

JOINT REGIONAL PLANNING PANEL (East)

JRPP No	2014SYE147
DA Number	239/13/3
Local Government Area	North Sydney Council
Proposed Development	Section 96(2) application to modify consent for demolition of existing structures and the construction of a mixed use development comprising basement levels, commercial floor space, and residential apartments involving modifications to building envelope and facade design and increase in apartment numbers from 181 to 218.
Street Address	144-154 Pacific Highway and 18 Berry Street North Sydney
Applicant/Owner	Fu Ji (North Sydney) Pty Ltd
Number of Submissions	Eighteen (18)
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) Modification application of Capital Investment Value > \$20M
List of All Relevant s79C(1)(a) Matters	North Sydney LEP 2013 - Zoning – B4 Mixed Use North Sydney DCP 2013 S94 Contribution SEPP 55 - Contaminated Lands SREP (2005)
List all documents submitted with this report for the panel's consideration	Plans Architectural Design Excellence Statement
Recommendation	Approval
Report by	Geoff Mossemenear, Executive Planner, North Sydney Council

EXECUTIVE SUMMARY

At its meeting of 17 December 2013, the Sydney East Region Joint Regional Planning Panel, as the consent authority, approved 2013SYE061 – North Sydney – Development Application No.239/13 for demolition of existing structures and the construction of a 24 storey mixed use building with basement parking subject to two amendments:

- a) the use of Level 3 being commercial rather than residential; and
- b) the width of the through-site link being 4m.

The Panel requested the Council's planning assessment officer to prepare, by 17 January 2014, draft conditions of consent, including conditions that require the above two amendments.

The Panel's reasons for departing from the recommendation of the planning assessment report, which was for refusal, were:

- a) the Court has approved a proposal of similar height to that of the application;
- b) the additional height to that permitted by the North Sydney LEP 2013 has no amenity impact;
- c) while the North Sydney LEP 2013 is now made, the application was lodged when it was still a draft LEP and the savings clause requires the Panel to assume that, at the time of determination, the LEP has not commenced.

On 15 January 2014, the Regional Panel Secretariat circulated the draft conditions and minutes of Panel Meeting on 17 December 2013 to panel members and requested confirmation of the panel member's decision on the application. Panel members confirmed their decision via email between 15 January 2013 and 20 January 2014.

The property was sold and the new owners have submitted a Section 96 application to modify the consent. The application proposes modifications to the building envelope and façade design, and an internal replanning of the building, resulting in a total of 218 apartments.

The Council's notification of the proposal has attracted 18 submissions raising particular concerns about blocking access from Berry Street to Doohat Lane; blocking of windows on common boundary; traffic; construction impacts; excessive development; loss of privacy and sunlight. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

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

DESCRIPTION OF PROPOSAL

The proposed amendments to the approved building involve:

- changes to the apartment configuration, mix and number, resulting in an increase in the number of apartments from 181 to 218;
- an increase in the buildings non-residential floor space from 3,765m² to 4,051m²;
- adjustments to the podium structure and ground floor layout;
- changes to the building's external form and appearance;
- amendments to the basement car park configuration and an increase in the number of car spaces;

Comparison between approved development and development as proposed to be modified

Component		Approved	Proposed
Height	Metres	<ul style="list-style-type: none"> 73.91m – RL146.71 (highest point of residential accommodation) 76.96m – RL149.76 (highest point of majority of roof level) 82.96m – RL 155.76 (highest point of roof plant) 	<ul style="list-style-type: none"> 76.2m – RL 149.00 (highest point of residential accommodation) 76.2m – RL149.00 (highest point of majority of roof level) 77.45m – RL 150.250 (highest point of lift overrun and plant) 85.696m – RL 158.49 (top of architectural roof feature)
	Storeys	24	24
Eastern front setback (Pacific Highway)	Ground/podium	0 m – 1.2 m (minimum)	0 m – 3.9 m
	Tower	2 m – 9.5 m (3.0 m weighted average)	1.7m – 3.85m (3.0 m weighted average)
Rear setback (Doohat Lane)	Ground/podium	0 m – 7.8 m	0 m
	Tower	0.8 m – 8.1 m	2.23 m – 4.75m
North side setback	Ground/podium	0 m	0 m
	Tower	0.9 m - 3.85 m	3.0 m – 5.6 m
South front setback (Berry Street)	Ground/podium	0 m	0 m – 4.6m
	Tower	1.45 m – 3 m (2.6 m weighted average)	0.1 m – 4.6 m

Changes to the Building Mass and Height

The massing and height of the building is modified as follows:

- The upper level of the buildings south western component fronting Berry Street has been modified from a stepped built form to an angled building plane sloping east to west.
- The tower component now includes an angled roof feature that results in the maximum building height at this corner increasing from RL155.76 to RL 158.49. The extent of the increased height is limited to the roof feature.
- The height of the building over the north eastern part of 18 Berry Street has changed from RL132.46 to a varying height which transitions from RL109.35 to RL139.04. The increased height is due to the new angled façade plane that is proposed.

A comparison between the approved and proposed building form is provided in **Figure 1**. A more detailed overview of the massing changes is provided in the accompanying Architectural Design Excellence Statement (see attachment B to this report).

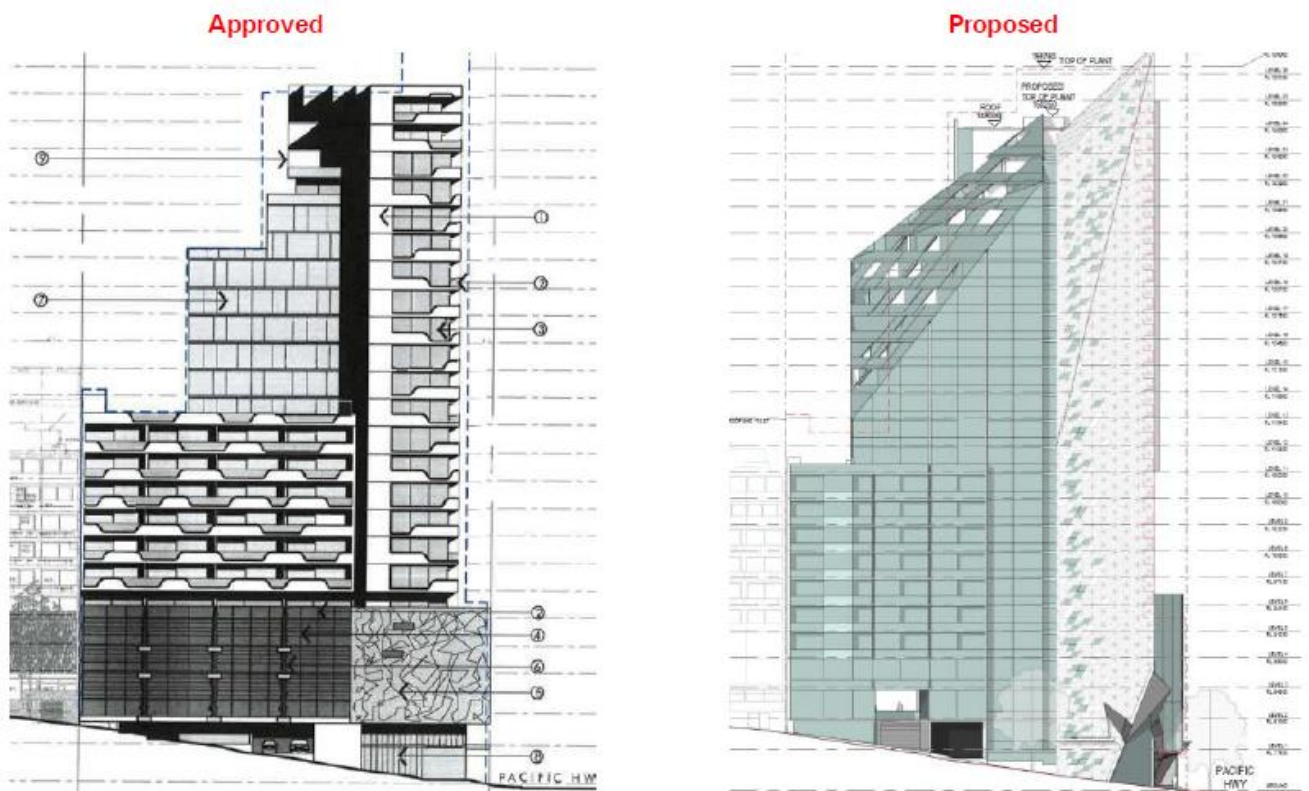


Figure 1 – Building heights and massing along Southern Elevation (Approved vs Proposed)

Façade and Elevational Changes

A number of modifications are proposed to the external design of the building. These changes principally involve amendments to the material composition and detailing, specifically:

- The use of composite panelling as well as glass fibre-reinforced concrete cladding on the north, south and east elevations;
- Re-orientation of the approved metal sunshade devices from vertical to horizontal. This change principally relates to the western elevations; and
- Replacement of performance wall glass with 'balustrade to curtain wall glazing'.

A photomontage of the previously approved design is shown at **Figure 2**, while the proposed design is shown at **Figure 3**.



Figure 2 – Photomontage of approved development
Source: Nettleton Tribe



Figure 3 – Photomontage of proposed development
Source: AJC Architects

Ground Plane and Through Site Access

A number of changes are proposed to the ground plane and through site access, these include:

- The building's street level façade has been redesigned to provide a more continuous and uninterrupted frontage of at-grade non-residential tenancies.

- The ground level setback to Pacific Highway has been reduced and is now built to boundary;
- The corner frontage to Berry Street and Pacific Highway has been chamfered to provide greater relief and space to the intersection.
- Pedestrian awnings have been provided for the full width of the site's frontage, including the corner frontage to Berry Street and the Pacific Highway.
- The through-site pedestrian link has been widened from 3.5m to a minimum of 6.2m and now expands to the width of Doohat Lane. The revised design also incorporates active commercial frontages and lobby entrances and has been pushed to the boundary to be more prominent and visible along Berry Street.
- Vehicular access has been maintained in the same location although the driveway has been modified to provide a straight entrance into the basement instead of the previously approved curved ramp design.

The changes to the through site access are shown in **Figure 4** below.

