

Post-Exhibition Report – PP 2021-7169

The Planning proposal seeks to amend the North Sydney Local Environmental Plan 2013 as it applies to 360 Pacific Highway, Crows Nest by increasing the maximum height of buildings to RL 163.8, introducing a maximum Floor Space Ratio (FSR) of 5.5:1 and increasing the minimum non-residential FSR to 2:1.

1 Introduction

The purpose of this report is to provide a summary of the key matters raised by members of the public, North Sydney Council (Council) and public agencies during the public exhibition of the planning proposal for 360 Pacific Highway, Crows Nest (the site), and to make a recommendation to Sydney North Planning Panel (the Panel) to submit the proposal to the Department of Planning and Environment (the Department) for finalisation following relevant updates.

Table 1 – Timeline of the planning proposal

Element	Description
Date of request to exhibit PP	4 May 2023
Date of panel determination on rezoning review	9 November 2022
Planning Proposal no.	PP-2021-7169
LGA	North Sydney
LEP to be amended	North Sydney Local Environmental Plan 2013 (NSLEP)
Address	360 Pacific Highway, Crows Nest
Brief overview of the timeframe/progress of the planning proposal	<p>4 August 2021 – Pre-lodgement meeting with Council.</p> <p>8 October 2021 – Second pre-lodgement meeting with Council.</p> <p>8 December 2021 – Planning proposal lodged with Council.</p> <p>30 March 2022 – Meeting with Council to discuss the proposal and amended concept scheme submitted.</p> <p>8 June 2022 – North Sydney Local Planning Panel recommended to not support the proposal.</p> <p>27 June 2022 – North Sydney Council recommended the proposal not be supported and not proceed to Gateway determination.</p> <p>6 September 2022 – Rezoning Review request received by Department</p> <p>9 November 2022 – Sydney North Planning Panel (Panel) endorsed the planning proposal proceed to Gateway determination.</p>

Element	Description
	1 March 2023 – Gateway determination issued 19 April 2023 – An Alteration of Gateway determination was issued deleting condition 5 May – June 2023 – The proposal was placed on public exhibition from 8 May to 6 June 2023.
Finalisation date required by Gateway Determination	1 December 2023
Department contact:	Renee Ezzy, Senior Planning Officer

1.1 The Site and local context

The site (**Figure 1**) is legally described as Lot CP / SP72954 with a total site area of 1406m² and is regular in shape. Existing development on the site includes a three-storey retail and commercial building. The site has a primary frontage of 42m to the Pacific Highway along the eastern boundary and has a secondary 42m frontage to Nicholson Place on the western boundary. Adjoining the site to the north-west (366-376 Pacific Highway) is a 2-storey row of 6 local heritage items known as the ‘Higgins Buildings’ (**Figure 2**), while adjoining the site to the south-east are non-heritage listed terrace buildings used for retail land uses.

To the west of the site, across Nicholson Place, is the suburb of Wollstonecraft with one and two storey residential dwellings and two storey apartments facing Nicholson Street. St Leonards Train Station is approximately 800m to the north with services to Sydney CBD, Chatswood, Hornsby, West Ryde, and regional areas.

The Crows Nest Metro Station (Metro) is approximately 100m to the north on the opposite side of the Pacific Highway and currently under construction. The Metro development includes a proposed over station mixed use development consisting of 3 buildings of 21, 19 and 7 storeys.

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Figure 1 – Subject site (source: Planning Proposal, March 2023)



Figure 2 – NSLEP 2013 Heritage Map (source: Gateway Determination Report – March 2023)

1.2 Planning Proposal

Table 1 – Overview of planning proposal

Element	Description
Site Area	1,406m ²
Site Description	360 Pacific Highway, Crows Nest (Lot CP / SP72954).
Proposal summary	<p>The planning proposal seeks to amend the NSLEP 2013 to facilitate a mixed use development by:</p> <ul style="list-style-type: none"> Increasing the maximum building height from 10 to a maximum RL of 163.8 Introducing a maximum FSR of 5.5:1 Increasing the minimum non-residential FSR to 2:1 <p>The intent of the proposal is to provide for additional housing and non-residential employment floor space within walking distance of the Crows Nest Metro and St Leonards Railway stations.</p>
Relevant State and Local Planning Policies, Instruments	<ul style="list-style-type: none"> Greater Sydney Region Plan (A Metropolis of three Cities) North District Plan St Leonards Crows Nest 2036 Study (SLCN 2036 Plan) NSLEP 2013 Local Strategic Planning Instrument (LSPS) North Sydney Local Housing Strategy (LHS) Draft North Sydney DCP – SLCN 2036 Plan Future Transport Strategy 2056 Ministerial direction 1.13 Implementation of St Leonards and Crows Nest 2036 Plan Ministerial direction 3.2 Heritage Conservation Ministerial direction 4.4 Remediation of Contaminated Land Ministerial direction 5.1 Integrating Land Use and Transport Ministerial direction 5.3 Development near Regulated Airports and Defence Airfields Ministerial direction 6.1 Residential zones Ministerial directions 7.1 Business and Industrial zones SEPP (Resilience and Hazards) 2021 SEPP (Transport and Infrastructure) 2021 SEPP (Building Sustainability Index: BASIX) 2004 SEPP 65 – Design Quality of Residential Apartment Development SEPP (Sustainable Buildings) 2022 Standard Instrument – Employment Zone Reform (SI LEP 2006)

The planning proposal (**Attachment A**) seeks to amend the NSLEP 2013 as per the changes in **Table 2** below.

