

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-422
DA Number	215/23
LGA	North Sydney
Proposed Development	Demolition of existing building and works, construction of a mixed use building with a basement of 3 levels for parking, storage, waste management, plant and commercial space, 2.5 levels of commercial space (above and below natural ground level), 12 levels of residential accommodation, landscaping and associated works.
Street Address	45 McLaren Street, North Sydney
Applicant	The Trustee for Aidop No 4 Unit Trust C/- Urbis Pty Ltd
Owner	45 McLaren Pty Ltd
Date of DA lodgement	28 July 2023
Number of Submissions	13 from 11 correspondents
Recommendation	Approval
Regional Development Criteria (Schedule 4A EP&A Act)	Capital Investment Value (CIV) greater than \$30 million (\$68,776,892.00)
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 • SEPP (Housing) 2021/SEPP 65 Design Quality of Residential Apartment Development • North Sydney DCP 2013
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> 1. Conditions of Consent 2. Report of the North Sydney Council Design Excellence Panel (10 10 23)' 3. Clause 4.6 Variation Request – Urbis (28 February 2024) 4. Architectural Plans - Bates Smart (19 February 2024) 5. Design Report -Bates Smart (June 2023) 6. RFI Response Design Report - Bates Smart (February 24) 7. Landscape Documentation – 360 (23 February 2024) 8. Civil Engineering Drawings – Robert Bird Group (26 February 2024) 9. On-site Detention Drains Report – Robert Bird Group (26 February 2024)
Report prepared by	Jim Davies, Executive Assessment Planner, North Sydney Council
Report date	03 June 2024

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? **Yes**
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 lodged on 28 July 2023, the subject of this report, seeks consent for:

- Demolition of all existing buildings and structures on the subject land,
- Excavation to a depth of RL 60.4m,
- Construction of a mixed use building of 10 - 14 levels (12 residential and 2 commercial) above ground and a basement of 3 levels (including commercial floor area, vehicular access and parking, storage, plant and equipment,
- Total gross floor area of 10,521m², including 1,285m² commercial and 8,874m² residential, with 332.9m² of “residential amenity” in the basement (level 00),
- Widening and upgrading of a through-site pedestrian link from Walker Street to Harnett Street, a space to be redeveloped including part of the land south of the site at 150 Walker Street,
- Landscaping of terracing along Walker Street and a communal open space on level 8,
- Private terraces and balconies on residential levels, and
- Pedestrian entries to residential (via a separate lobby) and commercial spaces from McLaren Street, Walker Street, Harnett Street and the pedestrian link on the southern side of the building.

Council advertised and notified the application twice, (25 August - 15 September 2023 & 22 March – 5 April 2024). The second notification period followed receipt of amendments to the application. During both periods combined, 13 submissions were received from 11 correspondents. Issues of concern include:

- View loss,
- Solar access, overshadowing,
- Loss of privacy,
- Traffic congestion, including cumulative impacts of the proposed and other development in the locality,
- Aggregate construction impacts (noise, vibration, dust)
- Overdevelopment,
- Inadequate setback to southern boundary, and
- Poor relationship with neighbouring heritage items.

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

Council’s Design Excellence Panel considered the proposed development as originally submitted on 10 October 2023.

In summary, issues raised by the Panel include:

- Excessive height and scale of podium with adjacent heritage buildings in Walker Street (resolved by design amendments)
- Inadequate building separation for privacy with adjacent residential development south of the site (resolved by design amendments)
- Activation of street frontages could be improved (resolved by design amendments),
- Landscaping of streetscape and communal space could be improved, and the amount of deep soil (for planting larger trees) accommodated (resolved by design amendments),
- Communal space is inadequate (indoor and outdoor), noting that existing public open space in the locality has limited capacity to accommodate rapid and significant population growth (resolved by design amendments),

- Poor layout of some apartments and elongated common circulation (the applicant submits that due to site conditions, strict compliance with Apartment Design Guideline criteria is impractical),
- Excessive floor area below ground level (including resident amenities), noting that modelling of non-residential floor space at the planning proposal stage appears to have been overestimated, and not to have given due consideration to site conditions (resolved by design amendments).

The Panel's comments and recommendations are considered later in this report.

Following the Panel's deliberations and Council's detailed assessment, further information and amendments to the design were requested in December 2023. A meeting was held between Council and the applicant on 19 January 2024 to discuss various items, the most significant being:

- The location of the driveway, and potential impacts on the two existing large plane trees either side of the proposed vehicular entry to the building,
- The setback between the proposal's southern side boundary and its relationship with adjacent LEP-listed heritage items on Walker Street,
- The narrowness of the pedestrian link from Walker Street to Harnett Street, south of the building,
- Design refinement to improve the building's form and detailing in relation to neighboring heritage buildings,
- Reduction of the amount of floor area below ground level, due to the original design having large areas with poor access to sunlight and natural ventilation.

Due to the reduction in commercial floor space causing non-compliance with a development standard, a request to contravene the minimum non-residential floor space ratio standard has been submitted, which supports reduction of floor space below the minimum allowed.

The provisions of cl. 4.6 North Sydney Local Environmental Plan 2013 (the LEP) have been satisfied and consent is able to be granted despite the proposed development's non-compliance with this standard.

Should the Panel grant consent, concurrence of the Secretary of the Department of Planning Housing and Infrastructure may be assumed, the proposal raising no matters of regional or state planning significance. Variation of the standard is in the public interest, being consistent with development standard and zone objectives.

The application was lodged before amendments to clause 4.6 Standard Template LEP were enforced on 1 November 2023. The request to vary the standard has been made and considered in accordance the version of the Template LEP (and hence the North Sydney Local Environmental Plan 2013) in force before this date.

The proposed development has been assessed regarding applicable provisions of the Environmental Planning & Assessment Act 1979 (the Act), State Environmental Planning Policies (SEPPs), the LEP, the North Sydney Development Control Plan 2013 (the DCP) and the North Sydney Local Infrastructure Contributions Plan and is acceptable.

Approval is recommended, subject to the conditions in Attachment 1. These conditions are necessary to ensure acceptable environmental impacts, maintenance of public safety, convenience and amenity, and compliance with applicable provisions of the North Sydney Local Environmental Plan and Development Control Plan, and other relevant policies.

EVOLUTION OF APPLICATION

Planning proposal

The site was the subject of a planning proposal to increase its development capacity. Subsequent amendments to LEP were published on 30 June 2023, resulting in:

- Amending the zoning from R4 High Density Residential to MU1 Mixed Use;
- Increasing the maximum height of building limit from 12m to part RL 103 (approximately 36-43m) and Part RL 115 (approximately 47-51m);
- Imposing a maximum floor space ratio of 6.25:1;
- Imposing a minimum non-residential floor space ratio of 1:1;
- Amending Clause 4.4A – Non-Residential Floor Space Ratios - residential accommodation permitted to face Walker Street at ground level, instead of commercial uses; and
- Amending Clause 6.12A – Residential flat buildings in Zone MU1 Mixed Use to permit residential accommodation at ground level facing Walker Street, not commercial uses.

The new site-specific statutory controls were complemented by concurrent addition of design guidelines (cl. 2.1.4) to the North Sydney DCP 2013, which comprise:

- Design objectives and principles,
- Controls to ensure overshadowing is not increased to planned public space south west of the site, part of the Ward Street Precinct Masterplan,
- Maximum 10 and 14 storey heights, responding to the height maxima applied by the LEP,
- Minimum street setbacks (podium) and above podium setbacks,
- Podium height maxima, expressed as a number of storeys,
- Landscape performance criteria and controls
- Provisions to widen and improve the pedestrian walkway along the site's southern boundary, and
- Provision of vehicular access from Walker Street, not McLaren Street.

Planning agreement

Preparation and publication of the planning proposal was complemented by a Planning Agreement, executed between Council and the then owners of the property, the Strata Plan for the existing residential flat building. The planning agreement accommodates these contributions by the developer:

- A monetary contribution based on the total number of dwellings proposed less the existing number (18), in addition to contributions payable pursuant to s. 7.11 or s.7.12 of the Act.
- A reduction in the contribution payable for parking, if the "Future Parking Rate" is less than the "Current Parking Rate".
- Contributions being indexed and payable before issue of an Occupation Certificate.
- Facilitating widening of the pedestrian link and its suitable protection by easement and covenant.
- Carrying out of public domain works.
- Construct, finish and fit-out one dwelling for Council as affordable housing, a 2 bedroom unit, according to the submitted planning statement.
- Reduction of the contributions in certain circumstances relating to state or regional contributions.

Pre-lodgement meeting

No meeting was requested by the applicant before the subject application was lodged. The applicant considered a pre-DA meeting to be unnecessary, as they had engaged with Council during development and ultimate approval of the preceding planning proposal.

Application lodged and notified

The subject application was lodged on 28 July 2023 and notified publicly for 21 days from 25 August 2023 until 15 September 2023. 11 submissions were received, raising these issues:

- View loss,
- Solar access, overshadowing,
- Loss of privacy,
- Traffic congestion, including cumulative impacts of the proposed and other development in the locality,
- Aggregate construction impacts,
- Overdevelopment,
- Inadequate setback to southern boundary, and
- Poor relationship with neighbouring heritage items.

Design Excellence Panel

On 10 October 2023, Council's Design Excellence Panel reviewed the proposal and proffered the following advice to the applicant (Attachment 2), also advising that these matters should be addressed in a revised design and design verification statement, to receive the Panel's report.

Preliminary briefing of the Sydney North Planning Panel

The Sydney North Planning Panel was briefed regarding the application on 11 October 2023.

Key issues tabled for discussion included:

- Inconsistencies with the Apartment Design Guide, some of which are more reasonable than others, due to site and context conditions:
 - Communal open space requires reconsideration, in conjunction with options discussed with the DEP,
 - Deep soil requires reconsideration,
 - Solar access is reasonable in the site's context and considering local conditions,
 - Natural ventilation, clarification regarding compliance is required.
 - Common circulation, acceptable, only a minor variation.
- Departures from DCP provisions:
 - Dwelling (population) mix – adjust the development to comply and submit an economic report to support the proposal if still non-compliant,
 - Visual privacy, demonstration of satisfactory building separation and other suitable measures to provide reasonable and acceptable privacy with all neighbours,
 - Pedestrian link upgrade,
 - Revise garbage storage and management, and
- Driveway location and design, and potential impact on trees in Walker Street, and
- Issues raised by residents, including cumulative impact on traffic congestion considering existing and planned development in the locality, privacy and overshadowing.

At the conclusion of the briefing Council advised an indicative timeframe for a report for determination of the application would be between April and June 2024. The official record of the briefing recorded the tentative determination date as 'to be advised'.

Request for amendments and additional information

Following a thorough evaluation by Council's assessment team, amendments to the design and related information were requested by Council in a letter to the applicant on 18 December 2023.

Based on the DEP's advice and the assessment, the letter outlined these issues for consideration by the applicant:

- Provide a market analysis to support the dwelling mix proposed,
- Inconsistencies with Heritage provisions of the North Sydney LEP and DCP,
- Inconsistency with waste management provisions of the DCP,
- Tree removal from the site and potential damage to street trees in Walker Street,
- Potential for queuing onto Walker Street, when entering or leaving the site by vehicle,
- Review of the application to ascertain whether the proposal is impacted by approval (in November 2023) of a State-significant DA for a K-12 private school by adapting the existing building for this purpose, immediately west of Harnett Street at 41 McLaren Street.

Meeting between Council and the Applicant

A meeting was held on 19 January 2024, to discuss issues raised by Council's request for amendments and additional information. Resulting from that dialogue, Council advised that the application's refinement should be considered in the following terms, as advised by email to the applicant on 22 January 2024:

1. *Maintaining the proposed driveway location:*
 - a) *Council's letter had previously expressed concern about the likely survival of trees T10 and T11, extant large London Plane trees located either side of the proposed driveway, to be located off Walker Street near the site's southern boundary. The impact on these trees had been the subject of the submitted arborist's report, by Australis Tree Management, 12 June 23. Council's letter had advised it would be preferable to relocate the driveway to avoid potential impacts on the trees. Council's Landscape Development Officer's report details these impacts later in this report.*
 - b) *At the meeting the applicant presented various options for locating the driveway. Constraints and limitations of various driveway options were discussed, including mid-site off Walker Street (existing driveway) and access from Harnett Street. Access from McLaren Street was not considered, this being discounted during the planning proposal's evaluation and consequently prevented by site-specific DCP provisions.*
 - c) *Following the meeting, maintaining the driveway's location was agreed in principle, subject to the applicant submitting information demonstrating that there was no other practical and workable location for the vehicular access to the building and providing further information regarding the trees' preservation.*
2. *A clause 4.6 submission would be considered, to reduce non-residential floor area below the 1:1 floor space ratio minimum, provided Council's urban design and other outcomes would be reasonably achieved.*
3. *Suitable activation of the site's Harnett Street frontage being required per the DCP (Part C, Cl 2.1.4.1, P3).*
4. *An improved physical/visual relationship with heritage items in Walker Street being essential. If practical, some form of activity should be placed at or closer to the corner.*
5. *The apparent scale of the podium at the south-eastern corner being reduced.*
6. *Landscape terracing to Walker Street being increased and the height of retaining walls reduced/softened in appearance. Planting of larger trees also being considered, although additional terracing may limit opportunities to accommodate root-balls of larger trees.*

7. *The submitted design did not sufficiently offset a lack of deep soil or planting for new large trees and conservation of existing trees. The outdoor communal open space being increased and improved in quality and function. A common room opening onto this space being considered, to address the presently poor interface between the communal terrace and adjacent units – i.e. a unit or units could be replaced partially or wholly by an indoor communal facility.*
8. *As previously advised by email to Ms. Purton (Urbis) on 19 December 23, recyclables bins on each residential level could be replaced by dual chutes (not a single chute with an E-separator). All other waste management requirements stipulated by the RFI letter remained, this advice being based on consistent application of DCP provisions and waste management guidelines (Appendix 3 to the DCP).*
9. *Requirements for kerbside collection of residential wastes from suitable temporary storage structures accessible from the street also being required, due to Health & Safety and contractual obligations preventing Council employees entering private property to collect rubbish and recyclables.*
10. *Further traffic advice being required to address possible queuing in and out of the driveway and other matters (turning circles, etc.) for Council's transport engineers to consider.*
11. *Changes to the application being possible, practical, and beneficial, for the applicant and the community.*

Amended plans submitted and notified

Following this meeting amendments were received on 1 March 2024. These amendments having substantively addressed the above issues, the application was renotified for 14 days between 22 March 2024 and 5 April 2024. Two additional submissions were received from correspondents of the first notification period. No additional issues were raised.

