

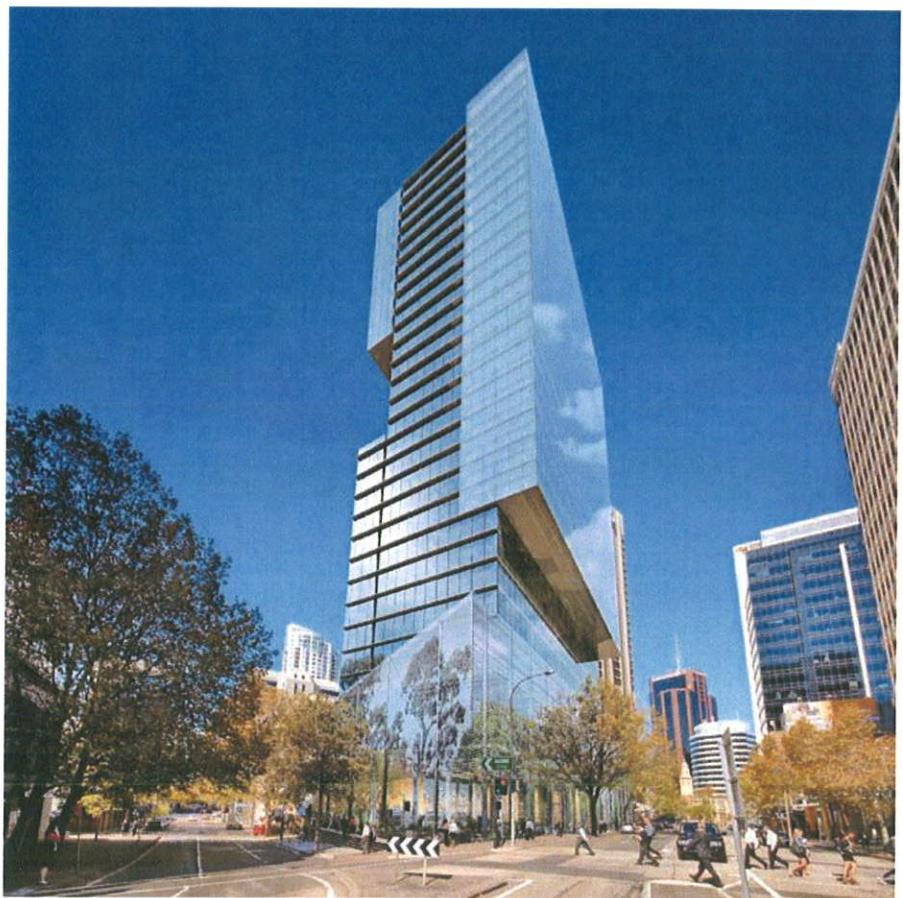
MAJOR PROJECT ASSESSMENT:

North Sydney Commerce Centre

177-199 Pacific Highway, North Sydney

Proposed by: Winten (No. 13) Pty Ltd

MP09_0214



Director-General's
Environmental Assessment Report
Section 75I of the
Environmental Planning and Assessment Act 1979

December 2010

ABBREVIATIONS

CIV	Capital Investment Value
Department	Department of Planning
DGRs	Director-General's Requirements
Director-General	Director-General of the Department of Planning
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
EPI	Environmental Planning Instrument
MD SEPP	<i>State Environmental Planning Policy (Major Development) 2005</i>
Minister	Minister for Planning
PAC	Planning Assessment Commission
Part 3A	Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>
PEA	Preliminary Environmental Assessment
PFM	Planning Focus Meeting
PPR	Preferred Project Report
Proponent	Winten (No.13) Pty Ltd.
RtS	Response to Submissions

Cover Image: Rendering of proposed building by Batesmart Architects

© Crown copyright 2010
Published December 2010
NSW Department of Planning
www.planning.nsw.gov.au

Disclaimer:

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

NSW Government
Department of Planning

EXECUTIVE SUMMARY

This is a report on a Concept Plan application seeking approval for a commercial development at 177-199 Pacific Highway, North Sydney. The site is located in the North Sydney CBD and within the North Sydney LGA. The Proponent is Winten (No. 13) Pty Ltd.

The proposal as exhibited sought Concept Plan approval for the following:

- building envelope of 31 storeys, plus plant and a 4 level basement (max. RL195 metres);
- commercial land use, with a public plaza and retail/ commercial lobby at ground floor; and
- Streetscape upgrades along the frontage of the site.

The Environmental Assessment (EA) was exhibited for 30 days between 7 July 2010 and 6 August 2010. As a result, the Department received 5 submissions from public authorities, 1 submission from North Sydney Council and 20 public submissions objecting to the proposal. On 27 September 2010, the Proponent submitted a Preferred Project Report (PPR). Key PPR revisions include:

- provision of a detailed shadowing study, including compliant building envelope studies;
- an amended architectural presentation for the upper floors of the building; and
- further detail on the proposed street presentation of the building.

