



Planning Panels Secretariat  
Locked Bag 5022  
PARRAMATTA NSW 2124

NM2 (CIS)

FAO: Adam Iskander

Dear Sir

**PP-2022-5353 - 378-390 Pacific Highway, Crows Nest**

Reference is made to the recently exhibited Planning Proposal at the above site seeking to amend the North Sydney LEP 2013. This submission is to be read in conjunction with Council's detailed assessment report (considered by Council 26 April 2022) and Council's submission to the rezoning review dated 6 July 2022. A copy of these documents are attached for your reference.

**Planning Proposal**

We note that the Planning Proposal was the subject of a recommendation of support by the Sydney North Planning Panel and underwent subsequent revision prior to its formal public exhibition. The Planning Proposal, as exhibited, seeks to increase the maximum building height from 16m to RL 176, introduce a maximum FSR of 7.2:1 and increase the minimum non-residential FSR from 1.5:1 to 2:1.

**Strategic Merit**

Council notes the Sydney North Planning Panel position that the Planning Proposal demonstrates strategic merit. It is North Sydney Council's position that the site is considered to have strategic merit as it broadly gives effect to the 2036 Plan which was prepared in response to the new Crows Nest Metro Station. The Planning Proposal, however, is not considered to be consistent with Ministerial Direction 7.11 - *St Leonards, Crows Nest 2036 Plan* as it does not ensure a suitable interface and transition to the west and therefore does not meet the objectives and actions of the 2036 Plan.

**Site Specific Merit Issues**

**Height**

The concerns expressed in Council's letter of 6 July 2022 remain. The proposed height assigned to the site is well in excess of that required to accommodate a 24-storey building on the site. The accompanying reference design, as amended, includes an 11.3m 'transition' between the podium and tower components. The reference scheme also has no formal status so this design feature may not ultimately be delivered.

### **Building transition and setbacks**

The concerns expressed in Council's letter of 6 July 2022 remain. It is noted that the reference design was amended following the panel's initial consideration of the Planning Proposal and the overall FSR reduced (by approx. 25sqm per level) however the relationship, and concerns arising, of the tower component to neighbouring sites remain ostensibly the same. Due to the site not incorporating either No 398 Pacific Highway (to the north) or No's 29-33 Nicholson Street (to the west), the Planning Proposal will facilitate a building form that does not comply with the State Government's Apartment Design Guide. The proposal will result in a poor and unresolved interface with the adjacent lower density areas to the west and southwest.

### **Overshadowing**

Due to the heights identified in the 2036 Plan, significant solar access impacts are anticipated. The proposed maximum height in this Planning Proposal adds unnecessarily to the overall building height which results in shadow length 34m longer than is necessary to accommodate a 24-storey tower. A reduction in the proposed height would assist in reducing the extent of overshadowing impacts.

### **Exhibition Process**

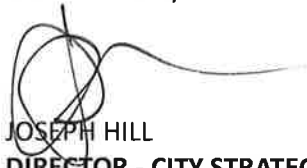
The exhibition material and documentation are presented in a confusing and in some cases incorrect manner. Specific examples include;

- the notification letter incorrectly describes the proposed non-residential floorspace ratio as being amended from '1:5 to 2:1' whereas should read 1.5:1 to 2:1.
- the planning portal describes the Planning proposal as 'Mixed Development at 378-390 Pacific Highway.' This is inconsistent with Departments 'Local Environmental Plan Making Guideline' which (refer stage 5 - Public Exhibition and Assessment) requires notice on the portal to describe the objectives or intended outcomes of the Planning Proposal.
- 22 of the 25 documents available during the exhibition contain the primary title of '*Gateway Determination Report*'. Adding further confusion to the community is the sub titling of these documents where it is unclear as to content versions, use of opaque acronyms and no sequence or logic to the order or hierarchy of the documents.

### **Conclusion**

For the reasons detailed in Council's assessment report (26 April 2022), summarised in Council's submission of 6 July 2022 and re-iterated in this letter, Council maintains its objection to the progression of this Planning proposal.

Yours faithfully



JOSEPH HILL  
DIRECTOR - CITY STRATEGY

**Date: 2 May 2023**



Jazmin van Veen  
Acting Director, Central (GPOP)  
Metro Central and North  
Department of Planning & Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

TM3 (CIS)  
Our Ref: PP7/21  
Your Ref: RR-2022-11

ATTENTION: GEOFF KWOK

6 July 2022

Dear Ms van Veen

**REQUEST FOR REZONING REVIEW - RR-2022-11  
378-390 PACIFIC HIGHWAY, CROWS NEST**

I refer to your letter dated 30 May 2022, notifying Council of the lodgement of a request for a Rezoning Review in relation to the Planning Proposal for 378-380 Pacific Highway, Crows Nest.

The following comprises Council's response to your invitation to comment. This is to be read in addition to the detailed assessment report considered by Council at its meeting on 26 April 2022.

**1. Planning Proposal Assessment**

The Planning Proposal was lodged with Council on 7 September 2021. Over the course of its assessment a number of minor revisions were made to the proposal in response to concerns raised by Council Officers.

The Planning Proposal as modified seeks to make the following amendments to the North Sydney Local Environmental Plan 2013 (NSLEP 2013):

- Amend the maximum building height from 16 m to RL176 (24 storeys)
- Establish a maximum floor space ratio control of 7.5:1
- Amend the minimum non-residential floor space ratio control from 1.5:1 to 2:1.

The planning proposal is accompanied by a concept building design for a 24-storey mixed-use commercial and residential building incorporating a four-storey podium, amenities levels and 16 residential floors.

On 13 April 2022, the North Sydney Local Planning Panel (NSLPP) considered a report on this Planning Proposal and recommended that the planning proposal not be supported for Gateway Determination.

At its meeting on 26 April 2022, Council resolved not to support the Planning Proposal proceeding to Gateway Determination, for the reasons outlined in the Council Officer's assessment report.

