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Attention: Amy Robertson

**TOWN PLANNING SUBMISSION LETTER – MP 08_0238 MOD 7 – PROPOSED
MODIFICATION OF A COMMERCIAL BUILDING AT 77-81 BERRY STREET (1 DENISON
STREET), NORTH SYDNEY**

Dear Sir,

Willowtree Planning Pty Ltd has prepared this submission to MP 08_0238 MOD 7 on behalf of the residents of the upper levels of the Beau Monde building at 77 Berry Street, North Sydney (SP 74602). MP 08_0238 MOD 7 proposes the modification of an approved commercial building at 77-81 Berry Street (also known as 1 Denison Street), North Sydney, pursuant to Clause 3C(1) of Schedule 6A of the *Environmental Planning and Assessment Act* 1979 (EP&A Act) which provides for the continued application of Section 75W of Part 3A of the EP&A Act.

The Beau Monde building encompasses 241 residential apartments forming part of a mixed-used building which contains retail and commercial floor space on its lower levels. **Figure 1** below establishes the physical location of the Beau Monde building (from which this submission has derived), in relation to the proposed development.

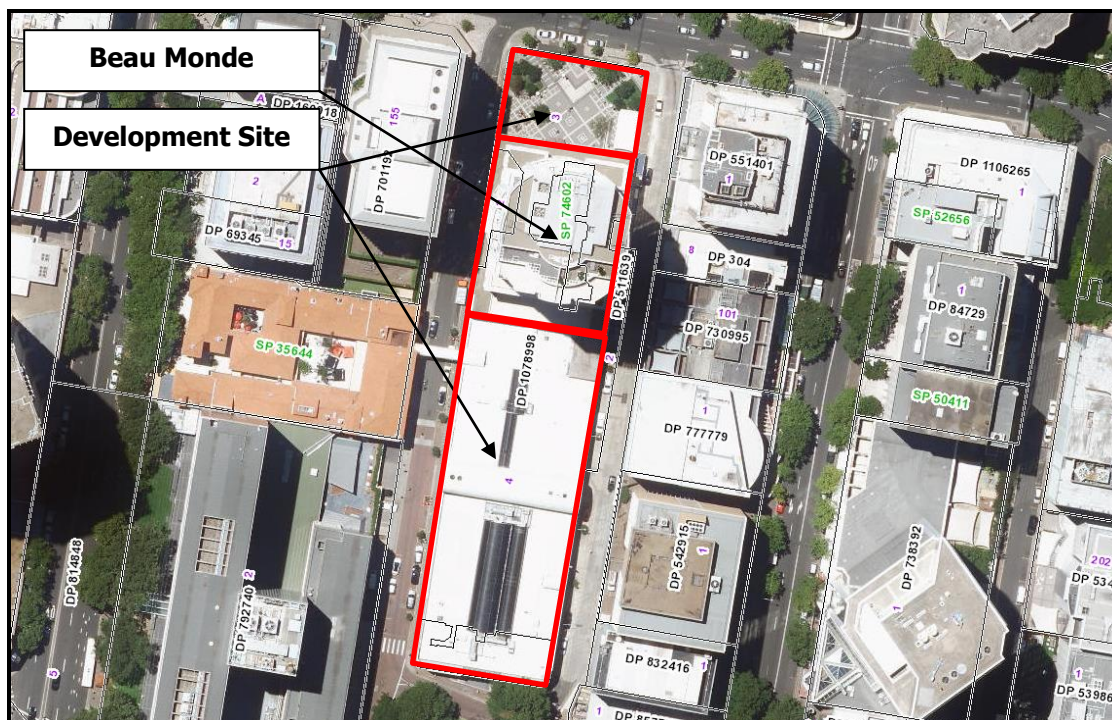


Figure 1. Development Site in relation to the Beau Monde Building



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1. Summary of the Submission

