

JOINT REGIONAL PLANNING PANEL (East)

JRPP No	2016SYE012
DA Number	486/15
Local Government Area	North Sydney Council
Proposed Development	Demolition of existing office building and the construction of a mixed use development comprising basement levels, retail / commercial floor space, and 415 residential apartments
Street Address	168 Walker Street, North Sydney
Applicant/Owner	Aqualand Pty Ltd
Number of Submissions	Thirty nine (39)
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment Value > \$20M
List of All Relevant s79C(1)(a) Matters	North Sydney LEP 2013 - Zoning – B4 Mixed Use North Sydney DCP 2013 SEPP65 SEPP 55 - Contaminated Lands SREP (2005)
List all documents submitted with this report for the panel's consideration	Plans Clause 4.6 request Conditions
Recommendation	Approval
Report by	Geoff Mossemeneer, Executive Planner, North Sydney Council

EXECUTIVE SUMMARY

The application seeks development consent for:

- The demolition of the existing commercial building and associated structures;
- Construction of a mixed use building incorporating ground level retail space, upper level commercial office space and residential apartments; and
- Basement parking, ground level communal open space and roof level communal space and facilities.

The land use components of the development are:

- Retail: 1,133m² GFA
- Commercial: 1,365m² GFA
- 415 apartments:
 - 7 x studio
 - 144 x 1 bedroom
 - 196 x 2 bedroom
 - 68 x 3 bedroom

Council's notification of the proposal attracted thirty nine submissions raising particular concerns about overdevelopment; breach of height control; overshadowing; loss of privacy/overlooking (School, residential); loss of trees; inadequate parking; setbacks; construction noise; Building Height Plane to R4 zones opposite (DCP control); no visitor parking; traffic; interface with Ridges (privacy, future development potential of hotel site); School safety and light pollution from the towers at night.

Council's Design Excellence Panel also 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 23 May 2016. Notification of the amended proposal was not required as the amended plans did not result in additional impacts. The amended plans have generally resolved the concerns raised by the DEP and Council staff.

The assessment of the proposal has considered the concerns raised by submitters as well as the performance of the application against Council's planning requirements. Following assessment of the amended plans, the development application is recommended for **approval**.

DESCRIPTION OF PROPOSAL

The application seeks development consent for:

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- Construction of a mixed use building incorporating ground level retail space, upper level commercial office space and residential apartments; and
- Basement parking, ground level communal open space and roof level communal space and facilities.

The land use components of the development are:

- Retail: 1,133m² GFA
- Commercial: 1,365m² GFA
- 415 apartments:
 - 7 x studio
 - 144 x 1 bedroom
 - 196 x 2 bedroom
 - 68 x 3 bedroom

The building includes four interconnected tower “pods” that vary in height, stepping up to the maximum height at the corner of McLaren Street and Walker Street.

The height in storeys of the tower pods that make up the building are:

- Pod 1: 22 storeys plus roof plant;
- Pod 2: 26 storeys inclusive of roof level community facilities;
- Pod 3: 28 storeys plus roof level plant; and
- Pod 4: 24 storeys inclusive of roof level gym.



Walker Street looking south



Corner of McLaren Street and Walker Street



McLaren Street looking east

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 subject site is located on the north-western corner of Walker and McLaren Streets North Sydney and is legally described as Lot 100 in DP 1172241. No.168 Walker Street (the site) is an irregular shaped lot of 4,898m² in area, with the major frontage to McLaren Street of 78.445m and the Walker Street frontage of 59.055m.

The site has a 7m level difference, sloping down from north to south and towards the prominent corner position at the junction of McLaren and Walker Streets.



Existing on the site is a multi-storey commercial office building with basement car parking including extensive perimeter and site landscaping and a northern ground level pedestrian plaza.

The site is conditioned with several easements relating to the adjacent Rydges Hotel which was developed at the same time and is of a similar architectural style to the existing building. Several Rydges Hotel services are either shared or run directly through the site and will have to be redirected accordingly. In addition, two (2) key through site links must be respected. A right-of-carriageway, to serve vehicular access to the hotel, defines a western footprint extent, and an east-west right-of-footway determines a permeable podium to any new concept.



Existing Office Building

The site lies within the North Sydney commercial centre and within a diverse urban context of land uses and buildings. The site has a shared irregular L shaped boundary with the Rydges Hotel to the west and to the north, as well as the Wenona School to the north.

Also adjoining to the west is a vacant site over which there is an existing Concept Approval for aged care housing redevelopment including a maximum building height envelope granted in July 2011 by the JRPP. The maximum height was RL 118.



Opposite the site on the south-eastern corner of McLaren and Walker Streets is a three (3) storey brick residential flat development at 45 McLaren Street.

Opposite the site in Walker Street is a mix of residential flat buildings of varying ages and architectural styles including a nine storey building at 191-195 Walker Street and an eight storey building at 199 Walker Street.

Background

A formal DA pre-lodgement meeting was held with Council officers on 12 October 2015. Pre-lodgement meetings were held with the Council's Design Excellence Panel (DEP) on 13 October and 10 November 2015.

Development Application No.486/15 (subject application) was submitted on 22 December 2015. The application was referred to various external authorities and internal staff for comments, notified to surrounding owners and residents and to Council's Design Excellence Panel (3rd time).

Following a preliminary assessment of the application, consideration of submissions received and the comments raised by the Design Excellence Panel, the applicant was invited to meet with Council staff on 1 April 2016 to discuss the following issues:

1. Heritage

The subject site assists in providing additional landscape setting and low sandstone boundary walls to the setting of the heritage items. Although of a much greater bulk and scale, 168 Walker St's perceived bulk and scale is screened from the lower scale heritage items by the canopies of Council's street trees as well by the trees located on the subject site. The proposal will however, result in the large scale removal of this tree canopy.

2. Landscape

The subject site has 60 trees and there are 16 trees immediately adjacent to the site comprising trees on private property and trees on Council's footpath. The trees as a group create a considerable canopy and green oasis that assists with the transition between the heavily paved commercial precinct of North Sydney and the suburban character of upper Walker St and Ridge St.

The proposed Landscape Plan Drawing L-DA-17 by Turf is also not yet adequately developed. It is conceptual only. The landscape proposal is not compliant with controls in Part B Sections 1.5.6, 1.5.8 and 1.5.10 of NSDCP 2013 as there is inadequate retention of the existing trees, inadequate proposed plantings and the future residents will not be provided with a reasonable level of outdoor amenity.

3. Waste

The waste chute room on each floor does not require four shelves for 50lt recycling

bins. 1 x 140lt wheelie co-mingled recycling bin is all this is required for each waste chute room, or as many as decided is necessary to accommodate the amount of recycling likely to accumulate on each floor.

The other issue is that no temporary holding bay has been provided, a temporary holding bay sufficiently large enough to accommodate at least 100 garbage/recycling bins and any household clean up material is essential to be provided.

4. Traffic and parking

The development proposes a total of 373 parking spaces which is an additional 27 parking spaces above the maximum requirements set out in the DCP.

Council has developed this section of the DCP in accordance with its policies on traffic minimisation. In 1999, Council undertook a detailed Traffic and Transportation Study, which outlined a plan to provide restrictive parking spaces to therefore limit the traffic generation associated with the private motor vehicle. Further, Council's adopted Community Strategic Plan aims to minimise the impact of the private motor vehicle.

Permitting any development to increase their parking spaces over the DCP, would entirely undermine the intent and purpose of Council's DCP. Increasing parking spaces also discourages the concept of "Green Travel Plan" to consider alternate means of accessing a site rather than by private motor vehicle.

Council's DCP specifies that all new development is to provide on-site, secure bicycle parking facilities. The minimum required bicycle space for residential building is 1 bicycle parking space per 1 dwelling. Therefore minimum of 457 on-site, secure bicycle parking for residents and visitors are required to be provided. Also provision of bicycle spaces shall be made for the retail and office areas. The minimum required parking space rate for retails and office areas are described in Council's DCP. As such a minimum of 58 and 13 parking spaces are required for retail and office areas respectively. Council's DCP also permits the use of basement storage area on title if it is large enough for bicycle storage. This may reduce the provision of required bicycle spaces mentioned above. The applicant is required to either provide a minimum 528 bicycle spaces or reduce the numbers by submitting the provision of using basement storage as bicycle spaces.

The layout of parking spaces for some of adaptable parking spaces does not meet the AS2890.6:2009 minimum requirements. Accessible parking spaces are to be located closer to the lifts for easier accessibility and convenience. The shared zone for accessible parking spaces need to be provided with a bollard in accordance with AS2890.6

5. Stormwater

The stormwater concept plan is generally acceptable, more information about proposed connections to Council's system is required. On the plan SW 300, there is proposed 600 mm pipe redirection via new stormwater easement alignment. We need

confirmation that new pipe will be connected to the existing stormwater pit in McLaren Street. Stormwater overland flow path route, extent and depth must be defined on one of stormwater plans. It must be also confirmed that it will not increase in comparison with the existing overland flow. Overland flow must be assessed from 1 in 5 year up to 1 in 100 year event.

6. SEPP 65 and design concerns

- Setbacks of tower from western boundary
- Winter gardens/ living areas facing side boundaries
- Apartment layouts – winter gardens attached to internal bedrooms rather than having main wall directly to living areas
- Separation distance between tower 2 and 3 fronting McLaren Street is only 2m
- Issues raised in DEP minutes - landscaping, noise, height, ground level wind impacts and overlooking/privacy of balconies

7. Submissions

In response to the notification, Council received a submission from Stanton Precinct and 38 individual submissions from surrounding owners and residents raising a number of concerns that need to be responded to by the applicant.

Response:

The applicant responded by submitting amended plans and details on 23 May 2016. The package of information, in addition to this covering letter, included the following:

- Woods Bagot architects – a short report explaining the architectural response to matters raised, together with amended drawings and associated schedule;
- Turf landscape architects – an amended landscape report;
- Naturally Trees arborist – an amended arborist report;
- BCA Logic – letter of advice regarding BCA compliance of bedrooms, provided with the architectural drawing package;
- The Mack Group – an updated Waste Management Plan; and
- Written advice from AECOM regarding stormwater matters.

The issues raised by Council were responded to as follows:

"1. Heritage

The heritage comments largely related to the landscape setting of the site and future development, and so are addressed under item 2 below. The Council's comments concluded that "No specific heritage conditions are required as the issues will be addressed under Landscape."

2. Landscape

An amended landscape report and an amended arborist report are provided. The amended landscape report follows on-site discussion with Council officers on 28 April and subsequent exchange of draft drawings and Council comments.

In summary the amended landscape report and amended arborist report:

- *Detail the increased number and location of trees and other vegetation to be retained;*
- *Detail the sandstone clad retaining walls to be included;*

- Includes a widened pedestrian path within the property boundaries adjacent to the Council's footpath in McLaren Street;
- Includes opportunities for public seating areas on site; and
- Provides increased areas for substantial planting including canopy trees and street trees.

The result is a development set within a generous landscaped setting with numerous canopy trees, both existing to be retained and new trees. The landscape package provides for an enhanced outcome on site and a significantly enhanced relationship and positive contribution to the public domain of McLaren and Walker Streets.

3. Waste

Amended architectural drawings are provided that confirms space available fronting McLaren Street for the temporary holding of waste and recycling bins. The Council has confirmed that space for 104 bins is satisfactory and also that multiple collections may occur. This area is also visually screened along the sides via integrated landscaping as shown in the landscape report. Also included is an updated Waste Management Plan for Operational Waste.

4. Traffic and parking

The amended architectural drawings include the following:

- The total number of car parking spaces for the development complying with the maximum allowable under NSDCP;
- Provision of bicycle parking for all land uses consistent with the requirements of NSDCP. This includes storage within allocated residential parking;
- Provision of end-of-journey bicycle facilities in accordance with NSDCP; and
- Provision of two car share spaces on level B1.

The design/layout of all parking spaces is provided in accordance with AS2890.6:2009. We also note the Council's confirmation that the 3.5m basement clearance height for delivery and service vehicles is acceptable.

5. Stormwater

Full details of the stormwater overland flow path route and calculations assessed from 1 in 5 years up to 1 in 100 years are resubmitted for the Council's information and included at Attachment 3. AECOM, the project hydraulic engineers, have confirmed via separate email that the 100 year ARI peak discharge to the proposed connection point (south eastern corner kerb inlet pit) has been limited to 54.5 l/s, via on-site detention systems (existing condition - 5 Year, 1 hour storm event), in accordance with North Sydney Council's On-Site Detention Policy. The reduction in peak discharges ensures that the flows to the existing kerb inlet pit are less than the current peak flows. The relevant details are contained in the Site Stormwater Management Report, Rev a, including analysis of the proposed on-site detention systems, lodged with the DA.

6. SEPP 65 and design concerns

Setback of tower 1 from western boundary. Winter gardens/ living areas facing side boundaries

The Council has accepted that a minimum 9m setback is provided for a substantial section of the western wall of tower pod 1. The amended architectural drawings include details of additional privacy measures for wintergardens on levels 2-8 located closer than the 9m setback to the western boundary.

