

## SYDNEY NORTH PLANNING PANEL

JRPP No	2017SNH078
DA Number	486/15/2
Local Government Area	North Sydney Council
Proposed Development	To modify consent for demolition of existing office building and the construction of a mixed use development comprising basement levels, retail/commercial floor space, and residential apartments with regard to increase in apartment numbers and parking.
Street Address	168 Walker Street, North Sydney
Applicant/Owner	Aqualand North Sydney Development Pty Ltd
Number of Submissions	Five
Regional Development Criteria (Schedule 4A of the Act)	Section 96(2) application Capital Investment Value > \$20M
List of All Relevant s79C(1)(a) Matters	North Sydney LEP 2013 - Zoning – B4 Mixed Use North Sydney DCP 2013 SEPP65 SEPP 55 - Contaminated Lands SREP (2005)
List all documents submitted with this report for the panel's consideration	Plans Architect's Section 96 report Architect's ADG assessment
Recommendation	Approval
Report by	Geoff Mossemeneer, Executive Planner, North Sydney Council

### Assessment Report and Recommendation

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## EXECUTIVE SUMMARY

The proposed modifications are to DA 486/15 (Sydney East JRPP reference 2016SYE012) which was the approval for demolition of an existing commercial building and construction of mixed use building comprising retail space and 415 apartments with basement parking for 375 vehicles, granted by the JRPP on 12 July 2016. The proposal seeks to increase the number of apartments from 415 to 441, all within the approved built form envelope.

Council's notification of the proposal attracted five submissions raising particular concerns about increased density, inadequate parking and increased traffic.

Council's Design Excellence Panel raised concern that the proposal reduced communal space and relocated it to an area of reduced outlook and solar access while increasing residential accommodation by 26 apartments. The applicant responded by increasing the quantum of communal area and communal open space in comparison to the modification as lodged and also in comparison to the development as approved. This has been achieved by way of the introduction of sundeck on L26 and a gym at L1. The gym will be available to the residents of the development. The sundeck is located on roof space previously unoccupied, with amenity including 180 degree views to the north, east and west. The sundeck is located on the same level as the majority of the resident facilities including 3 community rooms, pool, spa and BBQ facilities.

The assessment of the proposal has considered the concerns raised by submitters as well as the performance of the application against Council's planning requirements.

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

## **DESCRIPTION OF PROPOSAL**

The proposed modifications are to DA 486/15 (Sydney East JRPP reference 2016SYE012) - the approval of the demolition of an existing commercial building and construction of a mixed use building comprising retail space and 415 apartments with basement parking for 375 vehicles, which was granted by the JRPP on 12 July 2016.

## **MODIFICATIONS**

The proposal seeks to increase the number of apartments from 415 to 441, all within the approved built form envelope.

The proposal would be achieved by:

- Maintaining the approved building heights, setbacks and envelope, with some very minor changes to regularise height at roof level where a curved roof form is approved. The absolute building heights, expressed as RLs do not change.
- Increasing the number of storeys by reducing approved floor-to-floor heights but maintaining 2.7m floor-to-ceiling heights for residential and the approved floor-to-ceiling heights for non-residential. For example, the residential floors are proposed to have F to F of 3.03m, inclusive of highly documented details on how this can be achieved.
- Reduced level 1 floor-to-floor height to 3.53m
- Changing the approved roof level gym to residential.
- Providing a sun deck on the same level as the pool and communal amenities (L26).
- Changing roof level plant on Pod 1 to residential and relocating to the roof of Pod 3.
- Providing a gym on L1 to be commercially operated and available to the residents of the development to use.
- Resident access to the L1 gym is physically facilitated by providing the residential lifts full access to L1
- Consequential façade amendments to suit the new floor to floor and residential additions.
- Consequential car parking increase
- No changes to approved landscaping, tree retention etc.

The proposed modifications are demonstrated in detail on the architectural drawings attached to this report.

The proposal results in an increase in the gross floor area (GFA) from 45,057m<sup>2</sup> to 47,478m<sup>2</sup>, and a corresponding increase in the floor space ratio (FSR) from 9.2:1 to 9.5:1.

The proposal does not result in any increase in the overall building height of any of the pod buildings because the additional levels have been incorporated generally

into the approved building envelope. The maximum building height is retained at 94.5m.

In terms of the dwelling mix within the development, the modification results in the following:

<b>Dwelling Type</b>	<b>Approved DA dwelling mix</b>	<b>Proposed dwelling mix</b>
Studio	7 (1.7%)	7 (1.6%)
One (1) bedroom	144 (34.7%)	152 (34.5%)
Two (2) bedroom	196 (47.2%)	208 (47.2%)
Three (3) bedroom	59 (14.2%)	65 (14.7%)
Penthouse	9 (2.2%)	9 (2%)
<b>Total</b>	<b>415 apartments</b>	<b>441 apartments</b>

The number of adaptable dwellings provided as part of the above dwelling mix increases from the 60 (14.5% of total dwellings) approved, to 66 apartments proposed (15% of total dwellings).

The modification does not alter the proposed retail or commercial floor space to be provided at ground level. This has been retained at 1133m<sup>2</sup> for retail and 1370m<sup>2</sup> for commercial.



North Sydney LEP 2013 - Zoning – B4 Mixed Use  
S94 Contribution  
Environmental Planning & Assessment Act 1979  
SEPP 65  
SEPP 55 - Contaminated Lands  
SREP (2005)

North Sydney DCP 2013

As this is a Section 96(2) application for a proposal that has a Capital Investment Value (CIV) of greater than \$20 million, the consent authority for the development application is the Sydney North Planning Panel.

The subject site is located on the north-western corner of Walker and McLaren Streets North Sydney and is legally described as Lot 100 in DP 1172241. No.168 Walker Street (the site) is an irregular shaped lot of 4,898m<sup>2</sup> in area, with the major frontage to McLaren Street of 78.445m and the Walker Street frontage of 59.055m.



Existing on the site is a multi-storey commercial office building with basement car parking including extensive perimeter and site landscaping and a northern ground level pedestrian plaza.

The site is conditioned with several easements relating to the adjacent Rydges Hotel which was developed at the same time and is of a similar architectural style to the existing building. Several Rydges Hotel services are either shared or run directly through the site and will have to be redirected accordingly. In addition, two (2) key through site links must be respected. A right-of-carriageway, to serve vehicular access to the hotel, defines a western footprint extent, and an east-west right-of-footway determines a permeable podium to any new concept.



Existing Office Building

The site lies within the North Sydney commercial centre and within a diverse urban context of land uses and buildings. The site has a shared irregular L shaped boundary with the Rydges Hotel to the west and to the north, as well as the Wenona School to the north.

Also adjoining to the west is a vacant site over which there is an existing Concept Approval for aged care housing redevelopment including a maximum building height envelope granted in July 2011 by the JRPP. The maximum height was RL 118.

Opposite the site on the south-eastern corner of McLaren and Walker Streets is a three (3) storey brick residential flat development at 45 McLaren Street.

Opposite the site in Walker Street is a mix of residential flat buildings of varying ages and architectural styles including a nine storey building at 191-195 Walker Street and an eight storey building at 199 Walker Street.

## Background

Development Application No.486/15 was submitted on 22 December 2015. The application was referred to various external authorities and internal staff for comments, notified to surrounding owners and residents and to Council's Design Excellence Panel (3<sup>rd</sup> time).