## 2. Strategic Merit

The Strategic Merit Test requires consideration of the following:

a) *Does the proposal:*

- *Give effect to the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, and/or corridor/precinct plans applying to the site. This includes any draft regional, district or corridor/precinct plans released for public comment or a place strategy for a strategic precinct including any draft place strategy; or*
- *Demonstrate consistency with the relevant LSPS or strategy that has been endorsed by the Department or required as part of a regional or district plan; or*
- *Respond to a change in circumstances that has not been recognised by the existing planning framework.*

This has been considered below.

## 3. Regional / District plans and Local Strategic Planning Statement (LSPS)

It is acknowledged that the planning proposal would facilitate the development of a mixed-use building on the site, in line with, at a high level, the Regional and District plans and the LSPS.

## 4. St Leonards and Crows Nest 2036 Plan

The site is considered to have strategic merit as it broadly gives effect to the 2036 Plan prepared by the State Government in response to the new Crows Nest Metro Station. It is not however considered to be consistent with Ministerial Direction 7.11 - *St Leonards and Crows Nest 2036 Plan* as it does not ensure a suitable interface and transition to the west and therefore does not meet the objectives and actions of the 2036 Plan.

## 5. Site-Specific Merit

The Site Merit Test requires consideration of the following:

"b) *Does the proposal have site-specific merit, having regard to the following?*

- *the natural environment on the site to which the proposal relates and other affected land (including known significant environmental areas, resources or hazards)*
- *the built environment, social and economic conditions existing, approved and likely future uses of land in the vicinity of the land to which the proposal relates; and/or*
- *services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision*

This has been considered below.

### **5.1. Height**

There is a high degree of community sensitivity regarding the height of buildings in this precinct. Oversized towers can create unnecessary overshadowing of surrounding sites and prevent a suitable transition to lower height-built forms. Following Council's request to rationalise the height of the building, the design concept was revised to reduce the maximum height of 86.86 m (RL175.4), down from the initial 91.46 m, to accommodate the proposed 24-storey building, inclusive of plant and lift overrun. This is numerically consistent with the height (expressed in storeys) contained in the 2036 Plan. However, there is a very significant proportion of the building dedicated to linking the podium to the tower with minimal floor space contained within. Whilst the applicant has argued that this will provide for outdoor recreation/garden area, given the sensitivity of height in the precinct, further efforts to reduce the height whilst achieving a considerable floor space yield on the site, is not an unreasonable expectation for the site to minimise its visual and overshadowing impacts.

### **5.2. Building transition and setbacks**

In highly built-up areas such as the emerging St Leonards and Crows Nest precincts, there is a need to ameliorate the impacts of multiple high-rise towers dominating the skyline along the length of the Pacific Highway, reducing the amenity of lower density residential areas nearby, as well as that of future tower residents. Appropriate setbacks will also facilitate a greater separation between future tower forms. The following assessment takes this into account.

#### **5.2.1. Northern Elevation**

The 2036 Plan provides the potential for the subject site and the adjacent site to the north to redevelop to 24 storeys; therefore, a suitable setback needs to be considered to allow for future tower separation along Pacific Highway.

A 6 m above podium setback is proposed along the northern and western elevations. The proponent has included a 12m "notch" in the design concept for habitable rooms, but otherwise is proposing non-habitable, or heavily screened rooms facing north to enable a reduced (6m) setback.

The proposed setback to the north is substantially below minimum ADG requirements for tower separation (24m total). This encroaches into the setback of the northern site at 398 Pacific Highway, potentially preventing it from being redeveloped to accommodate a tower form that achieves a reasonable level of residential amenity and meets ADG requirements.

To address Council's preliminary comments regarding a preference for site amalgamation, the proponent provided further information suggesting that adjoining landowners to the north and western boundaries of the subject site had been approached in relation to potential acquisition, but no viable commercial agreement could be reached between the parties. No formal documentation or evidence was provided of interactions between the parties in this context.

It is noted that the adjoining property to the north has objected to the proposal on these grounds. In considering this design concept, the proponent has provided a series of potential alternative redevelopment scenarios for the neighbouring northern site. The concepts identify that individual site redevelopment is unlikely given its constrained

size, but amalgamation with 402-420 Pacific Highway would enable a tower form that achieves ADG setback requirements. In this respect, the planning proposal cannot be said to create a definitive site isolation issue for its northern neighbour as an alternative amalgamation option exists; however, it still represents a “borrowing” of setbacks from the northern site and does not adequately future-proof the alternative possible planning scenarios for the adjoining site which also benefits from substantial uplift in the 2036 Plan.

### 5.2.2. Building transition and setbacks

The podium has a stepped setback to the western boundary in the concept design, which incorporates commercial and retail uses. The proposed tower element partially overhangs the terracing below. The reference design includes:

- a 0 m whole of building setback at Ground Level
- a mix of setbacks between 4.3-11.9 m to the boundary from Level 1 to Level 4
- a 6 m tower setback (i.e., above podium).

The 2036 Plan does not specify side and rear setback controls for the site, and instead ADG provisions apply.

The proposed setback of the podium along the western elevation contained in the design concept is non-compliant with ADG building separation requirements when interfacing with single storey residential development. Particular attention is drawn to section 2F: Building Separation of the ADG, which requires office windows and balconies to be considered as habitable spaces when measuring building separation requirements between commercial and residential uses.

Further, the NSDCP 2013 - Commercial and Mixed-use Development provisions contain specific setback controls to the side and rear which are:

- P6. buildings containing non-residential activities must be set back a minimum of 3m from the property boundary where the adjoining site has balconies or windows to main living areas of dwellings or serviced apartments located at the same level.*
- P7. a development proposed on land adjoining or adjacent to a residential or recreation zone must not exceed a building height plane commencing:*
- (a) at 3.5 m above ground level (existing) and projected at an angle of 45 degrees internally to the site from all boundaries that directly adjoin land zoned R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, RE1 Public Recreation.*

### 5.2.3. Western Elevation - Tower

The interface between the existing low density residential and the proposed development is dramatic. It is acknowledged that the 2036 Plan has given rise to the need to manage a very difficult interface. Notwithstanding this, the 2036 Plan contains a Precinct Objective which states, “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” (p. 9). A related Action within the Plan states: “New development should be sympathetic to existing buildings with appropriate

*setbacks and street wall height*” and *“Provide appropriate transitions in height to adjoining low scale residential areas”* (p. 33). A 6m setback is proposed between the 24-storey tower and single storey residential dwellings to the west, representing a very poor urban transition that does not satisfy these objectives and actions. A 6 m setback is the minimum distance required for towers with non-habitable rooms above nine storeys in the ADG.

