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Plan finalisation report – PP-2021-7196

360 Pacific Highway, Crows Nest

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Acknowledgement of Country

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

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1 Introduction

Overview

1.1.1 Name of draft LEP

North Sydney Local Environmental Plan 2013 (Map Amendment No. 4).

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at 360 Pacific Highway, Crows Nest (SP72954)
Type	Site
Council / LGA	North Sydney Council
LGA	North Sydney

The site is in the North Sydney Local Government Area (LGA) and is located less than 100m from the Crows Nest Metro Station, currently under construction. St Leonards Train Station is located approximately 800m from the site to the north.

The site consists of 1 lot with a total area of 1,406m² with the primary frontage to the Pacific Highway and secondary frontage and vehicular access from Nicholson Place (**Figures 1-3**).

The site is legally known as SP72954 and currently occupied by commercial and retail uses with a height of 3 storeys built to the boundaries (**Figure 4**). The site adjoins six local heritage listed terraces known as the Higgins Buildings to the north at 366-379 Pacific Highway.

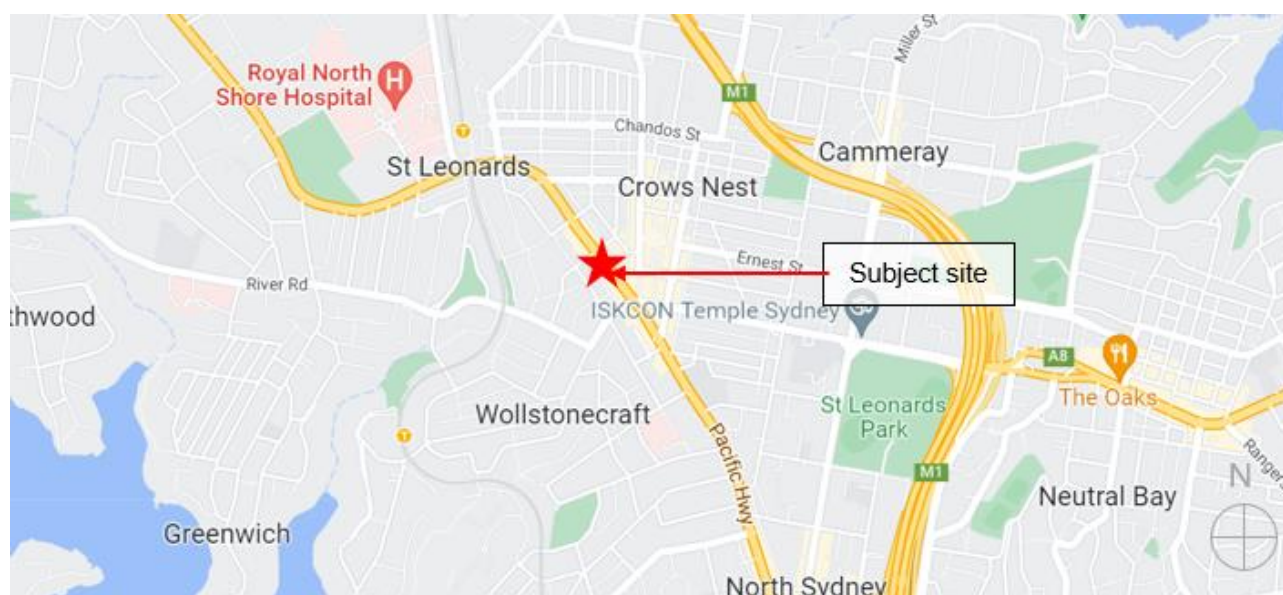


Figure 1 Locality map (source: Six Maps, overlay by the Department)



Figure 2 Subject site (source: Six Maps, overlay by the Department)

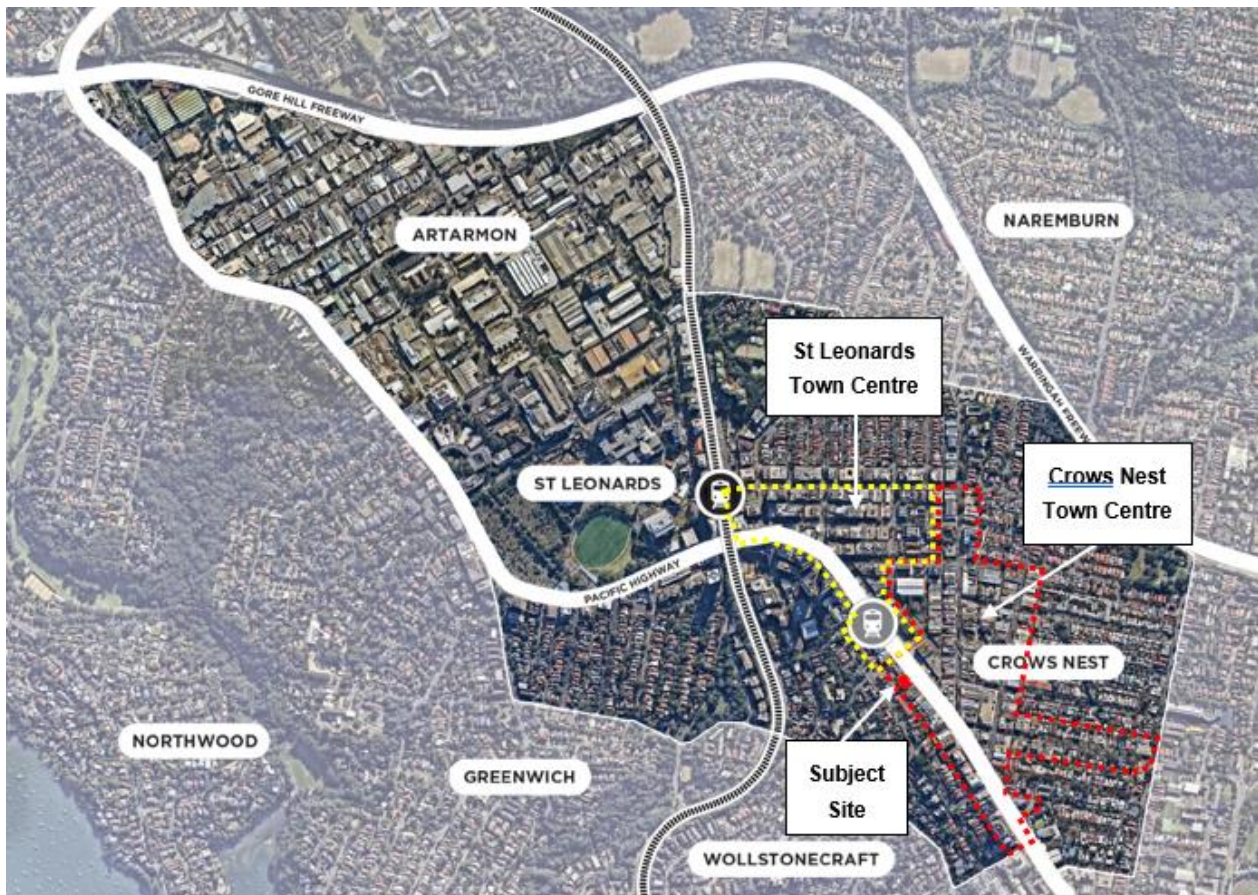


Figure 3 SLCN 2036 Plan map (source: the Department)



Figure 4 Existing site (Source: Planning proposal, Urbis, March 2023)

1.1.3 Purpose of plan

The planning proposal will amend the North Sydney LEP 2013 to apply:

- a maximum height of buildings of RL163.8;
- a maximum floor space ratio (FSR) of 5.5:1; and
- a minimum non-residential FSR of 2:1.

