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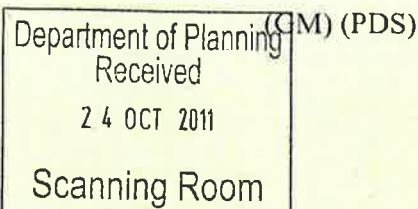
ABN 32 353 260 317

Department of Planning & Infrastructure  
Metropolitan & Regional Projects South  
Attention: Simon Truong  
GPO Box 39  
SYDNEY NSW 2001



PCU027185

21 October 2011



Dear Sir

**RE: 86-96 MOUNT STREET & 100 MOUNT STREET, NORTH SYDNEY  
SECTION 75W MODIFICATION FOR COMMERCIAL AND RETAIL  
DEVELOPMENT (MP08\_0241 MOD 1) – PART 3A CONSENT**

The abovementioned application was the subject of a report considered by Council at its meeting held on 17 October 2011.

At this meeting Council resolved as follows:-

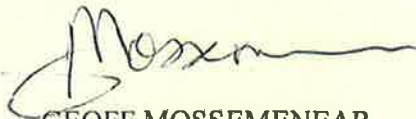
- A. **THAT** Council provide the Department of Planning and Infrastructure with a copy of the report.
- B. **THAT** the Department be advised that Council *strongly opposes any changes* to the Construction Hours in condition D1 *and does not support the modification of the construction hours proposed by the applicant due to the unacceptable amenity impacts on the adjacent residential flat building.*
- C. **THAT** the matters identified by Council's Design Excellence Panel be addressed by the applicant before the Section 75W application is determined.
- D. **THAT** the matters identified by Council's Conservation Planner be addressed by the applicant before the Section 75W application is determined.
- E. **THAT** the Department request certification of the existing building's gross floor area from the applicant before the contributions under conditions B5 and B6 are calculated.
- F. **THAT** should the Department grant consent to the application, Condition B8 be modified to relate to the vehicle access being changed from Spring Street to Walker Street.
- G. **THAT** the Department be requested to impose appropriate conditions which create public rights of way over the Mount, Walker and Spring Street setbacks and which confirm public access rights over the though site link between Mount and Spring streets during the hours of operation of the building.
- H. **THAT** the setback on the Mount Street elevation be increased from 4.2m to 4.8m.



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Should you have any further enquiries in this regard, please contact **the undersigned** between the hours of 9.30 am and 11.00 am, Monday to Friday, on telephone number **9936 8100**, or at any time on facsimile **9936 8177**.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'Mossemenear', with a long horizontal flourish extending to the right.

**GEOFF MOSSEMENEAR**  
**EXECUTIVE PLANNER**



**MEETING HELD ON 17/10/11**

**Attached:** Site Plan  
Plans

**REPORT TO THE GENERAL MANAGER**

**ADDRESS/WARD:** 86-96 Mount Street & 100 Mount Street, North Sydney (V)

**APPLICATION No:** Section 75W Modification Application for Commercial and Retail Development (MP08\_0241 MOD 1) – Part 3A Consent

**PROPOSAL:** Demolition of existing buildings, excavation, construction of a thirty six (36) storey commercial and retail building with 6 levels of basement car parking for 113 cars, and public domain improvements in Mount Street, Walker Street and Spring Street.

**PLANS REF:** Drawings numbered DA107 to DA140, dated 12 August 2011, drawn by Skidmore, Owings Merrill LLP and Architectus.

**OWNER:** Laing O'Rourke Mount Street Pty Ltd

**APPLICANT:** Laing O'Rourke Mount Street Pty Ltd

**AUTHOR:** Geoff Mossemear, Executive Planner

**DATE OF REPORT:** 10 October 2011

**RECOMMENDATION** Council's comments and recommended conditions to be forwarded to the Department of Planning and Infrastructure.

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## EXECUTIVE SUMMARY

The proposal for a 38 storey commercial building was determined as a Major Project under Part 3A of the Environmental Planning & Assessment Act 1979 with the Minister for Planning as the consent authority. The Minister granted approval on 25 May 2010 subject to the tower being setback 4.2m from Walker Street and parking numbers being reduced.

The applicant has submitted an application under Section 75W of the Act to modify the consent granted by the Minister in 2010. There are a number of changes to the approved development including:

- Relocation of core from north to west
- Improved ground floor plane to improve public space and movement through site
- Remove 2 vehicle access points in Spring Street and relocation to one access point in Walker Street to allow opportunity to create shared zone or possible closure of Spring Street in future
- Improvement to ESD performance
- Increase in GFA by 10%
- Relocation of amenities floor from basement to above ground

It is noted that the architects engaged on this project have changed and now comprise the Australian based practice Architetus and the Chicago based practice of Skidmore Owings and Merrill. It is of note that the latter firm are the project architects for the Burj Khalifa tower in Dubai which will rise to some 828 metres. Ownership of the project now resides with Laing O'Rourke P/L.

