

# JOINT REGIONAL PLANNING PANEL (Sydney East Region)

## SUPPLEMENTARY ASSESSMENT REPORT

JRPP No	<b>2016SYE015</b>
DA Number	<b>DA 487/2015</b>
Local Government Area	<b>North Sydney Council</b>
Proposed Development (As Amended)	<b>Demolition of existing residential flat building and construction of mixed use building consisting of 99 apartments, commercial space and 85 car-spaces (Amended proposal)</b>
Street Address	<b>229 &amp; 231 Miller Street, North Sydney</b>
Applicant	<b>Yaver Pty Ltd</b>
Owner	<b>Yaver Pty Ltd</b>
Number of Submissions	<b>Six (6) submissions (Original Proposal) Two (2) to subject amended proposal</b>
Regional Development Criteria (Schedule 4A of the Act)	<b>Capital Investment Value &gt; \$20 m</b>
List of All Relevant s79C(1)(a) Matters	<b>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</b>
List all documents submitted with this report for the panel's consideration	<b>Plans (Revision D) Statement of modification Revised Clause 4.6 Request for Modification (Building Height)</b>
Report by	<b>David Hoy, Team Leader Assessments</b>
Report date	<b>12 August 2016</b>
Recommendation	<b>Deferred Commencement</b>

## EXECUTIVE SUMMARY

The subject application was originally reported to the JRPP on 23 June 2016 and sought approval for demolition of existing residential flat building and construction of mixed use building consisting of 113 apartments over 18 residential levels with a sublevel commercial tenancy and at-grade basement entry from a right of way at the eastern (rear) site boundary with parking for 85 car-spaces.

The application was recommended for refusal on five primary grounds including inadequate building separation, excessive density, inadequate internal apartment amenity and poorly resolved interface with the adjoining development to the immediate west at 225 Miller Street, North Sydney.

At the meeting the Panel resolved unanimously to defer the application to enable the significant design issues to be addressed. Specifically, the Panel resolved to require the development to be amended to address the following:

- 1. Increase the floor to floor height to a min 3.1m without an increase in the overall height of the building*
- 2. Reduced dwelling numbers, particularly on levels 1-10, which should result in increased unit sizes*
- 3. Modification of the floor layouts on all levels to maximise solar access and cross ventilation*

The amended plans were submitted to Council on 14 July 2016 in response to the above incorporating a substantial number of amendments. The amended proposal achieves the requirement for increased floor to ceiling heights required by the Panel and includes partial compliance with the remaining points requiring internal layout changes and an overall reduction of units, particularly between residential levels 1 to 10.

The amended proposal comprises a total of 99 apartments being 26 x studios, 35 x 1 bedroom apartments, 37 x 2 bedroom apartments and 15 x 3 bedroom apartments with a floor space of 753m<sup>2</sup> for the retail/commercial component.

This supplementary report has considered the amended proposal against the requirements of all relevant environmental planning instruments, including SEPP 65 and the Apartment Design Guidelines (ADGs). Specific consideration has been given to the building separation and amenity requirements of the ADGs owing to the highly constrained nature of the site.

The subject development will not achieve the building separation and solar access requirements of SEPP 65 and the ADGs, however given the applicable height control, zoning, the site context and the history of similar approved development in the immediate vicinity of the site, the proposed development is considered to adequately respond to the site constraints and would generally achieve the built form anticipated at the site.

In relation to solar performance and internal unit amenity further amendments are recommended to improve solar performance, such amendments would result in a further reduction of 8 units at Ground to Level and improved solar performance accordance with the minimum 2 hours standard of direct sunlight to private open spaces and internal living rooms.

Further amendments are also recommended in relation to the interface with the adjoining building at 225 Miller Street. A minimum setback of 8 metres from the common boundary with No. 225 is recommended to reduce the roof top plant room and delete a bedroom in Unit 1 at Levels 16 & 17. Such reduction would substantially improve outlook to the north-east of the top floor units of the adjoining non-compliance balconies.

On balance, the development is considered to adequately respond to the amendments requested by the Panel and site constraints. However, due to outstanding issues arising from the proposed stormwater management of the subject site and the adjoining property at 231 Miller Street, it is recommended that consent be granted on a **deferred commencement** basis.

## DESCRIPTION OF PROPOSAL (AS AMENDED)

The application seeks approval for demolition of existing structures and erection of a twenty (20) storey mixed use building and basement parking.

The core amendments made to the proposal since consideration by the JRPP Panel are described as follows:

- A full storey of the building has been removed from the proposal and the tower from the ground floor (entry level) podium and is now seventeen (18) storeys (including ground floor).
- The removal of the floor has facilitated and increase to the floor to floor height to achieve a minimum 3.1 metres in order to preserve 2.7 metres floor to ceiling height for improved internal unit amenity at the lower floors. The ground floor level (lowest floor containing residential apartments proposes a floor to floor height of 4.2 metres being approximately 3.9m floor to ceiling.
- The height of the building to the roof is the same as originally proposed at RL135. The roof level, associated parapet and other features to the roof match the proposal which was considered by the JRPP on 23 June 2016.
- The number of units within the residential tower has been reduced from 113 to 99. The revised apartment mix is as follows:

UNITS & UNIT MIX	ORIGINAL PROPOSAL		AMENDED PROPOSAL	
Type	No.	%	No	%
Studio	26	23%	20	20%
1 Bed	35	31%	25	25%
2 Bed	37	33%	39	39%
3 Bed	15	13%	15	15%
<b>TOTAL</b>	<b>113</b>	<b>100%</b>	<b>99</b>	<b>100%</b>

- Total parking in the basement has been revised as follows (reduction of 5 total spaces):

Residential Parking	78
Commercial	2
Parking	
<b>Total Parking</b>	<b>80</b>
<b>Motorbikes</b>	<b>8</b>
<b>Bicycles</b>	<b>116</b>

- 16 of the parking spaces have been designated to be accessible parking spaces and one visitor space is designated to be a car wash bay.

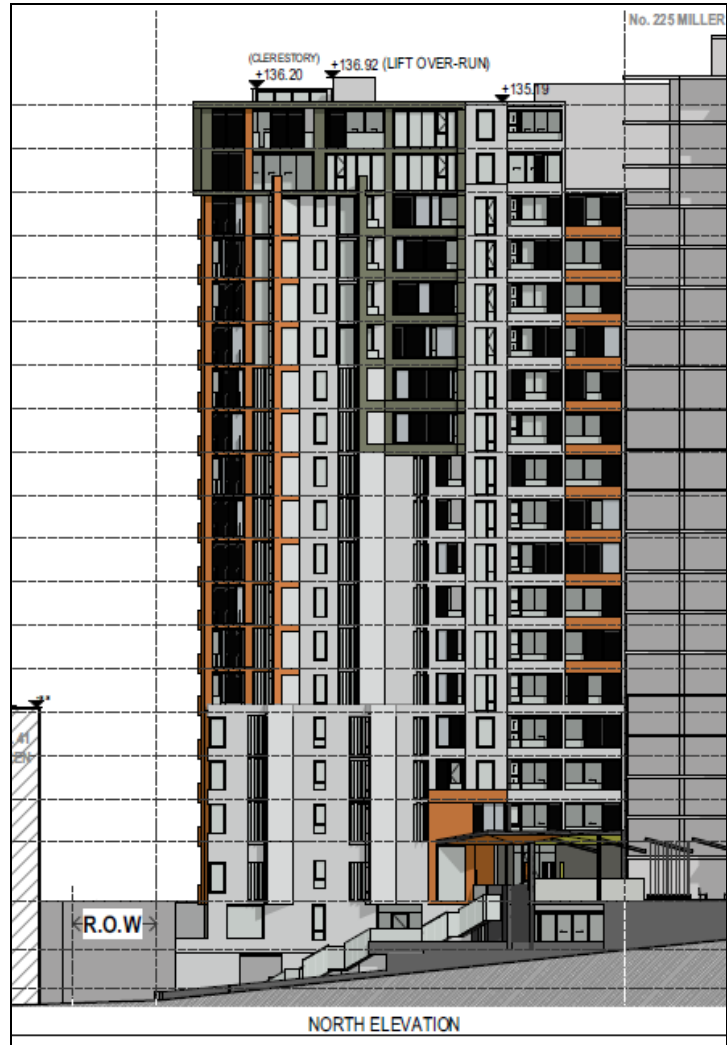
Accordingly, the floor by floor description of the development as amended is as follows:

- Basement 4: contains parking for 7 cars, 100 residential storage units, lift core and a plant room.
- Basements 2 and 3 are split level basements, each containing parking for 24 cars (4 accessible), 1 motorcycle, and 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 (one designated the car wash bay), 5 motorbike spaces, separate lift to commercial component of building, plant room, storage areas. A shower and toilet are designated on the upper level. The lower level provides vehicular access to the basement parking, with a driveway ramp accessing the basement, loading area and

