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Plan finalisation report – PP-2021-2926

North Sydney Local Environmental Plan 2013 (Map Amendment No 2)
253-265 Pacific Highway and 1 West Street, North Sydney

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

North Sydney Local Environmental Plan 2013 (Map Amendment No.2) –
253-267 Pacific Highway, North Sydney.

1.1.2 Site description

Table 1 Site description

Site Description	<p>The planning proposal (Attachment A) applies to land at 253-265 Pacific Highway and 1 West Street, North Sydney.</p> <p>The site comprises five (5) lots as follows:</p> <ul style="list-style-type: none"> • 253 Pacific Highway - SP 16134 • 255-259 Pacific Highway - SP 22870 • 261 Pacific Highway - Lot 51, DP 714323 • 265 Pacific Highway - Lot B, DP 321904 • 1 West Street - Lot 10, DP 749576
Type	Site
Council / LGA	North Sydney Council
LGA	North Sydney

The site is 253-265 Pacific Highway and 1 West Street, North Sydney. The site is located north of the North Sydney Central Business District and within the boundaries of the Civic Precinct. The site has a primary frontage to the Pacific Highway (60m) and secondary frontages to Church Lane (65m) and West Street (23m). The site has total approximate area of 1,469sqm and comprises 5 lots. Church Lane provides vehicular access to the rear of the lots.

The site currently contains two 3-storey and three 2-storey commercial buildings. The site at 265 Pacific Highway is a locally listed heritage item, I0959 “The Cloisters”, a terrace in the Victorian Free Gothic style.

The site is approximately 400 metres from the North Sydney CBD and approximately 800m northwest of North Sydney Train Station. The subject site is also located 260m northwest of the planned Victoria Cross Metro Station. To the south and east of the site is the McLaren Street heritage conservation area. To the west of the site and Pacific Highway is the Crows Nest heritage conservation area. To the north of the site is The Union Hotel (Heritage item I0960), an early example of the international style that is identified as an icon within the character area in North Sydney Council’s Development Control Plan (DCP) 2013.

The site is within Council’s strategic Civic Precinct Planning Study (CPPS) area which was adopted by Council in November 2020.

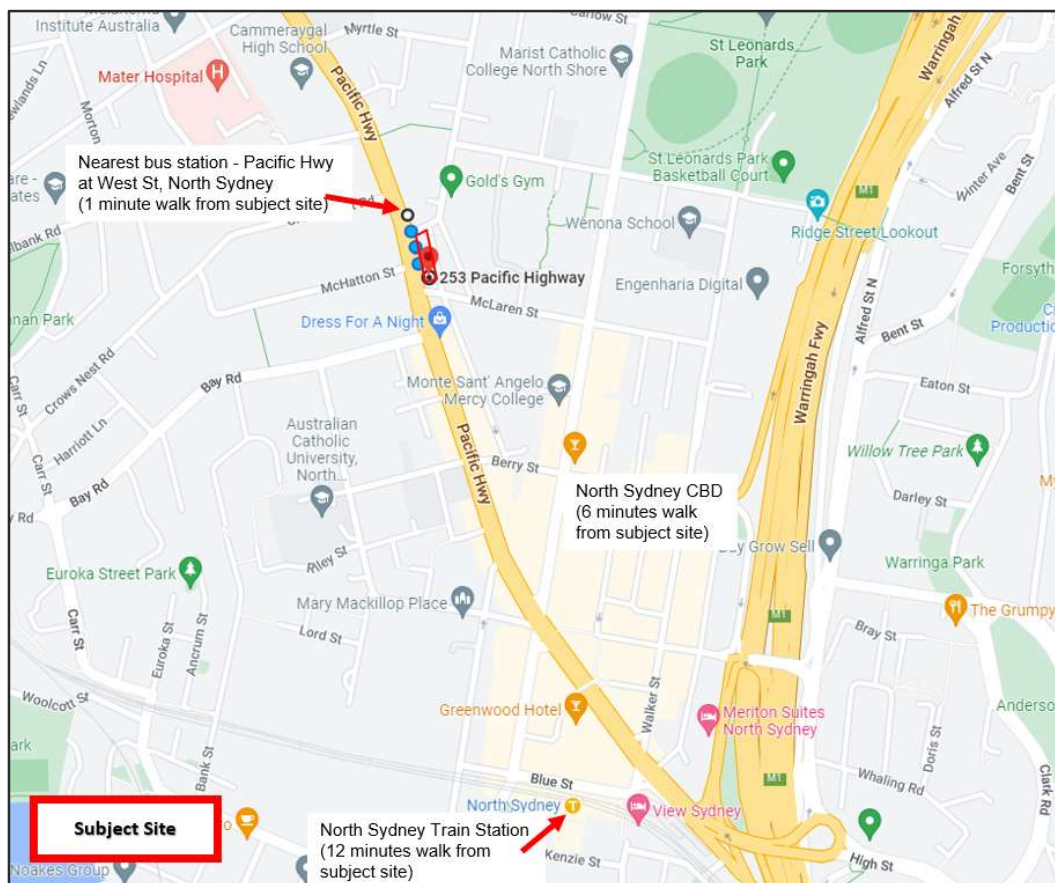


Figure 1 Site context (source: Google Maps)

