

JOINT REGIONAL PLANNING PANEL (East)

JRPP No	2016SYE013
DA Number	239/13/4
Local Government Area	North Sydney Council
Proposed Development	Section 96(2) application to modify consent for demolition of existing structures and the construction of a mixed use development comprising basement levels, commercial floor space, and residential apartments involving modifications and increase in apartment numbers from 218 to 232.
Street Address	144-154 Pacific Highway and 18 Berry Street North Sydney
Applicant/Owner	Fu Ji (North Sydney) Pty Ltd
Number of Submissions	Two
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) Modification application of Capital Investment Value > \$20M
List of All Relevant s79C(1)(a) Matters	North Sydney LEP 2013 - Zoning – B4 Mixed Use North Sydney DCP 2013 S94 Contribution SEPP 55 - Contaminated Lands SREP (2005)
List all documents submitted with this report for the panel's consideration	Plans
Recommendation	Approval
Report by	Geoff Mossemeneer, Executive Planner, North Sydney Council

EXECUTIVE SUMMARY

On the 11 March 2015, modification application DA239/12/3 (JRPP ref 2014SYE147) was approved by the JRPP subject to conditions. The modification sought approval for internal and external alterations to the approved development, including amendments to the building envelope and façade design, changes to the ground level interface and laneway design, and internal amendments. The proposal initially sought consent for an increase to the quantum of apartments from 181 to 230 that was to be accommodated through the change of use of Level 3 from commercial to residential. Notwithstanding this, Council indicated the reduction in non-residential FSR could only be supported upon the gazettal of a planning proposal and the application was granted approval on the basis of 218 apartments.

Subsequently, consent to DA 399/14 for the change in use of Level 3 from commercial to residential in the development approved under DA239/12/3 was granted by the NSW Land and Environment Court (LEC) (10010 of 2015) following the gazettal of a planning proposal to reduce the minimum FSR for non residential from 3:1 down to 1.4:1. Accordingly, this application seeks to update the consent to reflect the changes associated with the determination and seek consent for further design improvements.

The application seeks approval for alterations to the approved development, including modifications to the configuration of the basement car parking layouts, a minor increase in the height of the building, various minor internal and external design amendments, and an increase in the number of apartments from 218 to 232 through the conversion of the level 3 commercial area to residential.

The Council's notification of the proposal has attracted one submission raising particular concerns about on street parking in the area. The assessment has considered these concerns as well as the performance of the application against Council's planning requirements.

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

DESCRIPTION OF PROPOSAL

This section 96(2) application seeks approval for alterations to the approved development, including modifications to the configuration of the basement car parking layouts, a minor increase in the height of the building, various minor internal and external design amendments, and an increase in the number of apartments from 218 to 232 through the conversion of level 3 commercial area to residential.

Reconfiguration of the Basement Design

- the basement levels now include new stair pressurisation systems to improve BCA compliance;
- the height of the loading dock has been reduced to provide a clearance height of 3.6 metres;
- reconfiguration of the basement car parking layouts to accommodate the inclusion of new bicycle facilities and additional motorcycle spaces;
- the parking layout has been slightly reconfigured and now incorporates two (2) additional residential parking spaces, increasing the quantum from 155 to 157 spaces whilst providing for a total of 164 spaces; and
- a corresponding reduction in commercial spaces from ten (10) to seven (7).

Reconfiguration of the Commercial Levels

- Consistent with the NSW LEC (10010 of 2015) determination, the existing commercial floor space on Level 3 has been converted into residential apartments.
- Accordingly, the podium comprising the residential lobby has been relocated from Level 4 to Level 3.
- The lobby area has been reconfigured to include the provision of residential mail boxes, a manager's office, and an additional amenities room.
- All commercial levels now incorporate escalators on the southern portion of the building.
- The pedestrian bridge on level two over Doohat Lane Thoroughfare has been slightly relocated to the south and is now enclosed by glazing.
- Stairs have been included on the southern portion of the building to provide access to Berry Street.
- The commercial levels now incorporate a new stair pressurisation system to improve BCA compliance.

