

DECISION OF 3750th COUNCIL MEETING HELD ON MONDAY 27 SEPTEMBER 2021

8.9. Planning Proposal 3/18 - 50-56 Atchison Street, St Leonards - Post exhibition

AUTHOR: Katerina Papas, Strategic Planner

The purpose of this report is to present the outcomes of the public exhibition of a Planning Proposal and accompanying draft Voluntary Planning Agreement (VPA) for 50-56 Atchison Street, St Leonards. The report seeks Council's endorsement to forward the Planning Proposal to the Department of Planning, Infrastructure and Environment with a request that the Plan be made and to finalise the VPA with the view to have it in force prior to the gazettal of the LEP amendment.

On 27 July 2020, Council resolved to support a Planning Proposal (PP3/18) to amend the North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land at 50-56 Atchison Street, St Leonards.

The Planning Proposal seeks to:

1. increase the maximum height of buildings control from 20m to 56m (16 storeys);
2. impose a maximum Floor Space Ratio (FSR) of 6.4:1;
3. increase the minimum non-residential FSR from 0.6:1 to 1.7:1; and
4. introduce a site-specific provision allowing a lift overrun (to provide access to communal open space at the rooftop) to exceed the maximum height of buildings control to a maximum building height of 58.1m.

The Planning Proposal is accompanied by a draft Voluntary Planning Agreement (VPA) which would provide a 5.6m wide and 7.2–7.5m high pedestrian through-site link from Atchison Street to Atchison Lane with an easement for public access; and a monetary contribution of \$1.4 million to Council for open space upgrades within the St Leonards and Crows Nest Precinct.

On 15 March 2021, a delegate to the Minister for Planning issued a Gateway Determination, enabling the Planning Proposal to proceed to public exhibition subject to meeting a number of conditions.

On 26 March 2021, Council sought further clarification from the DPIE on the conditions of the Gateway Determination, in particular Condition 1(c) which requested the proposal be updated prior to exhibition to clarify that the Special Infrastructure Contribution (SIC) will apply in addition to any negotiated VPA. Council wrote to the DPIE on 12 April 2021 requesting an exemption from the SIC on the basis of there being a duplication between the public benefits proposed under the draft VPA and SIC Plan, in relation to Hume Street Park. Council is yet to receive a response from the DPIE in relation to the application of the SIC to this site.

The Planning Proposal and accompanying draft VPA were placed on public exhibition from Monday 19 July to Monday 16 August 2021. The exhibition period was extended by a further two weeks until 30 August 2021, to allow further time for submissions given the current Covid restrictions.

A total of 12 submissions were received, including 2 relating to other development proposals (either under assessment or already approved by Council) on adjacent sites. Notwithstanding, the issues raised could be equally relevant to the subject proposal and have therefore been considered in this report. A total 5 submissions were received from local residents objecting to the proposal and 7 submissions raised no objection (public agencies).

The proposal has attracted a number of objections relating to amenity impacts (overshadowing, noise, wind, environmental and traffic impacts). It needs to be recognised that the precinct is undergoing significant change. The St Leonards and Crows Nest area is identified as a 'strategic centre' through a suite of high-level planning documents, including the Greater Sydney Regional Plan and North District Plan, and there is an opportunity to renew, activate and manage growth within the precinct through the delivery of the desired objectives and outcomes as outlined within the *St Leonards and Crows Nest 2036 Plan (2036 Plan)*.

The issues raised, when critiqued against the 2036 Plan and broader context of the St Leonards and Crows Nest area, are not considered sufficient to warrant an amendment to the Planning Proposal. The Planning Proposal is generally consistent with the outcomes of the 2036 Plan. Concentrating appropriate height and density near highly accessible mass transit nodes, employment and services, is more sustainable and desirable than dispersing this growth throughout more sensitive neighbourhoods with lower levels of accessibility.

It is recommended that Council resolves to forward the Planning Proposal to the DPIE with a request that the Plan be made.

Should the draft VPA be executed, it will result in various in-kind and monetary contributions to Council, including:

1. provision of a 5.6m wide and 7.2-7.5m high pedestrian through-site link from Atchison Street to Atchison Lane, with an easement for public access between 6am and 11pm; and
2. a monetary contribution of \$1.4 million to Council for open space upgrades within the St Leonards and Crows Nest Precinct.

RECOMMENDATION:

1. THAT having completed the community consultation requirements outlined in the Gateway Determination, Council forward the Revised Planning Proposal (Attachment 3) to the Department of Planning and Environment with a request that a Local Environmental Plan be made in accordance with section 3.36 of the Environmental Planning and Assessment Act 1979, to give effect to the Planning Proposal.

2. THAT Council finalise the Voluntary Planning Agreement with the view to have it in force prior to the gazettal of the LEP amendment.

3. THAT Council write to the Minister for Planning seeking an undertaking to exempt this site, in the same manner that the Minister acted for 23-35 Atchison Street, from the application of any Special Infrastructure Contributions (SIC) on the basis of the delivery of defined public benefits within this Voluntary Planning Agreement.

4. THAT Council notify all submitters of its decision.

Voting was as follows:

For/Against 10/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Beregi	Y		Drummond	Y	
Keen	Y		Gunning	Y	
Brodie	Y		Mutton	Y	
Carr	Y		Baker	Y	

RESOLVED:

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AUTHOR: Katerina Papas, Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Gateway determination - 50-56 Atchison St, St Leonards PP [8.9.1 - 3 pages]
2. Gateway Determination Alteration 50-56 Atchison St, St Leonards PP [8.9.2 - 1 page]
3. Revised Planning Proposal - 50-56 Atchison St, St Leonards PP [8.9.3 - 77 pages]
4. Draft Voluntary Planning Agreement - 50-56 Atchison St, St Leonards PP [8.9.4 - 33 pages]
5. Public Submissions Summary Table - 50-56 Atchison St PP [8.9.5 - 7 pages]

PURPOSE:

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EXECUTIVE SUMMARY:

On 27 July 2020, Council resolved to support a Planning Proposal (PP3/18) to amend the North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land at 50-56 Atchison Street, St Leonards.

The Planning Proposal seeks to:

1. increase the maximum height of buildings control from 20m to 56m (16 storeys);
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3. increase the minimum non-residential FSR from 0.6:1 to 1.7:1; and
4. introduce a site-specific provision allowing a lift overrun (to provide access to communal open space at the rooftop) to exceed the maximum height of buildings control to a maximum building height of 58.1m.

The Planning Proposal is accompanied by a draft Voluntary Planning Agreement (VPA) which would provide a 5.6m wide and 7.2–7.5m high pedestrian through-site link from Atchison Street to Atchison Lane with an easement for public access; and a monetary contribution of \$1.4 million to Council for open space upgrades within the St Leonards and Crows Nest Precinct.

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The proposal has attracted a number of objections relating to amenity impacts (overshadowing, noise, wind, environmental and traffic impacts). It needs to be recognised that the precinct is undergoing significant change. The St Leonards and Crows Nest area is identified as a 'strategic centre' through a suite of high-level planning documents, including the Greater Sydney Regional Plan and North District Plan, and there is an opportunity to renew, activate and manage growth within the precinct through the delivery of the desired objectives and outcomes as outlined within the *St Leonards and Crows Nest 2036 Plan (2036 Plan)*.

The issues raised, when critiqued against the 2036 Plan and broader context of the St Leonards and Crows Nest area, are not considered sufficient to warrant an amendment to the Planning Proposal. The Planning Proposal is generally consistent with the outcomes of the 2036 Plan. Concentrating appropriate height and density near highly accessible mass transit nodes, employment and services, is more sustainable and desirable than dispersing this growth throughout more sensitive neighbourhoods with lower levels of accessibility.

It is recommended that Council resolves to forward the Planning Proposal to the DPIE with a request that the Plan be made.

FINANCIAL IMPLICATIONS:

Should the draft VPA be executed, it will result in various in-kind and monetary contributions

to Council, including:

1. provision of a 5.6m wide and 7.2-7.5m high pedestrian through-site link from Atchison Street to Atchison Lane, with an easement for public access between 6am and 11pm; and
2. a monetary contribution of \$1.4 million to Council for open space upgrades within the St Leonards and Crows Nest Precinct.

RECOMMENDATION:

1. THAT having completed the community consultation requirements outlined in the Gateway Determination, Council forward the Revised Planning Proposal (Attachment 3) to the Department of Planning and Environment with a request that a Local Environmental Plan be made in accordance with section 3.36 of the Environmental Planning and Assessment Act 1979, to give effect to the Planning Proposal.

2. THAT Council finalise the Voluntary Planning Agreement with the view to have it in force prior to the gazettal of the LEP amendment.

3. THAT Council write to the Minister for Planning seeking an undertaking to exempt this site, in the same manner that the Minister acted for 23-35 Atchison Street, from the application of any Special Infrastructure Contributions (SIC) on the basis of the delivery of defined public benefits within this Voluntary Planning Agreement.

4. THAT Council notify all submitters of its decision.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.4 Public open space and recreation facilities and services meet community needs

2. Our Built Infrastructure

2.1 Infrastructure and assets meet community needs

2.2 Vibrant centres, public domain, villages and streetscapes

2.3 Sustainable transport is encouraged

3. Our Future Planning

3.1 Prosperous and vibrant economy

3.4 North Sydney is distinctive with a sense of place and quality design

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

5.3 Community is informed and consulted

BACKGROUND

St Leonards/Crows Nest Planning Study – Precincts 2 & 3 (2015)

The *St Leonards/Crows Nest Planning Study – Precincts 2 & 3 (Planning Study)*, was adopted by Council in May 2015. The Planning Study provided a framework to manage the high level of development interest in St Leonards/Crows Nest, sustainably accommodate population growth in the North Sydney Local Government Area (LGA), stimulate job growth and deliver much needed public domain and services.

The Study identified the subject site as being located within the West of Oxley Street Creative Quarter – a vibrant precinct supporting a mix of creative industries, specialty retail, start-up businesses, galleries and cosmopolitan living options. The site was identified under the Planning Study's Built Form Strategy as having potential for uplift. In particular, the Planning Study identified following built form controls for the subject site:

1. maximum building height of 16 storeys; and
2. minimum non-residential FSR of 1.5:1.

St Leonards and Crows Nest 2036 Plan (2020)

In July 2016, the Minister for Planning announced that the Department of Planning, Industry and Environment (DPIE) would undertake a strategic planning investigation into the Crows Nest, St Leonards and Artarmon industrial areas (refer to Figure 1).



Figure 1 – St Leonards and Crows Nest Precinct.

On 15 October 2018, the DPIE released the draft *St Leonards and Crows Nest 2036 Plan* (draft 2036 Plan) and a suite of supporting documents for public exhibition. The draft 2036 Plan outlined capacity for significant residential and employment growth within the precinct (principally as a result of the new Crows Nest Metro station opening in 2024) and identified desired building heights, density (FSR), employment (non-residential FSR), land use, overshadowing and building setback controls.

On 29 August 2020, the final 2036 Plan was published by the DPIE. The final 2036 Plan identified the following built form controls for the subject site:

- maximum building height of 16 storeys;
- maximum overall floor space ratio (FSR) of 6:1; and
- minimum non-residential FSR of 1:1.

The final 2036 Plan was also accompanied by the Special Infrastructure Contribution (SIC) Scheme to help support growth within the precinct. The SIC scheme is a funding mechanism whereby a monetary contribution is levied on new residential development within the precinct to help deliver improvements to State and regional infrastructure assets.

Chronology and Milestones of the Planning Proposal Process to Date

6 April 2018 – Planning Proposal (No. 3/18) was lodged with Council. The Planning Proposal responded to Council’s *St Leonards/Crows Nest Planning Study – Precinct 2 & 3 (2015)* and initially sought to:

1. increase the maximum building height control applying the site from 20m to 61m (RL150);
2. establish an overall floor space ratio (FSR) control for the site of 6.9:1; and
3. increase the non-residential FSR control for the site from 0.6:1 to 2.2:1.

The Planning Proposal was accompanied by an indicative concept design which envisaged the site being developed to accommodate a 17-storey mixed use building with a 4-storey podium and 13-storey tower above.

23 May 2018 - a preliminary assessment letter was sent to the applicant requesting the concept scheme be revised to align with the maximum building height identified in Council's Planning Study, including any adjustment to the overall FSR sought. It was also requested that consideration be given to the public benefits identified in Council's Planning Study for inclusion in any proposed VPA.

February 2019 - Council received a revised Planning Proposal, which sought to:

1. increase the maximum building height control applying the site from 20m to 58.1m (RL147.1);
2. establish an overall floor space ratio (FSR) control for the site of 6.4:1; and
3. increase the non-residential FSR control for the site from 0.6:1 to 1.7:1.

The revised indicative concept design envisaged the site being developed to accommodate a 16-storey mixed-use building with a 3-storey commercial podium and 13-storey residential tower above containing a total 65 apartments.

The revised Planning Proposal was also accompanied by a draft Voluntary Planning Agreement (VPA) with an offer to provide monetary and in-kind contributions towards community infrastructure within the precinct.

25 July 2019 – Council met with the applicant to discuss the proposed VPA offer and requested the applicant submit a revised offer.

4 December 2019 – Council received a revised VPA offer which included the provision of a pedestrian through-site link along the western boundary of the site and a \$1.4 million monetary contribution towards the upgrade of Hume Street Park.

1 July 2020 – The North Sydney Local Planning Panel (NSLPP) considered the Council Officer's assessment report and recommendation and supported the Planning Proposal being forwarded to the DPIE for Gateway Determination, subject to the provision of a special clause for the height of the building to exclude the lift overrun for access to the communal rooftop.

27 July 2020 – Council resolved to support the Planning Proposal subject to it being amended to address the recommendations outlined in the Council Officer's assessment report, specifically a maximum building height control of 56m, and that a special clause be included

with the effect of clarifying that this control may be reasonably exceeded for those portions of the building designed to provide access to a communal rooftop.

Council resolved that the General Manager be provided with delegated authority to forward the Planning Proposal seeking a Gateway Determination, subject to the completion of the above amendments and satisfactory negotiation of the contents and detailed terms of the draft VPA.

It was also resolved that the applicant be requested to prepare a draft Green Travel Plan prior to commencement of public exhibition and that, upon receipt of a Gateway Determination, the associated draft VPA be exhibited concurrently with the Planning Proposal.

29 September 2020 - Council forwarded the Planning Proposal to the DPIE seeking a Gateway Determination in accordance with s3.34 of the EP&A Act 1979.

15 March 2021 – Council received a Gateway Determination enabling the Planning Proposal to proceed to public exhibition subject to meeting a number of conditions (see Attachment 1).

26 March 2021 - Council sought further clarification from the DPIE with respect to the conditions of the Gateway Determination.

09 April 2021 – an alteration of the Gateway Determination was received by Council, addressing an error within the description of the Planning Proposal (see Attachment 2).

12 April 2021 – Council sent a letter addressed to the DPIE's Director of Operations, Infrastructure and Place Division seeking an exemption from the Special Infrastructure Contribution (SIC) on the basis of there being a duplication between the public benefits proposed under the draft VPA and SIC Plan in relation to Hume Street Park.

04 May 2021 – a copy of the Planning Proposal and all relevant supporting material was forwarded to the Commonwealth Department of Transport, Infrastructure, Regional Development and Communications (DTIRDC) for comment prior to public exhibition, in accordance with Condition 6 of the Gateway Determination.

14 May 2021 - Council received an updated Planning Proposal package from the applicant, addressing Condition 1 of the Gateway Determination.

18 May 2021 – The updated Planning Proposal was submitted to the DPIE (via the NSW Planning Portal) for review and endorsement, in accordance with the conditions of the Gateway Determination.

8 June 2021 – Council received a letter from the DPIE advising that the Planning Proposal had been adequately updated to address Condition 1 of the Gateway Determination, with the exception of three minor typographical errors, which were to be updated prior to community consultation.

15 June 2021 – Council received a further updated Planning Proposal from the applicant, addressing the matters raised in the DPIE's letter dated 8 June 2021.

09 July 2021 – Council received a Green Travel Plan (GTP) from the applicant, in accordance with Council’s resolution from 27 July 2020.

19 July 2021 to 30 August 2021 – The Planning Proposal and associated draft VPA were publicly exhibited.

CONSULTATION REQUIREMENTS

Community engagement has occurred in accordance with Council’s *Community Engagement Protocol* and the relevant conditions of the Gateway Determination. The detail of this report provides the outcomes from the engagement for Council to consider prior to adoption.

DETAIL

1. Assessment against Gateway Determination Conditions

Ten (10) conditions were imposed on the Gateway Determination (refer to Attachment 1) and have been addressed in the following subsections.

1.1 Revision of Planning Proposal

Conditions 1 and 2 of the Gateway Determination required that:

1. *The planning proposal is to be amended to address the following matters and submitted to the Department for review and endorsement prior to public exhibition:*
 - a) *clearly specify a maximum height of building to 56m, consistent with the St Leonards and Crows Nest 2036 Plan;*
 - b) *include reference to the introduction of a new local provision for the site to allow a lift overrun providing access to a communal rooftop to exceed the height of building control to a maximum RL of 147.1m with a plain English explanation rather than a specific clause;*
 - c) *clarify that the Special Infrastructure Contribution (SIC) will apply to the site and any Voluntary Planning Agreement (VPA) is in addition to the application of the SIC;*
 - d) *provide mapping demonstrating the existing development controls on the site;*
 - e) *provide proposed and existing mapping to the Department’s technical standard;*
 - f) *include an updated project timeline in section 10 of the proposal;*
 - g) *amend the planning proposal to refer to Section 9.1 Ministerial Direction instead of the former Section 117 Ministerial Directions;*
 - h) *provide assessment against Section 9.1 Ministerial Direction 2.6 Remediation of Contaminated Land and provide a preliminary site investigation to demonstrate consistency with this Direction to the satisfaction of the delegate of the Minister;*
 - i) *provide assessment of the planning proposal against Section 9.1 Ministerial Direction 7.11 Implementation of St Leonards and Crows Nest 2036 Plan including*

- justification with any inconsistencies relating to Height of Building, FSR, setbacks and street wall height and remove all references to the 'draft' St Leonards and Crows Nest Plan;*
- j) remove references to revoked Section 9.1 Ministerial Directions and repealed SEPPs.*
- 2. Prior to community consultation, the planning proposal is to be revised to address condition 1 and forwarded to the Department for review and approval.*

On 14 May 2021, Council received a revised Planning Proposal package from the applicant addressing the matters raised in Condition 1 of the Gateway Determination. The revised Planning Proposal was submitted to the DPIE via the NSW Planning Portal on 18 May 2021 for review and endorsement as required by Condition 2 of the Gateway Determination.

On 8 June 2021, a letter was received from the DPIE advising that the Planning Proposal had been adequately updated to address Condition 1 of the Gateway Determination with the exception of three minor typographical errors, which were to be updated prior to community consultation. A further revised Planning Proposal was submitted to Council by the applicant on 15 June 2021, thus satisfying Conditions 1 and 2 of the Gateway Determination.

It should be noted that on 26 March 2021, Council sought further clarification from the DPIE on the conditions of the Gateway Determination, in particular Condition 1(c) which requested the proposal be updated prior to exhibition to clarify that the Special Infrastructure Contribution (SIC) will apply in addition to any negotiated VPA.

In response to Condition 1(c), Council wrote to the DPIE's Director of Operations, Infrastructure and Place Division on 12 April 2021 seeking an exemption from payment of the SIC for the site on the basis that VPA negotiations had commenced prior to the exhibition of the proposed SIC and there being a duplication between the public benefits proposed under the draft VPA and SIC Plan, in relation to Hume Street Park.

It was noted in Council's letter that the DPIE has previously granted an 'exemption' from payment of the SIC for 100 Christie Street, 575 Pacific Highway and 23-35 Atchison Street, on the basis that VPA negotiations had commenced prior to the exhibition of the proposed SIC and that the VPA delivered or contributed towards the provision of open space.

At the time this report was prepared, Council was yet to receive a response from the DPIE in relation to the application of the SIC. Should payment of the SIC be imposed in addition to any VPA, the applicant has the right to request a review of the draft VPA, with the value of public benefits proposed to take into consideration payment of the SIC. This is in accordance with the agreed terms of the draft VPA.

1.2 Uploading documentation to the Planning Portal

Condition 3 of the Gateway Determination required that:

- 3. All documentation submitted with the Gateway determination request is uploaded to the NSW Planning Portal within 14 days.*

On 26 March 2021, Council sought further clarification from the DPIE on the documentation required to be uploaded to the NSW Planning Portal and the timeframes imposed under Condition 3. Council was advised that the intent of the condition was administrative in nature and did not require all the updates to the Planning Proposal required under the Gateway Determination to be made within 14 days.

Council uploaded the revised Planning Proposal addressing Condition 1 of the Gateway Determination, and all supporting documentation submitted to the DPIE for the Gateway Determination, onto the NSW Planning Portal on 18 May 2021.

1.3 Pre-community consultation

Condition 6 of the Gateway Determination required that the Planning Proposal be referred to the *Commonwealth Department of Transport, Infrastructure, Regional Development and Communications (DTIRDC)* for comment prior to public exhibition in accordance with the Section 9.1 Direction 3.5 Development Near Regulated Airports and Defence Airfields.

A copy of the Planning Proposal and all relevant supporting material was forwarded to DTIRDC prior to public exhibition, and again concurrently with public exhibition. Council received two (2) duplicate submissions from DTIRDC.

A summary and a response to the comments is provided below:

1.3.1 Commonwealth Department of Transport, Infrastructure, Regional Development and Communications (DTIRDC)

The DTIRDC advised the following:

As the maximum height of the proposed development is below the height of the Obstacle Limitation Surface (OLS) for Sydney Airport, the proposal is not considered to constitute a controlled activity in this particular instance. However, if there is an increase to the height of the building or if the crane activity associated with the development proposal may intrude into the OLS, an approval should be sought from Sydney Airport prior to construction commencing.

The DTIRDC recommended that the proponent continue to advise Sydney Airport of the planned final height of the building as well as any associated crane activities.

Comment: Noted. Consultation with Sydney Airport Corporation Limited (SACL) was undertaken concurrently with the public exhibition of the Planning Proposal. A summary and response to the comments is provided under section 2.2.1 of this report.

1.4 Public Exhibition

Condition 4 and 5 of the Gateway Determination required that:

4. *Any Council endorsed Voluntary Planning Agreement (VPA) is to be exhibited concurrently with the planning proposal.*
5. *Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:*
 - a) *the planning proposal must be made publicly available for a minimum of **28 days**; and*
 - b) *the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment, 2018).*

The Planning Proposal and accompanying draft VPA was on public exhibition from 19 July 2021 to 30 August 2021 inclusive (total 42 days). Public exhibition was initially scheduled from 19 July 2021 to 16 August 2021 (i.e. 28 days in accordance with Condition 5(a) of the Gateway Determination), however the exhibition period was extended by a further two weeks to 30 August 2021 to allow further time for submissions to be received given the current Covid restrictions.

Council notified all landowners who are directly affected by the Planning Proposal and those who may be impacted by the Planning Proposal of its public exhibition.

1.5 Consultation with Public Bodies

Condition 6 of the Gateway Determination also required consultation be undertaken with several aviation authorities/organisations under section 3.34(2)(d) of the EP&A Act and/or to comply with the requirements of relevant Section 9.1 Directions concurrently with public exhibition.

The following public authorities/organisations were consulted concurrently with the public exhibition of the Planning Proposal:

- *Commonwealth Department of Transport, Infrastructure, Regional Development and Communications (DTIRDC);*
- *Sydney Airport Corporation Limited (SACL);*
- *Airservices Australia;*
- *Civil Aviation Safety Authority (CASA);*
- *Ausgrid;*
- *Sydney Water; and*
- *Transport for NSW (TfNSW).*

Council received responses from all the above listed public authorities, with the exception of Ausgrid.

A summary and response to their comments is provided within sections 2.2 of this report.

1.6 Public Hearing

Condition 7 did not require the undertaking of a public hearing in accordance with s. 3.34(2)(e) of the Environmental Planning and Assessment Act 1979. No hearing was held.

1.7 Timeframes

Condition 1(f) of the Gateway Determination required the Planning Proposal be revised to include an updated project timeline. The revised planning proposal, including the updated project timeframes, were submitted to and endorsed by the DPIE on 8 June 2021, prior to public exhibition.

Accordingly, the initial timeframes outlined in Condition 8 and 9 of the Gateway Determination are superseded by the revised timeframes outlined below (refer to Table 1), with the proposal having been exhibited and reported to Council for final recommendation within the endorsed revised timeframes.

Stage	Timeframe and/or Date
Consideration by North Sydney Council	April 2018
Council determination of Planning Proposal	July 2020
Request for Gateway Determination sent to DPIE	September 2020
Gateway Determination Issued to Council	March 2021
Submission of amended Planning Proposal to DPIE for approval	June 2021
Public exhibition	July – August 2021
Council considered post-exhibition report	October 2021
Submission to DPIE requesting making of LEP	October 2021
Drafting of LEP and Gazettal	March 2022

Table 1: Project Timeline (extract from Planning Proposal Report, p. 58)

It is also intended that the timeframe for completing the LEP will be within 12 months of the date of the Gateway Determination, in accordance with Condition 10 of the Gateway Determination.

2. Consideration of Submissions

A total of 12 submissions were received in response to the public exhibition of the Planning Proposal, which comprised the following:

- 5 public submissions; and
- 7 authority submissions.

A summary and response to all public submissions received are located in the attached Submissions Summary Table (refer to Attachment 5).

These submissions are further discussed in the following subsections.

2.1 Public Submissions

All 5 public submissions received objected to the proposal. The submissions were mostly from owners/occupies from surrounding buildings, notably 15 Atchison Street and 48 Atchison Street.

Two (2) of the public submissions received related to other Development Applications and Planning Proposals (either already approved or under assessment by Council) for adjacent sites, however the issues raised could be equally relevant to the subject proposal and have been considered within this report.

The key issues raised in the public submissions are discussed in detail in the following subsections. Most of the issues relate to height, overshadowing, wind, noise, environmental and traffic impacts, and other concerns relating to proposed public benefits.

2.1.1 Height

All 5 public submissions received objected to the number of Development Applications and Planning Proposals seeking increased building heights in St Leonards and the cumulative impact of high-rise development on the wellbeing of local residents. It was suggested that the existing maximum building height controls under NSLEP 2013 be adhered to.

In particular, one (1) submission noted that high-rise developments are already well served within future plans and constructions along the Pacific Highway and objected to high-rise development being extended into the quieter eastern side of St Leonards. It was suggested that by allowing a building height of 56m, the proposal would set a precedent impacting surrounding dwellings and destroying the village character and atmosphere of St Leonards East.

Comment:

The proposal is seeking a height of 56m to accommodate a 16-storey mixed use development. The proposal also seeks to introduce a site-specific clause to allow portions of the building designed to provide access to a communal rooftop to exceed this control to a maximum building height of 58.1m. This was supported by the North Sydney Local Planning Panel (NSLPP) and is consistent with the desired outcomes of the Council and community endorsed, *SLCN Planning Study – Precincts 2 & 3* and the DPIE's *2036 Plan*. The proposal is largely consistent with the recommendations for a mixed-use development comprised of a maximum of 12 storey residential tower over a 4-storey podium for the site.