However, due to the change in land use zones between the subject site’s B4 Mixed Use zone and R3 Residential zone immediately west, an additional 3m setback is required on the western boundary. This means a minimum 9m setback is required to meet ADG requirements for towers with non-habitable rooms and increasing to 15m for habitable rooms. This additional setback increase would help to reduce overlooking and privacy impacts, improve solar access and amenity as well as providing a less overbearing transition between the existing and future built forms.

Further, Council’s urban design assessment indicates that provision of a 9m setback would not prevent a 7.5:1 FSR from being achieved on the site. It should also be noted that as foreshadowed in the 2036 Plan objectives outlined above, reliance alone on the ADG is an inadequate approach to such a dramatic interface and established urban design principles of separation and transition should be applied. There is no doubt that, for an area undergoing so much change, amalgamation with the western adjoining allotments (which are held in familial ownership), represents the potential for a better and more holistic outcome by enabling a single design to deal with an array of built-form issues identified in Council’s assessment report.

While the Proponent’s contended efforts in amalgamating four existing parcels is acknowledged, the poor amenity outcome to the western neighbours can be partially mitigated through provision of an additional 3 m setback. It is also acknowledged that there is a 3 m podium setback to Pacific Highway stipulated in the 2036 Plan which limits the location of the tower on the site, preventing it from being built closer to the highway and further away from the western boundary.

It is worth noting however, that a submission from one of the western adjoining allotments has indicated that no approaches were made in relation to potential amalgamation. As one of the first Planning Proposals received for this precinct, consistent application of the 2036 Plan objectives and actions, and related design controls, is imperative to set a high standard for similar proposals in the vicinity.

This will avoid establishing negative planning precedents for Crows Nest that may undermine the future built form character and amenity of the precinct. Council must give sufficient weight to the ADG applying across the metro area, as well as sound urban design principles in the absence of local controls for the precinct to manage abrupt and dramatic interfaces and ensure they are consistently applied wherever possible for fair and equitable planning decision-making across the LGA. On these grounds, the proposal cannot be supported.

### **5.3. Overshadowing**

When considering this Planning Proposal alongside the Crows Nest Over Station Development and 2036 Plan at full “build-out”, significant solar access impact is somewhat inevitable due to the heights envisaged in the 2036 Plan, and there are significant cumulative overshadowing impacts to residential areas to the west including the eastern side of Nicholson Street. These impacts are considered to be somewhat

mitigated as a result of the slenderness of the proposed tower form and its separation from other towers which ensures that any shadows cast are narrow and impacts on nearby properties are short-term. A reduction in the proposed height as previously discussed under section 1.7.1 however, would assist in further reducing the extent of overshadowing impacts.

#### **5.4. Visual Impact**

The visual impact of the building will be pronounced from several viewpoints. This will be particularly obvious from properties to the south-west of the site and also from surrounding residential streets. These visual impacts are largely a result of the primary controls identified in the 2036 Plan which provides for substantial heights along Pacific Highway.

#### **5.5. Conclusion**

Overall, the Planning Proposal is not considered to have site specific merit due to the following reasons:

- Further efforts to reduce the height whilst achieving a considerable floor space yield have not been explored and exist.
- Inadequate building separation and setbacks to the northern boundary resulting in non-compliance with the ADG - opportunities for site amalgamation with 402-420 Pacific Highway have been identified by the proponent that would comply with the ADG should be explored.
- Building transition and setbacks are not consistent with the minimum ADG and NSDCP 2013 setback requirements nor established urban design principles.
- Significant cumulative overshadowing impacts to the residential properties to the to the west including the eastern side of Nicholson Street.
- Significant visual impacts to the properties to the south-west of the site and from surrounding residential streets.

### **6. Rezoning Review Documentation**

#### **6.1. Missing Documentation**

Having reviewed the relevant documentation associated with the rezoning review, it has come to our attention that we believe there to be documents submitted with the original planning proposal that are missing on the NSW Planning Portal. The missing documents are as follows:

- Concept Urban Design Report
- Acoustic Report
- Preliminary Site Investigation
- Services Infrastructure Report
- Transport Assessment
- Landscape Plans
- Survey Plans



## 6.2. General

Putting aside the above, the Planning Proposal and accompanying documentation on the NSW Planning Portal is generally consistent with that submitted to Council.

No objection is raised with respect to the inclusion of these additional documents as it relates to the rezoning review in question.

## 7. Planning Proposal Authority (PPA)

Council at its meeting on 27 June 2022 considered a report on taking on the PPA role for this (and other) planning proposals. Council resolved the following:

1. ***THAT Council not accept the role of the Planning Proposal Authority for Planning Proposals 2/21 - 253-267 Pacific Highway North Sydney, 3/21 - 20 Berry Street, North Sydney and 7/21 - 378-390 Pacific Highway, Crows Nest and that the Department of Planning and Environment be advised accordingly.***

Accordingly, we advise that Council declines the role of PPA for this proposal, should the Panel recommend that the planning proposal should proceed to Gateway.


## 8. Conclusion

For the reasons discussed in detail above, the Planning Proposal is not supported as;

- The proposal does not demonstrate site specific merit due to the following:
  - Further efforts to reduce the height whilst achieving a considerable floor space yield have not been explored and exist.
  - Inadequate building separation and setbacks to the northern boundary resulting in non-compliance with the ADG - opportunities for site amalgamation with 402-420 Pacific Highway have been identified by the proponent that would comply with the ADG should be explored.
  - Building transition and setbacks are not consistent with the minimum ADG and NSDCP 2013 setback requirements nor established urban design principles.
  - Significant cumulative overshadowing impacts to the residential properties to the to the west including the eastern side of Nicholson Street.
  - Significant visual impacts to the properties to the south-west of the site and from surrounding residential streets.

Should you have any queries, please direct them to Tom Mojsiejuk, of Council's Strategic Planning department on **9936-8388**.

