



IRF22/4525

Gateway determination report – PP-2021-7451

The Five Ways Triangle; 391-423 Pacific Highway,
3-15 Falcon Street and 8 Alexander Street, Crows
Nest

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Acknowledgment of Country

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

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Table 1 Reports and plans supporting the proposal

Relevant reports and plans
Attachment A – Planning Proposal
A1 – Revised Planning Proposal Report (December 2022)
A2 – Planning Proposal Report considered by Council and SNPP (24 December 2021)
A3 – Urban Design Report (19 December 2022)
A4 – Place Making Report (December 2021)
A5 – Supplementary Transport Assessment (15 November 2022)
A6 – Economic Impact Assessment (November 2022)
A7 – Heritage Impact Statement (20 December 2021)
A8 – Structural Report (14 December 2021)
A9 – Section 9.1 Ministerial Directions (December 2022)
A10 – State Environmental Planning Policies (December 2022)
A11 – Proposed LEP Map Amendments (December 2022)
A12 – Preliminary Contamination Report (26 October 2020)
A13 – Pedestrian Wind Environment Statement (16 December 2021)
A14 – Site-Specific DCP
Attachment B – Affordable Housing Feasibility Analysis (December 2022)
Attachment C – North Sydney Council and North Sydney Local Planning Panel
C1 – Council Resolution and Report (27 June 2022)
C2 – Local Planning Panel minutes and Council Assessment Report (8 June 2022)
Attachment D – Rezoning Reviews
D1 – Sydney North Planning Panel Record of Decision RR-2021-87 (18 October 2021)
D2 – Sydney North Planning Panel Record of Decision RR-2022-14 (4 October 2022)
D3 – Sydney North Planning Panel PPA Record of Decision (9 December 2022)
Attachment E – North Sydney DCP 2013 Proposed Amendment to Implement the SLCN 2036 Plan Post-Exhibition Report (12 December 2022)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	North Sydney
PPA	Sydney North Planning Panel
NAME	Five Ways Triangle (129 dwellings, 441 jobs)
NUMBER	PP-2021-7451
LEP TO BE AMENDED	North Sydney LEP 2013
ADDRESS	391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest
DESCRIPTION	<p>3 Falcon Street – Lot 2 DP 29672</p> <p>7 Falcon Street – Lot 3 DP 29672</p> <p>9-11 Falcon Street – Lot 1 DP 127595</p> <p>15 Falcon Street – Lot 1 DP 562966</p> <p>8 Alexander Street – Lot 11 DP 29672</p> <p>391-393 Pacific Highway – Lot 6 DP 16402</p> <p>395 Pacific Highway – Lot 4 and 5 DP 16402</p> <p>399 Pacific Highway – Lot 3 DP 16402</p> <p>401 Pacific Highway – Lot 1 and 2 DP 16402</p> <p>407 Pacific Highway – Lot 10 DP 29672</p> <p>411 Pacific Highway – Lot 8 and 9 DP 29672</p> <p>413 Pacific Highway – Lot 7 DP 29672</p> <p>415 Pacific Highway – Lot 6 DP 29672</p> <p>417 Pacific Highway – Lot 5 DP 29672</p> <p>419 Pacific Highway – Lot 4 DP 29672</p> <p>423 Pacific Highway – Lot 1 DP 29672</p>
RECEIVED	21/12/2022
FILE NO.	IRF22/4525
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal (**Attachment A1**) contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are to amend the planning controls in the North Sydney Local Environmental Plan (LEP) 2013 as they apply to the site known as the Five Ways Triangle, Crows Nest to facilitate a mixed-use development. The changes are appropriate as they are considered to:

- implement the planning framework identified in the St Leonards and Crows Nest 2036 Plan, therefore demonstrating consistency with the objectives of the Greater Sydney Region Plan and North District Plan;
- establish planning controls enabling renewal of the site and the realisation of its significant potential to contribute to Crows Nest;
- provide infrastructure that meets the needs of the existing and future community while contributing to the forecast housing needs of North Sydney;
- provide non-residential floorspace that enables and supports the growth of Crows Nest and St Leonards as a medical and educational precinct; and
- provide an opportunity to improve the presentation of the site to the public domain, greatly enhancing the streetscape and improving public spaces.

The objectives of this planning proposal are clear and adequate.

1.3 Explanation of provisions

The site is proposed to be redeveloped to facilitate a mixed-use development at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street known as the Five Ways Triangle site, Crows Nest. The planning proposal seeks to amend the North Sydney LEP 2013 by:

- increasing the maximum building height from 16m to 62.5m;
- introducing a floor space ratio (FSR) control of 5.8:1; and
- increasing the minimum non-residential FSR control from 0.5:1 to 2.5:1.

Table 3 Current and proposed controls

Control	Current	Proposed
Zone	B4 Mixed Use	B4 Mixed Use
Maximum height of the building	16m	62.5m
Floor space ratio (FSR)	N/A	5.8:1
Minimum non-residential FSR	0.5:1	2.5:1
Number of dwellings	0	129
Number of jobs	Approx. 154	441
Carparking	N/A	258 spaces

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

The subject site was previously subject to a rezoning review considered by the Sydney North Planning Panel (Panel) on 18 October 2021. The Panel considered the proposal that is not part of this planning proposal package and determined that it did not demonstrate strategic merit and should not be submitted for a Gateway determination (**Attachment D1**). In particular, the Panel determined that the proposed variations to height and FSR were not minor with significant non-compliances with FSR.

A second rezoning review for a subsequent planning proposal was considered by the Panel on 28 September 2022. The Panel considered the proposal (dated 24 December 2021) and determined that it demonstrated strategic and site-specific merit and should be submitted for a Gateway determination subject to a number of issues being resolved or confirmed (**Attachment D2**).

Specifically, the Panel requested the proponent address the following issue:

- a) *The Proponent should work with the Department to reduce the podium height (by approximately 1-2 metres consistent with the change in levels across the site) to provide a characteristic three storeys, possibly with four storeys at the north-western corner of the site, producing a corresponding reduction in the overall height from 63.5m. The final height of building is to accommodate all roof structures including the lift overrun.*

On 7 December 2022, the Department briefed the Panel that a 1m reduction in height from the podium to an overall height of 62.5m had been proposed by the Proponent. The Panel supported this reduction and supporting the proposal to proceed as amended to a Gateway determination (**Attachment D3**). The Panel noted in its decision the remaining elements of the rezoning review record of decision (b) to (e) are to be resolved or confirmed by the Department prior to proceeding to Gateway. These have been assessed in section 5 of this report.

The planning proposal package has been updated to reflect the current approved height control.

1.4 Site description and surrounding area

The site is located in Crows Nest in the North Sydney Local Government Area (LGA), 5.7km north of the Sydney CBD (**Figure 1**). It is situated on the northern eastern side of Pacific Highway and is covered by the St Leonards and Crows Nest 2036 Plan (SLCN 2036 Plan).

Known as the Five Ways Triangle, the site comprises an entire street block formed by nineteen allotments owned by the proponent bounded by the Pacific Highway, Falcon Street and Alexander Street (**Figure 2**). The total site area is 3,200sqm and the legal descriptions of all allotments have been identified in **Table 2**. The Five Ways intersection of which the site derives its name is located at a crest in the ridgeline, making it a focal point. The site generally falls in a south easterly direction from its north western corner down to the south eastern corner.

Currently the site contains a mix of 1-4 storey buildings generally constructed to their boundary without vehicular access. The Alexander Street frontage is staggered with multiple driveway crossings. The current buildings feature a variety of non-residential uses including commercial office, retail and education, including several vacant premises.

To the north of the site across Falcon Street is the Crows Nest Hotel that is a 3 storey building listed as a local heritage item under the North Sydney LEP 2013. The remaining northern side of Falcon Street contains two small commercial buildings at 6-8 Falcon Street and a 3 storey commercial building featuring a supermarket and carparking at 10 Falcon Street.

To the east across Alexander Street is a mix of commercial and mixed-use buildings ranging from 1 to 4 storeys in height. These buildings are a buffer between the subject site and the Holtermann Estate C Conservation area.

To the south and west across Pacific Highway are a mix of commercial and mixed-use developments that are up to 6 storeys in height. Further south along Pacific Highway is a 17 storey building located at 210-220 Pacific Highway. Directly opposite the site across Pacific Highway a

planning proposal for 270-272 Pacific Highway to accommodate a 13 storey commercial building to a height of 54m is currently at the finalisation stage.

The site is not listed as a heritage item or within a heritage conservation area (HCA), however, it is in the vicinity of a number of local heritage items and the Holtermann Estate B and C HCA's (Figure 13).

The Sydney Metro tunnels pass under the north eastern corner of the site and are contained within a below ground stratum approximately 30m below the natural ground surface (Attachment A8). This is acknowledged as a constraint of development (Figure 5) and the planning proposal will require referral to Transport for NSW (Sydney Metro) during public exhibition.



Figure 1 Locality map (source: Gyde)

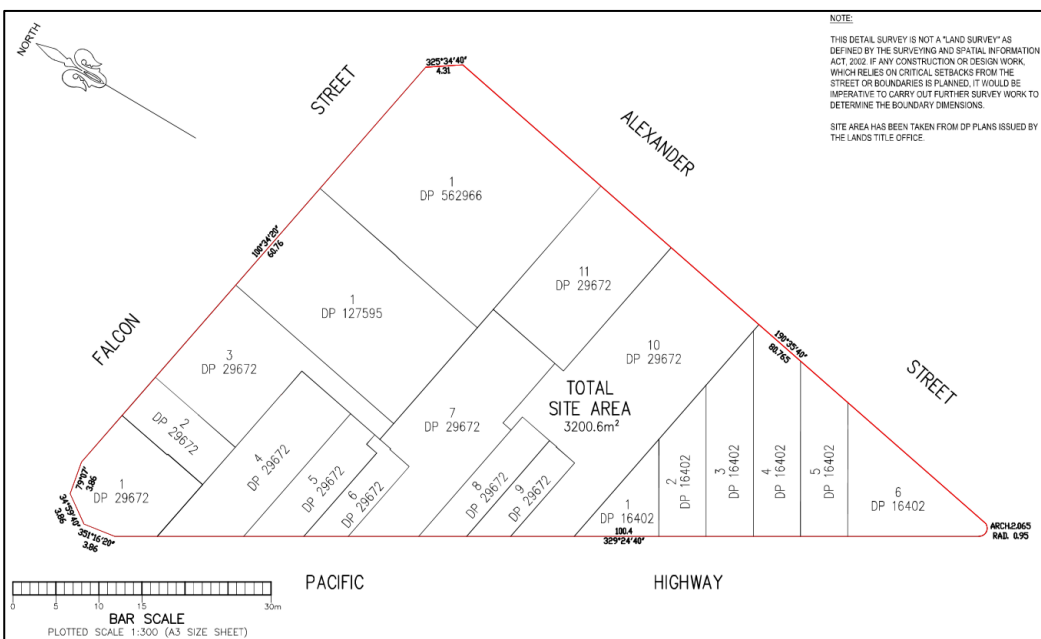


Figure 2 Site survey (source: Gyde)



Figure 3 Subject site (source: Gyde)

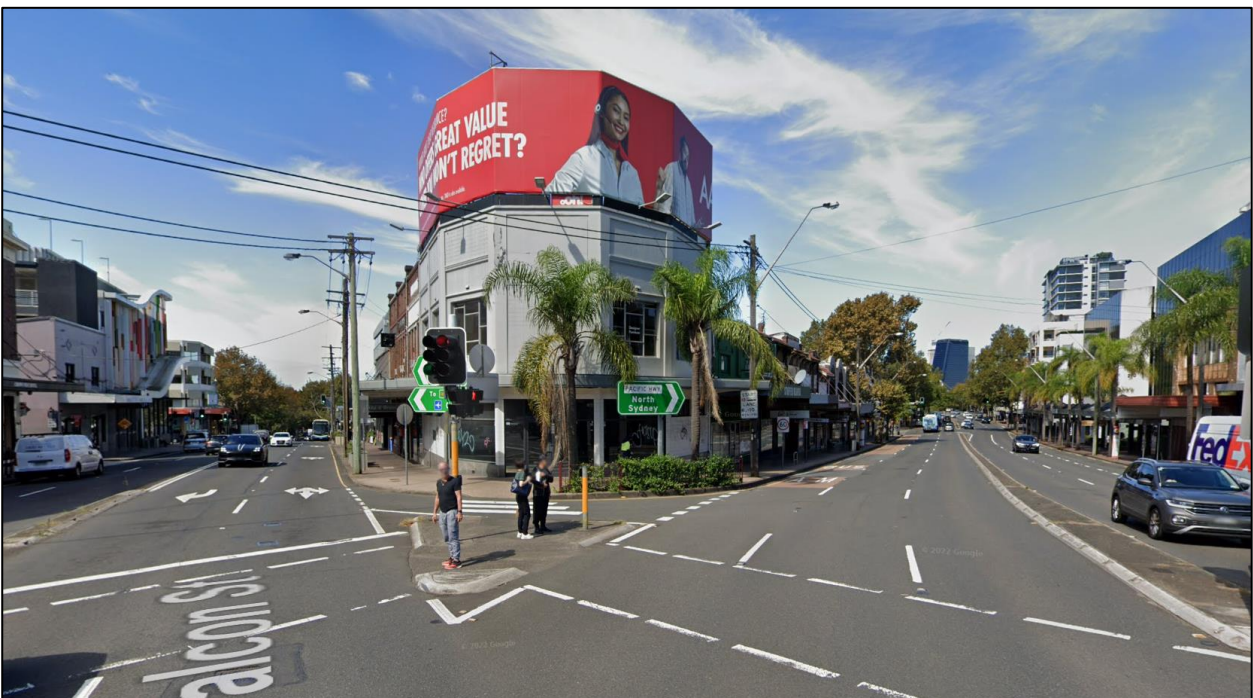


Figure 4 View of the subject site from the Five Ways intersection (source: Google maps)

