

## COUNCIL ASSESSMENT REPORT

|                                                                             |                                                                                                                                                                                                     |
|-----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Panel Reference                                                             | PPSSNH-212                                                                                                                                                                                          |
| DA Number                                                                   | DA97/21                                                                                                                                                                                             |
| LGA                                                                         | North Sydney                                                                                                                                                                                        |
| Proposed Development                                                        | Demolition of existing buildings and construction of 26 storey commercial building with part 4, part 5 levels of basement parking                                                                   |
| Street Address                                                              | 63-83 Walker Street, North Sydney                                                                                                                                                                   |
| Applicant/Owner                                                             | The Trustee for Thirdi Walker Street Unit Trust;<br>Somersby Springs Pty Ltd, Props of SP 70165/77239, Props of SP 35394, 2Hourtoner Pty Ltd                                                        |
| Date of DA lodgement                                                        | 23 April 2021                                                                                                                                                                                       |
| Number of Submissions                                                       | 73                                                                                                                                                                                                  |
| Recommendation                                                              | Approval                                                                                                                                                                                            |
| Regional Development Criteria (Schedule 4A of the EP&A Act)                 | Capital Investment Value (CIV) of greater than \$30 million                                                                                                                                         |
| List of all relevant s4.55(1)(a) matters                                    | North Sydney LEP 2013 <ul style="list-style-type: none"> <li>• Zoning – B3 Commercial Core</li> </ul> SEPP 55 - Contaminated Lands<br>SREP (Sydney Harbour Catchment) 2005<br>North Sydney DCP 2013 |
| List all documents submitted with this report for the Panel's consideration | Conditions<br>Plans<br>Clause 4.6 request<br>Design Statement                                                                                                                                       |
| Report prepared by                                                          | George Youhanna, Executive Planner North Sydney Council                                                                                                                                             |
| Report date                                                                 | 16 March 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 (S94EF)? Not  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions* Applicable

### Conditions

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

## EXECUTIVE SUMMARY

This development application seeks approval to construct a mixed use commercial building at 63-83 Walker Street, North Sydney. The DA seeks approval for:

- Site preparation works including demolition of all existing structures and bulk excavation;
- Construction and use of a part four, part five level basement, including:
  - driveway access from Little Walker Street;
  - 82 vehicle and 34 motorcycle parking spaces; and
  - end of trip facilities.
- Construction and use of a 26 storey commercial building, comprising:
  - lower ground floor and ground floor retail tenancies;
  - dual podium and tower lobby divided by a central podium atrium;
  - 23 commercial office levels;
  - podium and rooftop terrace; and
  - top of building plant level.
- Landscaping and public domain works including the provision of a new through-site-link connecting Walker Street to Little Walker Street.
- Extension and augmentation of services and infrastructure as required.

Council's notification of the proposal attracted 73 submissions, including 71 submissions in support and 2 submissions raising concern with regard to height, views, overshadowing and other concerns.

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

The applicant has submitted a Clause 4.6 request with regard to the height of the proposal exceeding the current height control of RL 145 by 10m. The request is considered to be well founded and is supported.

Council's Design Excellence Panel has considered the proposal and the Panel's advice has largely been adopted in the revised development.

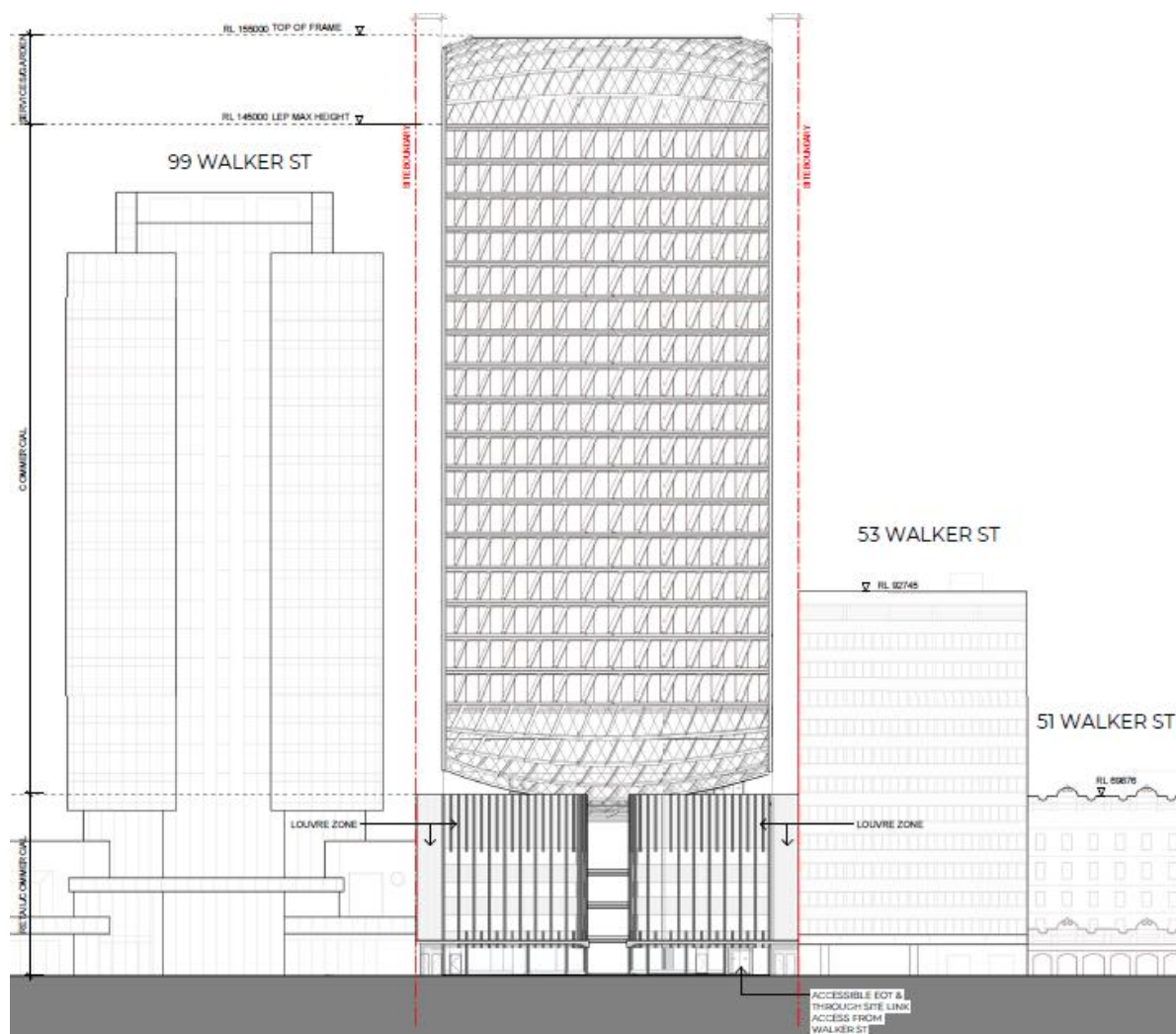
Following assessment of the development application, it is recommended that the Panel may assume the concurrence of the Secretary of the Department of Planning and Environment and invoke the provisions of Clause 4.6 with regard to the exception to the development standard for height and grant consent to the development.

## 1. DESCRIPTION OF PROPOSAL

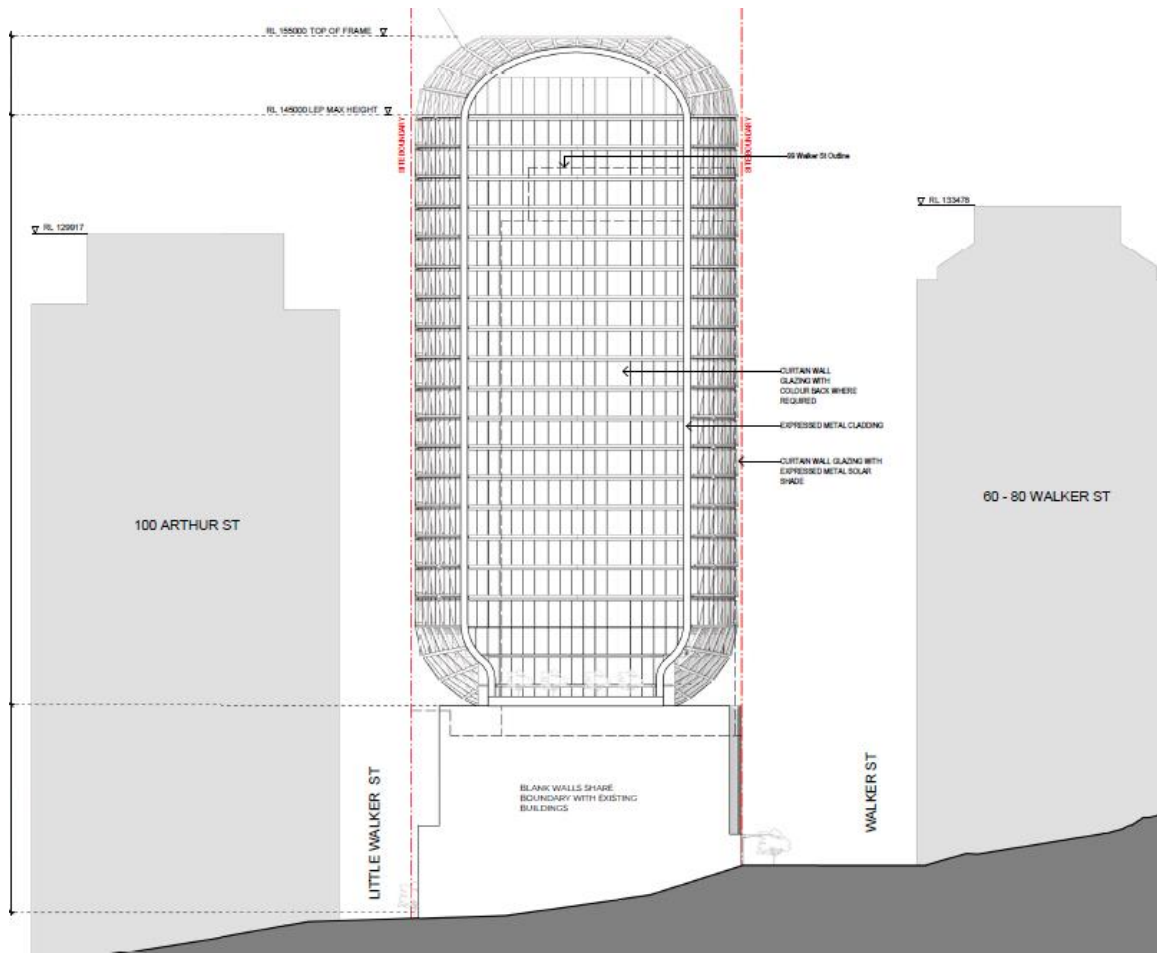
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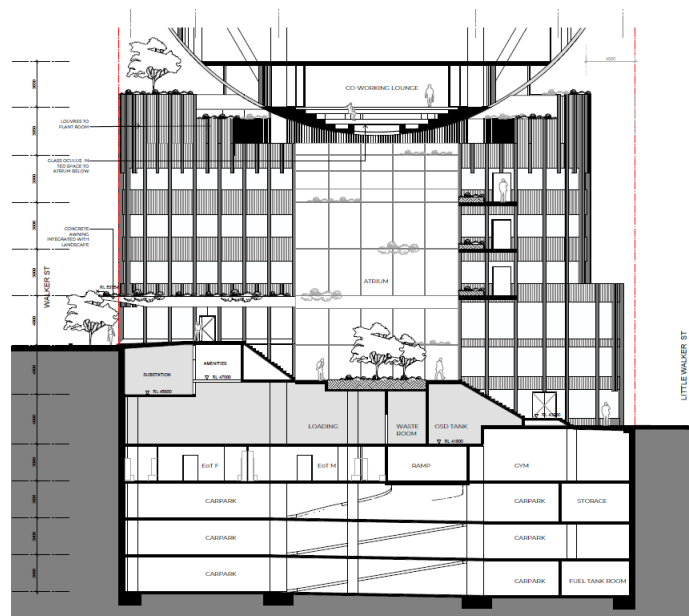
### West Elevation