The building height controls identified in the *SLCN Planning Study Precincts 2&3* and the *2036 Plan* are informed by 'stepping down' and 'height transition' principles. This is based on the principle of concentrating height and density around mass public transport, employment and services to more sustainably support population growth with the lowest levels of traffic generation and the ability to more likely deliver well-located public benefits to support any additional population.

The height transition principles of the 2036 Plan, require taller buildings to be located 150-200m of either station and transition in height, and bulk and scale away from Pacific Highway to the surrounding neighbourhood areas. The focus of height is referred to as the 'knuckle area.'

As shown in Figure 2 below, the subject site is located outside the 'knuckle area' and in a buffer area for transition to the lower density residential areas to the east of Oxley Street. At 58.1m (16 storeys), it is considered that the proposal would not unacceptably break the transition of heights from the Pacific Highway towards Willoughby Road.

The preparation of the 2036 Plan has taken into account community values of the area's village character, particularly Willoughby Road, heritage conservation areas, health facilities and leafy streets. One of the 2036 Plan's key principles for 'place' is extending this village character through the identification of Atchison Street as a 'civic street'. The 2036 Plan supports the role and function of this street as an active space by requiring new development to adopt reverse setbacks and provide retail uses at the ground level to improve the interface between new buildings and the public domain.

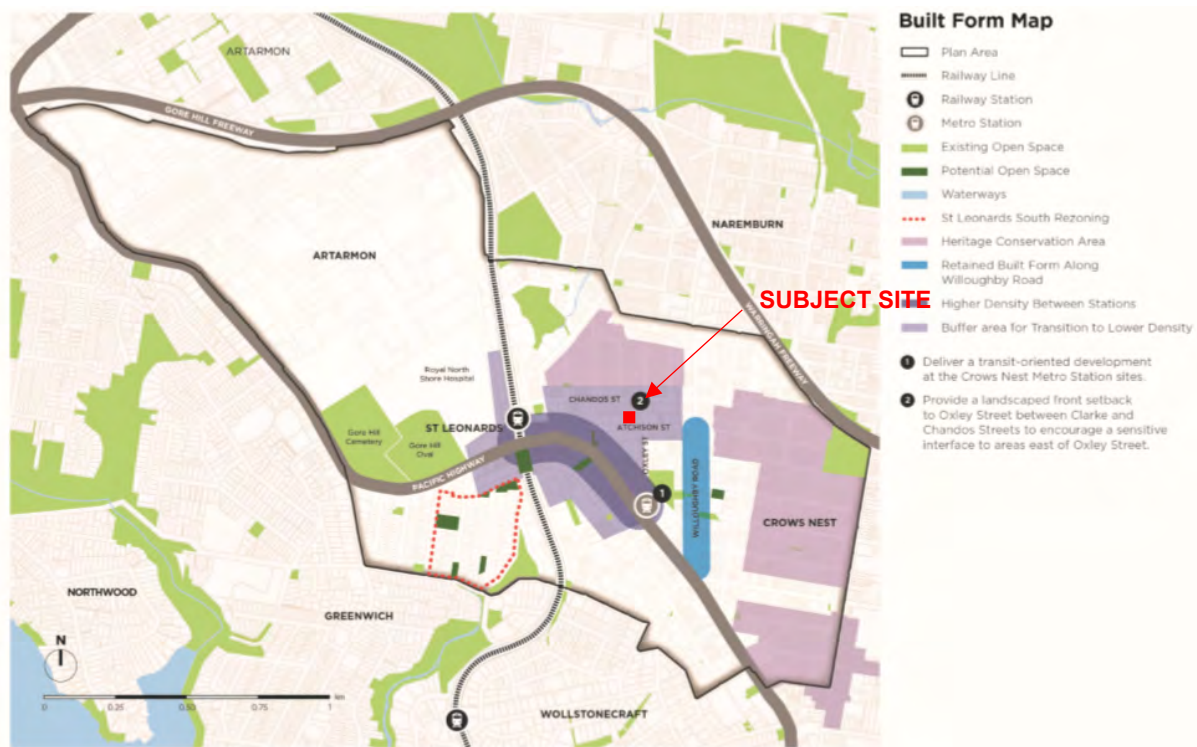


Figure 2: Built Form Map (extract from 2036 Plan, p. 32)

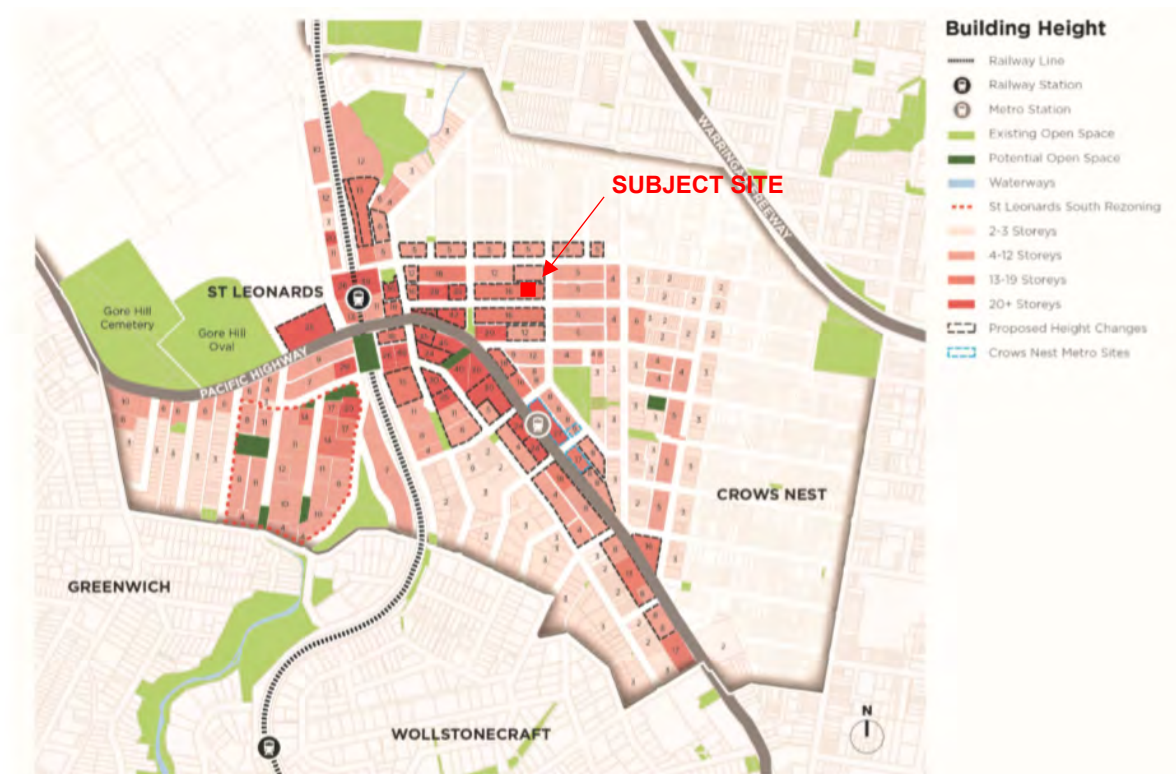


Figure 3: Building Height Map (extract from 2036 Plan, p. 66)

2.1.2 Overshadowing

One of the most common concerns raised related to the extent of overshadowing that the proposed increase in height would create to surrounding properties, which were purchased under an existing building height limitation of 20m. In particular, concern was raised with respect to the proposal's impact on north and north-east facing dwellings at 15 Atchison Street. It was suggested that the proposed height be reduced to mitigate adverse solar access impacts.

Comment:

In a dense urban environment, there is an inevitable degree of overshadowing expected when redevelopment occurs. During the preparation of the *SLCN Planning Study – Precincts 2 & 3* and *2036 Plan*, it was recognised that, whilst additional height and density may lead to impacts on residential amenity (such as solar access), the concentration of appropriate mixed-use development in close proximity to mass public transport, employment and services would better accommodate significant housing and job targets, than dispersing this growth throughout broader areas of surrounding neighbourhoods with lower levels of accessibility.

The applicant's shadow analysis indicates that the proposal will have some overshadowing impact to buildings to the west and south of the site and the public domain to the south-east of the site, in particular:

- apartments along the eastern elevation at 40-48 Atchison Street ('The Arden') between 9am-11am;

- apartments along the northern elevation at 15 Atchison Street between 9am – 12noon;
- the proposed development at 23-35 Atchison Street between 12noon-3pm; and
- the proposed Oxley Street linear park between 2pm-3pm.

The proponent has provided a 6m setback above the podium along the eastern and western elevations resulting in a slender tower form to help minimise overshadowing impacts to surrounding mixed-use developments. The slenderness of the tower ensures that any shadows cast are narrow and impacts on nearby properties are short term.

The 2036 Plan recommends a maximum building height of 16 storeys on the subject site (refer to Figure 3). Therefore, the solar impacts are an expected outcome as part of any redevelopment on the subject site under this Plan. Notwithstanding, additional design and architectural considerations can still be explored at the DA stage to ensure overshadowing impacts to surrounding properties and the public domain are minimised as far as possible within the proposed planning controls.

2.1.3 Wind

A number of submissions raised concerns with respect to the proposal's impact on existing wind conditions, particularly at the street level and increased wind tunnels in St Leonards.

Comment:

As outlined in the *2036 Plan* under the precinct wide objectives for 'liveability', new developments are expected to have consideration to wind impacts demonstrated through a wind assessment.

The applicant has not provided a formal wind assessment at this stage, however the Planning Proposal's Concept Plan illustrates that the intended built form will incorporate an awning which will help mitigate wind impacts on the public domain. Notwithstanding, a further detailed design at the DA stage will need to be accompanied by a Wind Impact Report and demonstrate pedestrian comfort is not adversely affected by wind at footpaths and public outdoor spaces, in accordance with NSDCP 2013.

2.1.4 Noise

One (1) submission raised concerns with respect to the proposed location of the communal open space area at the rooftop and resulting noise impacts to residents in adjoining buildings.

Comment:

A further detailed design at the DA stage will need to consider noise transmission within and between dwellings and demonstrate a reasonable level of acoustic privacy and amenity to nearby residents as required under NSDCP 2013.

2.1.5 Environment

One (1) submission objected to the proposal on the basis that the increased number of dwellings would result in increased energy consumption, contrary to Council's reduced energy commitments.

Comment:

It is acknowledged that energy use in buildings makes the largest contribution to the North Sydney's greenhouse gas emissions. North Sydney Council is committed to a community greenhouse gas emissions reduction target of 25% by 2030 from 1996 baseline levels.

The reduction in community emissions to date is largely attributed to improved energy efficiency measures such as upgraded buildings investing in the latest technology, improved new building design, residents switching to LED lighting and more efficient appliances. The energy requirements for residential and commercial buildings are set under State Building Sustainability Index (BASIX) legislation and a certificate of compliance will be required at the DA stage.

As outlined in section 2.1.1 and 2.1.2 of this report, North Sydney Council seeks to minimise resource consumption by concentrating increased density around transport nodes and transport corridors, with reduced on-site parking requirements to ensure the effective take-up of walking, cycling and public transport use. The implementation of integrated transport and planning outcomes is being actively pursued through Council's planning studies.

2.1.6 Traffic Management and Vehicular Access

A number of submissions raised concerns with respect to the capacity of existing infrastructure, in particular the capacity and safety of Atchison Lane, to cope with the increased number of entrances to basement car parks and vehicular movements associated with the increased number of residential dwellings proposed.

Concern was also raised in relation to traffic generation and pedestrian safety along Oxley Street, which has recently been upgraded to improve pedestrian access and a village atmosphere.

Comment:

The Transport Impact Assessment (TIA) prepared by the proponent states that through the provision of parking consistent with the maximum parking rates identified in NSDCP 2013 (i.e. 32 off-street parking spaces), the *'potential net increase in traffic associated with the proposal is negligible and is not envisaged to affect the existing intersection performances adversely.'* The TIA indicates that the proposal will generate a net additional 2 vehicles during both AM and PM peak hours and *'it is expected that surrounding key roads will continue to operate in the same way.'*

A draft Green Travel Plan (GTP) has been prepared by the proponent identifying travel demand management measures that can be incorporated into the development to reduce the number of car trips and increase the share of walking, cycling, public transport use.

Vehicle access to the basement car park is proposed to be maintained on Atchison Lane, with the location unchanged from the existing arrangement. The loading dock is also proposed adjacent to the car park ramp. An analysis of vehicles entering and existing the proposed development has been included in the TIA to demonstrate satisfactory operation of the proposed Atchison Lane access.

The submitted documentation is considered satisfactory for the purpose of assessing the traffic implications of the proposal. Notwithstanding, further attention to detail of future vehicular accessway and basement design will be required at the DA stage.

2.1.7 Public Benefits

One (1) submission objected to the public benefits proposed under the draft VPA as a trade-off for allowing an increase in building height and stated that the proposed monetary contribution to Council is not commensurate to the level of impact.

Comment:

The *SLCN Planning Study – Precincts 2 & 3* identifies a set of public benefits (including new and improved open space, a multi-purpose art centre, childcare facility) that are considered critical to support future development within the precinct. The public benefits offered as part of the draft VPA, which includes a \$1.4 million monetary contribution towards the upgrade of Hume Street Park and provision of a pedestrian through-site link, are largely consistent with the items identified in Council's study and the *2036 Plan* to help meet the needs of the community.

In accordance with Council's VPA policy, it is Council's expectation that the public benefit provided by the proponent is commensurate to the land value uplift resulting from the proposed changes to the planning controls. Council has sought the advice of an independent property consultant and land valuer to assess the value uplift which will result from the Planning Proposal and considers the value of the public benefits offered fair and reasonable.

2.2 Consideration of Public Authority Submissions

Council received 7 submissions (including 2 duplicate submissions) from the following aviation authorities/public organisations:

- *Commonwealth Department of Transport, Infrastructure, Regional Development and Communications (DTIRDC);*
- *Sydney Airport Corporation Limited (SACL);*
- *Airservices Australia;*
- *Civil Aviation Safety Authority (CASA);*
- *Sydney Water; and*

- *Transport for NSW (TfNSW).*

An assessment of these submissions is provided in the following subsections.

Please note, a summary and response to the comments provided by the DTIRDC is provided under section 1.4.1 of this report.

2.2.1 Sydney Airport Corporation Limited

Sydney Airport Corporation Limited (SACL) indicated that they had no objection to the maximum height of buildings sought under the Planning Proposal. They advised that:

The application sought approval for the PROPERTY DEVELOPMENT to a height of 146.1 metres Australian Height Datum (AHD).

In my capacity as Airfield Design Manager and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, I have no objection to the erection of this development to a maximum height of 146.1 metres AHD.

The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

Should you wish to exceed this height a new application must be submitted.

Comment:

It is noted that SACL have no issues with the proposed maximum height of buildings control sought under the Planning Proposal. Should there be any cranes erected at the future construction stage, clause 6.15 of *NSLEP 2013* will require these matters to be taken into consideration when assessing a Development Application (DA).

2.2.2 Airservices Australia

Airservices Australia did not have any comment on the Planning Proposal at this stage. It was advised that any future DA on the site would need to be assessed by the operator of Sydney Airport first, and if further assessment is required, the operator of Sydney Airport will request assessment from Airservices Australia.

Comment:

It is noted that Airservices Australia has no issues with the proposed maximum height of buildings control sought under the Planning Proposal. SACL was consulted as part of the public exhibition of the proposal. (refer to section 2.2.1 of this report for a summary of the comments provided by SACL).

2.2.3 Civil Aviation Safety Authority

CASA indicated they had no objection to the proposed maximum height of buildings control sought under the Planning Proposal, as the proposed building will not infringe the prescribed airspace for Sydney Airport.

Comment:

It is noted that CASA has no issues with the proposed maximum height of buildings control sought under the Planning Proposal.

2.2.4 Sydney Water

The submission from Sydney Water comments on water and wastewater access points and provides advice on how connections could be made and approvals sought at the time that development was to occur.

Comment:

Noted. This will be addressed at the DA stage.

2.2.5 Transport for NSW

Transport for NSW (TfNSW) indicated they had no objection to the Planning Proposal. However, it was noted that the Hume Street Park Upgrade is an identified open space project under the *2036 Plan* and SIC Scheme and that the draft VPA indicates a \$1.4 million monetary contribution towards the upgrade of Hume Street park. It was suggested:

Should the monetary contribution be applied towards the Hume Street Park, Council and the Department of Planning, Industry and Environment may wish to consider whether this may qualify for SIC offset provisions noting this is identified in the SIC.

Comment:

On 12 April 2021, Council wrote to the DPIE's Director of Operations, Infrastructure and Place Division on 12 April 2021 seeking an exemption from payment of the SIC for the site on the basis of there being a duplication between the public benefits proposed under the draft VPA and SIC Plan, in relation to Hume Street Park. At the time this report was prepared, Council was yet to receive a response from the DPIE on this matter.

CONCLUSION

The main issues raised in the five (5) submissions objecting to the proposal included concerns about height and associated amenity impacts to surrounding dwellings and streetscape (overshadowing, wind, noise, environmental and traffic impacts). Concerns were also raised

with respect to the public benefits proposed under the draft VPA and whether they are commensurate to the level of impact.

It is acknowledged that additional height and density may lead to impacts on residential amenity, however these impacts need to be considered in the context of the broader strategic direction of the St Leonards and Crows Nest area and its designation as a 'strategic centre' by the NSW State Government. The precinct is undergoing significant change and North Sydney Council have proactively sought to manage this change appropriately through significant planning work.

The proposal presents an opportunity for Council to realise the objectives and outcomes of the community endorsed *St Leonards/Crows Nest Planning Study – Precincts 2 & 3* and the DPIE's *St Leonards and Crows Nest 2036 Plan*, along with the associated public benefits defined in the accompanying draft VPA. Notable is the monetary contribution of \$1.4 million to Council towards the upgrade of Hume Street Park or other open space opportunities in the area.

It is noted that no objection to the proposal was raised in the seven (7) submissions received from public authorities/organisations.

Given the proposal's consistency with the desired visions and principles of the studies mentioned above, it is recommended that the Planning Proposal be forwarded to the DPIE with a request that the plan be made under the EP&A Act.

Attachment 1



Planning,
Industry &
Environment

Gateway Determination

Planning proposal (50-56 Atchison Street, St Leonards): to amend the North Sydney Local Environmental Plan (LEP) 2013 for land at 50-56 Atchison Street, St Leonards to increase the maximum height of buildings from 20m to 56m, increase the maximum floor space ratio from 0.6:1 to 6.4:1, increase the maximum non-residential floor space ratio from 0.6:1 to 1.7:1 and introduce a site-specific provision for a lift overrun providing access to a communal rooftop to exceed the height of building control.

I, the Executive Director at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the North Sydney Local Environmental Plan (LEP) 2013 to increase the maximum height of buildings from 20m to 56m, increase the maximum floor space ratio from 0.6:1 to 6.4:1, increase the maximum non-residential floor space ratio from 0.6:1 to 1.7:1 and introduce a site-specific provision for a lift overrun providing access to a communal rooftop to exceed the height of building control, should proceed subject to the following conditions:

1. The planning proposal is to be amended to address the following matters and submitted to the Department for review and endorsement prior to public exhibition:

The planning proposal is to be updated to:

- (a) clearly specify a maximum height of building to 56m, consistent with the St Leonards and Crows Nest 2036 Plan;
- (b) include reference to the introduction of a new local provision for the site to allow a lift overrun providing access to a communal rooftop to exceed the height of building control to a maximum RL of 147.1m with a plain English explanation rather than a specific clause;
- (c) clarify that the Special Infrastructure Contribution (SIC) will apply to the site and any Voluntary Planning Agreement (VPA) is in addition to the application of the SIC;
- (d) provide mapping demonstrating the existing development controls on the site;
- (e) provide proposed and existing mapping to the Department's technical standard;
- (f) include an updated project timeline in section 10 of the proposal;
- (g) amend the planning proposal to refer to Section 9.1 Ministerial Direction instead of the former Section 117 Ministerial Directions;
- (h) provide assessment against Section 9.1 Ministerial Direction 2.6 Remediation of Contaminated Land and provide a preliminary site investigation to demonstrate consistency with this Direction to the satisfaction of the delegate of the Minister;

- (i) provide assessment of the planning proposal against Section 9.1 Ministerial Direction 7.11 Implementation of St Leonards and Crows Nest 2036 Plan including justification with any inconsistencies relating to Height of Building, FSR, setbacks and street wall height and remove all references to the 'draft' St Leonards and Crows Nest Plan;
 - (j) remove references to revoked Section 9.1 Ministerial Directions and repealed SEPPs.
2. Prior to community consultation, the planning proposal is to be revised to address condition 1 and forwarded to the Department for review and approval.
3. Ensure all documentation submitted with the Gateway determination request is uploaded to the NSW Planning Portal within 14 days.
4. Any Council endorsed Voluntary Planning Agreement (VPA) is to be exhibited concurrently with the planning proposal.
5. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
6. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with Section 9.1 Directions:
 - Ausgrid;
 - Sydney Airport Corporation Limited (SACL);
 - Airservices Australia;
 - Civil Aviation Safety Authority (CASA);
 - Commonwealth Department of Transport, Infrastructure, Regional Development and Communications (DTIRDC);
 - Sydney Water; and
 - Transport for NSW (TfNSW).

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal. Consultation with the Commonwealth Department of Transport, Infrastructure, Regional Development and Communications (DTIRDC) is required prior to public exhibition in accordance with the Section 9.1 Direction 3.5 Development Near Regulated Airports and Defence Airfields.
7. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to reclassifying land).

(IRF20/5617)

8. The planning proposal must be exhibited **3 months** from the date of the Gateway determination.
9. The planning proposal must be reported to council for a final recommendation **9 months** from the date of the Gateway determination.
10. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.

Dated 15 day of March 2021.

A handwritten signature in blue ink, appearing to read 'M. McDonald'.

Malcolm McDonald
Executive Director, Eastern Harbour City
Greater Sydney, Place and Infrastructure
Department of Planning, Industry and Environment

Delegate of the Minister for Planning and Public Spaces

(IRF20/5617)

Attachment 2



Planning,
Industry &
Environment

Alteration of Gateway Determination

Planning proposal (50-56 Atchison Street, St Leonards):

I, the Director, North District at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 56(7) of the *Environmental Planning and Assessment Act 1979* (the Act) to alter the Gateway determination dated 15 March 2021 for the proposed amendment to the North Sydney Local Environmental Plan (LEP) 2013 as follows:

1. Change the description of the planning proposal

from:

"I, the Executive Director at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the North Sydney Local Environmental Plan (LEP) 2013 to increase the maximum height of buildings from 20m to 56m, increase the maximum floor space ratio from 0.6:1 to 6.4:1, increase the maximum non-residential floor space ratio from 0.6:1 to 1.7:1 and introduce a site-specific provision for a lift overrun providing access to a communal rooftop to exceed the height of building control, should proceed subject to the following conditions":

to:

a new description "I, the Executive Director at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the North Sydney Local Environmental Plan (LEP) 2013 to increase the maximum height of buildings from 20m to 56m, introduce a maximum floor space ratio of 6.4:1, increase the minimum non-residential floor space ratio from 0.6:1 to 1.7:1 and introduce a site-specific provision for a lift overrun providing access to a communal rooftop to exceed the height of building control, should proceed subject to the following conditions:"

A handwritten signature in blue ink, reading "Brendan Metcalfe".

Dated 9th day of April 2021

Brendan Metcalfe
Director, North District, Eastern Harbour City
Greater Sydney, Place and Infrastructure
Department of Planning, Industry and Environment
Delegate of the Minister for Planning and Public
Spaces

Attachment 3

URBIS

REQUEST FOR PLANNING PROPOSAL

50-56 Atchison Street, St
Leonards

Prepared for
EPIC LEISURE PTY LTD
July 2021

URBIS STAFF RESPONSIBLE FOR THIS REPORT WERE:

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Associate Director	Christophe Charkos
Consultant	Eliza Scobie
Project Code	P005132
Report Number	Planning Proposal_50-56 Atchison Street – Post-Gateway (Final Version 3)

All information supplied to Urbis in order to conduct this research has been treated in the strictest confidence. It shall only be used in this context and shall not be made available to third parties without client authorisation. Confidential information has been stored securely and data provided by respondents, as well as their identity, has been treated in the strictest confidence and all assurance given to respondents have been and shall be fulfilled.

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1. INTRODUCTION

1.1. OVERVIEW

This Request for Planning Proposal (**Planning Proposal**) has been prepared by Urbis for Epic Leisure Pty Ltd (**the proponent**) to request that North Sydney Council amend the North Sydney Local Environmental Plan 2013 (**NSLEP 2013**). This report follows the issue of the Gateway Determination for the proposal on 15 March 2021.

The planning proposal relates to the land at 50-56 Atchison Street, St Leonards (**the site**). The amendment will enable the development of a mixed-use retail/commercial and residential building on the site.

The proposed amendments to the NSLEP 2013 are as follows:

- Increase the maximum building height control from 20m to 56m (RL145);
- Introduce a maximum floor space ratio (**FSR**) of 6.4:1;
- Increase the minimum non-residential FSR control from 0.6:1 to 1.7:1; and
- Introduce a new site-specific provision that allows a lift overrun to provide access to communal open space at the rooftop to exceed the maximum building height control to a maximum building height of 58.1m (RL147.1).

1.2. REPORT STRUCTURE

The Planning Proposal has been prepared under Section 3.33 of the *Environmental Planning and Assessment Act 1979* (**the EP&A Act**). The NSW Department of Planning, Industry and Environment (**DPIE**) has prepared the following guidelines which have been considered in this planning proposal: *A Guide to Preparing Local Environmental Plans* and *A Guide to Preparing Planning Proposals*.

The report contains the following information:

- Description of the site and its context;
- Overview of the strategic context of the site;
- Summary of the local planning controls;
- Description of concept proposal;
- Statement of the objectives and intended outcomes of the proposal;
- Explanation of the 'provisions' of the proposal;
- A justification for the proposal;
- The expected process for community consultation; and
- An indicative project timeline.

The following supporting documents accompany the Planning Proposal:

- Concept Design Report - prepared by Kann Finch (**Appendix A**);
- Concept Architectural Plans – prepared by Kann Finch (**Appendix B**);
- Transport Impact Assessment – prepared by ARUP (**Appendix C**);
- Waste Management Plan – prepared by Elephants Foot (**Appendix D**);
- Building Services Report – prepared by Cardno (**Appendix E**);
- Preliminary Site Investigation – prepared by Douglas Partners (**Appendix F**).
- Endorsed Voluntary Planning Agreement – prepared by Sparke Helmore Lawyers (**Appendix G**).
- Existing Technical LEP Mapping – obtained from North Sydney Council (**Appendix H**).
- Proposed Technical LEP Mapping – prepared by North Sydney Council (**Appendix I**).
- Green Travel Plan – prepared by ARUP (**Appendix J**).