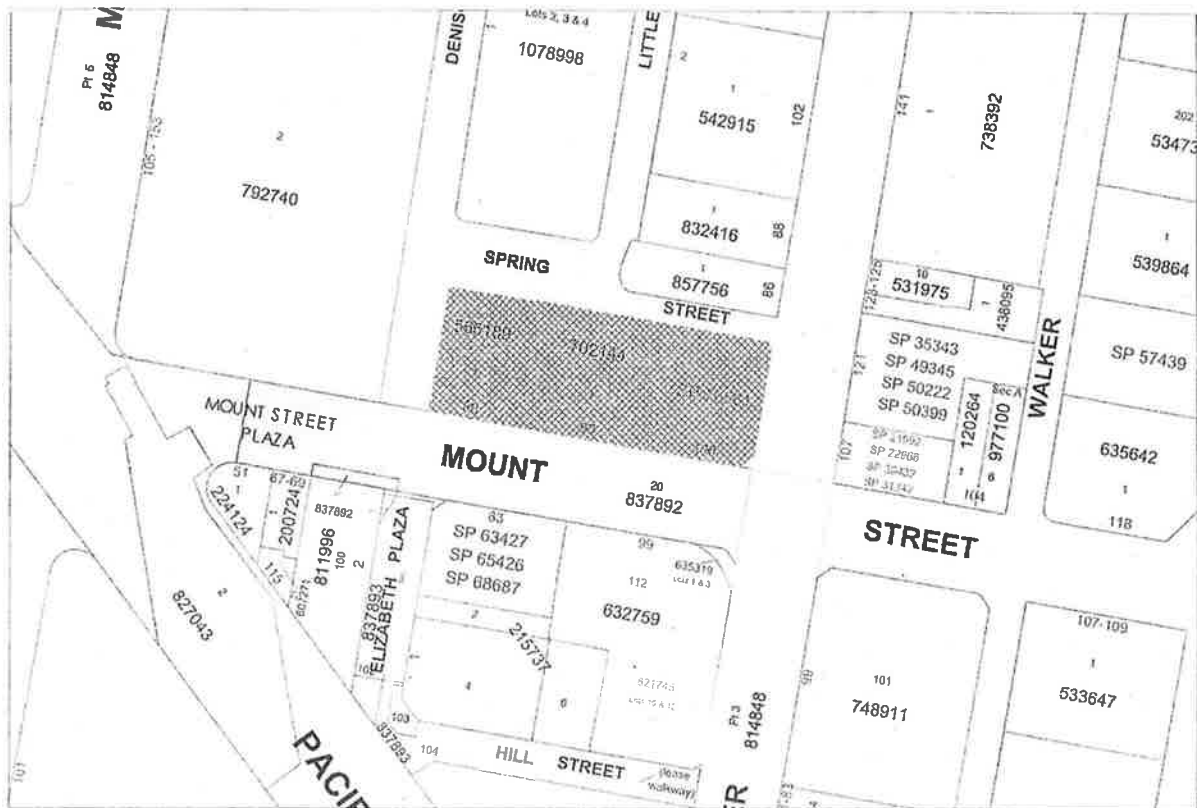
The plans lodged with the Department have been fine tuned following market appraisal and an additional 6,334m<sup>2</sup> of GFA has been included. Other refinements include the architectural structural steel brace, details of a triple layer pressurised external glazing system and an extended awning to Walker Street (partly due to the findings of the wind impact study).

Council was invited by the Department on 23 September 2011 to make a submission including advice on recommended conditions of approval by 14 October 2011. It would appear that the modification is not on public exhibition. The timeframe provided is considered to be unrealistic when dealing with a major project that has completely changed. The Department has been requested to allow additional time (21 October) for Council to consider the changes and provide its feedback. No response has been received at the time of writing this report.

The applicant had submitted plans separately to Council Design Excellence Panel on 29 June 2011 and more recently the final plans on 21 September 2011. The comments of the DEP are included in the following report.

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

LOCATION MAP



☐ Property/Applicant    ● Submitters - Properties Notified

## DESCRIPTION OF PROPOSAL

On 25 May 2010 the Minister for Planning approved Major Project (MP 08\_0241) for a Concept Plan pertaining to 86-96 Mount Street and 100 Mount Street, North Sydney. The development approved under MP 08\_0241 is summarised as follows:

- Demolition of the existing buildings on both sites.
- Excavation for 5 levels of basement.
- Construction and use of a 38 storey commercial and retail building together with 5 levels of basement car parking with vehicular access via Spring Street; and

Construction of through-site pedestrian link and on-site streetscape, footpath reconstruction and infrastructure works in Mount Street, Walker Street and Spring Street together with public art works.

Since obtaining indifferent market feedback on the approved scheme and Laing O'Rourke obtaining 100% control of the project, the redesign was necessary to:

- Create the most efficient and flexible floor plate for the end user that moved the building from A grade to Premium grade.
- Improve the sustainability of the design.
- Create the ground floor plane with respect to the office vision and enhance ground floor amenity and human activation
- Enhance the general appearance.

World renowned tower architects and engineers Skidmore Owings and Merrill were commissioned in combination with local architects Architectus. The process has arrived at a superior floor plate design, more efficient plant and energy efficiency features, improved interface with the public domain and improved architectural resolution in general. All these modifications can occur without any additional impact on the surrounding area, noting that the overall height and setbacks remain similar.

In a practical sense, the modified design includes the following improvements:

- Relocated lift core to the western side yielding significant savings in energy efficiency.
- Localised plant on each level allowing the reduction in dedicated plant levels.
- Improvement to ESD performance resulting from superior façade treatment and full chilled beam air conditioning system.
- A state-of-the-art double skin closed cavity façade system to allow high light penetration and excellent thermal insulation.
- An above-ground shower and change-room facility to enhance the amenity for cyclists and building occupants.
- An open-plan ground plane with operable walls to allow use as public-commercial space throughout the entire year – this space will be activated by a restaurant type facility.
- Reduction in vehicle access points to a single location off Walker Street thus reducing traffic movement, improving pedestrian amenity in the surrounding circuit and allowing flexible options for North Sydney Council including possible closure to Spring Street.

- Excellent pedestrian through-site accessibility and visibility with an improved relationship with adjoining public spaces.
- An elegant architectural expression.

Although generally within the approved building envelope, increase in GFA 38,733m<sup>2</sup> to 45,067m<sup>2</sup> achieved primarily through the improvement of the efficiency of the floor plate and plant systems.

These amendments to the project will be implemented through modification of the following conditions of Major Project Approval MP08\_0098:

- Condition A2 - to include new plans for reference.
- Condition B1 Design Modifications -- to be deleted.
- Condition B5 Monetary Contributions -- to be amended to reflect revised cost of works.
- Condition B6 Railway Infrastructure -- to be amended to reflect revised cost of works.
- Condition B13 Details of Materials, Colours and Finishes -- to be amended in accordance with revised plans.
- Condition B38 Number of Parking Spaces -- to be amended to reflect revised number of parking spaces.
- Condition D1 Construction Hours -- to be amended to reflect revised construction timeframe.

As the vehicle access is changing from Spring Street to Walker Street, Condition B8 Required Infrastructure Works - needs to be modified.

## **STATUTORY CONTROLS**

North Sydney L1(F1) 2001

- Zoning 'Commercial'
- Item of Heritage -- No
- In Vicinity of Item of Heritage -- Yes (No.86 Walker Street, former fire station; No.105-153 Miller Street, MEC Centre (State Significant); and No.67-69 Mount Street)
- Conservation Area - No

Draft North Sydney LEP 2009

Section 94 Contributions Plan

Environmental Planning & Assessment Act 1979

SEPP No.55 - Remediation of Land

SEPP (Major Projects) 2005

SEPP (Infrastructure) 2007

Sydney Metropolitan Strategy

## **POLICY CONTROLS**

DCP 2002

## DESCRIPTION OF LOCALITY

The subject site comprise two adjacent sites identified as Lot 1 in DP702144 (No.86-96 Mount Street) and Lot 1 in DP624581 (No.100 Mount Street). The site is located in the heart of the North Sydney CBD with the surrounding principal roads being Berry Street, Walker Street, Mount Street and Miller Street.