These measures include:

- Additional vertical fins to mitigate opportunities for direct lines of sight from within and towards the wintergardens.
- Additional integrated privacy screening as a second layer behind the wintergardens external glazing system. These screens will consist of full height opaque glass panels and are designed such that each panel can be pulled out or stacked away individually. This also gives ultimate flexibility in application for occupants.
- Additional full height opaque glazing panels to the external façade along the western side.

The amended drawings also demonstrate that the layouts and additional privacy measures of the units directs outlook from living areas towards the north or south respectively, and not towards the western side boundary.

Apartment layouts – winter gardens attached to internal bedrooms rather than having main wall directly to living areas

At the meeting with Council officers on 1 April, the Council confirmed that it would be satisfied if it is demonstrated that the internal amenity of the bedrooms meets the BCA requirements for light and ventilation.

Included with the architectural drawing package is written confirmation from BCA Logic, some of which is reproduced below:

Based on the size of the glazing as shown on the plans and the understanding of floor to ceiling glazing being used it is noted that sufficient lighting and ventilation can be shared from the wintergarden to each of the bedrooms.

When assessing the floor area of each bedroom and the glazing element between the bedroom and the wintergarden it is considered that sufficient light will be provided as floor to ceiling windows are provided for a minimum width of 900mm. When reviewing the ventilation it is considered that doors are proposed to be provided from the bedroom into the wintergardens. It is noted that doors will provide a sufficient opening size to allow for compliant ventilation throughout the rooms.

Additionally it is noted that the openings to the wintergardens will be full operable and achieve openings similar to a balcony with an 1100mm solid balustrade and therefore allow for sufficient lighting and ventilation to be shared to serve the bedrooms.

It is noted that compliance is readily available for the lighting and ventilation requirements serving the bedrooms in accordance with Part F4 of the BCA.

Separation distance between tower 2 and 3 fronting McLaren Street is only 2m

At the meeting held on 1 April, Council officers advised that the comment is principally in relation to any perceived building bulk of the combined southern elevations of towers pods 2 and 3. We note that the separation distance between the two towers is not uniformly 2m and in fact widens to 4m towards McLaren Street due to the curved facades. We also note that windows oriented towards the gap are offset between tower pods 2 and 3, addressing direct privacy issues.

When considering the building as a whole, the minimum slots between different tower pods vary in distance from a minimum 2m up to 3.2m and greater.

Further to the above points, it should also be noted that the SEPP 65 Apartment Design Guide (ADG) does not stipulate minimum distances for building slot widths. The ADG stipulates minimum separation distances between buildings and boundaries while also allowing for performance based alternatives.

Woods Bagot architects have undertaken a study of similar built forms and exemplar development in order to understand contemporary best practice and have included this in the updated reports. Woods Bagot have analysed buildings at:

- One Central Park, Sydney (Atelier Jean Nouvel)*
- Lumiere Towers, Sydney (Norman Foster & Partners)*

The Woods Bagot study has reinforced that the proposed separation distance of a minimum of 2m is greater than other exemplar developments, and is further enhanced with the curvilinear forms increasing width to around 4m at the opening. The Woods Bagot package of information also includes updated images of the southern elevations of tower pods 2 and 3, demonstrating that the two towers will be read as separate buildings on the Walker Street frontage.

On behalf of the applicant we submit to the Council that the separation between tower pods 2 and 3 is acceptable through best practice benchmarking and enhanced separation resulting from the building's unique forms.

Issues raised in DEP minutes - landscaping, noise, height, ground level wind impacts and overlooking/privacy of balconies

All of these matters were addressed either during the iterative design process undertaken with the Council's Design Excellence Panel (DEP) or are dealt with elsewhere in this submission of additional and updated information. Specifically, there is an amended landscape report and amended architectural drawings addressing potential privacy impacts along the western boundary to the lower levels of tower pod 1. Noise and ground level wind impacts have been addressed in the relevant DA reports provided to the Council and to our knowledge do not remain outstanding matters of concern to the Council.

We note that the DEP has specifically endorsed the proposed building heights of all tower pods, including tower pod 3 which is above the maximum height standard under North Sydney Local Environmental Plan 2013. We also note that the Council has advised that it is satisfied that the Clause

4.6 submission seeking a variation to the height development standard is well founded and is supported."

The plans as amended are the subject of this assessment.

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.

Strategic Planning

Council's Senior Strategic Planner (B Stafford) has provided the following comments:

The development application has been the subject of two formal pre-DA meetings with staff and two Design Excellence Panel meetings. Notwithstanding the advice given during this process, the following comments are made from a strategic planning / urban design perspective.

- The impending arrival of significant new public transport infrastructure within 300m of the subject site presents an opportunity to retain a significant amount of employment floor space to support that infrastructure. Compliance with the existing non-residential FSR minimum control is, however, noted and supported.
- Despite the increase in building footprint proposed, the retention and reinstatement of extensive landscaping on the site will maintain the existing built form and garden character of the site and is supported.
- The maintenance of significant building set backs to Walker Street and McLaren Street will retain sight lines and facilitate the garden setting of the proposed built form, and is supported.
- Proposed breaches of the height control will be assessed on merit. The philosophy of a varied building height for each 'pod' is supported, with the reduction in overall GFA than a strictly height-compliant scheme noted.
- It is noted that much of the ground plane of the site is publicly accessible. Opportunities for outdoor dining and informal seating / recreation illustrated in the landscape plans are noted and supported. To adequately activate retail and recreation space, public access must be made legible and accessible.
- The Ward Street Masterplan lies to the immediate south of the subject site. The proposal is likely to impact on the consideration and outcomes of the masterplan owing to the proposed loss of a significant quantum of commercial floor space and the imposition of a large number of residential apartments in the precinct. The Masterplan is expected to be completed in 2016.

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 (L Varley) has advised as follows:

The subject site has 60 trees and there are 16 trees immediately adjacent to the site comprising trees on private property and trees on Council's footpath. The trees as a group create a considerable canopy and green oasis that assists with the transition between the heavily paved commercial precinct of North Sydney and the suburban character of upper Walker St and Ridge St.

The arborist, Andrew Scales of Naturally Trees, has provided a comprehensive report that identifies 17 trees that are important and worthy of retention. The drawing labelled 'Suggested Tree Retention Plan' L-DA10 by the consultant Landscape Architects, Turf similarly identified 19 existing trees and palms (on the site and adjacent to the site) that have potential for retention.

The amended Landscape Plans by Turf however, are still not yet adequately developed as they are conceptual only and do not specify locations of plants, pot size and plant numbers. The proposal does make a greater attempt to retain existing trees and to provide some soft landscape for recreation other than pavement for walking, café seating and peripheral shrub plantings.

To ensure that the proposal is satisfactorily documented to satisfy Clause 5.9 of NSLEP 2013 and Sections 1.5.8 – 1.5.10 in Part B of NSDCP 2013, the following conditions are recommended:

Landscape Plans

Landscape Plans prepared by a registered Landscape Architect are to be submitted to the satisfaction of Council's Landscape Development Officer prior to the issue of any construction certificate that:

- Promotes the existing character of the neighbourhood.
- Promotes the absorption of surface drainage water on site.
- Promotes biodiversity.
- Provides aesthetic and recreational amenity to the site.
- Provides canopy trees at 100 L pot size (minimum), including a 1000 L (minimum) pot size *Ficus rubiginosa* (or similar) for the McLaren Street frontage.
- Retains the following trees identified on Drawing titled Suggested Tree Retention numbered L-DA-10 by Turf Design, dated 20 May 2015 and received at Council on 23 May 2016 being Trees: 16, 32, 35, 57-62, 67-73, 75-77.
- Documents the trees to be removed.
- Provides screening to the residences to the north and ornamental plantings to site entries.
- Provides details of proposed plant numbers, species and locations to all planted areas, including the roof gardens.
- Provides new street trees 3 x 200 L *Waterhousia floribunda* (Weeping Lilly Pilly), offset 900-1200mm from the kerb (exact dimension TBC on site by Council's Tree Officer) as per the requirements in Natspec 'Specifying Trees'.
- Notes that the overhead power lines on McLaren Street are to be demolished and placed underground.
- Notes that irrigation to all planted areas is to be provided using recycled grey water from the site.
- Provides a section detailing typical planting, soil depth and drainage to the roof gardens.

(Reason: To ensure that the landscaping will contribute to the streetscape and amenity of the site users.).....

Comment

The applicant was requested to submit additional landscape details in response to the recommended condition above. Further details were submitted on 20 June 2016 and 21 June 2016 and Council's Landscape Development Officer has advised that the details are now acceptable subject to conditions that have been included in the recommendation.

Traffic/Parking

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

I refer to your request for traffic comments in relation to Development Application 486/15 for development at 168 Walker Street, North Sydney. I have read the Traffic Impact Assessment report prepared by Ason Group dated December 2015.

Existing Site

The subject site is located at the corner of McLaren Street and Walker Street, North Sydney and currently accommodates 19 storey commercial developments with basement car parking for 196 spaces. The site also provides access to the Rydges hotel car park via a right of way across the site. This right of access is to be maintained. The site has a total area of 4,898m².

Proposed Development

The proposed mixed use development consists of 415 residential units, 2498m² of non-residential uses and basement car parking providing a total of 373 spaces.

Traffic Generation

Traffic survey was undertaken during the morning and afternoon peak hour periods, 7 to 9am and 4 to 6pm, resulted 1 hour traffic generation of 88 and 68 vehicles for the morning and afternoon peak, respectively. Future traffic generation was assessed using the RMS Guide to Traffic Generating Developments 2013 updated version, revealed a total of 85 and 68 vehicles for the morning and afternoon peak, respectively. The result shows that the proposed development does not have any impacts on the existing Traffic.

Parking Provision

Based on the Council's DCP 2013 (amended on 5 November 2015 Section 10) the following maximum parking provisions for this development are required:

Type of Parking	North Sydney Council DCP 2013	
	Requirement per dwellings	
Studio and 1 Bedroom Dwelling	0.5 space x 151 dwellings	76
2 Bedroom dwelling	1 space x 196 dwellings	196
3 Bedroom dwellings	1 space x 68 dwellings	68
Visitor	N/A	0
Commercial	1 space / 400m ²	6
Total car parking		346

The development proposes a total of 373 parking spaces which is an additional 27 parking spaces above the maximum requirements set out in the DCP. The report suggests that extra parking spaces provided for 3-bedroom units are satisfactory based on the following reasoning:

"The parking rate for 3-bedroom units under Council's DCP varies depending on the relevant land zoning of a site. In this regard, developments located within a B4 zone (such as the Site) are permitted to provide parking at a rate of 1.0 space per unit, whereas developments not within a B4 zone are permitted to provide parking at a rate of 1.5 spaces per unit. Whilst it is acknowledged that the objectives of Council's DCP is to promote alternate transport modes, the provision of parking at the rates proposed is unlikely to result in any impact on modal splits of future residents – with accessibility to public transport proven to have a greater influence on travel modes.

- A comparison of the travel mode choices of residents is presented in Figure 8, which assesses the B4 zone that covers the Site against neighbouring Non-B4 zones. The comparison demonstrates that there is only a minor variation in the vehicle driver percentages between these two zones (27% versus 30%). Notwithstanding, both scenarios easily achieve the 40% non-car travel mode that is consistent with the objectives of the Metropolitan Strategy on other State planning targets.*

- A review of 2011 Census Data of car ownership for 3-bedroom dwellings demonstrates that 44% of all residents within the suburb of North Sydney owned 2 or more motor vehicles with an average car ownership of 1.47 vehicles per dwelling. Based on these ownership levels, the parking proposed under Council's DCP is insufficient to accommodate the future parking demands generated by the future residents of the 3-bedroom units and would result in increased demands for on-street parking.*

- Accordingly, the provision of parking in accordance with the rates proposed – which is consistent with the DCP for all uses except 3-bedroom units – is recommended recognising that the Site benefits due to its proximity of existing and future public transport services and that this would have a far greater impact on reducing traffic demand on the surrounding road network compared to constraining on-site parking, which would most likely have a detrimental impact to the availability of on-street car parking in the area."*

Council has developed this section of the DCP in accordance with its policies on traffic minimisation. In 1999, Council undertook a detailed Traffic and Transportation Study, which outlined a plan to provide restrictive parking spaces to therefore limit the traffic generation associated with the private motor vehicle. Further, Council's adopted Community Strategic Plan aims to minimise the impact of the private motor vehicle.

Permitting any development to increase their parking spaces over the DCP, would entirely undermine the intent and purpose of Council's DCP. Increasing parking spaces also discourages the concept of "Green Travel Plan" to consider alternate means of accessing a site rather than by private motor vehicle. It is strongly recommended that the car parking provision be reduced to comply with the limits set out in 2013 DCP.

Accessible Parking:

Council's DCP 2013 (amended on 5 November 2015 Section 10) sets out that developments containing adaptable housing must allocate at least one accessible parking space to each adaptable dwelling. The development consists of 60 adaptable units and provides a total of 60 adaptable units which meets the requirements of Council's DCP.