The PPR comprises a total floor area of 44,770m². The Capital Investment Value (CIV) for the development is estimated at \$157.7 million.

The site is zoned 'Commercial' under the North Sydney LEP 2001 ('LEP 2001') and the proposed commercial development is permissible with consent within this zone. However, Council has indicated that the LEP 2001 overshadowing controls (which the proposal does not strictly comply with) act as a prohibition rather than a development standard.

Key Issues include:

- Building height
- overshadowing
- built form, streetscape, setbacks and public domain

The proposed height and bulk results in overshadowing of 'Special Areas' (as defined in LEP 2001). However, on balance, the proposed development is suitable for the site and local context and has merit in terms of its ability to address strategic targets for large-scale, high quality commercial floor space in the North Sydney CBD.

Given the scale and prominent location of the proposal, public domain improvements should extend beyond the immediate frontage of the site. It is recommended that the public domain upgrade works to the Berry Street Special Area be extended.

The proposal will provide substantial public benefits including:

- the creation of additional premium-grade commercial floor space within the North Sydney CBD, and associated jobs growth, with excellent access to public transport;
- a substantial contribution to the North Sydney Centre commercial floor space target and consequent contribution to the upgrade of the North Sydney railway station;
- an 'all-weather' public plaza, and streetscape upgrades including a new Special Area;
- achievement of 5-star Green Star and NABERS energy efficiency ratings; and
- construction-phase and ongoing employment opportunities.

The Department has assessed the merits of the application, taking into account the issues raised by the public and relevant public agencies. It is considered that identified impacts have been addressed in the PPR and by way of modifications to the Concept Plan. The Concept Plan is recommended for approval, subject to modifications.

TABLE OF CONTENTS

1.	BACKGROUND	2
2.	PROPOSED PROJECT	5
2.1.	Project Description (EA as Exhibited)	5
2.3	Project Need and Justification	7
3.	STATUTORY CONTEXT	10
3.1.	Major Project	10
3.2.	Permissibility	10
3.3.	Environmental Planning Instruments	10
3.4.	Objects of the EP&A Act	10
3.5.	Ecologically Sustainable Development	11
3.6.	Statement of Compliance	11
4.	CONSULTATION AND SUBMISSIONS	12
4.1.	Exhibition	12
4.2.	Public Authority Submissions	12
4.3.	Public Submissions	13
5.	ASSESSMENT	14
5.1.	Height	14
5.2.	Overshadowing	15
5.3.	Built form, Streetscape and Setbacks	23
5.4.	Public Domain/ Public Benefit	26
5.5.	Other Issues	28
6.	RECOMMENDATION	29
APPENDIX A	STATUTORY ASSESSMENT	30
APPENDIX B	DIRECTOR GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS	35
APPENDIX C	ENVIRONMENTAL ASSESSMENT	36
APPENDIX D	SUBMISSIONS	37
APPENDIX E	PROPONENT'S RESPONSE TO SUBMISSIONS/ PPR	38

1. BACKGROUND

1.1 Site Description

The subject site is known as 'Norberry Terrace', located at 177-99 Pacific Highway, North Sydney. The site is located at the corner of the Pacific Highway and Berry Street, at the northern edge of the North Sydney Central Business District (CBD) (refer to **Figure 1**). The site is an irregular shape and has an area of 2415m², with frontages of approximately 70 metres to the Highway and 38 metres to Berry Street and a 6 metre chamfer at the street corner. The land falls by 4 metres from the north to the south and east across the site.

The site currently comprises a group of three and four storey commercial terraces around a common courtyard, with vehicle access from Berry Street to a single-level basement with parking for 60 cars. The existing buildings on the site have a Gross Floor Area (GFA) of 6920m² and read as a single perimeter block from the street, but are in fact five individual terraces.

The site is located within a predominantly commercial setting in the North Sydney CBD. The CBD is well serviced by public transport, with numerous bus routes in either direction along the Pacific Highway and Miller Street, and the newly upgraded North Sydney railway station, which is located approximately 450 metres to the south of the site. The Pacific Highway is a 6-lane, two-way arterial road, whilst Berry Street is a 3-lane collector road which only allows one-way traffic (eastbound) in front of the site.

