

Department of Planning, Housing and Infrastructure

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Mixed use development including in-fill affordable housing – Five Ways, Crows Nest

State Significant Development Assessment Report (SSD-66826207)

November 2024





Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Preface

This assessment report provides a record of the Department of Planning, Housing and Infrastructure's (the Department) assessment and evaluation of the State significant development (SSD) application comprising a mixed-use development including in-fill affordable housing located at 391-423 Pacific Highway, 3-15 Falcon Street, and 8 Alexander Street, Crows Nest, lodged by Deicorp Construction Pty Ltd. The report includes:

- an explanation of why the proposal is SSD and who the consent authority is
- an assessment of the proposal against government policy and statutory requirements, including mandatory considerations
- a demonstration of how matters raised by the community and other stakeholders have been considered
- an explanation of any changes made to the proposal during the assessment process
- an assessment of the likely environmental, social and economic impacts of the proposal
- an evaluation which weighs up the likely impacts and benefits of the proposal, having regard to the proposed mitigations, offsets, community views and expert advice; and provides a view on whether the impacts are on balance, acceptable
- an opinion on whether the proposal is approvable or not, along with the reasons, to assist the Independent Planning Commission in making an informed decision about whether development consent for the proposal can be granted and any conditions that should be imposed.

Executive Summary

This report details the Department's assessment of the State significant development application SSD-66826207 for a mixed-use development with infill affordable housing located at 391-423 Pacific Highway, 3-15 Falcon Street, and 8 Alexander Street, Crows Nest, lodged by Deicorp Construction Pty Ltd (the Applicant).

This report will be provided to the Independent Planning Commission (IPC) for their consideration when deciding whether to grant consent to the SSD.

The Applicant proposes to construct a 22-storey mixed-use development comprising commercial premises within a three-storey podium, a 19-storey residential tower above with 188 apartments (140 market and 48 affordable housing apartments) and seven basement levels. The infill affordable housing will be managed by St George Community Housing.

The site is located in the North Sydney local government area. The proposal has an estimated development cost (EDC) of \$141.3 million and is expected to generate 642 construction jobs and 55 operational jobs.

The proposal is classified as SSD under section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) because it is an in-fill affordable housing as specified in clause 26A, Schedule 1 of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP). The IPC is the consent authority for the proposal under section 4.5(a) of the EP&A Act because it satisfies criteria under section 2.7(1) of the Planning Systems SEPP as North Sydney Council (Council) objected to the proposal during the public exhibition period of the environmental impact statement (EIS), as required under Schedule 1 to the EP&A Act.

The Department exhibited the EIS from 10 May 2024 until 6 June 2024. The Department received:

- 46 public submissions (35 objections, 7 support and 4 comments)
- a submission from Council objecting to the proposal
- two public authority comments
- advice from eleven government agencies.

To address the issues raised in submissions, agency advice and by the Department, the Applicant submitted an amended application under section 37 of the Environmental Planning and Assessment Regulation 2021 on 13 September 2024. The amended application included a Response to Submissions Report (RtS) and an amended proposal, which reduced the total number of apartments from 191 to 188, increased the affordable apartments from 33 to 48, removed the previously

proposed digital sign and resulted in a minor increase in the height of the building along with some design modifications.

The Department exhibited the Amendment Report and RtS from 17 September 2024 until 30 September 2024 and received:

- 24 further submissions from the public (18 objections, 4 support and 2 comments)
- a further submission from Council's maintaining its objection to the development
- advice from three government agencies.

The Applicant also provided further information on 18 October 2024 to address residual concerns and submissions received during the exhibition of the amended proposal. In response to ongoing concerns, the Applicant revised the proposal to reduce the commercial car parking spaces from 134 to 20 (overall reduction of 324 to 220).

The Department has considered the merits of the amended proposal in accordance with the relevant matters under section 4.15(1) of the EP&A Act, the issues raised in the submissions, the Applicant's response and additional information.

The Department's assessment concludes the amended proposal is acceptable as:

- the development will support State government priorities to deliver well-located housing as it will deliver 188 new homes, including 48 affordable housing apartments, in a highly accessible location
- it is permissible with consent and consistent with the objectives of the North Sydney Local Environmental Plan 2013's MU1 Mixed use zoning
- while the building will be highly prominent, it provides a bulk and scale which is consistent with the envisaged character of the St Leonards and Crows Nest precinct and strategic and statutory instruments which permit and incentivise increased height and density where affordable housing is provided in accessible locations
- it would not result in unreasonable overshadowing, visual or traffic impacts on adjoining development, the surrounding heritage conservations areas or the public domain
- it will provide for 642 construction jobs and 55 operational jobs.

The Department has recommended conditions to appropriately address any residual issues.

Following its detailed assessment, the Department concludes the proposal is in the public interest and recommends that the proposal be approved, subject to conditions.

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1 Introduction

1. Deicorp Construction Pty Ltd (the Applicant) seeks approval for a mixed-use development with in-fill affordable housing (SSD-66826207) located at 391-423 Pacific Highway, 3-15 Falcon Street, and 8 Alexander Street, Crows Nest.
2. The proposal description and mitigation measures provided in Section 3 and Appendix 4 of the environmental impact statement (EIS), as refined in the Amendment Report and additional information, are the subject of this report and will form part of the recommended conditions of consent.
3. An overview of the proposed development as amended is provided in Section 2.

1.1 Proposal location

4. The site is shown in Figure 1 and Figure 2 and described in Table 1 is known as Five Ways, Crows Nest.

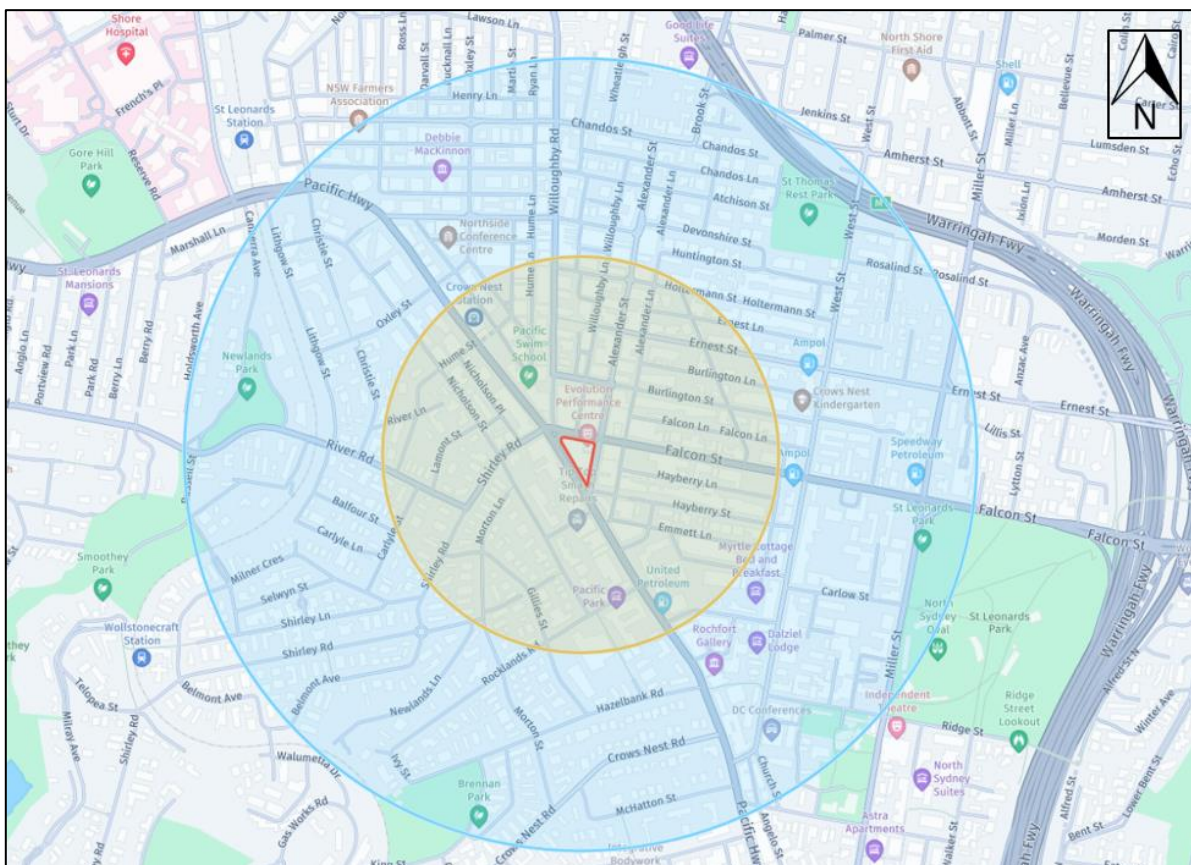


Figure 1 | Local context map (site outlined in red; 400m radius outlined in orange and 800m radius outlined in blue) (Base source: Nearnmap 2024)

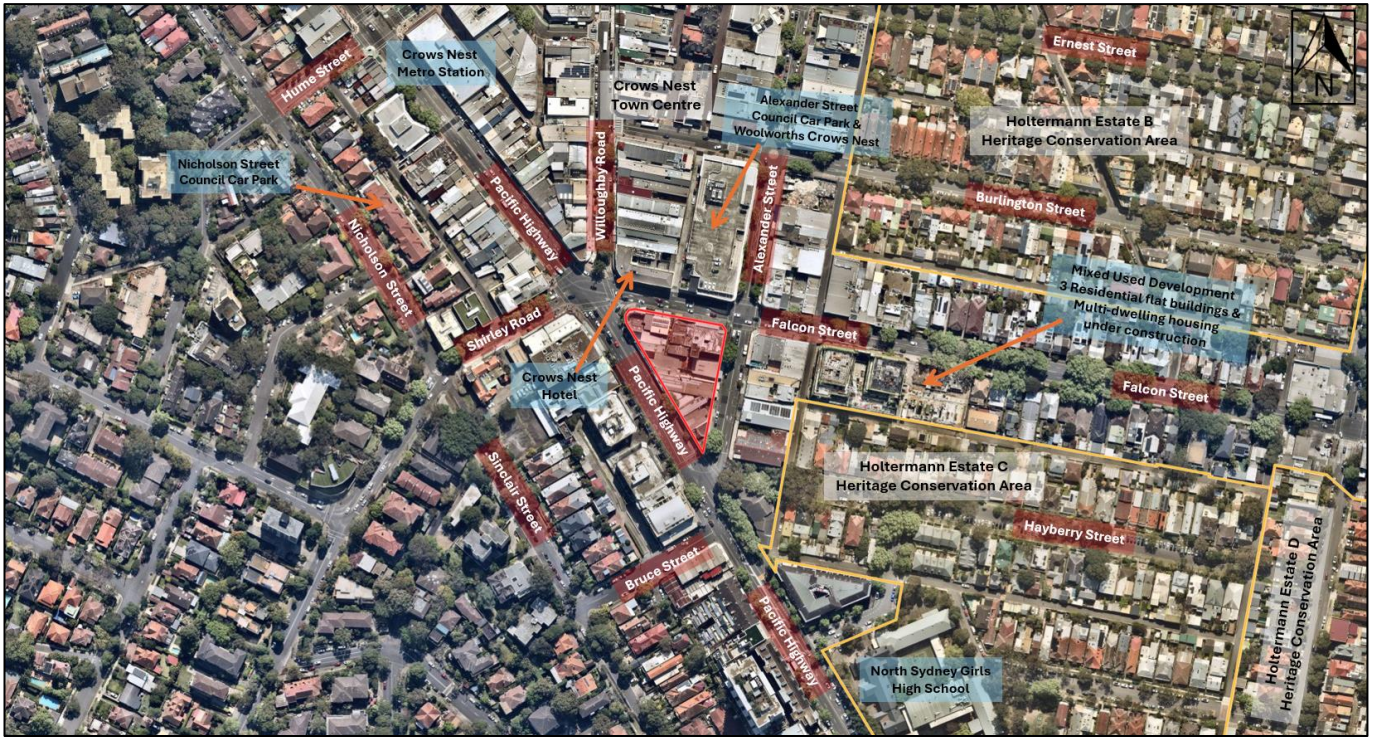


Figure 2 | Local context aerial image (Site outlined in red) (Base Source: Nearthmap 2024)

Table 1 | Key aspects of the site

Aspect	Description
Address	391-423 Pacific Highway, 3-15 Falcon Street, and 8 Alexander Street, Crows Nest
Local Government Area (LGA)	North Sydney
Legal description	Lots 1-11 DP 29672, Lot 1 DP 127595, Lot 1 DP 562966 and Lots 1-6 DP 16402 (19 lots in total)
Site area	3,200.6 m ²
Existing development	Multiple commercial premises (one-to four storey buildings) exist on the site. A non-digital advertising structure is located at the north-western corner of the site.
Surrounding roads	<ul style="list-style-type: none"> Falcon Street (69 metres m northern frontage) Alexander Street (80.66 m eastern frontage) Pacific Highway (108.15 m south-western frontage).

Aspect	Description
Topography	Diagonal crossfall of approximately 3.41 m from the north-western corner to the south-eastern corner.
Existing access	Seven existing driveway crossings along Falcon and Alexander Streets.
Public transport	<p>The site is located:</p> <ul style="list-style-type: none"> • 350m south of Crows Nest metro station (5 - 6 minute walk). • 1 km from St Leonards train station. • within 400m radius of bus stops with high frequency services.
Heritage	There are multiple heritage items listed under North Sydney Local Environmental Plan 2013 (NSLEP) near the site including the Crows Nest Hotel. Two heritage conservation areas (CA08 Holtermann Estate B and CA09 Holtermann Estate C) listed under NSLEP are in the near vicinity to the north-east (CA08) and south-east (CA09), respectively (Figure 2 Local context aerial image (Site outlined in red) (Base Source: Nearmap 2024)).
Flooding	The site is not flood affected. Alexander Street and Falcon Street, adjacent to the site, are impacted by the 1% annual exceedance probability (AEP) and probable maximum flood (PMF) flood events.
Easements or covenants	<p>Numerous easements, covenants and restrictions affect the site.</p> <p>An existing stratum lot (Lot 70 DP 1231642) associated with the Sydney Metro rail tunnel corridor traverses the north-eastern aspect of the site. The stratum lot is located approximately 26.75 m below ground level between RL 48.25 and RL 71.35.</p>
Surrounding context	<p>The surrounding area is generally characterised by a mixture of commercial and residential buildings, with the Crows Nest Village located in close proximity (north of Falcon Street).</p> <p>An under construction, mixed-use development is located to the east, on Falcon Street. It comprises six storey residential flat buildings and multi-dwelling housing (Figure 2 Local context aerial image (Site outlined in red) (Base Source: Nearmap 2024)).</p> <p>The site is located within the area identified as the anticipated Crows Nest Transport Oriented Development (TOD) precinct.</p>

1.2 Relevant planning background

1.2.1 St Leonards and Crows Nest 2036 Plan

5. The St Leonards and Crows Nest 2036 Plan (2036 plan) provides strategic land use and infrastructure guidance on future development within the St Leonards and Crows Nest precincts including Lane Cove, Willoughby and North Sydney LGA.
6. The 2036 plan is based on a vision for growth and improvement in the area to 2036 and recommended several planning controls for the site including MU1 land use zone, a 16-storey building with a maximum FSR of 5.8:1 (2.5:1 for non-residential) and a street wall height of 3-4 storeys with no setbacks.

1.2.2 Planning proposal

7. Following the 2036 Plan, a proponent-led planning proposal for the site was finalised by the Department on 6 December 2023. The PP resulted in the following amendments to the NSLEP, while retaining the existing MU1 Mixed Use zone:
 - maximum building height from 16 m to 58.5 m (16 storeys equivalent)
 - an additional 2 m maximum building height allowed for lift overruns and services
 - a floor space ratio (FSR) of 5.8:1 with a minimum non-residential FSR of 2.5:1.
8. The St Leonards and Crows Nest 2036 Plan was considered as part of the PP finalisation report and informed the controls which were gazetted into the NSLEP in December 2023.
9. There is no site-specific Development Control Plan (DCP) or guidelines that applies to the site as a result of the planning proposal.
10. The PP finalisation report considered a reference design scheme for the site's indicative building envelope, being a 16-storey mixed-use building with a 13-storey triangular residential tower (with an atrium) located above a 3-storey commercial podium (with a mezzanine along Alexander Street), as shown in Figure 3.



Figure 3 | PP concept scheme depicting indicative envelope (Source: PP finalisation report)

1.2.3 Crows Nest Transport Oriented Development (TOD) Program

11. The Department exhibited the Explanation of Intended Effect (EIE) for the Crows Nest TOD Precinct between 16 July and 30 August 2024.
12. The EIE identifies Crows Nest as an accelerated precinct due to its capacity to support an increase in population and additional housing growth, close to a transport hub and other essential amenities. It proposes rezoning of the precinct that was already earmarked for growth and renewal from the 2036 plan
13. The EIE included a rezoning proposal seeking additional height and density (floor space ratio) with opportunities for additional housing (including 10-15% affordable housing) on several sites within the precinct, being well serviced by public transport (Figure 4).

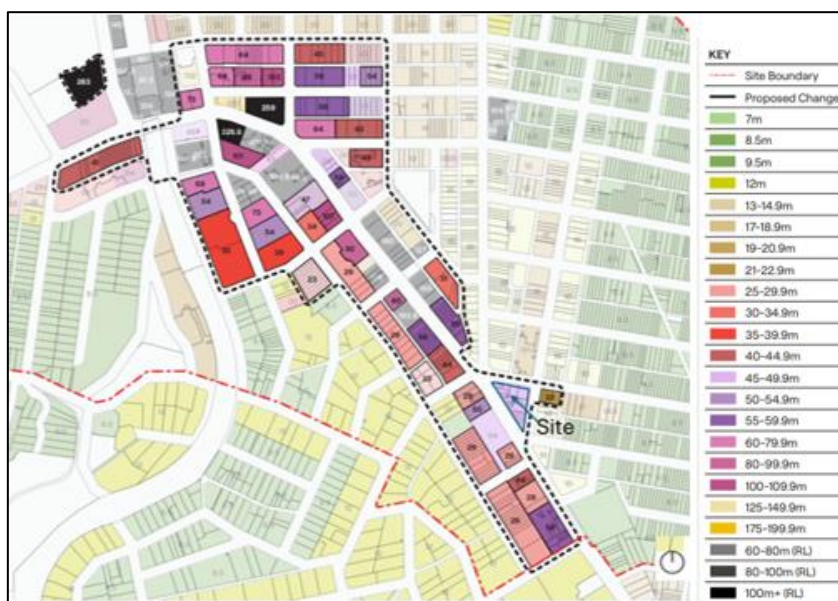


Figure 4 | Proposed NSLEP Height map (Source: Crows Nest TOD EIE)

14. The site is located within the future Crows Nest TOD precinct. However, the TOD program does not propose to further rezone the site or increase its density, beyond the existing controls in the NSLEP.

2 The proposal

2.1 Proposal overview

15. The key aspects of the proposal are provided in detail in the Proposal Description chapter of the EIS (as refined by the Amendment Report and additional information) (see Appendix A) are outlined in Table 2 and shown in Figures 5 to 7.

Table 2 | Key aspects of the proposal

Aspect	Description
Overview	Demolition of existing structures, early works, site remediation and construction of a 22-storey mixed-use development with commercial premises, in-fill affordable housing and seven basement levels.
Gross floor area (GFA)	24,119 m ² total, comprising: <ul style="list-style-type: none"> • residential GFA of 16,117 m² <ul style="list-style-type: none"> – market dwellings: 12,494.7 m² – affordable dwellings: 3,622.26 m² • non-residential GFA of 8,002 m² <ul style="list-style-type: none"> – commercial: 2,500 m² – retail: 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 • 37 x 3-Bedroom apartments.
Building heights	<ul style="list-style-type: none"> • Height: 79.74 m (to top of plantrooms) (RL 177.7) • Storey: 22 storeys including: <ul style="list-style-type: none"> – a 3-storey (with mezzanine) commercial podium – a 19-storey residential tower above.
Uses and activities	Mixed use development comprising: <ul style="list-style-type: none"> • retail (ground, mezzanine and level 1) and commercial (level 2) • residential flat building (RFB) with infill affordable housing.

Aspect	Description
Basement, parking and access	<ul style="list-style-type: none"> • Seven basement levels containing: <ul style="list-style-type: none"> – 220 car parking spaces (190 residential, 20 commercial/retail, 6 car share and 4 service vehicle spaces) – 302 bicycle parking (207 residential and 95 commercial) – 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 • Retail access from all frontages and internal site links.
Associated works and landscaping	<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 • Public domain works with street trees along all frontages, extension and augmentation of services and infrastructure.
Subdivision	<ul style="list-style-type: none"> • Consolidation of 19 existing lots • Stratum subdivision into retail, commercial and residential lots • Extinguishing and/or releasing of all existing easements restrictions and covenants.
Community housing provider	<ul style="list-style-type: none"> • 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.