Bicycle Parking

Council's DCP specifies that all new development is to provide on-site, secure bicycle parking facilities. The minimum required bicycle space for residential building is 1 bicycle parking space per 1 dwelling. Therefore minimum of 457 on-site, secure bicycle parking for residents and visitors are required to be provided.

Also provision of bicycle spaces shall be made for the retail and office areas. The minimum required parking space rate for retails and office areas are described in Council's DCP. As such a minimum of 58 and 13 parking spaces are required for retail and office areas respectively.

Council's DCP also permits the use of basement storage area on title if it is large enough for bicycle storage. This may reduce the provision of required bicycle spaces mentioned above. The applicant is required to either provide a minimum 528 bicycle spaces or reduce the numbers by submitting the provision of using basement storage as bicycle spaces.

Furthermore, type of bicycles spaces as well as changing and shower facilities shall be provided in accordance with Council's DCP. All other requirements for Bicycle parking and associated facilities such as access and design shall be provided in accordance with Council's DCP.

Motorcycle Parking

The maximum parking rate for motorcycle parking is 1 per 10 dwelling. Therefore the maximum required number of motorcycle parking spaces is 35. The applicant has provided a total of 41 parking spaces which exceeds the maximum permitted numbers by 6 spaces.

It is recommended that the motorcycle parking provision be reduced to comply with the limits set out in 2013 DCP.

Loading Facilities

Developments containing more than 60 dwelling are required to provide at least 1 service delivery space capable of at least 1 Heavy Rigid Vehicle (HRV) or 2 Medium Rigid Vehicles (MRV). The proposed development has provided a double loading bay on basement 1. The proposed loading bay can accommodate 2 Medium Rigid Trucks.

The report however states that due to the constraints associated with the development, it is proposed that "servicing of the development be limited to vehicles not greater than 3.5 metres in height however otherwise compliant with the requirements of an 8.8 metre MRV."

The AS2890.2, table 2.1 "Design Vehicle Dimensions" indicates the height clearance of an 8.8m long MRV is 4.5m. The applicant is required to provide detailed information and justification of 3.5m height clearance for a standard 8.8m long MRV.

Design/ Layout:

- The layout of parking spaces for some of adaptable parking spaces does not meet the AS2890.6:2009 minimum requirements.
- Accessible parking spaces are to be located closer to the lifts for easier accessibility and convenience.
- The shared zone for accessible parking spaces need to be provided with a bollard in accordance with AS2890.6

Conclusion

It is recommended that the proposed development be refused until the applicant addresses the following:

- The car parking provision to be reduced to comply with the limits set out in 2013 DCP.
- The applicant is required to provide details of proposed bicycle parking spaces as mentioned above.
- The motorcycle parking provision to be reduced to comply with the limits set out in 2013 DCP.
- The provision of loading facilities to be addressed as mentioned above.
- The design/layout of parking spaces be in accordance with AS2890.6:2009.

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 car park comply with the Australian Standard AS2890.1 Off-Street Parking and Council's DCP.
3. That all aspects of loading bay comply with the Australian Standard AS2890.2 Off-Street Parking for Commercial Vehicles and Council's DCP.
4. That all aspects of bicycle parking and storage facilities comply with the Australian Standard AS2890.3 and Council's DCP.

Comment:

The amended architectural drawings include the following:

- The total number of car parking spaces for the development complying with the maximum allowable under NSDCP;
- Provision of bicycle parking for all land uses consistent with the requirements of NSDCP. This includes storage within allocated residential parking;
- Provision of end-of-journey bicycle facilities in accordance with NSDCP; and
- Provision of two car share spaces on level B1.

The design/layout of all parking spaces is provided in accordance with AS2890.6:2009. The 3.5m basement clearance height for delivery and service vehicles has been allowed on other mixed use sites and is acceptable. Removal vans can comply with a 3.5m height limit. All residents moving in or moving out will need to book the loading dock through the Building Manager. This also allows the lifts to be protected from damage from furniture being moved to and from apartments.

The amended plans have responded to the concerns raised. The inclusion of 2 car share spaces will allow residents without parking to have access to a vehicle. There is also a car share parking space on McLaren Street to the west of the site.

Heritage

Council's Conservation Planner (L Varley) has provided the following comments:

The site is not a scheduled heritage item and is not located within a conservation area. It is however, located in the vicinity of heritage items 41 McLaren St, the Simsmetal Building, a five storey office building designed by Seidler and 185 Walker St, a single-storey Victorian sandstone dwelling, now converted to apartments. Although they are an eclectic group of heritage items, the street trees and front boundary sandstone walls provide a cohesive setting and domestic scale.

The subject site assists in providing additional landscape setting and low sandstone boundary walls to the setting of the heritage items. Although of a much greater bulk and scale, 168 Walker St's perceived bulk and scale is screened from the lower scale heritage items by the canopies of Council's street trees as well by the trees located on the subject site.

The proposal will however, result in the large scale removal of this tree canopy and is not supported. Unfortunately, the Arborist's report and the Landscape submission by Turf Pty Ltd are contradictory and it is not clear how many trees are to be retained. What is evident however, is that there will be a dramatic loss of tree canopy that will take many years to replace. To minimise this impact to the streetscape setting of the heritage items, comments are provided as part of the Landscape Assessment.

It is also not entirely clear how the existing sandstone block wall is to be re-used as details have not been provided. Drawing L-DA-21 suggests that retaining walls with sandstone cladding are to be used. The salvage and re-use of the existing sandstone wall is preferred and will also be discussed in my Landscape Assessment. No specific heritage conditions are required as the issues will be addressed under Landscape.

Noise

Council's Team Leader Environmental Health (F Mulchay) has provided the following comments:

Firstly the assessment looks at the type of glazing and acoustic seals that will be required at the new buildings to ensure acoustic amenity indoors for residents, workers etc.. Recommendations are made in this regard. These recommendations should be adhered to.

The second part of the assessment looks at noise output from the new development. In this regard plant and equipment has not yet been selected. The Noise Assessment advises that once plant and equipment is selected and its proposed location determined that further examination will be carried out to determine if acceptable noise criteria can be met. Recommendations re any required noise mitigation measures would be made at this time.

It is recommended that Council require details of proposed plant and equipment and its location at CC stage. An acoustic report will be required to accompany this advising of the predicted noise output from the proposed equipment and any mitigation measures required.

Standard conditions re the acceptable noise output from plant and equipment should be added as conditions of consent. I am happy to provide these suggested conditions if the development is to go ahead.

The Noise Assessment does not address potential noise at the construction stage. It is recommended that if the development is to go ahead the a noise management plan, as per Councils standards conditions of consent, be required so that construction noise is considered, noise mitigation measures adopted where possible, and consultation takes place with potentially affected receivers.

Public Art

Council's Community Services Director has provided the following comments:

The Proposal: to develop public art for "the atrium between the two main towers leading to the public plaza on the other side of the site. The work will be suspended with the artists and Woods Bagot [architect] working closely to create an integrated and elegant result."

Compliance with Council's Arts Plan Process

- Pre- DA meeting? **Y**
- Employment of artists/planner? **Y** [Virginia Wilson Art; Strategy supplied]
- Undertake site analysis/appraisal **Y** ["artists will be supplied with comprehensive plans, elevations and renderings, engineering advice and site visits will be arranged."]
- Identify themes? **Not clear.** [It is unclear whether artists will be encouraged to take into account the history of the site and the context of the buildings, as opposed to the buildings themselves. The requirement for site visits for the shortlisted artists is encouraging]
- Integration of art and design? **Y**
- Design phase. **Generally Y**, except no clear action suggested for engagement with local community
- Documentation **Y**

Recommendation;

The Public Art Strategy submitted by Virginia Wilson Art is to be amended to include:

1. A response to the broader location, whether it be the history of the site or the current wider urban form
2. Engagement with the local community: for example that the successful concept from the shortlisted artists is be promoted to the wider community, prior to construction, for example through Council's home page. Council's Arts and Culture Co-ordinator can be contacted to facilitate this

DESIGN EXCELLENCE PANEL

The development application was before the Panel on 8 March 2016 and the minutes of the meeting are reproduced as follows:

Background

The site is located on the north western corner of Walker and McLaren Streets, North Sydney. The site is an irregular shaped lot of 4,898m² in area, with the major frontage to McLaren Street of 78.445m and the Walker Street frontage of 59.055m. The legal property description is Lot 100 DP 1172241. This site has a 7m level difference, sloping down from North to South and towards the prominent corner position at the junction of McLaren & Walker Streets.

Existing on the site is a multi-storey commercial office building with basement car parking and including extensive perimeter and site landscaping and northern ground level pedestrian plaza.

The site also has a shared boundary with 'the Rydges Hotel' to the West, and 'the Rydges Hotel' & Wenona School to the North.

The site is conditioned with several easements relating to the adjacent Rydges Hotel. Several Rydges Hotel services are either shared or run directly through the site and will have to be redirected accordingly. In addition, two key through site links must be respected. A right of carriageway, to serve vehicular access to the hotel, defines a western footprint extend, and an east-west right of footway determines a permeable podium to any proposal.

The site is zoned B4 Mixed Use under North Sydney Local Environmental Plan 2013 (NSLEP 2013). The maximum height permitted on the site is RL 155.00. The DCP implies a 7m setback from the western side of Walker Street, for sites north of Berry Street, and, all new buildings fronting McLaren Street are to match that existing to protect the existing fig trees.

The Panel has previously considered a pre lodgement proposal for the adaptive reuse of the commercial building with 2500m² of commercial/retail and nominally 310 apartments above at its meetings of 2 September 2014 and 4 November 2014. A formal DA pre-lodgement meeting for a new building was held with Council officers on 12 October 2015. Pre-lodgement meetings were held with the Council's Design Excellence Panel (DEP) on 13 October and 10 November 2015. The Panel provided the following comments at the last meeting:

"While it is acknowledged that some elements of the building are below the height limit and an averaging approach to the height limit has been applied, the height of the proposal above the Council's height control is not supported. Any breach should result in no additional adverse impacts. This is a matter for Council to determine. The existing building height/outline should be identified on elevation drawings.

The Panel notes that a number of recommendations have been incorporated into the design, such as disabled access from both McLaren Street and Walker Street, and separate lobbies for commercial and residential.

As previously identified, the existing site has a large number of mature trees and the Panel considers that the existing landscape character of McLaren Street and Walker Street should be retained and enhanced with new planting. The controls require landscaped setbacks to both streets, and it would seem very unfortunate if advantage could not be taken of conserving a significant number of existing trees. Deep soil landscaping should be maximised on the site.

Details should be provided in relation to aural and visual privacy between openable windows in close proximity to each other. The Panel considers that landscaping should not be relied upon to achieve adequate privacy for the lower level apartments and that consideration should be given to the use of privacy devices.

The Panel is concerned that the building character should not be dark and reflective, and the use of clear glazing is preferable, subject to achieving satisfactory thermal performance which may require the use of double glazing. The specifications of the proposed glazing should be provided with the development application.

The proposed wintergardens should be designed to complement and enhance the amenity of the apartments with regard to thermal properties and occupant comfort, and details should be provided. Consideration should be given to mixed mode ventilation in order to achieve greater energy efficiency and passive thermal comfort.

The following concerns still require resolution:

- The extensive use of performance glass and whether it will be clear rather than dark;
- Methods of privacy protection at the lower 10 levels with regard to surrounding buildings as well as the apartments themselves;
- Acoustic treatment of the apartments particularly with the separation distance of only 2-4m;
- Wind impacts on the ground level.

Social interaction and building amenity could be enhanced by the provision of a seating bay in the lobby bridge on each level of the building, taking advantage of available views.

Conclusion

The proposal is not yet in a form that can be supported. The above issues need to be resolved in further progressing the design. The Panel would be happy to provide further comment on a modified proposal prior to lodgement of a development application."

Proposal

The development application will be determined by the Joint Regional Planning Panel.

The application seeks development consent for:

- The demolition of the existing commercial office building and associated structures, with the retention of substantial trees and vegetation particularly along the McLaren and Walker Street frontages;
- Construction of a mixed use development incorporating ground level retail space, upper level commercial office space and residential apartments; and
- Inclusion in the new development of basement car parking, ground level communal open space and al-fresco space and roof level communal space and facilities.

Panel Comments

The Panel's comments relate to the key issues or concerns with the proposal.

The Panel noted that the applicant had provided further details and information on the following issues:

- The use of performance glass being clear rather than dark;
- Acoustic treatment of the apartments with the separation distance of only 2-4m; however it appears that the referenced acoustic report relates only to the noise impacts when windows and doors are fully closed, when it is the situation with very nearby open windows which should be addressed. It is appreciated that the windows are off-set from each other, but a further option of orienting the windows 'outwards' towards the open end of the 'slots' could be explored.
- Wind impacts on the ground level. Achievement of acceptable wind impacts should not be partly reliant on future planting as recommended by the expert report.

