

### COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2016SNH001
<b>DA Number</b>	DA 413/16
<b>LGA</b>	North Sydney
<b>Proposed Development</b>	Demolition of existing structures and construction of a residential flat building
<b>Street Address</b>	84-90 Atchison Street, Crows Nest
<b>Applicant/Owner</b>	86 Dunning Avenue
<b>Date of DA lodgement</b>	29 November 2016
<b>Number of Submissions</b>	Seventeen (17)
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	General development with a capital investment value of more than \$20 million.
<b>List of all relevant s79C(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• North Sydney LEP 2013</li> <li>• North Sydney DCP 2013</li> <li>• SEPP 65 – Design Quality of Residential Apartment Development</li> <li>• SEPP 55 – Remediation of Land</li> <li>• SEPP (Building Sustainability Index BASIX) 2004</li> <li>• Clause 92(b) EPA Regulation 2000</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>• Attachment No.1 - Clause 4.6 Exception request</li> <li>• Attachment No.2 – Applicant's ADG Compliance Table</li> <li>• Attachment No.3 – Architectural Plans</li> <li>• Attachment No.4 – Shadow diagrams</li> </ul>
<b>Report prepared by</b>	George Youhanna, Executive Planner
<b>Report date</b>	24/7/17

#### Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**

## **EXECUTIVE SUMMARY**

The proposed development seeks approval for demolition of the existing commercial premises and construction of a 5 storey residential flat building containing 35 apartments, with basement parking for 53 vehicles, at No.84-90 Atchison Street, Crows Nest. The originally proposed works (prior to amendments) had a stated CIV of \$25,972,049.

Council's notification of the original proposal attracted a total of 17 submissions raising particular concerns about height, overshadowing, privacy, setbacks, visual impact, parking, noise, amenity, construction impacts and other issues. The assessment has considered these concerns as well as the performance of the application against the applicable planning requirements.

The proposed development is considered to be unsatisfactory with regard to site coverage, bulk and scale, building separation, top floor setbacks, privacy, overshadowing, internal amenity and excessive parking provision, as discussed throughout this report.

A request under clause 4.6 of NSLEP 2013 has been submitted in relation to a 0.85m breach of the 16m height limit. However, Council is not satisfied that compliance with the standard is unreasonable or unnecessary, or that there are any environmental grounds to justify the breach, given that the top storey has not been set back from the level below and part of the top storey breaches the height limit.

In relation to potential contamination, a Stage 1 Desktop Environmental Site Assessment was provided with the previous development application and Council is satisfied that the site would be suitable for residential development, with regard to clause 7 of SEPP 55.

The proposal is not supported in its current form and the substantive issues cannot be resolved by conditions of consent.

## **DESCRIPTION OF PROPOSAL**

This application is seeking consent for demolition of the existing structures and construction of a 6 storey (5 storeys above ground) residential flat building comprising 35 apartments and basement parking for 53 cars.

Details of the proposal are as follows:

### **Basement**

- Four (4) basement carparking levels accommodating 43 resident vehicles and 10 visitor spaces
- bin rooms
- plant rooms and plant
- storage
- lift and stairs

### **Lower Ground (basement) and Ground Level**

- 3 x 3 bedroom apartments, over two levels (including a basement level).
- Common open space
- Plant and services
- Substation
- Pedestrian access
- Driveway access

### **Level 1**

- 8 apartments (4 x 2 bedroom; 4 x 2 bedroom plus study)

### **Level 2**

- 8 apartments (4 x 2 bedroom; 4 x 2 bedroom plus study)

### **Level 3**

- 8 apartments (4 x 2 bedroom; 4 x 2 bedroom plus study)

### **Level 4**

- 8 apartments (4 x 2 bedroom; 4 x 2 bedroom plus study)

### **Roof level**

- Flat roof design
- Lift overrun
- Plant room
- Skylights

### **General**

- Cladding and horizontal blades to building exterior
- Frameless glass balustrades
- Vertical slat fence to ground level courtyards
- External automatic vertical sun blinds to east and west facing walls



Atchison Street - Corner of Western Boundary

## **STATUTORY CONTROLS**

### **North Sydney LEP 2013**

- Zoning – R4 High Density Residential
- Item of Heritage – No
- In Vicinity of Item of Heritage – No
- Conservation Area – No

