



IRF23/2568

Plan finalisation report – PP-2021-7451

North Sydney Local Environmental Plan 2013 (Map
Amendment No. 6) – 391-423 Pacific Highway, 3-15
Falcon Street and 8 Alexander Street, Crows Nest

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Acknowledgement of Country

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

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

North Sydney Local Environmental Plan (LEP) 2023 (Map Amendment No. 6).

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land known as the Five Ways Triangle at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest.	
	The site is a street block of 19 allotments forming 16 parcels of land.	
	The legal descriptions of the 16 individual sites are:	
	3 Falcon Street – Lot 2 DP 29672	401 Pacific Highway – Lot 1 and 2 DP 16402
	7 Falcon Street – Lot 3 DP 29672	407 Pacific Highway – Lot 10 DP 29672
	9-11 Falcon Street – Lot 1 DP 127595	411 Pacific Highway – Lot 8 and 9 DP 29672
	15 Falcon Street – Lot 1 DP 562966	413 Pacific Highway – Lot 7 DP 29672
	8 Alexander Street – Lot 11 DP 29672	415 Pacific Highway – Lot 6 DP 29672
	391-393 Pacific Highway – Lot 6 DP 16402	417 Pacific Highway – Lot 5 DP 29672
	395 Pacific Highway – Lot 4 and 5 DP 16402	419 Pacific Highway – Lot 4 DP 29672
	399 Pacific Highway – Lot 3 DP 16402	423 Pacific Highway – Lot 1 DP 29672
Type	Site	
Council	North Sydney Council	
LGA	North Sydney	

The site located at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest is an amalgamated site known as the Five Ways Triangle, and is located in the North Sydney Local Government Area (LGA) which is 5.7km north of the Sydney CBD. It is on the eastern side of Pacific Highway and within the St Leonards and Crows Nest 2036 Plan (SLCN 2036 Plan) precinct.

The site comprises a street block of 19 lots with a total site area is 3,200sqm, bounded by the Pacific Highway, Falcon Street and Alexander Street. (**Figure 1**). The site generally falls in a south easterly direction, with the highest point on the north western corner on (Falcon St/Pacific Highway) down to the south eastern corner (Alexander St/Pacific Highway).

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.

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 4). Crows Nest Hotel is listed as a local heritage item located north of the site across Falcon Street.

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. Consultation was undertaken with Sydney Metro during exhibition.



Figure 1 Subject site (Source: *SIX Maps*)

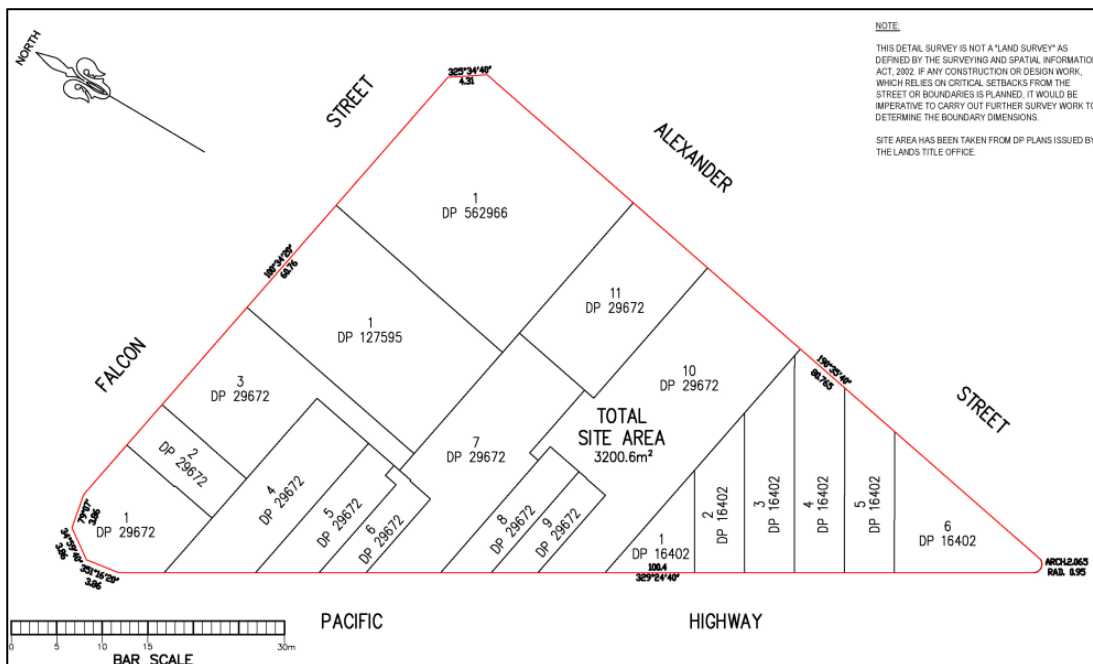


Figure 2 Site survey (Source: *planning proposal, Gyde March 2023*)



Figure 3 Existing development on the site viewing the Pacific Highway frontage (Source: *nearmap*)