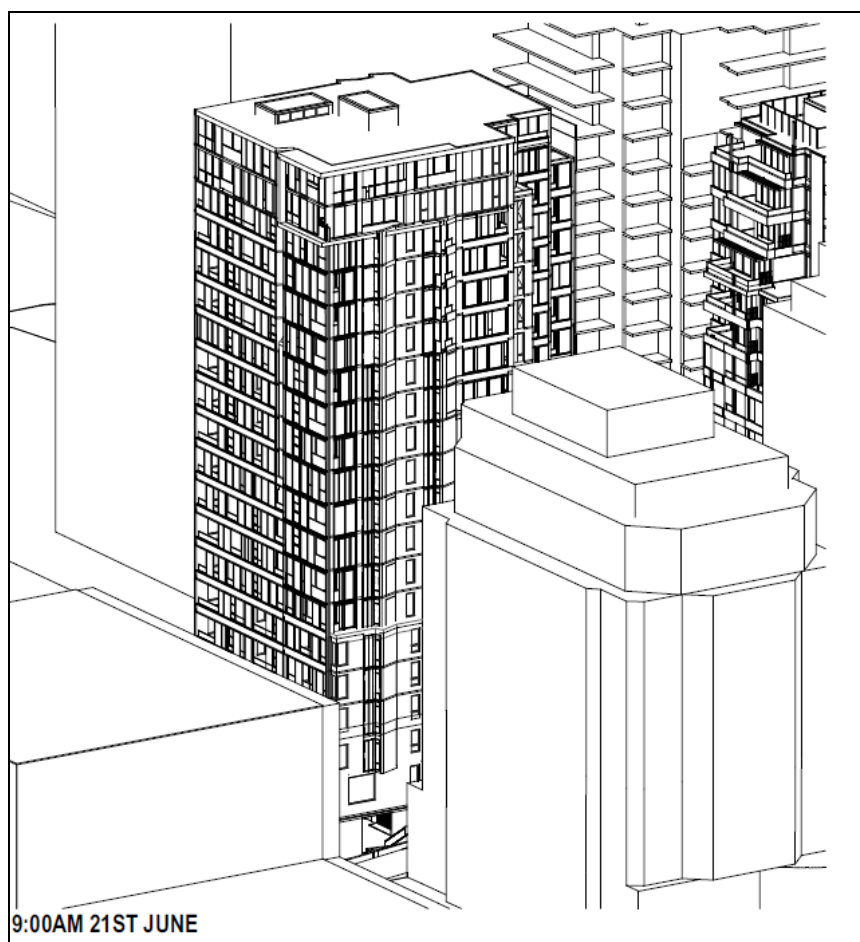
- garbage holding bay. This level also contains plant, substation, a detention tank, a garbage storage room with compactor.
- Commercial Level: This level is below the level of Miller Street and contains a commercial floor having an area of 581 m<sup>2</sup> with surrounding terraces to the south and 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 m<sup>2</sup>) and to the separate residential lobby. Four residential apartments (reduced from 5), being 1 x studio, 2 x 1 bedroom apartments and 1 x 2 bedroom apartments, are located on the eastern side of the ground level. All east orientated balconies are proposed to have winter gardens with the exception of apartment 4 secondary balcony off the bedroom.
  - Levels 1 - 3: Residential levels each containing seven apartments (reduced from 8), being 2 x studios, 2 x 1 bed, 2 x 2 bedroom apartments and 1 x 2 bedroom apartments plus study however can be easily converted to a three bedroom apartment. All balconies are proposed to be winter gardens.
  - Levels 4 - 7: Residential levels each containing seven apartments, being 2 x studio, 3 x 1 bedroom, 1 x 2 bedroom and 1 x 3 bedroom apartment. All balconies are proposed to be winter gardens.
  - Levels 8 – 9: Residential levels each containing six apartments, being 1 x studio, 2 x 1 bedroom, 2 x 2 bedroom and 1 x 3 bedroom apartment. All balconies are proposed to be winter gardens.
  - Levels 10 – 11: Residential levels each containing five apartments, being, 4 x 2 bedroom and 1 x 3 bedroom apartment. All balconies are proposed to be winter gardens.
  - Levels 12 – 15: Residential levels each containing five apartments, being, 1 x 1 bedroom apartment, 3 x 2 bedroom and 1 x 3 bedroom apartment. All balconies are proposed to be winter gardens.
  - Level L16 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. All balconies are proposed to be winter gardens.
  - Level L17 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 m<sup>2</sup>) with a north east orientated landscaped terrace. All apartment balconies are proposed to be winter gardens however the common room balcony will be open.
  - Sixteen apartments are adaptable apartments, all being 1 bedroom or studio apartments.
  - Proposed building is to contain a total of 753 m<sup>2</sup> of retail/business floor space (0.69:1 FSR).
  - 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 ground floor commercial tenancies onto the connecting pedestrian walkway to No. 229 Miller Street with awnings over to provide all weather cover along the walkway.



**Figure 1:** Proposed eastern (ROW) elevation of the subject proposal from the north east or Lower McLaren Street, North Sydney



**Figure 2:** Proposed North elevation facing No. 39 McLaren Street, North Sydney.



**Figure 3:** 3D “Sun’s eye” view of the proposed development 9:30am 21 June 2016 detailing indicative envelopes at Nos. 39 & 41 McLaren and 225 Miller Street, North Sydney.

## STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Clause 4.3 Building Height – RL135
- 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

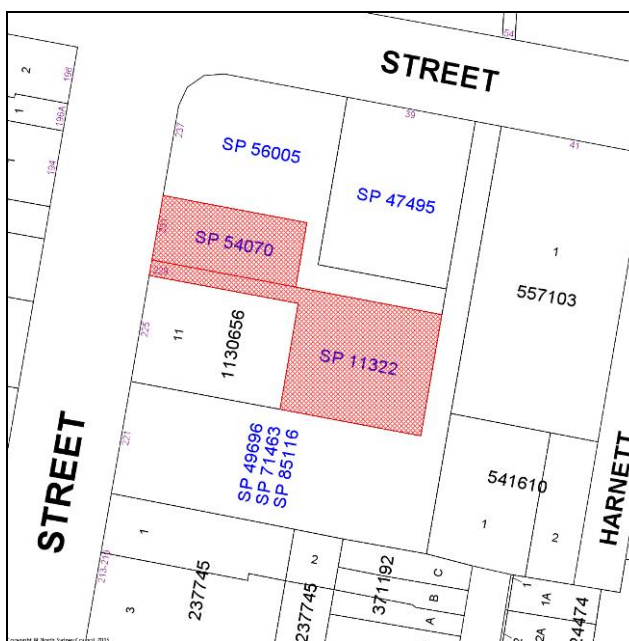
North Sydney DCP 2013

Apartment Design Guidelines (ADGs)

## 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 11322) 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 1,091.1m<sup>2</sup> and the main body excluding the access handle has an area of approximately 961m<sup>2</sup>. 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 4 – GIS cadastre location diagram**



**Figure 5 – Aerial of the site, 2014 Capture**





**Figure 6:** View of Access driveway from Miller Street



**Figure 7:** View of existing building along Miller Street access handle



**Figure 8:** View from Lower McLaren Street showing the space the proposed building will occupy



**Figure 9:** Existing building when viewed from existing right of way shared access





**Figure 10:** 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**

Full details of the application processing is including in the preceding report to the JRPP.

The application was reported to the JRPP (Sydney East Region) at its meeting of 23 June 2016 with a recommendation for refusal 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.*

At the meeting the Panel unanimously resolved to defer the application as follows:

#### Panel Decision:

*The panel agrees that the subject site is constrained, however, unlike adjoining sites the density in terms of dwelling numbers and the failure to satisfy key provisions of the ADG has led to poor internal amenity for the proposed units and the Panel agrees with the recommended reasons for refusal. However the Panel resolves to defer determination of the matter so that the applicant can provide amended plans to the council to address the following:*

- 4. Increase the floor to floor height to a min 3.1m without an increase in the overall height of the building*
- 5. Reduced dwelling numbers, particularly on levels 1-10, which should result in increased unit sizes*
- 6. Modification of the floor layouts on all levels to maximise solar access and cross ventilation*

*Amended plans are to be submitted to Council by 14 July 2016. Council will re-notify objectors having regard to its notification policy. Council will submit a supplementary report to the Panel by 28 July 2016. The Panel will consider the amended plans by electronic means unless a meeting is required. The matter of the Deed of Agreement and the Stormwater Management should also be resolved during this time.*

#### NOTIFICATION

The owners, occupiers of adjoining properties and the Stanton Precinct were notified of the original proposal between 15 January 2016 – 5 February 2016. A total of 6 submissions were received from residents and/or owners of 39 and 41 McLaren Street and 221 Miller Street (all adjoining properties). A Summary of the issues raised in the submissions is summarised as follows:-

Name & Address of Submitter	Basis of Submissions
Joan Walsh and Colin Prentice 604/39 McLaren Street, north Sydney  4 February 2016  <a href="mailto:joTwalsh@hotmail.com">joTwalsh@hotmail.com</a>	<ol style="list-style-type: none"><li>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.</li><li>2. Increased safety risks as the right of way is also used by pedestrians and school children.</li><li>3. Poor emergency access via the right of way. There will be inadequate space for fire rescue vehicles particularly in the case of a major fire in a 20 level building.</li><li>4. 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.</li></ol>
Brett Brown Ingham Planning  On behalf of Executive committee of SP47495 (39 McLaren Street, North Sydney)  5 February 2016	<ol style="list-style-type: none"><li>1. 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.</li><li>2. Raise concern over the poor solar access performance of the development. No apparent justification is provided beyond the site being</li></ol>

<a href="mailto:brett@inghamplanning.com.au">brett@inghamplanning.com.au</a>	<p>constrained. Concern over further overshadowing to the building from new development proposal at 168 Walker Street, North Sydney.</p> <ol style="list-style-type: none"> <li>3. Car parking is provided in excess of Council's requirements inclusive of the requirements for a future child care centre.</li> <li>4. Traffic assessment is inadequate nor has properly considered constructional impact.</li> <li>5. Concern over construction impact and potential for impact to residential amenity as a result of the numerous impending approvals in the area.</li> </ol>
<p>Barbera and Victor Norden 11/45 McLaren Street, North Sydney</p> <p>7 February 2016</p>	<ol style="list-style-type: none"> <li>1. Concerned over overlooking from new building to existing surrounding buildings</li> <li>2. Concerned over further congestion to rear right of way</li> <li>3. Solar Access will be limited given the concentration of surrounding buildings</li> <li>4. Concerned over timing of waste removal</li> <li>5. Lack of architectural merit in the design.</li> </ol>
<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"> <li>1. Insufficient building separation has been provided, resulting in significant loss of outlook and amenity for apartments within adjoining buildings.</li> <li>2. 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.</li> <li>3. 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.</li> <li>4. 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, 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.</li> <li>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</li> </ol>

