

COUNCIL ASSESSMENT REPORT

Panel Reference	2019SNH020
DA Number	68/19
LGA	North Sydney
Proposed Development	The construction of a 31 storey commercial office building at No. 173 Pacific Highway and alterations and additions to the existing building at No. 116 Miller Street including a through site link between the Pacific Highway and Miller Street frontages of the site
Street Address	173 Pacific Highway and 116 Miller Street, North Sydney
Applicant/Owner	Maville Investment Trust, Maville Bay Pty Ltd
Date of DA lodgement	13 March 2019
Number of Submissions	Two (original proposal); Zero (amended proposal)
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	Capital Investment Value (CIV) of greater than \$30 million
List of all relevant s4.55(1)(a) matters	SREP (Sydney Harbour Catchment) 2005 SEPP 55 - Contaminated Lands SEPP Infrastructure 2007 North Sydney LEP 2013 <ul style="list-style-type: none"> • Zoning – B3 Commercial Core North Sydney DCP 2013
List all documents submitted with this report for the Panel's consideration	Conditions Plans
Report prepared by	Luke Donovan, Senior Assessment Officer, North Sydney Council
Report date	7 November 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 (S94EF)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Not Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

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

This development application, as amended, seeks consent for the construction of a 31 storey commercial office building at No. 173 Pacific Highway and alterations and additions to the existing building at No. 116 Miller Street including a through site link between the Pacific Highway and Miller Street frontages of the site.

The Council's notification of the original proposal attracted two submissions concerning the height, setbacks, public benefit, cantilevered element, overshadowing, sunlight, air ventilation and views. The Council's notification of the amended proposal attracted no submissions.

The amended proposal removed the cantilevered element on the eastern façade and is compliant with the height of building development standard that applies to the site. The amended proposal has demonstrated that there will be no additional overshadowing of the land identified as "Special Area" or land known as "Don Bank Museum" in the North Sydney Local Environmental Plan 2013.

The amended proposal provides a through site pedestrian link between Pacific Highway and Miller Street with revision of building at 116 Miller Street that would result in a significant public domain benefit to both frontages of the site. The pedestrian through-site connection between the Pacific Highway and Miller Street frontages of the site will form part of the final phase of construction and a separate construction certificate to the commercial building at 173 Pacific Highway.

The proposed variation to the above podium setback control in the North Sydney Development Control Plan 2013 is supported in the site circumstances.

Roads and Maritime Services (RMS) have requested, via condition, the removal of the proposed awning to the Pacific Highway frontage of the site as it is located within an area that has been acquired by RMS for potential future road widening. Whilst acknowledging this condition, the awning would provide a significant public benefit to the proposed development as it would provide weather protection and improved pedestrian comfort. An awning that can be detached from the main building is recommended to be provided along the Pacific Highway frontage to the site. Should RMS widen Pacific Highway in the future, this awning could easily be removed through a deed of agreement provided to the RMS.

The proposed development has been assessed with respect to the objects and relevant Sections of the EP&A Act, as well as the objectives, merit based outcomes, development standards and prescriptive controls of various State Environmental Planning Policies, the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013. Other plans and policies were also considered such as the North Sydney Section 7.11 Contributions Plan.

Following assessment of the plans, it is recommended that the Panel grant consent to the development application.

1. DESCRIPTION OF PROPOSAL

The proposal, in an amended application which seeks consent for the construction of a 31 storey commercial office building at No. 173 Pacific Highway and alterations and additions to the existing building at No. 116 Miller Street including a through site link between the Pacific Highway and Miller Street frontages of the site. The proposal in detail includes the following:

- Demolition of the existing four storey building at 173 Pacific Highway;
- Construction of a 31 storey commercial building at 173 Pacific Highway including:
 - Ground floor lobby accessed from the Pacific Highway;
 - Office tenancies on Levels 1 to 27;
 - A multi-function meeting space on Level 28;
 - Plant on Levels 29 and 30;
 - 2 levels of basement car parking for servicing, loading bicycle parking and end of trip facilities, utilising the existing basement footprint.
 - No change is proposed to the existing vehicle access arrangement which is via a private laneway between Pacific Highway and Miller Street with a right of way easement.

Alterations and additions to the existing building at 116 Miller Street, including:

- Demolition of a party wall and alterations to the office tenancy on Level 1 of the existing building at 116 Miller Street;
- Alterations to the retail tenancy at ground floor level of the existing building at 116 Miller Street to accommodate a pedestrian through site connection to the Miller Street frontage of the site;
- The new pedestrian through site link will include a series of stairs and a lift to address the significant level change between the Pacific Highway and Miller Street frontage of the site;
- The substation for the commercial office building is proposed to be located above the through site pedestrian link on Level 1 of the existing building at 116 Miller Street.

The pedestrian through-site connection between the Pacific Highway and Miller Street frontages of the site will form part of the final phase of construction and a separate construction certificate to the main commercial building.



Southern and eastern facades of the proposed commercial building - Source: Woods Bagot



Miller Street façade - *Source: Woods Bagot*



Pacific Highway entry + podium - *Source: Woods Bagot*

1.1 Components

Component	Proposal	Amended
Site area	2,305m ²	No change.
GFA	<ul style="list-style-type: none"> • 116 Miller Street (existing) – 10,386m² • 173 Pacific Highway (proposed): <ul style="list-style-type: none"> - Commercial: 11,089m² - Retail: 25m² Total: 21,500m ²	<ul style="list-style-type: none"> • 116 Miller Street – 9,900m² • 173 Pacific Highway: <ul style="list-style-type: none"> - Commercial: 10,262m² - Retail: 25m² Total: 20,187m ² (reduction by 1,313m ²)
FSR	9.3:1 (inclusive of 116 Miller Street).	8.75:1
Maximum Height	RL 190	RL 190 Note: the eastern façade has been amended to remain outside of the RL 100 height limit applying to the 116 Miller Street portion of the site
Setbacks	<ul style="list-style-type: none"> • Nil setback to all sides at the podium level • Nil setback to the north and south above the podium level • Nil to 3.5m setback to the west (Pacific Highway) above the podium level 	No change. Note: The setback of the eastern façade to Miller Street has been increased by virtue of removing the cantilever element of the building.
Podium height	4 storeys (RL 84.3)	No change.
Loading	1 loading bay	No change.
Bicycle parking	<ul style="list-style-type: none"> • 110 bicycle parking spaces • 86 lockers • 8 shower and change cubicles 	No change.

Source: SEE

1.1.1 Podium

The proposed development features a four (4) storey podium comprising a double-height ground floor lobby and Level 01 and 02 of co-working offices. The podium adopts nil setbacks and is aligned with the top of the podium of the adjoining 177 Pacific Highway, recognising that the Vibe Hotel does not have a podium. The ground floor lobby area accommodates a reception, green wall, kiosk, and outdoor space at the rear of the podium corresponding to a lightwell above. The podium provides a footpath awning for weather protection.

1.1.2 Tower

The proposed tower sits above the podium from Level 03 to Level 31, comprising future office tenancies to Level 27.

A partly double and triple height void is proposed from Level 28 to Level 30 to create an amphitheatre area within the multi-function space and collaboration lounge on Level 28. This space will be available for use by the co-working users and office tenancies within the building.

The tower form is built to the northern and southern boundaries, and adopts angled facades to the east and west.

On the Pacific Highway frontage of the site, the tower facade is angled above the 4-storey podium, with a zero setback at the south-western corner. The tower then angles back to a 3.8m setback where the site adjoins the existing building to the north (177 Pacific Highway) at Level 03.

The eastern facade of the tower has been amended to be compliant with the maximum building heights that apply to the site. The eastern facade of the tower tapers inwards from Level 23 to roof level.

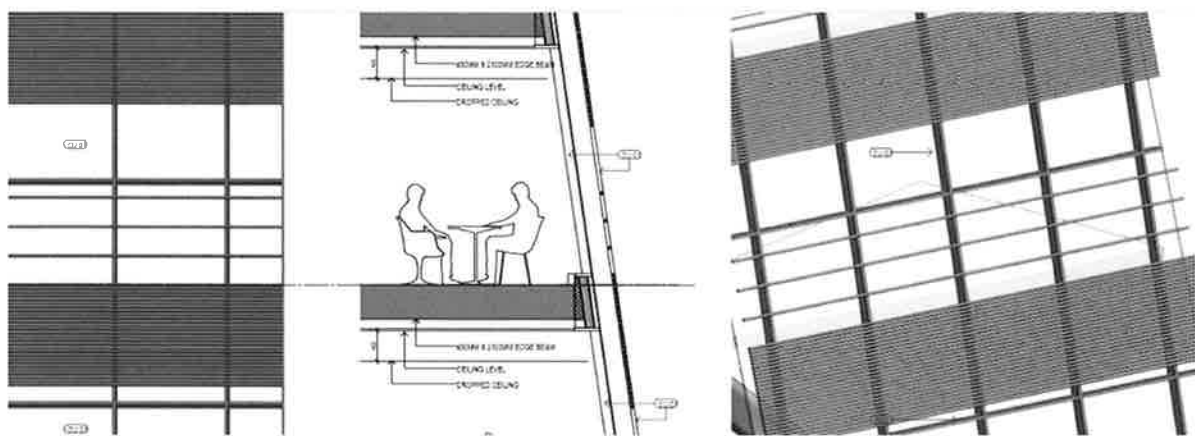
1.1.3 Commercial floor plates

The commercial office floors will have a GFA ranging from 313m² to 377m², resulting in a total of 10,287m² of GFA.

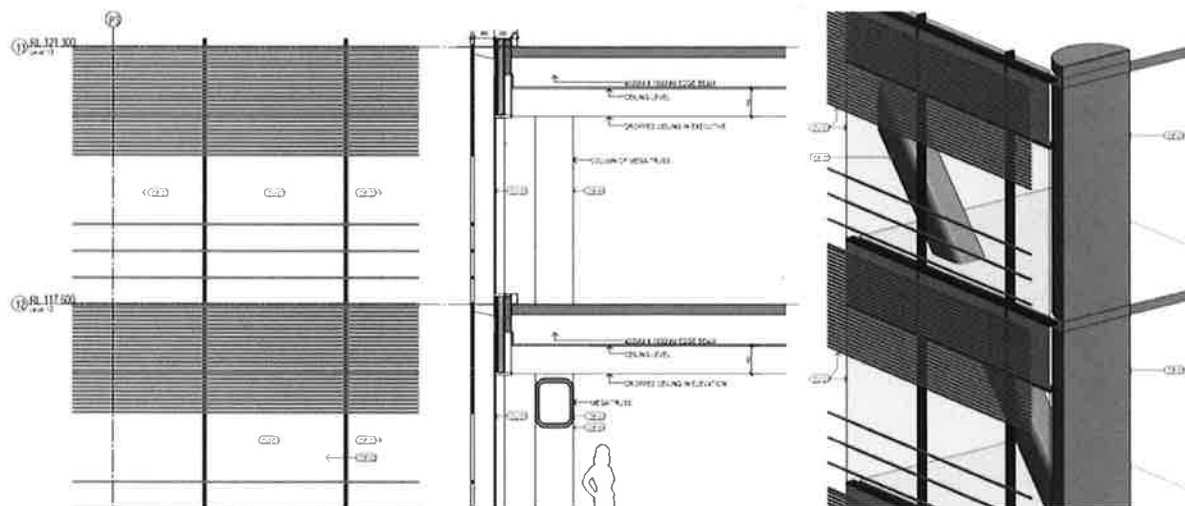
1.1.4 Materiality

The eastern and western facades of the tower have been designed with continuous horizontal slatted screen constructed from aluminium black louvres.

The slab edges of the eastern and western facades are emphasised with aluminium panels behind glass, creating strong horizontal lines to break up the facades. These panels will range from black, red, orange and yellow and are partially reflective so that the detailed colouring of the facade changes in line with the sunlight striking the building face.



Materials - East façade -- Source -- Woods Bagot



Materials - West façade -- Source -- Woods Bagot

The southern facade is patterned with modular glass panels and black aluminium spandrel 'shadow box' panels, which shape the façade.

- 2 x male toilets and 3 x urinals.

The end of trip facilities will be accessible via the goods lift which provides a connection between Level B2 and the entry gate located at Level B1.

