

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSNH-191
<b>DA Number</b>	19/21
<b>LGA</b>	North Sydney
<b>Proposed Development</b>	Demolition of all existing buildings and works, and construction of a commercial building with 57 levels above ground (including plant) and a basement of 7 levels.
<b>Street Address</b>	110-122 Walker Street North Sydney
<b>Applicant/Owner</b>	Stockland Development Pty Ltd C/- Urbis Pty Ltd
<b>Owner</b>	The Trust Company Limited
<b>Date of DA lodgement</b>	22 January 2021, original application, 12 August 2021, first amendment, 19 January 2023, second amendment
<b>Number of Submissions</b>	49
<b>Recommendation</b>	Approval
<b>Regional Development Criteria (Schedule 4A EP&amp;A Act)</b>	Capital Investment Value (CIV) greater than \$30 million (\$498,630,000.00)
<b>List of all relevant s4.55(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• North Sydney LEP 2013</li> <li>• SEPP (Infrastructure) 2007</li> <li>• SREP (Sydney Harbour Catchment) 2005</li> <li>• SEPP 55 - Contaminated Lands</li> <li>• North Sydney DCP 2013</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ol style="list-style-type: none"> <li>1. Conditions of Consent</li> <li>2. Report of the North Sydney Council Design Excellence Panel (09/11/2021)</li> <li>3. Architectural Plans - Hassell (02/02/22)</li> <li>4. Clause 4.6 request - Urbis (21/12/21)</li> <li>5. Design Report Addendum - Hassell (06/08/21)</li> <li>6. Design Report Addendum – Hassell (02/02/22)</li> <li>7. Visual Impact Assessment - Urbis (December 2020)</li> </ol>
<b>Report prepared by</b>	Jim Davies, Executive Assessment Planner, North Sydney Council
<b>Report date</b>	04 February 2022

### 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? **Yes**

**Special Infrastructure Contributions**

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

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

**No**

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**Conditions**

Have draft conditions been provided to the applicant for comment?

*Note: 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*

**Yes**

## EXECUTIVE SUMMARY

The application, as amended, seeks consent for:

- Demolition of all existing buildings and structures on-site,
- Construction of a commercial building of 57 levels, including lower ground, ground, and mezzanine levels and 51 habitable levels above ground, including a roof garden, restaurant and bar on level 51, with an additional 3 levels for plant and lift overruns.
- A 7-storey basement accessed from Little Spring Street (accessed from Walker Street in the original application), comprising:
  - 163 car parking spaces for commercial office and retail use (including visitor and car share spaces),
  - 642 bicycle parking spaces, including 172 visitor spaces in the basement and 20 spaces on the Walker Street footpath, and 450 spaces for occupants in the basement,
  - End of trip facilities, comprising 448 lockers and 46 shower stalls, and
  - Access and loading for two medium rigid vehicles and two small rigid vehicles, and ten courier parking bays.
- Upgrade of a through-site pedestrian link from Walker Street to Little Spring Street, a space to be jointly redeveloped with the proposal for 100-102 Walker Street (DA 32/22, submitted 27 January 2022) the site's southern neighbour, connecting to No. 1 Denison Street and the Victoria Cross Metro Station (under construction).
- Landscaping at ground level, on the top-of-podium terraces and on level 51, a 'rooftop' terrace, a 'green wall' proposed on the central section of the façade to Little Spring Street, from ground level to level 25, and partial 'green wall' treatment of the Walker Street podium-facade.
- Rooftop and podium business/building identification signage zones.

The proposed building has a maximum height of RL 270.3 (originally RL 283.85), or 210.3m measured from the ground floor. As originally submitted, the building also had 57 levels. Compared with the subject design, the first-submitted did not have a mezzanine and included two habitable levels above the RL 260 height limit, which have been removed.

The building comprises 68,318m<sup>2</sup> (75,135m<sup>2</sup> in the original proposal) of gross floor area (GFA) for commercial, business, retail and food and drink premises. This represents a floor space ratio of 29.7:1.

Council notified the proposal on two occasions. A total of 49 submissions were received.

46 submissions were made during both notification periods. During the first period 38 submissions were made, including from four precinct committees. The second, due to the application being amended, yielded another 8 submissions including a petition signed by 71 residents or owners of the Alexander Apartments at 79-81 Berry Street, North Sydney. Another 3 submissions and additional information from a previous correspondent were received between November 2021 and 4 February 2022.

Some of the key issues of concern and grounds of objection raised during both exhibition periods were:

- Non-compliance with height and tower setback controls.

- Inadequate building separation.
- The tower dominating the skyline and streetscape.
- Vehicular entry and exit on Walker Street.
- Loss of views, particularly from the apartment building at 77, 79-81 Berry Street.
- Overshadowing and loss of daylight of some apartments at this address.
- Impact on the privacy and general amenity of residents in this apartment building.

Issues raised by submissions have been considered in the application's assessment.

Council's Design Excellence Panel considered the proposed development on three occasions:

- before the DA was lodged,
- following submission of the DA, in March 2021, and
- following the applicant amending the application, in November 2021.

At the conclusion of the third meeting, the Panel's report (Attachment 2) made the following key comments regarding the design of the proposed building.

*Principal context and character elements which should be addressed are listed as follows:*

- *Walker Street ground level activation*
- *Little Spring Street activation*
- *Tower setbacks above podium to respond to adjoining sites and to create a tower in the round*
- *Podium treatment distinguished from the tower form to create an appropriate scale at street level*
- *Through site link coordinated with southern neighbouring site*

The recommendations and comments of the panel are considered in detail, later in this report.

The report of the Panel was sent to and discussed with the applicant, resulting in several outstanding matters which at the time prevented Council making a recommendation of approval for the Panel's meeting scheduled for 8 December 2021.

Subsequently, on 8 December 2021, the Panel was briefed a second time regarding the application, when Council and the applicant agreed to discuss further design refinements to resolve key issues. This has since occurred resulting in adjustments being made to the application in December 2021, January and February 2022. It is this application that is the subject of this report.

The application has not been renotified, as the resultant amendments are minor and do not adversely affect the environment or neighbourhood amenity. This is consistent with Council's Community Consultation Protocol. The amendments make the application more consistent with the planning framework applicable to the site.

In summary, the issues resolved in the latest amendment of the plan are:

- Resolution of the design and means of providing public access to and ongoing management of the pedestrian link are proposed. The link is to be shared with redevelopment of neighbouring property to the south, at 100-102 Walker Street,

- Maintenance arrangements for the 'green walls' on the western and eastern facades of the proposed building, a statement of commitment (Attachment 7) having been submitted by the applicant including information from the provider of the green walls, Fytogreen, with the aim of addressing Council's concerns regarding ongoing sustainability of the proposed green walls,
- An adjustment of tower setbacks, increasing the southern setback from 3.0m to 4.0m, and decreasing the eastern setback from 4.5m to 4.0m, resulting in a 42m<sup>2</sup> GFA (a 22m<sup>2</sup> increase of commercial floor area) increase from 68,276 m<sup>2</sup> to 68,318m<sup>2</sup>.
- Addition of a high-level awning over the pedestrian entry to the building from Little Spring Street, to improve pedestrian amenity by reducing down-draft.
- Activation and animation of the podium, overlooking Walker Street and the pedestrian link, and
- The dominance and excessive proportion and distribution of terra cotta panels which partly finish the western façade have been reduced, by introducing 'columns' of glazing to separate terra cotta elements, resulting a considerably improved appearance while reducing the bulk and scale of the building when viewed from the west, and retaining the verticality of the building, a key aim of the design.

The following issues were discussed, however relevant aspects of the proposal remain unchanged. Except for the height-breach (addressed below), conditions are recommended to address these (and other) matters.

- The northern section of the podium remains in excess of the height supported by the Design Excellence Panel and inconsistent with applicable provisions of the North Sydney DCP 2013,
- Awnings being lowered on the Waler Street frontage, to comply with the DCP, and
- Removal of bicycle racks from the Walker Street footpath and revision of bicycle storage within the building.

A request to exceed the building height maximum of RL 260 has been received from the applicant, seeking to justify contravening the standard by 10.3m (3.96%). The request is considered well founded, having established that compliance is unnecessary and that environmental planning grounds are sufficient to justify the contravention. The request results in no effective increase in yield.

The provisions of cl. 4.6 have been satisfied and consent is able to be granted despite the proposed development's non-compliance with the height of building development standard.

Should consent be granted, the Panel may assume concurrence of the Secretary of the Department of Planning Industry and Environment, the proposal raising no matters of regional or state planning significance.

The proposed development has been assessed with regard to applicable provisions of the EP&A Act, State Environmental Planning Policies, the North Sydney Local Environmental Plan 2013 (the LEP), the North Sydney Development Control Plan 2013 (the DCP) and the North Sydney Local Infrastructure Contributions Plan and found to be generally acceptable.

Approval is recommended, subject to the conditions attached to this report. In summary these conditions are necessary to ensure acceptable environmental impact, acceptable public safety,

convenience and amenity, and compliance with certain provisions of the North Sydney Local Environmental Plan and Development Control Plan, and other relevant policies.

# THE PROPOSAL

## Evolution of the application

### Design Excellence Panel: First Review

In August 2020, Council's Design Excellence Panel also reviewed the proposal and proffered the following advice to the applicant:

- For the ground plane, entry points and paths could be made more legible and clarify the 'public versus private hierarchy'.
- There would be limited pedestrian amenity due to a lack of awnings.
- A lack of required setbacks is not supported, reducing the amount of space available to the public.
- A key reason the driveway off Walker Street was not supported was due to it necessitating a 'blank wall experience' along this main façade to one of North Sydney's main thoroughfares, for pedestrians and vehicles.
- Revised design of the main entrance was also recommended, as it provided an uncomfortable environment and would be in shade most of the day.
- The 'green wall' was supported, but perhaps not at ground level. A lack of detail was noted by the Panel, regarding creating activation along Little Spring Street.
- Generally, more attention to creating active street edges, including the through site link, was deemed necessary.
- The height breach was viewed unfavourably, given the substantial increase in the permitted height.
- The issue of setbacks of the tower and podium was left to Council to address.

### Pre-lodgement meeting with Council

The applicant presented a proposal of 56 storeys to Council at a meeting held in September 2020. The design comprised a GFA of 77,262m<sup>2</sup> in a tower and podium form which made provision for upgrading an existing pedestrian through site link (shared with neighbouring property at 100-102 Walker St) between Walker Street and the forthcoming Victoria Cross Metro Station. The top of the building reached a height of RL 284.3, 24.3 metres over the permitted height of RL 260. The scheme proposed space for retail and commercial activities and included a 7-level basement for parking and services, with rooftop retail and 'other' amenities.

Council advised:

- Full compliance with the height limit was required, which had recently been increased via an LEP amendment from RL 175 to RL 260.
- Minor variations to the height maximum could be considered, only for plant and the like concealed by a rooftop feature as provided for by cl. 5.6 and in compliance of cl. 6.3 of the LEP.
- Setbacks of podium and tower were also expected to be complied with, noting recently approved developments at 100 Mount Street and 86-88 Walker Street respectively having tower setbacks of 4.5m and 2.8-5.5m.
- Regarding setbacks, the applicant was also advised to thoroughly analyse the built form context of the locality, in determining appropriate building envelope parameters.
- Setback analysis should also have regard to particular site constraints and the location's context.

- Variations of setbacks would only be considered if there was clear public benefit in doing so and would not be supported purely on the basis of maximising the floor plate.
- Regarding the through site link, Council noted:
  - The link should be better-resolved, and relate to the adjoining site (100-102 Walker Street),
  - The stairs could be broken-up into several flights and relocated to form a more gradual treatment of grades (potentially in combination with ramps, or gentle grades along the length of the walkway).
  - Installation of a lift(s) was also recommended, to negotiate the change in levels between Walker Street and Little Spring Street, thus providing direct and universal access for the public.
  - Increasing the setback of retail spaces adjacent the 6m wide link by 1.5m to make the space more usable and enable creation of a colonnade for amenity and weather protection.
- Public domain works would be required on streets adjacent the site.
- That vehicle and servicing access was preferred from Little Spring Street.
- A shared access with 100-102 Walker Street was also recommended for consideration, to limit the number of access points onto Little Spring Street, as was significantly reducing the number of proposed parking spaces (then 180, reduced to 163 for the DA) due to the direct access and proximity to the Metro station.
- Providing a continuous awning over the Walker Street footpath.
- Except for awnings, no encroachment of public streets will be supported.

### **DA Lodgement & 1<sup>st</sup> Sydney North Planning Panel Briefing**

The DA was lodged and again considered by Council and the Design Excellence Panel. The Sydney North Planning Panel was briefed regarding the application on 1 April 2021.

In summary, many of the matters raised during pre-lodgement had not been addressed. The submitted proposal involved a significant breach of the height control and proposed setbacks that were markedly at variance with the North Sydney Development Control Plan 2013 (the DCP):

- 57 storeys at a height of 283.85m - a breach of 23.83m.
- 75,135m<sup>2</sup> GFA for commercial, retail and refreshment outlets.
- A 7-level basement with services and parking for 170 cars and 622 bicycles.
- The through site link with 3m allowed (a setback) for the link with another 3m to be provided by the southern neighbouring property at 100-102 Walker Street.
- The green wall from ground level to level 25 with little or no setback to Little Spring Street, and landscaping at street-level, on a terrace atop the podium and on the roof.
- Tower setbacks of 2m, to Walker Street and Little Spring Street of 3 m (except the green wall section, with the lift core within).
- A 3m setback was proposed to the north.
- The vehicle access was proposed from Walker Street.

A letter requiring amendments to the application was sent to the applicant on 5 February 2021, requesting:

- A revised request to vary the height standard.
- Details of the existing three buildings' floor area, for calculating local infrastructure contributions.

- Further justification of proposed setback variations.
- Details of encroachment of the 'green wall' and its management, including irrigation, drainage and other requirements - a 25 level vertical planter, screening the buildings lift core, proposed to have a zero setback to Little Spring Street.
- More detailed shadow diagrams and analysis.

### **Design Excellence Panel: Second Review**

The Panel considered the first edition of the DA in March 2021 and provided this advice to Council and the applicant:

- Façade design and articulation were considered to be of high quality.
- The design lacked retail frontage and an excessive lobby area.
- Vehicle entry off Walker Street was considered inconsistent with the character desired for Walker Street (to again be a pedestrian-oriented street, according to Council strategies for the CBD).
- The service-lane function of Little Spring St was noted, as was its use by nearby development for vehicle access.
- Adjoining towers set a precedent for setbacks of the subject proposal's tower. The 2m setback to Walker Street proposed was considered out of context with the 5-6m setbacks of nearby towers.
- The height breach was again not supported.
- Any element being above the height limit should be restricted to non-habitable rooms and spaces, such as for lift and plant machinery.
- The tower was considered non-compliant with cl 6.3 of the LEP, in that the building did not adequately minimise overshadowing of residential areas outside the CBD.
- Inadequate details were provided as to how public access to the rooftop garden could be guaranteed (the garden was offered as a 'public benefit', or 'trade-off' in return for breaching the height limit).
- In contrast, the garden on the building's roof was considered less of a public benefit and more of a commercial benefit, in the Panel's opinion, for office and refreshment premises at the top of the tower.
- The lobby is large and some it would be better utilised as retail area to improve Walker Street's activation.
- Further clarification was sought regarding the type of glazing to be used. Glazing should be as clear as possible.
- Modulating the awning's height along Walker Street is required, to ensure rain (including wind-driven) protection and being able to integrate with awnings of adjacent sites.
- Adequate lighting of the through site link was noted as essential.

### **Amended application**

Amendments to the application were submitted in August 2021, which were notified during August and September 2021. Key changes made to the application included:

- Relocating the vehicular access from Walker Street to Little Spring Street,
- Rearranging the ground plane and façade facing Walker Street
- Reducing the overall height of the building,
- Relocating habitable/commercial floor space to below the RL 260 height limit prescribed by the LEP.

## **Design Excellence Panel: Third Review**

The amended application was tabled at a meeting of the Panel on 9 November 2021. Key matters discussed and the Panel's recommendations are outlined in a later section of this report. A complete copy of the Panel's report is attached to this report (Attachment 2).

### **2<sup>nd</sup> Briefing of the Sydney North Planning Panel**

The Panel was briefed a second time regarding the application's progress toward determination on 8 December 2021. It was intended that the application would be determined at this meeting. Only a recommendation of refusal was possible, as Council's detailed assessment and certain aspects of the Design Excellence Panel's advice, which combined revealed that key issues remained unresolved. As discussed with the Panel at the briefing, a number of matters remained outstanding that could not be acceptably addressed via conditions of consent.

