

Our ref: Mixed use development with in-fill affordable housing, Five Ways, Crows Nest (SSD-66826207)

Mr. Stephen Barry  
Planning Director  
Office of Independent Planning Commission NSW  
Suite 15.02, Level 15, 135 King Street  
Sydney NSW 2001

17 December 2024

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**Subject: Response to request for information**

Dear Stephen,

I am writing in response to the Independent Planning Commission's (Commission's) request for additional information dated 10 December 2024 and request for comment on draft conditions dated 13 December 2024, in relation to State significant development (SSD) application for Mixed use development with in-fill affordable housing, Five Ways, Crows Nest lodged by Deicorp.

The Commission requested the Department:

1. advise if there is any change to the Department's consideration of the *St Leonards and Crows Nest 2036 Plan* and the *Explanation of Intended Effect, Crows Nest Transport Oriented Development Precinct* and assessment of the Project, having regard to recent Land and Environment Court (LEC) judgment for *PDS Engineering Division Pty Ltd v North Sydney Council* [2024] NSWLEC 1722 at 286-294 Pacific Highway, Crows Nest
2. confirm if it is satisfied that the provision of 190 residential parking spaces does not require any of the parking spaces to be included in the calculation of Gross Floor Area (GFA) as per the definition of GFA included in the North Sydney Local Environmental Plan 2013
3. confirm if it is satisfied that the cumulative traffic impacts resulting from both the Project and the anticipated future precinct of Crows Nest have been adequately assessed
4. confirm the maximum number of apartments sharing a single lift (given the proposal includes three residential lifts and 188 apartments) and whether the Applicant's Vertical Transport Advice (dated 23 February 2024) is still applicable, given changes to the number and mix of apartments made by the amended application
5. advice on the workability, enforceability and any potential unintended consequences of the proposed conditions in Attachment A of the Commission's letter dated 13 December 2024.

The Department has provided its comments in response to each of the questions in Attachment A.

Thank you for requesting the Department's comments on these matters.

Please contact me on [REDACTED] if you require any additional information.

Yours sincerely,

[REDACTED]

Amy Watson  
Director  
Social and Affordable Assessments

## Attachment A – Department’s response to the Commission’s questions

### *Commission’s question*

1. Council has provided a recent Land and Environment Court judgment to the Commission for a development at 286-294 Pacific Highway, Crows Nest in which the Court considered the St Leonards and Crows Nest 2036 Plan and the Explanation of Intended Effect, Crows Nest Transport Oriented Development Precinct. Noting the Council’s assertions in the transcript of Council’s meeting (pages 6 and 7) with the Commission regarding the implications of the judgment, is there any change to the Department’s consideration of these plans and assessment of the Project?

### *Department’s response*

#### *Status of the Crows Nest Transport Oriented Development Precinct*

The Department has reviewed the recent Land and Environment Court (LEC) judgment for *PDS Engineering Division Pty Ltd v North Sydney Council [2024] NSWLEC 1722* at 286-294 Pacific Highway, Crows Nest.

Paragraph 40- 41 of the LEC judgement conclude that while the St Leonards and Crows Nest 2036 Plan (2036 Plan) is a strategy document, the Explanation of Intended Effect (EIE) for the Crows Nest Transport Oriented Development Precinct (Crows Nest TOD) is a document consistent with s 3.30 of the *Environmental Planning and Assessment Act 1979* (the Act). Consequently, the EIE is a draft environmental planning instrument.

#### *Implications of the judgement and Department’s consideration of the plans*

The Department has considered the proposal against the 2036 Plan and the exhibited EIE for the Crows Nest TOD in the following sections of the Assessment Report:

- Section 1.2.1 – 2036 Plan
- Section 1.2.2 – Planning Proposal for the site informed by the 2036 Plan
- Section 1.2.3 - Crows Nest Transport Oriented Development (TOD) Program
- Section 5.1.1 (Paragraph 55 – 61) - Strategic context
- Appendix B – Department’s consideration of community submissions
- Appendix C – Table 10 (consideration of compatibility with local character).

The Department’s assessment concluded that the proposal is compatible with the desired future and emerging character of the area as envisioned in the 2036 plan, the Crows Nest TOD and the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), which seeks to incentivise the delivery of affordable housing by allowing height and floor space bonuses in accessible locations.

The status of the EIE as a 'draft instrument' would not alter the Department's assessment of the proposal considering the strategic framework.