Table 2 – Current and proposed controls

Control	Current	Proposed
Zone	MU1 Mixed Use (formerly B4 Mixed Use- amended as per Employment Zone Reforms)	No change
Maximum height of the building	10m	RL163.8 (18 storeys)
Floor space ratio	N/A	5.5:1
Minimum non- Residential FSR	0:5:1	2:1 (2,812m ²)
Number of dwellings	N/A (commercial/retail floorspace)	42
Number of jobs	30	130

The planning proposal (**Attachment A** and **Table 1**) contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

1.2.1 Mapping

The planning proposal includes amendments to the following maps:



Figure 2. Current land use zoning map, with subject site outlined in red line – no change proposed (source: Gateway determination report — March 2023)

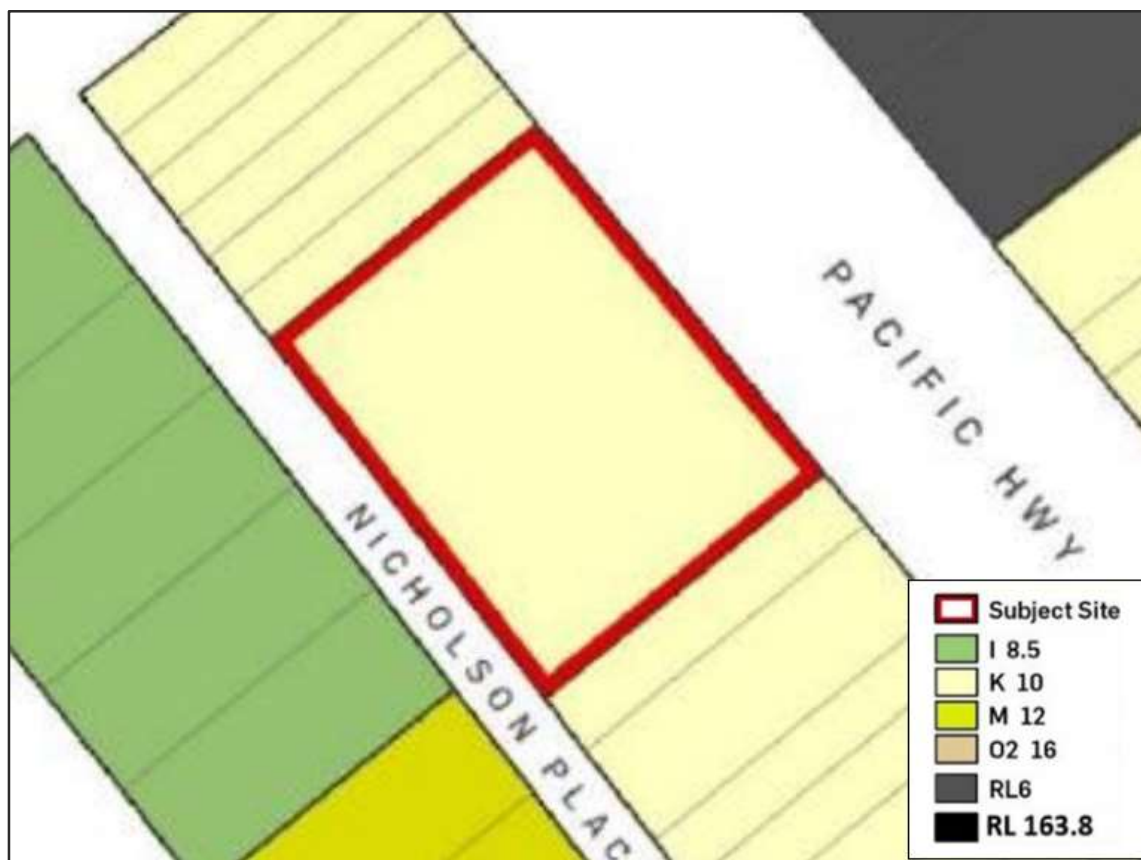


Figure 3: Current Height of Building Map (source: Gateway determination report, March 2023)

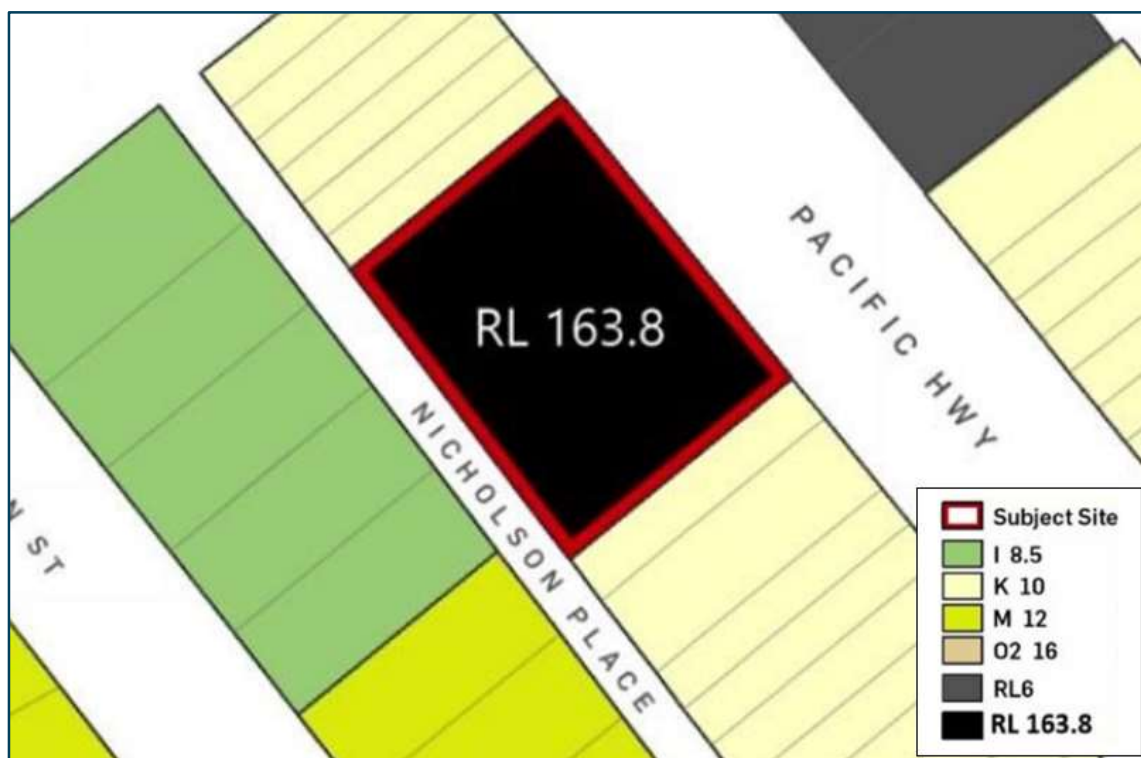


Figure 4: Proposed Height of Building Map (source: Planning Proposal, March 2023)