2. SITE AND SURROUNDING CONTEXT

2.1. THE SITE

The site is known as 50-56 Atchison Street, St Leonards. As shown in **Figure 1**, the site has a primary street frontage to Atchison Street and secondary street frontage to Atchison Lane. The site is located between Oxley Street to the east and Mitchell Street to the west.

Figure 1 Aerial Photograph of the Site



Source: Kann Finch

As shown in **Figure 2**, the site is located 400 metres from St Leonards train station and around 200m from the nearest entrance to the future Crow's Nest metro station. The site is located on the eastern edge of St Leonards within walking distance of the St Leonards and Crows Nest town retail centres.

Figure 2 Surrounding Context and Distance to existing and future stations



The site is occupied by two commercial buildings on separate titles as outlined in **Table 1** below.

Table 1 Property Description and Existing Development

Property Description	Legal Description	Existing Description
50 Atchison Street	Lot 7 Sec 11 DP 2872	2 storey commercial building with frontage to Atchison Street and secondary vehicular access from Atchison Lane
52 – 56 Atchison Street	Lots 5 and 6 Sec 11 DP 2872	3 storey commercial building with frontage to Atchison Street and secondary vehicular access from Atchison Lane.

The site has a fall from east to west of 2.3 metres along Atchison Street. The site has an area of 1080 sqm comprising boundary dimensions as described in **Table 2** below.

Table 2 Site Boundaries

Boundary	Description	Distance
Southern Boundary	Primary frontage to Atchison Street	30m
Northern (rear)	Secondary frontage to Atchison Lane	30m
Eastern Boundary	Adjoins 58 Atchison	36m
Western Boundary	Adjoins 48 Atchison Street	36m

2.2. SURROUNDING CONTEXT

2.2.1. Land Use Context

The site is located within the North Sydney Local Government Area (**LGA**). Administratively, St Leonards is split between North Sydney, Willoughby and Lane Cove LGA's.

St Leonards is located on Sydney's Lower North Shore. St Leonards is strategically located to high frequency public transport which connects it to the nearby centres of Sydney, North Sydney, Chatswood and Macquarie Park.

The land uses in St Leonards comprise a mix of uses including:

- Medical and hospital related uses associated with The Royal North Shore Hospital.
- Older B and C grade commercial office stock.
- Recently constructed and/or approved mixed use developments.

St Leonards is split east-west by the Pacific Highway and north-south by the North Shore Railway Line. St Leonards is undergoing urban renewal from a lower grade commercial office centre to a thriving mixed-use centre.

The urban renewal of St Leonards has been underpinned by:

- The existing strategic planning framework and priority precinct program.
- Ongoing major upgrade to the nearby Royal North Shore Hospital.
- Substantial State Government investment in the Sydney Metro and new Crows Nest Metro Station.

Recent developments include medium and high rise commercial and multi-storey mixed-use residential buildings. Some lower density residential uses remain on the fringe of the CBD to the east of Oxley Street. These areas are likely to undergo significant transition to higher densities as part of the priority precinct *St Leonards Crows Nest*. Currently under investigation by the NSW State Government.

Key land uses near the site include:

- **The Forum:** A 38 storey mixed use development built over the St Leonards railway station. The Forum includes local facilities including a supermarket, gym, restaurants and other essential services.
- **Royal North Shore Medical Precinct:** The Medical precinct comprises the Royal North Shore Hospital (RNSH), North Shore Private Hospital and the Northern Sydney Institute of TAFE. The hospital is a major employer and economic driver for the area.
- **Commercial offices:** The main commercial area is located east of the railway line. This area is characterised by a mix of commercial buildings, medical and allied health premises, hotel and residential apartments. No new commercial office buildings have been constructed east of the rail line for over 10 years.
- **Emerging mixed-use residential development:** St Leonards is undergoing transition to a mixed-use centre. New planned residential towers will transform the development profile and land uses within St Leonards. The centre will support greater diversity of uses including residential apartments above commercial podiums. At the street level, new retail uses provide activity which add to the character and vibrancy of the area.

2.2.1.1. Royal North Shore Hospital

The Royal North Shore Hospital (**RNSH**) is a major regional hospital and serves the surrounding Local Government Areas (LGAs). The hospital is a principle tertiary referral centre and NSW Trauma Centre. RNSH also includes specialist state wide health services. RNSH is a tertiary teaching hospital of the University of Sydney (medicine, allied health), University of Technology, Sydney (nursing), and Australian Catholic University (nursing and allied health).

RNSH is currently undergoing a major upgrade. Construction of the Acute Care building was recently completed in 2015. A 10,000sqm "support zone" is also planned to complement the redevelopment of RNSH. This zone will include:

- Staff accommodation,
- Childcare facilities,
- Administration buildings, car parking, and
- Commercial / retail uses.

Health care services are significant employers within St Leonards. Based on 2011 census data, up to 25% of jobs within the suburb were provided by the health care sector. The importance of the health industry to local employment is emphasised within the North District Plan (GSC, 2018) and the Interim Statement for St Leonards and Crows Nest (DPE, 2017). Future development will leverage the existing medical assets to strengthen the role of the precinct. This will create knowledge-intensive jobs in the health, medical education and ancillary industries. This growth will support housing and infrastructure within the precinct.

2.2.2. St Leonards-Crows Nest Area

The St Leonards-Crows Nest area has undergone significant planning and growth in accordance with the strategic growth opportunities for the area, and the development of the Crows Nest Metro Station. This development has largely redefined the character of St Leonards, resulting in a medium-high density centre with mixed-use and employment functions. Mixed use development will enable the renewal of older commercial stock whilst also providing for additional housing. This renewal allows the commercial function of the centre to continue. Retail frontages will activate the precinct outside traditional office hours in the evening and on the weekends.

These changes are supported by the *St Leonards Crows Nest 2036 Plan*, which aims to revitalise the area and create a thriving economy of work opportunities in the industrial, medical, research and commercial sectors. The location of the site within the St Leonards-Crows Nest area is identified in 'red' in **Figure 3**.

Figure 3 Identification of the site in the St Leonards Crows Nest area



Source: *St Leonards-Crows Nest 2036 Plan*

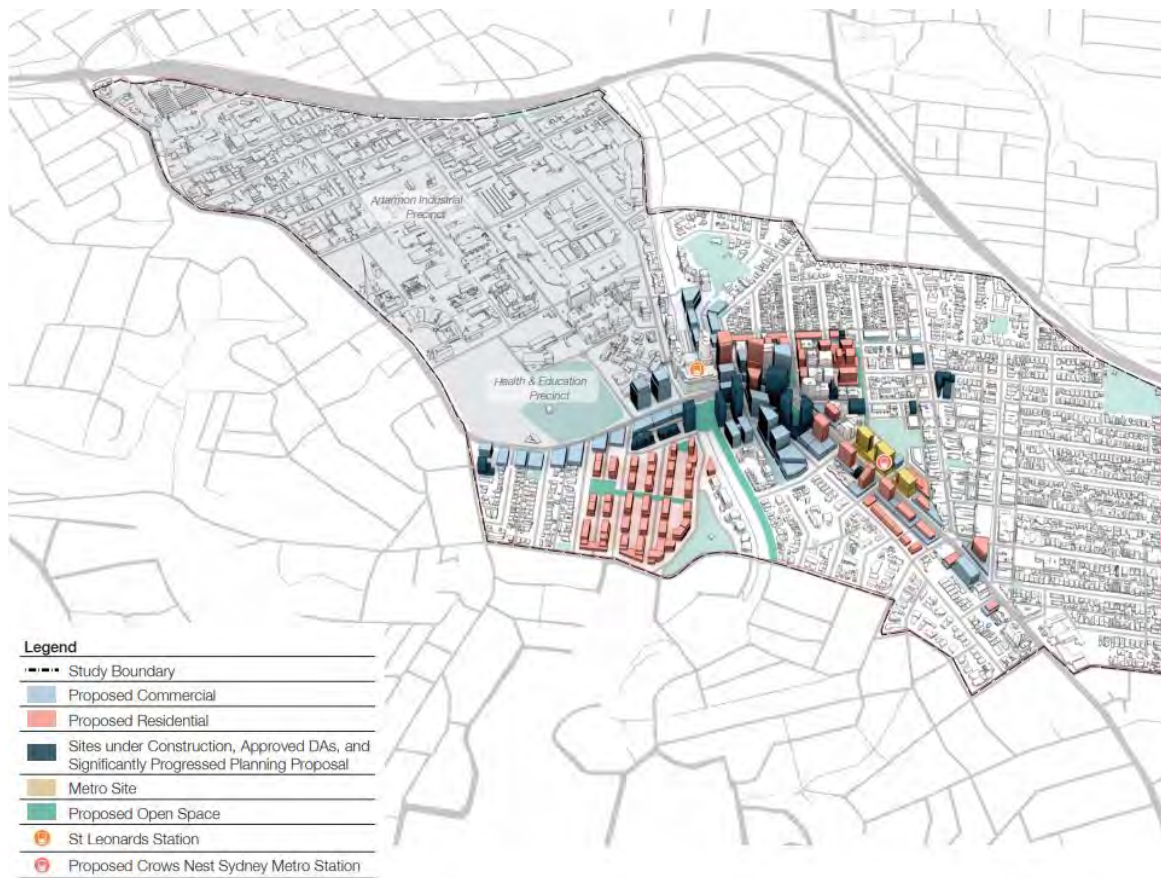
Major mixed use and residential projects being undertaken within St Leonards are detailed in **Table 3**.

Table 3 Local Development (Major New Projects)

Site	Development Type	Built Form	Status
23-25 Atchison Street	Planning Proposal	<ul style="list-style-type: none"> ▪ Increase building height to 56m as recommended by Council officers and as adopted by the North Sydney Local Planning Panel ▪ Minimum non-residential FSR 1.5:1 ▪ Total maximum FSR 6.3:1 	<p>LEP amendment gazetted 14 May 2020.</p> <p>DA lodged 24 July 2020, currently under assessment.</p>
84-90 Christie Street	Planning Proposal, Development Application	<ul style="list-style-type: none"> ▪ 46 storey mixed use residential tower 	LEP amendment gazetted 30 November 2017.
472-468, Pacific Highway	Development Application	<ul style="list-style-type: none"> ▪ 42 storey mixed use residential tower and 28 storey mixed use residential tower 	
500, 504-520 Pacific Highway	Development Application	<ul style="list-style-type: none"> ▪ 46 storey mixed use residential tower 	
619-621 Pacific Highway	Planning Proposal	<ul style="list-style-type: none"> ▪ 50 storey mixed use residential tower 	LEP amendment gazetted 12 June 2019.
100 Christie Street	Planning Proposal	<ul style="list-style-type: none"> ▪ 36 storey mixed use residential tower 	LEP amendment gazetted 14 May 2020.
6-16 Atchison Street	Development Application	<ul style="list-style-type: none"> ▪ 30 storey residential tower 	
1-13A Marshall Street	Development Application	<ul style="list-style-type: none"> ▪ 29 storey residential tower 	
71-79 Lithgow Street, 82-90 Christie Street, 84A Christie Street, and 546-564 Pacific Highway St Leonards	Development Application	<ul style="list-style-type: none"> ▪ 14 storey commercial building ▪ 26 storey mixed use tower ▪ 47 storey mixed use tower 	DA determined November 2018

The potential built form massing of the future St Leonards-Crows Nest area as envisaged in the Urban Design Study prepared by SJB to support the *St Leonards Crows Nest Plan 2036* is provided in **Figure 4**.

Figure 4 SJB potential built form massing for St Leonards-Crows Nest area



Source: SJB

2.2.3. Transport Network

St Leonards is a major public transport interchange. St Leonards station has one of the highest levels of rail and bus services in the Sydney Metro Area. Regular train services connect St Leonards to the major employment centres of Chatswood, Macquarie Park, Sydney CBD, and North Sydney.

- The Crows Nest Metro station will be located close to the site south of Oxley Street and east of the Pacific Highway. The Metro will offer frequent and high capacity services to employment centres throughout Sydney. The Metro is currently under construction and is anticipated to be operational by 2024.
- Regular bus services connect surrounding suburbs to St Leonards Station. A bus interchange is located on the Pacific Highway south of the railway station. The interchange provides bus services to the Sydney CBD and Lane Cove, Chatswood, Epping and the Northern Beaches.
- The Pacific Highway is a major regional road which connects to the M2 Motorway 2.5 kilometres to the north. The Pacific Highway continues further north to link with the M1 Pacific Motorway. The Pacific Highway provides the main route north linking Sydney to the Central Coast, Newcastle and the North Coast.

3. EXISTING PLANNING CONTROLS

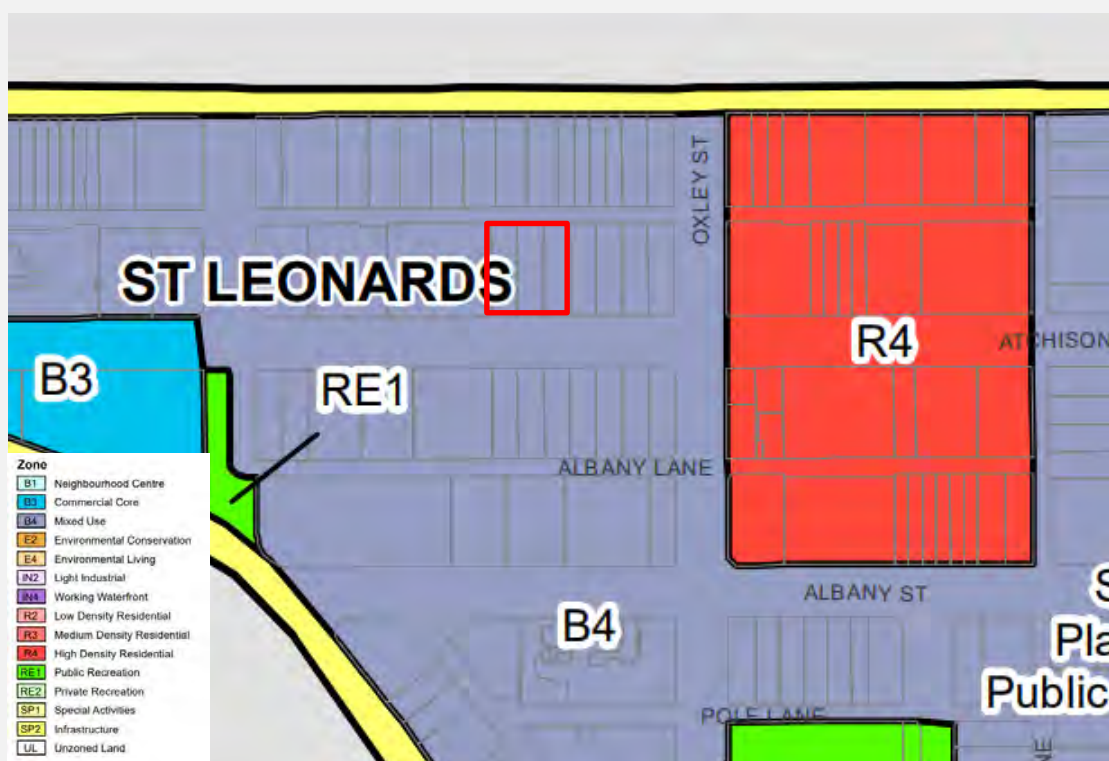
3.1. NORTH SYDNEY LOCAL ENVIRONMENTAL PLAN 2013

The NSLEP 2013 applies to the site. The key provisions and objectives are summarised in **Table 4**. Extracts of the existing technical mapping are provided below and in **Appendix H**.

Table 4 North Sydney LEP 2013 – Key Development Parameters

Parameters	Control	Objectives
Zoning B4 – Mixed Use	<i>Residential flat buildings Commercial premises and Shop top housing are permitted with consent.</i>	<ul style="list-style-type: none"> 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 concentrated on the lower levels and residential uses predominantly on the higher levels. <p>Refer site identification in 'red' in Figure 5.</p>

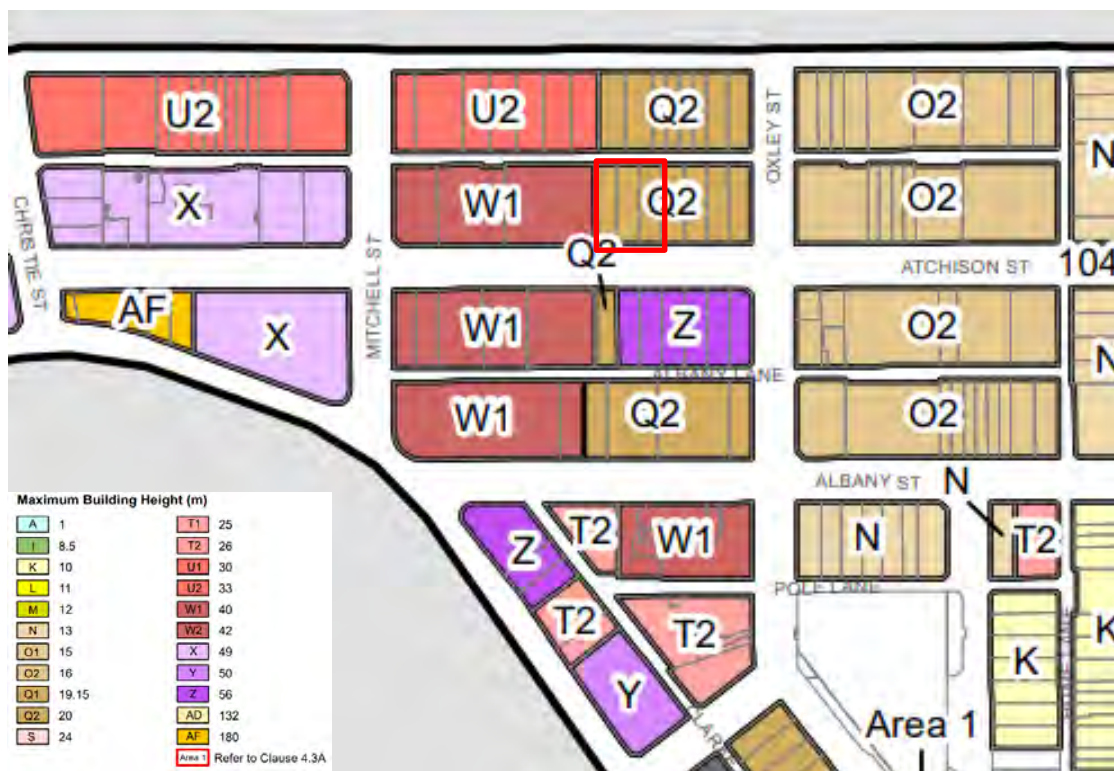
Figure 5 Identification of site zoning



Source: North Sydney LEP 2013

Parameters	Control	Objectives
Clause 4.3 Building Height	20m	<p>(a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,</p> <p>(b) to promote the retention and, if appropriate, sharing of existing views,</p> <p>(c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,</p> <p>(d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,</p> <p>(e) to ensure compatibility between development, particularly at zone boundaries,</p> <p>(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.</p> <p>Refer site identification in 'red' in Figure 6.</p>

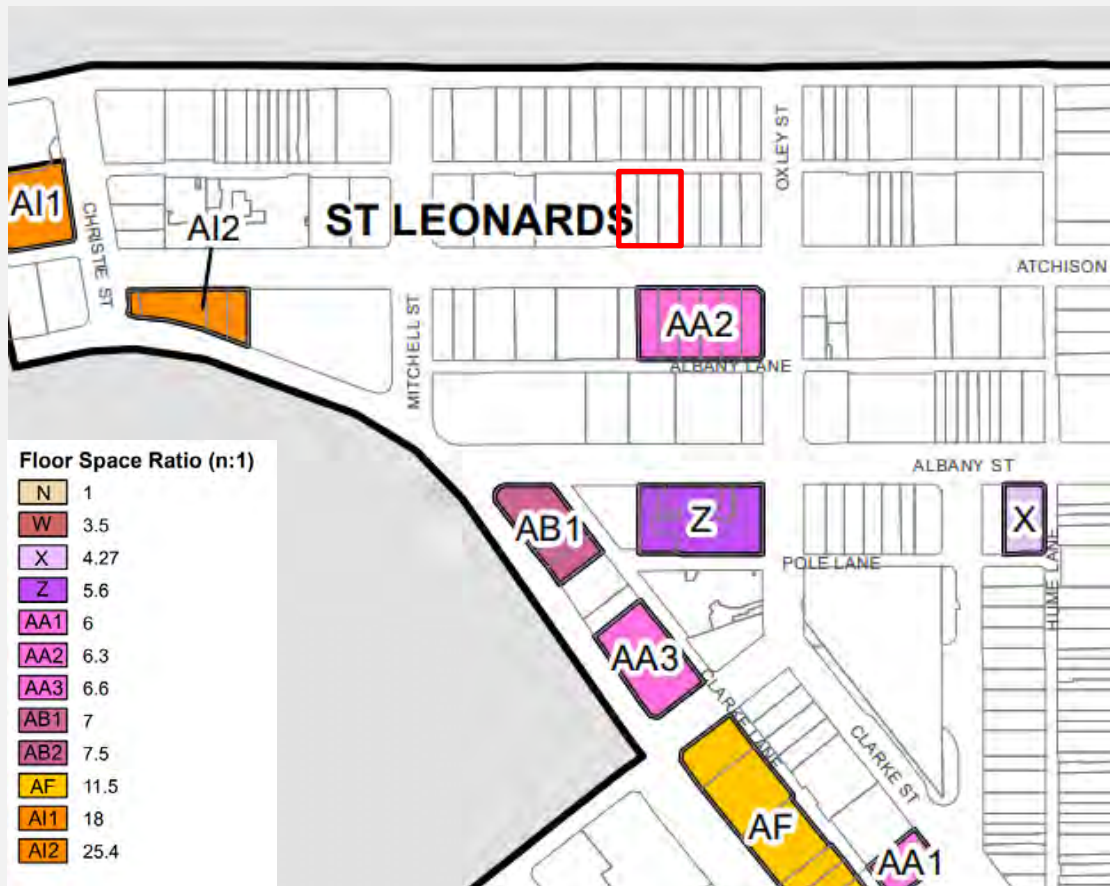
Figure 6 Identification of maximum building height control



Source: North Sydney LEP 2013

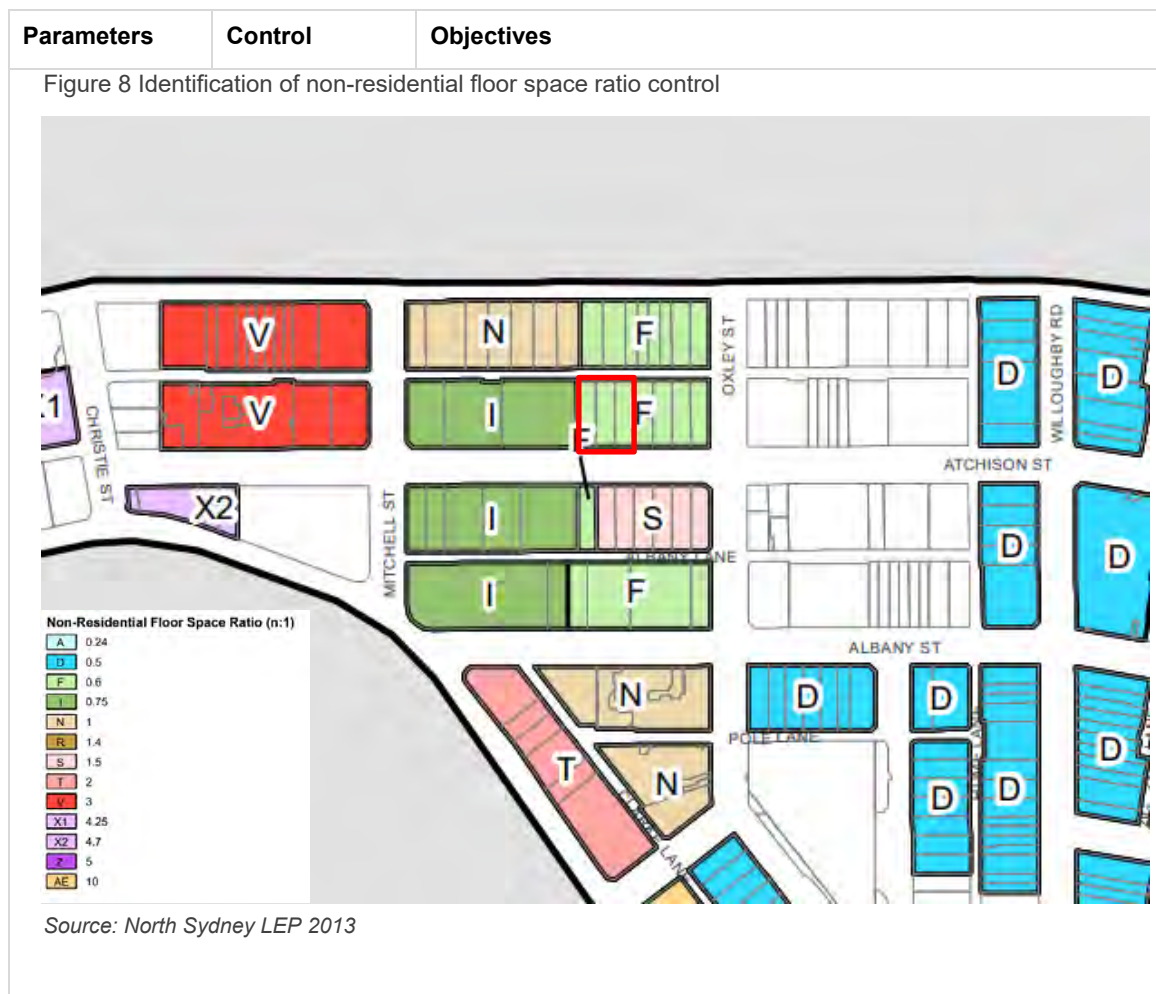
Parameters	Control	Objectives
Clause 4.4 Floor Space Ratio	Not applicable	<p>(a) to ensure the intensity of development is compatible with the desired future character and zone objectives for the land,</p> <p>(b) to limit the bulk and scale of development.</p> <p>Refer site identification in 'red' in Figure 7.</p>

Figure 7 Identification of floor space ratio control



Source: North Sydney LEP 2013

Clause 4.4A Non-residential Floor Space Ratio	Minimum non- residential FSR 0.6:1	<p>(a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,</p> <p>(b) to encourage an appropriate mix of residential and non-residential uses,</p> <p>(c) to provide a level of flexibility in the mix of land uses to cater for market demands,</p> <p>(d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.</p> <p>Refer site identification in 'red' in Figure 8.</p>
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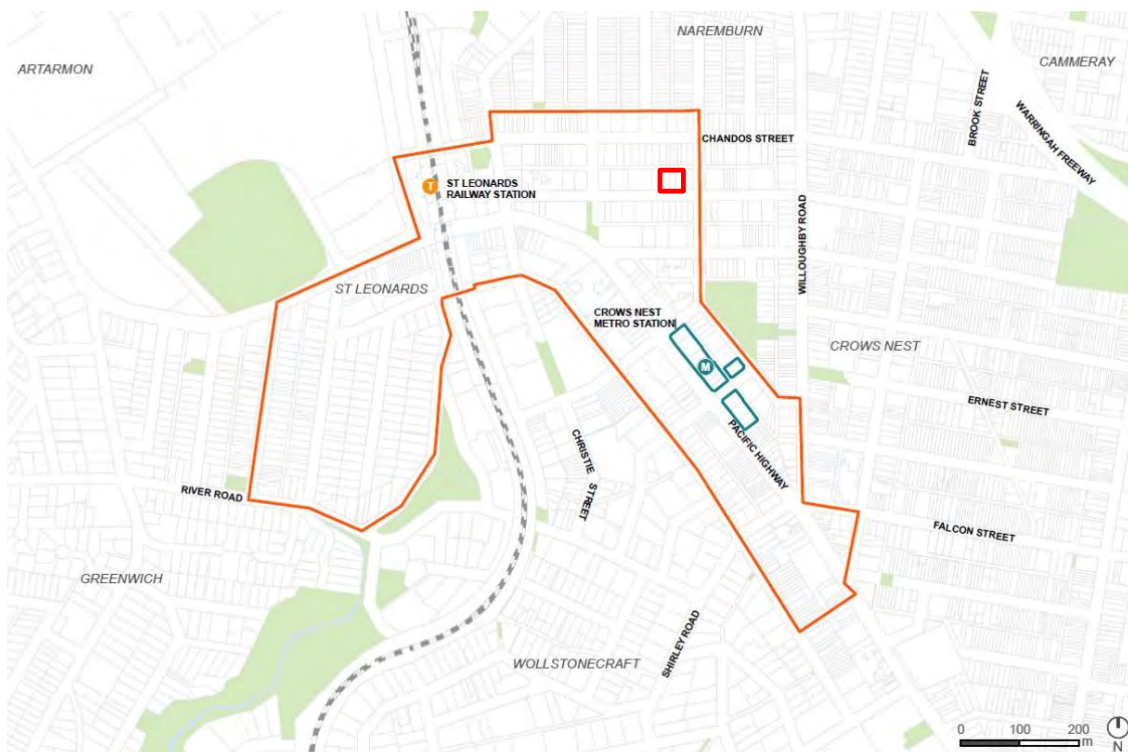
3.2. ST LEONARDS AND CROWS NEST SPECIAL INFRASTRUCTURE CONTRIBUTION

The St Leonards and Crows Nest Special Infrastructure Contribution (SIC) Plan was introduced in August 2020 and seeks to collect contributions on certain new residential development that occurs within the St Leonards and Crows Nest Special Contribution Area.