DEVELOPMENT THE SUBJECT OF THIS REPORT

The application, as amended, seeks consent for:

- Demolition of the extant four storey residential building and excavation to a depth of RL 60.4m.
- Removal of 36 trees.
- Construction of a mixed use building of 10-14 levels, comprising 12 residential levels with 71 dwellings and 2 commercial levels with 5 separate premises either wholly or partly above ground, and a basement of 2.5 levels, including commercial floor area (with openings on two of three sides), a space described as “residential amenity” vehicular access and parking for 59 vehicles, storage, plant and equipment.
- 14 adaptable apartments and one affordable apartment are included in the total.
- 1 apartment being dedicated as affordable housing, as required by the planning agreement that affects the site.
- Widening (from 1.5m to 5.2m) and upgrading of the existing pedestrian link from Walker Street to Harnett Street, partly developed on land to the south of the site, at 150 Walker Street.
- Total gross floor area of 10,521m², including 1,285m² commercial and 8,874m² residential floor area,
- Landscaping of terraces along Walker Street and a communal open space on level 8, with a common room adjacent to the communal space.
- Private terraces and balconies on other levels.
- Pedestrian entries to residential (via a separate lobby) and commercial premises in the building from McLaren Street, Harnett Street and the pedestrian link on the building's southern side, with access to dwellings facing Walker Street directly from the footpath.
- Augmentation of infrastructure and utilities where required, including provision of a dedicated substation at ground level directly adjacent to Harnett Street and an OSD

tank below ground level (see section BB Dwg No A10.002, Rev B, Attachment 4).

Architectural plans (Attachment 4) illustrate the proposed development. To complement these plans, to address compliance with applicable planning (and other statutory) provisions and potential environmental impacts of the proposal, several documents accompanied the application:

- Clause 4.6 request to contravene the non-residential floor space ratio standard (Attachment 3),
- Design report, for the design originally submitted (Attachment 5),
- A design report for the amended application (Attachment 6)
- Landscape plans (Attachment 7),
- Civil Engineering Drawings (Attachment 8),
- On site detention and DRAINS report (Attachment 9).
- Traffic impact assessment
- Waste Management Plan,
- Acoustic assessment
- Adaptable housing assessment
- Arboricultural impact assessment,
- BCA compliance report,
- Environmentally sustainable design report
- Fire safety design letter,
- Geotechnical report,
- Heritage impact statement,
- Wind impact assessment,
- Shadow diagrams for planned public spaces south of the site, and
- Sustainable transport plan.

Below are illustrations and plans of the proposed building, from design reports and architectural drawings prepared by Bates Smart.



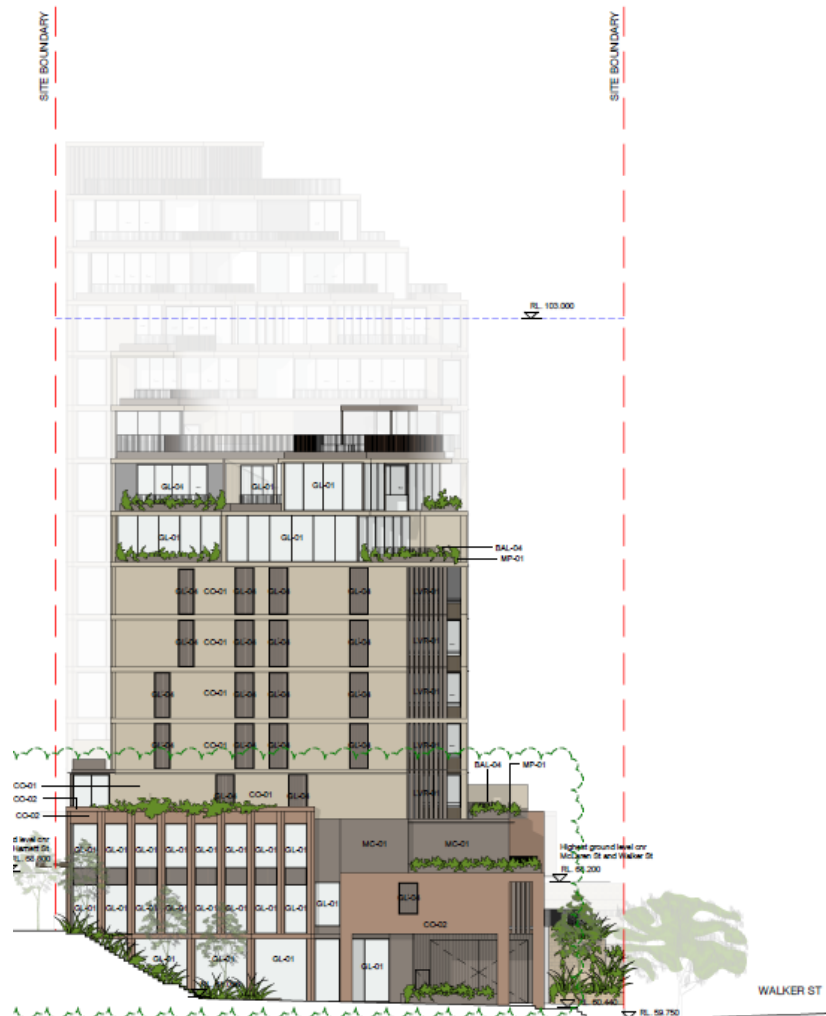
Northern elevation to McLaren Street.



Eastern elevation to Walker Street, detailing the landscape terraces and four apartments accessible from the footpath.



Image to the left shows the originally submitted design of the pedestrian link from Harnett Street (foreground) and Walker Street (background). Right-hand image shows the widened link providing opportunity for landscaping and an improved relationship with buildings south of the site, including heritage items.



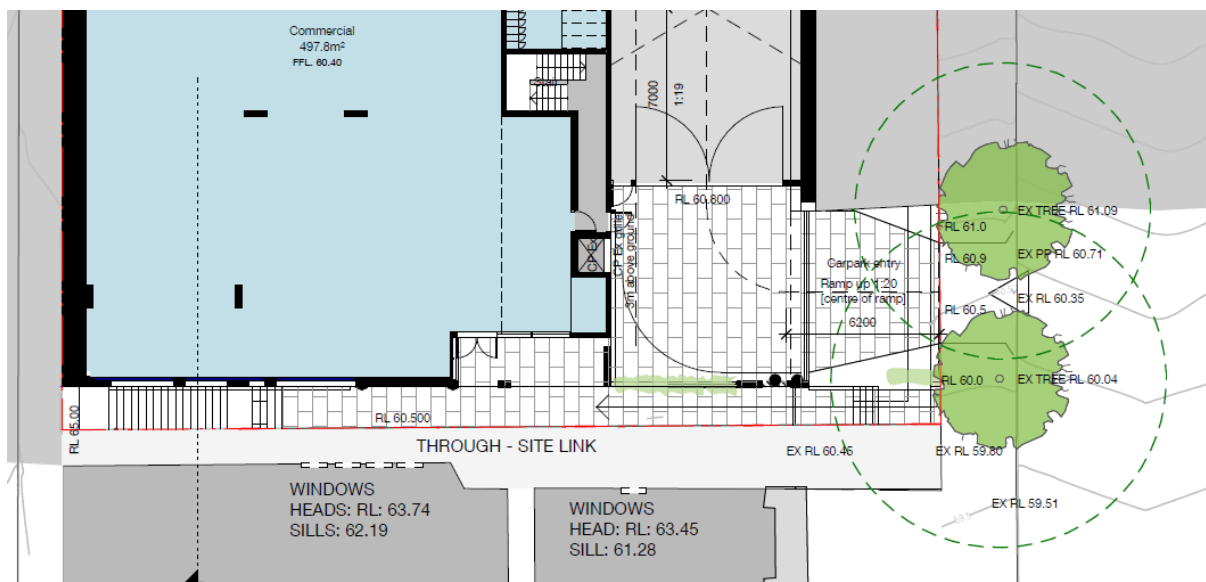
Southern elevation indicating change in levels from Walker Street (right) and Harnett Street (to the left).



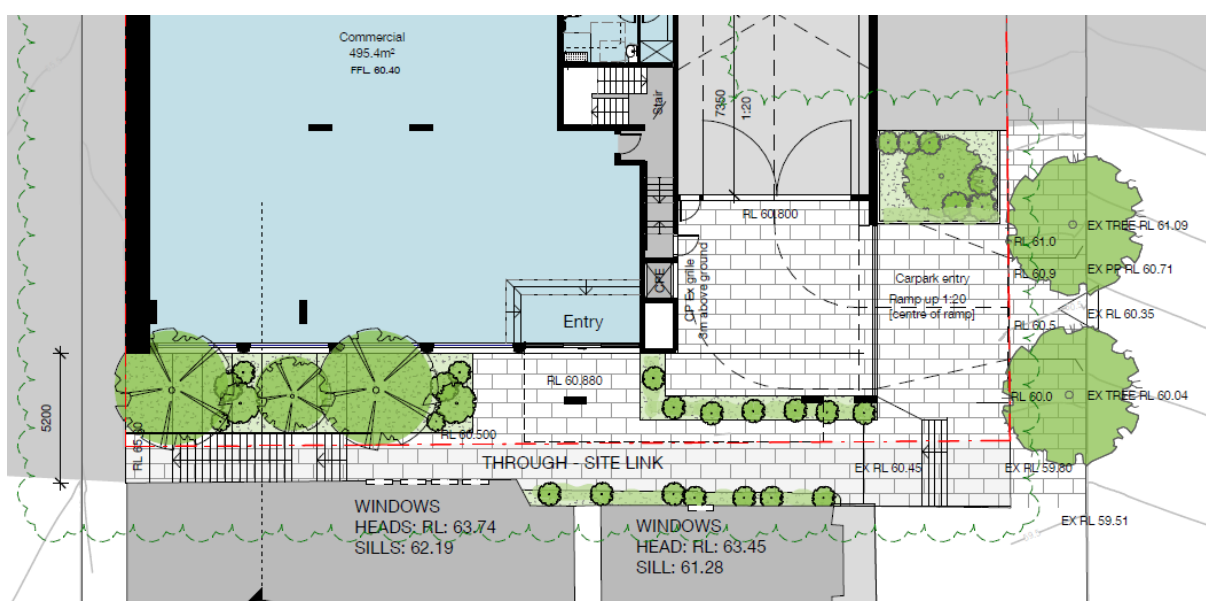
Vehicular entry and apartments above, of the original design, showing relationship with heritage items to the south (right side of image).



The same section of building in the amended design, depicting the recessed upper level and improved articulation above the driveway and landscaping between the proposal and neighbouring heritage items.



Extract of site plan as first submitted, showing detail of the through-site link between Harnett St (left) and Walker Street (right).



Extract of site plan as amended, showing widened through-site link, with landscaping. Plan also indicates location of London Plane trees either side of the driveway, on the Walker Street footpath, to the right.

SITE AND LOCALITY

Site

The site is SP 14598 (consisting of 18 strata units and common property), located at 45 McLaren Street North Sydney. Situated on the southwestern corner of McLaren Street and Walker Street, with a third, western frontage to Harnett Street (a lane that runs south off McLaren Street), the subject land is rectangular. The McLaren Street frontage is 37.72m (including corner splays) and to Walker Street the frontage is 47.39m. The site's area 1,792m².

The site's higher side faces north-northeast and its slope falls sharply to the south-south-west. The site's Walker Street frontage is oriented towards the east-south-east. On the southern side, is a narrow (1.5m) pedestrian link between Walker Street and Harnett Street.

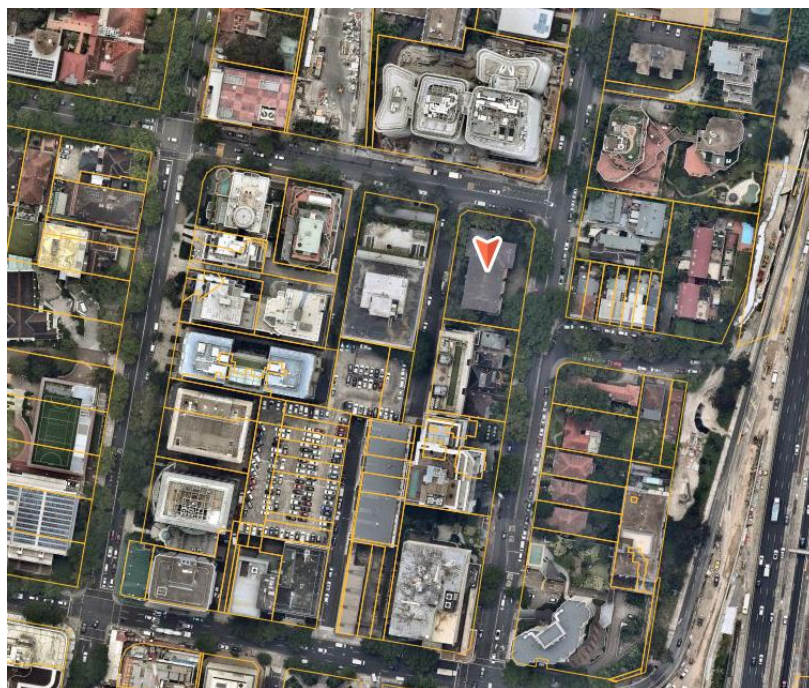
The site is currently occupied by a four storey residential flat building, with centrally located vehicular access from Walker Street.

