



Victoria Cross Over Station Development

State Significant Development Assessment

SSD 8874 MOD 1

SSD 10294

July 2020



Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: Victoria Cross Over Station Development

Subtitle: State Significant Development Assessment

Cover image: Photomontage of development looking northeast (Source: EIS)

© State of New South Wales through Department of Planning, Industry and Environment 2020. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Planning, Industry and Environment as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (July 2020) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Planning, Industry and Environment), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Glossary

| Abbreviation | Definition |
|--------------------|---|
| CIV | Capital Investment Value |
| CSSI | Critical State Significant Infrastructure |
| Council | North Sydney Council |
| Department | Department of Planning, Industry and Environment |
| DRP | Design Review Panel |
| EESG | Environment, Energy and Science Group |
| EIS | Environmental Impact Statement |
| EPA | Environment Protection Authority |
| EP&A Act | <i>Environmental Planning and Assessment Act 1979</i> |
| EP&A Regulation | Environmental Planning and Assessment Regulation 2000 |
| EPI | Environmental Planning Instrument |
| ESD | Ecologically Sustainable Development |
| FRNSW | Fire and Rescue NSW |
| Heritage | Heritage NSW, Department of Premier and Cabinet |
| Minister | Minister for Planning and Public Spaces |
| NSLEP | North Sydney Local Environmental Plan 2013 |
| OSD | Over Station Development |
| RMS | Roads and Maritime Services, TfNSW |
| SEARs | Planning Secretary's Environmental Assessment Requirements |
| Planning Secretary | Secretary of the Department of Planning, Industry and Environment |
| RtS | Response to Submissions |
| SEPP | State Environmental Planning Policy |
| SSD | State Significant Development |
| SSI | State Significant Infrastructure |
| TfNSW | Transport for NSW |

Executive Summary

This report provides a concurrent assessment of a modification application to the Victoria Cross over station development (OSD) concept approval (SSD 8874 MOD 1) and a State significant development (SSD) application (SSD 10294) for the design and construction of a commercial office tower above the southern entrance of the Victoria Cross Metro station at North Sydney.

The Victoria Cross Metro station is one of the seven new stations approved as part of the new Sydney Metro City and Southwest Metro lines. The proposed OSD will be delivered together with the station as an integrated station development, creating a new transport and civic hub within the heart of the North Sydney CBD.

The proposal seeks:

- modifications to the concept approval to amend the building envelope above the Miller Street setback area, reduce the setback to Berry Street, redistribute building mass and increase the maximum gross floor area (GFA) by 1,500 square metres (m²) to 61,500 m²
- development consent for the design, construction and operation of a 42-storey commercial office tower, including basement car parking, end of trip facilities, signage zones, Stratum subdivision and the use office lobbies within the Metro station.

The Applicant is Lendlease (Victoria Cross) Pty Ltd and the proposal is located within the North Sydney local government area. The Capital Investment Value (CIV) for the proposal is \$315,022,149 and it would generate 400 to 600 construction jobs and over 4,000 operational jobs.

The Minister for Planning and Public Spaces is the consent authority for both applications as the Victoria Cross over station development has been declared State significant infrastructure (SSI) related development.

Engagement

The Department publicly exhibited proposal between 1 November and 28 November 2019 (28 days) and received a total of 34 submissions. The concept modification application received 15 submissions (six objecting, one supporting and eight providing comments), including nine from Government agencies, an objection from North Sydney Council (Council) and five from the public.

The SSD application received 19 submissions (10 objecting, one supporting and eight providing comments), including seven from Government agencies, an objection from Council, three from special interest groups and eight from the public.

Council objected to the proposed departure with the Miller Street setback development standard in North Sydney Local Environmental Plan 2013 (NSLEP). Council considered the proposed setback is inconsistent with other developments in the North Sydney CBD and may set an undesirable precedent for future commercial buildings. Council also made several recommendations about safeguarding future shared vehicle access for the adjoining MLC building and the lack of space allocated for community use.

The key issues raised in the public submissions included bulk and scale, setbacks, view loss, overshadowing, parking, pedestrian traffic, public benefit and heritage impacts.

In response, the Applicant submitted a Response to Submissions (RtS) which provided further justification and additional information to address the issues raised in submissions. This included further justification for the proposed Miller Street setback, safeguarding future shared vehicle access and impacts on pedestrian congestion (refer to **Section 6**).

Council maintained its objection to the Miller Street setback encroachment and inadequate measures to safeguard a potential future underground connection with the adjoining MLC building. Council also noted the proposal did not provide a sufficient community/civic presence in the North Sydney CBD.

Government agencies provided further comments and advice which informed the Department's recommended conditions in **Appendix G**.

Assessment

The Department has considered the merits of the proposal, the issues raised in submissions as well as the Applicant's response to those submissions. The Department considers the key assessment issues associated with the proposal are built form, amenity impacts and integration with the surrounding public domain.

The Department considers the proposal is acceptable for the following reasons:

- the proposal is consistent with the strategic planning framework for the North Sydney Centre as it would strengthen North Sydney's role as a major commercial centre and capitalise on the Government's investment in public transport by locating over 4,000 jobs and approximately 2,400m² retail tenancies above a high-frequency rapid metro station
- the proposal would achieve design excellence as:
 - it is supported by the Sydney Metro Design review panel
 - it incorporates high quality materials and finishes and a highly modulated façade design
 - its height, bulk and scale is compatible with the character of tower developments in North Sydney CBD
 - it integrates with the design of the surrounding public domain to maximise amenity for workers, commuters and the local community.
- the height of the proposal is acceptable as it complies with the overall maximum height limits of RL 230. While the proposal departs from the RL 201 height limit in the centre of the site by up to 29 m, the variation is acceptable as it facilitates a redistribution of building mass from the lower levels to the upper levels which:
 - increases setback from the adjoining heritage item (MLC Building) from 18 m to 28 m
 - improves solar access to the site's public domain areas
 - maintains views and solar access for surrounding residential developments.
- the proposal would provide a 6 m setback from the Miller Street boundary up to a height of RL 126 (approximately 60 m above street level) consistent with Council's control. While the proposal encroaches on the 6 m setback above 60 m, it would result in an overall reduction in building mass and visual bulk along Miller Street compared to the concept approval
- the proposal appropriately integrates with the approved Metro station to deliver a high-quality place and public domain outcome within the heart of North Sydney CBD. The proposed over station development is part of an integrated station development that will be delivered by the Applicant together with the new Victoria Cross Metro Station. The Department notes the integrated station development would provide:

- an additional 1,290 m² of publicly accessible open space in addition to the existing 1,115 m² of public domain area along Miller Street (2,405 m² in total).
- a continuous civic green spine along Miller Street, incorporating a range of landscaped terraces, eateries and outdoor dining opportunities, casual seating areas and pedestrian paths
- a through site link from the station plaza to Denison Street, complementing Council's masterplan for future pedestrianisation of Denison Street
- a Community Hub (200 m²) or multipurpose space allowing for a variety of community uses, events, or as an exhibition space.
- the proposal includes best practice ESD initiatives and sustainability measures, targeting minimum environmental standards of 6 Star Green Star Design and As-Built and 5 Star NABERS Energy rating, and is committed to delivering a building capable of a Gold WELL Core - Building Standard rating
- the proposal would not result in any adverse transport or traffic impacts on the surrounding road or pedestrian network.

Conclusion

Following its detailed assessment, the Department supports the proposal because it is consistent with strategic planning objectives for North Sydney CBD and will deliver a significant boost to employment opportunities directly above the new transport hub. The proposed built form is compatible with the character of North Sydney CBD and it integrates with the new Victoria Cross Metro Station to deliver a high-quality place making and public domain outcome.

The Department is also satisfied that the additional information provided in the RtS with respect to pedestrian movement and amenity impacts, together with the recommended conditions of approval, would appropriately address the remaining concerns raised in submissions.

The Department concludes the proposal is in the public interest and recommends that the applications be approved subject to the conditions of consent.

Contents

| | | |
|----------|--|-----------|
| 1 | Introduction | 1 |
| 1.1 | North Sydney Centre | 2 |
| 1.2 | The site and its surrounds | 3 |
| 2 | Project | 6 |
| 2.1 | Physical layout and design | 7 |
| 2.2 | Related Development | 8 |
| 3 | Strategic context | 10 |
| 3.1 | Greater Sydney Region Plan: A Metropolis of Three Cities | 10 |
| 3.2 | North District Plan | 10 |
| 3.3 | Future Transport Strategy 2056 | 11 |
| 3.4 | Sydney Metro City and Southwest Project | 11 |
| 4 | Statutory Context | 12 |
| 4.1 | State significance | 12 |
| 4.2 | Permissibility | 12 |
| 4.3 | Other approvals | 12 |
| 4.4 | Mandatory Matters for Consideration | 12 |
| 4.5 | Planning Secretary's Environmental Assessment Requirements | 13 |
| 4.6 | Biodiversity Conservation Act 2016 | 13 |
| 5 | Engagement | 14 |
| 5.1 | Department's engagement | 14 |
| 5.2 | Summary of submissions | 14 |
| 5.3 | Key Issues – Government agencies | 14 |
| 5.4 | Key Issues – Council | 16 |
| 5.5 | Key Issues – Community and public interest groups | 17 |
| 5.6 | Response to submissions | 18 |
| 6 | Assessment | 19 |
| 6.1 | Built form | 19 |
| 6.2 | Amenity impacts | 28 |
| 6.3 | Integration with public domain | 32 |
| 6.4 | Other issues | 36 |
| 7 | Evaluation | 41 |
| 8 | Recommendation | 42 |
| 9 | Determination | 43 |
| | Appendices | 44 |

1 Introduction

This report provides a concurrent assessment of a modification application to the Victoria Cross over station development (OSD) concept approval (SSD 8874 MOD 1) and a State significant development (SSD) application (SSD 10294) for the design and construction of a commercial office tower above the southern entrance of the Victoria Cross Metro station, North Sydney.

The proposal seeks:

- modifications to the concept approval to amend the building envelope above the Miller Street setback area, reduce the setback to Berry Street, redistribute building mass and increase the maximum gross floor area (GFA) by 1,500 square metres (m²) to 61,500 m²
- development consent for the design, construction and operation of a 42-storey commercial office tower, including basement car parking, end of trip facilities, signage zones, Stratum subdivision and the use of office lobbies within the Metro station box.

The applications have been lodged by Lendlease (Victoria Cross) Pty Ltd (the Applicant). The site is located within the North Sydney local government area. The proposal has a Capital Investment Value (CIV) of \$315,022,149 and would generate 400 to 600 construction jobs and over 4,000 operational jobs.

The Victoria Cross Metro station is one of the seven new stations approved as part of the Critical State Significant Infrastructure (CSSI) approval (CSSI 7400) for the Sydney Metro City and Southwest Metro between Chatswood and Sydenham (**Figure 1**).

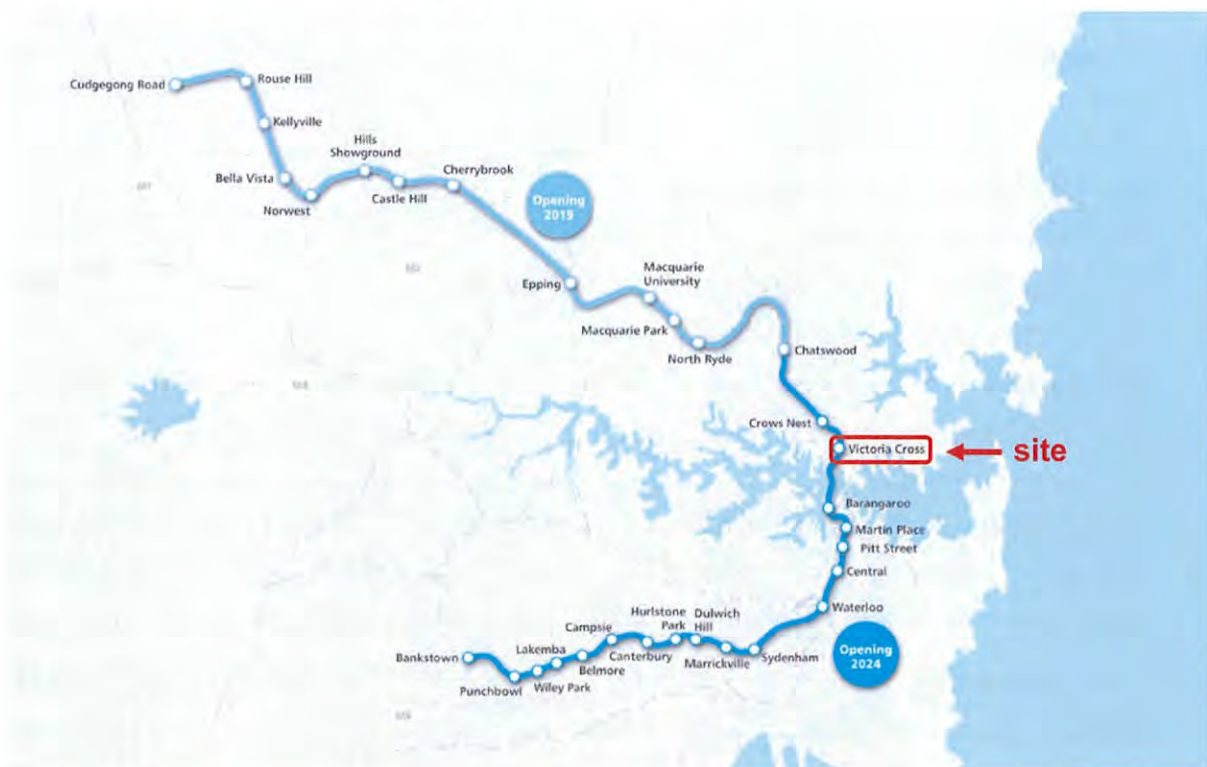


Figure 1 | Regional Context Map (Source: EIS)

1.1 North Sydney Centre

The site is located within the North Sydney Centre in the North Sydney Local Government Area. It is 3 km north of Sydney CBD, 5 km south-east of Chatswood and 2 km south-west of St Leonards. The North Sydney Centre is a business district comprising predominantly high-density commercial developments.

The North Sydney Centre currently provides about 820,000 m² of non-residential floor space and approximately 45,000 jobs. The delivery of Sydney Metro will increase transport capacity and access to North Sydney Centre. The North Sydney Local Environmental Plan 2013 was recently amended (Amendment 23) to take advantage Government's investment into public transport. The amendment increased buildings heights and removed restrictions on the amount of commercial floor space that can be accommodated within the North Sydney Centre.

The site is centrally located along Miller Street, which is the main north-south connection from North Sydney Railway Station, the main shopping centre Greenwood Plaza, to Berry Street and schools further north. Victoria Cross Metro station consists of a northern entrance, corner of Miller Street and McLaren Street, and a southern entrance, corner of Miller Street and Berry Street (**Figure 2**). The proposal relates to the southern station entrance only. The northern station entrance is located approximately 250 m to the north of the site and does not form part of the proposal.



Figure 2 | Local Context Map (Base source: EIS)

1.2 The site and its surrounds

The site is located on the southeast corner of Berry Street and Miller Street (**Figure 3**), North Sydney. The site is 'L' shaped with street frontages of approximately 37 m to Berry Street, 34 m to Denison Street and 102 m to Miller Street, resulting in a total site area of 4,815 m². All previous development at the site has since been demolished and construction of the Sydney Metro station under the CSSI approval has commenced.



Figure 3 | The site and surrounds (Source: EIS)

Development surrounding the site is characterised by a mix of commercial office towers, educational institutions, retail developments and civic uses. To the north of the site, on the opposite side of Berry Street, is a two-storey hotel known as the Rag and Famish, the Monte Sant Angelo Mercy College and a number of commercial buildings. Further north along Miller Street are a number of high density residential and commercial developments.

Adjoining the site to the east is an 18-storey office building known as 65 Berry Street (**Figure 4**). Further east is the Alexander Apartments, a 36-storey mixed use development with approximately 240 apartments and 1 Denison Street, which is a new 37-storey office tower (**Figure 7**). To the south of 1 Denison Street, is a new 38-storey commercial development known as 100 Mount Street.

Adjoining the southern boundary of the site is a 14-storey office building known as the MLC Building, which is a local heritage item (**Figure 5**). South of the MLC Building is a public plaza known as Brett Whiteley Plaza (formerly known as Mount Street Plaza) (**Figure 6**). Further south is Greenwood Plaza shopping centre, which has pedestrian connection to North Sydney Station and public open spaces.

The western side of Miller Street between Pacific Highway and Berry Street comprises commercial and office developments with ground floor retail, including the 35 storey Northpoint Tower opposite the site (Figure 8).



Figure 4 | Corner of Miller Street and Berry Street looking east (Source: Department)



Figure 5 | View northeast along Miller Street (Source: Department)



Figure 6 | Looking northeast along Miller Street, corner of Pacific Hwy (Source: Department)

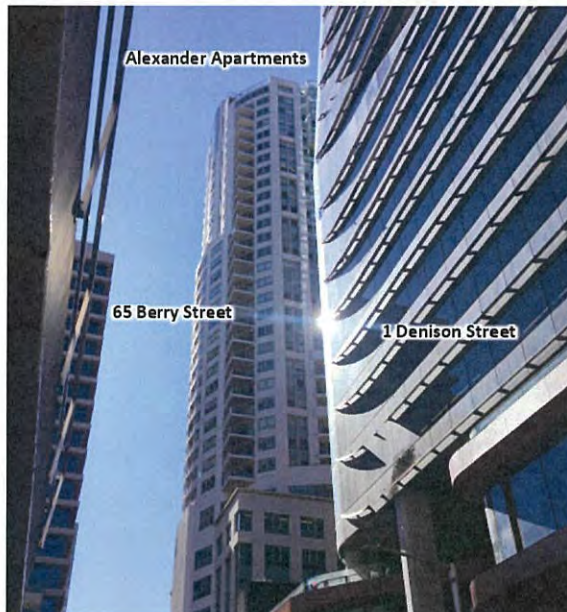


Figure 7 | The Alexander Apartments viewed from Denison Street (Source: Department)

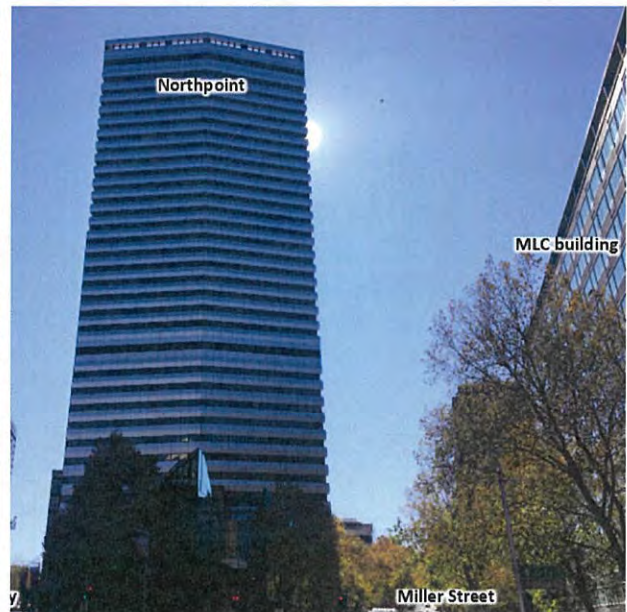


Figure 8 | Looking north from corner of Miller Street and Pacific Hwy (Source: Department)

2 Project

The proposal seeks approval to modify the Victoria Cross OSD concept approval and for the detail design and construction of a 42-storey commercial office tower above the southern entrance to the Sydney Metro Victoria Cross station.

The Victoria Cross station is being delivered under the CSSI approval (CSSI 7400), which includes a shared basement and podium (metro box). The proposal involves the design and construction of a commercial office tower above this metro box.

The proposed modifications to the concept approval involve redistributing building mass from the lower levels of the tower to the upper levels, additional GFA and a more defined articulation zone above the Miller Street setback.

The detail design includes the construction of a 42-storey commercial office tower, comprising 61,500 m² of GFA, a maximum height of RL 230 (approximately 168 m) and the use of 150 car parking spaces, end of trip facilities and loading/unloading area within the basement being constructed under the CSSI approval (CSSI 7400).

The key components of the proposal (as amended by the RtS) are summarised at **Table 1**. A link to the Applicant's modification application and SSD documents is provided at **Appendix A**.

Table 1 | Main Components of the Project

Proposed Modification (SSD 8874 MOD 1)

| Aspect | Description |
|------------|---|
| Built form | <ul style="list-style-type: none">Reduction in the massing of the building cantilever over the Miller Street setbackRelocation of building mass from the low-rise levels to the high-rise levels of the towerReduction of the Berry Street setback from 5 m to 4.5 mRelocation of the OSD lobby entry from Miller Street to Berry Street |
| GFA | <ul style="list-style-type: none">Increase total GFA permitted by 1,500 m² (from 60,000 m² to 61,500 m²) |

SSD Application (SSD 10294)

| Aspect | Description |
|------------|--|
| Built form | <ul style="list-style-type: none">Construction of a new 42-storey office tower (maximum building height of RL 230 or 168 m)Integration with the approved CSSI station box |
| GFA | <ul style="list-style-type: none">61,500 m² (excluding floor space constructed under CSSI approval) |
| Land uses | <ul style="list-style-type: none">Commercial office tower2400m² of retail tenancies |

| | |
|-------------------------------------|--|
| Vehicular access and parking | <ul style="list-style-type: none"> • Use of basement (constructed under CSSI approval): <ul style="list-style-type: none"> - 150 car spaces - 457 bicycle spaces - end of trip facilities - loading dock and associated facilities |
| Employment | <ul style="list-style-type: none"> • 400 - 600 construction jobs • Over 4,000 operational jobs |
| CIV | <ul style="list-style-type: none"> • \$315,022,149 |

2.1 Physical layout and design

The proposed building envelope comprises a L-shaped metro box up to RL 89 (approximately four storeys). The metro box is built to the Berry Street, Denison Street and southern boundaries, and is setback 6 m from the Miller Street boundary. The main entry to the new metro station is located off the southern through-site link and the entrance to the OSD is located off the corner of Miller and Berry Streets.