This submission has been prepared on behalf of the residents of the upper levels of the Beau Monde building at 77 Berry Street, North Sydney (SP 74602), such that the Department may be formally informed that whilst not opposed to the redevelopment of the site in principle, the owners of the adjoining site have concerns relating to the impact of the proposed development on their property. The outline below summarises the aspects of the proposal which raise concern and should be addressed to ensure a sound development outcome for the site and adjoining landowners:

- The height, scale and bulk of the development which is proposed to be increased as a result of the modification application.
- The impact of the development on the amenity of existing residential accommodation, in relation to solar access, views, privacy and sense of enclosure.
- The impact of the development on the streetscape and character of the area.
- The traffic generation resulting from the proposed development and changes to the operation of laneways.
- The implications of permitting the potential overdevelopment of the site for the redevelopment expectations of surrounding landholders.

These issues have been assessed in relation to relevant strategic and statutory plans including the North Sydney Centre Capacity and Land Use Study, the *North Sydney Local Environmental Plan 2013* (NSLEP2013) and the *NSW Land and Environment Court's Planning Principles*. It is noted that whilst this submission focuses on the impacts of the proposed development incurred by residents of the Beau Monde building, the identified impacts may be broad-reaching and should be holistically considered to ensure a positive outcome for all current and future stakeholders.

2. Height, Bulk and Scale of the Proposed Development

The aspect of the proposed modifications that is most concerning relates to the addition of seven (7) stories and 32.65m, increasing the height of the proposed building to RL210.65. Correspondingly, the bulk and scale of the proposed building will be exacerbated by an additional 13,470m² GFA, increasing the total GFA of the building to 66,706m².

The proposed building height significantly contravenes the NSLEP2013 which provides for a maximum building height of RL155-170 on the site. Accordingly the proposal exceeds the permitted building height by up to 55.65m or 35.9%. This is an excessive and unacceptable exceedance with negative implications for the amenity of adjoining sites, the public domain and the broader character of the area, and sets a dangerous precedent for the redevelopment of other sites which may similarly disregard Council's built form controls which have been implemented to promote the sustainable and just development of land in accordance with the public interest.

As well as contravening the numeric development standard for maximum building height, the proposal is also considered to be inconsistent with the objectives of Clause 4.3 of the NSLEP2013 in that surrounding buildings, including the Beau Monde building, will lose views, solar access and privacy as a result of the additional building height. Owing to this loss of amenity, the proposed development cannot be considered compatible with existing development, particularly the Beau Monde mixed use building. Neither can the development be considered to exhibit '*an appropriate scale and density of development*' or to positively contribute to the character of the area. Rather the development represents an obtrusive built form with negative amenity impacts.

Part 6 Division 1 of the NSLEP2013 is also relevant to the proposed development given the subject site is located within the North Sydney Centre. Whilst the proposal provides additional commercial floor space in accordance with the objectives of this Division, other objectives of the Division are

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compromised including as they relate to protecting the privacy of residents, protecting the amenity of residential areas and preventing overshadowing that would adversely impact on residential land. Whilst it is noted that the Beau Monde building is not located within a residential zone, it provides an important supply of centrally-located residential accommodation within a genuine and exemplary mixed-use building. In creating a vibrant and functional mixed use environment, the Beau Monde building accommodates the needs of businesses and residents, and therefore the protection of the amenity of this mixed use environment is highly important. Relatedly, the existence of a local resident population is essential to supporting a diverse day and night-time economy and therefore, whilst not directly providing commercial floor space, the site performs an important role in supporting surrounding commercial sites. Its protection from the potentially damaging effects of new development is therefore paramount.

Clause 6.3 of the NSLEP2013 specifically relates to building heights and massing within the North Sydney Centre and seeks to achieve a transition of building heights, protect public open space, Special Areas and residentially-zoned land, and to promote scale and massing that provides for pedestrian comfort. In determining whether to grant development consent, the Consent Authority is required to consider the impacts of proposed development on the scale, form and massing of the locality, natural environment and neighbouring development, view lines and vistas and the streetscape. Contrary to this clause, the proposed development is of an inappropriate scale based on its negative amenity impacts for neighbouring development as afore-described and further detailed in Section 3 of this Submission.

Further to the above, it is noted that a maximum building height of 238m is nominated for the site in Council's Capacity and Land Use Study (exhibited until 15 December 2016). This building height is however considered to provide an unsustainable and adverse impact particularly for the amenity of existing residential apartments within the Beau Monde building, as formerly conveyed to Council in a Submission to the Study during the exhibition period. Given the exhibition period for the Study has only recently ended and Council has not yet had the opportunity to consider submissions, the reliance of the proposed modification application on the contents of the Study is considered presumptuous and unjustified. Prior to Council's adoption of the Study and ultimately the translation of the Study into statutory controls through the amendment of the NSLEP2013, detailed modelling is considered to be required in order to understand the impacts of various controls, including as they relate to land use, building height and density, on existing development. Therefore the appropriateness of the proposed building height cannot rely on the Study without detailed modelling being undertaken, given the Study is still in its preliminary phases. Moreover it is suggested that the Study needs to adopt suitable policy and statutory responses to protect existing residential amenity, potentially embodying the extension of 'Special Areas' to include residential development and the adoption of complementary controls to preserve suitable levels of solar access, privacy, views and separation. As these clauses have not yet been formulated, it is dangerous to mobilise the preliminary, and yet to be refined, propositions of the Study.

In order to ameliorate the adverse impacts of the proposed development, it is recommended that the building height is reduced to what was previously approved. Whilst some loss of amenity is inevitable, and indeed will be experienced even resulting from what has already been approved, more equitable view sharing, access to natural light and ventilation, and privacy may be provided. This will reduce the far-reaching negative implications of the development, whilst still permitting the significant densification of the subject site and the efficient use of land.

3. Amenity Impact

Whilst the proposed modification claims to provide a better outcome for the Beau Monde residential building, a significant adverse amenity impact has been identified for the Beau Monde building and other adjoining properties owing the height, bulk and scale of the development.

The importance of protecting the amenity of the Beau Monde building and existing residential development is emphasised in respect to the overarching vision, aims and objectives of the North Sydney Land Use and Capacity Study particularly as they relate to creating *a more attractive,*

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sustainable and vibrant place for residents and promoting the *diversity, amenity and commercial sustainability of the Centre*. Notably, the Study identifies the need to transform North Sydney into a better place for all, promote genuine mixed use environments, and support day and night-time economies, all goals which are positively contributed to through highly amenable residential accommodation including the Beau Monde building.

On the basis of the significance of the Beau Monde building including its residential component, the amenity impact of the proposal in respect of views, solar access, privacy and sense of enclosure, is discussed in the ensuing subsections.

3.1 Views

The proposed development, in both its approved and proposed form, significantly obstructs the views of the Beau Monde building owing to its significant building height and scale. As demonstrated within the View Analysis prepared in support of the modification application, the proposed development as modified will rectify some view loss whilst detracting from other views, as compared to the approved scheme. It is noted though that in any case the development of the site will cause devastating view loss.

Based on the View Analysis, it is clearly demonstrated that views from level 37 will be compromised by the proposed modifications. The additional building height proposed will completely block views over the development site and therefore, rather than preserving views of the skyline, a solid built form will be perceptible. This will severely aggravate other elements of amenity as well as views, including sense of overlooking and enclosure.

Whilst not shown in the View Analysis, it is anticipated that views to the south, south-east and south-west from apartments at levels 27-36 of the Beau Monde building will be similarly compromised owing to the elimination of sky views and subsequent loss of views, sense of overlooking and sense of enclosure.

So as not to further compromise view sharing, particularly in light of view loss already being devastating as a result of the approved development, it is recommended that no additional building height is approved. Additionally an opportunity is identified in tapering the building form to provide a slimmer tower and therefore further reduced view loss.

3.2 Solar Access

Though referred to in the Planning Report, no Shadow Diagrams are available to view and accordingly an informed consideration of the implications of the development on solar access is unattainable. Although it is acknowledged that the Beau Monde building, being located north of the development site, will not be the subject of overshadowing, this Submission seeks also to articulate the wider public interest.

It is therefore requested that Shadow Diagrams are prepared and made available for public comment prior to the continued assessment of the application. These Shadow Diagrams should detail the shadows cast by both the approved and proposed development at the Summer and Winter solstices, such that the impacts of the proposal on solar access may be holistically understood.

3.3 Privacy

Compared to the approved development, greater building separation is provided at some lower levels resulting in reduced opportunities for direct overlooking and therefore a greater level of privacy preserved for residents of the Beau Monde building. At upper levels reduced building separation is however proposed (up to 9m less separation) thereby exacerbating the privacy infringement inflicted by the development. Therefore whilst the tapered building form provides some benefits including additional building separation at some levels, the revised form is detrimental at other levels. As such it

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is recommended that the tapered building form is again revised to provide a slimmer tower with no lesser building separation for any levels than previously approved.

Additionally, the greater building height creates new opportunities for overlooking whereby residents may feel as though they are being looked down upon by occupants of the commercial building's upper levels. To avoid infringing the sense of privacy enjoyed by residents, it is recommended that no additional building height is permitted beyond what has already been approved.

3.4 Sense of Enclosure

The proposed development exhibits greater building height, bulk and scale than the approved building on the site. In particular reduced building separation is provided to the north at upper levels resulting in the encroachment of the building at these levels by up to 9m beyond that previously approved. Also the provision of seven (7) additional storeys above what could already have been described an 'oversized development' adds significantly to the scale of the building.

The significantly expanded development of the site including additional bulk and height which are clearly perceptible from the Beau Monde building, will adversely impact on the sense of enclosure experienced by adjoining properties. This impact is particularly consequential for residents of the Beau Monde building given the contravention of residential amenity to be inflicted.

4. Streetscape and Character

As aforementioned, the height, scale and bulk of the proposed development are considered inconsistent with the character of the area. This is visually highlighted in **Figure 2**.



Figure 2. Modelling of Proposed Development

This is informed by consideration of the objectives and provisions of relevant clauses of the NSLEP2013, which fail to be achieved by the proposed development. Both the overriding aims of the NSLEP2013 and the specific objectives for the B3 Commercial Core zone emphasise the importance of preserving the amenity of existing development and preventing adverse effects of development on residents. Similarly, objectives for the North Sydney Centre (Division 1 of the NSLEP2013) seek to protect the amenity of residential areas, open spaces and Special Areas within and around the Centre. Therefore, as well as envisaging North Sydney as a major commercial centre supporting by transport infrastructure, the desired character for North Sydney is one defined by a complementary range of land uses enjoying high levels of amenity.

This desired character is further reinforced by the North Sydney Land Use and Capacity Study. Whilst it is acknowledged that this Study is yet to be finalised, the objectives and intentions of the Study are

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considered unlikely to change and therefore to reliably reflect the future direction for North Sydney. Importantly it is noted though that the precise controls, provisions and mechanisms imposed to realise these broad and overarching aims, are expected to be subject to refinement. The broad vision for North Sydney relates to creating *a more attractive, sustainable and vibrant place for residents* and promoting the *diversity, amenity and commercial sustainability of the Centre*. Notably, the Study identifies the need to transform North Sydney into a better place for all, promote genuine mixed use environments, and support day and night-time economies.

Whilst undeniably contributing the North Sydney economy through the provision of new commercial floor space, the proposed development undermines important objectives pertaining to the character and role of North Sydney as a diverse, amenable, attractive, sustainable and vibrant centre. By compromising the amenity of existing development, including the Beau Monde building and its significant residential component, the proposed development diminishes the attractiveness and sustainability of North Sydney instead prompting a mono-use character with low levels of amenity.

Given the highly incompatible height, scale and bulk of the development it is requested the height of the development is reduced to provide a more sympathetic built form that positively contributes to the desired future character of the North Sydney centre.

5. Traffic Generation

The proposed development provides an additional 13,470m² GFA which is considered likely to generate significantly more demand for car parking and loading facilities, and in association additional traffic movements within the surrounding lanes and streets. To accommodate the additional GFA, the proposal provides 46 additional car parking spaces for commercial and retail premises. It is noteworthy also that the proposal removes the 42 spaces worth of public car parking and replaces this with 10 car share spaces. As such the total number of parking spaces provided on the site increases from 162 spaces to 176 spaces. In order to ensure this car parking provision will satisfy all demand generated by the development with no reliance on street parking required, more detailed assessment is considered necessary. This is particularly important given the state of existing roadways and street parking within the North Sydney centre which frequently experience congestion.

Whilst the benefits of car share are acknowledged, the provision of car share spaces is not considered to eliminate demand for public parking for which need is considered to exist in North Sydney in order to ameliorate the existing parking situation and reduce demand for street parking. Accordingly it is recommended that prior to permitting the removal of approved public parking, detailed surveys and assessment are undertaken to quantify the existing and projected demand for public car parking.

More detailed consideration of the ability of the laneways and surrounding streets to accommodate the traffic generation of the proposed development as well as all existing development is also considered necessary particularly owing to proposed changes to the operation of laneways which are anticipated to significantly impact on traffic flows.

6. Precedence and Expectations of Surrounding Sites

The proposed development has completely disregarded the objectives and provisions of the NSLEP2013, particularly as they relate to building height. As well as causing severe and negative impacts for the amenity of surrounding sites and the broader character of the locale, this contravention of controls and excessive height, bulk and scale, sets a dangerous precedent for the redevelopment of other sites which may similarly disregard relevant environmental planning instruments and policies and cause similarly adverse development outcomes.

Given that Council's statutory instruments and policies have been formulated to promote the sustainable and equitable development and use of land and to safeguard the public interest, it is considered imperative that development adhere to relevant objectives and provisions. Should development that is contrary to these controls be allowed to proceed, expectations of surrounding landholders will also be dangerously skewed.

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Therefore, in order to secure an appropriate outcome for the subject site and avoid establishing dangerous precedents for the development of surrounding, it is recommended that the height of the building is reduced to more closely resemble the development outcome anticipated and planned for by Council, as conveyed by the NSLEP2013.

As afore-noted, whilst it is acknowledged that Council is in the process of undertaking a Capacity and Land Use Study, this study is in its preliminary stages only and it is considered that extensive modelling is still required in order to understand the likely impacts of potential controls. Suitable provisions are also required to be devised and implemented to protect Special Areas, and it has been suggested that it would be strategically relevant to include the preservation of existing residential amenity as a component of Special Area provisions.

7. Conclusion

In consideration of the issues summarised in the above sections it is recommended that the design and scale of the proposed development is revised and that no additional building height is approved beyond what has been previously approved. Such design revision is considered highly justified owing to the reasons discussed throughout this submission and outlined below. Accordingly a number of recommendations are suggested as also described below.

- The proposed building height significantly contravenes the NSLEP2013 (by up to 55.65m), with negative implications for the amenity of adjoining sites, the public domain and the broader character of the area.
- As a result, surrounding buildings, including the Beau Monde building, will lose views, solar access and privacy. Therefore the proposed development cannot be considered to be consistent with the NSLEP2013 objectives for building height or the North Sydney Centre, particularly as they relate ensuring '*an appropriate scale and density of development*', positively contributing to the character of the area, protecting the privacy of residents, protecting the amenity of residential areas and preventing overshadowing that would adversely impact on residential land.
- Whilst it is noted that the Beau Monde building is not located within a residential zone, it provides an important supply of centrally-located residential accommodation within a genuine and exemplary mixed-use building. In creating a vibrant and functional mixed use environment, the Beau Monde building accommodates the needs of businesses and residents, and therefore the protection of the amenity of this mixed use environment is highly important. Relatedly, the existence of a local resident population is essential to supporting a diverse day and night-time economy and therefore, whilst not directly providing commercial floor space, the site performs an important role in supporting surrounding commercial sites. Its protection from the potentially damaging effects of new development is therefore paramount.
- The proposed development, in both its approved and proposed form, devastatingly obstructs the views of the Beau Monde building owing to its significant building height and scale. As demonstrated within the View Analysis prepared in support of the modification application, the proposed development as modified will rectify some view loss whilst detracting from views for upper levels, as compared to the approved scheme.
- Whilst the Beau Monde building will not be affected by overshadowing, this Submission seeks also to articulate the wider public interest. It is therefore requested that Shadow Diagrams are prepared and made available for public comment prior to the continued assessment of the application. These Shadow Diagrams should detail the shadows cast by both the approved and proposed development at the Summer and Winter solstices, such that the impacts of the proposal on solar access may be holistically understood.
- Compared to the approved development, greater building separation is provided at some lower levels resulting in reduced opportunities for direct overlooking and therefore a greater level of privacy preserved for residents of the Beau Monde building. At upper levels reduced building separation is however proposed (up to 9m less separation) thereby exacerbating the privacy infringement inflicted by the development. Additionally, the greater building height creates new opportunities for overlooking whereby residents may feel as though they are being looked down upon by occupants of the commercial building's upper levels.
- The significantly expanded development of the site will adversely impact on the sense of enclosure experienced by adjoining properties. This impact is particularly consequential for residents of the Beau Monde building given the contravention of residential amenity to be inflicted.

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- As aforementioned, the height, scale and bulk of the proposed development are considered inconsistent with the character of the area. Whilst undeniably contributing the North Sydney economy through the provision of new commercial floor space, the proposed development undermines important objectives pertaining to the character and role of North Sydney as a diverse, amenable, attractive, sustainable and vibrant centre. By compromising the amenity of existing development, including the Beau Monde building and its significant residential component, the proposed development diminishes the attractiveness and sustainability of North Sydney instead prompting a mono-use character with low levels of amenity.
- In order to ameliorate the adverse impacts of the proposed development, it is recommended that the building height is reduced to what was previously approved. Whilst some loss of amenity is inevitable, and indeed will be experienced even resulting from what has already been approved, more equitable view sharing, access to natural light and ventilation, and privacy may be provided. This will reduce the far-reaching negative implications of the development, whilst still permitting the significant densification of the subject site and the efficient use of land.
- In order to ensure the proposed car parking provision will satisfy all demand generated by the development with no reliance on street parking required, more detailed assessment is considered necessary. This is particularly important given the state of existing roadways and street parking within the North Sydney centre which frequently experience congestion.
- Whilst the benefits of car share are acknowledged, the provision of car share spaces is not considered to eliminate demand for public parking for which need is considered to exist in North Sydney in order to ameliorate the existing parking situation and reduce demand for street parking. Accordingly it is recommended that prior to permitting the removal of approved public parking, detailed surveys and assessment are undertaken to quantify the existing and projected demand for public car parking.
- More detailed consideration of the ability of the laneways and surrounding streets to accommodate the traffic generation of the proposed development as well as all existing development is also considered necessary particularly owing to proposed changes to the operation of laneways which are anticipated to significantly impact on traffic flows.
- The proposed contravention of controls sets a dangerous precedent for the redevelopment of other sites which may similarly disregard Council's built form controls which have been implemented to promote the sustainable and just development of land in accordance with the public interest.

Given the significance of the proposed development in terms of the height and scale of the development and impacts on adjoining properties, it is evident that further assessment of the impacts of the development needs to be undertaken. Ultimately it is recommended that no additional building height is approved given the unacceptable amenity impacts incurred by residents of the Beau Monde building, as well as other adverse impacts relating to the amenity and character of the broader area and undesirable precedent. It is therefore considered vital that the matters raised in this submission are duly considered such that the public interest and optimal development outcome may be achieved.

Yours Faithfully,



Chris Wilson
Director
Willowtree Planning Pty Ltd