

## SYDNEY NORTH PLANNING PANEL

<b>Panel Reference</b>	2018SNH054 DA
<b>DA Number</b>	DA487/2015/5
<b>Local Government Area</b>	North Sydney Council
<b>Proposed Development</b>	Section 4.55(2) to Modify DA 487/15 for various modification to an approved mixed use building including changes to external finishes
<b>Street Address</b>	229 – 231 Miller Street, North Sydney
<b>Applicant</b>	Vantage 229 Pty Ltd
<b>Owner</b>	Vantage 229 Pty Ltd
<b>Date of DA lodgement</b>	10 August 2018
<b>Number of Submissions</b>	One (1) – now withdrawn
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b>	S4.55(2) Modification Application to application previously determined by Panel
<b>List of All Relevant s4.15(1)(a) Matters</b>	North Sydney LEP 2013 - Zoning – B4 Mixed Use North Sydney DCP 2013 S94 Contributions SEPP No. 55 – Remediation of Land SEPP No.65 – Design Quality of Residential Flat Development – Apartment Design Guide SEPP (Building Sustainability Index: BASIX) 2004 SREP (2005) – Sydney Harbour Catchment
<b>List all documents submitted with this report for the panel's consideration</b>	<ul style="list-style-type: none"> <li>Plans and Elevations –prepared by PA Studio Architects, various dates</li> <li>Colours and Materials Schedule</li> <li>Applicants Statement of Environmental Effects</li> <li>Glare report prepared by Inhabit</li> <li>Independent testing reflectivity report</li> </ul>
<b>Recommendation</b>	Approval (subject to modification to conditions)
<b>Report by</b>	Kim Rothe, Senior Assessment Officer, North Sydney Council
<b>Report date</b>	27 March 2019

### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

**Yes**

*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Not Applicable**

### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

**No**

*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

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**Conditions****Yes**

Have draft conditions been provided to the applicant for comment?

*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

## EXECUTIVE SUMMARY

The proposed modifications are to DA487/2015 (Panel Reference 2016SYE015) which granted approval for demolition of existing structures and erection of a twenty (20) storey mixed use building and basement parking. The proposal was first considered by the JRPP on 23 June 2016 (with a recommendation for refusal) and reconsidered on 24 August 2016 (with a recommendation for approval but with significant amendments required by Conditions). On both occasions the panel nominated to defer the matter for further amendments. On the third occasion of reporting, consent was granted by the Panel on 18 November 2016.

The application has undergone two previous modifications. DA487/15/2 sought substantial changes to the building including an additional storey, however, prior to any consideration being made by the panel, the applicant lodged a deemed refusal appeal to the Land and Environment Court. Via a negotiated outcome under a Section 34 Agreement, the modification was approved by the Court on 21 June 2017 to provide for an additional storey, increase in apartment numbers and parking. The communal use room and associated balcony was retained on the uppermost residential level of the building

The subject application is made pursuant to Section 4.55(2) and seeks principally to make minor building amendments principally due to building construction changes and substitution of the external materials with a modular glass façade system. The modifications do not alter the height, number of dwellings, car parking provision or general building envelope of the approved development (as modified),

The Council's notification of the proposal as modified attracted one (1) submission. The submission raised no fundamental concerns with the modification providing there was no alteration to the overall height of the building. This submission has subsequently been formally withdrawn.

As this modification is a Section 4.55(2) application pursuant to a development previously considered by the panel, the consent authority for the development application is the Sydney North Planning Panel.

Council has tendered without prejudice amendments to the conditions of development consent for the consideration of the applicant. To date, no official endorsement of the conditions as proposed to be modified has been received.

The assessment of the proposal has considered the performance of the application against State Government Policy and Council's planning requirements.

Following assessment of the plans and associated information, the development as proposed to be modified is recommended for **approval**.

## DESCRIPTION OF THE PROPOSAL

The application seeks to modify the approved 20 Storey mixed use development principally as a result of the preparation of detailed construction drawings and intention to make alteration to the external materials. The modifications do not alter the height, number of apartments, car parking provision or general building envelope of the approved development (as modified),

The modifications in summary proposed:

- Minor basement car parking reconfigurations.
- Alternation to the through-site link
- Minor layout changes to a number of apartments
- Infilling of the notch on the eastern elevation from level 13 and above.
- Change in façade materials. The approved façade comprises a mixture of painted cement finish render and aluminum composite cladding and the modification proposes a glass curtain wall system.

A more detailed description of the floor by floor changes as originally proposed in the modification include:

Level / Floor	Changes proposed
<b><u>Basement 4:</u></b>	Reduction of parking from 14 residential spaces to 13 spaces to provide turning area and rearrangement of residential storage.
<b><u>Basement 3:</u></b>	Relocation of 2 of the 5 accessible parking spaces to be closer to the lift (no change in overall provision of accessible spaces). The change in layout results in the provision of an additional 1 residential space, increasing the spaces from 22 to 23 on this level.
<b><u>Basement 2:</u></b>	Relocation of 2 of the 5 accessible parking spaces to be closer to the lift (no change in overall provision of accessible spaces). The change in layout results in the provision of an additional 1 residential space, increasing the spaces from 22 to 23 on this level.
<b><u>Basement 1:</u></b>	Relocation of 3 of the 5 accessible parking spaces to be closer to the lift (no change in overall provision of accessible spaces). The change in layout results in the reduction in the provision of car parking from 23 to 22 on this level. Provision of a lift pit (omitted from the approved plans) to provide for the commercial lift above.
<b><u>Car Park Entry:</u></b>	Relocation of motorcycle spaces (no change in number provided), redesign of end of trip shower facility, relocation of car wash bay, relocation of OSD tank and plant rooms, redesign of fire egress and redesign of garbage storage room. It is also proposed to redesign the portion of the through-site link near the eastern boundary of the site.
<b><u>Lower Ground:</u></b>	Minor redesign of the layout of the commercial space on the Lower Ground Level, redesign of fire egress stairs and provision of ducts. Minor extension of commercial space to the north to compensate for the reduction in space due to the redesign of the ducts and fire egress with no change to the approved 578m <sup>2</sup> of floor area as approved. It is also proposed to redesign the portion of the through-site link near the eastern entrance to the commercial suite. Change to the layout to the hydraulic pump room and fire services tanks.
<b><u>Ground:</u></b>	It is also proposed to redesign the portion of the through-site link from the eastern entrance to the commercial suite to Miller Street. Change in the configuration of Apartment 1, removal of "eye" window to northern bedroom and change to "eye" window of living room and minor change to balcony configuration. Change in the configuration of Apartment 3, provision of additional balconies, increasing the size from 91m <sup>2</sup> to 94m <sup>2</sup> . Commercial space unchanged from approved 132m <sup>2</sup> . No change in apartment mix.