The site is directly bounded to the south by Mount Street, to the north by Spring Street, and to the east by Walker Street. The combined site is approximately 31m wide and 54.7m long with a site area of 1,750m<sup>2</sup>.

Existing development on No.86-96 Mount Street comprises a 12 storey commercial building. Existing development on No.100 Mount Street comprises a 7 storey commercial building with ground level retail and basement car parking. Vehicular access to both buildings is from Spring Street. The combined GEA of the existing buildings to be demolished is approximately 10,390m<sup>2</sup>.

Various commercial and retail buildings surround the site. These include the two storey heritage listed firehouse building at No.86 Walker Street (known as the 'Firehouse Hotel'), to the north of the site and 'Shopping World' on the southern portion of No.77-81 Berry Street, also to the north of the site. The Shopping World site (and No.88 Walker Street) is also the subject of a Part 3A consent by the Planning Minister.

## RELEVANT HISTORY

The Part 3A application was reported to Council on 7 September 2009 with a recommendation that Council resolve to object to the proposal for fifteen (15) reasons and that these reasons (and a list of draft conditions in the event that consent is granted) be forwarded to the Department for consideration. At the Council meeting on 7 September 2009, Council RESOLVED:

*THAT Council's comments and recommended conditions be forwarded to the Department of Planning subject to recommendation A being amended to read STRONGLY OBJECT.  
THAT a note be added regarding the status of draft amendment 28 to the NSLEP 2009.*

A letter was sent to the Department of Planning advising of the above resolution and including the required note regarding draft NSLEP2009 on 16 September 2009.

On 15 October 2009, the Department of Planning wrote to the applicant requesting that a response be provided to the issues raised in the submissions and that a PPR should be prepared identifying how these issues have been addressed and how the PPR minimises the environmental impacts of the proposal.

On 11 November 2009, at the request of the applicant, a meeting of Council's Design Excellence Panel was held. At the meeting, the architect of the scheme provided a presentation of the PPR proposal.

On 14 January 2010, the Department of Planning advised by email that a PPR for the proposal had been lodged with the Department and was available on the Department's website. Following a review of the PPR, a report was prepared for Council's meeting of 1 February 2010.



The report detailed the changes to the original plans and recommended that Council notes the amendments and writes to the Department restating its strong opposition to the proposal. Councillors subsequently resolved that the report be adopted.

The application was approved by the Minister for Planning on 25 May 2010. Details of the approval, comprising the Director-General's Assessment Report, appendices and conditions of consent, are available for review on the Department of Planning's website. There are no approved plans on the website, however condition A2 confirms that the approved plans are those as amended by the PPR and previously reviewed by Council on 1 February 2010. Two changes have been made to the plans via condition B1. The changes pertain to the setback of the eastern façade (to 4.2m) and the number of parking spaces being reduced to 97.

## REFERRALS

### Heritage

Council's Conservation Planner has provided the following comments with regard to the modifications:

#### *"1. Heritage Status and Significance"*

- *The properties are not heritage items and are not in a Conservation Area.*
- *The heritage-listed properties that are in the vicinity are:*
- *Firehouse Hotel (formerly North Sydney Fire Station) at 86 Walker Street, North Sydney*
- *MLC Building, 105-153 Miller Street, North Sydney*
- *Column, relocated from the Former General Post Office, George St, Sydney*
- *Former Bank of NSW Building at 51 Mount St*

#### *2. Heritage Impact Assessment*

##### *a) North Sydney LEP 2001*

*An assessment of the proposal, with reference to the following Clause of the North Sydney LEP 2001 has been made:*

##### *50 Development in the vicinity of heritage items*

*Firehouse Hotel (formerly North Sydney Fire Station) at 86 Walker Street, North Sydney*

*The submitted documentation does not document the Walker St elevation with the adjacent façade of the Firehouse Hotel. It is however, desirable that the awning of the proposed development be designed to sympathetically match the height of the Firehouse Hotel providing an appropriate scale to respect the heritage item.*

*MLC Centre, 105-153 Miller Street, North Sydney*

*The proposed amended development will be visible above the roof line of the MLC Building when viewed from Victoria Cross. It is not considered to be detrimental, as the MLC Building is already in the context of taller towers. The setback of the proposed building on Mount St is also consistent with that of the MLC Building. No objection is therefore raised.*

*Column from the Former General Post Office, George St, Sydney*

*The proposed change to the streetscape in the vicinity of the column will have negligible impact upon the column's significance and curtilage. No objection is therefore raised.*

*Former Bank of NSW Building at 51 Mount St*

*The building already has a backdrop of high rise buildings. Its curtilage and significance will remain entirely intact and hence, no objection is raised.*

##### *b) North Sydney DCP 2002*

*An assessment of the proposal, with reference to Section 8.8 of the North Sydney DCP 2002 has been made with the*

*following elements of the DCP being of note with regard to the proposal:*

*a. Curtilage – The proposed development will have negligible impact upon the curtilage of the nearby heritage items as they have lot boundary curtilage. The significance of the streetscape setting of the Firehouse Hotel should be retained by the careful resolution of the proposed Walker St façade at the street and Plaza Levels. Further documentation is required.*

*f. Setbacks – The amended Walker Street building line is setback 3.4 m from the front building line of the Firehouse Hotel. This is considered to be an appropriate means of respecting and acknowledging the heritage-significant façade and giving it some prominence. The setback of the Mount St elevation is consistent with that of the MLC Building and is considered to be appropriate.*

*h. Massing, Form and Scale – The proposed Plaza level void of the amended proposal, respects and acknowledges the massing of the Firehouse Hotel. The void will assist in creating a transition between the high tower and the two-level Firehouse Hotel.*

*The proposed awning on the Walker St elevation will project over the footpath and is to be minimalist in appearance. Its relationship to the Firehouse Hotel is not clear, as there is inadequate documentation.*

*i. Roof Forms and Materials – The proposed roof will not be read in the context of the roofs of the heritage items due to the difference in height, so no objection is raised.*