Revised Loading Dock Clearance Height

The proposed modifications reduce the clearance height of the loading dock located on Level 2 to 3.6 metres. The proposed clearance height is necessitated by the change of use of Level 3, which has allowed for the provision of an additional apartment.

Conversion of Commercial Uses to Residential

In accordance with the original approval, the development is to remain a mixed-used development. Notwithstanding this, the NSW LEC (10010 of 2015) determination necessitates the conversion of the commercial uses on Level 3 to residential. The commercial uses will now occupy Ground and Levels 1 to 2 and residential uses to occupy the remaining Levels 3 to 23. In consequence, the approved non-residential GFA

of 4,051m² will decrease by 1,129m², amounting to 2,922m² and equivalent to a non-residential FSR of 1.74:1.

External Changes

Two kiosk substations on the north western portion of the site have been included and are shown in the Architectural Plans

Reconfiguration of the Residential Levels

A number of improvements to the internal layout of the apartments have been identified through the design development process. These amendments are shown in the Architectural Plans and generally consist of:

- the inclusion of additional apartments on Level 3 in accordance with NSW LEC judgement (10010 of 2015);
- the inclusion of an additional apartment on Level 3 directly above the loading dock;
- minor reconfigurations to the internal layout and size of a small number of apartments on all levels to improve the efficiency of the layout;
- minor reconfigurations to the layout of a small number of apartments to accommodate a larger kitchen exhaust;
- a reduction and reconfiguration in the size of the common space on Level 21; and
- removal of the pool on Level 24 to accommodate an additional bedroom.

Changes to Apartment Number and Mix

The conversion of Level 3 from commercial to residential increases the quantum and mix of apartments from 218 to 232.

Type	Approved		Proposed	
	Number	%		%
Studio	32	14.6%	35 (+3)	15%
One Bedroom	94	43.1%	101 (+7)	43.5%
Two Bedroom	85	38.9%	89 (+4)	38%
Three Bedroom	7	.03%	7	.03%
Total	218	100%	232 (+14)	100%
Adaptable	33	18.2%	24 (-9)	10.3%

Changes to the Building Roof and Height

The proposed changes to the buildings height is the result of a minor extension of the sloped building plane and the inclusion of additional plant. Specifically the proposed changes involve:

- an increase to the height of the sloped building plane from RL 150.607 to RL 153.489; and
- an increase to the rooftop plant from RL 150.350 to RL 151.300.

The additional plant is proposed for the purpose of servicing the future needs of the building while the minor extension of the sloped building plane is proposed to further enhance the building design. It is noted the extension of the building plane will not alter the angular formation of the building plane

STATUTORY CONTROLS

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

POLICY CONTROLS

North Sydney DCP 2013

CONSENT AUTHORITY

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

DESCRIPTION OF LOCALITY

The site is on the north-west corner of the intersection of the Pacific Highway and Berry Street. The site has an area of 1,678.6m² with a 36.755m frontage to the Highway.

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

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

BACKGROUND

DA.239/13 (2013SYE061) was preceded by DA.467/11 that proposed a mixed use development involving 6 basement levels of parking for 96 vehicles, 1405m² of commercial space, 41 serviced apartments and 101 residential apartments with a unit mix of 29 studio units, 7 x 1 bedroom units, 55 x 2 bedroom units and 10 x 3 bedroom units over 23 storeys (excluding plant) to a maximum height of RL 156.

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

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

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

- deleted the serviced apartments;
- reduced the density to 84 apartments;
- increased the non residential FSR to 2.65:1 (with commercial floor space in lieu of serviced apartments);
- improved amenity to dwellings;
- provided a podium and setbacks above the podium and
- provided for a public through site link from Berry Street to Doohat Lane.

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

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

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

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

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

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

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

The property was sold and the new owners submitted a Section 96 application to modify the consent.

