

SYDNEY NORTH PLANNING PANEL

SNPP No	2017SNH016
DA Number	19/17
Local Government Area	North Sydney
Proposed Development	Demolish existing commercial building and construct new commercial building
Street Address	118 Mount Street North Sydney
Applicant/Owner	Zurich Properties Pty Ltd
Number of Submissions	Fourteen (14)
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment Value (CIV) of greater than \$20 million
List of All Relevant s79C(1)(a) Matters	North Sydney LEP 2013 • Zoning – B3 Commercial Core • Item of Heritage – No • In Vicinity of Item of Heritage – No • Conservation Area – No SEPP 55 - Contaminated Lands SREP (Sydney Harbour Catchment) 2005 North Sydney DCP 2013
List all documents submitted with this report for the panel's consideration	Conditions Plans Photomontages View analysis Wind Report Clause 4.6 request
Recommendation	Approval
Report by	Geoff Mossemenear, Executive Planner, North Sydney Council

Assessment Report and Recommendation

EXECUTIVE SUMMARY

This development application seeks approval to demolish the existing commercial building and construct a 23 storey (excluding plant) commercial building.

The Council's notification of the proposal has attracted 14 submissions raising particular concerns about height, loss of views, inadequate setbacks, loss of amenity and wind impacts.

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

The application was referred to Council's Design Excellence Panel for comment. Some modifications were suggested and the proposal was supported by the DEP. The applicant responded to the DEP suggestions and other issues raised by Council with amended plans.

The written request under Clause 4.6 for an exemption to the **height** development standard is considered to be well founded and can be supported.

Following assessment of the amended plans, the development application is recommended for **approval** upon receipt of certification of the Secretary of Planning.

The SNPP is unable to approve the proposal without the certification of the Secretary that satisfactory arrangements have been made with regard to Railway Infrastructure. The applicant has entered into a commitment deed with Council and certification from the Secretary has been sought. Should the Panel favour the application a commitment deed will need to be certified by the Secretary as "satisfactory arrangements" before consent can be granted.

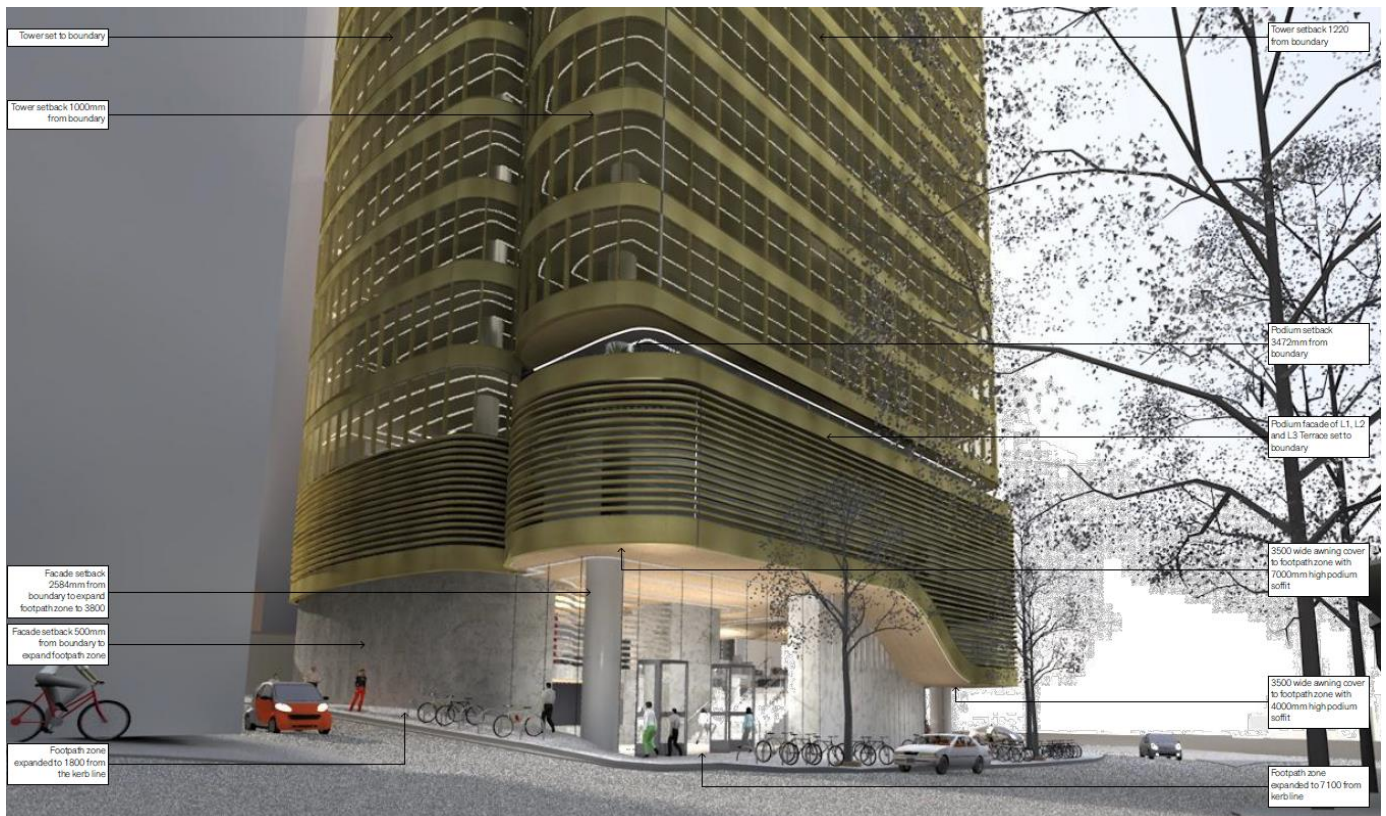
DESCRIPTION OF PROPOSAL

Approval is sought for:

- demolition of the existing building that occupies the site;
- excavation of the site;
- provision of a 3 level basement car park, accessed from Arthur Street comprising 38 car parking spaces, 1 share car space, 5 motorcycle bays, and 215 bicycle spaces.
- construction, use and fit-out of a 23 storey (excluding plant) commercial office building;
- construction of podium to include a retail component, commercial tower lobby, car park entry, loading dock and end of trip facilities;
- signage locations, and
- provision of landscaping and stormwater infrastructure.



The photomontage above shows the building before the latest amendments that included tower and ground level setbacks



Photomontage showing setback changes to tower and ground floor.

STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B3 Commercial Core
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No

Environmental Planning & Assessment Act 1979

SEPP 55 - Contaminated Lands

SREP (Sydney Harbour Catchment) 2005

POLICY CONTROLS

North Sydney DCP 2013

CONSENT AUTHORITY

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

DESCRIPTION OF LOCALITY

The site is legally described as Lot 1 in DP 635642. It is a 1,145m² rectangular-shaped parcel of land with splay corner. It has a primary frontage of approximately 40m to Mount Street and approximately 30m to the secondary streets of Little Walker Street and Arthur Street.

The site comprises a commercial office tower containing 5 office levels built above a retail ground level.

The site is situated at the eastern most edge of the North Sydney CBD. It is bordered by a 15 level building to the north and 10 level building immediately opposite on the other side of Mount Street to the south and Warringah Freeway is located to the east. The surrounding built form is characterised by large scale towers which comprise a number of recently approved developments ranging from 25 to 32 storeys in height.



BACKGROUND

On 1 September 2016, the applicant had a pre-lodgement meeting with Council staff for discussion of the design of a new twenty four storey commercial tower to replace an existing six storey building.

On 13 September 2016, the applicant had a pre-lodgement meeting with Council's Design Excellence Panel for discussion of the design of the same building.

The applicant was advised at both meetings of the height control at RL 130 and that the character statement for the CBD requires podiums of between 2 and 5 storeys as well as weighted setbacks of 5m for Mount Street and 4m for Little Walker Street above the podiums with a zero setback nominated at ground level. The applicant was advised that a site analysis is required to show how the controls are addressed and how the development is in context or consistent with surrounding development including recent/proposed buildings.

The subject application was lodged on 27 January 2017. The height of the building was RL 154.57 and the tower had nil setbacks to Mount Street and Little Walker Street.

A stop the clock letter was sent on 1 February 2017 advising:

Council has noted the substantial non compliance with the height control and is therefore, unlikely to support a Clause 4.6 request. Council would require a planning proposal to be submitted and endorsed by Council to accept such an increase in height.

Council may be considering a planning proposal in a few months time for increasing height in the CBD including a review of the character statement dealing with podiums and setbacks. The submission of an application with a 19% increase in height is premature and it is recommended that the application be withdrawn until there is a planning proposal that has been exhibited and adopted by Council.

The Planning Panel cannot determine an application that requires a planning proposal until the planning proposal is gazetted. Also the Planning Panel is unable to determine an application until satisfactory arrangements are made with regard to Railway Infrastructure (transitional arrangements). This involves a commitment deed and Bank Guarantee for the increase in gross floor area. This of course, relies on determination of the height to establish the exact increase in GFA. As no planning proposal has been submitted or considered by Council, the application should be withdrawn.

Your application has been initially assessed by the Development Review Panel (DRP), and it is considered that additional information is essential for Council to properly assess and determine the application should you wish to proceed with the application.

Accordingly, please submit the following information, attention to the Council Assessment Officer, within 21 days of the date of this letter:

Existing Floor Plans

Council requires existing floor plans showing existing gross floor areas and certified by a Surveyor/Architect. This is required to determine the increase in GFA.

Tower Setbacks

A more detailed survey showing approved and existing setback of tower for 100 Mount Street and 100 Arthur Street, as both do not have a nil setback as indicated in your documentation.

