



New South Wales Government
Independent Planning Commission

TRANSCRIPT OF MEETING

RE: MIXED USE DEVELOPMENT INCLUDING IN-FILL AFFORDABLE HOUSING – FIVE WAYS, CROWS NEST(SSD-66826207)

COUNCIL MEETING

PANEL:	MICHAEL WRIGHT (CHAIR) DUNCAN MARSHALL
OFFICE OF THE IPC:	BRAD JAMES TAHLIA HUTCHINSON CALLUM FIRTH
NORTH SYDNEY COUNCIL:	NEAL MCCARRY MICHAEL HORNERY
LOCATION:	ZOOM TELECONFERENCE
DATE:	12:30PM – 1:30PM THURSDAY, 5 th DECEMBER 2024

<THE MEETING COMMENCED

MR MICHAEL WRIGHT: Good afternoon, Neal and Michael. Just before we get into proceedings, I'm going to make an opening statement. So, I'd like to acknowledge that I'm speaking to you from Gadigal land, and I acknowledge the traditional owners of all of the country from which we virtually meet today, and I pay my respects to their Elders past and present.

Welcome to the meeting today to discuss the mixed use development including in-fill affordable housing at Five Ways, Crows Nest (SSD-66826207) currently before the Commission for determination. The applicant, Deicorp Construction Pty Ltd, proposes to construct a 22-storey mixed use development comprising commercial premises within a 3-storey podium, a 19-storey residential tower above with 188 apartments (including 141 market and 48 affordable housing apartments), and seven basement levels. The site is located in the North Sydney local government area.

My name is Michael Wright, and I am the Chair of this Commission Panel. And I am joined by my fellow Commissioner, Duncan Marshall. We are joined by Brad James, Tahlia Hutchinson and Callum Firth from the Office of the Independent Planning Commission.

In the interests of openness and transparency and to ensure the full capture of information, today's meeting is being recorded, and a complete transcript will be produced and made available on the Commission's website.

This meeting is one part of the Commission's consideration of this matter and will form several sources of information upon which the Commission will base its determination.

It is important for the Commissioners to ask questions of attendees to clarify issues whenever it is considered appropriate. If you are asked a question and are not in a position to answer, please feel free to take the question on notice and provide any additional information in writing, which we will then put up on our website.

I request that all attendees here today introduce themselves before speaking for the first time, and for all attendees to ensure that they do not speak over the top of each other, to ensure accuracy of the transcript. Thank you very much.

So Neal and Michael, could you please just introduce yourselves to the Commission Panel?

MR NEAL MCCARRY: Sure. Thank you, Commissioner. Just before I kick off, the audio is a little bit sketchy, so I can just clarify – I've heard your address there – can I just clarify you can hear me okay at this point?

MR WRIGHT: Quite clearly.

MR MCCARRY: Thank you. Yes, good afternoon, and I do acknowledge the traditional owners of the land upon which I'm sitting today, being the Cammeraygal lands, and pay my respects to the Elders past and present.

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Yes, good afternoon, ladies and gentlemen, and thank you for the opportunity to meet with the Commission as part of the consideration. My name is Neal McCarry, I am the Manager of Strategic Planning at North Sydney Council. And also in attendance this afternoon is Michael Hornery, he is an Executive Assessment Planner at North Sydney Council.

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I understand you've been given a copy previously of the Council's written submission, the one from June, and I note obviously that aspects of this are discussed in the Assessment Report. And having had the benefit of now reviewing that Assessment Report, I'd hoped today to discuss the key aspects of Council's concerns to this proposal, and how these have been responded to in that document.

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And I also provided to Tahlia earlier this week some documents that I was going to reference today, being a Gateway Determination Report, a Plan Finalisation Report, as well as a recent Land and Environment Court judgement. I don't intend to go into a huge amount of detail on those, but I just wanted to ensure those have been provided for your benefit.

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So, look, I'm in your hands in the preferred manner in which you wish to run this session, but I was going to suggest if it's appropriate that I perhaps outline each key issue in turn and then obviously if you have questions for Michael or myself, then happy to field those on the run. I don't do this too frequently, so I'm, yes, not sure of the exact protocols, but I think you'll make that clear.

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MR WRIGHT: Neal, that's a fine approach. Could you please proceed.

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MR MCCARRY: Sure. Okay – sorry.

MR DUNCAN MARSHALL: Can I just clarify, as you're working through the issues, if you could clarify if you're responding to the Department's Assessment Report and recommended conditions or to the previous material available.

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MR MCCARRY: Look, it's largely structured around the conclusions being reached in the Department's Assessment Report. So I've sort of taken that approach to sort of hone-in on those.

