Planning Proposal
Amendment to Building Height Map and
inclusion of Floor Space Ratio
North Sydney Local Environmental Plan 2013
31 – 33 Albany Street, Crows Nest

July 2015

Mersonn Pty Ltd 6/20 Wylde Street Potts Point NSW 2011

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1.0 Introduction

This Planning Proposal has been prepared on behalf of the Winten Property Group and is submitted to North Sydney Council in support of an amendment to the height provisions of the North Sydney Local Environmental Plan 2013 (LEP) as they relate to the site 31 – 33 Albany Street, Crows Nest (Lot 41 sec 4 DP2872 and Lot 1 DP572479).

This Planning Proposal explains the proposed amendment to the LEP and the justification for the amendment in accordance with the provisions of Section 55 of the Environmental Planning and Assessment Act 1979 and has been prepared consistent with the Guide to Preparing Planning Proposals prepared by the NSW Department of Planning.

The objective of this Planning Proposal is to amend the NSLEP 2013 as follows:

- Increase the maximum height limit for the subject site from the present 13 metres to 26 metres consistent with the Crows Nest/Crows Nest Planning Study; and,
- Include a Floor Space Ratio for the subject site of 4.27:1.

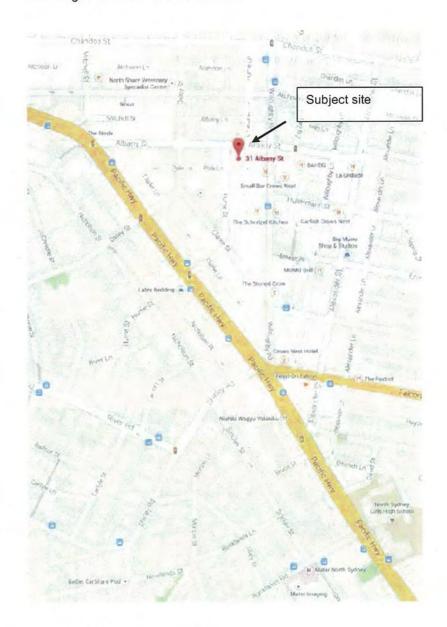
The Planning Proposal provides an analysis of the site and its context with images, photographs and diagrams and provides an overview of the key elements of the proposed amendment. It includes a statement of objectives and the intended outcomes together with an explanation of the provisions of the planning proposal and a summary of the justification for the proposal. The details of the pubic benefit that will arise from the proposal is discussed and consideration is given to the relevant local and state planning provisions and S117 Directions.



Source: RPData 2015

2.0 The Site and Context

2.1 Regional and Local Context



Location Plan

Source: GoogleMaps 2015

The site is located approximately 2km north-west of the North Sydney CBD and within 450m of Crows Nest Station. The site is located within

the local centre, which is currently experiencing a revitalisation. The area is generally characterised by a mix of non-residential uses interspersed with mixed-use medium density development with zoning promoting the redevelopment of the area as a medium density local centre bounded by the Pacific Highway corridor in the west and Willoughby Road commercial strip in the east.





Site with 5m contour overlay Source: RPData 2015

2.2 Site Analysis

The subject site is located on the southern side of Albany Street east of the intersection with the Pacific Highway. The site has frontage to Albany Street, Hume Lane and Pole Lane is within 450m of the entrance to Crows Nest Station. The area is developed with a mix of non-residential buildings and more recent mixed-use developments and is clearly an area in transition.

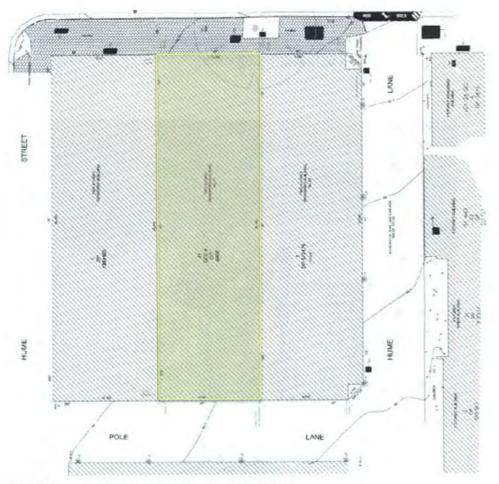


Site: Source RPData 2015

The subject site is legally described as Lot 41 sec 4 DP2872 and Lot 1 DP572479 and is known as 31-33 Albany Street, Crows Nest. The site has an area of approximately $684.8m^2$ and is rectangular in shape.

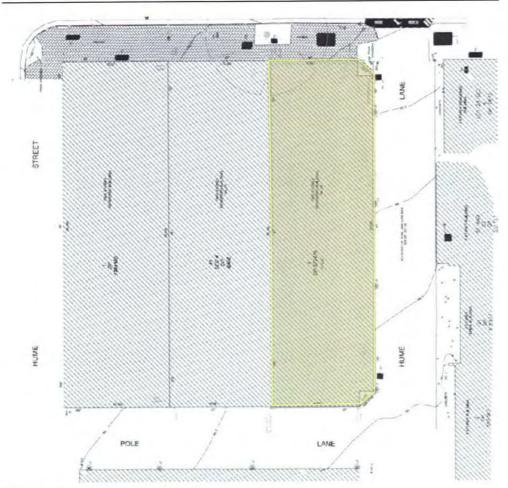
The site comprises two lots. 31 Albany Street (Lot 41 sec 4 DP2872) has an area of approximately 343.6m², it has a northern boundary to Albany Street of approximately 10.065m and a southern boundary to

Pole Lane of approximately 10.06m. The western boundary is common with 29 Albany Street (Lot 1 DP1201105) of approximately 34.145m and the eastern boundary is common with the adjoining lot to the east of approximately 34.145m.



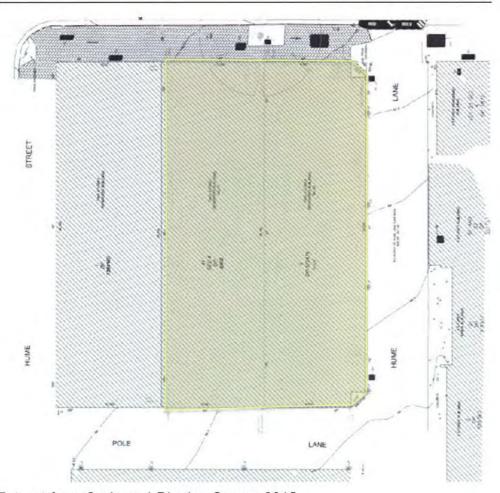
Extract from Craig and Rhodes Survey 2015

The second lot, 33 Albany Street (Lot 1 DP572479) has an area of approximately 341.2m², it has a northern boundary to Albany Street of approximately 8.535m (splay 2.157m) and a southern boundary to Pole Lane of approximately 8.535m (splay 2.157m). The western boundary to is common with 31 Albany Street of approximately 34.145m and the eastern boundary to Hume Lane of approximately 31.095m.



Extract from Craig and Rhodes Survey 2015

The total site has a northern boundary to Albany Street of approximately 18.600m (splay 2.157m) and a southern boundary of approximately 18.650m (splay 2.157m) to Pole Lane.



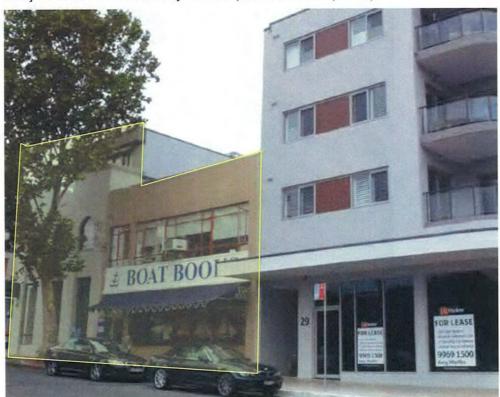
Extract from Craig and Rhodes Survey 2015

The land falls from east to west across the Albany Street site frontage from RL82.50 to RL83.00 (around 0.5m) and falls from Pole Lane at the rear around 1.7m. The site is currently occupied by two multi-storey commercial buildings. The buildings on both sites occupy 7 – 9 Albany Street occupies all of the site with at grade parking accessed from Pole Lane at the rear and Hume Lane.

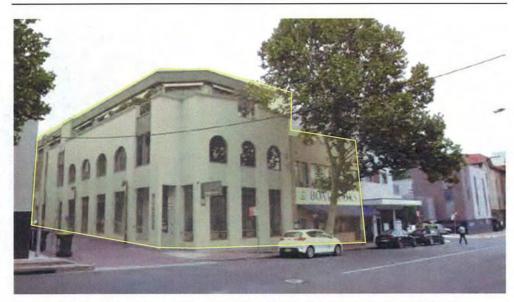
The building on 31 Albany Street generally comprises a two storey commercial buildings oriented to Albany Street. The building on 33 Albany Street comprises a three storey commercial building oriented to Albany Street and Hume Lane. Neither building is considered to have any architectural or heritage merit.



Subject site 31- 33 Albany Street (on left of the photo)



Subject site from north-west



Subject site from the north-east 33 Albany frontage to Hume Lane



Subject site from east looking up Albany Street



Subject site looking south-west from Hume Lane frontage



View west down Hume Lane



View south-east with 29 Albany in the foreground and the Hume Street intersection



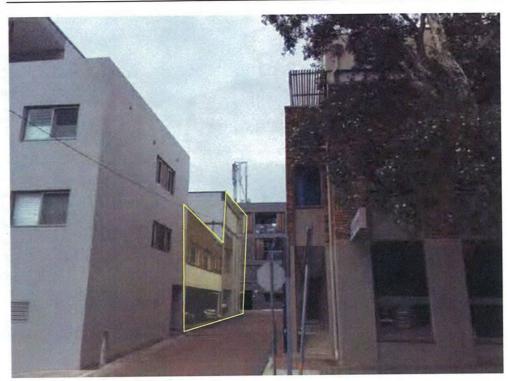
View west on Hume Street towards Pole Lane



View south-east to Pole Lane



View east down Pole Lane from Hume Street



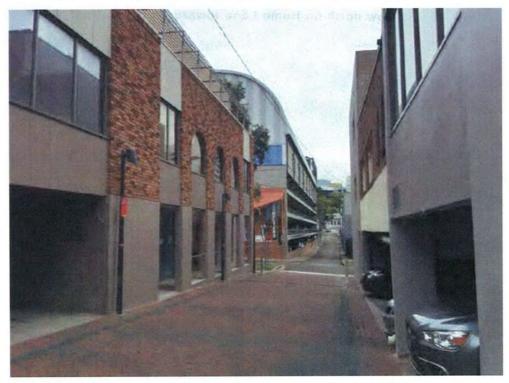
View east down Pole Lane from Hume Street



View east down Pole Lane



View west down Pole Lane from Hume Lane



View west down Pole Lane towards Hume Street carpark



View north on Hume Lane towards Albany Street



View north-east on Hume Lane towards Albany Street

2.3 Surrounding Development

29 Albany Street



Source: RPData 2015

The building on the site adjoining to the west is oriented to the north to Albany Street and west to Hume Street with a secondary frontage to Pole Lane at the rear. The building occupies all of the site and comprises residential apartments above ground floor retail uses. The building rises to 4 storeys on the corner of Albany and Hume Street to the west. It has a 4 storey podium above the Albany Street frontage.