The applicant advised that the height of the proposal would be lowered, setbacks reviewed and the additional information submitted.

On 2 March 2017, the applicant submitted an amended scheme that reduced the overall height of the scheme to one that is largely compliant (no leasable floor space above RL 130) with the permissible height control as shown in the LEP Height Map and a detailed response pertaining to the tower setbacks.

The amended proposal was considered by Council's Design Excellence Panel at its meeting of 14 March 2017 (minutes reproduced below under referrals). The DEP advised that setbacks of the tower and at ground level should be provided as well as an awning along Mount Street.

The applicant responded to the comments of the DEP in amended plans submitted to Council on 12 May 2017 that included the following changes:

- Increased setbacks to Mount Street and Little Walker Street;
- Increased public domain at the ground floor plane;
- Reconfiguration of the ground floor/first floor; and
- Provision of a median to Arthur Street.

The changes did not create additional impacts and did not require further notification.

The amended plans are the subject of this assessment report.

REFERRALS

Building

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

Engineering/Stormwater Drainage/Geotechnical

Council's Development Engineer (Z Cvetkovic) has assessed the proposed development and provided a number of specific conditions. Should the development application be approved, the imposition of a number of standard and site specific conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management would be required.

Landscaping

Council's Landscape Officer has provided conditions with regard to street trees. There are no trees on the site and limited landscaping opportunities.

Traffic/Parking

Council's Traffic and Transport Engineer (I Mohammadi) has provided the following comments:

I refer to your request for traffic comments in relation to Development Application 19/17 for development at 118 Mount Street, North Sydney. I have read the *Traffic Impact Assessment* prepared by ARUP dated 16th November 2016.

Existing Site

The site is located within the North Sydney Centre, on the corner of Mount Street, Little Walker Street and Arthur Street. It consists of 5 storey office building with basement parking

Proposed Development

The proposed mixed-use redevelopment consists of demolition of the existing five level commercial building and construction of a new 29 storey commercial building consisting of

three basement parking levels, ancillary retail on Level 1 and 23,494 m² (GFA) of office space.

Traffic Generation

Traffic survey was undertaken during the morning and afternoon peak hour periods in September 2015. It is suggested that the AM and PM peak hour vehicle generation in and out of development site is 6 trips. The report also states that the proposed development creates an increase in trip generation of 15% (comparing the existing 33 parking spaces to 38 proposed spaces) which does not have any impacts on the existing Traffic.

Parking Provision

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

- B3 Commercial Core: 1 space per 400m² GFA

Council's DCP parking rate, allows for a maximum of 58 parking spaces and the applicant has provided 38 including one (1) Accessible parking spaces which complies with the DCP.

Bicycle Parking

Council's DCP specifies that all new development is to provide on-site, secure bicycle parking facilities. The minimum required bicycle space for commercial building is

- Employees: Minimum 1 space per 150m² GFA
- Visitors: Minimum 1 space per 400m² GFA

The report states that the development has provided 157 Class B spaces for employees and 59 class C spaces for visitors. However, submitted architectural plans show a total of 169 employees and 30 visitors bicycle space located on level 00 and basement 1-3.

Therefore, the development is in shortage of 29 visitors bicycle spaces.

Motorcycle Parking

The applicant has provided a total of 5 motorbike parking spaces which complies with Council's DCP.

Loading Facilities

The proposed development has provided a single loading bay on level "00", 8.8m long and 3m wide which can accommodate 1 Medium Rigid Truck. Also the proposed development has provided 2 courier/service spaces on basement level 1.

The provision of loading bay and courier spaces are satisfactory.

Green Travel Plan

The report states that a Green Travel Plan has been prepared and submitted to the Council which has been noted with the submission of traffic assessment report.

Conclusion

It is recommended that the proposed development be approved and the following conditions be imposed:

1. That a Construction Management Plan be prepared and submitted to Council for approval by the **North Sydney Traffic Committee** prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.
2. That all aspects of the car park comply with the Australian Standard AS2890.1 Off-Street Parking and Council's DCP.
3. That all aspects of loading bay comply with the Australian Standard AS2890.2 Off-Street Parking for Commercial Vehicles and Council's DCP.
4. That all aspects of bicycle parking and storage facilities comply with the Australian Standard AS2890.3 and Council's DCP.

The comments relate to the original proposal, however the amended proposal do not change the entry, parking and loading arrangements.

Strategic Planning

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

I refer to DA 19/17 for 118 Mount Street, North Sydney, which has been referred to Strategic Planning for comment.

Context

The DA seeks approval for the demolition of the existing commercial building and the construction of a 29 storey commercial tower with 3 levels of basement parking.

The DA proposes a building height of RL 154.57. The existing height control for the site under NSLEP 2013 is RL 130.

It is understood that Council has asked the applicants to withdraw the DA on the basis of non-compliance with the LEP height controls and several non-compliances with NSDCP 2013 controls.

Comment

Strategic Planning supports the renewal of commercial building stock within the North Sydney Centre and is supportive of proposals to increase the commercial floor space offering within it. The provision of ground floor retail and public domain / landscape improvements is also supported.

The North Sydney Centre Capacity and Land Use Study was publicly exhibited in November / December 2016. The Study recommends the application of a strategy that would increase height of buildings controls on several sites within the Centre. Under this strategy, the subject site's maximum building height could be increased from RL 130 to RL 179.

The Capacity and Land Use Study presents a draft strategy and does not represent definitive height control changes for the North Sydney Centre.

It is expected that a post-exhibition report will be prepared for the 20 March Council meeting. If the recommendations of that report are adopted, a planning proposal will be prepared to give effect to the adopted strategy.

It is acknowledged that a potential amendment to height controls for this and other sites as foreshadowed by the Capacity and Land Use Study is by no means certain or imminent; the potential height controls identified in the Capacity Study cannot be relied on to approve a significant breach in the existing height control.

A review of DCP 2013 is currently underway and is expected to proceed concurrently with any future planning proposal. The issue of building podium and tower setback controls will be addressed in that review. It is noted though that Strategic Planning acknowledges the importance of existing podium and setback controls as a means of facilitating acceptable built form outcomes in terms of pedestrian scale, pedestrian amenity and tall tower separation.

Should the applicant not wish to withdraw the DA, it may be advisable to reduce the proposed height of the building until such time as the results of the Capacity and Land Use Study form part of a planning proposal and subsequent amendment to NSLEP 2013.

The height has been reduced by 4 floors and the capacity study has not been accepted as reason to permit any variation to the height control. The height controls may be varied in the future but this is neither certain or imminent.

External Referral

RMS advised:

Roads and Maritime advises that current practice is to limit the number of vehicular conflict points along the arterial road network to maintain network efficiency and road safety. This current practice is reflected in Section 6.2.1 of Roads and Maritime current publication of the

Guide to Traffic Generating Developments, which states 'access across the boundary with a major road is to be avoided wherever possible'.

Arthur Street is a major arterial road, which carries a high volume of traffic, where transport efficiency of through traffic is of great importance.

Further to the above, clause 101(2a) of *State Environmental Planning Policy (Infrastructure) 2007*, which reads as follows:

"The consent authority must not grant consent to development on land that has frontage to a classified road unless it is satisfied that:

(a) *where practicable, vehicular access to the land is provided by a road other than the classified road*".

Since the subject site has alternative vehicular access via the local road network, Roads and Maritime **would not grant concurrence** to the proposed access on Arthur Street under Section 138 of the *Roads Act, 1993*.

Roads and Maritime has the following additional comments for Council's consideration:

Roads and Maritime has previously acquired a splay corner at the intersection of Arthur Street and Mount Street of the subject property, as shown by blue colour on the attached Aerial – "X".

All buildings and structures together with any improvements integral to the future use of the site are to be erected clear of the land acquired for road and the Arthur Street boundary (unlimited in height or depth). No substantial trees or trees with the potential to be substantial are to be planted in the area acquired for road.

The applicant made further submissions to the RMS and the RMS further advised:

Refer to your further submission dated 16 March 2017 requesting Roads and Maritime to reconsider its comment on access arrangements from Arthur Street instead of Mount Street for the above development.

Roads and Maritime has reviewed your submission and provides the following comments for your consideration:

1. Vehicles exiting the site shall be turning right into Arthur Street then right into Mount Street and be restricted to access the left turn lanes (accessing to Freeway) in Arthur Street. In this regard a 900 mm wide concrete median shall be constructed on Arthur Street between middle lane (left turn lane) and the right turn lane, along the full width of the driveway. The concrete median should be extended up to the traffic lights on Arthur Street & Mount Street.

Roads and Maritime requests you to submit amended plan(s) satisfying the above requirements and the plans shall include swept path diagrams for the longest/largest vehicles accessing the site. Upon received the amended plans Roads and Maritime will review this application further and respond accordingly.

I have copied Council in this response for their information.

The amended proposal involving a median in Arthur Street was referred to RMS for further comment, the RMS responded on 2 June 2017:

Roads and Maritime has reviewed the development application and grants concurrence under Section 138 of the *Roads Act 1993*, subject to Council's approval and the following requirements being included in Council's determination of the development application.....

Sydney Water advised:

Due to the proximity of the proposed development to Sydney Water assets, we recommend that Council imposing the following conditions of consent:

Building Plan Approval

The approved plans must be submitted to the Sydney Water [Tap in™](#) online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

The Sydney Water [Tap in™](#) online self-service replaces our Quick Check Agents as of 30 November 2015.