40

So, I might start just in terms of setting context. I think we're aware that section 4.39 of the EP&A Act as well as clause 190 subsection 2 of the Regs requires a State Significant Development Application to have regard to the State Significant Guidelines, and the relevant ones there are dated March '24 and July 2022. And then section 3.3, importantly, of these guidelines makes specific reference to a requirement to consider strategic context.

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So, it's Council position that overall, the State Significant Development Application before the Commission as latest submitted, fails to satisfactorily consider these statutory requirements as we apply them and interpret them.

5 So, in terms of strategic context, the State Government obviously led the St Leonards and Crows Nest 2036 Plan, and that was made and finalised in 2020. And accompanying this was a Ministerial Direction requiring any Planning Proposal to be consistent with the vision, objectives and actions of the plan.

10 While it's not outlined in detail in the Assessment Report, I just wanted to draw to the Commission's attention the fact that as recently as October 2021, the Sydney North Planning Panel considered a rezoning and review for a Planning Proposal that saw a building height of 75 metres and a floor space ratio of 9.3:1, both well in excess of the St Leonards and Crows Nest 2036 Plan. And the Sydney North
15 Planning Panel determined unanimously that that proposal shouldn't proceed to gateway, as it failed to demonstrate strategic merit on the basis that the proposed heights and FSRs constituted a significant variation to the 2036 Plan and did not achieve the overall intent of that plan, having regard to its vision, objectives and actions.

20 In reaching this position, the panel at that time commented that the site sits outside the corridor, as also referred to as this concept of height knuckle areas, between St Leonards Station and Crows Nest Station, where the 2036 Plan envisaged that taller and higher density buildings be located and then should transition outwardly
25 in height, bulk and scale to the surrounding low density residential and heritage conservation areas in this area.

So, in terms of height more specifically, and the bulk and scale issue, the applicant then submitted a new Planning Proposal seeking a height of 63.5 metres and a
30 floor space ratio of 5.8:1. And the issue of height in both storey and metres is discussed in quite some detail throughout both the Department's Gateway Determination Report, that's the document dated March 2023, as well as the Department's Plan Finalisation Report dated November 2023.

35 So, in exploring this issue and considering those established principles such as transition, heritage, solar impacts and context, the Department ultimately formed the position that in order to ensure consistency with the 2036 Plan, a maximum of 16 storeys that better responds to the overarching strategic policy and a height of 58.5 metres be applied to this site. And that also had a provision allowing a
40 2 metre allowance for lift overrun and plant and equipment and the like.

So, this led to the gazelle or finalisation of that amendment to that site in December 2023 and accompanying that height limit was a floor space ratio also of 5.8:1. So, notwithstanding the provisions of the Housing SEPP which allow
45 potential bonuses, it's somewhat confusing to read some of the conclusions being reached in the Assessment Report, that in our opinion don't have sufficient regard to these important strategic considerations, as is required under the guidelines, as well as the very recent State Government policy which sought to implement those

objectives and actions and principles of the 2036 Plan, most notably this principle of centre height transition and protection of lower density areas and conservation areas from unreasonable overshadowing and visual impacts. These height principles were also informed in the heights more recently assigned under the Crows Nest Transit Orientated Development finalisation occurring just as recently as last week.

In particular, I wanted to draw to the Commission’s attention, paragraphs 58 and 59 of the Department’s Assessment Report. I won’t read the entirety of the text, but this issue appears – the essence of it comes down to a sentence or two where it’s stated, “It considers that the site is capable of accommodating additional height and floor space in line with the Housing SEPP for the reasons outlined below, as well as the tables 10 and 14 contained in Appendix C of that Assessment Report.”

So, moving to those two dot-points under paragraph 59, they seem to rely upon what I would call a fairly sweepingly general comment, and I paraphrase, “That the 22-storey building height is well within the 8 to 32-storey building heights and forms which are anticipated along the Pacific Highway corridor, as outlined in the EIE.” Finish quotation there.

This position, to be candid, is in our opinion factually and subjectively incorrect. And at best is an oversimplification of both the strategic policy and site context that has been the subject of several years’ work.

The taller towers are indeed in the height knuckles of St Leonards and Crows Nest Metro Station, and step down towards the edges of the precinct. And this State Significant Development proposal currently before us is at direct odds with that, being some 21 metres over that most recently established height limit.

Just making reference to the tables that are contained in that appendix that are referenced in paragraph 58. They’re largely numerically focused compliance tables and, in our opinion, don’t really satisfactorily explore those necessary and relevant mentioned principles of stepping down, transition and overshadowing and visual impact.

So that’s sort of all on the issue of height.

I’m just going to move on now to the Crows Nest TOD and the EIE, because that’s also referenced in the Assessment Report. So, at paragraph 60 and 61, the Assessment Report states – or actually, sorry, it’s paragraph 60 directly, “That the EIE is not a draft environmental planning instrument and does not carry statutory weight.” And then somewhat conflictingly, the Assessment Report in two other paragraphs, 59 and 65, seem to infer a level of reliance upon that draft TOD and the EIE as a justification for this significant increase in height, bulk and scale to that recently deemed appropriate in December last year.

