

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-81
DA Number	47/20
LGA	North Sydney
Proposed Development	Demolition of five (5) residential flat buildings, bulk excavation, tree removal and the construction of a 10 storey commercial building with basement parking
Street Address	2 – 4 Blue Street and 1 – 5 William Street, North Sydney
Applicant	Union Street Developer Pty Ltd
Owner	Conway Home Units Pty Ltd (2 – 4 Blue Street and 1 William Street), SP 12338 (3 William Street), SP 16506 (5 William Street)
Date of DA lodgement	11 March 2020
Number of Submissions	<u>Original proposal</u> Forty-five (45) submissions (twenty (20) in support, twenty-five (25) in objection) <u>Amended proposal</u> Fifty-eight (58) submissions (forty five (45) in support, ten (10) in objection, three (3) neutral)
Recommendation	Approval
Regional Development Criteria (Schedule 4A of the EP&A Act)	Capital Investment Value (CIV) of greater than \$30 million
List of all relevant s4.55(1)(a) matters	SREP (Sydney Harbour Catchment) 2005 SEPP (Infrastructure) 2007 SEPP No. 55 – Remediation of Land and Draft Remediation of Land SEPP SEPP (Affordable Rental Housing) 2009 SEPP No. 70 – Affordable Housing (Revised Schemes) SEPP (Affordable Rental Housing) 2009 SEPP (Vegetation in Non-Rural Areas) 2017 SEPP (Infrastructure) 2007 Draft SEPP (Environment) North Sydney LEP 2013 • Zoning – B4 Mixed Use North Sydney DCP 2013
List all documents submitted with this report for the Panel's consideration	Application Documents • Architectural and Landscape Plans • Amended written request pursuant to Clause 4.6 (building height) by Ethos Urban • View Survey Analysis • Addendum report prepared by Urbis • Peer heritage review prepared by Weir Phillips Architects • Advice letter from Pikes and Verekers Lawyers relating to Affordable Housing Council Assessment Report Supporting Documents • Conditions • Summary of public submissions • Heritage referral prepared by Lucas Stapleton Johnson • Judith Stubbs & Associates, 2019, North Sydney LGA: Analysis of Strata Prices 2011-2019 and Sales and Rental trends
Report prepared by	Luke Donovan, Senior Assessment Officer, North Sydney Council
Report date	7 July 2020

Summary of s4.15 matters

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

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?

Yes

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)?

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

Not Applicable

Conditions

Have draft conditions been provided to the applicant for comment?

Yes

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

EXECUTIVE SUMMARY

This development application, as amended, seeks consent for the demolition of five (5) residential flat buildings, bulk excavation, tree removal and the construction of a 10 storey commercial building with basement parking on land at 2 – 4 Blue Street and 1 – 5 William Street, North Sydney.

The Council's notification of the original proposal attracted a total of forty-five (45) submissions (twenty (20) in support and twenty-five (25) in objection). The submissions in objection raised concerns regarding view impacts, loss of outlook, loss of amenity, excessive bulk and scale, inadequacy of design, loss of privacy and overlooking, construction and noise impacts, tree removal, wind tunnel effect along William Street, increased traffic and distraction to students of the Shore School.

The Council's notification of the amended proposal attracted fifty-seven (58) submissions (forty-five (45) in support, ten (10) in objection and three (3) neutral). The submissions in objection raised concerns regarding view impacts, building height non-compliance, inadequacy of written request pursuant to Clause 4.6 in NSLEP 2013, lack of awning along William Street, excessive height and lack of setbacks, external finishes and the demolition of fine examples of Inter war buildings.

The amended proposal has provided increased setbacks to William Street, improvements in tree plantings at ground level and above podium landscaping along the William Street façade to provide greater articulation and reduced visual massing. The amended proposal has also provided for a reconfigured roof top plant area, additional privacy treatment to northern façade and compliant podium heights to assist in reducing amenity impacts to surrounding properties in terms of privacy and views.

The amended proposal is generally compliant with the building height control of RL100 specified in NSLEP 2013. The non-compliance with the building height control is limited only to the roof top plant to RL101.8. The amended written request prepared pursuant to Clause 4.6 in NSLEP 2013 seeking a variation to the building height control is considered to be well founded as it has adequately addressed subclause (3) in Clause 4.6 and is also consistent with the relevant objectives of the building height control and B4 Mixed Use zone and therefore in the public interest.

The amended proposal has demonstrated that there will be no additional overshadowing of the Special Area or RE1 zones as specified in the NSLEP 2013. The Visual Survey Analysis submitted as part of the amended proposal has demonstrated that whilst there will be view impact on some of the apartments within 9 William Street, the impact is predominantly caused by elements of the building at or below the building height control of RL 100. The roof top plant to RL 101.8 will not adversely impact existing views from the apartments at 9 William Street, in part, due to the design, location and height of the roof top plant which is lower than the parapet of the adjoining building at 40 Miller Street.

The site is not heritage listed under Schedule 5 of the NSLEP 2013 nor does it fall within a heritage conservation area. The heritage assessment of the application recommends further investigation of the buildings given that there may be potential for the group of four buildings, comprising Nos. 2-4 Blue Street and Nos. 1-3 William Street (also known as Conway Court) to be locally listed as a group.

However, these sites have been subject to a number of reviews at a strategic level and have never been identified for preservation, indeed the opposite is the case, whether it be under the current planning controls or those previously in force. It must be noted that while the existing buildings are representative of inter-war development they cannot reasonably be categorized as unique or rare. While demolition is regrettable, their retention cannot be justified given the historic zoning of the land and the fundamental objects of the Act seek to provide certainty and the promotion of the "*orderly and economic use and development of land*".

The amended proposal will not detrimentally impact the heritage significance of nearby heritage items given the amended form, massing, scale and materials of the building and the fact that it is generally compliant with the applicable planning controls that apply to the site.

The proposal will result in the demolition of 28 tenanted bedrooms that are identified under the Affordable Rental Housing SEPP as low-income dwellings. the vacancy rate for comparable affordable accommodation in the inner ring of Sydney where North Sydney is located is 2.8% and less than the 3%, an affordable housing contribution pursuant to Clause 51(3) of the Affordable Rental Housing SEPP is recommended as a condition of consent. The applicant does not share this view but has also not been able to share relevant information that proves the contrary. In Council's view, the loss of this number of low cost dwellings would contribute to significant further cumulative loss of affordable housing in North Sydney and such loss should reasonably be offset by contributions towards the provision of new affordable housing consistent with the objects of the Act which seek "*to promote the delivery and maintenance of affordable housing*".

Following an assessment of the development application, as amended, it is recommended that the Panel grant consent to the development application subject to conditions of consent.

1. DESCRIPTION OF PROPOSAL

The proposal, as amended, seeks consent for the demolition of all existing buildings, bulk excavation, tree removal and the construction of a 10 storey commercial building with basement parking on land at 2 – 4 Blue Street and 1 – 5 William Street, North Sydney. The proposal, in an amended application, includes the following:

- Site preparation works including demolition of all existing structures, bulk excavation and tree removal;
- Construction and use of a 10 storey commercial building, comprising:
 - 9.5 storeys of commercial office space; and
 - rooftop plant.
- Construction and use of 1.5 basement level of carparking, including:
 - driveway and pedestrian access from Blue Street;
 - 30 car parking spaces (including 2 accessible spaces);
 - 118 bicycle parking spaces and associated end of trip facilities;
 - 10 motorcycle spaces
 - 2 loading spaces for a Standard Rigid Vehicle; and
 - storage space
- Landscaping works including:
 - landscaped entry and under croft at the Blue Street entrance;
 - the provision of a wellness garden within the north-eastern corner of the lower ground level;
 - stepped planters along the William Street frontage;
 - garden bed along part of the northern boundary;
 - selected planting in the garden beds on the north-western corner of the ground floor; and
 - selected planting within the terraced garden beds on levels 5-8.
- Extension and augmentation of services and infrastructure as required.



Figure – Photomontage of proposed development, as amended, corner of Blue and William Street (Source: Woods Bagot)

1.1 Components (as amended)

Component	Proposal
Site area	2,309m ²
GFA	15,346m ²
FSR	6.6:1
Maximum Height	RL 101.8m
Number of storeys	10
Podium Setbacks • North • South • East • West	• 3.01m-6.13m • 3.7m – 24.29m • 0m (Core) - 9m • 0m - 2.29m
Tower Setbacks • North • South • East • West	• 3.01m-6.13m • 6.2m – 24.16m • 0m (Core) - 3m • 5m – 5.09m
Car spaces	30 (including two accessible spaces)
Bicycle parking spaces	118
Motorcycle spaces	10

Source: Ethos Urban

1.2 Site Preparation

1.2.1 Demolition and Excavation

All five existing buildings are proposed to be demolished to accommodate the proposed commercial building.

Excavation of the site to a depth of RL60m to all four site boundaries.

1.2.2 Tree Removal

A total of ten (10) trees on site will be required to be removed to facilitate the proposed development.

1.3 Land Use and Gross Floor Area (GFA)

The building is proposed to be used for commercial office purposes. The configuration of the building, which steps down for parts of levels 6-8, along with the terraces provided on levels 5-8, results in varied office floorplates with GFA ranging between 732m² and 1,878m². The total gross floor area of the building is 15,346m².

1.4 Setbacks

The podium and tower setbacks are indicated in Section 1.1 above.

1.5 Materials and Finishes

The following external building materials are proposed:

- Extruded terracotta mullions, louvres and spandrels;
- Dark brown/red brick masonry;
- Off-form concrete; and
- Curtain wall vision glass glazing.



Figure – Materials and Colours Schedule (Source: Woods Bagot)

1.6 Access, Parking and End of Trip Facilities

Pedestrian access to the site will be via Blue Street. All vehicle access including loading/servicing will be via a ramp at the south-eastern corner of the development, fronting Blue Street.

A total of 30 car parking spaces are proposed on the basement level, including two accessible parking spaces. Parking for 118 bikes and 10 motorcycles are also provided on the basement level. End of trip (EOT) facilities are also included in the southeastern corner of the proposed development. Access to the EOT facilities is directly from Blue Street adjacent to the lobby entry. The EOT facilities include 118 bicycle parking spaces, 270 lockers, 16 showers and four toilets.

2. STATUTORY CONTROLS

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Item of Heritage – No
- In Vicinity of Heritage Item – Yes (Shore School- I0782, St Peter’s Presbyterian Church Manse - I0792, St Peter’s Presbyterian Church and grounds - I0793, Greenwood (former North Sydney Technical High School) – I0892 and St Joseph’s Convent School and Chapel - I0918)
- Conservation Area – No

Environmental Planning & Assessment Act 1979 (as amended)

S7.11 Contribution

SREP (Sydney Harbour Catchment) 2005

SEPP (Infrastructure) 2007

SEPP No. 55 – Remediation of Land and Draft Remediation of Land SEPP

SEPP No. 70 – Affordable Housing (Revised Schemes)

SEPP (Affordable Rental Housing) 2009

SEPP (Vegetation in Non-Rural Areas) 2017

Draft SEPP (Environment)

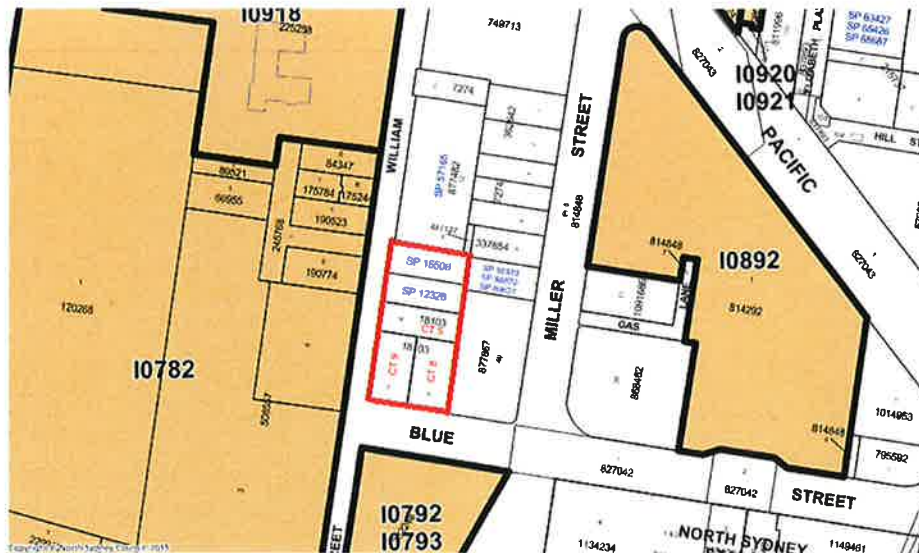


Figure – Extract from NSLEP 2013 Heritage Map (red outline is the subject site) (Source: IFM SISMap)

2.1 POLICY CONTROLS

North Sydney DCP 2013

3. CONSENT AUTHORITY

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

4. DESCRIPTION OF LOCALITY

The subject property comprises 5 lots that are legally described as the following:

- 2 Blue St North Sydney as Lot 5 in DP18103
- 4 Blue St North Sydney as Lot 6 in DP18103
- 1 William St North Sydney as Lot 4 in DP18103
- 3 William St North Sydney as SP 12328
- 5 William St North Sydney as SP 16506



Figure – Aerial photograph of subject site and surrounding development (red outline is the subject site) (Source: IFM SISMap)

All sites comprise existing residential flat buildings and in total the site has an area of 2,309sqm. The existing residential flat buildings are between two and four storeys in height. All these existing residential flat buildings comprise a similar appearance, being inter war art deco style residential flat buildings, constructed between 1939 and 1941. The five buildings contain 40 apartments comprising; 26 one-bedroom apartments; and 14 two bedroom apartments.

As detailed above, the existing residential flat buildings located at 3 and 5 William Street are strata subdivided. The existing residential flat buildings at 1 William Street, 2 Blue Street and 4 Blue Street are company titled buildings. A total of 28 of the 29 tenanted bedrooms within these three residential flat buildings are low cost dwellings under the Affordable Rental Housing SEPP when tested against the respective median weekly rental for a 1-bedroom and 2-bedroom units in North Sydney. An assessment is provided later in this report as to whether the loss is significant and whether a monetary payment is required to offset the loss or if there is comparable accommodation available for displaced tenants.

The site is located on the north-east corner of William Street and Blue Street, North Sydney and is located within the North Sydney CBD. The site is subject to significant level changes rising from RL 65m in the south east corner to RL 74m in the north west corner.

The site is zoned B4 Mixed Use under NSLEP 2013. The subject land is not within a Conservation Area and is not listed as an item of heritage under NSLEP 2013.

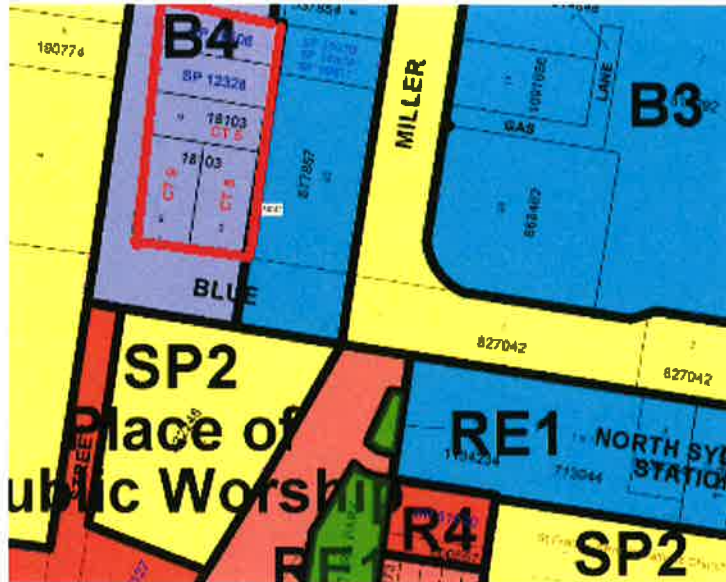


Figure - Extract from NSLEP 2013 zoning map (subject site within red outline)



Figure – Looking north from William Street towards the interface between the subject site (No. 5 William Street) and the building at No. 9 William Street



Figure – Looking north west from the corner of William and Blue Streets towards the eastern elevation of the building at the Shore School



Figure – Looking north east from corner of William and Blue Street towards the subject site (No's 2 and 4 Blue Street) and No. 40 Miller Street to the east



Figure – Looking north along William Street



Figure – Looking north from Blue Street towards the subject site (No's 2 and 4 Blue Street)



Figure – Looking south from William Street toward the subject site (No.5 William Street in foreground)

Surrounding Development

To the east of the site at 40 Miller Street is an eleven (11) storey commercial building with a parapet around the roof top plant of RL108.79. This site is zoned B3 Commercial Core.

To the north of 40 Miller Street is 44 Miller Street which is a seven (7) storey commercial building with an, in part, zero setback to the common boundary of the site. To the north east of the site is 50 Miller Street which is an eight (8) storey commercial building.

To the south-east of the site at 218 Blues Point Road is St Peters Church and Manse which are heritage listed buildings.

To the west of the site is Shore School which is also heritage listed.

To the north of the site at No.9-11 William Street is a ten (10) storey residential apartment building with a top parapet at the southern end of the building of RL101.77. This site is zoned B4 Mixed Use. A concrete driveway, approximately 5m wide, is located adjacent to the southern boundary of this site.

5. RELEVANT HISTORY

5.1 Previous application/s

Council's records do not indicate any relevant development history relating to the flat buildings at 1 William Street and 2 and 4 Blue Street.

No. 3 William Street

Strata subdivision of No. 3 William Street was approved by Council on 28 January 1977.

No. 5 William Street

Strata subdivision of No. 5 William Street was approved by Council on 4 December 1980.

1 William Street and 2 and 4 Blue Street

Strata subdivision has not occurred.

5.2 Current application

A brief history of the current application is summarised below:

28 January 2020 – The proponent had a Pre DA meeting with Council staff.

11 March 2020– DA 47/20 was lodged with Council.

27 March 2020 to 28 April 2020 – DA47/20 was notified to surrounding properties. A total of forty-five (45) submissions (25 objections and 20 in support) were received. The issues raised are summarised within the report.

14 April 2020 – DA47/20 was considered by the Design Excellence Panel. The comments made by the Panel are copied below.

8 May 2020 – The Applicant submitted draft amended plans in response to the issues raised by the Design Excellence Panel.

13 May 2020 – A preliminary assessment letter was sent to the Applicant raising the following key issues:

- Request for further articulation at the southern end of the William Street façade;
- Non-compliance with the podium height specified in NSDCP 2013;
- Inadequate northern and eastern side setbacks;
- View impacts for the residential apartments at 9 William Street;
- Privacy impacts to Shore School from Level 07 terrace and extensive western glazing;
- Inadequate tree replacement;
- Lack of awning along William Street;
- Amendments required to the written request pursuant to Clause 4.6 in NSLEP 2013;
- Request the deletion of the signage zones at plant level; and
- Public submissions.

