



**MEETING HELD ON 18/10/10**

**Attached:** Site Plan  
Architectural Plans  
Shadow diagrams  
Minutes of Design Excellence Panel 11/11/09  
Minutes of Councillor In-house Meeting 06/04/10  
Recommended conditions

**REPORT TO THE GENERAL MANAGER**

**ADDRESS/WARD:** 6-16 Atchison Street, St Leonards (W)

**APPLICATION No:** **PART 3A DEVELOPMENT** Department of Planning  
Reference: MP 09\_0187

**PROPOSAL:** Project Application for demolition of existing buildings/structures, excavation and construction of a 34 storey mixed use building with hotel, retail space, 228 apartments with basement carparking for 168 cars, through site link and public domain works.

**PLANS REF:** Drawings numbered PA-100-01 to PA-100-17 (inclusive), PA-200-01 and 02, PA-210-01 to PA-210-07 (inclusive), and PA-300-01 to PA-300-04 (inclusive), dated July 2010, drawn by Francis-Jones Morehen Thorp Pty Ltd, and Stormwater Drainage Concept Plans numbered H 100 to H 117 (inclusive), Issue 01, dated March 2010, drawn by Warren Smith and Partners Pty Ltd.

**OWNER:** Kingsmede Projects Pty Ltd and Elbeso Pty Ltd

**APPLICANT:** City Plan Services, on behalf of Bancor Developments Pty Ltd

**AUTHORS:** Ian Pickles, Executive Planner  
Nicola Reeve, Senior Assessment Officer

**DATE OF REPORT:** 12 October 2010

**DATE OF EXHIBITION:** 29 September 2010 until 29 October 2010

**RECOMMENDATION:** Council's comments are forwarded to the Department of Planning

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## EXECUTIVE SUMMARY

This report has been prepared to provide Councillors with details of the Major Project Application for a mixed use development at 6-16 Atchison Street, St Leonards, lodged with the Department of Planning pursuant to Part 3A of the Environmental Planning and Assessment Act, 1979.

The proposed development comprises that following:

- Demolition of the existing structures on the site;
- Ground level entry lobbies, 238 m<sup>2</sup> refreshment room and services;
- A 38 unit hotel (serviced apartments) on the podium levels and four levels of the tower;
- 228 residential apartments on the upper 28 levels;
- 168 basement car spaces and associated plant and services;
- A through-site pedestrian link from the street frontage to the rear lane, widened footpath, and public domain works.

Included as part of the application is a voluntary planning agreement that will see eight units transferred to Council “free of charge” for affordable housing purposes.

The application is on exhibition from 29 September 2010 until 29 October 2010. This application is reported to Council in order for Council to provide a formal response to the Department of Planning on the proposed development.

The key issues relating to this application are the excessive height of the building which is 60m higher than the maximum permitted by NSLEP 2001, the excessive bulk and scale and floor plate of the tower, inadequate setbacks, and the unacceptability of a proposal involving such significant breaches of the basic planning controls being dealt as a development application/approval, thereby bypassing and prejudicing the strategic planning process.

The Minister for Planning is the consent authority for the proposal and all submissions relating to the proposed development are to be considered by the Department of Planning rather than Council.

It is of importance to note in Council’s consideration of this proposal, that the provisions of Part 3A effectively remove a project so declared from the local planning process to the extent that the applicable Local Environmental Plans and Development Control Plans become guiding documents and are not given statutory weight.

**This report considers the proposed development against the relevant controls. It is ultimately the recommendation of this report that Council objects to the proposed development in its current form, and forward a submission to the Department of Planning.**



## BACKGROUND

On 9 June 2005, the NSW Parliament passed the *Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill*. This contained key elements of the NSW Government's planning system reforms through major changes to both plan-making and major development assessment. The Act was assented to on 16 June 2005. A key component of the amendments was the insertion of a new Part 3A (Major Projects) into the *Environmental Planning & Assessment Act, 1979* (EP&A Act). On 1 August 2005, the new Part 3A and related provisions commenced.

Part 3A applies to major State government infrastructure projects, development previously classified as State significant, and other projects, plans or programs of works declared by the Minister. The State Environmental Planning Policy (SEPP) for State Significant Development gazetted on 25 May 2005, was accordingly amended to reflect the new arrangements and was renamed as State Environmental Planning Policy (Major Projects).

Clause 13 of Schedule 1 of the SEPP (Major Projects) identifies the following as being Part 3A Major Projects:

### *“Residential, commercial or retail projects*

- (1) *Development for the purpose of residential, commercial or retail projects with a capital investment value of more than \$100 million.”*

Given the proposed development has an estimated capital investment value of \$156,372,008, it is in excess of the \$100 million threshold referred to above. As such, under Clause 6 of the Major Projects SEPP, the Minister's delegate has formed the view that the project is one to which Part 3A of the EP&A Act applies by virtue of it being development of a kind that is described in Schedule 1 of the SEPP (Major Projects). This means the proposed development will be assessed by the NSW Department of Planning and the Minister for Planning will make a final determination.

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.

## DESCRIPTION OF PROPOSAL

The subject proposal is summarised as follows:

- Demolition of the existing buildings and structures on the site;
- Erection of a 34 storey mixed use development comprising the following elements:
  - Ground level (upper and lower) entry lobbies, 238 m<sup>2</sup> refreshment room and services;

- A 38 unit hotel (24 studios and 14 x 1 bedroom serviced apartments) on podium level A (which includes an indoor swimming pool) and on levels B, C and D;
- 228 residential apartments (48 x studio units, 91 x 1 bedroom units, 68 x 2 bedroom units, and 21 x 3 bedroom units) on levels 6-33;
- 5 and a half basement levels containing 168 car spaces (152 for residential and 16 for hotel), 17 motor cycle spaces, garbage storage and compactor, residential storage, services, plant and loading dock;
- At ground level, a landscaped through-site pedestrian link, forecourts adjacent to the residential and hotel entry lobbies, and footpath to the Atchison Street frontage under the podium widened by 4.5m to 7m.

The maximum building height of the proposed development is 109m, and the floor area and floor space ratio (FSR) statistics are as follows:

Site area = 1740.6 m <sup>2</sup>	Floor area	Floor space ratio (FSR)
Non-residential floor area	3,498 m <sup>2</sup> (comprising 2,653 m <sup>2</sup> serviced apartments, 238m <sup>2</sup> refreshment room, and 607m <sup>2</sup> gymnasium)	2:1
Residential floor area	21,464 m <sup>2</sup> (comprising 228 apartments)	12.33:1
Total or gross floor area	24,962 m <sup>2</sup>	14.33:1

The application also proposes the dedication to Council of eight (8) apartments on the lower levels of the tower for affordable housing via a Voluntary Planning Agreement, and a proposed Deed of Agreement with Council in respect of the widened footpath and through-site pedestrian link.

## STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No

S94 Contribution – Yes

Environmental Planning & Assessment Act 1979

SEPP No. 1 – Development Standards

SEPP No. 55 – Contaminated Lands

SEPP (Major Projects) 2005

SEPP (Infrastructure) 2007

Draft North Sydney LEP 2009

## **POLICY CONTROLS**

DCP 2002

## **DESCRIPTION OF SITE AND LOCALITY**

The subject site is located on the northern side of Atchison Street between Mitchell Street and Christie Street. The site is approximately rectangular in shape with frontages of 50.295m to Atchison Street and Atchison Lane, and a depth of 34.32m to 35.7m. The site which comprises three existing lots, has a total area of 1,740.6m<sup>2</sup>. The site has a moderate slope with a total cross-fall of 5.8m from a high point at the south-east corner to its north-west corner.

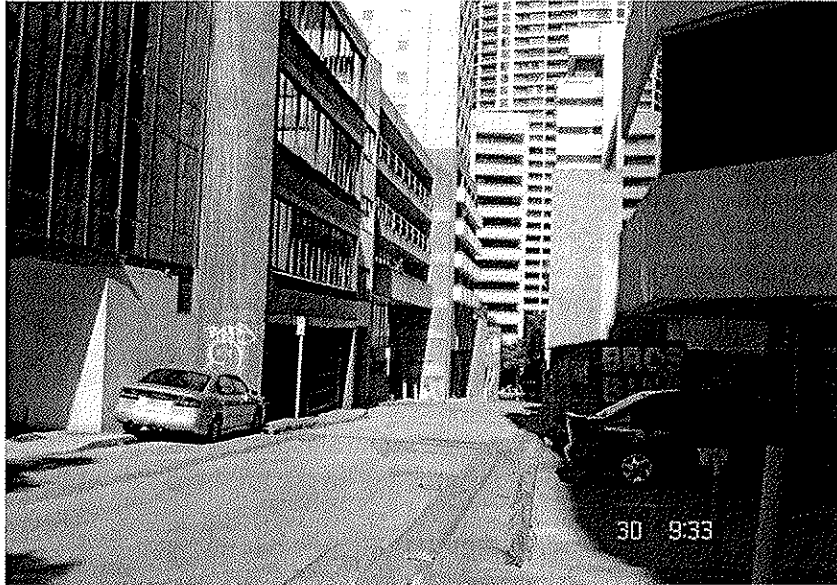
Atchison Street is a one way street within a road reserve of approximately 20m, within which landscape, road and public domain improvement works were carried out by Council in 2005. Atchison Lane on the north side of the site is a two way laneway within a road reserve varying in width from approximately 5.4m to 6.9m.

Existing on the site are 2 x 3 storey and 1 x 4 storey commercial buildings with parking under. These buildings have a combined current commercial floor space of about 5,000m<sup>2</sup> (applicant's figure), with a total of 60 on-site car spaces.

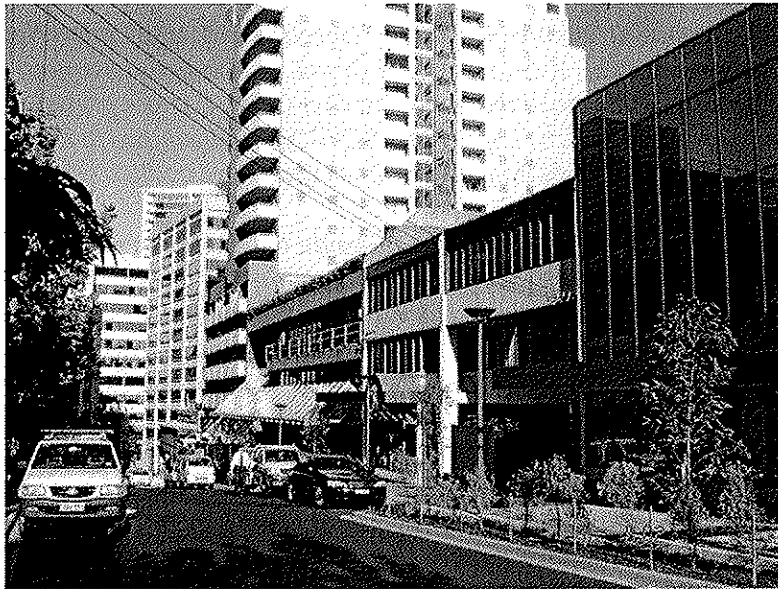
Adjoining And surrounding development comprises:

- To the west is a 16 level mixed-use development No 2-4 Atchison Street known as "Linea";
- To the east is a 5 storey commercial building, No 20 Atchison Street;
- To the north of the site on the opposite side of Atchison Lane are:- a 11 storey mixed use development No. 11 Chandos Street known as "Habitat", 2 x 3 storey commercial buildings No's. 21 and 23 Chandos Street, and a 7 storey commercial development No. 33 Chandos Street;
- To the south on the opposite side of Atchison Street are:- 2 storey and 7 storey commercial buildings at No. 617A Pacific Highway, and a prominent 17 storey commercial building at No. 601-609 Pacific Highway known as the "IBM" building;
- Further to the south-east is a 18 storey mixed use development known as "Abode" at 599 Pacific Highway; and
- Further to the west within the St Leonards Railway Station Precinct is a 38 storey mixed use development known as the "Forum".

This part of St Leonards is undergoing rapid change with the revitalisation of the centre and re-development of many sites from low to medium scale commercial and service industry sites to multi storey mixed use developments.



**View of rear of site (Atchison Lane) looking west**



**View of site at Atchison Street frontage (looking west)**

## **RELEVANT HISTORY**

### **The previous development application DA 469/05:**

Council has previously considered a development application (DA 469/05) for a mixed use building having a height of 81.5m, for approval in principle (staged development) comprising the elements summarized below:-

- Demolition of the three (3) existing commercial office buildings on the site,

- Erection of a 24-storey mixed use development consisting of:
  - 170 apartments on levels 2 to 24.
  - Childcare centre of 357m<sup>2</sup> for 40 children and café/restaurant of 292m<sup>2</sup>, each with external courtyard, on level 1 (ground level).
  - Two (2) delivery bays for large rigid vehicles parallel to the laneway partly within the site and partly within the laneway.
  - 154 car spaces within four (4) excavated lower ground and basement levels, containing also residential storage, communal meeting room/ swimming pool/spa/sauna/children's play area/sauna and toilets, garbage storage, plant rooms and vehicle entry/exits to Atchison Lane on the northern side of the site.

At its meeting of 27 March 2006 Council **RESOLVED**:

*PURSUANT TO SECTION 91 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)*

- A. *THAT Council defer consideration of Development Application No. 469/05 for the redevelopment of No's. 6-16 Atchison Street, St Leonards as a multi-level mixed use development, and advise the applicant that Council is not prepared to support the current proposal and the applicant's SEPP No. 1 objections in respect of significant departures from the building height, floor space and podium controls of Clauses 29, 31 and 32 of NSLEP 2001.*
- B. *THAT the applicant be advised that should the applicant wish to proceed with the proposed development, then an application to amend the NSLEP 2001 in conjunction with an amended development application should be submitted to Council in accordance with Section 72K of the Environmental Planning & Assessment Act 1979, on the basis of the current plans being amended to include consideration of the following but not limited to:*
  - *Provide a podium of generally matching the scale of the podium of the adjoining development at 2-4 Atchison Street over the western and central parts of site; Council may favourably consider an open through-site area at ground level on the eastern side of the site podium;*
  - *Setback the tower to comply with the separation distance criteria of the SEPP 65 Residential Flat Design Code and the NSDCP2002;*
  - *Provide adequate level of commercial floor space within the podium and lower levels of the building to satisfy the objectives of the NSLEP 2001, address solar access and cross-ventilation;*
  - *Provide adequate facilities for delivery vehicles as recommended by Council's Traffic Engineer, and also address design issues in relation to the car parking and vehicle ramps identified by the Development Engineer and Traffic Engineer.*
- C. *THAT Council appoint an independent Urban Design expert, at the applicant's expense, to review the design in consultation with neighbouring buildings in order to develop a valid case to proceed to the next step of the rezoning process. Such review is to include but not be limited to those matters outlined in Part B.*



The applicant subsequently withdrew development application 469/05 in March 2007.

Council's Design Excellence Panel considered a new proposal from a different applicant and architect, involving various options from a mixed use building from 80m to 118m in height, on 12 March 2008 and 9 May 2008. The Panel did not support the proposals explicitly but put forward suggestions for a basis on which a taller building might offer a better urban design and environmental outcome than a 'compliant' development.

**The current Major Project application:**

The current applicant requested a meeting with Council staff to foreshadow the proposal; this meeting took place on 6 November 2009. Council's Design Excellence Panel on 11 November 2009 considered the applicant's preliminary proposal. The minutes of the Panel's meeting are attached for information (see the Panel's comments later in this report under the heading "Referrals").

Council was advised in correspondence from the NSW Department of Planning dated 3 December 2009 that the delegate for the Minister for Planning had formed the opinion that the proposal met the mandatory criteria for a Major Project under State Environmental Planning Policy (Major Projects) 2005 to which Part 3A of the Act applies. On 21 January 2010 the Director-General's Environmental Assessment Requirements for the project were issued.

**Councillor In-house Meeting:**

On 6 April 2010, a Councillor In-house Meeting chaired by the Mayor took place in the Supper Room concerning the proposal. A laptop presentation was provided by the architect with additional comments from the planning consultant.

The presentation focused on the strategic context of the site and the shadow impacts of a tall tower on the site. The height control for the site is currently 49m. The applicant advised of increased height controls to the southern side of the Highway of up to 72m in commercial zones within Lane Cove Council area. The design, footprint and location of the proposed 109m tower were identified in more detail. Possible variations to the setbacks of the tower were also presented and discussed.

Councillors were provided with a copy of the minutes of the Design Excellence Panel meeting held on 11 November 2009 when a similar presentation was made. The applicant stated that one of the Panel members had no issue with the proposed heights but the minutes of the meeting did not record that opinion. Council's Manager Development Services (S Beattie) advised Councillors that the Panel minutes are prepared as a consensus view after considerable discussion, after the applicants left the meeting, and are endorsed by the members of the Panel, and the minutes are not edited by staff in any way.

Councillors present at the In-house Meeting had concern with the increase in height and density from the proposal they had earlier seen (DA.469/05). The height proposed is substantially above the current controls and Council's policy.

A further briefing of Councillors by the applicant and Council staff has been scheduled for 6:00pm, 18 October 2010.