According to the submitted arborist report, 36 trees occupy the site. Six are ranked as having medium significance and seven as having high significance. The remainder have low significance.

The remaining trees of the 40 assessed by the arborist report are four London Plane trees, situated immediately adjacent the site on Walker Street. According to Council's landscape development officer they are some of the finest examples of the species in the North Sydney CBD. Having large setbacks around them has enabled the trees to grow to their full size potential, in contrast to others, contorted and dwarfed by being situated adjacent to tall buildings built to the boundary in other locations.

The land generally falls down along Walker Street, with an average fall of 8.7m. The site is able to drain to Walker Street and is flood prone according to recent studies of the North Sydney local government area.

The image below shows the site's location.



Site (orange marker) Nearmap image 7 December 2023.

Locality

West of the site is 41 McLaren Street, a low-rise commercial building of heritage significance, designed by the celebrated architect, Harry Seidler. In November 2023, under the NSW Government's State Significant Development program, adaptive reuse of this building was approved as a private K-12 school. The school was granted concept and stage 1 approvals, the latter for about 500 of 1,560 total students. A stage 2 application, for the remainder of the building to accommodate the entire school populace, was approved by the North Sydney Local Planning Panel on 6 March 2024. Development is expected to occur to enable reuse of the building soon, with the student body planned to expand over several years.

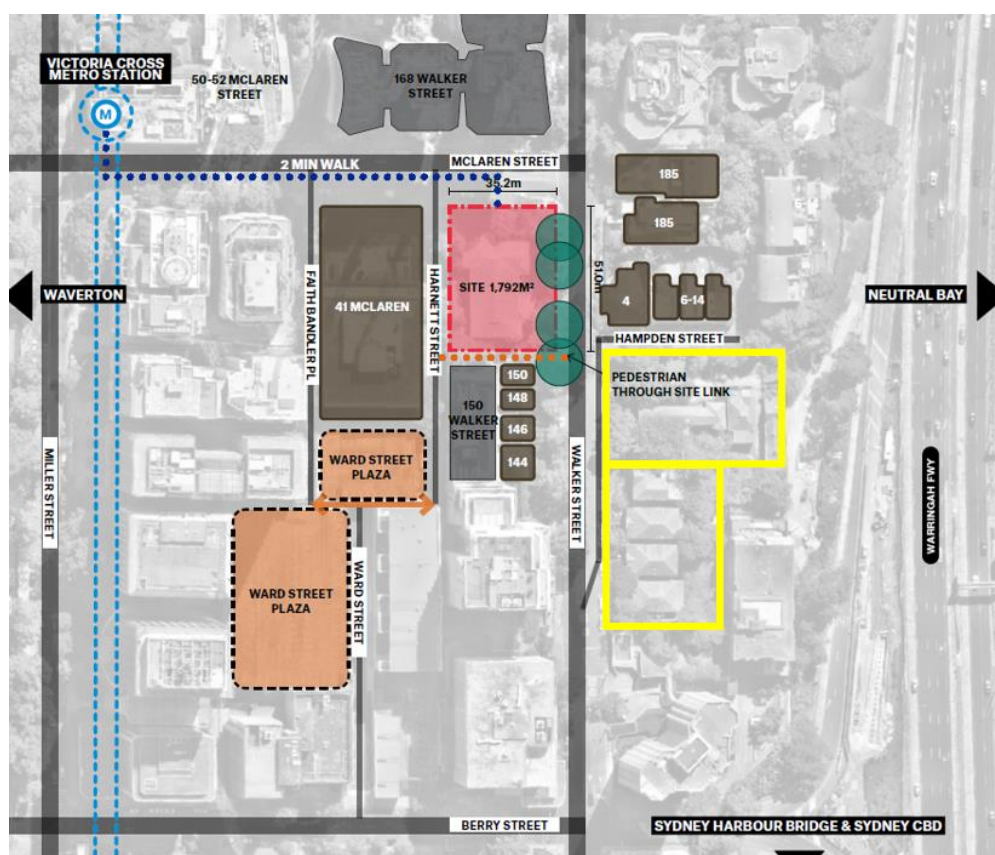
Across McLaren Street north of the site is the almost-complete Aqualand development entitled "Aura". It is a building in four conjoined tower elements with a maximum height of 29 storeys accommodating 2-3 levels of retail with 385 apartments above.

West of “Aura” on the north eastern corner of McLaren and Miller Streets, is the northern portal to the Victoria Cross Metro Station, a short, steep stroll from the site. Being on the extension of the existing Metro line from The Hills district, between Chatswood and Sydenham, and on to Bankstown, the first section of this line is planned to be open in mid-2024.

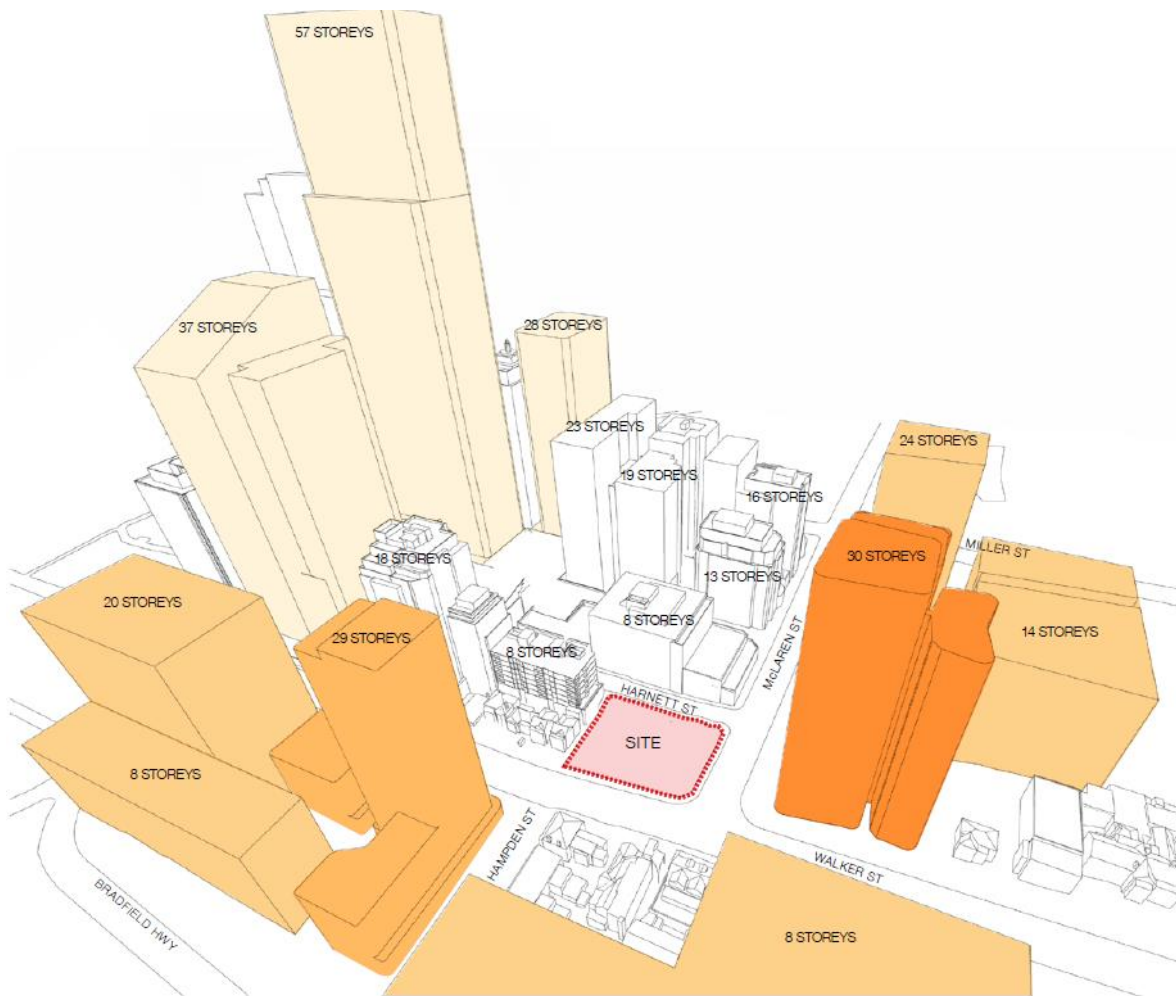
East of the site, several heritage buildings are located across Walker Street, including the row of terrace-houses on the northern side of Hampden Street. Neighbouring buildings to the south include a row of two storey heritage buildings, originally used as residences, some now accommodate several small businesses.

South east of the site, at the south eastern corner of Walker and Hampden Streets is a large L-shaped development site owned by CBUS Property. In mid-2022 a development application was lodged for this land to erect three residential buildings ranging in height from 4 to 29 storeys, comprising 176 units. An appeal was filed with the Land and Environment Court, based on the deemed refusal of the application, shortly after the application was lodged. Following negotiations and several design amendments under the Court’s auspices, the appeal and the application were withdrawn in late 2023. Since then, a housing project including build-to-rent accommodation has commenced planning as State Significant Development (SSD 67175465). At the time of writing, an application has not been lodged with the Department, the applicant preparing an environmental impact statement.

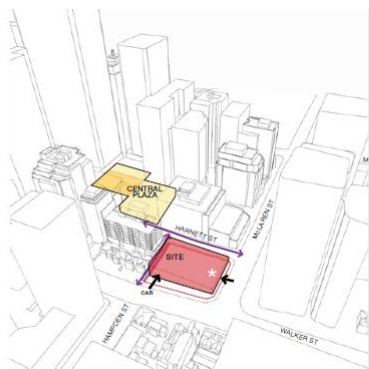
Finally, to the site’s southwest, is the area known as the Ward Street Precinct, occupied by several commercial buildings and the Council-owned Ward Street (multi-level) Car Park. Council has adopted a long term plan for the precinct, the centrepieces of which are two adjacent public plazas or squares. The two-step height controls developed for the site during the planning proposal process are designed to maintain sunlight to these spaces from Autumn until Spring.



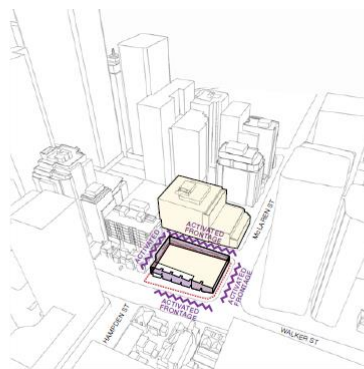
Site location, and its neighbourhood context.



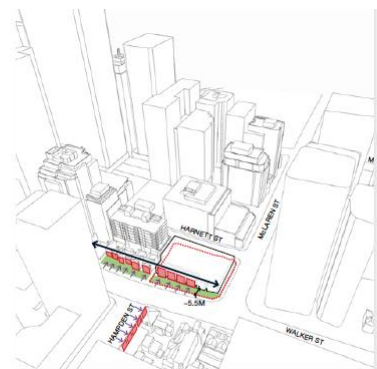
Surrounding indicative built form. The site is outlined in red. The Aqualand development at 168 Walker Street is shown in bright orange. In a mid-orange shade, a 'compliant' envelope is shown on the CBUS property site (at an indicative 29 storeys). Existing height limits/envelopes are shown in apricot. The palest envelopes show the Ward Street Master Plan's intended heights, the tallest envelope being 57 storeys, at 66 Berry Street.



Access, arrival and linkages



Land-use and activations



Context, heritage + setback

Urban design considerations – pedestrian links, street activation on the site's perimeter and proposed setbacks responding to the siting of adjacent heritage buildings.

STATUTORY CONTROLS

- Environmental Planning & Assessment Act 1979 (the Act)
- North Sydney Local Environmental Plan 2013 (the LEP)
 - Zoning – MU1 Mixed Use
 - Building height - RL 115 and RL 103
 - Exceptions to development standards
 - Item of Heritage - No
 - In Vicinity of Heritage Item - Yes (Walker and Hampden Streets)
 - Conservation Area - No
 - Earthworks
- SEPP (Biodiversity and Conservation) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP (Housing) 2021 and SEPP 65 Design Quality of Residential Apartment Development

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 (\$68,776,892.00) the consent authority for this application is the Sydney North Planning Panel.