19 May 2020 – Site inspection of a number of apartments within 9 William Street to consider view impacts.

20 May 2020 - Council briefing to the Sydney North Planning Panel.

26 May 2020 – The draft amended plans were considered by the Design Excellence Panel. The amended comments made by the Panel are also copied below.

29 May 2020 - The Applicant formally submitted amended plans to Council. A summary of the amendments, as provided by the Applicant, are copied below:

- *“The core of the building and plant has been rationalised, resulting the reduction of plant space and a lift core. This has enabled the reduction of the rooftop plant in width from 10m to 7m, thereby further retaining views from the top two south facing apartments at 9 William Street.*
- *Obscured glazing is proposed to the northern façade to improve privacy between the two sites.*
- *The southern half of the podium level has been reduced by one storey such that the podium now steps down with the street alignment.*
- *Introduction of a 2 storey setback with additional landscape at the northern ground level on the western facade. This zone also creates more opportunity for the proposed trees and landscaping in this location.*
- *Additional landscaping has been included that wraps around the northern corner of the building creating a landscape buffer to the north screening the existing driveway at 9 William Street.*
- *Additional facade articulation has been introduced centrally within the western facade to break the length of the facade. Brick materiality is extended vertically to an upper level spill planter breaking the massing.*
- *Street level setback has been introduced with integrated landscape that wraps around the southern corner onto Blue street.*
- *Windows have been removed from the eastern façade core to maintain development potential of that property and this will now be treated with a pre-cast finish to improve the outlook from the adjacent property.*
- *An awning has been introduced to the Blue Street elevation.*
- *Additional street trees to be planted in William Street.*
- *Additional planters have been introduced to the western edges of the upper level terraces to better provide privacy to the school located opposite on William Street.*
- *Substantial trees have also been added to each terrace.*
- *End of Trip facilities have been rationalised to improve security and comfort of use.”*

5 June 2020 to 19 June 2020 - DA47/20, as amended, was notified to surrounding properties. A total of fifty-eight (58) submissions (forty-five (45) in support, ten (10) in objection and three (3) neutral).

12 June 2020 – The Applicant submitted additional information in respect of Affordable Rental Housing.

24 June 2020 – The Applicant submitted a further response to the minutes of the Design Excellence Panel and a further revised written request pursuant to Clause 4.6 in NSLEP 2013. A summary of the further amendments, as provided by the Applicant, are copied below:

- *The core and rooftop plant has been further reduced and the cooling towers have been lowered into the floor below, reducing the extent of variation proposed over RL100;*
- *The planters along the western elevation have been lowered and seating incorporated into the lower level planter;*
- *The northern facade above the wellness garden has been setback a further 3.1 metres, increasing the setback from the boundary up to 6.1m and the wellness garden has been reconfigured to benefit from the increased setback;*
- *The number of parking spaces has been reduced down to 30 spaces;*
- *10 motorcycle spaces are now provided;*
- *The tree on level 7 at the northern end has been removed to overcome view impacts associated with it; and*
- *Clarified that poplar trees will be planted in the northern planter box.*

26 June 2020 - Addendum to Heritage response prepared by Urbis.

1 July 2020 - Heritage Response Peer Review prepared by Weir Phillips Architects.

1 July 2020 – A letter from Pikes & Verekers Lawyers in response to Affordable Housing.

6 July 2020 – Further revised written request pursuant to Clause 4.6 in NSLEP 2013.

6. REFERRALS

6.1 Building

Council's Building Surveyor has provided the following comments:

“The development application seeks approval for the demolition of all existing site structures and the construction of a new 10 storey commercial building with basement carpark. The building is classified by the NCC BCA 2019, Volume 1 as a Class 5 & 7a building.

The development application has been supported by an Access Assessment Report dated 27 February 2020 prepared by BCA Logic. The Report concludes that the proposed development can comply with the Deemed – to – Satisfy provisions of the BCA with some finer details to be addressed at Construction Certificate assessment stage.

That said, it should be noted that Part 4 within the Report identifies the following non-compliances with the access requirements of the BCA which if adopted may affect the external appearance of the building and/or possibly require submission of amended plans:

Part 4, Clause 4.3.1 – Principal Entrance. The revolving door is not a suitable accessible entrance and therefore an additional swinging/sliding entrance door is required to be provided adjacent to the building's main entry revolving door.

Part 4, Clause 4.3.4 – Accessible Toilets. There are no accessible unisex sanitary facilities available in the basement. An accessible unisex sanitary compartment is required to be included to the proposed bank of sanitary facilities located within the basement.

The development application has been further supported by a BCA Assessment Report prepared by BCA Logic dated 27 February 2020 ("the BCA Report"). The Report concludes that the proposed building design can achieve compliance with the BCA through a combination of meeting the Deemed – to – Satisfy provisions of the BCA and the use of Performance based and Fire Engineering Solutions.

That said, it should be noted that Part 5 of the Report contains recommendations that if adopted may result in a change to the internal or external design of the building, in particular the following Items:

Part 5.5 – Number of Exits Required. The Lower Ground Floor provides access to only a single exit. Each storey of the building is required to provide access to a minimum of two exits. Unless the use of the spiral stairs as an exit is supported by a Performance based/ Fire Engineering Solution an additional egress path, such as a passageway, from the commercial tenancy and service rooms is required to be created.

Part 5.10 – Non required stairways, ramps or escalators – The central spiral stairway is proposed to connect 3 storeys. To achieve BCA compliance the stairway is required to be modified to connect only two storeys.

A detailed assessment of compliance with the NCC BCA 2019 will be undertaken by an appropriately accredited certifier at the Construction Certificate Stage of the proposed development, addressing any finer details. Additionally, a Fire Safety Schedule is to be prepared by the certifier and accompany the Construction Certificate.

As the building is a new building compliance with the NCC BCA 2019, Volume 1 is required.

Given the above, the following Standard Condition is recommended:

Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

(Reason: Prescribed - Statutory)"

6.1.2 Comment

The condition recommended by Council's Building Surveyor is included within the attached conditions. Any external modifications to the design, at construction certificate stage, to achieve compliance with the relevant provisions of the BCA will require the lodgment of a s.4.55 application.

6.2 Engineering/Stormwater Drainage

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

6.3 Landscaping

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

"Street Trees and Private Trees

There are no street or neighbouring trees likely to be impacted.

There are 10 x mature canopy trees on site ranging in height from 4m – 18m. All 10 trees will require removal under this proposal. Council would not normally be supportive of tree removal of this scale to allow a development, but in light of the CBD location of this site, and the difficulty of being able to effectively design to allow their retention, this proposal may be supported subject to the planting of additional canopy trees.

Landscape Plan

The Landscape Plan prepared by 360^o dated 9/3/20 is considered to be generally acceptable but does not include sufficient canopy trees to replace those removed under this proposal.

Required amendments

- *An additional 7 x street trees (total 10) shall be planted along the William Street frontage.*
- *All street trees (10 along the William Street frontage, and 3 on the south west corner of the Blue Street frontage shall be *Platanus digitata* (200l).*
- *The *Solandra maxima* shown (incorrectly) as an Australian native climber in the submitted documents (this species is native to Mexico and Central America) is not considered suitable for use in the balcony plantings due to its propensity to produce large woody shoots which are prone to snapping in high winds, and may pose a risk to the public below). This species shall be replaced with one more suitable.*
- *The *Thunbergia grandiflora* is considered to be an environmental weed in much of Australia, and shall be substituted for a more suitable species.*
- *Each upper balcony level shall be amended to include a redesigned outdoor planter allowing for the planting of at least 1 (preferably more) x small canopy tree (100l) with a mature height of minimum 5m.*
- *Amended Landscape Plan shall include species, pot sizes and number."*

6.3.1 Comment

The Applicant submitted amended landscape plans in response to the comments of Council Landscape Development Officer. The amended landscape plans will form part of the attached conditions of consent.

6.4 Traffic/Parking

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

Existing Site

The subject site is located on the north-eastern corner of William Street / Blue Street intersection, some 100 metres northwest of North Sydney Railway Station. The site has street frontages approximately 66 metres in length to William Street, approximately 31 metres in length to Blue Street, and occupies an area of approximately 2,309 m².

The site is currently occupied by a number of separate residential flat buildings consisting of a total of 40 residential units that are either one or two bedrooms. Vehicular access to the off-street car parking facilities for these buildings is provided via multiple driveways directly to car spaces off the Blue Street & William Street road frontages.

Proposed Development

The proposed development involves demolition of the existing buildings on the site to facilitate the construction of a multi-storey commercial building with a cumulative floor area in the order of 15,346 m². A small retail / café component is also proposed on the ground floor level to activate its street frontage and serve local patronage.

Traffic Generation

The report suggests that the estimated net increase in traffic generation is in the order of 12 trips in the morning and 9 trips in the evening peak hours. Generally, the proposed development should not have unacceptable traffic implications in terms of road network capacity.

Parking Provision

Type of Parking	North Sydney Council DCP 2013	
	Requirement per dwellings	
Commercial (15,346m ²)	1 space / 400m ²	38
Total car parking (proposed)		30 (including 2 accessible spaces)

The development proposes 30 car parking spaces including 2 spaces for accessible parking which is compliant with Council's DCP.

Bicycle Parking

Council's DCP specifies that all new development is to provide on-site, secure bicycle parking facilities. The minimum required bicycle space for non-residential developments are 1 bicycle space per 150m² GFA for occupants and 1 bicycle space per 400m² GFA for visitors.

Type of Development	North Sydney Council DCP 2013 Bicycle Requirement		
Commercial (15,246m ²)	Occupants	1 space per 150m ² GFA	
	Visitors	1 space per 400m ² GFA	
Total Bicycle Spaces (Proposed)			118

Therefore, minimum of 118 on-site, secure bicycle parking is required to be provided. These bicycle parking spaces shall be Class 1 or 2 facilities with the preference of Class 1.

The report states that development provides a total of 118 bicycle spaces in the basement which is compliant with Council's DCP minimum requirements.

The proposal also provides for 10 motorcycle spaces which is compliant with Council's DCP.

Loading Facilities

The proposed development has provided two loading bays on lower ground level. The proposed loading bays can only accommodate a Small Rigid Trucks.

Council's DCP 2013 (amended on 5 November 2015 Section 10) requires off-street loading and unloading facilities for all commercial and industrial premises as require by Council. It does not specify the size of the loading zones for commercial and industrial developments.

The proposed loading bays to be used by Small Rigid Vehicles (SRVs) is acceptable, considering the use of development for office utilisation.

Conclusion

It is recommended that the proposed development be supported with the following conditions imposed:

- "1. That a Construction Management Plan be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate. Any use of Council property shall require appropriate separate permits/ approvals.*
- 2. That all aspects of the carpark comply with the Australian Standard AS2890.1 Off-Street Parking.*
- 3. That the developer pays to upgrade the lighting levels on Blue Street and William Street adjacent to the site, to the appropriate Australian Standard and to the satisfaction of Council."*

6.4.1 Comment:

The conditions recommended by Council's Transport and Traffic Engineer are included within the attached conditions. The condition requiring the upgrade of the lighting levels on Blue Street and William Street is considered reasonable given the scale of the development.

6.5 Strategic Planning

Council's Strategic Planners (Urban Design) have provided the following initial comments:

"Public Domain Strategy

There is no strategic direction to change/close the carriageway on Blue Street or William Street. Protecting solar access to our existing and future planned public domain is an important consideration. The Development Application (DA) suggests protection of solar access to St Peters Park. In the proposal this is achieved by shaping of the built form while also responding to the context. The DA also quotes the Local Environmental Plan.

North Sydney Local Environmental Plan 2013
6.3 Building heights and massing
(2) Development consent must not be granted for the erection of a building on land to which this Division applies if—
(a) the development would result in a net increase in overshadowing <u>between 12 pm and 2 pm from the March equinox to the September equinox (inclusive)</u> on land to which this Division applies that is within Zone RE1 Public Recreation [...]

However, chapter 4.20 of the concept design report, only provides solar diagrams of the Autumnal Equinox. It is important to see the impacts at mid-winter.

Consideration: please provide winter solstice solar impact diagrams to confirm the design intent.

Education Precinct Masterplan Report.

The site is located within the strategic direction of the Education Precinct Masterplan Report. Page 24, 66 and 67 of that report suggests potential infill trees along William Street and Blue Street. Three trees are suggested in this Development Application on both streets. However, it is unclear in the design report if these trees will be planted as part of this development. No reference is given to the London Plane tree in the plant schedule and no detail on the dimensions and engineering of the tree pit. The separation between the trees seems little for a large London Plane tree canopy.

Consideration: the Education Precinct Masterplan Report provides a diagrammatic direction to plant trees. There is further potential to replant lost trees, in particular in William Street. As per direction in the report, all trees should be built with permeable rubber surfacing and enable large canopy trees by providing separation and large tree pits (1500mm).

Further advice

The site measures more than 68m along William Street. There is minimum architectural articulation to the footpath along this street as shown in the west elevation of the Architectural Plans. The planting along the windows will make a positive impact however, due to the sloping land sits up very high and contributes more to the experience of the user of the building than to the public walking past. After the planting finishes, the brick wall continues for another 36m and gets up to 4m in height which provides no pedestrian amenity.

Advice: increase articulation in the façade along William Street by stepping the architectural detailing with the sloping land, provide space for tree canopy and/or any other measures that contribute to a human scale."

6.5.1 Comment:

Winter solstice diagrams were submitted as part of the application demonstrating that there will be no net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land that is within Zone RE1 Public Recreation. Clause 6.3(2)(a) in NSLEP 2013 is therefore satisfied.

The street tree species has been amended to be consistent with the Education Precinct Masterplan Report. The amended plans nominate the planting of three (3) *Platanus digitata* (London Plane) (200L) trees on the south west corner of the Blue Street frontage, and six (6) evenly spaced *Platanus digitata* (London Plane) (200L) trees along the William Street frontage. The nominated species provide a continuation of five (5) existing London plane trees at the northern end of William street which are successfully growing within a narrow verge adjacent to the building which has a nil setback to William Street.

The Applicant has provided the following amendments to the William Street façade to ensure that it presents at a more human scale:

- 1 *“The southern half of the podium level has been reduced by one storey such that the podium now steps down with the slope of William Street.*
- 2 *Increased two storey scale setback (Levels 02 and 03) with additional landscape at the northern ground level. This zone also creates more opportunity for the proposed trees in this location*
- 3 *Additional landscaping has been included that wraps around the northern corner of the building creating a landscape buffer to the north*
- 4 *Additional facade articulation has been introduced centrally within the facade to break the length of the western facade. Brick materiality is extended vertically to an upper level spill planter breaking the massing.*
- 5 *Street level setback has been introduced with integrated landscape that wraps around the southern corner onto Blue street”*

6.6 Community Development

Council’s Acting Director of Community and Library Services has provided the following initial comments:

Proposal

The overarching DA seeks approval for construction of a 10-storey commercial building at 2-4 Blue Street and 1-5 William Street North Sydney, comprising 9.5 storeys of commercial office space; and rooftop plant. The proposal requires the demolition of all existing buildings. The site is currently occupied by five residential buildings between two and four storeys in height. The five buildings contain 40 apartments comprising 26 one-bedroom apartments and 14 two-bedroom apartments.

The applicant submits a report by Andrew Martin Planning (AMP) February 2020 being “an assessment of the proposed development in accordance with Part 3 of SEPP (Affordable Rental Housing) 2009. AMP confirm a total of 28 of the 29 tenanted bedrooms are low cost dwellings when tested against the respective median weekly rental for a 1 and 2 bedroom unit in the North Sydney postcode. Four additional units were excluded from the calculations as were not low cost dwellings.”

The report provides a range of information including the Real Estate Institute of NSW’s vacancy rates for Jan 2020, December 2019 and November 2019.

The AMP Report (Clause 1.10 Page 3) concludes “Based on the above we are of the opinion that Council will support the demolition with no contribution to offset the loss of low-cost housing.”

Community Need

Very low- and low-income households are effectively excluded from the private rental market in North Sydney LGA. While some affordable rental is available for moderate income households, this largely consists of studio and one-bedroom apartments, with larger moderate-income households (for example those with children) excluded from the rental market.

In terms of more general availability, a first quartile studio apartment is not affordable to low income households and such households are effectively excluded from affordable rental in North Sydney LGA.

A recent Council report (September 2019) has the following key findings in Social Housing dwellings where North Sydney's most vulnerable residents are protected by legislation which caps their rent at 30% of their income:

- *1.8% of rental dwellings in North Sydney are social housing (down from 2.0% in 2001).*
- *For Greater Sydney the average number of social housing dwellings is 5.5%.*
- *From 2001 to 2016 social housing dwellings in North Sydney declined from 570 to 532.*
- *The NSW Government Family and Community Services website states there are currently 567 applicants (excluding dependents) on the general waiting list and 105 on the priority waiting list for social housing in the Northern Sydney area.*

Cumulative Loss

The difficulty in protecting and/or replacing affordable housing stock that has been lost in the North Sydney LGA has been apparent to Council for some time. Since Council's affordable housing program began in 1984, at least 2,400 affordable bed spaces have been lost in the LGA. Over the years, through contribution of land, partnerships with State Government authorities and funds levied, Council has been able to mitigate this loss through its partial or full ownership of 23 properties comprised of 39 multi-unit dwellings and houses and two boarding houses used for affordable housing. These properties include partial ownership of a nursing home and two services offering emergency accommodation to youth. Council has a goal of 5% of replacement of affordable housing stock lost. This is difficult to achieve due to the high cost of replacement.

The replacement strategy employed by Council depends on a dwindling stock of low cost private rental properties left in the LGA, such as boarding houses and non-strata subdividable flats including company title flats and units. Developer contributions collected by Council under Part 3 of the State Environmental Planning Policy (Affordable Rental Housing) 2009 remain vital in continuing its strategy, notwithstanding the 2009 Ministerial Directive that the funds collected be forwarded to FACS. Funds so directed are re-invested in the area from which they are levied. An example is the construction of a new generation Boarding House developed by Council in partnership with Link Housing and FACS in 2016.

Assessment

Cumulative loss

Guidelines for Loss of Existing Affordable Rental Housing NSW Planning 2009, page 9 states:

*"Cumulative loss of low-rental accommodation: clause 50(2)(e) –
There has been an incremental, long term decline in low rental accommodation in most areas to which the policy applies (though the rate of decline varies in time and location)."*

The individual contribution which a particular low rental building makes to the overall supply of low rental accommodation may be small, but the cumulative impact of many such losses is significant. It is therefore important to consider each application in the context of long term cumulative trends.

Conclusion.

Given the significant cumulative loss of affordable rental accommodation the proposal entails (28 bedrooms), Council is entitled to require a condition requiring a contribution to offset the cumulative loss of low rental accommodation.

