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Subject: RE: Five Ways Crows Nest - Council Stakeholder Meeting
Date: Monday, 2 December 2024 4:08:47 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[Gateway Determination Report_PP-2021-7451.pdf](#)
[Plan_Finalisation_report - PP-2021-7451.pdf](#)
[PDS Judgment.pdf](#)

Hello Tahlia

Please find attached the following documents that I will be referring to at our scheduled stakeholder meeting this Thursday 5th December 2024.

Gateway determination report – PP-2021-7451 – dated March 2023

Plan finalisation report – PP-2021-7451 – dated November 2023

Land and Environment Court Judgement – PDS Engineering Division Pty Ltd – v North Sydney

Council – Dated 8 November 2024

Kind Regards



Neal McCarry
Service Unit Manager Strategic Planning





IRF22/4525

Gateway determination report – PP-2021-7451

The Five Ways Triangle; 391-423 Pacific Highway,
3-15 Falcon Street and 8 Alexander Street, Crows
Nest

March 23



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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment A – Planning Proposal
A1 – Revised Planning Proposal Report (December 2022)
A2 – Planning Proposal Report considered by Council and SNPP (24 December 2021)
A3 – Urban Design Report (19 December 2022)
A4 – Place Making Report (December 2021)
A5 – Supplementary Transport Assessment (15 November 2022)
A6 – Economic Impact Assessment (November 2022)
A7 – Heritage Impact Statement (20 December 2021)
A8 – Structural Report (14 December 2021)
A9 – Section 9.1 Ministerial Directions (December 2022)
A10 – State Environmental Planning Policies (December 2022)
A11 – Proposed LEP Map Amendments (December 2022)
A12 – Preliminary Contamination Report (26 October 2020)
A13 – Pedestrian Wind Environment Statement (16 December 2021)
A14 – Site-Specific DCP
Attachment B – Affordable Housing Feasibility Analysis (December 2022)
Attachment C – North Sydney Council and North Sydney Local Planning Panel
C1 – Council Resolution and Report (27 June 2022)
C2 – Local Planning Panel minutes and Council Assessment Report (8 June 2022)
Attachment D – Rezoning Reviews
D1 – Sydney North Planning Panel Record of Decision RR-2021-87 (18 October 2021)
D2 – Sydney North Planning Panel Record of Decision RR-2022-14 (4 October 2022)
D3 – Sydney North Planning Panel PPA Record of Decision (9 December 2022)
Attachment E – North Sydney DCP 2013 Proposed Amendment to Implement the SLCN 2036 Plan Post-Exhibition Report (12 December 2022)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	North Sydney
PPA	Sydney North Planning Panel
NAME	Five Ways Triangle (129 dwellings, 441 jobs)
NUMBER	PP-2021-7451
LEP TO BE AMENDED	North Sydney LEP 2013
ADDRESS	391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest
DESCRIPTION	<p>3 Falcon Street – Lot 2 DP 29672</p> <p>7 Falcon Street – Lot 3 DP 29672</p> <p>9-11 Falcon Street – Lot 1 DP 127595</p> <p>15 Falcon Street – Lot 1 DP 562966</p> <p>8 Alexander Street – Lot 11 DP 29672</p> <p>391-393 Pacific Highway – Lot 6 DP 16402</p> <p>395 Pacific Highway – Lot 4 and 5 DP 16402</p> <p>399 Pacific Highway – Lot 3 DP 16402</p> <p>401 Pacific Highway – Lot 1 and 2 DP 16402</p> <p>407 Pacific Highway – Lot 10 DP 29672</p> <p>411 Pacific Highway – Lot 8 and 9 DP 29672</p> <p>413 Pacific Highway – Lot 7 DP 29672</p> <p>415 Pacific Highway – Lot 6 DP 29672</p> <p>417 Pacific Highway – Lot 5 DP 29672</p> <p>419 Pacific Highway – Lot 4 DP 29672</p> <p>423 Pacific Highway – Lot 1 DP 29672</p>
RECEIVED	21/12/2022
FILE NO.	IRF22/4525
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal (**Attachment A1**) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to amend the planning controls in the North Sydney Local Environmental Plan (LEP) 2013 as they apply to the site known as the Five Ways Triangle, Crows Nest to facilitate a mixed-use development. The changes are appropriate as they are considered to:

- implement the planning framework identified in the St Leonards and Crows Nest 2036 Plan, therefore demonstrating consistency with the objectives of the Greater Sydney Region Plan and North District Plan;
- establish planning controls enabling renewal of the site and the realisation of its significant potential to contribute to Crows Nest;
- provide infrastructure that meets the needs of the existing and future community while contributing to the forecast housing needs of North Sydney;
- provide non-residential floorspace that enables and supports the growth of Crows Nest and St Leonards as a medical and educational precinct; and
- provide an opportunity to improve the presentation of the site to the public domain, greatly enhancing the streetscape and improving public spaces.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The site is proposed to be redeveloped to facilitate a mixed-use development at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street known as the Five Ways Triangle site, Crows Nest. The planning proposal seeks to amend the North Sydney LEP 2013 by:

- increasing the maximum building height from 16m to 62.5m;
- introducing a floor space ratio (FSR) control of 5.8:1; and
- increasing the minimum non-residential FSR control from 0.5:1 to 2.5:1.

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	B4 Mixed Use	B4 Mixed Use
Maximum height of the building	16m	62.5m
Floor space ratio (FSR)	N/A	5.8:1
Minimum non-residential FSR	0.5:1	2.5:1
Number of dwellings	0	129
Number of jobs	Approx. 154	441
Carparking	N/A	258 spaces

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

The subject site was previously subject to a rezoning review considered by the Sydney North Planning Panel (Panel) on 18 October 2021. The Panel considered the proposal that is not part of this planning proposal package and determined that it did not demonstrate strategic merit and should not be submitted for a Gateway determination (**Attachment D1**). In particular, the Panel determined that the proposed variations to height and FSR were not minor with significant non-compliances with FSR.

A second rezoning review for a subsequent planning proposal was considered by the Panel on 28 September 2022. The Panel considered the proposal (dated 24 December 2021) and determined that it demonstrated strategic and site-specific merit and should be submitted for a Gateway determination subject to a number of issues being resolved or confirmed (**Attachment D2**).

Specifically, the Panel requested the proponent address the following issue:

- a) *The Proponent should work with the Department to reduce the podium height (by approximately 1-2 metres consistent with the change in levels across the site) to provide a characteristic three storeys, possibly with four storeys at the north-western corner of the site, producing a corresponding reduction in the overall height from 63.5m. The final height of building is to accommodate all roof structures including the lift overrun.*

On 7 December 2022, the Department briefed the Panel that a 1m reduction in height from the podium to an overall height of 62.5m had been proposed by the Proponent. The Panel supported this reduction and supporting the proposal to proceed as amended to a Gateway determination (**Attachment D3**). The Panel noted in its decision the remaining elements of the rezoning review record of decision (b) to (e) are to be resolved or confirmed by the Department prior to proceeding to Gateway. These have been assessed in section 5 of this report.

The planning proposal package has been updated to reflect the current approved height control.

1.4 Site description and surrounding area

The site is located in Crows Nest in the North Sydney Local Government Area (LGA), 5.7km north of the Sydney CBD (**Figure 1**). It is situated on the northern eastern side of Pacific Highway and is covered by the St Leonards and Crows Nest 2036 Plan (SLCN 2036 Plan).

Known as the Five Ways Triangle, the site comprises an entire street block formed by nineteen allotments owned by the proponent bounded by the Pacific Highway, Falcon Street and Alexander Street (**Figure 2**). The total site area is 3,200sqm and the legal descriptions of all allotments have been identified in **Table 2**. The Five Ways intersection of which the site derives its name is located at a crest in the ridgeline, making it a focal point. The site generally falls in a south easterly direction from its north western corner down to the south eastern corner.

Currently the site contains a mix of 1-4 storey buildings generally constructed to their boundary without vehicular access. The Alexander Street frontage is staggered with multiple driveway crossings. The current buildings feature a variety of non-residential uses including commercial office, retail and education, including several vacant premises.

To the north of the site across Falcon Street is the Crows Nest Hotel that is a 3 storey building listed as a local heritage item under the North Sydney LEP 2013. The remaining northern side of Falcon Street contains two small commercial buildings at 6-8 Falcon Street and a 3 storey commercial building featuring a supermarket and carparking at 10 Falcon Street.

To the east across Alexander Street is a mix of commercial and mixed-use buildings ranging from 1 to 4 storeys in height. These buildings are a buffer between the subject site and the Holtermann Estate C Conservation area.

To the south and west across Pacific Highway are a mix of commercial and mixed-use developments that are up to 6 storeys in height. Further south along Pacific Highway is a 17 storey building located at 210-220 Pacific Highway. Directly opposite the site across Pacific Highway a

planning proposal for 270-272 Pacific Highway to accommodate a 13 storey commercial building to a height of 54m is currently at the finalisation stage.

The site is not listed as a heritage item or within a heritage conservation area (HCA), however, it is in the vicinity of a number of local heritage items and the Holtermann Estate B and C HCA's (Figure 13).

The Sydney Metro tunnels pass under the north eastern corner of the site and are contained within a below ground stratum approximately 30m below the natural ground surface (Attachment A8). This is acknowledged as a constraint of development (Figure 5) and the planning proposal will require referral to Transport for NSW (Sydney Metro) during public exhibition.



Figure 1 Locality map (source: Gyde)

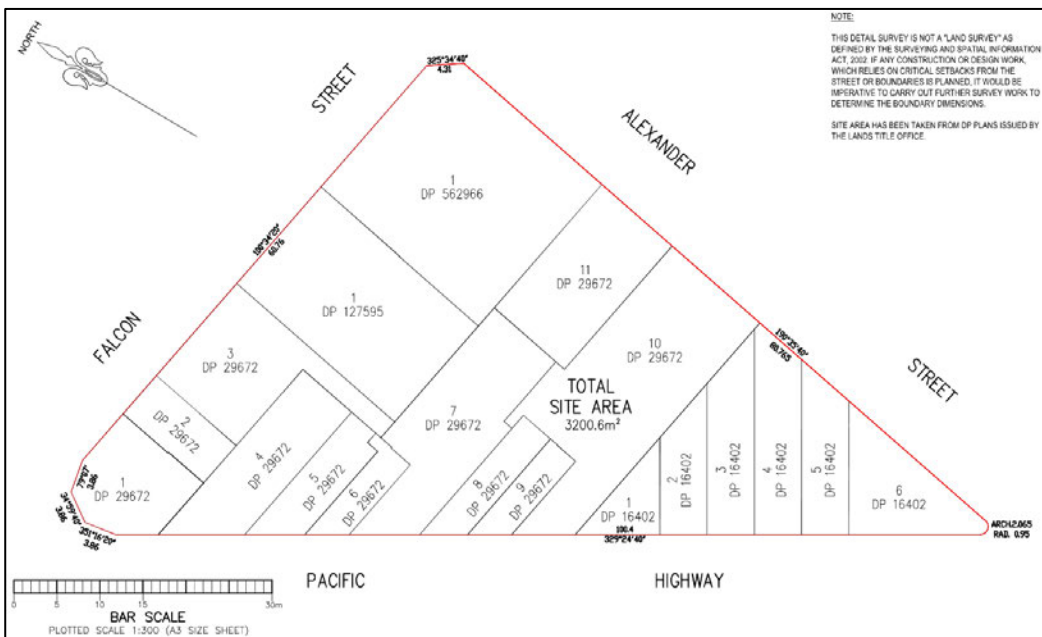


Figure 2 Site survey (source: Gyde)



Figure 3 Subject site (source: Gyde)

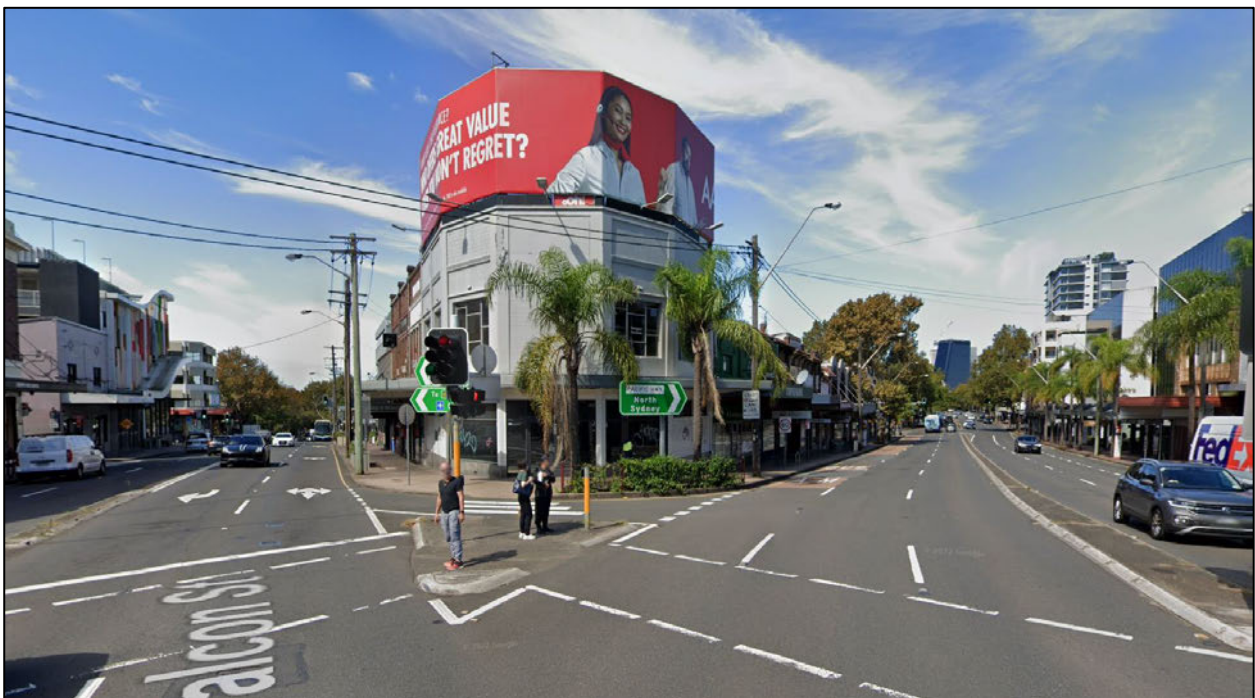


Figure 4 View of the subject site from the Five Ways intersection (source: Google maps)



Figure 5 Metro tunnel easements under the site (source: BG&E)

1.5 Mapping

The planning proposal (**Attachment A1**) includes mapping showing the proposed changes to the North Sydney LEP 2013 maps, which are suitable for community consultation. The existing and proposed mapping has been provided as **Attachment A11**.

The mapping associated with the North Sydney LEP 2013 indicates that the existing site is subject to the following planning provisions:

- B4 Mixed Use zone (**Figure 6**);
- maximum building height of 16m (**Figure 7**); and
- minimum non-residential FSR of 0.5:1 (**Figure 8**).

There is no change to the B4 mixed use zoning and there is no applicable FSR control for the site.

The proposed changes to the mapping indicate that the site will be subject to the following planning provisions:

- maximum building height of 62.5m (**Figure 10**);
- maximum FSR of 5.8:1 (**Figure 11**); and
- minimum non-residential FSR of 2.5:1 (**Figure 12**).

The heritage items in the vicinity of the site are shown in **Figure 13**.

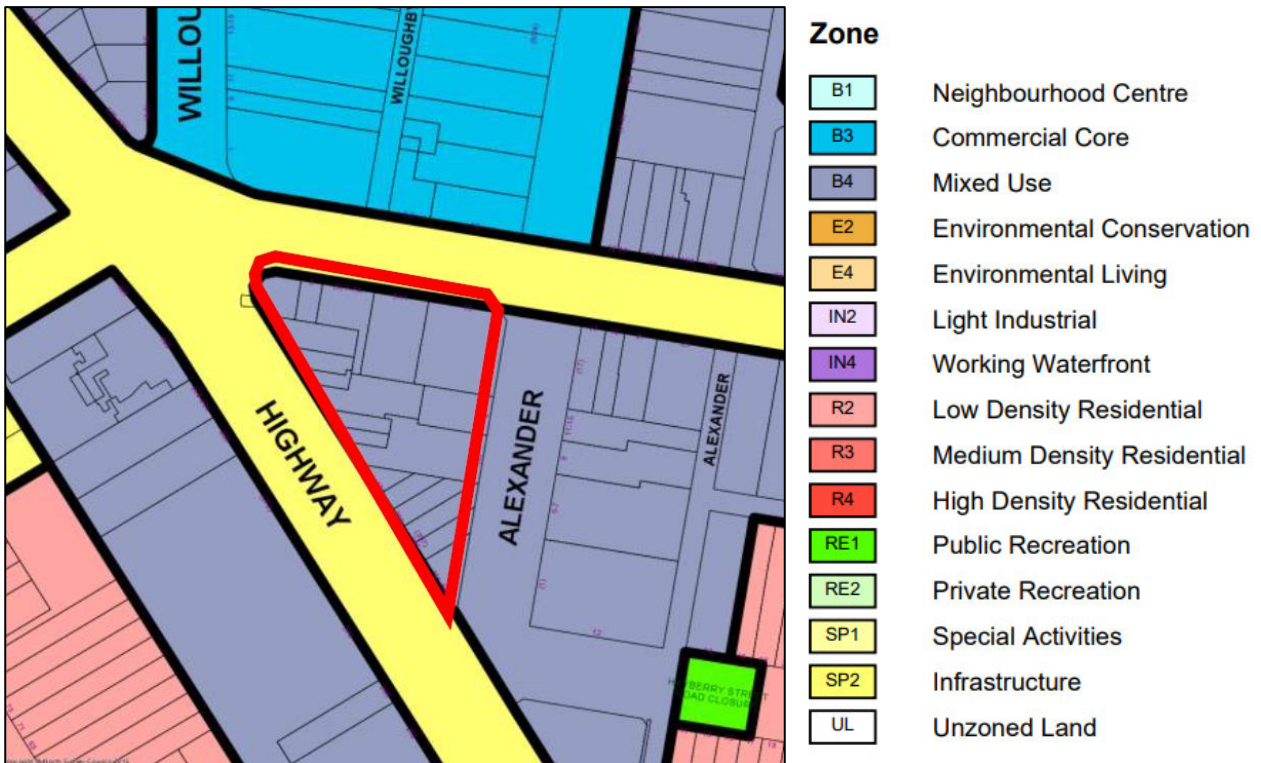


Figure 6 Current land zoning map – B4 Mixed Use (source: Council assessment report)

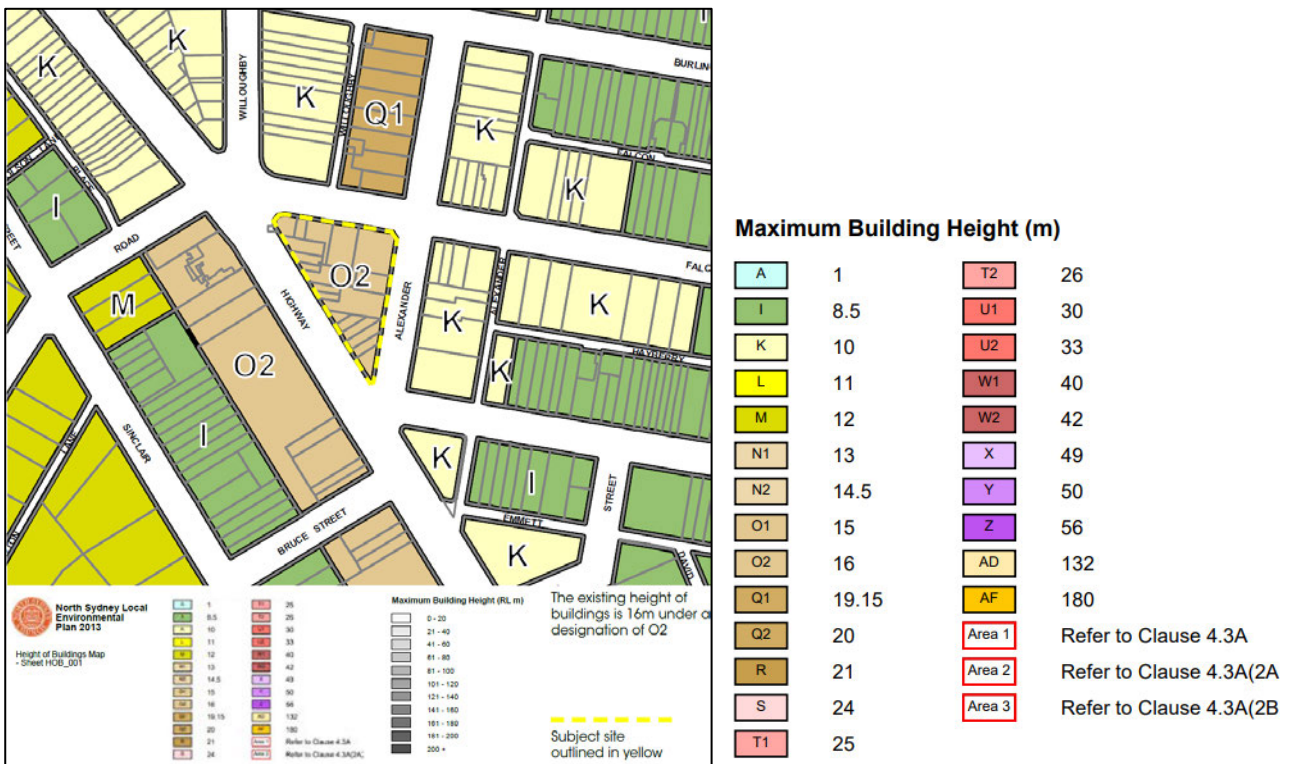


Figure 7 Current maximum building height map with a maximum height of 16m (source: Gyde)



Figure 8 Current minimum non-residential FSR map with a control of 0.5:1 (source: Gyde)

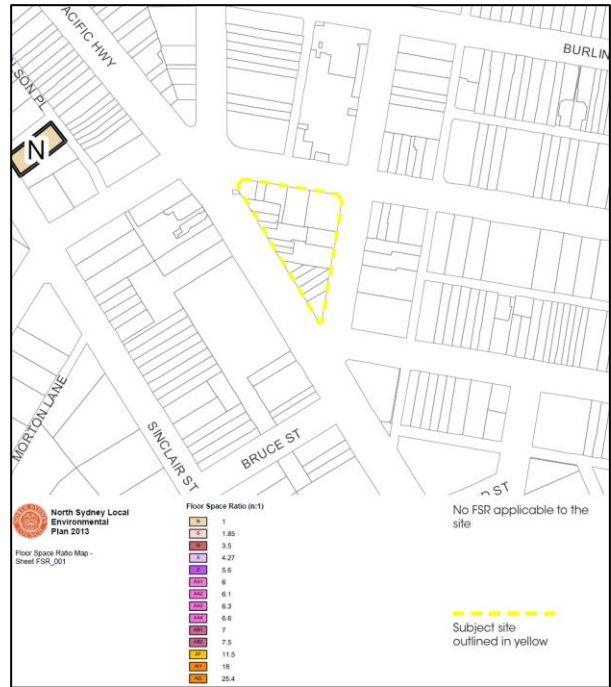


Figure 9 Current FSR that indicates no control applies to the site (source: Gyde)

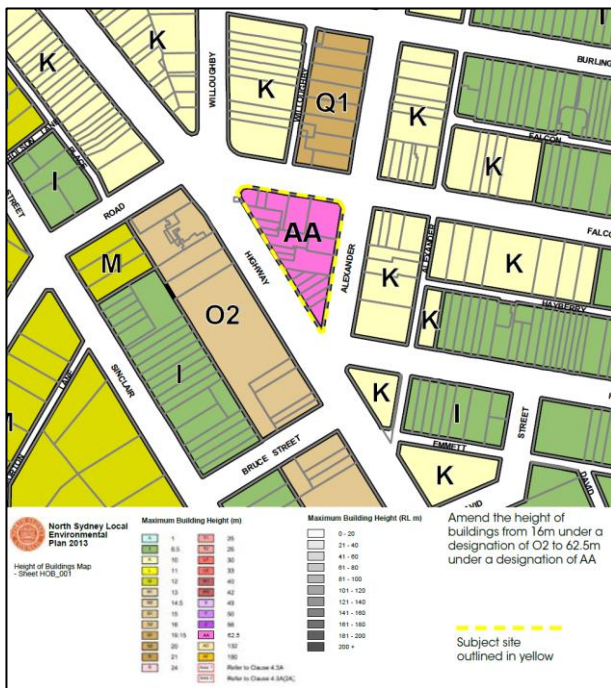


Figure 10 Proposed building height map – indicates a maximum height of 62.5m (source: Gyde)

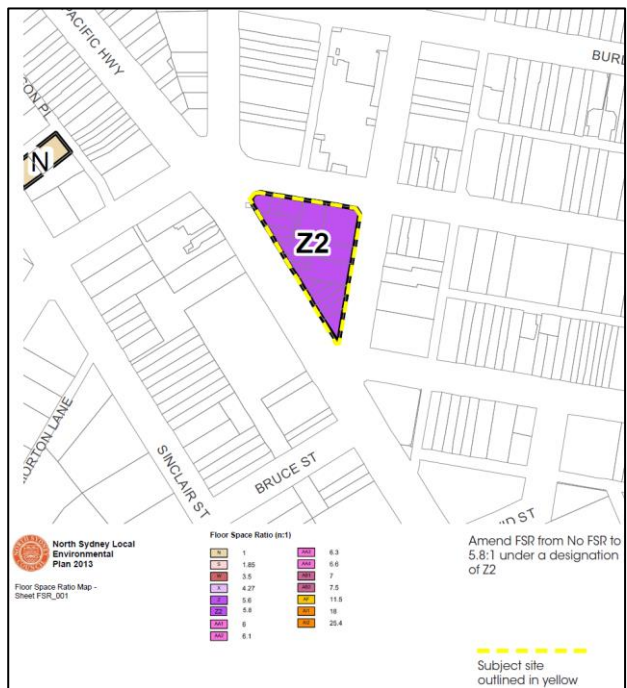


Figure 11 Proposed FSR map indicating a maximum FSR of 5.8:1 (source: Gyde)



Figure 12 Proposed minimum non-residential FSR map indicating a non-residential FSR control of 2.5:1 (source: Gyde)

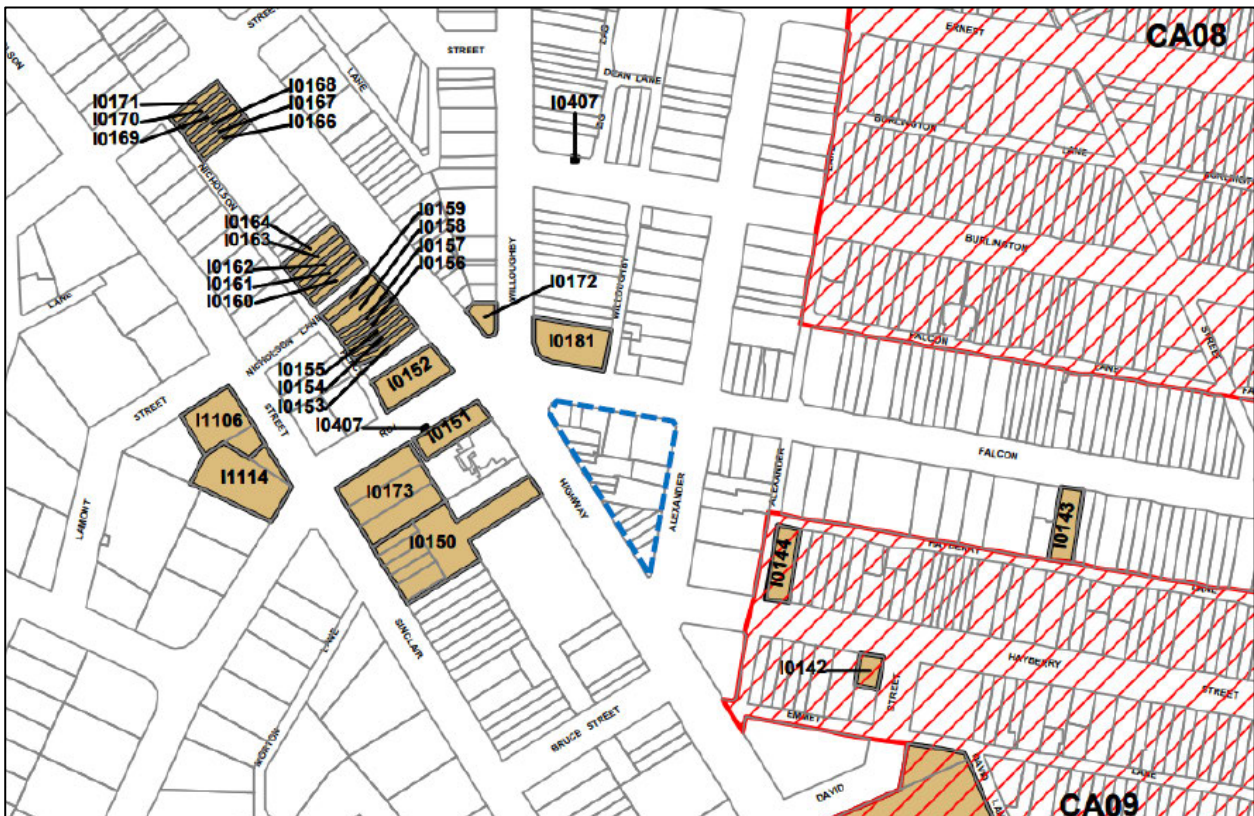


Figure 13 Current heritage map – no change proposed (source: Urbis)

1.6 Background

Table 4 Background to the planning proposal

Date	Event
18 October 2021	Sydney North Planning Panel did not support rezoning review RR-2021-87.
19 January 2022	Current planning proposal lodged with North Sydney Council.
8 June 2022	North Sydney Local Planning Panel recommended the planning proposal proceed to Gateway subject to recommendations.
27 June 2022	North Sydney Council resolved not to progress the planning proposal to Gateway.
18 July 2022	Proponent requested a rezoning review.
4 October 2022	Sydney North Planning Panel at a rezoning review (RR-2022-14) meeting determined the planning proposal should proceed to Gateway with recommended amendments.
9 December 2022	Sydney North Planning Panel supported the planning proposal as amended by the proponent in response to the rezoning review decision.
21 December 2022	Final planning proposal package was received by the Department.

1.6.1 Rezoning Reviews

RR-2021-87 – 18 October 2021

On 18 October 2021 the Sydney North Planning Panel (Panel) considered a planning proposal seeking to increase the maximum building height control to 75m, establish a maximum FSR of 9.3:1 and increase the minimum non-residential FSR control to 2.5:1 in order to facilitate a 19 storey mixed-use development. The rezoning review was the result of Council not indicating its support 90 days after the proponent submitted the planning proposal.

The Panel determined the proposal should not be submitted for a Gateway determination because the proposal has not demonstrated strategic merit (**Attachment D1**).

RR-2022-14 – 4 October 2022

On 30 June 2022, a rezoning review was lodged on the NSW Planning Portal as Council notified the applicant that it would not support the proposed amendments to the LEP.

On 28 September 2022, the Panel considered the planning proposal and determined that the proposal demonstrated strategic and site specific merit and a majority of the Panel members determined that it demonstrated site-specific merit (**Attachment D2**).

One member stated that the maximum height of building provision should be 56m, with an additional allowance for centralised lift overrun facilities. The schematic podium height should be reduced to better reflect the historical shopfronts in the vicinity of the site.

As a majority, the Panel recommended:

- the proposal be submitted for a Gateway determination;
- be amended by reducing the podium height approximately 1-2m consistent with the change in levels across the site, producing a corresponding reduction in the overall height from 63.5m;

- a site-specific DCP should be prepared to address a number of matters;
- a VPA should be agreed; and
- all specialist reports should be checked for accuracy and updated to post-COVID conditions.

As the rezoning review was the result of Council not supporting the planning proposal, the Panel appointed itself as the Planning Proposal Authority (PPA) in accordance with the Department's *LEP Making Guideline September 2022*.

Sydney North Planning Panel approval as PPA – 9 December 2022

On 7 December 2022, the Sydney North Planning Panel was briefed by the Department on the changes made to the planning proposal by the proponent in response to the rezoning review RR-2022-14. The Panel determined to proceed to Gateway determination, with the following matters resolved or agreed to be resolved during the Department's assessment of the proposal:

- the Panel supported a 1m podium reduction and subsequent overall height reduction to 62.5m to proceed to a Gateway determination. The planning proposal documentation has been updated to reflect this proposed height;
- the Department informed the Panel a storey limit is unable to be enforceable within an LEP;
- the proponent has provided an Affordable Housing Feasibility Assessment in response to the Panel's request (**Attachment B**);
- the proponent has contacted Council who advised if the SIC applies a VPA is not required; and
- the site-specific DCP will be reviewed in the context of North Sydney Council's recently adopted DCP update for the St Leonards and Crows Nest 2036 planning area.

It is noted a majority of the Panel supported progression of the amended planning proposal. One Panel member remained in the minority restating their initial position.

Table 5 Comparison of existing LEP controls with the progression of rezoning reviews and proposals

Control	Current LEP Control	RR-2021-87	RR-2022-14	Planning Proposal for Gateway
Maximum building height	16m	75m	63.5m	62.5m
Maximum FSR	N/A	9.3:1	5.8:1	5.8:1
Minimum non-residential FSR	0.5:1	2.5:1	2.5:1	2.5:1
Number of dwellings	0	233	129	129
Number of jobs	Approx. 154	456	456	456
Car parking	N/A	385	258	258

1.7 Reference Scheme

On 21 December 2022, a revised planning proposal (**Attachment A1**), updated Urban Design Report (**Attachment A3**), a Supplementary Transport Assessment (**Attachment A5**), updated Economic Impact Assessment (**Attachment A6**), revised LEP maps (**Attachment A11**) and an Affordable Housing Feasibility Analysis (**Attachment B**) were provided to the Department in response to the recommendations of the Panel. The notable reference scheme change was the reduced podium by 1m that produced a corresponding overall height reduction to 62.5m.

The revised planning proposal is supported by a number of additional assessments and documents that are all referenced as **Attachments A** in this report.

The revised proposal maintains the proposed number of 129 dwellings and approximately 441 jobs.

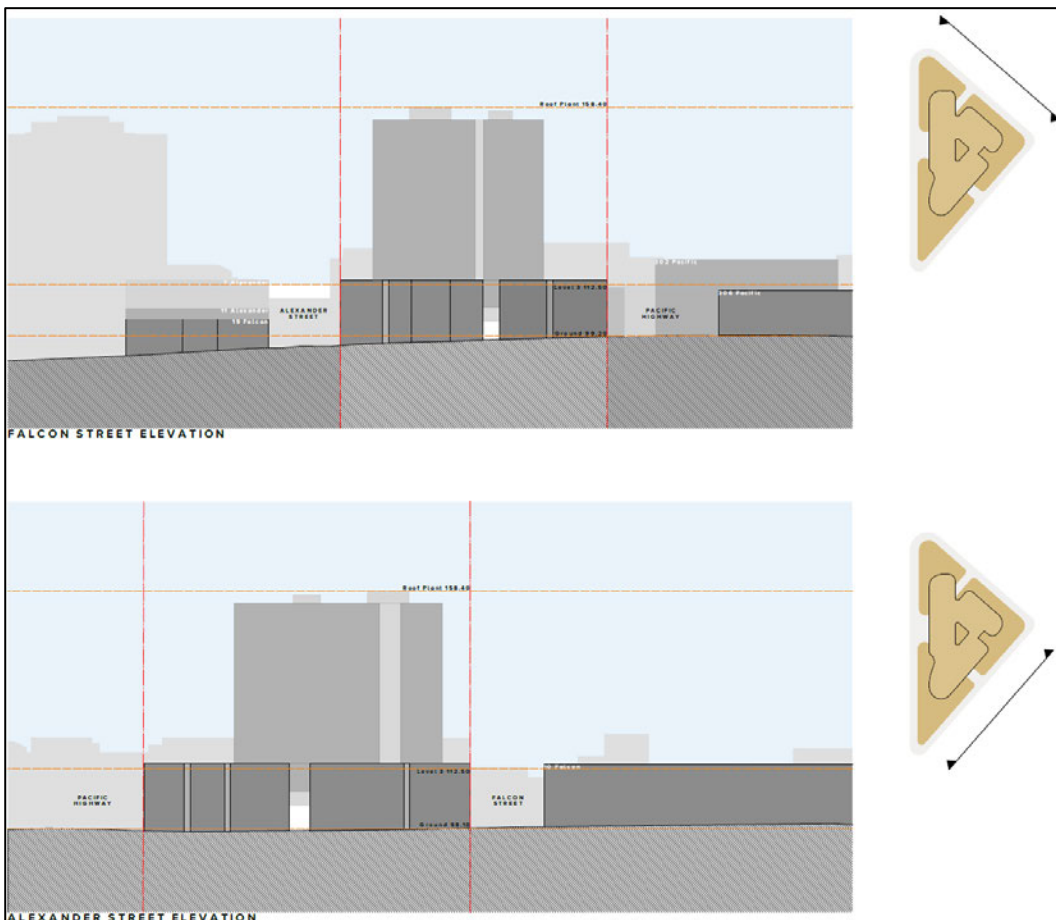


Figure 14 Elevations of Falcon Street and Alexander Street (source: Turner)

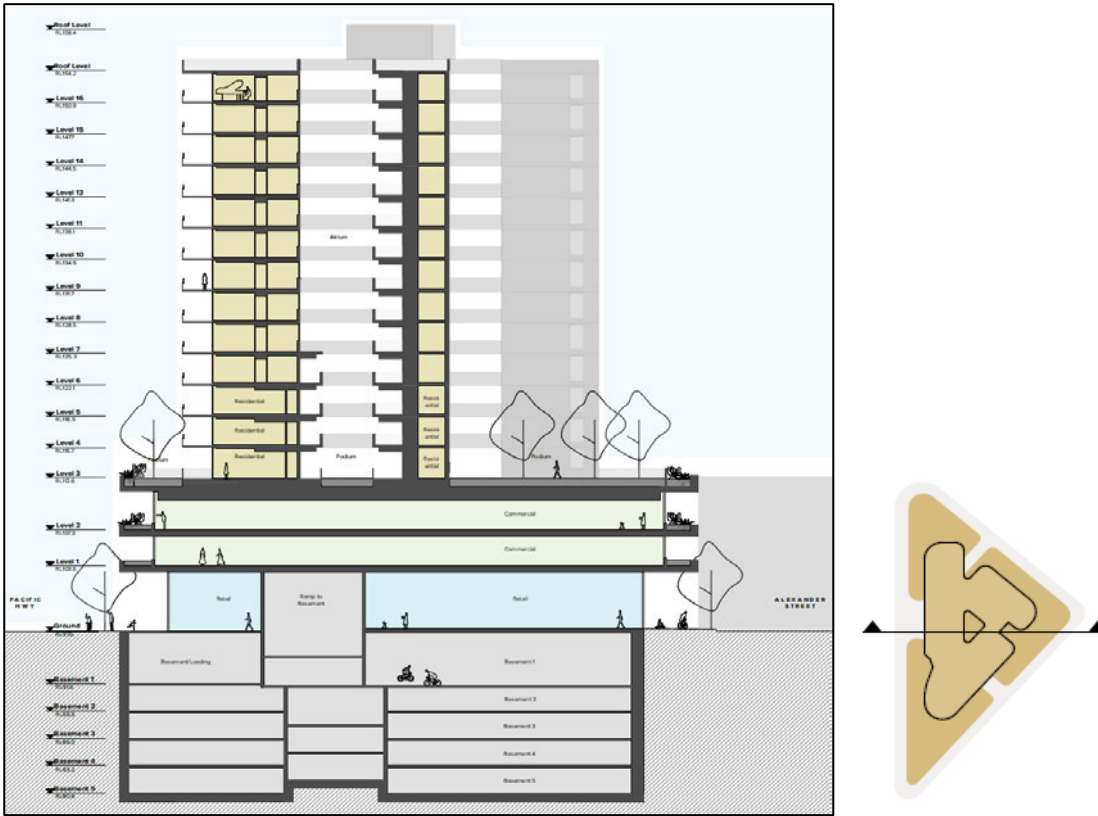


Figure 15 Section of proposed development (source: Turner)

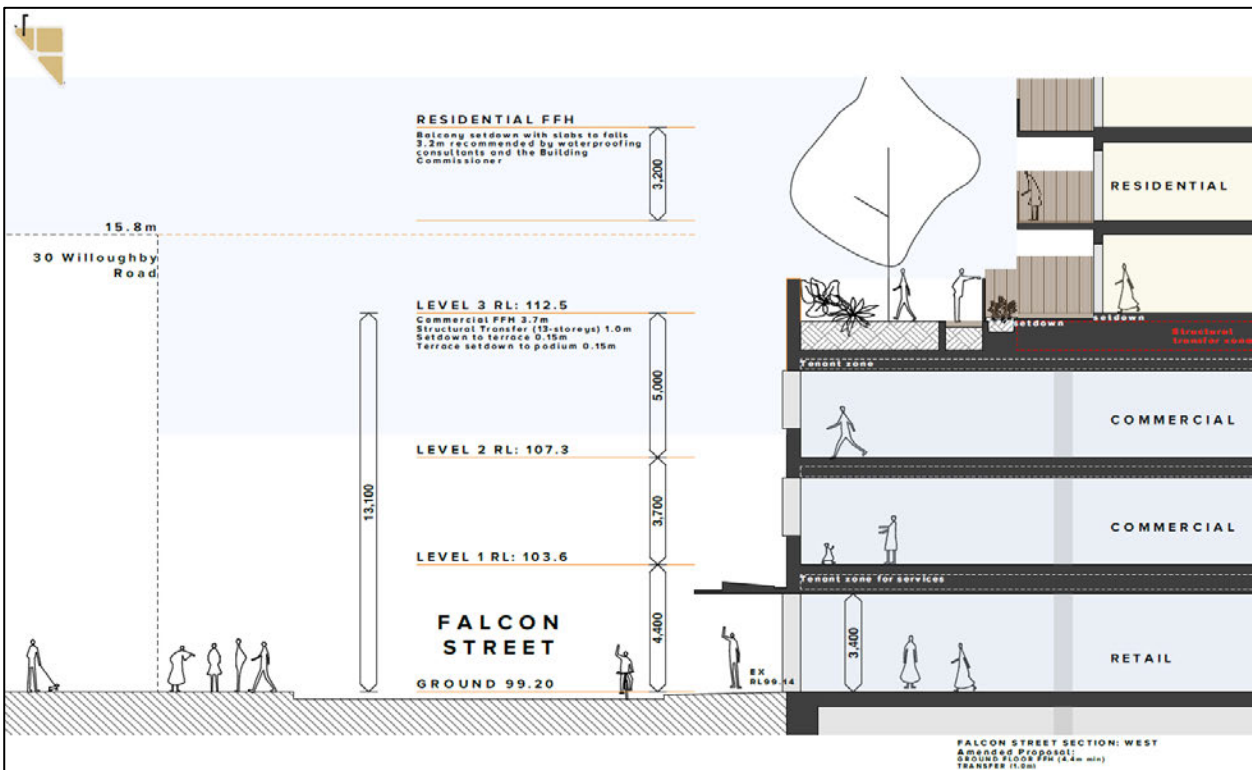


Figure 16 Section of proposed podium development where the street height is lower (source: Turner)

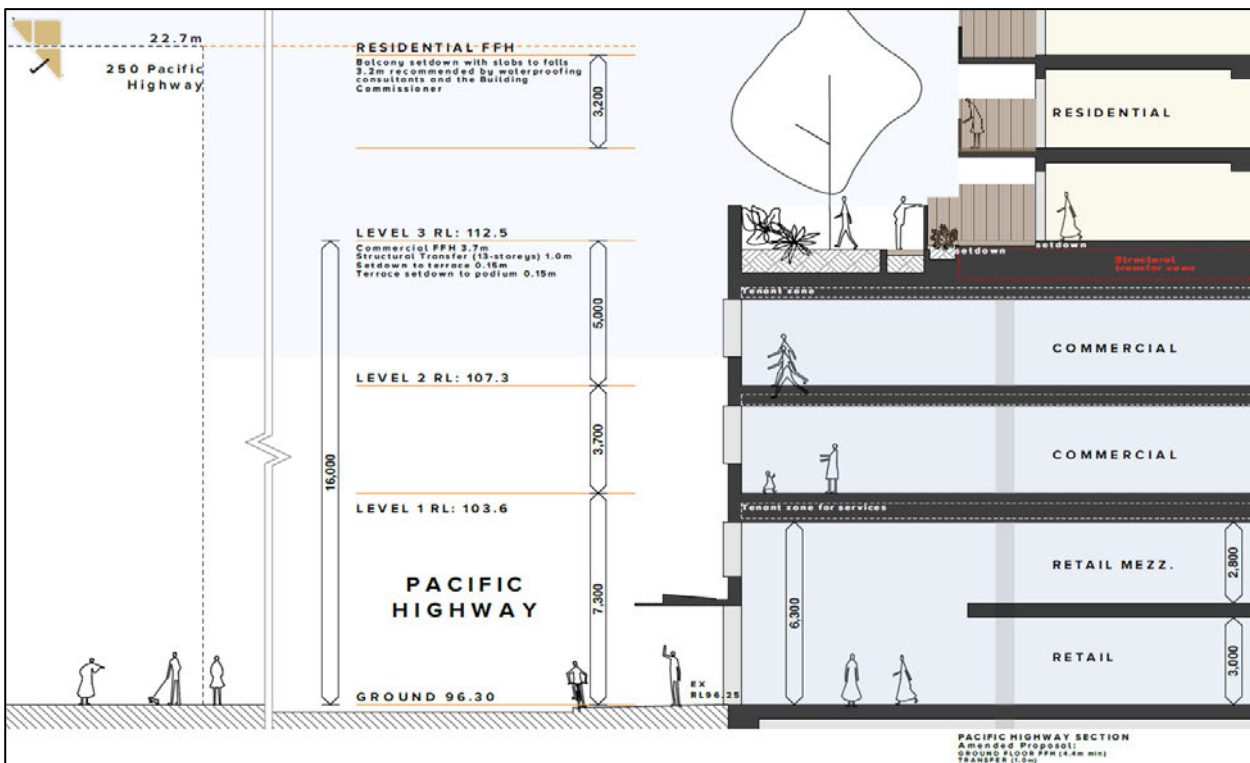


Figure 17 Section of proposed podium development where the street height is higher featuring the fourth storey podium mezzanine (source: Turner)

2 Need for the planning proposal

The planning proposal seeks to implement the St Leonards and Crows Nest 2036 Plan (SLCN 2036 Plan) with the site located within the urban renewal area identified in the North District Plan. The SLCN 2036 Plan was released in August 2020 and indicates the recommended planning controls encompassing the subject site at the Five Ways Triangle, Crows Nest. This site was previously designated as a significant site in the draft SLCN 2036 Plan before being provided with its current planning controls in the finalised plan.