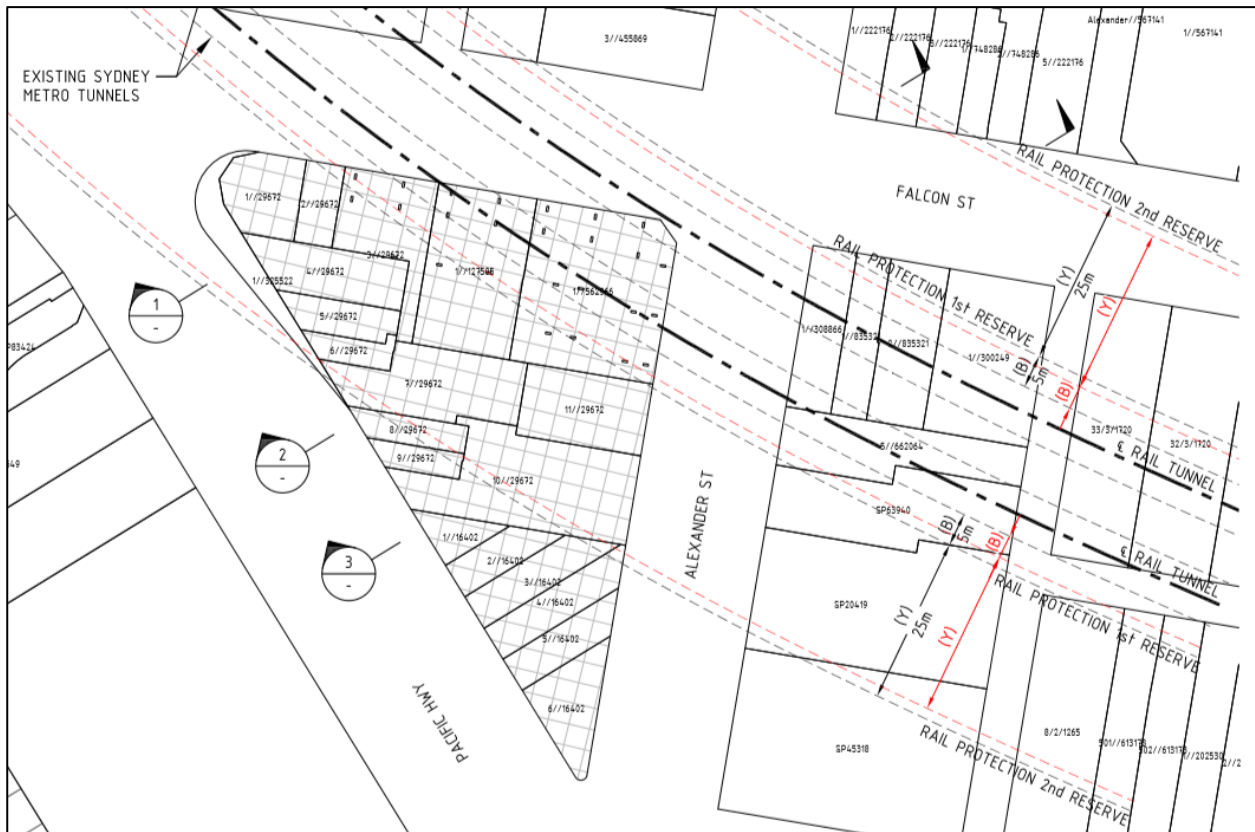


Figure 5 Metro tunnel easements under the site (source: BG&E)

1.5 Mapping

The planning proposal (**Attachment A1**) includes mapping showing the proposed changes to the North Sydney LEP 2013 maps, which are suitable for community consultation. The existing and proposed mapping has been provided as **Attachment A11**.

The mapping associated with the North Sydney LEP 2013 indicates that the existing site is subject to the following planning provisions:

- B4 Mixed Use zone (**Figure 6**);
- maximum building height of 16m (**Figure 7**); and
- minimum non-residential FSR of 0.5:1 (**Figure 8**).

There is no change to the B4 mixed use zoning and there is no applicable FSR control for the site.

The proposed changes to the mapping indicate that the site will be subject to the following planning provisions:

- maximum building height of 62.5m (**Figure 10**);
- maximum FSR of 5.8:1 (**Figure 11**); and
- minimum non-residential FSR of 2.5:1 (**Figure 12**).

The heritage items in the vicinity of the site are shown in **Figure 13**.

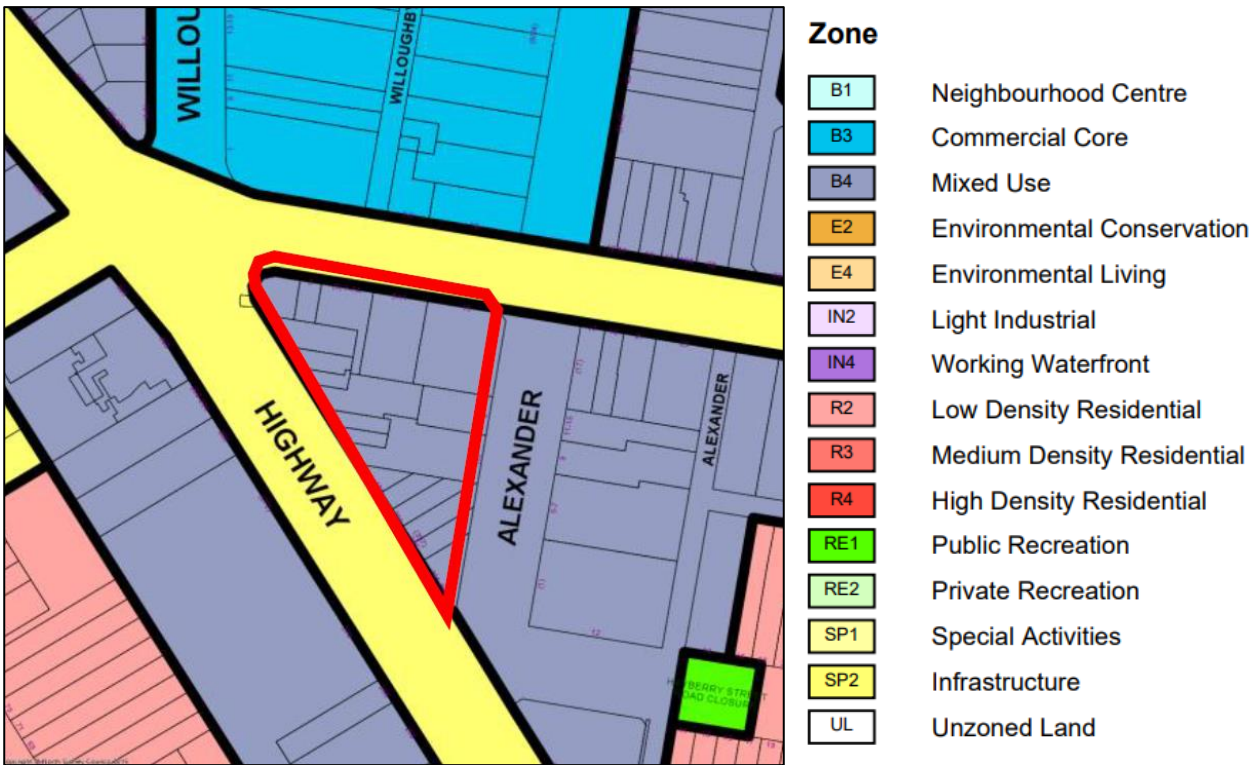


Figure 6 Current land zoning map – B4 Mixed Use (source: Council assessment report)

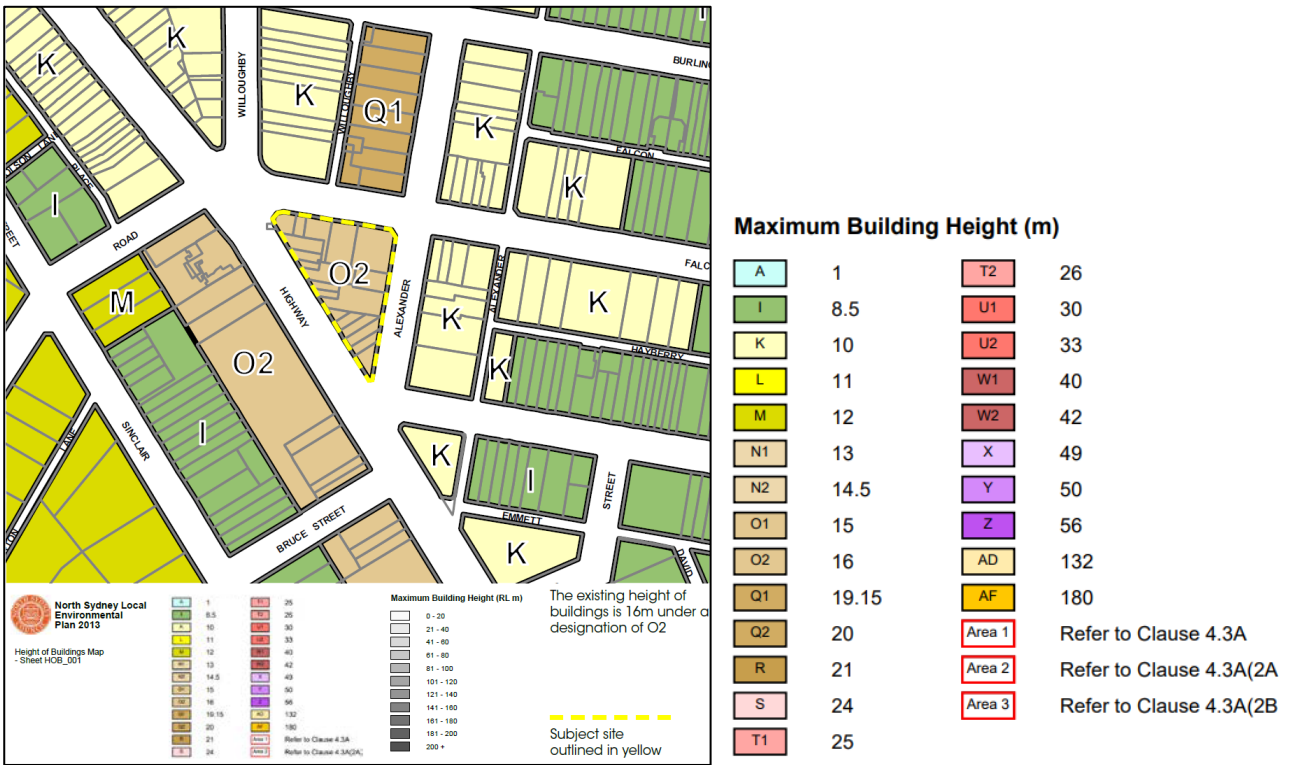


Figure 7 Current maximum building height map with a maximum height of 16m (source: Gyde)



Figure 8 Current minimum non-residential FSR map with a control of 0.5:1 (source: Gyde)

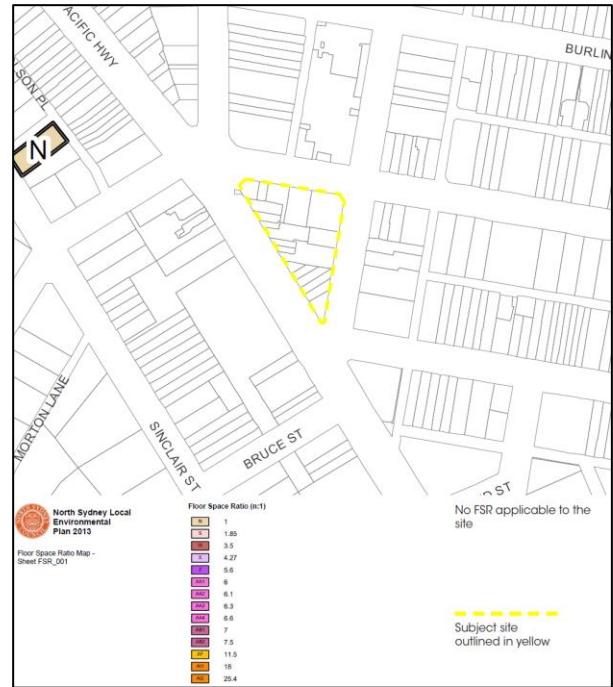


Figure 9 Current FSR that indicates no control applies to the site (source: Gyde)

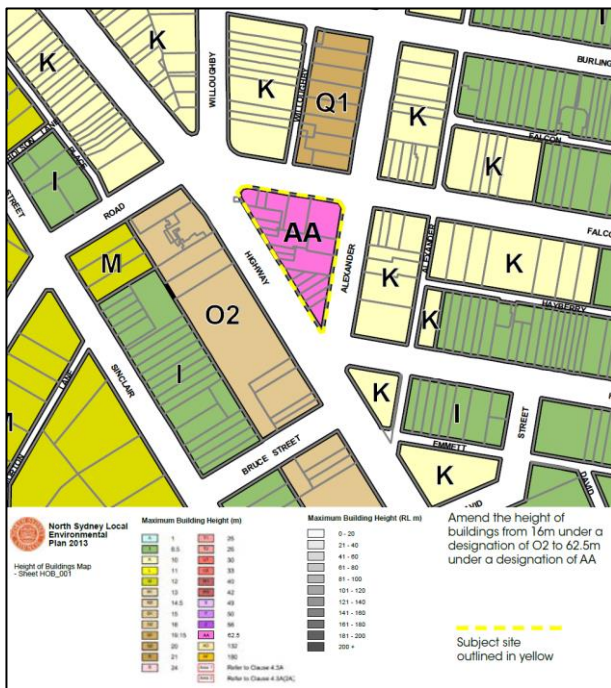


Figure 10 Proposed building height map – indicates a maximum height of 62.5m (source: Gyde)

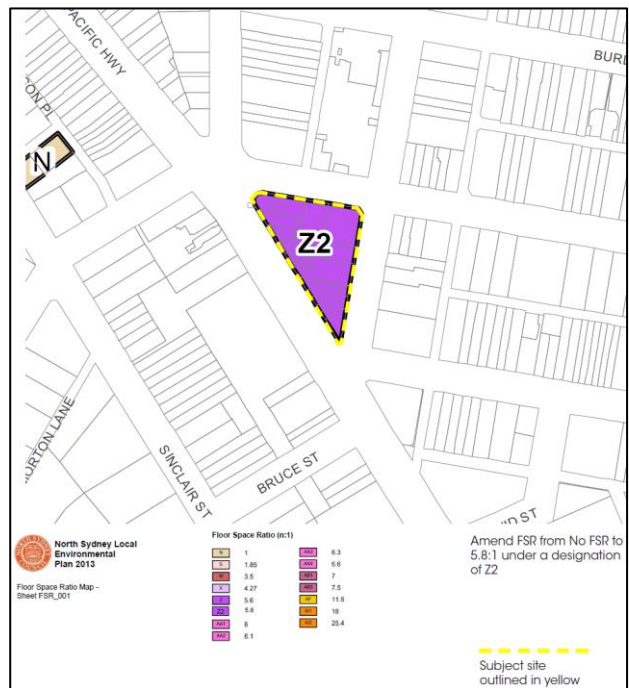


Figure 11 Proposed FSR map indicating a maximum FSR of 5.8:1 (source: Gyde)



Figure 12 Proposed minimum non-residential FSR map indicating a non-residential FSR control of 2.5:1 (source: Gyde)