Vacancy rates

The AMP report (Clause 1.6) page 2 states:

"The vacancy rate has been greater than 3% for the 3 months preceding the DA lodgement (refer to Annexure E REINSW sheet confirming Jan 2020, Dec 2019 and Nov 2019 are all above 3%)."

However, it should be noted that the vacancy rates for the Inner Ring - where North Sydney is placed by Housing NSW – for the quarter cited is 2.5% (March 2020), 2.8% (Feb 2020) 3.1% (Jan 2020), averaging 2.8%.

Recommendation

THAT *a contribution for the loss of affordable housing (28 bedrooms) be required under the Affordable Rental Housing SEPP 2009."*

6.6.1 Comment:

The above comments were sent to the Applicant on 12 June 2020, Andrew Martin, on behalf of the Applicant, provided the following response:

"We have reviewed the Councils internal referral in relation to the affordable housing assessment and we do not agree that the assessment represents a balanced application of SEPPARH. We say this because there are no provisions under Clause 50(3) of the ARHSEPP enabling a break down the Sydney vacancy rate. The Sydney vacancy rate is the rate that is called up by Clause 50(3) and is therefore the relevant vacancy rate test. Even if the inner ring criteria was applied (we say it should not be) it would be rounded up to 3.0 because the vacancy rate percentage is not expressed to the second decimal point and on this basis the vacancy rate would not be less than 3. The vacancy rate should be expressed in the same terms as it appears in Clause 50(3) and use of the second decimal point to express the vacancy rate is not correct in our opinion.

In order to further respond to the referral we request that Council provide the statistics of applications determined under this policy as required by the Guideline which states:

'Council's should also maintain statistics of applications determined under this Policy (both those involving loss or increase of affordable housing) so that emerging local trends in the supply of low rental accommodation can be identified'

Our initial review indicates that there is no significant decline in housing for very low, low or moderate incomes as reported in table 'M3A – Portion of Rental Stock that is affordable' (M3A available from Housing Tool Kit) where the portion of stock for low has increased from 2.2% in 2014 to 6.1% in 2017 and moderate stock has increased from 29.6% in 2014 to 47.9% in 2017. Very low was maintained (not in decline) at 0.6% between 2014 and 2017.

We note that SEPP 70 applies to the North Sydney LGA as of February 2019 and we request that Council advise as to why this was not referenced in the referral because there will be projected affordable income raised via mandatory affordable GFA contributions for new applications. Council has had the opportunity to amend its LEP since early 2019. This policy change should be recognised because there will now be other legislative means by which Council can achieve affordable housing. This policy only previously applied to certain councils like the Inner West but was expanded to all Council's.

Once we have the response to the number of applications determined under the policy as required by the Guideline then we can provide a further response to the referral."

A review of the vacancy rates on the Real Estate Institute of New South Wales website for the inner ring of Sydney where North Sydney is located indicates that post DA lodgment the vacancy rate has significantly increased. However, the 3 months immediately preceding the DA lodgment as required under clause 50(3) of the ARH SEPP indicates that the vacancy rate for the inner ring of Sydney fluctuated between 2.5% (March 2020), 2.8% (February 2020) and 3.1% (January 2020). If this period was extended to include the 3 months prior to January 2020 for the inner ring of Sydney, an even greater fluctuation occurs with 3.4% (December 2019), 2.4% (November 2019), 2.7% (October 2019). The average vacancy rate for the 3 months preceding DA lodgment for the inner ring of Sydney is 2.8%. The application was lodged on 11 March therefore the vacancy rate for March was included. If this was extended to 6 months preceding DA lodgment, the average vacancy rate would remain at 2.8%. In Council's opinion, a contribution pursuant to Clause 51 of the ARH SEPP is therefore required as a condition of consent given that the vacancy rate for comparable accommodation in the inner ring where North Sydney for the 3 months preceding DA lodgment is located is less than 3%.

The response from Andrew Martin (Applicant's consultant) dated 12 June 2020 was sent to Council's Acting Director of Community and Library Services who provided the following additional comments:

"The Applicant's Letter 12 June 2020 raises four matters.

- 1. Inner Ring and Vacancy Rate*
- 2. Additional Information required from Council*
- 3. Affordable Rental Stock for Low, Very Low and Moderate Incomes*
- 4. SEPP 70*

1. Inner Ring and Vacancy Rate

The applicant argues that:

"there are no provisions under Clause 50(3) of the ARHSEPP enabling a break down the Sydney vacancy rate;" and "Even if the inner ring criteria was applied (we say it should not be) it would be rounded up to 3.0 because the vacancy rate percentage is not expressed to the second decimal point and on this basis the vacancy rate would not be less than 3. The vacancy rate should be expressed in the same terms as it appears in Clause 50(3) and use of the second decimal point to express the vacancy rate is not correct in our opinion."

Response

The following excerpts are from the Department of Planning 2009 Affordable Rental Housing SEPP - Guidelines for retention of Affordable Housing October 2009 – and the comments rely on these guidelines.

The most obvious example of development that reduces low rental accommodation is the demolition of a low rental building to enable its replacement with a non-residential use. (page 5)

A Sydney vacancy rate of less than 3% is deemed to indicate that insufficient comparable accommodation is available to mitigate the impact of the development on demand for such accommodation. When that is the case, no weight can be given in assessment of this criteria to information purporting to show a sufficiency of comparable accommodation and no further analysis is required to conclude that sufficient comparable accommodation is not available. Preparation of such information necessarily adds to the cost and time involved in preparing and assessing the application. (page 6)

Where the vacancy rate for Sydney is less than 3%, it must be concluded that there is not sufficient comparable accommodation in the locality to satisfy the demand for such accommodation. In those circumstances, a development proposing a loss of such accommodation is likely to cause adverse social and economic effects on the general community. Potential adverse social and economic impacts on the general community include:

- *the displacement of existing residents who can no longer afford to live in the area causes break down of established social networks, resulting in social dislocation both for displaced residents and the community they are displaced from; (pages 7/8)*

'Comparable accommodation' is that which is similar to the existing building in terms of locality and access to facilities — it is in the same or adjacent suburbs. (Page 7)

Comments

- *It is understandable that the Applicant considers the average vacancy rate for private rental should be rounded up to 3.0 but it hard to see how this is in the interests of members of the North Sydney community in need of affordable housing. By this logic even a vacancy rate of 2.6 (14.7% below the benchmark) would be rounded up.*

It is reasonable to conclude from the excerpts from the ARHSEPP Guidelines above:

- *that by sufficient local accommodation and other social and economic matters the ARHSEPP intends the assessment process to consider the local area and local connections, not Greater Sydney (which ranges from Sydney CBD to the Hawkesbury, the Blue Mountains and Wollondilly) as suggested by the Applicant.*
- *that Council is entitled to consider the Inner Ring average as standing in for North Sydney given the Real Estate Institute publication referenced in the ARHSEPP publishes this figure.*
- *Revisiting the Vacancy rate, Council has found "The average vacancy rate for the 3 months preceding DA lodgement is 2.8%. If this was extended to 6 months preceding DA lodgement, the average vacancy rate would remain at 2.8%."*

NOTE: *The most important part of this assessment - notwithstanding the issue of vacancy rates - is that the most significant impact of the proposed development is the contribution it will make to the cumulative loss of affordable housing in North Sydney. On this basis alone it is open to Council to consider refusing the application.*

2. Request for further information

The Applicant draws Council's attention to the Clause in the SEPP

'Council's should also maintain statistics of applications determined under this Policy (both those involving loss or increase of affordable housing) so that emerging local trends in the supply of low rental accommodation can be identified' – and requests Council provide this information so that it can be reviewed,

Response

"Since Council's affordable housing program began in 1984, at least 2,400 affordable bed spaces have been lost in the LGA. Over the years, through contribution of land, partnerships with State Government authorities and funds levied, Council has been able to mitigate this loss through its partial or full ownership of 23 properties comprised of 39 multi-unit dwellings and houses and two boarding houses used for affordable housing. These properties include partial ownership of a nursing home and two services offering emergency accommodation to youth. Council has a goal of 5% of replacement of affordable housing stock lost. This is difficult to achieve due to the high cost of replacement." - 2019 Study Executive summary page 1

3. Affordable rental stock for low, very low and moderate incomes

The Applicant directs Council's attention to the NSW Local Government's Housing Kit (based on 2016 Census) results, concerning which, the Applicant comments:

"Our initial review indicates that there is no significant decline in housing for very low, low or moderate incomes as reported in table 'M3A – Portion of Rental Stock that is affordable' (M3A available from Housing Tool Kit) where the portion of stock for low has increased from 2.2% in 2014 to 6.1% in 2017 and moderate stock has increased from 29.6% in 2014 to 47.9% in 2017. Very low was maintained (not in decline) at 0.6% between 2014 and 2017."

Response

- *Council's Affordable Housing Policy focuses on cumulative loss of affordable housing in North Sydney from 1984 to the present, with systematic research published in 2008, 2013 and 2019 with annual reviews of rental affordability from 2011-2019, compared with the 2014-17 period referred to by the applicant.*
- *Council's strategies for replacement of lost affordable accommodation focuses on the most vulnerable to homelessness: those in need of social housing. Of the tenants currently in Council properties, 91% are on very low incomes (less than \$500 per week.).*
- *It is hard to see how an affordability rate of 0.6% for North Sydney residents on very low incomes isn't a concern, whether it was in decline between 2014 and 2017 or not.*
- *As mentioned, Council tracks affordability of private rental properties annually spanning from 2011 to date. The latest (May 2019) is attached and reports that:*

"Very low- and low-income households are effectively excluded from the private rental market in North Sydney LGA. While some affordable rental is available for moderate income households, this largely consists of studio and one-bedroom apartments, with larger moderate-income households (for example those with children) excluded from the rental market.

In terms of more general availability, a first quartile studio apartment is not affordable to low income households and such households are effectively excluded from affordable rental in North Sydney LGA."

4 SEPP 70

The Applicant notes:

“that SEPP 70 applies to the North Sydney LGA as of February 2019 and we request that Council advise as to why this was not referenced in the referral because there will be projected affordable income raised via mandatory affordable GFA contributions for new applications.”

Response

On 25 November 2019, Council considered a report outlining the outcomes to the public exhibition of the Local Housing Strategy (LHS) and resolved to adopt the LHS with an action to forward it to the Department of Planning Infrastructure and Environment for their approval and publication on the NSW Planning Portal. The Strategy noted (page 79), with regard to SEPP 70:

“Affordable Housing Contributions Schemes (AHCS) enables conditions to be imposed on development consents requiring the dedication of or monetary contribution for the provision of affordable housing. Despite all LGAs now being included in SEPP 70, this does not mean that North Sydney Council can automatically impose conditions on development consent for affordable housing.”

Section 7.32(3)(b) of the EP&A Act states that any condition imposed on a development consent must be authorised by an LEP and must be in accordance with an affordable housing contribution scheme for dedications or contributions set out in, or adopted by, the LEP.

The NSLHS provides the comprehensive evidence base to inform the preparation of an affordable housing contribution schemes. The Affordable housing supply gap identified in the NSLHS assists in informing Council on its decision of whether to develop an affordable housing contribution scheme and if an affordable housing contribution scheme and rate is viable. However, to ensure a consistent approach across metropolitan Sydney, it is essential that the GSC and DPE firstly implement consistent Affordable Rental Housing Targets.”

The Strategy elsewhere notes (page 78) that North Sydney Council’s current action is to:

“Continue to implement SEPP (Affordable Rental Housing) 2009 to deliver affordable rental housing.” This Strategy is guided by Council’s Affordable Housing Strategy 2017.

Recommendation

THAT *a contribution for the loss of affordable housing (28 bedrooms) be required under the Affordable Rental Housing SEPP 2009.”*

6.6.2 Comment:

The loss of affordable housing can be dealt with via a monetary contribution as a condition of consent (refer to more detailed comments in Sections 10.4 and 10.5 of this report).

6.7 Heritage

The application was referred to Lucas Stapleton Johnson (LSJ) to undertake a review of the heritage assessment prepared by Urbis dated 2 March 2020 and submitted with the application. The subject site is not heritage listed under Schedule 5 of the NSLEP 2013 nor located within a Heritage Conservation Area. This report addresses only the matters in relation to the relevant heritage provisions of the North Sydney Local Environmental Plan 2013 and North Sydney Development Control Plan 2013.

The heritage assessment provided by LSJ is attached to this report.

The heritage assessment provided by LSJ provides the following conclusion:

“Based on a site inspection, preliminary investigation into other comparable examples, and a review of the applicant’s Statement of Heritage Impact, it is the opinion of this firm that there may be potential for the group of four buildings, comprising Nos. 2-4 Blue Street and Nos. 1-3 William Street (also known as Conway Court) to be locally listed as a group.

We recommend that a more detailed assessment be undertaken, including comparative analysis of the building type in the North Sydney LGA with particular emphasis on Inter-war residential flat buildings with Art Deco, Moderne and Modernist architectural details. In addition, further research is warranted into the domestic work of the architectural firm of J.E. and E.R. Justelius and N.D. Frederick and whether any other examples of their domestic work survives in the locality.

However, based on the forgoing discussions and the site inspection, it is also clear that No. 5 William Street is of lesser significance and does not warrant heritage listing. Although it was part of the Caro Estate subdivision, it lacks aesthetic value and detracts somewhat from the main Caro Estate Flats group. As such, its demolition may be justified.

In considering the effect of the proposal on the cultural significance of heritage items within the vicinity of the subject property, the demolition of the four 1930s flats buildings at Nos. 2-4 Blue Street and Nos. 1-3 William Street will have a negative impact on the setting of nearby heritage items and will diminish the historic character of the locality directly to the south of the subject properties, most particularly St. Peter’s Presbyterian Church and Manse.

The siting, height and bulk of the proposed new development will result in encroachments into significant views of the St. Peter’s Church complex and is considered inappropriate given the heritage values of the complex of church buildings and their landscaped setting.

Elevational shadow diagrams should be prepared to demonstrate the extent of potential overshadowing on the church, manse and surrounding garden during winter solstice as a result of the proposed development. The substantial loss of solar access during winter solstice as indicated in the shadow diagrams accompanying application is considered to be unacceptable.

Further examination of the interface between the subject property and the adjacent Lavender Bay Heritage Conservation Area and Education Precinct is also required. The Caro Estate Flats play an important role in the locality as a buffer or transition site between the large scale commercial precinct to the north and east and the lower scale historical precinct to the south and west.

Consideration of not just materials and finishes, but of the bulk, height and scale of the proposed development should be undertaken with respect to how the proposed development will relate to and protect the local heritage items in the immediate vicinity and provide an appropriate transition between the CBD and the adjacent heritage conservation area."

6.7.1 Comment:

The site is not heritage listed under Schedule 5 of the NSLEP 2013 nor does it fall within a heritage conservation area. The heritage assessment of the application recommends further investigation of the buildings given that there may be potential for the group of four buildings, comprising Nos. 2-4 Blue Street and Nos. 1-3 William Street (also known as Conway Court) to be locally listed as a group.

However, these sites have been subject to a number of reviews at a strategic level and have never been identified for preservation, indeed the opposite is the case, whether it be under the current planning controls or those previously in force. It must be noted that while the existing buildings are representative of inter-war development they cannot reasonably be categorized as unique or rare. While demolition is regrettable, their retention cannot be justified given the historic zoning of the land and the fundamental objects of the Act seek to provide certainty and the promotion of the *"orderly and economic use and development of land"*.

The amended proposal will not detrimentally impact the heritage significance of nearby heritage items given the amended form, massing, scale and materials of the building and the fact that it is generally compliant with the applicable planning controls that apply to the site.

The amended proposal incorporating a stepped built form at the upper levels, varying degrees of articulation to William and Blue Street, generally characteristic external materials and finishes and a scale that is comparable to surrounding developments results in a built form that is unlikely to detrimentally impact on the significance of nearby heritage items and their setting. It is further noted that the built form is generally compliant with Council's key numerical building controls relating to building height and setbacks. The non-compliance with the building height is limited only to the roof top plant which will not be highly visible from St Peters Church or Manse given the roof top plant is setback a minimum of 29.5m (approximately) from the Blue Street boundary of the site.

Whilst the proposal will result in additional overshadowing at the winter solstice to St Peter's Church and Manse (local heritage listed item in NSLEP 2013), reasonable solar access will be maintained during the spring and autumn equinoxes. It is noted that the overshadowing at the winter solstice to St Peters Church and Manse is caused by elements of the building that comply with the relevant planning controls. Further, the significant setbacks above the podium to Blue Street and the landscaped planters assist in reducing the visual bulk of the development while ensuring a reasonable level of privacy is maintained with St Peters Church and Manse.

The proposal will result in only a negligible reduction in sky views beyond St Peters Church and Manse when viewed from Blue Point Road. The amended proposal will therefore not result in any unreasonable amenity impacts to St Peters Church and Manse. The amended proposal would therefore satisfy the relevant objective in Section 13.4 'Development in the vicinity of Heritage Items' in NSDCP 2013.

6.7.2 Further responses from Applicant

The addendum HIS report prepared by Urbis in response to the assessment of LJS and the peer review prepared by Weir Phillips Architects are attached to this report.

6.8 Environmental Health

Council's Environmental Health Officer has provided the following comments:

"The JK Environments Detailed Site Investigation (DSI) Report, dated 1 April 2020, notes the presence of Polycyclic Aromatic Hydrocarbons at levels that may pose a risk of harming human health and Total Recoverable Hydrocarbons and Zinc at a level having potential ecological impact.

The report also suspects asbestos may be within soil, however prior to demolition the site is unable to be appropriately sampled.

The DSI report is limited due to existing buildings preventing access. Bedrock was unable to be tested, however it is noted that remediation of the site is required.

A Remedial Action Plan (RAP) by JK Environments, dated 3 April 2020, noted that the site has the potential to be made suitable for its intended use subject to recommendations made with regards to further sampling following demolition, waste classification, removing fill, unexpected finds and validation.

A post demolition assessment is required to be carried out before excavation can commence to further characterise the soil contamination and finalise waste classification. In the event that additional contamination is identified, a Remedial Works Plan is to be prepared.

It is also noted that water is to be used as a measure of dust suppression during remediation. Leachate from fill poses risk of contaminating water.

The RAP must be complied with, along with any subsequent RWP following further investigation post demolition.

A Validation report is required to be completed following the completion of remediation works.

Conditions reflecting the above in addition to standard asbestos conditions (as building built before 2004) should be applied"

6.8.1 Comment

The conditions recommended by Council's Environmental Health Officer are included within the attached conditions of consent.

7 Design Excellence Panel

7.1.1 Original proposal

The original proposal, as lodged as part of DA47/20 was considered by Council's Design Excellence Panel (DEP) at its meeting of 14 April 2020 and provided the following comments:

"The Panel commends the applicant on a proposal to develop a commercial building with architectural merit and a high level of internal amenity, on the edge of the North Sydney CBD.