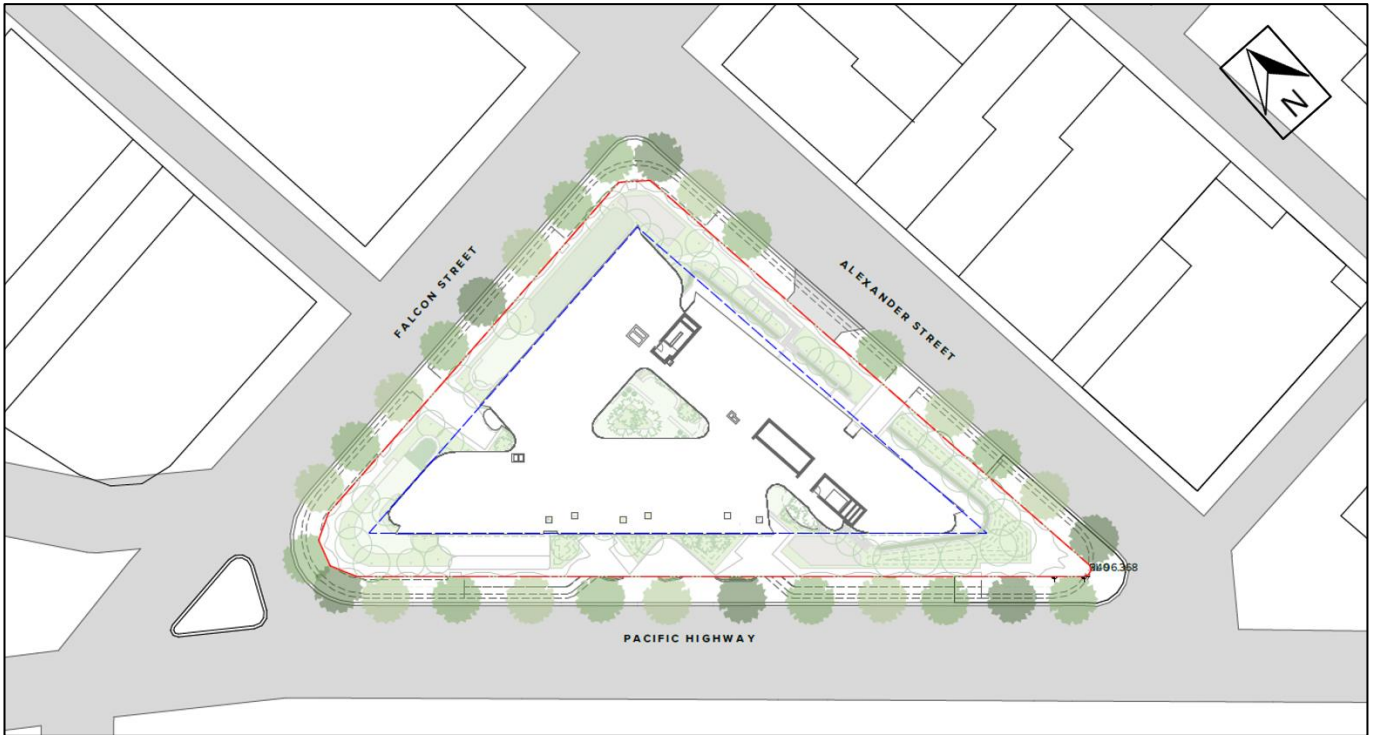


Figure 5 | Site layout (Source: Applicant’s additional information)



Figure 6 | Proposed Falcon Street Elevation (North) and Alexander Street Elevation (East) (Source: Applicant’s additional information)



Figure 7 | Photomontage viewed from corner of Shirley Road and Pacific Highway (Source: Applicant's Amendment Report)

3 Policy and statutory context

3.1 Housing supply

- 16. The NSW Government has an aspirational target of 377,000 well-located homes over the next 5 years. This policy is in support of the National Housing Accord that provides an aspirational national target of delivering 1.2 million new, well-located homes over five years.
- 17. In December 2023, a new SSD pathway was introduced for residential development with an EDC of over \$75 million in Greater Sydney, and \$30 million outside Greater Sydney, which includes at least 10% affordable housing. Additionally, the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) was amended to introduce new in-fill affordable housing provisions which permit FSR and building height bonuses of 20-30% for projects that include residential development and at least 10-15% of GFA as affordable housing. This SSD application has been submitted pursuant to these initiatives that aim to support the delivery of well-located affordable and market housing.

3.2 Permissibility and assessment pathway

- 18. Details of the legal pathway under which consent is sought and the permissibility of the proposal are provided in Table 2 below.

Table 2 | Permissibility and assessment pathway

Consideration	Description
Assessment pathway	<p>State significant development</p> <p>The proposal is declared SSD under section 4.36 of the EP&A Act as it satisfies the criteria under section 2.6(1) of the State Environmental Planning Policy (SEPP) (Planning Systems) 2021 (Planning Systems SEPP) as it is:</p> <ul style="list-style-type: none">• not permissible without development consent• development specified in section 26A of Schedule 1 of the State Planning Systems SEPP.
Consent authority	<p>Independent Planning Commission (IPC)</p> <p>The IPC is the declared consent authority under section 4.5(a) of the EP&A Act and section 2.7(1) of the Planning Systems SEPP, as North Sydney Council duly made a submission by way of objection during the public exhibition of the EIS.</p>

Consideration	Description
Permissibility	<p>Permissible with consent</p> <p>The site is zoned MU1 Mixed Use under the NSLEP and development for the purposes of shop-top housing comprising ground floor commercial/retail uses and residential development above, is permissible with consent.</p>

3.3 Other approvals and authorisations

19. The proposal will not require an environment protection licence issued by the NSW Environment Protection Authority under section 42 of the Protection of the Environment Operations Act 1997.
20. Under section 4.41 of the EP&A Act, a number of other authorisations required under other Acts are not required for SSD. This is because all relevant issues are considered during the assessment of the SSD application.
21. Under section 4.42 of the EP&A Act, certain approvals cannot be refused if they are necessary to carry out the SSD. These authorisations must be substantially consistent with any SSD development consent for the proposal.
22. The Department has consulted with and considered the advice of the relevant government agencies responsible for these other authorisations in its assessment of the proposal (see Section 4 and Section 5). Suitable conditions have been included in the recommended conditions of consent (see Appendix G).

3.4 Planning Secretary's environmental assessment requirements

23. The Department's review determined that the EIS addresses each matter set out in the Planning Secretary's environmental assessment requirements (SEARs) issued on 23 January 2024 and is sufficient to enable an adequate consideration and assessment of the proposal for determination purposes.

3.5 Mandatory matters for consideration

24. Mandatory matters for consideration include:
 - Matters of consideration required by the EP&A Act
 - Objects of the EP&A Act and ecologically sustainable development (ESD)
 - Biodiversity development assessment report

- Matters of consideration required by the EP&A Regulation
 - Matters of consideration required by environmental planning instruments.
25. The Department's consideration of these matters is summarised in **Appendix C**.
26. As a result of this consideration, the Department is satisfied that the development meets the statutory requirements.

4 Engagement

4.1 Exhibition of the EIS and Amendment Report

4.1.1 Public exhibition of the EIS

27. After accepting the development application and EIS, the Department:
- publicly exhibited the proposal between 10 May 2024 and 6 June 2024 (28 days) on the NSW Planning Portal
 - notified occupiers and landowners in the vicinity of the site about the public exhibition
 - notified and invited comment from relevant government agencies and North Sydney Council (Council).
28. The Department received 46 public submissions from 42 individuals and 4 interest groups (35 objections, 7 support and 4 comments), two public authority comments, advice from eleven government agencies and an objection from Council.
29. Department officers also visited the site and surrounding area on 30 May 2024 to gain better understanding of the site context and the issues raised in submissions.
30. The Department requested the Applicant to respond to the issues raised in submissions and the comments received from government agencies.
31. The Applicant submitted an amended application, under section 37 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation), on 13 September 2024.
32. The amended application included an Amendment Report and a Response to Submissions Report (RtS) which made the following key design amendments to the proposal (see **Appendix A**):
- increase in height of the building from 78.65 m (RL176) to 79.74 m (RL 177.7) due to increased internal floor-floor heights to accommodate services adhering to energy efficiency standards in National Construction Code (NCC) and waterproofing standards of the *Design and Building Practitioners Act 2020* (DBC Act)
 - reduction in the total number of apartments from 191 to 188
 - increase in the affordable housing apartments from 33 to 48
 - modification to the design of the communal open space
 - addition of a travelator from the ground to first floor commercial area
 - removal of the proposed digital sign and other minor design modifications.

4.1.2 Public exhibition of the Amendment Report

33. After accepting the Amendment Report and the RtS, the Department:
- publicly exhibited the proposal between 17 September 2024 until 30 September 2024 (14 days) on the NSW Planning Portal
 - notified occupiers and landowners in the vicinity of the site including additional properties requested by Council, and previous submitters
 - notified and invited comment from relevant government agencies and Council.
34. The Department received 24 public submissions from 22 individuals and 2 interest groups (18 objections, 4 support and 2 comments) and advice from three government agencies. Additionally, Council made a further submission maintaining its objection to the development.
35. Following review of the Amendment Report and Submissions Report, the Department requested the Applicant to address the issues raised in submissions, agency advice and by the Department.
36. In response, the Applicant submitted a further RtS and additional information on 18 October 2024. This included amended plans, which substantially reduced the total number of commercial car parking spaces from 134 to 20 (overall reduction of 324 to 220) (see **Appendix A**). The Department made the additional information available on its website.

4.2 Summary of advice received from government agencies / public authorities

37. A summary of the agency/public authority advice is provided in **Table 3**. A link to the full copy of the advice is provided in **Appendix A**.

Table 3 | Summary of agency and other public authority advice (EIS and Amendment Report)

Agency/Public authority	Advice summary
Transport for NSW (TfNSW)	<p>TfNSW initially requested additional information in relation to traffic impacts, pedestrian movements and requested reduction in car parking. Following review of the amended proposal, TfNSW have raised no further concerns, subject to recommended conditions.</p> <p>TfNSW advised that proposed roadworks on Alexander Street will need to be endorsed by Council as the relevant roads authority.</p>

Agency/Public authority	Advice summary
Sydney Metro	<p>Sydney Metro requested additional information in relation to the impact of the development on the metro tunnel below the site. The Applicant responded to the requests via the RtS and additional information.</p> <p>As a result, Sydney Metro raised no further concerns, subject to recommended conditions addressing construction impacts of the development on the safety of the tunnel bore.</p>
Biodiversity, Conservation and Science (BCS) – NSW DCCEEW	<p>BCS initially raised concerns on the EIS regarding stormwater and flooding management.</p> <p>The Applicant’s RtS responded to the concerns and BCS have raised no further concerns regarding flooding or biodiversity impacts.</p>
NSW State Emergency Service (NSW SES)	<p>NSW SES recommended that the driveway ramp be situated above the probable maximum flood level and requested that the Applicant seek advice from NSW DCCEEW regarding flood behaviour.</p>
Environmental Protection Agency (EPA)	<p>EPA raised no concerns and recommended conditions relating to the handling of contaminated soil. EPA also considered potential construction noise impacts from the development and advised the Applicant follows best practices to minimise noise during construction.</p>
Sydney Water	<p>Sydney Water raised no concerns and recommended conditions. Sydney Water noted it has water and wastewater capacity to service the development.</p>
Ausgrid	<p>Ausgrid raised no concerns and recommended continued direct discussions with the Applicant regarding the supply requirements for the development.</p>
NSW Police Force – North Shore Police Area Command	<p>NSW Police Force raised no concerns and recommended conditions relating to crime prevention through environmental design principles and operational matters.</p>
Civil Aviation Safety Authority (CASA)	<p>CASA raised no concerns and concurred with the Applicant’s assessment, as a controlled activity approval was already issued prior to the EIS.</p>
Sydney Airport	<p>Sydney Airport recommended conditions requiring the Applicant to provide confirmation of the finished building height from a certified surveyor.</p>

Agency/Public authority	Advice summary
Air Services Australia	Air Services Australia raised no concerns and has advised the development will not impact airspace operations or facilities of Sydney aerodrome.
Heritage NSW – Aboriginal Cultural Heritage	Heritage NSW raised no concerns and agreed with the management measures and recommendations outlined in the proposal’s Aboriginal Cultural Heritage Assessment Report (ACHAR), subject to recommended conditions of consent.
Fire and Rescue NSW (FRNSW)	FRNSW raised no concerns and noted the proposal has limited scope and application regarding special hazards or special problems of firefighting.
Sydney Trains	Sydney Trains and Transport Asset Holding Entity did not provide comments on the proposal as the site is not within vicinity of their assets.

4.3 Summary of council submissions (EIS and Amendment Report)

38. Council objects to the proposal.

39. Issues raised by Council are summarised below and a link to all submissions in full is provided in Appendix A:

- the proposal exceeds the NSLEP controls, which were introduced in a recent PP to provide a significant density uplift, compared to that envisioned in the 2036 plan
- the height of building should be reduced to 16 storeys as mandated in NSLEP
- 15% affordable housing should be provided in perpetuity
- the tower and podium have excessive bulk and scale
- the proposal will impact on surrounding heritage items and conservation areas
- the proposal will result in overshadowing and loss of solar access to the locality
- the proposed through site link is inconsistent with NSDCP
- the proposal should be carefully considered against the Connecting with Country Framework prepared by NSW Government Architect
- the proposed commercial and residential car parking spaces should be reduced to be in accordance with parking rates stipulated in the NSDCP
- excess parking should be included in the GFA calculations

- proposed digital signage facing the Five Ways intersection is inappropriate and creates heritage and traffic impacts
- the extent of the properties notified was inadequate and should be increased
- Council should be consulted with conditions of consent.

4.4 Summary of public submissions (EIS and Amendment Report)

40. The key issues raised in the public submissions is provided in Table 4 and a link to all submissions in full is provided in Appendix A.

Table 4 | Key issues raised in public submissions on the EIS

Issue	Number of Submissions
Amenity impacts to locality (overshadowing, daylight access, light pollution, acoustic impacts, privacy and reflectivity)	37 (80.4%)
Pedestrian, parking and traffic impacts	36 (78.2%)
Height, density, bulk and scale	35 (76%)
Consistency with 2036 Plan	32 (69.5%)
Applicability of the Housing SEPP bonus to the overall GFA of the site and the certainty of affordable housing	30 (65.2%)
Impacts on heritage items and heritage conservation areas	25 (54.34%)
Infrastructure, open space and development contributions	23 (50%)
Adverse visual impacts the catchment	22 (47.8%)
Adverse wind impacts on the public domain near the site	21 (45.6%)
Podium scale and oversupply of commercial tenancies	19 (41.3%)
Consistency with local character	18 (39.1%)
Construction impacts	17 (36.9%)
Inadequate community engagement by the Applicant	5 (10.8%)

Issue	Number of Submissions
Appropriateness of the digital advertising signage	3 (6.5%)
Waste management issues with kerbside collection and waste generation	3 (6.5%)
Geotechnical risks for basement and Sydney Metro corridor	1 (2.1%)

41. During the public exhibition of the Amendment Report and RtS, the majority of the public submissions reiterated the key issues raised during the EIS exhibition. Additionally, the submitters also raised the following:

- impact to property values
- inadequate cross ventilation
- request that the IPC undertakes a public hearing
- lack of consistency with the objectives of MU1 Mixed Use zone
- impact of the development on flooding in Falcon Street.

5 Assessment

42. The Department has assessed the proposal, considering all documentation submitted by the Applicant, all issues raised in submissions and all advice provided by government agencies.
43. The Department considers the key assessment issues associated with the proposal are:
 - built form and design
 - heritage impacts
 - residential amenity
 - traffic and parking.
44. Each of these issues are discussed in the following sections of this report. The Department's consideration of other issues is provided in Section 5.5 and the appendices.

5.1 Built form and design

5.1.1 Building height and density

45. As outlined in Section 1.2, the current height and density controls for the site in the NSLEP were recently amended as part of a PP, which considered the 2036 Plan.
46. In December 2023, the NSW Government introduced further height and density incentives, including up to 30% bonuses for developments in accessible areas, such as this site, which provide 10-15% affordable housing. In July 2024, the Department exhibited an EIE for the Crows Nest TOD which seeks to rezone and increase heights and densities in the Crows Nest and St Leonards Precinct.
47. The Department considers the key issues associated with the building height and density are:
 - Compliance with Housing SEPP controls
 - Strategic context and relationship with existing/future character
 - Height exceedances.

Compliance with Housing SEPP controls

48. The NSLEP provides a maximum FSR of 5.8:1 (with a non-residential FSR of 2.5:1) and a maximum building height of 58.5 m. Clause 4.3A(2A) of the NSLEP allows an additional 2 m height exceedance for service and plant rooms only.

49. Notwithstanding, section 16 of the Housing SEPP provides an additional 30% of the maximum permissible building height and FSR as the proposal provides 15% of the floor space as affordable housing. Therefore, the maximum permissible FSR for the site is 7.54:1 and the maximum permissible building height is 76.05 m (plus 2 m allowance for plant rooms).
50. The development includes a total GFA of 24,119 m² with 3,622.26 m² (15%) utilised as affordable housing. This equates to an FSR of 7.53:1 which complies with the maximum FSR of 7.54:1.
51. The proposal has a maximum building height of 77.85 m to the rooftop and 79.74 m (to the top of the plant enclosure), which exceeds the overall maximum permitted building height (including plant) by and 1.69 m. The height exceedance is detailed in Table 5, Figure 8, and Appendix D.

Table 5 | Summary of proposed building height variations (Source: Applicant’s additional information)

Component	Max. building height permitted (NSLEP)	Max. building height permitted (Housing SEPP 30% bonus)	Proposed height	Extent of variation
Tower	58.5 m	76.05 m	77.85 m	+1.8 m (2.16%)
Plantrooms and lift overruns	60.5 m (58.5 m + 2 m)	78.05 m (76.05m + 2m)	79.74 m	+1.69 m (2.88%)



Figure 8 | Extract of Alexander Street elevation with extent of height breach highlighted in yellow (Source: Applicant’s additional information)

52. Concerns were raised in public submissions that the 30% Housing SEPP bonus should be calculated against the GFA of the residential component only.
53. In response to concerns raised about the calculation of the Housing SEPP bonus, the Department notes that the Housing SEPP provides that bonus applies to the maximum permissible FSR for the land, which includes all residential and non-residential components.

Likewise, the minimum affordable housing requirement is calculated based upon the total GFA, which means that 15% of the overall GFA is provided as affordable housing, not just 15% of the residential GFA.

54. The Department is satisfied that the Housing SEPP bonuses apply to the site and have been correctly calculated. The Department has considered the variation to the height control below.

Strategic context and relationship with existing/future character

55. Council and public submissions raised concerns that the proposal would not relate to the height of buildings in the surrounding area and should comply with the NSLEP development standards, which were only recently increased as part of the PP for the site.
56. Council considers that the site has only just undergone a significant density uplift and considers that any further uplift would not be consistent with strategic planning policy including the recommendations of the 2036 plan. It also notes that a 19-storey proposal was previously rejected by both Council and the Sydney North Planning Panel.
57. Public submissions suggested that the determination of the application be delayed until the finalisation of the TOD program, in anticipation of new planning controls that will be introduced in the locality.
58. The Department acknowledges the concerns raised by Council and the community that the site has been the subject of a very recent PP in December 2023, which increased the height and FSR controls in line with the 2036 Plan. However, the proposal is able to utilise further incentives under the Housing SEPP provisions which also came into effect in December 2023. Further, it considers that the site is capable of accommodating additional height and floor space in line with the Housing SEPP for the reasons outlined below and in its detailed assessment in **Appendix C (Table 10 and 14)**.
59. The Department has reviewed the building height and density in the light of the strategic plans and policies guiding future development in the area and is satisfied that the proposal is acceptable as:
- the proposal benefits from a 30% uplift in height and density under the Housing SEPP, which permits an overall height and building form beyond the NSLEP and the TOD EIE
 - the proposed 22 storey building height is well within 8 to 32 storey building heights and forms which are anticipated along the Pacific Highway corridor, as outlined in the EIE for the Crows Nest TOD precinct
 - the site's landmark location at the Five Ways intersection provides justification for a taller building than the buildings in the immediate surrounding locality.

60. The Department notes that the EIS was lodged and exhibited prior to the exhibition of the EIE. Further the EIE is not a draft environmental planning instrument and does not carry statutory weight. The timing of finalisation of the TOD program would have no impact on the determination of this proposal, as the EIE did not outline any intention to further rezone the site or amend the development standards which apply to the site under the NSLEP.
61. Overall, the Department is satisfied that the proposal is generally consistent with the objectives and design requirements of the Housing SEPP. The development would be consistent with Crows Nest's future character of increased density as it undergoes through a transition process under the 2036 plan as well as the future Crows Nest TOD precinct.

