



WINTEN
PROPERTY
GROUP



Response to Submissions

North Sydney Commerce Centre Concept Plan

Submitted to
Department of Planning
On Behalf of Winten Property Group

September 2010 ■ 09486

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Date 13/09/10

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B	Response to Traffic Issues <i>Colston Budd Hunt & Kafes</i>
C	Analysis of Overshadowing on the Don Bank Museum and Miller Street Special Areas <i>Bates Smart and JBA</i>
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1.0 Introduction

An Environmental Assessment Report (EAR) for a Concept Plan for a 31 storey commercial building at 177-199 Pacific Highway was publicly exhibited for a period of 32 days between 7 July 2010 and 6 August 2010.

In total four agency and sixteen public submissions were received in response to the public exhibition of the Concept Plan. The following key issues were identified in submissions made:

- overshadowing;
- height, bulk and scale; and
- building form.

The proponent, Winten Property Group, and its specialist consultant team have reviewed and considered the Department's comments and the public submissions and, in accordance with clause 75H(6) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), and has responded to the issues raised (see Section 3.0).

The Proponent will not be making any revisions to the proposed Concept Plan but has finalised the Statement of Commitments (see Section 4.0).

In addition to responding to the issues raised during the public exhibition period, this response also provides clarification on the incorrect perception that clause 28D of North Sydney Local Environmental Plan 2001 (LEP 2001), which relates to the height and massing of buildings, is a prohibition rather than a development standard.

This report forms part of the Concept Plan and should be read in conjunction with the Environmental Assessment Report (EAR) dated June 2010.

2.0 Interpretation of LEP 2001 and Future Planning Pathway

2.1 Perceived Prohibition

Based on North Sydney Council's submission, we understand that Council (and possibly the Department) is of the opinion that the operation of clause 28D of North Sydney Local Environmental Plan 2001 (LEP 2001), which relates to the height of buildings, operates as a prohibition. We are of the opinion that clause 28D operates as a Development Standard for the following reasons.

Section 76B of the Environmental Planning & Assessment Act 1979 (EP&A Act) defines **prohibited development** as the following:

prohibited development means:

- (a) development the carrying out of which is prohibited on land by the provisions of an environmental planning instrument that apply to the land, or*
- (b) development that cannot be carried out on land with or without development consent.*

Clause 28D(2) is therefore not a prohibition as:

- the clause does not expressly list any development that is outright prohibited; and
- the clause allows for development to be carried out with development consent if the proposal complies with the provision.

The EP&A Act defines a **development standard** as the following:

development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, maneuvering, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,***

- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed.*

(Our Emphasis)

Clause 28D comprises a development standard as it contains a numeric control which in effect limits the height of a building by prescribing the maximum overshadowing allowed on land zoned Public Open Space or nominated as a Special Area.

The fact that State Environmental Planning Policy No.1 – Development Standards (SEPP 1) does not apply to Clause 28D does not alter the fact that it is and remains a Development Standard. Further to the above, the fact that the Council in drafting the LEP felt the need to apply a provision about the application or otherwise of SEPP 1 to the clause further outlines the intention that it operates as a development standard.

This position has been supported by previous decisions in the Land and Environment Court (Court) (see *Great Wall Property Group v North Sydney Council (No 2)* [2005] NSWLEC 574) in which the Court held that “subclauses 28D(2)(a), (b), (c), (d) and (e) are all development standards”. The Court noted that some of these development standards could be varied under SEPP 1, while others could not, and that in relation to clause 28D(2)(D) specifically, this could be varied via the LEP itself, pursuant to clause 28D(4), which is headed ‘minor variation of overshadowing controls’. We also note that even the Council itself in that case argued that some components of clause 28D were development standards.

Whilst the Minister retains the ability under section 75R of the EP&A Act to approve a Concept Plan that would otherwise be ‘prohibited’ by the LEP, it is important to clarify the correct interpretation of clause 28D as part of the process of assessing the project on its merits and its implications on future applications under the Concept Plan approval.

For example Council’s Senior Assessment Officer’s Report, which went to the elected Council for consideration, states that:

“Irrespective of the other merits of the application, this aspect of the proposal (the non-compliance with clause 28D) acts as a prohibition pursuant to NSLEP 2001 and as such the application can not be supported.”

and concludes that:

Finally, it must be stated that if this application were Council’s to determine, then the only possible recommendation would be refusal due to the prohibited impacts caused by the shadows cast by the building. While there is a considerable merit in the design approach, it is concluded that the proposed development in its current form cannot be supported and it is the recommendation of this report that Council should resolve to OBJECT to the application.

If Council was of the opinion that clause 28D was not a prohibition, then the recommendations of the Council’s assessing officer’s report may well have been different, and as the conclusion indicates, the proposed non-compliance with the development standard could be varied based on the “considerable merit” of the project.

2.2 Future Approval Pathway

If Clause 28D(2)(c) is a prohibition and the Minister nevertheless approves a Concept Plan contrary to this prohibition, which he is empowered to do, in sending the matter to Council for assessment of the detailed application under Part 4, he would have to direct that clause 28D(2)(c) did not apply. If he did not make such a direction, Council would have no power to consider the application under Part 4 (this is only on the assumption that cl.28D is a prohibition, which we do not agree with, as explained above).

Even if clause 28D(2)(c) is a development standard, the fact that it is not possible to lodge a SEPP1 objection to vary the standard beyond the minor variation permitted by clause 28D(4) would prevent the application from being approved under Part 4 unless the Minister directed that clause 28D(2)(c) does not apply at all.

In light of the above, we request that the Minister direct under s.75P(2)(c1) that sub-clauses 28B(o) and (p) and clause 28D of LEP 2001, and any corresponding provisions in the current Draft LEP (clauses 6.4) not apply to future applications under the Concept Plan.

3.0 Key Issues and Proponent's Response

The following section provides a detailed response to the key issues raised by the Department of Planning following a detailed review of the submissions.

Attachment 1 provides a response to all the issues raised during the public exhibition period.

3.1 Overshadowing

Issue

The proposed building envelope results in additional overshadowing of nearby Special Areas (as identified in the North Sydney LEP 2001). Further envelope massing options should be prepared which demonstrate maintenance of solar access to the Miller Street and Don Bank Museum Special Areas between 10am and 2pm throughout the year, with particular reference to the Equinoxes. The options should indicate the impact on floor space and floor plate areas.

Proponent's Response

An envelope study (see **Attachment C**) has been undertaken to demonstrate the various building envelopes that maintain solar access to the Miller Street Special Area and the Don Bank Museum Special Area between 10:00am and 2:00pm throughout the year, and on the Equinoxes. When combined to consider both Special Areas, a fully complying scheme would result in:

- a highly irregular envelope (see **Figure 1**), which would produce a maximum height of RL153m, and a maximum GFA of 25,485m² (a loss of 19,285m²); or
- a more regular building envelope (see **Figure 2**), which would produce a maximum height of RL146.4m, and a maximum GFA of 23,235m² (a loss of 21,535m²).