Methods of privacy protection at the lower 10 levels with regard to surrounding buildings is still a

concern and raised by a number of submissions to Council. Usability of balconies should be maximized for purposes such as clothes-drying, barbeque storage etc, whilst maintaining privacy and avoiding adverse visual impacts. The applicant needs to demonstrate how this can be resolved by design rather than relying on residents to draw their blinds.

Landscaping and the retention of trees on the site was again raised. It was not clear of the number of mature trees to be retained. It is important to maintain the landscape setting to both streets and as many healthy mature trees as possible. It was suggested that street trees planted 900mm in from the kerb could provide a good street canopy if the footpath could be widened into the site by a metre with a low stone wall with capping for casual rest (at seat height) to a deep planting area providing additional trees.

The Panel is supportive of the overall design and the form having the higher tower on the corner with lower towers stepping down.

Any breach of the height control should result in no additional adverse impacts and is a matter for Council to determine.

Conclusion

The Panel supports the proposal subject to the issues of landscaping, noise, height, ground level wind impacts and overlooking/privacy of balconies being addressed and resolved to the satisfaction of Council.

Comment:

The amended plans have fully addressed the issues raised by the DEP as detailed within the assessment.

EXTERNAL REFERRALS

State Environmental Planning Policy (Infrastructure) 2007 - Clause 104 and Schedule 3 of the ISEPP prescribes traffic generating development that is required to be referred to the Roads and Maritime Service (RMS) for consideration. Under Clause 104 and Schedule 3, a residential flat building proposing 300 or more dwellings with access to any road is required to be referred to the RMS. As the proposal accommodates 415 residential apartments, it is captured by Clause 104 and Schedule 3 and was referred to RMS under the terms of the Infrastructure SEPP.

Roads and Maritime Services has reviewed the application and advised:

Roads and Maritime has reviewed the submitted documentation and raises no objection to the Application. Roads and Maritime has the following comments for Council's consideration in the determination of the application:

1. 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.

Ausgrid advised:

Ausgrid has no objection to the matter proceeding at this stage subject to the following conditions: -

- Ausgrid substation S.3680 and associated high and low voltage underground electricity cables are located within the proposed development site. Unimpeded access is to remain available to these assets 24 hours per day, 7 days per week up until the time they have been decommissioned. Prior to decommissioning all substation doors must be fully operable and accessible at all times and are not to be blocked by construction fencing / hoarding / construction materials / etc, and the finished surface levels over all associated electricity cables must not be altered.
- The finished surface levels over the existing underground electricity cables within the public reserve at the Walker St and McLaren St frontages must not be altered or the land use changed from footway to roadway without permission from Ausgrid.
- The developer will need to contact our Contestability Group on 8569 6727 or contestability@ausgrid.com.au as required to proceed with substation decommissioning and/or any cable relocation works.
- The future supply of electricity to the proposed development will be dependant upon the proposed maximum demand of the development and the existing electrical loading of the surrounding area, and should not be assumed to be available until confirmed by Ausgrid.

The developer is advised to submit a Connection Application for the development as soon as their maximum demand has been determined.

SUBMISSIONS

The application was notified to the Edward, CBD and Union precincts and surrounding owners and residents in accordance with Council policy. In response to the notification, Council received a submission from Stanton Precinct and 38 individual submissions from surrounding owners and residents raising the following concerns:

Stanton Precinct:

- The precinct members accept that this is a valuable site but they believe that this building will be non compliant with the local height restrictions and they feel that it will set a precedent and overpower the whole neighbourhood. The precinct members oppose many aspects of this development – eg traffic concerns, parking, overshadowing – and they feel that it will facilitate wholesale overdevelopment in North Sydney

Robinson Urban Planning Pty Ltd
On behalf of Northside Gardens Hotels Pty Ltd
54 McLaren Street
(Rydges Hotel)

- Rydges site is battle axe site with no street frontage and existing building built to the boundary
- Although separation distance provided > 12m on subject site, may not be adequate to achieve visual privacy for proposed development and existing and future development of Rydges site
- Request amendments that living areas and private open spaces not be orientated towards Rydges or direct line of sight be avoided and/or fixed privacy measures be provided.

Wenona School
176 Walker Street

- Limited off street parking with no car share will increase demand for on street parking
- Overlooking of School grounds, suggest screening and planting particularly at the lower levels
- Amenity and views from Miller Street affected by scale and proximity of development
- Noise and disruption during demolition and construction, seek limit on truck movements during peak School drop off and pick up times to avoid conflict
- Significant loss of existing vegetation on the site

Ingham Planning Pty Ltd
On behalf of 39 McLaren Street

- Overshadowing
- Inadequate setbacks to western boundary (between 5.3m-9.3m), increased setback would lessen shadowing and lessen considerable visual impact of the southern elevation
- Non compliance with building height plane specified in DCP2013. The BHP applies from centre of road where it is opposite R4 zoning and is from a point starting at 3.5m high and at 45°
- Solar access does not comply with Apartment design Guide with 32% of apartments having a south only orientation
- Significant number of trees being removed
- Parking in excess of Council requirements leading to increased traffic
- Construction impacts

604/39 McLaren Street

- Scale of development
- Removal of trees
- Increase in traffic
- No visitor parking

11/45 McLaren Street

- Excessive height in breach of control
- No visitor parking
- Loss of trees
- Excessive number of apartments
- Increased setbacks would retain more trees

3 submissions from 150 Walker Street

- Scale would overwhelm character of area
- Overshadowing
- Non compliance with height
- Traffic
- Loss of trees

80/171 Walker Street

- There are positive aspects with quality development
- Size of development
- Traffic, should provide car share

1/175 Walker Street

- Inadequate provision of parking and visitor parking
- Increased traffic

2 submissions from 185 Walker Street

- Noise from demolition and construction
- Traffic and parking
- Asbestos and dust
- Overcrowding
- Overshadowing

12 submissions from 191-195 Walker Street

- Excessive density
- Loss of trees
- Overshadowing
- Height
- Infrastructure pressure
- Impacts on School
- Traffic
- Inadequate parking
- Scale
- Reduced building setback
- Reflection of building facade
- Out of character with neighbourhood
- Roof signage not detailed
- Overlooking

199 Walker Street

- Traffic
- Parking
- No visitor parking

2 Hampden Street

- Overshadowing
- Lack of resident and visitor parking
- Construction noise
- Out of character

8 Hampden Street

- Parking
- Overshadowing
- Overlooking

14 Hampden Street

- Bulk
- Height
- Out of character
- Reflective light
- Overshadowing
- Overlooking
- Parking
- Traffic

4 submissions from 16 Hampden Street

- Height
- Overshadowing
- Loss of trees
- Noise and dust from demolition and construction
- Traffic

91 Ridge Street

- Overdevelopment

- Traffic
- Inadequate parking
- Loss of trees

95A Ridge Street

- Height
- Traffic
- Loss of trees
- Impact on views
- Lack of open space
- Noise and dust from demolition and construction

237 Miller Street

- Scale
- Traffic
- Lack of visitor parking

243 Miller Street

- Scale
- Traffic
- Loss of trees
- Height

Amended plans were submitted on 23 May 2016. Notification of the amended proposal was not required as the amended plans did not result in additional impacts and mainly dealt with issues in the public domain, landscaping and the basement. Further modifications were made to the building on the lower 10 floors and the western elevation on the lower levels to respond to overlooking and privacy concerns.

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)	RL.167.51 to the top of the corner pod	RL 156m AHD	NO
Non Residential Floor Space (Cl.4.4a)	0.5:1	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	Variation permitted	YES

North Sydney Centre	Proposed	Control	Complies
	identified as a Special Area, the proposal complies with the overshadowing controls and the impact is generally consistent with a fully complying development. The additional length of shadow cast by the noncompliant component of tower pod 3 falls within existing shadows cast on residential properties and public open space.		
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))	4898m ²	1000m ² min.	YES

DCP 2013 Compliance Table

<i>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development</i>		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
Diversity of Activities	Yes	Mix of retail, commercial and residential uses plus publicly accessible spaces. Appropriate accessibility is provided in all communal residential areas and non-residential uses at ground level and residential above.
Maximise Use of Public Transport	Yes	The proposal satisfies these requirements, making appropriate provision for bicycle storage as well as providing a shower for end of trip usage. Parking for apartments is restricted to the maximum required.
Mixed Residential Population	Yes	7 x studio (1.7%); 144 x 1 bed (34.6%); (combined: 36.3%); 196 x 2 bed (47%); 68 x 3 bed (16.4%). The proposal is generally compliant with the required development mix. A minimum of 15% of dwellings are to be adaptable housing under the provisions of the DCP and 60 adaptable apartments are proposed being 14.5%.
2.3 Environmental Criteria		
Awnings	No	Requires the provision of a continuous 2m wide

		awning, however in the circumstance where the building is setback from both streets, it is not appropriate to provide an awning. Both adjoining properties also have no street awnings
Solar Access	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. 65% of apartments (269 out of 415) receive over two (2) hours of direct sunlight in winter. An additional 13 apartments receive a minimum of 60 minutes. 70% is the general requirement. Approximately 32% of dwellings are proposed to face south, however these apartments will enjoy acceptable amenity with prime Sydney Harbour views.
Views	Yes	Given the existing substantial commercial building on the site, together with the maximum height standard under NSLEP 2013, there are limited views currently available or envisaged across the site. There may be some impact on the Rydges Hotel to the north of the site due to its location as an in-board building rather than fronting Walker Street, resulting from the increased building footprint, although the Rydges building is considerably lower in height than the existing commercial building. It is not anticipated that there are any existing significant views towards Sydney Harbour, the North Sydney commercial centre or the Sydney CBD skyline that will be impacted. Also given that surrounding residential apartment buildings are lower than the maximum height standard for the site then the noncompliance with the height standard associated with part of the proposed building will have no adverse impacts on views. The views are affected by the compliant part of the building and not where the height control is exceeded. Views from taller buildings further south in Berry Street may be impacted with regard to district views but not iconic views
Visual Privacy	Yes	Requires buildings to be designed to avoid direct or close overlooking into windows, balconies or private open space of adjoining dwellings. The amended architectural drawings include details of additional privacy measures for wintergardens on levels 2-8 located closer than the 9m setback to the western boundary. These measures include: • Additional vertical fins to mitigate opportunities for direct lines of sight from within and towards the wintergardens. • Additional integrated privacy screening as a second layer behind the wintergardens external glazing system. These screens will consist of full height opaque glass panels and are designed such that each panel can be pulled out or stacked

		away individually. This also gives ultimate flexibility in application for occupants. Additional full height opaque glazing panels to the external façade along the western side. The amended drawings also demonstrate that the layouts and additional privacy measures of the units directs outlook from living areas towards the north or south respectively, and not towards the western side boundary.
2.4 Quality built form		
Context	Yes	The building is in context with surrounding development.
Setback	No	Setbacks are to be provided in accordance with the character statement, The DCP adopts the RFDC (now ADG) separation distances between buildings. The setbacks for the residential tower include a minimum of 9m from the side and rear boundaries for living areas and balconies. The setback for part of western pod is 6.5m. The amended architectural drawings include details of additional privacy measures for wintergardens on levels 2-8 located closer than the 9m setback to the western boundary. The setbacks are acceptable to the Design Excellence Panel and are considered appropriate under the circumstances. It is noted that the approved envelope for the adjacent building is around the same height of level 8.
Podiums	No	Requires podiums to be provided as required in the character statement and for podiums to match adjoining buildings. This is considered to be satisfactory. See comments with regard to building design.
Building Design	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 minimum floor-to-ceiling heights are provided. The built form is broken down with the defined "tower pods" and associated slots through the building as well as being a sculptured form with variable roof form and levels. A podium form is not warranted due to the ground plan garden setting of the proposal.
Balconies - Apartments	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. The minimum private open space sizes as detailed in the Apartment Design Guide (ADG) supersede the NSDCP provisions. The ADG minimums are: Studio: 4m² • 1 bed: 8m² – min 2m width • 2 bed: 10m² – min 2m width • 3+ bed: 12m² – min 2.4m width. All minimum sizes are met.
Entrances and Exits	Yes	Satisfactory
2.5 Quality Urban Environment		
Accessibility	Yes	Satisfactory

Safety and Security	Yes	Visible entry to building on both sides. Retail space provide for surveillance.
High Quality Residential Accommodation	Yes	The minimum apartment sizes as detailed in the Apartment Design Guide (ADG) supersede the NSDCP provisions. The ADG minimum are: • Studio: 35m ² • 1 bed: 50m ² • 2 bed: 70m ² • 3+ bed: 90m ² The proposal meets the minimum apartment sizes. A wide range of communal and private open space is provided for the residents of the building.
Vehicular Access	Yes	From McLaren Street
Car Parking	Yes	Parking provided. See comments under traffic.
Garbage Storage	Yes	Garbage chute provided with compactor.
2.6 Efficient Use of Resources		
Energy Efficiency	Yes	Basix certificate submitted
Natural Ventilation	Yes	Satisfactory within development.
Green Roofs	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 use on the ground level with commercial space 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 close to North Sydney Railway Station and being serviced by bus routes along Miller Street. 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.156m AHD. The application proposes a building height of RL.167.51 to the top of the corner pod which is higher than the other three (that are lower than the height control). The non

compliant section comprises Residential Level 26 and Residential Level 27 with plant at Level 28. Communal spaces are provided on 2 pods at Level 25 and the northern pod at level 24 and these communal spaces are all under the height control. The communal spaces all provide for excellent amenity with unrestricted northern views and ample solar access.