On the 11 March 2015, modification application DA239/12/3 (JRPP ref 2014SYE147) was approved by the JRPP subject to conditions. The modification sought approval for internal and external alterations to the approved development, including amendments to the building envelope and façade design, changes to the ground level interface and laneway design, and internal amendments. The proposal initially sought consent for an increase to the quantum of apartments from 181 to 230 that was to be accommodated through the change of use of Level 3 from commercial to residential. Notwithstanding this, Council indicated the reduction in non-residential FSR could only be supported upon the gazettal of a planning proposal and the application was granted approval on the basis of 218 apartments.

Subsequently, consent to DA 399/14 for the change in use of Level 3 from commercial to residential in the development approved under DA239/12/3 was granted by the NSW Land and Environment Court (LEC) (10010 of 2015) following the gazettal of a planning proposal to reduce the minimum FSR for non residential from 3:1 down to 1.4:1. Accordingly, this application seeks to update the consent to reflect the changes associated with the determination and seek consent for further design improvements.

REFERRALS

Building

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

SUBMISSIONS

The application was notified to the Edward, CBD and Union precincts and surrounding owners and residents in accordance with Council policy. Two submissions were received. One submission raised concern that the increase in apartment numbers places further pressure on the limited on street parking in the locality. The other submission raised concern that the proposal has its west facing wall too close to No.12 Berry St building which has east facing windows from level 5 up.

CONSIDERATION

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

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

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

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

Is the proposed development as modified substantially the same development approved?

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

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

- The verb "modify" means to alter without radical transformation.
- "Substantially" in this context means essentially or materially or having the same essence.

- A development as modified would not necessarily be “substantially the same development” simply because it is for precisely the same use as that for which consent was originally granted.
- A modification application involves undertaking both a qualitative and quantitative comparison of the development as originally approved and modified.
- Environmental impacts of the proposed modifications are relevant in determining whether or not a development is 'substantially the same'.

The development, as proposed to be modified, is substantially the same development as that originally approved in that:

- The development remains a mixed use development comprising residential and commercial uses;
- The materiality and external treatment to the façade is to remain consistent with the approved development;
- The proposed modifications are generally consistent with the approved building envelope and will not significantly alter the bulk, mass or scale of the development;
- The fundamental elements and public benefits delivered by the development will continue to be provided; and
- The environmental impacts are the same as the approved development.

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

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

Whether any submissions were made concerning the proposed modification.

Notification of the proposal attracted two submissions. One raised concern that the increase in apartment numbers places further pressure on the limited on street parking in the locality. The Section 96 proposal does not alter or necessarily increase these impacts having regard to the approval already granted. The proposal has 164 parking spaces which is 9 spaces below the maximum permitted under the DCP and is considered reasonable having regard to the proximity to public transport. The other submission raised concern that the proposal has its west facing wall too close to No.12 Berry St building which has east facing windows from level 5 up. The subject application does not change the wall on the western boundary. The eastern windows of No.12 on the boundary were not protected and are to be built over. This was also the case with the previous Court approval for the site.

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

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

NORTH SYDNEY LEP 2013

Permissibility within the zone

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

Height of buildings

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

The proposed rooftop design and height of the building remains generally consistent with that of the approved development and will not result in any additional amenity impacts. The maximum height of the development approved under DA239/12/3 is RL158.49 when measured to the architectural roof feature. The proposed changes to the building's rooftop plant and angular façade do not increase the buildings maximum height and have been designed to retain the same angular slope as the approved development.

