

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 60 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 first amended plans Final amended plans not notified</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 Conditions</b>
Recommendation	<b>Approval</b>
Report by	<b>Geoff Mossemeneer, Executive Planner, North Sydney Council</b>

## Supplementary Assessment Report and Recommendation

### DESCRIPTION OF PROPOSAL

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

The proposal contains 21 x studios, 16 x 1 bedroom apartments, 19 x 2 bedroom apartments and 4 x 3 bedroom apartments with a floor space of 270m<sup>2</sup> for the retail/commercial component. The proposal provides for 39 car spaces and 6 motorcycle spaces (within a stacker system).

## **BACKGROUND**

The application was reported to the JRPP (Sydney East Region) at its meeting of 1 July 2015 with a recommendation for refusal 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.

### *Panel Decision:*

1. The Panel resolves unanimously to defer the determination of the application to allow the applicant to submit amended plans by 24 July 2015. The amended plans should contain the following modifications:
  - a. The northern boundary is to have a setback of 1.5m from the western edge of the light well on the adjoining building to the eastern end of the building from level 5 up;
  - b. Levels 11 to 17 are to have a minimum 6m by 6m setback at the south east corner;
  - c. Levels 11 to 14 are to have a 1.5m setback from the eastern boundary; and
  - d. Levels 15 and 16 are to have a 3m setback from the eastern boundary.
2. The applicant is also requested to provide council, by 24 July 2015, with comments on the recommended conditions attached to the assessment report.
3. The Panel requests the council's assessment officer to prepare, within a week after receiving the amended plans, a supplementary report including recommended conditions, indicating whether the amended plans have responded to the above changes. This is subject to the amended plans not requiring further notification.
4. Following receipt of the supplementary report, the Panel will determine the application by communicating by electronic means.

## **AMENDED PLANS**

The amended plans were submitted to Council on 24 July 2015. The amended plans are fully compliant with the modifications a, b, c and d as required in the above JRPP resolution.

## **NOTIFICATION**

Section A4.5 of the North Sydney Development Control Plan (NSDCP) 2013 provides that

*'if, in Council's opinion, the amendments are considered likely to have a greater adverse effect on or a different adverse effect on adjoining or neighbouring land, then Council will renotify:*

- Those persons who made submissions on the original application;*
- Any other persons who own adjoining or neighbouring land and in the Council's opinion may be adversely affected by the amended application.*

*Where the amendments in the Council's opinion do not increase or lessen the adverse effect on adjoining or neighbouring land, Council may choose not to notify or readvertise the application.*

*Where the amendments arise from a Council-sponsored mediation, and it is considered that the amendments reflect the outcome of the mediation and do not otherwise increase the application's environmental impact, the amendments will not be notified or advertised.'*

In this instance, it is considered that the amendments would be unlikely to materially affect adjoining or neighbouring land compared to the originally notified development and as such, re-notification is not required. The amended plans are in response to the submissions received.

## **CLAUSE 4.6 VARIATIONS**

### **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 now that appropriate setbacks have been provided to the northern and eastern boundaries to further reduce amenity impacts to adjoining properties.

### **6.3 Building heights and massing**

*Clause 6.3(2)(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.

## **CONDITIONS**

The applicant advised on 20 July 2015 that only 2 conditions required modification (C4 and C37). The reasons for the proposed amendments are as follows:

### *Condition C4*

*In the current circumstance, where parts of the surrounding buildings are a long way from the proposed buildings and that the foundations of all of the surrounding buildings are located below the levels of the proposed excavation, it is considered that an independent structural or geotechnical engineer should determine the extent of the dilapidation reports. It is noted that the current condition requires the inspection of in excess of 280 apartments.*

### *Condition C37*

*According to our adaptable consultants ERGON CONSULTING PTY LTD this conditions should be modified such they are to designed and built to achieve compliance with AS4299.*

Council does not object to the above changes that are now incorporated in the attached conditions. The only other additional conditions relate to deletion of the awning over the front setback (condition A4) as it is contrary to the controls (accepted by applicant) and condition C43 that relates to landscaping works on Council land. The draft conditions were amended with regard to reference to plans, the Basix certificate and amended Section 94 contributions.

## **CONCLUSION**

The application has been assessed against the relevant statutory controls and with regard to the existing and approved developments nearby. The amended proposal with adequate setbacks and separation to surrounding residential buildings is now considered satisfactory and can be recommended for the Panel's favourable consideration.

## **RECOMMENDATION**

**THAT** the Joint Regional Planning Panel, as the consent authority, assume the concurrence of the Secretary of the Department of Planning and Environment and invoke the provisions of Clause 4.6 with regard to the exception to the development standard for height and site area and grant consent to 2015SYE006 – North Sydney - Development Application No.453/14 subject to the attached conditions.