



MEETING HELD ON 2/08/10

Attached: Site Plan
Architectural Plans
Shadow diagrams
Minutes of the Design Excellence Panel
Traffic Engineer's referral comments

REPORT TO THE GENERAL MANAGER

ADDRESS/WARD: 177-199 Pacific Highway, North Sydney (V)

APPLICATION No: **PART 3A DEVELOPMENT** Department of Planning
Reference: MP 09_0214

PROPOSAL: Concept Plan Application for demolition of existing structures on site and approval for an indicative building envelope for a 31-storey commercial building and basement car park, accommodating 44,770sqm of gross floor area and 112 car parking spaces.

PLANS REF: Drawings numbered PA02-004, PA02-003, PA02-002, PA02-001 and PA02-00 to PA02-13 (inclusive), PA05-01 to PA05-05 (inclusive), PA06-01 and PA06-02, dated May 2010, drawn by Bates Smart, and received by Council on 25 June 2010.

OWNER: Winten Property Group

APPLICANT: JBA Urban Planning Consultants, on behalf of Winten Property Group

AUTHOR: Nicola Reeve, Senior Assessment Officer

DATE OF REPORT: 27 July 2010

DATE OF EXHIBITION: 7 July 2010 to 6 August 2010

RECOMMENDATION Council's comments are forwarded to the Department of Planning

EXECUTIVE SUMMARY

This report has been prepared to provide Councillors with details of the proposed Concept Plan application for 177-199 Pacific Highway, North Sydney lodged with the Department of Planning pursuant to Part 3A of the Environmental Planning and Assessment Act, 1979.

The Concept Plan seeks approval for the following:

- Demolition of the existing structures on the site;
- An indicative building envelope to a maximum height of RL 195 AHD (31 storeys, with 4 levels of basement car parking);
- A maximum Gross Floor Area (GFA) of 44,770sqm;
- Indicative land uses as a commercial and retail floor space;
- Car parking for 112 vehicles; and
- Pedestrian and vehicular access locations to the site.

The application has been lodged with the Department of Planning and is on exhibition from 7 July 2010 and concluding on 6 August 2010. This application is reported to Council in order for Council to provide a formal response to the Department of Planning on the proposed development.

The key issue relating to this application is overshadowing to the Don Bank Museum and Miller Street Special Areas. Whilst the height of the proposed development is consistent with the maximum permitted by NSLEP 2001, the proposed height does result in additional overshadowing to both the Don Bank Museum and Miller Street Special Areas on the Spring and Autumn Equinoxes in excess of the permitted 15 minute variation pursuant to Clause 28D(4)(d) of NSLEP 2001. **As a result of the extent of additional shadowing to these special areas, the proposed development is prohibited pursuant to NSLEP 2001.**

The Department of Planning is the consent authority for the proposal and all submissions relating to the proposed development are to be considered by the Department of Planning rather than Council.

It is of importance to note in Council's consideration of this proposal, that the provisions of Part 3A effectively remove a project so declared from the local planning process to the extent that the applicable Local Environmental Plans and Development Control Plans become guiding documents and are not given statutory weight.

This report considers the proposed development against the relevant controls and it is ultimately the recommendation of this report that Council objects to the proposed development in its current form, and forward a submission to the Department of Planning.

BACKGROUND

On 9 June 2005, the NSW Parliament passed the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill*. This contained key elements of the NSW Government's planning system reforms through major changes to both plan-making and major development assessment. The Act was assented to on 16 June 2005. A key component of the amendments was the insertion of a new Part 3A (Major Projects) into the *Environmental Planning & Assessment Act, 1979* (EP&A Act). On 1 August 2005, the new Part 3A and related provisions commenced.

Part 3A applies to major State government infrastructure projects, development previously classified as State significant, and other projects, plans or programs of works declared by the Minister. The State Environmental Planning Policy (SEPP) for State Significant Development gazetted on 25 May 2005, was accordingly amended to reflect the new arrangements and was renamed as State Environmental Planning Policy (Major Projects).

Clause 13 of Schedule 1 of the SEPP (Major Projects) identifies the following as being Part 3A Major Projects:

“Residential, commercial or retail projects

- (1) *Development for the purpose of residential, commercial or retail projects with a capital investment value of more than \$100 million.”*

Given the proposed development has an estimated capital investment value of \$157.5 million, it is in excess of the \$100 million threshold referred to above. As such, under Clause 6 of the Major Projects SEPP, the Minister has declared the project to be one to which Part 3A of the EP&A Act applies by virtue of it being development of a kind that is described in Schedule 1 of the SEPP (Major Projects). This means the proposed development will be assessed by the NSW Department of Planning and the Minister for Planning will make a final determination.

The purpose of this report is to provide Councillors with details of the proposed development, comments from Council's Design Excellence Panel and technical staff, consideration of the key issues associated with the proposal, and ultimately a recommendation from Council to the Department of Planning.

DESCRIPTION OF PROPOSAL

The subject application seeks consent for a Concept Plan, which seeks approval for an indicative building envelope, which then provides the framework and parameters to assess future detailed development proposals for this site.

This Concept Plan seeks approval for the following:

- Demolition of the existing structures on the site;
- An indicative building envelope to a maximum height of RL 195 AHD (31 storeys, with 4 levels of basement car parking);
- A maximum Gross Floor Area (GFA) of 44,770sqm;
- Indicative land uses as a commercial and retail floor space;
- Car parking for 112 vehicles; and

- Pedestrian and vehicular access locations to the site.

Figure 1, below, provides an indicative photomontage of the proposed building envelope. Note that detailed design of the building would be subject to a further future project application, and the appearance of the building is subject to change. However, the photomontage does provide context for the proposed massing of the building envelope sought in relationship with surrounding development.



Figure 1 – *A photomontage of an indicative building design within the proposed building envelope*

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Commercial
- Item of Heritage - No
- In Vicinity of Item of Heritage – Yes (128 Miller Street – Monte Sant Angelo College, 6 Napier Street – Don Bank Museum, 187 Miller Street & 92-94 Pacific Highway - North Sydney Post Office & Courthouse)
- Conservation Area - No
- FSBL - No

S94 Contribution – Yes (however, not levied at Concept Plan stage)

Environmental Planning & Assessment Act 1979

SEPP No. 55 - Contaminated Lands

SEPP (Major Projects) 2005

SEPP (Infrastructure) 2007

Draft North Sydney LEP 2009

POLICY CONTROLS

DCP 2002

DESCRIPTION OF LOCALITY

The site has a legal description of Lots 1 to 26 in Strata Plan SP 17198, and is commonly known as 177-199 Pacific Highway, North Sydney. The site is located on the western side of the Pacific Highway, at the intersection with Berry Street. The site is irregular in shape, with frontages to the Pacific Highway and Berry Street. The site has an area of 2,418sqm.

Existing on the site is a series of 3 to 4 storey strata-titled commercial terrace buildings dating from the early 1980s, which contain a total of 26 commercial units of approximately 6,923sqm of gross floor area. The existing buildings generally are sited around the perimeter of the building, with there being a central internal landscaped courtyard. Basement car parking is provided for a total of 60 vehicles beneath the site, with vehicular access obtained from Berry Street. The existing development on the site is currently known as 'Norberry Terrace'. **Figures 2 and 3** below, illustrate the existing built form on the site.



Figure 2 – The existing commercial buildings on site as viewed from the Pacific Highway



Figure 3 – The site as viewed from the corner of the Pacific Highway & Berry Street

The site is located within the northern portion of the North Sydney CBD, and is surrounded by commercial development of varying eras and scales. Predominately development in the immediate surrounds of the site is low to mid scale in height, scaling up to the 34-storey Northpoint development, which is located to the south of the site (refer to Figure 4, below).



Figure 4 – View of the site in the foreground with Northpoint tower in the background, as viewed from the Pacific Highway

RELEVANT HISTORY

Council were advised in correspondence from the Department of Planning, dated 16 February 2010, that an application had been received pursuant to Part 3A of the EP&A Act for the subject Concept Plan for the site. Council was requested to provide key issues and assessment requirements for consideration in the inclusion of the Director-General's Environmental Assessment Requirements. Council provided a list of matters for consideration in correspondence dated 7 April 2010.

