

JOINT REGIONAL PLANNING PANEL (Sydney East Region)

SUPPLEMENTARY ASSESSMENT REPORT

JRPP No	2016SYE015
DA Number	DA 487/2015
Local Government Area	North Sydney Council
Proposed Development (As Amended)	Demolition of existing residential flat building and construction of mixed use building consisting of 91 apartments, commercial space and 85 car-spaces (Amended proposal)
Street Address	229 & 231 Miller Street, North Sydney
Applicant	Yaver Pty Ltd
Owner	Yaver Pty Ltd
Number of Submissions	Six (6) submissions (Original Proposal) Two (2) to previous amended proposal Two (2) to subject amended proposal
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment Value > \$20 m
List of All Relevant s79C(1)(a) Matters	North Sydney LEP 2013 - Zoning – B4 Mixed Use North Sydney DCP 2013 S94 Contributions SEPP No. 55 – Remediation of Land SEPP No.65 – Design Quality of Residential Flat Development – Apartment Design Guide SEPP (Building Sustainability Index: BASIX) 2004 SREP (2005) – Sydney Harbour Catchment
List all documents submitted with this report for the panel's consideration	Plans (Revision E) Statement of modification Revised Clause 4.6 Request for Modification (Building Height) View Loss Analysis Revised Solar Access calculation tables
Report by	Kim Rothe, Senior Assessment Officer
Report date	25 October 2016
Recommendation	1. Deferred for approval (deed of agreement) 2. Deferred Commencement Approval

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*

Amended plans were submitted to Council on 14 July 2016 in response to the above incorporating a substantial number of amendments. This amended proposal comprised 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 753m² for the retail/commercial component.

The July amended proposal achieved the requirement for increased floor to ceiling heights required by the Panel and included partial compliance with the remaining points requiring internal layout changes and an overall reduction of units, particularly between residential levels 1 to 10. Further Assessment by Council of the proposal also detailed outstanding concerns with Solar Access and amenity performance of development however recommended that the development be supported subject deferred commencement conditions of development consent requiring further unit amalgamations.

At the secondary meeting on 24 August 2016 the Panel resolved to defer the application to enable the further design issues to be addressed. Specifically, the Panel resolved to require the development to be amended to address the following:

“The Panel can’t legally determine this application at this time due to the need to execute the Commitment Deed in relation to railway infrastructure.

Accordingly the Panel defers, again, the determination of the DA. Notwithstanding the above, the Panel still has serious concerns that the development has not modified the floor layouts to maximise solar access as per the Panels previous Resolutions items 2 and 3. The Panel is currently not satisfied as to the merits of the proposal.

Further, the Clause 4.6 variation seeking to vary the height limit does not expressly address the view loss created by the breach, that is the 17th level.

No view analysis has been presented to the Panel and given the concerns for solar access, equinoxes and summer sun access analysis and a visual impact analysis is requested.

Council's suggested amendments via the DCC conditions go some way to addressing this issue but the Panel is unable to assess the full impact of solar access to the building. Building separation at levels 16 & 17 were raised by No 225 Miller St and remain an issue both in terms of view loss, massing and outlook.

The applicant is therefore requested to address these issues with amended plans to be submitted to Council and to be considered by the Panel, at a public meeting, at a time when the Deed has been executed.

Any amended plans submitted shall be notified by Council to submitters & they shall be given 14 days to respond to Council.

When this information has been received, the Panel will hold another public determination meeting."

Further Amended plans were submitted to Council on 8 September 2016 in response to the resolution incorporating a substantial number of amendments. This amended proposal comprises a total of 91 apartments being 8 x studios, 21 x 1 bedroom apartments, 47 x 2 bedroom apartments and 15 x 3 bedroom apartments with a floor space of 753 m² for the retail/commercial component.

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 a built form anticipated at the site.

In relation to solar performance and internal unit amenity the further amendments and apartment reductions have improved solar performance to what is now considered to be an acceptable and supportable levels.

The Deed of Agreement referred to in the resolution above has since been prepared and executed by the applicant on 30 August 2016 and referred to Transport for NSW and Department of Planning for concurrence and approval on 16 September 2016. At the time of writing this report, the necessary concurrence from both respective Departments has not yet been received and accordingly, full determination of the proposal cannot be given by the Panel at this time.

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.

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.

However in light of the outstanding matter of the lack of concurrence from the Director General of the Department of Planning for the endorsed deed or agreement, the Panel can make in principle agreement to the current amended proposal in line with the recommendation of this report and make electronic determination of the proposal once Council has received endorsement of the deed and notified the Panel accordingly.

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:

- The tower from the ground floor (entry level) podium and is seventeen (17) storeys (including ground floor) consistent with the previously amended scheme.
- 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 first considered by the JRPP on 23 June 2016 and reconsidered on 24 August 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		24 August 2016 AMENDED PROPOSAL		Subject AMENDED PROPOSAL	
Type	No.	%	No	%	No	%
Studio	26	23%	20	20%	8	9%
1 Bed	35	31%	25	25%	21	23%
2 Bed	37	33%	39	39%	47	52%
3 Bed	15	13%	15	15%	15	16%
TOTAL	113	100%	99	100%	91	100%

- Total parking in the basement has been retained as per the 24 August 2016 proposal as follows:

Residential Parking	78
Commercial	2
Parking	
Total Parking	80
Motorbikes	8
Bicycles	116

- 14 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 8 cars, 91 residential storage units, lift core and a plant room.
- Basements 3 is a split level basements, containing parking for 24 cars (2 accessible), 1 motorcycle, and lift core and plant room.
- Basements 2 is a split level basements, containing parking for 23 cars (2 accessible), 1 motorcycle, and lift core and plant room.
- Basement 1 is a split level basement, each containing parking for 23 cars (8 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 and one additional 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 as end of trip facilities. The lower level provides vehicular access to the basement parking, with a driveway ramp accessing the basement, loading area and garbage holding bay. This

- level also contains plant, substation, a detention tank, a garbage storage room with compactor.
- Commercial Level: This level is below the level of Miller Street and contains a commercial floor having an area of 581 m² with surrounding terraces to the south and east. This level has separate lift access from the car park entry level and from the ground level commercial space. This application does not include a use application for the space.
 - Ground Level: provides the main entry into the proposed building via the access handle from Miller Street and external entry courtyard to the building. The entry courtyard provides access to the ground level commercial suite (172 m²) and to the separate residential lobby. Three residential apartments (reduced from 4), being 1 x 1 bedroom apartments and 2 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 3 secondary balcony off the bedroom.
 - Levels 1: Residential level containing six apartments (reduced from 7), being 2 x 1 bed and 3 x 2 bedroom apartments and 1 x 2 bedroom apartments plus study however can be easily converted to a three bedroom apartment. The study has access to a terrace. All principle balconies are proposed to be winter gardens.
 - Levels 2 - 3: Residential levels each containing six apartments (reduced from 7), being 1 x studio, 1 x 1 bed, 3 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 - 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, 1 x 1 bedroom, 3 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 m²) with a north east orientated landscaped terrace. All apartment balconies are proposed to be winter gardens however the common room balcony will be open.
 - Fifteen apartments are adaptable apartments, all being 1 bedroom or studio apartments.
 - Proposed building is to contain a total of 753 m² of retail/business floor space (0.69:1 FSR).
 - In addition to the unit mix amendments, the top two floors (Level 16 and 17) have been amended to introduce splay to the north western and south western corners of the building to promote view corridors from the eastern orientated units of 225 Miller Street, North Sydney
 - Consent is also sought for works to the approved new 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. Construction has commenced to this building progressing from demolition and excavation preparation works.

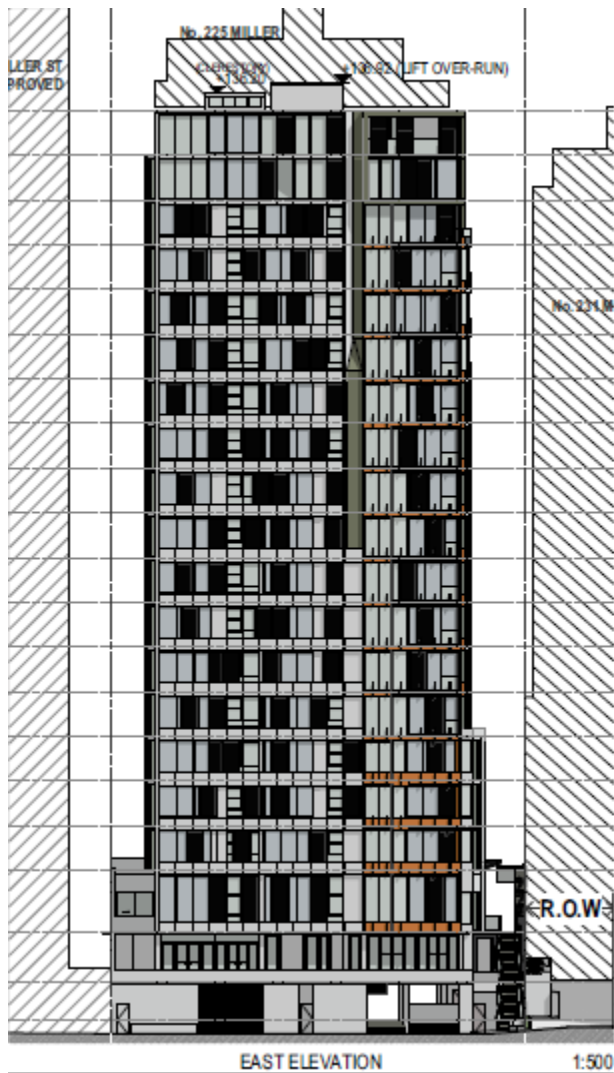


Figure 1: Proposed eastern (ROW) elevation of the subject proposal from the north east or Lower McLaren Street, North Sydney