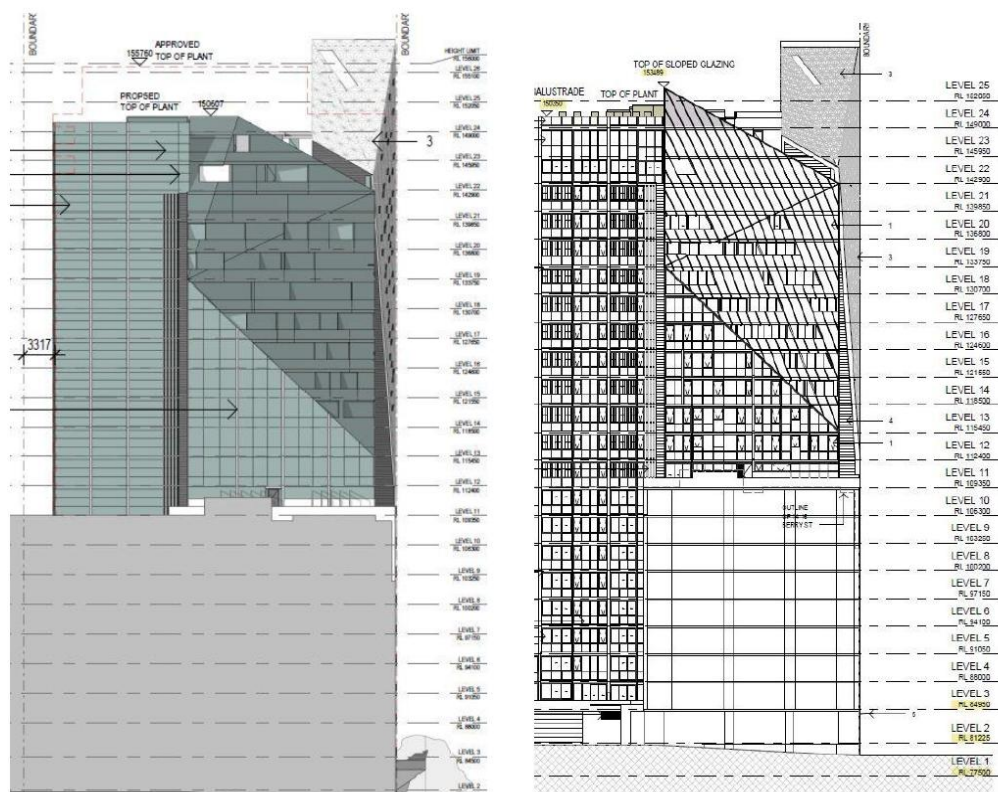


Figure 2 – Comparison of approved (left) sloped roof top glazing with proposed (right)
Source: AJ + C Architects

The inclusion of additional plant is not anticipated to reduce amenity. The height increase of the plant is minor and does not protrude beyond the highest point of the building. This combined with the fact the plant is recessed behind the building parapet will ensure that it is not visible from the street and will therefore not increase the perceived bulk and scale of the development.