Council staff and the Design Excellence Panel were briefed on the finalised (but not yet exhibited) proposal by the proponent and design team in June 2010. A briefing for Councillors by the architect of the proposed building was also held on 2 July 2010.

Council was formally notified of the proposed Part 3A development on 25 June 2010, with the exhibition period starting on 7 July 2010 and concluding on 6 August 2010.

As the consent authority, the Department of Planning rather than Council are responsible for notification of the application. Given the level of public interest in previous Part 3A applications within the CBD, Council staff in correspondence dated 6 July 2010, ensured that the CBD Precinct and all surrounding Precincts (being the Edward, Union, Lavender Bay, Stanton, Anderson and Milson Precinct Committees) were all notified of the application, where they could view the exhibition material and understood the process for submitting an objection to the Department.

REFERRALS

Design Excellence Panel

The members of the Design Excellence Panel were briefed on the proposal on 9 June 2010 by the proponent and the Architect for the proposal.

Overall, the Panel felt that the height of the tower was less important in urban design terms than the achievement of a high quality improved public domain and interface of the development with the public domain. Furthermore, it was noted that the proposed height was considered to be appropriate in terms of its context as part of the central area of the CBD, and with regard to the proximity to Northpoint tower. Commendation was made with regard to the public garden plaza, as it was considered to be a major feature of the proposal and a definite public benefit.

A copy of the Panel minutes are attached, however, in summary the issues raised by the Panel are as follows:

- Recommendation on the provision of additional documentation to indicate the number of minutes and number of days either side of Equinox that the proposal would result in overshadowing (particularly to the Special Areas of Miller Street and the Don Bank Museum);
- Concern regarding the protrusion of the building on the Pacific Highway frontage (into the setback areas required by the DCP controls) with regard to its impact and context when viewed from ground level on the eastern side of the Pacific Highway;
- Potential wind impacts and recommendation that awnings be provided on both frontages of the building (to the Pacific Highway and Berry Streets) over the public footpath to provide both weather protection and to control wind impacts from the tower;
- Existing trees along the frontages should be retained as they are well developed;
- Integration of disability access into the design of the podium areas of the garden plaza; and
- Further detailing with regard to finishes, entry points, treatments of the change in levels with the public footpath and ventilation of the public garden plaza (however, noting that this would occur at the detailed Project Application stage, if approval was obtained).

The general conclusions of the Panel were as follows:

“The urban design quality of the proposed concept is recognised by the Panel, however, it is noted that the current planning controls restrict the height of the tower. It is also noted that there is considerable public benefit with the large public garden space being offered.

In summary, subject to more detailed information as to the extent of overshadowing and study of the visual impact of the reduced setback on the Highway, the Panel supports the proposal as a well considered concept.”

No additional information was submitted beyond that considered by the Panel at its meeting with regard to the number of days either side of the Equinox that is impacted by overshadowing, nor was an additional perspective/photomontage from ground level on the Highway provided.

Traffic Engineer

The Concept Plan was referred to Council's Traffic Engineer, who in principle has raised no objection to the proposal with regard to traffic generation and the provision of car parking and bicycle facilities. A copy of the referral comments of the Traffic Engineer is attached for reference.

A series of conditions has been recommended on any approval, however, due to this being a conceptual building at this stage, further detailed design plans would need to be prepared and submitted as a Major Project Application to the Department of Planning, in the event of the approval of this plan.

None of the information requested would inhibit development on the site as proposed, and modifications can be made to the car park and loading docks at Project Application stage to satisfy the requirements of the Traffic Engineer. Whilst this information will be forwarded to the Department of Planning for their information, in the event of approval of the application, the Project Application would be again forwarded to Council for consideration and comment and detailed design conditions of the Traffic Engineer would then be imposed.

Heritage

Council's Conservation Planner has reviewed the proposal due to the subject site being in the vicinity of the heritage listed buildings. The following advice was provided:

"The property is not a heritage item, nor is it located within a conservation area. However, it is located in the vicinity of several heritage items. Of these, The Monte Sant Angelo Group is the most likely to be impacted by the proposal, being located diagonally across Berry Street from the subject site.

The Statement of Significance for Monte Sant Angelo states:

'Important regional private school since the 1880's. Contains a significant early mansion as its central building. Chapel and Mercy Hall are both fine buildings from the turn of the century. O'Regan House is a complementary building to the rest and respectable in its own right. The group, all in sight of each other, form an impressive precinct.'

The significant buildings are located at the centre and north of the school precinct, and are separated from the subject site by more recent contemporary buildings. The proposed building will not block views to or from the significant buildings or the other heritage listed buildings in the vicinity. As such, it is considered that the proposed building will not impact on the curtilage or significance of the heritage items in the vicinity.

Accordingly, no objections are raised on heritage grounds."

It should be noted that the shadow of the proposal will impact on the Don Bank Museum Special Area and that of the Miller Street Special area (which includes the heritage items at No. 105-153 & 187 Miller Streets). These impacts are discussed elsewhere within this report.

Engineering

The proposal has been reviewed by Council's Development Engineer with regard to the submitted Stormwater Concept Plan. The following advice was provided for consideration:

"The stormwater plan and report prepared by Hyder are only concepts, and are generally satisfactory at this preliminary stage.

A detailed drainage study in accordance with the Australian Rainfall and Runoff, Council's 'Performance Guide for Engineering Design & Construction' and in consultation with Sydney Water would need to be prepared and submitted at the detailed design phase, identifying the flows associated with the drainage system through the site (for the 1% AEP event), and to assess the impact of the overland flows on the subject development. The study is to demonstrate that the diverted pipeline is of sufficient capacity (for the 1% AEP event), showing the proposed hydraulic grade line levels to ensure there is adequate protection for the proposed development, upstream and downstream properties against the ingress of surface runoff.

Proposed easements are to be defined over the proposed stormwater system, including emergency overland flow paths.

Concept stormwater drainage plans detailing the provision of appropriate runoff controls, and incorporating the results and solutions of the drainage study are to be prepared and submitted with the project application."

The proposal, if approved, will require a major diversion of a Sydney Water stormwater line, which discharges into Sydney Harbour at Milsons Point.

PUBLIC SUBMISSIONS

Council was formally notified of the proposed Part 3A development on 25 June 2010, with the exhibition period starting on 7 July 2010 and concluding on 6 August 2010.

As the consent authority, the Department of Planning rather than Council are responsible for notification of the application.

Given the level of public interest in previous Part 3A applications within the CBD, Council staff, in correspondence dated 6 July 2010, ensured that the CBD Precinct and all surrounding Precincts (being the Edward, Union, Lavender Bay, Stanton, Anderson and Milson Precinct Committees) were all notified of the application, where they could view the exhibition material and that they understood the process for submitting an objection to the Department.

CONSIDERATION

The relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2001

1. Permissibility within the zone

The site is zoned 'Commercial' pursuant to Clause 14 of NSLEP2001, and the proposed development is permissible with consent of Council.

2. Objectives of the zone

The particular objectives of the Commercial zone as stated in clause 14 are:

- (a) *to prevent the loss of commercial floor space to residential use, and*
- (b) *to encourage a diverse range of employment opportunities, and*
- (c) *to minimise adverse effects of development on residents and occupiers of existing and new development.*

The overall proposed development is considered to be consistent with the objectives (a) and (b) of the zone as it does not include residential use and will encourage a diverse range of employment opportunities. However, due to overshadowing impacts, it is not considered that the development minimises adverse effects of development on existing residents and those special areas identified within the LEP as being utilised by both the workforce and residents of North Sydney.

3. LEP Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Site Area – 2,418m²	Existing	Proposed	Control	Complies
Commercial Zone				
Building Height (Cl. 28D(2)(a))	Unknown*	RL 195*	RL195	YES
Site Area (Cl. 28D(2)(e))	2,418sqm	2,418sqm	Min. 1,000sqm	YES

* The existing development is a maximum of 4 storeys in height, with the proposed development containing 31 storeys.

4. Division to prevail

The North Sydney Centre objectives and controls are located within Division 4 of NSLEP2001. It is of importance to note in the consideration of this proposal that clause 28A of NSLEP2001 states the following with respect to Division 4:

'The provisions of this Division prevail over all other provisions of this plan, to the extent of any inconsistency, except for Part 4 – Heritage provisions.'