Above the metro box, the proposed OSD takes the shape of a tower form up to RL 230 (approximately 42 storeys) at its northern end (toward Berry Street) with the height decreasing in a stepped form to the south down to RL 182.30. The OSD involves a building envelope that overhangs the 6 m Miller Street setback between 0 – 4.5 m, starting from RL 124.

The Department notes the detailed fitout and operation of the commercial tenancies within the CSSI approved metro box will be sought under separate approvals.

The CSSI approval grants consent for the design and construction of the 'metro box', including the basement loading and parking facilities, commercial podium and all the public domain works. The detail design of the metro box is included throughout the proposal for information only. This is delineated by colour; blue representing the components of the OSD, pink representing the components of the CSSI approval and green representing the commercial areas of the metro box where the use of these areas will be sought under separate approvals (see **Figure 11**).

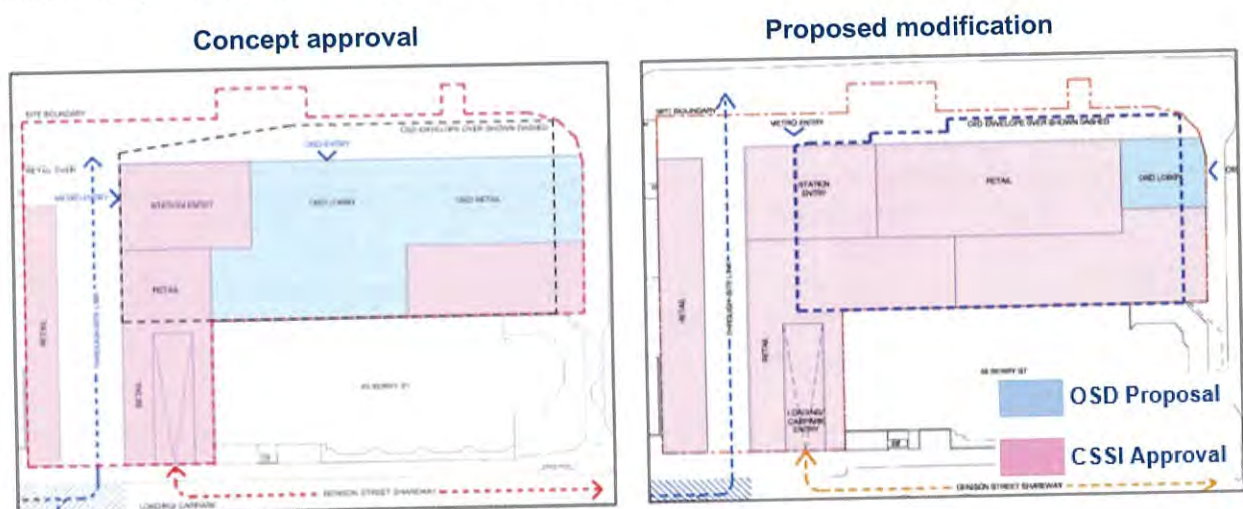


Figure 9 | Concept approval vs proposed modification (Source: SSD 8874 and EIS)

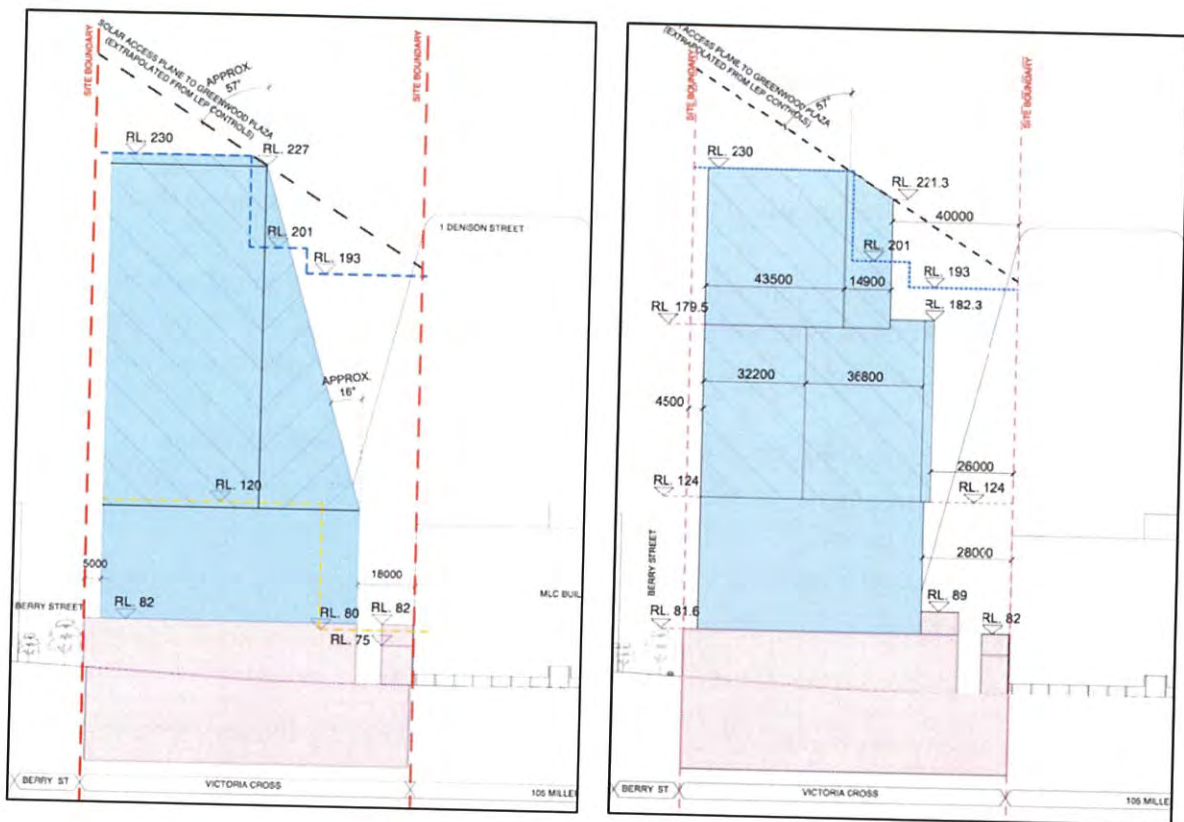


Figure 10 | Concept approval vs proposed modification (Source: SSD 8874 and EIS)

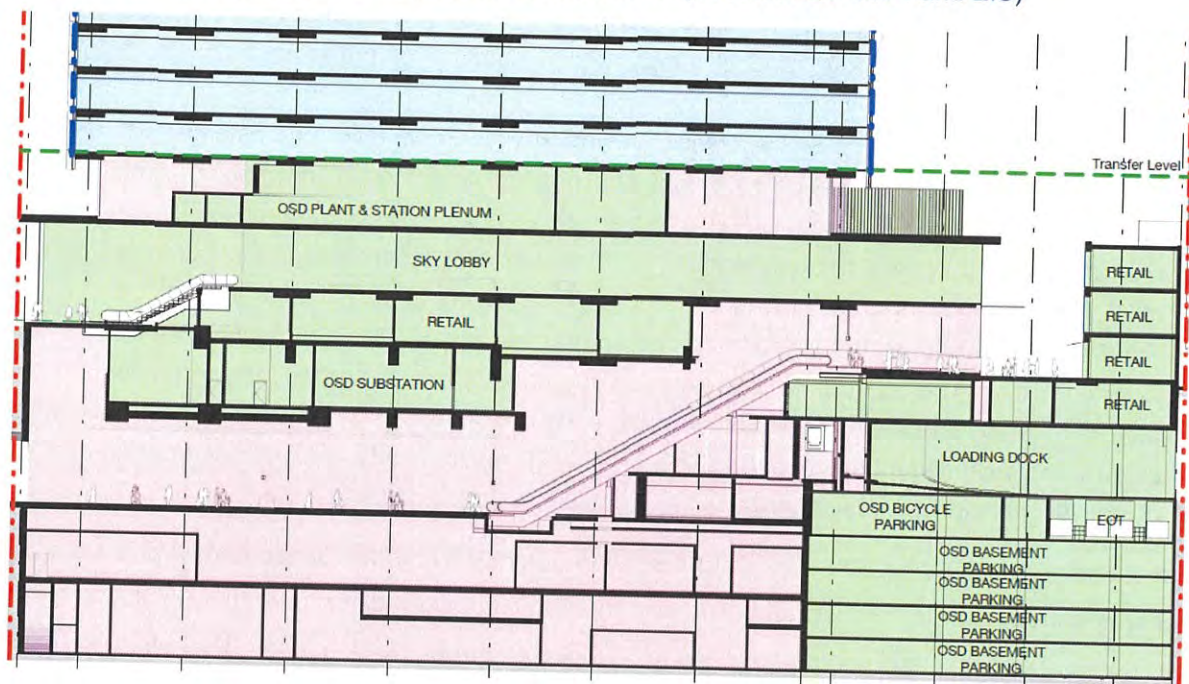


Figure 11 | Delineation between SSD and CSSI works (Source: EIS)

2.2 Related Development

Sydney Metro City and Southwest Metro (CSSI 7400)

On 9 January 2017, the Minister for Planning granted infrastructure approval (CSSI 7400) for the construction and operation of the Sydney Metro City and Southwest Metro between Chatswood and

Sydenham, including approval for 16.5km of rail lines, a tunnel under Sydney Harbour, links with the existing rail network, metro stations and associated infrastructure (**Figure 1**).

The CSSI approval as it relates to the Victoria Cross Station provides for:

- demolition of existing buildings within the site, including a former shop which was a local heritage item at 187 Miller Street
- excavation of the rail tunnel, concourse and platforms and therefore the setting of surrounding structural zones, services and accesses
- the establishment of an aboveground station footprint of approximately four storeys in height (RL 82)
- non-rail related structure within the station footprint for retail premises and OSD uses
- station entry via a large pedestrian entrance on Miller Street and a smaller entrance via a through-site link from Denison Street
- a pedestrian entrance on Miller Street for OSD
- public domain works.

The CSSI approval conditions relevant to OSD at Victoria Cross include:

- Condition A4 which notes that any OSD, including associated future use, does not form part of the CSSI and will be subject to the relevant assessment pathway
- Condition E92 requires an Interchange Access Plan (IAP) to be prepared and approved for each station, in consultation with the Sydney Metro Design Review Panel (DRP), to inform the final design of transport and access facilities and services, including footpaths, cycleways, passenger facilities, parking, traffic and road closures, and integration of public domain and transport initiatives
- Condition E100 requires the Sydney Metro Design Review Panel (DRP) be established to refine the design objectives for the development and provide advice on place making, architecture, heritage, urban design, landscape design and artistic aspects. The DRP comprises five members, chaired by the NSW Government Architect and includes a representative of the Heritage Council of NSW, with the opportunity for Council or other stakeholders to be invited to attend
- Condition E101 requires the preparation and approval of Station Design Precinct Plans (SDPPs) for each station. The SDPPs are to present an integrated urban and place making outcome. The SDPPs must be prepared in collaboration and consultation with relevant stakeholders, including council, the local community and the DRP. The SDPP must identify and address specific design objectives, principles and standards as are identified in Condition E101.

Six requests to modify the CSSI approval have been determined by the Department and a seventh request is currently under assessment. The first modification involved the relocation of the Victoria Cross northern entrance and services building to 50 McLaren Street, North Sydney. The relocation was to expand the station walking catchment area to additional residents, workers, education facilities and areas of open space. Other approved modifications relate to works at other locations, including Central Station, Martin Place Metro Station, Sydenham Station and Metro Facility and Blues Point construction site acoustic shed.

3 Strategic context

3.1 Greater Sydney Region Plan: A Metropolis of Three Cities

The *Greater Sydney Region Plan: A Metropolis of Three Cities* ('Regional Plan') superseded *A Plan for Growing Sydney* and sets out the NSW Government's vision, through the Greater Sydney Commission, for Sydney to be "...a metropolis of three cities where the people of Greater Sydney live within 30 minutes of their jobs, education and health facilities, services and great places." These cities are: the Western Parkland City, the Central River City and the Eastern Harbour City.

Ten directions underpin the Regional Plan which focus on infrastructure and collaboration, liveability, productivity, sustainability and implementation. The overall direction of which is to manage population growth and support economic growth and environmental sustainability.

The site is located within the Eastern Economic Corridor, which extends from Macquarie Park through the North Sydney Centre to Sydney Airport. The proposal is consistent with the Directions and Actions of the Plan, including:

- the proposal increases the national and international competitiveness of Sydney by providing additional job opportunities in strategic employment centres (Objective 14: A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities)
- the proposal is in the Eastern Economic Corridor and provides for the economic use of land immediately above the future metro station (Objective 15: The Eastern, GOP and Western Economic Corridors are better connected and more competitive)
- the North Sydney Centre is an important employment centre and the proposal will expand on the supply of employment space located to the north of the harbour (Objective 18: Harbour CBD is stronger and more competitive)
- the proposed development supports the strategic goals, directions and actions of the Plan by providing commercial office space in a strategic transport corridor. The proposal underscores the concept of integrated land use and transport by linking public transport use and promoting employment opportunities in a highly accessible part of Sydney.

3.2 North District Plan

The Greater Sydney Commission has prepared District Plans to inform regional and local-level planning and assist the actions of State agencies. The aim of the District Plans is to connect local planning with longer-term metropolitan planning for Greater Sydney.

The Victoria Cross Station is located within the North District. The North District Plan contains key priorities for infrastructure that are relevant to the proposed development including:

- Planning Priority N1 - Planning for a city supported by infrastructure
- Planning Priority N7 - Growing a stronger and more competitive Harbour CBD
- Planning Priority N8 - Eastern Economic Corridor is better connected and more competitive
- Planning Priority N10 - Growing investment, business opportunities and jobs in strategic centres
- Planning Priority N12 - Delivering integrated land use and transport planning and a 30- minute city

The proposal is consistent with the above priorities as it would facilitate the construction of a high-quality commercial building in an area with strong public transport connections and integrated employment opportunities. The proposal assists in meeting jobs targets for the North Sydney Centre, growing

investment in the Centre and opening fresh commercial leasing opportunities to a more connected catchment along the CBD Metro and North West Metro corridors.

3.3 Future Transport Strategy 2056

The Strategy was published by Transport for NSW to align with the Greater Sydney Commission's Regional Plans and sets out a transport vision, directions and outcomes framework for NSW to guide transport investment and policy. The aim is to achieve greater capacity, improved accessibility to housing, jobs and services and continued innovation. A planned and coordinated set of actions is set out to address challenges faced by the NSW transport system to support the State's economic and social performance over 40 years.

The proposal is consistent with the key outcomes of the Strategy as:

- it would provide new jobs and open space above and around a new Metro station
- it will encourage the use of the new Metro station and other forms of public transport, walking and cycling
- the site is located within walking distance to other high frequency public transport services including bus services and existing rail station
- the proposal provides for active transport options by providing bicycle parking spaces and end-of-trip facilities for walkers, runners and cyclists

3.4 Sydney Metro City and Southwest Project

Sydney Metro is Australia's largest public transport project and a city-shaping project. The Sydney Metro City to Southwest stage of the project has an investment value over \$11 billion. With this significant public investment in transport infrastructure comes a number of benefits and opportunities for placemaking and transit-oriented development to provide jobs, homes, a new public domain and community infrastructure around new stations.

The proposal would take advantage of the Government's investment in public transport by locating commercial office space, accommodating over 4,000 ongoing operational jobs, as well as retail tenancies immediately above the new Victoria Cross Metro Station.

4 Statutory Context

4.1 State significance

The proposal is SSD under section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) as the development is permissible with consent and has a CIV in excess of \$30 million (\$315 million) for the purpose of commercial premises associated with railway infrastructure under clause 8 of State Environmental Planning Policy (State and Regional Development) 2011.

In accordance with section 4.5(a) of the EP&A Act, clause 8A of State Environmental Planning Policy (State and Regional Development) 2011 (SRD SEPP) and Ministerial Planning Order dated 5 June 2020, the Minister for Planning and Public Spaces is designated as the consent authority for SSD 8774 MOD 1 and SSD 10294.

4.2 Permissibility

The site is located within the B3 – Commercial Core zone under the North Sydney Local Environmental Plan 2013 (NSLEP). The proposed commercial office tower is permissible with consent. See **Appendix E** for the Department's detailed assessment against the zone objectives.

4.3 Other approvals

Under sections 4.41 and 4.42 of the EP&A Act, a number of other approvals are either integrated into the SSD approval process and consequently are not required to be separately obtained for the proposal or are required, but must be substantially consistent with any development consent for the proposal (e.g. approvals for any works under the Roads Act 1993).

The Department has consulted with the relevant public authorities responsible for integrated and other approvals, considered their advice in its assessment of the proposal, and have included suitable conditions in the recommended conditions of consent (see **Appendix G**).

4.4 Mandatory Matters for Consideration

Section 4.15(1) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining development applications. These matters are summarised as:

- the provisions of any environmental planning instruments (including draft instruments), development controls plans, planning agreements, the Environmental Planning and Assessment Regulation 2000
- the likely environmental, social and economic impacts of the development
- the suitability of the site for the development
- any submissions
- the public interest, including the objects in the EP&A Act and the encouragement of ecologically sustainable development (ESD).

The Department has considered all of these matters in its assessment of the proposal, as well as the Applicant's consideration in its EIS and RtS, as summarised in **Section 6** and **Appendix E** of this report.

4.5 Planning Secretary's Environmental Assessment Requirements

The Department is satisfied that the EIS and RtS adequately address the Planning Secretary's Environmental Assessment Requirements (SEARs) to enable the assessment and determination of the Stage 2 detailed development application. Furthermore, the Department considers that the proposed concept modification remains consistent with the SEARs issued for the original concept application.

4.6 Biodiversity Conservation Act 2016

Under section 7.9(2) of the Biodiversity Conservation Act 2016 (BC Act), SSD applications are *"to be accompanied by a biodiversity development assessment report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the proposed development is not likely to have any significant impact on biodiversity values"*.

On 10 May 2019, the Environment, Energy and Science Group (EESG) determined that the proposed development is not likely to have any significant impact on biodiversity values and that a BDAR is not required. The Department supported EESG's decision and on 17 May 2019 determined that the application is not required to be accompanied by a BDAR as the site is located within North Sydney CBD and is approved for the construction of Sydney Metro rail and station with excavation and construction already underway.

5 Engagement

5.1 Department's engagement

In accordance with Schedule 1 of the EP&A Act, the Department publicly exhibited the proposed concept modification and SSD application between 1 November and 28 November 2019 (28 days):

- on the Department's website
- at Service NSW Centres
- at North Sydney Council's office.

The Department placed a public notice in the North Shore Times on 31 October 2019 and notified adjoining landowners, previous submitters to the concept approval and relevant Government agencies in writing.

The Department inspected the site and surroundings and met with Council officers on 18 December 2019 to gain a deeper understanding of Council's concerns.

5.2 Summary of submissions

The concept modification application received 15 submissions (six objecting, one supporting and eight providing comments), including:

- nine from Government agencies
- an objection from Council
- five from the public.

The SSD application received 19 submissions (10 objecting, one supporting and eight providing comments), including:

- seven from Government agencies
- an objection from Council
- three from special interest groups
- eight from the public.

A link to all submissions is provided at **Appendix A**.

5.3 Key Issues – Government agencies

A summary of the Government agencies submissions is provided in **Table 2**.

Table 2 | Summary of Government agency submissions

Environmental Protection Agency (EPA)

| | |
|------------|--|
| EIS | EPA did not object to the proposal and provided the following comments: <ul style="list-style-type: none">• The proposal does not constitute a Scheduled Activity under Schedule 1 of the Protection of the Environment Operations Act 1997• The consent should include acceptable vibration and ground borne noise limits for spaces within the development drawn from the EPA's Rail Infrastructure Guidelines and Assessing Vibration: A Technical Guidelines. |
|------------|--|

Heritage Council NSW

EIS No comments.

Environment, Energy and Science Group (ESS)

EIS EES did not object and noted the proposal is unlikely to impact on biodiversity values.

Transport for NSW (RMS)

EIS RMS objected to the proposal, raising the following concerns:

- No consideration given to pedestrian movements generated by the OSD not using the Metro station
- The interaction and cumulative impacts on pedestrian activity generated by the Metro station and OSD need to be confirmed through more detailed modelling
- Adoption of a traffic trend on the Pacific North of the Gore Hill Freeway is not appropriate for the North Sydney area. Future travel demand growth for all modes in North Sydney should be based on Transport for NSW multi-modal modelling tool (STM)
- The conclusion of negligible impact cannot be drawn without knowledge of the pedestrian volumes and the interaction with the traffic network
- Requests the traffic report to provide the traffic impacts of the proposal on the surrounding road network for both existing and existing + future scenarios.

RtS See TfNSW response to RtS below.

Transport for NSW (TfNSW)

EIS TfNSW did not object to the proposal, however provided the following comments:

- Further clarification for the reduction in the number of loading bays
- Consideration for E-transportation charging facilities within the loading bays
- Recommended condition for a Construction Pedestrian and Traffic Management Plan
- Recommended condition for a comprehensive Travel Plan in prior to occupation of the site.

RtS TfNSW and RMS provided the following joint response to the RtS:

- Further information regarding pedestrian modelling for the OSD component was provided and no further issues are raised on this point
- Recommended condition for the preparation of a detailed Freight and Servicing Management Plan prior to the issue of a Construction Certificate.

Sydney Metro

EIS No comments.

Sydney Water

EIS Sydney Water had no comments, noting it has already issued the requirements to obtain a Section 73 certificate directly to the developer.

Sydney Airport Corporation

| | |
|------------|--|
| EIS | Sydney Airport Corporation did not object to the proposal and noted that building obstacle lighting will need to be addressed by the controlled activity approval. |
|------------|--|

CASA

| | |
|------------|--|
| EIS | CASA did not object to the proposal and recommended that NSW Health Infrastructure and the Air Ambulance Helicopter Operators are consulted regarding the proximity to the Royal North Shore Hospital Helicopter Landing Site. |
|------------|--|

Fire and Rescue NSW

| | |
|------------|--------------|
| EIS | No comments. |
|------------|--------------|

5.4 Key Issues – Council

A summary of Council's submissions is provided in **Table 3**.