Height exceedances

62. The Applicant has submitted a written request under clause 4.6 of the NSLEP to vary the maximum height of the building (podium + tower), as well as the height of the plantroom beyond the permissible 2 m.
63. The Applicant contends that:
- the plant required to service a development of this scale cannot be accommodated within the 2m control. The cooling towers selected to service the entire development have a height of 3.81m and the plant enclosure has been designed at 3.85m high accordingly
 - the NSLEP allows an exemption of 3 to 5 m for plantrooms on other sites with equivalent maximum permissible building heights
 - the height and scale of the proposal is consistent with the applicable development standards as well as the desired future character of the Crows Nest precinct
 - the proposal has been carefully designed to mitigate adverse amenity impacts and will remain consistent with the anticipated character for development in the precinct
 - the development has been amended to increase the internal floor-to-floor heights to be 3.2m to accommodate the waterproofing requirements in the DBC Act and the energy efficiency services (insulation, thermal stringency etc) of the NCC, which results in an overall height increase to the development's residential tower by approximately 1.7 m beyond the permissible building height for the site.
64. The Department has carefully considered the Applicant's clause 4.6 variation request in relation to the height variation in **Appendix D** and is satisfied that there are sufficient environmental planning grounds to justify the variation to the permitted building height.
65. In summary, the Department considers that the overall building height, including the 30% bonus under the Housing SEPP and the minor variations are acceptable as:

- the scale of the development is compatible with the desired future and emerging character of the area as envisioned in the 2036 plan, the future Crows Nest TOD precinct and the Housing SEPP which seeks to incentivise the delivery of affordable housing by allowing height and floor space bonuses in accessible locations
 - the minor 1.8 m height exceedance for the building, above the 76.05 m Housing SEPP control, would not result in any additional GFA or dwelling yield, but would provide better amenity for the future residents by accommodating the services as required by the DBC Act and NCC
 - the Applicant has demonstrated that the rooftop plant room size and height of 3.85 m is required to service the development, particularly noting the specifications of the cooling towers
 - the proposed rooftop plant, lift overruns and stairs have been located on the roof with setbacks where possible noting that the triangular shape of the building, with a central void, reduces the ability to locate the plant and services centrally
 - the rooftop elements would not be visible from the immediate public domain and are contained within enclosures to minimise the visual impacts from more distant view points
 - the additional height will not result in any adverse amenity impacts in terms of overshadowing or other impacts, as discussed at Section 5.3 and Section 5.5
 - strict compliance with height requirements would not result in any material changes to the overall bulk and scale of the development or its impacts on the streetscape or neighbouring properties, but would compromise the amenity of the future occupants
 - the proposed minor height variations support the provision of a well-designed development containing desirable high-quality housing, including affordable housing.
66. The Department therefore concludes the proposed height and density are acceptable and justified as the proposal will deliver 48 affordable housing apartments along with a range of non-residential uses, consistent with the Housing SEPP aims for infill affordable housing. The minor variations to the building height control are acceptable as they would not result in adverse amenity impacts.

5.1.2 Podium height

67. The base of the 22-storey building is a three-storey podium to be built to the street frontages (Figure 9).



Figure 9 | Proposed podium in relation to the immediate context (Source: Applicant's Design Report)

68. Council has raised concern that the podium height and scale is excessive. Council is concerned the 16m high podium would be perceived as 4 storeys which does not align with the vision of the 3-storey commercial podium in the PP reference design. Public submissions also considered that the quantum of commercial space within the podium is unnecessary, given the existing oversupply in the Crows Nest area.
69. The proposal was presented to the State Design Review Panel (SDRP) in early 2024. The SDRP did not raise any specific concerns regarding the scale of the podium, apart from recommendations regarding the landscaping at the podium level communal open space (discussed in Section 5.5).
70. The Department has carefully considered the concerns raised by Council and the community, however, considers that the proposed scale of the podium is acceptable as:
- there is no NSLEP or other requirement for a maximum podium height and scale
 - the podium has been designed to accommodate approximately 8,002 m² of commercial floorspace in accordance with clause 4.4A of NSLEP, which requires the development to provide a minimum non-residential floor space ratio of 2.5:1
 - the scale of the podium would respond appropriately to the 2-4 storey building heights in the immediately surrounding context, as well as the 3-storey height of the Crows Nest Hotel (Section 5.2)
 - the podium design responds to the fine grain character of retail streetscapes of Crows Nest village and the Pacific Highway by providing indentation and articulation to the podium walls, to accentuate the individual retail tenancies, and through site links to break down the mass of the podium (Figure 9).
71. The Department concludes that the scale of the podium relates to the overall scale of the podium will contribute positively to the desired future character of the area.

5.1.3 Tower design

72. The proposed 19 storey residential tower is setback 6 m from the podium edges and has a triangular form, with apartments located around a central void or breezeway, providing natural ventilation to the circulation areas (Figure 10).
73. The SDRP provided advice and recommendations on a range of matters relating to the tower design as outlined in Appendix E.
74. The SDRP requested the Applicant to provide more varied tower façade treatments that respond to their solar orientation, consider the design of external shading, the material palette, distribution of solid and glazed components in the facade, respond to the local context through the building design and demonstrate how the breezeway would contribute to the overall amenity of the future occupants.
75. Public submissions raised concern that the building did not respond to the streetscape. The submissions also identified that the extensive tower facades may have detrimental impacts on motorists and surrounding residents due to glare.



Figure 10 | The triangular tower with the breezeway (Source: Applicant's Amendment Report)

76. The Applicant has responded to key concerns raised by SDRP and in public submissions, noting that:
 - 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 45 m 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
 - the communal open space area at the podium level will provide shaded recreational opportunities as well as well-lit social gathering spaces.
77. The Applicant also provided a Solar Light Reflectivity Study with a glare/reflectivity analysis which recommended that the glare from the glazing and other components of the external façade should not exceed a reflectance value of more than 20%.
78. The Department has carefully reviewed the SDRP advice in **Appendix E** and the community concerns regarding the tower design. 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 PP.
79. The Department is satisfied that the design of the tower is acceptable on merits as:
- the Applicant has reasonably responded to the design recommendations by the SDRP by incorporating a variety of finishes and materials in the external façade design to introduce sun-shades and reduce glare, as well as include vertical recesses at regular intervals
 - it incorporates a layout and design 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 (**Appendix C**)
 - it presents a high standard of architectural design that appropriately responds to the site and the desired future character of the local area.
80. Overall, the Department is satisfied that the proposal achieves a high quality, acceptable design outcome that will be compatible with the site’s surrounding context, subject to the recommended conditions regarding the final materials/finishes palette to demonstrate compliance with the reflectance criteria.

5.2 Heritage impacts

81. The site is located in a transitional area which includes low density, medium rise shop-top housing and high-density developments. The site is close to multiple heritage items and two

heritage conservation areas (HCA) listed under NSLEP, identified in Section 1.1 and Figure 2 | Local context aerial image (Site outlined in red) (Base Source: Nearmap 2024).

82. Council and public submissions raised concerns that proposal would result in visual impacts on the locality, nearby heritage items and HCAs. Overall, Council raised concerns that a more considered design approach at both podium and tower level is necessary, to respond to the surrounding heritage context.
83. The Applicant has provided a Heritage Impact Statement (HIS) and a Visual Impact Assessment (VIA) assessing the impact of the proposed built form on the locality, in particular the HCAs and the nearby heritage items. The Applicant's VIA and HIS, as amended, concluded that:
- the lower levels of the proposed building will be screened from the Holtermann Estate B HCA by existing commercial buildings within 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 (Figure 11)
 - while the tower is substantially larger than the surrounding heritage items, it follows the planning controls for the site and has been setback
 - 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.



Figure 11 | VIA Viewpoint from corner of Shirley Road/Pacific Highway: Existing (left) and proposed (Right) (Source: Applicant's Amendment Report)

84. The Department has carefully considered the Applicant's HIS and VIA, and the concerns raised by Council and the community in relation to heritage impacts. The Department acknowledges that the proposal will be prominent and visible from the immediate surrounds and more distant locations, including HCAs. However, the Department considers that on balance the heritage impacts are acceptable as:
- the 3-storey podium appropriately responds to the height of the nearest heritage item on the opposite side of Falcon Street (the Crows Nest Hotel) (Figure 12). Further the overall

bulk of the podium is broken down through connecting laneways, and variations in the façade is achieved through material treatment including use of brick to reference the heritage item

- mid-distant views from the east and residential precincts to the west of Pacific Highway, will largely be screened by topography, vegetation and existing buildings
 - from 2-3 km south of the site, the proposal will form a small component of the expansive views from the foreshore of Sydney Harbour
 - given the planned transformation of the Crows Nest precinct, further new skyline elements are expected in the locality and the building will be consistent with the envisaged broader skyline context
 - any redevelopment of the site in line with the NSLEP would be highly prominent in this location. The overall 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.
85. The Department is satisfied that the proposal's visual impacts on the locality and broader area are acceptable and the proposal would not result in unreasonable visual impacts that detract the quality of heritage items and HCAs located nearby.

5.3 Residential amenity

86. The proposal provides 188 residential apartments within the tower. The apartments have been designed to face either the Pacific Highway, Falcon Street or Alexander Street and are located around an internal void which provides open air corridors/breezeways to all apartments.
87. The Housing SEPP requires the consent authority to evaluate the quality of design of residential apartment development in accordance with the design quality principles which include amenity.
88. The Housing SEPP also requires the consent authority to consider the Apartment Design Guide (ADG) which provides planning guidance and principles to ensure acceptable levels of internal amenity are provided to residential apartments. However, to avoid doubt, the Housing SEPP states compliance with the design criteria specified in the ADG is not required.
89. The Applicant provided a Design Report, which outlined how the development addresses the recommended design guidance of the ADG (see Appendix A).
90. The Department has carefully considered the amenity of the proposed apartments as part of its assessment and is satisfied that the proposal is generally consistent with the key ADG

criteria, except for some variations to solar access, cross ventilation and acoustic privacy, as outlined in Appendix C. The key variations to the ADG performance criteria are discussed below.

5.3.1 Solar access

Residential Apartments

91. The ADG recommends that 70% of residential apartments should receive a minimum of 2 hours direct sunlight to living rooms and private open spaces between 9 am and 3 pm at mid-winter (21 June). The Applicant's sun-eye diagrams are provided in Figure 12.

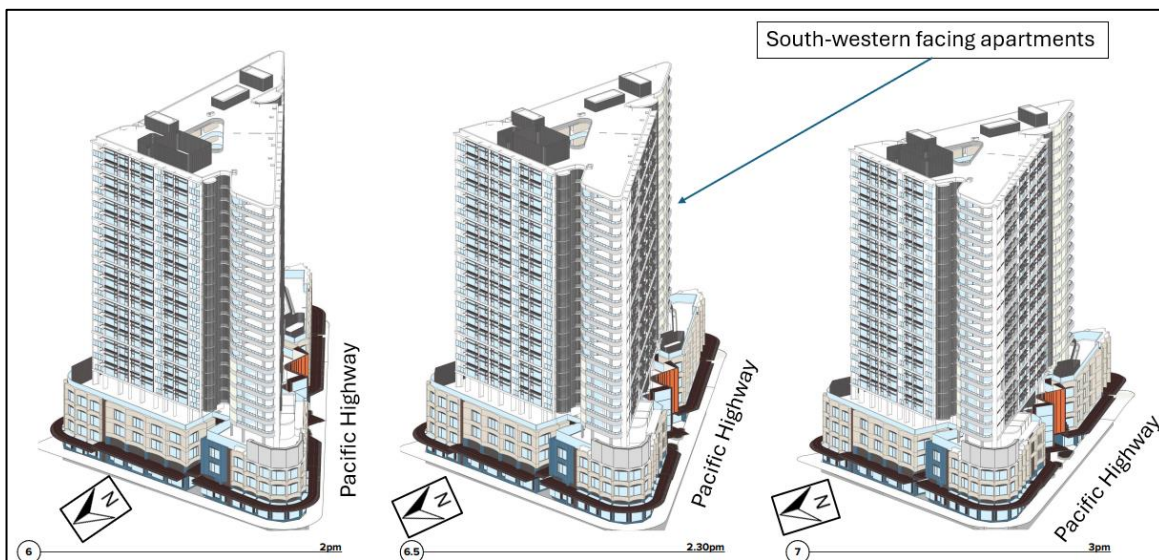


Figure 12 | Extract of proposal's sun eye diagram for mid-winter 21 June (Source: Applicant's EIS)

92. The Department's analysis of the applicant's sun eye diagram indicates that 129 apartments, equal to 68.61%, will likely receive 2 hours of direct sunlight between 9 am and 3 pm at mid-winter, which is three apartments less than the recommended 70%.
93. The Department recognises that meeting the recommended solar access performance criteria in the ADG is difficult, given the site's orientation, with a long south-western frontage and the irregular triangle shape of the building. The Department is satisfied that overall, the Applicant has reasonably positioned the apartments with different solar orientations, responding to the context of the site.
94. Based on the above assessment, the Department considers that the minor departure from the ADG recommendation is acceptable in the circumstances.

Communal Open Space (COS)

95. The ADG recommends 50% of the principal usable part of the COS of a residential apartment development should receive direct sunlight for a minimum of 2 hours between 9 am - 3 pm at mid-winter (21 June).
96. The SDRP raised concerns regarding the level of sunlight and daylight access to the podium level COS, as it is predominantly covered by the residential tower. The SDRP recommended that the tower soffit be raised to improve COS solar access as well as allow long term survival of planting at this level.
97. The Applicant subsequently modified the design of the COS and relocated the principal COS entirely to the northern portion, to increase its solar access during the day (Figure 13).

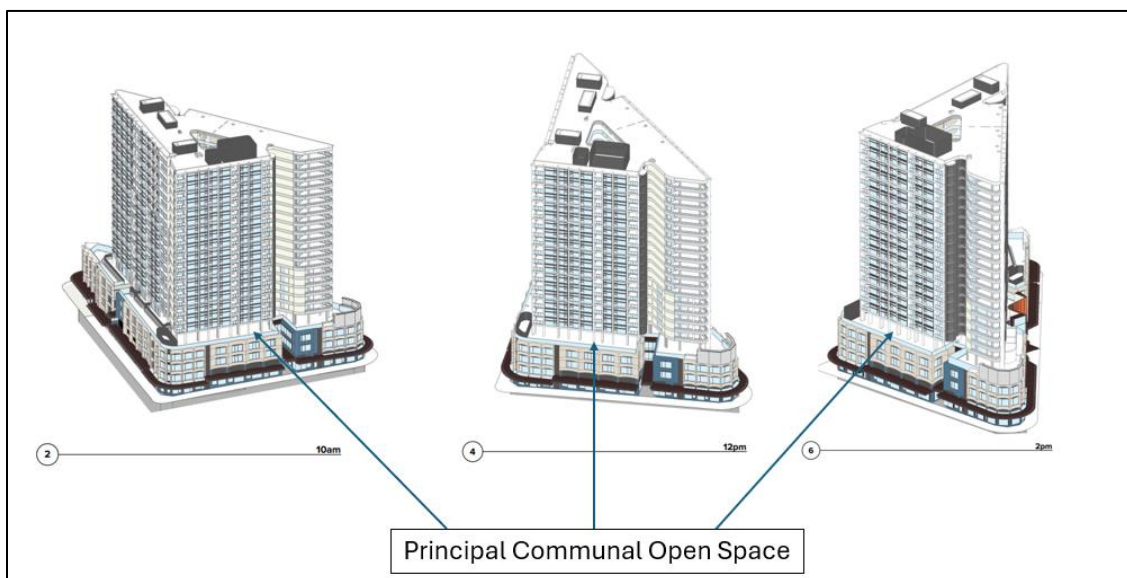


Figure 13 | Sun eye diagrams for June 21 at 10am (left), 12pm (middle) and 2pm (right) (Source: Applicant's EIS)

98. The Applicant also provided a Daylight Illumination Study, which demonstrated that most of the under-croft and perimeter COS will achieve sufficient daylight illumination between 9 am and 3 pm in mid-winter. The COS trafficable areas in the middle of the podium will also receive adequate natural light from the perimeter, rather than relying on the breezeway.
99. The Applicant's Landscape Report includes a detailed planting palette which incorporates shade loving planting species at the podium to ensure their long-term survival.
100. Based on the submitted diagrams, the Department is satisfied that the Applicant's nominated principal COS located along the northern side of the podium will achieve more than 2 hours of solar access in mid-winter consistent with the ADG.

101. The Department is also satisfied that the principal COS and trafficable areas will be well-lit by natural daylight. The COS will provide some shaded areas for the residents, which is desired at other times of the year.

Breezeway

102. The SDRP requested the Applicant analyse the extent of solar access to the breezeway.

103. The Applicant's solar access study acknowledged that the breezeway would be overshadowed during winter solstice. Further, the Daylight Illumination Study concluded that most of the breezeway areas between Levels 4 to 15, will require artificial lighting for safe movement. Levels 16 to 21 will receive adequate natural light throughout the day.

104. The Department is satisfied that the overshadowing of the breezeway would not significantly affect the amenity of apartments, as all apartments have alternate primary outlook and access to sunlight. Further, the breezeway will contribute to natural ventilation and outlook in the circulation areas and provide some daylight to circulation areas in all levels.

105. The Department recommends a condition in relation to artificial lighting at the lower levels to ensure the corridors provide a safe well-lit environment for all residents and visitors.

5.3.2 Cross ventilation and acoustic privacy

106. The ADG recommends that 60% of the residential apartments in the first nine storeys be naturally cross ventilated. Apartments at ten storeys and above are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.

107. The Applicant considers that 47 out of 51 apartments in the first nine storeys (92.2%) will be cross-ventilated and that all apartments at ten storeys and above have balconies which allow adequate natural ventilation.

108. Public submissions raised concerns regarding the adequacy of cross ventilation due to the breezeway and the general layout of apartments.

109. The SDRP requested that the Applicant provide detailed analysis to demonstrate how the apartments facing the breezeway and the busy roads (where windows are required to be closed to maintain acoustic amenity) would be naturally cross ventilated.

110. The Applicant submitted a Wind Tunnel Study and Acoustic Assessment Report (AAR), which concluded that in the lower nine storeys:

- 13 corner apartments satisfy the ADG cross ventilation criteria

- a further 34 units achieve cross-ventilation, via windows located above/adjoining the apartment entry doors facing the breezeway (Note this is subject to the windows being fully openable to create the required wind pressure difference)
 - the acoustic amenity of apartments would not be greatly affected by the breezeway windows
 - apartments fronting Pacific Highway and Falcon Streets and are subject to road noise impacts, and doors and windows of these apartments must be kept closed to meet the internal noise criteria as specified in the Guidelines for Developments Near Busy Road Corridors.
111. To enable natural ventilation for these noise-affected apartments, while maintaining acoustic amenity, the AAR recommended:
- acoustic treatment to the soffit of the balconies
 - low level operable windows for the rooms connecting to the balconies
 - 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.
112. Based on the Applicant's wind and acoustic assessments, the Department is satisfied that the breezeway will contribute towards natural cross-ventilation, with no unreasonable impacts on the acoustic amenity of the apartments.
113. The Department has carefully reviewed the trickle ventilation system and does not consider it to be an effective natural ventilation system as it relies on drawing air through a small vent on the wall and includes a motorised system to control the air flow released to each room from the ceiling. The ventilation system is, therefore, partly mechanical and also reliant on significant natural wind force to enter through the vents, which may not always be available. Further, the application does not include details to demonstrate whether one trickle vent system is suitable to naturally ventilate an entire apartment with all windows and doors closed.
114. Notwithstanding the above, the Department considers:
- the design of the proposal reasonably follows the principles of Guidelines for Developments Near Busy Road Corridors, as the residential tower is setback from the podium, the balconies are built into the external façade (to avoid projections) and where possible the bedroom windows have been recessed from the main façade
 - despite the design initiatives, some apartments will not be able to achieve the acoustic amenity criteria when the doors/windows are opened, due to the site's location at the intersection of major State roads

- for the above apartments, fronting Pacific Highway and Falcon Street, achieving natural ventilation at all times is impractical and reliance on air conditioning will likely be unavoidable at certain times
 - additional acoustic treatments to the balcony soffits will attenuate noise impacts from the roads to some extent and is an acceptable solution
 - by adding the low-level operable windows to rooms with direct connection to balconies, cross-ventilation can be achieved, while maintaining acoustic amenity
 - the addition of acoustically attenuated louvres (vertically) will provide a better natural ventilation solution for the rooms with no connection to balconies and is preferred over the proposed trickle ventilation system
 - the addition of the louvres will ensure that all identified apartments can always achieve cross-ventilation and meet the ADG performance criteria.
115. The Department concludes the proposal is acceptable in relation to cross ventilation subject to a recommended condition requiring the final design plans to be amended to include the vertical louvres to the affected rooms of the apartments fronting Pacific Highway and Falcon Street (level 4 – level 13).
116. While this will require minor amendments to the external facades, the Department considers this would provide an appropriate solution for maintaining cross-ventilation and acoustic amenity of these apartments.

5.4 Traffic, parking and servicing

5.4.1 Traffic impacts

117. Council and the community have raised concerns that the proposal will exacerbate traffic issues within the locality and generate queuing on the adjoining roads.
118. TfNSW initially raised concerns regarding the suitability of the pedestrian island near the site, queuing across the main driveway and the overall traffic impacts of the development.
119. The Applicant's Amendment Report was supported by an amended Traffic Impact Assessment Report (TIA) which concluded:
- The proposal is targeting a travel mode share to support sustainable transport. The target is for a low car mode share of 20% for residential and 25% for commercial, with other travel to be made by walking, cycling and public transport
 - the proposal would result in a net traffic generation of approximately 57 and 79 vehicles per hour during the AM and PM peak hours, respectively, which represents only 2% of the

existing total traffic movements through the Pacific Highway / Falcon Street intersection, which have already been considered for planning the St Leonards and Crows Nest precincts

- the additional traffic generation would not necessitate any further upgrades to the road network or nearby intersections
- the proposal would generate overall 138 and 120 additional pedestrian movements in the AM and PM peak periods, which can be accommodated within the existing pedestrian refuge island at the intersection of Pacific Highway / Falcon Street
- SIDRA traffic modelling analysis predicts that the proposal would not adversely impact on vehicle queues on Alexander Street, subject to left-in and left-out access is provided off Alexander Street (Figure 14).