Yours faithfully



MARCELO OCCHIUZZI

**MANAGER - STRATEGIC PLANNING**



## 8.11. Planning Proposal 378-380 Pacific Highway, Crows Nest

**AUTHOR:** Neal McCarry, Team Leader - Policy

**ENDORSED BY:** Joseph Hill, Director City Strategy

**ATTACHMENTS:** Nil

### **PURPOSE:**

To present to Council the assessment report of Planning Proposal No.7/21 at Nos. 378-380 Pacific Highway, Crows Nest which seeks to amend the North Sydney Local Environmental Plan 2013, following its review by the North Sydney Local Planning Panel.

### **EXECUTIVE SUMMARY:**

On 7 September 2021, Council received a Planning Proposal to amend the *North Sydney Local Environmental Plan 2013* as it relates to land at 378-390 Pacific Highway, Crows Nest. The site is located within the *St Leonards and Crows Nest 2036 Plan* ("2036 Plan") finalised by the Department of Planning and Environment (DPE) on 29 August 2020.

After various post lodgement amendments, the Planning Proposal seeks to:

- amend the maximum building height from 16m to RL176 (24 storeys)
- establish a maximum floor space ratio control of 7.5:1
- amend the minimum non-residential floor space ratio control from 1.5:1 to 2:1.

The indicative concept scheme accompanying the revised Planning Proposal seeks to provide a 24-storey mixed-use commercial and residential building incorporating a four-storey podium, amenities levels and 16 residential floors.

Having completed an assessment of the revised planning proposal against the *2036 Plan*, strategic planning documents and relevant planning policies, it is not recommended that the proposal receive support to proceed to a Gateway Determination. While the height and FSR are numerically compliant with the *2036 Plan*, the proposal fails to adequately demonstrate that the site can accommodate a building at the height and density requested. In this sense, it is recognised that the site has capacity to accommodate uplift pursuant to the *2036 Plan*, however, has not demonstrated that it has site-specific merit.

The design concept accompanying the proposal illustrates a building of excessive bulk and lack of transition to the western boundary in particular which is inconsistent with Precinct Objectives of the *2036 Plan* requiring that suitable interface to sensitive places are achieved. The reference design is non-compliant with the *State Environmental Planning Policy 65*, specifically the setbacks contained in the *Apartment Design Guide* nor consistent with sound urban design principles to deal with dramatic built form interface issues.

On 13 April 2022, the North Sydney Local Planning Panel (NSLPP) considered a report on this Planning Proposal and recommended that the planning proposal not be supported for Gateway Determination.

Whilst Council needs to be cognisant of the difficult balance required in considering this proposal against the need to deliver timely transit-oriented development adjoining the new metro station, attempts to negotiate a more suitable outcome with the proponent for the site have been unsuccessful. If supported, the proposal would set a poor standard and a negative precedent for the renewal of built form in the Crows Nest Precinct. Refusal is therefore recommended.

**FINANCIAL IMPLICATIONS:**

Should the Planning Proposal be supported, the costs associated with the administration and any exhibition of the Planning Proposal, should it proceed to exhibition, would be drawn from existing budget lines which anticipate this type of activity.

**RECOMMENDATION:**

- 1. THAT** the Planning Proposal not be supported to proceed to a Gateway Determination as it is inconsistent with *Ministerial Direction 7.11 - St Leonards and Crows Nest 2036 Plan* in that it has not demonstrated consistency with the objectives and actions of the 2036 Plan as it does not ensure that a suitable interface and transition to the western boundary can be achieved.
- 2. THAT** the proposal as lodged is not supported as it represents a poor planning outcome and approval would set a negative and detrimental precedent for similar tower forms across the precinct.
- 3. THAT** Council notifies the applicant of Council's determination in accordance with Section 9 of the Environmental Planning and Assessment Regulation 2021.
- 4. THAT** Council progress amendments to the *North Sydney Development Control Plan 2013* for the St Leonards and Crows Nest Precinct to better manage and accommodate the height limits and densities foreshadowed in the *2036 Plan* in relation to interface issues, character, internal and external amenity and other matters relevant to accommodating the significant extent of change in the most place sensitive manner possible.

## LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.2 North Sydney is sustainable and resilient

2. Our Built Infrastructure

2.2 Vibrant centres, public domain, villages and streetscapes

3. Our Future Planning

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

3.5 North Sydney is regulatory compliant

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

5.2 Council is well governed and customer focused

5.3 Community is informed and consulted

## BACKGROUND

A detailed history to the background of the Planning Proposal is contained in Council's Assessment Report which was considered by the North Sydney Local Planning Panel (NSLPP) on 13 April 2022, a copy of which can be viewed at:

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/13\\_april\\_2022/pp01 - 378-390\\_pacific\\_highway\\_crows\\_nest - pp721\\_rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp01_-_378-390_pacific_highway_crows_nest_-_pp721_rpt.pdf)

### St Leonards and Crows Nest 2036 Plan

After several years of investigation, on 29 August 2020, DPIE released the finalised the *2036 Plan*. The *2036 Plan* aims to deliver significant residential and employment growth within the precinct, principally as a result of the new Crows Nest Metro station opening in 2024. It is accompanied by a Section 9.1 Ministerial Direction which requires planning decisions be made consistent with the Plan.

The *2036 Plan* contains a Vision, Priorities, Objectives and Actions to realise the opportunity for urban renewal and growth within the precinct. The *2036 Plan* also identifies indicative building heights, density (FSR), employment (non-residential FSR), land use, overshadowing and building setback provisions. It is important to note that there are significant differences between the draft and final versions of the *2036 Plan* for this site. In the draft, a maximum height of 18 storeys and FSR of 6:1 was exhibited. This was subsequently increased to 24 storeys (a six storey difference) and an FSR of 7.5:1 in the final plan. These changes were not subject of any further community consultation by DPE.