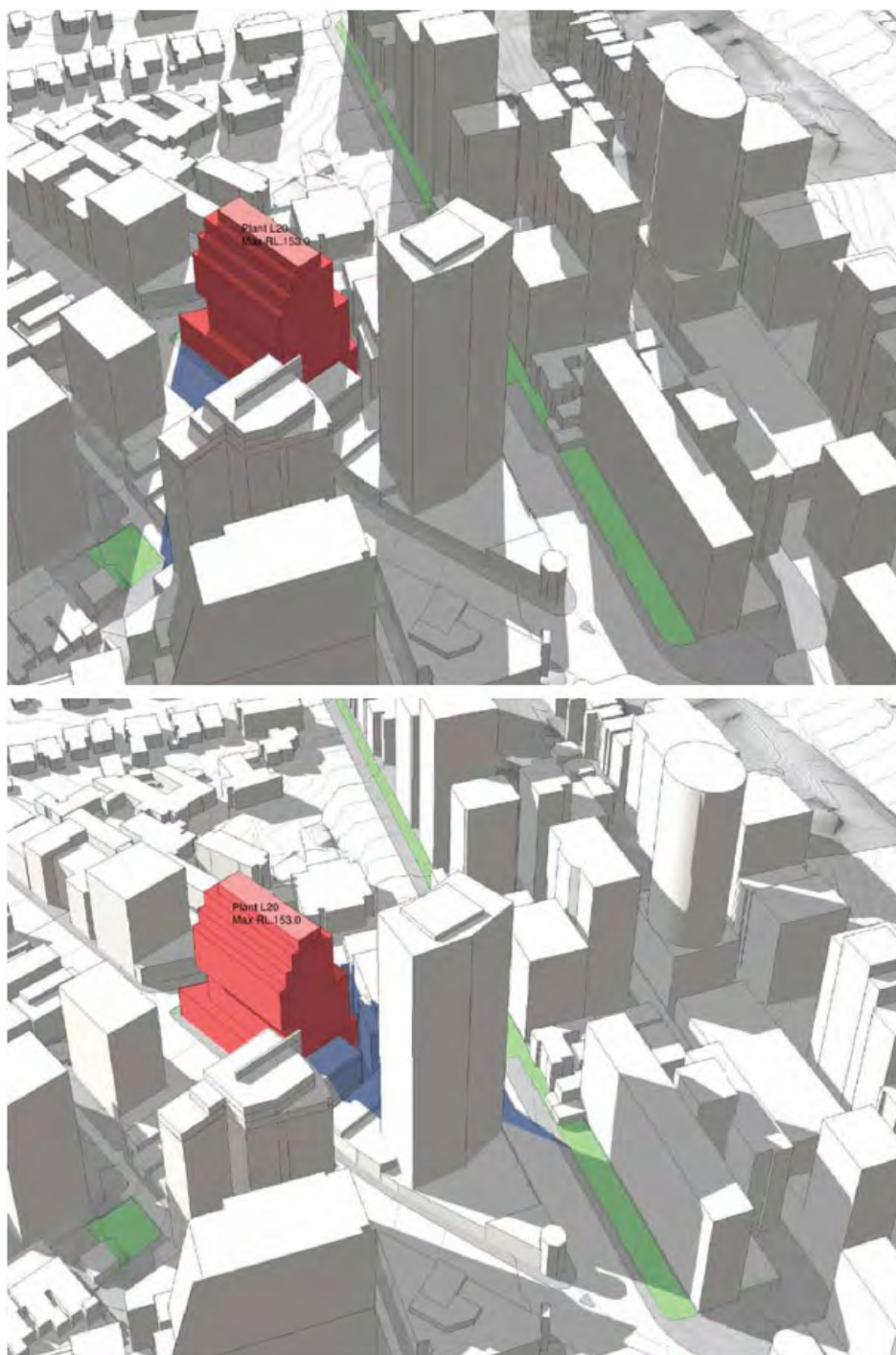


Figure 1 – A fully complying irregular building envelope

Source: Bates Smart

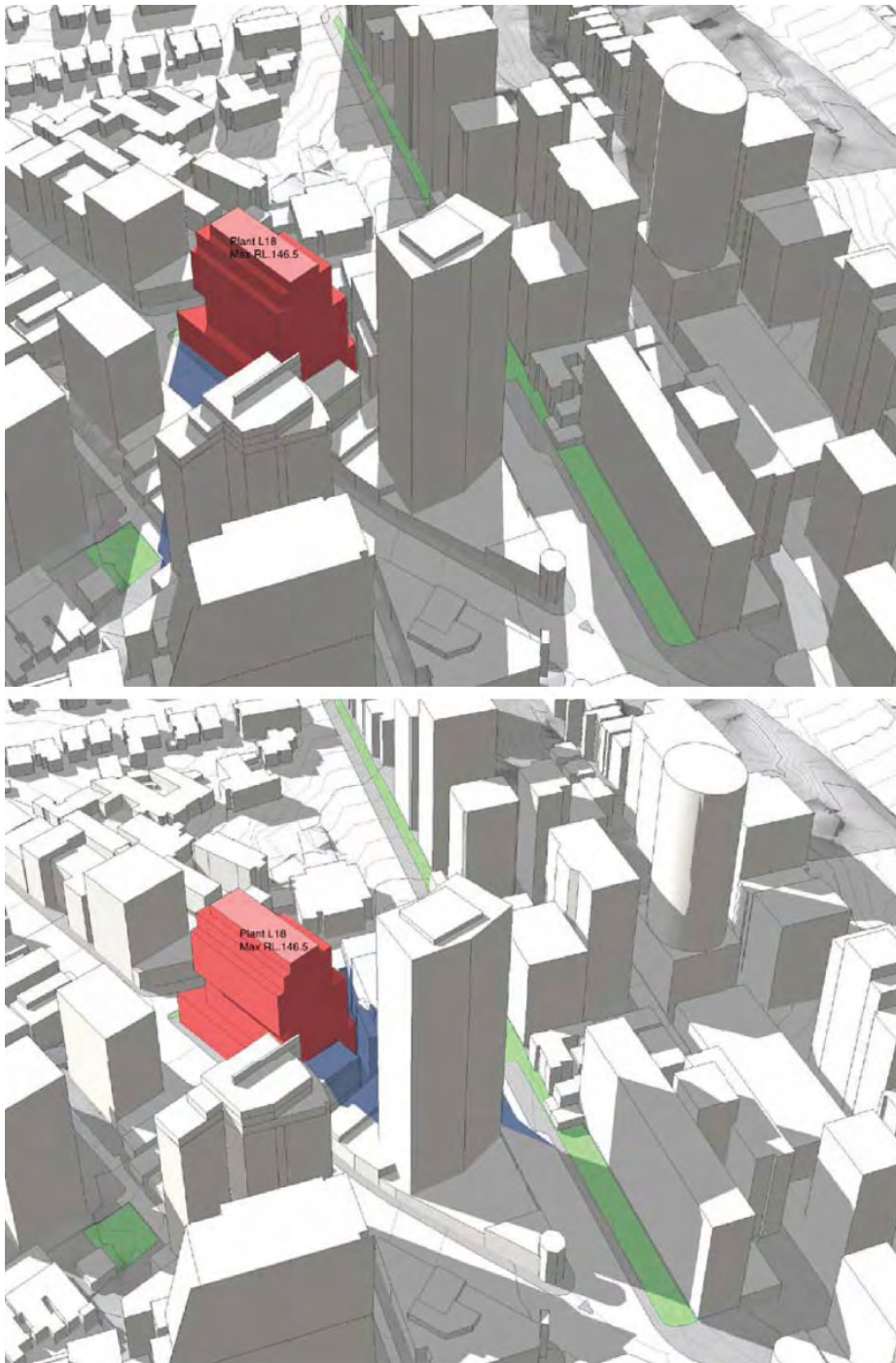


Figure 2 – A fully complying regular building envelope

Source: Bates Smart

The implicit reality is that a complying building on the subject site, i.e. either of the above options, would not be financially viable or feasible for any developer to develop as the building's form would severely affect its function and marketability.

Therefore, despite being one of the few sites left in the Centre that was identified by Council as being suitable and capable of delivering a large commercial floor plate building of the highest category floorspace, it is not foreseeable that any development will occur on the site under the existing or draft planning framework, not to mention the significant constraints relating to the current site's strata-titled development status.

The inability to provide a completely complying building on the site and the merit of the application was recognised by the North Sydney Design Review Panel, a panel of expert architects and planners appointed by Council to inform its assessment of development proposals. The Panel made the following comments:

...it is noted that the current planning controls considerably restrict the height of the tower. It is also noted that there is considerable public benefit with the large public garden space being offered.

*...The urban design quality of the proposed concept is recognised by the Panel,
...the Panel supports the proposal as a well considered concept.*

North Sydney Council's Assessment Officer's Report to Council also acknowledged that:

...protection of sunlight year round to these special areas is difficult and does constrain development potential for centrally located sites in the CBD and the efforts of the proponent to retain solar access on the winter solstice are also acknowledged. However, the impacts of the shadow cast by this building must be given determinative weight.

