

COUNCIL ASSESSMENT REPORT

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| Panel Reference | PPSSNH-360 |
| DA Number | 393/22 |
| LGA | North Sydney |
| Proposed Development | Demolition of existing buildings on-site and the construction of a 43-storey commercial tower |
| Street Address | 153-157 Walker Street, North Sydney |
| Applicant/Owner | GPT Funds Management Ltd |
| Date of DA lodgement | 16 December 2022 |
| Number of Submissions | Three |
| Recommendation | Refusal |
| Regional Development Criteria (Schedule 4A EP&A Act) | Capital Investment Value (CIV) greater than \$30 million (\$373,895,000.00) |
| List of all relevant s4.55(1)(a) matters | <ul style="list-style-type: none"> • North Sydney LEP 2013 • SEPP (Transport and Infrastructure) 2021 • SEPP (Biodiversity and Conservation) 2021 • SEPP (Resilience and Hazards) 2021 • North Sydney DCP 2013 |
| List all documents submitted with this report for the Panel's consideration | <ol style="list-style-type: none"> 1. Reasons for Refusal 2. Architectural Plans – Architectus (25/11/22) 3. Design Report – Architectus (01/03/ 23) 4. Landscape Public Domain Development Application Report – Site Image Landscape Architects (November 22) 5. Clause 4.6 request – Ethos Urban (28/11/22) |
| Report prepared by | Jim Davies, Executive Assessment Planner, North Sydney Council |
| Report date | 20 October 2023 |

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g., Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**
Note: to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

The application seeks consent for the demolition of the existing buildings on the site and the construction of a 43-storey commercial tower:

The proposed building has a maximum height of RL 234m with no habitable levels above the maximum permitted height of RL 215m. Measured from the lower ground, Walker Street level, the height of the proposed building is 180.8m. Permitted height above ground level is 161.8m.

The building comprises 51,967m² of gross floor area (GFA) for office use, with retail and food and drink premises on ground levels. With the site measuring 1,928m² (by survey) this total GFA represents a floor space ratio of about 27:1. For comparison, the approved development at 110-122 Walker Street has an FSR of 29.7:1.

Council advertised and notified the application. Three submissions were received, one supporting and the others objecting to the proposal. Issues of concern included:

- Over development in the locality, aggregate amenity impacts of this and other development proposals.
- View loss.
- Traffic generation and congestion.
- Adequacy of stormwater infrastructure and potential flooding.
- Impacts on the land north of the site at 161 Walker Street, including its redevelopment potential being compromised by the zero setback proposed by the subject development.

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

A pre-lodgement meeting was held 14 October 2022. Advice to the applicant was that newly introduced setbacks for CBD development should be complied with or supported by strong 'evidence-based' justification. Approval of a development breaching the height limit with habitable space above the height maximum would not be supported, and a breach would need to be accompanied by a comprehensive and well-founded request to vary the standard.

Council's Design Excellence Panel considered the proposed development on 14 February 2023, having also considered the proposal at Pre-DA stage, on 8 November 2022.

A request to exceed the building height maximum of RL 215m has been received from the applicant, seeking to justify contravening the standard by 19.0m (7.9% over the maximum RL, or approximately 11.7% above the height permitted, above existing the ground level, as defined by the LEP). The request is not considered to be well founded, not having established that compliance is unnecessary and that there are environmental planning grounds are sufficient to justify the contravention. An important consideration in reaching this conclusion is the impacts of the development, caused by the proposal's contravention of height and setback controls.

The provisions of cl. 4.6 North Sydney Local Environmental Plan 2013 (the LEP) have not been satisfied and consent is not able to be granted.

Setbacks of podium and above podium elements of the building are inconsistent with the setbacks required by the North Sydney Development Control Plan 2013. These were the subject of a comprehensive review by Council, to better align setback controls with new height controls introduced to the LEP in 2018. Following due process including public exhibition, Council adopted the new setbacks in October 2022.

A meeting with the applicant was held in July 2023, following a letter to them addressing the above matters. A presentation was made by the applicant at the meeting and consequently Council confirmed with the applicant previous advice, and that amendments presented at the meeting were insufficient.

In September 2023, the applicant deemed refusal and filed an appeal with the Land and Environment Court.

To conclude, the proposed development has been assessed as unsatisfactory, per applicable provisions of the Environmental Planning & Assessment Act 1979 (the Act), State Environmental Planning Policies (SEPPs), the North Sydney Local Environmental Plan 2013, and the North Sydney Development Control Plan 2013 (the DCP).

Refusal is recommended, for the reasons set out in **Attachment 1**, which reflect the proposal's failure to comply with:

- Clause 4.3 (1) NSLEP 2013, the proposed development exceeds the maximum building height development standard.
- Clause 4.6 NSLEP 2013, the written request to vary the development standard does not adequately demonstrate that compliance is unreasonable or unnecessary, or that there are sufficient environmental planning grounds to justify contravention of the standard,
- Various provisions of NSDCP 2013, Part B Section 2, clauses:
 - 2.4.3 Setbacks,
 - 2.4.4 Podium Setbacks, and
 - 2.4.9 Through Site Pedestrian Links.
- Provisions of NSDCP 2013, Part C Section 2, North Sydney Planning Area, clause 2.1 Central Business District,
 - 2.1.3 Desired Built Form, concerning Building (podium) Setbacks, Podium Height, Above Podium Setbacks, and
- Resultant environmental impacts, including:
 - Proposed setbacks exacerbate the effects of the proposal's bulk and scale, rather than reduce them, which is inconsistent with DCP objectives,
 - That potential wind impacts will not negatively impact pedestrian safety and amenity, has not been demonstrated, and
 - Proposed setbacks do not permit adequate separation between existing and potential towers on adjoining land, and will likely compromise future redevelopment of these properties, noting the owners of land immediately to the site's north have objected for this reason and attendant environmental impacts, caused by the non-compliance with setbacks prescribed by the DCP.
- Provisions of NSDCP 2013 Part B Section 10 Car Parking and Transport, in that basement ramps are not designed in accordance with AS 2890 – Parking Facilities – Off-street Car Parking.

THE PROPOSAL

Background

The application was lodged on 16 December 2022. During assessment, additional information was requested on 20 December 2022 and a response was received in February 2023. The information clarified ownership of the site and provided a visual impact assessment.

Appeal

On 13 September 2023 the applicant deemed refusal and filed an appeal with the Land and Environment Court. This followed communications between Council and the applicant, wherein Council remained consistent in providing advice that the applicant adhere to, or with adequate justification adhere closely to setback controls, amongst other matters.

Pre-lodgement meeting

At the applicant's request a development application pre-lodgement meeting was held on 14 October 2022. Key issues identified were:

- The excessive height proposed, considered to be beyond the scope of approval under clause 4.6 NSLEP 2013. The maximum height discussed at the pre-lodgement meeting was RL 238, 4.0m higher than the height proposed by this DA.
- Variation of setbacks, strong justification would be required for any variation.
- Various impacts of the design in terms of urban design outcomes sought by the North Sydney CBD DCP provisions.

Design Excellence Panel

The panel considered the proposal before it was lodged on 8 November 2022 and again on 14 February 2023 following the DA being submitted. There being little amendment to the submitted design, there were few additional comments made. In summary both meetings yielded the following points from the Panel:

On each occasion the panel's advice addressed:

- "Over-intensification" of the site's development caused by setback breaches, notwithstanding generally supporting setback variations.
- Inadequate shading of interiors.
- Increasing landscaping on the proposed through-site link.
- Clarifying use and landscaping of the building's mid and upper levels.
- Increasing the number of operable openings in the podium.
- Creating a smaller and more intimate space or series of spaces in the entry lobby at a more human scale.
- Greater detailing and modifying materials to 'unify' the appearance of the podium, with more refined articulation and reducing the amount of glazing to improve the building's appearance.
- Increasing activity on and interaction between use of the building and the pedestrian link.
- Dividing the tenancies on the Walker Street interface, to increase activity and variety.
- Improving landscaping on the ground plane.

These matters will be considered later in this report.

Briefing of the Sydney North Planning Panel

A 'kick-off' briefing was held by the Panel on 19 April 2023.

Based on a preliminary assessment, key issues identified raised at the briefing were:

- Setback non-compliances.
- Proposed height variation.
- Objection from owners of land immediately north of the site.

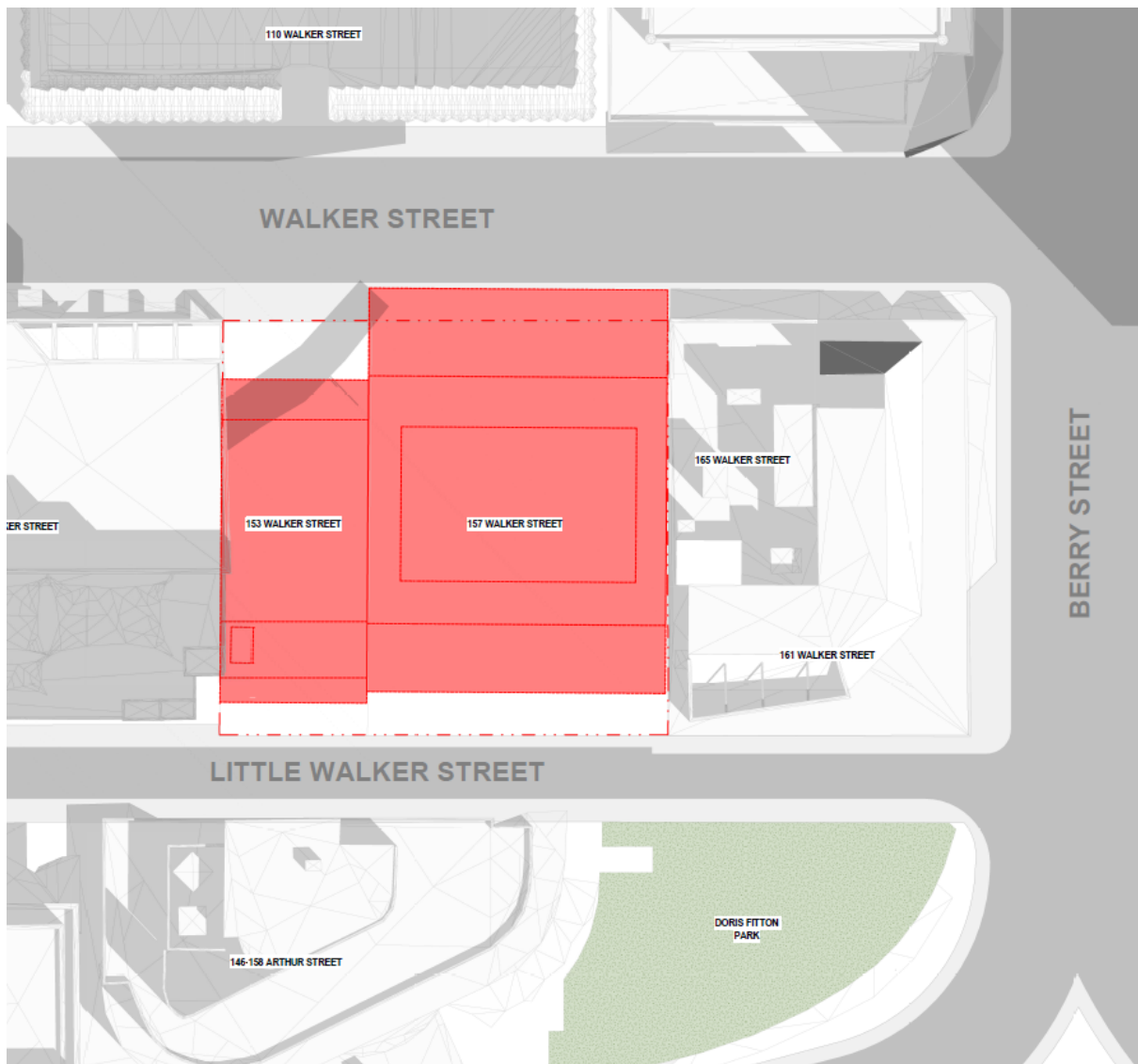
A second briefing was held 27 September 2023, when it was agreed that Council would prepare a report to the Panel recommending the application be refused, considering the matters at issue in the appeal.

DEVELOPMENT THE SUBJECT OF THIS REPORT

According to the submitted Statement of Environmental Effects (Ethos Urban 28 November 2022) the DA seeks approval for the demolition of the existing buildings on the site and the construction of a 43-storey commercial tower. Specifically, approval is sought by this DA for:

- Demolition of the existing commercial buildings at 153 and 157 Walker Street.
- Excavation to accommodate 5 basement levels.
- Construction of a 43-storey commercial tower with a maximum height of RL 234m and a total gross floor area (GFA) of 51,967m², including:
 - A 5-storey podium, comprising:
 - 2x retail tenancies and 1x restaurant tenancy with a total net lettable area of 475m²
 - Ground Level lobby.
 - End of trip facilities, including 480 bike storage spaces.
 - 4 terrace spaces.
 - 40 levels of commercial office floorspace with a total net lettable area of 46,745m².
- 5 basement levels, which will accommodate:
 - 130 car parking spaces.
 - 13 motorcycle parking spaces.
 - Lower Ground Level lobby.
 - End of trip facilities.
- The removal and retention of street trees as follows:
 - Retention of 3x street trees.
 - Removal of 5x on-site trees.
- Loading and servicing bays at the lower ground level, to be accessed from Little Walker Street.
- 490m² of additional public domain curtilage, including:
 - A new through-site link between Walker Street and Little Walker Street.
 - An increase to the width of the footpath at the Little Walker Street frontage.
- Connections to, and the augmentation of, existing underground utilities to service the development.

Below are illustrations of the site and the proposed building, from the architectural drawings and design report prepared by Architectus. Submitted architectural plans are in **Attachment 2**, the submitted design report and landscaping plans are respectively in **Attachments 3 and 4**.



Site location, with the two existing buildings (with awning over Walker St footpath) shaded red. North is to the right of the image. Doris Fitton Park (green) is adjacent the site in Little Walker Street. Falling from Walker to Little Walker Street, the site drains to the latter street. Site area is 1928m² and dimensions are around 45m to Walker Street and Little Walker. Side boundaries are about 41m. Apart from two aging buildings, the site has no distinguishing features.



- 153 - 157 Walker Street
- Lodged DA's
- Approved DAs
- Completed
- Under Construction

Surrounding development activity. The site is outlined in red. Nearby development, approved (apricot) and under construction (pink) are shown, as are completed buildings (green). West of the site are the Stockland development at 110 Walker Street and at 100 Walker is the Pro-invest proposal, both approved in 2022. All these developments are office towers, which, if all were developed, would add significantly to the commercial floor capacity of the CBD.