*l. Windows and Doors- Although non-compliant with element (ii), the glazed curtain wall on the Walker Street elevation is considered to be acceptable, as it is a successful means of acknowledging the scale and massing of the adjacent Firehouse Hotel.*

*m. Palette of Materials – No objection is made as the development is contemporary in form and the site is not located within a Conservation Area.*

*n. Colour Scheme- The submitted finishes are acceptable.*

*o. Characteristic Detailing – The detailing of the amended proposal is contemporary and will allow the decorative features of the Firehouse Hotel to dominate the immediate streetscape when viewed from the footpath. The diminution of the angled columns on the tower in this amended proposal is acceptable as they will no longer dominate the heritage item when viewed from the street.*

*r. Car Parking – The proposed car parking garage entry is considered to be in a satisfactory location on the Walker St façade. The void of the entry will assist in reducing the perceived bulk at street level by breaking the width of the building into three components that will have a sympathetic scale to the Firehouse Hotel. The detailing however is not yet resolved.*

### **3. Conclusion**

*Detail design work is required to document the relationship between the architectural elements on the Firehouse Hotel relative to the Walker St facade of the amended proposal.*

*It is recommended that:*

- Detail drawings at 1:50 scale, that label the alignment and relationship of the decorative features of the Firehouse Hotel (86 Walker St) relative to the street façade elements of the proposed development, be submitted. It is recommended that the level of the Walker St awning be at or below the central cornice level of the Firehouse Hotel. It is noted on Drawing DA 130 Issue A and 114 Issue A, that relationships are suggested. It is considered important that these alignments be carefully labelled to ensure that the development acknowledges the Firehouse Hotel's significance proportionally and spatially and that this does not inadvertently become modified with future design modifications.*
- Clarification is sought as to the Plaza level void as on drawing DA 113 A it appears to have glazing on the Walker St Façade and on drawing DA 114 A it is open. An open façade is preferred in the context of the Firehouse Hotel.*
- Street level splay at corner of Spring and Walker Streets to be deleted and building alignment redesigned to be parallel to street alignment to ensure that there is a sympathetic relationship with the Firehouse Hotel and its traditional setbacks.*
- Details of Walker St car parking entrance opening to be provided, including the materials.*
- Glazed balustrade above the Walker and Spring Sts awning to be setback to the main building line so that it does not visually intrude upon the void of the Plaza Level and its relationship to the Firehouse Hotel.*

*Subject to the resolution of the above, the following conditions are also recommended:*

***Dilapidation Survey Private Property (Neighbouring Buildings)***

- C1. *A photographic survey of the Firehouse Hotel, No 86 Walker Street, detailing the physical condition of the property, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Council and the Certifying Authority (where Council does not issue the Construction Certificate) prior to the issue of any Construction Certificate. This survey is to be prepared by an appropriately qualified person agreed to by both the applicant and the owner of the adjoining property.*

*All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.*

*In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written concurrence must be obtained from Council in such circumstances.*

*Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.*

*(Reason: Proper management of records)*

***Work Method Statement***

*A Work Method Statement is to be prepared by the Contractor for the works in close proximity of the Firehouse Hotel (86 Walker St) and is to be reviewed and approved by a suitably qualified and experienced heritage architect. Compliance with this condition is to be submitted to the certifying authority prior to the issue of any construction certificate.*

*(Reason: To ensure that construction workers are familiar with the protection requirements of the Firehouse Hotel (86 Walker St).*

***Alignment of features on 100 Mount St on Walker St Façade with Firehouse Hotel***

*Height of the proposed awning on the Walker Street façade match or to be less than the height of the mouldings at the central cornice of the Firehouse Hotel (86 Walker St). The glazed balustrade on the Walker St awning to be setback to be inline with the primary building line. The street level splay be modified to be parallel to the street such that there is a relationship to the alignment of the Firehouse Hotel.*

*(Reason: To respect the architectural features on heritage item and to account for the stepping of the buildings with respect to the topography.)"*

**Engineering/Stormwater Drainage**

Council's development Engineer has provided modified wording for the Engineering conditions requiring change.

**DESIGN EXCELLENCE PANEL**

The minutes of the meeting of 21 September 2011 are reproduced as follows:

**"ATTENDANCE:** *Panel Members: David Chesterman; Peter Webber; Russell Olsson; Phillip Graus.  
Council staff: Geoff Mossemeneer (chair), George Youhanna (Executive Planner)  
Proponents: Ray Brown (architect), Ben Lehmann (developer), Mark Maryska (developer), Paul Atree-Williams (planner).*

*The Panel has previously considered a proposal involving the demolition of existing buildings at 90 and 100 Mount Street and construction of a high rise office tower with vehicle access and loading facilities from Spring Street, at its meeting of 7 July 2009. The Panel could not support the proposal until the matters concerning a through site link, the levels of the ground level setback in Mount Street, the treatment of the building in the Walker Street elevation between levels 8 and 12 and the breach of the required building setback from level 22 up are addressed by the applicant.*

*A site inspection was carried out by the Panel and Council staff prior to the July 2009 meeting.*

*At its meeting of 11 November 2009 the Panel commented on the Part 3A Development Application as follows:*

*The Panel noted the changes to the public domain as a positive change subject to Council staff being able to comment on the loss of parking and increase in footpath widths in Mount Street. The change to Spring Street road and footpath treatment was acceptable.*

*The through site link was supported by the Panel and it was noted that the architect is looking at increasing the width if possible to activate the link with retail space. This is likely to be a very heavily used and popular route and require some imaginative detailed development.*

*The adjustment to the ground levels in Mount Street was noted by the Panel but the Panel felt that more could be achieved with moving the hydrants and planters to ensure a continuous travel path under the awning of the building. It is a very modest expectation that continuous cover for pedestrians should be provided for the full frontage, and this is particularly important on the southern orientation.*

*The Panel was very concerned that it is being assumed that the present street trees will have to be removed, they presently play a very important role in creating an attractive and cohesive character in both streets, and have now reached semi-maturity. Their loss would be extremely unfortunate and should not be taken for granted.*

*The Panel did not have an issue with the height of the building as previously stated, but questioned whether some modulation/setback of the top level on the eastern side might not satisfactorily overcome the objections of others in relation to overshadowing impact on nearby residential areas.*

