



Planning

**MAJOR PROJECT ASSESSMENT
PROJECT APPLICATION FOR COMMERCIAL,
RETAIL AND HOTEL DEVELOPMENT
77-81 Berry Street and 88 Walker Street,
North Sydney
Proposed by EASTMARK HOLDINGS Pty Ltd**

MP 08_0238

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

December 2009



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1 EXECUTIVE SUMMARY

This is a report on a Project Application seeking approval for a commercial, retail and hotel development located at 77-81 Berry Street and 88 Walker Street, North Sydney. The site is located within North Sydney LGA. The Proponent is Eastmark Holdings Pty Ltd.

Proposal

The original Project Application sought approval for the following:

- Demolition of the existing buildings on both sites, including the existing pedestrian bridge linking 77-81 Berry Street with Tower Square;
- Excavation for 4 levels of basement at 77-81 Berry Street and 2 levels of basement at 88 Walker Street;
- Construction of a part 28/part 37 storey commercial and retail building on the southern portion of 77-81 Berry Street and a 33 storey (200 room) 4.5 star hotel development at 88 Walker Street, including a connecting service tunnel below Little Spring Street;
- Construction of a pedestrian bridge over Little Spring Street linking 77-81 Walker Street and 88 Walker Street;
- Provision of 42 public car parking spaces and 10 motorcycle spaces in the commercial tower basement;
- Construction of a new through-site road between Denison Street and Little Spring Street; and,
- Construction of public domain improvements in Denison Street, Spring Street and Little Spring Street, including a new pedestrian plaza in Denison Street.

The Capital Investment Value is estimated at **\$291 million**.

Preferred Project Report (PPR)

On 21 October 2009, the Proponent submitted a response to public and agencies submissions and a Preferred Project Report. Key revisions to the original proposal include:

77-81 Berry Street (Commercial building)

- Deletion of the pedestrian bridge over Little Spring Street linking the commercial building to the hotel building;
- Reconfiguration of the southern setback and south-eastern corner of the commercial podium;
- Revised articulation of the roof level elevations;
- Provision of a new retail tenancy and awning on the southern side of the through site link and articulation to the roof above; and
- Reconstruction of a new pedestrian bridge to Tower Square following demolition of the existing bridge.

88 Walker Street (Hotel building)

- A ground level through-site link from the hotel to replace the proposed pedestrian bridge over Little Spring Street;
- Reconfiguration of the internal layout and redesign of the external façades of the hotel;
- Reconfiguration of the hotel rooms to face east/west rather than south;
- Revised articulation of the roof level of the hotel building; and
- Provision for drop off and pickup, and bus parking (25 seater bus) within the proposed loading dock (commercial lower ground level at 77-81 Berry Street).

Permissibility

The subject site comprises two separate sites. The site at 77-81 Berry Street is zoned 3(a) "Commercial A" pursuant to *North Sydney Local Environmental Plan 1989*. The proposed commercial and retail development is permissible with consent. The site at 88 Walker Street is zoned "Commercial" pursuant to *North Sydney Local Environmental Plan (LEP) 2001*. The proposed hotel development is permissible with consent.

Both sites are also zoned "Commercial" pursuant to draft *North Sydney Local Environmental Plan 2001* (Amendment 28). The proposed commercial, retail and hotel development is permissible with consent.

Public Exhibition

The Environmental Assessment (EA) was exhibited for a 30 day period from 3 June 2009 to 3 July 2009. During the exhibition period, the Department received 5 submissions from public authorities and 65 public submissions (of which 60 relate to the adjacent Beau Monde apartment building).

All public submissions did not support the proposal and the majority were pro-forma letters. To date 40 submissions have been received in response to the PPR, including a detailed submission on behalf of the "Beau Monde Residents Action Group" and North Sydney Council. All of the further submissions oppose the proposal.

Key issues include:

- Draft North Sydney City Centre controls;
- Building height;
- Impacts on views and outlook for residents of "Beau Monde";
- Wind impacts; and
- Traffic issues.

Assessment of Impacts:

- The height, location, bulk and scale of the proposed commercial building and the hotel building significantly impacts on the Sydney Harbour views enjoyed from some apartments in the adjacent Beau Monde building. This impact is assessed to be reasonable considering the location of the site within the North Sydney CBD and the height and envelope controls applying in the CBD.
- The additional traffic generated by the proposal will increase demands on already congested streets at peak hour which can be managed via additional traffic works.
- The proposed towers generate increased wind speeds in local streets which can be addressed by appropriate mitigation works.

Key Recommended Modifications & Conditions

Key recommendations made in respect to the proposal are included as conditions of approval as follows:

- Reduction in the height of the northern and southern parts of proposed commercial building to comply with the Draft LEP controls (ie max height to RL 155 & RL 170 metres respectively) excluding two plant room levels over the southern part (by condition);
- Deletion of the connecting tunnel beneath Little Spring Street and the introduction of alternative arrangements for access between the hotel and commercial tower carpark (by condition);
- Construction management conditions, including restrictions on construction hours; and,
- Additional monetary contribution towards upgrading the intersection of Walker and Berry Streets (by condition).

Public Benefits

It is expected that the proposal will have some impact on the locality and will affect the existing views and amenity of some apartments in the Beau Monde building. However, on balance the proposal will provide significant benefits to the wider community, including:

- Realisation of additional premium grade commercial floor space in the North Sydney Centre and jobs growth;
- Achievement of 5-star Greenstar energy rating for the commercial tower and 4-star NABERS rating for the hotel building;
- Contribution to the payment of the upgraded North Sydney Railway Station and the achievement of the North Sydney Centre 250,000m² floor space target;

- Public domain areas of 1,100m² including the creation of a public plaza in Denison Street;
- Construction of a new through-site link (road) through the commercial site, enabling the reconfiguration of traffic in the surrounding laneways and improved pedestrian connectivity;
- Increased setbacks at ground level to enhance the public domain, especially to the south on Spring Street;
- Provision of a 4.5-star hotel;
- Provision of a new public car park to accommodate 42 cars and 10 motorcycles;
- Increased separation distance between the commercial building and the Beau Monde building to improve amenity; and
- Employment opportunities through the construction and operational phase of the development.

Conclusion

The Department has assessed the merits of the proposal taking into consideration the issues raised in public submissions and is satisfied that the impacts have been addressed in the PPR, the Revised Statement of Commitments and recommended conditions. It is considered that the impacts can be suitably mitigated and/or managed to ensure a satisfactory level of environmental performance, pursuant to Section 75J of the Act.

The Department has determined that subject to a reduction in height, the proposed commercial tower is appropriate and fits within the context of the North Sydney CBD. The proposed hotel building on Walker Street is considered to be well resolved and of a height, bulk, scale and character that is also compatible with the City Centre.

The main impact that arises from the proposal is the loss of southerly views over North Sydney, Sydney Harbour and the Sydney CBD from some apartments in the Beau Monde residential building to the north. However, the preservation of all of these existing views is unsustainable having regard to its location in the North Sydney CBD, targets for future economic/employment growth in North Sydney, and impacts resulting from building heights/envelopes prescribed by the planning regime put in place to achieve these key strategic growth outcomes.

The public domain improvements on the adjacent streets and within the site are of considerable merit and will enhance the vitality of this area of North Sydney which requires renewal.

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2 BACKGROUND

2.1 The Site

Site context and location

The subject site comprises two separate sites identified as the southern portion of 77-81 Berry Street (stratum lots 2, 3 & 4 in DP 1078998) and 88 Walker Street, North Sydney (Lot 1 in DP 832416), and located in the heart of the North Sydney CBD on the lower north shore of Sydney (refer Diagram 1).

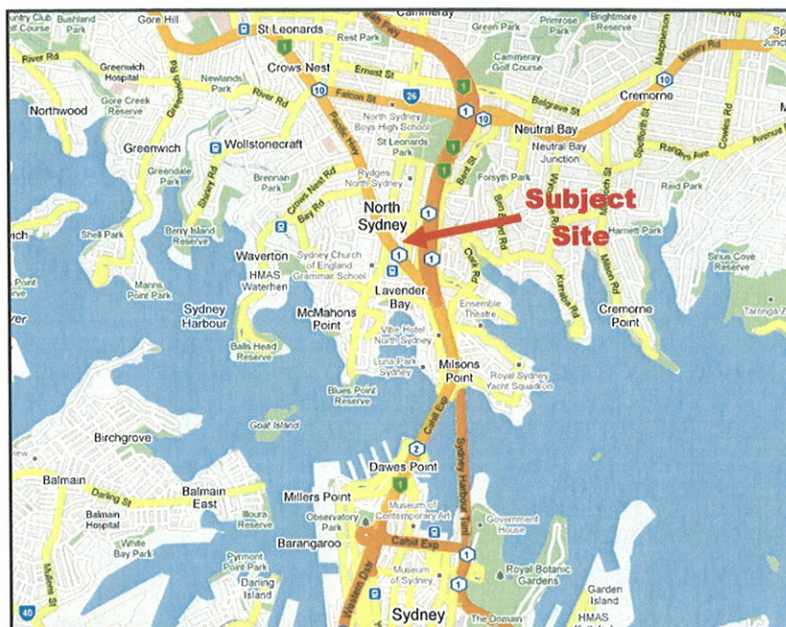


Diagram 1 – Regional Context (Source: Google Earth)

The two sites are located between Berry Street to the north and Spring Street to the south. The Berry site (Commercial Tower) is located on the eastern side of Denison Street and the Walker site (Hotel Tower) on the western side of Walker Street (refer Diagram 2).



Diagram 2 – Locality Plan (Source: Google Earth)

The locality is serviced by extensive commuter rail and bus services. North Sydney Railway Station is located 350 metres south of the site (near Blue Street) and major bus routes access the North Sydney CBD via the Pacific Highway and the Warringah Freeway located 200 metres east and west of the site.

Existing Site Features

77-81 Berry Street (Commercial Tower site)

The Berry Street site is rectangular in shape and comprises a total area of 3,142m², bounded by Denison Street, Little Spring Street, Spring Street and the southern building alignment of the "Beau Monde" building. The existing building on site comprises a 3 storey retail building known as Berry Square Retail (formerly known as North Sydney Shopping World), and includes 2 levels of retail and 1 level of basement car parking. The site has no actual frontage to Berry Street.

A pedestrian sky-bridge connects Berry Square Retail to Tower Square which is located on the western side of Denison Street. Tower Square is a large retail/food court complex fronting Miller Street.

A north-south through site link runs internally within the building connecting Berry Square Retail with the ground level of the adjoining a commercial/residential tower known as "Beau Monde" to the north of the site.

The site has a road frontage to Denison Street. Vehicular access to the site is presently available from Little Spring Street.



Photo 1 – Looking west along Spring Street



Photo 2 – Looking north along Little Spring Street



Photo 3 - Looking north-east across intersection of Spring Street and Denison Street

88 Walker Street (Hotel Tower site)

The Walker Street site is rectangular in shape and comprises a total area of 607m² with a main frontage to Walker Street. The existing building on site comprises an 8 storey commercial building including 2 levels of above ground car parking. Vehicular access to the site is available from Little Spring Street.

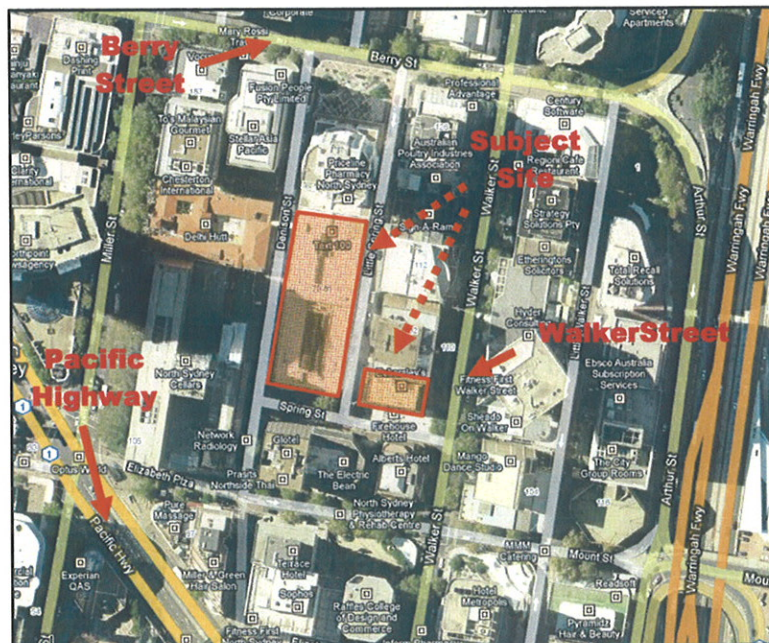


Diagram 3 – Relationship of the 2 parcels in plan (Source: Google Earth)

The combined area of the two sites is approximately 3,749 m².

Site History (77-81 Berry Street)

The site known as 77-81 Berry Street originally comprised a total area of 5,574.97 m². In 1997, Council granted approval (DA: 1466/96) for the development of a commercial/residential tower on the northern portion of the site, known as "Beau Monde".

In 2004, a stratum subdivision application (DA: 200/04) was approved by Council and resulted in the following:

- The northern portion of the site (containing the "Beau Monde" commercial/residential development) occupying an area of 2,432.97 m²; and,

- The southern portion of the site containing Berry Square Retail occupying a site area of 3,142 m².

In 2005, the "Beau Monde" commercial/residential building was constructed.

The commercial/retail development subject of this application is proposed to be located on the southern portion of this site, which is currently located within stratum lots 3 and 4.

2.2 Surrounding Development

77-81 Berry Street

The immediately surrounding development comprises the following:

- To the north of the site is the commercial/residential tower known as "Beau Monde" which comprises a 7 storey commercial and 30 storey residential building (241 apartments). The "Beau Monde" tower has a main frontage and access on Berry Street, and has the same street address as the proposed commercial development.
- South of the site is a series of 6 to 8 storey commercial/retail buildings fronting Mount Street but with rear access off Spring Street.
- To the east is predominately commercial development fronting Walker Street and includes the local heritage-listed Firehouse hotel.
- To the west of the site is Tower Square, a retail and commercial building and to the south-west is the local heritage-listed MLC Centre, which is a commercial/retail development.

88 Walker Street

The immediately surrounding development comprises the following:

- To the north of the site is a 14 storey commercial development.
- To the south is a local heritage-listed Firehouse Hotel which is currently utilised as a restaurant/bar.
- East of the site, on the opposite side of Walker Street is predominately commercial development.
- West of the site is the Berry Square Retail building at 77-81 Berry Street.

The local context comprises large to medium scale commercial and retail buildings, with the exception of the residential levels of the "Beau Monde" tower (refer Photo 4 below). Levels 8 to 36 inclusive comprise residential apartments, and the podium up to Level 7 are offices.



Photo 4 - Southern elevation of "Beau Monde"

The broader context of the North Sydney CBD is dominated by commercial office towers of varying heights (**Diagram 4 - site in red**).

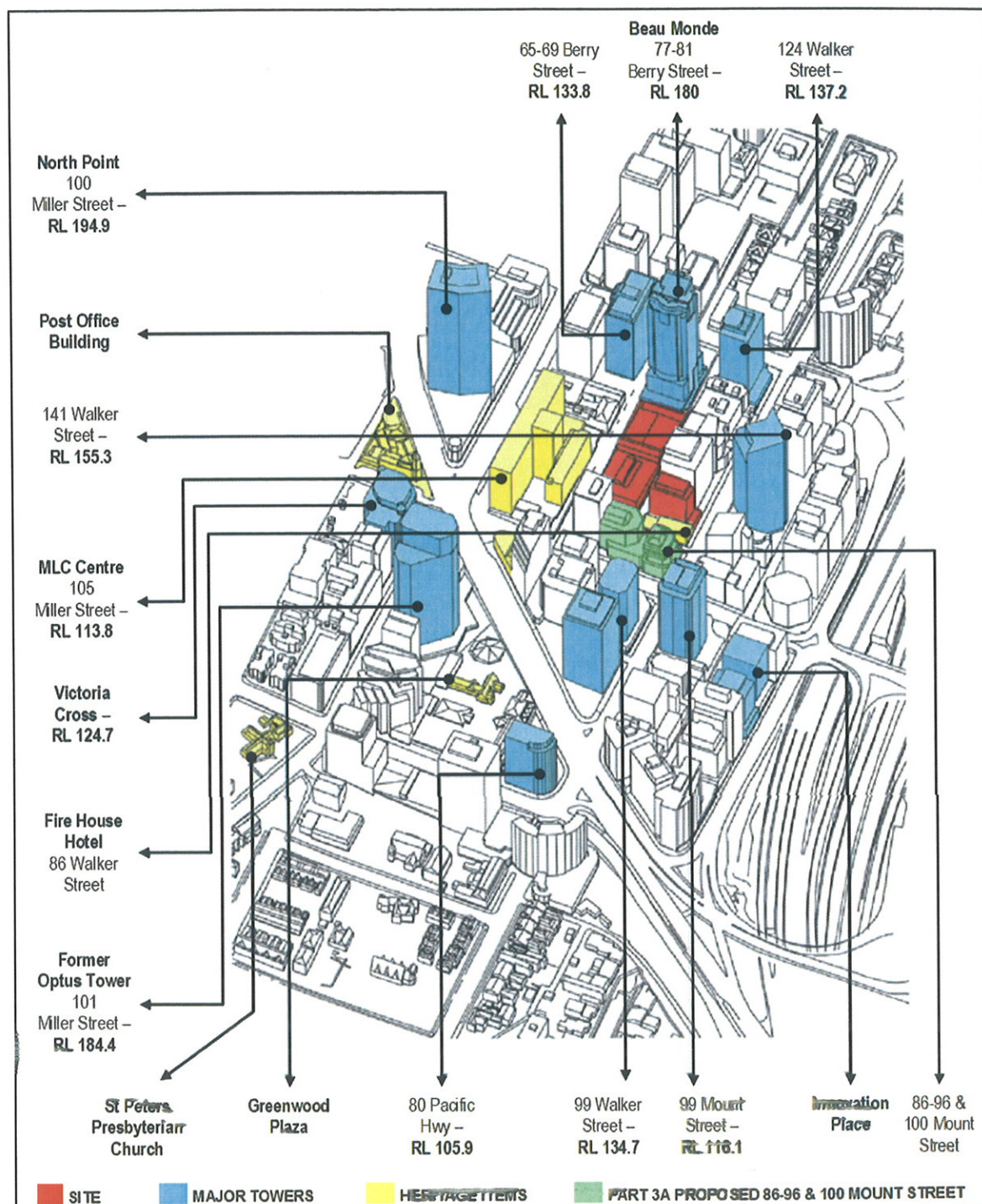


Diagram 4 - Site Analysis Plan, surrounding development (Source; EA)

3 STRATEGIC CONTEXT

NSW State Plan

The NSW State Plan aims to achieve improved urban environments and ensure sustainable development through reductions in greenhouse gas emissions and development in close proximity to existing centres, services and transport.

The proposed development is located within the heart of North Sydney CBD and is in close proximity to existing commercial, retail, community services and transport infrastructure.

Sydney Metropolitan Strategy "City of Cities"

The Sydney Metropolitan Strategy, developed to support the continuing economic growth of Sydney and enhance its standing as a global city, places the North Sydney Local Government Area in the Inner North Subregion. The proposal will assist in contributing to several of the Metropolitan Strategy's targets by providing new jobs in both the office and hotel/tourism sectors within a strategically located centre and economic corridor, whilst efficiently utilising current infrastructure.

Draft Inner North Subregional Strategy

The Draft Inner North Subregional Strategy requires that the Inner North Subregion provide capacity for an additional 60,100 jobs by 2031. Of these, 15,000 are to be provided within the North Sydney LGA, with 12,500 jobs being provided within the North Sydney CBD.

The proposal is located within the global economic corridor and will assist in sustaining Sydney's position as the nation's global city as the proposal provides new jobs by redeveloping an otherwise under-utilised site. The proposal will provide good access to gateway infrastructure and existing public transport.

The 70,000 m² of non-residential floorspace provided by the proposal is expected to make a significant contribution to achieving the employment capacity target for the North Sydney LGA.

Implementing the Inner North Subregional Strategy

In 1998, North Sydney Council commenced a review of the North Sydney Centre to facilitate a revitalisation of the North Sydney CBD. A major component of the planning framework that arose from the review is for the Centre to accommodate an additional 250,000sqm of non – residential floor space which equates to approximately 12,500 jobs. In February 2003, the Council completed the new planning framework, known as North Sydney LEP 2001 (Amendment 9).

North Sydney LEP 2001 – Amendment 9

~~The~~ The main aim of this amendment was to integrate land use/non-residential floor space growth and expansion with improved access to public transport and restriction on car usage, to ensure that North Sydney Centre maintained its status as a major commercial centre. The relevant LEP objectives and controls allowed for an additional 250,000m² of non-residential GFA, prohibited further residential development in the core of the CBD and encouraged the provision of high-grade commercial floor plates of at least 1000m².

The LEP also required that the Council review the North Sydney Centre planning controls once the floor space growth achieves 200,000m² to ensure that the North Sydney Centre controls are capable of meeting the 2031 targets. To date, 88,315m² of additional non - residential floor space has been approved under the provisions of LEP 2001 (Amendment 9).

The 250,000m² floor space target is contained within the existing boundaries of the commercial area to ensure no expansion into surrounding residential areas. The proposal to allow 250,000m² of floor space growth is balanced with new controls which restricted the maximum

height to RL 195 metres (height of the existing tallest building - Northpoint Tower) and required development to step and transition down in height to the Centre edges in the form of a "bell-curve".

The transition in height is currently controlled by a "composite shadow diagram" which effectively limits the height and bulk of development by requiring no net increase in shadowing of residential areas outside the CBD between 9.00AM and 3.00PM in mid-winter, nor any net increase in overshadowing of heritage items, "special areas" and public open space in the CBD between 10AM and 2.00PM at any time of the year.

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 of Rail, a commitment to proceed with the upgrade of the North Sydney Station.

The Deed was based on the Council delivering an additional 250,000m² of commercial floor space in order that North Sydney CBD can attract employment growth of 12,500 jobs.

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 floorspace required to generate the additional jobs and is linked to the capacity of the North Sydney Station, in its upgraded form.

The \$88 million upgraded North Sydney Railway Station was officially opened on 20 January 2009 and is fully operational. 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 \$6.3 million to the Transport Administration Corporation pursuant to the Deed to contribute to the payment for the completed upgrade of the North Sydney Railway Station.

Draft North Sydney LEP 2001 - Amendment 28

In July 2005, a review of the North Sydney Centre LEP 2001 (Amendment 9) planning controls was initiated and has continued until the present time.

The review was commenced in response to widespread concerns regarding the uncertainty created by the North Sydney Centre planning controls, particularly the primary height controls being the composite shadow diagram and shadowing restrictions, and the ability of the Amendment 9 planning controls to achieve the 250,000m².

In 2006, the Council resolved to prepare Draft North Sydney LEP 2001 (Amendment 28). The last version of Amendment 28 was exhibited by the Council in February – March 2009.

The key principle of Amendment 28 was to remove the composite shadow area controls and determine building height by maximum heights with built form defined by setbacks and site amalgamation criteria. It was considered that these controls would increase development certainty. Maximum heights (RL's) were applied to every site in the North Sydney Centre, based on various studies and modelling commissioned by Council in 2005 – 2006.

In terms of the current application, the modelled heights resulting from Council's studies are;

- 88 Walker Street = RL 170 metres; and,
- 77 – 81 Berry Street = RL 155 metres and RL 170 metres to the south. This stepped height regime recognised the location of the adjoining residential building ("Beau Monde").

Amendment 28 also proposed to rezone 77-81 Berry Street to "commercial" under LEP 2001 - enabling development potential on the rear portion of the site for commercial purposes and to

contribute to the overall capacity to achieve additional non-residential floor space in the North Sydney Centre.

Generally, the main aims and principles for achieving floor space growth under Amendment 28 have remained consistent, despite a number of revisions. The latest version expressed height as RL's in metres above ground and FSR controls were added to each site in the City Centre. The addition of FSR controls was at the request of the Department of Planning.

Council's Current position on DLEP 2001 (Amendment 28)

On 10 August 2009, the Council resolved that the Draft LEP Amendment 28 be incorporated into the Draft North Sydney Comprehensive LEP 2009.

On 30 November 2009, Council adopted the Draft Comprehensive LEP 2009 which included Draft LEP 2001 (Amendment 28). The most recently exhibited Amendment 28 provisions have been retained unchanged except for the removal of the CBD FSR controls and the re-introduction of building heights prescribed as RL's rather than height in metres above ground level.

Council also resolved to refer the adopted Draft Comprehensive LEP 2009 to the Department seeking a S.65 Certificate to allow exhibition in early 2010.

Summary

The current and draft CBD controls prohibit any residential development in the commercial core. This strategy seeks to facilitate commercial and retail development in the CBD. The proposed commercial, retail and hotel development will provide **70,950 m²** of non-residential GFA and would significantly contribute to the required jobs growth target for the North Sydney LGA. The proposal will also assist in the funding of the North Sydney Railway upgrade, which relies on the 250,000 m² of non-residential floor space being delivered.

The aims and provisions of the Draft NSLEP 2001 (Amendment 28) now incorporated into the Draft Comprehensive LEP 2009 are consistent with a number of Draft Inner North Subregional Strategy actions including:

- Protecting existing core commercial areas in strategic centres (B3.4.1);
- Create redevelopment opportunities for business space in the global economic corridor (B3.4.2); and,
- Identify, protect and promote sites for large scale development in strategic centres (B3.4.3).

The current proposal, subject to the recommended amendments to reduce height to ensure compliance with the controls in Council's Draft Comprehensive LEP (with the exception of two plant room levels) results in a development which meets the identified strategies for the Sydney Metropolitan Area, the Inner North and the North Sydney Centre.

4 PROPOSED DEVELOPMENT

4.1 The Proposed Development (Exhibition EA and PPR)

4.1.1 Environmental Assessment (as exhibited)

The proposal as described in the Environmental Assessment sought approval for the following:

- Demolition of the existing buildings on both sites, including the existing pedestrian bridge linking 77-81 Berry Street with Tower Square;
- Excavation for 4 levels of basement at 77-81 Berry Street and 2 levels of basement at 88 Walker Street;
- Construction of a part 28/part 37 storey commercial and retail building on the southern portion of 77-81 Berry Street and a 33 storey hotel development at 88 Walker Street, including a connective service tunnel below Little Spring Street;
- Construction of a pedestrian bridge over Little Spring Street linking 77-81 Walker Street and 88 Walker Street;
- Provision of 42 public car parking spaces and 10 motorcycle spaces in the commercial tower basement;
- Construction of a new through-site road between Denison Street and Little Spring Street; and,
- Construction of public domain improvements in Denison Street, Spring Street and Little Spring Street, including a new pedestrian plaza in Denison Street.

4.1.2 Preferred Project Report (PPR)

Following exhibition of the EA, the Department advised the Proponent by letter dated 11 August 2009 of a number of issues relating to the EA and requested that a PPR be submitted.

The main issue raised related to the non-compliant height and associated impacts. In addition, issues were raised relating to some key urban design / built form matters and the need for cumulative wind and traffic assessments (in association with the Part 3A proposal at 86-90 & 100 Mount Street).

The PPR addressed all of the matters raised, and provided further justification for the variation in height.

The Proponent's PPR seeks approval as follows (see **Tables 1 & 2**):

Table 1: PPR (77- 81 Berry Street)

	Exhibited EA	PPR	Existing Building	North Sydney LEP controls: - current - draft	Compliance
Site area	3,142 m ²	3,142 m²	3,142 m ²	Minimum 1,000m ²	Yes
FSR	19.3:1	18.81:1	2.6:1	3.28:1 (LEP 1989)	No
				23:1 (DLEP Am: 28)	Yes
GFA	60,630 m ²	59,090 m²	8,200 m ²	10,305m ² (LEP 1989)	No
				72,266m ² (DLEP Am: 28)	Yes

Height	Northern part = 105 m (RL166 m) (+11.0m ²) (28 storeys)	Northern part = 105 m (RL166 m) (+11.0m²) (28 storeys)	10 m	No height control (LEP 1989)	N/A
				Northern part = 94m (RL 155m) (25 storeys) (DLEP Am: 28) #	No
	Southern part = 143.7 m (RL198 m) (+32.7 m) (37 storeys)	Southern part = 143.7 m (RL198 m) (+32.7 m) (37 storeys)	8 m	No height control (LEP 1989)	N/A
				Southern part = 111 m (RL 170 m) (30 storeys) (DLEP Am: 28) #	No

Source: The Proponents EA dated May 2009 and PPR dated October 2009

On 30 November 2009, the Council resolved to incorporate these Draft LEP (Amendment 28) provisions into the Draft Comprehensive LEP.

Table 2: PPR (88 Walker Street)

	Exhibited EA	PPR	Existing Building	North Sydney LEP controls: - current - draft	Compliance
Site area	607m ²	607m²	607m ²	Minimum 1,000 m ²	No
FSR	21.4:1	19.53:1	-	No FSR control (LEP 2001)	Yes
				25:1 (DLEP Am:28)	Yes
GFA	12,995 m ²	11,860m²	-	15,175m ² (DLEP Am:28)	Yes
Height	112 m (RL 170 m) (33 storeys)	112 m (RL 170 m) (33 storeys)	32 m	Max RL 195 m (subject to Composite Shadow Control) (NSLEP 2001)	Yes
				112 m (RL 170) (33 storeys) (DLEP Am:28) #	Yes

Source: The Proponents EA dated May 2009 and PPR dated October 2009

On 30 November 2009, the Council resolved to incorporate these Draft LEP (Amendment 28) provisions into the Draft Comprehensive LEP.

Demolition

Demolition of the existing buildings on **both sites** including the pedestrian bridge linking 77-81 Berry Street with Tower Square.

Excavation

Excavation for 4 levels of basement at 77-81 Berry Street and 2 levels of basement at 88 Walker Street.

Buildings

The construction of a commercial, retail and hotel development which includes:

- a part 28/part 37 storey commercial and retail building on the southern portion of 77-81 Berry Street with car parking for 226 vehicles within 4 levels of basement car parking with

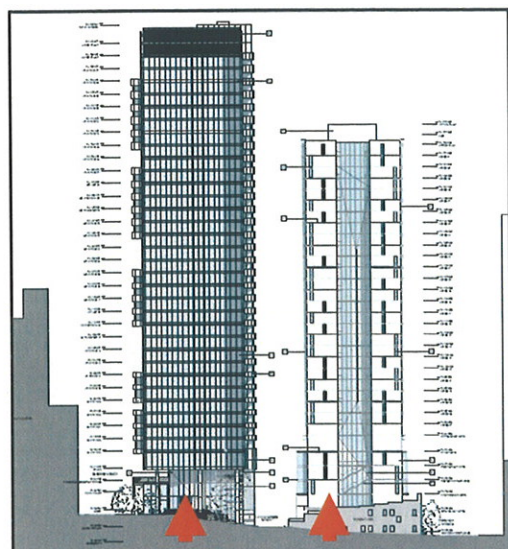
vehicular access via Little Spring Street and loading/unloading facilities including drop-off/pick-up for hotel (buses);

- reconstruction of the Tower Square pedestrian bridge;
- a 33 storey x 200 room 4.5-star hotel development at 88 Walker Street, including a connecting service tunnel below Little Spring Street to provide access to the Basement Level 2 of the commercial building; and,
- The Hotel facilities include back-of-house facilities, ground floor hotel lobby with through site link between Walker Street and Little Spring Street (open business hours), Level 2 conference, Level 3 reception and bar and Level 4 restaurant.

ESD

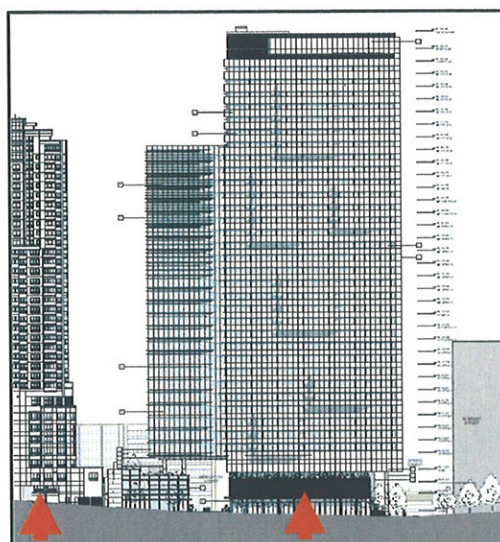
The commercial tower has been designed to achieve a 5-star Greenstar energy rating and the hotel will target a 4-star NABHERS rating. In addition, other initiatives are proposed, including;

- Avoiding the use of ozone depleting substances;
- Mains potable water conservation is ensured by minimising consumption and the provision of a blackwater recycling plant;
- Environmentally responsible material selection; and,
- Diversion of waste from landfill.



Commercial Tower Hotel Tower

Diagram 5 - Southern Elevations (Source: PPR)



"Beau Monde" Tower Commercial Tower

Diagram 6 - Western elevation of commercial tower



Diagram 7 - Eastern elevation of hotel tower with the commercial tower in the background (Source: PPR)



*Diagram 8- Revised treatments to Little Spring and Spring Streets
(Source: PPR)*



*Diagram 9 – New through site link between Little Spring Street
and Denison Street (Source: PPR)*

Off - Site Works including Public Domain and Landscaping

- A new pedestrian plaza in Denison Street and public forecourt to Spring Street;
- A new ground level pedestrian connection along the southern boundary of 88 Walker Street to the commercial building at 77-81 Berry Street;
- Construction of a new through-site road between Denison Street and Little Spring Street;
- Public domain improvements in Denison, Spring and Little Spring Streets, including road re-alignments/partial public road closures, tree planting, paving, street furniture and lighting; and,
- Provision for Public Art.

The proposed development has provided ground level setbacks to the three street frontages of the commercial building and also at the rear elevation of the hotel building which overall contribute approximately 1,100 m² to the public domain (refer **Diagram 10** below).

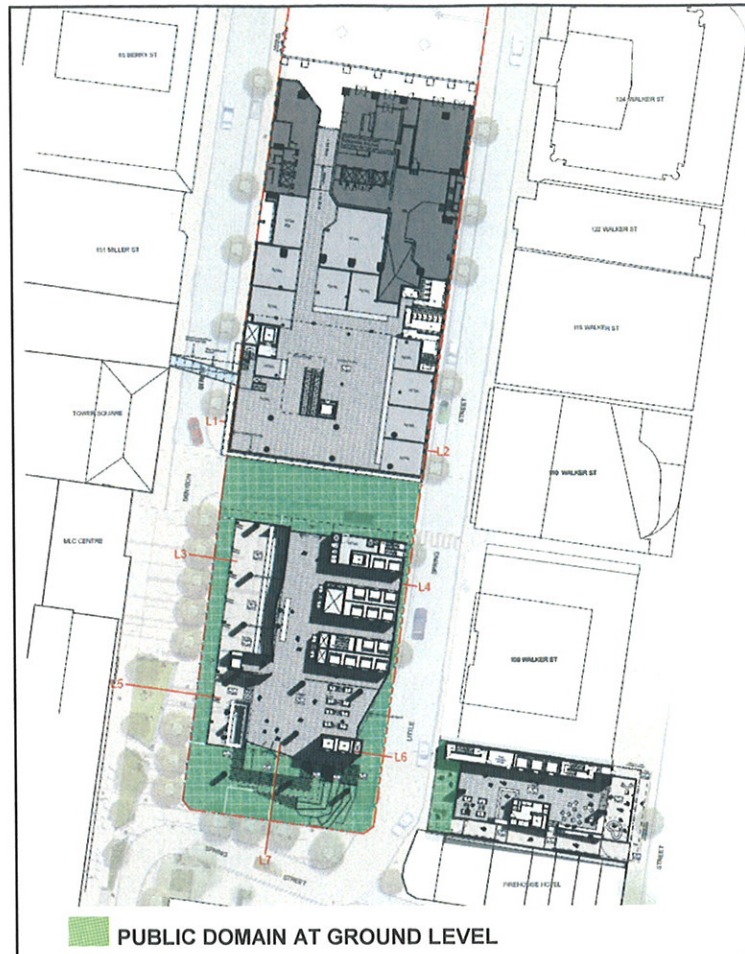


Diagram 10 – Ground level site setbacks and resultant public domain (Source: PPR)



Diagram 11 – Ground level on Denison Street and With partial road closure to create a new public plaza (Source: PPR)

4.2 Key changes between the exhibited EA and PPR

Key revisions to the project as described in the PPR include:

77-81 Berry Street (Commercial Tower)

- Deletion of the pedestrian bridge over Little Spring Street linking the commercial building to the hotel building;
- Reconfiguration of the southern setback and south-eastern corner of the commercial podium such that the lifts are rotated and the corner now comprises of a glazed glass finish and improved access and improved visual appearance;
- Revised articulation of the roof level elevations of the commercial building;
- Provision of a new retail tenancy and awning on the southern side of the through site link and articulation to the roof above; and
- Reinstatement of the Tower Square footbridge.

88 Walker Street (Hotel Tower)

- In lieu of pedestrian bridge over Little Spring Street a ground level through-site link provided on the southern side of the hotel foyer;
- Reconfiguration of the internal layout and redesign of the external façades of the hotel ;
- Reconfiguration of the hotel rooms to face east and west rather than south as proposed in the EA;
- Revised articulation of the roof level of the hotel building; and
- Provision for drop off and pickup, and bus parking (25 seater bus) within the proposed loading dock (commercial lower ground level at 77-81 Berry Street).

The PPR forms the basis of the assessment of this report.

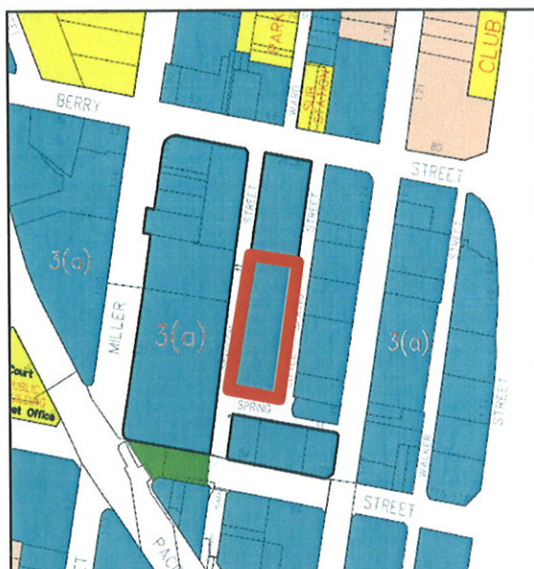
5 STATUTORY CONTEXT

5.1 Permissibility

The proposal is on land the subject of two different zoning regimes, being the North Sydney LEP 1989 and the North Sydney LEP 2001. The land at 77 - 81 Berry Street (commercial tower) was deferred from inclusion in the LEP 2001 subject to the resolution of the new North Sydney Centre controls.

North Sydney LEP 1989

The site at 77-81 Berry Street is zoned 3(a) (*Commercial "A"*) pursuant to Clause 9 of *North Sydney Local Environmental Plan 1989* (**Diagram 12**). The zone permits a diversity of commercial, retail and residential flat buildings. The proposed commercial/retail development is permissible with consent.

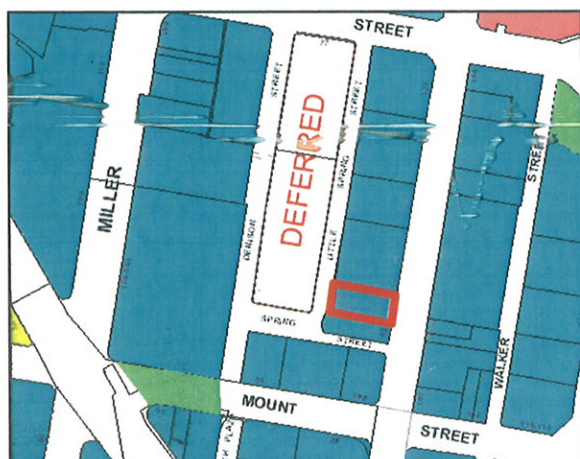


 77-81 Berry Street

Diagram 12 – Zoning Map: North Sydney LEP1989

North Sydney LEP 2001

The site at 88 Walker Street is zoned "*Commercial*" pursuant to Clause 14 of *North Sydney Local Environmental Plan 2001* (**Diagram 13**). The zone permits a diverse range of uses including hotel development. The proposal is permissible with consent in the zone. The site at 77-81 Berry Street was deferred from NSLEP 2001.



 88 Walker Street Site

Diagram 13 - Zoning Map: NSLEP 2001

Draft North Sydney LEP 2001 (Amendment 28)

Pursuant to the *Draft North Sydney Local Environmental Plan 2001 (Amendment 28)*, now incorporated into the Draft North Sydney Comprehensive LEP 2009, 77-81 Berry Street would be rezoned "Commercial". As such, both 77-81 Berry and 88 Walker Streets would be zoned "Commercial" following implementation of the Amendment 28 controls. The zone permits commercial, retail and hotel uses. The proposed development is permissible with consent in the zone (**Diagram 14**).

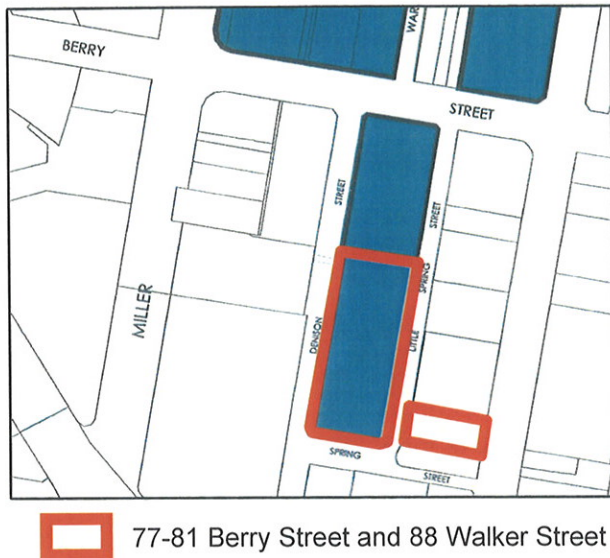


Diagram 14 - Zoning Map: Draft NSLEP 2001 Amendment 28

5.2 Director-General's Environmental Assessment Requirements (DGRs)

On the 27 January 2009, the Director-General issued DGRs pursuant to Section 75F of the *Environmental Planning and Assessment Act 1979* and a copy are contained in **Appendix B**.

The DGRs have been addressed in the EA lodged and were deemed to be adequate for public exhibition.

5.3 Exhibition and Notification

Under Section 75J of the Act, the Director-General is required to make the EA of a project publicly available for at least 30 days, and the EA was exhibited between 3 June 2009 and 3 July 2009 in accordance with statutory requirements in satisfaction of Section 75H(3) of the EP&A Act.

5.4 Other Statutory Considerations

Appendix A contains further consideration of the following Statutory Considerations;

- Objects of the Act;
- Statement of Compliance;
- Ecological Sustainable Development; and
- Environmental Planning Instruments (EPIs) which apply to the proposal.

6 CONSULTATION AND ISSUES RAISED

6.1 Public Exhibition of the Environmental Assessment

The Department exhibited the EA by public notification and by sending letters to adjoining landowners and occupiers, government agencies and North Sydney Council. The Department received a total of 69 submissions. Of these, 65 submissions were received from the public and 5 from government agencies.

The issues raised are summarised below.

The Proponent responded to these submissions in the PPR dated 9 October 2009 (**Appendix E**).

While not required to be placed on statutory exhibition, a significant number of submissions have been received in response to the PPR, including letters and a detailed submission from the "Beau Monde Residents Action Group" and the North Sydney Council. The Council considered a report relating to the PPR at the meeting held on 9 November 2009. All of the further submissions oppose the development.

6.1.1 North Sydney Council

Exhibition of the Environmental Assessment

The Council considered reports relating to the EA at meetings held on 6 July 2009 and 20 July 2009 and resolved that the Minister for Planning be urged to refuse the proposal and that the Minister be advised that the current Council had yet to consider the provisions of Amendment 28 to North Sydney LEP and that the Draft instrument remained neither imminent nor certain.

Attached to the Council report were the Minutes of the Council's Design Excellence Panel, which met on 9 June 2009. The Panel raised a number of design concerns regarding the proposal, but supported the height as being appropriate in its context within the centre of the CBD.

Additional submission - post exhibition

On 17 September 2009, Council submitted a supplementary submission requesting the Department consider the provision of an appropriately sized cinema as part of the assessment of the proposal.

The Proponent has stated in the PPR that the proposed development has not been designed to incorporate a cinema and that a cinema in this location would not be viable.

Preferred Project Report (PPR)

The Council considered a report relating to the PPR at a meeting held on 9 November 2009 and resolved that the Council continues its strong objection to the proposal and urges that the application be refused.

Council also identified additional issues relating to a Construction Management Plan, and construction hours, and, reiterated the matter of provision of a cinema and restated the concerns raised regarding loss of views.

The Council's planning report notes that the Design Excellence Panel had not had the opportunity to consider the PPR, but that many of the changes made in the PPR are in response to the Panel's previous comments/concerns.

Department Comment

The Department considers the proposal as recommended to be modified in height meets the objectives and requirements of the Draft LEP (Amendment 28). It is noted that Council recently

resolved to incorporate these height provisions for the CBD in the Draft LEP. A detailed consideration and summary of Council's submission in response to the EA is in **Appendix G**.

6.1.2 Railcorp

Railcorp raised no objection to the proposal.

6.1.3 Ministry of Transport (MoT)

The Ministry supports the proposal, but raised a number of issues:

- The Traffic Impact Study submitted does not satisfy the DGRs in relation to the consideration of transport impacts both during construction and when operational.
- The EA does not address the opportunity to maximise and encourage the use of public transport together with walking and cycling.
- Consideration should be given to measures to mitigate potential impacts for pedestrian and cyclists during the construction stage of the project, the preparation of a Workplace Travel Plan and car parking initiatives to reduce car usage to and from the site.

Department Comment

The Department notes the comments raised by the MoT. The issues raised have generally been addressed in the PPR and are also addressed by standard conditions.

6.1.4 Roads and Traffic Authority (RTA)

The RTA has raised no objections to the proposal; however, make a number of comments and recommendations as follows:

- The traffic generation rates detailed in the Traffic Report prepared by Halcrow MWT are considered low.
- A Comprehensive Traffic Impact Study should be undertaken by the DoP and Council to consider traffic generated by all future developments within North Sydney CBD.
- The existing angle parking on the northern side of Mount Street (between Walker and Denison Streets) should be banned during peak hours.
- Improvements to the intersection of Berry Street/Walker Streets are required;
- The proposed changes and treatments on Denison Street and Little Spring Street and the potential increase in conflicts between pedestrian and trucks reversing in/out of existing loading docks. A management plan shall be submitted to the satisfaction of Council
- Further information/analysis is required to the satisfaction of the DoP demonstrating that the existing public transport system would cope with the increase demand generated by the proposed development.
- Bus/coach facilities have not been provided for the hotel for group or tourist pick-up/drop-off.
- Amended traffic signal design plans for both the intersection of Mount Street/Walker Street and Berry Street/Walker Street incorporating improvements to improve traffic flow and levels of queuing in these streets.
- All future Shared Zones must satisfy RTA requirements and endorsed by North Sydney Council and submitted to the RTA for approval.
- Car parking provisions, loading bays and bicycle facilities shall be provided in accordance with Council's DCP.

Department Comment

The Department notes the comments raised by the RTA. The issues raised have generally been addressed in the PPR, and the requirement for upgrading of the Walker Street/Berry Street intersection is the subject of a recommended condition.

6.1.5 Sydney Water

Sydney Water has raised no objections to the proposal, however note the following:

- The Proponent should prepare a more detailed investigation in relation to stormwater issues. Subject to the outcome of these investigations, the proposal may require an on-site Stormwater Detention System.
- Implementation of best practice urban stormwater management using Water Sensitive Urban Design (WSUD) should be considered.
- Further assessment will be undertaken by Sydney Water when the proponent applies for a Section 73 certificate.

Department Comment

The Department notes the comments raised by Sydney Water and the matters raised have been addressed through conditions of approval.

6.1.6 Public Submissions

Exhibition of EA

The public submissions raised a number of issues, essentially focussed on the height, bulk and scale of the proposal and subsequent loss of views and amenity to the adjoining 'Beau Monde' Apartment building. These issues are assessed in detail in **Section 7** of this report. Other issues relating to traffic, wind impacts, and LEP issues have also been assessed in this Report.

A summary of key issues raised in the public submissions can be found in **Appendix D** and in the table in **Appendix G**.

A detailed submission was made by Ingham Planning on behalf of the "Beau Monde Residents Action Group" and is summarised in **Appendix G**.

PPR

There were a number of submissions received in response to the PPR which primarily restated previous concerns regarding impacts on views and also raising concerns about the loss of property values (as set out in a report prepared by Landsburys and submitted by Ingham Planning).

In addition, Ingham planning lodged a detailed submission on behalf of the "Beau Monde Residents Action Group" which included separate reports from Dickson Rothschild, Urban Designers/Architects; Traffix, Traffic Consultants and Landsburys, Land and Property Valuers.

Department Comment

The issues raised in public submissions and in particular the significant number of submissions received by and on behalf of residents in the Beau Monde building are addressed in detail in **Section 7**.

The matters raised by Ingham Planning on behalf of the "Beau Monde Concerned Residents Group", in particular the "Traffix" traffic consultants report, and the height and view loss impacts analysis prepared by Dickson Rothschild have been considered.

7 ASSESSMENT OF ENVIRONMENTAL IMPACTS

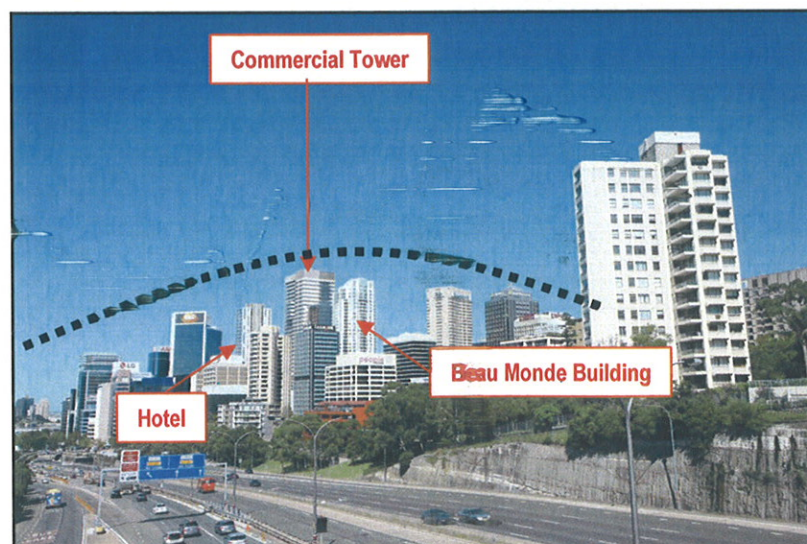
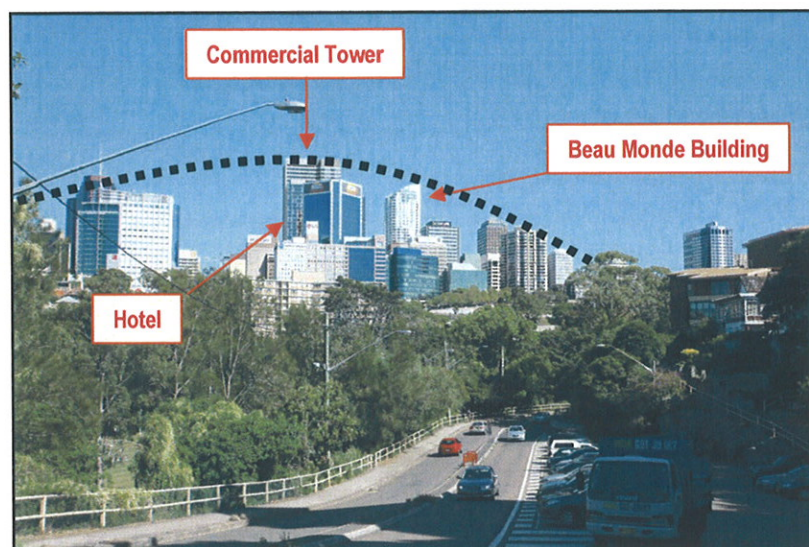
The key issues raised considered in the Department's assessment of the application are as follows:

- Height
- Views & Outlook
- Privacy, Amenity & Wind Impacts
- Transport, Access & Parking
- Other Matters

7.1 Height

The land at Berry Street and Walker Street is centrally located within the boundaries of the North Sydney CBD. A key control in both the North Sydney LEP 2001 and the Draft North Sydney LEP Amendment 28/Draft North Sydney Comprehensive LEP 2009 ("Draft LEP") is that new development should not exceed the height of the tallest building in the North Sydney CBD (at RL 195m).

All new development should step down in height toward the edges of the CBD generally to form a "bell-curve" in a north-south axis and east-west axis. The photomontages below detail the location and form of the proposed development in relation to the existing CBD context.



Diagrams 15 & 16 – Relationship of building heights to the existing North Sydney skyline (Source: PPR)

Under LEP 2001, the degree of stepping is controlled by the "Composite Shadow Diagram". In the Draft LEP, the stepping is pre-determined by maximum heights applied to each site within the CBD now expressed as reduced levels (RL's). The Draft LEP height controls were derived following extensive 3D site modelling commissioned by the Council and resulted in property-specific spot heights being applied to each CBD property.

The other key objective in both LEP 2001 and in the Draft LEP is to control the extent of additional shadowing of particular areas and sites within the CBD (heritage items, special areas and public open space) and residential areas outside the CBD. The Draft LEP height controls allow greater flexibility with the removal of the prohibition on any additional overshadowing of certain areas within the CBD between 10.00 AM and 12.00 NOON year round.

The provisions of LEP 2001 and the Draft LEP permit variations to the height controls subject to:

- the variation being justified by the merits of the proposal and **public benefits**; and,
- any increase in **overshadowing** not reducing the amenity of any land.

Proposal's compliance with Local Planning Controls

88 Walker Street (Hotel tower)

The proposed hotel building is compliant with the North Sydney height controls.

The proposed 33 storey hotel tower extends to a maximum height of RL 170m and is therefore below the maximum of RL 195m and complies with LEP 2001. The proposed building height and envelope complies with the Composite Shadow Diagram control, and does not increase overshadowing to any key area within the CBD or over residential land outside the CBD.

77-81 Berry Street (Commercial tower)

Although there is no current height control applying to the land at 77 - 81 Berry Street, it is considered appropriate to consider height (and shadowing) controls as contained in Draft LEP 2001 (Amendment 28) and now in the Draft LEP.

A comparison of a complying and a non-complying building envelope of the commercial building is provided at **Diagram 17**. The part of the diagram illustrated in red shows the Draft LEP height and envelopes to RL's 155m and RL 170m. The diagram also shows the Draft LEP envelope on the site at 86 - 104 Mount Street to the south at RL 195m.

The commercial tower features two areas of non-compliance with the Draft LEP height controls, to the extent of 7 storeys (6,390 m² GFA - not including plant area) and 3 storeys (1,800m² GFA) resulting in a total additional GFA of **8,190m²** as summarised in **Table 3** below.

Table 3: Height Variation – Proposed Commercial tower

	PPR	Draft LEP controls	Variation
Height	Northern part = 105 m (RL166 m) (28 storeys)	Northern part = 94m (RL 155m) (25 storeys)	+11.0m (+3 storeys)
	Southern part = 143.7 m (RL198 m) (37 storeys)	Southern part = 111 m (RL 170 m) 30 storeys)	+32.7 m (+7 storeys - including 2 levels of plant room)

Source: The Proponents EA dated May 2009 and PPR dated October 2009

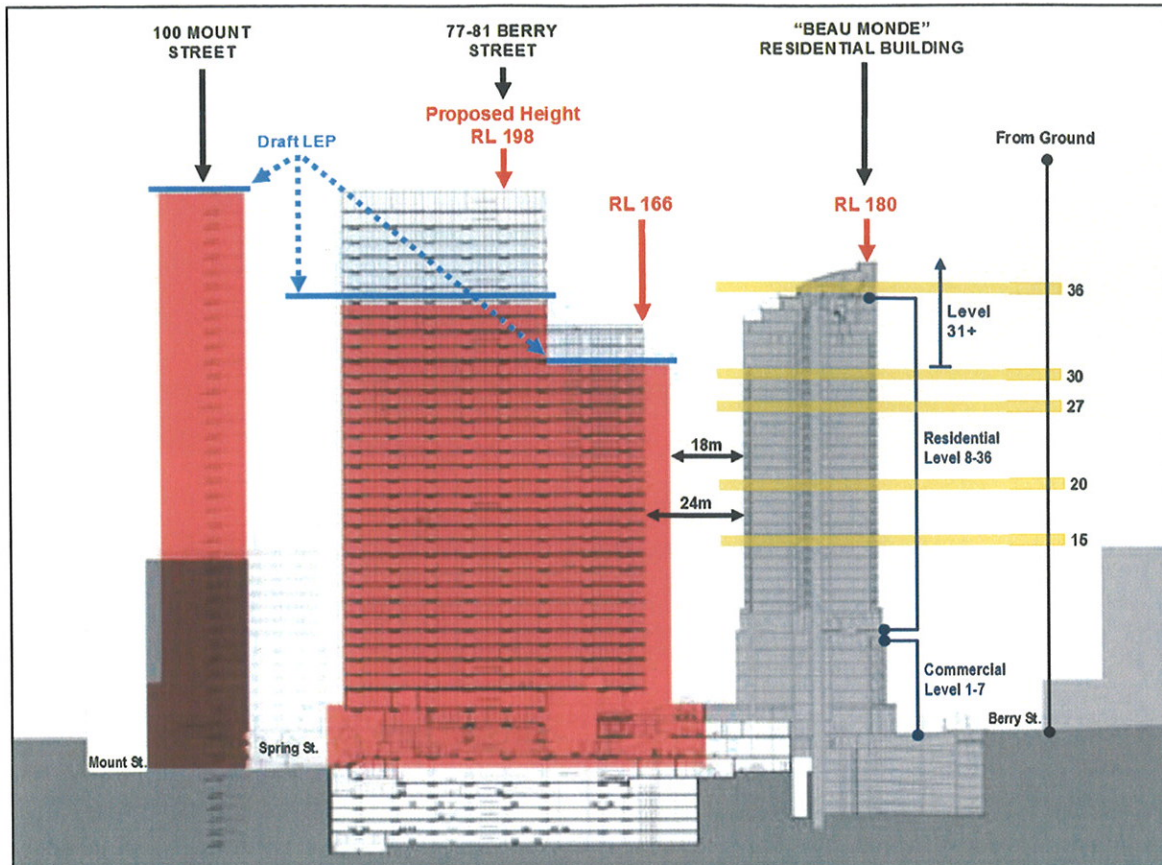


Diagram 17 – Proposed and Compliant Building Height (Source: EA & PPR)

Proponent's Justification for Height Variation

The LEP 2001 and the Draft LEP permit variations to compliance with the height control. The Proponent has provided a justification for the additional height based on the following outcomes;

- Quality and quantity of **public benefit** being provided. The PPR provides an area of **1,100m²** as ground level setbacks and public domain.
- A minimal increase in **overshadowing** of residential areas outside the CBD.
- An **appropriate built form** outcome in respect to the CBD skyline and "bell-curve".
- An additional 6 metres setback to the "Beau Monde" building, providing a benefit relating to views and separation amenity. This additional setback results in **3,340m²** less GFA than could be achieved in a complying envelope.

Department's Consideration of Non-compliance with Height controls

The Draft LEP heights of RL 155m and RL 170m are the result of Council's detailed consideration and modelling to establish envelopes that meet the built form objectives for the North Sydney CBD and minimise shadow impacts at the critical times and across the identified sensitive locations. Accordingly, requiring the proposal to be reduced in height to meet the Draft LEP heights and CBD objectives is considered an appropriate outcome.

The Department has considered public benefit, overshadowing impacts and appropriate built form outcomes in its assessment of height as detailed below:

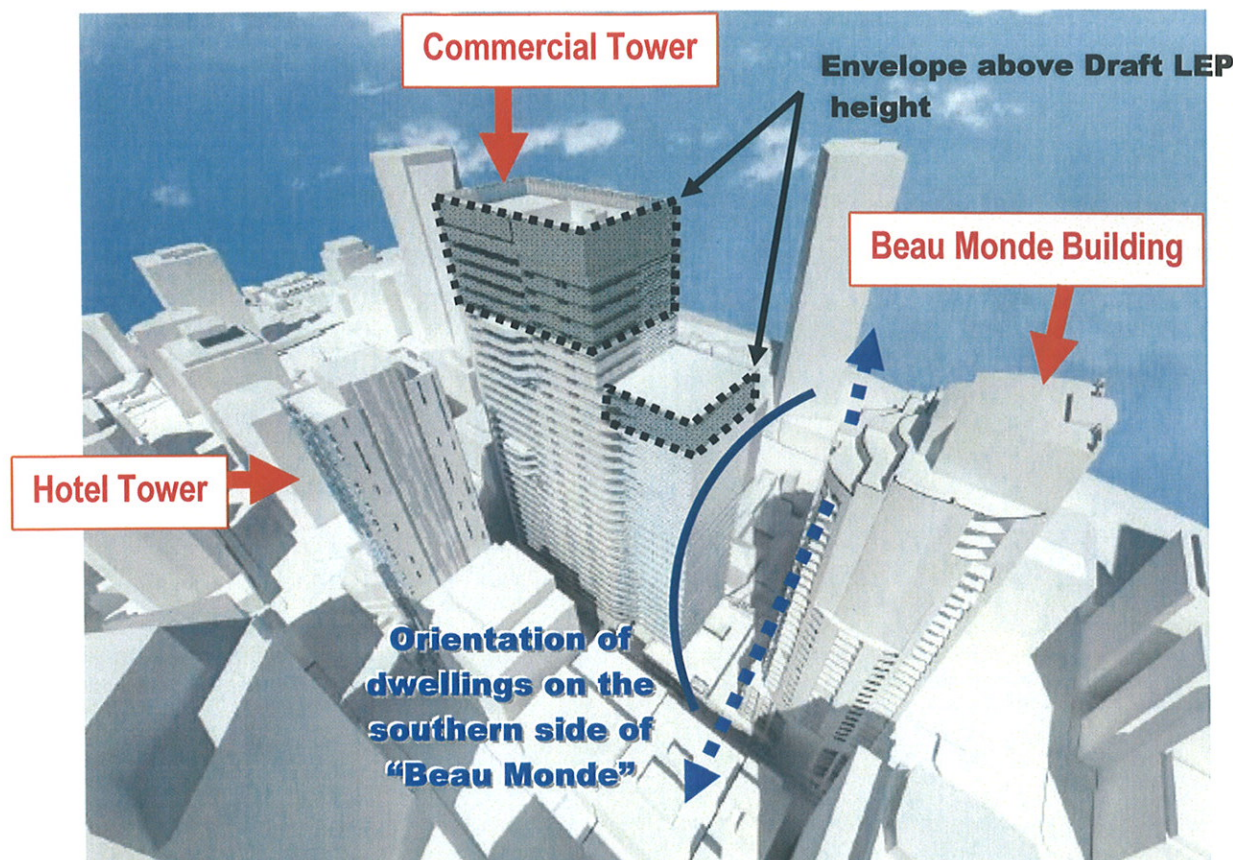


Diagram 18 – Locational and height relationship of the proposal and Beau Monde(Source: EA)

Public Benefit

The PPR provides significant public benefits including;

- a new pedestrian plaza in Denison Street and public forecourt to Spring Street;
- a new ground level pedestrian connection along the southern boundary of 88 Walker Street to the commercial building at 77-81 Berry Street;
- construction of a new through-site road between Denison Street and Little Spring Street;
- public domain improvements in Denison, Spring and Little Spring Streets, including road re-alignments/partial public road closures, tree planting, paving, street furniture and lighting; and
- provision for Public Art.

It is noted that discussions between the Proponent and Council are ongoing in terms of a Voluntary Planning Agreement (VPA) and the potential dedication of certain areas to the Council, including the public plaza area in Denison Street and the new roadway. Appropriate weight has been given to the merit associated with the dedication of various land to Council, being one of the criteria relating to the assessment of public benefit.

The variation to height compliance does not have any impact on important North City Centre view lines or vistas as identified by the North Sydney Character Statement in the North Sydney DCP 2002.

Overshadowing

The shadow diagrams illustrate that residential properties at the western end of Whaling Road, Neutral Bay (1, 3, 5, 7 & 9 Whaling Street) will be overshadowed from the proposed development.

The diagrams show that at 2.50 pm in midwinter (June 21) there is no shadow impact from the proposal. However, from 2.50 pm onwards, the shadow extends to impact on part of the western side elevation of No.1 Whaling Street and the rear gardens of numbers 1, 3, 5, 7 and 9 Whaling Street.

The Department considers that the additional overshadowing of these 5 residential properties in Whaling Street in midwinter has a minimal impact upon their amenity.

Appropriate built form

The additional 3 and 7 storeys of height will not generally be visible from street level in the vicinity of the site due to the narrow street configuration and height and setbacks of the surrounding large scale buildings. However, the additional 7 storeys height will be visible from a number of vantage points outside the CBD (**Diagrams 15 & 16**), and extends 3 metres above the maximum limit of RL 195m set by LEP 2001, and therefore outside the arc of the "bell-curve".

The clear intention of the controls is for the maximum height to be located at 86 - 104 Mount Street (**Diagram 17**) at the top of the "bell curve" and not the Berry Street site in terms of achieving the desired outcome for the CBD skyline.

The provision of the additional 6 metre setback to the Beau Monde building provides a built form outcome of some merit, providing a greater separation and improved amenity to the occupants of the Beau Monde building and results in a reduction of 3,340m² GFA. However, this is not considered sufficient to warrant the exceedence in height beyond the Draft LEP controls.

Department's recommended modifications

It is recommended that the non-complying height (additional 7 storeys) on the southern part of the commercial building be reduced to the Draft LEP height of RL 170m, excluding the 2 plant room levels. In respect to the plant room levels, it is recommended that the Proponent be required to minimise the footprint and envelope required for plant but be permitted to provide that plant room above RL 170m.

This modification strikes an appropriate balance between full compliance as contemplated by the LEP 2001/Draft LEP controls and permitting some additional height for plant room.

The plant room levels will have a minimal impact upon the desired built form character of the CBD, will reduce further the already minimal increase in overshadowing of residential areas and will allow the retention of 2 high-rise floor levels as lettable space (approximately 2,560 m²).

The 3 additional storeys of height over the northern part of the site are also recommended to be deleted. Notwithstanding the additional 6 metre setback provided to the Beau Monde building, the additional height, bulk and scale and loss of outlook / sky beyond that contemplated by the Draft LEP will have an impact on the amenity of the upper levels of Beau Monde building.

6.2 Views & Outlook

View analysis

The PPR submitted a revised View Analysis Report to assess the impacts of the proposal with respect to view loss for the Beau Monde Apartments. The analysis considered the following:

- (i) Existing views enjoyed from levels 15, 20, 27 and 36, to the east, south and west;
- (ii) View impacts from building envelopes permissible under North Sydney LEP 2001;
- (iii) The impacts of potential building envelopes permissible under the Draft LEP; and
- (iv) The proposed development with the increased 6 metre setback to 24 metres.

On 3 December 2009, the Proponent submitted amended LEP 2001 envelopes to correct errors identified with view analysis diagrams in the EA. Although the amended view analysis modelling indicates reduced building envelopes, the Department's consideration of the impacts on the Beau Monde building views of Sydney Harbour and the Harbour Bridge are not significantly altered. There has been no change to the envelopes prepared in respect to the Draft LEP.

Departmental Officers attended the site and its surrounds - visiting 15 different apartments located on the south side of the Beau Monde building between levels 14 and 36 to inspect the potential impacts and assess the Proponent's view analysis diagrams. It is reasonable to extrapolate the potential impacts from other levels in the building from the analysis undertaken for Levels 15, 20, 27 and 36.

It was confirmed that the significant views generally commence from Level 15 with glimpses of Sydney Harbour and of the top of the arches of the Sydney Harbour Bridge and become more extensive higher in the building up to Level 36 (penthouse level).

The residential apartments located on Levels 8 to 14 with an east, south or west aspect do not presently have any Harbour views due to the location of existing building on Mount and Walker Streets.

(i) Existing views and outlook

There are 241 residential apartments within the Beau Monde building, of which 83 are located on the southern elevation with varying degrees of view and outlook to the south, south-east or south-west.

Only those apartments located at Level 15 and above enjoy Harbour glimpses and those apartments with a corner aspect will enjoy a more expansive view and outlook to the south-west or south-east compared to those apartments which are centrally located and single-aspect south-facing, which will be most affected in terms of loss of views and outlook.

Those apartments with a south-westerly aspect are least affected as the distribution of existing nearby CBD buildings is more open and generally heights are lower. A large portion of these views are enjoyed over the top of the MLC building in Miller Street, which is a significant heritage item and therefore less likely to be redeveloped with additional height.

Accordingly, there is only a relatively small proportion of the total number of apartments in the Beau Monde building affected by the current proposal as detailed below:

Level 15 - The existing views are dominated by the surrounding buildings located within the North Sydney CBD with the exception of a partial view of the top of Sydney Harbour Bridge.

Level 20 - The existing views open up and water glimpses are evident, and compared with Level 15, a larger proportion of the Bridge, Sydney Harbour and Sydney CBD skyline can be seen.

Level 27 - The existing views are more panoramic and take in the Heads to the east, the Harbour, Harbour Bridge and Opera House, and Sydney CBD skyline and western Harbour.

Level 36 - The top floor of Beau Monde has extensive 180 degree views to the Heads to the east, the Harbour, Harbour Bridge and Opera House, and Sydney CBD skyline and western Harbour.

The orientation and extent of existing views and outlook are represented by the "wagon wheel" analysis in **Diagram 19** below.

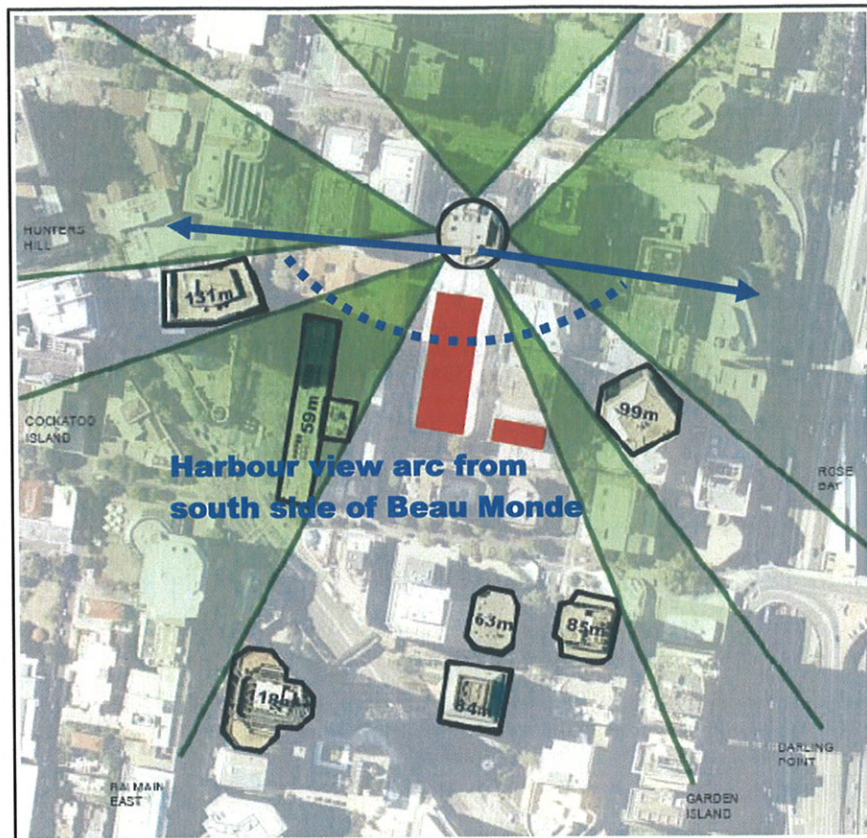


Diagram 19 – 'Wagon Wheel' diagram detailing existing arc of view and impact from proposal (Source: EA)

(ii) Views impacts from proposed building envelopes under NSLEP 2001

The building envelopes currently permissible pursuant to LEP 2001 in respect to the Composite Shadow area control, particularly on Walker Street have a significant impact on views from levels 15 and above, particularly to the east and south - east.

The LEP 2001 envelopes applicable to Mount Street properties due south of the site, are lower and therefore the existing views from approximately Level 27 and above to the south are less affected.

The proposed hotel tower in Walker Street extends to a height of RL 170m and complies with both the LEP 2001 and Draft LEP height controls. The hotel height and envelope has a significant impact on the views from Beau Monde, particularly views of the Sydney Harbour Bridge and the eastern Sydney CBD skyline.

Those apartments with a west and south-westerly aspect are not significantly affected by the LEP 2001 envelopes due to the amount of the arc occupied by existing high rise development and the heritage-listed MLC building.

(iii) Views impacts from proposed Draft LEP

The existing southerly views will be significantly affected. As a result of the permitted building envelope on the northern part of the commercial tower site (closest to the Beau Monde building), those apartments from Level 30 and below are significantly affected (refer **Diagram 17** above).

In respect to Levels 31 to 35, the permitted Draft LEP height envelope to RL 170m has an impact on views, although due to the increased separation distance, a lesser arc of view is lost (refer **Diagram 17**).

The Level 36 Penthouse level is least affected, and in particular will maintain its south-eastern view across the top of the hotel tower in Walker Street.

(iv) *Proposed development*

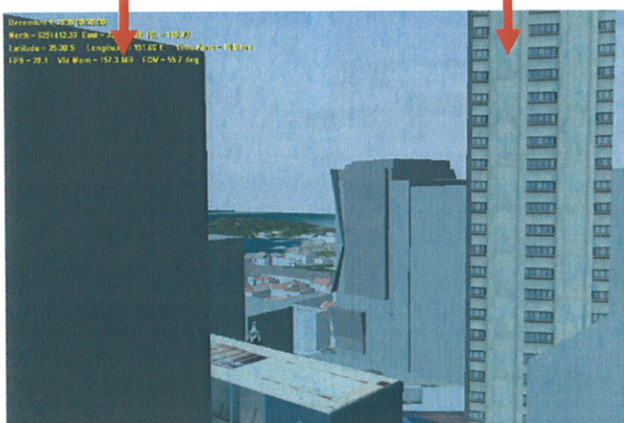
The proposed hotel tower complies with the LEP 2001 and Draft LEP height envelope and therefore has the impact described above. The commercial tower exceeds the Draft LEP envelope by 3 storeys on the northern part and 7 storeys on the southern part (refer **Diagram 17**).

The non-compliant height will affect the southerly views from the penthouse level but will not significantly affect other levels in the Beau Monde building, except in respect to the loss of outlook and sky, and increased bulk and scale.

The extent of the view impacts is lessened by the proposed 24 m setback from the northern façade of the commercial building to the southern façade of the Beau Monde building. Wider view corridors are maintained for the residents of Beau Monde than those which would have been provided if a complying setback of only 18 metres was provided (refer **Diagrams 20 & 21** below).

The Site
(DLEP Envelope)

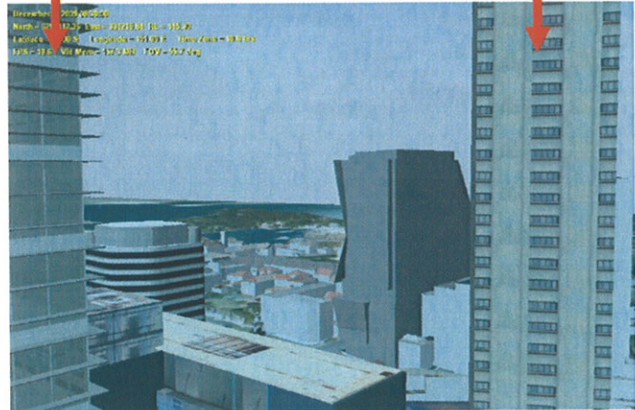
Existing Tower



View to SW from Level 27 with 18 metres setback
(DLEP Complying Envelope)

The Site
(PPR Proposal)

Existing Tower

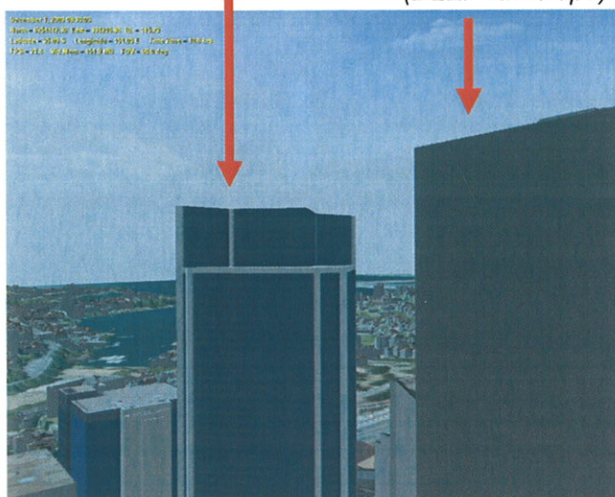


View to SW from Level 27 with 24 metres setback
(Current PPR Proposal)

Diagram 20 - Increase to cone of view with increased setback to 24 metres (Source: PPR)

Existing Tower

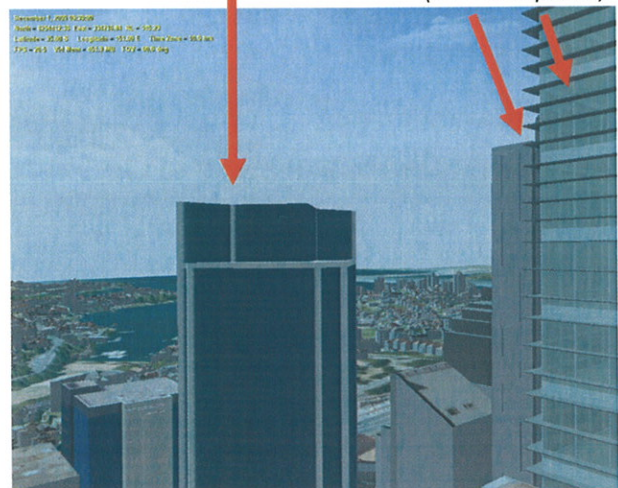
The Site
(DLEP Envelope)



View to SE from Level 27 with 18 metres setback
(DLEP Complying Envelope)

Existing Tower

The Site
(PPR Proposal)



View to SE from Level 27 with 24 metres setback
(Current PPR Proposal - the eastern edge of the
proposed hotel building is also visible)

Diagram 21- Increase to cone of view with increased setback to 24 metres (Source: JBA)

The separation principles in SEPP 65 – *Residential Flat Design Code* encourage increased separation between buildings with increased height, and while an 18 metre separation would meet SEPP 65, the additional 6 metres is of merit and presents an improved outcome for apartments at Levels 8 to 30, both in terms of views and outlook, and also reduced bulk, scale and overbearing.

View Impacts on the Beau Monde Building

There is no doubt that the proposed development will significantly modify the views of residents on the southern side of the Beau Monde building, particularly those which are centrally located and single-aspect south-facing units. The majority of public submissions have raised this issue.

A consideration of the principles in the Land and Environment Court judgement "*Tenacity Consulting v Warringah Council (2004)*", provides a basis for the consideration and assessment of view impacts, view loss and view sharing, and the criteria adopted in the decision state as follows:

- (i) Assess what views are affected (i.e. whether or not they are iconic views, water views, obscured etc);
- (ii) From what part of the property are the views obtained;
- (iii) The extent of the impact; and
- (iv) The reasonableness of the proposal which is causing the impact.

(i) Views which are affected

A detailed consideration of the views affected is described above.

(ii) From what part of the property are the views obtained

Views are enjoyed principally from balconies and living room spaces within the apartments orientated to the south in Beau Monde, and in some cases views/outlooks were available from kitchen and bedroom areas as well.

(iii) Extent of impacts

The view impacts on all south facing apartments (Level 15 to 36) resulting from the proposed development will, to varying degrees, reduce and/or remove significant views of the Sydney Harbour Bridge, Sydney Opera House and the Sydney CBD, and also result in the intrusion of new builtform into cones of view enjoyed to the south-east, and to a lesser extent, the south-west.

Existing easterly and westerly views and outlook obtained from corner aspect apartments on the southern elevation of the Beau Monde building will not be affected.

(iv) The reasonableness of the proposal which is causing the impact

The Beau Monde building is one of the few residential buildings to have been constructed in the centre of the North Sydney CBD, and there should always have been an expectation that large scale commercial development would occur in and around the Beau Monde with likely adverse impacts on views, outlook and amenity.

Residential development is now prohibited in the commercial core of North Sydney.

Further, there is a large area of the southern CBD currently overlooked by the southern elevation of the Beau Monde building which could also be the subject of redevelopment affecting views. It is unreasonable to expect that large scale commercial development over the southern half of the North Sydney CBD be frozen to protect the existing views from the Beau Monde building.

There are no specific aims or objectives in the LEP 2001 which seek to protect or preserve private views within the North Sydney CBD, nor to promote view sharing of private views.

88 Walker Street (Hotel Tower)

It is difficult to argue that the loss of views from the hotel building which extends to RL 170m is unreasonable. The hotel tower complies with the LEP 2001 and Draft LEP height envelope

controls and there was always a reasonable expectation that the extent of view loss detailed could occur.

77-81 Berry Street (Commercial Tower)

The impacts from a complying building envelope under the Draft LEP to RL 170m and RL 155m has a significant impact upon views enjoyed by a relatively small percentage of the units within the Beau Monde building, especially for the single-aspect south - facing apartments.

The impact from the proposed non-complying building height above RL's 170m and 155m does not result in any additional loss of southerly Sydney Harbour Bridge, Harbour or Sydney CBD skyline views, but does have an additional adverse impact upon Levels 27 to 36 to varying degrees with respect to loss of sky and outlook, and bulk, scale and overbearing.

However, as demonstrated above, the additional 6 metres separation to 24 metres overall markedly improves the outlook and extent of the arc of view for the corner apartments at all levels of the Beau Monde building and is of considerable merit.

It has been demonstrated by the most recent submission on behalf of the "Beau Monde Residents Action Group" that dramatic modification to the Draft LEP envelope for the commercial tower and the LEP 2001/Draft LEP envelope for the hotel tower would be required in order to retain Sydney Harbour, Sydney Harbour Bridge and Sydney CBD skyline viewlines. The alternative envelopes required would result in a part 3/7/9/10/12 storey commercial building and a part 5/13/33 storey hotel building where the upper 20 storeys of the hotel would feature floor plates of approximately 200 sqm, and therefore unviable.

This outcome is considered to be unsustainable and inequitable in terms of the strategic importance of this land and its development potential and ability to contribute significantly to the achievement of a range of Metropolitan, Subregional and North Sydney City Centre planning objectives for economic growth, job creation and the maintenance of North Sydney as a prime Subregional Centre.

Department's Recommended Modifications

The Department's recommendation to require the height to be reduced by 7 storeys on the southern part of the commercial building (except the 2 plant room levels) and by 3 storeys over the northern part of the site will provide a marginal improvement to the views, outlook and amenity of the majority of apartments in the upper levels of the Beau Monde building in terms of retention of some outlook and sky, and reduction in bulk, scale and overbearing.

In respect to permitting the retention of the 2 levels of plant room above a complying RL 170m, it is recommended that a condition be imposed requiring that the footprint and envelope of these levels be reduced and setback. In particular, if the east-west section of the plant room levels is reduced, the additional height would have no adverse impact on the upper levels of Beau Monde as the northern elevation of the plant room would be reduced in area.

7.2 Privacy, Amenity & Wind Impacts

Privacy, amenity and wind impacts on the adjoining "Beau Monde" residential tower are important issues for consideration.

Privacy

The proposed development has provided a 24m separate distance between the northern façade of the proposed commercial building and the southern façade of the Beau Monde Tower, 6 m in excess of the minimum recommended within SEPP 65 – Design Quality of Residential Flat Buildings. The proposed building separation will assist in ensuring the privacy of the residents in Beau Monde and provide greater outlook for more apartments than would otherwise be provided.

The Department is satisfied that the privacy of the residents in the Beau Monde building will not be adversely impacted from the proposed development.

Amenity

In recognition of the need to maintain the amenity of the residents on the southern side of the Beau Monde building, in addition to the above 24m building separation distances, shading screens are placed on the northern elevation of the commercial building with the aim of obscuring views out of and into the proposed building.

The minor overshadowing on the residential properties at the western end of Whaling Road, Neutral Bay (located on the eastern side of the Warringah Freeway) will not result in any adverse impacts on the solar amenity of these residents.

Wind Impacts

A revised Wind Report prepared by Windtech was submitted with the PPR addressing the concerns the Department raised in relation to the cumulative impacts from the proposal and future developments surrounding the subject site, in particular the proposal for 86-96, and 100 Mount Street.

In summary, the report described additional treatments required at particular locations on and surrounding the site and the proposed wind amelioration treatment required. All recommendations made by Windtech have been incorporated into the proposal.

The additional wind amelioration treatment is support by the Department.

7.3 Transport, Access & Parking

Traffic impacts

Halcrow MWT was engaged to examine the traffic impacts on the surrounding street network and submitted an amended traffic report as a part of the PPR. The revised traffic report addressed the concerns raised in public submissions, including the submitted Traffix Report on behalf of the Beau Monde residents, the Department and government agencies.

The Department is satisfied that the issues raised have been adequately addressed in the PPR. A number of conditions have been proposed to address some of the above matters, including a contribution of \$10,000 towards off-site works (upgrade to the intersection of Berry Street and Walker Street). This contribution has been agreed by the Proponent and Council as recommended by the RTA and is contained in a Letter of Offer from the Proponent and is listed in the Revised Statement of Commitments.

Vehicle Access

The reconfiguration of the existing laneway network is proposed due to the creation of the Denison Street public plaza, and although Denison Street will be closed, access to the MLC Centre building loading docks and driveways will be maintained. A new 12.2m wide one way through site link road running west has been proposed, linking Little Spring Street and Denison Street. The link will be open to vehicles and pedestrians 24 hours a day. To manage these changes, Little Spring Street will be reconfigured and widened, south of the through - site link to cope with increased traffic volumes.

All vehicle access for the commercial tower and hotel, including service vehicles and hotel vehicles will be via the new basement entrance on the western side of Little Spring Street.

A drop off zone specifically for hotel guests will be provided for on the eastern side of Little Spring Street. The space will accommodate three vehicles at a time or a small bus and will be policed by the hotel staff. The basement will be able to accommodate a 25 seater bus.

The Department is supportive of the vehicle accessibility surrounding the proposal and the suggested realignments/partial road closures, as well as construction of "new street".

Pedestrian Access

The primary pedestrian routes to the site will be from North Sydney station via Mount Street, Denison Street and Walker Street. The creation of the new Denison Street Plaza, will allow pedestrians to walk from North Sydney Railway Station to the site without crossing a road. This is considered a significant public benefit.

7.4 Other Matters

Heritage

A revised Heritage Impact Statement prepared by NBRS & Partner's was submitted with the PPR. The Heritage Report submitted addresses the requirements of the DGRs and heritage matters in accordance with North Sydney LEP 2001 (clause 50).

It is considered that the proposed development has been designed to generally respect the curtilage and heritage significance of the 2 nearby heritage items, being the adjoining Firehouse Hotel (86 Walker Street) and the state significant MLC Centre located west of the Berry Street site known as 105-153 Miller Street, North Sydney.

In particular, the eastern (Walker Street) podium elevation of the amended hotel building provides an appropriate response to the character and significance of the Firehouse building adjacent. A number of standard conditions are included relating to demolition and building work to ensure protection of the Firehouse Hotel.

Voluntary Planning Agreement (VPA)/Section 94 Contributions

The Proponent advised in the EA that it would enter into an agreement with Council to ensure certainty with respect to public domain outcomes and costs associated with the proposed development. The main components of the proposed VPA are as follows:

- Creation, operation and management of a 42 space public carpark (and 10 motorcycle parking spaces) within the commercial tower basement carpark (at Basement Level 1);
- An agreement to pay the \$6.3 million Railway Infrastructure Contribution to the Transport Administration Corporation (TAC) normally payable under LEP 2001 in respect of the commercial tower (this is required as 77-81 Berry St is "Deferred" from LEP 2001 and therefore the railway contribution doesn't currently apply);
- Works-in-kind in lieu of the payment of Section 94 contributions to construct public domain areas beyond the site boundaries;
- Various land transfers and dedications to Council, and public rights-of-way; and,
- Stratum lease for below ground level connecting tunnel between the hotel and commercial tower.

However, no legal documentation has been lodged with the Department or Council with respect to a VPA. On 7 December 2009, the Council resolved that owners consent for works on Council land and roads would only be granted if the proposal was amended to comply fully with Council resolution of 20 July 2009. It is noted that the Council's resolution at that meeting was to urge the Minister to refuse the proposal.

The Department supports the regime of Off - Site Works proposed for the public domain, but notes that these works will require the further approval of Council pursuant to the Roads Act.

In these circumstances, to overcome any uncertainty regarding the delivery of off - site works; it is recommended that appropriate conditions be imposed requiring that all Section 94 contributions be paid to Council in accordance with Council's Plan. It is relevant to note that the provisions of Section 2.4 of Council's Section 94 Plan provides for an applicant to apply to Council, in writing, to seek agreement that works-in-kind be provided in lieu of the payment of some or all monetary contributions.

The payment of the Railway Infrastructure Contribution has been guaranteed in a Letter of Offer received from the Proponent and has been included in the Revised Statement of Commitments. In this regard, the Proponent will be required to enter into a VPA with the Department to facilitate the payment to the TAC.

Parking

The EA proposed 226 parking spaces, and the PPR has maintained this number. The reduction in GFA in the PPR would require a reduction to carparking of 4 spaces (commercial building) and 2 spaces (hotel building).

The 226 car parking spaces are allocated as follows:

- 152 commercial/retail spaces;
- 32 hotel spaces; and
- 42 public parking spaces (including 12 spaces removed as a result of proposed public domain works).

In the circumstances, the excess of 6 spaces is not considered unreasonable.

Noise impacts

The Acoustic Report lacked detail with regard to proposed plant and equipment. The Department has included a condition requiring further acoustic reports prior to the issue of construction and occupational certificates to ensure the projected noise levels does not exceed 5dB(A).

In addition, a condition of consent has been included deleting the roof terrace above the northern portion of the commercial tower and making the area non - trafficable to ensure that there are no adverse acoustic or privacy impacts on the occupants of the Beau Monde building.

Utilities

The Department is satisfied the existing infrastructure will supply the utility demands for the proposed development, and any required works to the infrastructure could be met by the proponent.

8 KEY MODIFICATIONS & CONDITIONS

The Department has recommended that modification of the PPR is required, as follows;

- Reduction in the height of the northern and southern parts of proposed commercial building to comply with the Draft LEP controls (ie max height to RL 155 & RL 170 metres respectively) excluding two plant room levels over the southern part (by condition);
- Deletion of the connecting tunnel beneath Little Spring Street and the introduction of alternative arrangements for access between the hotel and commercial tower carpark;
- Construction management conditions, including restrictions on construction hours; and,
- Additional monetary contribution towards upgrading the intersection of Walker and Berry Streets (by condition).

9 PUBLIC INTEREST/PUBLIC BENEFIT

It is expected that the proposed development will have some impact on the locality and will affect the existing views and amenity of some apartments in the Beau Monde apartment building, however, on balance the proposal will provide significant benefits to the wider community, including:

- Realisation of additional premium grade commercial floor space in the North Sydney Centre and jobs growth;
- Achievement of 5-star Greenstar energy rating for the commercial tower and 4-star NABERS rating for the hotel building;
- Contribution to the payment of the upgraded North Sydney Railway Station and the achievement of the North Sydney Centre 250,000m² floor space target;
- Public domain areas of 1,100m² including the creation of a public plaza in Denison Street;
- Construction of a new through-site link (road) through the commercial site, enabling the reconfiguration of traffic in the surrounding laneways and improved pedestrian connectivity;
- Increased setbacks at ground level to enhance the public domain, especially to the south on Spring Street;
- Provision of a 4.5-star hotel;
- Provision of a new public car park to accommodate 42 cars and 10 motorcycles;
- Increased separation between the commercial building and the Beau Monde building; and
- Employment opportunities through the construction and operational phase of the development.

10 CONCLUSION

The Department has assessed the merits of the proposal taking into consideration the issues raised in public submissions and is satisfied that the impacts have been addressed in the PPR, the Revised Statement of Commitments and recommended conditions. It is considered that the impacts can be suitably mitigated and/or managed to ensure a satisfactory level of environmental performance, pursuant to Section 75J of the Act.

The Department has determined that subject to a reduction in height, the proposed commercial tower is appropriate and fits within the context of the North Sydney CBD. The proposed hotel building on Walker Street is considered to be well resolved and of a height, bulk, scale and character that is also compatible with the City Centre.

The main impact that arises from the proposal is the loss of southerly views over North Sydney, Sydney Harbour and the Sydney CBD from some apartments in the Beau Monde residential building to the north. However, the preservation of all of these existing views is unsustainable having regard to the targets set for future economic and employment growth in North Sydney, and the impacts that result from building heights and envelopes prescribed by the planning regime put in place to achieve the key strategic growth outcomes.

The totality of the improvements to the public domain on the adjacent streets and within the site itself are of considerable merit and will enhance the vitality of this area of North Sydney which requires renewal.

11 RECOMMENDATION

It is recommended that the Minister:

- (A) **Consider** all relevant matters prescribed under Section 75J (2) of the *Environmental Planning and Assessment Act, 1979*, including relevant matters prescribed by 75I(2) as contained in the Director General's Environmental Assessment Report (**Tag 1**);
- (B) Having considered all relevant matters under the Act in accordance with **(1)** above, **approve** the Project Application MP08_0238 subject to conditions pursuant to Section 75J (1) of the EP&A Act 1979; and,
- (C) **Sign** the Instrument of Approval (**Tag 2**).

Prepared by

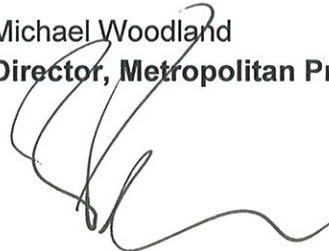


Andrew Smith
Team Leader, Metropolitan Projects

Endorsed



Michael Woodland
Director, Metropolitan Projects



Richard Pearson
Deputy Director General, Development
Assessment & Systems Performance