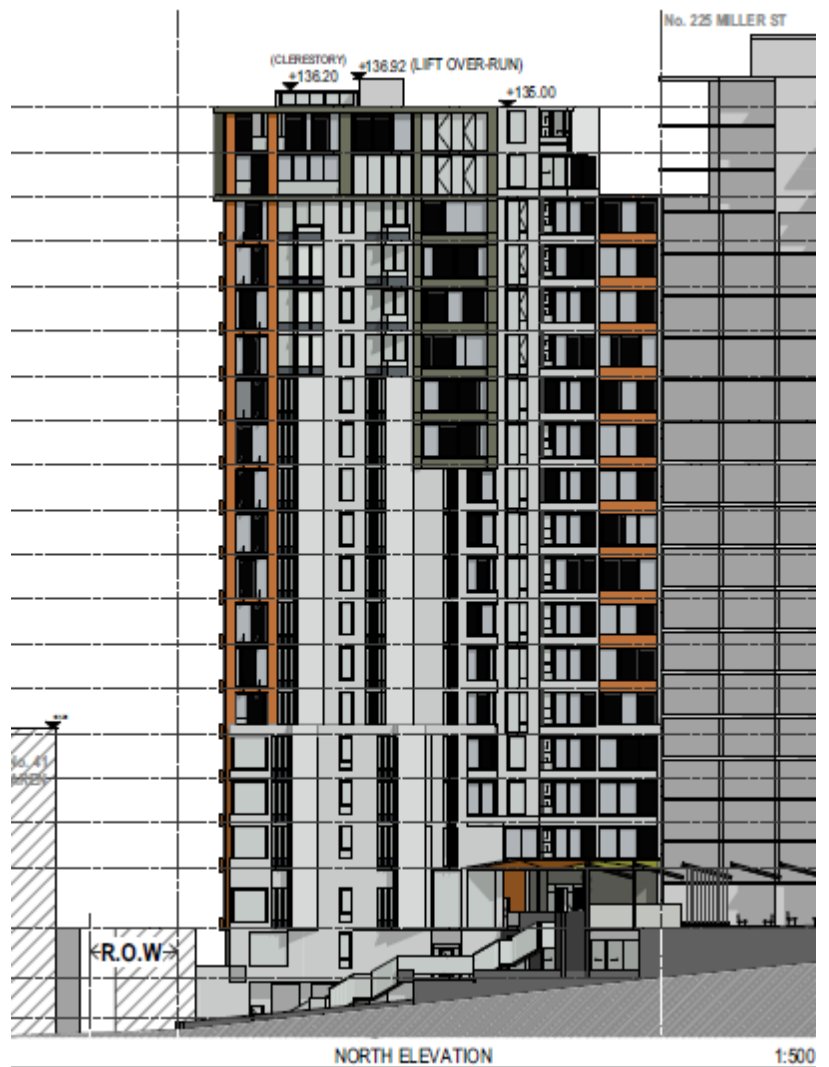


Figure 2: Proposed North elevation facing No. 39 McLaren Street, North Sydney.

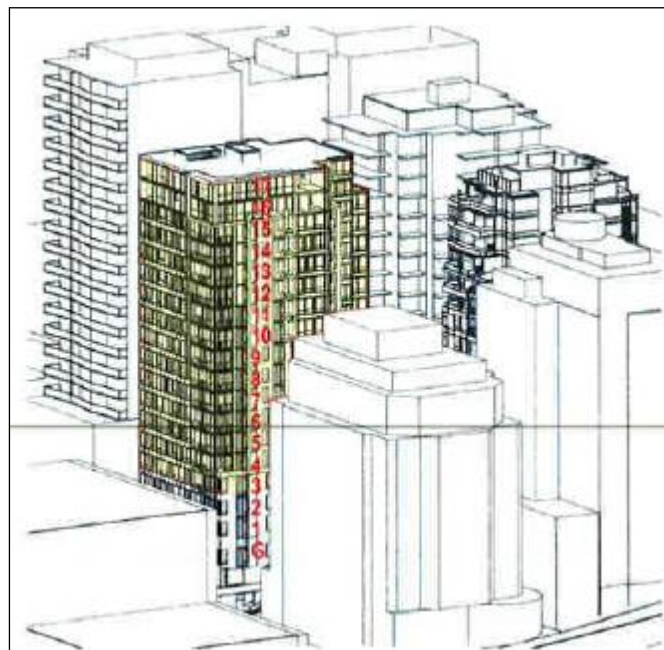


Figure 3: 3D "Sun's eye" view of the proposed development 8:30am 21 June 2016 detailing indicative envelopes at Nos. 39 & 41 McLaren and 225 Miller Street, North Sydney.

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 LI322) and Lot 10 in DP 865610 (SP 54070). The site is located on the eastern side of Miller Street, one lot to the south McLaren Street.

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



Figure 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) used to contain an eight storey office building which has now since been demolished.

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 to the 24 August 2016 is included in the preceding report to the JRPP. An abridged summary is provided here for reference:

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

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:

- 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*

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.

Amended plans were submitted to Council on 14 July 2016 in response to the above incorporating a substantial number of amendments. This amended proposal comprised 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 753m² for the retail/commercial component.

The July amended proposal achieved the requirement for increased floor to ceiling heights required by the Panel and included partial compliance with the remaining points requiring internal layout changes and an overall reduction of units, particularly between residential levels 1 to 10. Further Assessment by Council of the proposal also detailed outstanding concerns with Solar Access and amenity performance of development however recommended that the development Council supported subject deferred commencement conditions of development consent requiring further unit amalgamations.

At the secondary meeting on 24 August 2016 the Panel resolved to defer the application to enable the further design issues to be addressed. Specifically, the Panel resolved to require the development to be amended to address the following:

“The Panel can’t legally determine this application at this time due to the need to execute the Commitment Deed in relation to railway infrastructure.

Accordingly the Panel defers, again, the determination of the DA. Notwithstanding the above, the Panel still has serious concerns that the development has not modified the floor layouts to maximise solar access as per the Panels previous Resolutions items 2 and 3. The Panel is currently not satisfied as to the merits of the proposal.

Further, the Clause 4.6 variation seeking to vary the height limit does not expressly address the view loss created by the breach, that is the 17th level.

No view analysis has been presented to the Panel and given the concerns for solar access, equinoxes and summer sun access analysis and a visual impact analysis is requested.

Council’s suggested amendments via the DCC conditions go some way to addressing this issue but the Panel is unable to assess the full impact of solar access to the building. Building separation at levels 16 & 17 were raised by No 225 Miller St and remain an issue both in terms of view loss, massing and outlook.

The applicant is therefore requested to address these issues with amended plans to be submitted to Council and to be considered by the Panel, at a public meeting, at a time when the Deed has been executed.

Any amended plans submitted shall be notified by Council to submitters & they shall be given 14 days to respond to Council.

When this information has been received, the Panel will hold another public determination meeting.”

The Deed of Agreement referred to in the resolution above has since been prepared, executed on 30 August 2016 and referred to the respective Department of Transport and Department of Planning for concurrence and approval and the 16 September 2016. At the time of writing this report, the necessary concurrence from both respective Departments has not yet been received.

Further Amended plans were submitted to Council on 8 September 2016 in response to the above incorporating a substantial number of amendments. This amended proposal comprises a total of 91 apartments being 8 x studios, 21 x 1 bedroom apartments, 47 x 2

bedroom apartments and 15 x 3 bedroom apartments with a floor space of 753m² for the retail/commercial component.

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). The issues as raised are summarised as follows:-

Basis of Submissions
<ol style="list-style-type: none"> 1. Concerned over increased density on the site 2. Increased congestion in an already busy narrow lane way 3. Increase in car and service vehicles will lead to increased noise 4. Increased safety risks as the right of way is also used by pedestrians and school children. 5. Poor emergency access via the right of way. 6. Existing trees are likely to be affected
<ol style="list-style-type: none"> 1. Inadequate setbacks/separation provided to adjoining buildings, particularly on northern side buildings and 39 McLaren Street. 2. Raise concern over the poor solar access performance of the development. 3. Concern over further overshadowing to the building from new development 4. Car parking is provided in excess of Council's requirements inclusive of the requirements for a future child care centre. 5. Traffic assessment is inadequate 6. Concern over construction impact and potential for impact to residential amenity
<ol style="list-style-type: none"> 1. Concerned over overlooking from new building to existing surrounding buildings 2. Concerned over further congestion to rear right of way 3. Solar Access will be limited given the concentration of surrounding buildings 4. Concerned over timing of waste removal 5. Lack of architectural merit in the design.
<ol style="list-style-type: none"> 1. Insufficient building separation has been provided, resulting in significant loss of outlook and amenity for apartments within adjoining buildings. 2. As a result of the minimal building separation, the proposal has sought to provide visual privacy through orientation of windows, louvres and screens which results in poor amenity for future apartments 3. Poor amenity to apartment layouts. 4. Reduced setbacks and separation leads to poor amenity outcomes. 5. The pedestrian thoroughfare also needs to achieve a high quality outcome in terms of its contribution to the quality of the public accessible spaces near it. 6. The subject site is an isolated site. Presumably, it had the opportunity to be developed at the same time as 225 Miller St as a coordinated development but chose not to do so at that time. It is clear that development potential of the subject site was considered then given the blank wall to a height of 16 levels on the east face of 225 Miller St. 7. Council is currently preparing a precinct plan for built form for the subject street block and therefore the proposal of such a scale is quite premature. 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.
<ol style="list-style-type: none"> 1. Whilst a through site link is proposed, it will not engage in any way with the one approved through 221 Miller Street, North Sydney. Creation and engagement with 221 Miller Street, North Sydney will allow for a possible north south link which may allow for improved Disabled Ramp access. 2. The levels to the proposed child care centre also present an opportunity for greater engagement with 221 Miller Street, North Sydney. Further consideration to the southern elevation could alleviate the currently proposed blank façade.