So, I also wanted to draw to the Commission’s attention, and this was the

judgement I made reference to, the Land and Environment Court judgement *PDS Engineering ATS North Sydney Council*, which was delivered again quite recently on the 8th of November this year.

5 This judgement relates to a site in very close proximity just being immediately
opposite on the Pacific Highway. And in considering the weight that might be
given to the St Leonards/Crows Nest Plan and the draft TOD in that judgement, at
paragraph 41, Commissioner Horton, I think it was, from memory, states, and I'll
10 paraphrase again, or sorry, quote directly, "As such, the EIE is a draft planning
instrument which the 2036 Plan is not."

So, that's in relation to the considerations of the Commissioner at that time for that
site, I'll just draw that to your attention. So, with this in mind, and noting that the
15 Crows Nest TOD and EIE has now come into effect with the recent amendment to
the North Sydney LEP on the 27th of November, it's Council's position that the
EIE should be given weight in consideration of this proposal. So that's – well, not
agreeing with the position of the Department there.

20 The Crows Nest TOD as exhibited and now made and finalised, identified a
maximum building height of 58.5 metres with an allowance for lift and overrun of
2 metres on this site. The amendments associated with the Crows Nest TOD also
importantly switch off the bonus provisions of the Housing SEPP, as well as
require on this site an affordable housing provision rate of 6% to be provided in
25 perpetuity, obviously to meet a long-term need, within that height limit identified
on the plan.

30 So, this State Government policy position was obviously consciously made, and
this site, in our opinion, should not be exempted from these requirements on the
basis of the fortuitous timing of their lodgement, given all that important precinct
planning work has just been done by the State Government.

I just wanted to draw your attention in terms of this issue of when they did lodge
the application and when these changes came in. In making that amendment to the
35 TOD, a savings provision was included within North Sydney LEP. So, that's
provided in the LEP at clause 1.8(a) subparagraph 7, and I'll just read it out, if I
may. It says, "A development application made but not finally determined before
the commencement of the SEPP TOD must be determined as if the policy had not
commenced."

40 My interpretation of this provision, and Michael, who is obviously more focused
on the regular access program, sorry, workload in the Council, is in agreement –
but jump in, Michael, if you wish, is that my own interpretation is when that's
considered in conjunction with the position expressed most recently by
45 Commissioner Horton, is that the Crows Nest TOD EIE should be a matter for
consideration and assessment of this proposal.

And obviously in considering the weight that might be given to such a draft
instrument, there's obviously been numerous judgements over years on this

matter. However, these all focus in on these principles of certainty and eminence. And the EIE and TOD has now come into effect, so certainty is clear, and eminence can, as per that savings provision, now be taken to be a theoretical day immediately before the policy has commenced.

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So, that's an important matter we feel has not been addressed in the Department's report and, in fairness, that finalised plan only came out on the 27th of November. But the matter is still of relevance to this determination and assessment, in our opinion.

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On the issue of solar access, the Department's Assessment Report, again, doesn't appear to make any meaningful or detailed qualitative assessment of the solar access and impacts to surrounding properties. There's quite a lot of commentary on the internal compliance with apartment levels of solar access and percentages and the ADG etc. But I draw your attention to page 55 of the report where there's one sentence that states, "The Department's assessment of solar access studies concludes the proposal does not result in any unacceptable overshadowing impacts on surrounding developments."

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So, the proposal currently before the Commission is some 79 metres in height. As I've mentioned, that's 21 metres over what was the previously established height limit. And this results, mid-winter in a length of shadow that's some 60 metres longer than one might previously have anticipated under that amendment to the LEP. And in our opinion, this requires a much more detailed assessment of an analysis of what the impacts are, and an appropriate commentary of why these are or aren't acceptable, against the relevant assessment criteria.

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An example of where this sort of seems to be a very broad-brush approach is on page 39 where a statement says – sorry, page 39 in a table there, "Most of the areas impacted by additional uplift are already overshadowed by existing developments and structures." That, to our mind, is totally unqualified or quantified and just appears a generalised statement which in fact I don't think correct.

35

It's also noted that when the Crows Nest TOD was finalised, that a Precinct Design Guide was issued, and that guide is taken to constitute a DCP, we've been advised by the Department. And that contains provisions relating to solar access, including no additional overshadowing of low density residential areas outside the investigation area, as well as a minimum of 3 hours to heritage conservation areas as detailed in our submission.

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On the issue of parking rates, if I can move to that. So, in response to the significant number of large-scale developments earmarked for areas around St Leonards, Crows Nest and Victoria Cross and North Sydney stations, that's both metro and heavy rail. An amendment to the North Sydney DCP was prepared and exhibited in September to December 2022. And this amendment applied maximum parking rates for both commercial and residential developments, similar to those in place for a much smaller area within St Leonards that had been done

some years previous, to again accommodate increased densities.

