

**JOINT REGIONAL PLANNING PANEL
(Sydney East Region)**

JRPP No	2016SYE015
DA Number	DA487/2015
Local Government Area	North Sydney Council
Proposed Development	Demolition of existing residential flat building and construction of mixed use building consisting of 113 apartments, commercial space and 85 car-spaces (Amended proposal)
Street Address	229 & 231 Miller Street, North Sydney
Applicant	Yaver Pty Ltd
Owner	Yaver Pty Ltd
Number of Submissions	5 to original plans 1 to amended plans
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment Value > \$20 m
List of All Relevant s79C(1)(a) Matters	North Sydney LEP 2013 - Zoning – B4 Mixed Use North Sydney DCP 2013 S94 Contributions SEPP No. 55 – Remediation of Land SEPP No.65 – Design Quality of Residential Flat Development – Apartment Design Guide SEPP (Building Sustainability Index: BASIX) 2004 SREP (2005) – Sydney Harbour Catchment
List all documents submitted with this report for the panel's consideration	Revision C Plans and Elevations - DA01 – DA46 prepared by PA Studio, , dated 26/04/16 Lodged 27/04/16 Stormwater Concept Plan, Floth Building Consultants, Revision P1, dated 18/12/15 Structural Design Statement, Structural Design Solutions P/L, dated 26/04/16 Clause 4.6 Variation Request to Building Height prepared by KGPS
Recommendation	Refusal
Report by	Kim Rothe, Senior Assessment Officer, North Sydney Council
Report date	14 June 2016

EXECUTIVE SUMMARY

The application seeks approval for demolition of existing residential flat building and construction of mixed use building consisting of 113 apartments, commercial space and 85 car-spaces

The proposal is an amended proposal containing 26 x studios, 35 x 1 bedroom apartments, 37 x 2 bedroom apartments and 15 x 3 bedroom apartments with a floor space of 753m² for the retail/commercial component. The proposal provides for 85 car spaces and 9 motorcycle spaces.

The Council's notification of the original proposal (consisting of 117 apartments and 93 car spaces) attracted 5 submissions raising particular concerns about traffic, parking, construction issues, design, height, setback, privacy, overshadowing, density and views.

Council's Design Excellence Panel raised a number of concerns to be resolved before the proposal could be supported. The applicant responded in part to the DEP suggestions and other issues raised by Council with amended plans submitted on 26 May 2016. The Council's notification of the amended proposal attracted 1 further submission raising particular concerns about height, separation, access provisions and amenity impacts.

The assessment of the proposal has considered these concerns as well as the performance of the application against the relevant statutory provisions and Council's planning requirements. The amended plans have resolved some of the design issues raised but there is still concern with a lack of setback and separation with the upper levels of the building and the amenity performance of the apartments within the development, particularly at the lower levels of the building.

Council has also considered the proposed dwelling density in comparison to adjoining development and contends that the proposal represents excessive dwelling density given the highly constrained nature of the site. Significant and further amendments and reductions are considered necessary to enable appropriate redevelopment of the site. A development application that properly reflects the site constraints would be significantly different from the subject application and that any such proposal is likely to constitute a new Development Application.

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

DESCRIPTION OF PROPOSAL

The application seeks approval for demolition and erection of a twenty level mixed use building above at grade and basement parking comprising the following;

- Basement 4: contains parking for 12 cars and 1- motorcycle, 113 residential storage units, lift core and a plant room.
- Basements 2 and 3 are split level basements, each containing parking for 24 cars (5 accessible), 1 motorcycle, lift core and plant room.
- Basement 1 is a split level basement, each containing parking for 23 cars (5 accessible), 1 motorcycle, lift core and plant room.
- Split level Car Park Entry Level (via rear right of way laneway) The higher level there is 2 commercial car parking spaces, 5 motorbike spaces, separate lift to commercial component of building, plant room, storage areas. The lower level provides vehicular access to the basement parking, with a driveway ramp accessing the basement, loading area and garbage holding bay. This level also contains plant, substation, a detention tank, a garbage storage room with compactor.
- Commercial Level: This level is below the level of Miller Street and contains a commercial floor having an area of 581 m² with surrounding terraces to the south and east. This level

has separate lift access from the car park entry level and from the ground level commercial space. This application does not include a use application for the space.

- Ground Level: provides the main entry into the proposed building via the access handle from Miller Street and external entry courtyard to the building. The entry courtyard provides access to the ground level commercial suite (172 m²) and to the separate residential lobby. Five residential apartments, being 2 x studio and 3 x 1 bedroom apartments, are located on the eastern side of the ground level.
- Levels 1 - 4: Residential levels each containing eight apartments, being 3 x studios, 3 x 1 bed and 2 x 2 bedroom apartments (one of the 2 bedroom apartments can be easily converted to a three bedroom apartment).
- Levels 5 - 10: Residential levels each containing seven apartments, being 2 x studio, 3 x 1 bedroom, 1 x 2 bedroom and 1x 3 bedroom apartments.
- Levels 11 – 14: Residential levels each containing five apartments, being 4 x 2 bedroom and 1 x 3 bedroom apartments.
- Levels 15 - 16: Residential levels each containing five apartments, being 1 x 1 bedroom, 3 x 2 bedroom and 1 x 3 bedroom apartments.
- Levels 17: Level L17 contains two apartments, being 1 x 3 bedroom apartment with rumpus room and 1 x 3 bedroom plus study apartment. This level also includes a plant room and green roof.
- Levels 18: Level L18 contains two apartments, being 1 x 2 bedroom and 1 x 3 bedroom apartment. This level also includes a plant room and common room (37 m²) with a north east orientated landscaped terrace.

The apartment mix proposed is as follows:

- Studio apartments = 26 (23%)
- 1 Bedroom apartments = 35 (31%)
- 2 Bedroom apartments = 37 (32.7%)
- 3 Bedroom apartments = 15 (13.3%)
- Total = 113
- Seventeen apartments (7 x 1 bedroom and 10 x 1 bedroom apartments) are adaptable apartments.
- Proposed building is to contain a total of 753 m² of retail/business floor space (0.69:1 FSR).
- Parking for 85 cars, including 15 accessible spaces, and 9 motorcycles.
- Consent is also sought for works to the approved, but yet to be commenced, building at No. 231 Miller Street, for proposed doors opening from the approved café onto the connecting pedestrian walkway to No. 229 Miller Street and awnings to provide pedestrian comfort along that walkway.



Figure 1: View of the subject proposal from the north east or Lower McLaren Street, North Sydney

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Clause 4.3 Building Height – 135 m
- Clause 4.4A Non Residential FSR – min 0.5:1

- Item of Heritage - No
- In Vicinity of Item of Heritage – No
- Conservation Area - No

S94 Contributions - Required

Environmental Planning & Assessment Act 1979

SEPP No. 55 – Remediation of Land

SEPP No.65 – Design Quality of Residential Flat Development

SEPP (Building Sustainability Index: BASIX) 2004

SREP (2005) – Sydney Harbour Catchment

Local Development

POLICY CONTROLS

North Sydney DCP 2013

DESCRIPTION OF LOCALITY

The property is known as Nos. 229 and 231 Miller Street, North Sydney and comprises two lots identified as Lot 2, DP 413512 (SP LI322) and Lot 10 in DP 865610 (SP 54070). The site is located on the eastern side of Miller Street, one lot to the south McLaren Street.

No. 229 Miller Street is a battleaxe allotment with the main body of the lot being rectangular in shape and has an access handle to Miller Street having a length of 35.4m and a width of 3.66m. The main body of the allotment has a depth of approximately 33.5m and a width of approximately 28.66m. The allotment has a total area of 1,091.1m² and the main body excluding the access handle has an area of approximately 961m². The site has a fall from Miller Street to the rear of approximately 8m and a fall of approximately 4.2m across the main body of the site. The site also benefits from two rights-of-carriageway, over No. 221 Miller Street and No. 41 McLaren Street. Vehicular access is currently available directly from Miller Street via the access handle.

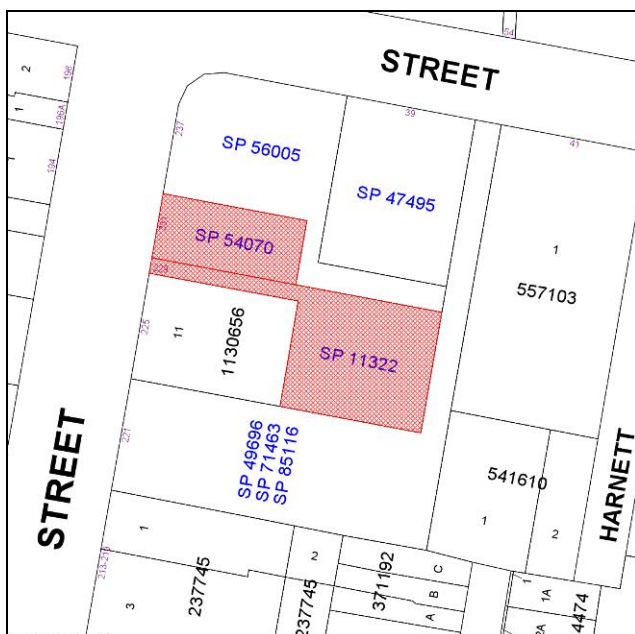


Figure 2 – GIS cadastre location diagram



Figure 3 – Aerial of the site, 2014 Capture



Figure 4: View of Access driveway from Miller Street



Figure 5: Glimpse of existing building down Miller Street Access



Figure 6: View from Lower McLaren Street showing the space the proposed building will occupy



Figure 7: Existing building when viewed from existing right of way shared access



Figure 8: View down shared right of way access to McLaren Street

No. 229 Miller Street is currently occupied by a four storey brick residential building and the building is currently strata titled. The building contains 28 apartments, with 20 x 2 bedroom and 1 x 2 bedroom apartments.

No. 231 Miller Street is located immediately adjoining No. 229 Miller Street to the north (of access handle) and north-west (of main body of the site) and contains an eight storey office building.

No. 231 Miller Street has recently had development consent granted for a nineteen storey mixed use development with ground level cafe and residential apartments above. The approved building has a five storey podium built largely to the boundaries, except Miller Street, and setbacks above the podium level, increasing with the height of the building. The approved building has a height of RL130 to the top of the roof top community room, with the lift overrun exceeding this height.

The site is located within the edge of the North Sydney Central Business District and the density of surrounding development reflects that location.

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).

RELEVANT HISTORY

Related/Previous JRPP Approvals

231 Miller Street, North Sydney

DA453/14 (2015SYE006) was lodged at Council on 18 December 2014. At its Meeting held on 1 July 2015 the JRPP deferred a 19 storey mixed use building above basement parking consisting of 61 apartments, retail and 39 car-spaces proposal at No.231 Miller Street, North Sydney to allow the applicant time to submit amended plans. The JRPP made electronic

determination of amended proposal on 30 July 2015. It is to be noted that the architect (Platino Properties) for this applicant is the same architect for this earlier application. This is important for noting to the concerns raised with the overall building height and constructability of the residential levels.

221 Miller Street, North Sydney

DA256/15 ((2015SYE095) was lodged at Council on 15 July 2015 for demolition the existing building and construct a 22 storey mixed use development including retail at ground level; 100 serviced apartments, 183 residential apartments and basement parking at 221 Miller Street, North Sydney. The development was approved by the JRPP on 11 February 2016.

225 Miller Street, North Sydney

DA658/06 was lodged at Council for the 19 storey mixed use development containing 79 apartments was originally granted consent under delegated authority by the General Manager on 6 September 2007, following Council's decision at its meeting on 30 July 2007 to support the application subject to amended plans.

Note: Density comparison data between the listed approvals above is provided in the SEPP 65 Design Principles discussion under the “*Density*” principle heading of the report.

Subject Application

The subject Development Application DA487/15 was lodged on 22 December 2015. An initial request for additional information was made on 29 January 2016 being:

Traffic Report

Council requires the submission of a traffic report that addresses the impact of your proposal on the local road network. The report must address the existing and likely future demand for on street parking, traffic flows to/from the development site and the car parking required for the development

This additional information was submitted 17 February 2016. The application was considered at the Design Excellence Panel meeting on 8 March 2016.

Following detailed assessment, Design Excellence Panel review and collation of referral comments, the applicant was advised of the following matters associated with the application on 6 April 2016:

“Unsuitability of the Current Proposal

Applicant was advised due to the level of issues raised, the application could not be supported.