*The Panel noted that the Character Statement for the CBD under Council's Development Control Plan recommends a weighted average setback of the tower of 5m from Walker and Mount Street and 4m from Spring Street. It was also noted that Council had not raised concerns with the non compliance of the setbacks for Mount Street and Spring Street that resulted in a substantial increase to the floor plate of the building.*

*The Panel is strongly of the view that the proposed projection forward of the tower at level 22 on the Walker Street facade should not be permitted. It is still felt that, if permitted, the upper portion of the Walker Street facade would set a precedent and that the cumulative effect would be to close the apparent width of Walker Street. The projection would also add to overshadowing and wind effects in Walker Street*

*The Panel also maintains their concern with the setback treatment of the building between levels 8 and 12. The recess above the two levels fronting Walker Street with the very assertive exposed structural frame is inappropriate in this context. This is not justified and is grossly out of scale with the building's setting.*

*The proposal was determined as a Major Project under Part 3A of the Environmental Planning & Assessment Act 1979 with the Minister for Planning as the consent authority. The Minister granted approval in May 2010 subject to the tower being setback 4.2m from Walker Street.*

***The Proposal:***

*The applicant is proposing modifications to the consent under Section 75W of the Act and the Department will be determining the application. The application has now been lodged with the department.*

*New architects have been engaged by the new owners (previously part owner) to create a more efficient and flexible*

*floor plate and to stay within the approved building envelope.*

*The Panel previously considered on 29 June 2011 a number of changes to the approved development including:*

- *Relocation of core from north to west*
- *Improved ground floor plane to improve public space and movement through site*
- *Remove 2 vehicle access points in Spring Street and relocation to one access point in Walker Street to allow opportunity to create shared zone or possible closure of Spring Street in future*
- *Improvement to ESD performance*
- *Increase in GFA by 10%*
- *Relocation of amenities floor from basement to above ground*

*The plans lodged with the Department have now been fine tuned and an additional 6,334m<sup>2</sup> of GFA has been included. Other refinements include the architectural structural steel brace, details of a triple layer pressurised external glazing system and an extended awning to Walker Street (partly due to the findings of the wind impact study). Signage at the upper level of the building has not yet been fully resolved.*

*The project architect Ray Brown provided a presentation of the latest amendments (as lodged with the Department) and was available for questions and discussion with the Panel.*

**Panel Comments:**

*It is considered that there should be a more thorough representation of the project in its context especially as the adjoining building has heritage status and is significantly smaller in scale. There appears to be no relationship between the proposed building and the heritage item. The Panel considered that additional perspectives/photomontages are required in order to show the relationship between the proposal and adjoining development. The views should be at street level at eye height, not raised as the current views indicate as this does not represent what will actually be seen from the public domain. The additional views required include:*

- *From Mount Street plaza west to Walker Street*
- *View showing 80 Mount Street*
- *From the south-east corner of Mount and Walker Street looking north up Walker Street showing the fire station site (86 Walker Street). This is particularly important given that the former fire station is a listed heritage item.*
- *Elevations to show adjoining sites*

*The frosted glass trafficable awning over Walker Street is generally supported, however, the Mount Street awnings should extend further out over the footpath, or lowered in order to provide weather protection for pedestrians, particularly given that they are considerably elevated above street level (by approximately 2-3 storeys). The possibility of disconnecting these from the level 1 floor and lowering them somewhat (admitting light to the lobby above them) would increase the cover that they provide and should be investigated. This would be consistent with previous advice in relation to amenity for pedestrians in Mount Street with regard to the impact of strong winds and the continuity of cover and protection from rain.*

*In relation to the air intake plenum adjacent to the stairs on Mount Street, it was noted that relocating and/or reducing the intake plenum size and relocating the adjoining w.c. internally would increase significantly the extent of activation of this frontage which adjoins a retail area and is in a prominent corner location. The architect advised that it may be possible to achieve greater activation, in part by locating the intake within the stair risers.*

*The 3.6m setback from Mount Street is considered inadequate and an additional 1.2m, which would provide a 4.8m total setback is required in order to facilitate improved pedestrian movement on Mount Street.*

*The Panel suggested that pedestrian movements along the through-site link might be improved by reconfiguring the northern stairs adjacent to the building entry on Spring Street. The Panel recommended that the through site link be kept as direct as possible.*

*The Panel continues to be concerned that the present street trees in Spring Street are shown to be removed, as they presently play a very important role in creating an attractive and cohesive character, and have now reached semi-maturity. If at all possible the street trees should be retained and protected during construction.*

*In relation to building signage, the Panel considered that although details have not been resolved (apart from being located behind the building façade), the quality of signage should be of a high standard in keeping with the high architectural quality of the building generally.*

**Conclusion:**

*In summary, the Panel notes the improvements and modifications as discussed at the presentation. Other matters of important detail, including additional perspectives or photomontages to show the relationship to surrounding development and matters identified above need to be addressed. The Panel will provide further comment when the additional information is available."*

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 75W**  
**Modification of Minister's approval**

**75W Modification of Minister's approval**

(1) In this section:

"Minister's approval" means an approval to carry out a project under this Part, and includes an approval of a concept plan.

"modification of approval" means changing the terms of a Minister's approval, including:

(a) revoking or varying a condition of the approval or imposing an additional condition of the approval, and  
(b) changing the terms of any determination made by the Minister under Division 3 in connection with the approval.

(2) The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.

(3) The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

(4) The Minister may modify the approval (with or without conditions) or disapprove of the modification.

(5) The proponent of a project to which section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request within 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.

(6) Subsection (5) does not apply to a request to modify:

(a) an approval granted by or as directed by the Court on appeal, or

(b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.

(7) This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan.

**CONSIDERATION**

The Minister has already granted consent to a high rise commercial building notwithstanding Council's previous objections. The impact on views, overshadowing and the height and setbacks have been determined. Council's consideration is limited to the changes in the building form, design, vehicle access, public domain and the increase in gross floor area.

**Building Height**

The proposed building height will be a maximum of RL 199.7 (145.7 metres measured from existing ground below that point) relating to the top of the brace structure proposed to the eastern facade of the building. This maximum height is the same maximum height as approved under the current scheme and will not result in any additional amenity impact upon nearby residential or open space areas.

As the lift core of the modified building has been relocated to the western extent of the site the lift overrun will result in an increased portion of height relative to the approved scheme, but no

higher than the total approved height. Otherwise, the majority of the roof of the plant room is lower than that approved. The portion extending up the approved height relating only to an architectural roof feature.