Table 3 | Summary of Government agency submissions

North Sydney Council (Council)

| | |
|------------|--|
| EIS | Council objected to the proposed breach of the Miller Street setback, noting the reverse podium is inconsistent with every recent development in the CBD and may set an undesirable precedent for future commercial buildings. |
|------------|--|

Council also provided the following comments:

- The podium height consistent with the MLC building is considered acceptable
- Beside the Miller Street setback, the proposed modifications remain generally compliant with other key development standards pertaining to bulk, density and scale
- The modifications reduce the bulk and scale of the building from the Miller Street Special Area, the through-site link, and Denison Street
- The proposal enhances appreciation of the existing built heritage by increasing separation to the adjacent MLC local heritage building
- The modified envelope results in largely reduced visual and view impact to surrounding residents and public spaces within the vicinity of the site
- The modifications are considered reasonable and an improvement, subject to the tower being setback on the Miller Street face to at least be in line with the podium
- The development does not adequately safeguard a potential future underground connection south into the MLC building to enable future consolidation of vehicular entrances and possible connection through to Greenway
- The proposed construction zone within the Miller Street eastern footpath impacts on pedestrian movements, visual connectivity, public amenity and requires significant tree removal
- The construction zone should be provided within the southbound kerbside lane in lieu of the footpath
- Council expresses strong disappointment regarding the inadequacy of the proposed public benefits, particularly the paucity of space for the community.

| | |
|------------|---|
| RtS | Council maintained its objection to the Miller Street setback encroachment. In addition, Council reiterated the following concerns: |
|------------|---|

- there is no commitment to safeguard a future underground connection with the adjoining MLC building for vehicle or pedestrian access
- expressed strong disappointment regarding the inadequacy of the proposed public benefits
- the proposal was a missed opportunity to create a strong community/civic presence in the North Sydney CBD.

5.5 Key Issues – Community and public interest groups

The Department received a total of 13 submissions from the community (noting three individuals made the same submission for both applications) and three from special interest groups, comprising 13 objections, one in support and two providing comments.

Table 4 | Summary of submissions (excluding duplicate submissions)

| Submitters | Number | Position |
|--|-----------|----------|
| Community | 10 | |
| • < 5 km | 9 | Object |
| • > 10 km | 1 | Support |
| Special Interest Group | 3 | |
| • IOP Custodian Pty Ltd ATF Miller Street North Sydney | 1 | Object |
| • Wollstonecraft Precinct | 2 | Comments |
| • Waverton Precinct | | |
| Total | 13 | |

A summary of the key issues raised in submissions is provided in **Table 5** below:

Table 5 | Summary of submissions (excluding duplicate submissions)

| Issue | % |
|---|----|
| Bulk and scale | 54 |
| Overshadowing impacts on adjoining public space and residential dwellings | 46 |
| Pedestrian congestion in the immediate area and the lack of sufficient consideration of these impacts | 31 |
| Negligible public benefit being provided by the proposal | 31 |
| View impacts on surrounding residential buildings | 23 |
| The provision of 150 car parking spaces | 23 |

Other issues raised in individual submissions:

- The site should be used to provide additional public open space.

- A high-quality civic space can be created by consolidating the setback area in front of the station, the footpath and two lanes of Miller Street.
- The proposal for the OSD remains a significant missed opportunity to create a civic heart for North Sydney.
- The project should offer community and civic functions rather than retail.
- The OSD proposal does not create a generous egress and exit for the 15,000 commuters travelling into and out of this station each day.
- The Victoria Cross Sydney Metro station does not integrate with the heavy rail line nor the existing rail station in North Sydney.
- No justification offered as to why the development should be granted an additional 1,500 m² of floor space nor why it should encroach on the current 5 m street setback requirement to Berry Street.
- There is no discussion about the northern entry to the Metro station and the lack of activation.
- Urban Design Drivers in the Urbis Report are overly simplistic as is the claim that the design responds sympathetically to the exiting character of neighbouring properties.

5.6 Response to submissions

Following the exhibition period, the Department placed copies of all submissions received on its website and requested the Applicant provide a response to the issues raised in the submissions.

On 1 May 2020, the Applicant submitted its Response to Submissions (RtS) which provided further justification and clarification for the proposed development. The RtS was accompanied by the following:

- supplementary view impact assessment
- traffic impact statement
- modified architectural plans
- revised subdivision plans

The RtS was made publicly available on the Department's website and was referred to relevant Government agencies and Council. An additional five submissions were received from Government agencies and a submission from Council.

Council maintained its objection to the Miller Street setback encroachment. Council also noted the proposal includes inadequate measures to safeguard a potential future underground connection with the adjoining MLC building and is a missed opportunity to create a strong community/civic presence in the North Sydney CBD.

The Department notes RMS and TfNSW provided a joint response to the RtS, stating the Applicant had adequately address its concerns regarding pedestrian traffic and modelling, and recommended an additional condition requiring the preparation of a detailed Freight and Servicing Management Plan prior to the issue of a Construction Certificate. In response, the Applicant amended the Basement Plan to include an additional 2 courier bays to the satisfaction of TfNSW.

6 Assessment

The Department has undertaken a comprehensive assessment of the merits of the proposal. This report provides a detailed assessment of the key issues identified and forms the basis of the evaluation, recommendation and recommended conditions.

The Department has considered the EIS, the issues raised in submissions and the Applicant's RtS in its assessment of the proposal.

The Department considers the key assessment issues associated with the proposal are:

- built form
- amenity impacts
- integration with public domain

All other issues associated with the proposal have been considered in **Section 6.4**.

6.1 Built form

The Department considers the key issues associated with the proposed built form are building height, the Miller Street setback (articulation zone) and envelope projections.

6.1.1 Building height

The site has a building height control of RL 230 along its Berry Street frontage, stepping down to RL 201 and RL 193 along its southern boundary.

While the proposal maintains compliance with the maximum building height standard of RL 230 as per the concept approval, it departs from the building height standard of RL 201 in the centre of the site by up to 29 m (see **Figure 12**).

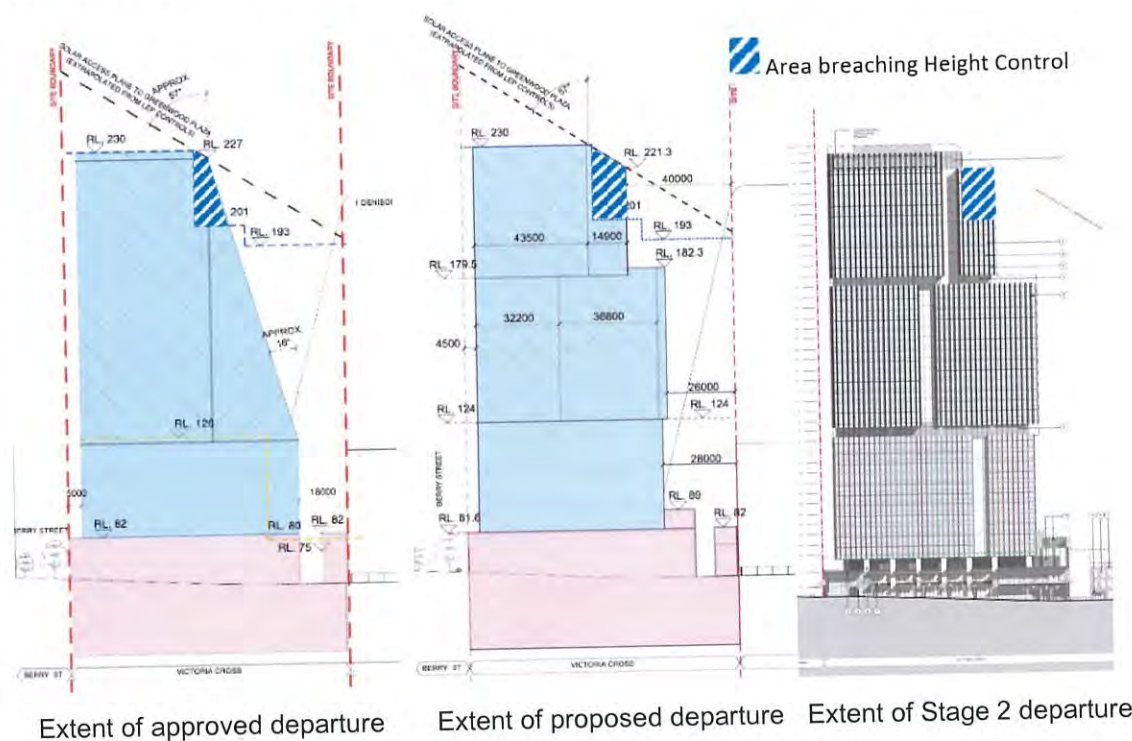


Figure 12 | Extent of building height departure (Base source: EIS)

The proposal seeks to redistribute the building mass from lower to upper floors as illustrated in **Figure 13** below.

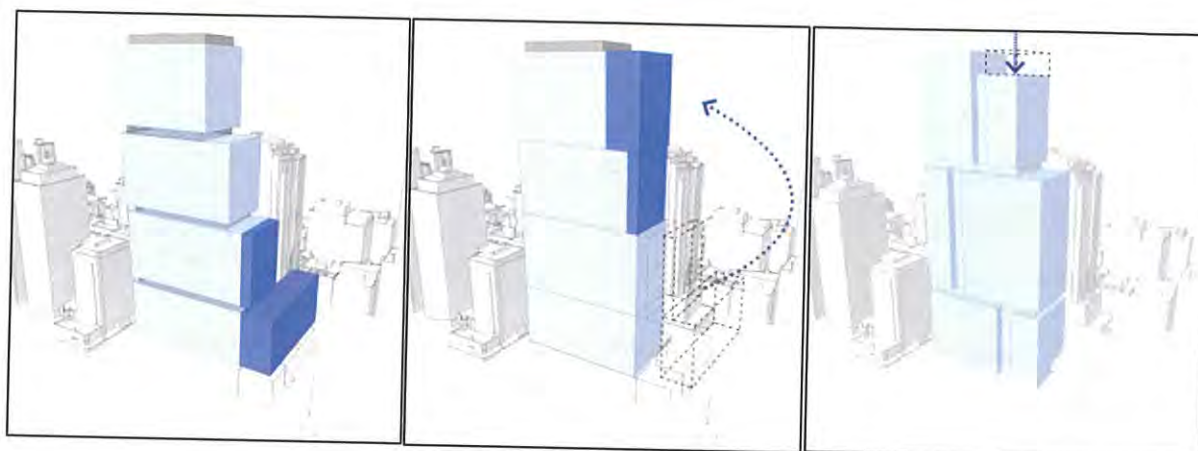


Figure 13 | Evolution of built form from concept approval (left) to proposed (right) (Source: EIS)

Council did not object to the proposed building height.

The Applicant contends that for the most part, the proposal complies with the overall maximum building height control applying to the site under the NSLEP, is similar to the approved envelopes under the concept approval (SSD 8874) and only a small portion of the OSD tower exceeds the central RL 201 height control by up to 29 m.

The Applicant also contends the height variation associated with the proposed built form is acceptable because the proposal:

- achieves the objectives of the development standard prescribed in clause 4.3 (Height of buildings) of NSLEP by providing a stepped form representative of the topography of the site, a scale and density compatible with the desired character of the area and maintaining appropriate levels of amenity for adjoining development and public domain.
- does not result in any additional overshadowing to Special Areas or RE1 Public Recreation zoned land identified in NSLEP.
- maintains sky views from the public domain.
- enables greater view outlook for residents in the Alexander Apartments building when compared to the approved envelope.

While a variation to the height standard is permissible (subject to clause 6.3.3) and a clause 4.6 variation request is not necessary, the Applicant has submitted a request outlining the justifications for the proposed changes to the building height. The Department's detailed review of the request is provided in **Appendix C**.

Consideration

The NSLEP permits variation to the maximum building height controls within the North Sydney Centre subject to specific solar access criteria prescribed in clause 6.3(3) - Building heights and massing. The Department has assessed the solar access analysis submitted with the proposal and is satisfied it complies with the criteria noting:

- the proposal does not reduce the solar access to a habitable room below 2 hours or cause any additional overshadowing to the principal private open space of any dwellings outside of the North Sydney Centre.
- the departure with the height standard does not result in any net increase in overshadowing of the Miller Street special setback area, Greenwood Plaza or Brett Whiteley Place.

The Department has also assessed the merits of redistributing the building mass and height and considers the proposal is acceptable because it:

- increases the separation to the MLC building (adjoining local heritage item) to the south from 18 m in the concept approval to 28 m.
- improves views from the Alexander Apartments (located to the east of the site) because the increased setback from the southern boundary widens the view corridor from Alexander Apartments to the west (see **Section 6.2**).
- improves solar access to the Miller Street special setback area by 8 m² and it reduces the time in which the tower overshadows the public domain by 16%, compared to the concept approval
- reduces the height of the podium immediately adjacent to the station entrance and the through site link between Miller Street and Denison Street by 29 m, which improves solar access and sky views along this public domain area compared to the concept approval.
- it complies with the overall maximum height established for the site (RL230) in the North Sydney LEP and is compatible in height and scale with surrounding development as shown below in **Figure 14**).



Figure 14 | Aerial image of North Sydney Centre looking south (Base source: EIS)

The Department is therefore satisfied the proposed building height is acceptable as it complies with the overall maximum building height established for the site and is compatible with the existing and future building heights permitted within the North Sydney Centre. The Department is also satisfied that the proposed variation to the RL 201 height control in the centre of the site is acceptable as it facilitates a redistribution of building mass from the lower levels of the site to the upper levels which:

- increases its setback from the adjoining heritage item (MLC Building) from 18 m to 28m
- improves solar access to the site's public domain areas
- maintains views and solar access for surrounding residential developments.

6.1.2 Miller Street setback (articulation zone)

The building envelope approved under the concept approval provided a minimum tower setback (above RL 118) of 1.5 m from Miller Street, which departed from the minimum 6 m setback required under clause 6.4 of NSLEP. This departure was approved as an “articulation zone”. The concept approval included Design Guidelines which contained specific criteria and objectives for the articulation zone.

The proposal seeks to modify the form of the approved articulation zone, consisting of a modulating facade with Miller Street setbacks between 1.5 m to 5.5 m above RL 124 (see **Figure 15**).

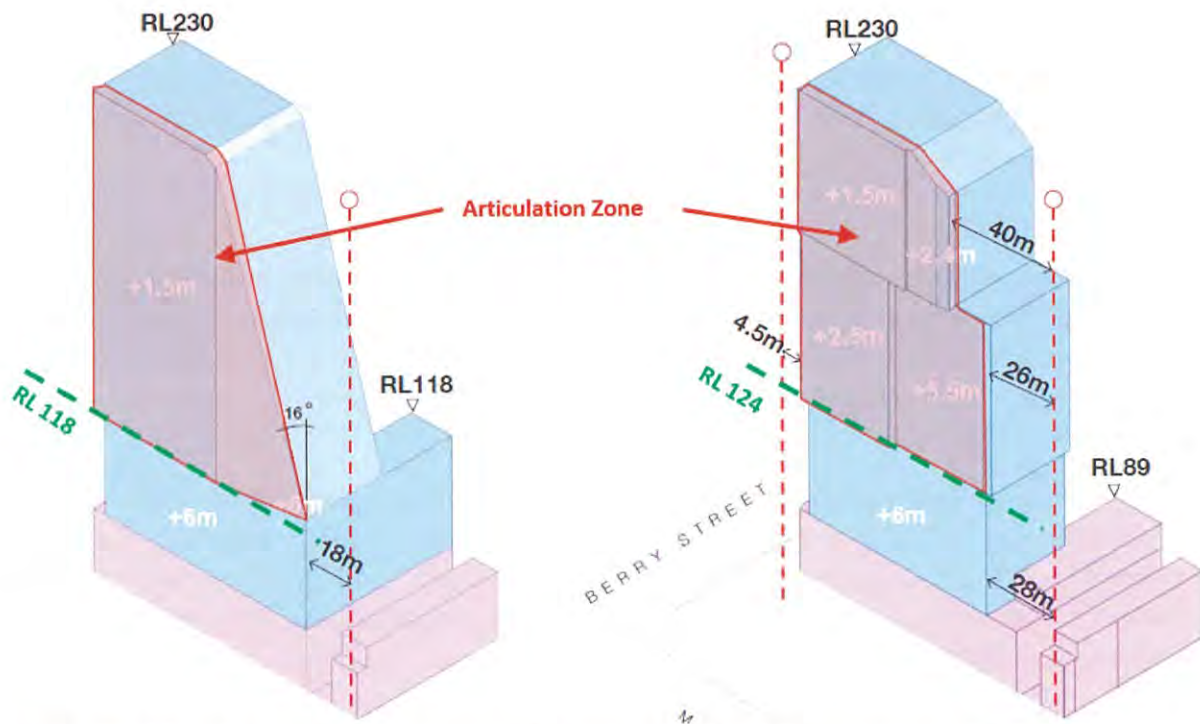


Figure 15 | Miller Street setbacks: approved (left), proposed (right) (Base source: EIS)

Council maintained its previous objection against the articulation zone, objecting to the proposed encroachment on the required 6 m Miller Street setback. Council considered the proposal is inconsistent with other developments and the character statement for the CBD. Council requested the proposal be amended to provide a conventional podium and tower form with an average setback behind the podium of 5 m or at least for it to align with the podium to reduce the building's dominance to Miller Street.

While Council objected to the proposed built form, it also acknowledged that the proposal remained compliant with other key development standards pertaining to bulk, density and scale. Council also noted the proposed modifications reduced the bulk and scale of the building and would enhance appreciation of the adjoining heritage item, the MLC building.

Five public submissions also raised concerns the proposed built form would impact on the Miller Street public domain area.

The Applicant submitted a clause 4.6 written request to vary the Miller Street setback development standard. The Department's detailed review of the request is provided in **Appendix C**. In summary, the Applicant contends the proposed variation to the setback is acceptable because:

- the proposal reduces the extent of massing permitted above the Miller Street setback under the concept approval (detailed design SSD only occupies 50% of the approved articulation zone).
- the cantilever occurs above the height of the adjacent MLC Building, therefore maintaining the established setback along Miller Street and prevailing setbacks of adjacent buildings.
- the articulation zone is responsible for reducing downdrafts, resulting in the wind conditions beneath the articulation zone being the lowest and most comfortable in the entire precinct.
- the cantilever contributes to the articulation and design excellence of the building, creating greater visual interest compared to a compliant vertically extruded tower with a sheer wall.

In preparing its RtS, the Applicant further presented to the Sydney Metro DRP, who were advised of Council's objection with respect to the proposed encroachment on the Miller Street setback and addressed by representatives of Council at the meeting. The Sydney Metro DRP advised it supports for the proposed built form, including the proposed Miller Street elevation and endorsed the proposal as achieving Design Excellence. (see **Appendix A**).

Consideration

The Department notes the proposed modified articulation zone has a volume of 19,385 m³, representing a reduction of 9,565 m³ (a 33% reduction) from the previously approved articulation zone of 28,950 m³. In addition, the proposed detail design only occupies approximately 77% of the modified articulation zone. The Department accepts the proposal represents an overall reduction in building mass and visual bulk along Miller Street when compared to the concept approval.

The proposed detail design will also continue to provide a 6 m setback from the Miller Street boundary up to a height of RL 126 (approximately 60 m) when compared to RL 118 under the concept approval (**Figures 16 & 17**). The Department is satisfied this will continue to satisfy the objective of the Miller Street setback standard in NSLEP which is to maintain the established setback and landscaped setting at the base of a building (see **Section 6.3 – Public Domain**).