It is at this point that it is requested that the Minister assess the application on its merits rather than in sole consideration of its strict compliance with LEP 2001. As demonstrated in Section 5.2.1 and 5.2.2 of the EAR, despite not fully complying with clause 28D(2)(b), the impact of the shadow cast by the building is not of determinative weight and that the proposed overshadowing will not have any significant adverse impacts on the Miller Street or Don Bank Special Areas.

To further illustrate this, as requested, the full extent of the overshadowing throughout the year generated by the proposal has been modeled. The graphs at **Figures 3 and 4** (see also at **Attachment C**) illustrate the level of affectation for each week of the year.

The shadow diagrams and assessment in the EAR demonstrated that even at its greatest impact the development will only result in:

- A maximum additional 46 minutes of overshadowing on the Miller Street Special Area, of which the majority of the time the building will only affect 4% of the usable area within the Special Area;
- A maximum additional 39 minutes of overshadowing on the Don Bank Special Area which occurs between 10:00am – 10:39am at a time when relatively few people will be using the area.

It is noted that under clause 28D(4)(d) the consent authority can vary clause 28D(2) by 15 minutes, and consequently the development will only result in additional overshadowing for 17 weeks of the year on the Don Bank Museum Special Area and 36 weeks on the Miller Street Special Area.

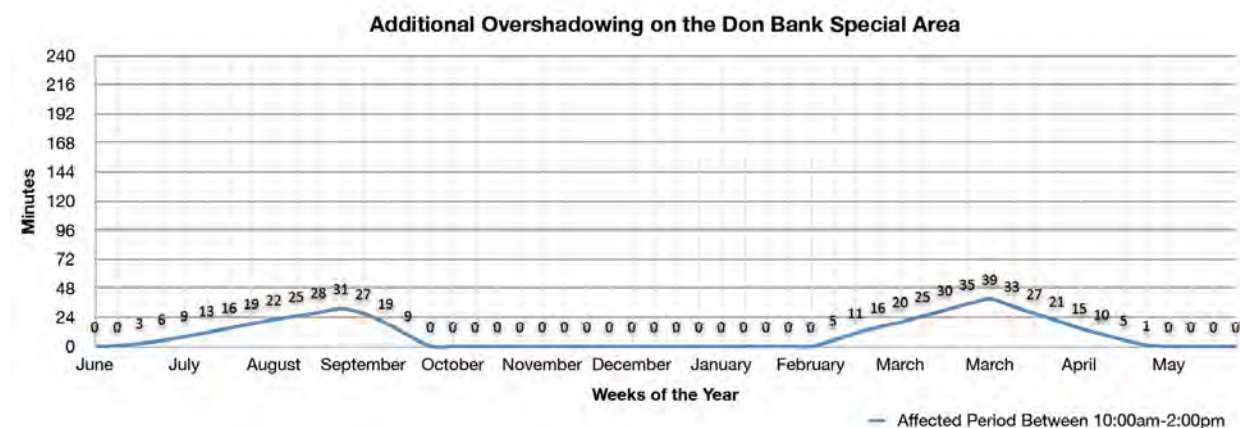


Figure 3 – Analysis of overshadowing on the Don Bank Museum Special Area

Source: Bates Smart & JBA Planning

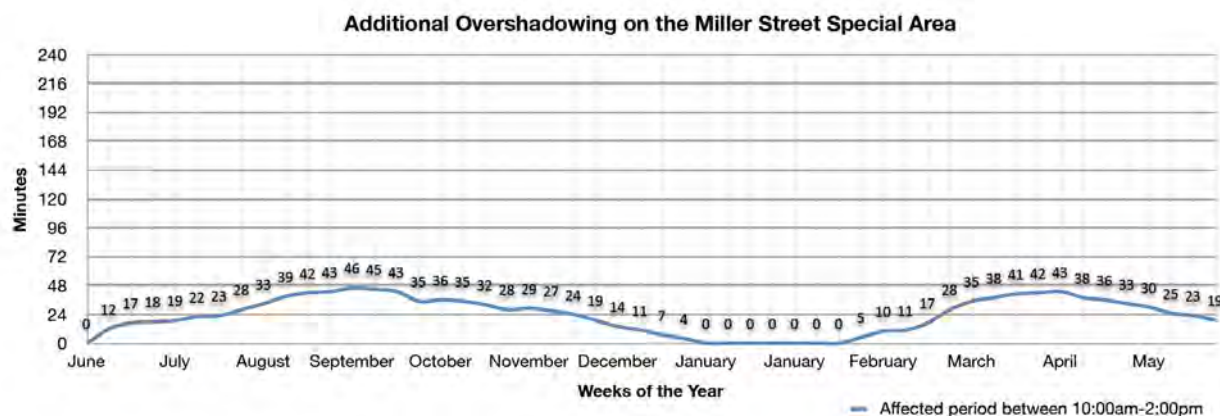


Figure 4 - Analysis of overshadowing on the Miller Street Special Area

Source: Bates Smart & JBA Planning

The above analysis shows the aggregate impact of the additional shadow. However, the analysis records the additional shadow from the time it first touches (or leaves) the special areas, and is therefore misrepresentative of the true impact of the shadow. As a result the additional shadow and the areas it affects has been modeled for each month of the year on the Miller Street Special Area (see **Attachment C**). The modeling shows that not only is the shadow relatively minor for the majority of the time it creates 'additional shadow' but also that it affects different sections of the Special Area at different times of the year. The modeling also demonstrates that the proposed public Garden Plaza and new Berry Street Special Area provided at the front of the site receive excellent solar access throughout the entire year, and any part of the Special Area overshadowed by the development is more than offset by the provision of the publicly accessible Garden Plaza and new Berry Street Special Area.

The areas within the Miller Street Special Area affected by shadow are identified in **Figure 5**, and a qualitative assessment of the quantity of that shadow on those areas is represented in **Figure 6** and summarised **Table 1**. The assessment shows that whilst the proposal will create 44 weeks (36 weeks above the 15 minute variation) of additional shadow, part portions of the grassed area of the MLC forecourt, for example, will only be in shadow for 19 of those weeks, and of those 19 weeks nearly half of that time the affectation is minor. At other times between the end of August to the end of March the grassed areas is completely unaffected. Further, the café seating areas are only affected in a major way for 6 weeks in September and October.

