



New South Wales Government
Independent Planning Commission

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Five Ways, Crows Nest Mixed Use Development including In-fill Affordable Housing

SSD-66826207

Statement of Reasons for Decision

Michael Wright (Chair)
Duncan Marshall AM

23 December 2024

Executive Summary

Deicorp Construction Pty Ltd (Applicant) has sought consent for a 22 storey mixed use development with infill affordable housing known as the Five Ways, Crows Nest Project (SSD-66826207) (the Project). The site is located at 391-423 Pacific Highway, 3-15 Falcon Street, and 8 Alexander Street, Crows Nest, within the North Sydney local government area.

The Project has a \$141.3 million estimated development cost, generating up to 642 construction jobs and up to 55 operational jobs. The NSW Independent Planning Commission (Commission) has determined the application for the Project as the delegate of the Minister for Planning and Public Spaces per the Minister's 14 September 2011 delegation to the then Planning Assessment Commission.

Commissioners Michael Wright (Panel Chair) and Duncan Marshall AM were appointed to constitute the Commission Panel in determining the Application. As part of its determination, the Commission met with representatives of the Applicant, the Department and North Sydney Council. The Panel also undertook a site inspection and locality tour. The Commission conducted community stakeholder meetings on 12 December 2023. The Commission also received written submissions on the Application.

Key issues which are the subject of the findings in this Statement of Reasons relate to built form and design, heritage impacts, residential amenity, traffic, parking and servicing, affordable housing, overshadowing impacts and construction noise.

After consideration of the material, including additional information received from the Applicant, North Sydney Council and the Department, and having considered the views of the community, the Commission has determined that development consent should be granted to the Project, subject to conditions.

The Commission has imposed conditions which seek to prevent, minimise, mitigate and/or offset adverse impacts of the Project and ensure appropriate ongoing monitoring and management of residual impacts. The Applicant will be required to prepare a number of comprehensive management plans and strategies and report on mitigation and monitoring outcomes as well as demonstrate compliance with performance criteria on an ongoing basis.

Whilst acknowledging the concerns raised by North Sydney Council and the community, the Commission found that the Project's height and density were acceptable as the Project was eligible for an up to 30% uplift in height and density under the Housing SEPP. The Project would not result in unacceptable traffic, overshadowing or visual impacts on the surrounding environment, including heritage conservation areas, and would be consistent with the future character of Crows Nest as it transitions to increased density under the Crows Nest Transport Oriented Development Accelerated Precinct.

The conditions as imposed contain changes made by the Commission to the Department's recommended conditions of consent. These changes strengthen the environmental management of the development by requiring construction to be undertaken in accordance with the recommendations of the Heritage Impact Statement and subsequent heritage information provided, and in accordance with the Aboriginal Cultural Heritage Assessment. The changes also respond to concerns raised by the community and stakeholders during the Commission's consideration of the Project by requiring a detailed Green Travel Plan to be updated annually in consultation with TfNSW and implemented for the life of the development.

The Commission finds that the Project is consistent with the applicable strategic planning framework as it will deliver additional housing, including affordable housing, with good access to public transport connections, employment centres, services and amenity. The Commission is also satisfied that the Project is in accordance with the objects of the EP&A Act and is in the public interest.

The Commission's reasons for approval of the Project are set out in this Statement of Reasons.

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Defined Terms

ABBREVIATION	DEFINITION
2036 Plan	St Leonards and Crows Nest 2036 (NSW Department of Planning, Industry and Environment, 2020)
AAR	Acoustic Assessment Report
ADG	Apartment Design Guide
Applicant	Deicorp Construction Pty Ltd
Application	Five Ways, Crows Nest Mixed Use Development including In-fill Affordable Housing (SSD-66826207)
Approved Methods	Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (EPA, 2016)
AR para	Paragraph of the Department's Assessment Report
Commission	Independent Planning Commission of NSW
Council	North Sydney Council
Crows Nest TOD	Crows Nest TOD Accelerated Precinct rezoning, gazetted 27 November 2024
COS	Communal Open Spaces
CEMP	Construction Environmental Management Plan
CTPMP	Construction Traffic and Pedestrian Management Plan
DCP	Development Control Plan
Department	Department of Planning, Housing and Infrastructure
Department's AR	Department's Assessment Report, dated November 2024
EDC	Estimated Development Cost
EIE	Explanation of Intended Effect, Crows Nest Transport Oriented Development Precinct (NSW Department of Planning, Housing and Infrastructure, July 2024)
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
EPA	NSW Environment Protection Authority
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
FSR	Floor Space Ratio
GANSW	Government Architect NSW
GFA	Gross Floor Area
HCA	Heritage Conservation Area
HIS	Heritage Impact Statement
ICNG	Interim Construction Noise Guideline
LGA	Local Government Area
m²	Square metres
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in section 3.1
Minister	NSW Minister for Planning and Public Spaces
NCC	National Construction Code
NPfI	NSW Noise Policy for Industry
NSDCP	North Sydney Development Control Plan 2013
NSLEP	<i>North Sydney Local Environmental Plan 2013</i>
Project	Demolition of existing structures, early works, site remediation and the construction of a 22-storey mixed-use development with commercial premises, in-fill affordable housing and seven basement levels.

RtS	Response to Submissions
SEPP Biodiversity and Conservation	<i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>
SEPP Housing	<i>State Environmental Planning Policy (Housing) 2021</i>
SEPP Planning Systems	<i>State Environmental Planning Policy (Planning Systems) 2021</i>
SEPP Resilience and Hazards	<i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>
SEPP Sustainable Buildings	<i>State Environmental Planning Policy (Sustainable Buildings) 2022</i>
SEPP Transport and Infrastructure	<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>
SIA Guideline	Social Impact Assessment Guideline for State Significant Projects (NSW Government, 2021)
Site	The Site as described in section 2.1
SDRP	State Design Review Panel
SSD	State Significant Development
TIA	Transport Impact Assessment
TfNSW	Transport for NSW
TOD	Transport Oriented Development

1. Introduction

1. On 19 November 2024, the NSW Department of Planning, Housing and Infrastructure (**Department**) referred the State Significant Development (**SSD**) Application SSD-66826207 (**Application**) from Deicorp Construction Pty Ltd (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Application seeks approval for the Five Ways, Crows Nest Mixed Use Development including In-fill Affordable Housing (the **Project**) located in the North Sydney Local Government Area (**LGA**) under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**).
3. The Application constitutes SSD under section 4.36 of the EP&A Act and section 26(A) of Schedule 1 of the *State Environmental Planning Policy (Planning Systems) 2021* (**SEPP Planning Systems**) as it is development for the purpose of in-fill affordable housing with an Estimated Development Cost (**EDC**) of more than \$75 million.
4. In accordance with section 4.38 of the EP&A Act and section 2.7 of SEPP Planning Systems, the Commission was the consent authority as North Sydney Council (**Council**) objected to the Application. On 12 December 2024, the Department wrote to the Commission advising of changes to the Planning Systems SEPP that would have the consequence of changing the consent authority for the Application from the Commission to the Minister. In order to permit the Commission to continue to exercise its functions in relation to the Application, the Commission has determined the present Application as the delegate of the Minister in accordance with the-then Minister's 14 September 2011 delegation to the-then Planning Assessment Commission.
5. Andrew Mills, Chair of the Commission, determined that Michael Wright (Chair) and Duncan Marshall AM would constitute the Commission for the purpose of exercising its functions with respect to the Application.
6. The Department concluded in its Assessment Report (**AR**) that the Project would support the State Government's priorities to deliver well-located housing and that the Project is in the public interest and approvable, subject to conditions.

2. The Application

2.1 Site and Locality

7. The Department's Assessment Report Table 1 states that the Site is located at 391-423 Pacific Highway, 3-15 Falcon Street, and 8 Alexander Street, Crows Nest (the **Site**).
8. The Site currently contains multiple commercial premises (one to four storey buildings) and a non-digital advertising structure located at the north-western corner of the Site (AR Table 1).
9. The Site has frontage to Falcon Street to the north, Alexander Street to the east and the Pacific Highway to the south-west. The Site has a total area of 3,200.6m² and is located 350m south of Crows Nest Metro Station, 1km from St Leonards Train Station and within a 400m radius of bus stops with high frequency services (AR Table 1).
10. The Site is located on land zoned MU1 Mixed Use (MU1 zone) pursuant to the *North Sydney Local Environmental Plan 2013* (**NSLEP**) (AR Table 2).

11. The surrounding area is characterised by a mixture of commercial and residential buildings and is in close proximity to the Crows Nest Village north of Falcon Street (AR Table 1). To the east of the Site is a mixed-use development comprising six storey residential flat buildings and multi-dwelling housing, which is currently under construction (AR Table 1).

Figure 1 - Site location and surrounding local context (Source: Department's AR)



2.2 The Project

12. The Applicant is seeking approval for the demolition of existing structures, early works, site remediation and the construction of a 22-storey mixed-use development with commercial premises, in-fill affordable housing and seven basement levels. A summary of the Project is provided in Table 1. The Project’s physical layout and design is shown at Figures 5 to 15 of the Department’s AR.

