

SNPP Briefing Report

Panel Reference	PPSSNH118
DA Number	147/20
LGA	North Sydney Council
Proposed Development	Demolition of existing heritage listed building and construction of a 27 storey commercial building including upgrade of existing ground plane and two basement parking levels
Street Address	105-153 Miller Street, North Sydney (MLC Building)
Applicant/Owner	Investa Office Developments Pty Ltd
Date of DA lodgement	7 July 2020
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> • 77 Individual submissions, all unique • In addition, a petition with 1,489 signatures
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Cost of works >\$30
Prepared by	Lara Huckstepp, Executive Planner

The Site

The site is located at 105-153 Miller Street, North Sydney. The site is rectangular in shape and comprises a single lot which is legally described as Lot 2 in DP792740. The site has a total area of 6,640sqm and dimensions of approximately 65m along the northern and southern boundaries and approximately 100m along the eastern and western boundaries. The site is located to the south east of the Pacific Highway, Miller Street and Mount Street junction, with two main road frontages including Miller Street (west) and Denison Street (east).

The site adjoins two public open spaces, being Brett Whitely Plaza to the south, and the Miller Street Special Area (incorporated on the site) to the west).

The site is currently occupied by the existing North Sydney MLC Centre and associated turfed public domain. The existing building contains 14 storeys and a modular building mass with a large north south oriented western wing, a central service core and a smaller eastern wing, setback from the southern boundary. The building was constructed in 1957 and represents a pre-eminent example of post-World-War II high rise office building.

The site is listed as a heritage item under the North Sydney Local Environmental Plan 2013 and has been listed as such since 1989.

Existing MLC building – Miller Street frontage

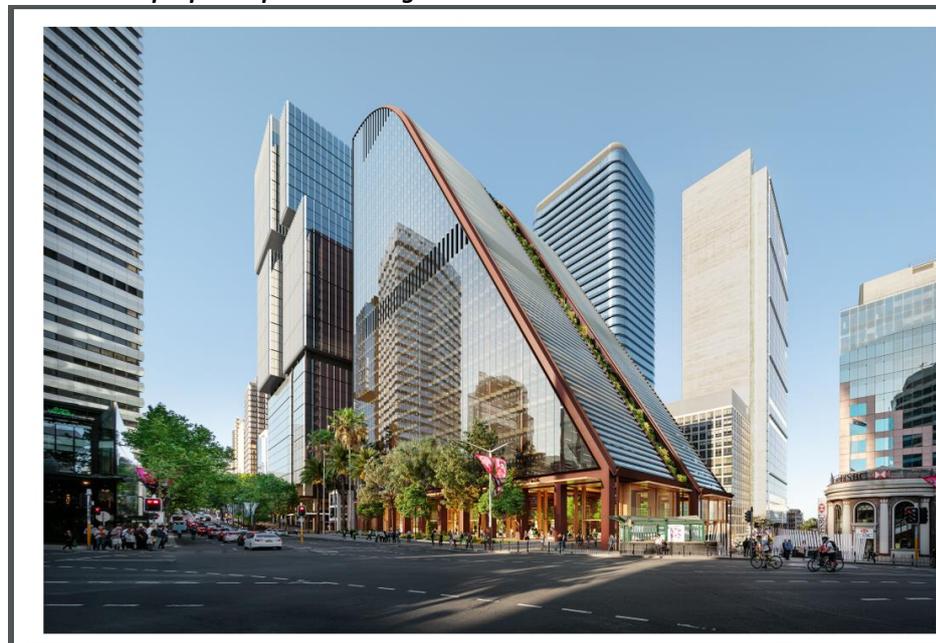


Proposed Development

The development application is described by the applicant as follows:

- Site preparation works including demolition of all existing structures, bulk excavation and tree removal
- Construction and use of a 27 level commercial building, comprising;
 - Publicly accessible lower ground floor and ground floor containing retail tenancies, commercial lobby, passive recreation and dining facilities;
 - 24 commercial office levels; and
 - Mid and top of building plant levels
- Embellishment of the ground plane with a significantly enhanced public domain, including
 - Redesigned public open space fronting Miller Street; and
 - Redesigned interface and increased area to Brett Whitely Place
- Construction and use of two basement levels, including
 - Driveway access from Denison Street
 - 123 parking spaces
 - 802 bicycle parking spaces and associated end of trip facilities
- Extension and augmentation of services and infrastructure as required.