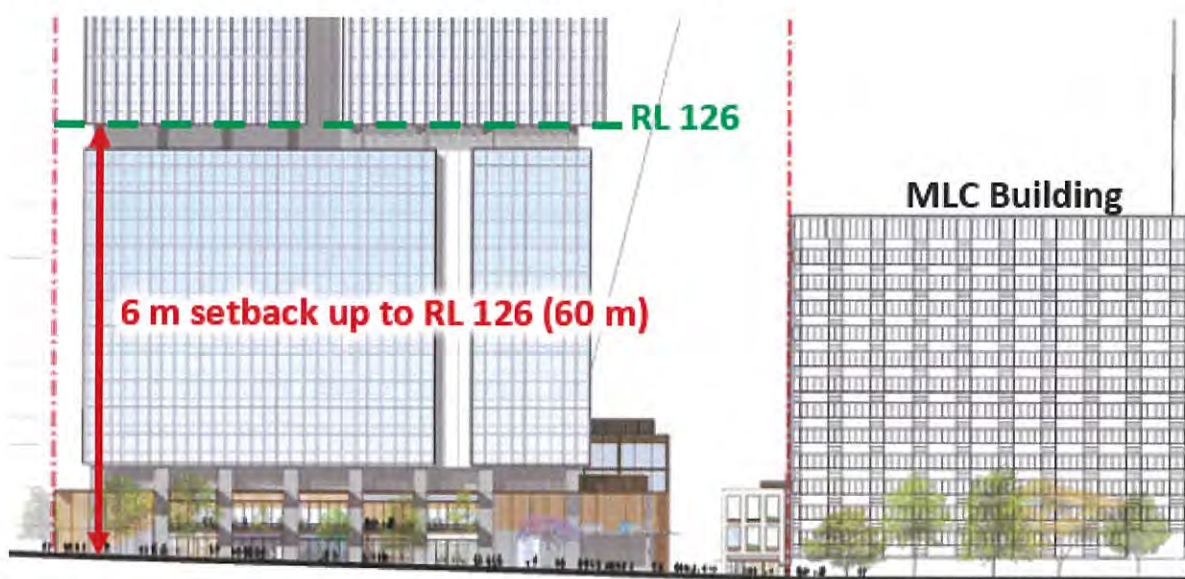


Figure 16 | Extent of proposed Miller Street setback departure (Base source: EIS)

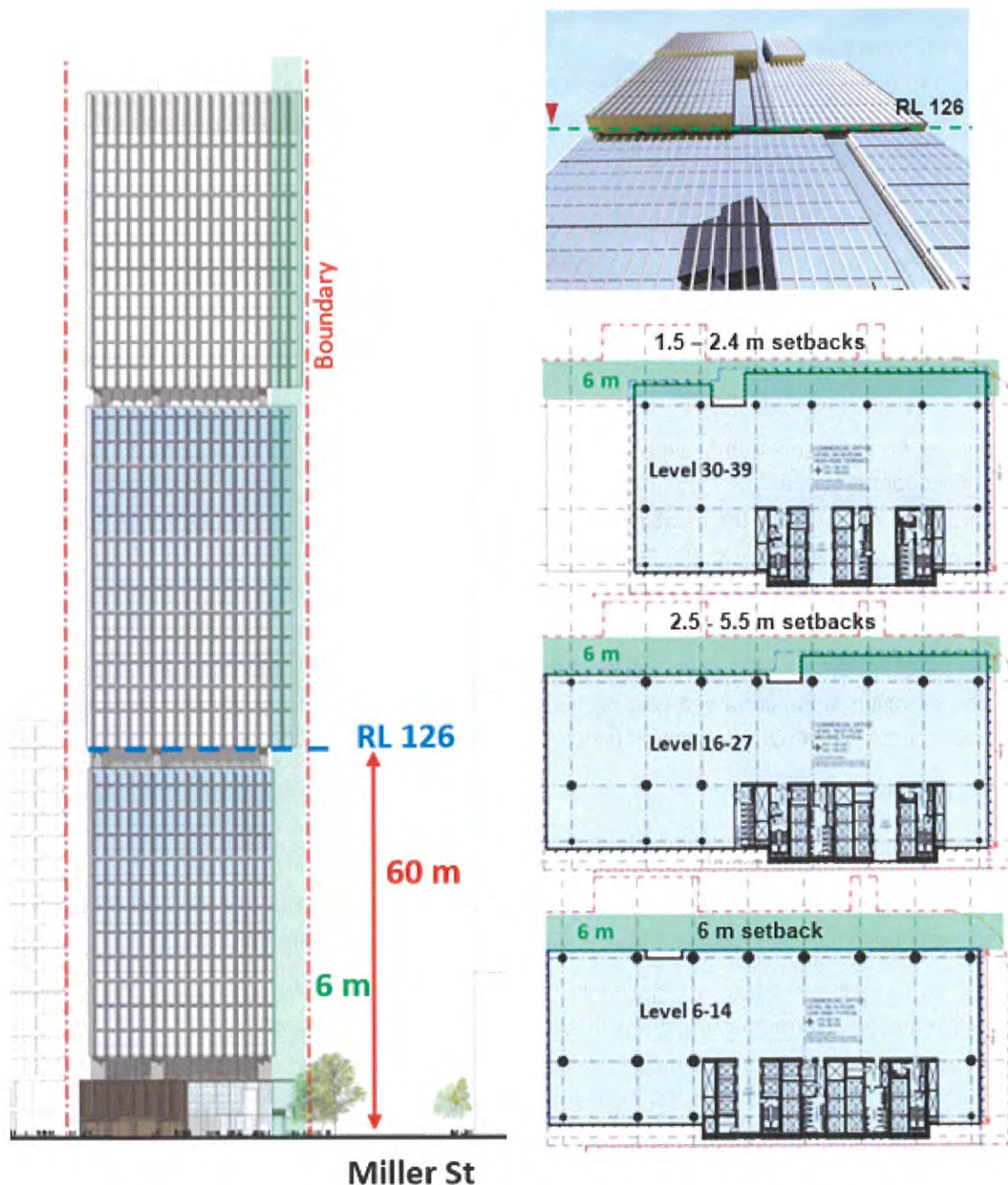


Figure 17 | Extent of proposed Miller Street setback departure (Base source: EIS)

The Department considers the proposal is compatible with the character of North Sydney CBD because there is a high degree of variation in built form character across the North Sydney CBD. Recent tower developments such as 1 Denison Street, 100 Mount Street and 177 Pacific Highway do not provide a podium with tower setbacks.

The design of any development within the articulation zone is also subject to specific Design Guidelines (clause 5.3.3) that were approved with the concept approval. The Department is satisfied that the current modifications to the articulation zone and the proposed detailed design is consistent with the approved Design Guidelines, as summarised below:

- the proposed detail design occupies approximately 50% of the currently approved articulation zone (noting it does not occupy all the articulation zone).

- the proposal will not result in any net increase in overshadowing of any identified public open spaces or reduce solar access below 2 hours during midwinter to any dwelling outside of the North Sydney Centre (see **Section 6.2**).
- the built form and facade articulation respect the height datum of the adjoining MLC building by incorporating horizontal recessed articulation and varying façade depths (see **Figure 16 and 17**).
- the articulation zone maintains sky view by varying the articulation depths for the proposed low, mid and high-rise levels. Sky views maintained by the proposal are illustrated by the submitted View and Visual Impact Assessment (see **Appendix A**).
- the submitted wind assessment report, prepared by Arcadis, demonstrated acceptable amenity and microclimate in the public domain particularly in respect to wind impacts.

The Department therefore concludes the proposed articulation zone and variation to the Miller Street Setback control is acceptable because:

- the proposal represents a reduction in building mass and visual bulk along Miller Street compared to the concept approval
- the proposal will maintain the established setback and landscaped setting along Miller Street
- the proposal is consistent with the Design Guidelines for the articulation zone
- the proposed tower is compatible in form and character with surrounding tower developments in North Sydney CBD
- the Department accepts the advice of the Sydney Metro DRP which endorsed the western (Miller Street) elevation of the proposed building having considered the approved Design Guidelines and Council's submission (DRP – session held 18 Feb 2020).

6.1.3 Berry Street Setback

The proposal seeks to reduce the approved Berry Street setback from 5 m to 4.5 m.

Two public submissions raised concerns the proposed reduction in the Berry Street setback would have additional view impacts on the adjoining residential tower, the Alexander Apartments.

In response to the submissions, the Applicant's RtS included an additional analysis on the potential impacts of the reduced Berry Street Setback to Alexander Apartments. The Applicant also argued while the proposed modification to the building envelope reduces the approved setback from the northern boundary (Berry Street) from 5 m to 4.5 m, the proposed detailed design provided an additional 3 m setback to the eastern boundary in the northeast corner of the site, improving views from the Alexander Apartments to the northwest, when compared to the approved building envelope (see **Figure 18**).

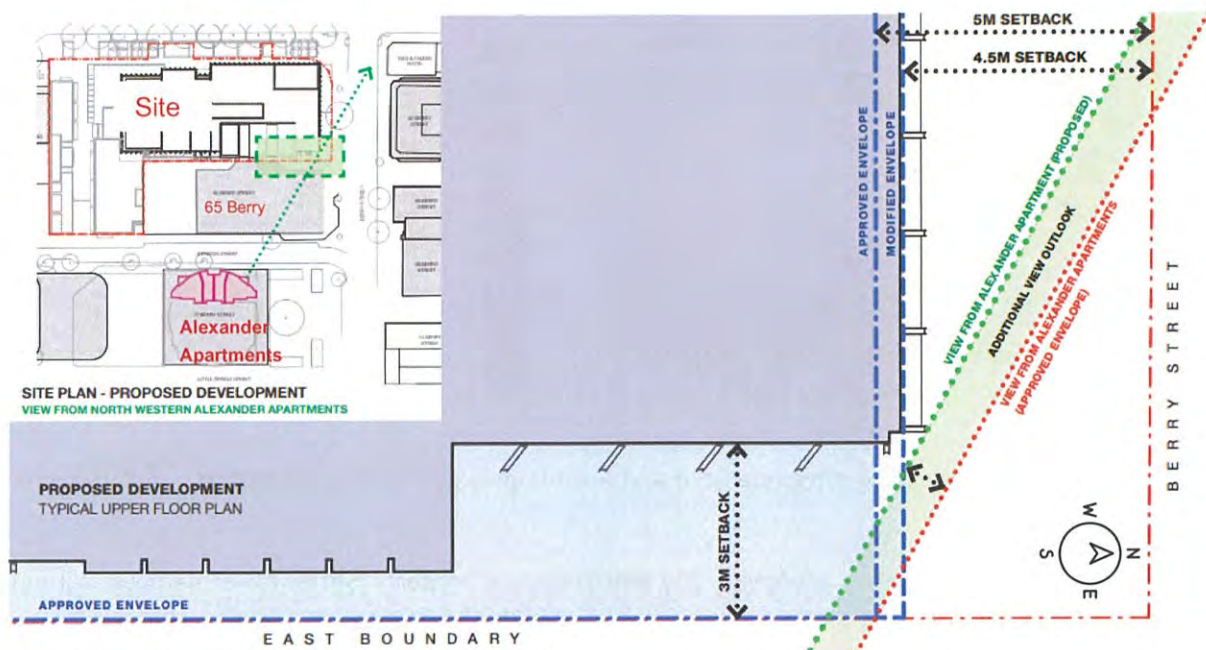


Figure 18 | Berry Street Setback (Source: RtS)

Consideration

The Department considers the proposed 500 mm reduction in Berry Street tower setback (5 m to 4.5 m) is not perceivable from the public domain along Berry Street because there is no established tower setback along Berry Street in the vicinity of the site (see **Figure 19**).

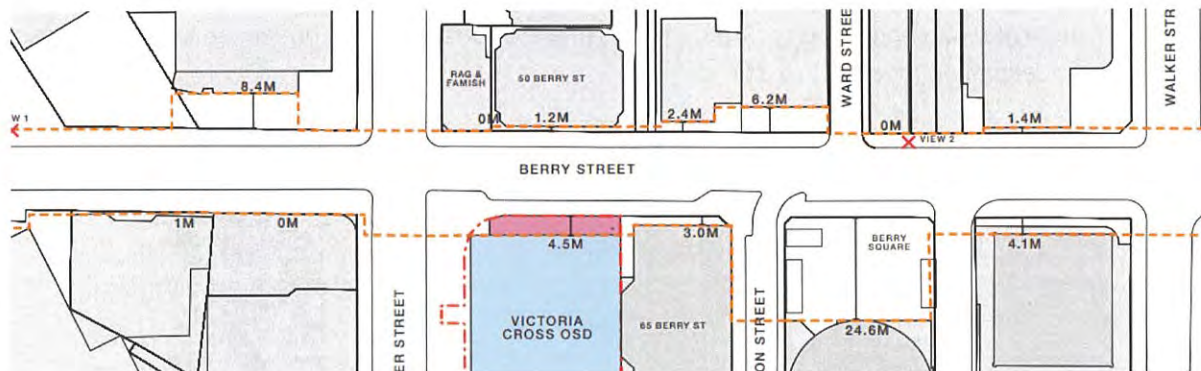


Figure 19 | Berry Street setback analysis (Source: EIS)

The Department also notes there are no existing iconic or water views from the Alexander Apartments across the Berry Street setback area. General outlook or district view across this setback area are limited to the high-rise levels of Alexander Apartment (above 20 Storeys) to the northwest (**Figure 20**).



Figure 20 | Proposed building envelope (left) and artist impression of detailed design (right) (Source: EIS)

The Department considers the proposed 500 mm reduction in Berry Street tower setback will not materially change this outlook and it would be partly offset by the increased 3 m side setback for the northeast corner of the site, which would widen the view corridor (**Figure 18**). The Department therefore concludes the proposed 500 mm reduction to the Berry Street setback is acceptable particularly given the increased eastern setback.

6.1.4 Envelope projections

The proposal seeks approval for projections beyond the modified building envelope on the northern and southern elevations for architectural features. The detailed design SSD includes vertical sunshades that project up to 490 mm on the Berry Street (northern) elevation and up to 100 mm on the lower levels of the southern elevation (see **Figure 21**).

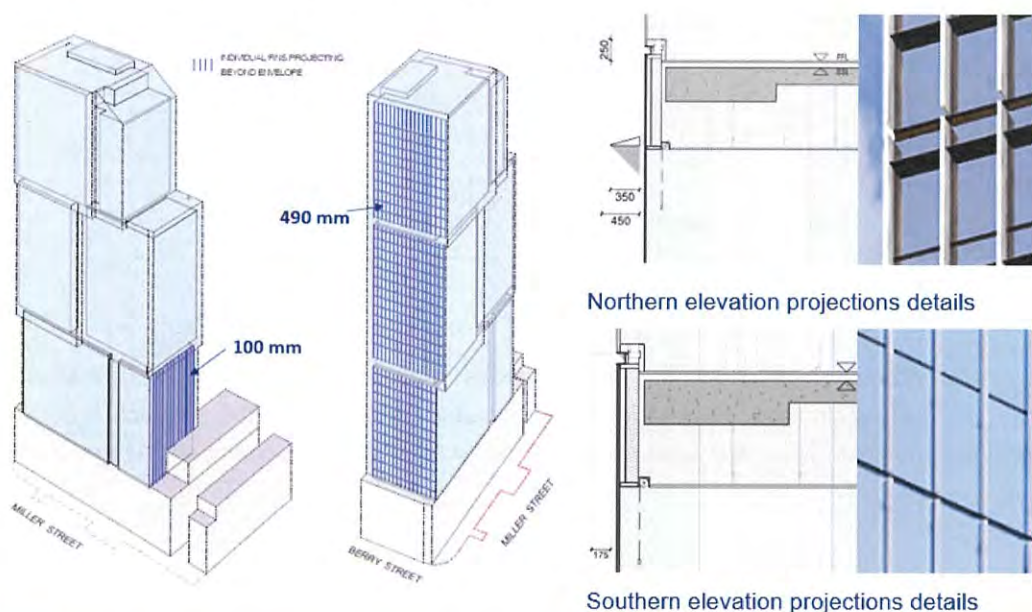


Figure 21 | Building envelope projections (Source: EIS)

The Department accepts the proposed projections beyond the building envelope do not result in any amenity impacts on surrounding development or public open space (see **Section 6.2**) because they are limited in depth and are integral to the proposed glazing. The Department also considers the vertical fins is a key architectural feature that will add visual interest to the proposed built form, while also

improving the environmental performance of the building by reducing direct heat impacts to internal commercial floor plates and mitigating glare.

The Department is therefore satisfied the proposed projections on the northern and southern elevations are appropriate and recommends a condition that limits the extent of the proposed projections to the vertical sunshades on the northern elevation and lower section of the southern elevation of the tower (**SSD 8874 - Condition A15**).

6.2 Amenity impacts

The Department has considered the potential amenity impacts of the proposal to the nearby residential buildings in terms of view loss, privacy and overshadowing impacts, in particular the Alexander Apartments (79-81 Berry Street) and The Miller (221 Miller Street). The two residential buildings are located to approximately 40 m to the east of the site and 120 m to the northeast of the site respectively (**Figure 22**).

The Alexander Apartments is a mixed-use building containing retail and commercial uses from ground floor to Level 7, and approximately 240 apartments from Levels 8 to 36. The Miller is a 22-storey mixed-use building containing ground floor retail and approximately 100 serviced apartment and 169 residential apartments.

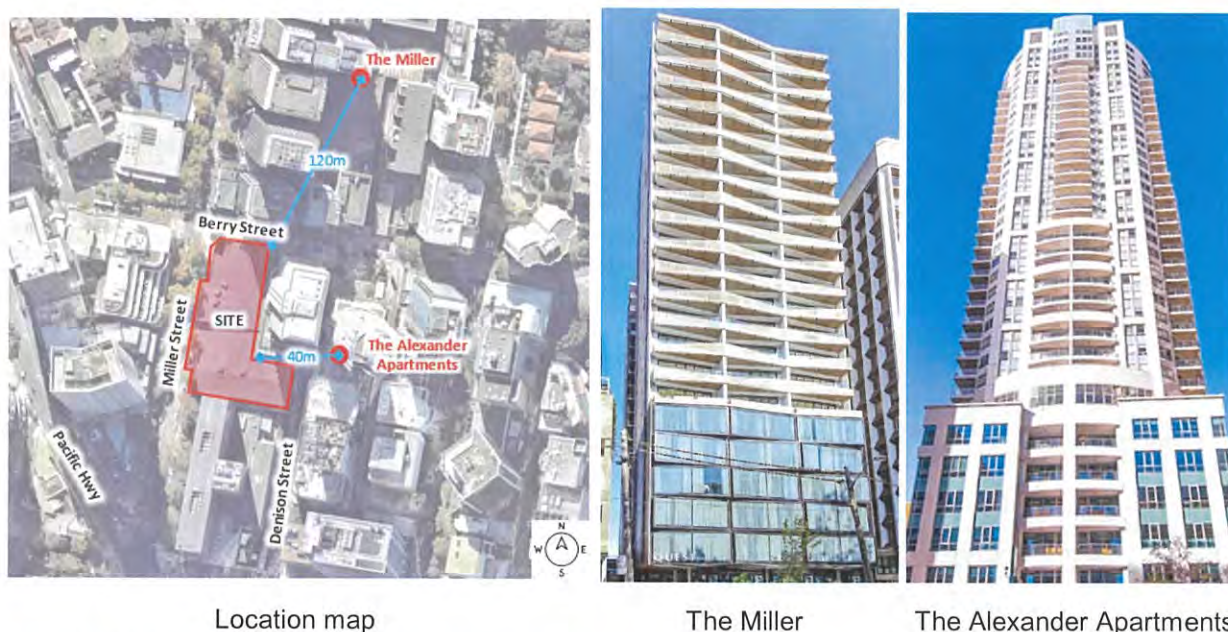


Figure 22 | Adjoining residential development (Base source: Nearmap)

6.2.1 Views

Two public submissions from the residents of the Alexander Apartments raised concern regarding potential view impacts from the proposal.

The proposal was accompanied by a View and Visual Impact Assessment (VVIA) which provided a comprehensive analysis of the potential view impacts caused by the proposal (see full VVIA at **Appendix A**). The Applicant contended the proposed modification to the approved building envelope and the proposed detailed design will not cause any additional view impacts to nearby residential properties.

The Department's detailed assessment of the proposal against the planning principles established by the NSW Land and Environment Court in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140* can be viewed at **Appendix D**.

The Department's consideration of the proposal's key view impacts is discussed below.

Alexander Apartments

The Department notes the building envelope approved by the concept approval impacts views from the Alexander Apartments, particularly for smaller mid-levels apartments with a single (western) aspect, across the side boundary. The Department accepted in its original assessment of the concept approval that the view loss was reasonable because the building envelope generally complies with the NSLEP. Further, the approved building envelope's southern setback (from MLC building), the height of the south-eastern wing towards Denison Street and a tapered tower south elevation would assist in maintaining a reasonable view corridor and outlook from the Alexander Apartments.

The Department notes the proposed modifications and detailed design will further increase the southern setback from 18 m to 28 m, widening the view corridor from the Alexander Apartments to the south west. The Department accepts this increased setback will further mitigate view impacts to the Alexander Apartments, particularly for apartments above level 21, with a south or a southwest aspect (**Figure 23**).

The Department also considers the reduced building height fronting Denison Street from approximately 58 m (RL 118) to 29 m (RL 89) will improve the outlook from mid-level apartments in Alexander Apartments, with a south or a south west aspect (**Figure 24**).

The Department therefore concludes the proposed modification to the approved building envelope and the proposed detailed building design will have acceptable view impacts to Alexander Apartment.



Figure 23 | Comparison between concept approval (left) and detailed design SSD (right) from a south facing apartment on Level 27 of the Alexander Apartments looking southwest (Source: EIS)



Figure 24 | Comparison between concept approval (left) and detailed design SSD (right) from a south facing apartment on Level 15 of the Alexander Apartments looking southwest (Source: EIS)

The Miller

One public submission from a resident of The Miller raised concerns regarding view impacts from the proposal.

In response to the submission, the Applicant submitted an addendum to the VVIA (see **Appendix A**). The additional VVIA illustrated the view impact from a southeast corner apartment on Level 21 of The Miller (see **Figure 25**).

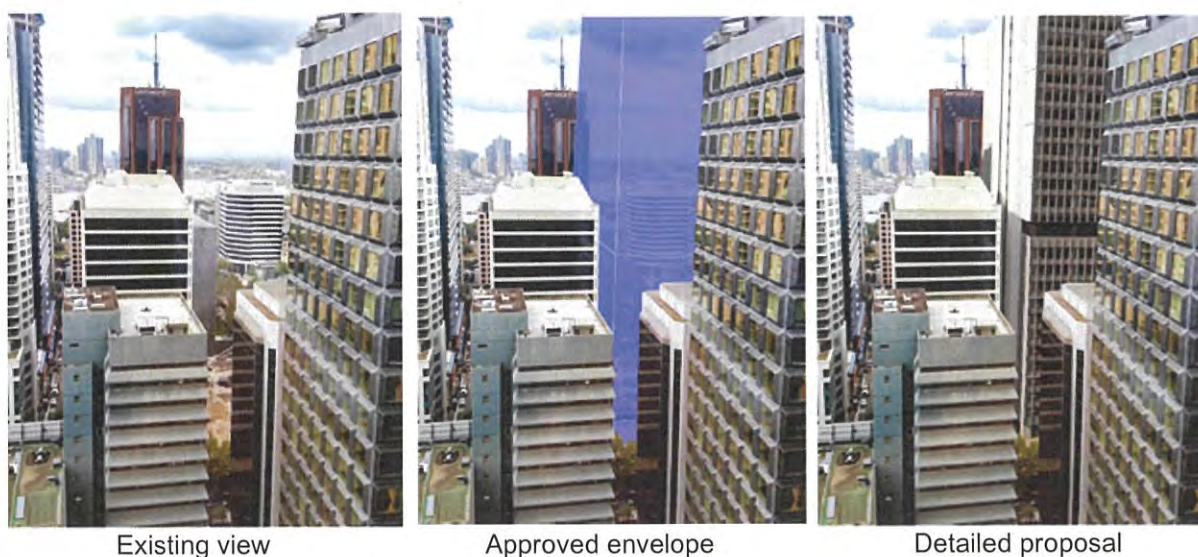


Figure 25 | View comparison between existing, concept approval and detailed design SSD from Level 21 of The Miller (221 Miller Street) looking south (Source: RtS)

The Department accepts the proposed modification and detailed design would result in no notable change in view impacts to The Miller when compared to the concept approval.

