



PLANNING PROPOSAL

Restriction on the use of SEPP 1 St Leonards

2012

1 INTRODUCTION

North Sydney Council has prepared a Planning Proposal to amend North Sydney Local Environmental Plan 2001 (NSLEP 2001).

The amendment is being sought to restrict the use of State Environmental Planning Policy 1 (SEPP 1) in cases where a proposed development within the St Leonards / Crows Nest Planning Study area breaches the height control. This initiative is necessitated by the Part 3A approval at 6-16 Atchison Street that, without this proposed intervention, sets a precedent for further breaches of the height control without due consideration of cumulative impacts and without proper strategic planning having occurred.

The Planning Proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the Department of Planning and Infrastructure's document *"A guide to preparing Planning Proposals"*.

2 LOCALITY

The area to which this Planning Proposal relates correlates with the St Leonards / Crows Nest Planning Study area. The area incorporates all of North Sydney's jurisdiction in St Leonards and its interaction and connections with Crows Nest and the Pacific Highway (see Figure 1).

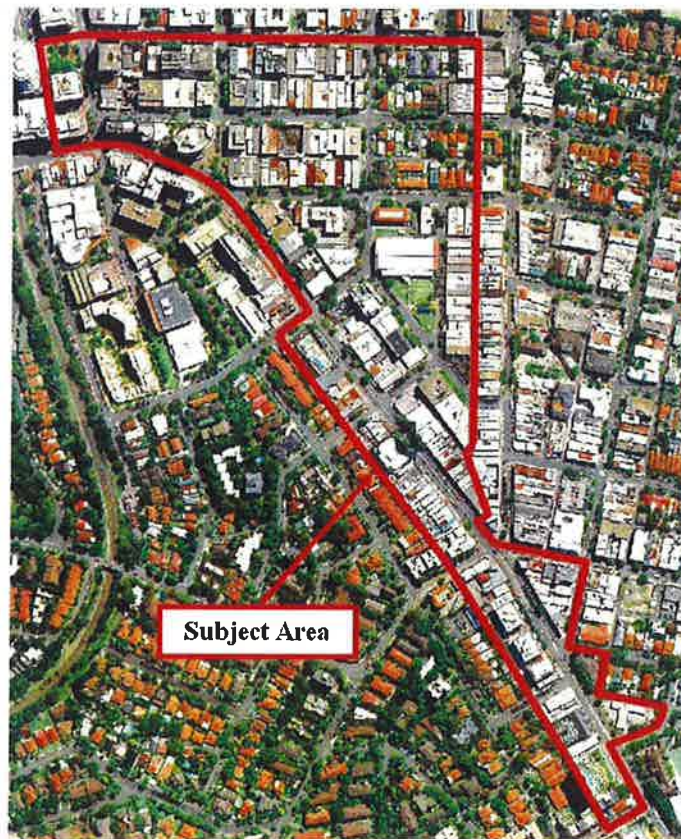


Figure 1 – Aerial Photograph

3 BACKGROUND

On 29 November 2010 Council resolved to undertake a planning study of the St Leonards / Crows Nest area with the following objectives:

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

The study was commenced in the knowledge that there is a pressing need 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 in the St Leonards / Crows Nest area.

The study seeks to consider additional height and residential capacity in the area in a clear strategic context and to identify mechanisms that would ensure any increase results in tangible public benefit through open space and public amenity gains.

Due to the size of the planning study area Council adopted a precinct-based approach to ensure focused analysis and recommendations (see Figure 2).

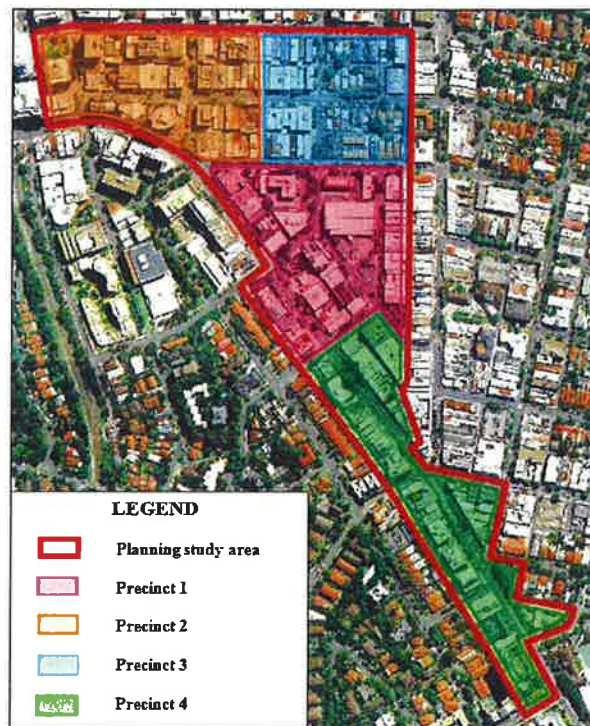


Figure 2 – Planning study precincts

A study of Precinct 1 was adopted by Council on 5 December 2011 which proposed substantial increases in building height in specific locations. The increase in height was predicated on the owners/developers of those sites contributing towards the achievement of predetermined public benefits including ground level setbacks in strategic locations and the creation of new open space within the precinct. Subsequent planning study work has focused on refining the mechanisms through which this 'trade-off' is to occur.