## North Elevation



## Photomontage and Section

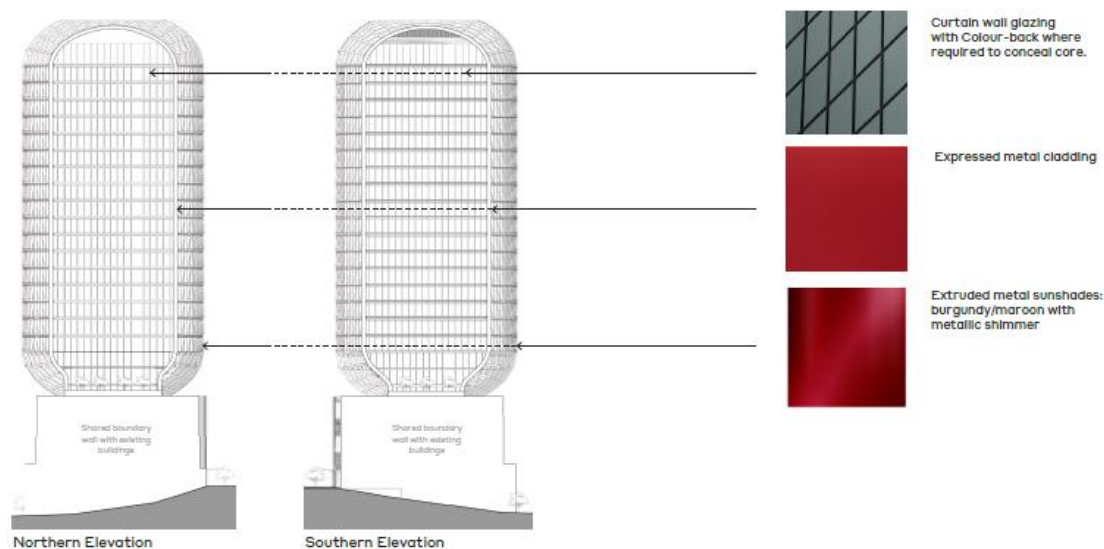


## Area Schedule

| Levels    |                             | RL      |       |                 |                 |                |                 |
|-----------|-----------------------------|---------|-------|-----------------|-----------------|----------------|-----------------|
|           |                             | FFH (m) |       | GBA (per level) | GFA (Measure d) | NLA Efficiency | NLA (per level) |
| High Rise | Top of Building             |         | 156   |                 |                 |                |                 |
|           | Level 26 - Plant            | 5       | 151   |                 | 157             |                |                 |
|           | Level 25 - Plant            | 6       | 145   |                 | 841             |                |                 |
|           | Level 24                    | 3.8     | 141.2 | 1345            | 1236            | 87%            | 1165            |
|           | Level 23                    | 3.8     | 137.4 | 1345            | 1236            | 87%            | 1165            |
|           | Level 22                    | 3.8     | 133.6 | 1345            | 1236            | 87%            | 1165            |
|           | Level 21                    | 3.8     | 129.8 | 1345            | 1236            | 87%            | 1165            |
|           | Level 20                    | 3.8     | 126   | 1345            | 1236            | 87%            | 1165            |
|           | Level 19                    | 3.8     | 122.2 | 1345            | 1236            | 87%            | 1165            |
|           | Level 18                    | 3.8     | 118.4 | 1345            | 1236            | 87%            | 1165            |
|           | Level 17                    | 3.8     | 114.6 | 1345            | 1236            | 87%            | 1165            |
|           | Level 16                    | 3.8     | 110.8 | 1345            | 1236            | 87%            | 1165            |
|           | Level 15                    | 3.8     | 107   | 1345            | 1236            | 87%            | 1165            |
|           | Level 14                    | 3.8     | 103.2 | 1345            | 1164            | 84%            | 1126            |
|           | Level 13                    | 3.8     | 99.4  | 1345            | 1164            | 84%            | 1126            |
| Low Rise  | Level 12                    | 3.8     | 95.6  | 1345            | 1164            | 84%            | 1126            |
|           | Level 11                    | 3.8     | 91.8  | 1345            | 1164            | 84%            | 1126            |
|           | Level 10                    | 3.8     | 88    | 1345            | 1164            | 84%            | 1126            |
|           | Level 9                     | 3.8     | 84.2  | 1345            | 1163            | 84%            | 1126            |
|           | Level 8                     | 3.8     | 80.4  | 1345            | 1162            | 84%            | 1126            |
|           | Level 7                     | 3.8     | 76.6  | 1383            | 1060            | 74%            | 1023            |
|           | Level 6                     | 3.8     | 72.8  | 1161            | 810             | 66%            | 772             |
|           | Level 5                     | 3.8     | 69    | 888             | 460             | 47%            | 419             |
| Podium    | Level 4                     | 3.8     | 65.2  | 983             | 69              | 0%             |                 |
|           | Level 3                     | 3.8     | 61.4  | 1378            | 1036            | 72%            | 992             |
|           | Level 2                     | 3.8     | 57.6  | 1378            | 1036            | 72%            | 992             |
|           | Level 1                     | 3.8     | 53.8  | 1378            | 1016            | 71%            | 973             |
|           | Ground Floor (Walker St)    | 4       | 49.8  | 1378            | 789             | 55%            | 759             |
|           | Mezzanine (Lobbies)         | 4       | 45.8  | 1426            | 790             | 53%            | 757             |
|           | Basement (Little Walker St) | 4       | 41.8  | 1643            | 545             | 23%            | 386             |
|           | Basement - EOT              | 3.7     | 38.1  |                 | 851             |                | 373             |
| Subtotal  |                             |         |       | 35861           | 29808           | 75%            | 26978           |
| TOTAL     |                             |         |       |                 |                 |                |                 |

## Materials

### 01 Envelope North and South Facade Materiality



## 2. STATUTORY CONTROLS

### North Sydney LEP 2013

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

Environmental Planning & Assessment Act 1979

SEPP 55 – Remediation of Land

SEPP (Infrastructure) 2007

SEPP (State and Regional Development) 2011

SREP (Sydney Harbour Catchment) 2005

## **2.1 POLICY CONTROLS**

North Sydney DCP 2013

## **3. CONSENT AUTHORITY**

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

## **4. DESCRIPTION OF SITE AND LOCALITY**

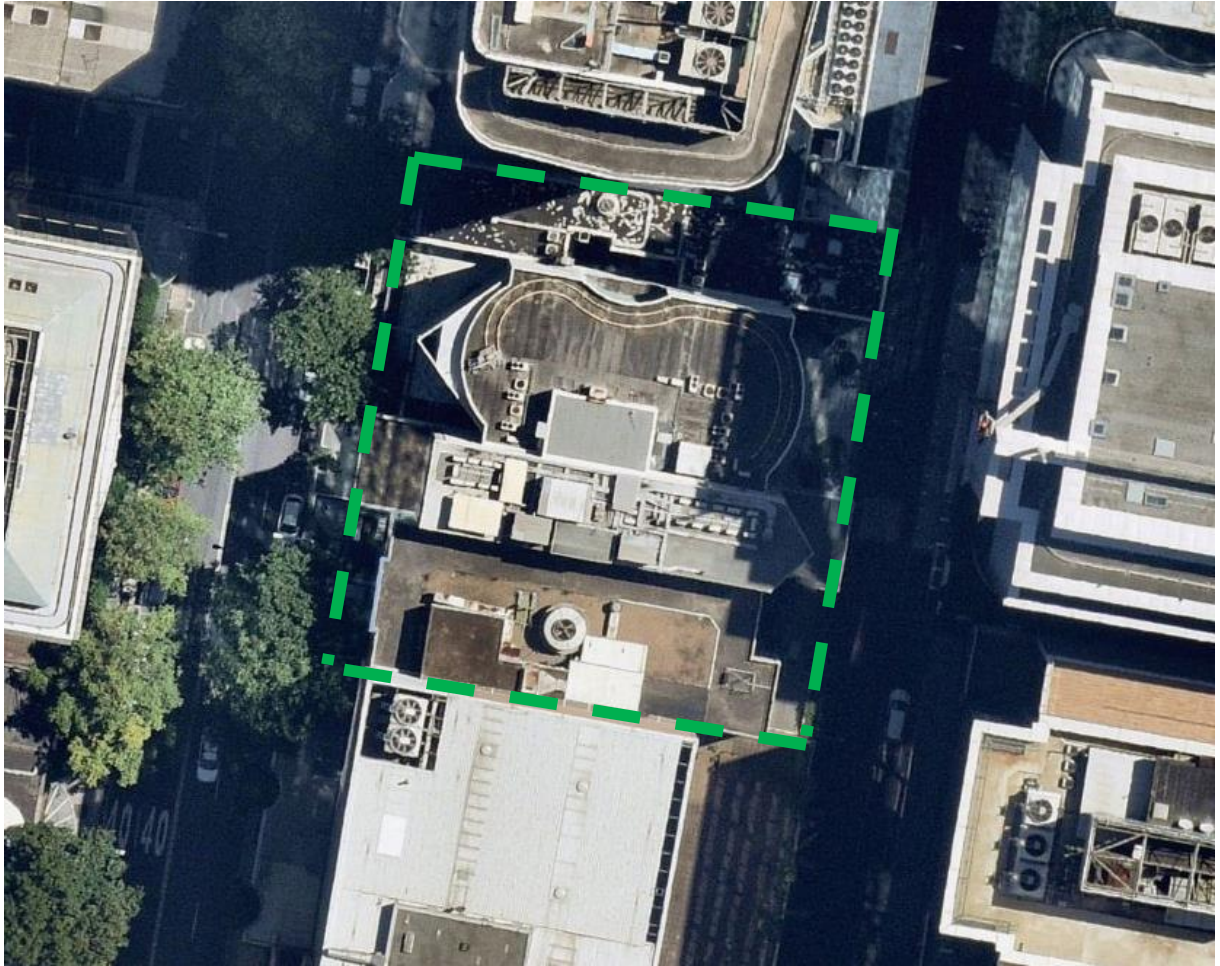
The site is located at 63-83 Walker Street, North Sydney and comprises the following lots:

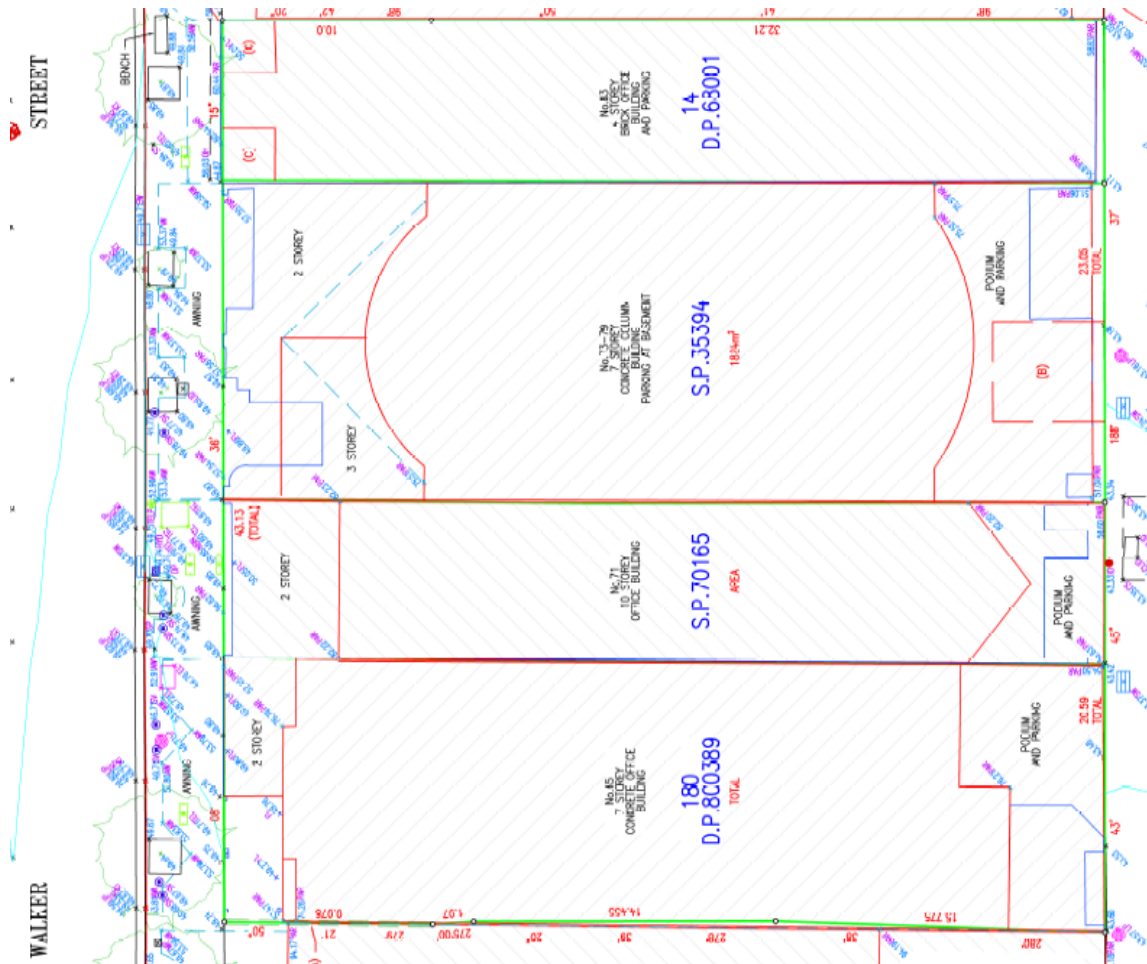
- Lot 180 in DP 800389
- SP70165
- SP35394
- Lot 14 in DP 68001

The site has an area of 1,824m<sup>2</sup> and is located north east of the Pacific Highway and Walker Street intersection with two street frontages, including Walker Street and Little Walker Street. The site falls approximately 6m from the high point on Walker Street (RL 49.83) to the low point on Little Walker Street (RL 43.58).

The site is located approximately 200m north east of the North Sydney Railway Station and approximately 290m south of the future Victoria Cross Metro Station.

The site is currently occupied by four commercial buildings from three to nine storeys in height. Vehicle access is provided via Little Walker Street to each building.





## 5. BACKGROUND

21/12/20 – Pre Planning Proposal meeting held with Council's strategic planning staff (no pre-DA meeting was held)  
 26/4/21 – DA97/21 lodged.  
 28/4/21 – DA97/21 Advertised for 14 days.  
 4/5/21 – Stop the clock letter issued.  
 28/6/21 – Further stop the clock letter issued, raising multiple issues.  
 11/10/21 – Amended DA reviewed and re-advertised for 14 days  
 6/12/21 – Letter issued to applicant advising that the amended DA is not supported and requesting withdrawal of DA.  
 15/12/21 – Meeting with applicant held, Council agreed to accept a further amended DA  
 7/2/22 – 2<sup>nd</sup> amended DA submitted to Council (Notification not required).

## 6. REFERRALS

### 6.1 Building

Council's Senior Building Surveyor provided the following comments:

This BCA referral comment is further to our previous comments provided dated 3 May 2021 and 30 August 2021 following submission to Council of amended Architectural Plans and associated professional reports.

The Development Application seeks approval for the demolition of all existing buildings and the construction of a new 26 storey commercial building.

The building will be classified by the NCC BCA 2019 as a class 5, 6 and 7a building of Type A construction.

The development application is supported by an amended Access Report dated 13 August 2021 prepared by Credwell Consulting. The amended Access Report identifies several non-compliances with the Disability (Access to Premises – Buildings) Standards 2010 however also mentions that these non-compliances are intended to be addressed via use of Performance based Solutions that are to be developed and submitted to the PCA at Construction Certificate assessment stage of the development. Full acceptance of any Performance Solution is a matter for the consideration of the PCA.

The amended Development Application is supported by an Accessibility Assessment of Revised Architectural Plans dated 27 January 2022 prepared by Credwell Consulting which informs that the revised Architectural Plans are consistent with the previous DA submission in August 2021.

The development application is supported by an amended NCC BCA Assessment Report dated 13 August 2021 prepared by Credwell Consulting which identifies that the proposed building design can comply with the NCC NCA via a combination of satisfying the Deemed to Satisfy provisions of the BCA and use of Performance based and Fire Engineering Solutions. It is noted that an amended Fire Engineering Statement dated 9 August 2021 prepared by Credwell Consulting has also been submitted to support the amended NCC BCA Assessment Report which mentions that the proposed Performance based and Fire Engineering Solutions referred to in the BCA Report can be developed.

The amended application is supported by an NCC BCA Assessment of revised Architectural Plans dated 27 January 2022 prepared by Credwell Consulting which informs Council that their review of the amended Architectural Plans revealed the revised plans eliminate a number of previous NCC BCA non-compliances.

As the building is a new building, construction in accordance with the NCC BCA 2019 is required.

It is recommended the following standard Conditions are imposed...  
(BCA and accessible paths of travel).

## **6.2 Engineering/Stormwater Drainage**

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

Council's Engineering Project Manager has provided the following comments:

The flood mitigation methodology proposed is via mechanical flood devices these are not acceptable. However in this situation an exception can be made with the following conditions:

1. Mechanical flood gates are only an interim solution until a development of 107 Mount Street is undertaken and an overload flow path can be established through 107 Mount Street from Little Walker Street to Arthur Street.
2. The overland flow path will need to be listed in the Council's DCP and/or LEP
3. Modelling for this overland flow path is to be undertaken by the developer of 63 - 83 Walker Street.
4. That all entrances to the building are set at the future calculated 1% AEP level + 500mm.
5. The owner of the property is to acknowledge that the building is subject to flooding and they are to indemnify Council from flooding.
6. Flood management strategy will be required for the building detailing and effected tenancy's The connection into Council's Stormwater system is to be undertaken utilising the existing Stormwater pits in Little Walker Street.

### 6.3 Landscaping

Council's Landscape Officer has raised no objections subject to conditions.

### 6.4 Traffic/Parking

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

The site has its primary frontage located in Walker Street and bounded by Little Walker Street on the east. It is situated within the B3 Commercial Core zone under the North Sydney Council LEP.

The proposed development is a commercial building with 29,808 square metres GFA including office space, mezzanine, ground floor retail, and end-of-trip facilities. A total of 73 parking spaces are proposed including 1 accessible space, 144 staff bicycles parking, and 32 visitor bicycle parking spaces in the three levels basement parking and ground floor car parking area. Basement parking access point will be positioned in Little Walker Street in the north-east corner of the site.

#### **TRAFFIC GENERATION:**

However, In GTA's report the existing development's GFA is not provided. In my calculation I have adopted GTA's existing site area of 1,825 Square metre as the GFA for the existing development and applied the *Guide to Traffic Generating Developments, TDT 2013/04a Appendix D2* trip generation rate for the North Sydney area. Consequently, the net traffic generation for the AM peak is 48 vehicle trips per hour and the PM peak is 39 vehicle trips per hour.

#### **PARKING PROVISION:**

The provision of 73 parking spaces including 1 accessible parking spaces comprises approximately 97% of the maximum parking rates specified in NSCDP.

In accordance with NSCDP section 10.3 Design and Layout, Clause P2 '*1-2% of all non-residential parking spaces are to be designated for used by the disabled.*' There is a shortfall of one disabled parking space to meet NSCDP maximum parking rate.

#### **CYCLING FACILITIES:**

The provision of bicycle parking for **occupants** and **visitors** comprises approximately 72% and 43% of the minimum bicycle parking rates specified in NSCDP.

In accordance with NSCDCP 10.5 Bicycle parking and associated facilities, Clause P11:

*For non-residential uses, the following facilities for bike parking are to be provided at the following rates:*

- a) 1 personal locker for each bike parking space;
- b) 1 shower and change cubicle for up to 10 bike parking spaces;
- c) ...

The proposed bicycle facilities (shower and change cubicle) **do not comply** with NSCDCP minimum parking provision please find details in the table below:

|                              | <b>GTA<br/>Proposed<br/>Provision</b> | <b>DCP<br/>Minimum<br/>Parking<br/>Provision</b> | <b>Shortfall/<br/>Surplus</b> |
|------------------------------|---------------------------------------|--------------------------------------------------|-------------------------------|
| Personal locker              | 333                                   | 274                                              | +59                           |
| Shower and<br>change cubicle | 15                                    | 28                                               | -13                           |

#### **MOTORCYCLE PARKING PROVISION:**

The provision of 8 motorcycle parking is in compliance with the NSCDCP.

#### **LOADING AND SERVICING FACILITIES:**

The development has proposed a total of 3 service bays; 2 bays for MRV (8.8m) and 1 service bay accommodating SRV (6.4m) is considered adequate. However, swept paths for the proposed service bays need to be submitted for review.