The site is located within the Special Contributions Area, as identified in 'red' in **Figure 9**, and as such is subject to the provisions of the SIC Plan. The applicable rate is \$15,100 per dwelling.

Payment of the contribution will be required prior to CC in accordance with a condition of development consent relating to a mixed-use development on the site. It is noted that the SIC will be phased in over 3 years, with a 50% reduction in 2020-21 and a 25% reduction in 2021-22. The full rate will apply from 1 July 2022.

Figure 9 St Leonards and Crows Nest Special Contributions Area



Source: NSW DPIE

4. CONCEPT PROPOSAL

4.1. INDICATIVE CONCEPT SCHEME

Kann Finch have prepared a revised Design Report (**Appendix A**) and Architectural Concept (refer **Appendix B**) to inform this Planning Proposal

The following factors informed the development of the amended proposed concept design:

- *St Leonards Crows Nest 2036 Plan;*
- *St Leonards Crows Nest Planning Study – Precinct 2 and 3;*
- Feedback and discussions from Council staff that occurred between July and October 2018 to reduce the number of storeys and height by:
 - The reduction in the number of storeys to a 16 storey building height comprising a 3 storey podium and 13 storey residential tower.
 - The deletion of the mezzanine level resulting in reduced commercial floor space by 391sqm;
 - A reduced podium height but maintaining a 3 storey podium height which visually reads as an equivalent 3 – 4 storey podium height;
 - Overall reduced height to 16 Storeys (RL143.2) which is 54.2m to the parapet but noting a future lift overrun will extend above this maximum height by approximately 3.9m to RL 147.1.
- Feedback from North Sydney Local Planning Panel in 2020 requiring the provision of a special clause for the height of the building to exclude the lift overrun for access to the communal rooftop;
- Existing and future development context;
- Public domain presentation;
- Street activation; and
- Residential amenity;

A concept design has been prepared which reflect the proposed controls and includes:

- Indicative basement car parking arrangements;
- Ground level street address; which are setback from the Atchison Street and Atchison Lane frontages.
- Above ground commercial uses, and
- Typical floor layouts of the residential apartments above with rooftop communal open space;
- Opportunities for public domain improvements on both street frontages.

The key parameters of *State Environmental Planning Policy 65 Design Quality of Residential Apartment Development (SEPP 65)* have been considered within the concept design including:

- Building separation and setbacks;
- Solar access and cross ventilation;
- Communal open space at the rooftop;
- Apartment and balcony sizes, and
- Ceiling heights.

4.2. DESIGN CONSIDERATIONS

The key features of the Preliminary Concept Design are summarised in **Table 5** below. Photomontages of the proposal are illustrated at **Figure 10**, **Figure 11** and **Figure 12**.

Table 5 Summary of the key features

Element	Proposed
Land uses	Ground Floor: retail/commercial uses with retail frontages to Atchison Street and partly to Atchison Lane services and vehicle entry (Atchison Lane). Levels 1 and 2: commercial offices. Level 3 – Level 15: residential dwellings.
New pedestrian through site link	A covered connection along the western boundary to create a north-south pedestrian link that connects Atchison Street to Atchison Lane to be delivered as part of a Voluntary Planning Agreement.
Indicative yield	1,855sqm retail/commercial GFA 65 residential apartments.
Gross Floor Area (GFA) / Total FSR	6887m ² / 6.4:1
Non-residential floor space (GFA/ FSR)	1,844m ² / 1.7:1
Building Height	
Maximum building height (excluding lift overrun)	54.2m (RL143.2)
Maximum building height (including lift overrun)	58.1m (RL147.1)

4.2.1. Basement

Parking and building services will be located within the basement. The concept design illustrates 3 levels of basement parking accessed from Atchison Lane. Allowance has been made within the basement design for car, motorcycle and bicycle parking. Detailed design of the car park basement and total overall spaces will be subject to detailed design during the development application stage and will be consistent with the maximum rate of provision within the DCP or RMS Guide to Traffic Generating Development whichever is the lesser.

4.2.2. Ground Floor and Podium

The ground floor and podium concept plans provide the following:

- Three retail tenancies between 68sqm and 85sqm at ground level.
- The commercial floor space on Levels 1 and 2 has been sized to accommodate a range of business types and formats and includes:
 - A 672sqm commercial tenancy at Level 1 which accounts for the double height void over the proposed through site link.
 - A 843sqm commercial tenancy at Level 2,

- Separate lobby access for the retail uses fronting Atchison Street.
- A new covered pedestrian through site link with double height void adjacent to the western site boundary between Atchison Street and Atchison Lane. Lobby access to the main entry is also available from the through site link.
- The retail tenancies are designed to front Atchison Street, Atchison Lane and also to the pedestrian through site link.
- Vehicular access to the basement and carpark via Atchison Lane.
- At grade loading dock and waste collection area accessed from Atchison Lane.
- Separate commercial and residential waste storage areas adjacent to loading dock.

As detailed in the accompanying Design Report (**Appendix A**) and illustrated in **Figure 10** and **Figure 11**, the ground floor and podium has been based on these key design principles:

- Clearly defined building entry to the residential and commercial lobby
- A safe and well-lit forecourt and through site link which encourages pedestrian movement and permeability between streets and activates the extensive ground floor retail spaces which front both Atchison Street and the through site link.
- A high amenity, fine grain public domain enhanced by paving, street furniture, pedestrian focused lighting, outdoor seating areas and landscaping.
- A podium that provides a distinct human scale at the ground level whilst providing high quality and functional commercial tenancies in the levels above.
- A podium setback that maximises sunlight to the surrounding public domain.

Figure 10 Photomontage of the proposed podium from the southern side of Atchison Street



Source: Kann Finch

Figure 11 Ground plane photomontages



Picture 1 Photomontage of the proposed through site link

Source: Kann Finch



Picture 2 Photomontage of the proposed lobby

Source: Kann Finch

4.2.3. Tower Form

The proposed tower has a height to the parapet of 54.2m (RL 143.2). An allowance for an additional 3.9m height to the top the lift overrun is required, approximately 58.1m (RL147.1) to provide access an area for communal open space at the rooftop. It is proposed this is addressed through a site-specific provision permitting an exceedance of the maximum building height control to facilitate the lift overrun up to a maximum of RL147.1, as outlined in **Section 6.3**.

The future development will provide a mix of unit types as follows:

- 26 one-bedroom apartments (40%)
- 13 one-bedroom apartments plus study (20%)
- 26 two-bedroom apartments (40%)

The slender tower design will have a typical floorplate GFA of 388sqm. A typical level will accommodate up to 5 apartments. The Design Report provided states that

The residential floors have minimum ceiling heights to living/dining/bedrooms of 2.7 metres and 2.4 metres to non-habitable spaces. The floor to floor height is typically 3.1 metres. Each apartment has access to a private open space with which meet the minimum areas requirements within the SEPP 65 Apartment Design Guide. A landscaped roof terrace will provide a communal area for the future residents. Four of the five apartments per floor are dual aspect enhancing overall sunlight and natural ventilation.

A minimum of 2 hours direct sunlight between 9:00am & 3:00pm in mid-winter will be enjoyed by more than 72% of the apartments. Similarly, more than 80% of apartments will be naturally cross ventilated. Each apartment has access to a minimum private storage space that will be provided via a combination of space within the apartment or secure storage cage within the basement levels.

Photomontages of the proposed tower form is provided in **Figure 12**.

Figure 12 Photomontages of the tower form



Picture 3 Photomontage looking north-west along Atchison Street

Source: Kann Finch



Picture 4 Photomontage looking south-east along Atchison Street

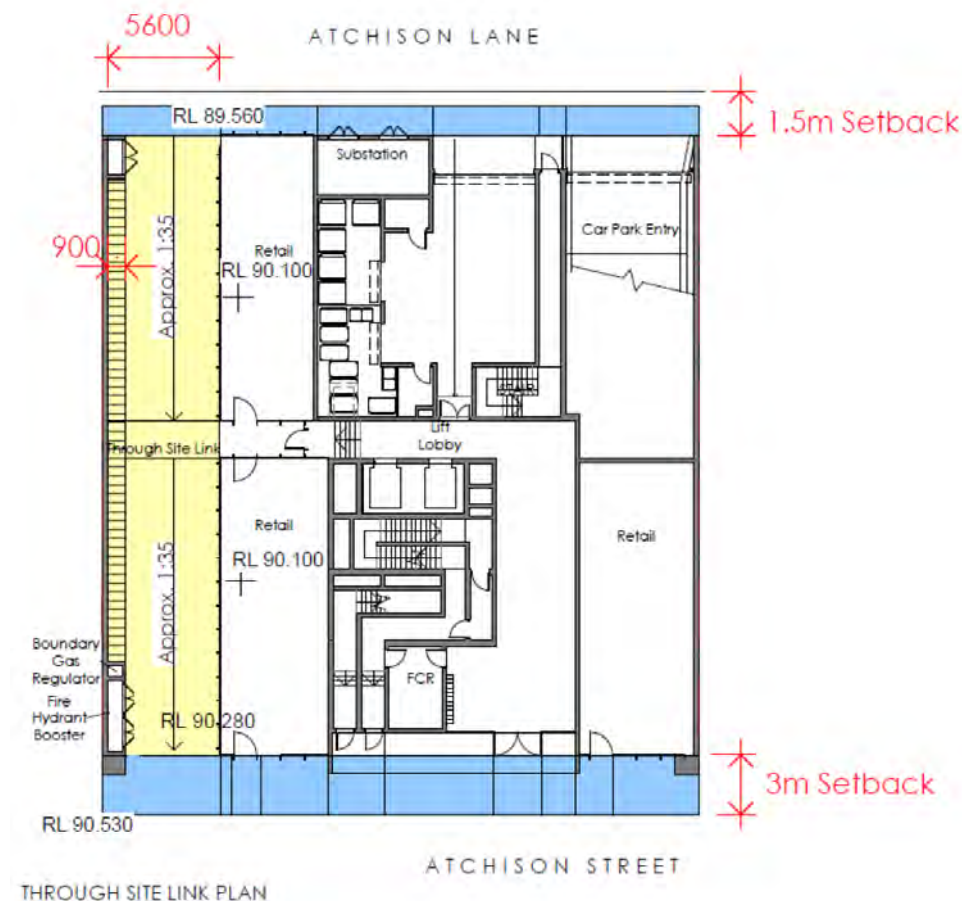
4.2.4. Public Benefit Offer & Voluntary Planning Agreement

A draft Voluntary Planning Agreement (VPA) prepared by Sparke Helmore Lawyers has been endorsed by the proponent and Council and is provided under a separate cover. The draft VPA will be notified under Clause 7.4 of the EP&A Act concurrently with this Planning Proposal.

The contributions proposed in the draft VPA include:

- Provision of a 3-metre-wide building setback from Atchison Street as generally shown on the Plan at **Figure 13**. The Setback Area will be established through the registration of a covenant restricting building (registered prior to a Construction Certificate for above ground works) and an easement for public access to the relevant land (registered prior to the issue of an Occupation Certificate).
- Provision of a publicly accessible pedestrian thoroughfare between 4.6m and 5.6m wide and at least 7m high from Atchison Street to Atchison Lane, as generally identified in the location on the Plan at **Figure 13**, with an easement for public access between 6am to 11pm. The easement will be required prior to issue of an Occupation Certificate.
- A \$1,400,000 monetary contribution towards the upgrade of Hume Street Park or public open space within the suburbs of St Leonards or Crows Nest within the North Sydney Local Government Area. The monetary contribution will be payable in instalments, with 50% of the amount payable prior to the issue of a Construction Certificate for any above-ground works and the remaining 50% of the amount payable prior to the issue of the first Occupation Certificate for the Development.

Figure 13 Identification of setback and publicly accessible thoroughfare



Source: Kann Finch, Sparke Helmore Lawyers

Refer to the endorsed draft VPA prepared by Sparke Helmore Lawyers provided at **Appendix G**.

The Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Direction 2020, specifies a contribution amount of \$15,100 for each additional dwelling within the contribution area. The Hume Street Park Upgrade is an identified open space project under the 2036 Plan and SIC Scheme. As such, it is expected that any SIC paid by the proponent would also be used to fund the works to Hume Street Park upgrade.

On 12 April 2021, a letter was sent to the DPIE's Director of Operations, Infrastructure and Place Division seeking clarification on whether the public benefits proposed under the accompanying draft VPA will be accepted in lieu of the SIC.

Should the application of the SIC be imposed in addition to any VPA, a review of the draft VPA will be undertaken with the value of public benefits proposed being reduced to take into consideration payment of the SIC.

5. PLANNING PROPOSAL

This Planning Proposal has been prepared in accordance with Section 3.33 of the EP&A Act 1979 with consideration of DPIE's A guide to preparing Planning Proposals (December 2018).

Accordingly, the proposal is discussed in the following parts:

- **Part 1** – A statement of the objectives and intended outcomes.
- **Part 2** – An explanation of the provisions that are to be included in the proposed LEP.
- **Part 3** – The justification for the planning proposal and the process for the implementation.
- **Part 4** – Mapping.
- **Part 5** – Details of community consultation that is to be undertaken for the planning proposal.
- **Part 6** – Project timeline.

An assessment of the proposal against the above parts is outlined in the following sections.

6. INTENDED OBJECTIVES AND OUTCOMES

6.1. OBJECTIVES

The primary objective of the Planning Proposal is to amend the NSLEP 2013. The amendments will provide for the urban renewal of the site to accommodate a mixed-use development on the site with a taller building form.

6.2. INTENDED OUTCOMES

The intended outcomes of the planning proposal are as follows:

- To satisfy State Government objectives to grow jobs, housing and infrastructure within the St Leonards health and education precinct and priority precinct.
- To enable the redevelopment of the land in a manner consistent with the building height and FSR parameters envisaged by the St Leonards/Crows Nest Planning Study (Precincts 2 and 3).
- To permit a lift overrun to a maximum height to facilitate access to a communal rooftop space.
- To integrate the subject site with the surrounding area through improvements to adjoining public domain spaces.
- To deliver significant public domain improvements including active street frontages, high quality public domain and improved connectivity between the St Leonards train station and surrounding areas.
- To provide a mixed-use development with residential commercial and community facilities that will contribute to the creation of a vibrant and active community
- Contribute to the rejuvenation of St Leonards by encouraging and supporting development activity and supporting the diverse mixed-use nature of the precinct.

6.3. EXPLANATION OF PROVISIONS

6.3.1. Overview

The Planning Proposal seeks to amend the NSLEP summarised in **Table 6**.

Table 6 Existing Controls and Proposed Amendments

Parameter	Existing Standard	Amended Standard	Map Amendment
Building Height	20 metres	56m (RL145)	<i>NSLEP, 2013 Height of Buildings Map-Sheet HOB_001</i>
		A site-specific provision that allows a lift overrun to provide access to communal open space at the rooftop to exceed the maximum building height control to a maximum building height of 58.1m (RL147.1).	<i>NSLEP, 2013 Height of Buildings Map-Sheet HOB_001</i>
Minimum non-residential FSR	0.6:1	1.7:1	<i>NSLEP 2013 Non-residential Floor Space</i>

Parameter	Existing Standard	Amended Standard	Map Amendment
			<i>Ratio Map-Sheet LCL_001</i>
Total maximum FSR	Not applicable	6.4:1	<i>NSLEP 2013 Maximum Floor Space Ratio Map- Sheet FSR_001</i>

6.3.2. Proposed Wording

This Planning Proposal seeks to implement a site-specific provision in Part 6 of the North Sydney LEP to allow a lift overrun providing access to a communal rooftop.

The following provision is proposed:

6.19C Development at 52-56 Atchison Street, St Leonards

(1) This clause applies to land at 52-56 Atchison Street, St Leonards, being Lot 7 Sec 11 DP 2872, and Lots 5 and 6 Sec 11 DP 2872.

(2) Despite any other provisions of this plan, development for the purposes of a lift overrun to provide access to communal open space at the rooftop can exceed the maximum building height control to a maximum building height of 58.1m (RL147.1).

7. STRATEGIC JUSTIFICATION

7.1. NEED FOR THE PLANNING PROPOSAL

Q1 – Is the planning proposal a result of any strategic study or report?

The DPIE recently completed and endorsed the *St Leonards and Crows Nest 2036 Plan (SLCN Plan)* in August 2020. This builds upon prior studies in the area including North Sydney Council's *St Leonards/ Crows Nest Planning Study – Precinct 2 and 3*, which was completed and endorsed in 2015. These studies identified the strategic opportunities for the area, largely resulting from the operation of the Crows Nest Metro Station in 2024, and the capacity to accommodate more intensive mixed-use, residential and employment growth within St Leonards.

The site is located within Precinct 3 of the study area. The study recommends a future building height of 16 storeys for the site. The study includes 6 design principles which relate to building height. These design principles are addressed in **Table 7** and in the Design Report at **Appendix A**.

Table 7 St Leonards/Crows Nest Planning Study – Building Height Design Principles

Design Principle	Comment
Reinforces the desired character of the area;	The proposed building height contribute towards the high-density character of the St Leonards Centre and will adopt a distinct podium element with a slender tower form.
Adheres to the setbacks, podium height, ground level and above podium setbacks illustrated in maps 6A and 6B;	<p>The proposed built form with podium element will accord with the established adjacent podium and provide opportunity for a range of retail uses that will activate Atchison Street and contribute to the desired future main/civic street function.</p> <p>Pedestrian amenity and public benefit will be enhanced by achieving a 3m podium setback to the Atchison Street frontage and 1.5m to Atchison Lane.</p>
Maximises sunlight access to streets, Mitchell Street Plaza, and the linear parks;	<p>As shown in the accompanying shadow diagrams. The north south orientation of the proposed slender tower will result in faster moving shadows over the public domain and maximise sunlight to streets.</p> <p>The proposal will have minimal impact to the proposed linear park along Oxley Street. The building height proposed in storeys is no higher than the 16 storey height limit envisaged under the Planning Study.</p>
Maximises sunlight access and view sharing of nearby residences;	<p>The proposal maximises solar access to nearby residences though the proposed tower setbacks and slender form which allows for greater solar penetration between buildings.</p> <p>There will be some impact to views to the east from the adjacent building to the west. Generally, the eastern elevation windows are secondary windows to living spaces or bedrooms and studies.</p> <p>Whilst views to the Sydney CBD are restricted by the built form of the Nexus building at No. 15 Atchison Street the orientation of the living areas and balconies within this</p>

Design Principle	Comment
	<p>building means some regional and city views to the north and south can be maintained.</p> <p>Any visual aspect impacted from neighbouring lower-scale properties is reasonable. The proposed height is consistent with the planning study and the impact is considered consistent with those impacts envisaged by the Planning Study.</p>
Provides a high level of residential amenity;	The proposed building height enables the building to achieve a high level of internal amenity including solar access and cross ventilation that is consistent with the requirements of the ADG.
Creates a safe, comfortable, accessible, vibrant, and attractive public realm and pedestrian environment.	The proposed podium setbacks are consistent with the Planning Study and as such contributes to the overall quality and usability of the public domain. The proposed building height and tower setbacks will allow sunlight to access the street level providing greater pedestrian amenity and comfort.

Q2 - Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

The site is a logical and appropriate place to concentrate future growth within the North Sydney LGA. This is because the site is located within an area designated for future growth. The site is located close to services and public transport infrastructure. The planning proposal is the best means of achieving the objectives and intended outcome of the proposal. The alternative means of achieving the objectives are considered in **Table 8**.

Table 8 Options to achieve objectives

Option	Comment
Option 1: do nothing	Without an amendment to the statutory planning controls, the proposed Design Concept for the site cannot be achieved. This means that the associated public benefits and desired building outcome by Council in its strategic study would be lost.
Option 2: - Schedule 1 site specific clause to permit additional floor space and building height;	This approach is undesirable and is best utilised for adding 'additional permitted uses' to a zone rather than increasing built form controls such as building height and/or floor space.
Option 3: Amend the Height of Building and FSR maps	This option is considered most conventional means to give statutory effect to the proposal. Option 3 allows for the relevant strategic and site-specific merits of the proposal to be considered by Council, the DP&E, local community and relevant agencies.

7.2. RELATIONSHIP TO STRATEGIC PLANNING FRAMEWORK

Q3 - Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

The Planning Proposal demonstrates strategic merit through its consistency with the objectives and actions of the applicable strategic plans and policies discussed below.

7.2.1. NSW State Plan 2021

The *New South Wales State Plan* sets the strategic direction and goals for the NSW Government across a broad range of services and infrastructure. The State Plan nominates one of the key challenges for the State as being the planning challenges that arise from continued population growth.

The increased density proposed, and future redevelopment of the site is consistent with the State Plan. This is because the proposal will provide jobs and encourage housing diversity in a location close to nearby services and facilities.

7.2.2. Greater Sydney Region Plan (2017)

The *Greater Sydney Region Plan (GSRP)* continues the themes provided in the previous A Plan for Growth Sydney. The GSRP focuses on providing infrastructure to increase access to services and employment, via the three cities of Sydney.

Ten directions have been defined to direct growth within the identified districts. The site is within the North District. The North District Plan was finalised in March 2018. The GSRP housing targets for the North District as follows:

- A 0-5 year target of **25,950**;
- A 20-year target of **92,000**.

St Leonards and Crows Nest are identified as a Priority Growth Area and Urban Renewal Corridor. St Leonards forms part of the Eastern Economic Corridor and is defined as one of Greater Sydney's nine commercial office precincts. St Leonards, Frenchs Forest and Macquarie Park are defined as a Collaboration Area and will share resources and investment across the area.

The proposal is consistent with the objectives of the GSRP for these reasons:

- The proposal optimises the use of infrastructure given its strategic location close to existing and planned rail services. The proposal's location will encourage usage of existing and new public transport infrastructure.
- The proponent will collaborate with Government to ensure that residential growth provided will benefit the local community. This will be achieved through potentially a mix of state and local developer contributions and provision of a pedestrian through site link and towards the improvement of Hume Park.
- The proposal provides housing supply through the provision of 65 new dwellings. The new dwellings will contribute to the short to medium term housing targets for the North District. The proposal focuses on 1 and 2-bedroom apartments to deliver a range of apartment types and sizes to cater for the growing population in St Leonards.
- The proposal's strategic location integrates land use and transport and supports the creation walkable and 30-minute cities.
- The proposal will offer upgraded commercial space to revitalise investment and business activity within St Leonards. These spaces will support a globally competitive health, education precincts and supply more jobs.
- The proposal will enhance public open spaces and access around the site through public domain upgrades and provision of a through site link.
- The proposal will contribute to providing an efficient city. The proposal will promote walkable neighbourhoods and low carbon transport options. The site is near to existing and future public transport, services which will reduce private car use.

7.2.3. North District Plan (2018)

The site is located within North District of Greater Sydney. The revised North District Plan reflects changes to the districts and the broader vision of Sydney as a three-city metropolitan region.

The key targets of *North District Plan* are below:

- Housing – an additional 92,000 dwellings by 2036.
 - North Sydney has a 5-year housing target of 3,000 new dwellings.
- St Leonards has a baseline job target of 54,000 and an upper level target of 63,500 by 2036.

The proposal is consistent with the *North District Plan* and the identified 'Actions' for St Leonards for these reasons:

- The proposal provides housing near to services, jobs and transport. The proposal delivers more jobs and residential capacity to leverage off the NSW State Government's significant investment in the Sydney Metro.
- The proposal is consistent with the productivity objectives of the plan and will grow jobs in the centre. The proposal upgrades older commercial floor space to suit a wider range of businesses and services. The mixed-use proposal will deliver an integrated land use and transport outcome which promotes the 30-minute city.
- The proposal will increase housing capacity in St Leonards. The proposal will foster liveable healthy communities by ensuring people can live where they can access jobs, transport and services without a car.
- The proposal will contribute to providing services and social infrastructure through a proposed VPA.
- The proposed renewal will contribute to creating a vibrant and active local centre with high quality public spaces. Active retail frontages will be provided to both Atchison Street and the proposed through site link.
- The proposal delivers high quality open space by providing opportunities to beautify the site's street frontage. A new public through site link will contribute to the network of accessible pedestrian spaces in the centre.

7.2.4. St Leonards and Crows Nest 2036 Plan

The SLCN Plan was completed by the DPIE in August 2020 and is part of a suite of documents which provide a framework for positive change in Crows Nest and St Leonards. These documents include:

- St Leonards and Crows Nest Local Character Statement,
- St Leonards and Crows Nest Green Plan,
- Special Infrastructure Contribution Scheme.