Design Excellence Panel / SEPP 65 (Apartment Design Guide)

A copy of the minutes of the Design Excellence Panels attached for design amendments to achieve a higher quality design.

Clause 6.5 Railway Infrastructure – Transitional Arrangements NSLEP 2013

Clause 6.5(2) of NSLEP 2013 requires that the Director General must provide written certification that a satisfactory agreement /arrangement in place. Accordingly, a Developer Commitment Deed must be entered into prior to Council determining the application.

Clause 4.3 Building Height NSLEP 2013

Concern raised regarding the ability of the development to provide for the required 2.7 metre internal clear floor to ceiling heights with only 2.97 metres of clearance provided between the floor to floor heights. May require further increase to the height which is not in accordance with Clause 4.3 Building Height and the Clause 4.6 Request for Variation cannot be considered to be well founded and cannot be relied upon.

As it has not yet been determined whether the building may or may not require alteration to the overall Building Height, the Clause 4.6 Request to Vary and Development Standard is currently not accepted and the environmental planning grounds proffered in the statement are not agreed with.

Clause 6.10 Earthworks NSLEP 2013

Pursuant to of Clause 6.10 Earthworks of NSLEP 2013 an estimation of the total amount of material proposed to be removed from the site is required and the outline of the proposed methodology of excavation, inclusive of the intended method of support for the adjoining existing buildings at 225, 231 and 221 Miller Street, North Sydney is to be submitted for Council's consideration.

Clause 6.4 Miller Street Setback NSLEP 2013

Pursuant to Clause 6.4(2) of NSLEP 2013 The North Sydney Centre map requires a 5.0 metre setback to be provided for the Miller Street Setback and the Building. The battle-axe plant room should be deleted and be replaced by a suitably designed and retained footway at appropriate levels.

Intended Usage of the Commercial Space as a Childcare Centre

The proposed commercial space is (subject to further consent from Council) intended to be used as a childcare centre. Given the enclosure of a significant portion of the terrace/outdoor area, the centre would have poor performance with regard to general solar access/ambient light and outdoor open space requirements for Childcare centres. Additionally, no certainty has been provided that a suitable Child Care Centre operator has been secured as a future tenant.

Accordingly, consideration is to be given to an alternative scheme of usage of the commercial space for the purposes of general commercial tenancies. In this regard, a revised layout for the commercial premises is to be submitted for Council's consideration.

Engineering Referral Issues

The following matters have been raised by Council's Development Engineer and are to be addressed via the submission of amended plans:

- (a) A stormwater drainage concept plan including connection to the existing private storm water drainage pipe within the local drainage easement is required at DA stage.*
- (b) There is an existing private pipe traversing the property (approximately 225 mm) and a 5.0 m height x 2.5 m width clearance path is required. The stormwater line is not able to be relocated.*
- (c) Three (3) longitudinal sections are required from the middle of the road/right of way, through the crossing to the parking in the basement.*
- (d) The proposed parking spaces are to be dimensioned on amended plans to ensure compliance with AS2890 is demonstrated.*

- (e) *The proposed civil works within the public domain must be supported with minimum of three sections from the existing kerb on Miller Street, through the proposed “through link” and up to existing levels at the back of 229 Miller.*

Traffic Engineer Referral Issues

The following matters have been raised by Council’s Traffic Engineer:

- *The traffic generation calculations are to be resubmitted using Sydney average figures for the High Density Residential Flat Dwellings combined with a SIDRA report for assessment.*
- *The car parking provision to be reduced to comply with the limits set out in NSDCP 2013 (Calculated maximum of 89 car spaces allowed).*
- *The applicant is to provide end of trip changing and shower facilities as set out in DCP2013.*
- *The applicant is required to provide 24 new bicycle spaces or storage area to accommodate for the minimum required bicycle parking spaces.*
- *The provision of loading facilities to provide for developments containing more than 60 dwellings are required to provide at least 1 service delivery space capable of 1 Heavy Rigid Vehicle (HRV of 12.5m length) or 2 Medium Rigid Vehicles (MRV 8.8m length).*
- *The applicant is required to provide a car wash bay within the visitor parking area as set out in NSDCP 2013.*
- *The layouts of some accessible parking spaces need to be reviewed to satisfy the AS2890.6:2009 minimum requirements.*
- *A Construction Traffic Management Plan (CTMP) for Council to assess and approve prior to approval of DA (please note, RMS will not permit a construction zone on Miller Street)*

Waste Service Officer

Council’s Waste Services Officer has raised concern with the garbage chute and compaction unit proposal. The concerns associated with this type of system include:

- *Noise generated from glass bottles and jars being dropped from a considerable height*
- *The bins would be extremely heavy*
- *The material recycling facility(MRF) that Council is required to transport the recycling to would not accept glass that is broken into such small pieces or even less.*
- *No failsafe measures have been proposed to ensure recycling waste is not contaminated with putrescible waste and vice versa.*

The applicant was advised that the proposal was not supported and significant amendments were considered necessary in order to address the issues raised above. Council contended the amendments required would be considered to be so significant that they may constitute a new development application and sought that the subject application to be withdrawn.”

A meeting was held on 11 April 2016 with the applicant to discuss the letter and application. Following the meeting the following correspondence was sent by Council to the applicant on 13 April 2016

“I refer to the abovementioned proposal, the meeting with Council staff held on 11 April 2016 to discuss the issues outlined in Council’s previous letter advising that the current proposal is unsatisfactory.

Following discussions with Council staff, it was unclear whether the matters outlined in Council's assessment letter could be fully resolved under the current application. Council remains concerned that the amendments required to satisfactorily address the issues raised in the assessment by Council and the Design Excellence Panel, could not reasonably be achieved in the timeframes presented by the Joint Regional Planning Panel.

The Panel has confirmed a date for the matter to be determined as 23 June 2016, which requires that a satisfactory proposal be submitted, notified, referred and assessed by Council by 9 June 2016.

Given the degree of change required to the design, there remains a high degree of uncertainty with regard to whether the proposal can be resolved under this development application and for all required supporting information to be prepared and submitted to Council. I refer specifically to the need to achieve increased setbacks from the northern boundary, improved building articulation and amenity, building design certification for the structural slab design and acoustic treatment as well as unresolved matters such as car parking, use of the commercial levels, setbacks to Miller Street, loading and bicycle parking.

I must confirm that Council's position is that the current application should be withdrawn and a revised development application submitted following further pre-lodgement discussion with Council.

Please be advised that pursuant to Clause 55 of the Environmental Planning and Assessment Regulations 2000, Council is not obliged to accept an amended proposal which does not fully respond to all issues raised and that any unsolicited, incomplete or partially amended proposal will not be accepted by Council under the current development application.

Council requests that a formal response confirming your intended course of action in writing be provided within the timeframe outlined in Council's preceding letter, which is twenty one days from the date of the letter being 27 April 2016. Should you elect not to withdraw the development application before the end of this timeframe, it is likely the matter will be referred to the Joint Regional Planning Panel, to be determined with a recommendation for refusal."

The applicant responded by advising that they intended to lodge amended plan before the end of April 2016

Amended plans and additional were received on 26 April 2016: The amended plans contained the following amendments

- increased the setbacks particularly around the northern side of the building,
- amended the design of the eastern façade for further articulation,
- increased the commercial floor area on the lowest commercial level,
- reduced the total number of apartments from 117 to 113,

Additional information was also provided as requested. The amended plans and additional information are considered within this report. Council consented to accept the amendments and proceeded to renotify the amended proposal.

REFERRALS

Building

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

Engineering/Stormwater

Council's Development Engineer raised concerns on the development as originally submitted (refer to Council's primary issues letter dated 6 April 2016 provided under the "Relevant History" heading of the report).

The applicant provided amended hydraulics plans which have significantly altered the concept drainage design to convey water from 231 Miller Street, North Sydney approved building through the subject site. The 231 Miller Street, North Sydney stormwater design was approved with all water from the building being directed to Miller Street and not through the rear of the site.

The primary issue is that no Section 96 has been lodged for DA453/14 to enable any consideration to modify the approved stormwater proposal or conditions and it is also not known by the Development Engineer the proposed capacity loading from 231 Miller Street, North Sydney to be diverted into the subject site's system through to the nearby Council owned stormwater infrastructure. Appropriate conditions cannot be prepared for this application until the 231 Miller Street, North Sydney is properly modified. Accordingly, the application cannot be supported in this regard and forms part of the basis for refusal of the application.

Traffic

Council's Traffic Engineer raised concerns on the development as originally submitted (refer to Council's primary issues letter dated 6 April 2016 provided under the "Relevant History" heading of the report). Following review of the amended plans and information provided by the applicant on 26 April 2016 the following comments have been made by the Traffic Engineer on the subject amended proposal under consideration:

"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 (B4 zoning)	North Sydney Council DCP 2013	
	Requirement per dwellings	
Studio and 1 Bedroom Dwelling	0.5 space x 61 dwellings	31
2 Bedroom dwelling	1 space x 37 dwellings	37
3 Bedroom dwellings	1 space x 15 dwellings	15
Visitor	N/A	0
Commercial, 753m2,	1 space per 400 m2 GFA	2
Total Maximum car parking spaces		85

The development proposes a total of 85 parking spaces for 113 residential units and commercial area which includes 17 Accessible parking spaces.

The proposed development complies with the Council's DCP 2013 (amended on 5 November 2015 Section 10) for the maximum parking space requirement.

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 17 adaptable units and provides a total of 17 adaptable parking spaces which complies with the requirements of Council's DCP.

However the Accessible parking spaces marked as bay No's 11 on basements level 1, 2 and 3 do not comply with the AS2890.6, 2009. The parking layout needs to be revised to comply.

In addition parking spaces marked 4 and 7 on Basement level 1 need to be marked as Accessible parking.

Motorcycle Parking

The maximum parking rate for motorcycle parking is 1 per 10 dwelling. Therefore the maximum required number of motorcycle parking spaces is 12.

The applicant has provided 5 motorcycle parking spaces on the R.O.W car park entry level and 1 in basement parking levels 1 to 4. This will add up to a total of 9 parking spaces which complies with the maximum permitted numbers as set out in 2013 DCP.

Bicycle Parking

Council's DCP specifies that all new development is to provide on-site, secure bicycle parking facilities. 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.

Council DCP's requirements for Bicycle facilities are summarised in the table below.

	North Sydney Council DCP 2013 Requirement		Provision of Off-Street Bicycle Parking
<i>Residential</i>	<i>1 space per dwellings</i>	<i>113</i>	<i>113</i>
<i>Visitor</i>	<i>1 space per 10 dwellings</i>	<i>12</i>	<i>19 (Racks on Ground Floor)</i>
<i>Commercial (occupants)</i>	<i>1 space per 150 m2 GFA</i>	<i>5</i>	
<i>Commercial (visitors)</i>	<i>1 space per 400 m2 GFA</i>	<i>2</i>	
Total Minimum Bicycle spaces		132	132

Furthermore 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.

Loading Facilities

The proposed development has provided a single loading bay on the car park entry level. The proposed loading bay is 3.8m (w) x 6.4m (l) which can only accommodate one (1) Small Rigid Truck.

Council's DCP 2013 (amended on 5 November 2015 Section 10) sets out that developments containing more than 60 dwellings to provide at least 1 service delivery space capable of 1 Heavy Rigid Vehicle (HRV of 12.5m length) or 2 Medium Rigid Vehicles (MRV 8.8m length).

In addition, the proposed 4m car park access height clearance does not accommodate a Medium Rigid Vehicle's minimum height of 4.5m as set out in the AS 2890.2-2002, Tables 2.1 and 4.1.

The applicant is required to provide sufficient loading facility to comply with the Council's DCP 2013 and also address the minimum clearance height required by the Australian Standard.

Car wash bay

Council's DCP 2013 (amended on 5 November 2015 Section 10) sets out those developments containing 4 or more dwellings to provide 1 car wash bay within the visitor parking area.

The applicant has addressed this but not shown any car wash bay and is requirements of Council's 2013 DCP.

Design/ Layout

- The layouts of parking spaces for some of accessible parking spaces do not meet the AS2890.6:2009 minimum requirements and need to be addressed by the applicant.*

Green Travel Plans

Council's DCP 2013 (amended on 5 November 2015 Section 10) sets out those developments containing 50 or more dwellings to provide a Green Travel Plans (GTP). The applicant has not provided a GTP and is required to provide one.