1.5 Loading and servicing

The loading dock will remain unchanged. The loading dock will be shared with the existing building at 116 Miller Street, which is consistent with the current site arrangements. The loading area is located on Level B1 and is accessible from the Miller Street vehicular entrance. The driveway shared with Northpoint and the Vibe Hotel that is used to access the loading dock will continue to accommodate a small rigid vehicle (SRV), providing sufficient space to manoeuvre and service the new building at 173 Pacific Highway and 116 Miller Street. The proposed development will utilise the access easement that currently exists over the driveway.

2. STATUTORY CONTROLS

North Sydney LEP 2013

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

Environmental Planning & Assessment Act 1979

SREP (Sydney Harbour Catchment) 2005

SEPP 55 - Contaminated Lands

SEPP Infrastructure 2007

2.1 POLICY CONTROLS

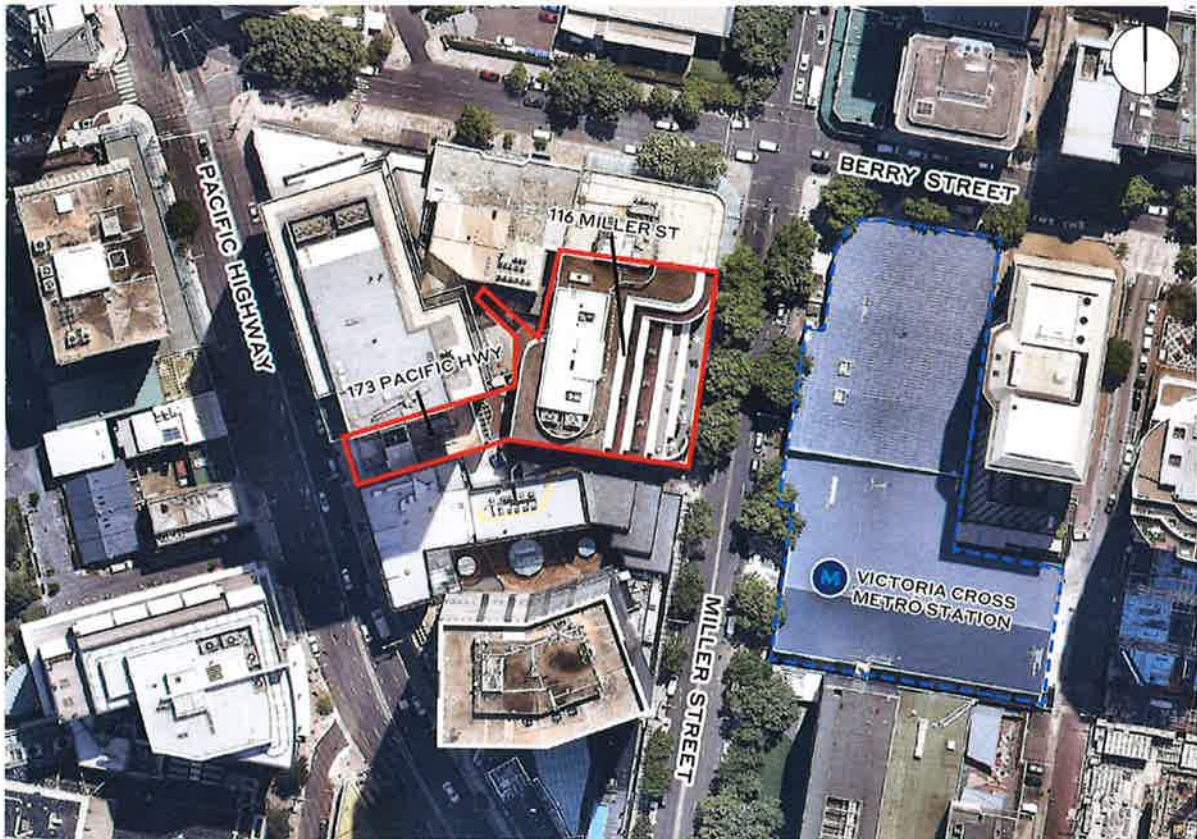
North Sydney DCP 2013

3. CONSENT AUTHORITY

As this proposal has a Capital Investment Value (CIV) of greater than \$30 million the consent authority for the development application is the Sydney North Planning Panel.

4. DESCRIPTION OF LOCALITY

The site is located at 173 Pacific Highway and 116 Miller Street, North Sydney. The site is legally described as Lot 22 in DP809571. It is shared between two commercial buildings, being 116 Miller Street, North Sydney and 173 Pacific Highway, North Sydney and has an area of 2,304.7m². The site is irregular in shape with a frontage to Pacific Highway of 14.6m and a frontage to Miller Street of 44.365m. The site is located within the North Sydney Central Business District opposite the southern entrance to the new Victoria Cross Metro Station and future Over Station Development above at the corner of Berry Street and Miller Street.



 The Site

Photo – Aerial photograph of subject site and surrounding development – *Source: SEE*

The existing building on 173 Pacific Highway is four storeys in height and currently accommodates the School of Physiotherapy for the Australian Catholic University. It also contains a basement car park with the capacity for 11 vehicles, which is accessed via a reciprocal right of way shared with Northpoint / Vibe Hotel that can be accessed from both the Pacific Highway and Miller Street. This building is proposed to be demolished.



Photo – Looking east towards the Pacific Highway frontage of the site

The existing building at 116 Miller Street is 8 storeys in height and currently accommodates ground floor retail shops and upper level offices. It also contains a basement car park with the capacity for 65 vehicles.



Photo – Looking north west towards the Miller Street frontage to the site

Directly to the north of the building at 173 Pacific Highway is 177 Pacific Highway (Vodafone building) which comprises a 32 storey office tower with a 3 storey podium with recess above the podium for 2 storeys at the southern end and 4 storeys at the northern end. The building adopts a zero setback where it adjoins the site, for the full height of the development. There are retail tenancies within the lobby and ground floor of the building, and 4 levels of basement.



Photo – Looking north up Pacific Highway. 177 Pacific Highway to the north and the Vibe Hotel to the south of the subject site.

Directly to the north of the building at 116 Miller Street is 53 Berry Street which is comparable in height and scale to the existing building at 116 Miller Street, comprising 8 storeys of mixed commercial offices and retail tenancies.

Opposite 116 Miller Street on the eastern side of Miller Street is the future Victoria Cross Metro Station and Over Station Development. This approved Concept Proposal provides the framework for a 42 storey commercial tower above the stations southern entrance on Miller Street, including retail space and a through-site link between Miller Street and Denison Street.

Directly adjoining the site to the south is 100 Miller Street (Northpoint tower) which is approximately 44 storeys in height. At the north western corner of 100 Miller Street is the Vibe Hotel which is 8 storeys in height accommodating 194 rooms, a conference facility, and gym. It has a zero setback to the site with a glazed curtain wall over a section of the façade. No windows or balconies from the hotel overlook the shared boundary.



Photo - Looking east across Pacific Highway. 177 Pacific Highway to the north and the Vibe Hotel to the south of the existing ACU building which is proposed to be demolished

Directly opposite the site, on the western side of the Pacific Highway are a series of lower density commercial buildings. These buildings (from 110 to 120 Pacific Highway) range from 3 to 6 storeys in height and have small floor plates.

5. RELEVANT HISTORY

5.1 Previous application

On 15 March 1991, development consent was granted to DA No. 1098/90 for the construction of an 8 storey storey commercial building comprising retail and banking facilities on the ground level with seven levels of commercial space above on land at 112-122 Miller Street and the refurbishment of 173 Pacific Highway.

On 22 August 1991, modified consent was granted to DA 1098/90 for the following amendments:

1. New window openings to the northern elevation of the Pacific Highway building.
2. Relocation of the arcade to the Miller Street commercial building at ground floor level.
3. Increased height of the Pacific Highway building.

On 25 August 1992, the two commercial buildings were renumbered to 116 Miller Street (Miller Street frontage commercial building) and 173 Pacific Highway (Pacific Highway frontage commercial building).

5.2 Current application

A brief history of the current application is summarized below:

11 December 2018 – The proposal was considered by the Design Excellence Panel prior to lodgment. The comments made by the Panel are contained within this report.

13 March 2019 – The development application was lodged with Council.

29 March 2019 to 12 April 2019 – The development application was notified to surrounding properties. Two submissions received. The issues raised are summarized within the report.

14 May 2019 – The development application was considered by the Design Excellence Panel. The comments made by the Panel are contained within this report.

3 June 2019 – A preliminary assessment letter was sent to the applicant raising the following key issues relating to the proposal:

- a) The proposal does not promote the orderly development of the land as the part of the site to be developed is limited to 550m².
- b) The written request pursuant to Clause 4.6 in NSLEP 2013 for variation to building height is not considered to be well founded.
- c) Inadequate and non-compliant tower setback to Pacific Highway.
- d) Adverse impacts on ground level retail activation.
- e) The through site pedestrian link must be incorporated as part of this proposed development.
- f) Additional information relating to overshadowing of special area zone on the eastern side of Miller Street.

27 June 2019 – A meeting with the applicant wherein conceptual amendments were discussed.

19 July 2019 – A letter was prepared by the applicant advising of the changes that will form part of the amended proposal.

23 July 2019 – Council briefing for the Sydney North Planning Panel.

11 September 2019 – The applicant submitted an amended proposal to Council. The key amendments are as follows:

- a) Providing a through-site link between the Pacific Highway and Miller Street frontages of the site. This will require the demolition of the party wall on Level 1 of 116 Miller Street and providing a new corridor to ground level on the Miller Street frontage of the site.
- b) Amending the eastern facade of the proposed building to reduce the cantilever and match the de-facto building line established by 177 Pacific Highway, ensuring the proposal does not project over 116 Miller Street.

- c) Relocating the substation from the existing ATM chamber of the retail banking tenancy on the ground floor of 116 Miller Street to the south eastern corner of Level 1 within the building.
- d) Providing panel joints in the visible portion of the norther facade of the building, providing a consistent finish to that portion that is not adjoining the southern wall of 177 Pacific Highway.

20 September 2019 to 4 October 2019 – The development application, as amended, was notified to surrounding properties. Zero submissions were received.

16 October 2019 – The applicant provided the following additional information:

- a) Clarification on the staging of the proposed through site pedestrian link;
- b) Correspondence from Sydney Water;
- c) Schedule of finishes and materials prepared by Woods Bagot;
- d) Wind Statement prepared by CPP; and
- e) Statement regarding the location of the proposed substation prepared by Floth.

6. REFERRALS

6.1 Building

Council's Building Surveyor has provided the following comments:

"The development application has been supported by BCA Assessment Report prepared by Philip Chun Building Compliance, Revision R02, dated 1 March 2019 an Accessibility Design Review prepared by Philip Chun Building Compliance, Revision 2, dated 1 March 2019 and additionally, a Fire Engineering Statement prepared by Core Engineering dated 1 March 2019.

Following an assessment of the plans provided and supporting information the proposed works are likely able to comply with the requirements of the NCC BCA 2016, Volume 1 via a combination of meeting the deemed-to-satisfy provisions and performance solutions prepared in accordance with A0.5 of the BCA.

A search of Councils records revealed the building at 116 Miller Street, North Sydney is currently the subject of a Development Control Order – Fire Safety Upgrade.

A detailed assessment of compliance with the NCC - BCA 2016 will be undertaken by an appropriately accredited certifier at the Construction Certificate Stage of the proposed development.

Additionally, a Fire Safety Schedule is to be prepared by the certifier for both buildings and accompany the Construction Certificate/s.

Given the above, the following standard conditions are recommended: "F1". Building Code of Australia, "C42". Upgrade of existing building – Fire Spread and Safe Egress, "C72". Provision of Accessible Paths of Travel."

6.1.2 Comment

The conditions recommended by Council's Building Surveyor are included within the attached conditions.

6.2 Engineering/Stormwater Drainage

Council's Development Engineer supports the proposed development subject to a number of standard and site-specific conditions relating to damage bonds, dilapidation reports of adjoining properties, construction management plan, infrastructure works and stormwater management. The conditions recommended by Council's Development Engineer are included within the attached conditions.

6.3 Landscaping

Council's Landscape Development Officer has provided the following comments:

"There are 3 x Platanus sp. trees on the council verge in front of 116 Miller Street. These trees shall be protected and conditioned with a tree bond of \$12,000 each.

There is 1 x Platanus sp. tree planted in the council verge just to the north of the subject site. This tree shall be protected and conditioned with a tree bond of \$3,000."