#### **2<sup>nd</sup> application amendments**

Following the briefing, discussions were held with the applicant. As a result, the application was amended a second time on 19 January 2022. Following 'last minute' negotiations, further amendments were received on 2 February 2022.

The majority of matters have now been addressed to Council's satisfaction, meaning the proposal is, subject to conditions, sufficiently consistent with the planning framework that applies to the site, and able to be approved.

How each issue has been addressed by the applicant, or is recommended to be addressed by conditions, is outlined below.

#### **1. Diversifying the podium to lessen its bulk and scale and contrast its appearance with the tower's.**

The applicant agreed to examine means of animating and articulating the podium, such as additional terraces, operable openings or additional landscaping, to give it more life, improve its scale and lessen its bulk, and provide a degree of natural ventilation.

A discussion was held with the applicant's architects, Hassell, on 2 December 21. It was agreed that the podium would be animated by provision of judiciously located operable windows.

The Design Report Addendum of 2 February 2022 (Attachment 5) details the operable elements and workings of the eastern and southern podium facades. On the architectural drawings of these elevations (Attachment 3), the operable panels are indicated by diagonal dotted lines across glazed panels.

#### **2. Reducing the western façade's visual impact.**

As discussed at the briefing, there were still details to be resolved for the ongoing success of the green wall and other vertical gardens, on Little Spring Street and Walker Street. Council had previously requested that further details regarding the green walls be provided and that modification of the western façade be considered, to lighten this

façade by various design means, to reduce the dominance of the façade's expanses of terra cotta tiles.

On 2 February 2022, the applicant submitted revised plans to alter the western façade's design and submitted further details in support of the green walls, including a 'letter of commitment' from the applicant (Attachment 7) with further detail regarding design, installation, and maintenance of the green walls/vertical gardens. The Supplementary Design Report (Attachment 5), further illustrates the design, outlines the design process and maintenance procedures. This information confirms that delivery and maintenance of this innovative feature of the development is possible.

Conditions are recommended for submission of a fully detailed management plan for vertical landscaping proposed on the Walker Street and Little Spring Street elevations, and the applicant and/or the building-owner entering into an agreement with Council to provide for maintenance and public indemnity over Little Spring Street and Walker Street, in perpetuity, based on a risk assessment, to be independently conducted regarding potential to compromise or pose a risk to public safety, during installation and throughout the operational life of the building.

**3. Unifying the design of the southern pedestrian walkway (aka 'through site link') with the neighbouring site and 100-102 Walker Street, improving its amenity and accessibility.**

At the time of the briefing, plans showing a complete design for the entire space had not been provided (over the 3.0m on each side of the property boundary that make up the walkway). The Panel advised that other matters such as legal guarantee of public access, maintenance and the like also needed to be addressed.

Amended plans were submitted in January 2022, later revised in February, which provide a unified design over the entire width of the proposed pedestrian link (Plans No DA1107 Rev 4, DA1109 Rev 4 and DA2012 Rev 4). The link is further illustrated in the Supplementary Design Report (Attachment 5). The amended design is based on consultation with the developer of the adjoining site and further wind modelling.

The design addresses access via a new, single stairway flanked by landscaping at the western end of the link, to Little Spring Street. The redesign shows suitable finished levels and drainage, and a degree of weather protection, while keeping the space open to the sky. Good access into each building and suitable activation of the space are also achieved. Universal access is provided within the lobbies of the subject proposal and the southern neighbour, via lifts between lower ground (Walker Street and pedestrian link) and ground (Little Spring Street) levels.

In this regard, detailed design and development of the pedestrian walkway, public access to it, illumination at night, its ongoing management and maintenance et. al. must be provided in a coordinated manner, by the property proprietors that jointly own the planned pedestrian walkway to be provided via an easement or right of way in Council's favour.

Further, some form of legal instrument should also provide for appropriate access to the lift, or lifts, in the lower ground and ground level lobbies of one or either building on

each side of the walkway, or both buildings, to ensure universal access is provided for people with disabilities, to travel between Little Spring Street and Walker Street, should members of the public be unable to use the stairs proposed at the western end of the walkway.

A condition is recommended to apply to the site and the adjoining land (lot 1 DP 542915, at 100-102 Walker Street) and by reference to Plans No DA1107 Rev 4, DA1109 Rev 4, and DA2012 Rev 4, per section 4.17 (1) (f) Environmental Planning & Assessment Act, which allows conditions to be imposed to require works (whether or not being works on land to which an application relates) relating to any matter referred to in section 4.15 (1) of the Act applicable to the development.

**4. Redesign the podium, to:**

- (a) improve activation of Little Spring Street, the southern walkway and Walker Street,**
- (b) repositioning the lift and services core,**

**Paragraphs (a) and (b) were resolved.**

**(c) reduce the height of the northern section of the podium by one storey.**

The applicant has reiterated their submission that the height of the northern podium section is in proportion with the rest of the building's composition and can integrate with future development of land at 124 Walker Street (the northern neighbour). This building has the appearance of being relatively recently constructed but is around 40 years old, having a new curtain wall system installed around 10 years ago.

The applicant had reiterated their opinion to the Panel, that the podium's height is consistent with applicable DCP provisions.

Council's urban designers and development planners maintain the view that the Design Excellence Panel's advice should be applied i.e. – that the northern podium height should be lowered, by the equivalent of one storey (around 4.0m).

The applicant submits that this section of the building has 5 storeys. However, its height at the northern boundary is 22.95m. Dividing this by 4.0m (the typical floor to floor height of the podium) yields an equivalent height of 5.7 storeys, closer to 6 than 5. At the southern end of the podium's northern section, its height is 24.4m (in each measurement an extra 1.4m has been added for the terrace balustrade on top of the podium), which equates to 6.1 storeys.

In assessing this design element, it is acknowledged this amendment may result in losing one or half a level of lettable floor area in the podium. However, it must also be noted that the design of the development as a whole, has maximised the amount of lettable floorspace, via variations to tower setbacks, and Council's support of the request to contravene the maximum height standard. This loss of floor area in the podium is minor, and immaterial in the overall context of the proposal.

The diagram on page 42 of the Design Report Addendum of 6 August 2021 (Attachment 6) hypothesises redevelopment of the neighbouring land at 124 Walker Street, on a corner with Berry Street, will build a podium of a similar scale and height as proposed.

Such a design outcome at this important intersection would be unacceptable. The podium would be clearly out of proportion and scale with other buildings (existing and likely future) at this intersection and would encourage further erosion of the DCP's efficacy, while also thwarting Council's efforts to re-create Walker Street as a more human-scaled, attractive and pedestrian-friendly space than it is now.

**5. Increasing the tower's southern setback.**

This matter has now been resolved via further negotiation.

Plans have been submitted to amend the tower setbacks to be 4.0m from the southern and eastern boundaries. Tower setbacks to the north and west remain unchanged at an average weighted 3.2m to the north and a weighted average of 3.6m to the west. Setbacks are examined in some detail later in this report.

**6. Bicycle parking/storage for visitors.**

The plans have not been amended to remove the bike racks from the Walker Street footpath and the number of visitor bicycle spaces in the building has been increased to 172 spaces. The number of visitor spaces required is 191, a shortfall of 19 spaces. The number of occupant bike parking spaces has been increased to 450, whereas 448 are required, leaving a surplus of two spaces.

The total number of spaces required by the DCP is 639, for occupants and visitors. The total number provided within the building is 622, an overall deficit of 17 spaces.

A condition is recommended to ensure the number of bicycle parking spaces provided for occupants and visitors complies with the DCP and to remove the bike racks from the Walker Street footpath.

**7. Reconfiguration of the Walker Street frontage to improve street activation.**

The applicant provided information which demonstrated that this had been tested, resulting in a poor layout of retail space with unsuitable access from the Walker Street footpath. No design amendments were required.

**8. Redesign the podium, to:**

- (a) improve activation of Little Spring Street, the southern walkway and Walker Street,**
- (b) repositioning the lift and services core,**

In response to paragraphs (a) and (b) the applicant presented information to Council, demonstrating that several lift core/pedestrian and vehicle access configurations were tested in arriving at the current design. The submitted design minimises potential impact on street activation of the podium's and lift core's design and, in the circumstances (site constraints and design fundamentals), optimises pedestrian activation and connectivity on each of these frontages. The proposal is considered acceptable in this regard.

**9. The tower's response to climatic and amenity conditions.**

The applicant presented information which shows how each façade is to be detailed, to respond to two key conditions:

- Variable climatic conditions over the height and breadth of each façade, and
- Reasonably retaining privacy and other amenities of residents of the neighbouring apartments at 79-81 Berry Street.

Council is satisfied that the design will suitably achieve these outcomes.

## **DEVELOPMENT THE SUBJECT OF THIS REPORT**

It is this revised development resulting from the second amendment, that is the focus of this report and for which consent is sought.

The current application is described below:

- Demolition of all structures on-site.
- 57 above ground levels (including an equivalent 3 levels of plant at the top of the building) with a maximum height of 270.3m - a breach of 10.3m (3.96%).
- 7-level basement with vehicle access from Little Spring Street, comprising:
  - 163 car parking spaces, for commercial, retail and courier use,
  - 642 bicycle parking spaces, including 172 visitor spaces in the basement and 20 spaces on the Walker Street footpath, with 450 spaces for occupants, and
  - 448 lockers and 46 showers for cyclists, walkers, runners, et.al.
- Loading and services on a mezzanine level for trucks and smaller service vehicles.
- 68,318m<sup>2</sup> gross floor area for commercial floor space, retail and refreshment outlets, on 52 levels.
- A pedestrian link from Walker Street to Little Spring Street, to connect with a pedestrian walkway through 1 Denison Street to the Victoria Cross Metro Station (under construction). The other half of the laneway is to be provided by development of land south of the site at 100-102 Walker Street.
- Rooftop and podium business (or building) identification signage zones.
- Landscaping including:
  - retention of trees and planting a new tree on Walker Street,
  - a rooftop garden shrouded by a glass wall, partly enclosed by a canopy,
  - vertical gardens on the Walker Street façade, and
  - a 'green wall' on the Little Spring Street (western) façade, with a 375mm setback from ground level to level 25, concealing the lower-level lift and services 'core'.

Architectural plans (Attachment 3) illustrate the proposed building. To complement these plans, address compliance with applicable planning provisions and potential environmental impacts of the proposal, several documents accompanied application and subsequent amendments, addressing:

- Access compliance with the Disability Discrimination Act,
- Acoustic impacts
- Arboricultural impacts,
- BCA compliance,
- Bicycle parking,

- Civil engineering report and plans,
- Clause 4.6 request (revised) to contravene the height standard,
- Construction management,
- Construction traffic management,
- Crime prevention through environmental design assessment,
- Architectural design,
- ESD,
- Fire safety,
- Geotechnical impacts,
- Green travel,
- Landscape design,
- North Sydney office market conditions,
- Preliminary site investigation (contamination),
- Public art strategy,
- Reflectivity impacts,
- Statement of environmental effects,
- Shadow analysis - Alexander Apartments,
- Shadow diagrams, impacts within and outside the North Sydney CBD,
- Traffic and transport impacts,
- Visual (views and landscape) impacts,
- Waste management, and
- Wind-related environmental impacts.

## **SITE AND LOCALITY**

### **Site**

The site is Lot 1 DP777779, Lot 101 DP730995, and lot 8 DP 304 and 110-122 Walker Street North Sydney is its street address. Situated on the western side of Walker Street, the site is rectangular in shape with a Walker Street frontage of about 63m and a depth of 36.6m between Walker Street and Little Spring Street. The site's area is about 2,305m<sup>2</sup>. The site's Walker Street frontage is oriented towards the east-southeast.

There is no vegetation of note on the site. Six London Plane trees are on the footpath on Walker Street immediately adjacent the site. Five of these trees are mature.

The land generally falls from northwest to southeast with a fall of 5.25m and an average slope of 7.2%. The site is able to drain to a newly constructed grated gully pit on Walker Street adjacent to the site.

Currently occupying the site are three commercial buildings of varying height with basement level parking. All three basements are accessed from Little Spring Street on the site's western side.

### **Locality**

The image below (Figure 1) shows the site's location. The mixed-use building with a rectangular podium and circular tower west (left) of the site includes the Alexander Apartments in the (estimated) 26 level tower section, with 9 levels of commercial and retail premises below.

Southwest of the site is the recently completed building known as 1 Denison Street.

On the site's southern boundary is 100-102 Walker Street, the subject of a development application (DA 32/22) lodged in January 2022. As this application is also for regional development it is expected to be determined by the Panel, probably later in 2022. South of 100 Walker Street is the development at 86-88 Walker Street, under construction.

East of the site on Walker Street are several office buildings of varying age and height.

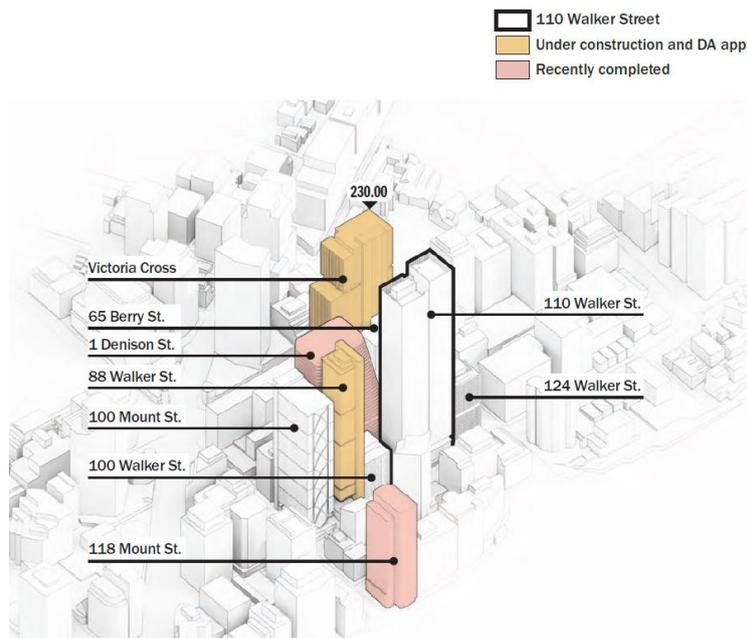


**Figure 1: Aerial image of the site (red outline) and surrounding development (Near Map)**

### **Recent Development in the Locality**

In a broader context, as shown in Figure 2, other proposed, recently approved and under construction development includes:

- The Victoria Cross Metro Station and over station development
- 1 Denison Street
- 100 Mount Street
- 118 Mount Street



**Figure 2: The proposed development (white) and recently approved and completed development near the site (Hassell Architects)**

### North Sydney Centre Public Domain Strategy

Figure 3 shows the public domain around the site, including elements of Council’s adopted Public Domain Strategy, namely its pedestrian routes and key nodes. The diagram shows the site and the pedestrian laneway between the site and the neighbouring site at 100-102 Walker Street to the south, the image identifying a ‘key node’ where the pedestrian laneway terminates at Walker Street.

Other ‘key nodes’ the strategy seeks to improve pedestrian connectivity between in the “North Sydney Laneways Precinct” (of which the site is a part) are Berry Square, north west of the site, Brett Whiteley Place to the south and the Victoria Cross Metro Station to the west.

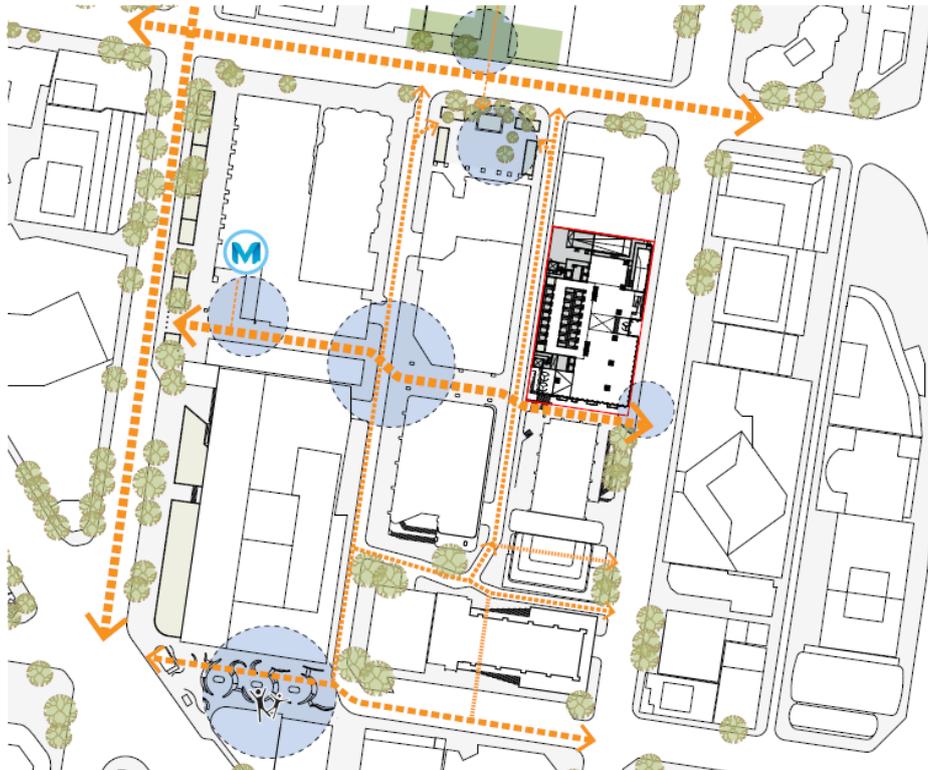
Denison Street is the main north-south connection through the precinct with Little Spring Street planned to be upgraded and to continue to perform a shared function, as a walkway and provider of vehicular access to development either side. Recently approved development gains vehicle access from Little Spring Street in the precinct, as proposed by the subject development.