The [Tap in™](#) service provides 24/7 access to a range of services, including:

- building plan approvals
- connection and disconnection approvals
- diagrams
- trade waste approvals
- pressure information
- water meter installations
- pressure boosting and pump approvals
- changes to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's [Tap in™](#) online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

Section 73 Certificate

A Section 73 Compliance Certificate under the *Sydney Water Act 1994* must be obtained from Sydney Water.

It is recommended that applicants apply early for the certificate, as there may be water and sewer pipes to be built and this can take some time. This can also impact on other services and building, driveway or landscape design.

Application must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

These conditions can be imposed on any development consent issued.

Civil Aviation Safety Authority

The original application was referred for concurrence. A response was received. The proposal has been lowered from the original height and concurrence is no longer required.

DESIGN EXCELLENCE PANEL

Referred to the Design Excellence Panel meeting on 14 March 2017 and the minutes are reproduced as follows:

ATTENDANCE

<i>Chair</i>	Russell Olsson
<i>Panel Members</i>	Philip Graus; Peter Webber; Gerard Outram
<i>Council staff</i>	Geoff Mossemeneer; Emma Booth
<i>Proponents</i>	Richard Francis –Jones (architect); Simon Barr (architect); Tom Goode (planner); David Whitting (applicant); Mark Grant (applicant)

Background

The site is located on the eastern periphery of the North Sydney CBD, adjacent to the Warringah Freeway. The site has three street frontages, being 27.27m to Mount Street, 31.86m to Little Walker Street and 33.46m to Arthur Street to the west and east, respectively. The site area is 1,145m².

Surrounding development in the North Sydney CBD comprises mainly multi-level commercial development.

At its meeting of 13 September 2016, the Panel had a pre-lodgement meeting for discussion of the design of a new twenty four storey commercial tower to replace an existing six storey building. The following is extracted from the minutes:

The Panel and Council Officers inspected the site prior to the meeting. The proponent provided a presentation to the Panel and was available for questions from the Panel. The submitted plans had been reviewed and copies of the new plans were emailed to the Panel after the meeting.

The character statement for the CBD requires podiums between 2 and 5 storeys as well as weighted setbacks of 5m for Mount Street and 4m for Little Walker Street above the podiums. A zero setback is nominated at ground level.

Site analysis is required to show how the controls are addressed and how the development is in context or consistent with surrounding development including recent/proposed buildings. A comparison to a compliant scheme would be useful.

A survey or streetscape analysis of buildings on the same side of the street and lane showing podiums and setbacks need to demonstrate how the proposal would not create precedent for nearby sites. Maximisation of the floor plate would not be adequate justification for substantial variation to the current Council controls. Having a reduced setback would need to demonstrate how the design meets the objectives of the setback with regard to scale and shadow impacts. It is critical for there to be continuity in the streetscape in relation to pedestrian amenity and scale: it is important to demonstrate how the site immediately across the lane can be development to complement the development of the subject site and ensure that these objectives can be achieved.

The Panel raised concern about wind impacts on pedestrians and the need for adequate street awnings around the perimeter of the site, which the Proponent acknowledged as an issue that they would respond to.

Relocation of the substation to Arthur Street and the vehicle entry to the Lane should be considered. The vehicle entry as proposed appears too close to the corner and may not be accepted with regard to traffic safety. The use of a turntable for the loading dock at the entry ramp to the carpark might also be an issue for traffic safety.

The activation of the site should occur on Mount Street and Little Walker Street, where the Proponent did suggest there was scope for inclusion of a small retail space facing the latter, as well as the upper level space proposed off Mount Street and overlooking Arthur Street. Additional setbacks on the Lane at the lower levels might be achieved to improve the public domain.

The Panel supported the location of end of trip facilities. Details of how cyclists will store and access their bikes should be considered.

The Panel felt that the tower setback controls cannot be disregarded and need to be resolved before further comment can be made on the design and materials.

The Panel did not have an issue with the height of the building on the basis that there would be no shadow impact on residential areas.

The above issues need to be resolved before the proposal can be supported.

Proposal

A development application has been submitted to demolish the existing building and construct a 23 storey commercial building with plant above. The proposed building height is RL 139.97. Basement parking for 38 cars and 5 motor cycles is proposed. The application will be determined by the Sydney North Planning Panel.

The Panel and Council Officers again inspected the site prior to the meeting. The proponent provided a presentation to the Panel and was available for questions from the Panel.

Panel Comments

The Panel's comments relate to the key issues or concerns with the proposal, largely consistent with comments raised at the previous panel meeting.

The Panel noted that the development application was amended by reducing the height down to RL 139.97 and the height control under the LEP is RL 130. The proposed building has the commercial floor area under the height control with basically the plant exceeding the height. The Panel does not have issue with the height of the building as presented on the basis that shadow impact on residential areas would be within acceptable limits.

The Panel was advised that RMS would not accept vehicle access from Arthur Street, however the applicant advised the Panel that after discussions with RMS, access as proposed might be allowed if right turn movements can be eliminated. The Panel had raised concern previously about traffic safety, the Panel noted that concurrence is required from RMS so no further comments were made with regard to vehicle access.

As indicated in the extract above from the previous Panel meeting, the issues remain as: the need for setbacks of the tower above a podium for Mount and Little Walker Streets; site analysis and street survey to show how the proposal would not create an unacceptable precedent for other nearby sites; the need for adequate street awnings; improvement to the public domain, the surrounding streets in this case, with setbacks at ground level.

The Panel did not accept maximising the floor plate as justification for such significant noncompliance with the controls although it was understood that reducing the floor plate to more closely comply with setback controls, was resisted by the applicant for commercial reasons. Any acceptance of reduced setbacks must be on the basis of the building being in context with the existing and future desired character of the CBD, and improving the public domain at street level.

The Panel noted the site analysis and street survey and questioned the setback of 100 Mount Street as it was being used as the main argument for a nil setback. 100 Mount Street was non-compliant and as a Part 3A the Panel's recommendations were not supported. Given that this

building now is built its form was also taken into consideration by the panel who have proposed that a reduced setback be required in response to the setback at 100 Mount Street. The applicant believed that the survey of 100 Mount Street frontage to Mount Street showed a 970mm setback and Council had advised of a 1200mm setback. The Panel requested that the Council Officer verify the setback and advise the Panel and applicant. The Council Officer later (morning after meeting) produced approved drawings from the latest modification for level 2 and level 34 at 100 Mount Street showing a setback of 1220mm.

The Panel also noted that 100 Mount Street had an increased setback at street level that extended the public domain. The Panel felt that 100 Mount Street should be used as a precedent for the northern side of Mount Street provided the setback of the tower was no less than 1220mm and that the public domain could be improved at street level. This could be achieved by having no podium and the whole building setback 1220mm, with awnings providing essential protection for pedestrians.

With regard to Little Walker Street, it was noted that the character of the street differs to the south of Mount Street where the buildings on the eastern side are more recent (still built before the current controls) with a minimal setback. The eastern side buildings north of the subject site have setbacks greater than 4m except for the building at the northern end of the block with a nil setback. Allowing a nil setback to Little Walker Street would set a precedent for redevelopment of the buildings to the north and west.

There have been submissions from owners to the north about harbour views loss – there should be an analysis to demonstrate the difference between complying setbacks to see if the noncompliant part of tower has any adverse impact. There should be a view impact study, but if this does indicate that impacts would be acceptable, a nil setback could be supported for the main façade. However, at ground level this is the pedestrian entrance to what the Panel considers will ultimately be an attractive ‘shared-zone’ and to have a substation hard against a very narrow footpath is not very attractive. If it has to be in this location, some small setback is highly desirable – say 500mm. The wall should be articulated and attractively finished. This would provide a precedent for sites to the north when they are redeveloped leading to an improved public domain.

The Panel considered that an awning was essential along Mount Street for its full length at a comfortable height to provide pedestrian shelter. It should extend to the Mount Street/Arthur Street corner which is particularly exposed, and provide protection for pedestrians to the same extent as the awnings on the existing building and on the immediately opposite side of the street.

The existing plane trees in Mount Street must be protected and conserved, and the potential for additional tree-planting should be explored in consultation with Council.

The Panel commended the architect for the aesthetics of the building and raised no issue with the materials or finishes.

Conclusion:

The above issues need to be resolved before the proposal can be supported by the Panel.

The applicant responded to the comments of the DEP in amended plans submitted to Council on 12 May 2017 that included the following changes:

- Increased setbacks to Mount Street (setback of tower by 1220mm) and Little Walker Street (minimum 500mm at ground level);
- Increased public domain at the ground floor plane (allowing for widening of footpath and shelter provided by a colonnade);
- Reconfiguration of the ground floor/first floor; and
- Provision of a median to Arthur Street.

SUBMISSIONS

The original application was notified to all precincts and surrounding owners in accordance with Council policy from 10 February 2014 until 24 February 2017. Full copies of the submissions have been forwarded to the Sydney North Planning Panel. Fourteen submissions were received (12 from 122 Arthur Street; 1 from 141 Walker Street and 1 from 121 Walker Street) with the main issues being summarised as follows:

Height

The proposal seeks a height of RL 154.57 which is 24.57m over the height limit and a 19% variation from the statutory standard. This is considered excessive and unreasonable given the potential impact on the area character and exacerbation of impacts for surrounding properties.

The height is not compliant with objectives and the height standard and is considered to create an unusually high and dominant visual form.

The Applicant's Clause 4.6 request includes the following primary justifications for exceeding the development standard on the basis that:

- *The view loss is acceptable from assessed locations within North Sydney centre.*
- *Building height is acceptable based on North Sydney CBD Strategic Review, that recommends additional height on the site up to RL170.*
- *The principle reason for the contravention of the maximum Height of Buildings development standard is the need to respond to the site area of 1,146m² yet provide a functional commercial floor plate and to accommodate an A-Grade commercial building.*

We wish to highlight for Council why the development application, which conflicts with Council's view sharing controls and the Planning Principal established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* (Tenacity) cannot be supported in its current form.