As such, the general aims and objectives of NSLEP2001 as stated in clauses 2 and 3, do not apply if they are inconsistent with the objectives for the North Sydney Centre. The North Sydney Centre objectives do not seek to protect the amenity or views of residential properties located within the commercial zone, only the amenity of nearby residential zones.

As such, the following objective contained in clause 3(c)(ii) of NSLEP2001 is not applicable to

the assessment of the application:

‘ensure that non-residential development does not adversely affect the amenity of residential properties and public places, including adverse affectation by reason of the use, design, bulk, scale or appearance of the development, or the traffic generation and parking associated with the development’.

5. North Sydney Centre Objectives

The proposed development responds to the specific objectives pursuant to Clause 28B of NSLEP 2001 for the North Sydney Centre, as described in the following table.

Objective	Proposal
<i>(a) to maintain the status of the North Sydney Centre as a major commercial centre within Australia.</i>	The proposed development is considered to achieve the objective of maintaining the status of the North Sydney CBD as a major commercial centre. The proposal would provide would a significant development within the North Sydney CBD, capitalising on a currently underutilised site. The proposed development provides A-grade commercial floor plates of a floor area that are commercial viable and marketable in encouraging new tenants to North Sydney.
<i>(b) to require arrangements for railway infrastructure to be in place before additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre.</i>	The proposal is capable of complying with this objective, with a Railway Infrastructure contribution able to be determined at the Project Application stage of the development, if necessary.
<i>(c) to ensure that railway infrastructure, and in particular North Sydney Station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and will:</i> <i>(i) be convenient and accessible, and</i> <i>(ii) enable a reduction in dependence on private car travel to the North Sydney Centre, and</i> <i>(iii) be adequate to achieve no increase in car parking, and</i> <i>(iv) have the capacity to service the demands generated by development within the North Sydney Centre.</i>	The subject site is accessible to the station and it is likely that a significant number of the new employees within the CBD will utilise public transport. It therefore remains critical that the any Project Application require an appropriate railway infrastructure payment.
<i>(d) to discourage use of motor vehicles in the North Sydney Centre</i>	The proposed development provides a total of 112 car parking spaces within the basement car parking levels, which is in accordance with the DCP requirements.
<i>(e) to encourage access to and within the North Sydney Centre for pedestrians and cyclists.</i>	Bicycle storage/parking is provided within the basement car park in accordance with NSDCP 2002. Council’s Traffic Engineer has noted the provision of change facilities on Level 2 of the car park, but required that appropriate showers be provided. The proponent’s EAR state that shower and change facilities will be provided, and this will be the subject of detailed design at the Project Application stage.
<i>(f) to allow for 250,000m² (maximum) non residential gross floor area in addition to the estimated existing (as at the commencement of this Division) 700,000m² non-residential gross floor area.</i>	The proposed additional GFA would contribute to the provision of non-residential GFA within the North Sydney CBD.
<i>(g) to prohibit further residential development in the core of the North Sydney Centre.</i>	No residential development is proposed.

<i>(h) to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1000m².</i>	The proposed commercial building complies with this requirement.
<i>(i) to achieve a variety of commercial space</i>	A variety of commercial space is proposed.
<i>(j) to encourage the refurbishment, recycling and rebuilding of older buildings.</i>	The existing buildings are unsuitable for the site with regard to the current applicable controls and proposed controls and are not considered worthy of retention.
<i>(k) to encourage a diverse range of employment, living, recreation and social opportunities.</i>	The proposed development provides for a range of employment and social opportunities.
<i>(l) to promote high quality urban environments and residential amenity</i>	As detailed previously in this report, Council's Design Excellence Panel has raised no objection to the proposed building envelope. The proposed public garden plaza is considered to be a positive attribute to the development and the North Sydney CBD.
<i>(m) to provide significant public benefits such as open space, through-site linkages, childcare and the like.</i>	<p>The proposal concept plan provides a 1,325sqm publicly accessible garden plaza that would provide weather protected public space for office workers of the North Sydney CBD (not only those future workers of the proposed building). The plaza area would be open between the hours of 7.00am to 7.00pm, and should approval be given it should be required to be the subject of a future deed of agreement or restriction on title to ensure that this area remains publicly accessible.</p> <p>The proposed building has also been setback the required 8 metres as stipulated by NSDCP 2002 to contribute to the creation of the Berry Street Special Area as is desired pursuant to the strategic direction provided within both NSLEP 2001 and Draft LEP 2009.</p>
<i>(n) to improve accessibility within and to the North Sydney Centre.</i>	Any new development will be required to be accessible and meet the relevant Australian Standards. Detailed access reports would need to be provided as part of a future Project Application. Observations were provided by the Design Excellence Panel noting changes in levels between the Berry Street footpath and internal public plaza, as well as the provision of podiums within the plaza itself. Consideration would be needed to ensure accessibility to these areas in particular.
<i>(o) to protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre</i>	The proposed envelope would result in additional overshadowing to properties in Oak and Lord Streets in the early morning hours. Further consideration of this issue is provided below in the assessment of Clause 28D of NSLEP 2001.
<i>(p) to prevent any net increase in overshadowing of any land-zoned residential or public open space or identified as a special area.</i>	The proposal does result in additional overshadowing to the special areas of Don Bank Museum and the Miller Street setback on the equinox. Further consideration of this issue is provided below in the assessment of Clause 28D of NSLEP 2001, however, as a result of this shadowing, the proposal is considered to be inconsistent with this objective.
<i>(q) to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and protect the amenity of these areas.</i>	No open space areas exist on the site. Existing setbacks will be maintained or increased to provide improved public domain and pedestrian access outcomes.

6. Railway Infrastructure

Pursuant to Clause 28C(2) of NSLEP 2001, Council must not grant consent for development within the North Sydney Centre which exceeds the non-residential gross floor area of the building that lawfully existed on the site before the development is carried out. The proposed development will substantially increase the existing level of non-residential gross floor area currently in existence on the site.

Subclause (3) of the clause allows for an increase in non-residential gross floor area to occur only if the Director-General has first certified, in writing, to the consent authority, that satisfactory arrangements have been made for the increased demand for railway infrastructure generated by the development. The required 'satisfactory arrangement' is a Developer Commitment Deed to pay a contribution for railway infrastructure.

As this proposal is in effect a staged development, this Concept Plan is seeking consent for an envelope, and would still require the submission and approval by the Department of Planning of a Project Application. It is at Project Application stage that railway infrastructure contributions for additional commercial floor space would be calculated and levied.

7. Building Heights and Massing

The following are the building height and massing objectives pursuant to Clause 28D for the North Sydney Centre:

Objective	Proposal
(a) <i>to achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79 - 81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre.</i>	The proposed building form is considered to generally achieve an appropriate transition in height from the Northpoint development, and fit within the future context of the North Sydney CBD. Despite this, it should be noted that the future planning controls for this site envisage a tower with a maximum RL 190 AHD. Thus it can be concluded that a marginally lower tower on the site would result in a greater transition in height and be a more appropriate fit with the desired strategic outcome for the CBD.
(b) <i>to promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre" or on heritage items.</i>	The height and massing of the proposed development will result in an adverse impact on the special areas of Don Bank Museum and Miller Street on the Spring and Autumn Equinoxes. This issue is addressed further below.
(c) <i>to minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre".</i>	The proposed development is considered to be consistent with this objective, however, it is noted that the proposed envelope does result in additional shadows being cast across residential properties that are sited outside the boundaries of the North Sydney Centre (as discussed below).
(d) <i>to protect the privacy of residents within and around the North Sydney Centre.</i>	The proposed building will have no unreasonable impact on the privacy of residents within and around the North Sydney Centre.
(e) <i>to promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance.</i>	The scale and massing of the proposed building is considered to reflect its location within the centre of the CBD when measured against other relevant controls. The provision of awnings on both street frontages of the

