The applicant amended the previous application with regard to the decision of the Court and submitted DA499/05 on 1 November 2005. The applicant lodged an appeal against the deemed refusal of the application on 20 December 2005. The application was reported to Council at its meeting of 30 January 2006 when Council **RESOLVED**:

> ***THAT*** *delegated authority be granted to the General Manager to grant development consent subject to the discontinuance of the Land and Environment Court proceedings.*
>
> ***THAT*** *any consent should contain the following site specific conditions:*
>
> - *Sandstone wall on eastern boundary facing the walkway and Walker Street to be reinstated as a boundary wall.*
> - *Block sandstone to be used as a facing to the sides of the stairway from Harnett Street to Ward Street.*
> - *The public open space to be principally for private recreational use of residents of the building; with an appropriate Section 88B to be entered into.*
> - *The footpath to be widened to the line of the bollards and the bollards removed, and a conventional kerb and gutter be provided.*

The appeal was discontinued and the General Manager granted development consent on 13 February 2006.

DA65/06 for another mixed use proposal was submitted on 21 February 2006. The proposal involved internal reconfiguration; changes the number of apartments from 65 to 67 and an additional car parking space. The proportion of commercial floor space within the proposed development remained unchanged. At its meeting of 10 April 2006 Council resolved to refuse the application.

Energy Australia purchased the property to construct a new substation. Development Consent No.499/05 was subsequently surrendered to Council.

DA.427/07 to demolish all buildings on site was approved under delegated authority on 22 November 2007.

REFERRALS

Design Excellence Panel

Council's Design Excellence Panel has provided the following comments on the proposal:

> *"The banding of the upper section of the building above the podium height is considered to be too dominant.*
>
> *The podium height is defined on the street facade where the building articulation starts which is about the height of the existing substation wall to the south.*

The upper level above the podium should be less visually assertive, by means of reducing contrast between brickwork bands, and reducing the amount of banding - suggest the lighter brick with no banding above podium level OR minimal dark brick banding about 3m apart on a lighter background – the bricks should not be too light as they will get dirty. This should also be of assistance in minimising the impact on future residential development to the east.

An awning cantilevered from the new building over the footpath is recommended however it is accepted that there may be technical or security reasons which mean that this is not desirable.

Consideration should to be given to footpath treatment to match public domain materials or increase width of the footpath if possible, street trees would also assist if deep planting is possible with services in street. The authority would need to liaise with Council Engineers."

Despite being advised last year, the applicant has not responded to the above suggestions with regard to the brick banding. The recommendations need to be forwarded on to the Department of Planning for consideration. Council has also indicated a preference for some widening of the footpath along Ward Street and a pedestrian link from Ward Street to Harnett Street through the northern end of the site, however Energy Australia has stated that the site is too tight to allow for any boundary setbacks. Should the substation have to occupy the whole site, Council would like to see some public benefit when the current substation is decommissioned which may involve some landscaped public space on the corner of Berry Street and Ward Street.

Traffic Engineer

Council's Traffic Engineer has previously approved a Construction Management Plan subject to conditions as follows:

"*I refer to your submitted Traffic Management Plan dated 21 January 2010 version 1 for the North Sydney Zone Substation located at 3-11 Ward Street, North Sydney, project number N8603. I generally concur with the contents of this Traffic Management Plan.*

The following comments/recommended modifications are made for the Traffic Management Plan:

1. *It is noted that vehicles approaching from the north cannot directly turn right onto Falcon Street from the Warringah Freeway. They will need to "u-turn" around the Military Road island.*

2. *For the Harnett Street site access, where trucks are entering the site from the north, the TMP currently states, "From North: Trucks would approach from Warringah Freeway, right onto Falcon Street, left onto Pacific Highway, left into McLaren Street, right into Harnett Street and then onto site". The preferred access route is for trucks to approach from the Warringah Freeway, right into Falcon Street, left into Miller Street and then left into McLaren Street. The reason for this is to minimise heavy vehicle movements on McLaren Street, between the Pacific Highway and Miller Street. McLaren Street is a local road which contains a number of residential properties.*

3. *Alternatively, vehicles may wish to exit the Freeway at the Alfred Street exit, go around the Alfred Street "roundabout", turn right into High Street, merge into the Pacific Highway, right into Walker Street, left into McLaren Street and then left into Harnett Street.*

4. *For the Harnett Street site access, where trucks are entering the site from the south, the TMP currently states, "From South: Trucks would approach from Warringah Freeway (northbound), left into Falcon Street, left into McLaren Street, right into Harnett Street and then onto site". The preferred access route is either for trucks to approach from the Warringah Freeway, left into the Pacific Highway, right into Miller Street, right into McLaren Street and then right into Harnett Street; or alternatively for trucks to approach from the Warringah Freeway, left into the Pacific Highway, right into Walker Street, left into McLaren Street and then left into Harnett Street.*