These documents identify opportunities for renewal and rezoning in St Leonards and Crows Nest and is based on a vision for growth and improvement in the area to 2036. The plan has also been closely informed by community aspirations as identified in the Local Character Statements and the extensive community consultation conducted during preparation and finalisation of these documents. A Special Infrastructure Contribution Scheme has been developed alongside the Plan to assist with funding and delivery of State and regional infrastructure to support the areas sustainable growth (refer **Section 3.2**).

The SLCN 2036 Plan identifies a number of site-specific built form controls. The height and FSR controls identified in the SLCN 2036 Plan for the subject site are as follows:

- A building height of 16 storeys;
- Overall FSR of 6:1; and
- A minimum non-residential FSR of 1:1.

The Planning Proposal is generally consistent with the built form provisions, vision, objectives and actions of the SLCN 2036 Plan insofar that it seeks to:

- Increase the maximum building height control from 20 to 56m (RL145) to accommodate a 16-storey mixed use building as envisaged under the SLCN 2036 Plan.
- Establish an overall FSR of 6.4:1. Whilst this exceeds the FSR identified under the SLCN 2036 Plan by 432 sqm, it represents a minor variation and does not undermine the vision, objectives and actions of the Plan.
- Increase the minimum non-residential FSR to 1.7:1. Whilst this is greater than that identified for the site under the SLCN 2036 Plan, it enables the proposal to offset the 324 sqm net reduction of employment floorspace on the subject site.

A detailed assessment of the proposal's consistency with the visions, objectives and actions of SLCN 2036 Plan is outlined under **Table 9** below.

Table 9 Alignment with the St Leonards and Crows Nest 2036 Plan

SCLN Plan	Planning Proposal Response	Consistency
<u>Vision</u>		
<i>Sitting at the heart of the Eastern Economic Corridor; connectivity, innovation and a commitment to great design will see the St Leonards and Crows Nest area transform as a jobs powerhouse. Mixing commercial and residential, the centre will offer workers, residents, students and visitors a variety of homes, jobs and activities with increased accessibility with a new world class metro service.</i>	<p>The Planning Proposal will positively contribute to the emerging character of St Leonards. The proposal is compatible in height, scale and orientation with the future built form, whilst also complements the existing character and varied (higher and lower) planned building heights on surrounding sites.</p> <p>In regard to use, the mixed-use concept scheme will support a range of diverse retail, employment and residential uses, contributing to the delivery of a genuine mixed-use precinct within the St Leonards CBD. This will provide a mix of homes to the diverse range of people within the area, and also supporting employment opportunities for future residents. The site's proximity to the Crows Nest Metro Station will support usage of the infrastructure investment and provide enhanced accessibility and connectivity through the Greater Sydney region.</p>	✓
<u>Precinct Objectives</u>		
Infrastructure and Collaboration		
<i>Deliver key State and regional infrastructure to support long-term growth.</i>	State and regional infrastructure is a matter for Council and NSW Government consideration.	N/A
<i>Coordinate the delivery of key infrastructure between NSW Government and councils.</i>	Coordination of infrastructure delivery is a matter for Council consideration.	N/A
<i>Enhance quality of life by providing infrastructure to support place outcomes.</i>	The indicative mixed-use scheme will make efficient use of existing services and infrastructure. As discussed in Section 4.2.4 , the Planning Proposal is also accompanied by an	✓

SCLN Plan	Planning Proposal Response	Consistency
	endorsed Voluntary Planning Agreement and acknowledgement that the SIC may apply to future development. This can be utilised to support local infrastructure to support place outcomes.	
<i>Coordinate the delivery of infrastructure with growth to ensure infrastructure is available at the right time.</i>	The site is located proximate to the Sydney Metro transport infrastructure and the new Crows Nest station. The development of the indicative concept scheme will reinforce existing investment in public transport infrastructure, through increased patronage of the existing station at St Leonards and future patronage at Crows Nest station.	✓
Liveability		
<i>Ensure new development retains and enhances important heritage elements by using sympathetic building materials and preserving key views and vistas.</i>	Whilst not within a Heritage Area, building materials will be selected at detailed design stage as part of a future Development Application. These materials will be consistent with the surrounding area.	✓
<i>Retain and enhance the village atmosphere in and around Crows Nest, particularly along Willoughby Road</i>	The proposal is not located within Crows Nest or Willoughby Road and as such will not impact on the village atmosphere. However, the proposed retail spaces will contribute towards Council's plans for activating Atchison Street as a main street.	✓
<i>Apply casual surveillance and universal access principles to new development to create a safe, inclusive and comfortable environment.</i>	Casual surveillance of the public domain can be achieved through the active uses on the ground floor fronting the new through site link and Atchison Street. Universal access principles will be considered as part of the detailed design.	✓
<i>New development should have consideration to wind impacts demonstrated through a wind assessment.</i>	As illustrated in the concept design report the proposed building has been designed to include an awning that will provide further protection to the public domain. A wind assessment can be provided at the Development Application stage once the detailed design is further progressed.	✓
<i>New buildings adjoining Hume Street Park should contribute to the village green atmosphere. They should also provide an active frontage to the park and encourage connections between Willoughby Road, Hume</i>	The site does not adjoin Hume Street Park.	N/A

SCLN Plan	Planning Proposal Response	Consistency
<i>Street Park and Crows Nest Metro Station.</i>		
<i>Consider cumulative impacts of new developments on existing areas, including overshadowing, wind impacts and view loss.</i>	The proposal is consistent with the expected built form envisaged by the SLCN. Refer to discussion of amenity impacts contained in Section 7.3 .	✓
<i>Contain taller buildings between St Leonards Station and Crows Nest Metro Station.</i>	The built form is consistent with this approach being on Atchison Street between St Leonards and the proposed Crows Nest Metro Station.	✓
<i>In transition areas between low and high-rise developments, new development should consider the prevailing scale and existing character in the design of their interfaces.</i>	The site is not located within a transition area.	N/A
<i>New building design should provide high on-site amenity and consider street width and character by providing ground and upper level setbacks and awnings to achieve a human scale at street level.</i>	<p>The building envelope has considered amenity. The podium will be setback 3m from the boundary with an awning provided over the footpath along Atchison Street. A 3.25m rear setback will be provided from the Podium to Atchison Lane.</p> <p>Upper level tower setbacks will 6m to the side boundaries, allowing for a well separated built form with access to light and air.</p> <p>Approximately 75% of the street edge is activated by retail space and residential/commercial lobbies. A new through site link will be provided which will include entries to new retail tenancies.</p>	✓
<i>Ensure new development contributes to a range of dwelling types in the area to cater for all life cycles.</i>	<p>The indicative concept scheme incorporates a range of dwelling types as follows:</p> <ul style="list-style-type: none"> ▪ 26 one-bedroom apartments (40%) ▪ 13 one-bedroom apartments plus study (20%) ▪ 26 two-bedroom apartments (40%) <p>The diversity in dwelling size and typology will accommodate a range of life cycles.</p>	✓
<i>Investigate and secure locations for education establishments to service the precinct. This includes early childhood, schools, and tertiary education facilities that may be needed to deliver education services.</i>	Not applicable.	N/A

SCLN Plan	Planning Proposal Response	Consistency
Productivity		
<i>Ensure new employment sites in the area cater to a range of business types and sizes.</i>	The retail and commercial spaces within the podium have been appropriately sized to cater for a range of business types and sizes.	✓
<i>Foster development of high technology and health related uses in the light industrial area to support the surrounding hospitals</i>	The site is not located within the light industrial area adjacent to RNSH Hospital however could support such uses if required.	N/A
<i>New development in mixed-use areas should contribute to the delivery of active streets by providing a range of uses at ground floor.</i>	An active street frontage will be provided with retail spaces fronting Atchison Street and the new through site link.	✓
<i>Protect large commercial core zoned sites to ensure employment uses are protected into the future.</i>	Site is zoned mixed use however still provides over the required amount of commercial floor space. The indicative concept scheme accommodates 1,855sqm of retail/commercial GFA.	✓
Sustainability		
<i>Ensure no additional overshadowing of public open spaces and important places in accordance with solar access controls identified on page 38 of the Plan</i>	The shadow diagrams demonstrate that there will be no additional overshadowing of the public open spaces within this figure.	✓
<i>New development along Chandos, Oxley and Mitchell Streets should provide wider setbacks to enable the creation of greener streets</i>	Not applicable.	N/A
<i>New development adjoining the increased setbacks and landscaped areas should contribute to its landscape character. For example, by providing planter boxes, lighting, green walls, deep planting, landscaped setbacks and forecourts.</i>	The site does not adjoin landscaped areas. The provision of landscaping on the site will be considered at detailed design stage.	N/A
<i>New development in nominated areas along the Pacific Highway should be set back 3 metres and incorporate elements such as avenue planting, below ground setbacks for deep soil planting</i>	The site is not located on the Pacific Highway.	N/A

SCLN Plan	Planning Proposal Response	Consistency
<i>Incorporate new street trees to realise the tree canopy targets identified on Page 3 and increase the overall tree coverage in the area.</i>	Street trees and landscaping of the public domain will be considered at detailed design stage.	✓
<u>Actions</u>		
Place		
<i>Investigate opportunities for improved connections to the health and education precinct.</i>	The site is not located within, or directly adjacent to, the health and education precinct.	N/A
<i>Retain the current heritage status in existing planning controls.</i>	The site is not identified as a local heritage item.	N/A
<i>Transition heights from new development to surrounding Heritage Conservation Areas</i>	The site is not located within, or directly adjacent to, a heritage conservation area.	N/A
<i>New development should adopt the street wall height consistent with existing heritage shopfronts for new buildings in the same street.</i>	The site is not located within proximity to a heritage item along Atchison Street.	N/A
<i>Maintain current planning controls along Willoughby Road to retain its village feel and character.</i>	The site is not located on Willoughby Road.	N/A
<i>Improve the public domain by introducing 'green streets' along Oxley, Mitchell, and Chandos Streets to allow for setbacks with grass and canopy trees.</i>	The site is not located on Oxley, Mitchell or Chandos Streets. However, it is noted the proposal will contribute to the achievement of this objective on Atchison Street through the proposed 3m ground-floor setback to Atchison Street, which can accommodate street trees and greenery within the setback zone.	✓
<i>Investigate inclusion of shared zones along Clarke Lane including the provision of traffic calming measures.</i>	The site is not located along Clarke Lane.	✓
<i>New development should consider its place within country, including Aboriginal heritage by (at least) consulting with the Metropolitan Local Aboriginal Land Council.</i>	The site has no identified or known items of Aboriginal significance, and as such consultation with the Metropolitan Local Aboriginal Land Council is not required. Consideration of Aboriginal heritage significance will be further considered and incorporated where possible into a future development application.	✓

SCLN Plan	Planning Proposal Response	Consistency
<i>Widen key streets (including Atchison Street) to support more active uses and allow for green elements e.g. planter boxes.</i>	Amendment to street widths is a matter for Council consideration. The proposal supports this objective through the proposed 3m setback to Atchison Street to facilitate the provision of street trees and planter boxes.	✓
Landscape		
<p><i>Leverage the improved amenity and connectivity opportunities from Lane Cove Council's proposed St Leonards Plaza, through:</i></p> <p><i>Investigate improvements for pedestrian crossings of Pacific Highway.</i></p> <p><i>New/improved connections to the regional pedestrian cycling link.</i></p> <p><i>Support for investigation of an indented bus stop as part of the plaza.</i></p> <p><i>Support for links to recent and proposed development either side of Council's future St Leonards Plaza.</i></p>	The site is not located within, or in direct proximity to, the future St Leonards Plaza.	N/A
<i>Protect and enhance natural links through the area. Refer to final Green Plan.</i>	The proposal will not impact existing or proposed natural links within the area.	✓
<i>Work with North Sydney Council to redevelop Holtermann Street carpark by bringing forward development contributions.</i>	The SIC and future development contributions required as part of a future development application can be utilised to fund this action.	✓
<i>Investigate opportunities to upgrade Hume Street Park consistent with North Sydney Council policy.</i>	The draft VPA offer includes a \$1.4 million monetary contribution towards the upgrade of Hume Street Park, which is an identified open space project under the 2036 Plan and SIC scheme. Should the application of the SIC be imposed in addition to any VPA, a review of the draft VPA will be undertaken with the value of the public benefits proposed reduced to take into consideration payment of the SIC (refer to Section 4.2.4).	✓
<i>Introduce landscaped street setbacks along Oxley, Mitchell, and</i>	The site is not located on Oxley, Mitchell or Chandos Streets. However, it is noted the proposal will contribute to the achievement of this objective on Atchison Street through the	✓

SCLN Plan	Planning Proposal Response	Consistency
<i>Chandos Streets to allow for additional street trees.</i>	proposed 3m ground-floor setback to Atchison Street, which can accommodate street trees and greenery within the setback zone.	
<i>Maintain and expand tree canopy in St Leonards South to meet tree canopy target for the area identified at page 3. Investigate opportunities to expand Newlands Park and new public park in St Leonards South.</i>	Street trees and landscaping of the public domain will be considered at detailed design stage in a future development application. The provision of landscaping will respond to relevant landscaping targets and objectives. The site is not located in proximity to Newlands Park or within the St Leonards South precinct.	✓
Built Form		
<i>Deliver a transit-oriented development at the Crows Nest Metro Station sites.</i>	The site is not located within, or adjacent to, the Crows Nest Metro Station.	N/A
<i>Apply design principles for solar amenity, configuration, and interface between areas of transition.</i>	<p>The proposed building envelope has considered amenity as follows:</p> <ul style="list-style-type: none"> Ground-level setbacks will provide 3m to Atchison Street (with an awning over the footpath) and 3.25m rear setback to Atchison Lane to allow for an extension of the public domain into the site. Approximately 75% of the street edge will be activated by retail space and residential/commercial lobbies. Upper-level tower setbacks will 6m to the side boundaries, allowing for a well separated built form with access to light and air. A new through site link will be provided to enhance site connectivity and provide entries to new retail tenancies. The site is located within an area undergoing change to higher densities and is not located within a transition area. 	✓
<p><i>New development should be sympathetic to existing buildings with appropriate setbacks and street wall height (pages 69 and 70).</i></p> <p><i>Street wall height: 4 storeys</i></p> <p><i>Setbacks: 3m reverse setback</i></p>	<p>The proposed 3-storey podium maintains the scale of a 4- storey podium/street wall through generous floor to ceiling heights, particularly on ground level with a floor to ceiling height of 4.1m.</p> <p>Whilst the proposed concept scheme does not adopt a reverse setback podium, the following is noted:</p> <ul style="list-style-type: none"> Reverse setbacks are not considered an appropriate design outcome on this site. The adjacent buildings have adopted a regular tower setback above a podium form, providing a strong street wall and providing definition to the street edge. The indicative concept scheme will be consistent with this urban design approach 	Justification provided

SCLN Plan	Planning Proposal Response	Consistency
	<p>and will further enhance the street wall along Atchison Street.</p> <ul style="list-style-type: none"> The draft VPA (Appendix G) includes the provision of a 3-metre-wide building setback from Atchison Street, to be established through registration of a covenant restricting built form in this location (above ground). This will ensure that any future development on the site retains this setback area. The increased 3m setback allows for greater public space at the front of the building which will contribute to the active areas provided adjacent to the new through site link. An awning will contribute to mitigating potential wind impacts to the public domain. 	
<i>Adopt reverse setbacks and active street frontages to improve the interface between new buildings and the public domain along Atchison Street and Clarke Lane</i>	As outlined above, a reverse setback is not considered appropriate for this site. The proposed 3m setback to Atchison Street and provision of 2 x retail tenancies, a lobby and through site link along the Atchison Street frontage will activate the adjacent public domain and promote activity along this key street.	Justification provided
<i>Provide stepped setbacks for properties on the south side of Henry Lane to provide a sympathetic interface with Naremburn Heritage Conservation Area.</i>	The site is not located within, or adjacent to, the Naremburn Heritage Conservation Area.	N/A
<i>Provide appropriate transitions in height to adjoining low scale residential areas.</i>	The site is not located within a transition area.	N/A ✓
<i>Minimise overshadowing of key open spaces, public places and adjoining residential areas. Solar height planes should be adhered to as indicated within the Solar Access Map (page 38).</i>	<p>The proposal maximises solar access to nearby residences through the proposed tower setbacks and slender form which allows for greater solar penetration between buildings.</p> <p>In regard to key open spaces, the shadow diagrams demonstrate that there will be no additional overshadowing of public open spaces within this figure. In regard to the streetscape along Oxley Street, the shadow diagrams provided in the Urban Design Report (Appendix A) illustrate that the proposed built form will result in a minor addition to the overshadowing of Oxley Street at 3pm, outside of the identified time period of 11:30am – 2:30pm.</p>	✓

SCLN Plan	Planning Proposal Response	Consistency
<i>Provide transitions in height from the lower scale development at Willoughby Road, Crows Nest, to tall buildings in the St Leonards Core.</i>	The site is located to the west of Willoughby Road and is not located within the direct transition area of Crows Nest and St Leonards.	N/A
<i>Adopt objectives from the Government Architect NSW's Evaluating Good Design Policy in the drafting of new planning provisions.</i>	These objectives have been considered in the drafting of the proposed provisions outlined in Section 6.2.	✓
<i>Provide a landscaped front setback to Oxley Street between Clarke and Chandos Streets to encourage a sensitive interface to areas east of Oxley Street.</i>	The site is not located on Oxley Street.	N/A
Land Use		
<i>Investigate further opportunities to strengthen the health and education precinct including the identification of education pathways through TAFE and other institutions, physical connection to support collaboration and identify opportunities to share new and existing facilities.</i>	The site is not located within the health and education precinct.	N/A
<i>Commit SIC funding to provide infrastructure that caters for all age demographics including pedestrian and cycle links and parks</i>	Commitment of SIC funding is a matter for Council consideration.	N/A
<i>Include opportunities through amendments to planning controls to encourage a range of dwelling typologies to cater for the diverse community in St Leonards and Crows Nest.</i>	<p>The proposal seeks to permit up to a maximum of 5,043sqm of residential floor space on the site. The indicative concept scheme demonstrates the diversity of this floor space through provision of a mix of unit types as follows:</p> <ul style="list-style-type: none"> ▪ 26 one-bedroom apartments (40%) ▪ 13 one-bedroom apartments plus study (20%) ▪ 26 two-bedroom apartments (40%) <p>The range of dwelling types will accommodate a diversity of future residents, thereby contributing to the St Leonards community.</p>	✓
<i>Concentrate higher density housing along the Pacific Highway between the St Leonards Station and Crows Nest Metro Station and transition to</i>	The site is not located within the Pacific Highway corridor.	N/A

SCLN Plan	Planning Proposal Response	Consistency
<i>lower density living options in the surrounding area.</i>		
<i>Encourage a mixture of densities in St Leonards South.</i>	The site is not located within St Leonards South.	N/A
<i>Undertake investigations to identify an appropriate target for affordable housing in the area, consistent with each Councils affordable rental housing target schemes.</i>	Affordable housing targets are a matter for Council consideration.	N/A
<i>Explore build-to-rent opportunities within the precinct</i>	The proposal does not seek to deliver build to rent on the site.	N/A
<i>Encourage a balance of commercial and residential uses within the St Leonards Core with a minimum non-residential floor space requirement for the B4 Mixed Use zone to meet North District Plan high jobs target.</i>	The proposal directly aligns with this key action through the proposed objective of providing a mixed-use development incorporating 1-level of retail floor space, 2-levels of commercial floor space, and 13-levels of residential floor space. The indicative concept scheme proposes 1,844sqm (a total FSR of 1.7:1) of non-residential floor space. This will be solidified within the planning controls through the proposed increase to the minimum non-residential FSR from 0.6:1 to 1.7:1. The non-residential floor space will have the potential to generate up to 106 employment opportunities. This will contribute to the St Leonards employment target of 4,570 new jobs by 2036.	✓
<i>Permit mixed-use development on key sites to encourage the renewal of St Leonards through the delivery of new A-grade commercial floor space (page 65).</i> <i>Land zoning: B4 Mixed Use</i>	The Planning Proposal supports a range of diverse retail, employment and residential uses in accordance with the B4 zoning objectives. These uses will be delivered on a site which has historically been commercial only. The proposal will contribute to achieving a genuine mixed-use precinct within the St Leonards CBD, and will support the ongoing renewal of floor space within the centre. The commercial floor space on Levels 1 and 2 has been sized to accommodate a range of business types and formats, with further design development to occur within a future development application.	✓
<i>Retain B3 Commercial Core zone on appropriate sites to maintain future viability of the St Leonards Core (page 65).</i>	The site is not located within the B3 Commercial Core zone.	N/A ✓

SCLN Plan	Planning Proposal Response	Consistency
<i>Protect and manage the Artarmon Employment Area</i>	The site is not located within the Artarmon Employment Area.	N/A
<i>Enable flexibility in planning controls to consider innovative and complementary health and education related uses on a site by site basis within the Artarmon Employment Area and health and education precinct.</i>	As above.	N/A
<i>Investigate new early childhood, schools and tertiary education facilities in the Precinct, supported via SIC funding.</i>	Commitment of SIC funding is a matter for Council consideration.	N/A
<i>Investigate introduction of Complying Development Provisions for cafes, restaurants and retail with extended trading hours.</i>	Complying development provisions is a matter for DPIE and Council consideration.	N/A
<i>Ensure land is available at Royal North Shore Hospital for future expansion of health uses.</i>	The site is not located adjacent to the Royal North Shore Hospital.	N/A
<i>Encourage the location of additional retail in the St Leonards Core and Crows Nest Village rather than the Artarmon Employment Area.</i>	The indicative concept scheme proposes three retail tenancies between 68sqm – 85sqm at ground level, in order to activate Atchison Street, Atchison Land and the pedestrian through site link. The provision of retail floor space with the St Leonards mixed-use core will retain the supremacy of employment uses within the Artarmon Employment Area.	✓
<i>Support investigations into the Herbert Street Precinct to provide new health services, affordable and key worker housing and additional education facilities.</i>	The Herbert Street precinct investigations are a matter for Council consideration.	N/A
Movement		
<i>Provide clear, continuous and direct pedestrian and cycle routes to priority destinations such as St Leonards Station and surrounding commercial core, the future Crows Nest Sydney Metro Station, Royal North Shore Hospital and St Leonards TAFE.</i>	The indicative concept scheme proposes a north-south through site linkage between 4.5m – 5.6m wide and at least 7m high. As outlined in Section 4.2.4 , the endorsed VPA proposes to implement an easement for public access between 6am – 11pm to ensure the ongoing accessibility of this linkage. This will improve pedestrian and cycle	✓

SCLN Plan	Planning Proposal Response	Consistency
	<p>accessibility throughout the St Leonards mixed-use core and enhance access to Chandos Street.</p> <p>The site is not in direct proximity of the Crows Nest Sydney Metro Station, Royal North Shore Hospital and St Leonards TAFE.</p>	
<p><i>Investigate footpath improvements:</i></p> <p><i>Enhance amenity and connectivity along Clarke Lane to support access to the Crows Nest Metro Station with a continuous shared path treatment and reverse setbacks at ground level.</i></p> <p><i>Widen the footpath along Sergeants Lane to support access to St Leonards Station and complement plans for active retail along Atchison Street.</i></p> <p><i>Provide shade and shelter for pedestrians with reverse setbacks along Atchison Street and tree lined green streets along Chandos, Oxley and Mitchell Streets.</i></p>	<p>Footpath upgrades are a matter for Council consideration. However, it is noted the proposed 3m podium ground level setback to Atchison Street will widen the public domain and activate the proposed retail tenancies along this frontage.</p>	✓
<p><i>Investigate cycle path improvements</i></p> <p><i>Prioritise delivery of cycle infrastructure identified by North Sydney Council and Bike North including dedicated cycle lanes on Henry Lane and Burlington Street.</i></p> <p><i>Bicycle crossing facilities should form part of upgrades to the signalised intersections along cycling routes including where they cross Pacific Highway and Oxley Street.</i></p> <p><i>Cycling infrastructure along the Pacific Highway is identified as a long-term consideration contingent upon a detailed assessment of the effects of major infrastructure investments as part of detailed traffic and transport modelling currently underway</i></p>	<p>Cycle paths are a matter for Council consideration.</p>	N/A

SCLN Plan	Planning Proposal Response	Consistency
<i>Deliver a regional pedestrian and cycling link to connect the area and regional open space</i>	Provision of regional linkages are a matter for Council and DPIE consideration.	N/A
<i>Improve pedestrian crossings</i>	Upgrades to pedestrian crossings are a matter for Council consideration.	N/A
<i>Undertake road network improvements</i>	Road network improvements are a matter for Council consideration.	N/A
<i>Provide a pedestrian and cyclist extension from the Herbert Street bridge to improve east west connectivity</i>	Not applicable.	N/A
<i>Limit the amount of car parking provided for new developments.</i>	Parking has been provided in accordance with the maximum requirements of the NSDCP 2013. The future DA will be required to provide parking for the residential component in accordance with the ADG which requires the lesser of either the NSDCP 2013 or the RMS Guide to Traffic Generating Development.	✓
<i>Subject to further investigations, provide funding of a right hand turn only movement from the Pacific Highway to Oxley Street for south bound traffic to reduce traffic in St Leonards Core created by the current limitation on this movement.</i>	Funding of upgrades is a matter for Council consideration.	N/A
<i>Improve pedestrian and cyclist comfort with tree lined streets along Reserve Road, Westbourne, Herbert, and Frederick Streets.</i>	Not applicable.	N/A
<i>Promote the provision of end of trip facilities to support cycling.</i>	End of trip facilities will be considered in the detailed design stage of a future Development Application.	✓
<i>Encourage the use and implementation of car share facilities.</i>	Car share facilities will be considered in the detailed design stage of a future Development Application.	✓

7.2.5. NSW Long Term Transport Master Plan and the Draft Future Transport 2056 Strategy.

The *NSW Future Transport 2056 strategy (Future Transport 2056)* is the 2018 update of the *NSW Long Term Transport Master Plan (the Transport Master Plan)*. The plan is a 40-year vision for mobility in NSW. Both plans are addressed below.

The NSW Long Term Transport Master Plan

The Transport Master Plan outlines several projects that will impact Sydney. The plan aims to build efficiently on existing transport connections, including those with the Sydney CBD through the Global Economic Corridor. These connections will connect people with jobs and other opportunities which in turn will support productivity and economic growth.

The Plan recognises that State Government investment in transport will grow and enhance businesses and precincts. The plan includes strategies to improve road capacity, reduce journey times and public transport solutions to promote accessibility across Sydney.

This Planning Proposal is consistent with the objectives of the Transport Master Plan. The proposal provides a high density residential, commercial and community development near train and bus networks. The existing network provides excellent linkages to key nearby employment centres.