A joint study of precincts 2 and 3 is due to commence in July 2012. It is expected that this study will be driven by similar principles as those in Precinct 1 and that increases in height and/or residential capacity will be explored in a strategic manner whereby cumulative impacts and the needs of all existing and future populations are appropriately considered and planned for.

On 1 May 2012 the Planning Assessment Commission (PAC) gave consent to an 82.5 metre high mixed use development at 6-16 Atchison Street, St Leonards. The consent was granted under Part 3A of the Environmental Planning and Assessment Act 1979. The approved development represents a 33.5 metre breach of the 49 metre NSLEP 2001 height control that applies to the site.

Without limitation, the approval at 6-16 Atchison Street sets a precedent for when consent authorities are considering further proposed breaches of the height control in St Leonards. The approval means that it is highly likely that further breaches of height controls in St Leonards will eventuate without due consideration of cumulative impacts and without proper strategic planning having occurred. Further, the approved breach of the height limit compromises Council's ability to restructure the planning framework via the St Leonards / Crows Nest Planning Study to deliver new open space and other public benefits.

This Planning Proposal seeks to limit the impact this approval will have on Council's strategic planning for the area by placing a restriction on the use of SEPP 1 when consent authorities are considering further proposed breaches of the height control in St Leonards.

4 STATUTORY CONTEXT

Building height

Under NSLEP 2001, building heights within the mixed use zone are controlled via clause 29(2) *Building height controls* which states:

A building must not be erected in the mixed use zone in excess of the height shown on the map

Under NSLEP 2001, building heights within the residential zone within the subject area are controlled via clause 17(6) which states:

Where a maximum height is specified on the map, a building must not be erected, in a residential zone, in excess of that height

As per Schedule 2 - Definitions within NSLEP 2001:

map means the map marked "North Sydney Local Environmental Plan 2001" comprised of sheets numbered 1, 2, 3, and 4 and deposited in the office of the Council, as amended ...

The relevant excerpt from the map showing building height controls within the subject area is shown below (see Figure 3):

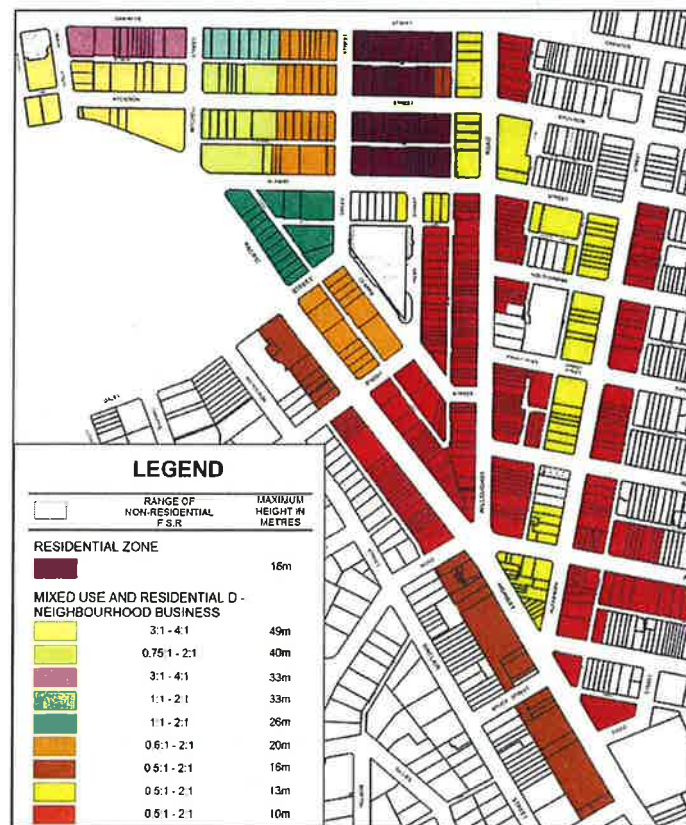


Figure 3 – NSLEP2001 Building heights

Breaches of building height controls

SEPP 1 provides flexibility in the application of planning controls in circumstances where strict compliance with those controls would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act.

As per section 5(a)(i) and (ii) of the EP&A Act, the objects of that Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land, ...