	<p>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.</p> <p>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.</p> <p>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>
<p>Bob Shin Yuhu Group 221 Miller Street, North Sydney</p> <p>8 March 2016</p> <p><a href="mailto:BobShin@yuhugroup.com.au">BobShin@yuhugroup.com.au</a></p>	<p>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.</p> <p>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.</p>
<p>Mr Walter Gordon On behalf of Meriton Group Owners of 225 Miller Street, North Sydney</p>	<p>1. <b>Building Height:</b> object to the height of the proposed building. Specifically, we were requested by Council at the time of preparing our Development Application [at 225 Miller St] to have no openings along the boundary shared by 229-231 Miller Street, except for the top 3 levels.</p> <p>2. 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.</p> <p>3. The western elevation plans submitted with the Development Application clearly show the proposed building will completely block light, ventilation, outlook and direct views from the top three levels of 225 Miller Street. The proposed building including plant and architectural features be lowered to sit entirely below the top three levels of our building.</p> <p>4. <b>Right of Way:</b> The commercial level plan shows plant rooms and outdoor terraces abutting our northern boundary for proposed uses within 231 Miller Street. 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</p>

	<p>access, to which we object to. The right or way along this part of the site provides us maintenance and servicing access for our building.</p> <p>5. <b>Basement Car Parking:</b> 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.</p> <p>6. <b>Privacy:</b> How is privacy being treated to protect the amenity from our balconies along the northern elevation?</p> <p>7. In summary, the proposed building has serious shortcomings with respect to building height, right of way access, basement excavation and privacy.</p>
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### Notification of Amended Plans – 14 July 2016

In accordance with Section 4 of NSDCP 2013 Council undertook further notification of the amended proposal. Council wrote directly to those parties who raised submissions to the originally proposed development made to the original development proposal. The amended proposal was placed on notification between 18 July to 25 July 2015.

In addition to the above submissions, a further two submissions were received raising the following additional matters in response to the amended proposal:

Name & Address of Submitter	Basis of Submissions
<p>Mr Michael Harrison Architectus</p> <p>On behalf of 41 McLaren Street North Sydney unit trust</p>	<p>1. In my opinion this continues to fail to adequately recognise the constrained nature of the site and the excessive levels of impact which it will have on adjoining properties. In reviewing the amended proposal, it is still considered that the proposal cannot be supported as it:</p> <ul style="list-style-type: none"> <li>• does not adequately respond to the existing planning controls for the site, in particular the ADGs for building separation,</li> <li>• does not achieve an acceptable level of amenity for future residents within the building as a result of the depth of the proposed floor plate which results in deep units with poor natural light,</li> <li>• continues to result in a severely compromised outlooks for surrounding residents of existing buildings and residents of future buildings on adjoining land;</li> <li>• continues to rely on borrowed amenity from 41 McLaren Street to ensure that future residents are provided with an acceptable outlook;</li> <li>• the proposal continues to result in exceedingly poor solar access for future units which indicates that the lower levels of the building (namely the first 8 floors) should be limited to commercial land uses only; and</li> <li>• fails to adequately respond to the built form context of the site, especially in light of the fact that Council is currently preparing a precinct plan for built form for the subject street block.</li> </ul>



	<p>2. Council's previous reasons for refusal of the application which have not been adequately resolved by the amended proposal. In particular, I note that our primary area of concern was the failure to provide adequate building separation was also identified by Council and has not been resolved by the proposal.</p> <p>3. I note that an increased building separation would also encourage a reduced floorplate depth which would improve the amenity and outlook for future residents, which was also identified by Council as an area of concern.</p> <p>4. During the JRPP meeting, it was identified that in a dense urban environment it may not be possible to achieve compliance with the minimum building separations under the ADGs. Whilst this is recognised and acknowledged, it is not considered appropriate for this particular site. This is as the subject site is unique in that it is an isolated site located in the centre of an existing street block with no meaningful street frontage other than the access handle to Miller Street. All elevations of the proposed building are orientated towards adjoining buildings either occupied or likely to be occupied in the near future by other residential properties.</p> <p>5. The application should be refused by Council on the following grounds:</p> <ul style="list-style-type: none"> <li>a) Failure to adequately respond to requirements of State Environmental Planning Policy No 65— Design Quality of Residential Apartment Development and the associated Apartment Design Guidelines (79c (a)(i) – Environmental Planning Instruments of EP&amp;A Act 1979)</li> <li>b) The proposal will result in unacceptable environmental impacts on adjoining properties by way of significantly affecting outlook of surrounding properties as a result on insufficient building separation (79c (b) – Environmental Planning Instruments of EP&amp;A Act 1979)</li> <li>c) The proposed development does not adequately respond to the constraints of the site as a result of its isolated nature and location in the centre of the wider street block. As a result, the proposed development is not suitable for the subject site. (79c (c) – Environmental Planning Instruments of EP&amp;A Act 1979)</li> <li>d) The proposed development relies on a variation to the minimum building separation in an area identified by Council for future master planning which will potentially frustrate the future</li> </ul>
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	<p>organised development of this wider street block (79c (e) – Environmental Planning Instruments of EP&amp;A Act 1979)</p> <p>e) The lowest levels with the lowest levels of solar access should be restricted to non-residential land uses such as commercial for the first 8 floors;</p> <p>f) The building separations should be increased to as per Attachment A which allows for the following:</p> <ul style="list-style-type: none"> <li>• A separation of 6m from the approved building at 221 Miller Street, responding to the orientation of both buildings and block (setback of 3m from shared boundary);</li> <li>• A separation of 9m from the centre line of the right of way to the north of 229 Miller Street allowing for a building separation of approximately 12m from the existing building at 39 McLaren Street (setback of 6m from property boundary);</li> <li>• A separation of 9m from the centre line of the right of way to the east of 229 Miller Street allowing for a building separation of 12m from 41 McLaren Street (setback 6m from property boundary)</li> </ul>
<p>Mr Walter Gordon On behalf of Meriton Group Owners of 225 Miller Street, North Sydney</p>	<ol style="list-style-type: none"> <li>1. Amended plans were not renotified in accordance with the JRPP decision and under these circumstances the process has not been undertaken correctly to justify any decision being. The amended plans have not been placed on the JRPP website, for further review.</li> <li>2. The application at the best must be deferred to allow adjoining neighbours to consider the amended plans, have Council consider submissions and then a full report be presented to the JRPP. By not undertaking this process would at the very least constitute a section 123 court appeal under the Environmental Planning and Assessment Act.</li> <li>3. Notwithstanding, we continue to strongly object to this development without seeing the amended plans and having time to make a written submission for consideration by the Council and JRPP, if required.</li> </ol>

## REFERRALS

### Engineering/Stormwater

Council's Development Engineer has raised concerns with the proposed stormwater management plan submitted with the development application. The applicant has provided hydraulics plans which significantly alter the approved concept drainage design to convey water from 231 Miller Street, North Sydney 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 over the subject site.

Council's Development Engineer has advised that insufficient information has been provided to enable a full and proper assessment of the proposed stormwater system having regard for potential impacts to down stream Council infrastructure and achievement of Council requirements for on-site detention and rainwater re-use for both the subject site and 231 Miller Street, North Sydney.

On the information submitted with the current application, appropriate conditions cannot be prepared for this application. However, as solutions can be achieved for an adequate stormwater system, conditions have been crafted which enable the detailed stormwater design to be submitted and approved on a deferred commencement basis.

### **Traffic**

The proposal as amended has had regard for the comments which were raised in the previous report and has made adjustments to the basement levels, provision of end of trip facilities and total amounts of parking (car, motor cycle and bicycle).

The traffic Engineer had concerns regarding the proposal to provide for only a single loading area of suitable size for a small rigid vehicle (Two spaces for a medium rigid or one singular heavy rigid required). The Panel recommendation for deferral did not require alteration or expansion to the proposed loading area.

Considering the reduction in the overall unit numbers, and the number of dwelling proposed, it is considered desirable to have additional basement loading space for moving vehicles, however the design implications for the basement are considered significant and unreasonable considering the ability to have restricted and pre-booked moving days for the development. It remains within the powers of the body corporate to manage such movement into and out of the building.

The development is otherwise satisfactory with regard to the requirements for traffic management, subject to compliance with the attached conditions.

### **Landscaping**

Council's landscaping referral comments did not raise any matters of ongoing concern with the proposal. Should the proposal be supported, conditions of development consent are able to resolve the remaining outstanding matters.

### **Waste Services Officer**

The design as amended pursuant to the JRPP decision has not altered the methodology of waste disposal throughout the development. No referral back to the Waste Officer was necessary.

### **Design Excellence Panel**

There has been insufficient time to refer the amended design back to the Design Excellence Panel. Notwithstanding this, the JRPP Panels decision is clear that in terms of the actual building envelope (separation distances, setbacks, and overall height) the proposal is considered to be satisfactory. The re planning of the floors and layouts and associated amenity impacts is considered against the provisions of SEPP 65 and Council's DCP is discussed throughout this supplementary report and accordingly, re referral back to the Design Excellence Panel is not considered necessary.

### **Roads and Maritime Services**

The Roads and Maritime Service Authority did not raise concern with the proposal as considered by the Panel subject to conditions of development. The plans as amended will not alter any of the recommended requirements which can be incorporated into the draft conditions of consent.

### **Ausgrid**

The Ausgrid Authority did not raise concern with the original proposal as considered by the Panel subject to conditions to be imposed upon any development consent. The plans as amended will not alter any of the recommended requirements.

### **Sydney Water**

The Sydney Water Authority did not raise concern with the proposal as considered by the Panel subject to conditions of development. The plans as amended will not alter any of the recommended requirements.