### **Environmental Planning & Assessment Act 1979**

SEPP 65

SEPP 55



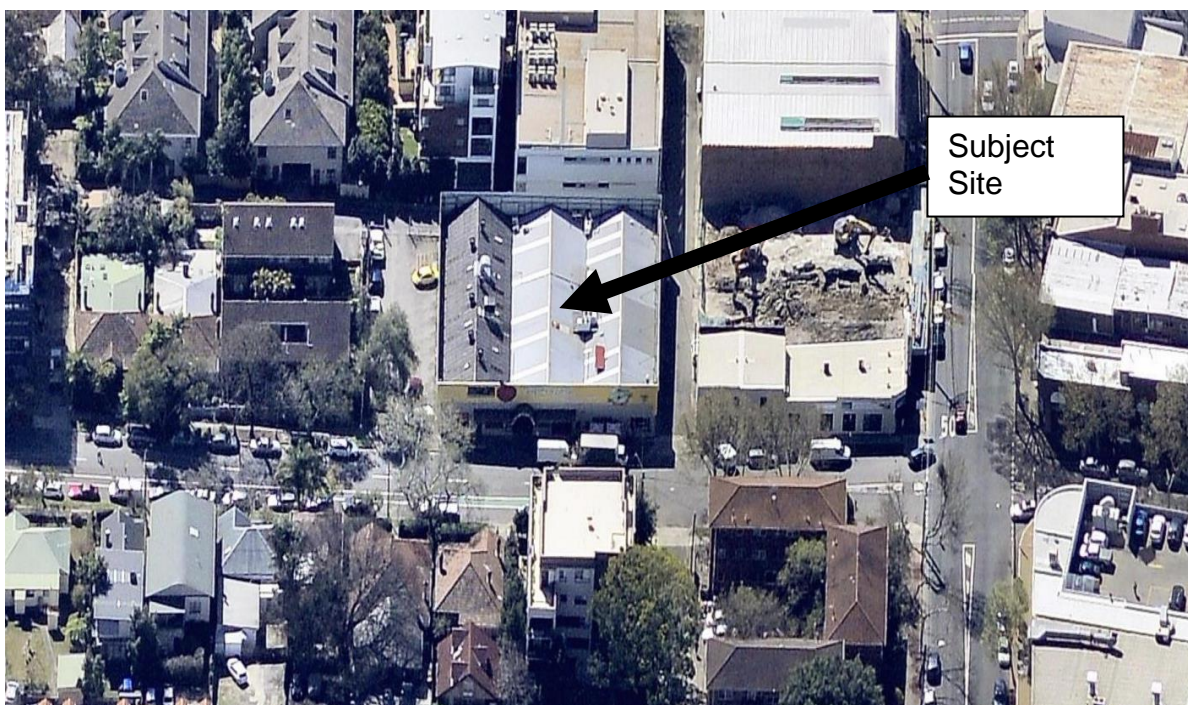
SEPP BASIX  
Local Development

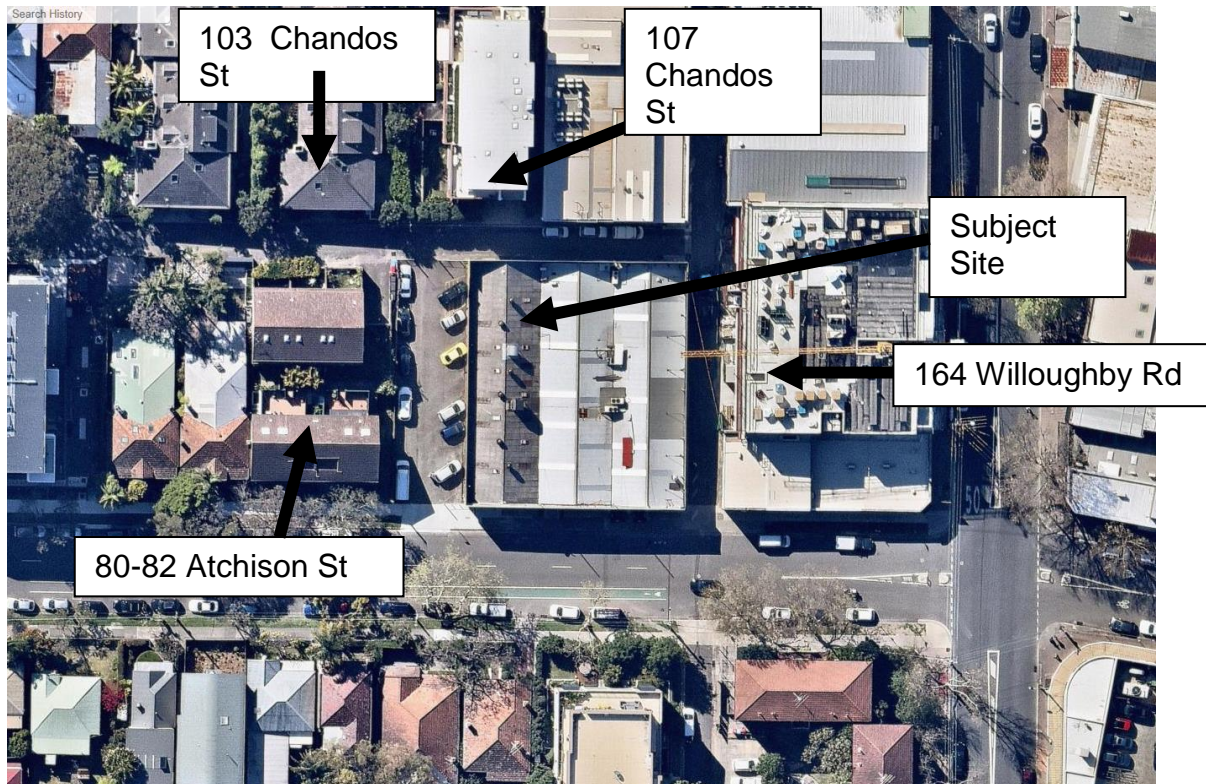
## **POLICY CONTROLS**

DCP 2013

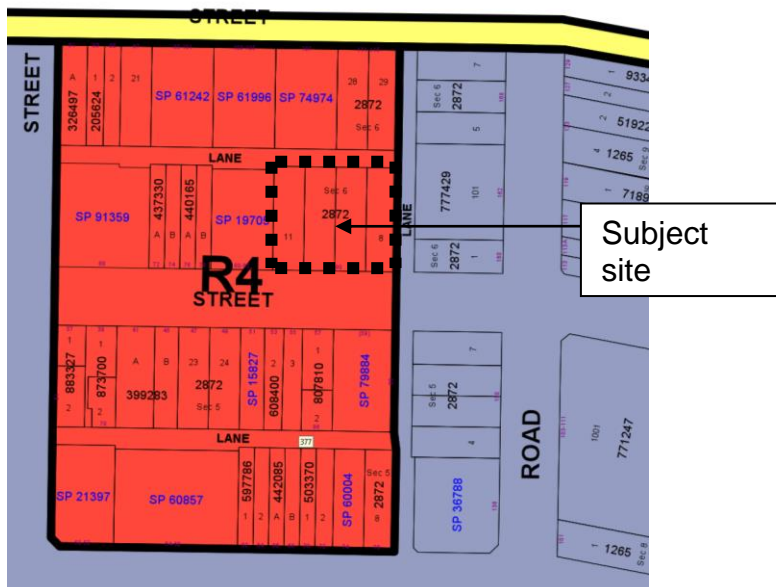
## **DESCRIPTION OF LOCALITY**

The site is located on Atchison Street, between Oxley Street to the west and Willoughby Road to the east, and adjoins Hume Lane on its eastern boundary and Atchison Lane to the northern boundary. The site comprises Lots 8-11, DP2872, is 1528.2m<sup>2</sup> in area and has a frontage of 42.67m to Atchison Street and a depth of 35.815m. Existing development on the site is a fresh food market and liquor store:





The site is zoned R4 High Density Residential under NSLEP 2013:







**Subject site – Atchison Street**



**Subject site – western side boundary**



**Subject site – Atchison Lane**



**Subject site – Hume Lane**



**107 Chandos Street**



**107 Chandos Street**



**80-82 Atchison Street**



**103 Chandos Street**

## RELEVANT HISTORY

- DA 28/13 for a seven storey residential flat building was refused on 30/5/13
- DA363/14 for a 5 storey residential flat building approved by the NSIPP on 4/11/15
- Pre-lodgement meeting held on 6/10/16 - Council advised applicant of concerns regarding height, site coverage, setbacks and building separation, inter alia.
- DA413/16 lodged on 29/11/16
  - 9/12/16 Additional Information requested
  - 9/12/16 to 23/12/16 Application notified
  - 14/2/17 Design Excellence Panel meeting
  - 27/3/17 Application amended to delete top floor, widen northern and southern cut-outs from 1.6m to 2.2m, increase depth of eastern and western cutouts, provide additional details, reduce site coverage to 57.4%, provide a security gate and fencing to the Atchison Street frontage and other associated amendments
  - 10/5/17 SNPP Briefing Meeting held

## REFERRALS

### Design Excellence Panel

The original proposal was considered by the DEP on 14 February 2017. The following comments were provided:

#### **Panel Comments**

*The Panel notes that in the absence of an FSR control, site cover and height are key determinants of building bulk and scale. While the building is modulated and the architecture has merit, the proposed 6 storey height and 63% site cover are excessive and indicative of the excessive extent of the building.*