Table 1 – Key Project details (Source: Department’s AR)

Aspect	Proposed Project
Gross Floor Area (GFA)	24,119 m ² total, comprising: <ul style="list-style-type: none"> residential GFA of 16,117m²; commercial GFA of 2,500 m²; and retail GFA of 5,502 m².
Dwellings	188 apartments (140 market and 48 affordable) comprising: <ul style="list-style-type: none"> 33 x 1-bedroom apartments; 118 x 2-bedroom apartments; and 37 x 3-bedroom apartments.
Building heights	79.74 m (to top of plantrooms) (RL 177.7), 22 storeys

Uses and activities	Mixed use development comprising: <ul style="list-style-type: none"> • retail (ground, mezzanine and level 1) and commercial (level 2); and • residential flat building with infill affordable housing.
Basement, parking and access	Basement, parking and access comprising: <ul style="list-style-type: none"> • seven basement levels containing: <ul style="list-style-type: none"> ○ 220 car parking spaces; ○ 302 bicycle parking spaces; and ○ garbage rooms, car wash bay, end of trip facilities, plant rooms, residential and commercial storage spaces and loading bay with turntable; • two-way vehicular access provided from Alexander Street; • residential lobby accessed from Alexander Street; • commercial lobby accessed from Pacific Highway; • two publicly accessible through site links connecting Alexander Street, Falcon Street and Pacific Highway at ground level; and • retail access from all frontages and internal site links.
Associated works and landscaping	Associated works and landscaping comprising of: <ul style="list-style-type: none"> • demolition, early works, remediation of land and tree removal; • 1,696 m² of communal open space at podium level; • landscaping works at ground level, podium level and on breezeways; • basement chamber substation within basement level 1 located at the southern corner; and • public domain works with street trees along all frontages, and extension and augmentation of services and infrastructure.
Subdivision	Subdivision comprising: <ul style="list-style-type: none"> • consolidation of 19 existing lots; • stratum subdivision into retail, commercial and residential lots; and • extinguishment and/or release of all existing easements, restrictions and covenants.
Community housing provider	St George Community Housing, a not-for-profit registered community housing provider.
EDC	\$141.3 million.
Employment	Approximately 642 construction jobs and 55 operational jobs.

3. The Commission's Consideration

3.1 Material Considered by the Commission

13. In this determination, the Commission has considered the following material (**Material**):
- the Planning Secretary's Environmental Assessment Requirements dated 23 January 2024;
 - the following information provided by the Applicant:
 - the Environmental Impact Statement (**EIS**) dated 6 May 2024 and its accompanying appendices;
 - the Amendment Report dated 12 September 2024 and its accompanying appendices; and
 - the Response to Submissions Report (**RtS**) dated 17 October 2024 and its accompanying appendices;
 - all public submissions on the EIS and Amendment Report made to the Department during public exhibition;
 - all Government Agency advice to the Department;
 - the Department's AR, dated 19 November 2024;
 - the Department's recommended conditions of consent, dated 19 November 2024;
 - comments and presentation material at meetings with the Department, Applicant and North Sydney Council, as referenced in Table 4 below;
 - the Applicant's response to the Commission, dated 12 December 2024 and correspondence to the Commission dated 18 December 2024;
 - the Department's response to the Commission, dated 17 December 2024;
 - Council's correspondence to the Commission, dated 17 December 2024;
 - all written comments made to the Commission and material presented at the Community Stakeholder Meetings;
 - all written comments received by the Commission up until 5pm, 19 December 2024; and
 - the Department's comment (dated 17 December 2024) on the feasibility and workability of proposed conditions.

3.2 Strategic Context

14. The Department's AR identifies the NSW Government's aspirational target of 377,000 well-located homes to be constructed over the next 5 years. This is in support of the National Housing Accord, which aims to deliver 1.2 million new, well-located homes over the same period (AR para 16).
15. The St Leonards and Crows Nest 2036 Plan (**2036 Plan**) applies to future development within the St Leonards and Crows Nest precincts including the Lane Cove, Willoughby and North Sydney LGAs. The 2036 Plan provides strategic land use and infrastructure guidance based on a vision for growth and improvement to 2036. Among other directions, the 2036 Plan recommended several planning controls for the Site, including MU1 Mixed Use land use zoning, a 16-storey building with a maximum floor space ratio (**FSR**) of 5.8:1 (2.5:1 for non-residential) and a street wall height of 3 – 4 storeys with no setbacks (AR para 5 – 6).
16. Following the 2036 Plan, a proponent-led planning proposal for the Site was finalised by the Department in December 2023. The finalisation of the planning proposal considered the 2036 Plan which informed the following amendments to the NSLEP, retaining the existing MU1 Mixed Used land use zone:

- “maximum building height from 16m to 58.5m (16 storeys equivalent);
 - an additional 2m maximum building height allowed for lift overruns and services;
 - and
 - an FSR of 5.8:1 with a maximum non-residential FSR of 2.5:1” (AR para 7).
17. The Department’s AR states that the planning proposal finalisation report considered a reference design scheme for the Site’s indicative building envelope, being a 16-storey mixed-use building comprising a 13-storey triangular residential tower with an atrium located above a 3-storey commercial podium (with a mezzanine along Alexander Street) (AR para 10).
18. Between 16 July and 30 August 2024, the Department exhibited the Explanation of Intended Effect (**EIE**) for the Crows Nest Transport Oriented Development (**TOD**) Precinct which identified Crows Nest as an accelerated precinct due to its capacity to support an increase in population and housing growth close to a transport hub and other amenities (AR para 12). The Crows Nest TOD Accelerated Precinct rezoning (**Crows Nest TOD**), which was gazetted on 27 November 2024, includes amendments to the NSLEP and new planning controls. The Site is located within the future Crows Nest TOD precinct, however no further rezoning or change to density for the Site was proposed in the EIE or incorporated in the finalised Crows Nest TOD.
19. The Commission notes that Council raised concerns with the Department’s consideration of the Crows Nest TOD EIE and the Department’s characterisation of the EIE in AR para 60 as not being a draft planning instrument, and therefore not having statutory weight.
20. The Commission notes that the Crows Nest TOD came into effect on 27 November 2024 and included savings provisions provided in the NSLEP at clause 1.8A(3). Accordingly, the rezoning effected by the Crows Nest TOD does not apply to this Project. Nonetheless, the Commission has taken into account the strategic considerations of the EIE and finalised Crows Nest TOD in its strategic consideration of the Project (see section 5).
21. Within the context of a need for new homes, the Department notes that a new SSD pathway was introduced in December 2023 for residential development with an EDC of over \$75 million in Greater Sydney which includes at least 10% affordable housing. The *State Environmental Planning Policy (Housing) 2021 (SEPP Housing)* was also amended to introduce new in-fill affordable housing provisions which permit FSR and building height bonuses of 20-30% for projects in accessible locations that include residential development and affordable housing equal to at least 10-15% of the GFA. These initiatives aim to support the delivery of well-located affordable and market housing (AR para 17). The Application has been submitted pursuant to these initiatives.
22. The Commission has considered the strategic planning policies and guidelines relevant to the Site and the Project, including the Greater Sydney Region Plan, North District Plan, Future Transport Strategy 2056, Housing 2041: NSW Housing Strategy, Council’s Local Strategic Planning Statement, Council’s Local Housing Strategy, the St Leonards and Crows Nest 2036 Plan and the Crows Nest TOD EIE and finalised Crows Nest TOD. The Commission finds that the Project is consistent with the strategic planning framework as it will deliver much needed housing in a suitable location, alleviating housing pressure and responding to the need for affordable homes.
23. The Commission notes that the Project represents an estimated investment of over \$141 million, supporting approximately 642 construction jobs and 55 operational jobs.

3.3 Statutory Context

24. The Commission has given consideration to the statutory context in Table 2 below.

Table 2 - Statutory context

Statutory Context	Commission's Comments
<i>Objects of the EP&A Act</i>	In this determination, the Commission has carefully considered the Objects of the EP&A Act and is satisfied that the Application is consistent with those Objects.
<i>State Significant Development</i>	The Application is SSD under section 4.36 of the EP&A Act and section 2.6(1) of the Planning Systems SEPP, as the Project is permissible with development consent, has an EDC greater than \$75 million and is for the purposes of in-fill affordable housing.
<i>Permissibility</i>	The Site is located within the MU1 Mixed Use zone under the NSLEP. The Project is a development for the purposes of shop-top housing comprising ground floor commercial/retail uses with residential development above and is permissible with consent.
<i>Amended Application</i>	<p>In accordance with clause 37 of the <i>Environmental Planning and Assessment Regulation 2021 (EP&A Regulation)</i>, a development application can be amended, with the agreement of the consent authority, at any time before the application is determined.</p> <p>In response to issues raised during the exhibition period by community members, Council and government agencies, the Applicant submitted an amended application on 13 September 2024. The amended proposal included a reduction in the total number of apartments from 191 to 188, an increase in the number of affordable apartments from 33 to 48, removal of the previously proposed digital sign and a minor increase in the height of the building (AR page ii – iii).</p> <p>Before the Application was referred to the Commission for determination, the amendment was agreed to by the Department in its capacity as delegate of the Commission.</p>
<i>Integrated and other NSW Approvals</i>	Pursuant to section 4.41 of the EP&A Act, several approvals are integrated into the SSD process and therefore are not required to be separately obtained for the Project (AR para 20). Pursuant to section 4.42 of the EP&A Act, several further approvals are required but must be substantially consistent with any development consent for the Project (AR para 21).