The strategy also nominates **Walker Street** as a key route for improving pedestrian amenity, while acknowledging its role as a link in the local road network and connecting key routes of the metropolitan road network, existing and planned.

## North Sydney Laneways/Public Domain Strategy

North Sydney Public Domain strategy calls for a permeable and connected ground plane that is walkable and green. 110 Walker Street has contributed to the through site link along its southern boundary with an activated frontage supporting retail offerings, end of trip access and top of tower entry. This allows pedestrians, in particular those on Walker Street and further to the east, to cut through to other parts of the CBD.

-  Victoria Cross Metro
-  Site boundary
-  Pedestrian link
-  Key nodes



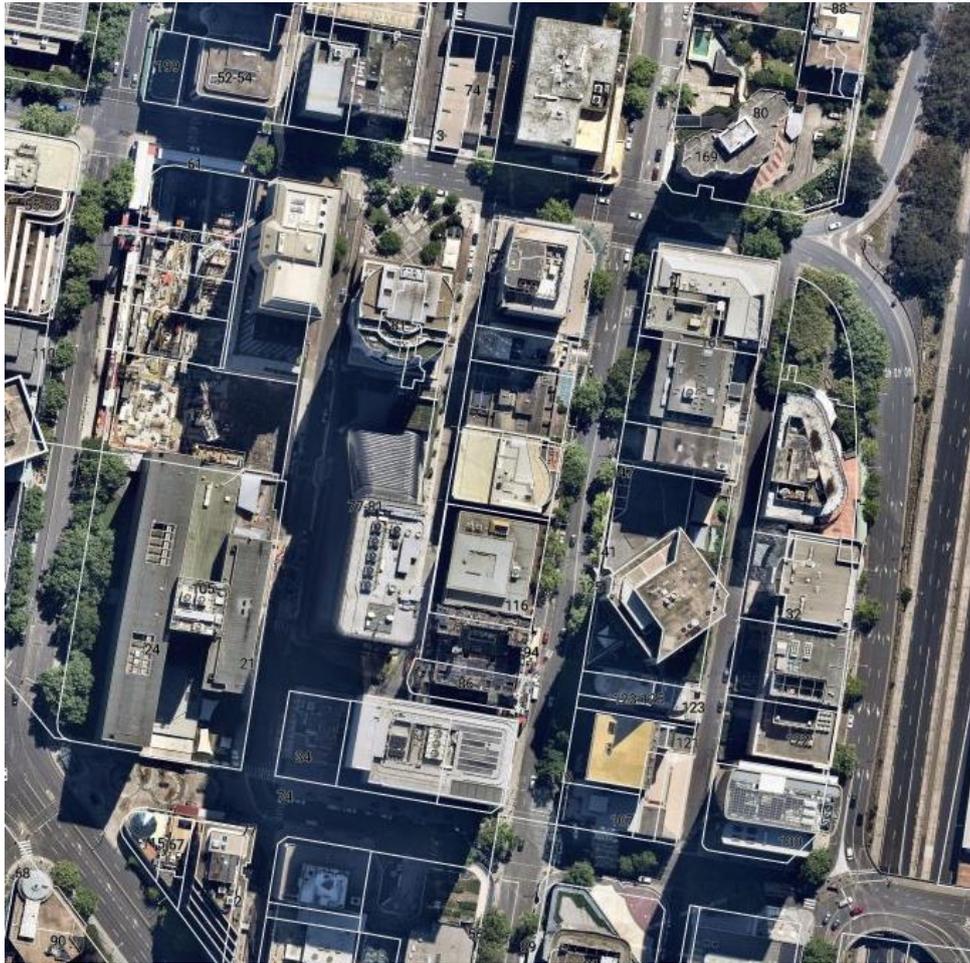
**Figure 3 Extract showing movement corridors and pedestrian nodes (Hassell Architects)**

The Strategy also identifies Walker Street as an ‘active perimeter’ dedicated to street activation through retail and dining opportunities with footpaths providing a commercial interaction edge. This is consistent with Provision P6 in Part C, Section 2.1.3 in NSDCP 2013 that states buildings are to have a “zero setback to all street frontages at the ground floor level”.

The proposal provides limited street activation along Walker Street with only one entry to the lobby and no retail at the street frontage. Activation is limited by the grades along the Walker Street footpath, which falls moderately towards the south. As the building’s podium has a floorplate almost as large as the site, the architect advises it is impractical to provide multiple entries and floor spaces at levels to match or integrate with the footpath.

Further, to provide essential vehicular access from the rear (Little Spring St) and to enable ramp geometry to access the basement, much of the Walker Street façade north of the centrally located pedestrian entry screens vehicular movement areas immediately behind the wall at street level. The entry to the recessed lobby is elevated above footpath level with only a multi-functional space provided at the northern end of the lobby. The only retail activation at footpath level is provided along the southern pedestrian walkway.

Figure 4 shows an aerial image taken 4 October 2021 of the same area shown in Figure 3. To the west (left) the image shows the Metro Station construction site and to the south, the tower under construction at 88 Walker Street.



**Figure 4 Aerial image of the North Sydney Laneways Precinct (Near Map)**

## **STATUTORY CONTROLS**

North Sydney Local Environmental Plan 2013

- Zoning - B3 Commercial Core
- Item of Heritage - No
- In Vicinity of Heritage Item - No
- Conservation Area - No
- Building height – RL 260
- Architectural roof features
- North Sydney Centre - Objectives, Building heights and massing
- Earthworks

SREP (Sydney Harbour Catchment) 2005\*

SEPP (Infrastructure) 2007

SEPP 55 - Remediation of Land\*

*\*These SEPPs have drafts planned to replace them. Applicable provisions in them are not sufficiently different to those in the existing SEPPs to warrant separate consideration.*

## **POLICY CONTROLS**

North Sydney Development Control Plan 2013  
North Sydney CBD Public Domain Strategy  
North Sydney Local Infrastructure Contributions Plan 2020  
Airports (Protection of Airspace) Regulations 1996 (C'wlth)

## **CONSENT AUTHORITY**

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

## **REFERRALS**

### **Building**

Documents submitted with the development application have been reviewed and the proposed building is capable of compliance with the NCC and BCA. Conditions are included in the recommended conditions of consent.

### **Civil Engineering, Stormwater Drainage & Geotechnical Stability**

Council's Senior Development Engineer has assessed the proposal and does not object to the development, subject to recommended conditions. These conditions address compliance with various Australian Standards for the basement and parking design, maintaining geotechnical stability, stormwater being retained and discharged into Council's infrastructure and imposition of bonds to protect public assets, including the existing trees on Walker Street.

### **Landscape**

No objection to approval of the application was raised by Council's Landscape Officer, subject to conditions. The conditions address details required for approval before issue of a construction certificate, protection of street trees during construction, planting an additional tree in Walker Street and replacing another, supervision of site works by a qualified arborist and submission of a landscape maintenance plan to ensure all plant material, including that to comprise the green walls, are suitably maintained.

### **Traffic and Parking**

Council's Traffic and Transport Engineer advised:

- Car and motorcycle parking and loading facilities comply with Council's DCP.
- Bicycle parking for employees of the development complies.
- That the application be referred to Transport for NSW regarding traffic generation and impact on the road network. Advice from TfNSW is outlined below, raising no objection to the proposal.
- 191 bicycle spaces are required for visitors according to Council's DCP and only 172 visitor spaces are provided within the basement. Another 20 are proposed to be provided for by racks on Walker Street.

### **Comment**

*The bike parking aspect of the proposal remains unsatisfactory. When advised of the proposal's inconsistency with the DCP, the applicant's traffic engineer responded, submitting that based on analysis of supply of bike parking in nearby development and expected demand including an 'aspirational target' of 5% of visitors using bicycles, the proposed visitor cycle parking facilities were considered adequate.*

*Council's Traffic and Transport Engineer advised the proposal remains unacceptable having considered this submission. That provision of 20 visitor bike spaces on Walker Street also remains unsatisfactory was also confirmed, with all bicycle parking to be provided on-site.*

*Amendments made on 2 February 2022 modified the bike parking as follows:*

- 642 bicycle parking spaces in total, previously 506
- 172 visitor spaces in the basement, previously 58
- 20 spaces on the Walker Street footpath, and
- 450 spaces for occupants, previously 448 (compliant),

*This leaves a deficit of bike storage of 19 spaces for visitors' bikes and a surplus of 2 spaces for occupant's bikes. Overall the 622 spaces proposed within the building leaves a deficit of 17 spaces.*

*Accordingly, a condition of consent is recommended, requiring provision of bicycle parking/storage on-site in accordance with the DCP and that the bike racks proposed on the Walker Street footpath are not to be installed.*

*It should be noted that one significant design change during the assessment process was made by relocating site access from Walker Street to Little Spring Street, at the rear of the building. This change affected several other aspects of the building within the podium and the basement.*

### **Environmental Health**

No objection was raised to the proposal from Council's Environmental Health Officer, provided nominated conditions are included should consent be granted. A number of conditions address potential environmental impacts of retail and food and drink premises, and the latter's possible use as entertainment venues.

Should the panel approve the application, a condition of consent is provided, which requires submission and approval of separate development applications for the use and fit-out of any parts of the approved building for the purposes of retail premises or business premises, instead of imposing the conditions recommended by Council's Environmental Health Officer, thus allowing an accurate and appropriate assessment of any such premises, should they be proposed.

### **Public Art**

Council's Team Leader Arts and Culture has considered the Public Art Plan submitted with application. An appropriate condition is recommended, requiring an updated public art strategy be submitted to Council and approved before a construction certificate is issued. The updated strategy is also to be prepared in consultation with the neighbouring developer of 100-102 Walker Street, should any public art be proposed in the walkway between the site and the neighbouring site.

## **Waste Management**

No objections were made regarding the proposal by Council's Waste Management Officer provided a condition is included in the consent, that ensures waste collection vehicles can access waste storage areas. Such a condition is recommended.

## **Strategic Urban Design**

The following comments were made by Council's Strategic Planning Department regarding the revised design, received in August 2021. Comments are made to explain the consequences of subsequent design amendments.

### ***Reduction of overall building height***

The overall height of the tower has been reduced by 13.55m to RL 270.3. The proposed height still exceeds the maximum building height control of RL260 in the North Sydney Local Environmental Plan 2013 (NSLEP 2013) by 10.3m, or 3.96%.

The relocation of the rooftop garden and commercial tenancy (restaurant) within the RL 260 maximum building height control is supported. No habitable space (GFA) is located above the LEP height control of RL 260 which comprises a glass curtain to screen various plant and lift overruns.

The location and screening of plant equipment and lift overruns in an architectural roof feature that steps up to the north is an appropriate transitional response to lower scale development to the south that steps up in height towards 110 Walker Street.

The proposed height results in some additional overshadowing but complies with the requirements and intent of clause 6.3 of NSLEP 2013. However, the cumulative shadow from the additional height and permissible building envelope is far-reaching. Any further reduction to the height could help minimise this impact.

***Planner's comment:*** As the impacts of the proposed height are considered satisfactory, further height reduction is unwarranted.

The maximum building height control for the site was significantly increased in 2018 from RL 175 to RL 260. Any further height uplift could set a precedent across the CBD and result in cumulative impacts on overshadowing, pedestrian amenity and scale and bulk of built form over time.

Reducing the height of the southern roof top area to align with RL 260, while allowing some uplift to the northern roof top area would minimise additional overshadowing and align more closely with the existing maximum height control. It would also enable the proposed stepped articulation of the rooftop.

The reduction of the proposal's overall height and the relocation of the rooftop garden and commercial tenancy within the RL 260 maximum height control is a more appropriate response to the context.

Reducing the height of the southern roof top area to RL 260 so that only the northern roof top area exceeds the existing height control could lessen the overall impact of the tower and allow for the proposed architectural roof feature. It is

noted the proposal also appears to be consistent with the requirements of clause 6.3 of the NSLEP 2013.

**Planner's comment:** Compliance with clause 6.3 NSLEP 2013 is addressed later.

***Increased tower setback to Walker Street***

The tower setback to Walker Street has increased from 2.0m to a 4.0m weighted average setback. This setback is consistent with the NSDCP 2013's objectives and better aligns the proposal with existing tower setbacks immediately north and south of the site.

The 4.0m weighted setback provides definition to the podium form and will strengthen the desired future character of the streetscape along Walker Street and is a strong contextual response to the existing streetscape.

**Planner's comment:** The August amendment featured the Walker Street setback at 4.5m. This was amended in the final set of plans to the proposed 4.0m setback to facilitate increasing the setback of the tower from the southern boundary, from 3.0m to 4.0m. This is considered an acceptable compromise.

***Above podium setbacks***

The tower setback has been increased from 3.0m to 4.0m from the southern boundary, 3.6m (weighted) from Little Spring Street from Level 25 and above, and 3.2m (weighted) from the northern boundary.

Consideration should be given to increasing the northern and southern tower facade setbacks to 6m to align with the draft DCP amendment. This would ensure adequate separation between towers which is particularly imperative for tall towers. The setback will also improve pedestrian amenity along the through-site-link at ground level on the southern boundary, as it will mitigate wind impacts and increase sky views and daylight to the link.

The lift core is built almost to the boundary for a majority of the Little Spring Street façade, and for a height of over 90m. As Little Spring Street is largely a service lane, placement of the lift core effectively on this boundary might be considered appropriate if setbacks to the north and south tower facades are fully compliant.

**Planner's comment:** Following the briefing of the panel, adjustments to the tower setbacks as noted above achieve a reasonable outcome, given the public benefit offered by the through site link. The proposed DCP amendment to provide a 6.0m above podium setback remains in draft form and remains uncertain at the time this report was prepared.

***Relocation of vehicle entry from Walker Street to Little Spring Street***

The vehicle entry, loading dock and car stacker have relocated from Walker Street to Little Spring Street, placed along the northern boundary of the site.

Walker Street is identified as a key pedestrian corridor in the Public Domain Strategy and a strong focus on street activation and pedestrian amenity is encouraged along the street. The relocation of the vehicle entry to Little Spring

Street, a designated service lane which many buildings already utilise for access, will allow for more ground level activation on Walker Street and is also a clear step in prioritising the pedestrian over the private vehicle within the CBD.

The different levels between Little Spring Street and Walker Street have been dealt with efficiently and the integrated green wall on Walker Street to the north that hides the loading bay area located behind it, is a clever response to what would otherwise be a blank wall. Redesigned vehicle access enables a more efficient use of space than the previous ramp from Walker Street and has allowed a large retail tenancy to be included off the through-site-link at lower ground level.

The relocation of the vehicle entry to Little Spring Street is an improved contextual response and aligns with the CBD's Public Domain Strategy vision of Walker Street as a key pedestrian route and is therefore supported.

### ***Reconfiguration of ground level podium along Walker Street***

The ground floor along Walker Street has been reconfigured as a result of the relocation of the vehicle entry to Little Spring Street.

The podium has been aligned to the boundary along Walker Street, except for the Walker Street entry located in the middle of the podium, which aligns with neighbouring buildings. To the north the façade is an accessible ramp into the building and a green wall, behind which is part of the vehicle ramp/loading dock area. The green wall is a visually interesting façade treatment for what is, out of necessity, a blank wall.

Towards the south of the podium along Walker Street is a food and beverage tenancy and lounge spaces located entirely inside the podium. There are no additional entrances or openings along the façade to encourage direct activation of the street, and instead one would have to walk up and in through the main lobby entry to walk around and access these areas. Despite level changes, it is important that any retail or hospitality tenancies can be easily seen and accessed by the public, and additional entrances or openings along the façade would strengthen activation of this space.