### **Building Setbacks**

The proposed building setbacks are similar to that approved, noting that the 4.2m setback to Walker Street remains in accordance with the existing condition of approval.

The proposed tower setbacks have been revised in line with the modified building concept which aims to create more efficient floor plates in addition to creating an integrated public/commercial space at the ground (lobby) level of the podium.

The modified proposal includes more regular building setbacks for the tower and is proposed to read as a more elegant form incorporating an open area at the base with a streamlined tower above. The tower building includes a setback of 1.2 metres to the south, nil metres to the north and nil metres to the west. The east setback presents a continuous setback to Walker Street of 4.2 metres in keeping with Condition B1 in the approval for MP 08\_0241.

The northern setback is similar to that approved and the southern setback is within that already approved but for portions at the western and eastern extent.

The base of the proposed tower building including the ground (lobby) level will read as an open and integrated space seamlessly transitioning to the public domain with no formal setbacks to Mount Street.

The setback from Walker Street to the operable glass walls will also be 4.2 metres as per the tower building above. The proposed setbacks to Spring Street and Mount Street at the "podium" level will range between 5 and 9 metres to the operable glass walls. The retail tenancies at Walker Street level are setback approximately 5 metres to allow room for chairs and tables associated with the café.

The approved building adopts a "reverse" podium at the tower base, a void above, but otherwise includes similar side setbacks to Spring and Mount Streets.

### **Building Facade**

The proposed building facade has been modified to improve ESD performance and appearance. The modified building facade adopts a more regular shaped, simplified tower presenting an elegant architectural expression.

A state-of-the-art double skin closed cavity façade system has been adopted to allow high light penetration and excellent thermal insulation. The building facade will also incorporate a finished concrete surface with exposed structural columns, curtain wall system and an architectural structural steel brace featured on the Walker Street elevation which will terminate in the highest building point.

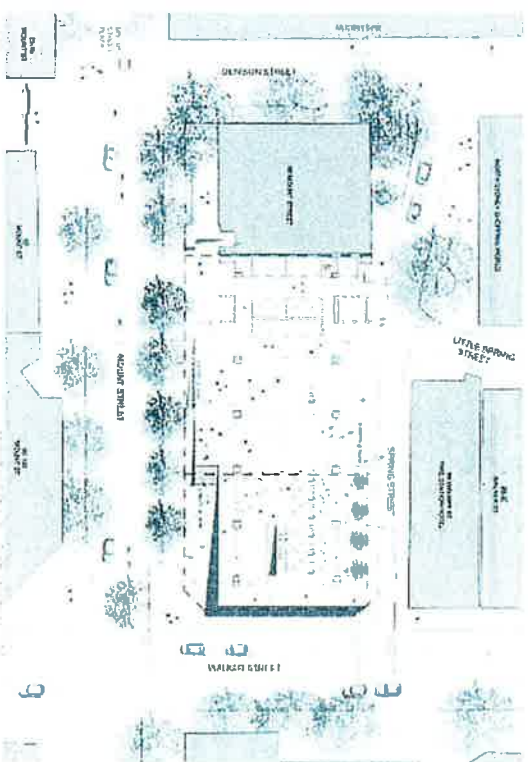
This facade treatment will represent a refinement of the approved building facade which included a "reverse podium" below the tower, a facade with varied setbacks incorporating protruding design features and exposed structural columns.

## Land Use and Floor Area

Although the building envelope will be largely consistent with the approved concept plan, the proposed modifications will result in an increase in GFA from 38,733m<sup>2</sup> to 45,067m<sup>2</sup>. This is largely due to the fact that the building floor plates have been more efficiently configured by the relocation and the minimisation of building core services; the provision of localised plant on each level allowing the reduction in dedicated plant levels; and a reduction in the setback at the western and eastern ends of the southern tower wall.

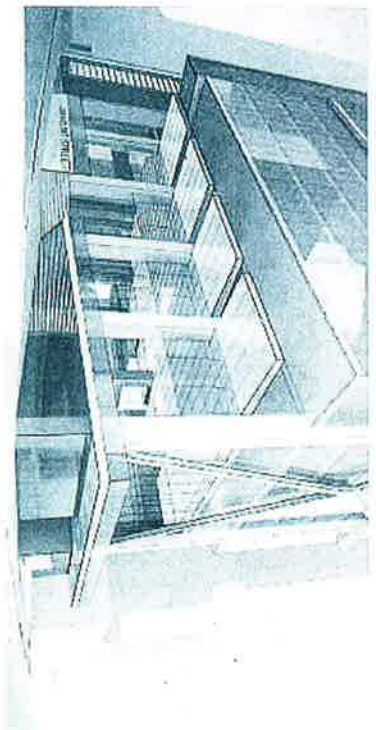
The proposed land use mix will not be changed from the approved concept, including a mix of retail and commercial. However, the retail use has been refined to better coordinate with the revised ground plane, making the area accessible for both passive and active public use. A retail space (café/restaurant) will occupy the Walker Street space and this use will be connected to an indoor/outdoor restaurant space off Mount Street level above, accessed via a central stair.

Thirty-three levels above will accommodate commercial floor space as well as one dedicated plant level (at roof level).