Another important change between draft and final versions of the *2036 Plan* relates to the accompanying urban design report prepared by consulting firm SJB Urban. The report

recommended a minimum 1,500m<sup>2</sup> site area to access the higher controls and encourage land assembly through site amalgamation. An extract from SJB's report models the subject site with a single tower form running east-west, incorporating the three adjoining lots immediately to the west to achieve a cohesive redevelopment outcome (refer Figure 1 below). This design approach appears to recognise the particularly difficult interface issues associated with such a dramatic difference in scale and height, especially without the benefit of a separating rear laneway. Further, the design approach appears to reinforce the benefits of amalgamation with the western adjoining properties. These recommended concepts and controls were not ultimately incorporated into the final published *2036 Plan* but represent a better opportunity to deal with the dramatic height and scale interface.



**Figure 1: SJB Urban indicative conjoined massing model across the subject site and western neighbours (SJB Urban, p. 67).**

### Ministerial Order

On 26 November 2021, the Minister for Planning and Public Space made the Environmental Planning and Assessment (Statement of Expectation) Order 2021. The Order establishes various expectations in relation to Council's development assessment, planning proposal and strategic planning roles and expected levels of performance. In particular, the Minister confirms his expectations Council's should.....*"make a decision as to whether to support or not a proponent led planning proposal as soon as practical and no longer than 90 days"*.

The Order includes an explanatory note which states that *"If a Council is found not to be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or regional panel to exercise Council's functions"*.

In the context of this Order, Council staff have sought to finalise its assessment and reporting of the proposal with minimal delay.

## CONSULTATION REQUIREMENTS

Should the Planning Proposal progress, community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

### DETAIL

#### 1. Planning Proposal

##### 1.1 Applicant

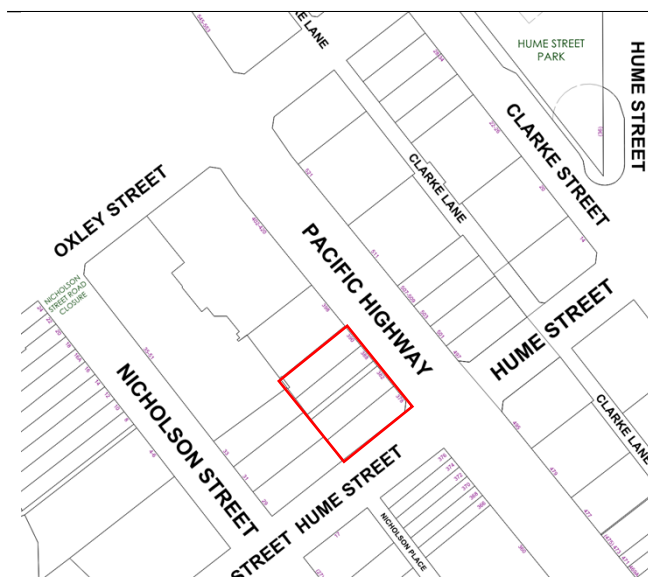
The applicant for the proposal is Futuro Capital Pty Ltd.

##### 1.2 Site Description

The subject site comprises five (5) allotments of land being;

378 Pacific Highway	Lot 1, DP 577047
382 Pacific Highway	Lot 5, DP 4320 and Lot 1, DP 573543
388 Pacific Highway	Lot 4, DP 663560
390 Pacific Highway	Lot 1, DP 177051

The subject site is 1,309m<sup>2</sup>, bound by Pacific Highway to the east, Hume Street to the south and abutting 398 Pacific Highway to the north and 29, 31, and 33 Nicholson Street to the west. The site is rectangular in shape with a frontage of approximately 37m to Pacific Highway, and 30m along Hume Street. The site is shown in Figures 2 and 3 below.



**FIGURE 2: Subject site**



**FIGURE 3: Aerial photo of subject site**

#### 1.3 Proposed Instrument Amendment

The Planning proposal seeks to;

- amend the Height of Buildings Map from 16m to RL176 (24 storeys or 86.9m)
- amend the Floor Space Ratio Map to establish a maximum floor space ratio of 7.5:1
- amend the minimum non-residential floor space ratio map from 1.5:1 to 2:1.



Table 1 below summarises the proposal against the recommended controls in the 2036 Plan. Figure 4 depicts the concept plans submitted.

	<b>2036 Plan</b>	<b>Planning Proposal</b>
Height	24 storeys (silent on numerical height limit)	86.9m (24 storeys) <ul style="list-style-type: none"> <li>• 16 storey tower</li> <li>• 4 storeys of amenities</li> <li>• 4 storey podium</li> </ul>
Gross Floor Area (GFA)		9,818 m <sup>2</sup> <ul style="list-style-type: none"> <li>• 2,618m<sup>2</sup> non-residential</li> <li>• 7,200 m<sup>2</sup> residential (indicative yield: 87 apartments)</li> </ul>
Floor Space Ratio (FSR)	7.5:1	7.5:1
Non-Residential FSR	2:1	2:1
Whole of building setbacks	Pacific Highway – 3m Hume Street – Nil	Pacific Highway – 3m Hume Street – Nil
Above podium setbacks	None specified	Southern elevation (Hume Street) – 3m Northern elevation – 6m Eastern elevation (Pacific Highway) – 6m Western elevation – 6m

**Table 1** – summary of key Planning Proposal built form parameters



**Figure 4** – Concept elevations viewed from rear (west) and north



#### **1.4 Assessment**

By Ministerial direction, all planning proposals are required to be referred to the Local Planning Panel. A detailed assessment of the proposal is provided within the Assessment Report considered by the NSLPP on 13 April 2022, a copy of which is available at;

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/13\\_april\\_2022/pp01 - 378-390 pacific highway crows nest - pp721 rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/13_april_2022/pp01_-_378-390_pacific_highway_crows_nest_-_pp721_rpt.pdf)

#### **1.5 Local Planning Panel**

The NSLPP considered the proposal at its meeting on 13 April 2022, where it recommended that the planning proposal not be supported for the purpose of seeking a Gateway Determination.

A copy of the NSLPP recommendation can be found at;

[https://www.northsydney.nsw.gov.au/Council\\_Meetings/Meetings/NSLPP/2022/13\\_April\\_2022](https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2022/13_April_2022)

#### **KEY ISSUES**

The issues highlighted below are considered the most pertinent for the assessment of the Planning Proposal. A more comprehensive analysis and assessment is provided in the link to the NSLPP above under section 1.4 above.