It is noted that Council is in the process of reviewing its planning controls of North Sydney CBD, and while there is a recommendation to raise the Height of Building standard on the subject site, the lodgement of this development application ahead of the exhibition of new planning controls is premature. Council's CBD wide Planning Proposal is an appropriate place to test the capacity of the CBD to accommodate taller buildings, where a range of environmental planning considerations can be considered.

View loss

All of the three properties (122 Arthur Street; 141 Walker Street and 121 Walker Street) have raised view loss as a major concern.

No.122 Arthur Street is located directly to the north of the development site, and contains an 18 level commercial building office building with a retail/restaurant use at ground floor level. The building is known as the 'Suncorp' building. 122 Arthur Street contains 109 strata lots and is

directly impacted by the proposed building due to its scale and close proximity to the common boundary. Some of the offices within the building (47) face directly towards the subject site. The south facing windows can be seen in the photo below:



As the building is proposed on the northern boundary and is higher than the adjoining building it will obviously block the views from the windows on the southern elevation of the neighbouring building to a large degree, noting that the adjoining building has a 3m setback from the common boundary.



Taken from 122 Arthur Street - Level 18/ top floor/lot 105

The submitted view loss analysis does not adequately address this issue. It does not undertake any analysis of the impacts on 121 Walker Street. Notwithstanding, the analysis undertaken for the adjoining property, 141 Walker Street, indicates that the proposal will result in the loss of iconic views. Further this view loss results from the significant non-compliance with the LEP height control. The assessment does not include a proper consideration of the Land and Environment Court's 'Tenacity' principles for the assessment of view loss. If one was undertaken it would conclude that the impact was severe and that due to the height breach, unreasonable.

North Sydney Council's Development Controls for commercial office buildings requires consideration of view sharing principles. Clause 2.3.8 of the North Sydney DCP provides controls for view sharing for commercial and mixed use development.

Clause 2.3.8 of the North Sydney DCP states that:

When considering impacts on views, Council will generally not refuse a development application on the grounds that the proposed development results in the loss of views, where that development strictly complies with the building envelope controls applying to the subject site.

Where a development has the potential to impact views from existing properties the North Sydney DCP requires consideration of the view sharing planning principal established in Tenacity.

The Applicant has provided a view impact assessment against the Tenacity view sharing planning principles. The Applicant's assessment uses 3D modelling to determine the angles of available views and the levels within each identified building that was identified as likely to enjoy existing views, vistas and outlook that may be impacted upon. A loss of the primary view of landmarks and iconic buildings, including the Sydney Harbour Bridge, Sydney Opera House and Sydney CBD to the south east are expected to occur for the high rise levels of 141 Walker Street occurs as a result of a development proposal that does not comply with the height of building standard.

Visual impact

The excessive height of the building adds significantly to its bulk and scale, particularly when viewed from the upper levels of surrounding buildings including No.121 Walker Street. However, the lack of compliance with the setback requirements of the DCP also contribute to the excessive bulk of the building.

In this case however there is no compromise and the proposal provides a building form that is much greater than would result from a complying development. This additional bulk increases view impact, overshadowing and result in excessive building bulk when viewed from the public domain and surrounding development.

North Sydney Centre Review

The Applicant's request for an exception to the Height of Building standards, includes justification that the:

Building height is acceptable based on North Sydney CBD Strategic Review, that recommends additional height on the site up to RL170.

As part of the review of the North Sydney Centre, Council has prepared a Capacity and Land Use Study that aims primarily to develop a framework to unlock additional commercial floor space capacity within the Centre, thereby ensuring it maintains and improves its status as a resilient and competitive economic centre. The Study proposes several strategies to guide future development of the North Sydney Centre, including that the Centre's height of buildings controls be based on the following core principles:

- *No additional overshadowing of residential land outside the North Sydney Centre between 10am and 2pm mid-winter; and*
- *No additional overshadowing of 'special areas' or land zoned RE1 Public Recreation within the North Sydney Centre between 12pm and 2pm any time of the year.*

Council's website states that:

The Study does not represent proposed amendments to North Sydney Local Environmental Plan 2013 - any changes to the LEP will be the subject of a Council-initiated planning proposal process, enacted only once submissions to this public exhibition have been considered and an endorsed position is resolved by Council.

The Applicant has sought to justify the height of the proposed commercial building on the Capacity and Land Use Study based on consistency with the recommended height in the Capacity and Land Use Study. While there is capacity in the North Sydney CBD to achieve additional heights with the changes to the core overshadowing principles that have informed the current height of buildings standards in the LEP, we note that the Capacity and Land Use Study is the initial step in a strategic planning process, which is itself the subject to a public exhibition

process, and the subsequent preparation of a Planning Proposal will be subject to further investigations and public exhibition.

Inconsistent with LEP objectives

The proposal is considered to be inconsistent with the NSLEP objectives

(a) to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,

(b) in relation to the character of North Sydney's neighbourhoods:

(i) to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and

(iii) to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,

(c) in relation to residential development:

(ii) to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and.....

The building is considered to be excessive in scale (much higher than allowed) and does not provide setbacks or scale transitions which protect the area or surrounding properties.

Non-compliance with DCP setbacks

The building does not provide a stepped/recessed podium form plus has minimal boundary setbacks which exacerbate the overall scale.

Providing weighted stepping and recesses would be consistent with Council's design controls. Generally, the proposed setbacks are considered inconsistent with the following setback objectives of DCP Clause 2.4.3:

01 To enable a reduction in the impact of scale.

02 To ensure adequate ventilation, solar access, privacy, view sharing and a reduction of adverse wind effects.

The submitted DA does not adequately address or acknowledge the urban form requirements of Part C 2.1 of the DCP which provides controls for the City Centre. These requirements include a 5 storey max podium height to Mount Street and a 2/3 storey podium height to Little Walker Street. Development above the podium is required to be setback an average of 5m. Contrary to these requirements the proposal has no podium and has a nil setback to all boundaries. Whilst it is considered that there could be alternative solutions to the required building form, the impacts of not complying with the controls are still important and any alternative should deliver a reasonable compromise in terms of impact.

Amenity impacts (loss of natural light)

The proposal will impact on the light, amenity and views currently available to south facing windows at 122 Arthur Street.

Wind tunnelling

The Statement of Environmental Effects indicates that the proposal will result in greater wind impacts than expected by the controls. The proposal should comply with form, scale and wind controls.

Amended plans have been submitted to Council during the assessment period in response to the Design Excellence Panel's comments and the issues raised by Council. The amendments include a reduction in height, increased setbacks of the tower, improved public domain and reduced footprint. In this instance, it is considered that the amendments would be unlikely to materially affect adjoining or neighbouring land compared to the originally notified development and as such, re-notification is not required. The amended plans have been assessed with regard to the submissions received.

CONSIDERATION

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

The application has been assessed against the relevant numeric controls in NSLEP 2013 and DCP 2013 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

Compliance Tables

North Sydney Centre	Proposed	Control	Complies
Height (Cl. 4.3)	RL 139.97 AHD to top of plant	RL 130m AHD	NO Refer to Clause 4.6 request
Overshadowing of dwellings (Cl.6.3 (1) (c))	Additional overshadowing is limited to the adjacent commercial properties and surrounding roads.	Variation permitted	YES
Overshadowing of land (Cl.6.3 (2) (a) and (b))	The proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas between 12am and 2pm. The proposal will not overshadow Don Bank Museum.	Variation permitted	YES
Minimum lot size (Cl.6.3 (2) (c))	1,145m ²	1000m ² min.	YES

DCP 2013 Compliance Table

DEVELOPMENT CONTROL PLAN 2013		
	complies	Comments
Environmental Criteria		
Wind Speed	Condition required	The Wind Assessment Report has addressed the developments compliance with the relevant DCP controls. The qualitative assessment indicates it is unlikely the wind conditions of the site would meet the 13 m /s criterion. The design has considered wind impacts. Specifically, the curved corners of the tower will encourage winds to pass horizontally rather than via a downward flow, the setback of the tower to form a small podium setback of

		1220mm will assist in providing protection to footpaths and accessible outdoor spaces. At the pedestrian street level, revolving doors at the main entrances will limit wind impacts and the 3.5m wide colonnade will provide protection. Wind conditions around the site would be similar to existing conditions with the pedestrian level wind environment for most locations being classified as suitable for pedestrian standing or walking and all areas would pass the distress criterion. The design would meet the intended use of the space in terms of pedestrian comfort and safety. For such a significant development, wind tunnel testing is recommended during detailed design for the development of specific measures. This may involve screens and additional awnings.
Reflected light	Yes	The proposed façade system incorporates measures to adequately manage reflectivity. The façade incorporates an automated glare control through the inclusion of horizontal blinds on the eastern and western facades and can be conditioned
Artificial light	Yes	The proposal seeks consent for signage locations. The details of the signage, including illumination levels, will be determined under a separate application. The signage is proposed to be located on the tower and plant façade on the southern elevation only. As it is not located at street level, it is not anticipated the illumination emissions will not have an adverse impact on the surrounding public domain. Appropriate lighting will be provided to identify the building entrance at street level whilst preventing concealment opportunities and glare impacts.
Awnings	Yes	Colonnade provided to Mount Street to a depth of 3.4m providing adequate shelter, additional awning may be provided following wind tunnel testing.
Solar access	Yes	Satisfactory Complies with the height and overshadowing requirements contained within cl.4.3 As indicated in the submitted shadow diagrams, the majority of the shadows cast by the building fall onto existing commercial sites or surrounding roads. No overshadowing of dwellings will result.
Quality built form		
Context	Yes	Site analysis undertaken, building in context with desired character for area. Refer to separate discussion with regard to area character statement.
Setbacks	No	Amended plans satisfactory with additional setbacks of tower and ground floor with improved public domain. Refer to separate discussion with regard to area character statement.