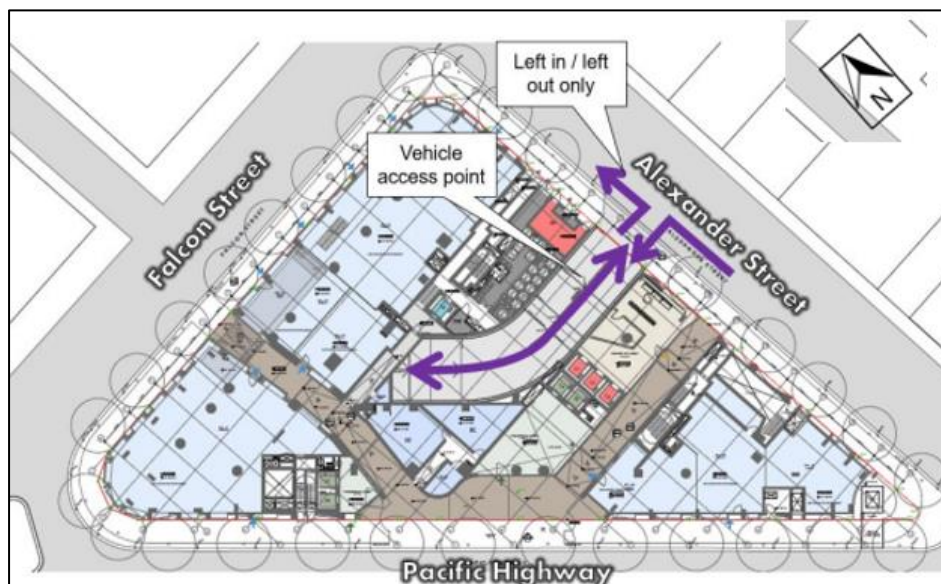


Figure 14 | Alexander Street driveway entry (Source: Applicant's additional information)

120. The TIA also included a preliminary Green Travel Plan (GTP) with a range of mechanisms to support achieving the target mode shares and improve sustainable transport usage.
121. TfNSW have reviewed the amended TIA and raised no further concerns regarding traffic impacts of the proposal subject to a condition requiring the Applicant to implement the left-in and left-out movement at the driveway, in consultation with Council.
122. The Department has considered the findings of the Applicant's TIA, the advice provided by TfNSW and the concerns raised by Council and the community. The Department is satisfied that:
 - the proposal is not expected to generate high traffic volumes, representing only 2% of the existing total traffic movements through the Pacific Highway / Falcon Street intersection

- the target car mode share (20% for residential and 25% for commercial) aligns with TfNSW Guide to Traffic Impact Assessment 2024, which identifies the site within Category 1A area, with a very high level of access to public transport
 - there is adequate pedestrian infrastructure to support the proposal
 - the reduced car parking provision (discussed in Section 5.4.2) and implementation of the GTP will contribute towards achieving the target car mode share and therefore reduce the overall traffic generation.
123. The Department has recommended conditions requiring left-in and left-out access via Alexander Street and for the Applicant to prepare and submit a final GTP with implementation measures to the Certifier, prior to the occupation of the building.

5.4.2 Car parking, bicycle parking

124. The proposal initially proposed a total of 324 car parking spaces including 190 residential and 134 commercial spaces.
125. In response to concerns raised by Council, public submissions and TfNSW, the Department engaged an independent traffic consultant to review the appropriateness of the proposed car parking spaces on the site. The independent expert advice recommended that car parking be reduced to comply with Housing SEPP (residential) and North Sydney Development Control Plan (NSDCP) (commercial) requirements. The expert advice report is provided in Appendix F.
126. In response to the concerns, the Applicant amended the proposal to reduce the commercial car parking. The development (as amended) proposes 220 car spaces in seven basement levels with 20 commercial and 190 residential car parking spaces. The development also includes 302 bicycle parking spaces including residential, visitor and commercial (staff and visitor) and six car share spaces. The Applicant has provided a table demonstrating compliance with the car parking requirements in the Housing SEPP and the NSDCP as shown in Figure 15.
127. The Applicant's TIA advised that the proposed parking rates now generally align with the Housing SEPP rates for the residential component and DCP rates for the commercial component.
128. The Applicant, however, does seek to provide a total of 190 residential spaces, which have been based on the application of the non-affordable housing rates across the entire development. The Applicant contends that the non-affordable housing rate in the Housing SEPP should be available for the affordable units when they convert to market housing after 15 years.

Land Use	Type	No. of units / GFA	Parking Rate	Required No. of Spaces	Parking on opening	Parking after 15 years	
Residential	Non-Affordable Housing	1 bed	15	0.5 / unit	8	174	190*
		2 bed	92	1.0 / unit	92		
		3 bed	33	1.5 / unit	50		
	Affordable Housing	1 bed	18	0.4 / unit	7		
		2 bed	26	0.5 / unit	13		
		3 bed	4	1.0 / unit	4		
Sub-Total - Residential		188	-	174			
Retail / Commercial		8,002m ²	1 / 400m ²	20	20	20	
Sub-Total: Residential + Retail / Commercial				194	194	210	
Car share		n / a			6	6	
Service vehicles		n / a			4	4	
Car wash bay		n / a			1	1	
Total Car Parking					205	221	

Figure 15 | Car parking compliance (Source: Applicant's additional information)

129. To comply with the Housing SEPP requirements, the Applicant proposes to quarantine the 16 excess spaces for a period of 15 years. After the 15-year period, when the affordable housing apartments are released to the market, the quarantine would be removed.
130. The Department has carefully considered the Applicant's proposal regarding car parking and supports the amount of commercial car parking, as this has been minimised in line with the DCP and the site's excellent access to public transport and other available public parking in Crows Nest.
131. However, the Department considers that the arrangement to quarantine the car parking spaces is uncertain, may not be successful and would set an undesirable precedent.
132. The Department however in this circumstance considers that the Applicant has provided adequate reasons to exceed the Housing SEPP parking rate:
- the overall residential car spaces comply with the non-affordable rates in the Housing SEPP and will be utilised by the 188 market apartments after 15 years
 - the Housing SEPP is a minimum rate, rather than a maximum, and provision of car parking at this rate would mean 1 car space is provided per apartment on average, which is not considered excessive
 - the 16 additional car parking spaces would not result in detrimental traffic generation

- the proposal includes sustainable transport measures including 6 car share spaces, which would discourage car ownership and a GTP to improve overall alternate transport usage in the future
- 302 bicycle spaces, complying with the DCP rates, are proposed to cater for the residents, visitors and commercial users as a sustainable transport mode.

133. The Department has recommended conditions requiring the provision of car parking and bicycle space within the basement in compliance with relevant Australian Standards.

5.4.3 Access and Servicing

134. Access to the site is proposed via a two-way driveway off Alexander Street. The Applicant has submitted vehicle swept paths and turning areas to demonstrate compliance of these areas with the relevant Australian Standards. Council has not provided any comment in this regard.

135. The basement level 1 also includes service areas and a loading bay with a turntable to fit a small to medium rigid vehicle. The entry to the basement will have a height clearance of 4.5 m to enable entry and exist of service vehicles of this size in a forward direction. The loading bay will be used for commercial waste collection and other services only. Residential waste collection vehicles will not enter the site (discussed in Section 5.5).

136. The Department’s assessment of driveway access, turning areas and servicing arrangements is satisfactory subject to recommended conditions.

5.5 Other issues

137. The Department’s consideration of other issues is summarised in Table 6 below.

Table 6 | Assessment of other issues

Conclusions	Recommended conditions
<p>Overshadowing impacts</p> <p>Council and public submissions raised concerns regarding additional overshadowing impacts on the surrounding developments, HCAs and North Sydney Girls High School.</p> <p>The Applicant’s Amendment Report provided shadow analysis for midwinter (21 June) between 9am and 3pm which incorporated the proposal and massing of all surrounding developments. The shadow analysis considered the shadows from a development compliant with the NSLEP standards and the additional shadows cast due to the 30% Housing SEPP incentives.</p>	<p>Conditions not required.</p>

Conclusions	Recommended conditions
<p>The Department concludes the additional shadows cast due to the increased height of the building does not result in any unacceptable overshadowing impacts on surrounding developments because:</p> <ul style="list-style-type: none"> • most of the areas impacted by the additional uplift are already overshadowed by existing developments and structures • despite the additional shadows, the development would maintain 2 hours of solar access to the nearby residential areas between 9am and 3pm midwinter (21 June) • impacts to North Sydney Girls High School are limited to 30 minutes of additional overshadowing to the western courtyard between 2.30 pm to 3 pm • the Holtermann Estate C HCA will be overshadowed for 1.5 hours from 1.30 pm to 3 pm but will still receive solar access from 9am to 1pm. 	
<p>Visual privacy and building separation</p> <p>Public submissions have raised concerns that the development will have a detrimental impact on the visual privacy of the residential towers nearby.</p> <p>The Department notes that the site is irregularly shaped and is isolated by three surrounding roads. No buildings are located adjoining the site boundaries. Given the width of these roads and the tower setback, the proposal can achieve adequate building separation from all nearby developments, in accordance with the ADG recommendations.</p> <p>The Department is satisfied that the site will provide a reasonable level of visual privacy to the neighbouring residential properties as expected in a high-density environment.</p>	<p>Conditions not required.</p>
<p>Landscaping and communal open space</p> <p>The EIS and Amendment Report included Landscape Plans and a Landscape Design Report. Landscaping works include public domain works (discussed later) at the ground level, podium level communal open space and planting along the breezeway.</p> <p>The site is currently covered in built structures/hard stand areas and doesn't provide any deep soil. The proposal also seeks consent for 100% site coverage and does not include any deep soil zone. Noting the location of the site in a dense urban setting and inclusion of a podium with nil setbacks to the streets, no deep soil provision is acceptable.</p> <p>In response to the SDRP comments, the Applicant amended the landscape design to increase tree planting and landscaping within the podium level and breezeway. The</p>	<p>Condition B8 of Appendix G</p>

Conclusions

Recommended conditions

Applicant's landscape report advised that the proposed planting includes low water and shade loving species to ensure their long-term survival with limited solar access.

The communal open space area includes a variety of recreational areas, some of which will be suitable under the shady tower soffit (outdoor cinema, BBQ area, fitness area and the like). Social gathering spaces and a viewing deck are proposed at the northern end fronting Falcon Street for maximising amenity and solar access.

The proposal provides 15% canopy coverage (including street trees) and the planting palette selected is appropriate as it will provide a mix of endemic and indigenous spaces integrated within the design providing pockets of both formal and informal areas for future residents to gather and connect with the environment.

The Department considers the proposal will result in a high-quality landscape outcome in a dense urban area which will positively contribute to the character of the site and the surrounding streetscape. The Department recommends conditions for a detailed landscape plan and a landscape maintenance program.

Through site links

The NSDCP provides for a through-site link across the site, diagonally from the north-east corner of the site (Falcon Street and Alexander Street) to Pacific Highway.

The proposal includes two publicly accessible through-site links on the ground floor providing pedestrian connection from Falcon, Alexander Street and Pacific Highway (**Figure 16**). The Applicant has advised that the through site links will always be publicly accessible (24/7).

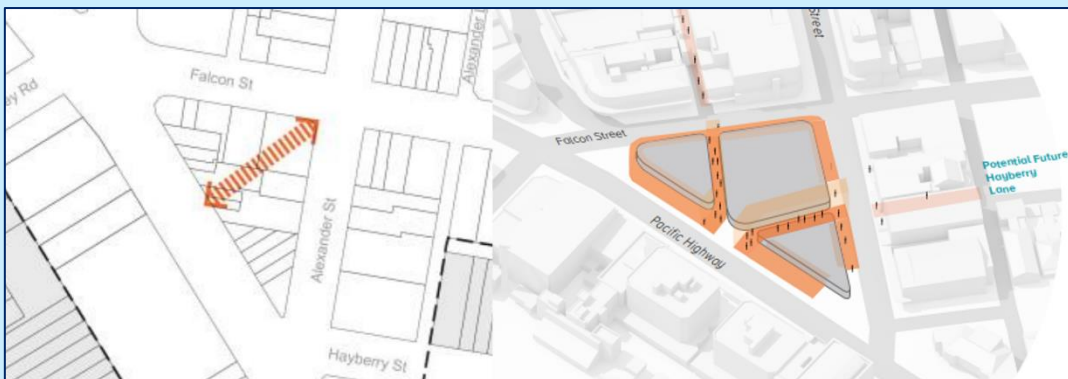


Figure 16 | The NSDCP through site link (left) and proposed through site links (right) (Source: NSDCP and Applicant's Design Report)

Council and public submissions raised concerns about the amenity of the through-site links and inconsistency with DCP provisions.

Condition E40, E51 and G9 of Appendix G

Conclusions	Recommended conditions
<p>In response, the Applicant noted that while the proposed through-site links do not align with the DCP’s desired location, they have been designed to provide effective pedestrian movement through the site, increase site permeability, connect key areas and support the activation of public spaces.</p> <p>The Department is satisfied the proposal appropriately activates the public domain, incorporates appropriate 24 hr/7 days publicly accessible through-site links and is generally in accordance with the DCP’s accessibility and permeability objectives.</p> <p>The Department has recommended conditions so that appropriate easements and restrictions on title are created to allow public access through the links at all times. Conditions are also recommended requiring the Applicant to implement security measures within the publicly accessible areas and deliver an operational management plan with security and staff management measures for the public accessible links.</p>	
<p>Public domain works and street trees</p> <p>The Applicant proposes to remove the six existing street trees along the site’s frontages and replace them with 29 street trees. The Applicant’s Arborist Report advised that given the scale of excavation, the existing street trees would not survive, therefore removal and replacement is recommended.</p> <p>The Applicant has also proposed a range of other public domain works including integrated seating, connection of the publicly accessible through site links with the footpaths, public art and green walls within the links, continuous awnings along the frontages, lighting to activate the frontages and a public art strategy within the through-site link.</p> <p>Public submissions raise concerns on the impacts of this development on the immediate public domain on Crows Nest.</p> <p>Council did not raise any concerns in its submission, but it recommended a condition that two street trees at the corner of Falcon Street and Pacific Highway be retained and that they be consulted regarding the public art strategy.</p> <p>The Department has considered Council’s request regarding the retention of trees, however notes that the two Cocos Palm trees, identified in the Arborist report as having low value, are located within approximately 2 – 2.5m of the boundary and would be impacted by basement excavation works. The Department therefore supports the proposed removal and replacement planting as it would offer a better and reasonable solution for the public domain in the long term. Therefore, the Department has recommended conditions requiring the planting of street trees per</p>	<p>Conditions C9 – C15 of Appendix G</p>

Conclusions	Recommended conditions
<p>the landscape plans and the planting species to comply with Council’s recommendations.</p> <p>The Department is satisfied that the proposal will improve the existing public domain, subject to conditions including pre-construction and post-construction dilapidation reports, requirements for footpath and kerb and gutter works per Council specifications, street tree planting and consultation with Council in relation to, the public art strategy.</p>	
<p>Operational Noise and Vibration</p> <p>Public submissions have raised concerns regarding the impacts of the development on acoustic amenity of surrounding residents and the commercial uses, as well as impacts of the existing adjacent acoustic environment on the amenity of the future residents.</p> <p>In response to concerns raised, the AAR (as revised by the Amendment report) concluded that the proposal is capable of achieving a satisfactory level of acoustic amenity for future residents and would not result in unreasonable noise impacts on the locality. In particular, the ARR notes:</p> <ul style="list-style-type: none"> • noise impacts on the future residents from traffic on surrounding roads, metro corridor and the and background noise due to the Crows Nest Hotel use or other commercial uses can be mitigated via recommended construction standards • acoustic treatments and additional ventilation measures are required for the apartments facing classified roads (discussed in Section 5.3.2) • the noise generation from the loading dock/car park operations comply with the specified noise criteria specified • separate approvals with additional noise assessment will be needed for future tenancies with night-time uses (10 pm – 7 am) and with outdoor dining and liquor license. <p>The Department has reviewed the findings and conclusions of the AAR and considered the concerns raised in submissions. The Department considers that the proposal is capable of achieving good acoustic amenity and can be designed to mitigate any noise impacts on surrounding properties subject to conditions requiring:</p> <ul style="list-style-type: none"> • compliance with construction measures outlined in the acoustic advice • the fit-out of the and use of commercial tenancies to be subject to a separate future assessment 	<p>Conditions B1, B13, E14 - E15, E42 of Appendix G</p>

Conclusions	Recommended conditions
<ul style="list-style-type: none"> preparation of an operational plan of management (OPM) which includes measures for noise management of communal and commercial areas. <p>The Department is satisfied that operational noise impacts associated with the proposal can be appropriately managed subject to these recommended conditions of consent.</p>	
<p>Construction noise</p> <p>The Interim Construction Noise Guidelines (ICNG) recommend limits to construction noise impacts in NSW. In particular, it sets noise management levels (NML), standard construction hours (7am to 6pm Monday to Friday and 8am to 1pm on Saturdays) and notes that noise impacts above 75 dB represent a point where sensitive receivers may be ‘highly noise affected’ and additional mitigation is warranted.</p> <p>The Applicant provided a Construction Noise and Vibration Management Plan (CNVMP) within the AAR considering construction noise and vibration assessment.</p> <p>The Applicant proposes construction hours between 7am to 6pm, Monday to Friday and 7am to 5pm on Saturdays. The Applicant also requested to undertake the noisy construction activities including rock breaking and piling from 7 am with a 2, 1 hour respite periods each day, to expedite construction works.</p> <p>The Applicant’s CNVMP assessed the likely impacts of construction works on surrounding properties against the recommendations of the Interim Construction Noise Guideline (ICNG).</p> <p>The Applicants CNVMP predicted up to 6 dBA exceedances to noise management levels during certain activities. It advised that construction noise levels are not expected to exceed the Interim Construction Noise Guideline’s (ICNG) highly affected noise criterion (75dB) at residential receivers during all activities except when using the piling rig close to the site boundary of Alexander Street (up to 3dB exceedance).</p> <p>The CNVMP recommended noise mitigation measures to ensure construction noise can be minimised to not exceed 75dBA at any time and acknowledged that a detailed plan will be developed, including a further acoustic review of the plant and equipment and likely use of quieter equipment to ensure compliance with the ICNG noise limits.</p> <p>The CNVMP recommended that despite noise mitigation measures, if compliant noise levels cannot be guaranteed for certain activities, a notification process should be developed to inform the nearest residents of the duration of the noise intensive construction process.</p>	<p>Condition B20 - B41, C1 – C6, C16, C26, D3 – D13, D18 of Appendix G</p>

Conclusions	Recommended conditions
<p>Community submissions have raised concerns regarding construction impacts due to the development.</p> <p>While the Department notes the Applicant’s proposed construction hours, it recommends a condition requiring the construction to be undertaken within the standard hours stipulated by the ICNG, being:</p> <ul style="list-style-type: none"> Monday to Friday – 7 am to 6 pm Saturday – 8 am – 1 pm no works on Sundays or public holidays. <p>Noting that certain activities, such as piling are expected to exceed 75dB, the Department recommends that a condition rock breaking, rock hammering, sheet piling, pile driving and similar activities may only be carried out between 9 am and 12 pm and 2 pm and 5 pm, Mondays to Fridays and 9 am to 12 pm Saturdays. This is consistent with standard conditions applied to urban developments to ensure that the surrounding properties achieve sufficient respite from high noise generating works.</p> <p>The Department has recommended conditions to ensure the construction does not have an unreasonable impact on the amenity (traffic, noise) of nearby residents or result in any damage to neighbouring development and public domain.</p>	
<p>Other construction impacts</p> <p>The Applicant provided:</p> <ul style="list-style-type: none"> a Construction Environmental Management Plan with air and dust, geotechnical, contamination, stormwater, sediment control and waste management measures reports assessing impacts of construction on Sydney Metro corridor a Geotechnical Investigation Report considering excavation / vibration impacts a Construction traffic management plan with details of construction vehicle routes, pedestrian management measures and mitigation measures to minimise disruption during construction <p>Submissions raised concerns regarding adverse construction impacts.</p> <p>TfNSW, Sydney Metro and EPA have reviewed the proposal having regard to construction impacts and raised no concerns subject to conditions including developing a detailed CNVMP prior to commencement of works.</p> <p>The Department has carefully considered the Applicant’s reports, public submissions and agency advice.</p>	<p>Condition B20 - B41, C1 – C6, C16, C26, D3 – D13, D18 of Appendix G</p>