#### **1.6 Strategic Merit**

The Planning Proposal is deemed to have strategic merit as it broadly gives effect to the *2036 Plan* prepared by State Government in response to the new Crows Nest Metro Station.

#### **1.7 Site Specific Merit**

##### **1.7.1 Height**

There is a high degree of community sensitivity regarding the height of buildings in this precinct. Oversized towers can create unnecessary overshadowing of surrounding sites and prevent a suitable transition to lower height built forms. Following Council's request to rationalise the height of the building, the design concept was revised to reduce the maximum height of 86.86m (RL175.4), down from the initial 91.46m, to accommodate the proposed 24 storey building, inclusive of plant and lift overrun (refer Figure 5). This is numerically consistent with the height (expressed in storeys) contained in the *2036 Plan*.

As the diagram below indicates, however, there is a very significant proportion of the building dedicated to linking the podium to the tower with minimal floor space contained within. Whilst the applicant has argued that this will provide for outdoor recreation/garden area, given the sensitivity of height in the precinct, further efforts to reduce the height whilst achieving a considerable floor space yield on the site, is not an unreasonable expectation for the site to minimise its visual and overshadowing impacts.

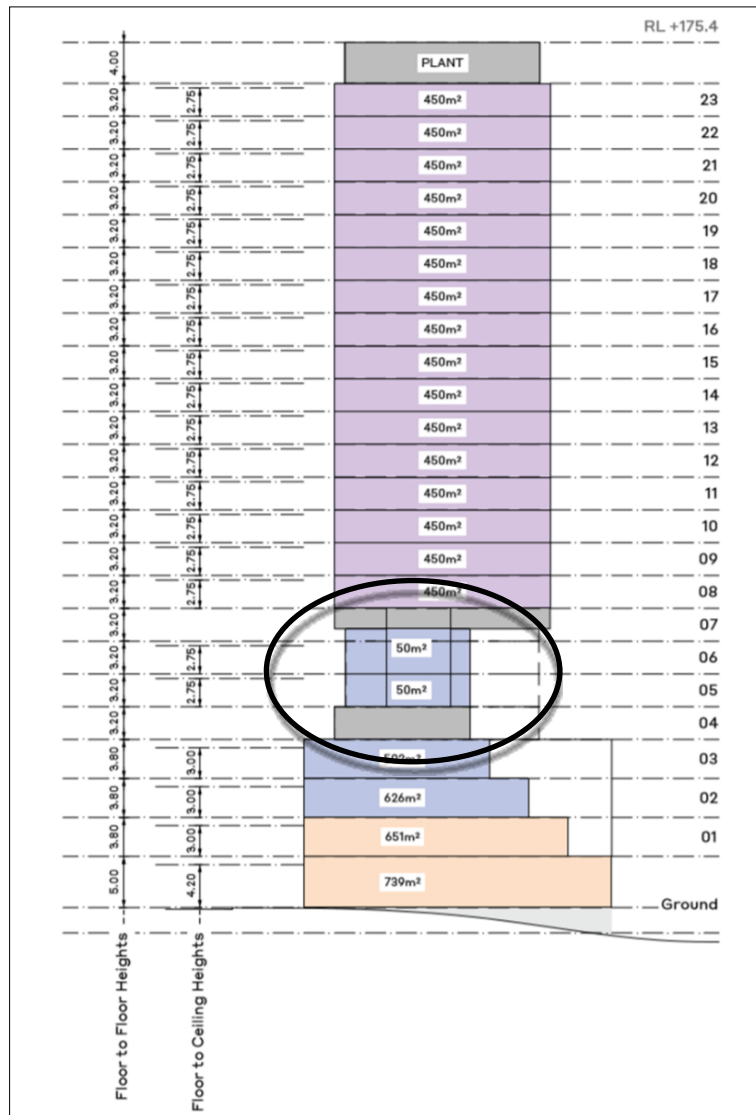


Figure 5 – cross section

## 1.8 Building transition and setbacks

In highly built-up areas such as the emerging St Leonards and Crows Nest precincts, there is a need to ameliorate the impacts of multiple high-rise towers dominating the skyline along the length of the Pacific Highway, reducing the amenity of lower density residential areas nearby, as well as that of future tower residents. Appropriate setbacks will also facilitate a greater separation between future tower forms. The following assessment takes this into account.

### 1.8.1 Northern elevation

The 2036 Plan provides the potential for the subject site and the adjacent site to the north to redevelop to 24 storeys; therefore a suitable setback needs to be considered to allow for future tower separation along Pacific Highway. A 6m above podium setback is proposed along the northern and western elevations. The proponent has included a 12m “notch” in the design concept for habitable rooms, but otherwise is proposing non-habitable, or heavily screened rooms facing north to enable a reduced (6m) setback (Figure 6).

The proposed setback to the north is substantially below minimum ADG requirements for tower separation (24m total). This encroaches into the setback of the northern site at 398 Pacific Highway, potentially preventing it from being redeveloped to accommodate a tower form that achieves a reasonable level of residential amenity and meets ADG requirements.

To address Council's preliminary comments regarding a preference for site amalgamation, the proponent provided further information suggesting that adjoining landowners to the north and western boundaries of the subject site had been approached in relation to potential acquisition but no viable commercial agreement could be reached between the parties. No formal documentation was provided of interactions between the parties in this context. It is noted that the adjoining property to the north has objected to the proposal on these grounds.

In considering this design concept, the proponent has provided a series of potential alternative redevelopment scenarios for the neighbouring northern site. The concepts identify that individual site redevelopment is unlikely given its constrained size, but amalgamation with 402-420 Pacific Highway would enable a tower form that achieves ADG setback requirements. In this respect, the planning proposal cannot be said to create a site isolation issue for its northern neighbour as an alternative amalgamation option exists; however, it still represents a "borrowing" of setbacks from the northern site and does not adequately future-proof the alternative possible planning scenarios for the adjoining site which also benefits from substantial uplift in the *2036 Plan*.