6.3.1 Comment

The three (3) Platanus sp. trees relatively evenly spaced along the Miller Street frontage of the site. The southern Platanus sp. tree is directly in front of the proposed through site link on the Miller Street frontage, the middle Platanus sp. tree is 10m (approx.) to the north of this tree and the northern Platanus sp. tree a further 15m (approx.) to the north of this middle Platanus sp. tree. These trees could be potentially damaged as a result of the proposed through site pedestrian link and works to the existing building at 116 Miller Street. Similarly, the Platanus sp. tree on Pacific Highway, just to the north of the site could potentially be damaged as a result of the demolition and construction of the new building. The tree bonds recommended by Council's Landscape Officer for the protection of the Platanus sp. trees on the Pacific Highway and Miller Street frontages are included within the attached conditions.

6.4 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 68/19 for development at 173 Pacific Highway, North Sydney. I have read the Traffic Impact Assessment report and workplace Travel plan prepared by PTC Consultant dated 4th March 2019.

Existing Site:

The subject site is an allotment between 173 Pacific Highway and 116 Miller Street, North Sydney which is under North Sydney Council's "B3 Zoning".

Proposed Development:

The existing eight (8) storey commercial office building fronting 116 Miller Street will be retained, whilst the four (4) storey building fronting 173 Pacific Highway, (currently occupied by the Australian Catholic University) will be demolished and re-developed into a new 33-storey commercial tower. The buildings on 116 Miller Street and 173 Pacific Highway currently share a loading dock which is accessed via a driveway located next to the development on Pacific Highway. This driveway is also shared with the Vibe Hotel and Northpoint. It is proposed that the arrangement is maintained during and post the redevelopment process.

Traffic Generation / Parking Provision:

The report states that:

“Due to site constraints and close proximity to public transportation (North Sydney Station, Victoria Cross Station and strong bus network), the development will not provide any parking spaces. As such, it is anticipated that the proposed development will have no adverse impact on the existing road network and Surrounding intersections”.

Accessible Parking:

The report states that:

“Council DCP requires 1-2% of all non-residential parking spaces to be designated as accessible spaces. The development will not provide any accessible parking, as there are no additional car parking as part of the proposal.”

Motorcycle Parking:

Council's DCP 2013 (amended on 5 November 2015 Section 10) does not require for any Motorcycle Parking Space for Non-residential Developments in B3 zones.

Bicycle Parking:

Council's DCP specifies that all new development is to provide on-site, secure bicycle parking facilities.

Council DCP's requirements for bicycle facilities are summarised in the table below.

GFA: 11,114 (10,287 + 25)	North Sydney Council DCP 2013 Requirement		Provision of Off-Street Bicycle Parking
Office (Occupants)	1 space per 150 m ² GFA	74	79
Office (Visitors)	1 space per 400 m ² GFA	28	28
cafe (Occupants)	1 space per 25m ²	1	1
Cafe (Visitors)	2 spaces + 1 space per 100m ² over 100m ²	2	2
Total Minimum Bicycle spaces	105		110

Council's DCP requires a total of 105 bicycle spaces within the site and the proposed development has provided 110 on the Basement 2, 5 more than the requirement which satisfy the DCP.

End Of Trip Facility (EOTF)

Council's DCP 2013 requires EOTF to be provided in accordance with the following rates:

	No. of Bicycles	Rate	Requirement	Provision of EOTF
Personal locker	80	1/ space	80	86
Shower and change cubicles	Up to 10	1 shower and change cubicle	1	1
	11-20 bicycle spaces	2 shower and change cubicle	2	2
	each additional 20 bicycle spaces	2 shower and change cubicle	5	5

Green Travel Plan (GTP)

Council's DCP 2013 requires a Green Travel Plan (GTP) to be provided for non-residential developments as per below:

Part B, Section 10.6 Green Travel Plans, P1 (b)

"New, or redevelopment of, non-residential developments which result in the total floor space of the development exceeding 2,000m² (approximately 100 employees in an office development)."

Design/ Layout:

- *The layouts of all Bicycle Spaces must comply with the Australian Standard AS2890.3:2015*

Conclusion:

It is recommended that the proposed development be supported subject to the followings:

- *The applicant is required to provide a Green Travel Plans (GTP) as set out in Council's DCP 2013.*

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 loading bay comply with the Australian Standard AS2890.2 Off-Street Parking for Commercial Vehicles and Council's DCP.*
3. *That all aspects of bicycle parking and storage facilities comply with the Australian Standard AS2890.3 and Council's DCP.*
4. *The applicant is required to provide a Green Travel Plans (GTP) as set out in Council's DCP 2013.*
5. *An Operational Traffic Management Plan to be provided to Council for Assessment and Approval of Traffic Committee prior to issue of the Occupation Certificate."*

6.4.1 Comment:

A workplace travel plan was provided as part of the application.

The conditions recommended by Council's Transport and Traffic Engineer, including a condition implementing the strategies detailed in the workplace travel plan are included within the attached conditions.

7. DESIGN EXCELLENCE PANEL

7.1 Proposal (prior to lodgment)

Prior to the lodgement of the development application, the proposal was considered by the Design Excellence Panel (DEP) at a meeting held on 11 December 2018. The key issues raised by the Panel are summarised below:

- Any redevelopment fronting the Pacific Highway should provide a 5 storey podium with a 5m setback to any storeys above the podium height.
- The glazed southern facade above Level 6 and the portion of the glazed northern facade above Level 6, both with zero lot setbacks, rely on borrowed amenity from neighbouring sites. The development needs to consider how the right to light, views and air are protected for future occupants of the building.
- The neighbouring building at 177 Pacific Highway has windows located at zero setback to the boundary. Clarification is required as to the status of the rights to light, views and air for this building.
- Issues of amenity, access to natural light, views and ventilation are a concern at the podium levels. The reliance on the light void, which appears to be enclosed by neighbouring development and the upper levels of the building, raise concern with regard to the environmental standards and energy performance of the proposed development.
- The proposal directly abuts 177 Pacific Highway, which would produce a combined length of 75m+ and a street wall height of up to 124m above ground. The collective scale of the street wall length and height to the Pacific Highway is a concern. Potential wind impacts effects require further consideration.
- A masterplan should be prepared for the entire site. The masterplan should address the development potential of the remainder of the site, in addition to considerations such as the connection of floor plates, servicing of the site, the provision of a through-site link, either as part of the proposal or in the future.

7.2 Original proposal (as lodged with Council)

The original proposal, as lodged as part of DA68/19 was considered by Council's Design DEP at a meeting on 14 May 2019. The Panel provided the following comments:

"The Panel's comments relate to the key issues or concerns with the proposal.

The Panel raised concerns with the extent of glass proposed on the southern elevation. The Panel noted that the adjoining building to the south could be developed in the future. This would result in the subject development being wholly reliant on east and west light only. The building is over 30m with no other access to natural light. The Panel felt that a reduced building depth would assist in providing a greater level of future amenity should the adjoining property to the south redevelop.

The Panel did not support the angled façade above the podium on the Pacific Highway and considered that above the 5-level podium the façade should be set back 5m and be parallel to the street frontage. This would comply with DCP provisions and provide an appropriate street frontage appearance. The applicant outlined they considered that the angled podium would provide a street presence as viewed from the North however the Panel felt this was unnecessary.

The Panels concerns relate mostly to the bulk and scale, rather than the quality of the façade. While the site exceeds 1,000m² area required to achieve the nominated FSR, the portion of the site where the tower is proposed is in the order of 500m². This has resulted in a large bulk on effectively a small site, resulting in minimal setbacks and compromised amenity. The narrow portion of the site on the Pacific Highway will result in the tower reading as a 'wall' extension of the tower adjacent. After due consideration the panel is supportive of a tower in that location subject to amendments described below to mitigate both poor amenity and public domain impacts.

The Panel did not support the eastern setback and considered the 'bulge' element to be inconsistent with adjoining development. The Panel felt that the building should be set back further complying with the Building Height control.

The Panel raised concerns with the approach of the angular façade. The applicant advised that the architectural 'angular' language was taken from the adjoining building at 177 Pacific Highway. The Panel noted that this adjoining development was a Part 3A Development that was not approved by Council. The Panel felt that an elegant design is required.

The Panel raised concern that the eastern façade would appear as an extension to the adjoining building to the north and would not be read from the ground plane as a different building. The Panel felt that greater setbacks are required and that a street wall effect should be avoided.

The Panel were not convinced that the clear glass and horizontal shading devices would provide sufficient sun protection on the eastern elevation.

As noted above the bulk of the site is not proposed to be developed, though its area is used to justify the proposed tower. The Panel believes that this portion of the site can add a potentially significant public domain benefit and that this should be achieved as part of the current proposal. The Panel felt that the ground floor level of Miller Street should therefore be resolved as part of this development application. The Panel felt that a through site link from Miller Street to the Pacific Highway should be included, noting the site's Miller Street frontage being opposite the future Sydney Metro site. The Panel noted that the Miller Street property is currently constrained by existing leases however felt that given the scope of works, the site as a whole should be resolved.

The Panel suggested that a Masterplan across the site could be considered particularly at the ground plane to ensure a good public domain outcome. The Panel noted that land subdivision could be sought in the future. The public domain should benefit from the proposed development.

The ground floor layouts result in a substantive loss of retail space for the Pacific Highway and Miller Street. The Panel did not support the proposed substation location as it reduces the activated street frontage and felt this should be relocated. Miller Street has an arguably higher street presence than the Pacific Highway.

The Panel felt that more information was required with regards to solar access impacts and how this relates to the building cut out at 177 Pacific Highway. The Panel requested further testing and felt this to be an integral component of proposed development. The Panel seeks to safeguard the existing solar access to the Miller Street special area.

Conclusion

The Panel does not support the proposal in its current form for the reasons outlined above."

7.3 Comment

The applicant lodged amended plans which addressed the following issues raised by the Panel:

- The eastern facade of the proposed building was amended to reduce the cantilever and match the de-facto building line established by 177 Pacific Highway
- A through-site link between the Pacific Highway and Miller Street frontages of the site was provided to ensure a significant public domain benefit from the development.

- The substation was relocated from the ground floor to the south eastern corner of Level 1 of the building at 116 Miller Street to improve retail activation.
- Additional shadow diagrams were provided confirming there is no additional overshadowing of the special area along Miller Street.

The applicant provided the following responses in relation to the other issues raised by the Panel:

Internal Amenity

“It is emphasised that the proposed development is unlikely to be impacted by further development to the site in the near future. Northpoint tower to the south of the site has achieved the maximum capacity for this building under the current planning controls. Whilst there is the potential to accommodate additional height on top of the Vibe Hotel under the current controls, this Hotel was the product of major upgrades and refurbishment works to the site and only commenced operating last year (2018). It is also noted that a DA was originally approved with a large building adjoining the site that was subsequently modified to reduce its scale, as a large hotel was not viable in this location. The construction of a second major commercial tower adjoining Northpoint would likely require changes the existing building podium and would impact on existing daylight and views for offices within Northpoint, potentially putting at risk the leasing of existing office space that is under the same ownership as the Vibe Hotel.

Notwithstanding this, the proposed development is considered able to achieve an appropriate degree of amenity in the event that land to the south is redeveloped. This would involve a restriction on the title requiring that the windows to the south be converted to solid wall to enable a nil setback for the adjoining development. The resultant tower on the site would still benefit from the full-height glazed eastern and western facades that allows daylight to penetrate into the floorplate as well as providing external views. Electrical lighting would be installed on each floor to meet the requirements of AS1680 for a commercial office building. This is 320 Lux average at bench height across lettable areas of each floor without reliance on any natural lighting from outside the building. Hence the internal lighting level will not be effected at night or if the southern façade windows are blocked by a future building on the southern façade. The ESD Report prepared by Floth Engineers and submitted at Appendix D of the SEE confirmed that the building remained capable of complying or exceeding the minimum requirements of NCC Section J requirements.”

Comment: A condition is recommended requiring a restriction on title advising that the proposed southern glazing is not protected in the event that the property to the south at 100 Miller Street is redeveloped.

The full height glazed eastern and western facades would ensure reasonable daylight is provided to a majority of the office floor plates.

Setback to Pacific Highway:

“It was considered in the SEE that the proposed variable setback to the Pacific Highway is an appropriate site-specific response that addresses the unique conditions of adjoining development to the north and south as well as providing a better design outcome for the proposed commercial tower. The setback is nil at the south western corner of the site and extends to a 3.8m setback where it adjoins the existing building to the north. This setback aligns with the row of windows on the southern side of 177 Pacific Highway, and transitions the tower form between the 4 storey street wall height of 177 Pacific Highway and the 10 storey street wall height of the Vibe Hotel. This site-specific design response creates a consistent human scale and provides a seamless transition between neighbouring development with consideration of Part C, Section 2.1.2, P10 of the DCP.