As stated in GTA's report 'a reduced height clearance of 3.8 metres for the loading dock is proposed ...', the reduced height **is not in compliance** with AS2890.2. Although GTA has attached the confirmation from waste collection SUEZ showing that the trucks can go through under the reduced height, however, the service bays are intended to accommodate all kinds of service vehicles.

#### **CONCLUSION:**

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

- Scale of the development be reduced such that there is minimal net traffic generation
- On – site bicycle parking and facilities comply with NSCDCP minimum parking provision
- All vehicle and related turning paths to be submitted for further assessment
- All proposed loading docks comply with AS2890.2

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

1. That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.
2. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3 and are to be located in the ground level/basement parking level within the site boundary.
3. That all aspects of the commercial vehicle facilities comply with the Australian Standard AS2890.2 Off-street Commercial Vehicle facilities.

4. That motorcycle parking must have a minimum dimension of 1.2mx3m.
5. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.
6. The driveway to the site must be designed such that there are minimum sight lines for pedestrian safety as per Figure 3.2 of AS 2890.1.
7. That the developer upgrades the lighting levels on Walkers Street and Little Walker Street adjacent to the site, to PR2 & PR3 lighting level in accordance with AS1158.1
8. That a Demolition and Construction Management Program be prepared and submitted to Council for consideration by the North Sydney Traffic Committee and approval by Council prior to the issue of a Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.
9. Council Will not take into consideration any future requests for on-street loading zones/facilities if the development is in shortage of loading/unloading facilities

#### Planning Comment:

The proposed scale and intensity of development is generally consistent with the development standards applicable to the site, particularly in relation to anticipated GFA, and on this basis it is considered that the likely traffic generation is acceptable.

Conditions are proposed with regard to bicycle facilities to achieve compliance with NSDCP 2013, in addition to turning paths and loading docks, in order to address the identified issues. All additional recommended conditions will also be applied.

### 6.5 Environmental Health

Council's Team Leader Environmental Health has provided the following comments

I have reviewed the JK Environments (JKE) Preliminary (stage 1) Site Investigation, dated 24 March 2021, for the proposed development and note that potential contamination sources have been identified at the site location.

Based on the potential contamination sources, and the potential for contamination, further investigation of the contamination conditions is considered to be required.

The site has been used for dry cleaning activities. Furthermore, historical off-site sources of contamination located up-gradient and within close proximity of the site including chemicals/pesticide manufacture and formulation, dry cleaning establishments, oil production and storage, and service stations were also identified which are listed in Table 1 of the SEPP55 Planning Guidelines as activities that may cause contamination. On this basis, a detailed (Stage 2) site investigation (DSI) is required.

A detailed (Stage 2) site investigation (DSI) should be undertaken to characterise the site contamination conditions and establish whether the site is suitable for the proposed development, or whether remediation is required. Due to the built nature of the site, a DSI based on the probabilistic sampling design will be difficult to achieve, therefore JKE recommend that sampling to be undertaken within accessible areas of the site, targeting the AEC (areas of environmental concern) where possible; and

A hazardous building materials survey should be undertaken prior to demolition of the buildings. Following demolition of the buildings (and preferably prior to removal of the hardstand), an asbestos clearance certificate should be obtained.

JKE also recommend that a waste classification be undertaken to classify material to be excavated for the proposed development. Fill and contaminated soil disposal costs are significant and should be assessed at an early stage of the project. Considering the findings of the investigation, JKE are of the opinion that the site can be made suitable for the proposed development subject to the appropriate implementation of the recommendations.

## **6.6 Urban Design**

Council's Senior Strategic Planner – Urban Design has provided the following comments:

### **1. FSR**

According to the submitted Area Schedule, the proposed calculated FSR is 16.3:1. There is no GBA-GFA efficiency information provided in the Area Schedule. Based on the provided GBA and GFA numbers, the GBA-GFA efficiency of the high rise levels (level 15-level 24) is 92%, and 86.5% of the low rise levels (level 8-level 14). The efficiency rates for these levels are much higher than the standard commercial efficiency rate (80%), especially the high rise levels. With the such high GBA-GFA efficiency rates, it is critical to check the building design against the BCA to ensure the proposed building can meet the minimum requirements.

### **2. Safety - Provision of Escape**

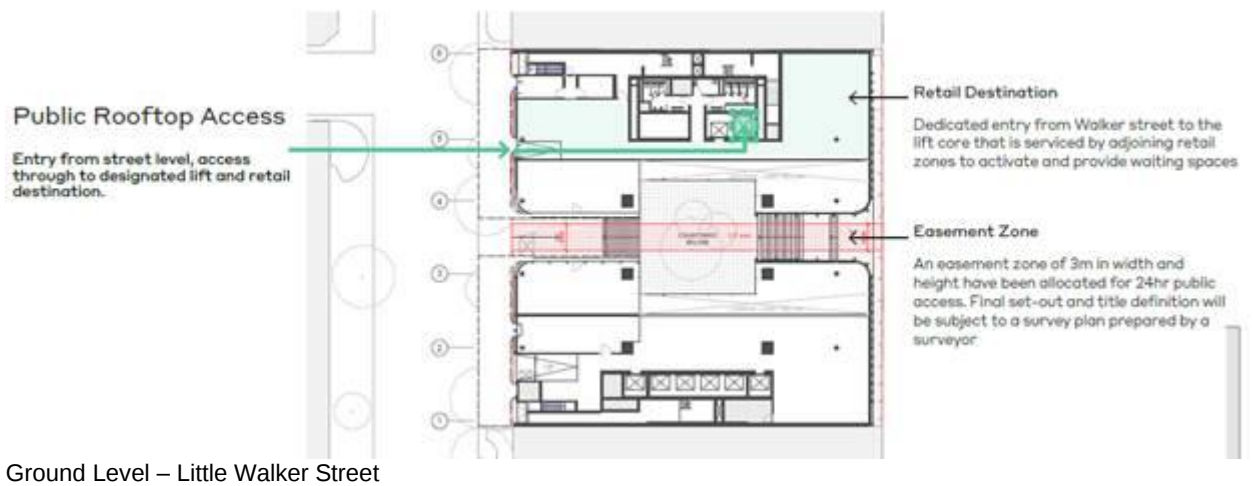
According to the BCA Assessment Report (August 2021), the revised DA lodged in October 2021 has non-compliance in exit travel distances at Basement1, Mezzanine, Ground Floor Little Walker Street, Ground Floor Walker Street, Level 1-26. It is worth noting that the non-compliances occur at all the commercial levels including the rooftop garden. In addition, the BCA Assessment Report (August 2021) also indicated that there are a few levels that have non-compliance in number of the required exits.

According to the submitted BCA Cover Letter, the amended DA has now eliminated a number of previous non-compliances including but not limited to the protection of exposed openings and extended exit travel distances. However, with the absence of the amended BCA Assessment Report, it is not clear on which levels the non-compliances still occur in the amended DA. In our assessment, the non-compliances in exit travel distances may still exist, especially at the podium levels and the podium top garden.

### **3. Public Access to the Rooftop Garden**

The rooftop garden would be a valuable addition to the North Sydney CBD's public domain if accessible to the public. The amended Design Report indicates that the Level 25 rooftop garden can be accessed by the public via Walker Street and the garden will be shared by the public and tenants. A dedicated publicly accessible entry is provided from Walker Street to the lift core, and a destination control lift provides access to the rooftop garden.

Although the Walker Street entry is dedicated to the public, the Walker Street Level lift core is located within the retail space, which does not read as public accessible. It is recommended that a clear organised publicly accessible connection should be provided from Walker Street to the rooftop garden without intervening in the retail uses.



Planning Comment – A suitable condition will be applied in relation to improving access to the rooftop garden. The proposal is considered satisfactory with regard to the BCA, subject to conditions of consent.

## 6.7 Waste Management

Council's Waste Operations and Education Officer has provided the following comments:

Commercial building with no residential units. Council does not collect commercial waste. Bins must not be presented on the footpath. The driveway height must allow for commercial waste truck clearance.

## 7. DESIGN EXCELLENCE PANEL

Council's Design Excellence Panel provided the following comments:

### Panel Comments

Principle 1: Context and neighbourhood character

- The through site link is supported. Little Walker Lane now has pedestrian-friendly paving and is progressively being activated, so the broad link could be very helpful. The design of the through site link could be very active/attractive, and wide enough to be open 24 hours, and if well-lit would significantly enhance security in the Lane
- The proposed podium height and setback with respect to adjoining development and the immediate precinct, in particular Little Walker Lane, is uncharacteristic and inconsistent with NSDCP 2013. Further discussion is provided under the heading of Built Form and Scale.
- Overall form (not height) with respect to context is supported including the curve and screen (if it is demonstrated that it works for sun shading) – height breach is a separate issue
- Tower setbacks above podium to the street, lane and side boundaries are of significant concern. Issues are detailed in sections below. The applicant must demonstrate how the form is contributing to Council's Public Domain Strategy.
- The Strategy identifies;
  - Little Walker Lane - Inner-block spaces to create rich pedestrian urban environment, and

- Walker St - proposed to change to a shared zone with active perimeter, dedicated to street activation and dining opportunities.

The proposed design introduces warmth and variation in the colours and details of the facades. Most nearby new commercial buildings are dark grey/black reflective, so the concept of bringing some texture and humanity into the streetscape should be encouraged.

#### Principle 2: Built form and scale

- There is no justification or public benefit associated with the additional building height.
- Benchmarking of the impacts of the additional height should have been provided against a scheme that complied with all height and setback controls. It is noted that plant rooms cannot exceed the height plane and a discussion around setbacks follows.
- The lack of side setbacks to the tower above the DCP podium height to Walker St and Little Walker Lane creates 'walls' rather than a distinct tower which is undesirable. Nil side setbacks are acceptable within the podium, however the tower should achieve sufficient side and street setbacks (see building separation below)
- The value of the terraces without any usable space on the same level is limited. The design could consolidate a full level of plant and then have terraces on the same level as occupied floorspace, all within the height limit.
- The height of the podium to Little Walker Lane at approximately 7 storeys is inconsistent with the 2-3 storey height limit in NSDCP 2013 and the desired character of the laneway in terms of scale.

#### Building separation – side boundary setbacks

The proposed zero building tower setback to the side boundaries is not supported. 3m-5m setbacks to both side boundaries should be provided to avoid creating a walled cavern to Walker St and Little Walker Lane.

NSDCP 2013 requires spaces to be created between taller buildings to avoid a solid mass of development and to allow daylight and/or sunlight to penetrate through to pedestrian level, and also that setbacks must be provided between buildings above the podium level. The current design does not achieve these objectives and will result in a continuous street wall effect.

#### Above podium setbacks to Walker Street and Little Walker Lane

The proposed setbacks above podium are insufficient. The Panel is not suggesting a "wedding cake" configuration, however the lack of setbacks and tower bulk, scale and presence on Walker Street and Little Walker Lane are unacceptable.

As per NSDCP 2013, setbacks should be respected with:

- 5m weighted setback above 5 a storey podium to Walker Street
- 4m weighted setback above podium to Little Walker Lane.