A key issue is the length and treatment of the William Street wall, particularly because it faces this relatively narrow street. The wall is over 60m in length and will appear as one long, unbroken wall from a number of viewpoints; immediately within the street at the pedestrian scale and from further away within the precinct given the building's scale. The brick and terracotta façades are appropriate in terms of materiality, however, additional articulation of the William Street elevation is to be provided, consistent in consideration with surrounding buildings that share a similar use of materials. Apart from the immediately opposite school building, William Street to the north of the site is not unattractive, because of a combination of setbacks and planting. The subject development should include some similar setbacks/articulation and planting. The Panel noted the importance of integrating materials, scale, setbacks/articulation and detailing.

At the William Street ground plane there is limited activation along the street edge. The difficulties presented by level changes across the site are acknowledged, however the provision of a more active street edge should be explored. A setback to the on-grade floor could be considered to provide a more generous public domain. Additionally, it is unlikely that the substantial street trees shown on the landscaping plan will grow in William Street with the nil setback proposed. The provision of two or three building recesses to accommodate the canopies of substantial street trees would also provide the very desirable break in the long western façade. The panel strongly supports street trees on William Street.

Consideration should be given to an increased building setback from the northern boundary, which would potentially provide greater amenity to the below ground internal courtyard in the commercial building and also increase building separation to the residential building to the north of the site. This may also allow for passive ventilation and avoid the need to sprinker the northern elevation.

Opportunities for additional landscaping desirably including at least one tree at ground level on the northern boundary should be considered, and privacy impacts on the residential building to the north require further resolution, possibly through the use of angled windows looking out to William Street.

The Panel queries the appropriateness of a nil setback to most of the eastern boundary given that the adjoining development to the east at 40 Miller Street has a stepped setback.

The integrated landscape concept within the development should be extended into a generous landscape treatment at the ground plane contiguous with the public domain. The details of how the plinth wall and covered pedestrian path would operate are somewhat unclear from the 3D images and ideally the path would extend around the corner of the building. The landscaping in this area should not be limited to a planter box. The possibility of extending the internal landscape treatment out to the street should be explored, in order to create a desirable public space where people would want to spend time.

The location and configuration of end of trip facilities should be reviewed in light of CPTED principles, as the current access via a long narrow corridor with a bend is potentially uninviting and may not achieve the aim of promoting increased use of bicycles as a mode of transport.

Conclusion

The Panel provides qualified support for the proposal, subject to the identified issues being satisfactorily addressed."

Comment: The Applicant has made amendments to address the principle issues raised by the Design Excellence Panel. These amendments are summarised below:

- *“Additional privacy treatment to the northern facade and additional planting on the north western corner. This treatment will allow light into the workspace whilst creating visual privacy to 9 William street.*
- *Increased two (2) storey scale setback with additional landscape. This zone also creates more opportunity for the proposed trees in this location.*
- *Additional landscape has been included that wraps around the northern corner of the building creating a landscape buffer to the north.*
- *Additional facade articulation has been introduced to break the length of the western facade. Brick materiality is extended vertically to an upper level spill planter breaking the massing.*
- *Street level setback has been introduced with integrated landscape that wraps around the southern corner onto Blue street.*
- *To improve visibility and security, glass windows are placed at the base of the ramp incorporating signage visible from the street. Access to the end of trip (EOT) is primarily via stair direct into a glazed reception that links the EOT and the parking level lift lobby. The parking level lifts have been enclosed with a glazed facade that allows EOT users to access lifts without passing through the parking area.”*



Interior View - Privacy Treatment to Glazing



External View - Privacy Treatment to Glazing

Figure – Amendments to the northern façade facing residential flat building to the north at No. 9 William Street

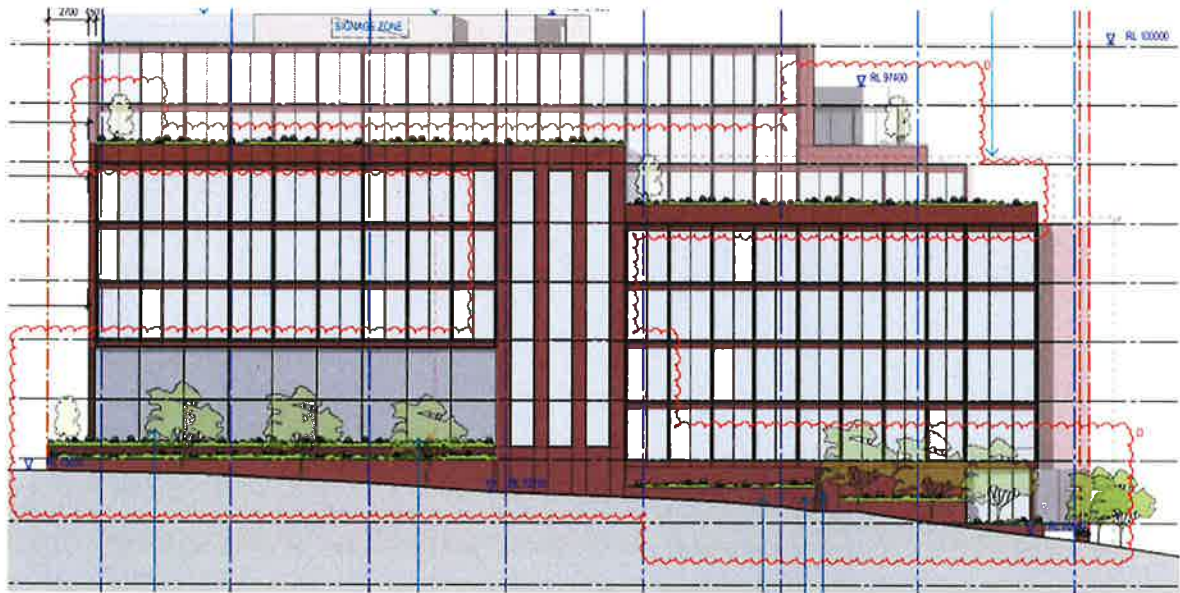


Figure – Amendments to the articulation and treatment of western façade fronting William Street



Corner of William and Blue streets with additional planting & glazing

1. Street trees located with additional setback
2. Increased articulation to western facade
3. Street level spill planting and recessed brick facade
4. Additional planting wraps south western corner and connects into the landscaped public stair and street frontage
5. Additional glazing wraps south western corner
6. Level 6 has been set back at its southern half to further articulate a stepping towards Blue Street. Previously this setback happened on the floor above
7. Pedestrian Awning

Figure – Amendments to the corner of Blue and William Street

7.1.2 Amended proposal

The amended proposal, was considered by Council's Design Excellence Panel (DEP) at its meeting of 26 May 2020 and provided the following comments:

"The Panel felt that the amended plans have generally responded positively to a number of issues raised at the previous Panel Meeting.

The amendments to the façade treatment to William Street are supported. The modified design provides appropriate articulation to assist in breaking up the visual massing.

The amendments to open up the south-western building corner is a positive outcome and is supported.

Further consideration of the William Street ground plane is required. The height of the stepped planters should be removed to allow for a widening of the pavement allowing for an increased soil zone for street trees as well as the incorporation of seating.

The amended plans have not provided an additional setback to the northern façade which was previously requested by the Panel. However, privacy screening is proposed to the northern façade which will assist with minimising overlooking to the adjoining residential properties.

The inclusion of London Plane trees along the northern frontage is fully supported, but as indicated in the section, they are planted on a 'ledge' and their root systems would not have access to deep-soil, severely compromising their viability. The profile of the northern retaining wall must be amended to ensure that this is well-resolved.

A primary concern remains that the building setbacks to the street trees in William Street are inadequate. The provision of increased setbacks or recesses at ground/ lower levels should be considered to accommodate the canopies of substantial trees, it being noted that these are also London planes which are large species.

The amended designs have not increased the amount of daylight accessing the below ground wellness garden fronting the northern boundary. An increased setback on level 2 and 3 corresponding to the frontage width of the wellness garden should be considered.

No amendments have been proposed to the solid wall along the eastern boundary. The adjoining building at No.40 Miller Street has a stepped setback and a glazed façade. Consideration should be given to providing setbacks to improve light and amenity to the adjoining commercial building.

Conclusion

The panel provides qualified support for the proposal, subject to the identified issues being satisfactorily addressed."

Comment: The applicant provided the following further comments and amendments in response to the DEP comments:

- *"The core and rooftop plant has been further reduced and the cooling towers have been lowered into the floor below, reducing the extent of variation proposed over RL100;*
- *The planters along the western elevation have been lowered and seating incorporated into the lower level planter;*

- *The northern facade above the wellness garden has been setback a further 3.1 metres, increasing the setback from the boundary up to 6.1m and the wellness garden has been reconfigured to benefit from the increased setback”*

The further amendments have addressed to remaining issues raised by the Design Excellence Panel.

8 External Referrals

8.1 Transport for NSW

Transport for NSW (TfNSW) has reviewed the application and has the following comments:

1. *“A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for determination prior to the issue of a construction certificate.*
2. *The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004 and AS 2890.2-2002 for heavy vehicle usage.*
3. *All vehicles are to enter and exit the site in a forward direction. Provision for vehicles to turn around must be provided within the property boundary.*
4. *The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval which shows that the proposed development complies with this requirement.”*

8.1.2 Comment:

The conditions recommended by TfNSW are included within the attached conditions.

8.2 Ausgrid

Ausgrid has reviewed the application and provided the following comments:

“Proximity to Existing Network Assets

Underground Cables

There are existing underground electricity assets in Blue Street & transmission cables in William St. Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Safework Australia – Excavation Code of Practice, and Ausgrid’s Network Standard NS156 outlines the minimum requirements for working around Ausgrid’s underground cables. Substation There are existing electricity substation assets S3589 on Blue ST.

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

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

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

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

For further details on fire segregation requirements refer to Ausgrid's Network Standard 113. Existing Ausgrid easements, leases and/or right of ways must be maintained at all times to ensure 24 hour access. No temporary or permanent alterations to this property tenure can occur without written approval from Ausgrid.

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

8.2.1 Comment:

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

8.3 Sydney Metro

Transport for NSW (TfNSW) has delegated its rail authority functions in relation to the Sydney Metro City and Southwest and Sydney Metro Northwest rail corridors to Sydney Metro. Therefore, Sydney Metro is the relevant rail authority for the Sydney Metro City and Southwest rail corridor for the purpose of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP).

"Sydney Metro has assessed the development proposed by the DA in accordance with the requirements of clause 86(4) of the ISEPP.

In this regard, Sydney Metro has taken into account:

- (a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:*
 - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and*
 - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and*
- (b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.*

Concurrence granted subject to conditions

Sydney Metro has taken the above matters into consideration and has decided to grant its concurrence to the development proposed in the DA, subject to the consent authority imposing the conditions at Attachment A.

Should the consent authority determine not to impose the conditions provided in Attachment A in the form provided, then concurrence from Sydney Metro has not been granted to the DA.

The consent authority is also advised that Sydney Metro's concurrence is not to be amended, replaced or superseded by any concurrence which may be issued by any other authority, without further agreement from Sydney Metro.

Next steps

If, at any point, the DA is amended prior to the consent authority's determination, please ensure that the amended DA and any new or amended supporting documents are provided to Sydney Metro for further assessment. Any amendments to the DA may alter the impacts of the proposed development on the Sydney Metro City and Southwest rail corridor assessed by Sydney Metro, so Sydney Metro may need to amend (or refuse) its concurrence."

8.3.1 Comment:

The conditions recommended by Sydney Metro are included within the attached conditions. The amended plans were provided to Sydney Metro on 3 June 2020. The amended plans do not propose any additional excavation, as such there is unlikely to be any additional impact on the rail corridor. At the time of drafting this report, Sydney Metro had not provided any additional comments and/or conditions.

8.4 Sydney Water

Sydney Water has reviewed the application and provided the following comments:

"Water Servicing

- *Potable water servicing should be available via either a 375mm CICL watermain (laid in 1968) on William Street or a 100mm CICL watermain (laid in 1938) on Blue Street.*
- *The 100mm CICL watermain on Blue Street will require amplifications if connected to.*

Wastewater Servicing

- *Wastewater servicing should be available via a 225mm EW wastewater main (laid in 1940) within the property boundary.*

This advice is not formal approval of our servicing requirements. Detailed requirements, including any potential extensions or amplifications, will be provided once the development is referred to Sydney Water for a Section 73 application."

8.4.1 Comment:

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

9 SUBMISSIONS

9.1 Public notification of original application

The original application was notified to the Central Business District precinct and surrounding owners in accordance with Council policy from 27 March 2020 to 28 April 2020. A total of forty-five (45) submissions (25 objections and 20 in support) were received.

The key issues (objection) and key reasons (support) and the number of submissions identifying these are included in the table below. A summary of the submissions is attached to this report.

<i>Key Issues (objections)</i>	<i>No. Submissions</i>
• Construction impacts;	13
• View impacts;	11
• Loss of privacy and overlooking;	10
• Excessive bulk and scale and building height;	10
• Loss of amenity;	8
• Inadequacy of design;	6
• Noise impacts during construction;	4
• Tree removal;	3
• Increased traffic;	3
• Inadequate setbacks;	2
• Request tree planting along northern boundary;	2
• Distraction to students of the Shore School;	2
• Wind tunnel effect along William Street;	2
• Loss of outlook;	2
• Reduction in natural light and sky views;	1
• Loss of fauna habitat with tree removal;	1
• Detrimental visual impact on nearby heritage items;	1
• Excessive glass;	1
• Non-compliance with podium control;	1
• Impacts on future redevelopment; and	1
• Lack of awning along William Street.	1
<i>Key Reasons (support)</i>	
• Contribute to many benefits in the local area;	20
• Economic stimulus that will boost the property market;	13
• Improvements to the streetscape; and	7
• Aligns with Council's plan to grow the North Sydney CBD;	4

9.2 Public notification of amended application

The amended application was notified to Central Business District precinct and surrounding owners in accordance with Council policy from 5 June 2020 to 19 June 2020. A total of fifty-eight (58) submissions (forty-five (45) in support, ten (10) in objection and three (3) neutral).

The key issues (objection) and the number of submissions identifying these are included in the table below. A summary of the submissions is attached to this report.

Key Issues (objections)	No. Submissions
• View impacts;	8
• Loss of natural light and sky;	2
• Demolition of fine examples of Inter War buildings;	2
• Height non-compliance resulting in view and/or solar impacts;	3
• Inadequacy of written request pursuant to Clause 4.6 in NSLEP 2013;	3
• Northern façade treatment and setback;	1
• Public health issues arising from setbacks and ground level treatment to William Street;	1
• No details on proposed textured concrete panels; and	1
• Consumption of alcohol and smoking on upper level balconies	1

The further amended plans and written request pursuant to Clause 4.6 in NSLEP 2013 received by Council on 24 June 2020 and 6 July 2020 (respectively) were not required to be notified in accordance with Section 3.6 of the North Sydney Community Participation Plan. The amendments primarily related to a further reduction in the size of the roof top plant, an increased setback to the northern boundary for the wellness garden and the provision of seating integrated within the planters along William Street. In Council's view, the amendments are minor and not considered to have a greater of different adverse effect on adjoining properties.

9.3 Comment

The issues raised in the submissions are addressed within Section 15 of this report.

10 CONSIDERATION

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

10.1 SEPP 55 and Contaminated Land Management Issues

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

A Preliminary Site Investigation report was prepared by JK Environments dated 17 January 2020. The site history information in this report indicated that the existing buildings at the site were constructed prior to 1943 and were utilised for residential purposes. A motor garage (e.g. mechanics, possibly including fuel dispensing facilities) was located immediately to the east of the site in the 1950s.

"The report identified the following potential contamination sources:

- *Fill material – Due to the steep slope of the area, the site appears to have been historically filled to achieve the current level platform for the existing buildings. The fill may have imported from various sources and could be contaminated;*
- *Use of pesticides – Pesticides may have been used beneath the buildings and/or around the site for typical residential applications;*
- *Motor garage – A historical motor garage business was listed as being located immediately to the east of the site in the 1950s, which is considered to be a potential off-site source of contamination; and*

- ***Hazardous Building Materials** – The existing buildings appear to have been constructed prior to 1943, however potential hazardous building materials may be present as a result of building and demolition activities during and before this time. These materials may also be present in the existing buildings on site in the form of peeling paint with the potential to contain elevated levels of lead.*

The report recommended a Detailed Site Investigation to confirm whether the site is suitable for the proposed development without the need for remediation, or that the site can be made suitable subject to remediation. Where remediation is required, a Remediation Action Plan (RAP) is to be prepared and submitted to the consent authority.

A Detailed Site Investigation and Remedial Action Plan was also prepared by JK Environments dated 1 and 3 April 2020, respectively.

The Detailed Site Investigation identified that “concentrations of carcinogenic polycyclic aromatic hydrocarbons (PAHs) above the human-health site assessment criterion (SAC) were identified in fill at three locations that were relatively widespread across the site. Concentrations of total recoverable hydrocarbons (TRHs) and zinc exceeding the ecological-based (SAC) were also identified in fill at two locations.”

“The Tier 1 risk assessment established that the risks associated with contamination at the site are relatively low in the context of the proposed development as all fill will be removed from the site as part of the basement construction.”

Nevertheless, the fill is contaminated, and a Remedial Action Plan is required to document the procedure for remediating the site.

The Remedial Action Plan concluded that “remediation is considered to be straight forward and includes the excavation and off-site disposal of all fill, which will occur to facilitate construction of the basement. JKE are of the opinion that the site can be made suitable for the proposed development provided this RAP is implemented accordingly. A site validation report should be prepared on completion of remediation activities and should be submitted to the consent authority.”

Subject to relevant conditions of consent requiring the implementation of the Remedial Action Plan and preparation of a site validation report, the proposal is considered satisfactory having regard to Clause 7(1) in SEPP 55.

10.2 SREP (Sydney Harbour Catchment) 2005

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

10.3 SEPP (Infrastructure) 2007

The development proposes excavation to a depth of greater than 2m and within 25m of a rail corridor. Accordingly, the application was referred to Sydney Metro pursuant to Clause 86 of the SEPP (Infrastructure) 2007 (ISEPP). Transport for NSW (TfNSW) has delegated its rail authority functions in relation to the Sydney Metro City and Southwest and Sydney Metro Northwest rail corridors to Sydney Metro.

As detailed within Section 8.3 of this report, Sydney Metro has assessed the proposal in accordance with the requirements of clause 86(4) of the ISEPP. Sydney Metro has taken the above matters into consideration and has granted concurrence to the development subject to conditions of consent. The conditions recommended by Sydney Metro are included within the attached conditions of consent.

The proposed development is identified as being traffic generating development in the meaning of Schedule 3 and Clause 104 of the ISEPP as it seeks approval for a commercial premise with a floor area of 15,246m². As detailed within Section 8.1 of this report, Transport for NSW have reviewed the application and provided comments. These comments are incorporated within the attached conditions of consent.