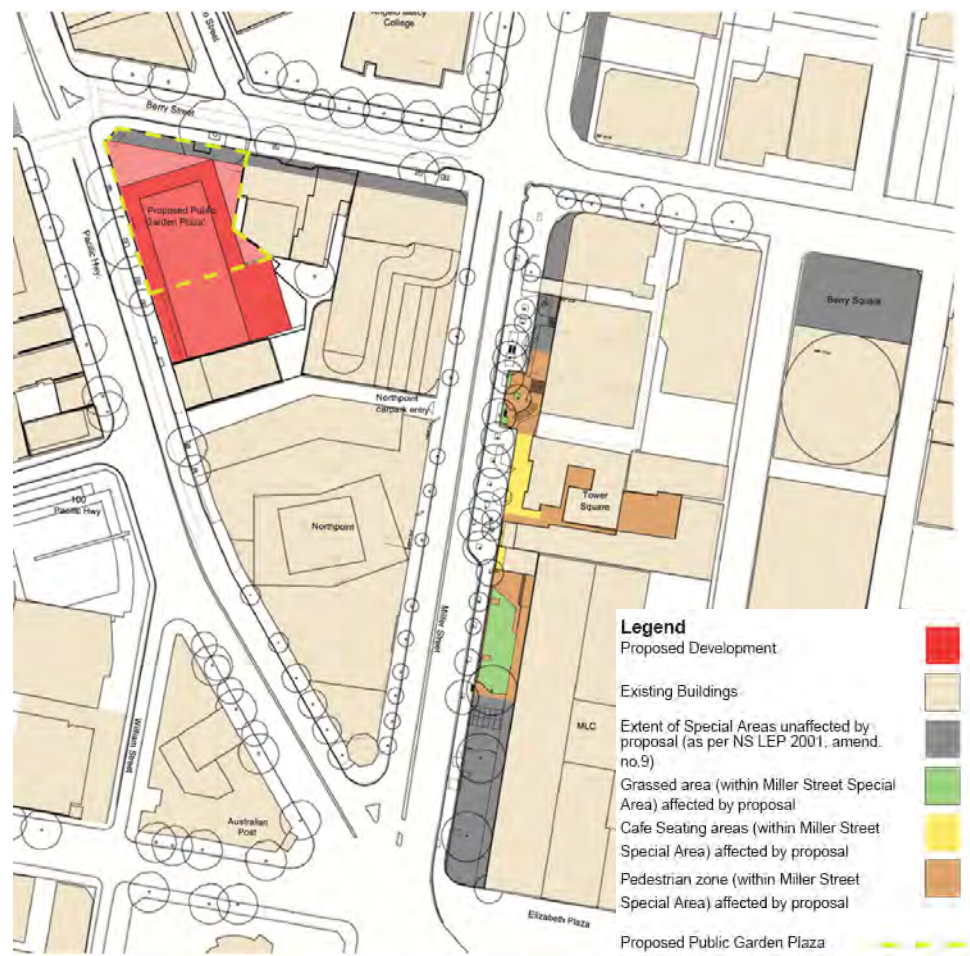


Figure 5 – Areas affected by additional shadow

Source: Bates Smart

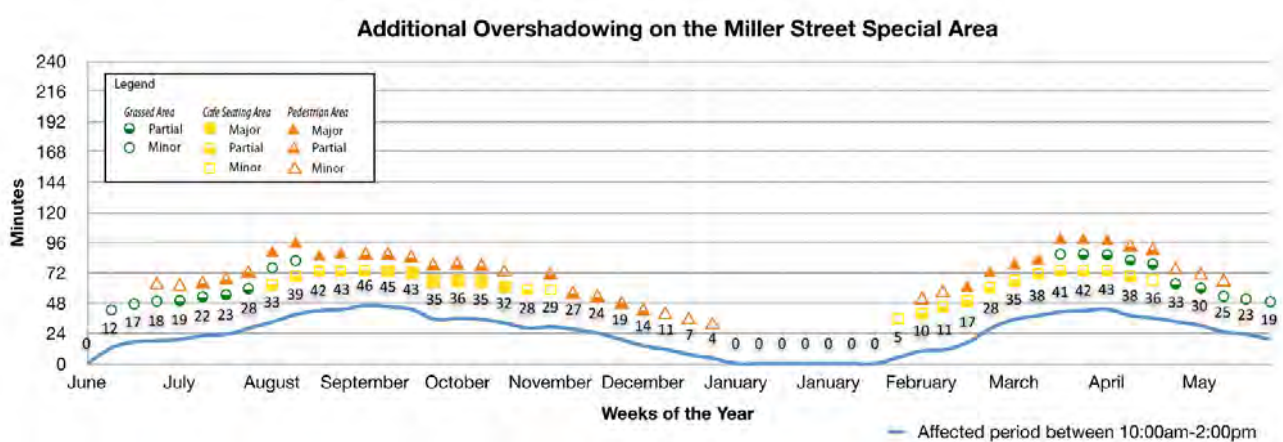


Figure 6 – Analysis of the areas affected by overshadowing on the Miller Street Special Area

Source: Bates Smart & JBA Planning

Table 1 – Summary of the additional overshadowing on the affected areas within the Miller Street Special Area

Location	Weeks of Additional Shadowing		
	Minor	Partial	Major
MLC Lawn	9	10	0
Café Seating	3	16	6
Footpaths & Circulation	13	16	11

It is acknowledged that vegetation can not be considered in determining the additional shadow on the Special Areas under the LEP. However, using the Land & Environment Court's planning principle for solar access (*The Benevolent Society v Waverley Council* [2010] NSWLEC 1082), which states that *Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way*, in undertaking an assessment of the impact of the proposed shadowing, the Minister should consider the true impact of the proposed shadow on the amenity of the special areas based on the substantial vegetation which currently overshadows those Special Areas.

The Foliage Study at **Figure 7** shows that:

- established vegetation casts shadows on the Don Bank Museum Special Area throughout the entire course of the year; and
- established vegetation casts shadows on the Miller Street Special area for the majority of the year, with trees retaining their foliage up until June.

Therefore, despite creating 'additional shadow' the study demonstrates that a large majority of the areas that will be overshadowed are in fact already in shadow from dense vegetation.

Don Bank Museum Special Area Foliage Study



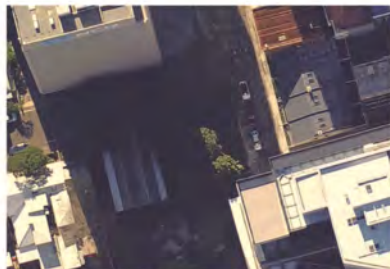
April



May



June



August



November

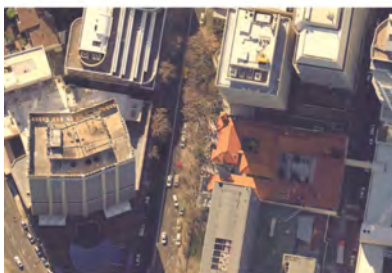
Miller Street Special Area Foliage Study



April



May



June



August



November

Figure 7 – Special Area Foliage Studies

It appears that commercial drivers have been previously considered in the assessment of planning applications in the North Sydney Centre, which is reflected in sub-clause 4.6(7) of Draft LEP 2009, which exempts future additions to the MLC building from the overshadowing the Mount Street Plaza:

(7) Mount Street Plaza public recreation zone

Despite any other provision of this plan, the consent authority may grant consent to an application for additions to the MLC building on land known as 105-153 Miller Street, North Sydney that may cause a net increase in overshadowing of that part of the land known as Mount Street Plaza that is within the RE1 Public Recreation zone.

This concession, which appears inequitable, was the product of an unsuccessful development application for an addition to the MLC building which overshadowed Mount Street. It appears that Council is now willing to exclude the MLC building from its shadowing controls as a response to the commercial driver to allow MLC to expand. This poses a philosophical question of whether the same principle should also be applied to the Winten development, where the commercial benefits of a project with significant merit may be considered of greater value than compliance with an LEP development standard.

Therefore as detailed above, the additional shadow should not be considered to be of determinative weight. Furthermore any of these minor impacts are more than off-set by the positive economic, environmental and public benefits the proposal will provide in the form of the:

- provision of a 1,325m² publicly accessible Garden Plaza as a new special area within North Sydney;
- creation and extension of the Berry Street Special Area along the site's frontage;
- amalgamation and redevelopment of an underdeveloped site which would otherwise remain under fragmented ownership indefinitely;
- provision of a highest grade commercial building with large floor-plates; and
- various other urban design and public domain improvements.

In light the merits of the proposal and public benefit provided, the impact of the shadows which occur for a small period of time over a small part of the year and will have very little material impact should not prevent an otherwise generally compliant development with considerable public benefit.

3.2 Height, Bulk and Scale

Issue

The Department is of the view that the envelope of the upper levels of the proposed building will be visually prominent when viewed from the east and west at the edges of the North Sydney Centre.

In its recommendations to the Department, Council recommended emphasising the 'relevant' height controls of the yet to be exhibited Draft LEP 2009 for the site of RL 85 and RL 190 to reinforce overshadowing controls.

Proponent's Response

As a result of the building's height it will be visually prominent in the locality. This prominence is considered appropriate considering the site's location in the North Sydney CBD and the level of design excellence that has been undertaken and is committed to being achieved.

The proponent has considered possible alternative designs to the upper levels of the envelope and resolved that any design modifications, such as a ziggurat form, would be contrary to the design intent of the building, which responds to the solar access plains, to create a series of interconnected monolithic masses. Such revisions to the design of the upper levels would

- adversely impact on the composition of the building and thus threaten the building's ability to achieve design excellence; and
- also potentially threaten the achievement of suitable floorplates and thus the viability of constructing at upper levels.