The SEE provided a comparison of the proposed variable setback, and a uniform 5m setback in strict compliance with the DCP, and noted the following:

- *Providing a greater 5m setback above the podium, in place of the adopted 3.8m setback, would not result in a significant change to the bulk and scale of the tower.*
- *Adopting a greater setback would only serve to expose the core of 177 Pacific Highway, which would not contribute to greater amenity or architectural merit. The current proposed setback does not enclose any existing windows on the southern facade of the tower.*
- *The tower setback ensures the proposed four (4) storey streetwall for the commercial tower that is shared with 177 Pacific Highway is legible in the streetscape.*
- *The nil setback on the southern side of the proposed tower creates a seamless transition to the taller streetwall created by the Vibe Hotel. The DCP compliant scheme, by comparison, results in an irregular built form outcome and streetscape.*

Requiring an additional 1.2m setback in the north western corner of the site would also restrict the functionality of the building and the office floorplate. The provision of a linear core on the northern side of the building has been designed to be as efficient as possible, however, warrants extensive length which places pressure on the edges of the building. As observed, the core occupies much of the northern wall and setbacks have been adopted to reflect this. Stepping back the building further in this corner would require significant amendments to the building core which would impact accessibility, structural changes, and the overall functionality of the building. Adopting a greater setback in this corner would only serve to expose the core of 177 Pacific Highway, as such these impacts would also not be warranted to contribute to any greater overall amenity or architectural merit.

The proposed setback to the Pacific Highway is, therefore, considered to the best possible and most appropriate outcome for the site, as:

- *It is a site-specific design response that provides an appropriate transition between adjoining development and respects the distinct architectural features of adjoining development including existing windows.*
- *It does not generate any significant or adverse environmental impacts when compared to a uniform 5m setback as demonstrated in the SEE, this response, and all associated technical studies with regard to solar access, wind, view sharing, and sky views.*
- *It enables the development of a functional core and associated office floorplate, which would be restricted if required to setback a negligible further 1.2m in the north western corner of the site.*
- *It is compatible with the established tower setback along this section of Pacific Highway noting that 177 Pacific Highway and Northpoint comprise of nil setbacks to portions of their upper levels."*

Comment: The application proposes an angled façade to Pacific Highway, above podium level. The angled façade has a setback of 3.8m, at northern end, and zero, at southern end. The weighted or average setback would be 1.9m.

Provision P9 in Part C, Section 2.1.3 in NSDCP 2013 requires the "a maximum podium of 5 storeys to all streets, with a weighted setback of 5m above the podium...." The tower does not comply with the weighted 5m setback.

The building to the north at 177 Pacific Highway has a zero setback to Pacific Highway above Level 5 and incorporates an inverted podium which is cantilevered over the lower floors. The mixed use tower developments along Pacific Highway further to the north between Berry Street and McLaren Street include a variety of responses to podium levels to Pacific Highway.



Figure – Looking south along the eastern side of Pacific Highway between McLaren and Berry Streets

The purpose of podium setback control is to encourage new development to achieve an appropriate ‘human’ scale which does not overpower or dominate the pedestrian environment and public domain.

The proposed tower design incorporates an angled façade to articulate its street frontage, with the angled façade ranging from nil setback to 3.8m where it adjoins 177 Pacific Highway. This response is considered to add architectural interest in a manner that would not dominate adjoining towers or significantly impact on the pedestrian environment.

The Vibe Hotel located immediately to the south at 100 Miller Street is built to a zero setback to its frontage.

A compliant above podium setback would require a further reduction in the size of the floor plates which is not preferable given these floor plates range from 313m² to 377m². Furthermore, a compliant above podium setback would not result in any material improvements to the street frontage appearance. Whilst the proposed setback will result in some affectation on views to the south from 177 Pacific Highway, the impact is not considered unreasonable in the circumstances. On balance, the proposed angled façade and resulting setback to Pacific highway is considered acceptable.

7.4 External Referrals

7.4.1 Road and Maritime Services (RMS) advised:

RMS raised no objections however advised that they have previously acquired a strip of land for road along the Pacific Highway frontage of the subject property as shown by blue colour on the Figure below.

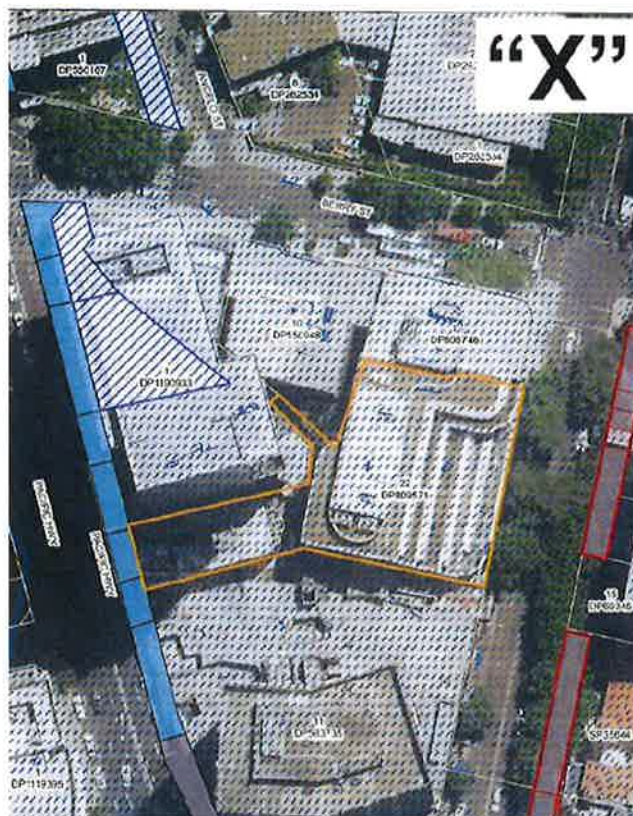


Figure – Aerial photograph and mark up prepared by RMS and submitted with their comments – Source: RMS

RMS advised in their comments dated 17 October 2019 that *“the applicant is requested to remove any pedestrian awnings located within Roads and Maritime owned land. Updated plans clearly displaying the removal of the awning should be re-submitted to North Sydney Council for review and approval”*.

Comment: As part of RMS’s conditions they have requested the deletion of the awning along the Pacific Highway frontage of the site. RMS have not provided any specific reasons for the deletion of the awning other than potential future road widening. It is noted that the buildings to the north at 177 Pacific Highway and to the south at 100 Miller Street have awnings along the Pacific Highway frontages of these sites. These awnings are similarly located within the area marked in blue on the aerial photograph attached to the RMS comments/conditions. The awning would provide a significant public benefit to the proposed development as it would provide weather protection and improved pedestrian comfort. An awning that can be detached from the main building should be provided along the Pacific Highway frontage to the site. Should RMS widen Pacific Highway in the future, as flagged in their comments, this awning could easily be removed to accommodate the widening through a deed of agreement provided to the RMS.

The above issue was raised with RMS in an email sent on 17 October 2019 and a follow up phone call on 6 November 2019, however at the time of finalising this report no formal amended comments/conditions were provided by RMS.

The other conditions recommended by RMS are included within the attached conditions.

7.4.2 Sydney Water advised:

“Water Servicing

- *The existing building has a single watermain connection to the 150mm main Miller Street.*
- *Any new connection for the development on this site should also be from the Miller St frontage, unless there is clear access to the 250mm main in the Pacific Highway to the south of the existing closed valve. This will need to be determined on site.*
- *Four watermains are located within the Miller Street road corridor. The development should connect to a main of the correct size. If the connection requested is to a trunk main, then the Sydney Water Customer Delivery – Network Area Team (North) will need to be consulted to determine the preferred main.*

Wastewater Servicing

- *There is currently a 225mm wastewater pipe located within the eastern portion of the property and may require deviation.*
- *The existing building has multiple connections to the wastewater network.*
- *The developer will need to provide a breakdown of future fixture units that are planned to discharge to each location as part of the Section 73 application details, so that Sydney Water can assess the impact of the development on the existing network.*
- *Any pipework provided for the current project should be planned to cater for any redevelopment of the eastern portion of the site in the future.*

Stormwater

- *There is currently a 900mm major stormwater pipe located through the property.*
- *The proposed development appears to be in close proximity to this major stormwater pipe. The proponent is required to provide further details regarding the proximity of the proposed building work in relation to Sydney Water’s stormwater pipe and likely impact.*
- *Further requirements in relation to Sydney Water’s stormwater assets are subject to the receiving of the above information.”*

Sydney Water further advised that detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application. Sydney Water recommended the following conditions:

Sydney Water Servicing

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

The proponent is advised to make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs.

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

Building Plan Approval

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

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

The Tap in™ service provides 24/7 access to a range of services, including:

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

Sydney Water's Tap in™ online service is available at:

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

7.4.3 Comment

The amended proposal incorporating the through site link will be in close proximity to the 900mm major stormwater pipe running through the basement of the building at 116 Miller Street. The amended proposal was referred to Sydney Water who advised:

"The proponent is required to contact Sydney Water for a meeting with Sydney Water Engineering Services to discuss this current proposal and its impact on Sydney Water stormwater pipe in long term."

This response was forwarded to the applicant. The applicant met with Sydney Water on 2 October 2019. Sydney Water advised that given all structural elements supporting the Sydney Water's 900mm stormwater main will remain in place and will not be impacted, Sydney Water raises no objection to the proposed development.

These conditions recommended by Sydney Water are included within the attached conditions.

7.4.4 Ausgrid advised

Proximity to Existing Network Assets

Underground Cables

There are existing underground electricity network assets in Pacific Highway and Miller Street.

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable. Safework Australia–Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

Substation

There are existing electricity substation assets in Miller Street.

The substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings. In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres. Exterior parts of buildings within 3metres in any direction from substation ventilation openings, including duct openings and louvered panels, must have a fire rating level (FRL) of not less than 180/180/180 where the substation contain soil-filled equipment, or 120/120/120 where there is no oil filled equipment and be constructed of non-combustible material.

The development must comply with both the Reference Levels and the precautionary requirements of the ICNIRP Guidelines for Limiting Exposure to Time-varying Electric and Magnetic Fields (1HZ–100kHz)(ICNIRP 2010).For further details on fire segregation requirements refer to Ausgrid's Network Standard 113.Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid. For further details refer to Ausgrid's Network Standard 143.

These conditions recommended by Ausgrid are included within the attached conditions.

7.4.5 Sydney Airport advised:

“At a maximum height of 190m AHD, the proposed development will penetrate the obstacle limitation surface (OLS) by approx. 34 metres.

Sydney Airport believes that at 208.4m AHD, Obstacle #5037 (Antenna on building) would shield the proposed development.

If the Department decides to approve the proposed development, we recommend that the following minimum conditions be imposed on that approval, which the Department is entitled to do under r14 (3) of the Regulations.

We believe that these conditions are in the interests of the safety, efficiency and regularity of air transport operations at Sydney Airport:

- At the completion of the construction of the building, a certified surveyor is to notify (in writing) the airfield design manager of the finished height of the building.*

Separate approval must be sought under the Airports (Protection of Airspace) Regulations 1996 for any cranes required to construct the buildings. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations, therefore Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.”

Approval of the controlled activity under the Airports (Protection of Airspace) Regulations 1996 was granted by the Secretary on 22 July 2019 subject to a number of conditions which are included in the attached conditions.

7.4.6 Sydney Observatory

No response was received from the Sydney Observatory.

8 SUBMISSIONS

8.1 The original application was notified to the Central Business District precinct and surrounding owners in accordance with Council policy from 29 March 2019 to 12 April 2019. Two (2) submissions were received.

8.1.1 Angus Finney on behalf of Edward Precinct

- “1. Floor space ratio or height of tower given small footprint. This site was looked to for consolidation at the time of the 177 Pacific Highway development and didn't take up the offer. As you know council has policies on creating useable floor space sizes, particularly as it wound up in the past with lots of small unusable floor space sites in North Sydney. Sites were given increased heights allocations in order to provide incentive to create these spaces. This is a skinny tower jammed in against a neighbouring property and has very limited floor plates. It would be contrary to my understanding of council policy to encourage this sort of infill development.
2. In relation to the above point it struck me that there may be technical issues with the applicant being able to ramp off the 116 Miller site for its increased height claim. Can you please look into this and see if the applicant is clearly authorised to make this grab for height. These small high towers have a higher environmental footprint due to high energy use requirements for lift wells etc. Does it meet relevant energy usage requirements given councils ESG policy?
3. Public benefit. I can't see any offering of an actual public benefit from this site. There is a mooted thru link to Miller but this is so vague and non-committal that it should be either discarded or bound in via a condition or other commitment of the applicant. I'd note that the current suggestion has no elevator and a marked height disparity between pac hwy and Miller st. It looks like a long potential graffiti site as currently detailed.
4. Podium setback, PAC Hway side. The applicant is seeking an exemption from the NSC podium requirements which Precinct objects to. 177 got an exemption but for its own reasons eg setback on the Berry St side. 173 has no public benefit and the slanted front is contrary to policy and potentially ugly given its inconsistency. Wind effects from this scooping facade need addressing as well. At ground level the frontage should at least reflect the ground level setback of the 177 ground level. And please ensure that they don't take this setback space up with dangerous hazards like the bicycle racks in front of 177. Precinct supports bicycle facilities but believes that in event of emergency evacuation of these buildings that the 177 ones are currently a very dangerous crush hazard.
5. Mechanical plant. Can you please ensure that this doesn't face the residential side. There are continued issues with noisy plant facing the residential western side. And condition that if a sign is to be erected on the western side that it not be illuminated.
6. The beer bully bulge. The variation application for the bulge over the 116 site should be rejected. This is another ambit claim, imposes on the neighbouring 177 building aesthetics, takes away from both 177 and 173 profiles and building design. It seems to be inconsistent again with the suggestion that 116 site entitles the 173 site to partake in the increased height that is sought. On the model it looks really inconsistent with the 177 building.
7. Overshadow. There will be increased overshadow and loss of amenity to the western residential side. My experience at 15 Riley is that we have lost early morning sun from 177 and that this will aggravate that. It is not clear from the shadow diagrams of

these impacts both on local residences as well as local heritage sites on Mount St. I can't recall detail on the latter though.

8. *Building exterior treatment.* *The applicant in my view is trying too hard to make this building stick out, despite being a skinny infill site. The variation to the colour on the southern side and the varied facade on that side don't have a large enough site to work and in particular risk ageing very poorly. The bulge also makes this an even funkier irregular exposure.*
9. *Southern facade.* *This has high potential to be built in by eventual development on the neighbouring property. 173 should be assessed as though this will be eventually built in with all the adverse impacts on internal light, skyline and streetscape view impacts etc.*

In summary this is an opportunistic infill building which runs counter to council best development policy. In my view it will be a long term negative to councils streetscape and council attempts to provide consistent planning concepts and floor spaces to the CBD area."

8.1.2 Willowtree Planning Pty Ltd on behalf of The Trust Company (PTAL) Limited as trustee for Suntec REIT 177 Trust. The Trust wholly owns the adjoining property at 177 Pacific Highway, to the immediate north of the proposed development site

"INADEQUATE SETBACKS

The proposed development would have a nil setback to the north above the podium level, where it will adjoin the southern boundary of the existing commercial building at 177 Pacific Highway (Lot 1 DP1190933). As the Design Excellence Panel has rightly pointed out:

The neighbouring building at 177 Pacific Highway has windows located at zero setback to the boundary. Clarification is required as to the status of the rights to light, views and air for this building.

The SEE prepared in support of DA68/19 describes the proposed development as having a 3.8m setback to the adjoining 177 Pacific Highway (above the podium level). However, this reference to a 3.8m setback is misleading, as it does not appear to provide for the calculated weighted setback of the proposed tower from 177 Pacific Highway, or rather, a calculated average of all setbacks along the site's northern facade, given that the tower's setback to 177 Pacific Highway would decrease from east to west due to the proposed "angled tower footprint"

This is further described within the SEE as resulting in a "seamless transition between neighbouring development."

The SEE further suggests that:

- *Providing the greater 5m setback above the podium would not result in a significant change to the bulk and scale of the tower. The setback serves to break up the massing of the tower and respects the amenity of the neighbouring building by aligning the tower with the row of windows on the southern facade of 177 Pacific Highway. Adopting a greater setback would only serve to expose the core of 177 Pacific Highway, which would not contribute to greater amenity or architectural merit.*

This comment ignores the fact that the minimum setback between the proposed development and 177 Pacific Highway is actually much less than 3.8m. Indeed, the minimum setback between the two buildings has not been specified in DA218/19. Therefore, the conclusion that a 5m setback would not result in a discernible difference is not completely founded. The Trust

disagrees that the setbacks in their current form allow the proposed development to suitably integrate with 177 Pacific Highway.

VIEWSCAPES

The Design Report prepared in support of DA16/19 regards the design of the proposed development as continuing to allow views from 177 Pacific Highway. However, this assessment is considered inadequate in terms of fully comprehending the impediments on views which are currently accessible from the south-west and south-east corners of the existing tower at 177 Pacific Highway. Specifically, no consideration has been given to the loss of views from the south-eastern corner of the 177 Pacific Highway when looking in a south-westerly direction.

Overall, it is submitted that the proposed development would impede the views which are currently available from 177 Pacific Highway to the south. This is particularly the case as land in this area of the North Sydney Local Government Area slopes down towards Lavender Bay and Berry Bay. The loss of views from the 177 Pacific Highway site, which currently include the city and Barangaroo to the south, was raised as a concern by the Design Excellence Panel. Specifically, the Design Excellence Panel stated:

- The glazed southern facade above Level 6 and the portion of the glazed northern facade above Level 6, both with zero lot setbacks, rely on borrowed amenity from neighbouring sites. The development needs to consider how the right to light, views and air are protected for future occupants of the building; and*
- The neighbouring building at 177 Pacific Highway has windows located at zero setback to the boundary. Clarification is required as to the status of the rights to light, views and air for this building. However, it is considered that the tapered design of 173 Pacific Highway does not adequately address this legitimate concern with regards to impinging upon views currently enjoyed by 177 Pacific Highway.*

SUNLIGHT ACCESS

The North Sydney Local Environmental Plan 2013 (NSLEP 2013) does not prescribe any requirement for the proposed development to consider the potential for overshadowing impacts to 177 Pacific Highway. Rather, the NSLEP 2013 requires that consideration be given to potential overshadowing impacts for mapped Special Areas. 177 Pacific Highway is not mapped as being a Special Area under the NSLEP 2013, it is noted that the overshadowing plans prepared in support of DA16/19 indicate that the proposed development would not create additional overshadowing impacts for the existing tower at 177 Pacific Highway.

Nevertheless, the Design Excellence Panel has commented on the potential for sunlight access being restricted to 177 Pacific Highway. This raises further concerns about the environmental standards and energy performance of the proposed development, particularly as they may impact on the ongoing energy performance of 177 Pacific Highway through the requirement to use more lighting or building heating, etc. It is not fully understood how this would impact on the energy performance of 177 Pacific Highway when assessed against the NABERS standards of building energy efficiency. However, it is considered that this increased use of electricity and gas on the part of 177 Pacific Highway in order to adapt to the proposed development's blocking of sunlight access would result in increased consumption of these energy resources. This has further impacts to the environment in general, by reducing the site's ongoing sustainability, contract to objective (b) of the Environmental Planning and Assessment Act 1979 (EP&A Act). As such costs would be passed onto building tenants, this also has implications for the ongoing affordability of office space within North Sydney.

Indeed, the SEE states that the proposed development would be relatively unimpeded by existing surrounding development, and would benefit from daylight and views to the east, west and south that ensure the proposed office space achieves excellent amenity. The SEE further states that the minor separation from 177 Pacific Highway would ensure that a degree of daylight can penetrate the south facing windows on the south eastern corner of 177 Pacific Highway. The SEE contends that the 177 Pacific Highway tower can continue to receive adequate sunlight access via its eastern façade. Once again, it is considered that this superficial assessment does not adequately consider the matters at hand.

AIR VENTILATION

DA68/19 has not considered how the proposed development could impact on air ventilation as relied upon by the existing property at 177 Pacific Highway. The Trust considers this is a matter of importance which directly impacts on the amenity of 177 Pacific Highway.

DESIGN INTEGRATION

The proposed development is considered to represent a poor urban design outcome, representing an attempt to maximise floorspace at a site which is not suited to infill development. Given the relatively short width and depth of the proposed development, it would not be clearly defined as its own development within the North Sydney skyline. Rather, it would appear to be a poor attempt at infill development that is noticeably sandwiched between or tacked onto existing developments. The proposed development is considered to have an overall negative impact on the North Sydney skyline.

OVERALL IMPACTS

It is considered that the cumulative impact of those matters described in this Objection would be to negatively impact on the rental values that could be obtained for tenancies within the 177 Pacific Highway building. This would have a flow-on effect of negatively impacting the overall asset value of 177 Pacific Highway.

It is further considered that allowing the proposed development to proceed in its current form would create a poor urban design precedent, thereby creating unrealistic expectations on behalf of other landowners within the North Sydney CBD who are looking to increase their existing GFA."

- 8.2** The amended application was notified to Central Business District precinct and surrounding owners in accordance with Council policy from 20 September 2019 to 4 October 2019. Zero submissions were received.

8.3 Comment

The issues raised in the submissions are addressed within this report.

9 CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

9.1 SEPP 55 and Contaminated Land Management Issues

The development is required to comply with the provisions of *State Environmental Planning Policy No 55 – Remediation of Land* ("SEPP 55"), and in particular cl 7(1) requiring consideration of any

contamination and associated required remediation. Council records do not indicate that the site has been developed or used for activities that may cause contamination, Clause 7(1) of SEPP 55 is therefore complied with.

9.2 SREP (Sydney Harbour Catchment) 2005

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

9.3 SEPP (Infrastructure) 2007

The proposed development will not require excavating to a depth of greater than 2m within 25m of a rail corridor and is not identified as being within either Zone A or Zone B of an interim rail corridor. Accordingly, the application will not require referral to the rail authority pursuant to Clause 86 of the SEPP.

The proposal does not seek a change to the existing vehicular access and driveway which is shared with Northpoint and the Vibe Hotel.

The site has a frontage to the Pacific Highway, which is identified as being a road with a traffic volume of more than 20,000 vehicles per day. The proposed development is for commercial offices and is not a sensitive receiver as identified in Clause 102 of the SEPP.

The proposed development requires excavation to accommodate the basement levels, structure and lift pits. This excavation will exceed 3m in depth, but is not occurring within the Pacific Highway road corridor as identified in Schedule 2 of the SEPP.

The proposed development is identified as being traffic generating development in the meaning of Schedule 3 and Clause 104 of the SEPP. RMS have provided recommended conditions which are included within the attached draft conditions.

9.4 North Sydney Local Environmental Plan 2013

9.4.1 Permissibility within the zone

The proposal is permissible with consent under the B3 Commercial Core zoning.

9.4.2 Zone B3 Commercial Core

The proposal provides office and retail uses to serve the local and wider community. The through site link provides improved access through the site and to the future southern cross metro station. The proposal will not adversely impact the amenity of surrounding developments. The proposal is consistent with the objectives of the B3 zone.

9.4.3 Height of buildings – Clause 4.3

North Sydney Centre	Proposal	Control	Compliance
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Height (Cl. 4.3)	173 Pacific Highway The proposed height of building over the western part of the site at 173 Pacific Highway is RL190 (AHD). The amended proposal removed the portion of the building that cantilevered over 116 Miller Street which has a maximum height of building of RL100.	RL 190 AHD (<i>Western part of the site at 173 Pacific Highway</i>) RL 100 AHD (<i>Eastern part of the site at 116 Miller Street</i>)	Yes
	116 Miller Street The application does not seek a change to the height of the existing building over the eastern part of the site at 116 Miller Street. The maximum height of this existing building is RL100.627		

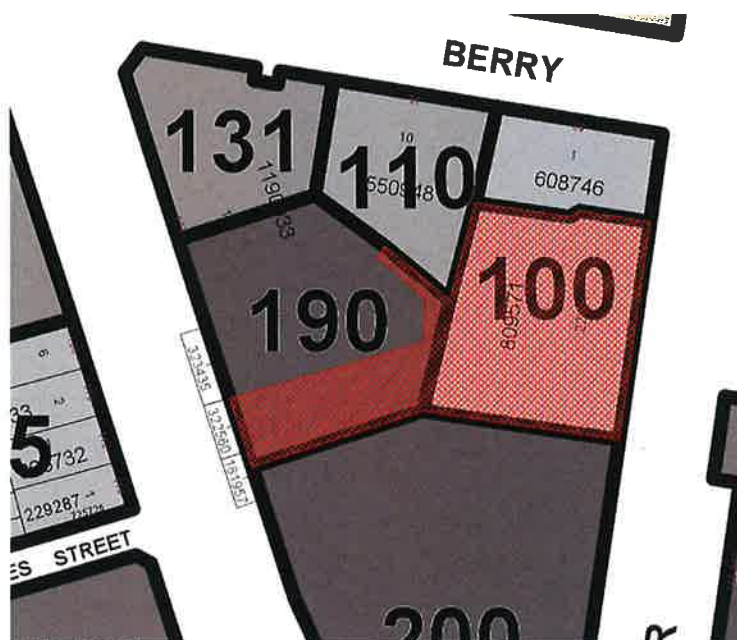


Figure – Extract from the NSLEP 2013 height of building map

9.4.4 North Sydney Centre

Objectives of the Division - Clause 6.1

The proposal has been considered against the objectives of this Division as follows:

- (a) *to maintain the status of the North Sydney Centre as a major commercial centre,*

The proposal will assist in maintaining the status the North Sydney Centre as a major commercial centre.

- (b) to maximise commercial floor space capacity and employment growth within the constraints of the environmental context of the North Sydney Centre,**

The proposal maximises commercial floor spaces as far as possible having regard to the constraints of the site and current planning controls.

- (c), (d) (Repealed)**

- (e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres,**

The subject site is constrained by virtue of its irregular shape and narrowness particularly over the part of the site known as 173 Pacific Highway. The site has a frontage to Pacific Highway of 14.6m, and the northern boundary of 173 Pacific Highway has a length of 40m, while the southern boundary of 173 Pacific Highway has a length of 36m. This effectively produces an area of approximately 532m². The balance of the site area is located at 116 Miller Street.

The existing building at 116 Miller Street is effectively built to its maximum permitted envelope based on the current planning controls. Essentially any increase in height or mass of this building has the potential to result in additional overshadowing of the Special Area on the eastern side of Miller Street which would result in a prohibition under the current planning controls. This means that any additional commercial floor area is limited to the part of the site known as 173 Pacific Highway.

The Part 3A approval for the Vodafone building at 177 Pacific Highway did not seek to consolidate 173 Pacific Highway as part of that development. This effectively meant the isolation of 173 Pacific Highway.

Whilst 173 Pacific Highway is relatively narrow for a development of this scale, the design has demonstrated that reasonably sized commercial floor plates between 313m² and 377m² can be achieved throughout the building. Acknowledging this is significantly less than the 1000m² specified in the objective, this floor plate is considered acceptable for this site given its constraints. Any additional commercial floor space will likely result in further non compliances with current planning controls, particularly those relating to building height and setbacks.

- (f) (Repealed)**

- (g) to prevent any net increase in overshadowing during winter months of any land in Zone RE1 Public Recreation (other than Brett Whiteley Plaza) or any land identified as "Special Area" on the North Sydney Centre Map,**

The proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas during the winter months.

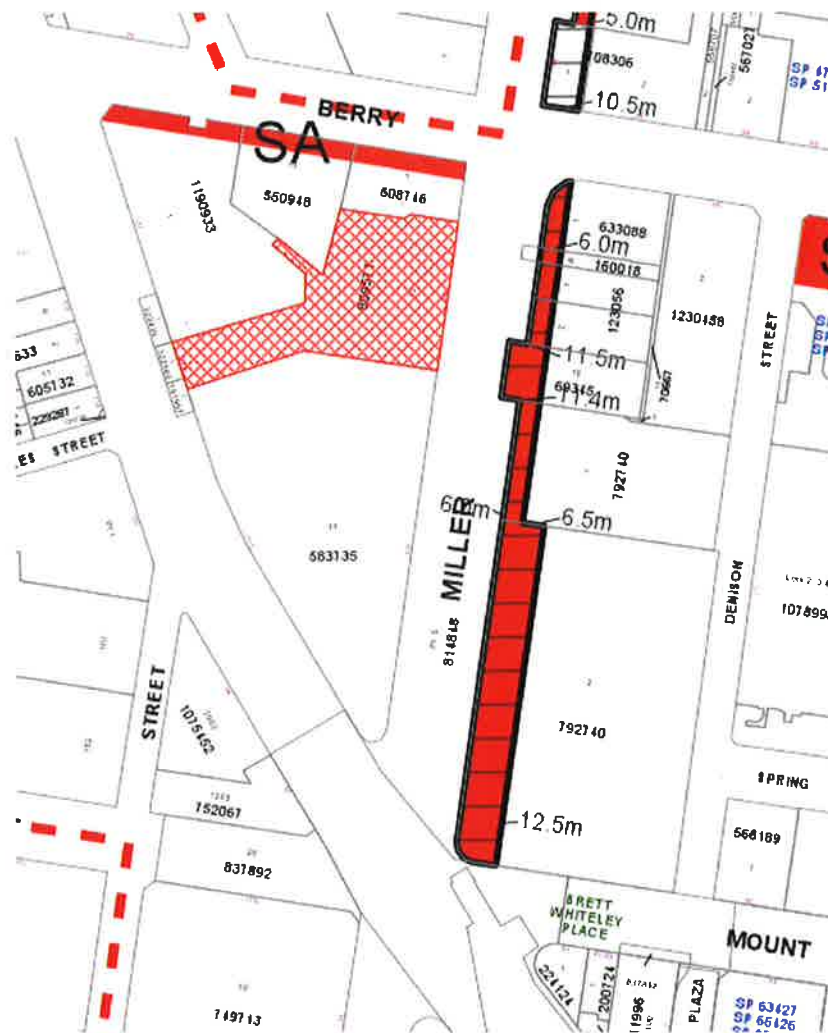


Figure – Extract from the NSLEP 2013 Local Provisions Map – Red and black hatched area is the 'Special Area' zones

- (h) to ensure that any land within a residential zone is afforded a reasonable amount of solar access,

The proposal does not affect solar access to the residential zones to the west of the site, outside of the North Sydney Centre.

- (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.

The site does not contain any open space or landscaped area.

Building heights and massing - Clause 6.3

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

- (a) (Repealed)

- (b) to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre 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 proposed height of building over the western part of the site at 173 Pacific Highway is RL190 (AHD) and compliant with the maximum height of building standard in NSLEP 2013. Shadow diagrams submitted as part of the application demonstrate that the proposal will have no adverse overshadowing impacts on 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 and massing of the proposed building is therefore considered acceptable.

- (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 that is located outside the North Sydney Centre,**

The shadow diagrams confirm that the proposal will not result in any additional overshadowing of residential properties outside the North Sydney Centre between 10am and 2pm.

- (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 podium height of the building matches the building on the adjoining property at 177 Pacific Highway. As detailed in section 7.4.1 of this report, RMS does not support an awning over the Pacific Highway frontage of the building. RMS have not provided any specific reasons for the removal of the awning other than potential future road widening. It is noted that the buildings to the north at 177 Pacific Highway and to the south at 100 Miller Street have awnings along the Pacific Highway frontages of these sites. These awnings are similarly located within the area marked in blue on the aerial photograph attached to the RMS comments/conditions. The awning would provide a significant public benefit to the proposed development as it would provide weather protection and improved pedestrian comfort. An awning that can be detached from the main building should be provided along the Pacific Highway frontage to the site. Should RMS widen Pacific Highway in the future, as flagged in their comments, this awning could easily be removed to accommodate the widening through a deed of agreement provided to the RMS.

The angled western façade, and setback above podium assists in reducing the visual dominance of the building, noting that it is setback 3.8m from the Pacific Highway boundary where it adjoins the existing building at 177 Pacific Highway. The visual dominance of 177 Pacific Highway will remain far greater given its existing massing, the inverted cantilevered podium design and zero setback to Pacific Highway.

Whilst the southern façade will be exposed, the modular glass panels and black aluminium spandrel ‘shadow box’ panels, will shape the façade and provide a degree of visual interest to this part of the building.

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

There are no opportunities for consolidation of the adjoining sites to the north or south of the building at 173 Pacific Highway. The adjoining site to the north at 177 Pacific Highway (Vodafone building) was constructed following the approval of DA205/11. The adjoining site to the south at 100 Miller Street, has the driveway with the Vibe Hotel constructed partially over which formed part of the approval of DA443/14. It would have been preferable that 173 Pacific Highway formed part of the development at 177 Pacific Highway. However, the proposed development at 173 Pacific highway will provide smaller high grade commercial space with good levels of daylight to encourage employment growth within the North Sydney Centre.

- (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 from the March equinox to the September equinox (inclusive) 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*
- (b) *the development would result in a net increase in overshadowing between 10 am and 2 pm from the March equinox to the September equinox (inclusive) of the Don Bank Museum, or*

The proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas between 12 pm and 2 pm from the March equinox to the September equinox (inclusive).

The proposal does not result in any additional overshadowing of Don Bank Museum between 10 am and 2 pm from the March equinox to the September equinox (inclusive)

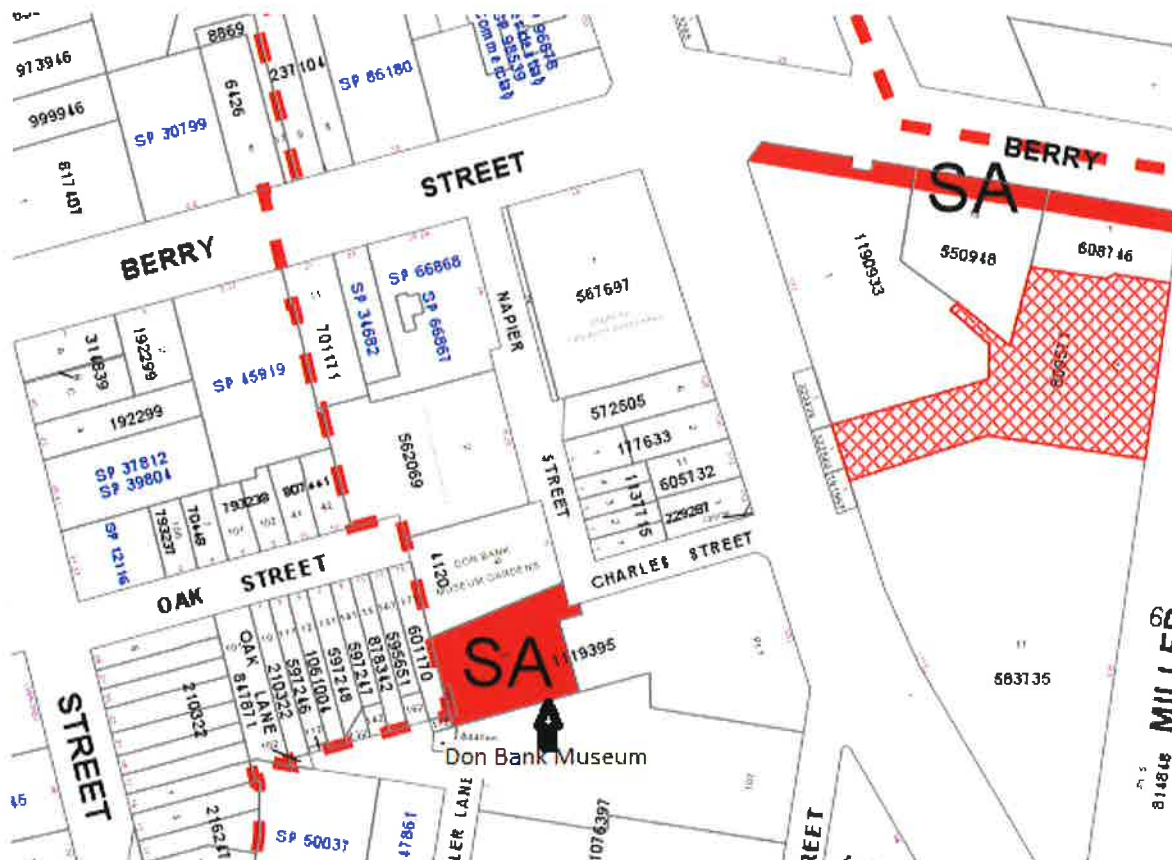


Figure – Extract from the NSLEP 2013 Local Provisions Map – Red and black notated area is the Don Bank Museum

- (c) *the site area of the development is less than 1,000 square metres and any building resulting from the development would have a building height greater than 45 metres.*

Section 1.5(1) of the Act states that “development” is any of the following:

- “(a) the use of land,
- (b) the subdivision of land,
- (c) the erection of a building,
- (d) the carrying out of a work,
- (e) the demolition of a building or work,
- (f) any other act, matter or thing that may be controlled by an environmental planning instrument.”

Under this proposal, development works would be carried out on both 173 Pacific Highway and 116 Miller Street which comprise the site. The total site area of the development is 2304.7m² and compliant with 2(c) in Clause 6.3 in NSLEP 2013.

Whilst the proposed building is located over the part of the site known as 173 Pacific Highway which has an area of approximately 532m² (approx.), the amended proposal incorporating a through site link through the existing building at 116 Miller Street produces a significant public domain benefit.

- (3) *The consent authority may grant development consent to development on land in the North Sydney Centre 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 from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving:*
- (a) *if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or*
- (b) *if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.*

The proposal is compliant with the maximum height of building as indicated on the Height of Building Map. Subclause 3(a) and (b) is therefore not applicable.

(4) ***Brett Whiteley Plaza***

Development consent may be granted to development on land at 105–153 Miller Street, North Sydney, known as the MLC Building, that would result in a net increase in overshadowing of the land known as Brett Whiteley Plaza that is within Zone RE1 Public Recreation from the March equinox to the September equinox (inclusive).

Not applicable.

- (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 the North Sydney Centre,*

The proposal is acceptable with regard to its scale within the context of the locality. The scale of the proposed building is consistent with the building on the adjoining property at 177 Pacific Highway. The amended proposal has removed the cantilevered element on the eastern façade to ensure the form and setback of the building is more compatible with the building on the adjoining property at 177 Pacific Highway.

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

There are no public view lines or vistas affected by the proposal nor are there view lines or vista affected from residential properties outside the North Sydney Centre.

The proposal will affect some of the existing views from the southern windows of the commercial building at 177 Pacific Highway. There is no easement between the subject site and 177 Pacific Highway defining a right to views. The amended proposal has removed the cantilevered element on the eastern facade, so the eastern facade generally matches that established by the building at 177 Pacific Highway. The views to the south east and south west from the southern windows at 177 Pacific Highway are across the subject site and the impacts are from elements of the building that are compliant with the height of building development standard. The above podium setback of 3.8m to Pacific Highway, where it adjoins 177 Pacific Highway, and allows for the preservation of a majority of this view to the south west from 177 Pacific Highway. The impact on views and vistas is therefore considered reasonable in the site circumstances, noting that the views to the east from the building at 177 Pacific Highway will be unaffected by the proposal.

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

The proposed development will enhance the streetscape with its variation in materials and external treatments and provides variety and interest, that assists in providing some differentiation from the building on the adjoining property at 177 Pacific Highway.

9.4.5 Airspace operations – Clause 6.15

As required by Clause 6.15 of NSLEP 2013, the 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.

The Outer Horizontal Surface of the OLS above the subject site is at a height of RL 156(AHD) and the prescribed airspace above the site commences at RL 156. At a maximum height of RL 190 AHD, the proposal would penetrate the OLS by 34m.

The proposed construction of the development would constitute a controlled activity under Section 182 of the Airports Act 1996 (the Act). Section 183 of the Act requires that controlled activities cannot be carried out without approval.

The Department has approved the proposal and recommended conditions that are included within the conditions attached.

9.5 NSDCP 2013 Compliance Table

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2 and 9		
	<i>complies</i>	Comments
2.2 Function		
Diversity of Activities	Yes	The proposal provides different sized office spaces, with retail at ground level.
Maximise Use of Public Transport	Yes	The development is located in close proximity to the North Sydney railway station and bus interchange, and directly opposite from the proposed Victoria Cross Metro Station. End of Trip facilities are provided within basement 02.
2.3 Environmental Criteria		
Clean Air	Yes	The proposed office uses will not adversely impact on air quality. New mechanical plant will comply with current standards.
Noise	Yes	A noise and vibration impact assessment report was prepared by WSP dated February 2019 which concluded that the “ <i>proposed development can be designed to have limited acoustic impact and meet the applicable environmental noise emission criteria at the</i> ”

		<i>nearest sensitive receivers."</i>
Wind Speed	Yes	A qualitative wind assessment report was prepared by Cermak Peterka Petersen (CPP) dated February 2019 which concluded that <i>"the proposed development will have some effect on the local wind environment, though any changes are not expected to be significant from the perspective of pedestrian comfort or safety. Wind conditions around the development are expected to be classified as acceptable for pedestrian standing or walking"</i> .
Reflectivity	Yes	<p>Solar Reflectivity Assessment has been prepared by WindTech dated 19 February 2019. The purpose of the report is to assess the proposed development to analyse its potential to produce solar reflectivity impacts on surrounding public roadway locations.</p> <p>Clause 2.3.4 of NSDCP 2013, promotes the use of non-reflective glass and materials to reduce reflectivity. The primary objective is to minimize the impacts by reflected light and solar reflexivity from buildings on pedestrian and motorists.</p> <p>The assessment has recommended limitations to the maximum normal specular reflectance of visible light of the external façade glazing to ensure there are no adverse solar glare to motorists or pedestrians in the surrounding area, or to occupants of neighbouring buildings and to comply with the objective of Clause 2.3.4 in NSDCP 2013. The recommendations of this report are included within the attached conditions.</p>
Artificial Illumination	Yes	Internal light spill from the offices will not adversely impact on residents, pedestrians or sky glow.
Awnings	Yes	RMS does not support an awning over the Pacific Highway frontage of the building. RMS have not provided any specific reasons for the removal of the awning other than potential future road widening. It is noted that the buildings to the north at 177 Pacific Highway and to the south at 100 Miller Street have awnings along the Pacific Highway frontages of these sites. These awnings are similarly located within the area marked in blue on the aerial photograph attached to the RMS comments/conditions. The awning would provide a significant public benefit to the proposed development as it would provide weather protection and improved pedestrian comfort. An awning that can be detached from the main building should be provided along the Pacific Highway frontage to the site. Should RMS widen Pacific Highway in the future, as flagged in their comments, this awning could easily be removed to accommodate the widening through a deed of agreement provided to the RMS.
Solar Access	Yes	<p>There is no additional shadow as a result of the proposed development on the Miller Street Special Area or Don Bank Museum identified by the <i>NSLEP 2013</i> provisions.</p> <p>The proposed development will not affect solar access to the residential areas on the western side of Pacific Highway.</p> <p>The proposed development will not affect solar access to the eastern façade of the building at 177 Pacific Highway.</p> <p>There are no windows to the northern façade of the Vibe Hotel.</p>
Views	Acceptable on merit	<p>The proposal will not materially affect views from the street or other public places.</p> <p>The amended proposal has removed the cantilevered element on the eastern façade of the building resulting in an eastern façade that generally matches the eastern façade of the existing building at 177 Pacific Highway. The views from the south-facing windows of 177 Pacific Highway are reliant on views across the development site.</p>

		<p>The offices within 177 Pacific Highway will continue to benefit from a 60m long glazed eastern facade, which affords the building with excellent access to views to the east which will not be impacted by proposed development.</p> <p>The proposed above podium setback to Pacific Highway will allow for part of the existing views to the south west to be maintained from the southern windows of the offices within 177 Pacific Highway</p>
2.4 Quality built form		
Setbacks	Acceptable on merit	<p>The proposal provides for a zero-podium setback to Pacific Highway compliant with Provision P3 in Part B, Clause 2.4.3 and Provision P6 in Part C, Clause 2.1.3 in NSDCP 2013. A further recess at the ground floor level would result in minimal additional public domain benefit noting the relatively narrow width of the frontage.</p> <p>The height and setback of the podium generally matches the existing building to the north at 177 Pacific Highway.</p> <p>Refer to detailed discussion in Section 9.5.1 in this report regarding the variation to the above podium setback.</p>
Building Design	Yes	<p>Table B-2.9 in NSDCP 2013 requires all floors in the Commercial Core zone to be a minimum of 3.3m in floor to ceiling height. The proposed development is compliant with this requirement.</p> <p>The angled eastern and western facades, in addition to, the variation in detailing assists in reducing its bulk and providing a degree of differentiation from the building on the adjoining property at 177 Pacific Highway.</p> <p>The amended proposal has removed the cantilevered element on the eastern façade of the building resulting in an eastern façade that generally matches the eastern façade of the existing building at 177 Pacific Highway.</p>
Skyline	Yes	<p>The proposed development is compliant with the height of building requirement in Clause 4.3 in NSLEP 2013.</p> <p>Roof top plant and associated equipment is concealed within the building. The building has been designed to positively contribute to the skyline of the North Sydney CBD.</p>
Through site pedestrian link	Yes	<p>The amended proposal includes a through site link to enhance pedestrian connectivity through and around the site. This is further enhanced by provision for a new retail tenancy to further activate the Miller Street entry.</p> <p>A lift is provided within the through site pedestrian link given the substantial level change between the Pacific Highway and Miller Street frontages to the site.</p>
Streetscape	Yes	<p>The Miller Street frontage will be further activated with the addition of a new retail tenancy which will have a direct frontage to the through site pedestrian link.</p> <p>Part of the Pacific Highway frontage will be occupied by the accessible utilities and services. The remainder of the Pacific Highway frontage will be activated by the main building lobby.</p> <p>Appropriate conditions are recommended for the protection of the street trees along both the Pacific Highway and Miller Street frontages of the site.</p>

Entrances and Exits	Yes	<p>The primary entrance point to the building is accessible from Pacific Highway and highly visible from the street frontage. The entrance provides a continuous path of travel, including a through site link to Miller Street via a lift.</p> <p>These entrances and exits have been designed in accordance with the relevant Australian standards and the DCP controls and will provide appropriate seating and non-slip floor surface.</p>
Public Spaces and facilities	Yes	<p>The proposed through site link provides a significant public domain benefit in that it will provide improved permeability through the site and greater activity at ground level.</p> <p>The lobby areas and kiosks with seating areas have been designed to attract people and encourage social engagement.</p>
2.5 Quality Urban Environment		
Accessibility	Yes	Equitable access will be provided, including entry foyer, ramps, passenger lifts, unisex accessible toilets and showers.
Safety and Security	Yes	There is good surveillance from the ground floor lobby and through site link.
Vehicular Access	Yes	All vehicular access, including loading/service vehicles and set downs will occur via the existing driveway which is shared with North Point and the Vibe Hotel.
Car Parking	Nil	Onsite parking spaces will not be provided as part of the development. Dedicated end of trip facilities and bicycle parking will provide alternative options to car parking. The proposed development will provide 110 bicycle parking spaces (80 staff and visitor) as well as associated end of trip facilities (EOTF) on Level B2 compliant with the requirements in NSDCP 2013.
Garbage Storage	Yes	The proposed building at 173 Pacific Highway and the existing building at 116 Miller Street will continue to share waste facilities in accordance with the existing arrangements. A commercial waste room is proposed on Level B1 adjacent to the loading and service area. The waste storage area will accommodate 13 bins to service the proposed building at 173 Pacific Highway and the existing building at 116 Miller Street.
2.6 Efficient Use of Resources		
Energy Efficiency	Yes	<p>An ESD report was prepared by Floth which advises that the commercial office levels of the proposed building at 173 Pacific Highway will be targeting a NABERS rating of 5 stars and a self-assessed Green Star Design and As-Built Rating equivalent to 5 stars and the retail portion of the proposed development will comply with National Construction Code (NCC) Section J Energy Efficiency by means of a Deemed-To-Satisfy Solution or Performance Solution as appropriate.</p> <p>If the Vibe Hotel to the south was redeveloped in the future blocking light to the proposed development, the applicant has confirmed that the internal lighting levels for the office floors will not be adversely affected and would still be capable of complying with and exceeding the Energy Efficiency requirements in Section J of the NCC.</p>
Waste Management and Minimisation	Yes	An Operational Waste Management Plan has been prepared by Elephants Foot. The purpose of the report is to describe the waste management system proposed for the project. A commercial waste room is proposed on Level B1 adjacent to the loading and service area.
Stormwater Management	Yes	The development includes a new drainage system along the eastern building face which will connect to a new on-site detention (OSD) tank. The proposed OSD tank will be located on Level B2 with an area of 15m ² and volume of 49m ³ . The OSD tank will discharge

		prior to draining into the existing Sydney Water stormwater line, which is being retained.
2.7 Public Domain		
Street Landscaping, Furniture, Works, public art	Yes	<p>The proposed development provides a range of measures to respond to and enhance the public domain around the site. Specifically, the development will:</p> <ul style="list-style-type: none"> • Demolish part of the existing building at 116 Miller Street to create a through site pedestrian link between the Pacific Highway and Miller Street resulting in a significant public domain benefit; • Accessible features including ramps and lift to deal with the level changes through the site; • The provision of café kiosks and seating areas at ground floor lobby and within the through site pedestrian link; and • A new retail tenancy that has a frontage to the through site link resulting in additional activation of Miller Street

9.5.1 Character Statement – Part C, NSDCP 2013

NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT

The subject site is within the Central Business District which falls within the North Sydney Centre Planning Area. The proposal is generally consistent with the character statement other than the non-compliances with 5m weighed (average) above podium setback to Pacific Highway. The proposal provides a 3.8m above podium setback where the building adjoins 177 Pacific Highway to the north and a zero setback where the building adjoins the Vibe Hotel to the south. This results in an angled façade above the podium fronting Pacific Highway. The weighed or average above podium setback would therefore be 1.9m.

The above podium setback is considered reasonable for the following reasons:

- Providing a compliant above podium setback, in place of the proposed zero to 3.8m setback, would not result in a significant change to the bulk and scale of the building when viewed from Pacific Highway;
- The building at 177 Pacific Highway, Level 05 and above, has a zero setback to Pacific Highway;
- Providing a setback greater than 3.8m where the building adjoins 177 Pacific Highway would result in the part exposure of the core of this building and would not contribute to greater amenity or architectural merit. The proposed setback of 3.8m allows a majority of the existing glazing along the southern façade of 177 Pacific Highway to remain exposed;
- The proposal will maintain a podium height to Pacific Highway that is consistent with the building at 177 Pacific Highway;
- The Vibe Hotel is 8 storeys in heights with no podium and a zero setback to Pacific Highway. The zero setback on the southern side of the proposed building creates a seamless transition with the Vibe Hotel;
- The buildings to the north of Berry Street do not have a consistent and or compliant above podium setback to Pacific Highway;
- The Applicant has demonstrated that the proposed setback to the Pacific Highway will not significantly alter the sky views currently available on the Pacific Highway frontage of the site. (refer to Figure below)
- The Applicant has further advised that “*requiring an additional 1.2m setback in the north western corner of the site would also restrict the functionality of the building and the office floorplate. The provision of a linear core on the northern side of the building has been designed to be as efficient as possible, however, warrants extensive length which places pressure on the edges of the building. As observed, the core occupies much of the northern wall and setbacks have been adopted to reflect this. Stepping back the building further in this corner would require significant*

amendments to the building core which would impact accessibility, structural changes, and the overall functionality of the building.”

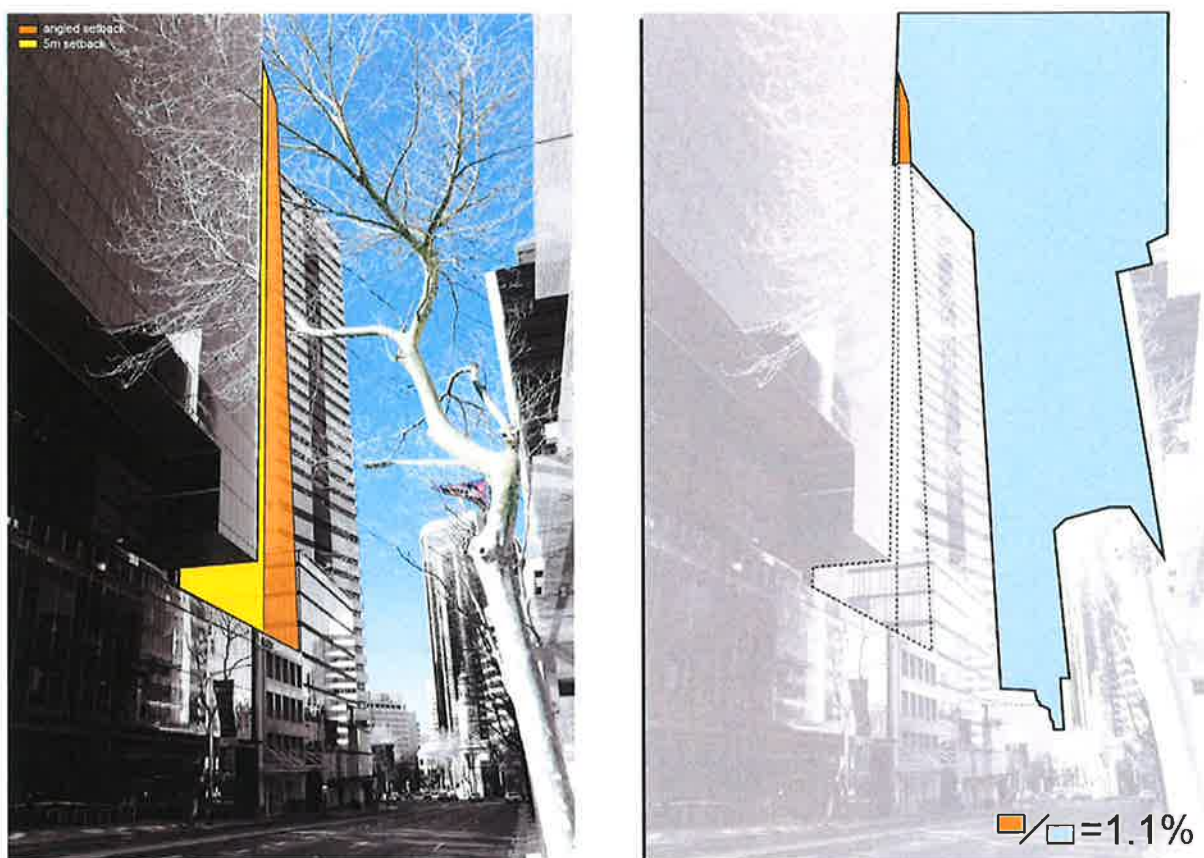


Figure - Sky view assessment – looking south at the corner of Pacific Highway and Berry Street
Source: Woods Bagot

10.0 SECTION 7.11 CONTRIBUTIONS

The existing building at 173 Pacific Highway which is proposed for demolition has a GFA of 1,330m² and the proposed building at 173 Pacific Highway has a GFA of 10,287m².

With the proposed through site pedestrian link the commercial GFA of the existing building at 116 Miller Street will be reduced from 9,400m² to 9,025m², a reduction of 375m². The retail GFA of the existing building at 116 Miller Street will also be reduced from 1,160m² to 875m², a reduction of 285m².

Credit will be given for the 1990m² of commercial and retail GFA across the site that will be demolished.

Section 7.11 Contributions in accordance with Council's S7.11 plan are warranted and based on the increase in non residential gross floor area. The total contribution is calculated at \$1,172,942.74. The contributions are detailed in the attached conditions.

11.0 DESIGN & MATERIALS

MATERIAL FINISHES

1. **CE:01 In-Situ Concrete Wall (NORTH & SOUTH)**
Reference: Off Form Finish
Colour: Grey
2. **CE:02 In-Situ Concrete Wall (BLACK BOX/WEST)**
Reference: Iron Oxide concentrated pigment added into concrete mix to achieve intergrad colouring
Colour: Black
3. **SE:01 Steel Column with Decorative Finish**
Reference: Semi-gloss water based enamel (on zinc coated steel) - Column Exterior
Colour: Silver Metallic
4. **SE:02 Steel Column with Decorative Finish**
Reference: Semi-gloss water based enamel (on zinc coated steel) - Brace Exterior
Colour: Silver Metallic
5. **CU:01 Curtain Wall System - Type 01 (EAST & WEST)**
Reference: -Black aluminium framing (bind mullions)
-Vertical vision panel (windows) with insulated glass unit (GL:01)
-Spandrel 'shadow box' panel at slab and ceiling level with insulation (IN:01) and black aluminium panel behind glass
-External drenches in spandrel zone
Colour: Black, Yellow, Orange, Red
6. **CU:02 Curtain Wall System - Type 02 (SOUTH)**
Reference: -Black aluminium framing (bind mullions)
-Vertical spandrel panels with solid aluminium sheet cladding. Type 01
Colours: Dark Grey and Black
-Vertical vision panel (windows) with insulated glass unit (GL:02)
-Spandrel 'shadow box' panel at slab and ceiling level with insulation (IN:01) and black aluminium panel behind glass
-External sunshade screen in black, yellow, orange, and red colours
-External drenches at 2meters centres
7. **LV:01 Aluminium Mechanical Louvres (FACADE)**
Colour: Black
8. **LV:02 Aluminium Mechanical Louvres**
Colour: Silver Grey

The removal of the cantilevered element from the amended proposal will assist in reducing the bulk of the building and ensure compliance with the building height controls that apply to the site.

The eastern and western facades of the tower have been designed with a continuous horizontal slatted screen constructed from aluminium black louvres to control sunlight. The southern facade is patterned with modular glass panels and black aluminium spandrel 'shadow box' panels, which shape the façade and provide visual interest. The off form in-situ concrete wall panels on the exposed northern façade will ensure there are no amenity impacts with the adjoining building at 177 Pacific Highway.

12. ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | |
|--|-----|
| 1. Statutory Controls | Yes |
| 2. Policy Controls | Yes |
| 3. Design in relation to existing building and natural environment | Yes |
| 4. Landscaping/Open Space Provision | Yes |

5.	Traffic generation and Carparking provision	Yes
6.	Loading and Servicing Facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

13 Submitters

Two submissions were received against the original proposal raising concerns about: *height, setbacks, public benefit, cantilevered element, overshadowing, sunlight, air ventilation and views*. No submissions were received to the amended proposal.

These concerns are summarized and addressed below:

Height and cantilevered element - The amended proposal removed the cantilevered element from the eastern façade of the building and ensured compliance with the building height controls that apply to the site.

Public benefit - The amended proposal also includes the provision of a through site pedestrian link between Pacific Highway and Miller Street which will provide a significant public domain benefit.

Amenity for adjoining property - There are no easements over the subject site in favour of 177 Pacific Highway relating to a right to views and light through the southern glazing of this building. The removal of the cantilevered element will ensure the eastern façade of the proposed building generally matches that established by 177 Pacific Highway ensuring a reasonable level of amenity is maintained for this property. The eastern façade of 177 Pacific Highway will retain existing light and views as it will not be affected by the proposed development.

Overshadowing - The solar diagrams demonstrate that the proposal will not affect solar access to the residential zones outside the North Sydney CBD or result in a new increase in overshadowing to the Special Area zone on the eastern side of Miller Street.

14 Conclusion

The proposed development has been assessed with respect to the objects and relevant Sections of the EP&A Act, as well as the objectives, merit based outcomes, development standards and prescriptive controls of various State Environmental Planning Policies, the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013. Other plans and policies were also considered such as the North Sydney Section 7.11 Contributions Plan.

The Council's notification of the original proposal attracted two submissions. Council's notification of the amended proposal attracted no submissions. The concerns raised have been primarily addressed through the amended proposal.

The amended proposal removed the cantilevered element on the eastern façade and is compliant with the height of building development standard that applies to the site. The amended proposal has demonstrated that there will be no additional overshadowing of the land identified as "Special Area" or land known as "Don Bank Museum" in the North Sydney Local Environmental Plan 2013.

The amended proposal provides a through site pedestrian link between Pacific Highway and Miller Street with revision of building at 116 Miller Street that would result in a significant public domain benefit to both frontages of the site.

The proposed variation to the above podium setback control in the North Sydney Development Control Plan 2013 is supported in the site circumstances.

Roads and Maritime Services (RMS) have requested, via condition, the removal of the proposed awning to the Pacific Highway frontage of the site as it is located within an area that has been acquired by RMS for potential future road widening. Whilst acknowledging this condition, the awning would provide a significant public benefit to the proposed development as it would provide weather protection and improved pedestrian comfort. An awning that can be detached from the main building is recommended to be provided along the Pacific Highway frontage to the site. Should RMS widen Pacific Highway in the future, this awning could easily be removed through a deed of agreement provided to the RMS.

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

RECOMMENDATION

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

THAT the Sydney North Planning Panel, as the consent authority, grant consent to 2019SNH020 – North Sydney - Development Application No. 68/19 for the construction of a 31 storey commercial office building at No. 173 Pacific Highway and alterations and additions to the existing building at No. 116 Miller Street including a through site link between the Pacific Highway and Miller Street frontages of the site, subject to the attached conditions.

Prepared by:



Luke Donovan
SENIOR ASSESSMENT OFFICER

Endorsed by:



David Hoy
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