The site is in a designated growth area and located near the future Crows Nest Metro Station. The proposal is the best means of achieving the objectives and intended outcomes.

The SLCN 2036 is discussed further in section 3.3.1.

3 Strategic assessment

3.1 Regional Plan

The following **Table 6** provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Regional Plan.

Table 6 Regional Plan assessment

Regional Plan Objectives	Justification
A City Supported by Infrastructure	<p>The proposal will provide increased residential and employment floorspace in a location well serviced by current and future public transport, providing access to the Sydney CBD, St Leonard’s Strategic Centre and other locations along the Eastern Economic Corridor.</p> <p>The proposal is considered to be consistent with this objective.</p>
A City for People	<p>The proposal will facilitate housing within a location of significant infrastructure investment in the future Crows Nest Metro Station. The proposal will activate the street through laneway retail providing new social infrastructure and service floorspace to the community on the ground floor.</p> <p>The proposal creates a framework to deliver a unique building enhancing connectivity from the site to the southern end of Willoughby Road.</p> <p>The proposal is considered to be consistent with this objective.</p>
Housing the City	<p>The planning proposal will provide housing in a location nearby to existing and soon to be completed infrastructure projects and is easily accessible by public transport to the Sydney and North Sydney metropolitan centres.</p> <p>The proposal is considered to be consistent with this objective.</p>
A City of Great Places	<p>The planning proposal will facilitate the urban renewal of a currently rundown street block on the southern side of the Crows Nest village. The proposed building envelope envisages a permeable ground floor enabling active laneways, walkways and connections to surrounding locations.</p> <p>The proposal will create a visual marker for Crows Nest as enabled by the SLCN 2036 Plan. It will reinforce the role of the Five Ways intersection as a gateway in the precinct.</p> <p>The proposal is considered to be consistent with this objective.</p>
A Well-Connected City	<p>The site is located 240m from the future Crows Nest Metro Station and is well serviced by bus routes. This location offers residents and users access to Crows Nest and Greater Sydney through accessible public transport, reducing private vehicle dependency.</p> <p>The proposal is considered to be consistent with this objective.</p>
Jobs and Skills for the City	<p>The proposal site is an interface between the Education and Medical facilities in south Crows Nest and the Crows Nest village. The proposed development will provide non-residential floorspace bringing forward the proposed targets identified in the SLCN 2036 Plan.</p> <p>St Leonards is identified as a strategic centre and the proposal will support the development, servicing and housing supply of the St Leonards centre in a planned and strategic manner.</p> <p>The proposal is considered to be consistent with this objective.</p>

Regional Plan Objectives	Justification
An Efficient City	<p>The proposal seeks to facilitate increased use of public transport to combat the use of private vehicles reducing emissions due to its location to these transport options.</p> <p>The proposal is considered to be consistent with this objective.</p>

3.2 District Plan

The site is within the North District and the Greater Cities Commission (formerly the Greater Sydney Commission) released the North District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following **Table 7** includes an assessment of the planning proposal against relevant directions and actions.

Table 7 District Plan assessment

District Plan Priorities	Justification
Infrastructure and Collaboration	
N1 Planning for a city supported by infrastructure	The planning proposal is consistent with this priority as it provides increased residential density with access to existing and future infrastructure including public transport, community, jobs and services.
Liveability	
N4 Fostering healthy, creative, culturally rich and socially connected community	The planning proposal encourages spontaneous social interaction and community cultural life with development designed at a human scale for walkability. Active street life will provide great social opportunities.
N5 Providing housing supply, choice and affordability with access to jobs, services and public transport	The proposal will provide housing in a location nearby to existing and future public transport options and city shaping infrastructure. This will make the development accessible to strategic metropolitan centres and the jobs and services that they offer.
N6 Creating and renewing great places and local centres, and respecting the District's heritage	The planning proposal is consistent with this priority as it will renew a rundown street block featuring a podium that combined with the wide roads surrounding the site mitigates impacts on adjacent heritage items. The development will ensure there will be no overshadowing impacts on key spaces as identified in the SLCN 2036 Plan.

Productivity

District Plan Priorities	Justification
N12 Delivering integrated land use and transport planning and a 30-minute city	Increased development in North Sydney is consistent with this priority and the increase to the planning controls will facilitate the provision of 129 dwellings and retail/commercial floorspace to leverage off existing and future public transport options supporting the 30-minute city.
Sustainability	
N21 Reducing carbon emissions and managing energy, water and waste efficiency	The proposal is consistent with this priority as it seeks to facilitate greater use of public transport to reduce private vehicle reliance, taking advantage of the future Crows Nest Metro Station. The proposal's location will enable access to jobs and services capitalising on public transport.

3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies.

3.3.1 St Leonards and Crows Nest 2036 Plan

The St Leonards and Crows Nest 2036 Plan (SLCN 2036 Plan) was finalised on 29 August 2020. It requires that future planning proposals within the St Leonards and Crows Nest investigation area reflect the SLCN 2036 Plan vision, design principles and recommended planning controls as outlined in **Table 8**.

The site is within the area covered by the SLCN 2036 Plan (**Figure 18**) and the revised planning proposal generally achieves the overall intent of the SLCN 2036 Plan for the site, which focusses on delivering greater employment floorspace and jobs.

An assessment of the revised planning proposal against Section 9.1 Ministerial Direction 7.11 Implementation of St Leonards and Crows Nest 2036 Plan is outlined in section 3.3.

Table 8 Consistency of the planning proposal with the SLCN 2036 Plan

Strategies	Justification
<i>Vision</i>	<p>The proposal will facilitate a renewed development and an increase to commercial floorspace on the site through the amalgamation of allotments to cater to a wider range of services for a growing population that is compatible with the future character of the area. It will also provide a variety of residential dwellings for a variety of household sizes on a site specifically designated for uplift within the plan area.</p> <p>The planning proposal is generally consistent with the vision of the SLCN 2036 Plan as it will promote an active street frontage and include two through site links to improve permeability. The development will leverage on the currently under construction Crows Nest Metro Station with the opportunity to be developed into a visual icon for the Crows Nest village.</p>

Strategies	Justification
<i>Place</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to place as:</p> <ul style="list-style-type: none"> • it is designed to provide a significant redefinition of the public domain; • the site is physically separated from the nearby Heritage Conservation Areas with the block to the east providing a transition to these areas; and • it adopts the indicative street wall heights outlined in the Plan. The Department notes an inconsistency that will be explored further under the Plan's implementation section of this table.
<i>Landscape</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to landscape as:</p> <ul style="list-style-type: none"> • it includes two pedestrian through-site links connecting to three street frontages enhancing the permeability of the site; and • it takes an integrated approach to landscape with a number of initiatives.
<i>Built Form</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to the built form as:</p> <ul style="list-style-type: none"> • it complies with the solar access controls as outlined further in section 4.1.1 of this report; • the site has been identified for significant increases in built form controls; • it provides a transition from the development within the St Leonards core; • the redevelopment of the site will improve the functionality and efficiency of a previously underused and isolated site; and • it ensures the development is a contextual fit within the future character of Crows Nest, creating a location that is connected, safe and liveable.
<i>Land Use</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to land use as:</p> <ul style="list-style-type: none"> • it enables the development of a range of dwelling sizes that will support the St Leonards and Crows Nest community; • the facilitation of the redevelopment will enable Council to secure the associated SIC funding to support investigations into various community facilities in the precinct; • it includes a retail offering with the Crows Nest village activating the area and providing additional retail floorspace in an appropriate location; and • it includes a component of key worker housing.
<i>Movement</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to movement as:</p> <ul style="list-style-type: none"> • the site is well located to connect to existing pedestrian links across the precinct with the public domain improvements at ground level improving the permeability of the site; • it is located close to accessible and convenient public transport, retail, services and amenities that should priorities public transport usage of future residents; and • a traffic study (Attachment A5) considers the effect of the development on existing and future traffic networks.

Strategies	Justification
<p><i>Implementation of the Plan</i></p>	<p>The planning proposal complies with the following built form and design criteria of the SLCN 2036 Plan:</p> <ul style="list-style-type: none"> • the B4 Mixed Use zone will be retained; • the built form is proposed to be 16 storeys with an FSR of 5.8:1 including a minimum non-residential FSR of 2.5:1 (Figures 19 to 21); • setbacks of 0m to all street frontages (Figure 22), with the indicative concept design allowing for increased setbacks at through site links and key Pacific Highway bus stop; • solar access is retained to public open spaces and residential areas outside the SLCN 2036 Plan area including maintaining at least 3 hours solar access to Heritage Conservation Area's (Figures 31 to 35); and • the development will facilitate 129 new residential dwellings and approximately 8,000sqm of non-residential floor space across the podium; <p>The planning proposal is inconsistent with the following criteria of the SLCN 2036 Plan:</p> <ul style="list-style-type: none"> • a 3 storey podium with a 4th storey mezzanine to the intersection of Pacific Highway and Alexander Street is proposed (Figure 24). The location of the mezzanine podium level on the 2036 Plan is the opposing corner of the site to the Five Ways intersection (Figure 23).



Figure 18 SLCN 2036 Plan area map (source: DPE)



Figure 19 SLCN 2036 Plan recommended height of 16 storeys (source: DPE)



Figure 20 SLCN 2036 Plan recommended FSR of 5.8:1 (source: DPE)

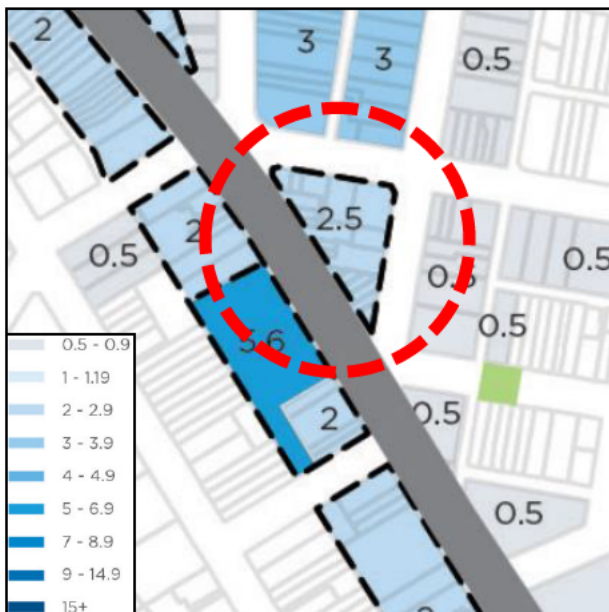


Figure 21 SLCN 2036 Plan recommended minimum non-residential FSR of 2.5:1 (source: DPE)

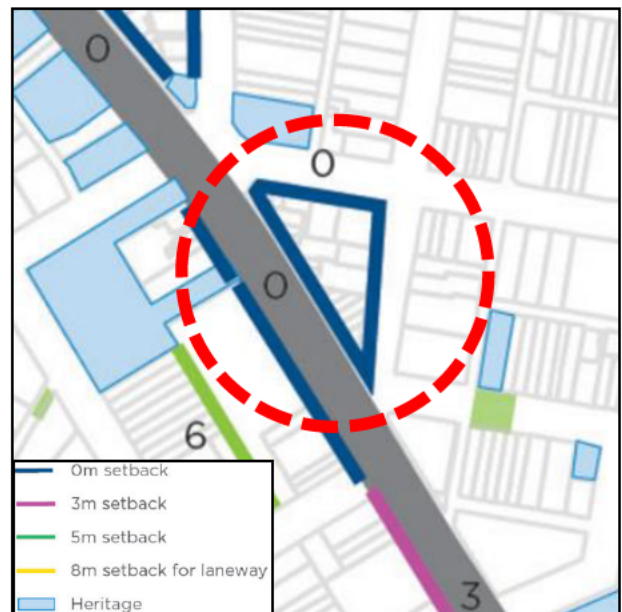


Figure 22 SLCN 2036 Plan recommended 0m setback to all frontages (source: DPE)

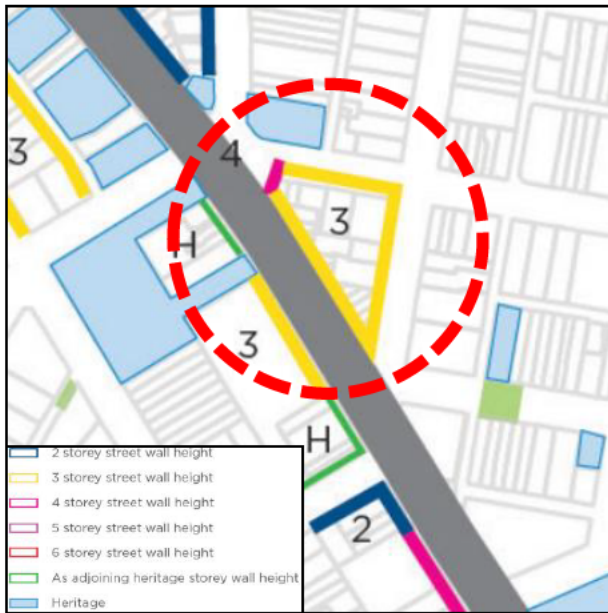


Figure 23 SLCN 2036 Plan recommended street wall heights of 3 storeys with 4 storeys to the Five Ways intersection (source: DPE)

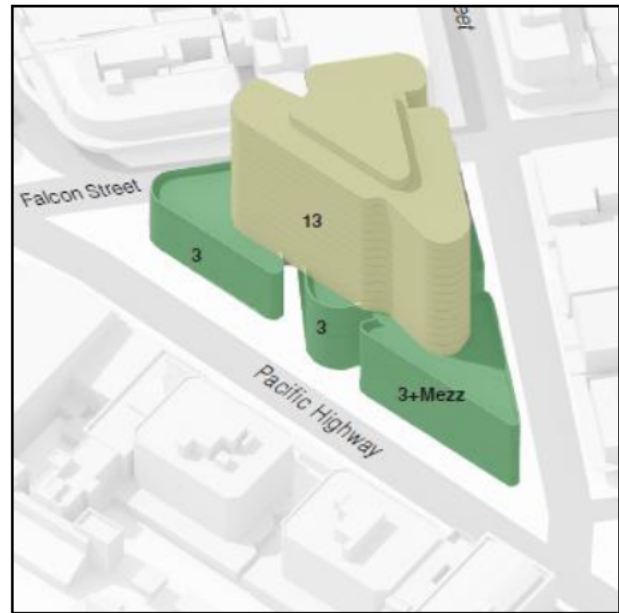


Figure 24 Proposed built form with the podium mezzanine at the intersection of Pacific Highway and Alexander Street (source: Turner)

3.3.2 North Sydney Local Strategic Planning Statement (LSPS)

The North Sydney LSPS was endorsed by the Greater Sydney Commission on 20 March 2020. The LSPS sets the 20-year direction for housing, employment, transport, recreation, environment and infrastructure for the North Sydney LGA.

The consistency of the proposal with the relevant key Local Planning Priorities and Actions of the LSPS is outlined below in **Table 9**.

Table 9 North Sydney LSPS assessment

Planning Priority	Justification
Planning priority I2 – Collaborate with State Government agencies and the community to deliver new housing, jobs, infrastructure and great places	The reference scheme will provide 129 new residential dwellings and approximately 8,000sqm of non-residential floor space with increased amenity generally consistent with the North District Plan. The planning proposal is consistent with this priority.
Planning priority L1 – Diverse housing options that meet the needs of the North Sydney community	The planning proposal is consistent with this priority as it will provide a variety of additional residential dwellings in an area well serviced by existing and proposed public transport, services, jobs, infrastructure and public open space.
Planning priority L2 – Provide a range of community facilities and services to support a healthy, creative, diverse and socially connected North Sydney community	The planning proposal is consistent with this priority as it will offer community benefit through an enhanced public domain, activation of the site and the provision of retail/commercial floorspace across the podium. This will suit an increasing and changing demographic of the area.

Planning Priority	Justification
Planning priority L3 – Create great places that recognise and preserve North Sydney’s distinct local character and heritage	The planning proposal is consistent with this objective as it will provide an opportunity to develop the site into a gateway development to the SLCN 2036 Plan precinct. It will facilitate the renewal of an underperforming part of Crows Nest through the amalgamation of a key site.
Planning priority P6 – Support walkable centres and a connected, vibrant and sustainable North Sydney	The planning proposal is consistent with this objective as it will provide residents and other users with access to a variety of public transport nodes and improve connectivity through the site and local area.
Planning priority S3 – Reduce greenhouse gas emissions, energy, water and waste	The planning proposal will deliver high amenity residential apartments that exceed requirements for cross ventilation and solar access, overall reducing energy consumption. The site is well serviced by public transport to enable access to a walkable 30-minute city that further contributes to reducing emissions and reliance on private vehicles.

3.3.3 North Sydney Local Housing Strategy (LHS)

The North Sydney LHS, adopted by Council on 25 November 2019 and endorsed by the Department on 10 May 2021, sets out the strategic direction for housing in the North Sydney LGA to 2036.

The planning proposal is consistent with the LHS as it will implement the St Leonards and Crows Nest 2036 Plan and will provide an indicative 129 new residential dwellings in an area identified for potential additional housing close to existing and proposed public transport links. Analysis undertaken in the planning proposal indicates the proposal will further assist in addressing the shortfall of one bedroom dwellings and studios across the North Sydney LGA.

3.3.4 North Sydney DCP 2013 – Implementation of the SLCN 2036 Plan

On 12 December 2022 North Sydney Council resolved to adopt an amendment to the North Sydney Development Control Plan (DCP) 2013. In particular, Section 3 – St Leonards Crows Nest Planning Area and Section 10 – Waverton Wollstonecraft Planning Area within Part C – Area Character Statements to the North Sydney DCP 2013 were amended to include new provisions relating to built form controls associated with the implementation of the SLCN 2036 Plan. The amendment to the DCP came into effect on 6 January 2023.

The subject site is within the Crows Nest Town Centre within the St Leonards / Crows Nest Planning Area (**Figure 25**) and the North Sydney DCP (**Attachment E**) following the recent amendment proposes that the site will require:

- 0m whole of building setback to all street frontages (**Figure 27**);
- 6m above podium setback to all street frontages (**Figure 29**);
- 3 storey podium height to all street frontages and intersections (**Figure 28**); and
- a singular through site link from the intersection of Falcon Street and Alexander Street to the centre of the Pacific Highway frontage (**Figure 26**).

The proponent made a submission on the DCP amendment during exhibition as follows:

- contests that the DCP’s character statement and built form character only ‘generally’ focus on the scaling down of development from the transport stations;
- agrees with Council the location of the Five Ways is a significant element of the area with the intersection an icon for the centre;

- supports the identification of a through-site link, noting the final design of the link will not mirror that shown in **Figure 26**;
- site has a street frontage greater than 40m but acknowledges the draft DCP includes performance objectives to assess the built form;
- requests the inclusion of objectives to support increased residential floor to floor height of minimum 3.2m; and
- proposed setbacks and above podium setbacks are consistent with the DCP.

The planning proposal is accompanied by a site-specific DCP prepared by the proponent (**Attachment A14**) that will be compared to the controls endorsed by Council’s amendment below. However, it is noted that only one DCP can apply to the site, and the planning proposal will require updating to refer to the DCP and compliance with the endorsed amendment. Inconsistencies with the DCP should be addressed in detail.

Site-Specific DCP

The proponent has submitted a site-specific DCP with the planning proposal (**Attachment A14**) that was part of the proposal package prior to Council’s exhibition of their DCP amendment. **Table 10** below contains a brief comparison of the coinciding elements of the DCP’s noting the above condition that will be imposed.

Table 10 Comparison of applicable DCP provisions

Council Endorsed DCP Amendment 3.2 Crows Nest Town Centre	Proponent Site-Specific DCP Proposed Additions to 3.2 Crows Nest Town Centre
3.2.2 Desired Future Character	
<p>3.2.2.1 Diversity of activities, facilities, opportunities and services</p> <p>P1 Intensify commercial and mixed use development in close proximity to the Metro station and along the Pacific Highway with active uses at the ground floor levels, commercial within the podium levels and residential above.</p>	<p>Diversity of activities, facilities, opportunities and services</p> <p>P4 High density residential development on the Five Ways Triangle site.</p>
<p>3.2.2.2 Accessibility and permeability</p> <p>P1 Provide, retain and enhance through site links for pedestrians identified on the Through Site Link Map (refer to Figure 26).</p> <p>P3 Through site links that are proposed in addition to those identified under P1 must demonstrate that it meets the objectives and provisions of this subsection.</p>	<p>Accessibility and permeability</p> <p>P7 Pedestrian through site links to Willoughby Lane and Hayberry Lane are provided through the Five Ways Triangle site (refer to Figure 30)</p>

3.2.3 Desired Built Form

Council Endorsed DCP Amendment 3.2 Crows Nest Town Centre	Proponent Site-Specific DCP Proposed Additions to 3.2 Crows Nest Town Centre
<p>3.2.3.3 Setbacks</p> <p>P1 Buildings are to be setback from all street frontages in accordance with the Buildings Setbacks Map (refer to Figure 27).</p>	<p>Setbacks and building separation</p> <p>P4 Despite P3 (zero setback to all street frontages), greater ground level setbacks will be permitted along street frontages with high levels of pedestrian activity (adjacent to through site links) on the Five Ways Triangle site (refer to Figure 30).</p>
<p>3.2.3.4 Podium Heights</p> <p>P1 Podiums are to be provided in accordance with the Podium Heights Map (refer to Figure 28)</p>	<p>Podiums</p> <p>P6 (d) A podium of 3 storeys on the Five Ways Triangle Site, except for a 4 storey element on the corner of Pacific Highway and Falcon Street with a minimum setback of 6m above the podium (refer to Figure 30). Architectural and design features for the purposes of articulation within the upper setback will be considered where appropriate.</p>
<p>3.2.3.9 Car accommodation</p> <p>P2 No vehicular access is permitted to:</p> <ul style="list-style-type: none"> (b) Pacific Highway; or (c) Falcon Street. 	<p>Car accommodation</p> <p>P13 Vehicle access to the Five Ways Triangle site must be from Alexander Street, between Falcon and Hayberry Street (refer to Figure 30).</p>

North Sydney Council Draft DCP Amendment – Car Parking Rates

In addition to the adopted DCP amendment above, a draft DCP amendment including the revision of the car parking rates for new high-density developments in areas with high accessibility to public transport has also been prepared by Council. The revision to the car parking rates for residential development in the B4 Mixed Use zone was on exhibition until 13 December 2022.

The draft DCP seeks to reduce the rate of off-street parking in areas identified as having high public transport accessibility including the St Leonards and Crows Nest area. Council is proposing to reduce the rate of parking as follows:

Table 11 Recommended parking rates under Council's draft DCP amendment

Apartment Type	Current Parking Rate (per dwelling)	Proposed Parking Rate (per dwelling)
Studio	0.5	0.3
1 bedroom	0.5	0.4
2 bedrooms	1.0	0.6
3 bedrooms	1.0	0.7
Non-residential	1 per 60sqm	1 per 400sqm

(Source: Council draft DCP amendment)

A supplementary transport assessment has been submitted (**Attachment A5**) that acknowledges the proposed number of parking spaces is to be based on Council's controls at the time of a DA.

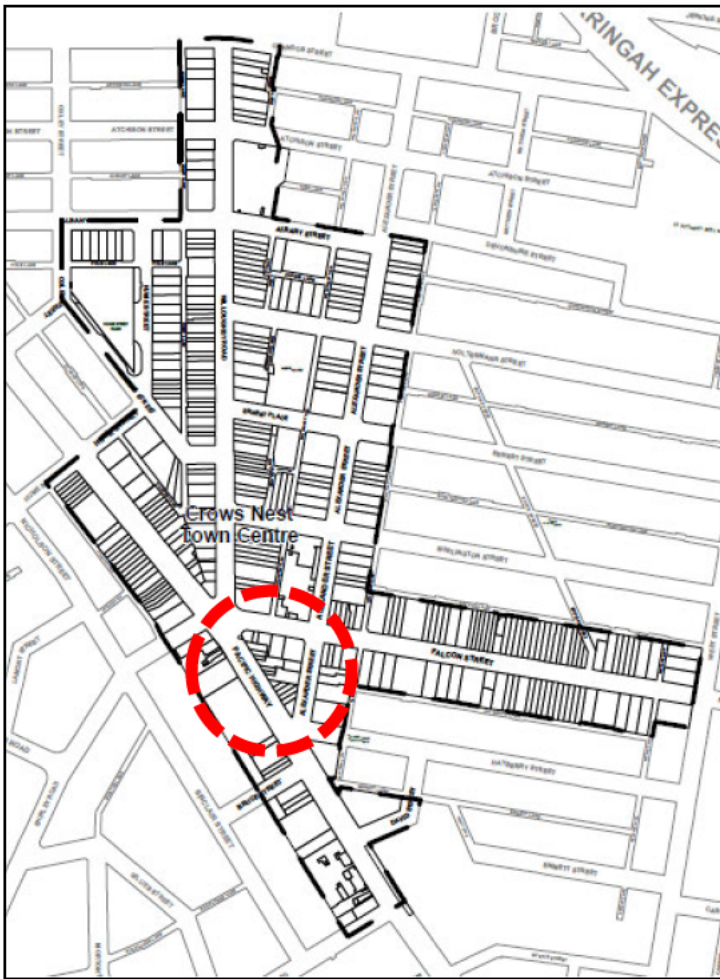


Figure 25 The Crow's Nest Town Centre subject to the NSDCP 2013 (source: Council)

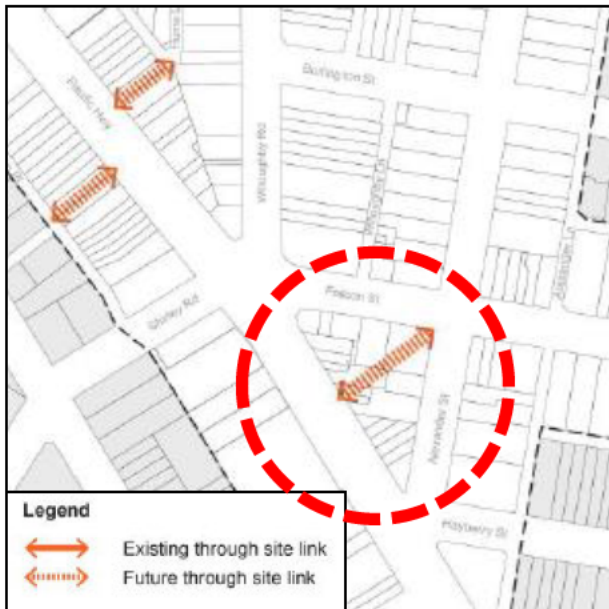


Figure 26 NSDCP 2013 recommends a single through site link (source: Council)

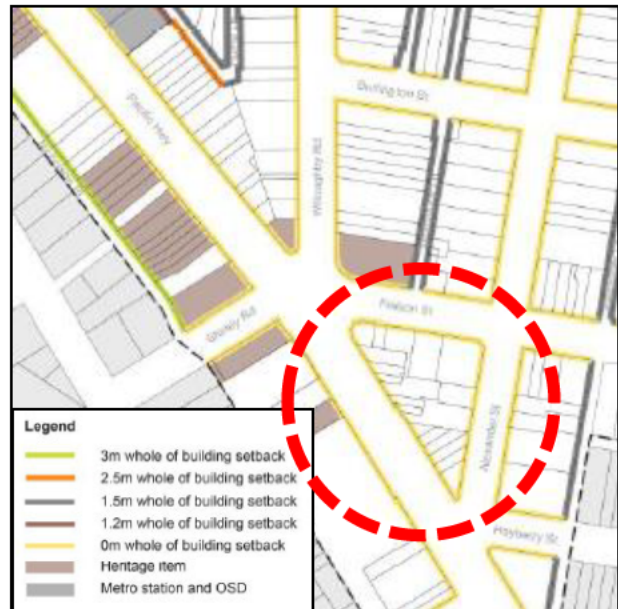


Figure 27 NSDCP 2013 recommends a 0m whole of building setback (source: Council)

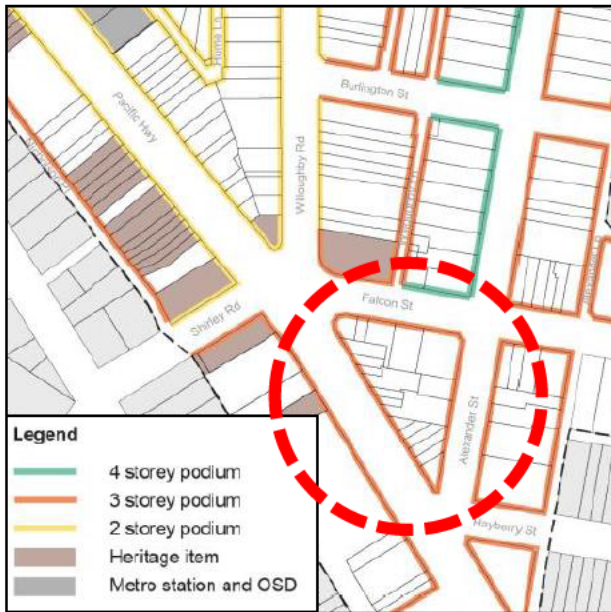


Figure 28 NSCDCP 2013 recommends a 3 storey podium to all frontages (source: Council)



Figure 29 NSCDCP 2013 recommends a 6m above podium setback to all frontages (source: Council)

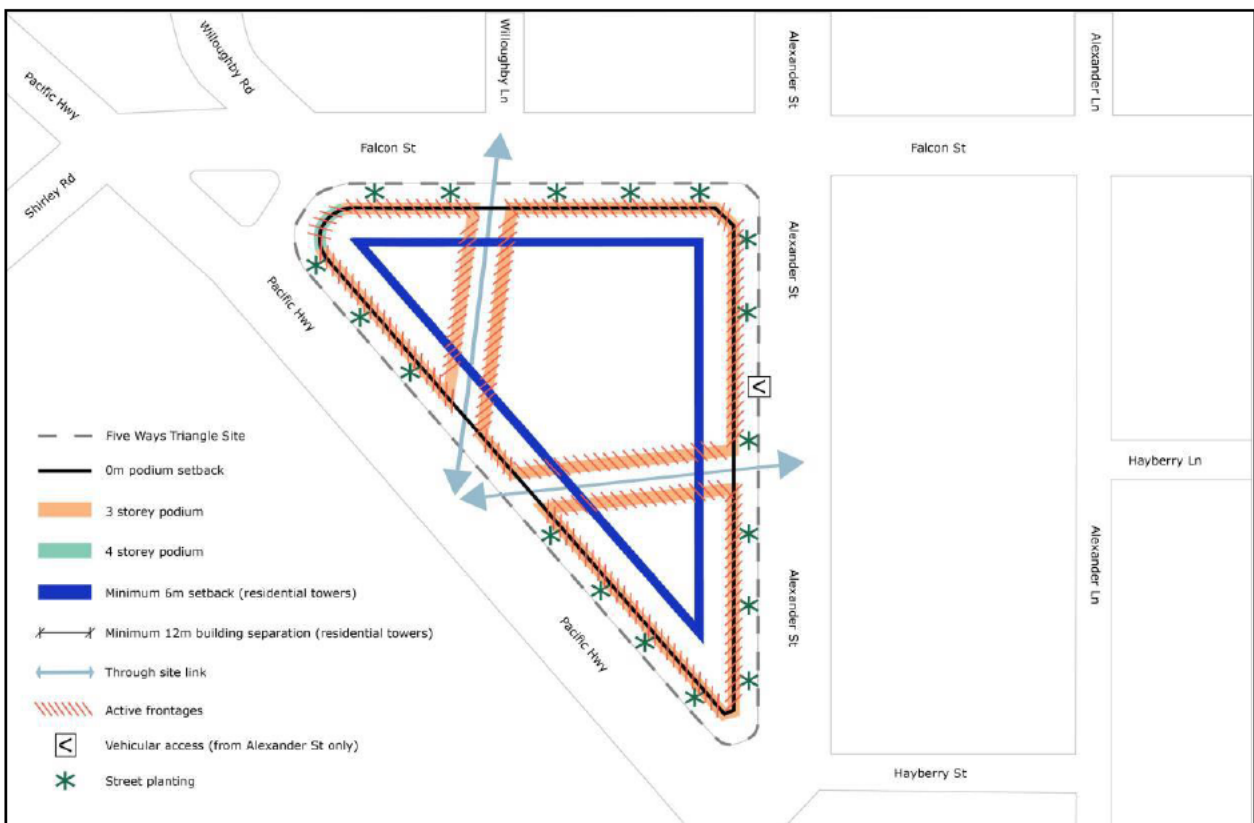


Figure 30 Proposed controls of proponent site-specific DCP (source: Gyde)

3.4 Local planning panel (LPP) recommendation

On 8 June 2022, the North Sydney Local Planning Panel considered the original planning proposal seeking a maximum building height of 63.5m, FSR of 5.8:1 and minimum non-residential FSR of 2.5:1. The LPP recommended the planning proposal proceed to a Gateway determination having regard to the following comments:

- it is acknowledged that development of this nature is anticipated in the 2036 Plan, considering the concept proposed presents a considered option that is generally consistent with the 2036 Plan;
- Council Officer's Report and the Recommendation is generally endorsed by the LPP subject to a maximum height of 60m, providing certainty as to the number of storeys capable of being built within the 60m height limit being 16 storeys;
- the LPP agrees that a DCP for the site is necessary given its prominence;
- any future development application will also be subject of review by Council's Design Excellence Panel; and
- the LPP considers it is imperative, and in line with best practice, that the car parking be reduced and indeed this is a prerequisite of the 2036 Plan that has identified the site for substantial uplift in densities.

3.5 Section 9.1 Ministerial Directions

On 1 March 2022, the Section 9.1 Ministerial Directions were renumbered and ordered into thematic framework focus areas.

The planning proposal has been updated to refer to the new numbering, remove any revoked directions and with regard to any updated information within the directions.

The planning proposal's consistency with the Section 9.1 Directions is discussed in **Table 12**.

Table 12 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Planning Systems – Place Based		
1.4 Site Specific Provisions	Not Applicable	<p>The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. This includes not imposing any development standards or requirements in addition to those already contained in the principle environmental planning instrument being amended.</p> <p>The proposal does not intend to introduce site specific provisions. This Direction does not apply to the site. However, a site-specific DCP has been drafted to guide development on the site. It is noted in this report the site-specific DCP will not apply following the adoption of Council's DCP amendment.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	Yes	<p>The objective of this direction is to ensure development within the St Leonards and Crows Nest Precinct is consistent with the SLCN 2036 Plan.</p> <p>The proposal is generally consistent with the vision, objectives and actions of the SLCN 2036 (see section 3.3.1). Notwithstanding this, an inconsistency is noted regarding the proposed 4th storey mezzanine on the intersection of Pacific Highway and Alexander Street. As Council's DCP is inconsistent with the Plan in this regard and the Department's Urban Design team suggests this location as more suitable for the site, this inconsistency is acceptable.</p>
Biodiversity and Conservation		
3.2 Heritage Conservation	Yes	<p>The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The site is within the vicinity of several heritage items and HCA's. The proposal is accompanied by a HIS (Attachment A7) that indicates the proposal will have no adverse impact on nearby heritage items or HCA's. The heritage impact is discussed further in section 4.1.2 of this report.</p>
Resilience and Hazards		
4.4 Remediation of Contaminated Land	Yes	<p>The objective of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p> <p>The planning proposal is accompanied by a preliminary contamination report (Attachment A12) which confirms the existence of impacted soils and groundwater with further investigation required following demolition of existing buildings on the site to determine scale of contamination.</p> <p>The contamination impact is discussed further in section 4.1.5 of this report.</p>
Transport and Infrastructure		
5.1 Integrating Land Use and Transport	Yes	<p>The key objectives of this Direction are to improve access to housing, jobs and services by walking cycling and public transport and reducing dependency on private vehicles.</p> <p>The planning proposal intends to increase the planning controls on the site to facilitate 129 new residential dwellings close to existing and proposed public transport including the currently under construction Crows Nest Metro Station.</p> <p>The planning proposal is consistent with this direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.3 Development Near Regulated Airports and Defence Airfields	No	<p>The objectives of this Direction are to ensure the effective and safe operation of airports so that their operation is not compromised, and to ensure development is not adversely affected by aircraft noise.</p> <p>The proposal seeks to increase the maximum HOB from 16 metres to 62.5 metres which will result in a total height of 159.5m AHD. The site is subject to the Obstacle Limitation Surface (OLS) of 156m AHD. As such, the proposal exceeds the OLS by 3.5m.</p> <p>The planning proposal does not address this Direction. Moreover, the Direction requires the planning authority to consult with the Department of Commonwealth responsible for airports and the lessee/operator of the airport for the development of land near a core regulated airport.</p> <p>The Gateway determination has been conditioned to require the Section 9.1 direction to be addressed in the planning proposal and will require consultation with the appropriate agencies.</p>
Housing		
6.1 Residential Zones	Yes	<p>Under this Direction, a planning proposal must broaden housing choice, make efficient use of existing infrastructure, reduce consumption of land for housing on the urban fringe and be of good design.</p> <p>The existing site contains commercial uses. The proposal is consistent with this direction by facilitating 129 residential dwellings in an urban area located in close proximity to existing and proposed services and public transport.</p> <p>The planning proposal is consistent with this direction.</p>
Industry and Employment		
7.1 Business and Industrial Zones	Yes	<p>This direction refers to retaining areas and locations of existing business and industrial zones and not reducing the total potential floor space area for employment uses in the business zones, or for industrial uses in industrial zones.</p> <p>The site is zoned B4 Mixed Use. The planning proposal represents a total employment floorspace of 8,002sqm, an increase of 3,402sqm from the site's estimated existing GFA of 4,600sqm. This is an increase of approximately 74% in employment floorspace for the site.</p> <p>The planning proposal is consistent with this direction.</p>

3.6 State environmental planning policies (SEPPs)

On 1 March 2022, the Department consolidated 45 SEPPs and deemed SEPPs into 11 new thematic SEPPs. The 45 SEPPs were consequently repealed. The provisions contained in the repealed SEPPs have been carried over into the new SEPPs as 'chapters'.

The SEPP consolidation does not substantially change the effect of the repealed SEPPs.

However, any redundant or outdated provisions of the repealed SEPPs have not been carried over to the new consolidated SEPPs.

The consistency of the planning proposal with the SEPPs is discussed in **Table 13**.

Table 13 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	The SEPP aims to reserve, conserve and manage NSW's natural environment and heritage.	Yes	<p>The site is within an existing urbanised area of Greater Sydney and not zoned as a conservation area or contain any flora and/or fauna that would require the application of this SEPP.</p> <p>The entire North Sydney LGA is identified as being within the Sydney Harbour Catchment Area. The proposal is unlikely to have any adverse impact on the water quality of Sydney Harbour or the District's waterways.</p> <p>The site is within the vicinity of several heritage items and HCA's. The proposal is accompanied by a HIS (Attachment A7) that indicates the proposal will not have any adverse impacts on neighbouring heritage items and HCA's. The heritage impact is discussed further in Section 4.1.</p>
SEPP (Housing) 2021	This SEPP aims to deliver a sufficient supply of safe, diverse and affordable housing.	Yes	<p>The proposed changes to development controls on the site will facilitate 129 new residential dwellings with a mix of apartments within close proximity to public transport nodes.</p>
SEPP (Transport and Infrastructure) 2021	This SEPP aims to provide well designed and located transport and infrastructure integrated with land use.	Yes	<p>The proposal is accompanied by a Supplementary Transport Assessment (Attachment A5) that indicates the proposal will not have a significant impact on the surrounding road network.</p> <p>This assessment acknowledges the proposal does not seek to lock in a set number of parking spaces, with the proposed number to be based on Council's controls at the time of a DA lodgement.</p> <p>The site is located above the Sydney Metro Tunnel. As such, the Gateway determination has been condition to consult with Transport for NSW (TfNSW) and Sydney Metro.</p> <p>The traffic, transport and parking impact is discussed further in Section 4.1.4.</p>

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Building Sustainability Index: BASIX) 2004	This SEPP aims to encourage sustainable residential development through establishing targets for thermal comfort, energy and water use.	Yes	<p>Development applications (DAs) for all future residential development will need to comply with the targets established under BASIX.</p> <p>The reference scheme has been designed to comply with any future BASIX compliance. Further consideration of this SEPP can occur at a future DA stage.</p> <p>It is noted the Panel listed best practice sustainability outcomes as a consideration for inclusion in the no longer required site specific DCP.</p>
SEPP 65 – Design Quality of Residential Apartment Development	The aim of this policy is to improve the design quality of residential apartment development in NSW.	Yes	<p>The proposal states that it is generally consistent with the principles of this SEPP.</p> <p>Any future DA for residential flat buildings, shop top housing or mixed-use development with a residential component will be required to have regard to SEPP 65 and the ADG.</p> <p>The consistency can be further assessed as part of a future DA.</p>
SEPP (Resilience and Hazards) 2021	This SEPP aims to manage risks and build resilience in the face of hazards.	Yes	<p>The site is not identified as being within a coastal use area in the map associated with the SEPP (Resilience and Hazards) 2021 (former SEPP (Coastal Management) 2018).</p> <p>Hazardous or offensive development is not proposed.</p> <p>The planning proposal is accompanied by a preliminary contamination report (Attachment A12) which confirms the existence of impacted soils and groundwater and recommends further investigation following demolition.</p>

4 Site-specific assessment

4.1 Environmental

The site is within an established urban environment with no known critical habitats, threatened species or ecological communities. The following provides an assessment of the potential environmental impacts associated with the proposal.

4.1.1 Overshadowing Impact

The St Leonards and Crows Nest 2036 Plan includes objectives and principles regarding overshadowing and solar access that the planning proposal has been demonstrated to comply with. These principles are defined below, with the analysis conducted in the Urban Design Report (**Attachment A3**) using the 21 June shadow from 9am – 3pm:

- No additional overshadowing of nominated public open spaces and important places between 10am – 3pm (**Figure 31**);
- No additional overshadowing of nominated streetscapes between 11:30am – 2:30pm (**Figure 32**);
- Maintain solar access to residential areas inside the SLCN 2036 Plan boundary for at least 2 hours between 9am – 3pm (**Figure 33**);
- Maintain solar access to residential areas outside the boundary of the SLCN 2036 Plan for the whole time between 9am – 3pm (**Figure 34**); and
- Maintain solar access to Heritage Conservation Areas inside the SLCN 2036 Plan boundary for at least 3 hours between 9am – 3pm (**Figure 35**).

Further overshadowing diagrams are in the Urban Design Report (**Attachment A3**) that demonstrate the proposed overshadowing impacts on the current built form and the proposed built form of the SLCN 2036 Plan. It is evident that overshadowing impacts to the west and south will be reduced should development occur to the 2036 Plan scale, however overshadowing to the east will not be impacted by any future development under the Plan.