These short and long-term objectives promote the connectivity of St Leonards to the CBD and surrounding centres. The mixed-use proposal is timely given the proposed infrastructure upgrades planned to improve travel times between northern Sydney and the CBD.

Future Transport 2056 Strategy

The Future Transport 2056 outlines the vision for the Greater Sydney mass transit network. The strategy identifies St Leonards as a 'strategic centre' linked directly to the 'Harbour City' (the Sydney CBD) via North Sydney.

Future Transport 2056 sets six state-wide outcomes to guide investment, policy and reform and service provision. They provide a framework for network planning and investment aimed at supporting transport infrastructure. The locality will significantly benefit from the frequency of transport services and upgraded infrastructure provided by the proposed public transport upgrades.

Q4 - Is the planning proposal consistent with a Council's local strategy or other local strategic plan?

The St Leonards/ Crows Nest Planning Study – Precinct 2 and 3 (the 'Planning Study') May 2015, has been adopted by Council. The study provides the framework to inform future proposals in the locality.

The subject site is included within the defined study area and is situated within Precinct 3. This Precinct is identified by the Planning Study as a medium density mixed use residential area. The Planning Proposal provides a 16-storey mixed use residential building as recommended in Council's Planning Study.

The planning proposal does seek to vary the requirement for a four (4) storey street wall and 3m setback above the street wall. This variation is considered justifiable for the following reasons:

- The proposed 3 storey podium maintains the scale of a 4- storey podium/street wall through the application of generous floor to ceiling heights and will step down from the podium of the adjacent building at 40-48 Atchison Street to suit the fall towards Oxley street.
- The tower and podium are setback 3m from the boundary which allows for a more generous public domain increased pedestrian amenity and activation of the ground floor retail tenancies at ground level.
- The podium height is consistent with the established podium heights to adjacent buildings and provides a pedestrian scale which contributes to the desired character of St Leonards as emphasised within the Planning Study
- The proposed tower setback to Atchison Street aligns with the adjacent tower at 4—48 Atchison Street to the west and both defines the street edge and allows for greater internal amenity to the apartments fronting Atchison Street. The reduced above podium setback to Atchison Lane aligns with the northern façade of the adjoining building at 40-48 Atchison street and was endorsed by the Design Review Panel on the basis that 6m setbacks to the East and West tower facades were maintained.

Notwithstanding the above the proposed podium and tower remain consistent with the built form objectives within the St Leonards / Crows News Planning Study as detailed in **Table 10** below:

Table 10 Assessment against the built form objectives

Objective	Response
<i>Award-winning architectural design offering quality mixed use and commercial development</i>	The proposed building envelope allows for a high-quality design with flexible commercial spaces that will offer high levels of amenity and functionality. The proposed envelope will accommodate slender tower design above the podium that allows for design excellence and apartments that will be consistent with the requirements of the ADG.
<i>A built form that transforms St Leonards into a modern, mixed use centre, and</i>	The proposed built form will contribute to the continued revitalisation of St Leonards as a modern, mixed use centre through the development of an older commercial site that is located within an area undergoing significant transition and intended for urban renewal within the both the Planning Study and the SLCN Plan.
<i>Additional residential and employment capacity to meet the demand for new jobs and housing in the LGA</i>	The proposal will add both additional residential and employment capacity above the minimum requirements to meet the demand for new jobs and housing within the LGA.
<i>Human scale to streets & laneways</i>	<p>The 3 -4 storey podium incorporates a ground plane design that recognises pedestrian scale and connectivity by adopting a 3-metre building setback from the Atchison Street boundary which facilitate an active street frontage.</p> <p>The proposed through site link from Atchison Street to Atchison Lane will also contribute towards Council's plans for a well-connected centre.</p>
<i>Greater pedestrian amenity and more room for outdoor dining</i>	The proposed setbacks and covered through site link will facilitate active frontages providing greater activation and pedestrian amenity with future opportunities for outdoor dining.

Q5 - Is the planning proposal consistent with applicable State Environmental Planning Policies?

The proposals consistency with current State Environmental Planning Policies (**SEPPs**) and Regional Environmental Plans (**REPs**), which are deemed SEPPs, are summarised in **Table 11**.

Table 11 Consistency with SEPPs and REPs

State Environmental Planning Policy	Comment
SEPP (Koala Habitat Protection) 2020	Not applicable
SEPP (Koala Habitat Protection) 2021	Not applicable
SEPP (Aboriginal Land) 2019	Not applicable
SEPP (Activation Precincts) 2020	Not applicable

State Environmental Planning Policy	Comment
SEPP (Concurrences and Consents) 2018	Not applicable
SEPP (Educational Establishments and Child Care Facilities) 2017	Not applicable
SEPP (State and Regional Development) 2011	Not applicable
SEPP (Sydney Drinking Water Catchment) 2011	Not applicable
SEPP (Urban Renewal) 2010	The site is located within the St Leonards/ Crows Nest precinct. Whilst the State government has commenced an urban renewal investigation in this area the proposal responds to a comprehensive precinct study by Council in 2015. As such, processing of this application should proceed independently of the wider precinct investigation.
SEPP (Affordable Rental Housing) 2009	Not applicable
SEPP (Western Sydney Parklands) 2009	Not applicable
SEPP (Exempt and Complying Development Codes) 2008	Not applicable
SEPP (Western Sydney Employment Area) 2009	Not applicable
SEPP (Kosciuszko National Park – Alpine Resorts) 2007	Not applicable
SEPP (Infrastructure) 2007	The future development application will not trigger referral to the RMS.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Not applicable
SEPP (Sydney Region Growth Centres) 2006	Not applicable
SEPP (State Significant Precincts) 2005	Not applicable
SEPP (Building Sustainability Index: BASIX) 2004	<p>The BASIX SEPP requires residential development to achieve mandated levels of energy and water efficiency.</p> <p>The proposed development concept has been designed with building massing and orientation to facilitate future BASIX compliance, which will be documented at the development application stage.</p>

State Environmental Planning Policy	Comment
SEPP (Housing for Seniors or People with a Disability) 2004	Not applicable
SEPP (Penrith Lakes Scheme) 1989	Not applicable
SEPP (Kurnell Peninsula) 1989	Not applicable
SEPP No. 19 Bushland in Urban Areas	Not applicable
SEPP No. 21 Caravan Parks	Not applicable
SEPP No. 33 Hazardous and Offensive Development	Not applicable
SEPP No. 36 Manufactured Home Estates	Not applicable
SEPP No. 47 Moore Park Showgrounds	Not applicable
SEPP No. 50 Canal Estate Development	Not applicable
SEPP No. 55 Remediation of Land	Given the ongoing commercial use on the site it is expected that the site is suitable for the proposed use. Nevertheless, a Phase 1 Preliminary Site Investigation will be undertaken as part of any future development application.
SEPP No. 64 Advertising and Signage	Not applicable
SEPP No. 65 Design Quality of Residential Apartment Development	<p>An analysis of the indicative concept design has been undertaken by Kann Finch Architects. The analysis confirms that the development could achieve an acceptable level of internal amenity for future residents.</p> <p>Based on the indicative apartment layout tested by Kann Finch, the following is noted:</p> <p>The residential component consists of 65 apartments suited to a variety of lifestyles. An indicative dwelling mix is 1 bedroom units (60%) 2 bedroom units (40%).</p> <p>The residential floors have floor to floor height of 3.1 metres. The proposal is able to achieve the minimum ceiling heights under SEPP 65.</p> <p>Each apartment has access to a secure private open space such as a balcony with minimum areas of 8-12m² based on apartment size. A communal open space area at the rooftop will also be provided for occupants</p> <p>When modelled against the surrounding future context, approximately 72% of apartments will receive 2 hours of sunlight in mid-winter.</p>

State Environmental Planning Policy	Comment
	80% of apartments will achieve cross ventilation. A maximum of 15% of apartments have no direct sunlight which meets the ADG guide.
SEPP No. 70 Affordable Housing (Revised Schemes)	Not applicable
SEPP Vegetation in Non-Rural Areas	Not applicable
SEPP Coastal Management 2018	Not applicable
SEPP (Gosford City Centre) 2018	Not applicable
Draft Environment SEPP	There is no existing vegetation on the site. The site is within an existing urban area and as such will have minimal additional impact on the surrounding natural environment.
Draft SEPP Primary Production and Rural Development	Not applicable
Sydney Regional Environmental Plan No. 8 – Central Coast Plateau Areas	Not applicable
Sydney Regional Environmental Plan No. 9 – Extractive Industry	Not applicable
SREP No. 16 – Walsh Bay	Not applicable
SREP No. 20 – Hawkesbury-Nepean River	Not applicable
SREP No. 24 – Homebush Bay Area	Not applicable
SREP No. 26 – City West	Not applicable
SREP No. 30 - St Marys	Not applicable
SREP No. 33 – Cooks Cove	Not applicable
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	The site is within the Sydney Harbour Catchment to which this plan applies. The proposal is unlikely to have any additional impact on the water quality of Sydney Harbour as it is within an existing high-density urban environment. Strategies to reduce overall surface runoff and water retention on the site will be considered as part of the detailed design.
Greater Metropolitan REP No. 2 – Georges River Catchment	Not applicable
Willandra Lakes REP No. 1 – World Heritage Property	Not applicable

State Environmental Planning Policy	Comment
Murray REP No. 2 – Riverine Land	Not applicable

Q6 - Is the planning proposal consistent with applicable Ministerial Directions (s9.1 directions)?

The Planning Proposal's consistency with applicable section 9.1 Ministerial Directions is outlined in **Table 12**.

Table 12 Section 9.1 Compliance Table

Ministerial Direction	Comment
Employment and Resources	
1.1 Business and Industrial Zones <i>(a) encourage employment growth in suitable locations,</i> <i>(b) protect employment land in business and industrial zones, and</i> <i>(c) support the viability of identified strategic centres</i>	<p>The Planning Proposal is consistent with the direction for the following reasons:</p> <ul style="list-style-type: none"> ▪ The proposed commercial floor space will replace lower grade commercial floor space with upgraded space which will provide for a wider range of new businesses. ▪ The ground floor will include a new through site link which provides activation and vibrancy to these new retail and commercial tenancies. ▪ The proposal provides a non-residential component which exceeds both the NSLEP 2013 (0.6:1), the more recent St Leonards and Crows Nest Planning Study (1.5:1) and the SLCN Plan (1:1) ▪ The revised proposal provides 1,844sqm of non-residential GFA. 1. The proposed new employment spaces will have the potential to generate up to 106 jobs. ▪ The proposed concept and use will support the viability of the St Leonards as it transitions into a mixed-use centre which requires more retail service offering than presently available. ▪ Despite reducing commercial floorspace, the proposal satisfies Council's recommended non-residential minimum FSR, and as such achieves the objectives of this Direction.
1.2 Rural Zones	Not applicable
1.3 Mining, Petroleum Production and Extractive Industries	Not applicable.
1.4 Oyster Aquaculture	Not applicable
1.5 Rural Lands	Not applicable
Environment and Heritage	
2.1 Environmental Protection Zones	Not applicable
2.2 Coastal Management	Not applicable

Ministerial Direction	Comment
2.3 Heritage Conservation	The site has no identified or known items of European or Aboriginal significance, as such the proposal does not trigger further consideration.
2.4 Recreation Vehicle Areas	Not applicable
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable
2.6 Remediation of Contaminated Land	<p>Douglas Partners have prepared a Preliminary Site Investigation (PSI) Report to address this direction and assess the potential for contamination based on past and present land uses. This report is provided at Appendix F and discussed further in Section 7.3.9.</p> <p>In summary, the investigation identifies potential sources of contamination at the site including fill material, previous demolition works and off-site sources from previous commercial and industrial properties in the region. While the investigation determines that there is a low risk of significant or widespread contamination at the site, Douglas Partners recommend that once the site is demolished a detailed site investigation (DSI) and waste classification is undertaken. Preparation of a DSI and site remediation if required will be completed during the detailed development application stage.</p> <p>This finding confirms that the land is suitable (or will be suitable subject to the DSI) for all the purposes for the future use of the site as a mixed-use development.</p>
Housing, Infrastructure and Urban Development	
3.1 Residential Zones	<p>The Planning Proposal is consistent with the direction for the following reasons:</p> <ul style="list-style-type: none"> ▪ The proposal provides a mix of dwelling types to meet future population needs. The site is well placed to accommodate high density residential uses. ▪ The proposed mixed-use development will make efficient use of existing services and infrastructure. It will provide sufficient housing to help meet infill housing targets and reduce the need for land release on the metropolitan fringe. ▪ Residential accommodation in this location will have minimal impact on the natural environment or resource lands. This is because the precinct and sites are already developed and are not constrained by natural hazards. The proposal is consistent with the scale supported by Council through its adopted Planning Study.
3.2 Caravan Parks and Manufactured Home Estates	Not applicable

Ministerial Direction	Comment
3.4 Integrating Land Use and Transport	<p>The Planning Proposal is consistent with the direction for the following reasons:</p> <ul style="list-style-type: none"> ▪ The proposal to increase density on the B4 mixed use zoned site supports the principle of integrating land use and transport. ▪ The site has excellent access to public transport. It is within walking distance of the St Leonards train station and future Crows Nest Station, as well as existing bus services. ▪ The site's proximity to public transport would provide opportunities for residents and employees to conveniently use public transport thereby reducing private vehicle trip movements. ▪ The proposal would provide additional employment within the North Sydney LGA close to existing services and infrastructure. ▪ The site is close to nearby centres which offer employment and other services. Additional local service provision within walking distance of new dwellings will be incorporated into the future design of the site.
3.5 Development Near Licensed Aerodromes	<p>The site is not close to Sydney Airport however it is affected by obstacle limitation surface of 156 AHD. While the proposed building height is below the OLS height, during construction the crane may exceed this height. Accordingly, the provisions of clause (4) to the Direction applies.</p> <p>As such an aviation safety assessment referral as a 'controlled activity' will be required by CASA and Airservices Australia as part of this planning proposal assessment.</p>
3.6 Shooting Ranges	Not applicable
3.7 Reduction in non-hosted short term rental accommodation period	Not applicable
Hazard and Risk	
4.1 Acid Sulphate Soils	<p>There is no mapping of acid sulfate soils (ASS) by Council. Given the location of the site high on a ridge the likelihood of ASS is low. Evidence of recent construction close to the site demonstrate ASS is not a constraint to the future proposed development of the site. Further assessment can be carried out if necessary as part of the development application.</p>
4.2 Mine Subsidence and Unstable Land	Not applicable
4.3 Flood Prone Lane	Not applicable
4.4 Planning for Bushfire Protection	Not applicable

Ministerial Direction	Comment
Regional Planning	
5.2 Sydney Drinking Water Catchments	Not applicable
5.3 Farm Land of State and Regional Significance on the NSW Far North Coast	Not applicable
5.4 Commercial and Retail Development along the Pacific Highway, North Coast	Not applicable
5.9 North West Rail Link Corridor Strategy	Not applicable
5.10 Implementation of Regional Plans	The proposal is consistent with this Direction. This proposal outlines an assessment demonstrating the achievement of the objective of this Direction.
5.11 Development of Aboriginal Council land	Not applicable
Local Plan Making	
6.1 Approval and Referral Requirements	This is an administrative requirement for Council.
6.2 Reserving Land for Public Purposes	This is an administrative requirement for Council.
6.3 Site Specific Provisions	The proposal is consistent with this direction. It does not seek to impose unnecessarily restrictive site-specific planning controls, rather conventional LEP amendments such as building height and FSR changes to Council maps.
Metropolitan Planning	
7.3 Parramatta Road Corridor Urban Transformation Strategy	Not applicable
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	Not applicable
7.5 Implementation of Wilton Priority Growth Area Interim Land use and Infrastructure Implementation Plan	Not applicable
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	Not applicable
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	Not applicable

Ministerial Direction	Comment
7.8 Implementation of Western Sydney Aerotropolis Plan	Not applicable
7.9 Implementation of Bayside West Precincts 2036 Plan	Not applicable
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	Not applicable
7.11 Implementation of St Leonards and Crows Nest 2036 Plan	The proposal is consistent with the SLCN Plan as outlined in Section 7.2.4 of this Planning Proposal. Where any inconsistencies arise between the proposed concept scheme and the Plan, it is noted that the overall intent, vision, objectives and actions of the Plan are achieved.
7.12 Implementation of Greater Macarthur 2040	Not applicable
7.13 Implementation of the Pyrmont Peninsula Place Strategy	Not applicable

7.3. ENVIRONMENTAL, SOCIAL AND ECONOMIC IMPACT

Q7 - 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 site is fully developed and comprises little vegetation. There are no known critical habitats; threatened species or ecological communities located on the site and therefore the likelihood of any negative impacts is minimal.

Q8 - Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

The site is free of major constraints. There are no likely environmental effects associated with the future development of the land that cannot be suitably mitigated through further design development. Preliminary investigations have been undertaken as outlined below.

7.3.1. Overshadowing

An additional three-dimensional shadow study has been undertaken by Kann Finch. The shadow study has considered the potential future-built form within Atchison Street including the future development envelopes adjacent and opposite.

The Planning Study acknowledged that the east-west orientation of the urban blocks within St Leonards meant that a large proportion of the ground plane with St Leonards is overshadowed throughout the day.

The submitted shadow analysis demonstrates that the orientation of the site means that some overshadowing of the public domain and buildings to the south is unavoidable with the built form anticipated by the Planning Study and the SLCN Plan.

There will be some additional impact to the development sites opposite between 9am and 3pm however as demonstrated in the shadow study there are already impacts from existing buildings and likely to be further impacts when surrounding sites are re-developed. These impacts are considered acceptable in the context of an emerging high-density environment. It is also noted that the current levels of solar access from surrounding properties will not remain in perpetuity. This is because the site is located within a Strategic Centre which is required to continue to grow housing and employment numbers, meaning the building form must also expand.

There will be no impact to the Mitchell Street plaza which is located to the west of the site. Further the shadow study demonstrates that the shadows from the proposed building are likely to overlap with the shadows generated by a future building envelope on the site to the east and as such will not generate any additional overshadowing of the proposed linear park on Oxley Street between 2pm and 3pm.

Whilst there will be some impact to the surrounding public domain within Atchison Street There will be no additional impacts to any other spaces and parks identified within the Planning Study including Hume Street Park.

7.3.2. View Impacts

The height and bulk of the St Leonards built form is already undergoing significant transformation. Several tall building forms have recently been approved or are pending approval on surrounding sites. The surrounding lands will continue to undergo building height increases over the coming years through the priority precinct vision.

As demonstrated in **Figure 14** which has been sourced from the Planning Study, the key views and sightlines are generated by the predominantly 'orthogonal' street grid and undulating topography which generates long sightlines and vistas. As the proposal is located mid-block on Atchison Street it will not impact on these views. However, the development uplift will have some unavoidable impact on views from surrounding taller buildings.

Figure 14 Key Sightlines and Vistas



Source: St Leonards Crows Nest Planning Study – 2014

The revised concept design was prepared in accordance with the St Leonards/ Crows Nest Planning Study and feedback from North Sydney Council. This study has determined that the site and surrounding sites are suitable for a 16-storey building. This will result in a building form taller than its neighbouring properties to the immediate west.

The proposal has the potential to impact on some views from the adjacent 11 storey residential building at No. 48 Atchison Street to the east. This site currently benefits from partial district views to the east and north. However, we note that generally, the eastern elevation windows are secondary windows to living spaces or bedrooms. Views from this site to the Sydney CBD to the south are currently impacted by the built form of the Nexus building at No. 15 Atchison Street.

Any impact to the visual aspect of neighbouring properties resulting from the development uplift to neighbouring lower-scale properties is reasonable. This is because both Council's own Planning Study for the precinct and the new SLCN Plan have endorsed the height of the proposed site. The proposal is therefore consistent with the broader change in density and visual impacts in the centre.

In summary, the proposed built form presents a well-considered building form with a defined podium base and slender tower above which will provide views to the sky between future tower forms. The design responds to the key site characteristics and framework set by the St Leonards/Crows Nest Planning Study. The built form is appropriate for this location and compatible with the surrounding built form typologies.

7.3.3. Traffic Impacts

A Transport Impact Assessment (TIA) has been undertaken by ARUP in relation to the proposal. This assessment is included at **Appendix C**. The TIA has reviewed the existing conditions of the site including travel behaviour, public transport, road network, parking and traffic volumes. Significantly for this planning

proposal, the review notes that Travel to Work data from the 2016 census indicates that over 51% of residents within St Leonards take the train to work.

The TIA provides a preliminary assessment of the design concept. The TIA includes a review of the proposed parking provision in relation to the controls within the NSDCP 2013. The TIA also reviews the servicing arrangements and traffic generation on the site.

The TIA notes that the site's location close to various modes of public transport will not generate significant parking demand. TIA states that the proposed parking provision is consistent with the requirements of the NSDCP 2013. The TIA also confirms that the proposed servicing arrangements are acceptable given the low frequency of service vehicles and that deliveries can take place out of hours. This will minimise potential conflicts with other vehicles and pedestrians.

The TIA has assessed the potential traffic generation. Whilst there will be a net increase in traffic generation when compared to current conditions, this increase was assessed to be negligible. The TIA does not envisage any adverse impacts to the performance of surrounding intersections and therefore the surrounding road network is expected to operate at current levels.

The TIA makes the following recommendations to be undertaken as part of any future DA.

- Secure bicycle parking be provided, and
- Travel Demand Management measures which includes a Green Travel Plan will be implemented to improve the mode share of public transport and active transport.

The TIA concludes that the proposal is supportable on traffic related considerations.

A draft Green Travel Plan (**draft GTP**) has been prepared to accompany the Planning Proposal in accordance with Council's Resolution (no. 3) on 27 July 2020. The draft GTP is attached at **Appendix J**.

7.3.4. Waste Management

Elephants Foot have been engaged to provide an Operational Waste Management Plan (OWMP). A copy of their OWMP is attached in **Appendix D**. The OWMP identifies the different waste streams which are likely to be generated in the operational phase of the development.

The OWMP provides the following details:

- How the waste will be handled and disposed for both residential and commercial waste.
- Estimation of volumes of waste for both residential and commercial uses on the site.
- Details of bin sizes/quantities and waste rooms.
- Descriptions of the proposed waste management equipment used including its installation and design.
- Information on waste collection points and frequencies.

The OWMP provides that the concept can accommodate the spatial requirements for waste and recycling, further details will be provided at development application stage.

7.3.5. Servicing

A Services Report has been prepared by Cardno and included at **Appendix E**. The site is located centrally within the St Leonards Town Centre close to existing services. The Building Services Report has reviewed the indicative services requirements of the proposed concept design including:

- Mechanical Services
- Electrical Services,
- Fire Services, and
- Hydraulic Services.

In liaison with the relevant service providers the proposal will be subject to further capacity testing to determine the suitability of existing service and utility infrastructure and any upgrades required.

7.3.6. Sustainability

The Services Report also includes the following Ecologically Sustainable Development (ESD) initiatives which can be incorporated into the development.

The ESD initiatives include:

Mechanical

- High efficiency (high COP) motors and equipment;
- Cross flow ventilation to apartments;
- Insulated ductwork;
- Variable speed drives on all fan motors;
- Individual toilet exhaust fans and FCR OA fan interlocked to local light switches;
- CO monitoring in the carpark;

Electrical

- After hours switches.
- Energy efficient lighting and lighting systems;
- Lighting levels and lighting power densities to all other areas in accordance with BCA – Section J requirements;
- Digital power metering for all common area submains and house distribution boards as per BCA part J8;
- Reduction of “spill” lighting; and
- Power factor correction.

Hydraulic

- Rainwater harvesting for landscape irrigation;
- Low flow fittings and fixtures;
- Additional insulation to hot water pipework;
- Solar hot water systems with gas boost.

In addition to the above, the concept design has been prepared with building massing and orientation to facilitate future BASIX compliance. BASIX will be addressed at the detailed development application stage. The Services Report confirms that the development shall meet and where possible exceed the NCC energy efficiency requirements of Part J of the BCA.

7.3.7. Noise

The site is situated a short distance away from road noise associated with the Pacific Highway and surrounded by existing buildings that will shield noise intrusion. As such mitigating measures are unlikely to be required.

7.3.8. Wind

Wind impacts are expected to be limited due to the proposed height and the incorporation of an awning along the Atchison Street frontage. The parapet design of the podium will also reduce potential downward wind effects to the public domain.

7.3.9. Contamination

A PSI prepared by Douglas Partners is provided at **Appendix F**. The PSI has been prepared in accordance with the NEPC *National Environment Protection (Assessment of Site Contamination) Measure 1999*; and the NSW EPA *Guidelines for Consultants Reporting on Contaminated Land*. The PSI provides an overview of the site history and environmental setting, as well as the results of a site visit on 16 April 2021 and preparation of a conceptual site model to determine potential contaminating sources.

The PSI identifies the following potential sources of contamination and contaminants of potential concern:

- S1: Fill: Associated with levelling, demolition of former buildings on the site.
- S2: Former buildings.
- S3: Off-Site Sources (Motor Garages & commercial / industrial), Current and historic.

Douglas Partners also note that due to the nature of these sources and the distance to Flat Rock Creek from the site, the risk of groundwater and surface water contaminated from on-site sources is low.

Overall, the PSI concludes that the risk of significant or widespread contamination at the site is low. To confirm this finding, it is recommended that a DSI and waste classification is completed following demolition to assess possible contamination, including testing of the soils and groundwater. These activities will be completed prior to the preparation of a detailed Development Application for the site in accordance with the provisions of *State Environmental Planning Policy No 55—Remediation of Land* to confirm the site can suitably accommodate the mixed-use development.

7.3.10. Summary

Overall, the Planning Proposal, will not result in any significant environmental effects that would preclude the LEP amendment. The site is therefore appropriate for the high-density mixed use proposed.

Q9 - Has the planning proposal adequately addressed any social and economic effects?

To determine whether the proposal adequately addresses economic effects, it is important to understand to the current market conditions and how the proposal responds. Through realising economic benefits, a positive social on-flow effect will also occur with the public benefiting through job creation and public domain upgrades.

Economic and Social Benefits

The proposed development at 50-56 Atchison Street will result in several direct economic benefits, during the construction stage and during ongoing operations. The proposed retail and commercial tenancies will provide a variety of spaces for new businesses and services. The proposed new employment spaces will have the potential to generate up to 106 jobs.

Improved public spaces will be created by the new through site link with active retail uses to foster social gathering and interaction.

State and Commonwealth Interests

Q10 - Is there adequate public infrastructure for the planning proposal?

The site is served by existing utility services. The site is located to allow incoming residents and workers to capitalise on the wide range of infrastructure and services existing and planned within the area. It will reinforce existing investment in public transport infrastructure, through increased patronage of the existing station at St Leonards.

A range of established services are available within proximity of the site, including health, education and emergency services networks.

Q11 - What are the views of state and Commonwealth public authorities consulted in accordance with the Gateway determination?

No consultation with State or Commonwealth authorities has been carried out to date on the Planning Proposal.

The Gateway Determination will advise the public authorities to be consulted as part of the Planning Proposal process. Any issues raised will be incorporated into this Planning Proposal following consultation in the public exhibition period.