Following a preliminary assessment of the application, consideration of submissions received and the comments raised by the Design Excellence Panel, the applicant was invited to meet with Council staff to discuss Heritage, landscaping, waste, traffic, parking, stormwater, design and SEPP 65 concerns.

The applicant responded by submitting amended plans and details on 23 May 2016. The package of information, in addition to the covering letter, included the following:

- Woods Bagot architects – a short report explaining the architectural response to matters raised, together with amended drawings and associated schedule;
- Turf landscape architects – an amended landscape report;
- Naturally Trees arborist – an amended arborist report;
- BCA Logic – letter of advice regarding BCA compliance of bedrooms, provided with the architectural drawing package;
- The Mack Group – an updated Waste Management Plan; and
- Written advice from AECOM regarding stormwater matters.

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). The request sought a variation to the Height of Building standard, adopted under clause 4.3 of NSLEP 2013. Clause 4.3 sets a maximum height for buildings on the subject site of RL.156m AHD. The application proposed a building height of RL.167.51 to the top of the corner pod which is higher than the other three (that are lower than the height control). The non compliant section comprised Residential Level 26 and Residential Level 27 with plant at Level 28. Communal spaces were provided on 2 pods at Level 25 and the northern pod at level 24 and these communal spaces were all under the height control. The communal spaces provided for excellent amenity with unrestricted northern views and ample solar access.

At its meeting of 12 July 2016, the Joint Regional Planning Panel (Sydney East) granted approval to the demolition of the existing commercial building and the construction of a mixed use building comprising retail space and 415 apartments with basement parking for 375 vehicles.

## REFERRALS

### Building

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

### Engineering/Stormwater Drainage/Geotechnical

Council's Development Engineer (Z Cvetkovic) has assessed the proposed modifications and advised that the approved conditions relating to damage bonds, excavation, dilapidation reports of adjoining properties, construction management plan, vehicular crossing requirements and stormwater management do not require modification.

### Traffic/Parking

Council's Traffic and Transport Engineer has provided the following comments:

I refer to your request for traffic comments in relation to Development Application 486/15/2 for additional 26 units and 21 parking spaces for development at 168 Walker Street, North Sydney. I have read the *Traffic Impact Assessment report* prepared by Ason Group dated 16th October 2017. In assessing this report, architectural plans dated 28th September 2017 have been considered.

#### Approved Development

The approved development comprises 415 residential units, 2,503m<sup>2</sup> non-residential with 340 residential and 7 retail parking spaces.

The proposed section 96 comprises of additional 26 units and additional 21 parking spaces.

#### Traffic Generation

The report states that the additional units will generate a total of 5 and 4 trips in the morning and afternoon peak hour respectively. This is an additional 1 trip every 10-12 minutes and is considered acceptable.

#### Parking Provision

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

Type of Parking	North Sydney Council DCP 2013	
	Requirement per dwellings	
Studio and 1 Bedroom Dwelling	0.5 space x 159 dwellings	80
2 Bedroom dwelling	1 space x 208 dwellings	208
3 Bedroom dwellings	1 space x 74 dwellings	74
Visitor	N/A	0
Commercial	1 space / 400m <sup>2</sup>	7
<b>Total car parking</b>		<b>369</b>

The development proposes a total of 368 parking spaces which is below the maximum requirements set out in the DCP.

#### Accessible Parking:

Council's DCP 2013 (amended on 5 November 2015 Section 10) sets out that developments



containing adaptable housing must allocate at least one accessible parking space to each adaptable dwelling. The development consists of 60 adaptable units and provides a total of 67 adaptable units which meets the requirements of Council's 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 residential building is 1 bicycle parking space per 1 dwelling. Therefore, minimum of 441 bicycle spaces for residents and visitors are required to be provided. A total of 455 bicycle spaces using the storage area have been proposed for residents which meets the requirements of Council's DCP.

Also provision of bicycle spaces shall be made for the retail and office areas. The minimum required parking space rate for retails and office areas are described in Council's DCP. As such a minimum of 1/150m<sup>2</sup> (17) for occupant and 1/400m<sup>2</sup> (6) for visitors are required for retail and office areas respectively. Total of 17 and 42 spaces are proposed for occupant and visitors of the retail area which meets the requirements of Council's DCP.

Furthermore, type of bicycles spaces as well as changing and shower facilities shall be provided in accordance with Council's DCP. All other requirements for Bicycle parking and associated facilities such as access and design shall be provided in accordance with Council's DCP.

### **Motorcycle Parking**

The maximum parking rate for motorcycle parking is 1 per 10 dwelling. Therefore, the maximum required number of motorcycle parking spaces is 44.

The applicant has provided a total of 39 parking spaces which meets the requirements of Council's DCP.

### **Loading Facilities**

Developments containing more than 60 dwelling are required to provide at least 1 service delivery space capable of at least 1 Heavy Rigid Vehicle (HRV) or 2 Medium Rigid Vehicles (MRV).

The proposed development has provided a double loading bay on basement 1. The proposed loading bay can accommodate 2 Medium Rigid Trucks.

The report however states that due to the constraints associated with the development, it is proposed that:

#### **"2.2 Servicing**

*The approved loading arrangement consists of a ground level loading dock that is accessed via the Site's primary access driveway to McLaren Street, which is capable of accommodating 2 Medium Rigid Vehicles (MRV) not greater than 3.5 metres in height."*

The AS2890.2, table 2.1 "Design Vehicle Dimensions" indicates the height clearance of an 8.8m long MRV is 4.5m. The applicant is required to provide detailed information and justification of 3.5m height clearance for a standard 8.8m long MRV.

### **Design/ Layout:**

- The layout of parking spaces for some of adaptable parking spaces does not meet the AS2890.6:2009 minimum requirements.
- Accessible parking spaces are to be located closer to the lifts for easier accessibility and convenience.
- The shared zone for accessible parking spaces need to be provided with a bollard in accordance with AS2890.6

### **Conclusion**

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

- The applicant is required to provide details of proposed bicycle parking spaces as mentioned above.
- The provision of loading facilities to be addressed as mentioned above.
- The parking layout and location of accessible parking spaces to be modified to meet the AS2890.6:2009 and AS2890.6 minimum requirements
- The design/layout of parking spaces be in accordance with AS2890.6:2009.

Should Council approve this development it is recommended that the following conditions be imposed:

1. That a Construction Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.
2. That all aspects of the car park comply with the Australian Standard AS2890.1 Off-Street Parking and Council's DCP. This includes all relevant requirements for accessible parking spaces.
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.

Comment:

The amended architectural drawings include the following:

- The total number of car parking spaces for the development complying with the maximum allowable under NSDCP;
- Provision of bicycle parking for all land uses consistent with the requirements of NSDCP. This includes storage within allocated residential parking;
- Provision of end-of-journey bicycle facilities in accordance with NSDCP; and
- Provision of two car share spaces on level B1.

The design/layout of all parking spaces is provided in accordance with AS2890.6:2009. The 3.5m basement clearance height for delivery and service vehicles has been allowed on other mixed use sites and is acceptable. Removal vans can comply with a 3.5m height limit. All residents moving in or moving out will need to book the loading dock through the Building Manager. This also allows the lifts to be protected from damage from furniture being moved to and from apartments.