## **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**

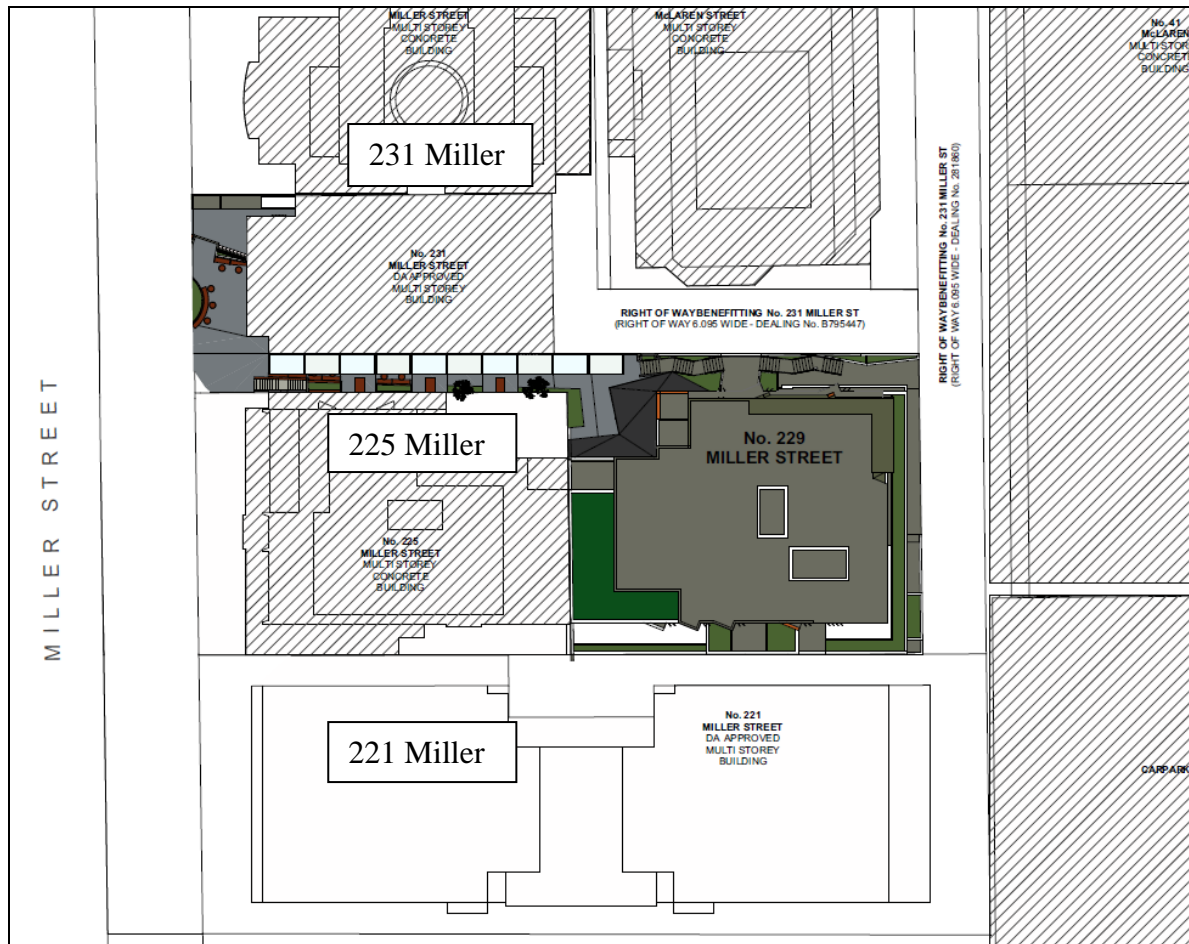
A discussion of the design as amended against the primary design principles are discussed as follows:

#### ***Principle 1: Context and Neighbourhood Character***

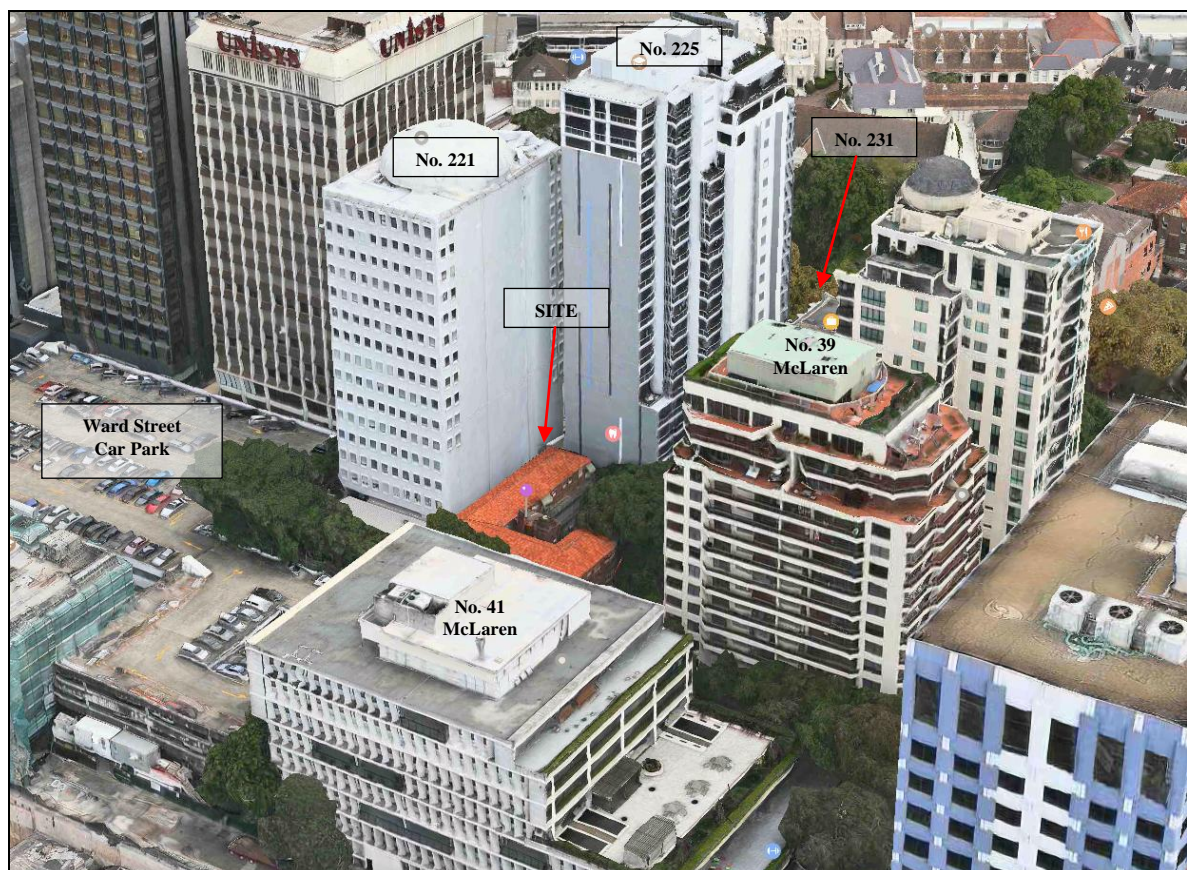
The site is a highly constrained location due to its “backland” or battle-axe allotment arrangement and its proximity to existing and recently approved high-rise development at Nos 221, 225 & 231 Miller Street. The site is located in a very density locality with existing development constraints giving little opportunity for the subject site to provide a substantial street presence.

In its initial consideration, the Panel considered the site constraints in the context of the primary building controls established under the LEP and the Site’s B4 Mixed Use zoning and did not raise concern with regard for the character of the development given the local context. The amended proposal retains the boundary setbacks, separation distances and overall height of the development.

Amendments within this envelope have focused on improvements of internal amenity and retention of a vertical tower elements with a staggered setback along the northern side boundary so as to reflect the existing tower footprint at 225 Miller Street as reflected in **Figure 11 and 12**: below:



**Figure 11:** Extract of Plan DA02(D) showing approved building outlines relative to subject site



**Figure 12:** 3D aerial image detailing site context and adjoining built form source: Apple maps

The site constraints does not provide opportunity to fully address the site's Miller Street address, however slot views are provided along the access corridor. The proposed covered pedestrian way would also provide for improved activation and interest at the ground plane with improved pedestrian amenity via a new though the site link to the north and landscaped areas at ground level.

The proposed building scale, siting and design adequately responds to the site context, reflects the footprint of adjoining approved development at No. 221 and 225 Miller and is therefore consistent with the development character envisaged for the site and the B4 Mixed Use zone.

***Principle 2: Built Form and Scale***

The proposed development as amended remains generally consistent with the visual height and bulk for development in this area, it being noted that the breach of the height control relates to roof top features and lift overrun only. The amended proposal has been designed to respond to the site context and the scale of the immediately adjoining buildings.

Concern was raised in the preceding assessment report on the proposed non-compliant floor to floor heights proposed and sufficient amenity to the apartments as proposed.

The amended design has increased the floor to floor height to the required by the resolution however to ensure the overall height of the building has not increased, the design has had an entire floor removed from the development. Accordingly the proposal as amended remains acceptable with regard to overall built form and scale.

***Relationship with No. 225 Miller Street (Meriton building)***

The modifications to the floor to floor heights within the development has translated to an altered non-trafficable roof top area at Level 16 immediately adjacent to the existing missed use building at 225 Miller Street. The resulting building interface has reduce the RL of the roof top area so as to reduce the impact at this interface.