The Department notes apartments within The Miller rely on surrounding buildings to remain well below the permissible building heights under NLEP to maintain the existing water views. The Department is therefore satisfied the proposal's view impacts to The Miller is acceptable because:

- the impact would result from a compliant built form with regards to setbacks and building height controls.

- the expectation of retaining existing water views from The Miller would require the prohibition of redevelopment on the site and other properties within the view corridor which is unreasonable having regard to current planning controls for North Sydney Centre.

6.2.2 Privacy

One submission from the Alexander Apartments raised concern that the proposed development would result in a loss of privacy.

The Department notes the proposed OSD tower is located within the North Sydney CBD and approximately 40 m from the Alexander Apartments (the closest residential development) (**Figure 22**). While the Apartment Design Guide (ADG) does not technically apply to the proposed development as it is a commercial tower, the 40 m separation between the proposed tower and adjoining Alexander Apartments well exceeds the minimum building separation (24 m) normally required to protect privacy, within the ADG.

The Department is satisfied the proposed development will not unreasonably impact on the privacy of nearby residential properties.

6.2.3 Overshadowing

Clause 6.3(2) of NSLEP states development consent must not be granted to a building within the North Sydney Centre if results in a net increase in overshadowing between 12pm and 2pm from the March equinox to the September equinox (inclusive) to any land within the RE1 Public Recreation zone or land identified as 'Special Area'. This includes Brett Whiteley Place, and the Greenwood Plaza and the Miller Street special areas.

Six public submissions raised concerns the proposal results in overshadowing impacts to nearby residential developments and public open spaces.

The Applicant submitted a solar access analysis, demonstrating the proposal would achieve the intended objectives of the relevant development standards contained within NSLEP and design criteria in the ADG. The Applicant also argued the proposed modification and detailed building design would improve the overshadowing impacts when compared to the concept approval (see **Appendix A**).

Consideration

The proposal incorporates a stepped form and approximately 40 m upper tower setback from the site's southern boundary to minimise overshadowing to key public open spaces and surrounding dwellings.

The Department accepts the submitted solar access analysis demonstrates the proposal would maintain the same level of shadow impacts to Brett Whiteley Place as the concept approval, which results in 37 m² of overshadowing upon an existing awning.

The submitted solar access analysis also demonstrates the proposed modification would improve solar access to the Miller Street special area by 8 m² compared to the concept approval (see **Figure 26**) and would not overshadow the Greenwood Plaza special area.

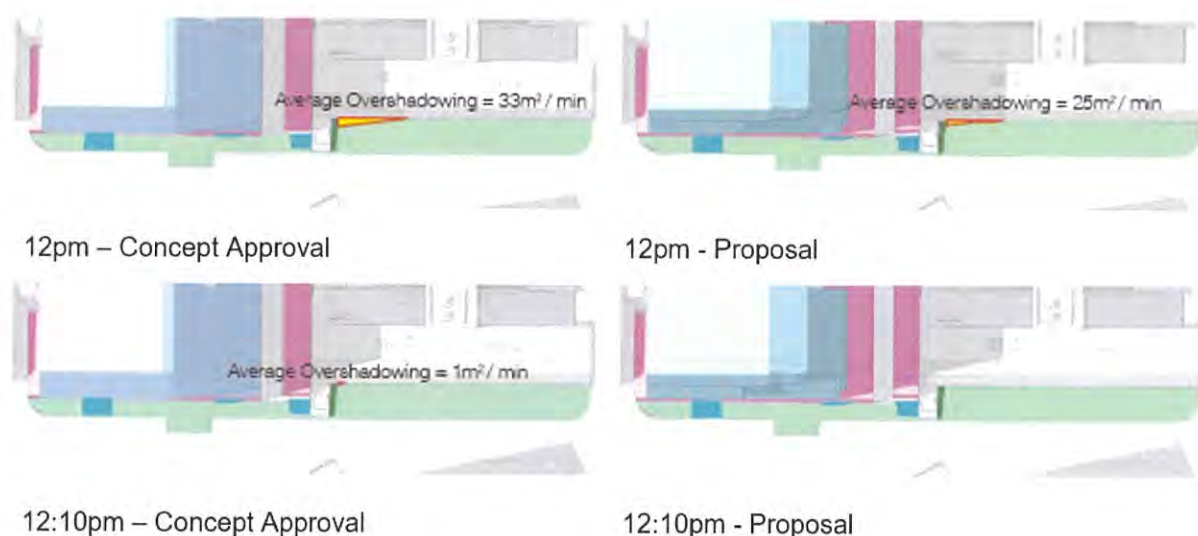


Figure 26 | Brett Whitely Place additional overshadowing (red outline), 21 June (Source: EIS)

In addition, the Department has also assessed the overshadowing impacts on nearby residential properties. The Department notes the overshadowing remain consistent with the concept approval and is considered acceptable as:

- the proposal would not result in any window to a habitable room receiving less than 2 hours of solar access or impact on any principal private open space at midwinter to the affected dwellings along Whaling Road
- the reduction of eight dwellings within the Alexander Apartments that receive 2 hours solar access at midwinter (from 145 to 137) remains compliant with ADG requirements.

The Department therefore is satisfied the overshadowing impacts of the proposal on the adjoining residential developments and public domain areas are acceptable, given the impacts remain consistent with the concept approval and comply with relevant overshadowing standards.

6.3 Integration with public domain

The proposal does not include any works within the Victoria Cross Metro Station or surrounding public domain areas. Public domain works, including the Miller Street setback area and the 7 m wide through-site link from Miller Street to Denison Street is subject to the separate infrastructure approval (CSSI 7400) for the Sydney Metro project.

Four public submissions raised concerns about insufficient public open space and the capacity of the public domain areas to accommodate pedestrians.

The Committee of North Sydney also raised concerns that there is negligible public benefit flowing from the project, which has the potential to deliver one of the most impressive public spaces in Sydney by consolidating the Miller Street setback area, the footpath and two lanes of Miller Street.

In response to the submissions, the Applicant reiterated the public domain concept and podium design details were submitted for information only because the public domain works are subject to a separate infrastructure approval for the metro station. The Applicant stated the public domain concept provides for a continuation of the civic green spine along Miller Street, incorporating a range of lawn areas / grassed terraces, eateries and outdoor dining opportunities, casual seating areas and key walkways

(see **Figures 27 & 28**). The Applicant also considered the provision of the through-site link contributes to an additional 600 m² of public open space (see **Figure 29**).

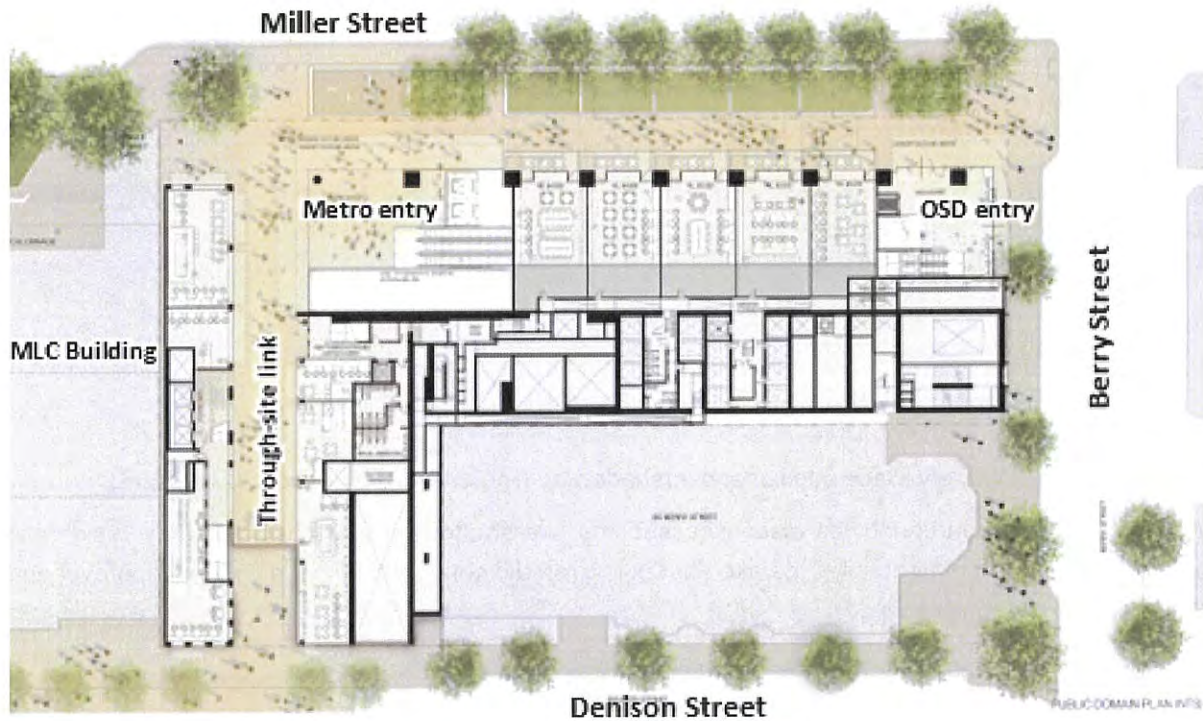


Figure 27 | Public domain concept (information only) (Source: EIS)



Figure 28 | Artist impression of Miller Street station entrance and public domain area and through site link (Source: EIS)

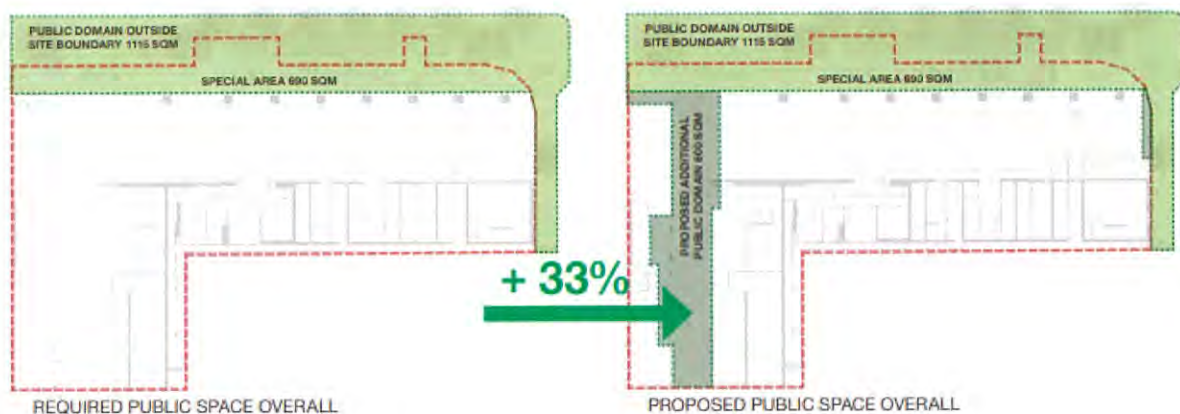


Figure 29 | Public domain concept (information only) (Source: EIS)

Consideration

The Department in its assessment of the concept approval accepted the design of the public domain, including the publicly accessible space at the ground level along Miller Street and the east-west through-site link are subject to the requirements of the Station Design Precinct Plan (SDPP) and the Interchange Access Plan under the infrastructure approval (**Condition E92 and E101 of CSSI 7400**).

The SDPP for Victoria Cross Metro Station was approved in April 2020 and sets out design requirements for the station and associated public domain works. The Department notes the design development of the approved station and associated public domain areas are on-going and will be further informed by the advice from the Sydney Metro DRP. The Sydney Metro DRP also informed the design of the OSD and is satisfied with its integration with the Metro station.

However, the Department notes the concept approval included Design Guidelines requiring the integration between the approved Metro station and the OSD to deliver better public domain and place integration outcomes. More specifically, the Design Guidelines require appropriate weather protection, support for active retail uses with opportunities for complementary outdoor uses and to complement pedestrian capacity along Miller Street.

The Department is satisfied the proposal is consistent with the requirements of the Design Guidelines, noting the submitted public domain design report illustrates (**Figure 30**):

- appropriate weather protection would be provided for the retail terraces along Miller Street, the entrance to the OSD lobby and the entrance to the Metro station
- an additional 1,290 m² of publicly accessible open space would be provided in addition to the existing 1,115 m² of public domain area adjacent to the site
- a 4.8 m wide green spine would be provided contributing to the landscaped public domain area along Miller Street (across both the site and the adjoining MLC Building)
- a 2 m wide Miller Street footpath and a 4.5 m wide accessible path would be provided connecting the Metro entry and OSD lobby along Miller Street.

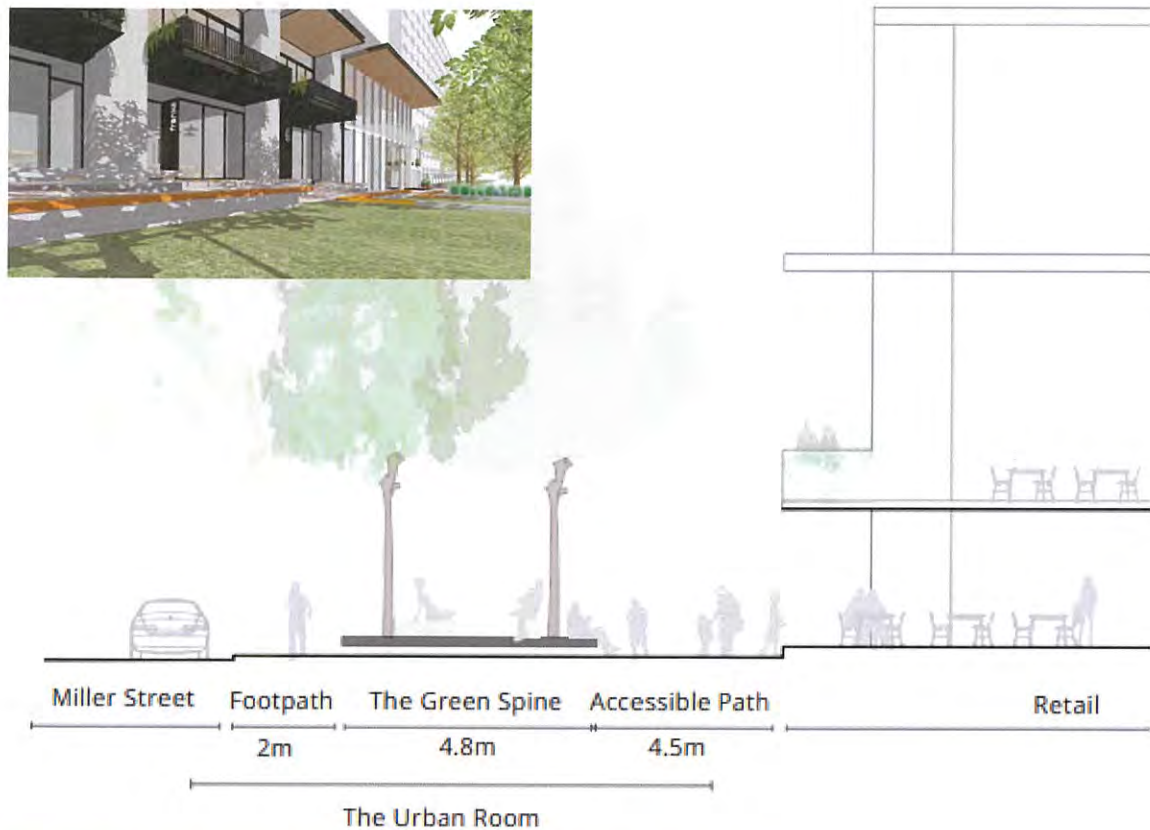


Figure 30 | Public domain concept (information only) (Source: EIS)

The Department also notes the proposed modification to the approved building envelope reduces the height of the podium along the northern side of the public through-site link by 29 m (from RL 118 to RL 89) (see **Figure 15**). The Department considers the reduction in building height will improve the amenity to the adjoining station plaza and the through-site link in terms of reduction of wind impacts and improvements to solar access and sky views.

The Department is therefore satisfied that the proposal's response to the surrounding public domain and integration with the approved Metro Station is acceptable.

6.4 Other issues

| Issue | Findings | Recommendations |
|-----------------------------|---|---|
| Basement Connection | <ul style="list-style-type: none"> A public submission suggested the site should include an underground pedestrian connection to the North Sydney train station and bus interchange through Greenwood Plaza. Council also requested that the site should future proof a potential underground pedestrian connection via the MLC building to the existing Greenwood Plaza and connection to the existing North Sydney Railway. In response, the Applicant contends that the design and construction of works within the basement levels are being completed as part of the CSSI approval. However, the basement loading dock area includes breakthrough panels that would enable a potential connection to the adjacent MLC building if required in the future. The Applicant does not object to a condition requiring the maintenance of the breakthrough panels to retain the potential for future underground connection to North Sydney Station subject to a 30-year time limit. The Department notes Sydney Metro has not confirmed any plans for future underground connection from the new Metro Station to North Sydney Railway Station and the adjacent MLC building has no confirmed redevelopment plans. The Department however accepts the Applicant's proposal to retain the potential connection given it will be in the public interest should a connection ever be proposed in the future. However, the Department notes any right of access or sharing part thereof between the site and the adjacent MLC building relies on private negotiation between landowners that is outside the scope of the over station development. | Condition E26 sets out requirements for a covenant to retain the breakthrough panel. |
| Pedestrian movements | <ul style="list-style-type: none"> Four public submissions and TfNSW (RMS) raised concerns over pedestrian congestion as a result of the proposal. In response, the Applicant submitted a revised Traffic and Transport Impact statement, prepared by Arcadis, which identified the increased number of pedestrian movements generated by the proposal will be less than 10% of that generated by the Metro station. The statement also confirms the intersections and footpaths surrounding the precinct would continue to operate at acceptable levels. TfNSW accepts the Applicant's RtS has resolved its issues and has recommended a condition requiring the preparation of a Construction, Pedestrian and Traffic Management Plan to mitigate any impacts on pedestrian movements during construction. The Department accepts the advice from TfNSW and its recommended conditions. The Department also notes an interchange access plan is required under the infrastructure approval for the metro station (E101 CSSI 7400) which will inform the final design of transport and access facilities and services, including footpaths, cycleways, passenger | Condition B41 sets out the requirement for the preparation of a Construction Pedestrian Traffic Management Plan. |

facilities, parking, traffic and road closures, and integration of public domain and transport initiatives for the site and its surrounds.

Community/Civic Uses

- Council and four public submissions raised concerns over the lack of perceived public benefits by the proposal. Public submissions also called for additional civic spaces which would activate the site after general working hours and on weekends.
- The Applicant notes the proposal includes 'The Hub', which is a multi-purpose space within the podium, which would deliver a new civic space for a variety of community uses, events, or as an exhibition space.
- The Department accepts the site would be appropriately activated outside of general working hours and on the weekend because of the extensive hours of operation of the Metro train service, the proposed retail premises along Miller Street and the proposed through site link.
- The Department also accepts the proposed Hub or multipurpose space has the potential to deliver public benefits by allowing community uses. However, the Department considers the programming and management of the proposed Hub space must be developed in a consultative manner with the community and key stakeholders such as Council to maximise its benefits to the community.
- The Department therefore recommends a condition of consent requiring the preparation of an Operational Management Plan for the Hub, including requirements for community consultation, development of program for community groups and/or public authorities and future reviews of programs.

Condition E8 sets out the requirement for operation and management of the Hub space.

Construction zone

- Council notes the proposal will require construction zones for the next four years and the current Construction and Site Management Plan reduces the Miller Street footpath to below 2.5 m. Council's preference would be for the use of the southbound lanes along the Miller Street frontage of the metro site for a loading/construction zone during the metro and metro OSD construction period as a trial for the partial closure of Miller Street.
- The Department notes both Miller Street and Berry Street are classified State roads for which approval is required from TfNSW – RMS for any road changes, including partial road closure.
- TfNSW – RMS does not object to the proposed OSD or specify any required road or traffic changes. TfNSW – RMS's suggested conditions with respect to construction management, including additional consultation and approval required from the relevant road authorities (Council and TfNSW – RMS) and the Sydney Coordination Office.

Condition B41 sets out requirements for the finalisation of the Construction and Site Management Plans.

Design Excellence

- Subject to the recommended conditions by TfNSW – RMS and further consultation with Council, the Department is satisfied that the construction impacts associated with the proposal can be appropriately mitigated and managed.
- The concept approval requires the detailed design of the proposed building to be reviewed by the Sydney Metro Design Review Panel (DRP) in accordance with the approved Design Excellence Strategy.
- The Department notes the proposal has been reviewed by the Sydney Metro DRP nine times prior to its submission and again during the preparation of the RtS. The Sydney Metro DRP made several recommendations regarding façade details, environmental performance and maintaining separation between adjoining heritage items, which have been resolved by in the detail design proposal.
- The Department notes the Sydney Metro DRP endorses the detail design of the OSD.
- The Department is satisfied the proposal has responded to the advice of the Sydney Metro DRP and notes the Applicant sought further advice from the Sydney Metro DRP in preparation of the RtS. The Sydney Metro DRP subsequently confirmed endorsement of the proposed built form.
- The Department accepts the advice of the Sydney Metro DRP and is satisfied the proposal achieves Design Excellence.

Conditions B1-B7 set out the requirements for post approval requirements for design excellence.

Car parking

- Concerns were raised in three public submissions regarding the provision of car parking spaces above a metro station.
- The Proposal seeks approval for the use of 150 car parking spaces within the basement being constructed under the CSSI approval.
- The NSDCP allows for a maximum of 154 parking spaces to support the commercial office tower and therefore the proposal does not exceed Council's parking rates. Furthermore, the proposal results in a reduction from the previous 208 parking spaces that existed on the site prior to demolition of the previous buildings.
- TfNSW raised no objection to the proposed car parking and is satisfied with the proposed traffic and transport arrangement, including loading subject to recommended conditions of consent.
- The Department accepts the proposal remains consistent with the number of parking spaces permitted under the concept approval and Council's parking rates.
- The Department recommends requirements for preparation of a finalised Green Travel Plan to encourage users of the development to make sustainable travel choices, including walking, cycling, public transport and car sharing.