1. **Building Height:** 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.
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.
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.
4. **Right of Way:** 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 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.
5. **Basement Car Parking:** 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.
6. **Privacy:** How is privacy being treated to protect the amenity from our balconies along the northern elevation?
7. In summary, the proposed building has serious shortcomings with respect to building height, right of way access, basement excavation and privacy.

Notification of Second Round Amended Plans – received 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 2016.

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

Basis of Submissions

1. The development 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.
 - does not adequately respond to the existing planning controls for the site, in particular the ADGs for building separation,
 - 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,
 - continues to result in a severely compromised outlooks for surrounding residents of existing buildings and residents of future buildings on adjoining land;
 - continues to rely on borrowed amenity from 41 McLaren Street to ensure that future residents are provided with an acceptable outlook;
 - 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
 - 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.

2. Council's previous reasons for refusal of the application which have not been adequately resolved by the amended proposal. In particular was the failure to provide adequate building separation was also identified by Council and has not been resolved by the proposal.
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.
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.
5. The application should be refused by Council on the following grounds:
 - 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&A Act 1979)
 - 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&A Act 1979)
 - 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&A Act 1979)
 - 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 organised development of this wider street block (79c (e) – Environmental Planning Instruments of EP&A Act 1979)
 - 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;
 - f) The building separations should be increased to as per Attachment A which allows for the following:
 - 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);
 - 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);
 - 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)

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.
2. The application 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.
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.

Notification of Third Round Amended Plans – Received 8 September 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 28 September to 12 October 2016.

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

Basis of Submissions
<p>1. noted as amended. Mention of improved solar access through the reduction of the number of units from 99 to 91. No change in parking provisions. There is a non-compliant lift height over run. Precinct opposes this as it sets a precedent.</p>
<p>1. I refer to the application currently on public exhibition which closes today for (DA487/2015) 229 & 231 Miller Street, North Sydney Mixed Use Development.</p> <p>The applicants has improved the view angles for our eastern facing units on the top most floors of 225 Miller Street. There is no longer an objection to the proposed units at the top three levels provided the height does not exceed the height limit or in creep up through Section 96 applications.</p> <p>Given the close proximity of the proposed building next to ours, we request the following conditions be imposed.</p> <ul style="list-style-type: none"> ○ A noise and vibration monitoring plan be prepared so as not to interfere with the amenity of residents. ○ Working hours be restricted to 7.30am to 5.30pm Monday to Fridays with no work on weekends. ○ No work to the western boundary excavation area or above ground wall without a report agreed to us on how works will be carried out. ○ Anchor approval from us into our site. ○ Hoarding plans to be approved by us where over our land. ○ Crane Tower sail approval where over our land. ○ Construction Traffic Management plan to be submitted to us for our approval. ○ Dust control measures during construction. ○ Construction Management Plan to be submitted for our approval where adjoining our land. ○ Dilapidation report signed by the Applicant and us. ○ Engineering/civil and stormwater plans to be signed by us where the proposed building is abutting or against our boundary.

REQUIREMENTS OF COUNCIL'S NOTIFICATION DCP -NOTIFICATION OF AMENDED PROPOSALS

As seen in the preceding notification history the application has undergone broad notification of the proposal have occurred comprising the development as originally received as submitted to Council has occurred. The subsequent renotification of the proposal since reporting to the Sydney East JRPP as noted under each respective notification round headings were only to those parties who submitted submissions in the first instance. *Part A Section 4.0 Notification of Applications Section 4.5 Amended Plans* of NSDCP 2013 details the requirements of Council to renotify amended plans as received is as follows:

4.5 AMENDED PLANS

An applicant may amend an application at any time before Council has made its final determination.

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

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

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

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

Where the amendments involve the removal, lopping, topping or pruning a tree, the application will not be renotified or readvertised, but only where that application is required by a tree preservation order and no other development is involved.

In response to the Revision D & E Amended proposals noted above, Council undertook direct notification of those persons who made submissions on the originally proposed development application, in accordance with bullet point 1 of Part 4.5 of NSDCP 2015.

Further broad renotification of all persons notified of the original proposal was not deemed to be required by the DCP for the Revision 'D' & 'E' amended proposals due to the distinct absence of any new or different adverse effect on adjoining and neighbouring properties arising from the amended proposal.

In arriving at this position, further broad renotification was not considered warranted for the following reasons:

- The amended proposal represents a significant reduction from 113 apartments to 91 apartments primarily through amalgamation of apartments to the east elevation of the building.
- The setback from the northern boundary has been increased at key points of the building as follows:
 - Lower commercial level - Level 1 = 600 mm
 - Level 2 – Level 4 = 600 mm – 2.2 metres

- Level 5 – Level 10 = 1.4 metres to 2.2 metres
- Level 11 – Level 17 = 1.5 metres
- The external configuration of the building as proposed remains generally consistent with the originally notified Revision A proposal. The amended proposal does not alter the overall building height of the originally proposed development;
- The amended proposal removed of an entire floor from within the external building envelope with no alteration to overall building height representing a significant reduction in the number of dwellings.
- Finished floor levels of the building presents only minor differences to the originally proposed and amended scheme.
- Other changes to external form of the building relating to materials, fenestrations and architectural detailing which are largely cosmetic in nature.
- All submitters who made submissions have been provided further opportunities to comment on the amended proposal and will be invited to the public meeting of the JRPP.

In interpreting the adverse effect and referred to in Section 4.5, Council can be guided by the provisions of Section 4.4.3 of the Notifications Policy which is as follows:

4.4.3 Matters considered in forming the opinion that enjoyment of land may be adversely affected

In determining which neighbouring land may be adversely affected Council will consider:

- (a) *the likely impacts of the development on both the natural and built environment of the neighbourhood; and*
- (b) *the social and economic impacts on the neighbourhood.*

In accordance with Part A Section 4.5 of NSDCP 2013, Council undertook renotification of the amended plans to those objectors who responded to the original notification only. In Council's opinion, further broad notification of the amended plans was not required due to the substantial reductions in the proposed scheme and due to the absence of any greater or different adverse effect on adjoining land. Accordingly, Council considers that adequate renotification has occurred of the amended proposals having regard to the requirements of Council's Notifications Policy as set out under *Part A Section 4.0 Notification of Applications of NSDCP 2013*.

REFERRALS

Engineering/Stormwater

Council's Development Engineer has previously 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 reviewed the applicants submission as well as the approved designs for adjoining developments at 221, 225 and 231 Miller Street, North Sydney. On the basis that a comprehensive design is required which can be accommodated by existing infrastructure and that this may need to involve adjoining land and developments, it is appropriate that this be resolved 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 would be required). The Panel recommendations for both previous deferrals have not required alteration or expansion to the proposed loading area.

Considering the further reduction in the overall unit numbers, and the number of dwelling types 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.

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

The original proposal was submitted to the North Sydney Council's Design Excellence Panel (DEP) for consideration which recommended the following design features be incorporated:

- Articulation to be added to the building ground floor lobby to be observable from Miller Street pedestrian access.
- Cut out to the building should be incorporated on the northern, eastern or southern side to allow for more natural light penetration to the building.
- More vertical elements and detailing required to emphasis height in a positive sense and emphasis a more slender tower.
- Must ensure the mesh screens are non-reflective, easy to maintain and do not cause wind noise impacts.
- Common room to be moved to north east corner of the building.
- All apartments need to comply with regard to the minimum floor area and width requirements for apartments and balconies under the Apartment Design Guide.
- 3.1 Metre high floor to floor heights should be provided
- Floor plate exceeds ADG, further separation and setbacks should be incorporated including a reduction to the total number apartments per floor.

The recommendations of the DEP have largely been incorporated into the amended proposal in addition to the amendments requested by the JRPP.

Certain design features such as the "cut-out" in the upper floor plans could not be achieved given the significant site constraints and the need to provide a functional lift core..

The JRPP Panels preceding decisions have generally accepted that the proposal's building envelope, separation distances, setbacks, and overall height to be satisfactory. 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 was 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. 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 sense of articulation to the façade and ensure the building comprises a functional base, middle and top which responds to the sites battle-axe location.

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. The amended floor plans and associated amenity impacts is considered against the provisions of SEPP 65 and Council's DCP is discussed throughout this supplementary report.

