

**DECISION OF 3648th COUNCIL MEETING
HELD ON 28 APRIL 2014**

124. PDS01: Planning Proposal - 200-220 Pacific Highway, Crows Nest

Report of Ben Boyd, Executive Strategic Planner

Council has received a Planning Proposal for the site known as 200-220 Pacific Highway Crows Nest. The Planning Proposal seeks to amend the non-residential floor space ratio range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from 0.5:1 - 2:1 to 0.2:1 - 2:1. It is proposed to achieve this by amending clause 4.4A and the *Non-residential Floor Space Ratio Range Map* (LCL_001) to NSLEP 2013. The intent of the Planning Proposal is to allow the conversion of 6 approved serviced apartments to residential accommodation.

The Planning Proposal is supported as it:

- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- generally complies with NSW Planning and Infrastructure's "*A guide to preparing planning proposals*";
- is unlikely to result in any adverse impacts on the environment or wider community;
- is unlikely to result in an adverse impact upon employment generation in the locality; and
- does not contradict the ability to achieve the objectives and actions of high level planning strategies.

As such, the Planning Proposal is considered to be satisfactory and should be forwarded to the NSW Planning and Infrastructure for Gateway Determination.

It is noted that Planning Proposal could result in further minor losses of non-residential floor space, as the proposed minimum non-residential floor space requirement is less than the loss of non-residential floor space that would result from the conversion of the existing serviced apartments to residential accommodation. Accordingly, to ensure that there is no further loss, it is recommended that the Planning Proposal is amended requiring a non-residential floor space ratio range of 0.24:1-2:1 prior to it being forwarding it to NSW Planning and Infrastructure for Gateway Determination.

As part of its assessment of the Planning Proposal, Council staff have also recognised a need to review:

- the non-residential floor space ratio range requirements in some, but not all mixed use areas; and
- controls relating to the provision of serviced apartments.

Addressing these issues would provide Council with a firm policy position in how it treats such applications in the future.

Recommending:

1. THAT Council resolve to forward the attached Planning Proposal to the Minister for Planning and Infrastructure in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979, subject to the following amendment:

a. The non-residential floor space ratio range for the subject site be amended to 0.24:1 – 2:1.

2. THAT Council include a review of the non-residential floor space requirements of mixed use areas in undertaking Precinct 4 of the St Leonards/Crows Nest of the Planning Study.

3. THAT Council reviews the non-residential floor space requirements of mixed use areas as opportunities arise through planning studies or development strategies.

4. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council's planning controls so that developments

incorporating serviced apartments do not undermine Council's ability to meet employment targets.

Mr Shand addressed the Meeting.

Councillor Morris arrived at the Meeting at 7.07pm.

It was moved by Councillor Baker and seconded by Councillor Barbour

1. THAT Council include a review of the non-residential floor space requirements of mixed use areas in undertaking Precinct 4 of the St Leonards/Crows Nest of the Planning Study.

2. THAT Council reviews the non-residential floor space requirements of mixed use areas as opportunities arise through planning studies or development strategies.

3. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council's planning controls so that developments incorporating serviced apartments do not undermine Council's ability to meet employment targets.

It was moved as an amendment by Councillor Gibson and seconded by Councillor Bevan

1. THAT Council resolve to forward the attached Planning Proposal to the Minister for Planning and Infrastructure in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979, subject to the following amendment:

a. The non-residential floor space ratio range for the subject site be amended to 0.24:1 – 2:1.

2. THAT Council include a review of the non-residential floor space requirements of mixed use areas in undertaking Precinct 4 of the St Leonards/Crows Nest of the Planning Study.

3. THAT Council reviews the non-residential floor space requirements of mixed use areas as opportunities arise through planning studies or development strategies.

4. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council's planning controls so that developments incorporating serviced apartments do not undermine Council's ability to meet employment targets.

The amendment was put and **lost**.

Voting on the amendment was as follows: For/Against 2/9

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Morris		N
Reymond		N	Robertson	Absent	
Clare		N	Burke		N
Baker		N	Butcher	Absent	
Carr		N	Marchandean		N
Beregi		N	Bevan	Y	
Barbour		N			

The Motion was put and **carried**.

Voting was as follows: For/Against 9/2

Councillor	Yes	No	Councillor	Yes	No
Gibson		N	Morris	Y	
Reymond	Y		Robertson	Absent	
Clare	Y		Burke	Y	
Baker	Y		Butcher	Absent	
Carr	Y		Marchandean	Y	
Beregi	Y		Bevan		N
Barbour	Y				

RESOLVED:

- 1. THAT** Council include a review of the non-residential floor space requirements of mixed use areas in undertaking Precinct 4 of the St Leonards/Crows Nest of the Planning Study.
- 2. THAT** Council reviews the non-residential floor space requirements of mixed use areas as opportunities arise through planning studies or development strategies.
- 3. THAT** Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council's planning controls so that developments incorporating serviced apartments do not undermine Council's ability to meet employment targets.

ADOPTED

**Report to General Manager**

Attachments:

1. Planning Proposal for 200-220 Pacific Highway, Crows Nest
2. Extracts of Approved Plans to DA 404/10

SUBJECT: Planning Proposal - 200-220 Pacific Highway, Crows Nest**AUTHOR:** Ben Boyd, Executive Strategic Planner**ENDORSED BY:** Joseph Hill, Acting Director Planning and Development Services**EXECUTIVE SUMMARY:**

Council has received a Planning Proposal for the site known as 200-220 Pacific Highway Crows Nest. The Planning Proposal seeks to amend the non-residential floor space ratio range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from 0.5:1 - 2:1 to 0.2:1 - 2:1. It is proposed to achieve this by amending clause 4.4A and the *Non-residential Floor Space Ratio Range Map* (LCL_001) to NSLEP 2013. The intent of the Planning Proposal is to allow the conversion of 6 approved serviced apartments to residential accommodation.

The Planning Proposal is supported as it:

- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- generally complies with NSW Planning and Infrastructure's "*A guide to preparing planning proposals*";
- is unlikely to result in any adverse impacts on the environment or wider community;
- is unlikely to result in an adverse impact upon employment generation in the locality; and
- does not contradict the ability to achieve the objectives and actions of high level planning strategies.

As such, the Planning Proposal is considered to be satisfactory and should be forwarded to the NSW Planning and Infrastructure for Gateway Determination.

It is noted that Planning Proposal could result in further minor losses of non-residential floor space, as the proposed minimum non-residential floor space requirement is less than the loss of non-residential floor space that would result from the conversion of the existing serviced apartments to residential accommodation. Accordingly, to ensure that there is no further loss, it is recommended that the Planning Proposal is amended requiring a non-residential floor space ratio range of 0.24:1-2:1 prior to it being forwarding it to NSW Planning and Infrastructure for Gateway Determination.

As part of its assessment of the Planning Proposal, Council staff have also recognised a need to review:

- the non-residential floor space ratio range requirements in some, but not all mixed use areas; and
- controls relating to the provision of serviced apartments.

Addressing these issues would provide Council with a firm policy position in how it treats such applications in the future.

FINANCIAL IMPLICATIONS:

Nil

RECOMMENDATION:

1. THAT Council resolve to forward the attached Planning Proposal to the Minister for Planning and Infrastructure in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979, subject to the following amendment:

- a. The non-residential floor space ratio range for the subject site be amended to 0.24:1 – 2:1.

2. THAT Council include a review of the non-residential floor space requirements of mixed use areas in undertaking Precinct 4 of the St Leonards/Crows Nest of the Planning Study.

3. THAT Council reviews the non-residential floor space requirements of mixed use areas as opportunities arise through planning studies or development strategies.

4. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council's planning controls so that developments incorporating serviced apartments do not undermine Council's ability to meet employment targets.

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction : 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence
2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

Direction : 3. Our Economic Vitality

Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy

BACKGROUND

Development Applications:

A development application (DA 404/10) was received by Council on 31 October 2010 for the redevelopment of 200-220 Pacific Highway, Crows Nest. The proposed development sought to demolish one building in its entirety, partially demolish the two remaining buildings and redevelop the site for a mixed use development comprising 203 apartments, 7 serviced apartments ground floor retail and 150 car parking spaces. The redevelopment results in a 5 storey building fronting the Pacific Highway, an 8 storey building to the southern part of the site and a 17 storey tower to the western part of the site. The development proposed a total non-residential floor space of 1,270sqm resulting in a non-residential floor space ratio (FSR) of 0.38:1.

Due to the scale of the development to DA 404/10, the application was referred to the Joint Regional Planning Panel (JRPP) for determination with a recommendation for approval subject to a number of conditions. DA 404/10 was considered by the JRPP on the 2 March 2011, wherein it resolved to approve the application subject to conditions. The approved development had a non-residential floor space of 1,412sqm resulting in a non-residential FSR of 0.42:1.

On 18 May 2011, Council received a s.96 application to modify the development consent to DA 404/10. The modifications sought comprised (emphasis added):

- a reduction in the number of car share spaces;
- the deletion of serviced apartment 101 and replacement with a residential storage room;
- the deletion of approved residential storage within Basement Level 1; and
- the relocation of the Level 5 communal roof terrace.

This s.96 application to DA 404/10 was considered by Council on 8 August 2011, wherein it resolved to approve the application. The approved development resulted in the non-residential floor space being reduced to 1,338sqm resulting in a non-residential FSR of 0.4:1.

On 22 August 2011, Council received another s.96 application to modify the development consent to DA 404/10. The modifications sought comprised:

- Modified louvre system to western elevation;
- Facade modifications;
- Residential entry location reconfiguration;
- Convenience store reconfiguration;
- Apartment mix adjustment and increase from 203 to 204 units;
- Internal reconfiguration of fire stairs;
- Correction of minor anomalies; and
- Other minor modifications.

This s.96 application to DA 404/10 was considered by the JRPP, wherein it resolved on 19 December 2011 to approve the application. The approved development as modified, resulted in the non-residential floor space being increased to 1,351sqm resulting in a non-residential FSR of 0.4:1.

On 19 December 2011, Council received a further s.96 application to modify the development consent to DA 404/10. The modifications sought comprised a reduction in the non-residential gross floor area, by converting the six (6) approved serviced apartments on Level 1 into residential units. The justification provided in support of the modification essentially related to the claim that serviced apartments would be an unviable use due to the small scale of the serviced apartment component. Council refused the application for the following reasons:

1. *The proposed modification is inconsistent with the objectives of the mixed use zone, particularly in relation to objective (c) of which seeks to “maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at the lower levels and residential above...”. The variation being sought of 0.4:1 reduced down to 0.24:1 is excessive and is a 52% variation from the 0.5:1 development standard. The proposal would result in no non-residential use at Level 1.*
2. *The proposed 52% variation to the 0.5:1 minimum non-residential GFA development standard requires a variation to the provisions of North Sydney Local Environmental Plan 2001, by way of a planning proposal. Given that the Draft NSLEP 2009 maintains a 0.5:1 minimum non-residential GFA development standard, it is unlikely that the required planning proposal would be supported by Council.*
3. *The arguments and accompanying advice from serviced apartment operators in support of the modification do not warrant conversion of the approved serviced apartments to residential units and it is considered that there would be demand for serviced apartments in this location.*
4. *The proposed modification does not satisfy the provisions of s.96(1A)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal will result in the development not being substantially the same as the original form of development approved by Council, due the character of the approved development being significantly altered as a result of the non-residential GFA being substantially reduced from 0.4:1(1,351m²) to 0.24:1(820m²).*
5. *The proposed non-residential FSR of 0.24:1 is inconsistent with the 0.5:1 development standard in Draft NSLEP 2009.*

Planning Proposal:

On 21 February 2014, Council received a Planning Proposal for the site known as 200-220 Pacific Highway, Crows Nest. The Planning Proposal sought to amend the non-residential FSR range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from 0.5:1 - 2:1 to 0.2:1 - 2:1. It sought to do this by amending clause 4.4A and the Non-Residential Floor Space Ratio Range Map to NSLEP 2013.

On 11 March 2014, Council forwarded a letter to the applicant stating that it could not support the progression of the Planning Proposal due to there being no adopted policy direction to support a reduction in the non-residential floor space ratio. The applicant was advised that the subject site forms part of Precinct 4 to the *St Leonards / Crows Nest Planning Study* which is likely to assess current arrangements to the non-residential floor space controls. This would result in the establishment of a formal planning policy position on the issue allowing for appropriate consideration of the proposal. It was therefore suggested that the applicant consider withdrawing the Planning Proposal to allow the *St Leonards / Crows Nest Planning Study* to be completed.

The letter also identified a number of issues with the Planning Proposal which would benefit from further consideration. These issues included:

- correction of the legal description of the subject property,
- the need to address the current version of the NSW Planning and Infrastructure's (NSW P&I) *A Guide to Preparing Planning Proposals*,
- increased justification with respect to:
 - the demand for serviced apartments in the locality,
 - the potential to increase the number of serviced apartments on the site to make this component of the development viable,
 - the potential to accommodate other non-residential uses (i.e. other than offices) on the subject site, and
 - the potential to relocate the non-residential floor space to another part of the site,
- the provisions of relevant extracts from the approved plans of the development to clearly illustrate its context.

The applicant submitted a revised Planning Proposal (refer to Attachment 1) to Council on 19 March 2014 which sought to address the issues raised in Council's letter.

CONSULTATION REQUIREMENTS

Should Council determine that the Planning Proposal can proceed, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal.

SUSTAINABILITY STATEMENT

The following table provides a summary of the key sustainability implications:

QBL Pillar	Implications
Environment	• No anticipated impacts.
Social	• The Planning Proposal if implemented will result in a reduction of commercial floor area that could be made available to future community and cultural services and facilities. • The Planning Proposal if implemented would result in a minor increase in residential accommodation.
Economic	• The Planning Proposal if implemented would result in a reduction in available floor space made available for commercial purposes which reduces the ability to meet employment targets set by the State Government.
Governance	• The Planning Proposal if implemented could have the potential to create a precedent that could undermine other established policies for the St Leonards/Crows Nest Planning Study Area and other mixed use zoned land.

DETAIL

1. Site Description

The subject site is located 200-220 Pacific Highway, Crows Nest and is legally described as:

- Lots 2 & 4, DP 1183313
- Lots and common property within SP 88827
- Lots and common property within SP 88890

It is located on the western side of the Pacific Highway, between Rocklands Road and Bruce Street. The subject site is rectangular in shape, 3,352.4sqm in area and has a 73.175m frontage to the Pacific Highway. The site contains 3 interconnecting mixed use buildings up to 17 storeys in height, containing 204 residential apartments, 6 serviced apartments, ground floor retail and basement parking for 140 cars. A total of 1,351sqm of non-residential floor space is provided across the site resulting in a non-residential FSR of 0.4:1.

The majority of the non-residential floor space comprises retail space at the ground floor level, and serviced apartments located on the first floor level of the building that fronts the Pacific Highway. The location of the non-residential floor space is illustrated in extracts of the approved plans to DA 404/10 a copy of which is provided in Attachment 2 to this report.

Works in relation to DA 404/10 are now complete and parts of the buildings are now occupied. None of the retail tenancies are currently occupied.



Figure 1: Subject Site



Figure 2: Aerial Photo

2. Local Context

The subject site is located approximately halfway between the commercial cores of the North Sydney CBD and St Leonards Town Centre. The Pacific Highway is generally dominated by commercial and mixed commercial and residential developments of varying scale.

Immediately to the north-west of the subject site at 222 Pacific Highway is an old two storey commercial building which is built to all boundaries with the exception of an approximately 6.5m setback to its rear south-western boundary. Further to the north-west lie a mixture of single to three storey commercial buildings built to all boundaries and up to 6 storey mixed use buildings containing ground level commercial tenancies and residential apartments above.

North Sydney Girls’ High School (a heritage item) and mixed commercial and residential buildings are located to the north-east of the site on the opposite side of the Pacific Highway. Further to the north-east lie one and two storey dwelling houses.

Immediately to the south-east lie 198 Pacific Highway, 52 Rocklands Road and 50 Rocklands Road. No.198 is a two storey retail building fronting the Pacific Highway and Rocklands Road. No. 52 and 50 Rocklands Road contain three storey commercial buildings. Further to the south-east is a mixture of residential and medical facilities associated with the Mater Hospital.

A mixture of single storey semi-detached dwellings, two storey town houses and a part 4 and part 7 storey residential flat building are located to the south-west of the site. Similar forms of development are located further to the south-west.

3. Current Planning Provisions

The following subsections identify the relevant principal planning instruments that apply to the subject site.

3.1 NSLEP 2013

NSLEP 2013 was made on 2 August 2013 through its publication on the NSW legislation website and came into force on the 13 September 2013. The principal planning provisions relating to the subject site are as follows:

- Zoned *B4 - Mixed Use* (refer to Figure 3)
- A maximum building height of 16m
- A non-residential FSR of 0.5:1 to 2:1 - Area 6 (refer to Figure 4)

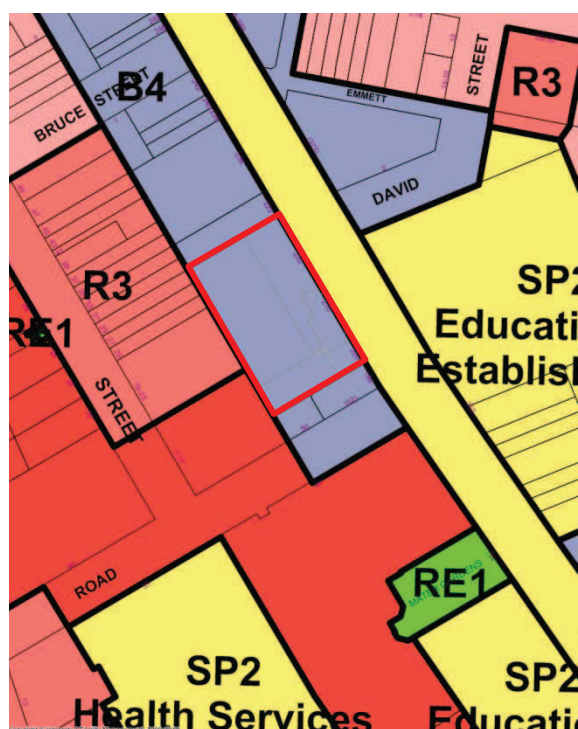


Figure 3: NSLEP 2013 Zoning Map extract
The subject site is zoned B4 - Mixed Use



Figure 4: NSLEP 2013 Non-residential Floor Space Ratio Range Map extract
The subject site has an non-residential floor space ratio range of: Area 6 - 0.5:1 – 2:1

4. Proposed LEP Amendment

The purpose of the Planning Proposal is to amend NSLEP 2013 such that the existing non-residential FSR range applying to the subject site is amended from 0.5:1 – 2:1 to 0.2:1 – 2:1. The submitted Planning Proposal proposes to achieve this by amending clause 4.4A and the Non-Residential Floor Space Ratio Range Map - LCL_001 - to NSLEP 2013, as described in the following subsections.

4.1 Clause 4.4A – Non-residential floor space ratio ranges

It is proposed to amend Clause 4.4A as follows (deleted words are shown in ~~red strikethrough~~ and additions in red underline):

- (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 to reflect the hierarchy of commercial centres.*
- (2) *The non-residential floor space ratio for all buildings within a site on land identified on the Non-Residential Floor Space Ratio Range 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.*

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Area 2</i>	<i>0.75:1</i>	<i>2:1</i>
<i>Area 3</i>	<i>3:1</i>	<i>4:1</i>
<i>Area 4</i>	<i>1:1</i>	<i>2:1</i>
<i>Area 5</i>	<i>0.6:1</i>	<i>2:1</i>
<i>Area 6</i>	<i>0.5:1</i>	<i>2:1</i>
<i>Area 7</i>	<i>0.5:1</i>	<i>1:1</i>
<i>Area 8</i>	<i>3:1</i>	<i>4:1</i>
<i><u>Area 14</u></i>	<i><u>0.2:1</u></i>	<i><u>2:1</u></i>

- (3) *The non-residential floor space ratio for all buildings within a site on land identified as follows on the Non-Residential Floor Space Ratio Range Map must not be less than the ratio shown for that land:*
 - (a) *Area 1—3:1,*
 - (b) *Area 9—0.5:1,*
 - (c) *Area 10—1:1,*
 - (d) *Area 12—2:1,*
 - (e) *Area 13—1.5:1.*
- (4) *The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Non-Residential Floor Space Ratio Range 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~~14 on the Non-Residential Floor Space Ratio Range 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 no part of the ground floor of the building facing a street is 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.*

4.2 Non-residential floor space ratio ranges Map – LCL_001

It is proposed to amend the Non-Residential Floor Space Ratio Range Map (ref: 5950_COM_LCL_001_010_20130607) to NSLEP 2013 such that the subject site is identified as being located in Area 14 and a new Area 14 key added to the legend. It is anticipated that the map will be amended similar to that depicted in Figure 5.

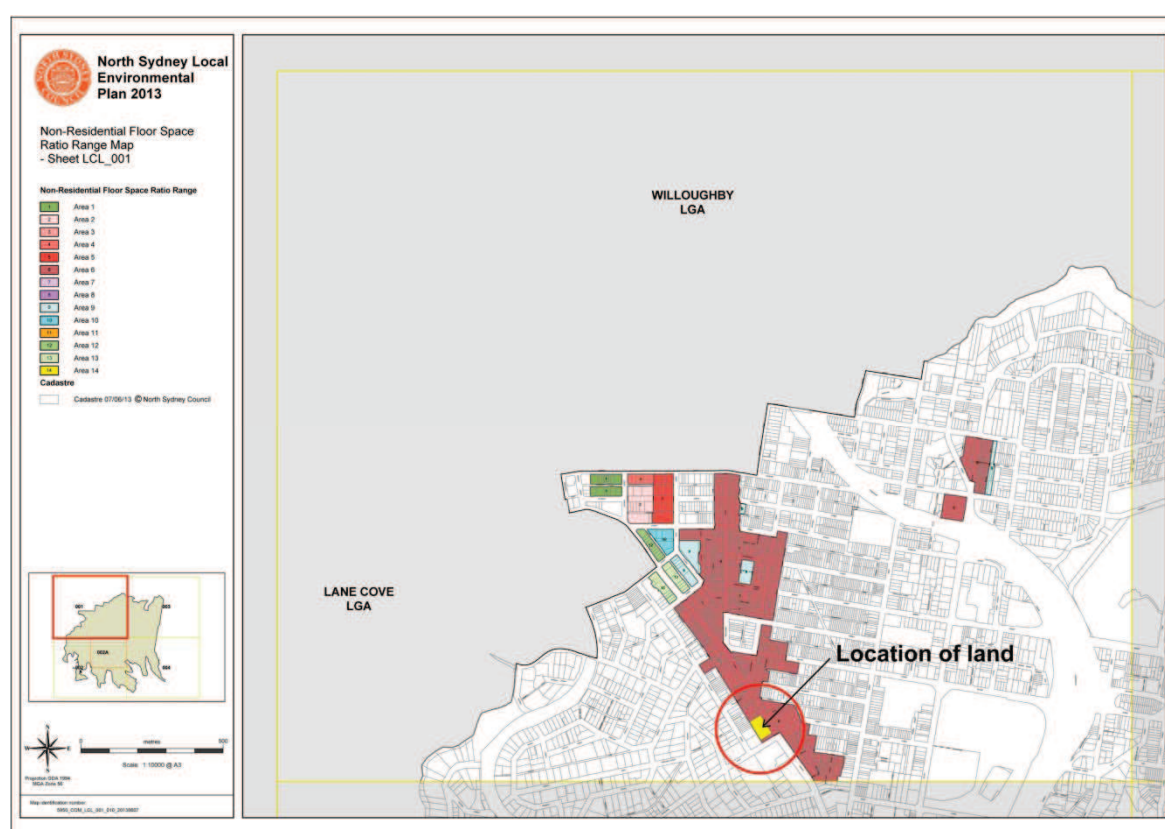


Figure 5: Proposed amendment to Non-residential floor space ratio range Map LCL_001

Extract from Planning Proposal prepared by Robinson Urban Planning

5. Planning Appraisal

The revised Planning Proposal as submitted (refer to Attachment 1) is considered to be generally in accordance with the requirements under s.55(2) of the Environmental Planning and Assessment Act 1979 and the NSW Planning and Infrastructure's *A guide to preparing planning proposals* (dated October 2012). In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;

- An explanation of the provisions that are to be included in the proposed local environmental plan;
- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken with regard to the Planning Proposal.

6. Justification of the Planning Proposal

6.1 S.117 Direction 1.1 - Business and Industrial Zones

Direction 1.1 - Business and Industrial Zones applies when a relevant planning authority prepares a Planning Proposal that will affect land within an existing or proposed business or industrial zone. The objectives of the Direction are to:

- (a) *encourage employment growth in suitable locations,*
- (b) *protect employment land in business and industrial zones, and*
- (c) *support the viability of identified strategic centres.*

Subclause (4) to the Direction states:

A planning proposal must:

- (a) *give effect to the objectives of this direction,*
- (b) *retain the areas and locations of existing business and industrial zones,*
- (c) *not reduce the total potential floor space area for employment uses and related public services in business zones,*
- (d) *not reduce the total potential floor space area for industrial uses in industrial zones, and*
- (e) *ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.*

The Planning Proposal is considered to be inconsistent with subclause (4)(c) as it will reduce the level of floor space made available for commercial purposes. However, subclause 5 to the Direction states:

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:

- (a) *justified by a strategy which:*
 - (i) *gives consideration to the objective of this direction, and*
 - (ii) *identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and*
 - (iii) *is approved by the Director-General of the Department of Planning, or*
- (b) *justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of this direction, or*
- (c) *in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or*
- (d) *of minor significance.*

Accordingly, there are a number of options by which a Planning Proposal may justify an inconsistency with the requirements of the Direction.

The Planning Proposal is not justified by a strategy or study in accordance with subclauses 5(a)-(c). Therefore, the Planning Proposal has relied on the inconsistency being of minor significance. The Planning Proposal justifies the minor inconsistency on the basis that the site is unlikely to support significant employment potential.

It is considered that the minor inconsistency can be supported for the following reasons:

- It does not prevent the subject site from being used for business purposes.
- It does not prevent a future increase in non-residential development on the subject site.
- The subject site is not well served by mass public transport, being located approximately 1100m from St Leonards Railway Station and 1350m from North Sydney Railway Station (refer to Figure 6).
- The subject site is located at the southern extremity of the Crows Nest Town Centre, approximately 270m from its centre (refer to Figure 6).
- The difficulty in selling or finding tenants for the non-residential components of the building.

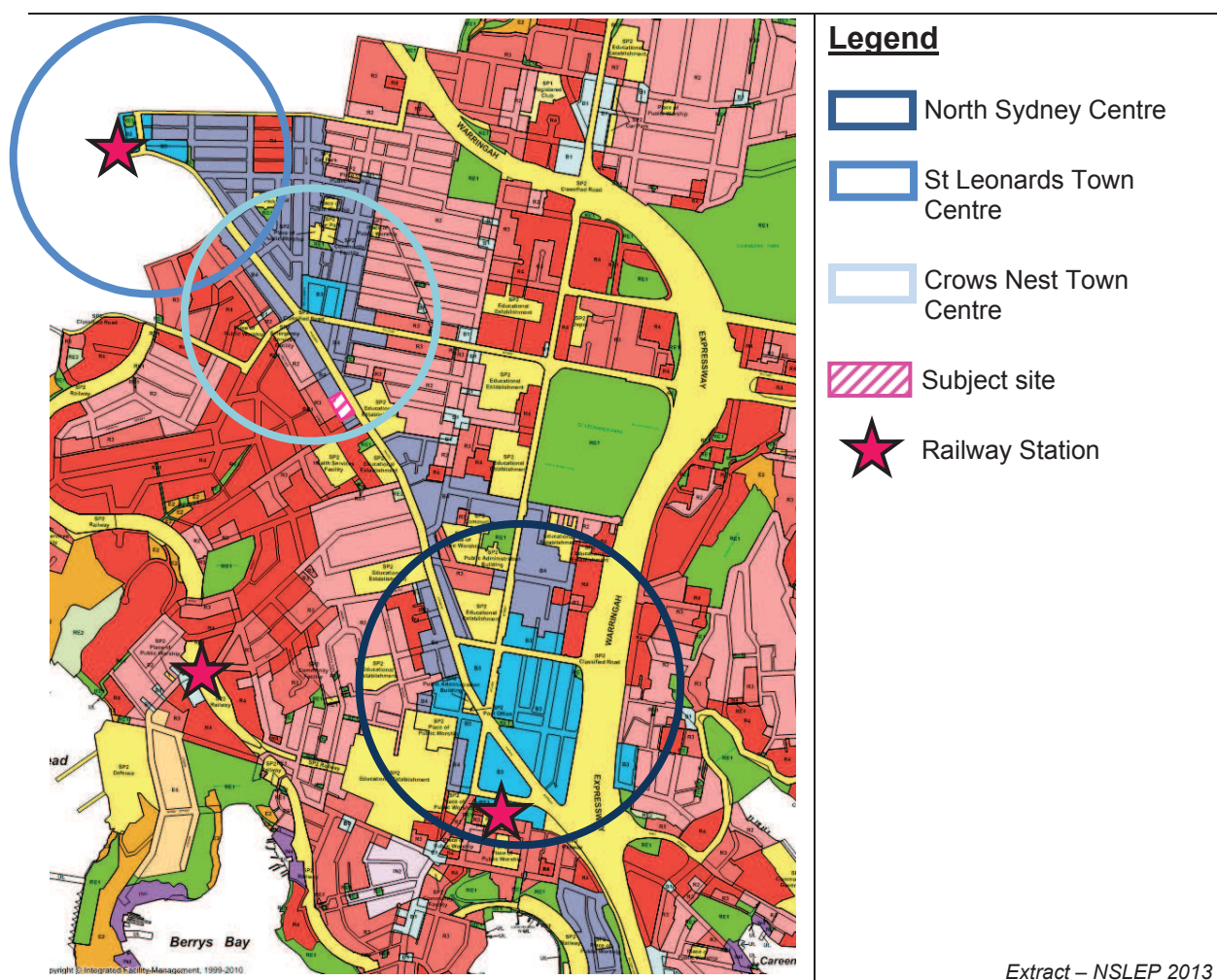


Figure 6: Site context to North Sydney Centre

Furthermore, it is noted however, that the subject site is identified within Precinct 4 of the St Leonards/Crows Nest Planning Study. The Planning Study for Precinct 4 has yet to be commenced by Council and is unlikely to commence until at least 2015. This leaves a long period of time that the non-residential spaces could remain vacant. This in turn has the potential to prevent the development from meeting the objectives of the EP&A Act to promote the efficient and economic use of land. Accordingly, it is considered appropriate in this instance to enable the fast tracking of the proposed amendment.

6.2 Objectives of the non-residential floor space ratio range controls

Clause 4.4A(1) of NSLEP 2013 contain the objectives to the non-residential floor space ratio range controls. The Planning Proposal is considered to be consistent with the objectives of this Clause as outlined in Table 2.

TABLE 2: Consistency with Non-residential FSR Range Objectives	
Objective	Consistency
(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,	The Planning Proposal essentially seeks to enable the conversion of the first floor serviced apartments with residential accommodation. Accordingly, it will not impact on the ability to provide an active street front to the Pacific Highway, which it currently achieves.
(b) to encourage an appropriate mix of residential and non-residential uses,	The Planning Proposal will still enable a mix of uses to be provided on the subject site.
(c) to provide a level of flexibility in the mix of land uses to cater for market demands,	The Planning Proposal provides some increased flexibility in response to current market demands without adversely impacting upon the ability to meet employment targets.
(d) to ensure that a suitable level of non-residential floor space is provided to reflect the hierarchy of commercial centres	The subject site is located at the southern periphery of the Crows Nest Town Centre which is identified as a “Village” under the Metropolitan Plan for Sydney. It is located approximately 270m from its centre, where the desire for commercial floor space is low, especially when provided above the ground level. Its location approximately 1100m from St Leonards Railway Station and 1350m from North Sydney Railway Station also compromise its desirability for traditional office style development.

6.3 Objectives of the B4 - Mixed Use zone

The Land Use Table to Part 2 of NSLEP 2013 contains the objectives to the B4 - Mixed Use zone. The Planning Proposal is considered to be consistent with the objectives of the zone as outlined in Table 1.

TABLE 1: Consistency with B4 –Mixed Use Zone Objectives	
Objective	Consistency
(e) To provide a mixture of compatible land uses.	The Planning Proposal will not prevent the ability to provide a mix of uses on the subject site.

TABLE 1: Consistency with B4 –Mixed Use Zone Objectives	
Objective	Consistency
(f) 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.	The proposed reduction in the minimum non-residential FSR requirement is considered acceptable due to its distance from the centre of the Crows Nest Town Centre (approximately 270m), St Leonards Railway Station (1100m) and North Sydney Railway Station (1350m).
(g) To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.	The Planning Proposal will result in the retention of non-residential floor space across the majority of the ground floor level of the existing development, enabling appropriate activation at street level and within the development itself.
(h) 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.	Despite the proposed reduction in the level of non-residential floor space within the building, the Planning Proposal still enables a development which contains non-residential development at the ground level and residential above. The proposed reduction in the minimum non-residential FSR requirement is considered acceptable due to its distance from the centre of the Crows Nest Town Centre (approximately 270m), St Leonards Railway Station (1100m) and North Sydney Railway Station (1350m).

6.4 Proposed change to the non-residential floor space ratio requirements

The primary intent of the Planning Proposal is to enable the conversion of the approved serviced apartments on level 1 of the existing development to residential apartments (shop top housing as defined under NSLEP 2013). It seeks to achieve this by amending the non-residential FSR requirement applying to the subject site under clause 4.4A of NSLEP 2013. In particular, it seeks to reduce the minimum non-residential FSR such that a non-residential FSR range of 0.2:1 - 2:1 applies across the entire subject site.

Converting the serviced apartment component of the development to residential apartments would leave a total of 820sqm of non-residential floor space remaining on the subject site, resulting in a non-residential FSR of 0.24:1. Accordingly, the non-residential floor space requirement proposed by the applicant is less than (by 150sqm) than what is required to achieve the intent of the Planning Proposal. Should the requested minimum non-residential FSR be implemented, this would merely open up the ability for the applicant or future owner of the site to further reduce the level of non-residential floor space being provided on the site.

If Council were to endorse the Planning Proposal being forwarded to NSW P&I seeking a Gateway Determination, then it is recommended that the Planning Proposal be amended to request a minimum non-residential FSR of 0.24:1 to ensure that there is no further erosion of non-residential floor space on the subject site.

6.5 Use of the site for serviced apartments

There have been a number of development applications lodged with Council over the last few years that have sought approval for a mixed use development containing serviced apartments. In many instances, serviced apartments have merely been incorporated to meet the non-residential floor space requirements of NSLEP 2013 or the former NSLEP 2001. Despite

serviced apartments being a permissible use under the LEP, conversion to residential apartments in the future has been a concern.

With respect to this Planning Proposal, no evidence has been provided to demonstrate if there is a demand for serviced apartments in the locality. The applicant has however demonstrated that they have approached a number of larger serviced apartment operators (refer to Appendix C of the Planning Proposal located in Attachment 1 to this report) regarding the operation of the serviced apartment component of the development. Arguably, a wider approach, i.e. the open market, may have encouraged more interest from small scale operators. All of the operators approached stated that it would be unviable for them to operate and manage only 6 serviced apartments. One serviced apartment operator suggested that at least 40 serviced apartments would be required to make it a viable proposition.

Serviced apartments and other tourist related accommodation facilities result in very low employment densities (1-2 employees per 5 bedrooms or about 1 employee per 35-50sqm) in comparison with employment densities for retail (1 employee / 15-40sqm) and office (1 employee / 10-20sqm) development.

Accordingly, the low level of direct employment generated by serviced apartments can impact on meeting employment targets set out by the state government. In this instance, the conversion is assumed to result in the loss of 2 full time equivalent jobs.

Due to the issues arising from the provision of serviced apartments in the LGA, it is recommended that a review is undertaken of planning controls relating to serviced apartments to ensure that only legitimate proposals are put forward.

6.6 Precedent

The Planning Proposal has the potential to create a precedent which will place pressure on Council to reduce the minimum non-residential floor space ratio requirement on other sites in the Mixed Use zone.

Council is currently in receipt of three (3) Planning Proposals, including this one, which seek to reduce the minimum non-residential floor space ratio under NSLEP 2013. This increasing pressure to have the non-residential floor space ratio controls amended indicates that these controls may not be working effectively and may need to be reviewed. However, approving such variations to the LEP in an ad-hoc fashion, may have the potential to undermine Council's ability to appropriately achieve the aims, objectives and outcomes of various strategic planning documents (e.g. Metropolitan Plan for Sydney 2006-2036). Whilst Council has previously approved amendments to the non-residential floor space requirements under NSLEP 2001, these amendments had been supported by justified and adopted strategic approach.

Accordingly, it is recommended that a Planning Study be undertaken that reviews the non-residential floor space ratio controls, which apply to all land zoned *B4 –Mixed Use* under NSLEP 2013. Such an undertaking would need to be reported back to Council to consider funding and Delivery Plan implications. It is likely, that this work could be a supporting document in addressing sub-regional planning issues as they arise. Furthermore, this issue could be incorporated into the St Leonards / Crows Nest Town Centre Planning Study for Precinct 4 when it is commenced.

6.7 Policy and Strategic Context

6.7.1 Section 117 Directions

Section 117 of the Environmental Planning and Assessment Act 1979 enables the Minister for Planning to issue directions regarding the content of Planning Proposals. There are a number of s.117 Directions that require certain matters to be addressed if they are affected by a Planning Proposal. Each Planning Proposal must identify which s.117 Directions are relevant to the proposal and demonstrate how they are consistent with that Direction.

The Planning Proposal is considered to be generally consistent with all relevant s.117 Directions, with the exception of Direction 1.1 – Business and Industrial Zones. The assessment of the Planning Proposal against Direction 1.1 has been specifically addressed in Section 6.1 of this report. In particular, the applicant’s justification for supporting an inconsistency with the Direction is supported in the circumstances of the case.

6.7.2 Metropolitan Plan for Sydney 2006-2036

In December 2010, the State Government released the *Metropolitan Plan for Sydney 2036* covering the North Sydney LGA. The Plan replaced the former 2005 *City of Cities: A plan for Sydney’s Future*. The Plan is to provide an additional 770,000 homes and 760,000 new jobs by 2036. The Plan sets targets for new dwellings and jobs of 44,000 and 62,000 respectively in 2036 for the Inner North Subregion, of which North Sydney is a part.

Objective B1 to the Plan is to focus activity in accessible centres. It is proposed to achieve this Objective through the following actions:

- B1.1 Plan for centres to grow and change over time*
- B1.2 Establish appropriate mechanisms in Subregional Strategies to provide sufficient capacity for commercial development in centres, taking into account identified demand*
- B1.3 Aim to locate 80 per cent of all new housing within the walking catchments of existing and proposed centres of all sizes with good public transport*

Of particular note the Plan states that in the preparation of LEPs, additional commercial capacity should be provided “in or adjacent to the existing commercial part of existing centres” to achieve more sustainable growth.

The subject site is located at southern periphery of the Crows Nest Town Centre, which is identified as a “Village” under the Plan and is located approximately 270 metres from its centre. It is also located over 1.1kms from both St Leonards and North Sydney Railway Stations which reduces the site’s desirability to accommodate business activities, especially office development.

The extent of non-residential floor space proposed to be lost over the subject site could easily be accommodated and better located within established town centres such as St Leonards or North Sydney.

Objective D1 to the Plan is to ensure an adequate supply of land and sites for residential development. In particular, the Plan identifies the provision of an additional 770,000 homes

by 2036, 44,000 of which are to be accommodated in the Inner North Subregion, of which North Sydney is a part. The Draft Inner North Subregional Strategy (refer to section 6.8.4 of this report) states that 5,500 additional dwellings are to be accommodated in the North Sydney LGA. Whilst the Planning Proposal will be able to assist in meeting this target, Council's Residential Development Strategy (refer to section 6.5.5 to this report) clearly demonstrates that there is already sufficient capacity under NSLEP 2013 to easily accommodate the housing targets applied to North Sydney.

Objective E1 to the Plan is to ensure adequate land supply for economic activity, investment and jobs in the right locations. In particular, the Plan identifies the provision of an additional 760,000 jobs by 2036, 62,000 of which are to be accommodated in the Inner North Subregion, of which North Sydney is a part. The Plan also identifies that an additional 14,000 jobs are to be accommodated within the North Sydney Centre.

The Planning Proposal would result in the loss of 6 serviced apartments or 531sqm of non-residential floor space. It is considered that the loss of this non-residential floor space as serviced apartments will generally result in an inconsequential loss of 2 jobs (based on 1-2 employees per 5 rooms). However, if the non-residential floor space to be lost comprised of office accommodation, it is considered that it would result in the loss of approximately 27-53 jobs (based on 10-20sqm per employee). The overall loss is considered to be minor in comparison to the requirements for the provisions of jobs across North Sydney in total. Furthermore, the loss is occurring at a location that has low access to mass public transport.

Objective E2 to the Plan is to focus Sydney's economic growth and renewal, employment and education in centres. In particular, it seeks to achieve this by the following actions:

- E2.1 Plan for more commercial and retail jobs in highly accessible Strategic Centres*
- E2.2 Ensure an adequate supply of retail, office space and business parks*
- E2.3 Plan to meet future demand for business parks by establishing a framework to identify suitable sites in Subregional Strategies*
- E2.4 Deliver spatial components of the NSW Business Sector Growth Plan*
- E2.5 Strengthen clusters of activity in Specialised Centres, particularly those for high growth and high value sectors, and support emergence of new clusters*
- E2.6 Promote development of education, research and development (R&D) clusters around TAFEs, universities and health infrastructure in accessible centres to promote skills development, capacity for innovation and lifelong community learning*
- E2.7 Prepare and implement measures to assist development of low cost space for creative industries and business start-ups*

As indicated, the subject site is located at the periphery of a "village" with low access to mass public transport. The loss of non-residential floor space in this location is considered to be acceptable in the circumstances of the case.

6.7.3 Draft Metropolitan Strategy for Sydney to 2011-2031

On 19 March 2013, the State Government released the *Draft Metropolitan Strategy for Sydney to 2031* which will replace the *Metropolitan Plan for Sydney 2036*. The Draft Plan is to provide an additional 545,000 homes and 625,000 new jobs by 2031. The Plan sets targets

for new dwellings and jobs of 138,000 and 230,000 respectively in 2031 for the Central Subregion, of which North Sydney is a part. In addition, it specifically identifies a need for an additional 12,000 jobs in the North Sydney Centre which forms part of “Global Sydney”.

Objective 2 of the Draft Strategy is to strengthen and grow Sydney’s centres. The Planning Proposal does not appear to contradict the meeting of the identified Policy Directions. In particular, the applicant has adequately demonstrated that they have been unable to sell or tenant the serviced apartments for approximately 2 years. Given the site’s location in relation to existing commercial centres and railway stations the loss of non-residential floor space is considered acceptable in the circumstances.

Objective 4 of the Draft Strategy is to deliver strategic outcomes for its nine “city shapers”. In particular, the Policy to this objective is to transform the city by delivering the priorities for each city shaper. The subject site forms part of the “Global Economic Corridor” city shaper.

Two of the key priorities for this city shaper includes maintaining its significance in the expansion of Sydney’s economy and position as Australia’s number one city. They should also seek to reinforce economic clustering in established and emerging centres, particularly for globally competitive industries. Furthermore, an additional 59,000 jobs are to be provided in the existing Corridor in addition to the 114,000 new jobs to be created in Global Sydney.

The subject site is not located in an established or emerging centre that will positively contribute to the Global Economic Corridor. Due to the subject site being located at the periphery of a “village” sized centre and the failure to sell or occupy the commercial floor space over the last 2 years, it is considered that the proposed development is unlikely to impact upon the meeting of this objective.

Objective 5 of the Draft Strategy seeks to deliver new housing to meet Sydney’s growth. In particular it seeks to do this by planning for at least 237,000 new dwellings by 2021 and 545,000 by 2031, with minimum targets for each subregion. North Sydney forms part of the Central Subregion where an additional 82,000 new dwellings by 2021 and 138,000 by 2031 is to be accommodated.

Council’s Residential Development Strategy indicates that Council has sufficient land zoned to accommodate an additional 6,199 dwellings by 2031, which is well in excess of the minimum targets set by the Draft Inner North Subregional Strategy. Accordingly, there is no pressure for Council to alter the residential / commercial mix on the subject site to meet these targets. However, the proposed development will help to attain those targets.

Objective 6 of the Draft Strategy seeks to deliver a mix of well designed housing that meets the needs of Sydney’s population. In particular, it seeks to achieve this by planning for a range of housing types to meet demand and provision of affordable housing for a mix of very low, low and moderate income earners.

The proposed conversion of the serviced apartments will assist in providing more housing which is affordable to lower income earners due to the lower levels of amenity these dwellings will have as a result of increased traffic impacts emanating from the Pacific Highway (e.g. noise and fumes).

Objective 7 of the Draft Strategy is to deliver well designed and active centres that attract investment and growth. In particular, Policy (b) states that retail, employment, cultural and social infrastructure will be included in centres undergoing growth and renewal.

The subject site forms part of the Crows Nest Town Centre, which is currently in the preliminary stages of undergoing urban renewal. To ensure the appropriate redevelopment of this town centre and adjoining town centre of St Leonards, Council has already commenced the St Leonards / Crows Nest Town Centre Planning Study. The Planning Study area has been broken into 4 Precincts to enable progressive amendments to be made to the planning controls as pressure for development arises. The subject site is located within Precinct 4. The Planning Study has been completed for Precinct 1, nearing completion for Precincts 2 and 3 and has yet to commence for Precinct 4. As the Planning Study has yet to be commenced for Precinct 4, the controls relating to the mix of residential and non-residential development could be reviewed as part of this Study to ensure that this objective to the Draft Strategy can be achieved. It is considered however, that the Planning Proposal is unlikely to prevent the attainment of this objective.

Objective 10 of the Draft Strategy is to provide capacity for jobs growth and diversity across Sydney. This objective is largely to be met by meeting minimum employment targets, of which 6,000 are to be accommodated in North Sydney (Global Sydney) by 2021 and 12,000 by 2031.

The subject site is not located within Global Sydney, nor within a major or specialised centre, within which the majority of the targeted jobs are to be located. Accordingly, it is considered that the proposal will not prevent the attainment of this objective.

Objective 14 of the Draft Strategy is to provide a good supply of office space. The policies that seek to achieve this objective aim to locate office space within Strategic Centres and Specialised Precincts to boost centre growth and development opportunities while providing jobs closer to home and along key transport routes. The subject site is not located within strategic centre or specialised precinct and therefore the proposed reduction of the non-residential floor space ratio on the subject site is unlikely to prevent the attainment of this objective.

Objective 15 of the Draft Strategy is to provide a good level of retail space. Policy (a) sets out that retail is to be accommodated in centres of all sizes at a scale reflecting the level of public transport accessibility. The Planning Proposal only seeks to reduce the level of non-residential floor space at the first floor level which is unlikely to be used for retail purposes, and therefore it is unlikely to prevent the attainment of this objective.

6.7.4 Draft Inner North Subregional Strategy

In July 2007, the State Government released the draft Inner North Subregional Strategy. This Draft Strategy has yet to be finalised and adopted by the State Government.

The Inner North Subregion is proposed to provide an additional 30,000 homes (from 2004) and 60,000 new jobs (from 2001) by 2031. The Draft Strategy sets targets for new dwellings and jobs of 5,500 and 15,000 respectively in 2031 for the North Sydney LGA, of which 11,000 jobs are to be accommodated within the North Sydney Centre which is identified as a “Strategic Centre”.

The Planning Proposal would enable an increase in residential accommodation provided on the subject site in an urbanised centre which is capable of utilising reasonable access to services and facilities. However, the Planning Proposal would also result in a net loss of non-residential commercial floor space over that permitted under NSLEP 2013 and that currently existing on the subject site.

Action A1 of the Draft Strategy is to provide suitable commercial and employment lands in strategic areas. It seeks to achieve this in part by planning for sufficiently zoned land and infrastructure to achieve employment targets. The subject site is not located within a strategic area identified for significant employment growth. Council has demonstrated that NSLEP 2013 is capable of delivering on the relevant employment targets set by the State Government. The Planning Proposal is not considered contrary to achieving this Action.

Action B1 to the Draft Strategy is to provide places and locations for all types of economic activity and employment across the Sydney Region. It seeks to achieve this by establishing a typology of centres and employment targets for strategic centres. The targets for North Sydney and their ability to be met are addressed above.

Action B2 to the Draft Strategy is to increase residential densities in centres whilst improving liveability. In particular, housing growth is to be planned such that it does not undermine the identified employment needs for a centre. It is considered that the Planning Proposal will not significantly undermine the attainment of this action as the reduction in non-residential floor space and the increase in housing is occurring at the periphery of an existing low order centre.

Action B4 seeks to concentrate activities near public transport. In particular, it seeks to concentrate retail activity in centres, business development zones and enterprise corridors. The subject site is located at the periphery of a low order centre in the centres hierarchy. Furthermore, the subject site is located over 1.1km from St Leonards and North Sydney Railway Stations. Accordingly, the minor loss of non-residential floor space on the subject site is considered to be acceptable in the circumstances.

Action B5 is to protect and strengthen the primary role of economic corridors. The subject site is not located in an established or emerging centre that will positively contribute to the Global Economic Corridor. Due to the subject site being located at the periphery of a low order centre and the inability to sell or occupy the commercial floor space over the last 2 years, it is considered that the proposed development is unlikely to impact upon the meeting of this action.

Action C1 is to ensure adequate supply of land and sites for residential development. In particular, the North Sydney LGA is to accommodate an additional 5,500 dwellings. As indicated in section 6.5.5 to this report, Council's Residential Development Strategy indicates that Council has sufficient land zoned to accommodate an additional 6,199 dwellings by 2031, which is well in excess of the minimum targets set by the Draft Strategy. Accordingly, the minor alteration to the residential / commercial mix on the subject site is unlikely to adversely impact on the ability to meet these targets. Despite this, the Planning Proposal would only result in an increase in 6 additional dwellings and a loss of 531sqm of non-residential floor space.

Action C4 is to improve housing affordability. The proposed conversion of the serviced apartments will assist in providing more housing which is affordable to lower income earners

due to the lower levels of amenity these dwellings will have as a result of increased traffic impacts emanating from the Pacific Highway (e.g. noise and fumes).

6.7.5 Residential Development Strategy

The North Sydney Residential Development Strategy (RDS) identifies the potential for an additional 6,199 dwellings in the North Sydney LGA by 2031 under the provisions of NSLEP 2013. The RDS identifies that the Waverton / Wollstonecraft locality, incorporating the subject site, has the capacity to supply 322 additional residential dwellings over the next 18 years, of which 85 are identified in the B4 - Mixed Use zone.

The Planning Proposal will be capable of meeting these requirements.

6.7.6 North Sydney Local Development Strategy

The North Sydney Local Development Strategy (LDS) reflects the outcomes sought by the Metropolitan Plan, draft INSS and RDS. These issues are addressed in the previous subsections to this report.

7. Conclusion

The Planning Proposal seeks to amend the non-residential floor space ratio range requirements of NSLEP 2013 from 0.5:1 - 2:1 to 0.2:1 - 2:1.

It is considered the relevant requirements under s.55 of the EP&A Act and the matters identified in NSW Planning & Infrastructure's *A guide to preparing planning proposals* (2012) have been adequately addressed in the Planning Proposal. It is considered that the proposal is appropriate and is adequately justified. In particular, the proposal:

- does not prevent the subject site from being used for business purposes.
- does not prevent a future increase in non-residential development on the subject site.
- is not well served by mass public transport, being located approximately 1100m from St Leonards Railway Station and 1350m from North Sydney Railway Station.
- is located at the southern extremity of the Crows Nest Town Centre, approximately 270m from its centre.
- The difficulty in selling or finding tenants for the non-residential components of the building.

However, to remove the potential to further reduce the non-residential floor space on the subject site, it is recommended that the non-residential FSR range is amended from 0.2:1 - 2:1 to 0.24:1 - 2:1.

There is potential that if the Planning Proposal is approved, it could set a precedent to reduce the non-residential floor space requirement elsewhere in the LGA. However, the Proposal is considered to be acceptable given its location on the periphery of lower order commercial centre, its distance from mass public transport and the inability to sell or occupy non-residential floor space. However, to further ensure that a precedent is not set, it is recommended that the non-residential floor space ratio controls under NSLEP 2013 are

reviewed as part of the Planning Study for Precinct 4 of the St Leonards and Crows Nest Town Centres. This review could extend to other mixed use areas, when these areas become subject to a planning study, or when the subregional planning parameters are being reviewed and set for the relevant areas.

It is therefore recommended that Council support the forwarding of the Planning Proposal to NSW P&I, seeking a Gateway Determination under s.56 of the EP&A Act 1979.