The proposal viewed from across Walker Street, south west of the site.



Indicative fit-out illustration to retail tenancy - subject to separate fit-out DA"

Ground floor at the Walker Street level and lower ground level facing Little Walker Street. The pedestrian link is shown on the left-hand (southern) side of the image, with the service/lift 'core' to the right, against the northern side boundary.



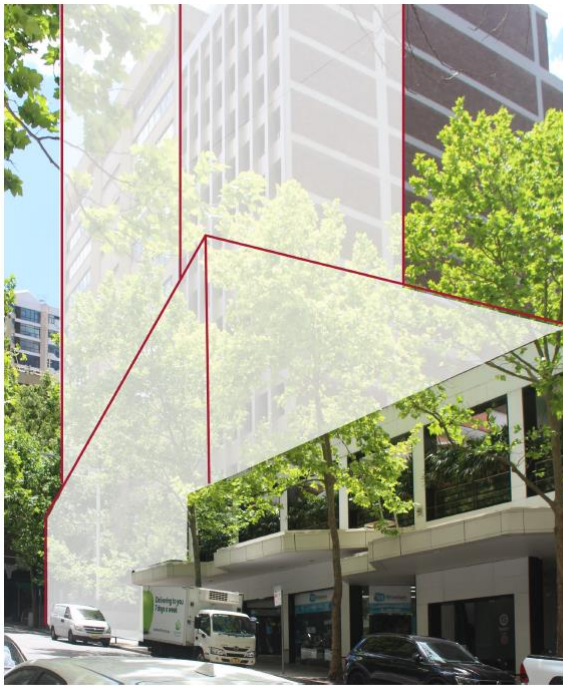
The ground plane from Little Walker Street, the pedestrian link is to the left.



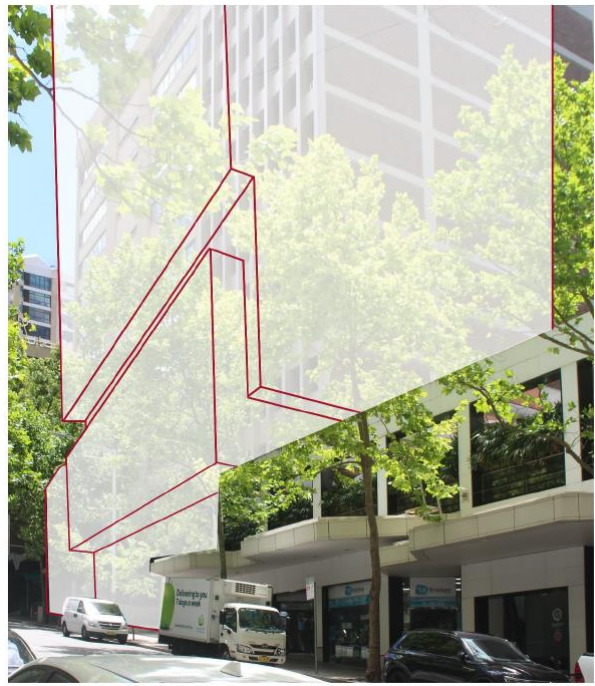
Section through the podium and basement. Walker Street to the right and Little Walker Street to the left.



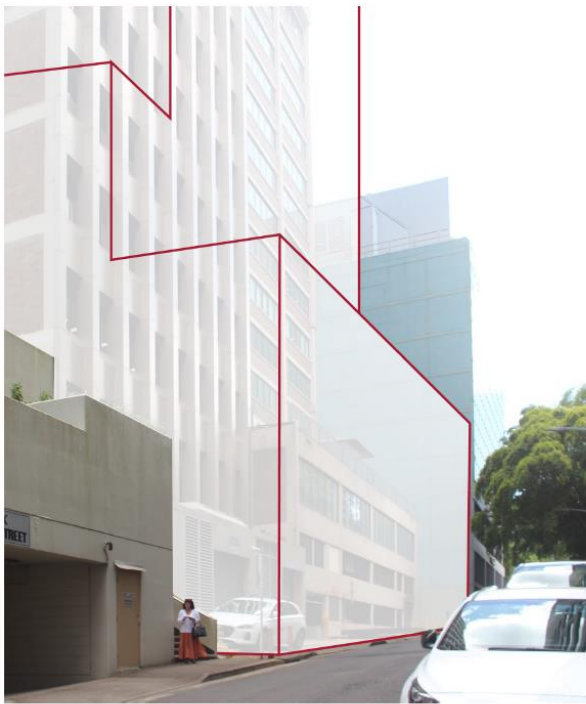
The proposed building is to the right, ghosted by building envelopes northwest (behind) and west (left) of the site, respectively indicating potential envelopes for buildings in the Ward Street Master Plan area and approved development on Walker Street. The new Zurich building is in the centre of the image, which is located on the corner of Arthur and Mount Streets.



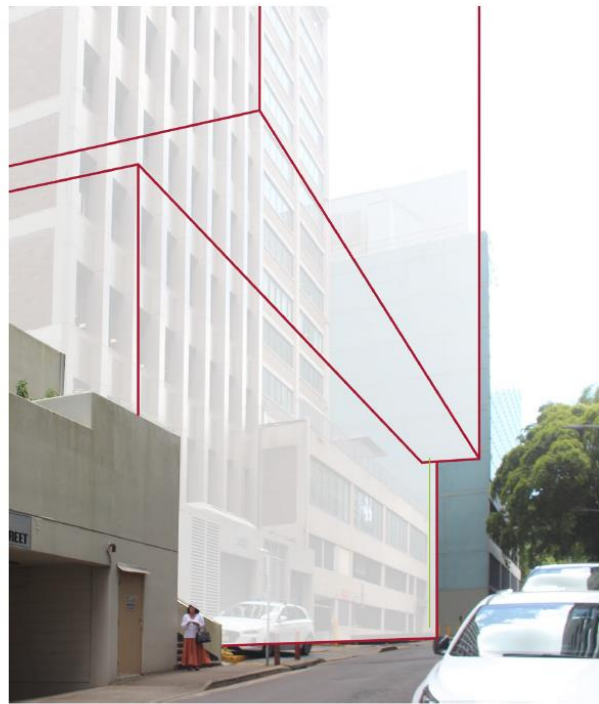
Compliant DCP Envelope



Proposed Envelope



Compliant DCP Envelope



Proposed Envelope

Illustrations indicatively comparing a DCP-compliant envelope (left) with that proposed (right), on Walker Street (above) and Little Walker Street (below).

SITE AND LOCALITY

The Site

The site is legally described as SP 50411 and Lot 1 DP 84729, being located at 153-157 Walker Street North Sydney. Occupied by two commercial buildings of 14 and 12 storeys the site faces Walker Street. Each building has vehicular access from Little Walker Street.

Comprised of two lots the site is rectangular with frontages of approximately 45m to Walker and Little Walker Streets and side boundaries of about 42m, with an area of 1,928m². The site falls from northwest to southeast with a difference in levels of about 6.7m and drains to Little Walker Street.

There are no distinguishing features apart from extant buildings and works.

The Locality

The site is on a street block bounded by Berry Street (north), Little Walker Street (east), Mount Street (south) and Walker Street (west).

Commercial buildings flank the site on all sides. Buildings to the east face Arthur Street and form the eastern extent of the North Sydney Central Business District.

Recent significant increase in development potential has been brought about by the LEP being amended to increase maximum building heights in the CBD. Land near the site stands ready for redevelopment, with many buildings being at or close to the end of their economic life. These opportunities have been capitalised upon by recent development in the North Sydney CBD, as the applicant aims to, via the subject application.

Strategically, another key reason this redevelopment is occurring is the soon-to-be-completed Metro line extension, from Chatswood to the Sydney CBD. About 170m west of the site the Victoria Cross Metro Station is under construction.

Between the site and the forthcoming Metro station two other commercial developments were approved by the Sydney North Planning Panel in 2022, at 100 and 110-112 Walker Street. Respectively these buildings are 48 storeys and 57 storeys and if carried out, will add another 42,000m² and 68,000m² of floor area to the CBD.

Several other large-scale commercial buildings are proposed or have been completed recently in the CBD, including the 50-storey mixed use (office and hotel) building at 86-88 Walker Street.

Opposite the site's northeast corner is Dorris Fitton Park, a public reserve.

Council's adopted Public Domain Strategy includes projects to complement the new rail link and promote the CBD's rejuvenation, including creating a series of walkways linking existing amenities while improving pedestrian access and facilities. One such link is a series of pedestrian laneways between Little Walker Street and the Metro station on Miller Street. Major development, including the two mentioned above and the completed tower at 1 Denison Street, combine to eventually bring this link into existence.



Figure 3: Aerial image showing site outlined in red, with approved buildings (orange), buildings under construction (pink), and recently completed buildings (green) (Architectus).

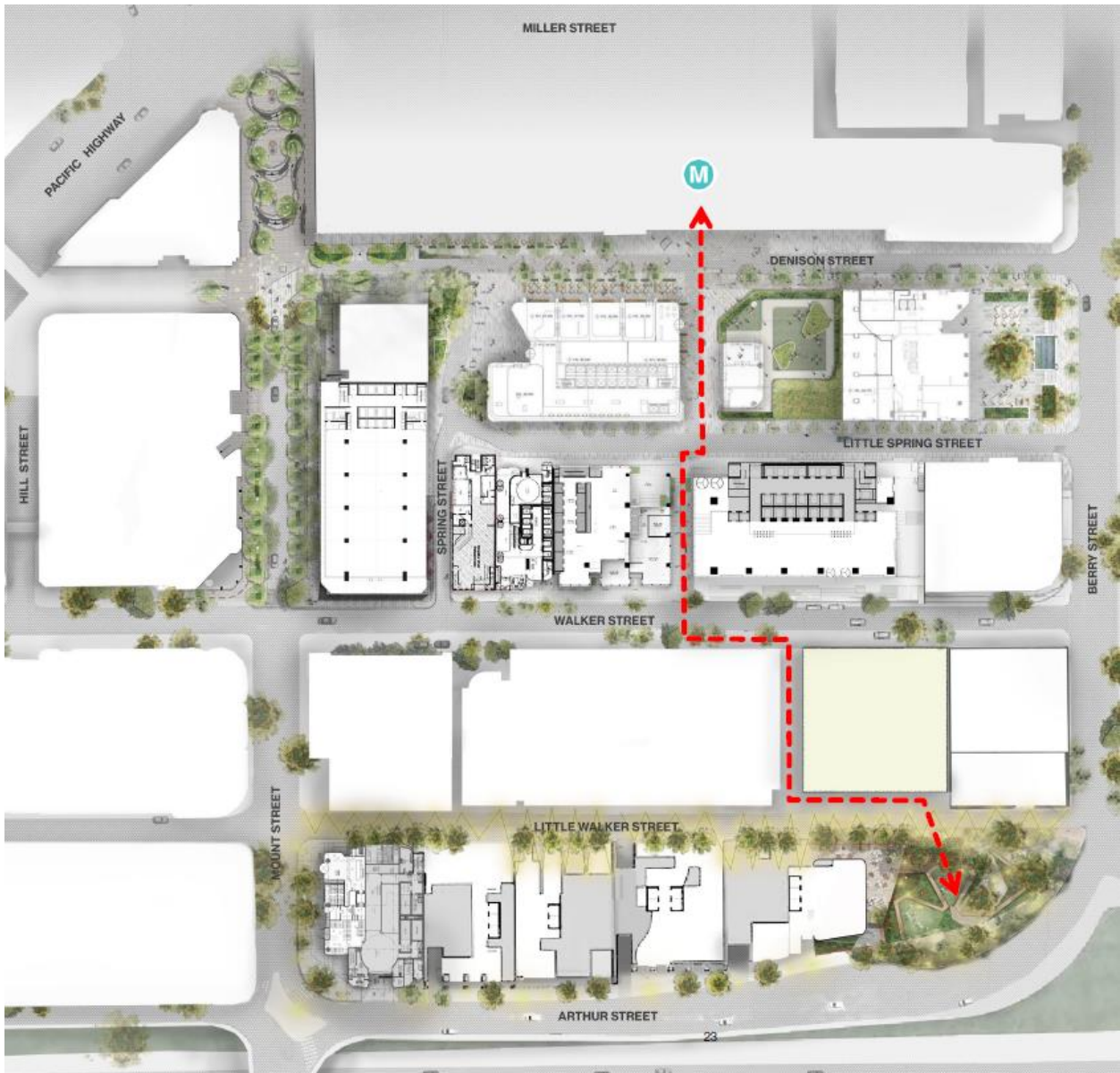


Figure 5: Indicative image showing the proposed building (cream) and access promoted by Council’s Public Domain Strategy, from the Victoria Cross Metro Station to the site via other pedestrian links, and to Dorris Fitton Park via the link proposed along the southern side of the site (Architectus).