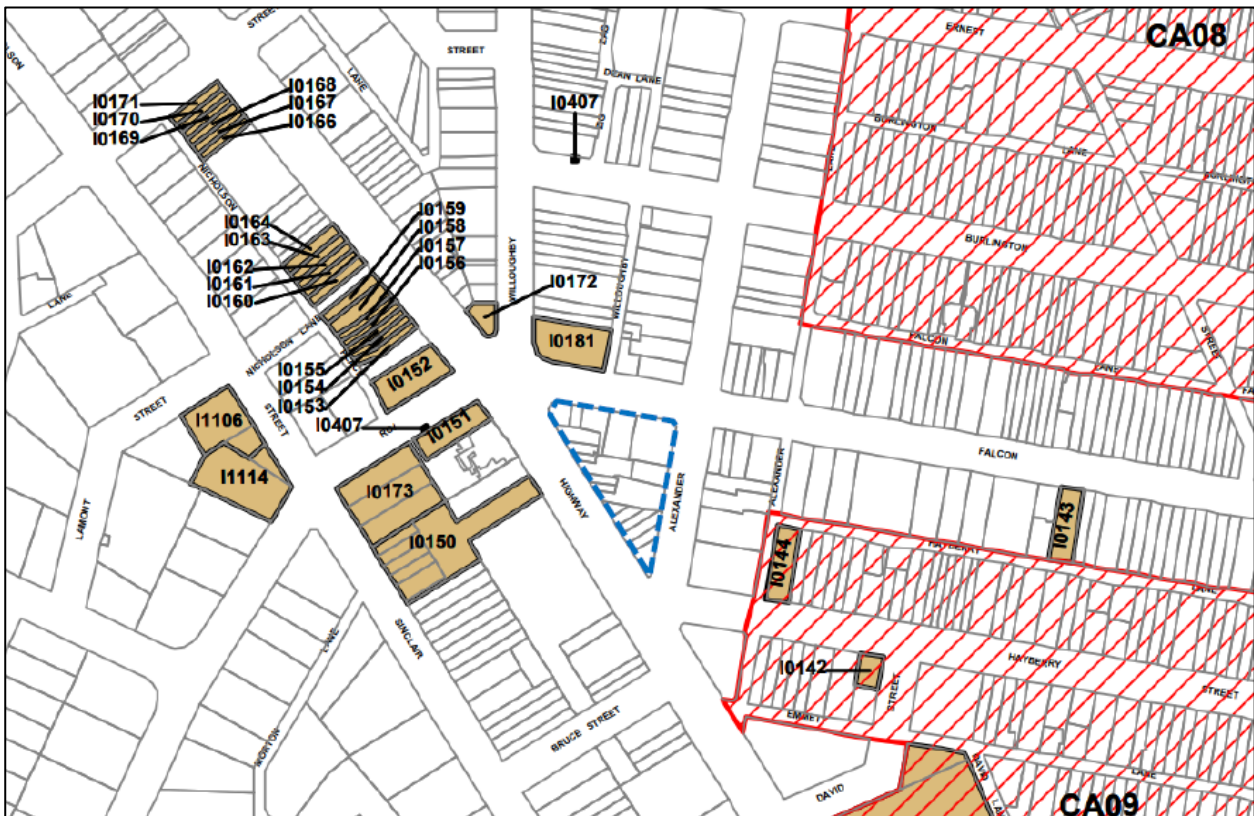


Figure 13 Current heritage map – no change proposed (source: Urbis)

1.6 Background

Table 4 Background to the planning proposal

Date	Event
18 October 2021	Sydney North Planning Panel did not support rezoning review RR-2021-87.
19 January 2022	Current planning proposal lodged with North Sydney Council.
8 June 2022	North Sydney Local Planning Panel recommended the planning proposal proceed to Gateway subject to recommendations.
27 June 2022	North Sydney Council resolved not to progress the planning proposal to Gateway.
18 July 2022	Proponent requested a rezoning review.
4 October 2022	Sydney North Planning Panel at a rezoning review (RR-2022-14) meeting determined the planning proposal should proceed to Gateway with recommended amendments.
9 December 2022	Sydney North Planning Panel supported the planning proposal as amended by the proponent in response to the rezoning review decision.
21 December 2022	Final planning proposal package was received by the Department.

1.6.1 Rezoning Reviews

RR-2021-87 – 18 October 2021

On 18 October 2021 the Sydney North Planning Panel (Panel) considered a planning proposal seeking to increase the maximum building height control to 75m, establish a maximum FSR of 9.3:1 and increase the minimum non-residential FSR control to 2.5:1 in order to facilitate a 19 storey mixed-use development. The rezoning review was the result of Council not indicating its support 90 days after the proponent submitted the planning proposal.

The Panel determined the proposal should not be submitted for a Gateway determination because the proposal has not demonstrated strategic merit (**Attachment D1**).

RR-2022-14 – 4 October 2022

On 30 June 2022, a rezoning review was lodged on the NSW Planning Portal as Council notified the applicant that it would not support the proposed amendments to the LEP.

On 28 September 2022, the Panel considered the planning proposal and determined that the proposal demonstrated strategic and site specific merit and a majority of the Panel members determined that it demonstrated site-specific merit (**Attachment D2**).

One member stated that the maximum height of building provision should be 56m, with an additional allowance for centralised lift overrun facilities. The schematic podium height should be reduced to better reflect the historical shopfronts in the vicinity of the site.

As a majority, the Panel recommended:

- the proposal be submitted for a Gateway determination;
- be amended by reducing the podium height approximately 1-2m consistent with the change in levels across the site, producing a corresponding reduction in the overall height from 63.5m;

- a site-specific DCP should be prepared to address a number of matters;
- a VPA should be agreed; and
- all specialist reports should be checked for accuracy and updated to post-COVID conditions.

As the rezoning review was the result of Council not supporting the planning proposal, the Panel appointed itself as the Planning Proposal Authority (PPA) in accordance with the Department's *LEP Making Guideline September 2022*.

Sydney North Planning Panel approval as PPA – 9 December 2022

On 7 December 2022, the Sydney North Planning Panel was briefed by the Department on the changes made to the planning proposal by the proponent in response to the rezoning review RR-2022-14. The Panel determined to proceed to Gateway determination, with the following matters resolved or agreed to be resolved during the Department's assessment of the proposal:

- the Panel supported a 1m podium reduction and subsequent overall height reduction to 62.5m to proceed to a Gateway determination. The planning proposal documentation has been updated to reflect this proposed height;
- the Department informed the Panel a storey limit is unable to be enforceable within an LEP;
- the proponent has provided an Affordable Housing Feasibility Assessment in response to the Panel's request (**Attachment B**);
- the proponent has contacted Council who advised if the SIC applies a VPA is not required; and
- the site-specific DCP will be reviewed in the context of North Sydney Council's recently adopted DCP update for the St Leonards and Crows Nest 2036 planning area.

It is noted a majority of the Panel supported progression of the amended planning proposal. One Panel member remained in the minority restating their initial position.

Table 5 Comparison of existing LEP controls with the progression of rezoning reviews and proposals

Control	Current LEP Control	RR-2021-87	RR-2022-14	Planning Proposal for Gateway
Maximum building height	16m	75m	63.5m	62.5m
Maximum FSR	N/A	9.3:1	5.8:1	5.8:1
Minimum non-residential FSR	0.5:1	2.5:1	2.5:1	2.5:1
Number of dwellings	0	233	129	129
Number of jobs	Approx. 154	456	456	456
Car parking	N/A	385	258	258

1.7 Reference Scheme

On 21 December 2022, a revised planning proposal (**Attachment A1**), updated Urban Design Report (**Attachment A3**), a Supplementary Transport Assessment (**Attachment A5**), updated Economic Impact Assessment (**Attachment A6**), revised LEP maps (**Attachment A11**) and an Affordable Housing Feasibility Analysis (**Attachment B**) were provided to the Department in response to the recommendations of the Panel. The notable reference scheme change was the reduced podium by 1m that produced a corresponding overall height reduction to 62.5m.

The revised planning proposal is supported by a number of additional assessments and documents that are all referenced as **Attachments A** in this report.

The revised proposal maintains the proposed number of 129 dwellings and approximately 441 jobs.

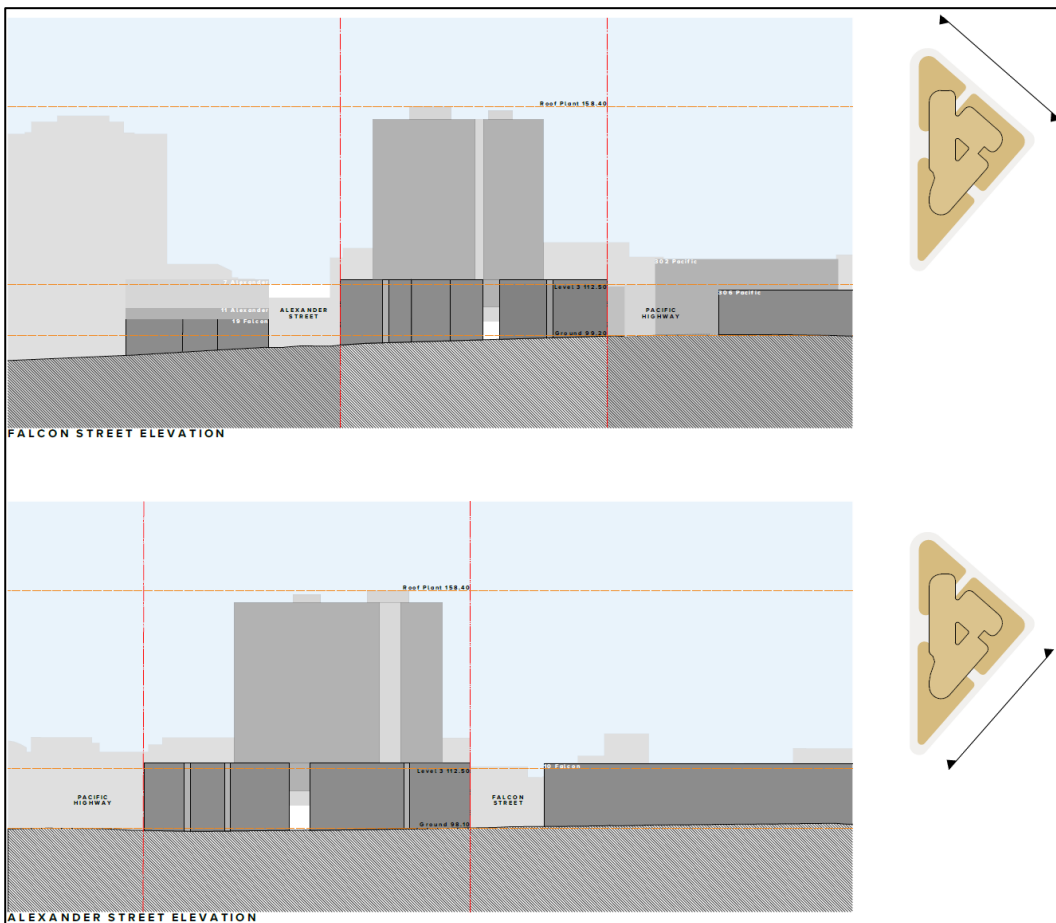


Figure 14 Elevations of Falcon Street and Alexander Street (source: Turner)

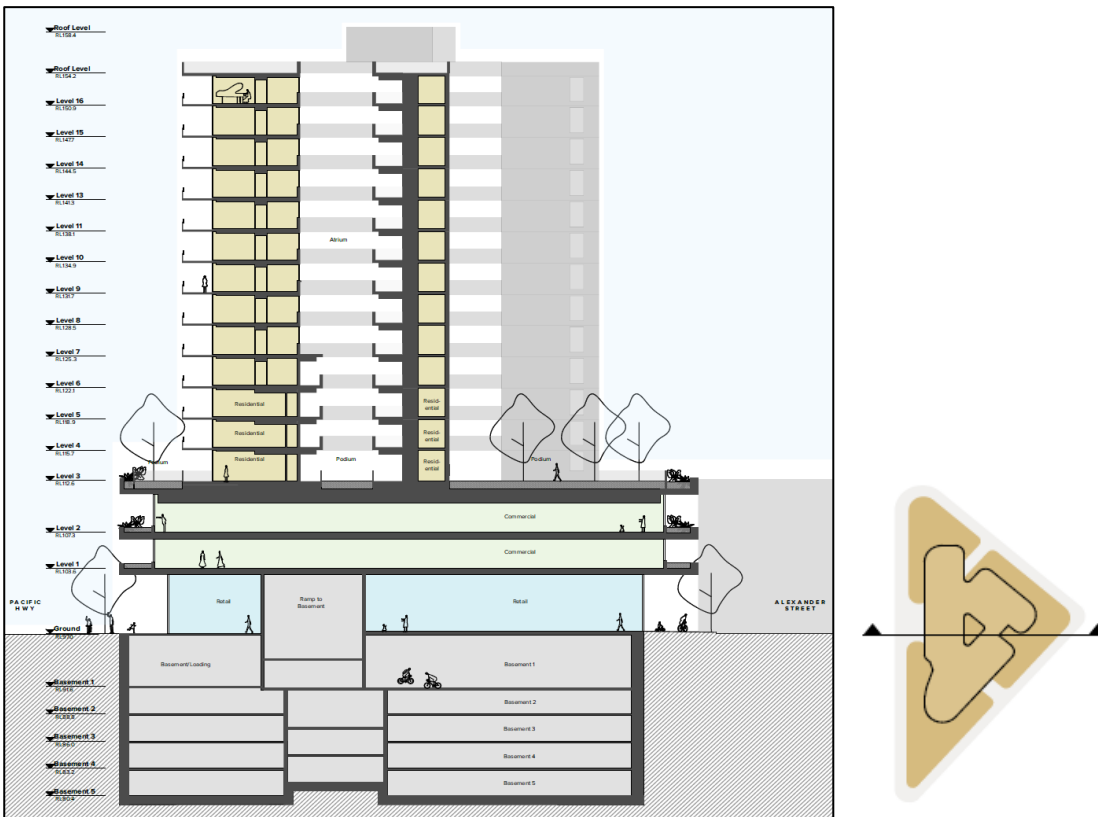


Figure 15 Section of proposed development (source: Turner)