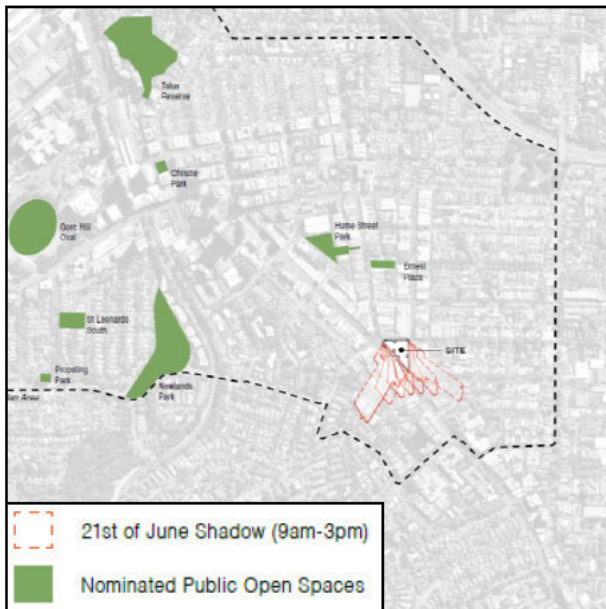


Figure 31 Proposed overshadowing impact in relation to open spaces (source: Turner)



Figure 32 Proposed overshadowing impact on nominated streetscapes (source: Turner)



Figure 33 Proposed overshadowing impact on 2036 Plan boundary (source: Turner)

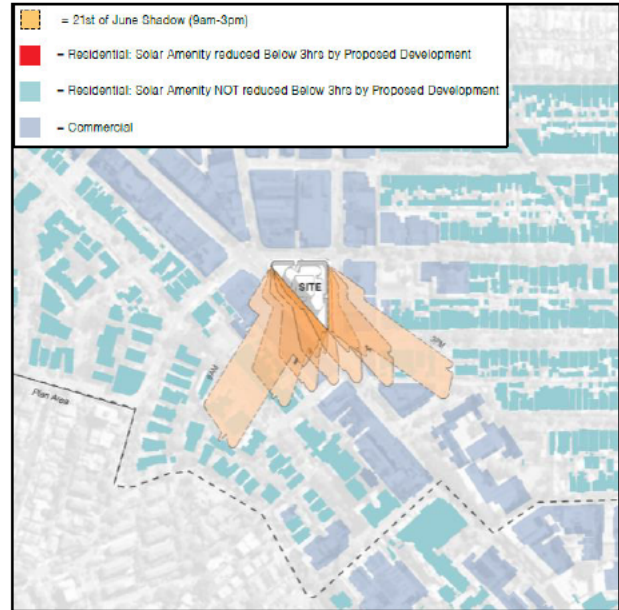


Figure 34 Proposed overshadowing impact on residential areas (source: Turner)



Figure 35 Proposed overshadowing of HCA's (source: Turner)

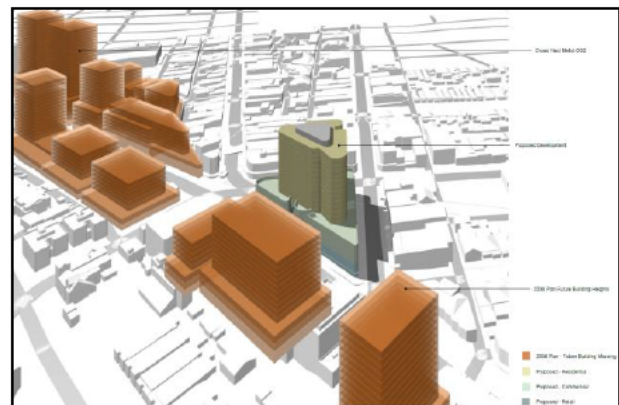


Figure 36 Proposed development in the context of the 2036 Plan built form (source: Turner)

4.1.2 Heritage Impact

A Heritage Impact Statement (HIS) undertaken by Urbis dated 20 December 2021 (**Attachment A7**) has been submitted with the planning proposal. This formed part of the original planning proposal and did not require updating following rezoning review.

The site is not listed as a local heritage or state heritage item and it is not within a Heritage Conservation Area (HCA). However, it is nearby to several locally listed heritage items and HCA's listed below.

Local Listings

- Former North Shore Gas Co Office, 286-288 Pacific Highway, Crows Nest (Item I0150).
- Bank, 306 Pacific Highway, Crows Nest (Item I0151).
- Former National Australia Bank, 308 Pacific Highway, Crows Nest (Item 0152).
- Willoughby House, former OJ Williams store, 429 Pacific Highway, Crows Nest (Item I0172).
- Crows Nest Hotel, 1-3 Willoughby Road, Crows Nest (Item I0181).
- Shop Group, 312-322 Pacific Highway (Items I0153, I0154, I0155, I0156, I0157, I0158).
- Crows Nest Fire Station, 99 Shirley Road, Wollstonecraft (Item I0173).
- Uniting Church, 122 Shirley Road, Wollstonecraft (Item I1114).
- Former Hall, 14 Hayberry Street, Crows Nest (Item I0144).
- House, 18 David Street, Crows Nest (Item I0142).
- Former Church of Christ, 69 Falcon Street, Crows Nest (I0143).
- North Sydney Girls' High School, 365 Pacific Highway (between David and Myrtle Streets), Crows Nest (Item I0165).

Heritage Conservation Areas

- Holtermann Estate “B” Heritage Conservation Area (labelled “CA08”).
- Holtermann Estate “C” Heritage Conservation Area (labelled “CA09”).

The HCA’s are to the east and north-east of the site (**Figure 13**).

The HIS states the planning proposal is supported from a heritage perspective and recommended for approval for the following reasons:

- The subject site does not contain any heritage items. It is noted the building at 391-393 Pacific Highway was identified by Council as having the potential for heritage listing, however Urbis has assessed the property has unsubstantiated significance as a potential heritage item.
- The proposed development controls of the proposal are assessed to have no material impact on heritage items in the vicinity of the site.
- The site is appropriately identified as an opportunity for increased density. From a heritage perspective, the physical separation resulting from the intersection would see the heritage context of Five Ways Crows Nest remain unaffected by the proposed uplift.
- Principal views to and from heritage items are predominantly at street level and any increased uplift above existing façade heights have minimal impact on the interpretation of their heritage significance.
- Interpretation of the existing streetscape character of the HCA’s do not rely on the subject site. The proposed uplift does not impede on the HCA’s.

In addition to the above conclusions, Urbis has provided a number of design elements that should be considered to ensure the proposed development fits contextually within the heritage items near the site and respond to the unique character of the Five Ways intersection. These have been outlined in the planning proposal (**Attachment A1**).

4.1.3 Visual Impact

The Urban Design Report dated 19 December 2022 prepared by Turner (**Attachment A3**) builds on the view analysis undertaken by the Government Architect NSW. The visual impact analysis demonstrates that the building would not be apparent from large parts of Willoughby Road and would have minimum visual impact from the nearby heritage conservation areas. The building will be most prominently visible along the Pacific Highway and from streets within the Crows Nest Village. It is noted that this is consistent with the scale of development intended by the SLCN 2036 Plan.

4.1.4 Transport, Traffic and Parking Impact

A supplementary Transport Assessment dated 15 November 2022 (**Attachment A5**) was submitted to support the planning proposal as requested by the Panel and was carried out on the current proposed development scheme.

The site has frontages to all sides with the Pacific Highway and Falcon Street considered to be State arterial and sub-arterial roads respectively. Alexander Street is considered a local north-south road.

Transport

St Leonards Train Station is approximately 800m to the north-west of the site along the Pacific Highway. The currently under construction Crows Nest Metro Station is located approximately 250m to the north-west of the site on Pacific Highway. The site is well serviced by an extensive network of bus routes to surrounding areas, connecting the site to the Sydney CBD, Chatswood CBD and other suburbs.

The site's 30 minute public transport catchment is demonstrated in **Figure 37** below of the site's highly accessible public transport options allowing residents better access to their place of work.

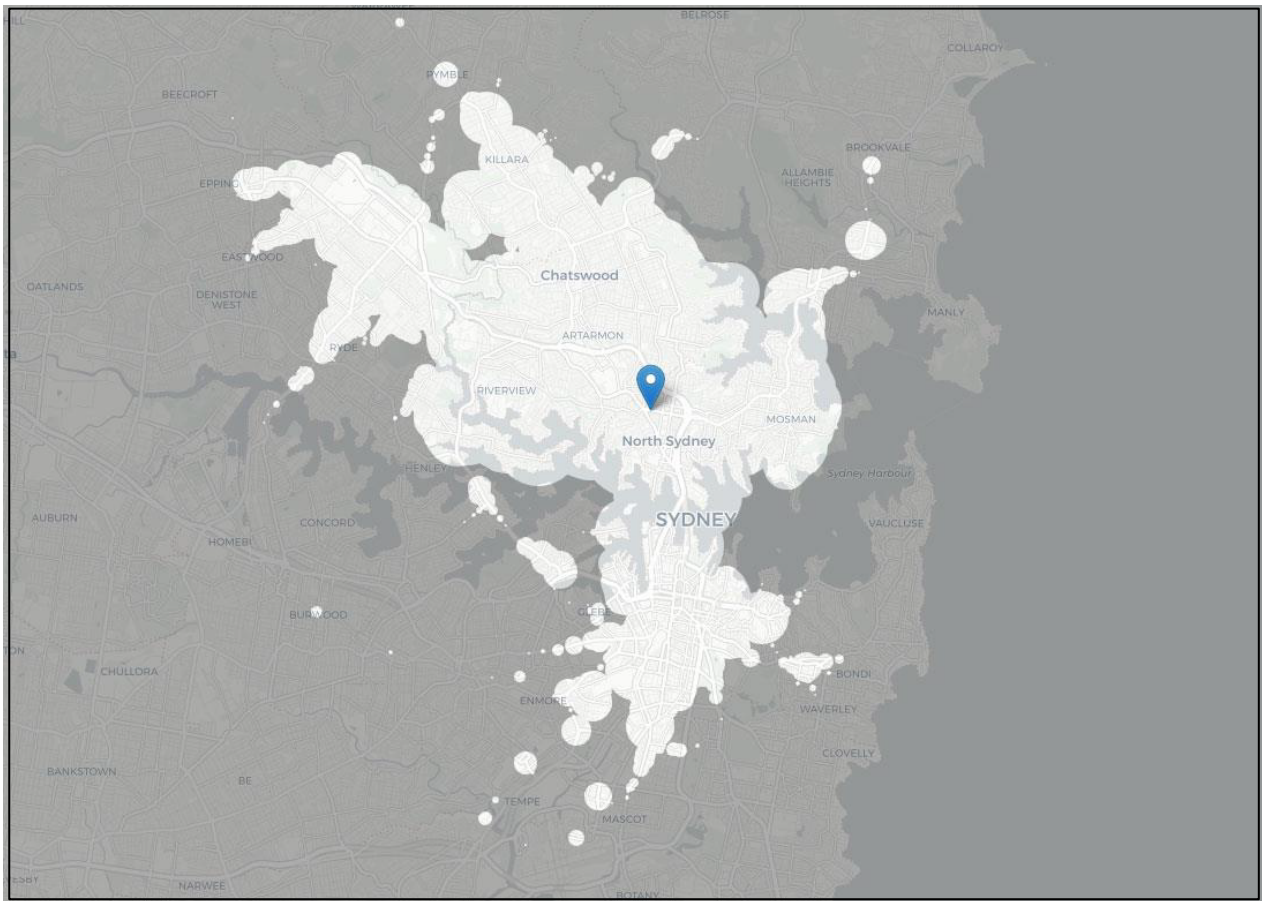


Figure 37 30 minute public transport catchment (source: JMT Consulting)

Traffic

Based on the existing and proposed traffic generation of the existing and proposed future uses on the site following the preparation of the Supplementary Transport Assessment, the planning proposal states the following additional trips will be generated:

- 40 additional AM peak hour trips; and
- 58 additional PM peak hour trips.

Car Parking

The Supplementary Transport Assessment states the planning proposal does not seek to lock in a set number of parking spaces as this will be confirmed at the time of a development application to align with Council's controls in place at the time.

As discussed in section 3.3.4 of this report, North Sydney Council is currently considering a draft DCP amendment to car parking, which if adopted will likely be the provisions in place at the time of any development application applying to the proposal site.

4.1.5 Contamination Impact

A Preliminary Site Investigation (PSI) (**Attachment A12**) dated 26 October 2020 was submitted with the planning proposal conducted by EI Australia. The report concluded that the overall findings of the limited field investigations showed that impacted soils and groundwater do exist, highlighting the need to extend the investigation to other parts of the site after building demolition.

EI Australia consider that sufficient data gaps still exist due to the current built form of the site that warrant further investigations in order to achieve adequate environmental characterisation. As the recommendation relates to further detailed investigations taking place post-demolition, the Department considers it appropriate that the contamination impact has been satisfactorily addressed and further investigations will form part of any development application.

4.1.6 Wind Impact

A Pedestrian Wind Environment Statement dated 16 December 2021 was prepared by Windtech Consultants (**Attachment A13**) to determine the wind impact of the concept buildings at a pedestrian level. The findings of this study have been divided into a number of categories and are summarised below, with the study itself going into greater detail regarding treatment strategies to mitigate the potential identified wind effects.

Ground Level Areas

- All street frontages are potentially exposed to direct wind effects travelling along the streetscape.
- Each laneway forming the through-site links are potentially exposed to funnelling and gap wind effects directed into the laneway by the podium and lower façade respectively.
- The various pedestrian footpath and laneway intersections are susceptible to winds accelerating around the corners of the building morphology.

Podium Rooftop Communal Outdoor Areas

- These areas will experience direct wind effects due to the lack of shielding provided by the low-rise commercial/retail buildings on the surrounding streetscapes; and
- Down-wash wind effects captured off the southern and western tower facades that are redirected onto the podium rooftop below.

Levels 4-15 Open Tower Corridors

- Open corridors benefit from the shielding provided by the subject building; however; it is potentially exposed to funnelling wind effects from the southerly direction.

Private Balconies

- Wind conditions within the various single aspect private balconies along the tower facades that are recessed into the built form are expected to be suitable for their intended uses.
- The corner balconies however are susceptible to stronger wind conditions.

The Pedestrian Wind Environment Statement recommends that wind tunnel testing be undertaken as part of the detailed design phase of any future development application.

4.2 Social and economic

The following **Table 14** provides an assessment of the potential social and economic impacts associated with the proposal.

Table 14 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	<p>The planning proposal will improve the quality of housing options that will help address the gaps in certain types of housing needs across the North Sydney LGA to cater to a growing population.</p> <p>The proposal will provide increased amenity to an underutilised site that aims to achieve the objectives set out in the SLCN 2036 Plan, including ensure built form and design is consistent with the Plan.</p>
Economic	<p>The planning proposal is accompanied by an Economic Impact Assessment (Attachment A6) that details the economic impact of the development at the site. It concludes the design, construction and future use of the development will generate a significant increase to employment across a number of sectors, with the commercial spaces on the site potentially accommodating 441 jobs.</p> <p>This assessment also confirms the proposals consistency with relevant strategic and statutory controls that will facilitate the additional commercial floorspace in a transit oriented environment. The proposal aims to create a more vibrant and diversified strategic centre.</p>

4.3 Infrastructure

The following **Table 15** provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 15 Infrastructure assessment

Infrastructure	Assessment
Public transport	<p>The site is located in a highly accessible area well connected to proposed and existing road, rail and metro infrastructure.</p> <p>Extensive bus services operate along the Pacific Highway with the Crows Nest Metro Station currently under construction located within a short walking distance offering various transport connections across Greater Sydney.</p>
St Leonards and Crows Nest Special Infrastructure Contribution (SIC)	<p>The St Leonards and Crows Nest Special Infrastructure Contribution (SIC) applies in this area to new additional residential development. Contributions will help fund new and upgraded infrastructure to support the St Leonards and Crows Nest 2036 Plan and support new growth. The funds will help provide open space, pedestrian and cycle movements, education and road crossing improvements.</p>
Adopted North Sydney DCP 2013	<p>The site is in the Crows Nest Town Centre of the recently adopted North Sydney DCP 2013 amendment to better manage the increase in density deriving from the SLCN 2036 Plan. This is discussed in detail in section 3.3.4 of this report.</p>

5 Sydney North Planning Panel Decision

On 4 October 2022 the Sydney North Planning Panel (Panel) determined that the planning proposal subject to rezoning review should proceed subject to a number of issues being resolved or confirmed (**Attachment D2**). These will be outlined and assessed in this section of the report.

- a) *The proponent should work with the Department to reduce the podium height (by approximately 1-2 metres consistent with the change in levels across the site) to provide a characteristic three storeys, possibly with four storeys at the north-western corner of the site, producing a corresponding reduction in the overall height from 63.5m. The final height of building is to accommodate all roof structures including the roof overrun.***

In response to the Panel, the proponent reduced the maximum building height by 1m to a total of 62.5m, with this reduction deriving from the total podium height. This reduction in height was approved by the Panel on 9 December 2022 to proceed to Gateway determination, with the remaining conditions of the original rezoning review decision to be addressed in the Department's Gateway assessment (**Attachment D3**). The proposal has been updated to reflect this height.

- b) *The proposal would be a total of 16 storeys including 13 residential storeys.***

On 7 December 2022 the Department informed the Panel the proposed LEP amendment relates to the height of the planning proposal of 62.5m and it is not possible to include a storey height in a standard LEP. The proposed minimum non-residential FSR control of 2.5:1 of the total proposed FSR of 5.8:1 is the appropriate LEP control to determine residential floor space.

The Department notes that the proposed height of 62.5m exceeds the expected height when following the assumptions of the ADG at 16 storeys, potentially resulting in a building of up to 17 storeys. The Department can consider the final controls post-exhibition and whether a further reduction in height is necessary.

- c) *A site specific DCP should be prepared by the Proponent in consultation with the Department and Council and it must include: Best practice sustainability outcomes; Affordable Housing percentage; Design Excellence process, Setbacks; Through-site links; and appropriate percentages of Parking Spaces for car share, motor bike / scooters, bicycles and electric vehicle charging.***

As addressed in section 3.3.4 of this report, North Sydney Council has adopted an amendment to the North Sydney Development Control Plan (DCP) 2013. The amendment to the DCP came into effect on 6 January 2023 following the submission of this planning proposal that includes a site-specific DCP. As assessed, the proponent will be required to address the current adopted DCP amendment by Council as two DCP's are unable to apply to a site.

In addition to the assessment in section 3.3.4, the following addresses each of the requested inclusions by the Panel, noting the Department has informed the Panel these considerations are unable to be included within a DCP.

Best practice sustainability outcomes

- The site-specific DCP submitted with the proposal does not feature any sustainability outcomes, with the proposal to address the provisions and objectives in Council's DCP.
- Best practice sustainability outcomes would be more suitably addressed at any future development application stage.

Affordable Housing percentage

- It is noted North Sydney Council's LSPS contains a local planning priority to investigate the establishment of an Affordable Housing Contribution Scheme and associated amendment to the LEP to enable a mechanism for the delivery of local affordable housing.

- In response to the Panel’s decision, the proponent commissioned an Affordable Housing Feasibility Analysis (**Attachment B**).
- The analysis concluded that *“In this instance, the land purchase was based on Deicorp’s understanding of achievable density and scale at the time, prior to the finalisation of the 2036 Plan. The expectation of an uplift in planning controls has since been reduced. Based on our feasibility analysis Deicorp are no longer in a position to offer an affordable housing contribution as part of the latest planning proposal”*.
- For the purpose of the modelling undertaken in the analysis, regard was given to the following:
 - **Project Internal Rate of Return (IRR):** is the actual return on the investment on an annualised basis and expressed as a percentage; and
 - **Development Margin:** is the net profit expressed as a percentage of the development costs.
- **Table 16** below outlines the standard feasibility indicators for each area of performance.

Table 16 Industry standard performance indicators

Performance	Project IRR	Development Margin
Feasible	> 15%	> 20%
Marginally Feasible	13% - 15%	17% - 20%
Not Feasible	< 13%	<17%

- **Table 17** below demonstrates the economic impact of affordable housing on financial viability in comparison to the results generated that support a finding that the inclusion of affordable housing is not feasible in this proposal. The analysis conducted states that as anticipated, the RLV and returns are adversely impacted if an affordable housing contribution was payable.

Table 17 Results of planning proposal with 0% affordable housing (AFH) and sensitivity analysis

	Analysis Results (0% AFH)	5% AFH	3% AFH	2% AFH
Development Margin	7.61%	3.8%	5.29%	6.06%
Internal Rate of Return	7.78%	6.4%	6.96%	7.24%
Residual Land Value (IRR of 15%)	\$76.3 million	\$70.55 million	\$72.9 million	\$74 million
Net Development Profit	\$21, 277, 982	\$11,025,849	\$15,128,175	\$17,179,339
Net Profit from 0% AFH Results		-48%	-29%	-19%

DPE Housing Policy Comments

The affordable housing feasibility study was referred internally within the Department to its housing policy team that provided the following comments:

- HillPDA adopted a lower IRR than would be typical for a high rise proposal, noting a longer lead time.

- The calculated land value is well below the indicative land purchase price and has been conservatively projected to significantly impact on the projected IRR and development margin. Both figures are well below industry standards.
- Requiring any additional affordable housing contributions would only further impact on those margins and the overall viability of the development, which is already questionable in current market conditions.

The Department therefore does not recommend the inclusion of an affordable housing percentage of the development in this instance based on the findings of the HillPDA study and the Department’s housing policy comments.

Design Excellence process

One of the development outcomes of the planning proposal is to facilitate a high quality urban and architectural design that exhibits design excellence and responds to the emerging and future character of the precinct.

North Sydney requires a design excellence process to be undertaken for major development proposals prior or post the lodgement of a development application stage should the proposal continue to progress. It is therefore unnecessary to duplicate provisions regarding this process in a DCP, and it is noted that there are currently no requirements in Council’s DCP for design excellence but that they have Design Excellence Panel to refer matters to.

Setbacks

Refer to section 3.3.4 of this report.

Through-Site Links

Refer to section 3.3.4 of this report.

Appropriate percentages of Parking Spaces for car share, motor bike / scooters, bicycles and electric vehicle charging

It is noted the inclusion of the above is not possible given the recently adopted North Sydney DCP amendment. It is further noted the ambiguity surrounding “appropriate percentages” as this will likely lead to various interpretations.

This should also be considered in the context of Council’s draft DCP amendment to car parking rates for new high-density developments in areas with high public transport access that was on public exhibition to December 2022. As noted in the planning proposal report, the provision of car parking, bicycle and motorcycle parking will be developed and considered further as part of any development application process.

Table 18 Assessment of each listed parking space considerations

Parking Space Type	Department Comment
Car share	<ul style="list-style-type: none"> • The concept design for the planning proposal includes an allocation of 12 car share spaces of a total 258 spaces, equating to 4.7%. • North Sydney’s DCP contains provisions regarding car share schemes.
Motor bike / Scooters	<ul style="list-style-type: none"> • The concept design proposes 11 motorcycle spaces be included in the development. • North Sydney’s draft DCP contains provisions for maximum motorcycle parking rates of 1 / 10 dwellings. When applied to the concept design, the planning proposal is consistent with this provision.

Parking Space Type	Department Comment
Bicycles	<ul style="list-style-type: none"> The concept design proposes 303 bicycle spaces to be included in the development. North Sydney's DCP contains provisions for minimum bicycle parking rates that are unchanged in Council's draft DCP. The proposal's design concept appears consistent with these provisions.
Electric vehicle charging	<ul style="list-style-type: none"> North Sydney's DCP requires that car parking areas be designed and constructed so that electric vehicle charging points can be installed at a later time. The planning proposal does not include reference to any electric vehicle charging provisions.

d) The proponent should work with Council and the Department to agree a VPA.

The Department has been informed by the proponent that Council is not seeking a VPA as the SIC applies to the site. The Department would not be involved in discussion on a local VPA with Council and the proponent.

e) All specialist reports should be checked for accuracy and updated to post-Covid conditions

In response to the Panel's decision, the proponent submitted an updated Supplementary Transport Assessment dated 15 November 2022 (**Attachment A5**) and an updated Economic Impact Assessment dated November 2022 (**Attachment A6**). The Department is satisfied that these specialist reports were appropriate to be updated in the context of the Panel decision. However, it is noted that there is a degree of ambiguity surrounding the definition of post-Covid conditions and this would be best placed being assessed during a DA stage closer to the timing of any construction beginning.

The following outlines the Department's comments on and observations of the revised specialist reports in the context described by the Panel.

Supplementary Transport Assessment (Attachment A5)

- The proponent engaged JMT Consulting to prepare a supplementary transport assessment in addition to the previous assessment submitted prior to rezoning review.
- The supplementary assessment notes the original traffic counts included in the original traffic assessment were undertaken in April 2020 during the first COVID lockdown. These counts were subsequently compared to traffic data from February 2020 and scaled up to form the basis of the traffic analysis provided as an appendix to the supplementary assessment.
- JMT Consulting used updated traffic data counts commissioned in October 2022 and concluded the data used in the 2020 analysis was generally higher than the data collected in October 2022. The analysis demonstrated the original traffic data provides for a conservative and robust assessment of traffic conditions compared to current conditions and is therefore suitable for ongoing use.
- JMT Consulting also concluded the traffic generation forecasts used in the original detailed modelling supporting the proposal are conservative and represent a worst case assessment of future year traffic conditions around the site.
- The supplementary assessment affirms that the car parking numbers noted in the planning proposal documentation are preliminary based on the current reference scheme and will remain compliant with Council controls in force at the time of any DA lodgement.
- The Department reiterates the definition of post-Covid is ambiguous and current conditions likely will not reflect those during and after any construction at the site.

Economic Impact Assessment (Attachment A6)

- The proponent commissioned HillPDA to revise its Economic Impact Assessment of the planning proposal in response to the Panel's decision.
- The updated document analyses the socio-economic profile of the North Sydney LGA, summarising that the planning proposal will provide the types of land uses and subsequent employment opportunities that support the resident, worker and economic profile of the LGA.
- As a general assessment, the revised document has also taken into account the design costs and subsequent economic impacts in addition to just construction that was assessed in the original proposal.
- The assessment updates the figures for expected employment generation and associated economic benefits and impacts of the planning proposal.
- The assessment concludes the commercial spaces in the proposal will accommodate 441 jobs, an increase of approximately 290 jobs on current employment numbers on the site.
- The Department notes it is not in a position to conduct its own economic feasibility analysis of the proposal and reiterates that post-Covid conditions are particularly ambiguous regarding the economy. These considerations would be best placed being conducted closer to the time of a DA lodgement and future construction.

6 Consultation

6.1 Community

The planning proposal does not propose a number of days the proposal should be exhibited.

A condition of the exhibition period is be attached to the Gateway determination for 20 working days.

6.2 Agencies

The planning proposal does not specifically raise which agencies will be consulted. The Department recommends the following agencies be consulted on the planning proposal and given 30 days to comment:

- Transport for NSW;
- Transport for NSW (Sydney Metro)
- North Sydney Council;
- Ausgrid;
- Sydney Water Corporation;
- NSW Department of Education and Schools Infrastructure NSW;
- NSW Department of Health;
- Commonwealth Department of Transport, Infrastructure, Regional Development, Communications and the Arts (DTIRDCA);
- Sydney Airport;
- Civil Aviation Safety Authority (CASA); and
- Airservices Australia.

7 Timeframe

The planning proposal provides an indicative timeline with an anticipated completion date of the LEP amendment by March 2023.

The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

As such, from the date of the Gateway determination, the planning proposal must be:

- exhibited within 3 months; and
- reported to the Sydney North Planning Panel for a recommendation within 6 months.

The planning proposal is to be amended to provide an updated timeline for completion. It is recommended that a 9 month time frame is appropriate for this planning proposal from the date of the Gateway determination.

A condition to the above effect is recommended in the Gateway determination.

8 Local plan-making authority

The Sydney North Planning Panel approved the proposal to proceed to Gateway determination.

As the proposal is a result of a rezoning review, the Department will be the local plan-making authority.

9 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- it is generally consistent with the St Leonards and Crows Nest 2036 Plan;
- it is generally consistent with North Sydney Council's Local Housing Strategy and Local Strategic Planning Statement;
- it is generally consistent with the actions of the Greater Sydney Region Plan and North District Plan by facilitating additional residential dwellings and maximising public transport uptake;
- the increase to the planning controls will facilitate an increase and variety of residential dwellings close to existing and proposed public transport with good access to services and employment; and
- the amended scheme will have minimal impacts on heritage items and heritage conservation area's nearby, remaining consistent with the SLCN 2036 Plan controls.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- update the planning proposal and all associated documents to reference the currently adopted North Sydney DCP 2013, including addressing any inconsistencies or contentions;
- update the planning proposal to reference the most up to date consultant reports supporting the proposal;
- address Ministerial Direction 5.3 in the context of the proposal's OLS height exceedance;
- provide an explanation on the street wall height inconsistency with the SLCN 2036 Plan; and
- include an updated timeline based on the issuing of the Gateway determination.

10 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated to address the following:
 - update the planning proposal to note the current adopted North Sydney DCP 2013 amendment that came into effect on 6 January 2023 and removing the reference to a site-specific DCP that is no longer required;
 - to correctly refer to the new and updated supporting documentation;
 - address Ministerial Direction 5.3 Development Near Regulated Airports and Defence Airfields and the proposed height's exceedance of the Obstacle Limitation Surface for Sydney Airport;
 - address the proposal's inconsistent street wall height with the St Leonards and Crows Nest 2036 Plan; and
 - include an updated timeline based on the issuing of the Gateway determination.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 20 working days; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).

Exhibition must commence within **3 months** following the date of the gateway determination.

3. Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:
 - Transport for NSW;
 - Sydney Metro;
 - North Sydney Council;
 - Ausgrid;
 - Sydney Water Corporation;
 - NSW Department of Education / Schools Infrastructure NSW;
 - NSW Department of Health;
 - Commonwealth Department of Transport, Infrastructure, Regional Development, Communications and the Arts (DTIRDCA);
 - Sydney Airport;
 - Civil Aviation Safety Authority (CASA); and
 - Airservices Australia.

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The Panel as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:
 - (a) the planning proposal authority has satisfied all the conditions of the gateway determination;
 - (b) the planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act or the Secretary has agreed that any inconsistencies are justified; and
 - (c) there are no outstanding written objections from public authorities.
6. The LEP should be completed within **9 months** of the date of the Gateway determination.


1 March 2023

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IRF23/2568

Plan finalisation report – PP-2021-7451

North Sydney Local Environmental Plan 2013 (Map Amendment No. 6) – 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest

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Acknowledgement of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

North Sydney Local Environmental Plan (LEP) 2023 (Map Amendment No. 6).

1.1.2 Site description

Table 1 Site description

Site Description	<p>The planning proposal (Attachment A) applies to land known as the Five Ways Triangle at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest.</p> <p>The site is a street block of 19 allotments forming 16 parcels of land.</p> <p>The legal descriptions of the 16 individual sites are:</p>	
	3 Falcon Street – Lot 2 DP 29672	401 Pacific Highway – Lot 1 and 2 DP 16402
	7 Falcon Street – Lot 3 DP 29672	407 Pacific Highway – Lot 10 DP 29672
	9-11 Falcon Street – Lot 1 DP 127595	411 Pacific Highway – Lot 8 and 9 DP 29672
	15 Falcon Street – Lot 1 DP 562966	413 Pacific Highway – Lot 7 DP 29672
	8 Alexander Street – Lot 11 DP 29672	415 Pacific Highway – Lot 6 DP 29672
	391-393 Pacific Highway – Lot 6 DP 16402	417 Pacific Highway – Lot 5 DP 29672
	395 Pacific Highway – Lot 4 and 5 DP 16402	419 Pacific Highway – Lot 4 DP 29672
	399 Pacific Highway – Lot 3 DP 16402	423 Pacific Highway – Lot 1 DP 29672
Type	Site	
Council	North Sydney Council	
LGA	North Sydney	

The site located at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest is an amalgamated site known as the Five Ways Triangle, and is located in the North Sydney Local Government Area (LGA) which is 5.7km north of the Sydney CBD. It is on the eastern side of Pacific Highway and within the St Leonards and Crows Nest 2036 Plan (SLCN 2036 Plan) precinct.

The site comprises a street block of 19 lots with a total site area is 3,200sqm, bounded by the Pacific Highway, Falcon Street and Alexander Street. (**Figure 1**). The site generally falls in a south easterly direction, with the highest point on the north western corner on (Falcon St/Pacific Highway) down to the south eastern corner (Alexander St/Pacific Highway).

Currently the site contains a mix of 1-4 storey buildings generally constructed to their boundary, without vehicular access. The Alexander Street frontage is staggered with multiple driveway crossings. The current buildings feature a variety of non-residential uses including commercial office, retail and education, including several vacant premises.

The site is not listed as a heritage item or within a heritage conservation area (HCA). However, it is in the vicinity of a number of local heritage items and the Holtermann Estate B and C HCA's

(Figure 4). Crows Nest Hotel is listed as a local heritage item located north of the site across Falcon Street.

The Sydney Metro tunnels pass under the north eastern corner of the site and are contained within a below ground stratum approximately 30m below the natural ground surface. Consultation was undertaken with Sydney Metro during exhibition.



Figure 1 Subject site (Source: *SIX Maps*)

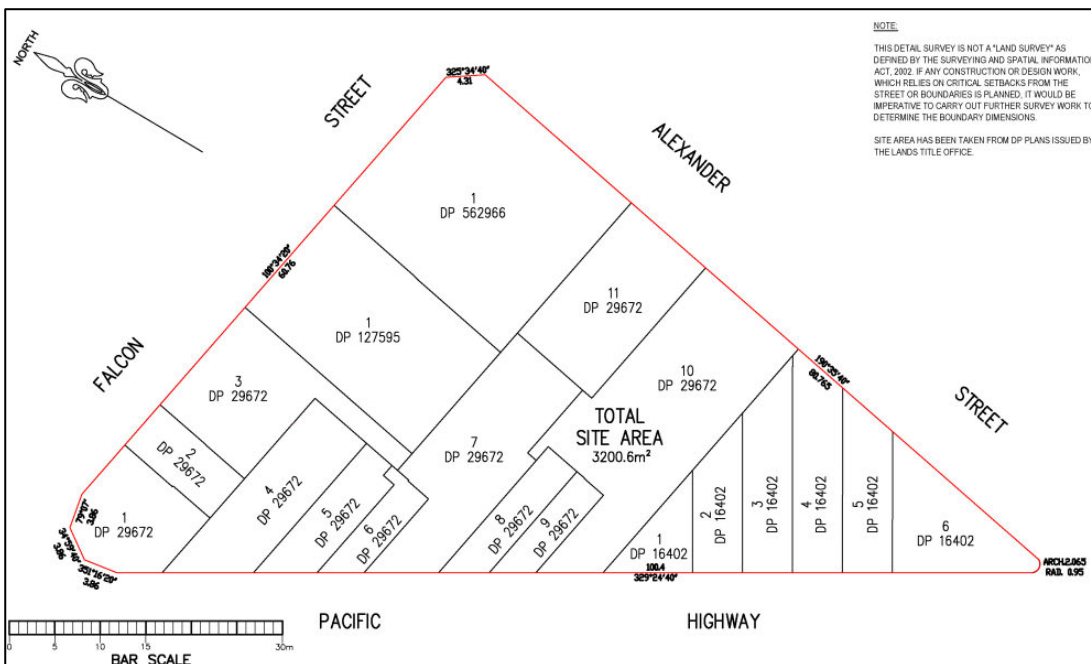


Figure 2 Site survey (Source: *planning proposal, Gyde March 2023*)



Figure 3 Existing development on the site viewing the Pacific Highway frontage (Source: *nearmap*)

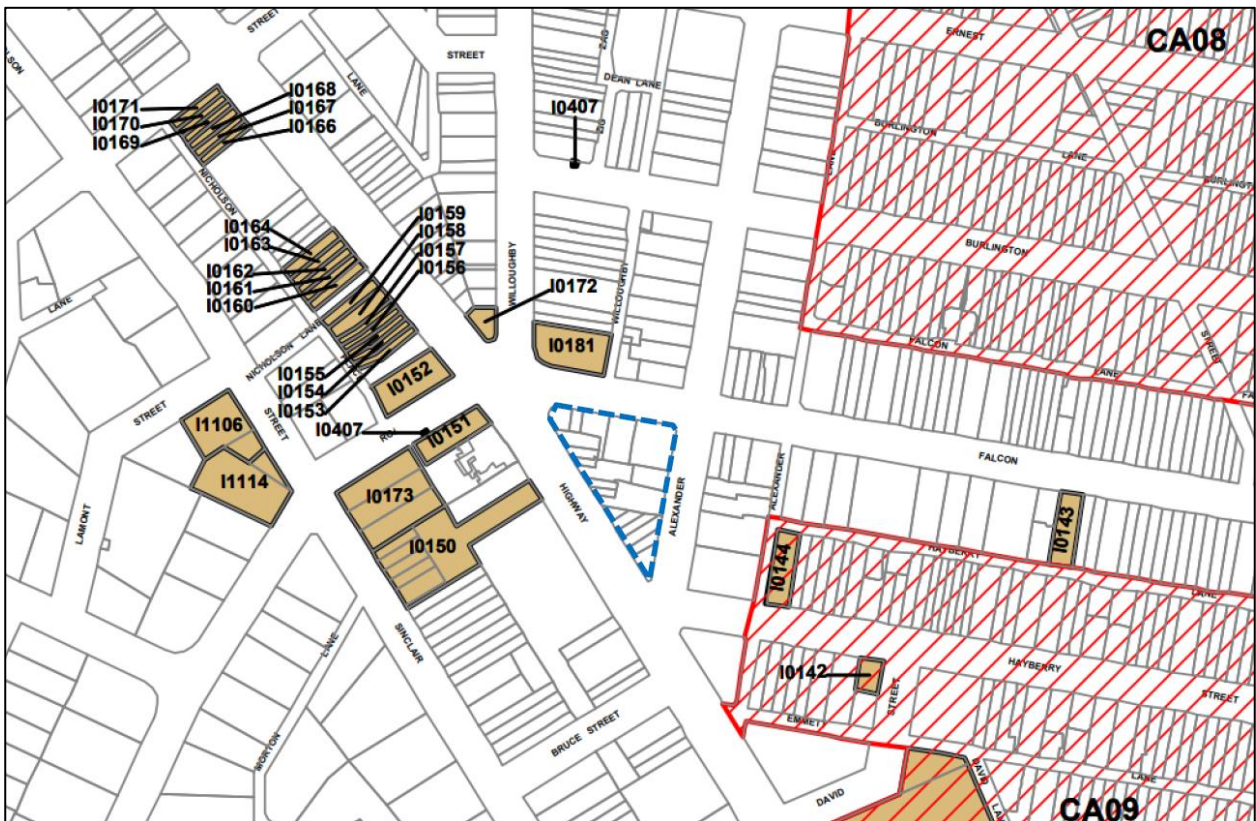


Figure 4 Current heritage map under North Sydney LEP 2013 (Source: *Heritage Impact Statement, Urbis*)

1.1.3 Purpose of plan

The planning proposal seeks to amend the North Sydney LEP 2013 to facilitate a 16 storey mixed use development on the site known as the Five Ways Triangle. The development will accommodate 129 dwellings and 8,002sqm non-residential gross floor area (GFA) providing 441 jobs (**Attachment A**).

The proposal as submitted for finalisation seeks to amend North Sydney LEP 2013 by:

- increasing the maximum building height from 16m to 62.5m;
- introducing a floor space ratio (FSR) control of 5.8:1; and
- increasing the minimum non-residential FSR control from 0.5:1 to 2.5:1.

Table 2 below outlines the current, proposed and final controls achieved by the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed	Final
Zone	MU1 Mixed Use	MU1 Mixed Use (no change)	MU1 Mixed Use (no change)
Maximum building height	16m	62.5m	58.5m
Site-specific provision	N/A	N/A	An additional 2m in height (total 60.5m), subject to the height increase relating to lift overrun, rooftop plant or associated rooftop equipment, under Clause 4.3A Exceptions to height of buildings to apply.
Floor space ratio (FSR)	N/A	5.8:1	5.8:1
Minimum non-residential FSR	0.5:1	2.5:1	2.5:1
Number of dwellings	0	129	129
Number of jobs	Approx. 154	441	441

A post-exhibition change is recommended to the maximum building height proposed in this planning proposal as discussed in Section 3.3 of this report. The change involves reducing the maximum building height from 62.5m to 58.5m, with the application of Clause 4.3A Exception to Height of Buildings to allow for an additional 2m in height for lift overruns and associated structures necessary to provide access, balustrades and rooftop plant or equipment.

The proposed development concept scheme is provided in **Figures 5** and **6**. The recommended post-exhibition changes are not reflected in these indicative built form drawings.



Figure 5 Indicative built form (source: *Urban Design Report, Turner*)

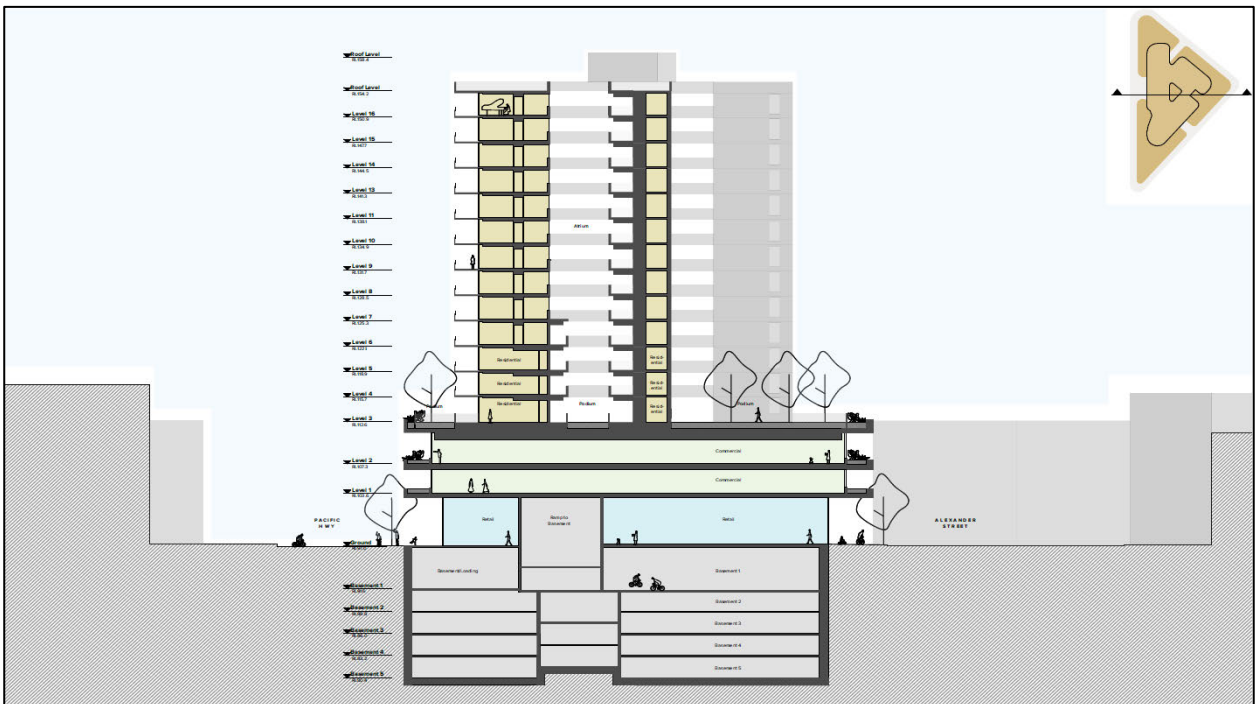


Figure 6 Proposed development section (source: *Urban Design Report, Turner*)

1.1.4 State electorate and local member

The site falls within the North Shore state electorate. The Hon. Felicity Wilson MP is the State Member.

The site falls within the North Sydney federal electorate. Kylea Tink MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alteration

On 4 October 2022, a rezoning review was considered and the Sydney North Planning Panel (the Panel) recommended the planning proposal should proceed to Gateway. As Council did not support the planning proposal, the Panel appointed itself as the Planning Proposal Authority (PPA) in accordance with the Local Environmental Plan Making Guideline (September 2022).

The Panel recommended amendments to the planning proposal before proceeding to Gateway determination. This related to a reduction in the podium height (by 1-2m consistent with the changes in levels across the site) producing a reduction in the overall height of 63.5m. The Panel supported the amended planning proposal on 9 December 2022.

The Gateway determination issued on 2 March 2023 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The Gateway determination was altered on 19 April 2023 to correct a minor error in the Gateway determination that authorised the Panel to exercise the functions of the local plan-making authority. The alteration removed this condition as the Department is the local plan-making authority.

On 1 May 2023, the Panel was advised by the Department that the proposal was adequately amended to satisfy the Gateway conditions to allow exhibition to commence. The Panel noted that the Gateway determination conditions have been met. An updated planning proposal and accompanying documents responding to the Gateway conditions were exhibited on the NSW Planning Portal.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited on the NSW Planning Portal for 25 working days from 3 May 2023 to 6 June 2023.

Following public exhibition, the Panel held a public meeting on 13 September 2023 where it considered the post exhibition report prepared by the Department's Agile Planning Team, which recommended the planning proposal be submitted for finalisation.

A majority of the Panel concurred with this recommendation and concurred with the post exhibition report that the proposal demonstrated strategic and site-specific merit, the conditions of Gateway had been met, and that issues raised in agency and public submissions had been adequately addressed.

The decision noted that one Panel member disagreed with the majority and considered that the maximum building height provision should be 56m, with an additional allowance for centralised lift overrun facilities. Additionally, it was considered that the podium height should be reduced to better reflect the historical shopfronts in the vicinity of the site.