*The Panel has previously, where appropriate, encouraged communal open space above the height limit but only where there are no associated impacts whatsoever and not in relation to sellable floorspace. In this submission the open space at ground level should function satisfactorily as a communal area as indicated on the plan.*

*SEPP 65 and the Apartment Design Guide (ADG) require apartment buildings to meet a range of objectives and standards to provide better quality design and planning for residential apartment development and there are no provisions in either SEPP 65 or the ADG that facilitate additional height or floor space for architectural design quality. This is in part due to the potential for development sites to be on-sold after obtaining consent, with materials and finishes being formally modified from the approved development. With regard to the above comments, the Panel does not support the height and site cover of the development as proposed. The top storey should be removed and the fifth storey should be recessed.*

*At the ground level entrance from Atchison Street the installation of a security gate should be considered in order to promote CPTED principles and provide security for residents entering the building. Direct access to ground level apartments from Atchison Street and Atchison Lane should be explored in order to improve activation and the street interface, while providing improved amenity for those apartments. Additional details of the slat fence treatment of the ground level courtyards are required. The fence should not read as a 1.0m to 1.5m blank wall.*

*The Panel considers the 1.6m wide 'cut-outs' on the northern and southern elevations to be very narrow and deep and consideration should be given to widening them. There are bathrooms in the units adjacent to the 'cut-outs' which have no natural light or ventilation: Window should surely be provided. The two storey apartments on the eastern and western elevations are desirable, however increased unit depth would improve their amenity.*