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 Statutory level controls (SEPP 65) and 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 battle-axe allotment arrangement and proximity to existing and recently approved high-rise development at Nos 221, 225 & 231 Miller Street. The site is located in a high density locality with existing development constraints giving little opportunity for the subject site to achieve 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 10 and 11**: below:



Figure 10: Extract of Plan DA02(E) showing approved building outlines relative to subject site

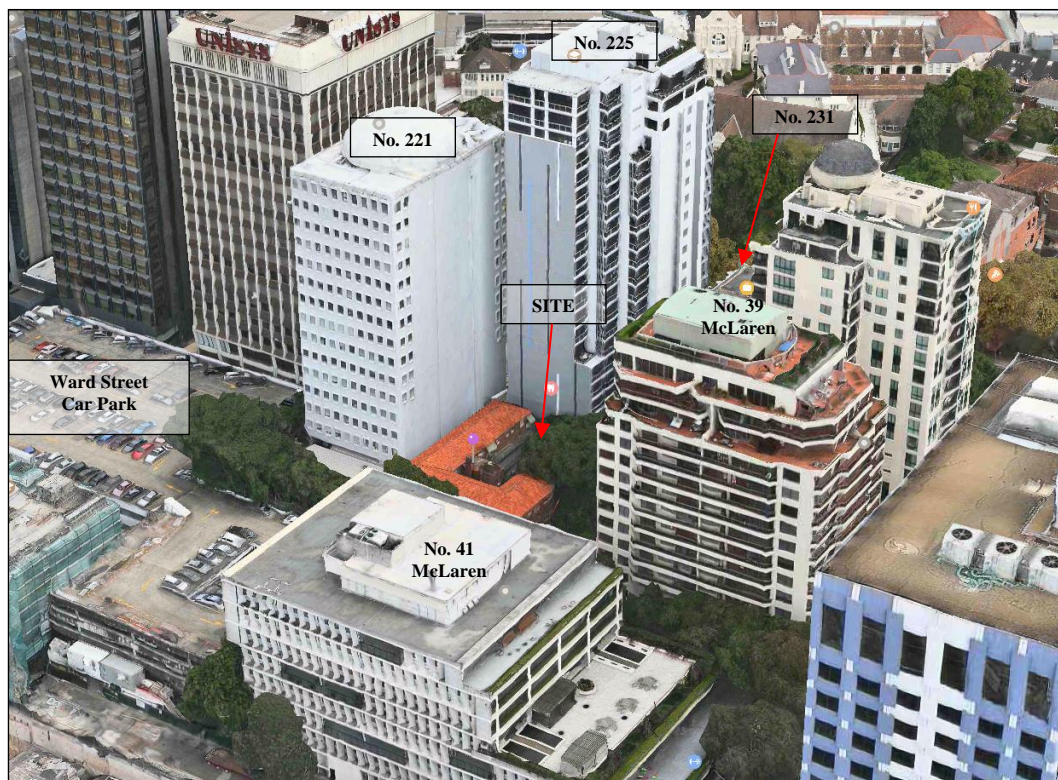


Figure 11: 3D aerial image detailing site context and adjoining built form source: Apple maps

The site constraints do not provide opportunity to fully address the site's Miller Street frontage, however slot views from Miller Street are provided along the access corridor and the building will be visible from McLaren Street to the north East. 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 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 as anticipated for development in this area, it being noted that the breach of the height control relates to roof top features and lift overrun only and is consistent for approved breaches to adjoining sites. 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 mixed

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 level.

Additional detail was lodged prior to the 24 August 2016 meeting regarding the interface of the non-trafficable green roof and the existing balconies of the adjacent existing building. Concern was raised by Council with the lack of separation to between the balconies of 225 Miller and the back of the plant rooms which lead to Council recommending a deferred commencement condition to increase the separation between these balconies and the plant rooms/back of apartments to improve outlook and solar access to these balconies.

The Panel's consideration at the meeting of the 24 August 2016 support Council's conclusion resolving:

"Building separation at levels 16 & 17 were raised by No 225 Miller St and remain an issue both in terms of view loss, massing and outlook."

In response, the applicant has sought to improve the outlook, solar access and massing to these balconies via amendments in the form of splays to the north western and south western corners of the building to levels 16 and 17 and the submission of a view loss analysis (attached to this report). These plans have been renotified in accordance with Council policy. It is to be noted that a further submission has been received from the representative of the owners of the affected adjoining building at 225 Miller Street advising that the proposed treatments are acceptable in the circumstances. Accordingly, the proposal can be considered to adequately respond to the Panels resolution with regard to acceptable in the circumstances with regard to the relationship to 225 Miller Street, North Sydney, the overall building height and view loss concerns.

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 originally proposed 113 to 99 apartments under the 24 August proposal. Pursuant to the JRPP resolution of the 24 August 2016, the dwelling numbers have been further reduced to a total of 91 apartments, resulting in a total yield of 9.46 dwellings per 100sqm of site area (excluding the access handle). The reduction in the overall dwelling yield is a function of the site constraints and the need to provide improved internal building amenity.

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 in line with the Panel recommendations and consistent with reasonable expectations for the site, given the highly constrained location.

Table 1: Density Comparison – Miller Street developments					
Address	229 Miller Street		231 Miller Street	221 Miller Street	225 Miller Street
	Subject Site		Approved (JRPP)	Approved (JRPP)	As Built (Council)
DA No.	DA487/15		DA453/14	DA256/15	DA658/06
Site Area (m ²)	1091 m ² (961m ² – excl handle) Original DA / Amended		521 m ²	2007 m ²	885 m ²
Total Dwellings	113	91	60	183	79
Serviced Apartments	-	-	-	100	-
Unit Mix (%)					

Studio	26 (23%)	8 (9%)	23 (38.3%)	27 (14.8%)	-
1 Bed	35 (31.0%)	21 (23%)	9 (15%)	71 (38.8%)	12 (15.2%)
2 Bed	37 (32.7%)	47 (52%)	21 (35%)	76 (41.5%)	43 (54.4%)
3 Bed	15 (13.3%)	15 (16%)	7 (11.7%)	9 (4.9%)	24 (30.3%)
Dwg Yield (/100sqm)	10.36 (11.75)	8.34 (9.46)	11.51	9.12	8.93
Roof RL (ex Plant)	135.19	135.19	135.22	144.1	139.9
Total Storeys	20 - 21	19 - 20	18 - 19	22	21

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 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. Conditions are recommended to require suitable roof top plantings and maintenance occurs.

Principle 6: Amenity

Unit size, internal living areas and private open space

The sizes and private open spaces of the residential apartments generally 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. To improve the solar amenity the panels resolution was 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 due to an abundance of small studio apartments with limited northern exposure.

Amendments made to Plans considered by the Panel on 24 August 2016

The proposal was 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) were reduced from 8 to 7. The former Level 1 containing 8 apartments was deleted.

The number of apartments on levels 5 to 8 (now levels 4 to 7) had 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) had been reduced from 7 to 6 through internal layout changes to amalgamate units 3 & 4.

Reliance on Wintergardens

The development however relies on winter gardens to compensate for a larger number of south-east facing dwellings with openings to the east façade. The orientation of the site at 9 degrees south of east results in the majority of these units failing to achieve the minimum 2 hours minimum direct sunlight to internal living areas during mid-winter in accordance with the ADGs.

Council's assessment of the Revision C amendments (submitted in July 2016) disputed the levels of claimed performance against the Solar Access provisions primarily due to the disproportionate reliance on wintergardens and apparent lack of penetration of the sun into the primary living rooms of many of the apartments. Furthermore, the levels of solar access at the mid winter solstice (21 June) also relied on an extended daytime photoperiod commencing from 8:30 am rather than the required period nominated in the ADG's of 9:00 am.

The current proposal (Revision E submitted in September 2016) has been supported by a supplementary solar access report prepared by Stephen King which addresses solar performance. The solar access report advises that the proposal on June 21 will achieve two hours of solar access compliance to 69.2% of the units within the development between 8:00 am to 11:00 am.

In summarising the solar performance of the building the report states:

4.0 Conclusions

4.1 Interpreting the ADG

At 11am on June 21, the angle of incidence of direct sun to the nominally east facing glazing is too great to be considered as part of the prescribed minimum 2 hour period of solar access.

Therefore, a literal application of the ADG Design criterion (minimum 2 hours after 9:00 am) is unachievable for glazing in that elevations.

4.2 'Extended hours'

On the other hand, the applicant's full 3-D analysis makes clear that early morning sun after 8:00 am is both available, and provides for a superior amenity for units oriented towards the east.

I note again, that not only is the earlier sun of significantly higher value to the relevant units, but that given the greater overshadowing of the site from the north, sun access is actually available to more units. This solar access opportunity is combined with a more favourable exposure to both dominant summer cooling wind regimes, and what I understand to be significant amenity of views.

In my considered opinion the designers are making the appropriate decision by laying out the floor plates to maximise the benefits of the easterly orientation.

As I have previously reported, I have examined recent approvals within close vicinity of the subject application, that have significantly lower solar access than the proposal. In my considered opinion, the subject application uses best practice and good design to maximize solar access.

In my experience, Council is not precluded from exercising its discretion - in that it should take into consideration such superior solar access in determining that the performance objective of the ADG is satisfied.