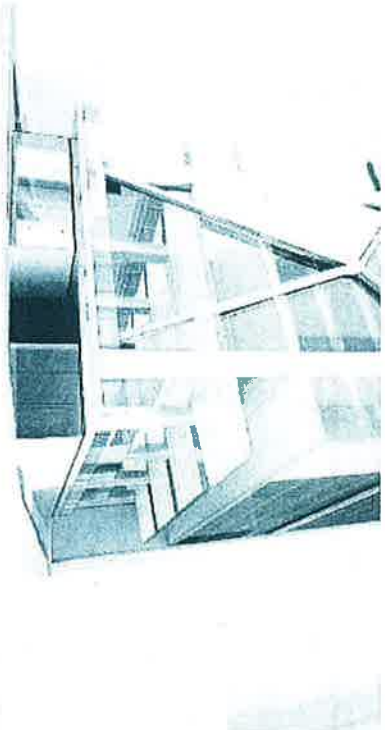


Site Plan showing ground level through site link

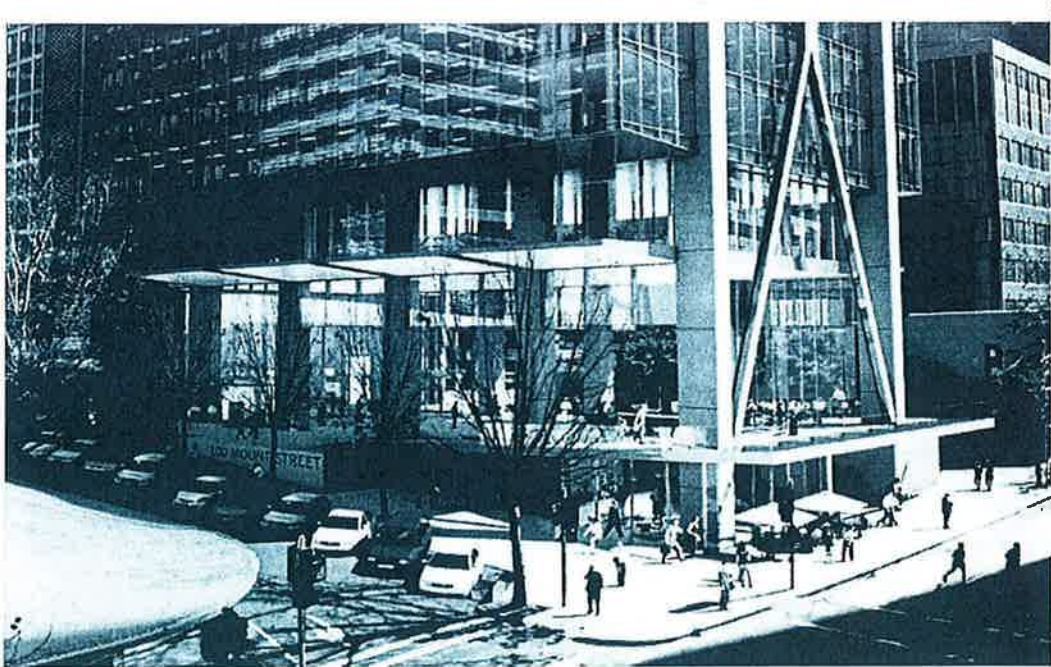




Walker and Mount Street Perspective



Walker and Spring Street Perspective



Photomontage of public domain and retail space at corner of Mount and Walker Street

### **Vehicle Access and Parking**

The proposed modifications include the reduction in vehicle access points from two points of access on Spring Street to a single point of access located off Walker Street. A single vehicle access from Walker Street is supported by the RTA and Council's Traffic Engineer.

This change enables key strategic improvements to the site enabling the opening up of the Spring Street facade to facilitate pedestrian circulation through and around the site and enabling a larger through site link from Spring Street to Mount Street.

Removal of the vehicular access points from Spring Street will also reduce the traffic movements in Spring Street and enable the use of Spring Street, and the entire Mount Street/Spring Street circuit as a pedestrian priority zone. In addition, all servicing will now occur at basement level as opposed to in Spring Street.

The modifications proposed will result in some key changes to the parking and access provisions at the basement level as follows:

- Deletion of one vehicular circulation ramp through the basement levels and relocation of existing circulation ramp providing access to Walker Street (not Spring Street).
- Relocation of the amenities area from Basement Level 1 to above ground.
- Relocation of loading dock from the western boundary at ground level to Basement Level 1.
- Increase and reconfiguration of parking spaces from 97 to 113 (including accessible spaces) over six levels.

- Centralisation of critical services (gas meter, fire control and fire booster) at the basement level with ground level access from the single storey wall at the eastern end of Spring Street.
- Relocation of bicycle storage facilities from Basement level 1 to Basement level 2,3,4,5 & 6 and increased provision for parking from 262 spaces to 272 spaces;
- Relocation of courier spaces from Basement Level 1 to Basement Level 1 and 2 and reduction of spaces from 7 to 6.
- Relocation of parking level lifts from northern site boundary to western site boundary to reflect changes to lift core location above.
- Inclusion of a substation at Basement Level 1 accessible via a hatch and stairs at ground level of Spring Street.

Overall, the proposal will result in more efficient utilisation of the approved basement area by minimising the area dedicated to circulation and plant room and removing the amenities area from the basement level.

The parking numbers are in accordance with Council's DCP requirements.

### **Pedestrian Access**

The relocation of the core to the west and the reduction in vehicle access points from two points of access on Spring Street to a single location off Walker Street has enabled a new concept for the site including a stronger focus on the public domain, the pedestrian focus for Spring Street and the provision of an improved through site link from Spring Street to Mount Street.

The proposal better integrates the ground floor plane with Spring Street and Mount Street and improves visibility toward the site from the public domain and improved relationship with adjoining public spaces.

The eastern half of the ground floor gains level access from both Spring Street and Mount Street and with operable walls will exist as a comfortable commercial/public space that can be used all year round.

### **ESD**

The modified design will represent a significant improvement to ecologically sustainable design principles, exceeding a 5 Green Star v.3 and a 5 Star NABERS Energy rating.

This improvement has been enabled by the proposed state-of-the-art double skin closed cavity façade system to allow high light penetration and excellent thermal insulation and the relocated lift core to the western side yielding significant savings in energy efficiency.

### **Construction Hours**

In order to improve OHS and mitigate the risk of accidents on site, the applicant will be aiming to maximise the amount of off-site pre-fabrication. This inherently requires more crane lifting time. Additionally, to achieve a more efficient and shorter construction timeframe, it is proposed to extend daily construction hours. An amended Environmental Noise Impact Report assesses the impact of extended construction hours. It is proposed to modify the condition to:

*Building construction shall be restricted to within the hours of 7.00am to 7.00 pm Monday to Friday and on Saturday within the hours of 7.00 am to 5 pm inclusive, with no work on Sundays and Public Holidays. Extended loading hours are within the hours of 7pm to 11pm Monday to Friday inclusive.*

While some economic benefit will flow to both the community and the developer, this represents an additional 2 hours weekdays and 4 hours on Saturday as well as the crane operating until 11pm weekdays. Council generally only allows extended construction hours for quiet internal fit outs where there are no deliveries or external activity. This is not what the applicant is suggesting here. The site is in proximity to Beau Monde residential tower and the extended construction hours for external works are not supported on that basis. It would also set an undesirable precedent for the construction of 1 Denison Street (88 Walkers Street) to the north.