The proposed current and proposed controls are outlined in **Table 2**. The planning proposal seeks to implement the recommended planning controls under the St Leonards and Crows Nest 2036 plan endorsed in August 2020.

The planning proposal is supported by a concept reference scheme to facilitate an 18-storey mixed use building with a height of 68.8m. The height of the building at 18 storeys is RL159.8 with 4m height to 163.8 for roof top plant (**Figure 7**).

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	MU1 Mixed Use*	MU1 Mixed Use (no change)
Maximum height of building	10m	RL163.8 (including 4m rooftop plant). RL 159.8 to level 18.
Floor space ratio (FSR)	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	N/A	130

* Note: The B4 Mixed Use zone has changed to MU1 Mixed Use under the Employment Zone Reform (April 2023).

The concept provides indicative massing with a 3-storey podium including ground floor retail and commercial levels, with a 6m void and podium garden between levels 3 and 4 of the building (Attachment A3 and Figures 5 and 6). A residential tower comprising 42 apartments is provided over 14 storeys above the void.



Figure 5 Concept Scheme (source: Nettleton Tribe)

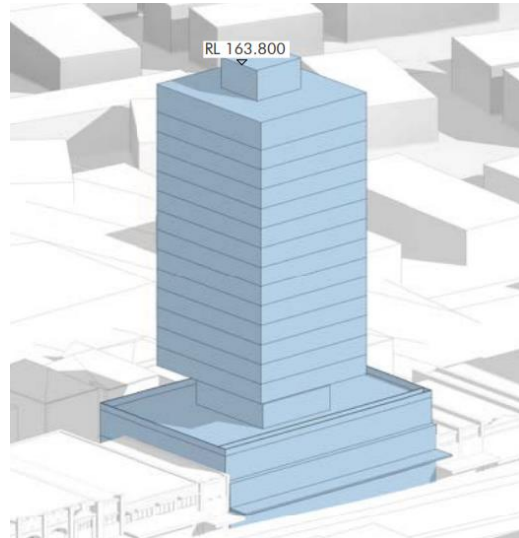


Figure 6 Concept Scheme (source: Nettleton Tribe)

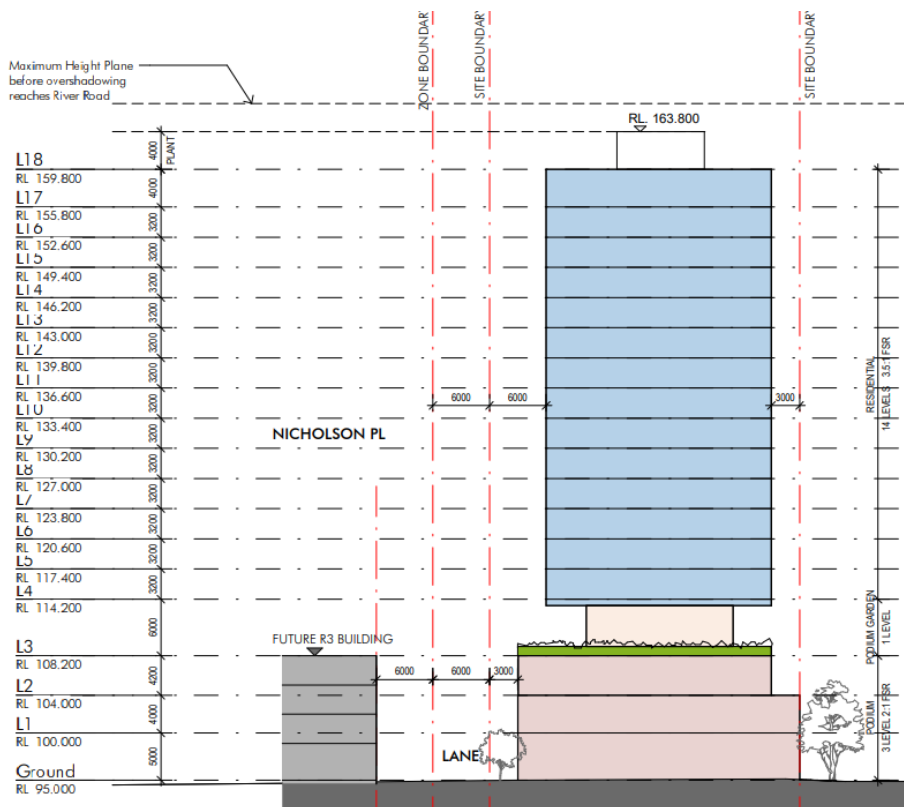


Figure 7: Proposed Concept (Source: Planning Proposal, Urbis 2023)

1.1.4 State electorate and local member

The site falls within the North Shore state electorate. Felicity Wilson MP is the State Member.

The site falls within the North Sydney federal electorate. Kylea Tink MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 1 March 2023 (**Attachment B1**) determined that the proposal should proceed subject to conditions. All of the Gateway determination conditions have been met (**Attachment B4**).

The Gateway determination was altered on 19 April 2023 (**Attachment B3**) to delete condition 5. This condition incorrectly referenced the Sydney North Planning Panel (the Panel) as the local plan making authority.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 1 December 2023.

As Council did not support the amendment to the LEP and the proposal was the subject of a rezoning review (**Attachment D2**), the Panel appointed itself as the PPA on 9 November 2022. This aligns with the Department's Local Environmental Plan Making Guideline and section 3.32(1) of the *Environmental Planning and Assessment Act 1979*.

3 Public exhibition

In accordance with the Gateway determination (as altered), the proposal was publicly exhibited from 8 May 2023 to 6 June 2023.

A total of 18 community submissions were received, comprising of 17 objections and 1 submission supporting the proposal (**Attachment C3**).

A total of 11 agency responses were received, including 1 submission from North Sydney Council.

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

One submission received in support of the planning proposal stated that the heritage sites to the west should not prevent development. The site is close to the new Crows Nest Metro station, consistent with the SLCN 2036 Plan and the planning proposal should be approved.