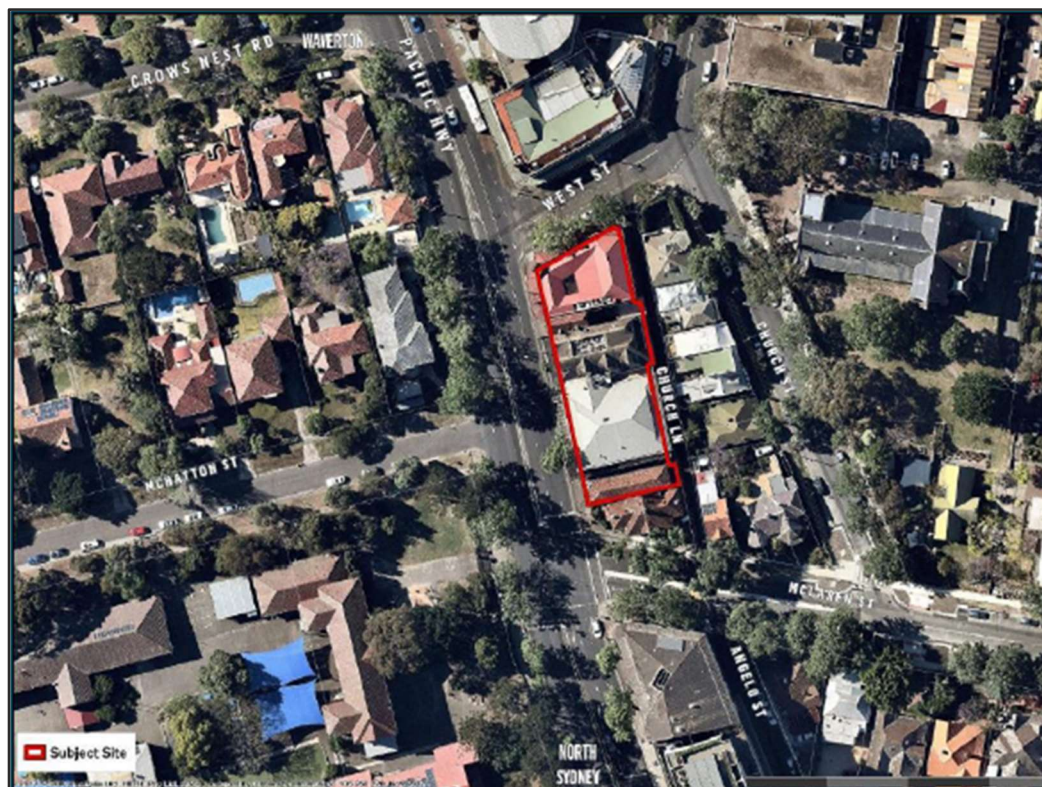


Figure 2: Subject site (source: AK Planning on behalf of North Sydney Council)

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	B4 Mixed Use	MU1 Mixed Use*
Maximum height of the building	10m	15m, 29m, and 37m (3 storey; 8 storey and 10 storey built form)
Floor space ratio (residential)	Nil	4.83:1 for 253-261 Pacific Highway 1.83:1 for 265 Pacific Highway and 1 West Street (Total 3,893sqm residential floor area).
Floor space ratio (non-residential)	0.5:1	1:1 (Total 1,775sqm commercial/retail floor space).
Number of dwellings	0	37
Number of jobs	95	118

***Note:** The B4 Mixed Use zone has become a MU1 Mixed Use zone as part of the Department's Employment Zone Reform. This is discussed further in Section 5.1.2.

1.1.4 State electorate and local member

The site falls within the North Shore state electorate. Felicity Wilson MP is the State Member. Neither MP has made any written representations regarding the proposal. There are no donations or gifts to disclose, and a political donation disclosure is not required. There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 28/10/2022 (**Attachment B**) determined that the proposal should proceed subject to conditions.

Council has met the requirements of the Gateway determination. The proponent submitted a Detailed Site Investigation (**Attachment K**) and Remediation Action Plan (**Attachment L**) to the Department on 29 March 2023 in response to Gateway condition 2. This confirmed that the site can be made suitable for the proposed land use.

An updated version of the planning proposal responding to the Gateway conditions, dated November 2022, was exhibited on the NSW Planning portal.

In correspondence dated 11 August 2022, the Sydney North Planning Panel advised that council has not accepted the role of planning proposal authority (PPA). In accordance with section 3.32(1) of the *Environmental Planning and Assessment Act 1979*, the Panel – as delegate of the Minister for Planning and Public Spaces – determined itself as the PPA to finalise the matter.

In accordance with the Gateway determination the proposal is due to be finalised by 28 July 2023.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by the Department from 7 December 2022 to 3 February 2023, as required by section 29 of the *Local Government Act 1993*.

In its Post Exhibition, Public Meeting on 26 April 2023, the Sydney North Planning Panel determined to recommend to the Minister that the proposed LEP amendment as exhibited should be made in a 4:1 vote.

3.1 Submissions

During the exhibition period 54 submissions were received from individuals, organisations, and government agencies, including Sydney Water, Ausgrid, and Transport for NSW. A summary of submissions is included at **Attachment H**.