## DESIGN EXCELLENCE PANEL

The application was before the Panel on 12 December 2017 and the minutes of the meeting are reproduced as follows:

<b>PROPERTY</b>	168 Walker Street North Sydney	
<b>PROPOSAL</b>	Section 96(2) Application – Modify consent to increase apartment numbers and parking	
<b>DATE</b>	12 December 2017	
<b>TIME</b>	Commenced: 3.45pm	Concluded: 4.30pm
<b>HELD</b>	Supper Room, North Sydney Council Chambers	
<b>ATTENDANCE</b>		
Chair	Philip Graus	

Panel Members	Angela Koepp; Kylie Legge; Peter Webber.
Council staff	George Youhanna; Geoff Mossemeneer
Proponents	Tony Pizzolato (Aqualand); Costas Haramis (Aqualand); Jason Fraser (architect); Derek Scholes (architect); Scott Barwick (planner)

## Details of Proposal

The site is located on the north western corner of Walker and McLaren Streets, North Sydney. The site is an irregular shaped lot of 4,898m<sup>2</sup> in area, with the major frontage to McLaren Street of 78.445m and the Walker Street frontage of 59.055m. The legal property description is Lot 100 DP 1172241. This site has a 7m level difference, sloping down from North to South and towards the prominent corner position at the junction of McLaren & Walker Streets.

Existing on the site is a multi-storey commercial office building with basement car parking and including extensive perimeter and site landscaping and northern ground level pedestrian plaza.

The site also has a shared boundary with 'the Rydges Hotel' to the West, and 'the Rydges Hotel' & Wenona School to the North.

The site is conditioned with several easements relating to the adjacent Rydges Hotel. Several Rydges Hotel services are either shared or run directly through the site and will have to be redirected accordingly. In addition, two key through site links must be respected. A right of carriageway, to serve vehicular access to the hotel, defines a western footprint extend, and an east-west right of footway determines a permeable podium to any proposal.

The site is zoned B4 Mixed Use under North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The Panel has previously considered a pre lodgement proposal for the adaptive reuse of the commercial building with 2500m<sup>2</sup> of commercial/retail and nominally 310 apartments above at its meetings of 2 September 2014 and 4 November 2014. A formal DA pre-lodgement meeting for a new building was held with Council officers on 12 October 2015. Pre-lodgement meetings were held with the Council's Design Excellence Panel (DEP) on 13 October and 10 November 2015. The Panel provided comments on the development application on 8 March 2016. The Panel supported the proposal subject to the issues of landscaping, noise, height, ground level wind impacts and overlooking/privacy of balconies being addressed and resolved to the satisfaction of Council. Amended plans were submitted that fully addressed the issues raised by the Panel. The application was approved by the Sydney East JRPP.

The proposed modifications are to DA 486/15 (Sydney East JRPP reference 2016SYE012 DA) which was the approval for demolition of an existing commercial building and construction of mixed use building comprising retail space and 415 apartments with basement parking for 375 vehicles, on 12 July 2016.

The proposal seeks to increase the number of apartments from 415 to 441, all within the approved built form envelope.

The proposal would be achieved by:

- Maintaining the approved building heights, setbacks and envelope, with some very minor changes to regularise height at roof level where a curved roof form is approved. The absolute building heights, expressed as RLs do not change.
- Increasing the number of storeys by reducing approved floor-to-floor heights but maintaining 2.7m floor-to-ceiling heights for residential and the approved floor-to-ceiling heights for non-residential. For example, the residential floors are proposed to have F-to-F of 3.03m, inclusive of mechanical details on how this can be achieved.
- Reduced level 1 floor-to-floor height to 3.53m

- Changing the approved roof level gym to residential and consolidating the gym within pool level residential amenities. Changing roof level plant on Pod 1 to residential and relocating to the roof of Pod 3.
- Consequential façade amendments to suit the new floor to floor and residential additions.
- Consequential car parking increase
- No changes or further development to approved landscaping, tree retention etc.

The Panel and Council staff inspected the site prior to the meeting. The applicant made a presentation to the Panel and was available for questions.

### **Panel Comments**

The Panel expressed concerns relating to the feasibility of the proposed residential floor to floor heights of 3.03m and noted that if for any reason the building cannot be constructed at 3.03m floor to floor, the uppermost storey may need to be deleted.

The proposed reduced floor to floor height results in balcony access over a hob, requiring portable ramps for DDA compliance. The Panel notes while such a solution may comply with minimum statutory requirements it is not consistent with design excellence which aspires to best practice.

The Panel is concerned at the proposal to reduce communal space and its relocation to an area of reduced outlook and solar access and increase residential accommodation by 26 apartments, potentially of the order of an additional 50 residents, in terms of residential amenity. The original proposal was approved in part on the basis of the amenity provided by the communal areas and it is not apparent as to why the communal areas should be reduced when the number of apartments is being increased, except to assist in achieving a higher residential yield. In particular, the conversion of the "Sky Gym" on level 24, which enjoys views and has a high level of amenity, to two x three bedroom apartments is not supported. A comparison of the floor area of the approved and proposed communal areas is required to quantify the extent of the proposed reduction.

In the context of a significant increase in the number of apartments in the development, the Panel suggests that, in addition to maintaining the upper level communal area and amenity, the ground plane should also be reviewed and further developed in order to improve site amenity. The usability of the common areas could be improved through the provision of play equipment, communal open space, a BBQ area or other flexible uses. Consideration should be given to rendering part of the open space more pet friendly.

### **Conclusion**

The Panel gives qualified support to the proposed modifications, subject to the originally approved extent of communal open space being retained and where possible enhanced, and the submission of additional information to Council that addresses the identified issues.

### **Comment:**

The applicant responded to the DEP comments with amended plans received on 6 February 2018. The DEP commented on balcony access over a hob. The applicant submitted a letter from access experts BCA Logic confirming that the proposed design meets statutory accessibility requirements.

The quantum of communal areas, including communal open space has been increased, as shown on the amended drawings prepared by Woods Bagot. The amended information confirms that the quantum of communal area and communal open space has been increased in comparison to the modification as lodged and also in comparison to the development as approved. This has been achieved by way of the introduction of sundeck on L26 and a gym at L1.

The sundeck is located on roof space previously unoccupied, with amenity including 180 degree views to the north, east and west. The sundeck is located on the same level as the majority of the resident facilities including 3 community rooms, pool, spa and BBQ facilities. Protection of privacy and avoidance of any potential overlooking from the sundeck is achieved with a 2m wide non-trafficable area setback from the parapet edge. The sundeck will include a 1500mm glass balustrade for wind protection. There is no increase to the approved RL of the roof or parapet and the setback clear glass balustrade will cast no additional shadow.

The gym on L1 will be commercially operated and available to the residents of the development to use. The applicant has advised that they would accept a covenant on title, or some similar legal mechanism, requiring a gym in this location, guaranteeing access to the facility for the residents.

Resident access to the L1 gym is physically facilitated by providing the residential lifts full access to L1, an amendment to the approved design.

## **EXTERNAL REFERRALS**

Nil required

## **SUBMISSIONS**

The application was notified to the Edward, CBD and Union precincts and surrounding owners and residents in accordance with Council policy. In response to the notification, Council received a submission from Stanton Precinct and 4 individual submissions from surrounding owners and residents raising the following concerns:

Stanton Precinct:

- The Precinct strenuously objects to the scope creep in the proposed expansion, with the existing approval already a significant and sufficient increase in residential and traffic intensity.

H & S Henderson  
1310/138 Walker Street  
North Sydney

- Increased traffic

M Harris  
21/191-195 Walker Street  
North Sydney

- Increase in number of apartments that could overlook property
- Inadequate parking
- Additional traffic
- Danger to school children

J Heppard  
25 Alexander Avenue  
North Willoughby

- Increased traffic and density

- Increased amenity impacts on surrounding area

W Chevalier  
243 Miller Street  
North Sydney

- Additional apartments unnecessary to already generous approval.

## **CONSIDERATION**

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

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

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

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

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

Although there is a significant increase in the number of apartments, the proposal is considered to be substantially the same development as approved because the height and envelope of the building are similar, the ground floor is similar, the car access and loading is the same, as is the landscaping.

The environmental impacts of the modified development are substantially the same as the approved development.

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

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

### **Whether any submissions were made concerning the proposed modification.**



The submissions raise concerns/issues about increased density, inadequate parking and increased traffic. The Section 96 proposal does not significantly increase these impacts having regard to the approval already granted.

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

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

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 Table**

North Sydney Centre	Proposed	Control	Complies
Height (Cl. 4.3)	RL.167.51 to the top of the corner pod	RL 156m AHD	NO
Non Residential Floor Space (Cl.4.4a)	0.51:1	Minimum 0.5:1	YES
Overshadowing of dwellings (Cl.6.3 (1) (c))	The proposal has no detrimental shadow impacts upon any land zoned R2, R3, R4 of RE1 or land identified as a Special Area, the proposal complies with the overshadowing controls and the impact is generally consistent with a fully complying development. The additional length of shadow cast by the noncompliant component of tower pod 3 falls within existing shadows cast on residential properties and public open space.	Variation permitted	YES
Overshadowing of land (Cl.6.3 (2) (a) and (b))	The diagrams demonstrate that the development will have no net increase in overshadowing between 12 pm and 2 pm on the land marked 'Special Area' on the North Sydney Centre Map. The proposal will not overshadow Don Bank Museum.	Variation permitted	YES
Minimum lot size (Cl.6.3 (2) (c))	4898m <sup>2</sup>	1000m <sup>2</sup> min.	YES

## DCP 2013 Compliance Table

<b>DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development</b>		
	<b><i>complies</i></b>	<b><i>Comments</i></b>
<b>2.2 Function</b>		
<b>Diversity of Activities</b>	Yes	Mix of retail, commercial and residential uses plus publicly accessible spaces. Appropriate accessibility is provided in all communal residential areas and non-residential uses at ground level and residential above.
<b>Maximise Use of Public Transport</b>	Yes	The proposal satisfies these requirements, making appropriate provision for bicycle storage as well as providing a shower for end of trip usage. Parking for apartments is restricted to the maximum required.
<b>Mixed Residential Population</b>	Yes	7 x studio (1.6%); 152 x 1 bed (34.5%); (combined: 36.1%); 208 x 2 bed (47.2%); 74 x 3 bed (16.7%). The proposal is generally compliant with the required development mix. A minimum of 15% of dwellings are to be adaptable housing under the provisions of the DCP and 66 adaptable apartments are proposed being 15%.
<b>2.3 Environmental Criteria</b>		
<b>Awnings</b>	No	Requires the provision of a continuous 2m wide awning, however in the circumstance where the building is setback from both streets, it is not appropriate to provide an awning. Both adjoining properties also have no street awnings
<b>Solar Access</b>	No	Requires development in the Central Business District to comply with the height and shadowing requirements of clauses 4.3 and 6.4 of the LEP. These clauses have been addressed below. 67% of apartments receive over two (2) hours of direct sunlight in winter. 70% is the general requirement. Approximately 32% of dwellings are proposed to face south, however these apartments will enjoy acceptable amenity with prime Sydney Harbour views.
<b>Views</b>	Yes	Given the existing substantial commercial building on the site, together with the maximum height standard under NSLEP 2013, there are limited views currently available or envisaged across the site. There would be some impact on the Rydges Hotel to the north of the site due to its location as an in-board building rather than fronting Walker Street, resulting from the increased building footprint, although the Rydges building is considerably lower in height

		<p>than the existing commercial building.</p> <p>It is not anticipated that there are any existing significant views towards Sydney Harbour, the North Sydney commercial centre or the Sydney CBD skyline that will be impacted. Also given that surrounding residential apartment buildings are lower than the maximum height standard for the site then the noncompliance with the height standard associated with part of the proposed building will have no adverse impacts on views.</p> <p>The views are affected by the compliant part of the building and not where the height control is exceeded. Views from taller buildings further south in Berry Street may be impacted with regard to district views but not iconic views. The amended proposal would have the same impact as the building approved.</p>
<b>Visual Privacy</b>	Yes	<p>The proposed modifications replicate the design features of the approved DA. That is, the architectural drawings detail how the design will achieve internal and external privacy. Apartments are designed with the wintergardens to take advantage of angled outward views rather than direct views to adjoining properties. Where bedroom windows are located adjacent to the tower pod slots these are offset and include opaque glazing in order to avoid direct lines of sight.</p>
<b>2.4 Quality built form</b>		
<b>Context</b>	Yes	<p>The building is in context with surrounding development.</p>
<b>Setback</b>	No	<p>The proposed modifications adhere to the building setbacks and separations approved with the DA. Given that the overall height and envelope of the building does not change, nor does the layout of dwellings, then changes to setbacks and separations are not warranted.</p>
<b>Building Design</b>	Yes	<p>The minimum floor-to-ceiling heights are provided.</p> <p>In terms of the other building design requirements, the proposed modifications do not result in any substantive departures to the building design that has already been approved and considered these provisions. The built form is broken down with the defined "tower pods" and associated slots through the building as well as being a sculptured form with variable roof form and levels. A podium form is not warranted due to the ground plan garden setting of the proposal.</p>
<b>Balconies - Apartments</b>	Yes	<p>The design continues to integrate the wintergardens and balconies into the building envelope, located adjacent to living rooms. The wintergardens provide flexible private open space with fully operable glazing suites to the living areas.</p>

<b>Entrances and Exits</b>	Yes	Satisfactory
<b>2.5 Quality Urban Environment</b>		
<b>Accessibility</b>	Yes	Satisfactory
<b>Safety and Security</b>	Yes	Visible entry to building on both sides. Retail space provide for surveillance.
<b>High Quality Residential Accommodation</b>	Yes	The minimum apartment sizes as detailed in the Apartment Design Guide (ADG) supersede the NSDCP provisions. The ADG minimum are: Studio: 35m <sup>2</sup> ; 1 bed: 50m <sup>2</sup> ; 2 bed: 70m <sup>2</sup> ; 3+ bed: 90m <sup>2</sup> The proposal meets the minimum apartment sizes. A wide range of communal and private open space is provided for the residents of the building.
<b>Vehicular Access</b>	Yes	From McLaren Street
<b>Car Parking</b>	Yes	Parking provided. See comments under traffic.
<b>Garbage Storage</b>	Yes	Garbage chute provided with compactor.
<b>2.6 Efficient Use of Resources</b>		
<b>Energy Efficiency</b>	Yes	Basix certificate submitted
<b>Natural Ventilation</b>	Yes	Satisfactory within development.

## **NORTH SYDNEY LEP 2013**

### **Permissibility within the zone**

The proposal is permissible with consent under the B4 Mixed Use zoning as retail use on the ground level with commercial space and shop top housing above.

### **Zone B4 Mixed Use**

#### **Objectives of zone**

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

The design provides a flexible cafe/retail space, and residential apartments which are compatible uses with each other and surrounding land uses. The site is well located for access to public transport, being close to the new Metro and North Sydney Railway Station and being serviced by bus routes along Miller Street. The proposal is consistent with the objectives of the B4 zone.

### **Clause 4.3 Height of buildings**

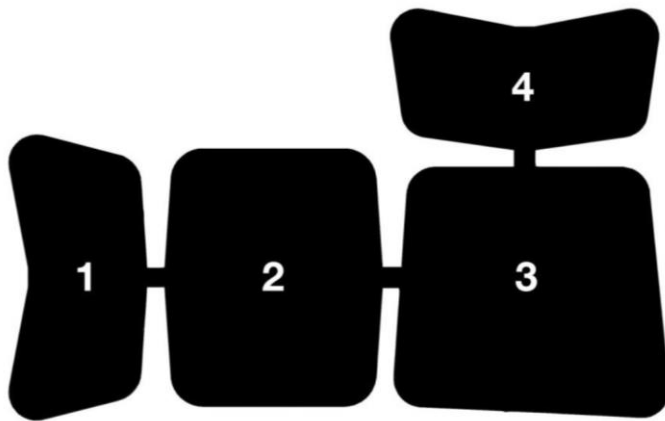
Clause 4.3 sets a maximum height for buildings on the subject site of RL.156m AHD. The application proposes a building height of RL.167.51 to the top of the corner pod which is higher than the other three (that are lower than the height control). This

variation to the height was thoroughly assessed as part of the original assessment process.

The DA was supported by a Clause 4.6 variation request to break the building height plane of RL155m, and was approved by the SEJRPP.

The proposed modification does not change the approved absolute maximum building height, nor the overall approved heights for each of the proposed buildings/pods. The additional apartments are achieved through a reduction in floor to floor heights on each level that collectively allow an additional level within the approved height. The building footprint is unchanged.

There are increases in height to parts of Pods 1, 2, and 4 (refer to Plan below for location of "pods"). In the case of building/pod 2 there is a minimal increase in height to only a part of this building above the maximum 155m height plane resulting from the change room/WC/community room on the roof level.



#### **Clause 4.6 to vary the Height of Building Development Standard**

Although the proposed modification does not alter the extent of the already approved non-compliance to the 155m height limit set by Clause 4.3, a formal variation request pursuant to Clause 4.6 is not relevant to the assessment of the proposed modification application. A formal variation pursuant to 4.6 is not required in the case of Section 96 applications.

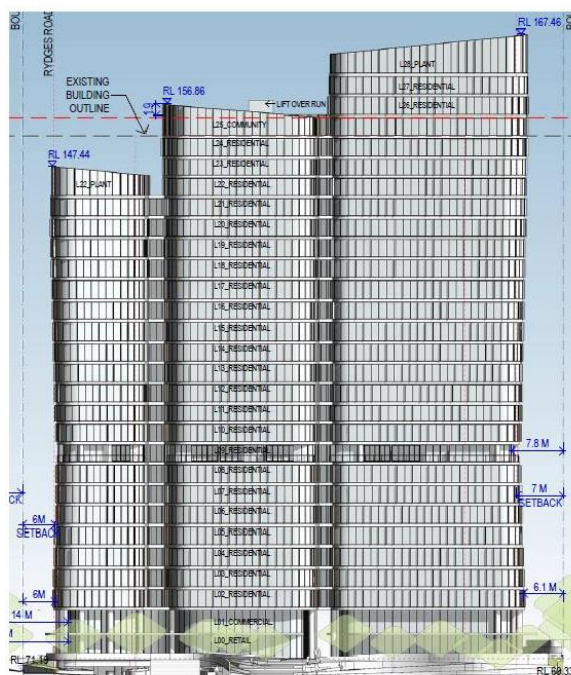
Notwithstanding, any variation to a development standard that emerges with an application made under Section 96 of the *EP&A Act 1979*, still requires a merit assessment, including an assessment against Section 79C (1).

The merit arguments associated with the variation to the height of building standard were thoroughly explored in the assessment of the development application, which was subsequently approved by the SEJRPP in July 2016.

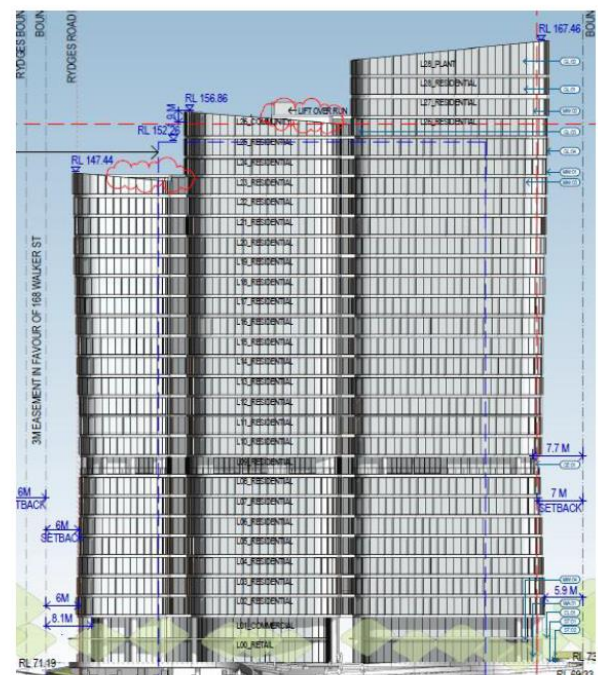
The proposed modification does not materially change the approved building envelope nor the overall approved heights for each of the proposed buildings/pods, except for relatively minor increases in height to parts of buildings/pods 1, 2, and 4.

The increase in height to part of Pod 2 resulting in a further breach to the maximum 155m height plane, has been justified on the grounds of:

- The additional height, is sited and designed in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing, view loss or privacy impacts;
- The siting of the change room, WC and community room atop of Pod 2 are setback away from the main façade of the building and thereby are not visually discernible;
- The modified development continues to satisfy the objectives of the zone and the development standard.



Approved South Elevation



Proposed South Elevation

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

The provisions of clause 4.4A set requirements for floor space for non-residential uses, in this case the non-residential floor space ratio must not be less than 0.5:1. The site has an area of 4898m<sup>2</sup> and as such the non-residential floor space is required to be a minimum of 2449m<sup>2</sup>. The proposal provides 2503m<sup>2</sup> (0.51:1) of non-residential floor space, complying with the control. The gym on L1 is considered to be part of the non residential floor area as it is commercially run and open to the public. The gym is also available to residents as part the communal facilities to be provided on site. The gym should be subject to a covenant on title to ensure that the space is used as a gym for resident and public use.

#### Cause 5.1 Heritage conservation

The provisions of clause 5.1 address heritage conservation and require consideration



of the impact of developments within the vicinity of items of heritage. The site is not a scheduled heritage item and is not located within a conservation area. It is however, located in the vicinity of heritage items 41 McLaren St, the Simsmetal Building, a five storey office building designed by Seidler and 185 Walker St, a single-storey Victorian sandstone dwelling, now converted to apartments. Although they are an eclectic group of heritage items, the street trees and front boundary sandstone walls provide a cohesive setting and domestic scale.

The subject site assists in providing additional landscape setting and low sandstone boundary walls to the setting of the heritage items. Although of a much greater bulk and scale, 168 Walker Street's perceived bulk and scale is screened from the lower scale heritage items by the canopies of Council's street trees as well by the trees located on the subject site.

No specific heritage conditions are required as the issues are addressed with landscaping that remains unchanged.