Conclusions	Recommended conditions
<p>The Department is satisfied that the development can be constructed to appropriate standards, without causing structural damage to nearby buildings or resulting in any unreasonable amenity impacts, subject to recommended conditions requiring the preparation of detailed Construction Management Plans, CNVMP, Traffic Management Plans, Construction Waste, Soil and Water Management Plans.</p>	
<p>Stormwater and flooding</p> <p>The Applicant provided a Stormwater Management Report and Drainage Plan. An On-Site Detention tank is proposed along Falcon Street and will discharge to Council’s stormwater drainage system along Alexander Street.</p> <p>Council has recommended conditions to address a range of requirements for the proposed stormwater management system.</p> <p>The Department has recommended conditions related to detailed design of the stormwater system, stormwater quality treatments, construction stormwater management and preparation of a Stormwater Operational and Maintenance Plan, adhering to Council’s specifications.</p> <p>Alexander Street and Falcon Street, adjoining the site, are impacted during the 1% AEP and Probable Maximum Flood PMF flood events. The Applicant has proposed the crest of the basement entry driveway to be above the PMF. BCS have reviewed the application and raised no concerns regarding flooding.</p> <p>The Department is satisfied adequate protection to the basement has been provided and subject to recommended conditions, the site will not be impacted by flood events.</p>	<p>Conditions B6, B44, and E10 of Appendix G</p>
<p>Connecting with Country Framework</p> <p>The Applicant provided a Connecting with Country Report which outlines the Country centric approach that has been undertaken overall in designing and delivering a high-quality living place including a scalloped street wall, inclusion of traditional motifs, including natural materials and finishes and sculptures into the design of the ground plane, public domain and podium terrace. The Connecting with Country report includes a public art strategy to be implemented in consultation with indigenous artists.</p> <p>The Applicant incorporated sustainability initiatives through passive solar design and natural ventilation to all apartments.</p> <p>The SDRP comments and Applicant’s response is summarised in Appendix E. Council recommended that Connecting with Country Framework be considered adequately in the assessment.</p>	<p>Condition B17-B19 of Appendix G</p>

Conclusions	Recommended conditions
<p>The Department has considered the Applicant’s Connecting with Country Report and is satisfied that the Applicant has responded to and incorporated design elements, consistent with the Connecting with Country Framework.</p> <p>The Department has recommended conditions requiring the implementation of the Public Art Strategy.</p>	
<p>Crime Prevention through Environmental Design Assessment (CPTED)</p> <p>The Applicant submitted a CPTED report with the EIS, which considered CPTED principles noting the proposal improves crime prevention through introduction of active frontages, passive surveillance of the public domain, clear demarcation of private/public areas and common areas which promote interaction. The EIS also noted that further measures such as security cameras, controlled access, maintenance and lighting can be implemented to improve crime prevention.</p> <p>NSW Police Force have recommended conditions relating to CPTED principles and operational matters.</p> <p>The Department is satisfied that the development would not result in any unacceptable safety or security impacts, subject to recommended conditions requiring adherence to the CPTED report, preparation of a security management plan, provision of CCTV cameras and appropriate building construction standards to prevent theft or unauthorised entry.</p>	<p>Condition B11 of Appendix G</p>
<p>Wind impacts</p> <p>Public submissions have raised concerns regarding the wind tunnel effects and pedestrian wind comfort on Pacific Highway.</p> <p>The Applicant submitted Pedestrian Wind Impact Assessment and additional Wind tunnel assessment reports, which conclude that subject to recommended wind mitigation measures such as screens and landscaping, pedestrian comfort levels on the ground level and the podium level will be maintained.</p> <p>The Department has reviewed the findings and recommendations of the Applicant’s Wind Assessment and is satisfied that wind impacts would be within acceptable limits, subject to recommended conditions of consent to ensure that the mitigation measures are incorporated prior to occupation of the building.</p>	<p>Condition B12 of Appendix G</p>
<p>Operational waste management</p>	<p>Condition E34 of Appendix G</p>

Conclusions	Recommended conditions
<p>Public submissions raised concerns regarding procedures of waste collection and quantity of waste generated. The Applicant provided an Operational Waste Management Plan which considers the NSDCP and outlines:</p> <ul style="list-style-type: none"> residential chutes and cupboards for recyclables will be provided at each level separate commercial, residential and residential bulky goods bin rooms are proposed on basement level 1 building management will be required to take general waste bins from the residential bin storage room to the bin collection room on the ground level Council collection vehicle will collect the bins from bin collection area fronting Alexander Street (easement of access to be provided) a private waste collection vehicle will collect commercial/retail waste from the loading bay on basement level 1 and enter/exit from Alexander Street collection of commercial/residential bins will occur on separate days. <p>Council provided standard waste conditions, including the requirement for a covenant/restriction to allow waste collection vehicles to access the site.</p> <p>The Department considers the proposed waste collection facilities and processes appropriately respond to the site and the constraints. The Department has recommended conditions relating to the on-going waste management and collection procedures.</p>	
<p>Groundwater</p> <p>The Applicant provided a geotechnical investigation report which concluded that the proposed excavation level will extend below recorded ground water levels. Therefore, seepage is expected at times during construction and in the long term, which can be readily controlled by perimeter drains.</p> <p>Consequently, the EIS includes a Dewatering Management Plan which concludes that the proposed drained basement will require a Water Access License and a Water Supply Works approval from DCCEEW Water.</p> <p>The Department has recommended conditions to ensure required approvals are obtained and impacts minimised.</p>	<p>Conditions B6 and D21-D23 of Appendix G</p>
<p>Affordable Housing</p>	<p>Conditions E2, E39, and F12 of Appendix G.</p>

Conclusions

Recommended conditions

The proposal includes 15% of the overall GFA to be managed as affordable housing by a community housing provider for 15 years, consistent with the Housing SEPP. The proposal includes 48 apartments at level 4 to 8.

Public submissions raised concerns that 15% affordable housing is insufficient and also raised concerns that the housing will not be delivered once approval is obtained. Concerns were also raised regarding the nature and price of the tenancy.

The EP&A Act and Housing SEPP provides that affordable housing must be available to very low, low and moderate income households, or a combination of the households as defined in the Housing SEPP.

The Department notes that there are no statutory requirements or specific policy guidance around the design and selection of affordable housing within an infill affordable housing development. However it has considered the design and location of the affordable apartments as part of its assessment of the proposal against the ADG.

The Department is overall satisfied that the affordable apartments will achieve a high standard of amenity including:

- a mix of 1, 2 and 3 bedroom apartments
- apartment sizes and balconies/terraces which meet or exceed the ADG recommendations
- access to podium level communal open space with shared amenities with the market housing
- functional layouts consistent with the market housing.

Further, the Department has recommended conditions, as outlined in **Section 5.3.2** to require apartments fronting Pacific Highway and Falcon Street between level 4-13 be designed to include vertical louvres to ensure appropriate ventilation and acoustic amenity is provided to these apartments.

To ensure the affordable housing is provided consistent with the requirements of the Housing SEPP, the Department has recommended conditions requiring:

- a restriction on title requiring 48 affordable housing apartments (15% of the GFA) to be provided for a minimum of 15 years and managed by a community housing provider
- the affordable housing apartments to be completed and be ready for occupation prior to the issue of any occupation certificate relating to the residential component

Conclusions	Recommended conditions
<ul style="list-style-type: none"> the Applicant to provide the Department with a report within 12 months of occupancy to demonstrate their endeavours to ensure that the tenancies are occupied. 	
<p>Obstacle Limitation Surfaces</p> <p>The proposal's height is RL 177.9 and will breach Sydney Airport's Outer Horizontal Surface (OHS) RL 156 by 21.9 m. CASA has issued a Controlled Activity Approval and their comments (including Sydney Airport) are summarised in Section 4.</p> <p>Based on the comments, the Department is satisfied that the proposal will not adversely impact on airspace operations and recommended a that all necessary approvals be obtained prior to commencement of works.</p>	<p>Condition A9 - A11 of Appendix G</p>
<p>Aboriginal Cultural Heritage</p> <p>The Applicant submitted an ACHAR, which confirmed that the site has low potential of Aboriginal relics or objects and recommended an unexpected finds protocol be in place during construction.</p> <p>Heritage NSW have agreed with the Applicant's conclusions and the Department has recommended a condition related to unexpected finds.</p>	<p>Condition D6 of Appendix G</p>
<p>Development Contributions</p> <p>The Department has recommended conditions levying section 7.11 contributions in accordance with Council's Local Contributions Plan 2020, as well as Housing and Productivity Contributions (HPC) requirements.</p>	<p>Conditions A7 and A8 of Appendix G</p>
<p>Outdoor light spill</p> <p>Community submissions raised concerns that the development would result in outdoor light spill.</p> <p>The Department has recommended conditions to ensure that the proposed outdoor lighting complies with relevant standards and does not result in outdoor light spill.</p>	<p>Condition E22 and F9 of Appendix G</p>
<p>Sydney Metro impacts</p> <p>The proposal will be partially constructed within the existing Sydney Metro reservation in the norther-eastern part of the site. Sydney Metro advised that the proposal will not impact on the assets or operation of the metro line subject to recommended conditions.</p>	<p>Condition B22 of Appendix G</p>

Conclusions	Recommended conditions
<p>Relocation of bus stop</p> <p>Public submissions recommended that the bus stop on Pacific Highway should be improved.</p> <p>Based on comments from TfNSW, the Department has recommended a condition requiring the temporary relocation of this bus stop during construction works (if required).</p>	<p>Condition D19 of Appendix G</p>
<p>Consultation with community</p> <p>The Applicant provided a Community Consultation Report which outlines the community consultation undertaken in accordance with the Department’s social impact and community consultation guidelines.</p> <p>Public submissions raised concerns that inadequate consultation about the proposal has been undertaken by the Applicant. Council raised concerns regarding lack of consultation by the Department.</p> <p>The Department notes that the Applicant has provided a Community Consultation Report and Social Impact Assessment detailing the matters raised and responses provided to the issues raised by the community. Additionally, Department’s engagement is summarised in Section 4. The Department considers that satisfactory community engagement has been undertaken.</p>	<p>No conditions required</p>

6 Evaluation

138. The Department's assessment has considered the relevant matters and objects of the EP&A Act, including the principles of ESD, advice from government agencies, local councils and public submissions, and government policies and plans.
139. The Department's assessment concludes that the proposal is acceptable as it:
- the development will support State government priorities to deliver well-located housing, including 48 affordable housing apartments, offering housing choice at a highly accessible location
 - it includes commercial floor space which will generate approximately 55 ongoing employment opportunities
 - while the building will be highly prominent, it provides a bulk and scale which is consistent with the envisaged character of the St Leonards and Crows Nest precinct and strategic and statutory instruments which permit and incentivise increased height and density where affordable housing is provided in accessible locations
 - it will not result in unreasonable overshadowing, visual or traffic impacts on adjoining development, the surrounding HCAs or the public domain
 - the Department has recommended a suite of conditions to appropriately address any residual issues.
140. The Department has recommended a range of conditions to manage any residual environmental impacts. See the recommended conditions of consent at **Appendix G**.
141. Overall, the Department considers the impacts of the development are acceptable and can be appropriately managed or mitigated through the implementation of recommended conditions of consent. Consequently, the Department considers the proposal is in the public interest and is approvable, subject to conditions.
142. This assessment report is presented to the IPC to determine the application.

Appendices

Appendix A – List of referenced documents, submissions and advice

The following documents can be accessed at <https://www.planningportal.nsw.gov.au/major-projects/projects/mixed-use-development-including-fill-affordable-housing-five-ways-crows-nest>:

- Environmental Impact Statement
- Amendment report
- Submissions report
- Applicant’s additional information
- Submissions (public, public authority and Council)
- Government agency advice.

Appendix B – Department’s consideration of submissions

Table 7 | Key issues and how they have been considered

Matter Raised	Consideration
<p>Inadequate Cross Ventilation to apartments.</p>	<p>The site is located at the intersection of State roads and is subject to road noise. The Department is satisfied that proposal provides reasonable cross-ventilation to the apartments, subject to a condition requiring acoustically attenuated louvres to provide natural ventilation to rooms of apartments on level 4 to 13 fronting the Pacific Highway and Falcon Street</p> <p>In addition to the required louvres, the apartments include sufficiently sized openings, which can be opened at times of the day/night when the environment is less noisy.</p> <p>The Department has recommended conditions to ensure acceptable cross ventilation is provided to the apartments fronting the busy roads, where windows/doors are required to be closed to maintain acoustic privacy.</p>
<p>Pedestrian, parking and traffic impacts</p>	<p>The Applicant has also provided detailed assessment of traffic impacts, traffic modelling of surrounding roads, pedestrian movement analysis and queuing analysis on Alexander Street. This analysis concluded that the proposal would not result in unreasonable traffic, parking or pedestrian movement and safety impacts on the locality, subject to a left-in left-out access arrangement from Alexander Street.</p> <p>The Applicant amended the proposal to reduce the number of car parking spaces (from 324 to 220).</p> <p>TfNSW has reviewed the proposal and raises no concerns subject to conditions.</p> <p>The Department supports the development subject to recommended conditions regarding car parking arrangements, restriction on traffic movements at the driveway and other servicing conditions.</p>
<p>Public domain adverse impacts on Crows Nest</p>	<p>The Applicant has proposed a range of works to improve the public domain via street trees, landscaping, through site links and public art strategies. The Department has recommended conditions to ensure that the public domain works are completed and supports the proposal on this basis.</p>
<p>Building form and design - Exceedance to maximum height, FSR, bulk and scale,</p>	<p>The Department considers that the proposal presents a high standard of architectural design and appropriately responds to the planning controls for the site, while delivering 48 affordable units in accordance with the Housing SEPP.</p>

Matter Raised	Consideration
<p>inadequate consideration of Connecting with Country Framework</p>	<p>The podium height of 3 storeys responds to the surrounding context including the Crows Nest hotel. The overall height, including the minor variations to the Housing SEPP controls, are considered acceptable in the circumstances and the Department is satisfied that sufficient environmental planning grounds are provided to justify the variation.</p> <p>Additionally, the proposal will not result in adverse amenity impacts for the residents and the neighbours.</p> <p>The proposal responds to the Connecting with Country framework and includes initiatives including a scalloped street wall, inclusion of traditional motifs, natural materials and finishes and sculptures into the design of the ground plane, public domain and podium terrace. The Connecting with Country report also includes a public art strategy to be implemented in consultation with indigenous artists.</p> <p>Further, the Applicant has incorporated sustainability initiatives through passive solar design and natural ventilation to all apartments.</p>
<p>Adverse visual impacts to the catchment</p>	<p>The Department has reviewed the Applicant’s VIA and is satisfied the visual impacts to the locality and broader area are acceptable.</p> <p>Mid-distant views from the east and residential precincts to the west of Pacific Highway, will largely be screened by topography, vegetation and existing buildings. Further from 2-3 km south of the site, the proposal will form a small component of the expansive views from the foreshore of Sydney Harbour and will be consistent with the future character of the Crows Nest and St Leonards Precinct.</p> <p>The proposal is not considered to create visual impacts that detract the quality of the heritage items and heritage conservation areas located nearby.</p>
<p>Adverse wind impacts on the public domain near the site</p>	<p>The Applicant has provided wind assessment reports, which concluded that subject to recommended wind mitigation measures such as screens and landscaping, pedestrian comfort levels on the ground level and podium level will be maintained. The Department has recommended conditions to this effect.</p>
<p>Impacts on heritage items and heritage conservation areas</p>	<p>The 3-storey podium appropriately responds to the height of the nearest heritage item. Further the overall bulk of the podium is broken down through connecting laneways, and variations in the façade is achieved through material treatment including use of brick to reference the heritage item. The tower will be visible from the adjacent HCA however this impact is considered reasonable in the</p>

Matter Raised	Consideration
	<p>context of the planning controls for this site and the likely future uplift of surrounding sites in Crows Nest as part of the draft Crows Nest TOD program.</p>
<p>Consistency with local character</p>	<p>The site is located near the Crows Nest village, along the Pacific Highway corridor. The locality is undergoing a transition, being subject to further rezoning and density increases under the 2036 Plan and the draft Crows Nest TOD program.</p> <p>The Department considers the proposal will result in an appropriately scaled building that will be compatible with the desired future character of the area as envisioned in the strategic planning documents.</p>
<p>Amenity impacts to locality (overshadowing, daylight access, light pollution, acoustic impacts, privacy and reflectivity)</p>	<p>The Department is satisfied the development’s amenity impacts are acceptable subject to conditions. In particular, the Department is satisfied that the proposal would not result in:</p> <ul style="list-style-type: none"> • significant additional overshadowing, loss of daylight, visual or acoustic privacy to neighbours • adverse impacts due to glare from the facades and light spill. <p>Any noise impacts due to future uses of the premises would be assessed under separate local development applications.</p> <p>The Department has also recommended appropriate conditions to ensure a high level of amenity is maintained along with glare and light spill control.</p>
<p>Overshadowing</p>	<p>The Department’s assessment of solar access studies concludes the proposal does not result in any unacceptable overshadowing impacts on surrounding developments.</p>
<p>Concerns regarding the uncertainties of delivery of Affordable Housing, its nature and the calculation of Housing SEPP incentives</p>	<p>The proposal includes 15% of the overall GFA to be managed as affordable housing by a community housing provider for 15 years, consistent with the Housing SEPP. The proposal includes 48 apartments at level 4 to 8.</p> <p>The Department is satisfied that the proposal provides 15% of its overall GFA as affordable housing and is eligible for 30% bonuses above the maximum permissible FSR for the land, which includes both the residential and non-residential components.</p> <p>The EP&A Act and Housing SEPP provides that affordable housing must be available to very low, low and moderate income households, or a combination of the households as defined in the Housing SEPP.</p>

Matter Raised	Consideration
	<p>The Department is satisfied that the affordable apartments will achieve a high standard of amenity including:</p> <ul style="list-style-type: none"> • a mix of 1, 2 and 3 bedroom apartments • apartment sizes and balconies/terraces which meet or exceed the ADG recommendations • access to podium level communal open space with shared amenities with the market housing • functional layouts consistent with the market housing.
<p>Infrastructure, lack of open space to cater for the increased density and development contributions</p>	<p>The Department has recommended a condition levying section 7.11 contributions in accordance with North Sydney Council’s Local Contributions Plan 2020, which would be utilised in the improvement of public infrastructure within the LGA including delivery of open spaces.</p> <p>Additionally, the application will also be affected by the Housing Productivity Commission, and this is also recommended as a condition of consent.</p>
<p>Podium scale, retail and commercial components, oversupply of commercial tenancies</p>	<p>The proposed scale of the podium is acceptable as:</p> <ul style="list-style-type: none"> • there is no NSLEP or other requirement for a maximum podium height and scale • the three-story (plus mezzanine) podium has been designed to accommodate approximately 8,002 m2 of commercial floorspace in accordance with clause 4.4A of NSLEP, which requires the development to provide a minimum non-residential floor space ratio of 2.5:1 • the scale of the podium would respond appropriately to the surrounding context of heritage items • the proposal has used a variety of fine grain materials and breaks in the podium layout to tone down its scale and provide a human context by introducing the through site links and voids.
<p>Construction impacts</p>	<p>The Department has recommended conditions to ensure the construction of the development does not have an unreasonable impact on the amenity (traffic, noise, air quality etc.) of nearby residents or result in any damage to neighbouring development and public domain.</p>

Matter Raised	Consideration
Appropriateness of the digital advertising signage	The Applicant has removed the digital advertising signage from the scope of the proposal.
Inadequacies of waste management on site	The Department is satisfied the proposed waste collection facilities and processes appropriately responds to the site. The Department recommends a condition for the development to comply with an Operational Waste Management Plan.
Geotechnical risks for basement and Sydney Metro corridor	The proposal will be partially constructed within the existing Sydney Metro reservation in the north-eastern part of the site. Sydney Metro is satisfied that the proposal would not impact on the assets or operation of the metro line subject to recommended conditions.
Request for public hearing by IPC	Holding a public meeting is at the discretion of the IPC.
Inadequate community engagement	<p>The Applicant engaged with Council and the community in accordance with the Department's 'Undertaking Engagement Guidelines for State Significant Projects'.</p> <p>The Department publicly exhibited the proposal for 28 days, which included consultation with Council, public authorities and notifying neighbouring properties. The Department also exhibited the Amendment Report for 14 days with increased extent of properties notified as requested by Council. The community consultation from the Applicant and Department is considered satisfactory.</p>
Cumulative Impacts of proposal and property values	<p>The cumulative impacts of the proposal have been considered by the strategic vision for the site. The proposal aligns with the planning controls and therefore would not generate adverse cumulative impacts. The cumulative construction impacts can be managed via recommended conditions.</p> <p>The Department has assessed the merits of the proposal in detail within Section 5 of this report and concludes, subject to conditions, the development has acceptable impacts. Therefore, the Department is satisfied the proposal is unlikely to result in any significant adverse impacts on property prices.</p>

Appendix C – Statutory considerations

Matters of consideration required by the EP&A Act

Section 4.15 of the EP&A Act sets out matters to be considered by a consent authority when determining a development application. The Department’s consideration of these matters is shown in Table 8 below.