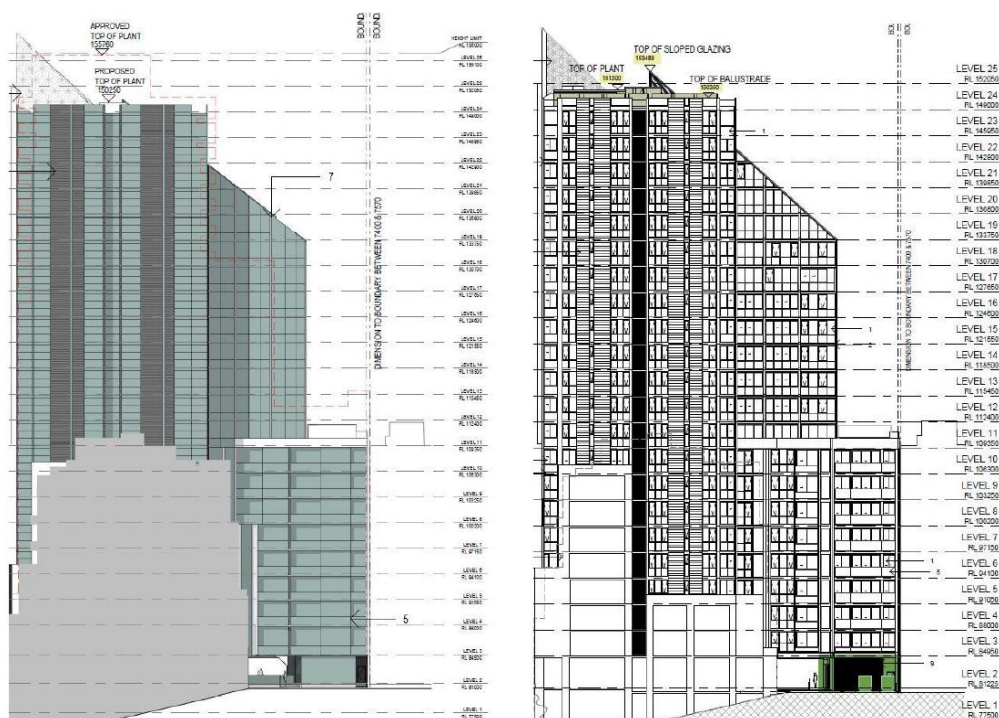


Figure 3 –Comparison of approved building height (left) with proposed (right)
Source: AJ + C Architects

Non-residential floor space

On 4 September 2015, Amendment No.8 to NSLEP 2013 was made and came into force. Amendment No.8 amends the non-residential floor space ratio range requirements of North Sydney Local Environmental Plan 2013 as it applies to 144-154 Pacific Highway and 18 Berry Street, North Sydney. In particular, the non-residential floor space ratio range requirements have been amended from part 3:1-4:1 and part 0.5:1 to a minimum of 1.4:1 across the entire site with no maximum requirement. The modified proposal has a non residential FSR of 1.74:1 and is therefore compliant with the modified control.

Clause 6.1 Objectives of Division (North Sydney Centre)

Objective	Comment
(a) to maintain the status of the North Sydney Centre as a major commercial centre	The proposal results in a reduction in the commercial floor space existing on site.
(b) to require arrangements for railway infrastructure to be in place before any additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre	The proposal does not increase the non residential floor area and accordingly arrangements are not required.
(c) to permit an additional 250,000 square metres of non-residential gross floor area in addition to the estimated existing (as at 28 February 2003) 700,000 square metres of non-residential gross floor area	The proposed development will reduce existing non residential floor space.
(d) to ensure that transport infrastructure, and in particular North Sydney station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and:	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage. The proposal does not provide for excessive car parking on site.

(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	
(e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres	The non residential floor space would be located at the lower levels and unlikely to be office space..
(f) to protect the privacy of residents, and the amenity of residential and open space areas, within and around the North Sydney Centre	The proposal will have a minimal impact on amenity of the residential areas.
(g) to prevent any net increase in overshadowing of any land in Zone RE1 Public Recreation (other than Mount Street Plaza) or any land identified as "Special Area" on the <u>North Sydney Centre Map</u>	The proposed development will result in acceptable additional overshadowing within the controls.
(h) to prevent any increase in overshadowing that would adversely impact on any land within a residential zone	The proposed development will result in no additional overshadowing.
(i) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas	No applicable to site

6.3 Building heights and massing

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

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

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

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

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

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

No overshadowing.

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

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

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

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

(2) Development consent must not be granted for the erection of a building on land to which this Division applies if:

(a) the development would result in a net increase in overshadowing between 12 pm and 2 pm on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as "Special Area" on the North Sydney Centre Map, or

The proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas between 12pm and 2pm.

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

The proposal does not overshadow Don Bank other than a small section at 11.15am in mid winter for less than 15 minutes.

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

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

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

See discussion above with regard to height non compliance.

(5) In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following:

(a) the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining North Sydney Centre,

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

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

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

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

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

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

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

Provide diverse activities, facilities, opportunities and services

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

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

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

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

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

Allow zero setbacks at ground floor and adjacent to heritage items

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

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

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

Provide architectural detailing, high quality materials and a visually rich pedestrian

environment with active street frontages. Buildings are to be energy efficient, minimise stormwater runoff, recycle where possible, and minimise waste consumption

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

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

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

SEPP 55 and Contaminated Land Management Issues

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

SREP (Sydney Harbour Catchment) 2005

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The site, however, is not located close to the foreshore and will not be readily visible from any part of the harbour and the application is considered acceptable with regard to the aims and objectives of the SREP.