In accordance with the Gateway Determination, public exhibition of the planning proposal is required for a minimum of 28 days. North Sydney Council must comply with the notice requirements for public exhibition of planning proposals in Section 5.5.2 of *A guide to preparing local environmental plans*.

8. MAPPING

The Planning Proposal seeks to amend the following NSLEP 2013 Maps:

- Height of Buildings Map Sheet - HOB_001_010
- Non-Residential Floor Space Ratio Map Sheet - LCL_001_010; and
- Maximum Floor Space Ratio Map Sheet FSR_001_010.

The proposed technical mapping changes are provided at **Appendix I**.

9. COMMUNITY CONSULTATION

Section 3.33 of the EP&A Act requires the relevant planning authority to consult with the community in accordance with the gateway determination. It is anticipated that the Planning Proposal will be publicly exhibited for at least 28 days. This is in accordance with DPIE's *A Guide to Preparing Local Environmental Plans*.

At a minimum, the notification of the public exhibition of the Planning Proposal is expected to involve:

- A public notice in local newspaper(s);
- Notification on the North Sydney Council website; and
- Written correspondence to owners and occupiers of adjoining and nearby properties and relevant community groups.

The proponent has met with Council officers in 2015 and on several occasions in 2018 to discuss the planning proposal. The proponent considered Council's feedback and refined the scale and definition of the building envelope to address the officer's requirements and the outcomes of the St Leonards Crows Nest Planning Study.

10. PROJECT TIMELINE

It is anticipated that the LEP amendment will be completed within 9-12 months. An indicative project timeframe is provided below.

Table 13 Indicative Project Timeline

Stage	Timeframe and/or Date
Consideration by North Sydney Council	April 2018
Council determination of Planning Proposal	July 2020
Request for Gateway Determination sent to DPIE	September 2020
Gateway Determination Issued to Council	March 2021
Submission of amended Planning Proposal to DPIE for approval	June 2021
Public exhibition	July – August 2021
Council considered post-exhibition report	October 2021
Submission to DPIE requesting making of LEP	October 2021
Drafting of LEP and Gazettal	March 2022

11. CONCLUSION

The Planning Proposal seeks an amendment to the *North Sydney Local Environmental Plan 2013*. The amendment will allow for a high-density mixed-use development at 50-56 Atchison Street, St Leonards.

The Planning Proposal has been prepared in accordance with:

- Section 3.33 of the *Environmental Planning and Assessment Act 1979* and,
- The relevant DPIE guidelines.

The planning proposal report provides strategic and site-specific justification for the LEP amendments. The proposed Concept Design has been informed by a detailed site analysis and pre-lodgement engagements with Council.

The proposed amendments to the NSLEP 2013 will achieve an appropriate development outcome for the following reasons:

- The proposal achieves an appropriate built form and scale outcome consistent with the objectives of local planning policy. The proposal is also consistent with both the existing and emerging scale of development within St Leonards.
- The proposal will positively contribute to the State planning strategic goals. These goals include increasing employment and housing densities in centres with access to existing and planned public transport.
- The proposal will deliver a range of benefits for the community, including:
 - Direct and indirect jobs during the construction phase
 - Ongoing employment from the retail and commercial uses proposed for the site
 - Growth of employment from the current uses that are consistent with the new direction and forecast need for retail and commercial uses.
 - A public through site link on the western boundary to enhance activation to the proposed retail tenancies. The specifics of the offer will be discussed with Council during the assessment of the planning proposal and ultimately formalised through a Voluntary Planning Agreement.
 - A 3-metre building setback from the Atchison Street boundary to improve pedestrian circulation, to encourage active street frontages at ground level and to improve the amenity of the public domain.
 - Monetary Contribution for the upgrade works to Hume Park.
- The site has good access to services and public transport. The proposal will achieve environmental benefits by encouraging more trips within and outside of the centre without cars.
- The Planning Proposal supports the State government's objective to increase densities in major centres where there is good access to public transport and facilities.
- The Planning Proposal provides renewal of lower grade commercial office space which will allow for a greater mix of both retail and commercial uses.
- The residential component of the proposal capitalises on the site's location close to amenities, services and public transport.
- The proposal will ensure a development with significant economic and community benefit. The proposal has demonstrated both strategic and site-specific merit and as such warrants Council's support.

Overall, the proposal includes significant public benefits that will facilitate the development of a high-quality mixed-use development.

DISCLAIMER

This report is dated 15 July 2021 and incorporates information and events up to that date only and excludes any information arising, or event occurring, after that date which may affect the validity of Urbis Pty Ltd (**Urbis**) opinion in this report. Urbis prepared this report on the instructions, and for the benefit only, of Epic Leisure Pty Ltd (**Instructing Party**) for the purpose of X (**Purpose**) and not for any other purpose or use. To the extent permitted by applicable law, Urbis expressly disclaims all liability, whether direct or indirect, to the Instructing Party which relies or purports to rely on this report for any purpose other than the Purpose, and to any other person which relies or purports to rely on this report for any purpose whatsoever (including the Purpose).

In preparing this report, Urbis was required to make judgements which may be affected by unforeseen future events, the likelihood and effects of which are not capable of precise assessment.

All surveys, forecasts, projections and recommendations contained in or associated with this report are made in good faith and on the basis of information supplied to Urbis at the date of this report, and upon which Urbis relied. Achievement of the projections and budgets set out in this report will depend, among other things, on the actions of others over which Urbis has no control.

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This report has been prepared with due care and diligence by Urbis and the statements and opinions given by Urbis in this report are given in good faith and in the reasonable belief that they are correct and not misleading, subject to the limitations above.

APPENDIX A CONCEPT DESIGN REPORTS

APPENDIX B CONCEPT ARCHITECTURAL PLANS

APPENDIX C

TRANSPORT IMPACT ASSESSMENT REPORT

APPENDIX D

OPERATIONAL WASTE MANAGEMENT PLAN

APPENDIX E BUILDING SERVICES REPORT

APPENDIX F

PRELIMINARY SITE INVESTIGATION

APPENDIX G

ENDORSED VOLUNTARY PLANNING AGREEMENT

APPENDIX H

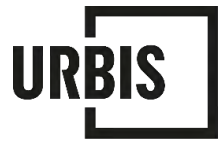
EXISTING TECHNICAL LEP MAPPING

APPENDIX I

PROPOSED TECHNICAL LEP MAPPING

APPENDIX J

GREEN TRAVEL PLAN





Voluntary Planning Agreement

North Sydney Council
ABN 32 353 260 317

Epic Leisure Pty Ltd
ACN 115 707 527

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Agreement

Date

Parties

First party

Name North Sydney Council (**Council**)
ABN 32 353 260 317
Contact General Manager
Telephone

Second party

Name Epic Leisure Pty Ltd (**Developer**)
ACN 115 707 527
Contact Michael Tan
Telephone

Background

- A. The Developer owns the Land.
- B. Council has adopted the St Leonards / Crows Nest Planning Study- Precinct 2 and 3 which identifies the Land as being within both "Precinct 2" and "Precinct 3".
- C. The Developer proposes to carry out the Development which will include a multi-storey mixed use development with underground car parking and associated publicly accessible areas.
- D. To facilitate the Development, the Developer has lodged a Planning Proposal seeking the following amendments to LEP 2013:
 - (a) an amendment to the Height of Buildings Map to allow a maximum building height of 56m (excluding the lift overrun) on the Land;
 - (b) an amendment to the Floor Space Ratio Map to allow a maximum floor space ratio for the Land of 6.4:1; and
 - (c) an amendment to the Non-Residential Floor Space Ratio Map to provide a minimum non-residential floor space ratio for the Land of 1.7:1.
- E. The Developer has made an offer to enter into this agreement to provide public benefits in connection with the Planning Proposal and future Development of the Land.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person; agency or entity and includes a certifier accredited under the *Building Professionals Act 2005* (NSW).

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire 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,
- (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;

Bond means a documentary performance bond in favour of Council which is signed and issued by an AA- credit rated insurer and that is in a form and substance satisfactory to Council, acting reasonably;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

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

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

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

Development means a proposed multi-storey mixed use development on the Land as modified from time to time, including commercial or retail uses, residential apartments, underground car parking and associated public domain and landscaping works permitted as a consequence of the Instrument Change;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Floor Space Ratio Map means the Floor Space Ratio Map in the LEP 2013.

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 of or administration of the GST;

Height of Buildings Map means the Height of Buildings Map in the LEP 2013;

Hume Street Park means the proposed public open space between Hume Street and Clarke Street, St Leonards;

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 an amendment to LEP 2013 implementing the Planning Proposal;

Land means Lots 5 to 7 of Section 11 in Deposited Plan 2872, known as 50-56 Atchison Street, St Leonards;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

LEP 2013 means the *North Sydney Local Environmental Plan 2013*;

Modification means any modification of the Development Consent under section 4.55 of the Act;

Monetary Contribution means a monetary contribution payable by the Developer in the amount of \$1,400,000.00;

Non-Residential Floor Space Ratio Map means the Non-Residential Floor Space Ratio Map in the LEP 2013;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate;

Planning Proposal means PP 3/18 lodged with the Council on 6 April 2018, seeking to amend LEP 2013:

- (a) to increase the building height control applying the Land from 20m to 56m (excluding the lift overrun);
- (b) to establish an overall maximum floor space ratio control applying to the Land of 6.4:1; and
- (c) to increase the minimum non-residential floor space ratio control applying to the Land from 0.6:1 to 1.7:1.

Public Access Area means a pedestrian thoroughfare between 4.6m and 5.6m metres wide (with a minimum width of 4.6m), connecting Atchison Street to Atchison Lane, as generally identified in the location on the plan attached at **Annexure A**.

Public Access Easement means an easement in gross limited in depth to the finished floor level of the ground floor of the Development and limited in height not less than 7.0m above ground floor level granted in favour of the Council that permits public access via the Public Access Area and a positive covenant which are generally in the terms set out in **Schedule 2**;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Regulation means the *Environmental Planning and Assessment Regulation 2000*;

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth);

Security means a Bank Guarantee or Bond and includes the Easement Security and the Monetary Contributions Security;

Setback Area means a 3 metre building setback from the Atchison Street boundary of the Land, as shown on the plan attached at **Annexure A**; and

Setback Easement means an easement in gross limited in depth to the finished floor level of the ground floor of the Setback Area and unlimited in height granted in favour of the Council that permits public access via the Setback Area and is generally in the terms set out in **Schedule 3**.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) 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 power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) **Schedule 1** of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Land;
- (b) the Development; and
- (c) the Instrument Change.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) The Developer will pay to Council the Monetary Contribution in accordance with this clause 6.1.
- (b) Subject to clause 9.2, the Monetary Contribution must be paid to Council as follows:
 - (i) prior to the issue of a Construction Certificate for the Development for any above-ground works approved under a Development Consent, or such other time as agreed by the parties in writing, the Developer must pay to Council 50% of the Monetary Contribution increased but not decreased, in accordance with movements in the CPI from the date of this agreement to the date of payment; and
 - (ii) prior to the issue of the first Occupation Certificate for the Development, or such other time as agreed by the parties in writing,, the Developer must pay to Council the remaining 50% of the Monetary Contribution increased but not decreased in accordance with movements in the CPI from the date of this agreement to the date of payment.
- (c) Any agreement by the parties to vary the timing for payment of the Monetary Contribution will not take effect until the amendment has been:
 - (i) confirmed in writing; and
 - (ii) signed by the parties.
- (d) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (e) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and

cleared funds or electronic funds have been deposited in the Council's bank account.

- (f) The parties agree and acknowledge that the Monetary Contribution will be used by the Council as it sees fit to:
 - (i) acquire land for the improvement of Hume Street Park as required;
 - (ii) carry out the embellishment of Hume Street Park; and
 - (iii) care for and maintain Hume Street Park.
- (g) Subject to clause 9.3, in the event Council determines not to acquire the land for the purposes of establishing Hume Street Park, 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 within the North Sydney Local Government Area and within the suburbs of St Leonards and Crows Nest only.
- (h) For the avoidance of doubt, nothing in this agreement requires the Council to:
 - (i) spend the Monetary Contribution made under this agreement by a particular date; or
 - (ii) refund to the Developer any contribution made under this agreement.

6.2 Public Access Area

- (a) The Developer agrees to establish the Public Access Area as part of the Development, in accordance with this **clause 6.2**.
- (b) The Developer agrees and acknowledges that:
 - (i) any Development Consent or Modification relating to a building on the Land may require development of the Public Access Area so it is consistent with any standards and specifications provided by the Council, and suitable for public use as a pedestrian thoroughfare;
 - (ii) prior to the issue of any Occupation Certificate for the Development, or such other time as agreed by the parties in writing, it will design and construct the Public Access Area in a good and workmanlike manner and in accordance with any technical requirements in *North Sydney Development Control Plan 2013* and Council's Public Domain Style Manual and Design Code, unless otherwise specified by the Council, and any Development Consent.
- (c) The works to develop the Public Access Area must be completed to Council's satisfaction, acting reasonably, prior to the issue of the first Occupation Certificate for the Development, or such other time as agreed by the parties in writing.
- (d) Prior to the issue of any Occupation Certificate for the Development or such other time as agreed by the parties in writing, the Developer must lodge the Public Access Easement for registration.
- (e) The Developer must do all things reasonably required to procure registration of the Public Access Easement including responding in a timely manner to requisitions issued by NSW Land Registry Services.
- (f) For the avoidance of doubt:

- (i) The Developer will be taken to have established the Public Access Area as required by this agreement when the Council is satisfied that the works to develop the Public Access Area are complete and the Public Access Easement has been registered.
 - (ii) The lodgement of the Public Access Easement with NSW Land Registry Service does not constitute completion of the obligation to register the Public Access Easement.
 - (iii) The Public Access Easement will be taken to have been registered for the purposes of this clause 6.2 when the Developer has provided Council with a copy of the registered dealing.
- (g) Any agreement by the parties to vary the timing for the design and construction of the Public Access Area, completion of the works to the Public Access Area or registration of the Public Access Easement permitted by clause 6.2(b)(ii), (c) and (d) will not take effect until the amendment has been:
- (i) confirmed in writing; and
 - (ii) signed by the parties.
- (h) The Developer acknowledges and agrees that the Public Access Area will serve the purposes of improving pedestrian circulation and improve the amenity of the public domain by encouraging active street frontages.

6.3 Setback Area

- (a) The Developer agrees to establish the Setback Area as part of the Development in accordance with this **clause 6.3**.
- (b) The Developer agrees and acknowledges that:
 - (i) any Development Consent or Modification relating to a building on the Land may require development of the Setback Area so it is consistent with any standards and specifications provided by the Council, and suitable for public use;
 - (ii) prior to the issue of the first Occupation Certificate for the Development, or such other time as agreed by the parties in writing, it will design and construct the Setback Area in a good and workmanlike manner and in accordance with any technical requirements in *North Sydney Development Control Plan 2013* and Council's Public Domain Style Manual and Design Code, unless otherwise specified by the Council, and any Development Consent.
- (c) The works to develop the Setback Area must be completed to Council's satisfaction, acting reasonably, prior to the issue of the first Occupation Certificate for the Development.
- (d) Prior to the issue of a Construction Certificate for any above-ground works approved under a Development Consent, or such other time as agreed by the parties in writing, the Developer is to register a restrictive covenant against the title to the Land prohibiting the erection of any building or structure on or above the finished floor level of the ground floor of the Setback Area other than improvements consistent with the Setback Easement and approved by Council, including works of art, street furniture, tables and seating, signage including but

not limited to rules of behaviours, security, lighting, planter boxes and any other public domain improvements.

- (e) Prior to the issue of the first Occupation Certificate for the Development, or such other time as agreed by the parties in writing, the Developer must lodge for registration against the title to the Land the Setback Easement.
- (f) The Developer must do all things reasonably required to procure registration of the Setback Easement including responding in a timely manner to requisitions issued by NSW Land Registry Services.
- (g) For the avoidance of doubt:
 - (i) The Developer will be taken to have established the Setback Area as required by this agreement when the Council is satisfied that the works to develop the Setback Area are complete and the Setback Easement has been registered.
 - (ii) The lodgement of the Setback Easement with NSW Land Registry Service does not constitute completion of the obligation to register the Setback Easement.
 - (iii) The Setback Easement will be taken to have been registered for the purposes of this clause 6.3 when the Developer has provided Council with a copy of the registered dealing.
- (h) Any agreement by the parties to vary the timing for the design and construction of the Setback Area, completion of the works to the Setback Area or registration of the Setback Easement permitted by clause 6.3(b)(ii), (c), (d) and (e) will not take effect until the amendment has been:
 - (i) confirmed in writing; and
 - (ii) signed by the parties.
- (i) The Developer acknowledges and agrees that the Setback Area will serve the purposes of improving pedestrian circulation and improve the amenity of the public domain by encouraging active street frontages.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration of this agreement

8.1 Developer Interest

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

8.2 Registration of this agreement

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, 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 registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (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 this **clause 8.2**.
- (c) The Developer, at its 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 40 Business Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.3 Removal from Register

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

8.4 Caveat

- (a) The Developer acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five (5) Business Days after the Developer complies

with **clause 8.2** and must not lodge any other caveats on the titles to any of the Land.

9 Review of this agreement

9.1 Review by agreement

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purposes of this clause 9.1 and subject to clauses 9.2 and 9.3:
 - (i) no modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement; and
 - (ii) a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

9.2 Adjustment to Monetary Contribution

- (a) If the Development as approved by a Development Consent (**Approved Development**) achieves a total gross floor area equal to or less than 6499 m² and a total FSR equal to or less than 6:1 then within 20 Business Days of either party making a written request for review, the Council and the Developer must meet to review this agreement in accordance with the principles in clause 9.2(b), using their best endeavours and acting in good faith.
- (b) If a review of this agreement is carried out under clause 9.2(a) the parties must consider during that review process, whether the quantum of Monetary Contribution payable by the Developer under this agreement should be reduced having regard to:
 - (i) the total gross floor area and total FSR of the Approved Development; and
 - (ii) the planning controls applicable to the Land.

9.3 State Infrastructure Contribution

- (a) The Parties acknowledge that:
 - (i) On 31 August 2020, before the date of this agreement, the NSW State Government has adopted the Local Character Statement, the Green Plan and the *Environmental Planning and Assessment (Special Infrastructure Contribution St Leonards and Crows Nest) Determination 2020 (SIC Determination)*, the *Environmental Planning and Assessment (Special Infrastructure Contribution - St Leonards and Crows Nest) Direction 2020 (Ministerial Direction)* and the *Environmental Planning and Assessment Amendment (St Leonards and Crows Nest Special Contributions Area) Order 2020 (Order)*;
 - (ii) The Land is identified within the St Leonards and Crows Nest Special Contributions Area in the SIC Determination and the Order and consequently, the SIC Determination applies to the Land;
 - (iii) As at the date of this agreement:
 - (A) The Land is not identified as "intensive residential use land" within the meaning of the SIC Determination; and

- (B) clause 6 of the SIC Determination does not apply to the Land nor the Development.
- (iv) The Land may be identified as “intensive residential use land” within the meaning of the SIC Determination following the making of the Instrument Change such that clause 6 of the SIC Determination will apply to the Land and the Development.
- (b) In the event that the Contributions have not been made under this agreement and either:
 - (i) The SIC Determination, or any other Special Infrastructure Contribution (SIC) determination made under Part 7, Division 7.1, Subdivision 4 of the Act or any other similar state or regional development contribution applies to the Land and the Development which imposes a requirement for the Developer to pay a SIC in relation to the Development or the Land; or
 - (ii) LEP 2013, following the Instrument Change, contains a provision requiring satisfactory arrangements for the provision of contributions to designated state or regional infrastructure,within 20 Business Days of either party making a request for a review, the Council and the Developer must meet to review this agreement in accordance with the principles in **clause 9.3(c)**, using their best endeavours and acting in good faith.
- (c) If a review of the Agreement is carried out under **clause 9.3(b)**, the parties must consider during that review process a reduction of the quantum of Monetary Contribution payable by the Developer to the Council under this agreement (and any subsequent release of all or part of the Security provided by the Developer under this agreement) taking into account:
 - (i) the amount of the SIC that is payable by the Developer in connection with the Development; and/or
 - (ii) the infrastructure to be provided and the amount of any contributions or works required as a result of the requirement to enter into satisfactory arrangements to provide contributions for designated state or regional infrastructure.
- (d) For the avoidance of doubt, nothing in clause 6.1(g) operates to release or alleviate the Council of its obligation to meet with the Developer to review this agreement in accordance with this clause 9.3.

9.4 Outcome of Review

- (a) Any agreement reached during a review under **clause 9.2** or **clause 9.3** will not constitute an amendment to this agreement until the amendment has been:
 - (i) confirmed in writing as a proposed amendment to this agreement;
 - (ii) publicly notified in accordance with the Regulation
 - (iii) approved by Council after consideration of any public submissions; and;
 - (iv) signed by the parties.
- (b) A failure by a Party to agree to participate in a review under **clause 9.2** or **clause 9.3** is taken to be a dispute for the purposes of **clause 10**.

- (c) If the Parties cannot agree to the terms of any amendment following a review under **clause 9.2** or **clause 9.3**, either Party may refer the matter to dispute resolution under **clause 10**.
- (d) Nothing in this **clause 9** operates as a requirement for Council to pay any money to the Developer or to refund to the Developer or any other entity, any amount paid to it under this agreement or for any other purpose.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 14 business days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with **clause 10.6** about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 Further Notice if Not Settled

If the dispute is not resolved within 14 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (Determination Notice) by mediation under **clause 10.5** or by expert determination under **clause 10.6**.

10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall

- include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
 - (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
 - (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
 - (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
 - (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
 - (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 Expert determination

If the dispute is not resolved under **clause 10.3** or **clause 10.5**, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) agreed upon and appointed jointly by the parties; and
 - (ii) in the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;

- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 Litigation

If the dispute is not *finally* resolved in accordance with this **clause 10**, then either party is at liberty to litigate the dispute.

10.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under **clause 10.1**, the referral to or undertaking of a dispute resolution process under this **clause 10** does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 Default

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 20 Business Days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under **clause 10** of this agreement.

11.2 Security

- (a) Prior to the issue of a Construction Certificate for any building comprising any residential component of the Development on the Land, the Developer must provide to the Council Security in the amount of \$50,000 to secure the works to the Public Access Area and Setback Area and lodgement of the easements, positive covenant and restrictive covenant required under this agreement (**Easement Security**).

- (b) Prior to the issue of a Construction Certificate for any building comprising any residential component of the Development, the Developer must provide to the Council Security in the amount of \$700,000 indexed in accordance with CPI from the date of this agreement to the date of the Security to secure the payment of the component of the Monetary Contribution payable in accordance with **clause 6.1(b)(ii) (Monetary Contribution Security)**.
- (c) The Council may call on a Security provided under this clause if:
 - (i) the Developer is in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with **clause 11.1** of this agreement; or
 - (ii) the Developer becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of the provision of a Security under **clause 11.2(a)**, the Developer must provide Council with one or more replacement or additional Securities (**Replacement Security**) so that the total amount of Security or Securities held by Council is equivalent to the amount calculated in accordance with the following:
$$A = \frac{B \times D}{C}$$
Where:
 - A is the amount of the total Security or Securities,
 - B is the amount of the Security to be replaced,
 - C is the CPI for the quarter ending immediately before the date of the Security to be replaced,
 - D is the CPI for the quarter ending immediately before the date of the Replacement Security,provided A is greater than B.
- (e) On receipt of a Replacement Security provided under **clause 11.2(d)**, the Council must release and return to the Developer, as directed, the Security that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Security under this clause, the Developer may provide the Council with one or more replacement Securities totalling the amount of all Securities required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Developer, as directed, the Security or Securities which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of the Monetary Contribution Security in satisfaction of:
 - (i) any obligation of the Developer under this agreement to pay the Monetary Contribution; and

- (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (h) Subject to this clause and the provisions of this agreement, the Council may apply the proceeds of the Easement Security in satisfaction of:
 - (i) any obligation of the Developer under this agreement to grant easements or register covenants against the title to the Land, including any costs incurred in acquiring relevant interests in the Land in accordance with clause 11.4; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (i) The Council must promptly return a Security provided under this clause if requested by the Developer and the Council is satisfied that the Developer has met all obligations under this agreement to which the Security relates.
- (j) Nothing in this **clause 11.2** prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,

that is not or cannot be satisfied by calling on a Security.

11.3 *Restriction on the issue of Certificates*

- (a) Unless otherwise agreed by Council in writing, in accordance with section 6.8 of the Act and clause 146A of the Regulation:
 - (i) the following obligations must be satisfied prior to the issue of the first Construction Certificate for any above-ground works approved under a Development Consent:
 - (A) payment of the first instalment of the Monetary Contribution in accordance with **clause 6.1(b)(i)**;
 - (B) registration of the restrictive covenant for the Setback Area as required by **clause 6.3(d)**; and
 - (ii) the obligations to provide Security as required under **clause 11.2** must be satisfied prior to the issue of a Construction Certificate for any building comprising any residential component.
- (b) Unless otherwise agreed by Council in writing, in accordance with section 6.10 of the Act and clause 154E of the Regulation, the following obligations must be satisfied prior to the issue of the first Occupation Certificate for the Development:
 - (i) Lodgement of the Public Access Area Easement with NSW Land and Registry Service for registration as required by **clause 6.2(d)**;
 - (ii) Lodgement of the Setback Area Easement with the NSW Land and Registry Service for registration as required by **clause 6.3(e)**; and

- (iii) payment of the full amount of the Monetary Contribution in accordance with **clause 6.1(b)**.
- (c) A Construction Certificate or Occupation Certificate must not be issued for any part of the Development if the Developer has failed to comply with this agreement by paying money, completing works or registering interests in the Land at the time required under this agreement, including any revised time as agreed between the parties in accordance with this agreement.

11.4 Acquisition of Easements

- (a) If the Developer does not transfer or dedicate the Public Access Easement or the Setback Easement as required by this agreement, the Council may compulsorily acquire the relevant easement, in which case the Developer consents to the Council compulsorily acquiring the relevant interest for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (b) This clause constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW).
- (c) Except as otherwise agreed between the Developer and the Council, the Developer must ensure that the land subject to the Public Access Area and Setback Area is not encumbered to any extent that would prevent the future use of that land for the public purposes identified in this agreement.
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant interest in land under this clause.
- (e) The Council may call on the Security provided under **clause 11.2(a)** for the purposes of reimbursing the Council's reasonable costs and legal costs incurred by the Council in acquiring any interest in the Land under this clause, and the Developer must pay the Council, promptly on demand, any amount that is not or cannot be satisfied by calling on a Security.

11.5 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.

12 Assignment and Dealings

12.1 Assignment

- (a) The Developer is not to settle on the sale or assignment or novation of its interest under this agreement to another party (**Incoming Party**) unless before settlement the Developer:

- (i) procures the execution by the Incoming Party of an agreement in favour of the Council on the same terms as this agreement;
 - (ii) delivers any replacement Securities provided by the Incoming Party as required under this agreement; and
 - (iii) satisfies the Council that the Developer is not in breach of this agreement at the time of settlement of the sale, assignment or novation.
- (b) Any purported dealing in breach of this clause is of no effect.

12.2 *Transfer of Land*

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
- (i) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (ii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (iii) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (iv) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.
- (b) **Clause 12.2(a)** does not apply to an assignment or novation of the Developer's interest in the Land:
- (i) if the Developer has satisfied Council that all obligations of the Developer under this agreement have been met;
 - (ii) if the Council has released or discharged the Developer from any obligations under this agreement in connection with the part of the Land to be transferred;
 - (iii) that is a mortgage of or charge on the Land, provided that this agreement is registered on title; and
 - (iv) that is an off-the-plan sale, transfer assignment to a third party acquiring an interest in the Land as a purchaser of one or more lots in the strata scheme (whether or not the plan has, at the date of exchange been registered) provided that this agreement is and remains registered on the title to any such lot in accordance with **clause 8**.

12.3 *Further Acts*

- (a) Provided that this agreement is registered on the title to the Land in accordance with **clause 8**, the Developer may, while continuing to be bound to perform this agreement do any of the following that are not inconsistent with or contrary to the obligations under this agreement to register the Public Access Easement and the

Setback Easement or the terms of the Public Access Easement and the Setback Easement :

- (i) Subdivide, mortgage, charge or encumber the Land or any part of it.
- (ii) Sub-contract or delegate the performance of any obligation under this agreement to any person.
- (iii) Subject to subclause (vi) below, enter into any lease or licence arrangements in relation to the Land or register any type of interest or right on the title to the Land, other than a transfer, assignment or disposal of any right, title or interest in the Land in which case clauses 12.1 and 12.2 apply.
- (iv) Enter into any joint venture or similar type of arrangement in respect of the Development and / or the Land, provided it does not involve the transfer, assignment or disposal of any right, title or interest under this agreement or in the Land contrary to **clause 12.1** or **clause 12.2** of this agreement.

but must not without the Council's written consent:

- (v) Grant any easements over the Public Access Easement and the Setback Easement; or
- (vi) Enter into any lease or licence arrangements in relation to the Public Access Easement and the Setback Easement.

13 Approvals and consents

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 discretion, acting reasonably, and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Planning Proposal, Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and

- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to North Sydney Council: 200 Miller Street, North Sydney 2060
Email: First party email
Attention: General Manager
 - (ii) to Epic Leisure Pty Ltd: Second party address
Email: Second party email
Attention: Michael Tan
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above or when the Notice is first opened or read by the recipient, whichever occurs first; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 Relationship between parties

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.

- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 Time for doing acts

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 Variation

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.5 Counterparts

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

16.6 Legal expenses, valuation costs and stamp duty

The Developer must pay:

- (a) the Council's reasonable valuation costs in connection with the calculation of the land value uplift as a consequence of the Instrument Change and the appropriate value of contributions under this agreement; and
- (b) Council's reasonable legal costs incurred with the negotiation, preparation, execution, stamping and registering of this agreement, including the costs of obtaining any legal advice in connection with this agreement.

16.7 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.8 Representations and warranties

The parties represent and warrant that they have the power and authority 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.

16.9 Severability

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. 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.

16.10 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of **clause (a)**, the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if **clause 16.10(b)** applies.

16.11 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.12 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer 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.

16.13 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
Planning instrument and/or Development Application – Section 7.4(1) The Developer has: <ul style="list-style-type: none"> Sought a change to an environmental planning instrument <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Made, or propose to make a Development Application <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 	
Description of the land to which the planning Agreement applies – Section 7.4(3)(a)	Lot 5, Section 11, DP 2872; Lot 6, Section 11, DP 2872 and Lot 7, Section 11, DP 2872 also known as and situated at 50-56 Atchison Street, St Leonards.
The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(b)	See clauses 6.1, 6.2 and 6.3.
Applicability of section 7.11 of the Act – Section 7.4(3)(d)	The application of section 7.11 of the Act is not excluded in respect of the Development.
Applicability of section 7.12 of the Act – Section 7.4(3)(d)	The application of section 7.12 of the Act is not excluded in respect of the Development.
Applicability of section 7.24 of the Act – Section 7.4(3)(d)	The application of section 7.24 of the Act is not excluded in respect of the Development.
Mechanism for dispute resolution – Section 7.4(3)(f)	See clause 10.
Enforcement of the Planning Agreement – Section 7.4(3)(g)	See clause 11.
Registration of the Planning Agreement – Section 7.4(3)(g) and section 7.6	See clause 8.2.
No obligation to grant consent or exercise functions – Section 7.4(9)	See clause 14.

Schedule 2 Easement in Gross (Public Access Area)

Definitions

For the purpose of this Schedule 2 of this agreement, the following words have the following meanings:

Council means North Sydney Council and its successors;

Easement means the Easement created in accordance with this Schedule 2 of this agreement;

Easement Site means the location of the Public Access Area as defined in **Clause 1** of this agreement, limited in depth to the finished floor level of the ground floor of the Development and limited in height not less than 7.0m above ground floor level;

Lot Burdened means the lot or lots subject to the Public Access Area;

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time;

Easement Terms

1. The Owner of the Lot Burdened grants to the Council and members of the public full and free right to go, pass and repass over the Lot Burdened within the Easement Site between the hours of 6am to 11pm:
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without vehicles (other than prams, strollers, wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
2. The owner of the Lot Burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the Easement Site (including any services in, on or under the Lot Burdened) in good repair and condition;
 - (b) maintain and repair the Easement Site and all improvements on it;
 - (c) keep the Easement Site clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this Easement.
3. The owner of the Lot Burdened must ensure that any rules made by an Owners Corporation relating to the Easement Site have been approved by the Council, whose approval shall not be unreasonably withheld.
4. If any member or members of the public loiter or congregate, for any purpose which the owner of the Lot Burdened, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
5. The owner of the Lot Burdened may erect safety signage and any other appropriate signage and may erect CCTV cameras on the Lot Burdened.
6. The owner of the Lot Burdened may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals apart from those referred to in 1(a), riding bicycles and skateboards and the like in accordance with any rules made by an Owners Corporation relating to the Lot Burdened.
7. The owner of the Lot Burdened may, with the written approval of Council acting reasonably (except in the case of an emergency, in which case the Council's prior written approval is not required), temporarily close or temporarily restrict access through all or part of the Lot Burdened including the Easement Site for the time and to the extent necessary but only on reasonable grounds for the purposes of:

- (a) maintenance and repairs; the installation and maintenance of services; or the installation of furniture or other public domain improvements; or
 - (b) security, public safety or evacuation of the Lot Burdened and adjoining buildings.
- 8. Subject to paragraph 9 below, the Owner of the Lot Burdened must not erect any building or structure within the Easement Site, unless approved by Council, acting reasonably;
- 9. Subject to ensuring the provision of access in accordance with **clause 1** of this Easement, which must be a clear pathway being at least 3m wide, the owner of the Lot Burdened may, with the consent of Council:
 - (a) carry out works in the Easement Site for the purposes of enhancing the Lot Burdened;
 - (b) install or erect works of art, street furniture, tables and seating associated with ground floor retail and commercial premises, signage (including but not limited to rules of behaviour), security, lighting, planter boxes or any other public domain improvements within the Easement Site; and
 - (c) use the Easement Site.

Release and Variation of Easement

- 10. The Council is solely empowered to release the Easement.
- 11. The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Schedule 3 Easement in Gross (Setback Area)

Definitions

For the purpose of this Schedule 3 of this agreement, the following words have the following meanings:

Council means North Sydney Council and its successors;

Easement means the Easement created in accordance with this Schedule 3 of this agreement;

Easement Site means the location of the Setback Area as defined in **Clause 1** of this agreement, limited in depth to the finished floor level of the ground floor of the Setback Area;

Lot Burdened means the lot or lots subject to the Setback Area;

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time;

Easement Terms

1. The owner of the Lot Burdened grants to the Council and members of the public full and free right to go, pass and repass over the Lot Burdened at all times (but only within the Easement Site):
 - (a) with or without companion animals (as defined in the *Companion Animals Act 1998*) or other small pet animals; and
 - (b) on foot without vehicles (other than prams, strollers, wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;for all lawful purposes.
2. The owner of the Lot Burdened must, to the satisfaction of Council, acting reasonably:
 - (a) keep the Easement Site (including any services in, on or under the Lot Burdened) in good repair and condition;
 - (b) maintain and repair the Easement Site and all improvements on it;
 - (c) keep the Easement Site clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the Easement Site in accordance with the terms of this Easement.
3. The owner of the Lot Burdened must ensure that any rules made by an Owner's Corporation relating to the Easement Site have been approved by the Council, whose approval shall not be unreasonably withheld.
4. If any member or members of the public loiter or congregate, for any purpose which the owner of the Lot Burdened, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
5. The owner of the Lot Burdened may erect safety signage and any other appropriate signage and may erect CCTV cameras on the Lot Burdened.
6. The owner of the Lot Burdened may engage security personnel to monitor and control the behaviour of the public including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals apart from those referred to in 1(a), riding bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Lot Burdened.
7. The owner of the Lot Burdened may, with the written approval of Council (such approval not to be unreasonably withheld (except in the case of an emergency, in which case the Council's prior written approval is not required) temporarily close or temporarily restrict access through all or part of the Lot Burdened including the Easement Site for the time and to the extent necessary but only on reasonable grounds for the purposes of:

- (a) maintenance and repairs; the installation and maintenance of services; or the installation of furniture or other public domain improvements, with the approval of Council; or
 - (b) security, public safety or evacuation of the Lot Burdened and adjoining buildings.
- 8. Subject to ensuring the provision of public access in accordance with clause 1 of this Easement the owner of the Lot Burdened may, with the consent of Council:
 - (a) carry out works in the Easement Site for the purposes of enhancing the Lot Burdened; and
 - (b) install or erect works of art, street furniture, tables and chairs associated with ground floor retail and commercial premises, signage (including but not limited to rules of behaviour), lighting, planter boxes or any other public domain improvements within the Easement Site; and
 - (c) use the Easement Site,
in a manner consistent with any outdoor or footway dining policy of the Council, where relevant.

Release and Variation of Easement

- 9. The Council is solely empowered to release the Easement.
- 10. The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.

Executed as an agreement

Executed for and on behalf of **North**)
Sydney Council by its authorised)
delegate in accordance with a resolution)
of the Council dated [insert date]:)

.....
Witness

.....
Authorised Delegate

.....
Name of Witness

.....
Name of Authorised Delegate

Executed by Epic Leisure Pty Ltd)
ACN 115 707 527 in accordance with)
section 127 of the *Corporations Act 2001*)
(Cth) by:)
)
)

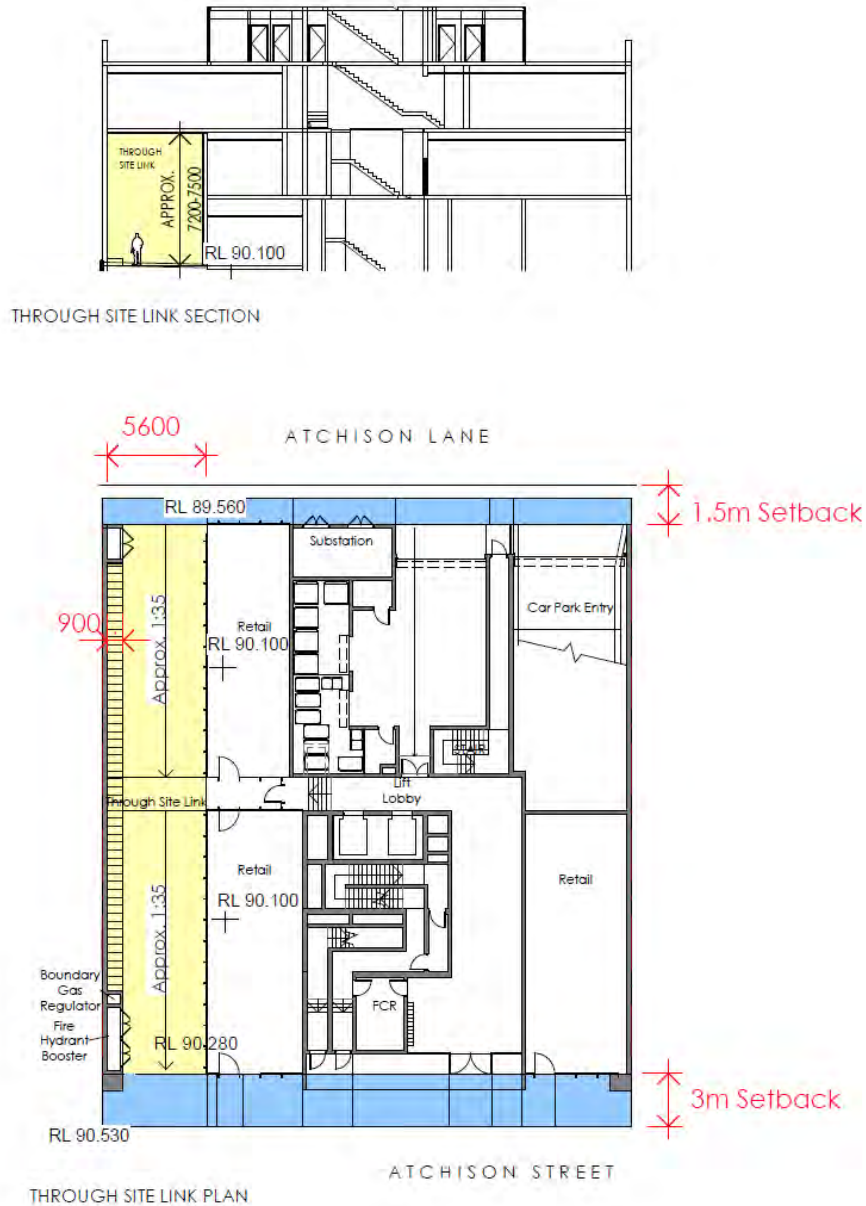
.....
Company Secretary/ Director

.....
Director

.....
Name of Company Secretary/ Director
(print)

.....
Name of Director (print)

Annexure A Plan showing Public Access Area and Setback Area



KANNFINCH 50 - 56 ATCHISON ST. ST LEONARDS
Kann Finch Group Pty Ltd www.kannfinch.com

THROUGH SITE LINK

SK01

Scale 1:300

0 1.5m 2m 7.5m 15m

Project No.

6309

1 : 300 @ A4

18/09/2020 3:42:23 PM

Plot Date

ATTACHMENT 5

Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards Summary of submissions received during public exhibition period (19 July 2021 to 30 August 2021)

The following criteria are used to analyse all submissions received, and to determine whether or not the plan would be amended:

1. The Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards **would be** amended if issues raised in the submission:
 - a provided additional information of relevance.
 - b indicated or clarified a change in government legislation, Council's commitment or management policy.
 - c proposed strategies that would better achieve or assist with Council's objectives.
 - d was an alternate viewpoint received on the topic and is considered a better option than that proposed or;
 - e indicated omissions, inaccuracies or a lack of clarity.
2. The Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards **would not be** amended if the issues raised in the submission:
 - a addressed issues beyond the scope of the proposal.
 - b was already in the proposal or will be considered during the development of a subordinate plan (prepared by Council).
 - c offered an open statement, or no change was sought.
 - d clearly supported the proposal.
 - e was an alternate viewpoint received on the topic but the recommendation was still considered the best option.
 - f was based on incorrect information.
 - g contributed options that are not possible (generally due to some aspect of existing legislation or government policy) or; involved details that are not appropriate or necessary for inclusion in a document aimed at providing a strategic community direction over the long term.

Attachment 8.9.5 Public Submissions Summary Table - 50-56 Atchison St PP

Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards SUBMISSIONS SUMMARY (Exhibition Period – 19 July 2021 to 30 August 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
1.	Terry Stone U806, 15 Atchison Street ST LEONARDS NSW 2065	Height Overshadowing/ Solar Access Traffic management	<p>Submission relates to another Development Application on an adjacent (DA161/20 at 23-35 Atchison St, St Leonards, which has already been approved by Council). A submission was received from the same submitter and considered as part of the assessment of DA161/20. The issues raised, however, could be equally relevant to the subject Planning Proposal.</p> <p>Objection based on visual and overshadowing impacts of proposal to existing properties, which were purchased under an existing building height limitation of 20m. Concerned a 56m height limit will set a precedent impacting the amenity and character of the area. Objected to the intense development of the eastern side of St Leonards as it is not in sympathy with its surrounds and should remain 5 storeys.</p> <p>It was suggested that any substantial increase in traffic along Oxley Street, which has recently been modified to improve pedestrian access and village atmosphere, would be unsafe.</p>	<p>See section 2.1.1, 2.1.2 and 2.1.6 of Council report.</p> <p>It is recognised that additional height and density will lead to some degree of impact (overshadowing) to surrounding dwellings. However, these impacts need to be considered in the context of the broader strategic direction for St Leonards and its designation as a 'strategic centre' by the NSW State Government. St Leonards is identified under the Regional and District Plans to accommodate significant uplift in employment floorspace and residential dwellings.</p> <p>The proposal is seeking a maximum building height of 58.1m to accommodate a 16-storey mixed use development. This is consistent with the desired outcomes of the Council and community endorsed <i>St Leonards Crows Nest Planning Study – Precincts 2 & 3 (2015)</i> and the DPIE's <i>St Leonards and Crows Nest 2036 Plan (2020)</i>. The building height controls identified in the above Plans are informed by 'stepping down' and 'height transition' principles with the subject site being located within a buffer area, between the taller buildings concentrated around St Leonards and Crows Nest stations and the lower density residential areas to the east of Oxley Street.</p> <p>The proposal is accompanied by a Traffic Impact Assessment (TIA) demonstrating the potential net increase in traffic associated with the proposal is negligible, with 2 additional vehicle trips generated during AM and PM hours. It is expected that surrounding key roads will continue to operate much the same way.</p>	N/A	2E

Attachment 8.9.5 Public Submissions Summary Table - 50-56 Atchison St PP

Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards SUBMISSIONS SUMMARY (Exhibition Period – 19 July 2021 to 30 August 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
2.	Michael Rowledge U1000/48 Atchison Street ST LEONARDS NSW 2060	Height Overshadowing/ Solar Access Noise Traffic management and vehicular access	<p>Objects to the Planning Proposal. Concerned about the proposed height and cumulative overshadowing impacts to surrounding dwellings. The proposed communal area on rooftop will result in adverse noise impacts to residents in adjoining buildings.</p> <p>Concerned about impact to existing infrastructure, in particular road network and the capacity and safety of Atchison Lane with the increased number of entrances to car parks.</p>	<p>Refer to section 2.1.1, 2.1.2, 2.1.4 and 2.1.6 of Council report.</p> <p>For response on height, overshadowing and traffic impacts, refer to comments above (submission 1).</p> <p>A further detailed design at the DA stage will need to consider noise transmission within and between dwellings and demonstrate a reasonable level of acoustic privacy and amenity to nearby residents as required under NSDCP 2013.</p>	N/A	2E

Attachment 8.9.5 Public Submissions Summary Table - 50-56 Atchison St PP

Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards SUBMISSIONS SUMMARY (Exhibition Period – 19 July 2021 to 30 August 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
3.	Alana Wilson U19/45 Chandos Street ST LEONARDS NSW 2065	Height Wind Public Benefits	<p>Objects to the Planning Proposal. Concerned about the cumulative impact of numerous DAs and PPs in the area on the wellbeing of residents, particularly the lack of open space and community facilities and increased wind tunnels around St Leonards. Existing maximum building heights should be adhered to.</p> <p>The proposed monetary contribution to Council is not commensurate to the level of impact to St Leonards residents.</p>	<p>Refer to section 2.2.1, 2.1.3 and 2.1.7 of Council report.</p> <p>For response on height, refer to comments above (submission 1).</p> <p>It is noted that the proponent has not provided a formal wind assessment at this stage, however the Concept Plan illustrates that the intended built form will incorporate awnings to mitigate wind impacts at street level. A Wind Impact Report will need to be provided at DA stage with a further detailed design demonstrating pedestrian comfort is not adversely affected by wind at footpaths and public outdoor spaces, in accordance with NSDCP 2013.</p> <p>The <i>SLCN Planning Study – Precincts 2 & 3</i> identifies a set of public benefits (including open space and community facilities) that are considered critical to support future development within the precinct. The public benefits offered as part of the draft VPA, including monetary contribution towards the upgrade of Hume Street Park, is largely consistent with the items in Council's Study. The draft VPA has been negotiated in accordance with Council's VPA Policy, with the expectation that the value of public benefits proposed is commensurate to the land value uplift resulting from the proposed changes to the planning controls on the site. The advice of an independent property consultant and land valuer was obtained by Council during the VPA negotiation.</p>	N/A	2E

Attachment 8.9.5 Public Submissions Summary Table - 50-56 Atchison St PP

Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards SUBMISSIONS SUMMARY (Exhibition Period – 19 July 2021 to 30 August 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
4.	Tom & Kate Derrig 905/15 Atchison Street ST LEONARDS NSW 2060	Height Overshadowing/ Solar Access Wind Environmental impacts	Objects to the Planning Proposal. Concerned about overshadowing impacts to surrounding dwellings with north and north-eastern aspects; overshadowing and wind tunnel impacts on streetscape amenity. The proposal will result in increased energy consumption, contrary to Council's reduced energy commitments. Height should be reduced to mitigate adverse solar access impacts.	<p>Refer to section 2.1.1, 2.1.2, 2.1.3 and 2.1.5 of Council report.</p> <p>For response on height and overshadowing impacts refer to comments above (Submission 1).</p> <p>For response on wind impacts refer to comments above (Submission 3).</p> <p>North Sydney Council seeks to minimise resource consumption by concentrating increased density around transport nodes and transport corridors, with reduced on-site parking requirements to ensure the effective take-up of walking, cycling and public transport use. The implementation of integrated transport and planning outcomes is being actively pursued through Council's planning studies.</p> <p>Council is committed to a community greenhouse gas emissions reduction target of 25% by 2030 from 1996 baseline levels. The reduction to date is largely attributed to improved energy efficiency measures such as upgraded buildings and improved new building design. A further detailed design at the DA stage will consider energy efficiency, including compliance with BASIX requirements.</p>	N/A	2E

Attachment 8.9.5 Public Submissions Summary Table - 50-56 Atchison St PP

Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards SUBMISSIONS SUMMARY (Exhibition Period – 19 July 2021 to 30 August 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
5.	No details provided.	Traffic management and vehicular access	<p>Submission relates to another Planning Proposal on an adjacent site (PP5/21 at 71-89 Chandos Street & 58-64 Atchison Street). However, the issues raised could be equally relevant to the subject Planning Proposal.</p> <p>It is noted that the applicant's traffic management study considers traffic generated by low level commercial uses and not the increased number of residential units. Concerned about the capacity of existing infrastructure, in particular Atchison Laneway, to cope with the increased number of vehicles and waste generated by the number of additional residential dwellings proposed.</p>	<p>Refer to section 2.1.6 of Council report.</p> <p>The location of vehicle access to the basement car park is unchanged from the existing arrangement. The proponent's Traffic Impact Assessment (TIA) considers vehicular access to and from the site, including operation of the proposed loading dock, and demonstrates satisfactory operation of the proposed Atchison Lane access. Notwithstanding, further attention to detail of future vehicular accessway and basement design will be required at the DA stage.</p>	N/A	2E
6.	Sydney Airport Corporation Limited (SACL)	Height & Prescribed Airspace Regulations	No objection to the erection of the proposed development to a maximum height of 146.1m AHD, inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc. Should this height be exceeded (including any temporary structures or equipment), a new approval must be sought. Approval to operate construction equipment (i.e. cranes) should be obtained prior to any commitment to construct.	See section 2.2.1 of Council Report. Noted. Should there be any cranes erected at the future construction stage, clause 6.15 of <i>NSLEP 2013</i> will require these matters to be taken into consideration when assessing a DA.	N/A	2D
7.	AirServices Australia	Height & Prescribed Airspace Regulations	No comment on Planning Proposal at this stage. Any future development on the subject site should be first assessed by the operator of Sydney Airport. If further assessment required, the operator of Sydney Airport will request assessment from AirServices Australia.	See section 2.2.2 of Council Report. Noted. Sydney Airport Corporation Limited (SACL) was consulted as part of the public exhibition of the proposal. Refer to SACL comments above.	N/A	2C
8.	Civil Aviation Safety Authority (CASA)	Height & Prescribed Airspace Regulations	No objection to the proposed maximum height of buildings control sought by the Proposal. At this height the proposed building will not infringe the prescribed airspace for Sydney Airport.	See section 2.2.3 of Council Report. Noted.	N/A	2C
9.	Sydney Water	Water and wastewater servicing	Advises on potable water servicing and wastewater servicing requirements and access points for the proposed development. Detailed technical requirements will be provided once the development is referred to Sydney Water for a s73 application.	See section 2.2.4 of Council Report. Noted. This will be addressed at the DA stage.	N/A	2A

Attachment 8.9.5 Public Submissions Summary Table - 50-56 Atchison St PP

Planning Proposal 3/18 – 50-56 Atchison Street, St Leonards SUBMISSIONS SUMMARY (Exhibition Period – 19 July 2021 to 30 August 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
10.	Transport for NSW (TfNSW)	Public Benefits	No objection to the Planning Proposal. Should the proposed monetary contribution be applied towards Hume Street Park, Council and the DPIE may wish to consider whether this may qualify for SIC offset provisions noting this project is identified in the SIC.	See section 1.1 and 2.2.5 of main report. Council has written to the DPIE seeking an exemption from the payment of the SIC for the site on the basis of there being a duplication between the public benefits proposed under the draft VPA and SIC plan in relation to Hume Street Park. Council is yet to receive a response from the DPIE in relation to its request for a SIC exemption.	N/A	2D
11.	Commonwealth Department of Infrastructure, Transport, Regional Development and Communication (DITRDC)	Height & Prescribed Airspace Regulations	Advised that the proposed maximum building height is below the Obstacle Limitation Surface (OLS) for Sydney Airport and is not considered to constitute a controlled activity in this instance. If there is an increase to the height of the building or if the crane activity associated with construction intrudes into the OLS, an approval should be sought from Sydney Airport prior to construction commencing. It is recommended the proponent continues to advise Sydney Airport of the planned final building height and any associated crane activities.	See section 1.3.1 and 2.2.1 of Council Report. Noted. Consultation with Sydney Airport Corporation Limited (SACL) was undertaken concurrently with the public exhibition of the Planning Proposal. SACL have no issues with the proposed maximum height of buildings control sought by the proposal. Should the be any cranes erected at the future construction stage, cl. 6.15 of NSLEP 2013 will require these matters to be taken into consideration when assessing a DA.	N/A	2B
12.	Commonwealth Department of Infrastructure, Transport, Regional Development and Communication (DITRDC)	Height & Prescribed Airspace Regulations	As above. Duplicate submission.	As above.	N/A	2B