Table 8 | Matters for consideration

Matter for consideration	Department’s assessment
Environmental planning instruments, proposed instruments, development control plans & planning agreements	Appendix C
EP&A Regulation	Appendix C
Likely impacts	Section 5 – Assessment
Suitability of the site	Section 1 – Proposal location, Section 3 – Policy and statutory context and Section 5 – Assessment
Public submissions	Section 4 – Engagement and Section 5 – Assessment
Public interest	Section 4 – Engagement, Section 5 – Assessment and Section 6 – Evaluation

Objects of the EP&A Act

In determining the application, the consent authority should consider whether the proposal is consistent with the relevant objects of the EP&A Act (s 1.3) including the principles of ecologically sustainable development (ESD). Consideration of those factors is described in Table 9 below.

As a result of its analysis, the Department is satisfied that the development is consistent with the objectives of the EP&A Act and the principles of ESD.

Table 9 | Objects of the EP&A Act and how they have been considered

Object	Consideration
<p>(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,</p>	<p>The proposal promotes the social and economic welfare of the community by providing additional housing, including affordable housing, and jobs at an accessible site, contributing to the achievement of State, regional and local planning objectives.</p> <p>Environmental impacts will be balanced by replacement tree planting and landscaping works.</p> <p>The proposed development does not have any impacts on the State’s natural or other resources.</p>
<p>(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,</p>	<p>The proposal includes ESD initiatives and sustainability measures such as passive solar design and thermal massing, which will meet the Building Sustainability Index (BASIX) requirements and achieve an average 7 Star NatHERs with individual apartments achieving a minimum of 6 Stars.</p>
<p>(c) to promote the orderly and economic use and development of land,</p>	<p>The proposal represents the orderly and economic use of the land primarily as it will increase housing and employment opportunities near services and public transport.</p> <p>The proposed land uses are permissible, and the form of the development has regard to the planning controls that apply to the site, the desired character and context of the locality and surrounding sites.</p>
<p>(d) to promote the delivery and maintenance of affordable housing,</p>	<p>The proposal will provide 48 affordable housing apartments, to be managed by a registered community housing provider for a minimum of 15 years from the date of occupation.</p>
<p>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,</p>	<p>The proposal will not adversely affect the protection of the environment. See consideration of biodiversity below.</p>

Object	Consideration
<p>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),</p>	<p>The proposal is accompanied by an ACHAR and Heritage Impact Statement which confirm the proposal will not have any unreasonable heritage impacts.</p>
<p>(g) to promote good design and amenity of the built environment,</p>	<p>The proposal demonstrates a good design approach to the relevant planning controls and local character and has considered comments provided by SDRP. The buildings have been designed to minimise amenity impacts to neighbours and the surrounding environment and to provide good levels of internal amenity for the occupants.</p> <p>Other amenity impacts would be managed by either the form of the development or by the recommended conditions of consent for mitigation measures during the construction and operational phase of the development.</p>
<p>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,</p>	<p>The proposal demonstrates that construction work will be undertaken in accordance with national construction standards, relevant regulation and the site-specific construction management plan. Any impacts during this phase will be monitored and managed in keeping with the conditions of consent set out to mitigate any impacts. Ongoing management and maintenance of the development will need to be managed by the building management.</p>
<p>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,</p>	<p>The Department publicly exhibited the proposal as outlined in Section 4. This included consultation with Council and other government agencies, and consideration of their responses.</p>
<p>(j) to provide increased opportunity for community participation in environmental planning and assessment.</p>	<p>The Department publicly exhibited the application, which included notifying neighbouring landowners and displaying the application on the Department's website.</p>

Object	Consideration
	<p>The amended application was exhibited and the additional landowners were notified in consultation with Council.</p> <p>The Department placed the Applicant’s submissions report, Amendment Report and additional information on its website, in addition to providing a copy to Council and other relevant government agencies.</p> <p>The engagement activities carried out by the Department are detailed in Section 4.</p>

Ecologically sustainable development

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

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

The Applicant has committed to achieving the following minimum sustainability targets:

- achieve minimum average of 7-star NatHERS rating
- meet or exceed BASIX minimum Energy and Water requirements
- meet the BASIX thermal performance requirements.

The proposal also provides for good sustainable design through the provision of adequate cross-ventilation and solar access.

The Department has considered the proposal in relation to the ESD principles. The precautionary and inter-generational equity principles have been applied in the decision-making process via a thorough and rigorous assessment of the environmental impacts of the proposal. The conservation principle has been applied through the provision of new landscaping around, on and within the

proposal and the valuation principle has been applied through the efficient use of the site, application of sustainability measures and creation of new employment opportunities.

The Department has recommended conditions requiring the implementation of ESD measures and minimum sustainability targets.

Subject to the above conditions, the proposal will be consistent with ESD principles, and the Department is satisfied the future detailed development is capable of encouraging ESD, in accordance with the objects of the EP&A Act.

Biodiversity Development Assessment Report

Section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all SSD applications to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the proposal is not likely to have any significant impact on biodiversity values (as identified in the BC Act and in the *Biodiversity Conservation Regulation 2017*).

A BDAR waiver request was submitted to the Department on 19 January 2024. The Director, Biodiversity, Conservation and Science Group of the Department of Climate Change, Energy, the Environment and Water and the Team Leader, Social and Affordable Assessments, as delegate of the Planning Secretary, determined that the development is not likely to have any significant impact on biodiversity values. A BDAR waiver was granted on 6 May 2024.

EP&A Regulation

The EP&A Regulation requires the Applicant to have regard to the *State Significant Development Guidelines* when preparing their application. In addition, the SEARs require the Applicant to have regard to the following:

- *Social Impact Assessment Guideline for State Significant Projects*
- *Undertaking Engagement Guidelines for State Significant Projects*

The Department considers the requirements of the EP&A Regulations have been complied with.

Environmental Planning Instruments (EPIs)

Planning Systems SEPP

The proposal is SSD under section 2.6(1) and section 26A of Schedule 1 of the Planning Systems SEPP, being an in-fill affordable housing development pursuant to Chapter 2, Part 2, Division 1 of the Housing SEPP as it is located on land within the Eastern Harbour City in the Six Cities Region with an estimated development cost of more than \$75 million.

Housing SEPP

A summary of the Department’s consideration of the relevant standards contained in the Housing SEPP are provided in Table 10 below.

Table 10 | SEPP (Housing) 2021 compliance table

Control	Department’s consideration
<p>15C Development to which division applies</p> <p>(1) This division applies to development that includes residential development if –</p> <ul style="list-style-type: none"> (a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and (b) the affordable housing component is at least 10%, and (c) all or part of the development is carried out – <ul style="list-style-type: none"> (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area – in an accessible area, or (ii) for development on other land – within 800 m walking distance of land in a relevant zone or an equivalent land use zone. 	<ul style="list-style-type: none"> (a) The development is permitted with consent on land zoned MU1 Mixed Use under the NSLEP. (b) The development will consist of 15% affordable housing component. (c) The development is located on land in the Six Cities Region (Eastern Harbour City) and is in an accessible area within 800m walking distance to Crows Nest metro station and within 400m walking distance to numerous bus stops serviced by high frequency routes.
<p>16 Floor space ratio</p> <p>(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).</p> <p>(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows-</p>	<p>(1) The maximum permissible FSR for the development under NSLEP is 5.8:1 (including a non-residential FSR of 2.5:1). The application seeks to apply the 30% bonus FSR under clause 16(1). The maximum permissible FSR, therefore increases to 7.54:1. The proposal seeks for an FSR of 7.54: 1 and complies with this requirement. The proposal includes a non-residential component of 2.5:1.</p> <p>(2) The proposal includes 3,622.26 m² affordable GFA which is 15% of the overall GFA on the site.</p>

Control	Department's consideration
<p>Affordable housing component = additional floor space (as a percentage) divided by 2</p> <p>(3) If the development includes residential flat buildings or shop top housing, the maximum building height used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).</p>	<p>(3) The maximum permissible building height for the development under NSLEP is 58.5m. The 30% bonus increases the maximum permissible building height to 76.05m (+2 m allowance for plantrooms). The proposal seeks approval for a building height of 79.74 m. A request for variation to the height control has been provided (see Section 5.1 and Appendix D).</p>
<p>19 Non-discretionary development standards</p> <p>(2) The following are non-discretionary development standards in relation to the residential development to which this division applies-</p> <ul style="list-style-type: none"> (a) a minimum site area of 450 m² (b) a minimum landscaped area that is the lesser of- <ul style="list-style-type: none"> (i) 35 m² per dwelling, or (ii) 30% of the site area (c) a deep soil zone of at least 15% of the site area (d) living rooms and private open spaces in at least 70% of dwellings receive at least 3 hours of direct solar access between 9am and 3pm at midwinter (e) the following number of parking spaces for dwellings used for affordable housing- <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom – at least 0.4 parking spaces (ii) for each dwelling containing 2 bedrooms – at least 0.5 parking spaces (iii) for each dwelling containing at least 3 bedrooms – at least 1 parking space (f) the following number of parking spaces for dwellings not used for affordable housing- <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom – at least 0.5 parking spaces (ii) for each dwelling containing 2 bedrooms – at least 1 parking space 	<ul style="list-style-type: none"> (a) Complies – site area of 3,200.6 m² (b) Complies – landscaped area of 31.6% (1013 m²) (c) Not applicable under section 19(3) (d) Not applicable under section 19(3) (e) The Department has assessed the car parking to be satisfactory as discussed in Section 5.3.2. (f) The Department has assessed the car parking to be satisfactory as discussed in Section 5.3.2.

Control	Department's consideration
<ul style="list-style-type: none"> (iii) for each dwelling containing at least 3 bedrooms – at least 1.5 parking spaces (g) the minimum internal area, if any, specified by the ADG for the type of residential development. 	(g) Complies
<p>20 Design requirements</p> <ul style="list-style-type: none"> (3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with- <ul style="list-style-type: none"> (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition – the desired future character of the precinct. 	<p>The Department considers the proposal will result in an appropriately scaled building that will be compatible with the desired future character of the area as envisioned in the statutory and strategic planning documents, including the NSLEP, the 2036 plan and the EIE for the Crows Nest TOD precinct.</p>
<p>21 Must be used for affordable housing for at least 15 years</p> <ul style="list-style-type: none"> (1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development- <ul style="list-style-type: none"> (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and (b) the affordable housing component will be managed by a registered community housing provider. 	<p>The Applicant has confirmed St George Community Housing (registered community housing provider) will manage the affordable housing component of the development. The Amendment Report includes a nomination plan identifying the 48 affordable housing units.</p> <p>The Department has also recommended a condition to this effect.</p>

Section 147(1)(a) of Chapter 4 of the Housing SEPP requires the consent authority to consider the design principles for residential apartment development set out in Schedule 9 while Section 147(1)(b) requires the consent authority to consider the Apartment Design Guide (ADG) (see Table 12). Importantly, Section 147(3) of the Housing SEPP does not require a consent authority to require compliance with the design criteria specified in the ADG.

Section 148 of Chapter 4 of the Housing SEPP also contains non-discretionary standards in relation to the minimum amounts of car parking, internal areas for apartments, and minimum ceiling heights specified in the ADG. The proposal satisfies these non-discretionary standards (see Table 10).

The ADG is closely linked to the design principles and sets out best practice design principles for residential developments. The Department is satisfied that the proposal achieves the objectives of Schedule 9 of the SEPP Housing as detailed in Table 11 below:

Table 11 | Schedule 9 design principles

Principle	Consideration
<p>Context and neighbourhood character</p>	<p>The proposed development is compatible with the future desired character of the precinct.</p> <p>The Department has considered the proposal’s height, scale and design in Section 5.1 and concludes the proposal responds to the future context of the site and surrounding area while maintaining adequate levels of amenity for surrounding properties.</p>
<p>Built form and scale</p>	<p>The built form adequately defines the public domain, contributes to the character of the streetscape and provides satisfactory internal amenity and outlook. The proposed built form is considered as satisfactory in Section 5.1.</p> <p>The proposed development will be of a high standard of architectural design and appearance as discussed in Section 5.1.</p>
<p>Density</p>	<p>The density of the overall development is consistent with the provisions of the Housing SEPP and the proposal has demonstrated that will not have adverse built form, traffic or amenity impacts.</p>
<p>Sustainability</p>	<p>The proposal has been designed having regard to ESD principles and best practice sustainability measures and satisfies BASIX requirements in relation to energy efficiency, water conservation and thermal comfort.</p>
<p>Landscape</p>	<p>The proposal includes landscaping consisting of trees, shrubs and groundcover within the public domain, ground level and podium as detailed in the submitted landscape plans. The landscaping is considered to provide a high level of amenity for future residents and improve the landscape outcomes on the site.</p>
<p>Amenity</p>	<p>The proposal complies with the Housing SEPP design principles and satisfies the intent of the ADG design and performance criteria in terms of achieving a high level of residential amenity for future residents.</p>
<p>Safety</p>	<p>The proposal implements CPTED principles visible by providing accessible residential lobby areas at Alexander Street for passive surveillance, security-controlled access, CCTV, lighting and regular cleaning. As recommended by NSW</p>

Principle	Consideration
	Police, the Department recommends conditions relating to CPTED principles and operational matters of the site.
Housing diversity and social interaction	The proposal will improve housing supply and choice, provide for a mix of apartment types to cater for a range of households, provide communal areas for interaction by all residents as well as provide for an additional 48 affordable dwellings to increase the supply of affordable housing in the region. The provision of new housing will aid in the creation of a mixed and balanced community.
Aesthetics	The proposed development demonstrates a high standard of architectural design and includes an effective palette of materials and finishes to complement the building form. The architectural detail responds appropriately to the site's opportunities and constraints and relates suitably to the surrounding context.

Table 12 | Department's consideration of ADG best practice design criteria

ADG – Relevant Criteria	Proposal
3A Site Analysis <ul style="list-style-type: none"> Site analysis illustrates design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context. 	<ul style="list-style-type: none"> The application is informed by an urban design report which includes an analysis of the site constraints and surrounding context. The Department has assessed the site analysis to be satisfactory, identifying the opportunities and constraints of the site.
3B Orientation <ul style="list-style-type: none"> Building types and layouts respond to the streetscape and site while optimising solar access within the development. Overshadowing of neighbouring properties is minimised during mid-winter. 	<ul style="list-style-type: none"> The proposed building is appropriately orientated having regard to the triangular shape of the site with three street frontages. The proposal appropriately responds to the streetscape, optimise solar access and minimise overshadowing of neighbouring properties.
3C Public Domain Interface <ul style="list-style-type: none"> Transition between public/private domain is achieved without compromising safety and security. 	<ul style="list-style-type: none"> The commercial podium separates the residential apartments from the public domain. Passive surveillance of the public domain will be available from balconies, windows and communal open space as well as the retail premises on the ground floor.

ADG – Relevant Criteria	Proposal
<ul style="list-style-type: none"> Amenity of the public domain is retained and enhanced. 	
<p>3D Communal and Public Open Space</p> <ul style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site. Minimum 50% direct sunlight to principal usable part of the communal open space for a minimum of two hours in mid-winter. Communal open space is designed to allow for a range of activities and to maximise safety. 	<ul style="list-style-type: none"> Communal open space is provided at the podium (level 3) Overall, this equates to approximately 1,696 m² (52.99% of the site area). The principle useable part of the communal open space area equates to approximately 622 m² of which a minimum of 50% will achieve more than 2 hours of direct solar access in midwinter (see Section 5.3.1).
<p>3E Deep Soil Zones</p> <ul style="list-style-type: none"> For sites greater than 1,500 m², a minimum of 7% of the site with a minimum dimension of 6 m should provide for deep soil zone(s). 	<ul style="list-style-type: none"> No deep soil zone is proposed and is acceptable as the proposed development is mix-used and located in a high-density urban environment.
<p>3F Visual Privacy</p> <ul style="list-style-type: none"> Minimum separation distance from building to side and rear boundaries recommendations. 	<ul style="list-style-type: none"> More than 24 m building separation is provided to neighbouring sites. The Department has assessed visual privacy as satisfactory in Section 5.5.
<p>3G Pedestrian Access to Entries</p>	<ul style="list-style-type: none"> The proposal includes separate pedestrian entries to the residential (Alexander Street) and commercial uses (Pacific Highway/Falcon Street). A direct access (via a travelator) is also provided to the upper-level commercial premises along with publicly accessible links at the ground level to ensure site permeability. The Department has assessed the pedestrian access and entry points to be satisfactory subject to recommended conditions regarding safety and security (See assessment in Section 5.2 and 5.5).
<p>3H Vehicle Access</p>	<ul style="list-style-type: none"> The proposal includes vehicular access from Alexander Street, via a two-way driveway with left-in and left-out traffic movements.

ADG – Relevant Criteria	Proposal
	<ul style="list-style-type: none"> Based on comments from Council and TfNSW, The Department considers the vehicular access to the satisfactory (See assessment in Section 5.3).
<p>3J Bicycle and Car Parking</p>	<ul style="list-style-type: none"> The proposal includes 190 residential car parking in the basement complying with the Housing SEPP non-affordable car parking rates across the entire development (instead of a mix of affordable and non-affordable parking rates). This would lead to 16 additional parking spaces (190 provided in lieu of required 174). The Department has accepted the additional car parking for residents in the basement noting that these car spaces would cater for the 188 apartments, when they are converted to market housing after 15 years (discussed in Section 5.3.2). The proposal includes 302 bicycle parking spaces complying with the NSDCP rates and is acceptable.
<p>4A Solar and Daylight Access</p> <ul style="list-style-type: none"> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space. Minimum of 70% of apartments' living rooms and private open spaces receive 2hrs direct sunlight between 9 am-3 pm in mid-winter in the Sydney Metropolitan Area. 	<ul style="list-style-type: none"> The Department's assessment concludes that 129 units (68.61%) will likely achieve direct sunlight between 9am–3pm mid -winter, which would be less than the 70% solar access recommended criteria in the ADG. The Department recognises that meeting the recommended solar access performance criteria in the ADG is difficult on this site, given the site's orientation, with a long south-western frontage and the irregular triangle shape of the building. The Department is satisfied that overall, the Applicant has reasonably positioned the apartments with different solar orientations, responding to the context of the site. The apartments have a flexible layout, which maximise daylight access, where possible. The Applicant has submitted daylight illumination

ADG – Relevant Criteria	Proposal
	<p>reports to demonstrate that all apartments would benefit from natural light at all times.</p> <ul style="list-style-type: none"> The minor shortfall is considered acceptable in the circumstances as discussed in Section 5.3.1.
<p>4B Natural Ventilation</p> <ul style="list-style-type: none"> At least 60% of apartments are cross ventilated in the first nine storeys (apartments 10 storeys or greater are deemed to be cross ventilated). Overall depth of a cross-over or cross-through apartment does not exceed 18 m. 	<ul style="list-style-type: none"> The Applicant advised that 47 out of 51 apartments in the first nine storeys (92.2%) will be cross-ventilated out of which 34 units achieve cross-ventilation, via windows located above/adjoining the apartment entry doors facing the breezeway (subject to the windows being fully openable). The acoustic amenity of apartments would not be greatly affected by the breezeway windows. The cross-ventilated apartments fronting Pacific Highway and Falcon Streets are subject to road noise impacts, and doors and windows of these apartments must be kept closed to meet the internal noise criteria as specified in the Guidelines for developments near busy road corridors. The Applicant has proposed alternate ventilation method to enable natural cross ventilation of the apartments facing the busy roads. The Department considers that the apartments with breezeway side windows will achieve satisfactory natural cross-ventilation. The Department has considered the natural cross-ventilation of the apartments facing the busy roads to be acceptable subject to recommended conditions requiring additional acoustic treatments and/or addition of acoustically attenuated louvres to these apartments. This is discussed in detail in Section 5.3.2. Cross-through apartments are less than 18 m deep.

ADG – Relevant Criteria	Proposal
<p>4C Ceiling Heights</p>	<ul style="list-style-type: none"> • Consistent - Ceiling heights meet or exceed the recommended minimum of the NCC.
<p>4D Apartment Size and Layout</p> <ul style="list-style-type: none"> • Minimum apartment size recommendations. <ul style="list-style-type: none"> ○ Studio 35 m² ○ 1 bedroom 50 m² ○ 2 bedroom 70 m² ○ 3 bedroom 90 m² ○ 4 bedroom 102 m². • Every habitable room must have a window in an external wall with a total glass area of not less than 10% of the floor area. Daylight and air may not be borrowed from other rooms. • Habitable room depths are limited to 2.5 x the ceiling height. • In open plan layouts the maximum habitable room depth is 8m from a window • Master bedroom, living room size , and width of cross-over/cross-through apartment size recommendations. 	<ul style="list-style-type: none"> • All apartments within each building meet or exceed the minimum size recommendations. • All habitable rooms are provided with a window in an external wall. • All habitable rooms are provided with a window in an external wall. • All habitable room depth/width recommendations are satisfied.
<p>4E Private Open Space and Balconies</p> <ul style="list-style-type: none"> • Primary balconies are provided to all apartments providing for: <ul style="list-style-type: none"> ○ Studios apartments min area 4 m² ○ 1-bedroom min area 8 m² min depth 2m ○ 2-bedroom min area 10 m² min depth 2m ○ 3-bedroom min area 12 m² min depth 2.5m. 	<ul style="list-style-type: none"> • All apartments are above ground. • Each apartment includes a courtyard (podium level) or balcony (upper levels) that meets or exceeds the minimum size and depth recommendations of the ADG.