## SECTION 94 CONTRIBUTIONS

The Section 94 contribution can easily be calculated once the increased GFA is known. When Council determines these applications, the applicant is required to provide a plan certified by the Architect or a Surveyor of the exact GFA of the existing buildings on site. The contribution is calculated as the difference between the existing and proposed GFA. The certified existing GFA has not been provided to Council and it is unknown whether the Department has requested this information with the original application.

## RAILWAY INFRASTRUCTURE

Clause 28(c) of NSLEP 2001 states:

### *28C Railway infrastructure*

#### *(1) Railway infrastructure objective*

*The specific objective of this clause is to ensure there will be railway infrastructure to accommodate the growth of the North Sydney Centre in accordance with this Division.*

#### *(2) Railway infrastructure control*

*Consent must not be granted to the carrying out of development on any land in the North Sydney Centre if the total non-residential gross floor area of buildings on the land after the development is carried out would exceed the total non-residential gross floor area of buildings lawfully existing on the land immediately before the development is carried out.*

#### *(3) Exception railway infrastructure control*

*Despite subclause (2) but subject to subclause (5), consent may be granted to the carrying out of development on any land in the North Sydney Centre that would result in an increase in the total non-residential gross floor area of buildings lawfully existing on the land, but only if the Director-General has first certified, in writing to the consent authority, that satisfactory arrangements have been made for railway infrastructure that will provide for the increased demand for railway infrastructure generated by the development.*

*(4) In determining whether to certify arrangements in accordance with subclause (3), the Director-General must consider the views of:*

*(a) the New South Wales Department of Transport, and*

*(b) any other public authority that the Director-General considers relevant.*

There is no evidence with the original consent whether the DG certified that satisfactory arrangements are in place and that the views of the Department Of Transport were considered.

The condition B6 imposed a requirement to pay an amount of \$3,038,304 by bank cheque to the Transport Administration Corporation prior to the issue of an **Occupation Certificate**. To calculate the correct amount, the certified existing GFA must be known as described above.

When Council determines an application for an increase in non residential floor space in the CBD, certified GFA calculations for the existing and proposed buildings are required. A commitment deed accompanied by a Bank Guarantee for the calculated amount is entered into with the applicant. The deed and Bank Guarantee is sent to the Department of Planning and Infrastructure and Transport and when they are satisfied, a certification from the DG is given pursuant to Clause 28(c). Development Consent can then be granted. Payment of the full contribution is required prior to the issue of the **Construction Certificate**.

It is considered that the method of dealing with Railway Infrastructure contributions by the Minister under Part 3A with this application and the approval for 88 Walker Street is inconsistent with the agreements reached between Council, the Department of Planning and the Transport Department in 2003. It seems unfair to other applicants that have entered into the commitment deeds and provided the bank guarantees and paid the contribution before construction commenced. It also seems that payment of the contribution at Occupation Certificate stage without a bank guarantee in place would result in the Transport Administration Corporation being put in a difficult position should a developer fail during construction of a large development. The Department should reconsider its position when considering the modification application with regard to condition B6.

#### **Draft North Sydney Local Environmental Plan 2009**

The Draft North Sydney Local Environmental Plan 2009 was on public exhibition from 20 January 2011 to 31 March 2011, following certification of the plan by the Director-General of the Department of Planning. It is therefore a matter for consideration under S.79C of the Environmental Planning and Assessment Act 1979. However at this stage little weight can be given to the plan since the final adoption of the plan is neither imminent nor certain.

The provisions of the Draft Plan largely reflect and build on the existing planning objectives, strategies and controls in the current NS LEP 2001 in relation to this site (inclusion of height controls). The proposed modifications will not substantially alter the level of compliance or the compliance with the Draft LEP objectives from the approved scheme.

#### **CONCLUSION**

Despite Council's objection to the original proposal, the Part 3A development has been approved by the Minister for Planning. The height of the approved form of development will be generally consistent with that allowed for under the Draft North Sydney LEP 2009.

Public benefits arise from the approval in the form of section 94 contributions, Railway Infrastructure Contribution, various public domain works, public art and through-site link together with the economic benefits of the provision of premium grade commercial floorspace.

Council will play an important role in working to ensure the finer details of the approval are suitably resolved i.e. off-site works including streetscape improvements and works required under the Roads Act 1993, and to ensure disruption caused by the development to neighbouring residents and the surrounding business community is minimised as much as possible.

The modification is considered to be an application to which 75W applies for the following reasons:

- The principal use of the building, being primarily commercial with lower level retail, remains the same.
- The building remains generally in accordance with the approved building envelope and any additional floor area has been the result of design and engineering efficiencies.
- The proposal does not introduce any new adverse amenity impact upon the surrounding area.

The design of the tower and public domain area are considered to be a definite improvement on the approved plans. The design outcomes are reflective of the international partnership between the prominent Australian architectural firm and a world renowned international practice. Vehicle access from Walker Street instead of Spring Street is supported.

Additional information and matters as identified by Council's Design Excellence Panel and Council's Conservation Planner need to be addressed before the Department can consider the application.

Before the Section 94 contribution and Railway Infrastructure contributions are recalculated, the existing Gross Floor Area needs to be certified to properly determine the increase in GFA.

The modification to the Construction Hours condition is not supported as it would adversely affect the neighbourhood amenity and create an unacceptable precedent.

The rewording of the conditions is relatively straightforward and Council does not need to comment other than with regard to Condition B5 – Monetary Contribution and B6 – Railway Infrastructure. As the vehicle access is changing from Spring Street to Walker Street, Condition B8 - Required Infrastructure Works - needs to be modified.

#### **RECOMMENDATION**

- A. **THAT** Council provide the Department of Planning and Infrastructure with a copy of the report.
- B. **THAT** the Department be advised that Council does not support the modification to the Construction Hours condition D1.
- C. **THAT** the matters identified by Council's Design Excellence Panel be addressed by the applicant before the Section 75W application is determined.
- D. **THAT** the matters identified by Council's Conservation Planner be addressed by the applicant before the Section 75W application is determined.
- E. **THAT** the Department request certification of the existing building's gross floor area from the applicant before the contributions under conditions B5 and B6 are calculated.
- F. **THAT** should the Department grant consent to the application, Condition B8 be modified to relate to the vehicle access being changed from Spring Street to Walker Street.

**ORIGINAL SIGNED**

**Geoff Mossemeneer**  
**EXECUTIVE PLANNER**

**Stephen Beattie**  
**MANAGER DEVELOPMENT SERVICES**