3.1.2 Submissions objecting to and/or raising issues about the proposal

The post-exhibition report outlines the issues raised in submissions (**Attachment C4**). A summary of key issues is outlined in **Table 3**.

Of the individual submissions, 17 objected to the proposal (94%) including 1 submission objecting to the proposal from the Wollstonecraft Precinct. As mentioned above, 1 supported the proposal (6%).

The Department considers that the proponent and post exhibition report has adequately addressed matters raised in submissions.

Table 3 Summary of Key Issues – Public submissions

Issue raised	Responses
<p>Height, bulk and scale (76%)</p> <p><i>The height is inconsistent with the character of Crows Nest and will create poor amenity outcomes</i></p>	<p><u>Proponent Response:</u></p> <p>The proposed height at 18 storeys (equivalent to 65m) is consistent with the recommended heights in the SLCN 2036 Plan and transitions to a permitted height of 8 storeys at 348 Pacific Highway.</p> <p>The setbacks are appropriate and consistent with the Apartment Design Guide (ADG). These issues were considered in the rezoning review and the Panel determined that these provisions were adequate.</p> <p><u>Department Response:</u></p> <p>The proposed 18 storey building envelope is consistent with the recommendations in the SLCN 2036 Plan. Amended plans were submitted to Council prior to rezoning review to reduce the overall height from RL166 to RL163.8. It is noted that the proponent response states 18 storeys is equivalent to 65m height, however the planning proposal provides for an overall height of 68.8m. The height of the building at level 18 in the concept plan is shown as RL159.8, with 4m of rooftop plant to 163.8m.</p> <p>The proponent submitted a Summary Compliance Table that demonstrates that the proposed concept generally complies with the requirements in the Council DCP, ADG and other State and local plans (Attachment A13). This will be assessed in further detail at a future DA stage.</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>
<p>Overshadowing (65%)</p> <p><i>Significant overshadowing mostly to the lower density residential areas</i></p>	<p><u>Proponent Response:</u></p> <p>The height of the proposal was previously reduced from building height of RL166 to RL 163.8. Council had previously commented that based on the overshadowing assessment provided, there was no overshadowing impact outside the SLCN 2036 Plan boundary. Residents to the west will still retain at least 2 hours of solar access between 9am-3pm mid-winter. Setbacks and envelopes are consistent with the objectives of the ADG.</p> <p><u>Department Response:</u></p> <p>The Shadow Impact Analysis (SIA) in the Concept Design Report (Attachment A3) 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. This will be assessed in further detail at development application stage.</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>
<p>Traffic and parking (47%)</p> <ul style="list-style-type: none"> increase traffic congestion in the area mainly on 	<p><u>Proponent's Response:</u></p> <p>The Transport Assessment found that the proposal would generate an additional 24 vehicle trips in the AM peak hour and 23 vehicle trips in the PM</p>

Issue raised	Responses
<p>surrounding local roads;</p> <ul style="list-style-type: none"> increased demand for on-street parking; 80 parking spaces was excessive considering the site's proximity to public transport. 	<p>peak hour and not significantly impact the operation of the adjacent road network.</p> <p>The St Leonards and Crows Nest Station Precinct Traffic and Transport Study – Future Year Modelling Report 2020 did not identify any future upgrades at the Pacific Highway / Hume Street intersection to support the development of the broader St Leonards and Crows Nest precinct. In this context no additional traffic works would be required to accommodate the planning proposal. Car parking is an item that can be resolved at DA stage.</p> <p><u>Department Response:</u></p> <p>The Transport Assessment (Attachment A5) found that the traffic and transport impacts arising from the proposed increase to the planning provisions is acceptable. North Sydney Council adopted a draft amendment to the DCP on 26 April 2023 reducing on-site parking rates in new high-density residential developments near accessible public transport. Any future development would need to comply with the DCP. This can be assessed a part of a future DA.</p> <p>Transport and parking impacts are discussed further in section 4.1 and the DCP in section 3.5.</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>
<p>Lack of affordable/public housing (41%)</p> <ul style="list-style-type: none"> submissions raised the lack of public or affordable housing in the development; one submission was in support of new dwellings in proximity to the future Metro Station. 	<p><u>Proponent's Response:</u></p> <p>The planning proposal can potentially deliver 4,921m² of residential floorspace that will contribute to dwelling supply needed to meet the dwelling targets for the district. Affordable housing provisions can be explored as part of the future detailed DA.</p> <p><u>Department Response:</u></p> <p>The proponent has responded to this issue to advise that affordable housing provisions can be explored as part of the future DA and with regard to relevant planning controls at that time.</p> <p>This issue is discussed further in Section 4 detailed assessment, as the Panel also raised this matter for consideration in finalisation of the planning proposal.</p>
<p>Lack of social Infrastructure (35%)</p> <ul style="list-style-type: none"> social infrastructure in the area is not adequate to support an increased population; open space and tree canopy cover is not adequate; increased strain on local schools and hospitals. 	<p><u>Proponent response:</u></p> <p>The planning proposal is consistent with the SLCN 2036 Plan and responds to the wider precinct vision for the site. The provision of social infrastructure will be assessed as part of the future detailed DA.</p> <p><u>Department Response:</u></p> <p>The St Leonards and Crows Nest Special Infrastructure Contribution (SIC) applies in this area to new additional residential development. The SIC applied from 1 July 2022.</p> <p>The Housing and Productivity Contribution commenced from 1 October 2023 and applies to additional residential development such as apartments.</p> <p>Contributions will help fund new and upgrade infrastructure to support new growth. The funds will contribute to infrastructure such as the provision of open space, transport and education.</p>