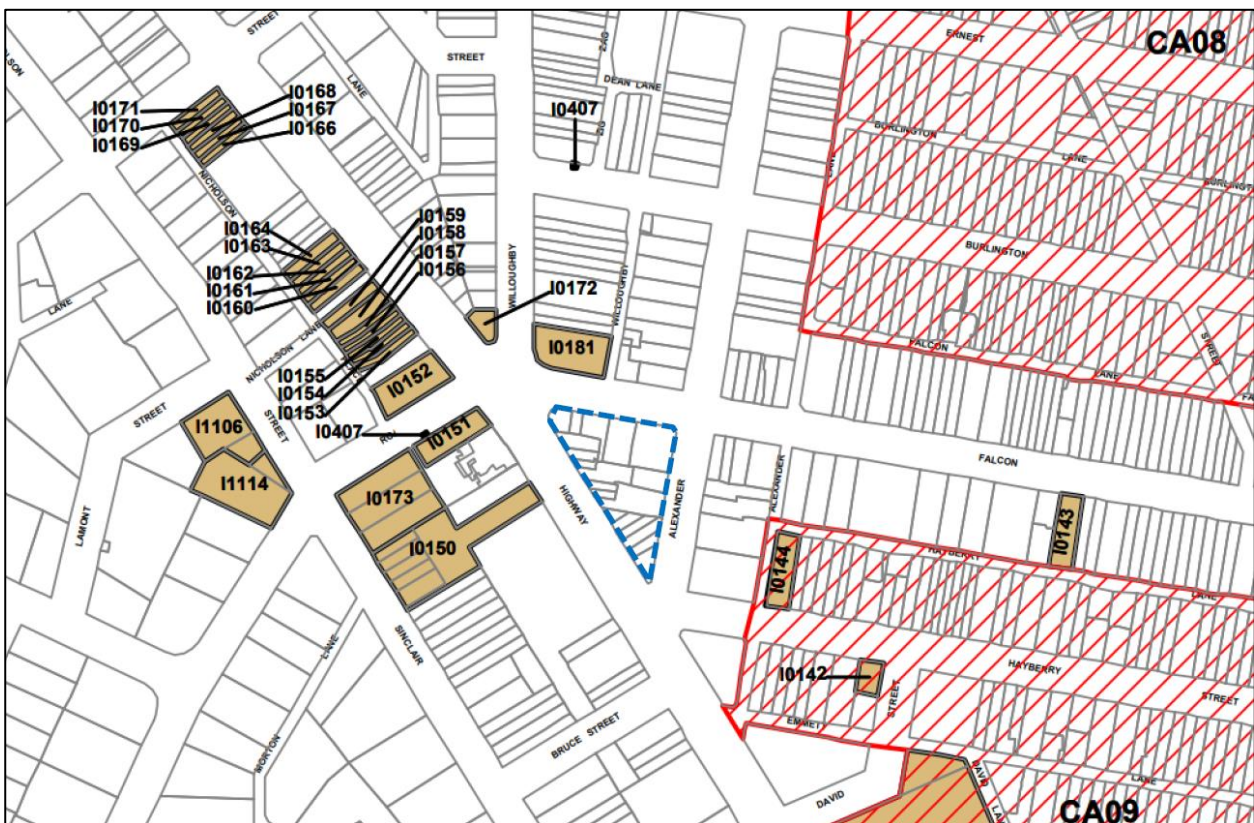


Figure 4 Current heritage map under North Sydney LEP 2013 (Source: *Heritage Impact Statement, Urbis*)

1.1.3 Purpose of plan

The planning proposal seeks to amend the North Sydney LEP 2013 to facilitate a 16 storey mixed use development on the site known as the Five Ways Triangle. The development will accommodate 129 dwellings and 8,002sqm non-residential gross floor area (GFA) providing 441 jobs (**Attachment A**).

The proposal as submitted for finalisation seeks to amend 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 2 below outlines the current, proposed and final controls achieved by the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed	Final
Zone	MU1 Mixed Use	MU1 Mixed Use (no change)	MU1 Mixed Use (no change)
Maximum building height	16m	62.5m	58.5m
Site-specific provision	N/A	N/A	An additional 2m in height (total 60.5m), subject to the height increase relating to lift overrun, rooftop plant or associated rooftop equipment, under Clause 4.3A Exceptions to height of buildings to apply.
Floor space ratio (FSR)	N/A	5.8:1	5.8:1
Minimum non-residential FSR	0.5:1	2.5:1	2.5:1
Number of dwellings	0	129	129
Number of jobs	Approx. 154	441	441

A post-exhibition change is recommended to the maximum building height proposed in this planning proposal as discussed in Section 3.3 of this report. The change involves reducing the maximum building height from 62.5m to 58.5m, with the application of Clause 4.3A Exception to Height of Buildings to allow for an additional 2m in height for lift overruns and associated structures necessary to provide access, balustrades and rooftop plant or equipment.

The proposed development concept scheme is provided in **Figures 5** and **6**. The recommended post-exhibition changes are not reflected in these indicative built form drawings.



Figure 5 Indicative built form (source: *Urban Design Report, Turner*)

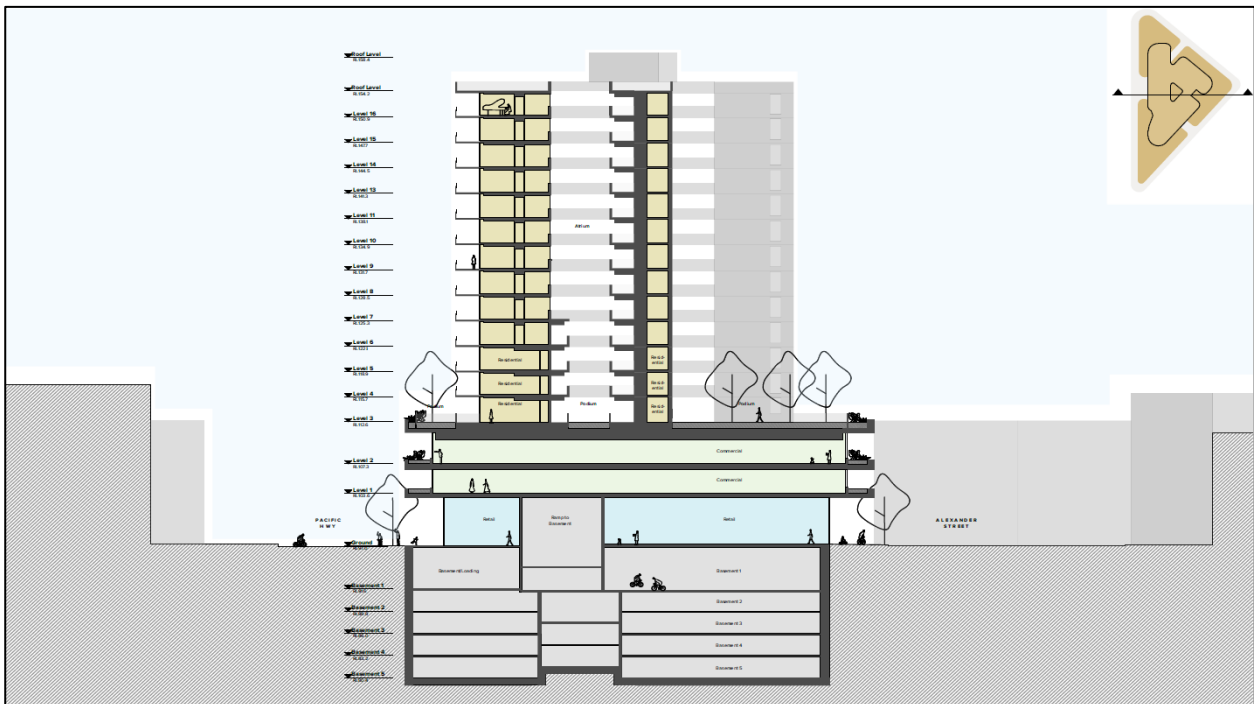


Figure 6 Proposed development section (source: *Urban Design Report, Turner*)

1.1.4 State electorate and local member

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

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

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

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

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

2 Gateway determination and alteration

On 4 October 2022, a rezoning review was considered and the Sydney North Planning Panel (the Panel) recommended the planning proposal should proceed to Gateway. As Council did not support the planning proposal, the Panel appointed itself as the Planning Proposal Authority (PPA) in accordance with the Local Environmental Plan Making Guideline (September 2022).