Clause 4.6 permits variations to development standards, of which the RL.156 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.

Assessment of request under Clause 4.6 to vary the Height of Building Development Standard

A written request was submitted with the development application in accordance with the provisions of Clause 4.6 - Exceptions to Development Standards of the North Sydney Local Environmental Plan 2013 (NSLEP 2013). The request seeks a variation to the Height of Building standard, adopted under clause 4.3 of NSLEP 2013. A copy of the written request is attached for the Panel's information.

The Height of Building Map sets a height of building standard of RL 156 for the site.

The proposed scale and visual impact of the proposal is acceptable in the locality and provides an appropriate contextual fit.

The applicant has provided the following in support of the variation:

"The additional height, i.e. above the height of buildings control, is sited and designed in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing, view loss or privacy impacts.

There is minimal difference in the impacts between a building that strictly complies with height of buildings control including:

Visual and acoustic privacy impacts: The building achieves appropriate building separation, is arranged on the site in a manner to mitigate privacy impacts to the neighbouring properties. The higher elements of the building in tower pod 3 are substantially set back from the rear northern property boundary and therefore the interface with those properties and residential properties in Walker Street and will not generate any significant visual or privacy impacts. This built form is shown in Figure 5 below.

Visual impacts: Due to the non-complying components of the building being located on the south eastern section of the site there is not a significant difference in visual impacts between the proposed building a complying building. The reduced height, below the maximum RL, of tower pod 1, closest to the western boundary, and tower pod 4, closest to the northern boundary results in an improved outcome with the adjoining properties, with height redistributed to the corner pod 3. The design is a conscious effort to take away building height – compliant building height – from the sensitive side boundaries and redistribute this floor space and height on to the less sensitive section of the site. The upper levels on tower pod 3, above the maximum RL contain 2 residential levels and building plant and represent floor space taken out of tower pods 1 and 4. The upper levels of tower pod 3 will not present as an imposing visual mass when viewed from the surrounding area, due to the setbacks of the building from McLaren and Walker Streets and the relatively modest increase in scale above a complying height.

A comparison between a height "compliant" built form, shown in Figure 4 and the proposal, shown in Figure 5 is shown below.

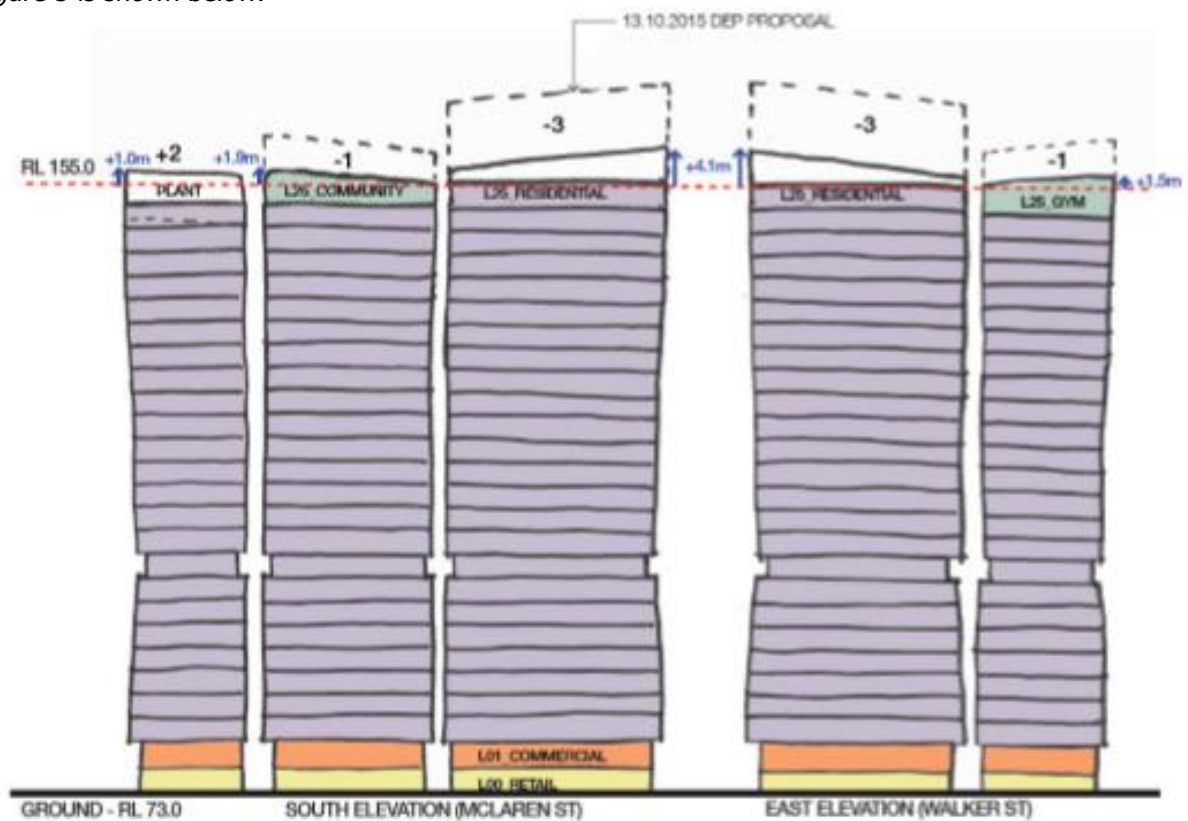


Figure 4: Indicative built form of a height compliant scheme

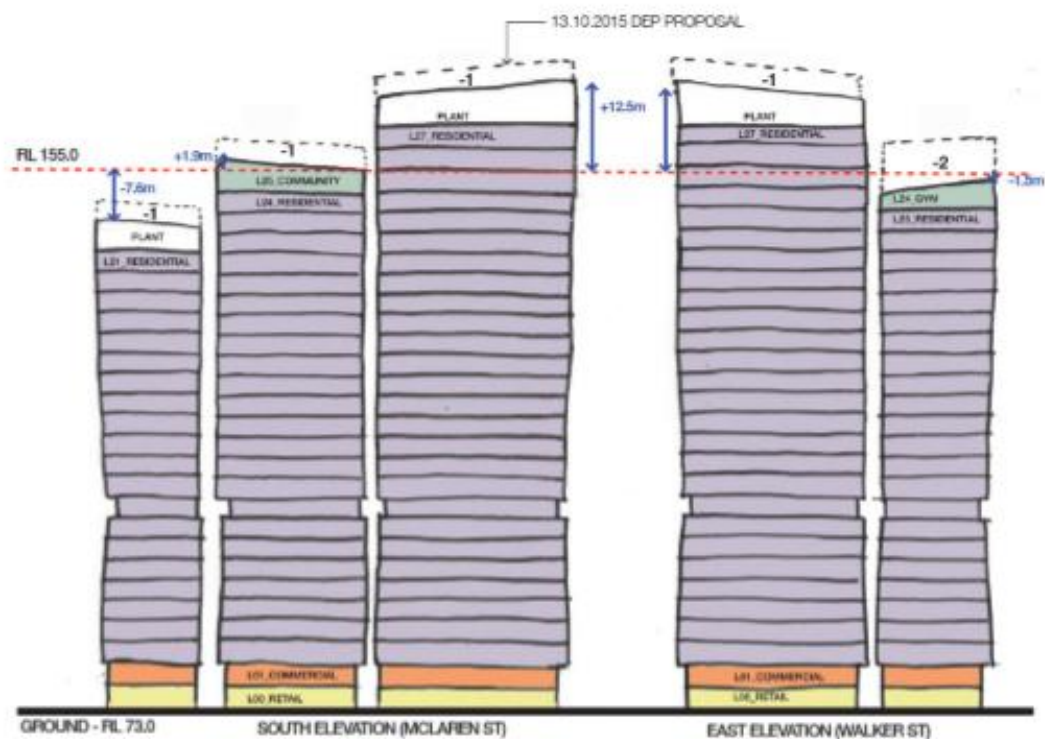


Figure 5: Height of proposed scheme.

Overshadowing impacts: Due to the stepped and sculptured built form, with sections of building under and over the maximum height standard, there are moderately different overshadowing impacts as compared with a fully compliant building uniformly built to the maximum. The variation in building height across the site, with some sections of the building below the maximum height standard, and some above, results in some minor variations to a "compliant" shadow impact. The architectural drawing package includes detailed analysis, with the only potential impact on residential and public open space zoned land being to the east of the North Sydney centre. Information taken from the architectural drawings is included below in Figure 6.

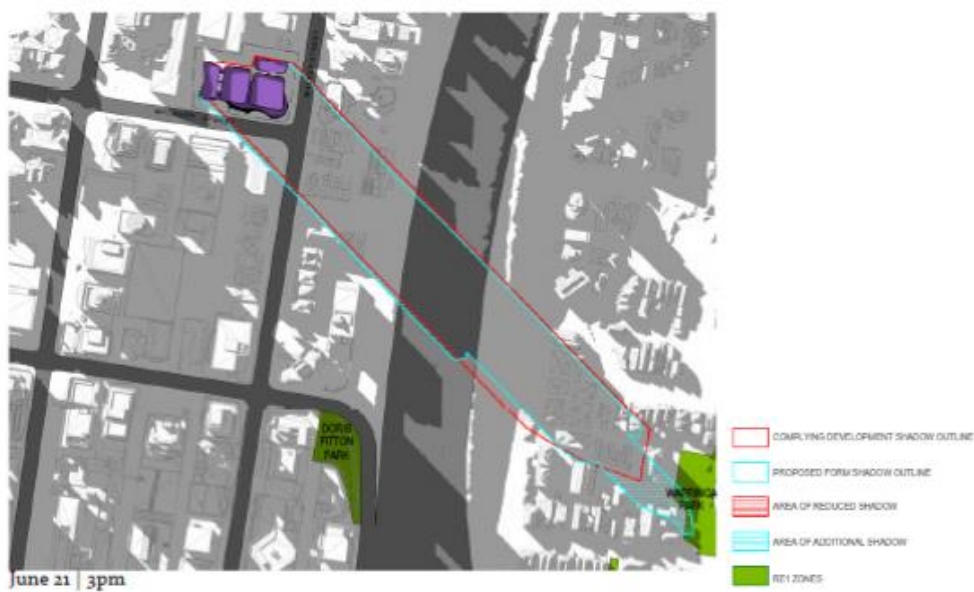


Figure 6: shadow diagram relating to residential area and public open space

The slightly extended shadow, resulting from that section of the building above the height standard, falls within existing shadows cast in the afternoon mid-winter. There is no net increase in shadow impact.

View impacts: Given the height of the existing building on the site, relative to the height of surrounding development, there will be no direct impacts on major or significant views from surrounding properties from an increase in height above existing. There will be no direct view impacts from the one section of the building that is above the height development standard.

The increase in building footprint may impact on outlook and views across the site currently available to the Rydges Hotel to the north but any impact must be considered in the following context:

- *The hotel site is "inboard" with no street frontage and tucked behind a number of properties, including the subject site.*
- *The hotel site relies entirely on borrowing amenity across property boundaries.*
- *The hotel is a commercial use and the consideration of view impacts is less sensitive than would otherwise exist for a residential building.*
- *Any view or outlook impacts result from a compliant footprint and built form on the subject site. The one area of height non-compliance on the corner of McLaren and Miller Streets has no additional impact.*

To the west of the site was a low scale retirement village (recently demolished), with a concept building envelope approved. In the event that new development occurs at some stage in the future that is consistent in height and scale with the approved envelope then such development will sit well below the height of both the existing building and the proposed building. As a result, any development to the west is unlikely to be impacted.

The level of non-compliance with the building height control is consistent with the variations contemplated and accepted by the consent authority with respect to approved development in the

locality which vary the applicable height of buildings standard, particularly in cases where there are community facilities and building plant above the height standard. The Council has, through other development consents within the North Sydney Centre, demonstrated its acceptance to vary the development standard, with each of these variations specific to individual cases. As detailed within this request, the particular nature of the site warrants a variation to the height of buildings development standard.

The development satisfies the objectives of the zone and the development standard.

The proposal, inclusive of the height of buildings variation, is a superior planning outcome to what would be achieved by a strictly complying development."

Clause 4.6 of the NLEP 2013 provides flexibility in the application of planning controls by allowing Council to approve a development application that does not comply with a development standard where it can be demonstrated that flexibility in the particular circumstances achieve a better outcome for and from development.

NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

Several key Land and Environment Court (NSW LEC) planning principles and judgements have refined the manner in which variations to development standards are required to be approached.