Then on 27 September 2010 Council was advised of the formal submission of the Environmental Assessment for this project, and the exhibition / notification of the project by the Department of Planning commencing on 29 September 2010 and ending on 29 October 2010.

Given the level of public interest in previous Part 3A applications, and given the scale of the proposal, Council staff arranged for all Precincts to be notified of the application, where the exhibition material may be viewed, and the process for making a submission to the Department.

## REFERRALS

### Design Excellence Panel

The members of the Design Excellence Panel gave consideration to two preliminary design options for this project on 11 November 2009.

The Panel commented as follows:

*"The Panel accepts that a variance in height could be a better outcome than a uniform 49m high building providing this can be clearly demonstrated with no adverse impacts*

*The Panel noted that a precisely located smaller footprint high rise tower could be more beneficial in terms of shadow impact than a squat lower building compliant with the current planning controls.*

*The Panel noted that the Forum building has an existing FSR of 10.6:1 for a building of similar height to the 109m tower. The Panel questioned the accuracy of the material with regard to the FSRs for the IBM building (shown as 16.2:1 – when it is a commercial building of 13 storeys) and the Abode (17.5:1 - mixed use with two towers with the tallest being 19 storeys and the other 11 storeys with generous setbacks and separation).*

*The Panel also noted that Council's DCP Character Statements allow for a stepping down from the highest building at the Forum down to 2-3 storey commercial development in Willoughby Road Crows Nest.*

*The Panel noted that it is common practice for taller buildings to have a reduced site cover to ensure adequate separation between buildings which is evident with the Forum development. The FSR should remain similar to a compliant building and not be substantially increased to ensure that the site cover of the tower is reduced. The only justification for some increase in the FSR may be the provision of public facilities.*

*Before a taller building could be supported, it needs to be demonstrated that the taller building delivers a clear public benefit. The Panel noted that the proposed ground floor and public domain area is improved and there may be room for further improvement with more tree planting along the rear lane frontage. Shadow impacts on Atchison Street and public spaces opposite need to be considered when looking at lower level setbacks. The Panel would also prefer more detail showing the views from real people's eye-level showing the full street context as well as from the Lane.*

*The Panel is not convinced that the proposed taller tower is actually significantly thinner than the maximum footprint that could be approved (taking SEPP 65 building separation "rules of thumb" into account) for a 49m high building. Setbacks need to take into account the interface of the development to the west as well as adequate separation to future development on the northern side of the Lane. Setback of the tower to Atchison Street to the extent shown is not necessarily desirable.*

*The character of the lane should be enhanced with planting, paving, lighting, artwork or other means.*

*The Panel still has concerns about the amenity of the proposed apartments with regard to the Residential Flat Design Code's (RFDC) "rule of thumb" recommendations for solar access and cross ventilation. The system of cross ventilation of single fronted apartments presented needs to be thoroughly tested as the proposal would have much less than the recommended 60% of apartments having cross ventilation. This would be improved with a more slender footprint.*

*The applicant proposes a community facility such as a child care centre at first floor, however the issues of building setbacks, height, environmental performance and ground level amenity need to be further resolved before the community facility is considered."*

The Panel concluded as follows:

*"The Panel considers that more work is required on the floor plan of the tower and the floor plate of the tower needs to be reduced further. A thinner building will result in further shadow improvements and better separation distances.*

*The Panel notes that under the RFDC, the separation requirement is increased as the height increases. An average setback for a uniform tower may be acceptable provided it can be demonstrated that the average of the setbacks (vertical and horizontal) generally complies with the rule of thumb recommendations. Precedent setbacks of developments approved prior to SEPP 65 are not helpful and should be disregarded. Variations would only be considered if the amenity of the adjoining development is not compromised.*

*The Panel considers that the floor space ratio of the taller building should be similar to a compliant shorter building (around 11:1 which is similar to the FSR for the Forum) and that any increase would only be accepted on the basis of demonstrated additional public benefits such as public domain areas, improved solar access to surrounding areas etc. The Panel considers that any built form that does not step down from the Forum in keeping with Council's stated policy is unacceptable regardless of amenity and other concerns. Council does not propose a dome control. The proposed 109m tower with a FSR of 16.5:1 is not supported by the Panel."*

(Note: Arrangements have been made for the Design Excellence Panel to give consideration to the final plans and relevant supporting material for this project at its meeting to be held on Wednesday 13 October 2010. It is intended that the minutes of the Panel's meeting concerning this project be conveyed to Council via an Addendum Report to Council's meeting on 18 October 2010).

## Strategic Planning

Council's Senior Strategic Planner (B Strafford) advises in a memorandum dated 8 October 2010 that Council's strategic planners have undertaken an initial review of this proposal and make the following comments:

*"Firstly, Council has prepared a new draft Local Environmental Plan for the whole LGA which should soon be placed on public exhibition. During the progression of the draft LEP towards exhibition Council has demonstrated to the Department that the proposed planning controls for St Leonards are capable of achieving the dwelling and commercial floor space targets contained in the draft Inner North Sub-regional Strategy. The draft LEP itself proposes a height of 49 metres for the site and at no point were these height controls flagged as requiring review or revision.*

*Should this application be approved in any form above the existing height control it will impact upon the future planning framework for the entire area. The strategic planning framework of an area should **not** be determined by applications relating to an individual site.*

*Further, Council is endeavouring to 'plan' for potential outcomes resulting from the new planning paradigm in which consent authorities other than Council can reject long standing planning controls with little strategic regard for their impact on planning frameworks.*

*The mixed use zonings introduced in the St Leonards/Crows Nest area in 2001 were the key manifestation of Council's strategic direction for the area. The 936 dwellings delivered since December 2001 and the capacity illustrated by the Draft RDS show that residential targets for that area and indeed the LGA are being, and can continue to be achieved, under the current and proposed controls.*

***Height:** The application seeks approval for a height more than double the current control. There is no strategic basis for this level of proposed breach. The proposal is not supported by a planning proposal or wider strategic study for the site and surrounding precinct.*

***St Leonards Strategy:** The St Leonards Strategy was an inter-Council strategic study adopted by Council in December 2006. The Strategy was undertaken to guide the three St Leonards councils in implementing the Sydney Metropolitan Plan and Draft Inner North Subregional Strategy through each council's comprehensive draft LEPs. None of the recommendations of the St Leonards Strategy (as it relates to North Sydney) suggested any change to the height controls. The Strategy cannot be relied upon to justify such an upzoning.*

***Residential Development Strategy:** The North Sydney draft Residential Development Strategy (RDS) in part informs the content of NSDLEP 2009. The RDS illustrates that Council, under its current controls, is able to meet its housing targets without any substantial upzonings of land.*

*Draft North Sydney LEP 2009: DLEP 2009 has not yet been publicly exhibited, and can therefore be given no statutory weight when considering the proposal. Notwithstanding this, the DLEP is largely a translation of existing controls, made possible by the illustration of strategic studies which show that residential and commercial targets can be achieved largely via existing controls.*

*Environmentally Sustainable Development (ESD): The documentation states that the proposal has the 'potential' to gain a 5-star energy rating, and that on-site renewable energy production will be 'maximised'. The documentation goes on to say that this will extend to solar hot water heating. This is not considered to be maximising on-site energy production. Rainwater harvesting is to be used only for swimming pool re-filling and for irrigation systems – the provision of greywater recycling could be utilised. Plantings should be utilised in conjunction with solar panels on the roof to improve the efficiency of those panels.*

*Public Benefit: The provision of a through-site link to Atchison Lane is the main tangible public benefit proposed. There is no public benefit proposed that is close to being commensurate with a building more than double the height allowed."*

#### **Traffic Engineer**

Council's Traffic Engineer (C Edwards-Davies) has not had the opportunity to review this proposal due to absence on leave. However the Traffic Engineer did review the previous development application DA 469/05 for a mixed use development on this site. The current proposal involves 168 on-site car spaces compared to 154 car spaces in the previous application (which was withdrawn). Both the current Major Projects proposal and DA469/05 involve proposed vehicle entry/ exit(s) to Atchison Lane.

The Traffic Engineer had advised in a memorandum dated 15 March 2006 that the impact of that proposal (DA 469/05) on the local traffic network was not likely to be significant, with a net increase in peak hour traffic generation of the order of 48 trips, and supported the traffic and parking aspects of the proposal subject to certain amendments to the design of the vehicle access and parking including provision of on-site loading docks for 2 vehicles, namely a 10.7m heavy rigid vehicle and a 8.8m medium rigid vehicle. The requirement for provision of loading docks arose from the significant number of furniture and other delivery vehicles certain to be associated with such a large number of dwellings.

**Planning comment:** The Traffic Engineer's 2006 memorandum estimated existing traffic generation of the site based on RTA guidelines of 0.8 vehicle trips for each of the 60 existing commercial car parking spaces to be 48 trips, far lower than the estimated 100 trips in the traffic and parking study accompanying the current application. In addition the project's traffic generation estimates are based on the RTA high density Metropolitan CBD rate rather than the higher RTA metropolitan sub-regional centre rate.

In summary it is considered that the project will result in the order of 25 additional peak hour vehicle trips. While this is not itself likely to result in unacceptable impact on the local traffic system, **the cumulative impact of excessively large mixed use developments well in excess of the planning controls, such as this proposal, would have a significant impact on the local street system.** It is noted that one of the inputs into the recent review of the planning controls in St Leonards was the Arup Traffic and Pedestrian Management Study (2005) which estimated traffic generation and intersection capacity on the local St Leonards street system on redevelopment within the LEP planning controls.

The current proposal involves a level of development considerably in excess of a development generally compliant with the planning controls, as discussed elsewhere in this report.

Having regard for the comments of Council's Traffic Engineer concerning the previous proposal, if approval is contemplated, the following design amendments and conditions are required:

- Provision of loading docks within the site for 2 vehicles, namely a 10.7m heavy rigid vehicle and a 8.8m medium rigid vehicle, designed in accordance with Australian Standard AS 2890.2 (note: the single loading dock proposed in the basement is too small);
- Adequate queuing space (for three cars) at the driveway entry in front the security grill as per Australian Standard AS 2890.1;
- An adequate number of bicycle lockers (42), bicycle rails (10) and motor cycle spaces (17) to be provided on site in accordance with Council's DCP;
- Design of the car park, ramps, car spaces, bicycle facilities and disabled spaces to be in accordance with Australian Standards AS 2890.1, AS 2890.3 and AS 2890.6 respectively;
- A Construction Management Program for the development to be approved by the North Sydney Traffic Committee prior to issue of Construction Certificate (in view of the size and scale of the proposed 31-month construction phase).

## **Building**

The application was not referred for comment to Council's Building and Technical Services Team. It is noted that the application is accompanied by a Building Code of Australia (BCA) assessment report. The relevant standard condition should be imposed in regard to BCA compliance if consent is contemplated.

## **Waste Management**

Council's Environmental Education Officer (G Lewis) has reviewed the proposal in terms of the provision of garbage and recycling facilities. The application is accompanied by a Waste Management Plan. The Environmental Education Officer advises as follows:

*"The current plans are not acceptable in regard to garbage and recycling facilities, and will require the following amendments:*

1. *The base of the garbage chute serving the tower is not connected or accessible to the garbage compactor unit; the basement to be redesigned to ensure the garbage compactor unit and room is located at the base of the chute on basement level B1.*

2. *Council's Waste Handling Guide requires provision of a holding area for residential garbage and recycling bins at street/laneway level within 2m of the street/ laneway frontage, in cases where the main garbage storage area is located elsewhere, for weekly collection by Council's residential garbage contractors. This bin holding area should be of sufficient size to accommodate the number of 240 litre garbage bins and recycling bins necessary to handle all waste emanating from the residential component.*
3. *Separate garbage storage facilities to be provided for residential and non-residential components, and chute/compactor to be available only to the residential component.*
4. *Recycling storage area to be provided on each residential level adjacent to the chute.*
5. *All internal walls of the garbage storage areas to be rendered to a smooth surface coved at the floor/wall intersection, graded and drained to the sewer with a tap to facilitate cleaning."*

**Planning comment:** The above recommendations have been incorporated within the attached recommended conditions of consent.

### **Engineering**

Council's Development Engineer (Z Cvetkovic) has advised engineering conditions to be imposed in the event that approval is contemplated. These conditions relate to construction and traffic management plan, dilapidation surveys, geotechnical, requirements, shoring, driveway design, loading docks, stormwater drainage, awnings, roadworks, bonds, work zone and utilities. These conditions have been incorporated in the attached recommended conditions.

### **PUBLIC SUBMISSIONS**

Council was formally notified of the proposed exhibition of this Part 3A development on 24 September 2010, with the exhibition period starting on 29 September and ending on 29 October 2010.

The NSW Department of Planning, not Council, is responsible for notification of the application. Given the level of public interest in previous Part 3A applications, Council staff have arranged for all Precincts to be notified of the application, where the exhibition material may be viewed and the process for submitting a submission / objection to the Department.

It is noted that the notification advice letters do not appear to have included any properties beyond the blocks bounded by Christie, Chandos and Mitchell Streets and the Pacific Highway. These owners in the "Abode" were not notified, which is considered unacceptable since the proposal (particularly the top 18 storeys which exceed the LEP height limit) would have an adverse amenity impact on the "Abode".

### **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 ENVIRONMENTAL PLAN 2001

### 1. Permissibility within the zone

The site is zoned 'Mixed Use' pursuant to Clause 14 of NSLEP2001, and (setting aside the provisions of Part 3A of the Act) the proposed development is permissible with consent of Council.

### 2. Objectives of the zone

The particular objectives of the Mixed Use zone as stated in clause 14 are:

- (a) *encourage a diverse range of living, employment, recreational and social opportunities, which do not adversely affect the amenity of residential areas, and*
- (b) *create interesting and vibrant neighbourhood centres with safe, high quality urban environments with residential amenity, and*
- (c) *maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at the lower levels and residential above, and*
- (d) *promote affordable housing.*

The proposed development is considered to be consistent in part with the objectives (a), (b) and (c). However, the proposal would not result in a high quality urban environment [objective (b)] due to its excessive height and the bulk of the tower in relation to the existing and desired context of surrounding area. The proposed development is not consistent with objective (c) to the extent that the proposal does not maintain the existing 5,000 m<sup>2</sup> of commercial space on the site. These issues are discussed further in this report.

### 3. North Sydney LEP 2001 Compliance Table

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001			
Site Area – 1,740.6m <sup>2</sup>	Proposed	Control	Complies
<b>Mixed Use Zone</b>			
Building Height (Cl. 29) (max)	109m (max) above ground at western end of plant room on the tower.	49m	NO (exceeds by 60m or 122%)
Floor Space (Cl. 31) (max)	2:1 (3,798 m <sup>2</sup> of services apartments and café)	3.0:1 to 4.0:1 (5,220m <sup>2</sup> - 6,960m <sup>2</sup> )	NO
Design of Development (Cl. 32)	Building to have residential and non-residential uses, with non-residential at lower levels and no residential at ground level (except access); Separate entrance for residential; Building to be set back above podium.	Satisfactory  Satisfactory Inadequate podium provided.	YES  YES NO



#### 4. Building Height

The most significant feature of this proposal in terms of compliance with the planning controls is the major exceedence of the applicable building height 'development standard' of *Clause 29* of the NSLEP 2001. The proposal has a maximum building height of 109m measured to the top of plant room from the ground level on the western side of the tower, **thus the proposal exceeds the applicable 49m maximum height by 60m (122%)**. All levels above level 15 exceed the height control, that is, the uppermost 18 residential levels are more than 49m above ground level.

The specific objectives of the building height control stipulated under *Clause 29 (1)* of NSLEP 2001 are to:

- (a) Ensure compatibility between development in the mixed use zone and adjoining residential areas and open space zones; and*
- (b) Encourage an appropriate scale of development for each neighbourhood that, if there is a character statement for the neighbourhood, is to be consistent with the scale recommended; and*
- (c) Provide reasonable amenity for inhabitants of the building and neighbouring buildings; and*
- (d) Provide ventilation, views, building separation, setback, solar access, light, and avoid overshadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like; and*
- (e) Promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient; and*
- (f) Avoid the application of transitional heights as justification for exceeding height controls.*

The above objectives assist the Council in considering whether or not to support the proposed departure from the height control. A variation to the height control should only be considered justifiable if the development can demonstrate exceptional design outcomes, while not offending the objectives of the control, without creating unacceptable amenity impacts on nearby residences, and where there is an appropriate public benefit(s) offered in the development.

It is noted that Council's Design Excellence Panel does not support the excessive height of the proposal (see the 'referrals' section of this report). In particular the Panel considered that any built form that does not step down to Crows Nest from the nearby "Forum" building within the St Leonards Station Precinct in keeping with Council's stated policy in the DCP, is unacceptable regardless of amenity and other concerns, and did not support the 'dome' skyline control.

The 'characteristic building height' for the St Leonards Town Centre in the DCP character statement is as follows:

*"Buildings are scaled down significantly from the Forum towards surrounding areas and the lower scale development on Chandos Street, Willoughby Road, Crows Nest Village, the Upper Slopes and Crows Nest Neighbourhood."*

In this case the applicant seeks to demonstrate that a 'dome' to upscale the height rather than a scaling down, is acceptable. There is no strategic basis for this 'dome' approach. As with the previous proposal in 2005, the applicant seeks to demonstrate that this proposed building, significantly taller than the maximum building height control achieves a better overall design and amenity outcome for both residents of the proposed building and residents of adjacent and nearby existing mixed use buildings. Council has previously acknowledged that the site is unique in this locality in that the solar impact, overshadowing, view and privacy impact of a tall building is potentially less with a smaller floor plate/carefully configured tower, compared to the impact of a squat lower 'compliant' building.