Conclusion

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

- The applicant is to provide changing and shower facilities as set out in 2013 DCP.*
- The applicant is required to provide a car wash bay within the visitor parking area as set out in 2013 DCP.*
- The layouts of some accessible parking spaces need to be reviewed to satisfy the AS2890.6:2009 minimum requirements.*
- The applicant is required to provide sufficient loading facility to comply with the Council's DCP 2013 and is also required to address the minimum clearance height required by the Australian Standard.*
- The applicant is required to provide a Green Travel Plans (GTP) as set out in Council's DCP 2013*

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."

Planning comments: It is the foregoing conclusion of this report that the proposal should be refused on the basis of the stormwater engineering and general building issues as raised throughout this report. Accordingly, as the proposal is being refused on these grounds the matters as raised by the Traffic Engineer can also be incorporated into the reasons for refusal.

Landscaping

Council's Landscape Development Officer provided the following comments:

"The subject site includes two trees along its northern boundary, a Camphor Laurel and a Cheese Tree, that have a portion of their trunks on the driveway access to 237 Miller St, North Sydney. The two trees are not visible from either McLaren or Miller Streets due to the height and massing of the surrounding buildings. Major surface roots of the Camphor Laurel are raising and cracking the driveway pavement to the extent that it is creating a safety issue. No objection is therefore raised to its removal. The Cheese Tree is not worthy of retention due to the extent of the disturbance within the Tree Protection Zone during the construction of the new building. The removal of the two trees is supported by the consultant arborist Naturally Trees and consent has been provided by the owner of 237 Miller St. There is also a multi-trunked Queensland Umbrella Tree to the west of the existing building. There are no street trees impacted by the proposed works.

To mitigate the loss of the existing trees, a landscape plan has been submitted that provides replacement trees and shrub plantings for the narrow planting spaces which are in most cases in compromised shaded positions. The proposed landscape plan is generally considered to be satisfactory subject the conditions."

Planning comments: Should the application be recommended for approval, the conditions can be appended to any approval determination notice. **Note**, an updated landscaping plan reflective of the subject amended proposal has not been submitted and would be required for finalised landscaping requirement conditions of development approval.

Waste Services Officer

Concern was raised with the initial application (refer to Council's issues letter dated 6 April 2016 provided under the Relevant History heading of the report) with regard to the proposal to incorporate a chute accessed at each floor with a diverter to accommodate recycling materials.

The amended design has incorporates a separate garbage chute and separate recycling materials collection point to be provided on each residential floor and maintained/collection by building maintenance. The subject design also incorporates a temporary holding area for bins prior to collection from the right of way carriageway. Accordingly, the development is acceptable in this regard.

Design Excellence Panel

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

“Proposal

The site is located on the eastern side of Miller Street, one lot to the south of McLaren Street. No.229 Miller Street is a battleaxe allotment with the main body of the lot being rectangular in shape and has an access handle to Miller Street having a length of 35.4m and a width of 3.66m. The main body of the allotment has a depth of approximately 33.5m and a width of approximately 28.66m. The allotment has a total area of 1,091.1m² and the main body has an area of approximately 961m².

The site has a fall from Miller Street to the rear of approximately 8m and a fall of approximately 4.2m across the main body of the site. The site also benefits from two rights of carriageway, over No.221 Miller Street and No.41 McLaren Street. Vehicular access is currently available directly from Miller Street via the access handle. No.229 Miller Street is currently occupied by a four storey brick residential building.

No.231 Miller Street is located immediately adjoining No.229 Miller Street to the north (of access handle) and northwest (of main body of the site) and contains an eight storey office building. No.231 Miller Street has recently had development consent granted for a nineteen storey mixed use development with ground level cafe and residential apartments above. The approved building has a five storey podium built largely to the boundaries, except Miller Street, and setbacks above the podium level, increasing with the height of the building. The approved building has a height of RL135 to the top of the roof top community room, with the lift overrun exceeding this height.

The application seeks approval for demolition and erection of a twenty level mixed use building above at grade and basement parking. The proposed building is to contain a total of 580m² of retail/business floor space, 117 residential apartments and parking for 93 cars and 8 motorcycles.

Consent is also sought for works to the approved, but yet to be developed, building at No.231 Miller Street. The works proposed are minor and include proposed doors opening from the approved café onto the pedestrian walkway to No.229 Miller Street and awnings to provide pedestrian comfort along that walkway.

The Panel and Council staff inspected the site prior to the meeting and the proponent was available for questions.

Panel Comments

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

The Panel recognised that the site was a battle axe site with no street frontage amongst high-rise development with no outlook (other than at upper levels to north and east), limited sunlight and poor amenity.

The Panel felt that the proposal was excessive for the site when compared to adjacent development with limited space and separation to adjoining buildings.

The Panel supported the proposed treatment of the entry to the site from Miller

Street and the modifications to the development at No.231 Miller Street with regard to the pedestrian access, café and awnings.

A view shaft along the access from Miller Street needs to be provided so that only the ground level (residential lobby) extends to within 3m of the northern boundary and can be seen from Miller Street. The northern alignment of the tower should match No.225 Miller Street to increase the building separation to No.39 McLaren Street (which would still be well under SEPP 65 recommendations).

The Panel recommends a substantial cut out be incorporated on the northern, eastern or southern side of the tower to provide natural light and ventilation into the lift lobbies and aid light and ventilation to units. The resultant vertical slot would also help provide more modelling to the façade, helping reduce its apparent visual bulk.

The Panel considered that the east elevation required further articulation and detailing with the materials to provide for a more slender 'tower' appearance. The horizontal balcony elements emphasised width over height which is at odds with more successful buildings adjacent.

Building elements should be arranged to emphasise height in a positive sense, the introduction of a slot, or similar strong articulation to the north elevation, greater articulation to the east elevation and a better arrangement of building massing would achieve substantial improvements. Replanning of the floor layouts would likely result in positive amenity outcomes.

The use of expanded mesh privacy screens to winter gardens were generally supported, however careful thought would need to be given to the final colour and maintenance. The applicant should consider the potential for the screens to generate noise impacts in high wind conditions, and ensure that they function effectively in relation to sun protection without resulting in glare impacts due to their 'pattern'.

The Panel recommended that the common room on level 18 be moved to the northeast corner to provide for better views and more sunlight. This was particularly important given the large number of apartments with limited amenity, poor solar access and outlook.

All apartments need to comply with regard to the minimum floor area and width requirements for apartments and balconies under the Apartment Design Guide.

The proposed floor to floor height at 2.97m within the residential part of the tower appears insufficient to provide the minimum required 2.7 floor to ceiling heights required by the ADG. Details of how the proposal can meet the minimum ceiling height requirement must be provided. The ADG (figure 4C.5) indicates a floor to floor height of 3.1m is expected to allow for a 2.7m floor to ceiling height to habitable rooms.

The proposed floorplate exceeds the recommended dimensions under the ADG. The Panel considered that the building depth North to South was excessive at 23 metres and the alignment with No. 225 Miller Street would achieve improved solar penetration and amenity. With the increased setback to the northern boundary and the modifications suggested above, the floorplate and the density of the proposal is likely to be reduced to a more acceptable proposal. Given the reduced tower footprint, consideration should be given to reduce the apartment numbers to 7 per floor instead of 8. This may also reduce the corridor lengths within apartments, improving internal efficiency.

Conclusion

The Panel does not support the proposal unless the concerns raised are addressed and resolved."

Planning Comment: The amended plans are now the subject of this assessment. It is noted that whilst increased separation and setback has been provided to the northern side of the building, the tower element is not in alignment as per the DEP request.

Additionally, the cutout as requested by the panel to improve upon the apartment amenity has not been provided. A small cutout/recess for the purposes of improving the verticality of the design has been incorporated into the eastern elevation however this cutout does not serve any function to improve apartment amenity or communal foyer lighting.

The lowest four levels of the building have also retained the 8 apartments per floor where the apartment amenity, particularly with regard to solar access is at its lowest.

These aspects will be discussed in more detail throughout the report. The character statement recommends that adequate side separation should be provided for residential amenity. The concern remains that the proposal is too dense and provides insufficient amenity for the occupants of the building to be supported in the circumstances.

Roads and Maritime Services

Roads and Maritime Services has reviewed the application and advised:

"Roads and Maritime has reviewed the submitted application and raises no objection to the proposal subject to the following requirements being included in any consent issued by Council:

- 1. The redundant driveway on Miller Street shall be removed and the vehicular crossing shall be replaced with kerb & gutter to match the existing.*
- 2. A Road Occupancy Licence should be obtained from Transport Management Centre for any works that may impact on traffic flows on Miller Street during construction activities.*
- 3. A construction zone will not be permitted on Miller Street."*

Ausgrid

Ausgrid has reviewed the application and advised:

"A review of the development has been undertaken in relation to potential impacts or interfaces with Ausgrid's electricity infrastructure. Ausgrid has identified the following assets:

- 132,000 volt cables and 33,000 volt cables (blue and green lines, respectively), which reside within the 'right of way' benefiting No. 229 and 231 Miller Street (shaded in red); and*
- Ausgrid's North Sydney Zone Substation (shaded yellow) within approximately 30 metres of the development.*
- Ausgrid underground electricity transmission cables associated with North Sydney Zone substation are located adjacent to the proposed development site within the access driveway connecting the site to McLaren St. The conditions associated with these major cables will be advised separately by our Transmission department.*
- The development will need to comply with the requirements of our Network Standards NS113 and NS141 (available at our website at: www.ausgrid.com.au) with regards to any existing or proposed Ausgrid*

substations that are located on the lots immediately adjacent to the proposed development site. In particular, action should be taken to ensure compliance with the fire segregation requirements relating to the placement of any proposed windows, building ventilation systems, gas reticulation systems, and fire hydrant installations, as stated within these documents.

- 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.”

Sydney Water

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

“We have reviewed the application and provide the following comments for your consideration.

Water

- The drinking water main available for connection is the 200 mm main on the Western side of Miller Street.
- Detailed drinking water requirements will be provided at the Section 73 application phase.

Wastewater

- The wastewater main available for connection is the 150 mm main traversing the property.
- Where proposed works are in close proximity to a Sydney Water asset, the developer may be required to carry out additional works to facilitate their development and protect the wastewater main. Subject to the scope of development, servicing options may involve adjustment / deviation and or compliance with the Guidelines for building over/adjacent to Sydney Water assets.
- Detailed wastewater requirements will be provided at the Section 73 application phase.”

SUBMISSIONS

The owners, occupiers of adjoining properties and the Stanton Precinct were notified of the proposal between 15 January 2016 – 5 February 2016. A total of 5 submissions were received from residents and/or owners of 39 and 41 McLaren Street and 221 Miller Street (all adjoining properties) with the main issues being summarised as follows:-

Name & Address of Submitter	Basis of Submissions
Joan Walsh and Colin Prentice 604/39 McLaren Street, north Sydney 4 February 2016 joTwalsh@hotmail.com	<ol style="list-style-type: none"> 1. Increased density with no provision for direct street access. Vehicle access via existing right of way from McLaren Street will increase congestion in an already busy narrow lane way and the increase in car and service vehicles will lead to increased noise for the residents of 39 McLaren Street. 2. Increased safety risks as the right of way is also used by pedestrians and school children. 3. Poor emergency access via the right of way. There will be inadequate space for fire rescue vehicles

	<p>particularly in the case of a major fire in a 20 level building.</p> <ol style="list-style-type: none"> Existing trees are likely to be affected by the building's construction and increased traffic flow. This will impact on the views and privacy of residents in 39 McLaren Street.
<p>Brett Brown Ingham Planning</p> <p>On behalf of Executive committee of SP47495 (39 McLaren Street, North Sydney</p> <p>5 February 2016</p> <p>brett@inghamplanning.com.au</p>	<ol style="list-style-type: none"> Inadequate setbacks/separation provided to adjoining buildings, particularly on northern side buildings and 39 McLaren Street. A number of apartments on the southern side have direct orientation to the south and low amenity as existing. Raise concern over the poor solar access performance of the development. No apparent justification is provided beyond the site being constrained. Concern over further overshadowing to the building from new development proposal at 168 Walker Street, North Sydney. Car parking is provided in excess of Council's requirements inclusive of the requirements for a future child care centre. Traffic assessment is inadequate nor has properly considered constructional impact. Concern over construction impact and potential for impact to residential amenity as a result of the numerous impending approvals in the area.
<p>Barbera and Victor Norden 11/45 McLaren Street, North Sydney</p> <p>7 February 2016</p>	<ol style="list-style-type: none"> Concerned over overlooking from new building to existing surrounding buildings Concerned over further congestion to rear right of way Solar Access will be limited given the concentration of surrounding buildings Concerned over timing of waste removal Lack of architectural merit in the design.
<p>Michael Harrison Architectus</p> <p>On behalf of 41 McLaren Street North Sydney unit trust</p> <p>8 February 2016</p>	<ol style="list-style-type: none"> Insufficient building separation has been provided, resulting in significant loss of outlook and amenity for apartments within adjoining buildings. As a result of the minimal building separation, the proposal has sought to provide visual privacy through orientation of windows, louvres and screens. Although this resolves some visual privacy considerations, it results in poor amenity for future apartments and does not address the loss of outlook for adjoining properties. The building depth exceeds the maximums provided by the Apartment Design Guides resulting in poorly designed units with poor access to natural light and cross ventilation, with only 52% of units achieving cross ventilation according to the applicant - but our review indicates very poor cross ventilation and natural ventilation. Although reduced setbacks have been approved previously by Council, this has been applied on sites where only one boundary or elevation has been negatively affected. In these other instances, balconies and habitable rooms have been able to be orientated towards another building preserving some outlook for future apartments. In the subject instance,