As a result any design changes which require a reduction in the mass of the upper levels of the building would realistically require reducing the height of the tower. Whilst no changes are proposed to the Concept Plan envelope, the articulation of the building will be undertaken as part of the detailed design and provide opportunities to address the perceived visual prominence of the upper levels.

Attachment C and **Figures 8** and **9** illustrate how this could potentially be achieved through a series of studies.

It is noted that neither the Design Review Panel nor Council raised any issue with the mass of the upper levels of the building.



Figure 8 – An example of a possible articulation to the western façade

Source: Bates Smart

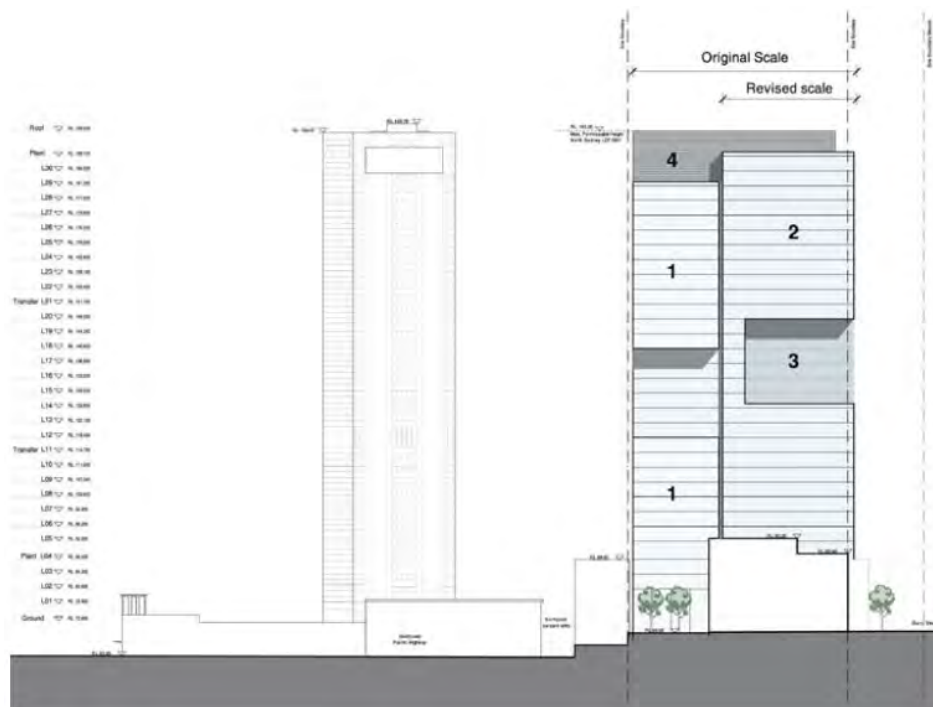


Figure 9 - An example of a possible articulation to the eastern façade

Source: Bates Smart

In regards to Council's recommendation that the Draft LEP 2009 heights be adopted to reinforce the overshadowing controls, Section 5.2 of the EAR demonstrated as a result of the overshadowing provisions that apply under LEP 2001 and Draft LEP 2009, the maximum numeric building heights set out in Draft LEP 2009 are irrelevant as the maximum height achievable on the site under a complying scheme is RL 136.9 and a 5 metre reduction to the tower to RL 190 will still result in overshadowing occurring on the Don Bank Museum and Miller Street Special Areas.

The overshadowing impact of a concessional reduction to the maximum building height to RL190, as recommended by Council, is shown **Figures 10-12** below. The analysis demonstrates that even on the days with the greatest affectation, the 5m reduction to the tower will have negligible impacts on the degree of overshadowing on the Miller Street and Don Bank Museum Special Areas during the Equinoxes or on the Shore School during the Winter Solstice. Notably the reduction would make no significant difference on the area of additional overshadowing on the Miller Street Special Area at 2pm on the Spring Equinox.

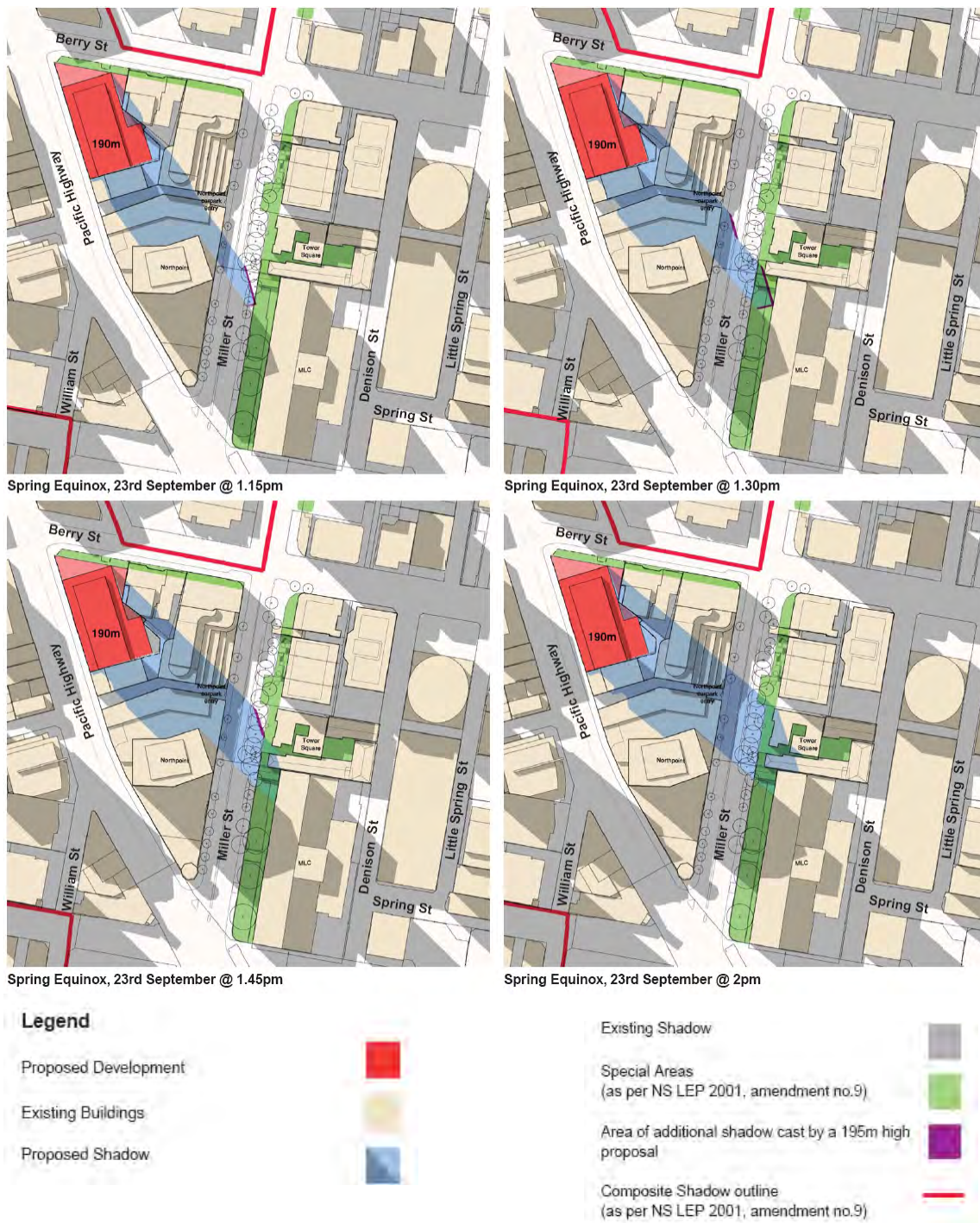


Figure 10 – Impact of the non compliance with Draft LEP 2009 RL190 height control on the Miller Street Special Area



Figure 11 - Impact of the non compliance with Draft LEP 2009 RL190 height control on the Don Bank Special Area