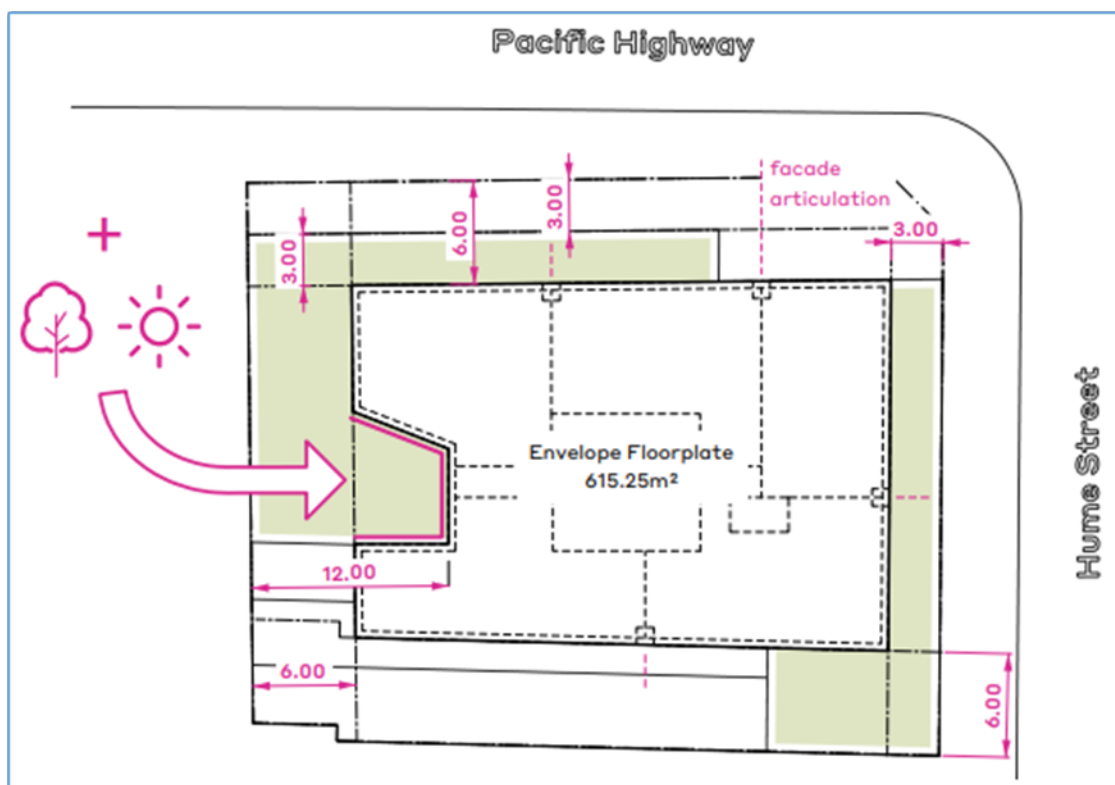


Figure 6 – proposed setbacks

### 1.8.2 Western elevation

The podium has a stepped setback to the western boundary in the concept design, which incorporates commercial and retail uses. The proposed tower element partially overhangs the terracing below (refer Figure 5) as per the following:

- a 0m whole of building setback at Ground Level
- a mix of setbacks between 4.3 to 11.9m to the boundary from Level 1 to Level 4
- a 6m tower level setback (i.e. above podium)

The *2036 Plan* does not specify side and rear setback controls for the site, and instead ADG provisions apply. The proposed setback of the podium along the western elevation contained in the design concept is non-compliant with ADG building separation/privacy requirements when interfacing with single storey residential development. Particular attention is drawn to section 2F: Building Separation of the ADG, which requires office windows and balconies to be considered as habitable spaces when measuring building separation requirements between commercial and residential uses.

Further, the NSDCP 2013 - Commercial & Mixed Use Development provisions contain specific setback controls to the side and rear which are:

*P6. buildings containing non-residential activities must be set back a minimum of 3m from the property boundary where the adjoining site has balconies or windows to main living areas of dwellings or serviced apartments located at the same level.*

*P7. a development proposed on land adjoining or adjacent to a residential or recreation zone must not exceed a building height plane commencing:*

*(a) at 3.5m above ground level (existing) and projected at an angle of 45 degrees internally to the site from all boundaries that directly adjoin land zoned R2 Low Density Residential, R3 Medium Density Residential, R4 High Density Residential, RE1 Public Recreation.*

### 1.8.3 Western elevation – tower

The interface between the existing low density residential and the proposed development is dramatic. It is acknowledged that the *2036 Plan* has given rise to the need to manage a very difficult interface. Notwithstanding this, the *2036 Plan* contains a Precinct Objective which states, “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” (p. 9). A related Action within the Plan states: “New development should be sympathetic to existing buildings with appropriate setbacks and street wall height” and “Provide appropriate transitions in height to adjoining low scale residential areas” (p. 33). A 6m setback is proposed between the 24-storey tower and single storey residential dwellings to the west, representing a very poor urban transition that does not satisfy these objectives and actions.

A 6m setback is the minimum distance required for towers with non-habitable rooms above 9 storeys in the ADG. However, due to the change in land use zones between the subject site’s B4 Mixed Use zone and R3 Residential zone immediately west, an additional 3m setback is required on the western boundary. This means a minimum 9m setback is required to meet

ADG requirements for towers with non-habitable rooms and increasing to 15m for habitable rooms. This additional setback increase would help to reduce overlooking and privacy impacts and improve solar access and amenity as well as providing a less overbearing transition between the existing and future built forms. Further, Council's urban design assessment indicates that provision of a 9m setback would not prevent a 7.5:1 FSR from being achieved on the site. It should also be noted that as foreshadowed in the 2036 Plan objectives outlined above, reliance alone on the ADG is an inadequate approach to such a dramatic interface and established urban design principles of separation and transition should be applied.

There is no doubt that, for an area undergoing so much change, amalgamation with the western adjoining allotments (which are held in familial ownership), represents the potential for a better and more holistic outcome by enabling a single design to deal with an array of built-form issues identified in this report and the more detailed report considered by the North Sydney Local Planning Panel.