The Panel recommended amendments to the planning proposal before proceeding to Gateway determination. This related to a reduction in the podium height (by 1-2m consistent with the changes in levels across the site) producing a reduction in the overall height of 63.5m. The Panel supported the amended planning proposal on 9 December 2022.

The Gateway determination issued on 2 March 2023 (**Attachment B**) determined that the proposal should proceed subject to conditions.

The Gateway determination was altered on 19 April 2023 to correct a minor error in the Gateway determination that authorised the Panel to exercise the functions of the local plan-making authority. The alteration removed this condition as the Department is the local plan-making authority.

On 1 May 2023, the Panel was advised by the Department that the proposal was adequately amended to satisfy the Gateway conditions to allow exhibition to commence. The Panel noted that the Gateway determination conditions have been met. An updated planning proposal and accompanying documents responding to the Gateway conditions were exhibited on the NSW Planning Portal.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited on the NSW Planning Portal for 25 working days from 3 May 2023 to 6 June 2023.

Following public exhibition, the Panel held a public meeting on 13 September 2023 where it considered the post exhibition report prepared by the Department's Agile Planning Team, which recommended the planning proposal be submitted for finalisation.

A majority of the Panel concurred with this recommendation and concurred with the post exhibition report that the proposal demonstrated strategic and site-specific merit, the conditions of Gateway had been met, and that issues raised in agency and public submissions had been adequately addressed.

The decision noted that one Panel member disagreed with the majority and considered that the maximum building height provision should be 56m, with an additional allowance for centralised lift overrun facilities. Additionally, it was considered that the podium height should be reduced to better reflect the historical shopfronts in the vicinity of the site.

The planning proposal was submitted to the Department for finalisation on 19 September 2023.

In finalising the proposal, the Department in consideration of submissions and the Gateway Determination Report have recommended a post-exhibition change to the maximum building height, as discussed in Section 3.3 of this report.

3.1 Submissions during exhibition

A total of 73 public submissions were received, comprising of 68 objections, 4 submissions supporting the proposal and 1 submission unclear on its position. There were 4 submissions were received from local precinct groups and committees. A total of 10 agency submissions were received as outlined in **Table 4**. The Post exhibition report (**Attachment C**) considers the matters raised by members of the public, North Sydney Council and public agencies during the public exhibition of the planning proposal.

3.1.1 Submissions supporting the proposal

There were 4 submissions (approximately 5% of the total) received in support of the planning proposal. In summary, the submissions supported the proposal for the following reasons:

- supply of additional housing near the Crows Nest Metro Station.
- proposed development will support an increased use of public transport.
- businesses will benefit from an increase in the local population.

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

There were 68 submissions (approximately 93% of the total) received from the community raising objections to the planning proposal.

The key issues raised in submissions included:

- Building height (76%)
- Traffic and parking (54%)
- Overshadowing (50%)
- Neighbourhood character (40%)
- Bulk and scale (37%)

Submissions also raised other issues which were considered in the Department's post exhibition report and by the Panel. **Table 3** provides a summary of the key issues raised in submissions and the Department's response.

Table 3 Summary of Key Issues

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
Building height, bulk and scale	76% (building height) 37% (bulk and scale)	<p><u>Community View:</u></p> <p>Concerns were raised the proposal would establish a precedent for approvals of large buildings and the proposed height does not enable an appropriate transition to lower density areas. Submissions were concerned with the building height given the site's location on a ridge and the development will result in excessive bulk and scale.</p> <p><u>Department Response:</u></p> <p>The site is located within an identified growth area under the SLCN 2036 Plan, which recommends a 16 storey development for the site. The concept scheme is generally consistent with the Plan</p>

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
		<p>in relation to the proposed number of storeys, however the 2036 Plan does not prescribe a height in metres. The Department notes the concerns raised regarding building height in this location.</p> <p>The Panel has endorsed the proposed bulk and scale of the development, agreeing the podium as revised (following the rezoning review) is appropriate for the site. The Department's Urban Design Team advice reaffirms this, considering the podium height provides transition to adjoining low scale residential areas. A larger reduction in podium height may compromise the use of the proposed mezzanine level in the south-eastern section of the podium.</p> <p>The Department is recommending a reduction to the building height achieved by the proposal to 58.5m with an additional 2m site-specific provision achieving a total building height of 60.5m. As discussed further in Section 3.3 of this report, it is considered that the proposed 16 storey development scheme can be accommodated within a 60.5m height limit. This maintains the podium mezzanine. All other proposed controls are consistent with the SLCN 2036 Plan.</p> <p>The Department considers this issue has been adequately addressed.</p>
Traffic and parking	54%	<p><u>Community View:</u></p> <p>The proposal will generate additional unwanted traffic and congestion along Pacific Highway, Falcon Street, Alexander Street and Shirley Road. Existing parking issues would be exacerbated.</p> <p><u>Department Response:</u></p> <p>The planning proposal is supported by a Supplementary Transport Assessment (Attachment A5) which identifies the existing and proposed traffic generation of the site. This assessment concluded the additional traffic attributable to development is not expected to have any significant impact on the performance of surrounding intersections, or the local road network. The proposal is consistent with the SLCN 2036 Plan and North District Plan as it is accessible to public transport and encourages a walkable neighbourhood to reduce the need for car dependency.</p> <p>The Department notes this traffic assessment is based on the proposed number of car parking spaces that are significantly more than the spaces currently permitted in the North Sydney DCP 2013 for the site. Since lodgement of the planning proposal, the North Sydney DCP 2013 has been amended to significantly revise the number of car parking spaces for the site.</p> <p>As the planning proposal does not seek to lock in a set number of parking spaces, the number of car parking spaces will be confirmed at the future DA stage.</p>

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
		The Department considers this issue has been adequately addressed.
Overshadowing	50%	<p><u>Community View:</u></p> <p>The proposed building height will result in a loss of sunlight to neighbouring low density areas. Community concerns raised the impact of privacy caused by overlooking into nearby residential dwellings.</p> <p><u>Department Response:</u></p> <p>The planning proposal is consistent with the solar access principles in the SLCN 2036 Plan. The Urban Design Report (Attachment A3) contains a shadow analysis demonstrating the concept scheme will not result in additional overshadowing of key open spaces during the nominated times and will maintain solar access to residential areas within and outside the plan's boundary.</p> <p>The Department is recommending a reduction in maximum building height to 60.5m that will contribute to a minor decrease in overshadowing anticipated by the proposal. This will help reduce some of the impacts experienced by the nearby Heritage Conservation Area (HCA).</p> <p>The Department notes the development concept accompanying the proposal is indicative only and the extent of overshadowing can be further analysed in a future DA.</p> <p>The Department considers this issue has been adequately addressed.</p>
Neighbourhood character	40%	<p><u>Community View:</u></p> <p>The proposal is inconsistent with the character of Crows Nest and will negatively impact the neighbourhood character. This impact would extend to low scale residential areas to the east and west. Submissions identified there is a lack of building of comparable height in the area.</p> <p><u>Department Response:</u></p> <p>The planning proposal was lodged in response to the SLCN 2036 Plan that identified a building height of 16 storeys for the site along with a podium height of 3 storeys with a 4 storey podium fronting the Five Ways intersection. It is noted the majority of the Panel determined at rezoning review the height of the podium and subsequent overall development should be reduced by 1-2 metres consistent with the change in levels across the site. The proposal was amended to reduce this height by 1m, and the Panel has consistently found the proposal to have strategic merit in the context of the SLCN 2036 Plan.</p> <p>The proposal states the podium heights respond to the height of neighbouring buildings. The Department notes the proposal is</p>

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
		<p>justifiably inconsistent with the SLCN 2036 Plan as it seeks to locate a podium mezzanine level in the south-eastern corner of the site. This is the lowest topographic point of the site and the Panel supported the proponent's reasoning for including the additional podium height in this location.</p> <p>The compatibility of the development with the character of the neighbourhood and the adjacent heritage conservation area will be further considered at development application stage.</p> <p>The Department considers this issue has been adequately addressed, as the proposal aligns with the proposed built form envisaged by the 2036 Plan and further consideration can be given to the detailed design at DA stage.</p>
Social infrastructure provision	24%	<p><u>Community View:</u></p> <p>Existing infrastructure in Crows Nest will be unable to accommodate the proposed increased population growth. Submissions were concerned the proposal does not specify the public benefits with regards to landscaping.</p> <p><u>Department Response:</u></p> <p>The site was previously subject to the St Leonards and Crows Nest Special Infrastructure Contribution (SIC). On 1 October 2023 the Housing and Productivity Contribution was introduced and will apply to new residential and commercial development. Contributions will help fund new and upgraded infrastructure to support new growth. These funds will contribute to infrastructure such as the provision of new open space, transport, education and health facilities.</p> <p>Noting the submitted concept design, the planning proposal does indicate there are opportunities to improve the public domain including street tree planting.</p> <p>The Department considers this issue has been adequately addressed.</p>
Heritage	18%	<p><u>Community View:</u></p> <p>The proposal will result in a loss of character and negatively impact the two HCAs to the east and north-east.</p> <p><u>Department Response:</u></p> <p>Refer to the above response to the overshadowing issue.</p> <p>The Department further notes the proposal is accompanied by a Heritage Impact Assessment (Attachment A7) that concludes the proposal is supported from a heritage perspective. Further assessment on the compatibility of the development with nearby heritage items and HCA's will be undertaken at the DA stage.</p> <p>The Department considers this issue has been adequately addressed.</p>

Issue raised	Submissions (% of objections)	Summary of submissions and the Department's Response
Wind impacts	15%	<p><u>Community View:</u></p> <p>Some submissions were concerned the proposal will lead to an increase in the wind tunnel effect experienced in the area.</p> <p><u>Department Response:</u></p> <p>A Pedestrian Wind Environment Statement (Attachment A11) submitted with the planning proposal recommends that wind tunnel testing be undertaken as part of the detailed design phase of any future DA.</p> <p>The Department considers this issue can be adequately addressed at the DA stage through detailed assessment of the proposed design.</p>

3.1.3 Other issues raised

Affordable Housing Supply

Community View:

There is demand for affordable housing in the area the proposal could contribute towards. The proposal itself does not specify the amount of affordable housing potentially provided in the future development.

Department Response:

The Gateway Determination Report (**Attachment B2**) contains a detailed assessment of affordable housing in the context of the proposal. The Department's conclusion in the Gateway Determination Report was not to recommend the inclusion of an affordable housing percentage of the development.

The Department considers this issue has been adequately addressed noting there is no statutory requirement for affordable housing to be provided in the North Sydney LGA and the evidence provided by the proponent regarding the lack of feasibility to include affordable housing on the site due to the acquisition cost of consolidating multiple lots and post-exhibition changes to the SLCN 2036 plan that limited the development outcome for the site to 16 storeys.

Strategic Alignment

Community View:

The proposal does not respond to the character and vision outlined by the SLCN 2036 Plan and is inconsistent with the North Sydney Local Strategic Planning Statement (LSPS).

Department Response:

The Department notes that the Panel, at rezoning review, determined the proposal has strategic merit, and is satisfied the planning proposal is generally consistent with the SLCN 2036 Plan. As identified in the Gateway Determination Report, the proposal is consistent with the North Sydney LSPS delivering a variety of additional residential dwellings an area well serviced by transport, jobs, infrastructure and public open space.

Community Consultation

Community View:

Some submissions were concerned the community was not consulted prior to lodgement of the planning proposal. One community group requested an audience with the proponent to discuss the proposal.

Department Response:

The Department on behalf of the Panel as PPA has undertaken the necessary public consultation as required by the Gateway Determination (**Attachment B**) and relevant guidelines. Submitters were also provided an opportunity to address the Panel at a public post-exhibition meeting.

3.2 Advice from agencies

In accordance with the Gateway determination, the Panel was required to consult with agencies and Council as listed below in **Table 4** who have provided the following feedback.

Table 4 Advice from agencies and Council

Agency	Advice raised	Department response
North Sydney Council	<p><u>Strategic Merit</u></p> <p>The proposal is inconsistent with the urban design principles of the SLCN 2036 Plan. It would result in a height and density that will permanently change the character of Crows Nest village. It will dominate the significant HCA's to the south and east.</p>	<p><u>Strategic Merit</u></p> <p>On 4 October 2022, a majority of the Panel determined the proposal had strategic merit. The proposal is generally consistent with the recommended controls for the site identified in the SLCN 2036 Plan. These controls were recommended in the context of the urban design principles to be achieved by development in the precinct.</p> <p>The Department considers the proposed location of a 4th storey in the podium justifiably inconsistent with the SLCN 2036 Plan, as its proposed location is the lowest topographic point of the site.</p> <p>The Department is recommending a post exhibition reduction to the building height achieved by the proposal to 60.5m. This is to address the concerns raised regarding impact and amenity on the adjoining HCA's and that the proposed height may result in a development that could exceed 16 storeys.</p> <p>Refer to Section 3.3 of this report for details on this post exhibition change. Further consideration of the concept scheme will occur at DA stage.</p>

Agency	Advice raised	Department response
	<p><u>Site-specific Merit Issues</u></p> <p>Council recommended a site-specific DCP be prepared to ensure appropriate building mass and transition, podium height and treatment, setbacks, heritage, public domain, through-site links and parking rates. Council also notes the Panel's rezoning review decision recommending a site-specific DCP be prepared and notes the dissenting Panel member's comments.</p> <p>Council consider conditions 1(a)¹ and 1(d)² of the Gateway determination have not been adequately addressed.</p>	<p><u>Site-specific Merit Issues</u></p> <p>A majority of the Panel in its decision to support the rezoning review determined it to have site-specific merit subject to a 1-2 metre reduction in podium and subsequent building height, and a site-specific DCP being prepared to address a number of issues.</p> <p>A full assessment of the Panel's recommended site-specific DCP elements can be found in the Department's Gateway Determination Report (pages 38-41) (Attachment B2).</p> <p>The conditions of the Gateway determination were addressed to the satisfaction of the Department prior to exhibition on 1 May 2023.</p> <p>Condition 1(a) of the Gateway determination required the planning proposal to reference the adopted North Sydney DCP 2013 amendment applying to the SLCN 2036 Plan precinct. This was anticipated to address any inconsistencies or contentions. This also included removing reference to the submitted site-specific DCP. Updates to the planning proposal were made to include reference to the adopted of Council's DCP on 6 January 2023.</p> <p>Condition 1(d) of the Gateway determination required the planning proposal to provide an explanation on the street wall height inconsistency with the SLCN 2036. The planning proposal has been updated to address the proposal's inconsistent street wall height with the St Leonards and Crows Nest 2036 Plan. The proposal notes that the concept design provides 3 storeys at the Fiveways Intersection, however that the proposed floor to floor levels and topography still ensures the proposal presents to the Fiveways intersection achieving the objective of a gateway element (p.47).</p>

¹ Condition 1(a) "note the adopted North Sydney DCP 2013 amendment that commenced on 6 January 2023 and removing the reference to a site-specific DCP that is no longer required"

² Condition 1(d) "address the proposal's inconsistent street wall height with the St Leonards and Crows Nest 2036 Plan"

Agency	Advice raised	Department response
	<p><u>Height, Bulk and Scale</u></p> <p>The reference scheme includes a podium inconsistent with the recommended SLCN 2036 Plan street wall heights. This magnifies the bulk and scale and does not provide an appropriate interface and transition to nearby HCA's.</p> <p>The proposed 62.5m height is well in excess of required for a 16 storey building. A 56m height with an additional 2m allowance has been considered appropriate for other mixed use development in the precinct.</p> <p><u>Overshadowing</u></p> <p>Proposed height adds unnecessarily to the overall building height resulting in a shadow length 19.5m longer than necessary for a 16 storey tower.</p>	<p><u>Height, Bulk and Scale</u></p> <p>The Department notes Council's submission strongly recommended a maximum building height of 56m with an additional allowance for lift overrun.</p> <p>As identified in Council's submission, the Department's Gateway Determination Report does consider the proposed height of 62.5m could result in a building up to 17 storeys.</p> <p>The Department is recommending the maximum building height achieved by the planning proposal be reduced to 58.5m with an additional 2m site-specific clause allowing for lift overrun, rooftop plant or associated rooftop equipment. The concept proposal's 4.6m lift overrun is considered excessive and could accommodate an additional storey in a future DA. Further details on this recommendation are in Section 3.3 of this report.</p> <p>As referenced in Section 3.3, the recommended total 60.5m height limit can accommodate the proposed formation of the podium and all residential levels adequately within the overall limit. It is acknowledged this recommended height limit remains generous for a 16 storey development. This height reduction will have some benefit in reducing the impact of the podium in the context of the surrounding scale.</p> <p>It is recognised the presented design scheme is indicative only and final detail provided by the proponent regarding heights of the structural transfer zone, rooftop plant and the podium can be considered further at a DA stage.</p> <p><u>Overshadowing</u></p> <p>The Department has responded to concerns relating to overshadowing in Table 3 above.</p>

Agency	Advice raised	Department response
Transport for NSW (TfNSW)	<p><u>Transport Improvements</u></p> <p>TfNSW identified the site is within a broader investigation area to upgrade Pacific Highway. TfNSW requested a 2m setback along the Pacific Highway frontage for future provision of a cycle corridor.</p>	<p><u>Transport Improvements</u></p> <p>The Department's post exhibition report notes a high level strategic review was undertaken by TfNSW in March 2023 identifying the need for a cycle corridor along the Pacific Highway. However, there is no draft plan or business case, or funding allocated to support any potential land acquisitions.</p> <p>The proponent considered this request and did not agree with the provision of an additional setback given the lack of strategic planning documentation supporting it.</p> <p>The Department notes without a site-specific DCP or any identified land acquisition, this LEP amendment is unable to require a 2m setback from Pacific Highway as a statutory control. It is considered that this issue has been adequately addressed.</p>
	<p><u>Design</u></p> <p>TfNSW recommends vehicular access to the site from Alexander Street be restricted to left-in / left-out operation.</p> <p>TfNSW also notes pedestrian links direct pedestrian traffic to midblock locations.</p> <p>Comments were also provided on loading and servicing and bicycle parking for consideration in a DA.</p>	<p><u>Design</u></p> <p>TfNSW provided a supplementary submission agreeing to defer all raised traffic matters to a DA stage. This includes the recommended direction of entry / exit from the site. It is further noted specific vehicular access is not a requirement during the planning proposal rezoning.</p> <p>The Department notes the proposed through site link locations differ from the location of a link on the site within the North Sydney DCP 2013. This can be further addressed in a DA to identify the most appropriate location for pedestrian links.</p>
	<p><u>Traffic Impact Assessment</u></p> <p>TfNSW raised a number of issues on review of the submitted TIA with traffic counts and intersection cycle times.</p>	<p><u>Traffic Impact Assessment</u></p> <p>The proponent responded to TfNSW on these issues who in a supplementary submission confirmed in light of minimal traffic generation, these matters can be considered and addressed in more detail during a DA.</p>

Agency	Advice raised	Department response
	<p><u>Car Parking</u></p> <p>Located 400m from Crows Nest Metro Station, TfNSW strongly encourages the proposed transit oriented development use the same or similar parking rates as developed by Sydney Metro.</p>	<p><u>Car Parking</u></p> <p>The Department notes the planning proposal includes a car parking provision based on the North Sydney DCP 2013 at the time of lodgement of the proposal. North Sydney Council has since amended the DCP for the location to significantly reduce the number of on-site car parking spaces permitted. Adoption of the Sydney Metro parking rates would be a further reduction.</p> <p>The Department considers this matter can be resolved in a future DA noting the reduced number of parking spaces in Council's DCP.</p>
Sydney Metro	Sydney Metro raises no objections to the proposal. Its submission contains requests for consideration ahead of lodging a future DA.	The Department notes this submission. The proponent can address each consideration in a future DA and the Department will ensure Council has a copy of the submission.
Ausgrid	Ausgrid has no comment to make regarding the planning proposal at this time.	The Department notes this submission.
Sydney Water Corporation	Sydney Water raises no objections to the proposal and requests all impactful DA's should be sent for comment.	The Department notes this submission. Further consultation with Sydney Water will be undertaken by the appropriate consent authority for a future DA.
Schools Infrastructure NSW (SINSW)	<p>SINSW advises it is likely the number of students projected to be generated by the proposal can be accommodated by surrounding schools.</p> <p>SINSW encourages consideration of the cumulative impact on the surrounding transport network.</p>	The Department notes the submission. The planning proposal has considered a number of anticipated traffic and transport impact attributable to the proposed development. Greater detail can be provided and assessed in a future DA.
NSW Department of Health	No decision required as the proposal is not in proximity to any North Sydney Local Health District property.	The Department notes a submission is not required.

Agency	Advice raised	Department response
Commonwealth Department of Transport, Infrastructure, Regional Development, Communications and the Arts (DTIRDCA)	The proposed height of 159.5m AHD is likely to intrude into the Obstacle Limitation Surface (OLS) for Sydney Airport which is at 156m AHD. Development above this height cannot be carried out without prior approval.	The Department noted these submissions and that there are no objections raised in relation to the proposed development. As advised, the proponent should engage early with Sydney Airport to ensure any proposed intrusion is appropriately assessed. The proponent is encouraged to obtain all the required approvals prior to construction.
Sydney Airport	The Sydney Airport OLS is 156m AHD for the site. Approval to operate construction equipment should be obtained prior to any commitment to construct.	It is considered this can be responded to at a DA stage.
Civil Aviation Safety Authority (CASA)	Sydney Airport will confirm the infringement and obtain relevant comments. As there are much taller buildings in the vicinity, it is very unlikely CASA will recommend any mitigations such as obstacle lighting for the building.	
Airservices Australia	Airservices are unable to provide comment with no specific development detail.	

3.3 Post-exhibition changes

3.3.1 The Department's recommended changes

Following receipt of the revised planning proposal from the Panel, the Department at finalisation is recommending a change to the maximum building height to be achieved by the LEP amendment for the site. The Department has considered the post exhibition submissions report and acknowledges the majority Panel recommendation that the planning proposal be finalised as proposed.

However, as discussed further below, the Department considers it appropriate to reduce the maximum building height achieved by the proposal to provide certainty regarding the maximum number of storeys being 16, to ensure a suitable development outcome, and respond to issues raised throughout submissions by the Council and community.

The Department has recommended an amended maximum building height to 58.5m with an additional 2m in height (total 60.5m), subject to the height increase relating to lift overrun, rooftop plant or associated rooftop equipment. This represents an overall reduction of 2m from the exhibited proposed height and ensures defines the height of the rooftop plant.

Table 5 compares the exhibited proposed controls recommended by the Panel with the final controls recommended by the Department for finalisation of the LEP amendment.

Table 5 Proposed and Department recommended controls

Control	Proposed	Department Recommendation
Zone	MU1 Mixed Use	MU1 Mixed Use
Maximum building height	62.5m	58.5m (-4m)
Site-specific provision	N/A	An additional 2m in height (total 60.5m), subject to the height increase relating to lift overrun, rooftop plant or associated rooftop equipment. (New provision)
Floor space ratio (FSR)	5.8:1	5.8:1
Minimum non-residential FSR	2.5:1	2.5:1
Number of dwellings	129	129
Number of jobs	441	441

3.3.2 Justification for post-exhibition changes

The Department notes this post-exhibition change to maximum building height is a minor reduction in height and does not require re-exhibition.

It is considered that the post-exhibition change:

- Is a reasonable response to submissions received;
- does not alter the intent of the planning proposal;
- is a minor adjustment to the planning proposal to allow for lift overruns and plant at rooftop level consistent with other proposals in North Sydney; and
- continues to give effect to the St Leonards and Crows Nest 2036 Plan and the recommended height of 16 storeys.

The Department has considered the following matters in recommending this amendment to the maximum building height.

Response to submissions

As outlined, many issues raised in submissions objecting to the planning proposal relate to building height, bulk, scale and overshadowing. Details of how this height reduction addresses each issue are provided in **Table 3**. The post-exhibition height reduction of 2m in total height recommended by the Department reduces the cumulative height impact of the proposed development.

It is noted some submissions make reference to the minority Panel member's height recommendation with one submission specifically requesting building height be reduced to 60.5m including the lift overrun prior to exhibition of the proposal.

The minority Panel member recommended a maximum building height of 56m at rezoning review, with an additional allowance for centralised lift overrun facilities. It was further recommended the schematic podium height should be reduced to better reflect the historical shopfronts in the vicinity of the site.

The Department further notes this Panel member remained in the minority throughout the rezoning review process, recommending in a forwarding the planning proposal for Gateway determination

that the amended proposal that the maximum building height should be 60.5m, including centralised lift overrun facilities.

The Department's amendment to building height also responds to North Sydney Council's submission detailed in **Table 4**. While the Department does not seek a height reduction to 56m per Council's submission, it is recognised a reduction of 2m to a total height of 60.5m ensures the development can achieve a 16 storey height limit while accommodating many features such as the proposed podium mezzanine.

The Department considers this height amendment to be minor in nature to achieve a reduction in scale and overshadowing over low scale residential areas and HCA's. An overshadowing analysis of the exact overshadowing mitigation attributable to the 2m height reduction has not been conducted.

Provides greater certainty of achieving a 16 storey built form

As noted in the Gateway Determination Report (**Attachment B2**), the proposed height of 62.5m exceeds the expected height limit when following the assumptions of the ADG at 16 storeys, potentially resulting in a building of up to 17 storeys.

The Department recommendation of 60.5m is derived from the following ADG recommendations totalling 60.3m rounded to 60.5m that maintains the proposed 16 storey development scheme:

- 3.1m floor to floor height in 13 storey residential tower (as per ADG);
- 8.1m ground floor with mezzanine level;
- 3.7m two storeys commercial;
- 1.5m structure transfer / green roof (this can be reduced to 1.2m);
- 2m rooftop structure; and
- 1m to account for changing topography as per ADG.

The Department notes these recommendations present an indication of the possible development within a 60.5m height limit and are not indicative of the proponent's development concept.

The Department considers a minor reduction to this recommended total height of 60.5m (58.5m + 2m for plant) is necessary to provide certainty regarding the number of storeys capable of development. This height will maintain the proposal's consistency with the SLCN 2036 Plan.

As outlined below, the Department is also introducing a site-specific provision of 2m to accommodate the rooftop plant facilities within the development footprint. The Department considers the above breakdown to be generous for a 16 storey building as it continues to accommodate the additional storey in one section of the podium.

The proposed amendment does not preclude the consideration of a proposed variation at development application stage for the detailed design of a development scheme.

The proposed rooftop plant is excessive and could accommodate an additional storey

As discussed above, the Department's Urban Design Team reviewed the initial 63.5m planning proposal and recommended the apparent 4.6m floor to floor height for the rooftop plant exceeds ADG recommendations. The height of this rooftop plant has not changed during the following iterations of the planning proposal and is demonstrated in **Figure 7** below.

Urban Design recommended a 2m height for the rooftop plant which is a similar provision to that applying to another 16 storey development at 50-56 Atchison Street, St Leonards. It is noted this planning proposal will receive 2.5m more than this recently approved 16 storey development.

The Department recognises the need to constrain the rooftop plant for the site in the context of the proposed 4.6m as this could generate an additional storey during a future DA. The site-specific provision of 2m applied by the Department will ensure a quality development can be achieved while not unnecessarily extending in height. The total height achieved by the development will be

60.5m, representing a 2m reduction that reduces the possibility of an extra storey being incorporated into the future DA.

The Department notes Council's submission recommending a maximum building height of 56m accompanied by a site-specific provision. The Department considers reducing the height to 56m could make the proposed development unfeasible as the additional 4th storey element in the podium will accommodate non-residential floorspace.

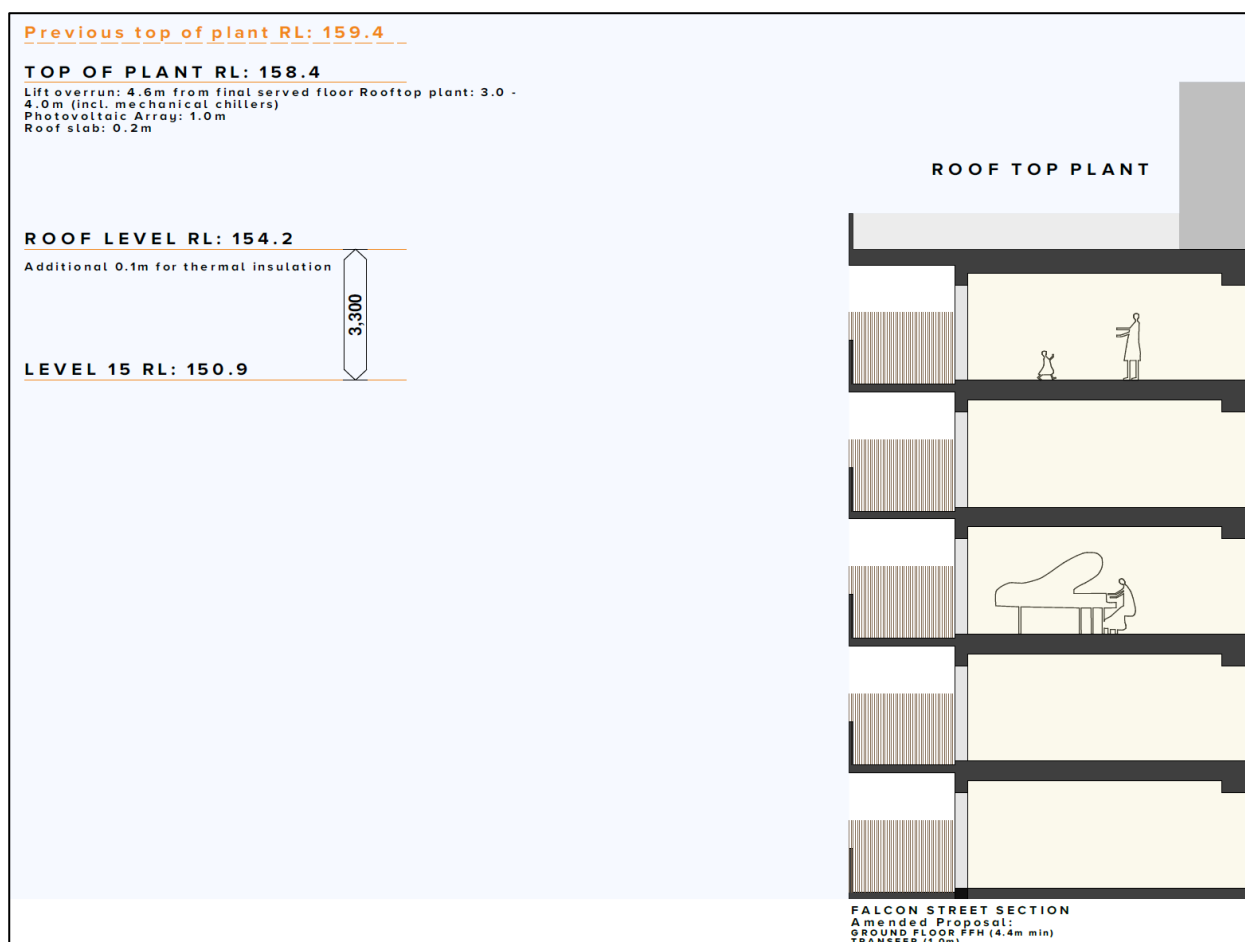


Figure 7 Proposed rooftop plant development section (source: *Urban Design Report, Turner*)

North Sydney Local Planning Panel (LPP) recommendation

The North Sydney LPP considered the planning proposal on 8 June 2022. It is noted the LPP considered the proposal that was lodged for rezoning review with a proposed height limit of 63.5m. The remaining proposed controls remain unchanged.

The LPP unanimously recommended to North Sydney Council the planning proposal should proceed to a Gateway determination subject to a maximum building height of 60m (**Attachment I**). The LPP recognised the need to facilitate sustainable building methods while providing certainty as to the number of storeys capable of being built within the 60m height limit (16 storeys). The LPP further recognised the need to ensure massing of the development is appropriate to minimise overshadowing to the HCA.

Ministerial Direction 5.3 Development Near Regulated Airports and Defence Airfields

The Department's Gateway Determination Report (**Attachment B2**) identified the planning proposal would exceed the Sydney Airport Obstacle Limitation Surface (OLS) of 156m AHD by 3.5m. As raised in agency submissions discussed in **Table 4**, the proponent will need to consult with appropriate authorities for development and construction occurring above this OLS.

The reduction in building height recommended by the Department to 60.5m will result in a breach of the OLS of 1.5m for the site, as opposed to 3.5m under the proponent's preferred plan.

4 Department's assessment

The planning proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal. It is noted the Department's recommended maximum building height reduction does not alter the intent of the proposal to achieve a 16 storey mixed-use development.

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

- the St Leonards and Crows Nest 2036 Plan, noting the variation in location of the 4th podium storey is justified;
- North Sydney Council's Local Housing Strategy (LHS) and Local Strategic Planning Statement (LSPS);
- actions of the Greater Sydney Region Plan and North District Plan;
- all relevant Section 9.1 Directions, noting the Gateway determination report considered the proposal to be inconsistent with direction 5.3 Development Near Regulated Airports and Defence Airfields. The proposal was updated prior to exhibition to address this direction and is assessed in Section 4.1 of this report; and
- all relevant SEPPs.

The following **Tables 6** and **7** identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 6 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
St Leonards and Crows Nest 2036 Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 7 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable. It is noted Section 3.3 above addresses the Department's recommended change to the planning proposal.

4.1.1 Section 9.1 Ministerial Direction – 5.3 Development Near Regulated Airports and Defence Airfields

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.

The Gateway determination required the proposal to be updated prior to exhibition to address direction 5.3 Development Near Regulated Airports and Defence Airfields. The updated planning proposal adequately recognises the proposed building height breaches the Sydney Airport OLS and that any future DA must obtain the appropriate approvals prior to commencing construction. It is noted consultation was conducted during exhibition with Sydney Airport and other relevant agencies. This OLS breach will be reduced by the Department's recommended maximum building height reduction.

4.1.2 Employment Zones Reform

The Department's Employment Zones Reform commenced on 26 April 2023. The previous Business (B) and Industrial (IN) zones were replaced with 5 new employment zones and 3 supporting zones under the Standard Instrument LEP.

This change has applied to the site as the zoning is proposed to remain unchanged. The previous B4 Mixed Use zone that is identified in all exhibited material has now been translated to MU1 Mixed Use following commencement of this reform.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

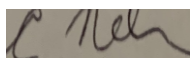
Table 8 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	3 maps have been prepared by the Department's GIS team and meet the technical requirements. The maps relevant to give effect to the planning proposal are: <ul style="list-style-type: none"> Height of Buildings HOB_001; FSR FSR_001; and Non-Residential FSR LCL_001. 	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	Council was consulted on the terms of the draft instrument and draft LEP maps on 6 December 2023 (Attachment K).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Sydney North Planning Panel (PPA)	<p>The Sydney North Planning Panel was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment J).</p> <p>The Panel confirmed on 6 December 2023 that it notes the Department's advice regarding a reduced maximum building height provision and raised no objection to the draft. The Panel confirmed that the plan should be made (Attachment J).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	The LEP amendment is a map only amendment. Parliamentary Counsel Opinion is not required.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

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

- the Department's recommended maximum building height reduction from 62.5m to 58.5m with an additional 2m site-specific provision (60.5m total) is justified and assessed in Section 3.3 of this report above;
- the draft LEP has strategic merit being consistent with the Greater Sydney Region Plan and North District Plan;
- it is consistent with the Gateway Determination assessment, noting some conditions have not been adequately addressed, this does not prevent the draft LEP proceeding;
- it is consistent with all relevant Section 9.1 Directions and SEPPs;
- issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal; and
- the draft LEP gives effect to the provisions of the planning proposal, noting the Department's recommended maximum building height reduction.



6 December 2023

Charlene Nelson

Manager, Place and Infrastructure, Metro North

Metro Central and North



6 December 2023

Brendan Metcalfe

Director, Metro North

Metro Central and North

Assessment officer

Matthew Rothwell

Planning Officer, Metro North

Metro Central and North

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Attachments

Attachment	Document
A	Planning Proposal (March 2023)
A1	Planning Proposal – Section 9.1 Ministerial Directions (March 2023)
A2	Planning Proposal – SEPPs (December 2022)
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 Assessment (20 December 2021)
A8	Structural Report (December 2021)
A9	Proposed LEP Map Amendments

Attachment	Document
A10	Preliminary Contamination Report (26 October 2020)
A11	Wind Impact Assessment (16 December 2021)
B	Gateway Determination (2 March 2023)
B1	Gateway Alteration (19 April 2023)
B2	Gateway Determination Report (March 2023)
C	DPE Post-Exhibition Report (September 2023)
C1	Sydney North Planning Panel Post-Exhibition Decision (14 September 2023)
C2	Assessment against Gateway Determination conditions
D	Summary of submissions
E	Proponent response to submissions
F	North Sydney Council submission
G	Agency submissions
G1	Transport for NSW supplementary submission
H	Community submissions (redacted)
I	North Sydney Local Planning Panel minutes (8 June 2022)
J	Consultation with Sydney North Planning Panel
K	Consultation with North Sydney Council on draft LEP
Maps	Draft LEP Maps
LEP	Draft LEP