The report also references the following figures 12 and 13 depict sun's eye views of the proposal:

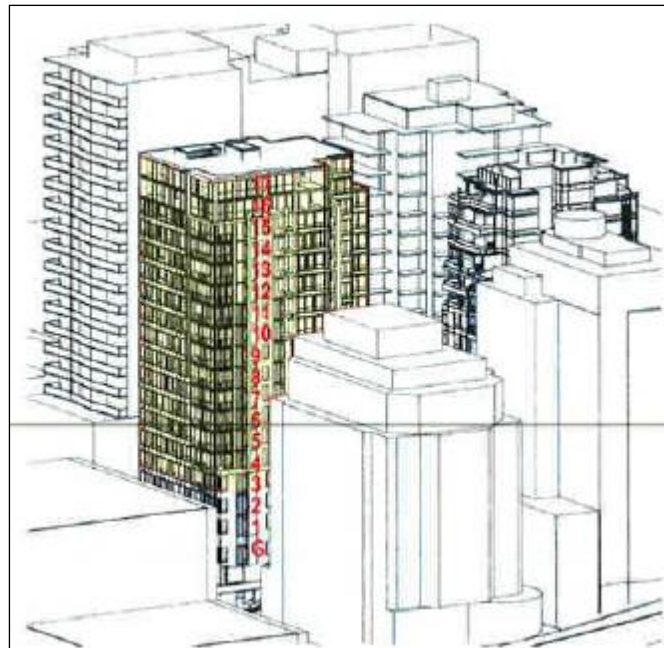


Figure 12: 3D "Sun's eye" view of the proposed development at 8:30 am to 21 June 2016.



Figure 13: 3D “Sun’s eye” view of the proposed development from between 10:30 am to 11:00 am 21 June 2016 when the last of the morning eastern exposure to the building is obtained.

Consideration of Applicant’s submission

The solar access report prepared by Steven King, dated 9 September 2016, acknowledges that the development **would not achieve the minimum requirements of the Apartment Design Guidelines of 2 hours solar access** between 9:00am and 4:00pm at the winter solstice (21 June).

The report seeks support to rely upon a broader performance period for the east facing units from 8:00am to 11am in midwinter due to the un-obstructed solar access to the eastern façade of the building from 8:00am. The report justifies this as acceptable due to as well as access to superior views and cooling breezes at this location (p. 6). The report also submits that the designed wintergardens should be considered to have dual purpose as both private open space and internal living rooms for the purposes of solar performance, with the eastern glazing of the wintergardens considered to be the point of assessment for solar performance against the ADG.

Most relevant from the submission is the following:

2.2.2 Wintergardens to East facade

Logically, the applicant employs a proven and usually accepted strategy for maximising the effective winter sun available to the apartments which face East - East facing private open spaces (POS) are configured as wintergardens.

- *It is understood that the wintergarden glazing is intended to meet the following objectives:*
- *Well-controlled air exchange to optimise the performance of the wintergarden as an attached sunspace in winter. In practical terms, an attached sunspace is a more effective passive solar gain strategy than 'direct gain';*
- *Designed for maximum opening to encourage (and possibly enhance) summer ventilation*

Where those requirements are both met, the relevant glazing line for winter solar access compliance is the outer façade glazing. That said, I note especially that

neither I nor the applicant seeks to characterize the wintergardens as indoor space.

The Applicant goes much further than is usual - or even than illustrated in the ADG by way of example of satisfactory implementation of the wintergarden principles - by including the consideration to preserve the true nature of balconies in providing 3D articulation for the façade. The proposed detailed strategy for the operable glazing forgoes an 'easy' solution of full glass louvres, in favour of glazed panels sliding away in front of adjacent solid walls.

It is Council's view that the arguments provided in support of the solar performance of units should not be supported by the Panel due to the unfavourable site conditions, and in particular due to the solar path and unfavourable "angle of incidence" of the sun striking the building from 10:30am which limits the effectiveness of direct sunlight to internal areas of units to the eastern face of the building.

The principles established in *Benevolent Society v Waverley Council* [2010] NSWLEC 1082 for the assessment of the adequacy of solar access should be undertaken with the following principles in mind:

- **The ease with which sunlight access can be protected is inversely proportional to the density of development.** At higher densities sunlight is harder to protect and the claim to retain it is not as strong.
- **The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.**
- **Overshadowing arising out of poor design is not acceptable**, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.
- For a window, door or glass wall to be assessed as being in sunlight, **regard should be had not only to the proportion of the glazed area in sunlight but also to the size of the glazed area itself.** Strict mathematical formulae are not always an appropriate measure of solar amenity. For larger glazed areas, adequate solar amenity in the built space behind may be achieved by the sun falling on comparatively modest portions of the glazed area.
- For private open space to be assessed as receiving adequate sunlight, **regard should be had of the size of the open space and the amount of it receiving sunlight.** Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.
- **Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored**, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.
- In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.

Having regard for the planning principle and the Council's previous supplementary report, it is appropriate that the Panel give consideration to some early morning solar access for unit dwellers at the eastern façade as well as consideration for superior views and outlook from the eastern elevation. The applicant's reliance on performance prior to 8:30am, however should not be accepted.

The Panel may however wish to apply a balanced consideration of total unit amenity for this building, which weighs up the poor solar performance arising from unfavourable site orientation and unit design with the improvements incorporated into the amended scheme. The amended Revision E plans have significantly reduced the number of poorly performing units in the scheme, and the other positive amenity characteristics of the design, such as the greater exposure to views outlook and enclosure of balcony spaces as winter gardens at the building's higher levels, where wind loading would otherwise render these spaces unusable as outdoor open spaces.

In applying a view that the levels of the building below Level 9 would not generally achieve great amenity benefit from the wind protected wintergarden design, the Panel may consider that east facing units from Level 10 and above should be considered to be acceptable amenity units due to the all year round useability of the wintergardens. By applying this view to the amended proposal, it is considered that only 34% of the proposed units would achieve the minimum 2 hours direct solar access to both private open space and internal living space required by the ADGs. However, a greater 50.4% of units would have either satisfactory solar performance or higher view amenity which would ensure good residential amenity.

In summary, Council does not recommend that the Panel accept the arguments which rely solely on the exposure of the wintergarden glazing for solar performance to east facing units below level 10, but recommends that the Panel consider the improved solar performance of the amended scheme and higher view amenity as adequate offsets to the requirement to achieve minimum 2 hours direct solar access. In considering whether to accept this view the Panel may wish to consider whether a condition should be imposed to require the interior walls and soffits to the wintergardens and balconies to be finished and maintained in a highly reflective colour so as to maximum the reflective properties of opposing internal walls for solar penetration into units. A condition to this effect is included in the draft conditions of development consent as Condition A5.

Principle 7: Safety

No significant concern was raised to the original proposal in this regard and the design as 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. Fifteen 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. 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 sense of articulation to the façade and ensure the building comprises a functional base, middle and top which responds to the sites battle-axe location.

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

Apartment Design Guide (ADG)

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

Parameter	Design Criteria	Compliance	Comment
Separation	<p>Minimum separation distances for buildings are:</p> <p>Up to four storeys (approximately 12m):</p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>Five to eight storeys (approximately 25m):</p> <ul style="list-style-type: none"> • 18m between habitable rooms/balconies • 12m between habitable and non-habitable rooms • 9m between non-habitable rooms <p>Nine storeys and above (over 25m):</p> <ul style="list-style-type: none"> • 24m between habitable rooms/balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 	NO	<p>Generally the positioning of the building is such the separation distances in accordance with the ADG cannot be reasonably achieved on site.</p> <p>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 altered the built form above ground or overall height or separation distances.</p>
Setbacks	Merit	NO	<p>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.</p>

Parameter	Design Criteria	Compliance	Comment
Solar and daylight access	70% off apartments to receive 2 hours of direct sunlight between 9:00 am to 3:00 pm	NO	<p>The solar access report acknowledges that the development does not achieve the minimum 2 hours of solar access between 9:00 am and 3:00 pm at Midwinter, however seeks approval to rely upon un obstructed solar access to east facing apartments between :800 am to 11:00 am due to superior views, outlook and access to cooling breezes.</p> <p>Whilst Council does not support this interpretation or accept the stated performance in the solar access report , it is considered that the development floor plans have been amended to reduce the overall number of poorly performing apartments through layout changes and increased openings to the east elevation of the building</p> <p>The poor orientation and location of existing and future approved buildings means that full compliance can never be achieved within this proposal. The proposal to incorporate wintergardens to all primary balconies accordingly is supported in the circumstances to create a protected airlock buffer to the living spaces in winter time. These balconies can be opened up by the occupants when the weather and solar access is improved to function as typical balconies.</p> <p>The sites difficult constraints and orientation is acknowledged and with regard to Council's previous recommendation, the JRPP resolution of 24 August 2016 and further amendments made by the applicant the level of Solar performance is now considered supportable in the circumstances and recommended for full approval without further refinement required by Council.</p>
Natural ventilation	60% of apartments are naturally cross ventilated	Yes	Given the total number of dual aspect apartments the total of whole building will be approximately 80%.
Ceiling Heights	2.7m (habitable rooms)	Yes	In direct response to the Panels first deferral request and concerns, the applicant amended the floor to floor heights of the residential and also removed an entire floor from the building.
Apartment size and layout	35m ² Studio 50m ² (1B) 70m ² (2B) 90m ² (3B)	Yes	<p>46-49 m² (Studio) 50m² - 72 m (1B) 74 m²-114m² (2B) 100m²-160m² (3B)</p> <p>The apartments as amended achieve the minimum required apartment sizes.</p>

Parameter	Design Criteria	Compliance	Comment
Apartment size and layout	<p>Master bedrooms have a minimum area of 10m²</p> <p>All secondary bedrooms have a minimum width of 3m</p> <p>Living rooms have a minimum width of 3.6m (1B) and 4m (2B and 3B)</p> <p>The maximum habitable room depth is 8m from a window</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p>	<p>All master bedrooms have an area greater than 10m²</p> <p>All secondary bedrooms have a minimum width of 3m</p> <p>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.</p> <p>The kitchens of the apartments are less than 8m from the windows.</p>
Private open space and balconies	<p>Studio – 4 m²</p> <p>1B – 8m²</p> <p>2B – 10m²</p> <p>3B – 12m²</p>	Yes	<p>The amended proposal meets the ADG guideline in this regard.</p> <p>It is to be noted that essentially all apartments within the development have wintergardens proposed for their balconies.</p>
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	<p>6m³ (1B)</p> <p>8m³ (2B)</p> <p>10m³ (3B)</p>	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:

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

B4 Mixed Use Zone Objectives

The specific objectives of the Mixed Use zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.*

The amended development is considered to satisfactorily achieve the zone objectives.