	<p>building and the inclusion of the ground floor garden plaza is considered to create a development that is friendly to pedestrians and compliments the public domain. However, as noted above, the proposal will reduce solar access to the special areas of the Don Bank Museum and Miller Street setback, which are actively used by workers and residents of the North Sydney CBD as areas of open space.</p>
<p>(f) <i>to encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.</i></p>	<p>The proposal has involved the acquisition of numerous strata lots to enable potential development of the proposed site, however, the proponent has not been able to amalgamate the subject site with the neighbouring site to the south (at No. 173 Pacific Highway, North Sydney). Sufficient information was submitted to demonstrate the efforts made by the proponent to amalgamate the site with its neighbour to the south. It is noted that much of planning controls applicable to this site (including the applicable height control) are based on a building envelope that encompasses the site at No. 173 Pacific Highway within the development site.</p> <p>The proposal is considered to be able to achieve high grade commercial floor space, however, in order to be commercially viable (without the amalgamation with No. 173), the proposal would need to achieve the maximum height of RL 195, which does result in shadowing impacts.</p> <p>Lastly, the proposed ground level public plaza and setbacks from Berry Street to contribute to the creation of an improved public domain and new “special area” as per the strategic direction of both NSLEP 2001 and Draft LEP 2009, is considered to provide public benefit to the workforce of North Sydney. This is subject to an appropriate mechanism being in place to ensure permanent public access to this garden plaza.</p>

Development Controls

Subclause 28D (2) sets out the building height and massing requirements for proposed development within the North Sydney Centre.

(a) *the height of the building will not exceed RL 195 AHD,*

The proposed building will have a maximum RL 195 AHD.

(b) *There is no net increase in overshadowing of any land between the hours of 9am and 3pm, 21 June outside the composite shadow area, as shown on the map marked “North Sydney Local Environmental Plan 2001 (Amendment No. 9)- North Sydney Centre” (except land that is in the Road or Railways Zone).*

The proposal does result in additional overshadowing to land outside the composite shadow area between 9.00am and 10.00am on the winter solstice. The proponent has submitted shadow diagrams indicating that those areas affected would not be sensitive areas, instead new shadows are cast across the intersection of Lord and Edward Streets and onto non-essential areas of the Shore School (namely the car park, vehicular access ways and landscaping). It is noted that some new shadowing would fall across the landscaped parts of the playing fields of the Shore School on the eastern side of Edward Street, however, this is not considered to be a material impact.

- (c) *There is no net increase in overshadowing, between 10am and 2pm, at any time of the year, of any land this is within the North Sydney Centre and is within the public open space zone or within a special area as shown on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No 9) - North Sydney Centre", and*

The proposed building envelope would result in additional shadowing being cast across both the Don Bank Museum and Miller Street Special Areas, which is contrary to this objective. The proposed building envelope has been designed with cut-out sections to achieve no overshadowing to areas of public open space and those identified as special areas within NSLEP 2001 on the winter solstice.

The proposed envelope would result in impacts primarily on the equinoxes, and this has been summarised in the following table (**Table 1**) submitted by the proponent in the Environmental Assessment Report:

Table 1 - Degree of overshadowing on Special Areas within the North Sydney Centre

Time of year	Degree of Impact	
	<i>Don Bank Museum Special Area</i>	<i>Miller Street Special Area</i>
Winter solstice	No increase in overshadowing.	No increase in overshadowing.
Summer solstice	No increase in overshadowing.	Minor additional overshadowing at 2pm.
Spring Equinox	Partially overshadowed for an additional 19 minutes between 10.00am and 10.19am.	Partially overshadowed for an additional 45 minutes between 1.15pm and 2.00pm.
Autumn Equinox	Partially overshadowed for an additional 33 minutes between 10.00am and 10.33am.	Partially overshadowed for an additional 30 minutes between 1.30pm and 2.00pm.

Clause 28D(4) of NSLEP 2001 permits minor variation to the overshadowing controls of Clause 28B(2)(b), where the following:

- (a) *it is satisfied that the variation is justified due to the merits of the development application and the public benefit gained, and*
- (b) *It is satisfied that any increase in overshadowing will not reduce the amenity of any land, and*
- (c) *In relation to a variation of the operation of subclause (2)(b), the variation will result in not more than 2 hours net increase in overshadowing of land referred to in that paragraph between the hours of 9am and 3pm, 21 June, and*

(d) in relation to a variation of the operation of subclause (2)(c), the variation will result in not more than 15 minutes net increase in overshadowing of land referred to in that paragraph between the hours of 10am and 12 noon, and no net increase between the hours of 12 noon and 2pm, on any day.

The proposal results in overshadowing to both the special areas of Don Bank Museum and the Miller Street Special Areas for greater than 15 minutes on both the Spring and Autumn Equinoxes. **Therefore, irrespective of the other merits of the application, this aspect of the proposal acts as a prohibition pursuant to NSLEP 2001 and as such the application cannot be supported.**

It should be noted that pursuant to the provisions of Part 3A of the EP&A Act, the Department does have the authority to approve development that would be prohibited pursuant to the NSLEP 2001. Therefore, for the purposes of providing a submission on the impacts of the proposal to the Department, consideration has been given to the merits of the proposal against the other variation controls of Clause 28D(4).

The proposal has been assessed elsewhere as providing a public benefit through the incorporation of the public accessible ground floor level garden plaza, which would contribute to the provision of useable areas for the workforce of North Sydney, and is considered to achieve the objective of Clause 28D(4)(a) to permit variation.

To establish whether or not the proposal results in a loss of amenity to these special areas as a result of the additional shadowing, the proponent has provided the following justification:

Don Bank Museum:

- the open space is already heavily vegetated, which would be casting shadows across this open space;
- the fact that after approximately 15 minutes, approximately half the open space is unshaded, with only a partial area in full shade for the 33 minute period;
- shadowing in the morning hours does not compromise the area at its periods of greatest use (e.g. lunch times); and
- modifications to achieve compliance on the equinoxes would result in shadowing on the winter solstice, which has been preserved as solar access during the winter months is more critical.

Miller Street:

- a survey of non-useable and useable areas within the Miller Street Special Area was undertaken, which indicates that the degree of impact on areas of useable space varies between 0% and 13% between 1.15pm and 2.00pm on the spring equinox. With 2.00pm being the worst case scenario;
- during the period of greatest use of this special area (i.e. lunch time) approximately 4% of this designated area is impacted.

It is 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 considered that insufficient information has been submitted to date by the proponent to

justify the extent of shadowing on these special areas and it is recommended that further shadowing information be requested by the Department prior to determination to further assist in establishing the degree of impact on these special areas. It is recommended that a detailed analysis be provided documenting the number of days on either side of the equinox that would be impacted by additional shadowing and the number of minutes on each of these affected days. This additional information would allow greater analysis to be undertaken on the year-round extent of impact to these areas of highly used open space.

The purpose of these height and massing controls is to permit height in the CBD where it does not result in detrimental amenity impacts to private residences or public open space/special areas. In this instance, the proposal does not achieve numeric compliance, nor comply with the 15 minute variation permitted by this control and as such is a prohibition. The proposed form is considered to be unacceptable due to the adverse shadowing impacts that would arise from a development of this height.

- (d) There will be no increase in overshadowing that would reduce the amenity of any dwelling that is outside the North Sydney Centre and falls within the composite shadow area referred to in paragraph (b),*

The proposed building envelope would result in additional shadows being cast across the rear of residential properties in Oak Street during the winter solstice and equinoxes between the morning hours of 9.00am to 9.42am. Furthermore, additional shadows would be cast across the rear of the two terraces at the easternmost end of Lord Street between 9.00am and 9.10am on the winter solstice.

The proposed additional shadowing to these residential properties falls predominately across areas of car parking and vehicular access, however, it is noted that some new shadows fall across areas of rear open space of these dwellings. The periods of overshadowing are less than thirty minutes to those properties in Oak Street and 10 minutes to those dwellings in Lord Street, thus, do not result in an automatic prohibition, as is the case with the special areas (detailed above). Due to the time of day of the shadowing and the extent and area of impact, it is not considered that the additional shadowing would result in a material shadowing impact to these dwellings.

- (e) The site area is not less than 1,000m².*

The overall site area is 2,418sqm, and thus complies with the control.

8. Building Design and Public Benefits

Clause 28D(5) of NSLEP 2001 requires the consent authority to consider a number of provisions.