*Assessment of the proposal considering the recent amendments to the planning framework*

The Department notes that the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) and Housing SEPP have been amended on 27 November 2024 identifying Crows Nest TOD as an accelerated precinct. The amendments were gazetted after the referral of the SSD application to the Commission on 19 November 2024.

The Department has considered the implications of the recently amended planning framework on the application, as summarised below:

- this SSD application was submitted in May 2024 prior to the exhibition of the EIE for the Crows Nest TOD, under the new in-fill affordable housing SSD pathway pursuant to Schedule 1, Section 26A of the Planning Systems SEPP
- the SSD application seeks to apply the bonus density provisions available under Chapter 2 of the Housing SEPP, which allows up to 30% bonus height and floor space above the North Sydney Local Environmental Plan 2013 (NSLEP) development standards
- following recent amendments to the planning framework, the site now forms part of the Crows Nest TOD, which is an identified site in Schedule 2, section 19 of the Planning Systems SEPP
- the recently gazetted controls for the site do not change the 58.5m building height control and overall Floor Space Ratio (FSR) of 5.8:1 under the NSLEP. The controls provide a minimum non-residential FSR of 1:1 (rather than the previously applicable 2.5:1 under the NSLEP)
- the planning proposal finalisation report and the post exhibition massing within the urban design report, identify the 22-storey building proposed on the Five Ways site under the in-fill affordable housing provisions of the Planning Systems SEPP (Figure 1). The report advises that sites subject to submitted SSD applications are being 'saved' and may continue to use the provisions of the Housing SEPP (page 25)
- given this SSD application was lodged as an in-fill affordable housing prior to the gazettal of the amended planning controls for the site, it should be assessed based on the Housing SEPP controls, pursuant to the savings provisions in the section 1.8A of the NSLEP.

The planning proposal finalisation report can be viewed [here](#) and the supporting urban design report can be viewed [here](#)

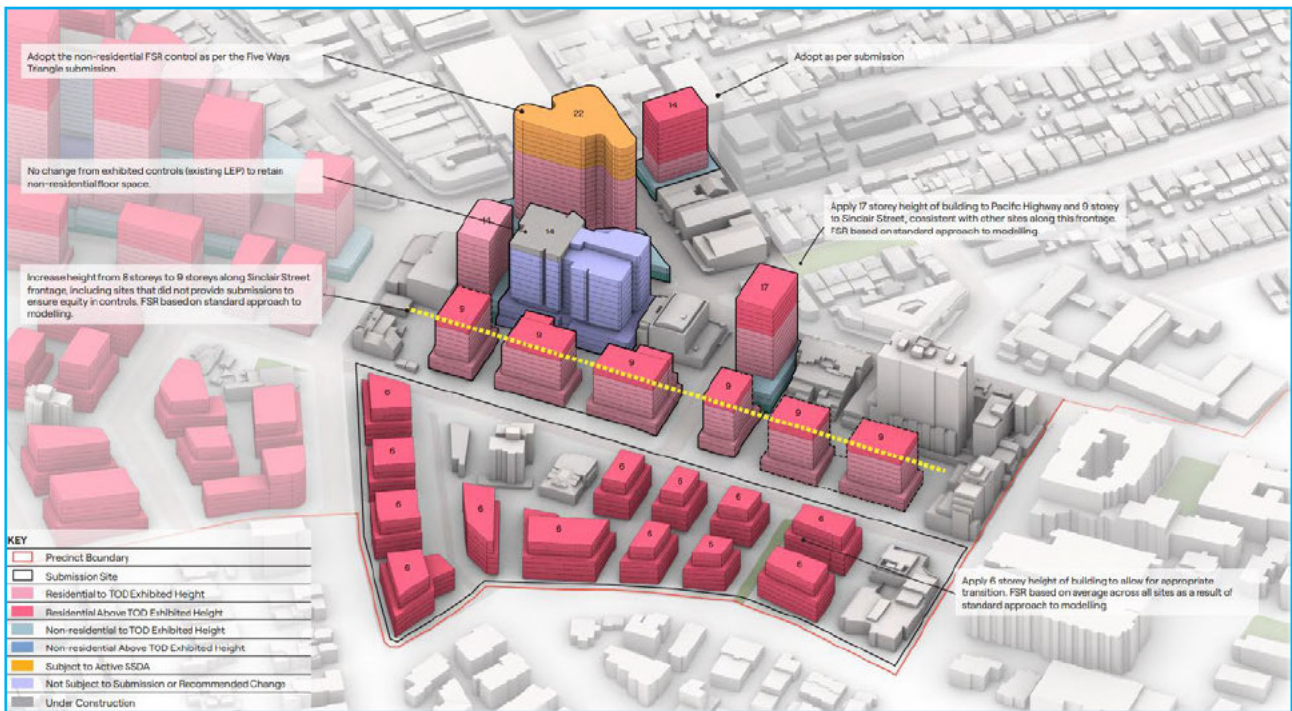


Figure 1: Crows Nest TOD future building envelopes (Source: Crows Nest TOD Appendix A – Post-Exhibition review)

### Commission’s question

2. Please confirm if the Department is satisfied that the provision of 190 residential parking spaces does not require any of the parking spaces to be included in the calculation of Gross Floor Area (GFA) as per the definition of GFA included in the North Sydney Local Environmental Plan 2013.

### Department’s response

The Department understands that the Housing SEPP car parking rates would apply for the residential component of the development, rather than the North Sydney Development Control Plan 2013 (NSDCP) pursuant to section 1.9 (Application of SEPPs) of the NSLEP, which states that:

*(1) This Plan is subject to the provisions of any State environmental planning policy that prevails over this Plan as provided by section 3.28 of the Act.*

Consequently, the Department has calculated the residential car parking spaces in accordance with the clause 19 - non-discretionary development standards, of the Housing SEPP.

As indicated in paragraph 32 of the Assessment Report for SSD-66826207, the 190 residential spaces have been calculated based on the application of the non-affordable housing rates across the entire development. A total of 174 car parking spaces are required to be provided, if a mix of non-affordable and affordable housing rates are applied.

The Department has accepted the 16 additional spaces as the Housing SEPP provides a minimum rate, rather than a maximum. Given the application of the Housing SEPP, the Department does not consider that the 16 excess spaces should count towards the GFA, as required by the NSLEP.

### *Commission's question*

3. *Is the Department satisfied that the cumulative traffic impacts resulting from both the Project and the anticipated future precinct of Crows Nest have been adequately assessed?*

### *Department's response*

The Applicant provided a Transport Impact Assessment Report (TIA) with its Environmental Impact Statement and amended application. It acknowledged that the height and FSR for the Five Ways site under the NSLEP was accounted for in the planning proposal, which was informed by traffic studies of the 2036 plan.

The TIA then analysed the impacts of the additional uplift due to the bonus FSR and height under the Housing SEPP and concluded that:

- the current proposal relies on a low car mode share for 20% for residential and 25% for commercial, resulting in low net traffic generation
- the traffic generated by the proposal would be much lesser than the approved planning proposal, which considered significant higher traffic movements, with high car mode shares
- while the planning proposal assumed significantly higher traffic movements, it still concluded that the overall traffic generation due to a development on this site would have minor impacts on the operation of the key intersections surrounding the site
- consequently, the current proposal, with lesser traffic generation, would have no further detrimental impacts on the identified key intersections near the site
- as such, the forecast traffic generated by the site represents only 2% of the existing total traffic movements through the Pacific Highway / Falcon Street intersection, which have been considered as part of the planning for the Crows Nest precincts
- no queuing at intersections is anticipated post development and the existing pedestrian infrastructure capacity around the site is assessed as satisfactory.

Based on this analysis and comments from Transport for NSW (TfNSW), the Department was satisfied that the proposal would not have unreasonable traffic impacts on the surrounding road network and pedestrian infrastructure.

### *Assessment of traffic impacts considering the Crows Nest TOD*

The site now forms part of the Crows Nest TOD and the planning proposal finalisation report has considered a 22-storey development on the Five Ways site (Figure 1). The Department's planning proposal finalisation report states that the Crows Nest TOD aims to deliver up to 5,900 new dwellings in the precinct including homes not delivered under the 2036 Plan and additional dwellings.