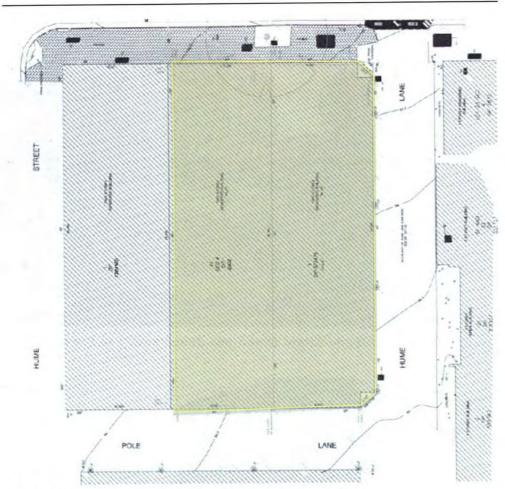


29 Albany Street mixed use development to the west



29 Albany Street frontage

The building is oriented to the north, west and south and presents blank walls to the subject site built with a nil setback to the common boundary. The building rises a full four levels without setback from the common boundary.



Extract from Craig and Rhodes Survey 2015



View south on Albany



Hume Street frontage

23 Albany Street



Source: RPData 2015

The building on the site to the west across Hume Street is oriented to the Albany Street on the north, Hume Street to the east, Oxley Street to the west and with a secondary frontage to Pole Lane at the rear. The building and surrounding site is an electricity substation occupies all of the site.



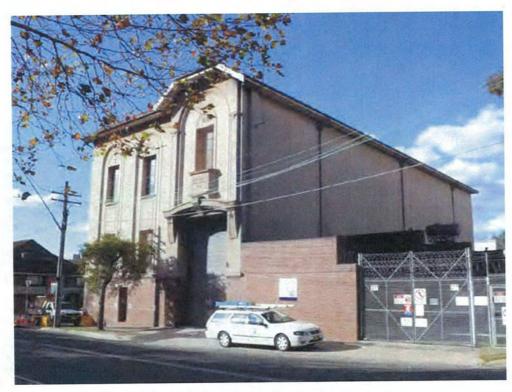
View north-west on Hume Street towards Albany Street and substation complex



View west on Hume street of substation complex



View west on Albany Street of substation complex



View of 23 Albany Street from the south-west

50 - 76 Albany Street



Source: RPData 2015

The buildings on the sites to the north across Albany Street are oriented to the Albany Street on the south, Oxley Street to the east and with a secondary frontage to Albany Lane at the rear. These are generally single dwellings and medium density two to three storey dwellings.



Source: RPData 2015

Albany Street generally provides for a 23m metre separation on this frontage. It is noted that these properties are reviewed in the Area 2 and 3 Planning Study and are recommended for a five storey height.



View north-east on Albany Street towards Willougby Road



View north-west on Albany Street towards Pacific Highway

122 - 134 Willoughby Road



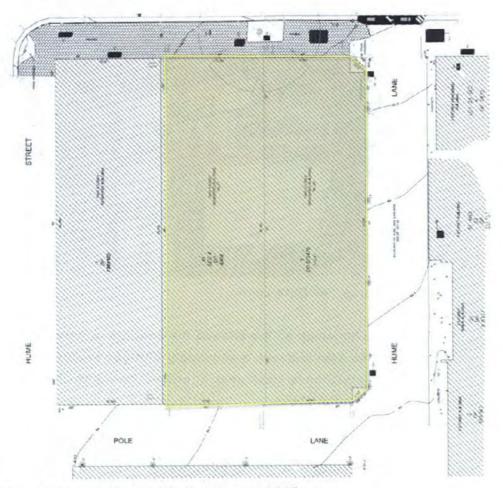
Source: RPData 2015

The buildings on the sites to the east are oriented to Willoughby Road to the east and with a secondary frontage to Hume Lane. The buildings generally have retail uses at ground floor with commercial and residential above.



Source: RPData 2015

Hume Lane generally provides a 6.2m separation and the existing dwellings fronting the land can be seen to include privacy treatments to balconies and habitable rooms.



Extract from Craig and Rhodes Survey 2015



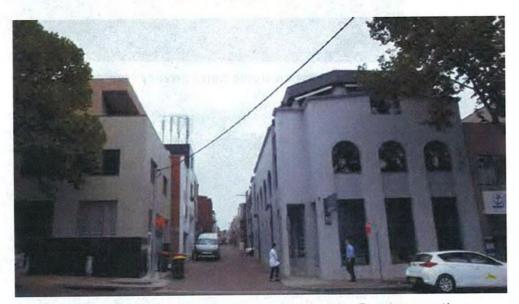
View north-east on Hume Lane privacy treatement to residential balconies



View east on Pole Lane



Intersection of Albany and Willoughby Road view south



View south on Hume Lane with rear of Willoughby Road properties

63 - 65 Hume Street



Source: RPData 2015

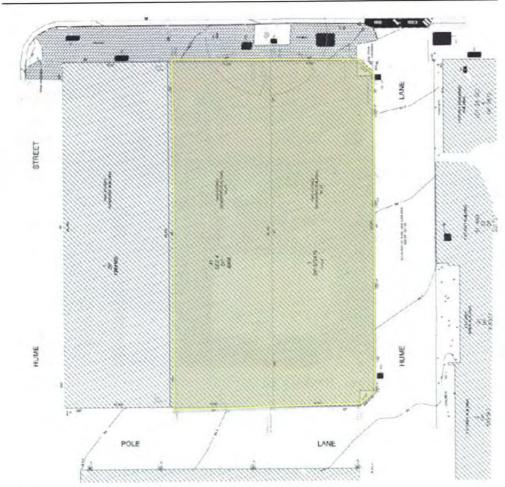
The buildings on the sites to the south are oriented to Hume Street to the east and with a secondary frontage to Hume Lane and Pole Lane.

The buildings generally have retail uses at ground floor with commercial and residential above.



Source: RPData 2015

Hume Lane generally provides a 6.1m separation and the existing buildings are generally commercial in use.



Extract from Craig and Rhodes Survey 2015



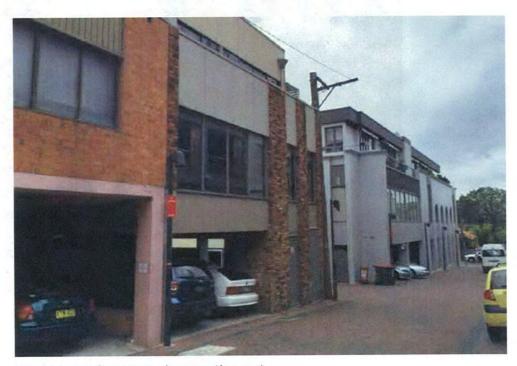
63-65 Hume Street frontage view south



Hume Street frontage view south-east



Pole Lane frontage view west



Hume Lane frontage view north-west

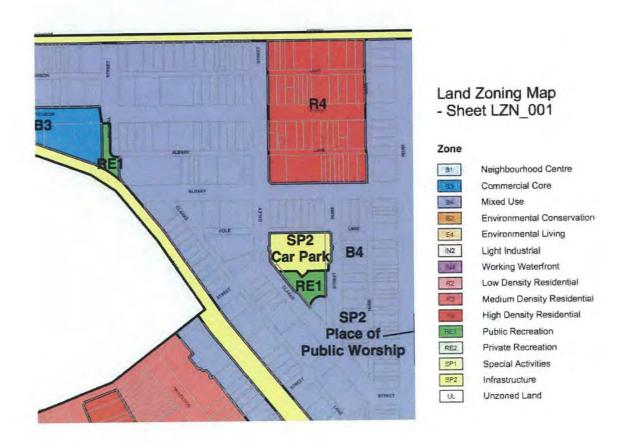
2.4 Development History

The have been no relevant development applications on the site.

3.0 Statutory Context

3.1 Zoning

The subject site is zoned B4 –Mixed Use under North Sydney Local Environmental Plan 2013.



The specific objectives of the zone are:

Zone B4 Mixed Use

1 Objectives of zone

- 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 on the lower levels and residential uses above those levels.

The permissible uses include:

Amusement centres; Backpackers' accommodation; Boarding houses;
Car parks; Child care centres; Commercial premises; Community
facilities; Educational establishments; Entertainment facilities;
Function centres; Hostels; Hotel or motel accommodation; Information
and education facilities; Medical centres; Passenger transport facilities;
Places of public worship; Recreation areas; Recreation facilities
(indoor); Registered clubs; Respite day care centres; Restricted
premises; Roads; Seniors housing; Serviced apartments; Sex services
premises; Shop top housing; Signage; Vehicle repair stations;
Veterinary hospitals

3.2 Key Objectives and Development Control Standards

4.3 Height of buildings

- (1) The objectives of this clause 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.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the <u>Height of Buildings Map</u>.
- (2A) Despite subclause (2), the height of the street elevation of any building on land in Zone R2 Low Density Residential that is also within a heritage conservation area must not exceed 5.5 metres unless any adjoining buildings with the same street frontage are at least 2 storeys high.
- (2B) Despite subclauses (2) and (2A), the maximum height of a building on land in the following zones with a site area of less than 230 square metres (excluding the area of any access handle, access way or right of carriageway) must not exceed 5.5 metres:
 - (a) Zone R2 Low Density Residential,
 - (b) Zone R3 Medium Density Residential,
 - (c) Zone R4 High Density Residential.
- (2C) Despite subclause (2), development consent may be granted to development on land identified as "Land in Crows Nest" on the

Exceptions to Development Standards Map if the height of a building (excluding plant rooms and other similar structures) will exceed the maximum height shown for the land on the <u>Height of Buildings Map</u> by no more than 3 metres.

13m

Includes objectives of the building height controls for the site.

A building cannot be erected on the subject site in excess of 13m.

4.4 Floor space ratio

- (1) The objectives of this clause are as follows:
 - (a) to ensure the intensity of development is compatible with the desired future character and zone objectives for the land,
 - (b) to limit the bulk and scale of development.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the <u>Floor Space</u>
 Ratio Map.
- 4.4A Non-residential floor space ratio ranges
- (1) The objectives of this clause are as follows:
 - (a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,
 - (b) to encourage an appropriate mix of residential and non-residential uses,
 - (c) to provide a level of flexibility in the mix of land uses to cater for

market demands,

- (d) to ensure that a suitable level of non-residential floor space is
- provided that reflects the hierarchy of commercial centres.
- (2) The non-residential floor space ratio for all buildings within a site on land identified on the Floor Space Ratio Map as specified in Column 1 of the Table to this subclause must not be less than the ratio shown for

that land in Column 2 of that Table and must not exceed the ratio shown for that land in Column 3 of that Table.

- (3) The non-residential floor space ratio for all buildings within a site on land identified as follows on the Floor Space Ratio Map must not be less than the ratio shown opposite for that land:
- (4) The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Floor Space Ratio Map must not exceed 2:1.
- (5) Development consent must not be granted to the erection of a building on land identified as Area 1–13 on the Floor Space Ratio Map unless the consent authority is satisfied that the building will have an active street frontage after its erection.
- (6) Despite subclause (5), an active street frontage is not required for any part of a building that is used for any of the following:
 - (a) entrances and lobbies (including as part of a mixed use development).
 - (b) access for fire services,
 - (c) vehicular access.
- (7) In this clause, a building has an active street frontage if the part of the ground floor of the building facing a street is not used for residential accommodation.
- (8) In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose, other than residential accommodation, a car park or a telecommunications facility, in all buildings within a site to the site area.

Area 6 0.5:1

Includes objectives of the FSR controls for the site.

A building cannot be erected on the subject site with a non-residential FSR of less than 0.5:1. There is no FSR control for residential development.

5.10 Heritage conservation

Note. Heritage items (if any) are listed and described in Schedule 5.

Heritage conservation areas (if any) are shown on the <u>Heritage Map</u> as well as being described in Schedule 5.

(1) Objectives

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage,
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,
- (c) to conserve archaeological sites,
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.
- (2) Requirement for consent

Development consent is required for any of the following:

- (a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance):
 - (i) a heritage item,
 - (ii) an Aboriginal object,
 - (iii) a building, work, relic or tree within a heritage conservation area,
- (b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,
- (c) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (d) disturbing or excavating an Aboriginal place of heritage significance,
- (e) erecting a building on land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance,

- (f) subdividing land:
 - (i) on which a heritage item is located or that is within a heritage conservation area, or
 - (ii) on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance.
- (3) When consent not required

However, development consent under this clause is not required if:

- (a) the applicant has notified the consent authority of the proposed development and the consent authority has advised the applicant in writing before any work is carried out that it is satisfied that the proposed development:
 - (i) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
 - (ii) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area, or
- (b) the development is in a cemetery or burial ground and the proposed development:
 - (i) is the creation of a new grave or monument, or excavation or disturbance of land for the purpose of conserving or repairing monuments or grave markers, and
 - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or to an Aboriginal place of heritage significance, or
- (c) the development is limited to the removal of a tree or other vegetation that the Council is satisfied is a risk to human life or property, or
- (d) the development is exempt development.
- (4) Effect of proposed development on heritage significance
 The consent authority must, before granting consent under this clause
 in respect of a heritage item or heritage conservation area, consider the
 effect of the proposed development on the heritage significance of the
 item or area concerned. This subclause applies regardless of whether a

heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).

(5) Heritage assessment

The consent authority may, before granting consent to any development:

- (a) on land on which a heritage item is located, or
- (b) on land that is within a heritage conservation area, or
- (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(6) Heritage conservation management plans

The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

(7) Archaeological sites

The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the *Heritage Act 1977* applies):

- (a) notify the Heritage Council of its intention to grant consent, and
- (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.

(8) Aboriginal places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:

(a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and

- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.
- (9) Demolition of nominated State heritage items

 The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:
 - (a) notify the Heritage Council about the application, and
 - (b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.
- (10) Conservation incentives

The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.

The subject site is not identified as being located within a heritage conservation area and is not a heritage item.

The subject site is located opposite and in proximity to the substation

on the corner of Hume and Albany Street which is a heritage item.

3.3 Strategic Context

Crows Nest/Crows Nest Planning Study – Precinct 1(Addendum)
October 2012

North Sydney Council resolved on 29 November 2010 to undertake a planning study of the Crows Nest / Crows Nest area with the following objectives:

- New open space in Crows Nest / Crows Nest;
- Increased investment in St Leonards and decreased commercial vacancy rates, with particular focus on the rejuvenation of the Pacific Highway between Crows Nest train station and the intersection of Pacific Highway and Willoughby Road;
 - Improved connectivity, particularly between St Leonards / Pacific Highway and Willoughby Road;
 - Improved urban design and street level amenity particularly in Crows Nest and along the Pacific Highway; and
 - Improved building design and residential amenity in Crows Nest.

The subject site is located within the Crows Nest/Crows Nest Planning Study – Precinct 1. An Addendum Study was carried out in October 2012 and adopted by Council at its meeting on 22 October 2012.

The addendum study aims to utilise the main guiding principle of the original study, that is, that development opportunities be provided in exchange for public benefit, to facilitate the desired open space outcome. In doing so it predominantly focuses on land between the redevelopment strip and the eastern edge of Precinct 1 at Hume Lane.

The study identifies the subject site as an under-utilised site.

The 'redevelopment strip' adjacent to the subject area along the Pacific Highway is characterised by under-utilised commercial premises. This was a major reason for the original planning study which aimed to facilitate appropriate rejuvenation of this strip. The land to which this addendum study is concerned also contains a number of under-utilised sites, particularly on the southern side of Albany Street and the eastern side of Hume Street. These sites are generally characterised by aging commercial buildings.



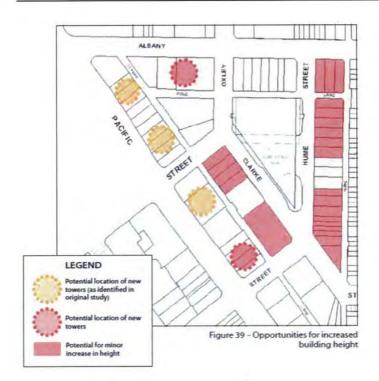
The study identified the following opportunities:

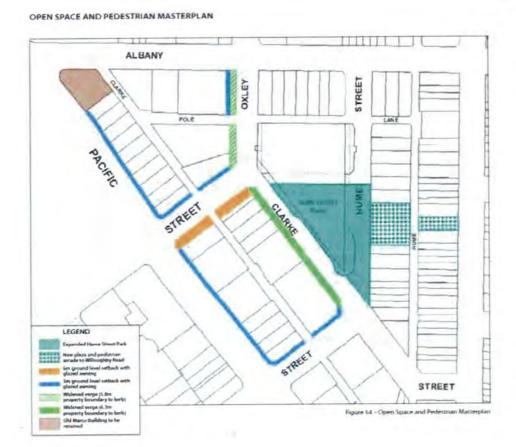
If appropriately redeveloped, the subject land in Precinct 1, as well as the redevelopment strip along the Pacific Highway, could help achieve the following aims of the broader planning study:

New open space in Crows Nest / Crows Nest.

- Increased investment in Crows Nest and decreased commercial vacancy rates, with particular focus on the rejuvenation of the Pacific Highway between Crows Nest train station and the intersection of Pacific Highway and Willoughby Road.
- Improved connectivity, particularly between Crows Nest / Pacific Highway and Willoughby Road.
- Improved urban design and street level amenity particularly in Crows Nest and along the Pacific Highway.
- Improved building design and residential amenity in Crows Nest.

An opportunity exists to increase the height of buildings throughout the subject area without unduly impacting upon the views and solar access of existing and future residential dwellings or existing and planned areas of open space. Given the identified deficit in open space and amenity in the area, this increase in development feasibility should be traded for predefined public benefits of a nature that improve amenity and provide new open space. In this way, the benefits arising from rejuvenation of the built form can occur concurrently with, and indeed facilitate, the improvement of the public domain. However, any increase in height must respect the stepping down principle as articulated in the Crows Nest / Crows Nest Area Character Statement contained in both DCP 2002 and DCP 2010.



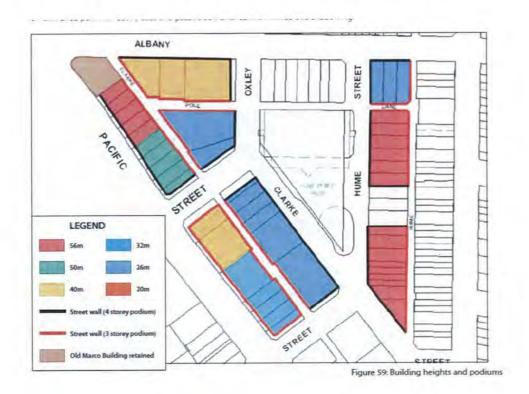


Building Height

The original planning study of Precinct 1 recommended an increase in heights along the highway so as to facilitate the development of slender high-amenity residential towers. Built form above podium elements should generally be limited to single slender tower elements. Compact slender towers with small floor plates minimise shadowing and maximise view retention between buildings.

Increasing heights in other parts of the precinct is proposed in this addendum study so as to facilitate development that enables the outcomes envisaged by the Open Space and Pedestrian Masterplan to be realised.

Away from the highway and the proposed tower on Albany Street west of Oxley Street, height increases are necessarily limited by the stepping-down principle and the desire to limit the impact of increased height on the expanded Hume Street Park and the lower scale character of Willoughby Road and Crows Nest more generally. The building heights proposed for sites adjoining, or in close proximity to, the expanded Hume Street Park aim to facilitate redevelopment so that the built form positively contributes to an enlivened park with active uses and passive surveillance with limited overshadowing. (Page 26)



Floor space ratios

Floor space ratios for individual development sites should be determined by considering the amount of floor space achievable under existing LEP2001 height controls. The floor space available to new developments should generally be no more than that achievable under existing planning controls. However, floor space beyond that achievable under existing controls may be justified according to the degree to which predetermined public benefit is provided. The maximum amount

of available floor space should not exceed 80 percent of the available building envelope. Building envelopes should be defined by the Building Depth guideline contained within the RFDC in addition to other setback requirements, including ground level setbacks recommended by this study. Should DLEP 2009 be in force, the maximum site specific floor space ratios that may be considered are to be calculated at 75% of the available building envelope.

Once established, a site specific FSR control is an absolute maximum which may not be wholly achievable due to urban design considerations. (Page 26)

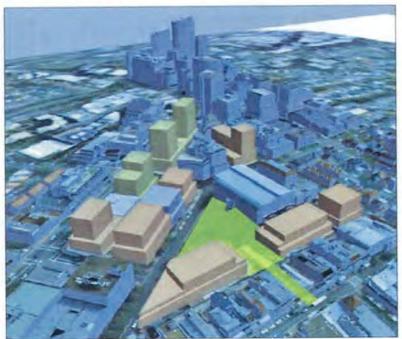


Figure 60: Built form block modelling

Developer initiated changes to local planning provisions.

It is recommended that the Built Form Masterplan for Precinct 1 be implemented through developer initiated changes to local planning provisions. In order to gain Council's support, site specific planning proposals should:

Relate to a parcel of land with a minimum street frontage of 20

metres:

- Relate to a parcel of land that does not isolate, sterilise or unreasonably restrict the development potential of adjacent parcels of land;
- Propose an amendment to the LEP height control consistent with the Built Form Masterplan for Precinct 1;
- Propose a site specific floor space ratio LEP control determined in a manner consistent with that identified in the Built Form Masterplan for Precinct 1;
- Propose mechanisms that ensure slender tower elements retain, where practicable, views and solar access currently enjoyed by existing residents.
- Include satisfactory arrangements for the provision of new open space within Precinct 1*;
- Propose a ground level setback DCP control consistent with the Open Space and Pedestrian Masterplan (if applicable); and
- Propose a 3 storey podium height DCP provision consistent with the Built Form Masterplan (if applicable).

*Note: It is considered that a planning proposal accompanied by a proposed voluntary planning agreement (VPA) made in accordance with Council's voluntary planning agreements policy may constitute satisfactory arrangements for the provision of new open space within Precinct 1 if the proposed VPA:

 Contributes to the costs associated with land acquisition required to achieve a new plaza and pedestrian link to Willoughby Road as envisaged by the Open Space and Pedestrian Masterplan; or 2. Facilitates the construction and gifting to Council, of a new childcare centre allowing for the relocation of Kelly's Place Children's Centre.

It is considered appropriate that development sites within Precinct 1 that are to benefit from the increases in building height proposed by this addendum study should contribute to the cost of realising the public benefits as articulated by the Open Space and Pedestrian Masterplan for Precinct 1. These predetermined public benefits are likely to have a tangible positive effect on the quality of life of those residents that will reside in Precinct 1 as a result of the height increases proposed by this planning study. (Page 34)

North Sydney Residential Development Strategy 2009

The North Sydney Residential Development Strategy was adopted by Council on 20 June 2011 and informed the preparation of LEP 2013. The RDS concludes that the LEP 2013 will meet housing targets through the following:

- Contain sufficient capacity to accommodate over 6,000
 additional dwellings by 2031 in addition to the 1,300
 dwellings already approved since 2004. The LEP 2013
 achieves the NSW Government's draft housing target
 without having to make significant policy changes,
 upzonings or increases in development potential;
- Concentrate the bulk of new dwellings in Mixed Use centres in close proximity to retail, office, health, education, transport, leisure, entertainment facilities and community and personal services;
- Deliver housing choice for a range of socioeconomic groups throughout North Sydney to meet the needs of existing and future residents; and
- Minimise the impact of new development on local

character, amenity, environment and heritage.

Sydney over the Next 20 Years - A Discussion Paper (May 2012)

This Discussion Paper is the first step in the State Government's development of a new Metropolitan Strategy for Sydney.

The Discussion Paper identifies the projected rise in Sydney's population by more than 1.3 million persons by 2031 requiring an estimated 570,000 more new homes as a major issue.

These estimates are significantly increased from those in the 2005 Metropolitan Strategy and are likely to have a flow on effect in terms of the contribution individual Council's will need to make towards housing supply.

4.0 The Planning Proposal

The Planning Proposal is prepared in accordance with "A Guide to Preparing Planning Proposals 2012" prepared by Planning & Infrastructure NSW.

The Planning Proposal is comprised of the following six (6) parts:

- Part 1 Objectives or Intended Outcomes;
- Part 2 An explanation of the Provisions;
- Part 3 Justification;
- Part 4 Mapping
- Part 5 Community Consultation
- Part 6 Project Timeline

4.1 Objectives and Intended Outcomes

The objective of this Planning Proposal is to amend the NSLEP 2013 as follows:

- Increase the maximum height limit for the subject site from the present 13 metres to 26 metres consistent with the Crows Nest/Crows Nest Planning Study; and,
- 2. Include a Floor Space Ratio for the subject site of 4.27:1.

The Planning Proposal seeks to amend the height controls to allow the development of an 8 storey mixed use building.

The following photomontages provide a comparison of indicative visualizations for the proposed development on the subject site and

what the development outcome would be pursuant to the LEP amendment proposed in this Planning Proposal.



Planning Proposal Concept Scheme (subject to Development Application Assessment and Approval) view from north-west (elevated)



Planning Proposal Concept Scheme (subject to Development Application Assessment and Approval) view from north-west (street level)

In addition to the amended height control and inclusion of a FSR control, the intended outcome for the subject site is a building that has a built form consistent with the ground level setback controls identified in the Crows Nest/Crows Nest Planning Study – Precinct 1. This includes the provision of a 3m setback to Hume Lane to facilitate the widening of the lane as a clear public benefit and in the public interest.

To provide greater certainty and clarity in regard to the outcomes of the Planning Proposal it is proposed to lodge a development application for the site so that it can be placed on public exhibition with the Planning Proposal (subject to the Gateway determination).

4.2 Explanation of Provisions

The following table provides a summary of how the amending LEP impacts on the relevant provisions of the NSLEP 2013.

4.3 Height of buildings

13m

No change to the objectives of the building height controls for the site.

This Planning Proposal amends the Building Height Map to show a height of 26m for the subject site.

4.4 Floor space ratio

Area 6 0.5:1

No change to the objectives of the floor space ratio controls for the site.

This Planning Proposal amends the Floor Space Ratio Map to show a Floor Space Ratio of 4.27:1 for the subject site.

5.10 Heritage conservation

The amending LEP will not change the provisions of this clause.

4.3 Justification

- 4.3.1 Section A Need for a Planning Proposal
- 1. Is the Planning Proposal a result of any strategic Study or Report?

Yes. The Planning Proposal is a direct result of the Crows Nest/Crows Nest Planning Study – Precinct 1. Details of the Study are provided in Section 3.3 of this proposal.

In relation to the subject site, the planning study identified the following preferred built form option:

- · Height 26 metres;
- Ground level setbacks 3000mmm on Hume Lane frontage; and,
 1500 mm on the Pole Lane frontage.
- · 4-storey podium.

To achieve the preferred built form option for the subject site, it is necessary to amend the LEP through a Planning Proposal.

The Planning Proposal provides for a 'base' FSR of 2.88:1 that is facilitated by current controls. A 'bonus' FSR of 1.39:1 is proposed to allow for appropriate trade-offs between development feasibility and public benefit so that the proposed FSR for the site will be 4.27:1. The planning proposal allows for an increase in the height from 13m to 26m where the planning study proposed height of 26m was designed to step down from the Pacific Highway. The justification for the 'bonus' FSR and height increase is the following commensurate public benefit being provided:

Open Space

A Voluntary Planning Agreement is being entered into that will deliver open space outcomes on the western side of Hume Lane. This new space will:-

- effectively increase Hume Street Park;
- provide improved pedestrian access to the park; and
- form part of an important link within the broader pedestrian network that links Crows Nest town centre and Willoughby Road.

Pedestrian Circulation/Amenity

Increased 3m ground level setbacks are provided along Hume Lane.
These setbacks will:

- improve pedestrian amenity;
- encourage 'active' street frontages at ground level; and,
- generally improve the public domain.

It should be noted that these benefits are in the public interest and are provided in addition to what would be normally required by a new development. They are also public benefits that have been identified by Council as being needed in Crows Nest.

2. Is the Planning Proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. The Planning Proposal is seen as the best means of achieving the objectives or intended outcomes because:

It will allow implementation of the preferred built form option that North Sydney Council has adopted for the subject site following a focused analysis of the planning study precinct (Precinct 1) addendum which lies within the broader Crows Nest/Crows Nest study area; and

The justification to proceed with the amending LEP has taken into consideration the public interest and the consequence of not proceeding with the necessary changes to the planning controls. The following table provides an evaluation of the Planning Proposal against the key criteria for a Net Community Benefit Test set out in the Department of Planning's Draft Centres Policy. While the subject site is not located in a recognised centre it is considered appropriate to use the evaluation criteria to ensure consistency with the assessment process followed for the Planning Proposal at 545 – 553 Pacific Highway in determining the net community benefit test for the amending LEP.

The assessment of the key evaluation criteria in the table, it is considered that the proposed changes to the North Sydney LEP 2013 will produce a net community benefit.

Key Evaluation Criteria for net community benefit

Will the LEP be compatible with agreed State and regional strategic direction for development in the area?

The LEP is compatible with the following State and regional strategic directions;

- To achieve a balance between greenfield development and redevelopment in existing areas;
- To concentrate activity in accessible centres;
- To provide new housing within the walking catchments of existing and planned centres of all sizes with good public transport;

- To produce housing that suits our expected future needs; and,
- To improve the quality of new housing development and urban renewal

Is the LEP located in a global/regional city, strategic centre or corridor nominated within the Metropolitan Strategy or other regional or subregional strategy?

The LEP is located in the Global Economic Corridor identified in the Metropolitan Strategy.

Is the LEP likely to create a precedent or create or change the expectations of the landowner or other landholders?

The LEP arises from the recommendations of the Crows Nest/Crows Nest precinct study area addendum. The expectations of the landowner or other landowners in the precinct will be informed by the findings of the study.

Have the cumulative effects of other spot rezoning proposals in the locality been considered?

What was the outcome of these considerations?

There are no identified cumulative effects from spot rezoning in the locality that needs to be considered.

Will the LEP facilitate a permanent employment generating activity or result in a loss of employment lands?

Permanent employment activity will be generated within the nonresidential tenancies of the site and the management of the residential components.

Will the LEP impact upon the supply of residential land and therefore

housing supply and affordability?

The amending LEP will increase the residential housing supply and affordability from the site.

Is the existing public infrastructure (roads, rail, utilities) capable of servicing the proposed site?

Is there good pedestrian and cycling access?

Is public transport currently available or is there infrastructure capacity to support future public transport.

The existing public infrastructure (road, utilities and rail) is capable of servicing the proposed development of the site.

There is good pedestrian access in the locality of the subject site. The subject site is well serviced by bus and train being within 700 metres of the Crows Nest station.

Will the proposal result in changes to the car distances travelled by customers, employees and suppliers?

If so, what are the likely impacts in terms of greenhouse gas emissions, operating costs and road safety?

The proposal is expected to reduce car distances travelled by occupants and suppliers because of improved densities and proximities to shops, services and existing public transport.

This will result in a decrease in greenhouse gas emissions and operating costs and result in improved road safety.

Are there significant Government investments in infrastructure or services in the area whose patronage will be affected by the proposal? If so, what is the expected impact?

Yes. There is significant investment in the existing rail network.

The patronage on the rail network will increase.

Will the proposal impact on land that the Government has identified a need to protect (e.g. land with high biodiversity values) or have other environmental impacts?

No

Is the land constrained by environmental factors such as flooding.

No

Will the LEP be compatible or complementary with surrounding land uses?

The LEP will be compatible with existing mixed use development in the area.

What is the impact on amenity in the location and wider community?

The proposal will provide for improved streetscape and contribute to the revitalisation of this precinct. In particular, the proponent will enter into a Voluntary Planning Agreement (VPA) that will contribute to the provision of new open space in the precinct.

Will the public domain improve?

Yes. The VPA will contribute to the provision of more public open space in the precinct and provide improved movement interface along Hume Lane.

Will the proposal increase choice and competition by increasing the number of retail and commercial premises operating in the area?

The proposal will increase the number of active uses operating in the area and will provide a mix of non-residential tenancies at street level.

If a stand-alone proposal and not a centre, does the proposal have the potential to develop into a centre in the future?

No

What are the public interest reasons for preparing the draft plan?

The public interest for preparing the draft plan includes:

- Improved streetscape and pedestrian interface;
- · Provision of public open space;
- Meet the demand for dwellings with high amenity and access to services;
- Improved sustainability due to proximity to public transport and services.

What are the implications of not proceeding at this time?

The site will be redeveloped at a lesser intensity with little public benefit accruing from the redevelopment with future uncertainty in the preferred future built form of the precinct.

4.3.2 Section B - Relationship to Strategic Planning Framework

3. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies?

The Planning Proposal is consistent with the relevant directions/actions of A Plan for Growing Sydney (Sydney Metropolitan Strategy December 2014) as reflected in the table below:

A Plan for Growing Sydney

GOAL 1: A COMPETITIVE ECONOMY WITH WORLD-CLASS SERVICES AND TRANSPORT

Emphasis is placed on intensifying development across Sydney within strategic locations, including the Sydney CBD and the Economic Growth Corridor.

"A Plan for Growing Sydney is a plan to sustain strong growth for Sydney, improve its productivity and competitiveness, and foster higher living standards.." (p.22)

Direction and Action	Comment on Consistency
Direction 1.6	Consistent.
Expand the Global Economic	The subject site is located within
Corridor	North Sydney, which is within the
	Global Economic
	Corridor.
Action 1.6.1	Consistent.
Grow high-skilled jobs in the	This PP encourages the efficient
global economic corridor by	development of the site for a
expanding employment	mixed use building, including
opportunities and mixed-use	commercial and residential floor
activities	space.
Direction 1.7	Consistent
Grow strategic centres - providing	The subject site for this PP is
more jobs closer to home.	located within North Sydney
	(Crows Nest), which is identified
	as a Strategic Centre. The PP
	seeks to allow the more efficient
	redevelopment of the land that will
	contribute to the economical and
	residential needs in the area.
Action 1.7.1	Consistent
Invest in strategic centres across	The PP seeks to increase the
Sydney to grow jobs and housing	development potential of the land
and create vibrant hubs of activity.	for a mixed use development,
	which will provide jobs and
	housing in the centre.
GOAL 2: A CITY OF HOUSING CHO	ICE, WITH HOMES THAT MEET
OUR NEEDS AND LIFESTYLES	
Plan for greater housing supply, cho	pice and affordability to meet
Sydney's changing needs and lifest	yles.
A stronger emphasis on acceleratin	g the delivery of new housing in

Sydney to meet the needs of a bigger population and to satisfy a growing demand for different types of housing. Delivering houses in greenfield and urban renewal locations will help people to live closer to family and friends, to workplaces and schools, and to the services they use on a daily or weekly basis.

"A Plan for Growing Sydney focuses on Government actions to remove the barriers which impede the delivery of more housing, to stimulate competition among developers and to influence the location and type of new homes being built." (p.63)

new nomes being bunt. (p.03)	
Direction and Action	Comment on Consistency
Direction 2.1	Consistent
Accelerate housing supply across	The PP seeks to provide increased
Sydney.	capacity for residential dwellings
	on the site.
Action 2.1.1	Consistent
Accelerate housing supply and	The planning proposal seeks to
local housing	provide increased capacity for
Choices.	residential dwellings, thereby
	increasing housing supply and
	improving housing options and
	affordability.
Direction 2.2	Consistent
Accelerate urban renewal across	The PP applies to a site that is
Sydney - providing homes closer	within walking distance of public
to jobs.	transport services providing
	transport to nearby local centres
	and the CBD.
	Additionally the site is within close
	proximity to, shops, schools and
	other community facilities.
Action 2.2.1	Consistent
Use the Greater Sydney	The PP facilitates small infill
Commission to support Council-	medium density development
led urban infill project.	which is within walking distance of
	public transport and a number of
	community facilities.

Direction 2.3	Consistent
Improve housing choice to suit	The PP seeks to provide medium
different needs and lifestyles.	density housing within close
	proximity to public transport and
	community facilities, thereby
	improving housing choice to meet
	demand and lifestyle
	requirements. The proposal
	supports 'universal housing' that
	allows people to stay in their home
	as they age.
Action 2.3.1	Consistent
Require Local Housing Strategies	The PP will provide a platform for
to plan for a range of housing	the Local Housing Strategy.
types.	Additionally, the increase will
	assist Council to meet its target of
	1,453 additional dwellings under
	the Draft Subregional Plan.
Action 2.3.3	Consistent
Deliver more opportunities for	The PP seeks to provide increased
affordable housing.	capacity for residential dwellings
	on the site, thereby increasing
	dwelling supply and affordability.
GOAL 3: A great place to live with	communities that are strong, healthy
and well connected.	
Our plan for creating a city with str	ong, healthy and well connected
communities "A Plan for Growing S	ydney aims to create more vibrant
places and revitalised suburbs whe	re people want to live - welcoming
places and centres with character a	and vibrancy that offer a sense of
community and belonging." (p.80)	
Direction and Action	Comment on Consistency
Direction 3.3	Consistent
Create healthy built environments	The subject site is within walking
	distance of public transport, and
	other recreational facilities and
	provides the opportunity for people

	to walk and cycle which promotes social cohesion and community connectivity. Overall the proposal supports strong, healthy and well connected community.
Action 3.3.1 Deliver guidelines for a healthy built Environment.	The subject site is within walking distance to transport, and other community facilities which encourages active modes of travel such as walking and cycling and promotes healthy activities and overall supports healthy built environment.

North Subregion

This subregion will continue to be an attractive place to live, work and visit with a thriving economy.

The subregion's Gross Regional Product is second only to the Central subregion's, with North Sydney, the second-largest office market in Sydney. Increases in the supply of housing and jobs will be focused on centres with good public transport. The subregion will offer a growing diversity of high amenity living and working environments.

Direction and Action	Comment on Consistency
Priorities for North Subregion	The planning proposal seeks to
Accelerate housing supply, choice	provide increased capacity for a
and affordability and build great	mixed use development
places to live.	(commercial and residential),
	thereby increasing dwelling supply
	and improving housing options and
	affordability.
	The subject site is within walking
	distance to public transport, parks
	and other community facilities
	which encourages active modes of
	travel such as walking and cycling
	and promotes healthy activities

South Constitution of	and overall supports healthy living
	environment.
Consistency with Draft Sub-regio	nal Strategy
Action	Response
Economy and Employment	The PP will provide a viable
	quantum of retail / commercial
	opportunities and will increase the
	provision of residential dwellings
	on the site. The PP will support
	the local economy and will
	contribute to the growth of the
	locality and neighbouring suburbs
	to achieve the anticipated capacity
	for 8,000 additional jobs.
Centres and Corridors	The Crows Nest neighbourhood
	offers a village shopping
	atmosphere and in particular a
	restaurant strip/night economy in
	Crows Nest which supports the St
	Leonards 'Specialised Precinct' as
	identified by the Metropolitan
	Strategy and the draft Subregional
	Strategy. Increasing the
	residential density of the subject
	site will foster the viability of the
	global economic corridor which wil
	enhance the potential for a vibrant
	community which provides much
	needed housing choice consistent
	with "B2.1 Plan for Housing in
	Centres consistent with their
	employment role."
Housing	According to North Sydney
	Council's North Sydney
	Residential Development
	Strategy 2009, the suburb of

Crows Nest, with its direct association with St Leonards, is accorded the role of 'special centre.' By increasing the residential density of the subject site and ultimately increasing the level of housing choice in an appropriate location, supporting the growth of this Specialised Precinct and its locality, this PP will meet the provisions of this land use policy and the policies held under the North Sydney Residential Development Strategy 2009. Ultimately, the proposal will strengthen the role of Crows Nest / St Leonards by providing urban village living within this "special centre" and will aid in achieving the targets of increasing housing capacity and housing mix near jobs, transport and services in Crows Nest / St Leonards (determined to be 1,453 additional dwellings from 2004-2031 by North Sydney Council) consistent with "C1.3 Plan for increased housing capacity targets in existing areas" and "C2 Plan for a housing mix near jobs, transport and services." The "Transport Strategy" primarily Transport relates to increasing opportunities for walking or cycling and enhancing public transport infrastructure, for instance through

the establishment of Strategic Bus Corridors. Whilst the proposal has no direct impact on public transport infrastructure, it will increase the amount of people working and living within close proximity of the existing public transport network, therefore increasing its efficiency. In particular given the site is within close proximity (walking distance) to train and bus services. The proposal also provides a 6 metre ground level setback to the Oxley Street (northern) frontage which provides an improved dedicated pedestrian environment and connects the Pacific Highway to the urban village beyond. Ultimately, an increased density of the subject site will support the availability of public transport infrastructure to a greater number of residents. Environment, Heritage and The increased density of the subject site will not result in an Resources adverse impact to the environment or heritage. The future detailed design of this mixed use development will be sensitive to the significance of the local heritage item at the adjoining site to the east, being the 'St Leonards Centre' at 28-34 Clarke Street, Crows Nest. Thus, the proposal

A CONTRACTOR OF THE CONTRACTOR	would remain consistent with this
	land use policy.
Parks, Public Places and Culture	This PP is accompanied by a Draft
	Voluntary Planning Agreement
	which includes the offer of a
	monetary contribution to Council
	for the purpose of increasing the
	amount of public open space in the
	LGA. The proposal provides a
	direct benefit to the provision and
	quality of parks and public spaces
	for the use of the community. The
	proposal also provides non-
	residential spaces on the lower
	levels which have the potential to
	be occupied by appropriate land
	uses which benefit the culture of
	the Crows Nest Village.

The PP is considered consistent with the Draft Subregional Strategy. It is considered that the redevelopment of the site will also contribute to the following 'key directions' articulated in the Draft Subregional Strategy:

- · Plan for housing choice in an appropriate location;
- Develop and support improvements to the increasingly integrated transport system; and
- Improve the quality of the built and natural environment while aiming to decrease the subregion's ecological footprint.
- 4. Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

North Sydney Council has a number of local strategic plans that are relevant to the Planning Proposal. The following provides a summary

of how the Planning Proposal is consistent with the objectives of the local strategic plans.

North Sydney Residential Development Strategy 2009

The Planning Proposal is consistent with the North Sydney Residential Strategy because it will:

- Provide additional housing to meet the revised projected demand from the increasing population projections.
- Concentrate the bulk of new dwellings in Mixed Use zone in close proximity to retail, office, health, education, transport, leisure, entertainment facilities and community and personal services;
- Deliver housing choice for a range of socio economic groups; and
- Minimise the impact of new development on local character, amenity, environment and heritage.

North Sydney Local Development Strategy 2009

This Strategy is identified by Council as "a translation of the strategic vision for North Sydney Council as identified in the Metropolitan and Subregional Strategies".

The Planning Proposal is consistent with this Strategy because it:

 Maintains both commercial and residential uses in the mixed use zone;

- Maintains employment generating uses on the site; and,
- Responds to the changing market demands for more housing choice in close proximity to public transport, retail and services.

North Sydney Community Strategic Plan 2013 - 2023

The Community Strategic Plan "sets a strategic direction for where the community of North Sydney wants to be in the year 2023.

The Planning Proposal is consistent with this Plan because it:

- Improves the urban green spaces;
- Contributes to the provision of private open space through a Voluntary Planning Agreement.
- Contributes to an improved mix of land uses and quality development through design excellence and providing a sense of community;
- Encourages sustainable public transport; and,
- Contributes to a diverse, strong, sustainable and vibrant local economy,
- Contributes to community connectivity ,
- 5. Is the Planning Proposal consistent with applicable State Environmental Planning Policies?

There are a number of State Environmental Planning Policies that will apply to any proposed development of the site but not all are applicable to the assessment of this Planning Proposal. The following table considers this consistency.

SEPP	Consistency	Comments
1. Development Standards	Yes	Yes The Standard Instrument Clause 4.6 supersedes the SEPP. The proposal seeks to allow for a maximum building height of 26 metres to the top of the building which satisfies the site specific building height sought via this PP.
4. Development Without Consent & Miscellaneous Exempt & Complying Development	Yes	The PP will not contain provisions that will contradict or would hinder the application of this SEPP.
6. Number of Storeys in a Building	Yes	The proposal is for a maximum building height as demonstrated on the proposed LEP mapping (Section 8).
14.Coastal Wetlands	N/A	Not applicable
15.Rural Landsharing Communities	N/A	Not applicable
19.Bushland in Urban Areas	N/A	Not applicable

21.Caravan Parks	N/A	Not applicable
22. Shops & Commercial Premises	Yes	The PP aims to be consistent with the SEPP having regard to the range of uses that may be appropriate for the site.
26. Littoral Rainforests	N/A	Not applicable
29. Western Sydney Recreation Area	N/A	Not applicable
30. Intensive Agriculture	N/A	Not applicable
32. Urban Consolidation (Redevelopment of Urban Land)	Yes	The PP aims to be consistent with the SEPP having regard to the range of uses that may be appropriate for the site.
33. Hazardous and Offensive Development Complex	N/A	Not applicable
36. Manufactured Home Estates	N/A	Not applicable
39. Spit Island Bird Habitat	N/A	Not applicable
41. Casino Entertainment	N/A	Not applicable
44. Koala Habitat Protection	N/A	Not applicable
47. Moore Park Showground	N/A	Not applicable
50. Canal Estate Development	N/A	Not applicable
52. Farm Dams, Drought Relief &	N/A	Not applicable

Other Works		
55. Remediation of Land	Yes	The PP will not contain provisions that will contradict or would hinder the application of this SEPP. The sites historical use was for motor showroom with ancillary offices. The site is capable of being used for commercial and residential purposes, with any requirement for remediation of the site addressed in the detailed DA for the mixed use development.
59. Central Western Sydney Economic & Employment Area	N/A	Not applicable
62. Sustainable Aquaculture	N/A	Not applicable
64. Advertising and Signage	N/A	Not applicable
65. Design Quality of Residential Flat Development	Yes	The PP will achieve consistency with the SEPP through application of design excellence provisions. The Architectural Indicative Scheme addresses in detail

		the implications for realising the design quality principles in the SEPP and demonstrated an appropriate built form on the site.
70. Affordable Housing (Revised Schemes)	N/A	Not applicable
71. Coastal Protection	N/A	Not applicable
SEPP (Affordable Rental Housing) 2009	Yes	The PP will not contain provisions that will contradict or would hinder application of this SEPP.
SEPP (Building Sustainability Index: BASIX) 2004	Yes	The PP will not contain provisions that will contradict or would hinder application of this SEPP.
SEPP (Exempt and Complying Development Codes) 2008	Yes	The PP will not contain provisions that will contradict or would hinder application of this SEPP.
SEPP (Housing for Seniors or People with a Disability) 2004	Yes	The PP will not contain provisions that will contradict or would hinder application of this SEPP.
SEPP (Infrastructure)	Yes	The PP will not

2007		contain provisions that will contradict or would hinder application of this SEPP.
SEPP (Kosciuszko National Park-Alpine Resorts) 2007	N/A	Not applicable
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	N/A	Not applicable
SEPP (Temporary Structures and Places of Public Entertainment) 2007	N/A	Not applicable
SEPP (Rural Lands) 2008	N/A	Not applicable
SEPP (Western Sydney Parklands) 2009	N/A	Not applicable
SREP (Sydney Harbour Catchment) 2005	Yes	The PP will not contain provisions that will contradict or would hinder application of this SEPP.

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s 117 directions)?

The following table provides an assessment of the Planning Proposal against the applicable Ministerial Directions. The Planning

Proposal is generally consistent with the identified applicable Ministerial Directions.

Ministerial Directions

Employment and Resou	rces	
1.1 Business and Industrial Zones	Yes	The planning proposal is consistent with the objectives of the direction because it will continue to provides for employment growth within the mixed use area on the ground and first floor levels.
1.2 Rural Zones	N/A	Not applicable
1.3 Mining, Petroleum Production and Extractive Industries	N/A	Not applicable
1.4 Oyster Aquaculture	N/A	Not applicable
1.5 Rural Lands	N/A	Not applicable
Environment and Herita	ge	
2.1 Environment Protection Zones	N/A	Not applicable
2.2 Coastal Protection	N/A	Not applicable
2.3 Heritage Conservation	N/A	Not applicable
2.4 Recreation Vehicle Areas	N/A	Not applicable
Housing, Infrastructure	and Urban Deve	lopment
3.1 Residential Zones	Yes	The planning proposal is consistent with the

		objectives of the direction because it will improve the choice, accessibility and distribution of housing stock. It will also help reduce the development of land on the urban fringe.
3.2 Caravan Parks and Manufactured Home Estates	N/A	Not applicable
3.3 Home Occupations	N/A	Not applicable
3.4 Integrating Land Use and Transport	Yes	The planning proposal is consistent with the objectives of the direction because it provides for housing in close proximity to established public transport reducing travel demand with environmental benefits.
3.5 Development Near Licensed Aerodromes	N/A	Not applicable
3.6 Shooting Ranges	N/A	Not applicable
Hazard and risk	alle mainten	
4.1 Acid sulphate soils	N/A	The site is not located on acid sulphate soils. Accordingly, Direction 4.1 is not applicable.
4.2 Mine Subsidence	N/A	Not applicable

and		
Unstable Land		
4.3 Flood Prone Land	N/A	The site is not located within flood prone land Accordingly, Direction 4.3 is not applicable.
4.4 Planning for Bushfire Protection	N/A	The site is not located within a Bushfire prone area. Accordingly, Direction 4.4 is not applicable.
5. Regional Planning		
5.1 Implementation of Regional Strategies	Yes	The PP will be consistent with this Ministerial Direction.
5.2 Sydney Drinking Water Catchments	Yes	The planning proposal is prepared in accordance with the general principle that water quality within the Sydney drinking water catchment will be protected. The Planning proposal is consistent with SEPP (Sydney Drinking Water Catchment) 2011 and development will have a neutral or beneficial effect on water quality.
5.3 Farmland of State and Regional Significance on the	N/A	Not applicable

NSW Far North Coast		
5.4 Commercial & Retail Development along the Pacific Highway, North Coast	N/A	Not applicable
5.8 Second Sydney Airport: Badgerys Creek	N/A	Not applicable
5.9 North West Rail Link Corridor Strategy	N/A	Not applicable
Local Plan Making		and the second
6.1 Approval and Referral Requirements	Yes	The PP will be consistent with this Ministerial Direction.
6.2 Reserving Land for Public Purposes	Yes	The PP will be consistent with this Ministerial Direction.
6.3 Site Specific Provisions	Yes	The PP will be consistent with this Ministerial Direction.
Metropolitan Planning		7/11
7.1 Implementation of the Metropolitan Plan for Sydney 2036	Yes	The Planning Proposal is shown to be consistent with the NSW Government's Metropolitan Plan for Sydney 2036

4.3.3 Section C - Environmental, Social and Economic Impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No, there have been no critical habitat or threatened species,

populations or ecological communities, or their habitats, identified on this site.

A full set of shadow diagrams have been prepared and are appended to the proposal which detail the impact of a compliant building and that of the proposal on the surrounding development and future development envisaged for the Precinct and demonstrates that the impacts are satisfactory.

The non-residential floor space ratio will not be amended and as such the amount of employment generating floor space that can be provided on the site will not decrease.

8. Are there any other likely environmental impacts as a result of the Planning Proposal (and if so), how are they to be managed?

There are no likely environmental impacts as a result of this Planning Proposal. The proposed change to the maximum permissible height limit is not likely to give rise to any particular environmental impact given the location of the subject site and the nature of existing built form in the area. Any future development of the site will be assessed against the environmental provisions of the applicable planning instruments.

9. Has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal is unlikely to deliver any significant detrimental economic effects but will deliver positive social benefits, including increased housing stock close to public transport, shops and amenities; greater housing choice; improved public domain facilities and an improved pedestrian interface with the surrounding streets.

- 4.3.4 Section D State and Commonwealth Interests
 - 10. Is there adequate public infrastructure for the planning proposal?

The locality of the Planning Proposal is very well served by existing public transport and infrastructure being in close proximity to St Leonards Station and accessible to a number of bus services. It is anticipated that the public infrastructure will adequately serve the area.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Consultation with other public authorities has been undertaken at this stage of the gateway process. It is expected that any required consultation will be identified following the gateway determination.

4.4 Mapping

The proposal is supported by relevant and accurate mapping in the form of the aerial photographs, surveys and mapping included in section 2.2.

The planning proposal will amend the Height of Buildings Map and Floor Space Ratio Map of the NSLEP 2013 to reflect the proposed amendment to 26m and 4.27:1.

4.5 Community Consultation

Community consultation will be undertaken in accordance with the requirements of the gateway determination.

The Planning Proposal is considered to be a 'low impact' proposal because:

- It is consistent with the recommendations of the Crows Nest
 / Crows Nest Planning Study Precinct 1 Addendum; and
- The study was adopted by the Council following its public exhibition.

4.6 Timeline

- · anticipated commencement date (date of Gateway determination)
- 31 July 2015
- timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)
- 21 August 2015

- commencement and completion dates for public exhibition period
- 30 August 2015 30 September 2015
- dates for public hearing (if required)

Not required

- · timeframe for consideration of submissions
- 1 October 2015 14 October 2015
- timeframe for the consideration of a proposal post exhibition
- 14 October 2015 28 October 2015
- date of submission to the department to finalise the LEP
- 28 October 2015
- anticipated date RPA will make the plan (if delegated)
- 28 October 2015
- anticipated date RPA will forward to the department for notification.
- 7 November 2015

5.0 Summary

This Planning Proposal should be supported because;

- It is consistent with both Local and State Government strategies on the provision of new housing.
- 2. The subject site is ideally highly proximate to public transport, shops and services.
- Sydney's population is growing faster than previously expected causing increased housing demand.
- 4. There are demonstrated social benefits resulting from the proposed amendment that include the provision of a range and diversity of housing types, the provision of growth within close proximity to a centre and public transport corridor and the provision of public open space through a VPA.



Andrew Darroch Consultant Planner July 2015

PLANNING AGREEMENT

PARTIES

NORTH SYDNEY COUNCIL of 200 Miller Street, North Sydney, NSW, 2060 ("Council")

AND

WINTEN (NO. 16) PTY LTD ACN 092 479 644 of Level 10, 61 Lavender Street, Milsons Point, NSW, 2061 ("Developer")

AND

PALUMA PTY LIMITED ACN 164 017 412 of [address] and YURI BOLOTIN and RAE BOLOTIN of [address] ("Landowners")

BACKGROUND

- A. At the time of executing this Agreement, Paluma Pty Limited is the registered proprietor of Lot 41 Section 4 DP 2872 and Yuri and Rae Bolotin are the registered proprietors of Lot 1 DP 572479.
- B. At the time of executing this Agreement, the Developer has entered into a put and call option agreement to purchase the Land, conditional on the Instrument Change.
- C. The Developer proposes to carry out the Development on the Land. To this extent, the Developer proposes to make a development application to Council for the Development.
- D. Clause 4.3(2) of LEP 2013 provides that a building is not to exceed the maximum height shown for the land on the Height of Buildings Map. The map relating to clause 4.3(2) provides a height limit of 13 metres for the Land.
- E. Clause 4.4(2) of LEP 2013 provides that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The map relating to clause 4.4(2) shows no maximum floor space ratio for the Land.
- F. Council has adopted the St Leonards Crow's Nest Planning Study Precinct 1 which makes provision for an increase in building heights in the area. The Study also recommends a whole of building floor space ratio be applied to sites seeking to increase the building height control. The Land is located within the area the subject of the Planning Study.
 - G. The Developer and the Landowners have sought:

- a. a change to the Height of Buildings Map referred to in clause 4.3(2) of LEP 2013 to allow a maximum building height of 26 metres for the Land as defined in LEP 2013; and
- a change to the Floor Space Ratio Map to introduce a maximum floor space ratio of 4.27:1 for the Land.
- H. The Developer has offered to enter into a Planning Agreement with Council for the provision of Development Contributions in connection with the Instrument Change. The Landowners have consented to the arrangement offered by the Developer. The Parties wish to formalise that arrangement by entering into this Agreement in accordance with section 93F of the Act.

OPERATIVE PROVISIONS

1 Planning agreement under the Act

The Parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act

2 Application of this Agreement

This Agreement applies to:

- (a) the Land,
- (b) the Instrument Change, and
- (c) the Development.
- 3 Operation of this Agreement

The parties each agree that this Agreement operates on and from the date of this Agreement.

- 4 Definitions and interpretation
- 4.1 In this Agreement the following definitions apply:

Act means the Environmental Planning and Assessment Act 1979 (NSW).

Bank Guarantee means an irrevocable and unconditional undertaking, not limited in time, by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited:
- (b) Commonwealth Bank of Australia:
- (c) Macquarie Bank:
- (d) National Australia Bank Limited;
- (e) St George Bank Limited:

- (f) Westpac Banking Corporation: or
- (g) other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council.

Bolotins means Yuri and Rae Bolotin.

Construction Certificate means a construction certificate as defined under s109C of the Act.

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means the proposed mixed use development on the Land including a building having a height of up to 26 metres, adopting the definition of "height" contained in LEP 2013.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

GST Law has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Insolvent means the occurrence of any of the following:

- (a) a Party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a Party becomes unable to pay its debts as they fall due;
- (c) a Party enters into any arrangement with creditors;
- (d) a Party becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act 2001 (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) above occurs in relation to a party, including the court appointment of a receiver.

Instrument Change means a change to LEP 2013 to provide for a maximum building height of 26 m and maximum floor space ratio of 4.27:1 for the Land.

Land means Lot 1 in DP572479 and Lot 41 of Section 4 in DP2872, known as 31 and 33 Albany Street, St Leonards.

LEP 2013 means North Sydney Local Environmental Plan 2013.

Modification means the grant of any Modification Application under s96 of the Act.

Modification Application means an application to modify a Development Consent under s96 of the Act.

Monetary Contribution means the monetary contribution to be paid by the Developer and the Landowner to the Council in accordance with clause 5(a) of this Agreement.

Occupation Certificate means an occupation certificate as defined under section 109C of the Act, including an interim occupation certificate or a final occupation certificate.

Paluma means Paluma Pty Limited ACN 164 017 412.

Party means a party to this agreement, including their successors and assigns.

Register means the Torrens Title register maintained under the NSW Real Property Act 1900.

Regulation means the Environmental Planning and Assessment Regulation 2000.

Setback Area means the area of the Land created by the set back of any future building from Hume Lane, as required by clause 5(c) of this Agreement.

- 4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
 - (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amount payable under this Agreement are payable in Australian dollars.
 - (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.

- (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
- (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
- (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
- (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- (k) References to the word 'include' or 'including' are to be construed without limitation.
- A reference to this Agreement includes the agreement recorded in this Agreement.
- (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (n) Any schedules and attachments form part of this Agreement.
- 5 Development Contributions to be made under this Agreement
 - (a) The Developer will for the purpose of increasing the amount of Public Open Space in the North Sydney Local Government Area provide a monetary contribution in an amount calculated in accordance with clause 5(b) by way of a bank cheque in favour of North Sydney Council prior to the issue of any Construction Certificate that applies to or with respect to any future building or development on the Land.
 - (b) The monetary contribution referred to in clause 5(a) will be \$1,150,000.00 or an amount determined in accordance with the following formula, whichever is the greater, at the time of actual payment of the monetary contribution:

\$1,150,000.00 xThe CPI at the time of payment

The CPI that applied at the date of this Agreement

(c) The Developer and Landowners acknowledge and agrees that:

- any future building on the Land will be set back 3 metres from the Hume Lane frontage of the Land, excluding structures approved by Council for the purposes of enhancing public domain areas; and
- (ii) any future Development Consent for, or Modification relating to, a building on the Land may require development of the Setback Area so described in clause 5(c)(i) so that it is consistent with the public domain and establishes a functioning publicly accessible footpath area
- (d) Prior to the issue of any Construction Certificate for any building on the Land, the Developer and the Landowners must register a covenant against the title to the Land prohibiting any building or development within the Setback Area, other than structures approved by Council for the purposes of enhancing public domain areas.
- (e) Prior to the issue of any Occupation Certificate for any building on the Land, the Developer will design and construct the Setback Areas in accordance with the technical requirements for footpaths in North Sydney Development Control Plan 2013 and Council's Public Domain Style Manual and Design Code and any Development Consent granted for those works.
- (f) The Developer and the Landowners agree and acknowledge that prior to the issue of any Occupation Certificate for any building on the Land, an easement in gross in favour of the Council permitting public access to the Setback Area must be registered against the title to the Land at no cost to the Council.
- (g) The easement in gross referred to in clause 5(e) will:
 - (i) require the owner of the Setback Area to:
 - (A) maintain and repair the land to the satisfaction of the Council,
 - (B) maintain sufficient public liability insurance,
 - (C) ensure that no buildings or structures are erected on the setback area at ground level or above other than structures approved by the Council for the purposes of enhancing public domain areas, and
 - (D) ensure that any rules made by an Owner's Corporation relating to the Setback Area are approved by the Council; and
 - allow the owner of the Setback Area to, with the consent of Council and subject to providing adequate access;
 - (A) carry out works in the Setback Area for the purposes of enhancing the Setback Area;

- (B) install or erect works of art, street furniture, tables and chairs associated with ground floor commercial premises, or any other similar improvements at ground level of the Setback Area, and
- (C) use the Setback Area in a manner that is consistent with the Council's "Outdoor Dining and Goods on Footpath Policy" and associated Guidelines or any instrument replacing that policy.
- (h) The Developer and the Landowners agree and acknowledge that the obligation to maintain the Setback Area under clause 5(c) of this Agreement is a relevant consideration for the Council or any other consent authority when determining any future Development Application or Modification Application and that a failure to comply with that obligation or any inconsistency with the requirements of this clause 5 may constitute a reason for refusal of any such application.

6 Application of the Development Contributions

- (a) The Council must upon receipt of the Monetary Contribution paid by the Developer in accordance with clause 5 of this Agreement and within a reasonable time after the date of this Agreement use that contribution as it sees fit to:
 - (i) acquire land for the provision of Public Open Space;
 - (ii) attend to the embellishment of the land so acquired for open space; or
 - (iii) care for and maintain the said open space.
- (b) In the event the Council determines not to acquire land for the purposes of establishing new open space areas, the Council agrees that the contributions made under this Agreement will be applied towards the embellishment and maintenance of other land for the purposes of public open space and recreation with the North Sydney Local Government Area.
- (c) For the avoidance of doubt, nothing in this Agreement requires the Council to:
 - spend the contributions made under this Agreement by a particular date; or
 - (ii) refund to the Developer any contributions made under this Agreement.
- 7 Application of s94, s94A and s94EF of the Act to the Development
 - (a) Sections 94, 94A and 94EF of the Act will apply to any future development of the Land.

- (b) Benefits under this planning agreement are excluded from being taken into consideration under s94(6) of the Act and its application to any future development of the Land.
- 8 Registration of this Agreement

8.1 Requirement to Register

- (a) The Developer agrees that it will procure the registration of this Agreement, under the Real Property Act 1900 (NSW) in the relevant folios of the Register for the Land in accordance with s93H of the Act.
- (b) The Developer at its own expense will, promptly after this Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title,

to enable the registration of this Agreement in accordance with clause 8.1(a).

- (c) The Developer at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement comes into operation but in any event, no later than 90 Business Days after that date; and
 - (ii) to procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration.

8.2 Landowners Obligations

- Paluma represents and warrant that it is the registered proprietor of Lot 41 Section 4 DP 2872.
- (b) The Bolotins represent and warrant that they are the registered proprietors of Lot 1 DP 572479 as joint tenants.
- (c) The Landowners consent to the registration of this Agreement in accordance with clause 8.1(a) and will do all that is necessary to effect registration of this Agreement and all documents contemplated by this Agreement.

- (d) The Landowners acknowledge and agree that if the Developer:
 - (i) becomes Insolvent; or
 - fails to comply with this Agreement after having been given reasonable notice to comply in accordance with the terms of this Agreement; or
 - (iii) transfers any interest in the Land or the Development to another party contrary to the terms of this Agreement,

the Landowners will adhere to the provisions of this Agreement and agree to satisfy all obligations and requirements imposed on the Developer under this Agreement, as if they were obligations or requirements imposed on the Landowners.

8.3 Caveat

- (a) The Landowners acknowledge and agree that:
 - (i) when this Agreement is executed, Council is deemed to have acquired, and the Landowners are deemed to have granted, an equitable estate and interest in each relevant parcel of the Land for the purposes of section 74F(1) of the Real Property Act 1900 and consequently Council has sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest; and
 - (ii) they will not object to Council lodging a caveat in the relevant folios of the Register nor will it seek to remove any caveat lodged by Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) Council must register, at the Landowners' and the Developer's cost, a withdrawal of any caveat in respect of the Land within 20 Business Days after this Agreement has been registered in accordance with clause 8.1 and must not lodge any other caveats on the titles to any of the Land, providing the withdrawal of a caveat will only apply in respect of such parts of the Land in respect of which registration of this Agreement has been procured.

8.4 Release and Discharge

The Council will provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is, acting reasonably, satisfied the Developer has duly fulfilled its obligations under this Agreement and is not otherwise in default of any of the obligations under this Agreement.

9 Review of this Agreement

This Agreement may be reviewed or modified by the agreement of the parties using their best endeavours and acting in good faith.

10 Dispute Resolution

10.1 Dispute

If any dispute arises out of this Agreement (**Dispute**) a party to the agreement must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief,

10.2 Notice of Dispute

A party to this Agreement claiming that a dispute has arisen out of or in relation to this Agreement must give written notice (**Notice**) to the other party to this Agreement specifying the nature of the dispute,

10.3 Dispute Resolution

If the parties do not agree within twenty one days of receipt of the Notice (or such further period as agreed in writing by them) as to:

- the dispute resolution technique (eg expert determination) and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- the selection and compensation of the independent person required for such technique,

The parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales as published by the Law Society of New South Wales from time to time, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

11 Enforcement

11.1 Bank Guarantee

- (a) Prior to the Instrument Change, the Developer is to provide to the Council a Bank Guarantee in the amount of \$1,150,000.00.
- (b) Except as expressly permitted by this Agreement, the Council is not to call on a Bank Guarantee provided under this clause unless:
 - (i) the Developer is in material or substantial breach of this Agreement and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
 - (ii) the Developer becomes Insolvent.
- (c) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause 11.1(a), the Developer must provide Council with

one or more replacement Bank Guarantees. Each replacement Bank Guarantee is to be in the amount specified in clause 11.1(a) indexed annually in accordance with any movement (but not any decrease) in the CPI from the date of entry into this Agreement until the date of that replacement Bank Guarantee.

- (d) At any time following the provision of a Bank Guarantee, the Developer may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being.
- (e) On receipt of any replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantees which it holds that have been replaced.
- (f) Subject to this clause, the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer under this Agreement to pay the Monetary Contribution, and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement.
- (g) When an obligation of the Developer under this Agreement to which a Bank Guarantee relates has been fulfilled, the Council must return the Bank Guarantee if requested by the Developer.
- (h) Nothing in this clause 11.1 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this Agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement,

that is not nor cannot be satisfied by calling on a Bank Guarantee.

11.2 Restriction on the issue of a Certificates

- (a) In accordance with section 109F of the Act and clause 146A of the Regulation the following obligations under this Agreement must be satisfied prior to the issue of any Construction Certificate for any future building or development on the Land:
 - (i) payment of the Monetary Contribution under clause 5(a); and
 - (ii) registration of the covenant restricting buildings in the Setback Area under clause 5(d).

- (b) In accordance with section 109H(2) of the Act the following obligations must be satisfied prior to the issue of any Occupation Certificate for any future building or development on the Land:
 - completion, to the Council's satisfaction, acting reasonably, of the construction of the Setback Area as required under clause 5(e); and
 - (ii) registration of the easement in gross under clause 5(f).

11.3 General Enforcement

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11.4 Acknowledgement regarding Security

The parties acknowledge and agree that the security provided under this clause 11 together with the timing of requirements to pay contributions, the agreements and acknowledgements under clause 5, the requirements under clause 8 for registration of this Agreement and the restrictions on assignment of this Agreement under clause 14 will provide sufficient security for the performance of the Developer's obligations under this Agreement.

12 Notices

- 12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
 - (a) Delivered or posted to that Party at its address set out below.
 - (b) Faxed to that Party at its fax number set out below.
 - (c) Emailed to that Party at its email address set out below.

Council

North Sydney Council

Attention: Alex Williams

Address: 200 Miller Street, North Sydney, NSW, 2060

Fax number: 9936 8177

Email: alex.williams@northsydney.nsw.gov.au

Developer

Winten Property Group

Attention:

Stuart Vaughan

Address:

61 Lavender Street, Milsons Point, NSW, 2061

Fax number:

9929 5001

Email:

svaughan@winten.com.au

Landowners

Paluma Pty Limited

Attention:

Address:

Fax number:

Email:

Yuri and Rae Bolotin

Attention:

Address:

Fax number:

Email:

- 12.2 If a Party gives the other Party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.
 - (c) If it is sent by fax, as soon as the sender receives from the sender's fax machine a report of an error free transmission to the correct fax number.

12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

13 Approvals and consent

Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 Assignment and Dealings

The Developer and the Landowners may not sell, transfer, assign or novate or similarly deal with their right, title or interest in the Land (if any) or the Development, or rights or obligations under the terms of this agreement, or allow any interest in them to arise or be varied, in each case, without Council's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer or the Landowners as the case may be:

- at no cost to Council, first procures the execution by that person of all necessary documents in favour of Council by which that person agrees to be bound by the Agreement as if they were a party to the original Agreement; and
- (b) satisfies the Council that the Developer is not in breach of this Agreement.

15 Costs

The Developer agrees to pay or reimburse Council all reasonable costs incurred in connection with:

- (a) the negotiation, preparation and execution of this Agreement; and
- advertising and exhibition of this Agreement in accordance with the Act, and
- any other costs required to be paid by the Developer or the Landowners under this Agreement

within ten business days after receipt of a tax invoice from Council.

16 Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

17 Further Acts

Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

18 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

19 Joint and individual liability and benefits

Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

20 No fetter

- (a) Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- (b) This Agreement does not impose any obligation on Council to:
 - (i) grant Development Consent; or
 - (ii) exercise any function under the Act in relation to a change in an environmental planning instrument.

21 Representations and warranties

The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

22 Severability

If a clause or part of a clause in this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be ready in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

23 Modification

No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

24 Waiver

The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

25 GST

- (a) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this Agreement, the Developer must pay, on receipt of a tax invoice from the Council, the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

26 Counterparts

NLS\KTC\48391516\3

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

EXECUTION		
Dated:		
Executed as an Agreement:		
Signed for and on behalf of North)	
Sydney Council ABN 32 353 260 317 by its authorised delegate)	
pursuant to a resolution dated)	
in the presence of:)	
)	
)	
)	

Signature of Witness		Signature of Authorised Delegate

Print name of Witness

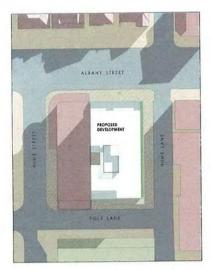
ATTACHMENT TO CIS05 - 19/10/15

Sparke Helmore Lawyers

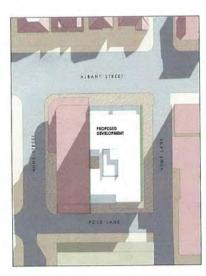
EXECUTED for and on behalf of WINTEN (NO 16) PTY LTD ACN 092 479 644 in accordance with Section 127(1) of the Corporations Act 2001:)	
)	
)	
)	
)	

Signature of Director		Signature of Director/Secretary
Name of Director		Name of Director/Secretary
Executed by Paluma Pty Limited ACN 164 017 412 in accordance with section 127 of the Corporations Act 2001 (Cth) by:)	
)	
)	
)	
)	
Signature of Director		Signature of Director/Secretary
		6.1
Print name of Director		Print name of Director/Secretary

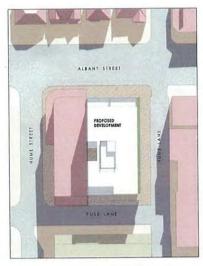
Signed by Yuri Bolotin in the presence of:)	
)	
)	
Signature of Witness		Signature of Yuri Bolotin
Print name of Witness		
Signed by Rae Bolotin in the presence)	
of:)	
)	
Signature of Witness		Signature of Rae Bolotin
Print name of Witness		



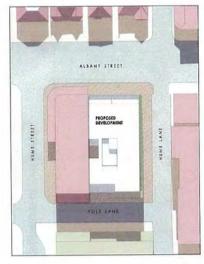
21 June - 09.00 am



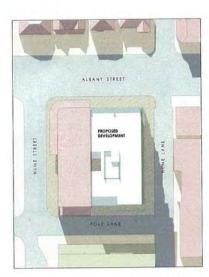
21 June - 10.00 am



21 June - 11.00 am



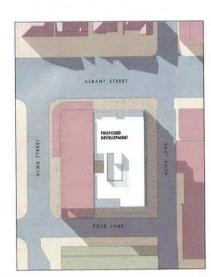
21 June - 12.00 pm



21 June - 01.00 pm

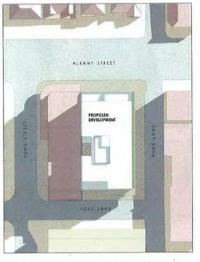


21 June - 02.00 pm

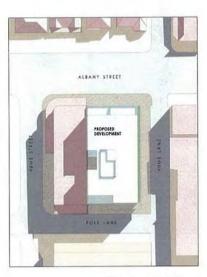


21 June - 03.00 pm

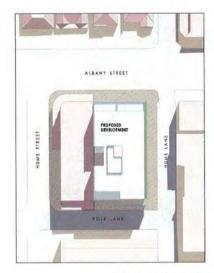




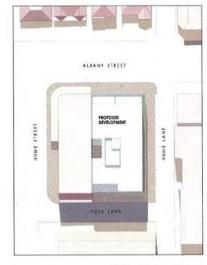
21 September - 09.00 am



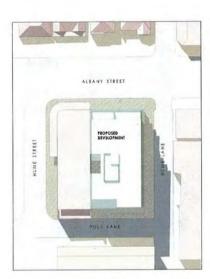
21 September - 10.00 am



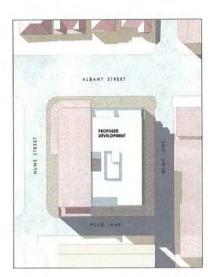
21 September - 11.00 am



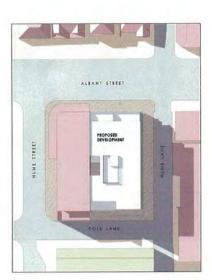
21 September - 12.00 pm



21 September - 01.00 pm

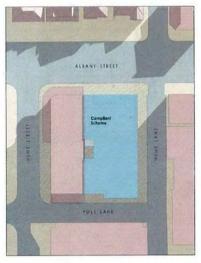


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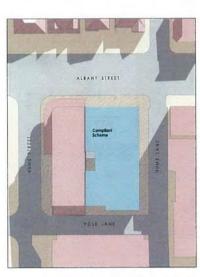


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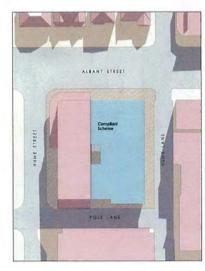




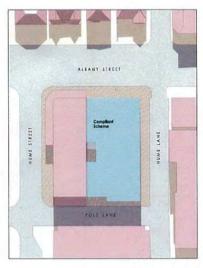
21 June - 09.00 am



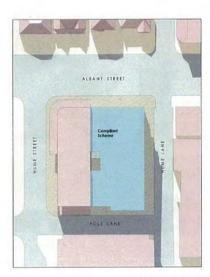
21 June - 10.00 am



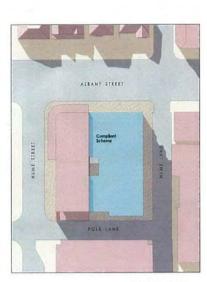
21 June - 11.00 am



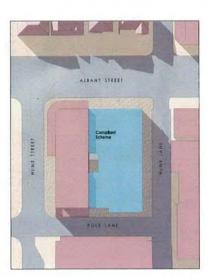
21 June - 12.00 pm



21 June - 01.00 pm



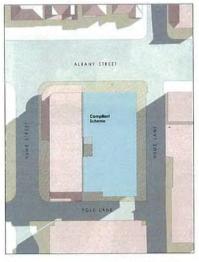
21 June - 02.00 pm



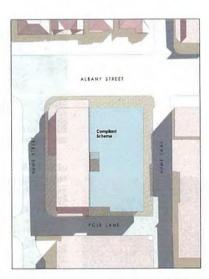
21 June - 03.00 pm



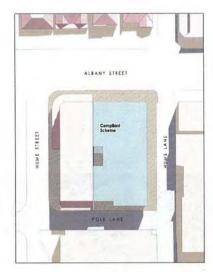
Mixed Use Development 31-33 Albany Street, Crows Nest NSW | State | Local All | Rook | 1418 | State | Local All | Rook | 11 | Towns | 141 | To



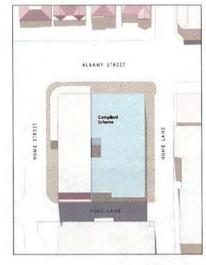
21 September - 09.00 am



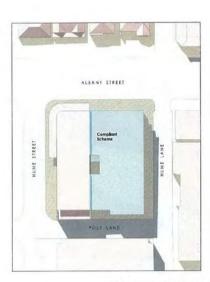
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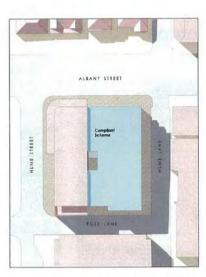
21 September - 11.00 am



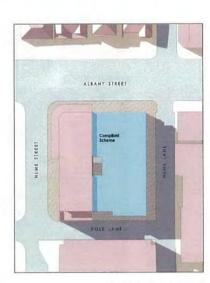
21 September - 12.00 pm



21 September - 01.00 pm



21 September - 02.00 pm



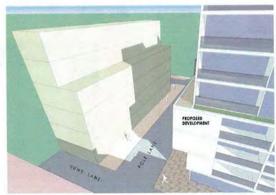
21 September - 03.00 pm



A.703



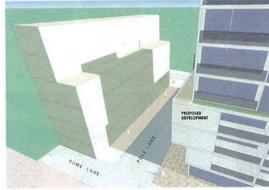
21 June - 09.00 am



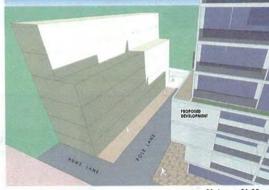
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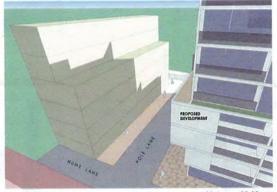
21 June - 11.00 am



21 June - 12.00 pm



21 June - 01.00 pm



21 June - 02.00 pm



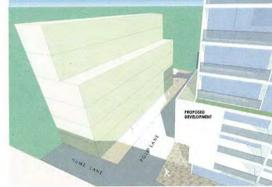
SHADOW DIAGRAM MIDWINTER - 21 June (Elevation of Potential Building across Pole Lane)

Mixed Use Development 31-33 Albany Street, Crows Nest NSW

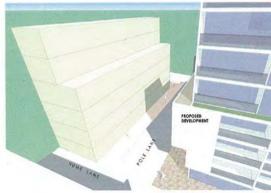




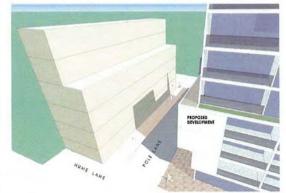
21 June - 03.00 pm



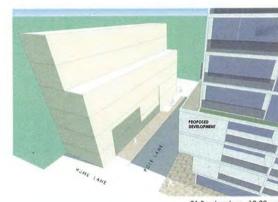
21 September - 09.00 am



21 September - 10.00 am



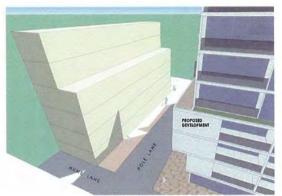
21 September - 11.00 am



21 September - 12.00 pm



21 September - 01.00 pm



21 September - 02.00 pm



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21 September - 03.00 pm