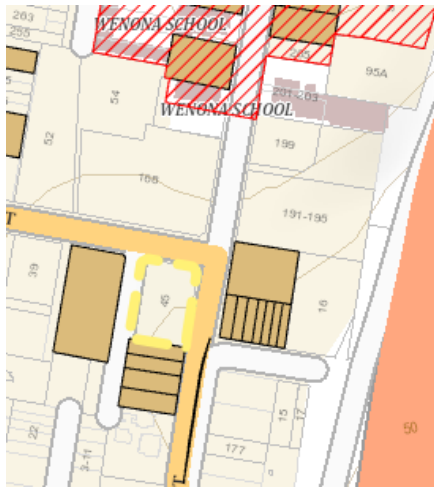
REFERRALS

Heritage

Council's conservation planner's assessment of the originally submitted proposal

1. Heritage Status and Significance

45 McLaren Street is not identified as a scheduled heritage item and nor is it located within a heritage conservation area. The site is located within the Central Business District as per NDCP 2013 Part C: s2.1 within which the site is culturally sensitive for its close proximity to several heritage items in the immediate vicinity of the site. As per NLEP 2013 Cl 5.10 (5)(c) and NDCP 2013 Part B: s13.4 Development in the vicinity of heritage items, the proposal is to be assessed in terms of the extent to which the works would affect the heritage context of the site identified by the following heritage items listed in the table below:



HERITAGE SENSITIVE SITE CONTEXT

Identified heritage items in the vicinity of the site:

- | | |
|-------------------------|-------|
| • 41 McLaren Street | Local |
| • 185 Walker Street | Local |
| • 144-150 Walker Street | Local |
| • 2 -14 Hamden Street | Local |

More generally in the vicinity of

- | | |
|--|-----------------------------|
| • St Leonards Park and the Walker/ Ridge Street Conservation Area | State (park)
Local (HCA) |
| • Hampden Neighbourhood | Local |
| • Heritage features e.g. Walker Street and Hampden Street sandstone walls. | Local |

2. Heritage Impact Assessment and Recommendations

An assessment of the proposed mixed use development comprising residential apartments above a podium at 45 McLaren Street has been undertaken in relation to NSDCP 2013 Part B: s13 Heritage and Conservation, namely s13.4 Development in the vicinity of heritage items, to ensure the development satisfies the objectives of NSLEP 2013 Cl5.10 Heritage conservation (1) (a) and (b) as follows:

s13.4 Development in the vicinity of heritage items - O1

With regard to the site-specific area character controls relevant to the site (NDCP 2013 Part C: s2.1.4: 45 McLaren Street) the key heritage issues for the development are for it be able to:

- transition in scale across the site from north to south between 168 Walker Street and 150 Walker Street, and
- from east to west along McLaren Street.

The key mechanism to achieve this is through the appropriate response of the podium level so that it positively relates to the heritage context surrounding site. Along Walker Street this would be by:

- allowing for appropriate stepping down in the built form between 168 and the heritage dwelling group at 144-150 Walker Street to the south of the site to achieve a sympathetic response to the overall lower scale residential scale of the heritage dwelling group,
- setting back the podium level in line with the tower at 168 Walker Street to maintain appropriate site lines to and from the heritage dwelling group to strengthen the unity of the new built form with the rhythm of the heritage dwelling group at 144-150 Walker, the Hamden Street heritage items to the east of the site as well as improving the streetscape landscape character set by the heritage dwelling group to the south of the site that is in contrasts with the character of McLaren Street.

Along McLaren Street by:

- responding to the form of the heritage listed commercial building at 41 McLaren Street to the west of the site where there is an overall mixed residential, commercial and hotel character,
- continue a compatible relationship to 41 McLaren Street along Harnett Street.



Walker Street elevation

The overall height of the podium along Walker Street appears to be much higher than the heritage dwelling group at 150 Walker Street. Whilst enhancing the pedestrian permeability of the site from Harnett Street to Walker Street with a setback of a minimum of 1.5m provides a positive break between the heritage dwelling group and the new development, there is scope for the eastern portion of the podium to be reduced in height so that it not only responds to the sloping topography of the site between Harnett Street and Walker Street but ensure the southeastern corner of the development with Walker Street can respond with a compatible scale to the heritage dwellings group. Additionally. The northeastern corner of the site at Walker Street and McLaren Street has the potential to be accessed on grade rather than be elevated from the street level and the overall terraced heights of the retaining walls can be lowered to improve the interface of these elevations with Walker Street.

It would be useful to have a photomontage that shows the relationship of the proposed elevation of the development with the heritage item at 41 McLaren Street.

3. Conclusion and Recommendations

With reference to the above, there is scope to improve the effects of the development on the heritage context of the site. As such, it is recommended that the applicant be advised of the above with the view to further refine the design of the development.

Heritage assessment of amended application:

2. Heritage Impact Assessment

The amended proposal has addressed the issues raised as part of the original DA as well the post meeting (held 19 January 2024, with the applicant) amendments. In summary, this includes the following:

- *The relationship of the proposed elevation with that of the heritage item at 41 McLaren Street. The vertical accent of the proposed podium to be revised to a horizontal one to compliment the form of the heritage item has been received positively.*
- *The design refinement of the podium is more sympathetic in scale to the heritage dwelling group at 150 Walker Street. The Walker Street podium provides a clearer transition to the adjacent heritage buildings which is enhanced by the increase in the width of the through site link to Harnett Street. The dormant concrete frame has been lowered and the third storey volume has been further setback.*
- *Changes to the terraced landscaping along Walker Street allowing for a new deep soil zone and contribute to the leafy character of Walker Street.*

3. Conclusion and Recommendations

With reference to the above, no further heritage comments are made, and no recommendations are necessary.

Building

Council's building surveyor advised:

The Development Application is supported by a Regulatory Compliance Report dated 8 June 2023 prepared by McKenzie Group (BCA Report). Page 5 of the BCA Report confirms that a Performance Solution is proposed to be developed to address light and ventilation requirements to residential amenities, gym and business centre located on Basement Level 01. This may result in the use of mechanical ventilation and use of artificial lighting. Full acceptance of any Performance based or Fire Engineering Solution is a matter for the Registered Certifier during Construction Certificate assessment stage.

The Development Application is also supported by a Fire Engineering support letter for DA dated 13 June 2023 prepared by E-Lab Consulting - Fire Engineering which concludes that the proposed development is able to comply with the NCC BCA without significant design changes.

A detailed assessment of compliance with the NCC BCA 2022, Volume 1 will be undertaken by an appropriately registered certifier at the Construction Certificate Stage of the proposed development. Additionally, a Fire Safety Schedule is to be prepared by the certifier and accompany the Construction Certificate.

That all building work be carried out in accordance with the Building Code of Australia is recommended in a condition of consent.

Engineering

Council's Senior Development Engineer has assessed the proposal and does not object to the development, subject to recommended conditions. These conditions address compliance with various Council Specifications and Australian Standards for:

- Traffic Management
- Stormwater
- Parking and Access
- Sediment and Erosion Control measures
- Excavation and Retaining Walls

In respect of stormwater and flooding, the following commentary was provided:

Stormwater

Diversion is proposed, of the existing Council trunk line traversing the site. The stormwater inlet at the southwest corner of the site is critical. Existing and proposed pipes and pits at (and leading to) the sag point must be checked/modelled hydraulically, so that both the existing and the new pipes running to Walker Street are each capable of carrying the maximum amount of floodwater possible.

Inlet pits will need to be modified or rebuilt entirely. The pipe proposed to run to the south along

Harnett St may need to be located under the road pavement to achieve a maximum 45 degree bend through any new pit. Overland flow from the sag point in Harnett St must be conveyed down the steps (through-site link) to Walker Street for all storms up to and including the 1 in 100 year event.

Internal stormwater must discharge via the proposed on-site detention tank by gravity, to a new stormwater pit to be constructed in Walker Street.

Appropriate conditions are recommended in this regard.

Flooding

The development is to conform to the Floodplain Management Policy (Interim), using Councils flood model. The new drainage pipes are to have bends no greater than 45 degrees. All bends are to have accessible pits. Refer to comments in Stormwater section above in relation to inlet of flood waters and conveying flood waters. A freeboard or 500mm must be provided above the 1 in 100 year flood event.

Landscape

Council's Landscape Development Officer (LDO) had raised several concerns regarding the original application, particularly the potential impact on the trees in Walker Street, of considerable significance due to their size, condition and contribution to the streetscape. Also of concern was the loss of vegetation on the site, which would be caused by the proposed development.



The two Plane trees at the site's southeastern corner. The only driveway to the site is proposed to go between the trees. The gap is slightly wider than a parking space.

Upon concluding an assessment of the revised application, the LDO advised:

This proposal cannot be supported in its current form.

The applicant is not considered to have adequately addressed issues relating to protection of existing trees (particularly Council's street trees T10-T13), nor the requirement for a suitable level of quality landscaping to compensate for the loss of existing canopy and offset the bulk & scale of the proposed development.

- *The amended arborist Report prepared by Naturally Trees dated 28/2/24 is not deemed to be of the quality required to be considered as an acceptable professional report in support of this proposal; it contains vague suggestions, omissions, and obfuscations to support the proposal, and in the case of Request for Information (RFI) matter 3 (Council's letter of 18 December 2023) states only that details of proposed work zones etc. must be lodged (to date they do not appear to have been, despite LDO's earlier request).*
 - *The unsustainable Tree Protection Zone (TPZ) encroachments of 46% (T10 Platanus x hybrida (15x19m)), & 42% (T11 Platanus x hybrida (15x15m)) planted in the council verge, (Walker Street frontage) and major impact to T12 & T13 Platanus x hybrida (10x15m), have not been addressed, and the failure to even acknowledge the extent of proposed negative impact of these mature council street trees with a life expectancy of 40+ years raises concerns as to the quality of this report as an acceptable document.*
 - *The arborist's response to RFI matter 1, dealing with stormwater, appears to be essentially that the SW works are required and the TPZ will be impacted. The relocation of the On-site Detention Tank will likely reduce impact to T12&T13, though the extent of reduced impact is not quantified. The relocation of a major stormwater line traversing the site and terminating in a new pit in the south east corner of the subject site, impacting T10 & T11 has not been assessed in any detail.*
 - *In response to RFI matter 2 – pruning, the arborist only assesses T10 & T11, suggesting that required pruning to T11 & T12 would be minimal. The pruning shown in images that do not include the entire canopy, would appear to be less than what might normally be required for hoardings, scaffolding and construction works. The original arborist report prepared by Australis Tree Management dated 12/6/23 noted that additional pruning would be required (T10 & T11) for limbs overhanging proposed driveway. The amended report, apparently assessing required pruning in response to the RFI, has failed to include this required pruning.*
- *The applicant has not provided a Construction Tree Management Plan as requested in LDO's original assessment. In the absence of such a plan, it is assumed that the applicant proposes to utilise the Walker Street frontage as a*

works zone, and proposed driveway within this frontage to gain access to the site during construction. Should such permits be granted, further extensive pruning shall be required to T10-T13 (as yet unassessed in any lodged arborist reports). It is further considered likely that the proposed narrow vehicle crossover may not be wide enough to accommodate trucks during construction. Should a crane be lifting over and through the canopies of these trees, there is the risk of further unassessed negative impact/required tree removal.

LDO considers that there is a real risk that, regardless of assurances to the contrary, or the number of tree protection conditions included in any consent, T10 & T11 will be removed post consent, either due to safety concerns, or due to construction requirements not considered prior to consent. There is also risk of further unassessed impact to T12 & T13.

Should council (the Panel) choose to approve this proposal, contrary to LDO advice, the following amendments/conditions shall be required:

REQUIRED AMENDMENTS

- A Construction Tree Management Plan shall be provided and all works zones, construction zones, lift zones and vehicular site access shall be strictly limited to McLaren or Harnett Streets. The Walker Street frontage of the subject site shall not be used for such purposes.*
- No more than 10% canopy pruning shall be permitted to any one of T10-T13. Hoarding & scaffolding shall be designed to minimise the need for any pruning.*
- Any awnings shall include cut-outs of sufficient size to enable unimpeded canopy growth of any existing or proposed street tree.*
- 1 x additional Platanus X hybrida (200l) shall be planted in the council verge between T11 & T12 on the Walker Street frontage.*
- The 2 x Platanus X hybrida (200l) proposed to be planted in the council verge on the McLaren Street frontage shall be replaced with 3 x Liriodendron tulipifera (200l).*

These matters can be addressed via conditions of consent, in addition to those below, as recommended by the LDO, which address:

- Appointment of a project arborist, to supervise all works that may or will impact public trees,*
- Tree protection during site works and construction,*
- Setting a bond for \$180,000 for protection of public trees,*
- Approval to remove site trees and on the McLaren Street footpath (as proposed in the application),*
- Tree pruning, and amendments to the submitted landscape plan,*
- Root mapping, and*
- Tree planting.*

Planner's comments

The environmental significance of the trees in Walker Street is acknowledged and the potential impact of the proposal on them remains a concern. Considering the site's context and the proposed development, in past cases contested in Class 1 appeals before the Land &

Environment Court, experience indicates it is difficult to defend the protection and conservation of trees. Trees are typically considered to be replaceable.

During assessment, the applicant demonstrated that there are no viable alternatives for locating vehicular access as proposed (detailed in Attachment 6), driveway location being the key aspect of the proposal which would potentially adversely impact trees T10 and T11, located either side of the driveway. The applicant has submitted arborist's reports which, according to the LDO's assessment above, have limitations.

In response, the LDO had recommended conditions, including a requirement for appropriate monetary surety should the trees be damaged or require removal, which provides the best possible outcome in these circumstances.

Transport, Traffic and Parking

Based on an assessment of the application as originally submitted, Council's Traffic and Transport Engineer advised:

- 60 car parking spaces are provided, 56 for residential use and 4 for commercial use, compliant with Council's requirements.
- 6 spaces for motorcycles are provided, also compliant with the DCP.
- Storage for 105 bicycles is required (78 residential, 27 commercial). Storage for 108 bikes is proposed, including one for each dwelling as part of the unit's storage and the remainder provided in secure storage on the lower ground level. EoT facilities are provided for 10 people, as per the DCP, according to the submitted traffic and transport report. Some bike parking was not properly detailed on architectural plans, which has been addressed.
- Concern was expressed regarding the driveway location between the two plane trees on Walker Street, limiting site distance for vehicles leaving the site.
- Loading facilities and basement circulation is satisfactory.