5 THE PLANNING PROPOSAL

1 STATEMENT OF OBJECTIVES

The purpose of this Planning Proposal is to amend NSLEP 2001 to limit the use of SEPP 1 in cases where a proposed development breaches the height control within the subject area. This is to control the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2001 until such time as the findings of the St Leonards / Crows Nest Planning Study have been appropriately considered.

2 EXPLANATIONS OF PROVISIONS

Under this amendment the use of SEPP 1 to support a breach of the height control within the subject area would be limited to the approval of breaches of 3 metres or less, excluding lift overruns and roof plant. This is to enable approval of habitable storeys which the height limit would dissect, as well as lift overruns and roof plant, where full compliance is considered unreasonable or unnecessary.

This reflects past application of SEPP 1 within the St Leonards / Crows Nest area, prior to the approval at 6-16 Atchison Street being granted.

3 JUSTIFICATION

Section A – Need for the Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

This Planning Proposal seeks to enable a strategic study of the area to be undertaken without being compromised by further non-compliant development consents.

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

Yes. The proposed restriction on the use of SEPP 1 within the subject area is considered the best means of allowing the St Leonards / Crows Nest Planning Study to be undertaken without being compromised by further non-compliant development consents. It is considered the best way to manage the precedent set by the approval at 6-16 Atchison Street and the best way to provide certainty to applicants, the local community and consent authorities regarding the achievable height and residential capacity of future development.

3. Is there net community benefit?

Yes. The Planning Proposal will allow the impacts of increased height and residential capacity to be properly considered as part of a robust strategic planning process. It will also provide certainty to applicants, the local community and consent authorities regarding the achievable height and residential capacity of future development.

Section B – Relationship to strategic planning framework

4. Is the Planning Proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Metropolitan Plan for Sydney 2036 and exhibited draft strategies)?

The Metropolitan Plan for Sydney 2036 and the draft Inner North Subregional Strategy provide the framework and detail required to guide the preparation of Principal Local Environmental Plans. These upper level strategies are generally not intended to inform the assessment of individual development applications.

The Planning Proposal seeks to allow these upper level strategic documents to be considered as part of the St Leonards / Crows Nest Planning Study, which in turn will inform changes to the North Sydney Local Environmental Plan.

It is important that the cumulative impacts of individual non-compliant development consents are not permitted to undermine the upper level strategic objectives for the area.

5. Is the Planning Proposal consistent with the local council's Community Strategic Plan, or other local strategic plan?

North Sydney Council Delivery Program 2010/11-2013/14

The North Sydney Council Delivery Program 2010/11-2013/14 (Delivery Program) was prepared in accordance with NSW State Government's Integrated Planning and Reporting Framework requirements. The Delivery Program outlines Council's priorities and service delivery programs over four years, set out under five key Directions.

The directions and goals of the Delivery Program which are relevant to the Planning Proposal are as follows:

Direction 1: Our Living Environment

Goal 1.4: Provide appropriate public open space, recreation facilities and services

Direction 2: Our Built Environment

Goal 2.2: Improve mix of land use and quality development

Goal 2.5: Improve traffic management

Direction 3: Our Economic Vitality

Goal 3.1: Ensure a vibrant, strong, and sustainable local economy

Direction 4: Our Social Vitality

Goal 4.4: Enhance community services, facilities and information

Goal 4.6: Promote affordable housing and accommodation

Direction 5: Our Civic Leadership

Goal 5.5: Ensure the long term financial sustainability of North Sydney

The Planning Proposal will allow these goals and directions to be pursued in a robust and strategic manner.

Draft North Sydney LEP 2009

Under draft NSLEP 2009, height controls within the subject area reflect those within NSLEP 2001. The Planning Proposal will allow the suitability of these heights to be investigated in a robust and strategic manner.

6. Is the Planning Proposal consistent with applicable state environmental planning policies?

The Planning Proposal seeks to allow relevant State Environmental Planning Policies (SEPPs) to be considered as part of the St Leonards / Crows Nest Planning Study.

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

It is considered that the Planning Proposal 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:

Direction	Consistency	Comment
1. Employment and Resources		
1.1. Business & Industrial Zones	Yes	The Part 3A approval at 6-16 Atchison Street, St Leonards, will create 46 new jobs compared to the existing 200 and possible 200 jobs retained if the podium was commercial floor space. This is not a desirable precedent for employment in St Leonards. The Planning Proposal will allow the precedent effect of the Part 3A approval on future employment to be appropriately investigated and managed as part of the St Leonards / Crows Nest Planning Study. The Planning Proposal will also allow the impact of increased height and residential capacity on the employment function of the subject area to be properly considered as part of a robust strategic planning process.
1.2. Rural Zones	NA	Not applicable
1.3. Mining, Petroleum Production & Extractive Industries	NA	Not applicable
1.4. Oyster Aquaculture	NA	Not applicable
1.5. Rural Lands	NA	Not applicable
2. Environmental Heritage		
2.1. Environmental Protection Zones	NA	Not applicable
2.2. Coastal Protection	NA	Not applicable
2.3. Heritage Conservation	NA	Not applicable
2.4. Recreation Vehicle Areas	NA	Not applicable
3. Housing, Infrastructure & Urban Development		
3.1. Residential Zones	Yes	The Planning Proposal will allow for the infrastructure and servicing requirements of existing and new populations, including those resulting from increased height and residential capacity, to be properly considered as part of the St Leonards / Crows Nest Planning Study.
3.2. Caravan Parks & Manufactured Home Estates	NA	Not applicable
3.3. Home Occupations	NA	Not applicable
3.4. Integrating Land Use & Transport	Yes	The Planning Proposal will allow for land use and transport integration to be pursued in a strategic manner as part of the St Leonards / Crows Nest Planning Study.
3.5. Development Near Licensed Aerodromes	NA	Not applicable
3.6. Shooting Ranges	NA	Not applicable
4. Hazard and Risk		
4.1. Acid Sulfate Soils	NA	Not applicable
4.2. Mine Subsidence & Unstable	NA	Not applicable

Direction	Consistency	Comment
Land		
4.3. Flood Prone Land	NA	Not applicable
4.4. Planning for Bushfire Protection	NA	Not applicable
5. Regional Planning	NA	Not applicable
6. Local Plan Making		
6.1. Approval & Referral Requirements	Yes	The Planning Proposal will allow for the efficient and appropriate assessment of development by providing certainty to applicants, the local community and consent authorities regarding the achievable height and residential capacity of future development. The Planning Proposal also supports the efficient and appropriate assessment of development by allowing appropriate height controls, beyond those stipulated under NSLEP 2001, to be developed as part of a robust strategic planning process. Without the Planning Proposal there is little to guide applicants and assessment officers regarding the appropriateness of non-compliant proposals.
6.2. Reserving Land for Public Purposes	Yes	The Planning Proposal does not propose to create, alter or reduce existing zonings or reservations of land for public purposes
6.3. Site Specific Provisions	Yes	The objective of this direction is to discourage unnecessarily restrictive site specific planning controls. The Planning Proposal involves introducing a provision that restricts the use of SEPP 1 within the subject area and could potentially, therefore, be considered a 'site specific provision'. The proposed restriction on the use of SEPP 1 is considered necessarily restrictive so as to allow the St Leonards / Crows Nest Planning Study to be progressed without being undermined by further non-compliant development consents.
7. Metropolitan Planning		
7.1. Implementation of the Metropolitan Plan for Sydney 2036	Yes	Refer to Section B.4

Section C – Environmental, social and economic impact.

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

The Planning Proposal seeks to control the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2001 until such time as the findings of the St Leonards / Crows Nest Planning Study have been considered. The Planning Proposal will therefore allow the ecological impacts of increased height and residential capacity to be properly considered as part of a robust strategic planning process.

9. Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?

The Planning Proposal seeks to control the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2001 until such time as the findings of the St Leonards / Crows Nest Planning Study have been considered. The Planning Proposal will therefore allow the environmental impacts of increased height and residential capacity to be properly considered as part of a robust strategic planning process.

10. How has the Planning Proposal adequately addressed any social and economic effects?

The Planning Proposal seeks to control the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2001 until such time as the findings of the St Leonards / Crows Nest Planning Study have been considered. The Planning Proposal will therefore allow the social and economic effects of increased height and residential capacity to be properly considered as part of a robust strategic planning process.

Section D – State and Commonwealth interests.

11. Is there adequate public infrastructure for the Planning Proposal?

The Planning Proposal seeks to control the ability for developments to be approved beyond the scale and capacity envisaged in the planning controls contained in NSLEP 2001 until such time as the findings of the St Leonards / Crows Nest Planning Study have been considered. The Planning Proposal will therefore allow the public infrastructure requirements associated with increased height and residential capacity to be properly considered as part of a robust strategic planning process.

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

The Planning Proposal has not been considered by State or Commonwealth public authorities.

The Planning Proposal will allow for the views of State and Commonwealth public authorities regarding increased height and residential capacity to be properly considered as part of the St Leonards / Crows Nest Planning Study.

PART 6 COMMUNITY CONSULTATION

Consultation will be undertaken in accordance with the requirements made by the Gateway Determination and Council's guidelines.

The Planning Proposal will allow for community consultation regarding the strategic vision for the area to occur as part of the St Leonards / Crows Nest Planning Study. Without the intervention proposed by the Planning Proposal individual non-compliant development consents will cumulatively impact upon the future of St Leonards without appropriate consultation having occurred.