ADG – Relevant Criteria	Proposal
<ul style="list-style-type: none"> Private open space and primary balconies are integrated into and contribute to the architectural form and detail of the building. Primary open space and balconies maximises safety. 	<ul style="list-style-type: none"> The proposed balconies within each building are suitably integrated into, and contribute to, the architectural form and detail of the building. The proposed private open space areas maximise safety.
<p>4F Common Circulation and Spaces</p> <ul style="list-style-type: none"> Maximum number of apartments off a circulation core is eight – 12. For buildings 10 storeys and over, the maximum number of apartments sharing a single lift is 40. Natural ventilation is provided to all common circulation spaces where possible. Common circulation spaces provide for interaction between residents. 	<ul style="list-style-type: none"> A maximum of 12 apartments are proposed off a circulation core. The number of apartments sharing a single lift is 62. Although this exceeds 40, the Applicant provided a Vertical Transportation reporting demonstrating that the 3 lifts proposed can adequately service 188 apartments. The Department is satisfied that the number of lifts is appropriate and waiting times would be acceptable. Common circulation spaces are naturally ventilated.
<p>4G Storage</p> <ul style="list-style-type: none"> The following storage is required (with at least 50% located within the apartment): <ul style="list-style-type: none"> Studio apartments 4 m³ 1-bedroom apartments 6 m³ 2-bedroom apartments 8 m³ 3-bedroom apartments 10 m³ 	<ul style="list-style-type: none"> Residential storage within each building is located within the apartments and within individual storage cages within the basement. The proposed volume of storage for each apartment is provided in accordance with the minimum rates recommended in the ADG, including the provision of at least 50% of the required storage within the apartments.
<p>4H Acoustic Privacy</p> <ul style="list-style-type: none"> Noise transfer is minimised through the siting of buildings and building layout and minimises external noise and pollution. Noise impacts within apartments are mitigated through layout and acoustic treatments. 	<ul style="list-style-type: none"> Noise transfer will be minimised through the appropriate layout of the apartments. Acoustic treatments are required in response to road noise - See Section 5.3.2.

ADG – Relevant Criteria	Proposal
<p>4J Noise and Pollution</p> <ul style="list-style-type: none"> In noisy or hostile environments, the impacts of external noise and pollution are minimised through the careful siting and layout of buildings. Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission. 	<ul style="list-style-type: none"> In accordance with the recommendations of the AAR, apartments will be appropriately insulated to ensure compliance from external noise sources. The Department has recommended conditions to ensure acoustic treatments and recommendations are implemented.
<p>4K Apartment Mix</p> <ul style="list-style-type: none"> Provision of a range of apartment types and sizes. Apartment mix is distributed to suitable locations within the building. 	<ul style="list-style-type: none"> A variety of apartment types and sizes are provided and logically located within the residential tower.
<p>4M Facades</p> <ul style="list-style-type: none"> Building facades provide visual interest along the street while respecting the character of the local area. Building functions are expressed by the façade. 	<ul style="list-style-type: none"> The proposed facades have been designed to break down the scale of the proposed buildings. The design for each building provides acceptable visual interest at street level.
<p>4N Roof Design</p> <ul style="list-style-type: none"> Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for accommodation and open space is maximised. Roof design includes sustainability features. 	<ul style="list-style-type: none"> Roof design includes solar panels. Communal open space is proposed at the podium level as the roof accommodates plant rooms.
<p>4O Landscape Design and 4P Planting on Structures</p> <ul style="list-style-type: none"> Landscape design is viable and sustainable. Landscape design contributes to streetscape and amenity. Appropriate soil profiles are provided and plant growth is maximised (selection/maintenance). 	<ul style="list-style-type: none"> A detailed landscape plan has been provided for the site and public domain, including the podium level communal and through-site link. Adequate soil depth, consistent with ADG recommendations, is proposed.

ADG – Relevant Criteria	Proposal
<ul style="list-style-type: none"> Plant growth is optimised with appropriate selection and maintenance. Building design includes opportunity for planting on structure. 	
<p>4Q Universal Design</p> <ul style="list-style-type: none"> Developments should achieve a benchmark of 20% of the apartments incorporating the Liveable Housing Guideline’s silver level universal design features. A variety of apartments with adaptable designs are provided. Apartment layouts are flexible and accommodate a range of lifestyle needs. 	<ul style="list-style-type: none"> The proposed development provides a total of 38 adaptable dwellings (20.2%). 100% of all apartments will also achieve a silver level performance rating (Liveable Housing Guidelines). Apartments are of a size and layout that allows for flexible use and design and therefore can accommodate a range of lifestyle needs.
<p>4T Awning and Signage</p> <ul style="list-style-type: none"> Awnings are well located and complement and integrate with the building. Signage responds to the context and design streetscape character. 	<ul style="list-style-type: none"> Entrance lobby is covered by the building structure above. Awnings are proposed along street frontages. No signage is proposed under this proposal.
<p>4U Energy Efficiency</p>	<ul style="list-style-type: none"> The proposal includes ESD measures (such as rooftop solar panels and stormwater quality treatment measures). It also achieves the BASIX targets and meets the NatHERs requirements (See assessment of ESD in Appendix C).
<p>4V Water Management and Conservation</p>	<ul style="list-style-type: none"> The development will include water efficient fittings and appliances. Urban stormwater would be treated on site as recommended by the stormwater management report -.
<p>4W Waste Management</p>	<ul style="list-style-type: none"> The Applicant proposes separate management measures for residential and commercial waste on the site.

ADG – Relevant Criteria	Proposal
	<ul style="list-style-type: none"> • Each residential level would be provided with a garbage chute and a recycled waste storage area. • Bin rooms for residents would be located at the basement level 1 with the temporary waste collection area located at the ground level fronting Alexander Street. Council truck would park on Alexander Street and collect waste. • Commercial waste would be collected from the basement loading bay using a small to medium rigid vehicle.
4X Building Maintenance	<ul style="list-style-type: none"> • The building has been designed appropriately to allow ease of maintenance. • Plantrooms would be easily accessible on the roof. • The materials and finishes are robust for ease of maintenance.

State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)

The T&I SEPP aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to particular types of infrastructure development, and providing for consultation with relevant public authorities about certain development during the assessment process.

Section 2.48 of the T&I SEPP requires the consent authority to notify the relevant utility authority about the proposal. The Department consulted Ausgrid and Sydney Water and their responses are summarised at Section 4. The Department has recommended conditions requiring the Applicant to obtain approval from utility providers for any necessary service connections and infrastructure augmentations.

Section 2.99 of the T&I SEPP relates to excavation in, above and below rail corridors. The Department referred the application to Sydney Metro and included recommended conditions from the government agency to manage the impacts on the tunnel.

Sections 2.100 and 2.120 of the T&I SEPP relates to maintaining acceptable noise and vibration impacts on land in and/or adjacent to a rail corridor and road corridor to ensure the amenity of residential development. The Department has undertaken a detailed assessment in this regard in Section 5.3 and 5.5 and is satisfied that the development can meet the requirements of T&I SEPP.

Sections 2.119 and 2.122 of the T&I SEPP relate to developments with frontage to a classified road and traffic-generating developments. The proposal is considered as a traffic generating development under Schedule 3 as it proposes significant car parking spaces, commercial gross floor area and residential accommodation within vicinity of a classified road. The proposal was referred to Transport for NSW (TfNSW) and its response is summarised at Section 4. The Department has assessed the impacts on the classified road network in Section 5.4 and included all recommended conditions by TfNSW.

State Environmental Planning Policy (Resilience and Hazards) 2021 (Hazards SEPP)

Chapter 4 of the Hazards SEPP is relevant to this proposal and aims to provide a State-wide planning approach to the remediation of contaminated land, reduce risk of harm to human health and the environment and ensure that potential contamination issues are considered in the determination of a development applications.

The Applicant provided a Pre-Demolition Detailed Site Investigation (DSI) report (see Appendix A) had identified the existing buildings on site are likely to contain asbestos and the fill soils on site contain some polycyclic aromatic hydrocarbons (PAH).

The report recommends further data gap investigations post demolition of the existing buildings, a hazardous materials survey, clearance of asbestos by a suitable occupational hygienist and waste classification prior to off-site disposal along with an unexpected protocol for contaminants during construction.

The Department referred the application to the NSW Environment Protection Authority (EPA) as summarised in Section 4.

Having regard to the Applicant's report and EPA comments, the Department considers the site is suitable for the proposed development, subject to recommended conditions requiring further investigation post demolition, to ensure the proposal addresses the requirements of the Hazards SEPP.

State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Building SEPP)

The Sustainable Buildings SEPP encourages sustainable residential development by setting targets that measure efficiency of buildings in relation to water and energy use and thermal comfort.

A BASIX certificate was submitted demonstrating the proposal achieves compliance with the BASIX water, energy and thermal comfort requirements under the SEPP. The Department recommends a condition of consent requiring compliance with the BASIX certificate.

Overall, the development also includes sustainability measures for all components of the building (residential and commercial) such as solar panels on the roof and urban stormwater treatment measures.

State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity SEPP)

Relevant chapters of the Biodiversity SEPP aim to protect the biodiversity values of vegetation in non-rural areas and to protect the water quality and quantity of water catchments.

The Department considers the proposed tree removal and planting of replacement trees is acceptable and that water quality impacts will be appropriately addressed through the implementation of proposed water sensitive urban design measures, including directing runoff from roof and landscaped areas to storm filter chambers within the on-site detention system to achieve pollution reduction.

North Sydney Local Environmental Plan 2013 (NSLEP)

A summary of the Department’s consideration of the relevant standards and provisions contained in NSLEP are provided in Table 13 below.

Table 13 | Compliance with NSLEP

Control	Department’s consideration
2.3 Zone objectives and land use table	<p>The site is zoned MU1 Mixed Use. The proposed development is permitted with consent.</p> <p>The proposal is consistent with the objectives of the zone as it:</p> <ul style="list-style-type: none"> • provides an appropriate level of non-residential uses that generates employment opportunities • provides active street frontages to encourage pedestrian traffic and contribute to vibrant streets and public spaces • provides for housing, including affordable housing.
4.3 Height of buildings	The proposal exceeds the permitted height on the site as discussed in Section 5.1, Appendix C Table 9 and Appendix D .
4.3A Exceptions to height of buildings	The proposal exceeds the permitted height of plantroom on the site as discussed in Section 5.1 and Appendix D .
4.4 Floor space ratio	The proposal complies with the maximum permissible FSR under clause 16(3) of the Housing SEPP (see Section 5.1 and Table 9).
4.4A Non-residential floor space ratios	The site is mapped as 2.5:1 under the NSLEP’s <i>Non-Residential Floor Space Ratio Map</i> . The proposal provides a non-residential floor space of 2.5:1 (GFA 8,002 m ²) within the podium complying with the requirement.

Control	Department's consideration
4.6 Exceptions to development standards	The Applicant has submitted a clause 4.6 variation request to vary the maximum permitted building height under the Housing SEPP as discussed in Section 5.1 and Appendix D .
5.10 Heritage conservation	The Department has considered the heritage impacts in Section 5.2 .
5.21 Flood planning	The Department has considered flooding at Section 5.5 .
6.10 Earthworks	The Department considers the proposed earthworks would not have detrimental impact on environmental functions, processes, neighbouring uses, cultural or heritage items or features subject to conditions.
6.12A Residential flat buildings in Zone MU1 Mixed Use	The Department considers development consent can be granted as the development provides a residential flat building component that forms part of a mixed-use development and no part of the ground floor is used for residential accommodation.
6.15 Airspace operations	The Department has considered air space operations in Section 5.5 .

Appendix D – Consideration of Clause 4.6 Variation Request

Clause 4.3 of NSLEP requires the height of a building on any land is not to exceed the maximum permissible height shown for the land on the Height of Buildings Map. The site is mapped ‘Area 4’ on the NSLEP Height of Buildings Map with a maximum permissible height of 58.5 m.

Notwithstanding, section 16 of the Housing SEPP provides an additional 30% of the maximum permissible building height and FSR as the proposal provides 15% of the floor space as affordable housing. Therefore, the maximum permissible building height is 76.05 m.

As the site is mapped ‘Area 4’, clause 4.3A(2A)(a)(ii) of NSLEP also permits uses such as lift overruns, plantrooms, associated structures and the like to exceed the maximum height by 2m. The Department considers that this provision can be applied to the maximum permissible building height of 76.05m under the Housing SEPP.

Considering the additional allowance under clause 4.3A(2A) of NSLEP, the maximum permissible building height on the land, excluding lift overruns and plant rooms is 76.05m, and including lift overruns and plantrooms, is 78.05m.

The Applicant seeks to vary the maximum permissible height of building for the site as identified in Table 14 and Figures, 17, 18 and 19.

Table 14 | Summary of proposed building height variations (Source: Applicant’s additional information)

Building component	Max. building height permitted (NSLEP)	Max. building height permitted (NSLEP + Housing SEPP)	Proposed height	Extent of variation
Tower	58.5m	76.05 m	77.85 m	+ 1.8 m (2.16%)
Plantrooms and lift overruns	60.5 m (58.5 m + 2 m)	78.05 m (76.05m + 2m)	79.74 m	+ 1.69 m (2.88%)

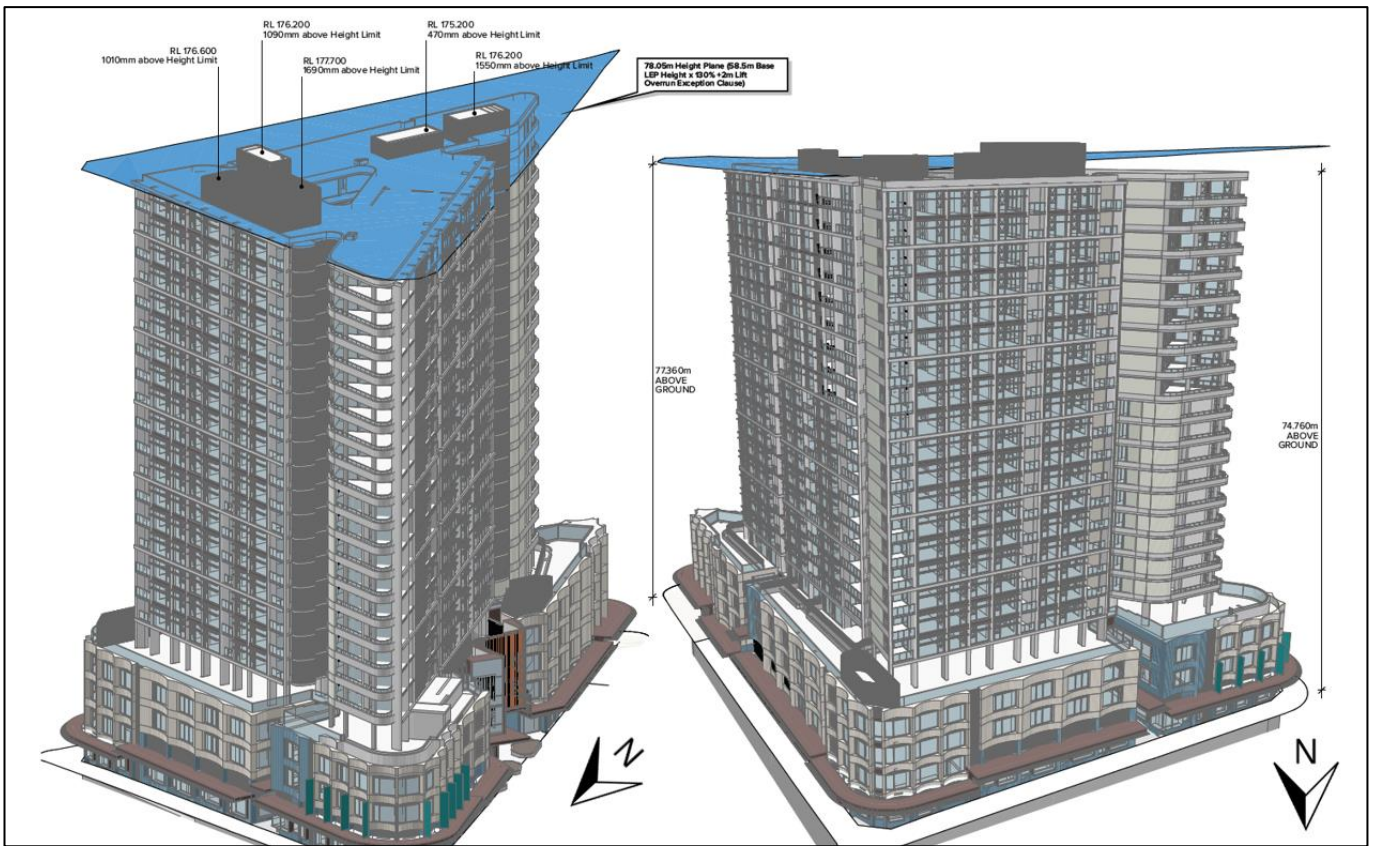


Figure 17 | 3D views showing the height plane of 78.05m (Source: Applicant’s additional information)

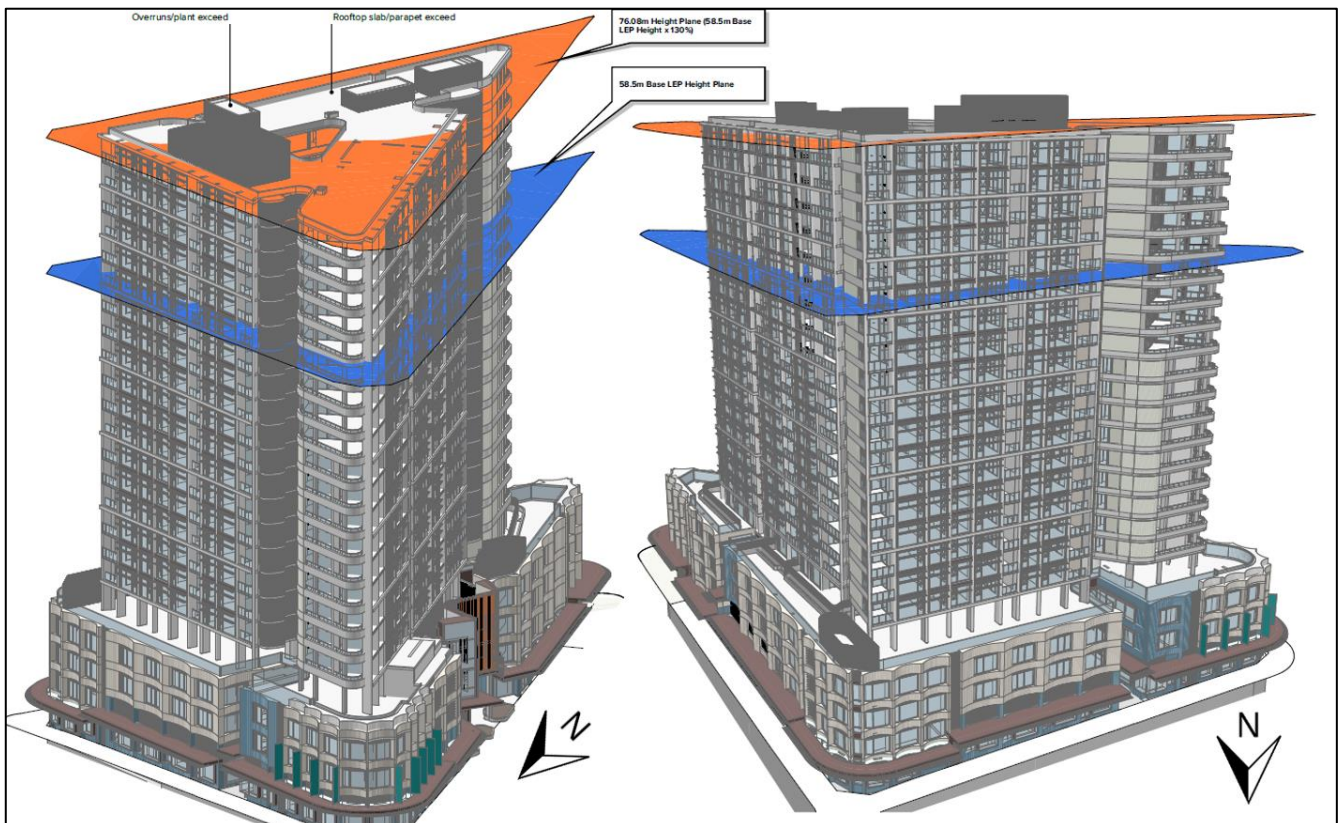


Figure 18 | 3D views showing the base height plane of 58.5m (blue) and the height plane of 76.05m (orange) (Source: Applicant’s additional information)

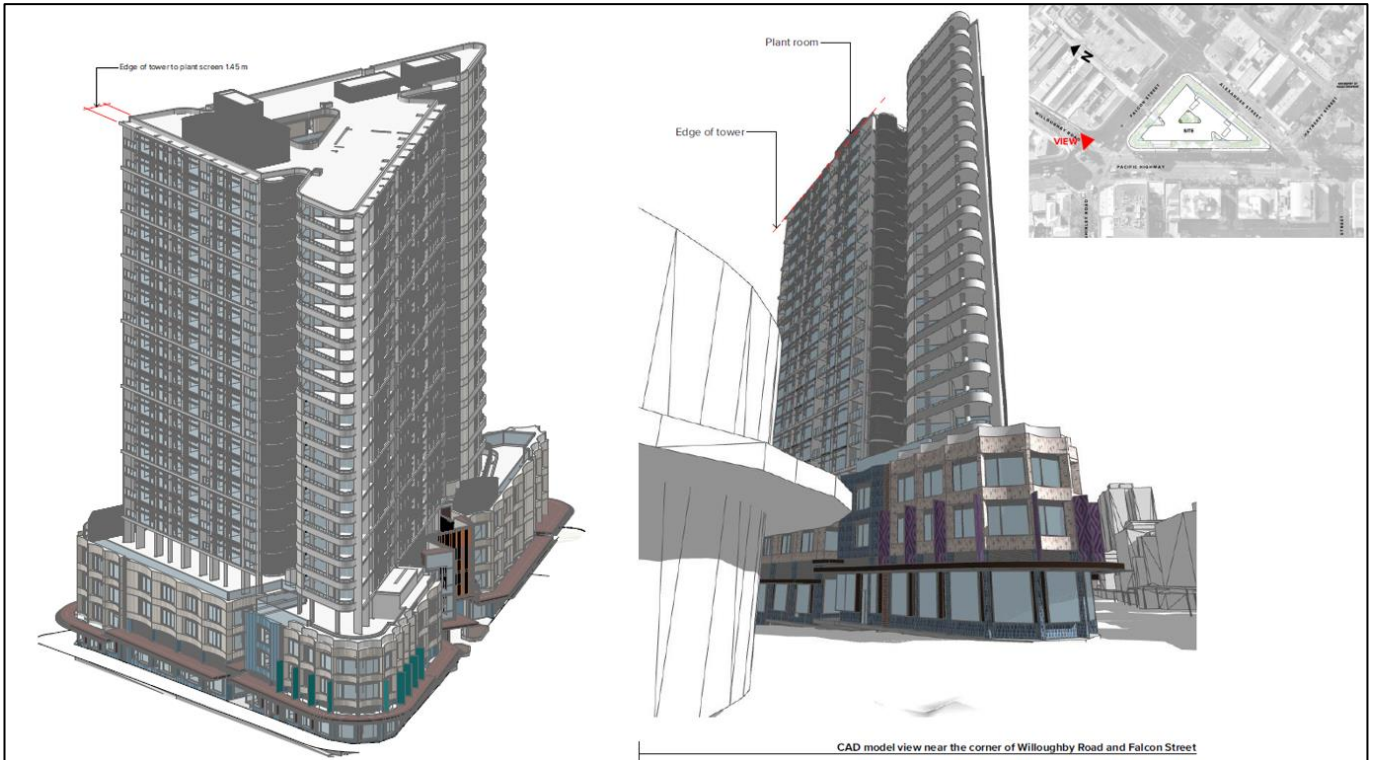


Figure 19 | 3D view of the proposed plantroom along the northern façade as viewed from the public domain at the corner of Willoughby Road and Falcon Street (Source: Applicant’s additional information)

Clause 4.6(2) of NSLEP permits the consent authority to consider a variation to a development standard imposed by an environmental planning instrument. The aim of clause 4.6 is to provide an appropriate degree of flexibility in applying development standards to achieve better development outcomes. In consideration of the proposed variation, clause 4.6(3) requires the following:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that-*
- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances; and*
 - (b) *there are sufficient environmental planning grounds to justify contravention of the development standard.*

In accordance with clause 4.6(3) of NSLEP and section 35B of the EP&A Regulation, the Applicant prepared a written request to vary the maximum permissible heights of buildings.

A summary of the Applicant’s request for varying the building height standard are as follows:

- the plant required to service a development of this scale cannot be accommodated within the 2m control. The cooling towers selected to service the entire development have a height of 3.81m and the plant enclosure has been designed at 3.85m high accordingly. Therefore, a height exemption of 1.69 m above the permitted 78.05 m is requested

- the development has been amended to increase the internal floor-to-floor heights to be 3.2m to accommodate the waterproofing requirements in the *Design and Building Practitioners Act 2020* and the energy efficiency services (insulation, thermal stringency etc) of the NCC, which results in an overall height increase to the development's residential tower by approximately 1.7 m beyond the permissible building height of 76.05 m for the site.

While two separate height variations are sought, the Department has considered the impact of the overall height variation holistically.

The following provides an assessment of the proposed exception to the height of buildings development standard under clause 4.6, applying the tests summarised by Chief Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* (Wehbe case) as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34]*.

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

The Applicant has submitted a written request (see **Appendix A**), seeking a variation to the building height standard that applies to the site.

In summary, the Applicant's clause 4.6 request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstance of the case as the development is consistent with the objectives of the height standard and the zone, delivers public benefits and design benefits beyond those anticipated by the planning controls, and is in keeping with the first test of the five-part tests in *Wehbe v Pittwater Council [2007] NSWLEC 827*.

More specifically, the Applicant's written request provides the following reasons to demonstrate that the development is consistent with the height of buildings objectives under NSLEP:

- the additional height is a result of increased internal floor-to-floor heights and plantrooms heights are required to meet technical requirements, not resulting in additional density on the site in the form of yield or GFA beyond the permissible FSR
- the NSLEP allows an exemption of up to 5 m for plantrooms on sites along Pacific Highway (Area 1 map of NSLEP clause 4.3A), with equivalent maximum permissible building heights
- overall, the development will provide for a scale and form that is compatible with the existing and planned character of the area, despite the minor height exceedance
- the proposal has considered the site's cross-fall by ensuring that the design of the ground floor retail tenancies follow the natural gradient of the site
- at the ground plane, the building engages with the streetscape and public domain
- the rooftop plantroom is setback as far as possible to avoid visibility from the public domain

- the proposed development does not obstruct any significant views or vistas
- the solar and shadow analysis undertaken demonstrates the site's surrounding developments maintains at least 2 hours of uninterrupted solar access on winter solstice (21 June), consistent with the ADG, despite the height exceedance
- as the site is isolated by three surrounding roads, the height variation will not impact on building separation or visual privacy of the surrounding residential developments, which will be adequately maintained
- the proposal contributes to the delivery of 48 affordable housing units and results in significant public benefit
- despite the proposed variation, the development in its current form is consistent with the objectives of the applicable development standards, the strategic documents that apply to the site, allows for efficient and economic use of the land and complies with the objects of the EP&A Act.

The Department has reviewed the Applicant's request and accepts that compliance with the maximum permissible height is unreasonable or unnecessary given the circumstances of the case.

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

The Department considers the Applicant's arguments above to be well founded and justifies the contravention to the development standard. In supporting the above environmental planning grounds to vary the development standard, the Department considers that the development will deliver a better planning outcome for the site. The Department also considers the proposed additional height is acceptable because:

- strict compliance will not meaningfully reduce the impact of the bulk and scale of the development on the streetscape or neighbouring properties, but will compromise the amenity of the future occupants by reducing the plantroom size or the floor-to-floor heights
- the Applicant has demonstrated that the rooftop plant room size and height of 3.85 m is required to service the development, particularly noting the specifications of the cooling towers (with a height of 3.81 m) the proposed rooftop plant, lift overruns and stairs have been located on the roof with setbacks where possible noting that the triangular shape of the building, with a central void, reduces the ability to locate the plant and services centrally. The rooftop elements would not be visible from the immediate public domain and are contained within enclosures to minimise the visual impacts from more distant view points
- the additional shadows cast due to the height exceedance will be minor

- despite the height exceedance, the proposal provides a scale and character that is compatible with the desired future high-density character of the Crows Nest TOD precinct and the 2036 plan
 - the proposal will not result in any unreasonable impacts on neighbouring development in terms of view loss, overshadowing, bulk and scale or privacy
 - the proposed minor height variations support the provision of a well-designed development containing desirable high-quality housing, including affordable housing
 - the proposal aligns with the strategic plans and policies including the aims and objectives of the 2036 plan as well as the upcoming density uplifts in the locality under the TOD program.
3. *Is the consent authority satisfied that the proposed development will be consistent with the objectives of the standard?*

The Department considers the proposal is consistent with the relevant objectives of clause 4.3 of the NSLEP and the overall aims of the Housing SEPP, despite the height exceedance.

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

The Department is satisfied the Applicant's written request has sufficiently demonstrated the development will be consistent with the objectives of the MU1 zone as it promotes non-residential land uses on the ground floor of the building, will generate diverse employment opportunities and provide a mixed-use centre with residential amenity.

Conclusion

Having considered the Applicant's written request, the Department considers the Applicant has provided sufficient environmental planning grounds to justify the contravention of the maximum permissible building height and the matters required to be demonstrated have been adequately addressed.

Based on the discussion above, the Department concludes the Applicant's written request adequately addresses the matters required to be demonstrated under clause 4.6 of the NSLEP. The proposed development is in the public interest because it is consistent with the building height objectives in the NSLEP and the objectives of the land use zone.

Further, the proposal will not result in any unreasonable impacts on the surrounding area and the site is ideally located to accommodate higher densities, being located within a highly accessible area.

Appendix E – Consideration of SDRP comments

Table 15 | Department’s consideration of SDRP comments

SDRP comment	Applicant’s response	Department’s consideration
<p>Illustrate how Connecting with Country principles can inform the proposal more holistically, for example, through sustainability approaches, materiality, landscape design, and specification of plant species.</p>	<p>The Applicant has advised that a Country centric approach has been undertaken overall in designing and delivering a high-quality living place including a scalloped street wall, inclusion of traditional motifs, including natural materials and finishes and sculptures into the design of the ground plane, public domain and podium terrace</p>	<p>The Department supports the Applicant’s commitment with the ongoing engagement with Indigenous Knowledge Holders.</p> <p>The Department supports the proposal to incorporate artwork and landscaping. The Department also notes that the Applicant has incorporated sustainability initiatives through passive solar design and natural ventilation to all apartments.</p>
<p>Natural ventilation to all apartments is supported.</p> <p>Inclusion of the central void results in a larger building footprint, increased bulk and long unbroken facades.</p> <p>Provide plans illustrating the pedestrian and vehicle circulation for the commercial premises.</p>	<p>The amended application includes additional plans identifying the pedestrian and vehicle circulation paths, demonstrating street activation and site permeability at the ground level.</p>	<p>The proposed built form and bulk are consistent with the strategic vision for the site. The reference design for the PP also included a central void. The proposal includes vertical recesses and articular to break up the building facades.</p> <p>The ground level pedestrian circulation is assessed as satisfactory and will result in street activation and site permeability.</p>
<p>The single height landscaped podium is considered inappropriate to sustain planting and is not supported. Therefore, the tower soffit should be elevated or communal open space distributed throughout the tower levels.</p>	<p>The tower soffit cannot be elevated any further without a further variation to the building height limit.</p> <p>The communal open space distribution to various levels will not deliver all the elements that are proposed</p>	<p>The Department is satisfied that the amended design provides a quality consolidated communal open space on the podium rooftop which would be suitable for use by all residents, subject to conditions regarding suitable planting species.</p> <p>The Applicant has submitted a Daylight illumination Report, which demonstrates that most of the</p>

SDRP comment	Applicant's response	Department's consideration
	<p>in the consolidated podium level open space.</p> <p>Shade tolerant species have been provided to ensure that the planting grows at the podium level communal open space.</p>	<p>communal open space will receive adequate daylight. Therefore, the Department considers that there will be no additional benefit of raising the tower soffit, noting this would lead to further height breach and is not warranted.</p>
<p>Provide technical evidence to demonstrate the effectiveness of the unenclosed central void and connected breezeway as the key method for natural cross ventilation to the apartments.</p>	<p>The Applicant has submitted Natural Cross Ventilation and Wind tunnel reports to demonstrate that adequate cross ventilation can be achieved for 92.2% units in the first nine storeys, complying with the ADG.</p>	<p>The Department has reviewed the submitted reports and is satisfied that subject to the provision of openings above/adjoining the doors facing the breezeway, the cross-ventilation recommendations are met for apartments relying on the breezeway (see Section 5.3.2).</p>
<p>a. Address the effectiveness of cross-ventilation strategy for the apartments fronting the central breezeway.</p> <p>b. Address how wind comfort levels will be maintained for people used the central circulation area.</p> <p>c. Address ventilation strategies for apartments facing the busy roads such as Pacific Highway, being impacted by external noise.</p>	<p>a. Wind tunnel studies demonstrate that subject to the provision of openings fronting the central breezeway, satisfactory cross -ventilation can be achieved.</p> <p>b. The Applicant has also prepared a Pedestrian Wind Environment Study which includes measures such as full height louvered screens at certain edges of the breezeways, to maintain comfort levels within the common trafficable areas.</p> <p>c. The Applicant proposes a 'trickle vent system' as an alternate ventilation system to introduce natural</p>	<p>a. The Department is satisfied with the cross-ventilation strategies, see discussion Section 5.3.2.</p> <p>b. Subject to incorporation of the recommended measures, satisfactory comfort levels can be achieved for the common circulation areas on each residential floor.</p> <p>c. The Department has reviewed the wind assessment with alternate ventilation system. This is discussed in detail in Section 5.3.2 along with</p>

SDRP comment	Applicant's response	Department's consideration
	<p>ventilation to the acoustically effected apartments.</p>	<p>recommended conditions to incorporate acoustically attenuated louvres to improve ventilation while achieving acoustic amenity.</p>
<p>Conduct solar studies to demonstrate the extent of natural light penetration throughout the void at all levels during mid-winter.</p>	<p>The Applicant has provided detailed solar access studies and a Daylight Illumination Report, which demonstrates that some levels of the central breezeway will need artificial lighting, and the others (upper levels and podium) will have adequate daylight.</p> <p>The Applicant acknowledges that a large section of the central void will be overshadowed during mid-winter, between 9am - 3pm.</p>	<p>The Department notes that a large part of the central breezeway will be overshadowed. However, daylight access to majority of the upper-level corridors will be maintained during the day. Some of the lower levels would need artificial illumination for safe passage of occupants. The Department accepts this scenario as it is a better outcome than a double loaded corridor, entirely reliant on artificial lighting. The breezeway will contribute towards cross ventilation of apartments as well.</p> <p>The apartments are not reliant on the central breezeway for their solar access.</p>
<p>Provide more varied façade treatments that respond to the solar orientation of each facade. Consider the design of external shading, the material palette, and the distribution of solid and glazed components.</p>	<p>The treatments of the tower façade respond to the solar orientation and introduce a variety of sun shading devices.</p> <p>Varied colour, materials and finishes re-introduced at the street level including segmenting the podium façade similar to Crows Nest village.</p> <p>The tower facades have been simplified to ensure it is less dominant. Brick is used on</p>	<p>The Department has discussed the built form and façade design in Section 5.1.</p> <p>The Department is satisfied that the proposal responds to its context by proposing a fine-grained approach to the podium as a simplified approach to the tower form.</p> <p>The façade treatment has been varied, where possible and is considered acceptable.</p>

SDRP comment	Applicant's response	Department's consideration
	the internal corridors for a human scale.	
Introduce vertical recesses to break up the bulk and mass of the long tower facades in order create the appearance of several slender tower forms and provide a better response to the scale and rhythm of the local context.	<p>The Applicant advises that:</p> <ul style="list-style-type: none"> the maximum façade length is 45 m (four apartments), after which vertical recesses are introduced articulation is also achieved through balconies and corner treatments the podium responds to the scale of the buildings on the opposite side of the street, the tower more aligns with the taller buildings at St Leonards. 	<p>The proposed tower form will be generally consistent with the future character of the locality and the site, as depicted in the PP and the future TOD Program.</p> <p>The building footprint of the tower form itself is based on the envelope depicted in the PP. Noting this, the Department accepts the proposed tower form and considers that the Applicant has made reasonable effort to introduce vertical recesses on the façades.</p> <p>The Department is satisfied that the scale of the podium will break the built form and set the alignment with the local context.</p>
Test options illustrating how the digital billboard can be better integrated with the design of the podium façade/parapet and also illustrate an option without the billboard.	The Applicant has deleted the digital sign and parapet.	No further assessment is necessary.
Explore how the entry nooks to the apartments could provide greater flexibility of use. For example, by providing space for the storage of bicycles, prams, etc.	The Applicant has included storage spaces within the entry nooks.	The Department is satisfied that this provides for efficient use of the entry nook spaces.
Test the viability of a single lift core servicing the number of apartments on each floor.	The Applicant has provided a vertical transportation advice which concludes that three	The Department is satisfied that the proposed lifts will provide a reasonable level of service for the residents.

SDRP comment	Applicant's response	Department's consideration
	lifts are sufficient to service 188 apartments.	
Present alternatives featuring heightened floor-to-ceiling dimensions for the podium landscape, accompanied by successful examples of undercover planting that match the proposed podium garden's climate conditions, solar exposure, and coverage extent.	The Applicant has advised that the floor-to-ceiling height of the podium cannot be further increased without further exceeding the height standard. Instead, the Applicant has provided supporting information to demonstrate that sunlight will be available to majority of the areas. Shade tolerant species are proposed to ensure they can thrive at the proposed locations.	The Department's assessment with regard to daylight penetration into the communal open spaces area is satisfactory, as discussed in Section 5.3.1 . As discussed in previous sections of this table, the Department's assessment of the planting palette is satisfactory subject to recommended conditions.
Provide technical evidence to demonstrate that the landscaping will thrive in the proposed and revised locations.	The Applicant has submitted evidence in the form of planting palette, Daylight Illumination Report and additional landscaping details to demonstrate that the proposed plant species can survive at the proposed locations on the podium.	As discussed in the previous sections of this table, the Department's assessment of the planting species is satisfactory subject to recommended conditions regarding additional planting and landscaping maintenance.
Co-locate communal space with the internal open circulation areas to encourage social interaction between residents and enable a sense of community to develop.	The Applicant has advised that it is not practicable or desirable from an acoustic amenity point of view to encourage communal open spaces on circulation corridors.	The Department agrees with the Applicant's conclusion and considers the podium level communal open space will provide a high level of amenity and opportunities for social interaction between future residents of the development.
Integrate planting within the unenclosed circulation	The Applicant has incorporated planting in circulation areas and breezeways.	The Department's assessment in this regard is satisfactory subject to recommended conditions.

SDRP comment	Applicant's response	Department's consideration
spaces/breezeways of the typical levels.		
Incorporate more indigenous, endemic species and explore how Connecting with Country themes can be brought into the landscape design.	The Applicant provided a Landscape Report in consultation with the Indigenous artists illustrating how Connecting with Country themes have been incorporated into the landscape design, with a greater proportion of native and endemic species.	Department considers that compliance with this requirement can be achieved through conditions of consent requiring the Applicant to provide a detailed landscape design with more native or endemic planting. Conditions have been recommended to this effect.
<ul style="list-style-type: none"> a. Provide façade type sections illustrating solar orientation. b. Provide measures to facilitate sustainable transport. c. Demonstrate how the proposal will contribute to NSW's Net Zero emissions goal by 2050. 	<ul style="list-style-type: none"> a. The Applicant has provided details on solar orientation and sunshade strategies. b. Sustainable transport measures are provided with car-share spaces and secure bicycle parking. c. A Net Zero Carbon Statement has been submitted. 	The Department's assessment of the façade orientation, sustainable transport and Net Zero Carbon Statement are satisfactory.
<ul style="list-style-type: none"> a. Ensure that the amenity of the affordable apartments within the development is equal to that of the market housing when locating the affordable component. b. Demonstrate consistency with the design quality principles for residential apartment development and ADG objectives. 	<ul style="list-style-type: none"> a. The apartments have been designed in line with the ADG recommendations. b. The Applicant has submitted a Design Report addressing the consistency with the design quality principles in the Housing SEPP and the ADG objectives. 	a. The Department considers that the development has demonstrated compliance with the performance criteria of the ADG as a whole and is acceptable in this regard. Although there is no statutory requirement or policy guidance in relation to the amenity of affordable apartments, the Department is satisfied that the proposed affordable units will

SDRP comment	Applicant's response	Department's consideration
		<p>achieve good levels of amenity as discussed in Section 5.5.</p> <p>b. The design quality principles and ADG are assessed in Appendix C.</p>
<p>Provide a full set of architectural drawings.</p>	<p>The Applicant has included all necessary drawings.</p>	<p>The Department has reviewed these documents as part of its assessment.</p>
<p>Provide:</p> <ul style="list-style-type: none"> a. Views from key vantage points. b. Wind analysis report. c. Lift waiting time analysis. d. Additional overshadowing studies. e. comparison of two schemes, with and without housing SEPP bonuses 	<p>The Applicant has submitted the reports in accordance with SDRP request.</p> <p>A comparison of the impacts of the development with and without the bonuses have been made. The Applicant concludes that despite the increased ridgetop height, the proposed building will be substantially screened by the existing topography and developments.</p> <p>No significant detrimental additional overshadowing impacts are noted.</p>	<p>The Department has reviewed these documents as part of its assessment.</p>

Appendix F – Independent expert advice on car parking

<https://www.planningportal.nsw.gov.au/major-projects/projects/mixed-use-development-including-fill-affordable-housing-five-ways-crows-nest>

Appendix G – Recommended instrument of consent

<https://www.planningportal.nsw.gov.au/major-projects/projects/mixed-use-development-including-fill-affordable-housing-five-ways-crows-nest>