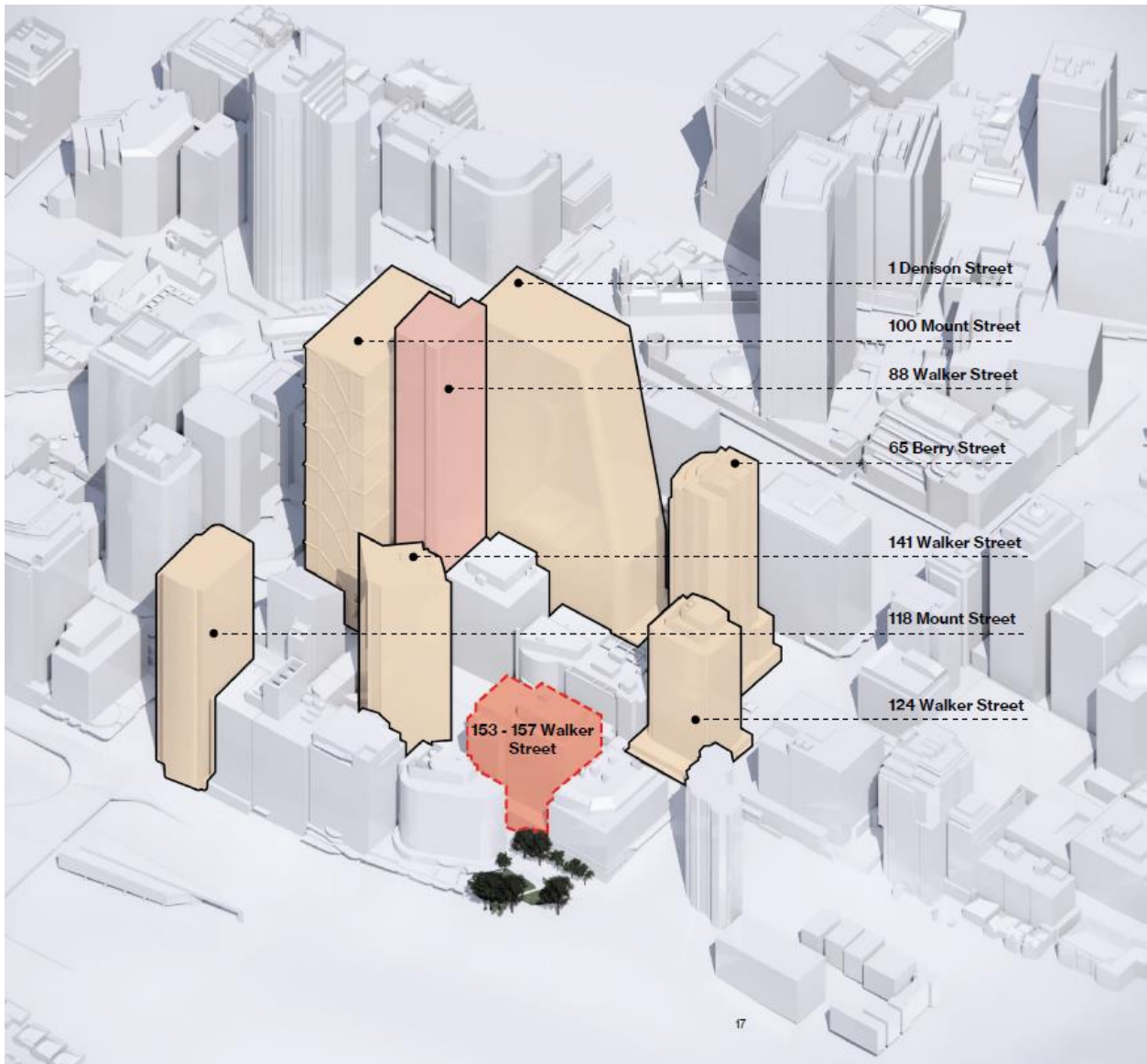


Figure 6: Image of site with Doris Fitton Park in the foreground (black tree-shaped objects) and development recently completed in its vicinity (Architectus). Envelopes shown for 124 Walker, 141 Walker and possibly 65 Berry Street, would likely be redeveloped in years to come.

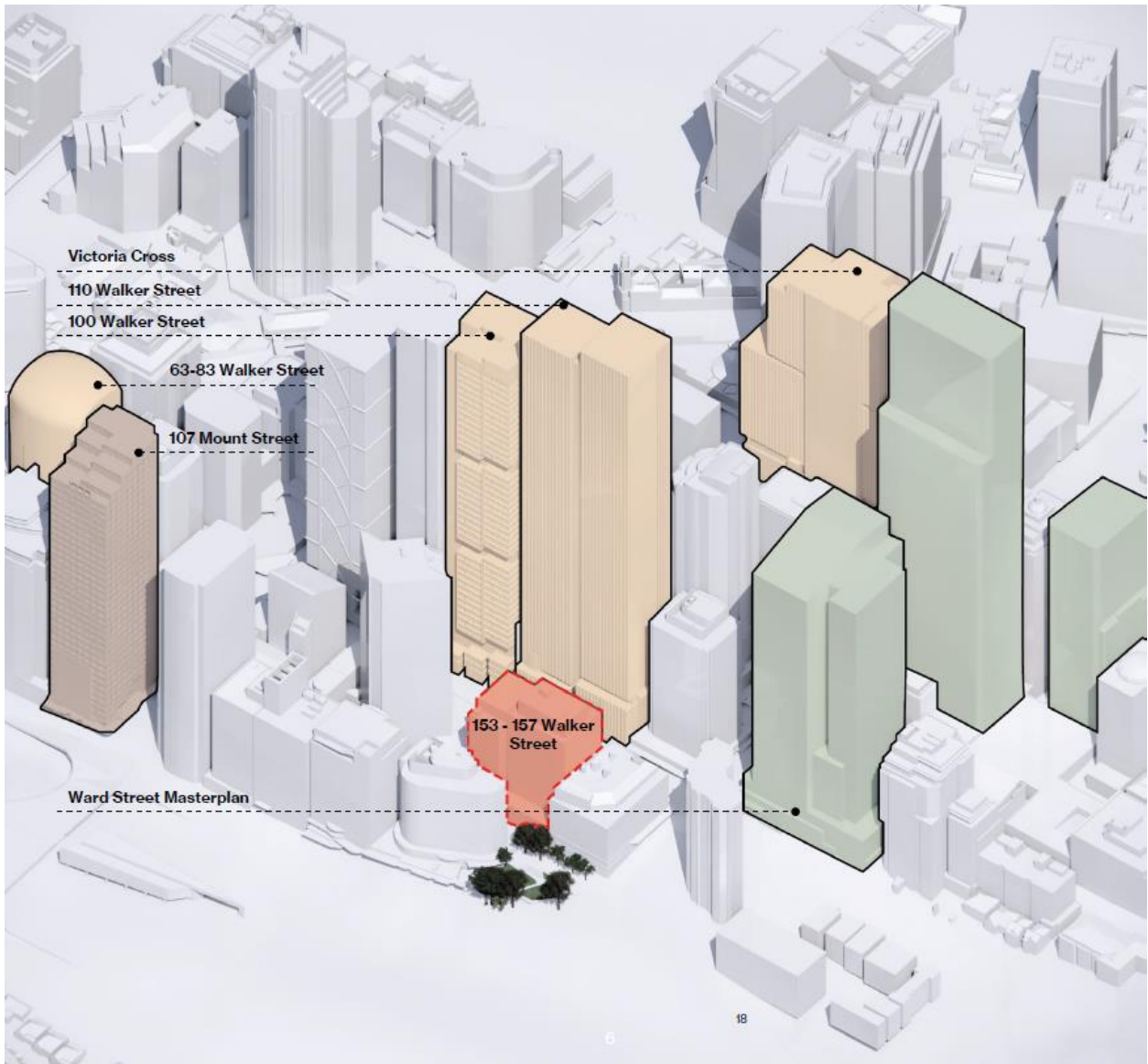


Figure 7: Development approved in the site's vicinity. To the right are proposed envelopes in the Council adopted "Ward Street Masterplan" (Architectus). Sites in the master plan have not yet experienced the height uplift of sites south of Berry Street, including the subject land.



Figure 8: Montage indicating the proposed development and shaded envelopes depicting approved development such as at 100 and 110-122 Walker Street to the right of the proposed building (centre). To the left, envelopes possible under Council's planning controls (subject to approval) are shown. In dotted white outline is an envelope on land north of 110-122 Walker Street. In front of the subject proposal, the image includes an envelope showing the maximum height (RL 115) permitted for the neighbouring land to the north, at 161 & 165 Walker Street. Owners of No 165 have objected to the application, principally due to the proposed tower's zero setback to the common boundary instead of the 6.0m required (Architectus).

STATUTORY CONTROLS

- Airports (Protection of Airspace) Regulations 1996 (C'wlth)
- Environmental Planning & Assessment Act 1979 (the Act)
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Transport and Infrastructure) 2021
- SEPP (Resilience and Hazards) 2021
- North Sydney Local Environmental Plan 2013 (the LEP)
 - Zoning – E2 Commercial Centre
 - Building height - RL 215
 - Exceptions to development standards
 - Item of Heritage - No
 - In Vicinity of Heritage Item - No
 - Conservation Area - No
 - Architectural roof features
 - North Sydney Centre - Objectives, Building heights and massing
 - Earthworks

POLICY CONTROLS

- North Sydney Development Control Plan 2013 (the DCP)
- North Sydney CBD Public Domain Strategy
- North Sydney Local Infrastructure Contributions Plan 2020

CONSENT AUTHORITY

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

PRE-LODGEMENT MEETING

A pre-lodgement meeting was held at the applicant's request on 14 October 2022. In summary, advice provided to the applicant was:

- Satisfaction of all statutory and non-statutory controls that apply to the site,
- Variation to the height of building standard can be considered, provided no habitable space is above the specified maximum height.
- Compliance with relevant provision of cl. 6.3 of the LEP is necessary, in addition to request a variation to the building height control.
- The proposed variation (proposed height 238m - Max height 215m = non-compliance 23m) is considered beyond the scope of a clause 4.6 submission, the appropriate course to pursue such an increased being a planning proposal. The applicant had previously submitted such a proposal and it was refused by Council in March 2022. The applicant requested a review and withdrew it.
- Shadow diagrams submitted with the planning proposal indicated the building would overshadow public open space and residential development outside the DCP between 10am and 12pm in mid-winter, which did not comply with the LEP (Cl. 6.3). The proposed subject of this report is also shown the overshadow these areas.
- The submitted plans indicated the proposal would be in breach of the LEP's cl. 5.6

- (3) (a) (iii), which does not permit “floor space area” or space being adapted of conversion to this if the application were to rely on this clause to exceed the height limit by providing a compliant “Architectural roof feature”.
- Compliance with newly-adopted setbacks was advised, also noting that the justification for proposed variations was inadequate.
 - Awnings are necessary over footpaths of Walker and Little Walker Streets.
 - Detailed advice was also provided by Council’s urban designers:
 - o Detailed studies are required to support the proposed podium heights,
 - o The podium should have zero setbacks on all sides,
 - o More details are required for setback and cantilevering the building over these spaces at the interface of the proposal with public streets and the proposed pedestrian link along the southern side of the building,
 - o Continuous awnings over public walkways are required,’
 - o The 4.0m setback to Little Walker Street is excessive, notwithstanding the footpath widening proposed,
 - o Tower setbacks did not comply. Full compliance was recommended.
 - o Side tower setbacks of 6.0m are required to provide adequate building separation, in accordance with the DCP.
 - o Ground level activation requires improvement, including the proposed pedestrian link.
 - o The link is supported, reflecting the vision of Council’s Public Domain Strategy.
 - o The DDA lift could be more suitably located, to be more easily accessible.
 - o Compliance with setbacks would yield floor plates of more than 940m². Being less than the minimum requirement of premium space (1,000m²), the potential to provide high amenity would offset the slightly smaller-than-needed floor plate.
 - o The podium should be “...more legible to provide a consistent relationship with the streetscape and promote a human scale. In particular, the through site link and Little Walker Street would benefit from a stronger podium form given its narrower characteristics.”
 - o “...given its (the building’s) height, the tower form would benefit from further articulation to reduce the perceived bulk of the tower, especially from street view.”
 - Advice was also given for preparing an application regarding environmental performance, referrals, engineering requirements, and detailed information to be submitted with an application.

REFERRALS

INTERNAL REFERRALS

Strategic Planning - Urban Design

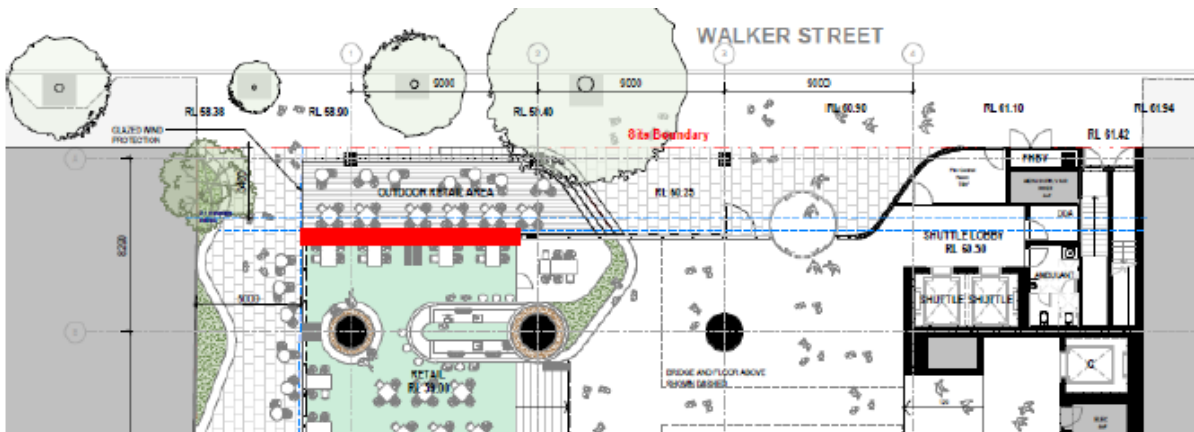
The strategic urban design team made the following assessment:

Ground Floor Setbacks

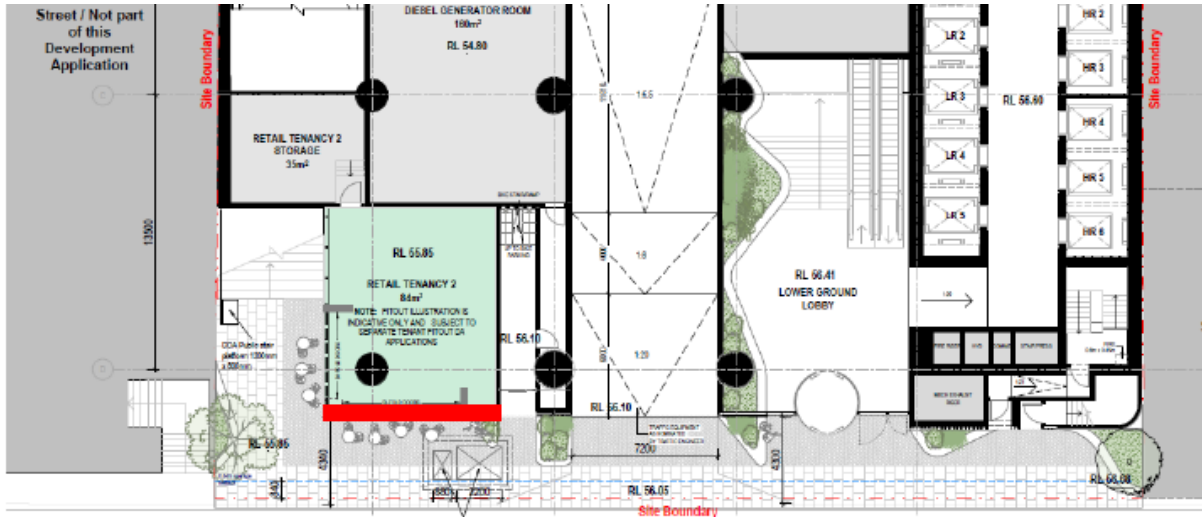
The North Sydney Public Domain Strategy (PDS) guidelines encourage buildings to be built to the site boundary at ground level unless the design response includes a purposeful setback with a high standard of amenity. Building to the street frontage adds to the public realm by:

- Strengthening the street wall and enhancing the streetscape character
- Offering continuous awning-covered weather protection windows, shops and openings to pedestrians
- Reducing security or safety issues of unused indented areas
- Creating a continuous line of activity which gives the street a clear urban form
- Preventing the creation of spaces that are ambiguous in terms of public accessibility, ownership, and safety, which can lead to long term problems for maintenance and upkeep.