Condition E24 sets out the requirement for preparation of a Green Travel Plan.

| | | |
|---|--|---|
| <p>Developer contributions</p> | <ul style="list-style-type: none"> • The Applicant seeks to pay developer contributions for the proposal in accordance with Council's Section 7.11 Contribution Plan. The Applicant also seeks a credit on the Section 7.11 Contribution to offset the commercial GFA that was previously on site prior to the demolition carried out under the CSSI approval. • However, Council noted that the concept approval for the OSD was granted after all previous buildings were demolished and therefore no floorspace exists to offset the required developer contribution. • In response, the Applicant argues that as per section 1.4 of the North Sydney Section 94 Contribution Plan 2013, contributions will only be levied on additional residential and commercial development in accordance with the Plan. To exclude a credit for existing buildings on the basis that they were the subject separate, yet related, applications would dissuade applicants from staging demolition and construction programmes. Further, the CSSI approval always envisaged an OSD on the site and permitted demolition to facilitate the construction of the Victoria Cross metro station and the integrated OSD. • The Department notes the Metro station and OSD require separate approvals under separate parts of the EP& A Act. The Department agrees with the Applicant that the CSSI approval always envisaged an OSD component on the site and a separate SSD application for the OSD would be lodged in the future. The Department also considers it is not uncommon for demolition of a previous development and the construction of a new development to be done under separate approvals. • The Department therefore accepts it is reasonable to apply a credit for previous commercial floor space existed at the site consistent with the North Sydney Section 94 Contributions Plan 2013. | <p>Condition A24 sets out the requirement for the payment of Section 7.11 Contributions.</p> |
| <p>No justification for additional GFA</p> | <ul style="list-style-type: none"> • Concerns were raised in public submissions that the proposal does not justify the additional GFA. • The Department notes the site is not subject to a maximum floor space control. The Department accepts the additional 1,500 m² can be readily accommodated within the approved and the modified building envelope. The Department also accepts the modified envelope and the proposed building design represent a reduction in building bulk and external amenity impacts (See Section 6.1). | <p>No conditions are required in relation to this issue.</p> |
| <p>Heritage impacts</p> | <ul style="list-style-type: none"> • Concerns were raised in public submissions that the proposal does not sit comfortably within the context of significant heritage items. • The Department acknowledges the proposal incorporates horizontal articulation and varying facade depths to ensure the design is both compatible with and respectful of the scale, massing and datum of the adjacent MLC Building and Rag & Famish Hotel. | <p>No conditions are required in relation to this issue.</p> |

| | | |
|---|---|---|
| | <ul style="list-style-type: none"> • The Department notes the proposal increases the separation between the adjoining MLC Building and the proposed tower from 18 m to 26 m. • The proposal also maintains the Berry Street podium height which responds to the height of the Rag and Famish Hotel. • The Department considers the proposal does not result in any unreasonable impacts on the significance of the surrounding heritage items. | |
| Victoria Cross northern station entrance | <ul style="list-style-type: none"> • One public submission raised concerns over the lack of discussion regarding the northern entrance to the Victoria Cross station. • The Department notes the proposal only relates to the development of land for the southern station entrance only. The design and construction of the northern entrance forms part CSSI approval and is not subject to this application. | No conditions are required in relation to this issue. |
| Signage | <ul style="list-style-type: none"> • The proposal includes the provision of four signage zones location at the top of the tower for future building identification signage. The submitted Signage Strategy limits future signage to a maximum of three of the four signage zones. • The Department notes the details of the future building identification signage will form part of separate approvals. However, the Department is satisfied the proposed signage Zones are acceptable as they are generally consistent with Council's signage controls and the existing building identification signage within the North Sydney Centre. • The Department has also assessed the proposed signage zones against State Environmental Planning Policy No. 64 – Advertising and Signage at Appendix E and is satisfied the proposal is acceptable. | Condition A6 sets out the requirements for future building identification signage. |
| Site Suitability | <ul style="list-style-type: none"> • The proposal involves the design and construction of a commercial officer tower above the approved metro station and rail tunnel below. • The Department notes site suitability matters such as contamination, stormwater management and flood mitigation measures have been addressed under the CSSI approval. • The proposal was accompanied by a Stormwater Management Plan that demonstrates the development can appropriately integrate with works being completed under the CSSI approval. • The Department is satisfied the site is suitable for the proposed development. | Condition A2 requires the development to be carried out in accordance with the submitted Stormwater Management Plan. |

7 Evaluation

The Department has assessed the merits of the proposal taking into consideration the issues raised in submissions, as well as the Applicant's response to these, and is satisfied the impacts have been satisfactorily addressed by the proposal and through the Department's recommended conditions.

The proposed development has demonstrated it is consistent with the objects of the EP&A Act and the State's strategic planning objectives for the site as set out in the Region Plan and North District Plan. The proposal will contribute to local economic activity with over 4,000 new operational jobs within the commercial core of the North Sydney Centre.

The Department finds that the proposal provides an appropriate built form in response to the constraints and opportunities that apply to the site and the proposal complements surrounding development. The development also achieves a high standard of design, is appropriate within its urban context and is supported by the Sydney Metro DRP.

The Department supports the proposed building height variation, as it contributes to a more appropriate redistribution of building mass that improves views and solar access to adjoining residential development and the public domain.

The Applicant has demonstrated that the built form within the approved Miller Street articulation zone achieves the specific design objectives contained in the Victoria Cross OSD Design Guidelines. The lack of a tower setback is not considered to detract from the prevailing or desired future character in the North Sydney Centre. The Department accepts the advice of the Sydney Metro Design Review Panel that the proposal exhibits design excellence.

The Department notes the design of the public domain and pedestrian access for the site is subject to the SDPP and IAP of the CSSI approval (CSSI 7400) for the Metro station.

The Department's Assessment therefore concludes the proposal is in the public interest and is approvable subject to the conditions (**Appendix F** and **G**).

8 Recommendation

It is recommended that the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve SSD 8874 MOD 1 and grant consent to SSD 10294
- **agrees** with the key reasons for approval listed in the notice of decision (**Appendix B**)
- **modifies** the consent SSD 8874 MOD 1
- **signs** the attached modified instrument and development consent (**Appendix F**)
- **grants consent** for the application in respect of SSD 10294, subject to the conditions in the attached development consent (**Appendix G**).

Recommended by:



Anthony Witherdin
Director
Key Sites Assessments

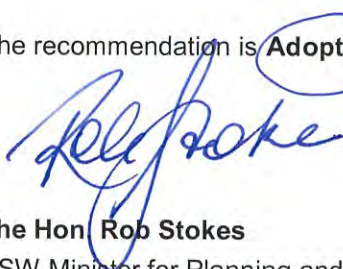
Recommended by:



Anthea Sargeant
Executive Director
Regions, Industry and Key Sites

9 Determination

The recommendation is **Adopted** / Not adopted by:



The Hon Rob Stokes

NSW Minister for Planning and Public Spaces

Appendices

Appendix A – List of documents

SSD 8874 MOD 1 – Stage 1 modification application

1. Modification Report
2. Submissions
3. Applicant's Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/25241>

SSD 10294 – Stage 2 development application

1. Environmental Impact Statement
2. Submissions
3. Applicant's Response to Submissions

<https://www.planningportal.nsw.gov.au/major-projects/project/11051>

Appendix B – Community Views for Draft Notice of Decision

| Issue | Consideration |
|--|---|
| <i>Bulk and scale</i> | <i>Assessment</i> |
| <ul style="list-style-type: none">the bulk and scale of the proposal is excessive.the Miller Street setback does not comply with the minimum 6 m setback standard in the NSLEP.a conventional built form should be adopted with the tower setback from the podium.no justification for the additional GFA or reduction in the Berry Street setback. | <ul style="list-style-type: none">the proposed bulk and scale are consistent with the concept approval and compatible with the surrounding development.the proposal maintains a 6 m setback to Miller Street at the ground plane up to a height of RL 126 (approximately 60 m) to achieve the public domain outcomes envisaged under Council's planning controls.other approvals for large sites in the North Sydney Centre are not representative of conventional podium and tower forms.the proposal is consistent with the approved Design Guidelines.the bulk and scale proposed is consistent with the increased scale and density envisaged by recent amendments to the North Sydney Local Environmental Plan 2013.the proposal is comparable in scale and character with other developments in the North Sydney Centre.detailed visual impact assessment concludes the proposal will have acceptable outcomes when viewed from key public vantage points, streetscapes and surrounding residential properties. |

Public domain and benefits

Assessment

- the proposal should include additional open space, wider pedestrian links and underground connection to North Sydney train station.
- the proposal should offer more community and civic functions.
- the proposal will result in pedestrian congestion in the immediate area.
- the proposal lacks any real public benefit.
- the approved station box and surrounding public domain is subject to a separate approval (CSSI 7400) which contains requirements for an Interchange Access Plan (IAP) and Station Design Precinct Plan (SDPP) to inform the final design. The Department accepts the building footprint of the OSD is structurally constrained by the approved station box.
- the Department notes Sydney Metro has not confirmed any plans for future underground connection from the new Metro Station to North Sydney Railway Station. However, the Department accepts the Applicant's proposal to retain a potential connection through the provision of basement break-through panels adjacent to the MLC Building.
- the Applicant's amended Traffic Impact Statement has demonstrated the proposed OSD will not result in any unreasonable pedestrian impacts on the surrounding precinct.
- the Department considers the provision of the Hub space, the additional employment opportunities and improvements to the public domain under the CSSI approval result in public benefits.

Condition

The Department has recommended a condition that requires the Applicant submit an Operational Plan of Management for the Hub space prior to the use of the OSD.

Amenity impacts on public and private land

Assessment

- overshadowing of the Miller Street Special Area and Brett Whitely Place
- overshadowing of residential dwellings outside of the North Sydney Centre
- overshadowing of Alexander Apartments
- view loss to Alexander Apartments and the Miller.
- the proposal incorporates a stepped building height, a 40 m upper tower setback to the southern boundary and a 3 m eastern side setback to mitigate overshadowing impacts to both public and private spaces.
- the proposal reduces the height of the podium adjacent to the through-site link which improves solar access to the public domain and maximises views from Alexander Apartments.
- The proposal results in a net solar access gain to the public open space and acceptable overshadowing impacts to private land.

Provision of car parking

Assessment

- the proposed 150 car spaces comply with the local planning controls, which permit up to 154 car spaces.
- the proposal results in a reduction in on-site car parking from the previous 208 parking spaces that existed on the site prior to demolition.
- the proposal remains consistent with the number of car parking spaces permitted under the concept approval.

Appendix C – Department's consideration of clause 4.6 submissions

The Department has considered the proposed variations to the following clauses in the North Sydney Local Environmental Plan 2013 (NSLEP):

- Clause 4.3 – Height of buildings
- Clause 6.4 – Miller Street setback

Clause 4.6(2) of NSLEP permits the consent authority to consider a variation to a development standard. The aims of clause 4.6 are to provide an appropriate degree of flexibility in applying certain development standards and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

As set out in **Section 6.1.1** of this report, the proposal complies with clause 6.3(3) of the NSLEP in relation to building height. The clause allows a building height greater than the standards contained in clause 4.3, without needing to consider any variation from the standards under clause 4.6. However, the Applicant has sought to vary the building height standard via a clause 4.6. The Department has considered the Applicant's clause 4.6, notwithstanding that it is not determinative in the assessment of the application. Rather, the clause 4.6 consideration is useful in setting out assessment practice around the principles and merit assessment issues of building height.

When considering proposed variations, clause 4.6 requires the following:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) (above), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained (although this is not required for SSD).*

The following provides an assessment of the proposed exceptions to the development standards under clauses 4.3 and 6.4 of the NSLEP, applying the tests summarised by *Preston CJ in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827*

Clause 4.3 - Building height development standard

Sections 6.1.1 of this report sets out the extent of variation requested to the mapped height standard in the NSLEP. In summary, a portion of the southern end of the proposed tower exceeds the height standard of RL 201 at a point where the height standard steps from RL 230 to RL 201 (**Figure 1**).

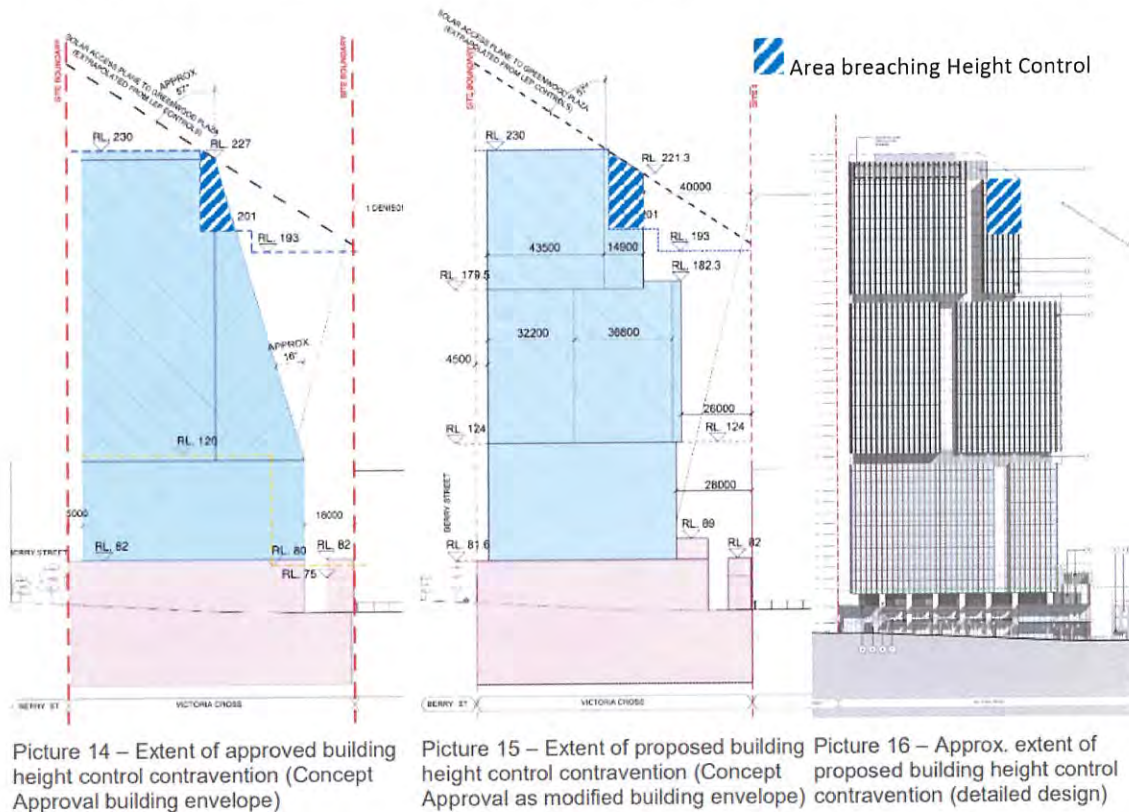


Figure 1 | Approved building envelope (left), proposed building envelope (middle) and proposed west elevation (right) (Source: EIS)

1. Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone?

The objectives of the B3 zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To prohibit further residential development in the core of the North Sydney Centre.
- To minimise the adverse effects of development on residents and occupiers of existing and new development.

The Department considers the proposed development is consistent with the objectives of the B3 Commercial Core Zone within the NSLEP, as the proposed development:

- serves the needs of the local and wider community for office use, by providing an increase in commercial floor space including retail and office premises within the commercial core of the North Sydney Centre

- encourages employment in a highly accessible location, as it is positioned immediately above the approved Metro station and within close proximity to North Sydney Station, bus routes, taxis and active transport networks for walking and cycling
- promotes public transport use and encourages active transport use, through minimising private car parking provision on site and enabling users of the OSD to efficiently access the new Metro station and surrounding public transport and active transport options
- minimises adverse effects on residents of existing development in relation to overshadowing, privacy and visual impacts, as set out in the Assessment Report.

2. Is the consent authority satisfied that the proposed development will be consistent with the objectives of the standard?

The objectives of the height standard under the NSLEP are:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.*

The Department considers the proposal is consistent with the relevant objectives of the building height standard in the NSLEP, as the proposed development:

- responds to the existing topography of the site by positioning the greatest building height to the north of the site and stepping the building height down towards the south
- promotes the retention and sharing of existing views from surrounding residential development and public domain by augmenting the maximum building envelope to the south of the site to minimise view loss impacts (refer **Section 6.2** of the Assessment Report). Further, the area of non-compliance does not cause any view impacts on the surrounding development.
- has a height and massing that has no adverse solar access impact on land in the RE1 Public Recreation Zone or land identified as "Special Area" in the North Sydney Centre and has minimised overshadowing of land in the R2 Low Density Residential Zone to the southeast (see **Section 6.2** of the Assessment Report)
- the area of non-compliance is significantly separated from the adjacent Alexander Apartments building (approximately 40 m) and will maintain adequate privacy
- is compatible with existing, under construction and proposed development within the North Sydney Centre (see **Section 6.1** of the Assessment Report)

- comprises an appropriate scale and density within the site in accordance with, and in promotion of, the character of the area as embodied within the development standards of the NSLEP and the aims and objectives of the North Sydney Development Control Plan 2013 (NSDCP) (see **Section 6.1** of the Assessment Report).

3. Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The Applicant's has submitted a written request (**Appendix J** of the EIS), seeking a variation to the mapped building height standard that applies to the site under the NSLEP. In summary, the Applicant's clause 4.6 request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstance of the case as the development is consistent with the objectives of the height standard, in keeping with the first test of the five part tests in *Wehbe v Pittwater Council [2007]* NSWLEC 827. More specifically, the Applicant's written request provides the following reasons to demonstrate that the development is consistent with the objectives of the height standard:

- the proposal responds to the existing topography of the site by delivering a stepped building form in the direction of the fall in the natural gradient of the site
- the proposal will continue to promote the retention and sharing of views despite the variation of the height standard
- the proposal maintains solar access to nearby existing dwellings, public reserves, and streets. The proposed development does not compromise or inhibit the ability of surrounding land to achieve solar access as part of future development proposals
- the proposed variation to the height of building standard relates to a portion of the development that is significantly separated from nearby residential buildings and direct sight lines are not available from the area of proposed variation
- the development is compatible with the existing and emerging character of the locality
- the proposal comprises an appropriate scale and density for the site, in accordance with the concept approval and the proposed modified concept approval.

For the reasons provided above, the Department recommends that the Minister accepts that compliance with the height standard is unreasonable or unnecessary given the circumstances of the case.

4. Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?

The Department recommends that the Minister accepts that there are sufficient environmental planning grounds to justify the development's contravention of the development standard in the circumstances of the case as provided in the Applicant's written request and as summarised below:

- the development is consistent with the objects of the EP&A Act by promoting the orderly and economic use and development of the land and promoting and delivering good design and amenity of the built environment through the delivery of an A-grade office tower that will support significant new employment within North Sydney CBD
- the proposal achieves the objectives of the height of building development standard

- the proposal contributes to the skyline with a stepped building form that reduces the scale of the development as viewed from the southern portion of the site, the through-site link, and the primary Sydney Metro entrance on Miller Street
- the additional height does not result in any non-complying overshadowing to public space, has acceptable view and privacy impacts to the Alexander Apartments to the east and the additional height has no heritage impacts.

The Department considers the above Applicant's arguments to be well founded. In supporting the above environmental planning grounds to vary the development standard, the Department considers that the development will deliver a better planning outcome for the site. In this instance, the Department also notes the proposed variation to the height standard does not seek to increase the overall building height or scale of the development and instead notes that the variation facilitates a redistribution of building mass which:

- improves daylight access to the through site link
- increases building separation to the heritage-listed MLC Building
- reduces view impacts to the Alexander Apartments to the east.

Finally, the Department notes the development is consistent with clause 6.3(3) of NSLEP, which permits a variation to the height standard subject to specific overshadowing provisions (see **Section 6.1.1** of the Assessment Report) rendering compliance with the height standard as being unnecessary.

These outcomes collectively deliver an overall better planning outcome.

Conclusion

Having considered the Applicant's written request, the Department considers that the Minister can be satisfied the Applicant has provided sufficient environmental planning grounds to justify the contravention of the height of buildings development standard and the matters required to be demonstrated have been adequately addressed.

The Department recommends that the Minister therefore concludes that the Applicant's written request adequately addresses the matters required to be demonstrated under clause 4.6 of the NSLEP and the proposed development is in the public interest because it is consistent with the objectives of the building height standard and the objectives for development within the zone.