The planning proposal was submitted to the Department for finalisation on 19 September 2023.

In finalising the proposal, the Department in consideration of submissions and the Gateway Determination Report have recommended a post-exhibition change to the maximum building height, as discussed in Section 3.3 of this report.

3.1 Submissions during exhibition

A total of 73 public submissions were received, comprising of 68 objections, 4 submissions supporting the proposal and 1 submission unclear on its position. There were 4 submissions were received from local precinct groups and committees. A total of 10 agency submissions were received as outlined in **Table 4**. The Post exhibition report (**Attachment C**) considers the matters raised by members of the public, North Sydney Council and public agencies during the public exhibition of the planning proposal.

3.1.1 Submissions supporting the proposal

There were 4 submissions (approximately 5% of the total) received in support of the planning proposal. In summary, the submissions supported the proposal for the following reasons:

- supply of additional housing near the Crows Nest Metro Station.
- proposed development will support an increased use of public transport.
- businesses will benefit from an increase in the local population.

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 68 submissions (approximately 93% of the total) received from the community raising objections to the planning proposal.

The key issues raised in submissions included:

- Building height (76%)
- Traffic and parking (54%)
- Overshadowing (50%)
- Neighbourhood character (40%)
- Bulk and scale (37%)

Submissions also raised other issues which were considered in the Department's post exhibition report and by the Panel. **Table 3** provides a summary of the key issues raised in submissions and the Department's response.

Table 3 Summary of Key Issues

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
Building height, bulk and scale	76% (building height) 37% (bulk and scale)	<p><u>Community View:</u></p> <p>Concerns were raised the proposal would establish a precedent for approvals of large buildings and the proposed height does not enable an appropriate transition to lower density areas. Submissions were concerned with the building height given the site's location on a ridge and the development will result in excessive bulk and scale.</p> <p><u>Department Response:</u></p> <p>The site is located within an identified growth area under the SLCN 2036 Plan, which recommends a 16 storey development for the site. The concept scheme is generally consistent with the Plan</p>

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
		<p>in relation to the proposed number of storeys, however the 2036 Plan does not prescribe a height in metres. The Department notes the concerns raised regarding building height in this location.</p> <p>The Panel has endorsed the proposed bulk and scale of the development, agreeing the podium as revised (following the rezoning review) is appropriate for the site. The Department's Urban Design Team advice reaffirms this, considering the podium height provides transition to adjoining low scale residential areas. A larger reduction in podium height may compromise the use of the proposed mezzanine level in the south-eastern section of the podium.</p> <p>The Department is recommending a reduction to the building height achieved by the proposal to 58.5m with an additional 2m site-specific provision achieving a total building height of 60.5m. As discussed further in Section 3.3 of this report, it is considered that the proposed 16 storey development scheme can be accommodated within a 60.5m height limit. This maintains the podium mezzanine. All other proposed controls are consistent with the SLCN 2036 Plan.</p> <p>The Department considers this issue has been adequately addressed.</p>
Traffic and parking	54%	<p><u>Community View:</u></p> <p>The proposal will generate additional unwanted traffic and congestion along Pacific Highway, Falcon Street, Alexander Street and Shirley Road. Existing parking issues would be exacerbated.</p> <p><u>Department Response:</u></p> <p>The planning proposal is supported by a Supplementary Transport Assessment (Attachment A5) which identifies the existing and proposed traffic generation of the site. This assessment concluded the additional traffic attributable to development is not expected to have any significant impact on the performance of surrounding intersections, or the local road network. The proposal is consistent with the SLCN 2036 Plan and North District Plan as it is accessible to public transport and encourages a walkable neighbourhood to reduce the need for car dependency.</p> <p>The Department notes this traffic assessment is based on the proposed number of car parking spaces that are significantly more than the spaces currently permitted in the North Sydney DCP 2013 for the site. Since lodgement of the planning proposal, the North Sydney DCP 2013 has been amended to significantly revise the number of car parking spaces for the site.</p> <p>As the planning proposal does not seek to lock in a set number of parking spaces, the number of car parking spaces will be confirmed at the future DA stage.</p>

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
		The Department considers this issue has been adequately addressed.
Overshadowing	50%	<p><u>Community View:</u></p> <p>The proposed building height will result in a loss of sunlight to neighbouring low density areas. Community concerns raised the impact of privacy caused by overlooking into nearby residential dwellings.</p> <p><u>Department Response:</u></p> <p>The planning proposal is consistent with the solar access principles in the SLCN 2036 Plan. The Urban Design Report (Attachment A3) contains a shadow analysis demonstrating the concept scheme will not result in additional overshadowing of key open spaces during the nominated times and will maintain solar access to residential areas within and outside the plan's boundary.</p> <p>The Department is recommending a reduction in maximum building height to 60.5m that will contribute to a minor decrease in overshadowing anticipated by the proposal. This will help reduce some of the impacts experienced by the nearby Heritage Conservation Area (HCA).</p> <p>The Department notes the development concept accompanying the proposal is indicative only and the extent of overshadowing can be further analysed in a future DA.</p> <p>The Department considers this issue has been adequately addressed.</p>
Neighbourhood character	40%	<p><u>Community View:</u></p> <p>The proposal is inconsistent with the character of Crows Nest and will negatively impact the neighbourhood character. This impact would extend to low scale residential areas to the east and west. Submissions identified there is a lack of building of comparable height in the area.</p> <p><u>Department Response:</u></p> <p>The planning proposal was lodged in response to the SLCN 2036 Plan that identified a building height of 16 storeys for the site along with a podium height of 3 storeys with a 4 storey podium fronting the Five Ways intersection. It is noted the majority of the Panel determined at rezoning review the height of the podium and subsequent overall development should be reduced by 1-2 metres consistent with the change in levels across the site. The proposal was amended to reduce this height by 1m, and the Panel has consistently found the proposal to have strategic merit in the context of the SLCN 2036 Plan.</p> <p>The proposal states the podium heights respond to the height of neighbouring buildings. The Department notes the proposal is</p>

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
		<p>justifiably inconsistent with the SLCN 2036 Plan as it seeks to locate a podium mezzanine level in the south-eastern corner of the site. This is the lowest topographic point of the site and the Panel supported the proponent's reasoning for including the additional podium height in this location.</p> <p>The compatibility of the development with the character of the neighbourhood and the adjacent heritage conservation area will be further considered at development application stage.</p> <p>The Department considers this issue has been adequately addressed, as the proposal aligns with the proposed built form envisaged by the 2036 Plan and further consideration can be given to the detailed design at DA stage.</p>
Social infrastructure provision	24%	<p><u>Community View:</u></p> <p>Existing infrastructure in Crows Nest will be unable to accommodate the proposed increased population growth. Submissions were concerned the proposal does not specify the public benefits with regards to landscaping.</p> <p><u>Department Response:</u></p> <p>The site was previously subject to the St Leonards and Crows Nest Special Infrastructure Contribution (SIC). On 1 October 2023 the Housing and Productivity Contribution was introduced and will apply to new residential and commercial development. Contributions will help fund new and upgraded infrastructure to support new growth. These funds will contribute to infrastructure such as the provision of new open space, transport, education and health facilities.</p> <p>Noting the submitted concept design, the planning proposal does indicate there are opportunities to improve the public domain including street tree planting.</p> <p>The Department considers this issue has been adequately addressed.</p>
Heritage	18%	<p><u>Community View:</u></p> <p>The proposal will result in a loss of character and negatively impact the two HCAs to the east and north-east.</p> <p><u>Department Response:</u></p> <p>Refer to the above response to the overshadowing issue.</p> <p>The Department further notes the proposal is accompanied by a Heritage Impact Assessment (Attachment A7) that concludes the proposal is supported from a heritage perspective. Further assessment on the compatibility of the development with nearby heritage items and HCA's will be undertaken at the DA stage.</p> <p>The Department considers this issue has been adequately addressed.</p>

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
Wind impacts	15%	<p><u>Community View:</u></p> <p>Some submissions were concerned the proposal will lead to an increase in the wind tunnel effect experienced in the area.</p> <p><u>Department Response:</u></p> <p>A Pedestrian Wind Environment Statement (Attachment A11) submitted with the planning proposal recommends that wind tunnel testing be undertaken as part of the detailed design phase of any future DA.</p> <p>The Department considers this issue can be adequately addressed at the DA stage through detailed assessment of the proposed design.</p>

3.1.3 Other issues raised

Affordable Housing Supply

Community View:

There is demand for affordable housing in the area the proposal could contribute towards. The proposal itself does not specify the amount of affordable housing potentially provided in the future development.

Department Response:

The Gateway Determination Report (**Attachment B2**) contains a detailed assessment of affordable housing in the context of the proposal. The Department's conclusion in the Gateway Determination Report was not to recommend the inclusion of an affordable housing percentage of the development.

The Department considers this issue has been adequately addressed noting there is no statutory requirement for affordable housing to be provided in the North Sydney LGA and the evidence provided by the proponent regarding the lack of feasibility to include affordable housing on the site due to the acquisition cost of consolidating multiple lots and post-exhibition changes to the SLCN 2036 plan that limited the development outcome for the site to 16 storeys.

Strategic Alignment

Community View:

The proposal does not respond to the character and vision outlined by the SLCN 2036 Plan and is inconsistent with the North Sydney Local Strategic Planning Statement (LSPS).

Department Response:

The Department notes that the Panel, at rezoning review, determined the proposal has strategic merit, and is satisfied the planning proposal is generally consistent with the SLCN 2036 Plan. As identified in the Gateway Determination Report, the proposal is consistent with the North Sydney LSPS delivering a variety of additional residential dwellings an area well serviced by transport, jobs, infrastructure and public open space.

Community Consultation

Community View:

Some submissions were concerned the community was not consulted prior to lodgement of the planning proposal. One community group requested an audience with the proponent to discuss the proposal.

Department Response:

The Department on behalf of the Panel as PPA has undertaken the necessary public consultation as required by the Gateway Determination (**Attachment B**) and relevant guidelines. Submitters were also provided an opportunity to address the Panel at a public post-exhibition meeting.

3.2 Advice from agencies

In accordance with the Gateway determination, the Panel was required to consult with agencies and Council as listed below in **Table 4** who have provided the following feedback.

Table 4 Advice from agencies and Council

Agency	Advice raised	Department response
North Sydney Council	<p><u>Strategic Merit</u></p> <p>The proposal is inconsistent with the urban design principles of the SLCN 2036 Plan. It would result in a height and density that will permanently change the character of Crows Nest village. It will dominate the significant HCA's to the south and east.</p>	<p><u>Strategic Merit</u></p> <p>On 4 October 2022, a majority of the Panel determined the proposal had strategic merit. The proposal is generally consistent with the recommended controls for the site identified in the SLCN 2036 Plan. These controls were recommended in the context of the urban design principles to be achieved by development in the precinct.</p> <p>The Department considers the proposed location of a 4th storey in the podium justifiably inconsistent with the SLCN 2036 Plan, as its proposed location is the lowest topographic point of the site.</p> <p>The Department is recommending a post exhibition reduction to the building height achieved by the proposal to 60.5m. This is to address the concerns raised regarding impact and amenity on the adjoining HCA's and that the proposed height may result in a development that could exceed 16 storeys.</p> <p>Refer to Section 3.3 of this report for details on this post exhibition change. Further consideration of the concept scheme will occur at DA stage.</p>

Agency	Advice raised	Department response
	<p><u>Site-specific Merit Issues</u></p> <p>Council recommended a site-specific DCP be prepared to ensure appropriate building mass and transition, podium height and treatment, setbacks, heritage, public domain, through-site links and parking rates. Council also notes the Panel's rezoning review decision recommending a site-specific DCP be prepared and notes the dissenting Panel member's comments.</p> <p>Council consider conditions 1(a)¹ and 1(d)² of the Gateway determination have not been adequately addressed.</p>	<p><u>Site-specific Merit Issues</u></p> <p>A majority of the Panel in its decision to support the rezoning review determined it to have site-specific merit subject to a 1-2 metre reduction in podium and subsequent building height, and a site-specific DCP being prepared to address a number of issues.</p> <p>A full assessment of the Panel's recommended site-specific DCP elements can be found in the Department's Gateway Determination Report (pages 38-41) (Attachment B2).</p> <p>The conditions of the Gateway determination were addressed to the satisfaction of the Department prior to exhibition on 1 May 2023.</p> <p>Condition 1(a) of the Gateway determination required the planning proposal to reference the adopted North Sydney DCP 2013 amendment applying to the SLCN 2036 Plan precinct. This was anticipated to address any inconsistencies or contentions. This also included removing reference to the submitted site-specific DCP. Updates to the planning proposal were made to include reference to the adopted of Council's DCP on 6 January 2023.</p> <p>Condition 1(d) of the Gateway determination required the planning proposal to provide an explanation on the street wall height inconsistency with the SLCN 2036. The planning proposal has been updated to address the proposal's inconsistent street wall height with the St Leonard's and Crows Nest 2036 Plan. The proposal notes that the concept design provides 3 storeys at the Fiveways Intersection, however that the proposed floor to floor levels and topography still ensures the proposal presents to the Fiveways intersection achieving the objective of a gateway element (p.47).</p>

¹ Condition 1(a) "note the adopted North Sydney DCP 2013 amendment that commenced on 6 January 2023 and removing the reference to a site-specific DCP that is no longer required"

² Condition 1(d) "address the proposal's inconsistent street wall height with the St Leonards and Crows Nest 2036 Plan"

Agency	Advice raised	Department response
	<p><u>Height, Bulk and Scale</u></p> <p>The reference scheme includes a podium inconsistent with the recommended SLCN 2036 Plan street wall heights. This magnifies the bulk and scale and does not provide an appropriate interface and transition to nearby HCA's.</p> <p>The proposed 62.5m height is well in excess of required for a 16 storey building. A 56m height with an additional 2m allowance has been considered appropriate for other mixed use development in the precinct.</p> <p><u>Overshadowing</u></p> <p>Proposed height adds unnecessarily to the overall building height resulting in a shadow length 19.5m longer than necessary for a 16 storey tower.</p>	<p><u>Height, Bulk and Scale</u></p> <p>The Department notes Council's submission strongly recommended a maximum building height of 56m with an additional allowance for lift overrun.</p> <p>As identified in Council's submission, the Department's Gateway Determination Report does consider the proposed height of 62.5m could result in a building up to 17 storeys.</p> <p>The Department is recommending the maximum building height achieved by the planning proposal be reduced to 58.5m with an additional 2m site-specific clause allowing for lift overrun, rooftop plant or associated rooftop equipment. The concept proposal's 4.6m lift overrun is considered excessive and could accommodate an additional storey in a future DA. Further details on this recommendation are in Section 3.3 of this report.</p> <p>As referenced in Section 3.3, the recommended total 60.5m height limit can accommodate the proposed formation of the podium and all residential levels adequately within the overall limit. It is acknowledged this recommended height limit remains generous for a 16 storey development. This height reduction will have some benefit in reducing the impact of the podium in the context of the surrounding scale.</p> <p>It is recognised the presented design scheme is indicative only and final detail provided by the proponent regarding heights of the structural transfer zone, rooftop plant and the podium can be considered further at a DA stage.</p> <p><u>Overshadowing</u></p> <p>The Department has responded to concerns relating to overshadowing in Table 3 above.</p>

Agency	Advice raised	Department response
<p>Transport for NSW (TfNSW)</p>	<p><u>Transport Improvements</u></p> <p>TfNSW identified the site is within a broader investigation area to upgrade Pacific Highway. TfNSW requested a 2m setback along the Pacific Highway frontage for future provision of a cycle corridor.</p> <p><u>Design</u></p> <p>TfNSW recommends vehicular access to the site from Alexander Street be restricted to left-in / left-out operation.</p> <p>TfNSW also notes pedestrian links direct pedestrian traffic to midblock locations.</p> <p>Comments were also provided on loading and servicing and bicycle parking for consideration in a DA.</p> <p><u>Traffic Impact Assessment</u></p> <p>TfNSW raised a number of issues on review of the submitted TIA with traffic counts and intersection cycle times.</p>	<p><u>Transport Improvements</u></p> <p>The Department's post exhibition report notes a high level strategic review was undertaken by TfNSW in March 2023 identifying the need for a cycle corridor along the Pacific Highway. However, there is no draft plan or business case, or funding allocated to support any potential land acquisitions.</p> <p>The proponent considered this request and did not agree with the provision of an additional setback given the lack of strategic planning documentation supporting it.</p> <p>The Department notes without a site-specific DCP or any identified land acquisition, this LEP amendment is unable to require a 2m setback from Pacific Highway as a statutory control. It is considered that this issue has been adequately addressed.</p> <p><u>Design</u></p> <p>TfNSW provided a supplementary submission agreeing to defer all raised traffic matters to a DA stage. This includes the recommended direction of entry / exit from the site. It is further noted specific vehicular access is not a requirement during the planning proposal rezoning.</p> <p>The Department notes the proposed through site link locations differ from the location of a link on the site within the North Sydney DCP 2013. This can be further addressed in a DA to identify the most appropriate location for pedestrian links.</p> <p><u>Traffic Impact Assessment</u></p> <p>The proponent responded to TfNSW on these issues who in a supplementary submission confirmed in light of minimal traffic generation, these matters can be considered and addressed in more detail during a DA.</p>

Agency	Advice raised	Department response
	<p><u>Car Parking</u></p> <p>Located 400m from Crows Nest Metro Station, TfNSW strongly encourages the proposed transit oriented development use the same or similar parking rates as developed by Sydney Metro.</p>	<p><u>Car Parking</u></p> <p>The Department notes the planning proposal includes a car parking provision based on the North Sydney DCP 2013 at the time of lodgement of the proposal. North Sydney Council has since amended the DCP for the location to significantly reduce the number of on-site car parking spaces permitted. Adoption of the Sydney Metro parking rates would be a further reduction.</p> <p>The Department considers this matter can be resolved in a future DA noting the reduced number of parking spaces in Council's DCP.</p>
Sydney Metro	Sydney Metro raises no objections to the proposal. Its submission contains requests for consideration ahead of lodging a future DA.	The Department notes this submission. The proponent can address each consideration in a future DA and the Department will ensure Council has a copy of the submission.
Ausgrid	Ausgrid has no comment to make regarding the planning proposal at this time.	The Department notes this submission.
Sydney Water Corporation	Sydney Water raises no objections to the proposal and requests all impactful DA's should be sent for comment.	The Department notes this submission. Further consultation with Sydney Water will be undertaken by the appropriate consent authority for a future DA.
Schools Infrastructure NSW (SINSW)	<p>SINSW advises it is likely the number of students projected to be generated by the proposal can be accommodated by surrounding schools.</p> <p>SINSW encourages consideration of the cumulative impact on the surrounding transport network.</p>	The Department notes the submission. The planning proposal has considered a number of anticipated traffic and transport impact attributable to the proposed development. Greater detail can be provided and assessed in a future DA.
NSW Department of Health	No decision required as the proposal is not in proximity to any North Sydney Local Health District property.	The Department notes a submission is not required.

Agency	Advice raised	Department response
Commonwealth Department of Transport, Infrastructure, Regional Development, Communications and the Arts (DTIRDCA)	The proposed height of 159.5m AHD is likely to intrude into the Obstacle Limitation Surface (OLS) for Sydney Airport which is at 156m AHD. Development above this height cannot be carried out without prior approval.	The Department noted these submissions and that there are no objections raised in relation to the proposed development. As advised, the proponent should engage early with Sydney Airport to ensure any proposed intrusion is appropriately assessed. The proponent is encouraged to obtain all the required approvals prior to construction.
Sydney Airport	The Sydney Airport OLS is 156m AHD for the site. Approval to operate construction equipment should be obtained prior to any commitment to construct.	It is considered this can be responded to at a DA stage.
Civil Aviation Safety Authority (CASA)	Sydney Airport will confirm the infringement and obtain relevant comments. As there are much taller buildings in the vicinity, it is very unlikely CASA will recommend any mitigations such as obstacle lighting for the building.	
Airservices Australia	Airservices are unable to provide comment with no specific development detail.	

3.3 Post-exhibition changes

3.3.1 The Department's recommended changes

Following receipt of the revised planning proposal from the Panel, the Department at finalisation is recommending a change to the maximum building height to be achieved by the LEP amendment for the site. The Department has considered the post exhibition submissions report and acknowledges the majority Panel recommendation that the planning proposal be finalised as proposed.

However, as discussed further below, the Department considers it appropriate to reduce the maximum building height achieved by the proposal to provide certainty regarding the maximum number of storeys being 16, to ensure a suitable development outcome, and respond to issues raised throughout submissions by the Council and community.

The Department has recommended an amended maximum building height to 58.5m with an additional 2m in height (total 60.5m), subject to the height increase relating to lift overrun, rooftop plant or associated rooftop equipment. This represents an overall reduction of 2m from the exhibited proposed height and ensures defines the height of the rooftop plant.

Table 5 compares the exhibited proposed controls recommended by the Panel with the final controls recommended by the Department for finalisation of the LEP amendment.

Table 5 Proposed and Department recommended controls

Control	Proposed	Department Recommendation
Zone	MU1 Mixed Use	MU1 Mixed Use
Maximum building height	62.5m	58.5m (-4m)
Site-specific provision	N/A	An additional 2m in height (total 60.5m), subject to the height increase relating to lift overrun, rooftop plant or associated rooftop equipment. (New provision)
Floor space ratio (FSR)	5.8:1	5.8:1
Minimum non-residential FSR	2.5:1	2.5:1
Number of dwellings	129	129
Number of jobs	441	441

3.3.2 Justification for post-exhibition changes

The Department notes this post-exhibition change to maximum building height is a minor reduction in height and does not require re-exhibition.

It is considered that the post-exhibition change:

- Is a reasonable response to submissions received;
- does not alter the intent of the planning proposal;
- is a minor adjustment to the planning proposal to allow for lift overruns and plant at rooftop level consistent with other proposals in North Sydney; and
- continues to give effect to the St Leonards and Crows Nest 2036 Plan and the recommended height of 16 storeys.

The Department has considered the following matters in recommending this amendment to the maximum building height.

Response to submissions

As outlined, many issues raised in submissions objecting to the planning proposal relate to building height, bulk, scale and overshadowing. Details of how this height reduction addresses each issue are provided in **Table 3**. The post-exhibition height reduction of 2m in total height recommended by the Department reduces the cumulative height impact of the proposed development.

It is noted some submissions make reference to the minority Panel member's height recommendation with one submission specifically requesting building height be reduced to 60.5m including the lift overrun prior to exhibition of the proposal.

The minority Panel member recommended a maximum building height of 56m at rezoning review, with an additional allowance for centralised lift overrun facilities. It was further recommended the schematic podium height should be reduced to better reflect the historical shopfronts in the vicinity of the site.

The Department further notes this Panel member remained in the minority throughout the rezoning review process, recommending in a in forwarding the planning proposal for Gateway determination

that the amended proposal that the maximum building height should be 60.5m, including centralised lift overrun facilities.

The Department's amendment to building height also responds to North Sydney Council's submission detailed in **Table 4**. While the Department does not seek a height reduction to 56m per Council's submission, it is recognised a reduction of 2m to a total height of 60.5m ensures the development can achieve a 16 storey height limit while accommodating many features such as the proposed podium mezzanine.

The Department considers this height amendment to be minor in nature to achieve a reduction in scale and overshadowing over low scale residential areas and HCA's. An overshadowing analysis of the exact overshadowing mitigation attributable to the 2m height reduction has not been conducted.

Provides greater certainty of achieving a 16 storey built form

As noted in the Gateway Determination Report (**Attachment B2**), the proposed height of 62.5m exceeds the expected height limit when following the assumptions of the ADG at 16 storeys, potentially resulting in a building of up to 17 storeys.

The Department recommendation of 60.5m is derived from the following ADG recommendations totalling 60.3m rounded to 60.5m that maintains the proposed 16 storey development scheme:

- 3.1m floor to floor height in 13 storey residential tower (as per ADG);
- 8.1m ground floor with mezzanine level;
- 3.7m two storeys commercial;
- 1.5m structure transfer / green roof (this can be reduced to 1.2m);
- 2m rooftop structure; and
- 1m to account for changing topography as per ADG.

The Department notes these recommendations present an indication of the possible development within a 60.5m height limit and are not indicative of the proponent's development concept.

The Department considers a minor reduction to this recommended total height of 60.5m (58.5m + 2m for plant) is necessary to provide certainty regarding the number of storeys capable of development. This height will maintain the proposal's consistency with the SLCN 2036 Plan.

As outlined below, the Department is also introducing a site-specific provision of 2m to accommodate the rooftop plant facilities within the development footprint. The Department considers the above breakdown to be generous for a 16 storey building as it continues to accommodate the additional storey in one section of the podium.

The proposed amendment does not preclude the consideration of a proposed variation at development application stage for the detailed design of a development scheme.

The proposed rooftop plant is excessive and could accommodate an additional storey

As discussed above, the Department's Urban Design Team reviewed the initial 63.5m planning proposal and recommended the apparent 4.6m floor to floor height for the rooftop plant exceeds ADG recommendations. The height of this rooftop plant has not changed during the following iterations of the planning proposal and is demonstrated in **Figure 7** below.

Urban Design recommended a 2m height for the rooftop plant which is a similar provision to that applying to another 16 storey development at 50-56 Atchison Street, St Leonards. It is noted this planning proposal will receive 2.5m more than this recently approved 16 storey development.

The Department recognises the need to constrain the rooftop plant for the site in the context of the proposed 4.6m as this could generate an additional storey during a future DA. The site-specific provision of 2m applied by the Department will ensure a quality development can be achieved while not unnecessarily extending in height. The total height achieved by the development will be

60.5m, representing a 2m reduction that reduces the possibility of an extra storey being incorporated into the future DA.

The Department notes Council's submission recommending a maximum building height of 56m accompanied by a site-specific provision. The Department considers reducing the height to 56m could make the proposed development unfeasible as the additional 4th storey element in the podium will accommodate non-residential floorspace.

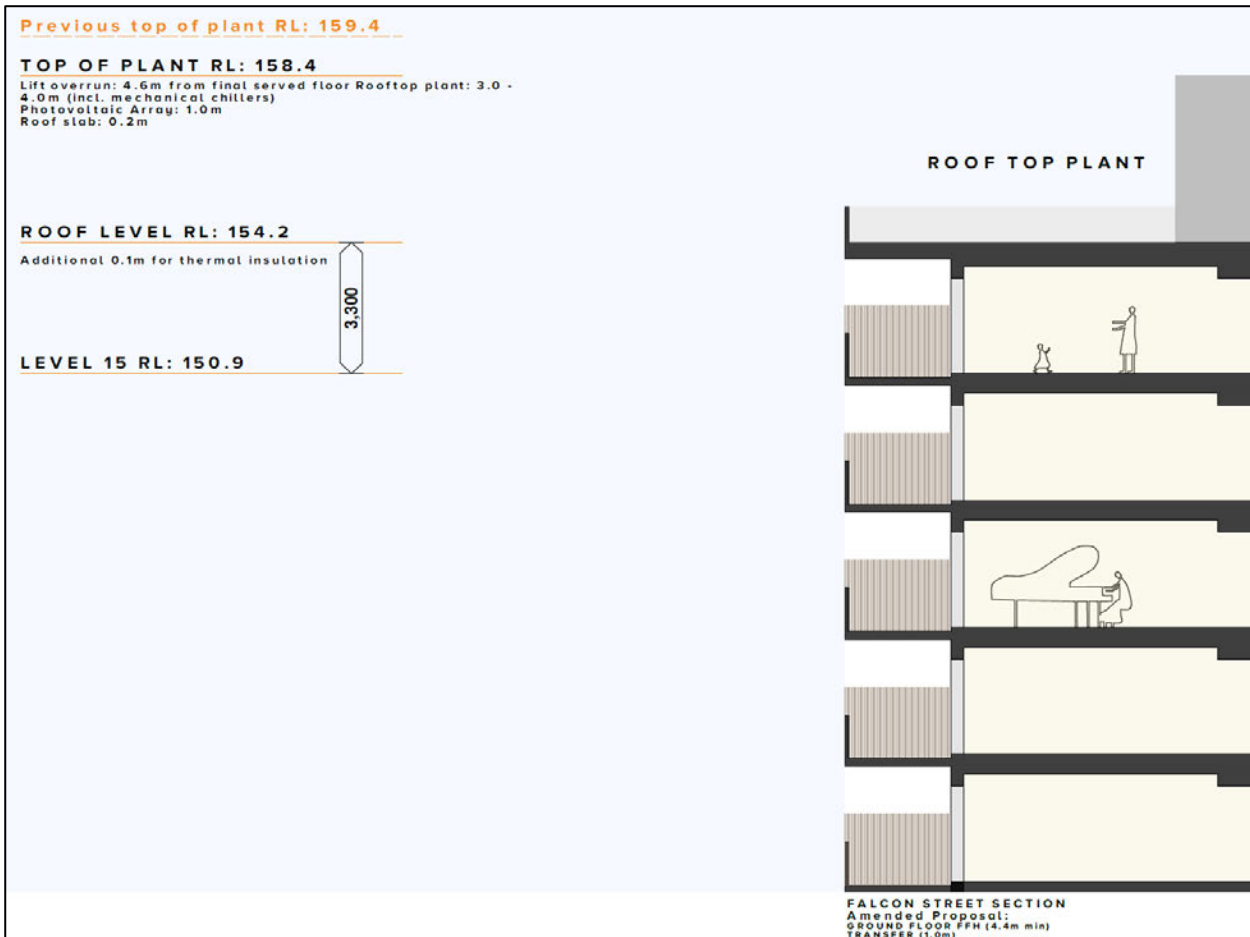


Figure 7 Proposed rooftop plant development section (source: *Urban Design Report, Turner*)

North Sydney Local Planning Panel (LPP) recommendation

The North Sydney LPP considered the planning proposal on 8 June 2022. It is noted the LPP considered the proposal that was lodged for rezoning review with a proposed height limit of 63.5m. The remaining proposed controls remain unchanged.

The LPP unanimously recommended to North Sydney Council the planning proposal should proceed to a Gateway determination subject to a maximum building height of 60m (**Attachment I**). The LPP recognised the need to facilitate sustainable building methods while providing certainty as to the number of storeys capable of being built within the 60m height limit (16 storeys). The LPP further recognised the need to ensure massing of the development is appropriate to minimise overshadowing to the HCA.

Ministerial Direction 5.3 Development Near Regulated Airports and Defence Airfields

The Department's Gateway Determination Report (**Attachment B2**) identified the planning proposal would exceed the Sydney Airport Obstacle Limitation Surface (OLS) of 156m AHD by 3.5m. As raised in agency submissions discussed in **Table 4**, the proponent will need to consult with appropriate authorities for development and construction occurring above this OLS.

The reduction in building height recommended by the Department to 60.5m will result in a breach of the OLS of 1.5m for the site, as opposed to 3.5m under the proponent's preferred plan.

4 Department's assessment

The planning proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal. It is noted the Department's recommended maximum building height reduction does not alter the intent of the proposal to achieve a 16 storey mixed-use development.

As outlined in the Gateway determination report (**Attachment B2**), the planning proposal submitted to the Department for finalisation remains consistent with:

- the St Leonards and Crows Nest 2036 Plan, noting the variation in location of the 4th podium storey is justified;
- North Sydney Council's Local Housing Strategy (LHS) and Local Strategic Planning Statement (LSPS);
- actions of the Greater Sydney Region Plan and North District Plan;
- all relevant Section 9.1 Directions, noting the Gateway determination report considered the proposal to be inconsistent with direction 5.3 Development Near Regulated Airports and Defence Airfields. The proposal was updated prior to exhibition to address this direction and is assessed in Section 4.1 of this report; and
- all relevant SEPPs.

The following **Tables 6** and **7** identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 6 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
St Leonards and Crows Nest 2036 Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 7 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable. It is noted Section 3.3 above addresses the Department's recommended change to the planning proposal.

4.1.1 Section 9.1 Ministerial Direction – 5.3 Development Near Regulated Airports and Defence Airfields

The objectives of this direction are to ensure the effective and safe operation of airports so that their operation is not compromised, and to ensure development is not adversely affected by aircraft noise.

The Gateway determination required the proposal to be updated prior to exhibition to address direction 5.3 Development Near Regulated Airports and Defence Airfields. The updated planning proposal adequately recognises the proposed building height breaches the Sydney Airport OLS and that any future DA must obtain the appropriate approvals prior to commencing construction. It is noted consultation was conducted during exhibition with Sydney Airport and other relevant agencies. This OLS breach will be reduced by the Department's recommended maximum building height reduction.

4.1.2 Employment Zones Reform

The Department's Employment Zones Reform commenced on 26 April 2023. The previous Business (B) and Industrial (IN) zones were replaced with 5 new employment zones and 3 supporting zones under the Standard Instrument LEP.

This change has applied to the site as the zoning is proposed to remain unchanged. The previous B4 Mixed Use zone that is identified in all exhibited material has now been translated to MU1 Mixed Use following commencement of this reform.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 8 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	3 maps have been prepared by the Department's GIS team and meet the technical requirements. The maps relevant to give effect to the planning proposal are: <ul style="list-style-type: none"> • Height of Buildings HOB_001; • FSR FSR_001; and • Non-Residential FSR LCL_001. 	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	Council was consulted on the terms of the draft instrument and draft LEP maps on 6 December 2023 (Attachment K).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Sydney North Planning Panel (PPA)	The Sydney North Planning Panel was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment J). The Panel confirmed on 6 December 2023 that it notes the Department's advice regarding a reduced maximum building height provision and raised no objection to the draft. The Panel confirmed that the plan should be made (Attachment J).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	The LEP amendment is a map only amendment. Parliamentary Counsel Opinion is not required.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- the Department's recommended maximum building height reduction from 62.5m to 58.5m with an additional 2m site-specific provision (60.5m total) is justified and assessed in Section 3.3 of this report above;
- the draft LEP has strategic merit being consistent with the Greater Sydney Region Plan and North District Plan;
- it is consistent with the Gateway Determination assessment, noting some conditions have not been adequately addressed, this does not prevent the draft LEP proceeding;
- it is consistent with all relevant Section 9.1 Directions and SEPPs;
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal; and
- the draft LEP gives effect to the provisions of the planning proposal, noting the Department's recommended maximum building height reduction.

[REDACTED]
6 December 2023

Charlene Nelson
Manager, Place and Infrastructure, Metro North
Metro Central and North

[REDACTED]
6 December 2023

Brendan Metcalfe
Director, Metro North
Metro Central and North

Assessment officer

Matthew Rothwell
Planning Officer, Metro North
Metro Central and North

Attachments

Attachment	Document
A	Planning Proposal (March 2023)
A1	Planning Proposal – Section 9.1 Ministerial Directions (March 2023)
A2	Planning Proposal – SEPPs (December 2022)
A3	Urban Design Report (19 December 2022)
A4	Place Making Report (December 2021)
A5	Supplementary Transport Assessment (15 November 2022)
A6	Economic Impact Assessment (November 2022)
A7	Heritage Impact Assessment (20 December 2021)
A8	Structural Report (December 2021)
A9	Proposed LEP Map Amendments

Attachment	Document
A10	Preliminary Contamination Report (26 October 2020)
A11	Wind Impact Assessment (16 December 2021)
B	Gateway Determination (2 March 2023)
B1	Gateway Alteration (19 April 2023)
B2	Gateway Determination Report (March 2023)
C	DPE Post-Exhibition Report (September 2023)
C1	Sydney North Planning Panel Post-Exhibition Decision (14 September 2023)
C2	Assessment against Gateway Determination conditions
D	Summary of submissions
E	Proponent response to submissions
F	North Sydney Council submission
G	Agency submissions
G1	Transport for NSW supplementary submission
H	Community submissions (redacted)
I	North Sydney Local Planning Panel minutes (8 June 2022)
J	Consultation with Sydney North Planning Panel
K	Consultation with North Sydney Council on draft LEP
Maps	Draft LEP Maps
LEP	Draft LEP



Land and Environment Court New South Wales

Case Name: **PDS Engineering Division Pty Ltd v North Sydney Council**

Medium Neutral Citation: **[2024] NSWLEC 1722**

Hearing Date(s): **12-13 September and 16-17 September 2024**

Date of Orders: **8 November 2024**

Date of Decision: **8 November 2024**

Jurisdiction: **Class 1**

Before: **Horton C**

Decision: **The Court orders that:**

- (1) The Applicant is to pay the Council's costs thrown away as a result of the amending of the development application, as agreed or assessed, in accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979*.
- (2) The appeal is upheld.
- (3) Development application No. DA66/23 for the proposed development involving restoration of a heritage item, partial demolition works, and construction of a 11-storey mixed use building comprising two floors of commercial premises, 52 residential units, and four levels of basement parking, public domain and landscaping works, and other associated works, at Lot 1 in Deposited Plan 1279891, referred to as 286-294 Pacific Highway, Crows Nest, is determined by the grant of consent, subject to conditions of consent at Annexure A .
- (4) All Exhibits are returned, except for Exhibits A, B, D and L.

Catchwords: **DEVELOPMENT APPLICATION – mixed use development in MU1 and R2 zone – heritage conservation – whether conservation incentives apply**

Legislation Cited:

Environmental Planning and Assessment Act 1979,
ss 3.30, 4.16, 8.7, 8.15(3)
Heritage Act 1977, ss 57, 59
Land and Environment Court Act 1979, s 39

Environmental Planning and Assessment (Special
Infrastructure Contribution - St Leonards and Crows
Nest) Determination 2020
Environmental Planning and Assessment (Special
Infrastructure Contribution - St Leonards and Crows
Nest) Direction 2020
Environmental Planning and Assessment Regulation
2021, ss 29, 38, 288A
North Sydney Local Environmental Plan 2013, cl
1.7, 2.3, 4.3, 4.4A, 4.6, 5.10, 6.12A, 7.6, Sch 5
Standard Instrument (Local Environmental Plans)
Amendment (Land Use Zones) Order 2021
Standard Instrument (Local Environmental Plans)
Order 2006
State Environmental Planning Policy (Biodiversity
and Conservation) 2021, ss 6.6, 6.7
State Environmental Planning Policy (Housing) 2021,
ss 144, 145, 147, 148; Ch 4; Sch 9
State Environmental Planning Policy (Infrastructure)
2007 (repealed)
State Environmental Planning Policy (Resilience and
Hazards) 2021, s 4.6
State Environmental Planning Policy (Sustainable
Buildings) 2022
State Environmental Planning Policy (Transport and
Infrastructure) 2021, ss 2.48, 2.119, 2.120, 2.121,
2.122
State Environmental Planning Policy Amendment
(Land Use Zones) (No 3) 2022

Cases Cited:

*Creative Academy Group Pty Ltd v White Pointer
Investments Pty Ltd* [2024] NSWCA 133
*Holt Avenue Cremorne Pty Ltd v North Sydney
Council* [2023] NSWLEC 1736
Howe Architects Pty Ltd v Ku-ring-gai Council [2021]
NSWLEC 1233
Initial Action Pty Ltd v Woollahra Municipal Council
2018) 236 LGERA 256; [2018] NSWLEC 118
*Stamford Property Services Pty Ltd v Mulpha
Australia Ltd* (2019) 99 NSWLR 730; [2019] NSWCA
141
*Swansea RSL Club & Rosecorp Pty Ltd v Council of
the City of Lake Macquarie* [2005] NSWLEC 755

Texts Cited: Apartment Design Guide
National Construction Code
North Sydney Development Control Plan 2013
NSW Department of Planning, Housing and
Infrastructure, Explanation of Intended Effect, 'Crows
Nest Transport Oriented Development Precinct' (July
2024)
NSW Department of Planning, Industry and
Environment, St Leonards and Crows Nest 2036
Plan (August 2020)

Category: Principal judgment

Parties: PDS Engineering Division Pty Ltd (Applicant)
North Sydney Council (Respondent)

Representation: Counsel:
M Wright SC with D Harker (Applicant)
M Henry SC with S Berveling (Respondent)

Solicitors:
Holding Redlich (Applicant)
Matthews Folbigg Pty Ltd (Respondent)

File Number(s): 2023/185876

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** A two-storey Art Deco style building located close to the intersection of the Pacific Highway and Falcon Street in Crows Nest was once the site of a shop and showroom used by the North Shore Gas Company, that I will refer to as the Gas Showroom building.
- 2 The Gas Showroom building is identified as an item of local heritage significance for the association it has to the North Shore Gas Company, to its architects Rupert Villers Minnett and Charles Cullis-Hill, and to its builders Howie Moffat & Co., and Wunderlich Ltd.
- 3 The façade fronting the Pacific Highway consists of materials considered somewhat unique in the precinct, such as red granite, bronze and terracotta.
- 4 An area of hardstand used for car parking is located behind the heritage building, accessed from Sinclair Street to the site's rear.
- 5 Development proposed on the site involves partial demolition of the existing building, construction of a mixed use building with commercial tenancies and residential apartments over, public domain works and landscaping.
- 6 To this end, the Applicant in these proceedings, PDS Engineering Division Pty Ltd (PDS) lodged development application No. DA66/23 with North Sydney Council (the Council) on 8 March 2023.
- 7 As the development application was otherwise undetermined, on 9 June 2023, PDS filed an appeal in Class 1 of the Court's jurisdiction under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 8 On 17 July 2024, the Court granted PDS leave to rely upon amended plans and other documents that had the effect of amending the development application now characterised in the Amended Statement of Facts and Contentions prepared by the Council (Exhibit 4) in the following terms:

- Partial demolition of existing buildings on site.
- Retention of the significant fabric of the local heritage-listed Former North Sydney Gas Works Co office building.
- Conservation and renewal of the remaining Former North Sydney Gas Works Co office building.
- Basement excavation to accommodate four levels of basement parking for 67 car parking spaces. Vehicular access will be from Sinclair Street.
- Construction of a 11 storey mixed use building comprising ground floor and level 1 commercial spaces with 52 residential apartments containing 8 x studio, 1 x 2-bedroom apartments and 9 x 3-bedroom, 16 x 4 bedroom and 10 x 5-bedroom apartments above. On the R2 land fronting Sinclair Street 8 X 4-storey, 5-bedroom townhouse are proposed.
- Landscaped roof top communal open spaces.
- A pedestrian walkway along the northern boundary linking the Pacific Highway to Sinclair Street.

9 At the outset of the hearing, PDS foreshadowed the amending of the development application, subsequently sought on the second day, which the Council, as the relevant consent authority, approved pursuant to s 38 of the Environmental Planning and Assessment Regulation 2021 (EPA Regulation).

10 The amended documents contained in Exhibit D, include:

- (1) Letter of revised offer to enter a Planning Agreement prepared by PDS dated 6 September 2024.
- (2) Heritage Management Document (Version 6) prepared by Heritage 21 dated 6 September 2024.
- (3) Construction Management Plan (Rev 5) prepared by Manado Constructions Pty Ltd dated 11 September 2024.
- (4) Operational Loading Dock Management Plan prepared by McLaren Traffic Engineering dated 5 September 2024.
- (5) Letter re waste collection arrangements prepared by MRA Consulting Group dated 11 September 2024.

- (6) Waste Management Plan (Rev 1.2) prepared by MRA Consulting Group dated 11 September 2024.
 - (7) Structural Engineering Plans (Rev B) prepared by CAM Consulting dated 11 September 2024.
 - (8) Driveway Plans (Rev F) prepared by CAM Consulting dated 6 September 2024.
 - (9) Revised Costs Estimate prepared by Rider Levett Bucknall dated 30 August 2024.
 - (10) Architectural Plans (up to Rev H) prepared by Fuse Architects dated 9 September 2024.
- 11 The parties agree the amendment to the development application (the amended DA) is more than minor and the Court directed PDS to pay the Council's costs thrown away as agreed or assessed in accordance with s 8.15(3) of the EPA Act.

The site and its context

- 12 The site is located on the western side of the Pacific Highway, south of Shirley Road, and presents a frontage that measures 24.4m to the Pacific Highway.
- 13 The site also has a frontage of 36.5m to Sinclair Street behind. As such, the site is irregular in shape, forming a kind of L-shape.
- 14 That portion of the site fronting Pacific Highway is located within the MU1 Mixed Use zone, and the wider portion of the site fronting Sinclair is located within the R2 Low Density Residential zone, according to the North Sydney Local Environmental Plan 2013 (NSLEP).
- 15 The site is legally identified as Lot 1 in DP 1279891, with an area of 2790m².

- 16 The site is located within an area that contains a mix of multi-storey commercial and retail buildings that generally front the Pacific Highway, and largely single storey residential buildings fronting Sinclair Street to the rear, elevated above sandstone retaining walls and sandstone foundation walls above that.
- 17 To the west of Sinclair Street, development is more varied, with a mix of residential flat buildings and other lower scale residential dwellings reflecting the R3 Medium Density Residential zoning that applies.
- 18 The site is also in close proximity to the Crows Nest Commercial Centre and the Crows Nest Metro Station, and to the St Leonards Commercial Centre and the St Leonards Train Station.
- 19 The area is agreed to be in transition. Planning proposals have been prepared for a number of sites located close to the subject site, including:
 - (1) The adjoining site fronting the Pacific Highway to the immediate south of the site known as 270-272 Pacific Highway.
 - (2) 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street otherwise known as the 'Five Ways Triangle'.