WINTEN V NORTH SYDNEY COUNCIL The decision of Justice Lloyd in Winten v North Sydney Council established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated.

These principles for assessment and determination of applications to vary development standards are relevant and include:

- Is the planning control in question a development standard;
- What is the underlying object or purpose of the standard;
- Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act;
- Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case;
- Is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case; and
- Is the objection well founded

WEHBE V PITTWATER [2007] NSW LEC 827 The decision of Justice Preston in Wehbe v Pittwater [2007] NSW LEC 827 expanded on the findings in Winten v North Sydney Council and established the five part test to determine whether compliance with a development standard is unreasonable or unnecessary considering the following questions:

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary;

- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that departs from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the "zoning of particular /and" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently compliance with that development standard is unnecessary and unreasonable.

FOUR2FIVE PTY LTD V ASHFIELD COUNCIL [2015] NSW LEC More recently in the matter of Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater* [2007] NSW LEC 827 and demonstrate the following:

- Compliance with the particular requirements of clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of clause 4.6 the LEP; and
- That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
- That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs.

IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD

The planning control in question is clause 4.3 of the NSLEP 2013. Clause 4.3 nominates a maximum Height of Buildings of RL 156 for the site. The planning control specifies requirements or fixes standards in respect of the development and falls within the definition of a "development standard" such that it is capable of being varied under clause 4.6 of NSLEP 2013.

CONSISTENCY WITH OBJECTIVES OF THE ZONE

The proposed variation to the Height of Building development standard will be in the public interest because it does not prevent the satisfaction of the B4 Mixed Use zone objectives.

WHAT IS THE UNDERLYING OBJECTIVE OF THE STANDARD

The proposed development will be in the public interest because it is considered to be consistent with the relevant objectives of the height control

The objectives of this clause are as follows:

- (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.

IS COMPLIANCE WITH THE DEVELOPMENT STANDARD CONSISTENT WITH THE AIMS OF THE POLICY AND IN PARTICULAR DOES COMPLIANCE WITH THE DEVELOPMENT STANDARD TEND TO HINDER THE ATTAINMENT OF THE OBJECTIVES SPECIFIED IN SECTION 5(A)(i) AND (ii) OF THE EP&A ACT

The aims and objectives of clause 4.6 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The objects set down in section 5(a)(i) and (ii) are as follows:

"(a) to encourage

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.

(ii) the promotion and co-ordination of the orderly and economic use and development of land..."

The development is generally consistent with the objectives of the EP&A Act, due to:

- The site is located within an established urban and high density environment.
- The redevelopment of the site for retail, commercial and residential uses contributes to urban consolidation and may contribute to reducing demand to develop more environmentally sensitive lands.
- The delivery of new housing and jobs within an established urban environment located near public transport options without significant or unreasonable environmental impact is considered to be both orderly and economic use of urban land.

IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE

Compliance with the development standard is considered unreasonable and unnecessary in the circumstance of the application based on the following:

- The proposal is consistent with the objectives of the development standard.

- There are no significant solar access impacts on residential properties when compared to a height compliant development.
- The visual impacts associated with the additional height are negligible.
- The level of non-compliance with the building height control is consistent with the variations contemplated and accepted by the consent authority with respect to approved development in the locality which vary the applicable height of buildings standard, particularly in cases where there are community facilities and building plant above the height standard.
- The proposal, inclusive of the height of buildings variation, is a superior planning outcome to what would be achieved by a strictly complying development.
- Given the height of the existing building on the site, relative to the height of surrounding development, there will be no direct impacts on major or significant views from surrounding properties from an increase in height above existing.
- The upper levels on tower pod 3, above the maximum RL contain 2 residential levels and building plant and represent floor space taken out of tower pods 1 and 4. The upper levels of tower pod 3 will not present as an imposing visual mass when viewed from the surrounding area, due to the setbacks of the building from McLaren and Walker Streets and the relatively modest increase in scale above a complying height.
- Communal spaces are provided on 2 pods at Level 25 and the northern pod at level 24 and these communal spaces are all under the height control. The communal spaces all provide for excellent amenity with unrestricted northern views and ample solar access.
- The stepping of the building provides better articulation that reduces the bulk and scale from that of a compliant building.
- The design response does not result in any additional GFA or development yield, and in fact is slightly below a "height compliant" GFA.
- Clause 6.3(3) states that 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. This is the case.

IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL

No. The development standard is not a performance based control.

ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

The environmental planning grounds are sufficient to justify the contravening development. These include:

- The proposed height is visually acceptable when viewed from the surrounding locality

- The proposal is consistent with the requirement to step down towards the residential area to the north.
- The development site is considered to have site specific characteristics in relation to its large size and corner location, as well as having more sensitive land uses on only two property boundaries. Due to the large land area, the corner location, the orientation of the site, and the nature of the land uses bordering to the west (aged persons housing approved to increase in height and scale) and north (Wenona School), there is a capacity to redistribute “compliant” height away from the more sensitive boundaries and place this height on the south-east corner of the site.
- The design response is a better planning outcome as it reduces built height and bulk away from the side boundaries, and relocates this height in a less sensitive location, in terms of impacts.
- The reduced height, below the maximum RL, of tower pod 1, closest to the western boundary, and tower pod 4, closest to the northern boundary results in an improved outcome with the adjoining properties, with height redistributed to the corner pod 3. The design is a conscious effort to take away building height – compliant building height – from the sensitive side boundaries and redistribute this floor space and height on to the less sensitive section of the site.
- The upper levels on tower pod 3, above the maximum RL contain 2 residential levels and building plant and represent floor space taken out of tower pods 1 and 4. The upper levels of tower pod 3 will not present as an imposing visual mass when viewed from the surrounding area, due to the setbacks of the building from McLaren and Walker Streets and the relatively modest increase in scale above a complying height.
- The design response does not result in any additional GFA or development yield, and in fact is slightly below a “height compliant” GFA.
- Given the prominence of the corner of Walker and McLaren Streets, the design, with the additional height placed on this corner, also has the benefit of reinforcing the prominent corner position.
- As a result, the variation from the development standard results in both a better planning outcome and a superior architectural outcome specific to the site.

IS THE OBJECTION WELL FOUNDED

The proposed development does not result in any unreasonable or significant adverse environmental impacts. The variation does not affect the redevelopment potential or amenity of any adjoining land. The objection is well founded.

IS THERE A PUBLIC BENEFIT OF MAINTAINING THE PLANNING CONTROL STANDARD?

Under Clause 4.6 (5)(b) there must be consideration of the public benefit associated with maintaining the development standard.

There is public benefit in maintaining a degree of flexibility in specific circumstances. In the current case, strict compliance with the height of buildings standard would likely

result in a poorer urban design outcome in respect to the presentation of the building to, and its relationship with adjoining sites and the public domain.

There is, in the specific circumstances of this case, no public benefit in strictly maintaining the development standard, as the proposed development results in a better planning outcome for the site and the locality.

Clause 6.3(3) of the LEP states:

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.

This clause allows for flexibility in height within the CBD.

The proposed height above the RL 156 height standard will not adversely impact the amenity of surrounding properties. The variation to the height control is supported.

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 non-residential floor space ratio must not be less than 0.5:1. The site has an area of 4898m² and as such the non-residential floor space is required to be a minimum of 2449m². The proposal provides 2498m² (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 site is not a scheduled heritage item and is not located within a conservation area. It is however, located in the vicinity of heritage items 41 McLaren St, the Simsmetal Building, a five storey office building designed by Seidler and 185 Walker St, a single-storey Victorian sandstone dwelling, now converted to apartments. Although they are an eclectic group of heritage items, the street trees and front boundary sandstone walls provide a cohesive setting and domestic scale.

The subject site assists in providing additional landscape setting and low sandstone boundary walls to the setting of the heritage items. Although of a much greater bulk and scale, 168 Walker Street's perceived bulk and scale is screened from the lower scale heritage items by the canopies of Council's street trees as well by the trees located on the subject site.

No specific heritage conditions are required as the issues will be addressed under Landscaping.

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 non residential gross floor area does not affect the 250,000m ² limit. There will be a loss of non residential floor area.
(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	1,365m ² of commercial proposed
(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 significant 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	Not 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, the proposal complies with the overshadowing controls and the impact is generally consistent with a fully complying development. The additional length of shadow cast by the noncompliant component of tower pod 3 falls within existing shadows cast on residential properties and public open space.

(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 built form outcome will be a landscaped podium and tower form setback from the street edges, as required by the relevant planning controls. It will not be a "traditional" podium. Activity at ground level will result from the inclusion of retail space.

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

The development does not include site consolidation as it is an existing large stand-alone site.

(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 subject site is 4898m² in area and complies.

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

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 permitted under the controls.

- (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 scale is in keeping with the controls and the proposed materials and external treatments are appropriate for the setting.

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 18,904m² and the proposal has a non residential floor area of 2498m² resulting in a decrease over that which currently exists. There is no additional non residential floor space proposed and accordingly certification is not required.

Airports Act 1996 and Airports (Protection of Airspace) Regulations 1996

As required by Clause 6.15 of NSLEP 2013, the application was referred to Sydney Airport pursuant to s.186 of the Airports Act 1996 and Airports (Protection of Airspace) Regulations 1996 as the proposal would penetrate the Limitation or Operations Surface of Sydney Airport.

The Department of Infrastructure and Regional Development (the Department) must review the application and consider any submissions made by Civil Aviation Safety Authority (CASA), Airservices and Sydney Airport.

The Outer Horizontal Surface of the OLS above the subject site is at a height of RL 156(AHD) and the prescribed airspace above the site commences at 156m. At a maximum height of 167.51m AHD, the proposal would penetrate the OLS by 11.51m.

The proposed construction of the development would constitute a controlled activity under Section 182 of the Airports Act 1996 (the Act). Section 183 of the Act requires that controlled activities cannot be carried out without approval. Regulation 14 provides that a proposal to carry out a controlled activity must be approved unless varying out of the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned. Approval may be granted subject to conditions.

It was anticipated that a response might have been received as the referral was made some months ago. Council notes that approval was recently granted by the Department in St Leonards for a twin tower development (Lane Cove Council area) exceeding the RL156 height by some 60m. It is noted that the proposal has only the corner element exceeding the height by less than 12m and that there are 3 existing and 2 approved buildings in the North Sydney CBD that are 30-40m higher than RL156. It was expected that the following conditions might be imposed by the Department as they are similar to those imposed on the St Leonards approval:

1. The building must not exceed a maximum height of 167.51m AHD, inclusive of all lift overruns, vents, chimneys, aerials, antennas, lighting rods, any roof top garden plantings, exhaust flues etc.

2. The building must be obstacle lit by low intensity steady red lighting at the highest point of the building. Obstacle lights are to be arranged to ensure the building can be observed in a 360 degree radius as per subsection 9.4.3 of the Manual of Standards Part 139 – Aerodromes (MOS part 139). Characteristics for low intensity lights are stated in subsection 9.4.6 of MOS Part 139.
3. Separate approval must be sought under the Regulations 1996 for any cranes required to construct the building.
4. At completion of the construction of the building, a certified surveyor must notify in writing the airfield design manager of the finished height of the building.

The above conditions are included within the draft conditions. Unless the approval is received prior to the determination meeting of the JRPP, it is recommended that any approval be deferred until receipt of approval from the Department.

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 primary design principles are discussed as follows:

Context

The site is part of a number of tall buildings that define the current northern extent of the North Sydney CBD & skyline. As such future development of the site will continue the strong skyline definition of these buildings. Views of the existing building can be seen heading north from the city, south on the Warringah Freeway, and travelling west along Military Road and Falcon Street. The site & surrounding area are strongly defined by the tree lined streets, and generally the DCP set-backs are in accordance with this. The DCP requires a 7m setback from the western side of Walker Street, for sites north of Berry Street, and, all new buildings fronting McLaren Street are to match that existing to protect the existing fig trees.

The building is massed on site to take maximum advantage of available sunlight while the principal and most desirable views are to the south facing the Harbour. The existing building form presents a hard street wall with little character. The proposed design proposes a series of articulated, connected stepped building forms. The outcome represents a considered resolution to the street corner and topography of the precinct. The design of the site as a mixed use development is an appropriate response to the character of the neighbourhood and appropriate to the ongoing development of this precinct.

Built Form and Scale

The proposed built form takes the existing SAP building as template in regards to height and scale and seeks to improve the character and context of the built form. This has been done with a series of stepped residential 'pods' linked by glazed corridors

to respond to the topography of the landscape. The towers are further articulated with a pinched form and softened with curvilinear edges. The forms have been located and adjusted in height to maximise daylight to living spaces while acknowledging the principle views to the south and the corner site.

At the ground plane the tower forms are sited to maximise sunlight to the northern courtyard. The forms are lifted two levels above the ground plane to define the retail perimeter and provide cover to residential and commercial lobbies. Canopy planting to the street frontages allows the building to fit into the streetscape. The building form is supported by the Design Excellence Panel.