Clause 6.4 - Miller Street setback development standard

Section 6.1.2 under the sub-heading "Miller Street Setback (articulation zone)" of the Assessment Report sets out the extent of variation requested. In summary, the proposal provides a 6 m setback up to a height of RL 126 (approximately 60 m) before encroaching into the 6 m setback. The extent of non-compliance is shown in **Figure 2** below:

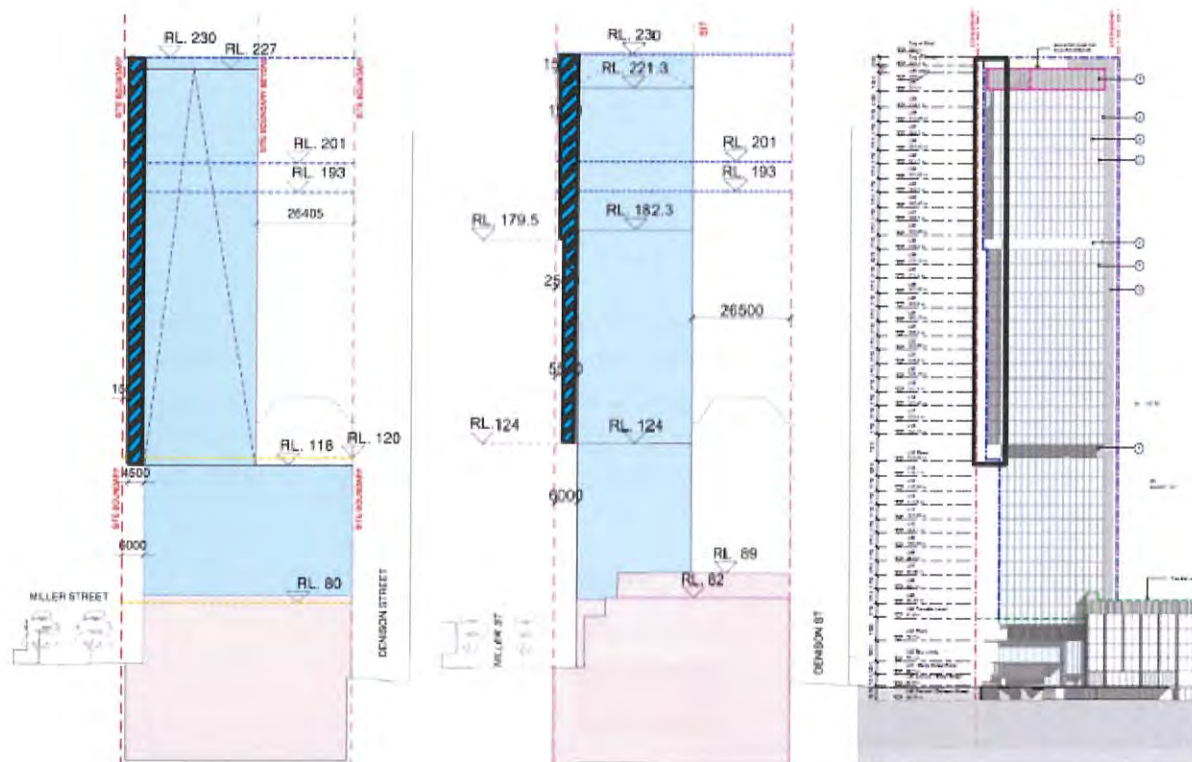


Figure 2 | Approved building envelope (left), proposed building envelope (middle) and proposed south elevation (right) with Miller Street setback non-compliance hatched (Source: EIS)

1. Is the consent authority satisfied that the proposed development will be consistent with the objectives of the zone?

The objectives of the B3 zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To prohibit further residential development in the core of the North Sydney Centre.
- To minimise the adverse effects of development on residents and occupiers of existing and new development.

The Department considers that the proposed development is consistent with the objectives of the B3 Commercial Core Zone within the NSLEP, as the proposed development:

- serves the needs of the local and wider community for office use, by providing an increase in commercial floor space including retail and office premises within the commercial core of the North Sydney Centre
- encourages employment in a highly accessible location, as it is positioned immediately above the approved Metro station and within close proximity to North Sydney Station, bus routes, taxis and active transport networks for walking and cycling

- promotes public transport use and encourages active transport use, through minimising private car parking provision on site and enabling users of the OSD to efficiently access the new Metro station and surrounding public transport and active transport options
- minimises adverse effects on residents of existing development in relation to overshadowing, privacy and visual impacts, as set out in the Assessment Report.

2. Is the consent authority satisfied that the proposed development will be consistent with the objectives of the standard?

The objective of the Miller Street setback standard under the NSLEP is:

- *to maintain the established setback and landscaped setting on the eastern side of Miller Street between McLaren Street and Mount Street.*

The Department considers that the proposed development is consistent with the objectives of the Miller Street setback standard in the NSLEP, as the proposed development maintains the established setback and landscaped setting of Miller Street between McLaren and Mount Streets (up to RL 126). The CSSI approved station box and the lower portions of OSD achieve this objective by maintaining a compliant setback up to a height of RL126 (approximately 60 m). Stepping of the built form above this height (i.e. RL 126) into the setback zone still allows the objective of this standard to be met whilst adding visual interest and complexity to the built form at upper levels.

3. Has the consent authority considered a written request that demonstrates compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and they are satisfied that the matters required to be demonstrated have adequately been addressed?

The Applicant's written request seeking to justify the contravention of the development standard is included in the EIS. The Department recommends that the Minister accepts that the submitted clause 4.6 request meet the five-part tests in *Wehbe v Pittwater Council [2007] NSWLEC 827* and has adequately addressed the matters required to be demonstrated under clause 4.6(3) of the NSLEP.

The Department considers that the submitted clause 4.6 request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, given the objectives of the standard can be met despite a numerical variation to the control at upper levels of the development.

4. Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard and with the Court the matters required to be demonstrated have adequately been addressed?

The Department recommends that the Minister accepts that there are sufficient environmental planning grounds to justify the development's contravention of the development standard in the circumstances of the case, as provided in the Applicant's written request and as summarised below:

- the proposed contravention of the Miller Street setback area is less than previously approved under the concept approval
- the proposal maintains the primary objective of the control which is to provide a setback at street level with respect to the established streetscape and to contribute to the public domain along Miller Street, being a highly pedestrianised north-south main street in North Sydney Centre

- the proposal maintains a minimum 6 m setback up to a greater height of RL 126, supporting public enjoyment and sense of space of the front setback area and contribution to the public domain, including future integration with the station entrance and active retail uses along Miller Street
- the proposed cantilever zone at the southern end of the facade complies with the NSLEP sun access plane requirements to protect solar access to Greenwood Plaza and Miller Street
- the proposed varied cantilever creates greater visual interest compared to a compliant 6 m vertically extruded tower form
- the beginning of the reduced setback corresponds with the height of the MLC Building to the south, allowing the lower levels of the tower to reference the height of the MLC Building
- the primary objective of the control is perceived to be to manage impacts at the lower levels of the building and street level rather than the air space above. A proposal which is fully compliant with the standard for the full height would not contribute more towards achieving the ground plane objective of the standard than the proposal
- the reduced setback will have negligible material impacts compared to a compliant scheme in terms of built form, landscaping, overshadowing, view or heritage impacts.

The Department considers the Applicant's arguments above to be well founded. In supporting the above environmental planning reasons to vary the development standard, the Department considers that the development will deliver a better planning outcome for the site. In this regard, the Department notes:

- the purpose of the articulation zone is considered appropriate as it creates greater visual interest compared to a compliant tower form
- the proposed non-compliance occurs wholly within the site boundaries and does not encroach on the public domain.
- the non-compliance does not have any impact on the ability for the 6 m setback at the base of the envelope to perform the landscaping and activity sought by the standard. The non-compliance occurs approximately 60 m above ground level and does not preclude the satisfaction of the intent of the standard
- the proposal achieves the design criteria included within the Design Guidelines which direct the architectural intent of the approved articulation zone.

Conclusion

Having considered the Applicant's written request, the Department recommends that the Minister be satisfied the Applicant has adequately addressed and provided sufficient environmental planning grounds to justify the contravention of the development standard and the matters required to be demonstrated have adequately been addressed.

The Department recommends that the Minister therefore concludes that the Applicant's written request adequately addresses the matters required to be demonstrated under clause 4.6 of the NSLEP and the proposed development will be in the public interest because it is consistent with the objectives of the setback standard and the objectives for development within the zone.

Appendix D – Department’s consideration of Tenacity view sharing principles

The proposal affects private views from apartments to the east at 79-81 Berry Street (the Alexander Apartments) and apartments to the north at 221 Miller Street (The Miller).

The NSW Land and Environment Court in *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140 established a four-step approach when considering view sharing and view loss issues with proposed development. The Department’s assessment of view is structured in accordance with the Planning Principles established as follows:

- *Step 1: Assessment of the views to be affected*
- *Step 2: Consider from which part of the property the views are obtained*
- *Step 3: Assess the extent of the impact*
- *Step 4: Assess the reasonableness of the proposal that is causing the impact.*

Step 1: Assessment of views which are affected

Private views affected by this development include westerly facing apartments within the Alexander Apartments building and south facing apartments located at the upper levels of The Miller.

The Alexander Apartments building (79-81 Berry Street) and The Miller (221 Miller Street) are located approximately 40 m east and approximately 120 m directly north of the site, respectively.

The Applicant’s View Impact Assessment (**Appendix V** of the EIS) notes that views from west facing apartments across various levels (Levels 15, 20, 21, 25, 27 and 37) within the Alexander Apartments building will be affected by the development. As evident in **Figures 1 and 2** below, views from northwest and west facing apartments on lower levels of the Alexander Apartments building are currently obstructed by the existing office building at 65 Berry Street and as such, lower level apartments within the Alexander Apartments building will not be affected by the proposal.



Figure 1 | View from Level 21 looking northwest
(Source: Department)



Figure 2 | View from Level 15 looking west
(Source: Department)

In addition, the Applicant’s RtS package considers view impacts from a south facing apartment within The Miller (Level 21) in response to a submission received during exhibition of the EIS. The Applicant’s RtS notes that the development was under construction during the concept proposal and has since

been completed. Views from south facing apartments towards the eastern harbour will be affected whilst southwest views and the general view outlook of southeast facing apartment are retained.

Step 2: Consider from what part of the property are the views obtained

The Applicant's EIS notes that views from the south west facing apartments of the Alexander Apartments buildings are obtained mainly from the balconies, in a standing position. Much of the view is obstructed by the solid balustrades of these balconies in a sitting position.

Views from the Level 21 apartment within The Miller are taken from the living room window (**Appendix F** of the Applicant's RtS).

Step 3: Assess the extent of the impact

The extent of view impact for south facing apartments within the Alexander Apartments building is generally consistent or considered improved relative to the concept approval.

While the proposal includes changes to the approved concept envelope, these changes (a 3m setback from the eastern site boundary and a reduction in massing at southern and eastern boundary) benefit southwest facing apartments, particularly mid and upper level apartments (between Level 15 and 25), by reducing view loss and retaining a greater extent of open sky and urban views relative to the concept approval. This proposal is considered to have negligible impact on the basis that the development results in either nil additional view impact or an improved outcome for apartments within the Alexander Apartments building relative to the approved concept proposal.

South facing views from upper level apartments within The Miller building is affected by the concept proposal (as approved and as modified) and the detailed design application. The concept proposal (as approved) mainly obstructs south-east views towards the eastern harbour and reduces the amount of open sky that would otherwise be visible. The concept proposal was determined by the Department to have an acceptable view impact at the time of approval as the proposal (at upper levels) was within the maximum height control permitted for the site under the NSLEP. The non-compliant portion of the development (at lower levels) did not contribute to any view loss. Alternate designs were also considered at the time however, no other scheme was considered to provide a feasible outcome that effectively reduced view loss.

The detailed design SSD and the concept approval (as modified) does not result in any additional view impact to south facing apartments within The Miller beyond that of the original concept approval. The overall extent of impact is considered to be moderate.

Figures 3 to 5 below shows comparative view analysis of the detailed design SSD against the concept envelope as approved.



Approved Envelope



Proposed Envelope



Detailed development

Figure 3 | Comparison between concept approval, proposed envelope and detailed design SSD from Level 21 of the Miller (221 Miller Street) looking south (Source: RtS)



Figure 4 | Comparison between concept approval (left) and detailed design SSD (right) from the roof terrace of the Alexander Apartments looking northwest (Source: SSD 8874 and RtS)

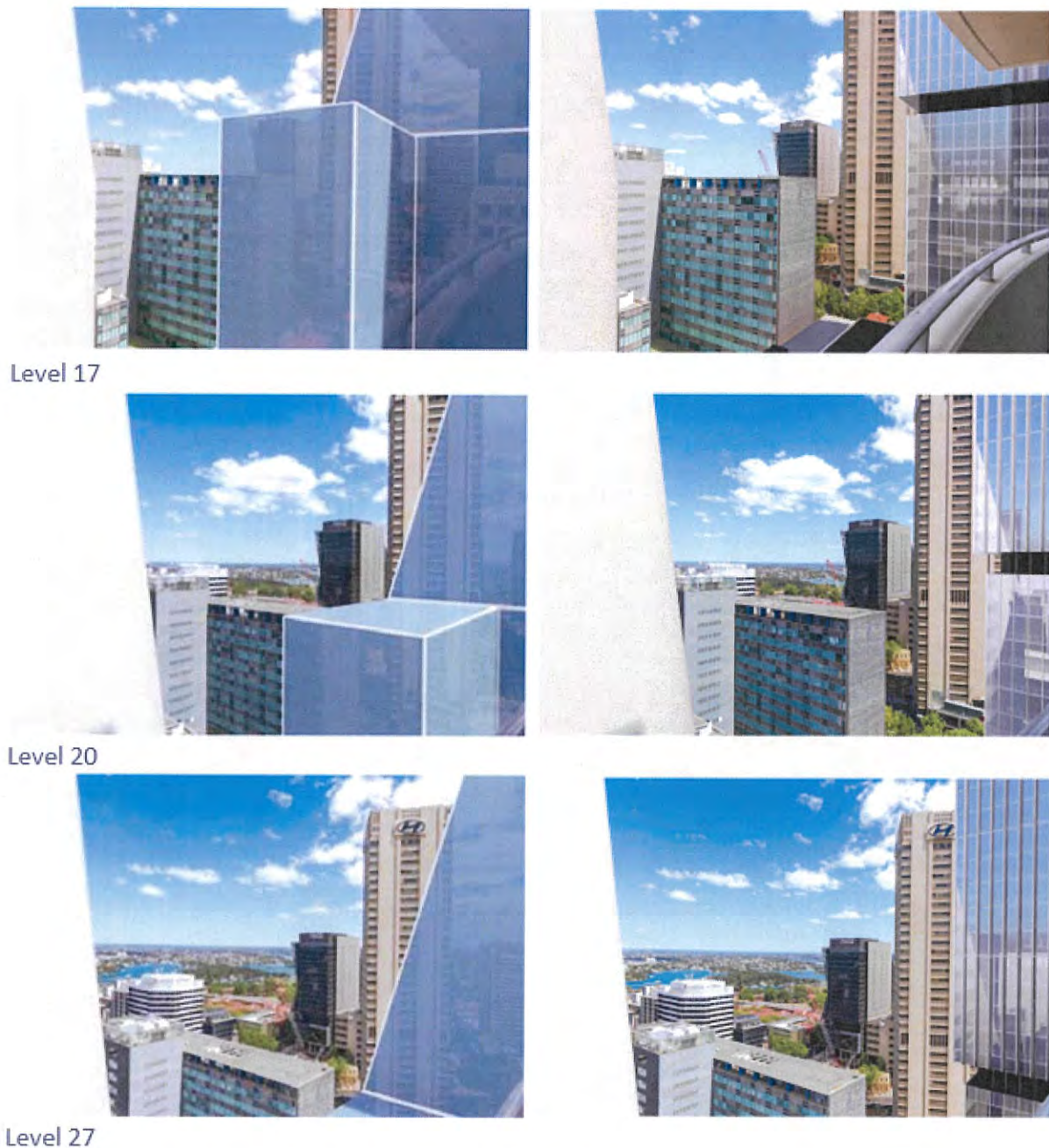


Figure 5 | Comparison between approved envelope (left) and proposed detailed design SSD (right) from the Alexander Apartments looking southwest (Source: SSD 8874 and RtS)

Step 4: Assess the reasonableness of the proposal which is causing the impact

The detailed design proposal and the modified concept approval is considered to provide an overall improved outcome, relative to the concept approval. This analysis is contained in full in **Section 6** of the Assessment Report and is summarised as follows:

- the proposed detailed design is generally compliant with the maximum height and floor space under NSLEP, and the extent of the envelope which is non-compliant (the Miller Street overhang above the setback zone and the top of the tower between RL 118 and RL 230) does not cause any view loss impact as it is not visible from the Alexander Apartments and The Miller apartments.

- the proposal is located on a site in North Sydney CBD, a dense urban environment that is earmarked for growth and development. The subject site is also zoned and mapped for high intensity use under the NSLEP. The proposal is therefore considered to be in public interest and would positively contribute to economic growth. It would be unrealistic in such circumstances to restrict the OSD to retain private residential views.
- the affected views for The Miller and the Alexander Apartments are across the side boundary of their respective site allotments. According to the *Tenacity* principle, retention of views across side boundaries (i.e. across neighbouring properties to the side) is often unrealistic. The Department therefore considers it unrealistic to retain these south west and south facing views by restricting the OSD to a significant extent.
- the proposal can largely be accommodated within the approved concept envelope. While some envelope changes are sought under this proposal, the modified envelope minimises view impacts and provides an improved outcome, particularly for mid and upper level apartments within the Alexander Apartments building.

The Department is therefore satisfied that the detailed design application and the modified envelope will have an acceptable view impact and that is reasonable for the reasons stated above.

Appendix E – Mandatory Matters for Consideration

Decisions made under the EP&A Act must have regard to the objects set out in **Section 1.3** of the Act. A response to the objects is below:

| Object of section 1.3 of EP&A Act | Department's Response |
|--|--|
| a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources | <ul style="list-style-type: none"> • the proposal promotes the social and economic welfare of the community by providing significant employment within a highly accessible site for transport and urban services, and, in doing so, contributing to the achievement of State, regional and local planning objectives • the proposal comprises development above the approved station infrastructure and does not have any impacts on the State's natural or other resources. |
| b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment | <ul style="list-style-type: none"> • the proposal has integrated ESD principles as discussed below. |

| Object of section 1.3 of EP&A Act | Department's Response |
|---|---|
| c) to promote the orderly and economic use and development of land | <ul style="list-style-type: none"> the proposal represents the orderly and economic use of the land primarily as it will increase employment opportunities near services and public transport. The proposed land uses are permissible and the form of the development has regard to the planning controls that apply, the character of the locality and the context of surrounding sites. |
| d) to promote the delivery and maintenance of affordable housing | <ul style="list-style-type: none"> not applicable. |
| e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats | <ul style="list-style-type: none"> the proposal, comprising commercial development above the metro station, will not have any natural environmental impacts. |
| f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage) | <ul style="list-style-type: none"> the Department considers that the heritage impacts of the development are acceptable, as set out in Section 6. |
| g) to promote good design and amenity of the built environment | <ul style="list-style-type: none"> the proposal demonstrates a good design approach to the relevant planning controls and local character. Amenity impacts in the locality are managed by either the form of the development or by the recommended conditions of consent for mitigation measures during the construction and operational phase of the development. |
| h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants | <ul style="list-style-type: none"> the proposal demonstrates that construction work will be undertaken in accordance with national construction standards, relevant regulation and the site specific construction management plan. Any impacts during this phase will be monitored and managed in keeping with the conditions of consent set out to mitigate any impacts. Ongoing management and maintenance of the development shall be managed by the building management. |

| Object of section 1.3 of EP&A Act | Department's Response |
|---|--|
| i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State | <ul style="list-style-type: none"> the Department publicly exhibited the proposal as outlined in Section 5. This included consultation with Council and other public authorities and consideration of their responses. |
| j) to provide increased opportunity for community participation in environmental planning and assessment. | <ul style="list-style-type: none"> the Department publicly exhibited the application which included notifying adjoining landowners, placing a notice in the local press and displaying the application on the Department's website and at the Council's office and Service NSW Centres. The Department also provided the RtS to Council and other relevant agencies and placed the RtS on its website. the engagement activities carried out by the Department are detailed in Section 5. |

Ecologically sustainable development

The EP&A Act adopts the definition of ESD found in the Protection of the Environment Administration Act 1991. Section 6(2) of the Protection of the Environment Administration Act 1991 states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle;
- inter-generational equity;
- conservation of biological diversity and ecological integrity; and
- improved valuation, pricing and incentive mechanisms.

The development proposes ESD initiatives and sustainability measures, including targeting minimum environmental standards of 6 Star Green Star Design and As-Built and 5 Star NABERS Energy rating. Furthermore, the commercial office tower is committed to delivering a building capable of a Gold WELL Core - Building Standard rating.

The Department has considered the project in relation to the ESD principles. The Precautionary and Inter-generational Equity Principles have been applied in the decision-making process by a thorough assessment of the environmental impacts of the project. Overall, the proposal is consistent with ESD principles and the Department is satisfied the proposed sustainability initiatives will encourage ESD, in accordance with the objects of the EP&A Act.

Section 4.15(1) matters for consideration

The matters for consideration under section 4.15 of the EP&A Act that apply to SSD in accordance with section 4.40 of the EP&A Act have been considered below. The following represents a summary for which additional information and consideration is provided for in **Section 6** and relevant appendices or other sections of this report and EIS.

| Section 4.15(1) Evaluation | Consideration |
|--|--|
| (a)(i) any environmental planning instrument | A comprehensive assessment of all relevant EPIs by the Department is discussed below this table. |
| (a)(ii) any proposed instrument | Not applicable. |
| (a)(iii) and development control plan (DCP) | Under clause 11 of the SRD SEPP, DCPs do not apply to SSD. Notwithstanding, the Department consideration of relevant provisions in the NSDCP is provided in this appendix below. |
| (a)(iia) any planning agreement | Not applicable. |
| (a)(iv) the regulations | The application satisfactorily meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications (Part 6 of the EP&A Regulation), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EIS. |
| (a)(v) any coastal zone management plan | Not applicable. |
| (b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality | Likely impacts are proposed to be appropriately mitigated or conditioned. Refer to Section 6 of this report. |
| (c) the suitability of the site for the development | The site is deemed suitable for the proposed development. |
| (d) any submissions | Consideration has been given to the submissions received during the exhibition period. See Section 5 of this report. |
| (e) the public interest | The proposal is considered acceptable and within the public's interest. Refer to Section 6 . |

Environmental Planning Instruments (EPIs)

To satisfy the requirements of section 4.15 of the Act, this report includes references to the provisions of the EPIs that govern the carrying out of the project and have been taken into consideration in the Department's environmental assessment of the project.

The EPIs that have been considered as part of the assessment of the proposal are:

- State Environmental Planning Policy (State & Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No. 64 – Advertising and Signage
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Draft State Environmental Planning Policy (Environment)
- North Sydney Local Environmental Plan 2013

State Environmental Planning Policy (State and Regional Development) 2011

The development is State Significant Development under clause 19 of Schedule 2 of SEPP. The Minister for Planning is the consent authority for the application.