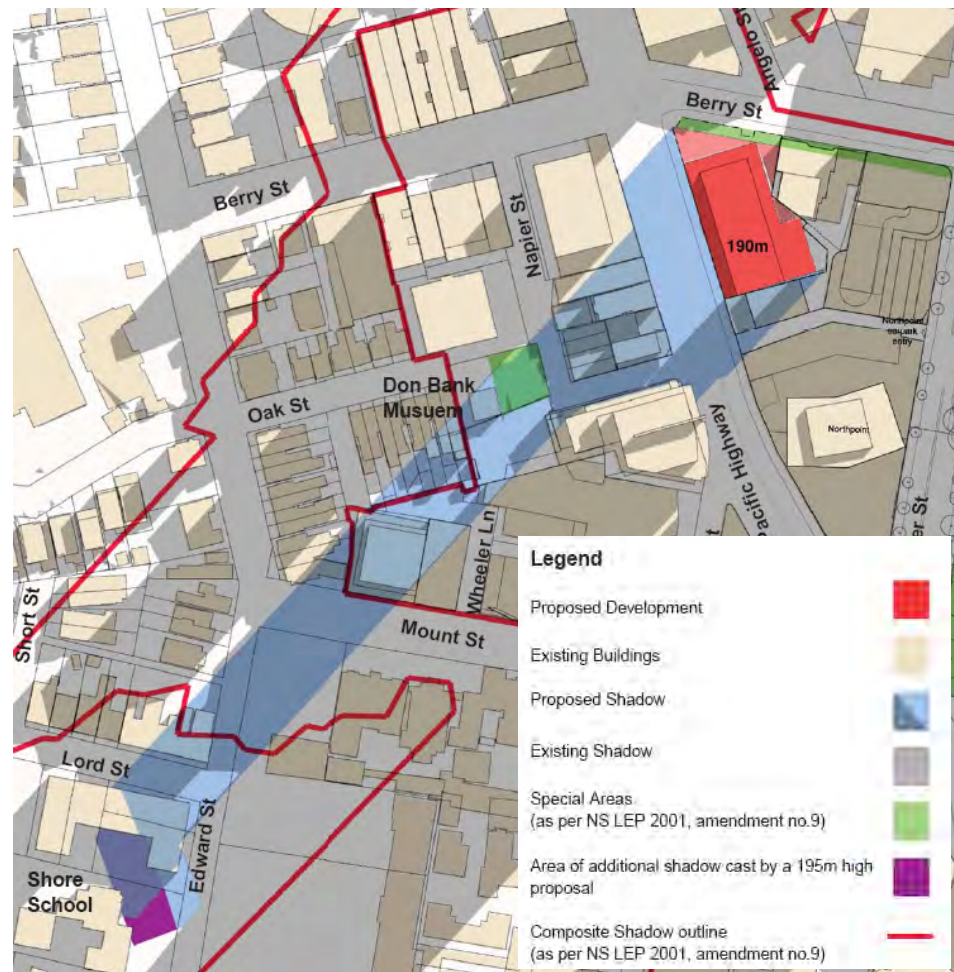


Figure 12 - Impact of the non compliance with Draft LEP 2009 RL190 height control on the Winter Solstice

If the development is required to comply with the RL 85 height of the draft LEP limit at the northern part of the site the development will no longer be commercially viable and the project will not proceed. Further discussion as to why the draft height controls are not appropriate is located at Section 5.2.2 of the EAR.

It should also be noted that both the Design Review Panel and Council's Assessment Report were supportive of the proposed tower height. The Panel stated that it:

...considered the height to be appropriate as far as visual impact is concerned in its context as part of the central area of the CBD and particularly the site's proximity to Northpoint.

Council stated that:

Generally, the proposed envelope is considered to be acceptable in scale, form and massing with regard to its context within the North Sydney CBD and the desired future character of the CBD.

3.3 Building Form

Issue

The proposed building envelope is inconsistent with Council's setback controls on the Pacific Highway alignment of the site.

Further options for the design and appearance of the expressed cantilevered envelope at Level 10 on the Pacific Highway elevation should be provided and should include options for the design and appearance of Level 10 soffit as seen from the public domain.

Proponent's Response

Section 5.2.4 of the EAR assesses the proposed development's non-compliance with the 5m weighted average setback control in DCP 2002.

The assessment demonstrates that the proposed variation to the setback control on the Pacific Highway will achieve the desired aim of the control. This position was confirmed in Council's Assessment Officer's report, which states:

The proponent has provided justification that the proposed setback on the lower levels up to level 10 is consistent with the scale of smaller buildings, and achieves the desired aim of the setback control.

However, the Report goes on to say that:

Whilst in isolation the proposed non-compliance does not result in adverse amenity impacts, the upper levels are the cause of the additional shadowing and the additional bulk on the Highway frontage of the building would be highly visible and contribute to the perceived scale of the overall building and its imposition on the streetscape.

To address these concerns, further investigations have been undertaken into the potential adverse additional shadowing and imposition on the streetscape that non-compliance with the setback control creates.

Whilst the intrusion into the setback on the Pacific Highway does create additional shadow during middle of the day, the majority of this shadow falls on the Pacific Highway. The overshadowing diagrams at **Figure 13** illustrates that due to the orientation of the building, and the location of the special areas to the south east and west of the site, the non-compliance will generate a negligible amount of additional overshadowing on the Don Bank Museum Special Area.



Figure 13 – Analysis of the additional overshadowing created by the setback intrusion

The Design Review Panel also noted that the non-compliance with the setback and recommend that a ground level perspective from the pavement on the east side of the Pacific Highway looking south be prepared to demonstrate that the protrusion is appropriate and in context with development on the eastern side of the Pacific Highway.

Bates Smart has prepared multiple perspectives (see **Figures 14-15**) which illustrate the proposed scheme. The perspectives clearly demonstrate that the building will sit in front of the existing North Point tower, which has a 0m setback, and the protrusion will not be overbearing on the streetscape and is appropriate in context with the development on the eastern side of the Highway.



Figure 14 – Proposed envelope overlayed on the existing site with North Point behind

Source: Bates Smart



Figure 15 – Ground Level perspectives from the pavement on the east side of the Pacific Highway
Source: Bates Smart

Therefore in light of the absence of any additional adverse overshadowing or streetscape impacts, the proposed intrusion into the setback on Pacific Highway should be supported.

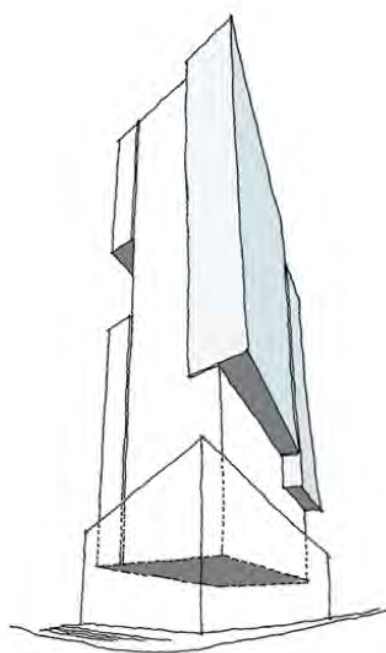
Furthermore it is noted that if the proposal was required to comply with the 5m weighted average setback control to the Pacific Highway, that to retain the economic viability of the building, the floorspace located within the setback would need to be redistributed back into the building podium. This would significantly reduce the amenity of the public Garden Plaza, and on balance, result in a lesser outcome in terms of public benefit, provision of large commercial floor plates, and the architectural quality and merit of the building. Further discussion on the viability of providing the Garden Plaza is located in Section 3.4.

The design of the Level 10 soffit as seen from the public domain will correspond with the final fabric of the building. As a result the design and appearance of the soffit will be developed as part of the detailed design of the building. Possible design solutions (as shown in **Figure 16**) could include:

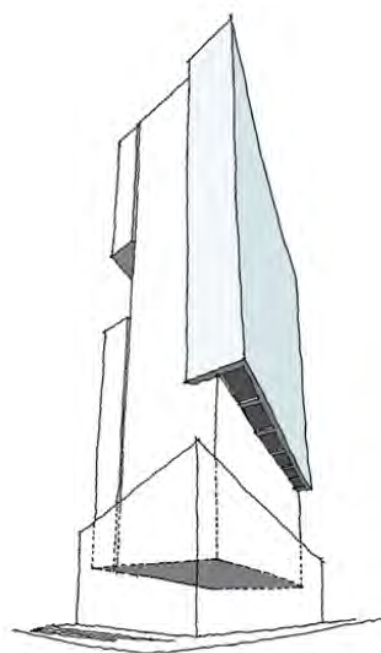
- articulated form;
- expressed structure;
- floating skirt; and
- recessed floor for articulation of form.

