

JRPP No:	2009SYE-13
DA No:	DA 356/09
PROPOSED DEVELOPMENT:	286-288 Pacific Highway, Crows Nest Alterations and additions to the existing commercial building, including modification and additional storeys to the existing building (fronting the Pacific Highway), a new four-storey building at the rear of the site (fronting Sinclair Street) and basement car parking for 138 vehicles accessed from Sinclair Street.
APPLICANT:	Trilogy Funds Management Limited
REPORT BY:	Nicola Reeve, Senior Assessment Officer North Sydney Council 9936 8100

Assessment Report and Recommendation

Attached: Minutes of the Design Excellence Panel
Traffic Engineer's referral comments
Conservation Planner's referral comments

ADDRESS/WARD: 286-288 Pacific Highway, Crows Nest (W)

APPLICATION No: DA 356/09

PROPOSAL: Alterations and additions to the existing commercial building, including modification and additional storeys to the existing building (fronting the Pacific Highway), a new four-storey building at the rear of the site (fronting Sinclair Street) and basement car parking for 138 vehicles accessed from Sinclair Street.

PLANS REF: Drawings numbered SK-14 Issue E, dated September 2009, SK-01 Issue B, dated 5 February 2010, SK-02 Issue D, SK-03 Issue D, SK-06 Issue D to SK-08 Issue, SK-12 Issue D and SK-15 Issue D, dated 5 May 2010, SK-10 Issue D, dated 6 May 2010, SK-04 Issue E, SK-05 Issue E, SK-11 Issue E and SK-13 Issue E, dated 11 May 2010, drawn by Leech Harmon Architects, and all received by Council on 14 May 2010.

OWNER: Trust Company Limited (Lot 1); and
Ficata Pty Limited (Lots 2 to 6).

APPLICANT: Trilogy Funds Management Limited

AUTHOR: Nicola Reeve, Senior Assessment Officer

DATE OF REPORT: 16 July 2010
DATE LODGED: 12 October 2009
AMENDED: 14 May 2010
RECOMMENDATION Refusal

DESCRIPTION OF PROPOSAL

The subject application seeks consent of the Joint Regional Planning Panel for substantial alterations and additions to the existing commercial building at No. 286-288 Pacific Highway, Crows Nest (and 79-83 Sinclair Street). The proposal seeks to expand the existing use as a specialist orthopaedic and sports medicine centre/hospital to provide consulting rooms, diagnostic equipment and day surgery all within the one premises.

In detail, the following works are proposed:

- Alterations and additions to the existing commercial building, including the addition of a further two storeys setback from the heritage façade of the Pacific Highway frontage of the building;
- Redevelopment of the existing car park (fronting Sinclair Street) to construct a new four-storey commercial building;
- Provision of four levels of basement car park beneath the new building, accommodating parking for 138 vehicles;
- New loading dock/ambulance bay accessed from Sinclair Street;
- Façade upgrade and restoration works on the Pacific Highway frontage of the building;
- Landscaping works to the side and rear of the new building on the Sinclair Street frontage.

STATUTORY CONTROLS

North Sydney LEP 2001

- Zoning – Mixed Use & Residential A2
- Item of Heritage – Yes (Former North Shore Gas Company Office)
- In Vicinity of Item of Heritage – Yes (99 Shirley Road – *Crows Nest Fire Station*, 306 Pacific Highway – *Former Westpac Bank* & 1-3 Willoughby Road – *Crows Nest Hotel*)
- Conservation Area - Yes
- FSBL - No

S94 Contribution

Environmental Planning & Assessment Act 1979

SEPP No. 1 Objection

SEPP No. 55 - Contaminated Lands

SREP (Sydney Harbour Catchment) 2005

POLICY CONTROLS

DCP 2002

DESCRIPTION OF LOCALITY

The site has a legal description of Lot 1 DP 716494 (Pacific Highway allotment) and Lots 2-6 716494 (Sinclair Street allotments), and are commonly known as 286-288 Pacific Highway, Crows Nest. The site is located on the western side of the Pacific Highway, between Bruce Street and Shirley Road, and has dual street frontages to both the Pacific Highway and Sinclair Street.

The site has a frontage to the Pacific Highway of 12.19 metres and a frontage to Sinclair Street of 36.57 metres. The sites have a collective area of 2,232sqm (being 557.87sqm on the Pacific Highway lots and 1,673.8sqm on the Sinclair Street lots). The site has dual zonings pursuant to North Sydney Local Environmental Plan 2001 (NSLEP 2001), being Mixed Use on the front Pacific Highway section of the site and Residential A2 on the rear Sinclair Street section.

Existing on the site is a three-storey commercial building located predominately within the boundaries of the Pacific Highway allotment. It should be noted that a section of the existing building does extend onto the residentially zoned part of the site. Currently, the rear of the site is used as an at-grade car park in association with the medical consulting rooms and specialist medical services provided within the existing building (refer to **Figures 1 to 4**, below).



Figures 1 & 2 – The existing commercial building as viewed from the Pacific Highway



Figures 3 & 4 – The rear of the site as viewed from Sinclair Street and the existing open car park

Generally, development along the Pacific Highway is multi-storey commercial or mixed use buildings (refer to **Figures 1 and 2**, above). Sinclair Street is predominately residential, however, includes the non-residential uses of the Crows Nest Fire Station and the Mater Hospital at either end. The scale of development in Sinclair Street does vary, with the western side of the street being characterised by apartment buildings that are partially obscured from the view at street level due to the topography. Development on the eastern side of the street transitions from the Fire Station to the north of the site (refer to **Figure 5**) to single-storey dwellings directly to the south (refer to **Figure 6**, below).



Figures 5 & 6 - Development adjacent to the site on Sinclair Street, with the Fire Station to the north (left) and residential dwellings to the south (right).

RELEVANT HISTORY

(1) Previous relevant applications to the site

Development Application 1002/84 was approved by Council on 4 June 1985 to permit the rear of the subject site to be used as car parking and loading facilities to service the existing commercial building at 286-288 Pacific Highway.

Development Application 1039/87 approved by Council on 29 April 1987 approved the extension to the commercial building to provide a covered portico entry from the rear of the site (from Sinclair Street car park). This application resulted in the floor plan of the building that currently exists on the site and permitted extension of the building into the

current residential zone.

Development Application 1403/87 approved by Council on 13 January 1988 granted consent to the use of the existing commercial building for consulting rooms and associated other sports medicine uses.

(2) Subject application

The applicant was advised in correspondence dated 19 November 2009 that the application was not supported in its current form, and the proposal required substantive revision to address the below issues or alternatively, should be withdrawn. The following concerns were raised:

- *Floor space and subsequent car parking/traffic generation* – The proposal is numerically non-compliant with the permissible floor space ratio pursuant to Clause 31 of NSLEP 2001 and provides insufficient car parking on the site to accommodate the vehicles associated with this floor space. The undersupply of car parking would result in an exacerbation of on-street car parking demand. The increase in car parking is not recommended for this site due to other environmental and amenity issues that have been identified with the proposal, instead the amount of floor space proposed should be reduced to be reflective of the number of car parking spaces proposed (at 94 spaces);
- *Bulk and scale* – The proposed rear building form is considered to be contrary to the objectives and performance criteria of Clause 18 of NSLEP 2001. The building form in Sinclair Street does not adequately transition the height and scale of the built form from the commercial buildings on the Pacific Highway to the single storey residential dwellings to the south of the site. It is recommended that the overall bulk of the building be reduced and greater separation be provided between the proposed building and the residential dwellings to the south;
- *Overshadowing* – The proposal results in complete overshadowing of the northern elevation windows of the adjacent dwelling at No. 77 Sinclair Street on the winter solstice, which is contrary to Clause 18 of NSLEP 2001 and Section 7.2 of NSDCP 2002;
- *Landscaping* – A reduction in building footprint and greater setbacks from the southern boundary are recommended. These modifications would result in a numeric improvement in landscaped area in accordance with the provisions of Clause 20 of NSLEP 2001, assist in the transitioning between uses and be more consistent with the low scale residential zoning of the site.
- *Heritage* – Insufficient detailing and information was provided and a list of additional information was provided to the applicant to complete this assessment.

The applicant advised on 30 November 2009 that they would be proceeding with the application, however, amending the proposal to address the concerns of Council's Planner, Traffic Engineer and Design Excellence Panel. Indicative amended plans were submitted on 21 December 2009, however, were not proceeded with and further amended plans and supporting documentation were submitted to Council on 14 May

2010. These amended plans are the subject of assessment of this report.

REFERRALS

Building

No objection has been raised to the proposed development by Council's Senior Building Surveyor, subject to conditions being imposed on any consent granted requiring compliance with the Building Code of Australia.

Heritage

The application was referred to Council's Conservation Planner as the existing building at 286-288 Pacific Highway (and site as a whole) is listed as an item of local heritage significance pursuant to NSLEP 2001, and the site is located in the proximity of other heritage listed properties (namely the Crows Nest Fire Station to the north).

The significance of the existing building has been described as follows:

"An unusual Interwar Art Deco two-storey shop building with degraded scalloped façade clad in glazed terracotta, however, only the upper level of the Pacific Highway façade has heritage significance. A fine example of the style which originally opened as the local gas company office and showroom, the modernity of the style being appropriate to the products displayed therein. The street level has been unsympathetically clad in polished granite and has a contemporary-styled frameless glazing. Most of the interior has been altered, however, the internal Art Deco timber and steel staircase remains and a section of pressed tin ceiling remains from the original shop. Original steel windows on the side elevations open onto a light well."

The following conclusions have been made by the Conservation Planner on the amended proposal, with a copy of the referral comments attached to this report:

"The proposal is considered to be generally acceptable with regard to the retention of the heritage significant Art Deco fabric and with regard to the nearby heritage listed Fire Station. Concern is raised, however, with regard to urban design. The juxtaposition of the strongly horizontal forms and the wide building frontages on Sinclair Street does not transition sympathetically with the one and two storey character of the dwellings, particularly as the latter have pitched roof forms and small bulk and scale."

Planning comment: Those concerns relating to transitioning of building forms, particularly with consideration to the zoning of the site and its immediate single storey residential neighbours to the south are shared by the Assessment Officer and may be in themselves determinative. This will be addressed in further detail within this report. Appropriate conditions have been recommended by the Conservation Planner for imposition on any approval to protect the significant fabric of the building (refer to the attached referral).

Traffic

As was noted in the history section of this report, the application as was originally lodged was not supported by Council's Traffic Engineer due to the inadequate amount of car parking provided. Concern was expressed that the low provision of parking on

site would result in further exacerbation in the demand for on-street car parking.

No objection has been raised to the amended proposal by the Traffic Engineer due to the increase in the number of car parking spaces (increased from 94 spaces to 138 spaces), however, it has been noted that this number of car parking spaces will result in an increase in traffic movements along Sinclair Street and surrounding intersections. The following comments have been made on likely traffic generation that would result from the proposed development:

“The net result on Sinclair Street will see traffic volumes in the AM peak increase from 89 to 189 vehicle movements. I agree with the applicant’s statement that this increase in traffic volumes will not bring any capacity related issues to the surrounding intersections. However, the proposed development may have some impact on environmental amenity. The underlying traffic movements on Sinclair Street are very low.

The functional classification of the street is important when determining the impact on residential/environmental amenity. The RTA’s Guide to Traffic Generating Developments states that the environmental capacity performance for a local road is a goal of 200 vehicles per hour and a maximum of 300 vehicles per hour.

It is clear that the proposed development will not raise vehicle volumes above the goal of 200 vehicles per hour. However, the impact of the development will be significant in that there will be such a large and sudden increase in vehicles due to one development, rather than a gradual increase caused by a number of smaller developments over a number of years. Therefore, the impact of this increase in vehicles is more likely to be “felt” by the local residents and community.

The definition of the impact on residential/environmental amenity by varying levels of traffic flow is extremely complex. Perceptions of impact vary greatly from person to person. Traffic flows that one person may find perfectly acceptable may be considered excessive by another. Impact is affected by the nature of the street and the area in which it is located, its width, building setbacks, grades, etc. as well as by the speed of traffic and the mix of cars and heavy vehicles.”

Planning comment: A copy of the full referral comments of Council’s Traffic Engineer has been attached for reference. Recommendations have been made with regards to modifications that would be required to the proposed basement car park and vehicular crossovers from Sinclair Street. These can be imposed as conditions of consent if the application is approved.

Whilst it is noted that the number of car parking spaces within the development has been increased to satisfy the numeric requirements of Council’s Traffic Engineer, any increase in car parking was discouraged by the Assessment Officer prior to any amendments being made to scheme due to the increase in vehicle movements that would result in this primarily residential street (refer to relevant history section of this report). Although it is noted that the increase in traffic movements has been assessed as being within the road network capacity pursuant to the Roads and Traffic Authority (RTA) guidelines, this does not address the issue of impacts of this increased traffic on residential amenity. Currently, this section of Sinclair Street is a one-way street narrowed by the provision of on-street car parking on both sides. Traffic calming has been installed by Council in the past to discourage traffic movements along Sinclair

Street.

It is considered that those concerns raised by the Traffic Engineer with regards to traffic generation are a determinative factor in this application. This development has the potential to adversely impact on the amenity of the adjacent residents and as such would be inconsistent with both the objectives of the Residential A2 zone and the objective of the floor space development standard applicable to the site pursuant to Clause 31 of NSLEP 2001.

Engineering (Stormwater/Geotechnical/Vehicular access)

The application was referred to Council's Development Engineer for assessment of the proposed stormwater and drainage scheme, review of the geotechnical investigation due to the proposed excavation of the site and finally, the modifications to the vehicular entry to the site from Sinclair Street. No objection has been raised to the scheme on engineering grounds, however, should the application be approved, detailed engineering conditions have been prepared and are recommended for imposition.

Design Excellence Panel

The Design Excellence Panel first considered the originally lodged scheme in November 2009, with the following advice provided:

"The Panel raised concern about the rear of the site located within the residential zoning. The Panel noted that the proposal did not meet the residential development controls regarding height, building height plane and landscape area. The Panel was also advised that the amount of parking needs to be resolved and that may result in less floor space on the site.

Having regard to the surrounding development, the Panel felt that the site should be considered as a transition between Urban development (Fire Station and development on Highway) and Suburban development (heritage dwellings adjoining to the south).

The Panel noted that the eastern side of the street was characterised with high front fencing/wall and street trees and front elevated landscaping.

The Panel did not support the proposed design with regard to the amount of landscaping provided; the scale of building near the southern residential boundary; the location of driveways; the finishes and the splayed roof of the building. The proposal was unacceptable with regard to scale and context.

The Panel made the following suggestions for a redesign of the rear building:

- *Bulk and scale of building should be confined to the northern two thirds of site having regard to the height and setbacks of the Fire Station.*
- *The southern third of the site should be low scale and used primarily as a landscape buffer to dwellings*
- *Incorporate a front boundary wall to continue the link between the Fire Station wall and the front wall of the dwellings*
- *Relocate the exit driveway to where it exists now to allow for large deep planting area in south west corner of site*

- Allow for deep planting along the frontage between the driveways which would result in the loss of some of the stacked parking spaces in the basement
- Consider windows in northern wall of building and increase cross ventilation for building
- The north facade of the proposed building adjacent to the fire station building requires refinement. It should not read as a party wall as it will never be built against
- The chamfered architectural elements are not in character with either the adjoining Fire Station or residential buildings, more rectilinear forms should be used
- Overshadowing be minimised by a larger setback to the residential buildings.”

The Panel considered the indicative scheme provided to Council (submitted in December 2009) in February 2010, however, considered that the proposal still required revision. It was based on this advice that the applicant decided to make further revisions to the proposal.

The subject amended plans have been reviewed by the Panel on 9 June 2010, with the conclusion being that the proposal is now supported on urban design grounds. The following comments were made:

“The Panel noted that the amended plans resulted in an improvement to the neighbour with regard to overshadowing and this will be addressed in more detail in Council’s assessment of the application.

The Panel considered the proposed rear building to be in context to the area and a good transition from the mixed use zone and Fire Station to the residential. The Panel felt the setbacks were appropriate.

The Panel supported the proposed materials and finishes noting that the brickwork was to be similar to the Fire Station and not the darker colour indicated on the model. It was noted that careful detailing of the brickwork will be important to avoid staining and that fine brickwork detail would assist in the building’s relationship to the surrounding buildings.

The Panel’s commended the architect for the redesign and having regard to the Panel’s previous comments. All of the concerns raised previously by the Panel have been addressed. The Panel did not comment on any compliance with zoning controls, traffic matters that also need to be assessed by Council.”

Planning comment: It is agreed that the amended scheme prepared by the applicant has addressed the concerns originally raised by the Design Excellence Panel, and it is noted that the Panel considers that the building from an urban design perspective, is now in context with its immediate surrounds. Despite this assessment, concern is raised regarding the scale of the proposed building, the separation provided to the south and the cumulative impacts that arise from the amount of floor space proposed considering the Residential A2 zoning of the site. This zoning is for low-density development, with development standards contained with Council’s planning controls reflecting this. The appropriateness of the proposed development in this zone and its compliance with the applicable development standards and their objectives is addressed later within this report and is a determinative factor in this application.

SUBMISSIONS

The owners of adjoining and nearby properties and the Wollstonecraft and Hayberry Precincts were notified of the proposed development, with the notification period being from 23 October 2009 to 6 November 2009. In response 24 submissions were received. The issues raised in the submissions are summarised as follows:

Basis of Submissions
<ul style="list-style-type: none"> • Proposal totally out of scale with adjoining cottages • Development is another intrusion into residential area following on from new development in Rocklands Road • Development will create large number of car movements in narrow residential street
<ul style="list-style-type: none"> • Proposal not in sympathy with residential and heritage environment of Sinclair Street • Excessive traffic generation • Will contribute to further destruction of amenity of area
<ul style="list-style-type: none"> • Concurs with submission by P Fryar of Moody & Doyle • Particularly concerned about increased traffic flow and removal of already limited on-street parking detrimental to street and area.
<ul style="list-style-type: none"> • Significant traffic flow and parking impact on usually quiet street, being a day surgery • Unique attractive streetscape of federation homes will be greatly impacted by proposed building • Shade and privacy impact on backyards
<ul style="list-style-type: none"> • Concur with objections in submission lodged by Moody & Doyle • Should be accommodated in a more suitable commercial precinct, having regard for glut of commercial space on Lower North Shore, and not in a one-way residential street
<ul style="list-style-type: none"> • Increased traffic volume and noise in Sinclair Street, and safety concerns for pedestrians • Proposal not in keeping with predominantly residential street, and will detract aesthetically and practically from living enjoyment in this location
<ul style="list-style-type: none"> • Inappropriate and uncharacteristic scale, height, built form and size of proposal at its rear and impact on Sinclair Street • Departures from height, floor space and landscaping controls not justified • Lack of pre-application consultation by developers • Existing commercial car park at rear does not justify wholesale redevelopment of the site • Residential street not designed for proposed increased traffic • Inadequate parking for proposed floor space

<ul style="list-style-type: none"> • Concur with objections raised in submission by P Fryar of Moody & Doyle • Proposed building height and building height plane uncharacteristic with and unsympathetic to adjoining low density residential environment and height of other buildings in Sinclair Street • Inadequate transition between mixed use commercial zone and low density residential zone • Health risks associated with disposal of medical waste • Traffic congestion, noise and fumes in single lane one way street, affecting residents 6 days a week
<ul style="list-style-type: none"> • Height of building not in keeping with neighbouring buildings, and should adhere to development requirements of neighbouring residential properties, ensuring no overshadowing of neighbours • Large rear building facing Sinclair Street detracts from other properties in street • Adverse streetscape impact and impact on Federation-style buildings in Sinclair Street and clashes with heritage fire station • Traffic and parking congestion • Building should be set well back from Sinclair Street with off-set landscaping
<ul style="list-style-type: none"> • Enclose and endorse separate submission and objections lodged on their behalf by P Fryar of Moody & Doyle • Northern windows will lose all sunlight due to the proposed development and its height and building height plane in contravention of Council controls, with sunlight to existing semi already affected by commercial tower and the former Gas Co. building to rear of their dwelling • Major traffic congestion and loss of amenity from traffic noise and fumes • Loss of an on-street parking space and parking congestion • Potential damage to house due to excavation • Loss of privacy • Minimal setback of proposed building to street unsympathetic to Federation homes and residential character
<ul style="list-style-type: none"> • Applicant's SEPP 1 objection is inadequate • Height of the proposed building on rear part of site is inconsistent with objectives of control • Breach of building height plane results in building of excessive scale and bulk, unsympathetic to adjoining residences, and elimination of 'at grade' car park does not give 'improved amenity' but results in detrimental impact only on neighbours • Significant exceedance of maximum floor space control signifies excessive bulk and scale and significant adverse amenity impacts on neighbours • Landscape buffer to side and street boundaries is insufficient and contrary to planning control • All winter sunlight to north-west facing windows of 77 Sinclair Street will be lost due to the development contrary to the planning controls with significant loss

<p>of amenity</p> <ul style="list-style-type: none"> • Impacts of proposed 1.8m high acoustic fence to common boundary will compound shadow impacts • Proposed driveway and ramp to basement parking directly adjacent to neighbour's property will result in adverse amenity impacts from noise and fumes, with discrepancies in proposed hours of operation in application material • Significant deficiency in on-site parking provision for medical centre, and discrepancy in proposed number of car spaces
<ul style="list-style-type: none"> • Object to building height, well over 8.5m planning control • Will not accept erection of scaffolding on neighbouring roof or erection of hoarding in front of their property, to avoid damage and financial loss to adjoining owners • Request dilapidation report and construction insurance policy
<ul style="list-style-type: none"> • Proposal is an ugly and looming incursion on period charm of this Sinclair Street residential strip • Traffic impact on already congested area
<ul style="list-style-type: none"> • Marked increase in traffic on Sinclair Street and driveway crossings will impede pedestrian access • Removal of an on-street parking space problematic in this area of critical shortage • Insufficient on-site parking leading to overflow parking on Sinclair Street • Significant traffic noise disrupting residential feel • Operating hours will detrimentally impact peacefulness of street • Construction noise and disruption to residents • Size and design of building with minimal setback to street will negatively affect visual character of street provided by Federation houses
<ul style="list-style-type: none"> • Concerns with non-compliance with a number of LEP planning controls • Parking inadequate • Increased noise • Unsympathetic to line of Federation houses
<ul style="list-style-type: none"> • Rear of development should be required to comply with LEP Residential A2 planning controls
<ul style="list-style-type: none"> • Concur with submission and objections by P Fryar of Moody & Doyle • Increased traffic and congestion at bottle-neck corner of Sinclair street and Rocklands Road, and increased traffic noise and dirt into apartment and its courtyard, affecting quality of home
<ul style="list-style-type: none"> • Blocking of sunlight to both front and rear outdoor areas of dwelling • Loss of privacy to dwelling • Significant traffic flow and noise in peaceful street

<ul style="list-style-type: none"> • Noise from hospital's operation • Removal of an existing on-street car space • Proposal unsympathetic to row of Federation houses
<ul style="list-style-type: none"> • Significant adverse affect on neighbouring residents and occupiers • Unacceptable level of increased traffic generated, with 100% increase in on-site parking • Traffic survey inadequate • Materials proposed conflict with the fire station and surrounding residential buildings • Setback to Sinclair Street and neighbouring property 77 Sinclair Street inadequate • Car park entry directly adjacent to 77 Sinclair Street inappropriate
<ul style="list-style-type: none"> • Concerns about traffic exiting site illegally turning right in Sinclair Street causing danger • Council should consider 2 hour parking limit in both sides of Sinclair Street
<ul style="list-style-type: none"> • Large increase in traffic in Sinclair Street will negate traffic calming, and increase congestion at Rocklands Road • Incongruous affect on streetscape interposing oversized modernistic building adjacent to century old matching dwellings • No pre-application consultation by developer • Violates residential zoning of Sinclair Street and planning controls
<ul style="list-style-type: none"> • Affected by increased traffic
<ul style="list-style-type: none"> • Inadequate notification and should be re-notified • Application treats property as one site whereas the rear is zoned Residential • Proposed mass of rear of building inconsistent with residential zoning • Increased traffic creates safety issue and affects neighbourhood character • Applicant's traffic impact report and construction management plan are inadequate; unacceptable for Sinclair Street to be closed off for periods during construction • Heritage impact not addressed • Building height does not consider height of existing buildings on Sinclair Street
<ul style="list-style-type: none"> • Proposal fails to comply with several LEP controls • Residents directly affected by increase in traffic and traffic noise • Object to 2 driveways and removal of one on-street parking space • Substantial overshadowing of neighbours • Proposal unsympathetic to line of Federation houses with minimal building setback

The amended proposal was notified to adjoining and nearby owners and the Wollstonecraft and Hayberry Precincts, with the notification period being from 28 May

2010 to 11 June 2010. In response 11 submissions were received. The issues raised in the submissions are summarised as follows:

<ul style="list-style-type: none"> • Notes changes to design of development, but development remains an inappropriate design response • While a marginal reduction in solar impact is acknowledged, the inconsistency in shadow diagrams does not enable proper assessment of shadow impact, and the proposal as amended fails to achieve satisfactory solar access to 77 Sinclair Street; requests elevational shadow diagrams • Privacy impact concerns in relation to proposed elevated areas facing 77 Sinclair Street • Maintains previous objections concerning building height, building height plane, floor space ratio and landscaped area, and inadequacy of SEPP 1 objections • Unacceptable traffic load on narrow one-way street, impacting adversely on residents • Requests noise and vibration report to ensure no disturbance to adjoining residents from use of basement car parking • Requests dilapidation reports before and after construction
<ul style="list-style-type: none"> • Even though the height plane has been amended, the proposal still has significant issues with solar, traffic, noise and degraded streetscape; refers to original submission
<ul style="list-style-type: none"> • Concurs with objections raised in submission by L Doyle of Moody & Doyle • Whilst changes made to the proposal, it is still non-compliant with several LEP controls, and re-iterates previous objections and issues
<ul style="list-style-type: none"> • Proposal does not comply with requirements for residential zone • Queries whether relationship to Royal North Shore Hospital and other institutions will result in traffic and pedestrian increase with adverse affect on surrounding areas and add to existing congestion
<ul style="list-style-type: none"> • Objections and issues raised in previous submission still valid • Requests that the building adjacent to the rear boundary with 290-294 Pacific Highway be reduced in height to 8.5m (LEP maximum) • Use of basement car park will impact on amenity of dwelling at 294 Pacific Highway due to noise and vibration and noise / vibration impact report requested
<ul style="list-style-type: none"> • Amended plans do not substantially address issues of increased traffic and noise, reduced pedestrian access to Crows Nest shops, parking shortages, and negative effects of size and design on development on visual character of street and encroachment of commercial development into a quite residential area
<ul style="list-style-type: none"> • Increased traffic congestion during construction phase • Proposed increase in car parking will increase traffic congestion in Sinclair and Bruce Streets, and increased noise for residents in Sinclair Street, with streets already congested by recent Mater and Poche developments

<ul style="list-style-type: none"> • Further development will exacerbate increased traffic in Sinclair Street due to Mater Hospital, and parking congestion • Proposed building height 'boxes in' Sinclair Street residents with non-residential construction • Beautiful homes in street will be adversely affected by the development in terms of height and streetscape
<ul style="list-style-type: none"> • Main concern is 138 space basement carpark with influx of vehicles and queuing to enter street and carpark likely to cause dangerous conditions • Increased traffic and queuing are likely to inhibit vehicle ingress/ egress to and from Crows Nest Fire Station • Reversion to a 2 way street would remove bikeway and conflict with sustainability aims
<ul style="list-style-type: none"> • Re-iterates objections and issues raised in previous submission
<ul style="list-style-type: none"> • Building mass still out of character and disproportionate with residential A2 zoning and controls applying to rear of site • Size of building and increased number of car spaces will have significant impact on safety and amenity of relatively quiet street • Traffic report and revised construction management plan do not address impact issues raised in previous submission

CONSIDERATION

The relevant matters for consideration under Section 79C of the *Environmental Planning and Assessment Act 1979*, are assessed under the following headings:

The application has been assessed against the relevant numeric controls in NSLEP 2001 and DCP 2002 as indicated in the following compliance tables.

Compliance Table

As addressed previously within this report, the site has dual zonings pursuant to NSLEP 2001, these being Mixed Use fronting the Pacific Highway and Residential A2 to the rear, fronting Sinclair Street. The compliance table, below, provides a numeric assessment of the component of the development that is situated within each zone.

STATUTORY CONTROL – North Sydney Local Environmental Plan 2001				
Total Site Area – 2,232m²				
Sinclair Street site – 1,673.8m ² Pacific Highway site – 557.9m ²	Existing	Proposed	Control	Complies

Residential A2 Zone (Sinclair Street site)				
Building Height (Cl. 17) (max)	Variable bet. 10.2m – 12.5m*	Variable bet. 12m – 15.9m	8.5m	NO
Building Height Plane (Cl.18)				
• Nth Elevation	Breaches 8.7m*	New breach 9.2m – 11.1m	45° height plane at 1.8m above boundary	NO
• Sth Elevation	Breaches 8.8m*	New breach 2.8m		NO
• East Elevation	Breaches 8m*	New breach 13.8m		NO
• West Elevation	No breach	New breach 6.1m		NO
Landscape Area (Cl. 20) (min)	N/A	10%	60%	NO
Mixed Use Zone (Pacific Highway site)				
Building Height (Cl. 29) (max)	12.3m	Variable 11.8m - 17.3m	16m	NO
Building Height Plane (Cl. 30)				
• West Elevation	Breaches 8.8m	New breach 14.1m	45° height plane at 1.8m above boundary of site that adjoins residential A2 zone	NO
Floor Space (Cl. 31) (max)	2.6:1	4.9:1	0.5 - 2:1	NO

* Existing breaches occur from additions to the original commercial building approved pursuant to DA 1039/87, which overlaps the change in zone from Mixed Use to Residential A2.

DCP 2002 Compliance Table

DEVELOPMENT CONTROL PLAN 2002		
	<i>complies</i>	<i>Comments</i>
Mixed Use Zone – Pacific Highway site		
6.1 Function		
Diversity of activities, facilities, opportunities and services	Yes	<p>The proposal provides a continuation and expansion of the existing sports medicine consulting rooms and associated diagnostic equipment on the site, however, also seeks to provide day surgery on site. Ground floor retail spaces are also proposed on the ground floor of the building (indicatively proposed to be a coffee shop and pharmacy).</p> <p>The continuation of this use does provide services and facilities for Crows Nest and wider community, and also contributes to a medical precinct with the recent developments and expansions of the Mater Hospital that have occurred in a nearby vicinity of the site.</p>
Mixed residential population	No (but assessed as acceptable)	Neither the existing or proposed use provides any residential component within the development.
Maximum use of public transport	Yes	The site is located on several bus routes along the Pacific Highway and Military Road/Falcon Streets, and is located nearby railway stations in St Leonards and Wollstonecraft. Whilst, it is accessible by public transport, it is general envisaged that the majority of staff and most patients would travel to the premises by private vehicle.
6.2 Environmental Criteria		
Clean Air	Yes	Appropriate conditions are able to be imposed to ensure compliance.
Noise	Yes	Appropriate conditions are able to be imposed to ensure compliance.
Acoustic Privacy	Yes	No objection is raised to the expansion of the existing building on the Pacific Highway site with regard to acoustic privacy, as these additional levels are not considered to result in any greater

		impact than the existing building.
Visual Privacy	Yes	No objection is raised to the proposed component of the building located within the Mixed Use zone with regard to loss of privacy to surrounding properties.
Reflected light	Yes	Appropriate conditions can be conditioned to ensure that new glazing is low reflectivity.
Artificial light	Yes	Proposal can be conditioned to comply.
Awnings	Yes	The existing awning on the Pacific Highway frontage of the building is to be retained as part of the proposed development.
Solar access	No	Refer to LEP assessment provided for the entire development, below.
Views	Yes	The proposed additional floors will not result in view loss from the public domain or a material view loss from surrounding properties.
6.3 Quality built form		
Context	Yes	The proposed additions and their siting is considered to be consistent with nearby development, including the recently constructed mixed use development to the north of the site at No. 296 Pacific Highway. The setback of the additional floors from the Pacific Highway frontage (eastern elevation) respects the heritage significance of the façade being set back a sufficient distance to minimise its visibility when viewed from the Highway.
Streetscape	Yes	The proposed works to the Pacific Highway would have a positive contribution to improving the streetscape appearance of the building, including rectification works to the heritage significant façade. The proposal introduces retail issues at street level, which would contribute to the activation of the Pacific Highway frontage and be an improvement to the existing unsympathetic tiles that clad this elevation.
Setbacks	Yes	The existing building is retained, therefore, generally the existing setbacks of the building are unchanged. The proposal does seek to infill the existing lightwell on the northern boundary of the site. No objection is raised to these works.

Entrances and exits	Yes	The existing pedestrian entry to the building from the Pacific Highway is retained and provides an accessible entry to the building. Although not located within the Mixed Use zone, it is assumed that many employees and patients to the building would enter the exit by vehicle from Sinclair Street and access the building via lifts from the basement levels.
Street frontage podium	Yes	The character statement does not specify an applicable podium height to this site, however, as addressed above, the setback of the additional levels is supported in this instance due to the heritage listing of the building and the identified significance of the façade.
6.4 Quality urban environment		
High quality residential accommodation	N/A	No residential component is proposed as part of the application.
Accessibility	Yes (with conditions)	An Accessibility Report has been submitted with the application. The proposed development is able to provide disabled access from both street frontages, and the building has three lift shafts to ensure all levels of the building (including the car park) are accessible. Appropriate conditions can be imposed to ensure compliance with AS1428, the BCA and the Disability Discrimination Act, 1992.
Safety and security	Yes	The design of the building is considered to be satisfactory with regard to providing surveillance of internal communal areas and the public domain. The proposed ground floor retail uses at the Pacific Highway frontage of the building introduces a glazed street frontage, which is considered to be a positive attribute to streetscape security and surveillance.
Car parking	Yes	Section 9 of NSDCP 2002 stipulates parking rates for the proposed uses as follows: <ul style="list-style-type: none"> • Medical centres – 4 spaces per 100sqm; • Refreshment rooms – 1 space per 50sqm; • Non-residential use in Crows Nest – 1 space per 60sqm. Based on the collective floor space (within both the mixed use and

		<p>residential zones), the proposed maximum parking spaces permitted pursuant to NSDCP 2002 is 182.</p> <p>It should be noted that Council's Traffic Engineer agreed to a reduced parking rate of 3 spaces per 100sqm of medical centre floor space for the recently completed Mater Clinic, located in nearby Gilles Street. This reduced parking rate was based on a detailed traffic study and analysis of the use. Council staff has agreed to the adoption of this reduced parking rate for the proposed development due to the similarity in development.</p> <p>Based on this reduced rate, a total of 138 car parking spaces are permitted. The amended scheme provides a total of 138 car parking spaces across the four basement car park levels, and has been assessed as satisfactory with regard to the provision of on-site parking.</p> <p>Further detailed assessment on the provision of car parking is provided in the attached referral comments of Council's Traffic Engineer.</p>
Bicycle storage	Yes	Provision is made for the parking/storage of 8 bicycles within the basement car park in accordance with the DCP requirements.
Vehicular access	Yes	Vehicular access to the basement car park is proposed from Sinclair Street and is contained within the rear residentially zoned site. This issue is discussed within the residential DCP table, below.
Garbage Storage	Yes	Garbage storage is proposed adjacent to the loading dock on the northern boundary of the rear Sinclair Street site. Any future use of the site would be subject to a commercial trade waste collection, particularly considering the medical usage of the site.
6.5 Efficient use and management of resources		
Stormwater and water management	Yes (with conditions)	Council's Development Engineer has assessed with proposed stormwater concept plan as acceptable, subject to the imposition of detailed conditions

		being imposed on any consent granted.
Residential Zone – Sinclair Street site		
7.1 Function		
Mixed residential population	N/A	The proposed development does not include a residential component.
Maintaining residential accommodation	Yes	No residential development currently exists on this rear Sinclair Street site, thus, there will be no loss of residential accommodation as a result of the proposed development.
7.2 Environmental criteria		

Topography	No	<p>The proposal seeks to excavate the site to provide four levels of basement car parking and a lift pit to a maximum depth of 17.5 metres. Preliminary geotechnical and excavation methodology has been provided with the application and reviewed by Council's Development Engineer.</p> <p>Whilst detailed conditions can be imposed to require the preparation of dilapidation reports and structural adequacy assessment of nearby properties, as well as detailed geotechnical investigation, concern is raised over the extent of excavation proposed on this site considering the low density zoning.</p> <p>It is considered that the extent of excavation is a reflection of the overdevelopment of the site based on the applicable controls, with this excavation resulting from the amount car parking required to achieve numeric compliance for the amount of additional floor space proposed.</p> <p>It should be noted that sections of the proposed ground floor level are partial or wholly sited below existing ground level in order to accommodate additional floor space on the site (refer to Sections BB and FF on architectural plans). Furthermore, excavation is proposed virtually boundary to boundary, and results in the lack of landscape area on the site, which in essence is a density planning control.</p> <p>It is considered that a reduction in floor space on the site to result in a more compliant building form with regard to height and landscaped area would result in significantly less excavation and be more consistent with the zone objectives.</p>
Views	Yes	Refer to LEP assessment provided below.
Solar access	No	Refer to LEP assessment provided below.
Acoustic privacy	Yes	An Acoustic Assessment was

	(with conditions)	<p>submitted at the time of lodgement of the application, and detailed potential noise impacts of the proposed development to adjacent properties. Those potential noise sources were considered to be plant/mechanical ventilation to the building and basement car parking and vehicle noise associated with entry and exiting the site.</p> <p>With regard to plant equipment, no details are included either within the acoustic report or on the architectural plans to demonstrate where the proposed plant for the new building is to be located (noting the location of the air conditioning condenser units on the rooftop of the mixed use component of the building). Appropriate conditions can be imposed on any approval requiring relocation of all plant to the basement car park to ensure no nuisance arises to nearby residents.</p> <p>The amended scheme has relocated the driveway to/from the car park from running parallel to the southern boundary of the site to running diagonally across the front setback. Despite the relocated driveway, the opening of the car park entry remains adjacent to the southern boundary to the site (adjacent to the bedroom windows of No. 77 Sinclair Street). The acoustic report recommended the installation of a solid boundary fence to attenuate any noise transmission from vehicles entering and exiting the site.</p> <p>It is noted that subject to the imposition of conditions, the proposed development can operate within the acoustic performance criteria of NSDCP 2002 and the NSW Industrial Noise Policy, however, it is considered that the driveway layout could have been designed to be set back further from the adjacent residential property.</p>
Visual privacy	Yes	No objection is raised to the proposed development with regard to loss of privacy, with it considered that

		appropriate window treatments and set backs on roof terraces have been proposed.
7.3 Quality Built Form		
Context	No	It is considered that the proposed development is out of context with its low density residential zoning and is inconsistent with the planning controls applicable to this site. It is considered that a reduction in scale to reduce the number of storeys proposed would provide a development that provides greater transition between adjacent developments.
Siting	Yes	The siting of the proposed form in the northeastern corner of the site is supported, as this is considered to be an appropriate location to site the bulk of the building in order to minimise amenity impacts to adjacent residents and to better respond to the built form of surrounding sites.
Setbacks	No	<p>No objection is raised to the setback of the proposed development from the northern, eastern or western boundaries of the site.</p> <p>It is, however, considered that the proposed development could be setback further from the southern boundary, noting the development of the ground floor approximately 2.1 metres from this boundary with the residential neighbour.</p> <p>Furthermore, in terms of reducing bulk and achieving an appropriate form for the zoning, it is considered that there is opportunity to further set the second floor back from both the western and southern boundaries in order to reduce the bulk when viewed from the street. A greater set back of the ground floor level would also result in an improvement in landscaped area provided on the site.</p>
Front fences	Yes	A stone wall is proposed along the western boundary of the site consistent with the residential properties to the south of the site. No objection is raised to this form of front fence treatment as it is considered appropriate to the

		streetscape.
Form, massing & scale	No	The proposed development is considered to be out of scale and context with the residential zoning, being significantly larger than its neighbours to the south.
Built form character	No	The proposed development is considered as being out of character with its immediate residential neighbours to the south. Whilst it is agreed that the subject site is able to accommodate a non-residential development for the proposed use, it is considered that substantive revision would be required to reduce the bulk and scale of the development.
Roofs	Yes	No objection is raised to the roof form of the proposed development.
Colours and materials	Yes (with condition)	No objection is raised to the proposed colours and materials, and an appropriate condition can be imposed to require compliance with the submitted colour and finishes scheme.
7.4 Quality urban environment		
Maximum use of public transport	Yes	Refer to comments provided under assessment of proposal against the Mixed Use provisions of the DCP.
Bicycle storage	Yes	Refer to comments provided under assessment of proposal against the Mixed Use provisions of the DCP.
Accessibility	Yes	Refer to comments provided under assessment of proposal against the Mixed Use provisions of the DCP.
Safety and security	Yes	Refer to comments provided under assessment of proposal against the Mixed Use provisions of the DCP.
Car parking	Yes	Refer to comments provided under assessment of proposal against the Mixed Use provisions of the DCP.
Vehicle Access	Yes (with conditions)	Vehicular access to the site has been assessed as acceptable by both Council's Traffic and Development Engineers subject to the imposition of a condition requiring the reduction in width of the vehicular crossovers to Sinclair Street to a maximum of 3.5 metres. This reduction will minimise loss of on-street car parking. Appropriate conditions are able to be imposed to ensure compliance with Council's vehicle access requirements.
Landscaped area	No	The proposal is significantly non-

		<p>compliant with the 60% landscaped area development standard pursuant to NSLEP 2001.</p> <p>It is proposed to improve the provision of vegetation on the site and provide a landscape buffer to adjacent residents by creating a green roof on top of a section of the ground floor level (approximately 7 metres in width). This is achieved through partially excavation below existing ground level. Whilst this does allow for some screening and separation, this does not constitute technical landscaped area and is inconsistent with the primary objective of this development standard, which is control density of development.</p>
Garbage storage	Yes	Refer to comments provided under assessment of proposal against the Mixed Use provisions of the DCP.

NORTH SYDNEY LEP 2001

1. Permissibility within the zone

The subject site has a dual zoning of *Mixed Use* (on the Pacific Highway site) and *Residential A2* (on the rear Sinclair Street site) pursuant to NSLEP 2001. The proposal seeks consent to undertake alterations and additions to the existing commercial building and construct a new commercial building with basement car parking to the rear.

Pursuant to Clause 14 of NSLEP 2001, the proposed use is defined as “*hospital*”, with ancillary retail space (defined as “*shop*” and “*refreshment room*”). A hospital is a permissible use within both zones and the proposed shop and refreshment room are permissible within the Mixed Use zone.

2. Zone Objectives

Due to the dual zoning of the site, the application has been considered against the objectives of both zones.

Mixed Use zone

Pursuant to Clause 14 of NSLEP 2001, the objectives of the Mixed Use zone are to:

- (a) “*Encourage a diverse range of living, employment, recreational and social opportunities which do not adversely affect the amenity of residential areas; and*
- (b) *Create interesting and vibrant neighbourhood centers with safe, high quality urban environments with residential amenity; and*
- (c) *Maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at lower*

levels and residential above”.

The proposed additions to the existing commercial building on the Pacific Highway would provide the opportunity for an expansion of the existing facilities on the site, which would contribute to the range of services and employment opportunities within the area. Whilst it is considered that the development collectively has an adverse impact on adjacent residents, objection is not raised to the proposed works specifically located on the Mixed Use (Pacific Highway) site in this regard. The proposed works are considered to positively contribute to the Pacific Highway presentation of the building and the Crows Nest centre as a whole. Therefore, the proposed works on the Pacific Highway site are considered to be generally consistent with the objectives of the Mixed Use zone.

Residential A2 zone

The objectives of the Residential A2 zone stipulated under Clause 14 of NSLEP 2001 are as follows:

- “(a) maintain lower scale residential neighbourhoods of mainly detached and duplex housing, and*
- (b) assist in the conservation of heritage and other sensitive areas, and*
- (c) encourage the retention of existing contributory items or neutral in conservation areas, and*
- (c1) promote affordable housing, and*
- (d) minimise the impact of non-residential uses and ensure these are in character with the zone.”*

The proposed development on the rear Sinclair Street site is considered to be inconsistent with the zone objectives, which seek low scale residential development or smaller scale, low impact non-residential uses. The proposed four-storey development (with equivalent levels of basement car parking), is considered to be out of scale with its single-storey neighbours and seeks consent for a development that is significantly non-compliant with all development standards applicable to the zone. This demonstrates overdevelopment of the site based on the applicable planning controls. Concern is also raised that the scale of development proposed would result in adverse amenity impacts to adjacent residents, particularly with regard to increased traffic generation and overshadowing.

Residential Development Standards

3. Building Height

The rear Sinclair Street site has a maximum permissible height of 8.5 metres pursuant to Clause 17 of NSLEP 2001.

Part of the existing commercial building is located on this rear site, and has a maximum height of 12.5 metres. The remainder of the site is undeveloped and used as a car park. The proposed development has a variable height between 12 metres and 15.9 metres when measured from existing natural ground level, which is non-compliant with the 8.5 metre height development standard.

It should be noted that part-to-all of the proposed ground floor level of the building fronting Sinclair Street is accommodated below existing ground level as a result of the slope of the site. Any floor space located beneath existing ground level is not included in the overall calculation of height of the building based on the definition contained at Schedule 2 of NSLEP 2001:

“the greatest distance measured vertically from any point on the building to the existing ground level, or the level of the lowest habitable floor, immediately below that point, whichever is lower, excluding chimneys.”

The proposed floor space is not considered to be “*habitable*” based on the definition of habitable rooms contained within the Building Code of Australia. This space which is located below existing natural ground level is for medical use, and is not “habitable” for residential purposes.

The applicant has submitted an objection pursuant to State Environmental Planning Policy No. 1 (SEPP No. 1) to justify the departure of the proposal from the development standard. The primary justification provided within this SEPP No. for the proposed non-compliances is reliant on precedent established from the part of the existing building that straddles the change in zoning and the on-going non-residential use of the site as a commercial car park. It is stated that the zoning of the site and the residential development standards would preclude the type and scale of development sought, even though it is permissible within the zone. Lastly, the SEPP No. 1 states that the proposal is an acceptable scale as it transitions between land uses and does not result in adverse amenity impacts.

The SEPP 1 objection of the applicant and its basis for variation is not supported in this instance, and is considered to be inconsistent with the following applicable objectives of the development standard:

(a) Limit height in residential zones

The degree of numeric breaches sought on this rear site are significant (up to nearly double the permitted 8.5 metres), which based on the low-density zoning of the site is deemed to be excessive and out of character with the residences located to the south (i.e. properties that are within the same residential zone to which the site is located).

The ascertain of the applicant that the general heights of nearby non-residential development (within different zonings) can be applied due to the 1980s consent by Council to the non-residential use of the site as a car park is not considered to be well founded or sufficient justification for the extent of breaches proposed. The proposed use is permissible within the zone, and as such, the application does not rely on existing use rights provisions for permissibility and the numeric development standard, therefore, apply.

The provision of a four-storey commercial building (with a further 4-storeys of basement car parking) adjacent to single storey dwellings is not considered to be an appropriate transition in height from the neighbouring mixed use and commercial developments of the Pacific Highway and Fire Station building, but rather to be generally adopting their height, form and scale.

(a1) promote development that conforms to and reflects natural landforms, by

stepping development on sloping land to follow the natural gradient

The proposed development seeks to significantly alter the existing topography of the site and seeks to locate a significant proportion of the development beneath the natural ground level, including commercial floor space. This proposal is considered to be contrary to this objective.

(b) promote gabled and hipped roofs

No objection is raised to the proposed roof form given the context of the site and the need to address the proposal's relationship to the adjoining heritage items.

(c) promote the retention of, and sharing of views

It is noted that those proposed floors in breach of the height control would result in some loss of outlook from the balconies and windows of the lower level apartments of the recently constructed building at No. 296 Pacific Highway. Any outlook obstructed by the proposed development is not considered to be a material impact. The development is not considered to result in the loss of any iconic or district views.

(d) maintain solar access to new and existing dwellings

The living room windows of No. 77 are currently overshadowed in the morning hours of the winter solstice (to approximately 11.30am) by the existing commercial development on the site and the neighbouring commercial building at No. 272 Pacific Highway. Due to the existing use of the site as an open car park, these windows currently benefit from direct sunlight for the afternoon hours on the winter solstice, and thus, receive the requisite 3 hours of solar access to the principal living room windows as required by Section 7.2 of NSDCP 2002.

The proposed development will result in overshadowing to the northern elevation windows of the adjacent dwelling at No. 77 Sinclair Street from approximately 12.30pm on the winter solstice. As part of the amended proposal, the applicant is proposing to demolish part of the existing building, which is resulting in overshadowing to these living room windows in the mid-morning hours (at approximately 10-11am) on the winter solstice. It should be noted that the property at No. 77 is a semi-detached dwelling, and has no other windows to these living rooms other than those located on the northern elevation of the property.

Elevational drawings have been submitted with the amended proposal to demonstrate that the living room window to No. 77 would receive direct sunlight between the hours of 9.30am to 12.30pm (3 hours of sunlight). The dining room and kitchen window of No. 77 would receive direct sunlight between the hours of 10.00am and 12.30pm (approximately 2.5 hours of direct sunlight). On the Equinox, these living room windows would receive direct sunlight between the approximate hours of 9.00am and 2.30pm, and as such, no objection is raised to overshadowing at this time of year.

The proposal is not strictly in accordance with the numeric requirements of NSDCP 2002, and therefore, an assessment against the Land and Environment Court planning principle for solar access established by Senior Commissioner Moore in the judgement, *The Benevolent Society v Waverley Council [2010] NSWLEC 1082* is provided below:

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

It is considered that the property at No. 77 Sinclair Street is vulnerable for overshadowing due to its location directly to the south of the site and the fact that it is a semi-detached dwelling with only north facing windows. Furthermore, it is noted that the current use of the site as an open car park does provide the residents of No. 77 with an improve amenity allowing greater solar access to these windows if a traditional residential subdivision existed in its place.

Whilst the larger context of the site may be a mixed use transitional area from the Crows Nest centre, the zoning of the site and its adjacent neighbour is for low density development. Based on this zoning it could be considered that there is a reasonable expectation for a development on the subject site of a smaller scale than that proposed.

A reduction in the number of storeys of the proposed development would result in further improvements to the amount of sunlight retained to the subject windows.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

The modifications proposed to demolish part of the existing building have resulted in the adjacent property receiving 3 hours of solar access to its principal living room as stipulated by the NSDCP 2002. The secondary living rooms of the dining room and kitchen would not receive numeric compliance, however, would receive approximately 2.5 hours of solar access on the winter solstice. As these windows currently are unshaded from approximately 11.30am, the extent of shadowing would be noticeable and 'felt' by these residents.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

As has been stated throughout the report, the proposal is considered to be an overdevelopment of the site based on the planning controls, and height of the development does result in overshadowing to No. 77. Whilst modifications have been made to improve numeric compliance, it is not considered that additional floor space and bulk in exceedance of the height control that results in overshadowing should be supported.

- *For private open space to be assessed as receiving adequate sunlight, regard should be had to the size of the open space and the amount of it receiving sunlight. Self-evidently, the smaller the open space, the greater the proportion of it requiring sunlight for it to have adequate solar amenity. A useable strip adjoining the living area in sunlight usually provides better solar amenity, depending on the size of the space. The amount of sunlight on private open space should ordinarily be measured at ground level but regard should be had to the size of the space as, in a smaller private open space, sunlight falling on seated residents may be adequate.*

The proposal does result in additional shadowing to the rear open space of No. 77 at 12-midday and in the afternoon of the winter solstice. No objection is raised to the shadowing of the site at 12-midday as these shadows are cast across the sections of the site used for car parking (not principal open space) or in areas already shadowed by the existing building.

At 3.00pm on the winter solstice, the proposal does result in significant overshadowing to the rear open space of the three directly adjacent dwellings to the south of the site. Depending on the property, this shadowing results from elements of the building that are both compliant and non-compliant with the height control.

It should be noted that these rear open spaces are already in shadow in the morning from shadows cast by the commercial building at No. 272 Pacific Highway, and currently receive solar access in the afternoon. As a consequence of the proposed development, solar access will be eliminated to the rear of No. 77 Sinclair Street for the entire day (between 9.00am and 3.00pm) and solar access to the rear of No's 73 & 75 would be reduced to less than 3 hours, which is not in accordance with NSDCP 2002.

Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.

Noted.

Overshadowing conclusions: Consideration has been given to the solar access planning principles that have been established by Senior Commissioner Moore of the Land and Environment Court. Whilst it is not considered unreasonable that some new shadowing would result from the proposal based on the fact that the existing site is "undeveloped" and underutilised and the residents of adjacent properties benefit from a temporary amenity afforded to them by the open car park. The proposed breaches to the height control cannot be supported as these elements of the building do result in a reduction in the amount of solar access received by the living area windows of No. 77 and the rear open space of adjacent properties, whereas an amended or reduced scheme could be designed to have a lesser impact.

(e) maintain privacy for residents

No objection is raised to the proposed breaches with regard to a 'material' loss of privacy to adjacent residents. It is considered that appropriate window treatments are proposed on the southern elevation of the subject building and the roof terrace on Level 3 is sufficiently setback and sited to minimise views and overlooking into the windows and rear open space of neighbouring residential dwellings.

(f) prevent excavation of sites for building works, other than for garages and car parking

The proposal does seek significant excavation on the site, predominately for car parking, however, as discussed with the NSDCP 2002 compliance table, sections of the ground floor are sited below existing ground level.

Planning comment: The SEPP No. 1 Objection submitted with the application is not supported in this instance as it is considered that it has not demonstrated that strict compliance would be unreasonable or unnecessary. Furthermore, the proposal has

been assessed as being inconsistent with the objectives of this development standard, namely the limitation of height of development within a residential zones and adverse overshadowing to neighbouring residential development. The maintenance of a low scale residential form as dictated by the requirements of the zone would be denied in upholding the SEPP No. 1 Objection.

4. Building Height Plane

The proposed building results in breaches to the building height plane from all boundaries of the residentially zoned site, and is therefore non-compliant with Clause 18 of NSLEP 2001. The applicant has submitted an objection pursuant to State Environmental Planning Policy No. 1 (SEPP 1) to justify the departure of the proposal from the development standard.

A consideration of those elements of the proposal in breach of this standard is provided below against both the objectives and performance criteria of Clause 18(1) and (5), respectively.

Objectives (Clause 18(1))

(a) Control the bulk and scale of the building

The breaches of the proposed building with the BHP development standard primarily relate to the 2nd and 3rd floor of the development (i.e. the upper two floors), as well as the proposed addition of the 4th floor to the existing commercial building that already extends across the zone boundary. The breaches are greatest from the northern and eastern boundaries of the site due to the nil setback proposed. This setback is supported as it would ensure the greatest separation of the building bulk from the residential properties to the south of the site.

Whilst some variation could be supported, the degree of variation sought is not supported in this instance as the proposed building form is considered to be out of scale with its Residential A2 zoning and the character of that zone. The resulting built form is considered to be bulky and inconsistent with both the zone objectives and numeric development standards, which collectively guide appropriate development form within this zone.

(b) Provide separation between buildings

As stated above, the nil setback and subsequent breaches from the northern and eastern boundaries of the site could be supported if a more appropriate-scaled building was proposed as it would concentrate any building bulk away from the adjacent residents and allow a landscape buffer between uses. It is noted in this instance that the proposed built form is not entirely set back from the southern boundary, with additional floor space proposed to be accommodated beneath the landscaping.

(c) Preserve amenity of existing dwellings and provide amenity to new dwellings in terms of shadowing, privacy, views, ventilation and solar access

The issues of shadowing, privacy, views and solar access have been addressed within the consideration of breaches to the height development standard, above. As detailed above in height, concern is raised regarding the extent of overshadowing proposed to

the windows of the adjacent property at No. 77 Sinclair Street in the afternoon hours of the winter solstice, and the fact that solar access could be improved to these windows through a scheme that had greater compliance and was of a lesser scale. Lastly, it is considered that the proposed breaches to the building height plane would not result in an unreasonable loss of ventilation to adjacent properties.

Performance criteria (Clause 18(5))

The proposal is considered against the performance criteria of Clause 18(5) as follows:

Overshadowing – Additional shadowing to the adjacent property to the south does result from the development as a whole and from those upper levels in breach of the BHP. Further consideration and assessment on shadowing impacts has been provided previously within this report.

Privacy – Those elements in breach of the BHP are not considered to result in a material privacy impact. Refer to comments provided within the compliance table.

Views – Those elements in breach of the building height plane do not result in material view loss.

Ventilation and daylight – The breaches to the building height plane do not result in significant loss of ventilation to adjacent properties. Previous assessment has been provided on the impact on solar access/sunlight to neighbouring residents as a result of the proposed development.

Planning comment: The applicant's SEPP No. 1 Objection to Clause 18 of NSLEP 2001 is not supported, with it is considered that the degree of variation sought results in a built form that is out of scale and context with its zoning and would result in adverse amenity impacts to the immediate adjacent dwelling. The proposed development is considered to be inconsistent with the objectives and performance criteria of this standard, and as such, the numeric variation sought from Clause 18 is not supported in this instance.

5. Landscaped Area

Clause 20 of NSLEP 2001 states that no development must be carried out in a residential zone if the percentage of site area (for sites greater than 900sqm) is less than the minimum of 60% landscaped area.

As a consequence of the existing use of the site as a car park, the site currently has no landscaped area as defined by Schedule 2 of NSLEP 2001. The proposed development has a technical landscaped area of 10%, with any planting or landscaping proposed above basement car parking or in the form of green roofs excluded from technical calculation.

The applicant has submitted a SEPP No. 1 to justify the numeric non-compliance of the proposal. An assessment of the proposed development against the objectives of Clause 20 is provided below:

(a) Promote the character of the neighbourhood

The proposed form of the development is out of scale with its residential zoning and this is evident through its non-compliance with all applicable development standards. The landscaped area development standard is in essence a density/site coverage control, which guides the appropriate and desired form of development. Provision of only 10% landscaped area reflects that the site is being overdeveloped, both above and below ground level, beyond that envisaged by the zoning of the site.

Whilst the additional planting is proposed in the landscaped buffer zone along the southern boundary of the site, inclusion of these areas would only result in approximately 26% of the site being landscaped, which is still significantly non-compliant. It is considered that there is greater opportunity to set the building back from the southern boundary, improve the landscaped area and lessen the site coverage.

(b) Provide useable private open space for the enjoyment of residents

As the existing site and proposed use is non-residential, the provision of open space on the site is not for use by residents. Instead the provision of open space assists in the regulation of site coverage, provision of a buffer to neighbouring properties and also to allow areas of open space to be used by visitors and staff of the facility.

Whilst it is considered that insufficient landscaped area has been provided as a consequence of the footprint of the proposal, no objection is raised with regard to the provision of useable space due to the proposed use of the site.

(c) Provide a landscaped buffer between adjoining properties

A landscaped buffer is provided along the southern boundary of the site. The width of this buffer zone proposed is aided by the provision of a green roof on the roof slab of the ground floor level, which provides approximately 10 metres of separation between the principal bulk of the building and the adjacent dwelling.

(d) Maximise retention and absorption of surface drainage water on site

The proposed introduction of soft planting on the site would result in an improvement in water infiltration and absorption than would currently occur with the bitumen car park. It is considered that further improvements could and should be made to the scheme to reduce the extent of site coverage, which would further aid absorption of water on site.

(e) Minimise obstruction to the underground flow of water

The proposal does seek to undertake extensive excavation of the site to accommodate the basement car parking levels and would impact on groundwater.

(f) Promote substantial landscaping, including trees which will grow to a minimum height of 15 metres

Landscaping is proposed along the southern boundary of the site, with this area able to be substantially planted.

(g) Control site density

The lack of landscaped area proposed reflects a development that is of an inconsistent

scale and density to that desired for a residentially zoned site. The provision of further floor space and parking beneath natural ground level, whilst not visible at street level does increase the density of the development and results in potential impacts on the locality with regard to increased traffic movements.

(h) Minimise site disturbance

The proposed development seeks to develop 90% of the site area, which is considered to be inconsistent with this objective.

Planning comment: Landscaped area in a residential context does allow the provision of open space for residents, however, it also establishes a guide to an acceptable level of site coverage. Whilst some degree of variation could be supported on this site as a result of the existing use and context, the extent of non-compliance sought by the proposal is significant and is considered to reflect an overdevelopment of the site both above and below ground levels. Whilst the proposed buffer zone along the southern boundary has some merits, it is considered that overall the development is inconsistent with the objectives of the landscaped area development standard, and as such the SEPP No. 1 Objection seeking variation from Clause 20 of NSLEP 2001 is not supported in this instance.

Mixed Use Development Standards

6. Building Height

Clause 29 of NSLEP 2001 stipulates a maximum permissible height for development on the Mixed Use zoned site of 16 metres. The existing building has a maximum height of 12.3 metres, and is underdevelopment in context with its neighbours to the north and south along the Pacific Highway. The proposed development has a maximum height of 17.3 metres (as measured to the roof top air conditioner condenser units and acoustic screen), thus the proposal is non-compliant with the height development standard of Clause 29 of NSLEP 2001.

The applicant has submitted a SEPP No. 1 Objection seeking variation to the 16 metre height development standard and is considered against the objectives of the standard below:

(a) ensure compatibility between development in the mixed use zone and adjoining residential areas

The proposed height is compatible with existing development and recent approvals of Council for development along the Pacific Highway. Whilst it is considered that the applicable height control does not appropriately transition to the low scale Residential A2 zoned located to the west of the Mixed Use zone (dwellings on Sinclair Street), the proposal is reflective of zoning and adjacent developments. Therefore, no objection is raised in this regard.

(b) encourage an appropriate scale and density of development that is in accordance with the character of the neighbourhood

The majority of works proposed on this site are compliant with the 16 metre height control. Those non-compliant components of the development are the 4th floor addition

closest to the Pacific Highway frontage of the site, which results from the topography, and also the siting of plant equipment on the roof. No objection is raised to these non-compliances as the proposed additions are consistent in scale and density with the commercial and mixed-use buildings located along the Pacific Highway.

(c) provide reasonable amenity for inhabitants of the building and neighbouring buildings

The proposed development would result in reasonable amenity for future commercial occupiers of this floor space, and would not adversely impact on neighbouring properties.

(d) provide ventilation, views, building separation, setback, solar access, light and avoid shadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like

The proposed additions do result in some additional overshadowing to the rear of the property at No. 77 Sinclair Street at 12 midday on the winter solstice. No objection is raised to this additional shadowing as it falls on areas of the site used for car parking, and not areas classified as principal areas of open space. The additions would not adversely impact neighbouring properties with regard to ventilation, views, setbacks or building separation, and as such, no objection is raised.

(e) promote development that conforms to and reflects natural landforms

The proposed additions on this portion of the site do not result in any change to the existing ground levels.

(f) avoid application of transitional heights as justification for exceeding height controls

The proposed development does not justify the proposed departure from the height control on the basis of transitional building heights. As assessed above, the justification provided is based on being consistent in height with neighbouring sites along the Pacific Highway.

Planning Comment: It has been demonstrated in the assessment of the proposal against the objectives of Clause 29 that the proposal does not result in any adverse amenity impacts to adjacent properties, nor does the proposal result in a built form that is uncharacteristic or out of scale with its surrounds. It is considered that the application has demonstrated that compliance with the building height control is unreasonable and unnecessary. The SEPP No.1 objection and a variation to Clause 29 of the NSLEP 2001 are supported in this instance.

7. Building Height Plane

Pursuant to the provisions of Clause 30(2) (a) of NSLEP 2001, the building height plane control is applicable from the western boundary of the Pacific Highway site as it adjoins the Residential A2 zone. The building height plane is applicable only from this western boundary of the site.

As the existing building straddles the boundary (and change in zoning), there is an

existing breach to the building height plane of 8.8 metres. The addition of further levels to this building results in a further breach to this development standard of 14.1 metres, and, thus remains non-compliant with Clause 30 of NSLEP 2001.

The applicant has submitted a SEPP No. 1 Objection to the non-compliance of the proposal with the provisions of Clause 30 of NSLEP 2001. The application is considered, below, against the objectives of this standard:

- (a) *ensure compatibility between development in the mixed use zone and adjoining residential areas*

Due to the siting of the existing building, numeric compliance with this development standard is not possible without demolition and redevelopment of the site. The proposed height and form of the additions is compatible with neighbouring development within the Mixed Use zone located along the Pacific Highway. Whilst it is considered that neither the existing building, nor the proposed additions, appropriately transition to the low scale Residential A2 zoned located to the west of the Mixed Use zone (dwellings on Sinclair Street), the proposal is reflective of zoning and adjacent existing built form. Therefore, no objection is raised in this regard.

- (b) *minimise adverse effects on land in adjoining residential or open space zones in relation to ventilation, views, building separation, solar access, light and avoid shadowing of windows, landscaped areas, courtyards, roof decks, balconies and the like*

The proposed breaches to this development standard have been assessed as not resulting in any material amenity impacts to neighbouring residential properties. Refer to assessment provided under building height, above.

Planning Comment: It has been demonstrated in the assessment of the proposal against the objectives of Clause 30 that the proposal does not result in any adverse amenity impacts to adjacent residents, nor does the proposal result in a built form that is out of scale with its surrounds. It is considered that the application has demonstrated that compliance with the building height plane control is unreasonable and unnecessary. The SEPP No.1 objection and a variation to Clause 30 of the NSLEP 2001 can be supported in this instance.

8. Floor Space

Pursuant to Clause 31 of NSLEP 2001, a floor space ratio (FSR) range of 0.5:1 – 2:1 is applicable to the development on the Mixed Use part of the site.

As the FSR control relates only to non-residential floor space, the control is in essence trying to achieve an appropriate mix of uses within the building to reflect the zone. Due to the existing use of the site as purely commercial, the existing development is already non-compliant with this development standard, with a FSR of 2.6:1. The proposal seeks the provision of approximately an additional 1,200sqm of commercial floor space to the existing building, which would result in a FSR for the development of 4.9:1.

The applicant has submitted a SEPP No. 1 Objection to justify the further departure from the maximum non-residential FSR permitted on the site. The proposal is considered, below, against the objectives of this clause:

(a) ensure a diverse mix of uses in each building in the mixed use zone

The proposed development seeks to continue the existing use of the premises for medical consulting suites, treatment and diagnostic equipment. As this building is currently 100% non-residential, no objection is raised to the lack of residential component proposed. The continuation of the existing commercial uses, including ground floor retail (indicatively proposed as a coffee shop and pharmacy) is considered to contribute to the provision of a diverse range of uses within the Crows Nest town centre, as well as the medical facility for the greater metropolitan area.

(b) minimise traffic generation from commercial development

If considered in isolation from the Sinclair Street site, then neither the existing nor proposed site has any car parking or opportunity to provide car parking. Provision of car parking and vehicular access to the site is reliant on the Sinclair Street site.

It is considered that the additional floor space on the Pacific Highway site could be accommodated without resulting in any significant adverse amenity impacts resulting from the traffic movements from these additions alone. However, this floor space coupled with that proposed on the rear residential site does result in a moderate-to-high increase in traffic generation along a one-way residential street. Collectively, the floor space has been assessed as an overdevelopment of the site; however, the proposed SEPP No. 1 Objection for the additional floor space on the Pacific Highway site can be supported.

Planning comment: The extent of non-compliance with the floor space development standard results primarily from the fact that the development does not contain residential component, however, is not a reflection on the appropriateness of scale, with this assessed under the provisions of the development standards for building height and building height plane. The continuation of the commercial nature of the building is supported, and it has been assessed that the proposed additional floor space on the Pacific Highway site would not result in adverse amenity impacts. For these reasons, it is considered that strict compliance with the floor space control is unreasonable and unnecessary. The SEPP No.1 objection and a variation to Clause 31 of the NSLEP 2001 are supported in this instance.

9. Design of Development

As the proposed development on the Pacific Highway site is not a new building, the provisions of Clause 32 of NSLEP 2001 are not applicable to this application.

Miscellaneous Provisions

10. Excavation of Land

Further excavation is proposed on the site (to a depth of 17.5 metres) to accommodate the basement car park, its footings and the lift shaft. A statement on the preliminary excavation methodology was submitted for assessment.

The proposal has been assessed by Council's Engineer who has recommended detailed conditions on the preparation of dilapidation surveys and structural adequacy reports of adjacent properties, as well as a detailed geotechnical investigation of the site by a Geotechnical or Civil Engineer prior to the issue of a Construction Certificate. With the imposition of these conditions, the proposal is considered to be consistent with the objectives of Clause 39 of NSLEP 2001.

However, it must be stated that development of this site consistent with the outcomes anticipated by the zone would result in no, or minimal excavation. This issue though in itself not determinative goes towards demonstrating overdevelopment.

11. Heritage Conservation

The site is listed as a heritage item pursuant to NSLEP 2001 and the site is located in the proximity of other heritage listed properties (namely the Crows Nest Fire Station to the north). The application has been assessed by Council's Conservation Planner, refer to the attached assessment. The proposed works have been assessed as being acceptable with regards to Clauses 48 to 50 of NSLEP 2001 and Section 8 of NSDCP 2002, subject to the imposition of conditions.

SEPP 55 and Contaminated Land Management Issues

The subject site has been considered in light of the Contaminated Lands Management Act and it is considered that contamination may be possible given the sites previous use as a depot for service vehicles. In the event that any consent is granted, it is recommended that a preliminary contamination report be required to be prepared to properly consider this issue, and this be imposed as a deferred commencement condition.

SREP (Sydney Harbour Catchment) 2005

The subject site is within part of North Sydney to be considered pursuant to SREP (Sydney Harbour Catchment) 2005. The proposal has been assessed as being generally consistent with the objectives of SREP (Sydney Harbour Catchment) 2005.

DEVELOPMENT CONTROL PLAN 2002

Pursuant to the Area Character Statements contained at Part B of NSDCP 2002, the site is situated within two planning areas, and is considered against the relevant character statement below:

Pacific Highway site – St Leonards Planning Area (Crows Nest Town Centre)

The proposed development on the Pacific Highway site is considered to be consistent

with the DCP character statement. In particular, the proposed development on the rear lot does not impede vehicular access to the Pacific Highway site from Sinclair Street (as this is a collective development).

Sinclair Street site – Waverton/Wollstonecraft Planning Area (Upper Slopes)

As has been assessed throughout this report, it is considered that there will be adverse amenity impacts to nearby residents as a result of the scale of the development, which is contrary to the desired future outcome for development within this planning area.

SECTION 94 CONTRIBUTIONS

As a result of the increase in commercial floor space as a result of the proposed development, a contribution would be levied in accordance with Council's Section 94 Contributions Plan. An appropriate condition is able to be imposed to ensure appropriate monies are paid to satisfy this policy.

ALL LIKELY IMPACTS OF THE DEVELOPMENT

All likely impacts of the proposed development have been considered within the context of this report.

ENVIRONMENTAL APPRAISAL CONSIDERED

1.	Statutory Controls	Yes
2.	Policy Controls	Yes
3.	Design in relation to existing building and natural environment	Yes
4.	Landscaping/Open Space Provision	Yes
5.	Traffic generation and Car parking provision	Yes
6.	Loading and Servicing facilities	Yes
7.	Physical relationship to and impact upon adjoining development (Views, privacy, overshadowing, etc.)	Yes
8.	Site Management Issues	Yes
9.	All relevant S79C considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

CLAUSE 14 NSLEP 2001

Consistency With The Aims Of Plan, Zone Objectives And Desired Character

The development is inconsistent with the specific aims of the plan and/or the objectives of the zone and/or the objectives of the controls as outlined in this report and as such, consent must not be granted.

SUBMITTORS CONCERNS

The issues raised in the submissions have been addressed within the body of this report.

CONCLUSION

The proposed development is not supported as it is considered to be an overdevelopment of the site, with this evident through the breaches (and extent of these breaches) to all applicable development standards pursuant to NSLEP 2001.

The proposed development to the rear of the site does not appropriately reflect the density and character of development sought by the Residential A2 zoning. It is considered that the applicable development standards within a residential zone collectively provide a framework for an appropriate scale and form of development of the site. Whilst no numeric FSR control exists for residentially zoned sites, collectively the development standards for the Residential A2 zone guide a form of development that is more consistent with a FSR of approximately 1:1. It is clear that the development proposed well exceeds the envisaged development yield for this site and as a consequence has amenity impacts for both the immediate neighbours (i.e. in terms of overshadowing) and the locality as a whole (i.e. increased traffic generation).

Whilst the use of the proposed development is not without merit and there is considered to be scope for development of the site, sufficient opportunity has been provided to the applicant to amend the proposal to address the issues raised within this report. It is not recommended that the application be deferred for further amended plans due to the opportunities already afforded to the applicant throughout the assessment process, and furthermore, substantive amendments would be required to the scheme in order to adequately satisfy the concerns raised.

It is the conclusion of this assessment that the application be **refused** for the reasons listed in the below recommendation.

RECOMMENDATION

PURSUANT TO SECTION 80 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **THAT** the Joint Regional Planning Panel resolve to refuse development consent to Development Application No. 356/09 for development to undertake alterations and additions to the existing commercial building and construction of a new four-storey building at the rear of the site on land at 286-288 Pacific Highway, Crows Nest, for the following reasons:-
1. The proposed development is inconsistent with the aims of Clause 3(a) and (b) of *North Sydney Local Environmental Plan 2001* and with the zone objectives of the Residential A2 zone as listed at Clause 14 of *North Sydney Local Environmental Plan 2001* in that the proposal is incompatible in bulk and scale with the neighbouring development and adversely impacts on residential amenity with regard to traffic generation and

overshadowing;

2. The proposed development results in an unacceptable breach to the building height development standard of Clause 17 of *North Sydney Local Environmental Plan 2001* and is inconsistent with the objectives of this clause with regard to provision of a characteristic building height in residential zones, the extent of excavation proposed and overshadowing of adjacent residential dwellings;
3. The proposed development results in an unacceptable breach to the building height plane development standard of Clause 18 of *North Sydney Local Environmental Plan 2001* and is inconsistent with the objectives of this clause in that the bulk and scale of the proposed development is out of character with the neighbouring properties, and the proposal results in adverse overshadowing;
4. The proposed development results in an unacceptable breach to the landscaped area development standard of Clause 20 of *North Sydney Local Environmental Plan 2001* and is inconsistent with the objectives of this clause in that the footprint of the building reflects a development that is out of scale with the character and density of the neighbourhood;
5. The proposed development fails to satisfy the provisions of the Waverton/Wollstonecraft Character Statement as listed at Section 9, Part B of NSDCP 2002 as the proposed non-residential use would detrimentally impact on the adjacent residential character and amenity;
6. The proposed development is inconsistent with Section 7.2(a) – Topography of *North Sydney Development Control Plan 2002* due to the extent of excavation proposed within a low density development zone contributing to an overdevelopment of the site;
7. The proposed development is inconsistent with Section 7.3(f) – Solar access of *North Sydney Development Control Plan 2002* as the proposed development results in adverse overshadowing to the windows and rear open space of adjacent residential properties;
8. The proposed development is inconsistent with Section 7.3(h) – Form, massing and scale and Section 7.3(i) – Built form character of *North Sydney Development Control Plan 2002* with the proposed development being inconsistent with characteristic scale and form of development within a Residential A2 zone;
9. The proposed development is inconsistent with Section 7.4(k) – Landscaped area of *North Sydney Development Control Plan 2002* as the proposed development fails to meet the objectives of landscaped area, namely provision of an appropriate type and scale of development in a residential area.

NICOLA REEVE
SENIOR ASSESSMENT OFFICER

STEPHEN BEATTIE
MANAGER, DEVELOPMENT SERVICES