SEPP 65 – Design Quality of Residential Flat Development

State Environmental Planning Policy No.65 aims to improve the design quality of residential flat development by recognising that the design quality of residential flat development is of significance for environmental planning due to the economic, environmental, cultural and social benefits of high quality design. The primary design principles being Context, Scale, Built Form, Density, Resource Energy & Water Efficiency, Landscape, Amenity, Safety & Security, Social Dimensions and Aesthetics are discussed as follows:

PRINCIPLE 1: Context

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

PRINCIPLE 2: Scale

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

PRINCIPLE 3: Built Form

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

PRINCIPLE 4: Density

This type of development is consistent with the density determined by the JRPP with its approval of the previous application and the recent Court approval allowing level 3 to beconverted to residential.

PRINCIPLE 5: Resource, Energy and Water Efficiency

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

PRINCIPLE 6: Landscape

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

PRINCIPLE 7: Amenity

The majority of the apartments have a "wintergarden" arrangement for their balconies. The wintergardens along the Pacific Highway should potentially also be effective in improving the acoustic privacy from traffic noise. Additional condition is required for the acoustic treatment to the loading area with level 3 becoming residential.

PRINCIPLE 8: Safety and Security

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

PRINCIPLE 9: Social Dimensions and Housing Affordability

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

PRINCIPLE 10: Aesthetics

The location of the building, amongst glazed commercial towers and in a prominent location at the intersection of the Pacific Highway and Berry Street gave rise to the commercial appearance of glazed curtain walls which conceal the internal residential environment. The angled tower will add a distinctive form to the North Sydney skyline.

The corner tower element is further articulated by textured concrete panels. A variety of materials including textured concrete, glass and metal cladding are proposed.

Apartment Mix

The proposed apartment mix is largely consistent with the approved development:

- the quantum of 2 bedroom apartments has increased from 85 to 89, comprising 38 percent of the overall dwelling mix and therefore remains consistent with the DCP requirements;
- the provision of 3 bedroom apartments is consistent with the approved development, comprising 0.03 percent of the overall apartment mix;
- the number of studio apartments has slightly increased; and
- the amount of one bedroom apartments has increased by seven (7) and now comprises 43.5 percent of the mix, remaining largely consistent with the approved mix.

The revised apartment mix proposes an increase to the proportion of studio, one and three bedroom apartments and a slight decrease to the proportion of two bedroom apartments. The apartment mix is generally consistent with the NSDCP 2013 and is considered acceptable. It is proposed the quantum of adaptable apartments be reduced from 33 to 24, therefore comprising 10 percent of the unit mix. The proposed quantum of adaptable housing provides an outcome that is consistent with Condition 31 of DA239/13/3. Condition 31 specifies only 10 percent of parking spaces are required to be adaptable, requiring a corresponding 10 percent of apartments to be adaptable.

Parking

The proposed development maintains the same parking rates as the approved development. Due to the increase in the number of apartments, the number of residential parking spaces has increased from 155 to 157. The number of commercial spaces has decreased from 10 to 7 to correspond with the decrease to the amount of non-residential floor space. The provision of adaptable spaces has also decreased from 36 to 25 spaces required the provision of a minimum of 23 accessible car parking spaces, equivalent to 10 per cent of the proposed 232 apartments.

Bicycle Parking

The proposed development provides 283 bicycle parking spaces and is therefore consistent with the nominated requirement for 281 spaces specified by the NSDCP 2013.