	<p>the proposal will result in a poor outcome on three out of four boundaries, providing limited opportunities to orientate future apartments away from existing buildings. This raises the question whether the site is capable of being developed to such an extent, where it results in poor amenity for future residents and such a significant loss of amenity for adjoining properties.</p> <ol style="list-style-type: none"> 5. The proposal would result in a dense cluster of 20+ storey buildings which would result in a very poor urban form. Although the site is not directly adjacent to any formal public domain it is noted that the existing right of way to the east of the site is frequently used by the surrounding residential and business community as a pedestrian thoroughfare. As such, the proposal also needs to achieve a high quality outcome in terms of its contribution to the quality of the public accessible spaces near it. 6. The subject site is an isolated site. Presumably, it had the opportunity to be developed at the same time as 225 Miller St as a coordinated development but chose not to do so at that time. It is clear that development potential of the subject site was considered then given the blank wall to a height of 16 levels on the east face of 225 Miller St. 7. Council is currently preparing a precinct plan for built form for the subject street block and therefore the proposal of such a scale is quite premature. As such, it is vital that the proposal be subject to the highest level of scrutiny and adequately responds to the constraints of the site, adjoining properties and the requirements of the current planning controls.
<p>Bob Shin Yuhu Group 221 Miller Street, North Sydney</p> <p>8 March 2016</p> <p>BobShin@yuhugroup.com.au</p>	<ol style="list-style-type: none"> 1. Whilst a through site link is proposed, it will not engage in any way with the one approved through 221 Miller Street, North Sydney. Creation and engagement with 221 Miller Street, North Sydney will allow for a possible north south link which may allow for improved Disabled Ramp access. 2. The levels to the proposed child care centre also present an opportunity for greater engagement with 221 Miller Street, North Sydney. Further consideration to the southern elevation could alleviate the currently proposed blank façade.

Amended Plans – Renotification

The applicants submitted amended plans on 26 April 2016 in response to the comments of the Design Excellence Panel and Council's Issues letter dated 6 April 2016. Accordingly, the owners, occupiers of adjoining properties and the Stanton Precinct were re notified of the amended development from 6 – 20 May 2016. The second notification resulted in one (1) new submission, raising issues summarised in the table below.

Name & Address of Submitter	Basis of Submissions
Walter Gordon	1. Strongly object to the height of the building Specifically, we

<p>Director Meriton Property Group</p> <p>20 May 2016</p> <p>walterg@meriton.com.au</p>	<p>were requested by Council at the time of preparing our Development Application to have no openings along the boundary shared by 229-231 Miller Street, except for the top 3 levels.</p> <p>The top 3 levels of our building were permitted because Council stated acknowledged that any future development of 229-231 Miller Street would be below our balconies in accordance with the Council's planning controls. The western elevation plans submitted with the Development Application clearly show the proposed building will completely block out light, ventilation, outlook and direct views from the top three levels of our building.</p> <p>Our position is that the proposed building including plant and architectural features be lowered to sit entirely below the top three levels of our building.</p> <ol style="list-style-type: none"> 2. There is a Right of Way benefiting our land for unlimited access (referring to over the current driveway battle-axe handle). We have not been approached to remove this right of way for the proposed development. The proposed plant rooms and outdoor terraces will remove the access, to which we object to. The right of way along this part of the site provides us maintenance and servicing access for our building. 3. We have our basement car parking levels along the eastern boundary adjoining 229-231 Miller Street. How will the applicant protect our basement structure should the basement wall be exposed during excavation? Any damage would be at the applicant's cost. 4. How is privacy being treated to protect the amenity from our balconies along the northern elevation?
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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.

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:

Principle 1: Context and Neighbourhood Character

The design addresses the Miller Street desired future character by providing activation at ground level with an active pedestrian access handle with pedestrian amenity via a new though the site link to the north and landscaped areas at ground. The proposed buildings scale, use and design will respond to the existing context and be consistent in character with the surrounding developments.

Principle 2: Built Form and Scale

The proposed development is generally consistent with the visual height and bulk of the existing and desired future character for development in this area, it being noted that the breach of the height control is a response to the site context and the scale of the immediately adjoining buildings. However, as discussed later, certain aspects of this development are unsatisfactory in terms of separation and amenity and clearly do not meet the objectives of the ADG's. Further concern also remains outstanding regarding the building being able to achieve the required 2.7 metres floor to ceiling heights whilst only providing 2.97 metres of clearance between the floor (typically 3.1 metres is required).

The general built form, whilst lacking a distinct podium is acceptable in the circumstance given its lack of primary street address. Generally an acceptable suite of materials is proposed to provide for detailing and articulation. Sufficient visual articulation is provided over the remainder of the elevations of the building for the components the building which will be visible from public places.

A final matter remains in this regard with the interface of the green roof proposed at level 17 and the balcony of the adjacent existing building at 225 Miller Street, North Sydney. There has been no detail provided for the necessary parapet, depth of planting proposed for the green roof nor whether a balustrade is required to ensure the green roof remains non trafficable from the occupants of the adjacent balcony of 225 Miller Street, North Sydney. An additional balustrade may result in further reductions to the amenity of the adjoining apartment. Accordingly, the proposal is not currently supported in this regard.

Principle 3: Density

The density of the development with particular reference to the density comparison data provided under the "Relevant History" heading of the report will be the most dense development in terms of the dwellings yield per 100 m² of site area (exclusive of the access handle) and number of storeys proposed. Appropriate density is largely determined by the height, separation and setback controls.

Density Comparison

	Subject DA	Approved (JRPP)	Approved (JRPP)	As Built (Council approved)
Address	229 Miller Street	231 Miller Street	221 Miller Street	225 Miller Street
DA No.	DA487/15	DA453/14	DA256/15	DA658/06
Site Area (m ²)	1091 (Less access handle = 961)	521	2007	885
Total Dwellings	113	60	183	79
Serviced Apartments	-	-	100	-
Unit Mix (%)				
Studio	26 (23%)	23 (38.3%)	27 (14.8%)	-
1 Bed	35 (31.0%)	9 (15%)	71 (38.8%)	12 (15.2%)
2 Bed	37 (32.7%)	21 (35%)	76 (41.5%)	43 (54.4%)
3 Bed	15 (13.3%)	7 (11.7%)	9 (4.9%)	24 (30.3%)
Dwg Yield (/100sqm)	10.36 (11.75)	11.51	9.12	8.93
Roof RL (ex Plant)	135.19	135.22	144.1	139.9
Total Storeys	20-21	18-19	22	21

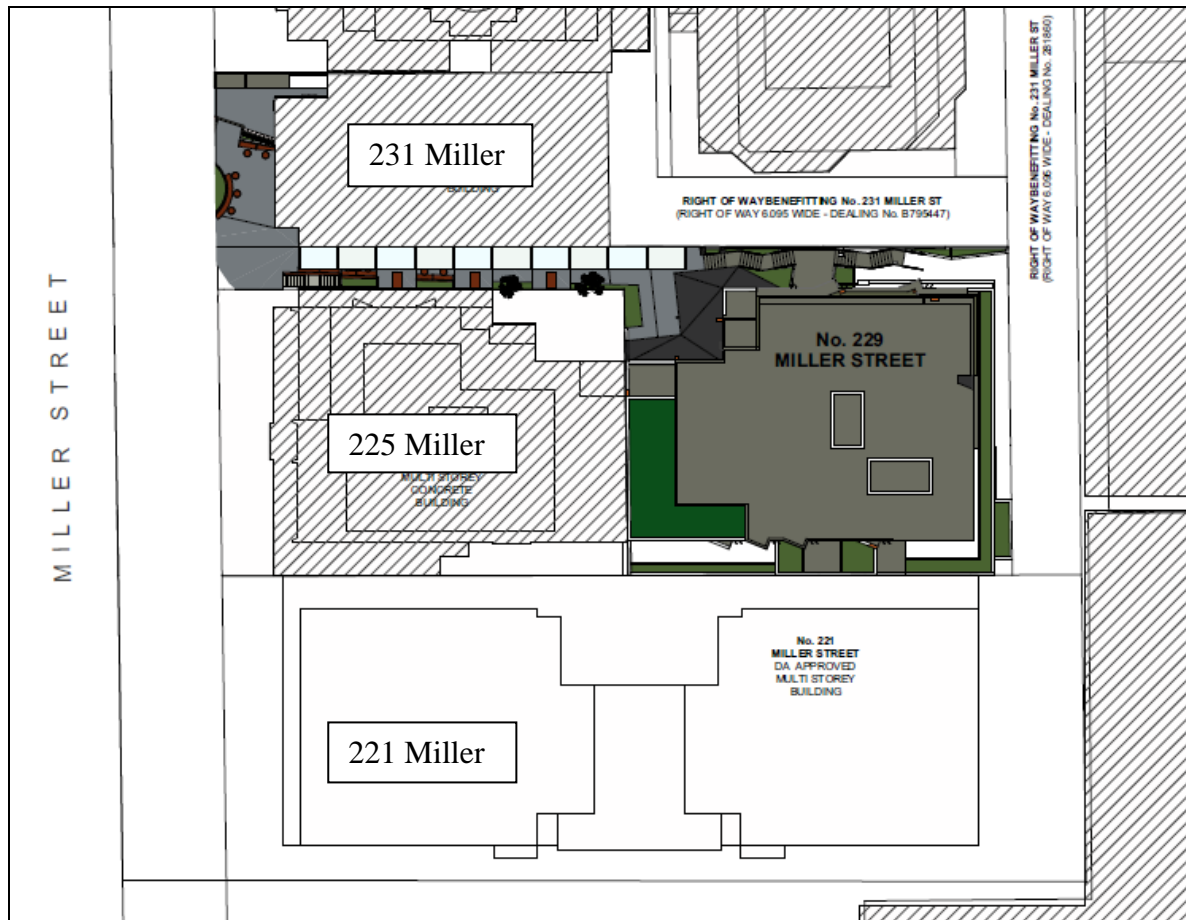


Figure 9: Extract of Plan DA02(c) showing approved building outlines relative to subject site

The proposed building is not fully compliant with setbacks and separation, and this in turn results in a substantial number of apartments having low amenity particularly at the lower levels of the building. The site constraints are such that a substantial reduction to the total number of apartments within the building is required to improve upon the overall residential amenity in particular the lower apartments.

The overall density of the proposed development is considered to be excessive given the highly constrained nature of the site. The proposal to achieve 113 dwellings on an effective site area of 961 sqm is unreasonable. A substantially redesigned proposal must be delivered including a reduction in dwelling density in order to achieve adequate amenity for future residents. Accordingly, the proposal is not supported in this regard.

Principle 4: Sustainability

The building is designed for energy efficiency despite it being constrained by the orientation and the size of adjoining buildings to the north, north-west and west. The applicant has sought to maximise Solar access by orienting all apartments to the north or east, with no direct south facing apartments proposed. Notwithstanding this, concern is still raised with the total number of eastern orientated apartments particularly at the lower levels of the building. A significant improvement to the overall amenity of the apartments could be achieved via a reduction to the total numbers of apartments, provision of greater floor to ceiling heights at lower levels and unit layout changes and amalgamation, particularly to the studio apartments at the lower levels of the building.

The BASIX report submitted with the application otherwise shows appropriate use of energy and water efficient devices and design.