However in this case the floor plate of the tower and therefore the gross floor space is excessive, and considerably exceeds the floor space ratio (about 11:1) which would result from a 'compliant' building. The floor plate of the tower (47%) is considerably larger than other high rise development in the area such as the "Abode" and the "Forum".

It is not clear from the information provided with the application whether the proposed tall tower would have view and afternoon shadow impact on dwellings in the 'Abode' at 599 Pacific Highway to the south-east of the site. No elevational shadow diagram in relation to the "Abode" were provided. Certainly the impact of a carefully positioned narrower and lower tower on the "Abode" building might be neutralised by the existing 'IBM' building in between the two buildings. At 9.00am on 21 June additional shadows are cast by the non-compliant portion of the proposed building as far as residential properties in Greenwich to the south-west.

It is noted that the siting of the tower does offer a benefit in terms of greater solar access to some dwellings in the adjacent "Linea" mixed use building to the west, compared to a compliant squat tower. However this benefit is at the expense of potential amenity impacts to the north and east due to the large floor plate and inadequate setbacks to the north and east.

**Neither the Draft North Sydney LEP 2009 nor the St Leonards Strategy (an inter-Council strategy prepared in 2006 to inform the preparation of the Draft North Sydney LEP 2009 in relation to planning controls for St Leonards) proposed any change in the 49m building height control.**

Furthermore a decision to accept this proposal would prejudice future consideration of departures from the height control sought on other sites, and the applicant is seeking to rely on the Major Projects development approval legislation to by-pass or override the proper LEP amendment/rezoning planning process underway via the Draft North Sydney LEP 2009.

In conclusion the very significant breach of the building height control is not justified.

## **5. Building Height Plane**

Since the site is not abutted or adjacent to any residential or open space zone, the building height plane control (Mixed Use zone) in Clause 30 of the NSLEP 2001 does not apply.

## 6. Floor Space

The proposed non-residential floor space is 3,498 m<sup>2</sup> giving a floor space ratio (FSR) of 2:1. This is significantly below the range (3.0:1 – 4.0:1) specified in Clause 31 of the NSLEP 2001 (refer to Compliance Table). It is noted that the existing commercial floor space on the site within the three (3) buildings totals 5,000 m<sup>2</sup> (applicant's advice) and equates to a FSR of 2.9:1 over the whole site.

However the non-residential floor space is in the form of serviced apartments, a café and a gymnasium, **with no commercial office space**. This is considered to be at variance with objective (c) of the Mixed Use zone which is as follows:

*“to maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at lower levels and residential above.”*

It is considered most unfortunate that the opportunity is not taken in this project to provide large floor plate A or B grade commercial office space as part of the non-residential development on this site, since the site is centrally located in the St Leonards Centre, within 3 minutes walk from the major public transport hub of St Leonards Railway Station and the major bus route on the Pacific Highway. The proposed café and serviced apartments will attract only an estimated 25 employees. Assuming the existing office space of 5,000 m<sup>2</sup> attracts of the order of 200 employees/jobs (at 25m<sup>2</sup> of gross floor rear per employee) the proposal actually results in a net loss of some 175 jobs in the St Leonards Centre.

St Leonards has been identified as a “Specialised Centre” in the State Government’s Metro Strategy (2004-2031) which identifies a target of an additional 8,000 employees in St Leonards by 2031. The inter-Council St Leonards Strategy (2006), which informed the preparation of the Draft North Sydney LEP 2009, confirmed an additional 8,000 jobs for St Leonards (including 980 jobs in that part of St Leonards within North Sydney Council).

Therefore it is considered essential that the redevelopment of this site should at least maintain the existing office space, and the current proposal is not supported.

## 7. Design of Development – Podium Controls

Clause 32 of the NSLEP 2001 sets out objectives and controls for the design of mixed use development. The controls are summarised as follows:

- (a) Building to have residential and non-residential uses;
- (b) Non-residential at lower levels, and no residential at ground level (except access);
- (c) Separate entrance for residential; and
- (d) Building to be set back above podium.

The design of the proposed development is consistent with these controls (a), (b) and (c), but is not consistent with the podium control (d) in so far as the proposal features a podium only to the southern elevation. While the lack of podium extension to the eastern elevation is justified due the provision of an open through-site pedestrian link, there is no justification for the lack of podium to the northern and north-western parts of the site.

The NSDCP 2002 requires provision of a podium at the street and laneway frontages in accordance with the height identified in the DCP Character Statement. The relevant St Leonards Centre Character Statement identifies the height as 13m (4 storeys) to the street frontage, and 10m (3 storeys) to the laneway.

## 8. 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, significant excavation (up to 27,000 m<sup>3</sup>) is required for the proposed 5 and half levels of basement car parking. A Construction Management Plan submitted with the application does not identify the detailed heavy vehicle routes through Council's area for the expected 6,000 heavy vehicle trips to carry away excavated material. Consent conditions are recommended to require a detailed Construction Management Program to be approved by the North Sydney Traffic Committee and geotechnical surveys and reporting.

Subject to these conditions, no objection is raised to the proposal with regard to the extent of excavation proposed.

## 9. 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 inconsistent 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 should not be granted.

## 10. North Sydney DCP 2002 Compliance Table

North Sydney Development Control Plan 2002			
Site Area – 1,740.6m <sup>2</sup>	Proposed	Control	Complies
Mixed Use Zone – St Leonards Town Centre			
6.1 Function			
Diversity of activities, facilities, opportunities and services	The proposed development incorporates a mixture of residential and non-residential uses (i.e. café, gymnasium and hotel/serviced apartments), which would further contribute to the facilities and services provided for the residents and workforce of St Leonards.	Various	Yes
	The proposed development does not incorporate any form of communal facilities for residents as required by the DCP (the gymnasium is not proposed to be a communal facility for residents only). This is particularly necessary having regard for the very large number of units.		No (condition proposed)

<b>Dwelling yield</b>	One unit per 93.8m <sup>2</sup> of residential gross floor space is proposed.	One dwelling per 100m <sup>2</sup> – 150m <sup>2</sup> gross floor space	No
<b>Mix of dwelling types</b>	<p>The following unit configuration is proposed, illustrating a greater proportion of smaller studio and 1 bedroom apartments than is envisaged by Council's Residential Development Strategy:</p> <ul style="list-style-type: none"> <li>• 48 x Studios = 21%;</li> <li>• 91 x 1 bedroom units = 40%;</li> <li>• 68 x 2 bedroom units = 30%;</li> <li>• 21 x 3+ bedroom units = 9%.</li> </ul> <p>Insufficient information has been submitted with the application to support the proposed non-compliant configuration, as is required pursuant to Section 6.2 of NSDCP 2002.</p>	<p>Studio: 15%                      1 bedroom: 30% (max)                      2 bedroom: 40% (min)                      3 bedroom+: 15% (min)</p>	No
<b>Affordable housing</b>	<p>The applicant has committed to providing a total of 8 apartments as affordable units, and has included a Voluntary Planning Agreement with the submitted documentation with regard to this commitment.</p> <p>The provision of 8 units is marginally non-compliant with the 4% requirement of DCP.</p> <p>It should be noted that the provision of affordable housing within this development is one public benefit justification of given by the applicant for the proposal. In this regard it is recommended that any approval of the development require the number of units dedicated as affordable housing to comply with the DCP requirements.</p>	Provide at least 4% of dwellings as affordable housing.	No (recommended that condition should be imposed to require compliance)
<b>Adaptable units</b>	<p>No adaptable housing has been provided as part of the development, with no justification provided within the submitted material for this departure from the planning controls.</p> <p>It is recommended that in the event that any approval is given by the Department, a condition should be imposed requiring that 10% of the approved apartments within this development be adaptable as required by Section 6.2 of NSDCP 2002.</p>	10% of units to be designed as adaptable units.	No (recommended that condition should be imposed to require compliance)
<b>Maximum use of public transport</b>	The proposed total number of car parking spaces complies with the maximums specified at Section 9 of NSDCP 2002. The site is conveniently located within the vicinity of public transport interchanges.	Various, including maximum non-residential car parking on sites.	Yes

<b>6.2 Environmental Criteria</b>			
<b>Clean Air</b>	A Mechanical Services and ESD report has been submitted with the application advising that the proposal can be designed to comply with the relevant legislation, with regard to exhaust emissions.		Yes (with conditions)
<b>Noise/Acoustic privacy</b>	<p>Due to the existence of mechanical and transportation noise, an acoustic report has been prepared and submitted. The conclusions of this report state that the facades of the apartments will require insulation. It is recommended that the conclusions of this assessment be adopted as conditions on any approval given.</p> <p>With regard to mechanically equipment associated within the proposed development, roof top plant is proposed as part of the application. It is recommended that either the application be required to be amended to relocate this plan to basement levels of the building (where possible) and/or that any roof top plant be acoustically screened. Conditions to this effect could be imposed on any approval granted by the Department.</p>	Establishes acceptable noise production levels & levels of internal acoustic privacy that should be achieved to residents.	Yes (with conditions)
<b>Visual privacy</b>	Refer to detailed discussion on building separation provided later within this report.	Numeric building separation requirements provided dependent on building height.	No
<b>Wind speed</b>	<p>A Wind Impact Study has been submitted with the application.</p> <p>This report identified potential for the creation of localised areas of non-compliances with the maximum wind speed criteria. The building design has incorporated many elements to improve amenity for future users of this development from wind, however, the Wind Impact Study has identified further windbreak features that should be incorporated into any final design.</p> <p>It is recommended that these recommendations are incorporated in conditions should any approval be granted by the Department.</p>	Maximum wind speed of 13m/sec at footpaths and accessible outdoor spaces.	Yes (with condition)
<b>Reflected light</b>	Insufficient information has been submitted with the application; however, an appropriate reflectivity condition could be imposed.	Pedestrians and motorists are not affected by reflected light.	Yes (with condition)
<b>Artificial light</b>	The applicant has advised that with the exception of nighttime external lighting to the public spaces proposed on the site, that no other external illumination is proposed. Appropriate conditions could be imposed to restrict hours of illumination and prevention of roof top lighting and the like.	Artificial lighting does not impact on the amenity of residents and pedestrians.	Yes (with condition)

<b>Awnings</b>	No awning is proposed along the Atchison Street or Lane frontages of the site. Whilst undercroft areas are proposed within the site, which are provided with weather protection, an appropriate condition could be imposed requiring the installation of an awning on the Atchison Street façade.	Weather protection for people in streets and other public spaces.	No
<b>Solar access</b>	Refer to detailed discussion on solar access/overshadowing provided later within this report.	Solar access is maintained to open spaces and publicly accessible outdoor places.	No
<b>Views</b>	Insufficient information has been submitted to allow a detailed analysis of potential view loss from surrounding apartment building.  It is considered that there may be some loss of views/outlook from the Abode Building towards the north/northwest and it is recommended that the Department request further information to ascertain whether the proposal has a detrimental impact on existing views.		No (Insufficient information provided)
<b>6.3 Quality built form</b>			
<b>Context</b>	A detailed site analysis has been undertaken and submitted with the application as per the requirements of the DCP.  However, due to the concerns raised within this report regarding the appropriateness of the height of the development, bulk and scale and its setbacks, the analysis and the assessment of the applicant that the proposed development is in context with the locality and the desired future character for St Leonards is not supported.	Site layout and building design respond to the existing characteristics, opportunities and constraints of the site and its context.	No
<b>Public spaces and facilities</b>	The proposed development is considered to have limited public domain benefits for a development of this scale.  The proposal provides limited public seating, landscaping, a through-site link and an art/sculpture within the forecourt of the development, however, it is considered that there is greater opportunity for more substantial public domain works, or provision of some off-site public open space.	Contributes to external and internal public spaces and facilities nearby and inclusion of these areas as part of the public domain.	No
<b>Skyline</b>	The proposed façade treatment and modulation of the building mass do create a visually interesting building. However, the height and size of the tower is considered excessive, inconsistent with the desired future character of St Leonards, and contrary to the Character Statement that buildings be scaled down from the "Forum" building to buildings in Willoughby Road.	Provide distinctive well-designed skyline; integrate roof design into overall development, with all roof top equipment contained within a single structure.	No

<b>Through-site pedestrian links</b>	The proposed development incorporates a through-site link between Atchison Street and Atchison Lane that would be accessible 24-hours a day. The proposed thoroughfare is proposed to be located adjacent to the café/restaurant use on the site and lobbies to the hotel/residential apartments, which would provide some level of passive surveillance of this area.	Provide access to the site and surrounding area, especially for pedestrians.	Yes
<b>Streetscape</b>	The proposal includes activation of the Atchison Lane frontage through the inclusion of the café and associated outdoor seating area. Atchison Street is activated to a lesser extent, being more a thoroughfare and building entry, rather than the provision of specific non-residential or communal uses.	Lively and active street and laneway frontages that create a feeling of safety both day and night.	Yes (however, could be further improved)
<b>Setbacks</b>	Refer to building setback analysis provided later within this report (setback / building separation distances also relevant)	Street to building: 3.0m Above podium: 1.5m from building alignment	Yes
<b>Laneway Setback</b>	Refer to building setback analysis provided later within this report.	Laneway to building: 1.5m Above podium: 1.5m	Yes
<b>Side Setback</b>	Refer to building setback analysis provided later within this report.	Above podium: 3m  Separation, above podium, between windows and balconies: 6m	Yes
<b>Entrances and exits</b>	Main entrances are provided clearly visible and with continuous path from street.	Provide main entrances clearly visible and with continuous path from street.	Yes
<b>Street Frontage Podium</b>	A podium of 7 metres is proposed on the Atchison Street frontage of the property.	Podium of 13m (4 storeys)	No
<b>Laneway Frontage Podium</b>	No podium is proposed on the Atchison Lane frontage of the property.	Podium of 10m (3 storeys)	No
<b>Building design</b>	The proposed variations in height, setbacks and building podium requirements from the form envisaged by the planning controls for this area results in a built form that is out of character and scale.  The proposed façade treatment does provide visual interest and make an architectural statement.  The proposed floor to ceiling height are acceptable with the provisions of the DCP (see also Design Excellence Panel comments).	Min. 3.6m for ground level and 2.7m for residential levels.	Yes
<b>6.4 Quality urban environment</b>			
<b>High quality residential accommodation</b>	The internal apartment areas exceed the minimum floor area requirements of NSDCP 2002. However, not all apartments have a balcony/winter garden with dimensions and areas that comply with the minimum 8sqm requirement.  70% of apartments achieve the minimum required access to daylight of 2 hours per day.	Various, including specified minimum sizes for units, 2m minimum corridor width, 2 hours minimum sun to balconies on 21 June, and 8m maximum depth of single aspect apartments.	No (balcony sizes inadequate)



<b>Cross-ventilation</b>	138 of the 228 apartments (being 60%) are cross ventilated, which is non-compliant with the DCP requirements. Further discussion on the compliance of the application with the requirements of SEPP No. 65 is provided elsewhere within this report.	75% of all units to have natural cross-ventilation.	No
<b>Balconies</b>	All hotel and residential apartments are provided with a balcony, however, these range in area between 4sqm (for a studio unit) and 18.8sqm (for a 3 bedroom unit).	Minimum width of 2m Minimum size of 8m <sup>2</sup>	No
<b>Accessibility</b>	The proposed development is accessible for persons with a disability. Whilst no accessibility report has been submitted with the application, appropriate conditions could be imposed to ensure the building and site achieve compliance with the relevant legislation.	A path of travel is continuous, relatively straight and does not incorporate any obstacle preventing safe and access by people with disabilities.	Yes (with conditions)
<b>Safety and security</b>	The applicant has submitted an analysis of the proposal against the CPTED principles.  The proposal provides surveillance of public areas and uses at street level, which provides a level of activation of the street to deter criminal behaviour and improve safety. All lobbies and car park areas are proposed to be secure.	A high level of personal safety and security in the development.	Yes
<b>Lighting</b>	Appropriate conditions can be imposed to ensure an adequate level of lighting is proposed to public areas.	Provide sufficient lighting of public areas in accordance with AS 1158.3.1.	Yes (with condition)
<b>Car parking</b>	168 spaces provided, with vehicle access to Atchison Lane, comprising: <ul style="list-style-type: none"> <li>• 152 resident spaces,</li> <li>• 16 hotel spaces,</li> <li>• 17 motorcycle spaces.</li> </ul> The proposed provision of car parking complies with the maximums specified by Section 9 of NSDCP 2002.	Adequate on-site car parking provision for residents.	Yes
<b>Bicycle storage</b>	No formal bicycle parking is proposed within the basement, with the applicant relying on residents to store any bicycles within storage lockers provided to units within the car park or alternatively utilising bicycle rails proposed as part of the public domain works on Atchison Street.  This lack of dedicated bicycle lockers is not supported, and it is recommended that if any approval is granted by the Department, then an appropriate condition be imposed requiring the inclusion of bicycle lockers at a ratio of 1 locker per 3 dwellings as required by the DCP.	Bicycle Storage for Residential component: <ul style="list-style-type: none"> <li>• 76 bicycle lockers;</li> <li>• 19 bicycle rails</li> </ul> Non-residential bicycle storage requirement: <ul style="list-style-type: none"> <li>• 6 bicycle lockers;</li> <li>• 1 bicycle rail</li> </ul>	No (condition required)

<b>Garbage storage</b>	See comments of Council's Environmental Education Officer.	Minimum numbers of garbage and recycled bins for residential component specified.	No
<b>Site facilities</b>	The proposal has incorporated basement storage areas within the car park for residential units. Appropriate conditions can be imposed to ensure the suitable siting of facilities for residents (i.e. location of mailboxes).	Adequate facilities provided in units and within basement.	Yes (with conditions)
<b>6.5 Efficient use and management of resources</b>			
<b>Energy efficiency, passive solar design, thermal insulation and waste management</b>	BASIX certificate provided	Various	Yes
<b>6.6 Public domain</b>			
<b>Street furniture, landscaping works, utilities and equipment</b>	The proposal incorporates public seating and public art at the Atchison Street frontage of the property. Appropriate conditions can be imposed to ensure paving is consistent with the desired future character of the St Leonards Town Centre.	Street furniture, landscaping works, utilities and equipment that contribute to the community's enjoyment of the public domain, but do not impede pedestrian movement and safety nor visual quality.	Yes (with conditions)

### *St Leonards Crows Nest Planning Area (St Leonards Centre)*

The 'character statement' for the St Leonards Centre within the St Leonards/Crows Nest Planning area contains specific criteria for subdivision, building and podium setbacks, and scaling down in building height from the 'Forum' building to Willoughby Road. The proposal's compliance with these criteria has been assessed in this report's North Sydney DCP 2002 compliance table and in the consideration of the North Sydney LEP 2001 building height control. In conclusion, it is considered that the proposal does not satisfy key aspects of provisions of the St Leonards/Crows Nest Area Character Statement.