#### Setback of podium on Little Walker Lane

The 3m setback of the podium with the tower cantilevered overhead is inconsistent with the form of Little Walker Lane. The resultant indent space is of questionable value, with no sun and no view to the sky. The podium should be integrated with and respect the alignment of neighboring podiums to create continuity in the form and character of the laneway.

#### Principle 3: Density

The proposed FSR of 18:1 is very high due to the lack of setbacks, excessive podium/streetwall heights, as well as tower height exceedance.

#### Principle4: Sustainability

Additional details are required to demonstrate that the façade screen and glazing are effective in terms of solar performance. ESD commitments of the highest standards should be provided.

#### Principle 5: Landscape

The atrium is potentially a positive design element. There is a need to ensure that the landscape treatment will be successful.

The viability of the proposed landscaping to the awnings over the public domain, although visually and environmentally attractive, is highly questionable.

#### Principle 6: Amenity

The through site link and street activation is a positive contribution to the site, however the extent of actual retail activation at the ground plane is limited by the dual core and dual foyer. The dual core should be reconsidered, and a retail strategy should be provided to demonstrate that sufficient flexible tenatable at grade retail activation is proposed.

It is noted that the retail tenancy at RL 43.35 appears to only have a floor to floor height of 2.25m which is unacceptable. The floor to floor height within all retail spaces should be a minimum of 3.5m.

Details of the level of access should be provided, ie, 24-hour access, unsecured, etc.

The lack of above podium setbacks raises potential wind impact issues.

Detailed consideration should be given to the wind conditions as per Council's pedestrian comfort criteria to ensure comfortable activated spaces on:

- Walker St and Little Walker Lane for sitting and dining
- Through site link/atrium for sitting and dining
- Podium landscaped terraces

Flood planning levels;

As Little Walker Lane is subject to flooding, consideration should be given to impacts on ground floor levels and interface with the lane to ensure access and activation.

View impacts;

Studies focus on improved view afforded to benefit of 99 Walker St, however it is unclear how all 6 identified key sites are impacted. The proposal should demonstrate view impacts for all key sites and be benchmarked against a compliant envelope in terms of height and setbacks (see previous discussion on this)

Exceedance of the LEP height will impact views. View impacts should be considered with regard to the development of surrounding sites to compliant heights.

#### Principle 7: Safety

The proposal should activate and improve safety at night.

#### Principle 8: Housing diversity and social interaction

- N/A

#### Principle 9: Aesthetics

- Podium character, materiality, articulation requires further consideration, especially with respect to height. It is not clear why such a dark podium expression is used. The montage should be rendered at daytime rather than dusk with lights on as this is not representative of its typical representation. Detailing is considered to be appropriate. Also consider a stronger relationship/ dialogue with neighbouring podium/buildings.
- Tower – The red colour of the screen appears differently in the renderings compared to materials indicated. While this potentially can create a desirable warm façade, the literal use of the ‘waratah’ needs to be refined and carefully examined relative to the positive aspects of the surrounding context.

#### Conclusion

The Panel does not support the proposed development in its current form. An amended proposal should be prepared, satisfactorily addressing the identified issues.

#### Planning Comment:

The development has been amended to provide satisfactory podium and tower setbacks and a reduction in building height. Further analysis has been provided on view impacts (as discussed later in this report). The proposal is considered to be satisfactory with regard to the advice of the Design Excellence Panel and re-referral of the application is not warranted.

### 7.1 External Referrals

#### TfNSW:

TfNSW has reviewed the submitted application and has the following comments for Council’s consideration in the determination of the application:

1. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for determination prior to the issue of a construction certificate.
2. The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval which shows that the proposed development complies with this requirement.

The recommended conditions have been adopted.

#### Sydney Water:

Thank you for notifying Sydney Water of DA97/2021 at 65 Walker Street, North Sydney, which proposes the demolition of existing buildings and construction of a 26-storey commercial tower with retail podium. Sydney Water has reviewed the application based on the information supplied and provides the following comments to assist in planning the servicing needs of the proposed development.

#### Water Servicing

- The development will be supplied by connection to the existing DN250 drinking watermain in Walker Street for the daily water needs.
- The DN250 main is due to be renewed in the next few years. If it is renewed prior to development occurring connection for this building shall be made to the new main.

**Wastewater Servicing**

- A minor extension of the wastewater network will be required, from the existing DN225 in Little Walker Street.
- The extension will create the point of connection for the building within the boundary of the site.
- Detailed requirements will be provided at the Section 73 application stage.

This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application. More information about the Section 73 application process is available on our web page in the [Land Development Manual](#).

Planning Comment:

Appropriate conditions will be applied to any development consent issued.

## Ausgrid

Ausgrid consents to the above mentioned development subject to the following conditions:-

### **Proximity to Existing Network Assets**

#### **Underground Cables**

There are existing underground electricity network assets in Walker St and Little Walker St.

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

Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables.

#### **Substation**

There are existing electricity substation assets Within the proposed development and adjacent property #53.

The substation ventilation openings, including substation duct openings and louvered panels, must be separated from building air intake and exhaust openings, natural ventilation openings and boundaries of adjacent allotments, by separation distances which meet the requirements of all relevant authorities, building regulations, BCA and Australian Standards including AS 1668.2: The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings.

In addition to above, Ausgrid requires the substation ventilation openings, including duct openings and louvered panels, to be separated from building ventilation system air intake and exhaust openings, including those on buildings on adjacent allotments, by not less than 6 metres.

Exterior parts of buildings within 3 metres in any direction from substation ventilation openings, including duct openings and louvered panels, must have a fire rating level (FRL) of not less than 180/180/180 where the substation contains oil-filled equipment, or 120/120/120 where there is no oil filled equipment and be constructed of non-combustible material.

The development must comply with both the Reference Levels and the precautionary requirements of the ICNIRP Guidelines for Limiting Exposure to Time-varying Electric and Magnetic Fields (1 HZ – 100 kHz)(ICNIRP 2010).

For further details on fire segregation requirements refer to Ausgrid's Network Standard 113.

Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid.

For further details refer to Ausgrid's Network Standard 143.

Planning Comment:

Suitable conditions have been applied.

## Sydney Airport

If CASA requires obstacle lighting as a condition of approval, Sydney Airport will seek advice from the Proponent on how this requirement will be met. Additional comments may be sent from Sydney Airport at that time; we request the determination be made following the submission of our additional comments.

At a maximum height of 163.5m AHD, the proposed development will penetrate the OLS by approx. 7.5 metres.

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

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

- At the completion of the construction of the building, a certified surveyor is to notify (in writing) the Sydney Airport Manager, Airfield Spatial & Technical Planning of the finished height of the building.

The Department needs to ensure that their determination is addressed to the eventual owner of the proposed development.

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

### Planning Comment:

The development has been reduced in height to RL 155, being below the OLS, however construction cranes will likely penetrate the OLS during the construction phase. Suitable conditions have been applied as appropriate.

## 8. SUBMISSIONS

The application was notified to the Central Business District precinct and surrounding owners in accordance with Council policy from 7 May 2021 until 21 May 2021. Seventy one (71) submissions in support of the proposal were received. One (1) submission from the Lavender Bay Precinct raised concern with afternoon overshadowing of residences on the eastern side of the Warringah Freeway.

The amended application was subsequently notified to the Central Business District precinct and surrounding owners in accordance with Council policy from 15 October 2021 until 29 October 2021. One (1) submission in total was received, on behalf of the owner of No.99 Walker Street (Perpetual Trustee Company Ltd), being the adjoining building to the north. The issues raised can be summarised as:

- excessive building height,
- loss of iconic views

- zero side setbacks

The submissions received are available for the Panel's review.

## 9. CONSIDERATION

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

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

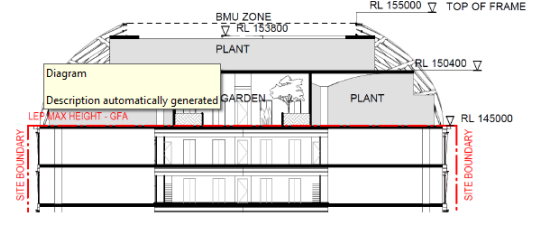
### 9.1 Compliance Tables

| North Sydney Centre                            | Proposed                                                                                                                                                                              | Control                          | Complies                                                                       |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|--------------------------------------------------------------------------------|
| Height (Cl. 4.3)                               | RL155.0                                                                                                                                                                               | RL 145.0                         | NO<br>10m/6.9%<br>breach<br><br>Refer to<br>Clause 4.6<br>exception<br>request |
| Overshadowing of land (Cl.6.3 (2) (a) and (b)) | The proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas between 12am and 2pm.<br>The proposal will not overshadow Don Bank Museum. | No net increase in overshadowing | YES                                                                            |
| Minimum lot size (Cl.6.3 (2) (c))              | 1,824m <sup>2</sup>                                                                                                                                                                   | 1000m <sup>2</sup> min.          | YES                                                                            |

### 9.2 - DCP 2013 Compliance Table

| DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2 and 9 |                 |                                                                                                                                                                    |
|--------------------------------------------------------|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                        | <i>complies</i> | Comments                                                                                                                                                           |
| <b>2.2 Function</b>                                    |                 |                                                                                                                                                                    |
| Diversity of Activities                                | Yes             | The proposal provides substantial commercial floor space, with retail at ground level. The development will contribute to diversity of activities in North Sydney. |
| Maximise Use of Public Transport                       | Yes             | The development is within close proximity of North Sydney railway station and bus interchange, as well as the proposed Victoria                                    |

|                                   |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-----------------------------------|------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                   |            | Cross Metro Station. End of Trip facilities are provided.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>2.3 Environmental Criteria</b> |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Noise</b>                      | Yes        | The development is capable of complying with this clause. This can be conditioned.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Wind Speed</b>                 | Yes        | The proposed development is supported by a Qualitative Wind Assessment prepared by CPP. The report details the proposed development's potential effect on the surrounding environment, specifically addressing pedestrian wind environments and the adequacy of selected façade materials. The analysis finds that the wind environment surrounding the proposed development would be similar to existing wind environment of the subject site. Further, the report finds that all study areas satisfy the applicable distress and safety requirements. The report also finds that the internal wind environment of the through-site link would experience no comfort issues. |
| <b>Reflectivity</b>               | Yes        | Suitable conditions will be applied.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Artificial Illumination</b>    | Yes        | Internal light spill from the development will not adversely impact on any residential uses                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Awnings</b>                    | Yes        | Awning proposed to Walker Street. A condition of consent will be applied to ensure the awning meets Council's specifications.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Solar Access</b>               | Yes        | <p>There is no additional shadow as a result of the proposed development on any of the areas identified by the <i>NSLEP 2013</i> provisions.</p> <ul style="list-style-type: none"> <li>The proposed development results in very limited additional overshadowing at any time of year as its shadows largely fall within other existing / approved shadows generated by other buildings in the North Sydney Centre.</li> <li>The proposed development will not result in overshadowing of residential dwellings located beyond the North Sydney Centre.</li> </ul>                                                                                                            |
| <b>Views</b>                      | Acceptable | See more detailed comments below                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>2.4 Quality built form</b>     |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Setbacks</b>                   | Acceptable | See more detailed comments below                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Building Design</b>            | Acceptable | <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. The proposed floor to ceiling heights comply with this clause.</p> <p>Building setbacks have been addressed below. The façade design and architectural form are satisfactory.</p>                                                                                                                                                                                                                                                                                                                                                                          |
| <b>Skyline</b>                    | Yes        | Roof top plant and associated equipment is concealed by the rooftop façade as demonstrated by the Architectural Plans. The building has been designed to positively contribute to the skyline of the North Sydney CBD.                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