3.4 Mandatory Considerations

25. In determining this Application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**). The mandatory considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the mandatory considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 3 – Mandatory Considerations

Mandatory Considerations	Commission’s Comments
Relevant EPIs	<p>Appendix C of the Department’s AR identifies relevant EPIs for consideration. The key EPIs (in their present, consolidated form) include:</p> <ul style="list-style-type: none"> • SEPP Planning Systems; • SEPP Housing; • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure)</i>; • <i>State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards)</i>; • <i>State Environmental Planning Policy (Sustainable Buildings) 2022 (SEPP Sustainable Buildings)</i>; • <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP Biodiversity and Conservation)</i>; and • North Sydney LEP 2013. <p>The Commission agrees with the Department’s assessment of EPIs set out in Appendix C of the AR. The Commission therefore adopts the Department’s assessment.</p>
Relevant Development Control Plans (DCPs)	<p>Section 2.10 of the SEPP Planning Systems states that development control plans do not apply to SSD. The Commission does not consider any development control plans to be relevant to the determination of the Application.</p>
Likely Impacts of the Development	<p>The likely impacts of the Application have been considered in section 5 of this Statement of Reasons.</p>
Suitability of the Site for Development	<p>The Commission has considered the suitability of the Site and finds that the Site is suitable for the following reasons:</p> <ul style="list-style-type: none"> • the Application is permissible with consent; • the Project will provide diverse housing options, including 15% of the total GFA as in-fill affordable housing dwellings in a mix of typologies; • the Project is in an advantageous location close to existing public transport networks, employment centres, services and amenity; • the Project meets the objectives of the MU1 Mixed Use zone; • the Project is an orderly and economic use of the land; • the Project will provide appropriate internal and external amenity for future residents; • the Project will contribute to activation of the public domain and provide additional economic, and community uses for the locality; • the Site can physically accommodate the proposed development without significant environmental impacts arising; and • impacts on surrounding land uses have been minimised where possible and are capable of being further mitigated through conditions of consent.
Ecologically Sustainable Development	<p>The Commission finds that the Project is consistent with ESD principles and would achieve an acceptable balance between environmental, economic and social considerations.</p>

The Public Interest	<p>The Commission has considered whether the grant of consent to the Application is in the public interest. In doing so, the Commission has weighed the predicted benefits of the Application against its predicted negative impacts.</p> <p>The Commission's consideration of the public interest has also been informed by consideration of the principles of ESD.</p> <p>The Commission finds that, on balance, the likely benefits of the Project warrant the conclusion that an appropriately conditioned approval is in the public interest.</p>
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3.5 Additional Considerations

26. In determining the Application, the Commission has also considered:

- Greater Sydney Regional Plan – A Metropolis of Three Cities, 2018;
- North District Plan, 2018;
- Future Transport Strategy 2056;
- Housing 2041: NSW Housing Strategy;
- St Leonards and Crows Nest 2036 Plan;
- Crows Nest TOD EIE and finalised Crows Nest TOD;
- North Sydney Council Local Strategic Planning Strategy 2020;
- North Sydney Council Local Housing Strategy 2019;
- NSW Noise Policy for Industry (**NPfI**);
- Interim Guideline for Development Near Rail Corridors and Busy Roads;
- Interim Construction Noise Guideline (**ICNG**);
- NSW Road Noise Policy;
- Rail Infrastructure Noise Guideline;
- Approved Methods for the Modelling and Assessment of Air Pollutants in New South Wales (EPA, 2016) (**Approved Methods**); and
- Social Impact Assessment Guideline for State Significant Projects (NSW Government, 2021) (**SIA Guideline**).

3.6 The Commission's Meetings

27. As part of the determination process, the Commission met with various persons as set out in Table 4. All meeting and site inspection notes were made available on the Commission's website.

Table 4 – Commission's Meetings

Meeting	Date	Transcript/Notes Available on
Department	5 December 2024	10 December 2024
Applicant	5 December 2024	10 December 2024
Council	5 December 2024	10 December 2024
Site Inspection	5 December 2024	16 December 2024
Community Stakeholder Meetings	12 December 2024	13 December 2024

4. Community Participation & Public Submissions

4.1 Site Inspection

28. On 5 December 2024, the Commission Panel conducted an inspection of the Site and immediate surrounds with the Applicant and a representative from Council. The Commission published notes from the Site inspection on its website, as indicated in Table 4 above.

4.2 Community Stakeholder Meetings

29. Due to limited registrations for the Public Meeting scheduled for 12 December 2024, the Commission cancelled the Public Meeting. Instead, the Commission met separately with the one interested individual who had registered to speak at the Public Meeting, the North Sydney Mayor and one interested community group representative to hear their views. The Community Stakeholder Meetings were held in person and via Zoom on 12 December 2024. Presentations made at the Community Stakeholder Meetings have been considered by the Commission.

4.3 Public Submissions

30. As part of the Commission's consideration of the Project, all persons were offered the opportunity to make written submissions to the Commission until 5pm AEDT 19 December 2024.
31. The Commission received a total of 19 written submissions on the Application through its website. Submissions received through its website comprised:
- 11 submissions in support; and
 - 8 objections.
32. For the reasons set out in this Statement of Reasons, the Commission considers that the matters raised in submissions do not preclude the grant of development consent and that the matters can be satisfactorily addressed by the conditions of consent imposed by the Commission.

4.3.1 Issues Raised

33. Submissions to the Commission raised a number of key issues, which are outlined below. The Commission notes that the submissions referred to below are reflective and illustrative of what the Commission regards as the key issues that emerged from the submissions and are not an exhaustive report of the submissions considered by the Commission.

Housing supply and affordability

34. The Commission received submissions in support of the proposal which highlighted the benefits of increased housing supply, particularly in what submitters considered a well-located site near public transport, local amenities and services. Submitters stated that increased housing supply could address high housing purchase and rental prices in the area.

35. Submissions supported the affordable housing component of the Project stating that this would provide for the needs of local families, younger people and essential workers who may otherwise be priced out of the area. Submissions also stated that affordable housing should be provided in-perpetuity as a better long-term outcome for the community.
36. Some submitters see the need for new housing, particularly affordable housing, as critical and that it should be weighted heavily in the assessment of impacts. One submitter was pleased to see the affordable housing bonus provisions (which enable the Applicant to increase the height and density of the development by 30%) utilised in an appropriate location.
37. Submissions objecting to the proposal were concerned with the scale of the proposal and the capacity of Crows Nest and surrounding localities to absorb the increase in density. Local public outdoor space was identified as something that would be put under further pressure by the Project given there is relatively little local public open space currently available.

Height and scale

38. Submissions objecting to the Project generally focussed on the height and scale of the Project, stating that it would produce a dominating eyesore that would also create unacceptable overshadowing impacts. Submissions stated that a 16-storey building was a more appropriate height while still delivering housing. Submissions also noted that 16-storeys was the height limit envisaged under the 2036 Plan as a transitional height from Crows Nest Metro Station, developed by the Department in consultation with the community. One submitter reasoned that more generous setbacks or stepped height changes could have provided better integration between the building and adjacent developments. One submitter raised concerns with the impact of a 22-storey building on the amenity of surrounding residences, including through loss of privacy and light pollution.
39. Other submissions stated that the height and scale was acceptable and that it was needed to provide more well-located homes.

Building Design

40. Submissions objected to the design of the proposed podium and tower, which was viewed as unsatisfactory. Some submitters stated that there was an insufficient amount of amenity provided for pedestrians at street level.

Heritage

41. Submissions stated that the Project was too tall and too close to local heritage items and heritage conservation areas. Submitters stated that heritage values would be negatively affected by excessive overshadowing and privacy impacts. Additionally, submissions stated that the Project would negatively change the character of the area.
42. One submitter was of the view that the Project's minor impacts to heritage should not be allowed to be used as a roadblock for important development and that it's normal for urban areas to change over time.

Traffic and parking

43. Submissions were concerned that the Project would exacerbate traffic problems in the area, especially given the amount of proposed car spaces which some submitters argued should be lowered to align with the requirements of the North Sydney Development Control Plan 2013 (**NSDCP**).

44. One submitter noted that as only a left turn out of the proposed building and onto Alexander Street would be permitted, it would be likely there would be insufficient manoeuvring space for motorists to exit the building and then turn right onto Falcon Street leading to potential congestion issues on Alexander Street.
45. One submission raised concerns with increased traffic growth due to the future opening of the Western Harbour Tunnel, and that cumulative traffic assessment had not been undertaken for the precinct to understand the Project's impact on existing intersections that may be performing at a low level of service.

Construction traffic

46. Submissions raised concerns about the impacts of construction on local traffic. Submitters were concerned where large vehicles would park and how any potential queueing or standing might impact traffic. There was also concern that Alexander Street would be closed to facilitate construction.

Construction noise

47. One submitter was concerned that the construction of the development, particularly of the basement levels, would create intolerable noise and vibration impacts on existing residents.

5. Key Issues

5.1 Built Form and Design

5.1.1 Building height and density

48. As set out in section 3.2, as amended as part of a proponent led planning proposal, the maximum height for the Site under the NSLEP is 58.5m with an additional 2m maximum building height allowed for plant and services. The maximum FSR is 5.8:1 with a maximum non-residential FSR of 2.5:1.
49. Section 16 of the Housing SEPP provides up to an additional 30% of the maximum permissible building height and FSR for the Site as the Application provides 15% of the total GFA as affordable housing. Therefore, the maximum permissible FSR for the Site is 7.54:1 and the maximum permissible building height is 76.05m with an additional allowance of 2m for plant and services (in accordance with clause 4.3A of the NSLEP).
50. The proposed height and density variations are set out below in Table 5.

Table 5 - Summary of proposed building height and density variations (Source: Department's AR)

Component	Max. under NSLEP	Max. with 30% Housing SEPP bonus	Proposal	Extent of variation
FSR	5.8:1	7.54:1	7.53:1	n/a
Tower Height	58.5m	76.05m	77.85m	+ 1.8m
Tower + Plantrooms and Lift Overruns (+2m) Height	60.5m	78.05m	79.74m	+ 1.69m

51. The Applicant submitted a written variation request, dated 22 October 2024, pursuant to clause 4.6 of the NSLEP for the proposed building height exceedance. The request states that the exceedance relates to both the height of the tower (exceeded by a portion of the roof) and the height of the plantrooms and lift overruns, both of which are illustrated in Figure 2 and Figure 3.