The NSDCP 2013 requires a zero setback to all street frontages at the ground level, unless otherwise stated. The proposal incorporates a 4.3m ground floor setback to Walker Street to 'expand the public domain' and a 4m lower ground floor setback to Little Walker Street to enhance the 'almost non-existent pedestrian pathway.'



Ground Floor - Walker St showing 4.3m setback (red line shows retail activated frontage)



Lower Ground - Little Walker St showing 4m setback (red line shows retail activated frontages)

- **Walker Street:** With the exception of the area directly outside the south-west corner retail tenancy, the design approach to the street frontage on Walker Street lacks a clear purpose for the setback other than to increase the publicly accessible space within the site. Considering the extent of the setback, the level of activation appears to be limited as it is primarily occupied by the lobby entry, services, and the through-site-link entry.

Further, the setback on Walker Street results in a podium design that is inconsistent with the adjacent sites and the desired streetscape character. Reference can be made to the approved development at 110-122 Walker Street, where the lobby entry is proportionately sized and the podium addresses the street and topography appropriately. It is encouraged that the podium to Walker Street is built to boundary, with minimal indentations for the lobby entry.

It is recommended that the ground level setback to Walker Street be built to the boundary for most of the frontage with indents to corners for wayfinding.

- **Little Walker Street:** Similar to Walker Street, except for the area directly outside the south-east corner retail tenancy, the street's activation is limited due to the predominant presence of the lobby entry, services, vehicular access, and the through-site link. Notwithstanding, it is recognised that there could be advantages to slightly widening the existing 840mm pedestrian pathway on Little Walker Street and incorporating a setback integrated with landscaping, which would establish a positive connection with Doris Fitton Park. Nevertheless, the proposed 4m setback along the entire frontage is excessive, and it would create an inconsistent street pattern once adjacent sites are developed in the future. Moreover, it remains unclear how effective this 4m setback would be in providing weather protection, especially considering the proposed overhead shelter is positioned at least 12m above.
- Furthermore, the proposed 4m setback on Little Walker Street is accompanied by an almost non-existent tower setback, resulting in a reverse podium design. The absence of a podium undermines the desired streetscape character, diminishes the human scale, and creates the perception of an imposing tower looming over the relatively narrow street. Therefore, any setback at ground level on Little Walker Street should be accompanied with an above podium setback.

It is recommended that the proposed lower ground level setback to Little Walker Street be reduced.

Podium

- The NSDCP requires podium heights of 2-5 storeys to Walker Street and 2-3 storeys to Little Walker Street, and a zero setback to all street frontages for the site. Podiums frame public space, ameliorate wind impacts, promote human scale and contribute to the scale and character of the streets in the North Sydney CBD.
- The proposal comprises a 5-storey podium facing Walker Street, recessed over 2 floors on street level, and an inverted 3-storey podium to Little Walker Street. An inverted stepped podium is also included across the through-site link. The design of the podium does not adhere to the requirements of the NSDCP.



East-West Section - Podium form shown in red outline

- The recess in the podium along Walker Street deviates from the established street pattern and rhythm, which disrupts the overall coherence of the surrounding architectural context. Moreover, the inverted podium design along Little Walker Street, coupled with its lack of above podium setback, intensifies the "canyoning effect" of the street. This creates a narrow and enclosed feeling that diminishes the open and pedestrian-priority nature envisaged for Little Walker Street in the Public Domain Strategy. Furthermore, this configuration results in a loss of human scale, as the building's massing dominates the surrounding streetscape, detracting from the desired pedestrian experience.

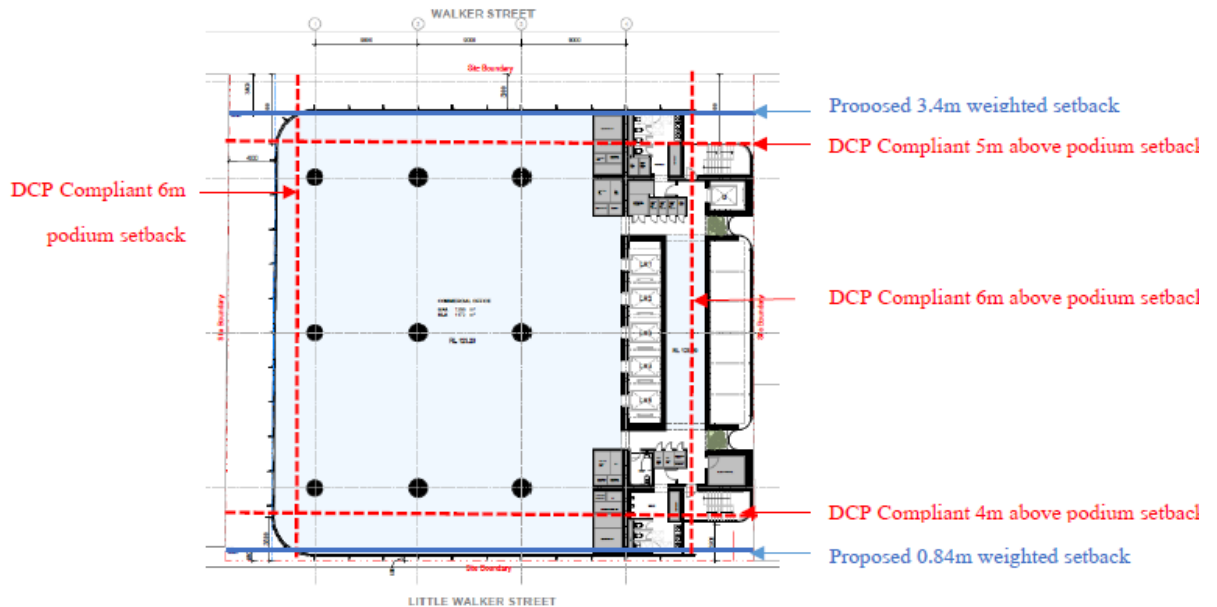
It is recommended that the podium form to Walker Street is built to the boundary and a non-inverted podium form typology be adopted to Little Walker Street, to comply with the NSDCP 2013.

Tower (above podium) setbacks

- NSDCP 2013 requires weighted above podium setbacks of 5m to Walker Street, and a 4m to Little Walker Street. The following provisions are also included in the NSDCP 2013:
 - o All parts of the building located above the podium must be setback a minimum of 6m from any rear boundary that does not have a street or laneway frontage (Part C, Section 2.1.3, P25)
 - o Any weighted setback above podium to street frontages must be setback a minimum of 3m (Part C, Section 2.3.1, P21)

Weighted Tower Setbacks to the Street

- The proposal provides a 3.4m weighted setback to Walker Street, 0.84m weighted setback to Little Walker Street. The proposed weighted tower setbacks to the street are non-compliant with the NSDCP 2013.



Typical Floor Plate showing reduced setbacks to all boundaries. Required setbacks shown as red dash.

It is crucial to acknowledge that the amendment to the setback controls in the NSDCP 2013 came into effect on 20 October 2022, and the development applications for the listed sites (those approved in 2022 and earlier, as discussed above) were submitted and approved prior to this date. Consequently, there is a reasonable expectation for the proposed weighted setbacks to align with the current DCP controls.

- The reduction of above podium setbacks results in a bulkier building and reduced sky views from the street level. Further, a compliant weighted setback would also help to distinguish the tower from the podium and create a human-scale environment at street level, minimizing overshadowing and wind downdrafts, and ensuring adequate sky views and daylight access. Increased tower setbacks could also enhance the amenity for neighbouring building occupants, allowing better solar access and views.

The current reduced tower setbacks to the street are not supported. It is recommended that the proposal should have at minimum a weighted 5m setback to Walker Street and a 4m weighted setback to Little Walker Street, to comply with NSDCP 2013.

Tower side setbacks

- The proposed tower is built to the north boundary of the site with no setback and provides a 4m setback to the south boundary. The proposed tower side setbacks are non-compliant with the NSDCP 2013. The reduced side setbacks to the tower will:
 - o Reduce sky views, daylight and solar access to the street level,
 - o Diminish human-scale to the street,
 - o Create monolithic walls of development that can increase overshadowing and wind impact,
 - o Reduce the amenity building occupant amenity of neighbouring sites, limiting natural solar access and views,
 - o Reduce the development potential of adjoining sites, particularly if the proposed tower has glazed facades to the north, and
 - o Increase wind impacts to the through-site link.
- The proposal should provide breaks between adjoining developments to equitably distribute access to outlook, daylight, and sunlight between developments, and

ensure adequate sky views, daylight penetration at street level, and mitigate wind impacts.

It is recommended that the tower be setback from the north and south boundary to provide breaks between development and improve pedestrian amenity.

Through site link

- *The Public Domain Strategy recognises the significance of creating a network of east-west through-site links to establish a pedestrian-friendly environment that encourages activity and connectivity. In line with this objective, the proposed plan includes a 5m wide through-site pedestrian link at street level, connecting Little Walker Street and Walker Street.*
- *Moreover, it's worth noting that the proposed through-site link complements another important through-site link to the west, between the sites at 100 and 110 Walker Street. This additional link serves as a desired access route from the new Metro and Walker Street to Doris Fitton Park, further enhancing the pedestrian connectivity and accessibility within the area.*
- *The proponent's Public Art Strategy, as outlined in the Urban Design Report, considers integrating public art within the through-site link. This consideration is strongly supported, particularly given the anticipated high volume of foot traffic expected to use the proposed site link. The presence of public art will enhance the overall experience within the through-site link, engaging pedestrians and adding cultural and aesthetic value to the space.*

The proposed through-site link and the possible public art integration within the space is supported.

Awnings

- *The NSDCP 2013 requires continuous awnings to be provided to all commercial buildings. Awnings offer protection from the harsh elements of the weather and should be designed with consideration of various factors such as site topography, footpath width, awnings of adjacent neighbouring buildings and street trees.*
- *The proposal suggests the inclusion of awnings along Walker Street and the western part of the site link. It is encouraged that the awnings be extended throughout the site link to provide pedestrians with appropriate weather protection, especially considering the area's anticipated strong winds. Additionally, more detailed information is needed regarding the design of the awnings, including their dimensions, depth, material, and how they will be integrated across the site.*

It is recommended that the awnings continue across the through-site link.

Design Excellence Panel

The Design Excellence Panel's report of 14 February 2023, concluded by offering qualified support for the proposal. The panel had previously considered the proposal at Pre-lodgement stage, on 10 October 2022.

The panel recommended further design refinement for certain aspects of the proposed development, summarised below.

- Setbacks being amended as suggested*:
 - o Walker St - 4m may be acceptable,

- North – Nil is supported (noting this is reduced from 6m in the DCP, however this was supported at pre-DA stage, given the unique constraints on the future context),
- South - 5m is suggested (6m required by the DCP, the departure is considered acceptable given the existing tower setback of the neighbour to the south, and other recent approvals), and
- Little Walker St – 6m is suggested (there appears little justification to depart from the DCP control (4m weighted average), the tower directly south of the site would comply with the weighted average setback).

* Despite the opinion of the panel, Council advised the applicant that compliance with setbacks should be observed, and that the design be as close as possible to compliance, only with adequate justification. The current DCP controls are well researched and only recently adopted and should generally apply. This development represents the first renewal of this city block and should set the precedent for future developments.

- The DEP Report provided to the applicant following the meeting also noted that given the recent adoption of new setbacks for buildings in the CBD, the development should have greater adherence to the new DCP controls.
- Applicants for other projects (100 Walker St and 110 Walker St) argued the height breaches are justified, inter alia, by climbing up the hill in line with ground-level topography, thus creating a stepped skyline.
- The panel noted that proposed setbacks were the result of detailed analysis of the site and surrounding conditions. Increases to setbacks were suggested, along Walker Street and Little Spring Street. As noted above, Council's strategic urban designers maintained their concerns regarding proposed setbacks.
- Sustainability and energy efficiency initiatives integrated into the design were noted and commended, as was the overall design approach and execution, and materials to be used. A request was however made, to consider a warmer colour palette.
- Awnings were thought to be too high to offer adequate weather protection and that it is important to consider design with that of the awnings of the neighbouring development.

Building

The proposed works the subject of this application have not been assessed for compliance with the National Construction Code of Australia, which is required before a Construction Certificate is issued. Conditions would have been included if the application were to be approved.

Civil Engineering, Stormwater Drainage & Geotechnical Stability

Council's Senior Development Engineer has assessed the proposal and does not object to the development subject to conditions, which would have been included were approval recommended.

Landscape

Conditions recommended to address landscape issues would have been included if the application were approval recommended.

Transport, Traffic and Parking

Council's Traffic and Transport Engineer advised, as follows, concluding the proposal satisfies Council's DCP with regard to traffic and parking, except for design of the basement ramps:

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

- *Basement column design to allow two vehicles to pass each other without colliding.*

Comment: Non-compliance with the DCP's requirements for vehicle manoeuvring is included in the reasons for refusing the application.

Public Art

Council's Acting Team Leader Arts and Culture has considered and supported the Public Art Strategy submitted with the application. An appropriate condition would have been recommended to ensure the strategy's implementation in accordance with Council's Public Art Policy.

Waste Management

Council's Waste Management Officer advise that waste collection services are not provided to commercial buildings. Conditions would have been recommended to address waste management if the application were to be approved.

EXTERNAL REFERRALS

Transport for NSW

Transport for NSW - Roads

The application was referred to TfNSW, as required by SEPP (Transport & Infrastructure) 2021. No objection was raised to the application as it was considered unlikely to have a significant impact on the classified road network. The advice also requested that pedestrian safety be considered, and that on-site parking be provided to Council's satisfaction.

Transport for NSW - Sydney Metro

The application was referred to the Sydney Metro office, who advised the proposal's location is sufficiently distant from the rail corridor to avoid adverse impacts.

Sydney Water Corporation

Sydney Water's reply did not identify any impediments to the proposed development. Amplification and extension of water and sewer infrastructure are expected to be addressed when a section 73 application is made. A condition would have been recommended requiring the applicant to make such an application.

Energy

Ausgrid raised no objection to the application and recommended certain matters to be addressed, were approval to be recommended.