3.1.1 Submissions supporting the proposal

A total of 51 public submissions (including a petition with 88 signatures) were received during the exhibition period. Of the 51 individual public submissions, 16 submissions (31% of the total) were supportive of the proposal. The reasons for community support included:

- Site revitalisation and modernising North Sydney
- An increased use of public transport and the Metro line
- Local business support and a benefit from increased people in the suburb
- The widening of Church Lane providing safety for cyclists and pedestrians.
- Supplying housing to young professionals and housing affordability

3.1.2 Submissions raised via petition

A petition with 88 signatures, was submitted during the exhibition period. The petition objected to the increased height of buildings, the impact on the character of the area, and the potential for overshadowing. The issues raised are discussed further below in Table 3.

3.1.3 Submissions objecting to the proposal – key Issues

Of the 51 individual public submissions, 35 objected to the proposal (69% of the total). The key issues raised included:

- Building height and scale (60%)
- Overshadowing (38%)
- Traffic flow, congestion, and noise (28%)
- Heritage impacts (22%)
- Impact on existing character (18%)

The table below summarises these issues.

Table 3 Summary of Key Issues

Issue raised/ Submissions (%)	Issue description	Proponent response/ Department assessment of the adequacy of response
Petition (88 Signatures) Objections to: - Height - Impact on the character of the area - Potential for overshadowing	<p>Objection to proposed building heights of 29 to 37m (8-10 storey residential buildings) as excessive for the character of the area.</p> <p>Suggests reduction to a maximum of 12 to 18m (up to 5 storeys) in order to mitigate adverse impacts on solar access to surrounding properties.</p>	<p><u>Proponent Response:</u></p> <p>The Planning Proposal seeks an amendment to the built form LEP controls in line with Council's own strategic vision for the site. The Proposal facilitates future development that would achieve a built form and scale outcome that is consistent with Council's endorsed Civic Precinct Planning Study (CPPS), which was subject to formal public exhibition processes and refinement based on community feedback. Consistent with the CPPS, the indicative reference design associated with the Planning Proposal provides a distinct podium and tower form with the maximum built form height of 10 storeys stepping down to 8 further north towards the Civic Precinct.</p> <p>Above the podium, setbacks provide transitions in height and scale to the adjoining heritage buildings. These ensure adequate separation is provided between the tower form and the heritage conservation area.</p> <p>The reference scheme and proposed building heights have been designed to achieve a human scale podium level, building heights and breaks which provide for view sharing, and to promote a shared and active environment and a high-quality landscaped outcome within both the public and private domain.</p>

Issue raised/ Submissions (%)	Issue description	Proponent response/ Department assessment of the adequacy of response
		<p><u>Department Assessment:</u></p> <p>The proposed amendments to the built form LEP controls will facilitate the delivery of new housing in proximity to retail and services, public transport, and infrastructure. This is consistent with the <i>Greater Sydney Region Plan (A Metropolis of Three Cities)</i>, the <i>North District Plan</i>, the <i>North Sydney Local Strategic Planning Statement (LSPS)</i>, the <i>North Sydney Local Housing Strategy (LHS)</i> and <i>North Sydney Council's Civic Precinct Planning Study (CPPS)</i>.</p> <p>Council adopted the Civic Precinct Planning Study (CPPS) on 30 November 2020. The CPPS has an 8-storey and 10-storey height limit for the “southern transition” site, where the Proposal is located.</p> <p>The concept reference scheme provided with the proposal is consistent with the CPPS as a medium scale building that supports the transition between the North Sydney CBD and the Civic Precinct. The site is supported by accessibility to jobs, services, transport, social infrastructure, and recreational areas in the North Sydney LGA where there is a growing demand for housing.</p> <p>Building height and scale, and overshadowing impacts have been addressed further below.</p>

Issue raised/ Submissions (%)	Issue description	Proponent response/ Department assessment of the adequacy of response
<p>Building height and scale</p> <p>60% of submissions raised concern with the increased building height</p>	<p>The proposed maximum building heights are not appropriate for this location.</p> <p>Concerns raised that the proposed height will:</p> <ul style="list-style-type: none"> - dominate the heritage conservation area of Church and McLaren Streets causing overshadowing and the loss of views - have poor height transition outcomes to 6-8 McLaren Street - cause overlooking of the school playground - create a precedent for other buildings in the area 	<p><u>Proponent Response:</u></p> <p>The proposed building heights have been designed to achieve a human scale podium level, include breaks which provide for view sharing, and to promote a shared environment.</p> <p>The proposed building heights:</p> <ul style="list-style-type: none"> • Are based on the urban design framework adopted by North Sydney Council as outlined in the CPPS which identifies the site as a transition site with an opportunity for density uplift. • Will provide increased opportunities for height and density within 300m of the station to contribute to the transit-oriented development around the new Metro Station. • Respond to the role of Pacific Highway within North Sydney CBD whilst also transitioning from the increased height of the CBD to the city edge. • Achieve an appropriate built form relationship to the existing heritage items and conservation areas consistent with the character of North Sydney. • Minimise any adverse shadow impacts to the adjoining houses and school. • Moderate scale to the laneway. • The tailored building height controls provided in the draft site specific DCP will further ensure that any future development provides a contextually appropriate outcome having regard to the future higher building heights to the south and the established residential area to the east.