The St Leonards and Crows Nest 2036 Plan

- 20 The site lies within an area identified in the St Leonards and Crows Nest 2036 Plan (the 2036 Plan) (Exhibit 1, Tab 33). The 2036 Plan has been led by the Department of Planning, Industry and Environment (the Department), in consultation with North Sydney Council, Willoughby City Council, Lane Cove Council, other government agencies and through extensive community engagement (folio 748).
- 21 The 2036 Plan, dated August 2020, has been developed as a strategic land use and infrastructure plan to guide future development in the precinct and as a precursor to more detailed site specific planning investigations (folio 748).

- 22 The 2036 Plan outlines proposed changes to existing planning controls, that will be developed as part of any future rezoning process (folio 810).
- 23 Diagrams show the site, or part of the site, is located within the area of proposed changes to planning controls, such as the number of storeys which is identified for change to 8 storeys to the MU1 land (folio 813).
- 24 The Council submits that while the 2036 Plan is not an environmental planning instrument, it is open to the Court to take the document into account as a matter of public interest.

Explanation of Intended Effect, Crows Nest Transport Oriented Development Precinct

- 25 The parties agree the 2036 Plan is superseded by a document titled 'Explanation of Intended Effect, Crows Nest Transport Oriented Development Precinct', also prepared by the Department, dated July 2024 (the EIE) (Exhibit 2, Tab 4).
- 26 The boundaries of the EIE adopt the boundaries of the 2036 Plan in order to accelerate its rezoning (folio 143), and the objectives of the EIE seek to review and implement recommendations of the 2036 Plan.
- 27 The EIE, exhibited between 16 July and 30 August 2024, states its purpose is, in part, to outline proposed planning controls for the rezoning of the Crows Nest Transport Oriented Development Precinct. The EIE anticipates implementation through a self-repealing State Environmental Planning Policy that will amend, among other instruments, the NSLEP (folio 142).
- 28 The Council submits that while the site is subject to change, that change is not to the degree claimed by PDS. When reference is made to the EIE, and the documents prepared in support of it, the proposed change in zoning, height and floor space ratio (FSR) to that part of the site zoned R2 is clearly designed to support the delivery of new public open space.

- 29 Section 1.4 of the EIE states that a master plan and urban design review of the 2036 Plan has been undertaken, supported by technical studies to determine boundaries and opportunities for new housing (folio 146) depicted in Figure 3 of the EIE, in which the site is located. The site is marked in blue as 'Subject to rezoning – anticipated change' (folio 147).
- 30 Such studies include an Open Space Investigation (folio 197), and Masterplan Testing of the Crows Nest Pacific Highway Corridor (Corridor Study) (folio 199).
- 31 The Open Space Investigation identifies the car park to the rear of the subject site, at 79-81 Sinclair Street, as a site of potential open space, notwithstanding its heritage listing and absent consideration of how such open space may be delivered.
- 32 The same area of the site is depicted in the Corridor Study as open space, and labelled as follows:
- "Indicative location to provide much needed new open space along Sinclair Street for the growing local community. Maintain access to adjacent property fronting Pacific Highway."
- 33 Figure 6 of the EIE (folio 151) appears to identify that part of the site occupied by the car park, and it must be said, part of the existing building that also occupies a portion of the R2 land, to be proposed for no change to the zoning. This is despite the land to the south being identified for rezoning to R4 High Density Residential.
- 34 Likewise, Figure 10 of the EIE (folio 155) depicts the proposed maximum height of buildings standards, in which that portion of the site zoned R2 is shown unchanged, and the portion zoned MU1 is shown with a height of 50m.
- 35 Section 2.8 of the EIE (folio 164) once again identifies the site at 79-81 Sinclair Street as potential open space, and explains the additional height and FSR on the land zoned MU1 would act as a development incentive, albeit further investigation is required into the delivery of potential open space.

36 Figure 13 of the EIE (folio 158) depicts a proposed change in FSR in the area, where none applies today, to an FSR standard of 2:1 on the land zoned R2, and a FSR standard of 6:1 to the MU1 zoned land.

37 Additionally, Masterplan Testing at folio 201 also explains the proposed arrangement for FSR on the site in the following terms:

“...The site has been split in two, with the portion at the front [MU1 land] identified as a heritage item and the portion at the rear [R2 land] flagged as an indicative location to provide much needed open space. If open space is delivered, the controls will thus only apply to the front of the lot, shown as 14 storeys with a total FSR of 6:1 to match surrounding developments. If open space is not provided to the rear of the lot, the site remains subject to the 2036 Plan controls that showed 8 storeys and an FSR of 4:1.”

38 Mr McDonald believes the EIE is not explanatory of a proposed instrument as understood in terms at s 4.15(1)(a)(ii) of the EPA Act, as the EIE is not more than a strategy document. At the most, the weight given to the EIE would be as a matter of public interest.

39 However, even if weight is given, Mr McDonald notes that whenever a taller building may be contemplated on the MU1 portion of the site, there can be no building on that portion of the site zoned R2 until the zoning of that area is clarified.

40 In my view, it is appropriate to give greater weight to the EIE than the 2036 Plan for three reasons. Firstly, because the 2036 Plan is clearly a strategy document that anticipates more detailed site-specific planning investigations, and secondly because the EIE states that it, in effect, supersedes the 2036 Plan by virtue of 'reviewing' the assumptions that lie therein. Thirdly, I accept the submission of PDS that the EIE is a document consistent with the terms of s 3.30 of the EPA Act that provides for the publicising of a document described as an "explanation of the intended effect of the proposed instrument" (subs (1)(a)) so as to seek and consider submissions from the public on the matter (subs (1)(b)).

41 As such, the EIE is a draft environmental planning instrument, which the 2036 Plan is not.

42 The 2036 Plan and EIE are particularly relevant in the circumstances of this case as the height of the proposed development exceeds the two height of building standards at cl 4.3 of the NSLEP.

43 However, before dealing with the question of the height exceedance, it is also helpful to set out the competing submissions advanced by the parties on whether the proposal is permissible in the R2 zone.

44 In short, this is because the Land Use Table at cl 2.3 of the NSLEP does not permit residential flat buildings on that part of the site zoned R2.

Whether the proposed development is permitted in the R2 zone

45 The Council contends that when principles of statutory construction are properly applied, the terms of cl 5.10(10) do not permit PDS to rely upon the heritage incentives contained therein because the site on which the development is proposed includes land that is not land on which the heritage item is erected.

46 In particular, that portion of the site located to the west of the former Gas Showroom building is land that was formerly occupied by dwellings fronting Sinclair Street until the 1970's, and so did not form part of the heritage item, nor act as a curtilage for it.

47 The Council's position is that when cl 5.10 is read as a whole, it is clear that the legislature adopted four different phrases within the provision referring to land:

- (1) "land on which a building is erected" (cl 5.10(10));
- (2) "land on which a heritage item or Aboriginal object is located" (cl 5.10(2)(e) and (f));
- (3) "land that is within a heritage conservation area" (cl 5.10(5)(b)); and

(4) "land that is within the vicinity of land referred to in paragraph (a) or (b)"
(cl 5.10(5)(c)).

48 Only the text at cl 5.10(10) uses the language of land on which a heritage building is *erected*, as distinct from land on which a heritage item or Aboriginal object is *located* (emphasis added).

49 Such a distinction in the text of the provision must be intended by the legislature as it can be presumed to have used the same words when the same meaning is intended, and different words where a different meaning is intended: *Creative Academy Group Pty Ltd v White Pointer Investments Pty Ltd* [2024] NSWCA 133.

50 Likewise, as shown in *Stamford Property Services Pty Ltd v Mulpha Australia Ltd* (2019) 99 NSWLR 730; [2019] NSWCA 141 (*Mulpha*), land is a word of such general meaning it is necessary to consider the context in which the word appears, and the scope and purpose of the relevant statutory provisions, in order to determine how the word 'land' is to be construed.

51 The context in which the provisions at cl 5.10 operate is found, in its entirety, within cl 5.10 of the NSLEP when the provision is read as a whole, including the objectives that are, relevantly, to conserve the environmental heritage of North Sydney, and the heritage significance of heritage items.

52 When so understood, the phrase "land on which [a building that is a heritage item] is erected" is the land to which that subclause applies, if it meets two criteria:

(1) Firstly, that the land is land to which the NSLEP applies and,

(2) Secondly, it is land on which a heritage item is erected.

53 According to the Council, the land on which a building is erected is that land on which the building that is the subject of the heritage listing was completed absent any changes to the footprint of the building, by addition or demolition.

- 54 That said, the Council also entertains that the land on which such a building is erected may also comprise some element of curtilage. Aerial photographs (Exhibit B, Tab 5) and surveys (Exhibit A, Tab 23) indicate some land to the west of the Gas Showroom building that the Council submits may be considered to answer the description of 'curtilage' in the Dictionary of the NSLEP. However, even if that is the case, the curtilage would not extend to the Sinclair Street frontage because that land was formerly the location of three dwellings, and so could not serve as curtilage to the Gas Showroom building.
- 55 Likewise, Lot 4, Section 2 in DP 1649, located to the north of the Gas Showroom building is not land on which the heritage item is erected.
- 56 The inclusion of this land within the site was only effected in January 2022 (Exhibit 1, folios 297-299), at which time Lots 1-6 in DP 716494, and Lot 4 in Section 2, in DP 1649, were consolidated to form the site cited at [15].
- 57 To the extent that the reference in Sch 5 of the NSLEP is to Lots 1-6 in DP 716494, and the Heritage Map shows the land to which the heritage significance is affixed is that land shown on the consolidation plan above, there is no reference to the Heritage Map in cl 5.10 of the NSLEP.
- 58 Furthermore, there is no reference to the Heritage Map in the definition of 'heritage item' in the NSLEP, unlike the definition of 'heritage conservation area' that invokes the Heritage Map.
- 59 The Council argues that its Heritage Map at Sch 5 of the NSLEP cannot be relied upon to identify an item of heritage significance.
- 60 PDS submits that when the NSLEP is construed according to accepted principles of statutory interpretation, the Court would regard the meaning of the phrase "land on which the building is erected" to have no more than its ordinary and grammatical meaning, having regard to their context and legislative purpose, and where the text is considered as a whole, as well as the general purpose of the relevant provision.

61 So understood, the phrase adopts the present tense to invoke the land on which a building *is*, and not *was*, erected. The provision is not directed to the land at the time the Gas Showroom building was erected, but the land on which the building stands today.

62 As at [50], PDS likewise relies on *Mulpha* to affix the meaning of 'land' to a given context that must be understood by reference to the scope and purpose of the provision itself.

63 Schedule 5 of the NSLEP identifies the address and property description of heritage items. In this case, the heritage item is identified as the Former North Shore Gas Co office at 286-288 Pacific Highway, described as Lots 1-6 in DP 716494.

64 The heritage item is also identified as "Item No I0150", as it appears on the relevant Heritage Map which is adopted by the terms at cl 1.7 of the NSLEP.

65 The map, re-produced in part below, shows the land as described in Sch 5 to comprise Lots 1-6, as has been the case since 2001.



66 To read the provision at cl 5.10(10) to refer to land as defined at the time a building was completed, or as it was erected on the land at the time, is to ignore

the express terms of Sch 5 and the Heritage Map and instead requires an expedition through historic documents, titles and deposited plans to identify the precise physical limits of the land on which the item was erected.

- 67 The factual circumstances and statutory regime relevant to the decision in *Mulpha* are distinguished from those in this case because, firstly, the text at s 57 of the *Heritage Act 1977* that is the focus in *Mulpha* acts as a prohibition and is not facultative as is the case with cl 5.10(10) of the NSLEP.
- 68 Secondly, because s 57(1)(e) of the *Heritage Act* contemplates orders in respect of a specific site or curtilage of a building – a question resolved in that case by reference to a plan that identified the curtilage of the heritage item: *Howe Architects Pty Ltd v Ku-ring-gai Council* [2021] NSWLEC 1233 (*Howe Architects*) at [64].
- 69 Thirdly, because the making of an application under s 59 of the *Heritage Act* is in respect of whether an item or land is situated on or comprises Crown land, unlike the situation in this case. In such a context, it was reasonable to find the application considered in *Mulpha* related to the footprint of a building on Crown land, and not the land itself.
- 70 In contrast to those provisions of the *Heritage Act* considered in *Mulpha*, the conservation incentives at cl 5.10(10) are facultative and are designed to facilitate conservation.
- 71 Next, the provision contemplates the grant of consent for either a building that is a heritage item, or the land on which a building is erected. However, the Council's preferred construction reduces the provision to not more than the footprint of the building on the land. As such, the incentives provided for by the legislature are confined to that footprint, and not to a wider application on the land.
- 72 If the understanding of 'land' is indeed highly contextual, as per *Mulpha*, then weight must be given to the listing of the site in Sch 5 of the NSLEP and to the

relevant Heritage Map as these are particular creatures of the NSLEP, and are not features of the *Heritage Act*.

73 The arguments advanced by the parties in the circumstances of this case are not unlike those advanced in *Howe Architects*, although in that case Council argued the heritage item was the entirety of the site, and PDS sought to argue the heritage item was limited to the dwelling house on the site.

74 In *Howe Architects* at [70], the Commissioner found there to be a distinction between the factual circumstances in that case and those in *Mulpha* for reasons that are also relevant in the circumstances of this case. In *Mulpha*, the plan included on the heritage inventory sheet identified the building footprint and the curtilage of the item to be one and the same, and excluded the remaining portion of the cadastral lot (*Howe Architects* at [62]).

75 However, in the circumstances of this case, there is no such evidence that limits the heritage significance of the North Shore Gas Building to the footprint of the building itself. Instead, from the date of its construction, the building appears to have been erected on land comprising a portion of the lots originally set out to the west of Lot 5 fronting what is now known as the Pacific Highway, and formerly known as Lane Cove Road - a fact acknowledged by the Council in written submissions.

76 As was shown in *Howe Architects*, at [69], if 'land' is defined as the Council argues, then the land is confined to the footprint of the Gas Showroom building, and there is no purpose served by the phrase, "or the land on which such a building is erected" in the provision at cl 5.10(10).

77 As in *Howe Architects*, I consider Sch 5 of the NSLEP a relevant part of the NSLEP that identifies the location of the heritage item by reference to the cadastral lots being the lots on which the heritage item is erected. Those lots are Lots 1-6 in DP 716494, according to Sch 5.

- 78 The Council submits that the Commissioner in *Howe Architects* failed to consider the decision in *Swansea RSL Club & Rosecorp Pty Ltd v Council of the City of Lake Macquarie* [2005] NSWLEC 755 (*Swansea*).
- 79 I have considered the circumstances in *Swansea*. As I understand the circumstances of the case, it relates to a large site of 5.5 hectares on which multiple items of heritage were identified in the relevant local environmental plan. The proponent sought to convert one of the existing buildings on the site to a registered club with apartments over. The Court found, at [77], firstly that the heritage items were not sufficiently relevantly related to the proposed actual development site where physical works will occur, and secondly there was an “express lack of intention to physically use any one of the heritage items in connection with the development...”.
- 80 I consider the finding in *Swansea* at [77] to sufficiently distinguish the facts in that case from those in this in two ways. Firstly, in *Swansea* the Court was asked to consider whether the site proposed for development was land on which a heritage item known as ‘Wallahah House’, is erected. This was necessary due to the number of heritage items identified on one lot. The Court chose to deal with the question by identifying the curtilage of Wallarah House. In the circumstances of this case, there is one heritage item identified on a site comprising multiple lots. Secondly, and significantly in my view, the Court found a lack of integration between the development proposed and any of the heritage items, unlike the proposal in this case which clearly seeks an integration with the Gas Showroom building.
- 81 The Council also submits that as the North Shore Gas Company was never the owner of Lot 4, the lot located to the north of the Gas Showroom building, that land is not land on which the heritage item was erected and so cannot benefit from the heritage incentives provision.
- 82 To accept such a submission would appear to limit the application of the provision at cl 5.10(10) to only those sites where the land bears an identical description to that land on which the building the subject of the listing was

originally erected, presumably absent subsequent subdivision or consolidation as is the case here.

- 83 I do not understand the historical consolidation or subdivision of land on which an item of heritage significance is found today to preclude the operation of the incentive provisions. It is common for the land on which a heritage item is, or was originally erected, to be different from that evident today. To suggest that cl 5.10(10) should be read to apply only to land that is wholly unaltered from its original state at the time a heritage building was completed would appear to conflict with the otherwise facultative character of the provision and it is unlikely, in my view, that such a construction gives effect to the objective intention of Parliament in drafting the provision.
- 84 As I find the land on which the heritage item is erected to be the land so identified in Sch 5 of the NSLEP, it follows that the provisions at cl 5.10(10) apply to the site, including that portion of the site zoned R2, and to Lot 4.
- 85 The next question for the Court to determine is whether development consent may be granted, even though development for the purpose of a residential flat building is prohibited by the Land Use Table in the R2 zone. For it to be so, the Court must form an opinion of satisfaction as to those matters at cl 5.10(10)(a)-(e) of the NSLEP.
- 86 In respect of subcl 5.10(10)(a), Ms Trueman considers the architectural and structural drawings to lack the level of detail expected of development that has an acknowledged impact on a heritage item.
- 87 In broad terms, Ms Trueman's concerns are that new columns will penetrate the heritage item, grounded on pads below the lower ground floor, and that structural supports will be visible over the heritage item from locations on the Pacific Highway.
- 88 However, I note the heritage experts agree that Schedule of Conservation Works prepared by Heritage 21 (Exhibit D, Tab 2) is comprehensive and covers

the works necessary and appropriate to conserve the heritage item. Such consensus is qualified, at par 3.2 of the joint expert report with the proviso that annotations contained in the marked plans appended to the Heritage Management Document must be transposed on to the architectural plans, a task that has now been completed. To the extent that Ms Trueman expresses concern at the potential impact of structural columns and the support of a northern wall to the Gas Showroom building, I consider the explanation provided by Mr Bonus in his written response, filed with the Court on 18 September 2024, resolves Ms Trueman's concerns by identifying particular structural drawings that indicate the retention of heritage fabric.

- 89 In respect of subcl 5.10(10)(b), the Court must be satisfied that the proposed development is in accordance with a heritage management document that has been approved by the consent authority. A Heritage Management Document, prepared by Heritage 21 dated September 2024 (Exhibit D, Tab 2), includes a Schedule of Conservation Works that is the subject of agreement between the heritage experts.
- 90 Additionally, a Fabric Analysis dated 1 July 2024 (Exhibit B, Tab 12), and Statement of Heritage Impact dated July 2024 (Exhibit B, Tab 13), both prepared by Heritage 21, support the proposal.
- 91 While the Council has not approved the Heritage Management Document, Fabric Analysis or Statement of Heritage Impact, the agreement of the heritage experts at [86], and subsequent explanation by Mr Bonus, is sufficient, in my view, for the Court to exercise the functions and discretions of the Council under s 39(2) of the *Land and Environment Court Act 1979* (LEC Act) to so do.
- 92 The Court also has in evidence structural certification of the columns about which Ms Trueman expresses concern (Exhibit K), prepared by Mr Andrew Cutuk, Director and Senior Engineer with CAM Consulting, Structural and Civil Engineering. Finally, annotations contained in the marked plans appended to the Heritage Management Document are now transposed on to the

architectural plans in accordance with Ms Trueman's written evidence at par 5.48 of the joint expert report.

- 93 As the Heritage Management Document, architectural plans and structural drawings are identified in Condition A1 of the without prejudice conditions of consent, the Court reasonably expects that the necessary conservation works identified in those documents will be carried out in accordance with subcl 5.10(10)(c), should consent be granted.
- 94 As I consider the structural concerns held by Ms Trueman to be addressed, the remaining adverse effect on the heritage significance of the Gas Showroom building requiring consideration would appear to be the visual impact of the overhang by the proposed tower when viewed from the Pacific Highway.
- 95 In the joint expert report, Ms Powale cites examples of towers that overhang, or cantilever over heritage buildings below, or adjacent to such towers. However, Ms Powale also acknowledges these examples do not involve the penetrating of the heritage items by structural columns as is proposed here, and furthermore that the ideal heritage outcome is that there be no penetrating of the heritage item by structure.
- 96 The State Heritage Inventory records the statement of significance for the item on the site as follows:

"The former North Shore Gas Co Showroom and office has historical significance for its ability to give evidence to the supply and promotion of utility services (gas), and reflects the varied mix of commercial uses in the 1940s along the Pacific Highway in Crows Nest. The building has associative significance for its associations with the North Shore Gas Company, the architects Rupert Villiers Minnett and Charles Cullis-Hill, builders Howie Moffat & Co, and Wunderlich Ltd. A fine example of the Inter-war Art Deco style in a commercial shop/showroom setting with a use of high quality materials including red granite, bronze facade elements and architectural terracotta. Set within the wider Crows Nest precinct, the type and level of materials are almost unique.

The building is representative of the marketing and commercial activities of mid-Twentieth Century utility companies such as the North Shore Gas Company. The building exhibits high quality use and details of materials which are now increasingly rare. Such elements and details include: bronze facade elements, architectural terracotta, coloured terrazzo amongst others. This item

is assessed as a rare example of an Inter-war Art Deco commercial building within North Sydney, particularly with its association as the showroom for the utility company North Shore Gas Co, the modernity of the style being appropriate to the products displayed therein.” (Exhibit B, folio 469)

- 97 PDS submits that the proposal does not adversely affect, but may well enhance, the historical or associative significance as it is expressed in the statement of significance by virtue of the retention and restoration of the original showroom, and the façade fronting the Pacific Highway.
- 98 While some of the inclined structural supports will be visible from certain locations on the eastern side of the Pacific Highway, the first support is setback 5.5m behind the parapet of the Gas Showroom building, within a gap or void of two storeys between the topmost level of the parapet of the Gas Showroom building and the underside of Level 4 that overhangs, which is a factor that Mr McDonald believes serves to ameliorate the scale of the tower element, and outweighs the “unorthodox appearance of the struts”. I accept Ms Powale’s opinion that this arrangement, coupled with the retreat of the tower form along the curve in plan to the south east, will maintain the prominence of the Gas Showroom building when viewed from the Pacific Highway.
- 99 Those columns that do penetrate the Gas Showroom building, are limited to the rear of the primary showroom space on the ground floor, where the footprint of the building narrows to admit natural daylight in lightwells to the north and south. Furthermore, the proposed columns are aligned to the existing structural grid of the Gas Showroom building, adopting the existing rhythm so that the position of columns appears logical and not at odds or out of step with the existing fabric.
- 100 While the experts do not offer an opinion on the façade of the new commercial lobby on the site of 290-294 Pacific Highway, it also appears relevant, in my view, that the glass façade of the proposal reflects what the heritage experts describe as ‘faience’ or shallow fluted tile motif of the original Gas Showroom building. In showing deference to such a feature of the existing façade, free of mimicry, it follows in my mind that, for this reason and those summarised above,

that the proposal does not adversely affect the heritage significance of the heritage item, pursuant to subcl 5.10(10)(d) of the NSLEP.

- 101 The final matter about which the Court needs to be satisfied, at cl 5.10(10)(e) of the NSLEP, is that the proposal would not have any significant adverse effect on the amenity of the area.
- 102 An Amenity Impact Assessment prepared by Bonus + Associates dated 31 May 2024 (AIA) (Exhibit B, Tab 9) assesses existing views currently enjoyed from 10 residential flat buildings in the area, and the potential impact arising from the proposal.
- 103 The AIA concludes views from sites in the area are either unaffected, or are affected to a negligible extent, and that view sharing is achieved.
- 104 Shadow diagrams contained in the architectural plans consider existing development in the area, and relevant open space, as well as shadows cast from the approved building height and envelopes proposed for development at 270-272 Pacific Highway and the Five Ways Triangle as foreshadowed in the 2036 Plan, and other building envelopes anticipated by the 2036 Plan. The planning and urban design experts agree that the proposal does not result in unacceptable shadow impacts on adjoining properties (Exhibit 5, par 76).
- 105 In terms of privacy for residents of new and existing dwellings, Mr McDonald cites the perception of overlooking to properties in the R2 zone. I accept the submissions made by PDS that such amenity is maintained by the zero setback to the northern boundary and locating openings in inset light courts, or to the front and rear elevations and where the tower element is limited to that part of the site zoned MU1 so that sightlines into existing apartments at 300 Pacific Highway are prevented.
- 106 Privacy to properties to the rear of the site, and opposite in Sinclair Street, is maintained by the degree of building separation achieved. In particular, privacy between the tower element and that part of the site zoned R2 does not result in

privacy loss to No 77 Sinclair Street because the building separation measures between 9m and 14.35m, in excess of the relevant guidance found in the Apartment Design Guide (ADG), and because sightlines are obstructed by planter boxes to outdoor terraces where those terraces generally address the northern boundary facing the Fire Station.

- 107 Accordingly, when views, overshadowing and privacy are considered, I am satisfied that the proposed development would not have any significant adverse effect on the amenity of the area.
- 108 Furthermore, as I am satisfied on those matters at cl 5.10(10)(a)-(e) of the NSLEP, I conclude that the provisions of cl 5.10(10) of the NSLEP operate to permit the development the subject of the development application, notwithstanding that residential flat buildings are prohibited in the R2 zone.
- 109 However, the proposed development also exceeds the height standard at cl 4.3 of the NSLEP. Having found the proposal to be permitted within the zone by operation of the conservation incentives, the Court must now be satisfied that the exceedance of the height is justified, pursuant to cl 4.6 of the NSLEP.

The height standard is exceeded

- 110 As stated previously, the height of the proposal exceeds the height permitted on the site.
- 111 The height standard applicable to the MU1 land is 16m, and the height standard applicable to the land zoned R2 is 8.5m.
- 112 The written request, authored by Mr John Wynne of Urbis, dated 17 July 2024 (Exhibit B, Tab 30) and prepared in accordance with cl 4.6 of the NSLEP, states that the proposed development comprises:
- (1) 11 storey development in the MU1 zone that measures 44.8m to top of lift overrun, resulting in an exceedance of the height standard by a maximum of 28.8m.

- (2) 4 storey development in R2 zone that measures 15.5m to top of lift overrun, resulting in an exceedance of the height standard by a maximum of 7m.

113 In summary, the written request identifies the following factors as relevant to consideration of the exceedance:

- (1) The fall in the land of around 4.75m from the frontage to the Pacific Highway to the lowest point at Sinclair Street. As such, the exceedance of the height standard varies according to the slope of the land, and because of the two height standards applicable to the site.
- (2) The strategic planning context of which the site is a part, including the relevance of the 2036 Plan and the EIE that both suggest the area is proposed to undergo significant change reflect in increased built form, density and land use activation that vary from the planning controls that apply today.
- (3) The changes foreshadowed to planning controls recommended by the 2036 Plan, in terms similar to those at [20]-[24], the planning proposals that apply to sites in the vicinity of the subject site, similar to those at [19], and changes foreshadowed in the EIE, similar to those set out at [25]-[29].
- (4) Excerpts from the Urban Design Report prepared in support of the EIE (Exhibit C, Tab 4d) include reference to the block in which the site is located, and its potential for increased height along Sinclair Street to improve the height transition from the Pacific Highway.

114 The written request relies on two primary grounds to argue that compliance with the height standards applicable to the site is unreasonable or unnecessary in the circumstances of this case (cl 4.6(3)(a)) as, firstly, the objectives of the standard are achieved notwithstanding the non-compliance with the height standard and, secondly, because the numerical height standard is

inappropriate in the context of the changed strategic planning circumstances of the site.

115 The objectives of the height standard at cl 4.3 of the NSLEP are as follows:

(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,

(b) to promote the retention and, if appropriate, sharing of existing views,

(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,

(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,

(e) to ensure compatibility between development, particularly at zone boundaries,

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,

(g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.

116 In submissions, the Council considers objectives (e), (f) and (g) to be the objectives that are not achieved. However, as the Court must form the necessary opinions of satisfaction to enliven the power to grant consent in terms set out in cl 4.6, I will summarise the reasons PDS relies on to assert that all objectives are achieved.

117 In respect of objective (a), the written request asserts that the land slopes 4.75m from a high point at the Pacific Highway frontage to a low point at Sinclair Street, and that, notwithstanding the variation to the height standard, achieves the objective because of the step in the height proposed.

118 In respect of objective (b), the written request relies on an assessment of existing views currently enjoyed from 10 residential flat buildings in the area, and their potential impact as a consequence of the proposal, contained in the AIA (Exhibit B, Tab 9). As stated at [103], the AIA concludes views from sites

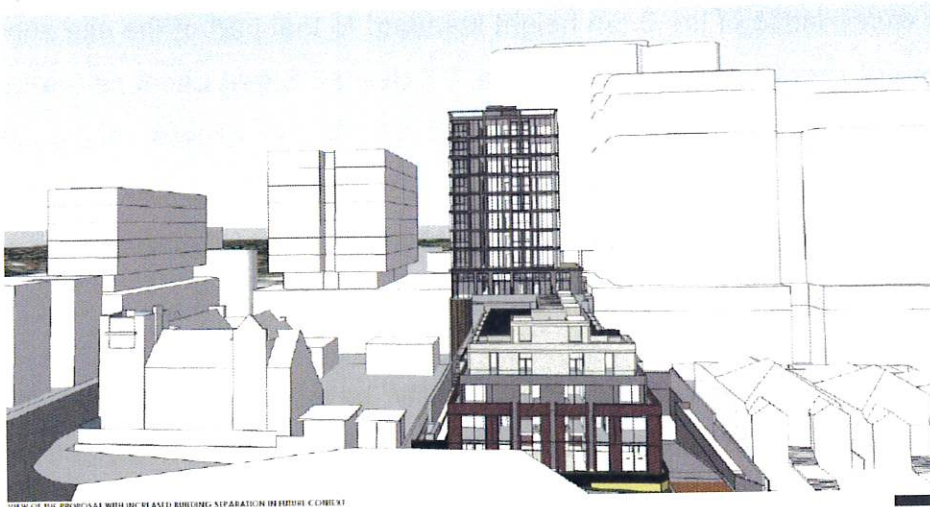
in the area are either unaffected, or are affected to a negligible extent, and that view sharing is achieved.

- 119 In respect of objective (c), the proposal is said to maintain solar access to existing dwellings according to shadow diagrams that depict the extent of overshadowing at 15 minute intervals between 9am and 3pm, in mid winter.
- 120 The shadow diagrams cited by the written request consider existing development in the area, and relevant open space, as well as shadows cast from the approved building height and envelopes proposed for development at 270-272 Pacific Highway and the Five Ways Triangle site as foreshadowed in the 2036 Plan, and other building envelopes anticipated by the 2036 Plan.
- 121 In essence, the conclusion drawn by the written request of the shadow diagrams is as follows:
- (1) Most of the properties to the south of the site are already subject to overshadowing from existing buildings located to the north and east fronting the Pacific Highway, and from other adjoining properties including the dwellings on the eastern side of Sinclair Street.
 - (2) Future development along Pacific Highway anticipated by the 2036 Plan and EIE cast additional shadows onto properties south of the site. The private open space to the rear of the Sinclair Street dwellings is already largely overshadowed by existing buildings, and will be additionally overshadowed by proposed building envelopes. However those areas affected by the additional height proposed on the subject site are free of such affectation by 1.30pm.
 - (3) Likewise, additional shadow generated by the proposal falls on the residential flat buildings at 42 and 46 Sinclair Street until 11am, after which there is no affectation from the proposed development, and a small area of public open space at the intersection of Morton Lane and

Sinclair Street opposite the subject site is unaffected from 9.45am to 1pm.

- 122 In respect of objective (d), privacy for residents of new and existing dwellings is said to be maintained by replicating the zero setback to the northern boundary and locating openings in inset light courts, or to the front and rear elevations and where the tower element is limited to that part of the site zoned MU1 so that sightlines into existing apartments at 300 Pacific Highway are prevented.
- 123 As stated at [106], privacy to properties to the rear of the site, and opposite in Sinclair Street, is maintained by the degree of building separation achieved.
- 124 The exceedance of the 8.5m height standard to that part of the site zoned R2 does not result in privacy loss to No. 77 Sinclair Street because the building separation measures between 9m and 14.35m, in excess of the relevant guidance found in the ADG, and because sightlines are obstructed by planter boxes to outdoor terraces where those terraces generally address the northern boundary facing the Fire Station.
- 125 In respect of objective (e), compatibility between development at zone boundaries is relevant because of the mix of zones evident on, and in close proximity to, the site. The site itself comprises land zoned MU1, and R2. To the approximate north, the Fire Station is on land zoned SP2 Infrastructure, and the land to the west of Sinclair Street is zoned R4 High Density Residential.
- 126 The written request provides the following four reasons for asserting the objective is achieved:
- (1) The tower element is restricted to the land zoned MU1, and a much lower built form is proposed to the land zoned R2, consistent with the zone objectives, the 2036 Plan and EIE which anticipate taller built form with greater density to land fronting the Pacific Highway.

- (2) The scale and design of the built form to Sinclair Street reflects the scale and form of adjacent buildings such as the Fire Station and the single storey dwellings to the south.
- (3) The proposed separation between the development and existing buildings on Sinclair Street ensures an appropriate physical relationship of built form in the lower density part of the site.
- (4) The proposed building height of 12m or 3 storeys on the land zoned R2 is consistent with the height of existing residential apartment buildings located on the opposite side of Sinclair Street in the R4 zone, supported by Figure 29, reproduced below.

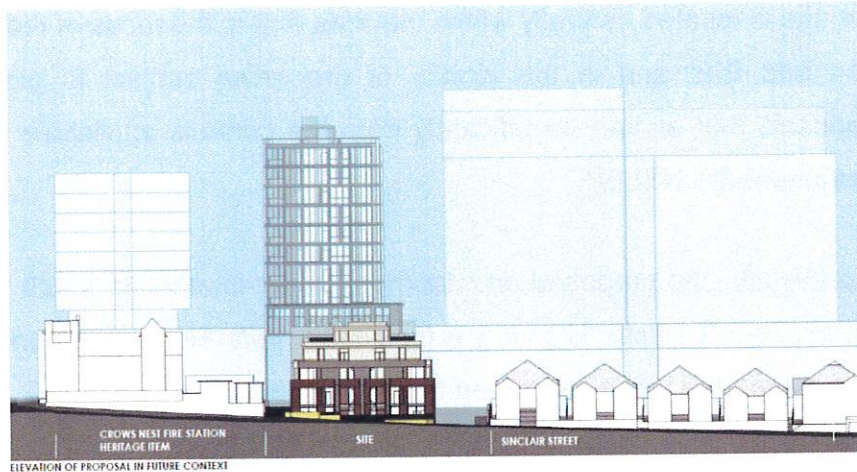


127 In respect of objective (f), the written request relies on the 2036 Plan and EIE as indicative of an area undergoing significant change. As such, the character of the area to be promoted by the scale and density of development is dramatically different to that evident in the controls found in the NSLEP. In this context, the proposal is supported by an urban design analysis that assists in determining the appropriate scale and density that achieves the compatibility required by the objective.

128 According to the written request, the proposal adopts a contextual design approach that responds to the following site conditions:

- (1) The site is located centrally within the area that is the focus of the 2036 Plan and EIE, and in the vicinity of properties subject to planning proposals that all vary significantly from the controls applicable to the area under the NSLEP.
- (2) In particular, the proposed development to the immediate south of the site at 270-272 Pacific Highway is for a vastly different land use and built form in the area when compared to what exists today.
- (3) A diverse range of land uses and built form surrounding the site, including the heritage listed Fire Station, residential flat buildings, low density housing in Sinclair Street and commercial development along the Pacific Highway.
- (4) The site is large, with sloping terrain that falls between two frontages, across two zones and adjoins both residential and non-residential uses, and has itself heritage status while also adjoining a site that is listed for its heritage significance.
- (5) Adopting a contextual response to the rapidly evolving character of the area is more likely to achieve development that is compatible, rather than rely on controls in the NSLEP that are rendered largely redundant by those changing controls on adjoining sites.

129 Adopting such a contextual approach achieves the objective at (f) by restricting the tower element to the land zoned MU1, which also serves to mediate between higher scale development proposed at 270-272 Pacific Highway and lower scale development in the vicinity of Shirley Road, as depicted in Figure 31 of the written request, re-produced below:



- 130 In respect of objective (g), which relevantly seeks to maintain a built form of mainly 1 and 2 storeys in the R2 zone, the written request states that the proposal does not undermine the objective.
- 131 In doing so, it notes the current use of the land zoned R2 is for the purposes of a car park servicing a non-residential use whereas the proposal is to reinstate a residential use into the R2 zone, which is sympathetic to the scale of the area as it exists today and assists with attaining an appropriate height interface with an area identified in the EIE to be rezoned R4 High Density Residential.
- 132 The written request reiterates the impact of state government strategic planning and infrastructure initiatives on the area in which the site is located, including the proximity of the recently opened Crows Nest Metro Station, 2036 Plan and EIE.
- 133 Next the written request argues the area zoned R2 is a relatively small 'island' within those other zones cited at [125] which has produced development at varying scales in the immediate vicinity of the site.
- 134 As stated at [114], in addition to arguing the proposal is consistent with the objectives of the height standard, the written request also argues that it is unreasonable or unnecessary to comply with the height standard as the numerical standards at [111] are inappropriate when the strategic planning initiatives at [20]-[36] are properly understood. In particular, the EIE proposes

a building height for that part of the site zoned MU1 of 50m that would permit 12 storeys. While the EIE does not identify change to the that part of the site in the R2 zone, but for as a place of potential open space, all other land in the R2 zone on the eastern side of Sinclair Street is proposed to have a height of 29m, or 8 storeys in height, applied via rezoning to R4 High Density Residential.

- 135 In such a context, a height standard of 16m and 8.5m is argued by the written request to be inappropriate.

Expert evidence on written request

- 136 The Court was assisted on issues of planning and urban design by the following experts, identified by the parties, who conferred in the preparation of a joint expert report (Exhibit 5):

- (1) Mr Brian McDonald on behalf of the Council in respect of urban design and planning.
- (2) Mr Geoff Bonus, in respect of urban design, and Mr John Wynne in respect of planning on behalf of PDS.

- 137 The experts agree that a 16m height standard for development on the MU1 land is inconsistent with the desired future character of the area set out in the strategic planning documents such as the 2036 Plan and the EIE are considered.

- 138 The experts also agree that adequate regard has been had to the objectives set out in the ADG, that the amenity of the proposed development is also acceptable, and that the shadow impact and visual impact of the proposal are also acceptable.

- 139 Mr McDonald's evidence is that such a height standard is also unrealistic when recent approval of development at 270-272 Pacific Highway nearby is considered. This is because it is reasonable to adopt a height equivalent to such a recent approval, despite it not being a development standard in any

environmental planning instrument, and because, conversely, it is unreasonable to be constrained by a height of 16m, as required by cl 4.3 of the NSLEP.

140 However, as the proposal is for an 11-storey tower, Mr McDonald considers the exceedance on that part of the site zoned MU1 to be the three storeys in excess of the eight he regards as reasonable, otherwise expressed by Mr McDonald as an exceedance of 9.6m.

141 Mr McDonald cites the Urban Design Principles in Part 2 of the 2036 Plan to the effect that a transition in height, bulk and scale are envisaged from St Leonards Station and the Crows Nest Metro Station, reducing in height to eight storeys at the intersection of Pacific Highway and Shirley Road.

142 That said, Mr McDonald also states that a departure from an eight storey building is not in itself out of the question, but that for such a departure to be reasonable is a question of degree. While fourteen storeys would be unreasonable, an eleven storey building may maintain some degree of transition from the thirteen storey height permitted at 270-272 Pacific Highway, to the eight storey height anticipated on Shirley Road.

143 Mr McDonald's primary concern with the tower as proposed is not so much a matter of the overall height, but its lack of transition in height at the zone boundary where that part of the site zoned MU1 meets that part zoned R2.

144 A tower of such height, with nil setback to the R2 land, does not minimise conflict between land uses as required by the objectives for development in the MU1 zone, nor is a transition in scale achieved, as would be the case if the taller built form was setback so as to moderate the overlooking to single storey dwellings in Sinclair Street.

145 A consequence of this, according to Mr McDonald, is likely to be a perception for the residents of the single storey dwellings in Sinclair Street that private open space to the rear of their dwellings is overlooked.

- 146 While sharing many characteristics of the proposal on the subject site, Mr McDonald considers development proposed on the adjoining site at 270-272 Pacific Highway to be acceptable because the setbacks proposed to the R2 zone behind are virtually consistent with those setbacks required by Part C3.2.3.5 of the North Sydney Development Control Plan 2013.
- 147 I note here that the proposal does not locate any windows or balcony openings in a position for Mr McDonald's perception at [145] to be warranted – a point made by Mr Bonus in his oral evidence. Windows are not proposed in the vicinity of the south west corner for a distance along the southern elevation of around 10m (between Gridlines J and L). I accept the evidence of Mr Bonus that where openings are proposed, a direct sightline is so oblique that would make it difficult to obtain, and is from a distance that exceeds the guidance provided at Part 3F of the ADG.
- 148 In essence, I understand Mr McDonald's evidence to be that the tower proposed on that part of the site zoned MU1 to be largely acceptable, if the development proposed to that part of the site zoned R2 complies with the 8.5m height standard, given neither the 2036 Plan nor EIE propose to alter this standard.
- 149 According to Mr McDonald, the written request fails to establish that compliance with the height standard on that part of the site zoned R2 is unreasonable or unnecessary because insufficient evidence is provided to establish that the additional yield in the R2 land is commensurate with the cost of conservation works proposed to the Gas Showroom Building.
- 150 I accept the submissions of PDS that cl 5.10(10) of the NSLEP does not require the Court to apply a test as to whether the yield proposed on the land, whether additional or not, is commensurate or proportional to some aspect of the conservation of an item.
- 151 Additionally, for the reasons set out at [108], I am of the view that the proposed development is permissible on that part of the R2 land.

- 152 However, the Council and its experts also contend that the height, bulk and scale of that portion of the development proposed on that part of the site zoned R2 is not compatible between development, particularly at zone boundaries (objective (e)), is not an appropriate scale or density that promotes the character of the Sinclair Street area (objective (f)), and does not maintain a built form of mainly 1 or 2 storeys in the R2 zone.
- 153 Absent a definition of 'low density', Mr McDonald considers an appropriate scale and density may be derived by reference to the FSR control and height standard applicable in the R2 zone in other local government areas, and where the height in the R4 zone opposite the site on Sinclair Street is 12m.
- 154 Mr McDonald's opinion is that development of five storeys, consisting of apartments with five bedrooms at a height of 15.5m, in an area zoned for low density residential with a height standard of 8.5m is development that is inconsistent with an existing low density residential context, and is not, of itself, of a low density character.
- 155 Instead, the development proposed on the R2 land is consistent with a 4-5 storey residential flat building with a bulk and scale that is incompatible with the bulk and scale of single storey dwelling houses with private open space located to the rear.
- 156 On Mr McDonald's assessment, while the site is not subject to a FSR standard, the gross floor area on that portion of land zoned R2 is equivalent to an FSR of 1.6:1 where land zoned similarly in adjoining local government areas prescribe an FSR of 0.5:1 or, where zoned R3 Medium Density residential, an FSR of 0.7-0.9:1 with which the proposal is clearly at odds.
- 157 Mr Bonus argues that if the number of dwellings proposed on the site is a measure of density, only 8 dwellings are proposed on that portion of the site zoned R2.

- 158 Mr Wynne observes the minimum lot size applicable to the site is 450m² and so it is conceivable that 4 dwellings may be proposed on this portion of the site. Furthermore, as the Land Use Table permits dual occupancy development with consent, in written submissions, PDS submits that 8 units would likely be permitted on the site.
- 159 Mr Wynne's evidence is that compatibility, being different to sameness, is achieved in the development fronting Sinclair Street by restricting the tower element to that portion of the site zoned MU1; providing a smaller scale built form to Sinclair Street, with detailed design and articulation sympathetic to buildings either side of the subject site; by providing adequate separation to adjoining sites so that the physical relationship is appropriate and; the primary built form is four storeys at around 12m in height, consistent with the height permitted in the R4 zone opposite.
- 160 Mr McDonald also regards the bulk of the building, evident in the unrelieved side elevations visible from Sinclair Street, will be easily distinguished from the single storeys dwellings adjacent.
- 161 According to Mr Bonus, the presentation of the development fronting Sinclair Street is in the form of two townhouses, with direct access through landscaped setbacks, in a manner not dissimilar or incompatible with the single storey dwellings adjacent, and where upper levels are setback.
- 162 I am satisfied the proposed development achieves the objectives of cl 4.3 of the NSLEP for the reasons that follow:
- (1) I consider the arrangement of built form on the site generally reflects the natural landform by stepping the development in the direction of the slope of the land, that is the focus of objective (a). The taller development is limited to the high point of the site zoned MU1, and fronting Pacific Highway. The lower form is limited to that part of the site zoned R2. I note that part of the existing heritage building currently located on the

R2 land exceeds the height permitted on the site today and serves as a kind of additional step that likewise reflects the fall of the land.