5 These amendments came into effect on the 4th of May, which was well prior to the current EIS being lodged which was early this year. The premise of these amendments was, in simple terms, that in locations with a high public transport accessibility level, to reduce the ownership and dependence on private vehicle and the ensuing traffic generation, while still offering a degree of choice in terms of it wasn't a prohibition of parking outright, it was reducing that quantity that was provided.

10 The significant densities are after all predicated on extremely close proximity to the Crows Nest and Victoria Cross metro stations. So it's noted on this issue that the Department engaged an external expert opinion, I think Beca is the reference to the company name that was attached and available on the website. Who recommended that the Council DCP rates should be applied only to the commercial, and that there's a recommendation of agreement or acceptance of this by the applicant.

20 So, that decision firstly is welcomed by Council. What's unclear, however, from a sort of methodology point of view, is how that consultant and the Department in their assessment have both come to the view that the residential parking rates should be determined by the Housing SEPP and not the DCP. So, the Housing SEPP sits minimum rates for which refusal cannot be based if they're met, and the provisions of the SEPP in relation to parking make no, I suppose, differentiation to the locational criteria or the vastly different transport public and private conditions that apply all across Sydney through which that SEPP is applying.

30 So, our calculation – and I'm happy to break this down, but in the interests of time, I'll just get to the summary. Our calculation is that based on the latest unit mix as put forward, that the issue of the DCP parking rates for residential should be a maximum of 133 parking spaces for the residential component. So, it's Council's position that the adopted DCP rates should be applied to the entirety of the development.

35 And that's important because – sorry, apart from the principle of this location and the density that's been achieved on the site, it also becomes important from a, I suppose, statutory or technical reason, is that when we look at the standardised definition of gross floor area within the North Sydney LEP, car parking to meet any requirements of the consent authority is excluded from GFA. And the parking that is being provided above Council's DCP requirements should therefore be included in the calculable GFA.

45 So this issue was raised explicitly in Council submission from June this year but does not appear to be addressed by the applicant or in the Department's Assessment Report. So, page 63, there's a reference there which provides comment on the numerics of the FSR but doesn't deal with this issue. And this creates, in our opinion, a jurisdictional matter as to whether the application can be legally determined in the absence of a clause 4.6 variation for the floor space

ratios.

5 **MR MICHAEL HORNERY:** Neal, just with that, just one thing I do add. With the site that was across to the road, just to touch on that. When Neal's talking about with the absence of the 4.6, we had a site where basically they were in excess of the parking rate, both parties agreed through that Land and Environment Court appeal that that would be included within the FSR, and they reduced the site by well in excess of a hundred spaces. So, that's where our sort of concern came from. And factually, both parties had that agreement. So, and that was from in a legal position as well.

10 **MR MCCARRY:** Thanks for clarifying that, Michael. It's also just noted on this issue that accompanying the finalisation of the Crows Nest TOD was a Precinct Design Guide. As I mentioned, this guide constitutes a DCP and contains provisions relating to parking rates, which are numerically the same as contained in the North Sydney Development Control Plan.

15 I may also add reference that the ADG calls up rates of parking provision, and I think it's at section 3J – if that's correct, Michael? That states where there's local controls in place, the lesser quantum or rate should apply.

20 So, that's the matter of the parking both from a principle point of view as well as a technical numerical point of view in what's before the Commission.

25 **MR WRIGHT:** Neal, could I just clarify one ...

MR MCCARRY: Please.

30 **MR WRIGHT:** I think you said based on your calculations that the maximum parking should be something of the order of 139 spaces or a number like that. Was that about right?

35 **MR MCCARRY:** Sorry if I didn't come across. Yes, it was 133 – that's for the residential component.

MR WRIGHT: So it was only for the residential, not the ...

40 **MR MCCARRY:** I beg your pardon, yes, only for the residential. And then I think the figure being relied upon or as agreed by the applicant is 20-odd for the commercial retail component.

MR WRIGHT: Okay, thanks.

45 **MR MCCARRY:** I can give you the breakdown if needed for the record, but it's as per our DCP.

MR HORNERY: Yes, we do note there was a significant reduction in the commercial from the original scheme.

MR MCCARRY: Correct, yes. On the broader issue of heritage. One of the principles established again in the St Leonards and Crows Nest 2036 Plan and carried through more recently in the Crows Nest TOD, was that new development provide an important transition to items of heritage significance, including conservation areas.

The site as I'm sure you're all aware, is in very close proximity to several heritage items, as well as the Holtermann Estate heritage conservation areas, some of our most intact conservation areas in the whole LGA. So, the tower form envisaged under the previously amended height of 58.5 metres and the floor space with that would be visible from many points within these conservation areas. And whilst that's not supported by many within the community, they were understood following that process that that was the extent of the impact.