Density

The density proposed is consistent with the development standards established by the controls. The proposed development is located within an area well served by public transport and community facilities.

Sustainability

A Basix Certificate has been submitted with the application. On site detention is proposed for stormwater management. The design proposal is structured around the concepts of sustainability. It incorporates a number of strategies to achieve a positive environmental outcome, including: rainwater storage and reuse; rooftop open space landscaping; natural light and ventilation; naturally ventilated corridors and lobbies; energy efficient lighting; proximity to public transport; bicycle parking and minimisation of excavation through considered siting of the elevated ground plane.

Landscape

A Landscape Concept Design and detailed landscape proposal has been provided. The design utilises the large footprint of the site to provide landscaping opportunities in order to enhance the landscape character along all boundaries, in particular the streetscape along Walker Street and McLaren Street.

A number of landscaping strategies have been adopted to enhance usability and privacy to neighboring properties: The existing landscaped perimeter be retained wherever possible; Existing trees are retained where possible to maintain a mature landscape of aged character; Where tree retention cannot occur transplanting of existing mature vegetation be considered, and or ex-ground species be incorporated into the new landscape to provide immediate vegetation height; Under storey planting will reflect those of the local character creating a rich landscape aesthetic; and Retaining wall materials sympathetically respond to the generous sandstone aesthetic of the area. Sandstone cladding and rendered walling of complimentary colourings will be adopted.

Amenity

The sizes of the residential units satisfy the minimum requirements of ADG. The proposed building design achieves of resident amenity, utilising the 'pod' planning rationale while acknowledging that the primary views of the development lie towards the harbour. The articulation of the 'pods' in an L shape maximises all available natural light and allows for cross-ventilation within a majority of apartments and in all

corridors. The elevated position of the site provides residents maximum outlook with floor to ceiling glazing allowing all apartments and residential corridors access to views and natural light. Visual and acoustic privacy is maintained through setbacks and acoustic treatment of the facade.

Safety and Security

The proposed building design incorporates a number of initiatives to optimise safety and security within private spaces and the public domain including: Easily identified entries from McLaren and Walker Street for residents and public; Well defined public space. The articulation of the residential apartments above maximises passive surveillance to these areas; Private lobby areas are clearly defined and accessible from the public domain; The building floor plate is articulated in order to create pedestrian flow through and around the site.

Housing Diversity and Social Interaction

The proposed development located on the periphery of the North Sydney CBD incorporates a number of apartment types to cater for the residential market. Apartment types all sit within ADG guidelines in terms of overall areas, living areas and balcony sizes depending on type. A total number of 415 apartments feature studios, 1 bed, 2 bed, 3 bed and penthouses on the upper levels of the south west plate. In consideration of the view opportunities surrounding the development the glazing in all apartments is floor to ceiling with winter gardens providing additional thermal control and ventilation opportunities.

A shared rooftop pool, secure gym, a reading room and communal function areas provide for a variety of enhanced residential experiences catering for a broad range of residents. Retail and commercial offerings on the lower floors provide further opportunities for social interaction and commercial opportunities in the precinct.

Aesthetics

The stepped, curvilinear design of the towers form is designed to take maximum advantage of sunlight while acknowledging that the principal and most desirable views are to the south facing the Sydney Harbour. The building responds to its existing and future context through a number of initiatives: The colour and texture of materials have been selected to complement the existing local context while equally responding to a modern architectural composition; The proposed form has been articulated to create a contemporary building of visual interest, in a prominent corner site of the CBD; Fine detailing of the facade with the use of metallic and glazed fins will allow the building to respond to light; Incorporation of building lighting and a public art programme. The DEP supports the design and aesthetics of the building.

Apartment Design Guide

The architect has submitted a comprehensive report with regard to compliance with the ADG.

Separation

The minimum distances between the proposed residential levels of the development and the existing neighbouring sites are as follows:

- To the north: a minimum of 9.2m up to and including level 20. A minimum of 8.5m to the glassline at upper levels but majority greater than 9m due to sculptured form. All wintergardens are a minimum of 9m and greater.
- To the west: a minimum of 6.5m to the part of the western elevation widening to greater than 9m up and including residential level 15. It should be noted that the approved building envelope for the adjoining site to the west does not extend above level 15. The amended architectural drawings include details of additional privacy measures for wintergardens on levels 2-8 located closer than the 9m setback to the western boundary. These measures include:
 - Additional vertical fins to mitigate opportunities for direct lines of sight from within and towards the wintergardens.
 - Additional integrated privacy screening as a second layer behind the wintergardens external glazing system. These screens will consist of full height opaque glass panels and are designed such that each panel can be pulled out or stacked away individually. This also gives ultimate flexibility in application for occupants.
 - Additional full height opaque glazing panels to the external façade along the western side.

The amended drawings also demonstrate that the layouts and additional privacy measures of the units directs outlook from living areas towards the north or south respectively, and not towards the western side boundary.

Solar access

At least 70% of apartments in a building should receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area. The proposal achieves 65% of apartments to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.

32% of apartments in the building receive no direct sunlight between 9 am and 3 pm at mid-winter. The planning of apartment floor plates are designed to maintain reasonable solar access on a long east-west axis acknowledging that the most desirable views are to the south facing the harbour.

Natural Ventilation

At least 60% of apartments are to be naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. The building achieves 81% counting all levels of the development.

Balconies

All apartments have at least one balcony and are located adjacent to, and designed to be an extension of the living or dining areas. The balcony areas and widths comply

with the minimum areas ranging generally from 8m² to 12m², with minimum depth of 2 metres. All apartments which include wintergardens in the form of adaptable glazed balconies providing the opportunity for residents to control their internal and external environment.

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 only be visible from part of the harbour and the application is considered acceptable with regard to the aims and objectives of the SREP. Council's Design Excellence Panel supports the built form and aesthetics of the building.

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 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. Provide roof top gardens and/or public facilities that allow the public and/or residents to access district views.

Setbacks of 7m from the western side of Walker Street, north of Berry Street are required. Maintaining the setback of existing buildings to all properties on the northern side of McLaren Street is also a requirement.

The setback of new buildings or alterations and additions to existing buildings on land fronting McLaren Street between Miller and Walker Streets are to match that existing to protect the existing fig trees. Encroachments will only be permitted where the development does not cover the drip line of any of the existing trees.

A maximum podium of 3 storeys to McLaren Street and Miller and Walker Streets north of McLaren Street, with a weighted setback of 3m above the podium. Podium heights should match or provide a transition in height between immediately adjacent buildings.

Podium heights should match the height of adjacent heritage items. Podium height may be reduced to that part of the building devoted to commercial use in mixed-use buildings. If there is no commercial component, and therefore no podium, adequate side separation should be provided for residential amenity.

The built form outcome will be a landscaped podium and tower form setback from the street edges, as required by the relevant planning controls. It will not be a “traditional” podium. Activity at ground level will result from the inclusion of retail space.

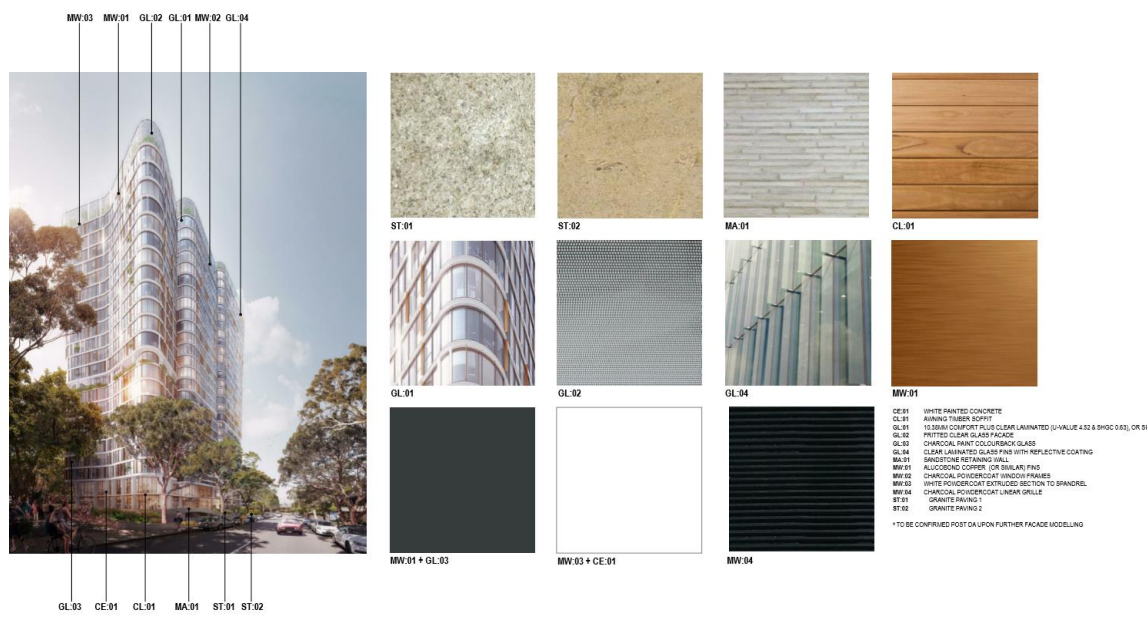
Have regard to Public Domain designed in accordance with the North Sydney Centre Public Domain Strategy and North Sydney Council Infrastructure Manual. Choice of trees and vegetation in accordance with North Sydney Centre Public Domain Strategy, Street Tree Strategy and North Sydney Council Infrastructure Manual. This has been conditioned.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council’s S94 plan are warranted should the Panel consider the development application worthy of approval. The existing buildings on the site have a total non-residential gross floor area of approximately 18,904m² and the proposal has a non residential floor area of 2498m² resulting in a decrease over that which currently exists. The contribution is based on the residential component of 7 x studio, 144 x one bedroom apartments; 196 x two bedroom apartments and 68 x three bedroom apartments with an allowance for 16406m² of non residential space in the existing commercial building:

Administration	16,174.51
Community Centres	NIL
Childcare Facilities	151,270.59
Library and Local Studies Acquisitions	26,682.14
Library Premises and Equipment	83,505.72
Multi Purpose Indoor Sports Facility	17,036.94
Olympic Pool	55,478.29
Open Space Acquisitions	1,440,013.66
Open Space Increased Capacity	2,854,355.33
North Sydney Public Domain	NIL
Traffic Improvements	54,022.22
Total	\$ 4,698,539.40

DESIGN & MATERIALS



The Design Excellence Panel raised no concern about the materials and finishes.

There are no objections to the proposed materials.

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 are addressed as follows:

Overdevelopment

The density and scale of development is consistent with the planning controls for the site. The non-compliance of tower pod 3 with the maximum height development standard does not result in additional development “yield” as the overall building height is stepped across the site, with a substantial component being below or compliant with the maximum building height.

Breach of Height

The breach of the building height development standard has been considered in the overall context of the entire built form, being both under and over the standard as the tower pods are stepped across the site. In the locations where the building height has the maximum potential for environmental impacts – to the north and to the west adjoining neighbours, the building height has been reduced to be below the height standard. The DEP has endorsed the proposed building heights of all the tower pods, including tower pod 3.

Overshadowing

Given that the proposal is greater in height and footprint than the existing building on the site, there will be some additional shadow cast, compared to the current circumstances. The variation in building height across the site, with some sections of the building below the maximum height standard and some above does result in some minor variations to a “compliant” shadow impact. The only potential impact on residential zoned land is located to the east of the North Sydney centre. The slightly extended shadow, resulting from that section of the building above the height standard, falls within existing shadows cast in the afternoon mid-winter. Based on the analysis provided, there is minimal net increase in shadow impact.

Loss of privacy – overlooking (School, residential)

In relation to the Wenona School to the north and north-west it is noted that the immediately adjoining school land has on it an administration building with car parking with a predominantly blank wall to the south and substantial vegetation screening which is to be retained on the landscape plan. The outdoor school quadrangle and active outdoor areas are approximately 50m away and visually separated.

With regard to the relationship to residential properties it should be noted that the proposed setbacks to Walker and McLaren Streets meet the NSDCP requirements and the separation distances to the south and east exceed ADG requirements. The setback to the northern boundary is a minimum of 9m as accepted by the DEP.

The setback to the western boundary in part meets the minimum 9m accepted by the DEP, additional design measures have been incorporated into the design of apartments on levels 2-8 in tower pod 1 in order to mitigate any potential privacy impacts to future development on the property to the west as described previously in

the report. Additional vertical fins have also been provided on levels 2-8 on the north, east and south elevation to further reduce privacy impacts. In addition, all apartments will all be provided with an integrated curtaining system to allow control for their own privacy.

Loss of trees

An amended landscape report and an amended arborist report have been submitted. The amendments include the retention of additional trees on site, as well as provide for new planting and streetscape enhancements. The development will result in a new building situated within a landscape setting, particularly to McLaren and Walker Streets.