Sydney Airport

The applicant has obtained approval from the Commonwealth for the proposed building, as it protrudes into prescribed airspace, being taller than RL 156m. The approval was granted subject to conditions, that the building does not exceed RL 234m (the proposed height) and be obstacle-lit at the highest point of the building during hours of darkness.

SUBMISSIONS

Council notified occupants of premises in the local area in writing of and publicly exhibited the application via its website for a period of 21 days from 3 March 23 until 24 March 23.

Three submissions were received. One, the owners of adjacent the site, at 161-165 Walker Street, the site's northern neighbour, objected on specific grounds outlined below.

In summary key issues of objection and concern included:

- Over development in the locality, aggregate amenity impacts of this and other development proposals.
- View loss.
- Traffic generation and congestion.
- Adequacy of stormwater infrastructure and potential flooding.

The objection received from the owners of 161 Walker Street, one of the site's northern neighbours, objected on specific grounds, as quoted from their submission.

The abovementioned sites (161 and 165 Walker Street, adjacent to the land the subject of the DA) are located adjacent to neighbouring buildings with extensive blank walls (proposed) along their shared boundary, resulting in boundary interface issues that hinder the prospect of enhanced building occupant amenity normally associated with building separation.

Importantly, the site at 153-157 Walker Street is not identified (by the DCP) as a site that should be afforded a degree of flexibility in the application of the 6 metre side setback requirement.

Overall, the Strata Committee does not object to the general purpose or proposed use associated with the DA in terms of delivering a commercial office building across the site with ground floor retail.

However, we have concerns with the bulk and massing of the design largely resulting from the non-compliance with the tower setback requirements. Specifically, the primary concern with the DA proposal is the fact that no setback is proposed to the northern boundary of the site from ground level to approximately RL 230m high which is shared with our asset at 161 Walker Street.

This equates to a 6 metre non-compliance of the recently adopted and prescribed side setback control under the NSDCP 2013. It is worth noting that this setback non-compliance is put forward in the context of a proposed breach to the maximum RL 215m building height control.

Our objection is summarised as follows:

- *Approving the development as proposed would therefore be contrary to council's CBD tower design objectives, thwarting the very purpose of introducing the control in the first place to provide separation between tower forms and reduce long extents of building forms as they present to street and laneway frontages.*
- *Such an outcome would limit the future development of the site insofar as obstructing any potential for development to achieve the desired south-easterly aspect toward Sydney harbour.*
- *If the DA is approved with a nil northern boundary setback, then we believe we could well be required to setback from the shared boundary to meet the DCP objective of providing separation between buildings to avoid a 'wall of towers'. If so, given our site is smaller in area, the development potential in this scenario would be unfairly burdened, resulting in a disincentive to redevelopment owning (sic) to it being unfeasible.*

- *The existing commercial tower that adjoins the DA subject site to the south at 141 Walker Street is well setback from their shared boundary, so if there were to be supportable grounds for a reduced setback, the interface to the south would be more appropriate as it would still maintain generous spaces between the proposed and this existing building at 141 Walker Street.*

A better built form and amenity outcome for the site and surrounds would be to have setbacks proposed to both sides of the site, particularly to the north to ensure building separation both now and in the future should 161 Walker Street be redeveloped.

Conclusion

The Strata Committee as owner's (sic) and managers of the commercial asset at 161 Walker Street, North Sydney, object to the proposed DA 393/22 as it relates to the neighbouring site situated to the south at 153-157 Walker Street, North Sydney.

Specifically, our objection is to the proposed zero metre tower setback to the northern side boundary. This is considered unreasonable and should be rejected on the basis that:

- *The setback represents a substantial 6-metre (or 100%) non-compliance to amended controls Council recently introduced in October 2022.*
- *A zero metre setback directly contradicts and thwarts the very purpose Council amended the controls in the first place which was to provide separation between tower forms, reduce long extents of built form and protect public and private amenity.*
- *As part of their detailed study of the North Sydney CBD undertaken as part of drafting and implementing amendments to the Development Control Plan, Council specifically identified sites where flexibility of imposing the side and rear setback controls should be considered and applied, of which the site at 153-157 Walker Street was not identified.*
- *The proposed setback control significantly limits the future development potential of the site at 161 Walker Street and will negatively impact upon the amenity of existing and future building occupants, as well as surrounding public areas, with respect to daylight, solar access, sky views, ventilation, natural light, view outlook and perceived bulk.*

We believe there are alternate (sic) design options available to the applicant to apply that would result in a greater level of planning compliance and improve the relationship to our site whilst maintaining a feasible floorplate design.

EVALUATION OF THE PROPOSED DEVELOPMENT

Relevant matters under Section 4.15 of the Act are considered in this section of the report. The application has been assessed against the relevant provisions of the LEP and DCP, and other environmental planning instruments that apply to the site and the proposal.

SEPP (Transport and Infrastructure) 2021

As noted in the external referrals section above, Transport for NSW did not object to the proposal. This agency was consulted regarding traffic generation, the development proposing more than 2,500m² of commercial gross floor area.

SEPP (Resilience and Hazards) 2021

A preliminary site investigation lodged with the application outlined means of addressing the SEPP's requirements.

SEPP (Biodiversity and Conservation) 2021

The site is axiomatically located in the Sydney Harbour catchment. The site is not located close to the foreshore and will form part of a distant skyline view of North Sydney and Milsons Point, from Sydney Harbour and other vantage points on harbour foreshores and within the waterway's visual catchment, in an arc generally from north east to south east.

If the application were to be approved as proposed, the development would be able to effectively treat the quality and quantity of stormwater before discharge to the public drainage system and the harbour. The application is consistent with relevant aims, objectives and principles of the SEPP.

NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

Permissibility

The site is zoned E2 Commercial Centre by NSLEP 2013.

Development for the purpose of "commercial premises" is permitted with consent in the E2 Commercial Centre zone of the NSLEP 2013.

Height of buildings - Clause 4.3

A maximum building height of RL 215m applies to the site under clause 4.3 of NSLEP 2013.

Exceptions to development standards - Clause 4.6

A written request was submitted with the development application (**Attachment 5**) in accordance with the provisions of cl. 4.6 - Exceptions to Development Standards, of the LEP. The request seeks a variation to the height of building development standard, as provided by cl. 4.3 of the LEP.

- Proposed maximum height: RL 234m.
- Maximum permitted height: RL 215m.
- Proposed contravention: 19.0m or 8.8% (based on RL height, as defined by the LEP).

When measured in accordance with the definition for measuring height, when the maximum building height is the distance between the tallest point of the building and the existing ground level directly under that point, the proposed contravention is:

- Proposed maximum height: RL 175.4m (234 - 58.6*)
- Maximum permitted height: RL 156.4m (215 - 58.6*)
- Proposed contravention: 19m or 12.1%.

* existing ground level below the tallest part of the building

As the panel would be aware, numerous decisions of the Land & Environment Court (the Court) have assisted in the interpretation and application of clause 4.6, a provision common to most, if not all LEPs in NSW.

Clause 4.6 - criteria for approval

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

1. The consent authority must be satisfied, according to cl. 4.6 (2):
 - (a) the provision for which non-compliance is sought is a development standard as defined by the Environmental Planning and Assessment Act 1979 (the Act), and
 - (b) the development standard in question is not excluded from being varied, by cl. 4.6 (6) or (8).
2. The applicant's written request must, according to cl. 4.6 (3):
 - (a) demonstrate that compliance is unreasonable or unnecessary in the circumstances of the case, and
 - (b) demonstrate that there are sufficient environmental planning grounds to justify the contravention.
3. As required by cl. 4.6 (4) (a), the consent authority must be satisfied that:
 - (a) the applicant's request has satisfactorily addressed these matters, and
 - (b) that the development is in the public interest, being consistent with the objectives of the standard and the zone in which the development is proposed.
4. As a delegate of the Planning Secretary, in accordance with cl. 4.6 (5), the consent authority must consider the following in deciding whether to grant concurrence:
 - whether a matter of State or regional significance is raised by the standard's contravention,
 - the benefit in maintaining the standard, and
 - any other matters.

Evaluation of the applicant's written request

An evaluation of the proposal regarding the requirements of the LEP to contravene a development standard follows.

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

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

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

Of relevance to the subject application, only the provisions of cl. 6.3 (2) (a) & (b)* of the LEP are excluded from the operation of cl. 4.6 (cl. 4.6 (8) (cb)). The proposal does not affect land protected by clause 6.3.

* Clause 6.3 (2) (a) and (b) state that consent must not be granted to development that will cause a net increase in overshadowing between the March and September equinox, between 10.00am and 2.00pm, of land in the North Sydney City Centre zoned RE1 or land in a 'Special Area', or of the Don Bank Museum.

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

The applicant's written request submits that the proposal is consistent with the objectives of the standard. This is one of the methods suggested by the Court to establish that compliance with the standard is unnecessary or unreasonable.

Objectives (cl. 4.3 (1) of the LEP) of the building height maximum are:

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) *to ensure compatibility between development, particularly at zone boundaries,*
- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.*

The applicant's request to depart from the height standard, regarding the development standard's objectives, is not considered sufficient to satisfy the terms of clause 4.6 (3) (a), for the following reasons:

To summarise, key elements of the submission, in response to paragraphs (a) - (f) (noting paragraph (g) does not apply) include:

- **Objective (a) Built form follows landform:** The statement refers to the ground plane's effective response to the difference in levels between Walker Street and Little Walker Street.

Comment: *The request does not, however, address the overall height of the proposal in its context. The proposed variation is not discussed in terms of the building's overall height as it relates to the topography of the site and its surrounds.*

- **Objective (b) View retention and sharing:** The request submits that view loss would "not be unanticipated", when considering the small variation (8.8% or 12.1%, depending on how height is measured) and the site's dense city context.

Comment: *At best, this statement is circumstantial, it does not establish if views are affected. The submission refers to the submitted Design Report noting it shows there is no "noticeable reduction" in "open-sky vistas" and that further view analysis can be undertaken if required.*

The request has not provided any information to establish whether public or private views are affected and if so, whether the proposal suitably achieves view-sharing, according to the principles established by the Court (Tenacity v Warringah [2004] NSWLEC 140, and Arnott v City of Sydney [2015] NSWLEC 1052).

- **Objective (c) Solar access to residences and the public domain and future development:** The request indicates Doris Fitton Park is not shaded by the proposal and that residential areas outside the CBD are overshadowed, although not to the extent that would make the proposal non-compliant with clause 6.3 (3), in that well over 2 hours of mid-winter sun is maintained to a small number of affected properties southeast of the site.

Comment: *The development is consistent with the objective.*

- **Objective (d) Maintain privacy of residents of existing and new buildings:** As noted in the request, the only nearby residential development is the Alexander Apartments building in Berry Street. Residents of this building will not have their privacy reduced.

Comment: *The request does not explain why – that the site and the apartment building have the existing and approved development and 110 and 122 Walker Street between them. If the approved development at 110 – 122 Walker does not proceed, the lateral distance between the residential building and the proposal is about 70m, adequate to maintain privacy.*

- **Objective (e) Compatibility between development:** By reference to the submitted statement of environmental effects, the proposal is claimed to be compatible with its context.

Comment: *Even if this observation was supported by sufficient information or analysis, it would not be agreed with, as the proposed building height, when considered in conjunction with setbacks, creates unacceptable bulk and scale on streetscape, ground plane and district view/visual impact levels. At macro and micro levels, the development is incompatible with other development.*

- **Objective (f) Appropriate scale and density that promotes an area's character:** The request contends the proposal's scale and density is acceptable due to not having negative effects on nearby Doris Fitton Park or views of the sky, or by causing additional overshadowing of public open space, outside the CBD. The proposal is also consistent with this objective, it is claimed, by making a positive contribution to the public domain (pedestrian link) and being consistent with the DCP's CBD character statement. And as discussed elsewhere in the request (examined later by this report), the proposal is claimed to be consistent with the zone objectives, despite being taller than the maximum height permitted.

Comment: *In general terms the foregoing indicates the development will have these outcomes, although it does not present or examine sufficient information to support the claims made, that the height breach is unreasonable or unnecessary. Even if these claims were supported, for the same reasons as those given for objective (e), the proposed development is not appropriately scaled, represents an overly dense development of the site, and does not promote and nor is the development consistent with, the character of the locality, existing or planned.*

Criteria 2(b): Sufficient environmental planning grounds

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

- The proposal does not unacceptably restrict or limit sky views or views from other buildings or the public domain.

Comment: *The diagrams purported to show maintenance of sky views are unclear because they are difficult to interpret and apply an unhelpful quantitative methodology.*

- The additional height accommodates plant only (not habitable space).

Comment: *On its own, this statement is not considered to be an “environmental planning ground”, neither is the statement supported by any information or analysis.*

- The modulated built form including the terraced upper levels, the “shadow gap” in the building’s central section (about half-way up) and ground plane (including the proposed publicly accessible pedestrian link) is generally consistent with emerging built form in the North Sydney DCP.

Comment: *While this may (or may not) be the case, this statement has not considered the breach of setbacks applicable to the site. Earlier, it was established that new setbacks were introduced in 2022 to ensure new development responds appropriately and reduces the bulk and scale of buildings permitted to achieve significantly taller buildings as a result of maximum height increases introduced when the LEP was amended in 2018.*

To achieve the height permitted by the LEP, it is critical that tower setbacks be complied with, otherwise buildings that exceed the minimum setbacks introduced last year result in excessive bulk and scale when compared with a compliant development. This is demonstrated below when the visual impact of the proposed is considered.

On the eastern side of Walker Street compliance is even more important. On the street block on which the site is located, most if not all properties are or will soon be ready for redevelopment, and it is critical for new development to contribute to the form, scale and detailing promoted by the LEP and DCP.

- The minor height increase will be imperceptible compared to a compliant building.

Comment: *The images provided with the application discussed below indicate the opposite, the proposal is readily interpreted as being taller, wider and deeper – bulkier - than a compliant envelope.*

- The proposal is consistent with the area’s character, being consistent with zone objectives.
- The request relies on other technical studies that demonstrate, it is claimed, that the proposal is “an acceptable design outcome.”

Comment: *The above two statements are generic and sweeping. No specifics are offered, and consequently this claim remains unsubstantiated. Clause 4.6 requests must ‘stand-alone’ and not rely on other documents, to be adjudged of sufficient merit to vary a development standard. To the contrary, it is established above, in relation to the standard’s objectives, that the proposal is incompatible with the character of the locality.*

- “The exceedance does not result in any impact on privately owned land.”