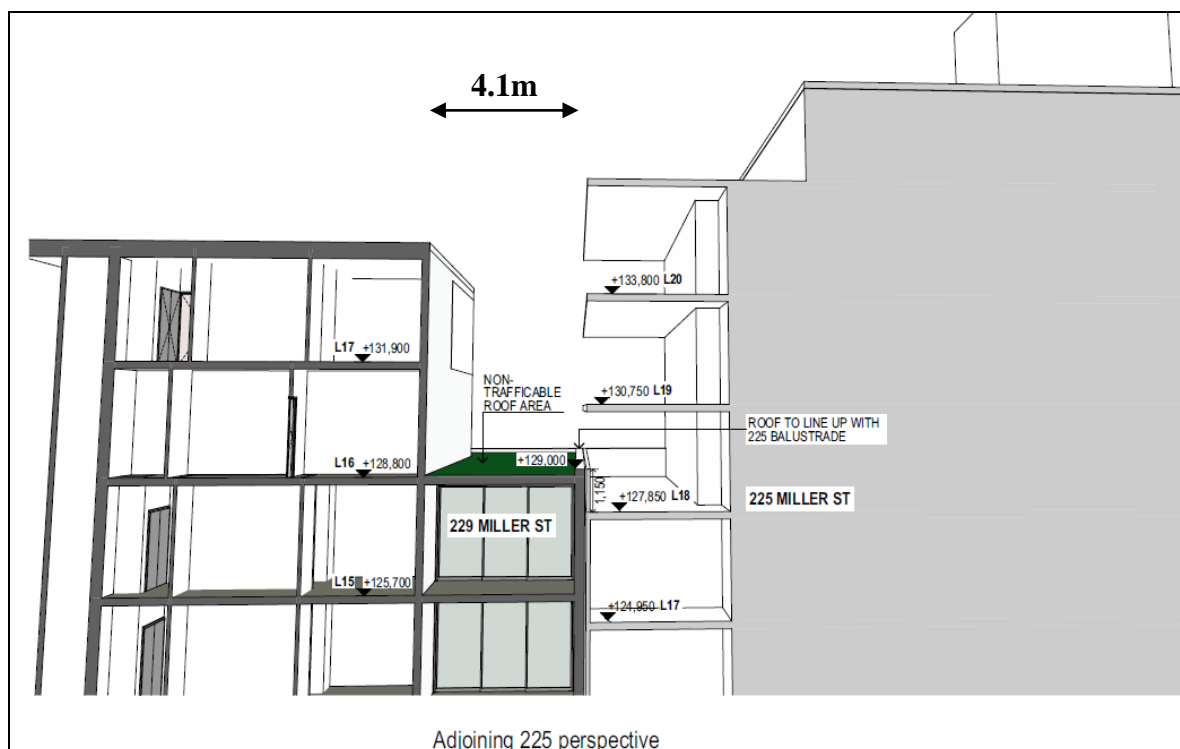
Additionally detail has also been lodged regarding the interface of the non-trafficable green roof and the existing balconies of the adjacent existing building. The applicant has provided a detail drawing showing revised floor levels adjacent to the east facing balconies of No. 225 Miller Street as shown in below in figure 13:

It is generally acknowledged that the relationship between the subject proposal and the adjoining building at 225 Miller is poorly resolved. However the development remains compliant with height and massing requirements at this location. The eastern facing balconies of the adjoining development, will be impinged by the height and location of the two storey plant room and western elevation of the building at Level 16 & 17.

The building separation requirements for habitable to non-habitable spaces as required by the ADG's is however non compliant, with a minimum separation of 18 metres required. However in light of the compliant building height and the non-compliant setback of the adjoining balconies consideration should be given to a reduce set back.

Whilst further substantial changes could be considered at this interface, it would be unreasonable to consider that the top two floor of the building be removed in their entirety as a result of existing non-compliant balconies on the adjoining site. It is however considered reasonable that some amendment be undertaken to reduce the impact at this level.





**Figure 13:** Isometric drawing extract DA53(D) showing the proposed relationship with No. 225 Miller Street at Levels 16 & 17.

Having regard for the proposed building layout at Levels 16 & 17, a minimum setback of 8 metres from the common boundary with No. 225 could reasonably be achieved by reduction in the plant room floor space and by deletion of bedrooms in Unit 1 at Levels 16 & 17. Such reduction would substantially improve outlook to the north-east of the top floor units in No. 225, being the approved location of living rooms whilst allowing a compliant height building on the subject site.

A condition is recommended to require an increased setback at Level 16 & 17 to be a minimum of 8.0 metres. Whilst the resulting impact of the development to its abutting neighbour would remain substantial, the non-compliant nature of the adjoining site is largely responsible for this poorly resolved interface.

### **Principle 3: Density**

The density of the development as amended has been reduced with the reduction of the total number of apartment within the development from the previously proposed 113 to 99 apartments resulting in a total yield of 10.3 dwellings per 100sqm of site area (excl handle).

The amended proposal has been considered in the context of adjoining site yield as detailed in the revised density comparison provided in Tale 1 below. The subject proposal has been reduced inline with the Panel recommendations and consistent with reasonable expectations for the site, given the highly constrained location.

<b>Table 1: Density Comparison – Miller Street developments</b>					
<b>Address</b>	229 Miller Street		231 Miller Street	221 Miller Street	225 Miller Street
	<b>Subject Site</b>		<b>Approved (JRPP)</b>	<b>Approved (JRPP)</b>	<b>As Built (Council)</b>
<b>DA No.</b>	<b>DA487/15</b>		<b>DA453/14</b>	<b>DA256/15</b>	<b>DA658/06</b>
Site Area (m <sup>2</sup> )	1091 m <sup>2</sup> (961m <sup>2</sup> – excl handle) <b>Original DA / Amended</b>		521 m <sup>2</sup>	2007 m <sup>2</sup>	885 m <sup>2</sup>
Total Dwellings	113	99	60	183	79
Serviced Apartments	-	-	-	100	-
Unit Mix (%)					
Studio	26 (23%)	20 (20%)	23 (38.3%)	27 (14.8%)	-
1 Bed	35 (31.0%)	25 (25%)	9 (15%)	71 (38.8%)	12 (15.2%)
2 Bed	37 (32.7%)	39 (39%)	21 (35%)	76 (41.5%)	43 (54.4%)
3 Bed	15 (13.3%)	15 (15%)	7 (11.7%)	9 (4.9%)	24 (30.3%)
<b>Dwg Yield (/100sqm)</b>	<b>10.36 (11.75)</b>	<b>9.07 (10.3)</b>	<b>11.51</b>	<b>9.12</b>	<b>8.93</b>
Roof RL (ex Plant)	135.19	135.19	135.22	144.1	139.9
Total Storeys	20 - 21	19 - 20	18 - 19	22	21

The reduction in the overall dwelling yield is a function of the site constraints and the need to provide improved internal building amenity. However, significant concern remains as to the performance of the proposed building against the solar access requirements of the apartment Design Guidelines as detailed below. On the basis that further reduced yield is anticipated to provide improved apartment amenity, the proposed dwelling yield is deemed appropriate..

#### **Principle 4: Sustainability**

The amended proposal has been designed to comply with energy efficiency and sustainability requirements of BASIX and would achieve the general requirements of the ADGs for the inclusion of sustainable measures to be implanted within the building.

#### **Principle 5: Landscape**

A landscape plan has been prepared detailing the intended planting of the proposed roof garden on Level 17 and front forecourt area of the development. The roof garden is designed to be comprised of low rise plants to survive largely on rainfall once established.

It is noted that the Panel did not appear to have any concern with the specifics of the roof garden but rather the treatments involved with its interface with 225 Miller Street, North Sydney.

#### **Principle 6: Amenity**

##### **Unit size, internal living areas and private open space**

The sizes and private open spaces of the residential apartments satisfy the minimum area and dimension requirements of the ADG. All primary balconies/wintergardens are orientated towards the available open frontages (being the north and east or screened to minimise potential privacy impacts on surrounding residents).

##### **Solar access**



The subject site is orientated in a general east-west direction consistent with adjoining sites to the north and south. No. 41 McLaren Street is located opposite to the east and is orientated in a north-south direction. The site's axis (long boundaries) are oriented at 99 degrees 33' 25" to north in a slight south-east bias.

Part 4A-1 of the Apartment Design Guidelines provides that **living rooms** and **private open space** of 70% of units within a residential flat development must achieve a minimum of 2 hours direct sunlight between 9am and 3pm in metropolitan areas.

Council raised concern with the amenity of the original proposal and the substandard solar amenity afforded the development. The Panel sought improvement to this by requiring modifications as follows:

1. *Increase the floor to floor height to a min 3.1m without an increase in the overall height of the building*
2. *Reduced dwelling numbers, particularly on levels 1-10, which should result in increased unit sizes*
3. *Modification of the floor layouts on all levels to maximise solar access and cross ventilation*

The Panel sought amendments so as to improve internal amenity of units and to maximise the exposure of internal living rooms to the eastern elevation. The Panel considered that this required a reduction in the overall number of units through internal layout changes so as to increase internal unit areas and limit the number of poorly performing units in mid-winter. The Panel particularly noted the need to reduce the number of dwellings per floor between levels 1–10.

The application has been amended to provide the minimum floor to floor heights of 3.1m and to provide a larger 3.9m floor to ceiling height at Level 1.

The number of apartments on Levels 2, 3 & 4 (now levels 1, 2 & 3) have been reduced from 8 to 7. The former Level 1 containing 8 apartments has been deleted.

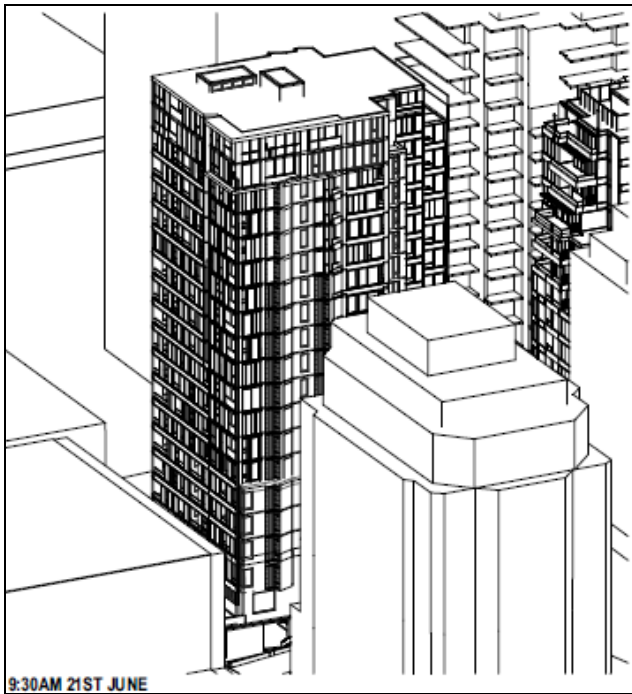
The number of apartments on levels 5 to 8 (now levels 4 to 7) has not been reduced, instead internal layout changes have been undertaken to improve corner unit (Apartment 2) and adjust Apartments 3 & 4. Concerns remain with regard to solar performance on these levels.