## **11. Draft North Sydney LEP 2009**

On 13 July 2010, Council received a conditional Section 65 Certificate (pursuant to Section 65 of the EP&A Act, 1979) from the Department of Planning authorising the public exhibition of the Council's Draft LEP 2009. This draft instrument has yet to be formally exhibited, and as such, does not require formal consideration within planning assessment.

Whilst not a matter for consideration, it is noted that this draft instrument carries forward the current 49m building height limit for the subject site. The proposed height of 109m would exceed the maximum height in the draft instrument by 60m. The draft instrument also carries forward the minimum 3:1 non-residential floor space ratio (FSR) for the site but removes the current maximum non-residential FSR of 4:1. The subject major project would not comply as the non-residential FSR is only 2:1. The proposed development and all its components would be permissible in the proposed Mixed Use zone applying to the site under this draft instrument.

## **SECTION 94 CONTRIBUTIONS**

In accordance with Council's S.94 Contributions Plan, appropriate contributions towards the cost of upgrading and/or providing Council's community facilities and infrastructure available to the future residents and occupants of the development, are included in the conditions recommended if approval to the project is contemplated. The calculation of the S.94 contributions in accordance with Council's S.94 contributions Policy is based on 48 studio units, 91 x 1 bedroom units, 68 x 2 bedroom units, 21 x 3+ bedroom units and 3,498 m<sup>2</sup> of non-residential space, less credit of for the existing 5,000 m<sup>2</sup> of commercial space on the site, at 2010 – 2011 contribution rates, and amounts to a total of \$2,764,067.40.

## **SEPP 55 and Contaminated Land Management Issues**

The proponent has submitted a preliminary contamination assessment report which concludes that the site has a low risk of contamination to the soil and groundwater. The applicant's draft Statement of Commitments includes an undertaking to carry out a site contamination investigations report after demolition prior to excavation, and (if required) a Remediation Action Plan.

## **SEPP 1 – Development Standards**

This SEPP was not one of the planning instruments and policies required to be taken into account by the applicant by the Director-General's Requirements issued on 21 January 2010. However the proposal involves substantial non-compliances with the development standards relating to building height, floor space ratio and the podium control in Clauses 29, 31 and 32 respectively of the NSLEP 2001. Therefore this review of the proposal assesses whether there is a reasonable basis in the circumstances for waiving adherence to these key planning controls.

As indicated in the sections of this report dealing with building height control, the floor space control and the podium control, and having regard for the objectives of these controls, it is concluded that the nature and extent of these departures from the controls cannot be supported. In the previous development application in 2005 for a mixed use development on this site, the applicant sought to rely on SEPP 1 to effect a significant strategic planning change which Council considered more appropriately dealt with and processed as an amendment to the LEP planning controls, so as not to prejudice future consideration of departures from these planning controls on other sites.

In the case of the current proposal the applicant is seeking to rely on a Major Projects development approval legislation to essentially do the same, that is to by-pass or override the proper LEP strategic planning process underway via the Draft LEP 2009.

## **SEPP (Infrastructure) 2007**

As proposed development involves in excess of 75 dwellings on a site having direct vehicle/pedestrian access to a road connecting to a classified road (the Pacific Highway) and within 90m of that classified road, the application is defined as "traffic generating development" under clause 104 of this SEPP and requires referral to the RTA and any submissions made by the RTA must be taken into account prior to determining the application. Council has not been advised of any referral to the RTA or any submission by the RTA. This is a matter for the Department of Planning as the assessing authority.

The application material includes an acoustic impact report. In relation to the requirements of clause 87 of this SEPP, a condition is recommended for imposition to require the relevant acoustic performance to be met for habitable rooms in buildings close to transport corridors.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

The application is accompanied by a BASIX Certificate in respect of the residential component with this development.

#### **SEPP 65 - Design Quality of Residential Flat Buildings**

The applicant has provided an architect's design statement in regard to the design principles of this SEPP. For the purposes of Council's assessment these principles are addressed as follows:

**Principles 1, 2 and 3: Context, Scale and Built Form:-** The context is set by the development surrounding the site, the development controls and character statement for the site. The height of the building (122% over the limit) and the floor plate of the tower (47% of the site) are excessive in this regard, and justification of the height using a 'dome' argument is fanciful and has no strategic basis. Council's Design Excellence Panel does not support the proposal. The lack of the podium to eastern side of the development is acceptable to support the through-site pedestrian link, however the lack of the podium on the northern side of the site is at odds with the desired built form for this neighbourhood and the DCP controls.

**Principle 4: Density:-** The density exceeds the dwelling yield envisaged for mixed use development as expressed in Section 6.1 of the NSDCP 2002, creating an undesirable precedent and resultant impacts.

**Principle 5: Resource, energy and water efficiency:-** The proposal satisfies BASIX in terms of the required energy and water efficiency. All ceiling heights are at least 2.7m.

**Principle 6: Landscape:-** The proposed landscaping appears acceptable in principle to enhance the ground level plaza and through site link.

**Principle 7: Amenity:-** The overall layout, orientation, design and balcony provision appears to provide reasonable amenity for dwellings.

**Principle 8: Safety and Security:-** The proposed development is considered to provide adequately for the safety and security of future residents, with provision of separate residential and non-residential lobbies.

**Principle 9: Social Dimensions:-** Whilst adequate storage for residents is provided the proposed development lacks any common facilities such as meeting room for residents and bicycle storage. The through-site link is a positive aspect of the proposal.

**Principle 10: Aesthetics:-** The façade treatment of the podium tower and pedestrian link appear to have some innovation, and will be a matter on which Council's Design Excellence Panel will no doubt comment.

## Residential Flat Design Code

SEPP 65 refers to a design code, titled the *Residential Flat Design Code*, published by PlanningNSW (2002). The provisions of Council's DCP 2002 and character statement generally contain complementary or more specific design requirements than this design code in relation to local content, site design and building design, and have been assessed in the DCP Table of Compliance. The application is accompanied by a SEPP 65 review which seeks to demonstrate that the proposal generally satisfies the 'rules of thumb' in the design code where applicable, including a minim 60% of units naturally ventilated and 70% having a minimum of 2 hours solar access in mid-winter. However the proposal does not comply with the key criteria 'building separation – visual privacy' and 'solar access' which are addressed below.

### *Visual Privacy – building separation*

Buildings which are too close together create amenity problems including lack of visual and acoustic privacy and loss of daylight access. The NSDCP 2002 and SEPP 65 (Residential Flat Design Code) provide the following recommended separation distances between buildings:

**Table: Habitable buildings separation**

Building height (metres)	Separation between habitable rooms	Separation between habitable balconies and non-habitable rooms	Separation between non-habitable rooms
Up to 12m	12	9	6
12-25m	18	13	9
25m +	24	18	12

In this case the proposal should be assessed having regard for potential mixed use development on sites to the north and east as well as existing development. The proposed setbacks do not comply with the minimum separation distances except to the southern elevation and parts of the east and west elevations. To the north and east, assuming future high-rise mixed use development with habitable rooms on adjacent sites and an equitable "sharing" of building separation setbacks between developments, the tower should be setback 9m from the centre line of the rear lane up the 25m height (ie: level 8) and setback 12m above level 9 (ie: 25m height). From the eastern side boundary the tower should be setback 12m. This would require the tower to be redesigned to increase its minimum setbacks to the northern and eastern boundaries by 5m and 6m respectively, since the current plans show the building to be setback only 3m from the northern boundary and only 6m from the eastern boundary.

Some tolerance in these setbacks might be demonstrated where privacy devices or orientation of living rooms assist in mitigating privacy impact, but not to the extent of the inadequate setbacks incorporated in current unsatisfactory design. **The current design relies on the developer 'borrowing' from neighbours in terms of separation distances, and reducing the development potential and design options for these adjacent sites.**

It is acknowledged that the design of the tower with the offset portions does result in improved solar access to those dwellings in 'Linea' to the west which rely on the lightwell located on the eastern side of this mixed use development.

There is also a potential for the tower to be relocated further south without compromising privacy / separation distances.

### ***Solar access***

The SEPP 65 Residential Flat Design Code provides the following guidelines with regard to solar access for apartments:

- *Living rooms and private open spaces for at least 70% of apartments in a development should receive a minimum of three hours direct sunlight between 9am and 3pm in mid winter. In dense urban areas a minimum of 2 hours may be acceptable.*
- *Limit the number of single aspect apartments with a southerly aspect to a maximum of 10%*

The applicant's SEPP 65 review seeks to demonstrate that 70% of the units would receive a minimum 2 hours at the winter solstice and only 6% have single southerly aspect. However the review does not appear to take into account potential development on adjacent sites to the north and east, which may adversely affect solar access to lower level units. The north-eastern projection of the tower severely limits solar access to units on the south-east corner to under 2 hours. Inadequate information has been provided to make an assessment of solar impact on dwellings on the "Abode" building.

### **PUBLIC BENEFIT**

The applicant purports to offer 'public benefits' to offset the very significant departure from the planning control height limit and the additional density. These comprise the following:

#### ***Public Space / Public Domain:***

The proponent wishes to enter into a Deed of Agreement with Council to enable public pedestrian access at all times to the public domain /forecourt/ widened footpath area and through-site pedestrian access at ground level around the base of the tower building, for the life of the building. The extent of the area is not clear on the plans. The cost of preparing and registering the deed is to be borne by the applicant, and the deed is to bind all successors in title and may only be altered at Council's discretion.

While the public benefit of a through-site public link is acknowledged, this benefit is significantly diminished by the inability of people in wheelchairs to use the link. The public benefit of the area on the north and west side of the building for public use is questionable.

#### ***Affordable Housing:***

The proponent offers to dedicate to Council eight (8) affordable housing units comprising 5 x studio units and 3 x 1 bedroom units, via a Voluntary Planning Agreement (VPA) between the Minister for Planning, Council and the proponent. The subject units are located on levels 6, 7 and 8 of the tower. The VPA envisages that Council will own and manage the subject units for 'affordable housing' being housing for the very low, low or moderate income households. It is noted that Council's DCP in Section 6.1(b) requires 4% of all units (ie: 9 units) to be 'affordable housing'. Should the parties including Council resolve to enter into the VPA, it will need to be placed on public notification for a minimum of 28 days prior to being entered into.

***Environmental Sustainability:***

The proposal offers a 5 Green Star rated building, water savings estimated by the applicant at 40%, and energy savings at 20%. The basis of the savings targets and relationship to BASIX criteria is not clear from the documentation. No grey water recycling is proposed. BASIX is a mandatory requirement.

***Undergrounding of Power:***

The applicant proposes to underground electricity power lines in Atchison Street between Christie Street and Mitchell Streets and provide underground conduits from the mains to the primary power box or room of the building. It is noted that this is a normal requirement imposed by a consent condition on any large redevelopment.

**Planning Comment:** The applicant seeks approval for a development which incorporates significant excesses over a 'compliant' building – 18 stories in terms of height, and of the order of 3:5:1 in equivalent floor space which equates to over 6,000 m<sup>2</sup> or more than 60 apartments.

The 'public benefits' offered are far from commensurate with the level of non-compliance and do not come close to offsetting these non-compliances. Nevertheless Council may wish to consider what level of offset or public benefit may be appropriate.

**ALL LIKELY IMPACTS OF THE DEVELOPMENT**

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

**CONCLUSION**

This proposal involves a very substantial non-compliance with Council's basic planning controls particularly building height and floor space.

In principle a building considerably taller than the current 49m height control may be appropriate and present a better urban design and amenity outcome than a 'compliant' development, and indeed Council has accepted this situation when Council gave consideration to the previous proposal in 2006. In particular the amenity for some residents in the adjacent 'Linea' building is improved as a result of the orientation and setback of the tower compared to a 'compliant' development.

However, the height in the current proposal is excessive and goes considerably beyond what may be an acceptable variation to the height control. This excessive height is at variance with the Character Statement for St Leonards Centre which clearly envisages a scaling down of the development from the 'Forum' building to lower development in Willoughby Road. This excessive height is compounded by the high site coverage or floor plate of the tower, and is well in excess of the overall floor space for a 'compliant' development. Furthermore the proposed development does not comply with SEPP 65 'rules of thumb' for the building separation distance, and 'borrows' from the potential of adjacent sites, with unacceptable compromises in amenity for residents and neighbours in terms of visual amenity and privacy. Non-compliances with Council's DCP such as the lack of any community meeting room and bicycle storage facilities for the future residents of the 228 dwellings are also of concern.

The public benefits offered do not compensate for the extent of the non-compliances.

The applicant has failed to demonstrate to Council's Design Excellence Panel that the development deserves Council's support in terms of a high quality urban design outcome, and further specific comments from the Panel concerning the proposal the Panel should be available for Council's consideration at the meeting when Council considers this report.

The extent of the departures from the statutory controls necessitates that even a proposal involving more moderate departures from the current controls must be dealt with through the strategic planning process, not as a one-off development approval, bypassing or over-riding strategic LEP planning process underway via the Draft LEP 2009. The 936 dwellings delivered since December 2001 and the capacity estimated in Council's Draft Residential Development Strategy 2009 reveal that residential targets for the St Leonards/Crows Nest area and Council's area generally can be achieved under both the current and the proposed draft LEP 2009 controls **without** the input of this overdevelopment. Furthermore the loss of office space and some 175 jobs on this large site so close to a major public transport interchange is inconsistent with the strategic planning controls and objectives.

The new paradigm in which major non-complying development can be approved outside of and contrary to the strategic planning process simply prejudices Council's ability to 'plan' for potential outcomes and creates a most undesirable precedent.

It is concluded that the proposed development cannot be supported and it is the recommendation of this report that Council should resolve to **strongly OBJECT** to the application.

A set of conditions is attached should the Minister decide to grant approval to the project. Council should also resolve that in the event of approval being granted, the General Manager be given authority to negotiate the terms of an appropriate draft Voluntary Planning Agreement for the dedication to Council of 8 affordable housing units and a Deed of Agreement in respect of public access to the public domain and through-site pedestrian link.

## **RECOMMENDATION**

### **PURSUANT TO SECTION 80 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)**

- A. **THAT** Council resolves to **strongly OBJECT** to the proposed Part 3A major development application (MP 09\_0187) at No. 6-16 Atchison Street, St Leonards, on the following grounds:
1. The proposed development does not satisfy the specific aims of North Sydney Local Environmental Plan 2001 (NSLEP 2001) as listed in Clause 3 (a) and (b) (*Specific aims of this plan*) of NSLEP 2001.
  2. The proposed development does not satisfy objectives (b) and (c) of the Mixed Use zone in that it does not result in a high quality urban environment with acceptable residential amenity and it fails to maintain commercial floor space on this site.