Building design	Yes	Floor to ceiling heights are in accordance with the requirements nominated which are required to be a minimum of 3.3m. Consistent with this provision the proposal provides floor to ceiling heights of 3.65metres. The Design Excellence Panel supports the amended proposal that provided increased setbacks of the tower and at ground level. The Panel commended the architect for the aesthetics of the building and raised no issue with the materials or finishes.
Skyline	Yes	Upper levels designed to contribute well to skyline
Streetscape	Yes	Satisfactory. Supported by Design Excellence Panel
Entrances and exits	Yes	Visible from public domain
Street frontage podium	Yes	No podium required for Arthur Street frontage. Podium to Mount Street is satisfactory
Laneway frontage	No	No setback required under character statement at ground level but 500mm required as recommended by DEP. Podium setback provided but less than required. See discussion under area character statement. Podium height is satisfactory
Nighttime appearance	Yes	Full height glazing is proposed to all street frontages
Public spaces and facilities	Yes	The proposal is of an appropriate scale, form and character given its locality and constraints with the size of the site. The Mount Street ground level setback allows for a wider footpath and greater pedestrian comfort and shelter

Quality urban environment		
Accessibility	Yes	Satisfactory
Safety and security	Yes	Satisfactory. Building entrance points are clearly visible from street frontage. Clear sight lines available between pedestrians and vehicles using the basement ingress and egress point.
Vehicular access	Yes	As described on the submitted architectural plans and photomontages, the basement entry is designed from Arthur Street. Acceptable to RMS subject to median being constructed.
Garbage Storage	Yes	Communal waste storage facilities and an adjacent loading bay are provided at Level 00. These facilities are located adjacent to the Arthur Street entrance and do not conflict with pedestrian entry points. Further, the bins located within this facility are within 3 metres of the entrance. A turntable is provided to facilitate on-site waste collection and will prevent waste collection from obstructing daily traffic.
Efficient use and management of resources		
Energy efficiency	Yes	The building has been designed to achieve a 5 Star rating in accordance with the NABERS Energy Rating System
Waste management	Yes	Waste Management Plan submitted.
Storm management	Yes	Can be conditioned

Building Materials	Yes	Sustainable building materials will be incorporated into the construction where possible. The building has been designed to achieve a 5 Star rating in accordance with the NABERS Energy Rating System
Public Domain		
Paving	Yes	All footpath paving along property frontages must be provided in accordance with Council's specifications. To be conditioned.
Signage		
Building identification/roof signs	Yes	The proposal seeks consent for signage locations. The details of the signage, including illumination levels, will be determined under a separate application. The signage is proposed to be located on the tower and plant façade on the southern elevation only.
Parking		
Car parking	Yes	Vehicular parking and loading bays are provided within the underground basement. The proposal provides 38 parking spaces and therefore accords with the maximum parking requirement of 58 spaces
Bicycle storage	Yes	Provision of bicycle parking spaces at minimum 1 per 150m ² GFA for employees and minimum 1 per 400m ² for visitors. Minimum 130 + 48 = 178. 215 spaces provided with adequate lockers, showers and change room provided.

NORTH SYDNEY LEP 2013

Permissibility within the zone

The proposal is permissible with consent under the B3 Commercial Core zoning. The proposed café is permissible as a *commercial premises*, which by definition includes *retail premises* and *food and drink premises*.

Zone B3 Commercial Core

Objectives of zone

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To prohibit further residential development in the core of the North Sydney Centre.*
- *To minimise the adverse effects of development on residents and occupiers of existing and new development.*

The site is surrounded by a variety of uses which predominantly comprise of commercial and retail uses.

The proposal is a form of development that is reasonably anticipated on the site. The proposal is consistent with the objectives of the B3 zone.

Clause 4.3 Height of buildings

The Height of Building Map sets a height of building standard of RL 130 for the site.

The height of the proposal is RL 139.97 to the top of the plant and RL 131.67 to parapet of the level 23 terrace. There is no leasable floor area proposed above the height standard.

4.6 Exceptions to development standards

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

The Height of Building Map sets a height of building standard of RL 130 for the site.

The height of the proposal is RL 139.97 to the top of the plant and RL 131.67 to parapet of the level 23 terrace. There is no leasable floor area proposed above the height standard.

The proposed scale and visual impact of the proposal is acceptable in the locality and provides an appropriate contextual fit to the edge of the CBD. The shadow cast by the proposed building envelope is consistent with Clause 6.3(3) of NSLEP 2013 that states that Development consent for development on land to which this Division applies may be granted for development that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm is not likely to reduce the amenity of any dwelling located on land to which this Division does not apply. Shadow diagrams demonstrate that no residential properties will be overshadowed.

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

NSW LAND AND ENVIRONMENT COURT: CASE LAW (TESTS)

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

WINTEN V NORTH SYDNEY COUNCIL The decision of Justice Lloyd in Winten v North Sydney Council established the basis on which the former Department of Planning and Infrastructure's Guidelines for varying development standards was formulated. These principles for assessment and determination of applications to vary development standards are relevant and include:

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

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

- Would the proposal, despite numerical non-compliance be consistent with the relevant environmental or planning objectives;
- Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary;
- Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable;
- Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that departs from the standard, making compliance with the development standard by others both unnecessary and unreasonable; or
- Is the "zoning of particular /and" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land. Consequently compliance with that development standard is unnecessary and unreasonable.

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

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

IS THE PLANNING CONTROL IN QUESTION A DEVELOPMENT STANDARD

The planning control in question is clause 4.3 of the NSLEP 2013. Clause 4.3 nominates a maximum Height of Buildings of RL 130 for the site. The planning control specifies requirements or fixes standards in respect of the development and falls within the definition of a "development standard" such that it is capable of being varied under clause 4.6 of NSLEP 2013.

CONSISTENCY WITH OBJECTIVES OF THE ZONE

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

The proposal satisfies the B3 zone objectives as it:

- Provides for a range of retail (at ground floor) and office land uses that will service the needs of the local and wider community
- will directly encourage employment both during construction and throughout the life of the building.
- Limits the provision, of car parking and offers increased bicycle facilities
- Improves streetscape amenity at the corner of Arthur street and Mount street.
- The proposal will not result in any undue environmental impact.

WHAT IS THE UNDERLYING OBJECTIVE OF THE STANDARD

The proposed development will be in the public interest because it is considered to be consistent with the relevant objectives of the height control. The objectives of this clause are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
- (b) to promote the retention and, if appropriate, sharing of existing views,
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
- (e) to ensure compatibility between development, particularly at zone boundaries,

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

The development conforms to natural landforms. View assessment has been undertaken that demonstrates additional height has limited impact with no loss of iconic views. The additional height will not overshadow dwellings. There is no impact on privacy of residents. The building form is compatible with surrounding and of appropriate scale that promotes the character of the area.

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

The aims and objectives of clause 4.6 are as follows:

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

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

"(a) to encourage

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

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

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

- The site is located within an established central business district.
- The proposal provides for the orderly and economic use of land and provides public domain improvements.

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

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

- The proposal is consistent with the objectives of the development standard.
- The height of building standard, was developed by the North Sydney CBD Composite Shadow Line (Composite Shadow Line) that existed under the North Sydney Local Environmental Plan 2001 (NSLEP 2001). The proposal complies with the Composite Shadow Line which suggests the breach of the standard is not unreasonable or unnecessary.
- The visual impacts associated with the additional height are negligible.

- Clause 6.3(3) of NSLEP 2013 states that Development consent for development on land to which this Division applies may be granted for development that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm is not likely to reduce the amenity of any dwelling located on land to which this Division does not apply. This is the case.

IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL

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

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

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

- The proposed height is visually acceptable when viewed from the surrounding locality
- The height of the new tower is in context with neighbouring sites.
- The overshadowing associated with the height above the RL 130 standard has a negligible impact on surrounding properties and maintains a compliant level of solar access to residential properties.
- No additional overshadowing to Mount street relative to a fully compliant envelope.
- Stepped roof form calibrated to optimise solar access.

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

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

There is no public benefit in maintaining the numerical building height development standard in this instance. Maintaining and enforcing the development standard in this case would unreasonably prevent the orderly and economic development of this site.

IS THE OBJECTION WELL FOUNDED?

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

The objection raises a land capacity study currently before Council that has not yet progressed to a planning proposal. As the amount of land zoned for commercial core is limited to the current CBD district, Council is considering allowing additional

heights within the CBD to allow expansion of the CBD into the future. It is possible that the height control over the site may be increased but this has not been tested with proper community consultation.

The height variation proposed under the current application relates to the plant area and open terrace with no additional leasable space above the height control.

The proposed scale and visual impact of the proposal is acceptable in the locality and provides an appropriate contextual fit to the edge of the CBD. The shadow cast by the proposed building envelope is consistent with Clause 6.3(3) of NSLEP 2013 that states that Development consent for development on land to which this Division applies may be granted for development that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm is not likely to reduce the amenity of any dwelling located on land to which this Division does not apply. Shadow diagrams demonstrate that no residential properties will be overshadowed.

Under the circumstances, the objection is well founded.

Clause 6.1 Objectives of Division (North Sydney Centre)

Objective	Comment
(a) to maintain the status of the North Sydney Centre as a major commercial centre	Proposal consistent
(b) to require arrangements for railway infrastructure to be in place before any additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre	The applicant has entered into a Railway Infrastructure Commitment Deed to contribute on the basis of additional floor area created (14,913m ²)
(c) to permit an additional 250,000 square metres of non-residential gross floor area in addition to the estimated existing (as at 28 February 2003) 700,000 square metres of non-residential gross floor area	The additional non residential gross floor area is within the 250,000m ² limit.
(d) to ensure that transport infrastructure, and in particular North Sydney station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and: (i) be convenient and accessible, and (ii) ensure that additional car parking is not required in the North Sydney Centre, and (iii) have the capacity to service the demands generated by development in the North Sydney Centre	Council has instigated measures with State Rail to ensure that North Sydney Railway Station is upgraded to improve patronage. The proposal does not provide for excessive car parking on site.
(e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres	The site cannot be consolidated with adjacent sites and cannot provide for large commercial floor plates.
(f) to protect the privacy of residents, and the amenity of residential and open space areas, within and around the North Sydney Centre	No privacy impacts to residents.
(g) to prevent any net increase in	The proposed development will result in no

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>	additional overshadowing.
(h) to prevent any increase in overshadowing that would adversely impact on any land within a residential zone	Additional overshadowing is limited to the adjacent commercial properties and surrounding roads.
(i) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas	No applicable to site

6.3 Building heights and massing

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

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

The proposal has almost a compliant height and creates the desired transition in building heights for the City Centre.

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

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

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

Additional overshadowing is limited to the adjacent commercial properties and surrounding roads.

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

Weather protection is provided at the building entrance point in Mount Street which includes a double height space with the façade setback 3.4m from the street boundary. The proposal has an architecturally defined base which creates human scale and is a clearly legible pedestrian entry point to the building.

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

The adjoining site has a large strata plan and is not available for redevelopment so consolidation is not practical.

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

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

As indicated on the submitted shadow diagrams, the proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas between 9am and 3pm.

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

The proposal does not overshadow Don Bank.

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

Site has an area of 1145m².

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

The non compliant parts of the building consist of the plant and roof terrace and there is no overshadowing of any dwelling.

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

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

The application is acceptable with regard to its scale within the context of the locality.

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

There are no view lines or vistas affected by the proposal. The proposal will affect existing views from other commercial buildings.

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

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

6.5 Railway infrastructure

- (1) The objective of this clause is to require satisfactory arrangements to be made for the provision of railway infrastructure to satisfy needs that arise from development in North Sydney Centre.*
- (2) Development consent must not be granted for development on land to which this Division applies if the total non-residential gross floor area of buildings on the land after the development is carried out would exceed the total non-residential gross floor area of buildings lawfully existing on the land immediately before the development is carried out, unless:*
 - (a) the Director-General has certified, in writing to the consent authority, that satisfactory arrangements have been made for railway infrastructure that will provide for the increased demand for railway infrastructure generated by the development, and*
 - (b) the consent authority is satisfied that the increase in non-residential gross floor area authorised under the development consent concerned when added to the increases (reduced by any decreases) in non-residential gross floor area authorised under all consents granted since 28 February 2003 in relation to land in the North Sydney Centre would not exceed 250,000 square metres.*
- (3) In determining whether to certify arrangements in accordance with subclause (2) (a), the Director-General must consider the views of:*
 - (a) Transport for NSW, and*
 - (b) any other public authority the Director-General considers relevant.*
- (4) The Council is to review this Division to determine whether the policy objectives of the Division remain valid and whether the terms of the Division remain appropriate for securing those objectives. The review is to be undertaken as soon as practicable after development consent has been granted that would result in the sum of increases (reduced by any decreases) in the non-residential gross floor area authorised under all consents granted in relation to land in the North Sydney Centre since 28 February 2003 exceeding 200,000 square metres.*
- (5) For the purposes of this clause:*
 - (a) an increase in non-residential gross floor area is the amount by which the non-residential gross floor area authorised on land after a development consent is granted exceeds the non-residential gross floor area authorised on the land immediately before the development consent was granted, and*
 - (b) a decrease in non-residential gross floor area is the amount by which the non-residential gross floor area authorised on land after a development consent is granted is less than the non-residential gross floor area authorised on the land immediately before the development consent was granted, and*
 - (c) a development consent does not include a development consent that has lapsed or been surrendered.*
- (6) In this clause, **non-residential gross floor area** means that part of the gross floor area of a building that is used for the purposes of business premises (excluding funeral homes), hotel or motel accommodation, office premises, retail premises (excluding pubs), serviced apartments or recreation facilities (indoor) (but only where those facilities are used for the purpose of gain).*

The existing building on the site has a total non-residential gross floor area of 4,132m² and the proposal has a non residential floor area of 19,045m² resulting in an increase of 14,913m².

Pursuant to Clause 6.5(2) of NSLEP 2013, Council must not grant consent for development within the North Sydney Centre which exceeds the non-residential gross floor area of the building that lawfully existed on the site before the development is carried out. The proposed development will substantially increase the existing level of non-residential gross floor area currently in existence on the site. The increased gross floor area for the site has been certified at 14,913m².

Subclause (2) of the clause allows for an increase in non residential gross floor area to occur only if the Secretary has first certified, in writing, to the consent authority, that satisfactory arrangements have been made for the increased demand for railway infrastructure generated by the development. The normal 'satisfactory arrangement' is a Developer Commitment Deed to pay a contribution for railway infrastructure.

The SNPP is unable to approve the proposal without the certification of the Secretary that satisfactory arrangements have been made. Should the Panel favour the application a commitment deed will need to be certified by the Secretary before consent can be granted.

The applicant submitted the signed developer commitment deed with a bank guarantee and the Secretary's certification has been sought.

SEPP 55 and Contaminated Land Management Issues

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that given the site's history of use, potential for contamination is unlikely.

SREP (Sydney Harbour Catchment) 2005

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

DEVELOPMENT CONTROL PLAN 2013

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

The subject site is within the Central Business District which falls within the North Sydney Centre Planning Area. The proposal is generally consistent with the character statement other than the podium setbacks at the Mount Street and Little Walker Street elevations.

The character statement recommends a weighted average of 4m as a podium setback to Little Walker Street and weighted average setback of 5m to Mount Street.

The proposal was considered by Council's Design Excellence Panel with regard to building form and context. They provided the following comments with regard to setbacks.

Any acceptance of reduced setbacks must be on the basis of the building being in context with the existing and future desired character of the CBD, and improving the public domain at street level.....

The Panel also noted that 100 Mount Street had an increased setback at street level that extended the public domain. The Panel felt that 100 Mount Street should be used as a precedent for the northern side of Mount Street provided the setback of the tower was no less than 1220mm and that the public domain could be improved at street level. This could be achieved by having no podium and the whole building setback 1220mm, with awnings providing essential protection for pedestrians.

With regard to Little Walker Street, it was noted that the character of the street differs to the south of Mount Street where the buildings on the eastern side are more recent (still built before the current controls) with a minimal setback. The eastern side buildings north of the subject site have setbacks greater than 4m except for the building at the northern end of the block with a nil setback. Allowing a nil setback to Little Walker Street would set a precedent for redevelopment of the buildings to the north and west.

There have been submissions from owners to the north about harbour views loss – there should be an analysis to demonstrate the difference between complying setbacks to see if the noncompliant part of tower has any adverse impact. There should be a view impact study, but if this does indicate that impacts would be acceptable, a nil setback could be supported for the main façade. However, at ground level this is the pedestrian entrance to what the Panel considers will ultimately be an attractive ‘shared-zone’ and to have a sub-station hard against a very narrow footpath is not very attractive. If it has to be in this location, some small setback is highly desirable – say 500mm. The wall should be articulated and attractively finished. This would provide a precedent for sites to the north when they are redeveloped leading to an improved public domain.....

The applicant amended the proposal to setback the tower 1220mm from Mount Street and the ground floor 3.4m to provide a colonnade and wider footpath. The building was also amended to provide a minimum 500mm setback to Little Walker Street at ground level with articulation to the wall. The amendments respond to the comments of the DEP.

One of the objectives of the desired built form under the Character Statement is that development sites should be of a size which enables the creation of large high quality floor plates which help to reinforce the Centre’s role as a global city as identified within the Metropolitan Strategy. The LEP requires a minimum site area of 1,000m² and the proposal complies with 1,145m². An A Class office floor plate is recognised as having a minimum of 800m². The amended proposal has a range of floor plates between 806 – 846m². To fully comply with setbacks of 4m and 5m on two sides of the tower would significantly reduce the floor plates to well below a high quality standard. The site is constrained and cannot be easily consolidated with the adjacent site as that site is strata titled with over 100 lots. The site is relatively unique in that it is a small site that is isolated by development to the north and has three street frontages

The objectives of providing setbacks to a tower above a podium are: To enable a reduction in the impact of scale; To ensure adequate ventilation, solar access, privacy, view sharing and a reduction of adverse wind effects; To improve pedestrian flow and amenity; and allow a range of activities to be accommodated.

The southern face of the 118 Mount Street tower align with 100 Mount Street and are set back a minimum 1.220 metres to the Mount Street boundary.

The proposed setbacks allow for an increased setback zone along Little Walker Street with a further setback to the corner of Mount and Little Walker Streets. The façade articulation responds to the diversity of built forms along Little Walker Street. Further, the terrace located above the proposal helps to demarcate the podium from the tower element and reduces wind impacts.

At the southern ground floor place an increased setback of 3.4 metres is provided to Mount Street, allowing for an increased footpath zone with an awning that will improve pedestrian amenity and weather protection. The facade is articulated by the inclusion of a range of building materials and contributes visual interest to the surrounding public domain.