- Level 1:** Minor layout alterations to Apartments 101 ,102, 104 and '105. Amendments in the design of the "eye" windows to Apartment 103 and removal of the southern balcony to be replaced with a non-trafficable roof. Change in the configuration of Apartment 106, removal of "eye" window to study and change to "eye" window to living room and minor change to balcony configuration. No change in apartment mix.
- Level 2:** Minor layout alterations to Apartments 201, 202, 204 and 205. Amendments in the design of the "eye" windows to Apartment 203. Change in the configuration of Apartment 206, location of "eye" window to northern bedroom and living room and minor change to balcony configuration. No change in apartment mix.
- Level 3:** Minor layout alterations to Apartments 301, 302,304 and 305. Amendments in the design of the "eye" windows to Apartment 303. Change in the configuration of Apartment 306, location of "eye" window to northern bedroom and living room and minor change to balcony configuration. No change in apartment mix.
- Level 4:** Minor layout alterations to Apartments 401,402,404 and 405. Amendments in the design of the "eye" windows to Apartment 403. Change in the configuration of Apartment 406, location of "eye" window to northern bedroom and living room and minor change to balcony configuration. No change in apartment mix.
- Level 5:** Minor layout alterations to Apartments 501, 502,504 and 505. Amendments in the design of the "eye" windows to Apartment 503. Change in the configuration of Apartment 506 and location of "eye" window to northern bedroom and living room- No change in apartment mix.
- Level 6:** Minor layout alterations to Apartments 601, 602,604 and 605. Amendments in the design of the "eye" windows to Apartment 603. Change in the configuration of Apartment 606 and location of "eye" window to northern bedroom and living room. No change in apartment mix.
- Level 7:** Minor layout alterations to Apartments 701,702,704 and 705. Amendments in the design of the "eye" windows to Apartment 703. Change in the configuration of Apartment 706 and location of "eye" window to northern bedroom and living room' No change in apartment mix.
- Level 8:** Minor layout alterations to Apartments 801, 802,804 and 805. Amendments in the design of the "eye" windows to Apartment 803. Change in the configuration of Apartment 806 and location of "eye" window to northern bedroom and living room. No change in apartment mix.
- Level 9:** Minor layout alterations to Apartments 901,902,904 and 905. Amendments in the design of the "eye" windows to Apartment 903. Change in the configuration of Apartment 906 and location of "eye" window to northern bedroom and living room. No change in apartment mix.
- Level 10:** Minor layout alterations to Apartments 1001, 1002, 1004 and 1005. Amendments in the design of the "eye" windows to Apartment 1003. Change in the configuration of Apartment 1006 and location of "eye" window to northern bedroom and living room. No change in apartment mix.
- Level 11:** Minor layout alterations to Apartments 1101, 1102, 1104 and 1105. Amendments in the design of the "eye" windows to Apartment 1103. Change in the configuration of Apartment 1106 and location of "eye" window to northern bedroom and living room. No change in apartment mix.
- Level 12:** Minor layout alterations to Apartments 1201, 1202, 1204 and 1205. Amendments in the design of the "eye" windows to Apartment 1203. Change in the configuration of Apartment 1206 and location of "eye" window to northern bedroom and living room. No change in apartment mix.
- Level 13:** Minor layout alterations to Apartments 1301, 1302 and 1305. Amendments in the design of the "eye" windows to Apartment 1303. Removal of "notch" in bedroom of Apartment

1304. change in the configuration of Apartment 1306 and location of "eye" window to northern bedroom and living room' No change in apartment mix.

**Level 14:** Minor layout alterations to Apartments 1401, 1402 and 1405. Amendments in the design of the "eye" windows to Apartment 1403. Removal of "notch" in bedroom of Apartment 1404. Change in the configuration of Apartment 1406 and location of "eye" window to northern bedroom and living room. No change in apartment mix.

**Level 15:** Minor layout alterations to Apartments 1501 and 1502. Amendments in the design of the "eye" windows to Apartment 1503. Removal of "notch" in bedroom of Apartment 1504. Change in the configuration of Apartment 1305 and location of "eye" window to northern bedroom and living room. No change in apartment mix.

**Level 16:** Minor layout alterations to Apartments 1601 and 1602. Amendments in the design of the "eye" windows to Apartment 1603. Removal of "notch" in bedroom of Apartment 1604. Change in the configuration of Apartment 1605 and location of "eye" window to northern bedroom and living room. No change in apartment mix.

**Level 17:** Removal of the "eye" windows to Apartment 1701 and internal changes. Removal of "notch" in living room of Apartment 1702, internal changes, minor change to balcony and increase in size with subsequent reduction in size of plant room area. No change in apartment mix.

**Level 18:** Removal of the "eye" windows to Apartment 1801 and internal changes. Removal of "notch" in common room. No change in apartment mix.

**Roof:** No change.

### **Amendments Made Since Lodgement of the Modification Application**

The "notch" referred to in the proposed amendments to floors 13-18 as being removed was reinstated into the design for further articulation and in response to Design Excellence concerns on 7 November 2018.

Further information and details have been submitted regarding the materials and finishes and reflectivity concerns on 25 January 2019

### **Requested Condition Amendments**

The applicant nominates the following condition amendments:

- Condition A1 requires modification to incorporate the new amended plans
- Condition A3 requires modification to incorporate new references to materials schedule
- Condition A4 requires modification to refer to updated plans public domain plans
- Condition G14 requires modification to incorporate updated landscaping plans
- Condition I6 Modify due to the provision of a roof by deletion of (b) and (d).

In addition it is requested that Condition 12, which requires the provision of a sign indicating the availability of visitor parking on the site, be deleted as the development makes no provision for visitor parking and Condition G18 does not require the provision of any visitor parking as the site is in the North Sydney Centre. This condition appears to have been included erroneously.

### **STATUTORY CONTROLS**

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Clause 4.3 Building Height – RL135
- Clause 4.4A Non Residential FSR – min 0.5:1

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

S94 Contributions - Required

Environmental Planning & Assessment Act 1979

SEPP No. 55 – Remediation of Land

SEPP No.65 – Design Quality of Residential Flat Development

SEPP (Building Sustainability Index: BASIX) 2004

SREP (2005) – Sydney Harbour Catchment

Local Development

## POLICY CONTROLS

North Sydney DCP 2013

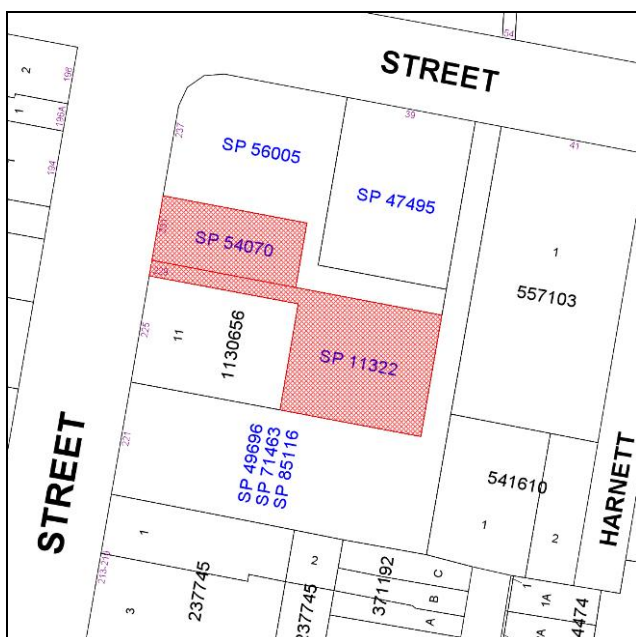
Apartment Design Guidelines (ADGs)

## DESCRIPTION OF LOCALITY

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

No. 229 Miller Street is a battleaxe allotment with the main body of the lot being rectangular in shape and has an access handle to Miller Street having a length of 35.4m and a width of 3.66m. The main body of the allotment has a depth of approximately 33.5m and a width of approximately 28.66m. The allotment has a total area of 1,091.1m<sup>2</sup> and the main body excluding the access handle has an area of approximately 961m<sup>2</sup>.

The site has a fall from Miller Street to the rear of approximately 8m and a fall of approximately 4.2m across the main body of the site. The site also benefits from two rights-of-carriageway, over No. 221 Miller Street and No. 41 McLaren Street. Vehicular access to the site, once the building is completed will be via the rear right of way accessway. This access, once all general construction is completed will be turn over to Council to be public road reserve.



**Figure 1 – GIS cadastre location diagram**



**Figure 2 – Aerial of the site, 2018 Capture**

Before construction commenced on No. 229 Miller Street used to contain a four storey residential flat building. The site is now a construction site with works occurring to the above ground floors.

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

South of No. 231 Miller Street and on the Miller Street side of No. 229 Miller Street is No. 225 Miller Street, North Sydney which is a completed 18 Storey Mixed use building. The building is occupied.

To the south of both No. 225 and 229 Miller Street, North Sydney is No. 221 Miller Street, North Sydney which has approval for a 21 storey mixed use building upon the site. This building currently being constructed and is nearing completion.

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

## **CONSENT AUTHORITY**

As this proposal is a Clause 4.55(2) modification to a development which has a Capital Investment Value (CIV) of greater than \$30 million, the consent authority for the development application is the Sydney North Planning Panel (NSPP). The original application was approved by the former Joint Regional Planning Panel, Sydney East Region (JRPP).

## **RELEVANT HISTORY**

### **DA487/15 Description of Development as Approved**

The proposal was first considered by the JRPP on 23 June 2016 (with a recommendation for refusal) and reconsidered on 24 August 2016 (with a recommendation for approval but with significant amendments required by Conditions). On both occasions the panel nominated to defer the matter for further amendments.

The proposal as tabled in the final report on 18 November 2016 considered by the then JRPP was as follows.

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

The tower from the ground floor (entry level) podium and is seventeen (17) storeys (including ground floor) consistent with the previously amended scheme.