NSLEP 2013 Compliance Table

Principal Development Standards – North Sydney Local Environmental Plan 2013			
North Sydney Centre	Proposed	Control	Complies
Height (Cl. 4.3)	RL135. to the roof of Level 18 (highest level of accommodation), RL 136.90 to the top lift overrun A clerestory window is proposed over the second apartment of level 18 with RL 136.2	RL 135m AHD	NO (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 of RE1 or land identified as a Special Area.	Variation permitted	Yes
Overshadowing of land (Cl.6.3 (2) (a) and (b))	The diagrams demonstrate that the development will have no net increase in overshadowing between 12 pm and 2 pm on the land marked 'Special Area' on the North Sydney Centre Map. The proposal will not overshadow Don Bank Museum.	Variation permitted	Yes
Minimum lot size (Cl.6.3 (2) (c))	1091 m ² Excluding access handle 961 m ²	1000m ² min.	Yes
Setback to Miller Street (Cl.6.4)	The proposal provides no works with a height greater than 1.5m above existing ground level within the front 5m of the subject site. Stair access down to the booster hydrant pump room is however for the purposes of the fire department requiring access from Miller Street.	5m setback to allow for landscaping and access	Yes

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 however have improved the floor to floor relationship and removed previous concerns with regard to constructability and building height creep.

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:

“1. THE PROPOSED VARIATION

This request relates to Clause 4.3 of the North Sydney Local Environmental Plan 2013 which sets a maximum height for buildings on the subject site of RL 135m AHD. The proposed building complies with the height control other than for the lift overrun, which reaches a height of RL 136.9 and as such breaches the control by 1.9m.

2. OBJECTIVES OF THE HEIGHT OF BUILDINGS DEVELOPMENT STANDARD

Clause 4.6(4) requires that prior to granting consent to 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 in the Statement of Environmental Effects submitted with the development application.

While a minor variation to the Height of Building development standard is sought, the development proposed is generally consistent with the objectives of the control, as set out in Clause 4.3 of the LEP. Consistency with each of the objectives of the Height Standard is outlined below.

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

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.

(b) to promote the retention and, if appropriate, sharing of existing views,

The breach of the height control will have little impact on views from the surrounding areas as the properties to the north, north west and north-east are developed with buildings, or have development approval.

The analysis of view impacts demonstrates that while there will be some impact on views for a small number of residents of the Meriton building which is located immediately to the west of the site, these impacts are caused by the compliant elements of the proposed building. Notwithstanding that these impacts are considered to be acceptable given the circumstance of the site and its surrounds, we have made some modifications to levels 16 and 17 to improve the outlook from the affected apartments. These alterations have reduced the size of the footprint of these levels, effectively taking area from the north-west and south-west corners to open the outlook in these directions.

The development proposed will generally not result in the loss of significant view lines or vistas as such views and vistas are already lost by the approval of developments at Nos. 221 and 231 Miller Street. Some loss of views will occur to the upper levels of No. 231 Miller Street, but the view loss is resultant from a portion of the building which complies with the height control and as such are not views that can reasonably be expected to be retained. The proposal will result in a loss of views from the existing office building at No. 221 Miller Street and future residential apartments in the as-yet undeveloped consent for that property. Again, the view impacts would be resultant from the compliant components of the building and as such are considered to be acceptable.

View impact is fully considered in the View Impact Analysis that has been submitted to Council under separate cover. The view analysis that has been undertaken has informed this amendment to the Clause 4.6 Variation request. The analysis demonstrates that the impact on views that would be caused by the non-compliance of the lift overrun with the height control will be minor in nature.

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

The impact on adjoining buildings in terms of solar access results from the compliant elements of the building. The lift overrun will not cause any additional detrimental solar impacts as the only areas of shadow caused will be to the rooftop of the proposed building.

Shadow diagrams and Views from the Sun diagrams have been submitted with this application, and additional solar impact information has now been provided to Council to allow for the consideration of the solar impact of the proposal.

There will be no detrimental solar impact to any public reserves, streets or other public areas as a result of the proposal. The position of the lift overrun is such that the only shadowing caused will be to the rooftop of the proposed building.

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

The privacy of the adjoining buildings is not be detrimentally impacted by the component of the building which varies from the height control as it is a lift overrun and not habitable space. The layout and design of the apartments have been designed to ensure that the impact on the privacy of adjoining residents will be minimised.

The minor breach in the height standard that is proposed relates only to the lift overrun and will not cause any loss of privacy for surrounding residents.

(e) to ensure compatibility between development, particularly at zone boundaries,

The proposed development will provide a compatible mix of uses to the surrounding area. All of the buildings in the immediate vicinity are a mix of residential apartments, serviced apartments and commercial uses. The mix of commercial use, residential apartments and a child care centre that is proposed within the building at 229 Miller Street will be entirely in keeping with the existing development, and it will also be consistent with the uses appropriate to the location of the site in the centre of North Sydney and in close proximity to public transport and employment opportunities.

The height of the building has been designed 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. As such it 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.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of an area.

The bulk of the proposed building is in keeping with the height control for the site and as such it is in keeping with the intended character for the area. The proposed building is also appropriate given the scale of the surrounding buildings, including recent approvals that are yet to be constructed. The diagram below indicates that the proposal fits well within the surrounding area and is consistent with the density and height that is appropriate given the location of the site within the North Sydney CBD.



The lift overrun cannot be seen from Miller or McLaren Streets 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 compliant 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 additional 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 the public interest to permit variation of the standard for the reasons given.

3. CLAUSE 4.6 VARIATION

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 in this case by varying the control in order to permit the lift overrun to exceed the height control.

3.1 The Development standard is unreasonable and unnecessary in the circumstances of the case

Clause 4.6(3)(a) of the North Sydney LEP 2013 requires that a proposed variation to a development standard demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In Wehbe V Pittwater Council (2007) NSWLEC 827 Preston CJ set-out five ways of establishing that compliance with a development standard is unreasonable or unnecessary in support of justifying a variation. These are:

- 1. The objectives of the standard are achieved notwithstanding non-compliances with the standard.*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*
- 3. The underlying objective of purpose would be defeated or thwarted if compliance was required and therefore compliance is unnecessary.*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. This is, the particular parcel of land should not have been included in the particular zone.*

As outlined elsewhere in this report, the development proposed at 229 Miller Street is consistent with the height standard apart from a minor breach by the lift overrun. The bulk and scale of the building is compliant with the height control and is hence consistent with the scale that was envisaged for the site by the LEP control. The proposed breach by the lift overrun does not alter the bulk and scale of the proposed building.

The exceedance of the height control by 1.9m does not cause any significant detrimental impacts on the surrounding area, with no additional shadow impact on any surrounding building or public place. The position of the lift overrun is such that the only area of shadowing cause is to the rooftop of the proposed building.

There are no detrimental visual impacts caused by the element of the proposed building that does not comply with the height control. The issue of visual impact is fully assessed in the View Impact Analysis that has been submitted to Council.

Given the location of the subject site within the North Sydney Centre, the nature of the immediately surrounding development and the fact that the building proposed is generally consistent with the objectives of the Mixed Use Zone, it is considered that strict compliance with the height control is unreasonable and unnecessary in this case.

3.2 Sufficient Environmental Planning Justification

Clause 4.6(3)(b) of the North Sydney LEP 2013 requires that a proposed variation to a development standard demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard.

As discussed previously in this report, it is considered that there is adequate planning justification to support the minor non-compliance of the proposed building:

- The proposed development is consistent with the objectives of the Mixed Use Zone and also with the objectives of the Height of Building development standard in the North Sydney LEP;*
- The non-compliant element does not add to the visual bulk and scale of the building;*
- The lift overrun cannot be seen from any public place;*
- The non-compliant element does not cause any additional shadow impacts on the surrounding area;*
- There are no additional view impacts caused by the lift overrun.*

For these reasons, it is considered that there is sufficient planning justification to support the minor level of non-compliance that is proposed.

3.3 The Public Interest

Clause 4.6 requires that development consent must not be granted unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The development proposed is consistent with the objectives of the Mixed Use zone. It is also consistent with the objectives set out in Clause 4.3 Height of Buildings. It is therefore considered that the proposal will result in the mixed use development that will contribute to the CBD of North Sydney in a manner that is envisaged by the relevant planning controls.

3.4 The Public Benefit of Maintaining the Development Standard

Clause 4.6 requires that the consent authority consider if there is public benefit associated with maintaining the development standard.

It is considered that there are no 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, and those already outlined in this report, 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.