Comment: *This statement is not supported by fact or analysis. As examined below regarding the DCP, setback and height variations have an unacceptable impact on adjoining land, either side of the site. And that owners of one adjoining building have objectives for these reasons is pertinent.*

Comment:

To conclude, the applicant’s request is not concurred with as it has not shown there are sufficient environmental planning grounds to vary the height standard.

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

As examined above, the applicant’s written request does not satisfy these criteria.

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

Approval would not be in the public interest, because the proposal is inconsistent with several relevant objectives of the standard.

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

The E2 Commercial Centre zone's objectives are:

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise the adverse effects of development on residents and occupiers of existing and new development.*

Below, the proposal is considered with regard these objectives:

- The proposal would provide new space for types of activities permitted, thus strengthening the North Sydney CBD.
- Significant commercial floor space is proposed that will promote the economy and employment.
- The design of building does not adequately provide high levels of accessibility and amenity for pedestrians.
- Residential development is not proposed.
- The proposal does not adequately provide for diverse and active street frontages, which would contribute to vibrant, diverse and functional streets.
- The development does not adequately minimise its effect on occupiers or new and existing development.

Comment: *The proposal is inconsistent with the third, fifth and sixth zone objectives.*

Granting of concurrence

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

Concurrence need not be considered due to the request not satisfying requisite criteria.

Criteria 4 (b): Benefit of maintaining the standard

The benefit of maintaining the standard need not be considered due to the request not satisfying requisite criteria.

Criteria 4(c): Other matters to be considered

No other matters require consideration.

Approval, despite contravening the development standard

Should the Panel concur with the above assessment, consent is unable to be granted to the development application, as the criteria or preconditions of cl.4.6 have not been satisfied by the written request.

In summary:

- building height is a development standard as defined by the Act and is capable of being contravened, as it is not excluded from the application of cl. 4.6,
- the proposal is not affected by other LEP provisions which exclude the proposal from cl. 4.6's operation,
- the applicant's written request to contravene the maximum building height has not demonstrated that compliance is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify building above the permitted height,
- the proposal cannot be considered in the public interest, as the development is not consistent with all applicable development standard and zone objectives, and
- no other matters need be considered, as consent is unable to be granted.

Cl. 5.6 Architectural roof features

The 4.6 submission notes the clause is not relied upon to vary the height standard.

Part 6 Additional local provisions

Division 1 North Sydney Centre

This division of the LEP sets out requirements which specifically apply to the key commercial hub of northern Sydney. The following assessment addresses provisions applicable to the proposal.

Objectives of Division 1 North Sydney Centre – Clause 6.1

| Objective | Evaluation |
|--|---|
| (a) to maintain the status of the North Sydney Centre as a major commercial centre | The proposal is consistent with this objective, as it would provide new office space to meet the demands of businesses requiring contemporary office accommodation and ancillary facilities in a highly accessible location. |
| (b) to maximise commercial floor space capacity and employment growth within the constraints of the environmental context of the North Sydney Centre | While the design optimises creation of contemporary, lettable floor space, it causes unacceptable impacts to the local environment and amenity, due excessive height and inadequate ground level, podium and tower setbacks, that do not comply with and fail to satisfy LEP and DCP provisions and objectives. |
| (c) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000m ² | The site has an area of 1,928m ² . High-quality office space is proposed, with a commercially viable and competitive floor plate, as the applicant has advised, with unacceptable impacts. A competitive floor plate could probably be provided if setbacks were altered to comply with the DCP. |
| (d) to prevent any net increase in overshadowing of any land in Zone RE1 Public Recreation (other than Mount | The proposed development will result in no additional overshadowing of places nominated by this clause of the LEP. |

| | |
|--|---|
| Street Plaza) or any land identified as “Special Area” on the North Sydney Centre Map. | |
| (e) to ensure any land in a residential zone is afforded reasonable solar access. | Minor and acceptable additional overshadowing only affects a small residential area and only for a brief period, adjacent to the North Sydney Centre. |
| (f) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas. | Not applicable. |

Building heights and massing - Clause 6.3

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

(a) *Repealed*

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

Assessment

The proposal will not cause additional overshadowing of any RE1 zoned land, any of the Special Areas as mapped by the LEP, or the Don Bank Museum. This is demonstrated by the shadow diagrams in the architectural drawing set (**Attachment 2**).

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

Assessment

As shown in the shadow diagrams submitted, midwinter sunlight is not reduced to less than two hours. As shadows are shorter in autumn and spring, the development does not affect sunlight access from 21 March until 21 September, as required.

(d) *To promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,*

Assessment

Information submitted does not adequately demonstrate that the proposed scale and massing provides reasonable pedestrian comfort and safety. Neither does the proposal have human scale and it is visually dominant.

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

Assessment

The site has an area greater than 1,000m² and can provide premium 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 12.00 pm and 2.00 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as "Special Area" on the North Sydney Centre Map, or*

Assessment

As indicated by the submitted shadow diagrams, the proposal does not result in any additional overshadowing of the RE1 zoned land or mapped as Special Areas between the nominated times and during the period of the year specified.

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

Assessment

The proposal does not overshadow the Don Bank Museum.

- (c) *the site area being less than 1,000 m² and any development being no higher than 45m.*

Assessment

The site area is 1,928m², this provision does not apply.

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

Assessment

As outlined above in relation to the objective of paragraph (1) (c) and shown in the shadow diagrams (**Attachment 2**) residential areas will continue to receive more than the minimum solar access specified.

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

Assessment

The site is not land specified by this clause.

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

Assessment

The proposed building's scale and form is incompatible with its environmental context, as it:

- Will likely have unacceptable impacts on the microclimate and amenity of the public domain and buildings adjacent to the site, noting that information submitted with the application has not demonstrated otherwise,
- Could better realise the potential of the site if developed in conjunction with adjoining land north of the site, to achieve an acceptable yield and maintain reasonable environmental impacts in a built form that complies with the intent of the DCP and LEP for development in the CBD, and
- Is of a scale, form and massing which has unacceptable impacts on built and natural environments.

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

Assessment

The proposed development has adverse impacts on view lines and vistas to and from the CBD, when compared to a compliant development.

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

Assessment

See comments regarding paragraph (a).

Division 2 General provisions

Earthworks - Clause 6.10

The earthworks clause's purpose is ensuring development does not detrimentally affect the environment, neighbouring land uses, cultural or heritage items, or features of surrounding land. Its provisions apply to earthworks requiring consent, or development requiring consent that involves ancillary earthworks. The latter includes the subject proposal.

Below is an assessment of the proposed development regarding matters to be considered as set out in cl. 6.10 (3).

Likely disruption to drainage patterns and soil stability

The proposal would be unlikely to disrupt drainage and stability of soils.

Natural features and vegetation of the site and adjoining land

Being in a high-density, highly modified urban location, the site and adjoining land are not occupied by natural features or indigenous vegetation.

Effect of development on the likely future use or redevelopment of the land

The excavation would likely influence redevelopment of the land. However, the life expectancy of the building would be at least 50 years. Just as the current proposal must deal with current site conditions, including drainage and excavation, so too will the next iteration of the site's use and development.

Quality of fill or material to be removed

The geotechnical report describes the site's geology as being derived from and mainly consisting of hard, high quality Hawkesbury sandstone.

Likely effects on existing and likely amenity of adjoining properties

A geotechnical desk top study and a site investigation were submitted with the application. Measures are recommended to ameliorate impacts on adjoining land, including noise and vibration of earth and rock removal.

Source of fill and destination of excavated material

No fill would be required as excavation of the site is proposed to a depth of about 14m to 19m below the surface. Excavated material will have to be suitably transported to a suitable location, with details provided in a waste management plan, if the application was recommended for approval.

Proximity to and potential adverse effects on waterways, drinking water catchment, or environmentally sensitive land

Proposed soil erosion control during demolition, excavation and construction would prevent or reasonably minimise effects on water quality and more generally effects on surrounding land and development, there being no "environmentally sensitive" land near the site.

These aspects of the development are addressed by information submitted with the development application.

Upon completion and occupation of the building on-site detention and associated water quality control facilities and waste management procedures could enable the development to eliminate or minimise impacts on Port Jackson and the local environment, to the standards prescribed by regulation and/or Australian Standards.

Measures to avoid, minimise, or mitigate impacts of the development

Implementing recommendations of the engineering and geotechnical reports and management of spoil from the site via a suitably comprehensive waste management plan could effectively manage likely impacts of the development.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

Below is an assessment of the application regarding applicable provisions of the North Sydney DCP 2013.

| North Sydney Development Control Plan 2013 Part B Section 2 COMMERCIAL AND MIXED USE DEVELOPMENT | | |
|---|-----------------|---|
| Provision | Complies | Comments |
| 2.2 Function | | |
| 2.2.1 Diversity of Activities | Yes | Spaces for a mix of office, retail and food and drink premises are provided in the proposal. The size and distribution of space for various activities could be improved, to better suit the needs of the North Sydney CBD. |
| 2.2.2 Maximise Use of Public Transport | Yes | The development is within 400m (a 5-minute walk) of North Sydney railway station and bus interchange, and the future Victoria Cross Metro Station. End of trip facilities are proposed for cyclists, runners and walkers. |
| 2.2.3 Mixed Residential Population | N/A | |
| 2.2.4 Design of Tourist and Visitor Accommodation | N/A | |
| 2.2.5 Tourist and visitor accommodation management | N/A | |
| 2.3 Environmental Criteria | | |
| 2.3.1 Clean Air | Yes | An ESD report was submitted with the application, which addresses topics including passive design, and natural ventilation in relation to air quality. Natural ventilation is to be considered, in addition to providing discreet air-conditioned and naturally ventilated spaces and "mixed mode balconies". A six green star rating is sought for the building, reflecting global leadership as defined by the Green Building Council of Australia. |
| 2.3.2 Noise | Yes | A noise and vibration impact assessment report were submitted. Addressing construction noise and vibration and operational noise, recommendations would have been made to address compliance with EPA and DCP criteria. |
| 2.3.3 Wind Speed | No | A pedestrian wind environment study was also lodged with the DA. However its recommendations do not appear to have been included in the submitted design. Whether the submitted report is acceptable is questioned, as it is common for development of the scale to be informed and supported by wind tunnel modelling. |
| 2.3.4 Reflectivity | Yes | No specific illumination report or assessment was submitted with the DA. A DCP compliance table was submitted |

**North Sydney Development Control Plan 2013 Part B Section 2
COMMERCIAL AND MIXED USE DEVELOPMENT**

| Provision | Complies | Comments |
|--------------------------------------|-----------------|---|
| | | indicating selection of glazing to minimise reflectivity and glare. |
| 2.3.5 Artificial Illumination | Yes | This issue is not addressed by the application, except a brief analysis in the DCP compliance table. Standard conditions would have been recommended for compliance with Australian Standards |
| 2.3.6 Awnings | No | The application does not include adequate detail for the awnings over public footways. Awnings over Walker Street and Little Walker Street footpaths and the pedestrian link are required. |
| 2.3.7 Solar Access | No | As discussed in relation to the LEP, the proposal results in acceptable impacts on sunlight and daylight access outside the North Sydney CBD. However, the application does not clearly demonstrate that the proposal has acceptable impacts on daylight access and sky views within the CBD, particularly on Walker Street and Little Walker Street. |
| 2.3.8 Views | No | The proposed development does not impact views from nearby residential development, as discussed. However, it would likely negatively impact views from adjoining land to the north, as submitted by the owners of 161 Walker Street. The negative impact of the development on views of the CBD from vantage points outside the CBD is discussed below, in relation to the city's skyline. |
| 2.3.9 Acoustic Privacy | N/A | Applies to the residential part of mixed use development. |
| 2.3.10 Vibration | Yes | A noise and vibration impact assessment was submitted with the application. Were approval recommended the assessment's recommendations would be included in the consent. |
| 2.3.11 Visual Privacy | Yes | As it related to nearby residential development. |
| 2.4 Quality built form | | |
| 2.4.1 Context | No | The application does not satisfy the clause's objectives, for development to respond to site and context conditions, regarding bulk, scale, visual impact and other issues discussed in this report. |
| 2.4.2 Site Consolidation | Yes | |
| 2.4.3 Setbacks | No | See urban design comments in the referral section of this report and assessment |

**North Sydney Development Control Plan 2013 Part B Section 2
COMMERCIAL AND MIXED USE DEVELOPMENT**

| <i>Provision</i> | <i>Complies</i> | <i>Comments</i> |
|--|-----------------|--|
| | | below regarding controls of the DCP's Part C for the CBD. |
| 2.4.4 Podiums | No | See assessment below in relation to Part C for the CBD. |
| 2.4.5 Building Design | Yes | Floor to ceiling heights would be acceptable. |
| 2.4.6 Skyline | No | <p>As new development realises the heights achievable, this building would be visible as a group of the tallest buildings in the North Sydney CBD, from vantage points in a large visual catchment, in a broad arc from northeast to southeast.</p> <p>In this context, the proposed bulk and scale of the building are visibly greater than a compliant development, to an unacceptable degree.</p> <p>This is examined below this table.</p> |
| 2.4.7 Junction and Termination of Streets | N/A | |
| 2.4.8 Balconies – Apartments | N/A | |
| 2.4.9 Through-site Pedestrian Links | No | Although inconsistent with the midblock location of Part C, the proposed through-site link could be supported. Its function and amenity should first be improved via addressing other concerns, regarding issues including setbacks, climate (wind) control and improving activity on podium frontages. In accordance with P5 the pedestrian link should be at least 6.0m wide, not 5.0m. The 1.0m cantilever over the link by the tower is also unsatisfactory. As recommended by Council's urban designers the link should also be protected by a 3.0m deep awning at an effective height. |
| 2.4.10 Streetscape | No | The proposal's performance could be improved via consideration and adoption of the recommendations made by the urban design assessment and the Design Excellent Panel's report, relating to this provision, promoting diverse activities at ground level, and active frontages having a zero setback, as does the E2 zone objectives. |
| 2.4.11 Entrances and exits | Yes | The requirements of the DCP are generally satisfied. An access report submitted with the DA concludes the proposal is capable of compliance with relevant design codes and legislation. |