Issue raised	Responses
	<p>Local contributions apply in special contribution areas. Local infrastructure contributions can be levied under North Sydney Council's Infrastructure Contributions Plan 2020, under sections 7.11 and 7.12 of the <i>Environmental Planning & Assessment Act 1979</i> (EP&A) and is payable before a construction certificate is issued. The plan applies as follows:</p> <ul style="list-style-type: none"> • s7.11 can be applied to residential and non-residential development such as retail and commercial to meet increased demand for facilities such as public plazas, outdoor seating, road construction or traffic management; • s7.12 can be applied to all development with a cost greater than \$100,000. <p>The proponent and post exhibition report has responded adequately to this issue.</p>
<p>Inconsistency with the village character (24%)</p> <p>The proposed development is inconsistent with the village character of Crows Nest.</p>	<p><u>Proponent Response:</u></p> <p>The character of the subject site and immediate visual context is transitioning from predominantly lower commercial buildings to taller mixed-use towers. The Panel considered this issue in the rezoning review process and determined the planning proposal was justified having regard to this issue.</p> <p><u>Department Response:</u></p> <p>The SLCN 2036 Plan recommends increased planning provisions in this area with increased density along the Pacific Highway, leveraging off new accessible and existing transport options.</p> <p>The majority of the Panel agreed that the proposal met the site-specific merit test in its determination during the rezoning review process (Attachment D2). The concept scheme with an appearance of a 2-storey podium will respond to the adjacent and nearby heritage items.</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>
<p>Strategic merit (24%)</p> <ul style="list-style-type: none"> • the proposal is inconsistent with strategic planning for the region, particularly the SLCN 2036 Plan; • excessive density, poor transition to lower-density areas, and poor liveability outcomes particularly in relation to open space provision. 	<p><u>Proponent Response:</u></p> <p>The proposal will positively contribute to the achievement of State and Local Government strategic planning goals including housing and employment. It is compliant with the recommendations in the SLCN 2036 Plan including height, floorspace ratio, setbacks and solar protection.</p> <p><u>Department Response:</u></p> <p>The planning proposal is consistent with the SLCN 2036 Plan. It has the potential to provide 42 new residential dwellings and support approximately 130 jobs close to accessible transport options.</p> <p>The Panel unanimously agreed that the proposal demonstrated strategic merit in their determination of the rezoning review on 9 November 2022 (Attachment D2).</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>
<p>Wind impact (24%)</p> <p>Submissions stated that the Pacific Highway</p>	<p><u>Proponent Response:</u></p>

Issue raised	Responses
creates a wind tunnel and concerns were raised that further development of the height and scale proposed would intensify the issue.	<p>A Pedestrian Wind Environment Statement accompanied the planning proposal. This concluded that the wind impacts can be reduced through the implementation of mitigation measures and can be explored in future DA.</p> <p><u>Department Response:</u></p> <p>The Pedestrian Wind Environment Statement (Attachment A11) stated that it is expected that the trafficable areas around and in the proposed development will be suitable for their intended use with the appropriate measures. This can be further assessed as part of the detailed design phase.</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>

3.1.3 Other issues raised

Other matters of concern raised by submissions included:

- setbacks (18%);
- heritage (18%);
- visual impact/privacy (12%);
- land use mix (12%); and
- noise impact (6%).

3.1.4 Council Submission

North Sydney Council made a submission on the planning proposal (**Attachment C2**). The key matters raised are addressed in Table 4 below and have been addressed in the post exhibition report (**Attachment C3a**).

Table 4: Summary of Key Issues – Council Submission

Issue raised	Responses
<p>Strategic merit</p> <p>The site at 366-376 Pacific Highway will be isolated limiting development potential. This does not align with the North District Plan and SLCN 2036 Plan</p>	<p><u>Proponent Response:</u></p> <p>The SLCN 2036 Plan does not specify minimum site areas or site amalgamations.</p> <p>The modelling indicates that the land to the north can achieve viable standalone development consistent with the 2036 Plan and other relevant planning controls. This was considered by the Panel in the Rezoning Review process and determined that this was not an issue.</p> <p><u>Department Response:</u></p> <p>The proposed increase to the planning provisions on this site is consistent with the SLCN 2036 Plan.</p> <p>The Concept Design Report shows that the 900m² site on the adjacent heritage listed sites known as the 'Higgins Buildings' at 366-376 Pacific Highway can be developed in accordance with SLCN 2036 Plan.</p> <p>In the Rezoning Review, the majority of the Panel agreed that the proposal met the site-specific merit test (Attachment D2).</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>

Issue raised	Responses
<p>Height and overshadowing:</p> <ul style="list-style-type: none"> the building height of RL163.8m (68.8m) is unnecessary for an 18-storey building and result in excessive overshadowing; the building height is an inappropriate interface and transition outcomes to the lower density residential area to the west of the site; a maximum building height of RL160 (65m) is recommended based on the ADG. 	<p><u>Proponent Response:</u></p> <ul style="list-style-type: none"> the planning proposal was previously amended to reduce the height from RL 166 to RL 163.8; the residential areas to the west will retain at least 2 hours of solar access between 9am-3pm in mid-winter; there is no overshadowing impact outside the SLCN 2036 Plan boundary; the interface between high density development on the site and the medium density 4-storey residential development to the west was anticipated as part of the SLCN 2036 Plan; the Panel considered the interface issues to be justified in the rezoning review. <p><u>Department Response:</u></p> <p>The proposal is consistent with the height of 18 storeys identified in the SLCN 2036 Plan. The Department notes that the Shadow Impact Analysis demonstrates that the shadows for the concept will remain within the 2036 boundary area and that 2 hours solar access will be maintained for properties to the west during mid-winter. Any overshadowing impact will also be further assessed in a future DA. This is discussed further in section 4.1.5.</p>
<p>Setbacks and ADG Compliance:</p> <ul style="list-style-type: none"> the setbacks are less than identified in the ADG and a poor interface with the lower density residential area; a tower setback of 9m is proposed to the southern boundary. The ADG requires a minimum 12m; ADG compliant setbacks increase privacy and visual amenity and improve solar access and avoid negative planning precedents for Crows Nest. 	<p><u>Proponent Response:</u></p> <p>The concept indicates that the building setbacks and envelope are consistent with relevant objectives of the ADG requiring adequate building separation to achieve reasonable levels of external and internal visual privacy. This can be further assessed at the development application Stage (DA).</p> <p>The proposal complies with the 2036 Plan and ADG and it is considered that it does not significantly reduce privacy and visual amenity impacts to the neighbouring sites, nor create a negative planning precedent in Crows Nest.</p> <p>The Panel considered this issue in the rezoning review process and determined the Planning Proposal was justified with regard to this issue.</p> <p><u>Department Response:</u></p> <p>The setbacks identified in the concept scheme are consistent with those specified in the St Leonards and Crows Nest 2036 Plan.</p> <p>The proposal was accompanied by a Compliance Table (Attachment A13) based on the RL 166 concept demonstrating that the proposal is capable of satisfying the objectives of the ADG.</p> <p>Any future development will need to comply with the DCP, State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) and the ADG which can be assessed as part of a future DA.</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>

Issue raised	Responses
<p>Carparking</p> <ul style="list-style-type: none"> since the original planning proposal was submitted to Council, the DCP 2013 was amended to reduce car parking provision rates for sites close to public transport; any future DAs will have to consider the amended parking rates. 	<p><u>Proponent Response:</u></p> <p>Car parking provision will be resolved at DA stage having regard to the relevant DCP and other controls in place at that time. The planning proposal relates only to height and FSR.</p> <p><u>Department Response:</u></p> <p>Council adopted a draft amendment to the DCP on 26 April 2023 reducing on-site parking rates for new high-density residential developments in the B4 Mixed Use zone near accessible public transport.</p> <p>Any future development on the site would need to comply with the amended DCP. The DCP is discussed in section 3.5. The parking issue can be assessed as part of a future DA.</p> <p>The proponent and post exhibition report has responded adequately to this issue.</p>

3.2 Advice from agencies

In accordance with the Gateway determination (as altered), consultation was required with various agencies. The responses are summarised in **Table 4**.

Responses from the agencies are at **Attachment C1**. The proponent's response to all submissions, including the agency submissions is at **Attachment C4**.

Table 3 Advice from public authorities

Agency	Advice raised	Proponent response
Transport for NSW (TfNSW)	<p>TfNSW recommended that parking rates be aligned with the North Sydney Transport Strategy and that Council review their existing carparking rates for developments close to public transport.</p> <p>TfNSW is supportive of travel demand management (TDM) measures to shift to public and active transport and reduce private vehicle dependence.</p>	<p>Car parking can be resolved at DA stage, the planning proposal is purely seeking to lock in height and FSR.</p> <p>Any future DA will address the relevant guides for walking and cycling. The Green Travel Plan will be updated at the DA stage.</p> <p><u>Department comment</u></p> <p>TfNSW's comments are noted. Further assessment can be carried out at a future detailed design stage.</p>
TfNSW (Sydney Metro)	<p>Sydney Metro requires that the applicant provide a report demonstrating compliance with the relative Sydney Metro Guidelines to enable Sydney Metro to confirm there is no objection.</p>	<p>Sydney Metro will be consulted for any future development application.</p> <p><u>Department comment</u></p> <p>Sydney Metro's and the proponent's comments are noted.</p>

Agency	Advice raised	Proponent response
Ausgrid	Ausgrid raise no objections with the planning proposal but will review any future development applications (DAs).	<p>Future DAs will address the compatibility of the proposed development with existing Ausgrid infrastructure.</p> <p><u>Department comment</u></p> <p>Further assessment can be carried out at a future detailed design stage.</p>
Sydney Water	Sydney Water raised no objection. Further review will be required once any DA is referred to Sydney Water.	<p>A Compliance Certificate will be submitted at the DA stage.</p> <p><u>Department comment</u></p> <p>Sydney Water's and the proponent's comments are noted.</p>
NSW Department of Education – School Infrastructure NSW	SINSW advise that it is likely that the number of students projected to be generated by the proposal can be accommodated by the surrounding schools. Council is requested to monitor and consider the cumulative impact of population growth on schools.	<p>The proponent did not provide a comment.</p> <p><u>Department comment</u></p> <p>SINSW comments for Council are noted.</p>
NSW Department of Health - Northern Sydney Local Health District (NSLHD)	NSLHD did not provide a comment.	<p>The proponent did not provide a comment.</p> <p><u>Department comment</u></p> <p>No comments or issues have been raised by NSW Health.</p>
Sydney Airport Corporation Limited (SACL)	The height of the Obstacle Limitation Surface (OLS) for Sydney Airport over the site is 156m AHD. Approvals are required to operate construction equipment and will need to be obtained prior to any commitment to construct.	<p>The impact on the OLS will be resolved at DA and construction stage.</p> <p><u>Department comment</u></p> <p>SACL and the proponent's comments are noted and further approvals are required at DA stage.</p> <p>The Aeronautical Impact Statement (Attachment A7) stated that the proposal will not impact on the operations of Sydney Airport or the helicopter operations in and around the Royal North Shore Hospital (RNSH).</p> <p>This issue is discussed further in section 4.1.9.</p>

Agency	Advice raised	Proponent response
Commonwealth Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA)	DITRDCA's response agreed with SACL that any proposed development that intruded onto prescribed airspace for Sydney Airport would be a 'controlled activity' and would need approval.	Early engagement with SACL will be carried out as part of the DA concerning the impact on the OLS. <u>Department comment</u> DITRDCA's and the proponent's comments are noted.
Civil Aviation Safety Authority (CASA)	CASA reviewed the proposal and the Aeronautical Impact Statement (Attachment A7) and raised no objection. However, as the proposed development at RL163.6 would infringe the prescribed airspace for Sydney Airport as the OLS is 156m above AHD. When the height of the building is finalised, the proponent should seek an activity approval through SACL. SACL will obtain comments from CASA and Airservices Australia and refer these to DITRDCA. The site is also 900m from the helipad at the RNSH. Cranes for construction will require a separate airspace height application and approval.	The impact on the OLS will be resolved at DA and construction stage. <u>Department comment</u> CASA and the proponent's comments are noted. See also SACL and DITRDCA submissions.
Airservices Australia	Airservices advise that the development or cranes during construction may require separate assessment. This should be referred to SACL in the first instance.	The proponent did not provide a comment. <u>Department comment</u> Airservices comments are noted and consultation will be required at DA stage.

3.3 Post-exhibition changes

No post-exhibition changes have been made to the planning proposal.

3.4 Post-exhibition public meeting

A public meeting was held following public exhibition on 24 July 2023 as more than 10 public submissions were received objecting to the planning proposal. At this meeting, the Panel recommended that the exhibited planning proposal should proceed and the LEP amendment be supported as it demonstrated strategic and site-specific merit.

The Panel encouraged Council and the proponent to consider affordable housing prior to finalisation of the plan, as they noted it had not been provided for in the planning proposal. This issue is discussed in Section 4.1.3 Affordable Housing.

The decision noted that one Panel member considered the planning proposal to be excessive in height, lack of setback and transition to adjacent properties. The Panel record of decision is at **Attachment D1**.

3.5 Council's Development Control Plan

On 12 December 2022, Council resolved to support an amendment to Part C of the NSDCP relating to the St Leonards Crows Nest 2036 Plan Area. This amendment came into force on 6 January 2023. The site is in the Crows Nest Town Centre and subject to the DCP built-form controls (**Figures 4 to 6**).

A comparison of the planning proposal and the requirements in the DCP is in **Table 5**.

The St Leonards and Crows Nest Plan 2036 includes recommended street wall heights and setbacks for the site. The recommended street wall height is as per the adjoining heritage storey wall height. This was considered in the rezoning review and the Panel supported the 3rd storey podium to be setback by 3m, to read as a 2 storey podium adjacent to the heritage items. There is a 0m setback from Pacific Highway recommended in the 2036 Plan. The requirements of the SLCN 2036 regarding street wall heights, setbacks and solar access are also noted in **Table 5**.

A site- specific DCP was not submitted with the planning proposal.

Table 5 Comparison of the planning proposal and DCP requirement

		Planning proposal	SLCN 2036	DCP 2013
Podium height/Street wall height	to Pacific Highway	3 rd storey setback to appear as 2 storeys	Heritage – as adjoining heritage storey wall height.	2 storeys
	to Nicholson Place	3 storeys	Heritage – as adjoining heritage storey wall height.	3 storeys
Podium setback	to Pacific Highway	nil to 2 storeys, 3 rd storey setback 3m	0m setback to Pacific Highway	nil
	Western boundary (rear)	3m	Not specified	3m
	North and south boundary	nil	Heritage	Not specified
Above podium setbacks	to Pacific Highway	3m	Heritage	3m
	Western boundary (rear)	9m	Not specified	9m
	North and south boundary	12m (north), 9m (south)	Not specified	Not specified

	Planning proposal	SLCN 2036	DCP 2013
Solar Access	The proposal states that it complies with the solar access controls under the St Leonards and Crows Nest 2036 Plan.	SLCN plan requires residential areas inside the plan boundary to retain at least 2 hours solar access between 9.00am and 3.00pm mid winter, and that no overshadowing will occur to identified open spaces or beyond the plan boundary.	The DCP controls require that rooftop plan should be designed and positioned to comprise a minor element of roofscape and minimise any increases to the building's overall overshadowing impacts. The DCP also requires no net increase in overshadowing of existing and proposed public spaces between 10am and 3pm from March to Sept Equinox.

Table 6 NSDCP revised parking rates

Apartment Type	Previous NSDCP Maximum Spaces per Dwelling	Revised new NSDCP Maximum Spaces per Dwelling
Studio	0.5	0.3
1 Bedroom	0.5	0.4
2 Bedroom	1.0	0.7
3 Bedroom	1.0	1.0
Non-residential	1 per 60m ²	1 per 400m ²



Figure 8 DCP buildings setback (source: Council)



Figure 9 DCP podium heights (source: Council)



Figure 10 DCP above podium setbacks (source: Council)

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination and report (**Attachment B1** and **B2**) and subsequent planning proposal processes. It has also been subject to public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as amended).

As outlined in the Gateway determination report (**Attachment B2**), the planning proposal submitted to the Department for finalisation:

- remains consistent with the regional and district plans relating to the site;
- remains consistent with the Council's Local Strategic Planning Statement;
- remains consistent with all relevant Section 9.1 Directions; and

- remains consistent with all relevant SEPPs.

The following **Tables 7** and **8** identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 7 Summary of strategic assessment

	Consistent with Gateway determination report Assessment
Regional Plan	<input checked="" type="checkbox"/> Yes
District Plan	<input checked="" type="checkbox"/> Yes
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes Note: The planning proposal was the subject of a rezoning review supported by the Sydney North Planning Panel (SNPP) to proceed to Gateway. The SNPP considered the recommendations of the Local Planning Panel's (LPP) which acknowledged that higher density in the area was appropriate however raised concerns relating to response to neighbouring heritage items, setbacks, scale of the tower and site isolation.
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes

Table 8 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report assessment
Social and economic impacts	<input checked="" type="checkbox"/> Yes
Environmental impacts	<input checked="" type="checkbox"/> Yes
Infrastructure	<input checked="" type="checkbox"/> Yes Note: The SIC which applies to residential development at this site will transition to the Housing and Productivity Contribution from 1 October 2023.

4.1 Detailed assessment

The planning proposal (**Attachment A1**) and Concept Design Report (**Attachment A3**) was updated to address all of the conditions of the Gateway determination (**Attachment B1**). A summary of the compliance is at **Attachment B4**.

It is considered that the matter should progress as:

- there are no matters different to the original assessment of the planning proposal and supporting documents and reports (**Attachment A1 to A13**) in the Gateway determination report (**Attachment B2**);
- public submissions and submissions from agencies and council have been fully considered and addressed;
- the planning proposal remains consistent with the SLCN 2036 Plan; and
- the Panel recommends that the plan proceed to finalisation (**Attachment D1**).

4.1.1 Transport and Parking Impact

The Transport Assessment dated November 2021 (**Attachment A5**) found that the site has excellent access to public transport and is close to the new Crows Nest Metro Station with links to other strategic centres such as Chatswood, Macquarie Park and the Sydney CBD.

The assessment stated that the proposal will generate an additional 24 vehicle trips in the AM peak and 23 vehicles in the PM peak and would not have a significant impact on the adjacent road network.

The provision of on-site parking would need to comply with the DCP. **Table 6** in section 3.5 outlines the revised parking rates in the DCP in areas with highly accessible transport. The final number to be determined as part of a future DA.

In the response from TfNSW, it was recommended that parking rates align with the North Sydney Transport Strategy and that Council review their existing carparking rates for developments close to public transport. TfNSW is supportive of measures to encourage public and active transport and reduce private vehicle dependence.

Transport for NSW has recommended that the Green Travel Plan prepared in the Traffic Assessment could be further developed as the development progresses to DA stage to include end of trip facility for commercial and retail to encourage active transport use, bicycle parking and car share parking to promote more sustainable travel. Transport for NSW also suggests that the DA should include details of the North Sydney to St Leonards Strategic Cycleway Corridor and demonstrate that cycling access to the site is integrated with the planned cycling networks.

The department considers that the traffic and parking impact has satisfactorily addressed. This can be further assessed in the detailed design phase and in a future DA. The parking provisions on this site will need to comply with Council's amended DCP which is addressed in section 3.5. The revised parking rates are summarised in **Table 6**.

4.1.2 Built Form

The Concept Design Report (**Attachment A3**) provides an 18-storey development that is generally compliant with the SLCN 2036 Plan with 3 podium levels for non-residential uses. The 3rd level will be set back 3m from the Pacific Highway to appear as a 2-storey podium from street level (**Figure 11**). Above the podium is 1 storey of open space with 14 levels of residential dwellings (**Figures 5 to 7**).

The Landscape Concept Report (**Attachment A4**) shows landscaping to the podium and retention of existing trees at street level with additional landscaping.

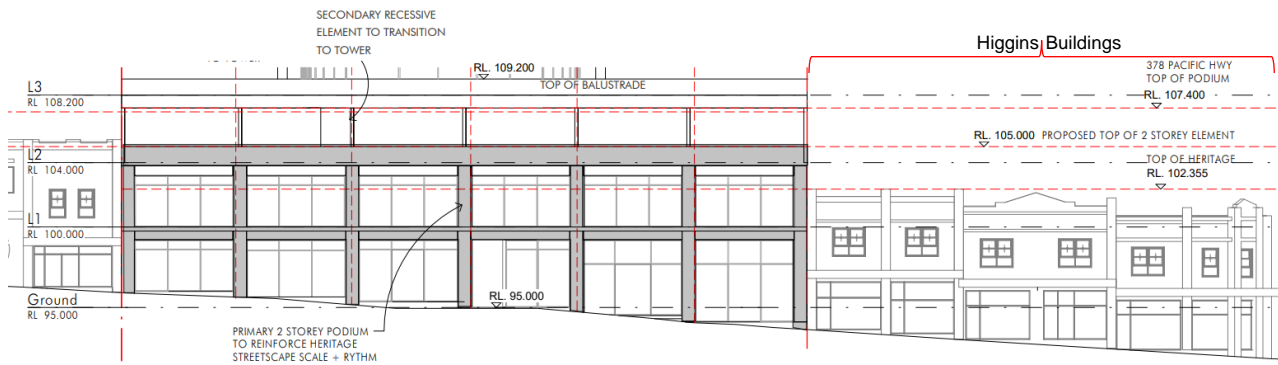


Figure 11 Concept (source: Nettleton Tribe)

4.1.3 Affordable housing

The Panel noted at the public meeting on 24 July 2023 (**Attachment D1**) that there was no provision for affordable housing in the proposal. The Panel encouraged Council and the proponent to consider this prior to the finalisation of the plan.

The North Sydney LEP does not mandate affordable housing to be provided in new developments, however affordable housing can be negotiated through a Voluntary Planning Agreement (VPA) between Council and the proponent. Monetary contributions collected from the SIC or Housing Productivity Contribution does not provide for affordable housing.

The applicant advised that the potential provision of affordable housing within the proposed development has been investigated and that Council has not sought any provision in this proposal or any other planning proposal recently approved or under assessment. However, the provision of affordable housing may be further considered at a future DA stage.

Council advised that VPA's have been successfully negotiated for affordable housing units to be dedicated to Council for other sites such as 45 McLaren Street, North Sydney and 173-179 Walker Street, North Sydney; and would support the provision for affordable housing on the site.

It is noted however, that both these VPAs were negotiated at planning proposal stage. The LEP for 173-179 Walker Street was finalised on 28 July 2021 and commenced on 28 August 2021 to allow sufficient time to finalise the site specific DCP and VPA. The VPA was negotiated and prepared during the post exhibition stage of the planning proposal & executed on 30 May 2022. It provides for the construction and dedication to council of 5% of the total number of new dwellings for the purposes of affordable housing and a monetary contribution for the provision of community infrastructure.

The LEP for 45 McLaren Street was finalised on 30 June 2023. The VPA was executed on 22 June 2023 prior to the finalisation of the planning proposal and provides for monetary contribution toward public infrastructure, streetscape upgrades, and dedication of one x two bedroom affordable housing unit. The VPA was negotiated and exhibited concurrently with the planning proposal.

A Voluntary Planning Agreement (VPA) to include the provision of affordable housing would be a matter between Council and the proponent.

4.1.4 Heritage

A Heritage Assessment (**Attachment A6**) submitted with the planning proposal found that the existing building on the site has no heritage significance.

The impact of the new development on the heritage significance of the adjacent local heritage items is appropriate and minimised with a podium consisting of a 2- storey façade which relates to the scale of the Higgins Buildings (**Figure 11**). The concept does not affect views to and from the heritage items in the vicinity. Further assessment on impact of adjoining heritage items may be considered at the DA stage.

The department considers that the heritage impact has been appropriately considered. Further assessment of the impact on the heritage items adjacent to and near the proposed development can be carried out at a future DA stage.

4.1.5 Overshadowing

A key objective of the SLCN 2036 Plan is to minimise overshadowing to key open spaces, public places and adjoining residential areas especially during mid-winter. This is discussed in more detail in section 3.5 *Council's Development Control Plan* and a comparison of controls are provided in **Table 5**.

The overshadowing analysis (**Figures 12 to 15**) by Nettleton Tribe indicates:

- the properties south and west will experience overshadowing between 9am and 11am but limited to 1 to 2 hours;
- the proposed increase to the development standards will not result in overshadowing beyond the SCLN 2036 Plan boundary; and
- there is no overshadowing to public open spaces.

The department considers that the planning proposal is consistent with the built-form priorities of the SLCN 2036 Plan and the overshadowing impact has been considered appropriately by the proponent. Further assessment can be carried out at a future DA stage.



Figure 12 Shadow diagram 9am, 21 June (source: Nettletontribe)



Figure 13 Shadow diagram 12pm, 21 June (source: Nettletontribe)



Figure 14 Shadow diagram 3pm, 21 June (source: Nettletontribe)

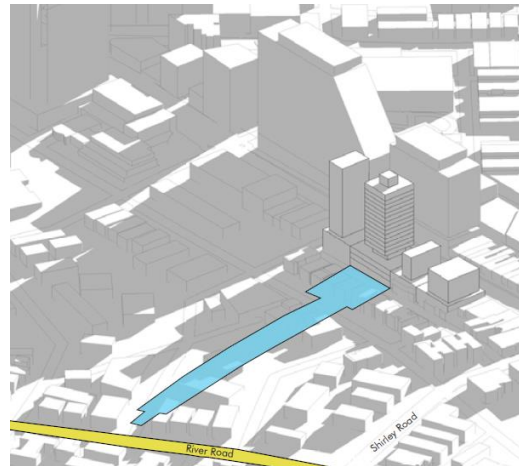


Figure 15 Cumulative shadow impact with site built to the allowable heights including the new Crows Nest Metro OSD, 21 June (source: Nettletontribe)

4.1.6 Acoustic Impact

An Acoustic Pre-Planning Report (**Attachment A10**) dated 8 November 2021 submitted with the planning proposal provided an assessment on a 24-storey development from a previous concept.

In this report, a desktop analysis recommended measures to moderate noise and vibration due to the site's proximity to the Pacific Highway and the new Crows Nest Metro. The report stated that the proposed Metro line will have noise and vibration mitigation measures and the likely impact is low.

The planning proposal remains consistent with the assessment in the Gateway determination report (**Attachment B2**). The department considers that the proponent has considered the acoustic impact appropriately. Further assessment of the acoustic impact on the development can be carried out at a future DA stage.

4.1.7 Wind Impact

The Pedestrian Wind Environment Statement (**Attachment A11**) was submitted with the proposal.

The report stated that it is expected that wind conditions for the various outdoor areas in and around the development will be suitable for their intended uses and satisfactory for pedestrian comfort and safety with shielding methods such as screens, densely foliated trees and awnings.

The planning proposal remains consistent with the assessment in the Gateway determination report (**Attachment B2**). The department considers that the proponent has addressed the wind impact appropriately. Further assessment of the wind impact in and around the development can be carried out at a future DA stage.

4.1.8 Contamination Impact

The Preliminary Site Investigation (PSI) (**Attachment A8**) submitted with the planning proposal found that contaminants may be present. However, these were considered to be of a low risk. A Detailed Site Investigation (DSI) is required to confirm the presence and extent of the contamination to determine the suitability of the site for the intended use.

A Geotechnical Report (**Attachment A9**) stated that borehole drilling is required following the demolition of the existing buildings to assess the ground conditions on the site including groundwater levels.

The planning proposal remains consistent with the assessment in the Gateway determination report (**Attachment B2**). The department considers that the contamination impact has been satisfactorily addressed. Further assessment can be carried out at the DA stage in accordance with chapter 4 of the SEPP (Resilience and Hazards) 2021.