Inadequate parking

The DA as lodged included residential parking in addition to that specified in NSDCP. Council has required that car parking strictly comply with NSDCP and the amended drawings achieve this outcome. The proposal is generally consistent with the Council's DCP, recognising the site's location towards the northern edge of the North Sydney Centre. Provision of bicycle parking for all land uses consistent with the requirements of NSDCP have been provided. This includes storage within allocated residential parking. Provision of end-of-journey bicycle facilities in accordance with NSDCP and provision of two car share spaces on level B1 have also been provided.

Council has developed the DCP in accordance with its policies on traffic minimisation. In 1999, Council undertook a detailed Traffic and Transportation Study, which outlined a plan to provide restrictive parking spaces to therefore limit the traffic generation associated with the private motor vehicle. Further, Council's adopted Community Strategic Plan aims to minimise the impact of the private motor vehicle.

Permitting any development to increase their parking spaces over the DCP, would entirely undermine the intent and purpose of Council's DCP. Increasing parking spaces also discourages the concept of "Green Travel Plan" to consider alternate means of accessing a site rather than by private motor vehicle.

Setbacks – ADG

The proposal complies with the Council's setback controls for McLaren and Walker Streets and with the minimum 9m specified by the DEP with regards to the northern and western boundaries. The DEP agreed that the setback of 9m was acceptable having regard to the zoning and the uses of the adjacent properties to the north and west. The School is located to the north. A proposed aged care facility that is likely to be less than 15 levels in height is located to the west and has a 3m right of way between the boundaries. With the new development to the west, the design will have regard to privacy impacts with an approved setback was 6m. Tower pod 1 in part complies with the 9m setback to the western boundary and in part does not, towards the south-western section of the tower.

The ADG guidelines regarding building separation include aims associated with appropriate building scale; provision of residential amenity; and provision of suitable areas for open space, deep soil and landscaping.

The proposal, inclusive of the partial departure from the 9m setback to the west, achieves a scale of development consistent with that anticipated under the controls of NSLEP and NSDCP and includes landscaping and deep soil zones within the western setback. The amended architectural drawings address matters raised by Council regarding protection of privacy to and from wintergardens and living areas.

Construction noise

Appropriate conditions of consent will deal with the management of construction works, including construction noise and hours.

BHP to R4 zones opposite (DCP control)

The building height plane control contained in part 2.4.3 of section 2 (Commercial and Mixed Use Development) of NSDCP does not apply to the subject site. Part 2.4.3 control P3 dealing with front setbacks states:

A zero metre setback, unless an alternative setback is identified within the relevant area character statement (refer to Part C of the DCP).

For the subject site the relevant setback controls are contained in Part C of NSDCP as the site lies within the North Sydney Planning Area for which there is a Character Statement. Specifically Section 2.1 Central Business District details the setbacks, with which the proposal complies. In addition to the NSDCP setback controls, the building separation guidelines of the ADG apply and these are exceeded with regard to both frontages

Part 2.4.3 control P7 states:

Despite P5 above, a development proposed on land adjoining or adjacent to a Residential or Recreation zone must not exceed a building height plane commencing: (a) at 3.5m above ground level (existing) and projected at an angle of 45 degrees internally to the site from all boundaries that directly adjoin land zoned R2 – Low Density Residential, R3 – Medium Density Residential, R4 – High Density Residential, RE1 – Public Recreation, or (b) at 3.5m above ground level (existing) and projected at an angle of 45 degrees internally to the site from the centre line of any adjoining road or laneway separating the site from land zoned R2 – Low Density Residential, R3 – Medium Density Residential, R4 – High Density Residential, RE1 – Public Recreation.

P5 relates to side and rear setbacks and not front setbacks. The adjoining R4 zones are on the opposite sides of Walker and McLaren Streets. The frontages are considered the front of the site being a corner. In addition, the DCP provision cannot override the provisions of the LEP. A building height plane from the centre of each road would not permit a building with the allowable height at RL156.

No visitor parking

The DA as lodged included residential parking in addition to that specified in NSDCP. Council required the car parking strictly comply with NSDCP, namely no visitor parking and the amended drawings achieve this outcome. Council has developed the DCP in accordance with its policies on traffic minimisation. Council's adopted Community Strategic Plan aims to minimise the impact of the private motor vehicle.

Permitting any development to increase their parking spaces over the DCP, would entirely undermine the intent and purpose of Council's DCP. Increasing parking spaces also discourages the concept of "Green Travel Plan" to consider alternate means of accessing a site rather than by private motor vehicle. Two car share spaces on level B1 have been provided on site in addition to the maximum permitted under the DCP.

Traffic

The proposal is generally consistent with the Council's DCP, recognising the site's location towards the northern edge of the North Sydney Centre. Council's Traffic Engineer advises that the traffic impacts of the development are acceptable in the location, particularly recognising the shift from the existing commercial office use to a majority residential use. The conclusion is that there will be no material increase in traffic generation.

Council required the onsite parking to be reduced and as a result the traffic generation will be less than that modelled at the time of lodging the DA. Bicycle parking for residents, workers and visitors will be provided with the new development as well as two car share spaces. Development consent will be supported by a Green Travel Plan.

Interface with Rydges – privacy, future development potential of hotel site

The proposal complies with the building separation and setback requirements of NSDCP and the ADG with respect to properties to the north and north-west, where the Rydges Hotel building is located. Given the level of compliance of the proposal there is no evidence that the Rydges site is unreasonably impacted in terms of development potential.

The southern façade of the Rydges building facing the subject site is a 17 storey blank wall with no openings. The Rydges Hotel site and building are located within an "internal" lot and will be subject to changed impacts as development around it changes. The hotel building has a nil setback to the common boundary with the subject site. The proposal provides more than half of the required building separation and it would not be fair for the hotel to borrow further setbacks because of their site constraints. Inclusion of the hotel site into the subject site would be beneficial however, it is understood, that the hotel was not interested or agreement could not be reached.

School safety

The Wenona School is located to the north and north-west of the subject site. In terms of the direct relationship along the northern boundary, it is noted that the immediately adjoining school land has an administration building with car parking and with a predominantly blank wall to the south with vegetation screening on the subject site.

With regard to traffic safety for school children the change of land use to a predominantly residential use is likely to result in less traffic generated along Walker Street during school hours, including before and after school, with residents likely to leave and return to the site at hours earlier and later than school students on Monday to Friday. The traffic report has confirmed that the development will generate no more traffic than the existing commercial office building. The safety during the construction process will be addressed through the preparation of a construction management plan.

Light pollution from towers lit up at night

Internal lighting to individual apartments will be no greater than any other residential development. Any external lighting will be conditioned to meet relevant Australian Standards regarding intensity and management of light spill. The building is located

within the North Sydney Centre which is characterised by external lighting defining the CBD skyline.

Views

Given the existing substantial commercial building on the site, together with the maximum height standard under NSLEP 2013, there are limited views currently available or envisaged across the site. There may be some impact on the Rydges Hotel to the north of the site due to its location as an in-board building rather than fronting Walker Street, resulting from the increased building footprint, although the Rydges building is considerably lower in height than the existing commercial building.

It is not anticipated that there are any existing significant views towards Sydney Harbour, the North Sydney commercial centre or the Sydney CBD skyline that will be impacted. Also given that surrounding residential apartment buildings are lower than the maximum height standard for the site then the noncompliance with the height standard associated with part of the proposed building will have no adverse impacts on views. The views are affected by the compliant part of the building and not where the height control is exceeded.

Views from taller buildings further south in Berry Street may be impacted with regard to district views but not iconic views.

To the west of the site was an existing low scale retirement village (recently demolished), with a concept building envelope approved. In the event that new development occurs at some stage in the future that is consistent in height and scale with the approved envelope then such development will sit well below the height of both the existing building and the proposed building. As a result, any development to the west is unlikely to be impacted.

The Likely Impacts of the Development

The proposal is generally consistent with the relevant environmental planning instruments and development control plans, and does not result in any significant adverse impacts upon adjoining properties or the locality.

The proposal includes a minimum amount of non-residential floor space as required under NSLEP 2013, ensuring an integrated mixed use development outcome on the site. The ground floor retail space will provide a service to the residents of the site and the locality. The inclusion of commercial floor space will also service the locality and ensure employment outcomes on the mixed use site. The inclusion of residential use on the site is also consistent with the objectives of the planning controls and will provide high quality apartments within the North Sydney Centre.

The design will provide an outcome on the site supported by council's DEP and is a significant improvement to the form of development on the site and will relate to the scale and form of future development envisaged in the precinct.

The design includes four (4) interconnected "pods" that vary in height across the site, providing a varied and sculptured built form on the site. The design, with the variable

height, is a response to the very large corner site. A single building uniformly meeting the maximum height standard, particularly fronting the widest section of the site along McLaren Street, would result in an inferior architectural outcome. It is considered more responsive to the site circumstances to step the building from west to east, provide for gaps between the pods and provide a prominent marker on the corner.

Wind Impact

A Wind Report by Windtech dated December 2015 was submitted with the application. The report presents an opinion on the likely wind conditions affecting the various trafficable outdoor areas within and around the subject development.

The results of the analysis indicate that due to limited shielding from neighbouring buildings and the site terrain the predominant southerly and north-easterly winds will impact the site. The movement of the southerly winds around the development will cause a negative pressure on the northern side which will result in the funnelling of winds through the Upper Ground Level through site links. A similar funnelling effect will result for the north-eastern and westerly winds. The outdoor seating area on the northern end and south-eastern end of the tower, are exposed to potentially strong winds due to possible ground level effects and downwash from the towers. The landscaping along McLaren Street should assist with ameliorating the southerly winds. Similarly, dense landscaping on the northern and eastern end of the development will be beneficial for the north-easterly and westerly winds. The setback of the towers from the pedestrian footpaths is also beneficial to minimise the wind impacts.

To provide suitable wind conditions for all trafficable outdoor areas of the development, the following features are recommended to be included in the final design:

- A 1.5m high glass screen along the south-eastern perimeter (on Upper Ground level) of the development adjacent the seating area or dense landscaping around the south eastern landscaping corner.
- Densely foliating shrubs capable of growing to a height of 1.8-2m above a planter box along the north-eastern edge (on Upper Ground level) of the development adjacent to the seating area.
- Inclusion of densely foliating trees along the southern landscaping perimeter near the north-south corridor entrance. These trees should be of a densely foliating evergreen species and capable of growing to a height of 4-5m with a 4-5m wide canopy. The trees should be spaced so that the canopies at full growth are interlocking. The appropriate species should be selected by the landscape architect.
- Provisions for localised portable screens to be placed around the alfresco seating areas at the base of the northern end of the tower (on Upper Ground level). This can be controlled by the café operators during adverse wind conditions.
- Provisions to connect all Upper Ground Level awnings, particularly between the tower forms.

Wind conditions for the majority of the private balconies on the development are expected to be acceptable since many of the balconies are setback into the building

form. All balconies are also wintergardens with fully operable glazing allowing occupants the ability to close off their balcony spaces when required.

The Level 9 balconies are expected to be acceptable as many of the balconies incorporate privacy screens. However, some of the corner balconies may be exposed to the prevailing winds. Hence it is recommended to include full-height blade walls for the balconies on Level 9.

The Level 25 Communal open space benefits from the high parapet design and dense landscaping surrounding the space. The breakup of the pool deck and seating area also assists in minimising the ability for the prevailing winds to reattach.

With the inclusion of the abovementioned recommendations in the final design, it is expected that wind conditions for all trafficable outdoor areas within the development will be acceptable for their intended uses.

The Suitability of the Site for the Development

The assessment of the application demonstrates that the site is suitable for the proposed development. It is in a location that is identified for increased development, particularly residential development.

The Public Interest

The development of land in an orderly and economic way is in the public interest. The development proposal achieves the objectives of the planning controls applying to the site and without significant adverse impacts for such a large development.

Conclusion

The application has been assessed against the relevant statutory controls and with regard to the existing and approved developments nearby.

Council's Design Excellence Panel supported the proposal subject to a number of concerns being resolved. The applicant responded to the DEP suggestions and other issues raised by Council with amended plans and details that were submitted on 23 May 2016.

The various matters raised during the assessment process have been comprehensively addressed by the applicant's detailed response. Amended architectural drawings and a landscape report address the design matters. These amended documents are supported by amended technical reports dealing with tree retention, waste management, stormwater and BCA compliance.

The proposal, as amended, results in a development consistent with the planning controls for the site and which has acceptable external impacts on the adjoining and surrounding land. The design approach to building height, including a part departure from the maximum height standard for one section of the development, is justified in this case due to the site specific circumstances and the successful achievement of a better planning outcome.

The proposal is considered to be a well reasoned and an appropriate response to the constraints of the site. The result will be a high quality building with additional benefits for the general community and may well be considered iconic in the future.

RECOMMENDATION

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

THAT upon receipt of approval from the Department of Infrastructure and Regional Development, 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 grant consent to 2016SYE012 – North Sydney - Development Application No.486/15 subject to the attached conditions and any additional conditions that the Department of Infrastructure and Regional Development require.

Geoff Mossemenear
EXECUTIVE PLANNER

Endorsed by:
Stephen Beattie
MANAGER DEVELOPMENT SERVICES