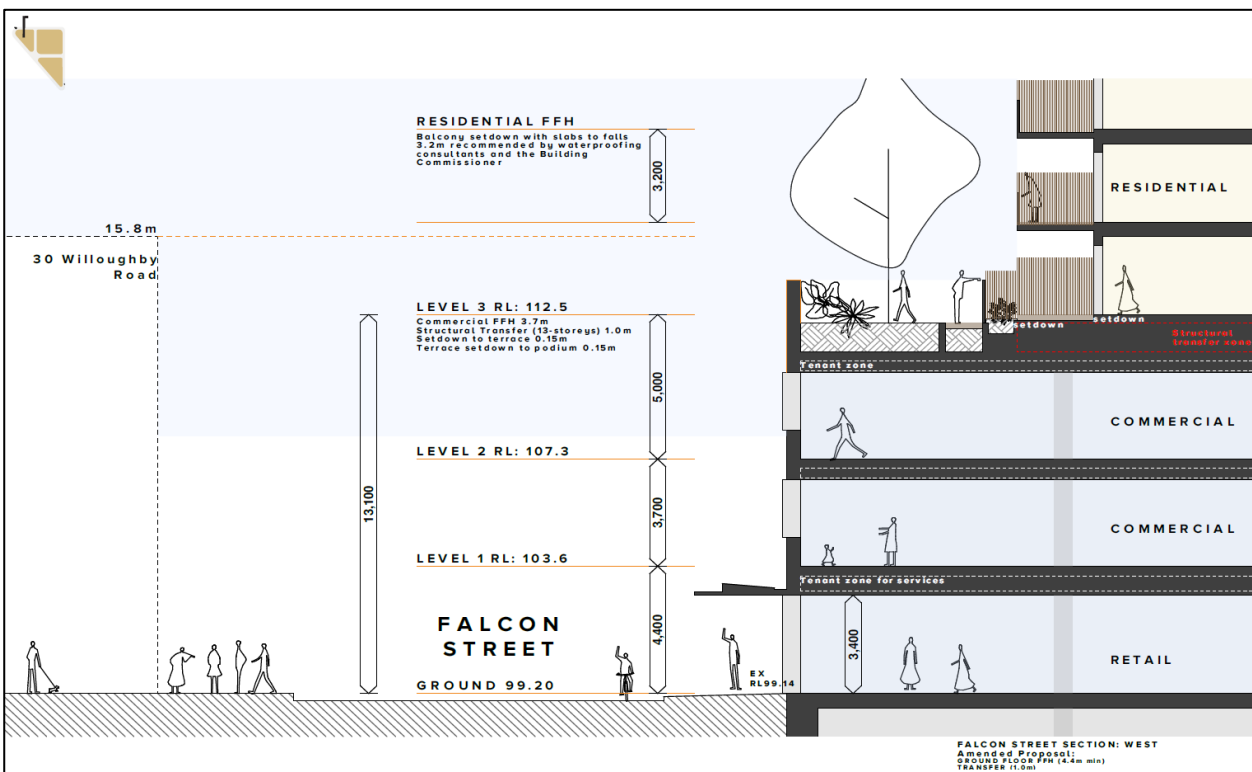


Figure 16 Section of proposed podium development where the street height is lower (source: Turner)

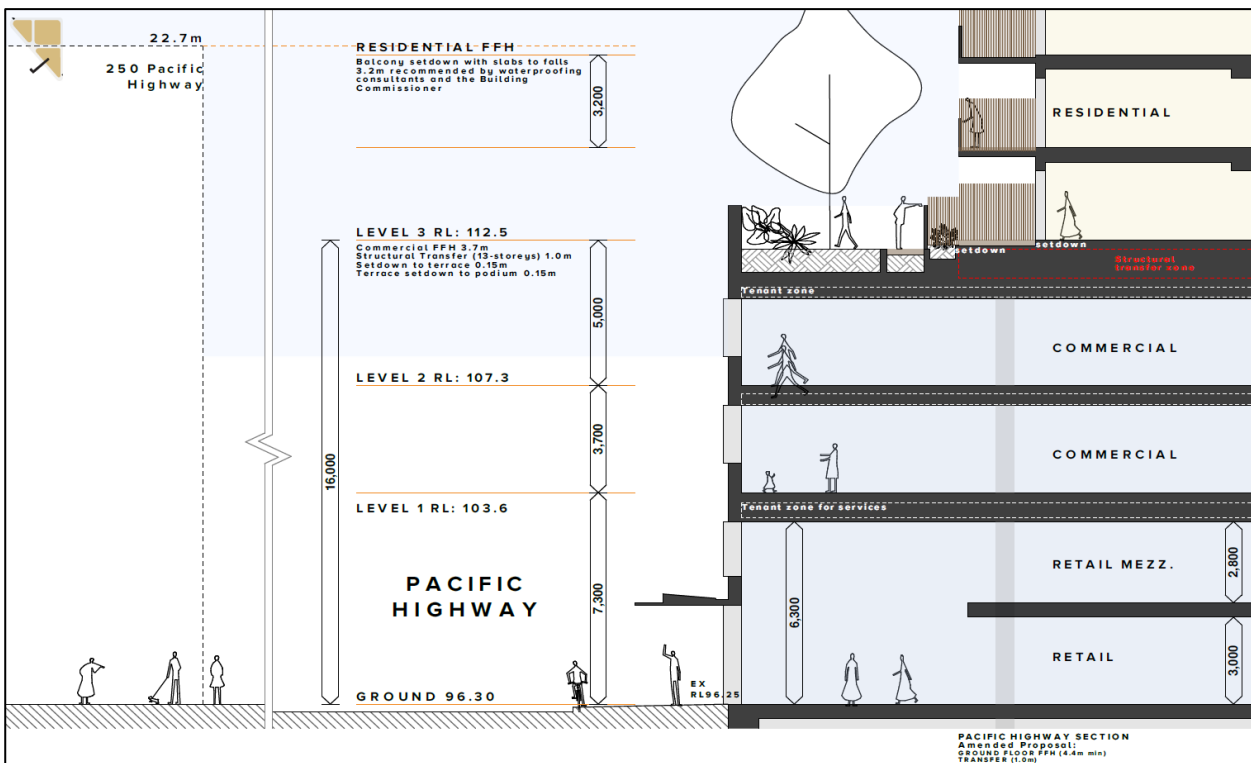


Figure 17 Section of proposed podium development where the street height is higher featuring the fourth storey podium mezzanine (source: Turner)

2 Need for the planning proposal

The planning proposal seeks to implement the St Leonards and Crows Nest 2036 Plan (SLCN 2036 Plan) with the site located within the urban renewal area identified in the North District Plan. The SLCN 2036 Plan was released in August 2020 and indicates the recommended planning controls encompassing the subject site at the Five Ways Triangle, Crows Nest. This site was previously designated as a significant site in the draft SLCN 2036 Plan before being provided with its current planning controls in the finalised plan.

The site is in a designated growth area and located near the future Crows Nest Metro Station. The proposal is the best means of achieving the objectives and intended outcomes.

The SLCN 2036 is discussed further in section 3.3.1.

3 Strategic assessment

3.1 Regional Plan

The following **Table 6** provides an assessment of the planning proposal against relevant aspects of the Greater Sydney Regional Plan.

Table 6 Regional Plan assessment

Regional Plan Objectives	Justification
A City Supported by Infrastructure	<p>The proposal will provide increased residential and employment floorspace in a location well serviced by current and future public transport, providing access to the Sydney CBD, St Leonard's Strategic Centre and other locations along the Eastern Economic Corridor.</p> <p>The proposal is considered to be consistent with this objective.</p>
A City for People	<p>The proposal will facilitate housing within a location of significant infrastructure investment in the future Crows Nest Metro Station. The proposal will activate the street through laneway retail providing new social infrastructure and service floorspace to the community on the ground floor.</p> <p>The proposal creates a framework to deliver a unique building enhancing connectivity from the site to the southern end of Willoughby Road.</p> <p>The proposal is considered to be consistent with this objective.</p>
Housing the City	<p>The planning proposal will provide housing in a location nearby to existing and soon to be completed infrastructure projects and is easily accessible by public transport to the Sydney and North Sydney metropolitan centres.</p> <p>The proposal is considered to be consistent with this objective.</p>
A City of Great Places	<p>The planning proposal will facilitate the urban renewal of a currently rundown street block on the southern side of the Crows Nest village. The proposed building envelope envisages a permeable ground floor enabling active laneways, walkways and connections to surrounding locations.</p> <p>The proposal will create a visual marker for Crows Nest as enabled by the SLCN 2036 Plan. It will reinforce the role of the Five Ways intersection as a gateway in the precinct.</p> <p>The proposal is considered to be consistent with this objective.</p>
A Well-Connected City	<p>The site is located 240m from the future Crows Nest Metro Station and is well serviced by bus routes. This location offers residents and users access to Crows Nest and Greater Sydney through accessible public transport, reducing private vehicle dependency.</p> <p>The proposal is considered to be consistent with this objective.</p>
Jobs and Skills for the City	<p>The proposal site is an interface between the Education and Medical facilities in south Crows Nest and the Crows Nest village. The proposed development will provide non-residential floorspace bringing forward the proposed targets identified in the SLCN 2036 Plan.</p> <p>St Leonards is identified as a strategic centre and the proposal will support the development, servicing and housing supply of the St Leonards centre in a planned and strategic manner.</p> <p>The proposal is considered to be consistent with this objective.</p>

Regional Plan Objectives	Justification
An Efficient City	<p>The proposal seeks to facilitate increased use of public transport to combat the use of private vehicles reducing emissions due to its location to these transport options.</p> <p>The proposal is considered to be consistent with this objective.</p>

3.2 District Plan

The site is within the North District and the Greater Cities Commission (formerly the Greater Sydney Commission) released the North District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following **Table 7** includes an assessment of the planning proposal against relevant directions and actions.

Table 7 District Plan assessment

District Plan Priorities	Justification
Infrastructure and Collaboration	
N1 Planning for a city supported by infrastructure	The planning proposal is consistent with this priority as it provides increased residential density with access to existing and future infrastructure including public transport, community, jobs and services.
Liveability	
N4 Fostering healthy, creative, culturally rich and socially connected community	The planning proposal encourages spontaneous social interaction and community cultural life with development designed at a human scale for walkability. Active street life will provide great social opportunities.
N5 Providing housing supply, choice and affordability with access to jobs, services and public transport	The proposal will provide housing in a location nearby to existing and future public transport options and city shaping infrastructure. This will make the development accessible to strategic metropolitan centres and the jobs and services that they offer.
N6 Creating and renewing great places and local centres, and respecting the District's heritage	The planning proposal is consistent with this priority as it will renew a rundown street block featuring a podium that combined with the wide roads surrounding the site mitigates impacts on adjacent heritage items. The development will ensure there will be no overshadowing impacts on key spaces as identified in the SLCN 2036 Plan.
Productivity	

District Plan Priorities	Justification
N12 Delivering integrated land use and transport planning and a 30-minute city	Increased development in North Sydney is consistent with this priority and the increase to the planning controls will facilitate the provision of 129 dwellings and retail/commercial floorspace to leverage off existing and future public transport options supporting the 30-minute city.
Sustainability	
N21 Reducing carbon emissions and managing energy, water and waste efficiency	The proposal is consistent with this priority as it seeks to facilitate greater use of public transport to reduce private vehicle reliance, taking advantage of the future Crows Nest Metro Station. The proposal's location will enable access to jobs and services capitalising on public transport.

3.3 Local

The proposal states that it is consistent with the following local plans and endorsed strategies.

3.3.1 St Leonards and Crows Nest 2036 Plan

The St Leonards and Crows Nest 2036 Plan (SLCN 2036 Plan) was finalised on 29 August 2020. It requires that future planning proposals within the St Leonards and Crows Nest investigation area reflect the SLCN 2036 Plan vision, design principles and recommended planning controls as outlined in **Table 8**.

The site is within the area covered by the SLCN 2036 Plan (**Figure 18**) and the revised planning proposal generally achieves the overall intent of the SLCN 2036 Plan for the site, which focusses on delivering greater employment floorspace and jobs.

An assessment of the revised planning proposal against Section 9.1 Ministerial Direction 7.11 Implementation of St Leonards and Crows Nest 2036 Plan is outlined in section 3.3.

Table 8 Consistency of the planning proposal with the SLCN 2036 Plan

Strategies	Justification
<i>Vision</i>	<p>The proposal will facilitate a renewed development and an increase to commercial floorspace on the site through the amalgamation of allotments to cater to a wider range of services for a growing population that is compatible with the future character of the area. It will also provide a variety of residential dwellings for a variety of household sizes on a site specifically designated for uplift within the plan area.</p> <p>The planning proposal is generally consistent with the vision of the SLCN 2036 Plan as it will promote an active street frontage and include two through site links to improve permeability. The development will leverage on the currently under construction Crows Nest Metro Station with the opportunity to be developed into a visual icon for the Crows Nest village.</p>

Strategies	Justification
<i>Place</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to place as:</p> <ul style="list-style-type: none"> • it is designed to provide a significant redefinition of the public domain; • the site is physically separated from the nearby Heritage Conservation Areas with the block to the east providing a transition to these areas; and • it adopts the indicative street wall heights outlined in the Plan. The Department notes an inconsistency that will be explored further under the Plan's implementation section of this table.
<i>Landscape</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to landscape as:</p> <ul style="list-style-type: none"> • it includes two pedestrian through-site links connecting to three street frontages enhancing the permeability of the site; and • it takes an integrated approach to landscape with a number of initiatives.
<i>Built Form</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to the built form as:</p> <ul style="list-style-type: none"> • it complies with the solar access controls as outlined further in section 4.1.1 of this report; • the site has been identified for significant increases in built form controls; • it provides a transition from the development within the St Leonards core; • the redevelopment of the site will improve the functionality and efficiency of a previously underused and isolated site; and • it ensures the development is a contextual fit within the future character of Crows Nest, creating a location that is connected, safe and liveable.
<i>Land Use</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to land use as:</p> <ul style="list-style-type: none"> • it enables the development of a range of dwelling sizes that will support the St Leonards and Crows Nest community; • the facilitation of the redevelopment will enable Council to secure the associated SIC funding to support investigations into various community facilities in the precinct; • it includes a retail offering with the Crows Nest village activating the area and providing additional retail floorspace in an appropriate location; and • it includes a component of key worker housing.
<i>Movement</i>	<p>The planning proposal is generally consistent with the vision and objectives of the SLCN 2036 Plan related to movement as:</p> <ul style="list-style-type: none"> • the site is well located to connect to existing pedestrian links across the precinct with the public domain improvements at ground level improving the permeability of the site; • it is located close to accessible and convenient public transport, retail, services and amenities that should priorities public transport usage of future residents; and • a traffic study (Attachment A5) considers the effect of the development on existing and future traffic networks.

Strategies	Justification
<p><i>Implementation of the Plan</i></p>	<p>The planning proposal complies with the following built form and design criteria of the SLCN 2036 Plan:</p> <ul style="list-style-type: none"> • the B4 Mixed Use zone will be retained; • the built form is proposed to be 16 storeys with an FSR of 5.8:1 including a minimum non-residential FSR of 2.5:1 (Figures 19 to 21); • setbacks of 0m to all street frontages (Figure 22), with the indicative concept design allowing for increased setbacks at through site links and key Pacific Highway bus stop; • solar access is retained to public open spaces and residential areas outside the SLCN 2036 Plan area including maintaining at least 3 hours solar access to Heritage Conservation Area's (Figures 31 to 35); and • the development will facilitate 129 new residential dwellings and approximately 8,000sqm of non-residential floor space across the podium; <p>The planning proposal is inconsistent with the following criteria of the SLCN 2036 Plan:</p> <ul style="list-style-type: none"> • a 3 storey podium with a 4th storey mezzanine to the intersection of Pacific Highway and Alexander Street is proposed (Figure 24). The location of the mezzanine podium level on the 2036 Plan is the opposing corner of the site to the Five Ways intersection (Figure 23).



Figure 18 SLCN 2036 Plan area map (source: DPE)



Figure 19 SLCN 2036 Plan recommended height of 16 storeys (source: DPE)



Figure 20 SLCN 2036 Plan recommended FSR of 5.8:1 (source: DPE)



Figure 21 SLCN 2036 Plan recommended minimum non-residential FSR of 2.5:1 (source: DPE)

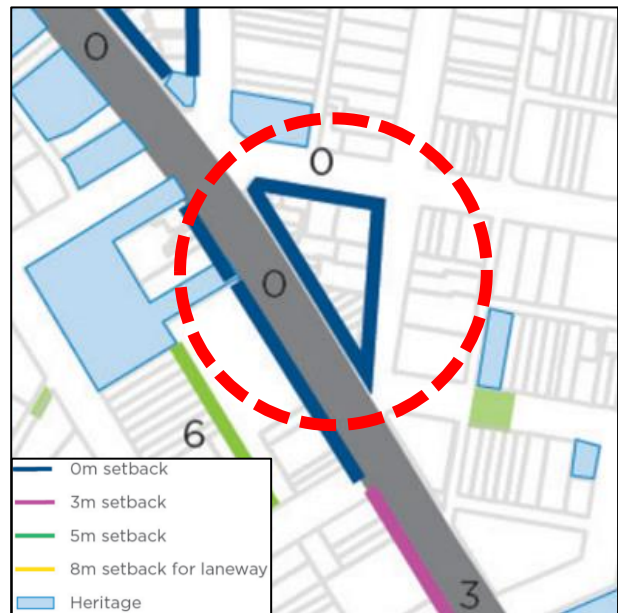


Figure 22 SLCN 2036 Plan recommended 0m setback to all frontages (source: DPE)

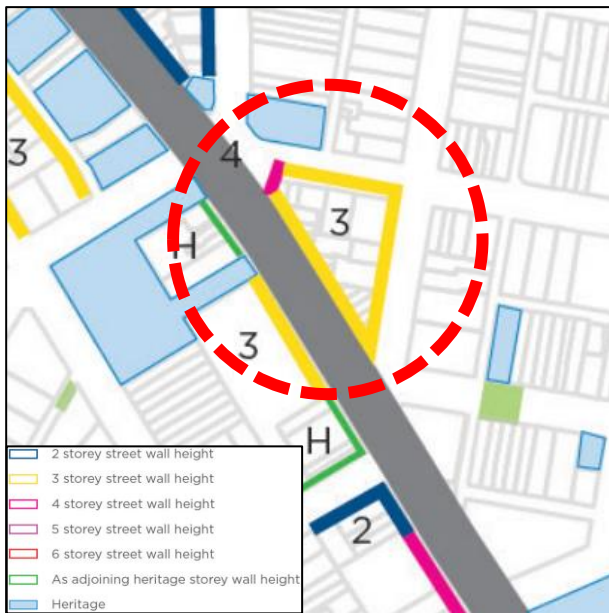


Figure 23 SLCN 2036 Plan recommended street wall heights of 3 storeys with 4 storeys to the Five Ways intersection (source: DPE)

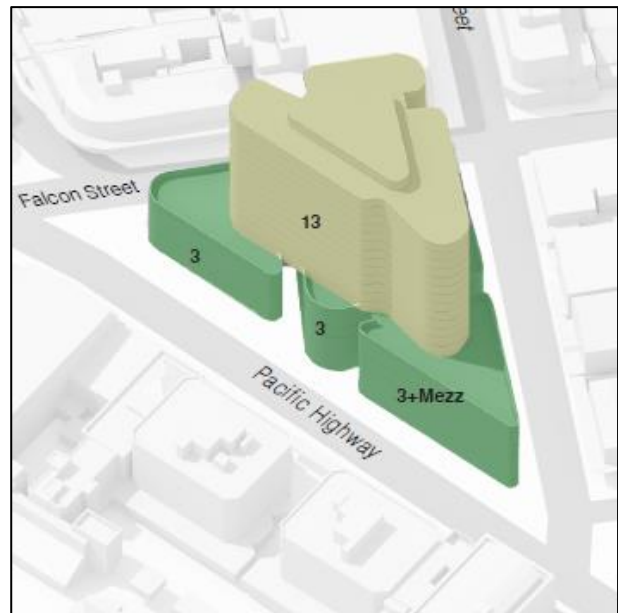


Figure 24 Proposed built form with the podium mezzanine at the intersection of Pacific Highway and Alexander Street (source: Turner)

3.3.2 North Sydney Local Strategic Planning Statement (LSPS)

The North Sydney LSPS was endorsed by the Greater Sydney Commission on 20 March 2020. The LSPS sets the 20-year direction for housing, employment, transport, recreation, environment and infrastructure for the North Sydney LGA.

The consistency of the proposal with the relevant key Local Planning Priorities and Actions of the LSPS is outlined below in **Table 9**.

Table 9 North Sydney LSPS assessment

Planning Priority	Justification
Planning priority I2 – Collaborate with State Government agencies and the community to deliver new housing, jobs, infrastructure and great places	The reference scheme will provide 129 new residential dwellings and approximately 8,000sqm of non-residential floor space with increased amenity generally consistent with the North District Plan. The planning proposal is consistent with this priority.
Planning priority L1 – Diverse housing options that meet the needs of the North Sydney community	The planning proposal is consistent with this priority as it will provide a variety of additional residential dwellings in an area well serviced by existing and proposed public transport, services, jobs, infrastructure and public open space.
Planning priority L2 – Provide a range of community facilities and services to support a healthy, creative, diverse and socially connected North Sydney community	The planning proposal is consistent with this priority as it will offer community benefit through an enhanced public domain, activation of the site and the provision of retail/commercial floorspace across the podium. This will suit an increasing and changing demographic of the area.

Planning Priority	Justification
Planning priority L3 – Create great places that recognise and preserve North Sydney’s distinct local character and heritage	The planning proposal is consistent with this objective as it will provide an opportunity to develop the site into a gateway development to the SLCN 2036 Plan precinct. It will facilitate the renewal of an underperforming part of Crows Nest through the amalgamation of a key site.
Planning priority P6 – Support walkable centres and a connected, vibrant and sustainable North Sydney	The planning proposal is consistent with this objective as it will provide residents and other users with access to a variety of public transport nodes and improve connectivity through the site and local area.
Planning priority S3 – Reduce greenhouse gas emissions, energy, water and waste	The planning proposal will deliver high amenity residential apartments that exceed requirements for cross ventilation and solar access, overall reducing energy consumption. The site is well serviced by public transport to enable access to a walkable 30-minute city that further contributes to reducing emissions and reliance on private vehicles.

3.3.3 North Sydney Local Housing Strategy (LHS)

The North Sydney LHS, adopted by Council on 25 November 2019 and endorsed by the Department on 10 May 2021, sets out the strategic direction for housing in the North Sydney LGA to 2036.

The planning proposal is consistent with the LHS as it will implement the St Leonards and Crows Nest 2036 Plan and will provide an indicative 129 new residential dwellings in an area identified for potential additional housing close to existing and proposed public transport links. Analysis undertaken in the planning proposal indicates the proposal will further assist in addressing the shortfall of one bedroom dwellings and studios across the North Sydney LGA.

3.3.4 North Sydney DCP 2013 – Implementation of the SLCN 2036 Plan

On 12 December 2022 North Sydney Council resolved to adopt an amendment to the North Sydney Development Control Plan (DCP) 2013. In particular, Section 3 – St Leonards Crows Nest Planning Area and Section 10 – Waverton Wollstonecraft Planning Area within Part C – Area Character Statements to the North Sydney DCP 2013 were amended to include new provisions relating to built form controls associated with the implementation of the SLCN 2036 Plan. The amendment to the DCP came into effect on 6 January 2023.

The subject site is within the Crows Nest Town Centre within the St Leonards / Crows Nest Planning Area (**Figure 25**) and the North Sydney DCP (**Attachment E**) following the recent amendment proposes that the site will require:

- 0m whole of building setback to all street frontages (**Figure 27**);
- 6m above podium setback to all street frontages (**Figure 29**);
- 3 storey podium height to all street frontages and intersections (**Figure 28**); and
- a singular through site link from the intersection of Falcon Street and Alexander Street to the centre of the Pacific Highway frontage (**Figure 26**).

The proponent made a submission on the DCP amendment during exhibition as follows:

- contests that the DCP’s character statement and built form character only ‘generally’ focus on the scaling down of development from the transport stations;
- agrees with Council the location of the Five Ways is a significant element of the area with the intersection an icon for the centre;

- supports the identification of a through-site link, noting the final design of the link will not mirror that shown in **Figure 26**;
- site has a street frontage greater than 40m but acknowledges the draft DCP includes performance objectives to assess the built form;
- requests the inclusion of objectives to support increased residential floor to floor height of minimum 3.2m; and
- proposed setbacks and above podium setbacks are consistent with the DCP.

The planning proposal is accompanied by a site-specific DCP prepared by the proponent (**Attachment A14**) that will be compared to the controls endorsed by Council's amendment below. However, it is noted that only one DCP can apply to the site, and the planning proposal will require updating to refer to the DCP and compliance with the endorsed amendment. Inconsistencies with the DCP should be addressed in detail.

Site-Specific DCP

The proponent has submitted a site-specific DCP with the planning proposal (**Attachment A14**) that was part of the proposal package prior to Council's exhibition of their DCP amendment.

Table 10 below contains a brief comparison of the coinciding elements of the DCP's noting the above condition that will be imposed.

Table 10 Comparison of applicable DCP provisions

Council Endorsed DCP Amendment 3.2 Crows Nest Town Centre	Proponent Site-Specific DCP Proposed Additions to 3.2 Crows Nest Town Centre
3.2.2 Desired Future Character	
<p>3.2.2.1 Diversity of activities, facilities, opportunities and services</p> <p>P1 Intensify commercial and mixed use development in close proximity to the Metro station and along the Pacific Highway with active uses at the ground floor levels, commercial within the podium levels and residential above.</p>	<p>Diversity of activities, facilities, opportunities and services</p> <p>P4 High density residential development on the Five Ways Triangle site.</p>
<p>3.2.2.2 Accessibility and permeability</p> <p>P1 Provide, retain and enhance through site links for pedestrians identified on the Through Site Link Map (refer to Figure 26).</p> <p>P3 Through site links that are proposed in addition to those identified under P1 must demonstrate that it meets the objectives and provisions of this subsection.</p>	<p>Accessibility and permeability</p> <p>P7 Pedestrian through site links to Willoughby Lane and Hayberry Lane are provided through the Five Ways Triangle site (refer to Figure 30)</p>

3.2.3 Desired Built Form

Council Endorsed DCP Amendment 3.2 Crows Nest Town Centre	Proponent Site-Specific DCP Proposed Additions to 3.2 Crows Nest Town Centre
<p>3.2.3.3 Setbacks</p> <p>P1 Buildings are to be setback from all street frontages in accordance with the Buildings Setbacks Map (refer to Figure 27).</p>	<p>Setbacks and building separation</p> <p>P4 Despite P3 (zero setback to all street frontages), greater ground level setbacks will be permitted along street frontages with high levels of pedestrian activity (adjacent to through site links) on the Five Ways Triangle site (refer to Figure 30).</p>
<p>3.2.3.4 Podium Heights</p> <p>P1 Podiums are to be provided in accordance with the Podium Heights Map (refer to Figure 28)</p>	<p>Podiums</p> <p>P6 (d) A podium of 3 storeys on the Five Ways Triangle Site, except for a 4 storey element on the corner of Pacific Highway and Falcon Street with a minimum setback of 6m above the podium (refer to Figure 30). Architectural and design features for the purposes of articulation within the upper setback will be considered where appropriate.</p>
<p>3.2.3.9 Car accommodation</p> <p>P2 No vehicular access is permitted to:</p> <ul style="list-style-type: none"> (b) Pacific Highway; or (c) Falcon Street. 	<p>Car accommodation</p> <p>P13 Vehicle access to the Five Ways Triangle site must be from Alexander Street, between Falcon and Hayberry Street (refer to Figure 30).</p>

North Sydney Council Draft DCP Amendment – Car Parking Rates

In addition to the adopted DCP amendment above, a draft DCP amendment including the revision of the car parking rates for new high-density developments in areas with high accessibility to public transport has also been prepared by Council. The revision to the car parking rates for residential development in the B4 Mixed Use zone was on exhibition until 13 December 2022.

The draft DCP seeks to reduce the rate of off-street parking in areas identified as having high public transport accessibility including the St Leonards and Crows Nest area. Council is proposing to reduce the rate of parking as follows:

Table 11 Recommended parking rates under Council's draft DCP amendment

Apartment Type	Current Parking Rate (per dwelling)	Proposed Parking Rate (per dwelling)
Studio	0.5	0.3
1 bedroom	0.5	0.4
2 bedrooms	1.0	0.6
3 bedrooms	1.0	0.7
Non-residential	1 per 60sqm	1 per 400sqm

(Source: Council draft DCP amendment)

A supplementary transport assessment has been submitted (**Attachment A5**) that acknowledges the proposed number of parking spaces is to be based on Council's controls at the time of a DA.

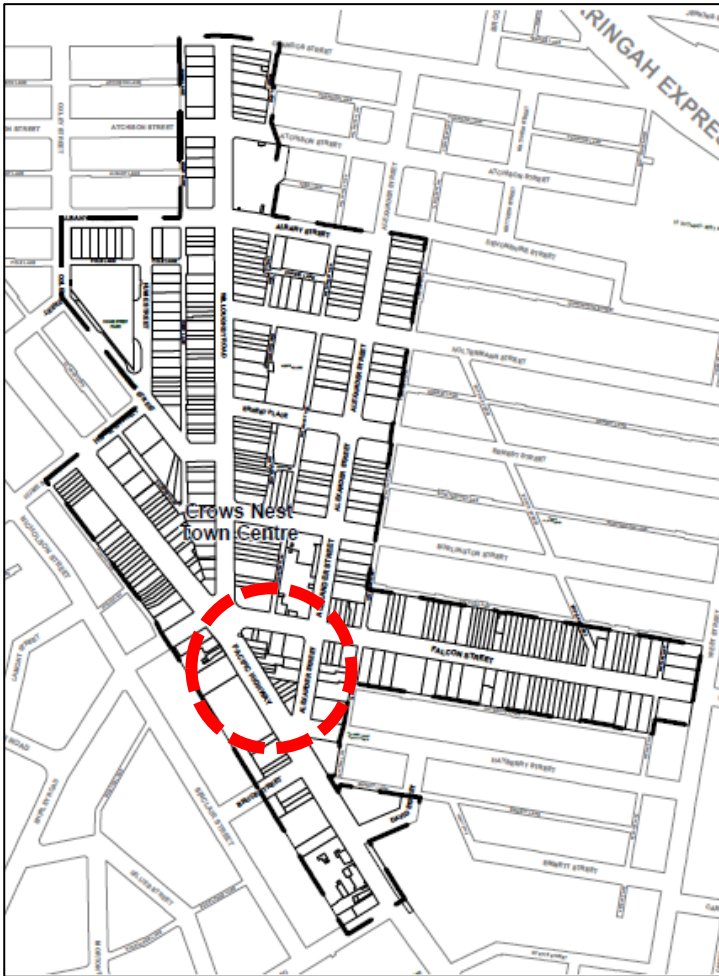


Figure 25 The Crows Nest Town Centre subject to the NSDCP 2013 (source: Council)

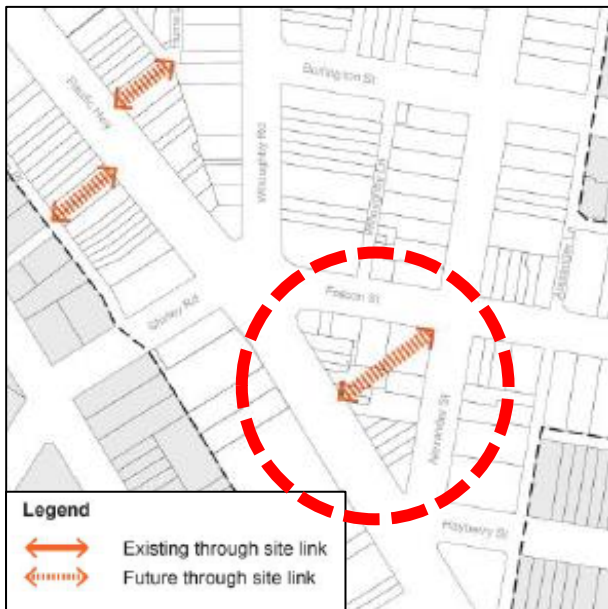


Figure 26 NSDCP 2013 recommends a single through site link (source: Council)



Figure 27 NSDCP 2013 recommends a 0m whole of building setback (source: Council)



Figure 28 NSCDCP 2013 recommends a 3 storey podium to all frontages (source: Council)



Figure 29 NSCDCP 2013 recommends a 6m above podium setback to all frontages (source: Council)

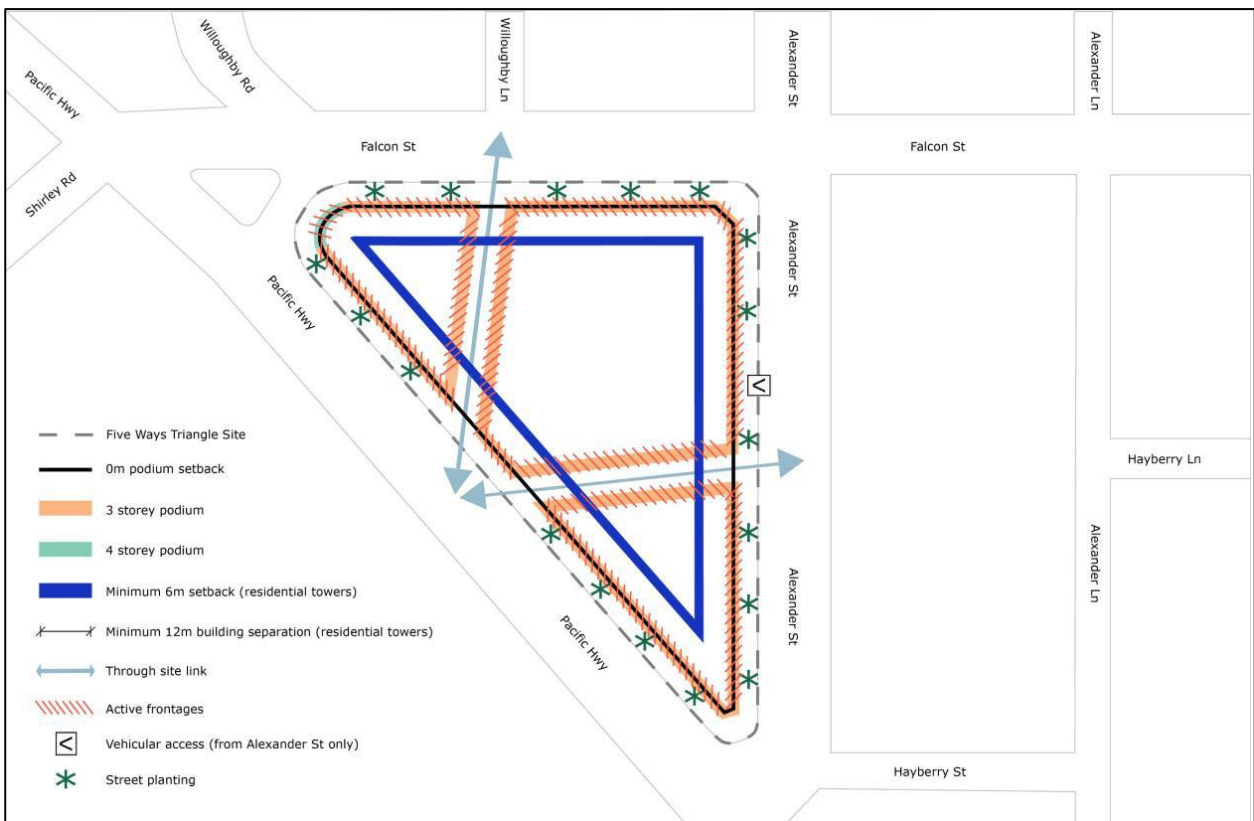


Figure 30 Proposed controls of proponent site-specific DCP (source: Gyde)

3.4 Local planning panel (LPP) recommendation

On 8 June 2022, the North Sydney Local Planning Panel considered the original planning proposal seeking a maximum building height of 63.5m, FSR of 5.8:1 and minimum non-residential FSR of 2.5:1. The LPP recommended the planning proposal proceed to a Gateway determination having regard to the following comments:

- it is acknowledged that development of this nature is anticipated in the 2036 Plan, considering the concept proposed presents a considered option that is generally consistent with the 2036 Plan;
- Council Officer's Report and the Recommendation is generally endorsed by the LPP subject to a maximum height of 60m, providing certainty as to the number of storeys capable of being built within the 60m height limit being 16 storeys;
- the LPP agrees that a DCP for the site is necessary given its prominence;
- any future development application will also be subject of review by Council's Design Excellence Panel; and
- the LPP considers it is imperative, and in line with best practice, that the car parking be reduced and indeed this is a prerequisite of the 2036 Plan that has identified the site for substantial uplift in densities.

3.5 Section 9.1 Ministerial Directions

On 1 March 2022, the Section 9.1 Ministerial Directions were renumbered and ordered into thematic framework focus areas.

The planning proposal has been updated to refer to the new numbering, remove any revoked directions and with regard to any updated information within the directions.

The planning proposal's consistency with the Section 9.1 Directions is discussed in **Table 12**.

Table 12 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Planning Systems – Place Based		
1.4 Site Specific Provisions	Not Applicable	<p>The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. This includes not imposing any development standards or requirements in addition to those already contained in the principle environmental planning instrument being amended.</p> <p>The proposal does not intend to introduce site specific provisions. This Direction does not apply to the site. However, a site-specific DCP has been drafted to guide development on the site. It is noted in this report the site-specific DCP will not apply following the adoption of Council's DCP amendment.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	Yes	<p>The objective of this direction is to ensure development within the St Leonards and Crows Nest Precinct is consistent with the SLCN 2036 Plan.</p> <p>The proposal is generally consistent with the vision, objectives and actions of the SLCN 2036 (see section 3.3.1). Notwithstanding this, an inconsistency is noted regarding the proposed 4th storey mezzanine on the intersection of Pacific Highway and Alexander Street. As Council's DCP is inconsistent with the Plan in this regard and the Department's Urban Design team suggests this location as more suitable for the site, this inconsistency is acceptable.</p>
Biodiversity and Conservation		
3.2 Heritage Conservation	Yes	<p>The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The site is within the vicinity of several heritage items and HCA's. The proposal is accompanied by a HIS (Attachment A7) that indicates the proposal will have no adverse impact on nearby heritage items or HCA's. The heritage impact is discussed further in section 4.1.2 of this report.</p>
Resilience and Hazards		
4.4 Remediation of Contaminated Land	Yes	<p>The objective of this Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p> <p>The planning proposal is accompanied by a preliminary contamination report (Attachment A12) which confirms the existence of impacted soils and groundwater with further investigation required following demolition of existing buildings on the site to determine scale of contamination.</p> <p>The contamination impact is discussed further in section 4.1.5 of this report.</p>
Transport and Infrastructure		
5.1 Integrating Land Use and Transport	Yes	<p>The key objectives of this Direction are to improve access to housing, jobs and services by walking cycling and public transport and reducing dependency on private vehicles.</p> <p>The planning proposal intends to increase the planning controls on the site to facilitate 129 new residential dwellings close to existing and proposed public transport including the currently under construction Crows Nest Metro Station.</p> <p>The planning proposal is consistent with this direction.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
5.3 Development Near Regulated Airports and Defence Airfields	No	<p>The objectives of this Direction are to ensure the effective and safe operation of airports so that their operation is not compromised, and to ensure development is not adversely affected by aircraft noise.</p> <p>The proposal seeks to increase the maximum HOB from 16 metres to 62.5 metres which will result in a total height of 159.5m AHD. The site is subject to the Obstacle Limitation Surface (OLS) of 156m AHD. As such, the proposal exceeds the OLS by 3.5m.</p> <p>The planning proposal does not address this Direction. Moreover, the Direction requires the planning authority to consult with the Department of Commonwealth responsible for airports and the lessee/operator of the airport for the development of land near a core regulated airport.</p> <p>The Gateway determination has been conditioned to require the Section 9.1 direction to be addressed in the planning proposal and will require consultation with the appropriate agencies.</p>

Housing

6.1 Residential Zones	Yes	<p>Under this Direction, a planning proposal must broaden housing choice, make efficient use of existing infrastructure, reduce consumption of land for housing on the urban fringe and be of good design.</p> <p>The existing site contains commercial uses. The proposal is consistent with this direction by facilitating 129 residential dwellings in an urban area located in close proximity to existing and proposed services and public transport.</p> <p>The planning proposal is consistent with this direction.</p>
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Industry and Employment

7.1 Business and Industrial Zones	Yes	<p>This direction refers to retaining areas and locations of existing business and industrial zones and not reducing the total potential floor space area for employment uses in the business zones, or for industrial uses in industrial zones.</p> <p>The site is zoned B4 Mixed Use. The planning proposal represents a total employment floorspace of 8,002sqm, an increase of 3,402sqm from the site's estimated existing GFA of 4,600sqm. This is an increase of approximately 74% in employment floorspace for the site.</p> <p>The planning proposal is consistent with this direction.</p>
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3.6 State environmental planning policies (SEPPs)

On 1 March 2022, the Department consolidated 45 SEPPs and deemed SEPPs into 11 new thematic SEPPs. The 45 SEPPs were consequently repealed. The provisions contained in the repealed SEPPs have been carried over into the new SEPPs as 'chapters'.

The SEPP consolidation does not substantially change the effect of the repealed SEPPs.

However, any redundant or outdated provisions of the repealed SEPPs have not been carried over to the new consolidated SEPPs.

The consistency of the planning proposal with the SEPPs is discussed in **Table 13**.

Table 13 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Biodiversity and Conservation) 2021	The SEPP aims to reserve, conserve and manage NSW's natural environment and heritage.	Yes	<p>The site is within an existing urbanised area of Greater Sydney and not zoned as a conservation area or contain any flora and/or fauna that would require the application of this SEPP.</p> <p>The entire North Sydney LGA is identified as being within the Sydney Harbour Catchment Area. The proposal is unlikely to have any adverse impact on the water quality of Sydney Harbour or the District's waterways.</p> <p>The site is within the vicinity of several heritage items and HCA's. The proposal is accompanied by a HIS (Attachment A7) that indicates the proposal will not have any adverse impacts on neighbouring heritage items and HCA's. The heritage impact is discussed further in Section 4.1.</p>
SEPP (Housing) 2021	This SEPP aims to deliver a sufficient supply of safe, diverse and affordable housing.	Yes	<p>The proposed changes to development controls on the site will facilitate 129 new residential dwellings with a mix of apartments within close proximity to public transport nodes.</p>
SEPP (Transport and Infrastructure) 2021	This SEPP aims to provide well designed and located transport and infrastructure integrated with land use.	Yes	<p>The proposal is accompanied by a Supplementary Transport Assessment (Attachment A5) that indicates the proposal will not have a significant impact on the surrounding road network.</p> <p>This assessment acknowledges the proposal does not seek to lock in a set number of parking spaces, with the proposed number to be based on Council's controls at the time of a DA lodgement.</p> <p>The site is located above the Sydney Metro Tunnel. As such, the Gateway determination has been condition to consult with Transport for NSW (TfNSW) and Sydney Metro.</p> <p>The traffic, transport and parking impact is discussed further in Section 4.1.4.</p>

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP (Building Sustainability Index: BASIX) 2004	This SEPP aims to encourage sustainable residential development through establishing targets for thermal comfort, energy and water use.	Yes	<p>Development applications (DAs) for all future residential development will need to comply with the targets established under BASIX.</p> <p>The reference scheme has been designed to comply with any future BASIX compliance. Further consideration of this SEPP can occur at a future DA stage.</p> <p>It is noted the Panel listed best practice sustainability outcomes as a consideration for inclusion in the no longer required site specific DCP.</p>
SEPP 65 – Design Quality of Residential Apartment Development	The aim of this policy is to improve the design quality of residential apartment development in NSW.	Yes	<p>The proposal states that it is generally consistent with the principles of this SEPP.</p> <p>Any future DA for residential flat buildings, shop top housing or mixed-use development with a residential component will be required to have regard to SEPP 65 and the ADG.</p> <p>The consistency can be further assessed as part of a future DA.</p>
SEPP (Resilience and Hazards) 2021	This SEPP aims to manage risks and build resilience in the face of hazards.	Yes	<p>The site is not identified as being within a coastal use area in the map associated with the SEPP (Resilience and Hazards) 2021 (former SEPP (Coastal Management) 2018).</p> <p>Hazardous or offensive development is not proposed.</p> <p>The planning proposal is accompanied by a preliminary contamination report (Attachment A12) which confirms the existence of impacted soils and groundwater and recommends further investigation following demolition.</p>

4 Site-specific assessment

4.1 Environmental

The site is within an established urban environment with no known critical habitats, threatened species or ecological communities. The following provides an assessment of the potential environmental impacts associated with the proposal.

4.1.1 Overshadowing Impact

The St Leonards and Crows Nest 2036 Plan includes objectives and principles regarding overshadowing and solar access that the planning proposal has been demonstrated to comply with. These principles are defined below, with the analysis conducted in the Urban Design Report (**Attachment A3**) using the 21 June shadow from 9am – 3pm:

- No additional overshadowing of nominated public open spaces and important places between 10am – 3pm (**Figure 31**);
- No additional overshadowing of nominated streetscapes between 11:30am – 2:30pm (**Figure 32**);
- Maintain solar access to residential areas inside the SLCN 2036 Plan boundary for at least 2 hours between 9am – 3pm (**Figure 33**);
- Maintain solar access to residential areas outside the boundary of the SLCN 2036 Plan for the whole time between 9am – 3pm (**Figure 34**); and
- Maintain solar access to Heritage Conservation Areas inside the SLCN 2036 Plan boundary for at least 3 hours between 9am – 3pm (**Figure 35**).