Miller Street proposed photomontage



Relevant Background

A number of pre-lodgement meetings were held between the applicant and Council prior to lodgement.

On 2 September 2019, a pre-lodgement meeting was held for a proposal of similar bulk, scale and design, as now proposed. The applicant was provided with pre-lodgement minutes, with the conclusion as follows:

- *Demolition of the existing building is NOT supported due to its level of significance.*
- *The massing, scale and character of the new proposal is overbearing and will detract from the heritage significance and setting of the nearby two-storey heritage items.*
- *The proposal provides less than the MLC Building to the character and setting of the nearby heritage items and nodal significance of Victoria Cross, the entry portal to the North Shore.*

The applicant was subsequently offered the opportunity to present the proposal at pre-lodgement stage to the Design Excellence Panel. Minutes were provided to the applicant with the following conclusion:

The Panel reiterates its view that a review of the proposal is premature as a full heritage assessment of the item must be undertaken prior to consideration of any redevelopment proposal. Without this information the Panel cannot consider redevelopment nor support demolition of the MLC building. Furthermore, the height breach is not accepted by the Panel. Both of these issues need to be addressed before the Panel provides further feedback.

The development application was lodged with Council on **7 July 2020**.

Notification / Advertising

The development application was notified between 17 July 2020 – 7 August 2020. A total of **77 individual submissions** have been received. The submissions predominantly object to the demolition of the existing building on heritage grounds.

In addition, a submission coordinated by Docomomo has been received with 1489 signatures, objecting to the proposed demolition of the MLC building at North Sydney.

Referrals

External referrals	Comments
NSW Police	No objection subject to conditions.
Sydney Observatory	No response.
Sydney Airport Corporation	No objections subject to conditions.
Ausgrid	No objections subject to conditions.
Sydney Water Corporation	Objects to proposal in its current form as it does not comply with Sydney Water's building over and adjacent to stormwater assets requirements. The proponent could liaise with Sydney Water to reach an alternate solution.
Sydney Metro	No response received.
TfNSW	No objections subject to conditions including: <i>TfNSW has previously vested a strip of land as road along the Miller Street frontage of the subject property, as shown by grey colour on the attached Aerial – 'X'. All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Miller Street boundary.</i>
Roads and Maritime Services	No response received.
Sydney Trains	No response required.
Heritage NSW	Objects to the proposed demolition of the MLC Building and considers that any decision on the redevelopment of the site should wait until the Minister has had the opportunity to determine the IHO and the SHR listing process.
Internal referrals	Comments
Design Excellence Panel	Objects to the proposal. Minutes attached.
Landscape	Existing lawn areas on Miller Street frontage are important for pedestrian use of the CBD and represent one of the few such available lawn areas. The replacement of a similar expanse of usable lawn area is an important consideration when consideration landscaping for this site. Little or no consideration appears to be given the 'Lewers Sculptures'. The removal of this sculpture is not supported.
Drainage Engineer	The developer will need to provide a flood study for this building to ensure that their proposed changes do not redirect any potential flood waters towards other properties.
Arts Officer	Further details required regarding the proposed arts strategy and also the proposed art works to be removed, should the building be demolished.
Development Engineer – Zarko	Further work is required regarding flooding and streetscape issues.
Waste Officer	Consideration should be given to providing clearance within the basement level for a HRV and not an MRV given the likely volume of waste.
Heritage Officer	Does not support the proposed development. See further comments below.
GML Heritage, on behalf of Council	Preliminary peer review by GML Heritage. Objects to the proposed development. See further comments below.
Transport Officer	Comments not received.

Notification of consideration for State Listing

On 3 September 2020, Council was advised (full copy is **attached**):

'The Heritage Council of NSW resolved, at its meeting of 1 September 2020, to give notice of its intention to consider listing MLC Building, North Sydney on the State Heritage Register in acknowledgement of its heritage significance to the people of NSW. This advice is in accordance with section 33(1)(a) of the Heritage Act 1977.'

Assessment Issues

1. Demolition of heritage listed building. The proposal involves demolition of a locally listed heritage item. The development application was referred to Council's Conservation Planner (L.Varley) where the following conclusions were provided (full copy is **attached**):

'The proposed demolition of a heritage item that is assessed as having national heritage significance and is capable of conservation and continued use, cannot be supported.'

The proposal will remove a building identified in Council's Public Domain Strategy as contributing to North Sydney's heritage character. It will also result in the loss of a building that has been identified as a potential state item by Heritage NSW, as a 'Significant Twentieth Century Building' by the Australian Institute of Architects and by DOCOMO as a nationally significant building, and that is unique within North Sydney. The proposal is also contrary to the Conservation Management Plan for Lend Lease Interiors, by Jackson Teece Chesterman, Willis Consultants Pty Ltd that was prepared for the building.

It is recommended that the application be withdrawn or refused.'

Council engaged external heritage consultants GML Heritage to provide an independent assessment of the heritage impacts of the proposed development and peer review of Council's internal heritage planner's comments. The following conclusions were provided (full copy is **attached**):

DA147/20 for 105 Miller Street, North Sydney (former MLC Building) cannot be supported as it proposes the demolition of a heritage item listed in Schedule 5 of NSLEP 2013 without proper consideration of its significance.

The applicant's HIS is inadequate; it has not followed the required guidelines and does not provide any consideration of the significance of the building. Regardless, its conclusion that the proposal will have direct major adverse impact on the MLC Building through demolition is undeniable.

The building is clearly able to be retained and adaptively re-used and no adequate justification has been provided to support its demolition. The cost of renovation and conservation works does not justify the complete demolition of this highly significant building.

The proposal is not in accordance with the aims and intentions of NSLEP 2013 or NSDCP 2013 in proposing demolition of a heritage item, and it is not in accordance with the relevant policies in the CMP.

In addition to its statutory listing by North Sydney, the significance of the MLC Building is recognised by the Australian Institute of Architects, the National Trust, Docomomo Australia and academics around Australia as a rare surviving seminal work of Modern Australian architecture that should be retained and conserved for future generations.

The considerable public interest in the proposed demolition and objections to the proposal demonstrate the significance of the building to the North Sydney community and the community of NSW. The applicant's statement that the proposal has public benefit is not well founded and not supported. It has failed to adequately consider the heritage significance of the building or the public benefit of its retention for future generations.

The approval of the demolition of this highly significant building, the most important office building in North Sydney and arguably Australia, would set a precedent for the demolition of other heritage listed buildings, potentially resulting in widespread loss of the heritage fabric of North Sydney.

In addition, the building is subject to a Heritage Council of NSW resolution that it be considered for listing on the State Heritage Register, as it has been assessed as having significance at a state and national level. The potential listing will be considered by the Heritage Council of NSW at its meeting on 3 November 2020. The determination of this application by the Joint Regional Planning Panel must be delayed until the public submission period and considered by the Heritage Council is complete.

It is recommended that Council engage a structural engineer with heritage expertise to review the applicant's engineering reports, the condition of the façade, and the costs associated with its repair, including an assessment of alternate forms of repair.

It is considered to be unnecessary and inappropriate to provide an assessment of the heritage impacts of the proposed replacement building, or recommend conditions of consent, given the demolition of the existing heritage item cannot be supported.

2. Design of proposed development – The Design Excellence Panel considered the development application at their meeting held on 11 August 2020. The following conclusions were provided (full copy is **attached**):

The analysis and alternate development options presented by the applicant did not adequately explore alternatives and did not convince the Panel that the current proposal is the only feasible development option. Inadequate justification has been provided for demolition of the existing building. Alternatives for retention, possibly with some alterations and additions should be explored in far more detail than provided. The issue of demolition and the merits of the replacement building cannot be separated and are inextricably linked.