In addition, the public benefit will be served through the provision of additional residential apartments, commercial space and a child care centre within the centre of North Sydney in close proximity to public transport, employment opportunities and a range of amenities. A child care centre is also proposed and this will provide an important service for residents and workers in the area.

4 CONCLUSION

A variation to the Height of Building development standard as set out in Clause 4.3 of the North Sydney LEP 2013 is sought in this case to enable the proposed lift overrun to exceed the height limit by 1.6m. This element of the building is minor and will not give rise to any significant impacts on the surrounding area.

The proposed building will provide a built form with a scale that is appropriate for the site given its location within the centre of North Sydney and the development, both constructed and recently approved, that immediately surrounds it. The site sits within a tight cluster of buildings, having a battle-axe location without a direct frontage to Miller Street.

The proposed height of the lift overrun will not create any additional shadow impacts and visual impacts caused will be minimal, as demonstrated by the visual impact assessment that has been submitted.

The scale and height of the proposed building is consistent with the objectives of both the Mixed Use zone and the Height of Buildings development standard and is therefore in keeping with the intended character of the area within the centre of North Sydney.

For the reasons outlined in this report, it is considered that the proposal will result in a building that creates public benefit and strict compliance with the Height of Buildings development standard is unnecessary and unreasonable in this case."

The previous report prepared for the Panel's 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.

Further concern had been raised by the Panel in the 24 August 2016 meeting leading to the Panel to include that the applicant must address view loss from the upper floors of the adjoining building at 225 Miller Street as part of any subsequent amended proposal.

The applicant has responded to these concerns via the introduction of splays to the north western and south western corners to levels 16 and 17 and the submission of a view loss

analysis. It is to be noted that a submission has been received from the representative of the affected adjoining building at 225 Miller Street advising that the proposed treatments are acceptable in the circumstances. Accordingly, the proposal can be considered acceptable in the circumstances with regard to the overall building height and view loss concerns.

The increase in height does not provide for additional density. It is considered that there has been sufficient grounds tabled to justify the Clause 4.6 Variation to the Height of Building development standard and the proposal can be supported in this regard.

Clause 4.4A Non-residential floor space

The proposal as amended remains compliant with the non 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)

Objective	Comment
(a) to maintain the status of the North Sydney Centre as a major commercial centre	Proposal is consistent with zoning
(b) to require arrangements for railway infrastructure to be in place before any additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre	New non residential floor space is proposed and a developer commitment deed is in preparation. At the time of reporting however, the deed remain unexecuted and has not been lodged with the NSW Department of Planning and Transport. Any endorsement of the building cannot be completed until such time and written endorsement of the executed deed is received from the Department of Planning.
(c) to permit an additional 250,000 square metres of non-residential gross floor area in addition to the estimated existing (as at 28 February 2003) 700,000 square metres of non-residential gross floor area	The additional non residential gross floor area is within the 250,000m ² limit.
(d) to ensure that transport infrastructure, and in particular North Sydney station, will enable and encourage a greater percentage of people to access the North	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage.

<p>Sydney Centre by public transport than by private transport and:</p> <p>(i) be convenient and accessible, and</p> <p>(ii) ensure that additional car parking is not required in the North Sydney Centre, and</p> <p>(iii) have the capacity to service the demands generated by development in the North Sydney Centre</p>	<p>Planning for the Sydney metro has also commenced.</p> <p>The proposal does not provide for car parking on site exceeding the maximum permitted.</p>
<p>(e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres</p>	<p>Not possible on smaller battle axe site isolated site</p>
<p>(f) to protect the privacy of residents, and the amenity of residential and open space areas, within and around the North Sydney Centre</p>	<p>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.</p> <p>The development will not result in overshadowing open space area around the North Sydney Centre Area.</p>
<p>(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></p>	<p>The proposed development will result in no additional overshadowing.</p>
<p>(h) to prevent any increase in overshadowing that would adversely impact on any land within a residential zone</p>	<p>No impacts. No adjacent residentially zoned land.</p>
<p>(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</p>	<p>No applicable to site</p>

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 the executed agreement has not been endorsed by either 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.

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																	
	<i>Complies</i>	<i>Comments</i>															
2.2 Function																	
2.2.1 Diversity of Activities	Yes	The proposal as previously considered by the Panel and as amended raises no concern in this regard.															
2.2.2 Maximise Use of Public Transport	Yes	The proposal as previously considered by the Panel and as amended raises is acceptable in this regard.															
2.2.3 Mixed Residential Population	Part	<p>The proposal as amended is as follows:</p> <table><tr><td>Studio</td><td>8</td><td>9%</td></tr><tr><td>1 Bed</td><td>21</td><td>23%</td></tr><tr><td>2 Bed</td><td>47</td><td>52%</td></tr><tr><td>3 Bed</td><td>15</td><td>16%</td></tr><tr><td>TOTAL</td><td>91</td><td>100%</td></tr></table> <p>The proposal as amended is above required development mix in relation to 2 and 3 bedroom apartments. Generally however, the apartment mix is considered to be well resolved in the circumstances given the poor solar performance of the site and building.</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, 15 adaptable apartments are proposed.</p>	Studio	8	9%	1 Bed	21	23%	2 Bed	47	52%	3 Bed	15	16%	TOTAL	91	100%
Studio	8	9%															
1 Bed	21	23%															
2 Bed	47	52%															
3 Bed	15	16%															
TOTAL	91	100%															

2.3 Environmental Criteria		
2.3.1 Clean Air	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.
2.3.2 Noise	Yes (condition)	The proposal can be conditioned to ensure plant and or air-conditioning units to not give rise to any unacceptable acoustic impact to any adjoining premises. The development is acceptable in this regard.
2.3.3 Wind Speed	Yes	The proposal 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.
2.3.4 Reflectivity	Yes (condition)	A condition of consent can be imposed to ensure any reflectivity of building materials is minimized.
2.3.5 Artificial Illumination	N/A	Being a battleaxe allotment, with limited ground level exposure to Miller Street there is no requirement for floodlighting to any portion of the building.
2.3.6 Awnings	N/A	Being a battleaxe allotment a street awning cannot be provided for the development. All weather protection is provided down the pedestrian access handle and over the residential and commercial lobbies.
2.3.7 Solar Access	NO	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. However please note the recommended condition to promote light penetration.
2.3.8 Views	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. The latest amendments to the building have introduced splays to the northwestern and southwestern corners of levels 16 and 17 of the building to maximize outlook from the uppermost eastern orientated apartments in the adjoining building at 225 Miller Street, North Sydney
2.3.8 Acoustic Privacy and 2.3.11 Visual Privacy	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>

2.4 Quality built form		
2.4.1 Context	Part	<p>The site is located within the Central Business District and accordingly is subject to the Local contextual analysis as set out under Part C Section 2 North Sydney Planning Area – 2.1 Central Business District of North Sydney DCP 2013. The building accords with the intended desired future character and zone characteristics of the B4 Mixed Use.</p> <p>Section 2.1 anticipates that buildings in the locality will have podiums however the subject building has no distinct podium. The lack of a podium in the circumstances is acceptable given the sites battleaxe location and no significant direct public street frontage. Generally, on the upper portion of the building from its most visually prominent position at McLaren Street will be visible</p>
2.4.3 Setback	NO	<p>Setbacks are to be provided in accordance with the character statement, with setbacks to consider the setbacks of adjacent buildings. A zero front, side and rear setback is to be provided for the podium unless a character statement requires an alternate setback. The LEP requires a front setback of 5m from Miller Street that has been provided. The character statement requires adequate setbacks above the podium to provide for residential amenity. The DCP adopts the ADG separation distances between buildings that cannot be complied with due the narrowness of the site and existing setbacks of adjacent buildings. See detailed comments under setbacks heading of the ADG compliance table.</p>
2.4.4 Podiums	N/A	See comments provided under the “Context” heading.
2.4.5 Building Design	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>
2.4.6 Skyline	Yes	<p>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 NSLEP 2013. The development is acceptable in this regard.</p>

2.4.8 Balconies - Apartments	Yes	Requires balconies to be incorporated within the envelope and not be located on roofs, podiums or be cantilevered. The proposal is compliant with the requirement.
2.4.9 Through Site pedestrian links	Yes	<p>The site as existing provides for an informal through site link from McLaren Street, down the private right of way access and up the battleaxe handle to Miller Street.</p> <p>The through site link down the battleaxe handle and past the northern side of the building is proposed to be altered but maintained. The access also serve to provide for external pedestrian access to the lower commercial floor of the building. The development is acceptable in this regard.</p>
2.4.10 Streetscape	Yes	<p>Given the site battle axe positioning, the site has limited streetscape presence and no direct opportunity for direct streetscape interface to Miller Street.</p> <p>The treatments proposed down the battle axe handle to interface with the café element of 231 Miller Street is considered to be a positive feature in the circumstances to provide for activation and passive surveillance of the access.</p> <p>The upper portion of the eastern façade provides for sufficient elements to provide for visual interest and articulation when viewing the building from McLaren Street. The development is acceptable in this regard.</p>
2.4.11 Entrances and Exits	Yes	<p>Sufficient protrusion of the ground floor level (not to be confused with the issues raised in the ADG assessment table regarding separation to the upper residential levels of the building) of the building is proposed that the primary entrance to the building will be able to be noted from Miller Street.</p> <p>Given the sites inherent site constraint of being located down the battleaxe handle, this is satisfactory in the circumstances.</p>
2.5 Quality Urban Environment		
2.5.1 Accessibility	Yes	<p>At grade access will be available from Miller Street with lift access through all other areas.</p> <p>The development provides for a compliant number of adaptable apartments in accordance with policy. The proposal is satisfactory in this regard.</p>
2.5.2 Safety and Security	Yes	<p>The principle building entry will be visible from Miller Street. Additionally, with the activation proposed for the café component of development along the Miller Street battleaxe handle will also improve upon the latent safety along the main access handle.</p> <p>The development is acceptable in this regard.</p>