Principle 5: Landscape

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

Principle 6: Amenity

The sizes and private open spaces of the residential apartments satisfy the minimum area and dimension requirements of the ADG. All balconies are orientated towards the available open frontages (being the north and east or screened to minimise potential privacy impacts on surrounding residents). Concern is raised however the total amount of solar access available to the internal living areas units within the development, particularly at the lower levels of the building.

The development matrix submitted with the application advises 73% of the apartments within the development achieve the required solar access however this is dependent on extending the solar period from the required 9:00 am to 3:00 pm of the ADG's to 8:30 am to 3:00 pm. Council's analysis of the proposal reveals that the three south eastern apartments from the ground level through to level 10 will receive no direct or marginal amounts of direct sunlight after 9:00 am in midwinter. Above level 10 the south eastern apartments will have the potential to receive more general light however the solar performance is still considered to be very poor.

A reduction to the total number of units at the lower levels and redesign of the apartment layouts is considered necessary to substantially improve amenity to apartments facing east. The amendments deemed necessary to address these amenity concerns will require a reduction in the total dwelling yield, with improved amenity to be achieved through amalgamation and redesign of units. Accordingly, the proposal is not supported in this regard.

Principle 7: Safety

The proposed design addresses safety and security requirements by providing separate ground floor lobbies for the residential and commercial components of the development and are appropriately lit to provide access to persons with disabilities. The ground floor lobbies visually connect to the through site link running east west through the site. Pedestrian access points to the building whilst shielded by the existing buildings on Miller Street will be identifiable if viewing the building from the battleaxe handle. In the circumstances, the building is acceptable in this regard.

Principle 8: Housing Diversity and Social Interaction

The apartment design provides a mix of one, two and three bedroom dwellings that generally satisfies the ADG. Fifteen percent (15%) are capable of adaptation for access for all age groups and degrees of mobility each unit will have access to dedicated secure disabled car space in the basement.

A variety of private, communal and public landscaped areas are provided within the site. The proposed building provides opportunities for enhanced social interaction within the public and communal domain. Also, pedestrian linkages through the site have been maintained.

Principle 9: Aesthetics

Whilst a range of materials is proposed to create visual interest, concern is raised regarding the use of specific materials particularly the use of mesh panels for movable screens to the northern, eastern and western elevations. Other low quality materials include external rendered concrete painted a basic "vivid white" which does not significantly contrasted with balustrades which is also a white glass light colour. Accents are provided primarily with a grey colour for aluminium framing and cladding. The principle accent colour is the "fresh clay" feature walls and aluminium blades. Whilst the building does not have a podium, it is considered that more emphasis to materials changes can be added to create a false podium effect.

The northern elevation is the most articulated elevation in terms of materials and colours. The eastern elevation is simpler with the vertical cutout providing separation and articulation between the main upper elevation material zones.

Apartment Design Guide (ADG)

The proposed development has also been considered against the Principle Apartment Design Guide Parameters as follows:

Parameter	Design Criteria	Compliance	Comment
Separation	<p>Minimum separation distances for buildings are:</p> <p>Up to four storeys (approximately 12m):</p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>Five to eight storeys (approximately 25m):</p> <ul style="list-style-type: none"> • 18m between habitable rooms/balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms <p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> • 24m between habitable rooms/balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 	NO	<p>Generally the positioning of the building is such the separation distances in accordance with the ADG cannot be reasonably achieved on site.</p> <p>The proposed buildings nearest residential receivers are located at 221, 225, 231 Miller Street and 39 McLaren Street, North Sydney</p> <p>Separation varies a relative to the surrounding buildings with the largest separation being proposed at the north western cross space with 225 Miller (varies from between 16 metres to 24 metres) and reduces from 13 metres to 17.1 metres (at 231 Miller Street) to 11.8 metres to 12.7 metres (39 Miller Street)</p> <p>Separation to the south to the adjoining approved building at 221 Miller Street is consistent but at its minimum 6 at the nearest point and 12 metres at it maximum separation at the point where 221 Miller Street provides an internalised courtyard within the site.</p> <p>Maximising the separation around the northern space is considered to be vital in the circumstances as this is where the most beneficial amenity can be obtained in terms of solar access and privacy protection can be gained.</p> <p>The approved development at 221 Miller (Yuhu Group) has been designed with regard to this potential separation. Whilst the separation is insufficient at this point, the site could not otherwise be developed for its zone purpose and comply with the separation requirements to the southern boundary.</p>

Parameter	Design Criteria	Compliance	Comment
			<p>The issue of separation to the northern boundary has been raised with the applicant who responded by cutting back the northern elevation of the residential tower of the building to increase setback and separation. The increased setback however not accorded with the DEP advice to align the residential tower northern setbacks with those as existing at 225 Miller Street, North Sydney.</p> <p>The applicant submits that further northern setbacks cannot be provided due to the engineering requirements to support the building at that point and that the residential tower should project forward of the northern setbacks of 225 Miller Street to allow for street address to Miller Street. The concerns relating to the engineering requirements have not been substantiated as this is a new build (not a refurbishment of an existing tower) and the necessary support can be provided for at the construction certificate stage.</p> <p>Council also contends that the constrained nature of the site should be maximised to provide for as much amenity to the apartments as can be achieved. It is submitted that if the number of apartments on the lower levels of the building is reduced to delete the south eastern studio apartment proposed over levels ground through to Level 10 this will allow for the separation/setbacks to be increased to the northern side of the building and the apartments on the lower levels to be redesigned to improve upon the amenity of eastern orientated apartments.</p>
Setbacks	Merit	NO (assessed as acceptable)	<p><u>Southern Boundary</u> - 3.0 m</p> <p>Comment – reciprocates setback provided to recent development to the south at 221 Miller Street Adjoining apartment orientated to east. It is long, narrow and very low amenity.</p>

Parameter	Design Criteria	Compliance	Comment
		NO (assessed as acceptable)	<p><u>Eastern Boundary</u> - 3.0 m</p> <p>Comment – The existing right of way access provides for an additional 6 metres of separation to the easterly direction.</p>
		NO	<p><u>Northern Boundary</u> 3.6 m – up to Level 9 4.4 m from level 10 and above</p> <p>Comment - The existing right of way access provides for an additional 6 metres of separation to the northerly direction.</p>
		NO	<p><u>Western Boundary</u> 0 metres basement through to Level 16 4.1 metres provided to level 17+</p> <p>Comment – adjoins existing approved building at 225 Miller Street. Setback provided to upper levels to preserve northern and south eastern outlook of uppermost apartments at 225 Miller Street, North Sydney</p> <p>Council contends that the upper floor relationship with No. 225 Miller is poor and should be improved.</p>
Solar and daylight access	70% off apartments to receive 2 hours of direct sunlight between 9:00 am to 3:00 pm	NO	<p>Claimed compliance 83 of the 113 apartments (73%) will receive 2 hours of direct solar access to living spaces and private open space between 8:30 am to 3:00 pm. Particular concern is also raised to the solar performance of the units of the lower portion of the building.</p> <p>The internal spaces on some apartments particularly at the south eastern corner of the building will not benefit direct sunlight during the key hours on June 21 at all.</p> <p>Even utilising the applicants own figures for solar compliance up to Level 9, the buildings solar access is only 53%. Council's assessment indicates compliance will be substantially lower (30%) for the units up to level 9.</p> <p>As suggested under the discussion provided under the separation heading of the report, the line of south eastern studio</p>

Parameter	Design Criteria	Compliance	Comment
			apartments between ground level and level 10 should be substantially modified and amalgamated. This would afford an opportunity to increase the northern setback and widen the eastern aspect afforded to the eastern orientated apartments thereby generating a substantial improvement to the solar performance of the building.
Natural ventilation	60% of apartments are naturally cross ventilated	NO	<p>Up to Level 9 - 53% Total of whole building 70%</p> <p>To improve upon the performance of the building in this regard, the DEP recommended a cutout be provided to the northern, eastern or southern elevation of the building through to the access corridor. The applicant has not nominated to provide for a substantial cutout, however includes a small slot to the east elevation which provides for minor visual relief only.</p>
Ceiling Heights	2.7m (habitable rooms)	Unsubstantiated	<p>Floor to floor clearance is given as 2.97 m (typically 3.1 clear required refer to diagram 4.C.5 page 87 of the ADG). The applicant has submitted engineering advice which contends that the required 2.7m can be achieved via the construction methodology proposed (pre stressed slabs).</p> <p>This was the same methodology proposed (and approved) for the construction of the building at 231 Miller Street, North Sydney.</p> <p>However, a Section 96 was subsequently lodged to DA453/14 to alter the overall building height within the approved building at 231 Miller Street, North Sydney to enable construction to proceed at floor to floor clearance of at least 2.7 m. Council however did not accept for construction reasons, the building had to increase. It remains necessary for the developer in this instance to demonstrate that floor to floor slab clearance of less than 3.1 m can be achieved as well as meet the weighted impact noise transfer standards for Residential Flat Buildings. Given the level of uncertainty in this aspect of the development and the poor standard of residential amenity at</p>

Parameter	Design Criteria	Compliance	Comment
			<p>lower levels, the Panel is urged not to support lower floor to floor clearances at ground through to Level 6.</p> <p>This matter was raised with the applicant in Council's letter dated 6 April 2016 along with the concerns associated with the overall height of the building. The applicant has submitted engineering advice Structural Design Solutions P/L, dated 26/04/16 (attached).</p> <p>Currently the building height can be supported given the compliance with the control and stipulated height limit with variation is only sought for plant and lift overruns. However, due to the substandard internal amenity and high potential for construction design issue then Council does not support the approach offered. In circumstances where the construction methodology is unable to be achieved, the concerns as iterated in Council's letter of 6 April 2016 are re affirmed and the total number of storeys within the development should be reduced from the proposal and appropriate floor to floor heights be proposed to enable the provision of 2.7 metre internalised floor to ceiling heights. Should a floor also be removed, this would also enable provision of larger floor to ceiling heights at the lower levels of the building thereby making it possible to improve upon the amenity of the apartments and solar access.</p>
Apartment size and layout	35m ² Studio 50m ² (1B) 70m ² (2B) 90m ² (3B)	Yes	35-45 m ² (Studio) 50m ² - 62 m (1B) 71 m ² -92m ² (2B) 100m ² -150m ² (3B) The apartments achieve the minimum required apartment sizes. This does not overcome layout concerns nor amenity issues as raised elsewhere in this assessment table.
Apartment size and layout	Master bedrooms have a minimum area of 10m ² All secondary bedrooms have a minimum width of 3m Living rooms have a	Yes Yes	All master bedrooms have an area greater than 10m ² All secondary bedrooms have a minimum width of 3m Minimum width of living rooms is

Parameter	Design Criteria	Compliance	Comment
	minimum width of 3.6m (1B) and 4m (2B and 3B) The maximum habitable room depth is 8m from a window	Yes Yes	3.6 – 4.0 metres for studio and 1 br apartments. 4.0 metres or greater is utilised for the 2 br + apartments. The kitchens of the apartments are less than 8m from the windows.
Private open space and balconies	Studio – 4 m ² 1B – 8m ² 2B – 10m ² 3B – 12m ²	Yes	The proposal meets the ADG guideline in this regard.
Common circulation and spaces	Maximum number of apartments off a circulation core on a single level is 8	Yes	There are a maximum of 8 apartments per level at the lower levels.
Storage	6m ³ (1B) 8m ³ (2B) 10m ³ (3B)	Yes	Satisfactory storage areas are provided with the apartments and on the basement level.

It is the foregoing conclusion of this report that the proposal is unsatisfactory with regard to separation distances, setbacks, solar access, ventilation and concerns remain outstanding with regard to floor to ceiling heights and overall building height.

To ensure amenity is maximised throughout the development it is considered essential that further separation and setbacks be provided to the northern side of the building, and the dwelling density be reduced through the ground level through to level 10 of the building via the deletion of the south eastern studio apartment proposed over these levels. This will allow for apartment redesign to improve upon the amenity of the remaining apartments per floor. Were these measures incorporated into the proposal, the development would be supportable in this regard.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate has been submitted with the application.

SEPP No.55 (Remediation of Land) 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 residential purposes, contamination is unlikely.

SREP (Sydney Harbour Catchments) 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.

NORTH SYDNEY LEP 2013

Permissibility within the zone:

The subject site is located within the B4 Mixed Use zone, where development for the purposes of construction of a “Commercial Premises” with “Shop top housing” over is permissible with consent of Council.