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

<b>Objective</b>	<b>Comment</b>
(a) to maintain the status of the North Sydney Centre as a major commercial centre	Proposal consistent with zoning
(b) to require arrangements for railway infrastructure to be in place before any additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre	No additional non-residential floor space
(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 non-residential gross floor area does not affect the 250,000m <sup>2</sup> limit. There will be a loss of non-residential floor area.
(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 car parking on site exceeding the maximum permitted.
(e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres	1,365m <sup>2</sup> of commercial proposed
(f) to protect the privacy of residents, and the amenity of residential and open space areas, within and around the North Sydney Centre	Satisfactory.
(g) to prevent any net increase in overshadowing of any land in Zone RE1 Public Recreation (other than Mount Street Plaza) or any land identified as "Special Area" on the North Sydney Centre Map	The proposed development will result in no additional overshadowing.

(h) to prevent any increase in overshadowing that would adversely impact on any land within a residential zone	No significant impacts
(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	Not 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 provides for an appropriate transition of heights from the centre of North Sydney Centre to the boundaries.

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

The height proposed has no adverse impacts upon any land zoned RE1 or identified as a Special Area.

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

The proposal has no detrimental shadow impacts upon any land zoned R2, R3, R4 of RE1 or land identified as a Special Area, the proposal complies with the overshadowing controls and the impact is generally consistent with a fully complying development. The additional length of shadow cast by the noncompliant component of tower pod 3 falls within existing shadows cast on residential properties and public open space.

*(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,*

The built form outcome will be a landscaped podium and tower form setback from the street edges, as required by the relevant planning controls. It will not be a "traditional" podium. Activity at ground level will result from the inclusion of retail space.

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

The development does not include site consolidation as it is an existing large stand-alone site.

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

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

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

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

The proposal does not overshadow Don Bank.

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

The subject site is 4898m<sup>2</sup> in area and complies.

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

The shadow diagrams provided with the application show that between 9am and 3pm at midwinter the shadows cast by the portion of the building that exceeds the height control will not reduce the amenity of any dwelling located on land outside the North Sydney Centre

*(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 scale, form and massing of the proposed development is reflective of the scale, form and massing permitted under the controls.

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

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

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

The scale is in keeping with the controls and the proposed materials and external treatments are appropriate for the setting.

## **6.5 Railway infrastructure**

- (1) The objective of this clause is to require satisfactory arrangements to be made for the provision of railway infrastructure to satisfy needs that arise from development in North Sydney Centre.*
- (2) Development consent must not be granted for development on land to which this Division applies if the total non-residential gross floor area of buildings on the land after the development is carried out would exceed the total non-residential gross floor area of buildings lawfully existing on the land immediately before the development is carried out, unless:*
  - (a) the Director-General has certified, in writing to the consent authority, that satisfactory arrangements have been made for railway infrastructure that will provide for the increased demand for railway infrastructure generated by the development, and*
  - (b) the consent authority is satisfied that the increase in non-residential gross floor area authorised under the development consent concerned when added to the increases (reduced by any decreases) in non-residential gross floor area authorised under all consents granted since 28 February 2003 in relation to land in the North Sydney Centre would not exceed 250,000 square metres.....*

The existing buildings on the site have a total non-residential gross floor area of approximately 18,904m<sup>2</sup> and the proposal has a non-residential floor area of 2,503m<sup>2</sup> resulting in a decrease over that which currently exists. There is no additional non-residential floor space proposed and accordingly certification is not required.

## **Airports Act 1996 and Airports (Protection of Airspace) Regulations 1996**

As required by Clause 6.15 of NSLEP 2013, the original application was referred to Sydney Airport pursuant to s.186 of the Airports Act 1996 and Airports (Protection of Airspace) Regulations 1996 as the proposal would penetrate the Limitation or Operations Surface of Sydney Airport. Approval was granted. There is no increase to the approved height.

## **SEPP 65 – Design Quality of Residential Flat Development**

State Environmental Planning Policy No. 65 aims to improve the design quality of residential flat development in New South Wales by recognising that the design quality of residential flat development is of significance for environmental planning for the State due to the economic, environmental, cultural and social benefits of high

quality design.

The primary design principles are discussed as follows:

#### *Context*

The site is part of a number of tall buildings that define the current northern extent of the North Sydney CBD & skyline. As such future development of the site will continue the strong skyline definition of these buildings. Views of the existing building can be seen heading north from the city, south on the Warringah Freeway, and travelling west along Military Road and Falcon Street. The site & surrounding area are strongly defined by the tree lined streets, and generally the DCP set-backs are in accordance with this.

The existing building form presents a hard street wall with little character. The proposed design proposes a series of articulated, connected stepped building forms. The outcome represents a considered resolution to the street corner and topography of the precinct. The design of the site as a mixed use development is an appropriate response to the character of the neighbourhood and appropriate to the ongoing development of this precinct.

#### *Built Form and Scale*

The proposed built form takes the existing SAP building as template in regards to height and scale and seeks to improve the character and context of the built form. This has been done with a series of stepped residential 'pods' linked by glazed corridors to respond to the topography of the landscape. The towers are further articulated with a pinched form and softened with curvilinear edges. Canopy planting to the street frontages allows the building to fit into the streetscape. The building form was supported by the Design Excellence Panel.

#### *Density*

The density proposed is consistent with the development standards established by the controls. The amended plan increases density within the approved envelope. There is no FSR control for the overall development. The proposed development is located within an area well served by public transport and community facilities.

#### *Sustainability*

A Basix Certificate has been submitted with the application. On site detention is proposed for stormwater management. The design proposal is structured around the concepts of sustainability. It incorporates a number of strategies to achieve a positive environmental outcome, including: rainwater storage and reuse; natural light and ventilation; naturally ventilated corridors and lobbies; energy efficient lighting; proximity to public transport; bicycle parking and minimisation of excavation through considered siting of the elevated ground plane.

#### *Landscape*

A Landscape Concept Design and detailed landscape proposal has been approved. The design utilises the large footprint of the site to provide landscaping opportunities in order to enhance the landscape character along all boundaries, in particular the

streetscape along Walker Street and McLaren Street. Landscaping is not affected with this application.

#### *Amenity*

The sizes of the residential units satisfy the minimum requirements of ADG. The proposed building design achieves of resident amenity, utilising the 'pod' planning rationale while acknowledging that the primary views of the development lie towards the harbour. The articulation of the 'pods' in an L shape maximises available natural light and allows for cross-ventilation within a majority of apartments and in all corridors.

#### *Safety and Security*

The proposed building design incorporates a number of initiatives to optimise safety and security within private spaces and the public domain including: Easily identified entries from McLaren and Walker Street for residents and public; Well defined public space. The articulation of the residential apartments above maximises passive surveillance to these areas; Private lobby areas are clearly defined and accessible from the public domain; The building floor plate is articulated in order to create pedestrian flow through and around the site.

#### *Housing Diversity and Social Interaction*

The proposed development located on the periphery of the North Sydney CBD incorporates a number of apartment types to cater for the residential market. Apartment types all sit within ADG guidelines in terms of overall areas, living areas and balcony sizes depending on type. A total number of 441 apartments feature studios, 1 bed, 2 bed, 3 bed and penthouses on the upper levels of the south west plate.

A shared rooftop pool, secure gym and communal function areas provide for residential experiences. Retail and commercial on the lower floors provide further opportunities for social interaction and commercial opportunities in the precinct.

#### *Aesthetics*

The stepped, curvilinear design of the towers form is designed to take maximum advantage of sunlight while acknowledging that the principal and most desirable views are to the south facing the Sydney Harbour. The proposed form has been articulated to create a contemporary building of visual interest, in a prominent corner site of the CBD. The Design Excellence Panel supports the design and aesthetics of the building.

### **Apartment Design Guide**

The architect has submitted a comprehensive report with regard to compliance with the ADG. A copy of the report is attached for the Panel's information.

### **SEPP 55 and Contaminated Land Management Issues**

The subject site has been considered in light of the Contaminated Lands



Management Act and it is considered that as the site has been used for commercial purposes, contamination is unlikely.

### **SREP (Sydney Harbour Catchment) 2005**

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The site, however, is not located close to the foreshore and will only be visible from part of the harbour and the application is considered acceptable with regard to the aims and objectives of the SREP. Council's Design Excellence Panel supports the built form and aesthetics of the building.

### **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 statement for the Central Business District indicates that the land use should be predominantly high rise commercial development with medium to high rise mixed commercial and residential development at the fringes. As the site is one at the fringes of the Central Business District, it is compatible with this land use intent, being a high rise mixed use development.

The proposed development is consistent with the desired future character, providing a high rise mixed use development, with appropriate non-residential uses at the lower level. Provide roof top gardens and/or public facilities that allow the public and/or residents to access district views.

Setbacks of 7m from the western side of Walker Street, north of Berry Street are required. Maintaining the setback of existing buildings to all properties on the northern side of McLaren Street is also a requirement.

The setback of new buildings or alterations and additions to existing buildings on land fronting McLaren Street between Miller and Walker Streets are to match that existing to protect the existing fig trees. Encroachments will only be permitted where the development does not cover the drip line of any of the existing trees.

A maximum podium of 3 storeys to McLaren Street and Miller and Walker Streets north of McLaren Street, with a weighted setback of 3m above the podium. Podium heights should match or provide a transition in height between immediately adjacent buildings. Podium heights should match the height of adjacent heritage items. Podium height may be reduced to that part of the building devoted to commercial use in mixed-use buildings. If there is no commercial component, and therefore no podium, adequate side separation should be provided for residential amenity.

The built form outcome will be a landscaped podium and tower form setback from the street edges, as required by the relevant planning controls. It will not be a

“traditional” podium. Activity at ground level will result from the inclusion of retail space.

Have regard to Public Domain designed in accordance with the North Sydney Centre Public Domain Strategy and North Sydney Council Infrastructure Manual. Choice of trees and vegetation will be in accordance with North Sydney Centre Public Domain Strategy, Street Tree Strategy and North Sydney Council Infrastructure Manual. This has been conditioned.

## **SECTION 94 CONTRIBUTIONS**

Section 94 Contributions in accordance with Council’s S94 plan are warranted should the Panel consider the development application worthy of approval. The existing buildings on the site have a total non-residential gross floor area of approximately 18,904m<sup>2</sup> and the proposal has a non-residential floor area of 2,503m<sup>2</sup> resulting in a decrease over that which currently exists. The contribution is based on the residential component of 7 x studio, 152 x one bedroom apartments; 208 x two bedroom apartments; 65 x three bedroom apartments and 9 x penthouse apartments with an allowance for 16401m<sup>2</sup> of non-residential space in the existing commercial building:

<b>Administration</b>	20,740.46
<b>Community Centres</b>	171,533.53
<b>Childcare Facilities</b>	NIL
<b>Library and Local Studies Acquisitions</b>	30,446.16
<b>Library Premises and Equipment</b>	95,136.99
<b>Multi Purpose Indoor Sports Facility</b>	20,112.61
<b>Olympic Pool</b>	65,494.09
<b>Open Space Acquisitions</b>	1,576,194.09
<b>Open Space Increased Capacity</b>	3,124,304.47
<b>North Sydney Public Domain</b>	NIL
<b>Traffic Improvements</b>	67,172.52
<b>Total</b>	<b>\$5,171,134.92</b>

## **ALL LIKELY IMPACTS OF THE DEVELOPMENT**

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

<b>ENVIRONMENTAL APPRAISAL</b>	<b>CONSIDERED</b>
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**

Issues raised in the submissions are addressed as follows:

#### *Overdevelopment*

The density and scale of development is consistent with the planning controls for the site.

#### *Inadequate parking*

The proposal is generally consistent with the Council's DCP, recognising the site's location towards the northern edge of the North Sydney Centre. Provision of bicycle parking for all land uses consistent with the requirements of NSDCP have been provided. This includes storage within allocated residential parking. Provision of end-of-journey bicycle facilities in accordance with NSDCP and provision of two car share spaces on level B1 have also been provided.

#### *No visitor parking*

Council required the car parking strictly comply with NSDCP, namely no visitor parking and the amended drawings achieve this outcome. Council has developed the DCP in accordance with its policies on traffic minimisation. Council's adopted Community Strategic Plan aims to minimise the impact of the private motor vehicle. Permitting any development to increase their parking spaces over the DCP, would entirely undermine the intent and purpose of Council's DCP. Increasing parking spaces also discourages the concept of "Green Travel Plan" to consider alternate means of accessing a site rather than by private motor vehicle.

#### *Traffic*

The proposal is generally consistent with the Council's DCP, recognising the site's location towards the northern edge of the North Sydney Centre. Council's Traffic Engineer advises that the traffic impacts of the development are acceptable in the location, particularly recognising the shift from the existing commercial office use to a majority residential use. The conclusion is that there will be no material increase in traffic generation.

### *School safety*

The Wenona School is located to the north and north-west of the subject site. With regard to traffic safety for school children the change of land use to a predominantly residential use is likely to result in less traffic generated along Walker Street during school hours, including before and after school, with residents likely to leave and return to the site at hours earlier and later than school students on Monday to Friday. The traffic report has confirmed that the development will generate no more traffic than the existing commercial office building. The safety during the construction process will be addressed through the preparation of a construction management plan.

### **The Likely Impacts of the Development**

The proposal is generally consistent with the relevant environmental planning instruments and development control plans, and does not result in any significant adverse impacts upon adjoining properties or the locality.

The proposal includes a minimum amount of non-residential floor space as required under NSLEP 2013, ensuring an integrated mixed use development outcome on the site. The ground floor retail space will provide a service to the residents of the site and the locality. The inclusion of commercial floor space will also service the locality and ensure employment outcomes on the mixed use site. The inclusion of residential use on the site is also consistent with the objectives of the planning controls and will provide high quality apartments within the North Sydney Centre.

The design will provide an outcome on the site supported by council's DEP and is a significant improvement to the form of development on the site and will relate to the scale and form of future development envisaged in the precinct.

### **The Suitability of the Site for the Development**

The assessment of the application demonstrates that the site is suitable for the proposed development. It is in a location that is identified for increased development, particularly residential development.

### **The Public Interest**

The development of land in an orderly and economic way is in the public interest. The development proposal achieves the objectives of the planning controls applying to the site and without significant adverse impacts for such a large development.

### **Conclusion**

The section 96(2) application seeks to modify existing consent to DA 486/15. The development as proposed to be modified is substantially the same development for which consent was granted.

The development as proposed to be modified is considered to adequately satisfy the relevant and applicable provisions of the SEPP 65, NSLEP 2013 and NSDCP 2013.

The proposed modifications will not result in any unacceptable adverse environmental or amenity impacts on the surrounding development, the public domain or locality.

The modification has remained within the approved envelope, with design development identifying the ability to increase the dwelling capacity of the development.

The amended plans require the following conditions to be replaced:

A1 – Development in accordance with plans/documentation

C33 – Section 94 Contributions

C34 – Security Deposit/Guarantee Schedule

C40 – Adaptable Housing

C41 – Basix Certificate

I2 – Use of Car Parking Spaces

Additional conditions are required with regard to the proposed Level 1 gym. The Section 96(2) application is recommended for favourable consideration.

## **RECOMMENDATION**

**THAT** the Sydney North Planning Panel, as the consent authority, modify its consent dated 18 July 2016 in respect of a proposal for demolition of existing structures, and construction of a mixed use building above basement car parking at 168 Walker Street North Sydney under the provisions of Section 96 of the Environmental Planning and Assessment Act with regard to 2017SNH078 – North Sydney - Development Application No.486/15/2, only insofar as will provide for the following.

To delete condition A1, C33, C34, C40, C41 and I2 of the consent and insert in lieu thereof the following new conditions namely:

### **Development in Accordance with Plans/documentation**

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

<b>Plan No.</b>	<b>Rev.</b>	<b>Title</b>	<b>Drawn by</b>	<b>Received</b>
DA-0000	D	Cover Sheet	Woods Bagot	23 October 2017
DA-1005	A	Demolition	Woods Bagot	22 December 2015
DA-1011	A	Site Plan	Woods Bagot	22 December 2015
DA-1203	A	B7 plan	Woods Bagot	23 October 2017
DA-1207	B	B3 – B6 plans	Woods Bagot	23 May 2016
DA-1208	B	B2 plan	Woods Bagot	23 May 2016
DA-1209	B	B1 plan	Woods Bagot	23 May 2016
DA-1210	A	L00 plan	Woods Bagot	22 December 2015

DA-1211	C	L01 plan	Woods Bagot	6 February 2018
DA-1212	B	L02 - L04 plan	Woods Bagot	23 October 2017
DA-1218	D	L05 - 08 plan	Woods Bagot	23 October 2017
DA-1219	B	L09 plan	Woods Bagot	23 May 2016
DA-1220	D	L10 - L16 plan	Woods Bagot	23 October 2017
DA-1226	D	L17 – L21 plan	Woods Bagot	23 October 2017
DA-1231	D	L22 plan	Woods Bagot	23 October 2017
DA-1232	D	L23 plan	Woods Bagot	23 October 2017
DA-1233	A	L24 plan	Woods Bagot	23 October 2017
DA-1234	D	L25 plan	Woods Bagot	23 October 2017
DA-1235	E	L26 plan	Woods Bagot	6 February 2018
DA-1236	C	L27 – L28 plan	Woods Bagot	23 October 2017
DA-1238	D	L29 plan	Woods Bagot	23 October 2017
DA-1300	D	North elevation	Woods Bagot	6 February 2018
DA-1301	C	South elevation	Woods Bagot	23 October 2017
DA-1302	D	East elevation	Woods Bagot	6 February 2018
DA-1303	D	West elevation	Woods Bagot	6 February 2018
DA-1310	C	Site Section	Woods Bagot	6 February 2018
DA-1311	B	Site Long Section	Woods Bagot	23 October 2017
DA-9200	A	External Finishes	Woods Bagot	22 December 2015
L-DA-16	B	Landscape Design	Turf	23 May 2016
L-DA-17	C	Landscape Concept	Turf	23 May 2016
L-DA-18	C	Design Sections	Turf	23 May 2016
L-DA-19	C	Design Sections	Turf	23 May 2016
L-DA-20	C	Communal Space	Turf	23 May 2016
L-DA-21	C	Sandstone clad.	Turf	23 May 2016
L-DA-22	C	Terrace Pavement	Turf	23 May 2016
L-DA-23	C	Streetscape	Turf	23 May 2016
L-DA-24	B	Materials	Turf	23 May 2016
L-DA-25	B	Planting	Turf	23 May 2016
L-DA-29	B	Planting plan	Turf	21 June 2016
L-DA-30	A	Rooftop sections	Turf	20 June 2016

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

## Section 94 Contributions

C33. A monetary contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council Section 94 Contribution Plan for the public amenities/ services detailed in column A below and, for the amount detailed in column B below, must be paid to Council.



<b>A</b>	<b>B (\$)</b>
<b>Administration</b>	20,740.46
<b>Community Centres</b>	171,533.53
<b>Childcare Facilities</b>	NIL
<b>Library and Local Studies Acquisitions</b>	30,446.16
<b>Library Premises and Equipment</b>	95,136.99
<b>Multi Purpose Indoor Sports Facility</b>	20,112.61
<b>Olympic Pool</b>	65,494.09
<b>Open Space Acquisitions</b>	1,576,194.09
<b>Open Space Increased Capacity</b>	3,124,304.47
<b>North Sydney Public Domain</b>	NIL
<b>Traffic Improvements</b>	67,172.52
<b>Total</b>	<b>\$5,171,134.92</b>

The contribution MUST BE paid prior issue of the relevant Construction Certificate.

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

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

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

### **Security Deposit/ Guarantee Schedule**

- C34. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of the relevant Construction Certificate:

<b>Security deposit/ guarantee</b>	<b>Amount (\$)</b>
Street Tree Bond (on Council Property)	\$15,000.00
Infrastructure Damage Bond	\$200,000.00
Drainage Construction Bond	\$17,200
Engineering Construction Bond	\$471,000.00
Others	
<b>TOTAL BONDS</b>	<b>\$703,200.00</b>

Note: The following fees applicable

<b>Fees</b>	
Section 94	<b>\$5,171,134.92</b>
<b>TOTAL FEES</b>	<b>\$5,171,134.92</b>

(Reason: Compliance with the development consent)

### **Adaptable Housing**

C40. Sixty-six (66) apartments are to be designed with accessible features for disabled persons, and must be designed to be generally in accordance with the requirements of the relevant Australian Standard 4299 - 1995. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of the relevant Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure equity of access and availability of accommodation in the future for an ageing population)

### **BASIX Certificate**

C41. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in BASIX Certificate No.(683795M\_03) for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

### **Level 1 Gym Covenant**

G13. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act* 1919 and one copy must be submitted to Council in registrable form, providing for:

- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 168 Walker Street requiring the ongoing retention, maintenance and operation of the gymnasium on level 1 as shown on drawing numbered 1211 Revision C drawn by Woods Bagot;

- b. The gymnasium may be commercially run and shall be available for the use of residents of the development site and the public;
- c. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the Land & Property Information Office for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier.

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of the relevant Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: To ensure adequate on site communal facilities are provided and maintained)

### **Use of Car Parking Spaces**

I2. A maximum of 295 car parking spaces provided shall be allocated to the apartments (not including the adaptable apartments – see separate requirement below) contained within the development with no more than one car space per apartment. The remaining spaces are to be allocated as follows:

- 66 spaces to the 66 adaptable apartments
- 7 spaces to the commercial/retail
- 2 spaces for car wash bays
- 2 spaces for car share

(Reason: To ensure that parking is allocated as approved)

### **Level 1 Gym**

I7. The fitout and use of the gymnasium on level 1 shall be the subject of a separate development application to Council prior to commencement of any use of the site.

(Reason: To ensure on site communal facilities are provided and amenity impacts and operation hours are acceptable)

**Geoff Mossemenear**  
**EXECUTIVE PLANNER**

Endorsed by:  
**Stephen Beattie**  
**MANAGER DEVELOPMENT SERVICES**