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

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. However, the overshadowing impacts arising from the desired height do act as a prohibition to the height and form sought.

- (b) whether the proposed development provides public benefits such as open space, through-*

site linkages, community facilities and the like, and

The proposed development has been assessed as providing public benefit through the incorporation of the 1,325sqm of publicly accessible ground floor garden plaza. This area is considered to be unique to the North Sydney CBD, and provide a year round weather protected area for use by the public between the hours of 7.00am and 7.00pm. To ensure that this area does remain as a public benefit, it is recommended that at Project Application stage the proponent be required to enter into either an agreement with Council or a restriction be placed on title to ensure public accessibility. Further detailed design on interaction of this space with the public domain would be required at Project Application stage.

As detailed previously within this report, the proposal would be set back from Berry Street in accordance with the provisions of NSDCP 2002 in order to allow for the creation of the Berry Street Special Area.

(c) whether the proposed development preserves important view lines and vistas, and

A view analysis has been undertaken with the Concept Plan to ascertain whether the proposed building envelope would result in a loss of views of vistas. The conclusion of this assessment is that the proposed envelope would be visible from approximately 41 of the apartments within the Beau Monde building located at No. 77 Berry Street, North Sydney. Of these apartments, 10 have only a westerly outlook that would be obstructed by the proposal. The proposed building envelope would result in a potential loss of district views and outlook from the remaining 31 units, however, the proponent does not consider this as a material view loss as these apartments would have alternative panoramic views to either the north or south.

No consideration has been given by the proponent to the fact that many of these units with southern outlook towards the city and harbour will have these views removed or obscured by the recent approvals of the developments at No. 100 Mount Street and that on No.88 Walker Street and No.77-81 Berry Street. Furthermore, the submitted EAR does not provide an assessment or analysis of what the existing views are from the affected units, therefore, based on the information available, it is not possible to determine the extent of important view lost or compromised by the proposal clearly the impacts could be significant.

It is clear from the height controls contained within the current and proposed planning controls for the site that there would be a loss of district views from various west facing units in the Beau Monde from level 19 and above. Objection to the proposed development on the basis of view loss is therefore not considered to be determinative, however, should be raised as a matter for consideration.

(d) whether the proposed development enhances the streetscape in terms of scale, materials and external treatments, and provides variety and interest.

Further details on streetscape interaction and materials would be the subject of a further application. However, based on the indicative information provided, it is considered that the proposal does contribute to the streetscape and the provision of the garden plaza allows interaction and interest at a pedestrian level.

9. Excavation

Clause 39 of NSLEP provides a number of objectives and controls with regard to minimising excavation and ensuring land stability and the structural integrity of neighbouring properties.

In this instance, significant excavation is required to create the proposed 4 levels of basement car parking. This level of excavation is typical of commercial buildings of this scale. An indicative Geotechnical and Groundwater Assessment has been submitted with the application, which concludes that the proposed development is feasible, however, should be subject to a detailed geotechnical investigation to be carried out as part of the documentation required for the Project Application stage of the development (if necessary).

At this stage, no objection is raised to the proposal with regard to the extent of excavation proposed.

10. Heritage Conservation

No objection has been raised by Council's Conservation Planner against the relevant provisions of Part 4 of NSLEP 2001, namely clause 50 (*Development in the vicinity of heritage items*), with regards to the impact of the design on the heritage listed buildings on the Monte Sant Angelo School site.

11. Consistency With The Aims Of Plan, Zone Objectives And Desired Character

As detailed in this report, the provisions of Clause 14 of NSLEP 2001 have been examined and it is considered that the proposed development is inconsistent with the specific aims of the plan and the objectives of the zone and of the controls. As such, consent to the development in its current form should not be granted.

12. North Sydney DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
20.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	The proposal allows for a range of high grade business accommodation spaces and will encourage uses at ground level that will contribute positively to economic and social vitality.
Maximum use of public transport	Yes	Bicycle storage spaces will be provided in the basement. Non-residential parking is provided in accordance with the maximum specified in Section 9 of the DCP.
20.2 Environmental Criteria		
Noise	Is able to comply	An Acoustic Report would be required to be provided at Project Application stage, and is included within the Draft Statement of Commitments by the proponent to mitigate potential impacts.
Wind Speed	Yes	An Environmental Wind Assessment has been submitted. The conclusions of this report are that the wind conditions within and around the site are generally acceptable, subject to the following: <ul style="list-style-type: none">• provision of trees at the northwestern corner of the development, and these to be an evergreen species;• retention of existing trees along the Pacific Highway and Berry Street frontages;• impermeable balustrades 1.2m in height around the

		<p>perimeter of the terraces proposed on levels 15 and 16 of the building.</p> <p>The proponent has included the above recommendations in its Statement of Commitments for the Project Application stage of the development. No objection is raised to the proposal, subject to the fulfillment of these commitments.</p>
Reflected light	N/A	No detail is provided on reflectivity of materials at the Concept Plan stage.
Artificial light	N/A	Further detail on lighting would be included at Project Application stage of the development.
Awnings	N/A	It is recommended that awnings be provided on both street elevations of the proposed development, however, this would be detailed at the Project Application stage.
Solar access	No	The proposal results in additional overshadowing to the special areas of the Don Bank Museum and Miller Street and does result in additional shadowing to residential properties in Oak and Lord Streets. This issue has been addressed previously within this report.
Views	No	The view impacts of the proposal have been considered previously in this report.
20.3 Quality built form		
Context	Yes	The proposal is for a large commercial building within the centre of the CBD. Council's Design Excellence Panel considers that the height of the proposed development is appropriate in its context.
Public spaces and facilities	Yes	The proposed incorporation of the ground floor public garden plaza and setbacks to Berry Street to improve the public domain and streetscape appearance are considered to be positive attributes of the proposal and were commended by Council's Design Excellence Panel.
Skyline	Yes	It is considered that the proposal will contribute positively to the CBD skyline.
Junction and termination of streets	Yes	The proposal emphasises the built form at the intersection of the Pacific Highway and Berry Street and establishes a gateway development when entering the North Sydney CBD from the north. The proposal also includes setbacks from the Berry Street frontage in accordance with the DCP requirements.
Through-site pedestrian links	N/A	The subject site is not identified within NSDCP 2002 or the character statement for the North Sydney CBD as needing to provide a through site link, nor is there any benefit in providing one. As demonstrated elsewhere within this report, appropriate public access is provided to the ground floor level of the building.
Streetscape	Yes	The proposed design and public domain works will allow for greater activation of both street frontages. Further detail and studies on how the proposed plaza relates to the public domain in Berry Street should be prepared prior to the Project Application stage of the development to ensure there is a cohesive connectivity between the two areas, and that the public is aware they can access and utilise the garden plaza.
Setbacks	No	<p>The proposed ground floor level of the building is setback in accordance with the DCP requirements, being 8 metres from the kerb alignment with Berry Street and a zero setback on the Pacific Highway.</p> <p>The character statement specifies a weighted average setback of 5 metres from the edge of the podium for the subject site. The setback of the tower from Berry Street has been designed to achieve the weighted average setback. Whilst the proposed envelope provides the desired setback above podium height for 6-storeys, with the upper levels of the building then adopting a zero setback to the Pacific Highway frontage. This non-compliance results from a transference of floor space from elsewhere on the building, which was</p>