Figure 2 - 76.05m Height Plane Diagram (Source: Applicant's 4.6 Variation Request)

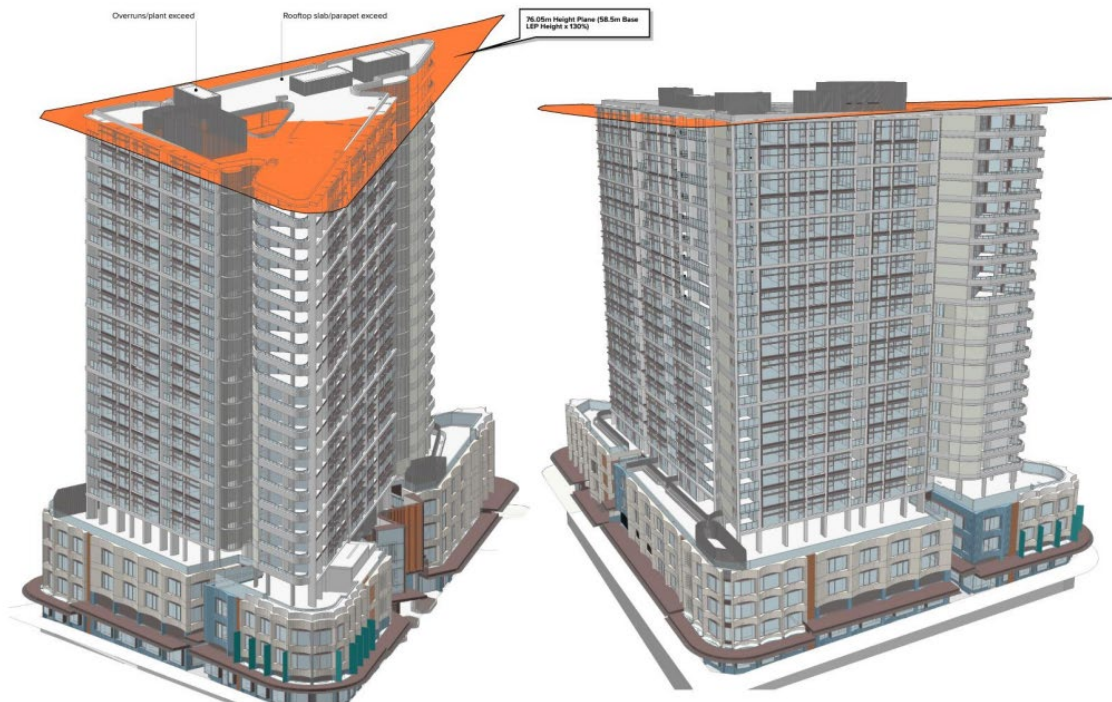
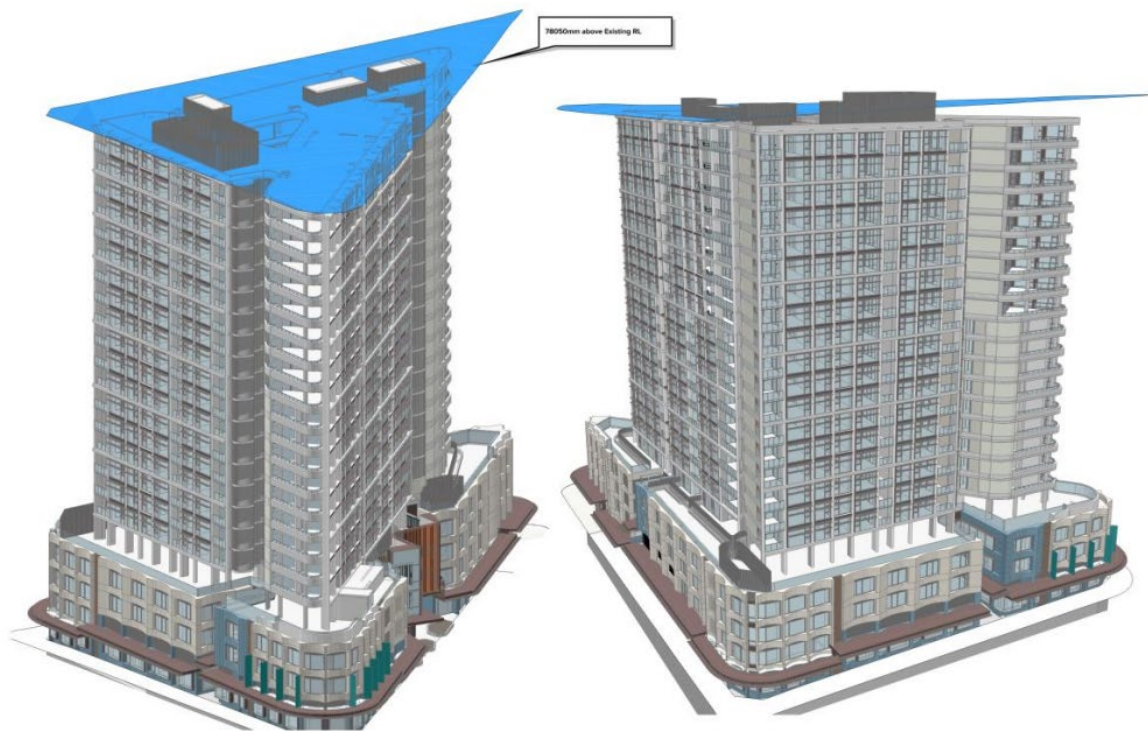


Figure 3 - 76.05m + 2m Height Plane Diagram (Source: Applicant's 4.6 Variation Request)



52. The Applicant seeks the variations as a result of increased floor to floor heights needed to achieve contemporary amenity standards required by the *Design and Building Practitioners Act 2020* (DBP Act) and associated regulations and guidelines, on the basis that the variations do not intensify the use of the Site or result in additional adverse visual or overshadowing impacts. Additionally, the Applicant justifies the variations by outlining that a taller plant room than contemplated by clause 4.3A of the NSLEP is required for the Project as clause 4.3A of the NSLEP corresponds to a 16m building height that applied to the Site before the uplift of the recent planning proposal. The NSLEP allows for an exemption of 3 – 5 metres for plantrooms on other sites with equivalent maximum permissible building heights. The Applicant's clause 4.6 variation request concludes that strict compliance with the height control is unreasonable or unnecessary as the objectives of the development standard are still achieved.
53. In its meeting with the Commission, the Department outlined that the NSW Government Architect advised the Department of changes to the NCC in terms of energy efficiency services, insulation requirements and thermal stringencies that had not been considered in the original application, about which the Department subsequently advised the Applicant.

Council and community concern

54. Council objects to the height of the Project which it states would not relate to the height of the buildings in the surrounding area, which was also an issue raised by public submissions to the Department and the Commission. Council notes that the Site has only recently undergone a significant uplift in height and density as a result of the recent planning proposal, and that any uplift beyond this would be inconsistent with the recommendations of the 2036 Plan. Council also cited that a 19-storey development proposal on the Site was previously rejected by both Council and the Sydney North Planning Panel, albeit before the uplift created by the planning proposal (AR para 55 – 56).
55. Public submissions suggested that the determination of the Application should wait until the finalisation of the Crows Nest TOD program, which would align the controls of the Site with adjacent developments as the rest of the precinct is rezoned. The Commission notes the Crows Nest TOD Accelerated Precinct was gazetted on 27 November 2024 and Council has raised concerns that the Crows Nest TOD Explanation of Intended Effect Project should be applied in the assessment of the Project, including the maximum height and affordable housing provisions designated to the Site.
56. One submission also raised concerns with the impact of the increased density on the existing public outdoor space. Public submissions raised concerns with the proposed height being inconsistent with the height transition from the “knuckle” between the St Leonards and Crows Nest Metro Station to the outer areas of the Crows Nest Precinct envisioned in the 2036 Plan and Crows Nest TOD.

Commission’s Findings

57. The Commission is satisfied that the Housing SEPP bonus height provisions have been calculated correctly, based on the total GFA, which includes both residential and non-residential components. The Applicant has provided 15% of the overall GFA as affordable housing and is therefore entitled to seek the additional 30% of maximum permissible building height and FSR.
58. Council in its meeting with the Commission raised concerns with the calculation of GFA not including excess parking spaces above what is required by the NSDCP. The Commission notes that any excess parking (and the space required to access that parking) above what is required to meet the requirements of the consent authority is not excluded from GFA as per the NSLEP. The Commission has considered the parking requirements in section 5.4.2 below, and agrees with the Department that the required parking for the Project is not exceeded as the Housing SEPP provides a minimum rate and therefore no parking is required to be included in the GFA calculation.
59. The Commission has considered the Applicant’s clause 4.6 variation request to exceed the maximum building height by 1.8m and the maximum allowable additional height for plantrooms and lift overruns by 1.69m. The Commission agrees with the Department’s assessment in Appendix D of the AR and is satisfied that there are sufficient environmental planning grounds to justify the variations as:
- the additional tower height is a result of increased floor-to-floor heights to meet technical requirements under the DBP Act and associated regulations and guidelines including the National Construction Code (**NCC**) which came into effect after the date of lodgement, including accommodation of waterproofing requirements and energy efficiency requirements;
 - the variations do not result in additional density on the Site;

- the NSLEP allows for an exemption of up to 5m for plantrooms on sites along the Pacific Highway with equivalent maximum permissible building heights, and the plantrooms will be setback to avoid visibility from the public domain;
- the Project has been designed with the ground floor tenancies following the natural gradient of the Site;
- the impacts of the building height are acceptable including heritage impacts (section 5.2) and overshadowing impacts (section 5.6);
- the Project is in the public interest as it is consistent with the building height objectives of the NSLEP and the objectives of the MU1 zone.

60. As discussed in section 3.2 above, the Commission has not applied the Crows Nest TOD EIE as though it were an in-force planning instrument or given it determinative weight. The Commission has considered the strategic merit of the now finalised and in force Crows Nest TOD, noting it is not in force in relation to the Project due to the savings provisions provided in clause 1.8A(3) of the NSLEP. Although the Project exceeds the maximum height limit provided for in the Crows Nest TOD, the Commission is of the view that the Project is consistent with the future character of Crows Nest as envisaged by the Crows Nest TOD as the Project:

- is located in close proximity to the area rezoned by the Crows Nest TOD for uplift of up to 40 storeys;
- is consistent with the increased density of the future character of Crows Nest as it undergoes transition under the Crows Nest TOD;
- is located on an appropriate site for a taller building than other surrounding sites due to its frontage to the Pacific Highway and prominence of the 'Five Ways' intersection; and
- will aid the precinct's capacity to support an increase in population and additional housing at a well located site close to a transport hub and other essential amenities.