The number of apartments on levels 9 and 10 (now levels 8 & 9) have been reduced from 7 to 6 through internal layout changes to amalgamate units 3 & 4.

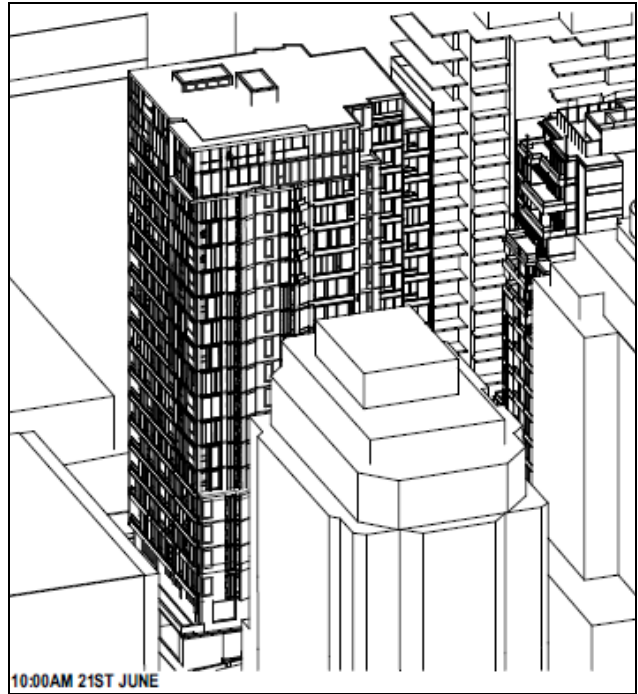
### ***Reliance on Wintergardens for solar performance***

The development however relies disproportionately on winter gardens to compensate for a larger number of south-east facing dwellings with narrow openings to the east façade which do not achieve solar access to internal areas. The orientation of the site at 9 degrees south of east results in the majority of these units failing to achieve adequate the minimum 2 hours minimum direct sunlight to internal living areas during mid-winter in accordance with the ADGs.

This is best illustrated in the applicant's view from the sun diagrams which show the eastern face of the building receiving increasingly oblique direct sunlight access from 9:30am as shown in Figure 14 & 15 below:



**Figure 14:** 9:30am Sun's eye view 21 June



**Figure 15:** 10:00am Sun's eye view 21 June

The resulting solar performance of these units therefore remains substantially below the performance required by the ADGs and as such further amendment is recommended.

### **Applicant's submission**

In support of the amended proposal, the applicant's has provided further justification for the proposed wintergardens relevant to the lower levels at from Ground to Level 7 as follows:

#### ***"Level 2 to 3***

*Apartment 3 has been increased in size from 36 sqm to 42 sqm and its winter-garden has increased for 4 sqm to 8 sqm.*

*The area of this apartment has been increased above the minimum requirements of the ADG in order to increase amenity and compensate for reduced solar access due to overshadowing.*

*Also the increase in the size of the winter-garden ensures that it is now a useable indoor-outdoor space in the cooler months.*

*It is noted that the 2 bedroom apartment on Level 3 has solar access after 8.30 am as by then it is no longer overshadowed by the building at 41 McLaren Street.*

#### ***Level 4 to 7***

*This switch of apartments has been done to allow the south eastern apartment (Apartment 4) to have a greater width to the eastern façade, therefore increasing amenity.*

*These apartments have good solar access as they are not overshadowed by the heritage listed Seidler building as demonstrated by the "Views from the Sun" Diagrams.*

*In addition above Level 5 these apartments will largely overlook the Seidler building at 41 McLaren Street and will have attractive east facing water views with consequent high amenity.*

*We have not consolidated these apartments 3 & 4, as indicated in the JRPP determination because reducing the number of apartments with solar access would in fact result in a further deviation from the desired outcome recommended by the ADG.*

*As noted by Steven King in his report to the JRPP “maximizing east facing apartments which have winter-gardens (which have solar access) optimizes solar access”.*

In support of the amended proposal the applicant has sought to rely on additional hours of solar performance prior to 9am measurement period stipulated under the Apartment Design Guide and by reliance on the wintergardens as internal living spaces. The applicant's solar performance calculations consequently include units which have direct sunlight on the building façade, but not within the unit from 8:30am, above the height of adjoining buildings (particularly 41 McLaren Street). There is some merit in this argument, given the likely morning use of internal living areas by occupants at this time, however Council's concern remains that the solar performance within the internal living areas of the units later in the morning is sufficiently poor as to require further unit amalgamation.

The inclusion of self-shadowed and recesses living rooms as achieving solar performance of the ADGs is not supported.

### **Amendments to achieve improved solar performance**

In this respect, further amalgamation of units coupled with internal layout changes are recommended so as to limit the number of solely south-east facing units, particularly at the lower levels of the building. Whilst reliance on wintergardens above Level 9 is more appropriate, and more successful, due to significantly improved internal layouts and larger balcony areas/wintergardens and less encumbrance of adjoining buildings, reliance on the winter gardens at the lower levels disguises poorly designed units and poor orientation.

The amendments recommended to achieve improve solar performance are as follows:

<b>Ground floor</b>	Amalgamate Unit G01 & G02 including layout changes to maximise solar access to internal living rooms
<b>Level 1</b>	Amalgamate Unit 102 & 103
<b>Level 2</b>	Amalgamate Unit 202 & 203
<b>Level 3</b>	Amalgamate Unit 302 & 303
<b>Level 4</b>	Amalgamate Unit 403 & 404
<b>Level 5</b>	Amalgamate Unit 503 & 504
<b>Level 6</b>	Amalgamate Unit 603 & 604
<b>Level 7</b>	Amalgamate Unit 703 & 704

The above changes to include layout changes to reorient living spaces to maximise solar access to internal living rooms and limit self-shading from balcony overhangs and extended walls.

The result of the above changes would be the amalgamation of 16 units into 8 units for a total reduction of 8 units and improved solar performance from 53% to 68% in accordance with the ADG minimum 2 hours standard of direct sunlight to private open spaces and internal living rooms.

Subject to such changes, the development would be considered to reasonably achieve maximum solar performance given the site's highly constrained orientation and the impact of

adjoining development.

Conditions have been recommended incorporating the changes recommended above. Should the Panel not consider further amalgamations necessary at ground to Level 3, these changes may be excluded.

**Principle 7: Safety**

No significant concern was raised to the original proposal in this regard and the design has amended has not made any significant amendments in this regard.

**Principle 8: Housing Diversity and Social Interaction**

The apartment design as amended maintains a mix of one, two and three bedroom dwellings that generally satisfies the ADG. Sixteen apartment or 16% 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**

Council previously raised concern with regard to the proposed materials and colour selection for the building. Whilst a range of materials is proposed to create visual interest, concern is raised regarding the use of specific materials particularly the potential for the proposed mesh panels for movable screens to the northern, eastern and western elevations to have a poorly resolved presentation.

The revised plan package includes an improved presentation of the proposed materials selection, and whilst not considered to be high end materials, the resulting development will adequately respond to the site context. The proposed design palette generally reflects that used in the adjoining development at 231 Miller Street and emphasises the verticality of the building consistent with the recommendations of the Design Excellence Panel.

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	Minimum separation distances for buildings are:  Up to four storeys (approximately 12m): <ul style="list-style-type: none"><li>• 12m between habitable rooms/balconies</li><li>• 9m between habitable and non-habitable rooms</li><li>• 6m between non-habitable rooms</li></ul> Five to eight storeys	NO	Generally the positioning of the building is such the separation distances in accordance with the ADG cannot be reasonably achieved on site.  Whilst this was raised and discussed in the previous report as a significant issue, pursuant to the JRPP decision, the Panel sought no further alteration to the building with regard to the separation distances. The amendments made have not

Parameter	Design Criteria	Compliance	Comment
	<p>(approximately 25m):</p> <ul style="list-style-type: none"> <li>• 18m between habitable rooms/balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable rooms</li> </ul> <p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> <li>• 24m between habitable rooms/balconies</li> <li>• 18m between habitable and non-habitable rooms</li> <li>• 12m between non-habitable rooms</li> </ul>		altered the built form above ground or overall height or separation distances.
Setbacks	Merit	NO	As per the previous separation distances issue previously raised and discussed in the previous report as a significant issue, pursuant to the JRPP decision, the Panel sought no further alteration to the building with regard to the separation distances. The amendments made have not altered the built form above ground or overall height or setback distances.
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 68 of the 99 apartments (68%) will receive 2 hours of direct solar access to winter gardens between <b>8:30 am</b> to 3:00 pm.</p> <p>Concern is raised in relation to the applicant's reliance on winter gardens and period prior to 9am to meet the minimum 2 hours direct sunlight to the eastern face of the building.</p> <p>Actual performance of the development is 53% of units achieving the minimum sunlight access with lower levels of the building performing poorly due to excessive dwelling numbers and impacts of adjoining buildings.</p> <p>The proposed solar performance is not supported for these reasons and those outlined above. Further amendments are deemed essential at Ground Floor to Level 7 in order to achieve improved solar performance at the lower levels of the building</p> <p>The result of the above changes would be the amalgamation of 16 units into 8 units on ground to Level 7 for a total reduction of 8</p>