The height of the building to the roof is RL135. The roof level, associated parapet and other features to the roof match the proposal which was first considered by the JRPP on 23 June 2016 and reconsidered on 24 August 2016.

The number of units within the residential tower had been reduced from 113 to 99. The revised apartment mix was as follows:



<b>UNITS &amp; UNIT MIX</b>	<b>ORIGINAL PROPOSAL</b>		<b>24 August 2016 AMENDED PROPOSAL</b>		<b>Subject AMENDED PROPOSAL</b>	
<b>Type</b>	No.	%	No	%	No	%
<b>Studio</b>	26	23%	20	20%	8	9%
<b>1 Bed</b>	35	31%	25	25%	21	23%
<b>2 Bed</b>	37	33%	39	39%	47	52%
<b>3 Bed</b>	15	13%	15	15%	15	16%
<b>TOTAL</b>	<b>113</b>	<b>100%</b>	<b>99</b>	<b>100%</b>	<b>91</b>	<b>100%</b>

Total parking in the basement was retained as per the 24 August 2016 proposal as follows:

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

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

All apartment balconies were proposed to be winter gardens however the common room balcony will be open.

Fifteen apartments are adaptable apartments, all being 1 bedroom or studio apartments.

Proposed building was approved to contain a total of 753 m2 of retail/business floor space (0.69:1 FSR).

In addition to the unit mix amendments, the top two floors (Level 16 and 17) were amended to introduce splay to the north western and south western corners of the building to promote view corridors from the eastern orientated units of 225 Miller Street, North Sydney

Consent was also sought for works to the approved new building at No. 231 Miller Street, for proposed doors opening from the approved ground floor commercial tenancies onto the connecting pedestrian walkway to No. 229 Miller Street with awnings over to provide all weather cover along the walkway.

The application was approved by the Joint Regional Planning Panel on 18 November 2016. The development as finally approved was amended to be for demolition of existing residential flat building and construction of a twenty (20) storey mixed use building consisting of 91 apartments, two floors of commercial space and 80 car spaces. The consent that was issued was for deferred commencement to resolve stormwater matters.

#### **DA487/15/2**

Modification application DA487/15/2 lodged on 19 December 2016 sought various amendments to the approved mixed use building including an additional level, increase number of apartments and car parking and a rooftop common area. The application being a Section 96(2) was required to be determined by the Sydney North Planning Panel.

Critically, the amendments sought to

- incorporate an additional floor into the building with no increase to building height.
- *Increase* the number of apartments to 101.
- Relocate the approved common room from the top floor to the ground floor lobby.
- New communal area on the roof of the building
- Increase the parking in the basement levels to 81 residential car parking spaces.

Prior to any consideration being made by the panel, the applicant lodged a deemed refusal appeal to the Land and Environment Court. Via a negotiated outcome under a Section 34 Agreement the modification was approved by the Court on 21 June 2017 to provide for the additional storey, increase in apartments and parking but no relocation of the common room or rooftop terrace. Conditional alterations included alteration to the plan references and contribution payments.

### **DA487/15/3**

Modification application DA487/15/3 lodged on 23 March 2018 and sought consent to amend Condition E5 and allow extension of construction hours 7am - 6pm Monday to Friday. This application was rejected by Council on the basis it was not supported by sufficient information lodged with the application and did not proceed to notification and subsequent determination.

### **DA487/15/4**

Modification application DA487/15/4 lodged on 09 July 2018 and sought consent to amend Condition E5 and allow extension of construction hours 7am - 6pm Monday to Friday. The application was approved under delegated authority on 26 November 2018.

#### Subject Modification

The subject modification application was lodged on the 14 August 2018. The development application was placed on notification between 14 September -28 March 2018.

The modification application was referred for further review by Council's Design Excellence Panel on 9 October 2018. Following this review, the applicant voluntarily submitted amended plans and information on 9 November 2018 in response to their perceived issues which arose from the DEP meeting. On 26 November 2018, Council sent the applicant a further letter requesting amendments to the building pursuant to the DEP comment and raised issues associated with the potential for glare from the proposed façade panel materials. Further information and a glare report was submitted by the applicant on 29 January 2019.

The Sydney North Panel was briefed to the subject modification on 13 February 2019.

Draft without prejudice conditions of modification have been tendered to the applicant.

### **INTERNAL REFERRALS**

#### **Building**

The application as modified has not been specifically assessed specifically in terms of compliance with the National Construction Code (NCC) / Building Code of Australia (BCA). Council's standard condition relating to compliance with the NCC/BCA is imposed upon the existing consent and there is no proposal sought to modify this condition.

#### **Engineering/Stormwater**

Council's Development Engineer has advised the modifications can be approved subject to the existing conditions as imposed.

#### **Design Excellence Panel**

The modified proposal as lodged was considered by the Design Excellence Panel with the following comments made regarding the design:

*“The Panel raised concerns with the infilling of the notch on Level 13 and above on the eastern elevation. The notch as approved provides depth and articulation on the eastern façade. Its infilling would reduce the façade’s integrity.*

*The Panel considered that the use of two different coloured abutting materials to replace the notch provides only surface treatment with no depth to the façade. This would provide contrast, however not articulation and the Panel considered the expression needs to be more pronounced. A recess of the same width and depth as the approved ‘notch’ should be retained to provide articulation.*

***The Panel noted in regard to the east elevation the proposal is also losing the differentiation in façade expression between the base of the of the building (levels 1-5) and upper levels 6 and above. This is attributed to the proposed increased height of the spandrel panels from level 6 and above. Any façade amendments should achieve the integrity of expression as per the approved DA, as a composition of base, middle and crown.***

***The Panel were concerned the use of ‘signal white’ may be too stark with issues of glare. The architect outlined that the use of ‘signal white’ on the lower levels was intended to provide a greater amount of reflected light to adjacent properties. The Panel considered that an alternate colour could be utilised which would achieve the desired effect.***

*The Panel considered a sample of the operable metal screening should be provided, since without a sample it is not possible to assess whether it would provide adequate solar protection. It should also be demonstrated that screens provide the appropriate level of shading to reduce solar loads and mitigate glare impacting the amenity of the areas affected. The applicant advised the screens remain unchanged from those approved.*

*The Panel recommends the proposed amendments to façade treatment are presented in a detailed and wholistic manner so the material quality and expression is fully understood. The Panel raised concerns that a number of bedrooms are undersized. All bedrooms must meet minimum standards set out in the Apartment Design Guide, with master bedrooms having a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space). Bedrooms must have a minimum dimension of 3m (excluding wardrobe space).*

*The Panel noted that the ‘study’ on the ground level is enclosed, appears to have inadequate area of window opening to achieve light and natural ventilation and is of dimensions which should be considered as a bedroom.*

*The Panel considered that the bicycle parking is poorly located within the entry mall and the ground level entry courtyard. The bicycle parking location and configuration should be replanned to ensure it does not compromise the circulation or functionality of these spaces. The courtyard (ground level) could include some seating.*

## **Conclusion**

*The Panel does not support the amendments discussed above for the reasons outlined.”*

Comment: In response to the Design Excellence Panel concerns the design was amended to include the articulation notch to levels 13-18 of the building. These plans were received on 9 November 2018.

Other small amendments to rectify small room sizing matters or opening up rooms for natural lighting and bike location improvements have also been made.

## **EXTERNAL REFERRALS**

Given the nature of these amendments, referral to external agencies was not required.

## **SUBMISSIONS**

The owners, occupiers of adjoining properties and the Stanton Precinct were notified of the original proposal between 14 September -28 March 2018. One submission was received from the owners of one of the adjoining building was received raising concern with any potential height increase from the building. This submission has since been withdrawn. In any case, it is to be noted that there is no increase to the height of the building.

## **CONSIDERATION**

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

Section 4.55(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 4.15 as are relevant.*

### **S.4.55(3) & S.4.15(1) CONSIDERATION**

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

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

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

The modifications fundamentally do not alter current the approval of the premises as a mixed use building and accordingly, the proposal is considered to be substantially the same development as approved because the height and envelope of the building are largely unchanged. There is no overall modification to apartment numbers, balconies or

general outlook.

The environmental impacts of the modified development are substantially the same as the approved development. Matters relating to alteration to materials is discussed elsewhere in this report.

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

There was no concurrence or consultation with external authorities required for the proposed modifications.