Loading Facilities

The proposed modification involves reducing the loading dock clearance height to 3.6 metres. The Traffic Assessment undertaken by Traffix indicates the proposed clearance height is sufficient to accommodate a Small Ridge Vehicle. Further, the loading dock is also capable of accommodating Medium Ridge Vehicles provided they do not exceed a height of 3.5 metres for the purpose of ensuring there is a 100mm clearance buffer. The height is appropriate for small removal vans. The loading dock will be controlled by

a building manager. Furniture removals can be booked through the building manager who can advise tenants/residents of the height clearance requirements when they move in or vacate their apartments.

Traffic Generation

Based on the number of car parking spaces proposed, the modified development will generate approximately 62 vehicle trips per hour (0.15 trips per PM peak and 3.7 trips per parking space for 7 retail spaces). The Traffic Report confirms the traffic generated as a result of the development is consistent with that of the original approval and therefore will not result in any additional traffic impacts on the surrounding road network.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's Section 94 plan are warranted and are based on the total increase in the number of apartments with an allowance for the reduction in commercial floor space. The contributions are detailed in the attached conditions. The Section 94 contribution has been paid for the approved 218 apartments. The additional contribution will be an additional condition.

DESIGN & MATERIALS

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

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | |
|---|-----|
| 1. Statutory Controls | Yes |
| 2. Policy Controls | Yes |
| 3. Design in relation to existing building and natural environment | Yes |
| 4. Landscaping/Open Space Provision | Yes |
| 5. Traffic generation and Carparking provision | Yes |
| 6. Loading and Servicing facilities | Yes |
| 7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |

- | | | |
|----|--|-----|
| 8. | Site Management Issues | Yes |
| 9. | All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979 | Yes |

Conclusion

The proposed development as modified is considered to be substantially the same development as approved. The modifications do not create additional impacts on surrounding development to the approved development.

This application will require the following conditions to be replaced:

- A1 Development in accordance with plans
- C27 Security Bond Schedule
- C29 Bicycles storage and parking
- C31 Parking for people with disabilities
- C32 Line marking
- H1 Allocation of spaces

As well as additional new conditions concerning the additional Section 94 contribution, acoustic treatment to the loading area and the apartments adjacent to the loading area.

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

RECOMMENDATION

THAT the Joint Regional Planning Panel, as the consent authority, modify its consent dated 22 January 2014 in respect of a proposal for demolition of existing structures, and construction of a mixed use building above basement car parking at 144-154 Pacific Highway and 18 Berry Street North Sydney under the provisions of Section 96 of the Environmental Planning and Assessment Act with regard to 2016SYE013 – North Sydney - Development Application No.239/13/4, only insofar as will provide for the following.

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

Development in Accordance with Plans

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

Plan No.	Issue	Title	Drawn by	Received
DA2000	1	Basement 5	AJ+C	24 December 2015
DA2001	1	Basement 4	AJ+C	24 December 2015
DA2002	1	Basement 3	AJ+C	24 December 2015

DA2003	1	Basement 2	AJ+C	24 December 2015
DA2004	1	Basement 1	AJ+C	24 December 2015
DA2005	1	Ground	AJ+C	24 December 2015
DA2006	1	Level 1	AJ+C	24 December 2015
DA2007	1	Level 2	AJ+C	24 December 2015
DA2008	1	Level 3	AJ+C	24 December 2015
DA2009	1	Level 4	AJ+C	24 December 2015
DA2010	1	Level 5	AJ+C	24 December 2015
DA2011	1	Level 6	AJ+C	24 December 2015
DA2012	1	Level 7	AJ+C	24 December 2015
DA2013	1	Level 8	AJ+C	24 December 2015
DA2014	1	Level 9	AJ+C	24 December 2015
DA2015	1	Level 10	AJ+C	24 December 2015
DA2016	1	Level 11	AJ+C	24 December 2015
DA2017	1	Level 12	AJ+C	24 December 2015
DA2018	1	Level 13	AJ+C	24 December 2015
DA2019	1	Level 14	AJ+C	24 December 2015
DA2020	1	Level 15	AJ+C	24 December 2015
DA2021	1	Level 16	AJ+C	24 December 2015
DA2022	1	Level 17	AJ+C	24 December 2015
DA2023	1	Level 18	AJ+C	24 December 2015
DA2024	1	Level 19	AJ+C	24 December 2015
DA2025	1	Level 20	AJ+C	24 December 2015
DA2026	1	Level 21	AJ+C	24 December 2015
DA2027	1	Level 22	AJ+C	24 December 2015
DA2028	1	Level 23	AJ+C	24 December 2015
DA2029	1	Level 24	AJ+C	24 December 2015
DA3101	1	North and East Elevations	AJ+C	24 December 2015
DA3102	1	South and West Elevations	AJ+C	24 December 2015
DA3210	1	Loading Dock Section	AJ+C	24 December 2015
DA9001	B	Materials Board	AJ+C	6 February 2015