61. The Commission agrees with the Department's assessment and is of the view that the Project's building height and density is appropriate as:

- it is eligible for an up to 30% uplift in height and density under the Housing SEPP, above what is permitted by the NSLEP or Crows Nest TOD;
- the delivery of a 22 storey building will deliver benefits which outweigh any residual amenity impacts (discussed further in section 5 below);
- the variations to the permitted heights are acceptable as outlined in para 59;
- it would deliver 48 affordable housing apartments consistent with the Housing SEPP's aims for infill affordable housing;
- the Project is located within close proximity to sites rezoned as part of the Crows Nest TOD and visible from the Site, including for 14 storeys (immediate east and west), 17 storeys (approximately 70m south), 21 storeys (approximately 130m north) and 40 storeys (approximately 170m north). The Commission considers the Project to be generally consistent and appropriate with the envisioned transition of height within this context; and
- the Project includes the provision of 1,696 m² of communal open space at podium level including recreational areas such as a BBQ area, fitness area and social gathering spaces to alleviate increase pressure on existing outdoor public spaces as a result of the Project.

5.1.2 Podium height and design

62. The Project includes a three-storey podium with a mezzanine to be built to the street frontages with no setback. Council raised concerns that the height of the podium at 16 metres would be perceived as a four storey structure, which is inconsistent with the three-storey commercial podium in the planning proposal reference design. Some submissions made to the Department also considered the amount of commercial space within the podium excessive given the supply already existing in Crows Nest (AR para 67 – 68).
63. Upon review of the proposal in early 2024, the State Design Review Panel (**SDRP**) did not raise any specific concerns with the scale of the podium apart from recommendations relating to the landscaping at the podium level communal open space (AR para 69).
64. A public submission raised concerns with the building height exceedance, noting that the podium height could be reduced to reduce the overall building height.

Commission's Findings

65. The Commission acknowledges the concerns raised by Council and the community regarding scale. However, the Commission finds that the scale of the podium would respond appropriately to the 2 – 4 storey building heights in the immediate surrounding context. The podium has also been designed to respond to the character of Crows Nest village by providing indentation and articulation to the podium walls as well as through site links to break up the mass at ground level. It is also noted the Site slopes down to the south making the podium higher above ground level at this point. The Commission considered the possibility of a step down in the podium to the south but concluded this would not be practical given the impact on the proposed podium level facilities.
66. The Commission is satisfied the scale of the proposed podium is appropriate, noting that it is not the subject of a specific development standard under the NSLEP. The podium has also been designed to accommodate 8,002 m² of commercial floorspace, which is in accordance with clause 4.4A of the NSLEP which requires the development to provide a minimum non-residential FSR of 2.5:1. The Commission is also satisfied the podium has been designed to provide adequate pedestrian amenity by including through site links providing pedestrian connection from Falcon Street, Alexander Street and the Pacific Highway, addressing pedestrian comfort levels due to wind impacts and including active street frontages to encourage pedestrian traffic.
67. The Commission is also satisfied that reducing the podium height to reduce the overall height of the building is not necessary as the Commission is of the view that:
- the Project's building height is appropriate (as discussed above in section 5.1.1);
 - the podium height is appropriate to respond to the sloping topography of the Site;
 - the podium height is appropriate to be able to enable adequate amenity for pedestrians through wind protection; and
 - the podium height enables the provision of 8,002m² of commercial floor space in accordance with the minimum non-residential FSR of the NSLEP.

5.1.3 Tower design

68. The Applicant proposes a 19 storey, triangular residential tower setback 6m from the podium edges with apartments located around a central void. The Department notes that the triangular tower form is guided by the applicable development standards in the Housing SEPP, the irregular shape of the Site and the reference design scheme in the recent planning proposal (AR para 78).

69. The Applicant responded as follows to concerns raised by the SDRP and in public submissions about the tower's design, particularly regarding the tower's response to the local context through building design, façade treatments to better respond to solar orientation and reduce glare impacts, and how the breezeway would contribute to the overall amenity of residents (AR para 76):
- *“the simple tower form has been designed to relate to taller buildings near St Leonards Station as it would be viewed more prominently from the broader visual catchment;*
 - *the tower form has a maximum façade length of 45m which is broken up with vertical recesses and further articulation achieved through balconies and voids;*
 - *the breezeway contributes to cross ventilation of the apartments and provides ventilated corridors at each level;*
 - *the proposal includes sunshades and various other materials (such as metal frames and screens) that will reduce glare; and*
 - *the communal open space area at the podium level will provide shaded recreational opportunities as well as well-lit social gathering spaces.”*
70. The Applicant provided a Solar Light Reflectivity Study, dated 25 March 2025, which recommended that the glare from glazing or any other components of the external façade should not exceed a reflective value of more than 20% (AR para 77).

Commission's Findings

71. The Commission agrees with the Department's assessment and finds that the design of the tower is acceptable as:
- the Applicant has reasonably responded to the design recommendations of the SDRP by incorporating a variety of finishes and materials in the external façade design to introduce sunshades and reduce glare, as well as including vertical recesses at regular intervals;
 - the design incorporates a layout that will allow future residents, including affordable housing residents, to enjoy a high level of residential amenity, including access to podium level communal open space;
 - it is consistent with the design quality principles in the Housing SEPP;
 - it presents a high standard of architectural design (including in its treatment of setbacks, bulk and scale) that appropriately responds to the Site and the desired future character of the local area; and
 - the façade materials will comply with the reflectance criteria identified in the Solar Light Reflectivity Study (as imposed by the Commission by condition B2(c)).
72. The Commission is of the view that the Project achieves a high quality, acceptable design outcome that is compatible with the surrounding context, including the desired future character of the local area. The Commission imposes condition B2 requiring the Applicant to submit the final material and finishes specifications to the satisfaction of the Planning Secretary prior to the issue of the first construction certificate.

5.1.4 Privacy and building separation

73. The Commission acknowledges concerns raised in submissions regarding the potential impact of the proposal on the visual privacy of nearby residential buildings as well as light pollution. However, the Commission is satisfied that given the isolated nature of the Site, the setback of the tower and the width of the adjacent roads (approx. 12m to 17m) the proposal can achieve adequate building separations in accordance with the ADG, both in the current context and with future developments. The Commission has also imposed condition E23 requiring the Applicant to ensure the development's outdoor lighting minimises light spillage and does not create a nuisance to surrounding properties or the public road network.
74. The Commission has considered the impacts of overshadowing on nearby residential properties at section 5.6.

5.2 Heritage

75. The Department's AR states that the Site is located in a transitional area with low density, medium rise shop-top housing and high-density developments and is close to multiple heritage items and two heritage conservation areas (**HCA**) listed under the NSLEP (AR para 81).
76. Council raised concerns that a more considered design approach at both podium and tower level would be needed to respond to the surrounding heritage context and limit visual impacts on the locality, nearby heritage items and HCAs.
77. The Applicant submitted a Heritage Impact Statement (**HIS**) (March 2024 with an addendum August 2024) and a Visual Impact Assessment (March 2024 with an addendum September 2024) which assessed the impact of the proposed built form on the locality, including the HCAs and nearby heritage items. Both assessments concluded that (AR para 83):
- the lower levels of the proposed building will be screened from the Holtermann Estate B HCA by existing commercial buildings in Crows Nest;
 - the height of the podium is compatible with the 2 - 4 storey height of the nearby heritage items, especially the Crows Nest Hotel;
 - while the tower is substantially larger than the surrounding heritage items, it follows the planning controls for the Site and has been setback; and
 - the impacts of the proposed building as a new skyline element with a prominent visual impact aligns with the applicable planning controls for the Site and the strategic vision for Crows Nest.
78. In reaching these conclusions, the Commission notes both assessments considered impacts in relation to the future strategic planning vision for Crows Nest, rather than in relation to the existing urban context.
79. The Commission also notes that the Applicant's HIS outlines that there are areas of high archaeological potential on the Site and requested additional information from the Applicant outlining how these areas have been considered and will be managed to mitigate heritage impacts. In its response to the Commission dated 12 December 2024, the Applicant stated that the potential for archaeological resources to occur on in these areas are low to nil dating to Phase 1 (1821-1886), low to moderate dating to Phase 2 (1887-1919) and moderate dating to Phase 3 (1920-1950). The Applicant also provided management measures to ensure these areas are managed to mitigate impacts to any items found in these areas including archaeological inductions and an unexpected finds procedure.

Commission's Findings

80. The Commission notes the concerns raised by Council and in submissions regarding the potential heritage impacts of the Project. The Commission acknowledges that the Project would represent a prominent and visible change to the immediate surrounds and would be visible from heritage items including the Crows Nest Hotel, and the Holtermann Estate B and C HCAs located to the east and north-east. The Commission considers that the heritage impacts are acceptable as:
- the planned transformation of the Crows Nest precinct will mean that, along with other expected developments, the Project will be consistent with the envisioned broader skyline context;
 - any redevelopment of the Site in line with the NSLEP would be highly prominent in this location;
 - the benefit of providing affordable housing in the locality outweighs the additional visual impacts caused by the 30% increased height beyond the base NSLEP development standards;
 - mid to distant views from the east and residential precincts to the west of the Pacific Highway will largely be screened by topography, vegetation and existing buildings;
 - from 2-3 km south of the Site, the Project would only form a small component of the expansive views from the foreshore of Sydney Harbour;
 - the three-storey podium appropriately responds to the height of the nearest heritage item, the Crows Nest Hotel; and
 - the overall bulk of the podium is broken down by connecting through site links, and variations in the façade are achieved through material treatment including the use of brick to reference the Crows Nest Hotel.
81. Further, the Commission is satisfied with the recommended mitigation measures within the Applicant's HIA, Heritage Memo and additional information dated 12 December 2024. The Commission is of the view these measures are appropriate to manage residual impacts to heritage items, HCAs and the areas of high potential archaeological significance on the Site. The Commission has therefore imposed the following conditions:
- condition A17 requiring Registered Aboriginal Parties to be kept informed about the progress of the development;
 - condition C1(h) requiring an unexpected find protocol for Aboriginal and non-Aboriginal heritage to be included in the Construction Environmental Management Plan;
 - condition D12 requiring vibratory compactors to not be used within 30 metres of a heritage building;
 - condition D30 requiring all works to immediately cease and notification to Heritage NSW, and in some cases the Planning Secretary, if a relic or Aboriginal object is found; and
 - condition D32 requiring all construction to be undertaken in accordance with the recommendations of the Aboriginal Cultural Heritage Assessment, HIS, Heritage Memo and the additional information dated 12 December 2024.
82. The Commission finds that the Project's visual impacts on the locality and broader area are acceptable, and that the Proposal would not result in unreasonable visual impacts on nearby heritage items or HCAs.

5.3 Residential Amenity

83. The Project includes 188 residential apartments within the tower which have been designed to face either the Pacific Highway, Falcon Street or Alexander Street. The tower includes an internal void which provides open air corridors or breezeway to all apartments as well as supplementing cross-ventilation.

5.3.1 Solar access

84. The Apartment Design Guide (**ADG**) recommends 70% of residential apartments receive a minimum of 2 hours of direct sunlight to living rooms and private open spaces between 9am and 3pm at mid-winter (21 June). The Department's analysis of the Proposal found that 129 apartments (a share of 68.61%) would receive the recommended 2 hours of direct sunlight during midwinter and three apartments less than the recommended 70% (AR para 92).
85. For Communal Open Spaces (**COS**) within the residential apartments, the ADG recommends that 50% of the principal usable part of the COS receives sunlight for a minimum of 2 hours between 9am and 3pm at mid-winter. In response to feedback from the SDRP, the Applicant modified the design of the principal COS and relocated it to the north of the floorplate to increase its solar access during the day. The Applicant's Daylight Illumination Study (dated August 2024) found that the COS will achieve the two hours of daylight illumination between 9am and 3pm during mid-winter (AR para 98).
86. The Applicant's Daylight Illumination Study found that the breezeway around the tower's internal void would be overshadowed during mid-winter and that at levels 4 to 15 artificial lighting would be required for safe movement. The breezeway along levels 16 to 21 would receive adequate natural light throughout the day (AR para 103).

Commission's Findings

87. The Commission acknowledges that the recommended solar access criteria within the ADG has not been met. However, given the Site's orientation, with a long south-western frontage and the irregular shape of the building, the Commission finds that the Applicant has reasonably positioned the apartments for solar access in response to the context of the Site and that the minor departure from the ADG criteria is acceptable.
88. The Commission is satisfied that the nominated principal COS located along the northern side of the podium will achieve more than 2 hours of solar access in mid-winter (AR para 100). The Commission is also satisfied that that overshadowing of the breezeway would not significantly affect the amenity of apartments as the breezeway would only act as a secondary outlook, and provides benefits such as an additional outlook, natural ventilation and daylight. The Commission imposes condition E51(e) requiring the breezeway circulation areas from levels 4 – 15 to be artificially lit.

5.3.2 Cross ventilation and acoustic privacy

89. The ADG recommends that 60% of residential apartments in the first nine storeys of a building be naturally cross ventilated. Apartments at ten storeys and above are deemed to be cross ventilated as long as any enclosure of the balcony at these levels allows adequate natural ventilation and cannot be fully enclosed (AR para 106). The Applicant outlines that 47 out of 51 apartments in the first nine storeys will be cross ventilated, representing a share of 92.2%.

90. The Applicant's Natural Cross Ventilation Wind Tunnel Study dated 3 September 2024 and Acoustic Assessment Report dated 31 July 2024 (**AAR**) concluded that in the lower nine storeys, 13 corner apartments satisfy the ADG cross ventilation criteria, while an additional 34 units achieve cross-ventilation via windows located above the apartment entry doors facing the breezeway (subject to the windows being fully openable). The AAR concludes that the acoustic amenity of apartments would not be greatly affected by the breezeway windows, however apartments fronting the Pacific Highway and Falcon Street would be subject to road noise impacts and their respective windows must be kept closed (AR para 110). To enable natural ventilation for these noise-affected apartments while maintaining acoustic amenity, the AAR proposed (AR para 111):
- *“acoustic treatment to the soffit of the balconies;*
 - *low level operable windows for the rooms connecting to the balconies; and*
 - *a trickle ventilation system (outside air drawn into the apartment and released through a vent in the ceiling as an alternate natural ventilation system) or vertical plenum acoustic attenuation measures (such as louvres) for the rooms with no connection to the balconies.”*
91. The Department is satisfied with acoustic treatment to the balcony soffits and inclusion of low-level operable windows for rooms connecting to the balconies. However, the Department considered that the proposed trickle ventilation system for noise affected apartments would not be an effective natural ventilation system as it requires a partly motorised system to release air into each room as well as a high natural wind force to enter through the vents which would not always be available to ventilate an apartment with closed doors and windows (AR para 113). The Department has instead recommended the installation of acoustically attenuated vertical louvres to provide better natural ventilation for rooms with no connection to balconies (AR para 114).

Commission's Findings

92. The Commission finds that despite the Applicant's proposed design initiatives, some apartments fronting the Pacific Highway and Falcon Street will not be able to achieve the acoustic amenity criteria when doors or windows are opened. The Commission notes that achieving natural ventilation for these apartments at all times would also be impractical with reliance on air conditioning being unavoidable at times. The Commission therefore agrees with the Department's recommendation to instead include vertical plenums with acoustically attenuated louvres to living room and bedroom windows with no direct connection to balconies for all apartments on levels 4 to 13 facing the Pacific Highway and all bedrooms for apartments on levels 4 to 13 and all living rooms for apartments on levels 4 to 11 facing Falcon Street. The Commission has imposed condition B1 to give effect to this requirement. With this condition and the contribution of the breezeway, the Commission is satisfied with the Project's ability to achieve a suitable level of cross-ventilation in line with the ADG performance criteria.
93. The Commission finds that the design of the Project reasonably follows the principles of the Interim Guideline for Development Near Rail Corridors and Busy Roads as the design of the proposal sets the residential tower back from the podium, with built in balconies and recessed bedroom windows where possible to reduce noise impacts.

5.4 Traffic, Parking and Servicing

5.4.1 Traffic

Operational traffic

94. The Applicant's amended Traffic Impact Assessment dated 29 August 2024 (**TIA**), states that the Project is aiming to support sustainable transport. This includes a low car mode share (the percentage of trips that use a car) of 20% for residential and 25% for commercial, with other travel to be by walking, cycling and public transport (AR para 119). The TIA includes a preliminary Green Travel Plan with a range of mechanisms to support achieving the target mode shares and improve sustainable transport usage (AR para 120).
95. The Applicant's TIA concluded that the Project would result in a net traffic generation of 57 and 79 vehicles per hour during the AM and PM peaks, respectively. This represents an additional 2% over and above the existing total traffic movements through the Pacific Highway / Falcon Street intersection. The TIA found that the additional traffic generation would not require any upgrades to the road network or nearby intersections. Traffic modelling also predicted that the proposal would not adversely impact vehicle queues on Alexander Street, subject to left-in and left-out access being provided off Alexander Street (AR para 119).
96. A public submission raised concerns with the assessment of additional growth in traffic in the context of the future completion and opening of the Western Harbour Tunnel. The Commission notes that the 2036 Plan was informed by a Future Year Modelling Report dated 13 July 2020 that included consideration of the Western Harbour Tunnel and a Strategic Transport Study dated 3 October 2018 that also included the Western Harbour Tunnel in its modelling. In its response to the Commission dated 17 December 2024, the Department notes that the height and FSR for the Site under the NSLEP was accounted for in the Planning Proposal, which was informed by the traffic studies of the 2036 Plan, and that the Applicant's TIA submitted with this Application assessed the impacts of the additional uplift proposed on top of what has already been assessed by the Planning Proposal.
97. The public submission also raised concerns with the diversion of traffic movements from the Sydney Harbour Bridge and Sydney Harbour Tunnel into the Western Harbour Tunnel, adding more vehicles to the Falcon Street offramp. The Commission notes that whilst the opening of the Western Harbour Tunnel is likely to induce some additional traffic, the Western Harbour Tunnel Falcon Street offramp is proposed at the location of the existing Warringah Freeway Falcon Street offramp, which carries the existing traffic from the Sydney Harbour Bridge and Sydney Harbour Tunnel into the Crows Nest area.
98. A public submission also raised concerns with the existing operation of the intersections adjacent to the Site and the proposed Project's impact on them. This included the Falcon Street/Alexander Street intersection, the performance of which was modelled in a report prepared by AECOM for Sydney Metro, dated 10 April 2024, as currently performing at a low level of service at the south approach at weekday peak times and at the north approach at weekend peak times.
99. In its response to the Commission dated 17 December 2024, the Department considered the Supplementary Transport Technical Note prepared as part of the finalisation report for the Crows Nest TOD. The Commission notes that the Technical Report was intended to be read in conjunction with the 2036 Plan and its transport studies.

100. The Department notes that this Technical Note identifies the increase in predicted traffic generation as a result of the Crows Nest TOD, on top of what was considered by the 2036 Plan, as 820 vehicle trips in the AM peak. The Department concluded that the additional 820 vehicle trips will be distributed across the precinct and comprise a small proportion of overall traffic demands. Additionally, the Department notes that the Warringah Freeway upgrade (which the Commission notes is linked to the Western Harbour Tunnel Project) could potentially reduce the volume of regional traffic through the area, freeing up capacity for local traffic, but also notes there are few opportunities for more traffic network improvements other than those already identified due to a constrained network.
101. In its response the Department confirmed that regarding cumulative traffic impacts, the additional traffic generated by the proposal has already been accounted for in the Department's traffic analysis for the Crows Nest precinct. The Department concludes that *"the net impacts of the development would continue to be minor compared to the overall traffic movements in the precinct"*.

Construction traffic

102. A public submission raised concerns with the consideration of construction waste management impacting on traffic, specifically on Alexander Street. The submission raised concerns with the lack of detail regarding truck sizes, stockpiling, frequency and path of truck movements and the timing of waste removal from the Site. One submission also raised concerns with the construction vehicle access route using the Falcon Street offramp on the Warringah Freeway which is currently closed due to the Western Harbour Tunnel works.
103. The Applicant's Construction Environmental Management Plan outlines the proposed waste management measures to be in force during construction including:
- a Construction Waste Management Plan that outlines the estimated volumes of construction waste, proposed methods of use (on-site reuse, contractor and recycling outlet and/or waste depot) and proposed monitoring and reporting procedures; and
 - a Construction Traffic Management Plan that outlines work zones, traffic control plans, proposed monitoring and performance procedures, a Site Management Plan, construction work zones and swept path analysis.

Commission's Findings

Operational traffic

104. The Commission acknowledges the concerns raised by Council and the community regarding the development's potential to exacerbate operational traffic and queuing in the locality and on adjoining roads, including on the Alexander and Falcon Street intersection. However, the Commission finds that in representing only an additional 2% of the existing traffic movements through the Pacific Highway and Falcon Street intersection, vehicle movements associated with the Project are not expected to generate high traffic volumes. Additionally, no queuing or performance issues are predicted on Alexander Street given the left in / left out restriction on the proposed driveway. This is supported by low target car mode share consistent with Transport for NSW's Guide to Traffic Impact Assessment 2024, as well as condition E30 which requires the Applicant to prepare a final Green Travel Plan, and condition B46 requiring details of the roadworks to prohibit right turn movements to/from the driveway within the Site onto Alexander Street be provided to the Certifier and endorsed by the relevant roads authority.

105. Additionally, the Commission acknowledges concerns raised regarding the traffic impact of the development on intersection operation, and in particular the intersection of Falcon Street and Alexander Street, and the potential traffic impacts of the Western Harbour Tunnel. The Commission notes that the height and FSR for the Site identified within the NSLEP resulted from the Planning Proposal for the Site, and was informed by the traffic studies of the 2036 Plan. Additionally, the Transport Impact Assessment prepared in support of the Planning Proposal identified a greater amount of traffic generation than the currently proposed development due to a higher car share mode. The intersection modelling undertaken for the Planning Proposal was also undertaken based on a development proposed in a previous planning proposal scheme for the Site for 233 apartments rather than 188.
106. The Commission notes that despite these conservative modelling assumptions, the intersections adjacent to the Site will continue to operate at their current levels or at a marginally lower level of service post development with the proposed traffic generation of the current proposal.
107. The Commission acknowledges the intersection modelling undertaken by AECOM for Sydney Metro dated 10 April 2024 which outlines the low level of operation of the Falcon Street/Alexander Street intersection at peak times based on traffic surveys conducted in November and December of 2023. The Commission notes that TfNSW reviewed the proposal, and after a bespoke assessment of the potential impact of the driveway access on queuing on Alexander Street completed by the Applicant based on traffic data from August 2023, did not raise any concerns with the Project's impact on the Falcon Street/Alexander Street intersection.
108. The Commission notes that the broader road network of the Crows Nest area is constricted and experiences congestion at peak times, including at intersections in proximity to the Site, with the Department's Technical Note finding the network is expected to experience more congested conditions over time, though modelling has indicated most of the network will continue to operate satisfactorily. However, the Commission also recognises the proposed increase in density and uplift of the Crows Nest precinct as a result of the 2036 Plan and Crows Nest TOD, which was informed by detailed traffic analysis, and considers that the minor additional traffic generated from the Project will have a minimal impact on the existing road network.
109. The Commission also notes that TfNSW raised no further concerns regarding the traffic impacts of the proposal subject to the imposition of a condition requiring the left-in and left-out movement of the driveway (imposed as condition B46).
110. The Commission is satisfied that the impacts of the proposed traffic generation on the adjacent intersections have been adequately assessed and the Project will not have an unacceptable impact on the adjacent intersections.
111. The Commission notes the importance of the Project's target mode shares and sustainable transport usage in alleviating some potential traffic generated by the development. The Commission has therefore imposed condition E30 requiring the final Green Travel Plan to be prepared in consultation with TfNSW, consistent with the Traffic Impact Assessment Report, including a mechanism to monitor the effectiveness of the Plan, and an implementation strategy that commits to specific management actions, operational procedures and timeframes for implementation.
112. The Commission notes the changing nature of the Crows Nest precinct and acknowledges the potential change in use of the 48 affordable housing apartments after 15 years. The Commission has therefore imposed a requirement that the Green Travel Plan be reviewed and updated annually to ensure that it responds to any changes in transport modes.

Construction traffic

113. The Commission has considered the Applicant's proposed management of construction traffic in its Construction Environmental Management Plan (**CEMP**), dated 11 March 2024 which identifies potential impacts, control measures, timing and responsibility. The Commission finds that construction traffic impacts can be managed without creating unreasonable amenity impacts, subject to condition C2 which requires the Applicant to prepare a Construction Traffic and Pedestrian Management Plan (**CTPMP**) prior to the commencement of any work.
114. The Commission is also satisfied with the Applicant's proposed control measures to mitigate the impacts of construction trucks queuing at entrances or impacting on the function of Alexander Street outlined in the Applicant's CEMP including accredited traffic controllers, ensuring adjacent public roads are free from construction materials and the implementation of a Traffic Control Plan.
115. The Commission also acknowledges concerns raised regarding the use of the currently closed Falcon Street exit off the Warringah Freeway for construction vehicle access. The Commission notes that the proposed construction vehicle haulage route outlined in the Applicant's CEMP submitted with the EIS identifies the use of the Pacific Highway exit, not the Falcon Street exit, for access to the Site, however the subsequent Transport Impact Assessments show the use of the Falcon Street offramp for construction vehicle access. The Commission is satisfied that the preparation of a CTPMP as imposed by condition C2 requiring details of construction vehicle access arrangements and haulage routes will adequately consider the available construction vehicle access routes, construction vehicle movements and any potential conflicts.
116. The Commission acknowledges concerns raised regarding the impact of construction waste management on traffic. The Commission is satisfied with the Applicant's proposed construction waste management procedures and management, subject to the appropriate construction management plans being prepared. The Commission has therefore imposed condition C5 requiring a Construction Waste Management Sub-Plan that must include identification of an appropriate area for storage of waste and a traffic plan showing transport routes within the Site. The Commission has also imposed condition C2 requiring a CTPMP including information on the proposed work zones, construction vehicle access arrangements and routes, predicted number and timing of construction vehicle movements and vehicle types, and identification of any potential conflicts with construction vehicle movements.

5.4.2 Parking, access and servicing

117. The Applicant proposes 220 car spaces in seven basement levels, which includes spaces for 20 commercial vehicles, 190 residential cars, 6 car share spaces and 4 service vehicle spaces. There will also be space provided for 302 bicycles. The Applicant's TIA states that the proposed parking rates for the affordable and non-affordable units have both been calculated using the non-affordable housing rate (which is higher) under the Housing SEPP, given the conversion of the affordable units to market housing after 15 years (AR para 128).

118. Council and public submissions recommended residential parking be provided in accordance with the parking rates set by the NSDCP. The minimum residential car parking rates set by the Housing SEPP (190 when calculated using the non-affordable housing rate) is higher than the residential car parking requirements under the NSDCP (133 spaces). The Commission notes that the NSDCP does not apply to the Project as it is SSD, and the Housing SEPP provisions are applicable to the Project. Therefore, provision of only 133 spaces in accordance with the NSDCP would mean the Project is non-compliant with the non-discretionary standards of parking provision within section 19 of the Housing SEPP.
119. Council raised concerns with the proposed number of basement levels and that there was no reduction in proposed basement levels commensurate with the reduction in car parking spaces from the original proposal (324 spaces) to the current proposal (220 spaces). The Project proposes seven basement levels containing 220 car spaces, 302 bicycle spaces, garbage rooms, a car wash bay, end of trip facilities, plant rooms, residential and commercial storage spaces and a loading bay with turntable. In its meeting with the Commission, the Applicant outlined that the area within the basement levels freed up by the reduction in car spaces has been re-allocated to provide additional storage for both residential and commercial/retail purposes. The Applicant's RtS dated 17 October 2024 outlines further changes to the basement layout as a result of the reduction in proposed parking including optimisation of residential storage, upgrades to parking circulation, the inclusion of an emergency vehicle bay and additional loading zone, and changes to layout to avoid parking aisles finishing in low clearance zones.
120. The Department's AR states that access to the Site is proposed via a two-way driveway off Alexander Street, with swept paths and turning areas provided by the TIA demonstrating compliance with the relevant Australian standards (AR para 134). Basement level 1 includes service areas and a loading bay accommodating small to medium rigid vehicles. The loading bay will be used for commercial waste collection and other services only (AR para 135).
121. The Commission notes that residential waste collection is proposed to occur from Alexander Street due to current Council requirements, even though on-site collection is possible, along with the on-site collection of retail/commercial waste.