**North Sydney Development Control Plan 2013 Part B Section 2
COMMERCIAL AND MIXED USE DEVELOPMENT**

| <i>Provision</i> | <i>Complies</i> | <i>Comments</i> |
|---|-----------------|---|
| 2.4.12 Nighttime Appearance | Yes | |
| 2.4.13 Public Spaces and Facilities | No | Addressing inconsistency with other DCP provisions would improve performance of the proposal's public spaces and facilities. |
| 2.5 Quality Urban Environment | | |
| 2.5.1 Accessibility | Yes | Reports addressing the BCA and Disability Discrimination Act 1992 (C'wealth) were submitted with the application. The studies conclude that the proposal can comply with the code and legislation. |
| 2.5.2 Safety and Security | Yes | Security for the building during construction would be addressed by a comprehensive construction management plan. The proposal is capable of being operated safely, provided suitable lighting and security are provided. Informal surveillance of the public domain would be adequate, for times when the building is occupied. Street activity promoted as discussed elsewhere would improve public safety. |
| 2.5.3 Illumination | Yes | Requirements would typically be enforced via conditions of consent. |
| 2.5.4 High Quality Residential Accommodation | N/A | |
| 2.5.6 Lightwells and Ventilation | N/A | Applies to residential part of mixed use development. |
| 2.5.6 Private Open Space | N/A | As above. |
| 2.5.7 Vehicular Access | No | Access to the building is provided via a centrally located driveway to Little Walker Street, which is unsatisfactory. Relocating the driveway to the northern side of the frontage to Little Walker Street could increase the amount of active frontage to this street. |
| 2.5.8 Car Parking | No | Vehicle manoeuvring and parking arrangements are satisfactory, as discussed, except vehicle maneuvering in the basement, and the driveway location. |
| 2.5.9 Garbage Storage | Yes | Waste is capable of being acceptably managed. |
| 2.5.10 Site Facilities | Yes | |
| 2.5.11 Temporary Structures | N/A | |
| 2.6 Efficient Use of Resources | | |
| 2.6.1 Energy Efficiency | Yes | The submitted ESD report includes a 'commitment table' which nominates targets for Resource efficiency, NABERS Energy rating and Green Star rating, in accordance with the DCP. |
| 2.6.2 Passive Solar Design | Yes | |
| 2.6.3 Thermal Mass and Insulation | Yes | |

**North Sydney Development Control Plan 2013 Part B Section 2
COMMERCIAL AND MIXED USE DEVELOPMENT**

| Provision | Complies | Comments |
|---|-----------------|--|
| 2.6.4 Natural Ventilation | Yes | However, the Design Excellence Panel advised this aspect of the design could be improved. |
| 2.6.5 Water Conservation | Yes | The ESD report discusses potential water management strategies, such as using water efficient fixtures and rainwater harvesting. Details of systems to be developed and implemented to sustainably conserve and use water could have been conditioned were approval recommended. |
| 2.6.6 Waste Management and Minimisation | Yes | Suitably addressed in the submitted waste management plan. |
| 2.6.7 Stormwater Management | Yes | The stormwater management report addresses stormwater management. Stormwater mitigation measures are required, for: <ul style="list-style-type: none"> - Erosion and sediment control, - Inground drainage, - overland flow path, and - Stormwater quality control. <p>A flooding assessment report was submitted, which demonstrated that all flows up to the PMF are accommodated within the street kerb and gutter system and that no flooding of the proposed building will occur.</p> |
| 2.6.8 Building Materials | Yes | |
| 2.6.9 Adaptive Reuse of Buildings | Yes | |
| 2.6.10 Hot Water Systems | Yes | |
| 2.6.11 Green Roofs | Yes | |
| 2.6.12 Wind Turbines | Yes | |
| 2.7 Public Domain | | |
| 2.7.1 Street Furniture, Landscaping Works, Utilities and Equipment | No | The centrepiece of the application's contribution to the public domain, is the pedestrian link, complemented by spaces for public art and landscaping, adjacent to the southern site boundary. The space should be widened and its interface with the building improved, as discussed elsewhere. Other elements of the building including the 'communal flex floors', could offer openings and landscaping on selected levels above the ground plane. Making these offerings publicly accessible should have been considered. |

| North Sydney Development Control Plan 2013 Part B Section 2 COMMERCIAL AND MIXED USE DEVELOPMENT | | |
|---|------------------------|--|
| <i>Provision</i> | <i>Complies</i> | <i>Comments</i> |
| 2.7.2 Public Entertainment and Expression | Yes | |
| 2.7.3 Public Art | Yes | A public art strategy has been submitted and would be implemented in accordance with Council's public art policy, if the DA were to be approved. |
| 2.7.4 Paving | Yes | |
| 2.7.5 Native vegetation and water | Yes | |

View and the CBD Skyline – visual impact of the proposal

In the preceding table it is noted that the proposal would have an acceptable impact on the views of the North Sydney CBD if the building were to comply with tower setbacks and height. As shown in the montages below, the compliant envelope is appreciably less bulky and would provide for adequate separation between buildings, especially when land either side of the site is redeveloped.

Ensuring adequate setbacks and building separation is vital to maintaining space for daylight penetration into the public domain and buildings, and to promote a safe and comfortable microclimate. Of equal importance is the appearance of the building, as it would be highly visible due to its location, permitted (and proposed) height, and potential building heights around it to the east and north being substantially lower.

As the tower element of any building on this site would be highly visible, any building should be less visually dominant than the proposal, achievable via compliance with setbacks and height controls, complemented by judicious use of materials, finishes and colours.

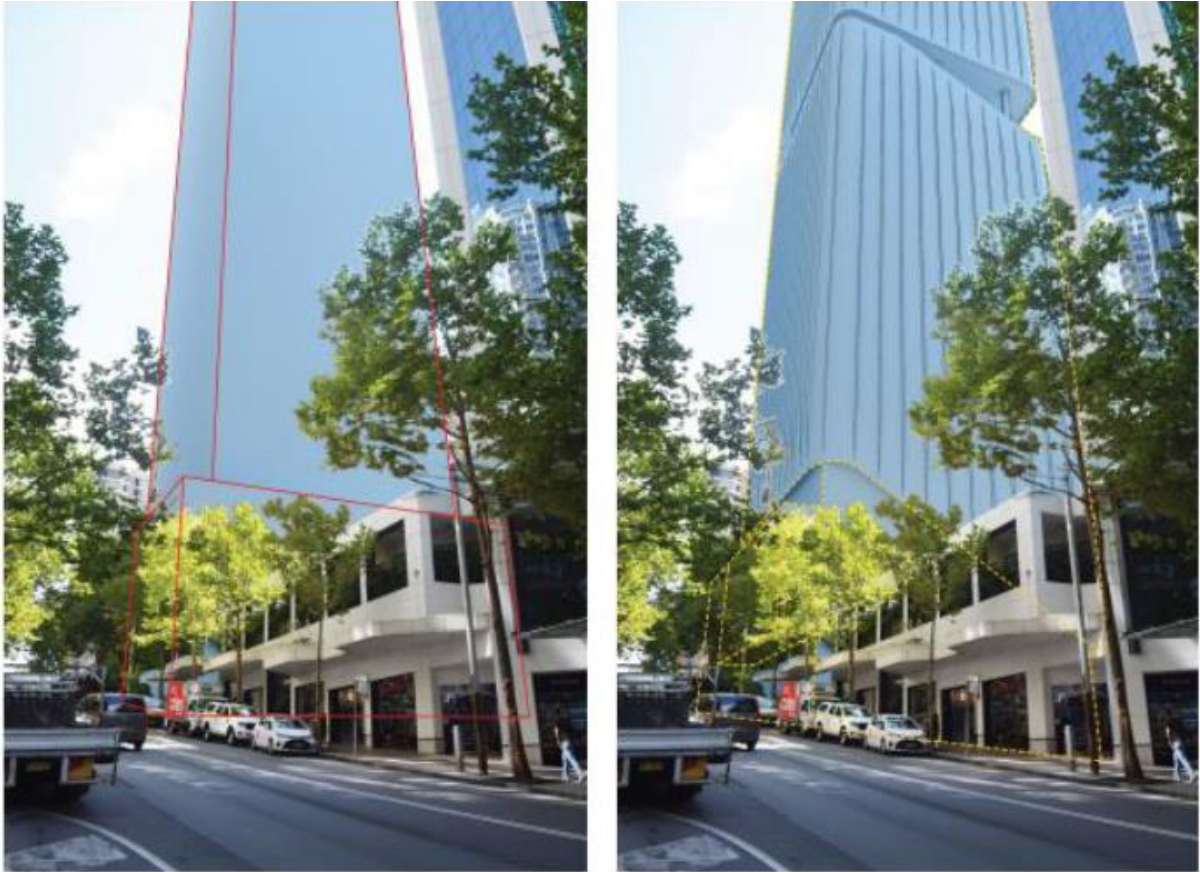


Figure 12: View from Walker Street, the compliant envelope is to the left and the proposed building to the right. The compliant form leaves a clear gap between it and the adjacent building, the proposed envelope almost closes this gap (Ethos Urban).



Figure 13: Again the compliant envelope is to the left and the proposal is to the right. These images represent the view from north of the site, in the context of existing and approved buildings. The tall building envelope to the right of the subject building is the development approved at 110-122 Walker Street. Although it is taller, it is visibly more slender and more clearly articulated than the proposal (Ethos Urban).



Figure 14: View from Alfred Steet southeast of the site, with the compliant envelope on the left and the proposed building to the right (Ethos Urban).

North Sydney Planning Area North Sydney DCP 2013 Part C Section 2.1

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

The Desired Future Character Statement (cl. 2.1.2) and cl. 2.1.3 Desired Built Form, which complement the controls of Part B, are the key DCP provisions to be considered in the North Sydney CBD.

| North Sydney Development Control Plan 2013 Part B Section 2 | | |
|--|-------------------|---|
| 2.1 CENTRAL BUSINESS DISTRICT | | |
| Provision | Compliance | Comments |
| 2.1.2 Desired Future Character | | |
| P1 High rise and medium density, commercial and mixed-use developments. | Yes | |
| P2 Provision of a variety of different sized office, retail, community and entertainment spaces. | No | As discussed elsewhere the ground plane and the building's contribution to a diverse and vibrant range of publicly accessible activities is inadequate and can be improved. |
| P3 Provision of a variety of outdoor and indoor community spaces (e.g., urban plazas, gymnasium; gardens; outdoor and indoor dining areas and food courts). | No | As above. |
| P4 The commercial focus of the CBD is to be enhanced by preventing any further residential development from occurring in its core (i.e., the E2 - Commercial Centre zone). | Yes | |
| P5 Development above the Victoria Cross metro station will provide significant commercial floorspace, as well as retail, dining and community uses that will contribute to the overall amenity and vitality of the CBD. | N/A | |
| P6 Council will pursue its vision for Miller Street as the civic heart of North Sydney. This will involve significant interventions and public domain improvements aimed at creating a vibrant place for people, with vehicle movements removed or minimised as much as practicable and both sides of Miller Street activated. | N/A | |
| P7 Creation of a substantial new public space within the middle of the street block bound by McLaren, Walker, Berry and Miller Streets, activated by surrounding buildings and new community facilities consistent with the Ward Street | N/A | |

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| Precinct Masterplan. This space is to be designed to be highly adaptable for events and prominent activities and form a spill over space for other community events associated with community facilities to be located in adjacent buildings. | | |
| P8 Brett Whiteley Place is a key public space for the North Sydney CBD which will incorporate an expanded Elizabeth Plaza, as well as portions of Denison Street and Mount Street. This expanded plaza will provide dedicated space for outdoor dining, large and small events, and other activities. | N/A | |
| P9 Consideration be given to expanding Berrys Square to the northern side of Berry Street. | N/A | |
| P10 The Central Laneways precinct will become a major focal point of pedestrian activity and amenity. | N/A | |
| P11 Active frontages to the Metro site, 1 Denison Street and the MLC building will contribute to the activation of the public domain in the Central Laneways Precinct. | N/A | |
| P12 A new laneway is provided across the redevelopment of 1 Denison Street to link the Metro site, Denison Street, Little Spring Street and Walker Street | N/A | |
| P13 Alternatives to the current entry of the commercial car park entry at 100 Miller Street (Northpoint) will be pursued to reduce or remove traffic on Miller Street and improve pedestrian amenity. | N/A | |
| P14 Provide roof top gardens and/or public facilities that allow the public and/or residents to access district views. | No | |
| P15 Development should maximise opportunities to incorporate retail, restaurant, bar facilities and other non-residential floor space at ground level to promote street level activation, amenity, diversity and place making objectives. | No | The SEE summarises public benefits as: 490m ² “additional public domain curtilage” including the: <ul style="list-style-type: none"> - pedestrian link between Walker St, Little Walker St, and Doris Fitton Park, and - The ‘public’ indoor space provided in the lobby. The application claims to provide market-responsive commercial space that will boost and support the economy and the CBD’s role as a |

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| | | transit-oriented commercial hub. Just about any contemporary, commercially driven development of the type proposed would make such contributions to the economy. As discussed elsewhere, the design fails to optimise it's potential to contribute to the public domain, it's variety and vitality, thus boosting the economic contribution the development could make to the CBD and beyond. |
| P16 Provide a diverse mix of higher density, non-residential land uses in the B4 Mixed Use zone of the Education Precinct, including education, shops, cafes, gyms, entertainment and small businesses. | N/A | |
| P17 Provide continuous active uses such as shops and cafes at the ground level of all buildings along Pacific Highway, Berry Street and Napier Street, especially within the Education Precinct. | N/A | |
| P18 Consideration should be given to the inclusion of educational or community-related purposes in the redevelopment of 110, 112, 116 and 120 Pacific Highway and 9 Napier Street. | N/A | |
| P18 Victoria Cross Metro station is designed to enhance the North Sydney CBD as a major commercial centre and further encourage the use of public transport. Pedestrians are prioritised throughout the CBD with a number of interconnected pedestrian routes that facilitates all direction movement and encourages fine grain retail and dining uses. | Yes | The proposal would be consistent with this clause, in so far as the pedestrian link would augment accessibility on the eastern side of the CBD. |
| P19 Community facilities that are of a type that support the creation of a cultural destination which is activated in the daytime, evenings and weekends are to be incorporated into the lower levels of the redevelopment of 56-66 Berry Street and the Ward Street Carpark site and these facilities are to front onto a new public square/s consistent with the Ward Street Precinct Masterplan. | N/A | |
| P20 Victoria Cross metro station is designed to enhance the North | N/A | |

| | | |
|---|-------|--|
| Sydney CBD as a major commercial centre and further encourage the use of public transport. Pedestrians are prioritised throughout the CBD with a number of interconnected pedestrian routes that facilitates all direction movement and encourages fine grain retail and dining uses. | | |
| P21 Consideration be given to providing a direct vertical pedestrian connection between the new public open space located centrally within the Ward Street Precinct and the Victoria Cross Metro Station concourse. | N/A | |
| P22 Barriers to pedestrian movement, particularly Miller Street, Berry Street and the Pacific Highway, will be reimagined such that their function and treatment favour pedestrian movement and amenity. | N/A | |
| P23 New development focuses on the use of public transport, cycling and walking. | Yes | |
| P24 Pick up and drop off points for public transport and taxi ranks are located as close as possible to public spaces and activities, and main building entries. | N/A | |
| P25 Loading and delivery facilities should be located away from the street and where possible be located underground. | Yes | |
| P26 The following through site link is to be provided, retained and enhanced: (i) An east-west pedestrian link from Walker Street to Little Walker Street across 81-83 Walker Street. | Merit | Although the DCP does not nominate the site as suitable for a pedestrian link, the proposed link could add to the CBD's vibrancy and pedestrian accessibility, complementing the link nominated by the DCP about 80m south of the site, making the CBD more permeable. |
| P27 Consideration should be given to the provision of an east - west pedestrian link from the Pacific Highway to Napier Street across either the northern side of 120 Pacific Highway or the southern side of 33 Berry Street. | N/A | |
| P28 Consideration should be given to the demolition of the single storey structure at the northern end of 105 Miller Street (MLC Building) to | N/A | |