So, these subsequent increases in height and massing will have, by virtue of their magnitude at 20 plus metres and the expansion of building and the configuration of this site, will have increased impacts in terms of overshadowing. But also be significantly more visually dominant when viewed from both the public and private domain, of these unique conservation precincts.

On the issue of the through-site link, I just make reference there. It is dealt with again in the Assessment Report, not in detail, but I just wanted to hopefully clarify what our position on the through-site link is. So, Council's DCP part C section 3 was amended in January 2023, not just for this site but several sites in the precinct, and more general provisions in response to the issues that we were seeing through the 2036 Plan implementation.

And these included on this site a future through-site link that runs from the approximate current bus stop location, so midpoint on the block of the Pacific Highway in a more or less northeast direction towards the corner of Falcon and Alexander Streets, which importantly is a signalised pedestrian crossing.

So, the intent of this was to help break down that street block, provide a sort of convenient and safe connection into, I suppose that sort of central heart of Crows Nest Village. So, the applicant's response to that is providing two separate through-site links and they discharge, I suppose, on Falcon and Alexander respectively at a mid-block point where there's not a pedestrian crossing.

But they also tend to internalise that retail activity within the site and, in our opinion, sort of decrease those principles of legibility and the hierarchy of the pedestrian network. So, our position on that, just to try and capture that, is one single point through the site we thought was a better response. We note, I think, they have somewhat widened those openings which, again, is a response, but we feel that a single point would be a better response.

So that was sort of my main points and just to sort of maybe encapsulate those. I just wanted to reiterate, we've had the recently made State Government Crows

Nest TOD which has rezoned and significantly increased density and housing capacity across this precinct as well as our neighbours in Lane Cove and Willoughby. And this site's obviously located within that.

5 And the TOD also applies a mandatory affordable housing rate across the precinct of 3% and a greater rate on several select sites, as I mentioned, this site has 6% identified. And importantly, that affordable housing is to be provided in perpetuity to meet the long-term need to help address both the general supply as well as the essential worker accommodation which is really difficult at the moment in terms of affordability.

10 So, to sum that up, for the reasons outlined and discussed this afternoon as well as our submissions, we have the view that the current State Significant Development fails to meet these requisite statutory and strategic framework considerations for this precinct, and off of those reasons, is not supported by Council.

15 So, happy to field any questions or clarify anything I've made in that statement. Members of the Commission.

20 **MR WRIGHT:** Thank you, Neal. Just in terms of the effect of the TOD for Crows Nest, and the view put forward by the judgement in the LEC that the EIE was effectively a planning instrument. Does Council have a view as to, if that had of been the case, what sort of scale form this development should have taken?

25 **MR MCCARRY:** Given, as I mentioned, the previous amendment and the process that went through, the exhibited form on this site was, as in that Crows Nest TOD, was 58.5 metres and a floor space of 5.8:1. So, that was as exhibited.

30 At the time the instrument was exhibited, the concept of affordable housing in perpetuity was a clear policy position, but there wasn't an exhibited figure on that. So, our view given what transpired and that process, when I say, "Council's view," that's been our consistent position – we respect that process even though it went through at 58.5 metres, that was what the LEP was, and then the Crows Nest TOD, that height had been arrived at – sorry, had been arrived at, and that was reflected in the Crows Nest TOD.

35 So, as a broader principle, our position is that affordable housing in perpetuity is the answer because the building stays forever, or the life of the building. And a shorter-term availability, it addresses a short-term need, but at the time that that ceases to be operated in that function, there's a whole social dislocation and the issue doesn't go away, it just pushes it down the road a little bit.

40 So, if that answers your question there, Commissioner, it's that what was reflected in that was what had been recently amended and we respected that, and I suppose this process challenges that by the degree of magnitude of uplift.

45 **MR WRIGHT:** Just on the question of affordable housing. I mean, do you have any response to the idea that there's quite a lot of affordable housing being

provided within the proposed development – way more than the kind of 6% identified under the TOD provisions. Can you respond to the idea that, I guess this development achieves a lot more affordable housing in the more short and medium term rather than a smaller proportion of affordable housing forever. Do you have any thoughts about that?

MR MCCARRY: Yes, sure. Look, I suppose at a broader position in that, given the State Government policy position on the whole precinct, so Lane Cove, North Sydney, Willoughby, setting that minimum and that being provided in kind or in monetary contribution across the precinct, as well as those select sites with the greater magnitude, and that'll be in perpetuity is welcomed as a response. We'd obviously suggest 3% is fairly modest and more, but I understand the Department arrived at that figure after its feasibility modelling and those kind of inputs.

So moving to this site. The challenge is that the degree or what comes with that, if this maybe answers the question, is a degree of magnitude of change that is, at 21 metres, and I mentioned the shadow length and the scale of this building, needs to be, I suppose, balanced against those broader strategic considerations, both Council ones and everything that's led the several years of planning work to the prescription of those controls.

So, it's not a – I don't know if that's – that's not a clear black-and-white answer but I would argue that the fact that they're time limited as well is challenging, because that time will elapse fairly quickly and then they go away. So, the building is there with that scale which we feel is not the appropriate response in this context.

MR WRIGHT: Just a question, Neal, about that aspiration in the LEP for that stepping down of height as you transition along the ridge going south. This building proposes 22 storeys, it is much lower than some of the heights set around the Metro and St Leonards knuckles. Is it so far out of alignment with that step down?

MR MCCARRY: Look, in our opinion, and when I say "our", it's both mine and the team's, it is in the sense that there's been, just as I say, recent assignment of height in this intersection which Michael mentioned those two court cases in close proximity and the LEP maps. I won't try and read them all out because the addresses are unclear.

But around this node, if we want to call it that, but where this site sits, is they're sitting at a scale of – the one at 270–272 Pacific Highway, for example, is 55 metres. The one that was the subject of the judgement, PDS Engineering, was 44 point something metres, Michael? Forty five?

MR HORNERY: 44.8.

MR MCCARRY: These sites all around this precinct were consciously set that height limit. So I would argue, given where this site sits and then the sharp

transition already at 58 metres down to the lower density, my view is that it's not and it was a deliberate decision to step that down. And 16 storeys isn't a small building, but that's respected that that went through that process.

5 So, if that answers your question? I would have the view that it offends it by the virtue of the degree of magnitude of 22 plus metres greater than what's envisaged, which is already higher than several of those sites surrounding. So, that's my sort of position on that, Commissioner.

10 **MR WRIGHT:** Thank you.

MR MARSHALL: If I could come back to heritage impacts and visual impacts. And the assessments that have been provided with the application seem to rely on kind of setting the benchmark against what is the planned future development of
15 the area.

And I just wonder whether, I mean, for example, in the overshadowing comments that you made, whether your consideration of the overshadowing as being just in the case of this particular proposed development or whether you've given
20 consideration to the fact that there's going to be quite a lot of new developments in the vicinity?

And I think we saw in an earlier presentation the TOD provides for a 14-storey development to the east of this development, or something of that sort. But I just wonder whether you would reflect on the kind of broader development context and
25 planning context and these impacts.

MR MCCARRY: Sure. That site you referenced there, Commissioner, I think it's 19–25 (don't quote me on that) Falcon Street, but I think we're talking about the same site just immediately opposite. That was the subject of a site-specific
30 planning proposal that Council supported at a height of some 22 metres, which is comparable to the site under construction currently that you'll see on the site visit later at 27–57 Falcon Street.

35 So, that was what was Council supported. That went into the Department and they said due to the timing that that site would be incorporated into the TOD. It came at a considerable surprise to Council that that site was assigned that 14-storey height limit. We weren't as part of the process of that TOD, weren't made aware of changes to that magnitude, certainly not that site, were being done.

40 So, first comment is that that's somewhat perplexing when you look at it in the 3D modelling accompanying that finalised design report, that really stands out. It's there and in place and if they take that up, I accept that a building would come forth. It's at 14-odd storeys, from memory. Actually, let's get specific, I'll get that
45 out. So yes, 50 metres is the height limit on that. So, it's a little bit less than what was previously assigned this site.

But more broadly, just on your comment and question there around the shadowing.

That site is concerning, that we've just spoken about, but it's – the shadow impact when you review it, it tends to cross that broader and not hit these conservation acts and the low density is as important in terms of the scale.

5 So, the overshadowing is a bit unclear, to be honest, on the plans that were submitted. But we've made an interpretation, but it doesn't show a sort of neat line of where the conservation area starts, where the lower density is. So, the broader comment is that this is a great lot longer shadow. But as importantly is the visual impact as well. When you get these transition areas, you know, the visibility of it
10 and the scale of it are experienced in both the public and private domain.

So, I would again reiterate that the transition and stepping down principle, that this site just doesn't meet that. And that's the sort of basis of some of the long-term planning work that's been done over time for this area.

15 **MR WRIGHT:** Can I just go back to your, the point raised, Neal, about the potential jurisdictional matter concerning excess car park, being counted or not being counted as part of the GFA. So I understand your point. Has Council said how much excess car parking, in terms of GFA there might be which would then, according to the Council's view, need to be considered by clause 4.6 variation?
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MR MCCARRY: Look, I haven't, to be honest. If we took the degree of excess, in our opinion, spaces, and multiplied that by an average parking space plus the circulation, we could come up with an approximate figure, if that would be of benefit to the Commission, but we don't have one to hand.
25

MR HORNERY: I think there's 190 residential and I think our DCP says 133. So, we've sort of looked at that and follow Neal's logic. That's how we would probably look at it.
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MR WRIGHT: Look, if Council could give us an estimate of that GFA, that'll be appreciated, for that amount.

MR HORNERY: Sure.
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MR MCCARRY: That's okay, we can do that. We'll have a caveat on it, but we'll try to just be clear how we've made that calculation, and how we've arrived at that figure. Yes, sure.

40 **MR WRIGHT:** Thank you.

MR MARSHALL: Sorry. Just to come back to the TOD as a basis for separation, I guess. Am I right in thinking that Council is broadly supportive of the planning outcomes that the TOD delivers?
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MR MCCARRY: Look, we understand certainly the need for accommodation of new housing in the LGA and the 2036 Plan set that framework. We made a very detailed submission to the Crows Nest TOD when it was on exhibition, as

exhibited. And I won't try to capture all that because it wouldn't be doing it justice, but one of the key things was around with the extent of density envisaged, was the need to help Local Government provide the supporting infrastructure for the incoming community.

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So, what as I say came as somewhat an alarm just last week, was the degree of amendments that were made post-exhibition to the Crows Nest TOD. So, our Council's position was as per exhibition, and then there's numerous sites have got greater height assigned, and then a large precinct moving, if I can describe it in a sort of southwest direction down from the Pacific Highway, was exhibited with no change and then was made with storeys of 6, 8 and up to 14 storeys. And that wasn't the subject of community consultation.

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So, if that answers your question, that's sort of the near-term big concern. We're still working through – there's obviously a fair bit of the instrument that, as amended, our LEP, we're still working through some of the interpretation of those provisions and the maps. So if I could hold my final position on it, but yes, to answer your question, broadly we understand that envisaged greater density, but it came with a lot of concerns. And then now those are amplified by the degree of post-exhibition amendments that have been made of some magnitude.

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MR WRIGHT: Just going back to pedestrian amenity, Neal, and the Council's DCP position that there should be a diagonal traverse through this lot. I note also, I think, in the Council's submission a suggestion that a [standard 00:41:18] pedestrian crossing might be considered. Can you talk to us about that as well?

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MR MCCARRY: I think this was a general comment in that – this is, I think, sorry, I'll just grab it, it's been a little while since we prepared it. Yes, I think this was a little bit about recognising the density on this site that was proposed, as well as the broader precinct and the role that intersection plays.

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But I might need to confer with my colleagues in the Transport Team. But I think it was really just saying that that should be something that could be explored, not necessarily this development, but just given the amount of pedestrian movement and the challenge of not just this site, but the volumes on Pacific Highway/Falcon Street particularly, that there could be something. And the development coming online at that site, I mentioned 27–57 Falcon Street, just down the road. So, it was a bit of a general comment about the need to look at some of these, on this site, it hadn't really been explored in detail as part of the 2036 Plan. So, that was my recollection, but I might come back with that, if I may ...

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MR WRIGHT: Please.

MR MCCARRY: ... with anything further to clarify that.

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MR WRIGHT: Take it on notice. And just one issue around pedestrian amenity. Does Council have a view about the width of the footpath pavement facing the Pacific Highway in particular, as a consequence of this development?

MR MCCARRY: Look, we recognise that our controls, so both DCP and as envisaged, at the lower level being a retail or a commercial function, have the podiums typically in this precinct have a sort of zero setback at the pedestrian level. And so that's accepted in a sense. Again, further density, bus stop, more people moving, you know, once the building's there, the opportunities for setbacks are difficult.

But no, we haven't put forward a position on this site. There are some other sites in the precinct where further north along Pacific Highway where there is a ground level setback identified through the earlier planning work and carried through. So, yes, this site obviously the final design in terms of the street furniture and plantings and all those things are the next level of thing to look at just to ensure there's an adequacy of movement there.

And I recall the applicant kind of trying to explain that's partly why they located that entry point there, to give a bit more breathing room within the private domain, if we call it like. But yes, it's certainly a challenge, Pacific Highway being a state-controlled road. The prospects of a widening of the footpath and public domain are not so realistic. But yes, that's the challenge there.

MR WRIGHT: Thank you.

MR MARSHALL: I don't think you've touched on the podium height in your comments today, but it's certainly within the Council's submission. I just wondered whether you wanted to talk a little bit about that issue and the fact that the site does fall away towards the south. So, the higher podium is at the south of the site compared to the north. And just in terms of where you see the issues being in that matter.

MR MCCARRY: Sure, so yes, the earlier planning proposal process, we really explored, and that was a reference design at the time which obviously is there to try and support their proof of concept and to amend the controls. And the concern, and forgive me with the passing of time the exact details of RLs have become a little bit less familiar. But what our issue was that three storeys was identified in the 2036 Plan, reflected in our DCP, and that the scale of what was proposed was reading at 4 plus, particularly down the end.

I think in an earlier iteration was sort of reading almost like 5 storeys. I know there's been efforts to reduce that somewhat. And we also accept that the challenges from a design point of view in trying to put a big step in the podium don't always lead to the best outcome in terms of the internal position. So, look, I haven't detailed that in this address today.

It's really ultimately about trying to provide a human scale there, so there's various treatments that can assist with that. But yes, our broad position is that the scale of it, it doesn't really read like 3 storeys, but I appreciate there's site considerations there that are needing to be resolved.

MR WRIGHT: And in terms of Willoughby Lane, and there's another lane in the southeast of this block as well, is there a future consideration within Council that those lanes may be further pedestrianised, to extend the Crows Nest Village?

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MR MCCARRY: Yes, look, I think when you say, "Willoughby Lane," I think that's the applicant in our pre-lodgement or in some discussions a while back, were sort of introducing this notion. And our position was that in terms of they were exploring that in a response to why they had sited those through-site links there.

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The laneway I think you're referring to, to the north, is an almost pure service lane. So, it doesn't – it's not on Council's radar in any way to really sort of explore that in terms of a pedestrianisation. The one reference to the east is no – it doesn't exist and it's not in any Council policy; it was a notion introduced by the applicant to say if those sites were to redevelop, there might be an opportunity the way Hayberry Lane sort of, where it aligns, to line up.

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So, to be direct on that, neither of those are viable prospects, in our opinion, sorry.

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MR WRIGHT: I think we've exhausted our questions, Neal and Michael. Unless you want to make any further statement or comment?

MR MCCARRY: Look, nothing from me. Just to say I appreciate the time been given to us and us being given this opportunity. And I understand the protocols around this, if there's something further the Council wishes to submit, either by way of detail or something that's arisen from this proceedings, that there's a timeframe mid-December to submit that. So, at the moment, no, nothing from me, further from me, Commissioner. Michael?

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MR WRIGHT: Thank you. Yes, sorry, Michael. Yes?

MR HORNERY: No, I was just going to say, look, I haven't got anything further to add. We obviously try to keep it to one person so we wouldn't take up too much of your time. But just probably following from Neal, appreciate the opportunity to present to you and discuss the matter.

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MR MARSHALL: Thank you very much.

MR WRIGHT: Perhaps just one further thing. I mean, you've talked a little bit about the recommended conditions. I mean, I just wonder whether Council is of a mind to provide further advice about where it would see conditions being amended or changed to better align with its concerns. So, I just wondered whether you're thinking of doing that or not?

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MR MCCARRY: Look, from my seat, I'll be honest, I haven't done a full review of those. Michael has had a closer look, however, I think the nature of what our concerns relate to, would be probably difficult to address in conditions, with the

exception perhaps of a reduction in the car parking as suggested, would be the only other wording one from my seat.

5 But Michael, you've had a closer look at them. Were there any in particular, and maybe we might also take it on notice if we could, just to be thorough, and have a bit better look at those and give you any comments. Did you have any in particular, Michael?

10 **MR HORNERY:** Oh look, my look at them, I guess, probably – like, we looked at certain things like the contributions, things like that, and we think that they're worded fine in terms of coming back to Council. Maybe that might be from us to sort of say where to come back to Council. That was where we were looking at in terms of that.

15 As Neal said, yes, the only thing we would probably see in terms of those conditions in terms of the parking would be a design change to reduce the parking. And how that would be done, whether that would be better done through amended plans as opposed to a condition, I don't know. You might lose a basement from it. I'm not sure how much we're sort of talking. Notwithstanding obviously there was
20 a significant reduction in the parking, we do note that. And we still do note that there is an excess of parking.

Other than that, there probably wasn't too much there. But that was the only thing I was thinking about when I was looking at the conditions, was when someone's
25 got to try and then come back to Council, who do they come back and see. So, maybe we need to provide a direct sort of – at least a Department and things like that. That might just assist the applicant more so.

30 **MR WRIGHT:** Okay, thank you very much, Neal and Michael. And you've got some matters you've taken on notice there as well, so we do appreciate that and look forward to hearing back from you.

35 **MR MCCARRY:** Sure, thank you. Just in closing. Obviously, there's a site visit component later this afternoon. I was planning on attending that. Is there a specific meeting point, just to avoid us wandering around and getting lost, Tahlia?

MS TAHLIA HUTCHINSON: We'll email that to you right after the meeting.

40 **MR MCCARRY:** All right. Thank you very much. All right, well, I'll see you on site.

MR WRIGHT: We'll see you shortly.

45 **MR MCCARRY:** All right. Thank you. Bye-bye.

>THE MEETING CONCLUDED