At Little Walker Street the tower component adopts an increased setback to the western boundary ranging from 1m to 1.2m from the boundary which minimises the buildings perceived bulk and scale. Further, the podium is setback 500mm (as amended) to increase the pedestrian area to this shared zone. The facade has a strong horizontal emphasis that helps to create a more human scale which compliments the laneway character of Little Walker Street. The increased setback accommodates a widened footpath with above awning shelter.

The proposal provides an increased podium setback of the Mount Street facade to expand the sheltered footpath zone and provides for a 3.4 metre awning over to the footpath.

The revised Architectural Drawings illustrate the proposal is compatible with the existing (and future) alignment of buildings along Mount Street, a street wall of Arthur Street, and reconciles the differing setbacks of Little Walker Street. Although the proposed tower form is forward of the DCP setback requirement, the tower component features curving ends which reduce the perceived bulk and scale of the development and softens it.

The latest modifications respond in full to the Design Excellence Panel suggestions. On balance, the proposed setbacks are acceptable on the basis that the building is in context with its surrounds, a podium along Mount Street is achieved, the articulation of the building and its form and the public domain improvements.

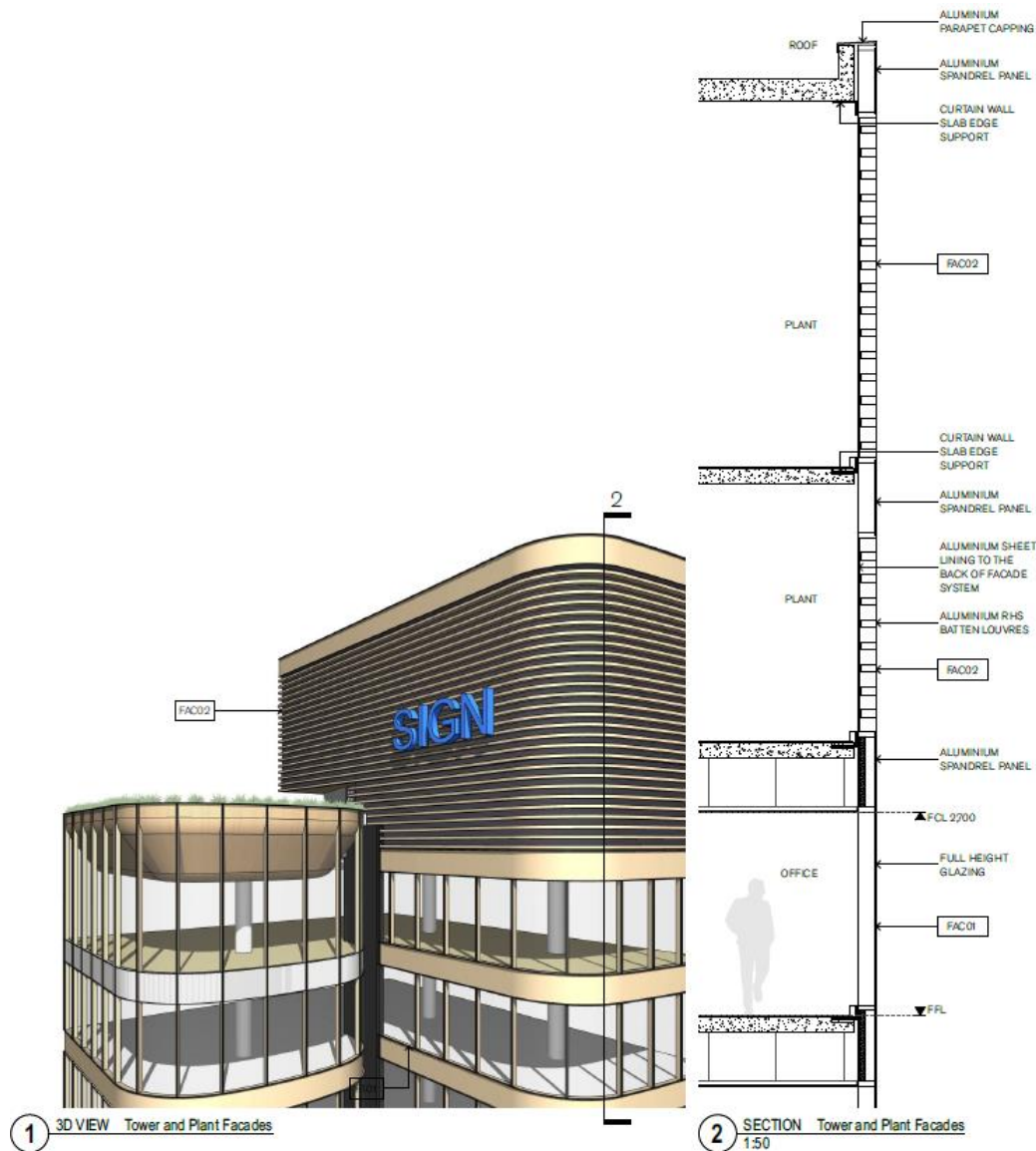
SECTION 94 CONTRIBUTIONS

Section 94 Contributions in accordance with Council's S94 plan are warranted and are based on the increase in non residential gross floor area. The contributions are detailed in the attached conditions.

DESIGN & MATERIALS

The proposed building design consists of a single tower with an irregular plan. The proposed building will be a refined tower complex of curves and proportions clad with a continuous flush high performance glass envelope. A double glazed, thermally isolated envelope utilising an interlayer technology of "copper/bronze" like colour will give transparency to the building.

It is proposed to be a building of high performance glass, bronzed aluminium and stone. The glazing is proposed as a low-e coated glass often referred to as 'triple silver' in a double glazed format with argon in the cavity. The spandrel is a high insulated metal faced zone.



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

VIEW IMPACT

It is considered that view loss impacts are inevitable given the site's location within a B3 Commercial Core zoning where it is envisaged that buildings heights will be increased to allow for additional capacity in the CBD.

The applicant has carried out a view analysis. A copy is attached for the Panel's information.

Three key buildings in the vicinity of the site were identified as being impacted or potentially impacted on by the proposal in terms of views.

3D modelling was used to determine the angles of available views and the levels within each identified building that was identified as likely to enjoy existing views, vistas and outlook that may be impacted upon.

The views analysed are:

- 100 Mount Street: view taken from 160AHD
- 141 Walker Street: View taken from 150AHD (i.e. one level below top most point of 155AHD)
- 171 Walker Street: View taken from 125AHD (i.e. one level below top most point of 130AHD)

100 Mount Street:

Views from the 100 Mount Street site towards the proposed building are available from the eastern elevation of the building and can be generally categorised as those occurring at the high-rise levels of the building, from commercial office uses at a distance of 70m - 80m.

The key elements of the view include distant harbour views and district views of the suburb of Kirribilli. Primary views of 100 Mount Street will be oriented towards the Sydney CBD, including Harbour Bridge and the Sydney Opera House.

The potential visibility of the proposal will be high, however it is not the primary visual element for 100 Mount Street, which will be likely achieve significant views south (which is its longest elevation) to the Sydney CBD, Harbour Bridge and Sydney Opera House.

141 Walker Street

The commercial office tower at 141 Walker street has a height of 155AHD. The view analysis is taken from 150AHD (i.e. one level below top most point)

Views from 141 Walker street site towards the proposed building are available from its south-eastern elevation and can be generally categorised as those occurring at the high-rise levels of the building from commercial office uses at a distance of 40m - 50m.

The primary views will be towards the Sydney CBD, including Harbour Bridge and the Sydney Opera House, both of which are generally to the south.

The visibility of the proposal is high, in terms of its distance and elevation from the view location and consideration that the proposal will be in a primary visual element - with views to key landmarks and iconic buildings.

The proposal impacts the view for 141 Walker Street however still maintains significant views of the Sydney Harbour Bridge and CBD beyond, as well as Sydney Harbour to the east. The view loss impacts to the building located at 141 Walker

Street will have views of landmark buildings largely retained. Some loss of views will result from the 'non-compliant' aspect of the height at the level at 140AHD of 141 Walker Street. It is noted that height variations are specifically allowed in the LEP on the basis of no adverse shadow impact on dwellings (Clause 6.3(3)) and through architectural roof features (Clause 5.6). The roof plant area would generally comply with the objectives of the clause on architectural roof features other than that the majority of the roof is not contained within the maximum building height standard. The proposal would satisfy all of Clause 5.6(3)

Clause 5.6 Architectural roof features

- (1) The objectives of this clause are as follows:
 - (a) to permit variations to maximum building height standards for roof features of visual interest,
 - (b) to ensure that roof features are decorative elements and that the majority of the roof is contained within the maximum building height standard,
 - (c) to maintain solar access to new and existing buildings, public reserves and streets,
 - (d) to promote the retention and, if appropriate, sharing of existing views.
- (2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.
- (3) Development consent must not be granted to any such development unless the consent authority is satisfied that:
 - (a) the architectural roof feature:
 - (i) comprises a decorative element on the uppermost portion of a building, and
 - (ii) is not an advertising structure, and
 - (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and
 - (iv) will cause minimal overshadowing, and
 - (b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.

171 Walker Street

The residential flat building at 171 Walker Street has a height of 130AHD. The view analysis is taken from 125AHD (i.e. one level below top most point).

Existing views from the building towards the proposed development are available from the southern elevation of the building and can be generally categorised as those occurring at the high rise levels of the building.

Views are available from its southern elevation and can be generally categorised as those occurring at the mid to high-rise levels of the building, from residential balconies at a distance of 200m.