*The horizontal blades which surround the building on all elevations should result in a reasonable aesthetic outcome, but their functional outcome is problematic – given the orientations to north, east and west. It is understood that the blades are not adjustable, and it needs to be demonstrated that they would deal adequately with sunlight at lower angles in relation to heat gain, as well as the visual impact of shadow 'stripes' on the interiors, without having to rely on blinds/curtains.*

*It should be noted that the Panel considers the previous approval to be a satisfactory development, with design merit in a number of respects and some of the current concerns of the Panel were satisfactorily addressed in the previous approval.*

### **Recommendation**

*Although the proposal has architectural merit, the Panel does not support the development in its current form. The Panel would consider an amended design that addresses the identified issues.*

Comment – The amended proposal has deleted the 6<sup>th</sup> storey, which was set back from the storey below. However, the 5<sup>th</sup> level which is now the top storey has not been set back from the storey below.

The extent of the building has been slightly reduced. The 1.6m wide cut-outs to the northern and southern elevations have been widened to 2.2m and the 1 bedroom/2 storey units to the eastern and western cutouts have been deleted, with part of the floor area retained and added to the adjoining units. The building remains unacceptable in terms of bulk and scale, and streetscape impact to Atchison Street.

It has not been clearly demonstrated that the external horizontal blades would deal adequately with sunlight at lower angles and no consideration has been given to the effect of shadow stripes on the interiors.

The Panel's view of the satisfactory nature of the previously approved residential flat building is noted.

In summary, the proposal has not satisfactorily addressed the issue of the excessive extent of building and excessive site cover.

### **Development Engineer**

The application was referred to Council's Development Engineer who raised no objection subject to conditions.



## **Traffic Engineer**

The application was referred to Council's Traffic Engineer who raised no objection subject to conditions.

## **Sydney Water**

Sydney Water raised no objection subject to conditions.

## **AUSGRID**

AUSGRID raised no objections subject to conditions.

## **SUBMISSIONS**

The owners of adjoining properties were notified of the proposed development between 9 December 2016 and 23 December 2016. The notification resulted in seventeen (17) submissions.

<b>Name &amp; Address of Submitter</b>	<b>Basis of Submissions</b>
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Paul Williams 303/107 Chandos Street	<ul style="list-style-type: none"><li>• Visual privacy</li><li>• Acoustic privacy</li><li>• Building height</li><li>• Solar access</li><li>• Natural light</li><li>• Traffic and access</li><li>• Construction impacts</li></ul>
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Peter Tipper 309/164 Willoughby Road	<ul style="list-style-type: none"><li>• Building height</li><li>• Solar access</li><li>• View impact</li><li>• Traffic impact</li><li>• Noise</li><li>• Privacy</li></ul>
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Alan Kwan 1/103 Chandos Street	<ul style="list-style-type: none"><li>• Building height/non-compliance</li><li>• Traffic and parking</li><li>• No reason to amend approved DA</li></ul>
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Terry Roberts 5/80-82 Atchison Street	<ul style="list-style-type: none"><li>• Building height excessive</li><li>• Solar access</li><li>• Noise and amenity</li><li>• Setbacks inadequate</li><li>• Bulkiness of building/ overwhelming wall appearance</li></ul>
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Nydia Karina Rodriguez Diaz PO Box 506 St Leonards	<ul style="list-style-type: none"><li>• Solar access</li><li>• Privacy</li><li>• Traffic and noise impacts</li></ul>
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**Name & Address of Submitter**    **Basis of Submissions**

Janice Faye  
Dieckhaus  
104/164  
Willoughby Road

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

Bruce Nettleton  
4/76-78 North  
Steyne, Manly

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

Milan Pavelic  
307/164  
Willoughby Road

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

Robert Goddard  
208/164  
Willoughby Road

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

Brad Townend  
201/164  
Willoughby Road

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

Kristina Knight  
115 Kent Street  
Sydney

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

**Name & Address    Basis of Submissions  
of Submitter**

Stuart Finn & Lisa  
Lee 107/164  
Willoughby Road

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

Martin Miller  
103/66 Atchison  
Street

- Building height should comply

Makiko Fujisawa  
209/164  
Willoughby Road

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

Janet Smith  
308/164  
Willoughby Road

- Building height
- Solar access
- Natural light
- Privacy
- Parking and traffic
- Not sympathetic to residences in area

Jessica Lee &  
Allan Richards  
7/80-82 Atchison  
Street

- (no details included)

**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 2013 and DCP 2013 as indicated in the following compliance tables. More detailed comments with regard to the major issues are provided later in this report.

**Compliance Table**

**NSLEP 2013 Compliance Table**

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 1528.41m <sup>2</sup>	Proposed	Control	Complies
Clause 4.3 – Heights of Building	16.85m	16m	NO*

\*Clause 4.6 exception request submitted.