- (2) I accept the conclusions of the View analysis that forms part of the AIA prepared by Bonus + Associates (Exhibit B, Tab 9). In so doing, I note the view from some properties in the area will benefit from the development, such as Apartments 307, 308, 309, 310 and 405 at 300 Pacific Highway with the removal of built form. As such, I accept that the proposal promotes the retention of, and sharing of views, consistent with objective (b).
- (3) Similarly, I accept the solar access analysis, commencing at p 62 of the AIA, and the agreement of the experts, that the proposal does not do other than maintain solar access to existing dwellings, public reserves and streets, consistent with objective (c) when the built form of development anticipated by the EIE is considered.
- (4) On the basis of the location of openings to the tower form described at [147], and the building separation distances shown in Figure 27 of the written request, I accept the proposal maintains privacy to existing dwellings and promotes privacy for new buildings consistent with objective (d).
- (5) While PDS submits the development on that portion of the site zoned R2 is four storeys, I do not read the definition to limit the development to four storeys. The topmost floor contains more than a lift shaft, stairway or meter room, is not a mezzanine or an attic. The development is five storeys, albeit limited in footprint at the uppermost level. That said, on the basis of the stepped setbacks to Sinclair Street, generous side setbacks that afford appropriate building separation and the predominance of face brick to the lower two levels that approximates the parapet level of an outbuilding with zero setback to the south west corner of the Fire Station site, with which the development is likely to be viewed in context, I accept the development is compatible with development in

Sinclair Street. Likewise, and while not in dispute, I also state here that the tower element is also, in my view, compatible in scale and form to development likely to emerge on the Pacific Highway. As such, I consider the development compatible with development evident today or likely in the future, consistent with objective (e).

- (6) I accept the consensus of the experts, supported by the Urban Design Analysis prepared by Bonus + Associates (Exhibit B, Tab 24), that the tower provides a degree of transition between the height permitted on 270-272 Pacific Highway and the height anticipated at the intersection with Shirley Road. Assisted by the relationships in built form depicted in Figure 31 at [129], I also accept the proposal is an appropriate scale and density that accords to the character of the area as sought by objective (f), which includes the taller residential flat buildings located in the R4 zone but which are in the immediate visual catchment. I also accept that the single storey dwellings in the R2 zone are not the sole determinant of character in the area, which is highly mixed and deserving of the 'mediating' so described in the written request.
- (7) Finally, while Mr McDonald may be correct in his assertion that a residential flat building may generally be regarded as medium or high density development, I note that the Dictionary of the NSLEP defines such development as comprising as few as 3 dwellings which goes to scale and density, being an aspect of objective (f), which I find is appropriate when those elements that contribute to scale are considered, such as setbacks, massing and materials, and the presentation of two townhouses frontages to Sinclair Street. I also accept the submission by PDS that up to 8 dual occupancy dwellings appear permitted on the site, which is a scale and density matched by the proposal.
- (8) I also accept that the proposal is not required to adopt a form that is either 1 or 2 storeys in order to achieve objective (g) for reasons similar to those in *Holt Avenue Cremorne Pty Ltd v North Sydney Council* [2023]

NSWLEC 1736 at [57], as the objective “to maintain a built form of mainly 1 or 2 storeys” does not require all buildings in those zones to be two storeys. That said, the development fronting Sinclair Street presents a two-storey form in face brickwork, albeit with levels above that are somewhat setback.

Whether sufficient environmental planning grounds

163 Five environmental planning grounds are advanced by the written request that are said to be sufficient to justify the contravening of the height standard. These grounds may be summarised as follows:

- (1) Firstly, when the strategic vision for the area is understood, it is clear that the built form envisaged by the 2036 Plan and EIE is dramatically different to that expressed by the controls in the NSLEP. Strict application of the controls in place today would have the effect of undermining the transition already underway, evident in those sites subject to planning proposals. The proposal is for development on a large site spanning two street frontages with building height standards that are ‘largely redundant’. It is for this reason that the proposal adopts a highly contextual approach that responds to the site’s location within the areas subject to the 2036 Plan and EIE, surrounded by a highly diverse range of zones, and to adjoining development that has a vastly different land use and built form than is evident today.
- (2) Secondly, the development facilitates the conservation of the heritage item on the site, consistent with cl 5.10(10) of the NSLEP that would otherwise not be financially viable if the height standard at cl 4.3 of the NSLEP is strictly applied. Funds from the proposed development, including additional space created as a result of the height exceedance, make possible the conservation set out in the Heritage Management Document.

- (3) Thirdly, the written request relies on achieving the objectives of the height standard notwithstanding the noncompliance with the standard, as summarised at [117]-[135].
- (4) Fourthly, when the likely impacts of the development are understood, there are negligible impacts on view loss, overshadowing and privacy. As such, the proposal does not give rise to unacceptable off-site impacts.
- (5) Fifthly, as the proposal facilitates the restoration and reuse of the site for contemporary purposes, the development promotes the orderly and economic use and development of the land, the sustainable management of built and cultural heritage, and the good design and amenity of the built environment that are all objects of the EPA Act with which the proposal is consistent.

164 Mr McDonald rejects the planning grounds as they apply to development proposed on that portion of the site zoned R2, because that portion of the development is not low residential density, is not permitted in the zone and because it does not adequately justify the value of the additional yield against the cost of conservation works.

165 For reasons set out earlier, I find the development proposed on that portion of the site zoned R2 to be permissible, and do not understand the text at cl 5.10(10) of the NSLEP to require the financial justification of the conservation in terms expected by Mr McDonald.

166 In his oral evidence, Mr Wynne acknowledges there is no basis for the assertion made in the written request that the conservation of the heritage item is not financially viable if strict compliance with the height standard at cl 4.3 is required. I do not understand this statement to be fundamental to the second environmental planning ground advanced in the written request. The position being advanced is simply that the exceedance facilitates the conservation and rejuvenation of a heritage item, which is a point I accept.

- 167 I also accept that where the experts agree the height standard on at least part of the site should set aside, and where that site is within an area acknowledged to be not only in transition, but also where the applicable controls are agreed to be in a state of flux, that it is appropriate for the EIE to carry some weight in respect of the character of the area, that is promoted by the scale and density of development.
- 168 Furthermore, I accept the argument put by PDS that, where the experts agree it would be essentially perverse to expect the height standard in the MU1 zone to be strictly applied, a highly contextual site analysis and urban design study, prepared by Bonus + Associates (Exhibit B, Tab 24) that assesses the potential off site impacts of a development that departs from the controls is an appropriate means of assessing the degree of impact likely to result from such a departure. But for privacy impacts and concern at whether and how a transition between the MU1 land and R2 land is addressed, the experts are essentially agreed that the development as proposed does not result in unacceptable offsite impacts to the amenity of surrounding residents or otherwise. For reasons stated earlier, I do not consider the concerns as to privacy or transition to be warranted.
- 169 It is necessary here to address the identification of a portion of the site for potential open space by the 2036 Plan and in the studies that support the EIE. The proposed maximum height applicable to the site, as depicted in Figure 10 of the EIE, is for a height standard of 50m to the land zoned MU1.
- 170 No height is identified on the land zoned R2, and it may be inferred that no change is proposed to this discrete portion of Sinclair Street, notwithstanding the proposed increase in height to the remainder of the street, except for the Fire Station site, to a height of 28m, and its rezoning to R4 High Density Residential.
- 171 At the very least, the character of the area, when the EIE is given weight, is dramatically different to that evident today. In such a context, a height of 15.5m on that portion of the site zoned R2 does not seem unreasonable. There is no

proposal in the EIE to rezone that part of the site to a different zone, such as RE1 Public Recreation, in which residential development is prohibited.

- 172 For these reasons, I am satisfied that the environmental planning grounds advanced by the written request are sufficient to justify the contravention of the height standard, and accordingly, that the written request adequately addresses those matters to be demonstrated by cl 4.6(3) of the NSLEP.
- 173 The written request also tabulates an assessment of the proposal against the objectives of development in the MU1 and R2 zones, with which the proposal is said to be consistent and so be in the public interest, in accordance with cl 4.6(4)(b) of the NSLEP.
- 174 In written submissions, the Council asserts that the requirement at cl 4.6(4)(a)(ii) to consider the public interest no longer applies and that as a consequence, contention 3(d)(ii) which only invokes the objectives of the R2 zone, is no longer pressed. However, it is my understanding that the effect of cl 8 of the Standard Instrument (Local Environmental Plans) Order 2006 preserves the provision at cl 4.6(4) for any development application made, but not determined, before the commencement of the relevant amending order on 1 November 2023.
- 175 It is also relevant to note once again that the development application was lodged on 8 March 2023. At the time, the 'Mixed Use' zone in the NSLEP was designated 'B4'.
- 176 It is my understanding that on 26 April 2023, the commencement of the Standard Instrument (Local Environmental Plans) Amendment (Land Use Zones) Order 2021, and State Environmental Planning Policy Amendment (Land Use Zones) (No 3) 2022 resulted in a change of the designation from 'B4 Mixed Use' to 'MU1 Mixed Use' with its attendant zone objectives.
- 177 The Amended Statement of Facts and Contentions filed with the Court in August 2024 (Exhibit 4) cites the objectives of the MU1 zone that took effect on

26 April 2024, at par 36 and in Contention 2, particular (b). Likewise, the Council bundle of documents inserts those same objectives (Exhibit 1, folio 341):

178 The objectives of the MU1 zone in the NSLEP are as follows:

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.

179 The objectives of R2 zone are as follows:

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.
- To ensure that a high level of residential amenity is achieved and maintained.

Expert evidence on zone objectives

180 The experts agree that the proposal includes development for the purposes of a residential flat building and commercial and retail spaces within the land zoned R2, and that development for such purposes is prohibited development in the R2 zone.

- 181 However, the same experts do not agree on whether the proposed development is consistent with the certain objectives of the R2 or MU1 zone.
- 182 In respect of the R2 zone, the Council contends the proposal does not provide for the housing needs of the community within a low density residential environment (the first objective), nor encourage development of sites for low density housing, including dual occupancies, because the development does in fact compromise the amenity of the surrounding area and cultural heritage of the area (the third objective), and that it does not ensure that a high level of residential amenity is achieved and maintained (the fourth objective).
- 183 In respect of the MU1 zone, the Council also contends the proposal fails to minimise conflict between land uses within this zone and land uses within adjoining zones (the third objective).
- 184 My Wynne's evidence is that a conflict between land uses with adjoining zones is minimised in three ways:
- (1) Firstly, by the abrupt change in height between the tower and the development proposed on that part of the site zoned R2 in the east-west direction, and the transition in the north-south direction between the taller form of the Fire Station, and the lower form of the single storey dwellings on Sinclair Street to the south.
 - (2) Secondly, that the built form adopted in the proposal reflects the underlying topography west of the Pacific Highway.
 - (3) Thirdly, for the reasons similar to those at [147], by ensuring no privacy impact arises.
- 185 As I have already found development on that part of the site zoned R2 is permissible results in no adverse privacy impacts and demonstrates an abrupt transition of a kind seemingly anticipated by the controls, I accept Mr Wynne's opinion that conflict between the MU1 zone and R2 zone is minimised.

- 186 In respect of the remaining objectives of the MU1 zone identified by the written request, I also accept the assessment at pp 52-53 of the written request that the development proposes a mixed-use development comprising retail/commercial spaces in the podium/lower levels and residential accommodation that is consistent with the mix of compatible land uses sought by the first objective of the MU1 zone; integrates a mix of land uses in a location that is well served by public transport (the second objective), and contributes to a vibrant mixed use centre that is safe and with high residential amenity (the third objective). It achieves this mix in a manner that is consistent with the fourth objective by maintaining non-residential uses on the lower two levels of the development fronting the Pacific Highway.
- 187 While not the subject of submissions, it is evident that the objectives dealt with in the written request are not those objectives relied on by the Council, nor evident in the Land Use Table today.
- 188 The four objectives dealt with in the table at pp 52-53 of the written request are in the following terms:
- To provide a mixture of compatible land uses.
 - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
 - To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
 - To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.
- 189 I am not required by cl 4.6(4)(a)(ii) of the NSLEP to find that the written request has adequately addressed the objectives of the zone. Instead, the opinion of satisfaction at cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under cl 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in cl 4.6(4)(a)(ii), not indirectly satisfied that an applicant's written request has adequately addressed the matter in

cl 4.6(4)(a)(ii) (see: *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 at [26]).

190 When the assessment at pp 52-53 of the written request is considered against the zone objectives at [178], which closely resemble those objectives assessed by the written request, I am of the opinion that the Court can be satisfied that the development is also consistent with the objectives of the MU1 zone for the reasons that follow:

- (1) In respect of the first objective, I understand the mix of compatible uses described in the written request represents a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- (2) In respect of the second, fourth and fifth objective, the positioning of retail uses and entry to both residential and commercial uses at the lower levels fronting Pacific Highway clearly provides an active street frontage that also includes heritage interpretation that will attract pedestrian traffic and contribute to a vibrant, safe, diverse and high quality street life with residential amenity.
- (3) My finding as to consistency with the third objective is set out at [185].
- (4) In respect of the sixth objective, the development proposes to maintain ground floor commercial uses in the form of the retail within the former Gas Showroom building, additional commercial uses above, and residential uses above that.

191 Turning once again to the objectives of the R2 zone that are contested by the Council at [182], the proposal clearly provides for the housing needs of the community in a low density residential environment and, by proposing retail and commercial uses at the lower levels fronting Pacific Highway, also provide facilities to meet the day-to-day needs of residents. For reasons I have already set out, I consider the amenity of the surrounding area, including the cultural

heritage of the area, to not be compromised by the proposal, and is likely to provide a high level of residential amenity on the site, and to maintain the residential amenity of adjoining and nearby properties.

- 192 As I find the development is consistent with the objectives of the height standard and of the relevant zone objectives, I am satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the height standard at cl 4.3 of the NSLEP, and with the objectives of the MU1 and R2 zone.
- 193 In arriving at this opinion of satisfaction, I also note the Council's own submissions in response to the EIE characterises the allocation of open space on this site as 'compromised' (Exhibit E, folio 687), and proposes funding for such an outcome to be behind two other options that appear preferred (folio 688).
- 194 I have also considered whether the contravention of the development standard raises any matter of significance for State or regional environmental planning, and the public benefit of maintaining the development standard, pursuant to cl 4.6(5) of the NSLEP. As I find there to be no such matters of significance, the Court, exercising its power under s 39(6) of the LEC Act deems the Secretary's concurrence and so I find there are no grounds on which the Court should not uphold the written request.

Design quality of residential apartment development

- 195 Chapter 4 of State Environmental Planning Policy (Housing) 2021 (Housing SEPP) applies by virtue of s 144(2) and (3).
- 196 The DA was referred to the Design Excellence Panel which I understand is constituted by the Council, and not the Minister under s 288A of the EPA Regulation. As such, s 145 of the Housing SEPP does not apply.
- 197 Section 147 of the Housing SEPP requires that certain matters be considered, including relevantly, the design principles at Sch 9 of the Housing SEPP and

the ADG. The experts agree that adequate regard has been had to the objectives set out in the ADG, that the amenity of the proposed development is also acceptable, and that the shadow impact and visual impact of the proposal are also acceptable.

198 I accept Mr Wynne's view that the building separation required by Objective 3F of the ADG to achieve visual privacy does not apply where the development has been considered as an integrated whole, so that matters of privacy and other interfaces can be considered in the design and where there is little or no need to factor in the sort of contingencies required when future adjoining development on a site, or between sites under different ownership, are unknown or subject to change.

199 In this case, the arrangement of built form on the site is in the form of one building, and is not a series of separated buildings as is depicted in Figure 3F.2 of the ADG, to which separation distances between apartments within the same site apply.

200 That said, visual separation between the proposed development on that part of the land zoned R2 and the Fire Station site to the north, and No 77 Sinclair Street to the south, comply with the guidance at Part 3F of the ADG.

201 While the guidance at Part 3F also advises for an additional 3m setback to be applied where a residential flat building is proposed on a site adjoining a zone boundary, I note this generally applies to circumstances that once again assume separate ownership between sites held in different ownership unlike the situation here where those parts of the site that are differently zoned have been considered holistically.

202 I am assisted in considering those matters required to be considered at ss 147 and 148 of the Housing SEPP by a statement prepared by Mr Rachid Andary (Arch Reg No 8627) and dated 15 July 2024, in accordance with s 29 of the EPA Regulation that attests Mr Andary directed the design of the proposal, and sets out the means by which the design principles at Sch 9 of the Housing SEPP

have been applied in the proposed development, and how the objectives in Parts 3 and 4 of the ADG are addressed.(Exhibit B, Tabs 31-32).

Traffic

203 The Court was assisted in considering traffic matters by the evidence of experts in traffic engineering, Mr Tom Steal for PDS and Mr Paul Corbert for the Council. Together, the experts conferred in the preparation of a joint expert report (Exhibit 8) in which a number of the particulars initially in contention were agreed to be resolved.

204 The primary issue that remains in dispute is whether car parking numbers provided for in the basement car park are adequate.

205 According to PDS, the parking rates specified in the NSDCP are expressed as a maximum. The experts agree the maximum number of parking spaces in the circumstances of this case is apportioned as follows:

(1) 46.1 residential parking spaces are required;

(2) 2.54 commercial spaces are required; and

(3) 2.14 retail spaces are required.

206 The final number of parking spaces depends on whether the precise numbers are rounded up or down. While Mr Steal, traffic expert on behalf of PDS, acknowledges there no such thing as 0.1 of a vehicle, Mr Corbett, the Council's traffic expert, cites certain provisions at Section 10.2.1 of the NSDCP to the effect that Council encourages proponents to provide fewer parking spaces than the maximum.

207 Mr Corbett agrees the site is located in an area of high accessibility, being close to public transport.

208 Given the newly opened Crows Nest Metro Station lies just 150m to the north of the site, and the proposal is accompanied by a Green Travel Plan (Exhibit 8, Annexure E) that identifies the site is well served by bus routes, and proposes initiatives in Section 6 to encourage future residents and staff of the development to choose travel arrangements that are other than by private vehicle, I consider the provision of car parking spaces in the development to be sufficient.

EV Charging is provided

209 The proposal also provides for 12 electric vehicle charging spaces in Basement 02 that Mr Corbert believes are currently unregulated so that residents may park in the charging space without a capacity for the strata body to enforce shorter timeframes, while Mr Steal believes such an issue can be addressed through by-law adopted by the strata body upon completion.

210 I accept that the terms of the National Construction Code (NCC) are met by the electrical infrastructure being provided in the basement to enable EV charging. As it is put by Mr Corbert, the variety of different and specific chargers is so broad that it may be appropriate for individual owners to carry the responsibility of installing the charger of their choice. I also accept that Mr Corbert's concerns as to the protocols for use of the EV charging spaces are capable of being regulated by by-laws adopted by the strata body, or by a Plan of Management that is the subject of a condition of consent at Condition C13.

The turntable issue

211 Access to the basement is proposed from Sinclair Street. The ramped driveway falls firstly in an easterly direction, before turning north. In the elbow of these two ramps, is a flat area in which a turntable is proposed.

212 The turntable is proposed to be used when a Medium Rigid Vehicle (MRV) is used for waste collection or any other delivery or collection that may be needed by residents or the commercial tenancies proposed on the site. The proposal is

for such a vehicle to be parked at 45 degrees in plan on the turntable to allow other vehicles to pass while in position.

- 213 The primary concern that arises from the location of the turntable as proposed is that the Council contends the path of travel for personnel moving bins between the waste room and a waste collection vehicle conflicts with vehicles exiting the basement, placing personnel at risk.
- 214 The Waste Management Plan (Exhibit D, Tab 6) states that residential waste requires 10 bins of 660L capacity, and that commercial waste requires 13 bins of 1,100L capacity.
- 215 The traffic experts provide calculations as to the time likely to be required for the transport and collection of bins at the MRV, parked in a 45 degree position on the turntable to allow vehicles to exit.
- 216 I am of the view that operators of waste vehicles are familiar with, and regularly operate within, dynamic environments involving risk in undertaking their task. I accept Mr Steal's opinion that vehicles in the car park will be moving slowly as they navigate exit ramps requiring two 90 degree turns in proximity of each other. I also accept that visual and aural cues will be available to waste contractors in moving bins within the car park and that the distance in which conflict is likely, is relatively short. Finally, I also acknowledge waste contractors do not generally stand behind a waste vehicle during waste collection, but to the side where controls are commonly located. So understood, such a position puts a waste contractor in a location where a sightline to vehicles in proximity to the MRV is possible.

Public submissions

- 217 At the onsite view, the Court, in the company of the legal representative, experts and representatives of PDS, heard an oral submission from a resident of a neighbouring residential flat building, and observed the apartment owned by the submitter.

218 The concerns expressed are primarily to do with the loss of light to two bedrooms with windows facing into a lightwell, shared with Units 105, 205, 305 and 405 according to the submission.

219 The lightwell in question faces generally south and the proposal rises on the boundary. Given its orientation, height and dimensions, I do not understand the lightwell to receive direct sunlight for most of the day in mid winter. In my judgment, the effect of the development, if any there is to be one, is that sunlight from the north may be reflected by the proposal into the lightwell as daylight.

Other jurisdictional issues

220 For reasons stated at [190(2)], I am satisfied the proposal complies with the non-residential FSR by having a non-residential FSR of not less than 0.5:1 on the relevant map at cl 4.4A of the NSLEP, and that the building will have an active street frontage to Pacific Highway after its erection, pursuant to cl 4.4A(5) of the NSLEP. As cl 6.12A of the NSLEP seeks similar outcomes, I record here that I am satisfied that no part of the development that is a residential flat building proposes residential accommodation on the ground floor facing a street in the MU1 zone.

221 I have considered the effect of the proposal on the heritage significance of the site in terms set out at cl 5.10 of the NSLEP and, as stated at [108], I conclude the proposed development is acceptable.

222 Assisted by the Stormwater Plans and Hydraulic Compliance Certificate prepared by CAM Consulting dated July 2024 (Exhibit B, Tabs 5-6), the amended architectural plans prepared by Fuse Architecture and Geotechnical Site Investigation Report prepared by Soilsrock Engineering (Exhibit B, Tab 27), I have considered those matters at cl 7.6(3) of the NSLEP in respect of earthworks, and conclude those matters to be satisfactorily addressed. I note the Stormwater Plans depict the onsite detention and treatment of stormwater in Stormwater filter chamber and Music Modelling results record the reduction of suspended solids, phosphorous, nitrogen and gross pollutants. As such, I am

satisfied the potential for adverse impacts on Sydney Harbour to be adequately addressed.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

- 223 The site is located within the Sydney Harbour Catchment as identified by the Sydney Harbour Catchment Map. The parties agree the site is not a strategic foreshore site, a heritage item on the Sydney Harbour Heritage Map or land within a wetlands protection area.
- 224 Section 6.6 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity SEPP) precludes the grant of consent unless the Council, or the Court on appeal, is satisfied that the proposed development ensures that, firstly, the effect on the quality of water entering a natural waterbody will be as close as possible to neutral or beneficial, and secondly, that the impact on water flow in a natural waterbody will be minimised.
- 225 I am satisfied that s 6.6 of the Biodiversity SEPP is achieved by providing sediment control and filtration to water in the post-development scenario in a manner that achieves a neutral or beneficial effect on the water quality and water flow into the harbour.
- 226 For similar reasons, I have also considered those matters at s 6.7 of the Biodiversity SEPP and am satisfied that the retention of water and post-development flows will keep any direct, indirect or cumulative impact on terrestrial, aquatic or migratory animals or vegetation to a minimum, and will not have an adverse impact on aquatic reserves, or in terms of erosion.

State Environmental Planning Policy (Transport and Infrastructure) 2021

- 227 As development is proposed in close proximity to electrical powerlines, written notice was provided to the electricity supply authority, Ausgrid, in accordance with s 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP).

- 228 Ausgrid's response is undated (Exhibit 1, Tab 20) but records that no objection is taken to the proposal.
- 229 Section 2.119 stipulates that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that vehicular access to the land is provided by a road other than the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected. The development fronts the Pacific Highway which is a classified road, and vehicular access will be via Sinclair Street.
- 230 Section 2.120 precludes the grant of consent unless the consent authority, or Court on appeal, is satisfied that appropriate measures will be taken to ensure that certain noise levels are not exceeded. I note here that the Environmental Noise Assessment prepared by TTM Consulting dated 6 June 2024 (Noise Assessment) addresses State Environmental Planning Policy (Infrastructure) 2007 that was repealed on 1 March 2022, which may be observed to pre-date the lodgement of the DA by more than a year. Precisely why an apparent expert in the field would address a repealed instrument was not explained. Nevertheless, the requirements of the repealed SEPP are transferred and addressed by the Noise Assessment in Table 14 such that the Court can be satisfied that appropriate measures are proposed, subject to the recommendations of Section 8 of the Noise Assessment being implemented. I note Condition C50 of the without prejudice conditions of consent requires the implementation of those recommendations.
- 231 Section 2.121 applies to development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is the road corridor of any of the roads or road projects described in Sch 2 of the Transport and Infrastructure SEPP. I note the land does not answer the description of 'road corridor' as defined in s 108 of the Transport and Infrastructure SEPP.
- 232 Section 2.122 requires that DAs for certain traffic generating development, as set out in Column 1 Sch 3 of the Transport and Infrastructure SEPP be referred

to TfNSW and that any submission from the TfNSW be considered prior to the determination of the application.

- 233 The application was referred to TfNSW and conditions provided by TfNSW are incorporated in to the without prejudice conditions of consent at Condition C1.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 234 On the basis of the Preliminary Site Investigation (PSI) prepared by Environmental Consulting Services dated 9 March 2023 (Exhibit A, Tab 21) which concludes the site is considered suitable for the proposed development, I accept the site is unlikely to be contaminated and is suitable for the purpose for which development is proposed to be carried out, pursuant to s 4.6 of State Environmental Planning Policy (Resilience and Hazards) 2021.

State Environmental Planning Policy (Sustainable Buildings) 2022

- 235 The application is accompanied by a BASIX certificate (Cert No. 1179591M_04 dated 27 June 2024) prepared by Credwell Energy Pty Ltd in accordance with State Environmental Planning Policy (Sustainable Buildings) 2022.

Conditions are disputed

- 236 At the close of the proceedings, parties were directed to confer on without prejudice conditions of consent that were provided to the Court on 27 September 2024.

Condition C13

- 237 The precise terms of Condition C13, cited at [210], are disputed and so it is necessary for the Court to resolve the final form of the condition.
- 238 The Council seeks to impose a condition requiring the installation of Level 3 "Fast" Chargers, and a requirement for vehicles to be in those charging bays for no longer than one hour. I understand the two to be related. The duration of

time permitted for a vehicle to occupy a charging bay is dependent on the time taken to charge a vehicle.

- 239 Absent guidance in the NSDCP on the type of EV Charging infrastructure required by Council, I conclude it is reasonable to rely on the terms of the NCC that the Court understands may be found at Section J9D4: Facilities for electric vehicle charging equipment, and provides for electrical infrastructure to support an EV charger able to deliver a minimum of 12kWh in Class 2 and Class 5 buildings.
- 240 So understood, I accept the condition should not prescribe a particular EV charger. As such, neither should a duration be set.
- 241 Furthermore, absent published guidance by Council against which an assessment would be undertaken, I cannot see the basis for Council to approve a Plan of Management.
- 242 The wording of the condition C13 preferred by PDS is adopted.

Condition G16

- 243 Not unrelatedly, the Council proposes a condition at Condition G16 requiring a restriction as to user and positive covenant in favour of North Sydney Council burdening 290 Pacific Highway, Crows Nest (Lot 1 DP 1279891) requiring the EV charging spaces to be solely used as EV charging spaces only and not to be used as additional private car parking spaces.
- 244 I consider the use of EV charging spaces capable of regulation by a Plan of Management, a matter contemplated by the terms of Conditions I2 and I4. I also recognise the likelihood that EV charging infrastructure may be adopted more widely by future residents of the development. Such appears the intent of the relevant section of the NCC.
- 245 The proposed condition at Condition G16 is deleted.

Condition C57

- 246 The parties agree that the site is within the 'St Leonards and Crows Nest Special Contributions Area' defined in the Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Determination 2020 (Determination).

Council's position

- 247 The Council submits that it has consulted with the Department of Planning, Housing and Infrastructure (the Department) in this regard and has been advised that the special infrastructure contribution (SIC) has been correctly imposed by Council. Council has also been informed that it is not Council's role to assess and determine if the SIC is applicable, but that this is the role of the Department.
- 248 The condition has been worded such that PDS is to contact the Department to confirm the applicability of the SIC for the subject site. If it is not applicable, the Department will provide PDS with a clearance certificate within 5 working days. If a SIC is applicable, a notice of assessment will be provided.

The PDS position

- 249 PDS submits that cl 4 of the Environmental Planning and Assessment (Special Infrastructure Contribution - St Leonards and Crows Nest) Direction 2020) requires that a consent authority only impose a condition requiring the payment of a SIC if:

'a special infrastructure contribution is required to be made under the Environmental Planning and Assessment (Special Infrastructure Contribution - St Leonards and Crows Nest) Determination 2020 '

- 250 That is, a SIC condition is not required to be imposed merely because the development is within a special contributions area, but if it is required to be made under the Determination.

- 251 Under cl 6 of the Determination, a contribution is only required to be paid with respect to, relevantly:
- ‘development on land that is intensive residential use land’
- 252 Under cl 5 of the Determination, ‘intensive residential use land’ means land that is:
- (a) within an ‘intensive urban development area’ shown on the NSLEP Intensive Urban Development Area Map;
 - (b) identified as ‘intensive residential use land’ on the St Leonards and Crows Nest SCA Intensive Residential Use Areas Map; or
 - (c) land included in Schedule 3 of the SIC Determination.
- 253 PDS submits that the subject land does not meet, and has never met, any of the above descriptions. As such, because no contribution is payable under the determination, no SIC condition should be imposed.
- 254 Nevertheless, should the Court decide to impose a condition in relation to the making of a SIC, PDS proposes a form of words to clarify that the condition may be satisfied by providing a clearance certificate issued by the Department if a SIC is not payable.
- 255 The Court notes the Determination is dated 27 August 2020, with the object of the Determination being to “require special infrastructure contributions to be made for the provision of infrastructure in connection with the intensification of residential development in St Leonards and Crows Nest, as generally outlined in the 2036 St Leonards and Crows Nest Plan...”.
- 256 While I have noted earlier that the 2036 Plan appears to be effectively superseded by the EIE, the question is whether the site is ‘intensive residential use land’ appears to be answered by cl 5 of the Determination.
- 257 The site is within the Special Contributions Area on the Intensive Residential Use Areas Map at Schedule 1 of the Determination that would appear

consistent with the descriptor at [252]. On this basis, I accept there are grounds for the imposition of a condition in respect of a SIC.

258 However, as I understand, the final assessment of whether a SIC is required by PDS is a decision for the Department. The parties appear to agree that the Department may decide there is no SIC for PDS to pay, confirmed by the issuing of a certificate to that effect. While both the competing conditions appear to provide for such an alternative, I consider the form of words proposed by PDS at Condition C57 to be more abundant in clarity on this point and so the condition as is proposed to be amended by PDS is adopted.

Conclusion

259 For the reasons set out above, the Court finds the proposed development deserving of the grant of consent in accordance with s 4.16 of the EPA Act, subject to conditions of consent.

260 In addition to the documents at [10] that are the subject of approval by the Council in accordance with s 38 of the EPA Regulation, PDS relied, unopposed, on the following amended plans and other documents in closing. To the effect the following documents further amend the application before the Court, the Court exercises its power under s 39(2) of the LEC Act to approve the further amending of development application No. DA66/23 by the following documents:

- (1) Amended Structural Plans prepared by CAM Consulting (Exhibit J)
- (2) Amended East Elevation, DA 201 Revision I (Exhibit L)

Orders

261 The Court orders that:

- (1) The Applicant is to pay the Council's costs thrown away as a result of the amending of the development application, as agreed or assessed, in

accordance with s 8.15(3) of the *Environmental Planning and Assessment Act 1979*.

- (2) The appeal is upheld.
- (3) Development application No. DA66/23 for the proposed development involving restoration of a heritage item, partial demolition works, and construction of a 11-storey mixed use building comprising two floors of commercial premises, 52 residential units, and four levels of basement parking, public domain and landscaping works, and other associated works, at Lot 1 in Deposited Plan 1279891, referred to as 286-294 Pacific Highway, Crows Nest, is determined by the grant of consent, subject to conditions of consent at Annexure A .
- (4) All Exhibits are returned, except for Exhibits A, B, D and L.

I certify that this and the preceding 56 pages are a true copy of my reasons for
judgment

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA66/23

Development: Partial demolition of heritage item and construction of part 4 and part 11 storey mixed use building comprising 8 studio units, 1 x 2 bed, 9 x 3 Bed and 16 x 4 bed and 18 x 5 bed units for a total of 52 units, 4 levels of basement parking containing 51 car parking spaces.

Site: 290 Pacific Highway, Crows Nest NSW 2065 (being the lands legally identified as Lot 1 in Deposited Plan 1279891).

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 8 November 2024
Date from which consent takes effect: 8 November 2024

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the "applicant" means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the "site", means the land known as 290 Pacific Highway, Crows Nest NSW 2065 (being the land legally identified as Lot 1 in Deposited Plan 1279891).

The conditions of consent are as follows:

A. Conditions that identify Approved Plans**Development in Accordance with Plans/Documentation**

- A1. The development must be carried out in accordance with the following drawings and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Revision	Description	Prepared by	Dated
DA-000	G	Cover Page	Fuse Architects	26/06/2024
DA-005	G	Site Plan	Fuse Architects	26/06/2024
DA-007	G	Concept Design Heritage sheet 1	Fuse Architects	26/06/2024
DA-008	G	Concept Design Heritage sheet 2	Fuse Architects	26/06/2024
DA-009	G	Demolition Plan Lower Ground	Fuse Architects	26/06/2024
DA-010	G	Demolition Ground Floor	Fuse Architects	26/06/2024
DA-011	G	Demolition Plan Level 01	Fuse Architects	26/06/2024
DA-012	G	Demolition Plan Level 2 (existing roof)	Fuse Architects	26/06/2024
DA-013	G	Existing Lower Ground and Ground Floor Plan	Fuse Architects	26/06/2024
DA-014	G	Existing Level 01 and Roof Plan	Fuse Architects	26/06/2024
DA-015	H	Heritage conservation Lower Ground and	Fuse Architects	09/09/2024

		Ground Floor Plan		
DA-016	H	Heritage conservation Ground Floor Mezz and Level 1 Plan	Fuse Architects	09/09/2024
DA-017	H	Heritage Conservation Roof Plan	Fuse Architects	09/09/2024
DA-101	H	Basement 04 Plan	Fuse Architects	09/09/2024
DA-102	H	Basement 03 Plan	Fuse Architects	09/09/2024
DA-103	H	Basement 02 Plan	Fuse Architects	09/09/2024
DA-104	H - WIP	Basement 01 Plan	Fuse Architects	WIP
DA-105	H	Lower Ground Plan	Fuse Architects	09/09/2024
DA-106	H	Ground Floor Plan	Fuse Architects	09/09/2024
DA-107	H	Ground Floor – Mezzanine Plan	Fuse Architects	09/09/2024
DA-108	H	Level 01 Plan	Fuse Architects	09/09/2024
DA-109	G	Level 02 Plan	Fuse Architects	26/06/2024
DA-110	G	Level 03 Plan	Fuse Architects	26/06/2024
DA-111	G	Level 04 – Level 10 Typical Plan	Fuse Architects	26/06/2024
DA-112	G	Level 11 Roof Terrace Plan	Fuse Architects	26/06/2024
DA-113	G	Lift Overrun Plan	Fuse Architects	26/06/2024

DA-201	I	East Elevation	Fuse Architects	13/09/2024
DA-202	G	West Elevation	Fuse Architects	26/06/2024
DA-203	H	South Elevation	Fuse Architects	09/09/2024
DA-204	G	North Elevation	Fuse Architects	09/09/2024
DA-301	H	Section AA	Fuse Architects	09/09/2024
DA-302	H	Section BB	Fuse Architects	09/09/2024
DA-303	H	Section CC	Fuse Architects	09/09/2024
DA-304	G	Section DD	Fuse Architects	26/06/2024
DA-305	H	Section FF	Fuse Architects	09/09/2024
DA-306	G	Section GG (Entry ramp)	Fuse Architects	26/06/2024
DA-307	G	Lightwell Detail Section	Fuse Architects	26/06/2024
DA-308	H	Section HH and II	Fuse Architects	09/09/2024
DA-401	G	Unit Types sheet 1	Fuse Architects	26/06/2024
DA-402	G	Unit Types sheet 2	Fuse Architects	26/06/2024
DA-403	G	Unit Types sheet 3	Fuse Architects	26/06/2024
DA-404	G	Unit Types sheet 4	Fuse Architects	26/06/2024
DA-405	G	Adaptable Unit types	Fuse Architects	26/06/2024

-	-	Materials and Finishes Schedule	Fuse Architects	
Landscape Plans				
-	-	Through Link & Private Terrace Lower Ground	Urbis	25.06.2024
-	-	Through Link Ground Floor	Urbis	25.06.2024
-	-	Private Terraces Level 2	Urbis	25.06.2024
-	-	Meadow Gardens Rooftop	Urbis	25.06.2024
-	-	Planting Strategy	Urbis	25.06.2024
501-PL	D	Planting Plan	Urbis	25.06.2024
503-PL	D	Planting Plan	Urbis	25.06.2024
505-PL	D	Planting Plan	Urbis	25.06.2024
Reports relied upon				
C21070	D	Stormwater Plans	CAM Consulting	02.07.2024
P0031525	D	Landscape Design Report	Urbis	25.06.2024
26003	Revision 1.1	Arboricultural Impact Assessment Report	Urban Tree Management	26.06.2024
214296.01	2	Preliminary Environmental Site Investigation Report	Environmental Consulting Services Pty Ltd	02.12.2021
Job No 8975-R14	6	Statement of Heritage Impact	Heritage 21	9 July 2024
Job No 8986-R15	6	Heritage Management Document	Heritage 21	06.09.2024

Job No 8986H-R1	2	Schedule of Conservation Works	Heritage 21	9 July 2024
C21009- NCC-r5 2022	5	BCA Assessment Report	Credwell Consulting	09.07.2024
SRE/1032/ CN/22	1	Geotechnical Site investigation Report	soilsrock	8/7/2024
210023.02 DB	-	Green Travel Plan	McLaren Traffic Engineering	16.08.2024
21SYA000 1 R01_3	3	Environmental Noise Assessment	ttm	06.06.2024
C21009- Access-r5 2022	5	Access Report	Credwell Consulting	09.07.2024
210023.01 FC	C	Traffic and Parking Impact Assessment	McLaren Traffic Engineering	03.07.2024
-	1.2	Waste Management Plan	MRA Consulting Group	11/09/2024
-	-	Waste Collection Arrangement	MRA Consulting Group	11/09/2024
230564.07 DA		Loading Dock Management Plan	McLaren Traffic	05/09/2024
D2314/WR PTDA/R2	01	Wind Report	ALJ Engineering Pty Ltd	15 June 2024
C21070	B	Structural Engineering Plans	CAM Consulting	11/09/2024
-	-	Letter of offer to enter into planning Agreement	Holding Redlich	06.09.2024

In the event of any inconsistency between the approved plans and the supporting documentation, the approved plans prevail. In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Note: An inconsistency occurs between an approved plan and supporting documentation or between an approved plan and a condition when it is not possible to comply with both at the relevant time.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

- A2. A copy of all plans, specifications and documents (including the plans, specifications and documents submitted and approved with the relevant Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

No Demolition of Extra Fabric

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

External Finishes and Materials

- A4. External finishes and materials must be in accordance with the Material and Finishes Plan prepared by Fuse Architects unless otherwise modified by Council in writing or by condition.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Signage

A5 The development consent does not approve the erection of any signage. A separate development consent or complying development certificate must be obtained for the erection of any signage, unless the proposed signage is exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 or any other applicable environmental planning instrument.

(Reason: To ensure appropriate forms of signage that are consistent with controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

C. Prior to the Issue of the relevant Construction Certificate (and ongoing, where indicated)

TfNSW Conditions

C1. The following conditions from TfNSW shall apply:

1. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

2. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system that impact upon the Pacific Highway are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee will be payable, and a performance bond may be required before TfNSW approval is issued.

3. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on the Pacific Highway during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>.

(Reason: Compliance with TfNSW Requirements)

Documentation of Conservation Works

- C2. All conservation works documented in the Schedule of Conservation Works and Heritage Management document are to be shown in detail on the Construction Certificate documents. The project Heritage Architect is to provide written confirmation that the entirety of the conservation works is detailed in the Construction Certificate Documents.

Reason: To ensure that all matters relating to conservation works are shown and detailed on the construction drawings)

Dilapidation Report Damage to Public Infrastructure

- C3. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Principal Certifier

for approval prior to the issue of a Construction Certificate for the excavation of the basement.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified (unless the Council otherwise agrees).

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Principal Certifier with submission of the Construction Certificate documentation for the excavation of the basement.

(Reason: To record the condition of public infrastructure prior to the commencement of any works or construction)

Dilapidation Report Private Property (Excavation)

- C4. A full dilapidation survey and report on the visible and structural condition of all neighbouring structures within the 'zone of influence' of the required excavations must be submitted to the Principal Certifier for approval prior to the issue of a Construction Certificate for the excavation of the basement, except as provided below. The zone of influence is to be defined as the horizontal distance from the edge of the excavation face to twice the excavation depth.

The dilapidation report and survey are to be prepared by a consulting structural/geotechnical engineer and a copy to be given to the owner of any affected adjoining property.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, it must be demonstrated, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

Written concurrence must be obtained from Council's Manager Development Services in such circumstances, confirming that they are satisfied that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

Note: This documentation is for record keeping purposes only, and may be used by the developer or affected property owners to assist in any action required to resolve dispute(s) over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: To record the condition of property/ies prior to the commencement of any works or construction)

Dilapidation Survey Private Property (Neighbouring Buildings)

- C5. A photographic survey and dilapidation report of adjoining properties 270 Pacific Highway, 300 Pacific Highway, 77 Sinclair Street and 99 Shirely Road is to be provided

The photographic survey and dilapidation report is to detail the physical condition of those properties, both internally and externally, including, but not limited to, such items as walls, ceilings, roof, structural members and other similar items, MUST BE submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate for the excavation of the basement. The survey and report are to be prepared by an appropriately qualified person and a copy to be given to the owner of the adjoining property. A copy of the report is to be provided to Council, if Council is not the Principal Certifier, prior to the issue of any Construction Certificate for the excavation of the basement.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent.

In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, it must be demonstrated, in writing, to the satisfaction of Council that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

Written concurrence must be obtained from Council's Manager Development Services in such circumstances, confirming that they are satisfied that all

reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

Note: This documentation is for record keeping purposes only and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible.

(Reason: Proper management of records)

Shoring for Adjoining Property

- C6. Where any shoring for excavation is to be located on or is supporting Council's property, or any adjoining private property, engineering drawings certified as being adequate for their intended purpose by an appropriately qualified and practising structural engineer, showing all details, including the extent of encroachment and the method of removal and de-stressing of shoring elements, must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. A copy of this documentation must be provided to the Council for record purposes.

Note: Approval of engineering drawings for shoring works to be located on adjoining property by the Principal Certifier does not authorise a trespass on private or public land. All relevant permissions/ legal rights must be obtained to undertake any works on adjoining land.

(Reason: To ensure the protection of existing public infrastructure and adjoining properties)

Structural Adequacy of Adjoining Properties – Excavation Works

- C7. A report prepared by an appropriately qualified and practising structural engineer detailing the structural adequacy of the following adjoining properties No's. 270 Pacific Highway, 300 Pacific Highway, 77 Sinclair Street and 99 Shirley Road is to be provided.

The report is to certify their ability to withstand the proposed excavation and outlines any measures required to be implemented to ensure that no damage will occur to adjoining properties during the course of the works, must be submitted to the Principal Certifier for approval prior to the issue of the relevant

Construction Certificate. The measures outlined in the approved report must be complied with at all times.

(Reason: To ensure the protection and structural integrity of adjoining properties in close proximity during excavation works)

Structural Adequacy of Existing Building

C8. A report prepared by an appropriately qualified and practising structural engineer, certifying the structural adequacy of any existing building(s) (including parts of buildings) on the property which are not proposed to be demolished under this development consent, and its ability to withstand the proposed additional, or altered structural loads during all stages of construction shall be submitted to the Principal Certifier for approval prior to issue of any Construction Certificate. The certified report must also include all details of the methodology to be employed in construction phases to achieve the above requirements. The methodology in the certified report must be complied with at all times.