Commission's Findings

122. The Commission acknowledges the concern raised by submitters regarding the number of parking spaces provided. The proposal includes 190 residential car parking spaces, which is higher than the required minimum of 174 spaces based on the respective parking rates for the Project's affordable and non-affordable apartments, which differ. However, the Commission finds that this is a preferable outcome, given the transition of affordable apartments to market rate apartments after 15 years would leave the development non-compliant if only 174 residential spaces were provided. The Commission also notes that the North Sydney DCP does not apply to this SSD application, and is of the view that the provision of residential car parking spaces in line with the Housing SEPP after the 15-year mark is appropriate. The Commission also notes the rates provided within the Housing SEPP are a minimum rate and not a maximum rate and therefore do not prevent the provision of parking above these rates.
123. The Commission agrees with the Department that the additional spaces would not result in detrimental traffic generation and that a 15-year quarantine of the 16 transitional spaces (as proposed by the Applicant) is unnecessary.

124. For the reasons set out above, the Commission finds that the proposed number of car spaces is appropriate and imposes condition B9, requiring the provision of 190 residential car parking spaces as well as sufficient bicycle parking, commercial car spaces, car share spaces and electric vehicle charging infrastructure.
125. The Commission acknowledges concerns raised regarding the number of basement levels proposed not being reduced in line with the reduction in proposed parking spaces from 324 to 220 spaces. The Commission is satisfied that the proposed 7 basement levels are acceptable as:
- the impacts of excavation and construction of the basement have been adequately assessed including through:
 - a comprehensive Geotechnical Investigation and further site stability requirements the Commission has imposed as condition B3;
 - a review of the proposal by Sydney Metro which provided conditions of consent to mitigate any adverse impacts on the operation and safety of the Sydney Metro City & Southwest rail corridor which the Commission have imposed as conditions of consent; and
 - a Dewatering Management Plan, a pre-demolition Detailed Site Investigation and a Construction Environmental Management Plan including the excavation timeframe, truck sizes required and truck trips per day;
 - the changes to basement layouts including the provision of additional storage for residential and commercial/retail purposes, upgrades to parking circulation, and provision of an emergency vehicle bay increase amenity for residential and commercial/retail users of the development;
 - the Commission also notes that the proposed parking does not include any “small vehicle” spaces, compared to the originally proposed 16 residential and 9 commercial/retail “small vehicle spaces” which also increases amenity for users.
126. The Commission is satisfied with the proposed driveway access, turning areas and servicing arrangements subject to condition E40, requiring the submission of a Car Parking, Loading and Servicing Management Plan to the Certifier prior to the issue of any occupation certificate.

5.5 Affordable Housing

127. The Project includes 48 affordable housing apartments (15% of the overall GFA) to be managed by a community housing provider for 15 years. Public submissions raised concerns that the affordable housing being provided for a period of 15 years only was insufficient, and they should be provided in perpetuity. Council also raised concerns that the Project would not be required to provide affordable housing in accordance with the Crows Nest TOD requirements. The Commission notes the Crows Nest TOD provisions at Part 7 of the NSLEP, were they to apply to this Application, would mean that the Commission could not grant consent to the development unless it had considered the Crows Nest TOD Precinct Affordable Housing Principles and the impact of the development on the existing mix and likely future mix of residential accommodation in North Sydney. Additionally, the Crows Nest TOD provisions at Part 7 of the NSLEP would permit, but not require, the Commission to impose a condition requiring an affordable housing contribution equivalent to 6% for this Site.
128. The Commission notes that other public submissions in support of the Project highlighted the public benefit of the provision of affordable housing in a well-located area, including the provision of housing for local families and young people.

Commission's Findings

129. The Commission is satisfied that the Project provides the required rate of affordable housing under the applicable in-force statutory instrument, being the Housing SEPP. The Commission is satisfied that the Project provides well-located, in demand and high-quality affordable housing, which will contribute to the NSW Government's target of 377,000 well-located homes over the next 5 years and will utilise the affordable housing initiatives within the Housing SEPP that aim to support the delivery of well-located affordable and market housing in NSW.
130. The Commission notes that the Crows Nest TOD provisions of the NSLEP do not apply to the Application, however it considers the provision of 48 affordable housing apartments (15%) for a period of 15 years is consistent with the Crows Nest TOD Precinct Affordable Housing Principles as:
- it will be provided and managed to accommodate a diverse residential population;
 - it will be rented out to tenants at rents that do not exceed a benchmark of 30% of actual household income (as outlined in the Applicant's Social Impact Assessment dated 7 March 2024 and defined in the Housing SEPP);
 - it will be managed to maintain the use as affordable housing for at least the required period of 15 years under the Housing SEPP; and
 - the affordable housing apartments will be designed to the same standard as the market rate apartments within the development.
131. The Commission is also satisfied that the Project will be consistent with the likely future mix of residential accommodation in North Sydney and notes the Project will provide for a substantially higher number of affordable apartments in the medium term compared to a smaller number of affordable apartments in perpetuity.

5.6 Overshadowing Impacts

132. The Applicant has submitted that the Project's overshadowing impacts are consistent with the statutory provisions applicable to the Project included in the ADG.
133. The Applicant's shadow impact analysis demonstrates that full solar access between approximately 12:30pm and 3pm at mid-winter is maintained for all developments south of the Pacific Highway and full solar access between 9am to 1pm at mid-winter is maintained for properties located east of the Site. The shadow impact analysis demonstrates that the primary impact of the additional height proposed due to the Housing SEPP bonus provisions is a minor increase in overshadowing on North Sydney Girls High School's western courtyard after 2:30pm.
134. Additionally, a public submission raised concerns with the overshadowing impacts of the proposed development on Holterman Estate C HCA. The Applicant's shadow impact analysis demonstrates that the Holterman Estate C HCA will receive solar access from 9am to 1pm. One submission also raised concerns with the impact of overshadowing on the public open space at the park in Hayberry Street, which the Commission understands is referring to the 'Hayberry St Road Reserve' located at the western end of Hayberry Street.

Commission's Findings

135. The Commission is satisfied that the overshadowing impacts of the proposed development do not result in any unacceptable impacts on the surrounding developments as the surrounding residential areas would maintain 2 hours of solar access between 9am and 3pm at mid-winter in accordance with the ADG. Further, the additional impacts to North Sydney Girls High School are limited to minor additional overshadowing after 2:30pm, with solar access being maintained from 9am to 2:30pm.
136. Further, the Commission is satisfied that the impacts of overshadowing on the Holterman Estate C HCA do not result in unacceptable impacts as the HCA will maintain solar access between 9am and 1pm at mid-winter in accordance with the ADG. The Commission is also satisfied that the Hayberry St Road Reserve will not be impacted by unacceptable overshadowing impacts as a result of the Project as the Reserve will maintain existing solar access experienced between 9am and at least 1pm at mid-winter.

5.7 Construction Noise

137. The Applicant provided an assessment of construction noise impacts, proposed mitigation measures and set out proposed construction hours. The Applicant proposes to undertake noisy rock breaking and piling activities from 7am each day (with two 1-hour respite periods) to expedite construction works. This would be inconsistent with standard construction hours set in the Interim Construction Noise Guideline (ICNG).

Commission's Findings

138. The Commission acknowledges the concern raised in public submissions regarding the effect of construction noise on nearby residents. The Commission agrees with the Department's recommendation that construction be undertaken within the standard hours stipulated by the ICNG and that rock breaking, rock hammering, pile driving, and similar activities must only be carried out from 9am. The Commission imposes this in conditions D3 – D6. The Commission is satisfied that construction noise can be managed appropriately and imposes condition C3 which requires the Applicant to develop a Construction Noise and Vibration Management Plan. The plan must include measures and procedures for reducing noise, identifying non-conformances with the plan and handling complaints from residents.

5.8 Other Issues


139. The Commission agrees with the Department's assessment of all other issues, including, visual privacy and building separation, landscaping and communal open space, through site links, public domain works and street trees, operational noise and vibration, Aboriginal cultural heritage, other construction impacts, stormwater and flooding, Connecting with Country framework, crime prevention through environmental design, wind impacts, operational waste management, groundwater, obstacle limitation surfaces, development contributions, outdoor light spill, Sydney Metro impacts, relocation of the bus stop on Pacific Highway adjacent to the Site and consultation with the community.
140. Subject to the imposed conditions relevant to each of these issues, the Commission is satisfied the Project's impacts are minimal and capable of being appropriately monitored and managed.

6. The Commission's Findings and Determination

141. The views of the community were expressed through public submissions and comments received (as part of exhibition and as part of the Commission's determination process). The Commission carefully considered all of these views as part of making its decision.
142. The Commission has carefully considered the Material before it as set out in section 3.1 and has weighed the broader strategic and social benefit of increased housing supply, including affordable housing supply delivered by this development, in the context of the impacts on the environment and local amenity of residents which were set out in section 5. Based on its consideration of the Material, the Commission finds that the Project should be approved subject to conditions of consent for the following reasons:
- the proposed use is permissible with consent;
 - the Project will provide diverse housing options, including 15% of the total GFA as in-fill affordable housing dwellings in a mix of typologies for at least 15 years;
 - the Project meets the objectives of the MU1 zone under the NSLEP;
 - the Project is consistent with the aims of the NSW Government to increase the supply of well-located housing, including affordable housing, in accordance with the National Housing Accord;
 - the Project is in an advantageous location close to existing public transport networks, employment centres, services and other amenities;
 - the Project is an orderly and economic use of the land;
 - the Project will provide appropriate internal and external amenity for future residents;
 - the Project will contribute to activation of the public domain and provide additional economic and community uses for the locality;
 - the Site can physically accommodate the proposed development without significant environmental impacts; and
 - impacts on surrounding land uses have been minimised where possible and are capable of being further mitigated through conditions of consent.
143. For the reasons set out in paragraph 142 above, the Commission has determined that the consent should be approved subject to conditions. These conditions are designed to:
- prevent, minimise and/or offset adverse environmental impacts;
 - set standards and performance measures for acceptable environmental performance;
 - require regular monitoring and reporting; and
 - provide for the on-going environmental management of the development.
144. The reasons for the Decision are given in the Statement of Reasons for Decision dated 23 December 2024.



Michael Wright (Chair)
Member of the Commission



Duncan Marshall AM
Member of the Commission



New South Wales Government
Independent Planning Commission

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