10.4 SEPP (Affordable Rental Housing) 2009

The Environmental Planning and Assessment Act 1979 provide objects which aim to provide for the promotion and maintenance of affordable housing. Section 1.3(b) of the Act provides the following Objects:

1.3 Objects of Act (cf previous s 5)

The objects of this Act are as follows—

(a) ...

(d) to promote the delivery and maintenance of affordable housing.

In relation to the subject proposal Council must have regard for the potential impact of development on the maintenance of affordable housing. In Council's opinion, SEPP (Affordable Rental Housing) applies to the proposal and has been considered below.

Part 3 of the SEPP (Affordable Rental Housing) 2009 is a matter for consideration in the assessment of this application given that some of the buildings which are proposed for demolition were reasonably assumed to be low-rental residential buildings as at 28 January 2000.

The assessment under Part 3 of the SEPP is limited to the demolition of the Company Title apartment buildings at 1 William Street, 2 and 4 Blue Street. The remaining apartment buildings at 3 and 5 William Street are Strata titled and therefore do not form part of the assessment.

An Affordable Rental Housing Assessment under the State Environmental Planning Policy (Affordable Rental Housing) 2009 was prepared by Andrew Martin Planning dated 28 February 2020 and has been submitted as part of the application. It is noted on page 6 of the Assessment the following comments are made:

"The following clauses are relevant to the assessment of the application.

Cl. 49 Buildings to which Part applies

- (1) This Part applies only to those buildings that were low-rental residential buildings as at 28 January 2000, and does not apply to any building that becomes a low-rental residential building after that date.*
- (2) This Part does not apply to a building:*
 - (a) that has been approved for subdivision under the Strata Schemes (Freehold Development) Act 1973, or*
 - (b) to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies, or (c) owned by, or under the care, control and management of, a social housing provider (emphasis added)*

Comment: *The SEPP provisions apply to the subject building given that the application seeks demolition of a three (3) Company Title buildings....."*

A reasonable assumption is made that the author of this assessment has formed the view that three (3) of the buildings (2 and 4 Blue Street, 1 William Street) that comprise the site were low rental residential buildings as at 28 January 2000. If the author was not of this view than no assessment would have followed. Council forms a similar view to the author of this assessment in that the three buildings (2 and 4 Blue Street, 1 William Street) that comprise the site must reasonably be assumed to be low rental residential buildings as at 28 January 2000. A review of Council's historical files associated with these three buildings does not indicate anything differently to this reasonable assumption.

It is a fact that these three buildings do not have approval for subdivision under the Strata Schemes Act 1973 and that 28 of the tenanted bedrooms were low rental dwellings for the 24 months prior to DA lodgment. The comments made on pg.6 of the letter from Mr Joshua Palmer from Pikes and Verekers Lawyers dated 29 June 2020 are of little relevance given the buildings were not under the current company title as at 28 January 2000.

In light of the information submitted with the application it is reasonable to assume that the relevant buildings (2 and 4 Blue Street, 1 William Street) were low rental dwellings at the relevant date and therefore Part 3 of the SEPP ARH applies to the assessment of the application. In circumstances where the applicant has not provided information to the contrary Council must consider the potential loss of affordable housing.

Clause 50(2) of the SEPP states that following is to be taken into consideration to determine whether there is a reduction in the availability of affordable housing:

(a) whether there is likely to be a reduction in affordable housing on the land to which the application relates,

A total of 28 of the tenanted bedrooms within the buildings at 2 and 4 Blue Street and 1 William Street are low cost dwellings when tested against the respective median weekly rental for a 1 and 2 bedroom unit in North Sydney. These are as follows:

9 x 1 bedrooms - 2 Blue Street North Sydney
11 x 1 Bedrooms - 4 Blue Street North Sydney
4 x 2 Bedroom – 1 William Street North Sydney

Given that the building contains low rental dwellings for the 24 month prior to lodgment of the DA an assessment is undertaken below as to whether the loss is significant and whether a monetary payment is required to offset the loss or is there comparable accommodation available for displaced tenants.

The rental information has been provided by the Company Director of 1 William Street and 2 and 4 Blue Street, Mr Robert Barnes, which confirms that the rental information provided in the rental schedule used in the Affordable Rental Housing Assessment is a true record of the current rentals and owner/tenant profiles.

(b) whether there is available sufficient comparable accommodation to satisfy the demand for such accommodation,

Clause 50(3) of the SEPP states that “for the purposes of subclause (2) (b), sufficient comparable accommodation is conclusively taken to be not available if the average vacancy rate in private rental accommodation for Sydney as published monthly by the Real Estate Institute of New South Wales is, for the 3 months immediately preceding the date of lodgment of the development application, less than 3 per cent.”

As detailed by Council's Acting Director of Community and Library Services in the comments in Section 6.6 of this report, the vacancy rates for the Inner Ring, where North Sydney is placed by Housing NSW for the 3 months prior to lodgement of the DA is 2.5% (March 2020), 2.8% (Feb 2020) 3.1% (Jan 2020), averaging 2.8%. Given the DA was lodged on 11 March 2020, it is considered appropriate to consider the vacancy rate in March 2020. Furthermore, it is also considered most appropriate to consider the vacancy rate of the Inner Ring, rather than the whole of Sydney given that any vacant comparable accommodation should be in relatively close proximity to where the loss in affordable accommodation occurs. It is noted that Clause 47(1) of the SEPP ARH defines "comparable accommodation" as:

"comparable accommodation means accommodation that is comparable with the accommodation provided within the premises the subject of a development application to which this Part applies in that:-

- (a) it is similar in location because it is in the same or a neighbouring suburb, and***
- (b) it is at the same rental level, or is not more than 5 per cent higher than that level, and***
- (c) it is available for occupation at the date of lodgement of the development application, and***
- (d) in the case of residential flat buildings, comprises dwellings with the same number of bedrooms as the dwellings in the premises the subject of the development application."***
(underline my emphasis)

Given the vacancy rate is less than 3% it is concluded that there is not sufficient comparable accommodation within North Sydney to accommodate this proposed reduction in affordable housing.

- (c) whether the development is likely to cause adverse social and economic effects on the general community,***

The loss of 28 tenanted bedrooms may not seem like a lot having regard to the number of 1 and 2 bedroom apartments within North Sydney but the issue is that there has been an "incremental, long term decline in low rental accommodation" which creates social and economic impacts on the community. A contribution should therefore be required to offset this loss in affordable housing.

- (d) whether adequate arrangements have been made to assist the residents (if any) of the building likely to be displaced to find alternative comparable accommodation,***

The Assessment Report advises that all tenants are employed and not on government assistance and are not disabled with only two (2) tenants over the age of 60. A one-off payment of \$500 for Unit 12 at 2 Blue Street and Unit 23 at 4 Blue Street is required given that these tenants are over 60 years of age and this will assist these residents in finding alternate accommodation. Conditions are recommended to ensure appropriate assistance is provided to these at risk tenants.

- (e) the extent to which the development contributes to any cumulative loss of affordable housing in the local government area,***

Council's Acting Director of Community and Library Services has provided detailed comment on the cumulative loss of affordable housing in the North Sydney LGA in recent times. This is the subject of a number of Council and State mandated policy documents including

1. The Local Strategic Planning Statement (LSPS) adopted by Council in November 2019 and assured by the GSC in March 2020.
2. The Local Housing Strategy (LHS) adopted by Council in November 2019.
3. North Sydney Affordable Housing Strategy adopted by Council in 2017.

The proposed development would result in the permanent loss of 28 tenanted bedrooms, which contributes to a substantial cumulative loss of affordable housing to the North Sydney area. To offset this permanent loss a monetary contribution is recommended to be imposed as a condition of consent to offset this loss of affordable housing.

- (f) the structural soundness of the building, the extent to which the building complies with any relevant fire safety requirements and the estimated cost of carrying out work necessary to ensure the structural soundness of the building and the compliance of the building with the fire safety requirements,***

The Applicant has not provided any details relating to the structural soundness of the buildings. Given these buildings are tenanted it is reasonable to assume that they are structurally sound and also subject to recent fire safety upgrades.

- (g) whether the imposition of a condition requiring the payment of a monetary contribution for the purposes of affordable housing would adequately mitigate the reduction of affordable housing resulting from the development,***

A condition requiring the payment of a monetary contribution is required given the reasons provided in (b) and (c) above.

- (h) in the case of a boarding house, the financial viability of the continued use of the boarding house.***

Not applicable.

As detailed above, the proposal is likely to reduce the availability of affordable housing within the area of North Sydney therefore a monetary contribution, via a condition of consent is recommended in accordance with Clause 51(2)(b) of the ARH SEPP.

Contributions for affordable Housing (Clause 51 SEPP(ARH))

In accordance with the provisions under Clause 51 of the SEPP (ARH), development which results in the loss of affordable housing is subject to contributions in lieu of the loss of affordable housing. As indicated above the development is considered to result in the loss of 28 tenanted bedrooms and is subject to contributions. Subclause (2) provides that:

- (2) *For the purposes of section 7.32 (3) (b) of the Act, this Policy authorises a condition to be imposed under section 7.32 of the Act if—*
- (a) the consent authority, when determining a development application referred to in clause 50 (1), is satisfied that the proposed development will or is likely to reduce the availability of affordable housing within the area, and*
 - (b) the condition is imposed in accordance with the scheme for dedications or contributions set out in subclauses (3) and (4).*

Clause 51(3) of the ARH SEPP outlines how the contribution is to be calculated.

- (3) *If a condition is to be imposed under this clause, the amount of the contribution is to be calculated in accordance with the following formula—*

$$C = L \times R \times 0.05$$

where—

C is the contribution payable.

L is the total number of bedrooms in a low-rental dwelling and boarding rooms that will be lost by the proposed development.

R is the replacement cost calculated as the average value of the first quartile of sales of strata properties in the local government area in which the development is to take place, as specified in the 4 most recent editions of the Rent and Sales Report

In this case, a total of 28 tenanted bedrooms will be lost by the proposed development. The replacement cost for the first quartile of sales of strata properties in North Sydney for the 4 most recent edition (December 2019, September 2019, June 2019 and March 2019) of the Rent and Sales Report are indicated below:

December 2019; First Quartile Sales for Strata properties in North Sydney - \$820,000
September 2019; First Quartile Sales for Strata properties in North Sydney - \$760,000
June 2019; First Quartile Sales for Strata properties in North Sydney - \$762,000
March 2019; First Quartile Sales for Strata properties in North Sydney - \$808,000
(Source: NSW Government – Community & Justice website – Rent and Sales Report)

The average value, and therefore the replacement cost, based on the above, is \$787,500.

$$C = 28 \times \$787,500 \times 0.05$$
$$C = \$1,102,500$$

The contribution payable for the loss of affordable housing is therefore \$1,102,500.00.

10.5 SEPP No. 70 Affordable Housing (Revised Schemes)

SEPP No. 70 Affordable Housing (Revised Scheme) (“SEPP 70”) is also a matter for consideration in the assessment of this application.

Clause 10 of SEPP 70 outlines the requirements for the imposition of Section 7.32 contributions.

“Pursuant to section 7.32 (3) (a) of the Act, the following requirement is prescribed with respect to the imposition of conditions under section 7.32 of the Act on development consents: A consent authority is to have regard to the affordable housing principles set out in Schedule 2 before imposing such a condition.”

Section 7.32(1)(a) applies in Council’s opinion as the proposal will or is likely to reduce the availability of affordable housing within North Sydney, in this case the loss of 28 tenanted bedrooms. An action of North Sydney Council’s Local Housing Strategy is to “continue to implement SEPP (Affordable Rental Housing) 2009 to deliver affordable rental housing”. A contribution is therefore recommended to ensure that affordable housing continues to be available for low or moderate income households within North Sydney.

Consideration has been given to the principles set out in Schedule 2 of SEPP 70 and Council is of the view that an affordable housing contribution of \$1,102,500.00 is required as a condition of consent.

10.6 SEPP (Vegetation in Non-Rural Areas) 2017

The proposal will not result in the clearing of any native vegetation or clearing that exceeds the biodiversity offsets scheme, and does not involve clearing that is, or forms part of a heritage item or a heritage conservation area. The amended proposal incorporates adequate number of replacement trees along both William and Blue Streets to offset to the loss of trees from the site. The proposal is considered satisfactory having regards to the requirements of this SEPP.

10.7 Draft SEPP (Environment)

This draft SEPP proposes to integrate the provisions of seven (7) SEPPs/SREPs including SREP (Sydney Harbour Catchment) 2005. The majority of the current provisions of SREP (Sydney Harbour Catchment) 2005 would be transferred to the draft SEPP with necessary updates and some amendments. The proposal would not offend the relevant provisions of the draft SEPP as detailed in the SEPP discussions above.

10.8 North Sydney Local Environmental Plan 2013

10.8.1 Permissibility within the zone

The proposal is permissible with consent under the B4 Mixed Use zoning.

10.8.2 Zone B4 Mixed Use

The objectives of the B4 Mixed Use zone are copied below:

- *"To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *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 provides for a commercial development with high grade commercial space that is within a highly accessible location within the North Sydney CBD, close to North Sydney train station and the future Victoria Cross Metro station. Whilst the proposal does not provide for any residential component this is considered acceptable given the location of the site within the North Sydney CBD wherein a principle objective is to maintain the North Sydney Centre as a major commercial centre.

10.8.3 Height of buildings – Clause 4.3

North Sydney Centre	Proposal	Control	Compliance
Height (Cl. 4.3)	Parapet (around level 09) – RL100 Parapet (around core) – RL101.80	RL 100 AHD	No

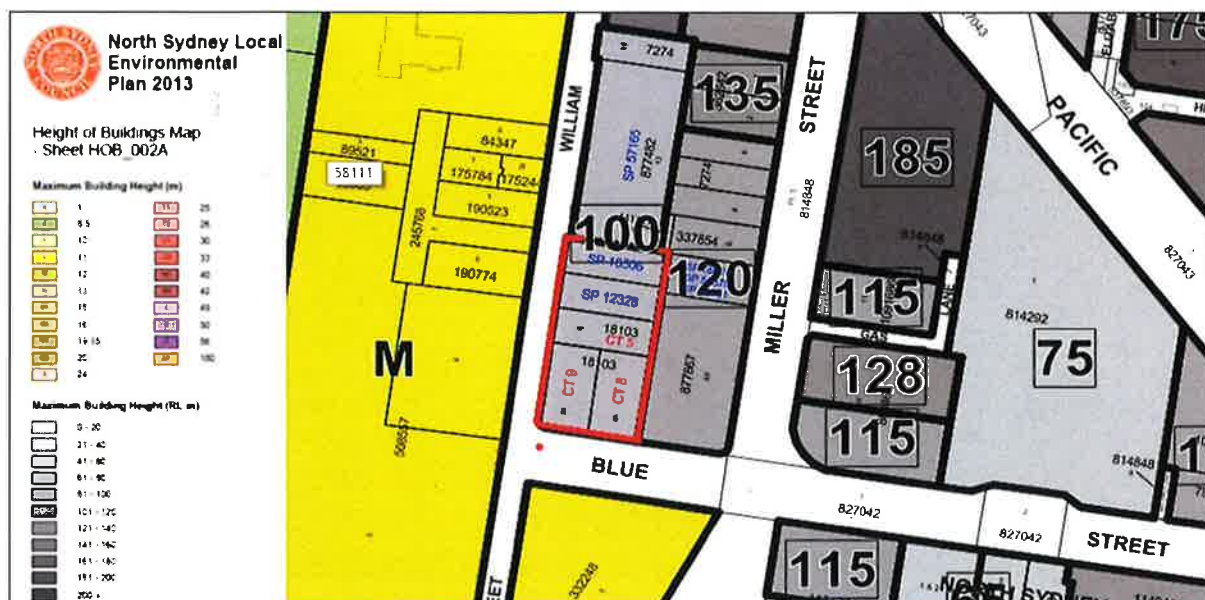


Figure – Extract from the NSLEP 2013 height of building map

10.8.4 Exception to development standard - Clause 4.6

An amended written request pursuant to Clause 4.6 in NSLEP 2013 prepared by Ethos Urban dated 6 July 2020 was submitted as part of the amended proposal.

Clause 4.3 in NSLEP 2013 specifies a maximum building height of RL100 applies to the subject site.

The height of the proposed building to the top of the plant and lift overrun is RL 101.8, which equates to variation of 1.8m (a variation of 1.8%). The proportion of the building envelope above a height of RL100 is shown and red outline in the Figures below. This portion of the building comprises plant and lift overruns. It does not contain any gross floor area.



Figure – Section diagram indicating the roof top plant that is located to a maximum RL101.80

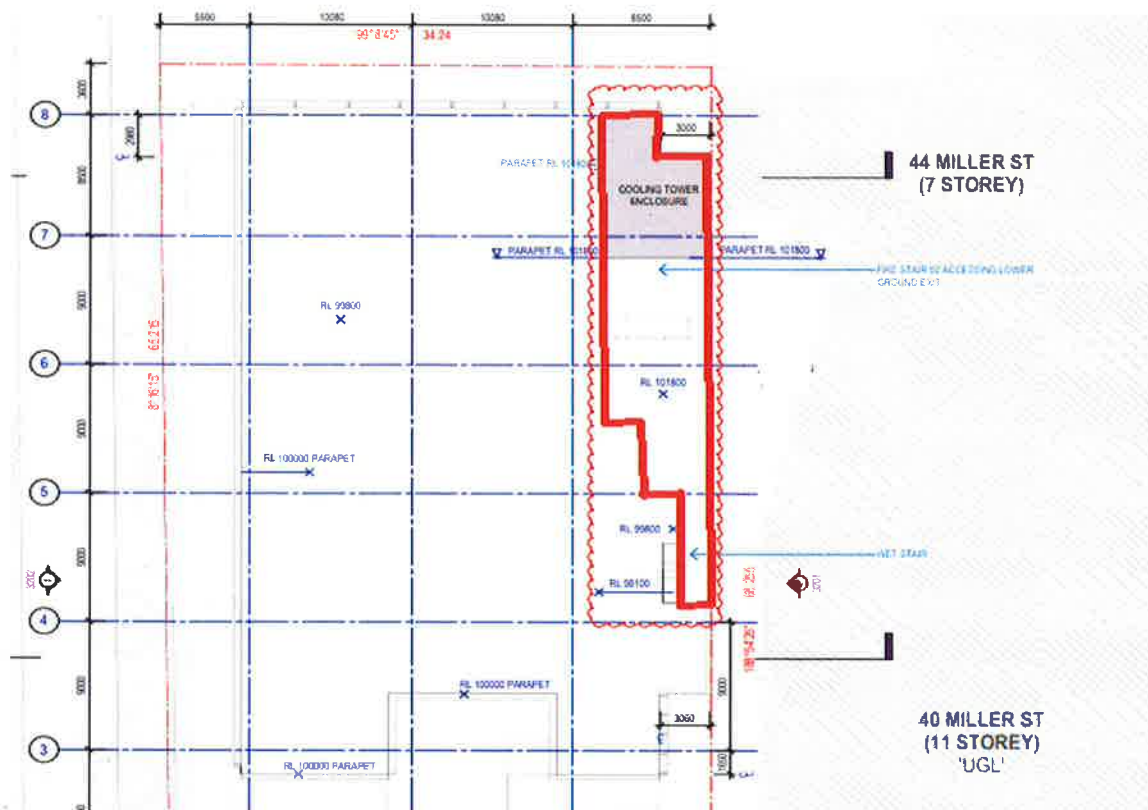


Figure – Extract from roof plan, area in red outline is representative of the area of plant that is located to maximum RL101.80

Clause 4.6(3) states the following:

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

The amended written request prepared by Ethos Urban dated 6 July 2020 has addressed the five (5) ways expressed by Preston CJ, in *Wehbe v Pittwater Council* [2007] NSWLEC 827, which is a common approach to used to demonstrate that strict compliance is unreasonable and unnecessary in the circumstances of the case.