3. Having regard for grounds 1 and 2 above, the proposal does not satisfy the provisions of Clause 14 (*Consistency with aims of plan, zone objectives and desired character*) of NSLEP 2001.
  4. The proposed development results in an excessive and unacceptable breach of Clause 29 (*Building height*) of NSLEP 2001, and is inconsistent with the objectives of the building height control. The proposed extensive breach of the height control would result in a building that is not compatible with the context of the site or the desired future character of the locality. The extent of the breach is such that, in any case, a change in the strategic planning controls for the site would be required to alter the maximum height control of the site, and it is not appropriate for this proposal to be approved as one-off development bypassing the strategic planning process.
  5. The proposed development fails to satisfy the provisions of the St Leonards/Crows Nest Area Character Statement with regard to the proposed height not satisfying the requirement for buildings to be scaled down significantly from the Forum development towards Willoughby Road. In addition, absence of a podium to the Atchison Lane frontage is unacceptable.
  6. The proposed development does not satisfy key Design Quality Principles set out in State Environmental Planning Policy No.65 (*Design Quality of Residential Flat Development*). In particular, the proposed height and the excessively large floor plate / site coverage of the tower would not be in context with existing and desired surrounding development and is of an inappropriate scale, with consequent amenity impacts and a poor urban design outcome.
  7. The application fails to satisfy the development controls for the following sections of the NSDCP 2002 and is therefore considered unacceptable:
    - a. Section 6.1 (a) Communal area;
    - b. Section 6.1 (b) Dwelling mix;
    - c. Section 6.2 (d) Visual privacy;
    - d. Section 6.3 (h) Setbacks;
    - e. Section 6.3 (a) Context;
    - f. Section 6.3 (c) Skyline;
    - g. Section 6.3 (l) Laneway frontage podium;
    - h. Section 6.4 (a.b) Balconies;
    - i. Section 6.4 (g) Bicycle storage;
    - j. Section 6.4(i) Garbage storage.
- B. **THAT** Council resolves that the Department of Planning be requested to forward any amended plans received to Council for comment.
- C. **THAT** Council requests that the Department of Planning consider the imposition of the attached Draft Conditions of Approval if approval is contemplated.

- D. **THAT** Council delegate to the General Manager pursuant to Section 377 of the Local Government Act 1993 the authority to negotiate appropriate terms for a draft Voluntary Planning Agreement for the dedication of affordable housing units to Council and a Deed of Agreement for public access to the public domain area and the through-site link at ground level on the subject site.

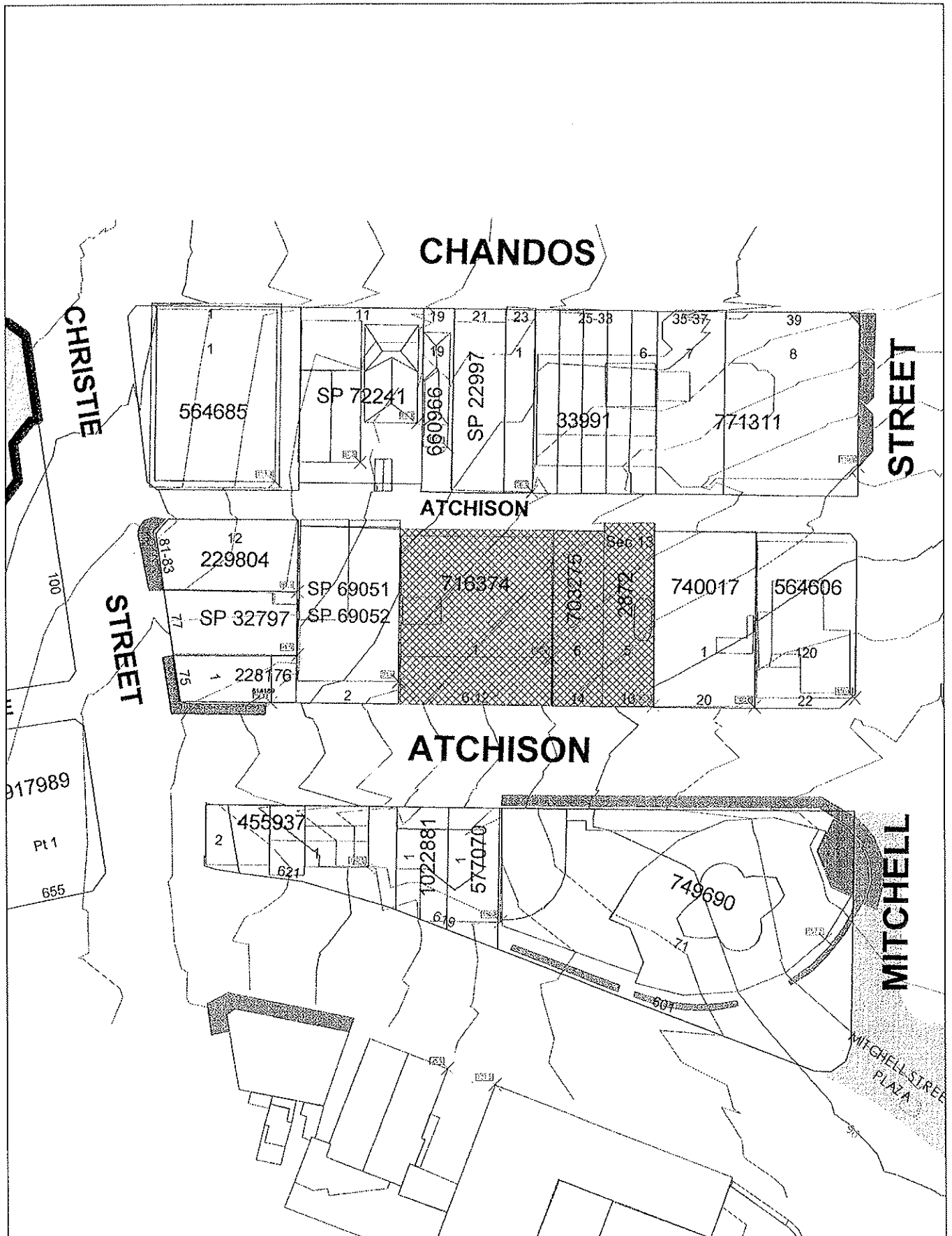
**IAN PICKLES**  
**EXECUTIVE PLANNER**

***ORIGINAL SIGNED***

**NICOLA REEVE**  
**SENIOR ASSESSMENT OFFICER**

**STEPHEN BEATTIE**  
**MANAGER DEVELOPMENT SERVICES**

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North Sydney Council

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**For privacy reasons, the architectural plans have been removed from this document prior to publishing on the web. The plans attached to the hard copy report may be viewed at Stanton Library during opening hours or at the Customer Service Centre in Council Chambers between 9.00am and 4.00pm Monday to Friday.**

**DESIGN EXCELLENCE PANEL MEETING**

**PROPERTY:** 6-16 Atchison Street, St Leonards

**DATE:** 11 November 2009 @ 4.00pm in the Supper Room

**ATTENDANCE:** Panel Members: David Chesterman; Philip Graus; Russell Olsson; Peter Webber  
Council staff: Geoff Mossemeneer (chair), Stephen Beattie.  
Proponents: Richard Francis-Jones (architect); Simon Barr (architect); Jennie Buchanan (planner); Peter Zervos (applicant)

**Introduction**

A similar proposal from a different applicant and architect was before the Panel on 12 March 2008 and 9 May 2008. A site inspection was carried out by the Panel and Council staff prior to the March 2008 meeting.

A presentation was given by the Architect on behalf of the applicant, with the aid of the distributed material and laptop presentation.

**The Proposal**

The proposal involves the demolition of the existing buildings on the site and the construction of a multi storey mixed use development comprising basement parking, podium with retail, community purposes area, and a residential tower.

The applicant has applied to the Department of Planning to have the proposal determined by the Minister under Part 3A of the EP&A Act.

The presentation focussed on the strategic context of the site and the shadow impacts of a tall tower on the site. Existing and proposed Floor Space Ratios were presented with the existing FSR for the site being 11:1 and the proposed FSR for the taller tower being 16.5:1.

Two options for height (83m and 109m) were presented, and a concept design for the ground (Atchison Street) level/public domain. The height control for the site is currently 49m. The design, footprint and location of the 109m tower were identified in more detail. Possible variations to the setbacks of the tower were also presented and discussed.

**Panel's comments**

The Panel accepts that a variance in height could be a better outcome than a uniform 49m high building providing this can be clearly demonstrated with no adverse impacts

The Panel noted that a precisely located smaller footprint high rise tower could be more beneficial in terms of shadow impact than a squat lower building compliant with the current planning controls.

The Panel noted that the Forum building has an existing FSR of 10.6:1 for a building of similar height to the 109m tower. The Panel questioned the accuracy of the material with regard to the FSRs for the IBM building (shown as 16.2:1 – when it is a commercial building of 13 storeys) and the Abode (17.5:1 - mixed use with two towers with the tallest being 19 storeys and the other 11 storeys with generous setbacks and separation).

The Panel also noted that Council's DCP Character Statements allow for a stepping down from the highest building at the Forum down to 2-3 storey commercial development in Willoughby Road Crows Nest.

The panel noted that It is common practice for taller buildings to have a reduced site cover to ensure adequate separation between buildings which is evident with the Forum development. The FSR should remain similar to a compliant building and not be substantially increased to ensure that the site cover of the tower is reduced. The only justification for some increase in the FSR may be the provision of public facilities.

Before a taller building could be supported, it needs to be demonstrated that the taller building delivers a clear public benefit. The Panel noted that the proposed ground floor and public domain area is improved and there may be room for further improvement with more tree planting along the rear lane frontage. Shadow impacts on Atchison Street and public spaces opposite need to be considered when looking at lower level setbacks. The Panel would also prefer more detail showing the views from real people's eye-level showing the full street context as well as from the Lane

The Panel is not convinced that the proposed taller tower is actually significantly thinner than the maximum footprint that could be approved (taking SEPP 65 building separation "rules of thumb" into account) for a 49m high building. Setbacks need to take into account the interface of the development to the west as well as adequate separation to future development on the northern side of the Lane. Setback of the tower to Atchison Street to the extent shown is not necessarily desirable.

The character of the lane should be enhanced with planting, paving, lighting,

artwork or other means.

The Panel still has concerns about the amenity of the proposed apartments with regard to the Residential Flat Design Code's (RFDC) "rule of thumb" recommendations for solar access and cross ventilation. The system of cross ventilation of single fronted apartments presented needs to be thoroughly tested as the proposal would have much less than the recommended 60% of apartments having cross ventilation. This would be improved with a more slender footprint.

The applicant proposes a community facility such as a child care centre at first floor, however the issues of building setbacks, height, environmental performance and ground level amenity need to be further resolved before the community facility is considered.

**CONCLUSION:**

The Panel considers that more work is required on the floor plan of the tower and the floor plate of the tower needs to be reduced further. A thinner building will result in further shadow improvements and better separation distances.

The Panel notes that under the RFDC, the separation requirement is increased as the height increases. An average setback for a uniform tower may be acceptable provided it can be demonstrated that the average of the setbacks (vertical and horizontal) generally complies with the rule of thumb recommendations. Precedent setbacks of developments approved prior to SEPP 65 are not helpful and should be disregarded. Variations would only be considered if the amenity of the adjoining development is not compromised.

The Panel considers that the floor space ratio of the taller building should be similar to a compliant shorter building (around 11:1 which is similar to the FSR for the Forum) and that any increase would only be accepted on the basis of demonstrated additional public benefits such as public domain areas, improved solar access to surrounding areas etc. The Panel considers that any built form that does not step down from the Forum in keeping with Council's stated policy is unacceptable regardless of amenity and other concerns. Council does not propose a dome control. The proposed 109m tower with a FSR of 16.5:1 is not supported by the Panel.

Meeting concluded at 5.30pm



## NOTES OF IN-HOUSE MEETING

**PROPERTY:** 6-16 Atchison Street St Leonards

**DEVELOPMENT APPLICATION NO:** Major Project Application

**DATE:** 6 April 2010

**START:** 6pm

**PRESENT:** See attendance list following notes

### Background

Council considered a proposal for a mixed use building having a height of 81.5m under DA 469/05 for approval in principle (staged development) to a 24 storey mixed use development consisting of 170 apartments on levels 2 to 24; Childcare centre for 40 children and café/restaurant on level 1 (ground level); Excavation to accommodate four levels of lower ground level and basement parking for 154 car spaces.

At its meeting of 27 March 2006 Council **RESOLVED:**

- A. *THAT Council defer consideration of Development Application No 469/05 for the redevelopment of No's. 6-16 Atchison Street, St Leonards as a multi-level mixed use development, and advise the applicant that Council is not prepared to support the current proposal and the applicant's SEPP No. 1 objections in respect of significant departures from the building height, floor space and podium controls of Clauses 29, 31 and 32 of NSLEP 2001.*
- B. *THAT the applicant be advised that should the applicant wish to proceed with the proposed development, then an application to amend the NSLEP 2001 in conjunction with an amended development application should be submitted to Council in accordance with Section 72K of the Environmental Planning & Assessment Act 1979, on the basis of the current plans being amended to include consideration of the following but not limited to:*
  - *Provide a podium of generally matching the scale of the podium of the adjoining development at 2-4 Atchison Street over the western and central parts of site; Council may favourably consider an open through-site area at ground level on the eastern side of the site podium;*
  - *Setback the tower to comply with the separation distance criteria of the SEPP 65 Residential Flat Design Code and the NSDCP2002;*
  - *Provide adequate level of commercial floor space within the podium and lower levels of the building to satisfy the objectives of the NSLEP 2001, address solar access and cross-ventilation;*
  - *Provide adequate facilities for delivery vehicles as recommended by Council's Traffic Engineer, and also address design issues in relation to the car parking and vehicle ramps identified by the Development Engineer and Traffic Engineer.*
- C. *THAT Council appoint an independent Urban Design expert, at the applicant's expense, to review the design in consultation with neighbouring buildings in order to develop a valid case to proceed to the next step of the rezoning process. Such review is to include but not be limited to those matters outlined in Part B.*



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The applicant subsequently withdrew the development application in March 2007. Council's Design Excellence Panel considered a similar proposal to the current proposal from a different applicant and architect on 12 March 2008 and 9 May 2008.

The current applicant presented a proposal to Council's Design Excellence Panel on 11 November 2009. The DEP concluded:

*The Panel considers that more work is required on the floor plan of the tower and the floor plate of the tower needs to be reduced further. A thinner building will result in further shadow improvements and better separation distances.*

*The Panel notes that under the RFDC, the separation requirement is increased as the height increases. An average setback for a uniform tower may be acceptable provided it can be demonstrated that the average of the setbacks (vertical and horizontal) generally complies with the rule of thumb recommendations. Precedent setbacks of developments approved prior to SEPP 65 are not helpful and should be disregarded. Variations would only be considered if the amenity of the adjoining development is not compromised.*

*The Panel considers that the floor space ratio of the taller building should be similar to a compliant shorter building (around 11:1 which is similar to the FSR for the Forum) and that any increase would only be accepted on the basis of demonstrated additional public benefits such as public domain areas, improved solar access to surrounding areas etc. The Panel considers that any built form that does not step down from the Forum in keeping with Council's stated policy is unacceptable regardless of amenity and other concerns. Council does not propose a dome control. The proposed 109m tower with a FSR of 16.5:1 is not supported by the Panel.*

## Meeting

The in-house meeting was held in the Supper Room and was chaired by the Mayor. A laptop presentation was provided by the Architect, Richard Francis Jones with additional comments from the Planning Consultant, Sue Francis.

The proposal involves the demolition of the existing buildings on the site and the construction of a multi storey mixed use development comprising basement parking, podium with retail, community purposes area, and a residential tower. The height of the proposal is 109m comprising 233 apartments plus 50 serviced apartments with parking for 171 cars.

The applicant has successfully applied to the Department of Planning to have the proposal determined by the Minister under Part 3A of the EP&A Act.

The presentation focussed on the strategic context of the site and the shadow impacts of a tall tower on the site. The height control for the site is currently 49m. The applicant advised of increased height controls to the southern side of the Highway of up to 72m in commercial zones within Lane Cove Council area. The design, footprint and location of the 109m tower were identified in more detail. Possible variations to the setbacks of the tower were also presented and discussed.

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Councillors were provided with a copy of the minutes of the Design Excellence Panel meeting held on 11 November 2009 when a similar presentation was made. The applicant Mr Zervos stated that one of the Panel members had no issue with the proposed heights but the minutes of the meeting did not record that opinion. Mr Beattie advised the Councillors that the minutes are prepared as a consensus view after considerable discussion after the applicants left the meeting and are endorsed by the members of the Panel, and the minutes are not edited by staff in any way.

Councillors present had concern with the increase in height and density from the proposal they had earlier seen (DA.469/05). The height proposed is substantially above the current controls and Council's policy. It was recommended that a briefing be provided by Council staff to Councillors prior to a Council meeting to ensure a majority of Councillors are in attendance. Council needs to consider the maximum height that they could accept and what public benefits must be provided in order to permit any bonus density to the applicant.