		<p>removed to achieve no overshadowing on the winter solstice and still allow the achievement of commercially viable floor plates.</p> <p>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. Further justification is reliant on the zero setback of existing taller buildings along the Highway.</p> <p>Council's Design Excellence Panel expressed some concern regarding how this additional bulk would read from the street level.</p> <p>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.</p>
Entrances and exits	Yes	The matter of compliance with relevant standards and legislation relating to accessibility of entrances to the building would be a matter dealt with at the detailed Project Application stage, and any proposal could be designed to comply.
Street frontage podium	Yes	The proposed podium height is in accordance with the requirements of NSDCP 2002.
Building design	No	Appropriate floor to ceiling heights, materials, and articulation are proposed. The proposed tower design results in non-compliance with the setback controls as detailed above.
20.4 Quality urban environment		
Accessibility	Yes	Refer to earlier comments on accessibility.
Safety and security	Yes	A crime prevention review has been included in the application and no concerns are raised in this regard.
Car parking	Yes	The proposal complies with 112 space maximum permitted pursuant to Section 9 of NSDCP 2002.
Bicycle storage	Yes	A total of 74 lockers and 17 bicycle rails are proposed within the basement together changing facilities. It is assumed that shower facilities would be provided within these change rooms, however, this should be detailed at Project Application stage. The proposal meets the DCP requirements.
Vehicular access	Yes	Appropriate vehicular access is proposed.
Garbage Storage	Yes	Indicative garbage and recycling bin storage areas are provided on Basement Level 1, however, greater detail and assessment would be provided at Project Application stage.
20.5 Efficient use and management of resources		
Energy efficiency	Yes	The proposal incorporates measures to allow the building to meet 5-Star Green Star requirements.
Stormwater and water management	No	Concern has been raised by Council's Development Engineer with regard to the proposed stormwater system, and it has been advised that additional information would be required to allow a detailed assessment and analysis.
20.6 Public Domain		
Street furniture, landscaping works, utilities and Equipment	Yes	The proposed public domain and public benefit components of the development have been assessed as acceptable. The detailed design of the Berry Street Special Area, internal layout of the garden plaza and the interface between the two areas would be further developed as part of the Project Application phase of the development.

The application has been assessed against the relevant controls of the character statement for the Central Business District contained at Part B of DCP 2002, with consideration given in the either the LEP assessment or DCP compliance table, above.

13. Draft North Sydney LEP 2009

On 13 July 2010, Council received a conditional Section 65 Certificate (pursuant to Section 65 of the EP&A Act, 1979) from the Department of Planning authorising the public exhibition of the Council's Draft LEP 2009. This draft instrument has yet to be formally exhibited, and as such, does not require formal consideration within planning assessment.

Whilst not a matter for consideration, it is noted that this draft instrument stipulates maximum heights for the site RL 85 for the northern portion to Berry Street and RL 190 on the rear portion, which includes and envisages amalgamation with No. 173 Pacific Highway, North Sydney. The proposed height of RL 195 AHD would exceed both maximum heights applicable to the site.

Generally, the height and massing controls contained within Clause 6.4(2) of Draft LEP 2009 are similar to those in the current LEP, and relate to overshadowing, provision of a public benefit and a minimum site area.

Clause 6.4(2) states that:

“Consent must not be granted to the erection of a building within the North Sydney Centre, if:

- (a) the building height will exceed the height for the land shown on the Height of Buildings Map, or*
- (b) there will be a net increase in overshadowing between 12 noon and 2pm, Eastern Standard Time, of any land that is within the North Sydney Centre and is within the RE1 Public Recreation zone or within a Special Area as shown on the North Sydney Centre Map, or*
- (c) there will be a net increase in overshadowing between 10am and 2pm, Eastern Standard Time, of the land known as Don Bank Museum, 6 Napier Street, North Sydney, or*
- (d) the site area is less than 1,000m²”*

Of notable difference from the existing shadowing provisions of Clause 28D of NSLEP 2001 is the variation in the range of hours when there is to be no additional overshadowing to special areas and public open space (i.e. reduced from 10am to 2pm in LEP 2001 to 12 noon to 2pm in Draft LEP 2009), with the exception of the Don Bank Museum Special Area.

Clause 6.4(4) permits variations to the maximum permitted heights only when the following is satisfied:

- “(a) the variation is justified by the merits of the development and the public benefit to be gained, and*
- (b) any increase in overshadowing between the hours of 9am and 3pm, Eastern Standard Time, will not reduce the amenity of any dwelling that is outside the North Sydney Centre.”*

In its current form, the Draft LEP 2009 does not provide any time flexibility to strict compliance

with the overshadowing controls of Clause 6.4(2)(b) and (c), which differs from the 15 minute variation permitted by NSLEP 2001. Therefore, the proposal would remain as a prohibition pursuant to the provisions of Clause 6.4 of Draft LEP 2009 due to the additional shadowing that results to the Special Areas of Miller Street and the Don Bank Museum.

SECTION 94 CONTRIBUTIONS

Appropriate Section 94 contributions would be levied on the development at Project Application stage. However, based on the current proposed floor area, a contribution of approximately \$4 million is anticipated.

SEPP 55 and Contaminated Land Management Issues

The proponent has submitted a Phase 1 Environmental Site Assessment, with the assessment concluding that the risk of significant contamination to the soil and/or groundwater is minimal and the site is suitable for the proposed commercial development.

The assessment concludes that soil testing be undertaken during its removal from the site to ensure its quality and lack of contaminants prior to disposal. This recommendation has been listed within the Draft Statement of Commitments prepared by the proponent.

SEPP (Infrastructure) 2007

The Department of Planning will refer the application to the RTA as part of the assessment process.

Sydney Metropolitan Strategy & the Draft Inner North Subregional Strategy

The proposed major commercial development within the North Sydney CBD satisfies the aims and objectives of these strategies.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

CONCLUSION

The proposal represents a very significant development within the heart of the North Sydney CBD and would result in an approximate net increase of 44,770m² of commercial floor area. In principle, a commercial development in this location reflects the existing and proposed intentions of Council for development within the CBD. The proposed indicative envelope is considered to provide the scope for a future building with high architectural merit and contribution to the skyline of the CBD, as well providing commercially viable floor plates that would achieve a 5-star environmental rating.

The incorporation of the 1,325sqm of publicly accessible garden plaza is considered to be a positive element of the proposal and would greatly contribute to the variety of spaces provided within the North Sydney CBD for use by office workers and local residents. 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.

Whilst the height of the proposed development is not inconsistent with the maximum permitted by NSLEP 2001, **the proposed height does result in additional overshadowing** to both the Don Bank Museum and Miller Street Special Areas on the Spring and Autumn Equinoxes in excess of the permitted 15 minute variation pursuant to Clause 28D(4)(d) of NSLEP 2001. **As a result of the extent of additional shadowing to these special areas, the proposed development is prohibited pursuant to NSLEP 2001.**

Further, whilst not a prohibition, the proposed envelope would also result in further overshadowing to residences in Oak and Lord Streets and minor additional new shadowing across the Shore School.

In addition, the proposed development would result in numerous non-compliances with NSDCP 2002 and the North Sydney Area Character Statement, the most notable being the inappropriate setback of the upper storeys of the tower to the Pacific Highway and solar access.

It is acknowledged that there would be some impacts on views from residential apartments within the Beau Monde tower at No.77-81 Berry Street. However, there are no planning controls, existing or proposed, that apply within the commercial zone to protect these residential views. Whilst little weight can be given to these impacts, the Department should be requested to consider the view impacts in the assessment of the application.

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.

RECOMMENDATION

PURSUANT TO SECTION 80 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **THAT** Council resolves to **OBJECT** to the proposed Part 3A major development application (MP 09_0214) at No. 177-199 Pacific Highway, North Sydney on the following grounds:
1. The proposed development does not satisfy the objective (c) of the Commercial zone as it does not minimise adverse effects of development on existing residents and occupiers. As such, the proposal does not satisfy the provisions of Clause 14 of NSLEP 2001 – *Consistency with aims of plan, zone objectives and desired character*.