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| improve accessibility and permeability to Miller Street and the Victoria Cross metro station. | | |
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| North Sydney Development Control Plan 2013 Part B Section 2 | | |
|--|-------------------|--|
| 2.1 CENTRAL BUSINESS DISTRICT | | |
| Provision | Compliance | Comments |
| 2.1.3 Desired Built Form | | |
| P1 Development sites should be of a size which enables: (a) the creation of large high quality floor plates which helps to reinforce the Centre's role as a Global City as identified within the Metropolitan Strategy, and (b) adequate setbacks and breaks between tall buildings above podium levels to preserve sky views and sunlight in the public domain. | No | Although the proposal optimises floor plate size, it does so at the expense of the impacts caused by breaching height and setback controls, examined elsewhere in this assessment. |
| P2 Development on small sites should not detrimentally impact on the long-term ability of the amalgamation of sites for significant commercial development. | Yes | Exceeding 1,000m ² , the site is not considered small. |
| P3 Site amalgamation is encouraged in accordance with the Ward Street Master Plan. | N/A | |
| P4 Buildings should be carefully designed to minimise the impact of their height and bulk on surrounding residential areas. | Yes | The LEP-based assessment indicates acceptable overshadowing impacts on residential development outside the CBD. |
| P5 Roof design contributes to building's appearance from a regional view catchment. | Yes | The roof line is acceptable, although this does not adequately off-set the adverse impacts of the building's excessive bulk and scale. |
| P6 Buildings on 116 and 120 Pacific Highway and 9 Napier Street should be designed such that their bulk steps down from the Pacific Highway to Napier Street to protect sunlight access to the Don Bank Museum and enhance pedestrian amenity to Napier Street. | N/A | |
| P7 No part of a building located above the podium and which exceeds 45m in height may have a horizontal width of more than 60m. | Yes | |
| P8 Development is to be designed to maximise year round solar access to the new public squares to be created centrally within the Ward Street Precinct. | N/A | |

| | | |
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| P9 Development must not result in a nett increase in overshadowing to the main southern square to be created centrally within the Ward Street Precinct between 9am and 4pm from the March equinox to the September equinox (inclusive). | N/A | |
| P10 Buildings are to provide a zero metre setback to all street frontages and adjacent to heritage items, with the following exceptions: - No exceptions of this provision apply to the site | No | See assessment below at P15 – podium setbacks. |
| P11 Buildings must be setback to conserve views to, and the setbacks and settings of, heritage items at 86 and 144 - 150 Walker Street, 94 Pacific Highway (Post Office), 36 Blue Street (Greenwood), 153 Miller Street (MLC Building), 168 - 172 Pacific Highway and 1-7 Napier Street. | N/A | None of the items specified are visible from or are potentially affected by the proposal. |
| P12 The setback of new buildings or alterations and additions to existing buildings on land fronting McLaren Street between Miller and Walker Streets are to match that existing to protect the existing fig trees. Encroachments will only be permitted where the development does not cover the drip line of any of the existing trees. | N/A | |
| P13 Podiums are to be provided in accordance with the Podium Heights Map (refer to Figure C-2.2). On the site podium heights required are: - 2-5 storeys on Walker St - 2-3 storeys on Little Walker St | No | The proposal comprises a 5-storey podium facing Walker Street, recessed over 2 floors above street level, and an inverted 3-storey podium to Little Walker Street. An inverted stepped podium is also included over the through-site link. The design of the podium does not adhere to DCP requirements. Arguably it is the opposite of what the DCP seeks to achieve. The consequences of this were discussed in the urban designer's comments in the referral section of this report. |
| P14 Podiums of between 3 and 5 storeys are required in the Ward Street Precinct. | N/A | |
| P15 All of a podium must be setback as required by P10 – P12. | No | No podium setbacks apply to the site. Council's urban designers recommended a zero setback for the podium from Walker Street and |

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| | | a setback of less than the 4.0m proposed. The existing 'reverse', or cantilevered podium design at either frontage is not supported. |
| P16 Podiums are to be built to all side and rear boundaries that do not have a street frontage, except where the site directly adjoins residentially zoned land (i.e. R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential) or requires a through site link as required under P23 to s.2.1.2 to this Part of the DCP. | N/A | |
| P17 Podium heights should match or provide a transition between immediately adjoining buildings. | No | The plans do not adequately indicate there will be a satisfactory relationship with adjoining buildings. |
| P18 Podium heights should match the height of adjacent heritage items. | N/A | |
| P19 Podium height may be reduced to that part of the building devoted to commercial use in mixed-use buildings. | N/A | |
| P20 All parts of a building located above the podium are to be setback from the podium's frontage to a street or laneway in accordance with Figure C-2.3. Above podium setbacks for the site are: - 5.0m on Walker St - 4.0m on Little Walker St | No | See the urban design assessment in the referrals section of this report. |
| P21 Despite P20, no part of any building may be located within 3m of the outer wall of the podium level fronting a street or laneway. | N/A | |
| P22 Despite P20 and P21, for buildings fronting Ward Street and the new public squares to be created within the Ward Street Precinct, that part of the building located above the podium is to be setback a sufficient distance to ensure the minimising of potential wind impacts and maintaining a human scale to the squares. | N/A | |
| P23 Where a building is to be erected on land zoned B3 Commercial Core or on any other land and the building will not contain residential accommodation, all parts of the building located above the podium must be setback a minimum of 6m from any side boundary, unless: (a) the area of the site is less than 1,000sqm; and | No | A zero setback is proposed to the northern side boundary and the tower is only setback 4.0m to the southern side boundary. |

| | | |
|---|-----|---|
| (b) the building does not exceed 45m in height. | | |
| P24 Despite P23, no setback is required above the podium level to: (a) the southern boundaries of 122 Arthur Street (SP 57439) or 100 Walker Street (Lots 1 and 2, DP 542915), if developed in isolation from sites to their north; (b) the southern boundary of 90 Arthur Street (Lot 1, DP 738262), if developed in isolation from the site to the south; (c) the northern boundary of 20 Berry Street (Lot 1, DP 550167) if developed in isolation from the site to the north; (d) the eastern boundary of 80 Mount Street (Lot 1, DP 566189) if developed in isolation from the site to the east; and (e) the southern boundary of 1 Wheeler Lane (Lot 101, DP 1076397) if developed in isolation from the site to the south. | N/A | |
| P25 Where a building does not contain residential accommodation, all parts of the building located above the podium must be setback a minimum of 6m from any rear boundary that does not have a street or laneway frontage. | N/A | |
| P26 Despite P25, no setback is required above the podium level to the western boundary of 65 Berry Street (Lot 2, DP 1230458) if developed in isolation from the site to the west. | N/A | |
| P27 Where there is more than one tower located above the podium level on land zoned B3 Commercial Core or on any other land and the building will not contain residential accommodation, the towers must maintain a minimum 12m separation from one another. | N/A | |
| P28 Provide architectural detailing, high quality materials and ornamentation provide a rich visual texture and a symbolic/decorative reference to the history of the place, the building's use or occupant. | No | The application has not demonstrated how this provision is addressed. |
| P29 Provide a visually rich and intimate pedestrian environment with active street frontages at ground level. | No | The development does not provide a "visually rich and intimate" experience in the public domain, within and adjacent to the building. |
| P30 Incorporate the rock outcrop into the design of development at 136 Walker Street. | N/A | |
| P31 Continuous awnings must be provided to all commercial buildings, except on the eastern side of Miller | No | Awnings are not provided over footpaths or the proposed pedestrian link. For the latter, the |

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| Street between the Pacific Highway and McLaren Street. | | wind report indicates protection is required (by tree planting) at either end of the link, which is not indicated in the architectural or landscaping plans. In the absence of modelling, the wind assessment is unconvincing. The report recommends wind tunnel testing. Other development applications recently approved in the CBD have been supported by wind tunnel testing. |
| P 32 Consideration should be given to the provision of weather protection at the pedestrian entrances or over outdoor seating areas for buildings fronting Miller Street between the Pacific Highway and McLaren Street. | N/A | |
| P 33 A 'sense of arrival' is established at North Sydney Station with strong linkage to the north to connect with the pedestrian bridge over Pacific Highway and Denison Street. | N/A | |
| P34 The Greenwood historic school building and large Moreton Bay Figs are retained and incorporated as the southern pedestrian gateway to the North Sydney CBD. | N/A | |
| P35 The intersection of Miller Street and Pacific Highway forms an important focal point of the North Sydney Centre with a distinctive character reinforced by the Post Office and the MLC building. | N/A | |
| P36 Improve amenity and safety by installing lighting, public art and/or landscape along the eastern facade of 12-14 Mount Street. | N/A | |
| P37 Provide a consolidated green space over the Don Bank Museum and 100 Pacific Highway. Consider extending this green space over the western side of 1 Wheeler Lane providing a north – south pedestrian link from Charles/Napier Street to Wheeler Lane. | N/A | |
| P38 33 Berry Street should be designed so Napier Street is activated by non-residential activities for at least 50% of its frontage. | N/A | |
| P39 Have regard to the <i>North Sydney Centre Public Domain Strategy</i> and <i>North Sydney Council Infrastructure Manual</i> in designing the public domain and the proposal's contribution to it. | No | For reasons discussed elsewhere in relation to the proposal's inconsistency with other DCP provisions, the development does not adequately promote or reflect |

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| | | the purpose and outcomes envisaged by the public domain strategy. |
| P40 A new multi-purpose public square with a minimum dimension of 52m by 40m is to be created in the centre of the Ward Street Precinct and integrated with a secondary public square of minimum dimension 35m by 33m consistent with the <i>Ward Street Precinct Masterplan</i> . | N/A | |
| P41 The secondary northern square in the Ward Street Precinct should be activated by café and/or community-based uses, et. al. | N/A | |
| P42 Consideration be given to expanding Berry Square across to the northern side of Berry Street. | N/A | |
| P43 Continued use of tree planting and use of native vegetation to enhance the urban environment and attract birdlife. | Yes | |
| P44 Choice of trees and vegetation in accordance with <i>North Sydney Centre Public Domain Strategy, Street Tree Strategy</i> and <i>North Sydney Council Infrastructure Manual</i> . | Yes | |
| P45 Short stay parking spaces should be located within or as close as possible to meeting places. | N/A | |
| P46 Reduce the amount of long stay commuter parking on site. | Yes | The proposal is within the maximum vehicle parking requirements of the DCP. |
| P47 Reduce the amount of non-residential parking on site. | N/A | |
| P48 Consideration to be given to providing all vehicular access to 213-219 Miller Street, 56-66 Berry Street and the Ward Street Carpark site from Harnett Lane and underneath the proposed new public squares. | N/A | |
| P49 Vehicular access to 76 Berry Street is to be provided from Walker Street. | N/A | |

OTHER ENVIRONMENTAL PLANNING INSTRUMENTS

LOCAL INFRASTRUCTURE CONTRIBUTIONS

As refusal is recommended, a contribution has not been calculated.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been appropriately considered by this report.

ENVIRONMENTAL APPRAISAL

CONSIDERED

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

Submitters

Key issues raised by submissions have been considered in this assessment. The development proposed is unlikely to significantly impact the amenity of nearby residential apartments, beyond those impacts envisaged by zoning and complementary controls.

Impacts of the proposed tower element’s departures from setback and height controls are however significant, when compared to a development fully compliant with those controls. The resultant impacts on streetscape and scenic impacts in CBD and harbourside contexts, and on the CBD skyline are unsatisfactory. Due to its excessive dimensions the tower would not make a positive contribution to the North Sydney CBD, when viewed from vantage points such as Port Jackson, Kirribilli, Neutral Bay or Bradley’s Head.

The lack of setback to the northern boundary of the proposal has drawn an objection from the owners of one of the properties north of the site, for reason it reduces amenity available to the current building and because the proposal will limit and restrict redevelopment potential of both land parcels to the site’s north, to the extent that redevelopment could be unviable. Due to receipt of this submission it is apparent that the applicant has either not consulted the neighbour or has ignored their concerns.

On the ground plane the development makes an unsatisfactory contribution to the public domain, due to the excessively bulky and overbearing design of the podium, the lack of small-scale and diverse activities bordering the public domain, and inadequate weather protection being afforded by awnings and other elements of the building’s design, at ground and upper levels.

CONCLUSION

The proposed development has been assessed with respect to relevant provisions of the Act, and applicable provisions of relevant SEPPs, the LEP, and the DCP. Council strategies related to the North Sydney CBD have also been considered.

The applicant has submitted a request in accordance with clause 4.6 of the LEP to exceed the building height development standard of RL 215m by 19.0m. It is unsatisfactory, failing to pass the tests set by this provision, thus preventing the granting of consent.

Even if the request to vary the standard was considered acceptable, non-compliance with the maximum height development standard, as complemented by the recently adopted DCP's building envelope controls, would not be supported for the following reasons:

- Adverse impacts on the built environment and local and district amenity, in terms of its bulk, scale, form and massing,
- Negative impacts on significant view lines and vistas from the public domain, and
- Views from nearby buildings and views of the building and the North Sydney CBD.

Accordingly, the application cannot be supported and refusal is recommended.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Sydney North Planning Panel as the consent authority, note that pursuant to clause 4.6 North Sydney Local Environmental Plan 2013, the written request to contravene the building height development standard has not satisfied prerequisite provisions to enable the grant of development consent, refuse the development application for the reasons set out in **Attachment 1**.

JIM DAVIES
EXECUTIVE ASSESSMENT PLANNER

Date:20 October 2023