The key elements of the view include distant harbour views and largely obscured CBD views to the south. Primary views of the Harbour Bridge and the Sydney Opera House, both of which are generally to the south, can be viewed in part from some of the top level balconies.

The visibility of the proposal is low, in terms of its distance from the view location and consideration of its context as part of the existing suite of tall office buildings in the North Sydney CBD.

It is noted a permissible development (up to 130RL) would block distant views to the Sydney CBD buildings such as the Sydney Opera House and landmarks of Sydney Harbour.

Whilst the proposal will provide some impact on views, the proposal is in context as a contemporary commercial tower element in a cluster of tall buildings. The North Sydney capacity study envisages greater height not only for this site, but for the broader precinct. Some loss of views will result from the 'non-compliant' aspect of the height at the level of 140AHD at 141 Walker Street. It is noted that height variations are specifically allowed under the LEP on the basis of no adverse shadow impact on dwellings (Clause 6.3(3)) and through architectural roof features (Clause 5.6). The proposal does not have any leasable space above the height control. The loss of these views are not considered to be so severe as to warrant refusal of the application or any redesign to the top of the building to retain the views affected.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL	CONSIDERED
1. Statutory Controls	Yes
2. Policy Controls	Yes
3. Design in relation to existing building and natural environment	Yes
4. Landscaping/Open Space Provision	Yes
5. Traffic generation and Carparking provision	Yes
6. Loading and Servicing facilities	Yes
7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8. Site Management Issues	Yes
9. All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

The issues raised are addressed within the report and as follows:

Height

The submissions were based on the original taller building that has now been reduced by 4 floors. The Height of Building Map sets a height of building standard of RL 130 for the site. The height of the proposal is RL 139.97 to the top of the plant and RL 131.67 to parapet of the level 23 terrace. There is no leasable floor area proposed above the height standard. The proposed scale and visual impact of the proposal is acceptable in the locality and provides an appropriate contextual fit to the edge of the CBD. The shadow cast by the proposed building envelope is consistent with Clause 6.3(3) of NSLEP 2013 that states that development consent for development on land to which this Division applies may be granted for development that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm is not likely to reduce the amenity of any dwelling located on land to which this Division does not apply. Shadow diagrams demonstrate that no residential properties will be overshadowed. The applicant submitted a written request under Clause 4.6 that is considered to be well founded so that the development standard is unreasonable and unnecessary under the circumstances of this site.

View loss

The submissions were based on the original taller building that has now been reduced by 4 floors. Most of the submissions were received from 122 Arthur Street that directly adjoins the subject site and consists of an elevation of south facing wall 3m off the boundary. No.122 Arthur Street is also well below the height control of RL 130. The proposed building has its core on the northern boundary which is the only one without street frontage. The proposed building is generally compliant in its location on the boundary and will significantly impact on current views. Such views are not protected. Full compliance with the weighted setback on Little Walker Street would make no difference to these views. To protect the views, the building would have to maintain the existing building footprint that would not allow A class commercial floorplates and the full potential of the site to be realised.

It is considered that view loss impacts are inevitable given the site's location within a B3 Commercial Core zoning where it is envisaged that buildings heights will be increased to allow for additional capacity in the CBD.

The applicant carried out a view analysis. A copy is attached for the Panel's information.

The height of the proposed development has been reduced from RL 154.27 to RL 139.97, decreasing the building's height from 29 to 25 storeys. Consequently, the view impacts to surrounding properties will be significantly reduced.

Consideration of the view impacts to 141 Walker Street has been addressed in the updated View Impact Analysis (attached). Views from 141 Walker Street are generally obtained from the higher levels of the building. The proposal continues to adopt a stepped built form which reduces in height towards the south to facilitate access to south east view corridors of Sydney Harbour. The view loss impacts to the

building located at 141 Walker Street will have views of landmark buildings largely retained. Some loss of views will result from the 'non-compliant' aspect of the height at the level at 140AHD of 141 Walker Street. It is noted that height variations are specifically allowed on the basis of no adverse shadow impact on dwellings and through architectural roof features.

Views from 121 walker street are predominantly available from the western elevation of the building to which the proposal has no impact. Views are also obtained from the eastern elevation however, these views are largely oriented towards the Sun Super building and above 104 Mount Street. Due to the orientation of the floorplate of 121 Walker Street, the view impact would be no worse than with a fully compliant building, there would be no iconic views across the site.

Visual impact

The proposal has been amended with the reduced height, increased setbacks and improved public domain. The Design Excellence Panel commended the architect for the aesthetics of the building and raised no issue with the materials or finishes. The DEP supported the modifications made during the assessment process.

North Sydney Centre Review

The Applicant's request for an exception to the Height of Building standards, includes justification that the:

Building height is acceptable based on North Sydney CBD Strategic Review, that recommends additional height on the site up to RL170.

As part of the review of the North Sydney Centre, Council prepared a Capacity and Land Use Study that aims primarily to develop a framework to unlock additional commercial floor space capacity within the Centre, thereby ensuring it maintains and improves its status as a resilient and competitive economic centre. The Study proposes several strategies to guide future development of the North Sydney Centre, including that the Centre's height of buildings controls. Council's website states that:

The Study does not represent proposed amendments to North Sydney Local Environmental Plan 2013 - any changes to the LEP will be the subject of a Council-initiated planning proposal process, enacted only once submissions to this public exhibition have been considered and an endorsed position is resolved by Council.

At Council's request the applicant amended the proposal by the reducing the height by 14m that is closer to the current height control. The recent capacity study was not accepted as justification for consideration of the Clause 4.6 request. The height controls may be varied in the future but this is neither certain or imminent.

Inconsistent with LEP objectives

The site is surrounded by a variety uses which predominantly comprise of commercial and retail uses. The proposal is a form of development that is reasonably anticipated on the site. The proposal is consistent with the objectives of the B3 zone.

Non-compliance with DCP setbacks

The applicant amended the proposal to setback the tower 1220mm from Mount Street and the ground floor 3.4m to provide a colonnade and wider footpath. The building was also amended to provide a minimum 500mm setback to Little Walker

Street at ground level with articulation to the wall. The amendments respond to the comments of the DEP.

The revised Architectural Drawings illustrate the proposal is compatible with the existing (and future) alignment of buildings along Mount Street, a street wall of Arthur Street, and reconciles the differing setbacks of Little Walker Street. Although the proposed tower form is forward of the DCP setback requirement, the tower component features curving ends which reduce the perceived bulk and scale of the development and softens it.

The latest modifications respond in full to the Design Excellence Panel suggestions. On balance, the proposed setbacks are acceptable on the basis that the building is in context with its surrounds, a podium along Mount Street is achieved, the articulation of the building and its form and the public domain improvements.

Amenity impacts (loss of natural light)

This concern relates to the south facing windows of 122 Arthur Street that are 3m off the boundary. The proposed building is generally compliant in its location on the boundary and will impact on current daylight available. Light to the windows are not protected. Full compliance with the weighted setback on Little Walker Street would make no difference to these windows as they are well setback from Little Walker Street. To protect the windows, the building would have to maintain the existing building footprint that would not allow A class commercial floorplates and the full potential of the site to be realised.

Wind tunnelling

The Wind Assessment Report has addressed the developments compliance with the relevant DCP controls. The qualitative assessment indicates it is unlikely the wind conditions of the site would meet the 13 m/s criterion. The design has considered wind impacts. Specifically, the curved corners of the tower will encourage winds to pass horizontally rather than via a downward flow, the setback of the tower to form a small podium setback of 1220mm will assist in providing protection to footpaths and accessible outdoor spaces. At the pedestrian street level, revolving doors at the main entrances will limit wind impacts and the 3.4m wide colonnade will provide protection. Wind conditions around the site would be similar to existing conditions with the pedestrian level wind environment for most locations being classified as suitable for pedestrian standing or walking and all areas would pass the distress criterion. The design would meet the intended use of the space in terms of pedestrian comfort and safety. For such a significant development, wind tunnel testing is recommended during detailed design for the development of specific measures. This may involve screens and additional awnings. Any external additions to the building could warrant a Section 96 application to modify the consent.

Conclusion

The application has been assessed against the relevant statutory controls and with regard to the existing and approved developments nearby. The written request under Clause 4.6 for an exemption to the **height** development standard is considered to be well founded and can be supported. Support of the requested variation will result in an outcome consistent with the zone objectives.

The application was referred to Council's Design Excellence Panel for comment. Some minor modifications were suggested and the proposal was supported by the DEP. Amended plans have been submitted to Council during the assessment period in response to the Design Excellence Panel's comments and the issues raised by Council. The amendments include a reduction in height, increased setbacks of the tower, improved public domain and reduced footprint. In this instance, it was considered that the amendments would be unlikely to materially affect adjoining or neighbouring land compared to the originally notified development and as such, re-notification was not required. The amended plans have been assessed with regard to the submissions received.

Following assessment of the amended plans, the development application is recommended for **approval**. The SNPP is unable to approve the proposal without the certification of the Secretary that satisfactory arrangements have been made with regard to Railway Infrastructure. The applicant has entered into a commitment deed with Council and certification from the Secretary has been sought. Should the Panel favour the application a commitment deed will need to be certified by the Secretary as "satisfactory arrangements" before consent can be granted.

RECOMMENDATION

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

THAT upon receipt of certification from the Secretary of Planning and Infrastructure pursuant to Clause 6.5 (2) of NSLEP 2013, the Sydney North Planning Panel, as the consent authority, assume the concurrence of the Director General of Planning and Infrastructure and invoke the provisions of Clause 4.6 with regard to the height control and grant consent to 2017SNH016 – North Sydney - Development Application No.19/17 subject to the attached conditions.

Geoff Mossemenear
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES