



Planning Proposal

521 Pacific Highway
CROWS NEST

Submitted to North Sydney Council
On Behalf of LegPro 22 Pty Limited

Report Revision History

Revision	Date Issued	Prepared by	Reviewed by	Verified by
01 Final	9/12/14	HP <i>Senior Project Planner</i>	SF <i>Executive Director</i>	Sue Francis <i>Executive Director</i>

This document is preliminary unless approved by a Director of City Plan Strategy & Development.

CERTIFICATION

This report has been authorised by City Plan Strategy & Development, with input from a number of other expert consultants, on behalf of LegPro 22 Pty Limited. The accuracy of the information contained herein is to the best of our knowledge not false or misleading. The comments have been based upon information and facts that were correct at the time of writing this report.

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Appendix	Document	Prepared by
1	Survey Plans	Denny Linker & Co
2	Architectural Indicative Scheme View Impact Analysis Shadow Analysis	Nettletontribe
3	Proposed LEP Mapping	Nettletontribe
4	Draft Voluntary Planning Agreement	LegPro 22 Pty Limited
5	Review of the Proposed VPA	AEC Group

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Section A - Overview

1. Executive Summary

This Planning Proposal (PP) is being submitted on behalf of LegPro 22 Pty Limited.

This PP explains the intended effect of, and justification for, the proposed amendment to North Sydney Local Environmental Plan (LEP) 2013. The amendment is a site specific 'principle' LEP for **No. 521 Pacific Highway, Crows Nest** (the site). It has been prepared in accordance with Section 55 of the *Environmental Planning and Assessment Act, 1979* (EP&A Act) and the relevant Department of Planning Guidelines including "A Guide to Preparing Local Environmental Plans and A Guide to Preparing Planning Proposals."

With regard to the North Sydney Local Environmental Plan (NSLEP) 2013, this PP seeks to amend the building height control for this site from **20 to 40 metres** to accommodate a 12 storey mixed use development. The PP introduces a maximum Floor Space Ratio (FSR) for the site of **5.3:1** and maintains the non-residential FSR component of 1.5:1 pursuant to Clause 4.4A of the NSLEP 2013.

This PP will allow for the intended built form identified in North Sydney Council's '*St Leonards / Crows Nest Planning Study Precinct 1 (Addendum)*' dated October 2012 to be translated into a desirable development outcome. That is, a mixed use development which provides a mix of lower level uses which activate the public domain and are compatible with the residential uses above, enhances the pedestrian experience with suitable setbacks at ground level, and provides a podium and tower building typology which expresses the presentation of slender architectural elements which reinforce the northern end of the block.

These intended outcomes are reflected in the Architectural Indicative Scheme prepared by Nettletontribe which accompanies this proposal (**Appendix 2**) with a 12 storey mixed use development which continues the stepping down effect of the tower forms from St Leonards along the Pacific Highway. This proposal is responsive to the existing built form of the immediate Crows Nest Village locality and fosters the future redevelopment of the adjoining site to the south. The proposal enables the preferable redevelopment of the site to deliver a desirable built form outcome.

This proposal is also supported by a Draft Voluntary Planning Agreement (**Appendix 4**) which offers public benefits to the community in the immediate locality as a direct result of this PP. The function of the VPA is to stipulate and manage the setback areas, stipulate the tower restrictions and facilitate a monetary contribution towards increased open space. The value of the monetary contribution is also reviewed and substantiated in the supporting documentation prepared by AEC Group and provided at **Appendix 5**.

2. Background

2.1 Planning History

The following is a history of relevant planning considerations for the site:

North Sydney Local Environmental Plan 2001

Prior to gazettal of the North Sydney Local Environmental Plan (LEP) 2013 the site was subject to the North Sydney LEP 2001 and was zoned Mixed Use with a building height of 20 metres and a non-residential floor space ratio range of 0.6:1 – 2:1.

North Sydney Local Environmental Plan 2013

The North Sydney LEP 2013 was gazetted on 13 September 2013 and is the relevant environmental planning instrument for this site. The site is zoned B4 Mixed Use and the objectives of this zoning are:

- *“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 site is subject to a maximum building height of 20 metres and a minimum FSR of 1.5:1 for the non-residential component of the site (being a significant increase to the minimum FSR required in the NSLEP 2001).

The adjacent site to the north is a local heritage item “St Leonards Centre” at Nos. 28-324 Clarke Street, Crows Nest.

St Leonards / Crows Nest Planning Study – Precinct 1

In December 2011, the St Leonards / Crows Nest Planning Study was issued to re-evaluate the existing statutory planning framework, particularly Council’s height controls and the relationship between density and the provision of open space and amenity. The subject site is within “Precinct 1” of the planning study.

The study recommended a further planning study to facilitate the expansion of Hume Street Park and the link to Willoughby Road through the redevelopment of land within Precinct 1. This study resulted in the St Leonards/Crows Nest Planning Study - Precinct 1 Addendum which comprises an Open Space and Pedestrian Masterplan and a Built Form Masterplan. The Addendum was formally adopted by Council on 22 October 2012.

Refer to **Section 7** below for further details.

2.2 Consultation with North Sydney Council

Ongoing consultation has been undertaken with North Sydney Council during the preparation and submission of the Planning Proposal related to this site. These discussions have been held with Council’s senior officers including Joseph Hill, Alex Williams and Lara Huckstep.

The items discussed with Council have been reviewed in detail and resolved prior to the submission of this PP.

2.3 Consultation with Department of Planning and Environment

There has been no direct liaison with the Department of Planning and Environment (DPE) in relation to this Planning Proposal.

3. The Site

3.1 Location and description

The site currently consists of two allotments as demonstrated in the Survey Plan in **Figure 1** below. The site is described as No. 521 Pacific Highway, Crows Nest and is legally described as Lots A and B DP374468.

The site is located at the corner of the Pacific Highway and Oxley Street with a rear frontage to Clarke Lane. The site has an area of 1,668m² with frontages to the Pacific Highway (south west boundary), Oxley Street (north west boundary), Clarke Lane (north east boundary), and existing development (south west boundary). The site slopes 2.77m from a high point (RL 88.17) at the southern corner of the site to a low point (RL 85.4) at the northern corner of the site.

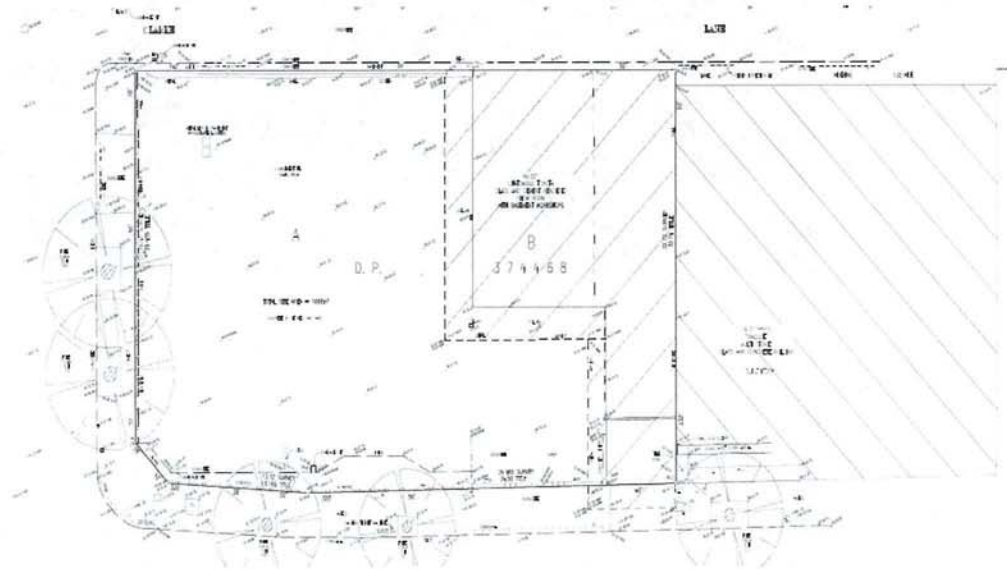


Figure 1: Extract of the Survey Plan (Appendix 1)



Figure 2: Aerial View (Six Viewer Maps)

3.2 Existing development

The site consists of a glass and cement rendered building, the prior use of which was for a motor showroom with basement workshops located to the south-east of the site. The remainder of the site consists of a raised concrete and bitumen open parking area. The premises have not been occupied for some time.

Refer to **Figures 3 to 6** below.



Figure 3 Photo of the existing site as viewed from the intersection of the Pacific Highway looking east (Source: Google Maps).



Figure 4: Photo of the primary street frontage of the existing site as viewed along the Pacific Highway looking south-east (Source: CPSD).



Figure 5: Photo of the secondary street frontage of the existing site as viewed along Oxley Street looking north-east (Source: CPSD).



Figure 6: Photo of the existing rear of the site along Clarke Lane (Source: CPSD).

3.3 Adjacent and surrounding development

The surrounding development comprises a mix of development types and forms. As a result of the recent adoption of the *St Leonards / Crows Nest Planning Study – Precinct 1 (Addendum)*, the area is experiencing significant transition to deliver its vision and planning objectives. This particularly relates to Nos. 545-553 Pacific Highway, St Leonards, to the north of the site, with a 16 storey mixed use development currently under construction (see **Photos 7 and 8**).

The site is adjacent to the “St Leonards Centre” which is a multi storey commercial development and a heritage item (see **Photos 8 and 12**) and a multi storey mixed use development at 22-26 Clarke Street (see **Photo 12**).

The site is also in the immediate vicinity of a 5 storey commercial premises at 38 Oxley Street and the North Sydney Sports Centre and Hume Street car park structure (see **Photo 12**).

The site forms a continuous block edge along the Pacific Highway, with the remainder of the ‘block’ to the south subject to future redevelopment (see **Photo 9**). These sites currently comprise a mix of two and three storey retail showrooms.

The opposite side of the Pacific Highway consists of a 4 storey mixed use development, and a mix of 2 and 3 storey commercial and showroom premises. The opposite side of the Pacific Highway is within the Lane Cove Local Government Area which is also the subject of future redevelopment and uplift.

The St Leonards Specialised Precinct is located to the north of the site, and comprises a series of tower forms including The Forum at 38 storeys, the Abode residential building at 20 storeys, the IBM mixed use building at 20 storeys, and the ‘Air’ mixed use development at 26 storeys at 6-16 Atchison Street currently under construction.



Figure 7: Photo of the adjacent 16 storey mixed use development to the north with a 4 storey podium. The 20 storey Abode and 20 storey IBM building are also shown (left) (Source: CPSD).



Figure 8: Photo of the subject site (right), multi storey commercial premises to the rear (right) and 16 storey mixed use development to the north (left) (Source: CPSD).



Figure 9: Photo of the existing developments to the south of the subject site along the Pacific Highway, comprising a mix of two and three storey developments occupied by retail showrooms (Source: Google Maps).



Figure 10: Photo of the adjacent 4 storey mixed use development on the opposite side of the Pacific Highway to the south-west (Source: CPSD).



Figure 11: Photo of the mix of commercial developments on the opposite side of the Pacific Highway to the south, comprising a mix of 2 and 3 storey showrooms and commercial premises (Source: CPSD).



Figure 12: Photo as viewed from the intersection of Oxley Street and Clarke Street to the north-west of the site. This photo shows the North Sydney Indoor Sports Centre, Hume Street car park and cafe (left), 7 storey mixed use development at 22-26 Clarke Street (left), the multi storey commercial development at 28 Clarke Street (centre), and 5 storey commercial development at 38 Oxley Street (right). The subject site is to the right (Source: Google Maps).

3.4 Context

Crows Nest is approximately 4km north of Sydney CBD and forms the 'Village' neighbourhood which complements the adjoining St Leonards Specialised Centre. The precinct has been undergoing a transition from a varied mix of smaller commercial and retail buildings to multi-storey mixed use development. The surrounding land consists of several sites which are capable of amalgamation and redevelopment, and which are under development or subject to Council consent for such buildings.

Crows Nest is a lively, interesting main street shopping village that has a focus of retail shops and cafes at ground level with various grades and sizes of business spaces which accommodate a mix of small and large business. Crows Nest, and this site in particular, is located along a major traffic route along the Pacific Highway, which connects with the health care hub of St Leonards to the north-west, which is classified in the Sydney Metropolitan Plan classified St Leonards as a Specialised Precinct within Sydney's 'Global Arc.'

The site's proximity to public transport infrastructure, shops and community services and its built form context make it well suited to higher density residential development.

3.5 Recent Approvals

Nos. 545-553 Pacific Highway, St Leonards (Ralan)

This site was the subject of a Planning Proposal (PP) to increase the building height from 26 metres to 50 metres and introduced a site specific floor space ratio (FSR) of 6.6:1. The Planning Proposal was also accompanied by a Voluntary Planning Agreement which was executed between the applicant and Council on 12 March 2013 and comprised a covenant for the northern portion of the site to have a maximum height restriction of 14 metres (RL 105.06) for approximately 37% of the site, 3 metre building setbacks to the Pacific Highway and Oxley Street frontage, and a monetary contribution of \$1,527,500 to acquire land and aim to:

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

This site was the subject of a previous development consent (LDA153/2010) for a mixed use development, with several modifications. This approval was for a 10 storey mixed use development with a total FSR for commercial floor space of 1:1, 62 residential units and basement parking for 62 spaces.

As a result of the PP described above, the site was the subject of a further Development Application (DA) (LDA2012/455) to increase the building height by 6 storeys to a total of 16 storeys. The approval increased the number of dwellings to 95 with a total of 95 parking spaces. The total approved GFA is 9,787.67m² (FSR 6.56:1) comprising 1,561.31m² (FSR 1:1) of non-residential floor space and 8,226.36m² (FSR 5.5:1) of residential floor space.

The development is still under construction as shown in **Photos 7 and 8** above.

Nos. 7-19 Albany Street, St Leonards

DA (LDA2013/323) was approved by the JRPP on 10 March 2014 for the demolition of the existing buildings and construction of a 10 storey mixed use development for 119 residential apartments and 2 basement parking levels.

Subsequent to this, an LEP amendment came into force to increase the development controls in relation to this site as the result of a Planning Proposal (PP), which was recently gazetted on 11 July 2014. The maximum building height was increased from 26 metres to 40 metres and a site specific floor space ratio (FSR) of 5.6:1 was introduced.

The Planning Proposal was also accompanied by a Voluntary Planning Agreement (VPA) between the applicant and Council. The VPA comprises a restriction on building height below

the current permitted height for approximately 39% of the western portion of the site to ensure solar access to existing residential units on the southern side of Pole Lane, 3 metre setback from the Oxley Street frontage to allow for a widened footpath and outdoor seating and a monetary contribution to Council of \$700,000 for the purpose of providing new open space within the precinct. At their meeting of 19 May 2014, Council resolved to execute the VPA with minor amendments under the delegation of the General Manager, and following this, forward the PP unamended to Parliamentary Counsel to give effect to the PP.

DA167/14 was lodged with Council on 3 June 2014 for a 14 storey mixed use building containing 125 residential apartments, ground and first floor retail / commercial, two levels of basement car parking and communal facilities located above the podium. The matter was reported and approved by the JRPP on 6 November 2014 with a recommendation for approval from Council. A Clause 4.6 variation was sought for non-compliance with the non-residential GFA development standard of 1:1 (0.937:1 proposed). This was granted.

Nos. 472-520 Pacific Highway and 95 Nicholson Street, St Leonards

This site is located within the Lane Cove Council LGA and is the subject of a PP. Following the public exhibition, on 27 October 2014 Lane Cove Council adopted and submitted this proposal to the DPE for finalisation. This PP is for the amendment to the Lane Cove Local Environmental Plan 2009 to:

- Rezone all landholdings that comprise 472-520 Pacific Highway and 95 Nicholson Street, St Leonards from B3 Commercial Core to B4 Mixed Use for retail, commercial and residential purposes; and
- Increase the maximum building height for land at 472-494 Pacific Highway, St Leonards from 65m to 91m and 115m; and for land at 504 Pacific Highway and 95 Nicholson Street, St Leonards from 72m to 138m.

The PP is also accompanied by a site specific Development Control Plan and Voluntary Planning Agreements.

The PP provides three tower forms configured as per the Concept Masterplan as demonstrated in **Figures 14 and 15** below:

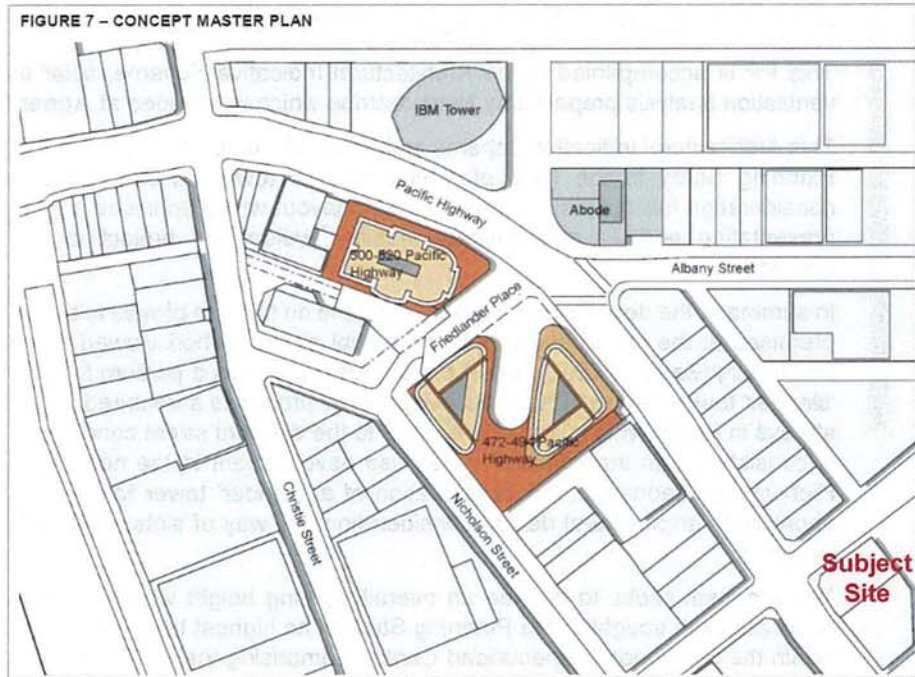


Figure 14: Extract of the Concept Master Plan PP for three tower forms at Nos. 472-520 Pacific Highway and 95 Nicholson Street, St Leonards, to the north-west of the subject site (Source: PP Report for Exhibition).

FIGURE 10 – INDICATIVE SITE SKETCHES



PICTURE 1 – 472-494 PACIFIC HWY



PICTURE 2 – 504 PACIFIC HWY + 95 NICHOLSON ST

Figure 15: Extract of indicative site sketches from the PP for the three tower forms for 34-37 storeys at Nos. 472-520 Pacific Highway and 95 Nicholson Street, St Leonards, to the north-west of the subject site (Source: PP Report for Exhibition).

4. Proposed Architectural Indicative Scheme

This PP is accompanied by an Architectural Indicative Scheme, solar access and natural ventilation analysis prepared by Nettletontribe which is provided at **Appendix 2**.

This Architectural Indicative Scheme applies the development outcome anticipated within the Planning Study in the form of a podium and tower building typology and takes into consideration the optimal internal floor plan layout which achieves a desirable architectural presentation and an economically viable development project in response to market demands.

In summary, the desired development outcome on this site proves to be the provision of retail premises at the lower levels with residential above. When viewed from the corner of the Pacific Highway and Oxley Street the proposal provides a podium form with a series of four 'slender' towers above. This indicative scheme proposes a fractured podium form two to four storeys in height which varies to respond to the different street conditions. This podium form is consistent with the adjacent mixed use development to the north, Nos. 545-553 Pacific Highway, St Leonards. The presentation of a 'slender' tower form is emphasised through appropriate architectural design considerations by way of slots, offset massing and varying setbacks.

The proposal seeks to provide an overall building height which responds to the stepping down principle sought in the Planning Study. The highest tower forms are currently located within the St Leonards Specialised Centre, comprising the 20 storey building heights of the Abode and IBM buildings to the north. The building heights then step down towards Crows Nest along the Pacific Highway, comprising 64, 56 and 50 metre tower forms to the north of Oxley Street, which then steps down to 40 metres for the subject site, and 32 metres directly to the south towards Hume Street. This stepping down principle is demonstrated in **Figure 16** below, and provides a gradual resolution between the St Leonards high rise buildings towards the Crows Nest village.

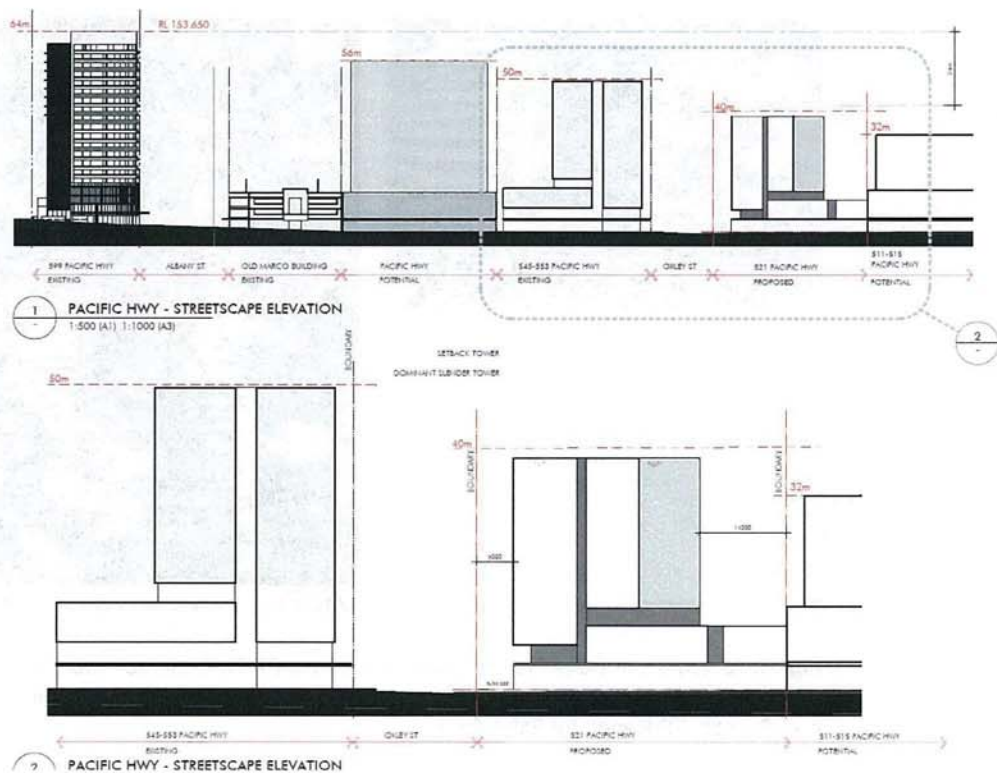


Figure 16: Pacific Highway Streetscape Elevation demonstrating that the proposed building height of 40m is in keeping with the future desired character for stepped building forms (Source: Architectural Indicative Scheme)

The development statistics of this indicative 12 storey development anticipates a total building height of 40 metres, a total FSR of 5.3:1, a minimum non-residential FSR of 1.5:1 and 80 dwellings. The proposal delivers a building envelope on the site which takes into account the required building setbacks and the anticipated floor plan layout and articulation which reasonably results in a total FSR of 5.3:1. This building form has been tested by the Architects with regard to satisfying State Environmental Planning Policy (SEPP) 65 Design Quality of Residential Flat Development and the Residential Flat Design Code (RFDC). It is understood that the proposal is capable of satisfying the SEPP 65 10 design quality principles and satisfying the RFDC 'rules of thumb.'

This is equivalent to adjoining developments as follows:

Table 1: Comparative Analysis of the outcome of recent Planning Proposals and the proposed Planning Proposal

	545-553 Pacific Hwy, St Leonards	7-19 Albany Street, St Leonards	Subject Site
Pre Planning Proposal			
Height (LEP)	26m	26m	20m
Height (DA)	Approx. 32.7m (DA 153/10)	Approx. 32.3m (DA 323/13)	N/A
Planning Proposal			
Height	50m	40m	40m
Site Specific FSR	6.6:1	5.6:1	5.3:1
VPA	\$1,527,500 3m setback to Oxley Street and Pacific Highway.	\$700,000 3m setback to Oxley Street.	\$1,600,000 3m setback to Pacific Highway 6m setback to Oxley Street.
Uplift: Height	Height restriction on 37% of the site. +24m	Height restriction on 39% of the site. +14m	Height restriction on 34% of the site. +20m

It is noted that the comparable uplift in height for the subject site is commensurate with the significant public benefits offered, such as the 6 metre setback to the Oxley Street frontage, which is over and above the benefits provided via the Planning Proposals for 545-553 Pacific Highway, St Leonards and 7-19 Albany Street, St Leonards. Furthermore, Levels 4 and above have a further 3 metre setback from the podium along the Pacific Highway frontage, which isn't provided at 545-553 Pacific Highway, St Leonards.

The proposed setbacks allow for the successful design of the public domain by way of pedestrian thoroughfare, street trees and landscaping, footpath seating and active frontages for the majority of the street frontages.

The proposal embodies a podium and tower building form and encourages boundary setbacks which allow for view corridors to be retained as viewed from neighbouring properties across part of the site, in particular along the southern boundary of the site. To provide assurance that these will be achieved, the accompanying Draft VPA stipulates the boundary setbacks and tower restrictions.

Shadow Analysis

The Shadow Diagrams on Plans PP013 and PP014 (**Appendix 2**) demonstrates the existing shadow impact of the adjacent 'Ralan' building at 545 Pacific Highway (shown in red) and the shadow impact of this proposal as a result of the podium and tower form (shown in blue).

In mid winter, the proposal results in some additional shadow impact on the mixed use developments on the opposite side of the Pacific Highway, and these shadows are clear of these buildings by approximately 12:30pm. It is noted that after 11am, the shadows from the 16 storey building on the Ralan site merge with the shadows which would result from this proposal, therefore reducing and mitigating the extent of the additional shadows caused by this proposal. The overall extent of overshadowing generated by the proposal is not considered to be excessive given the podium and tower form which has been designed to result in narrow shadows, which is in line with the impact anticipated in the St Leonards / Crows Nest Planning Study – Precinct 1 which is discussed in detail in **Section 7.1.1** below.

View Impact Analysis

The View Impact Analysis (**Appendix 2**) indicates the extent of existing view lines available from neighbouring buildings towards the City and Harbour iconic views. The following is a summary of the extent of view impacts which result from this proposal:

- 48 Atchison Street – the proposal has minor view impact above the podium of 7-19 Albany Street, east of 5 Albany Street
- 15 Atchison Street – the proposal has minor view impact above the podium of 7-19 Albany Street, east of 5 Albany Street
- 599 Pacific Highway – the proposal has no view impact
- 1-5 Albany Street – the proposal has no view impact
- 7-19 Albany Street – the proposal has some view impact above 34-36 Oxley Street
- 20 Oxley Street – existing view lines area available across the site, and the proposal will result in a reduction of available views by up to 48%
- 545 Pacific Highway – existing view lines area available across the site, and the proposal will result in a reduction of available views by up to 44%

Given the above, it is noted that generally, other buildings to the north and north-west of the subject site already limit views across the site towards the city/harbour views. The resulting view impact is not extensive and is mitigated by the appropriate placement of the tower form, which is reflective of similar buildings in the immediate vicinity, such as the adjacent 'Ralan' site to the north.

Therefore, the site is suitable for this form of mixed use development, and is considered capable of a high quality urban form and delivering a preferable architectural design outcome which is in keeping with the desired future character of the Crows Nest Village and delivers significant benefits to the community.

Section B - Planning Proposals

5. Part 1 - Objectives and the Intended Outcomes

5.1 Objectives of the Planning Proposal

The intended outcome of the PP is to enable a development outcome that will achieve State Government objectives and deliver public benefits with minimal environmental and economic impacts.

The objectives of the PP therefore are:

- To allow for a taller mixed use development on the site;
- To provide an economic and orderly use for the land;
- Ensure the use of land is appropriate to managing and minimising environmental risks; and
- To allow for contributions to local public domain and public open space improvements.

5.2 Intended development outcome

- Construct a mixed use development which satisfies the 'stepping down principle' as viewed along the Pacific Highway in a podium and tower building form;
- Provide retail space at the lower levels to support the livelihood of the Crows Nest Shopping Village;
- Protect and enhance the local environment including amenity of adjoining premises and providing suitable boundary setbacks which allow for view corridors from neighbouring properties across the site to be achieved;
- Encourage the development of buildings that are in keeping with the desired future character of this part of the Pacific Highway and achieve design excellence; and
- Maximise the use of public transport, walking and cycling, by integrating accessibility around the site which connects to services and public transport as well as the provision of on-site parking.

6. Part 2 - Explanation of the provisions

In line with the objectives of the PP and intended development outcome detailed above, the proposal seeks to modify the North Sydney Local Environmental Plan (NSLEP) 2013 as follows:

- Proposed maximum building height: **40 metres**.
- Proposed site specific maximum FSR: **5.3:1**.
- The portion of the site as nominated on the 'Land subject to height limitation' which accompanies the Draft Voluntary Planning Agreement at **Appendix 4**, is to provide a building height which does not exceed **RL 88.100** for the land identified as (x) (excluding street furniture, outdoor dining platforms, fences and landscaping, etc.).
- The portion of the site as nominated on the 'Land subject to height limitation' which accompanies the Draft Voluntary Planning Agreement at **Appendix 4**, is to provide a building height which does not exceed **RL 98.400** for the land identified as (y) (excluding fences, planters and balustrades, etc.).

The proposal maintains the non-residential FSR of 1.5:1 pursuant to Clause 4.4A of the NSLEP 2013, and comprises the proposed total FSR of 5.3:1.

A Draft VPA has been submitted in conjunction with this PP (**Appendix 4**) to achieve the outcomes for Precinct 1 as detailed in the St Leonards Crows Nest Planning Study. The value of the monetary contribution is reviewed and substantiated in the supporting documentation prepared by AEC Group and provided at **Appendix 5**.

7. Part 3 - Justification

7.1 Need for a Planning Proposal

7.1.1 Is the PP a result of any strategic study or report?

St Leonards / Crows Nest Planning Study – Precinct 1

In December 2011, the *St Leonards / Crows Nest Planning Study* was issued to re-evaluate the existing statutory planning framework, particularly Council's height controls and the relationship between density and the provision of open space and amenity. The subject site is within "Precinct 1" of the planning study.

The study recommended a further planning study to facilitate the expansion of Hume Street Park and the link to Willoughby Road through the redevelopment of land within Precinct 1. This study resulted in the *St Leonards/Crows Nest Planning Study - Precinct 1 Addendum* which comprises an Open Space and Pedestrian Masterplan and a Built Form Masterplan. The Addendum was formally adopted by Council on 22 October 2012.

The Study concluded that the desired built form outcome and associated public benefits were to be achieved via the implementation of site/specific planning proposals and Council led initiatives. These Planning Proposals (PPs) are to propose planning controls consistent with both the Built Form and Open Space and Pedestrian Masterplans as well as contribute towards the expansion of Hume Street Park.

The site the subject of this PP forms the primary redevelopment strip along the Pacific Highway within the Planning Study (Precinct 1 (Addendum)), in which the following anticipated outcomes are sought through the outcome of this PP and the accompanying VPA:

- Improved pedestrian circulation and pedestrian amenity through the implementation of a 3m ground level setback with glazed awning to the Pacific Highway frontage, a 6m ground level setback with glazed awning to the Oxley Street frontage. These setbacks offer a high level of amenity, reduce the perceived bulk and scale of buildings and encourage more prosperous street tree growth;
- Provide frontages to the retail / commercial component of the development at the lower levels with a high level of visibility to strengthen their retail function. In particular, the ground floor space fronting the Pacific Highway is anticipated to accommodate retail and showroom uses and the ground floor space fronting Oxley Street is anticipated to accommodate small scale retail, cafes and restaurants, residential lobbies and outdoor dining where appropriate;
- A built form which creates a consistent podium form along the Pacific Highway and slender high-amenity residential towers which minimise shadowing and maximise view sharing between buildings. The built form also allows for increased heights in appropriate locations in the precinct to facilitate the realisation of the Open Space and Pedestrian Masterplan facilitated by the 6 metre setback on Oxley Street. The proposal supports the expansion of Hume Park and the pedestrian connectivity to the park from the Pacific Highway. The remainder of the block is anticipated to comprise a continuous podium;
- The preferred built form outcome is to provide a series of 4 'slender' towers through the application of design techniques including slots, offset massing and varying setbacks. The presentation of a slender tower form is also achieved by allowing for a building footprint of approximately 787sqm for the upper levels which is small in size. The tower form will feature articulated vertical building elements will ensure that no single 'slender' tower component is greater than 30.55 metres in width. Overall, the tower form offers a generous setback and separation from the southern boundary;

- Building heights which provide a 'stepping down principle' along the Pacific Highway. Away from the highway and the proposed tower on Albany Street west of Oxley Street, the tower forms are to gradually step down towards the lower scale character of Willoughby Road and Crows Nest;
- The Floor Space Ratio (FSR) for each development site is to be provided to the degree to which the predetermined public benefit is provided. Each site is to demonstrate that the development satisfies the objectives of the RFDC and positive urban design considerations;
- The ground level is to achieve a strong street wall that frames the public domain and reduces the visual impact of tower elements;
- The podium height for this site is to be 3 storeys in order to lessen the perceived intensity moving away from St Leonards; and
- Small scale cafe, restaurant and retail uses at ground level to support the success of the public domain along pedestrian routes.

In association with the VPA, this PP will provide for the study outcome as follows:

- i. 3 metre setback at the Pacific Highway frontage;
- ii. 6 metre setback at the Oxley Street frontage;
- iii. The opportunity for retail spaces with direct frontages to the Pacific Highway and Oxley Street which will activate the public domain;
- iv. The opportunity for a cafe style use at the ground floor level with a connection to the extensive frontage to Oxley Street;
- v. The ability to provide pedestrian connectivity through a 6 metre wide setback along Oxley Street allowing for the desired lines from across the Pacific Highway;
- vi. Buildings which step down along the Pacific Highway;
- vii. A podium form which reinforces the presentation of the corner of the Pacific Highway and Oxley Street frontages and enhances the presentation of articulated vertical building elements throughout. The podium form is sculpted up to four storeys for the southern portion of the site and supports the gradual stepping down of the towers forms as viewed along the Pacific Highway and delivers an optimal architectural design outcome; and
- viii. Results in a FSR which is commensurate with the degree of public benefits offered, in particular through a monetary contribution to public domain improvements.

North Sydney Residential Development Strategy 2009

The North Sydney Residential Development Strategy (RDS) was adopted by Council on 20 June 2011 and informed the preparation of the standard LEP instrument. The RDS concludes that the North Sydney 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 socio-economic 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.

Architectural Indicative Scheme

This PP is accompanied by an Architectural Indicative Scheme which also comprises an analysis of the solar access, view and natural ventilation impacts as prepared by Nettleontribe which is provided at **Appendix 2**. Refer to detailed consideration provided at **Section 4** above.

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

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

- It will expedite the translation of the preferred built form option identified in the St Leonards/Crows Nest Planning Study – Precinct 1 (Addendum) whilst also delivering community benefits; and
- The uplift in the development controls will facilitate the development of a viable project, stimulating further development investment into Crows Nest in a flexible manner to the benefit of both employment and housing outcomes.

7.2 Relationship to Strategic Planning Framework

7.2.1 Is the planning proposal consistent with the objectives and actions contained within the applicable region or sub regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The State Government's Draft Central Subregional Strategy sets directions and actions for the implementation of the Sydney Metropolitan Strategy – City of Cities: A Plan for Sydney's Future (Metro Strategy) at a more detailed local level. Subregional planning provides a framework for coordinating planning, development, infrastructure, transport, an open space network and environmental actions across local and state government agencies.

This section outlines whether the PP is consistent with the intended outcomes and actions of the Metro Strategy and Draft Subregional Strategy. The following table identifies the actions that are directly relevant to the PP and discuss whether the PP is consistent with those actions.

Table 1: Consistency with Draft Sub-regional 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 will 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	<p>According to North Sydney Council's <i>North Sydney Residential Development Strategy 2009</i>, 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 <i>North Sydney Residential Development Strategy 2009</i>.</p> <p>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."</p>
Transport	<p>The "Transport Strategy" primarily relates to increasing opportunities for walking or cycling and enhancing public transport infrastructure, for instance through the establishment of Strategic Bus Corridors.</p> <p>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</p>

	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 Resources	The increased density of the subject site will not result in an 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 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 renewal 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.

7.2.2 Is the planning proposal consistent with the council's local strategy or other local strategy plan?

St Leonards Strategy 2006

The St Leonards Strategy was prepared by David Lock Associates on behalf of Willoughby, Lane Cove and North Sydney Councils as well as DPE. It set out an agreed approach to guide the coordinated development of this centre, and supported the direction of the Metropolitan Strategy for Sydney 2036.

The site is located within the 'Eastern Gateway' precinct as shown below.



Figure 4: Extract of the St Leonards Strategy 2006 Precinct Plan

The changes to the role and character of the Eastern Gateway precinct are as follows:

Precinct	Role	Key Recommendations
Eastern Gateway: Both sides of the Pacific Highway, east of the railway line	A mixed retail and office precinct, with the potential for hotels. In particular, this precinct will provide for the continuation of small-medium scale showrooms for household goods at ground floor level with offices above, or hotels, capitalising on the high profile location.	<ul style="list-style-type: none"> - Rezone land from 'Mixed Use' to 'General Business,' prohibit RFBs, remove FSR control. - Promote medium-scaled household goods showrooms, convenience shops, small-scale specialty shops, retail services, bars, cafes and restaurants. - Explore the potential for enhance pedestrian phases at signalised intersections on the Highway. - Encourage new development on the highway to incorporate a colonnade. - Introduce additional tree planting along the Highway.

Although, the Strategy proposes that land within the 'Eastern Gateway' fronting the Pacific Highway be rezoned so that only commercial uses are permissible thus quarantining the land for employment floor space, this approach is not carried through in the subsequent Crows Nest / North Sydney Planning Study - Precinct 1. Although the St Leonards Strategy 2006 is outdated with regard to land zoning, this PP is consistent with this strategy with respect to generating medium scale retail space and small scale retail / specialty cafe space. Furthermore, this PP enhances the pedestrian connections along the boundaries and improves the streetscape an allowance for covered pedestrian paths of travel and additional street trees. This PP is consistent with the relevant parts of this strategy.

North Sydney Local Development Strategy (2009)

North Sydney Council's Local Development Strategy (LDS) 2009 is a translation of the strategic vision for North Sydney Council as identified in the Metropolitan and Subregional Strategies. It informed the preparation of Council's draft comprehensive Local Environmental Plan to be consistent with relevant metropolitan, regional and local planning strategies and at the same time, identifying appropriate planning policies to manage the future natural, cultural, economic and built environment of North Sydney.

The Crows Nest area is identified as a local neighbourhood with smaller predominantly retail suburban centres and individual businesses. It is a local employment generator and provides local services, predominantly being a retail precinct for household goods stores which is known for its cafe/restaurant atmosphere.

To achieve success within Crows Nest, the Strategy endorses the development of the "Crows Nest experience" in gaining a distinct competitive advantage over its competitors. The Strategy offers the following recommendations in terms of planning:

- Consider the implications of formally realigning the Crows Nest Boundary to include the Fiat/Sleep City block (*the site the subject of this PP*).
- Consider the planning and traffic implications of encouraging higher order retail uses, which require a minimum footprint of 400 square metres.
- Consider the merit of communicating to property owners the potential benefits of site amalgamation to encourage through links from Pacific Highway to Willoughby Road.
- Work with nearby and adjacent councils to discourage bulky goods development.

This proposal supports the ability for the redevelopment of this site to achieve the above recommendations and promotes the retail/cafe experience on this site and the general precinct.

North Sydney Residential Development Strategy (2009)

North Sydney Council's Residential Development Strategy (RDS) 2009 guides North Sydney's residential development over the next 25 years. The strategy draws upon the State Government's Metropolitan Strategy and prescribed dwelling targets, as well as statistical information on the area. The RDS was formally adopted by Council on 20 June 2011 and informed the draft comprehensive LEP and DCP.

The RDS illustrates that North Sydney Council's new comprehensive LEP:

- Contains sufficient capacity to accommodate over 7,000 additional dwellings over the next 25 years, and therefore meet the State Government's housing target of 5,500 additional dwellings by 2031;
- Concentrates the bulk of new dwellings in centres in close proximity to retail, office, health, education, transport, leisure, entertainment facilities and community and personal services;
- Delivers housing choice for a range of socio-economic groups throughout North Sydney to meet the needs of existing and future residents; and
- Minimises the impact of new development on local character, amenity, environment and heritage.

The RDS formed the basis for residential zonings and development standards under the new comprehensive North Sydney Local Environmental Plan 2009 (now in force as the NSLEP 2013). The objectives of this residential development strategy are to:

- *"Establish a strategic framework for the location, type and extent of new residential development to be accommodated in North Sydney and to inform the preparation of the new comprehensive North Sydney Local Environmental Plan 2009;*
- *Accommodate and manage the anticipated population growth for North Sydney in a sustainable manner; and*
- *Deliver housing choice throughout North Sydney to meet the needs of existing and future residents."*

The following principles have been developed to provide a clear and concise direction for the RDS 2009. The principles are:

- *"Concentrate new dwellings in centres within walking distance of shops, jobs, public transport, facilities and services;*
- *Minimise the impact of new development on local character, amenity, environment and heritage;*
- *Preserve existing and potential commercial floor space in the commercial core of the North Sydney CBD;*
- *Maintain existing mixed use areas as village centres for the local community;*
- *Discourage intensification and inappropriate redevelopment in sensitive areas, the foreshores or adjoining bushland, or where traffic access is limited, by maintaining existing lower density zones;*
- *Maintain housing choice by retaining intact areas of detached and semi detached housing and allowing for further development of apartments and attached dwellings only in appropriate locations; and*
- *Discourage further intensification in the areas of Kirribilli, McMahons Point, Waverton, Wollstonecraft and Cremorne Point which are considered fully developed in terms of the impacts of existing development on parking, traffic, heritage and infrastructure."*

More specifically, this PP is consistent with the St Leonards / Crows Nest Planning Study Precinct 1 which identifies the site for additional development.

St Leonards / Crows Nest Planning Study – Precinct 1 (2012)

Section 7.1.1 above provides detailed consideration of this Study. The Study supports the redevelopment of the site in a form which recommends in a podium and tower building form up to 40 metres in height, which is consistent with the Built Form and Open Space and Pedestrian Masterplans, and contributes to the expansion of Hume Street Park. This proposal offers the opportunity for improvements to the streetscape and pedestrian connections, and through the VPA which accompanies this PP, offers a contribution towards public domain improvements. Therefore, the proposal is consistent with this strategy.

North Sydney Local Environmental Plan 2013 – Zoning Objectives

The North Sydney LEP 2013 was gazetted on 13 September 2013 and is the relevant environmental planning instrument for this site.

The site is zoned B4 Mixed Use and the objectives of this zoning are:

- *"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."*

This proposal enables the provision of non-residential land uses on the lower levels and residential uses above which are capable of operating in harmony with each other and adjoining sites. The site is in an accessible location which is serviced by public transport and is capable of enhancing access in and around the site for pedestrians and cyclists. The proposal supports the future redevelopment of the site in a manner which exhibits design excellence and enhancement of this local centre. Therefore, this proposal is consistent with the objectives of the zoning.

North Sydney Local Environmental Plan 2013 – Height of Building Objectives

The North Sydney LEP 2013 sets out the following objectives for Clause 4.3 Height of Buildings and assessment of each is as follows:

Clause 4.3 Height of Buildings: Objectives	Comment
(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient.	The site has an existing cross fall which is the result of previous development. The exiting gradient will be addressed in the future DA.
(b) to promote the retention and, if appropriate, sharing of existing views.	The proposal allows for a built form which creates a consistent podium form along the Pacific Highway and slender residential towers which maximise view sharing between buildings. Refer to the View Analysis provided at Appendix 2 .
(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development.	The proposal allows for a built form which creates a consistent podium form along the Pacific Highway and slender residential towers which minimise shadowing. Refer to the Shadow Analysis provided at Appendix 2 .
(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings.	As demonstrated in the Architectural Indicative Scheme (Appendix 2) the proposal allows for the redevelopment of the site in a manner which provides suitable building separation and privacy measures with respect to neighbouring residential buildings. The privacy of residents is maintained.
(e) to ensure compatibility between development, particularly at zone boundaries.	The site adjoins commercial and mixed use developments. The proposal maintains the mixed use land uses on the site and is compatible with the land uses of the nearby developments.
(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.	The proposal is consistent with the North Sydney / Crows Nest Planning Study – Precinct 1 in terms of satisfying the development outcome of a podium and slender tower form and which encourages design excellence.

The proposal is consistent with the zoning objectives.

North Sydney Local Environmental Plan 2013 – Floor Space Ratio Objectives

The North Sydney LEP 2013 sets out the following objectives for Clause 4.4 Floor Space Ratio and assessment of each is as follows:

Clause 4.4 Floor Space Ratio: Objectives	Comment
(a) to ensure the intensity of development is compatible with the desired future character and zone objectives for the land.	The proposal is consistent with the North Sydney / Crows Nest Planning Study – Precinct 1 in terms of satisfying the development outcome of a podium and slender tower form and which encourages design excellence. Refer to further detailed discussion above which confirms that the proposal is consistent with the zone objectives.

(b) to limit the bulk and scale of development.	The proposal is consistent with the North Sydney / Crows Nest Planning Study – Precinct 1 in terms of satisfying the development outcome of a podium and slender tower form with a maximum building height of 40 metres. The maximum FSR and height development controls are effective tools to limit the bulk and scale of the development, the detailed design of which is the subject of a future DA.
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The proposal is consistent with the floor space ratio objectives.

North Sydney Local Environmental Plan 2013 – Non-residential Floor Space Ratio Objectives

The North Sydney LEP 2013 sets out the following objectives for Clause 4.4A Non-residential Floor Space Ratio and assessment of each is as follows:

CI 4.4A Non-Residential FSR: Objectives	Comment
(a) to provide for development with continuous and active street frontages on certain land in Zone B4 Mixed Use	The proposal allows for a development form with a direct frontage to the primary and secondary street frontages which will assist with activating the public domain, the design of which is the subject of a future detailed DA.
(b) to encourage an appropriate mix of residential and non-residential uses.	This proposal enables the provision of non-residential land uses on the lower levels and residential uses above which are capable of operating in harmony with each other and adjoining sites.
(c) to provide a level of flexibility in the mix of land uses to cater for market demands.	The proposal allows for the future design the subject of a detailed DA to integrate flexible floor plates and services to accommodate varied land uses as required by the future type of businesses.
(d) to ensure that a suitable level of non-residential floor space is provided to reflect the hierarchy of commercial centres.	The proposal is consistent with the North Sydney / Crows Nest Planning Study – Precinct 1 in terms of satisfying the development outcome of a podium and slender tower form with a maximum building height of 40 metres. The maximum FSR and height development controls are effective tools to limit the bulk and scale of the development, the detailed design of which is the subject of a future DA.

The proposal is consistent with the non-residential floor space ratio objectives.

7.2.3 Is the planning proposal consistent with applicable state environmental planning policies?

Table 2: Consistency with state environmental planning policies (SEPPs)

SEPP Title	Consistency	Comment
1. Development Standards Consistent	Yes	The Standard Instrument Clause 4.6 will supersede the SEPP. The proposal seeks to allow for a maximum building height of 40 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	NA	Not applicable
15. Rural Landsharing Communities	NA	Not applicable
19. Bushland in Urban Areas	NA	Not applicable
21. Caravan Parks	NA	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	NA	Not applicable
29. Western Sydney Recreation Area	NA	Not applicable
30. Intensive Agriculture	NA	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	NA	Not applicable
36. Manufactured Home Estates	NA	Not applicable
39. Spit Island Bird Habitat	NA	Not applicable
41. Casino Entertainment	NA	Not applicable
44. Koala Habitat Protection	NA	Not applicable
47. Moore Park Showground	NA	Not applicable

50. Canal Estate Development	NA	Not applicable
52. Farm Dams, Drought Relief & Other Works	NA	Not applicable
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	NA	Not applicable
62. Sustainable Aquaculture	NA	Not applicable
64. Advertising and Signage	NA	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 (Appendix 2) 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)	NA	Not applicable. This PP does not include delivery housing stock.
71. Coastal Protection	NA	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) 2007	Yes	The PP will not contain provisions that will contradict or would hinder application of this SEPP.
SEPP (Kosciuszko National Park-Alpine Resorts) 2007	NA	Not applicable
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	NA	Not applicable
SEPP (Temporary Structures and Places of	NA	Not applicable

Public Entertainment) 2007		
SEPP (Rural Lands) 2008	NA	Not applicable
SEPP (Western Sydney Parklands) 2009	NA	Not applicable
SREP (Sydney Harbour Catchment) 2005	Yes	The Planning Proposal will not contain provisions that will contradict or would hinder the application of the SREP and ensures the environment of the waterways is protected.

There are no other deemed State Environmental Planning Policies (former Regional Environmental Plans (REPs)) applicable to the PP.

7.2.4 Is the planning proposal consistent with the applicable Ministerial directions (s.117 directions)?

It is considered that the PP is consistent with the relevant Directions issued under Section 117(2) of the Act by the Minister to Councils, as demonstrated in the assessment of the following:-

Table 3: Consistency with S117 Ministerial Directions

Direction Title	Consistency	Comment
Employment and Resources		
1.1 Business and Industrial Zones	Yes	The PP promotes employment growth and supports the viability of the Crows Nest Village and the Crows Nest / St Leonards Specialised Precinct, which is a suitable location for the protection and improvement of the mixed use zoning of this site.
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 Heritage		
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 Development		

3.1 Residential zones	Yes	The PP encourages a variety and choice of housing types to provide for existing and future housing needs, whilst making efficient use of existing infrastructure and services. The PP demonstrates appropriate built form whilst minimising the impact of residential development on the environment. The subject site is located within a retail / urban area where residential development is permitted in the form of mixed use development. This PP seeks to enable the delivery of housing stock on this site.
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 PP will enable retail / commercial and residential development in close proximity to jobs and services encouraging walking, cycling and use of public transport.
3.5 Development Near Licensed Aerodromes	N/A	Not applicable
3.6 Shooting Ranges	N/A	Not applicable
Hazard and Risk		
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 and Unstable Land	N/A	Not applicable
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.
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 PP will be consistent with this Ministerial Direction.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast	N/A	Not applicable
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		
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		
7.1 Implementation of the Metropolitan Plan for Sydney 2036	Yes	Refer to Table 1 Section 7 of the PP for detail.

7.3 Environmental, Social and Economic Impact

7.3.1 Is there any likelihood that critical habitat or threatened species will be adversely affected as a result of the proposal?

The subject site is located within an existing urban environment and does not apply to land that has been identified as containing critical habitat or threatened species, population or ecological communities, or their habitats.

7.3.2 Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The PP is unlikely to result in any environmental effects. Further consideration of the shadow and view impacts of the development on the public domain and neighbouring residents is provided above at **Section 4**.

Future development applications will investigate the potential for other likely environmental effect arising for future detailed proposals.

7.3.3 Has the planning proposal adequately addressed any social and economic effects?

The proposal promotes the efficient utilisation of land, services and support facilities and encourages the orderly growth of the site and surrounding area in support of this Specialised Precinct.

The proposed development contributes to the continued social growth of the area by encouraging a pattern of development which will help to diversify and increase housing choice in a suitable location.

This PP will enable the development of the site which is responsive to supporting the current and future social character of the locality, as well as supporting and revitalising its economic potential. Given the proximity of the site to public transport, services and infrastructure, this is an ideal site for 'village' style development which enhances a sense of neighbourhood and connectivity at the public domain level to the Willoughby Road shopping strip and adjoining St Leonards Specialised Precinct. The proposal recognises that any provision of non-residential floor space on the site will significantly benefit the site if it is located at the lower levels with a direct connection to the street level. Therefore, this proposal dedicates the ground level for boutique retail spaces which are likely to accommodate uses such as a retail shop, showroom, cafe or restaurant. These ground floor uses support the connection to the primary retail centres at Willoughby Road and St Leonards.

In its current form, the proposal focuses on reinforcing opportunities for the social growth of the area by dedicating the frontages at the public domain to provide commercial uses with a high likelihood of being occupied on a long term basis by boutique retail / cafe land uses, improving the pedestrian connections around the site with a 3m setback to the Pacific Highway and a 6m ground level and first floor setback to Oxley Street. The proposal demonstrates that it positively contributes to the quality of the public domain and delivers an improved built form outcome.

Furthermore, the proposal provides direct social benefits via either a monetary contribution of \$1.6 million to Council to increase the amount of public open space in the LGA (refer to **Appendices 4 and 5**).

Accordingly, the PP will have a positive and long term effect on the local economy and community.

7.4 State and Commonwealth Interests

7.4.1 Is there adequate public infrastructure for the planning proposal?

The existing public infrastructure is capable of accommodating this PP.

The site is well serviced by public transport. Existing bus routes run along the Pacific Highway in the immediate vicinity of the site. St Leonards train station is within 500 metres of the site. The Pacific Highway also has provision for cyclists to travel through the area towards the City and neighbouring suburbs.

The site is accessible by the existing road network, at the intersection of the Pacific Highway and Oxley Street, with a rear frontage to Clarke Lane.

The redevelopment of this site has the potential to substantially improve the pedestrian experience and connection from the Lane Cove LGA on the western side of the Pacific Highway to the Crows Nest Village. This is achieved by providing a 6 metre wide pedestrian route along the Oxley Street frontage which offers a safe and efficient connection and overall improvements to the presentation of the public domain.

Given the site has access to the main traffic route along the Pacific Highway and benefits from vehicular access and ingress via the rear laneway, the site and its surrounds are capable of accommodating the traffic movements which will result from this PP, in particular during peak traffic periods.

Existing utility services will adequately service any future development proposal as a result of this PP, and will be upgraded or augmented where required.

Waste management and recycling services are available through North Sydney Council.

The site is well serviced by medical centres and services being within the vicinity of the Royal North Shore Hospital and TAFE NSW. Education is also provided for in the area, with Greenwich Public School, Bradfield College, North Sydney Girls High School and North Sydney Boys High School located nearby.

The area is generally well-serviced with Police, Ambulance, Fire and other emergency services.

This PP does not obstruct the existing public infrastructure. In fact, the proposal seeks to support and enhance the public infrastructure of the site and its surrounds.

7.4.2 What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

At this first iteration of this PP, the appropriate State and Commonwealth public authorities have not yet been identified, and the Gateway Determination has yet to be issued by the Minister for Planning.

8. Part 4 - Mapping

The proposal requires a straight forward mapping change to the NSLEP 2013 Height of Buildings map to permit a maximum building height of **40 metres** to the top of the building for the subject site (provided at **Appendix 3**).

The proposal also seeks to introduce a site specific Floor Space Ratio of 5.3:1 with a maintenance of the non residential FSR of 1.5:1 pursuant to Clause 4.4 of the NSLEP 2013 (provided at **Appendix 3**).

9. Part 5 - Community Consultation

This PP is considered to be of a type that falls within the definition of a 'low impact Planning Proposal.'¹ Therefore, it is likely to be on exhibition for a minimum period of 14 days. The community will be notified of the commencement of the exhibition period via a notice in a local newspaper and via a notice on North Sydney Council's website. The written notice will:

- Give a brief description of the objectives or intended outcomes of the PP;
- Indicate the land affected by the PP;
- State where and when the PP can be inspected;
- Give the name and address of the RPA for the receipt of any submissions; and
- Indicate the last date for submissions.

During the exhibition period, the following material will be made available for inspection:

- The PP, in the form approved for community consultation by the Director General of Planning and Infrastructure;
- The Gateway determination; and
- Any studies relied upon by the PP.

10. Part 6 - Project Timeline

The timeframe for the completion of the planning proposal will depend on the complexity of the matter, the nature of any additional information that may be required and the need for agency and community consultation. The following details are indicative only and may be amended at Gateway to provide the necessary level of confidence that the PP will be finalised within a reasonable time:

Table 4: Indicative project timeline

Step	Indicative timeframe
Anticipated commencement date	Date of Gateway determination
Anticipated timeframe for the completion of required technical information	Not applicable. Technical analyses have already been commissioned to support the PP.
Timeframe for government agency consultation (pre and post exhibition as required by Gateway determination)	As specified in Gateway determination. Anticipated timeframe is to run concurrently with public exhibition period.

¹ Low impact planning proposal means a planning proposal that in the opinion of the person making the Gateway determination is consistent with the pattern of surrounding land use zones and/or land uses, is consistent with the strategic planning framework, presents no issues with regard to infrastructure servicing, is not a principle LEP, and does not reclassify public land.

Commencement and completion dates for public exhibition period	Dates are dependent on date of Gateway determination. Anticipated timeframe for public exhibition is 14 days.
Dates for public hearing (if required)	Not applicable at this stage
Timeframe for consideration of submissions	To be determined by Council
Timeframe for the consideration of proposal post exhibition	To be determined by Council
Date of submission to the Department to finalise the LEP	Not known
Anticipated date RPA will make the plan (if delegated)	Not known
Anticipated date RPA will forward to the department for notification	Not known

11. Conclusion

This Planning Proposal is submitted on behalf of LegPro 22 Pty Limited to modify the development standards in relation to building height and introduce a maximum floor space ratio for the site pursuant to the North Sydney Local Environmental Plan (NSLEP) 2013 for No. 521 Pacific Highway, Crows Nest. The proposal seeks to foster the delivery of the redevelopment of this vacant site to provide a mixed use development with a podium and tower building typology which is contextually appropriate with regard to the gradual stepping down of the tower forms away from the St Leonards Specialised Precinct.

The Planning Proposal:

- Is consistent with the objectives of the B4 Mixed Use zoning pursuant to the NSLEP 2013;
- Consistent with the objectives of the development standards in relation to Building Height and Floor Space Ratio controls pursuant to the NSLEP 2013;
- Provides a building height which is in keeping with the gradual stepping down of building forms along the Pacific Highway between the St Leonards Specialised Precinct and the Crows Nest Village;
- Resolves the overall redevelopment of the block by providing a built form which can continue to be developed on the adjoining sites to the south, being a podium form with a 3 metre setback to the Pacific Highway, and the presentation of slender design elements above with appropriate building separation;
- Enhances the public domain as experienced at the pedestrian level and improves the connection to the Hume Street Park and Willoughby Road, thereby supporting the viability of this neighbourhood;
- Comprises 'boutique' non-residential spaces on the lower levels which benefit from a high level of visibility and direct access from the public domain;
- Provides an improved built form outcome through a podium and tower building typology which is consistent with the desired future character of the locality, and in fact offers additional built form benefits than that anticipated in the Planning Study, including a 6 metre setback to the Oxley Street frontage. The proposal offers a high level of amenity for the future occupants of the site, and neighbouring properties;
- Is accompanied by a Draft Voluntary Planning Agreement which ensures the delivery of direct benefits to the community, including a monetary contribution to Council for the purpose of increasing public open space in the LGA. The VPA also includes restrictions on the tower form and setback areas including a 3 metre setback to the Pacific Highway frontage, a 6 metre setback at the Oxley Street frontage and a height restriction on the southern portion of the site;
- Is consistent with the Metro Strategy and Sub-regional Strategy objectives to locate increased residential density closer to public transport and access to mature road networks and existing urban centres;
- Is consistent with the Ministerial Directions; and
- Provides economic and social benefits in the interest of the local community.

In summary there is no reasonable planning basis which would not support the increase to the building height and site specific FSR which fosters a mixed use development with compatible land uses and offers an improved urban form of this Village neighbourhood.



APPENDIX 1

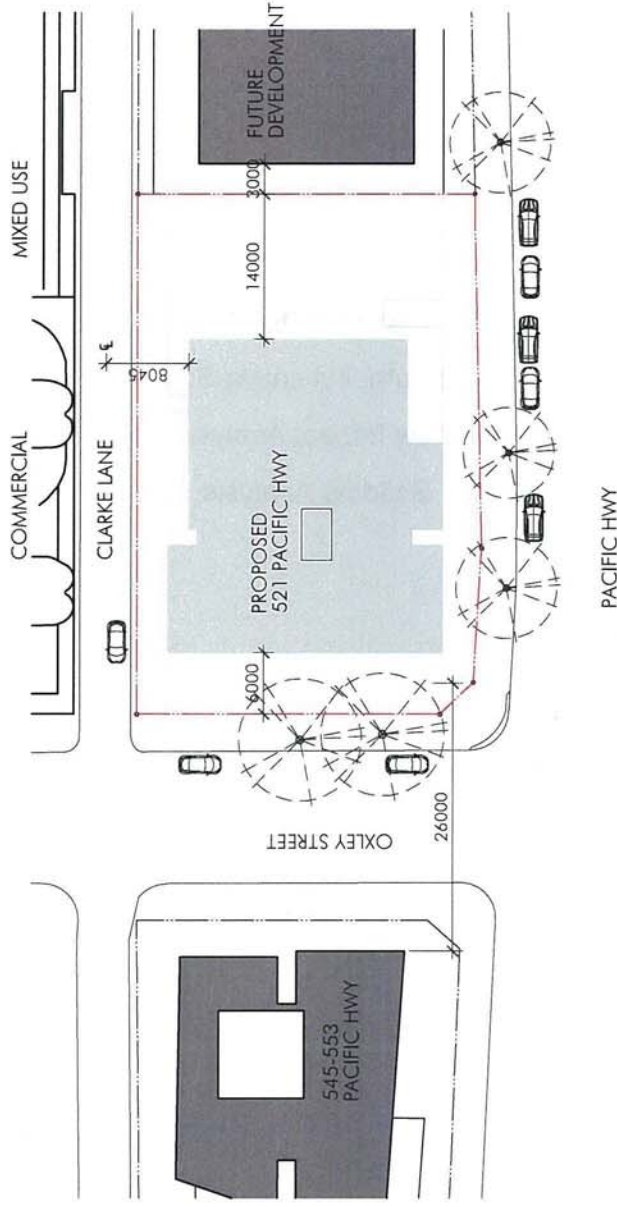
Survey Plan

APPENDIX 2

Architectural Indicative Scheme

View Impact Analysis

Shadow Analysis

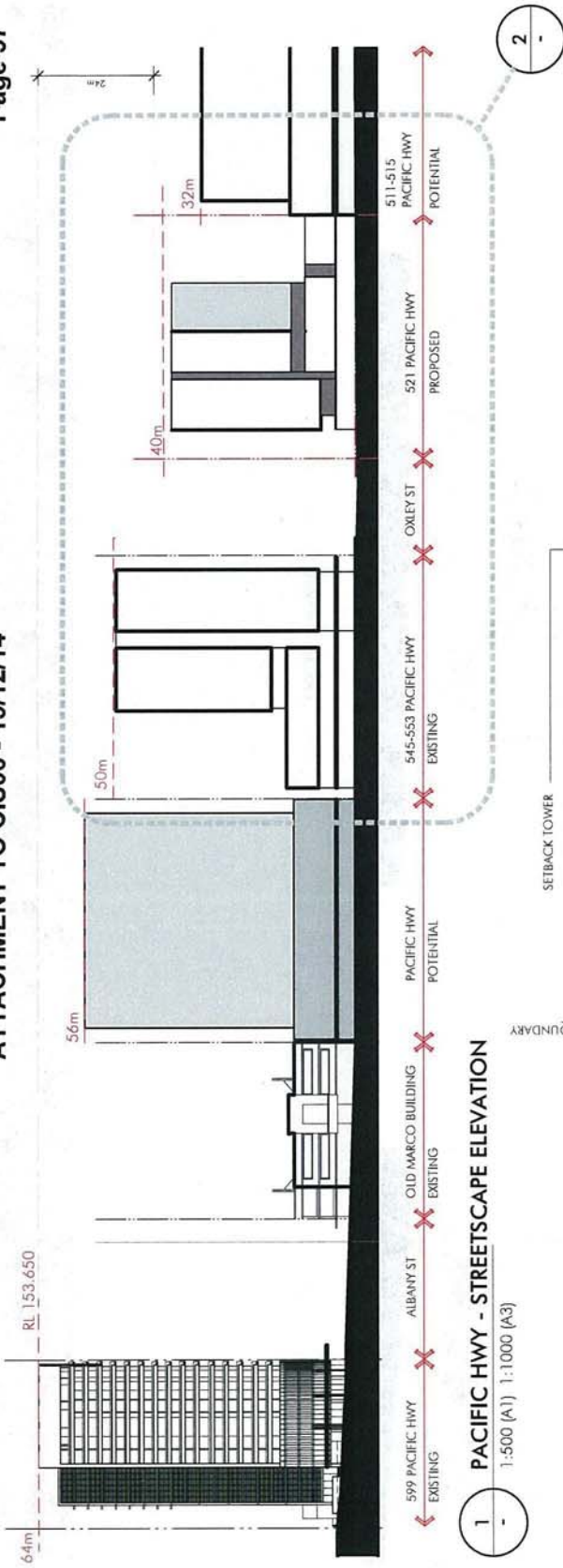


LEGACY
521 PACIFIC HIGHWAY, ST LEONARDS;

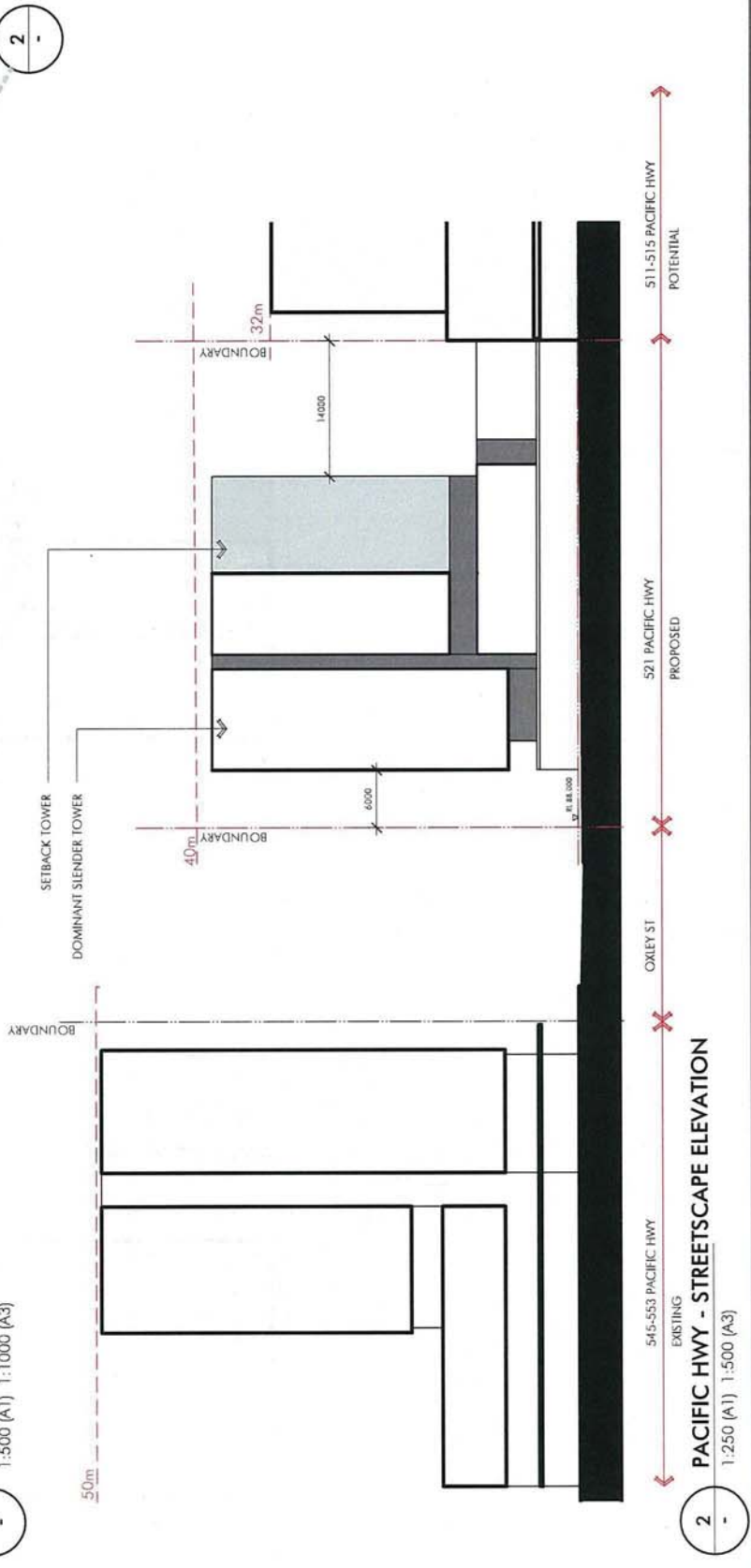
Site Plan

1:500 @ A3
1:250 @ A1
24/10/2014

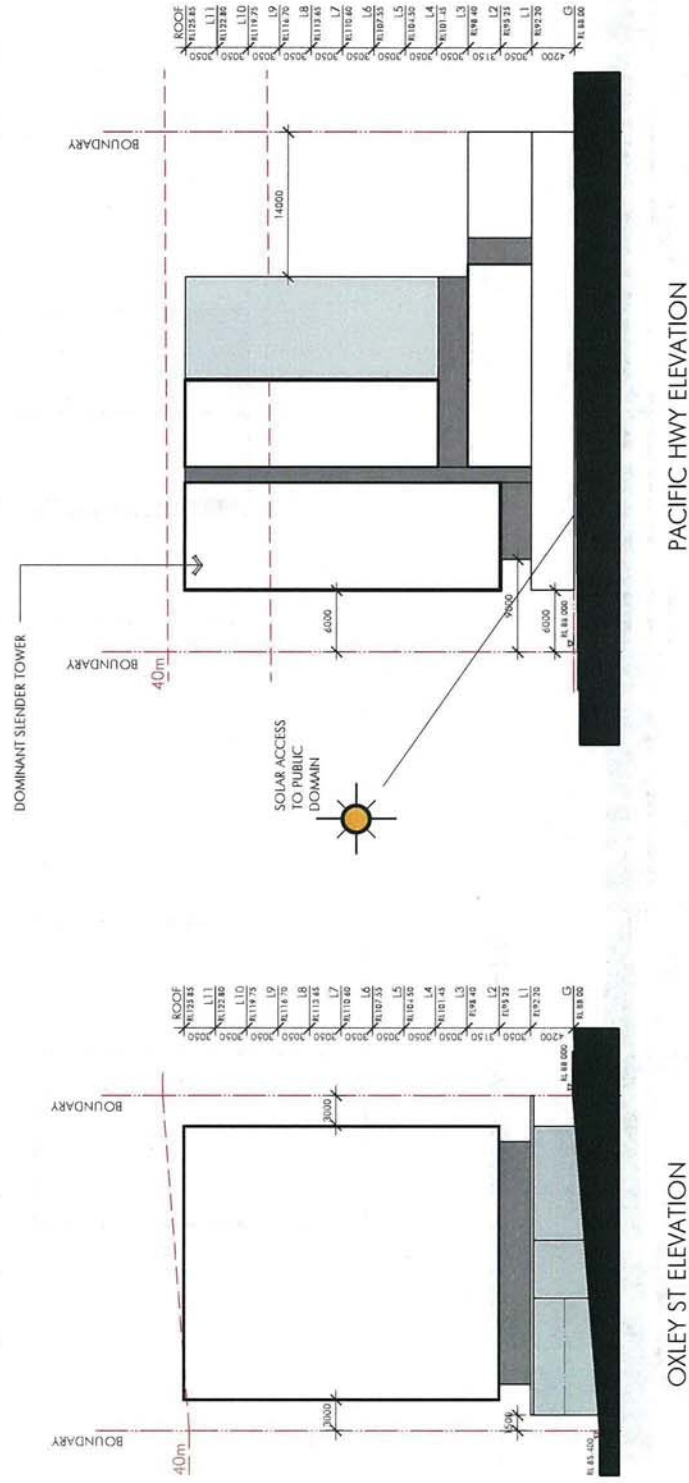
4448_PP000



1 - PACIFIC HWY - STREETSCAPE ELEVATION
1:500 (A1) 1:1000 (A3)



2 - PACIFIC HWY - STREETSCAPE ELEVATION
1:250 (A1) 1:500 (A3)





1. NW Corner - Pacific Highway & Oxley



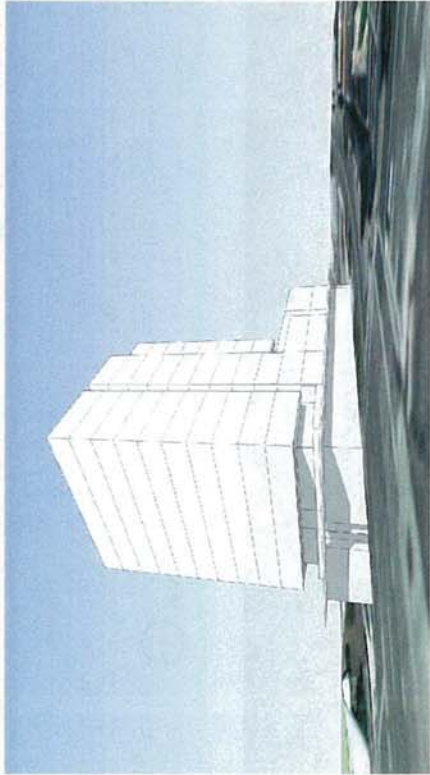
2. NE Corner - Oxley St & Laneway



3. SE Corner - Laneway



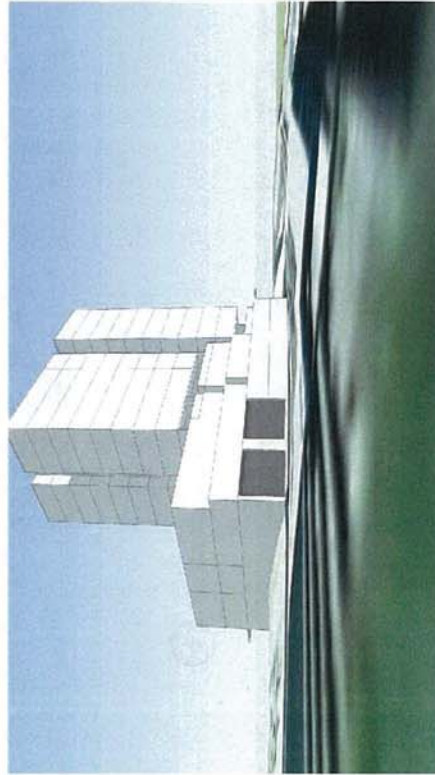
4. SW Corner - Pacific Highway



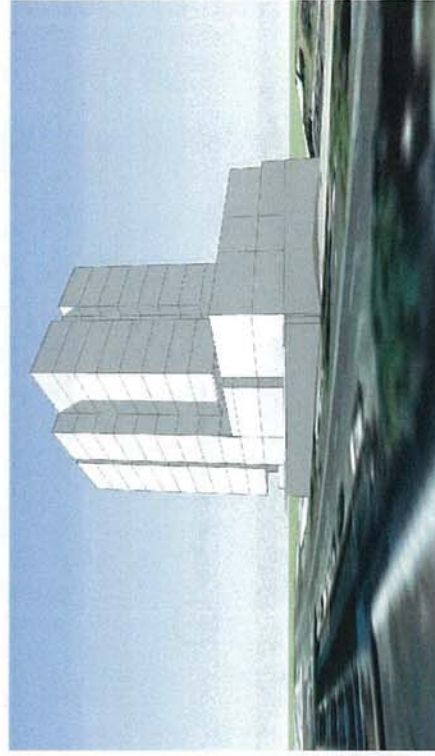
1 - NW Corner - Pacific Highway & Oxley



2 - NE Corner - Oxley St & Laneway



3 - SE Corner - Laneway



4 - SW Corner - Pacific Highway



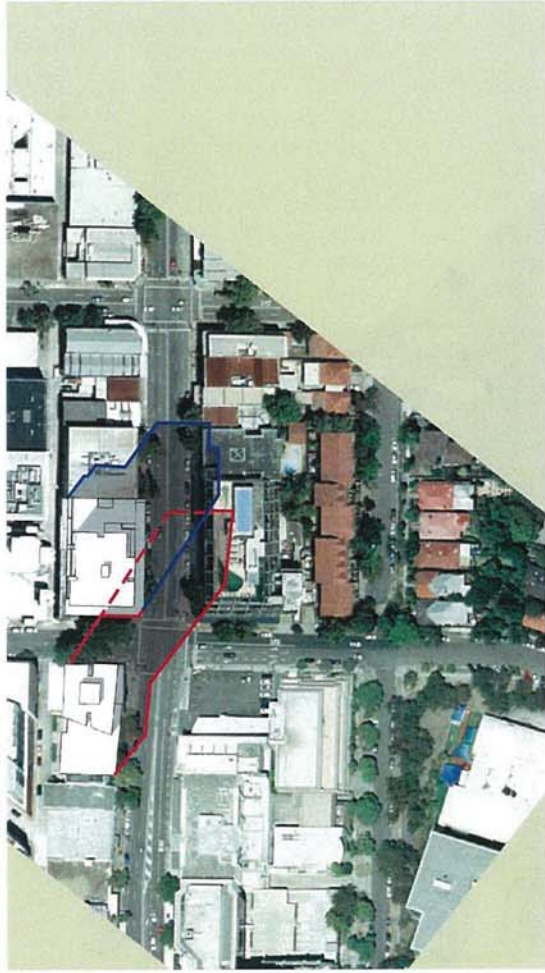
1 9:00AM



2 10:00AM



3 11:00AM SE Corner - Lemeway



4 12:00PM

LEGACY

521 PACIFIC HIGHWAY, ST LEONARDS;

SHADOW DIAGRAM 1

24/10/2014

4448_PP013



1 1.00PM



2 2.00PM



3 3.00PM



LEGACY

521 PACIFIC HIGHWAY, ST. LEONARDS;

VIEW IMPACT ANALYSIS
LOCATION PLAN

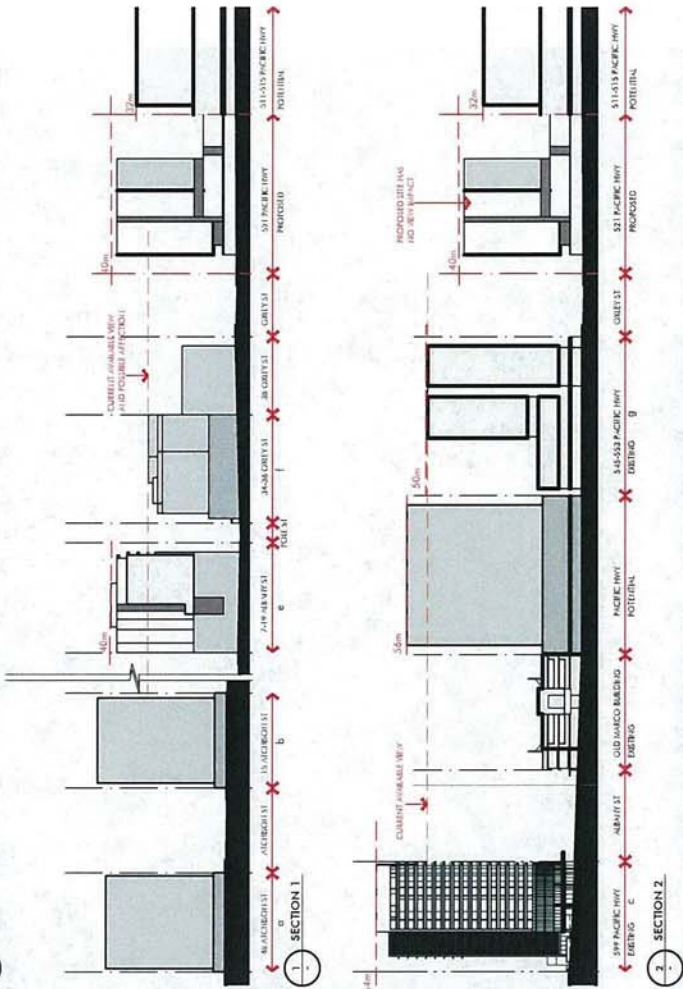
24/10/2014

4448_PP015





48 ATCHISON STREET
SOUTHWEST-WEST CORNBOROS

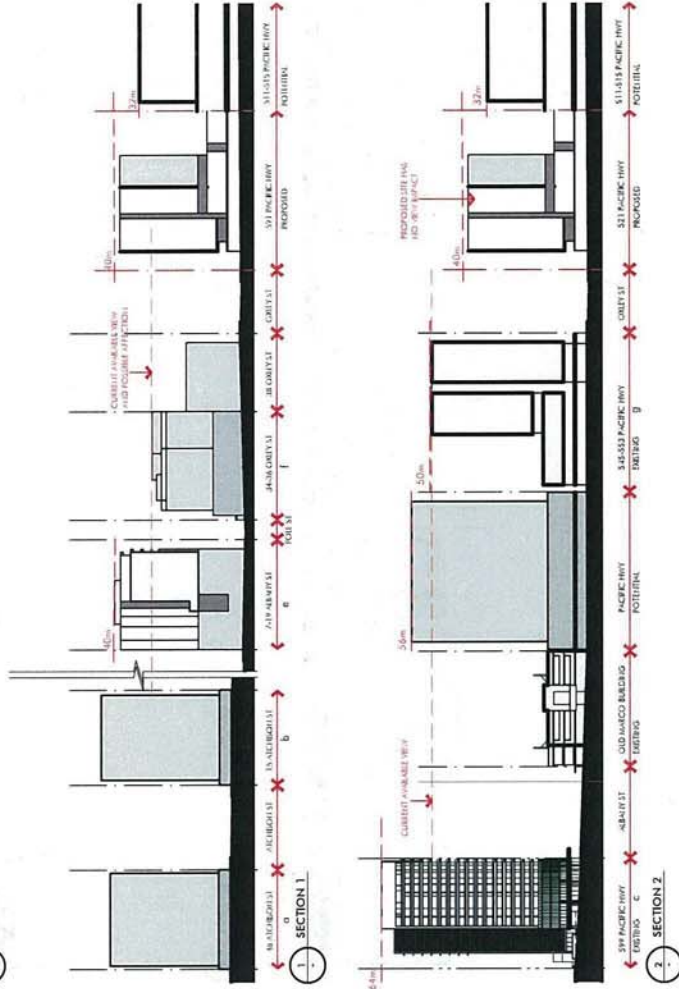


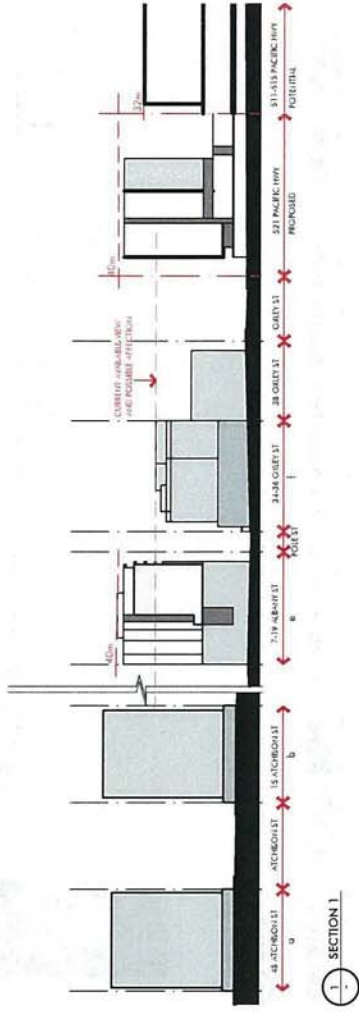
AVAILABLE VIEW

APPROXIMATE IMPACT TO VIEW CORRIDOR AT UPPER LEVELS

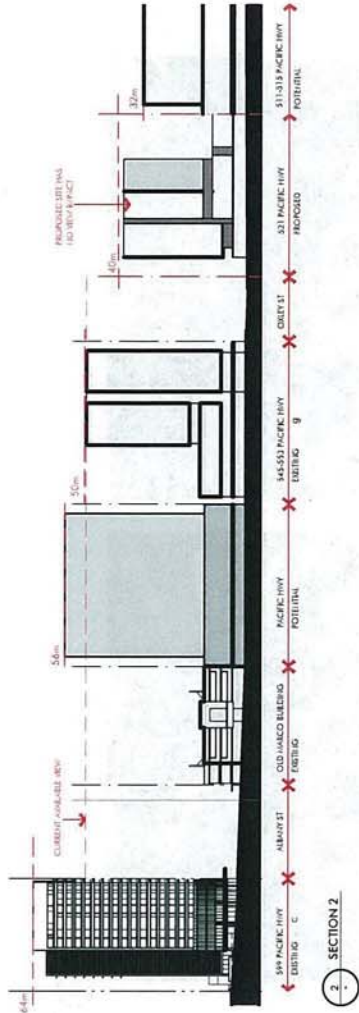


VIEW CORRIDORS





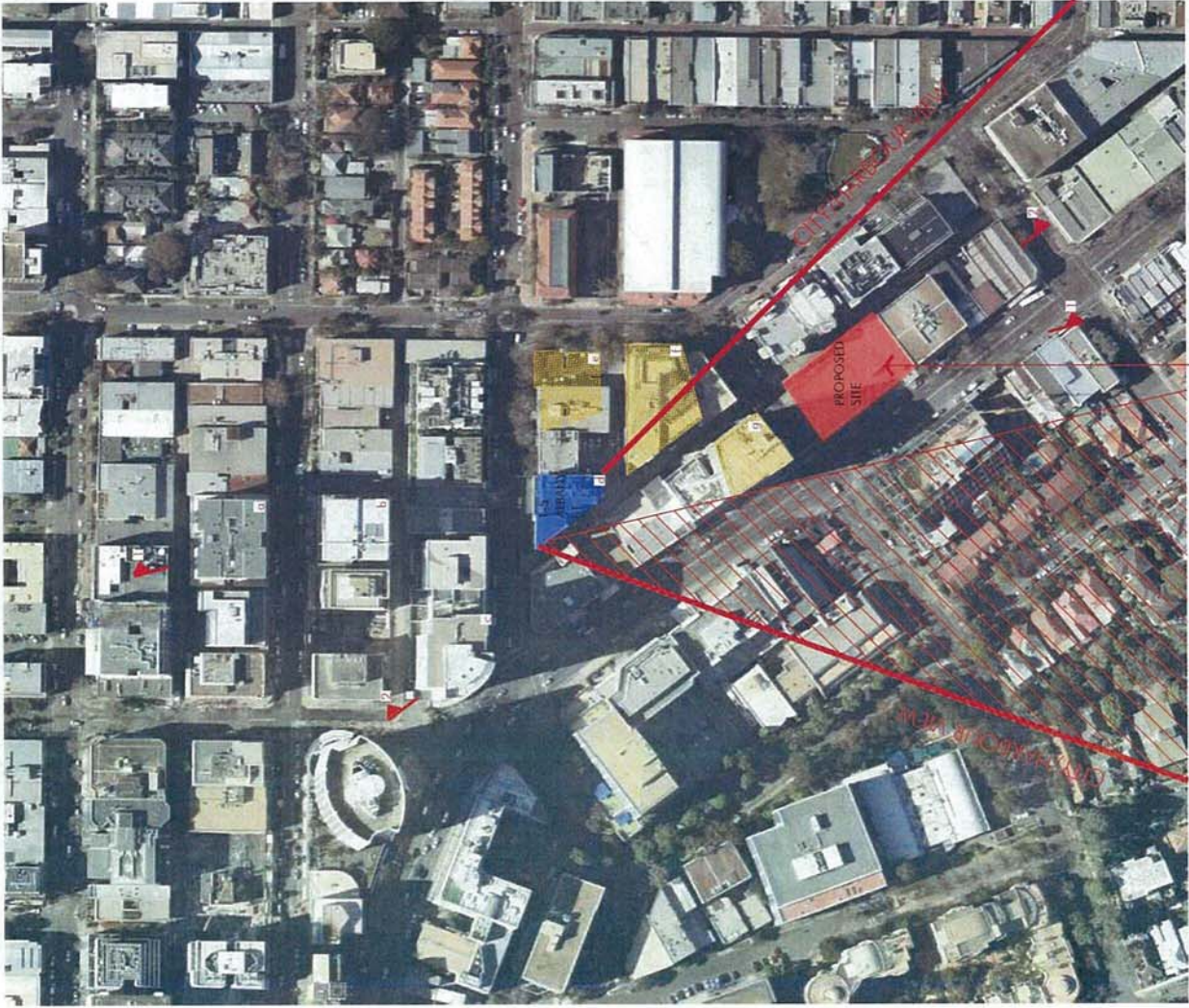
SECTION 1



SECTION 2

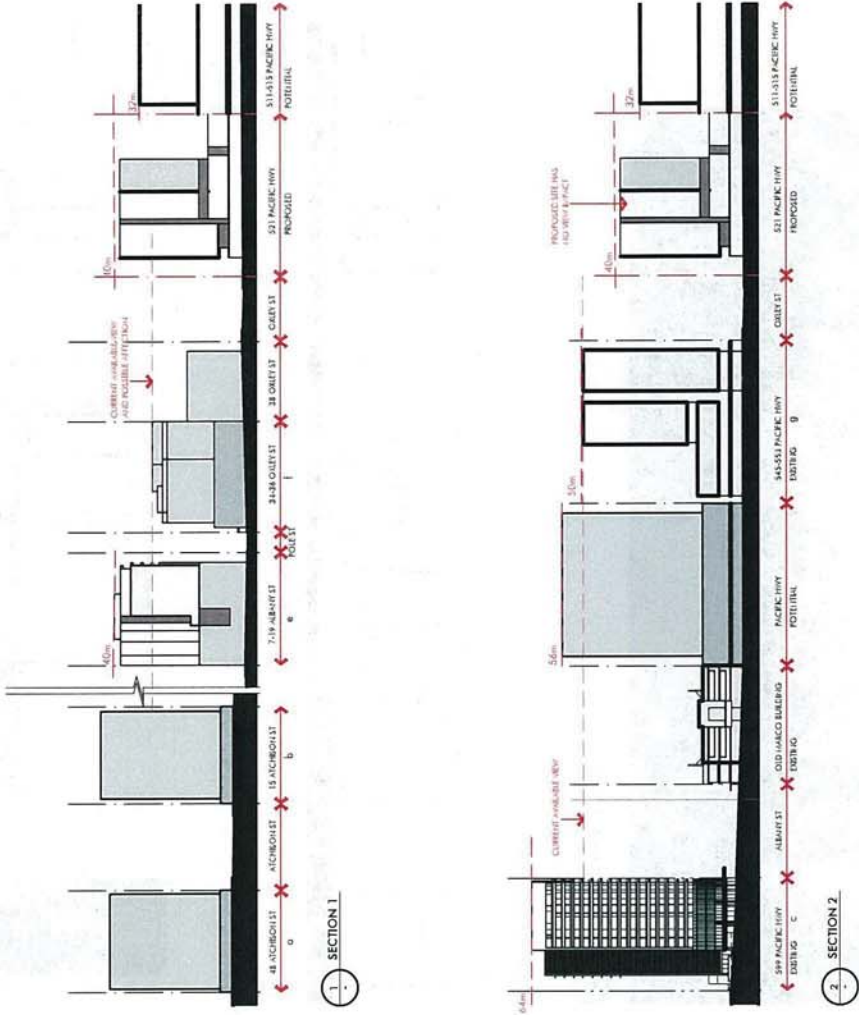
AVAILABLE VIEW

PROPOSED SITE HAS NO VIEW IMPACT



AVAILABLE VIEW

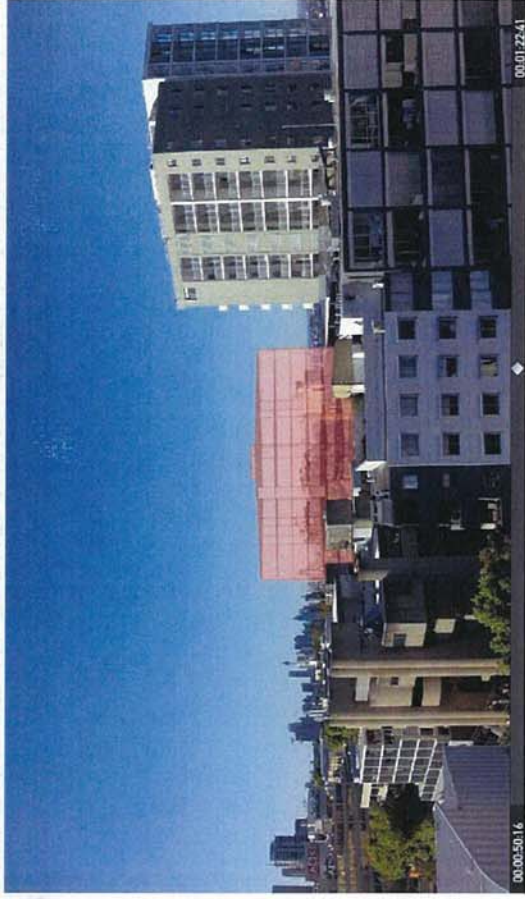
PROPOSED SITE HAS NO VIEW IMPACT



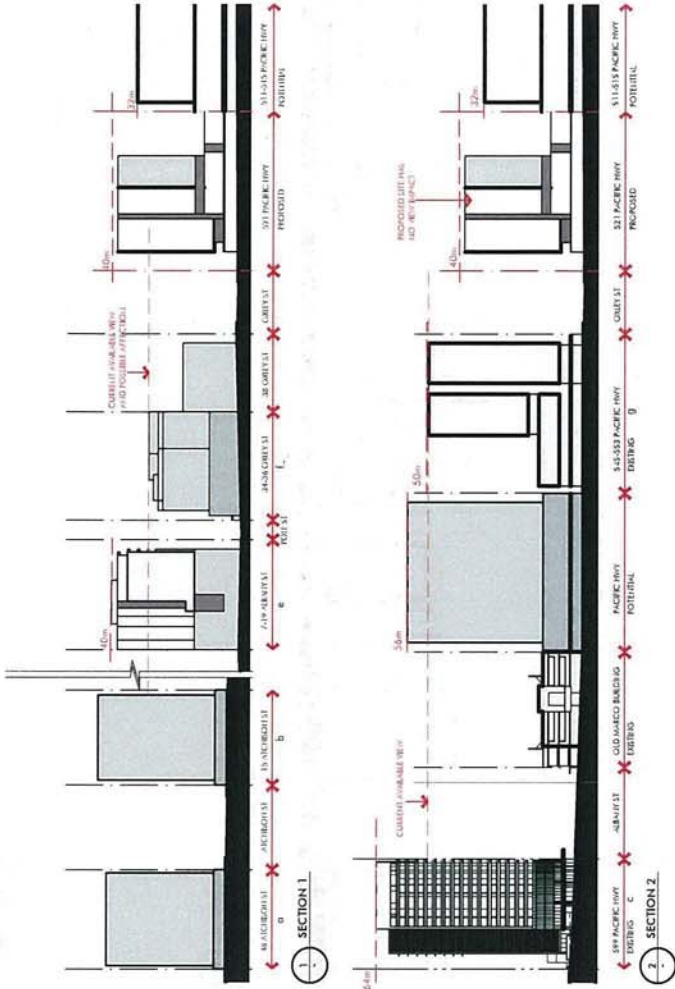


AVAILABLE VIEW

APPROXIMATE IMPACT TO VIEW CORRIDOR AT UPPER LEVELS



VIEW FROM CORNER ALBANY & OXLEY ST

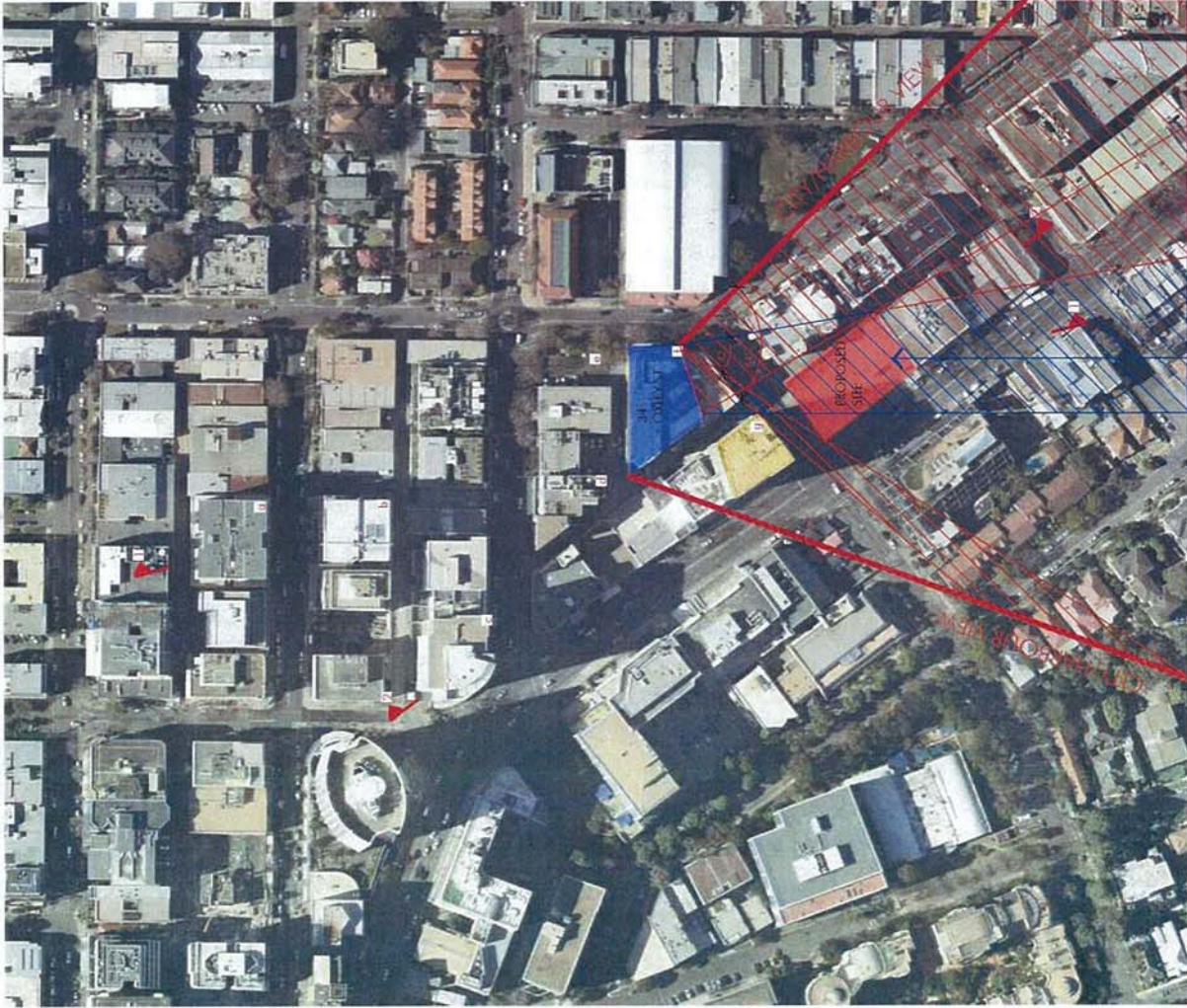


LEGACY
521 PACIFIC HIGHWAY, ST LEONARDS

VIEW IMPACT ANALYSIS 5
7-19 ALBANY ST

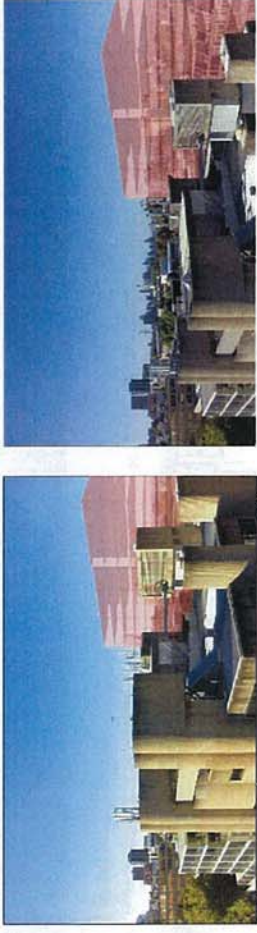
05/12/2014

4448_PP020

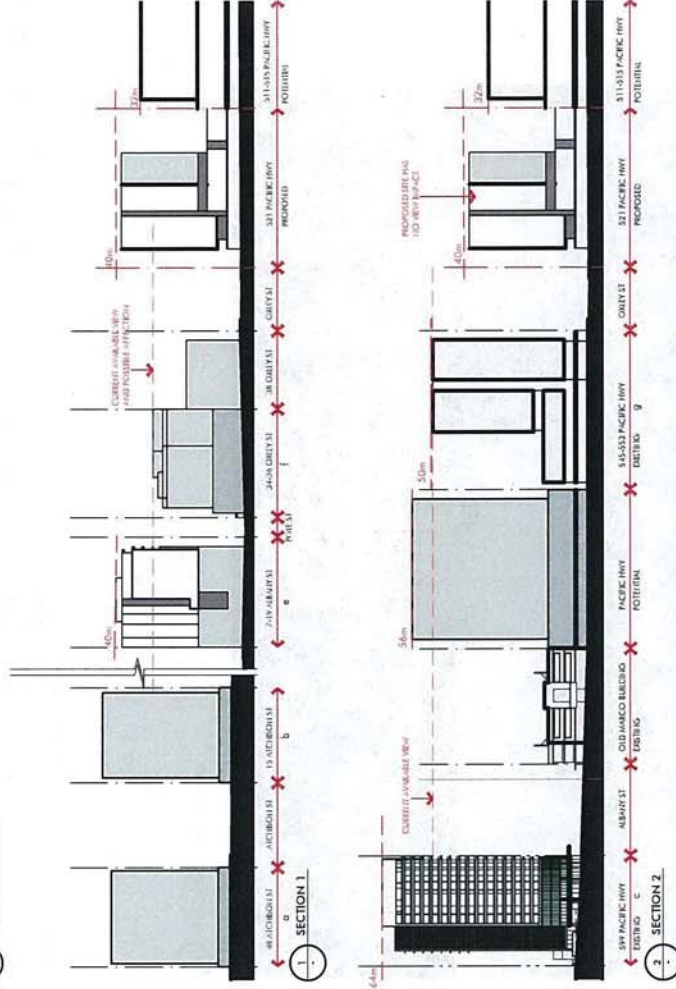


AVAILABLE VIEW

— APPROXIMATE IMPACT TO VIEW CORRIDOR



34 OXLEY STREET
SOUTHERN VIEW CORRIDOR

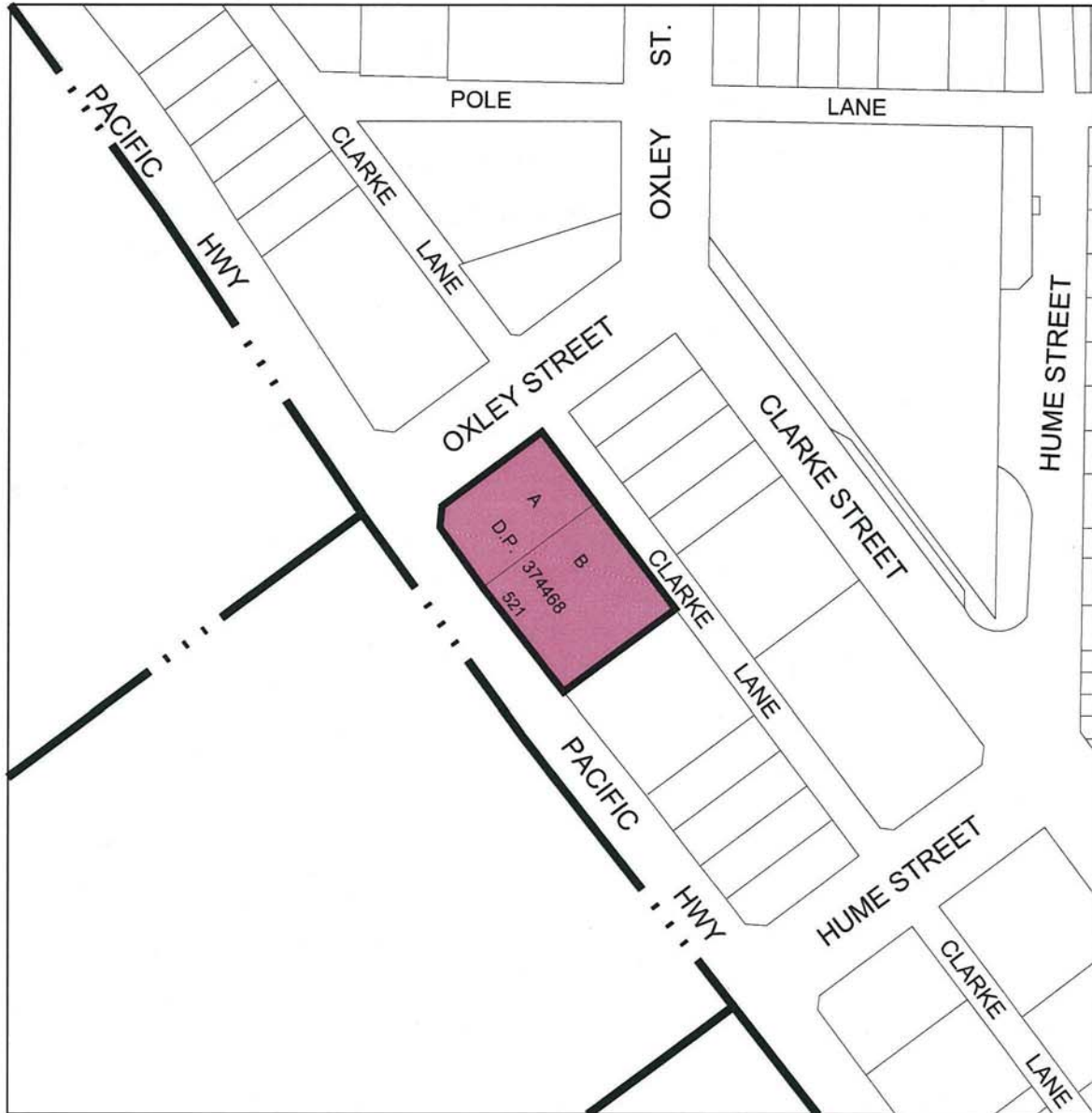




APPENDIX 3
Proposed LEP Maps

PLANNING PROPOSAL

521 Pacific Highway St Leonards



PROPOSED FSR CONTROL



Planning Officer - Alex Williams
Filename - 521 pacific hwy FSR amendment
Date - 06/01/14 Revision Date -
Plan notified on the NSW legislation website



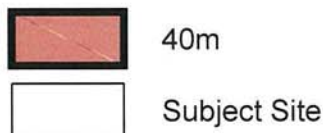
STATEMENT OF RELATIONSHIP WITH OTHER PLANS	
This plan amends:-	
NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013	
General Manager _____ <small>Certified in accordance with the Environmental Planning & Assessment Act 1979, and Regulations</small>	Date _____

PLANNING PROPOSAL

521 Pacific Highway St Leonards



PROPOSED HEIGHT CONTROL



Planning Officer - Alex Williams
Filename - 521 pacific hwy HOB amendment
Date - 06/01/14 Revision Date -
Plan notified on the NSW legislation website



Scale 1:1500

STATEMENT OF RELATIONSHIP WITH OTHER PLANS	
This plan amends:-	
NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013	
General Manager _____	Date _____
Certified in accordance with the Environmental Planning & Assessment Act, 1979, and Regulations.	



APPENDIX 4
Draft Voluntary Planning Agreement

VOLUNTARY PLANNING AGREEMENT

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3 <i>Operation of this Agreement</i>	3
4 <i>Definitions and interpretation</i>	3
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6 <i>Application of s94, s94A and s94EF of the Act to the Development</i>	6
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8 <i>Registration of this Agreement</i>	6
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Planning Agreement made at on

Parties:

North Sydney Council ABN 32 353 260 317 of 200 Miller Street, North Sydney NSW 2060
("Council")

LegPro 22 Pty Ltd ABN 43 163 208 360 of 521 Pacific Highway, St Leonards NSW 2065
("Developer")

Reil Dealership Bonds Pty Limited ACN 094 476 972 care of Kosmin & Associates, Suite 14
Level 1 Royal Arcade, 401-407 New South Head Road, Double Bay NSW 2028
("Landowner")

BACKGROUND

- A. The Landowner, at the time of executing this Agreement, is the registered proprietor of the Land. The Developer, at the time of executing this Agreement has entered into a put-and-call option agreement to purchase the Land.
- B. 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.
- C. Clause 4.3(2) of North Sydney Local Environmental Plan 2013 ("LEP 2013") provides that a building is not to exceed the maximum height shown for the land shown on the Height of Buildings Map. The map relating to clause 4.3(2) provides a height limit of 20 metres for the Land, which is located within a mixed use zone.
- D. 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 the clause 4.4(2) shows no maximum floor space ratio for the Land.
- E. Council has adopted the St Leonards Crows Nest Planning Study - Precinct 1 which makes provision for an increase in building height to 40 metres subject to appropriate public benefits being offered. 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.
- F. The Developer and the Landowner 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 40 metres for the Land as defined in LEP 2013; and
 - b. a change to the Floor Space Ratio Map to include a maximum floor space ratio of 5.3:1 for the Land.
- G. The Developer and the Landowner have made an offer to enter into a Voluntary Planning Agreement (VPA) with Council and the Council is to consider the offer. 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 within the meaning of section 93F 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 Definitions

Terms used in this planning agreement which are defined in Schedule 1 ("**Interpretation**") shall have the same meaning as ascribed to them by that Schedule and such meanings apply unless the contrary intention appears.

4.2 General

In this Agreement the following definitions apply:

- (a) A reference to this Agreement or another instrument includes any variation or replacement of any of them;
- (b) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) The singular includes the plural and vice versa;
- (d) The word "person" includes a firm, a body corporate, an unincorporated association or an authority;
- (e) A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;
- (f) A reference to anything (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (g) "include" or "including" when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;

- (h) If a party is required to do something, that includes a requirement to cause that thing to be done. If a party is prohibited from doing anything, it is also prohibited from doing or omitting to do anything which allows or causes that thing to be done;
- (i) A reference to a statute, ordinance, code or law includes a state ordinance code or law of the Commonwealth of Australia;
- (j) A reference to a body, whether statutory or not which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (k) No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement;
- (l) Any capitalized term used, but not defined in this Agreement, will have the meaning ascribed to it under, and by virtue of, the Act;
- (m) Headings are inserted for convenience only and do not affect the interpretation of this Agreement;
- (n) 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;
- (o) 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;
- (p) A reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
- (q) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
- (r) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
- (s) A reference to this Agreement includes the agreement recorded in this Agreement;
and
- (t) Any schedules and attachments form part of this Agreement.

5 Contributions to be made under this Agreement

- (a) The Developer and the Landowner 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 \$1,600,000.00 or an amount determined in accordance with the following formula, whichever is the greater:
$$\$1,600,000.00 \times \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this Agreement}}$$
- (c) The Developer and the Landowner agree and acknowledge that:

- (i) the whole of any future building on the Land (except basement levels) will be set back at least 3 metres from the Pacific Highway frontage
 - (ii) the whole of any future building on the Land (except basement levels) will be set back at least 6 metres from the Oxley Street frontage of the Land;
 - (iii) any future Development Consent for, or Modification relating to, a building on the Land may require development of the Setback Areas so described in clauses 5(c)(i) and 5(c)(ii) so that they are consistent with the public domain and at grade flush with the adjacent public footpath, excluding structures approved by Council for the purposes of enhancing public domain areas;
 - (iv) prior to the issue of any Occupation Certificate for any building on the Land, it 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;
 - (v) 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 Areas will be registered against the title to the Land at no cost to the Council; and
 - (vi) the easement in gross referred to in clause 5(c)(v) will require the owner of the Setback Areas 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 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 Areas are approved by the Council
- (d) The Developer and the Landowner agree and acknowledge that:
- (i) any future Development Application or Modification Application for a building on the Land will not include any building or development on the hatched portion of the Land marked (x) in accordance with clause 5(c) and will not include any building or development (other than landscaping or fencing) above RL98.40 on the hatched portion of the Land marked (y) as shown in Annexure A); and
 - (ii) prior to the issue of a Construction Certificate for any work on the Land, a covenant will be registered against the title to the Land prohibiting any building or development on the hatched portion of the Land marked (x) in accordance with clause 5(c) and any building or development (other than landscaping or fencing) above RL98.40 on the hatched portion of the Land marked (y) as shown in Annexure A);.
- (e) The Developer and the Landowner agree and acknowledge that the obligations under this Agreement at clause 5(c) and clause 5(d) are relevant considerations for the Council or any other consent authority when determining any future Development

Application or Modification Application and that a failure to comply with those obligations or any inconsistency with the requirements in those clauses may constitute a reason for refusal of any such application.

6 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.

7 Application of the Contributions

- (a) The Council must upon receipt of the Monetary Contribution paid by the Developer and the Landowner 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:
 - (i) spend the contributions made under this Agreement by a particular date; or
 - (ii) refund to the Developer or the Landowner any contributions made under this Agreement.
- (d) The parties acknowledge and agree that the setback of buildings referred to in clause 5(c) will provide more space for pedestrian use and increase the amenity of that area for pedestrian users.

8 Registration of this Agreement

- (a) The Landowner represents and warrants that, at the time of executing this Agreement, it is the registered proprietor of the Land.
- (b) The Developer and the Landowner agree that they 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.
- (c) The Developer and the Landowner at their 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(b).
- (d) The Developer and the Landowner at their own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) 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.
- (e) The Council will at the Developer's and the Landowner's cost 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 satisfied the Developer and the Landowner have duly fulfilled their 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 7 days of receipt of the Notice (or such further period as agreed in writing by them) as to:

- (a) the dispute resolution technique (eg expert determination) and procedures to be adopted.
- (b) the timetable for all steps in those procedures; and
- (c) 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 and Security

11.1 Bank Guarantee

- (a) Prior to the Instrument Change, the Developer and the Landowner are to provide to the Council a Bank Guarantee in the amount of \$1,600,000.00.
- (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 and the Landowner are in material or substantial breach of this Agreement and have 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 or the Landowner becomes Insolvent.
- (c) At any time following the provision of a Bank Guarantee, the Developer and the Landowner 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. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer or the Landowner, as directed, the Bank Guarantees which it holds that have been replaced.
- (d) Subject to this clause, the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer or the Landowner 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 and the Landowner to comply with this Agreement.
- (e) When an obligation of the Developer or the Landowner under this Agreement to which a Bank Guarantee relates has been fulfilled, the Council must return the Bank Guarantee if requested by the Developer or the Landowner.
- (f) 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 or the Landowner 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 or the Landowner 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 Construction Certificate

- (a) In accordance with section 109F of the Act and clause 146A of the Regulation, the following obligations must be satisfied prior to the issue of a Construction Certificate for any future building or development on the Land:
 - (i) provision of the Monetary Contribution in accordance with clause 5(a); and
 - (ii) registration of the covenant required under clause 5(d)(ii).
- (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:
 - (i) completion, to the Council's satisfaction acting reasonably, of the construction of the Setback Areas as required under clause 5(c)(iv); and
 - (ii) registration of the easement in gross under clause 5(c)(v).

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:
 - (i) 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 7 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 and the Landowner's obligations under this Agreement.

12 Notices

- (a) 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:
 - (i) Delivered or posted to that party at its address set out below.
 - (ii) Faxed to that party at its fax number set out below.
 - (iii) Emailed to that party at its email address set out below.

Council

North Sydney Council
Attention: General Manager
Address: 200 Miller Street, Sydney NSW 2060
Phone: 02 9935 8100
Fax Number: 02 9936 8177
Email: council@northsydney.nsw.gov.au

Developer

LegPro 22 P/L
Attention: Stewart Nettleton
Address: Lvl 8, 9-13 Young St, Sydney NSW 2000
Phone: 02 9252 1111
Fax Number: 02 9475 5151
Email: snettleton@legacyproperty.com.au

Landowner

Reil Dealership Bonds Pty Limited
Attention: Jacques Kosmin
Address: Kosmin & Associates, Suite 14 Level 1 Royal Arcade, 401-407 New South Head Road, Double Bay, NSW 2028
Phone: 02 9327 2296
Fax Number: 02 9327 2315
Email: jkosmin@kosmin.com.au

- (b) 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 party if it is delivered, posted or faxed to the latest address or fax number.
- (c) Any notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address.
 - (ii) if it is sent by post, 2 business days after it is posted.
 - (iii) 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.
- (d) 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

The parties acknowledge that:

- (a) 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.
- (b) A party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.
- (c) This Agreement does not impose any obligation on a Consent Authority to:
 - (i) grant Development Consent; or
 - (ii) exercise any function under the Act in relation to a change in an environmental planning instrument.

14 Assignment and Dealings

The Developer and the Landowner may not sell, transfer, assign or novate or similarly deal with any right, title or interest in the Land 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 consents and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer or the Landowner as the case may be:

- (a) 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 neither the Developer nor the Landowner are in breach of this Agreement.

15 Costs

The Developer and the Landowner agree to pay or reimburse Council all costs incurred in connection with:

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

within 14 business days after receipt of a notice from Council as to the amount of those costs.

16 Entire Agreement

This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

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

- (a) This Agreement is governed by the law of New South Wales. The Parties submit to the nonexclusive 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.
- (b) Without preventing any other method of service, any document in an action may be served on a party by being delivered or left at that party's address in the Details.

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

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.

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

- (a) The parties acknowledge that under and by virtue of Section 93F(4) of the Act, any provision of this Agreement is not invalid by reason only that there is no connection between the Development the object of the expenditure of any money required to be paid by that provision.
- (b) The parties agree that to the extent permitted by Law, this Agreement prevails to the extent of its inconsistency with any Law.
- (c) If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

- (d) 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 and is in accordance with the provisions of the Act.

24 Waiver

- (a) 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.
- (b) A waiver by a Party is only effective if it is in writing.
- (c) 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 Goods and Services Tax

- (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 and the Landowner must pay 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 Discharge of Developer and Landowner Obligations

The Developer's and the Landowner's obligations under this Agreement shall be discharged on the occurrence of any of the following:

- (a) The obligations have been fully carried out in accordance with this Agreement; or
- (b) Council, the Developer and the Landowner otherwise agree to the modification or discharge of this Agreement.

27 Counterparts

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

Schedule 1 Interpretation (clause 4)

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

Bank Guarantee means an irrevocable and unconditional undertaking 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.

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 upon land at 521 Pacific Highway, Crows Nest including a building having a height of up to 40 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.

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 the LEP 2013 to provide for a maximum building height of 40m and a maximum floor space ratio of 5.86:1 for the Land.

Land means the property located at No. 521 Pacific Highway, Crows Nest (Lot A in Deposited Plan 374468, and Lot B in Deposited Plan 374468)

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.

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

Regulation means the Environmental Planning and Assessment Regulation 2000.

Setback Areas means the areas of the Land created by the set back of any future building from the Pacific Highway and from Oxley Street, as required by clause 5(c)(i) and clause 5(c)(ii) of this Agreement.

Signed for and on behalf of **North**)
Sydney Council ABN 32 353 260 317 by)
its duly authorised delegate in accordance)
with a resolution of the Council passed at)
a meeting held on)
in the presence of:)

.....
Signature of Witness

.....
Signature of Authorised Delegate

.....
Print name of Witness

Executed by **LegPro 22 Pty Ltd** ABN 43)
163 208 360 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary

**Executed by Reil Dealership Bonds Pty
Limited** ACN 094 476 972 in accordance)
with section 127 of the *Corporations Act*)
2001 (Cth) by:)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary



APPENDIX 5
Review of the Proposed VPA



LEGACYPROPERTY

05 December 2014

Att : The General Manager
North Sydney Council
200 Miller Street
North Sydney NSW 2060

Dear Sir,

RE : Letter of Offer relating to proposed Voluntary Planning Agreement for 521 Pacific Highway, Crows Nest

This Letter of Offer is based upon discussions with members of Planning and Development Services, namely Joseph Hill, Alex Williams, and Lara Huckstepp of North Sydney Council. Please find below the proposed commercial terms of the Voluntary Planning Agreement for the development of 521 Pacific Highway Crows Nest.

Site: 521 Pacific Highway Crows Nest NSW 2065

- Key Provisions:**
- 1** A monetary contribution is proposed of \$1,600,000 for the purpose of increasing the amount of Public Open Space in the North Sydney LGA or equivalent in affordable rental housing stock.
 - 2** Any future building will be set back 3 metres from Pacific Highway and 6 metres from Oxley Street.
 - 3** A covenant will be registered on title restricting any building or development above RL 88.10 on the hatched portion of the Land marked (x) and RL 98.40 on the hatched portion of the Land marked (y) as shown in Annexure A of the Planning Proposal, prior to the issuance of a Construction Certificate for any work on the land.
 - 4** The Developer acknowledges that obligations listed in Provision 1 and 2 above are relevant considerations for Council or any other consent authority when determining any future Development Application or Modification Application and that a failure to comply with those obligations or any inconsistency with the requirements in those obligations may constitute a reason for refusal of any such application.



FSR: The maximum FSR to be granted to the site is 5.3:1 including a non-residential FSR component of 1.5:1.

Maximum Height: It is proposed that any future development or modification for a future building on the site will not exceed a building height of 40 metres. In addition to the maximum building height, there shall be a positive covenant which will be registered against the title in accordance with Provision 3.

Legacy Property Pty Limited shall bear the costs of registering the VPA on title. In the event that the VPA does not proceed, each party shall bear their own costs.

Should you have any queries relating to the above please contact the undersigned.

Yours sincerely,

Stewart Nettleton

Director

M +61 (0) 413 337 339

E snettleton@legacyproperty.com.au