The additional building height sought under the development application is not appropriate. Any additional height should be considered through a planning proposal, to consider all relevant planning considerations within the site's context.

There may be merit in reconsidering overshadowing impacts to Brett Whiteley Place, noting that overshadowing is only one constraint that needs to be addressed in any future proposal for alterations and additions.

The design of the building with the sloping tower form is out of context with development in the North Sydney Centre.

The public domain works fail to provide adequate public benefit such as to justify demolition and redevelopment as proposed.

The proposed development overall fails to address or respond to issues raised previously by the Panel. Comments raised by the Panel in minutes dated 10 September 2019 and 12 November 2019 have been mostly unaddressed and remain relevant.

The Panel does not support the application.

3. Breach of building height – The height of buildings map sets a maximum height on the subject site of RL125m. The proposed development is proposed to have a maximum height of RL188. The proposed development involves a breach of the building height of **63m**. The applicant provides the following:

The Proponent disputes the necessity of the clause 4.6 request in light of the powers to exceed the mapped maximum building height contained under North Sydney Local Environmental Plan 2013 (North Sydney LEP) clause 6.3(3). It is considered that an exemption from the general height limitations established by the Height of Buildings Map and clause 4.3 is available through clause 6.3(3). Provided the consent authority is satisfied that clause applies, no clause 4.6 variation application is required. Whilst the Applicant maintains this position, pre-DA advice has identified that Council takes a contrary view. As such, this clause 4.6 has been prepared as a precaution only. For absolute clarity, the Proponent is not of the view that a clause 4.6 request is required to accompany this DA.

The applicant's views are not accepted. Clause 6.3(3) is not considered to establish an 'exemption' from Clause 4.3 NSLEP 2013. Rather, clause 6.3(3) provides additional considerations when considering the impacts of a proposal. A Clause 4.6 request to vary the development standard is required. The submitted Clause 4.6 Objection fails to satisfy the provisions of Clause 4.6.

It is Council's view that the extent of the breach of the building height control is most appropriately dealt with through the lodgement of a Planning Proposal, if pursued.

4. Vehicular Access – The proposal seeks to provide vehicular access from Denison Street. Denison Street will form an important pedestrian link between the Victoria Cross Metro Station and North Sydney Station through the Greenwood Arcade link. The State Significant Development SSD10294 was approved by the Minister on 6 July 2020 to allow the over station development at No.155-167 Miller Street, North Sydney, which shares a boundary with the subject site.

In recognising the important future pedestrian link between the Sydney Metro site and the Greenwood place link to North Sydney Station, Condition E26 was imposed on SSD10294 as follows:

'Prior to any Occupation Certificate being issued for Level 4 and above in the building erected within proposed Lot 201, a restrictive covenant is to be registered on the titles of proposed Lots 201 and 101 pursuant to section 88B of the Conveyancing Act 1919, on terms requiring that for a period of 30 years the registered proprietor of proposed Lot 201 must not carry out, or permit any other person to carry out, any alterations or improvements on, within or to proposed Lot 201 which would prevent at least a minimum 6 metres wide section of the part of the boundary wall on Basement Level 1 of the building erected within proposed Lot 201 that is adjacent to Lot 2 in DP 792740 and situated between grid lines SE and SB on the approved plans (Soft Wall) being used for a possible future connection between the basements of the buildings located on Lot 2 in DP 792740 and proposed Lot 201 (Connection). The relevant section of the Soft Wall may contain a built wall structure or barrier, but it must be able to be removed so that the connection can be established. The covenant is to be created, at no cost to the owner of proposed Lot 201, appurtenant to proposed Lot 101 and burdening proposed Lot 201.

It is Council's view that the proposed development should utilise the shared basement provided for under the State Significant development approval. It is noted that the design of the proposed subject building locates lifts and services on its northern end, which would prevent any future reconfiguration to utilise a shared driveway.

5. Other issues – A number of other issues including building setbacks, ground plane design, outdoor seating details, wind impacts, reflectivity, shadowing, views and contamination remain either non-compliant or require further information.