An updated traffic report was submitted with the amended plans and reviewed by Council's traffic engineer, who raises no objections to revised traffic management measures. Additional traffic analysis indicated acceptable impacts, in terms of overall traffic generation and likely low impact on traffic movements due to vehicles queuing to enter and leave the site, meaning the driveway's proximity to the trees will unlikely disrupt vehicle movements into and out of the site from Walker Street.

Waste Management

Assessment of the original application resulting in amendments being made to the application, comprising:

- An appropriate temporary storage bay for 24 x 240 litre residential bins for collection with a door to the storage bay from Harnett Street.
- Provision of two garbage chutes accessible from each residential level and 1 or 2 recycling bins on each level, depending on the number of units per level.
- Provision of a bulky waste storage room with additional space for bulky items in the bin holding bay.
- Commercial waste being collected on-site by private contractor.

The above adjustments have suitably addressed concerns and the proposal is compliant with DCP waste management requirements, except conditions have had to be recommended to ensure adequate compliance, ensuring that waste can be transported from retail/commercial premises to the commercial waste storage and pick-up facilities in the basement, without the need to use public streets, or publicly accessible areas within the building.

North Sydney Design Excellence Panel

The Design Excellence Panel's report (Attachment 2) of 10 October 2023, concluded that the panel could not support the design as proposed, unless the matters detailed in the report were acceptably addressed.

The Panel's design critique and matters to be addressed were set out per SEPP 65 Design Excellence Principles.

Principle 2: Built form, scale and public domain/urban design

- a) *Podium setbacks to Walker Street and more generally the design of the south-eastern corner of the building do not appear to relate appropriately to the adjacent heritage buildings.*
- b) *Building separation and complementary visual privacy measures are satisfactory except for the proposed building separation to the south between the subject site and 150 Walker Street. 150 Walker Street has habitable windows facing the side (northern) boundary. Habitable rooms are proposed within 1.5m – 4.8m from the south boundary, which will result in unacceptable privacy concerns. The windows may also not be able to be operable due to fire separation. Habitable windows proposed to face south should be a minimum of 6m from the south boundary and be able to be operable for natural ventilation.*
- c) *The Panel observed that the improved pedestrian path on the southern boundary provides some community benefit. Opportunities to increase the width of the through site link to improve passive surveillance and activation of this space should be considered such as the creation of a small public space with natural light and air. There is an additional opportunity to engage with the adjacent land owner to investigate a pocket open space to the south, to serve both sites. Increasing the width of the through site link to align with the building form on level 1 looks achievable and would also substantially improve the amenity and functionality of the commercial tenancy on the lower ground floors.*
- d) *On Walker Street, especially at the south eastern corner, improvements to the design could be considered to activate the frontage by introducing a non-residential use and improving connection to the commercial space's entry from the path, and better relate the building to adjacent heritage buildings.*

Principle 3: Density

- a) *The testing that was completed as part of the planning proposal appears to have overestimated the amount of density that could be accommodated within the site's building envelope. This has resulted in a considerable amount of non-residential floor space being accommodated underground, and compromised residential floors, both of which are unacceptable. A reduction in both residential and commercial density may be required in order to achieve acceptable amenity.*

Principle 4: Sustainability, building performance and adaptability

- a) *façades rely heavily on full height performance glazing, particularly to the east and west facades. External solar shading should be incorporated to limit the dependence on heavily tinted performance glass.*

Principle 5: Landscape Integration

- a) *Public domain - Landscaping on a steep slope is challenging. Greater use of cascading plants and lowering planter levels and increasing terracing would improve the softening of the building at its edge to Walker Street.*
- b) *Communal open space - The deck proposed on level 8 is unacceptable, in terms of area and amenity offered, particularly given the reduced solar access to other areas of the proposal. The space seemed to have a poor relationship with the internal and*

external living areas of apartments next to the communal space. The deck should be significantly enlarged and better connected to the main circulation and a genuine internal communal space.

It was also noted that with the local residential population growing, demand for finite public open space in the locality would increase in the next 5 years and beyond, highlighting the need for improved on-site communal space. The underground communal space is not considered appropriate, it should be located above ground.

- c) *Deep soil* - A lack of deep soil was noted as one of the key site constraints. Increased deep soil areas should be considered, with preserving trees T1 *Grevillea robusta* (15x12m) T2 *Howea forsteriana* (6x4m) and *Magnolia* sp. (10x8m), as referred to in the submitted arboricultural impact report and as recommended by Council's landscape officer.

Such an amendment would require reducing the building's footprint and have the benefit of providing an additional space to open-up and improve amenity of the space on the southern side of the building. Increased communally accessible landscaping on the podium should also be considered, to off-set still limited deep soil areas.

Principle 6: Building configuration, planning, and amenity

- a) *Apartment size and layout* - Some apartments such as those on Level 00, could be termed 'snorkel apartments' with potentially poor amenity. These should be further developed. Opening skylights from upper levels was suggested. The generous size of the majority of apartments was noted.

Single-sided units on the building's western side would have poor ventilation. Those central units shown as cross ventilated from Levels 2-6, are unlikely to comply with Clause 4B-3 of the ADG, instead being single aspect units. Strict compliance with the ADG cross ventilation requirement should be achieved given the reduced mid-winter solar access.

- b) *Common circulation* - The 35m long internal corridor serving up to 10 apartments per floor is unacceptable. The ADG limits this to eight dwellings. A second core and / or an open stair should be considered up to level 6, which could also allow enhanced daylight penetration to the corridor.
- c) *Subterranean spaces and excavation* – Below ground commercial spaces would have poor amenity and may be too large. Alternative uses were suggested, such as subdividing the spaces for home-based workspaces or studios (provided they would satisfy LEP requirements for non-residential floorspace), noting the large floor plates provide numerous opportunities. Alternatively the quantum of floor space may need to be reduced if appropriate amenity cannot be demonstrated.

Basement level 'back of house' areas beneath the tenancies facing McLaren Street are too large.

The Panel suggested cutting voids into the spaces from levels above to improve daylight penetration.

Principle 8: Housing diversity and social interaction

- d) *Interaction at the public/private interface* - An alternative use to the apartments at the south eastern corner (at footpath level) would improve activation on Walker Street and the pedestrian path.

Amended application

Amended plans and related information were submitted, which address substantive issues raised by the Panel, reflected in the forthcoming Apartment Design Guide assessment. The “RFI Response Design Report” (Attachment 6) details design improvements made to answer the questions raised by the Panel and Council’s request for amendments.

Referral back to the panel was not warranted as a result.

External Referrals

Two agencies were consulted in accordance with SEPP (Transport and Infrastructure) 2021.

Sydney Water Corporation

Sydney Water made no comment regarding the application. Conditions are recommended , so the applicant obtains necessary approvals from Sydney Water.

Energy and Other Services

Ausgrid advised Council that no objection is raised to the application, and that there are underground and overhead cables in Walker Street, which must be protected and safety precautions taken during and after construction.

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

SUBMISSIONS

Council notified occupants of premises in the local area and the CBD Precinct Committee of and exhibited the application publicly via its website, on two separate occasions, for a period of 21 days from 25 August 2023 until 15 September 2023 and 14 days between 22 March 2024 and 5 April 2024.

13 submissions were received, from 11 correspondents, raising the following concerns and reasons for objecting to the application:

- View loss,
- Solar access, overshadowing,
- Loss of privacy,
- Traffic congestion, including cumulative impacts of the proposed and other development in the locality,
- Aggregate construction impacts,
- Potential damage to nearby properties,
- Overdevelopment,
- Inadequate setback to southern boundary, and
- Poor relationship with neighbouring heritage items.

These matters have been considered by this report and were also largely noted during the processing of the Planning proposal.

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 North Sydney LEP and DCP, and other environmental planning instruments that apply to the site and the proposal.

SEPP (Resilience and Hazards) 2021

The preliminary site investigation lodged with the application identified that the site had been used for residential purposes since c.1900 and that potential contaminants are unlikely to be identified on the site. Provided suitable waste soil classification and disposal is undertaken, the site is suitable for the proposed development, in accordance with the SEPP.

SEPP (Biodiversity and Conservation) 2021

The site is located in the Sydney Harbour catchment, and not close to the foreshore. The development would form part of a distant skyline view of North Sydney and Milsons Point (unless taller development occurs between the site and the harbour), from the Port Jackson and other vantage points on its foreshores and within the waterway's visual catchment.

As proposed, the development should 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.

SEPP (Housing) 2021 & SEPP 65 – Design Quality of Residential Apartment Development

Being a mixed use building including residential accommodation, SEPP 65 and the attendant Apartment Design Guide (ADG) apply to the residential apartments proposed.

SEPP 65 was repealed by the introduction of Chapter 4 of SEPP (Housing) 2021 on 14 December 2023. The amended policy did not include transitional provisions. This oversight was corrected by a retrospective amendment to clause 8 Schedule 7A of the Housing SEPP, published 15 March 2024, making it clear that applications made on or before 14 December 2023 would be determined in accordance with the repealed SEPP 65.

On page 5 of the Design Report (Attachment 5) the architect declares, in a SEPP 65 "Verification Statement", that the design has been prepared in accordance with the design principles the policy promotes.

ADG ASSESSMENT TABLE

Design objective	Design Criteria	Compliance	Comment
2F - Building Separation	<i>Minimum separation distances for buildings</i>	Acceptable on merit.	As demonstrated on page 48, Design Report (Attachment 5) various design techniques, including room-type location, window size, orientation, and louvres, are used to reasonably provide visual privacy, despite not providing compliant building separation distances. Additionally, the amended design has increased the setback to the southern neighbours.
3D- Communal Open	<i>Communal open space has a minimum area equal</i>	Acceptable on merit.	The communal space on level 8 has been increased from 143m ² to 205m ² .

Design objective	Design Criteria	Compliance	Comment
Space	<p><i>to 25% of the site.</i></p> <p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>		<p>Despite this increase the required 25% is not achieved, the communal area equates to 11.4% site area. This space is complemented by an adjacent common room and an indoor, lower level (below existing ground level) "residential amenity" space of 311m², which could be used for a variety of purposes.</p> <p>The development, including the level 8 common space, is overshadowed in mid-winter by the apartment development (Aura) directly north of the site in McLaren Street. The taller elements of the proposed building and probably the building to the north also shade this common space.</p> <p>Overshadowing is unavoidable due to the height of the adjacent building, local topography and the proposal's form being dictated by the need to maintain winter sun to the planned open space in the Council-adopted Ward Street Masterplan.</p>
3E – Deep Soil Zones	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none"> <i>• 3m minimum width</i> <i>• Minimum 7% of the site area</i> 	Acceptable on merit.	<p>6.8% is claimed to be provided (page 20 Attachment 6).</p> <p>This is deemed suitable, as the site is underlain by shallow bedrock 1.0m to 2.0m below the surface, possible site coverage is significant as allowed by setback and FSR controls and being located on the CBD edge in a dense urban area, where similar commercial and residential buildings have limited deep soil and open space.</p> <p>Further, the applicant has increased the communal space on level 8, open space and landscaping to Walker Street and in the southern pedestrian link between this Street and Harnett Street.</p>
3F - Visual privacy	<i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries</i>	Yes.	Discussed above in relation to design objective 2F.
3G – Pedestrian Access & Entries	<i>Building entries and pedestrian access connects to and addresses the public domain Access, entries and</i>	Yes.	The proposal offers high quality pedestrian access via an improved walking path between Harnett Street and Walker Street, including access to commercial space, direct access to Walker Street by several dwellings at ground level facing this street, direct

Design objective	Design Criteria	Compliance	Comment
	<i>pathways are accessible and easy to identify</i>		access to retail spaces and a separate lobby for residential premises on McLaren Street and a (potential) lobby to commercial space off Harnett Street.
3H – Vehicle Access	<i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</i>	Yes.	As discussed in Attachment 6, the proposed driveway is in the best possible location, given site's frontage to two streets and a lane, site conditions and the need to provide access for medium sized trucks.
3J – Bicycle and Car parking	<p><i>For development in the following locations:</i></p> <ul style="list-style-type: none"> <i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i> <i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i> <p><i>The car parking needs for a development must be provided off</i></p>	Yes.	As discussed in the Traffic Engineer's assessment, proposed parking for vehicles and bikes is acceptable.

Design objective	Design Criteria	Compliance	Comment
	<p>street</p> <p><i>Parking and facilities are provided for other modes of transport</i></p>		
4A - Solar and daylight access	<p><i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i></p>	Acceptable on merit.	52% of apartments satisfy the minimum required. However, as outlined earlier and detailed in Attachment 5, site and locality conditions make full compliance extremely difficult. The apartments will offer considerable amenity in terms of outlook, views and access to natural daylight.
4B - Natural ventilation	<p><i>All habitable rooms are naturally ventilated.</i></p> <p><i>The layout and design of single aspect apartments maximises natural ventilation.</i></p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents – At least 60% of apartments are naturally cross ventilated</i></p>	Yes.	As demonstrated by the Design Report (page 47 Attachment 5) 71% of apartments are naturally ventilated.
4C - Ceiling Heights	<p><i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7m (habitable rooms), 2.4m for second floor where it does not exceed 50% of the apartment area.</i></p>	Yes	Floor to floor heights on lower levels are between 3.0m and 3.6m. On residential levels 1 – 12, they range from 3.15m to 3.25m. The development should be able to achieve compliance.
4D 1 - Apartment size and layout	<p><i>Apartments are required to have the following minimum internal areas: 50m² (1B), 70m² (2B), 90m² (3B)</i></p>	Yes	All apartments exceed the minima, see page 72, Attachment 5.