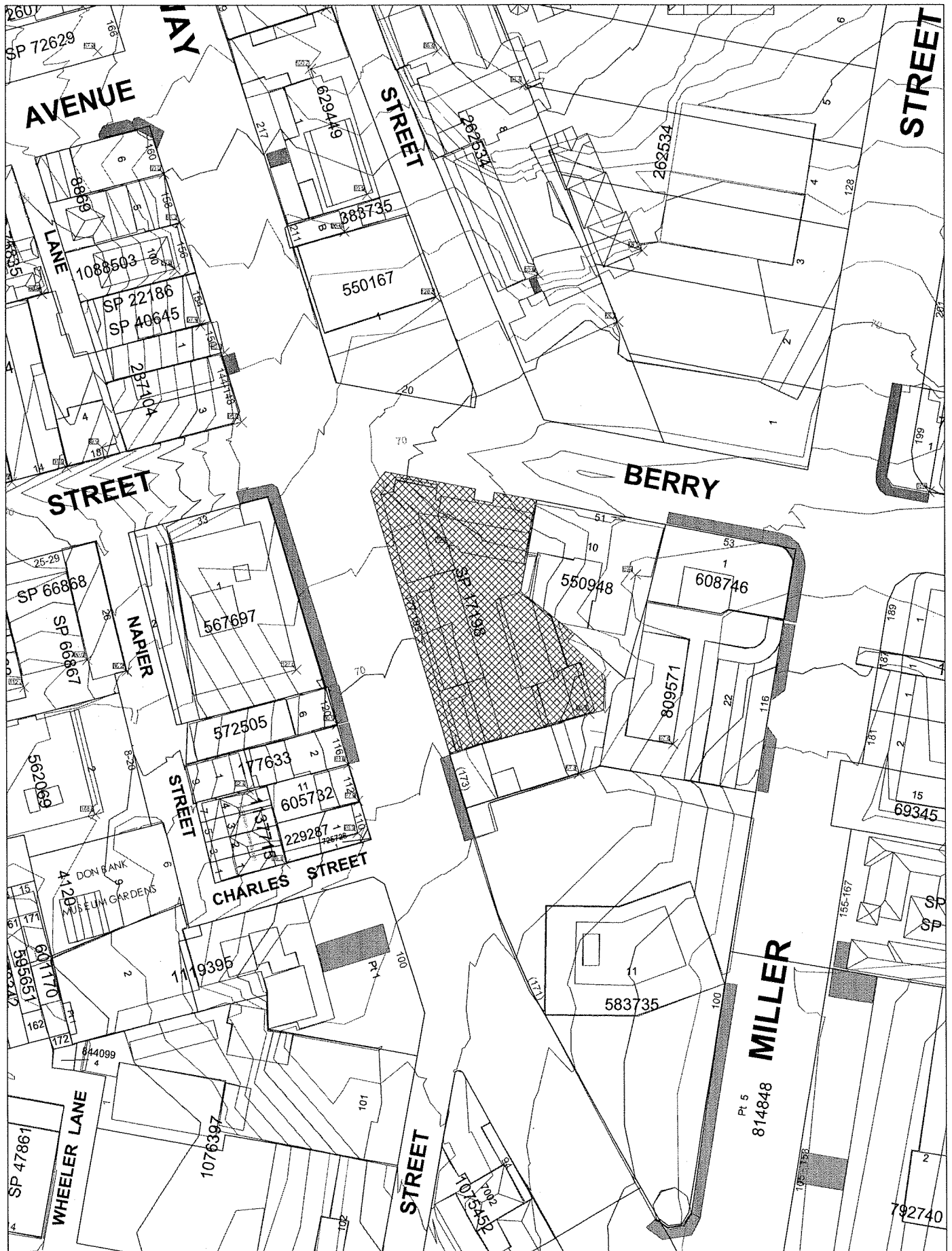
2. The proposed development fails to satisfy objectives (o) and (p) of Clause 28B of NSLEP2001 – *North Sydney Centre objectives*, in that the proposal does not protect the amenity of residential zones and existing open space, and does not prevent any net increase in overshadowing of residential zoned land, public open space and identified special areas.
3. The proposed development fails to satisfy objectives (b) and (c) of Clause 28D(1) of the NSLEP2001 - *Building heights and massing*, in that the proposal does not promote a height and massing that has no adverse impact on land zoned public open or identified as a special area or heritage items and does not minimise overshadowing of land in the residential and public open space zones or identified as a special area.
4. The proposed development fails to satisfy controls (b), (c) and (d) of Clause 28D(2) of the NSLEP2001 - *Building heights and massing*, in that the proposed building envelope will result in a net increase in overshadowing of land outside the composite shadow area between 9am and 3pm, will result in a net increase in overshadowing of land zoned public open space and identified special areas between 10am and 2pm, and will increase overshadowing of residential dwellings outside the North Sydney Centre resulting in a loss of amenity to these properties.
5. The proposed development fails to satisfy control (a) of Clause 28D(5) of the NSLEP2001 - *Building heights and massing*, in that its scale, form and massing is inappropriate and results in adverse shadowing impacts.
6. The proposed development is considered unacceptable due to non-compliance with the following sections of the NSDCP 2002:
 - a. Section 20.2(h) Solar access
 - b. Section 20.3(g) Setbacks
7. The proposed development is considered unacceptable as it fails to satisfy the following development controls contained within the North Sydney Centre Area Character Statement:
 - a. Solar access
 - b. Above podium setbacks, street frontage
8. The proposed development fails to satisfy controls (a), (b) and (c) of Clause 6.4(2) of Draft LEP 2009 - *Building height and massing controls*, in that the proposed building height will exceed the height for the land shown on Height of Buildings Map (of RL 85 and RL 190) and does result in a net increase in shadows to the Special Areas of Miller Street and Don Bank Museum.
9. The proposed development cannot be supported in its current form given the following concerns with the design raised by Council's Design Excellence Panel:
 - a. Provision of additional documentation to indicate the number of minutes and number of days either side of Equinox that the proposal would result in overshadowing (particularly to the Special Areas of Miller Street and the Don Bank Museum)

- b. Lack of setback of the tower on the Pacific Highway frontage with regard to its bulk and scale impact and context when viewed from ground level
 - c. Insufficient information provided on the integration of disability access into the design of the podium areas of the garden plaza
 - 10. Insufficient information has been submitted to enable an accurate or detailed assessment of potential view loss from the apartments within the Beau Monde building at No. 77-81 Berry Street, North Sydney.
- B. **THAT** Council resolves that the Department of Planning be requested to forward any amended plans received to Council for comment.

ORIGINAL SIGNED

NICOLA REEVE
SENIOR ASSESSMENT OFFICER

STEPHEN BEATTIE
MANAGER DEVELOPMENT SERVICES



North Sydney Council

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For privacy reasons, the architectural plans have been removed from this document prior to publishing on the web. The plans attached to the hard copy report may be viewed at Stanton Library during opening hours or at the Customer Service Centre in Council Chambers between 9.00am and 4.00pm Monday to Friday.

DESIGN EXCELLENCE PANEL MEETING**PROPERTY: 177-199 Pacific Highway, North Sydney****DATE:** 9 June 2010 @ 3.20 pm in the Geddes Room

ATTENDANCE: Panel Members: David Chesterman; Phillip Graus; Peter Webber; Russell Olsson.
Council staff: Geoff Mossemeneer (chair), Nicola Reeve.
Proponents: Phillip Vivian (architect), Anthony Otto (developer), Michael Rowe (planner).

A site inspection was carried out by the Panel and Council staff prior to the meeting.

This proposal is a Major Project under Part 3A of the Environmental Planning & Assessment Act 1979. The Minister for Planning is the consent authority. The proposal seeks Concept Plan approval for a 32 storey mixed use commercial/retail building located on the northern edge of the North Sydney CBD. The application is with the Department of Planning but is not yet on exhibition.

The Proposal:

The proposal involves the following:

The proponent is seeking approval for the development envelope on the site for principally commercial floor space. It is anticipated that there would be some potential retailing floor-space at ground level to support activation of Berry Street and the Pacific Highway. Access to the site is anticipated off Berry Street with the main address and frontage of the development to the Pacific Highway. The anticipated scope of development that would result from the Concept Plan approval is as follows:

- Proposed primary land use – Commercial
- Maximum Height - AHD 195 (32 Storeys)
- GFA 45,334 in²
- FSR 18.7:1
- Car Spaces 113

The building will be designed to provide A-Grade (or better) commercial floor space and will seek to achieve a minimum 4.5 star Green Star rating.

The proposed development provides the opportunity to create a landmark development at the northern gateway into the North Sydney CBD. By providing large floor plate (of about 1,500m²), high-grade commercial floor space the proposal will assist both North Sydney Council and the State Government in meeting its strategic planning objectives for the centre.

The project architect Phillip Vivian provided a presentation of the proposal and was available for questions and discussion with the Panel.

Panel Comments:

The Panel felt that the height of the tower was less important in urban design terms than the achievement of a high quality improved public domain and interface of the development with the public domain.

The Panel understands that the proposed tower will overshadow some residential properties and special areas including Donbank and the Miller Street at the Autumn and Spring Equinox but not during the Solstice. The extent of the shadowing was explained to the Panel and how the current LEP controls prohibits the proposed height. It was demonstrated that it is the height of the tower more than the size of the floor plate that causes the additional shadow. The Panel was advised that a fully compliant envelope would cut the tower down to RL136.9. The Panel recommended that the exact impact of the shadow should be independently documented indicating the number of minutes and the number of days either side of the equinox that the proposal is in breach. Existing vegetation and shading needs to be documented to determine the real impact of the breach. A landscape architect or arborist should confirm that the anticipated shadows will not adversely impact the trees or vegetation at Donbank.

The Panel 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.

A concern was raised about the protruding portion of building on the Highway that does not comply with the street setback controls. A ground level perspective from the pavement on the east side of the Highway looking south should be prepared to understand the visual impact of the view down the Highway.

The Panel raised no concern to the highly irregular tower envelope (apart from the protrusion noted above) as it has been modified to have regard to mid-winter overshadowing to the Special Areas. The applicant explained that their preferred option is based on a composition of volumes asymmetrically attached to the central anchoring volume. Each volume has been studied and given a differing façade treatment in response to orientation. The western volume has been emphasized to acknowledge the gateway entry to the North Sydney CBD.

The Panel notes the breach of the DCP (5m) tower setback on the Highway façade and feels that a ground level perspective from the pavement on the east side of the Highway looking south should be prepared to demonstrate that the protrusion is appropriate and in context with development on the eastern side of the Highway.

The Panel had concern about potential wind impacts caused by the building on street level and was advised that a wind impact study had been carried out and had recommended a number of design features to minimise impacts. The Panel recommended that an awning be provided along both frontages over the public footpath for pedestrian comfort as well as controlling wind impacts for the tower. Careful attention should be given to conserving the existing street trees which are now well developed, and articulating the awning to avoid any negative impacts on the trees.

The Ground Floor has been created as a publicly accessible Garden Plaza, creating a major new public space for the North Sydney CBD. This space will provide a year round weather protected space for the public to gather and meet and potentially host exhibitions and events. Access to the plaza is via Berry Street through large operable glass doors with secondary access off the Pacific Highway frontage. 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. At the southern end of the building is the lift core and entry foyer to the commercial office tower. Doors will provide access between the spaces during office hours. The Panel supports the proposed public garden plaza as a major feature of the proposal and a definite public benefit. Some further detailing is necessary with regard to finishes, entry points, treatment of the change in levels with the public footpath and ventilation of the space. Considerable detailing has already been done by the designers and probably the design needs very little fine tuning. Disabled access needs to be integrated into the design of the podium areas.

The urban design quality of the proposed concept is recognised by the Panel, however 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.

Conclusion:

In summary, subject to more detailed information as to the extent of overshadowing and study of the visual impact of the reduced setback on the Highway, the Panel supports the proposal as a well considered concept.

Meeting concluded at 4.45 pm



MEMORANDUM

TO: Nicola Reeve
FROM: Cathy Edwards-Davis
DATE: 19 July 2010
RE: 177-199 Pacific Highway, North Sydney

I refer to your request for comments on the proposed development at 177-199 Pacific Highway, North Sydney (MP 09_0214). I have read the Transport and Accessibility Impact Study prepared by Colston Budd Hunt & Kafes (CBHK) dated May 2010 (reference: 7812).

Existing Development

The existing development has 6,923 m² commercial floor space. There is parking for 60 vehicles with access from Berry Street.

Proposed Development

The proposed development comprises 44,680 m² commercial floor space. There is parking proposed for 112 vehicles over four basement levels. Vehicular access is proposed from the same location in Berry Street.

Parking

The applicant has proposed the provision of 112 parking spaces. This complies with Council's DCP for a development of this size.

The proposed motorbike parking complies with Council's DCP.

Bicycle Facilities

The proposed bicycle parking complies with Council's DCP. It is noted that there are change facilities for bike riders on Basement Level 2. It is unclear if these change facilities include showers. End of trip facilities are essential for encouraging people to travel by bicycle, particular in summer months. It is recommended that shower facilities be provided for use by bike riders.

Queuing Length

It is noted that there is boom gate entry on Basement Level 1, beyond the loading dock, to the car park. This is appropriate as it provides queuing length.

It is unclear whether there will be a security gate at the main entrance to the car park and loading dock off Berry Street. AS 2890.1 states that a car park of this size should have a minimum queuing length of 3 cars. Therefore, there should be a minimum of 18 metres at all times between the boundary and any security gate/ security access point. North Sydney has very high volumes of pedestrian activity. This queuing length helps to ensure that vehicles are not queued across the footpath.

Loading Dock

The loading dock accommodates medium rigid vehicles, small rigid vehicles and a number of courier parking spaces. This is considered appropriate for a development of this size.

Turning templates will be required to ensure that the larger vehicles can access the various loading bays/ docks.

Traffic Generation

The applicant has assumed a peak hour traffic generation of 0.25 to 0.4 vehicles per hour per space (two-way). The North Sydney Traffic Committee and Council have accepted in the past a peak hour traffic generation of 0.5 vehicles per hour per space for commercial developments such as this. Using the figure of 0.5 vehicles to be conservative, the proposed development will result in a net increase in traffic of 26 vehicles per hour.

Even with this more conservative figure, I concur with CBHK that this proposed increase in traffic generation will have a negligible impact on the surrounding road network. I concur with CBHK that the surrounding intersections would continue to operate at their existing levels of service, with similar average delays per vehicle.

Sustainable Transport

The site has excellent links to public transport and cycling networks.

Pedestrian Activity

A commercial site of this size will significantly increase pedestrian activity in the area. The intersection of Berry Street and the Pacific Highway currently has signalised crossings on the southern and eastern sides of the intersection. There is a marked (non-signalised) crossing on the western side of the intersection. There is no pedestrian facility on the northern side of the intersection. Should this development proceed it is recommended that signalised pedestrian crossings be provided by the developer on the northern and western sides of the intersection to assist with pedestrian access to the site.

Work Place Travel Plan

I support the proposed Work Place Travel Plan outlined by CBHK to encourage travel by modes other than private vehicle.

Recommended Conditions

Should this development be approved, it is recommended that the following conditions be imposed:

1. That a deferred commencement condition be set that the applicant must demonstrate, through turning templates, that heavy vehicles can access the various loading bays and facilities shown on Basement Level 1.
2. That a Construction Management Program shall be prepared and submitted to Council for approval by the North Sydney Traffic Committee prior to the issue of the Construction Certificate.
3. That all aspects of the carpark comply with the Australian Standard 2890.1.

4. That all aspects of the loading dock comply with the Australian Standard AS2890.2.
5. That all aspects of the bicycle parking and storage facilities comply with the Australian Standard AS2890.3.
6. That all aspects of parking spaces for people with disabilities comply with the Australian Standard AS 2890.6.
7. That all vehicles, including delivery vehicles and garbage collection vehicles must enter and exit the site in a forwards direction.
8. That the driveways to the site must have minimum sight lines for pedestrian safety as per Figure 3.3 of AS 2890.1.
9. That the location of any gate, intercom or security access point for driveway entry to the car park should be located 18 metres within the boundary of the property, such that three queued vehicles can be contained wholly within the boundary of the property, as per AS2890.1.
10. That there be no net loss of on-street parking in Berry Street.
11. That signs be installed at the exit to the driveway and loading dock stating "Stop – Give Way to Pedestrians"
12. That the developer upgrade the street lighting in Berry Street and the Pacific Highway, adjacent to the site. The design is to be submitted to Council for approval by the Director of Engineering and Property Services prior to the issue of the occupation certificate.
13. That a workplace green travel plan be developed to highlight to staff the available public and alternative transport options for travelling to the site. This is to be submitted to Council for approval by the Director of Engineering and Property Services prior to the issue of the occupation certificate.
14. That shower facilities be provided for bicycle riders, near the bicycle parking facilities.
15. That the applicant, if the RTA concur, modify the signals at the intersection of the Pacific Highway and Berry Street to provide signalised pedestrian crossings on the northern and western sides of the intersection. All works are to be at the expense of the applicant.

Yours sincerely

Cathy Edwards-Davis
Traffic Engineer