(Reason: To ensure the structural integrity of the building is maintained)

Construction Management Program – North Sydney Council Traffic & Transport Operations Division Approval

C9. A Construction Management Program prepared by a suitably qualified and experienced traffic consultant must be submitted and approved in writing by North Sydney Council's Traffic Division prior to the issue of any Construction Certificate. Any use of Council property will require appropriate approvals prior to any work commencing. At a minimum, the Construction Management Program must specifically address the following matters:

- a) A plan view (min 1:100 scale) of the entire site and frontage roadways indicating:
 - i. Dedicated temporary construction site driveway entrances and exits, controlled by a certified traffic controller, to safely manage pedestrians and construction related vehicles in the frontage roadways and footways;
 - ii. The proposed signage for pedestrian management to comply with the relevant Australian Standards, including pram ramps;
 - iii. Turning areas within the site for construction and spoil removal

- vehicles, allowing a forward egress for all construction vehicles on the site;
- iv. The locations of any proposed Work Zones in the frontage roadways (to be approved by Council's Traffic Committee);
 - v. Locations of hoardings proposed;
 - vi. Location of any proposed crane standing areas;
 - vii. A dedicated unloading and loading point within the site for all construction vehicles, plant and deliveries;
 - viii. Material, plant and spoil bin storage areas within the site, where all materials are to be dropped off and collected; and
 - ix. The provision of an on-site parking area for employees, tradesperson and construction vehicles as far as possible.
- b) A detailed heavy vehicle access route map through the Council area to Arterial Roads. Provision is to be made to ensure through traffic is maintained at all times.
- c) The proposed phases of works on the site, and the expected duration of each phase.
- d) How access to neighbouring properties will be maintained at all times and the proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of process.
- e) The road is not to be used as a waiting area for trucks delivering to or awaiting pick up of materials.
- f) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising structural engineer and must not involve any permanent or temporary encroachment onto Council's property or private land.
- g) Proposed protection for Council and adjoining properties. Details are to include site fencing and the provision of "B" class hoardings over footpaths and laneways.
- h) A Waste Management Plan. The Waste Management Plan must include, but not be limited to, the estimated volume of waste and method of disposal for the construction and operation phases of the development, design of on-site waste storage and recycling area and administrative

arrangements for waste and recycling management during the construction process.

All traffic control work and excavation, demolition and construction activities must be undertaken in accordance with the approved Construction Management Program and any conditions attached to the approved Program. A certificate that the Construction Management Program is satisfactory to the Council under this condition must be obtained from Council's nominated Traffic and Transport engineer prior to the commencement of demolition work or the issue a Construction Certificate.

The certificate and the approved Construction Management Program must be submitted as part of the documentation lodged with the application for approval of a construction certificate.

A copy of the approved Construction Management Program and any conditions imposed on that Program, must be kept on the site at all times and made available to any officer of Council upon request and must be complied with.

Notes:

- 1) North Sydney Council's adopted fee for certification of compliance with this condition shall be payable on lodgement, or in any event, prior to the issue of the relevant approval.
- 2) Any use of Council property will require appropriate approvals and demonstration of liability insurances prior to such work commencing.
- 3) Failure to provide complete and detailed information may result in delays. It is recommended that your Construction Management Plan be lodged with Council as early as possible, as a **minimum six (6) weeks assessment period** is required.
- 4) Dependent on the circumstances of the site, Council may request additional information to that detailed above.

(Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the demolition process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community)

Geotechnical Report

- C10. Prior to issue of any Construction Certificate for excavation of the basement a Geotechnical/Civil Engineering report must be prepared which addresses at a

minimum (but is not limited to) the following:

- a) the type and extent of substrata formations by the provision of a minimum of four (4) representative bore hole logs which are to provide a full description of all material from ground surface to 1.0m below the finished basement floor level and include the location and description of any anomalies encountered in the profile. The surface and depth of the bore hole logs must be related to Australian Height Datum;
- b) the appropriate means of excavation/shoring in light of point (a) above and proximity to adjacent property and structures. Potential vibration caused by method of excavation and potential settlements affecting nearby footings/foundations must be discussed and mechanisms to ameliorate any such impacts recommended;
- c) the proposed method to temporarily and permanently support the excavation for the basement adjacent to adjoining property, structures and road reserve if nearby (full support must be provided within the subject site);
- d) the existing groundwater levels in relation to the basement structure, where influenced;
- e) the drawdown effects on adjacent properties (including road reserve), if any, the basement excavation will have on groundwater together with the appropriate construction methods to be utilised in controlling groundwater. Where it is considered there is the potential for the development to create a "dam" for natural groundwater flows, a groundwater drainage system must be designed to transfer groundwater through or under the proposed development without a change in the range of the natural groundwater level fluctuations. Where an impediment to the natural flow path is constructed, artificial drains such as perimeter drains and through drainage may be utilised; and
- f) recommendations to allow the satisfactory implementation of the works. An implementation program is to be prepared along with a suitable monitoring program including control levels for vibration, shoring support, ground level and groundwater level movements during construction. The implementation program is to nominate suitable hold points at the various stages of the works for verification of the design intent before sign-off and before proceeding with subsequent stages.

The geotechnical report must be prepared by an appropriately qualified consulting geotechnical/ hydrogeological engineer with previous experience in such investigations and reporting.

It is the responsibility of the consulting geotechnical/ hydrological specialist to undertake the appropriate investigations, reporting and specialist recommendations to ensure a reasonable level of protection to adjacent property and structures both during and after construction. The report must contain site-specific geotechnical recommendations and shall specify the necessary hold/inspection points by relevant professionals as appropriate.

The design principles for the geotechnical report are as follows:

- a) no ground settlement or movement is to be induced which is sufficient enough to cause an adverse impact to adjoining property and/or infrastructure;
- b) no changes to the ground water level are to occur as a result of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- c) no changes to the groundwater level are to occur during the construction of the development that are sufficient enough to cause an adverse impact to the surrounding property and infrastructure;
- d) vibration is to be minimised or eliminated to ensure no adverse impact on the surrounding property and infrastructure occurs, as a result of the construction of the development;
- e) appropriate support and retention systems are to be recommended and suitable designs prepared to allow the proposed development to comply with these Design Principles; and
- f) an adverse impact can be assumed to be crack damage as identified within the relevant Australian Standard for determining such damage.

The report, satisfying the requirements of this condition, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate for excavation of the basement.

The professional recommendations, implementation program, monitoring program, mitigation measures and the like contained in the report must be implemented in full during the relevant stages of excavation and construction.

(Reason: To ensure the structural integrity of the subject site and adjoining sites and structures during the excavation process)

Sediment Control

C11. Where construction or excavation activity requires the disturbance of the soil surface or existing vegetation, erosion and sediment control techniques, as a minimum, are to be in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th Edition, Landcom, 2004) commonly referred to as the "Blue Book" or a suitable and effective alternative method.

An Erosion and Sediment Control Plan must be prepared and submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate and prior to any works (other than investigatory works or pre-construction works, other than demolition) commencing. The Erosion and Sediment Control Plan must be consistent with the Blue Book and disclose:

- a) All details of drainage to protect and drain the site during the relevant demolition or construction processes;
- b) All sediment control devices, barriers and the like;
- c) Sedimentation tanks, ponds or the like;
- d) Covering materials and methods; and
- e) A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- f) Methods for the temporary and controlled disposal of stormwater during demolition or construction (as applicable).

All works (other than investigatory works or pre-construction works, other than demolition) must be undertaken in accordance with the approved Sediment Control plan.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Communal Open Space

C12. A Plan of Management (POM) for use of the rooftop communal open space must be submitted to and approved by the Principal Certifier (PC) prior to the issue of any Construction Certificate, with a copy stamped as received by the PC provided to Council. The POM must outline the:

- hours of use of the rooftop communal open space which shall be restricted to between 8am to 10pm;
- maximum number of 50 users at any one time;
- provisions that no amplified music to be played; and
- identify other measures to ensure that the amenity and safety of persons within the development and in nearby existing and future development is maintained.
- Location and type of signage to be installed in the building to notify residents and visitors in respect to the use of this space.
- The approved POM shall be incorporated into the Owners Corporation by-laws in any future Strata subdivision and a sign in the front entry of the building shall be included to ensure the use of this space is monitored and understood by all occupants.

The development must be carried out in accordance with this POM at all times.

(Reason: To ensure residential amenity is maintained and noise impacts are minimised)

EV vehicle charging spaces

C13. An EV Plan of Management (POM) for use of the EV vehicle charging stations must be submitted to and approved by the Principal Certifier prior to the issue of any Occupation Certificate.

The proposed measures within the EV POM shall include, but not be limited to, the following:

- The EV charging spaces are to be solely used as EV charging spaces and are not to be used as additional private car parking spaces.

- The EV charging spaces are to solely be used by residents or tenants of the development that are designated with an on-site parking space. Use of the EV charging spaces by any other motorists shall be strictly prohibited.
- Once charging has concluded, motorists shall be required to promptly move their vehicle and either park within their designated on-site parking space or be required to depart the site.
- The required signage and linemarking arrangements to be installed within each EV charging space. The signage shall clearly identify that the spaces are only for use by 'electric vehicles while charging only'. The signage shall specify maximum parking duration having regard to the reasonable charging times and requirements for EVs which are likely to be used by residents or tenants of the development, and the likely demand and need for the charging spaces by the residents and tenants.
- The approved POM shall be incorporated in the owners corporation by-laws in any future strata subdivision.

The development must be carried out in accordance with this EV POM at all times.

(Reason: To ensure residential amenity is maintained and use of the EV chargers is appropriately restricted to residents or tenants of the development that are provided with an on-site parking space).

Waste Management Plan

C14. A Waste Management Plan is to be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

Heritage Architect to be commissioned

C15. An appropriately qualified and experienced heritage architect must be commissioned to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to heritage matters

An appropriately qualified and experienced heritage architect must be commissioned to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to heritage matters.

Written details of the engagement of the experienced heritage architect must be submitted to the Principal Certifier prior to the issue of any Construction Certificate.

Note: if advice provided by the heritage architect is to the effect that works requiring development consent be carried out, such works would require a Modification under s 4.56 of the *Environmental Planning and Assessment Act 1979* or further development application. This condition, and any advice given by the heritage architect, should not be construed as authorising the carrying of development with/ otherwise than in accordance with the development consent.

Reason: To ensure that all matters relating to significant fabric and spaces are resolved and recorded using best practice for heritage conservation)

Dewatering Management Plan

C16. A Dewatering Management Plan prepared by a suitably qualified environmental consultant must be submitted for approval by the Principal Certifier prior to the issue of any Construction Certificate. The plan must be developed in accordance with *Managing Urban Stormwater: Soils and Construction 2004* and include, but not be limited to the following details:

- a) De-watering technique and proposed discharge point
- b) Anticipated dewatering flow rate and total dewatering duration
- c) Controls (e.g. settling tank, silt curtain, flocculation) and method of discharge
- d) Measures and techniques to manage noise, vibration and odour issues.
- e) Measures and techniques to manage geotechnical stability issues

- f) Contingency plan in case of emergency situations
- g) Outline analysis/testing that has been undertaken and how that water quality measures against with 95% protection level trigger values for south-east Australian marine water ecosystems and secondary recreational water as included in the ANZECC (Australian and New Zealand Environmental Conservation Council) Australian and New Zealand Guidelines for Fresh and Marine Water Quality Guidelines 2000.
- h) Confirmation that testing to be carried out by a suitably qualified environmental consultant
- i) Require records of water sample testing to be kept and be available on site, confirming that the water quality released meets the above-mentioned guidelines. All records must be signed by the engaged suitably qualified environmental consultant
- j) Stipulation that the release of water into Council's Stormwater system is to halt immediately where water quality does not meet discharge criteria.
- k) confirmation that testing to be carried out by a suitably qualified environmental consultant
- l) contact details of the engaged suitably qualified environmental consultant

All works must be undertaken in accordance with the approved Dewatering Management plan.

(Reason: To protect the environment from the effects of pollution from development sites)

Reflectivity Glazing

C17. The glazing for windows, walls or roof finishes of the approved development must be factory pre-finished with low glare and reflectivity properties. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

(Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development)

Roofing Materials - Reflectivity

C18. Roofing materials must be factory pre-finished with low glare and reflectivity properties to be compatible with the colours of neighbouring buildings. The selected roofing material must not cause a glare nuisance or excessive reflectivity to adjoining or nearby properties. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development)

No External Service Ducts

C19. Service ducts must be provided within the new building to keep external walls free of plumbing, drainage or any other utility installations. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure quality built form of the development)

Work Zone

C20. If a Work Zone is required a Work Zone permit is to be obtained from Council prior to the issue of the relevant Construction Certificate.

Note: For major development an application for work zone permit must be considered by the North Sydney Local Traffic Committee.

Work Zones are provided specifically for the set down and pick up of materials and not for the parking of private vehicles associated with the site. Works Zones will generally not be approved where there is sufficient space on-site for the setting down and picking up of goods being taken to or from a construction site. If the Works Zone is approved by the Committee, the Applicant must obtain a written copy of the related resolution from the North Sydney Local Traffic

Committee and submit a copy of this to the Principal Certifier to enable issue of the relevant Construction Certificate.

Where approval of the 'Work Zone' is given by the Committee, the requirements of the Committee, including installation of the necessary 'Work Zone' signage and payment of any fees, must occur prior to commencement of any works on the site. Further, at the expiration of the Work Zone approval, the developer is required to remove the Work Zone signs and reinstate any previous signs, all at the developer's cost. The requirements imposed by the Committee on the Work Zone permit (or permits) must be complied with at all times.

(Reason: Amenity and convenience during construction)

Maintain Property Boundary Alignment Levels

- C21. Except where otherwise approved by Council, the property boundary alignment levels must match the levels which existed prior to the commencement of works. Plans and specifications which document existing and proposed levels adjacent to the site boundaries and which comply with the requirements of this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure interface between property and public land remains uniform)

Bicycle Storage and Parking

- C22. The bicycle storage area must accommodate a minimum of **76 bicycles including 52 spaces for residents, six spaces for residential visitors, 13 for business occupants and five for business visitors**. The bicycle parking shall be designed in accordance with the applicable Australian Standards. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

Staff Shower and Change Facilities (Commercial and Mixed-Use)

C23. Shower and change facilities shall be provided and made accessible without charge to staff who work in the building. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To promote and provide facilities for alternative forms of transport)

Design Certification – Parking

C24. A detailed "design" certificate from an experienced and qualified traffic engineer with tertiary qualifications is to be submitted to and approved by the Principal Certifier prior to the issue of a construction certificate confirming the following:

- a) The car parking layout associated with the development (including, driveway grades, headroom clearance turn paths, aisle widths, aisle lengths and parking bay dimensions) shall be in accordance with AS2890.1:2004 and AS2890.6:2022.
- b) Bicycle parking associated with the development is provided in accordance with AS2890.3 design requirements.
- c) Driveway access complies with Figure 3.3 of AS2890.1:2004 minimum sight lines for pedestrian safety.
- d) All vehicles shall enter and exit the premises in a forward direction;
- e) Confirmation that the plans provide for the following allocation of parking facilities:
 - i. A maximum of 46 car parking spaces for residential apartments
 - ii. A maximum of 3 car parking spaces for the commercial premises.
 - iii. A maximum of 2 car parking spaces for the retail premises.

- iv. 76 bicycle spaces including 52 spaces for residents, six spaces for residential visitors, 13 for business occupants and five for business visitors.
 - v. Six motorcycle parking spaces.
- f) A minimum of 2.5m headroom within disabled car parking spaces in accordance with AS2890.6:2022 design requirements and a minimum of 2.2m in all other areas in accordance with AS2890.1:2004 design requirements.

Any departures from the Australian Standards needs to be adequately justified by the qualified traffic engineer.

(Reason: To ensure compliance with relevant standards)

Accessible Parking Spaces to be Provided

C25. A total of thirteen (13) accessible parking spaces shall be provided as part of the total car-parking requirements, which is to include 11 spaces for residential apartments, one space for the retail premises and one space for the commercial premises. Consideration must be given to the means of access from the car-parking spaces to adjacent buildings, to other areas within the building and to footpath and roads. All details shall be prepared in consideration of, and construction completed in accordance with applicable Australian Standards to achieve compliance with the Disability Discrimination Act. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation)

Basement Car Park to Comply with Relevant Standards

C26. The basement layout must comply with all requirements of Australian Standard AS2890.1-2004. Certification from a suitably qualified and practicing Civil Engineer that the basement design will comply with the requirements of the Australian Standard must be provided to the Principal Certifier for approval prior to issue of the relevant Construction Certificate.

(Reason: To ensure the basement layout complies with relevant standards)

Loading Dock to Comply with Relevant Standards

C27. The development must accommodate appropriate on-site loading facilities including a minimum of one (1) Medium Rigid Vehicle (MRV) bay, two (2) Small Rigid Vehicle (SRV) bays and two (2) bays suitable for vans and be designed to comply with all requirements of Australian Standards As 2890.1-2004 and AS2890.2-2018. Certification from a suitably qualified and practicing Civil Engineer that the loading dock design will comply with the requirements of the Australian Standards must be provided to the Principal Certifier for approval prior to issue of the relevant Construction Certificate.

(Reason: To ensure the loading dock layout complies with relevant standards)

Required Infrastructure Works - Roads Act 1993

C28. Prior to issue of any Construction Certificate engineering design plans and specifications must be prepared by a qualified civil design engineer. The plans and specifications must be to a detail suitable for construction issue purposes and must provide detail and specification for the following infrastructure works to be completed as part of the development:

Road Works

- a) Full frontage footpath paver reconstruction in Pacific Highway, is required, in accordance with the current Public Domain Style manual for the Village Centres and Activity Strips. Full frontage concrete kerb/gutter and one lane width road shoulder reconstruction from the gutter lip in AC10 - 50 mm thick will be required in Pacific Hwy frontage. A longitudinal section is required along the footpath property boundary and along the gutter line at a scale of 1:50 extending 5m past the property boundary line. The footpath shall be designed (at a single straight grade of approx. 3% falling to the top of the kerb) so that it is uniform without showing signs of dipping or rising particularly at entrances.

- b) Full frontage concrete kerb/gutter, concrete footpath, grass verge and 600mm wide road shoulder reconstruction from the gutter lip in AC10 - 50mm thick, including removal of redundant laybacks and crossovers will be required in Sinclair Street frontage, in accordance with the current Public Domain Style manual for the Local/Residential area. A longitudinal section is required along the footpath property boundary and along the gutter line at a scale of 1:50 extending 5m past the property boundary line. The footpath shall be designed (at a single straight grade of approx. 3% falling to the grass verge) so that it is uniform without

showing signs of dipping or rising particularly at entrances

- c) cross sections at a scale of 1:50 along the centre-line of each access point to the building must be provided and are to show the calculated clearance to the underside of any overhead structure. All the entry points are to comply with the National Construction Code (NCC), including disability requirements. The Council approved footpath levels must be accommodated at the building entry points.

Drainage Works

Connection of the site stormwater system must be made directly to a newly constructed extended kerb inlet pit (with a 1.8 m lintel and class D galvanised grate), to front the site on Sinclair Street. To accommodate this requirement, the following drainage infrastructure works must be carried out on Council property at the Applicants expense:

- d) Construction of a new extended kerb inlet pit (1.8m lintel and class D galvanised grate) fronting the subject site in Sinclair Street. The pit must be constructed in accordance with Councils "Infrastructure Specification for Roadworks, Drainage and Miscellaneous Works
- e) Construction of a new in-ground drainage line under the kerb and gutter at standard depth. The line must connect the new kerb inlet pit to the existing Council pit located downstream of the site (in front of 51 Sinclair Street). The pipes within the road reserve are to be reinforced concrete class 2 with a minimum 375mm diameter and have bedding in accordance with Australian Standard AS 3725 – (Loads on buried concrete pipes). The developer shall be responsible for carrying out any service investigations to allow a gravity connection

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier must not issue a Construction Certificate—unless all necessary approvals under section 138 of the Roads Act 1993 have been given.

The required plans and specifications are to be designed in accordance with North Sydney Council's current documents Infrastructure Specification for Road Works, Drainage and Miscellaneous Works and Performance Guide for Engineering Design and Construction. The drawings must detail existing utility

services and trees affected by the works, erosion control requirements and traffic management requirements during the course of works.

A detailed survey must be undertaken as required. Traffic management is to be certified on the drawings as being in accordance with the documents SAA HB81.1 - 1996 - Field Guide for Traffic Control at Works on Roads - Part 1 and RMS Traffic Control at Work Sites (1998).

Construction of the works must proceed only in accordance with any conditions attached to the Council Roads Act 1993 approval.

Note: A minimum of 21 days will be required for Council to assess Roads Act submissions. Early submission is recommended to avoid any delays in obtaining a Construction Certificate. A fee to cover cost of assessment (set out in Council's adopted fees and charges) is payable and Council will withhold any consent and approved plans until full payment of the correct fees. Plans and specifications must be marked to the attention of Council's Development Engineers. In addition, a copy of this condition must be provided, together with a covering letter stating the full address of the property and the accompanying DA number.

(Reason: To ensure infrastructure works are designed and constructed to appropriate standards and requirements of the Roads Act 1993)

Splay Corners

C29. For the purposes of improving sight distance, the vehicular access must have sight lines for pedestrian safety in accordance with figure 3.2 of AS2890.1-2004. Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Public amenity and safety and appropriate sight distance)

Allocation of Parking

C30. The number of car parking spaces to be provided for the development shall comply with the table below:

Car Parking Type	Maximum Number of Spaces
Residential apartments	46 spaces including eleven (11) accessible spaces.
Commercial premises	3 spaces including one (1) accessible space.
Retail premises	2 spaces including one (1) accessible space

Details confirming the parking numbers shall be submitted to the satisfaction of the Principal Certifier prior to the issue of the relevant Construction Certificate.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Obtain Driveway Crossing Permit under S.138 Roads Act 1993ot

C31. A driveway crossing and roads infrastructure works permit to suit the approved off-street parking facilities must be granted by the Council prior to the issue of any Construction Certificate. In order to obtain a permit under S.138 of the Roads Act 1993, an application must be made to Council on the 'Vehicular Access Application' form with payment of the adopted assessment/inspection fees. Council will require civil design construction drawings and certification from the applicant's Civil Engineer to verify design details and enable issue of the permit. The requirements of the permit must be complied with at all times.

The civil design drawings must include the following at a minimum:

- a) the vehicular access way must comply with AS 2890.1 and Council's current Vehicular Access Application Guidelines and Specification (gutter bridges not permitted) to ensure that a B85 vehicle will not scrape/strike the surface of the carriageway, layback, vehicular crossing or parking floor;
- b) the redundant layback crossing must be reinstated as a kerb gutter and footpath
- c) the width of the vehicular layback accessed from Sinclair Street must be 7.0 metres (including the wings), vehicular layback is not permitted from the pacific highway
- d) the vehicular crossover must be set square to the kerb,

- e) the crossing (between the layback and the property boundary) must be placed on a single straight grade of approximately 4.5%, falling to the back of the layback,
- f) the gutter levels and boundary footpath levels must match the existing levels and shall not be altered;
- g) any twisting of driveway access must occur entirely within the subject property;
- h) all inspection openings, utility services must be adjusted to match the proposed driveway levels;
- i) sections along centre-line and extremities are required at a scale of 1:50 to be taken from the centre-line of the roadway through to the parking area itself and must include all changes of grade and levels both existing and proposed;
- j) a longitudinal section along the gutter line at a scale of 1:50 showing how it is intended to blend the vehicular crossing with the existing kerb and gutter;
- k) a longitudinal section along the footpath property boundary at a scale of 1:50 is required;
- l) the sections must show the calculated clearance to the underside of any overhead structure;
- m) all details of internal ramps between parking levels; and
- n) a swept path analysis is required demonstrating that an 85th percentile vehicle can manoeuvre in and out of the garage spaces in accordance with AS 2890.1 2004 "Off Street Parking".

The permit must be granted by Council prior to the issue of any Construction Certificate.

All driveway and infrastructure works on the road reserve must be undertaken in accordance with the terms of the permit issued by Council. Inspections by

Council will be required as specified. The Principal Certifier issuing a Construction Certificate must ensure that the permit issued by Council is obtained and referenced on and accompanies the Construction Certificate issued.

(Reason: To facilitate appropriate vehicular access to private sites, without disruption to pedestrian and vehicular traffic)

Stormwater Management and Disposal Design Plan - Construction Issue Detail

C32. Prior to issue of any Construction Certificate, a site drainage management plan must be prepared by a qualified drainage design engineer. The site drainage management plan must detail the following requirements of North Sydney Council:

- a) compliance with NCC drainage requirements, Council's Engineering Performance guide and current Australian Standards and guidelines, including the Plumbing Code of Australia;
- b) stormwater runoff and subsoil drainage generated by the approved development must be discharged directly to the newly constructed extended kerb inlet pit with 1.8m lintel in Sinclair Street;
- c) the stormwater drainage system shall be designed for an average recurrence interval (A.R.I) of 1 in 20 years.
- d) all redundant stormwater pipelines within the footpath area shall be removed and the footpath and kerb shall be reinstated
- e) pipeline within the footpath area shall be a hot-dipped galvanised steel hollow section with a minimum wall thickness of 4.0 millimetres and a section height of 100 millimetres, if a minimum top cover of 300 millimetres is not achieved
- f) the design and installation of the rainwater tank(s) must comply with BASIX and Sydney Water requirements. Overflow from the tank(s) shall be connected by gravity to the stormwater disposal system
- g) any proposed fence/building structure is to be constructed so as not to impede the natural overland flow, and.

- h) provision is to be made for the collection and disposal in an approved manner of any overland flow entering the subject property or concentrated as a result of the proposed works.
- i) surface inlet pits shall be located to catch surface flows and shall be provided at all pipe junctions, changes in pipe direction exceeding 45 degrees, prior to connection to the public drainage system and shall be of sufficient size to accept the flow.
- j) all sub-soil seepage drainage shall be discharged via a suitable silt arrester pit. Details of all plans certified as being adequate for their intended purpose and compliant with the provisions of AS3500.3.2 by an appropriately qualified and practising civil engineer shall be submitted with the application for a Construction Certificate.
- k) prevent any stormwater egress into adjacent properties by creating physical barriers and surface drainage interception.
- l) provide subsoil drainage to all necessary areas with pump out facilities as required.

A site drainage management plan which complies with this condition must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure controlled stormwater management and disposal without nuisance)

On-Site Stormwater Detention

- C33. On site detention must be provided to ensure that the maximum discharge of stormwater collected from the undeveloped site, which would occur during a 1 in 5- year storm of 1-hour duration is not exceeded. All other stormwater runoff from the site for all storms up to a 1 in 20-year storm event is to be retained on the site for gradual release to the kerb and gutter or piped drainage system. Provision is to be made for satisfactory overland flow should a storm in excess of the above parameters occur

For small areas up to 0.5 hectares, determination of the require cumulative storage may be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Runoff Volume 1, 1987 Edition.

Engineering calculations, design and certification complying with this condition must be provided by an appropriately qualified and practising Civil Engineer and submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

(Reason: To ensure appropriate provision is made for the disposal and management of stormwater generated by the development, and to ensure that public infrastructure in Council's care and control is not overloaded)

Pump-out System Design for Stormwater Disposal

C34. The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the following criteria:

- a) the pump system shall consist of two pumps, connected in parallel, with each pump being capable of emptying the holding tank at the rate equal to the rate of inflow for the one-hour duration storm. The holding tank shall be capable of holding one hour's runoff from a one-hour duration storm of the one-in-twenty-year storm;
- b) the pump system shall be regularly maintained and serviced, every six (6) months; and
- c) any drainage disposal to the street gutter from a pump system, must have a stilling sump provided at the property line, connected to the street gutter by a suitable gravity line.

Engineering details demonstrating compliance with these criteria and certified by an appropriately qualified and practising civil engineer shall be provided to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

(Reason: To ensure adequate provision is made for the discharge of sub-surface stormwater from the excavated parts of the site)

Bond for Damage and Completion of Infrastructure Works - Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

C35. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of **\$155,000.00** to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates;
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and environmental controls) required in connection with this consent; and
- c) Remedying any defects in any such public work that arise within 6 months , after the work is completed.

The security required by this condition and in accordance with the schedule contained later in these conditions and must be provided by way of a deposit with the Council; or a guarantee satisfactory to Council (such as a satisfactory bank guarantee).

The security will be refundable following the expiration of defect risk period for the particular type of work as specified above (under c), from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers. Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following:

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Principal Certifier must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Arborist to be commissioned

C36. An experienced AQF Level 5 consulting arborist must be commissioned to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to tree matters

An experienced AQF Level 5 consulting arborist must be commissioned to assist the design development, contract documentation and overseeing of construction works on the site for their duration by undertaking regular inspections of the works in progress and providing advice in relation to tree matters.

Written details of the engagement of the experienced arborist must be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Note: This condition, and any advice given by the consulting arborist, should not be construed as authorising the carrying of development with/ otherwise than in accordance with the development consent.

(Reason: To ensure that all matters relating to trees are resolved and recorded using best practice.)

Tree Bond for Public Trees

C37. Prior to the issue of any construction certificate, security in the sum of **\$60,000** must be provided to Council for the protection of trees in public places, including the making good of any damage caused to such trees. The security is to be provided in accordance with the Schedule below.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate but only upon inspection and release by Council's Landscape Development Officer.

If any tree is removed or damaged Council may deduct from this security the reasonable cost of replacement with a tree of the same species and to a similar stage of growth it would have attained at the completion of the work.

In the case of any tree, which cannot be replaced with a similar specimen, the security for that tree will be forfeited to Council and used to provide replacement street plantings.

SCHEDULE

Tree Species	Location	Bond
T14-T17 <i>Lophostemon confertus</i> (to 12x12m)	Roadway plantings in front of 290 Pacific Hwy- Sinclair St frontage	\$40,000
T21&T22 <i>Syagrus romanzoffiana</i> (9x6m)	Council verge in front of 290 Pacific Hwy	\$20,000

(Reason: Protection of existing environment public infrastructure, community assets and significant trees)

Tree Protection

C38. To ensure the protection of all trees to be retained, the following measures are to be undertaken

- a) All documentation for the Construction Certificate application must show the site trees to be retained, and retention of the adjoining trees, with their

positions and diameters of trunks and crowns (canopies) to be clearly and accurately shown in relation to all levels of the proposed development.

- b) All plans and correspondences must refer to the required compliance with the approved Tree Protection and Management Plan, and clearly show the assigned number of each tree on site, adjoining and Council land.
- c) A Consulting Arboriculturist ("the project arboriculturist"), who holds a minimum Australian Qualification Framework Level 5 in Arboriculture, is a registered consulting member of a nationally recognised arboricultural organisation or association, and who does not remove or prune trees in the North Sydney local government area, shall be engaged before work commences for the duration of site preparation, demolition, construction and landscaping.
- d) The project arboriculturist shall inspect, monitor, supervise, provide recommendations and written reports and certification relating to protection of the trees and compliance with the conditions of consent.
- e) The contact details of the project arboriculturist shall be advised to council before work commences and maintained up to date for the duration of works. If a new project arborist is appointed details of the new project arborist shall be notified to council within 7 days.

(Reason: Tree protection measures)

Tree Protection Measures to be shown on Construction Drawings

C39. The tree protection measures contained in the arborist report prepared by Urban Tree Management dated 25/6/2024, shall be shown clearly on the relevant Construction Certificate drawings. Plans and specifications showing the said tree protection measures must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure the construction plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure that appropriate tree protection measures are shown on construction drawings)

Protection of Trees

C40. The following trees are required to be protected and retained as part of the

development consent in accordance with AS 4970-2009 - Protection of trees on development sites:

Tree No./Species	Location	Height (m)
T1 <i>Eucalyptus botryoides</i>	Southern boundary-99 Shirley Rd	11x8m
T14-T17 <i>Lophostemon confertus</i>	Roadway plantings in front of 290 Pacific Hwy- Sinclair St frontage	12x12m
T18 <i>Eucalyptus scoparia</i>	To rear 270-272 Pacific Hwy	12x5.5m
T19&T20 <i>Ligustrum lucidum</i>	To rear 270-272 Pacific Hwy	9x6m
T21&T22 <i>Syagrus romanzoffiana</i>	Council verge in front of 290 Pacific Hwy	9x6m

Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Approval for Removal of Trees

C41. The following trees are approved for removal in accordance with the development consent:

Tree No./Species	Location	Height (m)
T2 <i>Morus nigra</i>	Northern bdry (rear) of subject site	6x11m
T3 <i>Agonis flexuosa</i>	Northern bdry (rear) of subject site	4.5x4m

<i>T4 Morus nigra</i>	Northern bdry (rear) of subject site	5.5x4.5m
<i>T5 Agonis flexuosa</i>	Northern bdry (rear) of subject site	3.5x3m
<i>T6,T7 Callistemon citrinus</i>	NW cnr- subject site	6x3.5m
<i>T8 Celtis sinensis</i>	NW cnr- subject site	6x2.5
<i>T9 Ligustrum lucidum</i>	NW cnr- subject site	7x5.5m
<i>T10 Phoenix canariensis</i>	NW cnr- subject site	5.5mx5.5m
<i>T11 Cinnamomum camphora</i>	Western boundary of subject site	6x5.5m
<i>T12 Ligustrum lucidum</i>	Western boundary of subject site	6x5.5m
<i>T13 Jacaranda mimosifolia</i>	Southern boundary of subject site	6x8m

Removal or pruning of or damage to any other tree on the site or off site is not approved, excluding species exempt under Council's Tree Preservation Order.

Any tree(s) shown as being retained on the approved plans (regardless of whether they are listed in the above schedule or not) must be protected and retained in accordance with this condition.

(Reason: Protection of existing environmental and community assets)

Pruning of Trees

- C42. As per the Arborist Report prepared by Urban Tree Management dated 25/6/24 (p4.), no pruning to any protected tree shall be permitted.

Hoardings, scaffolding, crane lift zones, removal and delivery of materials to and from site, access driveways, works zones, and all other ancillary construction works shall be designed to negate the need for any pruning to protected trees. Piling rigs shall not be used where their use will impact any protected tree.

(Reason: To ensure the protection and longevity of existing significant trees)

Garbage and Recycling Facilities

C43. An appropriate area must be provided within the premises for the storage of garbage bins and recycling containers and all waste and recyclable material generated by this premises. The following requirements must be met:

- a) all internal walls of the storage area must be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained with a tap in close proximity to facilitate cleaning;
- b) provision for the separation and storage in appropriate categories of material suitable for recycling;
- c) garbage enclosures serving residential units are not to be located within areas designated for non-residential uses; and
- d) garbage enclosures serving non-residential uses are not to be located within areas designated for dining purposes.

Plans and specifications which comply with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Note: The applicant may wish to discuss bin storage requirements and location with Council's Environmental Services prior to finalisation of the required detail, and a copy of Council's Waste Handling Guide should be obtained for reference purposes before the design is finalised.

(Reason: To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors)

Waste Collection

- C44. As the waste is to be collected by private contractor, the developer is required to advise potential purchasers that they would be paying two (2) x garbage fees, one for the private waste contractor and another for Council's domestic waste charges. This requirement is to be communicated to prospective purchasers through a s.88B instrument applied to all apartments.

A private contractor will be responsible for all waste streams including bulky waste.

(Reason: To provide notice to prospective purchasers of the required garbage fees)

Asbestos Material Survey

- C45. A report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements;
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Principal Certifier as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Principal Certifier for approval prior to the carrying out of any demolition work.

(Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily)

Noise from Plant and Equipment

C46. The use of all plant and equipment installed on the premises must:

- (a) Comply with the Project Specific Noise criteria contained in Table 4 of the TTM report dated 6 June 2024, pertaining to this development.
- (b) Not cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Vibration from Plant and Equipment

C47. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in "Assessing Vibration: a technical guideline" issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Principal Certifier, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

“affected receiver” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and commercial premises and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected residence.

“contemporaneously” means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Air Conditioners in Residential Premises

C48. The use of any air conditioner installed on the premises must comply with the requirements of the Protection of the Environment Operations (Noise Control) Regulations 2017 and State Environmental Planning Policy (Infrastructure) 2007 and must not:

- (a) emit a noise that is audible within a habitable room in any affected residence (regardless of whether any door or window to that room is open);
 - (i) before 8.00am and after 10.00pm on any Saturday, Sunday or Public Holiday; or
 - (ii) before 7.00am or after 10.00pm on any other day
- (a) cause an LAeq(15min) which exceeds the RBL background noise level by more than 5dB when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry 2017 will be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain residential amenity)

Acoustic Privacy (Residential Apartments)

C49. Noise levels in sole occupancy units of residential apartments must not exceed the following:

Location	Maximum
Habitable Rooms other than Sleeping Areas	40 LAeq (1hr)
Sleeping Areas	35 LAeq (1hr)

The "Maximum" limits are to apply in any hour of a 24-hour period with the windows of the sole occupancy unit closed.

"habitable room" has the same meaning as in the National Construction Code.

A floor separating sole occupancy units shall have a weighted standardised impact sound pressure level $L'_{nT,w}$ not more than 55dB when measured in-situ in accordance with AS ISO 140.7-2006 "Field measurements of impact sound insulation of floors" and rated to AS ISO 717.2-2004 "Rating of sound insulation in buildings and of building elements. Part 2: Impact sound insulation." This clause shall not apply to the floor of a kitchen, bathroom, toilet or laundry in a residential sole occupancy unit.

Mechanical equipment such as lift plant, air conditioning plant servicing the building and pumps shall not be located immediately adjacent bedrooms.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined above have been satisfied, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

(Reason: To comply with best practice standards for residential acoustic amenity)

Compliance with Acoustic Report

- C50. The recommendations contained in the acoustic report prepared by TTM dated 6th June 2024, must be implemented during construction and use of the development.

A statement from an appropriately qualified acoustical consultant certifying that the acoustic mitigation measures outlined in the above stated report have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Principal Certifier for approval prior to the issue of any Construction Certificate.

The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Mechanical Exhaust Ventilation

- C51. A statement from an appropriately qualified and practising Mechanical Engineer is required detailing how the exhaust ventilation system will be installed in accordance with AS1668. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Construction Noise Management Plan

- C52. A Construction Noise Management Plan must be prepared by an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, and must include the following:

- (a) Identification of noise affected receivers near to the site.
- (b) A prediction as to the level of noise impact at noise affected receivers from the use and proposed number of high noise intrusive appliances intended to be operated onsite.
- (c) Details of work schedules for all construction phases.

- (d) A statement should also be submitted outlining whether or not predicted noise levels will comply with the noise criteria stated within the Environment Protection Authority's Construction Noise Guideline.
- (e) Representative background noise levels should be submitted in accordance with the Interim Construction Noise Guidelines (ICNG).
- (f) Confirmation of the level of community consultation that is to be undertaken by occupants at noise affected receivers likely to be most affected by site works and the operation of plant/machinery particularly during the demolition and excavation phases.
- (g) Confirmation of noise monitoring methodology that is to be undertaken during the noise intensive stages of work including details of monitoring to be undertaken at the boundary of any noise affected receiver.
- (h) What course of action will be undertaken following receipt of a complaint concerning offensive noise.
- (i) Details of any noise mitigation measures that have been outlined by an acoustic consultant or otherwise that will be deployed on site to reduce noise impacts on the occupants at noise affected receivers.
- (j) Details of selection criteria for any plant or equipment that is to be used on site, the level of sound mitigation measures to be undertaken in each case and the criteria adopted in their selection taking into account the likely noise impacts on occupants at noise affected receivers and other less intrusive technologies available; and
- (k) Details of site induction to be carried out for all employees and contractors undertaking work at the site.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected residence.

The Construction Noise Management Plan must be submitted to the Principal Certifier and a copy provided to Council prior to the issue of the Construction Certificate.

The Construction Noise Management Plan must be complied with at all times.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

Provision of Accessible Paths of Travel

C53. The building must be designed and constructed to provide access and facilities in accordance with the Building Code of Australia and Disability (Access to Premises - Buildings) Standards 2010. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

Notes:

1. If, in complying with this condition, amendments to the development are required, the design changes must be submitted for the approval of Council's Manager Development Services prior to a Construction Certificate being issued. Approval of a modification application may be required.
2. It is not within Council's power to set aside national legislation which requires the upgrade of buildings to meet modern access standards. Such decisions remain the jurisdiction of the Building Professionals Board Access Advisory Committee who may grant an exemption in certain exceptional circumstances.
3. Information on making an application for an "unjustifiable hardship exemption" under the accessibility standards can be found on the website of the NSW Building Professional Boards at <http://www.bpb.nsw.gov.au/page/premises-standards>

(Reason: To ensure the provision of equitable and dignified access for all people in accordance with disability discrimination legislation and relevant Australian Standards)

Underground Electricity and Other Services

C54. All electricity and telecommunication provision to the site is to be designed in conjunction with Ausgrid and any other relevant authority. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To provide infrastructure that facilitates the future improvement of the streetscape by relocation of overhead lines below ground)

Adaptable Housing

C55. The following nominated apartments are to be designed in accordance with the standard adaptable housing AS4299 - 1995.

Schedule of adaptable units

Unit Nos. 301, 305, 401, 405, 501, 505, 601, 605, 701, 705, 801

A report prepared by a suitably qualified consultant must be obtained that demonstrates, to the certifier's satisfaction, that any adaptable dwellings specified in this condition and the approved plans or documents comply with the provisions of AS 4299 Adaptable Housing Standards.

(Reason: To ensure equity of access and availability of accommodation in the future for an ageing population)

Section 7.11 Development Contributions

C56. A monetary contribution pursuant to the provisions of Section 7.11 of the Environmental Planning and Assessment Act 1979, in accordance with the North Sydney Council's Contribution Plan for the public amenities/ services and the amount detailed in the table below, must be paid to Council.

Local Infrastructure Contributions	Amount (\$)
Open space and recreation facilities	\$548,326.94
Public Domain	\$287,358.75
Active Transport	\$16,401.56
Community facilities	\$110,133.97
Plan administration	\$14,382.68
TOTAL CONTRIBUTIONS	\$976,603.90

Indexation

The monetary contribution required under this consent will be indexed at the time of payment in accordance with quarterly movements in the Consumer

Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Timing of payment

The contribution must be paid to Council prior to issue of any Construction Certificate for any work approved by this consent.

Deferred Payments will not be accepted.

A copy of the North Sydney Contribution Plan can be viewed at North Sydney Council's Customer Service Centre, 200 Miller Street, North Sydney or downloaded via Council's website at www.northsydney.nsw.gov.au

(Reason: To provide for local infrastructure identified in the North Sydney Council Local Contributions Plan 2020)

Special Infrastructure Contribution (SIC)

C57. The development is within the 'St Leonards and Crows Nest Special Contributions Area' defined in the *Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Determination 2020* (as in force immediately prior to its repeal on 1 October 2023).

A person must not apply for a construction certificate or occupation certificate (as the case may require, having regard to the Determination) in relation to development the subject of this development consent unless the person provides, with the application:

- (a) **If a special infrastructure contribution is required to be made under the Determination:** written evidence from the Department of Planning, Housing and Infrastructure that the special infrastructure contribution for the development (or that part of the development for which the certificate is sought) has been made or that arrangements are in force with respect to the making of the contribution; or
- (b) **If a special infrastructure contribution is not required to be made under the Determination:** a clearance certificate issued by the Department of Planning, Housing and Infrastructure to that effect.

More information

A request for assessment by the Department of Planning, Housing and Infrastructure of the amount of the contribution that is required under this condition can be made through the NSW planning portal.

(Reason: To impose the condition in accordance with the Environmental Planning and Assessment (special infrastructure contribution – St Leonards and Crows Nest) Direction 2020)

Security Deposit/Guarantee Schedule

C58. All fees and security deposits/guarantees in accordance with the schedule below must be provided to Council prior to the issue of the relevant Construction Certificate:

Security Deposit/Guarantee	Amount (\$)
Street Tree Bond (on Council Property)	\$60,000.00
Drainage Construction Bond	\$40,000.00
Engineering Construction Bond	\$115,000.00
TOTAL BONDS	\$215,000.00

Note: The following fees are applicable under condition Section 7.11 Development Contributions condition above:

Fees	Amount (\$)
Local Infrastructure Contributions	\$976,603.90
TOTAL	\$976,603.90

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

BASIX Certificate

C59. Under clause 75 of the Environmental Planning & Assessment Regulation 2021, it is a condition of this development consent that all the commitments listed in BASIX Certificate No. 1179591M_04 dated 27 June 2024 for the development are fulfilled. Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the proposed development will meet the Government's requirements for sustainability and statutory requirements)

Outdoor Lighting

C60. All outdoor lighting must comply with, where relevant AS/NZ1158.3:1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting. Details demonstrating compliance with these requirements must be submitted to the Principal Certifier for approval prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To maintain the amenity of adjoining land uses)

Under Awning Lighting

C61. Under awning lighting must be provided to the Pacific Highway frontage of the site. Such lighting is to be designed to P1 standard in accordance with AS/NZS 1158.3.1. The luminaries must be:

- a. weatherproof and vandal-proof;
- b. designed in conjunction with Energy Australia so that the system can easily be connected to a public lighting system when available; and
- c. the location and type of the said luminaries shall be to the satisfaction of Council's Director of Engineering and Property Services.

Certification from a suitable qualified commercial electrician must be obtained to demonstrate compliance with the requirements of this condition and

certification must be submitted to the Principal Certifier prior to the issue of the relevant Construction Certificate. The Principal Certifier must ensure that the building plans and specifications submitted fully satisfy the requirements of this condition.

(Reason: To enhance the amenity and safety of the footpath adjacent to the premises)

Notification of New Addresses

C62. Prior to the issue of the relevant Construction Certificate, an application must be made and written confirmation received from North Sydney Council of the allocated street address and/ or unit numbers of the completed project.