State Environmental Planning Policy (Infrastructure) 2007

The application was referred to Transport for NSW pursuant to the requirements of clause 86 of the SEPP. TfNSW provided comments and recommended conditions.

The Rail Corridor Impact Assessment supporting the EIS (**Appendix FF** of the EIS) considered the provisions of the Development Near Rail Corridors and Busy Roads - Interim Guideline in relation to earthing, bonding, electrolysis and safety.

The development constitutes traffic-generating development under clause 104 – Traffic-generating development, as it involves over 10,000 m² of commercial GFA. Accordingly, the proposal was referred to RMS. RMS requested additional information resulting in the Applicant submitting an addendum Traffic Impact Assessment Statement as part of the RtS package (refer to **Appendix B** of the RtS). The addendum Traffic Impact Assessment Statement was referred to RMS. RMS raised no further issues with the proposal and recommended conditions.

State Environmental Planning Policy No. 55 – Remediation of Land

The proposed development will not affect soils on the land as the OSD occurs above the approved CSSI station box. The CSSI approval covers all demolition and excavation works on the site. Accordingly, SEPP 55 is satisfied, and the proposal is suitable for the site.

State Environmental Planning Policy 64 – Advertising and Signage

The proposed development includes provision of rooftop business identification signage zones. The architectural drawings show a signage zone at the top of the tower on each of the four elevations. The EIS advises that these signage zones are indicative and that specific signage within the zones, including their design and materials, would be part of a future application. The Stage 2 SSD requests consent for use of only three of the four zones.

The Urban Design Report supporting the EIS states that the proposed signage will:

- relate to the corporate or commercial office use of the building
- be installed within the confines of the proposed zone and will not extend above or wider than this zone
- not to exceed 80 sqm per sign and not be greater than 4m high
- utilise only 3 out of the 4 elevations for signage
- ensure a maximum of 2 signs can be viewed from any vantage point at once
- where illuminated, ensure illumination is controlled to minimise impact on residential buildings
- be appropriately designed for the proposed building and detailed in consideration of the overall design of the building for the purposes of Design Excellence.

The Department has considered the proposed signage zones and finds that they are consistent with existing signage within the surrounding commercial area and complies with the requirements of SEPP 64, as set out below:

| Assessment Criteria | Comments | Compliance |
|---|--|------------|
| 1 Character of the area | | |
| Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? | The proposed signage zones on the top of the commercial tower are consistent with similar commercial signage in the North Sydney CBD and compatible with the desired future character established under NSLEP 2013 and NSDCP 2013. | Yes |
| Is the proposal consistent with a theme for outdoor advertising in the area or locality? | The surrounding North Sydney CBD includes a number of existing commercial towers with similar sized and positioned building/business identification signs. The proposal is consistent with these existing signs. | Yes |
| 2 Special areas | | |
| Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? | The Department notes that the development site is not located in a heritage conservation area or in other environmentally sensitive areas. The proposed signage zones, the area of the signs and their location on the development are consistent with other signage observed within North Sydney CBD and is not considered to detract from the amenity or visual quality of the surrounding area. Consent for installation of the signs will be subject to separate future applications which will need to consider the quality, materiality and visual impact, if any, of the signs. | Yes |
| 3 Views and vistas | | |
| Does the proposal: obscure or compromise important views? dominate the skyline and reduce the quality of vistas? respect the viewing rights of other advertisers? | As the signage zones are located within the building facade, they will not obscure views or vistas and will not impact on the viewing rights of other advertisers. | Yes |
| 4 Streetscape, setting or landscape | | |
| Does the proposal: provide an acceptable scale, proportion and form, appropriate for the streetscape, setting or landscape? | The scale of the signage zones is acceptable for its location and is consistent with similar signage on the top of buildings within the CBD. | Yes |
| contribute to the visual interest of the streetscape, setting or landscape? | The signage will function as building/business identification and will be consistent with similar signage in the CBD setting. | Yes |
| reduce clutter by rationalising and simplifying existing advertising? | Not applicable. | N/A |
| screen unsightliness? | Not applicable. | N/A |
| protrude above buildings, structures or tree canopies in the area or locality? | The signage is contained within the building façade and does not protrude above the building. | Yes |
| require ongoing vegetation management? | No vegetation management required. | N/A |

| Assessment Criteria | Comments | Compliance |
|---|---|------------|
| 5 Site and building | | |
| <p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p> | <p>The signage zones are compatible with the scale and context of the proposed building. It will not detract from the design features of the building.</p> <p>Details of the signage design will be included in a future application.</p> | Yes |
| 6 Associated devices and logos with advertisements and advertising structures | | |
| Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? | Details of the signage design will be provided, and considered, as part of a future application. | Yes |
| 7 Illumination | | |
| <p>Would illumination: result in unacceptable glare? affect safety for pedestrians, vehicles or aircraft? detract from the amenity of any residence or other form of accommodation?</p> | Impacts from illumination, if proposed, will be considered as part of a future detailed application for the signs. | Yes |
| Can the intensity of the illumination be adjusted, if necessary and is the illumination subject to a curfew? | To be considered as part of a future detailed application for the signs. | Yes |
| 8 Safety | | |
| Would the proposal reduce safety for: pedestrians, particularly children, by obscuring sightlines from public areas? any public road? | As the signage zones are located at the top of the proposed building, it will not obscure any sightlines. | Yes |

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The land is within the mapping of the Sydney Harbour Catchment REP. However, the only relevant matters for consideration are scenic quality and views to and from the Harbour. In response to these matters, the Department notes that the proposal is generally compliant with the envisaged scale, form and siting of the building envelope under the NSLEP and has no adverse impact on the maintenance or protection of views to and from the Harbour from public places, landmarks or heritage items.

Draft State Environmental Planning Policy (Environment) (draft SEPP Environment)

Draft SEPP Environment proposes to consolidate seven existing SEPPs and SREPs including SREP (Sydney Harbour Catchment) 2005.

The proposal is consistent with the intended effect and provisions of the draft SEPP as there are no proposed changes to the content of SREP (Sydney Harbour Catchment) 2005 relating to the application.

North Sydney Local Environmental Plan 2013 (NSLEP)

An assessment of the proposal against the aims, objectives, standards and relevant provisions of NSLEP is set out in the table below.

| NSLEP Clause | Relevant controls / criteria | Department's Assessment |
|------------------------|---|---|
| 1.2 – Aims of the Plan | <p>The Plan aims to:</p> <ul style="list-style-type: none">• promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment• ensure development is compatible with desired future character of an area in terms of blurb, scale and appearance• maintain a diversity of employment, services, cultural and recreational activities• ensure non-residential development does not have adverse effects on amenity of residential properties and public spaces• ensure that development does not adversely affect heritage items. | <p>The proposal is in keeping with the aims of the NSLEP in that the land use is compatible with the desire to ensure North Sydney CBD has high employment generating uses and compliance is generally achieved with standards governing bulk and scale, protection of solar access to public space and residential properties.</p> |
| 2.3 – Land use zoning | <p>The site is within the B3 Commercial Core Zone.</p> <p>The objectives of the B3 Zone include the following relevant objectives:</p> <ul style="list-style-type: none">• to provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community• encourage appropriate employment opportunities in accessible locations• minimise the adverse effects of development on residents and | <p>The proposal is permissible with consent and consistent with the objectives of the zone.</p> |

| NSLEP Clause | Relevant controls / criteria | Department's Assessment |
|---|---|--|
| | occupiers of existing and new development. | |
| 4.3 – Height of buildings | <p>The height of a building is not to exceed the maximum height shown on the <i>Height of Buildings Map</i>. In this case, the map identifies four height standards for the site as follows</p> <ul style="list-style-type: none"> • RL 230 at the northern end of the site • RL 201 in the centre of the site • RL 193 at the south-west corner • RL 135 at the south-east corner. | <p>The proposal complies with the maximum height standard applying to the site except for a minor proposed variation in relation to the central portion of the building envelope where RL 201 applies. This is addressed in Section 6.1 of the report and the assessment of the variation against clause 4.6 at Appendix C of this report.</p> <p>The proposed building heights towards the south of the site are significantly below the LEP height standards to reduce bulk and scale toward the heritage-listed MLC Building, maintain views to Alexander Apartments to the east and reduce scale at the proposed east-west through site link as part of the CSSI approval.</p> |
| 4.6 – Exceptions to development standards | <p>Consent must not be granted for development which contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the non-compliance.</p> <p>Consent must not be granted unless the consent authority is satisfied that the applicant's request has adequately address the matters required and the proposal will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.</p> | <p>The proposal is not compliant with the maximum height of buildings standard and the Miller Street setback standard. The Applicant has provided a written request seeking to justify the non-compliance.</p> <p>The Department has assessed the Applicant's request (Appendix C) and acknowledges that it adequately addresses the matters required under clause 4.6 and that the proposal is in the public interest as it is consistent with the zone objectives and the objectives of the height and setback standards.</p> |

| NSLEP Clause | Relevant controls / criteria | Department's Assessment |
|--|---|--|
| 5.6 – Architectural roof features | Development consent can be granted to development that includes an architectural roof feature. | The proposed development does not include any architectural roof features which project above the height of building standard. |
| 5.10 – Heritage conservation | <p>The consent authority must consider the effect of the proposed development on the heritage significance of a heritage item or conservation area.</p> <p>The consent authority may require a heritage assessment before granting consent to any development on land that is within the vicinity of a heritage item or conservation area.</p> | The site does not contain any heritage items. However, the site is near listed items including the MLC Building, the Rag and Famish Hotel and the Monte Saint Angelo School Group. A Heritage Impact Assessment has been lodged and the Department has considered this assessment and the views of the NSW Heritage Council in its assessment of the application. |
| 6.3 – North Sydney Centre – Building heights and massing | <p>In relation to building height and massing, consent must not be granted if the development would increase overshadowing to land within the RE1 Public Recreation Zone or land identified as "Special Area" in the <i>North Sydney Centre Map</i>.</p> <p>In this case the relevant land is the Miller Street setback area, Brett Whiteley Place and public areas in the Greenwood Plaza site.</p> <p>Development may exceed the <i>Height of Buildings Map</i> if the consent authority is satisfied that any increase in overshadowing between 9am and 3pm will not result in any dwelling outside the North Sydney Centre receiving less than 2 hours sunlight to any habitable room window or principle private open space, or if a dwelling's window or open space currently receives less than 2 hours sunlight, is not reduced further.</p> <p>The consent authority must consider the following when determining whether to</p> | <p>The proposal has a no net overshadowing impact on land in the RE1 zone or a "Special Area".</p> <p>The proposal has a compliant overshadowing outcome on dwellings outside the North Sydney Centre.</p> <p>The matters for consideration in relation to built form, preservation of views and streetscape enhancement have been considered through-out this assessment and are satisfied.</p> |

| NSLEP Clause | Relevant controls / criteria | Department's Assessment |
|---|---|--|
| | <p>grant consent for development in the North Sydney Centre:</p> <ul style="list-style-type: none"> likely impact on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining North Sydney Centre whether the proposal preserves significant view lines and vistas whether the proposed development enhances the streetscape in relation to scale, materials and external treatments. | |
| 6.4 – North Sydney Centre – Miller Street setback | <p>Consent must not be granted on land within the “Miller Street setback” unless the building will have a height less than 1.5m and that part of the building will only be used for access to the building or landscaping purposes.</p> | <p>The proposal does not comply with this standard and the Applicant has provided a written request seeking to justify the non-compliance.</p> <p>The Department has assessed the Applicant's request (Appendix C) and acknowledges it addresses the matters required under clause 4.6 and that the proposal is in the public interest as it is consistent with the zone objectives and the objectives of the setback standard.</p> |
| 6.15 – Airspace Operations | <p>The consent authority must consult with the relevant Commonwealth body for any application which penetrates the Limitation or Operations Surface (OLS).</p> <p>The consent authority may grant consent for the development if the relevant Commonwealth body advises that it has no objections to its construction.</p> | <p>The proposal penetrates the OLS for Sydney Airport. Approval has been granted by the Commonwealth Department of Infrastructure, Regional Development and Cities for the maximum height of the building envelope up to RL 230. Relevant conditions of the approval have been included in the recommended conditions.</p> |

North Sydney Development Control Plan (NSDCP) 2013

It is noted that clause 11 of State Environmental Planning Policy (State & Regional Development) 2011 provides that development control plans do not apply to SSD. Notwithstanding this, consideration of relevant controls under the NSDCP is provided in the table below.

| NSDCP Section | Relevant controls / criteria | Department's Assessment |
|--|--|--|
| Part B (Development Controls) Section 2 – Commercial and Mixed Use Development | | |
| s.2.1.1 – General Objectives | A series of 18 general objectives are specified including how development aligns with strategic planning guidance, relates to the site and surrounds and deals with impacts on amenity within the site and surrounding sites. | The proposal complies with the objectives for commercial and mixed use development. |
| s.2.2 – Function | <p>The size of spaces within a building should reflect the sites location in the commercial centre hierarchy. Large floor plates should be provided in higher order centres.</p> <p>There are also provisions relating to diversity and activation in ground level uses and enhancing the public domain.</p> <p>Development should maximise use of public transport.</p> | <p>The proposal provides an appropriately sized floor plate for a tower located above a new metro station within North Sydney CBD. The development is also designed with the intent to encourage and maximise reliance and use of the new metro line.</p> <p>The ground floor level of the development is designed to promote activation of the surrounding public domain whilst accommodating a diversity of uses that can positively contribute to the vibrancy of the public realm.</p> |
| s.2.3 – Environmental criteria | Various objectives and provisions apply in relation to environmental protection and amenity including air quality, noise and vibration, wind impacts, pedestrian comfort, solar access, views and visual privacy. | The proposed design, EIS and RtS have considered the relevant environmental context. The Department is satisfied that adequate measures are incorporated into the project and within the recommended conditions to minimise and manage environmental impacts. |

| NSDCP Section | Relevant controls / criteria | Department's Assessment |
|------------------------------------|---|---|
| s.2.4 – Quality built form | <p>Building design should respond to the context of the site and relevant character area statement in Part C including built form (i.e. podium and tower form) and setbacks.</p> <p>In relation to setbacks, development must consider the setbacks of adjacent buildings and heritage items.</p> | <p>Refer to Part C assessment below in relation to the character area statement.</p> <p>Section 6 of this report includes a detailed assessment of the building setbacks and concludes the proposal is considered suitable.</p> |
| s.2.5 – Quality urban environment | The NSDCP sets out numerous controls in relation to ground conditions including access, safety and security, vehicle access, servicing and the like. | The CSSI approval includes the design and construction of the station footprint and public domain below the OSD. The proposed detailed design will integrate with the station box at ground level. The development is also consistent with the provisions and objectives of the endorsed Design Excellence Strategy and Design Guidelines for Victoria Cross OSD. |
| s.2.6 – Efficient use of resources | The NSDCP specifies performance targets for energy efficiency, passive solar design, ventilation, thermal mass, water conservation, stormwater and waste. | The Department is satisfied by the targets established for the project in the Applicant's Ecologically Sustainable Development report. |
| s.2.7 – Public domain | The NSDCP provides guidance on the design of public domain works, public art and encouragement of native vegetation and water. | The CSSI approval includes the design and construction of the station footprint and public domain below the OSD. The development is also consistent with the provisions and objectives of the endorsed Design Excellence Strategy and Design Guidelines for Victoria Cross OSD in relation to landscaping, public art and public domain works. |

| NSDCP Section | Relevant controls / criteria | Department's Assessment |
|---|---|---|
| Part B – Section 9 – Advertising and signage | Various objectives and provisions in relation to the location, design and impacts of signage are set out. | The Department notes the application provides a signage strategy, identifying a maximum of 4 signage zones, of which only 3 zones may be utilised for installation of signs. The signage strategy is generally consistent with the provisions of this part as well as the requirements of SEPP 64, assessed earlier in this section of the report. The design, materiality and quality of any future sign will be subject to assessment as part of any future application for installation of signage in the nominated signage zones. |
| Part B – Section 10 – Car parking and transport and Section 11 – Traffic guidelines for development | The NSDCP prescribes the Council's detailed requirements for car parking quantum, loading and unloading, accesses, bike parking, travel planning and construction traffic management. | The proposal complies with Council's maximum car parking rate and those set by the concept approval. Appropriate conditions have been recommended regarding the preparation of a Green Travel Plan, Construction Pedestrian Traffic Management Plan and a detailed Freight and Servicing Management Plan. |
| Part B – Section 12 - Access | The NSDCP sets out the Council's detailed requirements for disabled access to and within development. | The CSSI approval includes the design and construction of the station footprint and surrounding public domain below the OSD. This includes OSD lobby and OSD retail spaces. |

| NSDCP Section | Relevant controls / criteria | Department's Assessment |
|---|--|--|
| Part B – Section 13 – Heritage and conservation | The NSDCP sets out requirements for a heritage impact assessment and the Council's detailed requirements for development in the vicinity of heritage item. In this case, the MLC Building, Rag and Famish Hotel and Mont Saint Angelo Group are listed heritage items. | The Department and the NSW Heritage Council are satisfied that the proposal will have acceptable heritage impacts in the locality. The materiality and built form of the development is considerate of surrounding heritage items and is designed to complement and positively contribute to the setting of nearby heritage items. |
| Part B – Sections 17 to 21 – Erosion, stormwater, waste, services and telecommunications management | The NSDCP specifies detailed controls apply to construction works such as Council's expectations for stormwater quality and engineering works. | The proposal includes necessary management plans, including a site-specific construction management plan that will ensure that construction impacts, including sedimentation, erosion, waste management and stormwater management can be appropriately monitored and managed without resulting in adverse environmental impacts. |
| Part C (Character Statements) – Section 2 – North Sydney Planning Area | | |
| s.2.1.1 – Significant elements | <p>The NSDCP seeks development that:</p> <ul style="list-style-type: none"> is predominantly high-rise commercial in the centre of the CBD respects key icons and places which give identity, in this case the MLC Building, Brett Whiteley Place and Greenwood Plaza. takes advantage of accessibility provided by existing and planning public transport. | The Department is satisfied that the detailed design application achieves the outcomes sought in this section of the NSDCP. |
| s.2.1.2 – Desired future character | <p>The NSDCP seeks the following relevant matters:</p> <ul style="list-style-type: none"> high rise commercial developments | The Department is satisfied that the EIS and RtS address these NSDCP provisions. |

| NSDCP Section | Relevant controls / criteria | Department's Assessment |
|------------------------------|---|---|
| | <ul style="list-style-type: none"> • a variety of different sized office, retail, community and entertainment spaces, • a variety of outdoor and indoor community spaces • development above Victoria Cross metro station to provide significant commercial floorspace, as well as retail, dining and community uses that contribute to the amenity and vitality of the CBD • various public domain outcomes and interventions under Council control such as Miller Street being the civic heart of the CBD and assisting key streets to be more vibrant • active frontage at the Victoria Cross metro site • new development focusses on use of public transport, walking and cycling • loading and unloading to be underground where possible. | <p>In particular, the development will deliver significant commercial floorspace and opportunities for non-office uses in retail and other land uses.</p> <p>The ground plane of the site is subject to the CSSI approval. However, the OSD design is consistent with these NSDCP provisions in relation to active frontage, use of public and active transport and the location of loading and unloading facilities.</p> |
| s.2.1.3 – Desired built form | P1 – development sites should enable creation of large high quality floor plates which reinforce the CBD's role as a global city. | The development allows for large, flexible floorplates at the low-rise, mid-rise and high-rise portions of the tower to cater for A-grade office and business premises. |
| | P3 – buildings should be carefully designed to minimise the impact of their height and bulk on surrounding residential areas. | The Department is satisfied that the development has been set out to best minimise impacts associated with bulk, scale, overshadowing, view impact and privacy impacts to surrounding residential properties. The development is also consistent with the endorsed site-specific design guidelines on these matters which seek to maximise public |

| NSDCP Section | Relevant controls / criteria | Department's Assessment |
|---------------|---|---|
| | | benefit of the development whilst managing any impacts. |
| | <p>In relation to setbacks:</p> <p>P6 generally - zero setback control applies at ground floor level along Berry Street and Denison Street</p> <p>P6(a) - 6m setback standard applies in NSLEP to Miller Street</p> <p>P7 - setbacks are to conserve views to, and the setbacks and settings of heritage items – in this case the MLC Building.</p> | <p>The Denison Street setbacks are consistent with the NSDCP at podium and tower locations, whilst noting that the podium (i.e. station box at the base of the OSD) is subject to the CSSI approval.</p> <p>The development does not comply with the 6 m setback for the full height of the envelope along Miller Street. This non-compliance is addressed in Section 6.1 of this report and in the clause 4.6 discussion at Appendix C of this report.</p> <p>The Department concludes the setback non-compliance is acceptable and does not impede the achievement of the aims and objectives of NSLEP and NSDCP.</p> |
| | P9 – a maximum podium of 5 storeys to all streets with a weighted setback of 5m above the podium. | <p>The development along Miller Street does not have a podium and tower form. This matter has been addressed as part of the concept development where a singular tower form is considered to be appropriate for the site.</p> <p>The detailed design application is consistent with the approved concept building envelope (as modified) and accordingly the Department finds that the proposed form of the building is acceptable.</p> |

| NSDCP Section | Relevant controls / criteria | Department's Assessment |
|---------------|---|---|
| | P10 – podium heights should match or provide a transition in height between immediately adjacent buildings. | The Department is satisfied that height datum within the CSSI station box and OSD development relates to the adjacent height datum of the MLC Building to the south and Rag and Famish Hotel to the north. |
| | P11 – podium heights should match the height of adjacent heritage items. | The materiality, setting and presentation of the building is designed to positively address nearby heritage items, particularly the Rag and Famish Hotel and the MLC Building. The lower levels of the development include a height datum reference to align with the adjoining MLC Building. Increased setbacks are also provided to the MLC Building in the detailed design relative to the concept approval. |

Appendix F – Recommended Modification of Development Consent

Appendix G – Recommended Development Consent