Further overshadowing diagrams are in the Urban Design Report (**Attachment A3**) that demonstrate the proposed overshadowing impacts on the current built form and the proposed built form of the SLCN 2036 Plan. It is evident that overshadowing impacts to the west and south will be reduced should development occur to the 2036 Plan scale, however overshadowing to the east will not be impacted by any future development under the Plan.

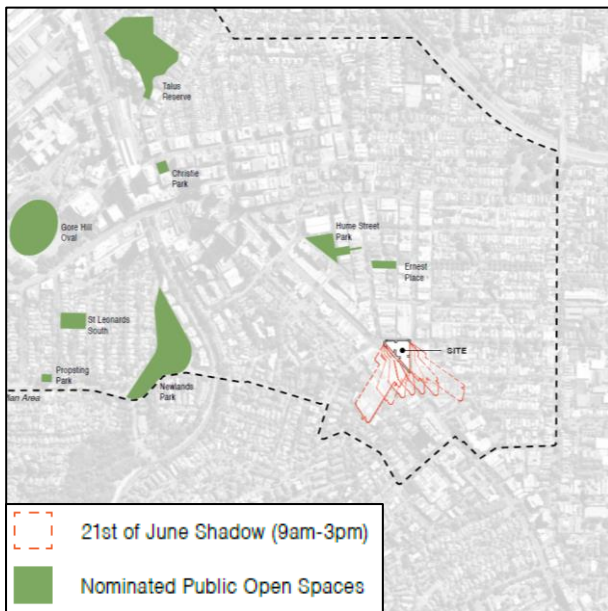


Figure 31 Proposed overshadowing impact in relation to open spaces (source: Turner)



Figure 32 Proposed overshadowing impact on nominated streetscapes (source: Turner)



Figure 33 Proposed overshadowing impact on 2036 Plan boundary (source: Turner)



Figure 34 Proposed overshadowing impact on residential areas (source: Turner)



Figure 35 Proposed overshadowing of HCA's (source: Turner)

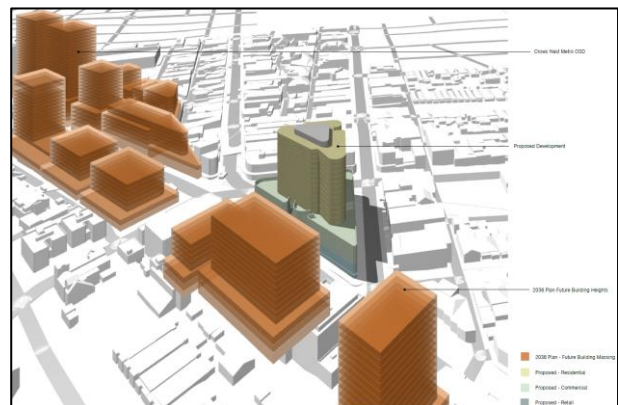


Figure 36 Proposed development in the context of the 2036 Plan built form (source: Turner)

4.1.2 Heritage Impact

A Heritage Impact Statement (HIS) undertaken by Urbis dated 20 December 2021 (**Attachment A7**) has been submitted with the planning proposal. This formed part of the original planning proposal and did not require updating following rezoning review.

The site is not listed as a local heritage or state heritage item and it is not within a Heritage Conservation Area (HCA). However, it is nearby to several locally listed heritage items and HCA's listed below.

Local Listings

- Former North Shore Gas Co Office, 286-288 Pacific Highway, Crows Nest (Item I0150).
- Bank, 306 Pacific Highway, Crows Nest (Item I0151).
- Former National Australia Bank, 308 Pacific Highway, Crows Nest (Item 0152).
- Willoughby House, former OJ Williams store, 429 Pacific Highway, Crows Nest (Item I0172).
- Crows Nest Hotel, 1-3 Willoughby Road, Crows Nest (Item I0181).
- Shop Group, 312-322 Pacific Highway (Items I0153, I0154, I0155, I0156, I0157, I0158).
- Crows Nest Fire Station, 99 Shirley Road, Wollstonecraft (Item I0173).
- Uniting Church, 122 Shirley Road, Wollstonecraft (Item I1114).
- Former Hall, 14 Hayberry Street, Crows Nest (Item I0144).
- House, 18 David Street, Crows Nest (Item I0142).
- Former Church of Christ, 69 Falcon Street, Crows Nest (I0143).
- North Sydney Girls' High School, 365 Pacific Highway (between David and Myrtle Streets), Crows Nest (Item I0165).

Heritage Conservation Areas

- Holtermann Estate "B" Heritage Conservation Area (labelled "CA08").
- Holtermann Estate "C" Heritage Conservation Area (labelled "CA09").

The HCA's are to the east and north-east of the site (**Figure 13**).

The HIS states the planning proposal is supported from a heritage perspective and recommended for approval for the following reasons:

- The subject site does not contain any heritage items. It is noted the building at 391-393 Pacific Highway was identified by Council as having the potential for heritage listing, however Urbis has assessed the property has unsubstantiated significance as a potential heritage item.
- The proposed development controls of the proposal are assessed to have no material impact on heritage items in the vicinity of the site.
- The site is appropriately identified as an opportunity for increased density. From a heritage perspective, the physical separation resulting from the intersection would see the heritage context of Five Ways Crows Nest remain unaffected by the proposed uplift.
- Principal views to and from heritage items are predominantly at street level and any increased uplift above existing façade heights have minimal impact on the interpretation of their heritage significance.
- Interpretation of the existing streetscape character of the HCA's do not rely on the subject site. The proposed uplift does not impede on the HCA's.

In addition to the above conclusions, Urbis has provided a number of design elements that should be considered to ensure the proposed development fits contextually within the heritage items near the site and respond to the unique character of the Five Ways intersection. These have been outlined in the planning proposal (**Attachment A1**).

4.1.3 Visual Impact

The Urban Design Report dated 19 December 2022 prepared by Turner (**Attachment A3**) builds on the view analysis undertaken by the Government Architect NSW. The visual impact analysis demonstrates that the building would not be apparent from large parts of Willoughby Road and would have minimum visual impact from the nearby heritage conservation areas. The building will be most prominently visible along the Pacific Highway and from streets within the Crows Nest Village. It is noted that this is consistent with the scale of development intended by the SLCN 2036 Plan.

4.1.4 Transport, Traffic and Parking Impact

A supplementary Transport Assessment dated 15 November 2022 (**Attachment A5**) was submitted to support the planning proposal as requested by the Panel and was carried out on the current proposed development scheme.

The site has frontages to all sides with the Pacific Highway and Falcon Street considered to be State arterial and sub-arterial roads respectively. Alexander Street is considered a local north-south road.

Transport

St Leonards Train Station is approximately 800m to the north-west of the site along the Pacific Highway. The currently under construction Crows Nest Metro Station is located approximately 250m to the north-west of the site on Pacific Highway. The site is well serviced by an extensive network of bus routes to surrounding areas, connecting the site to the Sydney CBD, Chatswood CBD and other suburbs.

The site's 30 minute public transport catchment is demonstrated in **Figure 37** below of the site's highly accessible public transport options allowing residents better access to their place of work.

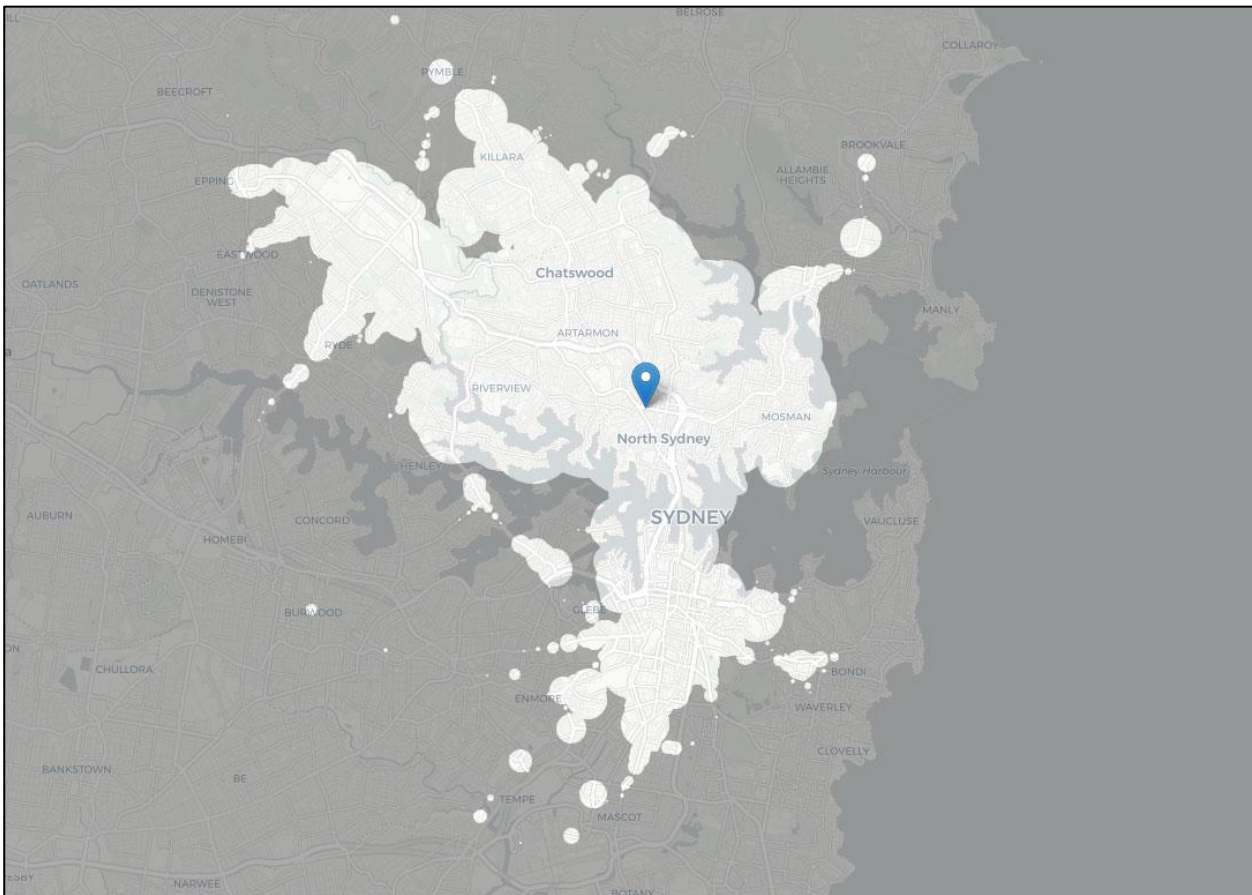


Figure 37 30 minute public transport catchment (source: JMT Consulting)

Traffic

Based on the existing and proposed traffic generation of the existing and proposed future uses on the site following the preparation of the Supplementary Transport Assessment, the planning proposal states the following additional trips will be generated:

- 40 additional AM peak hour trips; and
- 58 additional PM peak hour trips.

Car Parking

The Supplementary Transport Assessment states the planning proposal does not seek to lock in a set number of parking spaces as this will be confirmed at the time of a development application to align with Council's controls in place at the time.

As discussed in section 3.3.4 of this report, North Sydney Council is currently considering a draft DCP amendment to car parking, which if adopted will likely be the provisions in place at the time of any development application applying to the proposal site.

4.1.5 Contamination Impact

A Preliminary Site Investigation (PSI) (**Attachment A12**) dated 26 October 2020 was submitted with the planning proposal conducted by EI Australia. The report concluded that the overall findings of the limited field investigations showed that impacted soils and groundwater do exist, highlighting the need to extend the investigation to other parts of the site after building demolition.

EI Australia consider that sufficient data gaps still exist due to the current built form of the site that warrant further investigations in order to achieve adequate environmental characterisation. As the recommendation relates to further detailed investigations taking place post-demolition, the Department considers it appropriate that the contamination impact has been satisfactorily addressed and further investigations will form part of any development application.

4.1.6 Wind Impact

A Pedestrian Wind Environment Statement dated 16 December 2021 was prepared by Windtech Consultants (**Attachment A13**) to determine the wind impact of the concept buildings at a pedestrian level. The findings of this study have been divided into a number of categories and are summarised below, with the study itself going into greater detail regarding treatment strategies to mitigate the potential identified wind effects.

Ground Level Areas

- All street frontages are potentially exposed to direct wind effects travelling along the streetscape.
- Each laneway forming the through-site links are potentially exposed to funnelling and gap wind effects directed into the laneway by the podium and lower façade respectively.
- The various pedestrian footpath and laneway intersections are susceptible to winds accelerating around the corners of the building morphology.

Podium Rooftop Communal Outdoor Areas

- These areas will experience direct wind effects due to the lack of shielding provided by the low-rise commercial/retail buildings on the surrounding streetscapes; and
- Down-wash wind effects captured off the southern and western tower facades that are redirected onto the podium rooftop below.

Levels 4-15 Open Tower Corridors

- Open corridors benefit from the shielding provided by the subject building; however; it is potentially exposed to funnelling wind effects from the southerly direction.

Private Balconies

- Wind conditions within the various single aspect private balconies along the tower facades that are recessed into the built form are expected to be suitable for their intended uses.
- The corner balconies however are susceptible to stronger wind conditions.

The Pedestrian Wind Environment Statement recommends that wind tunnel testing be undertaken as part of the detailed design phase of any future development application.

4.2 Social and economic

The following **Table 14** provides an assessment of the potential social and economic impacts associated with the proposal.

Table 14 Social and economic impact assessment

Social and Economic Impact	Assessment
Social	<p>The planning proposal will improve the quality of housing options that will help address the gaps in certain types of housing needs across the North Sydney LGA to cater to a growing population.</p> <p>The proposal will provide increased amenity to an underutilised site that aims to achieve the objectives set out in the SLCN 2036 Plan, including ensure built form and design is consistent with the Plan.</p>
Economic	<p>The planning proposal is accompanied by an Economic Impact Assessment (Attachment A6) that details the economic impact of the development at the site. It concludes the design, construction and future use of the development will generate a significant increase to employment across a number of sectors, with the commercial spaces on the site potentially accommodating 441 jobs.</p> <p>This assessment also confirms the proposals consistency with relevant strategic and statutory controls that will facilitate the additional commercial floorspace in a transit oriented environment. The proposal aims to create a more vibrant and diversified strategic centre.</p>

4.3 Infrastructure

The following **Table 15** provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal and what infrastructure is proposed in support of the proposal.

Table 15 Infrastructure assessment

Infrastructure	Assessment
Public transport	<p>The site is located in a highly accessible area well connected to proposed and existing road, rail and metro infrastructure.</p> <p>Extensive bus services operate along the Pacific Highway with the Crows Nest Metro Station currently under construction located within a short walking distance offering various transport connections across Greater Sydney.</p>
St Leonards and Crows Nest Special Infrastructure Contribution (SIC)	<p>The St Leonards and Crows Nest Special Infrastructure Contribution (SIC) applies in this area to new additional residential development. Contributions will help fund new and upgraded infrastructure to support the St Leonards and Crows Nest 2036 Plan and support new growth. The funds will help provide open space, pedestrian and cycle movements, education and road crossing improvements.</p>
Adopted North Sydney DCP 2013	<p>The site is in the Crows Nest Town Centre of the recently adopted North Sydney DCP 2013 amendment to better manage the increase in density deriving from the SLCN 2036 Plan. This is discussed in detail in section 3.3.4 of this report.</p>

5 Sydney North Planning Panel Decision

On 4 October 2022 the Sydney North Planning Panel (Panel) determined that the planning proposal subject to rezoning review should proceed subject to a number of issues being resolved or confirmed (**Attachment D2**). These will be outlined and assessed in this section of the report.

- a) *The proponent should work with the Department to reduce the podium height (by approximately 1-2 metres consistent with the change in levels across the site) to provide a characteristic three storeys, possibly with four storeys at the north-western corner of the site, producing a corresponding reduction in the overall height from 63.5m. The final height of building is to accommodate all roof structures including the roof overrun.***

In response to the Panel, the proponent reduced the maximum building height by 1m to a total of 62.5m, with this reduction deriving from the total podium height. This reduction in height was approved by the Panel on 9 December 2022 to proceed to Gateway determination, with the remaining conditions of the original rezoning review decision to be addressed in the Department's Gateway assessment (**Attachment D3**). The proposal has been updated to reflect this height.

- b) *The proposal would be a total of 16 storeys including 13 residential storeys.***

On 7 December 2022 the Department informed the Panel the proposed LEP amendment relates to the height of the planning proposal of 62.5m and it is not possible to include a storey height in a standard LEP. The proposed minimum non-residential FSR control of 2.5:1 of the total proposed FSR of 5.8:1 is the appropriate LEP control to determine residential floor space.

The Department notes that the proposed height of 62.5m exceeds the expected height when following the assumptions of the ADG at 16 storeys, potentially resulting in a building of up to 17 storeys. The Department can consider the final controls post-exhibition and whether a further reduction in height is necessary.

- c) *A site specific DCP should be prepared by the Proponent in consultation with the Department and Council and it must include: Best practice sustainability outcomes; Affordable Housing percentage; Design Excellence process, Setbacks; Through-site links; and appropriate percentages of Parking Spaces for car share, motor bike / scooters, bicycles and electric vehicle charging.***

As addressed in section 3.3.4 of this report, North Sydney Council has adopted an amendment to the North Sydney Development Control Plan (DCP) 2013. The amendment to the DCP came into effect on 6 January 2023 following the submission of this planning proposal that includes a site-specific DCP. As assessed, the proponent will be required to address the current adopted DCP amendment by Council as two DCP's are unable to apply to a site.

In addition to the assessment in section 3.3.4, the following addresses each of the requested inclusions by the Panel, noting the Department has informed the Panel these considerations are unable to be included within a DCP.

Best practice sustainability outcomes

- The site-specific DCP submitted with the proposal does not feature any sustainability outcomes, with the proposal to address the provisions and objectives in Council's DCP.
- Best practice sustainability outcomes would be more suitably addressed at any future development application stage.

Affordable Housing percentage

- It is noted North Sydney Council's LSPS contains a local planning priority to investigate the establishment of an Affordable Housing Contribution Scheme and associated amendment to the LEP to enable a mechanism for the delivery of local affordable housing.

- In response to the Panel’s decision, the proponent commissioned an Affordable Housing Feasibility Analysis (**Attachment B**).
- The analysis concluded that *“In this instance, the land purchase was based on Deicorp’s understanding of achievable density and scale at the time, prior to the finalisation of the 2036 Plan. The expectation of an uplift in planning controls has since been reduced. Based on our feasibility analysis Deicorp are no longer in a position to offer an affordable housing contribution as part of the latest planning proposal”*.
- For the purpose of the modelling undertaken in the analysis, regard was given to the following:
 - **Project Internal Rate of Return (IRR):** is the actual return on the investment on an annualised basis and expressed as a percentage; and
 - **Development Margin:** is the net profit expressed as a percentage of the development costs.
- **Table 16** below outlines the standard feasibility indicators for each area of performance.

Table 16 Industry standard performance indicators

Performance	Project IRR	Development Margin
Feasible	> 15%	> 20%
Marginally Feasible	13% - 15%	17% - 20%
Not Feasible	< 13%	<17%

- **Table 17** below demonstrates the economic impact of affordable housing on financial viability in comparison to the results generated that support a finding that the inclusion of affordable housing is not feasible in this proposal. The analysis conducted states that as anticipated, the RLV and returns are adversely impacted if an affordable housing contribution was payable.

Table 17 Results of planning proposal with 0% affordable housing (AFH) and sensitivity analysis

	Analysis Results (0% AFH)	5% AFH	3% AFH	2% AFH
Development Margin	7.61%	3.8%	5.29%	6.06%
Internal Rate of Return	7.78%	6.4%	6.96%	7.24%
Residual Land Value (IRR of 15%)	\$76.3 million	\$70.55 million	\$72.9 million	\$74 million
Net Development Profit	\$21, 277, 982	\$11,025,849	\$15,128,175	\$17,179,339
Net Profit from 0% AFH Results		-48%	-29%	-19%

DPE Housing Policy Comments

The affordable housing feasibility study was referred internally within the Department to its housing policy team that provided the following comments:

- HillPDA adopted a lower IRR than would be typical for a high rise proposal, noting a longer lead time.

- The calculated land value is well below the indicative land purchase price and has been conservatively projected to significantly impact on the projected IRR and development margin. Both figures are well below industry standards.
- Requiring any additional affordable housing contributions would only further impact on those margins and the overall viability of the development, which is already questionable in current market conditions.

The Department therefore does not recommend the inclusion of an affordable housing percentage of the development in this instance based on the findings of the HillPDA study and the Department’s housing policy comments.

Design Excellence process

One of the development outcomes of the planning proposal is to facilitate a high quality urban and architectural design that exhibits design excellence and responds to the emerging and future character of the precinct.

North Sydney requires a design excellence process to be undertaken for major development proposals prior or post the lodgement of a development application stage should the proposal continue to progress. It is therefore unnecessary to duplicate provisions regarding this process in a DCP, and it is noted that there are currently no requirements in Council’s DCP for design excellence but that they have Design Excellence Panel to refer matters to.

Setbacks

Refer to section 3.3.4 of this report.

Through-Site Links

Refer to section 3.3.4 of this report.

Appropriate percentages of Parking Spaces for car share, motor bike / scooters, bicycles and electric vehicle charging

It is noted the inclusion of the above is not possible given the recently adopted North Sydney DCP amendment. It is further noted the ambiguity surrounding “appropriate percentages” as this will likely lead to various interpretations.

This should also be considered in the context of Council’s draft DCP amendment to car parking rates for new high-density developments in areas with high public transport access that was on public exhibition to December 2022. As noted in the planning proposal report, the provision of car parking, bicycle and motorcycle parking will be developed and considered further as part of any development application process.

Table 18 Assessment of each listed parking space considerations

Parking Space Type	Department Comment
Car share	<ul style="list-style-type: none"> • The concept design for the planning proposal includes an allocation of 12 car share spaces of a total 258 spaces, equating to 4.7%. • North Sydney’s DCP contains provisions regarding car share schemes.
Motor bike / Scooters	<ul style="list-style-type: none"> • The concept design proposes 11 motorcycle spaces be included in the development. • North Sydney’s draft DCP contains provisions for maximum motorcycle parking rates of 1 / 10 dwellings. When applied to the concept design, the planning proposal is consistent with this provision.

Parking Space Type	Department Comment
Bicycles	<ul style="list-style-type: none"> The concept design proposes 303 bicycle spaces to be included in the development. North Sydney's DCP contains provisions for minimum bicycle parking rates that are unchanged in Council's draft DCP. The proposal's design concept appears consistent with these provisions.
Electric vehicle charging	<ul style="list-style-type: none"> North Sydney's DCP requires that car parking areas be designed and constructed so that electric vehicle charging points can be installed at a later time. The planning proposal does not include reference to any electric vehicle charging provisions.

d) The proponent should work with Council and the Department to agree a VPA.

The Department has been informed by the proponent that Council is not seeking a VPA as the SIC applies to the site. The Department would not be involved in discussion on a local VPA with Council and the proponent.

e) All specialist reports should be checked for accuracy and updated to post-Covid conditions

In response to the Panel's decision, the proponent submitted an updated Supplementary Transport Assessment dated 15 November 2022 (**Attachment A5**) and an updated Economic Impact Assessment dated November 2022 (**Attachment A6**). The Department is satisfied that these specialist reports were appropriate to be updated in the context of the Panel decision. However, it is noted that there is a degree of ambiguity surrounding the definition of post-Covid conditions and this would be best placed being assessed during a DA stage closer to the timing of any construction beginning.

The following outlines the Department's comments on and observations of the revised specialist reports in the context described by the Panel.

Supplementary Transport Assessment (Attachment A5)

- The proponent engaged JMT Consulting to prepare a supplementary transport assessment in addition to the previous assessment submitted prior to rezoning review.
- The supplementary assessment notes the original traffic counts included in the original traffic assessment were undertaken in April 2020 during the first COVID lockdown. These counts were subsequently compared to traffic data from February 2020 and scaled up to form the basis of the traffic analysis provided as an appendix to the supplementary assessment.
- JMT Consulting used updated traffic data counts commissioned in October 2022 and concluded the data used in the 2020 analysis was generally higher than the data collected in October 2022. The analysis demonstrated the original traffic data provides for a conservative and robust assessment of traffic conditions compared to current conditions and is therefore suitable for ongoing use.
- JMT Consulting also concluded the traffic generation forecasts used in the original detailed modelling supporting the proposal are conservative and represent a worst case assessment of future year traffic conditions around the site.
- The supplementary assessment affirms that the car parking numbers noted in the planning proposal documentation are preliminary based on the current reference scheme and will remain compliant with Council controls in force at the time of any DA lodgement.
- The Department reiterates the definition of post-Covid is ambiguous and current conditions likely will not reflect those during and after any construction at the site.

Economic Impact Assessment (Attachment A6)

- The proponent commissioned HillPDA to revise its Economic Impact Assessment of the planning proposal in response to the Panel’s decision.
- The updated document analyses the socio-economic profile of the North Sydney LGA, summarising that the planning proposal will provide the types of land uses and subsequent employment opportunities that support the resident, worker and economic profile of the LGA.
- As a general assessment, the revised document has also taken into account the design costs and subsequent economic impacts in addition to just construction that was assessed in the original proposal.
- The assessment updates the figures for expected employment generation and associated economic benefits and impacts of the planning proposal.
- The assessment concludes the commercial spaces in the proposal will accommodate 441 jobs, an increase of approximately 290 jobs on current employment numbers on the site.
- The Department notes it is not in a position to conduct its own economic feasibility analysis of the proposal and reiterates that post-Covid conditions are particularly ambiguous regarding the economy. These considerations would be best placed being conducted closer to the time of a DA lodgement and future construction.

6 Consultation

6.1 Community

The planning proposal does not propose a number of days the proposal should be exhibited.

A condition of the exhibition period is be attached to the Gateway determination for 20 working days.

6.2 Agencies

The planning proposal does not specifically raise which agencies will be consulted. The Department recommends the following agencies be consulted on the planning proposal and given 30 days to comment:

- Transport for NSW;
- Transport for NSW (Sydney Metro)
- North Sydney Council;
- Ausgrid;
- Sydney Water Corporation;
- NSW Department of Education and Schools Infrastructure NSW;
- NSW Department of Health;
- Commonwealth Department of Transport, Infrastructure, Regional Development, Communications and the Arts (DTIRDCA);
- Sydney Airport;
- Civil Aviation Safety Authority (CASA); and
- Airservices Australia.

7 Timeframe

The planning proposal provides an indicative timeline with an anticipated completion date of the LEP amendment by March 2023.

The Department recommends a time frame of 9 months to ensure it is completed in line with its commitment to reduce processing times. It is recommended that if the gateway is supported it also includes conditions requiring council to exhibit and report on the proposal by specified milestone dates.

As such, from the date of the Gateway determination, the planning proposal must be:

- exhibited within 3 months; and
- reported to the Sydney North Planning Panel for a recommendation within 6 months.

The planning proposal is to be amended to provide an updated timeline for completion. It is recommended that a 9 month time frame is appropriate for this planning proposal from the date of the Gateway determination.

A condition to the above effect is recommended in the Gateway determination.

8 Local plan-making authority

The Sydney North Planning Panel approved the proposal to proceed to Gateway determination.

As the proposal is a result of a rezoning review, the Department will be the local plan-making authority.

9 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- it is generally consistent with the St Leonards and Crows Nest 2036 Plan;
- it is generally consistent with North Sydney Council's Local Housing Strategy and Local Strategic Planning Statement;
- it is generally consistent with the actions of the Greater Sydney Region Plan and North District Plan by facilitating additional residential dwellings and maximising public transport uptake;
- the increase to the planning controls will facilitate an increase and variety of residential dwellings close to existing and proposed public transport with good access to services and employment; and
- the amended scheme will have minimal impacts on heritage items and heritage conservation area's nearby, remaining consistent with the SLCN 2036 Plan controls.

Based on the assessment outlined in this report, the proposal must be updated before consultation to:

- update the planning proposal and all associated documents to reference the currently adopted North Sydney DCP 2013, including addressing any inconsistencies or contentions;
- update the planning proposal to reference the most up to date consultant reports supporting the proposal;
- address Ministerial Direction 5.3 in the context of the proposal's OLS height exceedance;
- provide an explanation on the street wall height inconsistency with the SLCN 2036 Plan; and
- include an updated timeline based on the issuing of the Gateway determination.

10 Recommendation

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated to address the following:
 - update the planning proposal to note the current adopted North Sydney DCP 2013 amendment that came into effect on 6 January 2023 and removing the reference to a site-specific DCP that is no longer required;
 - to correctly refer to the new and updated supporting documentation;
 - address Ministerial Direction 5.3 Development Near Regulated Airports and Defence Airfields and the proposed height's exceedance of the Obstacle Limitation Surface for Sydney Airport;
 - address the proposal's inconsistent street wall height with the St Leonards and Crows Nest 2036 Plan; and
 - 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 made publicly available along with planning proposals as identified in *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).

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;
 - Sydney Metro;
 - North Sydney Council;
 - Ausgrid;
 - Sydney Water Corporation;
 - NSW Department of Education / Schools Infrastructure NSW;
 - NSW Department of Health;
 - Commonwealth Department of Transport, Infrastructure, Regional Development, Communications and the Arts (DTIRDCA);
 - Sydney Airport;
 - Civil Aviation Safety Authority (CASA); 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, in response to a submission or 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 LEP should be completed within **9 months** of the date of the Gateway determination.



1 March 2023

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