|                                       |     |                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------------|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                       |     |  <p>Figure 3 Extent of the building above RL 145 – no commercial floor space<br/>Source: Woods Bagot</p>                                                                                                                                                                                                                            |
| <b>Streetscape</b>                    | Yes | <p>The proposal includes a through site link to enhance pedestrian connectivity through and around the site.</p> <p>Clear sight lines are provided. The lobby areas have the capacity to integrate art works in the design to provide further elements to the public domain.</p>                                                                                                                                      |
| <b>Entrances and Exits</b>            | Yes | <p>The primary entrance point to the building is accessible from Walker Street and highly visible from the street frontage. The entrance provides a continuous path of travel, including a through site link to Little Walker Street. These entrances and exits have been designed in accordance with the relevant Australian standards and the DCP controls and will provide seating and non-slip floor surface.</p> |
| <b>Public Spaces and facilities</b>   | Yes | <p>The proposal includes a landscaped rooftop terrace area for use by the public.</p>                                                                                                                                                                                                                                              |
| <b>2.5 Quality Urban Environment</b>  |     |                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Accessibility</b>                  | Yes | Equitable access will be provided.                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Safety and Security</b>            | Yes | The development and the through site link is satisfactory with regard to safety and security.                                                                                                                                                                                                                                                                                                                         |
| <b>Vehicular Access</b>               | Yes | The vehicular access, including loading/service vehicles is via Little Walker Street. No vehicular access is provided to Walker Street which is consistent with Council's clear way zone of 7-10am and 3-7pm.                                                                                                                                                                                                         |
| <b>Car Parking</b>                    | Nil | See detailed comments below                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Garbage Storage</b>                | Yes | The primary waste storage area for the proposed development is located on the ground floor – Little Walker St. This storage and movement of waste does not conflict with any main pedestrian paths throughout the development.                                                                                                                                                                                        |
| <b>2.6 Efficient Use of Resources</b> |     |                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Energy Efficiency</b>              | Yes | The proposed development is targeting a 5.5 Star NABERS Energy Base Building, demonstrated through a formal NABERS                                                                                                                                                                                                                                                                                                    |

|                                                        |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|--------------------------------------------------------|-----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                        |     | Commitment Agreement and is designed to deliver a 6 Star Green Star Certified – Green Star Design.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>Water Management and Minimisation</b>               | Yes | An Operational Waste Management Plan has been prepared by Elephants Foot. The purpose of the report is to describe the waste management system proposed for the project and the proposal is satisfactory with regard to waste management.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Stormwater Management</b>                           | Yes | <p>The existing site is affected in the 1% AEP flood event. This occurs in Little Walker St.</p> <p>The proposal has been designed with a freeboard of 500mm above the 1% AEP flood level.</p> <p>Flood gates have been proposed as an interim solution and are not required following the addition of an overland flow path through 107 Mount Street. A DA has been submitted for this site seeking consent for redevelopment.</p> <p>All entrances are set at a minimum of 500mm above the future 1% AEP flood level. The interim solution provides 300mm above existing 1% AEP flood levels utilising mechanical flood gates.</p> <p>The proposal is satisfactory with regard to stormwater subject to conditions.</p> |
| <b>2.7 Public Domain</b>                               |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Street Furniture, Landscaping Works, public art</b> | Yes | The proposed development is satisfactory with regard to the public domain strategy and conditions will be applied in relation to required public domain works.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |

### 9.3 - Parking

NSDCP 2013 provides for a maximum rate of parking for land uses. A total of 73 car parking spaces are proposed, including one accessible space, and NSDCP 2013 provides for a maximum of 75 spaces. The proposed parking provision is satisfactory.

Motorcycle parking at the rate of one space per 10 car parking spaces or part thereof is required, and based on the proposed 73 car parking spaces a minimum of eight motorcycle parking spaces are required. Forty (40) motorcycle spaces are provided in the basement car park, which is satisfactory.

Bicycle parking is required at a minimum rate of one space per 150 square metres GFA for staff and one space per 400 square metres GFA for visitors. Based on the proposed GFA, 199 spaces for staff and 75 spaces for visitors are required.

The development provides 144 staff bicycle spaces and 32 visitor spaces on the Little Walker Street ground floor level. While not compliant with NSDCP 2013, the provision is substantial and acceptable given the location of the site in close proximity to a range of public transport options.

A single two-way vehicle crossover is proposed on Little Walker Street in the north-east corner of the site and the proposed access arrangement provides a significant improvement on existing conditions, consolidating six separate entries on the Little Walker Street frontage into a single access point.

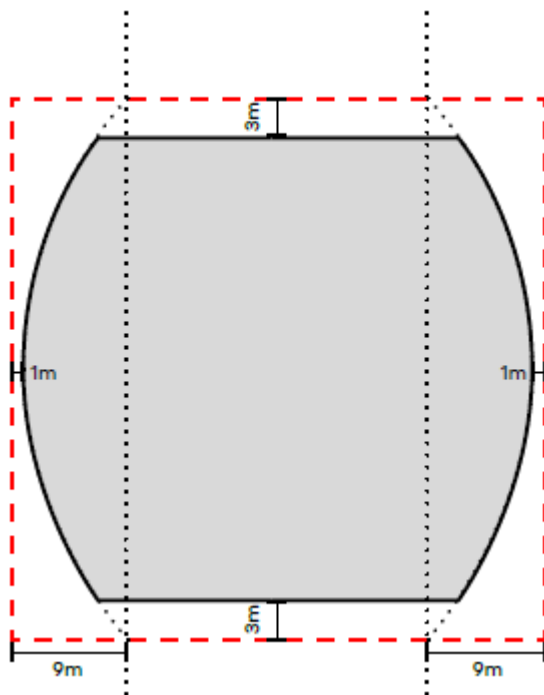
The proposed vehicle access will provide connection to the loading dock on the Little Walker Street ground floor level, accommodating two (2) MRVs, as well as an internal ramp to three levels of basement car parking over Basement 2 to Basement 4.

#### 9.4 - Setbacks

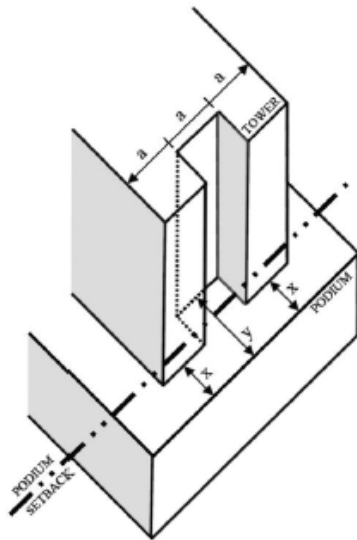
The DCP requires a nil podium setback to all frontages and an above podium tower setback as follows:

- Walker Street – 5m weighted average
- Little Walker Street – 4m weighted average
- Side setbacks - No specific setback requirement, however *spaces are to be created between taller buildings to avoid a solid mass of development and to allow daylight and/or sunlight to penetrate through to pedestrian level, and in addition, setbacks must be provided between buildings above the podium level.*

The proposal includes a curved façade to Walker Street and Little Walker Street:



The amended application states that the tower has compliant weighted average setbacks to Walker Street and Little Walker Street, based on the formula  $1 + 9 / 2 = 5\text{m}$ . The formula expressed in NSDCP 2013 depicts the frontage dimension (ie, width) "a" as identical in the projections and recesses, which provides for a formula of  $x + x + y / 3$ .



**Figure B-2.1:**

Weighted average is the average of projections and recesses from setback above podium (i.e.  $x + x + y / 3 =$  podium setback)

Regardless of the method of calculation, the proposed curved façade to both Walker Street and Little Walker Street achieve the objectives of the setback provisions, including:

O1 To enable a reduction in the impact of scale.

O2 To ensure adequate ventilation, solar access, privacy, view sharing and a reduction of adverse wind effects.

O3 To improve pedestrian flow and amenity and allow a range of activities to be accommodated.

In relation to side setbacks, the amended DA provides 3m setbacks to the north and south side boundaries, satisfying section 2.3.7, P5 and P6 of NSDCP 2013. The design approach is to be commended.

The proposed setbacks are satisfactory.

## 9.5 - Views

### 9.5.1 - Public Views

Clause 6.3(5)(b) of NSLEP 2013 requires the consent authority to consider whether a proposed development preserves important view lines and vistas. The NSDCP 2013 Character Statement for the North Sydney CBD identifies a series of important views and vistas. These are:

- From the plaza at No. 5 Blue Street and located over North Sydney Rail Station to the Sydney Harbour Bridge;
- From Doris Fitton Park (160-166 Arthur Street) to Sydney Harbour and Neutral Bay district;
- Views along the Pacific Highway to the Post Office on Mount Street from the south-east; and
- Views along the Pacific Highway to Sydney Harbour from the intersection with Mount Street.