Issue raised/ Submissions (%)	Issue description	Proponent response/ Department assessment of the adequacy of response
		<p><u>Department Assessment:</u></p> <p>The proposed height limits are consistent with the CPPS. The increased height limit for the site will enable the delivery of 37 new dwellings, supported by accessibility to jobs, services, transport, social infrastructure, and recreational areas in the North Sydney LGA where there is demand for new housing.</p> <p>The site is located outside of the McLaren Street Heritage Conservation Area however the proposal includes the adaptive reuse of the local heritage item “The Cloisters” at 265 Pacific Highway. The design has considered the podium height and setback from the local heritage item and includes these design parameters as part of the site specific DCP submitted with the proposal (Attachment M).</p> <p>The proposal has allowed for appropriate setbacks including a street setback of 1.5m to Church Lane, allowing for the widening of Church Lane to achieve a consistent lane width of 6m. The proposed density of development is considered consistent with that anticipated under the CPPS.</p> <p>The proposal responds to nearby ongoing infrastructure development in the North Sydney area (such as the construction of the Victoria Metro Station) and will allow for a moderate increase to housing supply within the North Sydney Civic Precinct.</p>
<p>Overshadowing impacts</p> <p>38% of submissions raised concern</p>	<p>Concern was raised that the proposal would result in overshadowing impacts to:</p> <ul style="list-style-type: none"> – Nearby residential apartments – Nearby school playgrounds during recess/morning tea 	<p><u>Proponent Response:</u></p> <p>Arising from the ongoing feedback during the earlier stages of the process, the indicative reference design was amended resulting in reduced podium height, increased setbacks, and lower building height, which ultimately ensures that the site will achieve an acceptable impact on the locality, consistent with that envisaged by Council when adopting the CPPS.</p> <p>Regarding the overshadowing impacts into the local school (North Sydney Public School) during school hours, the overshadowing caused by the proposal will fall within the existing shadow of the school building. Between 8:30am and 9am, a minor area of additional overshadowing will impact the southwestern corner of the school site however, the additional overshadowing falls within the overshadowing cast by the building envelope anticipated in Council's CPPS.</p>

Issue raised/ Submissions (%)	Issue description	Proponent response/ Department assessment of the adequacy of response
		<p><u>Department Assessment:</u></p> <p>The proposed building envelope creates a fast-moving shadow over the North Sydney Public School (North Sydney Demonstration School).</p> <p>A shadow analysis prepared by PTW Architects demonstrates some additional overshadowing beyond the existing school buildings and shadow impacts modelled in the CPPS.</p> <p>The additional overshadowing occurs briefly during the 8:15am period. This additional shadow is not considered to have a material impact beyond that considered by the CPPS. At 8:30am the proposed shadow aligns with the anticipated CPPS shadow.</p> <p>The proposed building envelope will not result in any significant overshadowing to the North Sydney Public School playground during school hours (9:00am to 3:00pm) and generally aligns with the overshadowing impacts envisaged by the CPPS.</p> <p>No additional overshadowing outside the anticipated CPPS shadow is foreseen to nearby residential development.</p>
<p>Traffic flow, congestion, and noise</p> <p>28% of submissions raised concern</p>	<p>Submissions questioned the findings of the traffic modelling that only 11 extra car trips per hour during peak times would occur as a result of the proposal.</p> <p>Concern that the proposal would lead to increased congestion, and traffic noise.</p>	<p><u>Proponent Response:</u></p> <p>The key findings of the traffic impact assessment prepared by JMT Consulting are:</p> <ul style="list-style-type: none"> • Under the indicative architecture concept vehicle access would be provided off Church Lane to minimise conflicts with pedestrians and general traffic along the Pacific Highway. • The site is in close proximity to various public transport facilities, including North Sydney transport interchange, nearby bus stops and the future Victoria Cross Metro station only 260m away, with any future development not expected to generate significant traffic impacts. • Analysis indicates that the potential increase in traffic as a result of the Planning Proposal is an additional 11 vehicles in the AM peak hour and 10 vehicles in the PM peak hour. This volume of additional traffic is considered negligible in the context of existing traffic flows and would not impact the operation of the surrounding road network.

Issue raised/ Submissions (%)	Issue description	Proponent response/ Department assessment of the adequacy of response
		<p><u>Department Assessment:</u></p> <p>The proposal enables increased commercial and residential density near North Sydney Railway Station, North Sydney CBD, and the future Victoria Metro Station. The proposal is consistent with the CPPS and North District Plan as it is accessible to public transport and encourages a walkable neighbourhood to reduce the need for car dependency.</p> <p>The Traffic Impact Assessment prepared by JMT Consulting forecasted travel demand across all travel modes, including public and active transport which is expected to account for 79% of all morning trips, with cars representing only 18%. Vehicular access to the site is proposed to be provided via Church Lane, consistent with the CPPS.</p> <p>The proposal enables increased commercial and residential density near North Sydney Railway Station, North Sydney CBD, and the future Victoria Metro Station. The proposal is consistent with the North District Plan and the CPPS as it is accessible to public transport, reducing the need for car dependency.</p> <p>Any potential noise impacts associated with the increased traffic travelling to and from the site should be adequately investigated and assessed at the development application (DA) stage.</p>

Issue raised/ Submissions (%)	Issue description	Proponent response/ Department assessment of the adequacy of response
<p>Heritage impacts</p> <p>22% of submissions raised concern</p>	<p>Concern was raised that:</p> <ul style="list-style-type: none"> - the proposal contains a heritage building which may be impacted by the development. - there would be an adverse visual impact on adjoining heritage conservation areas. <p>Consideration of the nearby sandstone church is requested.</p>	<p><u>Proponent Response:</u></p> <p>A Heritage Impact Statement prepared by NBRIS confirms the proposal will have an acceptable impact in relation to the curtilage and relationship to the existing heritage item on the site at No. 265 Pacific Highway and its height relationship with the adjoining heritage conservation area.</p> <p>The heritage item on site will be retained and integrated as part of the podium development. Adequate legibility and articulation is provided at the podium level to highlight the heritage item. The single form with appropriate setbacks to the heritage item, conservation area and the laneway will support the desired intensification around the station whilst responding to the heritage and conservation area context.</p> <p>The proposed development will:</p> <ul style="list-style-type: none"> - Provide an appropriate curtilage around the heritage item. - Continue the visual connection between McLaren Street and Crows Nest Conservation areas. - Concentrate height and scale along the Pacific Highway frontage to maximise separation to the conservation area. <p><u>Department Assessment:</u></p> <p>The proposal seeks to retain and adaptively reuse the local heritage item I0959, "The Cloisters" at 265 Pacific Highway.</p> <p>The draft site-specific DCP (Attachment M) has several specific Heritage interface controls requiring that any new development is modulated to present a sensitive relationship to heritage buildings and an appropriate scale.</p> <p>The podium elements of new development are required to be set back from The Cloisters heritage item. This will provide façade articulation, wind mitigation, and separation from the heritage item.</p> <p>The draft site-specific DCP has been developed to provide specific protection to the heritage item, as required by the Panel. The impact of any development on the surrounding heritage items and conservation areas will be further assessed at the DA stage.</p>

Issue raised/ Submissions (%)	Issue description	Proponent response/ Department assessment of the adequacy of response
<p>Impact on existing character</p> <p>18% of submissions raised concern</p>	<p>Concerns were raised that the area should be protected from development and that the proposal will shift the transition point between the North Sydney CBD and Crows Nest.</p> <p>Community concerns expressed reservations that the project will not fit with the surrounding suburb, and that the widening of Church Lane has not been considered in line with the area.</p>	<p><u>Proponent Response:</u></p> <p>Arising from the ongoing feedback during the earlier stages of the process, the indicative reference design was previously amended resulting in reduced podium height, increased setbacks, and lower building height, which ultimately ensures that the site will achieve an acceptable impact on the locality, consistent with that envisaged by Council when adopting the CPPS.</p> <p>The reference scheme and proposed building heights have been designed to achieve a human scale podium level, building heights and breaks which provide for view sharing, and to promote a shared and active environment and a high-quality landscaped outcome within both the public and private domain.</p> <hr/> <p><u>Department Assessment:</u></p> <p>The widening of Church Lane from 3-4.5m to 6m involves the dedication of approximately 130sqm of land to Council. This will improve the neighbourhood amenity, and safety for cyclists and pedestrians. The Traffic Impact Assessment submitted with the proposal has indicated that vehicular access to the site is proposed to be provided via Church Lane, consistent with the CPPS.</p> <p>The proposal's concept reference scheme is generally consistent with the CPPS design guidelines, specifically the mixed-use development which provides transition between the mid-rise residential buildings to the south of Pacific Highway and the low-scale North Sydney Civic Precinct to the north.</p> <p>The site specific DCP includes elevations, building envelopes, and setbacks which are consistent with the CPPS. The construction of the Victoria Cross Metro Station is a catalyst for change in the precinct, and the proposal is broadly consistent with Council's strategic plan as outlined by the CPPS.</p>

3.1.4 Submissions objecting to the proposal – other Issues

Other objections which were raised are summarised below. These are also in **Attachment F**, and summarised at **Attachment H**.