5. *It is understood that there won't be significant works on the actual road carriageway in Ward Street. However, there will be truck movements and changed traffic conditions. Therefore for the Traffic Control Plan for Ward Street, it is suggested some advance warning of works on side road may be required in Berry Street.*

6. *There are a high number of pedestrian movements in Ward Street. Given this, a qualified traffic controller should be in place to direct entering and exiting vehicles to Ward Street and the property of 3-11 Ward Street, to ensure no pedestrians or vehicles enter the zone of heavy vehicle movement.*

7. *Access to the Wilson Ward Street car park must be maintained at all times. The Energy2U Alliance should liaise with the managers of the Wilson Ward Street car park to minimise the impact on access for their customers.*

8. *Vehicles accessing the Wilson Ward Street car park must be able to do so without queuing back onto Berry Street. Traffic control access must be managed such that at no time are through vehicles on Berry Street to be held up by queuing vehicles waiting to enter Ward Street and the car park.*

9. *Any disruption to traffic flows on Berry Street must occur outside peak hours (i.e. outside of 6am to 10am and 3pm to 7pm Monday to Friday).*

10. *The Energy2U Alliance should keep surrounding businesses and residents informed of construction progress, particularly in relation to construction vehicle movements and advising residents of night and weekend works. Businesses and residents should be provided with a phone number such that they can contact the site manager.*

11. *At no time shall Harnett Street, Ward Street, McLaren Street, Berry Street or any other road be blocked by any vehicle or works associated with the construction of the proposed development. Through traffic on Harnett Street, Ward Street, McLaren Street, Berry Street and any other road is to be maintained at all times.*

12. *Harnett Street, Ward Street, McLaren Street, Berry Street or any other road are not to be used as a waiting area for trucks delivering to or awaiting pick up of materials etc. from the proposed development, except in marked Work Zones.*

13. *Construction vehicles are not to queue in Harnett Street, Ward Street, McLaren Street, Berry Street or any other road.*

14. *Installation of the Work Zone and No Stopping in Harnett Street and Ward Street is subject to the applicant paying all appropriate Council advertised fees and charges.*

15. *Materials are to be stored on site. At no time, are materials to be stored on Harnett Street, Ward Street, McLaren Street, Berry Street or any other road or any Council property.*

16. *Trucks may only enter and leave the construction site in a forwards direction unless under the direct supervision of a qualified traffic controller.*

17. *Mobile cranes and concrete pumps shall be located wholly on site.*

18. *Pedestrian access and the diversion of pedestrians shall be carried out in accordance with Australian Standards 1742.3 and 1742.10. If pedestrians are diverted, pram ramps must be provided in accordance with Australian Standard 1428.1.*

19. *All traffic control plans are to be prepared by an appropriate qualified person, holding a RTA "Design and Inspect Traffic Control Plans" ticket.*

20. *If a Permit to Stand Plant or Temporary Road Closure is required, application must be made to Council a minimum of two weeks prior to any proposed works.*

21. *Approval must be obtained from Council's Development Engineer Assessment for all temporary construction vehicular crossings.*

22. *A traffic route map and conditions are to be provided to truck drivers engaged for this development.*"

Engineering

Council's Development Assessment Engineer has provided a number of conditions to cover engineering and stormwater issues that could be forwarded to the Department of Planning.

PUBLIC SUBMISSIONS

Council was formally notified of the proposed Part 3A development on 22 September 2010, with the exhibition period starting on 22 September 2010 and concluding on 22 October 2010.

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

CONSIDERATION

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

NORTH SYDNEY LOCAL ENVIRONMENAL PLAN 2001

Permissibility within the zone

The site is zoned 'Mixed Use' and 'Special Use – Substation' pursuant to Clause 14 of NSLEP2001, and the proposed development is permissible with consent of Council.

LEP Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Site Area – 1214m²	**Existing**	**Proposed**	**Control**	**Complies**
Commercial Zone				
Building Height (Cl. 28D(2)(a))	Nil	RL 94.5	RL195	YES
Site Area (Cl. 28D(2)(e))	1214sqm	1214sqm	Min. 1,000sqm	YES

North Sydney Centre Objectives

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

Objective	Proposal
(a) To maintain the status of the North Sydney Centre as a major commercial centre within Australia.	The proposed development is considered to achieve the objective of maintaining the status of the North Sydney CBD as a major commercial centre. The proposal would provide the necessary upgrade in infrastructure.
(b) To require arrangements for railway infrastructure to be in place before additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre.	The proposal is not defined as non residential floor space.
(c) To ensure that railway infrastructure, and in particular North Sydney Station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and will: *(i) be convenient and accessible, and* *(ii) enable a reduction in dependence on private car travel to the North Sydney Centre, and* *(iii) be adequate to achieve no increase in car parking, and* *(iv) have the capacity to service the demands generated by development within the North Sydney Centre.*	Not applicable.
(d) To discourage use of motor vehicles in the North Sydney Centre.	The proposed development does not provide for car parking. Staff numbers are limited.
(e) To encourage access to and within the North Sydney Centre for pedestrians and cyclists.	Not applicable.
(f) To allow for 250,000m² (maximum) non residential gross floor area in addition to the estimated existing (as at the commencement of this Division) 700,000m² non-residential gross floor area.	The proposal does not add non residential gross floor area.
(g) To prohibit further residential development in the core of the North Sydney Centre.	No residential development is proposed.

(h) To encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1000m².	Not applicable.
(i) To achieve a variety of commercial space.	Not applicable.
(j) To encourage the refurbishment, recycling and rebuilding of older buildings.	The site is vacant, the previous buildings were not suitable for recycling for such a specific use as a substation.
(k) To encourage a diverse range of employment, living, recreation and social opportunities.	The proposed development provides for some employment opportunities.
(l) To promote high quality urban environments and residential amenity.	As detailed previously in this report, Council's Design Excellence Panel has commented on the proposal. The brick banding should be reviewed as suggested by the Panel.
(m) To provide significant public benefits such as open space, through-site linkages, childcare and the like.	Council would prefer a through site link from Ward Street to Harnett Street, however the total site area is required for the building. Council would like to see some public benefit when the current substation is decommissioned which may involve some landscaped public space on the corner of Berry Street and Ward Street.
(n) To improve accessibility within and to the North Sydney Centre.	Not applicable, no public access to site permitted.
(o) To protect the amenity of residential zones and existing open space within and nearby the North Sydney Centre.	The proposed envelope would not result in additional overshadowing to residential or special areas.
(p) To prevent any net increase in overshadowing of any land-zoned residential or public open space or identified as a special area.	The proposal does not result in additional overshadowing to the special areas.
(q) To maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and protect the amenity of these areas.	No open space areas exist on the site.

Railway Infrastructure

Pursuant to Clause 28C(2) of NSLEP 2001, Council must not grant consent for development within the North Sydney Centre which exceeds the non-residential gross floor area of the building that lawfully existed on the site before the development is carried out. The proposed development does not involve any non-residential gross floor areas and Clause 28C is not relevant.

Building Heights and Massing

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

Objective	Proposal
(a) To achieve a transition of building heights generally from 100 Miller Street (Northpoint) and 79 - 81 Berry Street (being the location of the tallest buildings) stepping down towards the boundaries of the North Sydney Centre.	The proposed building form is considered to achieve an appropriate transition in height and fit within the future context of the North Sydney CBD. The height is well under the existing and potential heights of surrounding development.
(b) To promote a height and massing that has no adverse impact on land in the public open space zone or land identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre" or on heritage items.	The height and massing of the proposed development will not result in an adverse impact on the special areas or open space areas identified on the map.

(c) To minimise overshadowing of land in the residential and public open space zones or identified as a special area on Sheet 5 of the map marked "North Sydney Local Environmental Plan 2001 (Amendment No. 9) - North Sydney Centre".	The proposed development is considered to be consistent with this objective with no overshadowing of residential zoned land.
(d) To protect the privacy of residents within and around the North Sydney Centre.	The proposed building will have impact on the privacy of residents within North Sydney Centre.
(e) To promote scale and massing that provides for pedestrian comfort, in terms of weather protection, solar access and visual dominance.	The proposal does not provide for weather protection by way of awnings, however, the site is located on the side of the street that is fully utilised by utility services which would not lead to pedestrian activity.
(f) To encourage consolidation of sites for provision of high grade commercial space and provision of public benefits.	The proposal will not result in the isolation of properties and does not include any commercial space.

Development Controls

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

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

The proposed building will have a maximum RL 94.5 AHD.

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

The proposal does not result in additional overshadowing to land outside the composite shadow area.

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

The proposed building envelope does not result in additional shadowing.

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

The proposed building envelope would not result in additional shadows being cast across residential properties outside the North Sydney Centre.

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

The overall site area is 1214m², and thus complies with the control.

Building Design and Public Benefits

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

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

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

(b) Whether the proposed development provides public benefits such as open space, through-site linkages, community facilities and the like, and

The proposed development provides infrastructure to the area. Council would prefer a through site link from Ward Street to Harnett Street, however the total site area is required for the building. Council would like to see some public benefit when the current sub station is decommissioned which may involve some landscaped public space on the corner of Berry Street and Ward Street.

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

No important view lines are affected by the building.

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

The scale is acceptable however further improvement can be made to the materials and external treatments as suggested by Council's Design Excellence Panel.

Excavation

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

In this instance, excavation is required to create the basement below the Harnett Street level for cables. No objection is raised to the proposal with regard to the extent of excavation proposed. Dilapidation reports for adjacent development should be carried out.

Consistency with the Aims of Plan, Zone Objectives and Desired Character

As detailed in this report, the provisions of Clause 14 of NSLEP 2001 have been examined and it is considered that the proposed development is consistent with the specific aims of the plan and the objectives of the zone and of the controls. As such, consent to the development in its current form may be granted.

North Sydney Centre Planning Area (Central Business District)

The application has been assessed against the relevant controls of the character statement for the

Central Business District contained at Part B of DCP 2002.

SEPP 55 and Contaminated Land Management Issues

The primary purpose of the *Contaminated Land Management Act 1997* (CLM Act) is to establish a process for investigating and (where appropriate) remediating land areas where contamination presents a significant risk of harm to human health or some other aspect of the environment.

3-11 Ward Street – proposed substation site
Demolition, excavation and remediation works have already taken place in this portion of the site, therefore, the potential contamination sources no longer exist on the site.

70-74 Berry Street – existing substation site
Contamination sources at the site in its current state may be uncovered within the existing substation during the decommissioning and demolition works. These risks were assessed in the *Building Assessment Report* and the *Hazardous Materials Survey Report.* The report indicated that the site may contain asbestos containing material (ACM), polychlorinated biphenyls (PCBs) and lead based paint hazards. The potential contamination of 70-74 Berry Street, North Sydney means it is subject to the provisions of the CLM Act.

SREP (Sydney Harbour Catchment) 2005

The subject site is not within part of North Sydney that is required to be considered pursuant to SREP (Sydney Harbour Catchment) 2005. The site is not visible from the Harbour.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

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

SECTION 94 CONTRIBUTION

No contribution is warranted due to limited space provided (control room) which is much less than previous commercial floor space on the site.

Impacts on neighbours

The application provides significant details on the shadow impact on adjoining development to the east – the mixed use development approved at 136-140 Walker Street. (Castle Constructions site). It should be noted that the site is the subject of a new development application (DA316/10) for a mixed use building that has regard to the substation as proposed. The application will be determined by the Joint Regional Planning Panel due to the capital cost of development. The previous proposal was impacted by the substation over several levels with regard to the amenity of a number of apartments. The new design attempts to lessen the impact of the substation and will be assessed on its merits in due course. Apart from the changes on the lower levels on the western elevation, the height, setbacks and envelope are similar to the approved development. Council's Design Excellence Panel has recently considered the new proposal with a positive response to the design.

CONCLUSION

A detailed Environmental Assessment (EA) was submitted with the notification documentation that assessed the potential environmental impacts associated with the construction, operation and maintenance of the proposed new North Sydney zone substation and decommissioning the existing North Sydney zone substation. Within this EA, the significance of impact has been determined and appropriate mitigation measures recommended.

As well as delivering electricity to the North Sydney Region and the surrounding areas and providing electrical capacity to the load area, the new high voltage supply to the substation also becomes part of a wider interconnected electricity network.

The new North Sydney zone substation would therefore improve supply reliability and quality of supply and hence meet increasing community expectations in terms of safety, reliability, quality and continuity of supply in the broader supply area. Similar improvements are expected in neighbouring supply areas as part of Energy Australia's integrated planning process.

The project and its associated environmental impacts are unlikely to have a significant impact on the environment. The proposed substation would deliver a safe and reliable electricity supply to the lower North Shore region and surrounding suburbs. The new North Sydney zone substation would ensure future demand is met, whilst minimising any adverse environmental impacts.

On 13 November 2009 Energy Australia provided notification to Council of the proposed substation pursuant to the Energy Supply Act. Members of Council's Design Excellence Panel met with EA representatives on site on 1 December 2009 to discuss the external finishes of the proposed substation. The following comments were provided to Energy Australia on 9 December 2009:

> "*The banding of the upper section of the building above the podium height is considered to be too dominant.*
>
> *The podium height is defined on the street facade where the building articulation starts which is about the height of the existing substation wall to the south.*
>
> *The upper level above the podium should be less visually assertive, by means of reducing contrast between brickwork bands, and reducing the amount of banding - suggest the lighter brick with no banding above podium level OR minimal dark brick banding about 3m apart on a lighter background – the bricks should not be too light as they will get dirty. This should also be of assistance in minimisng the impact on future residential development to the east.....*"

These suggestions are still relevant and have not been satisfactorily resolved by the applicant. The suggestions of the Design Excellence Panel should be forwarded to the Department to consider. Apart from traffic impacts, the main issue is fitting in within the context of the area.

There are a number of general engineering issues that can be addressed by appropriate conditions. A summary of the engineering conditions is provided to forward to the Department of Planning for consideration.