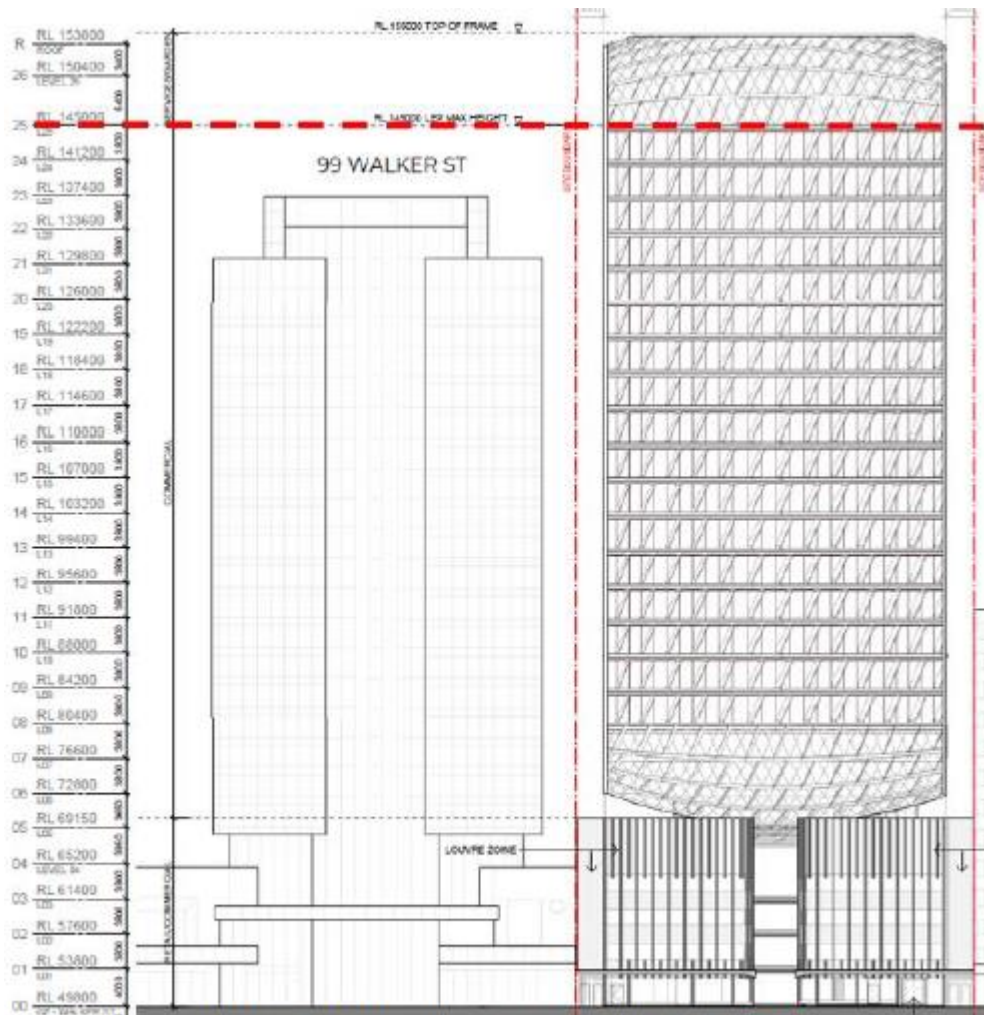
The proposed development is not positioned within any of the above view corridors and will not have any impact on public views.

### **9.5.2 - Private Views**

No residential development has been identified as being impacted in relation to view loss.

However, the adjoining commercial development at No.99 Walker Street has made a detailed submission in relation to view loss, and specifically in relation to potential view loss from a future redeveloped building on No.99 Walker Street, built to the height limit of RL 174 as a result of the proposed contravention of the building height standard. In response, the applicant has provided a detailed analysis of view impact and has directly addressed the issues raised in the submission from No.99 Walker Street. The submission and response from the applicant are attached to this report. It should be noted that this submission references comments from Council and the Design Excellence Panel that were made in respect of the original DA which had a height of RL 163.5, being 18.5m above the height limit. The current proposal has a height of RL 155. Further, the development has since been amended to provide 3m side setbacks to the tower.

It is of relevance to the issue of view impact on No.99 Walker Street that the views in question are not currently available (ie they are not existing views), as the existing building has a lower height than the proposed development. The submission relates to future views that would be available from the upper levels, if and when the site is redeveloped at a point in time in the future. Also of relevance is that the potential view impact does not relate to residential development, as the site is zoned B3 Commercial Core.



**Figure 2 Indicative Height Plane Diagram (RL 145 in red)**

Source: Woods Bagot

Clause 4.3 of NSLEP 2013 Height of Buildings includes the following objectives:

#### 4.3 Height of buildings

- (1) The objectives of this clause are as follows—
  - (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,
  - (b) **to promote the retention and, if appropriate, sharing of existing views,**
  - (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,
  - (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
  - (e) to ensure compatibility between development, particularly at zone boundaries,
  - (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,

Section 2.3.8 Views of NSDCP 2013 includes the following objectives and provisions relating to views:

#### Objectives

O1 To protect and enhance opportunities for vistas and views from streets and other public places.

O2 To protect and enhance existing views and vistas from streets and other public spaces.

O3 To provide additional views and vistas from streets and other public spaces where opportunities arise.

O4 To encourage view sharing as a means of ensuring equitable access to views from dwellings, whilst recognising development may take place in accordance with the other provisions of this DCP and the LEP.

### **Provisions**

P1 Where appropriate, the opening up of views should be sought to improve the legibility of the area.

**P2 Provide public or semi-public access to top floors where possible (e.g. restaurants, roof top gardens and facilities).**

P3 Use setbacks, design and articulation of buildings to maintain street views, views from public areas and those identified in the relevant area character statement (refer to Part C of the DCP).

P4 Maintain and protect views identified in the relevant area character statement (refer to Part C of the DCP) from future development.

P5 Where a proposal is likely to adversely affect views from either public or private land, Council will give consideration to the Land and Environment Court's Planning Principles for view sharing established in *Rose Bay Marina Pty Ltd v Woollahra Municipal Council and anor* [2013] NSWLEC 1046 and *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140. The Planning Principles are available to view on the Land and Environment Court's website ([http://www.lec.justice.nsw.gov.au/planning\\_principles](http://www.lec.justice.nsw.gov.au/planning_principles)).

The objectives of clause 4.3, particularly clause 4.3(1)(b), seek to "...*promote the retention and, if appropriate, sharing of **existing views***". As discussed, the submission from No.99 Walker Street substantially relates to future views that would be created by the redevelopment of the site to the permissible height of approximately RL 174. As such, clause 4.3(1)(b) is of limited relevance to the assessment of view impact in the context of the submission from No.99 Walker Street. The proposed impact on views from the existing development at No.99 Walker Street are predominantly a result of development below RL145.

The proposal is considered to be consistent with the objectives of clause 4.3.

The objectives of Section 2.3.8 *Views* of NSDCP 2013 relate to protection of views from public places and public spaces, and to encourage view sharing in relation to access to views from dwellings. There are no objectives that seek to protect views from commercial premises.

The provisions in section 2.3.8 include at P2: "*Provide public or semi-public access to top floors where possible (e.g. restaurants, roof top gardens and facilities)*". It is noted that the proposal is consistent with this provision and will provide significant views from a publicly accessible space at roof level.

The proposal is consistent with the view provisions in Part C of NSDCP 2013.

In relation to the planning principle established in *Tenacity*, it should be noted that planning principles in general terms are intended to assist a consent authority in circumstances where

there are inadequate local provisions that address a particular consideration. The LEC website advises that:

*Planning principles assist when making a planning decision, including:*

- *where there is a void in policy*
- *where policies expressed in qualitative terms allow for more than one interpretation*
- *where policies lack clarity.*

The LEC also makes it clear that “*Planning principles are not legally binding and they do not prevail over councils’ plans and policies*”.

The relevance of *Tenacity* to the current application is limited at best, as the principle relates to view loss from dwellings and was drafted to address the question of “what is view sharing?” in the context of a clause in Warringah LEP 2000 which states: “*development is to allow for the reasonable sharing of views*” (without defining “the reasonable sharing of views”).

The utility of a principle drafted to establish what is “reasonable sharing of views” in a residential context, which includes references to *side boundaries, standing or sitting position, living areas, bedrooms, kitchens and neighbours*, in the current application which relates to purely commercial development in the North Sydney CBD, is considered limited.

Regardless, for completeness the following is an assessment against *Tenacity*:

First step -

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

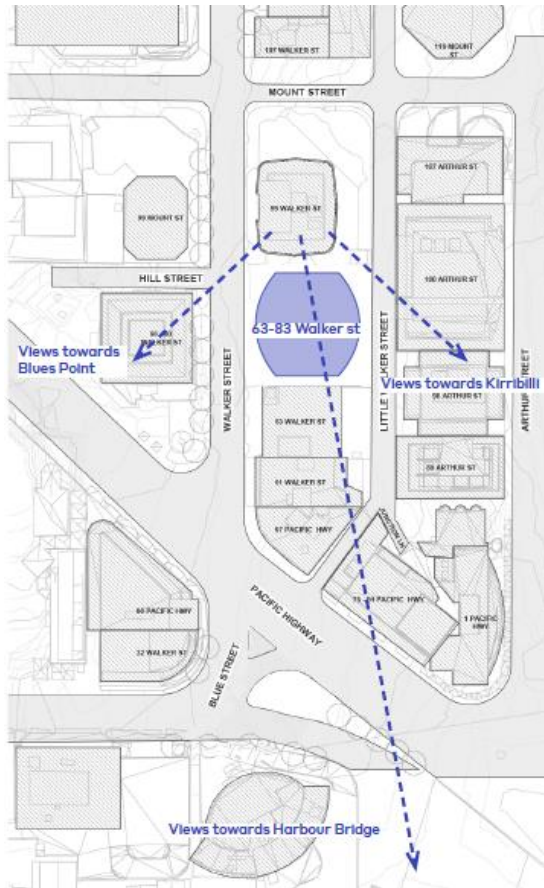
Assessment – The complying part of the development (ie, that part up to RL 145) obscures views, including iconic views, from No.99 Walker Street.

Future views resulting from a potential future redevelopment of No.99 Walker Street are beyond the considerations in *Tenacity*.

Second step –

*The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

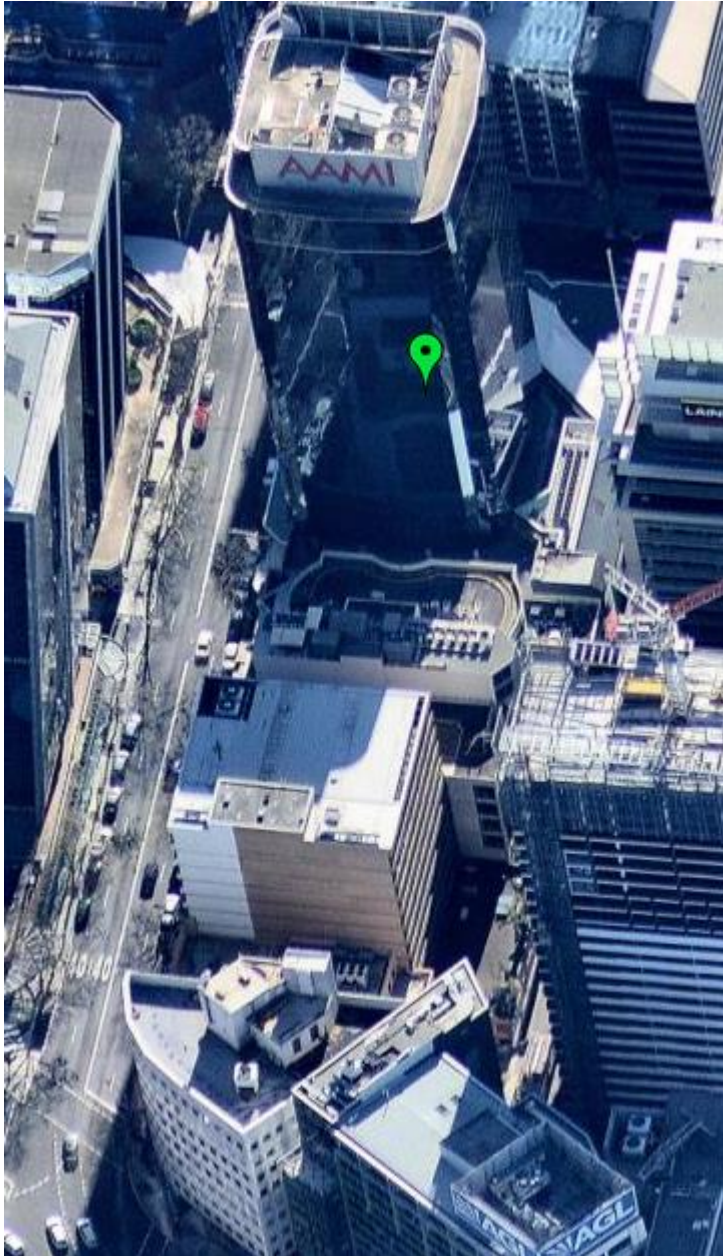
Assessment – Although this step was not drafted with regard to high rise commercial development in a CBD context, the views are in large part obtained across the southern side boundary and the principle states that the protection of views across side boundaries is more difficult than from front or rear boundaries. Both sitting and standing views would be affected:



Third step –

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

Assessment – The extent of view impact if referring to residential development would be described as devastating, as the proposal almost entirely obscures existing views to the south:



#### Fourth Step

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

**Assessment –** The complying part of the proposed development causes the subject view loss from the existing commercial development at No.99 Walker Street. With the site constraints applicable to the site, particularly setbacks, it is considered that it is not possible to produce a more skilful design that would retain some views, without adversely affecting the development potential of the site as a result of reduced floor plates.