Table 4 Summary of Other Issues

Issue raised / Submissions (%)	Department assessment
<p>Parking / 12%</p> <p>The amount of car parking provision was raised as an issue. There was concern that the proposal would place more pressure on the available public parking in the area and the demand for the limited number of car spots would increase.</p>	<p>Council's DCP contains parking rates for mixed use areas.</p> <p>On 26 April 2023, North Sydney Council adopted a draft amendment to the North Sydney DCP in relation to the provision of private parking. The DCP amendment reduced on-site parking requirements for high-density developments, reflecting the excellent level of public transport accessibility in the corridor between St Leonards, Crows Nest, North Sydney, and Milsons Point.</p> <p>The DCP amendment received a large number of public objections, however despite this the recommendation to reduce private parking was carried by Council as a sustainable, considered, and logical policy position to adopt in a highly accessible corridor that is the subject of significant growth pressure.</p> <p>The proponent has stated that in addition to private on-site parking, service vehicle parking, and secure bicycle parking would also be provided. The Department is satisfied that the proposed development will be able to address parking requirements at the DA stage.</p>
<p>Pedestrian safety / 6%</p> <p>Concern was raised that the development increases density on the Pacific Highway, which creates a safety issue for both people crossing the road, and an increased amount of traffic.</p>	<p>Vehicular access to the site is proposed to be provided via Church Lane. Driveway access, traffic management, and infrastructure capacity, will be assessed and addressed further as part of any DA.</p>
<p>Wind tunnel impacts / 8%</p> <p>Concerns were raised that the proposal will lead to an increase in wind tunnel effect on the area.</p>	<p>Any future DA for the site must be accompanied by an Environmental Wind Assessment to confirm the design meets relevant criteria. This will be assessed at the DA stage.</p>

Issue raised / Submissions (%)	Department assessment
<p>Loss of views / 6%</p> <p>Concern was raised that the proposal would impede views and set a precedent for the No. 1 McLaren Street site to also request increased building height.</p>	<p>The site specific DCP includes consideration of key views from the development. View sharing will be considered further at the DA assessment stage.</p> <p>Other sites are able to lodge a planning proposal at any time, and these are considered on their strategic and site-specific merits. In this way, a 'precedent' does not mean that approval will necessarily be given for height increases to neighbouring developments.</p>
<p>Stakeholder engagement process / 6%</p> <p>Concern was raised that community consultation and door knocking was limited to adjacent properties and those on the Eastern side of the Pacific Highway.</p>	<p>The Department has undertaken public consultation in accordance with the Gateway Determination. The proposal was made available for public comment for 58 days from 7 December 2022 to 3 February 2023.</p>
<p>Excessive excavation in area / 4%</p> <p>Concern was raised that excavation associated with the development may damage other buildings.</p>	<p>The conditions of any DA consent will usually require dilapidation reports are prepared for neighbouring properties.</p> <p>A dilapidation report is a report on the condition of a property at a given point in time. It records the current condition of the property through doing a site visit and taking photos. It records any existing damage, and the condition of any particular aspects of the property that are likely to be affected by construction work, excavation, or demolition.</p> <p>The conditions of consent also usually require that any damage caused to neighbouring sites is made good. This will be investigated further and assessed at the DA stage.</p>

3.1.5 Submissions from Council and agencies

North Sydney Council confirmed by email on 6 March 2023 that Council would not provide a submission on the proposal.

The agencies either had no comment or raised matters which will be further assessed and addressed at the DA stage. These matters included specifications for water and wastewater servicing, noise attenuation, loading and servicing provisions, and cycling facilities. A summary of submissions is included at **Attachment H**.

No issues were raised for consideration at the current planning proposal stage. The Department considers the matters raised in submissions from public authorities have been adequately addressed at this stage. A snapshot of the issues raised by agencies is in the table below:

Issue raised	Department assessment
<p>Transport for NSW (TfNSW)</p> <p><u>Noise</u></p> <p>Appropriate noise attenuation measures should be employed through design, architectural treatments, and setbacks, particularly along the Pacific Highway frontage.</p>	<p><u>Noise</u></p> <p>A draft site-specific DCP was exhibited with the planning proposal. This details the proposed setbacks and design. Further noise attenuation measures can be assessed and addressed at the DA stage after Council have finalised and adopted the DCP controls.</p>
<p><u>Loading and servicing</u></p> <p>Loading and servicing demands should be accommodated within the site and not rely on kerbside space. Spaces for freight and service vehicles should be provided within the development.</p> <p><u>Cycling facilities</u></p> <p>Cycling facilities should be provided above the minimum required by Council's DCP to encourage active transport, as the site is located close to North Sydney Station.</p>	<p><u>Loading and servicing</u></p> <p>The proposal is an indicative building form only and will be assessed and addressed at the DA stage after Council have finalised and adopted the DCP controls.</p> <p><u>Cycling facilities</u></p> <p>This will be assessed and addressed at the DA stage. Council will decide if their current DCP controls for cycling facilities should be updated.</p>
<p><u>Cycling networks</u></p> <p>The proposal is adjacent to cycle links that have been identified by North Sydney Council along both the Pacific Highway and Church Lane. These are identified in Council's Integrated Cycling Strategy.</p> <p>An increase in residential density and therefore vehicle use resulting from the development may negatively impact the proposed cycle link along Church Lane.</p> <p>TfNSW recommends that the proponent note the above cycling connections in their proposal and acknowledge the potential negative impacts by identifying suitable mitigations such as the installation of a 10kmh shared zone on Church Lane.</p>	<p><u>Cycling networks</u></p> <p>The proposal includes the widening of Church Lane to 6m. TfNSW's recommendation to install a shared zone with a 10km/per hour speed limit along Church Lane, can be considered by Council for in the finalisation of the site-specific DCP.</p> <p>Further input for TfNSW and design changes will be available as part of the DA process.</p>

Issue raised	Department assessment
<p>Sydney Water</p> <p>Amplifications, adjustments and/or minor extensions may be required to:</p> <ul style="list-style-type: none"> - the potable watermain on Pacific Highway. - the wastewater main on Church Lane. <p>Detailed requirements will be provided once the development is referred to Sydney Water for a Section 73 application.</p>	<p>These requirements are noted. The infrastructure capacity can be further assessed and addressed at the DA stage.</p>
<p>Ausgrid</p> <p>No issues were raised. The Ausgrid submission commented that the proposal was for building height and FSR controls, which would not affect Ausgrid assets.</p>	<p>Ausgrid's comment is noted.</p>

4 Department assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The Department has assessed the proposal against relevant Section 9.1 Directions. The proposal was required conditioned to update and demonstrate consistency with Ministerial Section 9.1 Direction 4.4 – Remediation of Contaminated land at Gateway and is now consistent with that Direction.