<p>2.5.4 High Quality Residential Accommodation</p> <p>Apartment size requirements</p> <p>Studios 40m² 1 bed 50m² 2 bed 80m² 3 beds 100m²</p> <p>Apartment size ranges</p> <p>46-49 m² (Studio) 50m² - 72 m (1B) 74 m²-114m² (2B) 100m²-160m² (3B)</p>	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>The applicant has provided compliant minimum floor areas generally in accordance with the DCP controls for all 1,2 and 3 bedroom apartments with the exception of a small number of 2 bedroom apartments. It is noted however that they are all in accordance with ADG guidelines and accordingly can be accepted in the circumstances.</p> <p>Accordingly, given the improvement to the general amenity parameters within the most recent amendments, the development is now supportable in this regard.</p>
<p>2.5.5 Lightwells</p>	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>
<p>2.5.6 Private Open Space</p>	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>
<p>2.5.7 Vehicular Access</p>	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>
<p>2.5.8 Car Parking</p>	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>

2.5.9 Garbage Storage	Yes	Garbage chute provided with compactor. Recycling material to be collected and managed via building maintenance. A temporary holding area is provided within site before collection from the right of way for collection with No.231 and 237 Miller Street.
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency	Yes	BASIX certificate submitted details a compliant level of energy efficient fixtures and appliances to the building.
2.6.2 Passive Solar Design	NO	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 from 8:00 am – 4:00 pm on June 21.. 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 the amalgamation and reduction to the total number of apartments particularly at the lower levels of the apartments.
2.6.4 Natural Ventilation	Yes	The development now meets cross ventilation criteria. This issue is discussed in detail under the ADG Compliance assessment table earlier in the report.
2.6.12 Green Roofs	Yes	Dedicated non-trafficable green roof provided on level 16 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 8 September 2016 proposal, is as follows:

A	B
Administration	\$10,138.13
Community Centres	\$42,538.11
Childcare Facilities	\$21,713.47
Library and Local Studies	
Acquisitions	\$8,004.32
Library Premises and Equipment	\$24,719.56
Multi-Purpose Indoor Sports Facility	\$7,014.25
Olympic Pool	\$22,846.32
Open Space Acquisitions	\$245,109.82
Open Space Increased Capacity	\$485,850.30
North Sydney Public Domain	\$267,361.18

St Leonards Public Domain Improvements	\$ -
Public Domain Improvements	\$ -
Traffic Improvements	\$27,381.53
Total	\$1,162,676.99

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: Setback and privacy, in the circumstances of the case are considered to be been reasonably maximise and no further amendments will be pursued in this regard.

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

Planning Comment: Via the most recent amendments submitted to Council on the 8 September 2016 which are the subject of the considerations of this report, the proposal is considered to have sufficiently made all reasonable attempts to maximise the solar performance of the constrained site. The proposal is now sufficiently acceptable to be recommended approval in the circumstances.

- *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 current amended proposal is a substantial reduction on the originally proposed development. The overall density of the development is now more consistent with recently approved development at No. 231 and 221 Miller Street, North Sydney.

- *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 latest 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 concern was also raised by the panel with particular regard to potential view loss from these apartments.

The applicant has responded via the introduction of splay corners to the north western and southwestern corners of the building on levels 16 and 17. Via the renotification process, the concerned party in this regard has advised the proposal as amended is now suitable in this regard.

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

Planning Comment: The 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: This concern was raised specifically in relation to the limited notification period from the first deferral and the reporting back of the proposal on 24 August 2016 which only allowed for a renotification period of 1 week.

In acknowledgement of this issue and the longer time taken between the second deferral of the proposal and the subject report, Council undertook a further two week 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 28 September to 12 October 2016. All new submission concerns have been considered within this report. Please also refer to the discussion regarding Council's Policy on Notification provided after the "Submissions" heading of the report.

- *Given the close proximity of the proposed building next to ours, we request the following conditions be imposed.*
 - *A noise and vibration monitoring plan be prepared so as not to interfere with the amenity of residents.*
 - *Working hours be restricted to 7.30am to 5.30pm Monday to Fridays with no work on weekends.*
 - *No work to the western boundary excavation area or above ground wall without a report agreed to us on how works will be carried out.*
 - *Anchor approval from us into our site.*
 - *Hoarding plans to be approved by us where over our land.*
 - *Crane Tower sail approval where over our land.*
 - *Construction Traffic Management plan to be submitted to us for our approval.*
 - *Dust control measures during construction.*
 - *Construction Management Plan to be submitted for our approval where adjoining our land.*
 - *Dilapidation report signed by the Applicant and us.*
 - *Engineering/civil and stormwater plans to be signed by us where the proposed building is abutting or against our boundary.*

Planning Comment: The above concerns can be generally accommodated within the scope of the without prejudice conditions attached to this report. Whilst, construction hours and residential amenity is acknowledged, the Council's standard construction hours condition accommodates the industry norm with restricted hours over the weekend and public holidays.

Works which involve adjoining properties not covered by applicable owners consent shall need to seek owners consent as appropriate. Generally however, adjoining owners consent and or agreement or approval is not required for work methodology plans and works abutting adjoining land or structures or independent third party approval being required for construction traffic management.

All reasonable standard precautionary conditions included in the draft conditions of consent and accordingly the development is acceptable in this regard.

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.

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*

Amended plans were submitted to Council on 14 July 2016 in response to the above incorporating a substantial number of amendments. This amended proposal comprised 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 753m² for the retail/commercial component.

The amended proposal achieved the requirement for increased floor to ceiling heights required by the Panel and included partial compliance with the remaining points requiring internal layout changes and an overall reduction of units, particularly between residential levels 1 to 10. Further Assessment by Council of the proposal also detailed outstanding concerns with Solar Access and amenity performance of development however recommended that the development Council supported subject deferred commencement conditions of development consent requiring further unit amalgamations.

At the secondary meeting on 24 August 2016 the Panel once again resolved unanimously to defer the application to enable the further design issues to be addressed. Specifically, the Panel resolved to require the development to be amended to address the following:

The panel agreed to defer the determination for the following reasons:

The Panel can't legally determine this application at this time due to the need to execute the Commitment Deed in relation to railway infrastructure.

Accordingly the Panel defers, again, the determination of the DA. Notwithstanding the above, the Panel still has serious concerns that the development has not modified the floor layouts to maximise solar access as per the Panels previous Resolutions items 2 and 3. The Panel is currently not satisfied as to the merits of the proposal.

Further, the Clause 4.6 variation seeking to vary the height limit does not expressly address the view loss created by the breach, that is the 17th level.

No view analysis has been presented to the Panel and given the concerns for solar access, equinoxes and summer sun access analysis and a visual impact analysis is requested.

Council's suggested amendments via the DCC conditions go some way to addressing this issue but the Panel is unable to assess the full impact of solar access to the building. Building separation at levels 16 & 17 were raised by No 225 Miller St and remain an issue both in terms of view loss, massing and outlook.

The applicant is therefore requested to address these issues with amended plans to be submitted to Council and to be considered by the Panel, at a public meeting, at a time when the Deed has been executed.

Any amended plans submitted shall be notified by Council to submitters & they shall be given 14 days to respond to Council.

When this information has been received, the Panel will hold another public determination meeting.

The Deed of Agreement referred to in the resolution above has since been prepared, executed on 30 August 2016 and referred to the respective Department of Transport and Department of Planning for concurrence and approval. At the time of writing this report, the necessary concurrence from both respective Departments has not yet been received and accordingly, full determination of the proposal cannot be given by the Panel at this time.

Further Amended plans were submitted to Council on 8 September 2016 in response to the resolution incorporating a substantial number of amendments. This amended proposal comprises a total of 91 apartments being 8 x studios, 21 x 1 bedroom apartments, 47 x 2 bedroom apartments and 15 x 3 bedroom apartments with a floor space of 753m² for the retail/commercial component.

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 the further amendments and apartment reductions have improved solar performance to what is now considered to be an acceptable and supportable levels.

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.

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.

Other matters remain outstanding which prevent the Panel from granting full consent at this time. This includes:

- 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.

However in light of the outstanding matter of the lack of concurrence from the Director General of the Department of Planning for the endorsed deed or agreement, the Panel can make in principle agreement to the current amended proposal in line with the recommendation of this report and make electronic determination of the proposal once Council has received endorsement of the deed and notified the Panel accordingly.

RECOMMENDATION

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

- A. **THAT** the Sydney East Joint Regional Planning Panel defer the granting of consent pending satisfactory agreement from the Department of Planning and Transport for NSW regarding the deed of agreement required to certify that adequate arrangements have been made for Railway Infrastructure as a result of the new commercial floor space being created.
- B. **THAT** subject to the satisfactory completion of (A), the Sydney East Joint Regional Planning Panel accept the Clause 4.6 Request for Variation to Clause 4.3 of NSLEP 2013 and 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 91 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