The proposal is considered to be satisfactory with regard to *Tenacity* and is considered satisfactory with regard to the view provisions in NSDCP 2013.

## **10. NORTH SYDNEY LEP 2013**

### **10.1 - Permissibility within the zone**

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

### **10.2 - Zone B3 Commercial Core**

#### **Objectives of zone**

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

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

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

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

The Height of Building Map sets a height of building standard of RL 145 for the site.

The height of the proposal is RL 155 to the top of the roof frame.

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

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

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

Clause 4.6 includes the following provisions that must be satisfied:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
  - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
  - (a) *the consent authority is satisfied that—*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The proposed contravention (not variation) of the building height development standard is supported by a written request from the applicant, justifying the contravention by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. The thirty (30) page written request is comprehensive and more specifically, addresses the matters set out in clause 4.6(3)(a) and (b).

The written request is considered to satisfactorily demonstrate that there are sufficient environmental planning grounds to justify the contravention, as set out in pages 20-27 of the request. In part, the justification relies on the provision of a publicly accessible rooftop terrace which does not include any lettable area, providing significant views and amenity for the public and occupants of the building.

Clause 4.6(4)(a) requires the consent authority to be satisfied that the applicant's written request has adequately addressed the matters in subclause (3), and that the proposal will be in the public interest because it is consistent with the objectives of the building height standard and the objectives of the B3 Commercial Core zone. The written request adequately demonstrates consistency with the building height and B3 zone objectives.

In considering the clause 4.6 request, it is of direct relevance that clause 6.3(3) of NSLEP 2013 includes a provision relating to exceedance of the maximum height of buildings development standard, as follows:

*The consent authority may grant development consent to development on land in the North Sydney Centre that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—*

- (a) *if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or*
- (b) *if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.*

The proposal satisfies the overshadowing provisions in this clause, as discussed later in this report. The drafting of clause 6.3(3) (with regard to clause 6.2 "...A provision in this Division prevails over any other provision of this Plan to the extent of any inconsistency) has been interpreted by the applicant as an inconsistency with clause 4.6.

Council considers that there is no material or other inconsistency between the provisions and that a clause 4.6 exception request is the statutory provision that facilitates contravention of the building height development standard, with regard to clause 6.3(3) and a number of other provisions and considerations. Regardless, the applicant has submitted a clause 4.6 request.

It should be noted that an amendment is proposed to NSLEP 2013 to remove any uncertainty around the relationship between clause 6.3 and clause 4.6. The proposed amendment has not been considered in the assessment of this application.

The clause 4.6 written request is considered to be well founded and the proposed contravention of the building height development standard will result in a better outcome in the circumstances and is supported.

#### 10.5 - Objectives of Division (North Sydney Centre) – Clause 6.1

| Objective                                                                                                                                                                                                 | Comment                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|
| (a) to maintain the status of the North Sydney Centre as a major commercial centre                                                                                                                        | Proposal consistent                                                                             |
| (b) to maximise commercial floor space capacity and employment growth within the constraints of the environmental context of the North Sydney Centre,                                                     | The proposal provides for a maximum floor space of commercial                                   |
| (e) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres                                                                      | The development site consolidates four sites and has an area of 1824m <sup>2</sup>              |
| (g) to prevent any net increase in overshadowing of any land in Zone RE1 Public Recreation (other than Mount Street Plaza) or any land identified as "Special Area" on the <u>North Sydney Centre Map</u> | The proposed development will result in no additional overshadowing.                            |
| (h) to prevent any increase in overshadowing that would adversely impact on any land within a residential zone                                                                                            | Additional overshadowing is limited to the adjacent commercial properties and surrounding roads |
| (i) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas                                     | Not applicable to site                                                                          |

#### 10.6 - 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,*

(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,*

- (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,*
- (e) to encourage the consolidation of sites for the provision of high grade commercial space.*
- (2) Development consent must not be granted for the erection of a building on land to which this Division applies if:*
  - (a) the development would result in a net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as “Special Area” on the North Sydney Centre Map, or*

As indicated on the submitted shadow diagrams, the proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas between 12pm and 2pm.

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

The proposal does not overshadow Don Bank Museum.

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

The site has an area of 1824m<sup>2</sup>.

- (3) The consent authority may grant development consent to development on land in the North Sydney Centre that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—*
  - (a) if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or*
  - (b) if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.*

The submitted shadow diagrams demonstrate that there is no net increase in overshadowing, satisfying this subclause.

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

The application is acceptable with regard to its scale, form and massing within the context of the locality.

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

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

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

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

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

As required by Clause 6.15 of NSLEP 2013, the application was referred to Sydney Airport pursuant to s.186 of the Airports Act 1996 and Airports (Protection of Airspace) Regulations 1996 as the proposal would penetrate the Limitation or Operations Surface of Sydney Airport. The comments received from Sydney Airport have been included previously in this report.

The Outer Horizontal Surface of the OLS above the subject site is at a height of RL 156(AHD) and the prescribed airspace above the site commences at RL 156. At a maximum height of RL 155 AHD, the amended proposal would not penetrate the OLS.

The proposed construction of the development would constitute a controlled activity under Section 182 of the Airports Act 1996 (the Act). Section 183 of the Act requires that controlled activities cannot be carried out without approval. Regulation 14 provides that a proposal to carry out a controlled activity must be approved unless varying out of the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of the airport concerned. Approval may be granted subject to conditions.

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

The subject site has been considered with regard to potential contamination and remediation. The preliminary site investigation submitted with the application indicates that the site has been used for dry cleaning activities. Furthermore, historical off-site sources of contamination located up-gradient and within close proximity of the site including chemicals/pesticide manufacture and formulation, dry cleaning establishments, oil production and storage, and service stations were also identified. On this basis, a detailed (Stage 2) site investigation (DSI) is required and will be conditioned.

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

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

## **13.0 - DEVELOPMENT CONTROL PLAN 2013**

### **13.1 NORTH SYDNEY CENTRE PLANNING AREA / CENTRAL BUSINESS DISTRICT**

The subject site is within the Central Business District which falls within the North Sydney Centre Planning Area. The proposal is generally consistent with the character statement and is satisfactory.

#### 14.0 - SECTION 7.11 CONTRIBUTIONS

The existing buildings on the site have a GFA of 8,100m<sup>2</sup> and the proposal has a GFA of 29,808m<sup>2</sup>. Section 7.11 Contributions in accordance with Council's S7.11 plan are warranted and based on the increase in non-residential gross floor area. The total contribution is calculated at \$2,513,777.90. The contributions are detailed in the attached conditions.

##### **s7.11 contribution**

|                                       |                       |
|---------------------------------------|-----------------------|
| Open space and recreation facilities: | \$597,934.33          |
| Public domain:                        | \$1,663,368.07        |
| Active transport:                     | \$94,920.46           |
| Community facilities:                 | \$120,103.44          |
| Plan administration and management:   | \$37,451.61           |
| <b>Total:</b>                         | <b>\$2,513,777.90</b> |

#### 15.0 - DESIGN & MATERIALS

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

#### 16.0 - ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

##### **ENVIRONMENTAL APPRAISAL**

##### **CONSIDERED**

|    |                                                                                                      |     |
|----|------------------------------------------------------------------------------------------------------|-----|
| 1. | Statutory Controls                                                                                   | Yes |
| 2. | Policy Controls                                                                                      | Yes |
| 3. | Design in relation to existing building and natural environment                                      | Yes |
| 4. | Landscaping/Open Space Provision                                                                     | Yes |
| 5. | Traffic generation and Carparking provision                                                          | Yes |
| 6. | Loading and Servicing Facilities                                                                     | Yes |
| 7. | Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |
| 8. | Site Management Issues                                                                               | Yes |
| 9. | All relevant S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979      | Yes |

## 17.0 – Submissions

Seventy one (71) submissions in support were received by Council.

The Lavender Bay Precinct submission in relation to the original notification raised concern with overshadowing of the residential areas to the east of the freeway. The shadow diagrams indicate that the proposal is satisfactory with regard to overshadowing of the residential areas to the east of the freeway.

The issues raised in the submission from No.99 Walker Street have been addressed previously in this report and the proposal is satisfactory with regard to the identified issues raised in the submission.

## 18.0 – Conclusion

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

The Council's notification of the proposal attracted two objections. The concerns raised have been considered and addressed and do not warrant refusal or modification of the proposal.

The applicant has submitted a Clause 4.6 request with regard to the height of the proposal exceeding the current height control of RL 145 by 10m. This clause 4.6 variation demonstrates that, notwithstanding the non-compliance with the maximum height development standard, the proposed development:

- Is consistent with clauses 4.6 and 6.3(3) of NSLEP which allow for a contravention of the maximum height control under certain circumstances;
- Will have an appropriate impact, in terms of its scale, form and massing;
- Will not materially increase anticipated yield
- Will not impact on any significant view lines and vistas from the public domain; and
- Will enhance the streetscape in relation to scale, materials and external treatments.

Under these circumstances, the objection is well founded and the strict application of the control is both unreasonable and unnecessary and the written request has demonstrated that the proposal has sufficient environmental planning grounds to justify the contravention.

Following assessment of the development application, the development is recommended for **approval**. The Panel may assume the concurrence of the Secretary of the Department of Planning and Environment and invoke the provisions of Clause 4.6 with regard to the exception to the development standard for height and grant consent.

## RECOMMENDATION

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

**THAT** the Sydney North Planning Panel, as the consent authority, assume the concurrence of the Secretary of Planning and Environment and invoke the provisions of Clause 4.6 with regard to the height control and grant consent to PPSSNH-212, Development Application No.97/21 subject to conditions of consent (separate document).

**George Youhanna**  
**EXECUTIVE PLANNER**

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