A plan for the proposed building must be submitted to Council for approval with the application for new addresses. Applications for numbering will be considered in accordance with the *NSW Geographical Names Board* requirements outlined in the document titled '*NSW Addressing User Manual*'.

The approved numbering will be recorded in Council's Land & Property Information database and must be clearly displayed at the property at all times. Council will also notify relevant public authorities and some service providers of the approved addresses (including Australia Post). A list of current authorities and service providers notified by Council will be included in the address approval notice.

These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing. A copy of the allocation confirmation must be submitted to the Principal Certifier with the application for a Construction Certificate.

(Reason: To ensure that Council records are accurate, and that numbering complies with the requirements of the NSW Geographical Names Board and Council's *Property Addressing Policy*)

Charging Facility for Electric Vehicles

C63. The building and basement car park are to be designed so that electric vehicle charging points can be installed at a later time within the basement of the building.

Plans and specifications complying with this condition must be submitted to the Principal Certifier for approval prior to the issue of a Construction Certificate. The Principal Certifier must ensure that the building plans and specification submitted fully satisfy the requirements of this condition.

(Reason: To promote sustainability and energy efficiency)

Public Artwork

C64. A public art consultant is to be engaged to design and integrate a commissioned artwork as follows:

- a) That is a high quality bespoke artwork for the proposed building,
- b) That is a significant addition to the existing collection of public artworks within the North Sydney LGA,
- c) Provides a unique sense of place distinct to the Crows Nest Town Centre,
- d) That is contemporary in nature, innovative and create a unique aesthetic signature to the surrounding area,
- e) That is in accordance with the North Sydney Public Art Policy & Arts Plan as well as the North Sydney Arts Trail.

The applicant shall liaise with Councils Arts and Culture Officer and scope the works for local artist/s to prepare the artwork. The artwork will be at the applicant's expense and the final artwork shall be to the satisfaction of Councils Arts and Culture Officer prior to the issue of the relevant construction certificate.

The public artwork must be completed prior to the issue of the Final Occupation Certificate.

(Reason: To facilitate an appropriately designed public art installation that presents high quality design and visual interest to public domain and provides a positive contribution to the streetscape and locality)

Voluntary Planning Agreement

C65. Prior to the issue of any construction certificate, the developer must enter into a Planning Agreement with the Council pursuant to Section 7.4 of the *Environmental Planning & Assessment Act 1979* applying to the subject land and this development application DA66/23 for a monetary contribution, in accordance with the terms of the letter of offer to enter into Planning agreement from Holding Redlich (on behalf of the developer) to the Council dated 6 September 2024 dated 6 September 2024.

To enable activation of the consent, the Planning Agreement shall be entered into and registered at the sole cost of the applicant. The Planning Agreement shall bind all successors in title and shall only be subject to variation at the discretion of the Council.

(Reason: To realise the public purpose of provision of the land for public open space and recoupment of the cost of providing / upgrading public amenities and services created by this development)

D. *Prior to the Commencement of any Works (and continuing where indicated)*

Photographic Survey (Heritage Items)

- D1. Prior to any works commencing a photographic survey recording of the existing building on the site (interior and exterior, including the sections to the retained and demolished and the roof) is to be carried out in accordance with the NSW Heritage Office Guidelines "Photographic recording of Heritage Items using file or digital capture". The survey is to be prepared to the written satisfaction of Council's Historian and Conservation Planner. Two (2) copies of the photographic survey must be provided to Council.

(Reason: To provide a historical record of heritage significant fabric on site for archival purposes)

Protection of Trees

- D2. All trees that are specifically nominated to be retained by notation on plans or by condition as a requirement of this consent must be maintained and protected during demolition, excavation and construction on the site in accordance with AS4970-2009 (Protection of trees on development sites).

A report containing recommendations, and methods of tree protection prepared by an appropriately qualified person must be provided to the Principal Certifier for approval by an appropriately qualified person prior to commencement of any works on the site. Any recommendations must be undertaken for the duration of works on the site.

Sensitive construction techniques including hand excavation, pier & beam construction & flexible location of piers/footings shall be used within the TPZ

of any protected tree. No roots greater than 40mm shall be cut. No stormwater or any other underground services shall be directed through the TPZ of any protected tree.

Hoardings, scaffolding, crane lift zones, removal and delivery of materials to and from site, access driveways, works zones, and all other ancillary construction works shall be designed to negate the need for any pruning to protected trees. Piling rigs shall not be used where their use will impact any protected tree.

(Reason: To ensure compliance with the requirement to retain significant planting on the site)

Project Arborist Engaged

D3. The project arboriculturist:

- shall inspect tree protection measures and certify in writing to the Principal Certifying Authority the measures comply with the approved Tree Protection Plan and as directed by the project arboriculturist before work commences
- shall provide guidance and oversight of tree protection and management to ensure that the stability and ongoing viability of trees being retained is not compromised.
- must contact the tree pruning contractor and Council's Tree Management Officer (giving at least 2 working days' notice) to arrange a joint site meeting, prior to commencing any pruning, to determine the exact location and extent of pruning that is permissible, with the tree pruning contractor to comply with any instructions issued by Council, acting reasonably.

Any pruning must be undertaken by a practicing arborist with a minimum Australian Qualification Framework Level 3 in arboriculture, in accordance with the principles of the Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and the NSW Work Cover Code of Practice for the Amenity Tree Industry (1998), as well as any instructions issued on site by Council, acting reasonably.

The practicing arborist must keep a log of dates and times of when they attended the site, the type of works that were performed, and must form part of the certification required prior to Occupation.

(Reason: Tree protection measures)

Tree Protection Measures

- D4. The tree protection measures detailed in the approved Tree Protection and Management Plan, and as directed by the project arboriculturist shall be established before work commences.

(Reason: To ensure that the stability and ongoing viability of trees being retained are not compromised Tree protection measures)

Protection of Public Trees

- D5. The following tree(s) are required to be protected and retained as part of the development consent in accordance with AS 4970-2009 – Protection of trees on development sites:

Tree	Location	Protection
T14-T17 <i>Lophostemon confertus</i> (to 12x12m)	Roadway plantings in front of 290 Pacific Hwy- Sinclair St frontage	Trunk, branch & root protection
T21&T22 <i>Syagrus romanzoffiana</i> (9x6m)	Council verge in front of 290 Pacific Hwy	Trunk, branch & root protection

Trunk protection to be installed by first wrapping the stem of the tree in hessian or like material then strapping timber battens over the top. It is recommended that timber battens with the dimensions of length 2000mm, width 75mm and depth 50mm are used. The battens are not to be directly screwed or nailed into the tree.

Plans and specifications complying with this condition must be submitted to the registered certifier for approval prior to the issue of the relevant Construction Certificate. The registered certifier must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: Protection of existing environmental and community assets)

Temporary Fences and Tree Protection

- D6. All protected trees on-site that are specifically nominated to be retained by

notation on plans or by condition as a requirement of this consent must be tagged with luminous tape or the like for purposes of identification prior to demolition, excavation or construction works and must remain so for the duration of works on the site. No materials or builder's waste are to be stored in the vicinity of the nominated tree/trees at any time.

Appropriate fencing or barricades in accordance with AS4970-2009 (Protection of trees on development sites), must be installed in accordance with the approved Tree Protection Plan and to the satisfaction of the Principal Certifier prior to demolition or commencement of any works and must be maintained for the duration of the works.

(Reason: To protect the trees to be retained on the site during construction works)

Public Liability Insurance - Works on Public Land

- D7. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Notification of New Addresses

- D8. Prior to the commencement of any building works, an application must be made and written confirmation received from North Sydney Council of the allocated street address (house number) and/ or unit numbers of the completed project.

A plan for the proposed dwelling and unit numbering must be submitted to Council for approval with the application for new addresses. Applications for numbering will be considered in accordance with the *NSW Geographical Names Board* requirements outlined in the document titled '*NSW Addressing User Manual*'.

The approved numbering will be recorded in Council's Land & Property Information database and must be clearly displayed at the property at all times. Council will also notify relevant public authorities and some service providers of the approved addresses (including Australia Post). A list of current authorities and service providers notified by Council will be included in the address approval notice.

These details will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard relating to rural and urban addressing. A copy of the allocation confirmation must be submitted to the Principal Certifier with the application for a Construction Certificate.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of the NSW Geographical Names Board and Council's *Property Addressing Policy*)

Sydney Water Approvals

- D9. Prior to the commencement of any works, the approved plans must be submitted to Sydney Water to determine whether the development application will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. The Principal Certifier must ensure that Sydney Water has appropriately stamped the plans before the commencement of building works.

Notes: **Sydney Water Building Plan Approvals** can be obtained from the Sydney Water Tap in™ online service. Building plans must be submitted to the Tap in™ to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met. For further information visit <http://www.sydneywater.com.au/tapin/index.htm> or call 13000 TAP IN (1300 082 746) for further information.

(Reason: To ensure compliance with Sydney Water requirements)

Asbestos Material Survey

- D10. Prior to the commencement of any works, a report must be prepared by a suitably qualified person in relation to the existing building fabric to be demolished and/or disturbed identifying the presence or otherwise of asbestos contamination and, if asbestos contamination is present, making

recommendations as to the work required to safely address the contamination.

Any demolition works or other works identified in the report as having to be carried out must be carried out in accordance with the recommendations of the report and the following:

- a) the removal of asbestos must be undertaken by a WorkCover licensed contractor;
- b) all removal must be in strict accordance with the requirements of the WorkCover Authority in relation to the removal, handling and disposal of material containing asbestos and any Work Safe Australia requirements;
- c) during the removal of any asbestos a sign stating "DANGER ASBESTOS REMOVAL IN PROGRESS" must be erected in a visible position at the boundary of the site; and
- d) Waste disposal receipts must be provided to the Principal Certifier as proof of correct disposal of asbestos laden waste.

The report must be submitted to the Principal Certifier for approval prior to the carrying out of any demolition work. The Principal Certifier must ensure that the report, and other plans, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure the long-term health of workers on site and occupants of the building is not put at risk unnecessarily)

Commencement of Works' Notice

D11. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. During Demolition and Building Work

Parking Restrictions

- E1. Existing public parking provisions (within the public road reserve) in the vicinity of the site must be maintained at all times during works (other than with the consent or approval of Council). The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E2. All public footways and roadways (within the public road reserve) fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways (other than with the consent of the Council). Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site (unless the Council otherwise consents).

Where public infrastructure is damaged as a result of the development, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742—3 (1996) "Traffic Control Devices for Work on Roads".

If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

- E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including

roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Principal Certifier.

(Reason: Stormwater control during construction)

Compliance with Dewatering Management Plan

- E4. All works conducted on site which form part of this development must be carried out in accordance with the Dewatering Management Plan submitted with the Construction Certificate and all conditions of consent.

(Reason: To protect the environment from the effects of pollution from development sites)

Geotechnical Stability during Works

- E5. A contractor with specialist excavation experience must undertake the excavations for the development and a suitably qualified and consulting geotechnical engineer must oversee the excavation procedure.

Geotechnical aspects of the development work, namely appropriate excavation method and vibration control, support and retention of excavated faces, and hydro geological considerations must be undertaken in accordance with the recommendations of the approved geotechnical report and all subsequent geotechnical inspections carried out during the excavation and construction phase.

Approval must be obtained from all affected property owners, including North Sydney Council where rock anchors (both temporary and permanent) are proposed within adjacent private or public property.

(Reason: Ensure appropriate professional are engaged at appropriate stages during construction)

Council Inspection of Public Infrastructure Works

- E6. During the works on public infrastructure reverting to Council's care and control,

Council's development engineer may undertake inspections of the works at the following hold points:

- a) Formwork for layback, kerb/gutter, footpath etc.
- b) All reinforcement for the concrete base beneath the pavers
- c) Formwork and reinforcement for in-situ stormwater pits
- d) Pipe connections prior to back filling

All works must proceed in accordance with Roads Act 1993 approvals or other permits relating to roads issued by Council. A minimum of 48 hours' notice must be given to Council to book an inspection. Work must not proceed until the works or activity covered by the inspection is approved.

(Reason: To ensure quality of construction joints and connections in the drainage system)

Progress Survey

- E7. In order to ensure compliance with approved plans, a Survey Certificate, prepared to Australian Height Datum, must be prepared by a Registered Surveyor showing the following: -
- a) at the completion of excavation, prior to the placement of any footings, showing the completed level of the excavation and its relationship to the boundaries;
 - b) prior to placement of concrete at the ground floor level, showing the level of the form work and its relationship to boundaries including relevant footpath and roadway levels;
 - c) prior to placement of concrete at each floor level above ground floor showing the principal level of the formwork and the intended relationship of the completed works to the boundary;
 - d) prior to roofing, or completion of the highest point of the building showing the anticipated level of the completed work and its relationship to the boundary; and
 - e) at completion, works showing the relationship of the building to the boundary and showing the maximum height of the overall works and the

height of the principal roof elements.

Progress certifications in response to points (a) through to (e) must be provided to the Principal Certifier for approval at the time of carrying out relevant progress inspections. In the event that such survey information is not provided or reveals discrepancies between the approved plans and the proposed works, all works, save for works necessary to bring the development into compliance with the approved plans, must cease. Works may only continue upon notification by the Principal Certifier to the Applicant that survey information (included updated survey information following the carrying out of works to comply with the approved plans) complies with this condition.

(Reason: To ensure compliance with approved plans)

Removal of Extra Fabric

- E8. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

Dust Emission and Air Quality

- E9. The following must be complied with at all times:
- (a) Materials must not be burnt on the site.
 - (b) Vehicles entering and leaving the site with soil or fill material must be covered.
 - (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
 - (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Noise and Vibration

E10. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Compliance with Construction Noise Management Plan

E11. All works conducted on site which form part of this development must be carried out in accordance with the submitted Construction Noise Management Plan submitted with a Construction Certificate and all conditions of consent.

(Reason: To ensure noise generating activities are appropriately managed and nearby sensitive receivers protected)

No Work on Public Open Space

E12. No work can be undertaken within adjoining public lands (i.e. Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

Applicant's Cost of Work on Council Property

E13. The applicant or the person, company or other entity that is acting upon this consent, must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

No Removal of Trees on Public Property

- E14. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Protection of Trees

- E15. All trees required to be retained, as part of this consent must be protected from any damage during construction works in accordance with AS4970-2009. All recommendations contained within the tree report prepared by Urban Tree Management dated 25/6/24 (p4.), and as further amended by conditions contained herein, must be implemented for the duration of the works.

In the event that any tree required to be retained is damaged during works on the site, notice of the damage must be given to Council forthwith.

Notes:

1. If the nominated tree is damaged to a significant degree or removed from the site without prior written approval being obtained from Council, the issuing of fines or legal proceedings may be commenced for failure to comply with the conditions of this consent.
2. An application to modify this consent pursuant to Section 4.55/4.56 of the Environmental Planning and Assessment Act 1979 will be required to address the non-compliance with any of the conditions of consent relating to the retention of nominated trees, and Council may require tree replenishment.

(Reason: Protection of existing environmental infrastructure and community assets)

Trees to be Removed

- E16. All trees on the site must be protected and retained save for those expressly identified below as being approved for removal:

Tree No./Species	Location	Height (m)
T2 <i>Morus nigra</i>	Northern bdry (rear) of subject site	6 x 11m
T3 <i>Agonis flexuosa</i>	Northern bdry (rear) of subject site	4.5 x 4m
T4 <i>Morus nigra</i>	Northern bdry (rear) of subject site	5.5 x 4.5m
T5 <i>Agonis flexuosa</i>	Northern bdry (rear) of subject site	3.5 x 3m
T6,T7 <i>Callistemon citrinus</i>	NW cnr- subject site	6 x 3.5m
T8 <i>Celtis sinensis</i>	NW cnr- subject site	6 x 2.5
T9 <i>Ligustrum lucidum</i>	NW cnr- subject site	7 x 5.5m
T10 <i>Phoenix canariensis</i>	NW cnr- subject site	5.5m x 5.5m
T11 <i>Cinnamomum camphora</i>	Western boundary of subject site	6 x 5.5m
T12 <i>Ligustrum lucidum</i>	Western boundary of subject site	6 x 5.5m
T13 <i>Jacaranda mimosifolia</i>	Southern boundary of subject site	6 x 8m

(Reason: To ensure compliance with the terms of this development consent)

Benchmarks

E17. All permanent survey markers must be retained, undamaged, and not relocated.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

E18. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours' notice is required for any permit:

1) **On-street mobile plant**

E.g., cranes, concrete pumps, cherry-pickers, etc., - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours

E19. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
R2 Low Density Residential MU1 Mixed-use	Monday - Friday	7.00am - 5.00pm
	Saturday	8.00am - 1.00pm
	Sunday Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, the EPA Noise Policy for Industry 2017 and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the Environmental Planning and Assessment Act 1979 and in accordance with Council's adopted Compliance & Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Out-of-hours' Work Permits

E20. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre

for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 4.55 or Section 4.56 of the *Environmental Planning and Assessment Act 1979*.

Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and
 - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include:
 - extended concrete pours
 - works which are solely to convenience the developer or client, and
 - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Installation and Maintenance of Sediment Control

- E21. Erosion and sediment controls must be installed and maintained at all times in accordance with the Sediment and erosion control plan submitted and approved with the relevant Construction Certificate.

Erosion and sediment measures must be maintained in accordance with the publication *Managing Urban Stormwater: Soils and Construction* (4th Edition, Landcom, 2004), commonly referred to as the "Blue Book" and can only be removed when development activities have been completed and the site fully stabilised.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Sediment and Erosion Control Signage

E22. A durable sign must be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained. A sign of the type referred to in this condition is available from Council.

(Reason: To protect the environment from the effects of sedimentation and erosion from development sites)

Site Amenities and Facilities

E23. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of workplace determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

E24. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site and provide a contact telephone number

for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Archaeological Discovery During Works

E25. Should any historical or Aboriginal relic be discovered on the site during demolition, excavation or site preparatory works, all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW must be informed in accordance with the provisions of the *Heritage Act 1977* and/or *National Parks and Wildlife Act 1974*. Works must not recommence until such time as approval to recommence is given in writing by the Heritage Council or a permit from the Director of the NPWS is issued, or the Heritage Council or the Director of the NPWS (as applicable) says that it has no objection to the work resuming and/or that an approval or permit is not required (as applicable)

(Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics)

Prohibition on Use of Pavements

E26. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Plant and Equipment Kept Within Site

E27. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Councils website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

Imported Fill Material

E28. The only waste derived fill material that may be received at the development site is:

- a) Virgin excavated natural material (within the meaning of the Protection of the Environment Operations Act 1997); and
- b) Any other waste-derived material the subject of a resource recovery exemption under cl. 51A of the Protection of the Environment Operations (Waste) Regulation 2005 that is permitted to be used as fill material.

Any waste-derived material the subject of a resource recovery exemption received at the development site, must be accompanied by documentation as the material's compliance with the exemption conditions and must be provided to the Principal Certifier on request.

(Reason: To ensure that imported fill is of an acceptable standard for environmental protection purposes)

Waste Disposal

E29. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

Waste Disposal -Soil

E30. Soil/waste to be removed from the site must be classified for disposal purposes, appropriately stored, and properly disposed of to a facility licensed to receive that category of waste. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

Asbestos Removal

- E31. All demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with National Occupational Health and Safety Commission.

(Reason: To ensure works are carried out in accordance with relevant WorkCover requirements)

Service Adjustments

- E32. The adjustment or inclusion of any new utility service or facilities must be carried out by an appropriate contractor in accordance with the requirements of the relevant utility authority.

These works shall be at no cost to Council. It is the Applicant's responsibility to contact the relevant utility authorities to ascertain the impacts of the proposal upon utility services prior to the commencement of any work, including demolition (including water, phone, gas and the like).

Council accepts no responsibility for any impact on or influence upon utility services provided by another authority.

(Reason: To ensure the service requirements are met)

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation

National Construction Code

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Home Building Act

- F2. 1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) for which the *Home Building Act 1989* requires there to be a contract of insurance under Part 6 of that Act must not be carried out unless the Principal Certifier for the development to which the work relates has given North Sydney Council written notice of the contract of insurance being issued and of the following:
- a) in the case of work for which a principal contractor is required to be appointed:
 - i) the name and licence number of the principal contractor, and
 - ii) the name of the insurer by which the work is insured under Part 6 of that Act, or
 - (b) in the case of work to be done by an owner-builder:
 - (i) the name of the owner-builder, and
 - (ii) if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- 2) If arrangements for doing residential building work are changed while the work is in progress such that the information submitted to Council in accordance with this condition is out of date, work must cease, and no further work may be carried out unless the Principal Certifier for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Note: A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(Reason: Prescribed - Statutory)

Appointment of Principal Certifier (PC)

- F3. Building work, **demolition** or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifier for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Construction Certificate

- F4. The erection of a building in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of the erection of a building)

Occupation Certificate

- F5. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

- F6. Building work must be inspected by the Principal Certifier on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifier.

(Reason: Statutory)

Commencement of Works' Notice

F7. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence the building work.

(Reason: Statutory; To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Excavation/Demolition

- F8. 1) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.
- 2) All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.
- 3) Demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Protection of Public Places

- F9. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

(Reason: To ensure public safety and the proper management of public land)

Site Sign

- F10. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifier for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:

- a. In the road reserve must be fully completed; and
- b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of Public assets)

Implementation of Conservation Works

G2. All conservation works documented in the Schedule of Conservation Works and Heritage Management document are to be completed prior to the release of any Occupation Certificate. The project Heritage Architect is to provide written confirmation that the entirety of the conservation works has been completed to their satisfaction prior to the release of a Occupation Certificate.

(Reason: To ensure all conservation works have been completed in accordance with the Heritage Management document)

Voluntary Planning Agreement

G3. The payment of the monetary contribution as identified in the Planning agreement referred to in condition C65 is to be paid prior to the issue of any occupation certificate.

(Reason: To ensure that the terms of the Planning Agreement have been satisfied)

Certification – Carpark

- G4. An “as built” certificate from an experienced and qualified traffic engineer with tertiary qualifications is to be submitted to and approved by the Principal Certifier confirming that the design requirements as detailed in the conditions have been met. This must be provided prior to the issue of an Occupation Certificate.

The approved parking must be used exclusively for the car parking as approved for the life of the development.

(Reason: To comply with the relevant standards)

Line Marking

- G5. A certificate prepared by an appropriately qualified and practising Civil Engineer certifying the construction, paving, line marking and signposting of a maximum of 51 off-street carparking spaces, together with access driveways, ramps and traffic circulation areas, in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate must be submitted to, and approved by, the Principal Certifier prior to issue of a relevant Occupation Certificate. The 51 car parking spaces must include a maximum of 46 spaces for the residential apartments, 3 spaces for the commercial premises use and 2 spaces for the retail premises use.

(Reason: To ensure ongoing compliance with this development consent and Australian Standards relating to manoeuvring and access of vehicles)

Noise Certification

- G6. Prior to issue of a relevant Occupation Certificate a certificate from an appropriately qualified acoustical consultant is to be submitted to, and approved by, the Principal Certifier certifying that the noise and vibration from use of the development complies with the conditions of consent here-in.

(Reason: To ensure acoustic amenity)

Loading Dock

- G7. A certificate prepared by an appropriately qualified and practising Civil Engineer certifying the construction, paving, line marking and signposting of the loading dock design including the proposed mechanical turntable, in accordance with the approved development plans, appropriate Australian Standards and industry best practice as appropriate must be submitted to, and approved by, the Principal Certifier prior to issue of a relevant Occupation Certificate.

(Reason: To ensure ongoing compliance with this development consent and Australian Standards relating to manoeuvring and access of vehicles)

Loading Dock Management Plan

- G8. A Loading Dock Management Plan (LDMP) is to be prepared by a suitably qualified traffic consultant detailing the required management arrangements for the safe and efficient operation of the loading dock area, including operation of the van, Small Rigid Vehicle (SRV) and Medium Rigid Vehicle (MRV) loading bays.

The LDMP is to be prepared in consultation with Council's waste officer and shall detail, but not be limited to, the following:

- a) Details of the development's freight and servicing profile, including the forecast freight and servicing traffic volumes by vehicle size, frequency, time of day and duration of stay; and
- b) Details of loading and servicing facilities within the subject site or within other sites in its immediate vicinity which adequately accommodates the forecast demand of the development so to not rely on the kerbside restrictions to conduct the development's business.
- c) Detail the procedures to be adhered to by the on-site dock manager, truck drivers, contractors, residents, tenants, visitors and the like, for trucks arriving at and departing from the site, internal manoeuvring of vehicles and goods, and operation of the vehicle turntable to ensure safety is maintained at all times.
- d) Detail that use of the MRV bay is to only occur during the hours of 9:00 AM – 5:00 PM on weekdays and 10:00 AM – 3:00 PM on weekends.
- f) Detail that all loading and unloading operations associated with servicing the site must be carried out within the confines of the site, at all times and must not obstruct other properties/units or the public way. At all times the service vehicle docks, car parking spaces and access driveways must be kept clear of goods and must not be used for storage purposes, including garbage storage.
- g) The size of vehicles servicing the property must be a maximum length of 8.8 metres.

The LDMP is to be submitted to and approved by Council prior to issue of the relevant Occupation Certificate.

(Reason: To ensure safe and efficient operation of the loading dock)

Access to Premises

- G9. Prior to the issue of a relevant Occupation Certificate, a certificate must be prepared by an appropriately qualified and practising Civil Engineer certifying that access and facilities for persons with a disability in accordance with the National Construction Code and AS Disability (Access to Premises - buildings) Standards 2010 (Premises Standards) has been provided. This certificate must be submitted to, and approved by, the Principal Certifier prior to issue of a relevant Occupation Certificate.

(Reason: Equitable access and facilities for people with a disability)

Certification – Civil Works

- G10. An appropriately qualified and practising Civil Engineer must certify to the Principal Certifier that the stormwater drainage system is constructed in accordance with this consent and the provisions of the applicable Australian Standard. A copy of the certificate must be submitted to Council (if it is not the Principal Certifier) upon completion of the development works and prior to the issue of an Occupation Certificate.

An appropriately qualified and practicing Civil Engineer must certify to the Principal Certifier that the vehicular crossing and associated works and road works were constructed in accordance with this consent and any approval for works in the road reserve issued by the Council. A copy of the certificate must be submitted to Council (if it is not the Principal Certifier), upon completion of the development works and prior to the issue of an Occupation Certificate.

(Reason: Compliance with the Consent)

Works as Executed Drawings

- G11. A works-as-executed survey drawing (W.A.E.) of the completed stormwater drainage system must be obtained. The W.A.E. survey drawing must show the alignment, depth and grade of the stormwater drainage pipelines, pits and ancillary plumbing. The W.A.E survey drawing must be reviewed by a qualified

and practising civil engineer and certification provided to the Principal Certifier that the as-built system achieves the design intent of the plans approved with the relevant Construction Certificate. Certification must be provided with the W.A.E survey drawing to the Principal Certifier prior to the issue of an Occupation Certificate.

CCTV inspection of conduits, that revert to the care and control of the Council, shall be conducted in accordance with the Conduit Inspection Reporting Code of Australia WSA 05-2013.

The camera, transportation unit, distance measuring devices, illumination systems and ancillary equipment shall be used suitable for the conduit size, material and conditions under which the inspection is undertaken.

The camera shall be steerable and be able to negotiate bends within the drainage pipe. The use of a pushrod camera may only be acceptable for pipe diameters less than 150mm or where a steerable camera cannot navigate.

A colour camera shall be used which has remotely operated automatic and/or manual adjustment of the focus and iris to allow optimum picture quality to be achieved.

The camera lens shall be capable of viewing the extremities of the conduit and panning and or tilting to view the lateral connections and defects or features at any position around the conduit regardless of the direction of travel of the camera in the main conduit.

The adjustment of focus and iris shall provide a focal range from 15 mm to infinity. The distance along the conduit in focus from the initial point of observation shall be a minimum of four times the vertical height of the conduit.

Where required, specialised instruments, apparatus and/or software shall be used to facilitate the measurement of parameters to determine acceptance. Hardware and software used in measuring the parameters shall be correctly calibrated for each application using the manufacturer's methods.

For circular or regular-shaped conduits, the camera shall be positioned centrally, $\pm 10\%$ of the vertical and horizontal diameter, within the conduit.

A copy of the WAE survey drawing and certification must be submitted to the Council if it is not the Principal Certifier.

(Reason: Compliance with the Consent)

Certification for Mechanical Exhaust Ventilation

G12. Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems the subject of the Occupation Certificate, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2(a)(iii) of the NCC Building Code of Australia, must be submitted to, and approved by, the Principal Certifier.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Damage to Adjoining Properties

G13. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

Utility Services

G14. All utility services shall be adjusted to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

Regulated Systems- Air Handling

G15. To ensure that adequate provision is made for ventilation of the building all mechanical and/or natural ventilation systems shall be designed, constructed installed and tested in accordance with the provisions of:

- 1) The National Construction Code;
- 2) The applicable Australian Standards;
- 3) The Public Health Act;
- 4) Public Health Regulation 2012;
- 5) Work Cover Authority.

The regulated system must be certified by an appropriately qualified engineer as compliant with the above provisions and registered with Council prior to commissioning the system and prior to issue of a relevant Occupation Certificate.

(Reason: To ensure public health is maintained; Statutory)

Covenant and Restriction (EV Charging spaces)

Not used

Covenant and Restriction (Stormwater Control Systems)

G16. An Instrument pursuant to Sections 88B and 88E of the *Conveyancing Act 1919* and one copy must be submitted to Council in registrable form, providing for:

- a. a restriction as to user and positive covenant as to user as appropriate in favour of North Sydney Council burdening 290 Pacific Highway, Crows Nest requiring the ongoing retention, maintenance and operation of the stormwater facility (on-site detention, pump-out, charged lines);
- b. North Sydney Council being nominated in the Instrument as the only party authorised to release, vary or modify the Instrument;
- c. the wording on the Instrument making reference to the Council file/s which hold:
 - i. the Construction plans; and
 - ii. the "Work-as-Executed" (as built) plans;

Upon Council being satisfied as to the terms of the Instrument, North Sydney Council's official seal will be affixed to these documents, prior to submission to the NSW Land Registry Services for registration

The Instrument creating the restriction and/or covenant under ss 88B and 88E required by this condition of consent must be registered on the Title of the development site prior to the issue of an Occupation Certificate or commencement of use of the site, whichever is the earlier. Typical wording for the Instrument can be sourced from Council's "Specification for the Management of Stormwater".

Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Occupation Certificate.

All costs associated with the preparation, approval and registration of the Instrument required by this condition of consent must be borne by the person acting on this consent including the reasonable costs of Council in obtaining advice, negotiating the terms or otherwise facilitating the execution and registration of the required Instrument.

(Reason: Compliance and adequate maintenance of drainage system)

Basement Pump-out Maintenance

G17. Prior to issue of an Occupation Certificate a Maintenance Regime must be prepared for the basement stormwater pump-out system and submitted to the Principal Certifier for approval with the relevant Occupation Certificate documentation. The regime must specify that the system is to be regularly inspected and checked by qualified practitioners.

The basement stormwater pump-out system must be maintained in accordance with the approved Maintenance Regime at all times.

(Reason: To ensure future provision for maintenance of the drainage system)

Notification of New Address Developments

G18. Prior to any Occupation Certificate being issued, the person acting upon this consent must comply with the following: -

- (a) Notify Australia Post of the address(es) as issued by Council and the location in plan form of any secondary, internal addresses, in relation to built public roads. Check Australia Post Website (www.auspost.com.au) to find your nearest Australia Post Delivery Facility.

(Reason: To ensure that Council records are accurate, that house numbering complies with the requirements of Council's House Numbering Policy and to assist emergency services.)

Asbestos Clearance Certificate

G19. For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by an appropriately qualified person (being an Occupational Hygienist or Environmental Consultant) must be submitted to and approved by the Principal Certifier (and a copy forwarded to Council if it is not the Principal Certifier) for the building work prior to the issue of any Occupation Certificate, the asbestos clearance certificate must certify the following: -

- a) the building/ land is free of asbestos; or
- b) the building/ land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from www.epa.nsw.gov.au.

(Reason: To ensure that building works involving asbestos based products are safe for occupation and will pose no health risks to occupants)

Certification of Tree Condition

G20. Prior to the issue of an Occupation Certificate, a report prepared by an appropriately qualified person (being an arborist or the like) must be submitted to the Principal Certifier, describing the health of the tree(s) specifically nominated below: -

Tree No./Species	Location	Height (m)
T1 <i>Eucalyptus botryoides</i>	Southern boundary-99 Shirley Rd	11x8m
T14-T17 <i>Lophostemon confertus</i>	Roadway plantings in front of 290 Pacific Hwy- Sinclair St frontage	12x12m
T18 <i>Eucalyptus scoparia</i>	To rear 270-272 Pacific Hwy	12x5.5m

T19&T20 <i>Ligustrum lucidum</i>	To rear 270-272 Pacific Hwy	9x6m
T21&T22 <i>Syagrus romanzoffiana</i>	Council verge in front of 290 Pacific Hwy	9x6m

The report must detail the condition and health of the nominated tree(s) upon completion of the works and shall certify that the tree(s) has/have not been significantly damaged during the works on the site and has/have reasonable prospects for survival. The certification must be submitted with any application for an Occupation Certificate.

(Reason: To ensure compliance with the terms of this consent)

Vehicle Egress Signs

G21. Prior to the issue of an Occupation Certificate, appropriate sign(s) must be provided and maintained within the site at the point(s) of vehicular egress to ensure all vehicles stop before proceeding onto the public way.

(Reason: To ensure pedestrian safety)

Height

G22. Upon completion of the works and prior to the issue of any Occupation Certificate the RL of the development as approved must be surveyed and certified by an appropriately qualified and practising surveyor as compliant with the maximum approved levels. This survey and certification must be submitted to the Principal Certifier with the application for an Occupation Certificate and a copy provided to Council (if it is not the Principal Certifier).

(Reason: To ensure compliance with the terms of this development consent)

Sydney Water

G23. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The final Section 73 Certificate must be submitted to the Principal Certifier prior to release of any linen plan for subdivision or prior to occupation of the development, whichever is the earlier.

Notes:

1. Application must be made through an authorised Water Servicing Co-ordinator, for details see the Sydney Water web site www.sydneywater.com.au/customer/urban/index, or telephone 13 20 92.
2. Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with the statutory requirements of Sydney Water)

BASIX Completion Receipt

- G24. In accordance with Section 45 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021, prior to issuing a final occupation certificate the Principal Certifier must provide a BASIX completion receipt.

(Reason: To ensure compliance with the Regulations)

House Numbering (Dwellings)

- G25. Prior to any Occupation Certificate being issued an application must be made to North Sydney Council for written confirmation, or allocation, of the street address(es) or apartment number(s) for the completed project in accordance with Council's Property Addressing Policy. These are the numbers that will be recorded in Council records and must be displayed at the property in accordance with the provisions of AS/NZS 4819:2011.

Note: If apartments are to be sold off the plan, the applicant must have written confirmation from Council of the address and apartment numbering if the apartment number is to be identified on the contract.

(Reason: To ensure that Council records are accurate, and that house numbering complies with the requirements of Council's House Numbering Policy. Proper house numbering also assists emergency services in readily locating properties.)

Landscaping

G26. The landscaping shown in the approved Landscape Design Report prepared by Urbis dated 25 June 2024 must be completed prior to the issue of a relevant Occupation Certificate.

(Reason: To ensure compliance)

Damage to Adjoining Properties

G27. On completion of the development the subject of this consent and prior to the issue of any Occupation Certificate, a report is to be prepared by an appropriately qualified consultant and is to be provided to the Principal Certifier (and a copy to Council if it is not the Principal Certifier) certifying:

- a) whether any damage to adjoining properties has occurred as a result of the development;
- b) the nature and extent of any damage caused to the adjoining property as a result of the development;
- c) the nature and extent of works required to rectify any damage caused to the adjoining property as a result of the proposed development;
- d) the nature and extent of works carried out to rectify any damage caused to the adjoining property as a result of the development; and
- e) the nature and extent of any agreements entered into for rectification of any damage caused to the adjoining property as a result of the development.

The report and certification must reference the dilapidation survey and reports required to be provided to the Principal Certifier in accordance with this consent.

Where works required to rectify any damage caused to adjoining property as a result of the development identified in the report and certification have not been

carried out, a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible prior to the issue of an Occupation Certificate.

All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To ensure adjoining owner's property rights are protected in so far as possible)

Verification Statement (External Finishes and Materials)

G28. Prior to the issue of a relevant Occupation Certificate, a verification statement from a qualified designer or architect (preferably the original designer), must be submitted to Council and the Principal Certifier certifying that the external finishes and materials are in accordance with the approved schedule of finishes and materials identified in this consent.

"qualified designer" means a person registered as an architect in accordance with the *Architects Act 2003*.

(Reason: To ensure the design quality and finishes for residential flat development)

Unpaved Verge

G29. The unpaved verge area must be constructed or reconstructed and planted with an appropriate species of grass prior to completion of the works at no cost to Council.

(Reason: To ensure that community assets are presented in accordance with reasonable community expectations)

Allocation of car parking spaces

G30. Car parking spaces must be provided and maintained at all times on the subject site. The spaces must be allocated to uses within the building as follows:

Car Parking Type	Maximum Number of Spaces
Residential apartments	46 spaces including 11 accessible space.

Commercial	3 spaces including one (1) accessible space.
Retail	2 spaces including one (1) accessible space

The car parking spaces are to be identified on-site by line-marking and numbering upon the completion of the works and prior to issue of the relevant Occupation Certificate. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Green Travel Plan

G31. The Green Travel Plan (GTP) dated 16 August 2024 prepared by McLaren Traffic Engineering & Road Safety Consultants is to be amended by a suitably qualified traffic engineer or traffic planner and is to be submitted to Council and the Principal Certifier, prior to the relevant Occupation Certificate.

The Green Travel Plan must incorporate the following:

- (a) empirical analysis of typical travel demand and mode share outcomes for walking, cycling, public transport including Metro Services and private vehicular use for similar developments (base case scenario);
- (b) a vision and objectives for the Travel Plan that are consistent with the community's vision for transport as detailed in the North Sydney Transport Strategy;
- (c) specific, measurable, ambitious and realistic targets, including time-frames for achieving them;
- (d) an action plan, with links to identified targets, that demonstrates how these actions will deliver the Travel Plan vision, reduce travel demand and/or increase walking, cycling, public transport and ride sharing for trips to and from the site. This could include:
 - i. Identification and promotion of public transport options to access the site (for example, on a website and /or business cards);
 - ii. Preparation of a Transport Access Guide (TAG) for the site.
 - iii. Implementation of a car pool system for employees;
 - iv. Introduce staff car sharing scheme for fleet vehicles;
 - v. Use taxis or public transport for work related journeys;
 - vi. Provide priority parking for staff who car pool with more than 2 passengers;
 - vii. Encouragement of cycling and walking to the site through generous provision of bicycle parking, showers and lockers;
 - viii. Incentive schemes to encourage employees to commute using sustainable transport modes (such as the provisions

- of public transport vouchers/subsidised public transport tickets);
- ix. Allocation of designated parking spaces for a car sharing scheme;
 - x. Prominent display of a large map of cycling routes (i.e. in the foyer of a residential, educational or business complex);
 - xi. Provide staff with cycling allowances, loans and insurance together with bicycle storage and showering and changing facilities; and

The recommendations, amenities and travel arrangements outlined in the GTP required by this condition are to be implemented and maintained at all times for the life of the development.

Notes:

- *Transport Access Guides (TAGs) provide information to staff and clients on how to reach places via public transport, walking or cycling.*
- *The strategies listed above do not comprise an exhaustive list and Council may consider alternative strategies that reduce the reliance on the use of private motor vehicles.*

(Reason: To encourage use of public transport and active transport and to minimise reliance on the private motor vehicle)

Vehicle Turntable

G32. To ensure safe and efficient operation of the vehicle turntable unit to be located in the loading bay, the following measures must be implemented in the completed development:

- (a) The turntable must have line marking depicting the centre of the turntable, maximum radius in which a vehicle is to be contained upon the turn table itself and the maximum swept path radius and associated "Keep Clear" marking, as a result of the swept path of vehicle overhanging the turn table.
- (b) The turntable controls / control pad must be located in close proximity to the turntable and are to be clearly marked and visible from the turntable. Controls are to include an emergency stop button, rotation control and a programmed/defined turning movement designed to facilitate manoeuvring a vehicle from the typical approach to the typical exit, operated with a single button.
- (c) A maintenance number is to be listed on the control panel area so as to minimise the downtime should the device breakdown

Details confirming installation of the above within the development must be provided to the Principal Certifier prior to the release of the relevant Occupation Certificate.

Charging Facility for Electric Vehicles to be provided

- G33. Appropriate provision must be incorporated into the design of car parking areas to allow for the installation of charging facilities for electric vehicles.

Certification confirming that that electric vehicle charging points can be installed at a later time within the basement of the building as required by the Charging Facility for Electric Vehicles condition that electric vehicle charging facilities are capable of being installed in parking areas as required by this condition is to be provided to the Principal Certifier with the Final Occupation Certificate. All costs incurred in achieving compliance with this condition shall be borne by the developer.

(Reason: To promote sustainability and energy efficiency)

Public Artwork to be installed

- G34. The public artwork agreed under specific requirements of any conditions within this consent is to be installed prior to the issue of the Final Occupation Certificate. Any variation to the artwork, shall be to the satisfaction of Council. The artwork is to be maintained in an acceptable condition at all times.

(Reason: To ensure that the art work required by this consent is delivered and maintained in an appropriate condition)

I. Ongoing/Operational Conditions

Communal Open Space

- I1. The use of the roof top communal open space area on Level 11 is to be in accordance with the approved Plan of Management (POM) at all times.

EV Charging Spaces

- I2. The use of the EV charging spaces are to be in accordance with the approved

EV Plan of Management (POM) at all times.

First use of Premise – Further consent Required

- 13. A separate development application for the fitout and use of the commercial premises must be submitted to and approved by Council prior to that fitout and/or use commencing

(Reason: To ensure that development consent is obtained prior to uses commencing)

Use of Car Parking Spaces

- 14. Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

(Reason: To ensure that parking for building occupants remains available on an ongoing basis)

Allocation of Spaces

- 15. The allocation of car parking spaces within the development must be maintained at all times in accordance with the terms of this consent. The allocation of spaces must be maintained in accordance with the following table:

Car Parking Type	Maximum Number of Spaces
Residential apartments	46 spaces including 11 accessible spaces.
Commercial	3 spaces including one (1) accessible space.
Retail	2 spaces including one (1) accessible space

Car parking spaces provided must only be used in conjunction with the approved uses contained within the development.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

Noise and Vibration Impact

16. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Loading within Site

17. All loading and unloading operations must be carried out wholly within the confines of the site, at all times and must not obstruct other properties or the public way.

(Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian amenity)

Minimum Headroom for Car Parking

18. Minimum headroom clearances must be provided throughout the car parking and loading areas as per AS 2890.1-2004, AS 2890.2-2018 and AS 2890.6-2009, including:

- A minimum clearance of 2.2 metres must be provided over all car-parking areas.
- A minimum clearance of 2.5 metres provided over all accessible parking spaces and shared areas.
- A minimum clearance of 3.5 metres provided above Small Rigid Vehicle bays and manoeuvring areas to/from the bays.
- A minimum clearance of 4.5 metres provided above the Medium Rigid Vehicle bay and manoeuvring areas to/from the bay.

(Reason: To ensure compliance with relevant standards and provide appropriate headroom)

No Illumination

19. No consent is given or implied for any form of illumination (other than ground - level lighting, lighting on rooftop/podium level areas to benefit the occupants of those areas and interior lighting) or floodlighting to the building or any sign. A separate development consent must be obtained for any such external

floodlighting or illumination of the building, approved sign or site landscaping (unless exempt development).

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

Commercial Waste and Recycling Storage

I10. Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.

(Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed)

Waste Collection

I11. Waste and recyclable material, generated by this premises must not be collected between the hours of 10pm and 6am on any day.

(Reason: To ensure the amenity of surrounding properties)

Delivery Hours

I12. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

Roof Top Lighting

I13. Lighting on rooftop or podium level areas must not be illuminated between 11:00 pm and 7:00 am. The design and placement of the lighting must:

- (a) be directed away from any residential dwelling;
- (b) not create a nuisance or negatively affect the amenity of the surrounding neighbourhood; and
- (c) comply with AS4282-1997 control of obtrusive effects of outdoor lighting.

(Reason: To ensure residential premises are not affected by inappropriate or excessive illumination)

Maintenance of Approved Landscaping

114. The site owner is to maintain the landscaping approved by this consent generally in accordance with the approved plans.

Any replacement plants required shall be advanced in growth and be selected to maintain the anticipated mature height, canopy density and nature of those plant species as originally approved. Any replaced trees shall conform with AS2303:2018 Tree stock for landscape use and the approved Landscape Plan.

Should it be desired to substitute plants which are not of the same mature height, canopy density and nature (particularly flowering for non-flowering, native for exotic, deciduous for non-deciduous or the reverse of any these) a modification to this consent will be required.

(Reason: To ensure maintenance of the amenity, solar access and views of adjoining properties)