The level change of the street means that the corner of Walker Street and the through-site-link is activated by a retail space coming off the link, with lounge spaces located above, in the lobby. This is a fairly successful treatment of the corner, and this level of high activation would ideally be continued up Walker Street when resolving the food and beverage tenancy in the lobby.

The consistent awning along Walker Street will improve pedestrian amenity, however it may need to be stepped further to ensure placement isn't too high up from the ground level (at points it is up to 7.5m above ground level, which may be too high).

The podium built to the boundary is a strong contextual response and the integration of a green wall to the north of Walker Street provides a visually interesting feature to what needs to be a blank wall.

The connection between the food and beverage tenancy located inside the lobby and Walker Street needs to be strengthened. This could be through additional entries or openings along Walker Street or relocating the tenancy closer to the boundary line. Currently it sits detached from the street and could provide limited activation. The lounge spaces within the podium facing Walker Street do not necessarily activate the podium and opportunities for this space should be looked at further.

**Planner's comment:** The moderate slope on the Walker Street frontage prevents effective and safe entry from a greater number of entries or shopfronts, and does not provide quality space for retailers, as demonstrated by the applicant, noted above. Lowering the awning height on Walker Street is required by a condition of consent.

#### ***Stepped podium height along Walker Street***

The podium massing has been stepped to respond to the street topography and to better align with neighbouring podium heights. This provides a strong contextual response to the site and an articulated form that works well in the streetscape.

While the podium to the south has a podium height of five storeys, to the north the podium reads clearly as six storeys. This should be reduced in height by one level, which will ensure that it aligns with any future development to the north of the site. A maximum 5 storey podium height to the north reinforces the clear step up from the lower podium and strengthens that visual connection.

The stepped podium is a strong contextual response to the site typology and will ensure alignment with future podiums on either side of the site.

#### ***Further detail on through-site-link***

The amended through-site-link provides an additional large retail space that continues deep into the building, as well as a smaller retail tenancy and access to end of trip facilities and top of building entry.

The additional large retail space is an improvement to the space that was previously used for vehicle ramps. The proposal notes the space could be used for a market hall or a supermarket and café space, either of which will help activate the through-site-link. The smaller tenancy at the corner of the site successfully connects the through-site-link with Walker Street.

Conversations with 100-102 Walker Street on the through-site-link to ensure both sides of the link work together will improve the amenity of this link. The inclusion of public seating and landscaping along the link, while admirable, must not impair its role as a pedestrian connection, given its 6m width.

The existing through-site-link on 100-102 Walker Street includes a DDA compliant ramp that allows for 24/7 access. Discussions with 100-102 Walker Street should include delivering 24/7 DDA access along the link. Replacing the existing link with internal elevators to lobbies is not an appropriate response.

**Planner's comment:** Amended plans included in this assessment have satisfactorily resolved design and access issues related to the adjoining development. Conditions are recommended to

ensure public, DDA compliant access throughout the day and night via lifts internal to one or both developments either side of the link. The proponents of both 100 and 110 Walker Street are keenly aware that working together is essential, regarding this aspect of their proposals.

Wind impacts to the through-site-link should be considered given the expected high level of pedestrian traffic. The draft DCP amendment for commercial setbacks requires a 6 m above podium tower setback from the boundary. Setting back the tower another 3 m from the through-site-link could help mitigate wind impacts, allow for increased sky views and daylight, and increase the overall amenity of the link.

**Planner's comment:** Further wind modelling has been carried out and awnings above the Little Spring building entry have been included in the plans (Drawing Nos DA1100 & DA1112) to control downdraft.

The additional large retail space will increase the use of the through-site-link and is good use of this space.

Details of the through-site-link, including 24/7 DDA-compliant access, should be resolved with 100-102 Walker Street to ensure a cohesive and well-designed link and interface. Seating and landscaping along the link should only be considered if it does not impact the primary role of the link as a pedestrian connection.

#### ***Articulated podium height to Little Spring Street***

The green wall on Little Spring Street includes a shadow gap and different planting at a two-storey height, to articulate a 'podium height' of two storeys. This is to provide some human-scale to the Little Spring Street façade, which has a lift core built to the boundary at ground level and to a height of over 90m.

Further detail on the shadow gap and green wall planting is required, including precedent images to assess if the difference is detectable. If it isn't noticeable, other articulation or façade treatment is recommended to give some human-scale to Little Spring Street, which may appear overscale to pedestrians.

#### **Increased trees to Walker Street**

The proposal requires the removal and relocation of one tree along Walker Street. An additional tree consistent with existing species is also proposed along Walker Street.

The retainment of all existing trees and addition of a further tree along Walker Street is supported. Any impact of the proposed awnings on the trees should be considered. These matters are addressed by conditions recommended by the Landscape Officer.

The following matters require resolution, as recommended by Council's Strategic Planner:

- Spaces within the podium not presently used for activating the street should be redesigned to improve activation along frontages to Walker Street and the through site link, such as via a change of use to retail or refreshment outlets.

- Awnings along Walker Street are supported but may need to be further stepped and closer to the ground level to provide adequate protection for pedestrians.
- The location of the lift core on the boundary along Little Spring Street, up to the 25-storey should only be considered appropriate when setbacks to the north and south tower facades are fully compliant.
- Architectural articulation to the Little Spring Street façade is required, to provide a human-scale response. Further information on the green wall planting and shadow gap is to be provided, to ensure the difference between the two-storey datum and the green wall above is distinct and visible from street level.

**Planner’s comment:** A condition is recommended to provide for details to be submitted in a maintenance plan for vertical landscaping, to ensure the benefits of this aspect of the proposal are delivered, including articulation at street level on Little Spring Street.

- Six storeys to the higher section of the podium to the north is not proportionate to the lower part of the podium and does not comply with NSDCP 2013. Reducing this height to five storeys will better align the podium with any future development to the north.

**Planner’s comment:** A condition is recommended that the height of the podium’s northern section be reduced by at least the equivalent of one storey.

- Details of the through-site-link, including 24/7 DDA access, should be resolved with 100-102 Walker Street to ensure a cohesive and well-designed link and interface. Seating and landscaping along the link should only be considered if it does not impact the primary role of the link as a pedestrian connection.
- Wind impacts to the link need to be considered further. An increased tower setback above podium may effectively mitigate any wind impacts to the through-site-link and improve pedestrian amenity.

### **Design Excellence Panel**

The Design Excellence Panel’s report (Attachment 2) of 9 November 2021, concluded that the design could not be supported in the form considered by the panel. As discussed above in the proposal’s description and the evolution of the application, the Panel’s key issues of concern have been resolved, either by design amendments or recommended conditions of consent.

## External Referrals

### **Transport for NSW**

The application was referred to TfNSW, as required by cl. 104, SEPP (Infrastructure) 2007. No objection was raised to the application as it is considered unlikely to have a significant impact on the classified road network. Accordingly, no conditions were required.

### **Sydney Water Corporation**

Sydney Water's reply did not identify any impediments to the proposed development, noting the applicant has submitted a "Notice of Requirements for the Feasibility Study" with Sydney Water.

Amplification and extensions of water and sewer infrastructure will be expected to be addressed when a section 73 application is made. Conditions are recommended to make provision for the applicant making such an application.

### **Energy and Other Services**

Ausgrid advised Council there are underground cables and substations existing on the site and in Walker Street and Little Spring Street, which must be protected during and after construction.

Again, a condition is recommended requiring the applicant to consult with Ausgrid and any other service providing or regulating authority and obtain any approval required for the development to proceed. Any approvals and accompanying plans are to be submitted to the certifying authority before a construction certificate is issued.

### **Sydney Airport**

Urbis, on the applicant's behalf, has previously applied for and obtained an approval for the proposed building, from the Department of Infrastructure, Regional Development and Cities, under the Airports (Protection of Airspace) Regulations 1996 (C'wlth). The approval was granted subject to several conditions to be administered by the Commonwealth.

### **Sydney Observatory**

No response was received from the Sydney Observatory.

## SUBMISSIONS

Council notified the proposal on two occasions. The first followed submission of the application. The second notification occurred in August/September when the application was first amended. Copies of submissions made during both exhibition periods have been provided under separate cover.

The second amendment to the application was not notified due to the minor changes made to the design, the application's potential impacts being better-managed and the design alterations not significantly altering any potential impact, or have any additional impacts, with respect to issues raised during previous exhibitions.

Council's practice allows for consideration of any submissions made post exhibition, up until the time an assessment report is prepared. A further 3 submissions were made between November

2021 and January 2022. Copies of these submissions have been provided for the Panel's information.

### **Original Application**

The first was between 5 February 2021 and 26 February 2021. 38 submissions were made, including from 4 Precinct Committees, Parks, Edward, Lavender Bay and Milson, of which all except the Parks precinct adjoin the CBD. Submissions were also received from owners and residents of adjacent development, including the Alexander Apartments at 79-81 Berry Street immediately west of the site, 124 Walker Street on the site's northern boundary and the property to the south 100-102 Walker Street, the subject of DA 32/22, received by Council in January 2022.

Issues of objection and concern included:

- The submitted traffic report not properly considering the impact on vehicle movement on Little Spring Street, including access to the loading docks at 79-81 Berry Street. Residents moving in and out of the building is closely managed and could be disrupted.
- Noise from the rooftop bar/restaurant will impact resident-amenity of the Alexander Apartments. Any roof top venue should be enclosed and soundproofed.
- A gap should be inserted into the building to preserve views from adjacent residences.
- The application does not demonstrate the proposal will not cause excessive overshadowing of adjoining dwellings.
- The subject development, together with recently completed development (No. 1 Denison Street) and development under construction (the over-station development) immediately west of the Alexander Apartments, the sunlight and day light of many apartments will be (and has been) reduced significantly.
- The proposal relies on architectural rooftop provisions of the LEP (cl. 5.6) allowing building height to exceed the maximum otherwise permitted. The proposed rooftop structure does not create additional decorative benefit to the community, "... with the glazed exterior being the same from ground to top of building."
- Statutory controls on development should be adhered to, like speed limits.
- The shadow impact study submitted is flawed and an independent study should be prepared, funded by the applicant.
- The applicant has failed to address cl. 4.6 (3) (a) and (b) - that compliance with a standard must be shown by the applicant to be unreasonable or unnecessary and that there are sufficient environmental planning grounds to vary the standard. Instead, the proposal causes:
  - o Loss of solar access and overshadowing,
  - o Loss of views,
  - o Insufficient building separation to maintain visual privacy,
  - o Inconsistent application of height controls in the North Sydney area,
  - o Increased traffic flow and noise,
  - o Inadequate setbacks to Little Spring Street, and
  - o The variation sought is unreasonable, given other development in the vicinity of the site comply with height limits.
- The development is excessive in bulk and scale, producing poor built form and amenity.
- All tower setbacks are inadequate, and the small setback of podium and tower to Walker Street will have an overpowering effect, being well forward of existing buildings.
- Inadequate setbacks to Little Spring Street represent a lost opportunity to improve the environmental qualities of that street.

- Office space will still overlook Little Spring Street (and the Alexander Apartments) affecting residents' privacy.
- The staircase at the end of the southern boundary through site link is not universally accessible.
- The green wall is unlikely to survive, due to adverse climatic conditions.
- The development offers little public benefit.
- Overshadowing by the building impacts residential areas, to the extent that some areas will have less than two hours solar access. Reducing the building's height from RL284 to RL 260 (maximum height per cl. 3.4 LEP) would lessen this impact.
- A planning agreement is required to provide public access to the rooftop and via the through site link between Walker Street and Little Spring Street, in perpetuity.
- View loss should not be more than that experienced from a compliant development.
- The development is inconsistent with the objectives of the height standard, causing loss of amenity (privacy, views and daylight) for occupants of residential and commercial buildings next to the site.
- Amenity impacts cause the building to be incompatible with adjacent development.
- The building exceeds Sydney Airport's published Operational Limitations Surface Map limit of 156 m AHD for North Sydney. Cl. 6.15 (3) of the LEP stipulates consent only be granted if there is no objection by the relevant Commonwealth Authority.
- Demand for office space is reduced by an increase in working from home.
- The building's height does not provide a suitable transition to Berry Square (in front of the Alexander Apartments building), or the Ward Street Precinct (north of Berry Street).
- The wind report does not account properly for North Sydney' prevailing wind issues (high velocity and impact on pedestrian comfort, especially in winter).
- North Sydney should be a vibrant commercial area, however it needs to have a balance of residential and commercial activities.
- North Sydney needs a vibrant life after 5.00 pm, as the North Sydney centre is a Monday to Friday employment area only.
- More recreational and cultural facilities should be a priority and Stocklands could be encouraged to consider this in its proposal.
- Stocklands, as a very successful building company should revise their design and build no higher than 20 storeys.
- Information provided in the application was insufficient to allow members of the public to thoroughly consider impacts of the proposal.
- Traffic counts were taken in August 2020, when many businesses were closed or operating at reduced capacity, thus not reflecting traffic conditions at capacity.
- The proposal will deliver premium grade office space, reinforcing North Sydney as a metropolitan centre.
- The through site link will improve the public domain, despite "... the setbacks required to create an open to the sky through site link on both adjoining sites (100-102 Walker Street and the subject site, 110-122 Walker Street), are not contemplated in the current planning controls for the site, but rather (the link is) presented by Council as a desirable public domain addition to North Sydney CBD."
- The setbacks proposed are supported as they will optimise commercial floor plates necessary to attract key tenants to North Sydney.
- Pedestrian connectivity and way finding are improved by the proposal.
- The lobby off Little Spring Street promotes activation of the street and will draw people northwards to the Ward Street precinct and Berry Square.
- The recess between the podium and tower differentiates tower and podium forms.

- The development helps to implement Council’s Public Domain Strategy for the CBD.
- Construction work and traffic causes additional traffic, dust and noise pollution.
- The setback to Little Spring Street should be increased to 13 m.
- Setbacks between buildings should be between 5 and 10 metres.
- The building should be around the same height as surrounding buildings.

### **Amended Application**

The second notification period was held between 20 August 2021 and 10 September 2021. 8 submissions were received, including a petition signed by 71 residents and/or owners of the Alexander Apartments, at 79-81 Berry Street, North Sydney, located immediately west of the site, across Little Spring Street, as shown in Figure 1.

Key points of concern regarding and objection to the proposed development included:

- The application is non compliant with the NSLEP 2013 and should be rejected.
- The petition from residents of the Alexander Apartments raised the following issues:
  - o The proposal is an “aggressive and gross over development”
  - o It shows “... no consideration of the rights of residents to solar access, privacy and fresh air ...”
  - o It is “14 storeys higher than our building and is located only 7 metres away to the east.”
  - o The building will seriously overshadow the apartments and block the view of the sky from many.
- Allowing the proposal to exceed the height limit defeats the purpose of setting the standard and establishes a precedent for other development.
- The amended proposal is largely unchanged and objection to the original application must be considered.
- 24-hour operation of the rooftop garden bar and restaurant will likely impact nearby apartments. The roof top facility should be fully enclosed.
- The Lavender Bay Precinct Committee affirmed its objection to the proposal “... on grounds of height, overshadowing and potential wind tunnel impacts.”
- “... the developer is using the time-honoured tactic of making minor variation so the application in the hope of wearing Council down to give a consent.”
- The building should be no taller than 40 storeys and be set back 15 m from the southern boundary and 3 m from Little Spring Street.
- The revised proposal would fall short in an assessment against the matters listed for consideration of a development application, by the *Environmental Planning and Assessment Act, 1979*.

The three submissions and additional information provided by a previous submitter, raised the following key matters, reiterating the concerns of previous submissions, including the petition signed by residents of the Alexander Apartments, noting that one of these submissions was made by a planning consultant on behalf of the Owner’s Corporation of the Alexander Apartments:

- Inconsistency of the proposal with objectives of the planning controls.
- Application of appropriate controls and ‘rights’ of residents.
- Excessive bulk and scale due to unacceptable building separation and height.
- Overshadowing and loss of daylight.
- View loss.
- Traffic impacts on Little Spring Street

## **EVALUATION OF THE PROPOSED DEVELOPMENT**

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, are considered in this section of the report. The application has been assessed against the relevant provisions of the LEP and DCP 2013, and other environmental planning instruments that apply to the site and the proposal. and Part B, clauses 2.4.5 - Building Design

### **NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013**

#### **Permissibility**

The proposal is permissible with consent in the B3 Commercial Core zone that applies to the site.