The potential soffit materials and finishes are shown at **Figure 17**, the material include:

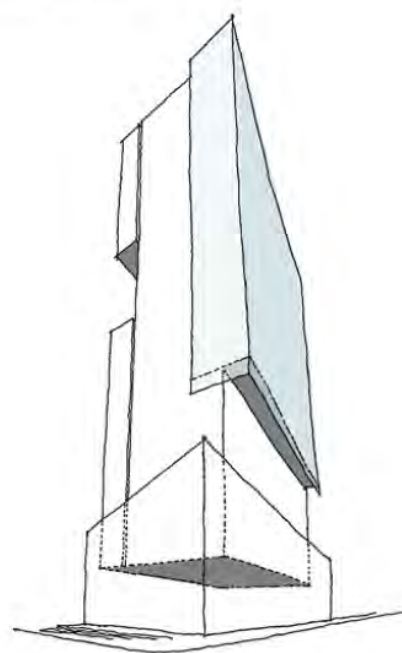
- aluminum cladding (high gloss for reflective quality)
- stainless steel
- Perforated metal
- off form concrete finish- high quality; and
- steel rods.



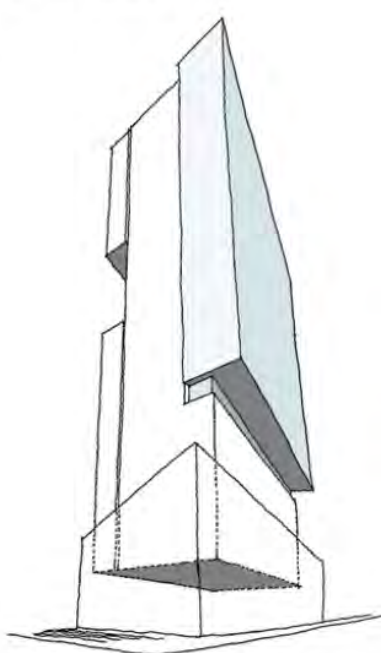
1. Articulated form



2. Expressed structure



3. Floating Skirt



4. Recessed floor for articulation of form

Figure 16 – Potential soffit design options

Source: Bates Smart

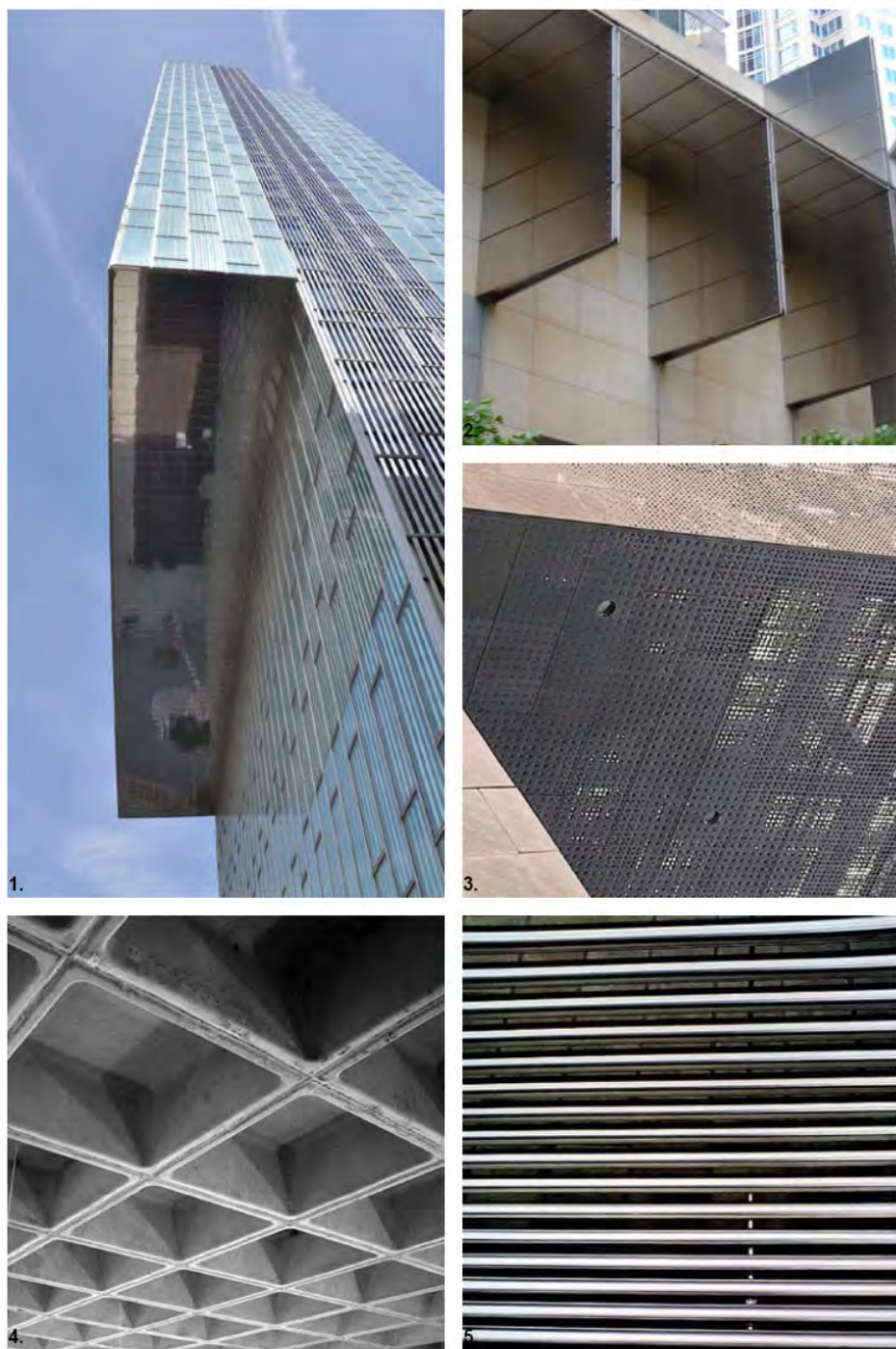


Figure 17 – Potential soffit materials and finishes

Source: Bates Smart

A commitment regarding the future design of the soffit has been incorporated into the Statement of Commitments.

3.4 The Public Benefit of the Garden Plaza

Issue

Council stated that it:

is not satisfied that the proposed garden plaza is a public benefit, as currently proposed it is a foyer to a commercial building and Council seeks that the garden plaza be open on Berry Street and Pacific Highway.

Proponent's Response

An assessment of the benefit provided by the publicly accessible Garden Plaza is located at Section 5.3 of the EAR.

The North Sydney Design Review Panel, an independent panel of esteemed architects appointed by North Sydney Council, informed the elected members of Council that:

The Panel supports the proposed public garden plaza as a major feature of the proposal and a definite public benefit.

and

...there is considerable public benefit with the large public garden space being offered.

Council's Senior Assessment Officer, in her Report to Council, stated that:

The proposed development has been assessed as providing public benefit through the incorporation of the 1,325sqm of publicly accessible ground floor garden plaza.

The final resolution of the elected Councilors; that the Garden Plaza as proposed is a commercial building lobby and not a public benefit, is contrary to the professional advice Council obtained to inform its decision, and reflects Council's broader political opposition to the project rather than an absence of public benefit or issue with the design of the Garden Plaza itself.

Furthermore, the Design Review Panel and Council's Assessment Officer were highly supportive of the design of the unique publicly accessible open space.

The Design Review Panel remarked that:

This space will provide a year round weather protected space for the public to gather and meet and potentially host exhibitions and events... It has been designed such that the entire podium appears as a four storey glazed volume that is open to the public. The central volume of the space is dedicated to public seating. A small café is proposed, however there will be no dedicated seating for commercial purposes. The tower structure is a long span structure (17m) over this space to eliminate columns and create a highly useable public space. (our emphasis)

Council's Assessment Officer notably remarked that the area would be:

...unique to the North Sydney CBD, and provide a year round weather protected area for use by the public.

and

The proposed garden plaza is considered to be a positive contribution to the streetscape appearance of the site as a gateway to the CBD, and is sited to provide an interface with the future Berry Street Special Area, envisaged by Council's planning controls.

In light of the above support for the proposal from Council's independent experts, Winten is satisfied that no modifications to the Garden Plaza are necessary.

It is noted that a correct interpretation of the plans provided show that the Garden Plaza is a completely separate facility from the commercial lobby in terms of the treatment and finishes.

To ensure that this area does remain as a public benefit, Council's Assessment Officer recommended that at Project Application stage, a restriction be placed on title to ensure public accessibility. Winten supports this recommendation and will organise to have a restriction placed on the title to ensure public accessibility.

Finally, it is noted that the provision of the publicly accessible garden plaza is contingent on the project being approved in its current form. Any revisions to the project in the form of a reduction in height or GFA would result in Winten needing to remove or significantly reduce the size of the proposed Garden Plaza.

3.5 Consultation with Sydney Airport Corporation (SACL)

The Department requested that the Proponent provide evidence of consultation with SACL.

Following consultation with SACL, SACL requested various details of the project be provided to it in order to allow assessment of the project under Part 12 Division 4 of the Airports Act 1996 and the Airports (Protection of Airspace) Regulations 1996 in respect of Obstacle Limitation Surface (OLS), and Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS).

This information has been provided to SACL (see **Attachment D**), however, we understand assessment may take a couple of months. It is therefore requested that as this separate approval process occurs the Minister, use his ability under section 75P(1)(a) of the Environmental Planning and Assessment Act to approve the Concept Plan above 156m AHD, subject to a condition requiring all SACL / Commonwealth approval being required prior to the issuing of a Construction Certificate for the next application.

4.0 Final Statement of Commitments

In accordance with Part 3A of the *Environmental Planning and Assessment Act 1979*, the following are the commitments made by Winten to manage and minimise potential impacts arising from the proposal. These commitments replace the draft commitments included with the EAR.

4.1 Public Domain

A 1,325m² publicly accessible recreation space will be provided at the ground level of the building between 7:00am – 7:00pm Monday to Friday.

4.2 Soffit Design

The detailed design and appearance of the Level 10 soffit will provide a high quality visual outcome when viewed from the public domain.

4.3 Transport and Accessibility

Winten makes the following commitments regarding transport and accessibility:

- All access, servicing and internal layout will be provided in accordance with AS 2890.1:2004 and AS 2890.2 – 2002.
- An assessment of the construction traffic generated by the development will be undertaken at the Project Application stage.
- Winten will request that workplace travel plans and transport access guides be prepared by future tenants prior to occupation.
- Winten will investigate the following matters at the Project Application stage:
 - locating the cycle facilities on B1;
 - providing a car share space;
 - the need and nature of any upgrade works to the nearest bus stops; and
 - providing visitor bicycle parking at the entrance to the development.
- A construction traffic management plan will be prepared prior to the issuing a construction certificate.
- Appropriate bicycle parking (75 bicycle racks lockers and 18 bicycle racks) and shower / change facilities will be provided in accordance with North Sydney Council's DCP rate.

4.4 Environmental and Residential Amenity

4.4.1 Acoustic Privacy

An Acoustic Report will be prepared to assess the acoustic impacts of the proposal at the Project Application stage.

4.4.2 Wind Impact

Winten commits to the following wind mitigation measures:

- provision of trees in at the north-western corner of the development in accordance with Council requirements;
- retention of the existing trees along the Pacific Highway and Berry Street pedestrian footpaths; and
- provision of impermeable balustrades 1.2m in height around the Level 15 and 16 terraces.

4.5 Environmentally Sustainable Development

The proposed building will achieve a 5 Star Green Star Office Design (v3) rating and a 5 Star NABERS Office Energy Rating.

Winten also commits to exploring the following environmental initiatives:

- natural ventilation to the podium;
- orientation specific sun-shading to minimise heat gain;
- low temperature VAV or chilled beams;
- rainwater recycling;
- solar water heating; and
- low embodied energy in materials.

4.6 Geotechnical and Groundwater

A comprehensive geotechnical site investigation will be undertaken at the Project Application stage. The comprehensive geotechnical site investigation will:

- Develop appropriate design and construction methodologies to mitigate noise and vibration impacts during excavation of the basement car park.
- Identify existing services and utilities and relocate them if required prior to demolishing and excavation works.
- Investigate the need to develop a retaining or shoring system for the existing building during demolition and for the excavation of the basement levels to ensure structural integrity of the adjacent buildings and basements.
- Develop temporary and/or permanent shoring systems to retain the soil and residual as well as the weak sandstone overlying the good quality sandstone so that the basement excavation can be carried out in a safe manner.
- Develop appropriate design solutions and construction methodologies to mitigate ground movement that may occur due to stress relief resulting from the basement excavation.
- Identify any significant geological features intersecting the project or in the close vicinity of the site that may have an impact on the development.

4.7 Contamination

During the removal of excess soil from the site, testing to confirm soil quality will be undertaken prior to off-site disposal.

4.8 Stormwater

The design of the future stormwater connection will be developed in consultation with Sydney Water.

4.9 Crime Prevention Through Environmental Design

A detailed CPTED assessment will be undertaken at the Project Application stage.

4.10 Infrastructure and Utilities

As part of the detailed design during the Project Application stage, an investigation into the existing capacity and required infrastructure works, electricity and telecommunications, will be undertaken for the proposed building.

Winten will enter into an appropriate arrangement with Energy Australia to organise for the external substation on Berry Street to be relocated (and upgraded if necessary) within the basement of the North Sydney Commerce Centre.

Winten will enter into an appropriate arrangement with Sydney Water to organise for the upsizing of the drinking water main to a 200mm pipe.

4.11 Obstacle Limitation Surfaces

Winten commits to consulting with SACL regarding obstacle limitation surfaces as part of the future stages.

5.0 Conclusion

The public exhibition process has demonstrated that the proposal is largely uncontentious. The independent expert assessments of the Concept Plan undertaken by the North Sydney Design Review Panel and Council's Assessment Officer were generally supportive of the proposal. The elected Council's submission, which requests the Minister for Planning to refuse the project, is generally contrary to the expert advice provided to Council and is based on the incorrect application of Clause 28D of LEP 2001 as a prohibition.

In terms of the issues raised during the public exhibition process, this Report in conjunction with the EAR has demonstrated that the Concept Plan will have minimal adverse environmental effects. The proposal generally complies with the height and massing controls, and where non-compliances occur variations to the controls are strongly supported by the merits of the project, substantial public benefit, and the absence of any significant adverse amenity impacts.

Removed from politics, the merits of the proposal represent a significant upgrade and enhancement of a dated commercial development and will provide an envelope capable of delivering a landmark building at the gateway to the North Sydney Centre consistent with Metropolitan and Sub-Regional planning objectives for the Centre, particularly in regard to employment generation and the ongoing viability and vibrancy of the North Sydney Centre.

The proposal will result in positive economic, environmental and public benefit in the form of the:

- provision of a 1,325m² publicly accessible Garden Plaza as a new special area within North Sydney;
- creation of the Berry Street Special Area along the site's frontage;
- amalgamation and redevelopment of an underdeveloped site which would otherwise remain under fragmented ownership indefinitely;
- provision of high grade commercial building with large floor-plates; and
- various other urban design and public domain improvements.

Given the environmental planning merits described above, and significant public benefits proposed, it is requested that the Minister approve the Concept Plan under Section 75O of the EP&A Act and under s.75P(2)(c1) that sub-clauses 28B(o) and (p) and clause 28D of LEP 2001, and any corresponding provisions in the current Draft LEP (clauses 6.4) not apply to future applications under the Concept Plan.