Geoff Mossemeneer

**EXECUTIVE PLANNER**

**Note: The above notes are an indication of the issues discussed and conclusions reached at the in-house meeting. They do not constitute a determination of Council, forming only part of the development application assessment process, nor should they be taken to represent the views of all Councillors.**

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**Meeting held at: Supper Room**

**On: Tuesday 6 April 2010**

### **Attendance List**

**Councillors** (mark X in box to indicate attendance)

<input checked="" type="checkbox"/>	Councillor Genia McCaffery	<input type="checkbox"/>	Councillor Jilly Gibson
<input type="checkbox"/>	Councillor Richard Pearson	<input checked="" type="checkbox"/>	Councillor Michel Reymond
<input type="checkbox"/>	Councillor Sarah Burke	<input type="checkbox"/>	Councillor Jillian Christie
<input type="checkbox"/>	Councillor Craig Carland	<input type="checkbox"/>	Councillor Trent Zimmerman
<input type="checkbox"/>	Councillor Stephen Barbour	<input checked="" type="checkbox"/>	Councillor Zoë Baker
<input checked="" type="checkbox"/>	Councillor Veronique Marchandean	<input type="checkbox"/>	Councillor Andrew Robjohns
<input type="checkbox"/>	Councillor Caroline Raymond		

### **Council Officers:**

Penny Holloway	Joseph Hill
Warwick Winn	Geoff Mossemenean
Stephen Beattie	

**NORTH SYDNEY COUNCIL  
PROPOSED CONDITIONS FOR PART 3A DEVELOPMENT  
6-16 ATCHISON STREET, ST LEONARDS**

***AA. Deferred Commencement Condition***

**DEFERRED COMMENCEMENT CONDITION**

This consent shall not operate until the following deferred commencement condition has been satisfied.

***Planning Agreement (Deferred Commencement)***

AA1. The applicant, the Minister for Planning and North Sydney Council must enter into a Planning Agreement pursuant to Section 93F of the *Environmental Planning & Assessment Act 1979* applying to the subject land and this application MP09\_0187 for the dedication to Council of eight (8) Affordable Housing units, subject to certain terms as indicated in the draft Planning Agreement submitted on behalf of the land-owners.

To enable activation of the consent, the Planning Agreement shall be entered into and registered at the sole cost of the applicant. The Planning Agreement shall bind all successors in title and shall only be subject to variation at the discretion of the Council.

(Reason: To realise the public purpose of provision of affordable housing within this development and to realise a public benefit in this regard)

**The date upon which the consent is activated is the date upon which the Planning Agreement referred to in condition AA1 has been entered into with the Council.**

**Upon satisfaction of the deferred commencement condition, the following conditions apply:**

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 2****A. Conditions that Identify Approved Plans****Development in Accordance with Plans**

- A1. The development being carried out in accordance with drawings numbered PA-100-01 to PA-100-17 (inclusive), PA-200-01 and 02, PA-210-01 to PA-210-07 (inclusive), and PA-300-01 to PA-300-04 (inclusive), dated July 2010, drawn by Francis-Jones Morehen Thorp Pty Ltd, and Stormwater Drainage Concept Plans numbered H 100 to H 117 (inclusive), Issue 01, dated March 2010 drawn by Warren Smith and Partners Pty Ltd, except where amended by the following conditions.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination, and public information)

**B Ancillary Matters to be Completed Prior to Issue of a Construction Certificate****Construction Management Program – Local Traffic Committee Approval**

- B1. A Construction Management Program shall be submitted and approved in writing by North Sydney Traffic Committee PRIOR TO THE ISSUE OF ANY Construction Certificate. Any use of Council property shall require appropriate approvals prior to such work commencing. The program shall specifically incorporate or address the following matters:
- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
    - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
    - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
    - iii. Turning areas within the site for construction and spoil removal vehicles, allowing a forward egress for all construction vehicles on the site;
    - iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
    - v. Locations of hoardings proposed;
    - vi. Location of any proposed crane standing areas;
    - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
    - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
    - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 3**

- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
- c) The proposed phases of works on the site, and the expected duration of each phase.
- d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
- e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
- f) To prevent queued vehicles on the footpath, driveway and/ or public roadway, the intercom for the visitor parking access and/or security access point for residents is to be installed at least 6m into the property from the boundary line.
- g) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified engineer and practising structural and shall not involve any permanent or temporary encroachment onto Councils property.
- h) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- i) A Waste Management Plan. The plans should include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition or construction activities shall be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved plan. A copy of the approved Construction Management Plan and any conditions imposed on that plan, shall be kept on the site at all times and made available to any officer of Council upon request.

**Notes:**

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property shall require appropriate approvals and demonstration of liability insurances prior to such work commencing.

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 4**

- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as a minimum six (6) weeks notice is required to refer items to the Traffic Committee.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

**C Prior to the Issue of a Construction Certificate****Car Park**

- C1. The proposed car park shall be designed to satisfy the following requirements:
- (a) That all vehicles must enter and exit the basement in a forwards direction.
  - (b) The layout of the car park shall comply with Australian Standard AS/NZS 2890.1: 2004 Parking Facilities - Off Street Car Parking. All parking spaces are to be linemarked.
  - (c) The driveways to the site must provide minimum sight lines for pedestrian safety as per the relevant section of AS 2890.1.
  - (d) The location of any boom gate or other vehicular access control for driveway entry to the car park should be located to provide for the queuing of at least three (3) cars within the property to avoid queuing on the laneway.
  - (e) "Stop" and "Give Way to Pedestrians" signage be installed at the exit from the car park.

Details from an appropriately qualified person showing that these design requirements have been met shall be submitted with the relevant Construction Certificate and approved by the Certifying Authority prior to issuing of the relevant Construction Certificate.

(Reason: To ensure the design and operation of the car park meets the relevant standards)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 5****Loading Docks**

- C2. Provision of loading docks within the site for two (2) vehicles, namely a 10.7m heavy rigid vehicle and a 8.8m medium rigid vehicle, accessed directly from Atchison Lane and designed within adequate headroom and swept path, etc, in accordance with Australian Standard AS 2890.2:2002 Parking Facilities – Off-street Commercial Vehicles Facilities.

(Reason: To ensure that adequate facilities are available for the loading and unloading of goods for the residential and non-residential components of the development, and reduce adverse impact of loading and unloading associated with the development on the local street system)

**5 Green Star Rating**

- C3. The design and operation of the building and all its components parts shall be in accordance with the 5 Green Star rating established by the Green Building Council of Australia, with appropriate Certification to be provided in this respect prior to the issue of the Construction Certificate and during the construction of the development

(Reason: To provide a building of high environmental sustainability in accordance with the commitment by the applicant)

**Required Infrastructure Works –Roads Act 1993**

- C4. Prior to issue of the Construction Certificate the applicant must have engineering design plans and specifications prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

*Road Works:*

- a) 1500mm setback from the existing kerb and gutter line in Atchison Lane, placed as footpath pavement is to be provided with no structure constructed in it.
- b) Construction of a fully new footpath is required across the entire site frontage in Atchison Lane. The footpath pavement shall be placed on a single straight grade of 3.0% falling to the top of kerb. The footpath pavement shall be full width constructed of concrete pavers, in accordance with Council's standard drawings No S401, S403, S404 and S405, placed adjacent to the front boundary of the property. In general, the pavers selected should match any pavers already laid in the same city block. A longitudinal section is required along the footpath property boundary at a scale of 1:50 extending 5m past the property boundary line. The footpath shall be designed (at a single straight grade of 3% falling to top of kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.



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PART 3A DEVELOPMENT****PAGE 6**

- c) Half width + 1m road pavement reconstruction in Atchison Lane.
- d) Construction of a fully new kerb and gutter is required across the entire site frontage in Atchison Lane. A longitudinal section is required along the gutter line (existing and proposed levels), at a scale of 1:50 extending 5m past the property boundary line.
- e) Cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the Building Code of Australia (BCA), particularly disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

*Drainage Works*

Connection of the site stormwater system must be made directly to a newly constructed grated gully pit (with lintel), to front the site on (INSERT) Street. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicants expense:-

- a) Construction of a new stormwater gully pit in Atchison Lane, which is to be constructed in front of the subject property. The new – minimum 375mm reinforced concrete pipeline in Atchison Lane is to be constructed between the new pit and the nearest pit in Atchison Lane which is located approximately 20m downstream. Pipe is to be from reinforced concrete and within the road reserve shall have a minimum cover of 450mm. The pit must be constructed in accordance with Councils “Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works”.

Private Certifying Authorities must not issue a Construction Certificate without the formal written approval of Council (as Roads Authority) under the Roads Act 1993.

The required plans and specifications are to be designed in accordance with North Sydney Council’s current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works. Detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 – 1996 – Field Guide for Traffic Control at Works on Roads – Part 1 and RTA Traffic Control at Work Sites (1998). **Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.**

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A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

**Awning, Footpath Entries, Fire Exit Details, and Disabled Access to the Through-site Link**

C5. The following details must be designed by an appropriately qualified and practising Civil Engineer and submitted to the Certifying Authority for approval with the application for Construction Certificate:-

- a) Cross section along the centre-line of each access point to the building including fire exits at a scale of 1:50 to be taken from the centre of the road and shall include all changes of grade both existing and proposed.
- b) The sections shall show all relevant levels and grades (both existing and proposed) including those levels stipulated as boundary levels.
- c) The sections shall show the calculated clearance to the underside of any overhead structure.
- d) A longitudinal section along the boundary line showing how it is intended to match the internal levels of the building with the boundary footpath levels. The footpath shall be designed (at a single straight grade of 3% falling to top of kerb) so that it is smooth without showing signs of dipping or rising particularly at entrances.
- e) A longitudinal section along the gutter and kerb line extending 5 metres past property lines showing transitions.
- f) A longitudinal section along the footpath property boundary line extending 5 metres past property lines showing transitions.
- g) Suitable awning to be provided over the Atchison Street footpath except adjacent to the proposed through-site link, and extending out approximately 2.0m over the footpath. The awning edge to be parallel to the kerb line and must not exceed edges of existing adjacent awnings.
- h) Disabled access ramp to be provided at an appropriate location within the

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through site link.

All details are to be certified as complying with the Building Code of Australia (BCA, Council's standard footpath specifications, and AS 1428.1 as relevant. Written concurrence confirming there will be no change to existing boundary and footpath levels is to be provided to North Sydney Council, prior to issue of a Construction Certificate.

(Reason: To facilitate suitable pedestrian and disabled access to private sites and the through-site link, and to ensure that internal levels reflect footpath boundary levels)

**Geotechnical Report**

- C6. Prior to issue of the Construction Certificate the applicant shall have a Geotechnical/Civil Engineering report prepared which addresses (but is not limited to) the following:-
- a) The type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs shall be related to Australian Height Datum;
  - b) The appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations shall be discussed and ameliorated;
  - c) The proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support to be provided within the subject site);
  - d) The impact of excavation/ rock anchors on the structural stability of the Pacific Highway and detailing how the carriageway would be monitored for settlement, and any other issues identified by the RTA (applicant to contact Geotechnical Engineer Stanley Yuen ph: 02 8837 0246 or Graham Yip ph: 02 8837 0245 for details of RTA requirements, and applicant to meet full cost of RTA assessment);
  - e) The existing groundwater levels in relation to the basement structure, where influenced;

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- f) The drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flowpath is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- g) Recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program (as required) including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by a consulting geotechnical/hydrogeological engineer with previous experience in such investigations and reporting. It is the responsibility of the engaged geotechnical specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report shall contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate. The design principles for the geotechnical report are as follows:

- a) No ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) No changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) No changes to the ground water level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) Vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) Appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and

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- f) An adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, including RTA sign-off of details relating to excavation adjacent to the Pacific Highway, must be provided as part of the supporting documentation lodged with the Certifying Authority for approval of the Construction Certificate application. The professional recommendations of the report shall be implemented in full during the relevant stages of excavation and construction.

- (Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process, and satisfy requirements of the RTA in relation to works adjacent to the Pacific Highway)

**Stormwater Management and Disposal Design Plan – Construction issue detail**

- C7. Prior to issue of the Construction Certificate, the applicant shall have a site drainage management plan prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:
- a) Compliance with BCA drainage requirements, Council's Engineering Performance guide and current Australian Standards and guidelines, such as AS/NZ3500.3.2 1998, National Plumbing and Drainage Code.
  - b) Stormwater runoff and subsoil drainage generated by the approved dwellings must be conveyed in a controlled manner by gravity via a direct connection to Council's stormwater gully pit in **Atchison Lane** which is to be constructed in front of the subject property. When a direct connection to the pit option is implemented then the pipeline within the footpath area shall have a minimum cover of 300mm.
  - c) All civil and drainage works within the road reserve and Council's stormwater drainage easement shall be designed and built in accordance with Council's current "Infrastructure Specification". Prior to issue of the Construction Certificate the applicant must have engineering plans and specifications, prepared by a qualified civil drainage design engineer. Council must approve the plans and specifications, in writing, prior to issue of any Construction Certificate by the Certifying Authority. The documentation must provide engineering construction detail for the following public infrastructure works that must be completed as part of the approved development. Council reserve the right of keeping all bonds on infrastructure works for 12 month defects liability period.
  - d) Video inspection must be carried out of completed drainage works that are to revert to council and a video tape forwarded to council's development engineer to support the certification. Bonds held by Council will be returned after receipt of satisfactory information.
  - e) The stormwater drainage system shall be designed for an average recurrence interval (A.R.I.) of 1 in 20 years.
  - f) All redundant stormwater pipelines within the footpath area shall be removed

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- and the footpath and kerb reinstated.
- g) All sub-soil seepage drainage shall be pumped out and discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being in **Atchison Lane**. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer, shall be submitted with the application for a Construction Certificate.
  - h) The design and installation of the Rainwater Tanks shall comply with BASIX and **Sydney Water** requirements. Overflow from tank shall be connected by gravity to the stormwater disposal system.

Details demonstrating compliance are to be submitted with the Construction Certificate.

The Certifying Authority issuing the Construction Certificate must ensure that the approved drainage plan and specifications, satisfying the requirements of this condition, is referenced on and accompanies the Construction Certificate.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

**Section 94 Contributions**

- C8. A contribution pursuant to the provisions of Section 94 of the Environmental Planning and Assessment Act 1979, as specified under the North Sydney Section 94 Contribution Plan for the services detailed in column A and, for the amount detailed in column B shall be made to Council.

A	B (\$)
Administration	19,953.46
Child Care Facilities	27,199.80
Community Centres	118,421.54
Library Acquisition	47,978.02
Library Premises & Equipment	55,281.06
Multi Purpose Indoor Sports Facility	14,738.28
Open Space Acquisition	644,901.61
Open Space Increased Capacity	1,278,305.40
Olympic Pool	47,662.82
Public Domain Improvements	458,485.18
Traffic Improvements	51,140.49
<b>The total contribution is</b>	<b>2,764,067.40</b>

The contribution SHALL BE paid prior to determination of the application for Construction Certificate.

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The above amount, if not paid within one calendar year of the date of this consent, shall be adjusted for inflation by reference to the Consumer Price (All Ordinaries) Index applicable at the time of the payment of the contribution.

A copy of the North Sydney Section 94 Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au)

(Reason: To retain a level of service for the existing population and to provide the same level of service to the population resulting from new development)

**Security Bond Schedule**

C9. All fees and security bonds in accordance with the schedule below must be paid or in place prior to the issue of the required Construction Certificate:

<b>Security Bonds</b>	<b>Amount (\$)</b>
Street Tree Replacement Bond (on Council Property)	\$3,000
Footpath Damage Bond	\$35,000
Drainage Construction Bond	\$8,000
Engineering Construction Bond	\$30,000
<b>TOTAL BONDS</b>	<b>\$76,000</b>
<b>Fees</b>	
Section 94 contributions	\$2,764,067.40
<b>TOTAL FEES</b>	<b>\$2,764,067.40</b>

(Reason: Compliance with the development consent)

**Bicycle Storage and Motor Cycle Parking**

C10. Provision shall be made for the following within the development :

76 residential bicycle storage lockers within the basement,  
6 non-residential bicycle lockers within the basement,  
19 bicycle rails within the development, and  
17 motor cycle spaces within the basement.

Such storage and parking facilities for bicycle and motor cycles to be designed in accordance with the relevant section of Australian Standard AS 2890.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval with the Construction Certificate.

(Reason: To promote and provide adequate facilities for alternative forms of transport)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 13****Wind Impact**

- C11. The design of the development and the building facades shall incorporate the recommendation contained in the Environmental Wind Tunnel Test report, dated 21 June 2010, prepared by Heggies (Ref: report 10-8304-R1).

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To reduce wind impact on the pedestrian environment)

**Tree Bond for Public Trees**

- C12. A Security Bond of \$3,000 for replacement of the trees and shrubs on the public footpath adjacent to the Atchison Street frontage of the site shall be deposited with Council prior to the issue of a Construction Certificate.

If the street trees are not replaced in accordance with the relevant condition of this consent, Council shall deduct from this Bond the reasonable cost of providing and installing the replacement tree or trees and maintaining same during the establishment period.

(Reason: Ensuring the replacement of public infrastructure trees)

**Acoustic Privacy for Residents**

- C13. A certificate from an appropriately qualified Acoustic Engineer is to be submitted with the Construction Certificate certifying that noise levels within dwellings, with windows closed, will not exceed the following:

<b>Location</b>	<b>Control</b>
Recreation/work area	40dB(A)*
Sleeping areas	35dB(A)*

(\*Readings are to be  $L_{Aeq}$  (1 hour), when measured during the noisiest 1 hour period between Day - 7am to 6pm; Evening - 6pm to 10pm and Night - 10pm to 7am).

The sound transmission and insulation properties of all walls and floors separating units must comply with the requirements of Part F5 of the Building Code of Australia. Materials with low noise penetration properties are to be used and detailed, and the location of mechanical equipment such as lift plant, air conditioning plant and pumps immediately adjacent to bedrooms is not permitted.