Parameter	Design Criteria	Compliance	Comment
			units and improved solar performance from 53% to 68% in accordance with the ADG minimum 2 hours standard of direct sunlight to private open spaces and internal living rooms.
Natural ventilation	60% of apartments are naturally cross ventilated	Yes	Total of whole building 73 apartments or 74%
Ceiling Heights	2.7m (habitable rooms)	Yes	In direct response to the Panels request and concerns, the applicant has amended the floor to floor heights of the residential
Apartment size and layout	35m <sup>2</sup> Studio 50m <sup>2</sup> (1B) 70m <sup>2</sup> (2B) 90m <sup>2</sup> (3B)	Yes	36-46 m <sup>2</sup> (Studio) 50m <sup>2</sup> - 62 m (1B) 71 m <sup>2</sup> -113m <sup>2</sup> (2B) 100m <sup>2</sup> -161m <sup>2</sup> (3B)  The apartments as amended achieve the minimum required apartment sizes.
Apartment size and layout	Master bedrooms have a minimum area of 10m <sup>2</sup>	Yes	All master bedrooms have an area greater than 10m <sup>2</sup>
	All secondary bedrooms have a minimum width of 3m	Yes	All secondary bedrooms have a minimum width of 3m
	Living rooms have a minimum width of 3.6m (1B) and 4m (2B and 3B)	Yes	Minimum width of living rooms is 3.6 – 4.0 metres for studio and 1 br apartments. 4.0 metres or greater is utilised for the 2 br + apartments.
	The maximum habitable room depth is 8m from a window	Yes	The kitchens of the apartments are less than 8m from the windows.
Private open space and balconies	Studio – 4 m <sup>2</sup> 1B – 8m <sup>2</sup> 2B – 10m <sup>2</sup> 3B – 12m <sup>2</sup>	Yes	The proposal meets the ADG guideline in this regard.  The it is to be noted that essentially all apartments within the development have wintergardens proposed for their balconies.
Common circulation and spaces	Maximum number of apartments off a circulation core on a single level is 8	Yes	The proposal has been reduced to propose no more than a maximum of 7 apartments at the lowest residential levels of the building.
Storage	6m <sup>3</sup> (1B) 8m <sup>3</sup> (2B) 10m <sup>3</sup> (3B)	Yes	Satisfactory storage areas are provided with the apartments and on the basement level.

#### SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate has been submitted with the amended 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:**

There are no amendments which would alter the permissibility considerations.

### **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.*

Subject to the further amendments required, the amended development is considered to satisfactorily achieve the zone objectives.

## **NSLEP 2013 Compliance Table**

<b>Principal Development Standards – North Sydney Local Environmental Plan 2013</b>			
<b>North Sydney Centre</b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
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 (refer CL. 4.6 Request for variation)
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 or 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	Variation permitted	Yes

	the North Sydney Centre Map. The proposal will not overshadow Don Bank Museum.		
Minimum lot size (Cl.6.3 (2) (c))	1091 m <sup>2</sup> Excluding access handle 961 m <sup>2</sup>	1000m <sup>2</sup> 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

## 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. The amendments to the building pursuant to the JRPP decision have preserved the proposed non compliances.

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 *updated* 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."*

The previous report prepared for the Panels consideration was clear that the breaches to Building Height in their own right were generally acceptable and arguments present sufficiently well-founded and include sufficient environmental planning grounds to empower the Panel to consider the overall height of the development to be acceptable and to approval the proposal.

Concern had been raised regarding the proposed floor to floor height and general amenity and this position was agreed and adopted by the Panel leading to the decision to defer the matter and require further amendment to the proposal. The applicant has responded to these concerns via the removal of a one entire floor and increased the floor to floor heights without the need to increase the height of the building in accordance with the Panel instruction. The increase to floor to floor heights also removes Council's previous concern regarding the constructability of building and apartment amenity and accordingly the development can be supported in this regard.

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

The proposal as amended remains compliant with the no residential FSR controls and is suitable in this regard.

#### **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)**

#### **Clause 6.1 Objectives of Division (North Sydney Centre)**

<b>Objective</b>	<b>Comment</b>
(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	The additional non residential gross floor area

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	is within the 250,000m <sup>2</sup> limit.
(d) to ensure that transport infrastructure, and in particular North Sydney station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and: (i) be convenient and accessible, and (ii) ensure that additional car parking is not required in the North Sydney Centre, and (iii) have the capacity to service the demands generated by development in the North Sydney Centre	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage. 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

There were no matters of significance raised in this regard that have been impacted upon by the amended design pursuant to the JRPP deferral of the proposal.

The Panel did reference the need to obtain an executed deed of agreement required pursuant to this clause. Such a requirement is a pre-cursor to the grant of consent and must be obtained prior to issue of any DA involving new commercial floor area.

Works are ongoing however at the time of writing this report an executed agreement has not been finalised and presented to the Department of Planning and Department of Transport for consideration and endorsement.

Pending successful resolution of all other matters and favourable consideration from the JRPP a final decision can be made by the JRPP electronically once an executed and endorsed agreement is obtained

## Clause 6.10 Earthworks

In accordance with the provisions of Clause 6.10(3) the previous assessment 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. The development as amended does not make any significant alteration to the levels of excavation proposed and accordingly the development continues to be 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															
<b>2.2 Function</b>																	
<b>2.2.1 Diversity of Activities</b>	Yes	The proposal as previously considered by the Panel and as amended raises no concern in this regard.															
<b>2.2.2 Maximise Use of Public Transport</b>	Yes	The proposal as previously considered by the Panel and as amended raises is acceptable in this regard.															
<b>2.2.3 Mixed Residential Population</b>	Part	<p>The proposal as amended is as follows:</p> <table><tr><td>Studio</td><td>20</td><td>20%</td></tr><tr><td>1 Bed</td><td>25</td><td>25%</td></tr><tr><td>2 Bed</td><td>39</td><td>39%</td></tr><tr><td>3 Bed</td><td>15</td><td>15%</td></tr><tr><td>TOTAL</td><td>99</td><td>100%</td></tr></table> <p>The proposal as amended is above required development mix in relation to 3 bedroom apartments. Generally the apartment mix is considered to be well resolved in the circumstances.</p> <p>A minimum of 15% of dwellings are to be adaptable housing under the provisions of the DCP and in the proposal as amended, 16 adaptable apartments are proposed.</p>	Studio	20	20%	1 Bed	25	25%	2 Bed	39	39%	3 Bed	15	15%	TOTAL	99	100%
Studio	20	20%															
1 Bed	25	25%															
2 Bed	39	39%															
3 Bed	15	15%															
TOTAL	99	100%															
<b>2.3 Environmental Criteria</b>																	
<b>2.3.1 Clean Air</b>	Yes	The proposal as amended incorporates a suite of energy efficient measures as required by the associated BASIX certificate															

		Car parking provision including bicycle parking will generally comply with Section 10 DCP2013.
<b>2.3.2 Noise</b>	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.
<b>2.3.3 Wind Speed</b>	Yes	The proposal and will not adversely result in pedestrian comfort been adversely affected by wind when walking along Miller Street. The proposed winter garden afford the opportunity for residents to enjoy their balconies with the windows closed and prevent wind exposure.
<b>2.3.4 Reflectivity</b>	Yes (condition)	A condition of consent can be imposed to ensure any reflectivity of building materials is minimized.
<b>2.3.5 Artificial Illumination</b>	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.
<b>2.3.6 Awnings</b>	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.
<b>2.3.7 Solar Access</b>	NO	The matter is discussed in detail under the ADG Compliance assessment table and the proposal as amended is now considered to be satisfactory in this regard.
<b>2.3.8 Views</b>	Yes	The proposed and previously considered and currently amended 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.
<b>2.3.8 Acoustic Privacy and 2.3.11 Visual Privacy</b>	NO	<p>From a specific privacy standpoint the development proposes utilizes unit orientation including, angled windows and balcony edge treatments to maintain visual and aural privacy.</p> <p>Notwithstanding the measures, separation distances as set out under the ADG's are not and cannot be provided throughout the development however the decision of the JRPP Panel has not sought any further increases to the separation distances as proposed.</p>
<b>2.4 Quality built form</b>		
<b>2.4.1 Context</b>	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>Section 2.1 anticipates that buildings in the locality will have podiums however the subject building has no distinct podium. The lack of a</p>

		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
<b>2.4.3 Setback</b>	NO	Setbacks are to be provided in accordance with the character statement, with setbacks to consider the setbacks of adjacent buildings. A zero front, side and rear setback is to be provided for the podium unless a character statement requires an alternate setback. The LEP requires a front setback of 5m from Miller Street that has been provided. The character statement requires adequate setbacks above the podium to provide for residential amenity. The DCP adopts the 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.
<b>2.4.4 Podiums</b>	N/A	See comments provided under the "Context" heading.
<b>2.4.5 Building Design</b>	Yes	<p>The principle matter raised previously in this regard was the issue of the floor to floor separation. This has now been adequately resolved in the amended proposal.</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.</p> <p>The proposal with regard to general design and materials can be supported in this regard.</p>
<b>2.4.6 Skyline</b>	Yes	The building as amended 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.
<b>2.4.8 Balconies - Apartments</b>	Yes	Requires balconies to be incorporated within the envelope and not be located on roofs, podiums or be cantilevered. The proposal is compliant with the requirement.
<b>2.4.9 Through Site pedestrian links</b>	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>

<b>2.4.10 Streetscape</b>	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 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>
<b>2.4.11 Entrances and Exits</b>	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.</p> <p>Given the sites inherent site constraint of being located down the battleaxe handle, this is satisfactory in the circumstances.</p>
<b>2.5 Quality Urban Environment</b>		
<b>2.5.1 Accessibility</b>	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 apartments in accordance with policy. The proposal is satisfactory in this regard.</p>
<b>2.5.2 Safety and Security</b>	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>
<b>2.5.4 High Quality Residential Accommodation</b>	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 40m<sup>2</sup>  1 bed 50m<sup>2</sup>  2 bed 80m<sup>2</sup>  3 beds 100m<sup>2</sup></p> <p>The 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</p>