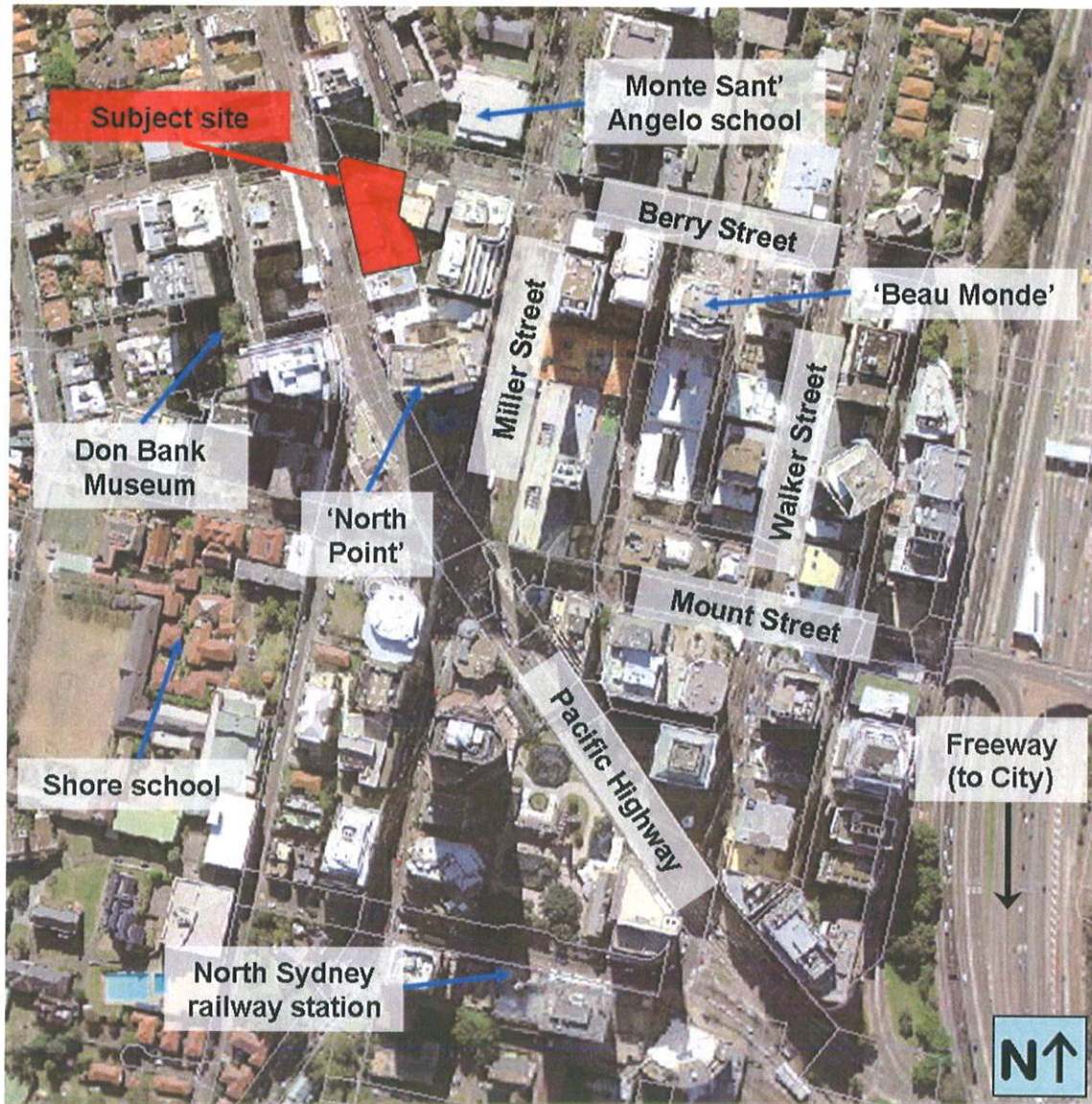


Figure 1: Aerial photograph of central North Sydney (source: NSW LPMA)

1.2 Surrounding Development

To the east of the site are 6 and 7 storey commercial buildings, and beyond these is a nominated Special Area on the eastern side of Miller Street.

To the south is the Northpoint development, a 34 storey commercial tower over a 2-4 storey podium (refer to Figures 2 and 3). Between Northpoint and the subject site is a 4 storey commercial building fronting the Highway, and a 7 storey building fronting Miller Street.

To the north (across Berry Street) is a 14 storey commercial building and the Monte Sant' Angelo Mercy College, which is a locally listed heritage item.

To the west (across the Highway) is a 17 storey commercial building. Beyond this building is a single storey heritage item and nominated Special Area known as the Don Bank Museum. Also, to the southwest of the site on Mount Street is the Shore school.

The nearest residential uses to the site are located approximately 180 metres to the east in the Beau Monde building (77-81 Berry Street) and 200 metres to the west in Edward Street. The photographs below detail the site and surrounds. Photographs of the Don Bank Museum and Miller Street Special Areas are provided in Section 5 of the report.