## DCP 2013 Compliance Table

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 1- Residential Development		
	<b><i>complies</i></b>	<b><i>Comments</i></b>
<b>1.2 Social Amenity</b>		
<b>Population Mix</b>	No	The proposed unit mix includes 32 x 2 bedroom units and 3 x 3 bedroom units which does not satisfy Table B-1.1 in section 1.2.1 which requires the provision of a proportion of studio and 1 bedroom apartments (Studio 10-20%, 1 bedroom 25-35%, 2 bedroom 35-45%, 3 bedroom+ 10-20%). The application identifies current demand for 2 bedroom units as justification for the proposed unit mix, although no analysis of current and future market demand has been provided, as required under the DCP. In the absence of a market analysis, the dwelling mix is considered unsatisfactory. A proportion of small dwellings should be provided within the development to promote a mixed residential population, consistent with the objectives of the DCP control.
<b>Maintaining Residential Accommodation</b>	Yes	The proposal significantly increases residential accommodation.
<b>1.3 Environmental Criteria</b>		
<b>Topography</b>	Yes	The building design adequately responds to the topography of the site. The development includes habitable rooms below ground level within the building footprint which are considered acceptable with regard to the proposed uses (gym, storage, wine cellar, sauna, clothes drying)
<b>Views</b>	Yes	The proposal will not have an adverse impact on any significant views available from surrounding properties.
<b>Solar Access</b>	No	The application includes shadow diagrams, however, no analysis has been provided of the extent of impact on adjoining properties, particularly No. 80-82 Atchison Street to the west and No. 164 Willoughby Road to the east, particularly at mid-winter between 9am and 3pm. It is unclear whether the adjoining dwellings would receive 3 hours of solar access at mid winter. It is considered that a less bulky building would be likely to have a reduced overshadowing impact on adjoining dwellings to the east and west.
<b>Acoustic Privacy</b>	Yes	The proposal will not have an adverse impact on any surrounding property with regard to acoustic privacy or noise intrusion. The communal open space is located adjacent to the western boundary and is acceptable with regard to acoustic privacy.
<b>Visual Privacy</b>	No	<p>The proposed development does not achieve 18m separation to the existing residential flat building to the north at No.107 Chandos Street, at the 5th level. As there is a laneway between the sites it is appropriate to require a 9m setback from the centreline of the laneway, being half of the 18m separation distance requirement between habitable rooms. The proposal includes a 6m setback at level 5 from the centreline of the laneway, resulting in a building separation distance of approximately 12m at the 5<sup>th</sup> level, as the development at No.107 Chandos Street is set back approximately 6m from the centreline.</p> <p>The proposal would achieve approximately 12m separation to the four storey development to the east at No.164 Willoughby Road, which is satisfactory.</p>


The proposed 6.7m setback at level 5 does not achieve the required 9m setback to the western side boundary.

The balconies to units 1 and 2 on each level of the proposal, located on the western side of the northern elevation, should include some form of privacy screening such as sliding louvres as they are located directly opposite south facing balconies and living areas in No.107 Willoughby Road.

It is noted that in relation to the NSDCP building separation requirements, the development application states that the separation requirements do not apply to the rear due to the laneway frontage. However, the principles guiding the building separation requirements, particularly in relation to achieving adequate privacy between dwellings, are not affected by the presence of a laneway between the subject site and existing residential development to the north at No.107 Chandos Street and there is no planning justification for not providing the required 9m setback from the centreline of the lane at the 5<sup>th</sup> level. An additional setback at the 5<sup>th</sup> level would also partly satisfy the provisions of section 1.4.7 P8, which requires the top storey to be set back from the floor below for flat roof building designs, as discussed later in this report.

***No.107 Chandos Street (southern elevation)***



		
<b>1.4 Quality built form</b>		
<b>Context</b>	No	The building design is considered to be excessively bulky as indicated by the proposed site coverage of 57.4%. A building complying with the site coverage control of a maximum of 45% would have a smaller footprint and envelope and be more in keeping with the desired future character of the area.
<b>Laneways</b>	Yes	The proposal is satisfactory with regard to the laneway provisions.
<b>Siting</b>	Yes	The proposed building is satisfactory with regard to the provisions of section 1.4.5 <i>Siting</i> .
<b>Setback – Front and side</b>	Yes	<p>Figure C-3.2 of Part C, section 3 requires a 3m setback to the northern, eastern and southern boundaries. The proposal complies with the 3m setback control to the northern, eastern and southern boundaries.</p> <p>The western side setback requirement, contained in Table B-1.5 is 4.5m up to 3 storeys in height, and 6m for the 4<sup>th</sup> and 5<sup>th</sup> storeys. The proposed development is set back a minimum of 6.7m from the western boundary.</p> <p>It should be noted that although the development complies with setback requirements, the setback controls must be read in conjunction with the site coverage control, in order to limit the extent of development on the site. This is particularly important as in the absence of an FSR control for development on the site, the setback, site coverage and height controls define an appropriate intensity of development.</p>
<b>Setback - Rear</b>	Yes	The rear setback of 3m complies with Figure C-3.2 of Part C, section 3.
<b>Building Separation</b>	No	<p>The building separation requirements set out in P8 in section 1.4.6 are identified as being in addition to the setback controls in P1-P7 in relation to residential flat buildings. As previously discussed in relation to visual privacy, the proposed development does not achieve 18m separation to the existing residential flat building to the north at No.107 Chandos Street, at the 5<sup>th</sup> level.</p> <p>The proposal would achieve approximately 12m</p>



		<p>separation to the four storey development to the east at No.164 Willoughby Road, which is satisfactory.</p> <p>The proposed 6.7m setback at level 5 does not achieve the required 9m setback to the western side boundary, which is unsatisfactory with regard to the 16m height limit on the adjoining site at No.80-82 Atchison Street, given the likelihood of future redevelopment.</p> <p>It should be noted that Part C of the DCP must be read in conjunction with North Sydney LEP 2013, and North Sydney DCP 2013 Part A and Part B, and that where there is an inconsistency between Part C and Part B of the DCP, the provisions within Part C prevail. It is considered that there is no inconsistency between the setback provisions and the building separation requirements, as they are separate requirements and compliance with the minimum setback requirement does not necessarily result in adequate building separation. Further, there is no inconsistency between the setback controls and the flat roof provision requiring the top floor to be set back from the storey below.</p>
<b>Form Massing Scale</b>	No	The proposed building form, massing and scale is considered to be unsatisfactory in terms of the envelope being excessively large, as indicated by the proposed 57.4% site coverage, in combination with the top storey not being set back from the storey below, as required by P8 in section 1.4.7 in relation to the proposed flat roof.
<b>Built Form Character</b>	No	While the subject site is zoned R4 and the height limit is 16 m/ 5 stories, the proposed building envelope is excessively large and is not consistent with the desired future character of the area. The top floor has not been set back from the floor below and is also unsatisfactory.
<b>Dwelling Entry</b>	Yes	The building has a clear and distinct residential entry from Atchison Street.
<b>Roofs</b>	No	Although a flat roof is appropriate with regard to the building typology, the top storey is required to be set back from the floor below, as previously discussed.
<b>Colours and Materials</b>	Yes	The proposed building colours and materials are satisfactory and suitable for the proposed building design.
<b>Balconies - Apartments</b>	Yes	All apartments are designed with a balcony or terrace.
<b>Front Fences</b>	Yes	The front fence is satisfactory.
<b>1.5 Quality Urban Environment</b>		
<b>High Quality Residential Accommodation</b>	No	<p>The apartments sizes and layouts meet the minimum ADG requirements. The development achieves 77% solar access and over 60% natural ventilation.</p> <p>The proposal includes 8 x 2 bedroom dwellings with a single aspect southern orientation, which equates to 22.8% of the development. The top floor south facing dwellings have the benefit of a skylight over the living area, however the remaining 6 south facing dwellings equate to 17% of the development which is excessive with regard to the ADG maximum of 15%. In some instances, such as where significant views are oriented to the south of a site, it may be acceptable to design a larger proportion of dwellings oriented to the south, but that is not the case in this development.</p>
<b>Safety and Security</b>	Yes	Satisfactory.
<b>Vehicle Access and Parking</b>	No	The DCP provides for a <u>maximum</u> of 46 spaces (37 resident + 9 visitor spaces) to be provided on site.

		The proposal includes 53 spaces (43 + 10 visitor spaces) which is excessive.
<b>Site Coverage</b>	No	<p>The proposed 57.4% site coverage is substantially in excess of the 45% control. The site coverage is considered to be indicative of the excessive bulk and scale of the development and is unsatisfactory.</p> <p>It is noted that the application seeks to justify the non-compliant 57.4% site coverage largely on the basis of a comparison to the residential development approved on the subject site by the North Sydney Independent Planning Panel under DA 363/14. The claimed site coverage of the approved development is not consistent with the assessed site coverage figure and in any event, the current proposal should be satisfactory on its own merits. Further, as expressed by the Design Excellence Panel, the approved development is considered to be a satisfactory development, with design merit in a number of respects, and some of the issues with the current development were satisfactorily addressed in the previous approval.</p>
<b>Landscape Area</b>	Yes	The proposal requires 40% landscape area and includes approximately 32.6% landscaping in accordance with the DCP definition.
<b>Excavation</b>	Yes	Suitable conditions would be applied, including in relation to potential site contamination. A reduction in car parking provision may reduce the extent of excavation required.
<b>Landscaping</b>	Yes	The quality and design of the landscaping is satisfactory.
<b>Front Gardens</b>	Yes	The proposal includes adequate landscaping in the front garden area.
<b>Private and Communal Open Space</b>	Yes	A suitable area of communal open space is provided on site.
<b>Garbage Storage</b>	No	The proposed garbage storage area is not located within 2m of the property boundary.
<b>1.6 Efficient Use of Resources</b>		
<b>Energy Efficiency</b>	Yes	A valid BASIX Certificate has been provided.
<b>Stormwater Management</b>	Yes	Subject to conditions.

## NORTH SYDNEY LEP 2013

### 1. Permissibility within the zone:

The site is zoned R4 High Density Residential and the proposal is permissible with consent as a “residential flat building.”

### 2. Residential Zone Objectives

The objectives of the R4 High Density Residential zone are as follows:

#### 1 Objectives of zone

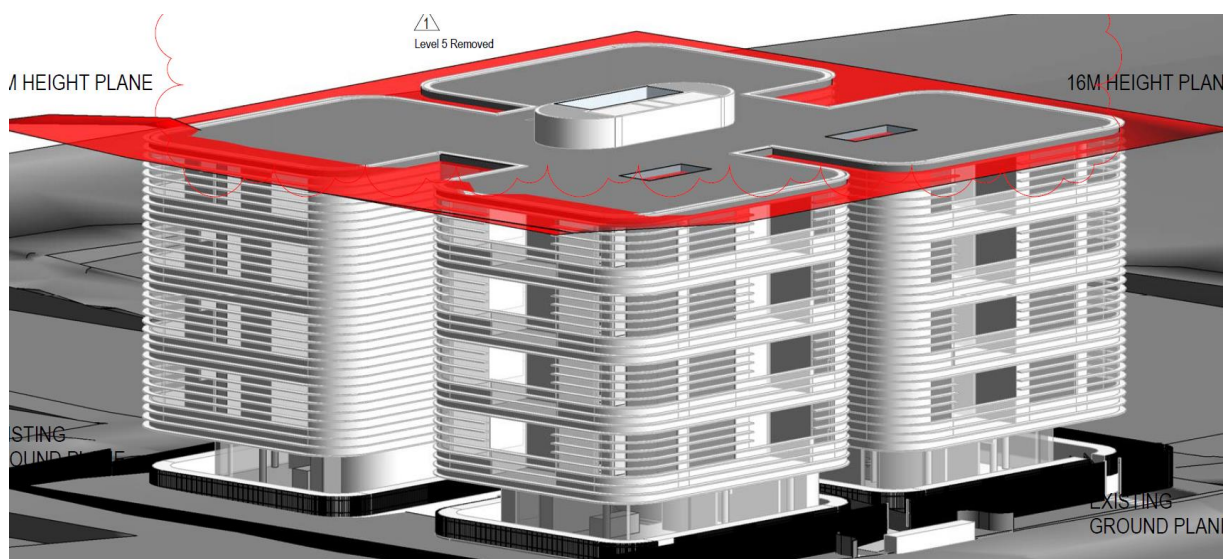
- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.

- *To ensure that a reasonably high level of residential amenity is achieved and maintained.*

The proposed development is unsatisfactory with regard to the objectives of the zone in relation to compromising the amenity of the surrounding area as a result of the proposed excessive site coverage.

### 3. Building Heights

The building in part exceeds the 16m height limit by up to 0.85m. The proposed exceedance of the 16m height limit is acceptable in principle in order to achieve a 5 storey development. The applicant has submitted a clause 4.6 request (Attachment No.1). The clause 4.6 exception does not satisfy the requirements of cl.4.6(4) as the top floor has not been set back from the floor below. Council is not satisfied that compliance with the standard is unreasonable or unnecessary, or that there are any environmental grounds to justify the breach, given that the top storey has not been set back from the level below.



### SEPP 65 - Apartment Design Guide

The applicant has provided an Apartment Design Guide compliance table which is attached to this report (Attachment No.2). The following issues are identified in relation to Parts 3 & 4 of the ADG:

**3A Site Analysis** – The site analysis has not considered future redevelopment on the adjoining site to the west at No.80-82 Atchison Street which is also zoned for 5 storey development, in relation to building separation at the 5<sup>th</sup> level. The site analysis has not addressed building separation to the five storey building to the north at No.107 Chandos Street.

**3F Visual Privacy (Building separation)** – The proposal is unsatisfactory with regard to visual privacy to the top floor apartment at No.107 Chandos Street, being separated by only approximately 12m. The proposal is also unsatisfactory with regard to privacy to future development on No.80-82 Atchison Street at the 5<sup>th</sup> level.

**3J Car Parking** – The proposal exceeds the maximum parking provision in NSDCP 2013 by 7 spaces. This issue can be resolved by condition.



*4A Solar and daylight access* – The proposal includes 17% (6 dwellings out of 35) single aspect south facing units which would not receive any solar access at mid winter. There is no justification, such as avoiding a noise source, a sloping site or obtaining significant views, for the proposed number of dwellings with no solar access. Further, it has not been adequately demonstrated that the proposed external horizontal blades would allow sufficient sunlight to enter window openings on the east, north and western side of the development between 9am and 3pm, at different times of the year. The Design Excellence Panel has also raised a valid concern with the horizontal blades creating shadow stripes within the apartments.

*4K Apartment mix* – The proposal does not provide an adequate apartment mix, with 32 x 2 bedroom apartments and 3 x 3 bedroom apartments. The predominance of 2 bedroom apartments does not provide housing choice and no analysis of current and future market demand has been provided to justify the proposed mix, particularly the absence of any studio and one bedroom apartments.

*4M Facades* – It is considered that the proposed building façade does not have a defined base, middle and top, with no setback at the top floor. The horizontal blades are the dominant façade element throughout the building.

*4N Roof design* – The proposed top storey is not recessed as required under NSDCP 2013 for flat roof designs, and is not differentiated in any way from the lower floors.

In summary, the proposal is considered unsatisfactory in a number of respects with regard to SEPP 65 and the ADG, as discussed above.

### **SEPP 55 and Contaminated Land Management Issues**

The previous development application included a Stage 1 Desktop Environmental Site Assessment which concluded that there is potential for contamination from imported fill and that the site can be made suitable for residential development, provided a preliminary Stage 2 intrusive assessment is undertaken and a waste classification assessment is undertaken for the off-site disposal of material excavated for the proposed development. A suitable condition would be applied.

### **DEVELOPMENT CONTROL PLAN 2013**

#### ***Relevant Planning Area (St Leonards Town Centre)***

The application has been assessed against the relevant controls in DCP 2013 and is unsatisfactory in a number of respects, as discussed previously in this report.

### **SECTION 94 CONTRIBUTIONS**

Section 94 contributions would be payable on the additional residential accommodation, less credit for the existing commercial GFA to be demolished.

### **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 Carparking 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

## SUBMITTERS CONCERNS

The relevant concerns of submitters have largely been addressed in this report. Additional comments are provided below:

### Privacy-

Comment: With regard to building separation, the top storey (5<sup>th</sup> level) does not achieve the required 9m setback from the western boundary and does not achieve a 9m setback from the centreline of Atchison Lane to the north, resulting in inadequate separation to No.80-82 Atchison Street and No.107 Chandos Street, at the top storey. The balconies to units 1 and 2 on each level of the proposal, located on the western side of the northern elevation should include some form of privacy screening, such as sliding louvres, as they are located directly opposite south facing balconies and living areas in No.107 Willoughby Road.

The east facing balconies in the proposal are offset from the west facing balconies in No.164 Willoughby Road which is a four (4) storey mixed use development and are satisfactory with regard to privacy.

### Setbacks inadequate-

Comment: The proposal complies with the 3m setback control to the northern, eastern and southern boundaries, however, additional setback is required to the top floor in relation to both building separation and the DCP requirement for flat roof development.

### Bulkiness of building/overwhelming wall appearance -

Comment: It is considered that the proposed building is unsatisfactory with regard to bulk and scale, as indicated by the proposed 57.4% site coverage.

### Building height-

Comment: The proposal has been amended to delete the 6<sup>th</sup> level and the building height is now a maximum of 16.85m. The proposed height is generally acceptable, however, the top storey is required to be set back from the storey below on all elevations and the proposal does not satisfy this requirement.

### **Solar access-**

Comment: As previously discussed, the application includes shadow diagrams, however, no analysis has been provided of the extent of impact on adjoining properties, particularly No. 80-82 Atchison Street to the west and No. 164 Willoughby Road to the east, at mid-winter between 9am and 3pm. It is unclear whether the adjoining dwellings would receive 2 or 3 hours of solar access at mid-winter. In any event, it is considered that a less bulky building with reduced site coverage would be likely to have a reduced overshadowing impact on adjoining dwellings to the east and west, subject to the actual building design. A recessed top storey would also be likely to improve solar access to the east and west of the site.

### **Traffic and parking -**

Comment: The proposal includes excessive on-site parking and a reduction in parking provision would result in a minor reduction in traffic movements to and from the site. The car park is accessed in a conventional manner using ramps and includes visitor parking, and as such the development should not have an adverse impact on parking in the vicinity of the site.

## **CONCLUSION**

The proposal is not supported in its current form and the substantive issues (such as excessive site cover, bulk and scale) cannot be resolved by conditions of consent.

## **RECOMMENDATION**

**THAT** the Sydney North Planning Panel, as the consent authority, refuse Development Application No.413/16 for demolition of existing structures and construction of a residential flat building at No.84-90 Atchison Street, Crows Nest, for the following reasons:

1. The proposed site coverage of 57.4% substantially exceeds the 45% maximum site coverage requirement under NSDCP 2013, and is indicative of excessive building bulk and scale.
2. The proposed development is unsatisfactory with regard to bulk and scale and is inconsistent with the desired future character of the area.
3. The proposed development is unsatisfactory with regard to building separation and privacy at the 5<sup>th</sup> storey to the adjoining site to the west at No.80-82 Atchison Street and to the north at No.107 Chandos Street.
4. The top storey has not been set back from the storey below as required by NSDCP 2013 in relation to residential flat buildings with a flat roof.
5. The proposed development is unsatisfactory with regard to overshadowing of No. 80-82 Atchison Street and No.164 Willoughby Road and inadequate information has been provided to demonstrate that dwellings at those properties will receive a minimum of 2 hours of solar access at mid-winter.
6. The proposal is unsatisfactory with regard to the SEPP 65 Apartment Design Guide in relation to building separation, visual privacy impacts, excessive on-site car parking, unsatisfactory internal amenity (17% south facing apartments), an inadequate mix of apartment sizes and unsatisfactory roof design.