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

As per the notification heading of the report, there are no submissions requiring consideration as part of this application. One (1) submission was received however, this was since withdrawn.

**4. Any relevant considerations under Section 4.15 of the Environmental Planning and Assessment Act 1979.**

In determining a development application, a consent authority is to take into consideration the following matters relevant to the development application:

- (a) The provisions of any environmental planning instrument or draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority.

Refer to detailed assessment below

**5. The reasons given by the consent authority for the grant of the consent**

The modifications do not result in any new adverse or unacceptable material amenity impact to adjoining properties or the surrounding area. The proposed modifications are consistent with the reasons for the granted of development consent to the originally approved development and are considered to be acceptable.

**SEPP No.65 (Design Quality of Residential Flat Development)**

The development as approved and modified was considered to satisfy the objectives of the SEPP, in particular, achieving quality built form, residential amenity and relationship to the public domain. The development as currently proposed to be modified has not fundamentally altered its compliance with the objectives of the SEPP.

Matters relating to the alteration and issues associated with the materials changes are discussed later in this report.

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

There was no significant change to the residential apartments within the development or other amendments proposed which would impact upon the development's ability to comply with the current BASIX certificate.

## **SEPP (Infrastructure) 2007**

Advice received from Roads and Maritime Services raise no objection to the proposed modifications. RMS matters are able to be resolved prior to occupation of the building premises via the as imposed conditions of consent. The modifications do not seek to alter the as imposed conditions and accordingly, the modifications remain suitable in this regard.

## **SEPP 55 Remediation of Land**

The modifications do not fundamentally alter any previous conclusions regarding SEPP 55.

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

The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SREP. The site is not located close to the foreshore and will not be readily visible from any part of the harbour and the application including the proposed modifications are considered acceptable with regard to the aims and objectives of the SREP.

## **NORTH SYDNEY LEP 2013**

### Permissibility within the zone:

The subject site is located within a B4 Mixed Use zone, where development for the purposes of a "Commercial Premises" with "Shop top housing" over is permissible with consent. The modification proposal remains compliant with the zoning.

### Building Heights

Clause 4.3 sets a maximum height for buildings on the subject site of RL135 AHD. The building as approved, has a roof level of RL135 AHD but including parapet, lift overrun and clerestory window exceeded this height limit with a maximum building height of RL136.9 AHD.

Council made independent assessment of the height breach and also considered the applicants Clause 4.6 variation submitted with the original application.

The subject section 4.55 application has been checked against the as approved plans (original and DA487/15/2 modifications and the overall height of the building remains unchanged. Accordingly, there is no reconsideration required regarding the controls or objectives of *Clause 4.3 Building Height of NSLEP 2013*. The development accordingly, remains acceptable.

### Clause 4.4A Non-residential floor space

The proposal as amended remains compliant with the non-residential FSR controls.

### Clause 5.10 Heritage Conservation

The provisions of clause 5.10 address heritage conservation and require consideration of the impact of developments within the vicinity of items of heritage. The subject site is located within the vicinity of a number of items of heritage, opposite the site in Miller Street at Nos. 128 Miller Street (Monte Saint Angelo Group), 192 Miller Street, 196 Miller Street and 200 Miller Street (North Sydney Council Chambers and fountain) and to the rear at No. 41 McLaren Street (Simsmetal House). ‘

Whilst the subject site is within the visual catchment of all of the above items of heritage, it is not considered that the proposal will have a detrimental impact on the heritage items or their settings as the building proposed is of commensurate height and design to surrounding development.

The development as modified continues to be acceptable in this regard.

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

<b>Objective</b>	<b>Comment</b>
(a) to maintain the status of the North Sydney Centre as a major commercial centre	Proposal is consistent with zoning desired and future character of the locality
(b) to maximise commercial floor space capacity and employment growth within the constraints of the environmental context of the North Sydney Centre,	Developer commitment deed was prepared and resolved under the original application. As there is no new floor area being created, no reconsideration of the previous deed is required.
(c) and (d) Repealed	These objectives related to the provision of additional rail services. There have since been repealed.
(e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres	Original development did not achieve a floor plate of 1000 m <sup>2</sup> . No change to approved commercial floor area.
(f) Repealed	This was a residential amenity condition. It has since been repealed since determination of the original application.
(g) to prevent any net increase in overshadowing of any land in Zone RE1 Public Recreation (other than Brett Whitely Plaza) or any land identified as "Special Area" on the <u>North Sydney Centre Map</u>	The proposed modifications will result in no additional overshadowing to any RE1 Zoned land.
(h) to ensure that any land within a residential zone is afforded a reasonable amount of solar access,	No impacts. No adjacent residentially zoned land.
(i) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas	No applicable to site

#### Clause 6.5 Railway Infrastructure

The original development was subject to the requirement for a contribution for the provision of future railway infrastructure in the North Sydney city centre area. This contribution was properly arranged for and paid by the applicant.

This requirement has since been repealed from the LEP and the modifications are no longer subject to this clause.

#### Clause 6.10 Earthworks

All bulk excavations have been completed and construction has commenced on the above ground floors. The conditions as imposed to deal with sedimentation and erosion control matters will remain unchanged upon the consent.

## DEVELOPMENT CONTROL PLAN 2013

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

The application as modified has been assessed against the relevant controls in the DCP 2013 with regards to the North Sydney Planning Area and the Civic Neighbourhood area. The proposed development is considered to be generally consistent with the desired character of the locality.

### **DCP 2013 Compliance Table**

Please note: Sections of the DCP clearly not applicable to the modifications have not been included in the assessment 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>2.2.1 Diversity of Activities</b>	Yes	The proposal as amended raises no concern in this regard.
<b>2.2.2 Maximise Use of Public Transport</b>	Yes	The proposal as amended raises is acceptable in this regard. Abundant public transport opportunities will be available to the residents
<b>2.2.3 Mixed Residential Population</b>	Yes	There is no alteration proposed to the apartment as approved apartment mix (based on DA487/15/2 numbers) nor numbers of approved adaptable apartments within the building.
<b>2.3 Environmental Criteria</b>		
<b>2.3.1 Clean Air</b>	Yes	The proposal as amended incorporates a suite of energy efficient measures as required by the associated BASIX certificate. There is no alteration proposed to the BASIX commitments associated with the development.  Car parking provision including bicycle parking generally complies with Section 10 DCP2013.
<b>2.3.2 Noise</b>	Yes (condition)	The development is conditioned to ensure plant and or air-conditioning units to not give rise to any unacceptable acoustic impact to any adjoining premises. There is no change sought to this condition.
<b>2.3.3 Wind Speed</b>	Yes	No alteration to previous conclusions in this regard.
<b>2.3.4 Reflectivity</b>	Yes (condition)	A condition of consent has been imposed to ensure any reflectivity of building materials is minimized. A discussion over materials is provided after this table.
<b>2.3.6 Awnings</b>	N/A	Being a battle-axe allotment a street awning cannot be provided for the development. All weather protection is provided down the pedestrian access handle and over the residential and commercial lobbies.
<b>2.3.7 Solar Access</b>	NO	It was acknowledged that the development performed poorly in this regard under the considerations of the original and first modification to the development. Notwithstanding this position, the development