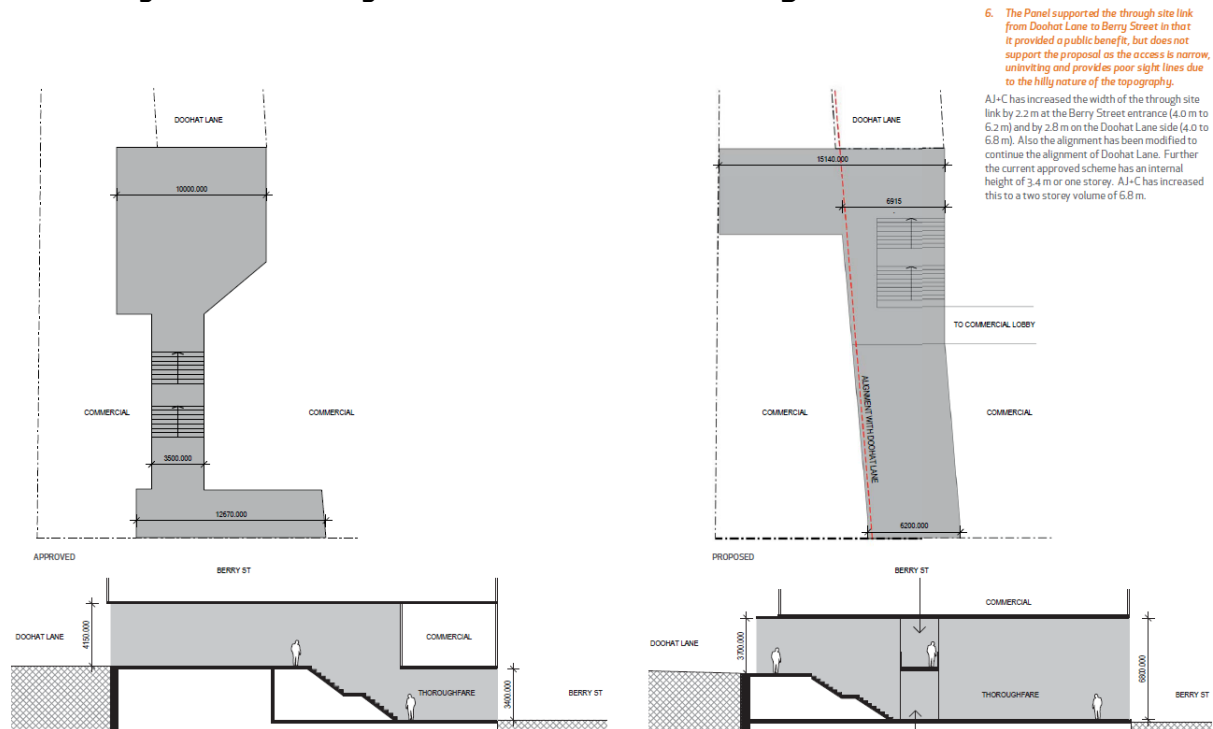


Figure 4 – Pedestrian through site link
Source: AJC Architects

Internal layout

The proposed amendments to the building's internal configuration have arisen following a comprehensive review of the approved scheme and further detailed design development in response to local market conditions and requirements. The proposed internal changes are shown in the accompanying Architectural Plans prepared by AJC (**Attachment A**) and include:

Residential

- Consolidation of the lift lobby on each floor.
- Consolidation of the lift and service core including relocation of garbage and service shafts;
- Deletion of the western fire stair;

Redesign of apartment configurations on each residential floor;

- Reduction in the size of the floor plate on Level 11 through an increased setback to the western side boundary.
- Minor extension of the floor plate further to the west on Levels 12-21
- Increasing the building setback to Berry Street on level 12-21 through the incorporation of a new angled façade.

The above changes result in an increase in the number of residential apartments from 181 to 218.

Commercial

- Reconfiguration of the driveway entrance to eliminate the need for a curved basement driveway ramp, freeing up internal space and allowing for the replanning of the ground, first, second and third floors.
- Creation of additional commercial space on the Ground Floor and Level 1 at the western end of the building adjacent to Berry Street.

Amalgamation of previous smaller tenancies into a larger contiguous non-residential space capable of being divided into smaller tenancies as required.

- Relocation of the non-residential lift core and changes to the lobby design.
- Changes to the lower floors of the building result in an increase of floorspace on levels Ground, 1, 2 and 3.

Changes to Apartment Number and Mix

The proposed amendments to the internal building configuration have resulted in changes to the number and mix of apartments

Apartment	Approved		Proposed	
One Bedroom / Studio	120	66%	127 (+7)	58%
Two Bedroom	59	33%	84 (+25)	39%
Three Bedroom	2	1%	7 (+5)	3%
Total	181	100%	218 (+37)	100%

STATUTORY CONTROLS

North Sydney LEP 2013 - Zoning – B4 Mixed Use
S94 Contribution
Environmental Planning & Assessment Act 1979
SEPP 1 Objection
SEPP 55 - Contaminated Lands
SREP (2005)

POLICY CONTROLS

North Sydney DCP 2013

CONSENT AUTHORITY

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

DESCRIPTION OF LOCALITY

The site is on the north-west corner of the intersection of the Pacific Highway and Berry Street. The inclusion of 154 Pacific Highway increases the site area to a total 1,678.6m² and extends the frontage of the site to the Highway by 13.055m to a total 36.755m.

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

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

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

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

BACKGROUND

DA.239/13 (2013SYE061) was preceded by DA.467/11 that proposed a mixed use development involving 6 basement levels of parking for 96 vehicles, 1405m² of commercial space, 41 serviced apartments and 101 residential apartments with a unit mix

of 29 studio units, 7 x 1 bedroom units, 55 x 2 bedroom units and 10 x 3 bedroom units over 23 storeys (excluding plant) to a maximum height of RL 156.

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

- 1. The Panel resolves unanimously to accept the recommendation of the planning assessment report to refuse the application for three principal reasons: excessive height; lack of a podium and poor internal amenity.*
- 2. As concerns the appropriate height, the Panel is aware that the only clear indication of height is in the draft North Sydney LEP 2009, which is neither certain nor imminent. Several other, more qualitative, controls have implications for appropriate height, and there are Court judgments, which have some relevance. On balance, the Panel believes that the appropriate height for this site is around RL 135. This value judgment is based partly on the context of the site, partly on the implications for this site of two judgments (Castle Constructions v North Sydney Council (2008) NSWLEC 1168 and (2008) NSWLEC 1456), and partly on the practical consideration that, if the proposal complied with the podium requirement, then the floor plate above RL 135 would be impractically small.*
- 3. In the Panel's opinion, the proposal requires a podium. While a podium has not been consistently required of all buildings in North Sydney, all recent approvals along the western side of the Highway are built over a podium. The podium should be consistent with new development at 156 Pacific Highway (ie carry on the height and setback) and continue along Berry Street, although it does not need to include 18 Berry Street.*
- 4. The amenity of the apartments on the northern side is unacceptable. On the assumption that No 154 may redevelop, the orientation of these apartments should be to the east and west.*
- 5. The Panel also believes that the serviced apartments should have reasonable amenity. Unlike hotel rooms, they can be easily converted to long-term residential use.*
- 6. The Panel notes that the serviced apartments are not a permissible use and need to comply with the definition of a hotel.*
- 7. The Panel believes that there should be a through-site link, as indicated by the applicant in proposed amendments.*

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

- deleted the serviced apartments;
- reduced the density to 84 apartments;
- increased the non residential FSR to 2.65:1 (with commercial floor space in lieu of serviced apartments);
- improved amenity to dwellings;

- provided a podium and setbacks above the podium and
- provided for a public through site link from Berry Street to Doohat Lane.

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

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- a) the use of Level 3 being commercial rather than residential; and
- b) the width of the through-site link being 4m.

The Panel requested the Council's planning assessment officer to prepare, by 17 January 2014, draft conditions of consent, including conditions that require the above two amendments.

The Panel's reasons for departing from the recommendation of the planning assessment report, which was for refusal, were:

- a) the Court has approved a proposal of similar height to that of the application;
- b) the additional height to that permitted by the North Sydney LEP 2013 has no amenity impact;
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On 15 January 2014, the Regional Panel Secretariat circulated the draft conditions and minutes of Panel Meeting on 17 December 2013 to panel members and requested confirmation of the panel member's decision on the application. Panel members confirmed their decision via email between 15 January 2013 and 20 January 2014.

The property was sold and the new owners have submitted a Section 96 application to modify the consent. The original application proposed modifications to the building envelope and façade design, and an internal replanning of the building, resulting in a total of **230** apartments with the level 3 commercial area as residential.

Following an initial assessment of the application, the applicant was requested to review and respond to a number of concerns relating to:

- level 3 as residential resulting in the amount of non residential floor space being below the minimum requirement of the LEP and below the amount provided in the original approved plans;
- information to support that proposal is substantially the same;
- the amenity of lower level apartments facing the rear lane;
- The treatment of the street awning at the corner;
- Matters raised in the submissions from the neighbouring property to the west.

The applicant submitted amended plans on 6 February 2015 and these plans are the subject of this report.

The applicant responded to the issues as follows:

Level 3 Residential

The conversion of Level 3 back to commercial results in the non-residential floor space within the development increasing from 2,862m² to 4,051m², representing an increase in the non-residential FSR from 1.7:1 to 2.41:1.

Under the North Sydney LEP 2013 the site has an overall minimum non-residential FSR of 2.24:1. Conversion of Level 3 back to commercial therefore ensures that the proposed modified building complies with the non-residential requirements of the LEP.

Substantially the Same Development

Further information was submitted that is discussed later in this report.

Residential Amenity of northern apartments fronting Doohat Lane

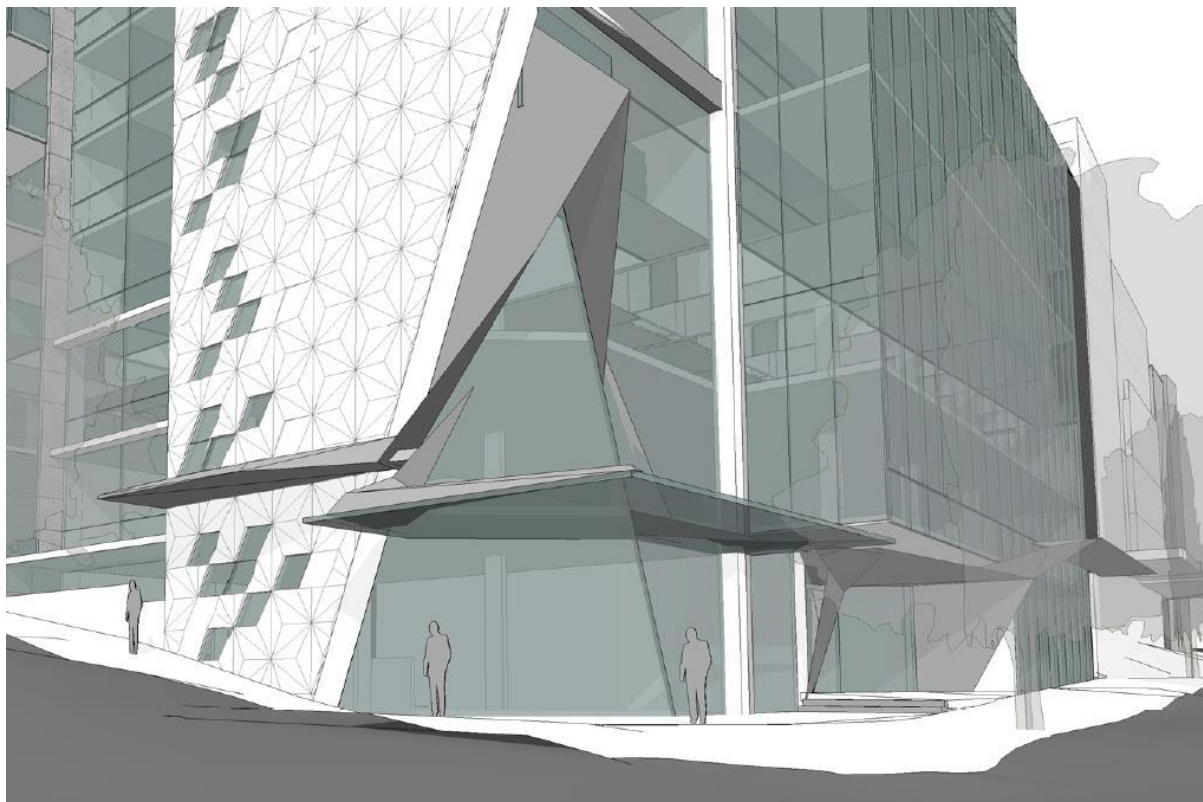
The design of the north facing apartments overlooking Doohat Lane has been amended in response to feedback from North Sydney Council, specifically:

- *Apartment 12 on levels 4 to 10 has been amended to provide a slightly narrower balcony. This change allows the recessed component of the building form to align with Doohat Lane.*
- *Apartment 13 on levels 4 to 10 has been amended to provide a more functional layout. The balcony has also been relocated to the western side of the apartment thus minimising overlooking opportunities.*
- *The design of apartment 14 on levels 4 to 10 has been amended by removing the balcony and converting this space to internal area. The result is an apartment with an internal area of 45m² configured in a more functional layout.*

The above amendments has allowed for the achievement of a building form that has a wider recess and increased setback above Doohat Lane, thus providing a more open and defined environment for the pedestrian through site link that connects from Berry Street through to the laneway.

Street Awnings

A new street awning has been added to the building's corner frontage to Pacific Highway and Berry Street. The new awning wraps around the entire corner of the building and will ensure that pedestrians receive protection from the elements across the full length of the site's Pacific Highway frontage and the majority of the Berry Street frontage.



Issues raised by owners at 12-16 Berry Street

We understand that concern has been raised with regard to potential privacy impacts caused by the balconies from the western facing apartments within the development, and that residents within 16 Berry Street have also objected to the potential impacts on their eastern facing windows caused by the proposed wall along the site's western boundary. In response to these objections we note the following:

- *The existing approved building on the subject site is already built to boundary. The proposed amended development therefore provides a design outcome that is consistent with that already approved for the site.*
- *Apartments within the building at 16 Berry Street are subject to a legal and binding covenant that was placed on all contracts at the time of the buildings construction and sale of units. This binding covenant applies to the units in perpetuity. This covenant permits the sealing or enclosing of all windows along the western side boundaries in case of development on the adjoining site (i.e. the subject site). The expectation that existing views and /or solar access from windows along the western boundary can be retained in the long term is therefore considered unreasonable. As part of the future development of the subject site the applicant is willing to encase or enclose these windows in a reasonable manner to the satisfaction of Council and the Body Corporate of 16 Berry Street. This could be appropriately conditioned as part of the development consent.*
- *With regards to potential privacy impacts, the balustrading of balconies of apartments 01 and 02 on Levels 4 to 11 has been amended to include a solid component up to a height of 0.75m, with glazing above this height. This design measure will reduce available sight lines between the balcony and the eastern facing windows of apartment at 16 Berry Street and thereby minimise any potential amenity impacts. In addition we note that the 19m-20m separation distance combined with the narrow nature of the side windows further minimises the potential for privacy impacts.*

REFERRALS

Building

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

Engineering/Stormwater Drainage/Geotechnical

Council's Development Engineer (Z Cvetkovic) has assessed the amended proposed development and advised of modifications to the standard and site specific conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management.

DESIGN EXCELLENCE PANEL

The proposal was initially presented to the North Sydney Design Excellence Panel on 3 June and 4 November 2014. The minutes of the 4 November 2014 meeting are reproduced as follows:

.....The site has been sold and the new owners have engaged a new architect to develop an amendment to the design of the approved building, including changes to the apartment configuration, mix and number; adjustments to the podium structure and ground floor layout; and changes to the building's external appearance and basement layout.

The initial redesign was before the Panel at its meeting of 3 June 2014 and involved:

- Demolition of the existing building.
- Construction of a mixed use building comprising commercial uses on Ground and Levels 1 to 3, with residential uses on the Levels 4 to 23.
- Construction of a multi storey basement car park.
- Approximately 3,765m² of commercial GFA.
- Approximately 226 residential apartments consisting of 21 x Studios, 137 x one bedroom apartments, 63 x two bedroom apartments and 5 x three bedroom apartments (achieved via internal reconfiguration).

The Panel noted that the plans were pre lodgement for general comment only and a formal Section 96 application is to be lodged with greater detail for SEPP 65 comments.

The Panel supported the changes to the through site link although still recommend that the width should be consistent with the laneway. The area needs to be well lit and safe. Some active uses, entrances etc would improve the ambience and safety of the lane extension. The Panel considered that the additional space gained by the redesign of the car access ramp could be incorporated into useable floor space.

The Panel raised concern about the public domain at the corner. Consideration is needed to the width of the footpath with regard to street trees and weather protection as well as wind from the tower element. An awning needs to be provided.

The Panel commented on the balustrades. They should allow for privacy and an ability to reduce noise levels from the Pacific Highway sliding louvres considered. The Panel requested further detailed plans be provided with the application about the sloping glazing

in the tower. Details on solar protection and reflectivity need to be provided.

The Panel noted that the architect advised that there would be an overall improvement on the approved plans with regard to south facing apartments, cross ventilation and solar access. A summary of RFDC compliance and a SEPP 65 statement will be provided with the application.

The Panel noted that there was a generous residential lobby and communal open spaces on level 11 and 21 that could work well provided that an enclosed space is provided. The Panel noted the improvement in the corridors with natural light being provided.

The Panel was supportive of the changes subject to the above matters being responded to.

The design has progressed for submission to Council as a Section 96 application for determination by the Joint Regional Planning Panel.

The Architect has provided the following statement with regard to the Section 96 application:

The approved DA had some significant inefficiencies in its planning, split lift cores, an excessive ramping configuration to gain access to the basement parking and large areas of underutilised floor space.

The building form did not sit well with its context in terms of street wall/podium heights, particularly in Berry Street. Also the eroded nature of the west and south-west elevations to comply with solar access requirements seemed unstructured, unresolved and unsatisfactory.

The principles guiding this Section 96 submission have been:

- *A building that better integrates into its local context by relating to the street wall heights established by existing developments.*
- *Refining the character and massing of the building to*
 - simplify its form*
 - diminish its bulk*
 - celebrate its corner location*
 - add value to the North Sydney urban environment.*
- *To improve the design of the internal configuration of the core, stairs and circulation to improve the amenity and functional quality.*
- *To improve the design quality of the apartments by reducing internal circulation, maximising location/orientation opportunities, functional furnishable spaces*
- *maximising the SEPP 65 requirements.*

Key to this Section 96 submission is the angled building plane to the south-west over Berry Street. This plane is a direct result of the reverse engineered solar plane. It established a geometry and character to the building. This has developed as 'crystal.....' or faceted character.

The apartments within this angled form have 'carved out' balconies and window openings looking south-west to the Harbour, the incline aiding in solar access to the apartments. Gutters aligning with the floor levels will collect rainwater as it runs down this roof/wall. Storage areas will occupy these areas or spaces that are below 2.4 m headroom. As a result of the solar studies this inclined form has resulted in a significant improvement in environmental benefits over the current approved DA.

The applicant has responded to the Panel's last comments as follows:

- *The through site link has been widened to pick up the width of Doohat Lane to the north and marginally narrows to 6.2m at Berry Street. The increase to a double height width enhances the sense of openness. Activation is achieved with the incorporation of commercial tenancies on either side of the laneway and inclusion of commercial lobbies that use the laneway as a point of access. It is also considered that the laneway might provide opportunities for future public art such as a wall mural.*
- *The building façade at the corner of Pacific Highway and Berry Street has been provided with an increased setback and has been chamfered to provide a more generous area of public domain. Street trees are proposed along both façades while an awning is also now included to respond to the concerns about wind impacts on pedestrians.*
- *Balconies facing Pacific Highway are to be enclosed by a curtain wall system, which will greatly assist with reducing noise impacts from the Pacific Highway. An acoustic treatment to the balcony soffit is also proposed.*
- *Further details have been provided on the treatment and design of the sloped façade as requested. It is noted that AJC have achieved a 'sloped' building plane as discussed at the meeting (as opposed to a stepped building plane).*
- *The revised design has resulted in a reduction of the number of single aspect south facing apartments from 40 to 32, and a reduction in the percentage of single aspect south facing apartments from 22.1% to 14.7%. The number of apartments that receive solar access has been increased from 120 to 139 while the number of cross ventilated apartments has significantly increased.*
- *The residential lobby and the communal open spaces on levels 11 and 21 have been retained. A new communal area has been added to Level 22 and the Level 21 communal area has also been partially enclosed in response to the panel's comments.*

The proposed design now before the Panel involves:

- Demolition of the existing building.
- Construction of a mixed use building comprising commercial uses on Ground and Levels 1 to 2, with residential uses on the Levels 3 to 23.
- Construction of a multi storey basement car park.
- Approximately 2,889m² of commercial GFA.
- 230 residential apartments consisting of 27 x Studios, 107 x one bedroom apartments, 89 x two bedroom apartments and 7 x three bedroom apartments

It is noted that the proposal now proposes level 3 as residential and the non residential floor space ratio is below the minimum required under Council's LEP. Use of level 3 as residential will require a planning proposal that has not been exhibited or endorsed by Council. Should the planning proposal not be gazetted, level 3 would be commercial and the commercial GFA would increase to 4,222m² and the apartments reduced to 218. The assessment of the Section 96 will be on the basis of 218 apartments. Should the planning proposal succeed, a further section 96 application could deal with the change to level 3.

Panel comments

The Panel comments concern the overall design of the building, the public domain and SEPP 65 matters. The amount of commercial GFA and the use of level 3 is a matter for Council to determine.

The Panel's comments are based on the 10 design principles of SEPP 65.

PRINCIPLE 1: CONTEXT

The North Sydney commercial area consists largely of mid and high rise commercial and residential buildings. Several large mixed use buildings are currently in the process of being developed nearby. The proposed development has been designed in the context of the future desired character. The lower podiums / street walls are compatible with the adjacent buildings. The Panel considers the proposed building an improvement to the approved plans.

PRINCIPLE 2: SCALE

The street wall heights of the adjacent buildings are continued along both the Pacific Highway and Berry Street facades. Rising from the podium is a sloping angular tower to reduce the visible bulk of the building from street level and reinforcing the street corner. The awning height of adjacent buildings along the Pacific Highway is continued along this façade, wrapping around the building's corner, and identifying entry points. The Panel raised concern about the proposed awning on the corner and suggested the height should be reduced and configuration modified to better provide protection for pedestrians.

PRINCIPLE 3: BUILT FORM

The solar amenity of the neighbouring apartments and the Don Bank museum were the starting points from which solar planes were reverse engineered to generate a solar envelope across the site. This solar study translated into the form of the tower element. This tower sits on a lower podium which aligns with its adjacent street edges, creating a continuous street wall along Berry St and the Pacific Highway. The building's highest point is at the corner. The proposed amendments to Ground and Level 1 facilitate a larger more contiguous retail/commercial frontage to the Pacific Highway and Berry Street which in turn enhance the building's appearance and street activation. The Panel considers the through site pedestrian link connecting Doohat Lane and Berry Street to be an improvement over that approved. Wind and safety impacts need to be addressed.

PRINCIPLE 4: DENSITY

This development includes 4000m² of commercial space and 218 apartments. This type of development is consistent with the density determined by the JRPP with its approval of the previous application in that the building envelope/volume is similar. The Panel did not comment on the proposed density as the JRPP had approved the scale of development previously.

PRINCIPLE 5: RESOURCE, ENERGY AND WATER EFFICIENCY

The residential component of the proposed development will meet the minimum BASIX energy (20%) and water (40%) efficiency targets. The development will comply with the BASIX requirements for thermal comfort. The Panel did not comment on this aspect.

PRINCIPLE 6: LANDSCAPE

The site offers limited opportunity for planting or landscaping. The main area of landscaping is on the top of the podium along Berry Street. Residents will have access to a podium area on level 11, which includes a barbeque area, shade structure, water feature and gardens. Street-tree planting, paving, signage etc should be developed to complement Council strategies for both streets.

PRINCIPLE 7: AMENITY

The majority of the apartments have a "wintergarden" arrangement for their balconies. The wintergardens along the Pacific Highway should potentially also be effective in improving the acoustic privacy from traffic noise.

The Panel does not support the studios proposed in the inner corner on levels 4 to 10 (level 3 being commercial) due the light well being covered at level 11, insufficient outlook from and daylight into the central studio and poor amenity. The inner corner needs to be reconsidered on these levels.

The Panel also raised concern with the width of the lobbies opposite the lifts on each level and the entrance door to the apartments opposite the lifts. The Panel recommends that the lobbies be extended by minor adjustment of the apartment opposite with the entrance relocated away from the lift doors.

The Panel suggested a solar study with regard to the treatment of the western elevation (glass, shading).

The proposed development has been designed to deliver an overall improvement to residential amenity across a range of aspects including solar access, natural ventilation and south facing apartments when compared to the approved development. 64.2% of apartments within the modified building design achieve solar access compliance (140 out of 218 units).

A total of 40 of the 181 apartments within the approved development were single aspect south facing, equating to 22.1% of apartments within the building. Under the revised scheme the total number of single aspect south facing apartments has been reduced to 39, representing 17.9% of the 218 apartments.

A total of 188 apartments (86%) within the development are naturally cross-ventilated. The methodology used to assess natural ventilation has been the same as the approach taken for the approved development, this being that all apartments above Level 6 are considered to be naturally ventilated by virtue of their elevation and exposure to breezes. The proposal therefore improves on the approved building's natural ventilation performance (75.7%) Given the high density and location of the development, some shortfall in relation to RFDC recommendations would be acceptable.

PRINCIPLE 8: SAFETY AND SECURITY

Passive strategies such as encouraging retail activity at ground level are to be implemented. The Doohat Lane thoroughfare has been designed so that it has commercial spaces adjacent for surveillance.

Access at level 1 from the through site link to the secondary residential lobby would be very insecure after daylight hours and this must be resolved.

The Panel also suggested that the residential and commercial lifts be shown with access to the loading and garbage areas on level 2 and that the garbage room be located under the garbage chutes to be provided on each residential level.

The Panel felt that sight distances need to be improved at the vehicle entrance with the walls being setback or glazed for the first 1.5m or more.

PRINCIPLE 9: SOCIAL DIMENSIONS AND HOUSING AFFORDABILITY

There is a mix of 1, 2, and 3 bedroom apartments in the development providing diversity to the market. The proposed development continues to incorporate rooftop residential communal areas on Levels 11 and 21 of the building. Supplementing this will be a new enclosed communal space provided on Level 22.

The two communal areas should provide good amenity and attractive meeting places for residents. It would be desirable for that at Level 11 to also have a small enclosed/sheltered space with amenities. The main residential lobby should desirably be wider and allow space for seating. Although the internal location of the residential mailboxes would be convenient and encourage meeting in this area, it is questioned whether it will be permissible.

PRINCIPLE 10: AESTHETICS

The location of the building, amongst glazed commercial towers and in a prominent location at the intersection of the Pacific Highway and Berry Street gave rise to the commercial appearance of glazed curtain walls which conceal the internal residential environment. The angled tower will add a distinctive form to the North Sydney skyline. The corner tower element is further articulated by textured concrete panels. A folded origami-like awning will run along the Pacific Highway frontage, folding in to the entrance lobby. A variety of materials including textured concrete, glass and metal cladding are proposed. The Panel was not convinced by the design of the awning proposed to the corner as it would be too high and would not provide adequate protection for pedestrians. The awning feature may need to be simplified to become more practical.

More consideration should also be given to the expression of the podium along Berry Street and to provide a visually stronger reinforcement to the Doohat Lane entry, and possibly some return glazing for the corner tenancy. Balustrade treatment to the L 3 apartments should also be reconsidered to provide more privacy to their visually exposed living areas.

Conclusion

The Panel supported the proposed development subject to the above issues being addressed.

The Panel's specific comments and the applicant's responses are listed in the table below:

Comment	Response
The Panel supports the changes to the through site link although still recommend that the width should be consistent with the laneway. The area needs to be well lit and safe. Some active uses, entrances etc would improve the ambience and safety of the lane extension. The Panel considered that the additional space gained by the redesign of the car access ramp could be incorporated into useable floor space.	The through site link has been widened to pick up the width of Doohat Lane to the north and marginally narrows to 6.2m at Berry Street. The increase to a double height width enhances the sense of openness.. Activation is achieved with the incorporation of commercial tenancies on either side of the laneway and inclusion of commercial lobbies that use the laneway as a point of access. It is also considered that the laneway might provide opportunities for future public art such as a wall mural.
The Panel raised concern about the public domain at the corner. Consideration is needed to the width of the footpath with regard to street trees and weather protection as well as wind from the tower element. An awning needs to be provided.	The building façade at the corner of Pacific Highway and Berry Street has been provided with an increased setback and has been chamfered to provide a more generous area of public domain. Street trees are proposed along both façades while an awning is also now included to respond to the concerns about wind impacts on pedestrians.
The Panel commented on the balustrades. They should allow for privacy and an ability to reduce noise levels from the Pacific Highway sliding louvers would be considered.	Balconies facing Pacific Highway are to be enclosed by a curtain wall system, which will greatly assist with reducing noise impacts from the Pacific Highway. An acoustic treatment to the balcony soffit is also proposed.
The Panel requested further detailed plans be provided with the application about the sloping glazing in the tower. Details on solar protection and reflectivity to be provided.	Further details have been provided on the treatment and design of the sloped façade as requested. It is noted that AJC have achieved a 'sloped' building plane as discussed at the meeting (as opposed to a stepped building plane).
The Panel noted that the architect advised that there would be an overall improvement on the approved plans with regard to south facing apartments, cross ventilation and solar access.	The revised design has resulted in the percentage of single aspect south facing apartments being reduced from 22.1% (40) to 18.3% (42) The number of apartments that receive solar access has been increased from 120 to 152 while the number of cross ventilated apartments has significantly increased.
The Panel noted that there was a generous residential lobby and communal open spaces on level 11 and 12 that could work well provided that an enclosed space is provided.	The generous residential lobby and the communal open spaces on levels 11 and 21 have been retained. A new communal area has been added to Level 22 and the Level 21 communal area has also been partially enclosed in response to the panel's comments.
The Panel noted the improvement in the corridors with natural light being provided.	Natural light to the corridors is still being provided as shown to the DEP.

Comments from Design Excellence Panel Meeting – 4 th November 2014	
To include a lower level awning at the building's corner frontage to Pacific Highway and Berry Street.	A lower level awning has been included on the building's corner as requested and will ensure that pedestrians are protected from the elements.
To include an awning over the Berry Street entrance to the pedestrian through site link.	A new awning is now provided over the Berry Street entrance to the through site link as recommended by the Panel.
To reconfigure the design and layout of apartments within the building's inner corner to provide greater separation and improved residential amenity. Would like to see the design of Level 4 replicated above.	The layout and configuration of Level 4 has been replicated on Levels 5, 6 and 7, thus increasing the height of the void above the through sit link and improving the amenity of these apartments.
Lower level balustrading on the Berry Street frontage to be amended to be a solid material as opposed to transparent glass.	Balustrading to apartments on the lower levels of the Berry Street frontage have been amended to be constructed of a solid material as recommended by the Panel.
The design of the access from the through site link to the residential and commercial lobbies to be considered and possibly redesigned to improve safety.	Access to these lobbies will be obtained via secure access card thus ensuring the security and safety of residents and occupiers of the building. It is envisaged that visitors will utilise the front entrance to the building.
Residential and commercial lifts to be shown with access to the loading and garbage areas.	The plans have been amended to show this.
Investigate the potential for the common wall with the driveway to include a glass section at the entrance to improve access and egress sight lines.	A section of glazed area has now been included to improve sight lines for motorists entering and exiting the basement.

The amended plans have addressed concerns about amenity and the street awning.

SUBMISSIONS

The application was notified to the Edward, CBD and Union precincts and surrounding owners and residents in accordance with Council policy. A total of 18 submissions were received with the main issues being summarised as follows:-

1 Doohat Ave

- Scale not compatible with immediate residential area

501/158 Pacific Highway

- Additional units in an already excessively large building
- Traffic and parking
- Loss of amenity: privacy, light and noise impacts
- Scale not compatible with immediate residential area

12-16 Berry Street

- Building built to boundary and blocking windows on side
- Impact on value of new apartment

1/12-16 Berry Street

- Impact on privacy of residents

3/12-16 Berry Street

- Impact on use of driveway from Doohat Lane

- Impact on privacy from communal rooftop area
- Impact on rental returns

6/12-16 Berry Street

- Impact on amenity with noise

10/12-16 Berry Street

- Impact privacy
- Too close to windows and balconies
- No more access for cars

12/12-16 Berry Street

- Loss of privacy
- Block access to property from Berry Street

14/12-16 Berry Street

- Building over Doohat Lane will block access from Berry Street
- Traffic conflicts
- Garbage collection in Lane will affect amenity
- Loss of privacy and sunlight
- Impact on side windows
- Scale excessive

19/12-16 Berry Street

- Block all windows on east side
- No access from Berry Street to carpark

20/12-16 Berry Street

- No access from Berry Street
- Loss of sunlight and privacy

29/12-16 Berry Street

- Block vehicle access
- Block light and ventilation
- Building too high and does not fit with existing

33/12-16 Berry Street

- Construction noise

40/12-16 Berry Street

- Building over Doohat Lane will block access from Berry Street
- Traffic conflicts
- Construction impacts
- Loss of privacy and sunlight
- Impact on side windows
- Scale excessive

43/12-16 Berry Street

- Building over Doohat Lane will block access from Berry Street
- Impact on privacy from communal rooftop area
- Building built to boundary and blocking windows on side

47/12-16 Berry Street

- Building over Doohat Lane will block access from Berry Street
- Traffic conflicts
- Construction impacts
- Loss of privacy and sunlight
- Impact on side windows
- Scale excessive

48/12-16 Berry Street

- Building over Doohat Lane will block access from Berry Street
- Impact on privacy from communal rooftop area
- Building built to boundary and blocking windows on side
- Traffic

34/7-17 Berry Street

- Construction issues

CONSIDERATION

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

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

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

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

Is the proposed development as modified substantially the same

development approved?

Section 96(2)(a) of the EP&A Act states that a consent authority may modify a development consent if “it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)”.

The Land and Environment Court established some key principles to be taken in account when considering what constitutes a modification, these being:

- The verb “modify” means to alter without radical transformation.
- “Substantially” in this context means essentially or materially or having the same essence.
- A development as modified would not necessarily be “substantially the same development” simply because it is for precisely the same use as that for which consent was originally granted.
- A modification application involves undertaking both a qualitative and quantitative comparison of the development as originally approved and modified.
- Environmental impacts of the proposed modifications are relevant in determining whether or not a development is 'substantially the same'.

Although the mix and design of the apartments are different to the original, the proposal is considered to be substantially the same development as approved because the height and envelope of the buildings are similar, it still comprises a taller tower component over 144-154 Pacific Highway, which then transitions down to a lower building mass over 18 Berry Street. The car access and loading is in the same location. The public benefits to be delivered by the scheme will continue to be provided and improved as a result of the proposal. In particular a more generous through site pedestrian link, improved street activation. The proposal retains a similar relationship with the adjoining development in Berry Street and the Highway, in that the height and podium articulation allow the building to effectively transition between the neighbouring developments; the proposal increases the number of apartments by 37, with the unit mix remaining similar; there is an increase (19) in the number of parking spaces.

The environmental impacts of the modified development are substantially the same as the approved development.

The changes to the building’s form as a result of the revised massing approach results in the building height increasing within the central recessed area of the site, which in turn generates a departure from the LEP height control applicable to 18 Berry Street. Whilst this is the case the modified massing approach does not radically transform the approved scheme. The revised massing strategy is a central feature to the modified building design and has been deliberately employed to reduce the building’s visual and overshadowing impacts.

There are two areas where the proposed development exceeds the height of the existing approved envelope, these being the roof feature at the corner of Pacific Highway and Berry Street, and the building mass located over part of 18 Berry Street.

The applicant has submitted the following information in response to Council's request for a comparison of the tower element above level 11:

A volumetric and GFA comparison has been carried out by AJ+C between the approved and amended building design. The analysis focuses on the building component above Level 11 as requested by Council. As demonstrated in the analysis the GFA of the amended building design exceeds that of the approved building by 995m². Whilst this is the case it is important to note however that the building's volumetric mass has been reduced by 1,089m³ under the amended design.

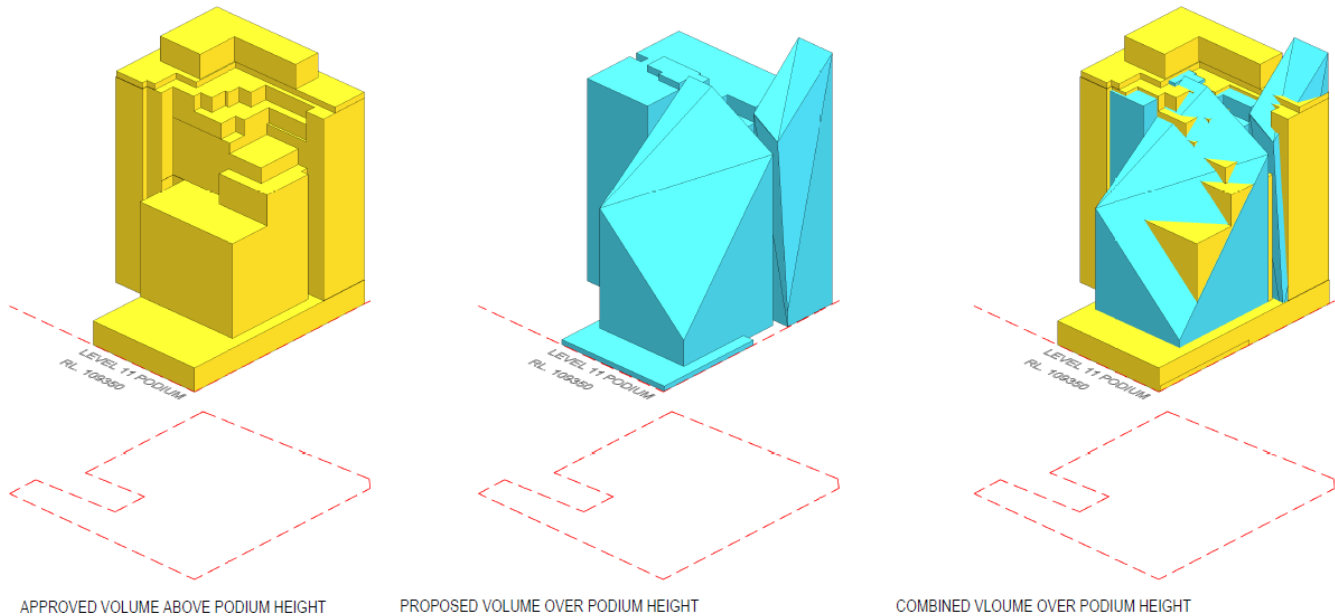
Accordingly, despite an increased GFA the amended building design is both visually and physically smaller than that of the approved building. AJ+C have been able to achieve this through a number of design changes and initiatives, including:

- a) Use of an angular building form that allows for a more efficient use of volumetric air space compared to the 'blocky' building mass of the approved development.*
- b) Reducing the height and volumetric mass of the northern part of the tower envelope compared to the approved development. This is clearly shown in the comparative volumetric diagrams.*
- c) Reducing the extent of Level 12 by increasing the building setback from the site's western boundary. This compares to the approved building which was built to the boundary at this level.*
- d) Redesigning and consolidating the building's central lift and service core to be more efficient and reduced in size. As a result the internal area that previously formed part of the building core has been converted into useable floor area which has increased the GFA.*

In light of the above it is acknowledged that the GFA above Level 10 has increased under the amended building design. This is considered acceptable however given that the building's volumetric size, form and mass have reduced as a result of the proposed amendments. The increase in floor area is therefore arbitrary and immaterial as it does not generate any additional or new environmental impact but rather improves the building's relationship with the surrounding area as demonstrated in the Section 96 application.

With regard to proposal being substantially the same as the approved development we reiterate that the amended building design maintains the same intent and essence of the approved development and does not represent a 'radical transformation' of the intended development outcome for the site. It is still a mixed use building with non-residential uses on the lower levels and residential above; it still distributes building mass and height across the site in a similar pattern to that of the approved building; it still maintains a similar relationship to its surrounds; and the environmental impacts of the development are largely consistent with that of the approved building. The only material difference relates to the buildings aesthetics and variations in architectural form that have been specifically implemented to improve the buildings appearance and reduce the overshadowing and visual impacts. As a result the revised design represents a superior planning and design outcome for the site.

	APPROVED	PROPOSED	DIFFERENCE
VOLUME OF BUILDING ABOVE PODIUM HEIGHT	36336m³	35247m³	-1089m³
GFA OF BUILDING ABOVE PODIUM HEIGHT	8288m²	9283m²	+995m²



VOLUME & AREA
COMPARISON

144-154 PACIFIC HIGHWAY NORTH SYDNEY
FUJI REAL ESTATE DEVELOPMENT (AUSTRALIA) PTY LTD

14013
SK0300
@A3

AJ+C
ARCHITECTS
170 Macleay Street, Sydney, NSW 2000
AUSTRALIA
p +61 2 9211 4222 f +61 2 9211 4222
www.ajc.com.au

The applicant has also provided a comparison table between the approved and proposed building which is reproduced for the information of the Panel as follows:

Component	Approved development	Amended Proposed Development	Consistency / Substantially the Same
Public Domain/Ground Plane/Communal Facilities			
Activation	Active frontages to both Pacific Highway and Berry Street	Active frontages to Pacific Highway and Berry Street. An increased amount of non-residential ground level activation is achieved along Berry Street.	✓ <i>Improvement</i>
Permeability	Access through the site between Berry Street and Doohat Lane.	Laneway has been retained and widened. Increased activation to laneway with incorporation of commercial lobby entrances and active facades facing the laneway.	✓ <i>Improvement</i>
Access	Residential lobby accessed off both Pacific Highway	No change	✓
Setback to Pacific Highway	0.4m to 2.6m provided at ground Built to boundary at podium Weighted average of 3m provided at tower	Built to boundary at ground Built to boundary at podium Weighted average of 3m provided at tower	✓ <i>Minor reduction at ground No change to above ground podium or tower</i>
Street trees	Provision along Pacific Highway and Berry Street	No change	✓
Pick/loading	Loading Bay provided at rear of building on Doohat Lane	No change	✓
Communal Facilities	Communal open space area provided on Levels 12 and 21	Communal open space area provided on Levels 11, 21 and 22. Communal areas located in same general locations within building.	✓

Built Form			
Envelope	Base, middle and top	Building form comprising base, middle and top still remain. Changes proposed to building envelope with incorporation of angled façade. Proposed change reduces the building's shadowing and visual bulk.	✓ <i>Improvement</i>
Max Height	RL155.76 to top of plant	RL150.25 to top of plan RL158.49 to top of architectural roof feature	<i>Majority of building below approved max height with exception of new architectural roof feature</i> ✓
Building transition	Stepped height plane transitioning between Pacific Highway and south western corner of the building along Berry Street.	New angled façade that provides a smoother transition from the tower to the lower building form along Berry Street, resulting in reduced visual and shadow impacts.	✓ <i>Improvement</i>
Podium	5 level podium fronting Pacific Hwy	No change	✓
Tower Setbacks (typical)	3.0m weighted average setback to Pacific Highway Built to boundary for 11 storeys fronting Berry Street and 2.35m setback to Berry Street from Level 12 above.	3.0m weighted average to Pacific Highway Built to boundary for 10 storeys fronting Berry Street 1.7m – 3.85m setback from Level 12 and above.	✓ <i>Improvement</i>
Architectural Expression	Stepped rectilinear block form. Expressed horizontality Design excellence not achieved according to North Sydney Design Excellence Panel.	Angular building form expressed both vertically and horizontally. Refer accompanying Design Excellence Statement (Attachment B). Design excellence achieved according to North Sydney Design Excellence Panel.	✓ <i>Improvement</i>

Having regard to all relevant matters, the proposal will be substantially the same as it has the same essence in regards to impacts and benefits as the original development. The marked changes in built form maintains substantially the same bulk as the original proposal.

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

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

Whether any submissions were made concerning the proposed modification.

Notification of the proposal has attracted 18 submissions raising particular concerns about blocking access from Berry Street to Doohat Lane; blocking of windows on common boundary; traffic; construction impacts; excessive development; loss of privacy and sunlight. The Section 96 proposal does not alter or necessarily increase these impacts having regard to the approval already granted. The issues raised are addressed within this report.

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

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

NORTH SYDNEY LEP 2013

Permissibility within the zone

The proposal is permissible with consent under the B4 Mixed Use zoning.

Clause 4.3 Height of buildings

The height of a building on the subject land under Clause 4.3 of NSLEP 2013 is RL125 over 144-154 Pacific Highway and RL106 over 18 Berry Street.

The approved development was not recommended for approval in the planning assessment report due to the substantial breaches of the height controls under the Draft NSLEP 2013. The Panel's reasons for departing from the recommendation of the planning assessment report were:

- a) the Court has approved a proposal of similar height to that of the application;
- b) the additional height to that permitted by the North Sydney LEP 2013 has no amenity impact;
- c) while the North Sydney LEP 2013 is now made, the application was lodged when it was still a draft LEP and the savings clause requires the Panel to assume that, at the time of determination, the LEP has not commenced.

The approved development has a maximum height of RL155.67 at 144-154 Pacific Highway, and RL116 at 18 Berry Street with the upper most residential floor being RL146.71. In comparison the modified building design has a maximum height of RL 150.00 (to glazed parapet on Pacific Highway) at 144-154 Pacific Highway measured to the building parapet and a height of RL145.95 measured to the top residential floor. An entertaining area of apartment 22.07 however is located at RL149.00. A proposed new architectural roof feature will extend up to RL158.49 and will therefore exceed the current maximum height of 144-154 Pacific Highway. The maximum height at 18 Berry Street is proposed to be RL134 which also exceeds the current height control.

144-154 Pacific Highway

- The LEP height control for 144-154 Pacific Highway is RL125. Strict interpretation of this control translates to all building mass above Level 16 being non-compliant with the LEP's numerical height standard for the site.
- The principle of building mass above Level 16 has been approved by the NSW Land and Environment Court in Judgement 10405 of 2012. The LEC approved development has a maximum height of RL156.00.
- The existing approved development (D239/13) has a maximum height of RL155.67 measured to the top of the building parapet.
- The proposed modified building design has a maximum height of RL149 to the top of the parapet.
- The bulk of the modified building therefore sits below that of the approved development.
- The proposed new roof feature located on the site's south eastern corner is the only new building component that exceeds the existing approved height at 144-154 Pacific Highway. It has a maximum height of RL158.49.

Clause 5.6 of the North Sydney LEP 2013 'Architectural roof features' states that development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limit set by Clause 4.3 may be carried out but only with development consent. Subclause (3) goes on to state that:

(3) Development consent must not be granted to any such development unless the consent authority is satisfied that:

(a) the architectural roof feature:

- (i) comprises a decorative element on the uppermost portion of a building, and*
- (ii) is not an advertising structure, and*
- (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and*
- (iv) will cause minimal overshadowing, and*

(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature

- The proposed architectural roof feature is solely a decorative element located on the uppermost portion of the building; is not an advertising structure; does not

include floor space area nor is it reasonably capable of being converted to floor space; and will not have an unacceptable overshadowing impact.

18 Berry Street

- The LEP height control for 18 Berry Street is RL106. Strict interpretation of this control translates to all building mass above Level 9 over this part of the site being non-compliant with the LEP's numerical height standard.
- The existing approved development (D239/13) has a maximum height of RL116.00 over this part of the site, being consistent with the LEC approved scheme.
- The proposed modified building design has a maximum height of RL110.35 to the building parapet where it adjoins 16 Berry Street and is therefore a full two storeys below that of the current approved design. The modified building therefore provides an outcome that directly corresponds with the adjacent building at 16 Berry Street.
- Building mass on the eastern half of 18 Berry Street transitions up in height from south-west to north-east from RL115.45 to RL134. The change to the building's form and height over 18 Berry Street occurs as a result of the new massing strategy which sees the approved stepped building form replaced with a unique sloping façade. This new massing strategy has the effect of redistributing mass away from the Berry Street frontage toward the centre of the site.
- The angle and height of sloping façade has been determined by the mid-winter solar access plane thus ensuring the modified building delivers a reduction in overshadowing compared to the approved development.
- The revised massing strategy also allows for the part of the building that is non-compliant with the height control to be recessed into the site and angled in such a way to ensure that buildings visual bulk is reduced compared to the approved building.

The proposed massing and height is considered appropriate and acceptable for the site.

Clause 4.4A Non-residential floor space

Under the North Sydney LEP the site known as 144-154 Pacific Highway has a minimum non-residential FSR requirement of 3:1 and the part known as 18 Berry Street has a minimum non-residential FSR of 0.5:1. Combination of these LEP controls results in an overall minimum non-residential FSR on the site of 2.24:1. A SEPP 1 objection was supported with the approved plans on the basis of compliance with the minimum overall FSR rather than an impractical insistence on compliance over each part of the site.

Under the amended plans, non-residential floor space is proposed to occupy the lower four levels of the building (Ground floor and Levels 1, 2 and 3). This represents an increase in the buildings non-residential floor space from 3,765m² to 4,051m² and a non residential FSR of 2.41:1.

The use of level 3 as commercial is consistent with the approved plan and ensures that the proposed modified building complies with the non-residential floor space standard set out in Clause 4.4A of the North Sydney LEP 2013.

Clause 6.1 Objectives of Division (North Sydney Centre)

Objective	Comment
(a) to maintain the status of the North Sydney Centre as a major commercial centre	The proposal results in a reduction in the commercial floor space existing on site.
(b) to require arrangements for railway infrastructure to be in place before any additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre	The proposal does not increase the non residential floor area and accordingly arrangements are not required.
(c) to permit an additional 250,000 square metres of non-residential gross floor area in addition to the estimated existing (as at 28 February 2003) 700,000 square metres of non-residential gross floor area	The proposed development will reduce existing non residential floor space.
(d) to ensure that transport infrastructure, and in particular North Sydney station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and: (i) be convenient and accessible, and (ii) ensure that additional car parking is not required in the North Sydney Centre, and (iii) have the capacity to service the demands generated by development in the North Sydney Centre	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage. The proposal does not provide for excessive car parking on site.
(e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres	The non residential floor space would be located at the lower levels and unlikely to be office space..
(f) to protect the privacy of residents, and the amenity of residential and open space areas, within and around the North Sydney Centre	The proposal will have a minimal impact on amenity of the residential areas.
(g) to prevent any net increase in overshadowing of any land in Zone RE1 Public Recreation (other than Mount Street Plaza) or any land identified as "Special Area" on the <u>North Sydney Centre Map</u>	The proposed development will result in acceptable additional overshadowing within the controls.
(h) to prevent any increase in overshadowing that would adversely impact on any land within a residential zone	The proposed development will result in no additional overshadowing.
(i) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas	No applicable to site

6.3 Building heights and massing

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

(a) to achieve a transition of building heights generally from 100 Miller Street and 79–81 Berry Street to the boundaries of the North Sydney Centre,

The proposal creates the transition in building heights for the City Centre similar to that accepted by the Court.

- (b) to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation or land identified as "Special Area" on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,*

The proposal will not overshadow any RE1 zoned land, any of the Special Areas as mapped by the LEP or the Don Bank Museum by more than the approved plans.

- (c) to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land identified as "Special Area" on the North Sydney Centre Map,*

No overshadowing.

- (d) to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,*

The architect has attempted to ensure that the streetscape has a comfortable human scale when viewed by passing pedestrians. A continuous awning is to be provided along the Highway façade as well as entry points in Berry Street to provide weather protection for pedestrians.

- (e) to encourage the consolidation of sites for the provision of high grade commercial space.*

The subject site comprises the consolidation of allotments. Adjoining sites are not isolated.

- (2) Development consent must not be granted for the erection of a building on land to which this Division applies if:*
(a) the development would result in a net increase in overshadowing between 12 pm and 2 pm on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as "Special Area" on the North Sydney Centre Map, or

As indicated on the submitted shadow diagrams, the proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas between 12pm and 2pm.

- (b) the development would result in a net increase in overshadowing between 10 am and 2 pm of the Don Bank Museum, or*

The proposal does not overshadow Don Bank other than a small section at 11.15am. in mid winter for less than 15 minutes where the approved building overshadowed for 30 minutes.

(c) the site area of the development is less than 1,000 square metres.

The subject site is 1,678.6m² in area and complies.

(3) Development consent for development on land to which this Division applies may be granted for development that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm is not likely to reduce the amenity of any dwelling located on land to which this Division does not apply.....

See detailed discussion above with regard to height non compliance.

(5) In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following:
(a) the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining North Sydney Centre,

The proposal is similar to the approved building with regard to its scale within the context of the locality.

(b) whether the proposed development preserves significant view lines and vistas,

There are no view lines or vistas affected by the proposal.

(c) whether the proposed development enhances the streetscape in relation to scale, materials and external treatments.

The proposed development will enhance the streetscape with its materials and external treatments and provides variety and interest.

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

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

Provide diverse activities, facilities, opportunities and services

The mixed use development provides for commercial, retail and residential uses, with communal area provided for all residents. The new residential accommodation is provided in the fringe of the city centre, and not in the commercial core as per the Development Control Plan

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

The site has excellent access to public transport and parking on site is satisfactory

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

A continuous awning is to be provided along the Highway façade as well as entry points in Berry Street to provide weather protection for pedestrians.

Allow zero setbacks at ground floor and adjacent to heritage items

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

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

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

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

The development has architectural detailing. The building will comply with the energy requirements of BASIX, Appropriate stormwater controls will be installed. Waste will be minimised where possible. The design of the building is supported by the DEP.

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

The development will not hinder the public domain. The through site link is significantly approved over the approved plans. Appropriate street planting will be required and conditioned.

SEPP 55 and Contaminated Land Management Issues

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

SREP (Sydney Harbour Catchment) 2005

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The site, however, is not located close

to the foreshore and will not be readily visible from any part of the harbour and the application is considered acceptable with regard to the aims and objectives of the SREP.

SEPP 65 – Design Quality of Residential Flat Development

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

- (a) to ensure that it contributes to the sustainable development of New South Wales:*
 - (i) by providing sustainable housing in social and environmental terms, and*
 - (ii) by being a long-term asset to its neighbourhood, and*
 - (iii) by achieving the urban planning policies for its regional and local contexts, and*
- (b) to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- (c) to better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- (d) to maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- (e) to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions.*

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

PRINCIPLE 1: Context

The North Sydney commercial area consists largely of mid and high rise commercial and residential buildings. The proposed development has been designed in the context of the future desired character. The lower podiums / street walls are compatible with the adjacent buildings.

PRINCIPLE 2: Scale

The street wall heights of the adjacent buildings are continued along both the Pacific Highway and Berry Street facades. Rising from the podium is a sloping angular tower to reduce the visible bulk of the building from street level and reinforcing the street corner.

PRINCIPLE 3: Built Form

The solar amenity of the neighbouring apartments and the Don Bank museum were the starting points from which solar planes were reverse engineered to generate a solar envelope across the site. This solar study translated into the form of the tower element. This tower sits on a lower podium which aligns with its adjacent street edges, creating a continuous street wall along Berry St and the Pacific Highway. The building's highest point is at the corner. The proposed amendments to Ground and Level 1 facilitate a larger

more contiguous retail/commercial frontage to the Pacific Highway and Berry Street which in turn enhance the building's appearance and street activation.

PRINCIPLE 4: Density

This type of development is consistent with the density determined by the JRPP with its approval of the previous application in that the building envelope/volume is similar.

PRINCIPLE 5: Resource, Energy and Water Efficiency

The residential component of the proposed development will meet the minimum BASIX energy (20%) and water (40%) efficiency targets. The development will comply with the BASIX requirements for thermal comfort.

PRINCIPLE 6: Landscape

The site offers limited opportunity for planting or landscaping. The main area of landscaping is on the top of the podium along Berry Street. Residents will have access to a podium area on level 11, which includes a barbeque area, shade structure, water feature and gardens. Street-tree planting, paving, signage etc should be developed to complement Council strategies for both streets.

PRINCIPLE 7: Amenity

The majority of the apartments have a "wintergarden" arrangement for their balconies. The wintergardens along the Pacific Highway should potentially also be effective in improving the acoustic privacy from traffic noise.

The proposed development has been designed to deliver an overall improvement to residential amenity across a range of aspects including solar access, natural ventilation and south facing apartments when compared to the approved development.

PRINCIPLE 8: Safety and Security

Passive strategies such as encouraging retail activity at ground level are to be implemented. The Dooat Lane thoroughfare has been designed so that it has commercial spaces adjacent for surveillance.

PRINCIPLE 9: Social Dimensions and Housing Affordability

There is a mix of 1, 2, and 3 bedroom apartments in the development providing diversity to the market. The proposed development continues to incorporate rooftop residential communal areas on Levels 11 and 21 of the building. Supplementing this will be a new enclosed communal space provided on Level 22.

PRINCIPLE 10: Aesthetics

The location of the building, amongst glazed commercial towers and in a prominent location at the intersection of the Pacific Highway and Berry Street gave rise to the commercial appearance of glazed curtain walls which conceal the internal residential environment. The angled tower will add a distinctive form to the North Sydney skyline. The corner tower element is further articulated by textured concrete panels. A variety of materials including textured concrete, glass and metal cladding are proposed.

Residential Flat Design Code 2002

The controls and objectives of the code are similar to many of the controls included in Council's Local Environmental Plan and Development Control Plan 2013. The two key rules-of-thumb that the apartment changes affect are that of cross ventilation and solar access. In each case the new proposal improves on the RFDC percentages.

Cross ventilation

A total of 77.1% of apartments within the development are naturally ventilated. The methodology used to assess natural ventilation has been the same as the approach taken for the approved development, this being that all apartments above Level 6 are considered to be naturally ventilated by virtue of their elevation and exposure to breezes. The proposal therefore improves on the approved building's natural ventilation performance (67.1%).

Solar access

It has been calculated that 67.4% of apartments within the modified building design now achieve solar access compliance (≥ 2 hours). The proposal therefore provides a marginal improvement on the approved building.

South Facing Apartments

A total of 40 of the 181 apartments within the approved development were single aspect south facing, equating to 22.1% of apartments within the building. Under the revised scheme, the total number of single aspect south facing apartments represents 14.7% of the apartments. The revised building design therefore achieves a reduction in the percentage of single aspect south facing apartments.

Traffic and parking

A Traffic Statement has been prepared by Traffix.

Parking

The proposed development maintains the same parking rates as the approved development. Due to the increase in the number of apartments, the number of residential parking spaces has increased from 136 to 155 spaces.

The number of commercial and retail parking spaces has remained at 10 spaces.

The increase in parking has resulted in a net overall increase of 19 car parking spaces compared to the approved development, and complies with the controls of the North Sydney DCP 2013

Traffic generation

Based on the number of car parking spaces proposed, the modified development will generate approximately 54 vehicle trips during the morning peak hour and 45 trips during the evening peak hour. The proposed increase in trip generation from the site is only minor and will not have any significant detrimental effects on the surrounding road network, with the nearby intersection able to maintain its current Level of Service B performance.

Wind

A Pedestrian Wind Environment Statement has been prepared by Windtech.

The statement outlines the results of a desktop study that assesses the likely impact of the proposed modifications on the local wind environment within and around the building. Windtech conclude that the wind conditions resulting from the modifications are acceptable

Reflectivity

A Solar Light Reflectivity Statement has been prepared by Windtech.

The statement comments on the likely impact of the modifications on potential solar glare from the development and recommends that the external façade of the development have a maximum reflectance of 20% to comply with SEPP 65 and the DCP.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's Section 94 plan are warranted and are based on the total increase in the number of apartments with an allowance for the reduction in commercial floor space. The contributions are detailed in the attached conditions.

DESIGN & MATERIALS

The design and materials of the buildings have been assessed as being acceptable.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes

- | | | |
|----|--|-----|
| 7. | Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. | Site Management Issues | Yes |
| 9. | All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979 | Yes |

Submitters Concerns

The concerns raised by submitters are summarised as follows:

Scale not compatible with immediate residential area

The application is a Section 96 application that is required to be substantially the same as the approval. The Court has determined the scale to be acceptable in a previous proposal as did the Panel. The scale of the modified proposal is in keeping with the approved plans and in fact a lesser scale directly adjoining the neighbours. Where the scale has been increased is to the centre of the site away from boundaries with no additional impacts on amenity.

Traffic and parking

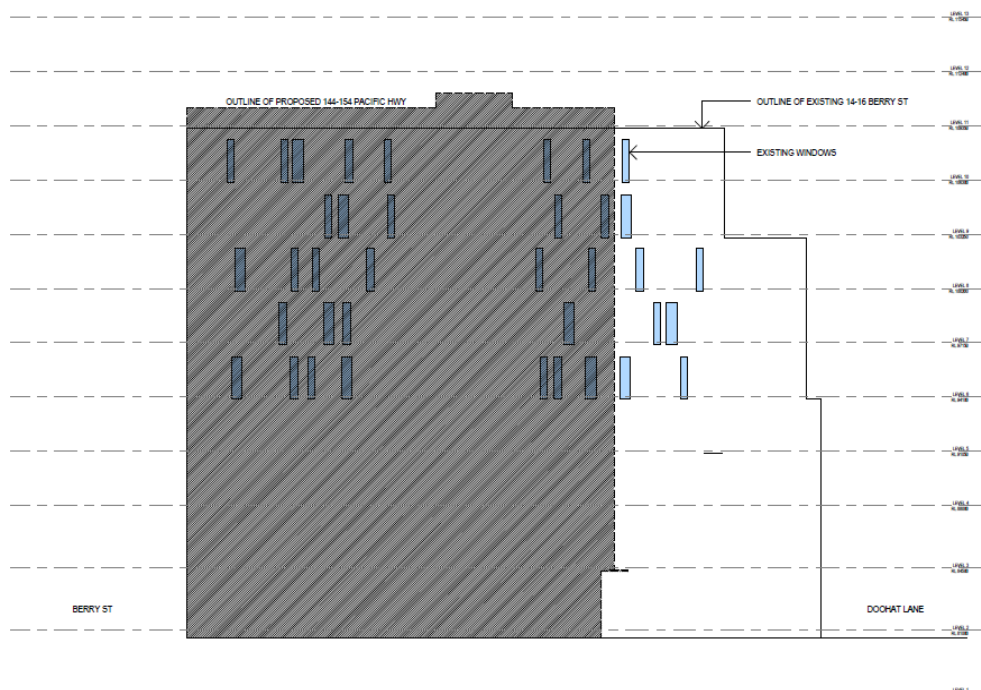
The proposal complies with the requirements of the DCP for amount of parking. The traffic report advises that the proposed increase in trip generation from the site is only minor and will not have any significant detrimental effects on the surrounding road network, with the nearby intersection able to maintain its current Level of Service B performance. The carpark entry/exit is to Berry Street so there is no increase in traffic using Doohat Lane.

Loss of amenity: privacy, light and noise impacts

The proposed modification does not alter the amenity impacts of the approved building. With regards to potential privacy impacts, the balustrading of balconies of apartments 01 and 02 on Levels 4 to 11 has been amended to include a solid component up to a height of 0.75m, with glazing above this height. This design measure will reduce available sight lines between the balcony and the eastern facing windows of apartment at 16 Berry Street and thereby minimise any potential amenity impacts. In addition the 19m-20m separation distance combined with the narrow nature of the side windows further minimises the potential for privacy impacts. The modification should not result in any additional noise impacts to that approved.

Building built to boundary and blocking windows on side

There are a number of windows on the eastern boundary of No.12-16 Berry Street. These windows had consent before but were built after the Court had approved a building on the boundary with a higher wall on the subject site. The approved building is also proposed to be built to this common boundary. The windows within 24m of Berry Street (the length of the proposed wall), that is all but the eight northern most windows will be covered.



1 14-16 BERRY ST EAST ELEVATION
1:200

When the JRPP determined the mixed use building at 12-16 Berry Street (18 May 2011) there was concern that these windows on the boundary would eventually be built over

and owners of these apartments would object to any new development adjoining to protect the amenity that the windows would provide. A suitable condition was imposed requiring a covenant on the strata title advising that the windows were not protected and could be built over in the future. Purchasers of apartments that had these boundary windows could have made enquiries about the consents on the neighbouring property or become aware through the 88B instrument on the strata plan advising:

Any windows and air vents on or near the eastern boundary of the subject land that adjoins No. 18 Berry Street, North Sydney (currently Lot 4 in DP237104) are not protected from any redevelopment of the adjoining property at No. 18 Berry Street, North Sydney that may be allowed to build to the boundary and these windows and air vents could be blocked from receiving any sunlight or airflow (whether direct or indirect) from any such further redevelopment.

Any windows on or near the western boundary of the subject land that adjoins No. 10 Berry Street, North Sydney (currently Lot 8 in DP237104) are not protected from any redevelopment of No. 10 Berry Street, North Sydney and these windows could be blocked from receiving any sunlight (whether direct or indirect) from any such further redevelopment.

The Registered Proprietor(s) of the subject land cannot object to North Sydney Council if the Council approves:

(a) A Development Application that would block any windows and air vents on or near the eastern boundary of the subject land that adjoins No. 18 Berry Street, North Sydney from receiving sunlight or airflow and/or permit the redevelopment of No. 18 Berry Street, North Sydney to build to the eastern boundary of the subject land; or

(b) A Development Application that would block any windows on or near the western boundary of the subject land that adjoins No. 10 Berry Street, North Sydney from receiving sunlight.

As part of the future development of the subject site the applicant is willing to encase or enclose these windows in a reasonable manner to the satisfaction of Council and the Body Corporate of 16 Berry Street. This could be appropriately conditioned as part of the development consent.

Impact on value of new apartment

The proposed modification does not cause any additional impacts to that already approved on the subject site. The proposal is consistent with the previous approvals. Notwithstanding the breach of the 2013 height controls, development on the subject site was still envisaged as being taller than the adjacent sites.

Impact on privacy from communal rooftop area

The communal rooftop area on level II is higher than the neighbour and does not extend past the wall of 12-16 Berry Street. There is no impact on privacy.

Impact on rental returns

This is not a matter that can be taken into account in the determination of the proposal. After the proposal is built, there would be a substantial improvement in the building's appearance and the public domain.

Too close to windows and balconies

The building is no closer than the approved plans. The closest part of the northern section of the building is 20m from the western boundary.

Building over Doohat Lane will block access from Berry Street

Doohat Lane does not link with Berry Street. That section is part of No.18 Berry Street. Doohat Lane ends where the vehicle access to 12-16 Berry Street is located. Both previous approvals did not provide for a vehicle link (due to excessive grade) but a pedestrian link. No.12-16 Berry Street does not have any legal access from Berry Street across No.18 only from the lane.

Garbage collection in Lane will affect amenity

This aspect remains the same as approved. Conditions are imposed to control loading and unloading times.

Construction noise

Standard conditions are imposed on the consent to minimise impacts as much as practical however there will be excavation and construction noise that cannot be avoided just as there was when the new buildings were built.

Conclusion

The proposed development as modified is considered to be substantially the same development as approved. While a contrary view might be proffered on the basis of physical form alone, qualitative and quantitative assessment suggest an outcome very similar to that contemplated by the original consent. The modifications do not create additional impacts on surrounding development to the approved development. The change in mix of dwellings is acceptable.

A concern was raised with regard to undergrounding of power lines and telecommunication cables. The approval already contains the following conditions (that will be retained with this application):

Underground Electricity and Other Services

C23. All electricity provision to the site is to be designed in conjunction with Energy Australia so that it can be connected underground. All overhead lines and cables (if any) on the property's street frontage to be placed underground or removed and any street lighting being replaced at the applicant's cost. Details to be shown on plans submitted and approved with the Construction Certificate.

(Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

Undergrounding of Telecommunications Services

G7. The developer shall submit to the Principal Certifying Authority a letter from Telstra and/or Optus confirming that satisfactory arrangements have been made for the provision of underground telephone and cable television services, prior to the release of the Subdivision Certificate or issuing of a final Occupation Certificate.

(Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services)

This application will require the following conditions to be replaced:

- A1 Development in accordance with plans
- A3 Level 3 to be commercial
- C7 Infrastructure works
- C26 S94 Contributions
- C27 Security Bond Schedule
- C29 Bicycles storage and parking
- C31 Parking for people with disabilities
- C32 Line marking
- C41 Minimum width of through site link
- G9 Right of way through site
- H1 Allocation of spaces

As well as additional new conditions concerning on site detention and pump out systems and the treatment of windows on the balcony.

The Section 96(2) application is recommended for favourable consideration.

RECOMMENDATION

THAT the Joint Regional Planning Panel, as the consent authority, modify its consent dated 22 January 2014 in respect of a proposal for demolition of existing structures, and construction of a mixed use building above basement car parking at 144-154 Pacific Highway and 18 Berry Street North Sydney under the provisions of Section 96 of the Environmental Planning and Assessment Act with regard to 2014SYE147 – North Sydney - Development Application No.239/13/3, only insofar as will provide for the following.

To delete condition A1, A3, C7, C26, C27, C29, C30, C31, C32, C41, G9 and H1 of the consent and insert the following new conditions namely:

Development in Accordance with Plans

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions and this consent.

Plan No.	Issue	Title	Drawn by	Received
DA001	K	Cover	AJ+C	6 February 2015
DA2001	K	Basement 1	AJ+C	6 February 2015
DA2002	K	Basement 2	AJ+C	6 February 2015
DA2003	K	Basement 3	AJ+C	6 February 2015
DA2004	K	Basement 4	AJ+C	6 February 2015
DA2005	K	Basement 5	AJ+C	6 February 2015
DA2100	K	Ground	AJ+C	6 February 2015
DA2101	K	Level 1	AJ+C	6 February 2015
DA2102	L	Level 2	AJ+C	6 February 2015
DA2103	K	Level 3	AJ+C	6 February 2015
DA2104	K	Level 4	AJ+C	6 February 2015

DA2105	J	Level 5	AJ+C	6 February 2015
DA2106	J	Level 6	AJ+C	6 February 2015
DA2107	J	Level 7	AJ+C	6 February 2015
DA2108	H	Level 8	AJ+C	6 February 2015
DA2109	H	Level 9	AJ+C	6 February 2015
DA2110	H	Level 10	AJ+C	6 February 2015
DA2111	J	Level 11	AJ+C	6 February 2015
DA2112	H	Level 12	AJ+C	6 February 2015
DA2113	H	Level 13	AJ+C	6 February 2015
DA2114	H	Level 14	AJ+C	6 February 2015
DA2115	H	Level 15	AJ+C	6 February 2015
DA2116	H	Level 16	AJ+C	6 February 2015
DA2117	H	Level 17	AJ+C	6 February 2015
DA2118	H	Level 18	AJ+C	6 February 2015
DA2119	H	Level 19	AJ+C	6 February 2015
DA2120	H	Level 20	AJ+C	6 February 2015
DA2121	H	Level 21	AJ+C	6 February 2015
DA2122	H	Level 23	AJ+C	6 February 2015
DA2124	H	Level 24	AJ+C	6 February 2015
DA3101	K	North and East Elevations	AJ+C	6 February 2015
DA3102	J	South and West Elevations	AJ+C	6 February 2015
DA3201	B	Sections	AJ+C	6 February 2015
DA9001	B	Materials Board	AJ+C	6 February 2015

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

Required Infrastructure Works in Berry Street, Pacific Highway and Doohat Lane –Roads Act 1993

- C7. Prior to issue of the Construction Certificate the applicant must have engineering design plans and specifications prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Prior to the issue of the Construction Certificate, North Sydney Council must issue the applicant with a driveway crossing and road infrastructure works **permit** to suit the approved off-street parking facilities. To obtain the permit, an application must be made to Council on a '*Vehicular Access Application*' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable permit issue.

The civil design drawings shall detail **the following infrastructure construction requirements of Council in relation to the consent:**

Road Works

- a) Construction of a fully new footpath is required across the entire site frontage in Berry Street. The footpath pavement shall be full width constructed of pavers, as specified in Public Domain Style Manual and Design Codes for the particular city area, placed adjacent to the front boundary of the property. The footpath shall be designed (at a single straight grade of 3% falling to top of kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.
- b) Construction of a fully new footpath is required across the entire site frontage in Pacific Highway. The footpath pavement shall be placed on a single straight grade of 3.0% falling to the top of kerb, so that it is uniform without showing signs of dipping or rising particularly at entrances. The footpath pavement shall be full width constructed of pavers, as specified in Public Domain Style Manual and Design Codes for the particular city area.
- c) Cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), particularly disability requirements. The Council approved footpath levels must be accommodated at the building entry points.
- d) The Certifying Authority must ensure that the internal property levels at boundary matches councils boundary levels.
- e) The redundant layback crossing in Berry Street must be reinstated as upright kerb gutter and footpath from pavers.
- f) Construction of a fully new kerb and gutter is required across the entire site frontage in Berry Street and Pacific Highway. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- g) Construction of kerb ramp at the corner of Pacific Highway & Berry Street is required as specified in Public Domain Style Manual and Design Codes for the particular city area and AS/NZS 1428.4.1:2009.
- h) The proposed vehicular access ways shall comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor.
- i) The width of the vehicular laybacks shall be 9.0m - including the wings.
- j) The vehicular access way shall be built from standard interlocking concrete pavers (Council's standard drawing No. S402) and designed to comply with AS 2890.1 to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or garage floor.
- k) The vehicular laybacks shall be set square to the kerb.
- l) The boundary footpath levels and gutter invert levels shall match the existing levels and shall not be altered unless agreed to by Council.
- m) The Certifying Authority must ensure that the internal property levels at boundary matches councils boundary levels.
- n) Construction of a fully new road shoulder (maximum grade 5% down

towards new gutter) extending to 600 mm out from the gutter alignment and across the entire development site frontage in Berry Street and Pacific Highway.

- o) Any twisting of driveway access to ensure vehicles do not scrape shall occur entirely within the subject property.
- p) All inspection openings, utility services shall be adjusted to match the proposed driveway levels and location.
- q) The vehicular access for loading dock in Doohat Lane shall be constructed as a continuous layback.
- r) The gutter invert levels shall match the existing levels and shall not be altered unless agreed to by Council.
- s) The building line entrance level for loading dock shall match the existing levels, but generally must not be more than 160 mm above existing gutter invert level at any point along the layback.
- t) The Certifying Authority must ensure that the internal property levels at boundary matches councils boundary levels.
- u) The design details for each vehicular access are to be provided with **vehicular access application** and must include sections along centre-line and extremities of the crossing at a scale of 1:25. Sections are to be taken from the centre of the roadway through to the parking area itself and shall include all changes of grade and levels, **both** existing and proposed.
- v) A longitudinal section along the footpath property boundary in Berry Street and Doohat Lane at a scale of 1:50 is required.
- w) The sections shall show the calculated clearance to the underside of any overhead structure.
- x) All details of internal ramps between parking levels.
- y) A swept path analysis is required demonstrating that an 85th percentile vehicle can maneuver in and out of the loading dock, garage spaces and along access ramps in accordance with AS 2890.1 2004 "Off Street Parking".
- z) Full frontage – full width Road surface Reconstruction in Doohat Lane.

Drainage Works

Connection of the site stormwater system must be made directly to a newly constructed grated gully pit (with lintel), to front the site on Pacific Highway. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property. The works shall be arranged at the Applicants expense:-

- a) Replacement of 2 standard grated gully pits with extended kerb inlet (2.4m lintel) in the kerb fronting the subject site in Pacific Highway (2 pits nearest to the corner with Berry Street). All new pits must be constructed in accordance with Councils "Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works".

- b) Construction of a new in-ground drainage line under the kerb and gutter at standard depth. The line must connect 2 new gully pits in Pacific Highway. The pipes within the road reserve are to be reinforced concrete class 2 with a 600mm diameter and have bedding in accordance with Australian Standard AS 3725 – (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow a gravity connection.

Private Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. Detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RTA Traffic Control at Work Sites (1998).

Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.

A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

S94 Contributions

- C26. A contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, as specified under the North Sydney Section 94 Contribution Plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

A	B (\$)
Administration	\$20,496.55
Child Care Facilities	\$28,849.52
Community Centres	\$98,648.76
Library Acquisition	\$18,286.37
Library Premises & Equipment	\$56,646.16

Multi Purpose Indoor Sports Facilities	\$15,042.86
Open Space Acquisition	\$656,394.98
Open Space Increased Capacity	\$1,301,082.33
Olympic Pool	\$48,993.54
Public Domain Improvements	\$436,086.28
Traffic improvements	\$57,025.87
Total	\$2,737,553.22

The contribution SHALL BE paid prior to determination of the application for Construction Certificate, where applicable.

The above amount, if not paid within one calendar year of the date of this consent, shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Section 94 Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au.

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

Security Bond Schedule

C27. All fees and security bonds in accordance with the schedule below must be paid or in place prior to the issue of the required Construction Certificate:

SECURITY BONDS	AMOUNT (\$)
Tree Damage Bond	10,000.00
Drainage Construction Bond	14,100.00
Engineering Construction Bond	117,400.00
TOTAL BONDS	\$141,500.00
FEES	
Section 94 contribution	\$2,737,553.22

(Reason: Compliance with the development consent)

Bicycle Storage and Parking

C29. The bicycle storage areas shall accommodate a minimum of two hundred and thirty one (231) bicycles and thirty five (35) visitor bicycles, such bicycle storage to be designed in accordance with AS 2890. Details demonstrating compliance are to be submitted to the Certifying Authority for approval with the Construction Certificate.

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

Parking for People with Disabilities

- C31. A minimum twenty three (23) car-parking spaces for use by persons with a disability shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads and shall be clearly shown on the plans submitted to the Certifying Authority for approval with the Construction Certificate. All details shall be prepared in consideration of, and construction completed in accordance with Australian Standard AS2890.1 to achieve compliance with the Disability Discrimination Act, and the relevant provisions of AS1428.1 and AS1428.4.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

Line Marking

- C32. A maximum of one hundred and sixty five (165) off-street car-parking spaces, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate. The plans shall also nominate the allocation of parking spaces for specific purposes as required by conditions of this consent. A certificate prepared and certified by an appropriately qualified and practising Civil Engineer for the construction of these areas in accordance with this requirement shall be submitted to the Certifying Authority for approval with the Construction Certificate.

(Reason: To ensure ongoing compliance with this development consent and Australian Standards relating to manoeuvring and access of vehicles)

Minimum Width of Through Site Link

- C41. The stairs to the through site link from Berry Street to Doohat Lane shall have a minimum width of 4.5 metres. The certifying authority issuing the Construction Certificate shall ensure building plans and specifications reflect this requirement.

(Reason: To improve public access)

Right of Way through Site

- G9. By way of section 88B Instrument the applicant shall create an easement under the Conveyancing Act 1919 in favour of the Council granting it a right of footway a minimum of 4.5m wide as shown on the submitted plans (DA2101.K and DA2102.L). The easement is to grant the following rights:

- A right of footway in favour of the Council as referred to in section 88B and Part 1 of Schedule 4A to the Conveyancing Act 1919; and

- A right to vary, modify or extinguish the easement in favour of Council.

The easement shall be prepared, executed and registered at the sole cost of the applicant, including the costs of Council in obtaining advice, producing documents or otherwise facilitating the preparation, execution and registration of the required documents, shall bind all successors in title and shall only be subject to variation at the discretion of the Council.

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

(Reason: Public access and internal amenity)

Allocation of Spaces

- H1. One hundred and sixty five (165) carparking spaces shall be provided and maintained at all times on the subject site. The spaces shall be allocated in the following proportions:

155 - residential (including 22 disabled spaces)

10 - Non residential spaces

Such spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Carparking provided shall only be used in conjunction with the uses contained within the development and in the case of Strata subdivision, shall be individually allocated to residential units. Under no circumstances shall Strata By-Laws be created to grant exclusive use of nominated car share parking spaces to occupants/owners of units or tenancies within the building.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

On-Site Stormwater Detention

- C45. On site detention must be provided to ensure that the maximum discharge from the site is not exceeded discharge which would occur during a 1 in 5 year storm of 1 hour duration for the existing site conditions. All other stormwater run-off from the site for all storms up to the 1 in 100 year storm is to be retained on the site for gradual release to the kerb and gutter or drainage system as required by Director of Assets and Infrastructure Services. Provision is to be made for satisfactory overland flow should a storm in excess of the above parameters occur.

Determination of the require cumulative storage must be calculated by the mass

curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Runoff Volume 1, 1987 Edition.

Engineering calculations, design and certification complying with this condition must be provided by an appropriately qualified and practicing Civil Engineer and submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that public infrastructure in Council's care and control is not overloaded)

Pump-Out System Design for Stormwater Disposal

C46. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria: -

- a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20 year storm;
- b) The pump system shall be regularly maintained and serviced, every six (6) months; and

Engineering details demonstrating compliance with these criteria, and certified by an appropriately qualified and practising civil engineer shall be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)

Windows on east elevation of 16 Berry Street

C47. The windows on the east elevation of 16 Berry Street shall be encased or enclosed to the satisfaction of the Certifying Authority following consultation with the Body Corporate of 16 Berry Street. Details of the method of treatment to the window openings in accordance with this requirement shall be submitted to the Certifying Authority for approval with the Construction Certificate.

(Reason: To ensure that the boundary windows are covered in a reasonable manner)

Covenant & Restriction (Stormwater Control Systems)

G13. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:

- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening the subject site requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention & pump-out);
- b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;
- c. the wording on the Instrument making reference to the Council file/s which hold:
 - (a) the Construction plans; and
 - (b) the "Work-as-Executed" (as built) plans;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier. Typical wording for the Instrument can be sourced from Council's "Specification for the Management of Stormwater".

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

Basement Pump-Out Maintenance

G14. Prior to issue of an Occupation Certificate a Maintenance Regime must be prepared for the basement stormwater pump-out system and submitted to the Principal Certifying Authority for approval with the Occupation Certificate documentation. The regime must specify that the system is to be regularly inspected and checked by qualified practitioners.

The basement stormwater pump-out system must be maintained in accordance with the approved Maintenance Regime at all times.

(Reason: To ensure future provision for maintenance of the drainage system)

Geoff Mossemeneer
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES