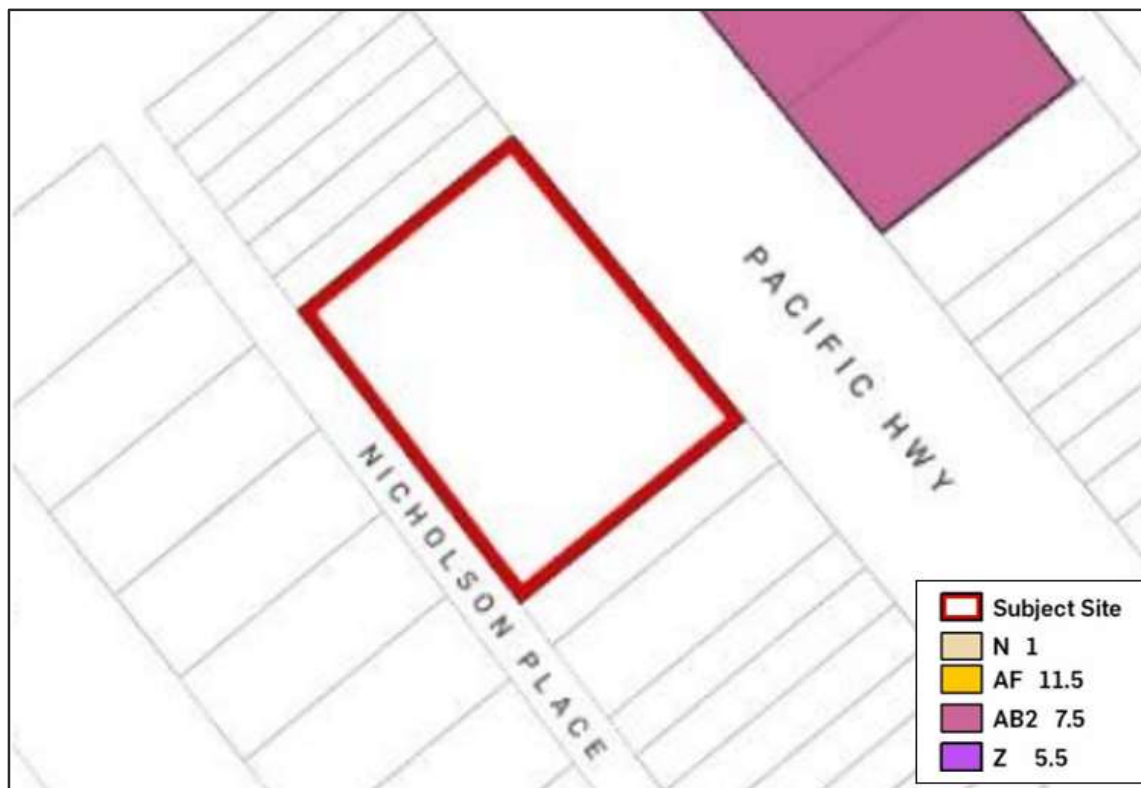


Figure 5: Current FSR map (source: Gateway determination report, March 2023)

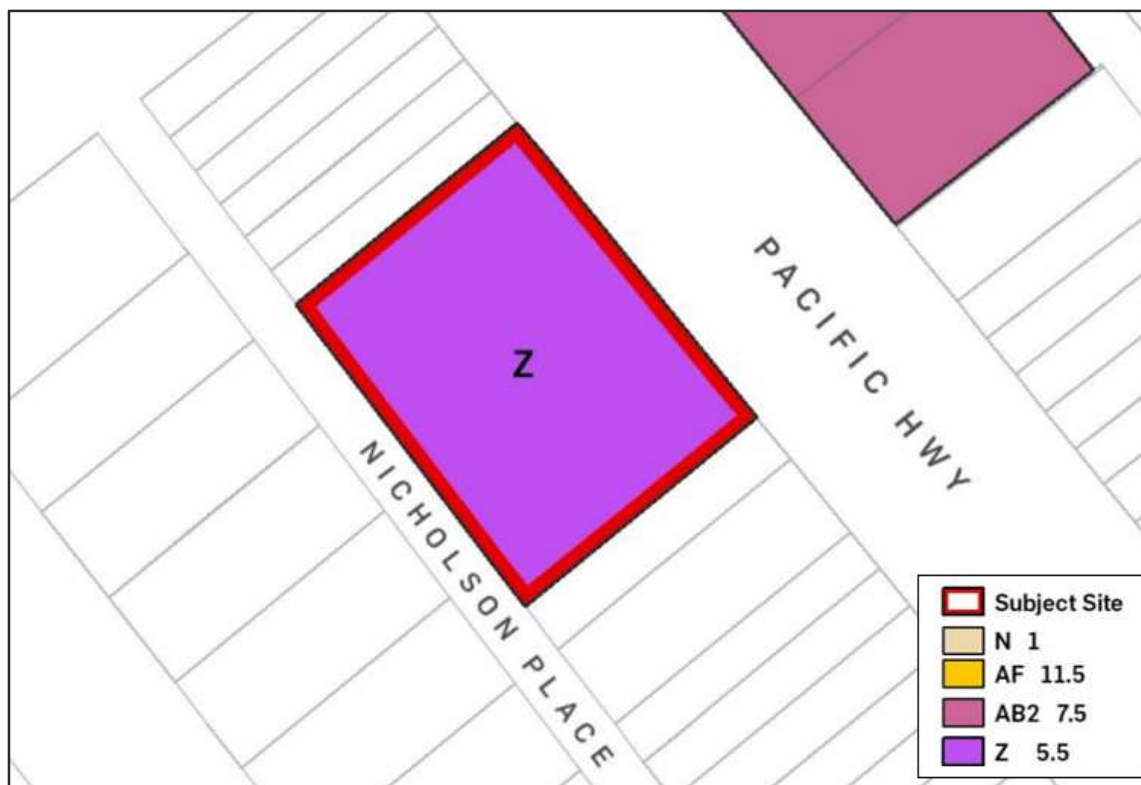


Figure 6: Proposed FSR map (source: Planning Proposal, March 2023)