		<p>adopt the minimum floor area requirements of the Apartment Design Guidelines of 35 m<sup>2</sup>. The JRPPs decision relates to general amenity of the apartments and their relative orientation proposed rather than the strict apartment sizing. Accordingly, the issue of studios and minimum sizes, given they are in accordance with ADG guidelines, can be accepted in the circumstances.</p> <p>Concern was also raised to the line of studio apartments at the south eastern corner of the building. The JRPPs decision was sufficiently flexible but clear that a reduction in apartments was required over levels 1-10. This has been achieved in the amended plans with generally, every floor up to level 10 having been reduced by at least 1 apartment.</p> <p>Accordingly, given the improvement to the general amenity parameters, the development as amended is now supportable in this regard.</p>
<b>2.5.5 Lightwells</b>	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.</p> <p>The applicant has not nominated to provide a lightwell and the JRPP in their deferral has not insisted that a cutout be provided. The applicant has however complied with the JRPPs instructions contained in their deferral and accordingly, a lightwell will not be insisted upon.</p>
<b>2.5.6 Private Open Space</b>	Yes	<p>Concern was previously raised in this section regarding the number of studios with sub sized balconies. The amended design has improved the sizes of balconies to the studios to now be compliant in this regard.</p> <p>Concern was raised under this section in part also due to the total amount for dedicated communal open space provided within the development however, the instruction from the JRPP was to pursue amendments to the apartment amenity to overcome any deficiencies in communal space. The design as amended has made no further reductions to available communal space and accordingly the proposal is acceptable in this regard.</p>
<b>2.5.7 Vehicular Access</b>	Yes	<p>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.</p>
<b>2.5.8 Car Parking</b>	Yes	<p>The development as amended 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, however these matters can be conditioned.</p>
<b>2.5.9 Garbage Storage</b>	Yes	<p>Garbage chute provided with compactor.</p>



		<p>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>
<b>2.6 Efficient Use of Resources</b>		
<b>2.6.1 Energy Efficiency</b>	Yes	BASIX certificate submitted details a compliant level of energy efficient fixtures and appliances to the building.
<b>2.6.2 Passive Solar Design</b>	NO	<p>The development as amended does still does not meet the 70% requirement, the development only achieves what is does by extending the solar access period to 8:30 am.</p> <p>The JRPP has recognized the constraints of the site and accordingly, the development as amended considered to have been maximized in the circumstances and a significant improvement has been achieved via a reduction to the total number of apartments particularly at the lower levels of the apartments.</p>
<b>2.6.4 Natural Ventilation</b>	Yes	With the reduction to apartment numbers the development now meets cross ventilation criteria. This issue is discussed in detail under the ADG Compliance assessment table earlier in the report.
<b>2.6.12 Green Roofs</b>	Yes	Dedicated non trafficable green roof provided on level 17 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. This includes any rights of ways over the access handles by other sites and other stormwater drainage rights.

### **SECTION 94 CONTRIBUTIONS**

Section 94 Contributions will be charged for the additional apartments and commercial floor area, and a credit will be provided for the existing 28 apartments (20 x 1 br and 8 x 2br apartments) to be demolished. The contributions required on the current proposal, excluding is as follows::

<b>A</b>	<b>B</b>
<b>Administration</b>	\$10,546.34
<b>Community Centres</b>	\$44,391.44
<b>Childcare Facilities</b>	\$22,420.56
<b>Library and Local Studies Acquisitions</b>	\$8,349.98
<b>Library Premises and Equipment</b>	\$25,788.99
<b>Multi Purpose Indoor Sports Facility</b>	\$7,306.26
<b>Olympic Pool</b>	\$23,797.40
<b>Open Space Acquisitions</b>	\$256,766.05
<b>Open Space Increased Capacity</b>	\$508,954.96
<b>North Sydney Public Domain</b>	\$276,966.47
<b>Traffic Improvements</b>	\$28,502.62
<b>Total</b>	<b>\$1,213,791.07</b>

## 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.

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

**Planning Comment:** The amended proposal is a substantial reduction on the originally proposed development. Whilst further amendments are recommended which would further reduce the site density, the overall density of the development is now more consistent with recently approved development at No. 231 and 221 Miller Street.

- *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:** The amended design incorporates amendments recommended by Council's Design Excellence Panel who were broadly in support of the building, . 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.

It is generally acknowledged that the relationship between the subject proposal and the adjoining building at 225 Miller is poorly resolved. However the development remains compliant with height and massing requirements at this location. The eastern facing balconies of the adjoining development, will be impinged by the height and location of the two storey plant room and western elevation of the building at Level 16 & 17.

The building separation requirements for habitable to non-habitable spaces as required by the ADG's is however non compliant, with a minimum separation of 18 metres required. However in light of the compliant building height and the non-compliant setback of the adjoining balconies consideration should be given to a reduce set back.

Having regard for the proposed building layout at Levels 16 & 17, a minimum setback of 8 metres from the common boundary with No. 225 could reasonably be achieved by a reduction in the plant room floor space and by deletion of bedrooms in Unit 1 at Levels 16 & 17. Such reduction would substantially improve outlook to the north-east of the top floor units in No. 225, being the approved location of living rooms whilst allowing a compliant height building on the subject site.

A condition is recommended to require an increased setback at Level 16 & 17 to be a minimum of 8.1 metres. Whilst the resulting impact of the development to it's abutting neighbour would remain substantial, the non-compliant nature of the adjoining site is largely responsible for this poorly resolve interface.

- *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 or way along this part of the site provides us maintenance and servicing access for our building.*

**Planning Comment:** The Panel may rely upon the provisions of Cl. 1.9A of NSLEP 2013 which provides that the provisions of any covenant or other such easement does not fetter the grant of development consent for development that is otherwise permissible under the LEP.

- *Concerns regarding notification of the amended proposal.*

**Planning Comment:** In accordance with Section 4 of NSDCP 2013 Council undertook further notification of the amended proposal. Council wrote directly to those parties who raised submissions to the originally proposed development made to the original development

proposal. The amended proposal was placed on notification between 18 July to 25 July 2015.

## CONCLUSION

The subject application was originally reported to the JRPP on 23 June 2016 and sought approval for demolition of existing residential flat building and construction of mixed use building consisting of 113 apartments over 18 residential levels with a sublevel commercial tenancy and at-grade basement entry from a right of way at the eastern (rear) site boundary with parking for 85 car-spaces.

The application was recommended for refusal on five primary grounds including inadequate building separation, excessive density, inadequate internal apartment amenity and poorly resolved interface with the adjoining development to the immediate west at 225 Miller Street, North Sydney.

The amended proposal submitted to Council on 14 July 2016 in response to the above incorporating a substantial number of amendments. The amended proposal achieves the requirement for increased floor to ceiling heights required by the Panel and includes partial compliance with the remaining points requiring internal layout changes and an overall reduction of units, particularly between residential levels 1 to 10.

The amended proposal comprises a total of 99 apartments being 26 x studios, 35 x 1 bedroom apartments, 37 x 2 bedroom apartments and 15 x 3 bedroom apartments with a floor space of 753m<sup>2</sup> for the retail/commercial component.

This supplementary report has considered the amended proposal against the requirements of all relevant environmental planning instruments, including SEPP 65 and the Apartment Design Guidelines (ADGs). Specific consideration has been given to the building separation and amenity requirements of the ADGs owing to the highly constrained nature of the site.

The subject development does not achieve the building separation and solar access requirements of SEPP 65 and the ADGs, however given the applicable height control, zoning, the site context and the history of similar approved development in the immediate vicinity of the site, the proposed development is considered to adequately respond to the site constraints and would generally achieve the built form anticipated at the site.

In relation to solar performance and internal unit amenity further amendments are recommended to improve solar performance, such amendments would result in a further reduction of 8 units at Ground to Level 7 so as to achieve improved solar performance in accordance with the minimum 2 hours standard of direct sunlight to private open spaces and internal living rooms.

Further amendments are also recommended in relation to the interface with the adjoining building at 225 Miller Street. A minimum setback of 8 metres from the common boundary with No. 225 is recommended to reduce the roof top plant room and delete a bedroom in Unit 1 at Levels 16 & 17. Such reduction would substantially improve the north-east outlook and interface between the proposed building and the existing top floor units of the adjoining building.

The amendments recommended to achieve improve solar performance are as follows:

<b>Ground floor</b>	Amalgamate Unit G01 & G02 including layout changes to maximise solar access to internal living rooms
<b>Level 1</b>	Amalgamate Unit 102 & 103
<b>Level 2</b>	Amalgamate Unit 202 & 203
<b>Level 3</b>	Amalgamate Unit 302 & 303
<b>Level 4</b>	Amalgamate Unit 403 & 404

<b>Level 5</b>	Amalgamate Unit 503 & 504
<b>Level 6</b>	Amalgamate Unit 603 & 604
<b>Level 7</b>	Amalgamate Unit 703 & 704

The above changes to include layout changes to reorient living spaces to maximise solar access to internal living rooms and limit self-shading from balcony overhangs and extended walls.

The result of the above changes would be the amalgamation of 16 units into 8 units for a total reduction of 8 units and improved solar performance from 53% to 68% in accordance with the ADG minimum 2 hours standard of direct sunlight to private open spaces and internal living rooms.

Subject to such changes, the development would be considered to reasonably achieve maximum solar performance given the site's highly constrained orientation and the impact of adjoining development.

Additionally, other matters remain outstanding which prevent the Panel from granting full consent 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 finalised by the applicant.
- Resolutions of drainage design matters as raised in the Engineering Referral heading of the report.

On balance, the amended development is considered to adequately respond to the amendments requested by the Panel and site constraints. However, for the reasons outlined within this report further amendment is required to achieve improved performance with regard to the amenity requirements Apartment Design Guidelines and due to outstanding issues arising from the proposed stormwater management of the subject site and the adjoining property at 231 Miller Street, it is recommended that consent be granted on a **deferred commencement** basis.

## **RECOMMENDATION**

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

- A. **THAT** the Sydney East Joint Regional Planning Panel grant Deferred Commencement Consent to 2016SYE015 – North Sydney Development Application No. 487 /15 for Demolition of existing residential flat building and construction of mixed use building consisting of 99 apartments, commercial space and 85 car-spaces (Amended proposal) on land at 229 and 231 Miller Street, North Sydney subject to the attached conditions:

**Kim Rothe**  
**SENIOR ASSESSMENT OFFICER**

**David Hoy**  
**TEAM LEADER ASSESSMENTS**

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