While the Proponent's contended efforts in amalgamating four existing parcels is acknowledged, the poor amenity outcome to the western neighbours can be partially mitigated through provision of an additional 3m setback. It is also acknowledged that there is a 3m podium setback to Pacific Highway stipulated in the 2036 Plan which limits the location of the tower on the site, preventing it from being built closer to the highway and further away from the western boundary. It is worth noting however, that a submission from one of the western adjoining allotments has indicated that no approaches were made in relation to potential amalgamation.

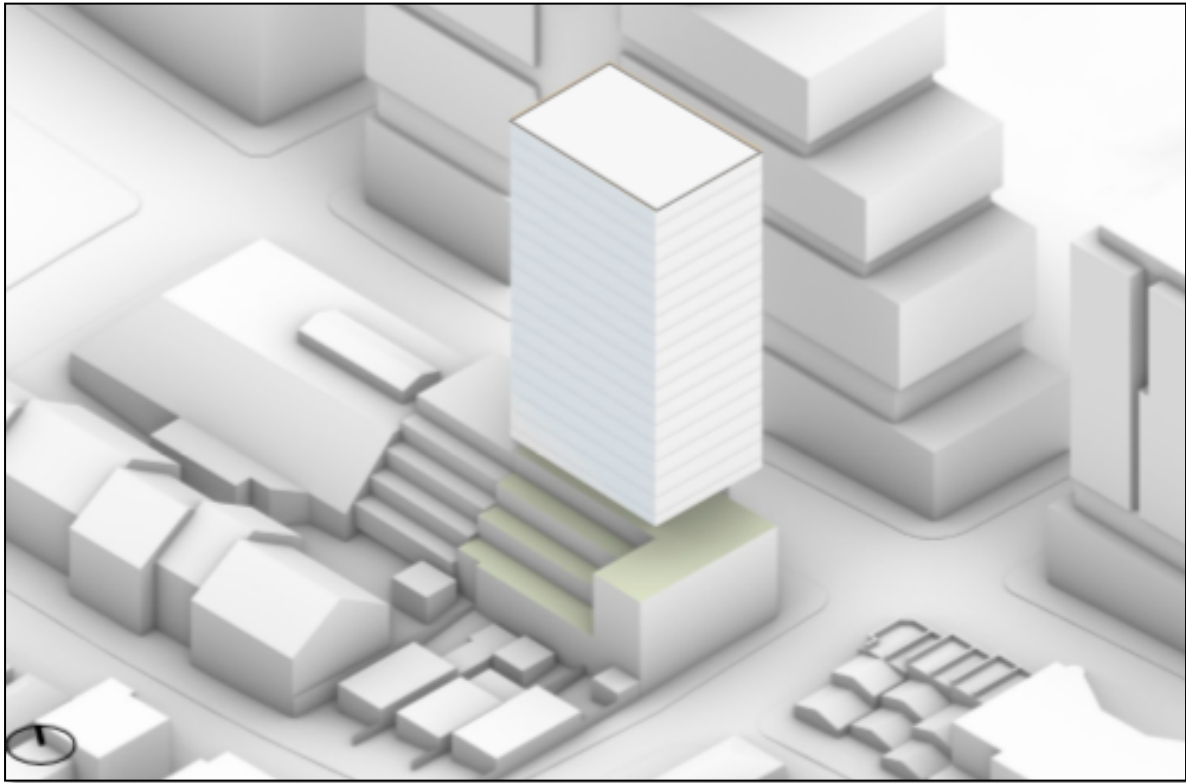
As one of the first Planning Proposals received for this precinct, consistent application of the *2036 Plan* objectives and actions, and related design controls, is imperative to set a high standard for similar proposals in the vicinity. This will avoid establishing negative planning precedents for Crows Nest that may undermine the future built form character and amenity of the precinct. Council must give sufficient weight to the ADG applying across the metro area, as well as sound urban design principles in the absence of local controls for the precinct to manage abrupt and dramatic interfaces and ensure they are consistently applied wherever possible for fair and equitable planning decision-making across the LGA. On these grounds, the proposal cannot be supported.

## **1.9 Overshadowing**

When considering this Planning Proposal alongside the Crows Nest Over Station Development and *2036 Plan* at full "build-out", significant solar access impact is somewhat inevitable due to the heights envisaged in the *2036 Plan*, and there are significant cumulative overshadowing impacts to residential areas to the west including the eastern side of Nicholson Street. These impacts are considered to be somewhat mitigated as a result of the slenderness of the proposed tower form and its separation from other towers which ensures that any shadows cast are narrow and impacts on nearby properties are short-term. A reduction in the proposed height as previously discussed under section 1.7.1 however, would assist in further reducing the extent of overshadowing impacts.

### 1.10 Visual Impact

The visual impact of the building will be pronounced from several viewpoints (refer Figure 7). This will be particularly obvious from properties to the south-west of the site and also from surrounding residential streets. These visual impacts are largely a result of the primary controls identified in the *2036 Plan* which provides for substantial heights along Pacific Highway.



**Figure 7 – Visual Impact**

## 2 Submissions

There are no statutory requirements to publicly exhibit a Planning Proposal before the issuance of a Gateway Determination.

However, Council sometimes receives submissions in response to planning proposals which have been lodged but not determined for the purposes of seeking a Gateway Determination. The generation of submissions at this stage of the planning process arise from the community becoming aware of their lodgement through Council's application tracking webpage and on-site signage.

These submissions are normally considered as part of Council's assessment report for a Planning Proposal, to illustrate the level of public interest in the matter before Council makes its determination.

Five submissions have been received by Council at the time of preparing this report. This includes two sites abutting the subject site, being 29 Nicholson Street to the west and 398

Pacific Highway to the north. A submission has also been received from the Wollstonecraft Precinct Committee and two from local Wollstonecraft residents. All submissions objected to the Planning Proposal, though some commented on its strategic merit in the broader context of the new metro station coming online.

Key concerns relate to:

- Excessive building height for 24 storeys proposed
- Site isolation to the north, call for precinct-based planning to resolve
- Traffic increase and related noise and pollution, parking and vehicle maneuvering Loss of solar access
- Reduced visual amenity, overlooking and loss of privacy

The issues identified have been discussed throughout this report and have helped to inform Council's assessment and recommendation. Should the Planning Proposal progress to a Gateway Determination, further opportunity to comment will be provided on the revised proposal.