Section 4.1.1 of the amended written request has demonstrated that strict compliance is unreasonable and unnecessary because the elements in breach of the height control would satisfy the objectives of the control (Clause 4.3 in NSLEP 2013) and the B4 Mixed Use zone objectives, notwithstanding the breach to the numerical control.

In respect of the objectives under Clause 4.3(1) of NSLEP 2013, the written request has provided the following comments (summarised):

- *“The proposed exceedance of the height control does not impact this reflection of natural landforms. In fact, the proposed building (and height variation) better reflects the natural landform than most buildings in North Sydney due to the stepping down of the building envelope to promote solar access to the RE1 zone.*

- *The proposed height variation does not impact on any significant view lines and vistas from the public domain.*
- *The proposed height variation does not impact on any significant view lines and vistas from the public domain.*
- *Whilst there are impacts to views to the units at the southern end of 9 William Street, the view impact analysis demonstrates that the view impacts are caused by the complying elements of the building and are considered to be reasonable in the context of the North Sydney CBD. The plant, which exceeds the maximum height limit does not generate any material view impacts.*
- *Whilst there are two instances when a minor view impact is generated by the non-complying component of the building, the impact is not considered to be material and is considered acceptable in this instance as:*
 - *The view impact to Unit 904 is to a bedroom (see **Figure 4**) which is not considered to be as significant as a view from a living area. The living room view, i.e. the primary view, of the same unit is not affected by the plant area which exceeds the height limit.*
 - *The view impact to Unit 905 (see **Figure 5**) is to the view from the eastern most window in the living area. It is noted that the portion of the view loss is minor, one building and that the building can be seen from the other two windows within the apartment and also from the balcony. Further, this apartment is a corner apartment and will retain expansive views to the south-west and west.*
- *Both views are obtained over a side boundary which are noted by Commissioner Roseth in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC 140, to be harder to retain than views over a front or rear boundary,*
- *The majority of the view impact to the affected units are caused by the complying components of the building envelope, the DCP notes that where developments generally comply with a height control they will not be refused on the grounds of view impacts, and*
- *The unit is located within the North Sydney CBD. The strategic objective to provide employment within the North Sydney CBD is considered to provide more public benefit, and should therefore be given greater weight than a private view from a bedroom.*
- *It is noted that the following specific design moves have been made to minimise view impacts:*
 - *Roof top plant has been minimised by distributing plant equipment at various levels throughout the building.*
 - *The rooftop plant has been positioned at the north-eastern corner of the building such that the plant sits within the portion of the view corridor that is already obscured by 40 Miller Street.*
 - *The lifts servicing the building have been reconfigured as part of the response to submissions to further reduce the extent of plant and lift overrun that is required above RL100.*
- *The proposed development (and height variation) will maintain an acceptable level of solar access to existing dwellings, public reserves and streets as outlined in clause 2.3.7 of NSDCP in that it won't generate adverse overshadowing to public spaces between 11.30am and 2.30pm on June 21.*

- *The building envelope has been significantly reduced at the southern part of the site so as to preserve solar access in accordance with clauses 4.3 and 6.4 of the North Sydney LEP.*
- *the proposed development complies with the required setback from the northern boundary and separation distances consistent with that usually provided under the ADG are maintained between the proposed commercial building and the existing residential building to the north. To further protect privacy of residents located to the north, the northern façade will also be constructed with obscured glazing to prevent overlooking between the two properties.*
- *The proposed development is located at the edge of the North Sydney Centre and appropriately transitions down to the zone boundary. Amendments have been made to the development to improve privacy between the development and the residential development to the north and the school to the west by way of additional screening to the glazing and terraces.*
- *The proposed height variation is consistent with the scale of development expected in the context of the North Sydney CBD and the adjacent buildings. It is noted that the proposed development will make more efficient use of the land by enabling the provision of A-Grade commercial floorplates on the upper levels of the building and thus generating high quality employment floorspace. This is a significant public benefit given its high level of accessibility to public transport and other services located within the North Sydney CBD and is consistent with the strategic planning in developing North Sydney as a major employment centre in Sydney's global arc.*
- *It is noted that the proposed variation only relates to a small area of rooftop plant and lift overruns which will not be visible from the public domain nor have any impact on the perceived scale of the development."*

Section 4.2 of the amended written request has also demonstrated that there are sufficient environmental planning grounds for contravening the building height control.

The amended written request, has outlined the following environmental planning grounds:

- *"The proposed variation is minor, a variation of 1.8%*
- *The proposed variation only covers a small proportion of the site and has been positioned in a location where impacts are avoided.*
- *The proposed height variation will not generate any unacceptable adverse environmental impacts in respect of overshadowing, view loss or wind impacts;*
- *Notwithstanding the proposed height variation, the proposal continues to satisfy the objectives of the relevant objectives of the height control applying to the site;*

- *The complying building envelope is significantly compromised by the increased setbacks required to be provided from the southern boundary in order to maintain solar access to the RE1 zone within the North Sydney CBD than would otherwise normally be required in the North Sydney CBD. In the most extreme case, at the upper levels of the building, a setback of 24m is proposed compared to the minimum setback control of 5m. Woods Bagot estimate that approximately 1,337m² of commercial floorspace is lost with the requirement to provide larger setbacks to the upper levels of the building to retain solar access. This equates to approximately 63 fulltime jobs (assuming a job ratio of 1 job per 21m²) or 167 jobs (assuming a job ratio of 1 job per 8m² as per the proposed design capacity of the building) which could have otherwise been generated.*
- *The floor plates of the building are also compromised by the requirement to provide an above podium setback to two street frontages being a corner site and a 3m setback to the residential development to the north. If the plant were to be relocated below the RL100 zone, this would further compromise the upper level floors of the building and would result in the loss of 1,050m² of A-grade commercial floorspace or 52.5 full time jobs;*
- *The breach of building height relates only to a building services zone, and is not in relation to any usable floor area; and*
- *The proposed variation will not result in a development which is out of character with that envisioned for the North Sydney CBD and is well below a significant number of existing and under construction towers in the CBD."*

Clause 4.6(4) states the following:

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

As detailed above, it is considered that the applicant's amended written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) in NSLEP 2013. Clause 4.6(4)(a)(i) is satisfied.

The proposed development is considered to be consistent with the objectives of the building height standard and the objectives of the B4 Mixed Use zone as discussed below.

- (a) ***to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient*** – The proposal generally reflects the natural landform of the site through the stepping of the built form at the upper levels.

(b) to promote the retention and, if appropriate, sharing of existing views – The loss of existing views for the apartments to the north of the site at 9 William Street is predominantly as a result of complying elements of the building. The non-complying elements of the building is limited only to the roof top plant which will not unreasonably impact views for these apartments as detailed in the “Visual Survey Analysis” report prepared by Woods Bagot dated May 2020. This is due to the design and location of this roof top plant and its height (RL101.80) relatively to the parapet of the building on the adjoining property at 40 Miller Street (RL103.009) which assists in minimising the extent of view impact for the apartments at 9 William Street (*refer to further detailed view analysis in Section 10.8.5, specifically (5)(b) and Section 11.1, specifically ‘Views’ of this report*).

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development – The shadow diagrams submitted as part of the application demonstrate that solar access will be maintained to the St Peters Park between 12pm and 2pm during the winter solstice. The roof top plant does not generate any additional overshadowing of Blue Street or Miller Street.

(d) To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings –

The privacy screens to the glazing along northern façade will ensure reasonable privacy is maintained with residential apartments to the north at 9 William Street.

The landscaping along the western side of the upper level terraces, in addition to, the 350mm vertical fins to the western façade will ensure reasonable privacy is maintained with the Shore School to the west of the site.

The glazing to the eastern façade is setback 3m from the eastern boundary ensuring reasonable privacy is maintained with the office building at 40 Miller Street. It is noted that the glazing in the western façade of 40 Miller Street maintains a similar 3m setback to the common boundary as that proposed.

(e) to ensure compatibility between development, particularly at zone boundaries - The stepped design of the building ensures a development that remains generally compatible in building height with the developments on surrounding properties that are zoned B4 Mixed Use to the north, B3 Commercial core to the east and SP2 Educational Establishment to the west. The stepped podium to Blue Street and the high degree of articulation above the podium ensures a suitable transition in scale is maintained with St Peters Church and Manse opposite on the south side of Blue Street which is zoned SP2 Place of Worship.

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area - The scale and density of the development is considered to be appropriate and generally in accordance with the character of the North Sydney CBD.

As detailed in Section 10.8.2 of this report, the proposal is considered to achieve the objectives of the B4 Mixed Use zone. The proposal provides for commercial development with high grade commercial space that is within a highly accessible location within the North Sydney CBD, close to North Sydney train station and the future Victoria Cross Metro station.

The proposed development is therefore considered to be in the public interest. Clause 4.6(4)(a)(ii) is satisfied.

There is assumed concurrence from the Secretary. Clause 4.6(4)(b) is also satisfied.

Clause 4.6(5) states the following:

- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposed breach to the building height development standard is unlikely to create any matter of significance for State or regional environmental planning. Furthermore, there is unlikely to be any public benefit in maintaining strict compliance with the building height control.

In conclusion, the written request seeking a variation to the building height control is considered to be well founded as it has demonstrated that compliance with the standard is unreasonable and unnecessary in the circumstances of the case, there are sufficient environmental planning grounds and the breaches to the building height are consistent with the objectives of the building height control and the B4 Mixed Use zone and therefore in the public interest.

10.8.5 North Sydney Centre

Objectives of the Division - Clause 6.1

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

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

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

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

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

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

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

The proposal provides high grade commercial space with floor plates that are mainly between the range of 1060m² and 1063m². The only exception is the lower ground floor, a part of which is occupied by access and services. It is noted that this lower ground floor has access to a wellness garden which improves the amenity for this commercial space.

- (f) *(Repealed)*

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

The proposal does not result in any additional overshadowing of the RE1 zoned land or mapped Special Areas as identified in the NSLEP 2013 during the winter months.

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

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

- (i) *to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas.*

The proposal incorporates replacement trees along William and Blue Street, as well as along parts of the northern boundary to offset the removal of trees from the site.

Building heights and massing - Clause 6.3

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

- (a) *(Repealed)*

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

The proposed height and massing will have no adverse impact on land zoned RE1 Public Recreation. The shadow diagrams submitted as part of the application confirm that there will be no additional overshadowing of St Peters Park which is zoned RE1 Public Recreation between 12pm and 2pm during the Autumn Equinox, Winter Solstice and Spring Equinox.

- (c) *to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,*

The shadow diagrams confirm that the proposal will not result in any additional overshadowing of residential properties outside the North Sydney Centre between 12pm and 2pm.

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

The amended plans provide additional articulation, street level setback, landscaping and a stepped podium along William Street to reduce the visual appearance and contribute to a more human scale. The pedestrian awning over the public stair along Blue Street provides weather protection for pedestrians.

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

The proposal provides the consolidation of five (5) sites to ensure a development that has high grade commercial space.

- (2) *Development consent must not be granted for the erection of a building on land to which this Division applies if:*

- (a) *the development would result in a net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as "Special Area" on the North Sydney Centre Map, or*
 - (b) *the development would result in a net increase in overshadowing between 10 am and 2 pm from the March equinox to the September equinox (inclusive) of the Don Bank Museum, or*

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

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

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

The total site area of the development is 2309m² and compliant with 2(c) in Clause 6.3 in NSLEP 2013.

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

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

The proposal will not result in any increase in overshadowing between 9am and 3pm from the March equinox to the September equinox (inclusive) of any private open space or window to a habitable room of a residential property that is located outside the North Sydney Centre.

- (4) *Brett Whiteley Plaza*

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

Not applicable as the site is to the north and some distance away.

- (5) *In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following:*

- (a) *the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining the North Sydney Centre,*

The scale of the proposed building is generally compatible with developments on adjoining properties. The stepping down of the building form and the addition of landscaped balconies to Blue Street assist in reducing the scale and massing of the development particularly when viewed from the south, outside of the North Sydney Centre.

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

There are no public view or vistas affected by the proposal.

The proposal will affect existing views from some of the south facing apartments within the building at 9 William Street. The property at 9 William Street contains a 10 storey residential flat building that is located to the north of the site. A “Visual Survey Analysis” (“VSA”) was prepared by Woods Bagot dated May 2020 and submitted as part of the amended plans. The Survey examines views from five (5) apartments (Units 905, 904, 902, 805 and 708) within this building. These apartments are located on levels 7, 8 and 9 of the building.

The VSA confirms that a majority of the existing views from these apartments will be obscured by complying elements of the proposed development. The maximum permissible building height that applies to the site is RL 100. The main parapet, except for the roof top plant, is at RL 100.

The VSA indicates that existing views of parts of the Sydney CBD and skyline will be retained from a standing position (1.6m above floor level) from the living rooms and balconies of Units 902, 904 and 905 (level 9) at 9 William Street.

The VSA indicates that the roof top plant to RL101.8 will not impact significant views from Units 904 or 905 (level 9) given that the plant is located adjacent to the eastern boundary. Furthermore, the top of the roof top plant at RL 101.8 is below the parapet of the building on the adjoining property at 40 Miller Street. The re-design and reduction in the area of the roof top plant under the amended proposal minimizes the extent of view impact. A condition of consent is recommended that the top of any exhaust vents located within the level 08 cooling tower enclosure do not extend above RL100.

The south western corner of the top of the building at 40 Miller Street currently obscures large parts of the views of the Sydney CBD from Units 904 and 905 (level 9) at 9 William Street. View 6 from Unit 905 in VSA and views 1-4 from Unit 904 in VSA confirms that the roof top plant will not unreasonably impact these existing views of the Sydney CBD. The potentially worst affected is View 4 from Unit 904 in VSA, which is a view from a balcony located off a bedroom. View 4 confirms that views of the Barangaroo skyline will be retained from this balcony.

Regrettably, the existing views of Sydney CBD will be lost from the living spaces and balconies of Units 805 (level 8) and 708 (level 7) at 9 William Street. This loss of existing views is caused by complying elements of the building that are located at or below the maximum building height control of RL 100. As detailed in Section 11.1 of this report, it is unlikely that a more skillful design could protect these existing views while still providing the Applicant with the same amenity (*step 4 of Tenacity*).

The proposed 5090mm setback for Levels 07 and 08 from the western boundary of the site, at the northern end closest to 9 William Street, is compliant with the 5m above podium setback control as specified in the North Sydney Centre Character Statement in Part C in NSDC 2013. This 5090mm above podium setback from the western boundary, at northern end closest to 9 William Street, allows for the retention of some of the existing Sydney Harbour and district views from the living room and balcony of Units 708 (level 7) and 805 (level 8) at 9 William Street, subject to the deletion of some of the larger trees that are proposed on this level 07 balcony.

In conclusion, whilst the proposal will result in the loss of some existing view lines and vistas from the residential apartment at 9 William Street these impacts are largely caused by elements of the building that comply with the maximum building height of RL 100 in NSLEP 2013 and the 5m above podium setback control specified in the North Sydney Centre Character Statement in NSDCP 2013.

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

The proposed development will enhance the streetscape given that it is of a compatible scale and the brick and terracotta façades are appropriate in terms of materiality.

10.8.6 – Earthworks - Clause 6.10

A Geotechnical Assessment was prepared by JK Geotechnics dated 16 January 2020 and submitted with the application. The assessment indicates that excavation will “*extend to depths ranging from about 4m on the southern boundary along Blue Street to about 14.3m along the northern boundary to achieve bulk excavation level.*”

The assessment concludes that the following geotechnical work will be required:

- *“Prior to the commencement of excavation a subsurface investigation of the site must be undertaken to confirm the anticipated subsurface conditions. This investigation should confirm rock strengths and excavation conditions, by means of cored boreholes. In addition, the extent of the adjoining basements to the east and materials on which these adjoining buildings are founded must be determined.*
- *Dilapidation reports on adjoining buildings potentially impacted by the proposed development should be completed prior to the commencement of construction.*
- *Computer modelling to assess the impact of the proposed development on the existing rail tunnels.*
- *Preparation of a Geotechnical Monitoring Plan to satisfy Sydney Trains and Sydney Metro.*
- *Completion of periodic or continuous vibration monitoring where percussive excavation techniques are adopted.*
- *Monitoring of the existing rail tunnels in accordance with the Geotechnical Monitoring Plans that have been approved by the relevant rail authorities.*
- *Inspection of all vertical cuts through sandstone bedrock to allow any adverse defects to be identified and where required remedial measures initiated.*
- *Inspection of all footing excavations by a geotechnical engineer to confirm that the design bearing pressures have been achieved.”*

The above recommendations, in addition to, those recommended by Council’s Senior Development Engineer and Sydney Metro are included within the attached conditions of consent.

10.8.7 Airspace operations – Clause 6.15

The proposed development will not penetrate the Limitation or Operations Surface for the Sydney (Kingsford Smith) Airport. Consequently, there is no requirement to consult with the relevant Commonwealth body about the application.

11. NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013 (NSDCP 2013)

11.1 NSDCP 2013 Compliance Table

DEVELOPMENT CONTROL PLAN 2013 – Part B Sections 2 ‘Commercial and Mixed Use Development’ and 13 ‘Heritage and Conservation’		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
Diversity of Activities	Yes	The proposal provides different sized office spaces which reflect the site’s location within the North Sydney Centre. The proposal enhances the amenity of the public domain with recessed elements and landscaping at ground level along William Street and public staircase and awning along Blue Street.
Maximise Use of Public Transport	Yes	The development is located in close proximity to the North Sydney railway station, bus interchange and the proposed Victoria Cross Metro Station. End of Trip facilities are provided within the basement level.
2.3 Environmental Criteria		

Clean Air	Yes (via condition)	The proposed office uses will not adversely impact on air quality. New mechanical plant will comply with current standards.
Noise	Yes (via conditions)	An Acoustic Assessment report was prepared by Acoustic dated 4 March 2020 and submitted with the application concluded that subject to compliance with the recommendations of the report, the internal noise levels shall comply with the NSDCP 2013 and all relevant standards. The recommendations of the report including the requirement for a Construction Noise Vibration Management Plan are included within the attached conditions of consent.
Wind Speed	Yes	An Environmental Wind Assessment report was prepared by ARUP dated 10 March 2020 and submitted with the application which concluded that <i>"wind conditions at the majority of locations around the site would be classified as suitable for pedestrian standing type activities with the corners of the Blue Street with William Street and Blues Point Road suitable for walking and close to business walking criterion. These classifications are considered to be suitable for intended use of spaces. It is considered that all locations within the proposed development would meet the safety criterion."</i>
Reflectivity	Yes	The proposal is unlikely to result in any adverse solar glare to motorists or pedestrians in the surrounding area, or to occupants of neighbouring buildings and to comply with the objective of Clause 2.3.4 in NSDCP 2013.
Artificial Illumination	Yes	Internal light spill from the offices will not adversely impact on residents, pedestrians or sky glow.
Awnings	Yes	An awning is provided along Blue Street for a majority of the site's frontage. The proposal does not provide an awning along William Street. The Applicant has provided the following reasons for not including an awning along William Street – <i>"The current built form is setback at the corner to encourage views through the corner. Woods Bagot are of the opinion due to the steep topography at the corner of the site, the introduction of an awning would create a visually cluttered outcome that negatively affects the increased visibility noted above.</i> <i>We question the need for an awning along William Street, given that pedestrian traffic is likely to move predominantly down Blue street either to the NS train station or to Miller street if travelling to the Metro as Miller street is more activated in the immediate block, then crosses Pacific Hwy into the future pedestrianized zone of Miller street leading to metro. People will naturally take the downhill path from the Blue street entry to the more active and direct path of travel along Miller street.</i> <i>William street is not an activated street due to the school frontage on the western side of the street and the residential and un-activated frontages north of the proposal and is therefore less likely to be the desirable path of travel into the CBD centre.</i> <i>We note that Council's own public domain strategy appears to come to the same conclusion and does not identify William Street as being a street that requires provision of an awning. Rather, Miller Street is to become the 'Civic Spine' and the main pedestrian route through the CBD."</i> The reasons advanced by the Applicant for not providing an awning along William Street are generally agreed with. It is further noted that neither the developments to the north of the site at 9 William Street, 19 William Street and 60 Miller Street have awnings along the William Street frontages. In the site circumstances and for the

		reasons provided, the lack of awning along William Street is considered acceptable. There are no additional shadows as a result of the proposed development on any 'Special Areas' as identified by the NSLEP 2013 or on St Peters Park between 11.30am and 2.30pm. This is confirmed in the Shadow Diagrams prepared by Woods Bagot and submitted as part of the application.
Solar Access	Yes	The proposed development will not affect solar access to the residential areas further to the south of the site. The proposed development will result in the loss of some solar access to the office spaces of the building at 40 Miller Street. However, there is no easement or covenant protecting solar access to this adjoining development. The addition of roof top balconies will improve the amenity of these commercial spaces.
Views	Acceptable on merit	The proposal will not materially affect views from the William Street or other public places. Objective O4 in Part B, Section 2.3.8 in NSDCP 2013 states the following: <i>"O4 To encourage view sharing as a means of ensuring equitable access to views from dwellings, whilst recognising development may take place in accordance with the other provisions of this DCP and the LEP."</i> To understand whether the proposal will satisfy objective O4 above, consideration is given to the four (4) step process adopted by Commissioner Roseth of the NSW Land and Environment Court centering around <i>Tenacity Consulting v Warringah Council [2004] NSWLEC 140</i>. The property at 9 William Street contains a 10 storey residential flat building that is located to the north of the site. A "Visual Survey Analysis" ("VSA") was prepared by Woods Bagot dated May 2020 and submitted as part of the amended plans. This VSA is attached to this report. The Survey examines views from five (5) apartments (Units 905, 904, 902, 805 and 708) within this building. These apartments are located on levels 7, 8 and 9 of the building. The apartments below level 7 would be impacted by any complying development. 1. Assessment of views to be affected; <i>"Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."</i> As indicated in the VSA a number of these units have views to the south and south west over the subject site, including parts of Sydney Harbour, Sydney CBD and Barangaroo and more districts views to the south west. 2. Consider from what part of the property the views are obtained.

		<i>"For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."</i> These views are across the side boundary of the site and the VSA confirms that the photographs were taken from a standing position 1.6m above the floor level of the respective units. 3. Assess the extent of the impact in qualitative terms as negligible, minor, moderate, severe or devastating. <i>"This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."</i> The VSA confirms that the impact is from mainly living rooms, kitchen and balconies of these units. The impact on views for units 904 and 905 (level 9) at 9 William Street would be considered severe and for unit 902 (level 9) would be considered minor. The impact on views for units 805 (level 8) and 708 (level 7) would be considered devastating. The VSA indicates that existing views of parts of the Sydney CBD and skyline will be retained from a standing position (1.6m above floor level) from the living rooms and balconies of Units 902, 904 and 905 (level 9) at 9 William Street. The VSA indicates that the roof top plant to RL101.8 will not impact significant views from Units 904 or 905 (level 9) given that the plant is located adjacent to the eastern boundary. Furthermore, the top of the roof top plant at RL 101.8 is below the parapet of the building on the adjoining property at 40 Miller Street. The re-design and reduction in the area of the roof top plant under the amended proposal minimizes the extent of view impact. The south western corner of the top of the building at 40 Miller Street currently obscures large parts of the views of the Sydney CBD from Units 904 and 905 (level 9) at 9 William Street. View 6 from Unit 905 in VSA and views 1-4 from Unit 904 in VSA confirms that the roof top plant will not unreasonably impact these existing views of the Sydney CBD. The potentially worst affected is View 4 from Unit 904 in VSA, which is a view from a balcony located off a bedroom. View 4 confirms that views of the Barangaroo skyline will be retained from this balcony. As detailed in Section 10.8.4 of this report, the written request prepared pursuant to Clause 4.6 in NSLEP 2013 seeking a variation to the building height control in Clause 4.3 in NSLEP 2013 is considered to be well founded. Regrettably, the existing views of Sydney CBD will be lost from
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	living spaces and balconies of Units 805 (level 8) and 708 (level 7) at 9 William Street. This loss of existing views is caused by complying elements of the building that are located at or below the maximum building height control of RL 100. The proposed 5090mm setback for Levels 07 and 08 from the western boundary of the site, at the northern end closest to 9 William Street, is compliant with the 5m above podium setback control as specified in the North Sydney Centre Character Statement in Part C in NSDC 2013. This 5090mm above podium setback from the western boundary, at northern end closest to 9 William Street, allows for the retention of some of the existing Sydney Harbour and district views from the living room and balcony of Units 708 (level 7) and 805 (level 8) at 9 William Street, subject to the deletion of some of the larger trees that are proposed on this level 07 balcony. 4. Assess the reasonableness of the proposal that is causing the impact. <i>“A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”</i> As detailed above, the main parapet of the building is at RL 100 and compliant with the building height control that applies to the site. The non-compliance with the building height control is limited to the roof top plant at RL 101.8. However, as indicated above the roof top plant does not unreasonably impact views from unit 904 and 905 (level 9) at 9 William Street. The proposal is also compliant with the 5m above podium setback to the western boundary, at the northern end closest to 9 William Street, as required by the North Sydney Centre Character Statement in Part C in NSDCP 2013. Unfortunately, due to the need to protect solar access to the RE1 zones to the south east of the site, there is no opportunity to provide for a more ‘skilful’ design that redistributes commercial floor space to the front of the building. Removing this commercial floor space would not provide the Applicant with the ‘same development potential’. The view impact on these units at 9 William Street is therefore considered acceptable and view sharing reasonable. <u>Shore School</u> The proposal will result in a negligible to minor loss of views for the Shore School located opposite the site on the western side of William Street. The Shore School however has largely unobstructed and expansive views from other parts of its site that will be unaffected by the proposed development.
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		<u>40 Miller Street</u> The commercial building at 40 Miller Street will retain existing expansive and iconic views to the south of Sydney Harbour and Sydney CBD. The proposal will result in a minor loss of views to the south west from 40 Miller Street. This view impact is minimized, as far as possible, through open balcony elements and increased upper level front setbacks to Blue Street as well as a 3m eastern side setback on the southern side of the core which allows for the retention of some of these existing views to the south west from 40 Miller Street. The location of the roof top plant generally aligns with the core of 40 Miller Street ensuring no unreasonable view impacts to the south west for the top commercial level of this building. In summary, the proposal is considered to satisfy Objective O4 in Part B, Section 2.3.8 in NSDCP 2013.
Vibration	Yes (via conditions)	Appropriate conditions of consent as recommended by Sydney Metro are included to minimise the impact on safety and the operation of the rail tunnels.
Visual Privacy	Yes	The amended proposal incorporates privacy treatment to the northern glazing from floor level to 2100mm above finished floor level which will ensure reasonable privacy is maintained with the units at 9 William Street. Landscaped planters (between 1000mm and 1040mm wide) are proposed along the western edge of the balconies to levels 06 and 07 which will ensure a reasonable level of privacy is maintained with the Shore School. Further, 350mm deep vertical fins are proposed to the western glazing to provide screening on the oblique viewing angle towards the Shore School. The eastern glazing to the south of the core, is setback 3000mm from the eastern boundary. As a commercial building is located on the adjoining property at 40 Miller Street with a similar setback to that proposed and western glazing there are unlikely to be any unreasonable privacy impacts. The stepped setback at the upper levels of the buildings in addition to the landscaped planters will ensure there are no unreasonable privacy impacts to St Peters Church which is located opposite on the southern side of Blue Street.
2.4 Quality built form		
Site Consolidation	Yes	The proposal provides for the consolidation of five (5) sites which allows for the creation of suitably sized commercial floor plates. The amended proposal breaks down the apparent length of the building to William Street through articulation, setbacks, landscaping and changes in materials.
Setbacks	Yes	The setbacks for podium and tower are indicated in Section 1.1 of this report. These setbacks are compliant with those specified in Section 2.4.3 in NSDPC 2013. The amended proposal provides for a setback of between 680mm and 2290mm to level 01 at the southern end of the William Street frontage and 2010mm for levels 02 and 03 at the northern end of the William Street frontage. These setbacks assist in reducing the impact of the scale of the development while improving pedestrian flow and amenity and allowing for the planting of substantial trees along the William Street footpath.

		A 3m setback to the northern boundary is proposed which is compliant with Provision P6 in Part B, Section 2.4.3 in NSDCP 2013.
Podium	Yes	The amended proposal provides for a stepped 5 storey podium consistent with the podium control specified in the North Sydney Centre Character Statement in Part C in NSDCP 2013
Building Design	Yes	Table B-2.9 in NSDCP 2013 requires all floors in the Commercial Core zone to be a minimum of 3.3m in floor to ceiling height. The proposed development is compliant with this requirement. The amended proposal breaks down the apparent length of the building to William Street through articulation, setbacks, landscaping and changes in materials. The podiums are generally built to the boundary except as indicated in the 'setbacks' section above. These setbacks improve the relationship with the public domain particularly along William Street The balconies to the upper levels are incorporated within the building envelope
Skyline	Yes	The proposed development is generally compliant with the height of building requirement of RL 100 in Clause 4.3 in NSLEP 2013 with the exception of the roof top plant. The roof top plant to RL101.8 is centrally located on the roof and located adjacent to and below the parapet of the building on the adjoining property at 40 Miller Street to minimise amenity impacts for surrounding properties. The roof top plant will not be easily visible from the public domain. A condition of consent is recommended that the top of any exhaust vents located within the level 08 cooling tower enclosure do not extend above RL100. The built form provides for appropriate stepping and setbacks particularly at the upper levels to ensure a comparable scale is maintained with surrounding developments.
Junction and termination of streets	Yes	A 2900mm x 3070mm splay is proposed at the corner of Blue and William Street to satisfy Provision P1(c) in Part B, Section 2.4.7 in NSDCP 2013. The amended proposal provides for a five storey podium height at the Blue and William Street corner of the site which is compliant with the podium height controls specified in the North Sydney Centre Character Statement in Part C in NSDCP 2013.
Through site pedestrian link	Not applicable	A through site pedestrian link is not necessary given the site is located on the corner of Blue and William Street.
Streetscape	Yes	The existing footpath levels, adjacent to the respective frontages of the site, makes it difficult to provide for active street frontages. Moreover, active use such as cafes and shops are unlikely to be particularly viable along this section of William Street. Active uses are more suited to Blue, Miller and Mount Street. The amended proposal incorporating greater articulation along the William Street façade including additional ground level landscaping assists in creating visual interest in the built form while ensuring good levels of natural surveillance particularly at the corner of Blue and William Street. A total of nine (9) London Plane trees are proposed along the William and Blue Street frontages to ensure a consistent streetscape.

		Appropriate conditions are recommended to ensure that the lighting, paving and awning (Blue Street) is consistent with Council's Public Domain Style Manual and Design Codes.
Entrances and Exits	Yes	The primary entrance point to the building is accessible from Blue Street and highly visible from the street frontage. The entrance provides equitable access to all person regardless of mobility.
Nighttime appearance	Yes	The use of large windows along the facades of the building will enable internal illumination to spill onto the public footpaths and public areas at night.
Public Spaces and facilities	Yes	The proposal is compatible with the scale, character and density of adjacent commercial and residential developments. The documentation submitted with the amended proposal confirms that whilst the core has a nil setback to the eastern boundary it is unlikely to adversely affect the redevelopment of 40 Miller Street given that a nil setback to a side boundary is encouraged by the NSDCP 2013 controls and there is no easement or covenant protecting natural light to this adjoining property.
2.5 Quality Urban Environment		
Accessibility	Yes	Equitable access will be provided, including entry foyer, passenger lifts, unisex accessible toilets and showers.
Safety and Security	Yes	A high level of safety and security is provided at the ground level and basement levels of the building. The amended proposal provides a glazed wall to end of trip facilities to ensure maximum personal safety. The level 01 glazing that wraps around the corner of Blue and William Streets will ensure clear lines of sight are provided at this junction of the site.
Vehicular Access	Yes	All vehicular access, including loading/service vehicles will occur via new driveway ramp off Blue Street.
Car Parking	Yes	The development proposes 31 car parking spaces and 2 spaces for accessible parking which is compliant with NSDCP 2013. Dedicated end of trip facilities and bicycle parking will provide alternative options to car parking. The proposed development will provide 140 bicycle spaces as well as associated end of trip facilities (EOTF) on Level B2 in the basement level which is compliant with the requirements in NSDCP 2013.
Garbage Storage	Yes	A commercial waste room is proposed at the lower ground level adjacent to the loading and service area. The waste storage area will accommodate 4 x 1100L MGBs garbage bins and 5 x 1100L MGBs recycling bins to service the proposed development.
2.6 Efficient Use of Resources		
Energy Efficiency	Yes	An Efficient Use of Resources commitment table was submitted as part of the application. The table indicates general compliance with the provisions in Part B, Section 2.6 in NSDCP 2013. The commitments table will form part of the conditions of consent.
2.7 Public Domain		
Street Furniture, Landscaping Works, public art	Yes	The proposed stepped landscape planters along William Street in addition to the planting of London Plane trees will contribute to the enjoyment of the public domain without detrimentally impacting pedestrian movement and safety or reduce visual quality.
Section 13 – Heritage and Conservation		
13.4 Development in the Vicinity of Heritage Items	Yes	The subject site is not heritage nor is it located within a heritage conservation area. The subject site is however in the vicinity of a number of heritage items including the following: • Shore School (I0782) – located on the western side of William Street;

		• St Peter's Presbyterian Church Manse (I0792) and St Peter's Presbyterian Church and grounds (I0793)– located on the southern side of Blue Street; and • St Joseph's Convent School and Chapel - I0918 – located to the north of Shore School Objective O1 in Part B, Section 13.4 in NSDCP 2013: <i>"O1 Ensure that new work is designed and sited so as to not detrimentally impact upon the heritage significance of the heritage item and its setting."</i> The relevant provisions in Part B, Section 13.4 in NSDCP 2013 are as follows: <i>"P1 Respect and respond to the curtilage, setbacks, form, scale and style of the heritage item in the design and siting of new work.</i> <i>P2 Maintain significant public domain views to and from the heritage item.</i> <i>P4 Provide an adequate area around the heritage item to allow for its interpretation."</i> The heritage assessment provided by LSJ in respect of Section 13.4 is NSDCP 2013 is noted. However, in Council's view, the proposal will not detrimentally impact on the nearby heritage items for the following reasons: • The amended proposal incorporates a stepped built form at the upper levels, particularly along Blue Street which results in significant setbacks and separation and an appropriate transition in scale with St Peters Church and Manse. • The five-storey podium height to Blue Street and main parapet is compliant with the applicable planning controls that apply to the site. • The roof top plant which is the only element of the building that is not compliant with the building height control will not be easily visible from St Peters Church or Manse given it is centrally located and adjacent to the façade of the higher building located at 40 Miller Street and setback a minimum of 29.5m (approximately) from the Blue Street boundary of the site. • The proposal will not adversely impact public domain views to or from St Peters Church and Manse. There will be a negligible loss of sky views behind St Peters Church and Manse when viewed from Blues Point Road, however the impact is considered reasonable, noting that it is generally caused by elements of the building that comply with the applicable planning controls. • Whilst the proposal will result in additional overshadowing at the winter solstice to St Peter's Church and Manse reasonable solar access will be maintained during the spring and autumn equinoxes. It is noted that the overshadowing at the winter solstice to St Peters Church and Manse is caused by elements of the building that comply with the relevant planning controls. Morning solar access to the front of St Peters Church and Manse will not be impacted as a result of the proposed development. • The significant setbacks above the podium to Blue Street and the landscaped planters assist in reducing the visual bulk of the development while ensuring a reasonable level of privacy is maintained with St Peters Church and Manse.
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		• The proposal will not significantly reduce the area around St Peters Church or Manse. Both St Peters Church and Manse can be interpreted from Blue Street, Blues Point Road and at the corner of Blue and William Street. • The proposal will not impact the heritage significant buildings that are centrally located within the Shore School. • St Joseph's Convent School and Chapel is located further to the north, on the western side of William Street, and will similarly not be impacted by the proposed development. The amended proposal would therefore satisfy the relevant objective in Section 13.4 'Development in the vicinity of Heritage Items' in NSDCP 2013.
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11.2 Character Statement – Part C, NSDCP 2013

North Sydney Centre Planning Area – Central Business District

The subject site is within the Central Business District which falls within the North Sydney Centre Planning Area. The proposal is generally consistent with the relevant provisions under desired future character in Part C, Section 2.1.2 in NSDCP 2013.