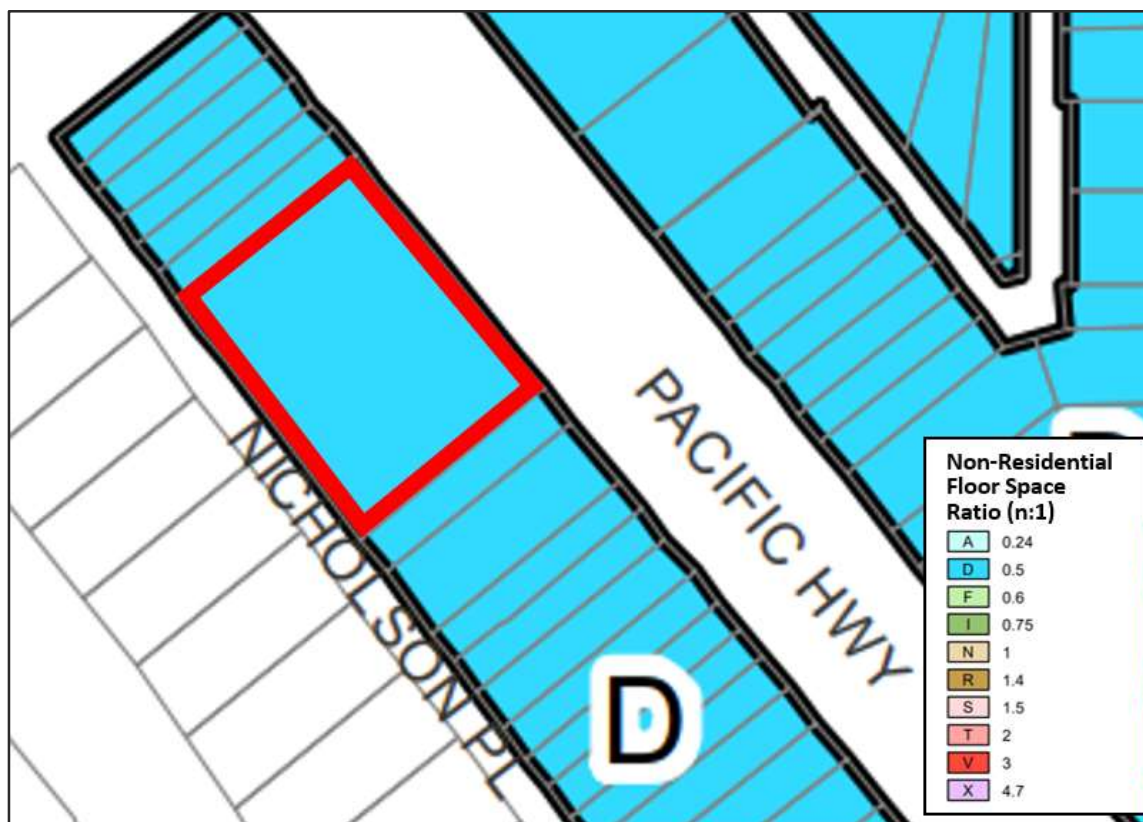


Figure 7: Current non-residential FSR map (source: NSW Legislation, July 2023)

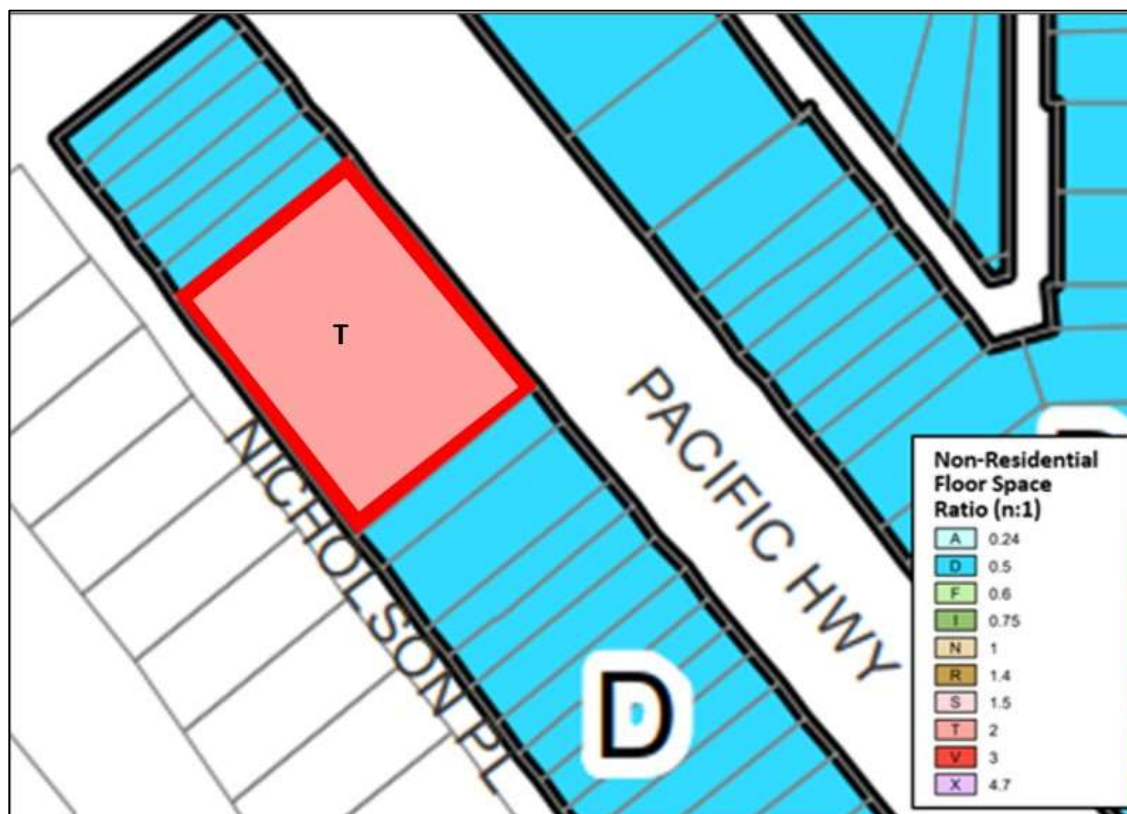


Figure 8: Proposed non-residential FSR map (source: Planning Proposal, March 2023)

1.3 Rezoning Review

On 9 November 2022, the Sydney North Planning Panel (the Panel) considered the rezoning review request for this planning proposal because Council notified the proponent it would not support the proposed amendment to the NSLEP 2013.

The Panel considered the planning proposal documentation and heard extensively from Council and the Proponent during the meeting including debate on the key issues of consistency with the St Leonards and Crows Nest 2036 Plan, building height, site isolation, impact on neighbouring properties and setbacks.

- The Panel concurred unanimously with the proponent that the planning proposal had adequately demonstrated strategic merit and the majority of the panel agreed the proposal had demonstrated site-specific merit (with only one dissenting opinion) for the following reasons:
 - as a result of consultation with the Department and Council, the proponent has reduced the proposed 18 storeys building height from RL 166 to RL 163.8m.
 - the proposed zoning of the site, height of building, and FSR controls are all consistent with the St Leonards and Crows Nest 2036 Plan.

On balance, the majority of the panel agreed that the proposal should proceed to gateway determination.

The Panel's determination and reasons for its decision are provided in **Attachment B**.

The Panel appointed itself as the Planning Proposal Authority (PPA).

The proposal was submitted to the Department for a Gateway determination on 31 January 2023.

1.4 Gateway determination

The Gateway determination issued on 1 March 2023 (**Attachment C**) determined that the proposal should proceed subject to the following conditions:

1. *Prior to community consultation, the planning proposal is to be updated to address the following:*
 - a) *Refer to the maximum height of buildings as RL 163.8 throughout and provide revised mapping to indicate a maximum height of buildings of RL 163.8.*
 - b) *Incorporate the changes as indicated in the revised Concept Design Report including updated shadow diagrams and any other supporting documents.*
 - c) *Include the number of jobs that may be created as a result of the increase to the planning controls on the site.*
 - d) *Refer to the new renumbered section 9.1 Ministerial Directions and remove reference to revoked Directions.*
 - e) *Address the consolidated SEPPs and remove reference to the repealed SEPPs.*
 - f) *It is recommended to address the proposed SEPP (Sustainable Buildings) 2022.*
 - g) *Include any advisory note referencing the Employment Zones Reform Framework, and*
 - h) *Include an updated timeline based on the issuing of the Gateway determination.*
2. *Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:*
 - (a) *The planning proposal is categorised as standard as described in the Local Environmental Plan Making Guidelines (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 20 working 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 Environmental Plan Making Guidelines (Department of Planning and Environment, 2021).*
- (c) It is recommended that a copy of the St Leonards Crows Nest 2036 Plan be exhibited with the planning proposal.*

Exhibition must commence within 3 months following the date of the gateway determination.

3. *Consultation is required with the following public authorities and government agencies under section 3.34(2)(d) of the Act and/or to comply with the requirements of applicable directions of the Minister under section 9 of the EP&A Act:*
 - *Transport for NSW (TfNSW)*
 - *Transport for NSW (Sydney Metro)*
 - *Ausgrid*
 - *Sydney Water Corporation*
 - *NSW Department of Education/Schools Infrastructure NSW*
 - *NSW Department of Health – Northern Sydney Local Health District; and*
 - *Department of Transport, Infrastructure, Regional Development and Communications and the Arts (DTIRDCA);*
 - *Sydney Airport Corporation Limited (SACL); and*
 - *Airservices Australia*

Each Public authority is to be provided with a copy of the planning proposal and any relevant supporting material via the NSW Planning Portal and given at least 30 days to comment on the proposal.

4. *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 EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, if reclassifying land).*
5. *The Panel as planning proposal authority is authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act subject to the following:*
 - (a) The planning proposal authority has satisfied all the conditions of the gateway determination.*
 - (b) The planning proposal is consistent with applicable directions of the Minister under section 9.1 of the EP&A Act, or the Secretary has agreed that any inconsistencies are justified; and*
 - (c) There are no outstanding written objections from public authorities.*
6. *The timeframe for completing the LEP is to be 9 months from the date of the Gateway determination.*

1.4.1 Gateway Alteration

A Gateway alteration was approved on 19 April 2023 to delete condition 5 to reflect that the Panel was not able to be the local plan making authority (LPMA).

The Gateway determination (as altered) identifies that the proposal is to be finalised before 23 September 2023.

All conditions of the Gateway determination (as altered) have been met (**Attachment D**).

The Gateway determination as altered identifies that the proposal is to be finalised before 1 December 2023.

2 Community Consultation

2.1 Public Exhibition

On 4 May 2023 the Agile Planning team advised the Panel Secretariat that the Planning Proposal had been satisfactorily amended to meet the gateway conditions for public exhibition to commence (**Attachment E**).

In accordance with the Gateway determination, the planning proposal and supporting material were publicly exhibited on the NSW Planning Portal for 21 working days, from 8 May 2023 to 6 June 2023.

3 Submissions

3.1 Submissions during exhibition

There were 29 submissions received objecting to the proposal from individuals and government agencies during the exhibition period including:

- 18 public submissions
- 10 agency submissions (as discussed in Section 2.1 above)
- 1 Council submission

Out of the total number of public submissions, 17 objected to the proposal (94%) and 1 supported the proposal (6%).

A table outlining the Department response to submissions is provided at **Attachment F** and the Proponent's response to submissions is provided at **Attachment G**.

3.1.1 Submissions from Agencies and Council

In accordance with the Gateway determination, the following agencies were consulted with:

- Transport for NSW (TfNSW);
- Transport for NSW (Sydney Metro);
- Ausgrid;
- Sydney Water Corporation;
- NSW Department of Education/Schools Infrastructure NSW;
- NSW Department of Health – Northern Sydney Local Health District;
- Sydney Airport Corporation Limited (SACL);
- Airservices Australia;
- Civil Aviation Safety Authority (CASA); and
- Department of Transport, Infrastructure, Regional Development and Communications and the Arts (DTIRDCA).

A submission was also received from North Sydney Council (**Attachment I**), which raised multiple concerns with the proposal including:

- Strategic merit and consistency with the Greater Sydney Regional Plan, North District Plan North Sydney LSPS and the SLCN 2036 Plan
- Height
- Overshadowing
- Setbacks and ADG compliance
- Car parking

No issues were raised by the relevant agencies that would preclude the proposal proceeding. Agency submissions are provided in full at **Attachment H**.

3.2 Key Issues from submissions

The main concerns raised by the community are as follows:

- Solar access and overshadowing
- Local character and heritage
- Building height

Redacted copies of the public submissions are provided at **Attachment J**.

3.2.1 Issue No.1 – Solar access, overshadowing

Significant overshadowing from the height of the development.

Council's view

A tower setback of 9m is proposed from the southern boundary. The ADG requires a minimum 12m setback. ADG compliant setbacks would reduce privacy and visual amenity impacts and improve solar access. The development should comply with ADG standards to avoid establishing negative planning precedents for Crows Nest.

Proponent response:

The planning proposal was previously amended to reduce building height from RL 166 to RL 163.8. Council's assessment report dated 8th June 2022 states:

"Based on the overshadowing assessment provided, there is no overshadowing impact to the residential areas outside the St Leonards and Crows Nest boundary. Within the boundary, the proposed built form can still enable residential areas to the west to retain at least two hours of solar access between 9am-3pm in mid-winter."

The building setbacks and envelope illustrated in the concept plans submitted with the proposal are consistent with relevant objectives of the ADG, particularly Objective 3F-1 requiring – *Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.*

Agile Planning team response:

The Shadow Impact Analysis (SIA) within the Concept Design Report (Nettleton tribe, March 2023) demonstrates that the shadows from the concept design fall within the SLCN 2036 Plan (**Attachment K**) area boundary. The SIA demonstrates that the proposal maintains at least 2 hours of solar access during mid-winter to residential properties to the west and is contained within the SLCN area boundary (see Figure 9).

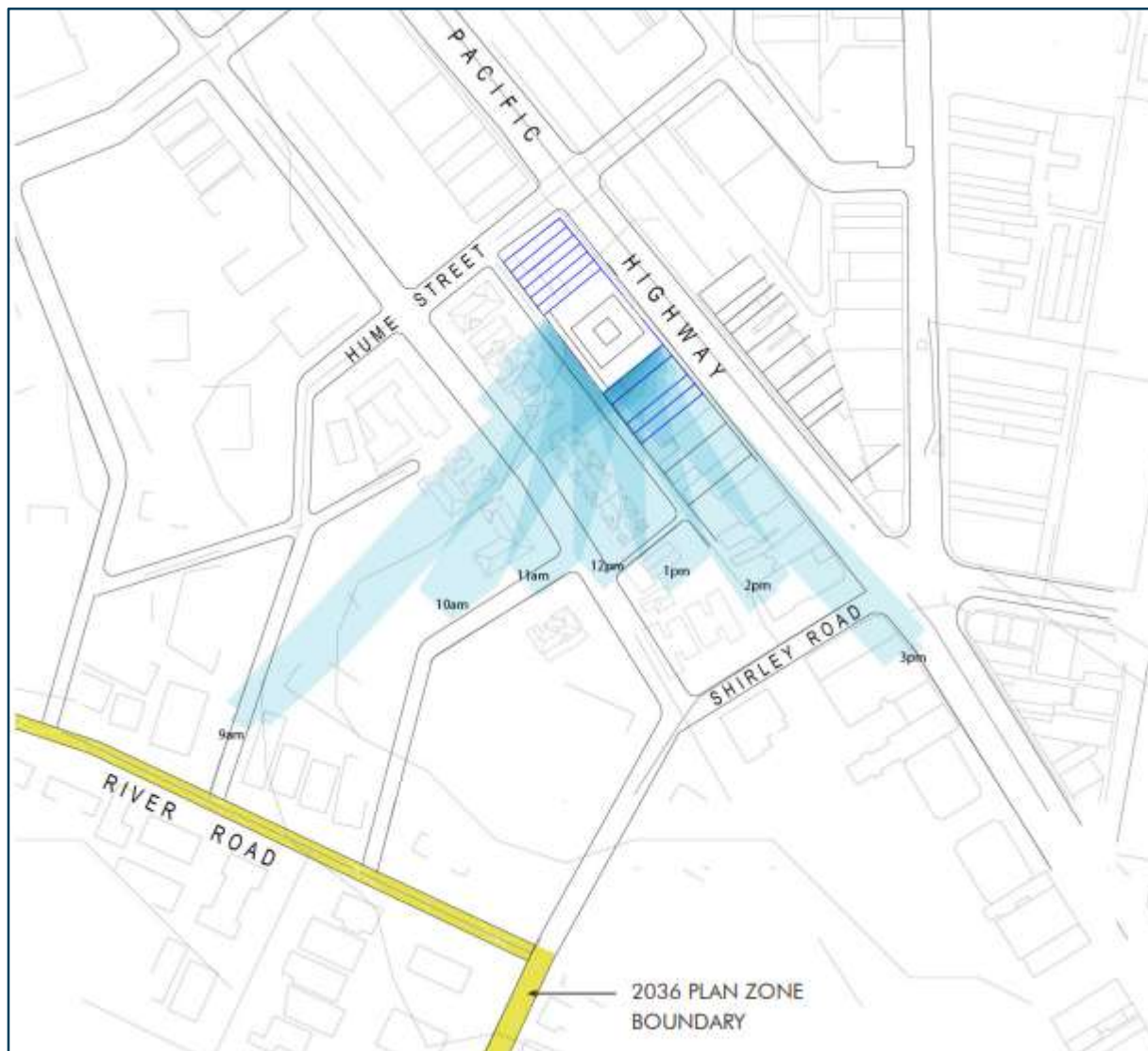


Figure 9: Shadow Impact Analysis (source: Concept Design Report, March 2023)

In response to concerns raised in relation to ADG compliance, the proponent has identified within the Concept Design Report (Nettletontribe, March 2023) that the proposal is capable of satisfying the objectives of the ADG (Figure 10).

The Agile Planning team is satisfied that more detailed consideration of solar access and overshadowing will be required at DA stage to ensure compliance with the ADG for this proposal.