B4 Mixed Use Zone Objectives

The specific objectives of the Mixed Use zone in Clause 14 are provided as follows:

- *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 commercial space, and residential apartments which are compatible uses with each other and surrounding land uses. The site is well located for access to public transport, being within a 700m walk from North Sydney Railway Station and being serviced by bus routes along Miller Street and Pacific Highway. The proposed development will be consistent with the objectives of the zone, however the internal amenity of the development is considered to be very poor given the site constraints and substantial design changes are required to improve the Development Application.

NSLEP 2013 Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
North Sydney Centre	Proposed	Control	Complies
Height (Cl. 4.3)	RL135. to the roof of Level 18 (highest level of accommodation), RL 136.90 to the top lift overrun A clerestory window is proposed over the second apartment of level 18 with RL 136.2	RL 135m AHD	NO (also refer to floor to floor height issue concern discussion after table)
Non Residential Floor Space (Cl.4.4a)	0.69:1	Minimum 0.5:1	YES
Overshadowing of dwellings (Cl.6.3 (1) (c))	The proposal has no detrimental shadow impacts upon any land zoned R2, R3, R4 of RE1 or land identified as a Special Area.	Variation permitted	YES
Overshadowing of land (Cl.6.3 (2) (a) and (b))	The diagrams demonstrate that the development will have no net increase in overshadowing between 12 pm and 2 pm on the land marked 'Special Area' on the North Sydney Centre Map. The proposal will not overshadow Don Bank Museum.	Variation permitted	YES
Minimum lot size (Cl.6.3 (2) (c))	1091 m ² Excluding access handle 961 m ²	1000m ² min.	Yes

Setback to Miller Street (Cl.6.4)	The proposal provides no works with a height greater than 1.5m above existing ground level within the front 5m of the subject site. Stair access down to the booster hydrant pump room is however for the purposes of the fire department requiring access from Miller Street.	5m setback to allow for landscaping and access	YES
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Building Heights

Clause 4.3 sets a maximum height for buildings on the subject site of RL 135m AHD. The amended application proposes a building height of RL 135.00 to the roof of Level 18 (highest level of accommodation). The development proposes an RL135.19 to the roof parapet, 136.20 to a clerestory windows on the roof and RL 136.92 to the top of the lift overrun, exceeding the height control.

Clause 4.6 permits variations to development standards, of which the RL 135 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 development by allowing flexibility.

The applicant has submitted the following written request:

"Clause 4.3 sets a maximum height for buildings on the subject site of RL 135m AHD. The proposed building complies with the height control of RL 135 other than for the lift overrun, which reaches a height of RL 136.9 and as such breaches the control by 1.9m.

It is noted that the proposed "blades" are considered to be architectural roof features and as such their height above the maximum height control is permitted by clause 5.6. In this regard the "blades" meet the criteria as they are a decorative element on the uppermost portion of the building, are not an advertising structure, do not include floor space and could not be modified to include floor space and will cause minimal overshadowing. These blades have been incorporated into the design of the building to provide visual interest and a point of difference from the surrounding tower building forms.

Clause 4.6 permits variations to development standards, of which the RL 135 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. It is considered that a better planning outcome can be achieved on this site by varying the control in order to permit the lift overrun to exceed the height control.

The lift overrun cannot be seen from the street or any other public place, is small in footprint and will not result in any significant detrimental impacts in terms of shadowing, loss of privacy or loss of views. Visually, the height of the building is fully in compliance with the height control and as such achieves the objectives of that control and the objectives of the mixed use zone, as were addressed previously. Were the lift overrun not permitted to exceed the height control, one storey would need to be removed from the development, which would result in it having the visual appearance of 3m below that anticipated by the control and as such a better planning outcome to achieve the visual intent of the control is to permit the lift overrun, which allows the top floor to be retained. For this reason there is an appropriate and necessary planning benefit to the variation of the height control in this instance and as such it is, in my opinion, in the public interest to permit variation of the standard for the reasons given.

It is not considered that there is any significant State or regional planning issues raised by the proposed variation to the control and in the circumstances and there is no public benefit to be had in maintaining the standard. For these reasons it is considered that compliance with the standard in this case is unreasonable and there are sufficient environmental planning grounds to justify the minor contravention of the development standard.

Further, clause 4-6(4) requires that prior to granting consent to such a variation the consent authority must be satisfied that the variation of the standard is consistent with the objectives of the standard and the objectives of the zone and these are addressed following.

The proposal satisfies the objectives of the Mixed Use zone which were identified above in section 11.2 of this statement.

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

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

The site has a slope from the front to the rear and this has been addressed appropriately by stepping the ground level at the front and rear to match the predominant levels of the adjoining street/right-of-way.

The breach of the height control has no impact on views as the properties to the north, north-west and north-east are developed with buildings, or have approved buildings, with residential floors lower than the height control and as such any view impact occurs due to compliant elements of the building.

Again, the impact on adjoining buildings in terms of solar access is a result of the compliant elements of the building.

The privacy of the adjoining buildings is not detrimentally impacted by the component of the building which varies the height control as it is a lift overrun and not habitable space.

The proposed height is specifically proposed in order to provide visual compatibility with the adjoining buildings, allowing an appropriate stepped transition in height of buildings as required by the North Sydney Centre controls and as such this provides an appropriate scale and density of development in accordance with the existing and desired future character of the area. The lift overrun is not visible from the public domain and as such does not alter the visual compatibility of the design.”

Considering the proposed height variation in isolation of other design issues such as internal residential amenity, the request is considered to be sufficiently well founded to empower the Panel.

There are sufficient environmental planning grounds, particular to the circumstances of the proposed development to warrant flexibility in the application of the development standard subject to appropriate setbacks being provided to the northern boundaries to further reduce amenity impacts to the apartments within the development.

However, as noted under the ADG Compliance table comments, concern is raised regarding the proposed method of construction utilising only 2.97 m of floor to floor separation over the residential levels. Should the building be proposed to be higher to achieve a constructible building and compliance with acoustic standards this casts into doubt the acceptability of the Clause 4.6 variation request. Should the resulting development need to be increased in height to achieve construction standards the development would have to be redesigned to remove at least one (1) storey. The floor to floor levels to achieve clearances in accordance with industry accepted standard of 3.1 metres would add an additional 2.2 metres to the overall height of the building and would not be supported in the circumstances.

Additionally, concern remains outstanding in this regard with the interface of the green roof proposed at Level 17 and the balcony of the adjacent existing building at 225 Miller Street, North Sydney. There has been no detail provided for the necessary parapet, depth of planting proposed to ensure viability of plantings for the green roof nor whether a balustrade is required to ensure the green roof remains non trafficable from the occupants of the adjacent balcony of 225 Miller Street, North Sydney. An additional balustrade may result in further reductions to the amenity of the adjoining apartment. Should the Panel support the application, then further details are required to resolve the matters detailed to ensure amenity is not unacceptably reduced to the existing adjoining apartment. Accordingly, the proposal is not currently supported in this regard.

Clause 4.4A Non-residential floor space

The provisions of clause 4.4A set requirements for floor space for non-residential uses, in this case the site requires a minimum non-residential floor space ratio must not be less than 0.5:1. The site has an area of 1091 m² and as such the non-residential floor space is required to be a minimum of 545.5 m². The proposal provides 753 m² (0.69:1) of non-residential floor space, complying with the control.

Cause 5.10 Heritage conservation

The provisions of clause 5.10 address heritage conservation and require consideration of the impact of developments within the vicinity of items of heritage. The subject site is located within the vicinity of a number of items of heritage, opposite the site in Miller Street at Nos. 128 Miller Street (Monte Sant Angelo Group), 192 Miller Street, 196 Miller Street and 200 Miller Street (North Sydney Council Chambers and fountain) and to the rear at No. 41 McLaren Street (Simsmetal House). Whilst the subject site is within the visual catchment of all of the above items of heritage, it is not considered that the proposal will have a detrimental impact on the heritage items or their settings as the building proposed is of commensurate height and design to surrounding development.

Clause 6.1 Objectives of Division (North Sydney Centre)

Objective	Comment
(a) to maintain the status of the North Sydney Centre as a major commercial centre	Proposal is 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	New non residential floor space is proposed and a developer commitment deed is in preparation. At the time of reporting however, the deed remain unexecuted and has not been lodged with the NSW Department of Planning and Transport. Any endorsement of

	the building cannot be completed until such time and written endorsement of the executed deed is received from the Department of Planning.
(c) to permit an additional 250,000 square metres of non-residential gross floor area in addition to the estimated existing (as at 28 February 2003) 700,000 square metres of non-residential gross floor area	The additional non residential gross floor area is within the 250,000m ² limit.
(d) to ensure that transport infrastructure, and in particular North Sydney station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and: (i) be convenient and accessible, and (ii) ensure that additional car parking is not required in the North Sydney Centre, and (iii) have the capacity to service the demands generated by development in the North Sydney Centre	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage. Planning for the Sydney metro has also commenced. The proposal does not provide for car parking on site exceeding the maximum permitted.
(e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres	Not possible on smaller battle axe site isolated site
(f) to protect the privacy of residents, and the amenity of residential and open space areas, within and around the North Sydney Centre	The residential amenity to surrounding building is considered to be sufficiently preserved in the circumstances. Concerns remain outstanding regarding the internalised amenity to apartments at the lower levels of the building. The development will not result in overshadowing open space area around the North Sydney Centre Area.
(g) to prevent any net increase in overshadowing of any land in Zone RE1 Public Recreation (other than Mount Street Plaza) or any land identified as "Special Area" on the <u>North Sydney Centre Map</u>	The proposed development will result in no additional overshadowing.
(h) to prevent any increase in overshadowing that would adversely impact on any land within a residential zone	No impacts. No adjacent residentially zoned land.
(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

Clause 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. The height breach to the Building Height control is such that it is limited principally to building plant, architectural detailing and minor parapet incursions.

- (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 or RE1 or land identified as a Special Area.

- (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,*

As the proposal has no direct Miller Street presence or interface this section is not applicable. All weather cover is provided to the battle axe access arm of the development for pedestrian comfort.

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

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

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

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

The proposed building does not overshadow land zoned RE1 or any Special Area between 12pm and 2pm.

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

The proposal does not overshadow Don Bank.

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

The development site at 1091 m² complies with the minimum 1,000 square meters and does not require further consolidation.

Clause 6.4 Miller Street setback

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

- (b) the part of the building that will be on that land is used only for access to the building or landscaping purposes.*

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

Clause 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 site are dedicated residential with no existing commercial space currently existing on site. The subject proposal will result in the creation of an additional 753 m². The matter was raised with the applicant in Council's issues letter dated 6 April 2016 and the commencement of a deed of agreement in accordance with this clause has commenced. As of the time of writing the report however, the deed has not been executed nor submitted to the Director General of the Department of Planning for certification. The application cannot be supported against the provisions of this clause.

Clause 6.10 Earthworks

Clause 6.10 of NSLEP 2013 seeks to ensure that earthworks will not have any detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The existing building currently has no basement levels. To achieve the new basement levels, bulk excavation will extend to depths ranging to 14.0 m for the lowest basement level and some additional pits down to 15 metres in depth for services such as lift shafts and car stacker. There is no effective opportunity for reuse on site for fill purposes. All of the material to be disposed off site to an approved landfill site.

As per the provisions of Clause 6.10(3), the following matters are required to consider before consent can be issued.

- (3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:**
- a) the likely disruption of, or any detrimental effect on:**
- i. drainage patterns and soil stability in the locality of the development, and**
 - ii. natural features of, and vegetation on, the site and adjoining land,**

The site as existing is entirely devoid of remnant vegetation or natural rock outcropping

typical of an inner city site. The site also occupies a relatively low point in the immediate locality and as such will be reliant on a pump out system to manage natural seepage into the basement areas. The excavation in itself will not disrupt or divert natural subsurface drainage patterns but require measures in the basement to manage the ground water flows.

b) The effect of the development on the likely future use or redevelopment of the land,

The proposal is in generally in accordance with the intended future character of the site zoning and general locality.

c) the quality of the fill or the soil to be excavated, or both,

Given the extended residential history of the site it is unlikely that the site has experienced any significant contaminating activities which would give rise for concern relating to the quality of material to be excavated off site. Where practicable, some of the excavated material will be re used on site however the majority of the excavated material will be removed off site for disposal to a suitable landfill.

d) the effect of the development on the existing and likely amenity of adjoining properties,

The excavation in itself is not considered to result in any amenity impact to these properties beyond unavoidable construction impact. The development and excavation is acceptable in this regard.

e) the source of any fill material and the destination of any excavated material,

Where practicable, some of the excavated material will be re used on site however the majority of the excavated material will be removed off site for disposal to a suitable landfill.

f) the likelihood of disturbing Aboriginal objects or relics,

The site has an extended history of residential usage and the general locality is substantially built up and natural topography highly modified. The likely hood of encountering undisturbed relics is exceptionally low in the circumstances. Notwithstanding this, standard conditions can be imposed upon any consent that should any artefacts or relics be uncovered during works that works are to cease and the relevant Authorities contacted.

g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

Appropriate sediment and erosion control measures have been to prevent sediment movement into the drainage infrastructure. Council's Development Engineers have also examined the proposed stormwater disposal plan and concluded (subject to recommended conditions of consent) that post development stormwater discharge quality should be reasonably maintained. The development is acceptable in this regard.