#### **Objectives of the B3 Commercial Core zone**

The site is surrounded by a variety of commercial, business and retail uses, with the only residential tower (with a retail/office podium) in the CBD being located west of the site, at 79-81 Berry St.

The proposal is a form of development reasonably anticipated for the site and is generally consistent with the objectives of the B3 zone, as discussed below.

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

The Height of Buildings Map sets a height of building standard of RL 260 for the site.

The maximum height of the proposal is RL 270.3 at the top of the goods lift motor room. The top of the building's facades, being at the apex of the glass screen that surrounds the highest 10m of the building, is at RL 270.1.

#### **Exceptions to development standards - Clause 4.6**

A written request was submitted with the development application (Attachment 4) in accordance with the provisions of cl. 4.6 - Exceptions to Development Standards of the LEP. The request seeks a variation to the Height of Building standard, as provided by cl. 4.3 of the LEP.

The contravention proposed is 10.3m or 3.96%.

As the panel would be aware, numerous decisions of the Land & Environment Court have assisted in the interpretation and application of clause 4.6. a provision common to most, if not all LEPs in NSW. That there is no need to provide commentary on this topic is assumed.

#### **Criteria for approval under clause 4.6**

For consent to be granted, the following criteria must be observed:

1. The consent authority must be satisfied, according to cl. 4.6 (2):
  - (a) the provision for which non-compliance is sought is a development standard as defined by the Environmental Planning and Assessment Act 1979 (the Act), and

- (b) the development standard in question is not excluded from being varied, by cl. 4.6 (6) or (8).
- 2. The applicant's written request must, according to cl. 4.6 (3):
  - (a) demonstrate that compliance is unreasonable or unnecessary in the circumstances of the case, and
  - (b) demonstrate that there are sufficient environmental planning grounds to justify the contravention.
- 3. As required by cl. 4.6 (4) (a), the consent authority must be satisfied that:
  - (a) the applicant's request has satisfactorily addressed these matters, and
  - (b) that the development is in the public interest, being consistent with the objectives of the standard and the zone in which the development is proposed.
- 4. As a delegate of the Planning Secretary, in accordance with cl. 4.6 (5), the consent authority must consider the following in deciding whether to grant concurrence:
  - (a) whether a matter of State or regional significance is raised by the standard's contravention,
  - (b) the benefit in maintaining the standard, and
  - (c) any other matters.

### **Evaluation of the applicant's written request**

An evaluation of the proposal with regard to the requirements of the LEP to contravene a development standard is set out hereunder.

#### **Criteria 1(a): Only a development standard can be varied**

The maximum height of buildings is a development standard as defined by the Act, as it fixes a maximum height for development on the site.

#### **Criteria 1(b): The development standard must not be excluded from cl. 4.6's application**

Of relevance to the subject application, only the provisions of cl. 6.3 (2) (a) & (b) of the LEP are excluded from the operation of cl. 4.6. These provisions do not permit granting of consent when a development will increase specific shadows cast on special places or public open space in the North Sydney Centre, as identified by the LEP. The proposal complies with these provisions of clause 6.3.

#### **Criteria 2 (a): Compliance would be unreasonable or unnecessary**

The applicant's written request submits that the proposal is consistent with the objectives of the standard. Consequently, the request is made on grounds that compliance with the standard is unnecessary and unreasonable. As discussed below in relation to Criteria 3(b), the consent authority may be satisfied the applicant has demonstrated that the development is consistent with the height standard's objectives.

#### **Criteria 2(b): Sufficient environmental planning grounds**

The applicant's written request submits the following to demonstrate sufficient environmental planning grounds to contravene the standard:

- The development is consistent with cl. 5.6, as the part of the building above the maximum height is an 'architectural roof feature', therefore the application need not rely on the request made in accordance with clause 4.6, for approval.
- The proposal is compliant with Cl 6.3 (2), (3) and (5).

- The height of the development is consistent with the height of other development expected to occur and has recently been approved in the locality, where the LEP permits buildings to be erected between RL 200 and RL 289.
- The development has reasonable impacts on views, particularly from the residential building at 79-81 Berry Street.
- The building's height accentuates its verticality thus contributing to its design excellence.
- With regard to specific provisions of the LEP concerning prevention of excessive overshadowing of specified parts of the CBD and residential development outside the CBD, the proposal is compliant.
- The context of the site where tall buildings are emerging render the proposed height's impacts negligible.
- The submitted wind impact analysis indicates the height of the building above the standard does not cause additional wind impacts for pedestrians.

The applicant's submission provides sufficient environmental planning grounds to contravene the standard, for these reasons:

- The overshadowing impacts of the development are acceptable, per clause 6.3 (3). As noted, the application complies with cl. 6.3 (2) so the application does not require variation of a standard that cannot be varied.
- Although views from some residential accommodation near the site will be affected, the key view to the east and southeast is only marginally and acceptably impacted, compared to a development fully compliant with building envelope requirements (max. height & min. setbacks). The additional height does not cause any view impacts, as the adjacent residential building is lower than the maximum height permitted for this development.
- The building is consistent with the height of other building heights approved and capable of being approved in accordance with maximum heights permitted by the LEP. The development has been demonstrated to have acceptable skyline impacts when viewed from vantage points around the Harbour and on the Walker Street streetscape.

Although not a determining factor in this assessment, that compliance with cl 5.6 is achieved by the rooftop design of the proposal is not concurred with, as discussed previously with regard to the Design Excellent Panel's assessment.

**Criteria 3 (a): The applicant must demonstrate satisfaction of criteria 2(a) and 2 (b)**

As outlined, the proposal applicant's written request satisfies these criteria.

**Criteria 3 (b): Consistency with the development standard's objectives**

Approval would be in the public interest, as the proposal is not inconsistent with relevant objectives of the standard. Objectives of the building height maximum are:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*

- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

### **Assessment**

The proposal is consistent with these objectives, as follows:

- Despite the overall height, the development modulates reasonably well in relation to the slope of Walker Street from north to south, in a broader context. At the top of the building, having regard to the heights of approved development and potential heights permitted under the LEP, the development will help form the skyline of North Sydney as intended by the LEP's height controls.
- As discussed by the applicant's submission, the view impacts of the proposal are acceptable, having referred to the visual impact assessment submitted with the application (Attachment 8).
- As outlined by the applicant's submission and illustrated by shadow diagrams, the proposal is compliant with the LEP's and DCPs controls for solar access. The development does not significantly overshadow the neighbouring residential development west of the site, during the critical midday hours of the Winter Solstice, as required by the DCP.
- Privacy and the general amenity of nearby development should be reasonably maintained, the submission noting that the western façade has been carefully designed to reasonably maintain privacy. As shown in the plans (DA2020 – detail of western façade and DA1123, typical commercial floor layout of tower) the sawtooth façade design is detailed to show terra cotta panels facing the residential section of the building at 79-81 Berry Street, thus protecting the privacy of those residents.
- The building is compatible with the types and intensities of uses and their scale, mass and density of development permitted in the B3 zone.

### **Criteria 3 (b): Consistency of the development with zone objectives**

Approval would be in the public interest, as the proposal is not inconsistent with relevant objectives of the B3 Commercial Core zone.

The zone's objectives are:

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

## **Assessment**

The proposal is consistent with these objectives, as the proposal:

- Will offer spaces for a range of retail, food and drink and office activities to service the needs of the local and wider community.
- Will create employment both during construction and throughout the life of the building.
- Assists to facilitate alternative sustainable modes of transport and optimises its location close to public train and bus services.
- Does not include residential development.
- Only causes reasonable and manageable environmental impacts and avoids other potential impacts, including on the amenity of occupants of new and existing development.

## **Granting of concurrence**

### **Criteria 4 (a): Matters of state or regional planning significance**

Despite the proposed building height exceeding the maximum permitted, the development's height is not inconsistent with that intended in the North Sydney Centre, a centre of metropolitan significance. Matters of state or regional significance are not raised.

### **Criteria 4 (b): Benefit of maintaining the standard**

The applicant's submission shows that the objectives of the standard are achieved, and the environmental performance of the proposal is acceptable, despite contravention.

Arguably, a benefit that could be said to arise from the standard being maintained is preservation of the height control's efficacy in a regionally significant locality. In other words, the standard being upheld would help ensure the standard is not "...abandoned or destroyed...", by this and later decisions which allow the height standard to be breached.

### **Criteria 4(c): Other matters to be considered**

Breaching the height standard on this occasion raises no other matters requiring consideration.

## **Approval, despite contravening the development standard**

Should the Panel so resolve, consent may be granted to the development, as in balance, the criteria or preconditions of cl.4.6 have been satisfied.

In summary:

- building height is a development standard as defined by the Act and is capable of being contravened, as it is not excluded from the application of cl. 4.6,
- the applicant's written request to contravene the maximum building height has demonstrated that compliance is unnecessary and that there are sufficient environmental planning grounds to justify building above the permitted height,
- the proposal can be considered in the public interest, as the development is consistent with zone and standard objectives, and
- there are no matters raised of regional or state planning significance or other matters raised, requiring consideration. Although it can be said that there is benefit in maintaining the standard, this is not considered to be of sufficient weight to warrant denying the clause 4.6

request, considering the public domain and economic benefits the development would contribute to the community.

## Part 6 Additional Local Provisions

### Division 1 North Sydney Centre

This division of the LEP sets out requirements which specifically apply to the key commercial hub of Northern Sydney. The following assessment has had regard to provisions applicable to the proposed development.

#### Objectives of Division 1 North Sydney Centre (cl. 6.1)

Objective	Evaluation
(a) to maintain the status of the North Sydney Centre as a major commercial centre	The proposal is consistent with this objective, as it provides new office space to meet the demands of businesses requiring contemporary facilities in a highly accessible location.
(b) to maximise commercial floor space capacity and employment growth within the constraints of the environmental context of the North Sydney Centre	The site is relatively large and optimises creation of floor space. The design of the proposal has been refined to avoid unacceptable impacts on the local environment and amenity.
(c) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 m <sup>2</sup>	Three lots are consolidated to form a site of 2,305m <sup>2</sup> , which is considerably larger than other sites in the North Sydney CBD.
(d) to prevent any net increase in over-shadowing of any land in Zone RE1 Public Recreation (other than Mount Street Plaza) or any land identified as "Special Area" on the North Sydney Centre Map.	The proposed development will result in no additional overshadowing of places nominated by this clause of the LEP.
(e) to ensure any land in a residential zone is afforded reasonable solar access.	Some additional overshadowing is caused to residential areas adjacent to the North Sydney Centre. However, the loss of solar access resulting from the development is marginal and acceptable
(f) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas.	Not applicable.

#### 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 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.*

#### Assessment

The proposal will not overshadow any RE1 zoned land, any of the Special Areas as mapped by the LEP or the Don Bank Museum. This is demonstrated by the diagrams on page 57 of the Design Report Addendum (Attachment 6).

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

#### **Assessment**

The additional overshadowing of land in these zones caused by the parts of the proposal in excess of the RL260 height limit is restricted to the early hours of the morning and after 3.00 pm during the winter solstice as shown in the shadow diagrams on pages 66 and 67 of the Design Report Addendum.

- (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,*

#### **Assessment**

Amendments have been made to the design, to satisfactorily address these criteria, by increasing tower setbacks to the east and south, providing an acceptable design solution for the pedestrian link on the site's southern side and wind-shielding awnings over the pedestrian entry to the building from Little Spring Street.

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

#### **Assessment**

The site has an area in excess of 1,000m<sup>2</sup> and can provide for premium office space, complemented by business, retail and food and drink premises.

- (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 12.00 pm and 2.00 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*

#### **Assessment**

As indicated the submitted shadow diagrams (p. 57, Design Report Addendum (Attachment 6)), the proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas between the nominated times and during the period of the year specified.

- (b) *the development would result in a net increase in overshadowing between 10.00 am and 2.00 pm of the Don Bank Museum, or*

#### **Assessment**

The proposal does not overshadow the Don Bank Museum.

- (c) the site area being less than 1,000 m<sup>2</sup> and any development being no higher than 45m.

### Assessment

The site area is 2,305m<sup>2</sup>, this provision does not apply.

- (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 two hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23) - less than two hours of direct sunlight, or*
  - (b) *if it received less than two 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.*

### Assessment

The shadow diagrams (p. 59 Design Report Addendum (Attachment 6)) indicate that the areas affected by overshadowing from the proposal will continue to receive more than the minimum solar access specified.

- (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).*

### Assessment

The site is not land specified by this clause.

- (5) *In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following:*
  - (a) *the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining North Sydney Centre,*

## Assessment

The proposed building's scale and built form is compatible with its environmental context. As amended, the proposal:

- Will have acceptable impacts on the microclimate and amenity of the public domain and buildings adjacent to the site,
- Will realise the potential of the site, in conjunction with redevelopment of adjoining land south of the site, to improve pedestrian amenity and convenience in accordance with Council's adopted strategies for the North Sydney CBD's public domain,
- Is of a scale, form and massing which has:
  - o acceptable impacts on built and natural environments, and
  - o sufficient detailing of the tower facades.

However, as previously discussed the scale in relation to the streetscape would be improved, by reducing the podium height by the equivalent of one storey (noting 4.0m is the floor-to-floor height of all but one of the levels of the podium) of the podium's northern section, between the main entry off Walker Street and the northern wall of the podium.

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

The development does affect view lines from adjacent residential development, which according to the 'Tenacity' planning principles for view sharing would be described as significant. However, as examined later, the views would have been similarly affected by a development fully compliant with the height standard. Neither do variations to setbacks unreasonably worsen the impact on these views, compared to a development which complied with tower setbacks prescribed by the DCP. These affects are illustrated later in this report and in Attachment 8, the submitted visual impact assessment.

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

See comments regarding paragraph (a).

## NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

Below is an assessment of the application with regard to applicable provisions of the North Sydney DCP 2013.

### Compliance Table

DEVELOPMENT CONTROL PLAN 2013 - Part B Sections 2 and 9		
<i>Provision</i>	<i>Complies</i>	<i>Comments</i>
<b>2.2 Function</b>		
<b>Diversity of Activities</b>	Yes	Spaces for a mix of office, business, retail and food and drink premises are provided in the proposal. The size and distribution of space for various activities suits the development's location in the heart of North Sydney.
<b>Maximise Use of Public Transport</b>	Yes	The development is within 400m (a 5-minute walk) of North Sydney railway station and bus

<b>DEVELOPMENT CONTROL PLAN 2013 - Part B Sections 2 and 9</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
		interchange, and the future Victoria Cross Metro Station. End of trip facilities are provided for cyclists, runners and walkers.
<b>2.3 Environmental Criteria</b>		
<b>Clean Air</b>	Yes	Submitted with the application was an ESD strategy prepared by ARUP, which includes means of attempting to achieve 'best practice' with regard to environmental performance, including air quality.
<b>Noise</b>	Yes	The acoustic report submitted indicates compliance will be achieved in respect of the DCP and other applicable standards, provided its recommendations are implemented. This report is recommended to be included in the consent, as part of condition A1.
<b>Wind Speed</b>	Yes	<p>Wind modelling has tested the altered setbacks and further analysed impact on pedestrians.</p> <p>The analysis indicated safe and comfortable conditions at ground level, noting the proposed 4.0m tower setback to Walker Street did not alter already acceptable safety and comfort ratings.</p> <p>Around the site on Walker and Little Spring Streets, and up to Berry Street, comfort ratings were found to be acceptable for walking and standing pedestrians only, and not for seated pedestrians or al fresco dining.</p> <p>At the corner of Little Spring Street and the pedestrian link, two high-level awnings are proposed to improve pedestrian amenity at the main entry to the building at this location.</p> <p>No alfresco dining is proposed adjacent to the subject building on the pedestrian link. Rather, similarly protected by high-level glass awnings and relocatable/operable glazed screens at ground level, outdoor seating and tables are proposed adjacent to the building proposed at 100-102 Walker Street (DA 32/22), on the southern side of the walkway. This is considered acceptable regarding local climatic conditions.</p>
<b>Reflectivity</b>	Yes	Reflectivity modelling was undertaken for the original and amended designs, and each were found to be within the 20% threshold. A condition is included to ensure compliance is achieved.