The development site is of an appropriate size which enables the creation of large high-quality floor plates consistent with Provision P1 in Part B, Section 2.1.3 in NSDCP 2013.

The height of the building steps down at the upper levels to minimize the impact of its height and bulk on the surrounding area including the RE1 zones to the south east of the site consistent with Provision P3 in Part C, Section 2.1.3 in NSDCP 2013.

The amended proposal has reduced the size of the roof top plant. The roof top plant is located adjacent to the eastern boundary of the site and below the parapet of the adjoining commercial building at 40 Miller Street which assist in reducing view impacts for surrounding properties and its visibility from the public domain.

Provision P6 in Part C, Section 2.1.3 in NSDCP 2013 advises that zero setbacks are to be provided to all street frontages at ground level. The amended proposal provides some setbacks at ground level to both Blue and William Street which assists in providing articulation to the building.

The amended proposal provides for a maximum podium of five (5) storeys to both William and Blue Street consistent with Provision P9 in Part C, Section 2.1.3 in NSDPC 2013. A setback of between 4540mm (southern end) and 5090mm (northern end) is proposed above the podium. Provision P9 in Part C, Section 2.1.3 in NSDCP 2013 requests a *“weighed setback of 5m above the podium”*. The minor non-compliance (185mm) with this weighed setback is as a result of the slightly irregular width of the site. The minor non-compliance is unlikely to materially reduce views and/or significantly add to the bulk of the building.

The amended proposal incorporates additional articulation and ground level landscaping along the William Street façade as well as the planting of nine (9) London Plane trees along William and Blue Street to assist in reducing the visual massing of the development and enhancing the urban environment.

The amended proposal provides for an awning along a majority of the Blue Street frontage consistent with Provision P17 in Part C, Section 2.1.3 in NSDCP 2013. The lack of awning along William Street is supported as detailed in Section 11.1 of this report.

12 SECTION 7.11 CONTRIBUTIONS

The amended proposal provides for 15,346m² of gross floor area (GFA). Credit is given to the 26 x 1 bedroom and 14 x 2 bedroom units that will be demolished under this application.

Section 7.11 Contributions in accordance with Council's S7.11 plan is warranted. The total Section 7.11 contribution is calculated at \$1,785,312.33. The contributions are detailed in the attached conditions.

13 DESIGN & MATERIALS

The materials are detailed in Section 1.5 of this report. The brick and terracotta façades are considered appropriate in terms of materiality and generally compatible with surrounding developments. The modified design submitted as part of the amended proposal provides appropriate articulation to assist in breaking up the visual massing of the building.

14 ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

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

15 SUBMITTERS

The key issues and the number of public submissions identifying these keys issues to both the original and amended proposal are summarised in Sections 9.1 and 9.2 of this report.

These key issues are summarized and addressed below:

Construction impacts

Appropriate conditions of consent are recommended to minimize impacts on adjoining land/s during demolition, excavation and construction associated with the proposed development.

View impacts

The property at 9 William Street contains a 10 storey residential flat building that is located to the north of the site. A “Visual Survey Analysis” (“VSA”) was prepared by Woods Bagot dated May 2020 and submitted as part of the amended plans. The Survey examines views from five (5) apartments (Units 905, 904, 902, 805 and 708) within this building. These apartments are located on levels 7, 8 and 9 of the building.

The VSA confirms that a majority of the existing views from these apartments will be obscured by complying elements of the proposed development. The maximum permissible building height that applies to the site is RL 100. The main parapet, except for the roof top plant, is at RL 100.

The VSA indicates that existing views of parts of the Sydney CBD and skyline will be retained from a standing position (1.6m above floor level) from the living rooms and balconies of Units 902, 904 and 905 (level 9) at 9 William Street. The VSA indicates that the roof top plant to RL101.8 will not impact significant views from Units 904 or 905 (level 9) given that the plant is located adjacent to the eastern boundary. Furthermore, the top of the roof top plant at RL 101.8 is below the parapet of the building on the adjoining property at 40 Miller Street. The re-design and reduction in the area of the roof top plant under the amended proposal minimizes the extent of view impact. A condition of consent is recommended that the top of any exhaust vents located within the level 08 cooling tower enclosure do not extend above RL100.

The south western corner of the top of the building at 40 Miller Street currently obscures large parts of the views of the Sydney CBD from Units 904 and 905 (level 9) at 9 William Street. View 6 from Unit 905 in VSA and views 1-4 from Unit 904 in VSA confirms that the roof top plant will not unreasonably impact these existing views of the Sydney CBD. The potentially worst affected is View 4 from Unit 904 in VSA, which is a view from a balcony located off a bedroom. View 4 confirms that views of the Barangaroo skyline will be retained from this balcony.

Regrettably, the existing views of Sydney CBD will be lost from the living spaces and balconies of Units 805 (level 8) and 708 (level 7) at 9 William Street. This loss of existing views is caused by complying elements of the building that are located at or below the maximum building height control of RL 100. As detailed in Section 11.1 of this report, it is unlikely that a more skillful design could protect these existing views while still providing the Applicant with the same amenity (*step 4 of Tenacity*).

The proposed 5090mm setback for Levels 07 and 08 from the western boundary of the site, at the northern end closest to 9 William Street, is compliant with the 5m above podium setback control as specified in the North Sydney Centre Character Statement in Part C in NSDC 2013. This 5090mm above podium setback from the western boundary, at northern end closest to 9 William Street, allows for the retention of some of the existing Sydney Harbour and district views from the living room and balcony of Units 708 (level 7) and 805 (level 8) at 9 William Street, subject to the deletion of some of the larger trees that are proposed on this level 07 balcony.

In conclusion, whilst the proposal will result in the loss of some existing view lines and vistas from the residential apartment at 9 William Street these impacts are largely caused by elements of the building that comply with the maximum building height of RL 100 in NSLEP 2013 and the 5m above podium setback control specified in the North Sydney Centre Character Statement in NSDCP 2013.

Loss of privacy and overlooking

The privacy screens to the glazing along northern façade will ensure reasonable privacy is maintained with residential apartments to the north at 9 William Street.

The landscaping along the western side of the upper level terraces, in addition to, the 350mm vertical fins to the western façade will ensure reasonable privacy is maintained with the Shore School to the west of the site.

The glazing to the eastern façade is setback 3m from the eastern boundary ensuring reasonable privacy is maintained with the office building at 40 Miller Street. It is noted that the glazing in the western façade of 40 Miller Street maintains a similar 3m setback to the common boundary as that proposed.

Excessive bulk and scale and building height

The amended proposal has reduced the bulk of the building through the provision of additional setbacks to level 01, 02 and 03 to William Street. The stepping down of the built form at the upper levels and the compliant five storey podium ensures a building that is acceptable in terms of bulk. The main parapet of the building is compliant with the maximum building height control of RL 100. The non-compliance with the building height control is limited only to the roof top plant to RL101.8. The roof top plant will not materially add to the bulk or scale of the bulk given it is centrally located on the roof of the building and not easily visible from the public domain. The roof top plant will also not adversely impact the amenity for surrounding properties.

Loss of residential amenity

The amended proposal will result in a reasonable level of view impact noting that the elements of the building causing the view impacts are compliant with the relevant planning controls.

The building is located to the south of 9 William Street and as such will not result in any overshadowing impacts. Building separation of between 12600mm (level 05) and 21350mm (level 08) exists with the residential flat building at 9 William Street ensuring reasonable natural light, sky views and privacy will be maintained with this property. The addition of privacy treatment to the northern glazing of the building will further ensure privacy is maintained with this adjoining property.

Inadequacy of design

The design of the amended proposal is considered high quality and is generally supported by the Design Excellence Panel as detailed in Section 7.1.2 of this report.

Noise impacts during construction

Appropriate conditions of consent are recommended to minimise potential noise impacts during construction.

Tree removal

The removal of the trees from the site are supported by Council's Landscape Development Officer as detailed in Section 6.3 of this report.

Replacement trees are proposed to be planted along Blue and William Streets and along the northern boundary to offset the removal of the existing trees from the site.

Increased traffic

Council's Traffic and Transport Engineer has advised that the proposal should not have any unacceptable traffic implications on the road network capacity as detailed in Section 6.4 of this report. Appropriate conditions of consent are recommended to minimise impacts on the surrounding road network during demolition, excavation and construction.

Inadequate setbacks

The amended proposal is compliant with the setback controls specified in Part B, Section 2 of the NSDCP 2013 as detailed in Section 11.1 of this report.

Request tree planting along northern boundary

The amended proposal provides for tree plantings along the northern boundary of the site.

Distraction to students of the Shore School

The addition of landscape planters to the western edge of the level 06 and 07 balconies will ensure reasonable privacy is maintained with the Shore School. The 350mm deep vertical fins to the western façade further assist in maintaining a reasonable level of privacy with the Shore School.

To further minimize potential impacts to the students of the Shore School a condition of consent is recommended that prohibits the consumption of alcohol and smoking on the western level 06 and 07 balconies during standard school hours (8.00am to 4.00pm, Monday to Friday).

Wind tunnel effect along William Street

An Environmental Wind Assessment report was prepared by ARUP dated 10 March 2020 and submitted with the application which concluded that *“wind conditions at the majority of locations around the site would be classified as suitable for pedestrian standing type activities with the corners of the Blue Street with William Street and Blues Point Road suitable for walking and close to business walking criterion. These classifications are considered to be suitable for intended use of spaces. It is considered that all locations within the proposed development would meet the safety criterion.”*

Loss of outlook

The apartments at 9 William Street will maintain a reasonable level of outlook noting that a building separation of between 12600mm (level 05) and 21350mm (level 08) will be provided with the residential flat building at 9 William Street. The impacts on outlook to the south for these apartments is largely caused by elements of the building that comply with the relevant planning controls relating to building height and setbacks.

Loss of fauna habitat with tree removal

The loss of habitat caused by the removal of these trees is regrettable, however the site is located within the North Sydney CBD and the proposal is generally compliant with the applicable planning controls. To seek the retention of these tree would significantly impact the redevelopment of the site. The amended proposal provides for six trees along William Street, three trees along Blue Street and four trees along the northern boundary to offset the removal of these trees from the site.

Detrimental visual impact on nearby heritage items

The amended proposal is unlikely to detrimentally impact nearby heritage items as detailed in Section 11.1 of this report.

Excessive glass

The building is unlikely to result in any adverse reflectivity issues. Appropriate conditions are recommended to ensure the glazing has low reflectivity properties.

Non-compliance with podium control

The amended proposal is compliant with the five (5) storey podium control specified in the North Sydney Centre Character Statement in Part C in NSDCP 2013.

Impacts on future redevelopment

The amended proposal has removed the eastern windows to the plant core ensuring no adverse impacts for any potential redevelopment of the adjoining property at 40 Miller Street. The eastern glazing to the south of the plant core is setback 3m from the boundary and compliant with the NSDCP 2013.

Lack of awning along William Street.

The proposal does not provide an awning along William Street. The applicant has provided the following reasons for not including an awning along William Street –

“The current built form is setback at the corner to encourage views through the corner. Woods Bagot are of the opinion due to the steep topography at the corner of the site, the introduction of an awning would create a visually cluttered outcome that negatively affects the increased visibility noted above.

We question the need for an awning along William Street, given that pedestrian traffic is likely to move predominantly down Blue street either to the NS train station or to Miller street if travelling to the Metro as Miller street is more activated in the immediate block, then crosses Pacific Hwy into the future pedestrianized zone of Miller street leading to metro. People will naturally take the downhill path from the Blue street entry to the more active and direct path of travel along Miller street.

William street is not an activated street due to the school frontage on the western side of the street and the residential and un-activated frontages north of the proposal and is therefore less likely to be the desirable path of travel into the CBD centre.

We note that Council’s own public domain strategy appears to come to the same conclusion and does not identify William Street as being a street that requires provision of an awning. Rather, Miller Street is to become the ‘Civic Spine’ and the main pedestrian route through the CBD.”

The reasons advanced by the Applicant for not providing an awning along William Street are generally agreed with. It is further noted that neither the developments to the north of the site at 9 William Street, 19 William Street and 60 Miller Street do not have awnings along the William Street frontages. In the site circumstances and for the reasons provided, the lack of awning along William Street is considered acceptable.

Demolition of fine examples of Inter War buildings

The subject site is not heritage listed in Schedule 5 of the NSLEP 2013 nor located within a Heritage Conservation Area. The demolition of these Inter War buildings is therefore supported as detailed in Sections 6.7.1 and 11.1 of this report.

Height non-compliance resulting in view and/or solar impacts

The elements of the building that are non-compliant with the building height control of RL100 is limited to the roof top plant to RL 101.8. As detailed in Section 10.8.3 of this report, the roof top plant will not result in unreasonable view or solar access impacts on adjoining properties.

Inadequacy of written request pursuant to Clause 4.6 in NSLEP 2013

The amended written request prepared pursuant to Clause 4.6 in NSLEP 2013 seeking a variation to the building height control is Clause 4.3 in NSLEP 2013 is considered to be well founded as discussed in Section 10.8.3 in NSLEP 2013. The written request has adequately addressed the matters in subclause (3) in Clause 4.6 in NSLEP 2013 and is consistent with the objectives of the building height control and the B4 Mixed Use zone and is therefore in the public interest.

No details on proposed textured concrete panels

A condition of consent is recommended that details of the textured concrete panels to the core be submitted to the certifying authority prior to the issue of a construction certificate.

Consumption of alcohol and smoking on upper level balconies

To minimise potential adverse impacts to students of the Shore School, located opposite on the western side of William Street, a condition of consent is recommended that prohibits the consumption of alcohol and smoking on the Workplace Terraces during standard school hours (8.00am to 4.00pm, Monday to Friday).

Northern façade treatment and setback

The amended proposal provides privacy treatment to the northern glazing to ensure reasonable privacy is maintained with the property to the north at 9 William Street. A 3m setback to the northern boundary is also provided which is compliant with the minimum setback specified in the NSDCP 2013.

Public health issues arising from setbacks and ground level treatment to William Street

The NSDCP 2013 encourages a nil ground floor setback to a side boundary. The amended proposal provides for articulation and landscaping at ground level along the William Street frontage as well as public seating which has addressed the key issues raised by the Design Excellence Panel.

16 CONCLUSION

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

The Council's notification of the original proposal attracted forty five (45) submissions (twenty (20) in support and twenty five (25) in objection) concerning view impacts, loss of outlook, loss of amenity, excessive bulk and scale, inadequacy of design, loss of privacy and overlooking, construction and noise impacts, tree removal, wind tunnel effect along William Street, increased traffic and distraction to students of the Shore School.

The Council's notification of the amended proposal attracted fifty-seven (57) submissions (forty-five (45) in support, nine (9) in objection and three (3) neutral). The submissions in objection raised concerns regarding view impacts, building height non-compliance, inadequacy of written request pursuant to Clause 4.6 in NSLEP 2013, lack of awning along William Street, excessive height and lack of setbacks, external finishes and the demolition of fine examples of Inter war buildings.

The amended proposal has provided additional setbacks, improvements in tree plantings at ground level and above podium landscaping along the William Street façade which has assisted in providing for greater articulation and reduced visual massing. The amended proposal has also provided for a reduced roof top plant area, additional privacy treatment to northern façade and compliant podium heights which has assisted in reducing amenity impacts for surrounding properties in terms of views, solar access and privacy.

The amended proposal is generally compliant with the building height control of RL100 specified in NSLEP 2013. The non-compliance with the building height control is limited only to the roof top plant to RL101.8. The amended written request prepared pursuant to Clause 4.6 in NSLEP 2013 seeking a variation to the building height control is considered to be well founded as it has adequately addressed subclause (3) in Clause 4.6 and is also consistent with the relevant objectives of the building height control and B4 Mixed Use zone and therefore in the public interest.

The amended proposal has demonstrated that there will be no additional overshadowing of the Special Area or RE1 zones as specified in the NSLEP 2013. The Visual Survey Analysis submitted as part of the amended proposal has demonstrated that whilst there will be view impact on some of the apartments within 9 William Street, the impact is predominantly caused by elements of the building at or below the building height control of RL 100. The roof top plant to RL 101.8 will not adversely impacts views from the apartments at 9 William Street due to its design, location and height which is lower than the parapet of the adjoining building at 40 Miller Street.

The site is not heritage listed under Schedule 5 of the NSLEP 2013 nor does it fall within a heritage conservation area. The heritage assessment of the application recommends further investigation of the buildings given that there may be potential for the group of four buildings, comprising Nos. 2-4 Blue Street and Nos. 1-3 William Street (also known as Conway Court) to be locally listed as a group.

However, these sites have been subject to a number of reviews at a strategic level and have never been identified for preservation, indeed the opposite is the case, whether it be under the current planning controls or those previously in force. It must be noted that while the existing buildings are representative of inter-war development they cannot reasonably be categorized as unique or rare. While demolition is regrettable, their retention cannot be justified given the historic zoning of the land and the fundamental objects of the Act seek to provide certainty and the promotion of the “*orderly and economic use and development of land*”.

The amended proposal will not detrimentally impact the heritage significance of nearby heritage items given the amended form, massing, scale and materials of the building and the fact that it is generally compliant with the applicable planning controls that apply to the site.

The proposal will result in the demolition of 28 tenanted bedrooms that are identified under the Affordable Rental Housing SEPP as low-income dwellings. the vacancy rate for comparable affordable accommodation in the inner ring of Sydney where North Sydney is located is 2.8% and less than the 3%, an affordable housing contribution pursuant to Clause 51(3) of the Affordable Rental Housing SEPP is recommended as a condition of consent. The applicant does not share this view but has also not been able to share relevant information that proves the contrary. In Council’s view, the loss of this number of low cost dwellings would contribute to significant further cumulative loss of affordable housing in North Sydney and such loss should reasonably be offset by contributions towards the provision of new affordable housing consistent with the objects of the Act which seek “*to promote the delivery and maintenance of affordable housing*”.

Following assessment of the development application, as amended, it is recommended for approval subject to conditions of consent.

RECOMMENDATION

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

THAT the Sydney North Planning Panel, as the consent authority, assume the concurrence of the Director General of the Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 NSLEP 2013 with regards to the non-compliance with Clause 4.3 (Building Height) and **grant consent** to PPSSNH-81 – North Sydney - Development Application No. 47/20 for the demolition of five (5) residential flat buildings, bulk excavation, tree removal and the construction of a 10 storey commercial building with basement parking at 2 – 4 Blue Street and 1 – 5 William Street, North Sydney, subject to the attached conditions.

Prepared by:



Luke Donovan
SENIOR ASSESSMENT OFFICER

Endorsed by:



Stephen Beattie
MANAGER OF DEVELOPMENT SERVICES