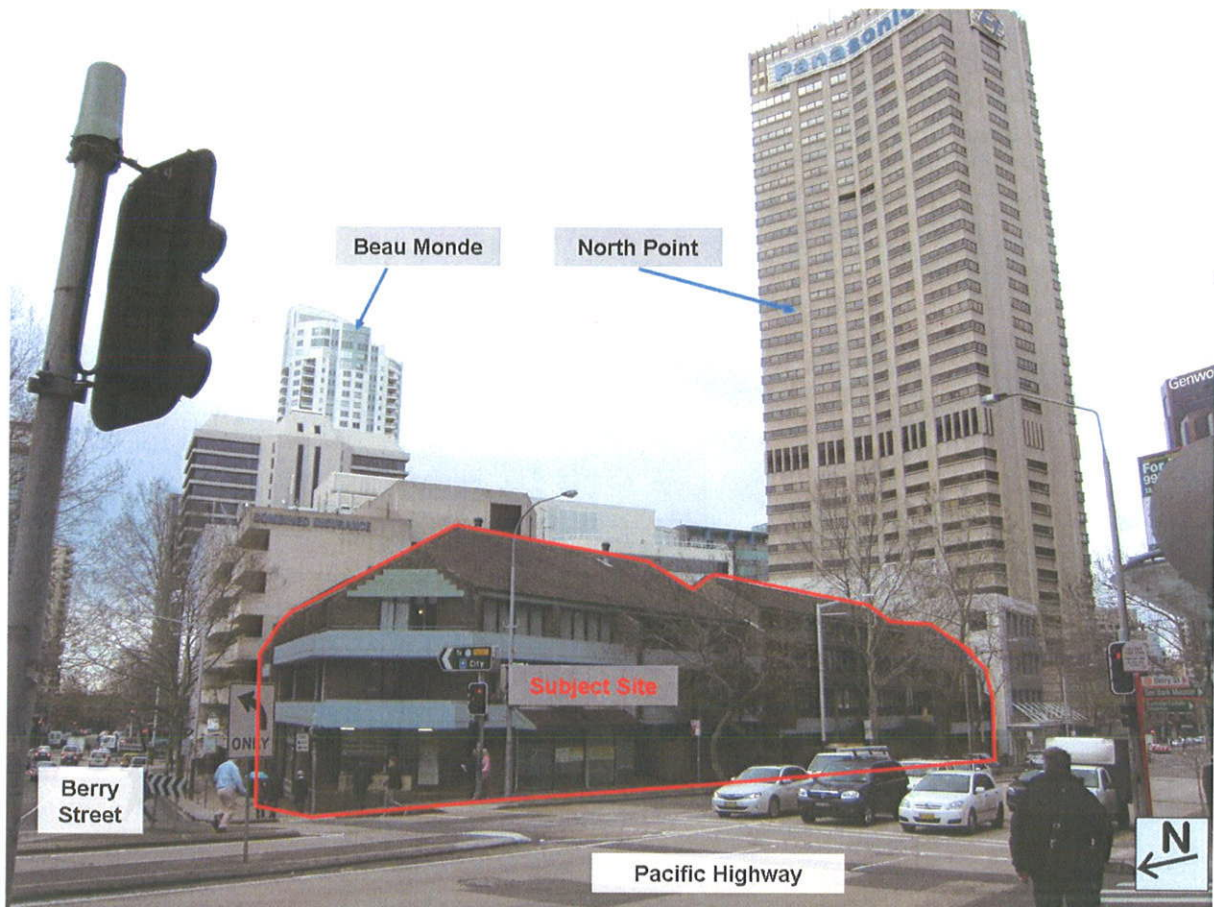


Figure 2: Corner elevation of the subject site looking southeast.

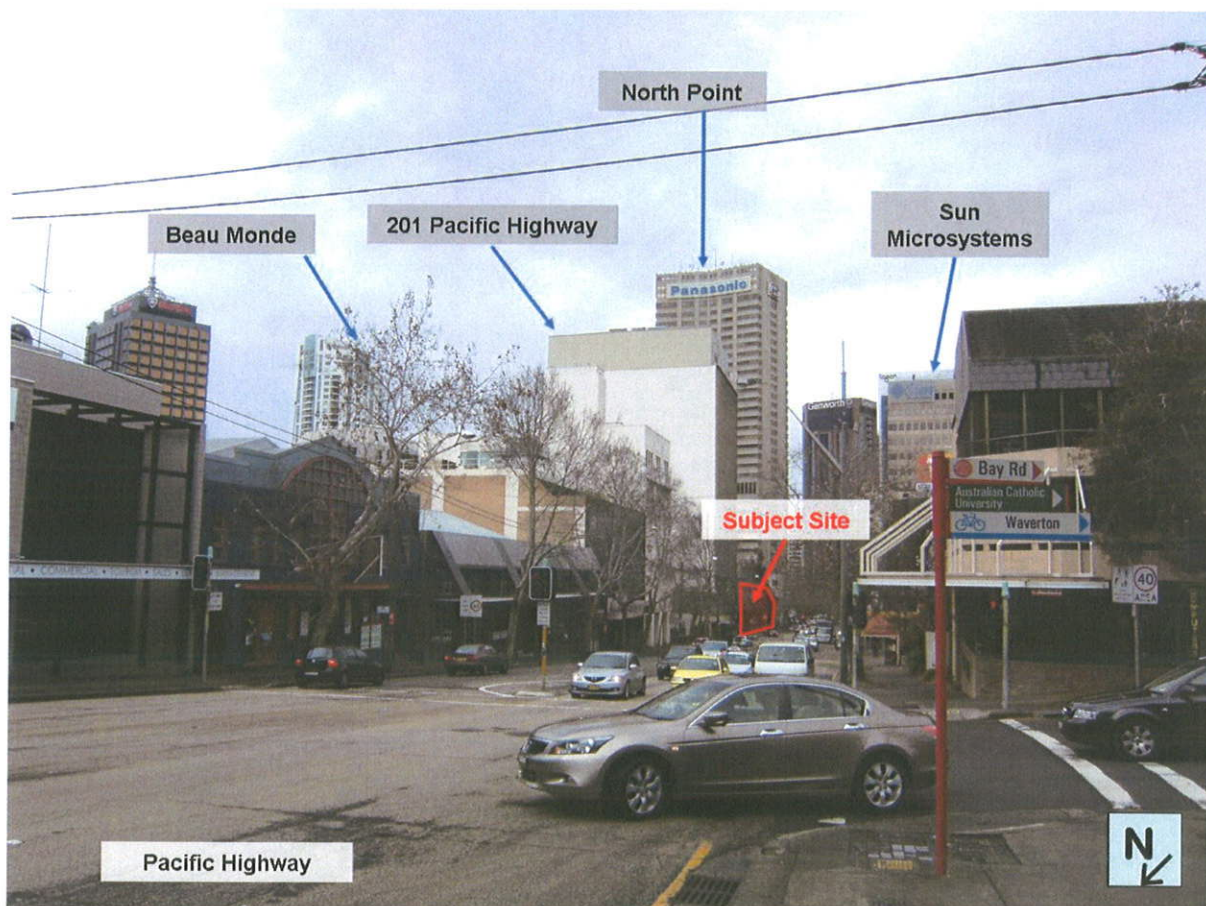


Figure 3: Looking south down the Pacific Highway from Crow's Nest.

2. PROPOSED PROJECT

2.1. Project Description (EA as Exhibited)

The Environmental Assessment (EA) as exhibited sought Concept Plan approval for the following:

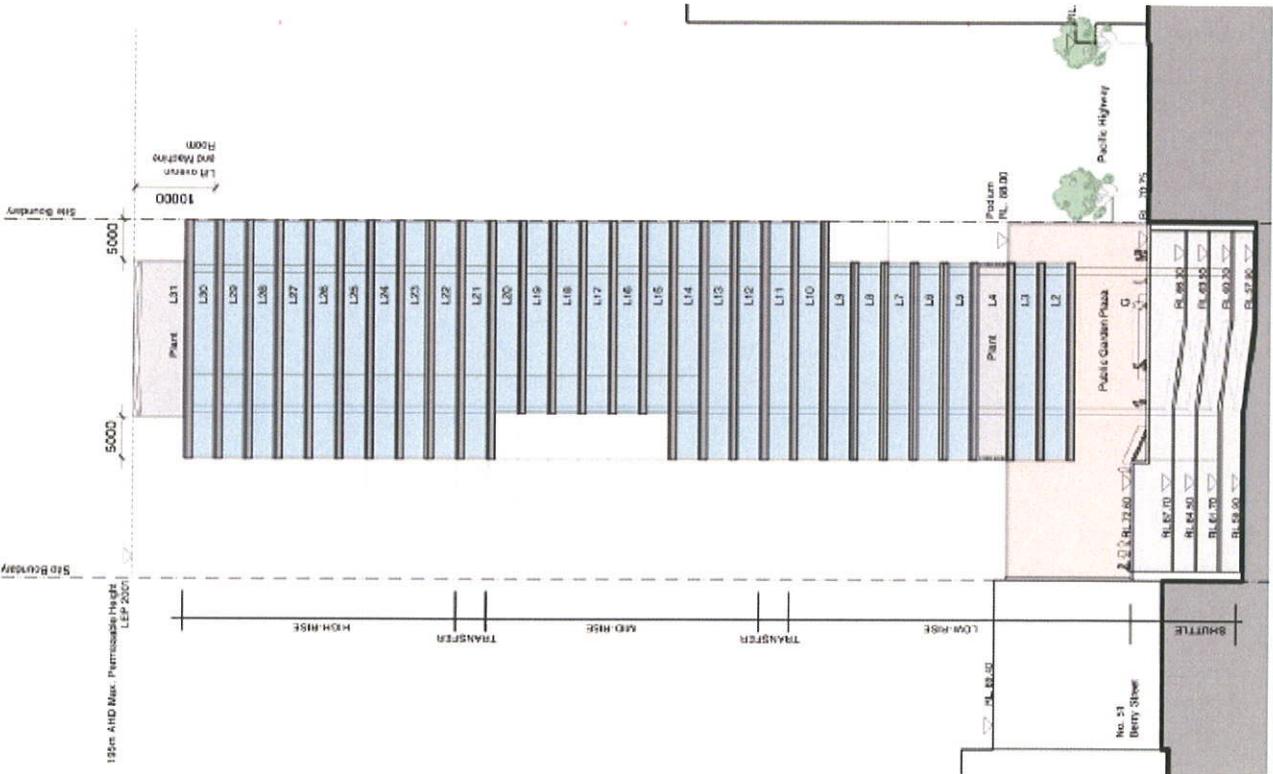
- a building envelope of 31 storeys, plus a plant level, to a maximum height of RL195 metres AHD, and a maximum Gross Floor Area of 44,770m², with a 4 level basement with 112 car spaces;
- commercial and ancillary land uses; and
- a publicly accessible wintergarden-style 'garden plaza' of approximately 1,325m², in addition to a retail/ commercial lobby at ground floor.

2.2 Preferred Project Report (PPR)

Following the public exhibition of the EA, the Department advised the Proponent of a number of issues which required further consideration, and requested the submission of a PPR.

Key issues raised included the bulk and massing of the proposed building envelope, particularly in terms of the additional shadowing of nearby Special Areas, impacts on the North Sydney skyline and the streetscape presentation of the building to the Pacific Highway. The Proponent was also asked to address the RTA's recommendation that the driveway access to the development from the Pacific Highway be considered, and to consult with the Sydney Airport Corporation.

On 27 September 2010, the Proponent submitted a response to submissions and a Preferred Project Report (PPR). The PPR proposes minimal changes to the EA, but provided a more detailed analysis of overshadowing impacts, an analysis of building massing options, and a revised design for the articulation of the eastern and western facades of the building. Images of the proposal (taken from the PPR) are shown in **Figures 4 and 5** below.



2.3 Project Need and Justification

NSW State Plan

The NSW State plan aims to increase investment and job creation, and promote sustainable development by encouraging the use of public transport.

The proposed development represents a significant investment which will contribute to immediate and ongoing employment growth. The jobs created will be within the established North Sydney CBD, with excellent access to multiple modes of public transport, including the recently upgraded North Sydney railway station.

Metropolitan Plan for Sydney 2036

The Metropolitan Plan for Sydney 2036 is a strategic document that guides the development of the Sydney Metropolitan area towards 2036. The Metropolitan Plan aims to support the continued economic growth and competitiveness of Sydney, and consolidate its standing as a 'global city'. Along with the Sydney CBD, North Sydney forms the strategic centre of Global Sydney, and anchors the 'global economic corridor' of concentrated jobs and activities in centres between Macquarie Park and Port Botany.

The Metropolitan Plan sets out an employment target for the Sydney region of 760,000 new jobs by 2036. The Plan provides further detailed targets of 62,000 additional jobs for the Inner North Subregion and 14,000 additional jobs for North Sydney by 2036. The Plan also identifies a Sydney-wide target of 10,000,000m² of new commercial floor space by 2036. The proposal will make a substantial contribution to these targets.

The proposal will also make a significant contribution to the achievement of a number of the Metropolitan Strategy's targets. Specifically, the proposal represents a large-scale commercial development within the strategic centre, which will provide increased employment and high-quality commercial floor space. The proposal will also contribute to the achievement of the Metropolitan Plan's environmental targets, by locating substantial commercial floor space in an established centre with excellent access to public transport, and in light of the applicant's commitment to achieving 5-star NABERS and Green Star energy efficiency ratings for the proposed building.

Draft Inner North Subregional Strategy

The proposal is consistent with the key directions and targets of the Inner North Subregional Strategy. Job targets in the Subregion and North Sydney have been updated by the Metropolitan Plan as identified above.

The proposal is for the major redevelopment of a large and under-utilised site within the North Sydney CBD, including more than 40,000m² of commercial floor space across high-grade floor plates. Considered alongside recent major project approvals for 77-81 Walker Street (approximately 60,000m² of commercial/ retail) and 86-100 Mount Street (approximately 36,000m² of commercial/ retail), the proposed development will make a significant contribution to the Inner North employment targets and strengthen North Sydney as the anchor of the global economic corridor.

The Subregional Strategy also seeks to concentrate activities around, and encourage the use of public transport. The proposed development will benefit from a close proximity (approximately 450m) to the recently upgraded North Sydney railway station and excellent access to north shore and city-bound bus routes.

North Sydney Centre Planning Provisions

In order to maintain the status of the North Sydney Centre as a major commercial centre, provisions were gazetted that allow for an additional 250,000m² of non-residential floor space within the confines of the CBD. Council is required to review the controls once additional non-residential floor space reaches 200,000m² to ensure that the controls remain appropriate to meet the objectives of the plan.

To date, it is understood that 90,000m² of additional non-residential floor space has been approved by Council, in addition to the recent major project approvals noted above. The proposal, with more than 44,000m² of additional non-residential gross floor area, would take the overall approved non-residential floor space in the centre to approximately 230,000m², which is beyond the LEP threshold and would trigger the requirement for Council to conduct its review.

Railway Contribution Deed 2003

During the course of 2000 to 2002, the Council negotiated with the Department of Planning, Transport NSW, the State Rail Authority (SRA) and the Office of the Coordinator General to proceed with the \$88 million upgrade of the North Sydney Station. The Deed was based on the Council delivering the above-mentioned additional floor space.

The rationale for jobs growth in North Sydney is based on it being an existing major business centre with good access to public transport. The figure of 250,000m² is the floor space required to generate the additional jobs needed and is linked to the capacity of the North Sydney Station, in its upgraded form. The upgraded North Sydney Railway Station was officially opened on 20 January 2009. Accordingly, the State Government has met its commitment to provide railway infrastructure in North Sydney with the capacity to accommodate the additional 250,000m² of non-residential floor space identified in LEP 2001.

The current proposal will be required to enter an agreement to pay approx. \$3.4 million to the Transport Administration Corporation at Project Application stage, pursuant to the Deed, as payment for the completed upgrade of the North Sydney Railway Station.

Draft North Sydney LEP 2009

On 10 August 2009, Council resolved to incorporate revised North Sydney Centre building height and overshadowing controls into the comprehensive draft North Sydney LEP 2009. On 2 July 2010, the Department issued a Section 65 certificate to authorise the public exhibition of the draft comprehensive LEP, with a revised certificate issued on 29 October 2010. At the time of reporting, the draft LEP is yet to be exhibited.

The draft LEP has a significant effect on the height control for the site – reducing it from the currently permissible RL195 metres (across the whole site) to RL85 metres on Berry Street and RL190 metres at the southern portion of the site. Council has made this amendment to the controls in order to ensure future building envelopes are within the heights allowed by the LEP 'Composite Shadow Diagram' and Special Area shadow controls. However, the non-residential floor space targets for the North Sydney CBD and objectives which require larger development sites and 'A grade' commercial floor plates are maintained.

The ramification of the draft control is significant for the allowable building envelope on the site. The draft control is considered to be at odds with the strategic employment objectives for the North Sydney Centre set out in the Subregional Strategy (discussed above) and the local planning controls for the North Sydney Centre which explicitly require larger development sites and high-grade commercial floor plates (of at least 1000m²) and which also identify a target of 250,000m² of non-residential floor space. This inconsistency goes to the core of the merits of the application.

The proposed building is well-designed and will make a positive contribution to the built form of the North Sydney CBD. The Concept plan contains significant public benefits including public domain improvements, as well as the provision of a substantial amount of high-grade floor space which is in line with strategic employment targets, which are considered to outweigh overshadowing impacts. In any case, the Department's assessment of the overshadowing impacts is that they are not overwhelming. A major reduction in the proposed floor plate in order to offset relatively minor overshadowing impacts is not warranted.

3. STATUTORY CONTEXT

3.1. Major Project

The proposal is a major project under Part 3A of the *Environmental Planning and Assessment Act* 1979 ('the EP&A Act') because it is development for the purpose of 'residential commercial or retail' with a Capital Investment value of more than \$100 million under Clause 13 of Schedule 1 of *State Environmental Planning Policy (Major Development)* 2005. Therefore the Minister for Planning is the approval authority.

3.2. Permissibility

North Sydney Local Environmental Plan 2001

The site is zoned 'Commercial' under the North Sydney Local Environmental Plan 2001, and the proposed land uses are permissible with consent within the zone.

North Sydney Council has stated that, as the proposal will increase overshadowing to identified Special Areas within a prescribed period, the development is prohibited by operation of Clause 28D(2) of the LEP. The fact that the proposed development does not fully satisfy the overshadowing controls is conceded by the Proponent, but the Proponent contends that the Clause is a development standard rather than a prohibition.

In any case, this issue has been addressed by the submission of a Concept Plan.

Draft North Sydney LEP 2009

The draft North Sydney comprehensive LEP 2009 proposes to retain the 'Commercial' zoning of the land, and as such the proposed use would remain permissible with consent.

Although the draft LEP seeks to amend the current height and overshadowing controls (as discussed in **Section 5** below), the same compliance/ prohibition issue as discussed above would arise in respect of the overshadowing controls.

It is noted that the Proponent has requested that the Minister make a direction that the provisions in question (within Clause 28D of the *North Sydney LEP* 2001) not apply, should the Concept Plan be approved.

3.3. Environmental Planning Instruments

The Department's consideration of relevant SEPPs and EPIs is provided in **Appendix A**.

3.4. Objects of the EP&A Act

Decisions made under the EP&A Act must have regard to the objects of the Act, as set out in Section 5 of the Act. The objects of the Act are:

- (a) *to encourage:*
 - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
 - (iii) *the protection, provision and co-ordination of communication and utility services,*
 - (iv) *the provision of land for public purposes,*
 - (v) *the provision and co-ordination of community services and facilities, and*
 - (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
 - (vii) *ecologically sustainable development, and*
 - (viii) *the provision and maintenance of affordable housing, and*

- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

The proposed Concept Plan is considered to be consistent with the relevant objects of the Act. The submission of the proposal in the form of a Concept Plan allows the broader economic, social and environmental of the development to be assessed independently of the 'fine detail' of the project. Council and the public have been consulted in relation to the proposed development (see Section 4 below).

3.5. Ecologically Sustainable Development

The EP&A Act adopts the definition of Ecologically Sustainable Development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) *the precautionary principle,*
- (b) *inter-generational equity,*
- (c) *conservation of biological diversity and ecological integrity,*
- (d) *improved valuation, pricing and incentive mechanisms.*

The Department's consideration of relevant of ESD principles is included at **Appendix A**.

3.6. Statement of Compliance

In accordance with section 75I of the EP&A Act, the Department is satisfied that the Director-General's environmental assessment requirements have been complied with.

4. CONSULTATION AND SUBMISSIONS

4.1. Exhibition

Under section 75H(3) of the EP&A Act, the Director-General is required to make the environmental assessment (EA) of an application publicly available for at least 30 days. After accepting the EA, the Department publicly exhibited it from 7 July 2010 until 6 August 2010 (31 days) on the Department's website, at the Department's Information Centre and at North Sydney Council. The Department also advertised the public exhibition in the Sydney Morning Herald, The Daily Telegraph and the North Shore Times on 7 July 2010. Surrounding landholders, relevant State government agencies and North Sydney Council were also notified in writing.

The Department received 26 submissions during the exhibition of the EA - 6 submissions from public authorities including North Sydney Council and 20 submissions from the general public and special interest groups, including Shore School, the Edward Precinct and Stanton Precinct (resident groups) and the residents of the Beau Monde building.

A summary of the issues raised in submissions is provided below.

4.2. Public Authority Submissions

Six submissions were received from public authorities. None of the state agencies raised objection to the proposal, and made recommendations as detailed below.

The **RTA** and Sydney Regional Development Advisory Committee (**SDRAC**) do not object to the Concept Plan application but recommended, in addition to standard requirements that:

- the Proponent consider relocating the driveway access to the site to the Highway;
- the Department and Council undertake a comprehensive traffic impact study for the North Sydney CBD in light of recent major development proposals; and
- an analysis of cumulative public transport demand increases should be undertaken.

NSW Transport does not object to the application, and recommended, in addition to standard project-stage requirements that:

- measures to increase non-car transport modes and improve bicycle access to the site and surrounding area be considered;
- the potential to reduce on-site parking and encourage car sharing be explored; and
- contributions be made to the development of local bicycle links and upgrade of nearby bus stops.

The **NSW Office of Water** does not object to the application, but requests that any future Project Application is subject to (standard) dewatering requirements.

Sydney Water does not object to the project, but noted that the existing drinking water main would need to be enlarged to service the development (a requirement which can be addressed in future applications).

RailCorp does not object to the application and did not make any specific recommendations or supply any conditions.

North Sydney Council objects to the project, on the basis of:

- non-compliance with the objectives of the North Sydney LEP 2001 (LEP 2001) for the Commercial zone and the North Sydney Centre, particularly in terms of overshadowing impact on identified Special Areas, residential land and open space;
- non-compliance with LEP 2001 objectives and controls in relation to building heights and massing, particularly in respect of overshadowing impacts;

- inconsistency of the proposal with North Sydney DCP 2002 solar access and street setback controls, and the DCP character statement for the North Sydney CBD;
- non-compliance with the reduced height controls and overshadowing controls proposed for the site under draft North Sydney LEP 2009; and
- a request from Council's Design Excellence Panel for further information on the exact extent of overshadowing, setbacks and accessibility of the public plaza.

The Council was made aware of the Proponent's PPR, but had not submitted further comment to the Department at the time of reporting.

4.3. Public Submissions

Twenty submissions were received from the public and included submissions from the following special interest groups:

- Shore School;
- Edward Precinct and Stanton Precinct (resident groups) and the Body Corporate of the Beau Monde building (at 77-81 Berry Street).

The submissions included 9 form letters and all public submissions raised objection to the project. The key issues raised are listed in **Table 1**, below.

Table 1: Summary of Issues Raised in Public Submissions

Issue	Proportion of submissions (%)
Additional overshadowing	100
Building Height & Massing	80
Wind Impacts	80
Public Benefit of the Garden Plaza	75
Traffic	75
Street Setbacks	60
Development not State Significant	50
Non-compliance with (Current and Draft) Controls	45
Other (incl. View Loss, Noise, Reflectivity)	10

The Department has considered the issues raised in public and agency submissions in its assessment of the project.