<b>DEVELOPMENT CONTROL PLAN 2013 - Part B Sections 2 and 9</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
<b>Artificial Illumination</b>	Yes	<p>Illumination in relation to signage or outdoor parts of the building, namely the “leisure spaces” atop the podium and on level 51, has not been considered by the application. Accordingly, a condition is recommended, which states no signage or signage zones would be approved in the event consent is granted.</p> <p>Another issue made apparent by residents of the Alexander Apartments, was glare from internal lighting within upper levels of the recently completed building ‘1 Denison Street’ causing nuisance to them. A condition is included to ensure internal and external lights (unless needed for safety) are switched off between 11.00pm and 7.00am.</p>
<b>Awnings</b>	No	The awnings over the Walker Street footpath do not satisfy the numerical requirements or the objective of clause 2.3.6. They are too high above the footpath to provide adequate weather protection for pedestrians on Walker Street. A condition is recommended to require compliance with the DCP.
<b>Solar Access</b>	Yes	As discussed above in relation to the LEP the proposal results in acceptable impacts on sunlight and daylight access within and outside the North Sydney Centre. This has been demonstrated by the applicant, despite variations to the building height and setback standards.
<b>Views</b>	Acceptable	See more detailed comments below.
<b>2.4 Quality built form</b>		
<b>Setbacks</b>	No	Acceptable on merit. See assessment below this table.
<b>Building Design</b>	Yes	<p>Table B-2.9 requires all floors in the Commercial Core zone to be a minimum of 3.3m in floor to ceiling height, from the ground level to the top of the building.</p> <p>With the exception of the mezzanine level, with a floor-to-floor height of 2.85 m, the minimum floor to floor height is 3.40 m (levels 40 &amp; 41). All other levels floor to floor heights are 3.7m or greater. According to Hassell’s Design Report the varying floor to floor heights allow for a minimum floor to ceiling height of 2.85 m, 450mm less than required by the DCP.</p> <p>Discussions with the architect confirmed that with the floor to ceiling glazing and openness of the office levels, adequate natural lighting will</p>

**DEVELOPMENT CONTROL PLAN 2013 - Part B Sections 2 and 9**

<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
		<p>reach toward the centre of the building. It was also noted that office buildings rarely provide the floor to ceiling height specified in the DCP. Further, the Design Report notes the "... solution ... maximise(s) daylight deep into the floor."</p> <p>Although the proposal is numerically inconsistent with the DCP, submitted information indicates satisfactory performance.</p>
<b>Skyline</b>	Yes	<p>This building has potential at least for the foreseeable future, to be the tallest building in the North Sydney CBD. It will be visible from vantage points from a large visual catchment, spanning all points of the compass.</p> <p>A building of the height proposed despite exceeding the standard to a degree of &lt; 4%, the building will contribute to a skyline otherwise permitted and hence envisaged by the North Sydney Centre planning framework.</p>
<b>Streetscape</b>	No	<p>As outlined by the DEP's assessment, the podium's impact on the streetscape would be improved by reducing its northern section by one storey in height and refining its articulation and detailing. This aspect of the design would then be acceptable.</p>
<b>Entrances and Exits</b>	Yes	<p>The minimum requirements of the DCP are generally satisfied, although redesign should improve the form and function of the building's entries and exits, as part of the building's presentation and interface with the pedestrian environment.</p>
<b>Public Spaces and Facilities</b>	No	<p>Outdoor public spaces at ground level are addressed above.</p> <p>At lower ground and ground levels within the building, several retail outlets and a large lobby space are respectively proposed.</p> <p>The rooftop garden, originally proposed as a public space, was to be a 'public benefit' in return for allowing lettable floor space above the LEP's height limit of RL 260.</p> <p>As this lettable space arrangement is considered unacceptable, the design has been amended to only have lettable space and the roof garden below the maximum height. This is now proposed to be a "...privately owned and managed, publicly accessible space."</p>

<b>DEVELOPMENT CONTROL PLAN 2013 - Part B Sections 2 and 9</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
		<p>Presumably it will be accessible to workers and visitors of the building or patrons of the food and drink outlet planned on level 51, and/or to members of the public, generally, via some other form of commercial arrangement. There is a separate lobby from the pedestrian link (lower ground level) for access to the top of the building.</p> <p>As this is somewhat uncertain, a condition is recommended for separate development application to use part of level 51 as a restaurant or other type of food and drink premises. This application should also clarify details regarding public access to level 51 from street level.</p>
<b>2.5 Quality Urban Environment</b>		
<b>Accessibility</b>	Yes	<p>An access report addressing the BCA and Disability Discrimination Act 1992 (C'wlth) was submitted with the amended application. It concluded that the proposal is capable of complying with the requirements of these controls.</p> <p>In respect to parking, toilets, stairs and ramps, lifts, circulation areas and paths of travel, external linkages and fire safety, the report states: "Further work will be required during design development stage to ensure appropriate outcomes are achieved."</p>
<b>Safety and Security</b>	Yes	<p>Security for the building during construction is to be provided according to the SEE. A Crime Prevention Through Environmental Design assessment has been submitted, concluding crime prevention design principles have been adequately observed in the building's design.</p>
<b>Vehicular Access</b>	Yes	<p>All vehicular access, including loading/service vehicles will occur from Little Spring Street. No vehicular access is provided to Walker Street, consistent with Council's clearway zone of 7.00am - 10.00 am and 3.00pm - 7.00 pm.</p>
<b>Car Parking</b>	Yes	<p>Vehicle manoeuvring and parking arrangements are satisfactory except for the deficit in the number of bicycle parking spaces provided for occupants and visitors, as addressed above in relation to the assessment of Council's transport and traffic engineer.</p>
<b>Garbage Storage</b>	Yes	<p>A waste management plan has been prepared for the revised design. The plan is in condition A1, thus recommending it be part of the consent.</p>
<b>2.6 Efficient Use of Resources</b>		

<b>DEVELOPMENT CONTROL PLAN 2013 - Part B Sections 2 and 9</b>		
<b>Provision</b>	<b>Complies</b>	<b>Comments</b>
<b>Energy Efficiency</b>	Yes	<p>The proposed development is targeting a 6 Star Green Star rating under the Design and As Built tool, representing 'world leadership', defined by the Green Building Council of Australia. A 5 Star NABERS rating is the commitment and aim of the developer, as the design is refined, post-consent.</p> <p>Various initiatives are detailed in an ESD report, addressing alternative transport, minimising waste from demolition, construction and operations, water conservation and quality of stormwater, passive design and natural ventilation and energy efficiency, and the health and wellbeing of the building's occupants.</p>
<b>Water Management and Minimisation</b>	Yes	<p>A preliminary construction waste management plan (Appendix E of the waste management plan) has been prepared with regard to applicable regulations and Council requirements, including the DCP. Condition A1 includes this document in the consent.</p> <p>The abovementioned Waste Management Plan establishes procedures for managing rubbish and recyclables, assuming commercial activity and food and drink premises will operate in the spaces as shown by the architectural plans.</p> <p>Waste facilities have been designed to accommodate the needs of intended building use.</p>
<b>Stormwater Management</b>	Yes	<p>The civil engineering report submitted with the amended application addresses stormwater management. Stormwater mitigation measures are required, for:</p> <ul style="list-style-type: none"> <li>- Erosion and sediment control,</li> <li>- On-site detention,</li> <li>- Stormwater filtering and rain-water reuse, and</li> <li>- Flood management adopting the probable maximum flood (PMF) for planning.</li> </ul> <p>A raft of conditions is recommended by Council's development engineer to ensure proper water cycle management throughout the lifecycle of the development, in the event of approval. The site is not burdened with any stormwater easement and nor is it subject to flooding.</p>
<b>2.7 Public Domain</b>		
<b>Street Furniture, Landscaping Works, Public Art</b>	No	<p>Three centrepieces are proposed as contributions to the public domain, complemented by spaces for public art and landscaping:</p>

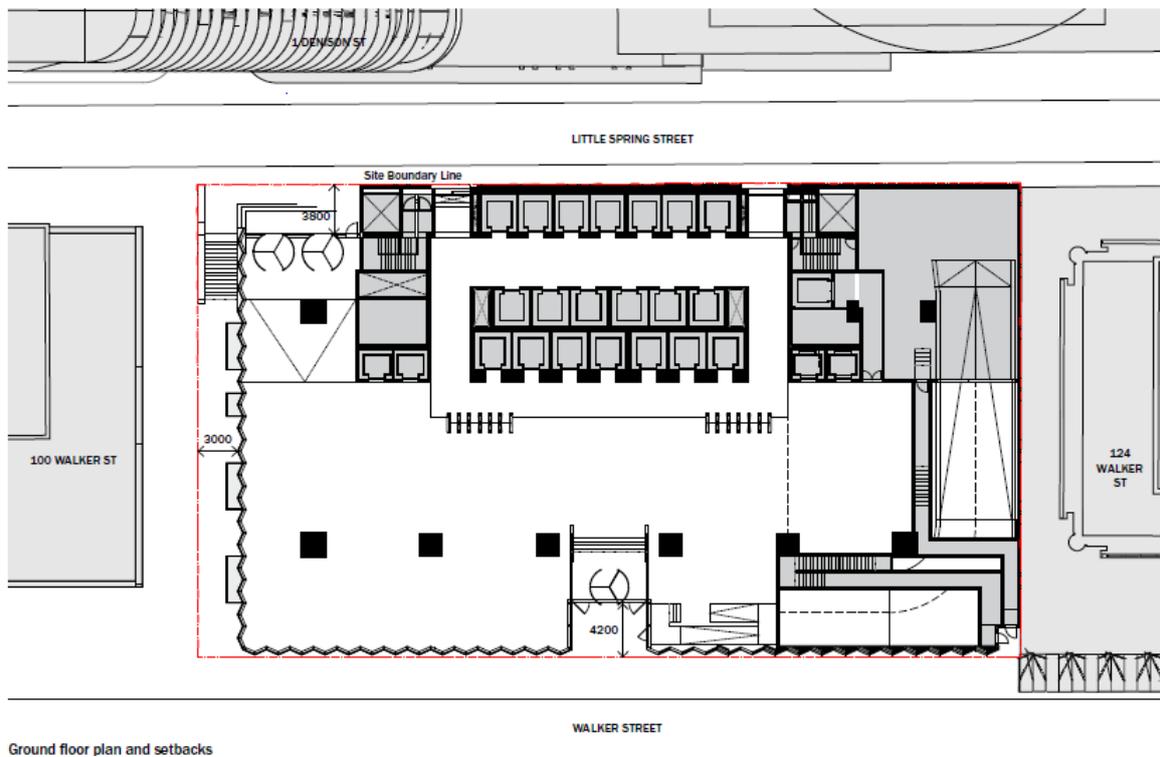
**DEVELOPMENT CONTROL PLAN 2013 - Part B Sections 2 and 9**

<i>Provision</i>	<i>Complies</i>	<i>Comments</i>
		<ul style="list-style-type: none"> <li>- Redesign of the ground level plane, to open it up, provide definition to the Walker Street frontage via a zero setback and providing for retail and food and drink premises to enliven the street interface of the development.</li> <li>- The pedestrian link, the redevelopment of which is to be shared with the development of neighbouring land to the south, at 100-102 Walker Street.</li> <li>- The rooftop garden.</li> </ul> <p>The design statement, architectural and landscape plans as submitted address these aspects of the development in considerable detail and have addressed a number of matters raised before the subject design was submitted in August 2021 and later amended in January and February 2022.</p> <p>Subject to recommended conditions being implemented, these aspects of the proposal are satisfactory. The rooftop garden and restaurant are addressed above.</p> <p>A condition also requires submission of a revised public art plan to be approved before a construction certificate is issued, as the originally submitted plan no longer conforms with or is appropriate for the amended design.</p>

## Detailed assessment

### Setbacks

At ground level, the DCP requires zero-metre front, side and rear setbacks on the site, except 3.0m is required for the pedestrian link on the southern boundary (shown below).



**Figure 5: Proposed ground level setbacks**

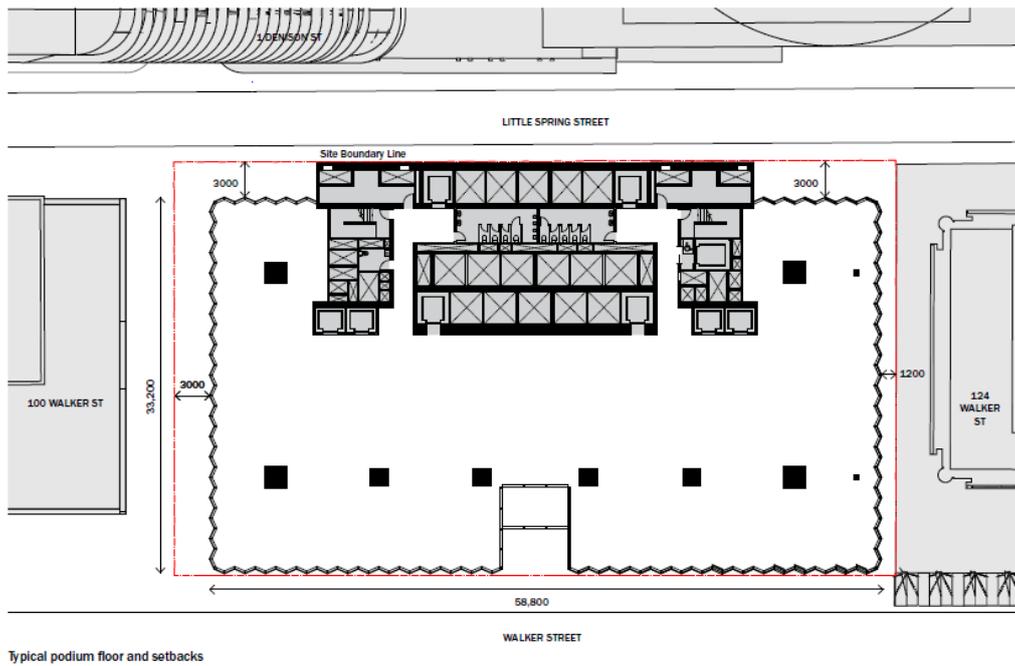
The public domain strategy for the North Sydney CBD identifies that the pedestrian link on the site's southern edge should be at least 6.0m wide. Therefore 3.0m is to be provided from the boundary with the adjacent property, at 100-102 Walker Street.

For the tower, the DCP requires an average weighted setback of 5.0m to Walker Street and 4.0m to Little Spring Street. No numeric control is provided in the DCP for setbacks to side boundaries. Side boundary setbacks are guided by good urban design outcomes, as expressed by the objectives of the DCP for setbacks:

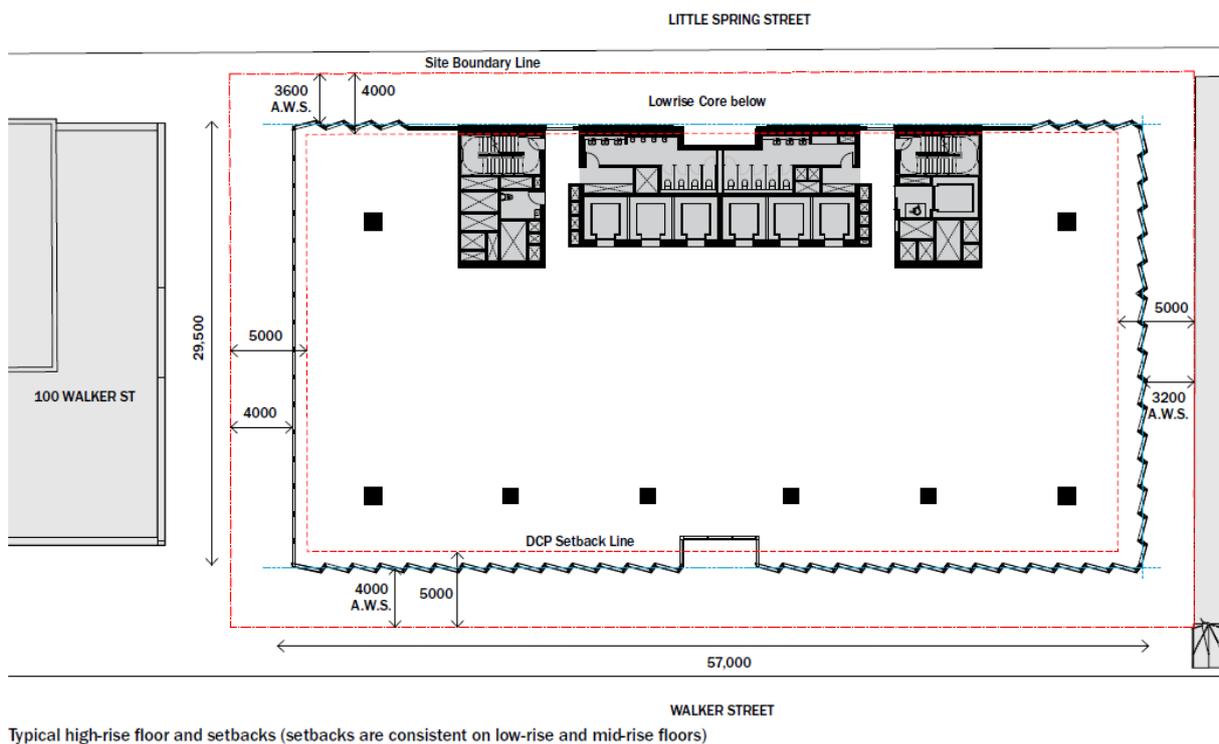
- *To enable a reduction in the impact of scale.*
- *To ensure adequate ventilation, solar access, privacy, view sharing and a reduction of adverse wind effects.*
- *To improve pedestrian flow and amenity and allow a range of activities to be accommodated.*

The recently exhibited DCP amendments propose 6.0m setbacks. These bear no weight in this assessment, as the DCP amendments have not been adopted and enforced by publication.

The diagrams below, from Hassell's Architectural Design Report Addendum (August 2021) and Supplementary Design Report (January 2022), show proposed podium and tower setbacks.



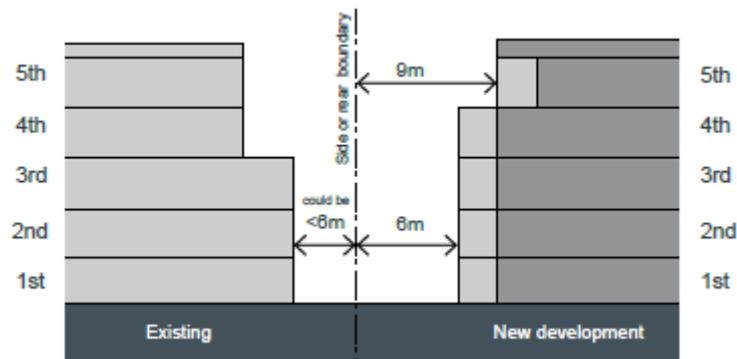
**Figure 6a: Typical podium setbacks**



**Figure 6b: Typical tower setbacks\***

As these diagrams indicate, proposed setbacks do not comply with the minima specified by the DCP. In support of these variations, the applicant submits the building's redesign represents an appropriate response to the surrounding built form context and emerging character.





**Figure 8: Separation distances suggested by the Apartment Design Guide (p. 63, Department of Planning, 2015)**

Setting aside the conditions shown in this diagram (only setbacks from the boundary provide building separation) and comparing them with the actual conditions of the site (a road and the proposed tower setback provides separation) the proposal could be deemed consistent with these guidelines, for buildings of 5 or more storeys. The ADG’s diagram indicates separation of between 9.0m and 15m would be suitable. A separation distance of about 13.4m is proposed.

The applicant’s analysis infers acceptable separation with nearby development regarding sunlight access, views and privacy. The applicant also submits that impacts on the streetscape and the pedestrian environment are acceptable. This is concurred with, as the plans received in January 2022 have increased the setback of the tower from 3.0m to 4.0m, on the southern side, above the pedestrian link. To maintain an optimised floor plate this was offset by decreasing the tower setback to the east, to Walker Street, from 4.5m to 4.0m. this reduction has little impact on the building’s performance regarding the above objectives.

On Little Spring Street, the setback of the lift core and the attached green wall are 375mm from the boundary (details shown p. 35 Attachment 5), to allow space for installation of the vertical gardens and plant growth. This space appears to be inadequate to avoid encroachment onto the footpath (1.3m wide) on Little Spring Street and ensure a safe pedestrian environment. The applicant’s assurances and information submitted to date does not provide sufficient confidence in the efficacy of this design. Examples of extant green walls installed elsewhere appear to require substantially greater setbacks to avoid overhanging of public spaces.

With regard information submitted in January and February 2022, the magnitude of the green wall on the western façade appears excessive and given the potential inherent to the current design, concern remains regarding potential for vegetation to break up and fall some 25 storeys (over 90m) to the ground. Further, the durability and the means of maintaining the green wall has not been completely assured.

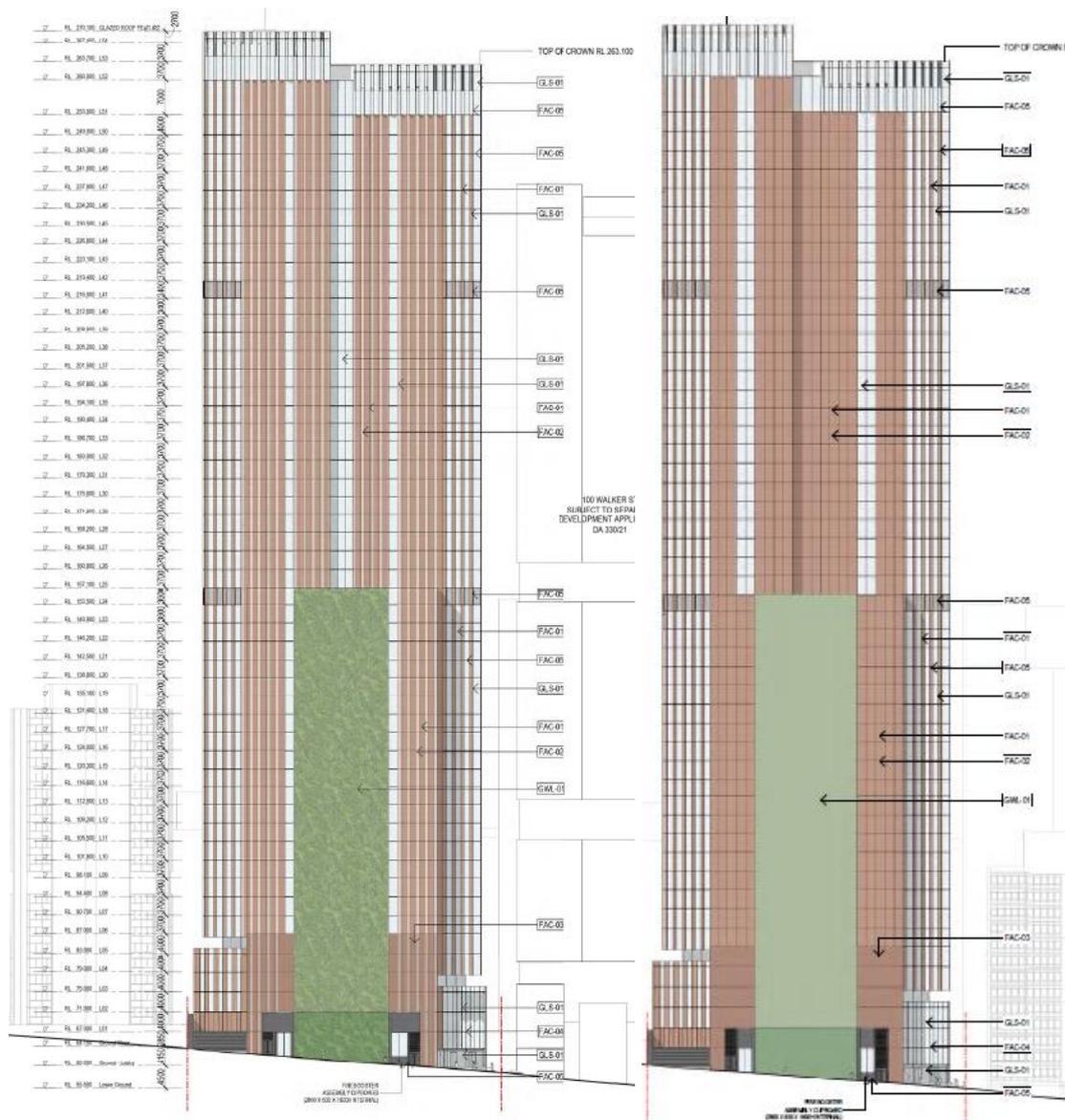
The approach taken on the Walker Street side of the building is considered appropriate, helping to articulate and animate the façade, being intermingled with other façade elements. Neither does it have the same problem as the western façade, of potentially overhanging the footpath. This is due to the sawtooth design of the podium’s eastern side, recessing the green wall away from the footpath. There is still some potential for plant material to overhang the footpath, although to a lesser degree.

Conditions require a risk assessment to be undertaken of the green wall design and the design modified if required for reasons of ensuring public safety, for vertical gardens proposed on western and eastern sides of the building.

### Streetscape and appearance

With the above adjustments the proposal is considered to have acceptable and positive public domain outcomes for frontages to Walker Street, the entire walkway between Walker Street and Little Spring Street, and to Little Spring Street.

Amendments submitted on 2 February 2022 have refined the design of the western façade, acceptably reducing its visual impact. Below and to the left is the current elevation and to the right the superseded elevation. Comparing them the revised elevation is more refined, alternating glazed and terracotta panels either side of and above the green wall, which still maintains its previous dimensions. This reduces the facades bulkiness and its visual impact and will appear as a less-dominating element of North Sydney’s skyline when viewed from the west. The western side, it could be said, now share some of the elegance of its opposite elevation.



**Figure 9: Western elevation (Hassell 02/22) Figure 10: Western Elevation (Hassell 08/21)**

## Views

### Public Views

The reduced height is considered to have a minor beneficial effect, rendering the proposal's impact on public views as acceptable, despite variations to setbacks, as proposed. The Design Report Addendum (Attachment 6) presents a series of images, shown below, depicting public views of the building from north and south of the site, on Walker Street. The variation of the tower setback to Walker Street, is barely discernible.

**View 03**

View from Walker Street looking north. 4m average weighted setback to Walker Street



**View 03-b**

View from Walker Street looking north. 4.5m average weighted setback to Walker Street



**View 04**

View from Walker Street looking south. 4m average weighted setback to Walker Street



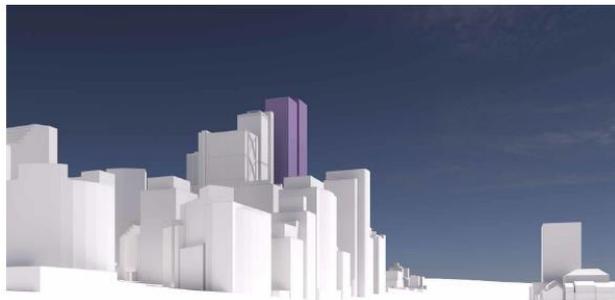
**View 04-b**

View from Walker Street looking south. 4.5m average weighted setback to Walker Street



**Figure 11: Views of the development along Walker Street. To the left is the development (lavender) with the 4.0m average weighted setback. To the right is the building envelope in compliance with the 4.5m AWS (Hassell, Design Report Addendum, January 2022).**

View from the M1 motorway looking north.



View from M1 motorway looking south.



**Figure 12: The image to the left shows the North Sydney skyline with the proposal, viewed from the south. The right-hand image shows the proposal in the skyline viewed from the north, on the Warringah Freeway (Hassell, Design Report Addendum, August 2021).**

View from Mrs Macquarie's Chair



**Figure 13: North Sydney viewed from Mrs Macquarie's Chair, with the proposed building (Hassell, Design Report Addendum, August 2021).**

View from Barangaroo Headland park.



**Figure 14: View of North Sydney with the proposal from the Barangaroo Headland Park - the Sydney Harbour Bridge is out of view and the high-rise buildings at Milsons Point**

*should be shown at the right-hand side of the image, see Google Street view image below, taken from Miller's Point - (Hassell, Design Report Addendum, August 2021)*



**Figure 15: View of North Sydney from Millers Point (Barangaroo Park) (Google, Street view, August 2015).**

### **Private Views**

The only residential development with direct views across the site is the Alexander Apartments at 79-81 Berry Street and the residential tower at 88 Berry Street. Views from the latter are unimpeded, to the west and south.

The building accommodating the Alexander Apartments has a commercial podium below a residential tower, which faces onto Berry Square. This development is located west of the site's north-western corner across Little Spring Street, which is 9.8m wide. There are 241 residential units in the building. Units facing the site in an arc from east to south are most-affected by the proposed development. The maximum height of the building is approximately RL 184, well below both the LEP's permitted maximum and the height proposed by the subject application.

Views from the Alexander Apartments building to the Sydney CBD, the Bridge or Harbour are or will be obstructed by the following existing or proposed buildings, in addition to being affected by the proposed development:

- One Denison Street, North Sydney (159 m in height);
- 99 Walker Street, North Sydney (85 m in height);
- 141 Walker Street, North Sydney (99 m in height); and
- 100 Mount Street, North Sydney (149 m in height).

Furthermore, the Metro over-station development (under construction) will effectively remove views to the west. The new building proposed to replace the existing MLC Centre (the subject of

a currently undetermined application, and subject to appeal) would, if approved, block remaining limited views to the southwest, from the Alexander Apartments.

A visual assessment report prepared by Urbis (December 2020, Attachment 8) was submitted with the original application. The report remains relevant to the amended proposal, as the lowering of the height in the amended design still leaves the building some 80m taller than the Alexander Apartments building, so it does not alter impacts on views from the Alexander Apartments.

The image below shows the original proposal (blue) and the envelope permitted by LEP and DCP (green). Minor adjustments of setbacks (as now proposed) do not cause any significant additional impact.

On pages 11 to 19 of Urbis's visual assessment report, a series of photo montages is provided. They indicate impacts of the proposal on views from one or two of the Alexander Apartments, at level 35. An example of these, of the south-east view, is shown below, this viewpoint arguably showing the view impacts from the greatest number of apartments in the building at 79-81 Berry Street.

As the applicant's analysis indicates, views of the harbour in this direction are not affected by the part of the building that extends beyond the permitted envelope (blue shading), only impacting views of nearby buildings indicated by grey shapes, which represent approved buildings at 88 Walker Street (under construction) and 100 Mount Street (completed). The view to the southeast is only impacted by the envelope permitted (green shading) by Council's planning controls.



**Figure 16: Extract from visual assessment showing view impact of the proposal on views from Alexander Apartments (Urbis).**

The visual assessment also notes that the Tenacity case is not the only Land and Environment Court decision of relevance to the proposal. In another case, *Arnott v City of Sydney* [2015] NSWLEC 1052 at paragraphs 72 and 73, it is stated that:

72. *I accept and adopt Ms. Morrish’s interpretation of the skilful design test in the fourth step of the Tenacity planning principle. The skilful design test is not about whether a design is skilful, in the sense of the architect’s expertise in creating a successful architectural composition. Instead, the intent of the fourth step is to look for opportunities within the massing and form of the proposal to minimise the impact on views across the site, whilst maintaining the capacity to reasonably develop the site. This is evident in Dr Roseth’s own words at paragraph 29 of the Tenacity planning principle, ‘whether a more skilful design could provide the applicant with the same development potential and amenity’. It is partly for this reason that the Tenacity planning principle is less helpfully applied to impacts on views from individual apartments within residential apartment buildings, as there are generally more limited*

*opportunities to rearrange massing to preserve what is often a singular orientation to a view. For this reason, it is also appropriate to consider the residential apartment building as a whole in assessing view impacts.*

73. *While I am satisfied that the resident objectors' concern regarding the impact of the proposal on their harbour view is well founded; it is fair to weigh the detrimental impact of the proposal on their views against the reasonableness of the proposal.*

Having regard to the foregoing and acknowledging that the Court has found it reasonable to assess the impact on a residential building as a whole, and that it is reasonable to weigh a proposal's negative impacts with the overall 'reasonableness' or acceptability of that proposal, then the effects on views from the Alexander Apartments can be considered reasonable and as anticipated by the planning controls. The proposed building compared to a compliant building has a marginal effect on views from the Alexander Apartments. Only views of approved buildings, not of the harbour, are so affected.

### **Impacts on 88 Walker Street.**

This building features views over the harbour to the southeast, east and enjoys views to the north. Any more distant views to the southwest across this site are either impacted by existing or approved development by being substantively generally taller than 88 Walker Street. Close views of the North Sydney CBD will be enhanced due to the modern design of the building.

### **Signage**

Under Section 9 of the DCP, roof or sky signs are generally not permitted. However, Council may consider new roof or sky signage, but only where:

- The new signs replace one or more existing roof or sky signs and improve the visual amenity of the locality; or
- The new signs improve the finish and appearance of the building and the streetscape.

Further, roof or sky signs will only be permitted if they are associated with a non-residential use in the B3 - Commercial Core or B4 - Mixed-use zones.