The Department has also assessed the proposal against relevant State Environmental Planning Policies (SEPPs), Regional and District Plans, and Council's Local Strategic Planning Statement. It reassesses any potential key impacts associated with the proposal.

As outlined in the Gateway determination report (**Attachment B1**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis, or reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment
Regional Plan	<input checked="" type="checkbox"/> Yes

	Consistent with Gateway determination report Assessment
District Plan	<input checked="" type="checkbox"/> Yes
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes, but requires consideration of unresolved matters, refer to section 4.1.1

Table 5 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment
Social and economic impacts	<input checked="" type="checkbox"/> Yes
Environmental impacts	<input checked="" type="checkbox"/> Yes. Further consideration of adaptively reuse of the heritage item at 265 Pacific Highway has been given in line with the Panel's comments dated 26 April 2023, refer to section 4.1.2. Further consideration of the built form and solar access and overshadowing has been undertaken in response to the comments by the Panel member who disagreed with the majority decision, refer to sections 4.1.3 and 4.1.4.
Infrastructure	<input checked="" type="checkbox"/> Yes

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters.

It is noted the planning proposal has been updated to address the current consolidated SEPPs and the revised Section 9.1 Ministerial Directions.

4.1.1 Section 9.1 Ministerial Directions and Direction 4.4 – Remediation of contaminated land

The proposal was required to update the references to the Section 9.1 Ministerial Directions and address the relevant new Directions issued since the proposal was prepared. The updated planning proposal addressed the current 9.1 Ministerial Directions (**Table 11; p. 63-68 of Attachment A**), confirming that there are no outstanding inconsistencies with these Directions.

The proposal was also required to be updated to ensure consistency with Direction 4.4 – Remediation of Contaminated Land after a preliminary site investigation indicated that the proposal site was previously utilised for potentially contaminating land uses. Condition 2 of the Department's Gateway determination required the proposal to be updated with a detailed site investigation and a Remediation Action Plan (RAP).

The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.

The detailed site investigation (**Attachment K**) concludes that the site can be made suitable for the proposed mixed-use commercial/residential development with the implementation of a RAP for the identified shallow impacted fill materials. The RAP (**Attachment L**) concludes that subject to the successful implementation of the measures described therein, the contamination risk to human health on the site will be successfully mitigated.

It is considered that the proposal has demonstrated consistency with Direction 4.4 Remediation of Contaminated Land which requires the planning proposal authority to consider whether the land is contaminated, and how it will be made suitable, after remediation, for any purpose proposed or permissible in that zone.

The Director as delegate of the Secretary is recommended to agree that the draft LEP is consistent with Ministerial 9.1 Direction 4.4 – Remediation of Contaminated land, and that this condition of the Gateway has been met.

4.1.2 Matters raised by the Sydney North Planning Panel

These matters were raised by the Sydney North Planning Panel in the post-exhibition and finalisation meeting on the 26 April 2023 (**Attachment P**). The Panel decision was 4:1 in favour that the proposed instrument should be made, one Panel member was against the decision.

The matters discussed below are those matters which were raised by the dissenting Panel member as reason for not supporting the proposal. These matters are the proposed built form, the site location and context, loss of solar access to surrounding buildings, and the overshadowing of the adjacent North Sydney Demonstration School playground.

The Panel also identified that the heritage item at 265 Pacific Highway North Sydney should be provided specific protections, and this is also addressed.

4.1.3 Built form and context

The Panel decision was decided 4:1 in favour of the proposal progressing to finalisation.

Concern was raised by one Panel member against the proposed heights and floor space ratio in the context of the area, specifically in regard to the *“juxtaposition of forms/heights with the two storey building forms on Church and McLaren Streets”* and the potential for overshadowing of the North Sydney Demonstration School playground.

The proposed development will be taller than the existing 2 storey building forms on Church Street to the east of the proposal. The existing building at 1 McLaren Street, south of the proposal, is 5 storeys. The proposal has a 3 storey, 8 storey, and 10 storey built form.

The proponent has adequately mitigated the potential impacts of the variation in adjacent building heights by increasing the building separation of the proposed tower. A setback of 3 metres has been proposed for the tower levels as well as an additional 1 metre secondary setback as part of the vertical tower articulation fronting Church Lane.

The proposal also outlines that a blank feature wall will be provided to part of the upper levels of the eastern façade to minimise the potential for overlooking. The proposal notes that apartment balconies will be oriented away from the eastern boundary for the same reason.

The Department also notes that the concept reference scheme supporting the proposal is an indicative built form only and that measures to ensure residential privacy and view sharing will be further investigated and assessed at the DA stage.

Overshadowing to Church Street, McLaren Street, and the North Sydney Demonstration School has been addressed below.

4.1.4 Solar access and overshadowing

A shadow analysis has been prepared to support the proposal by PTW Architects (**Attachment N**). This analysis compares the midwinter shadow cast at by the proposed development, to the shadow cast by development modelled in Council's CPPS study.

The shadow cast by the proposed development is almost identical to that foreseen within Council's study. The proposed shadowing to the Church Street properties at 2pm is slightly less than that illustrated by the CPPS. Overshadowing to McLaren Street is the same as that in the CPPS.

The objecting Panel member cited overshadowing of the North Sydney Demonstration School as a reason for objection, noting that it may "*result in a significant loss of amenity to the school students and school community*". The shadow analysis has confirmed that the proposal causes a small amount of additional overshadowing during the 8:15am to 8:30am period. This additional shadow is not considered to have a material impact beyond that which was considered by Council's CPPS. At 8:30am the proposed shadow aligns with the CPPS shadow. As such, the proposed building envelope does not result in significant additional overshadowing and will not cause a loss of amenity to the school or students.

In addition, the site-specific DCP provisions state the proposal must not reduce the solar access to the primary play area of the school between the hours of 9:00am to 3:00pm. It is also noted that any additional overshadowing that may occur outside these hours must not exceed the shadow in Council's CPPS.

4.1.5 Heritage item at 265 Pacific Highway

In the public meeting held on 26 April 2023 the Panel noted the proposal would retain and adaptively reuse the local heritage item 10959 "The Cloisters" at 265 Pacific Highway. It was noted that:

The Panel was strongly of the view that the heritage item warranted specific protection, which should be a consideration during finalisation of the Planning Proposal.

The site-specific DCP provisions (**Attachment M**), as required by Gateway, include proposed elevations, and illustrated plans showing building form, massing, and podium setback from the heritage item at 265 Pacific Highway. "Heritage interface" controls have also been included to address the legibility and articulation of the heritage item from the proposed concept design.

It is considered that the heritage item at 265 Pacific Highway has been appropriately addressed by the proposal.

5 Post-assessment

5.1 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 6 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	3 maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	Council was consulted on the terms of the draft instrument.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Sydney North Planning Panel (PPA)	The Sydney North Planning Panel, as the PPA, were consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment Q)</i> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

5.2 Employment zone reform

The Business zones and Industrial zones have been replaced by Employment zones, which were finalised in December 2021. The employment zones were introduced into 134 LEPs through 6 self-repealing SEPPs on 16 December 2022. These came into effect on 26 April 2023.

The Department led this state-wide reform in close consultation with each of the 124 councils in NSW with Business and Industrial zones. The translation detail for individual LEPs was publicly exhibited in May 2022.

The B4 Mixed Use zone has become a MU1 Mixed Use zone as part of this Employment zone reform. The MU1 Mixed Use zone facilitates a mix of compatible land uses including residential, commercial, and light industrial. The MU1 Mixed Use zone has been applied to transition between uses (for example, a commercial centre and another land use such as residential), and in instances where the B4 Mixed Use zone is used as a residential zone with some retail components, rather than an employment-focused zone.

6 Recommendation

It is recommended that the Director, as delegate of the Secretary, determine that the draft LEP is consistent with Ministerial 9.1 Direction 4.4 – Remediation of Contaminated land and the condition of the Gateway to conduct a site inspection and prepare a detailed remediation action plan has been met.

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit, being consistent with Council's Civic Precinct Planning Study 2020 (CPPS) strategic framework.
- The draft LEP has site-specific merit.
- The draft LEP is consistent with the Gateway Determination.
- The issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



30 June 2023

Ashley Richards

Specialist Planning Officer Case Manager, Metro Central & North



11 July 2023

Lauren Templeman

A/ Director, Metro Central & North

Assessment officer

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Attachments

Attachment	Document
Report	Plan finalisation report
Council	Letter to North Sydney Council
A	Planning proposal – November 2022
B	Gateway determination – 28.10.2022
B1	Gateway determination report – 25.10.2022
C	Instrument – North Sydney LEP 2013 (Map Amendment No 2)
D	Draft mapping <ol style="list-style-type: none"> 1. Height of Buildings Map – HOB_002A 2. Floor Space Ratio Map – FSR_001 3. Floor Space Ratio Map – FSR_002A 4. Non-Residential Floor Space – LCL_002A
E	Agency submissions
F	Community submissions - redacted
G	Proponent response to public submissions
H	Summary of submissions
I	Email to Council from Department consulting on the draft LEP
J	Council's response to the draft LEP
J2	Email to Council responding to Council comments on draft LEP
K	Detailed Site Investigation
L	Remediation Action Plan
M	Site specific Development Control Plan
N	Shadow Analysis and Building Envelope Study
O	Post-Exhibition Report - 18.04.23
P	Panel Record of Decision - 26.04.23
Q	Sydney North Planning Panel as PPA response to draft LEP