Design objective	Design Criteria	Compliance	Comment
	<p><i>Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each</i></p> <p><i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i></p>		
4D 2 - Apartment size and layout	<ol style="list-style-type: none"> <i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i> <i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i> 	Yes.	See pp 77 & 78, Attachment 5.
4D 3- Apartment size and layout	<ol style="list-style-type: none"> <i>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</i> <i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i> 	Yes.	See p 78, Attachment 5.

Design objective	Design Criteria	Compliance	Comment
	<p>3. <i>Living rooms or combined living/dining rooms have a minimum width of:</i></p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments 		
4E - Private open space and balconies	<p><i>All apartments are required to have primary balconies as follows: Studio apartments - 4m²</i></p> <p><i>1 bedroom apartments - 8m², minimum depth 2m</i></p> <p><i>2 bedroom apartments 10m² minimum depth 2m</i></p> <p><i>3+ bedroom apartments 12m² minimum depth 2.4m</i></p> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m</i></p> <p>2. <i>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</i></p> <p><i>Primary private open space and balconies are appropriately located to enhance</i></p>	Yes	See p 78, Attachment 5.

Design objective	Design Criteria	Compliance	Comment
	<p><i>liveability for residents.</i></p> <p><i>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</i></p> <p><i>Private open space and balcony design maximises safety.</i></p>		
4F - Common circulation and spaces	<p>1. <i>The maximum number of apartments off a circulation core on a single level is eight</i></p>	Acceptable on merit.	Again, site topography, geometry and related constraints result in the building having a single core, rather than the two needed to achieve compliance. This is demonstrated in Attachment 6 pp 51-53.
4G - Storage	<p><i>Studio apartments- 4m³</i></p> <p><i>1 bedroom apartments- 6m³</i></p> <p><i>2 bedroom apartments- 8m³</i></p> <p><i>3+bedroom apartments- 10m³</i></p>	Yes.	See p 79, Attachment 5.
4Q-2 & 4Q-3 Adaptable & flexible design	<p><i>Adaptable housing should be provided in accordance with Council policy and accommodate flexible design solutions.</i></p> <p><i>20% of the total number of dwellings when more than 5 are proposed is to be adaptable housing (Part B cl, 1.2.2 P1, DCP)</i></p>	Yes.	20% of all units (14 of 71) are designed to be adaptable.

NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

Permissibility

The submitted Statement of Environmental Effects describes the proposal as a mixed use development, comprising commercial floor space and residential apartments.

In terms of the LEP, the development proposed is part *residential flat building* and part *commercial premises*.

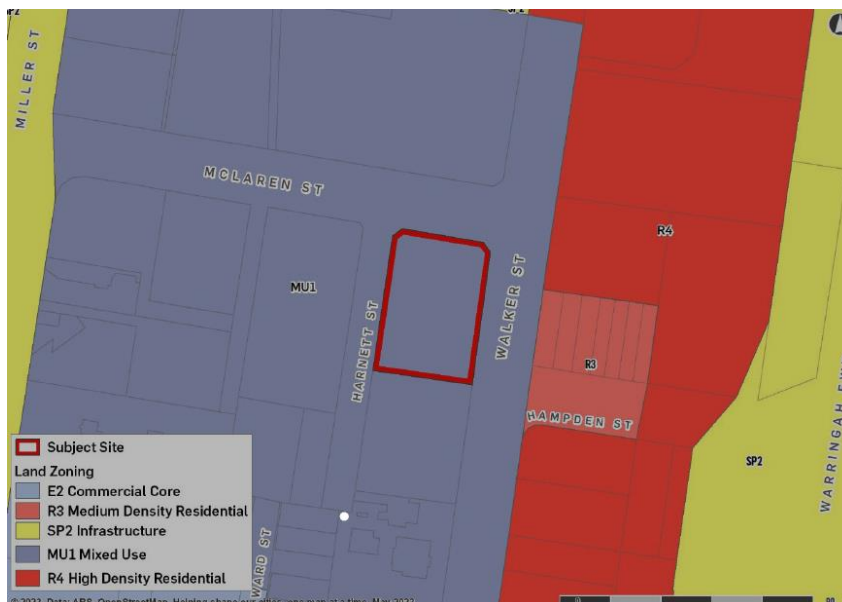
The LEP Dictionary defines these development types as follows:

commercial premises means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

These uses are both permitted with consent in the MU1 Mixed Use zone, which applies to the site.



Site (red outline) shown zoned MU1 Mixed Use (Urbis).

Objectives of the MU1 Mixed Use zone

Situated on the north eastern edge of the North Sydney CBD, the site is surrounded by a variety of residential, commercial, and retail development.

Objectives of the MU1 zone;

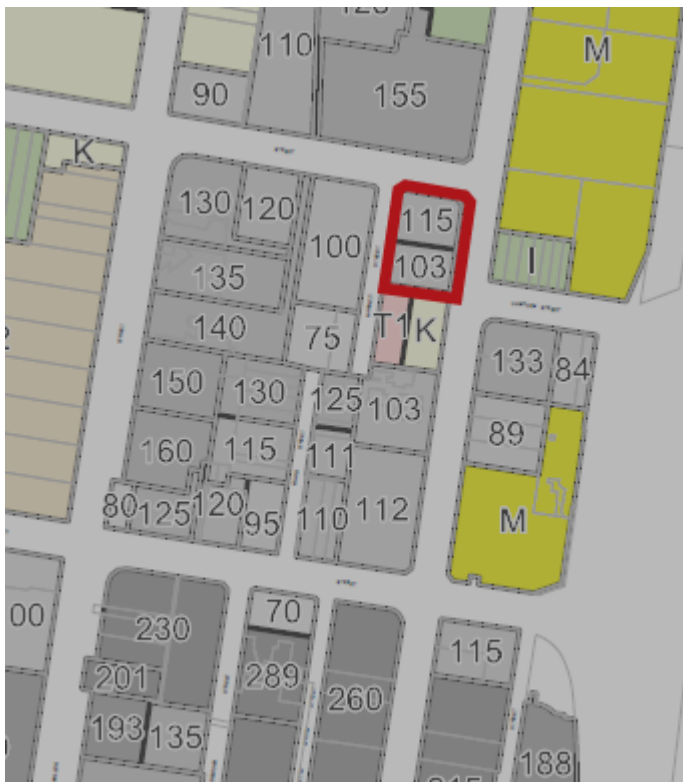
- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.

The proposal is of a type and form of development reasonably anticipated for the site and is not inconsistent with the objectives of the MU1 zone.

Height of buildings - Clause 4.3

The Height of Buildings Map sets two-step height of building standards of RL 115m and RL 103m for the site, as shown.



Height standards applicable to the site (red) (Bates Smart).

The building is within or equal to the permitted height maxima.

Floor space ratio – Clause 4.4

The LEP sets a maximum floor space ratio of 6.25:1, with which the proposal complies, being 5.87:1, according to the application.

Non-residential floor space ratio – Clause 4.4A

In identified commercial and mixed use zones, a minimum non-residential floor space ratio is set for mixed use development. The minimum floor space ratio applied to this site is 1:1, and a non-compliant ratio of 0.72:1 is proposed.

Exceptions to development standards - Clause 4.6

A written request was submitted with the development application (Attachment 3) in accordance with the provisions of cl. 4.6 Exceptions to Development Standards of the LEP. The request seeks a variation to the minimum non-residential floor space ratio development standard, as provided by cl. 4.4A of the LEP.

- Minimum permitted non-residential FSR: 1:1
- Proposed non-residential FSR: 0.72:1
- Proposed contravention: 28%

As the panel would be aware, numerous decisions of the Land & Environment Court have assisted in the interpretation and application of clause 4.6, a provision common to LEPs in NSW.

As the application was lodged before 1 November 2023 when the standard instrument was amended to alter the provisions of clause 4.6, this assessment observes the provisions applicable at the time the application was lodged.

Criteria for approval under clause 4.6

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

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

- (b) the benefit in maintaining the standard, and
- (c) any other matters.

Evaluation of the applicant's written request

The applicant's request to contravene the development standard is now considered.

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

The minimum non-residential floor space ratio is a development standard as defined by the Act, as it fixes a minimum non-residential floor area in mixed use buildings on land mapped for this purpose in the MU1 zone and other specified zones.

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

The subject standard is not excluded from being varied by clause 4.6 (6) or (8).

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. 4.4A (1) of the LEP) of the minimum non-residential floor space ratio standard are:

- (a) *to provide for development with continuous and active street frontages on certain land in Zone E1 Local Centre, Zone MU1 Mixed Use and Zone SP2 Infrastructure,*
- (b) *to encourage an appropriate mix of residential and non-residential uses,*
- (c) *to provide a level of flexibility in the mix of land uses to cater for market demands,*
- (d) *to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

The applicant's request to contravene the standard regarding these objectives satisfies the terms of clause 4.6. The submission demonstrates consistency of the proposal with these objectives, as quoted below:

- a) *The proposal maintains active street frontages on McLaren Street and Harnett Street, in accordance with the North Sydney Development Control Plan 2013. The McLaren and Harnett Street frontages are dedicated to commercial tenancies, including a commercial entry lobby, food and beverage offerings, and a new canopy (awning) to provide continuous shade and shelter. The widened and landscaped through-site link acts (sic) will support the desire to create a safe and attractive pedestrian passage connecting through to Harnett Street, with a subtle degree of activation along Harnett Street by way of the lower ground entrance to the commercial tenancy.*
- b) *The site provides an appropriate balance of residential and commercial uses. The development application was the subject of a site-specific rezoning of the land which introduced LEP controls, including a non-residential FSR of 1:1 (1,792m² or 16% of the total GFA) and a residential FSR of 5.25:1 (9,408m² or 84% of the total GFA). The achievement of the FSR was based upon a concept reference scheme. Upon lodging the development application, and through further design testing with Council to achieve the best urban design and public amenity outcomes, a reduction in the FSR for both non-residential and residential accommodation was required. The amended development application delivers an FSR of 0.7:1 (1,285m² or 12% of the total GFA) as non-residential and an FSR of 5.15:1 as residential, which includes 8,874m² (84%) as residential accommodation and 362m² (3.4%) as residential amenities. When compared to other mixed-use developments within the immediate area, the predominant non-residential FSR for the MU1 zone is 0.5:1. The site is a small site and the proposed 0.7:1 FSR is greater than what is typically required for mixed-use developments in the LGA. The site has a substantial slope, and the urban design*

outcome skillfully responds to this by wrapping the commercial along McLaren Street, Harnett Street and down the laneway, providing almost one and half full levels of good quality commercial space with decent street frontage.

The quantum of below-ground commercial space with no street presence presented a genuine risk of not attracting tenants. The reduced commercial space reduces the tenancy risk to provide with ability to be seen from Harnett Street to improve operational success whilst allowing enhanced amenities for residents in the original proposed commercial space. Five terrace houses are located on the Ground Floor fronting Walker Street, reflecting the heritage terraces to the south, with the remaining 66 apartments located in the tower above. The apartments are complemented by exclusive residential amenities spaces at Level 8 (outdoor and indoor) and the Ground Floor (internal). The development appropriately balances the two land uses seeking to foster a vibrant atmosphere and a sense of community.

- c) An Apartment Demand Study has been prepared by Charter Keck Cramer which confirms the proposed development is considered to meet current and future premium residential apartment market requirements. Additionally, the proposal provides a significant quantum of commercial floor space in a variety of locations and configurations that is suitable to a range of local-serving retail and or commercial businesses. The mixed-use surrounding area provides a diverse offering of commercial businesses.
- d) Despite the non-compliance with Clause 4.4A, the development still offers an abundance of high-quality, flexible commercial floor space to service future residents of the building and the local community. The site is located in a mixed-use zone, within the North Sydney business centre located south of the site. The proposal reflects the hierarchy of commercial centres and seeks to provide day-to-day commercial offerings to people living and working in the area. The proposed development outcome exceeds the commercial floor space typically required in North Sydney, being 0.5:1, demonstrating that an appropriate balance is delivered.

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:

- Notwithstanding the non-compliance, the proposed development achieves the objectives of Clause 4.4A as outlined earlier.
- The proposed development is consistent with the objectives of the MU1: Mixed Use Zone in that it will continue to provide a mix of non-residential and residential uses.
- The proposal provides a range of high-quality commercial spaces that activate all required site frontages and will facilitate a mix of future tenancies.
- The original development application that was submitted to Council demonstrated compliance with the minimum non-residential FSR (1.01:1). The proposed non-compliance is a direct result of a reduction in built form, in response to other matters raised by Council during its assessment in order to provide greater public amenity outcomes in the form of landscaping, a widening of the through-site link.
- The key moves which result in the reduction in commercial floor space were triggered by:
 - o The widening of the through site link at the southern western end from 3m to 5.2m results in a loss of commercial GFA across three levels, however improving activate, key sight lights and daylight through the laneway;
 - o The requirement for on-street bin collection and the introduction of a temporary holding area at street level;
 - o The requirement for increased landscaping to increase the lush, green landscape appeal and reduce the extent and exposure of the sandstone; The concern about the quantum of subterranean (lower ground) commercial space that was considered to pose a significant risk of (not) attracting tenants, with the revised quantum and configuration presenting a superior lettable space from the original proposal;

- *As identified in Figure 3 the residential amenity has been relocated to the Ground Level* (previously at the Basement Level in the DA submission), replacing the northern commercial tenancy. Due to the sloping nature of the site, the northern portion of the ground level is below street level. Therefore, street activation and external access are limited as the commercial tenancy would not be visible from the street, posing a poor commercial tenancy outcome. This outcome is considered to have not environmental impact but will deliver a benefit in terms of the amenity offering to residents.*
- *Figure 4 illustrates that McLaren Street is activated by the Upper Ground Level commercial tenancies. As such, there is no impact on the character and streetscape as a result of this design amendment. The removal of the Northern Ground Level commercial tenancy results in a better outcome for residential amenities and the viability of commercial tenancies and reduces risk of the space not being lettable to businesses. Overall, the proposed amendments do not result in any loss of streetscape activation, nor does it undermine the intent of the development standard as the proposal will still deliver 1,285sqm of commercial space in various tenancy configurations which is considered a significant area of non-residential space that will ensure that the site will positively contribute to Council's wider aspirations of the adjoining future active mixed use Ward Street precinct.*
- *While the revised design results in a reduced commercial FSR, the commercial tenancies are of a higher quality and design amendments are seen to improve the design quality and functionality of the wider development.*
- *The loss of non-residential GFA is balanced with delivering better public amenities and urban design outcomes whilst retaining the intent of the control, which is to provide for genuine active frontages and a mix of land uses. The amended development application demonstrates achieves an acceptable balance of the meeting the objectives of the development standard while also positively responding to other important site design and context considerations and for these reasons there are sufficient environmental planning grounds to justify the contravention of the development standard.*

***Clarification**

The ground level referred to above is substantially below ground level, requiring artificial lighting and mechanical ventilation.

Comment:

To conclude, the applicant's request is concurred with, the request has shown there are sufficient grounds to vary the standard.

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

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

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

Approval would be in the public interest. As outlined above, the applicant's request to contravene the standard demonstrates the proposal is consistent with relevant objectives.

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

Approval would be in the public interest, as the proposal is not inconsistent with relevant objectives of the MU1 Mixed Use zone.

As stated earlier, the proposed development is consistent with applicable zone objectives.

Granting of concurrence

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

Despite non-residential floor space being less than the minimum 1:1 ratio required; the proposed development is not inconsistent with desired outcomes from the recent rezoning of

the site. The proposal remains consistent with local planning objectives and does not raise issues of regional or State significance.

Criteria 4 (b): Benefit of maintaining the standard

The applicant's submission shows that the objectives of the standard are achieved, and the environmental performance of the proposal is acceptable, despite contravention. The amended design stands to deliver much-improved outcomes compared to the originally submitted design, which complied with the standard. A mix of uses is provided to activate the site's street frontages and provide commercial premises that would suit a variety of small businesses. In these circumstances, there is no benefit in maintaining compliance with the standard. An appropriate degree of flexibility would be applied in granting consent.

Criteria 4(c): Other matters to be considered

Non-compliance with the subject standard raises no other matters requiring consideration.

Approval, despite contravening the development standard

Consent is able to be granted to the application, as the criteria or preconditions of cl.4.6 for granting consent have been satisfied.

In summary:

- The variation embraces and provides suitable flexibility in applying the development standard.
- The urban design outcomes of the non-compliant development are superior when compared with the compliant scheme first submitted.
- The environmental impacts of the proposal are suitably managed, and
- The contravention's approval would not be inconsistent with objectives of the zone and development standard.

Part 5 Local Provisions

Heritage Conservation - Clause 5.10

As discussed by Council's heritage conservation planner in the referrals section, the proposed development is consistent with the heritage objectives and provisions of the LEP.

Part 6 Additional local provisions

Division 1 North Sydney Centre

The map below indicates the site (blue) is outside the North Sydney Centre (broken red line).



North Sydney LEP Map extract indicating site is outside the North Sydney Centre

Division 2 General provisions

Clause 6.10 - Earthworks

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 proposed entry on Walker Street prevents waters entering the premises during the 1%AEP flood event, indicated by the submitted flood study. Conditions requiring consistency with Council's Interim Flood Plain Management Policy are recommended.

Drainage measures are recommended by the submitted geotechnical report, to direct seepage to the stormwater system from sub-floor drainage below the basement.

Permanent groundwater is expected to be well below maximum excavation.

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. Conditions are recommended to protect significant trees adjacent to the site in Walker Street.

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

The excavation would be unlikely to influence redevelopment of the land. The life expectancy of the building is expected to 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

Surface materials and those to a depth of 1m-2m, with very low to low strength sandstone 0.5m – 3.5m, medium strength sandstone to 10m and hard, high quality Hawkesbury sandstone from a depth of about 10m - 20m.

Actual soil and bedrock conditions will need to be confirmed by further investigation.

Likely effects on existing and likely amenity of adjoining properties

The report identifies potential for impact on adjoining properties, in that "...footing details for the neighbouring properties should be established as potential movements may affect the building structure and could require underpinning or additional support." Further investigation and measures to protect adjacent property and public infrastructure are required by recommended conditions.

Source of fill and destination of excavated material

No fill will probably be required as excavation of the site is proposed to a depth of about 8m below the surface. Excavated material will have to be appropriately transported to a suitable location, details of which must be provided in a waste management plan, as required by a recommended condition of consent.

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

Proposed soil erosion control during demolition, excavation and construction will 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.

Upon completion and occupation of the building, on-site detention and associated water quality control facilities and waste management procedures will 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. These measures are detailed in the civil engineering report and drainage report (Attachments 8 & 9).

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, as recommended, will effectively manage likely impacts of the development.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

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

PART B DEVELOPMENT CONTROLS**Section 2 – Commercial & Mixed Use Development****DCP Compliance Table**

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 2 Commercial & Mixed Use Development		
Provision	Complies	Comments
2.2 Function		
2.2.1 Diversity of activities	Yes	The diverse urban environment is complemented by the proposal.
2.2.2 Maximise use of public transport	Yes	With the northern portal of the Victoria Cross metro station a short walk from the site, optimising public transport use is contributed to.

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 2 Commercial & Mixed Use Development

Provision	Complies	Comments
2.2.3 Mixed residential population	Acceptable on merit.	<p>As required by the DCP, a market study has been provided to support the application. This study suggests the proposed mix is suited to contemporary demographic (market) conditions, due to changes in population and changed household work/living arrangements being sustained post-pandemic.</p> <p>Despite variation, the study submits the proposal still satisfies a key DCP objective, to provide housing for a mix of households with good amenity.</p> <p>44% of households earn more than \$3,500 per week, which are attracted to large apartments. Supply of apartments with three or more bedrooms is currently 13.2%</p> <p>There is an undersupply of larger apartments. Larger dwellings suit 40% of households in North Sydney, being middle to older aged couples, with or without children, who typically seek larger apartments of 3 or more bedrooms.</p> <p>Demand for housing will increase in North Sydney due to high quality of life and major investment in transport infrastructure.</p> <p>Other activity supports these trends, while also indicating the demand for and lack of supply of large apartments. This activity includes developers amending approved plans to increase the number of large dwellings and buyers purchasing and consolidating two (or more) apartments into one.</p>
2.2.4 Tourist and visitor accommodation design	N/A	
2.2.5 Tourist and visitor accommodation management	N/A	
3 Environmental Criteria		
2.3.1 Clean air	Yes	The proposal will unlikely affect local air quality.
2.3.2 Noise	Yes	A condition is recommended to ensure adequate acoustic privacy.
2.2.3 Wind speed	Yes	The submitted wind impact study indicates pedestrian safety and comfort levels in the public domain and private/communal outdoor areas will be attained. Wind tunnel testing is recommended at the detailed design stage. Compliance with the study's recommendations is required by a condition of approval.
2.3.4 Reflectivity	Deemed to comply	Conditions are recommended to limit the degree of glazing and roof-material reflectivity.
2.3.5 Artificial illumination	Deemed to comply	Conditions are recommended to control and manage glare and unwanted night-light.
2.3.6 Awnings	Yes	Awnings are compliant with DCP requirements.
2.3.7 Solar access	Acceptable on merit	Assessed in ADG table.

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 2 Commercial & Mixed Use Development		
Provision	Complies	Comments
2.3.8 Views	Yes	The proposal is compliant with building envelope parameters. A visual impact study submitted with the application demonstrates reasonable impacts on views from nearby development and the landscape qualities of the locality. Existing and likely future development have been considered. View and visual impacts are considered further below this table.
2.3.9 Acoustic privacy	Yes	As above.
2.3.10 Vibration	Deemed to comply	Conditions are recommended to control vibration impacts of the development.
2.3.1 Visual privacy	Yes	Considered in the ADG assessment.
2.4 Quality built form		
2.4.1 Context	Yes	With the submitted amendments to the south eastern corner of the building, the proposal complements its context and adjacent urban fabric.
2.4.2 Site consolidation	N/A	
2.4.3 Setbacks	Yes	Site specific setback minima are complied with.
2.4.4 Podiums	Yes	Podium height and setback requirements are satisfied.
2.4.5 Building Design	Yes	Addressed in ADG assessment.
2.4.6 Skyline	Yes	The building's addition to the North Sydney skyline will be consistent with that envisaged by the building envelope controls that the proposal complies with.
2.4.7 Junction and termination of streets	Yes	The corner site is well-respected by the proposal's design.
2.4.8 Balconies - apartments	Yes	Addressed in ADG assessment.
2.4.9 Through-site pedestrian links	Yes	The widened link from Walker St to Harnett St is consistent with Part C, DCP requirements
2.4.10 Streetscape	Yes	The amended design results in a complementary contribution to the streetscape.
2.4.11 Entrances and exits	Yes	Entries are satisfactory on all four frontages in the amended design.
2.4.12 Nighttime appearance	Deemed to comply	A condition dictates that no lighting of the building is approved by this consent, so a further application would be required.
2.4.13 Public Spaces and Facilities	Yes	The pedestrian link provides a quality space and improved CBD permeability, taking site conditions into consideration.
2.5 Quality Urban Environment		
2.5.1 Accessibility	Yes	Submitted reports and Council's building surveyor conclude the development is capable of compliance with the BCA, relevant guidelines, and standards.
2.5.2 Safety and Security	Yes	The building conforms with design principles for safe design, features including informal surveillance and activation of street frontages, and separate entries for commercial and residential premises.
2.5.3 Illumination	Deemed to comply	Conditions are recommended to prescribe limits and management of this issue.

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 2 Commercial & Mixed Use Development		
Provision	Complies	Comments
2.5.4 High quality of residential accommodation	Yes	Considered in ADG assessment.
2.5.5 Lightwells and ventilation	Yes	Considered in ADG assessment.
2.5.6 Private open space	Yes	Considered in ADG assessment.
2.5.7 Vehicular access	Yes	Considered in ADG assessment.
2.5.8 Car Parking	Yes	Proposed number of parking spaces complies, as discussed by the traffic engineer's referral.
2.5.9 Garbage Storage	Yes	Amended plans are largely compliant and conditions are recommended to ensure full compliance.
2.5.10 Site facilities	Yes	Considered in ADG assessment.
2.5.11 Temporary Structures	N/A	
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency	Yes	The application was accompanied by an environmentally sustainable design report, concluding the application satisfies BASIX and Section J of the National Construction Code.
2.6.2 Passive solar design	Yes	As above.
2.6.3 Thermal mass and insulation	Yes	As above.
2.6.4 Natural ventilation	No, acceptable on merit.	Considered in ADG assessment.
2.6.5 Water conservation	Yes	<p>Stormwater mitigation measures are required, for:</p> <ul style="list-style-type: none"> - Erosion and sediment control, - On-site detention, - Stormwater filtering and rain-water reuse, and - Flood management, having adopted the 1% AEP floor for design, consistent with Council's adopted policy for flood management. <p>A raft of conditions is recommended by Council's development engineer to ensure proper water cycle management throughout the lifecycle of the development.</p>
2.6.6 Waste management and minimisation	Yes	Addressed by amended plans as discussed in the Referrals section.
2.6.7 Stormwater management	Yes	See clause 2.6.5 above.
2.6.8 Building materials	Yes	Matters such as choice of low energy-embodied materials, reuse and recycling in construction and operations are committed to in the ESD report.
2.6.9 Adaptive reuse of buildings	Yes	A degree of flexibility has been designed into the commercial floor space to allow premises of various sizes to be used for different purposes.
2.6.10 Hot water systems	Yes	A BASIX Certificate consideration.
2.6.11 Green roofs	N/A	
2.6.12 Wind turbines	N/A	
2.7 Public Domain		
2.7.1 Street furniture, landscaping, utilities and equipment	Yes	Street trees have been discussed regarding the Landscape Development' Officer's report.

DEVELOPMENT CONTROL PLAN 2013 - Part B Section 2 Commercial & Mixed Use Development		
Provision	Complies	Comments
		<p>Utilities and public domain facilities are required to be designed in accordance with relevant Council guidelines, by recommended conditions of consent.</p> <p>Landscaping: the size, design and planting of the communal open space and enlarged pedestrian walkway have been improved and are satisfactory.</p> <p>The referred-to Planning Agreement that applies to the site also addresses public domain improvements.</p>
2.7.2 Public entertainment and expression	N/A	
2.7.3 Public art	N/A	
2.7.4 Paving	Yes	The applicant proposes public domain redevelopment in accordance with Council's strategy and guidelines, addressed in the Planning Agreement, as mentioned.
2.7.5 Native vegetation and water	N/A	The site is not close to bushland.

DCP: Detailed assessment

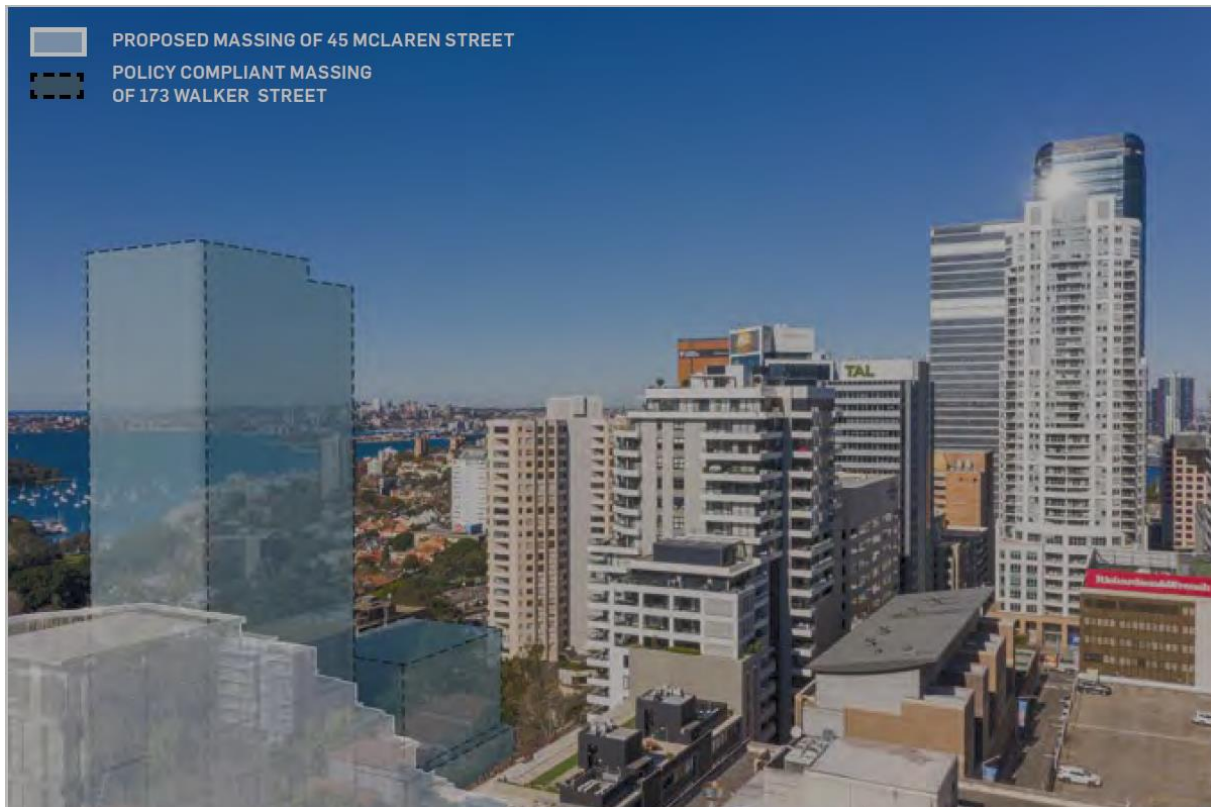
Views

Compliance with height and setback controls at upper levels of the building results in the development having acceptable view impacts from neighbouring properties, as shown in the submitted visual impact report.

A selective 'Tenacity' assessment has been carried out from a reasonable range of viewpoints from adjacent residential development based on photomontages and computer-generated modelling. Although harbour views are reduced for some, the assessment concludes these impacts are of minor to moderate severity, at worst.

Given the site's constraints and the public benefits to be gained from the building envelope being maintained (solar access to planned public spaces), visual impacts are acceptable.

Below is a selection of images (courtesy Urbis) from the submitted report to illustrate view effects.



View from a mid-level apartment in the western most tower of the Aura building at 168 Walker Street. The proposal is in the bottom left corner, with the 'compliant' envelope for the CBUS property (corner Walker and Hampden Streets) behind it (Urbis).



View impact from a unit in the building at 37-39 McLaren Street, the closest residential building west of the site (Urbis).

PART C – AREA CHARACTER STATEMENTS

Section 2 – North Sydney Planning Area

Clause 2.1 Central Business District

As there are site-specific provisions in the DCP for the site, an 'overview' or 'summary' assessment is provided having regard to the local character and design provisions of clause 2.1 applicable to the CBD.

DCP Compliance Table

DEVELOPMENT CONTROL PLAN 2013 - Part C Clause 2.1 Central Business District		
<i>Provision</i>	<i>Complies</i>	<i>Comments</i>
2.1.1. Significant elements		
Land use	Yes	Proposed land uses are permitted.
Topography	Yes	The design successfully addresses the challenges presented by the site's slope, aspect and context.
Natural Features	Yes	The site has no remnant features (visible rock outcrops, native vegetation).
Public Views	Yes	Public views identified in the DCP remain unaffected.
Icons	Yes	No 'icons' (e.g. Brett Whiteley Place) are affected.
Subdivision	Yes	The lot's size and shape are consistent with the subdivision pattern of the locality.
Streetscape	Yes	The proposal will complement be compatible the streetscape.
Public transport	Yes	The site is well-served by public transport.
2.1.2 Desired future character		
Diversity of activities, facilities, opportunities and services	Yes	The proposed mixed use development optimises its location and complements the emerging character of the locality, which has a diversity of educational, civic, recreational, transport, commercial and residential activities.
Accessibility and permeability	Yes	Proposed improvements to and widening of the pedestrian link will contribute to the CBD becoming more pedestrian-friendly, while complementing plans for the Ward Street Precinct Masterplan.
2.1.3 Desired built form		
	N/A	Design provisions of this clause are effectively superseded by site specific provisions of cl. 2.1.4 – 45 McLaren St, which are addressed in the following table.

Clause 2.1.4 – 45 McLaren Street

Site specific development guidelines being clause 2.1.4 of the DCP, complement the recent amendments to zoning, height and floor space ratio controls of the LEP which apply to the site.

DEVELOPMENT CONTROL PLAN 2013 - Part C Clause 2.1.4 - 45 McLaren Street		
<i>Provision</i>	<i>Complies</i>	<i>Comments</i>
Desired future character, design objectives and key principles	Yes	The proposal: - Responds adequately to the scale and character of existing development.

DEVELOPMENT CONTROL PLAN 2013 - Part C Clause 2.1.4 - 45 McLaren Street

Provision	Complies	Comments
		<ul style="list-style-type: none"> - Provides appropriate transitions in height and bulk to adjacent development. - Suitably activates site frontages to Walker, McLaren and Harnett Streets, and the pedestrian walkway on the southern boundary. <p>Solar access analysis in the Design Report (Attachment 5) demonstrates solar access being provided to plazas of the plans for the Ward Street precinct, necessitating the stepped built form.</p> <p>Landscaping to Walker Street softens the appearance of the building, within the required setback.</p> <p>The 5.2m (max.) wide pedestrian link is greatly improved (having been widened by over 2.0m) and will provide a highly functional, attractive and convenient link for pedestrians.</p>
Desired built form	Yes	The Design Reports (Attachments 5 & 6) comprehensively describe and illustrate a successful architectural response to the site's characteristics and local context, in a stepped form that promotes employment and high residential amenity.
Solar access (Ward Street Master Plan)	Yes	Solar access will be delivered to the planned public plazas, as required, between 9am and 4pm from March to September.
Building Height	Yes	Respective 10 and 14 storey building sections are designed as required.
Street and side setbacks	Yes	All setbacks are consistent with DCP minima.
Podium height	Yes	Podium heights of 2 – 3 stories are provided, and the podium does not exceed 3 storeys at the southern boundary.
Above podium setbacks	Yes	All setbacks are consistent with DCP minima.
Landscaped area	Yes	<p>The revised design allows for adequate deep soil zones along Walker Street for planting of shrubs and trees. This is achieved by setting back the upper level of the basement, despite the lower two basement levels being built to the boundary. Increased terracing of the landscaped setback between the footpath and the building improves the cascading effect of the landscaping, softening the development's appearance and allowing improved visibility between proposed lower level units and the public domain, and direct access to Walker Street.</p> <p>The other main landscaped areas are the communal space on level 8 and the through-site link, the latter discussed next in this table. The communal space has been increased and is complemented by a common room that opens directly onto the open space. The revised</p>

DEVELOPMENT CONTROL PLAN 2013 - Part C Clause 2.1.4 - 45 McLaren Street		
Provision	Complies	Comments
		design effectively achieves privacy for residents of the two apartments next to the common room and outdoor area, which was an issue with the first-submitted design.
Through-site link	Yes	The width of the link has been increased to 5.2m, assisting with building separation and importantly providing a high-quality, well landscaped space with improved daylight compared with the originally submitted narrower (3.0m min.) design. The wider link and the revised entry to the commercial space from the walkway improve the relationship of this entrance with Walker Street, in terms of convenience and informal surveillance.
Vehicular access	Yes	The proposed driveway at the south eastern site corner is the best possible option, as demonstrated by Attachment 6.

LOCAL INFRASTRUCTURE CONTRIBUTIONS & PLANNING AGREEMENT

The Minister's direction applicable at the time the application was submitted allows a maximum s.7.11 contribution of \$20,000.00 per additional dwelling. As 71 are units are proposed and there are 18 units in the development, a contribution of \$ 1,060,000.00 would be payable.

A condition is recommended that this sum be paid before the relevant construction certificate, i.e. before the first CC for works above ground level is to be issued. Another condition also required contributions to be paid, an apartment be provided for affordable housing and public domain improvements be provided, in accordance with the Planning Agreement that applies to the site.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

ENVIRONMENTAL APPRAISAL

CONSIDERED

- | | |
|---|-----|
| 1. Statutory Controls | Yes |
| 2. Policy Controls | Yes |
| 3. Design in relation to existing building and natural environment | Yes |
| 4. Landscaping/Open Space Provision | Yes |
| 5. Traffic generation and Carparking provision | Yes |
| 6. Loading and Servicing Facilities | Yes |
| 7. Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.) | Yes |

- | | | |
|----|---|-----|
| 8. | Site Management Issues | Yes |
| 9. | Relevant S4.15 considerations of the Environmental Planning and Assessment Act 1979 | Yes |

Submitters' concerns

Key issues raised by submissions have been considered in this assessment. The development proposed is unlikely to significantly and negatively impact the amenity of nearby residential apartments, beyond those impacts envisaged by the zoning and the underlying controls. Impacts of the proposal's departures from Apartment Design Guide and DCP performance-based provisions are acceptable.

Table: Consideration of concerns raised by public submissions

Issue	Consideration
View loss.	See view assessment following DCP table.
Solar access and overshadowing.	See ADG assessment table.
Aggregate impact on traffic of the proposal and other approved or planned development in the locality.	Addressed by recommended conditions.
Loss of neighbourhood character and amenity.	Considered with regard to the DCP.
Aggregate construction impacts, noise, dust, traffic and road safety, for pedestrians and motorists, structural stability of adjacent buildings.	Addressed by recommended conditions.
Developer should compensate residents for costs associated with keeping premises and vehicles clean.	Beyond the scope of this assessment.
Insufficient setback to southern boundary. Obscure glazing and louvres should be applied to south-facing commercial premises. Setback should be increased to 6.0m and 8 trees retained.	See ADG and DCP assessment tables.
Comprehensive traffic plans should be prepared to provide context for and to inform DA evaluation.	Beyond the scope of this assessment.
Government policy to increase building heights to achieve more housing will compromise local amenity.	Beyond the scope of this assessment.
The proposed development is overdevelopment of the site.	The amended application has reduced floor area by increasing the southern setback and increasing the size of the open space on level 8. Non-residential area has also been reduced, decreasing the amount for floor area below ground level.
Works should not commence before other development in McLaren Street is complete.	Beyond the scope of this assessment, an approval allows the applicant 5 years to physically commence a development. When suitably applied, recommended conditions aim to minimise impacts on local amenity, health and convenience.
Privacy impacts on neighbours.	Considered in ADG evaluation.
Adverse impact on heritage of the locality	Considered by the Conservation Planner's assessment, in this report's referral section.
Demand for on-street parking will increase.	Addressed in the Transport Engineer's assessment in this report's referral section.
The stepped building will create an 'unnatural skyline'.	Considered above in relation to the DCP's site-specific design criteria.
Property values will be negatively affected.	Beyond the scope of this assessment.

The southern section of the building's height should be by two storeys.	Considered in the DCP assessment.
The central square of the Ward Street Master Plan will be overshadowed by the building.	Considered in the DCP assessment.

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. The North Sydney Local Infrastructure Contributions Plan and strategic documents related to the North Sydney CBD have also been considered, including the Ward Street Precinct Masterplan.

The applicant has submitted a request in accordance with clause 4.6 of the LEP to provide less than the minimum non-residential floor area required. A floor space ratio of 0.72:1 is proposed, whereas the LEP's minimum is 1:1 for the site, representing a variation of 28%.

The applicant's submission is satisfactory as it demonstrates that compliance with the minimum non-residential floor space ratio is unnecessary, and that there are sufficient environmental planning grounds depart from the standard. Variation of this development standard assures improved urban design outcomes, by enhancing the physical and visual relationships with adjacent heritage-listed buildings, and improving streetscape and pedestrian safety, amenity and accessibility.

Concurrence of the Secretary of the Department of Planning Housing and Infrastructure can be assumed, and consent granted (necessary, as the application was lodged before clause 4.6 of the Standard Instrument was amended on 1 November 2023).

Despite inconsistencies with various numerical controls of the Apartment Design Guide, the proposal satisfies applicable performance criteria (objectives and guidelines, both numeric and descriptive) of this document, and is consistent with the SEPP's design principles.

The development stands to make a positive contribution to North Sydney's built environment, it's economic and community life. Offering both additional residential and commercial accommodation in a highly dynamic neighbourhood the proposal responds to metropolitan investment by the NSW Government, and to Council's strategies to both promote a more vibrant CBD and manage urban growth.

Approval is accordingly recommended.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

THAT the Sydney North Planning Panel, as the consent authority, can be satisfied the applicant's request to vary the non-residential floor space ratio development standard meets the requirements of clause 4.6 of the North Sydney Local Environmental Plan 2013, and grant consent to Development Application No. 215/23, subject to the conditions recommended in Attachment 1 to this report.

JIM DAVIES
EXECUTIVE ASSESSMENT PLANNER
3 June 2024