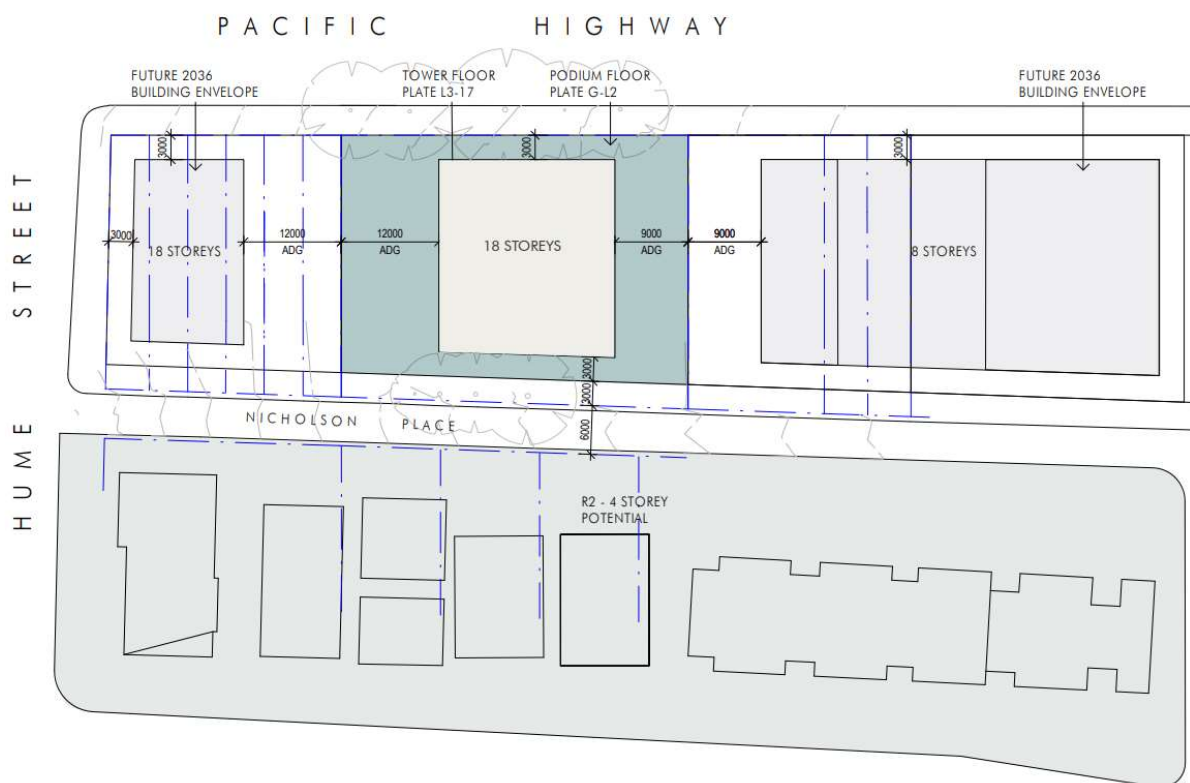


Figure 10: ADG compliance (source: Concept Design Report, March 2023)

3.2.2 Issue No.2 – Local character and heritage

The height and scale is not consistent with the character of the Crows Nest area and its numerous heritage buildings.

Council's view

Council held multiple pre-lodgement meetings with the proponent where the podium design was analysed and the proponent was requested to amend the design to respond sympathetically to the adjoining Higgins Buildings.

In order to achieve a more suitable and cohesive streetscape response to the site's context, the proponent was requested to set back the third podium level by 3m to align with the tower setback to reduce visual bulk and enable the building façade to be 'read' as a two-storey built form from the street. The proponent agreed to this change.

Proponent response:

The character of the subject site and immediate visual context is transitioning from predominantly lower commercial buildings to taller mixed-use towers.

The proposal provides a sympathetic response to the Higgins Buildings and other heritage items in the streetscape through the prominence of the two-storey portion of the podium. The public and users will still be able to view and appreciate the significance of the Higgins Buildings and recognise the contemporary infill that responds to that character. Additionally, the proposal does not affect views to, and from, the Heritage Item in the vicinity and no new development is proposed on the Higgins Buildings.

Agile Planning team response:

The Concept Design Report (Nettletontribe, March 2023) (**Attachment L**) provides additional detail around the proposed podium levels fronting the Pacific Highway. The proposed building form includes a 3 storey retail/commercial podium consisting of a primary 2 storey façade element with a 0m setback (to align with the adjacent heritage items) and a third podium level setback 3m and ‘softened’ with planter boxes that provides a transition to the tower element (see Figures 9 and 10).

The proposed podium envelope responds to ‘the vertical rhythm of the adjoining heritage buildings to the north and adjoining buildings to the south’. The more detailed finishes and scale at the podium levels provides a suitable human scale to the proposed building from the street. These elements which adopt the façade heights of the adjacent heritage items satisfies the priorities and objectives for respecting heritage within SLCN 2036.

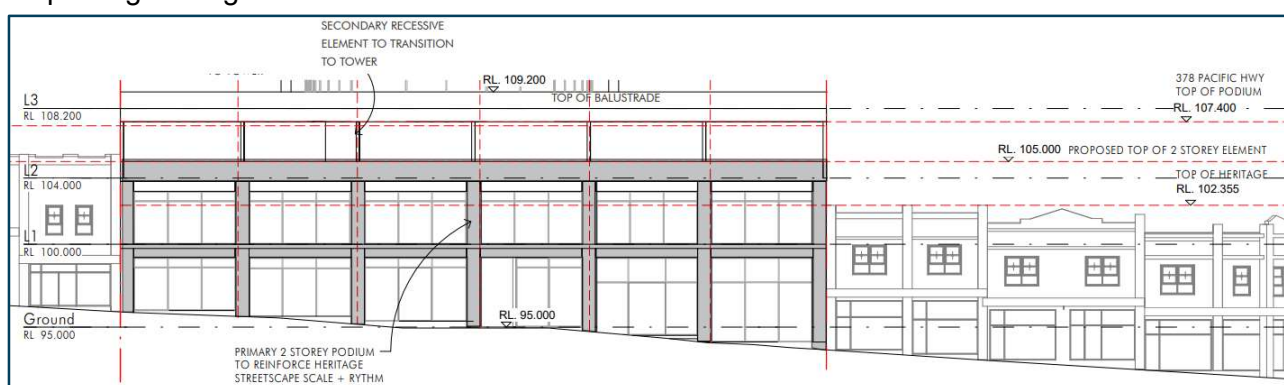


Figure 9: Podium transition (source: Concept Design Report, Nettletontribe March 2023)

The planning proposal is accompanied by a Heritage Impact Assessment (Architectural Projects, October 2021) which supports the podium design stating “a podium with a prominent two storey portion which relates to the scale of the Higgins Buildings is most appropriate.”