The finalisation report is supported by a Supplementary Transport Technical Note (Note) dated October 2024, supplementing the transport study and modelling for the 2036 plan. The document can be viewed [here](#). The Department’s findings in the Note are summarised below:

- the 2036 Plan was accompanied by a Strategic Transport Study, completed in 2018
- based on traffic studies, the 2036 Plan recommended a comprehensive list of transport / infrastructure initiatives including the following near the site:
  - additional or enhanced pedestrian infrastructure at multiple intersections including Pacific Highway / Falcon Street (by Council / TfNSW)
  - optimisation of traffic signals on Pacific Highway (by TfNSW)
  - clearways along Pacific Highway, between Albany and Falcon Streets (by TfNSW).
- several sites have been rezoned with development applications being approved or assessed since the finalisation of the 2036 plan in 2020 (including the site and land above or adjacent to the Crows Nest metro station)
- in 2020, a further modelling was conducted to validate and expand the 2018 transport study
- the Department has conducted further technical studies as part of the Crows Nest TOD program to validate the 2020 findings and identify opportunities for further density in the precinct
- the total capacity accounts for completing the rezoning of land identified in the 2036 Plan, and investigate any opportunities to deliver additional housing in the precinct
- the Department’s most recent traffic analysis provides the following results as shown in Figure 2

Dwelling Figure	2024 Analysis as part of this note
6,680 (2036 Plan dwelling number)	1,270 additional vehicle trips AM Peak (one hour)
11,000 (TOD rezoning dwelling number including 2036 dwelling number)	2,090 additional vehicle trips AM Peak (one hour)
Change	+820 more vehicle trips AM Peak (one hour)

Figure 2: Vehicle trip generation analysis and comparison (Source: Supplementary Transport Technical Note)

- the increase in 820 vehicle trips in the AM peak hour, due to TOD rezoning represents a small increase when compared to the total vehicle trips anticipated for the precinct in the 2020 modelling. The additional traffic generated will be distributed across the precinct and comprise a

small proportion of the overall traffic demands

- low rates of car parking across the precinct would assist in reducing the overall traffic volumes
- the Warringah Freeway upgrade and imposition can potentially reduce the volume of regional traffic through St Leonards / Crows Nest, however, there are few opportunities for more traffic network improvements in addition to those already identified due to the constrained network environment
- while the traffic congestion is expected to increase over time, implementation of the identified initiatives would ensure that most of the network operates satisfactorily in the future
- additional uplift under this TOD rezoning may bring the required timing of those initiatives forward, depending on the specific location and scale of take-up over the next 15-20 years.

The above findings demonstrate that the traffic generation due to the development has been already accounted for in the Department's traffic analysis for the precinct. The net impacts of the development would continue to be minor, compared to the overall traffic movements in the precinct, as demonstrated by the Applicant's TIA.

The Department considers that implementation of the suggested traffic initiatives by the public authorities would ensure that the cumulative traffic impacts are appropriately managed over time.

#### *Department's assessment of cumulative impacts on pedestrian infrastructure*

The Department notes that at the time of assessment of the application, the Applicant had provided a detailed analysis of the existing pedestrian infrastructure at this intersection and concluded that the extent of additional pedestrian movement generated by the proposed development would not require upgrades to this infrastructure. TfNSW had accepted the Applicant's conclusion.

The Department considers that this pedestrian infrastructure may require improvements in the future when additional sites are developed in the locality. However, this is not a matter for consideration for this SSD application.

#### *Commission's question*

4. *Please confirm the maximum number of apartments sharing a single lift (given the proposal includes three residential lifts and 188 apartments) and whether the Applicant's Vertical Transport Advice (dated 23 February 2024) is still applicable, given changes to the number and mix of apartments made by the amended application.*

#### *Department's response*

The Applicant's Vertical Transport Advice (VTA) applied the following occupancy rates for each apartment to calculate overall population using the lifts, based on *CIBSE Guide D, 2020, The Chartered Institute of Building Services Engineers*.



- 1-bedroom apartments: 1.8 persons
- 2-bedroom apartments: 3 persons
- 3-bedroom apartments: 4 persons.

Table 1 provides a comparison of the EIS and the amended application, in terms of the total population using lifts:

Table 1: comparison of apartment numbers in EIS and amended application

Component	EIS apartments	Persons using lifts	Amended application apartments	Persons using lifts
1-bedroom apartments	40	72	33	60
2-bedroom apartments	114	342	118	354
3-bedroom apartments	37	148	37	148
Total	191	560	188	562

Based on the results in Table 1, the Department concludes that:

- the amendments to the apartment numbers or mix would not have any significant impact on the population using the lifts (+ 2 persons).
- the VTA would apply to the amended application as the floor plans were not modified to an extent where the floor matrix, applied in the VTA (page 3) would be significantly altered
- the occupancy on each floor, derived by the VTA would also not change significantly as the floor plans have been marginally altered.