(Reason: To comply with best practice standards for residential acoustic amenity)

**Garbage and Recycling Facilities**



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PART 3A DEVELOPMENT****PAGE 14**

C14. Appropriate areas shall be provided within the building for the storage of garbage bins and recycling containers and all waste generated by the development. In particular the following requirements shall be met:

- a) The basement to be redesigned to ensure the garbage compactor unit and room is located at the base of the chute on basement level B1.
- b) A holding area for all residential garbage and recycling bins to be provided at laneway level within 2m of the laneway frontage, if the main garbage storage area is located elsewhere, for weekly collection by Council's residential garbage contractors. This bin holding area should be of sufficient size to accommodate the number of 240 litre garbage bins and recycling bins necessary to handle all waste emanating from the residential component.
- c) Separate garbage storage facilities to be provided for residential and non-residential components, and chute/ compactor to be available only to the residential component.
- d) Recycling storage area to be provided on each residential level adjacent to the chute.
- e) All internal walls of the garbage storage areas to be rendered to a smooth surface coved at the floor/wall intersection, graded and drained to the sewer with a tap to facilitate cleaning.

(Reason: To ensure the provision of adequate garbage storage and holding facilities for the development in accordance with Council's Waste Handling Guide)

**Adaptable Housing**

C15. A minimum of 23 apartments shall be designed with accessible features for disabled persons, and to incorporate level entries and wider doorways and corridors, slip resistant surfaces, reachable power points, disabled toilet, and lever door handles and taps; such features to be designed generally in accordance with the relevant Australian Standard. These 23 apartments shall include one of the 1 bedroom units to be dedicated to Council as Affordable Housing and a minimum of 4 other 1 bedroom units, 5 x 2 bedroom units and 5 x 3 bedroom units.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure equity of access and availability of accommodation in the future for an ageing population and people with limited mobility)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 15****Underground Electricity and Other Services**

- C16. All overhead electricity and other lines (existing and proposed) shall be undergrounded within Atchison Street and Atchison Lane between Christie Street and Mitchell Street and the lines / conduits between the building and the street connection shall be underground, in accordance with the requirements of Energy Australia, and at the cost of the applicant. The Certifying Authority must ensure that the building plans and specifications submitted by the applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

**Communal Meeting Room**

- C17. The plans shall be amended to provide a communal meeting room for the use of residents of the development. Such room to be provided in a location easily accessible to residents with access to natural light, and not readily accessible to non-residents. The room shall have a minimum area of 60 m<sup>2</sup>.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure adequate facilities to promote social interaction between residents of the development and a venue for such purposes as Body Corporate meetings)

**Sydney Water**

- C18. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Co-ordinator. For details see the Sydney Water web site [www.sydneywater.com.au](http://www.sydneywater.com.au), or telephone *Sydney Water's Development Operations Group* on 9829 8682.

Applicants will be advised of any requirements that must be met before the Certificate can be issued.

The final Section 73 Certificate must be submitted to the Certifying Authority prior to release of any linen plan for subdivision or prior to occupation of the development.

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 16****Sydney Water Approvals**

- C19. The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Care Centre to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The approved plans will be appropriately stamped. For Quick Check agent details please refer to "Your Business" section of Sydney Water's web site at [www.sydneywater.com.au](http://www.sydneywater.com.au) then see Building and Renovating under the heading Building and Developing, or telephone 13 20 92. The appointed PCA must ensure that a Quick Check agent/Sydney Water has appropriately stamped the plans before the commencement of building works.

(Reason: To ensure compliance with Sydney Water requirements)

**Dilapidation Report Damage to Public Infrastructure**

- C20. The applicant must have a dilapidation survey and report (including photographic record) prepared which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. The developer may be held liable to all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The applicant shall bear the cost of restoration of all infrastructure damaged as a result of the development, and no occupation of the development shall occur until damage is rectified. A copy of the dilapidation report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To ensure protection of existing built infrastructure)

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

- C21. A photographic survey of adjoining properties No's. 2-4 and 20 Atchison Street detailing the physical condition of those properties, 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

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PART 3A DEVELOPMENT****PAGE 17**

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)

**Shoring for Adjoining Property**

- C22. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, shall be submitted to the Certifying Authority for approval with the Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

**Structural Adequacy of Adjoining Properties – Excavation Works**

- C23. A certificate prepared by an appropriately qualified and practising structural engineer, at no cost to the Council, detailing the structural adequacy of adjoining properties No's. 2-4 and 20 Atchison Street, and certifying their ability to withstand the proposed excavation and any measures required to be incorporated into the work to ensure that no damage will occur to adjoining properties during the course of the works, shall be submitted to the Certifying Authority for approval with the Construction Certificate.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 18****Sediment Control**

C24. Where construction or excavation activity requires the disturbance of the soil surface and existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication Managing Urban Stormwater: Soils & Construction (4th edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method. The sediment Control Plan shall incorporate and disclose:

- a) All details of drainage to protect and drain the site during the construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition. All works must be undertaken in accordance with the approved Sediment Control plan.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

**Waste Management Plan**

C25. A Waste Management Plan is to be submitted with the Construction Certificate. The plan should include, but not be limited to: -

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

(Reason: To encourage the minimisation of waste and recycling of building waste)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 19****Reflectivity Index of Glazing**

- C26. The reflectivity index (expressed as a percentum of the reflected light falling upon any surface) of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

**Roofing Materials - Reflectivity**

- C27. Roofing materials shall be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

**No External Service Ducts**

- C28. Service ducts shall be provided within the building to keep external walls free of plumbing, drainage or any other utility installations. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure quality built form of the development)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 20****Work Zone**

- C29. If a Works Zone is proposed, an application must be made to the North Sydney Local Traffic Committee to install the 'Work Zone'. Works Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Works Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Works Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic Committee and submit a copy of this to the Certifying Authority to enable issue of the Construction Certificate.

Where approval of the 'Work Zone' is resolved by the Committee, the necessary 'Work Zone' signage shall be installed (at the cost of the Applicant) and the adopted fee paid prior to commencement of any works on the site. Further, at the expiration of the Works Zone approval, the Applicant is required to remove the Works Zone signs and reinstate any previous signs, all at the Applicant's cost.

(Reason:      Amenity and convenience during construction)

**Maintain Property Boundary Alignment Levels**

- C30. Unless otherwise approved by Council, the property boundary alignment levels must match existing. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason:      To ensure interface between property and public land remains uniform)

**Parking Meter Relocation**

- C31. All costs associated with relocating the metered parking including all sign changes, parking bay line markings shall be paid in full to North Sydney Council prior to issue of any Construction Certificate.

The Certifying Authority must ensure that the specifications submitted by the Applicant, accompanying the issued Construction Certificate, fully satisfy this condition.

(Reason:      To ensure the proper management of public land and funds)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 21****Parking for People with Disabilities**

- C32. A total of seven (7) car-parking spaces for use by persons with a disability shall be provided as part of the total car-parking requirements. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads and shall be clearly shown on the plans submitted to the Certifying Authority for approval with the Construction Certificate. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

**Pump-Out System Design for Stormwater Disposal**

- C33. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria: -

- a) The pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the 1 in 20 year storm;
- b) The pump system shall be regularly maintained and serviced, every six (6) months; and
- c) Any drainage disposal to the street gutter from a pump system, must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Engineering details demonstrating compliance with these criteria, and certified by an appropriately qualified and practising civil engineer shall be provided to the Certifying Authority for approval with the Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)



**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 22****Bond for Damage and Completion of Infrastructure Works – Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing, Road Pavement and Tree Protection**

C34. The applicant must lodge a Bond of \$76,000 with Council against any potential infrastructure damage or failure to complete to the relevant specification the construction of any infrastructure works required as part of this consent (See Schedule). The bond shall be lodged in the form of a deposit or bank guarantee and will be refundable following Occupation Certificate issue and at the end of any maintenance period stipulated by consent conditions, upon inspection and release by Council's Engineers. Further, Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in the following circumstances: -

- a) Where the damage constitutes a hazard in which case Council may make use of the bond immediately;
- b) The applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- c) Works in the public road associated with the development are to an unacceptable quality; and
- d) The Certifying Authority must ensure that bond is lodged with North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

**Footpath, Entries and Fire Exit Details (Mixed Use/Commercial/Apartments)**

C35. The following details must be designed by an appropriately qualified and practising Civil Engineer and submitted to the Certifying Authority for approval with the application for Construction Certificate: -

- a) Cross section along the centre-line of each access point to the building including fire exits at a scale of 1:50 to be taken from the centre of the road and shall include all changes of grade both existing and proposed.
- b) The sections shall show all relevant levels and grades (both existing and proposed) including those levels stipulated as boundary levels.
- c) The sections shall show the calculated clearance to the underside of any overhead structure.
- d) A longitudinal section along the boundary line showing how it is intended to match the internal levels of the building with the boundary footpath levels. The footpath shall be designed (at a single straight grade of 3% falling to top of kerb) so that it is smooth without showing signs of dipping or rising particularly at entrances.

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PART 3A DEVELOPMENT****PAGE 23**

- e) A longitudinal section along the gutter and kerb line extending 5 metres past property lines showing transitions.

All details are to be certified as complying with the Building Code of Australia (BCA) and Council's standard footpath specifications. Written concurrence confirming there will be no change to existing boundary and footpath levels is to be provided to North Sydney Council, prior to issue of a Construction Certificate.

(Reason: To facilitate suitable pedestrian and disabled access to private sites, and to ensure that internal levels reflect footpath boundary levels)

**Garbage and Recycling Facilities**

C36. An appropriate area shall be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises. The following requirements shall be met:

- a) All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning;
- b) Include provision for the separation and storage in appropriate categories of material suitable for recycling;
- c) The storage area shall be adequately screened from the street, with the entrance to the enclosures no more than 2m from the street boundary of the property;
- d) If a storage facility is to be provided at another suitable location within the building, a complementary garbage bin holding bay shall be provided no more than 2m from the street boundary of the property;
- e) Garbage enclosures serving residential units are not to be located within areas designated for non-residential uses; and
- f) Garbage enclosures serving non-residential uses are not to be located within areas designated for dining purposes.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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PART 3A DEVELOPMENT****PAGE 24**

Note: The applicant may wish to discuss bin storage requirements and location with Council prior to finalisation of the required detail, and obtain a copy of Council's Waste Handling Guide for reference purposes.

(Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors)

**Asbestos & Hazardous Material Survey**

C37. A survey of the existing building fabric shall be undertaken identifying the presence or otherwise of asbestos contamination. Any works subsequently required to address asbestos contamination shall be undertaken in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and Work Safe Australia.

The Certifying Authority must ensure that the specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily)

**Location of Plant**

C38. All plant and equipment (including but not limited to air conditioning equipment) is to be located within the basement or other areas of the building and is not to be located on the roof. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Minimise impact on surrounding properties, improved visual appearance and amenity for locality)

**Mechanical Exhaust Ventilation**

C39. A statement from an appropriately qualified and practising Mechanical Engineer is required detailing how the exhaust ventilation system will be installed in accordance with the applicable Australian Standard. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 25****Access for People with Disabilities**

- C40. The building must be designed and constructed to provide access and facilities for people with a disability in accordance with the Building Code of Australia. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council prior to a Construction Certificate being issued.

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

**Pool Access**

- C41. Access to the pool shall be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the barrier is to conform to the requirements of the applicable Australian Standard. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the safety of children and make applicant aware of the need to comply with applicable pool fencing legislation)

**Swimming Pool Water to Sewer**

- C42. The swimming pool including overflow water shall be drained to the sewer. The consent of Sydney Water to dispose of wastewater shall be obtained. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully comply with any conditions imposed by Sydney Water.

(Reason: Water from a swimming pool is classified as wastewater and cannot be legally disposed of into the stormwater system)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 26****Pool Filter**

- C43. The pool filtering equipment shall be encased by a soundproof cover and shall be located six (6) metres from any habitable room in a dwelling on a neighbouring property. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure noise generated by equipment does not result in offensive noise)

**Bonds**

- C44. Council will accept a bank guarantee for the purpose of any security bond imposed by these conditions of consent. Such bank guarantee shall be in a form acceptable to the Council and shall be in place prior to the issuing of the Construction Certificate and shall remain in place until the submission of the certificate required prior to the occupancy of the completed works.

(Reason: Information, Protection of infrastructure and the environment)

**BASIX Commitments**

- C45. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled. The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

In this condition:

- a) relevant BASIX Certificate means:
- (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
  - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a construction certificate, the replacement BASIX Certificate; and

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PART 3A DEVELOPMENT****PAGE 27**

- b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

***D. Prior To Any Commencement*****Public Liability Insurance – Works on Public Land**

- D1. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for North Sydney Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

(Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.)

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

**Notification of New Address Developments**

- D2. Prior to the commencement of any building works, the Private Certifying Authority must ensure that the person acting upon this consent has complied with the following:
- (a) Apply to North Sydney Council and receive written confirmation of the allocated street address (house number) and/ or unit numbers of the completed project. To assist Council, a plan for unit numbering should be submitted for concurrence. These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 28*****E. During Demolition and Building Work*****Service Adjustments**

- E1. Where required, the adjustment or inclusion of any new utility service facilities must be carried out by the person acting on the consent and in accordance with the requirements of the relevant utility authority. These works shall be at no cost to Council. It is the Applicants full responsibility to make contact with the relevant utility authorities to ascertain the impacts of the proposal upon utility services at the appropriate stage of the development (including water, phone, gas and the like). Council accepts no responsibility whatsoever for any matter arising from its approval of this application involving any influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

**Contamination Investigations**

- E2. Following demolition of the existing buildings and structures on the site and PRIOR to any excavation, the applicant shall carry out site contamination investigations to determine whether a Remediation Action Plan (Contaminated Land) is necessary. Such investigations shall be undertaken in accordance with the relevant guidelines and criteria under the Contaminated Land Management Act 1997 and the Contaminated Land Management Regulation 2008.

(Reason: To ensure proper management of the site in the event that it is found to be contaminated land)

**Cigarette Butt Receptacle**

- E3. A cigarette butt receptacle is to be provided on the site for the duration of excavation/demolition/construction process, for convenient use of site workers.

(Reason: To ensure adequate provision is made for builders' waste)

**Re-use of Sandstone**

- E4. Sandstone blocks (if any) removed from the site are to be either stored for re-use on site or offered to Council in the first instance.

Note: The provisions of the Heritage Act may also apply to altering any sandstone elements on any site)

(Reason: To allow for preservation of cultural resources within the North Sydney Council area)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 29****Parking Restrictions**

- E5. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions are only to be approved via the North Sydney Local Traffic Committee. The Applicant will be held responsible for any breaches of this condition, and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

**Road Reserve Safety**

- E6. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works. Construction materials and plant must not be stored in the road reserve without approval. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Applicant cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

**Temporary Disposal of Stormwater Runoff**

- E7. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures shall be to the satisfaction of the Principal Certifying Authority.

(Reason: Stormwater control during construction)



**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 30****Structures Clear of Drainage Easements**

E8. It is the full responsibility of the Applicant and their contractors to: -

- a) Ascertain the exact location of the Council drainage infrastructure traversing the site in the vicinity of the works;
- b) Take full measures to protect the in-ground Council drainage system; and
- c) Ensure dedicated overland flow paths are satisfactorily maintained through the site.

Drainage pipes can be damaged through applying excessive loading (such as construction plant, material storage and the like). All proposed structures and construction activities are to be located clear of Council drainage pipes, drainage easements, watercourses and trunk overland flow paths on the site. Trunk or dedicated overland flow paths must not be impeded or diverted by fill or structures unless otherwise approved.

In the event of a Council drainage pipeline being uncovered during construction, all work is to cease and the Principal Certifying Authority and Council must be contacted immediately for advice. Any damage caused to a Council drainage system must be immediately repaired in full as directed, and at no cost to Council.

(Reason: Protection of Public Drainage Assets)

**Progress Survey**

E9. In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, shall be prepared by a Registered Surveyor showing the following: -

- a) at the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
- b) prior to placement of concrete at the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
- c) prior to placement of concrete at each fifth floor level showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
- d) prior to roofing, or completion of the highest point of the building showing the anticipated level of the completed work and its relationship to the boundary; and

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PART 3A DEVELOPMENT****PAGE 31**

- e) at completion, works showing the relationship of the building to the boundary and showing the maximum height of the overall works and the height of the principal roof elements.

Progress certifications in response to points (a) through to (e) shall be provided to the Principal Certifying Authority at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveals discrepancies between the approved plans and the proposed works.

(Reason: To ensure compliance with approved plans)

**Dust Emission and Air Quality**

- E10. Materials must not be burnt on the site.

Vehicles entering and leaving the site with soil or fill material must be covered.

Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction. Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**Noise and Vibration**

- E11. Noise and vibration from works is to be undertaken in accordance with industry best practice, to ensure excessive levels of vibration do not occur to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

**No Work on Public Open Space**

- E12. The applicant shall not undertake any work within adjoining public lands (ie. Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the applicant is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 32****Applicant's Cost of Work on Council Property**

- E13. The applicant shall bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

**No Removal of Trees on Public Property**

- E14. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved in this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

**Special Permits**

- E15. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development are to occur entirely on the property. The applicant, owner or builder must apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property pursuant to S138 of the Roads Act. A minimum of forty-eight (48) hours notice is required for any permit: -

1) **On-street mobile plant**

Eg. cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the applicant's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 33****3) Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

**4) Kerbside restrictions, construction zones**

The applicant's attention is drawn to the existing kerbside restrictions adjacent to the development. Should the applicant require alteration of existing kerbside restrictions, or the provision of a construction zone, the appropriate application must be made and the fee paid. Applicants should note that the alternatives of such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

**Construction Hours**

E16. Building construction shall be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works shall be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- i. "Building construction" means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- ii. "Demolition works" means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- iii. "Excavation work" means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

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PART 3A DEVELOPMENT****PAGE 34**

The builder and excavator shall display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

**Out of Hours Work Permits**

E17. Where it is necessary for works to occur outside those hours allowed by these conditions, approval for such will be subject to issue of a permit on each occasion from Council's Customer Services Centre. Such occurrence shall be limited to two occasions per calendar month and shall only be approved if public safety or convenience is at risk. Any further variation shall require the lodgement and favourable determination of a modification application pursuant to Section 96 of the Environmental Planning and Assessment Act 1979.

Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Further information on permits can be obtained from the Council website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).
- 3) It is recommended that applications for permits be lodged as early as possible to allow sufficient time for determination by Council and avoid disruption or delay due to conflicting priorities.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

**Installation and Maintenance of Sediment Control**

E18. Techniques used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with the publication Managing Urban Stormwater: Soils & Construction (4th edition, Landcom, 2004), commonly referred to as the "Blue Book". All techniques shall remain in proper operation until all development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 35****Sediment and Erosion Control Signage**

- E19. A durable sign, which is available from Council, shall be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

**Site Amenities and Facilities**

- E20. The provision and maintenance of amenities, at a site where work involved in the erection and demolition of a building is being carried out, must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements. The type of work place determines the type of amenities required.

Further information and details can be obtained from the Internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

(Reason: To ensure the health and safety of the community and workers on the site)

**Health and Safety**

- E21. The work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site, and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at [www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)

(Reason: To ensure the health and safety of the community and workers on the site)

**Community Information**

- E22. Reasonable measures must be undertaken at all times by the proponent to keep nearby residents informed about the proposed work, such as by way of signs, leaflets, public meetings and telephone contact numbers, to ensure that adjoining residents are aware of the likely duration of the construction works on the site

(Reason: To ensure that residents are kept informed of activities that may affect their amenity)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 36****Aboriginal Heritage**

- E23. If in undertaking excavations or works, any Aboriginal site or relic is, or is thought to have been found, all works are to cease immediately and the applicant is to contact Aboriginal Heritage Officer for North Sydney Council, and the National Parks and Wildlife Service (NPWS). Any work to a site that is discovered to be the location of an Aboriginal relic, within the meaning of the National Parks and Wildlife Act, requires a permit from the Director of the NPWS.

(Reason: Aboriginal Heritage Protection)

**Prohibition on Use of Pavements**

- E24. Building materials shall not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand) and a suitable sign to this effect shall be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

**Plant & Equipment Kept Within Site**

- E25. All plant and equipment used in the erection of the building, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, shall be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like shall be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at [www.northsydney.nsw.gov.au](http://www.northsydney.nsw.gov.au).

(Reason: To ensure public safety and amenity on public land)

**Waste Disposal**

- E26. All records demonstrating the lawful disposal of waste will be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council, the Department of Environment and Climate Change or WorkCover NSW.

(Reason: To ensure the lawful disposal of construction and demolition waste)

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PART 3A DEVELOPMENT**

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***F. Operational Conditions imposed under EP&A Act and Regulations and other relevant Legislation***

**Building Code of Australia**

- F1. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

(Reason: Prescribed - Statutory)

**Home Building Act**

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates has given North Sydney Council written notice of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
    - i) the name and licence number of the principal contractor, and
    - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
  - b) in the case of work to be done by an owner-builder:
    - i) the name of the owner-builder, and
    - ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)



**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 38****Appointment of a Principal Certifying Authority (PCA)**

- F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until the person having the benefit of the development consent has appointed a PCA for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**Construction Certificate**

- F4. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**Occupation Certificate**

- F5. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the PCA appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

**Mandatory Critical Stage Inspections**

- F6. Building work must be inspected by the PCA on the mandatory critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed PCA.

(Reason: Statutory)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 39****Commencement of Works**

- F7. Building work, demolition or excavation in accordance with a development consent must not be commenced until the person having the benefit of the development consent has given at least 2 days notice to North Sydney Council of the persons intention to commence the erection of the building.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

**Excavation/Demolition**

- F8. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

**Retaining Walls & Drainage**

- F9. If the soil conditions require it:

- 1) retaining walls associated with the erection or demolition of a building or other approved methods of preventing movement of the soil must be provided, and
- 2) adequate provision must be made for drainage in accordance with the provisions of the applicable Australian Standard.

(Reason: To ensure appropriate measures are in place to address site conditions and provide appropriate site drainage)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 40****Support for Neighbouring Buildings**

- F10. 1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:-
- a) must preserve and protect the building from damage;
  - b) if necessary, must underpin and support the adjoining building in an approved manner Subject to adjoining owner's consent); and
  - c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- 2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.
- 3) In this clause, allotment of land includes a public road and any other public place.

(Reason: To ensure adjoining owner's property rights are protected and protect adjoining properties from potential damage)

**Protection of Public Places**

- F11. 1) If the work involved in the erection or demolition of a building:-
- a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
  - b) building involves the enclosure of a public place,
- a hoarding and site fencing must be erected between the work site and the public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.

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- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

**Site Sign**

- F12. 1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:
- a) stating that unauthorised entry to the work site is prohibited;
  - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
  - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out, but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

**G. *Prior to the Issue of an Occupation Certificate***

**Deed of Agreement – Public Space**

- G1. Prior to completion and issue of any interim Occupation Certificate, the applicant shall enter into a Deed of Agreement with Council with regard to the **proposed public area at the ground level of the site including the through-site pedestrian link to the rear lane, and the widened footpath area to Atchison Street as shown on drawing numbered PA-100-01 titled 'Public Domain Plan' prepared by Francis-Jones Morehen Thorp submitted with the application**, which achieves the objectives of:-

- enabling the public to use that area for the purpose of public access at all the times, for the life of the building (not in perpetuity), and

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PART 3A DEVELOPMENT****PAGE 42**

- binds all successors in title and ensures the rights are not subject to change or variation except with the prior consent of Council.

The applicant shall be responsible for the maintenance of the area and public liability insurance for a policy in the amount of not less than \$20 million in respect of any property damage, personal injury and loss of life caused by or in connection with the provision and use of the area. The Deed of Agreement shall include details on the design and finishes of materials, levels of light and security.

The Deed must also make provision for a Covenant on title to be registered with NSW Department of Lands prior to the issue of any Occupation Certificate for the building. The Covenant must note the matters contained in the Deed to ensure that the area is maintained as public space for the life of the building.

The Deed and any associated documentation shall be prepared, executed and registered at the sole cost of the applicant, including the reasonable costs of Council in obtaining advice, the cost and expense of negotiating the terms and conditions of the agreement, producing documents or otherwise facilitating the preparation, execution and registration of the required documents, shall bind all successors in title and shall only be subject to variation at the discretion of the Council.

(Reason: to facilitate public access and amenity)

**Easement(s) adjacent to Atchison Lane**

- G2. Prior to the issue of the final Occupation Certificate, the person acting on the consent shall create a public right-of-carriageway, public right-of-way and easements for services and drainage 1.5m wide and 2.0m deep along the Atchison Lane frontage of No 16 Atchison Street in Council's favour, by appropriate instrument under Part 6, Division 4 of the Conveyancing Act 1919. Such easements shall be at no cost to Council.

North Sydney Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument, and North Sydney Council's official seal shall be affixed to these documents, prior to submission to the Land & Property Information Office. Evidence of the lodgement of the instrument referred to in this condition is to be provided to Council with a copy of the Occupation Certificate.

(Reason: To ensure appropriate easements for public access, drainage and services over that section of the site which protrudes into Atchison Lane)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 43****5 Green Star Rating**

- G3. The completed building and all its components parts shall be in accordance with the 5 Green Star rating by the Green Building Council of Australia, with appropriate Certification to be provided in this respect prior to the issue of any Occupation Certificate for the relevant part of the building.

(Reason: To ensure the commitment by the applicant is met)

**Infrastructure Repair and Completion of Works**

- G4. Prior to issue of any Occupation Certificate all required works in the road reserve must be completed in full and any damaged public infrastructure caused as a result of construction works on the subject site (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub contractors, concrete vehicles) must be fully repaired to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of Public assets)

**Noise from Plant**

- G5. Prior to issue of the final Occupation Certificate, a certificate from an Acoustic Engineer is to be submitted to the Certifying Authority certifying that the air-conditioning, lift motors, pumps and plant rooms have been installed so as not to exceed more than 5dB(A) above the background level during the day and evening and not exceeding the background level at night (10.00pm to 6.00 am) when measured at the boundary of the property, and will comply with the Environment Protection Authority Industrial Noise Policy.

(Reason: To ensure acoustic amenity)

**Certification- Civil Works**

- G6. a) An appropriately qualified and practising Civil Engineer shall certify to the Principal Certifying Authority that the stormwater drainage system was constructed in accordance with this consent and the provisions of the applicable Australian Standard. The applicant shall, upon completion of the development works and prior to the issue of a final Occupation Certificate, submit to Council a copy of the aforementioned letter of certification.
- b) An appropriately qualified and practicing Civil Engineer shall certify to the Principal Certifying Authority that the vehicular crossing and associated works and road works were constructed in accordance with this consent. The applicant shall, upon completion of the development works and prior to the issue of a final Occupation Certificate, submit to Council a copy of the aforementioned letter of certification.

(Reason: Compliance with the Consent)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 44****Pool Access**

- G7. Access to the pool shall be restricted by a child resistant barrier in accordance with the regulations prescribed in the Swimming Pools Act 1992, and the requirements of the applicable Australian Standard. The pool shall not be filled with water or be allowed to collect stormwater until the installation of the child resistant barrier is completed. Certification from an appropriately qualified person confirming compliance with these requirements shall be provided prior to the issuing of any Occupation Certificate.

(Reason: To ensure that any person acting upon this consent is aware of their obligations under the provisions of the Swimming Pools Act)

**Pool Safety Requirements**

- G8. The owner of the pool shall display a notice showing:
- a) Appropriate instructions of artificial resuscitation methods.
  - b) A warning stating 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL'.

Note: This notice shall be kept in a legible condition and at the poolside.

Details demonstrating compliance are to be provided with any Occupation Certificate issued for the pool.

(Reason: To ensure an adequate level of safety for young pool users)

**Damage to Adjoining Properties**

- G9. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

On completion of the works and prior to the issue of a final Occupation Certificate, a certificate is to be prepared to the effect that no damage has resulted to adjoining premises, and is to be provided to Council and the Principal Certifying Authority.

Alternatively, if damage is identified which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to the issue of a final Occupation Certificate.

(Reason: To ensure adjoining owner's property rights are protected)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 45****Utility Services**

- G10. All utility services shall be adjusted, to the correct levels and/or location/s required by this consent, prior to issue of a final occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

**Regulated Systems- Air Handling**

- G11. To ensure that adequate provision is made for ventilation of the building all mechanical and/or natural ventilation systems shall be designed, constructed and installed in accordance with the provisions of:

- 1) The Building Code of Australia;
- 2) The applicable Australian Standards;
- 3) The Public Health Act;
- 4) Public Health (Microbial Control) Regulation;
- 5) Work Cover Authority; and

The regulated system must be registered with Council prior to commissioning the system and prior to issue of the final Occupation Certificate.

(Reason: To ensure public health is maintained; Statutory)

**Basement Pump-Out Maintenance**

- G12. Prior to issue of the final Occupation Certificate a maintenance regime shall be prepared for the basement stormwater pump-out system and submitted to Principal Certifying Authority to be included with the Occupation Certificate documentation. The regime shall specify that the system is to be regularly inspected and checked by qualified practitioners.

(Reason: To ensure future provision for maintenance of the drainage system)



**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 46****Notification of New Address Developments**

G13. Prior to any Occupation Certificate being issued for the building works, the person acting upon this consent must comply with the following: -

- a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. To find your nearest Australia Post Delivery Facility contact 13 13 18.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties)

**Asbestos Clearance Certificate**

G14. Prior to issuing any Occupation Certificate for building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to the Principal Certifying Authority (and a copy forwarded to Council) for the building work which certifies the following: -

- a) The building/ land is free of asbestos; or
- b) The building/ land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from [www.dec.nsw.gov.au](http://www.dec.nsw.gov.au)

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

**Vehicle Egress Signs**

G15. Prior to the issue of an Occupation Certificate, appropriate sign(s) shall be provided and maintained within the site at the point(s) of vehicular egress to ensure all vehicles stop before proceeding onto the public way.

(Reason: To ensure pedestrian safety)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 47****Disposal Information**

G16. Upon completion of works and prior to occupation, the person entitled to act on this consent shall provide to Council's Open Space and Environmental Services Department a hard copy of the following information:

- (a) the total tonnage of all waste and excavated material disposed of from the site (including any tipping dockets); and
- (b) the disposal points and methods used.

(Reason: To ensure appropriate disposal methods are undertaken for auditing and inspection purposes)

**Height**

G17. The maximum RL of the proposed development shall be RL 196.25 AHD measured at roof parapet of plant on top of building. The Certifying Authority must ensure, prior to the issue of the final Occupation Certificate required on the completion of works, that evidence is submitted by the Applicant, demonstrating compliance with this condition.

(Reason: To ensure compliance with the terms of this development consent)

**H. Prior to Final Completion****Allocation of Spaces**

H1. One hundred and sixty-eight (168) carparking spaces shall be provided and maintained at all times on the subject site. The spaces shall be allocated in the following proportions:

- 152 Residential (including 5 disabled spaces)
- 16 Non-residential (including 2 disabled spaces)

Such spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of Occupation Certificate. Carparking provided shall only be used in conjunction with the uses contained within the development and in the case of Strata subdivision, shall be individually allocated to residential units. Under no circumstances shall Strata By-Laws be created to grant exclusive use of nominated Visitors Parking spaces to occupants/owners of units or tenancies within the building.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 48*****I. On-Going / Operational Conditions*****Pool Filter**

11. Pool equipment shall not operate between 10.00 pm and 7.00 am.

(Reason: To ensure noise generated by equipment does not result in offensive noise)

**Pool Cover**

12. A pool cover must be installed and available for use at all times when the pool is not in use.

(Reason: To minimise water usage)

**Trade Waste**

13. Trade waste water shall be disposed of in accordance with the permit requirements of Sydney Water Corporation Ltd, Wastewater Source Control Branch.

(Reason: To ensure compliance with Sydney Water's requirements and protect the environment)

**Noise Impact**

14. The outdoor area associated with the use approved under this consent must not give rise to offensive noise within the meaning of the Protection of the Environment Operations Act 1997.

(Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines)

**Parking Station**

15. The off-street car parking area shall not be used as a Public Car Parking Station.

(Reason: Consistency with of the terms of this consent)

**Space Enclosure**

16. No parking spaces, or access thereto shall be constrained or enclosed by any form of structure such as fencing, or the like, without prior consent from Council.

(Reason: To ensure that minimum dimensions for parking spaces are not reduced or that vehicle manoeuvring is compliant with relevant standards)

**6-16 ATCHISON STREET, ST LEONARDS  
PART 3A DEVELOPMENT****PAGE 49****Commercial Waste and Recycling Storage**

- I7. Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

(Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed)

**Waste Collection**

- I8. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

(Reason: To ensure the acoustic amenity of surrounding properties)

**Delivery Hours**

- I9. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

(Reason: To ensure the acoustic amenity of surrounding properties)

**Roof Top Lighting**

- I10. An 11.00 pm to dawn curfew on lighting of rooftop or podium level areas shall apply. All lighting shall be directed away from any adjacent dwelling.

(Reason: To ensure residential premises are not affected by inappropriate or excessive illumination)

**No Parking in Aisles or Turn Paths**

- I11. No vehicles shall be parked at any time within the aisles or turn paths of the basement parking area.

(Reason: To ensure the efficient and safe operation of the car park for the convenience of the occupants of the building using the car park)

**Separate Occupation of Café and Recreation Facility**

- I12. The specific use or occupation of the refreshment room/ café and gymnasium/ recreational facility within the development shall be the subject of further development approval prior to such use or occupation.

(Reason: To ensure development consent is obtained prior to that use commencing, and to enable proper assessment of potential impacts)

**Loading Dock Use**

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PART 3A DEVELOPMENT****PAGE 50**

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- I13. All loading and unloading operations shall be carried out within the confines of the site. The loading dock shall be available for use by large vehicles associated with all uses within the building in accordance with the approved Transport Management Plan nominated in condition B2, including use by vehicles delivering or removing furniture, etc, from residential premises within the development.

(Reason: To ensure loading and unloading associated with the development occurs safely within the site with minimal inconvenience to traffic and pedestrians in the area)