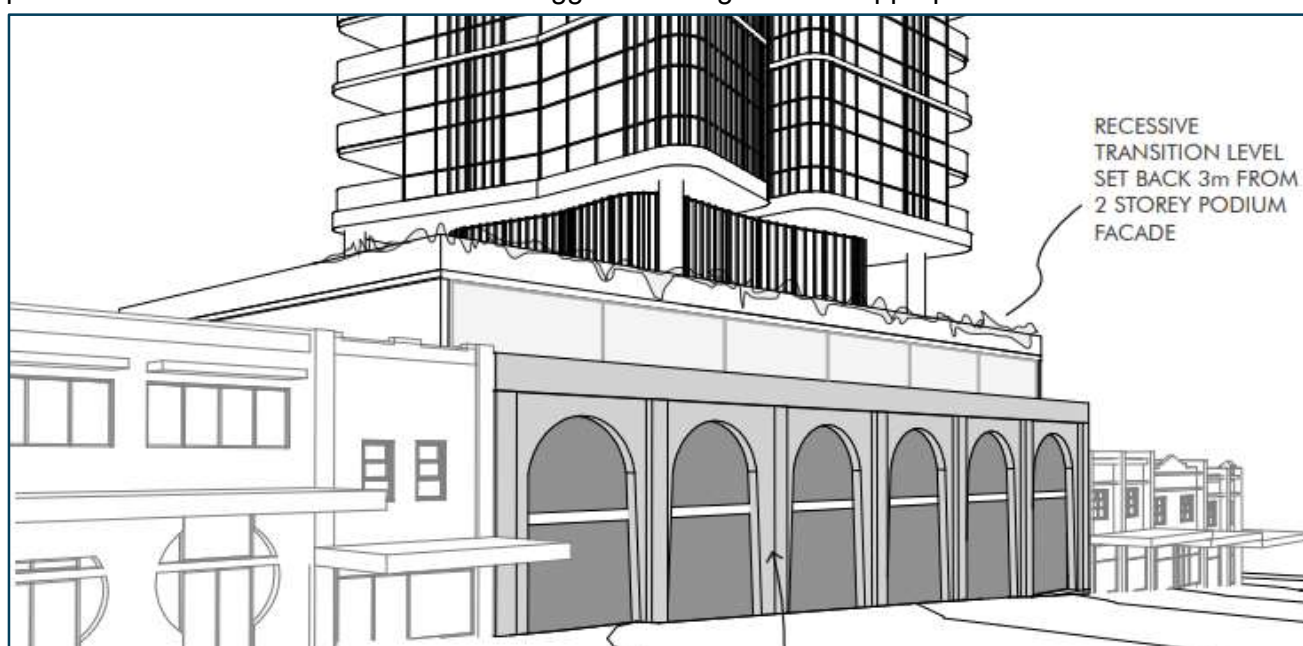


Figure 10: Concept Design Perspective (source: Concept Design Report by Nettletontribe, March 2023)

The concept reference scheme presents a development which is consistent with the SLCN 2036 Plan addressing the actions within the 'Place' theme for new development and how it relates to the heritage elements within the precinct and provides a suitable transition to the key 'height knuckles' of the Crows Nest Metro Over Station Development (up to 27 storeys) and St Leonards commercial core (up to 25 and 36 storeys).

The Agile Planning team is satisfied that the planning proposal provides a suitable response to the heritage items which bookend the site.

3.2.3 Issue No.3 – Building height

The height is inconsistent with the character of Crows Nest.

Council's view

Council considers the building height at RL 163.8 overly generous to accommodate an 18-storey mixed-use building on the site, resulting in inappropriate interface and transition outcomes and excessive overshadowing. Based on the Apartment Design Guide (ADG) requirements, a maximum building height of RL160 (65m) is recommended.

Council have also indicated that they don't support the 6m slab-to-slab height above the podium level as it unnecessarily raises the building height..

Proponent response:

The proposal provides a three-storey podium and is 18 storeys in height (equivalent to 65m), consistent with the envisaged height in the 2036 Plan. The height and scale of the proposal transitions from 18 storeys at the site to the future allowable height of 8 storeys at 348 Pacific Highway.

The interface between high density development on the site and the medium density four storey residential development to the west was anticipated as part of the 2036 Plan.

Agile Planning team response:

The proponent has, as part of their early consultation with Council, sought to address Council's concerns by lowering the finished height from their original level of RL 166 down to RL 163.8. This will result in a building of up to 18 storeys, which aligns with the indicative height identified for the site within the SLCN 2036 Plan.

In relation to the 6m slab-to-slab height above the podium level, this area is designed to accommodate deep soil areas to support more substantial vegetation and enable deeper solar penetration. The concept seeks to enable compartmentalisation of the podium area to facilitate protected areas for active and passive outdoor green spaces in any weather conditions.

The Agile Planning team is satisfied that the height of the planning proposal is consistent with the requirements of the SLCN 2036 Plan and that the building envelope is sufficient to support the concept reference scheme.

4 Next Steps

The Department is the Local Plan-Making Authority (LPMA) for this planning proposal.

The Panel's decision and the final planning proposal will be submitted to the Department through the NSW Planning Portal for finalisation.

The Department will prepare a finalisation report in accordance with the LEP Making Guidelines (December 2021) and will determine whether to make the LEP, with or without variation. The Department may defer the inclusion of a matter in the proposed LEP or not make the LEP.

In accordance with section 3.36(1) of the EP&A Act, the Department will organise drafting of the LEP and finalisation of maps and will consult the panel on any draft instrument.

5 Recommendation

Based on this post-exhibition report, it is recommended that the Sydney North Planning Panel determine that the planning proposal should be submitted to the Department for finalisation with no amendments.

The planning proposal is considered suitable for finalisation because:

- The proposal demonstrates strategic and site-specific merit
- The conditions of the Gateway determination have been met
- Agency and community consultation has occurred in accordance with the Gateway determination
- Submissions raised have been adequately addressed and the proposal warrants support.

5.1 Attachments

Attachment A – Planning Proposal (March 2023)

Attachment B – Sydney North Planning Panel Record of Decision (November 2022)

Attachment C – Gateway Determination (March 2023)

Attachment C1 – Alteration of Gateway Determination (April 2023)

Attachment D – Summary of assessment against Gateway determination

Attachment E – Authorisation of exhibition (May 2023)

Attachment F – Summary of community submissions

Attachment G – Proponent response to submissions

Attachment H – Agency submissions

Attachment I – North Sydney Council submission

Attachment J – Community submissions (redacted)

Attachment K – St Leonards and Crows Nest 2036 Plan

Attachment L – Concept Design Report (March 2023)

Attachment M – Transport Assessment (November 2021)

Attachment N – Heritage Assessment (October 2021)



(Signature)

____6 July 2023_____
(Date)

Douglas Cunningham

Specialist Planning Officer, Agile Planning



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____14 July 2023_____
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