Prior to demolition, dilapidation reports are to be required, externally on the adjoining properties located to the north, west and south of the site. A copy of these reports is to be provided to the respective property owners and Council for record keeping. The dilapidation reports may then be used as a benchmark against which to assess possible future claims for damage resulting from the works. In this manner the reports protect the builder from unfounded claims relating to damage existing prior to the commencement of work. This can be

conditioned. Appropriate conditions can be recommended with regard to geotechnical reports.

In accordance with the provisions of Clause 6.10(3) this assessment has considered the impact of the excavation on site and to surrounding properties and found the excavation to be acceptable or can be adequately controls via the imposition of conditions of development consent. Accordingly the development is acceptable in this regard.

DEVELOPMENT CONTROL PLAN 2013

Relevant Planning Area North Sydney Planning Area – 2.1 Central Business District

The application has been assessed against the relevant controls in the DCP 2013 with regards to the North Sydney Planning Area and the Civic Neighbourhood area. The proposed development is considered to be generally consistent with the desired character of the locality. There are however a number of concerns with the passive general amenity of the proposed building as detailed in the following assessment table.

DCP 2013 Compliance Table

Please note: Sections of the DCP clearly not applicable to the development have not been included in the assessment table.

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	Complies	Comments
2.2 Function		
2.2.1 Diversity of Activities	Yes	<p>The proposal satisfies, or can satisfy, these requirements with the non-residential floors suited for both a large single occupant or smaller occupancy suites. Residential uses are located above.</p> <p>The non-residential uses and utility areas of the building are immediately adjacent the rear right of way access laneway. Appropriate accessibility is provided in all communal residential areas and non-residential uses at ground level and residential above.</p>
2.2.2 Maximise Use of Public Transport	Yes	The proposal satisfies these requirements, proposing 2 parking spaces for non-residential users of the site and making appropriate provision for bicycle storage as well as providing a shower for end of trip usage. Parking for apartments is at the maximum required.
2.2.3 Mixed Residential Population	Part	<p>Studio 10%-20% = 26 (23%) 1 Bedroom 25%-35% = 35 (31%) 2 Bedroom 35%-45% = 37 (32.7%) 3 Bedroom 10%-20% = 15 (13.3%)</p> <p>As can be seen, the proposal is compliant with the above required development mix in relation to 1 to 3 bedroom apartments, but is over the stipulated requirements in terms of studio apartments. Generally the apartment mix is considered to be well resolved however concern remains outstanding regarding the total number of and general amenity of the apartments, particularly at the lower levels of the building.</p> <p>A minimum of 15% of dwellings are to be adaptable housing under the provisions of the</p>

		DCP and 17 adaptable apartments are proposed.
2.3 Environmental Criteria		
2.3.1 Clean Air	Yes	<p>The proposal incorporates a suite of energy efficient measures as required by the associated BASIX certificate</p> <p>Car parking provision including bicycle parking will generally comply with Section 10 DCP2013.</p>
2.3.2 Noise	Yes (condition)	The proposal can be conditioned to ensure plant and or air-conditioning units to not give rise to any unacceptable acoustic impact to any adjoining premises. The development is acceptable in this regard.
2.3.3 Wind Speed	Yes	The proposal will not result in pedestrian comfort been adversely affected by wind when walking along Miller Street. The local building separation and articulation of the existing building will assist in wind amelioration. The site is located away from the public domain.
2.3.4 Reflectivity	Yes (condition)	A condition of consent can be imposed to ensure any reflectivity of building materials is minimized.
2.3.5 Artificial Illumination	N/A	Being a battleaxe allotment, with limited ground level exposure to Miller Street there is no requirement for floodlighting to any portion of the building.
2.3.6 Awnings	N/A	Being a battleaxe allotment a street awning cannot be provided for the development. All weather protection is provided down the pedestrian access handle and over the residential and commercial lobbies.
2.3.7 Solar Access	NO	<p>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.</p> <p>The provisions require spaces to be created between taller buildings to allow daylight penetration, for setbacks to be provided between buildings above podium level and to avoid apartments with only southerly orientation. The proposal provides its greater separation on the northern and eastern side of the building however proposes nil setback to the western side and limited setback to the southern side of the building. Whilst the proposal has no apartments that are solely oriented to the south the amenity of the apartments, particularly on the lower eastern side of the building are not considered to be of sufficient amenity to be supported in the circumstances.</p> <p>The matter is discussed in detail under the ADG Compliance assessment table and the proposal is considered to be unsatisfactory in this regard.</p>
2.3.8 Views	Yes	The proposed building will change the outlook of many surrounding apartments, with the loss of some district views that are currently available above the existing building on the subject site. The loss of these views is inevitable with the redevelopment of the subject site. The views are affected by the compliant part of the building and not where the height control is exceeded.

2.3.8 Acoustic Privacy and 2.3.11 Visual Privacy	NO	<p>From a specific privacy standpoint the development proposes utilises unit orientation including, angled windows and balcony edge treatments to maintain privacy visual and aural privacy. Notwithstanding the measures, separation distances as set out under the ADG's are not and cannot be provided throughout the development.</p> <p>As discussed under the Separation section of the ADG compliance table, further separation and accordingly improvements to visual and aural privacy can be gained via the deletion of the south eastern studio apartment of residential levels ground floor through to level 10</p>
2.4 Quality built form		
2.4.1 Context	Part	<p>The site is located within the Central Business District and accordingly is subject to the Local contextual analysis as set out under Part C Section 2 North Sydney Planning Area – 2.1 Central Business District of North Sydney DCP 2013. The building accords with the intended desired future character and zone characteristics of the B4 Mixed Use.</p> <p>Reference is also made the proposed floor to floor levels being less than 3.1 metres. Should the Panel support the application, a condition would be required to ensure sound weight impact noise standards would need to be certified by an appropriately qualified professional at the Construction Certificate stage of the development.</p> <p>Section 2.1 anticipates that buildings in the locality will have podiums however the subject building has no distinct podium. The lack of a podium in the circumstances is acceptable given the sites battleaxe location and no significant direct public street frontage. Generally, on the upper portion of the building from its most visually prominent position at McLaren Street will be visible (refer to Figure 6 earlier in the report)</p>
2.4.3 Setback	NO	<p>Setbacks are to be provided in accordance with the character statement, with setbacks to consider the setbacks of adjacent buildings. A zero front, side and rear setback is to be provided for the podium unless a character statement requires an alternate setback. The LEP requires a front setback of 5m from Miller Street that has been provided. The character statement requires adequate setbacks above the podium to provide for residential amenity. The DCP adopts the ADG separation distances between buildings that cannot be complied with due the narrowness of the site and existing setbacks of adjacent buildings. See detailed comments under setbacks heading of the ADG compliance table.</p>
2.4.4 Podiums	N/A	<p>See comments provided under the "Context" heading.</p>
2.4.5 Building Design	NO	<p>Requires floor to ceiling heights of 3.3m at ground and first floor and 2.7m at upper levels</p>

		<p>and requires facades to be appropriately articulated. The ground level contains non-residential floor space and has a floor to ceiling height of 3.3m. The building contains residential apartments at the upper levels which have proposed floor to ceiling heights of 2.7m, complying with the control.</p> <p>Only 2.97 m is provided separating the residential floors. Typically 3.1 m is provided to allow for adequate slab thickness and interslab services. While the applicant has submitted engineering certification regarding the constructability of floors to these minimum thicknesses whilst still providing a minimum 2.7 m internalized floor to floor ceiling height, the sites positioning, internal layout design and separation to adjoining buildings results in poor solar and cross ventilation characteristics particularly to the lower floor apartments.</p> <p>In order to offset the poor amenity the DEP requested that a cutout from the outside of the building to the lift core to either the northern or eastern elevation be provided to the building. The applicant provided a pseudo cut out for building design and articulation purposes but did not create a cut out which made any substantial improvement to building amenity. In lieu of providing a cut out an alternative means of improving amenity can be increase the interfloor floor to ceiling heights.</p> <p>The applicant has not nominated to utilize either method and the overall apartment amenity, particularly at lower levels is considered to be unsatisfactory.</p> <p>The facades of the development are generally appropriately articulated by the provision of variation to materials and void spaces and by the provision of horizontal and vertical articulation with the use of metal blades. The building design and materials has been modified in response to the concerns raised by the DEP. The proposal with regard to materials, can be supported in this regard.</p>
2.4.6 Skyline	Yes	<p>The building is generally compliant with the building stipulated height limits. The uppermost floors have additional architectural detailing and elements which punctuate the skyline. Permissibility and acceptability of these decorative features is given effect by Clause 5.6 <i>Architectural roof features</i> of <i>NSLEP 2013</i>. The development is acceptable in this regard.</p>
2.4.8 Balconies - Apartments	Yes	<p>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.</p>
2.4.9 Through Site pedestrian links	Yes	<p>The site as existing provides for an informal through site link from McLaren Street, down the private right of way access and up the battleaxe handle to Miller Street.</p>

		<p>The through site link down the battleaxe handle and past the northern side of the building is proposed to be altered but maintained. The access also serve to provide for external pedestrian access to the lower commercial floor of the building. The development is acceptable in this regard.</p>
2.4.10 Streetscape	Yes	<p>Given the site battle axe positioning, the site has limited streetscape presence and no direct opportunity for direct streetscape interface to Miller Street.</p> <p>The treatments proposed down the battle axe handle to interface with the café element of 231 Miller Street is considered to be a positive feature in the circumstances to provide for activation and passive surveillance of the access.</p> <p>The upper portion of the eastern façade is provides for sufficient elements to provide for visual interest and articulation when viewing the building from McLaren Street. The development is acceptable in this regard.</p>
2.4.11 Entrances and Exits	Yes	<p>Sufficient protrusion of the ground floor level (not to be confused with the issues raised in the ADG assessment table regarding separation to the upper residential levels of the building) of the building is proposed that the primary entrance to the building will be able to be noted from Miller Street. Given the sites inherent site constraint of being located down the battleaxe handle, this is satisfactory in the circumstances.</p>
2.5 Quality Urban Environment		
2.5.1 Accessibility	Yes	<p>At grade access will be available from Miller Street with lift access through all other areas.</p> <p>The development provides for a compliant number of adaptable apartment in accordance with policy. The proposal is satisfactory in this regard.</p>
2.5.2 Safety and Security	Yes	<p>The principle building entry will be visible from Miller Street. Additionally, with the activation proposed for the café component of development along the Miller Street battleaxe handle will also improve upon the latent safety along the main access handle.</p> <p>The development is acceptable in this regard.</p>
2.5.4 High Quality Residential Accommodation	NO	<p>The controls require that apartments generally have the following minimum sizes and corridors are to have a width of 2m and have no more than 10 dwellings accessible from a single common lobby. The maximum depth of a habitable room from a window is 10m and apartments are to have a minimum width of 4m.</p> <p>Studios 40m² 1 bed 50m² 2 bed 80m² 3 beds 100m²</p>