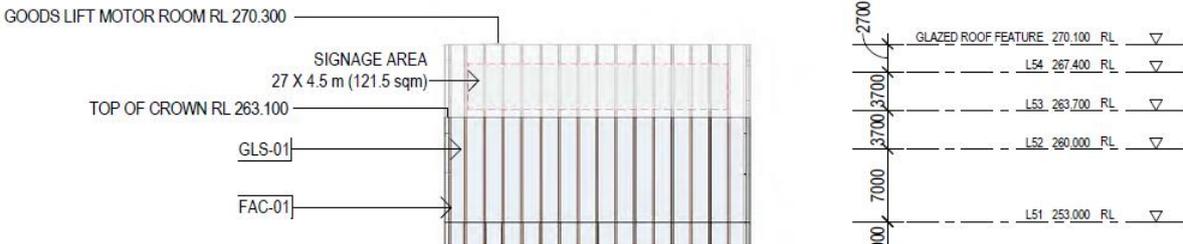
Roof or sky signs must not be positioned higher than the highest point of any part of the building, including lift overruns or air conditioning plants but excluding flag poles, aerials, masts and the like.

Roof or sky signs must not be wider than any part of the building and also in accordance with the relevant desired character statement in Section 9.2 of the DCP.

Signage zones are proposed above the habitable levels of the building. No details of the signage are provided, so whether the signage will be associated with non-residential use is unknown. The applicant has foreshadowed their intent to lodge another development application for the signage.

Whether or not the building's glass facade is capable of supporting or having an advertising structure integrated with it, along with details of the signage, will be some of the matters to be considered in accordance with the LEP, DCP and SEPP 64, when an application for signage is submitted.

The signage zones proposed as depicted in the architectural plans are disproportionately large and should not be included in any consent. The extract from the plans demonstrates the signage areas on northern and southern elevations of the building being virtually the same. That inappropriately sized signage would derogate from the reasons why the height breach as requested is supported, should be noted.



**Figure 17: Extract from architectural plans showing location and dimensions of one of two signage areas near the building’s summit (Hassell).**

**North Sydney Planning Area Part C Section 2**

The site is in the Central Business District, which is in the DCP’s North Sydney Planning Area.

The desired future character statement for the North Sydney Central Business District is the key provision to be considered. There are also built form provisions, already assessed above with regard to the LEP and DCP. Several other provisions are also relevant to the proposal’s assessment which are considered in the following table.

**Assessment Table - Desired future character (cl. 2.1.2)**

Provision	Compliance	Comments
P1 High rise and medium density, commercial and mixed-use developments.	Yes	
P2 Provision of a variety of different sized office, retail, community and entertainment spaces.	Yes	
P3 Provision of a variety of outdoor and indoor community spaces (e.g., urban plazas, gymnasium; gardens; outdoor and indoor dining areas and food courts).	Yes	
P4 The commercial focus of the CBD is to be enhanced by preventing any further residential development from occurring in its core (i.e., the B3- Commercial Core zone).	Yes	
P5 Development above the Victoria Cross metro station will provide significant commercial floorspace, as well as retail, dining and community uses that will contribute to the overall amenity and vitality of the CBD.	N/A	

Provision	Compliance	Comments
P6 Council will pursue its vision for Miller Street as the civic heart of North Sydney. This will involve significant interventions and public domain improvements aimed at creating a vibrant place for people, with vehicle movements removed or minimised as much as practicable and both sides of Miller Street activated.	N/A	
P7 Brett Whiteley Place is a key public space for the North Sydney CBD which will incorporate an expanded Elizabeth Plaza, as well as portions of Denison Street and Mount Street. This expanded plaza will provide dedicated space for outdoor dining, large and small events, and other activities.	N/A	The proposal would not affect Brett Whiteley Plaza.
P8 The Central Laneways precinct will become a major focal point of pedestrian activity and amenity.	Yes	
P9 Active frontages to the Metro site, 1 Denison Street and the MLC building will contribute to the activation of the public domain in the Central Laneways Precinct.	N/A	
P10 A new laneway is provided across the redevelopment of 1 Denison Street to link the Metro site, Denison Street, Little Spring Street and Walker Street	N/A	
P11 Alternatives to the current entry of the commercial car park entry at 100 Miller Street (Northpoint) will be pursued to reduce or remove traffic on Miller Street and improve pedestrian amenity.	N/A	
P12 Public open space and a community facility is provided at Ward Street Plaza (car parking station site).	N/A	
P13 Provide roof top gardens and/or public facilities that allow the public and/or residents to access district views.	Yes	The level 51 garden and restaurant provide opportunity for people to visit these features of the proposal and to enjoy district views. Access and its management is to be addressed by a separate application for facilities on level 51, a condition is accordingly recommended.
P14 Development should maximise opportunities to incorporate retail, restaurant, bar facilities and other non-residential floor space at ground level to promote street level activation, amenity, diversity and place making objectives.	Yes	
P15 Provide a diverse mix of higher density, non-residential land uses in the B4 Mixed Use zone of the Education Precinct, including education, shops, cafes, gyms, entertainment and small businesses.	N/A	

Provision	Compliance	Comments
P16 Provide continuous active uses such as shops and cafes at the ground level of all buildings along Pacific Highway, Berry Street and Napier Street, especially within the Education Precinct.	N/A	
P17 Consideration should be given to the inclusion of educational or community-related purposes in the redevelopment of 110, 112, 116 and 120 Pacific Highway and 9 Napier Street.	N/A	
P18 Victoria Cross Metro station is designed to enhance the North Sydney CBD as a major commercial centre and further encourage the use of public transport. Pedestrians are prioritised throughout the CBD with a number of interconnected pedestrian routes that facilitates all direction movement and encourages fine grain retail and dining uses.	Yes	
P19 Barriers to pedestrian movement, particularly Miller Street, Berry Street and the Pacific Highway, will be reimagined such that their function and treatment favour pedestrian movement and amenity.	N/A	
P20 New development focuses on the use of public transport, cycling and walking.	Yes	
P21 Pick up and drop off points for public transport and taxi ranks are located as close as possible to public spaces and activities, and main building entries.	N/A	
P22 Loading and delivery facilities should be located away from the street and where possible be located underground.	Yes	Relocation of vehicle services and driveways to Little Spring Street and within the building are consistent with this provision.
P23 The following through site link is to be provided, retained and enhanced:  (n) A widened and improved pedestrian link from Little Spring Street and Walker Street across 102 Walker and 110 Walker Street.	Yes	
P24 Consideration should be given to the provision of an east - west pedestrian link from the Pacific Highway to Napier Street across either the northern side of 120 Pacific Highway or the southern side of 33 Berry Street.	N/A	
P25 Consideration should be given to the demolition of the single storey structure at the northern end of 105 Miller Street (MLC Building) to improve accessibility and permeability to Miller Street and the Victoria Cross metro station.	N/A	

#### Assessment Table - Desired built form (cl. 2.1.3)

Provision	Compliance	Comments
P1 Development sites should be of a size which enables the creation of large high quality floor plates which helps to reinforce the Centre's role as a Global City as identified within the Metropolitan Strategy.	Yes	
P2 Development on small sites should not detrimentally impact on the long-term ability of the amalgamation of sites for significant commercial development.	Yes	
P3 Buildings should be carefully designed to minimise the impact of their height and bulk on surrounding residential areas.	Yes	
P4 Roof design contributes to building's appearance from a regional view catchment.	Yes	Despite the proposed height variation, the building has an acceptable effect on the regional view catchment, being broadly compatible with the skyline permitted by recently increased heights in the North Sydney CBD.
P5 Buildings on 116 and 120 Pacific Highway and 9 Napier Street should be designed such that their bulk steps down from the Pacific Highway to Napier Street to protect sunlight access to the Don Bank Museum and enhance pedestrian amenity to Napier Street.	N/A	
P6 Zero setback to all street frontages at the ground floor level and adjacent to heritage items, with the following exceptions: no exceptions apply to the site.	Yes	
P7 Buildings must be setback to conserve views to, and the setbacks and settings of, heritage items at 86 and 146 - 150 Walker Street, 94 Pacific Highway (Post Office), 36 Blue Street (Greenwood), 153 Miller Street (MLC Building), 168 - 172 Pacific Highway and 1-7 Napier Street.	N/A	
P8 The setback of new buildings or alterations and additions to existing buildings on land fronting McLaren Street between Miller and Walker Streets are to match that existing to protect the existing fig trees. Encroachments will only be permitted where the development does not cover the drip line of any of the existing trees.	N/A	
P9 A maximum podium of 5 storeys to all streets, with a weighted setback of 5m above the podium with the following exceptions:  (a) & (b) do not apply  (c) A podium of between 2 and 3 storeys to Wheeler Lane and Angelo, Charles, Denison, Harnett, Napier, Little Spring and Little Walker,	No	Podium height has been addressed, this assessment concluding the northern section of the podium is one storey too high and warrants amendment. A condition is accordingly recommended to reduce the height of the podium's northern half.

Provision	Compliance	Comments
Spring, Ward Streets, with a weighted setback of 4m above the podium		
P10 Podium heights should match or provide a transition in height between immediately adjacent buildings.	No	As above.
P11 Podium heights should match the height of adjacent heritage items.	N/A	
P12 Podium height may be reduced to that part of the building devoted to commercial use in mixed-use buildings.	N/A	
P13 If there is no commercial component, and therefore no podium, adequate side separation should be provided for residential amenity.	N/A	
P14 Architectural detailing, high quality materials and ornamentation provide a rich visual texture and a symbolic/decorative reference to the history of the place, the building's use or occupant.	Yes	
P15 Provide a visually rich intimate pedestrian environment with active street frontages at ground level.	Yes	
P16 The natural rock outcrop at 136 Walker Street should be incorporated into the design of any redevelopment proposal for the site.	N/A	
P17 Continuous awnings must be provided to all commercial buildings, except on the eastern side of Miller Street between the Pacific Highway and McLaren Street.	No.	Awnings are proposed above Walker Street footpath. They are located too high above the to provide adequate weather protection. A condition is recommended to lower the awning in accordance with the DCP height range for footpath awnings.
P18 Consideration should be given to the provision of weather protection at the pedestrian entrances or over outdoor seating areas for buildings fronting Miller Street between the Pacific Highway and McLaren Street.	N/A	
P19 A 'sense of arrival' is established at North Sydney Station with strong linkage to the north to connect with the pedestrian bridge over Pacific Highway and Denison Street.	N/A	
P20 The Greenwood historic school building and large Moreton Bay Figs are retained and incorporated as the southern pedestrian gateway to the North Sydney CBD.	N/A	
P21 The intersection of Miller Street and Pacific Highway forms an important focal point of the North Sydney Centre with a distinctive character reinforced by the Post Office and the MLC building.	N/A	
P22 Improve amenity and safety by installing lighting, public art and/or landscape along the eastern facade of 12-14 Mount Street.	N/A	

<b>Provision</b>	<b>Compliance</b>	<b>Comments</b>
P23 Provide a consolidated green space over the Don Bank Museum and 100 Pacific Highway. Consideration should be given to extending this green space over the western side of 1 Wheeler Lane to allow for a more direct north - south pedestrian link from Charles/Napier Street to Wheeler Lane.	N/A	
P24 33 Berry Street should be designed such that Napier Street is activated by non-residential tenancies such as commercial or educational facilities (At least 50% of its frontage should comprise of non-residential tenancies at the ground level).	N/A	
P25 Have regard to Public Domain designed in accordance with the <i>North Sydney Centre Public Domain Strategy</i> and <i>North Sydney Council Infrastructure Manual</i> .	Yes	A condition is recommended to ensure street improvements are designed and constructed with Council's "New Public Domain Style Manual", which is the current document relevant to public infrastructure works.
P26 Continued use of tree planting and use of native vegetation to enhance the urban environment and attract birdlife.	Yes	A condition is included, requiring submission of planting details for all landscaping, vertical and horizontal.
P27 Choice of trees and vegetation in accordance with <i>North Sydney Centre Public Domain Strategy</i> , <i>Street Tree Strategy</i> and <i>North Sydney Council Infrastructure Manual</i> .	Yes	As above.
P28 Short stay parking spaces should be located within or as close as possible to meeting places.	Yes	Short stay parking is on basement level 2, comprising 10 spaces for couriers, 4 accessible spaces, 4 for other cars and 2 for motorcycles.
P29 Reduce the amount of long stay commuter parking on site.	Yes	170 parking spaces are proposed. As up to 2,700 workers in addition to visitors could occupy the site, the parking complies with the DCP and is not excessive. The majority of trips generated by the development will be made by public transport or other means.
P30 Reduce the amount of non-residential parking on site.	Yes	As above.

## **OTHER ENVIRONMENTAL PLANNING INSTRUMENTS**

### **SEPP (Infrastructure) 2007**

As noted in the External referrals section above, Transport for NSW did not object to or require any conditions for the proposal. This agency was consulted regarding traffic generation (cl. 104) the site being within 90m of Berry Street, a classified road and the development proposing more than 2,500m<sup>2</sup> of commercial gross floor area.

### **SEPP 55 Remediation of Land**

The preliminary site investigation submitted with the application noted and recommended:

*Based on the results of this PSI it is considered that there is currently insufficient data on contamination at the site for a conclusion to be made regarding the suitability of the site in its current state for the proposed development. Based on the identified contamination risks it is considered that the site could be rendered suitable for the proposed development subject to further investigation and, if required, remediation/ management of any identified unacceptable contamination.*

*It is therefore recommended that a detailed site (contamination) investigation be undertaken to assess the actual concentrations, if any, of potential contaminants at the site, the suitability of the site for the proposed development and the need for remediation/ management of contamination. The recommended detailed site (contamination) investigation is currently being undertaken by DP and Stockland Development Pty Limited will provide it to Council once complete.*

Accordingly, should the subject application be approved, a condition is included to require submission of a detailed site investigation to Council and, if acceptable, implementation of the report's recommendations.

### **Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The site is axiomatically located in the Sydney Harbour catchment. As the site is not located close to the foreshore and will form part of a distant skyline view of North Sydney and Milsons Point, from the Harbour and from various vantage points on Harbour foreshores and within the waterway's visual catchment.

Furthermore, the development is capable of effectively treating the quality and quantity of stormwater generated by the development before discharge to the public drainage system and the Harbour. The application is acceptable with regard to relevant aims, objectives and principles of the SREP.

### **LOCAL INFRASTRUCTURE CONTRIBUTIONS**

The three existing buildings have a combined GFA of 11,301.7m<sup>2</sup> and the proposal has a GFA of 68,318m<sup>2</sup>. In accordance with Council's Local Infrastructure Contributions Plan the net increase in non-residential GFA would require a payment of a section 7.11 contribution of \$11,004,108.71, were the application approved. A recommended condition requires payment of the contribution.

## ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been appropriately considered by 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. Relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

### Submitters

Key issues raised by submissions have been considered in this assessment. The development proposed and others recently approved, under construction and completed, will impact the amenity of nearby residential apartments. These impacts would have been anticipated and considered in formulating the planning framework as it presently applies to the North Sydney CBD. Compared to a compliant development, impacts of the proposed, slight departures from setback and height controls are negligible, when compared to a development fully compliant with applicable planning controls.

### CONCLUSION

The proposed development has been assessed with respect to relevant provisions of the EP&A Act, and applicable provisions of relevant State Environmental Planning Policies, the North Sydney Local Environmental Plan 2013, and the North Sydney Development Control Plan 2013. The North Sydney Local Infrastructure Contributions Plan and strategic documents related to the North Sydney CBD have also been considered.

The applicant has submitted a request in accordance with clause 4.6 of the LEP to exceed the building height development standard of RL 260 by 10.3m, or 3.96%.

Non-compliance with the maximum height development standard does not cause, or contribute to:

- unreasonable additional overshadowing of land within and outside the North Sydney Centre,
- Adverse impacts on the built environment, in terms of its bulk, scale, form and massing,
- An increase in anticipated yield,
- Negative impacts on significant view lines and vistas from the public domain, and
- While the proposal affects views of residents from adjacent apartments the degree of the affect is reasonable. This is due to the building only slightly varying the building envelope resulting from justified variations in setbacks of the tower. When comparing the proposed building envelope with a building envelope that fully complies with height and setback controls, the difference between these is insignificant.

Concurrence of the Secretary of the Department of Planning Industry and Environment can be assumed, and consent can be granted, despite there being some benefit in maintaining the standard.

However, improvements to the design achieved throughout the assessment process outweigh this benefit, together with implementation of recommended conditions.

The development stands to make a significant contribution to North Sydney's built environment, it's economic and community life. Approval is accordingly recommended.

## **RECOMMENDATION**

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**THAT** the Sydney North Planning Panel, as the consent authority, can be satisfied the applicant's submission meets the requirements of clause 4.6 of the North Sydney Local Environmental Plan 2013, and grant consent to Development Application No.19/21, subject to the conditions recommended in Attachment 1 to this report.

JIM DAVIES  
**EXECUTIVE ASSESSMENT PLANNER**

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**Date 04 February 2022**