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

Security Bond Schedule

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

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

Section 96 Section 94 contribution **\$113,752.94**

(Reason: Compliance with the development consent)

Bicycle Storage and Parking

- C29. The bicycle storage areas shall accommodate a minimum of two hundred and forty seven (247) bicycles and thirty four (34) visitor bicycles, such bicycle storage to be designed in accordance with AS 2890. Details demonstrating compliance are to be submitted to the Certifying Authority for approval with the Construction Certificate.

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

Parking for People with Disabilities

- C31. A minimum twenty five (25) car-parking spaces for use by persons with a disability shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads and shall be clearly shown on the plans submitted to the Certifying Authority for approval with the Construction Certificate. All details shall be prepared in consideration of, and construction completed in accordance with Australian Standard AS2890.1 to achieve compliance with the Disability Discrimination Act, and the relevant provisions of AS1428.1 and AS1428.4.

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

Line Marking

- C32. A maximum of one hundred and sixty four (164) off-street car-parking spaces, together with access driveways, shall be constructed, paved, line marked and signposted in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate. The plans shall also nominate the allocation of parking spaces for specific purposes as required by conditions of this consent. A certificate prepared and certified by an appropriately qualified and practising Civil Engineer for the construction of these areas in accordance with this requirement shall be submitted to the Certifying Authority for approval with the Construction Certificate.

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

Section 94 Contributions (Section 96)

- C48. A monetary contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Section 94 Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.

A	B
Community Centres	\$ 770.08
Library and Local Studies Acquisitions	\$ 40.11
Library Premises and Equipment	\$ 189.11
Open Space Acquisitions	\$ 37,809.13
Open Space Increased Capacity	\$ 74,944.51
Total	\$ 113,752.94

The contribution MUST BE paid prior issue of the Construction Certificate that includes the Section 96 modification – DA.239/13/4.

The above amount, will be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

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

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

Acoustic glazing

- C49. The glazing acoustic rating being increased to Rw 32 (6.38mm laminated glass) for habitable rooms of residential apartments overlooking the garbage collection entry point.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Amenity of apartments)

Loading Dock Acoustic Treatment

- C50. The following acoustic treatment measures are required to reduce the impacts of trucks and delivery vehicles entering and exiting the development site.

- Install 50mm thick acoustic insulation similar to Bradford Ultratel (48kg/m³) to the underside of the soffit at the entrance driveway, between structural beams, beneath apartments. The insulation should be faced with heavy duty perforated foil or perforated metal with at least a 25% open area). The insulation is to be fixed to the internal surfaces of the barrier walls with proprietary clips (Clipfas Hanger and Washer).
- Rubber matting to be installed to the loading dock area to prevent noise and vibration from tailgate impact and impact from offloading within the loading dock areas.

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Amenity of apartments)

Allocation of Spaces

H1. One hundred and sixty four (164) carparking spaces shall be provided and maintained at all times on the subject site. The spaces shall be allocated in the following proportions:

- 157 - residential (including 25 disabled spaces)
- 7 - Non residential spaces

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

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

Geoff Mossemeneer
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES