

## JOINT REGIONAL PLANNING PANEL (East)

JRPP No	<b>2015SYE006</b>
DA Number	<b>453/14</b>
Local Government Area	<b>North Sydney Council</b>
Proposed Development	<b>Demolition of existing building and construction of mixed use building consisting of 61 apartments, retail and 39 car-spaces</b>
Street Address	<b>231 Miller Street North Sydney</b>
Applicant/Owner	<b>Klimbe Pty Ltd</b>
Number of Submissions	<b>13 to original plans 3 to amended plans</b>
Regional Development Criteria (Schedule 4A of the Act)	<b>Capital Investment Value &gt; \$20M</b>
List of All Relevant s79C(1)(a) Matters	<b>North Sydney LEP 2013 - Zoning – B4 Mixed Use North Sydney DCP 2013 S94 Contribution SEPP 65 SEPP 55 - Contaminated Lands SREP (2005)</b>
List all documents submitted with this report for the panel's consideration	<b>Plans Lightwell opinion from Consultant Steve King Draft Conditions</b>
Recommendation	<b>Refusal</b>
Report by	<b>Geoff Mossemeneer, Executive Planner, North Sydney Council</b>

**Assessment Report and Recommendation**

---

## EXECUTIVE SUMMARY

The application seeks approval for demolition and erection of a nineteen level mixed use building above basement parking.

The proposal contains 15 x studios, 17 x 1 bedroom apartments, 22 x 2 bedroom apartments and 7 x 3 bedroom apartments with a floor space of 268m<sup>2</sup> for the retail/commercial component. The proposal provides for 39 car spaces and 6 motorcycle spaces (within a stacker system).

The Council's notification of the original proposal (consisting of 64 apartments and 53 car spaces) attracted 13 submissions raising particular concerns about traffic, parking, construction issues, design, height, setback, privacy, overshadowing, FSR and views. Council's Design Excellence Panel raised a number of concerns to be resolved before the proposal could be supported. The applicant responded to the DEP suggestions and other issues raised by Council with amended plans submitted on 5 May 2015. The Council's notification of the amended proposal attracted 3 submissions raising particular concerns about height, privacy, overshadowing, setback, separation and amenity impacts. The assessment of the proposal has considered these concerns as well as the performance of the application against Council's planning requirements. The amended plans have resolved some of the issues raised but there is still concern with a lack of setback and separation with the upper levels of the building.

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

## DESCRIPTION OF PROPOSAL

The application seeks approval for demolition and erection of a nineteen level mixed use building above basement parking.

The proposal contains 15 x studios, 17 x 1 bedroom apartments, 22 x 2 bedroom apartments and 7 x 3 bedroom apartments with a floor space of 268m<sup>2</sup> for the retail/commercial component The proposal provides for 39 car spaces and 6 motorcycle spaces(within a stacker system).



① — MILLER ST PERSPECTIVE

## **STATUTORY CONTROLS**

North Sydney LEP 2013 - Zoning – B4 Mixed Use  
S94 Contribution  
Environmental Planning & Assessment Act 1979  
SEPP 65  
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 property is known as No.231 Miller Street, North Sydney and comprises one lot identified as SP 54070. The site is located on the eastern side of Miller Street, one lot to the south of its intersection with McLaren Street. The property is rectangular in shape and has a frontage to Miller Street and rear boundary dimension of 15.24m and side boundary dimensions of 34.27m, with a site area of 521.3m<sup>2</sup>. The site has a fall from Miller Street to the rear of approximately 4m. The site also benefits from two rights-of-carriageway, over Nos, 237 and 221 Miller Street, which provide vehicular access from McLaren Street. No vehicular access is currently available directly from Miller Street.

The site is currently occupied by a seven storey brick office building with two levels of basement parking and the building is currently strata titled. The existing building is currently setback from Miller Street by approximately the same amount as the two immediately adjoining buildings, 6.1 - 6.9m.

Immediately adjoining the site to the south, No. 225 Miller Street, is a multi-storey mixed use building containing business premises at ground level and residential uses above.

Immediately adjoining the site to the north, No. 237 Miller Street, the building contains business uses at ground level and residential apartments above.



Fig.1 The existing 7 storey building on the subject site



Fig.2 The recent redevelopment at No. 225 Miller Street, adjoins the site to the South



Fig. 3 The development at No 237 Miller Street, adjoins the site to the North. Note Southern blank wall with lightwell, which adjoins the subject site

## BACKGROUND

The application was not the subject of any pre lodgement meeting with Council or Council's Design Excellence Panel. The application was referred to Council's Design Excellence Panel for comment. The DEP raised a number of concerns with the original proposal and the initial assessment and notification raised further concerns. The applicant was invited to respond to the concerns raised by the DEP, Council and submitters.

The applicant responded to the DEP suggestions and other issues raised by Council with amended plans on 5 May 2015. Details of the applicant's response are summarised below:

### ***Amendments to Proposal***

*The following described amendments have been made to the proposal in response to the concerns raised:*

#### ***Basement Levels 3-4***

*Deletion of portion of car stacker system within setback area to Miller Street.*

#### ***Basement Level 2***

*Deletion of portion of car stacker system within setback area to Miller Street.*

#### ***Basement Level 1***

*Removal of portion of storage area under the tree to be retained and redesign of pump room, storage area and detention tanks, together with other plant.*

#### *Lower Ground Level*

*Deletion of café within the front setback area and stairs, relocation of garbage storage rooms and provision of residential storage area.*

#### *Ground Level*

*Retention of Casuarina tree on Council footpath by provision of planter box retaining the soil at the existing ground level, thereby protecting roots. Redesign of courtyard to café to provide access via ramps to either side of retained tree, relocated bicycle parking, removal of stairs to basement level within café (now one level café only) and provision of details of toilets within café. The total café area is now 268m<sup>2</sup>. Provision of setback at south-east corner for planter box and provision of windows along southern café façade.*

#### *Level 1*

*Increased side setback of planter at south-east corner.*

#### *Levels 2-4*

*Minor internal configuration changes and minor change to balcony of studio apartment.*

#### *Level 5 & 6*

*No changes.*

#### *Level 7*

*Reconfiguration and reduction in size of south-east corner apartment and enlargement of balcony to provide increased setback from rear boundary.*

#### *Levels 8-11*

*Reconfiguration and reduction in size of south-east corner apartment and relocation of balcony to provide increased setback from rear boundary.*

#### *Levels 12-13*

*Deletion of studio apartment and conversion of 1 bedroom apartment into a 2 bedroom apartment, with deletion of part of south-eastern part of balcony.*

#### *Level 14*

*Deletion of 1 bedroom apartment with provision of 2.2m setback from northern boundary forward of the stairwell and reconfiguration of front 3 bedroom apartment and balcony and alteration of rear 2 bedroom apartment to 3 bedroom apartment with provision of 3m setback, other than for ensuite, to the rear of the stairwell and deletion of south-eastern part of balcony.*

#### *Level 15*

*Reduction in size of front apartment and internal and balcony reconfiguration by provision of 2.2m setback from northern boundary forward of stairwell and in size of rear apartment from 3 bedroom to 2 bedroom by deletion of bedroom 1 and ensuite and provision of small study nook to the rear of the stairwell and increased rear setback for balcony and part of living room*

#### *Level 16*

*Reduction in size of front apartment by provision of 2.2m setback from northern boundary forward of stairwell and in size of rear apartment from 3 bedroom to 2 bedroom by deletion of bedroom 1 and ensuite and provision of small study nook to the rear of the stairwell and increased rear setback for balcony and part of living room*

#### *Level 17*

*Reduction in size of apartment by provision of 2.2m setback from northern boundary forward of stairwell, reduction in size of ensuite and deletion of balcony to the rear of the stairwell and reduction in size of bed 1, providing larger rear setback for bedroom and balcony*

#### *Level 18*

*Plant rooms relocated to provide 2.2m setback from northern boundary, relocation and change in area of communal room from 24m<sup>2</sup> to 37m<sup>2</sup> and relocation of terrace and change in size from 13m<sup>2</sup> to 18m<sup>2</sup>.*

#### *Height*

*The application as lodged proposed a building height of RL131.1 to the roof of Level 18 (highest level of accommodation), of RL 134 to the top of the plant/communal room and of RL 135.9 to the top of the lift overrun, exceeding the height control in these three places by 1.1m, 4m and 5.9m, respectively.*

*The amended application proposes a building height of RL132.33 to the roof of Level 18 (highest level of accommodation), of RL 135.22 to the top of the plant room/common room and of RL 136.22 to the lift overrun, exceeding the height control in these places by 2.33m, 4.22 and 6.22m, respectively. The change in height has occurred due to the increased floor to ceiling heights at each residential level to provide a minimum 2.7m clear floor to ceiling height for each residential level and by the reconfiguration of the communal facilities, plant room and lift overrun. The overall change in height to the top of the lift overrun is an additional 320mm from that originally lodged. The plant area has been redesigned and is now screened with an expanded mesh screen 1.9m high instead of 3.4m high as previously designed. Consequently the maximum height of the building has remained almost the same as originally designed.*

#### *Dwelling/Retail Mix*

*The application as lodged proposed a building containing a total of 409m<sup>2</sup> of gross café/retail floor space, 64 residential apartments and parking for 51 cars and 6 motorcycles. The apartment mix proposed was:*

<i>Studio apartments</i>	<i>17 (26.6%)</i>
<i>1 bedroom apartments</i>	<i>20 (31.3%)</i>
<i>2 bedroom apartments</i>	<i>19 (29.7%)</i>
<i>3 bedroom apartments</i>	<i>8 (12.5%)</i>

*The amended application proposes a building containing a total of 268m<sup>2</sup> of gross café/retail floor space, 61 residential apartments and parking for 39 cars and 6 motorcycles. The apartment mix proposed is:*

<i>Studio apartments</i>	<i>15 (24.6%)</i>
<i>1 bedroom apartments</i>	<i>17 (27.8%)</i>
<i>2 bedroom apartments</i>	<i>22 (36.1%)</i>
<i>3 bedroom apartments</i>	<i>7 (11.5%)</i>

#### **Response to Requested Amendments**

- *Reduce number of parking spaces to a maximum of 1 space per 2 and 3 bedroom apartments.*

*The size of the stacking system has been reduced such that it now caters for a maximum of 39 cars and 6 motorcycles, a reduction of 12 spaces. This equates to providing parking at the rate of 1 space per 3 bedroom and 2 bedroom apartment, with 1 parking space for the café and 9 additional car spaces to be allocated to 9 of the 37 studio and 1 bedroom apartments. Whilst this is slightly more than indicated in your email, given the configuration of the stacker system providing 9 spaces less would be difficult when the typical floor contains 16 spaces. Further, as is addressed in the report provided by Varga Traffic Planning, there is sufficient queuing space for the reduced stacker size and even if overflow queuing occurred off the site, it would not impact either the access to parking areas of adjoining buildings or traffic flow on public streets given the very long ROW that, in the vicinity of the stacker system entrance, only provides access to the subject site and the garbage collection area of one other property.*

- *Need to convince Traffic Manager that stacker system is appropriate. Any meeting to be arranged through assessment planner*

*The size of the stacking system has been reduced as addressed above such that it now caters for a maximum of 39 cars and 6 motorcycles. As addressed in the attached report from Varga Traffic Planning, the extent of provision for queuing onsite provides an appropriate level of protection such that queuing will not occur outside the subject site.*

*If it is further noted that even if queuing occasionally occurred off site, such queuing would occur in the ROW which benefits the subject site in a location where the ROW is not used for access to other properties, other than for service vehicles which access the rear of No. 237 Miller Street. Hence, the*



*occasional queuing occurring offsite within the ROW would have no negative impacts upon traffic flow on public streets or access to other properties.*

- *Council trees – one to be kept, need to protect roots*

*The identified Casuarina tree within Council's road reserve has been retained by removing all excavation underneath the tree for the café and parking stacker system and retaining the existing ground level beneath the tree in a large planter, with excavation for the surrounding paved area outside the SRZ of the tree as shown on the amended architectural and landscape plans.*

- *Lower ground floor - do not support cafe in front of 5m setback, impact on roots, not required for FSR and permissibility issue*

*The café has been completely removed from the lower ground level. See compliance table in relation to FSR compliance.*

- *Confirm that lifts can accommodate bicycles so they can be stored in basement or apartments*

*The lift has internal dimensions of 1.4m x 2m to be stretcher compliant and I am advised a standard bicycle has a length of 1.7m, ensuring bicycles can access the lift.*

- *Floor to floor heights to be a minimum of 3.05m. If slabs are thinner then ceiling heights have bonus of being slightly more than 2700mm*

*The proposal provides for a floor to ceiling height of minimum 2.7m for all residential levels. The amendment has raised the floor to floor level to between 2.94m and 2.98m (where the floors have larger spans). This change has been made after consultation with the project structural engineer and the preparation of the engineering design for the building which are been attached. The designs show sections for the building assuming a timber floor showing the thickness of the slab (160mm), plasterboard ceilings on furring channels (37mm) and timber flooring on rubber impact mat acoustic underlay (25mm), leaving a 2.718m finished floor to ceiling height, which is compliant with the rules of thumb of the Residential Flat Design Code of SEPP 65. Details of bulkheads for drainage and air-conditioning are shown to wet areas of the apartments. Detail is also provided of the proposed treatment of the balcony area. .... Attached is also a confirmation letter of the design from the structural engineer and another from the acoustic consultant confirming the design will comply with the BCA with respect to sound and impact noise penetration between apartments.*

*Whilst it is acknowledged that Council in the past may have approved 2.9m floor to floor heights and had developers return with s96 amendments to increase the floor to ceiling heights at construction certificate stage, the difference in this instance is that the width of the building is relatively narrow and the engineering design for the development has occurred upfront, in conjunction with the preparation of the architectural plans. This approach will ensure the approved design can be constructed without the need to increase the floor to floor levels whilst still enabling a 2.7m floor to ceiling. For this reason it is requested that Council reconsider its position on the need for 3.05m floor to floor dimensions in light of this further detailed design information.*

- *Setbacks in south eastern corner not supported above level 7 difficult to support borrowing of setbacks from other sites. Council normally requires minimum setback of tower above podium of 3m from boundary as well as consideration of RDFC. Need to increase setback at levels 7 -10 to a minimum 4m x 4m (square setback) at SE corner. Need to increase setback at levels 11 -17 to a minimum 6m x 6m (square setback) at SE corner. 3m setback from eastern boundary at level 15 and 16*

*The intention of the setbacks requested by Council is assumed to be to ensure appropriate setback from any future redevelopment of No. 229 Miller Street and to potentially improve solar access to the existing building at No. 225 Miller Street, given the separation distances between the proposed building and the existing building at No. 225 Miller Street are satisfactory to ensure visual privacy and the privacy treatments on the proposed windows/balconies will ensure privacy to the existing building at No. 39 McLaren Street. Having these intentions in mind and considering the suggested square shaped increased*



*setbacks at Levels 7-10 and 11-17, it was considered that an alternative shape would provide improved solar access to the existing building at No. 225 Miller Street without resulting in unacceptable separation distances to an assumed redevelopment at No. 229 Miller Street.*

*In order to demonstrate this, the amended plans identify both the requested "square shaped" additional setback in grey shading and the actual increased setback area in red hatching. At Levels 7-10 the area reduced provides for a greater setback from the southern boundary than required but a smaller one from the eastern boundary, which actually results in a greater overall setback area, but more importantly a greater depth of setback from the southern boundary. As the point where the shadows are cast by the building is the south-eastern corner, the additional setback of this point of the building towards the north results in a more significant shadow improvement than the suggested setback area whilst having no significant difference in separation to a future development at No. 229 Miller Street and maintaining a suitable level of privacy to No. 225 Miller Street by the use of a privacy screen.*

*For Levels 12-17, the setbacks sought from the eastern boundary have generally been provided and an increased setback at the south-eastern corner is provided from both the southern and eastern boundaries, improving sunlight penetration into the building at No. 225 Miller Street. However, the extent of setback requested by Council has not been provided in full for a number of reasons including that the resultant change in solar access between what was requested and what was proposed was negligible and that the separation provided to a likely future development at No.229 Miller Street was acceptable. Given the acceptable impacts of the alternate design, a lesser setback was chosen as it results in a more appropriate architectural resolution of the eastern façade of the building and a more appropriate internal floor plan for the apartments in question.*

- *3m setback from northern boundary from level 14 up – only stairwell permitted to boundary*

*The amended design provides for a setback of 2.2m from the northern boundary for Levels 14 and above forward of the stairwell, which whilst not fully compliant with the requested 3m setback, aligns with the setback of the front façade of the building at the lower levels and presents a more attractive architectural resolution at the upper levels of the building.*

*The slightly reduced setback, in my opinion, still achieves the intention of providing a setback in proximity to the two levels of windows in the upper levels of the building at No. 237 Miller Street, but in a more architecturally appropriate manner (see amended Miller Street elevation).*

*To the rear of the stairwell, where the visual impact of the design change is less critical, a 3m setback has been provided in the location opposite and to the rear of the two levels of windows in question to provide for improved outlook and view retention from the windows. However, a small area adjacent to the stairwell at each level has been retained on a nil setback where it is located opposite a blank wall in No. 237 Miller Street to provide ensuites or a small study nook for the proposed apartments to improve the internal amenity, given the lack of external impact of the small area retained.*

- *The above setbacks include balconies.*

*Noted, and addressed in the above comments.*

- *Stormwater issues need to be resolved.*

*Discussions are ongoing with Zarko Cvetkovic in relation to stormwater and an agreement has been reached that stormwater will be discharged into Miller Street and connected to the stormwater system in a location nominated by Council. The completion of the design relies upon a detailed survey to identify services in the area and such design works will occur at the construction certificate stage. As the location and method of disposal of stormwater has been agreed with Council it is requested that the requirements for design detail be conditioned for the construction certificate stage.*

The amended plans are now the subject of this assessment. It is noted that the recommended setbacks have not been provided with the amended plans (only partially). This aspect will be discussed in more detail under the heading of setbacks. The proposed building does not provide for a setback from the light well of 237 Miller Street. This light well contains a bedroom window on each of the 14 levels facing east. The

impact on the light well was not apparent with the initial assessment of the original plans and the true impact became fully realised following a site inspection of the neighbouring property. The character statement recommends that adequate side separation should be provided for residential amenity. There is a concern that enclosure of a small deep light well will result in inadequate light and ventilation to the habitable rooms in the adjoining apartment building.

## **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 proposed development and advised of suitable standard and site specific conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management.

### **Landscaping**

Council's Landscape Development Officer (B Smith) has advised as follows:

*It is advised that I and Councils Arborist have inspected the property with the submitted Plans and Arborists' Report and the following observations were made and recommendations provided.*

*The proposal provides for and shows the retention of the existing London Plane Tree growing in the footpath area outside the property.*

*The proposal also indicates the removal of two mature Paperbark Trees and one Mature Casuarina cumminghamiana growing in the Council owned garden area between the building and the footpath. This is supported by the Arborists Report. However he has indicated within his report the primary reason for the removal of the trees as proposed are design related.*

*We are were in agreement with the general observations contained in the Arborists' of the four trees age, health, condition, form streetscape value. Support is given for a number of reasons for the removal of the 2 Paperbark Trees. However the Casuarina which is a far larger tree is more prominent in the landscape and consequently is the most important of the trees in terms of streetscape, amenity values and the ability to break up the built form. Furthermore its health, condition and form are better than the two Paperbark Trees.*

*In light of the aforementioned observations it is our opinion that design changes should be made to accommodate the retention of the Casuarina.*

*This will require further consultation with the appointed Arborist and will no doubt require that set backs for excavation such that is manages to retain much of the trees' primary root zone (generally around the drip line of the Canopy). The appointed Arborist will need to document design changes within a further report and provide protective measures which will ensure that excavation and building activities minimise*

*impacts on the tree such that its health, stability and long term viability remain generally unaffected.*

*It should be noted that provided that much of the root zone of the tree remains unaffected by the works, this is only critical to the depth of the soil where it meets bedrock. If investigation were undertaken to determine the depth of the soil in the vicinity of the tree's primary root, it may be possible to allow excavation within the profile of the bedrock such that it supports the soil condition above. Any investigative work such as core sampling or the like would be supported provided protective measures for the tree in relation to the activity are provided by the appointed Arborist and done in consultation with myself and Council's Arborist*

The amended plans were commented on by Council's Landscape Development Officer as follows:

*It is advised that I have perused the submitted plans and as the excavation in the vicinity of the Council Casuarina tree growing outside the property has been substantially set back. It is my opinion provided that protective measures are provided by the appointed Arborist to the satisfaction of Council prior to the release of the C.C*

## **Traffic/Parking**

Council's Traffic and Transport Engineer has provided the following comments:

### **Traffic Generation**

*I generally concur that the proposed development will not have unacceptable traffic implications in terms of road network capacity.*

### **Car Parking – Supply**

*The development proposes 39 car parking spaces which is reasonably compliant with Council's DCP. The DCP requires a car wash bay to be provided for all residential developments with 4 or more dwellings. The proposed development does not provide for any such car wash bay.*

### **Motorbike Parking**

*The development has proposed 6 motorbike parking spaces which exceeds the DCP's requirement for motorcycle parking i.e. max.1 per 10 car parking spaces.*

### **Cycling Facilities**

*No specific secure bicycle parking is provided, however the proposal does include basement storage for each apartment which appear large enough to accommodate a bike, which complies with the DCP requirements.*

*The proposed development provides 12 x Calss 3 bicycle racks on the ground floor which complies with the DCP requirements.*

### **Mechanical Car Stacker**

*The use of a car lift should always be the last alternative for vehicular access. With any vehicular lift, there are concerns that the residents will chose not to use the lift because of the time delay and inconvenience, and this will place demands on the on-street parking. Particularly if residents are returning home for only a short time, it is likely that they will not "bother" with the inconvenience of the vehicle lift. Further, car stackers by their very nature are highly mechanical systems, which therefore make them highly likely to break down.*

*Australian Standard 2890.1 states in relation to mechanical parking installations, "Access to mechanical parking installations such as car stackers, shall be by means of access driveways and circulation roadways designed in accordance with this Standard, and providing sufficient vehicle storage to ensure that queues of vehicles awaiting service by the installation do not extend beyond the property boundary of the parking facility under normally foreseeable conditions.*

*"When determining the amount of vehicle storage required, queue lengths shall be calculated by applying conventional queuing theory to estimated mean arrival rates during normal peak periods, and mean service rates under continuous demand, determined as closely as possible from observing the operation of similar facilities. The storage area shall be designed to accommodate the 98th percentile queue under such conditions."*

*The Varga Traffic Planning has provided a queuing analysis based on arrival rate of 12.6 vehicles per hour and an average service rate of 24 vehicles per hour. It is allegedly that the service rate is based on information provided from the system manufacturer which is equivalent to a round trip of 150 seconds. The analysis indicates an average of 1.11 vehicles present during peak periods. Council's DCP requires a car waiting space entirely on-site where the car stacker system accommodates more than 10 vehicles. The proposed development has provided a waiting bay capable of accommodating two cars which complies with the DCP.*

### **Loading Facilities**

*In accordance with Section 10.4(P2) of the DCP the proposed development must provide at least 1 service delivery space capable of accommodating at least 1 Heavy Rigid Vehicle or 2 Medium Rigid Vehicles. The proposed development only provides a loading bay accommodating 1 Small Rigid Vehicle which does not comply with the DCP.*

### **Conclusion**

*It is recommended that the proposed development be refused until the applicant addresses the loading facilities requirement mentioned above.*

*Should Council approve this development it is recommended that the following conditions be imposed:*

- 1. That a Construction Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.*
- 2. That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.*
- 3. That the developer pays to upgrade the lighting levels on Miller Street adjacent to the site, to the satisfaction of Council.*

The comments are noted. The loading facility proposed is considered adequate as smaller removalist vans can service the site and the retail space is limited. Garbage trucks will not be entering the site. Garbage bins will be moved to the end of the right of way for collection as is the case with No.237 Miller Street.

## **DESIGN EXCELLENCE PANEL**

The development application was before the Panel on 24 February 2015 and the minutes of the meeting are reproduced as follows:

### **Proposal**

*The property is known as No.231 Miller Street, North Sydney and comprises one lot identified as SP 54070. The site is located on the eastern side of Miller Street, one lot to the south of its intersection with McLaren Street. The property is rectangular in shape and has a frontage to Miller Street and rear boundary dimension of 15.24m and side boundary dimensions of 34.27m, with a site area of 527.3m<sup>2</sup>. The site has a fall from Miller Street to the rear of approximately 4m. The site also benefits from two rights-of-carriageway, over Nos, 237 and 221 Miller Street, which provide vehicular access from McLaren Street. No vehicular access is currently available directly from Miller Street.*

*The site is currently occupied by a seven storey brick office building with two levels of basement parking and the building is currently strata titled.*

*The application seeks approval for demolition and erection of a nineteen level mixed use building above basement parking.*

*The proposal contains 17 x studios, 20 x 1 bedroom apartments, 19 x 2 bedroom apartments and 8 x 3 bedroom apartments with a floor space of 409m<sup>2</sup> for the retail/commercial component. The proposal provides for 53 car spaces and 6 motorcycle spaces (within a stacker system).*

*The application is to be determined by the Joint Regional Planning Panel.*

*The Panel and Council staff inspected the site prior to the first meeting. The architect gave an outline of the proposal and was available for questions from the Panel.*

**Panel Comments:**

*The Panel recognises that the site is isolated by previous developments and is well under the minimum site requirement of 1000m<sup>2</sup>. The site is constrained by surrounding residential and mixed use developments with setbacks and separation distances well below the RFDC.*

*The Panel felt that the development needs to be consistent with its neighbours. The Panel raised concern about the setbacks on the northern boundary above the adjoining upper podium of 237 Miller Street as well as the setbacks on the south east corner of the site.*

*The Panel did not support any breach of the height control or reduced setbacks that would result in unacceptable overshadowing of residential apartments in the building at 225 Miller Street. Further elevational shadow diagrams or "sun's eye view" diagrams need to be provided to demonstrate the extent of overshadowing.*

*The Panel also requested a cross ventilation diagram showing the units that are cross ventilated, with clarification of which windows would provide for this.*

*The Panel sought further information with regard to landscaping and the need for consistency in the streetscape and deep planting rather than planters.*

*The Panel suggested a need for surveillance at podium level over the southern laneway, with windows to the cafe being setback with planters in front along the laneway, and moving internal stairs to the edge of the tenancy to provide a better internal – external tenancy flow and give natural light to the basement.*

*The Panel did not accept the proposed 2.9m floor to floor heights and suggested that 3.1m should be adopted resulting in a loss of one floor (and more compliant height).*

*The Panel raised concern about the materials and finishes with regard to the dark podium base and stark red detail. The applicant should review the colours to adopt a more subtle treatment picking up the colours of adjacent development to provide for continuity in the streetscape.*

*The Panel also raised concern about a number of apartments having living areas below the recommended minimum 4m width. Furniture layouts are needed to be shown to demonstrate how the rooms could be accessed when occupied.*

*The Panel questioned the need for a gym on the top floor and felt that a communal room with access to a terrace should be provided, whether or not there is a gymnasium.*

*The Panel requested further details on the swept path for garbage trucks to service the site to ensure that they can enter and leave the site in a forward direction (noting that Council would not be servicing the garbage collection).*

*The Panel questioned the car stacker system and felt that perhaps less parking on site might be preferred subject to Council's Traffic Manager's comments.*

**Conclusion:**

*The Panel does not support the proposal without the above concerns being addressed.*

**The applicant was requested to respond to the concerns raised by DEP. The applicant submitted their response on 5 May 2015 in the following terms:**

*The Design Excellence Panel raised the following issues, each of which is addressed following:*

- *The Panel raised the need for the development to be consistent with its neighbours and in particular was concerned with the setbacks on the northern boundary above the adjoining upper podium of No. 237 Miller Street and at the south-east corner.*

*The issue of setbacks has been addressed in response to comments from Council.*

- *The Panel did not support a breach of height or reduced setbacks that would result in unacceptable overshadowing of residential apartments in the building at No. 225 Miller Street and requested "sun's eye view" diagrams to demonstrate the impact of the additional height on shadowing.*

*The amended shadow diagrams provided show that the difference in shadow impact upon No. 225 Miller Street as a result of the elements above RL 130 compared to the amended proposal is negligible. The impacts relate to bedroom windows, to secondary windows to living areas where the principal window faces west and is unaffected or to balconies where a minimum of 2 hours of solar access is retained in the morning due to the amendments to the south-eastern corner of the proposed building.*

- *The Panel requested cross ventilation diagrams showing the units that are cross ventilated with clarification of which windows provide the ventilation.*

*Cross ventilation diagrams are provided on the amended plans with arrows shown on each cross ventilated unit identifying the source of the cross ventilation.*

- *The Panel requested more consideration of the need for consistency in the streetscape and deep planting rather than planters.*

*The landscape treatment at the street frontage has been amended to retain the existing Casuarina tree in existing deep soil, which results in the level being similar to adjoining properties, with the paths either side being lowered to allow accessible entry to the café and courtyard.*

- *The Panel suggested the need for surveillance at the podium level over the southern laneway with windows to the café being setback with planters in front and relocating the internal stairs to the edge of the tenancy.*

*As can be seen in the amended southern elevation, windows have now been provided along the southern façade of the café to provide for casual surveillance and a landscape element in a planter box has been added to the south eastern portion of the elevation. The café is now single storey and as such the stairs have been deleted.*

- *The Panel raised concern with the 2.9m floor to floor heights and suggested a 3.1m floor to floor height with loss of one level of the building.*

*This issue is addressed in the response to issues raised by Council.*

- *The Panel raised concern about the materials and finishes with regard to the dark colour of the podium base and red detailing, with more subtle treatment and colours suggested.*

*The proposed colours and materials have been reconsidered in light of these comments and an amended sample board has been prepared. The board shows that the expanded mesh aluminium screens are to be clear anodized and the colour of the podium to be made lighter.*

- *The Panel raised concerns with the number of apartments with living areas less than 4m in width and sought furniture layouts to show how they could be used.*

*The amended plans show potential furniture layouts for all apartments.*

- *The Panel questioned the need for the gym and suggested a communal room with access to a terrace was preferable.*

*The design has been changed to provide a communal room with terrace rather than gym.*

- *The Panel requested further detail on the swept path for garbage trucks to services the site ensuring they can leave in a forward direction*

*It is proposed to continue garbage collection in the manner currently carried out, which will require the garbage to be wheeled along the ROW by a person employed by the owner's corporation to the intersection of the ROW and the easement that runs north-south beside the building at 39 McLaren Street. For this reason a swept path diagram is not provided for the proposal.*

- *The Panel questioned the size of the stacker system and suggested less parking may be preferable.*

*This requirement is addressed above in response to the issues raised by Council and in the traffic report prepared by Varga Traffic Planning.*

## **EXTERNAL REFERRALS**

Roads and Maritime Services has reviewed the application and advised:

*Roads and Maritime has reviewed the development application and raise no objection to the Application. Roads and Maritime has the following conditions to be included in any consent issued by Council:*

- 1. A strip of land was previously vested as road along the Miller Street frontage of the subject property, as shown by grey colour on the attached Aerial- "X". All buildings and structures, together with any improvements integral to the future use of the site are wholly within the freehold property (unlimited in height or depth), along the Miller Street boundary.*
- 2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system are to be submitted to Roads and Maritime for approval, prior to the commencement of any works.*
- 3. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to Roads and Maritime for assessment, in accordance with Technical Direction GT D201 21 001 .*
- 4. The proposed development should be designed such that road traffic noise from Miller Street is mitigated by durable materials in order to satisfy the requirements for habitable rooms under Clause 102 (3) of State Environmental Planning Policy (Infrastructure) 2007 .*
- 5. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council prior to the issue of a construction certificate.*
- 6. A Road Occupancy Licence should be obtained from Roads and Maritime for any works that may impact on traffic flows on Miller Street during construction activities.*
- 7. During construction all demolition and construction vehicles are to be contained wholly within the site and vehicles must enter the site before stopping. A construction zone will not be permitted on Miller Street.*
- 8. All works/regulatory signposting associated with the proposed development are to be at no cost to Roads and Maritime.*

*Roads and Maritime has the following comments for Council's consideration in the determination of the application:*



1. Council is to be satisfied that the proposal and subject site has legal vehicular access via the right of carriageways over No's 221 and 237 Miller Street.
2. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004 and AS 2890.2 - 2002 for heavy vehicle usage.
3. The swept path of the longest vehicle (including garbage trucks) entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval, which shows that the proposed development complies with this requirement.
4. Service and delivery vehicles should enter and exit the site outside of peak times.
5. It is not clear within the submitted documentation how long it takes for the mechanical car stacker system to store and retrieve vehicles. Concerns are raised regarding situations where there are more than two vehicles queuing to enter the car park. Due to the potential queuing impacts on the right of carriageway, Council could consider obtaining additional information regarding queuing times within the designated car waiting area.

Ausgrid advised:

#### *Network Alterations*

*To connect your development, alterations will need to be made to our network, We anticipate that the following alterations will be required:*

- *Installation of a direct distributor low voltage supply from an existing substation.*
- *Low voltage board upgrade*

Sydney Water has reviewed the application and provides the following comments:

*For the proposed development the drinking water main available for connection is the 150mm main on the eastern side of Miller Street. Detailed requirements will be provided at the section 73 application phase.*

*The proposed development the wastewater main available for connection is the 150mm wastewater main located outside the rear boundary of the subject site. Detailed requirements will be provided at the section 73 application phase.*

This can be conditioned.

## **SUBMISSIONS**

The original application was notified to all precincts and surrounding owners and residents in accordance with Council policy. A total of 13 submissions were received from residents and/or owners of 39 McLaren Street, 237 Miller Street and 225 Miller Street (all adjoining properties) with the main issues being summarised as follows:-

- Height

Building is over 12m and fails to comply with building separation to adjacent buildings under SEPP 65 (minimum of 18m). Height should be reduced to comply. Setbacks do not even match those provided by earlier developments built prior to SEPP 65

- Overshadowing Special Area

The proposal overshadows the building on the corner of Walker and Berry Streets which is located outside the North Sydney Centre area. There is not adequate detail in the DA documents to verify whether this overshadowing meets the requirements of Clause 6.3(3) of LEP 2013. Further, both the 'Special Area' along the Miller Street frontage and the RE1 zone associated with the school across Miller Street are overshadowed by the proposal. Whilst this overshadowing does not occur between 12 noon and 2pm,

given the nature of these areas, any overshadowing resulting from a breach of the RL130m height limit is unacceptable. The excessive height of the proposal means that the objectives of Clause 6.3 are not met.

- Miller Street Setback

The proposed basement retail area is located within the 5m setback required to Miller Street pursuant to Clause 6.4 of LEP 2013. Whilst this area is lower than the 1.5m height limit for this zone, it is not used "for access to the building or landscaping purposes " and so, consent cannot be granted to the current proposal.

- Non-residential FSR

The potential deletion of the basement retail space as noted above has implications for the 0.5:1 minimum non-residential FSR requirement of Clause 4.4A. Council needs to verify that the proposal meets this requirement (excluding any outdoor area which does not constitute GFA).

- Failure to comply with DCP apartment mix requirements

The proposal fails to comply with the minimum number of 2 bedroom apartments required and exceeds the maximum number of studios.

- Wind Impacts

Contrary to the requirements of Clause 2.3.3 of the DCP, a wind impact assessment has not been submitted. A proposal of this scale has the potential to create adverse wind impacts on both the public domain and adjoining properties including 'The Harvard.'

- Solar access

The proposal will have overshadowing impacts on dwellings outside the CBD and also on Special Areas and RE1 zoned land. In relation to the RE1 land, this is open space related to the nearby school and as such maintaining solar access is very important. The submitted information also does not adequately consider the overshadowing impacts on adjacent residential dwellings.

- View impact

The failure to comply with the height control and to provide adequate setbacks will result in unreasonable view loss, particularly for 'The Harvard' building. It is noted that the DCP CBD Character Statement requires: "The following views and vistas are to be preserved and where possible enhanced:

(a) Views to between buildings on east side of Miller Street, between Berry and McLaren Streets."

The proposal provides a nil setback to the northern boundary and as such is contrary to this requirement.

- Visual and acoustic privacy impacts

The proposal fails to meet the building separation requirements of SEPP 65 and Council's DCP and this will contribute to unreasonable privacy impacts.

- Setbacks

The proposal has inadequate setbacks. In this regard it fails to comply with the building separation requirements of SEPP 65 RFDC and the DCP; the 3m setback requirement to side and rear boundaries for residential uses.

- Visual impact

The failure to comply with the controls that limit height, bulk and scale mean that the visual appearance of the development will be excessive. The proposal includes a nil setback to the northern boundary which creates an undesirable and uncharacteristic 'street wall' form to Miller Street.

- Access and parking

The use of a car stacker in this circumstance where conventional parking is feasible is questionable. Given this and the nature of the access to the site, the proposed exceedance of the DCP car parking requirements is not acceptable.

- JRPP threshold

We understand that the information submitted indicates that the \$20M threshold is only exceeded by a small amount. Therefore Council must ensure that this relates to CIV and is checked by an appropriately qualified, independent quantity surveyor.

- Use of narrow Right of way

Not suitable for 2 way traffic and by trade vehicles, furniture vans and garbage trucks. Request all vehicle access from Miller Street.

- Overshadowing of adjacent buildings

Caused by increased height and inadequate setbacks.

- Inadequate shadow information

12 month shadow diagrams need to be provided to as No39 McLaren Street will be overshadowed in summer.

- Large street trees will be destroyed

Construction access likely to destroy existing trees in Miller Street

- Lack of visitor and disabled parking

- Lack of demolition plan on restricted site

Petition with 56 signatures from residents and owners at 39 McLaren Street in the following terms:

- Height is excessive and fails to satisfy SEPP 65 minimum separation distance of 18m and does not meet objective of "provide visual and acoustic privacy for existing and new residents" and to "control overshadowing of adjacent properties and private or shared open space".

Petition with 27 signatures from residents and owners at 39 McLaren Street in the following terms:

- Object to use of 6.095m right of way at rear of building for entry and exit to proposed development. Entry and exit should be via Miller Street.

The amended application was notified to all precincts and surrounding owners and residents in accordance with Council policy. A total of 3 submissions were received with the main issues being summarised as follows:-

- Overshadowing of adjacent buildings. Caused by increased height and inadequate setbacks. Height increased in amended plans.
- Height is excessive and fails to satisfy SEPP 65 minimum separation distance of 18m and does not meet objective of "provide visual and acoustic privacy for existing and new residents" and to "control overshadowing of adjacent properties and private or shared open space".
- Visual and acoustic privacy impacts. The proposal fails to meet the building separation requirements of SEPP 65 and Council's DCP and this will contribute to unreasonable privacy impacts.
- Inadequate shadow information. 12 month shadow diagrams need to be provided to as No39 McLaren Street will be overshadowed in summer.
- Inadequate setbacks

The proposal is built right to the northern boundary of the site. It is also setback only a small distance from the southern boundary. Therefore the resultant built form is highly inconsistent with the other buildings in this block which all exhibit good levels of building separation.

The lack of a setback to the northern boundary fails to respect the existing site conditions at No 237 in that a light well is provided on this boundary that provides a high level of amenity to the 2nd bedrooms of

the apartments that front Miller Street. This includes direct sunlight at certain times of the year, views of Sydney Harbour and good cross ventilation. The proposal will result in the total loss of this amenity

The setbacks to the east and west are also inadequate. Even though the setback adopted seeks to match No 237, because of the need to provide privacy between balconies, the proposal has the effect of blocking views and outlook and reducing daylight into the neighbouring apartments. The proposal should be set back behind the east and west facing balconies on No 247 that are located on the boundary.

- Sunlight/Daylight access

The proposal will have unacceptable impacts resulting from the inadequate setbacks provided.

- View impact

The proposal will have unacceptable impacts resulting from the inadequate setbacks provided.

## CONSIDERATION

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

The application has been assessed against the relevant numeric controls in NSLEP 2013 and DCP 2013 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

### Compliance Table

North Sydney Centre	Proposed	Control	Complies
Height (Cl. 4.3)	RL132.33 to the roof of Level 18 (highest level of accommodation), RL 135.22 to the top of the plant room/ common room RL 136.22 lift overrun	RL 130m AHD	NO
Non Residential Floor Space (Cl.4.4a)	0.51:1	Minimum 0.5:1	YES
Overshadowing of dwellings (Cl.6.3 (1) (c))	The proposal has no detrimental shadow impacts upon any land zoned R2, R3, R4 of RE1 or land identified as a Special Area, with any shadow impact due to the proposal falling within existing shadows.	Variation permitted	YES
Overshadowing of land (Cl.6.3 (2) (a) and (b))	The diagrams demonstrate that the development will have no net increase in overshadowing between 12 pm and 2 pm on the land marked 'Special Area' on the North Sydney Centre Map. The proposal will not overshadow Don Bank Museum.	Variation permitted	YES
Minimum lot size (Cl.6.3 (2) (c))	521.3m <sup>2</sup>	1000m <sup>2</sup> min.	NO
Setback to Miller Street (Cl.6.4)	The proposal provides no works with a height greater than 1.5m above existing ground level within the front 5m of the subject site and provides a landscaped	5m setback to allow for landscaping and access	YES

North Sydney Centre	Proposed	Control	Complies
	setting within that 5m setback		

## DCP 2013 Compliance Table

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	<i>complies</i>	<i>Comments</i>
<b>2.2 Function</b>		
<b>Diversity of Activities</b>	Yes	The proposal satisfies, or can satisfy, these requirements with the non-residential floors suited for both a large single use such as a café or two smaller suites. Residential uses are located above the non-residential uses and no blank walls are proposed facing streets or laneways. Appropriate accessibility is provided in all communal residential areas and non-residential uses at ground level and residential above.
<b>Maximise Use of Public Transport</b>	Yes	The proposal satisfies these requirements, proposing only 1 parking space for non-residential users of the site and making appropriate provision for bicycle storage as well as providing a shower for end of trip usage. Parking for apartments is below the maximum required.
<b>Mixed Residential Population</b>	Yes	<p>Studio 10%-20% = 15 (24.6%)  1 Bedroom 25%-35% = 17 (27.6%)  2 Bedroom 35%-45% = 22 (36.1%)  3 Bedroom 10%-20% = 7 (11.5%)</p> <p>As can be seen, the proposal is compliant with the above required development mix in relation to 1 and 3 bedroom apartments, but is slightly under in terms of 2 bedroom apartments and slightly over in terms of studio apartments. Notwithstanding the variation to the standard, it is considered that an appropriate mix of dwelling types and sizes is provided.</p> <p>A minimum of 15% of dwellings are to be adaptable housing under the provisions of the DCP and ten adaptable apartments are proposed, with 7 x 2 bedroom and 3 x 3 bedroom apartments.</p>
<b>2.3 Environmental Criteria</b>		
<b>Awnings</b>	No	Requires the provision of a continuous 2m wide awning, however in the circumstance where the building is setback 5m from Miller Street it is not appropriate to provide an awning.
<b>Solar Access</b>	No	Requires development in the Central Business District to comply with the height and shadowing requirements of clauses 4.3 and 6.4 of the LEP. These clauses have been addressed below. The provisions require spaces to be created

		between taller buildings to allow daylight penetration, for setbacks to be provided between buildings above podium level and to avoid apartments with only southerly orientation. The proposal provides a setback above the podium to the street façade and the southern façade, however does not do so on the northern side due to the nil setback and largely blank wall of the adjoining building. The proposal will encase the light well on the adjoining site impacting on the amenity (light and ventilation) of the second bedroom window on each of the 14 levels. The proposal has no apartments that are solely oriented to the south.
<b>Views</b>	No	The proposed building will change the outlook of many surrounding apartments, with the loss of some district views that are currently available above the existing building on the subject site. The loss of these views is inevitable with the redevelopment of the subject site. The views are affected by the compliant part of the building and not where the height control is exceeded. Some additional setback on the upper levels at the rear boundary would improve the view sharing and result in less overshadowing.
<b>Visual Privacy</b>	Yes	Requires buildings to be designed to avoid direct or close overlooking into windows, balconies or private open space of adjoining dwellings. The plans demonstrate that adjoining windows and balconies have been appropriately screened.
<b>2.4 Quality built form</b>		
<b>Context</b>	Yes	The building is in context with surrounding development subject to appropriate setbacks and separation distances being provided.
<b>Setback</b>	No	Setbacks are to be provided in accordance with the character statement, with setbacks to consider the setbacks of adjacent buildings. A zero front, side and rear setback is to be provided for the podium unless a character statement requires an alternate setback. The LEP requires a front setback of 5m from Miller Street that has been provided. The character statement requires adequate setbacks above the podium to provide for residential amenity. The DCP adopts the RFDC separation distances between buildings that cannot be complied with due the narrowness of the site and existing setbacks of adjacent buildings. See detailed comments under setbacks.
<b>Podiums</b>	Yes	Requires podiums to be provided as required in the character statement and for podiums to match adjoining buildings. Satisfactory.
<b>Building Design</b>	Yes	Requires floor to ceiling heights of 3.3m at ground and first floor and 2.7m at upper levels and requires facades to be appropriately articulated. The ground level contains non-residential floor space and has a floor to ceiling height of 3.3m. The building contains residential apartments at

		the upper levels which have floor to ceiling heights of 2.7m, complying with the control. The facades of the development are appropriately articulated by the provision of the podium, variations of solid and void and by the provision of horizontal and vertical articulation with the use of metal blades. The building design and materials has been modified in response to the concerns raised by the DEP.
<b>Balconies - Apartments</b>	Yes	Requires balconies to be incorporated within the envelope and not be located on roofs, podiums or be cantilevered. The proposal is compliant with the requirement.
<b>Entrances and Exits</b>	Yes	Satisfactory
<b>2.5 Quality Urban Environment</b>		
<b>Accessibility</b>	Yes	Satisfactory
<b>Safety and Security</b>	Yes	Visible entry to building. Windows to side access to provide for surveillance.
<b>High Quality Residential Accommodation</b>	Yes	<p>The controls require that apartments generally have the following minimum sizes and corridors are to have a width of 2m and have no more than 10 dwellings accessible from a single common lobby. The maximum depth of a habitable room from a window is 10m and apartments are to have a minimum width of 4m.</p> <p>Studios 40m<sup>2</sup>  1 bed 50m<sup>2</sup>  2 bed 80m<sup>2</sup>  3 beds 100m<sup>2</sup></p> <p>The proposal provides 1.7m wide corridors, but no more than 5 dwellings, and for many levels 4 or less are located off the corridors, they are considered to be of appropriate width.</p> <p>The design provides for minimum apartment widths of 4m, other than in relation to the four one bedroom, south-western apartments within the podium that are dual aspect apartments. These apartments vary in width between 3.1m and 6.3m, with the two narrower portions of the apartment being the bedroom and the dining/kitchen. The living rooms of these apartments have a width of 4m.</p> <p>The proposed apartments have the following sizes, with the studios, 1 and 3 bedroom apartments complying with the control;  The 2 bedroom apartments comply with the minimum size requirement of RFDC.</p>
<b>Lightwells</b>	No	The proposal will encase the light well on the adjoining site impacting on the amenity (light and ventilation) of the second bedroom window on each of the 14 levels. The control requires a minimum dimension of 6m for a light well up to 12m deep. The light well would be less than 50% of the required area with a depth of 40m.
<b>Private Open Space</b>	Yes	All apartments have primary balconies with minimum depths of 2m and comply with the minimum size of 8m <sup>2</sup> and generally get larger



		with the size of the apartment.
<b>Vehicular Access</b>	Yes	No direct access from Miller Street. Access provided via right of ways over two sites from McLaren Street
<b>Car Parking</b>	Yes	Stacker parking provided and under the maximum permitted. See comments under traffic.
<b>Garbage Storage</b>	Yes	Garbage chute provided with compactor. Bins to be moved to end of right of way for collection with No.237 Miller Street
<b>2.6 Efficient Use of Resources</b>		
<b>Energy Efficiency</b>	Yes	Basix certificate submitted
<b>Natural Ventilation</b>	No	Satisfactory within development. Unsatisfactory impact on adjoin apartments.
<b>Green Roofs</b>	Yes	Communal space and non trafficable green roof provided

## **NORTH SYDNEY LEP 2013**

### **Permissibility within the zone**

The proposal is permissible with consent under the B4 Mixed Use zoning as retail on the ground level and shop top housing above.

### **Zone B4 Mixed Use**

#### **Objectives of zone**

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

The design provides a flexible cafe/retail space, and residential apartments which are compatible uses with each other and surrounding land uses. The site is well located for access to public transport, being within a 700m walk from North Sydney Railway Station and being serviced by bus routes along Miller Street and Pacific Highway. The proposal is consistent with the objectives of the B4 zone.

### **Clause 4.3 Height of buildings**

Clause 4.3 sets a maximum height for buildings on the subject site of RL 130m AHD. The amended application proposes a building height of RL 132.33 to the roof of Level 18 (highest level of accommodation), of RL 135.22 to the top of the plant room/common room and of RL 136.22 to the lift overrun, exceeding the height control in these places by 2.33m, 4.22 and 6.22m, respectively.

The change in height has occurred due to the increased floor to floor heights at each residential level to provide a 2.7m clear floor to ceiling height for each residential level

and by the reconfiguration of the communal facilities, plant area and lift overrun, with the overall change in height to the top of the lift overrun being an additional 320mm from that originally lodged.

Clause 4.6 permits variations to development standards, of which the RL 130 height control is one, in order to provide an appropriate degree of flexibility in applying development standards and in order to achieve better outcomes for and from development by allowing flexibility.

The applicant has submitted the following written request:

*It is considered that a better planning outcome can only be achieved on this site by varying the control as in order to provide for appropriate visual stepping in the height of the building on the subject site from those either side, the height on this site would need to be greater than the maximum permitted.*

*The need to provide the stepping in heights can be appreciated in the Miller Street Elevation (Plan No, DA21 Issue B) which has been submitted with the amended plans. A building which complied with the RL 130 height would fail to provide stepping between the adjoining buildings and would look odd in the streetscape as the streetscape would step down in height from No. 225 Miller Street to the subject building and then back up to No. 237 Miller Street. As such, the building would then be inconsistent with the objectives of clause 6.3 contained in the North Sydney Centre controls which require development to step down in height from 100 Miller Street and 79-81 Berry Street to the boundaries of the Centre.*

*It is noted that the North Sydney Centre controls are identified as controls which prevail over the remainder of the controls in the LEP where there is any inconsistency and as such this requirement to step the height of buildings should prevail over the general height control contained in clause 4.3. For this reason there is an appropriate and necessary planning benefit to the variation of the height control in this instance and as such it is, in my opinion, in the public interest to permit variation of the standard for the reasons given.*

*It is not considered that there is any significant State or regional planning issues raised by the proposed variation to the control and in the circumstances, where the site must be developed in breach of the standard in order to satisfy the North Sydney Centre controls, there is no public benefit to be had in maintaining the standard. For these reasons it is considered that compliance with the standard in this case is unreasonable and there are sufficient environmental planning grounds to justify contravening the development standard.*

*Further, clause 4.6(4) requires that prior to granting consent to such a variation the consent authority must be satisfied that the variation of the standard is consistent with the objectives of the standard and the objectives of the zone and these are addressed following.*

*The proposal satisfies the objectives of the Mixed Use zone which are detailed and addressed following.*

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

*The design provides a flexible cafe/retail space, that could be used by one large café or be broken into two smaller tenancies, and residential apartments which are compatible uses with each other and surrounding land uses.*

*The site is well located for access to public transport, being within a 700m walk from North Sydney Railway Station and being serviced by bus routes along Miller Street, Pacific Highway and Falcon Street.*

*The introduction of residents into this area will improve its vibrancy and safety, particularly of a night, as will the activation of the street frontage of the site and the forecourt area by a use such as a cafe. The proposal does not maintain the existing commercial use on the site and does not propose new commercial floor space as the site is too small for the commercial floor plate to be sufficiently large to provide high quality office accommodation. Such accommodation is better provided in the commercial core on larger sites. The proposal, however does provide non-residential uses at the lower levels and residential at the upper levels as required by the objective.*

*The objectives of the height control are addressed following and the proposal is consistent with those objectives.*

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

*The site is relatively flat and as such appropriately addresses the landforms of the site. The breach of the height control has no impact on views as the properties to the north and northeast are developed with buildings with residential floors lower than the height control and as such any view impact occurs due to compliant elements of the building.*

*Again, the impact on adjoining buildings in terms of solar access is a result of the compliant elements of the building as has been shown in the comparative solar access diagrams provided with the amended application.*

*The privacy of the adjoining buildings is not detrimentally impacted by the component of the building which varies the height control as appropriate privacy measures are incorporated into the design. The proposed height is specifically proposed in order to provide compatibility with the adjoining buildings, allowing an appropriate stepped transition in height of buildings as required by the North Sydney Centre controls and as such this provides an appropriate scale and density of development in accordance with the existing and desired future character of the area.*

The request is considered well founded, the increase in height does not provide additional density and a communal space is provided on the roof to the benefit of future residents. The variation is supported subject to appropriate setbacks being provided to the northern and eastern boundaries to further reduce amenity impacts to adjoining properties.

#### **Clause 4.4A Non-residential floor space**

The provisions of clause 4.4A set requirements for floor space for non-residential uses, in this case the site is located within Area 9 which requires that the non-residential floor space ratio must not be less than 0.5:1. The site has an area of 521.36m<sup>2</sup> and as such the non-residential floor space is required to be a minimum of 260.68m<sup>2</sup>. The proposal provides 268m<sup>2</sup> (0.51:1) of non-residential floor space, complying with the control.

## Cause 5.1 Heritage conservation

The provisions of clause 5.1 address heritage conservation and require consideration of the impact of developments within the vicinity of items of heritage. The subject site is located within the vicinity of a number of items of heritage, opposite the site in Miller Street at Nos. 128 Miller Street (Monte Sant Angelo Group), 192 Miller Street, 196 Miller Street and 200 Miller Street (North Sydney Council Chambers and fountain) and to the rear at No. 41 McLaren Street (Simsmetal House). Whilst the subject site is within the visual catchment of all of the above items of heritage, it is not considered that the proposal will have a detrimental impact on the heritage items or their settings as the building proposed is of commensurate height and design to surrounding development.

## 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	Proposal consistent with zoning
(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	No additional non residential floor space
(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 additional non residential gross floor area is within the 250,000m <sup>2</sup> limit.
(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 car parking on site exceeding the maximum permitted.
(e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres	Not possible on small isolated site
(f) to protect the privacy of residents, and the amenity of residential and open space areas, within and around the North Sydney Centre	Satisfactory.
(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 no additional overshadowing.
(h) to prevent any increase in overshadowing that would adversely impact on any land within a residential zone	No impacts
(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 provides for an appropriate transition of heights from the centre of North Sydney Centre to the boundaries.

*(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 height proposed has no adverse impacts upon any land zoned RE1 or identified as a Special Area.

*(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,*

The proposal has no detrimental shadow impacts upon any land zoned R2, R3, R4 of RE1 or land identified as a Special Area, with any shadow impact due to the proposal falling within existing shadows.

*(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 proposal provides a compliant podium at 5 storeys and as such provides for an appropriate "human scale" within the visual context of Miller Street. Awning not required due to 5m setback requirement.

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

The site is an isolated surrounded by either relatively recent developments or rights-of-way to such properties and as such site consolidation is not possible. Both adjoining sites are not available for redevelopment so further consolidation is not practical.

*(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*

The proposed building does not overshadow land zoned RE1 or any Special Area 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.

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

The site area is 521.3m<sup>2</sup> and the site is isolated surrounded by either relatively recent developments or rights of way to such properties and as such site consolidation is not possible.

As such, a variation pursuant to clause 4.6 is requested to permit the site to be developed in isolation. The applicant has submitted the following written request:

*Clause 4.6 permits variations to development standards, of which the 1,000m<sup>2</sup> site area control is one, in order to provide an appropriate degree of flexibility in applying development standards and in order to achieve better outcomes for and from development by allowing flexibility.*

*It is considered that a better planning outcome can only be achieved on this site by varying the control as the site cannot be developed unless the control is varied as it is an isolated site. The alternative is the retention into the future of the existing 7 storey brick building, surrounded by much taller buildings. This would not only result in an unacceptable streetscape response for Miller Street into the future, but would also result in the site remaining underdeveloped. Clearly the strict application of this control would be contrary to the objects of the Act, which include to allow for the orderly and economic development of land.*

*For these reasons compliance with the standard is unreasonable in this case and there are appropriate environmental planning grounds to permit variation of the standard. It is also, in my opinion, in the public interest to permit variation of the standard for the reasons given. The redevelopment of this site in isolation is the only way in which it can be developed and for the site to remain underdeveloped would be contrary to both the objectives of the standard and those of the zone.*

*It is not considered that there is any significant State or regional planning issues raised by the proposed variation to the control and in the circumstances, where the site must remain undeveloped or be developed in breach of the standard, there is no public benefit to be had in maintaining the standard.*

The request is considered to be well founded and is supported subject to an appropriate development that does not result in unreasonable impacts.

*(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.....*

The shadow diagrams provided with the application show that between 9am and 3pm at midwinter the shadows cast by the portion of the building that exceeds the height control will not reduce the amenity of any dwelling located on land outside the North Sydney Centre

- (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 scale, form and massing of the proposed development is reflective of the scale, form and massing of the adjoining buildings which have been developed recently and as such will sit comfortably within that setting. The form with regard to setbacks does impact on neighbouring development and needs to be addressed with further modifications at the upper levels.

- (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 proposal will complete this section of the streetscape of Miller Street (in conjunction with the recently approved building at No. 221 Miller Street). The scale is compatible with the surrounding buildings and the proposed materials and external treatments are appropriate for the setting.

#### **6.4 Miller Street setback**

- (1) The objective of this clause is to maintain the established setback and landscaped setting on the eastern side of Miller Street between McLaren Street and Mount Street.*
- (2) Development consent must not be granted for the erection of a building on land identified as "Miller Street Setback" on the North Sydney Centre Map unless:*
- (a) the building height will be less than 1.5 metres, and*
- (b) the part of the building that will be on that land is used only for access to the building or landscaping purposes.*

The proposal provides no works with a height greater than 1.5m above existing ground level within the front 5m of the subject site and provides a landscaped setting within that 5m setback, complying with the control.



## 6.5 Railway infrastructure

- (1) *The objective of this clause is to require satisfactory arrangements to be made for the provision of railway infrastructure to satisfy needs that arise from development in North Sydney Centre.*
- (2) *Development consent must not be granted for development on land to which this Division applies if the total non-residential gross floor area of buildings on the land after the development is carried out would exceed the total non-residential gross floor area of buildings lawfully existing on the land immediately before the development is carried out, unless:*
  - (a) *the Director-General has certified, in writing to the consent authority, that satisfactory arrangements have been made for railway infrastructure that will provide for the increased demand for railway infrastructure generated by the development, and*
  - (b) *the consent authority is satisfied that the increase in non-residential gross floor area authorised under the development consent concerned when added to the increases (reduced by any decreases) in non-residential gross floor area authorised under all consents granted since 28 February 2003 in relation to land in the North Sydney Centre would not exceed 250,000 square metres.....*

The existing buildings on the site have a total non-residential gross floor area of approximately 2239m<sup>2</sup> and the proposal has a non residential floor area of 268m<sup>2</sup>. There is no additional non residential floor space proposed and accordingly certification is not required.

## 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 design responds well to its context and the desired future character of the area, providing an appropriate stepping in height between the adjoining buildings and providing podium heights commensurate with the more recent development.

*PRINCIPLE 2: Scale*

The proposed development is generally consistent with the visual height and bulk of the existing and desired future character for development in this area, it being noted that the breach of the height control is a response to the site context and the scale of the immediately adjoining buildings. However, as discussed later, certain aspects of this development are unsatisfactory in terms of setbacks and clearly do not meet the objectives of the RFDC.

*PRINCIPLE 3: Built Form*

The design of the development is appropriate for the site, taking its design queues in relation to height. The proposed building will complete this section of Miller Street in terms of providing development that steps down in height as one travels northward along the street. The setbacks above the podium to the north and the east require further modification to address amenity concerns and not borrow so heavily on the setbacks provided by developments to the east and south.

*PRINCIPLE 4: Density*

The density of the development is generally consistent with that expected within the mixed use zone, where Council has determined that it is appropriate to provide for a higher density of residential development in order to ensure the zone is activated both day and night. The density is largely controlled by the height and setback controls. Whilst the proposed building is not fully compliant with setbacks and height, the design reflects the existing site context. Addressing the setback concerns at the upper levels on the northern and eastern boundaries may result in a lower density than proposed but still a higher density (residential FSR) than adjoining development.

*PRINCIPLE 5: Resource, Energy and Water Efficiency*

The building is designed for energy efficiency despite it being constrained by the orientation and the size of adjoining buildings to the north and north-east. Solar access is maximised by orienting all apartments to the west or east, with no south facing apartments proposed, thereby satisfying the rule of thumb guideline of 70% of apartments with 2 hours of solar access. The BASIX report submitted with the application shows appropriate use of energy and water efficient devices and design.

*PRINCIPLE 6: Landscape*

A landscape plan has been prepared detailing the intended planting of the proposed

roof garden on Level 18 and front forecourt area of the development. The roof garden is designed to survive largely on rainfall once established. The design seeks to provide a green roof. The paving and landscaping of the forecourt of the building will allow for its appropriate activation and use in conjunction with a likely future café and the required retention of street trees.

#### *PRINCIPLE 7: Amenity*

A good level of amenity is provided throughout the building, with reasonably wide common corridors and good accessibility by the provision of 2 lifts. A functional communal space is proposed on the roof which will receive good solar access.

#### *PRINCIPLE 8: Safety and Security*

The safety of the residents will be ensured as the lift lobby is only accessible from the ground level by the residents and by the provision of key locking of each level of the building when accessed from the lower ground level. An intercom access arrangement will be provided at the entrance to the residential lobby of the building. Windows are provided to the south of the café for surveillance of the adjoining right of way.

#### *PRINCIPLE 9: Social Dimensions and Housing Affordability*

A mix of unit styles and sizes is provided to cater for a mix of household types. The provision of a functional communal space on the roof provides good opportunities for the residents of the building to meet in addition to the ground floor public café. A number of the smaller apartment will not have a parking space on site.

#### *PRINCIPLE 10: Aesthetics*

The design of the building is simple and modern and is appropriate to the site's infill location within Miller Street. Architectural features have been included to provide both horizontal and vertical emphasis, with the strong horizontal emphasis of the podium and vertical elements provided by the proposed blade features on the Miller Street façade. Further articulation is provided by the louvre elements and metal screening to the balconies. The amended design and materials are acceptable to the Design Excellence Panel.

#### *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.

##### *Cross ventilation*

A total of 70% of apartments within the development are naturally cross ventilated.

##### *Solar access*

It has been calculated that 70% of apartments within the modified building design now achieve solar access compliance ( $\geq 2$  hours).

## **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.

## **DEVELOPMENT CONTROL PLAN 2013**

### **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 statement for the Central Business District indicates that the land use should be predominantly high rise commercial development with medium to high rise mixed commercial and residential development at the fringes. As the site is one at the fringes of the Central Business District, it is compatible with this land use intent, being a high rise mixed use development.

The statement further indicates that views between buildings on the east side of Miller Street, between Berry Street and McLaren Street are to be preserved. The existing building has a nil setback to the north and south and as such views or vistas are provided over the site. However, the view between the proposed building and the adjoining building at No.225 Miller Street is maintained by virtue of the right of way existing between the two properties.

The statement also indicates that streetscapes should include wide fully paved footpaths, active street frontages and continuous awnings, with irregular street tree planting. The proposal provides for a wide paved footpath and front setback, allowing activation of the street frontage whilst still allowing for heavy pedestrian usage. No awning is proposed due to the required setback, but the existing street tree planting is retained by the proposal.

The proposed development is consistent with the desired future character, providing a high rise mixed use development, with appropriate non-residential uses at the lower level

## **Setbacks**

Setbacks are to be provided in accordance with the character statement, with setbacks to consider the setbacks of adjacent buildings. A zero front, side and rear setback is to be provided for the podium unless a character statement requires an alternate setback. The LEP requires a front setback of 5m from Miller Street that has been provided.

Most of the amended proposal is considered satisfactory particularly at the lower levels. The amended proposal has failed to provide adequate setbacks and separation to surrounding residential buildings. Council's controls require a minimum 3m setback from side and rear boundaries for a residential tower above a podium as well as consideration to the separation distances under the RDC. The proposal does not satisfy these requirements on any boundary. It is recognised that the site is small and isolated. However, the proposal is seeking a breach of the height control and 18 floors of development on a site of just over 500m<sup>2</sup>. As such it borrows heavily on the setbacks of surrounding buildings and relies on extensive screening of its windows and balconies.

As part of the initial assessment of the original plans, the applicant was advised:

*Setbacks in south eastern corner not supported above level 7 difficult to support borrowing of setbacks from other sites. Council normally requires minimum setback of tower above podium of 3m from boundary as well as consideration of RDC. Need to increase setback at levels 7 -10 to a minimum 4m x 4m (square setback) at SE corner. Need to increase setback at levels 11 -17 to a minimum 6m x 6m (square setback) at SE corner. 3m setback from eastern boundary at level 15 and 16*

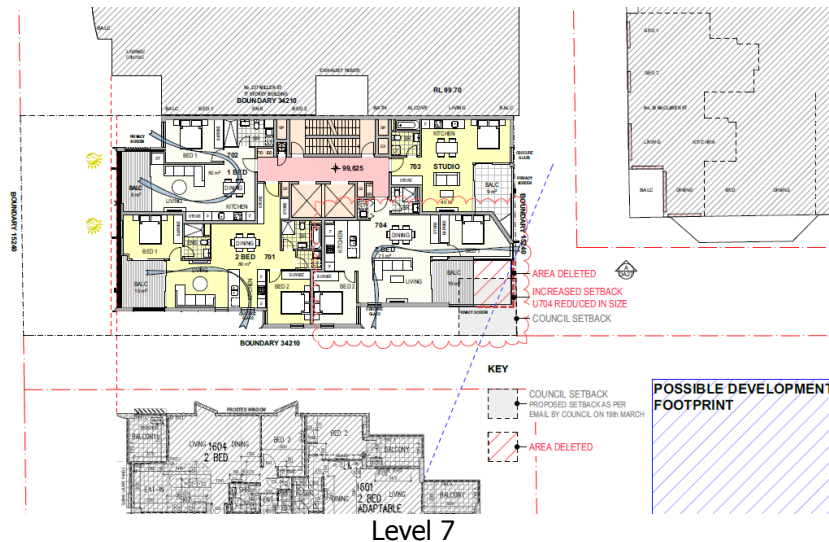
The applicant responded:

*The intention of the setbacks requested by Council is assumed to be to ensure appropriate setback from any future redevelopment of No. 229 Miller Street and to potentially improve solar access to the existing building at No. 225 Miller Street, given the separation distances between the proposed building and the existing building at No. 225 Miller Street are satisfactory to ensure visual privacy and the privacy treatments on the proposed windows/balconies will ensure privacy to the existing building at No. 39 McLaren Street. Having these intentions in mind and considering the suggested square shaped increased setbacks at Levels 7-10 and 11-17, it was considered that an alternative shape would provide improved solar access to the existing building at No. 225 Miller Street without resulting in unacceptable separation distances to an assumed redevelopment at No. 229 Miller Street.*

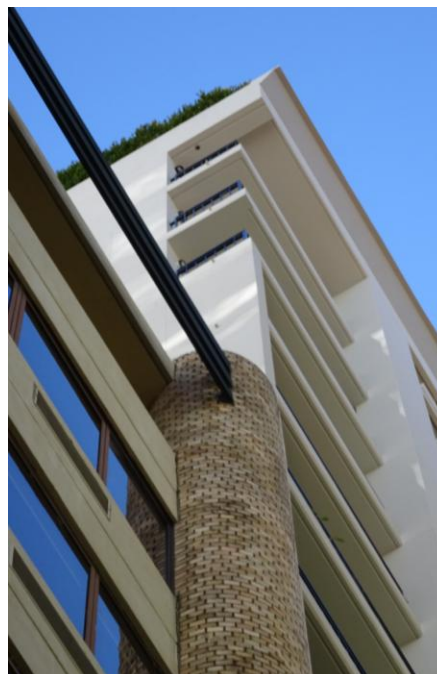
*In order to demonstrate this, the amended plans identify both the requested "square shaped" additional setback in grey shading and the actual increased setback area in red hatching. At Levels 7-10 the area reduced provides for a greater setback from the southern boundary than required but a smaller one from the eastern boundary, which actually results in a greater overall setback area, but more importantly a greater depth of setback from the southern boundary. As the point where the shadows are cast by the building is the south-eastern corner, the additional setback of this point of the building towards the north results in a more significant shadow improvement than the suggested setback area whilst having no significant difference in separation to a future development at No. 229 Miller Street and maintaining a suitable level of privacy to No. 225 Miller Street by the use of a privacy screen.*

*For Levels 12-17, the setbacks sought from the eastern boundary have generally been provided and an increased setback at the south-eastern corner is provided from both the southern and eastern boundaries, improving sunlight penetration into the building at No. 225 Miller Street. However, the extent of setback requested by Council has not been provided in full for a number of reasons including that the resultant change in solar access between what was requested and what was proposed was negligible and that the separation provided to a likely future development at No.229 Miller Street was acceptable. Given the acceptable impacts of the alternate design, a lesser setback was chosen as it results in a more appropriate architectural resolution of the eastern façade of the building and a more appropriate internal floor plan for the apartments in question.*

The setback at levels 7,8 and 9 from the southern and eastern boundaries is acceptable.

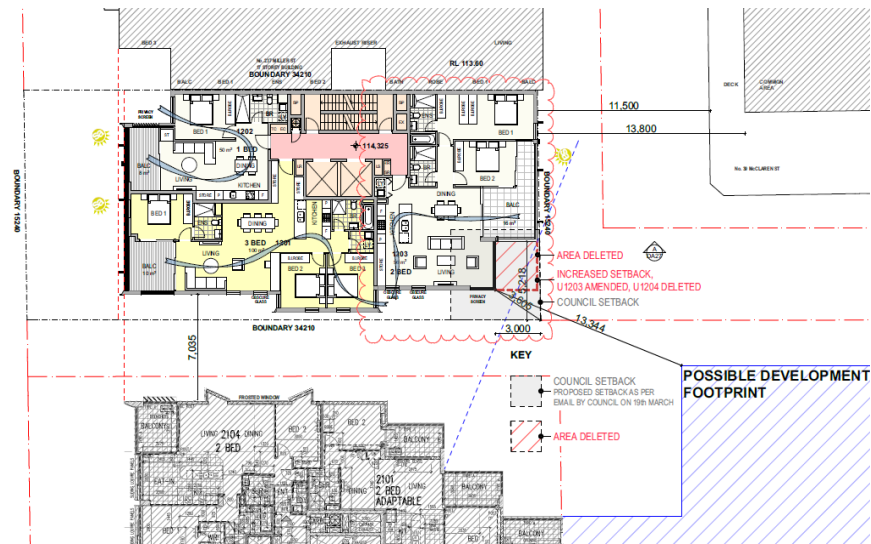


The adjoining property (No.237) has 3 open ended balconies at the front and rear on the northern boundary (adjacent to proposed levels 11, 12 and 13). The front balconies have an outlook over Miller Street and their sight line will be interrupted by the proposed building built to the building setback (5m) so a further setback is not warranted. The rear balconies however have a limited outlook and would benefit from levels 11 to 14 having a 1.5m setback from the eastern boundary (in addition to the setback from the northern boundary discussed below).

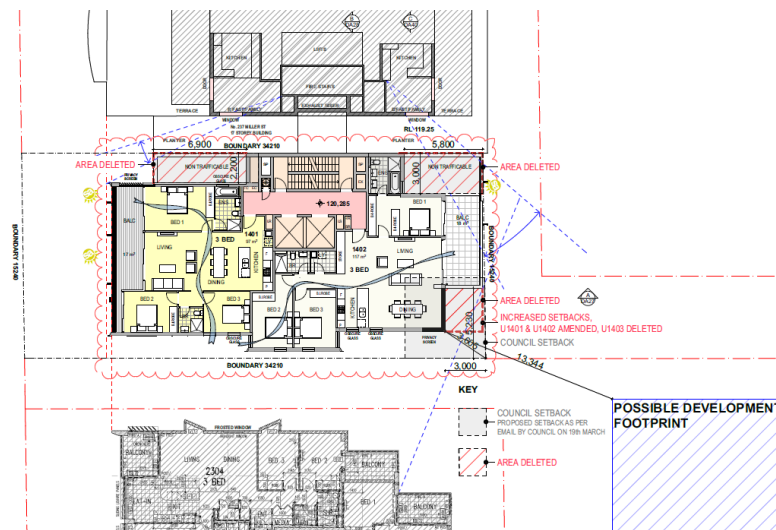


This will result in less shadow over 225 Miller Street (see shadow diagrams below) as well as increase in separation distances to No.39 McLaren Street. The need to increase setback at levels 11 -17 to a minimum 6m x 6m (square setback) at SE corner and 3m setback from eastern boundary at level 15 and 16 is still considered necessary for an acceptable amount of separation and to further reduce overshadowing. The separation

distances are to achieve visual and acoustic privacy. Heavy screening may assist visual but additional setbacks will improve acoustic privacy.

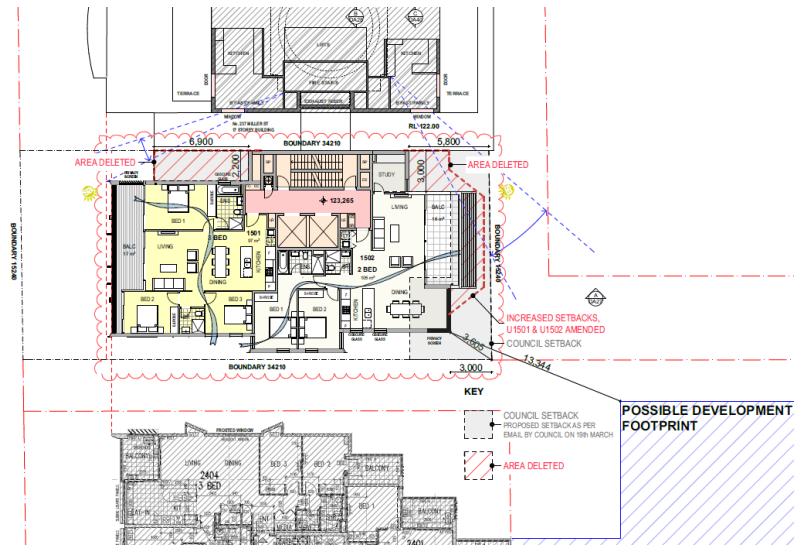


Level 12 and 13

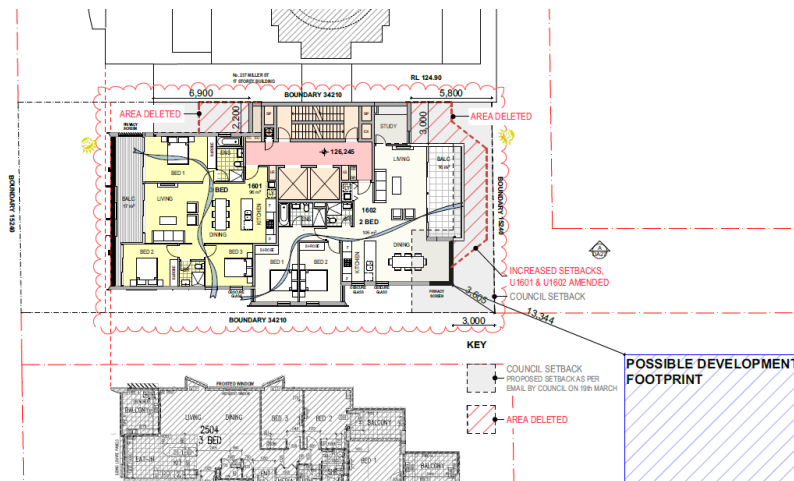


Level 14

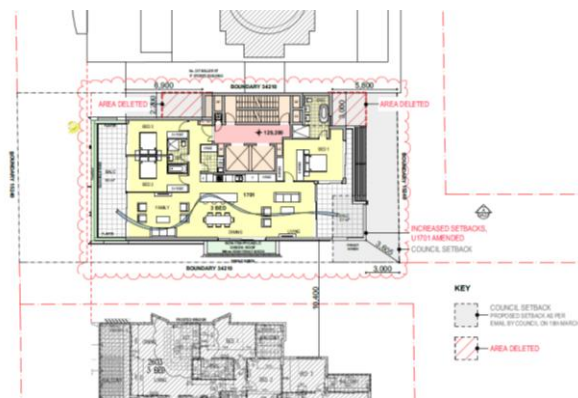




Level 15



Level 16



Level 17



The proposed building does not provide for a setback from the light well of 237 Miller Street. This light well contains a bedroom window on each of the 14 levels facing east. The windows rely on the openness of the light well at the boundary for amenity.

The impact on the light well was not apparent with the initial assessment of the original plans and the true impact only was fully realised following a site inspection of the neighbouring property. The character statement recommends that adequate side separation should be provided for residential amenity. There is a concern that enclosure of a small deep light well will result in inadequate light and ventilation to the habitable rooms in the adjoining apartment building. Council's DCP recommends that for a light well under 12m in height, the light well should measure 6m x 6m (in plan).

A 3m setback from the boundary is usually required above the podium (level 5). It is agreed that the building is appropriate built to the boundary to the west of the light well. It is considered that a 3m setback should be required opposite the light well continuing to the rear boundary or at least a setback of 3m opposite the light well (doubling the size of the light well). An alternative could be a 1.5m setback opposite the light well continuing to the rear boundary from level 5 up. This alternative may be better than doubling the size of the light well as it could provide for a source of light down the building from the eastern boundary as well as a breezeway. Either way, the light and ventilation in the light well will still be significantly reduced with a 18 storey wall.

The applicant has submitted an opinion from a Consultant, Steve King, who concludes that the impact on the lightwell is acceptable. A copy of the opinion is attached to this report for the Panel's information. The applicant has also submitted a BCA opinion from Anthony Protas Consulting Pty Ltd that reads as follows:

*I have reviewed the impact of the proposed development at 231 Miller Street on BCA compliance at 237 Miller Street. It is understood that it is proposed to build number 231 up to the boundary of number 237 and that Council has expressed concern that this could cause BCA compliance issues to the existing building at 237.*

*In respect of the above it is noted that:*

*1. The BCA requires compliance of a building on the site the subject of the building approval application. It contains no provisions or consideration of conditions or buildings on adjoining sites.*

2. The concept of a building only having to comply with the BCA requirements as applicable to the site on which the building is located is illustrated by the following BCA provisions:

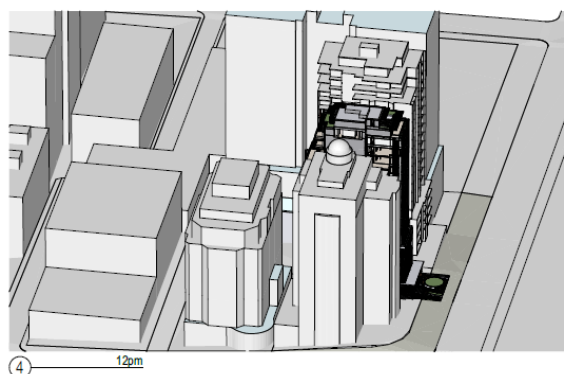
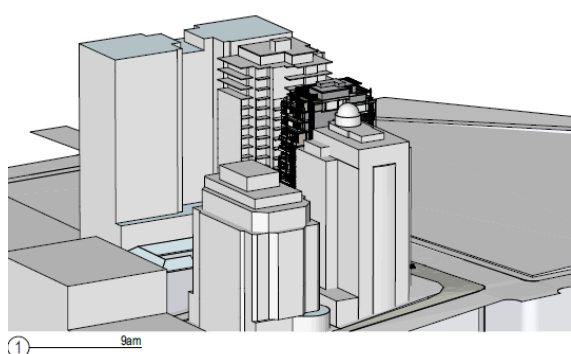
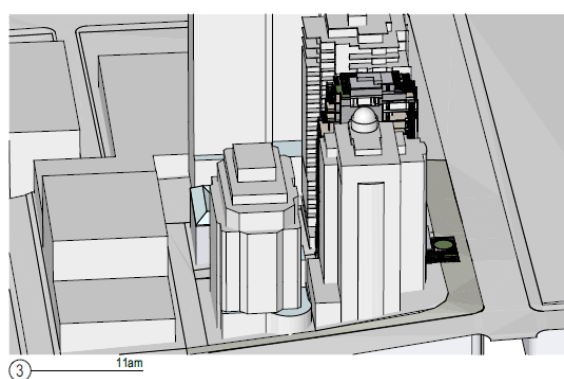
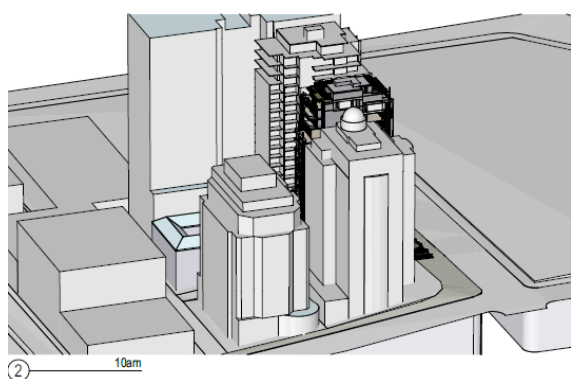
- The requirements for fire rating of external walls and protection of openings in those walls (Specification C1.1 and clause C3.2) relates to distances from fire source features. Fire Source Feature is defined as including a side or rear boundary of the allotment. The BCA recognises that a building on an adjoining allotment could be built to the boundary. There is no recognition of the design of the existing or potential buildings on adjoining allotments.
- The requirements for natural light (F4.2) prescribe a minimum setback for windows from the boundary. The BCA recognises that windows providing natural light need to be setback from the boundary as there is a potential of a building on an adjoining allotment to be built to the boundary.
- The provisions for natural ventilation (F4.6) require windows to open to a suitably sized court, or space open to the sky. The requirement is for the space to be open to the sky, not open to the front, rear or sides. Again the BCA recognises that there is a potential for a building on an adjoining allotment to be built to the boundary and for the court or space to be enclosed on all sides.

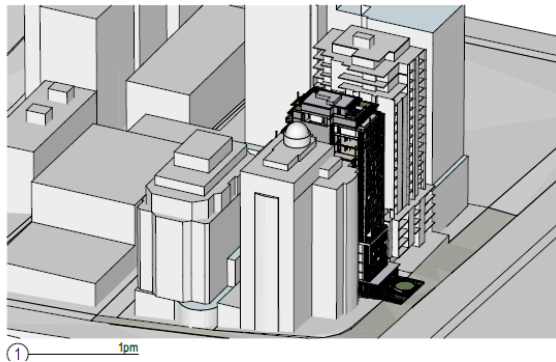
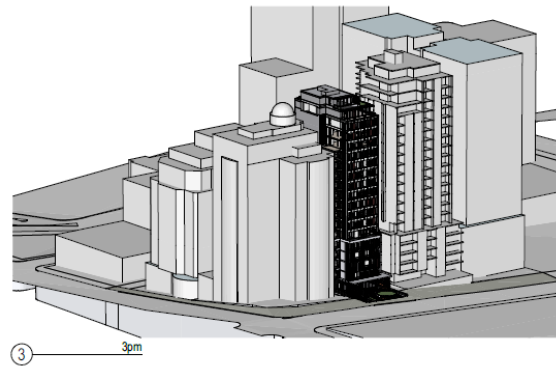
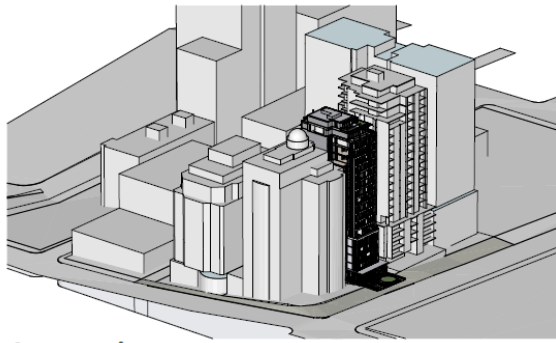
3. The building at 237 would have been assessed and approved in accordance with the above BCA provisions, including the sizing of the court or space. The proposal at 231 does not alter or impact on this.

In conclusion, the proposal at number 231 has no impact on BCA compliance at number 237 and it will not reduce the minimum required light and ventilation provisions for that building.

## Shadow impacts

Sun's eye view shadow diagrams were requested to demonstrate the extent of shadow over 225 Miller Street and the areas of the proposed building that cause the shadow. It helps to show that the additional setbacks requested from level 11 up will improve impacts on the surrounding buildings between 9am and 12noon.





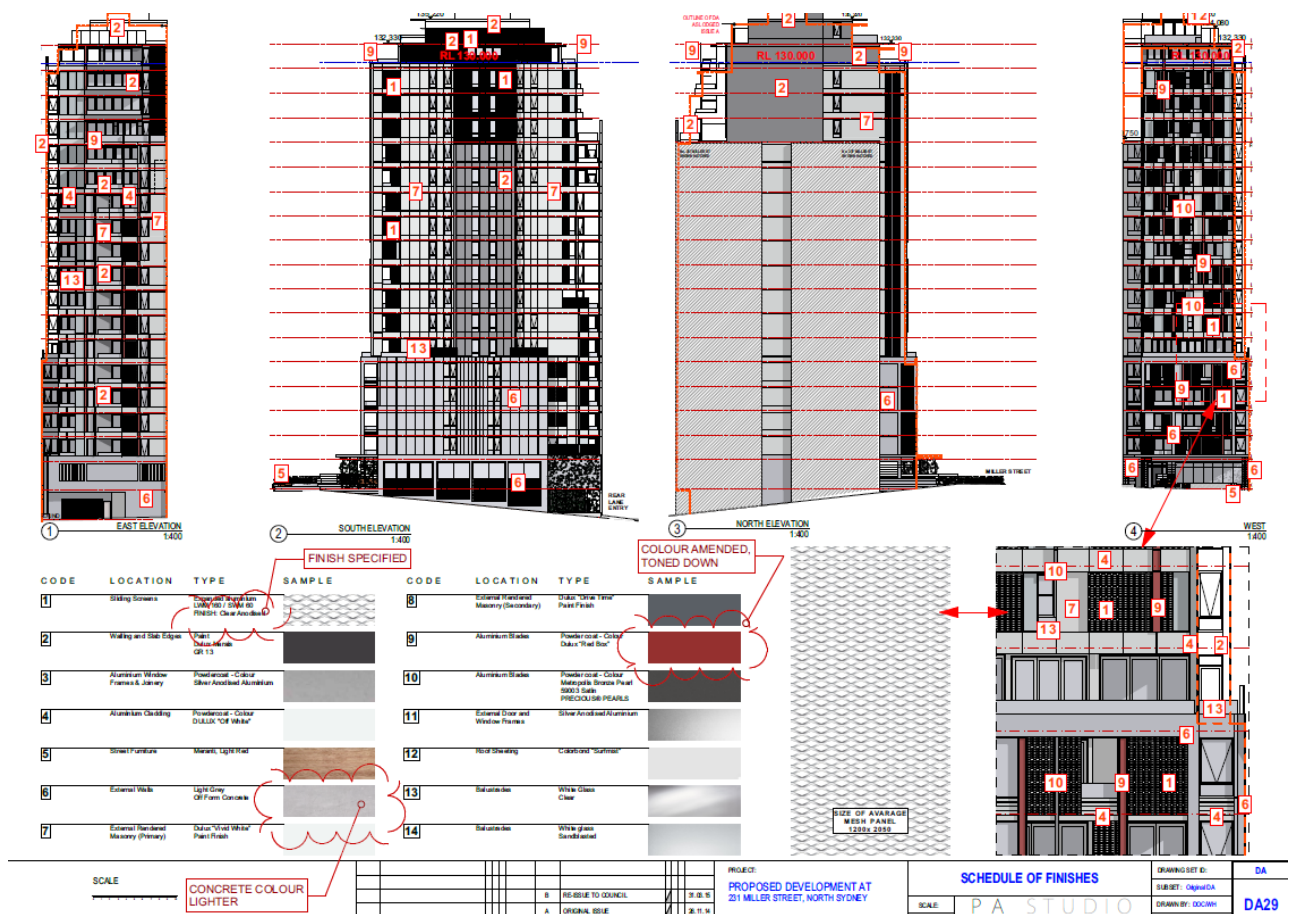
## SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's Section 94 plan are warranted and are based on the residential apartments with allowance for the reduction in non residential floor space on the site. The contributions are detailed in the attached draft conditions should the current application be approved. The contribution may require some modification should an amended proposal result in a reduction in the number of apartments.

## DESIGN & MATERIALS

The Design Excellence Panel raised concern about the materials and finishes with regard to the dark colour of the podium base and red detailing, with more subtle treatment and colours suggested.

The proposed colours and materials have been reconsidered in light of these comments and an amended sample board has been prepared. The board shows that the expanded mesh aluminium screens are to be clear anodized and the colour of the podium to be made lighter.



There are no objections to the proposed materials.

## 237 Miller Street Consent

A development application was made to Council on 22 January 1995. This application was refused on 13 March 1995 and subsequently appealed. There were numerous reasons for refusal, in effect; the proposal did not comply with the planning controls at the time. The Land and Environment Court upheld the appeal and the existing building on this site largely reflects that consent. Of note, bulk, scale, height and floorspace issues were key to this determination. The current applicant's arguments in turn rely heavily on the lack of setback to the southern boundary. It is evident that less than desirable development such as this is what led to the introduction of SEPP 65 and the RFDC. Relying on difficult site circumstances caused by an adjoining building not meeting current code standards should not be accepted as a reason for a lesser outcome than could be achieved by a more considered design.

## 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

Issues raised in the submissions that have not already been addressed throughout this assessment are addressed as follows:

#### *Concern with construction noise*

Council will place standard conditions on any approval limiting the hours of construction and other construction noise related impacts.

#### *Vehicular access should be from Miller Street*

RMS will not permit vehicular access from Miller Street when an alternative exists and the alternative in this case is the ROW.

#### *Adequate visitor parking should be provided*

Council's DCP does not permit the provision of visitor parking. Also reduced resident parking is encouraged due to the proposed stacker parking system that could lead to delays in vehicle retrieval.

#### *Shadow impact on adjoining apartments*



The shadowing of existing apartments adjoining the site is a concern that can be improved with increased setbacks on the upper levels from the eastern and southern boundaries.

*The building overshadows the property on the corner of Walker and Berry Street and as such doesn't satisfy the requirement for variation of height control*

The amended shadow diagrams show that the shadow falls on 138 Walker Street which is a mixed use site and not residentially zoned.

*The basement retail area is within the Miller Street setback area and is not permissible.*

The area has been deleted from the amended plans. The deletion of this area does not result in a non-compliance with the FSR control.

*The proposal doesn't satisfy the apartment mix requirements*

The proposal is generally consistent with the required mix.

*Proposal will result in wind impacts*

The proposal will have similar wind impacts to existing building and is located between similar scaled buildings.

*Large street trees will be destroyed*

Two trees are allowed to be removed with the remainder protected. Suitable conditions would be imposed with any consent granted.

*Lack of disabled parking*

With a stacker system, all spaces become disabled parking as level access is available from the car lift to the passenger lift.

*Lack of demolition plan on restricted site*

A Construction Management Plan will be a condition of any consent requiring details of the demolition plan.

## **Conclusion**

The application has been assessed against the relevant statutory controls and with regard to the existing and approved developments nearby. Most of the amended proposal is considered satisfactory particularly at the lower levels. The amended proposal has failed to provide adequate setbacks and separation to surrounding residential buildings. Council's controls require a minimum 3m setback from side and rear boundaries for a residential tower above a podium as well as consideration being given to the separation distances under the RFDC. The proposal does not satisfy these

requirements on any boundary. It is recognised that the site is small and isolated. However, the proposal is seeking a breach of the height control and 18 floors of development on a site of just over 500m<sup>2</sup>. As such it borrows heavily on the setbacks of surrounding buildings and relies on extensive screening of its windows and balconies.

It is noted that the taller building to the south at No.225 Miller Street contains 79 apartments and provides greater side setbacks on a site area of 885m<sup>2</sup> equating to one apartment per 11.2m<sup>2</sup>. For its site area of 521m<sup>2</sup> the expected number of apartments should be  $521 \div 11.2 = 47$  apartments, (the density at No.237 where there are 98 apartments on site area of 1402m<sup>2</sup> is one apartment per 14.3m<sup>2</sup>). The additional setbacks would not significantly reduce the density from the 61 apartments proposed and would still result in a density more in keeping with the controls.

Recognising that adequate setbacks need to be provided for residential amenity, the following modifications are considered necessary before the proposal can be recommended for approval:

- northern boundary setback of 1.5m opposite the light well and 1.5m setback continuing to the rear boundary from level 5 up; OR a 3m setback opposite the light well (doubling the size of the light well);
- levels 11 to 17 having a minimum 6m x 6m (square setback) at SE corner
- levels 11 to 14 having a 1.5m setback from the eastern boundary.
- 3m setback from eastern boundary at level 15 and 16

The applicant was advised of the concerns and their response is reproduced in the above report. They also provided an opinion from Steve King with regard to the enclosure of the light well. The response is noted but does not satisfactorily address the issue. Accordingly, the development application is recommended for **refusal**. Draft conditions have been prepared and attached should the Panel have a different view of the concerns raised.

## **RECOMMENDATION**

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

**THAT** the Joint Regional Planning Panel, as the consent authority, refuse 2015SYE006 – North Sydney - Development Application No.453/14 for the following reasons:

1. The proposed development fails to provide for adequate setbacks and building separation distances on its northern, eastern and southern boundaries.
2. The lack of setbacks results in adverse amenity impacts on adjacent development with regard to overshadowing, aural privacy, reduced daylight and ventilation.

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

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