		was recommended for approval and supported by the JRPP. Whilst there is no alteration to this position, there are no building modifications proposed which warrant not supporting the application in the circumstances. Accordingly, the modifications are supported in this regard.
<b>2.3.8 Views</b>	Yes	The as approved building with result in the loss of some district views that are currently available above the adjoining buildings to the subject site. There is no alteration to the overall approved built form and accordingly no further loss of outlook views from this building. The modifications are accordingly acceptable in this regard.
<b>2.3.8 Acoustic Privacy and 2.3.11 Visual Privacy</b>	NO (but approved)	Separation distances as set out under the ADG's are not, and cannot be provided throughout the development. There are no alterations proposed to the as approved separation and setback distances of the building.
<b>2.4 Quality built form</b>		
<b>2.4.1 Context</b>	Yes	There is no alteration to context considerations.
<b>2.4.3 Setback</b>	NO (but approved)	The DCP adopts the ADG separation distances between buildings that cannot be complied with due the narrowness of the site and existing setbacks of adjacent buildings. There are no alterations proposed to the as approved separation and setback distances of the building.
<b>2.4.5 Building Design</b>	Yes	<p>The building has been amended within the course of the assessment of this application to re integrate the articulation notch to the upper floors of the eastern elevation of the building as per the <i>Design Excellence Panel</i> review of the as submitted modified proposal.</p> <p>Beyond the discussion of the materials provided after this table, there is no other building design matter of concern raised regarding the modifications.</p>
<b>2.4.6 Skyline</b>	Yes	There is no alteration to the building skyline.
<b>2.4.8 Balconies - Apartments</b>	Yes	There is no alteration of significance to the as approved balconies within the development.
<b>2.4.9 Through Site pedestrian links</b>	Yes	There are modifications proposed to the configuration of the as approved through site access however these are principally to refine the construction methodology and fit service entries etc. The majority of changes occur to the lower portion of the access towards the rear laneway. The access however is largely maintained as per the original approval.
<b>2.4.10 Streetscape</b>	Yes	The building has limited principle street access exposure. This is a constraint of the site and not a failing of the design of the development.
<b>2.4.11 Entrances and Exits</b>	Yes	At grade entry to the site is maintained from Miller Street. It is an unavoidable site constraint that it is located down the battle-axe handle. The integration with 231 Miller Street commercial area renders the access handle a high quality space in the circumstances. This is unchanged from the considerations of the original application.

<b>2.5 Quality Urban Environment</b>		
<b>2.5.1 Accessibility</b>	Yes	At grade access will be available from Miller Street with lift access through all other areas.  The development as amended provides for a compliant number of adaptable apartments in accordance with policy. The modification is satisfactory in this regard.
<b>2.5.2 Safety and Security</b>	Yes	The principle building entry will be visible from Miller Street. Additionally, with the activation proposed for the café component of development along the Miller Street battle-axe handle will also improve upon the latent safety along the main access handle. This remains unchanged from the considerations of the original application.
<b>2.5.4 High Quality Residential Accommodation</b>  <b>Apartment size requirements</b>  Studios 40m <sup>2</sup> 1 bed 50m <sup>2</sup> 2 bed 80m <sup>2</sup> 3 beds 100m <sup>2</sup>  <b>Apartment size ranges</b>  46-49 m <sup>2</sup> (Studio) 50m <sup>2</sup> - 72 m (1B) 74 m <sup>2</sup> -114m <sup>2</sup> (2B) 100m <sup>2</sup> -160m <sup>2</sup> (3B)	NO	The original and first principle modification noted some minor deviation to Council's DCP apartment floor area controls however given their compliance with ADG controls, were supported in the circumstances.  There are no modifications of significance which alter any previous conclusions in this regard.
<b>2.5.6 Private Open Space</b>	Yes	The proposal as amended has maintained balcony sizes.
<b>2.5.7 Vehicular Access</b>	Yes	Access provided via right of ways over two sites from McLaren Street. This is unchanged from the as approved development.
<b>2.5.8 Car Parking</b>	Yes	The development as amended provides for a compliant amount of parking as per the DCP requirements.
<b>2.5.9 Garbage Storage</b>	Yes	Waste management arrangement are maintained in the as modified proposal
<b>2.6 Efficient Use of Resources</b>		
<b>2.6.1 Energy Efficiency</b>	Yes	There is no alteration proposed to the as approved BASIX commitments.
<b>2.6.2 Passive Solar Design</b>	NO	As detailed previously, the development is acknowledged to perform poorly in this regard however in the absence of major unit modifications of alterations to apartment numbers
<b>2.6.4 Natural Ventilation</b>	Yes	Adequate cross ventilation is maintained throughout the development as modified
<b>2.6.12 Green Roofs</b>	Yes	Dedicated non-trafficable green roof with low maintenance plantings provided on upper levels of the development

## Material Selection and Glare Issues

The application includes proposed alteration from external rendered masonry or metal cladding to glass curtain wall materials, specifically items 5, 7 and 8 as nominated on the

proposed materials schedule plan as “Glass Curtin Wall” as well as the physical samples submitted with the original application. A significant portion of the façade is proposed to be composed of these materials in the amended scheme.

The applicant submits in the *Statement of Environmental Effects* the following as justification for the new materials selection

*“Apart from the resultant improvement in the aesthetics presentation of the development due to the use of the glass curtain wall system, it will have the following benefits to the development:*

- Mitigate concerns the purchaser/owners corporation will have once the building is complete considering the bad press around Aluminium composite cladding.*
- Mitigate issues associated with the introduction of the Building Products (safety) Bill 2017, that will apply to all buildings retrospectively.*
- Speed up the construction time and reduce the amount and size of trucks in comparison to concrete precast construction, thereby reducing impacts upon neighbouring properties and pedestrian safety.*
- Curtain wall systems are more appropriately suited to high rise buildings in terms of waterproofing*
- The architectural intent and colours will remain the same”*

Council's standard condition limiting glazing a maximum 20% glare is as already imposed upon the consent (Condition C10). Notwithstanding this the concern raised by Council is twofold in that:

- The use of substantial amounts glass façade materials is typical for dedicated commercial buildings
- Glass materials, even if low glare, will have a point at which depending on the sun azimuth, which will result in glare to a particular point.

Following Council raising concern of the extent and potential glare arising from the use of the materials, the applicant commissioned and submitted a separate report prepared by **Inhabit and dated 24 January 2019** and is provided as an attachment to this report. A further supplementary report was also submitted from an independent testing lab which provided independent testing of the three principle curtain glass materials proposed to be used and also supplements the glare modelling. This report is also supplied as an attachment to this report.

There is no established methodology for measuring glare impact or comfort levels. The *Inhabit* report utilises the Daylight Glare Index (DGI) which is a glare index that is adapted to relatively large sources of glare and accounts for the eye's greater tolerance to glare from daylight sources rather than artificial sources. The DGI levels corresponding to comfort levels are shown in Table 2 below.

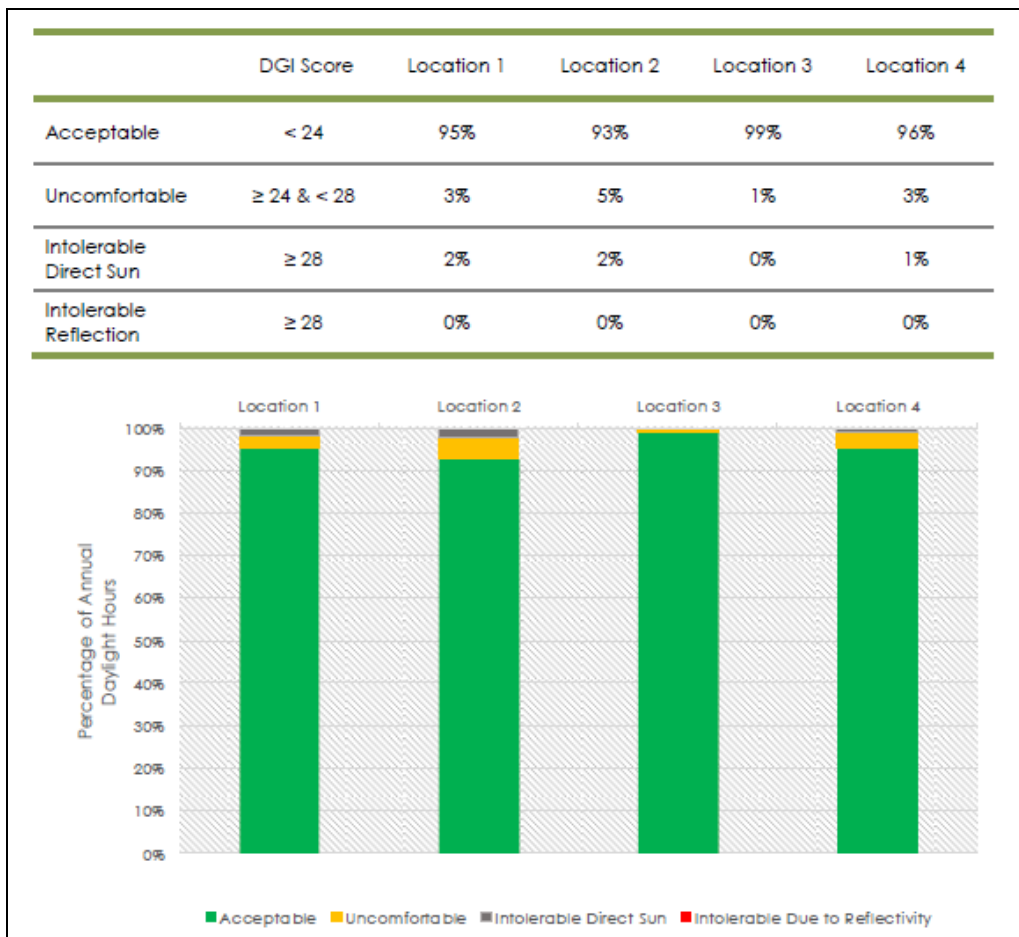
Glare Response	DGI
Imperceptible	<16
Perceptible	≥ 16 & < 20
Acceptable	≥ 20 & < 22
Borderline between Comfort and Discomfort	≥ 22 & < 24
Uncomfortable	≥ 24 & < 28
Intolerable	≥ 28

Full methodology of establishing the index modelling is provided in the report however for the purposes of describing the impact, the building was modelled and four (4) critical points were set to detail the impact points as per the following figure:



**Figure 3: DGI assessment impact points**

The location points of most concern for impacts to existing and future development include location 4 (37 McLaren Street, existing residential flat building), Location 3 (Future development at corner of McLaren and Walker Street) and location 2 (potential future development and public domain areas). The photo period used in the modelling covered 5:00 am through to 7:00 pm. The report also specifies that a more conservative approach was taken i.e these results are likely to be higher than real world conditions. Results of the modelling were as follows:



**Figure 4: Glare report summary results**

The report concludes:

*“From the above conducted study, following can be concluded:*

- *Location 1 is not subject to intolerable glare levels due to reflection from the proposed development.*
- *Location 2 is not subject to intolerable glare levels due to reflection from the proposed development.*
- *Location 3 is not subject to intolerable glare levels due to reflection from the proposed development.*
- *Location 4 is not subject to intolerable glare levels due to reflection from the proposed development.*

*The results indicate that the proposed façade will cause minor reflected glare on the identified critical locations provided specified material (refer section 5.6) or less reflective materials are used. Occurrences of uncomfortable glare are minimal and considered acceptable in Inhabit’s opinion. All intolerable glare experienced in this analysis were due to direct sunlight being in the field of vision and not from reflection off the proposed development.”*

In tabulated form the results more succinctly depict the times at which adverse impact occurs:

12.1 Location 1

	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00		
21 <sup>st</sup> January	0.00	6.48	13.87	16.37	16.92	20.88	17.29	22.59	15.56	12.47	11.66	19.12	7.86	7.65	7.80		
21 <sup>st</sup> February	0.00	0.09	8.26	11.49	13.05	13.77	14.06	14.18	14.15	13.78	13.28	12.08	12.42	11.34	0.00		
21 <sup>st</sup> March	0.00	0.00	11.75	Direct Sun	25.03	15.90	13.99	21.46	11.90	11.90	11.16	11.21	10.54	8.45	0.00		
21 <sup>st</sup> April	0.00	0.00	6.38	14.34	18.42	13.13	12.36	11.99	12.03	10.01	10.23	10.56	8.91	0.00	0.00		DGI
21 <sup>st</sup> May	0.00	0.00	0.00	8.74	12.66	13.91	14.01	13.83	13.10	12.29	11.41	10.41	0.00	0.00	0.00	Imperceptible	< 16
21 <sup>st</sup> June	0.00	0.00	0.00	9.91	13.23	12.76	11.75	11.35	10.93	10.31	10.31	10.04	0.00	0.00	0.00	Perceptible	≥16 & <20
21 <sup>st</sup> July	0.00	0.00	0.00	8.83	13.58	14.32	26.31	13.82	13.40	12.40	11.42	10.41	7.99	0.00	0.00	Acceptable	≥20 & <22
21 <sup>st</sup> August	0.00	0.00	5.30	13.76	17.34	13.80	12.38	12.08	12.78	12.74	11.78	11.51	9.01	0.00	0.00	Borderline between Comfort and Discomfort	≥22 & <24
21 <sup>st</sup> September	0.00	0.05	13.17	15.57	23.16	15.35	13.09	21.33	10.89	10.28	11.02	11.43	10.09	0.00	0.00	Uncomfortable	≥24 & <28
21 <sup>st</sup> October	0.00	8.07	15.31	Direct Sun	24.58	20.78	22.50	16.93	11.13	11.87	11.90	11.27	11.09	7.63	0.00	Intolerable	≥28
21 <sup>st</sup> November	1.91	11.45	15.15	16.95	24.38	17.21	20.99	20.20	14.31	13.34	12.97	9.94	10.22	9.61	0.00		
21 <sup>st</sup> December	1.89	11.37	14.68	17.40	16.84	Direct Sun	27.69	21.20	13.22	13.35	17.20	22.33	21.84	8.55	8.12		

12.2 Location 2

	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00		
21 <sup>st</sup> January	0.00	-8.87	0.00	0.00	0.00	0.00	3.74	9.89	22.20	26.47	9.65	11.16	Direct Sun	10.92	6.46		
21 <sup>st</sup> February	0.00	-10.62	-7.51	0.00	-1.52	2.03	4.44	6.08	12.23	14.07	6.52	7.58	9.45	7.57	0.00		
21 <sup>st</sup> March	0.00	0.00	-1.09	-22.70	-2.67	26.26	-2.18	25.27	27.97	10.43	9.37	8.31	8.76	4.98	0.00		
21 <sup>st</sup> April	0.00	0.00	-9.39	-14.40	4.00	14.79	15.28	19.72	20.89	11.01	9.88	8.28	6.32	0.00	0.00		DGI
21 <sup>st</sup> May	0.00	0.00	0.00	-11.34	-1.43	3.23	3.76	5.80	6.47	6.53	4.75	3.58	0.00	0.00	0.00	Imperceptible	< 16
21 <sup>st</sup> June	0.00	0.00	0.00	3.74	1.29	6.74	10.10	16.38	19.28	9.59	9.02	5.88	0.00	0.00	0.00	Perceptible	≥16 & <20
21 <sup>st</sup> July	0.00	0.00	0.00	0.00	1.35	-1.70	3.36	5.58	6.44	6.05	7.35	3.48	3.22	0.00	0.00	Acceptable	≥20 & <22
21 <sup>st</sup> August	0.00	0.00	-8.94	-11.63	2.45	1.77	14.80	18.87	6.53	8.18	6.17	5.47	1.28	0.00	0.00	Borderline between Comfort and Discomfort	≥22 & <24
21 <sup>st</sup> September	0.00	-10.64	-13.06	0.00	27.62	25.98	-0.98	27.34	21.80	11.78	9.90	8.20	8.39	0.00	0.00	Uncomfortable	≥24 & <28
21 <sup>st</sup> October	0.00	0.00	0.00	0.00	-13.34	-14.37	0.00	27.55	Direct Sun	10.09	8.34	8.88	8.00	4.72	0.00	Intolerable	≥28
21 <sup>st</sup> November	-11.09	1.75	-13.14	0.00	0.00	-7.45	6.39	18.41	18.23	12.74	14.14	11.40	9.81	8.97	0.00	Intolerable Glare Reflectivity	
21 <sup>st</sup> December	-9.93	0.00	-13.09	0.00	0.00	0.00	0.00	25.05	Direct Sun	15.33	13.81	Direct Sun	10.91	11.09	7.15		

12.3 Location 3

	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00		
21 <sup>st</sup> January	0.00	4.84	11.89	12.19	12.21	11.55	6.36	4.89	8.74	14.20	11.80	11.68	13.84	11.86	7.39		
21 <sup>st</sup> February	0.00	-1.33	6.65	9.52	10.75	11.43	11.62	11.52	11.56	11.60	11.53	11.45	11.43	11.91	0.00		
21 <sup>st</sup> March	0.00	0.00	9.12	11.99	11.46	17.51	22.87	-15.24	26.35	10.09	10.25	10.54	10.33	9.56	0.00		
21 <sup>st</sup> April	0.00	0.00	4.80	10.91	10.41	15.57	19.92	-16.52	22.60	13.62	10.24	9.53	7.95	0.00	0.00		DGI
21 <sup>st</sup> May	0.00	0.00	0.00	7.02	10.03	10.73	9.77	8.31	8.58	9.67	9.58	9.01	0.00	0.00	0.00	Imperceptible	< 16
21 <sup>st</sup> June	0.00	0.00	0.00	9.42	9.53	9.63	15.17	4.18	-23.48	12.72	9.43	8.61	0.00	0.00	0.00	Perceptible	≥16 & <20
21 <sup>st</sup> July	0.00	0.00	0.00	6.89	9.84	10.09	9.80	8.62	11.37	9.73	9.41	8.99	6.86	0.00	0.00	Acceptable	≥20 & <22
21 <sup>st</sup> August	0.00	0.00	3.80	10.38	10.38	12.28	19.07	-23.51	-19.05	10.35	10.08	10.24	7.82	0.00	0.00	Borderline between Comfort and Discomfort	≥22 & <24
21 <sup>st</sup> September	0.00	-1.37	9.38	12.28	11.35	17.94	23.49	0.00	27.25	10.54	10.27	10.67	10.44	0.00	0.00	Uncomfortable	≥24 & <28
21 <sup>st</sup> October	0.00	6.41	11.91	12.71	14.45	20.78	0.00	0.00	15.80	11.28	11.55	11.14	10.34	6.62	0.00	Intolerable	≥28
21 <sup>st</sup> November	0.32	11.36	12.00	12.87	12.40	7.41	5.75	5.80	9.62	12.57	12.74	12.06	11.99	10.37	0.00		
21 <sup>st</sup> December	0.17	11.61	12.16	12.54	16.62	22.45	0.00	0.00	21.01	21.04	10.50	11.35	18.07	12.08	7.91		

12.4 Location 4

	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00		
21 <sup>st</sup> January	0.00	0.00	25.21	20.26	19.54	5.41	2.62	-0.21	-3.25	-6.04	1.00	3.90	3.06	3.58	-4.24		
21 <sup>st</sup> February	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	1.32	0.87	-3.35	0.00		
21 <sup>st</sup> March	0.00	0.00	18.95	10.77	2.69	0.00	0.00	0.00	0.00	0.00	0.00	-6.44	-2.41	0.00	0.00		
21 <sup>st</sup> April	0.00	0.00	0.00	8.20	0.77	0.00	5.63	10.83	11.38	10.58	7.65	0.00	-11.73	0.00	0.00		DGI
21 <sup>st</sup> May	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Imperceptible	< 16
21 <sup>st</sup> June	0.00	0.00	0.00	6.25	-0.58	0.00	12.00	13.67	13.54	9.88	1.55	0.00	0.00	0.00	0.00	Perceptible	≥16 & <20
21 <sup>st</sup> July	0.00	0.00	0.00	0.00	1.04	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Acceptable	≥20 & <22
21 <sup>st</sup> August	0.00	0.00	0.00	8.67	1.32	0.00	4.91	6.64	0.00	0.00	0.00	0.00	0.00	0.00	0.00	Borderline between Comfort and Discomfort	≥22 & <24
21 <sup>st</sup> September	0.00	0.00	14.25	9.14	-1.19	0.00	0.00	0.00	0.00	0.00	0.00	-2.26	-4.61	0.00	0.00	Uncomfortable	≥24 & <28
21 <sup>st</sup> October	0.00	0.00	24.35	17.96	-2.15	0.00	0.00	0.00	0.00	0.00	-0.62	0.78	-11.06	0.00	0.00	Intolerable	≥28
21 <sup>st</sup> November	0.00	24.36	25.43	20.37	10.15	4.17	1.45	-1.84	-2.54	0.84	4.22	4.33	3.02	-0.41	0.00		
21 <sup>st</sup> December	0.00	Direct Sun	Direct Sun	26.71	26.99	-3.32	0.00	0.00	0.00	0.00	-6.42	3.42	3.71	5.66	-5.21		

Examination of the tabulated results shows that generally over 90% of the time, at all locations and all times of the year, the glare impacts from the building will be significantly within the “acceptable” range. Where impacts increase to uncomfortable or above, these typically will not occur for any more than 2 hour periods with the exception of location 4 on 21 December 6:00 am to 9:00 am in which there will be a period of up to 4 hours where there will be intolerable to uncomfortable impact. This is generally a point in time where the sun will have a low azimuth in the sky and not be at full intensity.

At location 2 there are currently no residential buildings. Strategic documentation (*Ward Street Masterplan*) being prepared indicates the area in location 2 will be occupied by commercial buildings in the future. The timing of such impact would indicate that the early morning impact is unlikely to impact upon the operation of a commercial building as the remainder of the day is acceptable after 9:00 am.

The modelling is unable to account for impact arising from other existing commercial buildings, some entirely comprised of glass facades or reflective materials. It is also further noted that the facades of the building are not entirely composed of the Curtain glass materials but include metal screens, other cladding and general articulation creating shadow lines to further diminish the potential impact.

It is concluded that, given the location of the building on the North Sydney City centre fringe, the modelling undertaken and consideration of the façade being an articulated building comprised of many materials that the glare impact will be acceptable in the circumstances. There is no request to alter the existing condition C10 requiring the glare reflectivity to be 20% or less and the information provided indicates the projected impact will be within this range. Beyond the points of the day in which glare may be at unavoidable uncomfortable due to solar azimuth the materials do not appear to result in unacceptable impacts.

### **Discussion of Other Requested Condition Amendments**

Where not discussed in detail in the report the following comments are provided regarding the other requested conditional amendments as detailed on page 6 of the report. Where noted, full copies of the conditions and the amendments proposed are included in the recommendation of the report.

Condition A1 – The plan reference will be updated in accordance with the most recent plans submitted as relevant.

Condition A3 – Condition A3 relates to the references of the previously approved materials schedule. On the basis of the conclusion of this report regarding the proposed materials selection and glare matters, the condition is recommended to be amended to reflect the most recent materials schedules received by Council.

Condition A4 – Condition A4 relates to the being carried out in accordance with the public domain plans Plan Nos, DA28 and DA29 Public Domain and Alterations to 231 Miller Street Revision E dated 8 September, drawn by PA studio and submitted to Council on 8 September 2016. The Statement of Environmental Effects notes a request to alter the public domain plans.

There were no plans submitted relating to alteration to the public domain submitted in the application package and accordingly, no alteration will be made to Condition A4.

Condition G14 – Condition G14 relates to the landscaping plans and landscaping to be completed before the issue of an Occupation Certificate. No objection is raised to the updating for landscaping plan references to be updated for landscaping within the site.



Condition G18 – Condition G18 relates to the allocation of parking within the building. There is a reference within the condition relating to visitor parking spaces to be designated common property on a strata plan. It is conceded there is no identifiable visitor parking in the current scheme and the condition can be amended to remove such references to visitor parking spaces. The condition will still retain or be refined to ensure the requirement for all parking within the basement to be allocated to tenancies / apartments within the building.

Condition I2 – Condition I2 It has been requested to delete condition I2 as there is no visitors parking within the building. No objection is raised to this.

Condition I6 – Relates to the ongoing operation of the common room approved on Level 18 of the building. Items (b) and (d) of the condition are as follows:

- (b) *The balcony shall remain open to the sky and not be covered;*
- (d) *The roof terrace shall be free of any the any umbrellas or any other shade devices.*

The intent of (b) and (d) was to ensure the balcony receives ample solar access. The roof level plan (both the currently approved and as per the proposed) show that the common room balcony roof is framed by roof structure but depicts an opening over the balcony itself. This arrangement is deemed satisfactory providing the void area is not infilled with pergola/vergola type structure. The request to delete (b) and (d) is supported in part however will be refined to specify the space in the roof is not to be infilled with pergola / vergola / awning or otherwise.

### **Suspensions of Covenants, agreements and similar instruments**

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

### **SECTION 7.1 CONTRIBUTIONS**

No section 7.1 contribution is applicable to the application which is for social infrastructure that supports the needs of the residents of the area.

### **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 4.15C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

## CONCLUSION

The section 4.55(2) application seeks to modify existing consent to DA487/15. The development as proposed to be modified is considered to be 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 State Environmental Planning Policy No 65 – Residential Flat Development NSLEP 2013 and NSDCP 2013.

The proposed modifications will not result in any new unacceptable adverse environmental or amenity impacts on the surrounding development, the public domain or locality. In fact, the significant reduction in the height of the school hall has significant benefits to the nearby residents.

Council has tendered without prejudice modifications to the conditions of development consent for the consideration of the Applicant. To date, no official endorsement of the conditions as proposed to be modified has been received by Council.

Following assessment of the plans and associated information, the development as proposed to be modified is recommended for **approval** subject to modification to the conditions of development as per the recommendation of this report.

## RECOMMENDATION

### PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **THAT** the Sydney North Planning Panel as the consent authority, modify its consent dated 18 November 2016 for for demolition of existing structures and erection of a twenty (20) storey mixed use building and basement parking. at No. 229 and 231 Miller Street, North Sydney, under the provisions of Section 4.55 of the Environmental Planning and Assessment Act with regard to 2018SNH054 – North Sydney - Development Application DA487/2015/5, only insofar as will provide for the following conditions: -

1. **To amend Condition A1, A3, G4, G18, I6, as follows: -**

#### 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 of this consent.

Dwg No.	Drawing Title	Rev	Drawn by	Dated	Received
DA02	Site Plan	A	PA Studio	2 August 2018	10 August 2018
DA03	Basement 4	A	PA Studio	2 August 2018	10 August 2018
DA04	Basement 3	A	PA Studio	2 August 2018	10 August 2018
DA05	Basement 2	A	PA Studio	2 August 2018	10 August 2018
DA06	Basement 1	B	PA Studio	2 August 2018	10 August 2018
DA07	ROW Carpark Entry Level	A	PA Studio	2 August 2018	10 August 2018
DA08	Commercial Level	A	PA Studio	2 August 2018	10 August 2018
DA09	Ground Level	C	PA Studio	2 October 2018	7 November 2018
DA10	Level L1	A	PA Studio	2 August 2018	10 August 2018
DA11	Level L2	A	PA Studio	2 August 2018	10 August 2018
DA12	Level L3	A	PA Studio	2 August 2018	10 August 2018
DA13	Level L4	A	PA Studio	2 August 2018	10 August 2018

DA14	Level L5	A	PA Studio	2 August 2018	10 August 2018
DA15	Level L6	A	PA Studio	2 August 2018	10 August 2018
DA16	Level L7	A	PA Studio	2 August 2018	10 August 2018
DA17	Level L8	A	PA Studio	2 August 2018	10 August 2018
DA18	Level L9	A	PA Studio	2 August 2018	10 August 2018
DA19	Level L10	A	PA Studio	2 August 2018	10 August 2018
DA20	Level L11	A	PA Studio	2 August 2018	10 August 2018
DA21	Level L12	A	PA Studio	2 August 2018	10 August 2018
DA22	Level L13	C	PA Studio	2 October 2018	7 November 2018
DA23	Level L14	C	PA Studio	2 October 2018	7 November 2018
DA24	Level L15	C	PA Studio	2 October 2018	7 November 2018
DA25	Level L16	C	PA Studio	2 October 2018	7 November 2018
DA26	Level L17	C	PA Studio	2 October 2018	7 November 2018
DA27	Level 18	C	PA Studio	2 October 2018	7 November 2018
DA28	Roof Level	C	PA Studio	2 October 2018	7 November 2018
DA29	Public Domain and alterations to 231 Miller Street	A	PA Studio	16 December 2016	20 December 2016
DA30	Public Domain and alterations to 231 Miller Street	A	PA Studio	16 December 2016	20 December 2016
DA31	North and South Elevations	A	PA Studio	2 August 2018	10 August 2018
DA32	East and West Elevations	A	PA Studio	2 August 2018	10 August 2018
502	North Elevation	4	PA Studio	23 November 2018	25 January 2019
503	East Elevation	4	PA Studio	23 November 2018	25 January 2019
504	South Elevation	7	PA Studio	20 December 2018	25 January 2019
505	West Elevation	2	PA Studio	23 November 2018	25 January 2019
DA37	Section S1 Looking East	B	PA Studio	22 May 2017	22 May 2017
DA38	Section S2 Looking North	B	PA Studio	22 May 2017	22 May 2017
DA40	Schedule of Materials and Finishes	E	PA Studio	19 December 2018	25 January 2019
DA401	Schedule of Materials and Finishes 2	A	PA Studio	2 August 2018	25 January 2019
DA44	Demolition, Erosion + Sediment Control	A	PA Studio	16 December 2016	20 December 2016
DA70	Mesh Screen Detail	A	PA Studio	16 December 2016	20 December 2016
DA71	Winter Garden Detail	A	PA Studio	16 December 2016	20 December 2016
DA72	Typical Winter garden	A	PA Studio	16 December 2016	20 December 2016
DA45	Adaptable units: L5 – L16	A	PA Studio	16 December 2016	20 December 2016
DA46	Adaptable units: L13 – L15	A	PA Studio	16 December 2016	20 December 2016

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

(Condition A1 Modified per DA487/15/2 Consent dated 14.6.17)

(Condition A1 Modified per DA487/15/5 Consent dated \*\*. \*\*. \*\*)

### External Finishes & Materials

- A3. External finishes and materials must be in accordance with the submitted ***schedule of Plan Numbered DA40 Revision E Schedule of Materials and Finishes dated 19 December 2018 and DA401 Revision A Schedule of Materials and Finishes 2 prepared dated 2 August 2018 by PA Studios and received by Council on 25 January 2019*** unless otherwise modified by Council in writing.

(Reason: To ensure that the form of the development undertaken is in

accordance with the determination of Council, **SNPP**, Public Information)

*(Condition A3 Modified per DA487/15/2 Consent dated 14.6.17)*

*(Condition A3 Modified per DA487/15/5 Consent dated \*\*.\*\*.\*\*) )*

## Landscaping

- G14. The landscaping shown in the approved landscape plan numbered 000, 101, 102, 103 & 501 (**All revision D**) prepared by Site Image received by Council on **10 August** 2018 must be completed prior to the issue of any Occupation Certificate.

Note: approved landscaping relates to landscaping with the site only and to any landscaping depicted outside of the property boundaries.

(Reason: To ensure compliance)

*(Condition G14 Modified per DA487/15/5 Consent dated \*\*.\*\*.\*\*) )*

## Allocation of Spaces

- G18. Car parking spaces must be provided and maintained at all times on the subject site. The spaces shall be allocated to uses within the building in accordance the following table:

81	Residential
2	Commercial
15	Accessible
8	Motorbikes
1	Loading Bay
1	Car wash Bays

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

In the case of Strata subdivision any car parking for strata lots for residential purposes must be individually allocated to its corresponding residential strata lot as part of each lots' unit entitlement. **Commercial parking is to remain allocated to the commercial tenancies**

Parking facilities must not at any time be **separately** allocated, sold, licensed or leased **to any third parties** and must **remain allocated to residential or commercial uses within the building**.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

*(Condition G18 Modified per DA487/15/2 Consent dated 14.6.17)*

*(Condition G18 Modified per DA487/15/5 Consent dated \*\*.\*\*.\*\*) )*

## Use of Common Room and restriction to non-trafficable roof areas

I6. The Level 18 Common Room shall be restricted by the following requirements:

- (a) The common room may only be used in association with the residential use of the building, by residents and their guests only. Any use of the roof terrace / balcony shall cease between the hours of 10.00pm and 7am, 7 days per week;
- (b) ***The void area to the roof over the balcony / roof terrace is to remain open and not infilled with pergola / vegola / see through awning or otherwise infilled;***
- (c) No part of the terrace / balcony may be enclosed; and
- (d) The balcony / roof terrace shall be free of any the any umbrellas or any other **portable** shade devices.

All other roof areas designated as non-trafficable or green roof are not to be accessed or used for any other stipulated purpose nor accessed with the exception of basic access for maintenance purposes.

(Reason: To preserve the visual and acoustic amenity of surrounding development)

(Condition I6 Modified per DA487/15/2 Consent dated 14.6.17)

(Condition I6 Modified per DA487/15/5 Consent dated \*\*. \*\*. \*\*)

2. To delete Condition I2, as follows: -

### ~~Visitors Parking Sign~~

~~I1. A sign, legible from the street, must be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces must be clearly marked as such.~~

~~(Reason: To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors)~~

~~(Condition I2 Deleted per DA487/15/5 Consent dated \*\*. \*\*. \*\*)~~

Kim Rothe  
SENIOR ASSESSMENT OFFICER

Stephen Beattie  
MANAGER DEVELOPMENT SERVICES