4.1.9 Aeronautical Impact

An Aeronautical Impact Statement (**Attachment A7**) assessed a previous concept with that requested greater height than the supported height of RL163.8m. However, this report found that this maximum building height would not have an adverse impact on the current and future operations at Sydney Airport or the helicopter traffic to and from the RNSH.

The report stated that:

- the building would infringe the OLS height of 156m AHD and would need approval;
- a maximum height of 165.3m AHD would not infringe on any Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surfaces or the lower Radar Terrain Clearance Chart) RTCC surface (**Figure 14**); and
- cranes to construct the building would exceed the OLS and would need approval.

The report states that the concept is technically approvable under the Airports (Protection of Airspace) Regulations.

A condition of the Gateway determination required that the planning proposal be referred to agencies responsible for the effective operation of air services. The agency responses (**Table 4**) from CASA and Commonwealth DITRDCA agree that any proposed development intruding onto prescribed airspace for Sydney Airport is a 'controlled activity' and would need approval. This approval will need to be sought prior to the DA stage.

The department considers that any potential aeronautical impact has been satisfactorily addressed. Further assessment can be carried out at a detailed design phase and prior to the commencement of any construction activity.

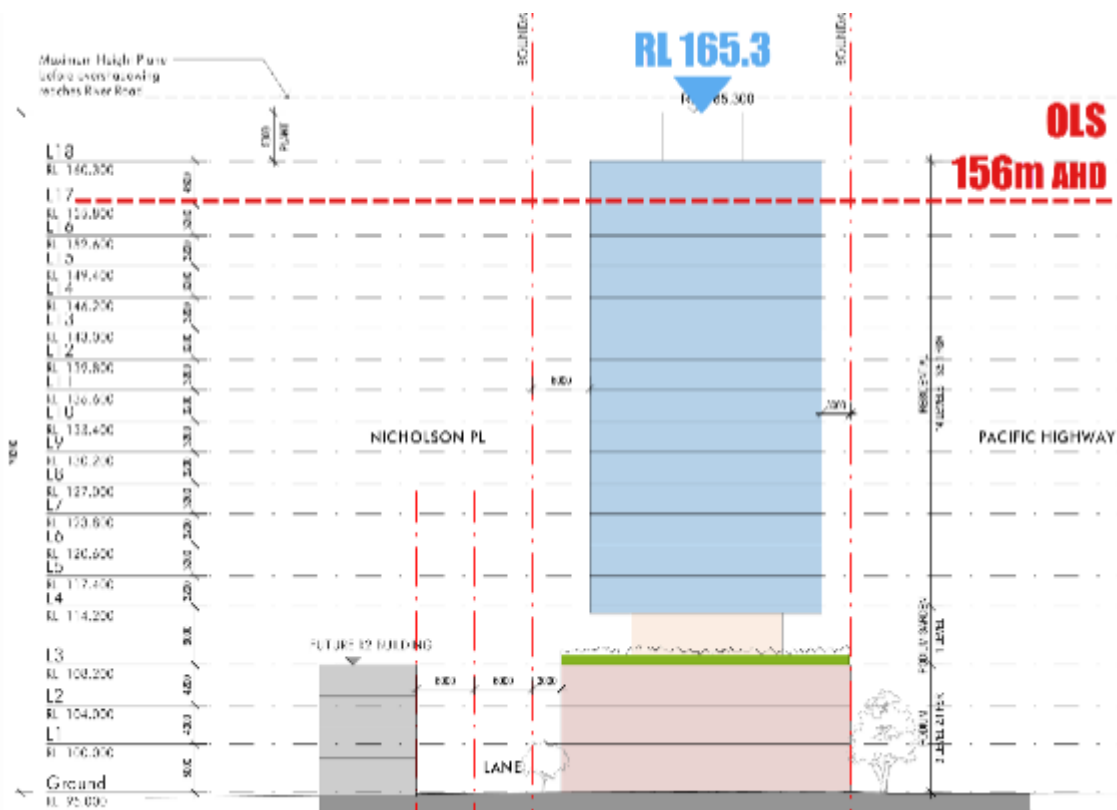


Figure 14 OLS height over the site (source: Strategic Airspace)

5 Finalisation consultation

The Department consulted with the following stakeholders as part of finalisation.

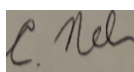
Table 9 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	3 maps (Attachment Maps) have been prepared by Council and reviewed by the Department's GIS team and meet the technical requirements: <ul style="list-style-type: none"> • HOB_001; • FSR_001; and • LCL_001 	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Sydney North Planning Panel (PPA)	The Sydney North Planning Panel, as the PPA, were consulted on the terms of the draft mapping amendment under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment E).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	A Parliamentary Counsel Opinion is not required as the LEP Amendment is a Map only amendment. Legal Branch has provided the prepared map only instrument.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> Not required

6 Recommendation

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

- the draft LEP has strategic merit being consistent with the SLCN 2036 Plan, the North Sydney Local Strategic Planning Statement and North Sydney Local Housing Strategy;
- the draft LEP has site-specific merit as the increase to the planning provisions on the site will provide 42 new residential dwellings and provide employment floorspace close to accessible transport;
- it is consistent with the Gateway Determination; and
- the issues raised during consultation have been addressed, with no outstanding agency objections to the proposal.



27/10/2023

Charlene Nelson

Manager, Place and Infrastructure, Metro North



14 November 2023

Brendan Metcalfe

Director, Metro North

Metro Central and North

Assessment officer

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Attachments

Attachment	Document
A1	Planning Proposal - March 2023
A2	Survey Plan - September 2021
A3	Concept Design Report - March 2023
A4	Landscape Concept Report – November 2021
A5	Transport Assessment - November 2021
A6	Heritage Impact Assessment - October 2021
A7	Aeronautical Impact Statement – 5 November 2021
A8	Preliminary Site Investigation – 21 October 2021
A9	Geotechnical Report – 9 November 2021
A10	Acoustic Report – 8 November 2021
A11	Wind Environment Statement Report – 29 October 2021
A12	Services Infrastructure Report – 9 November 2021
A13	Summary Compliance Table – 2 November 2021

Attachment	Document
B1	Gateway determination – 1 March 2023
B2	Gateway determination report – 1 March 2023
B3	Alteration of Gateway determination – 19 April 2023
B4	Summary of assessment against Gateway Determination
C1	Agency submissions-combined
C2	North Sydney Council submission – 9 June 2023
C3a	Summary of community submissions
C3b	Community submissions (redacted)
C4	Post Exhibition Submissions Report – July 2023
C5	Proponent Response to Submissions
D1	Sydney North Planning Panel – Record of Decision – 24 July 2023
D2	Rezoning Review - Record of Decision - RR-2022-24 – 9 November 2022
E	Consultation with the Panel on the terms of the draft mapping amendment under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>
Maps	Maximum height of buildings map HOB_001 Maximum FSR map FSR_001 Minimum non-residential FSR map LCL_001