		<p>The applicant has provided compliant minimum floor areas in accordance with the DCP controls for all 1,2 and 3 bedroom apartments. The applicant however has nominated to provide a significant number of studio apartments that adopt the minimum floor area requirements of the Apartment Design Guidelines of 35 m².</p> <p>Concern is raised in regard to an excessive number of single aspect studio apartments (apartment 4 or 5 depending on the given level) with sole orientation to the east. Ground level to Level 10 studios are designed to the minimum 35 m² of floor area and have an internalized width of 3.6 metres. The width and layout however is not conducive to adequate solar penetration into the internal living areas of the apartments. The position of the bedroom to the adjacent northern apartment which will further impair the solar penetration.</p> <p>Additionally a secondary series of minimalist studios are also proposed from the ground level through to level 4 which also have a designated width of 3.6 metres and singular orientation to the east. As they are proposed to the lower levels, their width will result in poor internalized amenity. This poor amenity should be offset by greater floor to ceiling heights and widths and / or by use of crossover or dual storey apartments.</p> <p>The applicants development summary table also advises that cross ventilation for the apartments within the building up to level 8 is 53% below the required 60%. A lowering of apartment density particularly the substandard studios proposed to the lower levels would result in an improvement overall building amenity performance indicators.</p> <p>Furthermore lowering of the apartment density would also allow for the incorporation of a cutout to the building thereby assisting in delivering improved amenity in the form of cross through ventilation and direct and ambient solar access particularly to the lower level apartments.</p> <p>The development is not satisfactory with regard to solar amenity. Further discussion associated solar access is provided in the ADG Compliance table.</p>
2.5.5 Lightwells	NO	<p>Following concerns raised over the width of the floor plate of the building, it was a recommendation of the DEP to provide a cutout to either the southern, eastern or northern elevation of the building to improve upon the general amenity performance of the building. The applicant has not nominated to provide a lightwell and the general amenity of the proposed apartments, particularly at the lower levels remains unsupportable.</p>
2.5.6 Private Open Space	NO	<p>Similar to the issues raised under 2.5.4 High Quality Residential Accommodation the proposal</p>

		<p>is compliant with this requirements with the exception of the significant majority of the studio apartments the bulk of which do not provide outdoor balcony space in accordance with the minimum 8 m² requirement. Given the general poor level of amenity provided to these apartments the further degradation in amenity from the lack of width and balcony space is not supported.</p> <p>This is somewhat offset via the provision of a high quality common room space provided at level 18 of the proposal. Whilst the position in the building is supported the internalized space is 37 m² and external space is 29 m² for a total area of 66 m²</p> <p>The communal residential space should be a minimum of 20 m² or 1 m² per bedroom, whichever is the maximum. Applying the rate per bedroom provides for 170 bedroom therefore generating a requirement for 170 m². The applicant makes claim that the additional space is provided down the access way from Miller and through thoroughfare to the private right of way and entry foyers result in a total of 370 m² being provided however these ancillary spaces are not for the exclusive use of the residents and accordingly cannot be included as wholly dedicated communal space for the residents.</p> <p>Accordingly, the substandard studio apartments private open space should be improved and further dedicated communal space for the exclusive use of residents should also be increased throughout the development.</p>
2.5.7 Vehicular Access	Yes	No direct access from Miller Street. Access provided via right of ways over two sites from McLaren Street. The reduction to vehicular accesses from Miller Street is a positive aspect of the development.
2.5.8 Car Parking	Yes	The development provides for a compliant amount of parking as per the DCP requirements. Concerns remain outstanding as per the comments as per the Traffic referral heading of the report. See comments under traffic.
2.5.9 Garbage Storage	Yes	<p>Garbage chute provided with compactor. Recycling material to be collected and managed via building maintenance.</p> <p>A temporary holding area is provided within site before collection from the right of way for collection with No.231 and 237 Miller Street.</p>
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency	Yes	BASIX certificate submitted details a compliant level of energy efficient fixtures and appliances to the building.
2.6.2 Passive Solar Design	NO	In order to meet the 70% requirement, the development only achieves this requirement by extending the solar access period to 8:30 am. The development is not considered to have been maximized in the circumstances and a significant improvement could be achieved via a reduction

		to the total number of apartments particularly at the lower levels of the apartments and reduction to apartment depths.
2.6.4 Natural Ventilation	NO	Concern is raised to general levels of ventilation particularly at the lower levels of the building. This issue is discussed in detail under the ADG Compliance assessment table earlier in the report.
2.6.12 Green Roofs	Yes	Dedicated non trafficable green roof provided on level 18 of the development

Suspensions of Covenants, agreements and similar instruments

Council is unaware of any covenants, agreements or the like which may be affected by this application.

SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's Section 94 plan would be required to be paid for the new residential apartments and commercial space proposed. As the development as proposed is currently not supported, accurate contribution payments have not been calculated at this time.

DESIGN & MATERIALS

The design and materials are considered to have an acceptable impact upon the surrounding heritage buildings and locality.

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

SUBMITTORS CONCERNS

Issues raised by submitters include:

- *Concern of increase congestion via existing right of way from McLaren Street will increase congestion in an already busy narrow lane way*

Planning Comment: As Council and the RMS do not support the continued provision of vehicular access from Miller Street, the only vehicular access to the site is via the existing right of way. Whilst the concern is noted, the building is well positioned for the occupants to utilise public transport or work locally thereby reducing the reliance on car usage.

- *Increased safety risks as the right of way is also used by pedestrians and school children.*
- *Existing trees are likely to be affected by the building's construction and increased traffic flow.*

Planning Comment: The right of way is privately owned and the subject site retains the benefit of the access over the right of way. Whilst the concern is noted, the ROW strip is clearly for ancillary purposes and is not conducive for fast vehicular movements.

With regard to the trees, precautionary tree protection measures can be placed upon any consent notice to require the developer to protect the trees.

- *Inadequate setbacks/separation privacy impacts to adjoining buildings*

Planning Comment: Council concurs with the concerns and does not support the proposal in this regard. Further improvements to building separation/setbacks and accordingly privacy can be made via recommended amendments as per the conclusion of this report.

- *Raise concern over the poor solar access performance of the development. No apparent justification is provided beyond the site being constrained.*

Planning Comment: Council concurs with the concerns and does not support the proposal in this regard. Further improvements to building solar performance can be made via recommended amendments as per the conclusion of this report.

- *Concern over further overshadowing to the building from new development proposal at 168 Walker Street, North Sydney.*

Planning Comment: 168 Walker Street is significantly removed from the subject site. It is likely that solar impact 41 Walker street would have a more significant solar impact to the building than 168 Walker Street. The submission is not supported.

- *Traffic assessment is inadequate nor has properly considered constructional impact.*
- *Concern over construction impact and potential for impact to residential amenity*
- *How will the applicant protect our basement structure should the basement wall be exposed during excavation?*

Planning Comment: Council can place standard conditions on any approval limiting the hours of construction and other construction noise related impacts. This would include the submission of a construction traffic management plan. Additionally, a concept excavation plan has been submitted by the applicant which details methods of shore piling to support adjoin buildings during construction.

- *Concerned over the residential density/ level of density increase to the immediate locality.*

Planning Comment: Council also has concerns regarding the density as detailed throughout

the report. To make the proposal supportable the development would need to be reduced in total apartment numbers, floor plate and potentially also height.

- Concerned over timing of waste removal

Planning Comment: Waste collection is to be managed by the building management. Should concerns arise from neighbouring buildings, the neighbouring buildings strata management can raise the matter to the building management to rectify the situation. Standard precautionary condition can also be imposed upon any determination to ensure waste is not collected between certain times to protect residential amenity.

- *Lack of architectural merit in the design.*

Planning Comment: Sufficient merit and articulation is proposed to be incorporated into the design. The proposal is acceptable in this regard.

- *Whilst a through site link is proposed, it will not engage in any way with the one approved through 221 Miller Street, North Sydney. Creation and engagement with 221 Miller Street, North Sydney will allow for a possible north south link*

Planning Comment: Whilst the suggestion has merit, Council has no authority to require the applicant to connect to other through site links approved over other sites.

- *The top 3 levels of our building were permitted because Council acknowledged that any future development of 229-231 Miller Street would be below our balconies in accordance with the Council's planning controls. The western elevation plans submitted with the Development Application clearly show the proposed building will completely block out light, ventilation, outlook and direct views from the top three levels of our building.*
- *Our position is that the proposed building including plant and architectural features be lowered to sit entirely below the top three levels of our building.*

Planning Comment: Council is not aware agreements to require the building to be lower than the adjoining building. The building is proposed to be in accordance with the stipulated height control (notwithstanding the concerns associated with the floor to floor height) and separation is provided from the uppermost units of the adjoining building at 225 Miller Street. These units will be adjacent to a low maintenance non trafficable roof garden with no apartments on that floor orientated towards those apartments. Additionally, those apartments maintain outlook to the north and southeast. The objection is not supported.

- *There is a Right of Way benefiting our land for unlimited access (see attached documents). We have not been approached to remove this right of way for the proposed development. The proposed plant rooms and outdoor terraces will remove the access, to which we object to. The right of way along this part of the site provides us maintenance and servicing access for our building.*

Planning Comment: The applicant has obtained a copy of the submission and confirmed the submitter does not have any rights over the Right of way in question.

CONCLUSION

The application has been assessed against the relevant statutory controls and has regard to the existing and approved developments adjacent to the subject site. The proposal as amended made improvements to the design as initially submitted in response to Council's concerns raised in its letter dated 6 April 2016.

The amended proposal however, has failed to provide adequate setbacks and separation to surrounding residential buildings as set out under the ADG. Additionally, the proposal is not considered to have made all reasonable attempts to maximise apartment amenity and the proposal is also not supported. It is recognised that the site is small and isolated however, the apartment density remains excessive and opportunity exists to make further improvements to the amenity in this regard.

Additionally, whilst the building at its current height proposed is potentially supportable, concern is raised regarding the constructability of the residential levels at floor to floor heights of 2.97 m and their ability to achieve the minimum stipulated 2.7 internal floor to ceiling heights. If this cannot be achieved and the floor to floor heights need to be raised, this alters the conclusions of the Clause 4.3 building Height discussions (and associated Clause 4.6 Variation request) and the development would also be unsupportable in this regard.

The extent of amendments required to bring the development into acceptable levels is such that they cannot be reasonably conditioned in the circumstance and alternatively, Council has no alternative but to recommend refusal of the proposal.

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

- Deletion of the south eastern studio apartments featured on the Ground floor level through to Level 10.
- A reduction to the floor plate of these levels to increase the setbacks/separation distances to the adjoining buildings to the north and northwest.
- Redesign of the ground floor to Level 10 apartments to improve the floor to ceiling heights, apartment widths for solar access and ventilation purposes.
- Submission of a revised landscaping proposal with particular to the treatments proposed to the level 17 green roof space.

If the Panel also concurs with concerns raised regarding the Building Height then it is also recommended that further amendment would be required in the form of the removal of a whole floor of the development and floor to floor heights increased at the lower levels of the building be increased to make further improvements to the residential amenity.

Additionally, other matters remain outstanding which prevent Council being unable to recommend approval at this time. These include:

- An executed Deed of Agreement for Rail Contributions as required pursuant to Clause 6.5 Railway Infrastructure and endorsed in writing by the Department of Planning has not yet been obtained by the applicant.
- Resolutions of inter allotment drainage matters as raised in the Engineering Referral heading of the report.

Accordingly, the development application is recommended for **refusal**. Should the Panel have a different view of the concerns raised, draft conditions cannot be prepared at this time due to the extent of matters requiring resolution and prevent council from generating a comprehensive draft set of condition for JRPP endorsement.

RECOMMENDATION

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

- A. **THAT** the Sydney East Joint Regional Planning Panel **refuse** 2016SYE015 – North Sydney Development Application No. 487 /15 for demolition of existing residential flat building and construction of mixed use building consisting of 113 apartments, commercial space and 85 car spaces at 229 and 231 Miller Street, North Sydney for the following reasons:

Inadequate Building Separation

1. The proposed development provides for inadequate setbacks and building separation distances to its northern and north western boundaries.
2. Due to the insufficient setbacks and separation distance to adjoining buildings the development results in unacceptable privacy (visual and aural), reduced daylight and ventilation impacts to existing and proposed surrounding apartments.

Excessive Density

3. The proposal exhibits excessive density of apartments via the number of units per floor and total number of floors throughout the development. The consequential development would result in unacceptable internal amenity to apartments within the building and to adjacent development with regard to overshadowing, aural privacy and reduced daylight and ventilation to units.

Internal Apartment Amenity

4. The internal amenity for the apartments within the development is very poor due to the excessive density, minimised floor to floor heights and general apartment layouts.

Interface with 225 Miller Street, North Sydney upper level

5. Insufficient detail is provided to resolve the circumstances at the balcony interface level of between the roof and adjacent balcony's on the upper level of 225 Miller Street, North Sydney. The finished roof level and FFL of No 225 Miller Street should be revised to improve the relationship between buildings.

Kim Rothe
SENIOR ASSESSMENT OFFICER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES