

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSNH153
DA Number	161/20
LGA	North Sydney Council
Proposed Development	Demolition of existing buildings and construction of shop top housing development
Street Address	23-35 Atchison Street, St Leonards
Applicant/Owner	Applicant: Aplus Design Group Owner: Tildoon (CARE: TWT Global)
Date of DA lodgement	29 July 2020
Total number of Submissions Number of Unique Objections	<ul style="list-style-type: none"> • 27 unique submissions in the first notification (all in objections) • 17 unique submissions in the amended plans notification (all in objection)
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Cost of works >\$30
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Determination 2020 • Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Direction 2020 • SEPP No. 55 – Remediation of Land • SREP Sydney Harbour Catchment 2005 • SEPP (Building Sustainability Index: BASIX) 2004 • SEPP No. 65 – Design Quality of Residential Apartment Development • North Sydney LEP 2013 • North Sydney Development Control Plan 2013 • An executed Voluntary Planning Agreement has been entered into under Section 7.4 of the Environmental Planning and Assessment Act 1979
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural plans and landscape plans • Clause 4.6 request for variation - Height of Buildings (Clause 4.3 NSLEP 2013) • Shadow analysis • Visual analysis • Clause 4.6 request for variation Height of Buildings • Traffic Report • Voluntary Planning Agreement • Letter of commitment from applicant re: vehicular access • Correspondence from DPIE 21 March 2021 regarding SIC requirement • Conditions of consent • Public submissions
Clause 4.6 requests	<ul style="list-style-type: none"> • The Local Environmental Plan (LEP) clause 4.6 application relates to Clause 4.3 Height of Buildings
Summary of key submissions	<ul style="list-style-type: none"> • Building height • Scale of building • Overshadowing • Traffic and parking

	<ul style="list-style-type: none"> • Privacy • Loss of natural light • Noise from traffic • Loss of property value • Noise from new apartments including communal open space • Poor interface with adjacent residential units • Construction hours and noise • Wind tunnel • Loss of views
Report prepared by	Lara Huckstepp, Executive Planner
Report date	6 May 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 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 summarized, 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 (S7.24)?

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Yes

Conditions

Have draft conditions been provided to the applicant for comment?

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Yes

EXECUTIVE SUMMARY

The development application seeks consent for the demolition of existing buildings and construction of a shop top housing development comprising 17 storeys with 3 levels of basement parking. The subject site is zoned B4 Mixed Use and shop top housing is permissible with the zone with the consent of Council.

A maximum building height of 56m applies to the site. A Clause 4.6 objection has been submitted for a non-compliance relating to roof plant proposed to exceed the building height by 1.85m. The Clause 4.6 objection is considered to be well founded and worthy of support. The proposed development will comply with the maximum 6.3:1 FSR pursuant to Clause 4.4 NSLEP 2013.

The proposed development will also provide a compliant non-residential floorspace, meeting the minimum 1.5:1 as set out in Clause 4.4A NSLEP 2013.

Building setbacks are considered to provide an acceptable level of compliance with the provisions of SEPP65 and the Apartment Design Guide, with impacts from a number of balcony encroachments able to be ameliorated with privacy screening and planting.

Overall, the proposed development is considered to provide a reasonable level of compliance with relevant planning controls applying to the site. The bulk, height and scale together with the resultant impacts are considered to be generally an expected outcome of the site.

The site was provided with the building height of 56m and floor space ratio of 6.3:1 through a Planning Proposal 1/18 which was gazetted on 15 May 2020. It is noted that since this time, the NSW State Government has released *St Leonards and Crows Nest Plan 2036* which suggests a 16 storey building height may be appropriate on the site. On this basis, the proposed height, bulk and scale is considered to be generally as envisaged for the site by the current planning controls and State Government's desired future character.

The proposed building height is considered to result in a significant level of overshadowing to surrounding properties, in particular No.30-36 Albany Street and No.38-46 Albany Street, both of these buildings being approximately 6 storeys in height and located to the immediate south of the subject site. Other adjoining sites are also overshadowed, as well as minor overshadowing to Hume Street Park. The proposed setback to the east and west are considered to assist in retaining a level of solar access to these properties within the context of the 56m building height control. However, the proposed overshadowing results from generally compliant building elements and is considered to be acceptable on this basis.

The proposed development will provide a level of overshadowing to Hume Street Park (northern edge) between 2.45pm – 3pm during the midwinter solstice. The existing area wherein the overshadowing occurs is presently occupied by a car parking structure and roof top basketball courts. However importantly, as part of the significant work that has been undertaken across St Leonards and Crows Nest, Council together with the State Government plan to expand the existing Hume Street Park. The proposed overshadowing is considered to be generally minor, and results from compliant building components. The shadow would affect a corner of the park, rather than an area more centrally located. The overshadowing to Hume Street Park is generally as envisaged when the Planning Proposal 1/18 was supported and on balance, is considered to be a reasonable outcome given that the impacts result from compliant building elements. Overshadowing to Hume Street Park is not a prohibition under Council's controls.

With regards to view loss, a number of properties currently enjoy an outlook over the subject site and this outlook will be removed from many properties. As St Leonards is located on a ridge line, expansive views are enjoyed from the upper levels of many properties, including views and outlook to the city, harbour, Harbour Bridge, North Sydney, Chatswood and district views to the coast and towards the Blue Mountains. These views are however, currently enjoyed across the existing site which is considered to be under-developed in the context of the planning controls. St Leonards and Crows Nest is a Precinct in transition with additional heights and densities envisioned across the locality, as detailed by the NSW State Government's *St Leonards and Crows Nest 2036 Plan*. The views across the site are considered unable to be reasonably retained due to the general compliance of the building envelope.

To the west of the subject site is No.21 Atchison Street, which will essentially be left isolated by the proposed development, given that the development further west is an existing 40m mixed use building. As part of the Planning Proposal process involving the uplift of 23-35 Atchison Street, negotiations to amalgamate with No.21 Atchison Street were commenced however agreement was not reached. Planning Proposal P1/18 proceeded without the inclusion of No.21 Atchison Street, and therefore the building height limit for No.21 Atchison Street remains at 20m. On the basis of the submitted information, it is considered that reasonable attempts have been made with regards to amalgamation. It is also considered that No.21 Atchison Street could be reasonably developed within the current planning controls, despite the proposed development. Notwithstanding this, the applicant has incorporated a number of measures which are likely to assist with any future redevelopment on the site, including:

- The provision of an easement for a right of carriageway to provide a shared basement access, which is intended to enable No.21 Atchison Street to access their own basement levels of any future redevelopment, through and across No.23-35 Atchison Street;
- The provision of an easement for a right of access to enable any future redevelopment of No.21 Atchison to provide ground level openings into the through site link, and to enable upper level east-facing windows. A public easement is to be provided over the through site link (unlimited in height).

Whilst any future redevelopment on No.21 Atchison Street would be subject to development approval, the proposed measures are offered by the applicant to address the site isolation issue. On balance, it is considered that the proposed development would not unreasonably restrict a future redevelopment at No.21 Atchison and the measures proposed by the applicant are considered to be acceptable.

A Voluntary Planning Agreement accompanied the Planning Proposal and has been executed. This includes a number of key deliverables of public benefit that were agreed including:

- A monetary contribution of \$2.8 million dollars towards the upgrade of Hume Street Park
- A 5m wide land dedication to Oxley Street to contribute to the establishment of the Oxley Street Linear Park concept as well as embellish works
- Provision of a 6m wide publicly accessible through site link to improve pedestrian connectivity.

Conditions of consent are recommended to be imposed to reinforce the VPA requirements within the development consent.

The VPA also includes provisions that require reconsideration should a State Infrastructure Contribution (SIC) apply to the site at some time in the future. On 27 August 2020, Ministerial Direction was made and the subject site is located within the area now subject to a SIC. In accordance with advice from the Department of Planning, Industry and Environment, Council subsequently applied for an exemption to the SIC by way of formal correspondence dated 23 October 2020. A response was received from DPIE on 23 March 2021 confirming that no SIC will be payable. Notwithstanding, as a statutory requirement a standard condition will be required to be imposed regarding the SIC. Conditions requiring the monetary contribution set out in the VPA is recommended for imposition.

Council received 27 submissions in relation to the originally advertised scheme and a further 17 submissions in relation to the amended plans. Concerns raised included building height, scale, overshadowing, traffic, parking, loss of natural light, noise from traffic, loss of property value, noise from new apartments and communal open space, poor interface with adjacent residential apartments, construction noise, wind tunnel impacts, view loss and loss of village character. Issues raised have been considered within the report and addressed where appropriate with conditions of consent.

Overall, the proposed development is considered to provide a high level of amenity to its future occupants. Conditions are recommended in relation to a number of elements to address privacy, the provision of balconies, on-going amenity considerations such as use of the common areas. The external form and appearance is supported by the Design Excellence Panel. A number of existing trees on Atchison Street are recommended for replacement to improve the future streetscape.

Whilst it is acknowledged that the proposed development will result in impacts on the surrounding locality, the proposed development is considered to be generally consistent with the expected outcome of development on the site, as expressed within the planning controls and more broadly within the *St Leonards and Crows Nest 2036 Plan*. The existing solar access and views that are currently enjoyed across the site by many properties are considered to be generally enjoyed across an under developed site.

On balance, the proposed development is considered to be satisfactory having regard to the relevant Environmental Planning Instruments, Development Control Plans and Council policies and is therefore recommended for **approval** subject to conditions.

DESCRIPTION OF PROPOSAL

The development application is for the demolition of existing buildings and construction of a 17 storey shop top housing development comprising:

100 apartments with the following configuration:

- 11 x studio apartments
- 15 x 1 bedroom apartments
- 57 x 2 bedroom apartments
- 14 x 3 bedroom apartments
- 3 x 4 bedroom apartments

Residential apartments include 20 livable apartments, of which 15 apartments are adaptable

Non-residential floorspace provided at lower ground, ground and part of levels 1-4

Communal space (for residential use) on levels 4 and 16

Construction of 3 basement levels with access from Albany Lane providing:

60 car parking spaces providing:

- 43 residential car parking spaces
- 17 non-residential car parking spaces

7 motorbike parking spaces comprising:

- 4 motorbike car parking spaces allocated to residential uses
- 3 motorbike car parking spaces allocated to commercial uses

2 electric vehicular charging stations

1 x car wash bay

Storage (including for bicycle parking) for 100 apartments

10 x bicycle spaces (residential visitor)

57 x bicycle spaces (non-residential)

1 loading space to accommodate a medium rigid vehicle

A garbage chute will be provided for residential apartments on each level and a garbage holding area is provided within Albany Lane.

An on-site detention (OSD) tank is proposed on the lower ground level as well as a rainwater tank.

Landscape works and the provision of a through site pedestrian link
Landscape works within the Oxley Street Linear Park
Associated site infrastructure works.

The total proposed non-residential floor space is 3,158.83sqm and the total gross floor area 13,294.7sqm.

The proposed schedule of materials includes a render finish incorporating a range of tones as can be seen in the schedule and photomontage.



Proposed finishes and materials



A Voluntary Planning Agreement accompanied the approved Planning Proposal 1/18 and applies to the site, wherein the following key deliverables of public benefit have been agreed including:

- A monetary contribution of \$2.8 million dollars towards the upgrade of Hume Street Park
- A 5m wide land dedication to Oxley Street to contribute to the establishment of the Oxley Street Linear Park concept as well as embellishment works
- Provision of a 6m wide publicly accessible through site link to improve pedestrian connectivity in the area.

STATUTORY CONTROLS

Environmental Planning & Assessment Act 1979 (As amended)

Environmental Planning & Assessment Regulations 1996

Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Determination 2020

Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Direction 2020

SREP (Sydney Harbour Catchment) 2005

SEPP 55 – Remediation of Land & Draft SEPP

SEPP 64 – Advertising and Signage

SEPP 65 – Design Quality of Residential Apartment Development & ADG

SEPP (Building Sustainability Index: BASIX) 2004

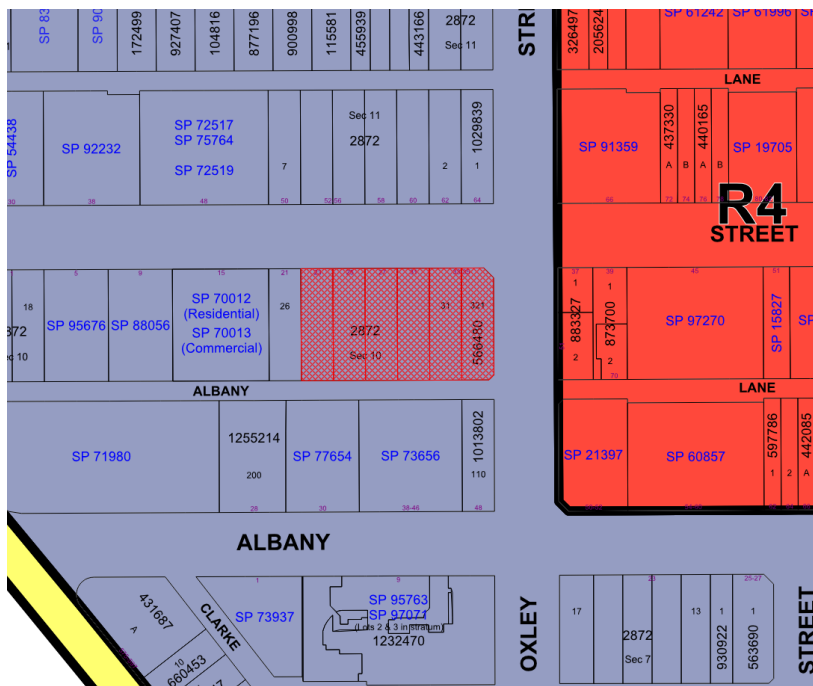
SEPP (Infrastructure) 2007

SEPP (Vegetation in Non-Rural Areas) 2017

Draft SEPP (Environment) 2017

North Sydney LEP 2013

- Zoning – B4 Mixed Use
- Item of Heritage - No
- In Vicinity of Item of Heritage - No



Subject site shown hatched

POLICY CONTROLS

DCP 2013

Apartment Design Guidelines (ADG)

Sydney Harbour Foreshores & Waterways Area DCP 2005

DESCRIPTION OF LOCALITY

The site comprises 5 properties legally described as Lot 27 in DP2872 (23 Atchison Street); Lot 28 in DP2872 (No.25 Atchison Street); Lot 29 in DP2872 (No.27 Atchison Street); Lot 30 in DP2872 (No.31 Atchison Street); Lot 31 in DP2872 (No.33 Atchison Street); and Lot 321 in DP566480 (No.35 Atchison). The site is known collectively for the purpose of this development application as 23-35 Atchison Street.

The site has an approximate area of 2,109.8sqm and is regular in shape. The site is bound by Atchison Street to the north, Albany Lane to the south, and Oxley Street to the east. The property at No.21 Atchison Street adjoins the site on its western frontage.

The site has a significant change in elevation from west to east of approximately 5.3m. The fall from the north to south along Oxley Street is just under 1m.

The site comprises 5 separate properties ranging in height from 2 storeys to 4 storeys, 23 Atchison Street, 25 Atchison Street and 27-29 Atchison Street are all 2 storey commercial / office buildings with vehicular access afforded off Albany Lane and pedestrian access via Atchison Street. No. 31 Atchison Street is a 2-3 storey building with a car workshop on the ground floor. No. 33-35 Atchison Street is a 4 storey commercial office building with ground floor café and undercover on-site parking located on the corner of Oxley Street and Atchison Street.



Subject site – 33-35 Atchison Street viewed from the corner of Atchison Street and Oxley Street



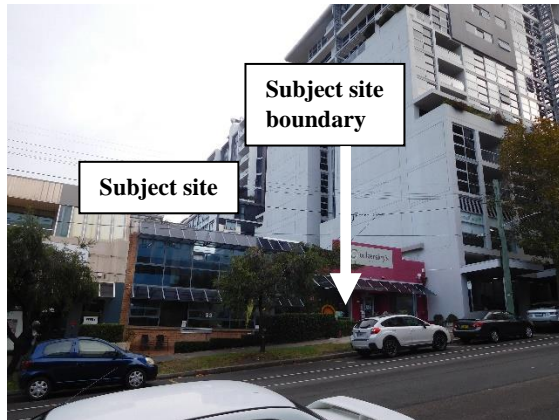
Subject site No. 33-35, 31 & 27 Atchison Street viewed from Atchison Street



Subject site No.31, 27 & 25 Atchison Street viewed from Atchison Street



Subject site No. 27, 25 & 23 Atchison Street as viewed from Atchison Street



Subject site No. 27, 25 & 23 Atchison Street as viewed from Atchison Street



Subject site rear elevations as viewed from Albany Lane



Subject site rear elevations as viewed from Albany Lane



Subject site Oxley Street elevation



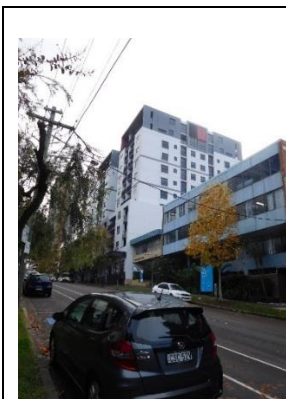
Subject site, viewed from eastern end of Atchison Street



Subject site, viewed from eastern end of Atchison Street

The surrounding development includes a range of building forms which are predominantly medium and high rise commercial and multi storey mixed use residential buildings.

On the northern side of Atchison Street is a number of existing commercial buildings to the eastern end, and existing mixed use buildings to the western end. The *St Leonards and Crows Nest 2036 Plan* identifies the existing sites to the north as having a future height of 16 storeys (subject to planning proposals) and Planning Proposal for 56 Atchison Street (PP3/18) is currently being considered by DPIE, which is seeking a building height of 56.1m. Accordingly, sites to the north of the subject site are considered likely to be in transition and likely to be provided with increase in height in the future.



Development on the northern of Atchison Street opposite the subject site

On the eastern side of Oxley Street is a residential area generally comprising medium and low density developments.



Development to the east of the subject on Oxley Street



Development to the east of the subject on Oxley Street

To the south of the subject site are existing mixed use buildings, with the buildings directly to the south comprising mixed use buildings having a building height of approximately 20m. To the south-west mixed use buildings have a building height of approximately 40m.



Subject site viewed from Oxley Street



Development to the south of the subject site viewed from Albany Lane

To the immediate west of the site is No.21 Atchison Street, being a single / split level building operating as Eckersley's Art and Craft store. This building has vehicular laneway access to the rear. The impacts of the development on this site are discussed further within the report.



No. 21 Atchison as viewed from Atchison Street which immediately adjoins the subject site



No. 21 Atchison as viewed from Atchison Street which immediately adjoins the subject site



No. 21 Atchison as viewed from Albany Lane which immediately adjoins the subject site

To the west of No.21 Atchison Street is a mixed use building at No. 15 Atchison Street having a height of approximately 40m.



Overall, St Leonards can be seen as area that is in transition. The strategic direction of St Leonards is now outlined within the *St Leonards and Crows Nest 2036 Plan* which details potential future building heights and floor space ratios across the locality.

RELEVANT HISTORY

On 25 June 2018, Council resolved to forward a Planning Proposal PP1/18 to the Department of Planning, Industry and Environment (DPIE) to enable exhibition of the Planning Proposal to amend the planning controls relating to 23-35 Atchison Street, St Leonards. In particular, the proposed amendments included:

- Increasing the maximum building height from 20m to 56m
- Increasing the minimum non-residential floor space ratio (FSR) from 0.6:1 to 1.5:1; and
- Imposing a total maximum floor space ratio of 6.3:1

The Planning Proposal was accompanied by a Voluntary Planning Agreement (VPA), which includes the dedication of a 5 metre wide strip for the purpose of a linear park along Oxley Street, provision of a publicly accessible 6-metre wide laneway from Atchison Street to Albany Lane along the western boundary of the site, and a \$2,800,000.00 monetary contribution towards the upgrade of Hume Street Park.

On 15 May 2020, the Planning Proposal amendments were gazetted and the proposed changes to the planning controls for 23-35 Atchison Street, St Leonards were adopted. This amendment formed part of the Minister for Planning and Public Space's recent first tranche of '*fast-tracked*' planning approvals to stimulate the economy moving post COVID-19.

On 28 July 2020 the subject development application was lodged.

North Sydney Development Control Plan Amendment

At its meeting held on 26/10/2020, Council adopted subsequent DCP amendments, which formed part of the Planning Proposal, however were not formally in force when the planning proposal was adopted due to the fast-tracked approval of the planning proposal by the Minister.

The amended DCP controls introduces a 6m ground level setback (over 2 storeys) along the Atchison Street frontage of the site to provide a more appropriate interface at the public domain at ground level.

Voluntary Planning Agreement

The Voluntary Planning Agreement was executed by both parties on 17 September 2020.

State Infrastructure Contribution

On 29 August 2020, the Minister announced the finalisation of a comprehensive land use and infrastructure package for St Leonards and Crows Nest to guide future development and infrastructure decisions in the area to 2036. This included the introduction of the St Leonards and Crows Nest Special Infrastructure Contribution (SIC) to apply to new additional residential development to help fund new and upgraded infrastructure to support the *St Leonards and Crows Nest 2036 Plan* and associated growth.

The suite of documents released included a Ministerial Direction and Order requiring the imposition of a condition of consent on any notice of determination for applicable development. This Order applies to the subject Development Application.

In light of the already negotiated VPA, Council sought written confirmation on 23 October 2020 that the VPA would constitute satisfactory arrangements and that a condition requiring the payment of a SIC is not required. It is highlighted that this process started and was advanced, well ahead of the *St Leonards and Crows Nest 2036 Plan* and that the key deliverable under the VPA is a significant monetary contribution (of 2.8 million) towards the delivery of Hume Street park open space upgrade.

Following numerous attempts to obtain a response from the Department of Planning, Industry and Environment, on 22 March 2021 Council received confirmation that an exemption will be granted from the SIC. Correspondence is attached. It is noted however, that in accordance with the Minister's Direction, the condition requiring the SIC must be imposed, however no SIC will be subsequently required.

Amendments to Development Application sought

Following an initial assessment, the applicant was requested to provide amended plans and to respond to a number of issues, including:

- Compliance with VPA, including to align the concept design for the Oxley Street Linear Park
- Deletion of habitable retail floor space below the Oxley Street linear park
- Further address the issue of site isolation of No. 21 Atchison Street
- To address issues raised by the Design Excellence Panel
- Amendments to meet minimum ADG setbacks
- Further discussion regarding solar impacts including to Hume Street Park
- Non-residential floor space of 1.5:1 should be provided at ground level or above.
- Provide compliant podium heights
- Rear Albany Lane ground level setback should be free of structure to enable pedestrian access.
- Landscape planter awnings over Council to be deleted.
- An additional lower level awning to be provided to Oxley Street
- A 1.5m ground level setback along Atchison should be provided on grade with the existing footpath.
- Consideration to be given to the anticipated building impacts to the likely development to the north, and impacts of solar access.
- No outdoor seating should be provided in Oxley Street as this space as required for a footpath.
- Non-residential spaces should be designed to be flexible spaces.
- Consideration should be given to activating Albany Lane
- The through site link should be designed to accommodate the future redevelopment of No.21 Atchison Street to allow windows and entry points in the future.

- Mix of apartments should comply with DCP requirements.
- Privacy to south-facing apartments should be further addressed.
- Design Excellence Panel requested further details regarding materials.
- Balcones to apartments 507 and 404 are excessive in size and should be reduced.
- A partly enclosed space should be included within the communal areas.
- Skylights should be provided to apartment 1602 to improve amenity
- Adequate loading facilities should be provided to accommodate at least 1 heavy rigid vehicle with the basement.
- Landscape amendments requested by Council's Landscape Development Officer.
- Provision of artwork would be the subject of Public Art Strategy wherein further consultation would be required.
- Various additional information requested.

Amended plans were received and generally addressed issues raised above. The amended plans are considered within this assessment report.

INTERNAL REFERRALS

BUILDING

The proposed works the subject of this application have not been assessed in accordance with compliance with the National Construction Code of Australia. This would need to be undertaken prior to the issue of a Construction Certificate. Should significant changes be required to achieve compliance with NCC standards, a Section 4.55 application would be necessary.

Notwithstanding the above, a Preliminary BCA Statement prepared by Alton Property has been submitted with the development applicant and confirms:

A preliminary review of the proposed design confirms the design is capable of complying with the requirements of the relevant sections of the Act and EPAR and the BCA 2019 Amdt 1 subject to resolution of the identified areas of non compliances and proposed Performance Solutions provided within this report, as recommended by the project Fire Engineer. Further detailed regulatory reviews will need to be progressively undertaken as designs advance and become more resolved to ensure compliance is achieved. We confirm the design as shown on the drawings referenced in Appendix A are capable of achieving compliance with the BCA.

Standard conditions of consent relating to compliance with the NCC are recommended to be imposed.

HEALTH/ENVIRONMENT

Council's Environmental Health Officer provided the following comments:

Contamination

The Preliminary Site investigation by WSP dated 10 June 2020, considered the site to be low risk and suitable for the proposed development.

The above report notes that the site was constructed prior to 2004 and an asbestos survey is required. In addition, no assessment of soils and groundwater ~~of the site~~ was carried out as part of the PSI however given the previous uses of the site the risk of contamination is considered to be low.

Regardless, conditions should be included regarding potentially contaminated soil/fill, which are included in the recommendations below.

Food

It is noted that some of the commercial tenancies are proposed to be food shops. Consideration will need to be given to the proximity of the exhausts to the community roof top garden as there may be noise and odour issues associated.

Acoustics

The acoustic report by Acoustic Logic, dated 6/7/2020, notes that the mechanical plant and equipment for the building have not yet been selected ~~for the premises~~.

While a plant room is noted to be located in basement level 2, A/C equipment, exhausts and stair press equipment is noted on the roof of the building, which is in close proximity to the roof garden and residential tenancies within the building.

Background noise readings have been taken and noise criteria for the project have been identified. Section 6.2.1 outlines options to ensure compliance, being the use of appropriate plant selection and location, duct lining, acoustic silencers, external lagging and enclosures. At this time, it has not been confirmed if any treatment will be required however will be considered.

A condition will be applied requiring that the project noise trigger levels identified in table 12 of the report to be achieved.

The report also provides recommendations regarding construction noise, which should also be conditioned. Vibration monitoring is also recommended during the excavation phase.

No information was noted in the acoustic report regarding use of the communal space on level 4 or the roof. Consideration should be given to the use of the areas, particularly noise from activities (i.e. parties) impacting neighbouring properties. It is suggested that permitted operating hours for the said areas are considered.

The report makes recommendations with regard to the glazing required to ensure acoustic amenity for residential units. The required internal noise levels will only be achieved if the windows and doors to the units remain closed.

Comment: It is noted that the fitout and use of any future food shops will form part of new development applications, as insufficient information is provided with the subject development application. The above-mentioned recommended conditions will be imposed.

ENGINEERING/STORMWATER DRAINAGE

Council's Development Engineer assessed the development application and raises no objection subject to imposition of a number of conditions regarding traffic management, stormwater, parking and access, sediment and erosion controls and basement excavation.

LANDSCAPING

Council's Landscape Development Officer outlined:

Street Trees and Private Trees

For the purposes of this assessment, it is assumed that existing overhead power lines along the Atchison street frontage shall be replaced with underground cable, or ABC. Assuming this to be the case, the following street tree recommendations are made. Should the existing overhead power lines along the Atchison street frontage remain, the existing plantings shall be retained and protected (with the exception of the 1 x Olea europaea var Africana which

shall be removed and replaced with 1 x *Callistemon viminalis* (200l)).

It is recommended that (subject to confirmation from council's Planning Advisor – Strategic Planning), should the above changes to electrical cabling, and subsequent street tree removal be confirmed, tree bonds be applied to ensure the replacement plantings are satisfactorily planted and can be inspected by council 6 months after issue of FOC, prior to the release of bonds.

1 x *Callistemon viminalis* (10x14m), 1 x *Platanus orientalis* (10x6m), and 1 x *Liriodendron tulipifera* (6x3.5m) are planted in the council verge on the Oxley Street frontage of the subject site. These 3 x trees shall be retained and protected with tree bonds of \$12,000, \$15,000, \$7,500 and respectively. Hoarding and scaffolding shall be designed to minimise any pruning requirement to the protected street trees and minor pruning only, with no more than 10% canopy removal shall be permitted to these trees.

1 x *Lagerstroemia indica* (3m) is planted in a recently refurbished street garden in the council verge on the corner of Oxley Street and Atchison Street. This tree and surrounding garden shall be retained and protected with a tree bond of \$5,000.

3 x *Callistemon viminalis* (6m) are located in the council verge in Atchison Street outside the subject site, and

1 x *Olea europaea* var *Africana* is planted in the council verge in Atchison Street outside the subject site. These 4 x trees shall be removed and replanted with 5 x *Liriodendron tulipifera* (200l) (equally spaced) to complement existing street plantings. Tree bonds of 5 x \$5,000 shall be applied to ensure the replacement plantings are satisfactorily planted and can be inspected by council 6 months after issue of FOC, prior to the release of bonds.

1 x *Callistemon viminalis* (3m) is located in the council verge outside 21 Atchison Street. This tree shall be removed and replaced with 1 x *Liriodendron tulipifera* (200l) in order to unify the streetscape planting. Tree bonds of \$5,000 shall be applied to ensure the replacement planting is satisfactorily planted and can be inspected by council 6 months after issue of FOC, prior to the release of bonds.

Note: the following trees are only acceptable for removal subject to the removal of existing overhead power lines along the Atchison street frontage, and the replacement plantings of *Liriodendron tulipifera* (200l).

Trees that are acceptable to remove	Location	Reason
3 x <i>Callistemon viminalis</i> (6m) -subject to replacement planting of 3 x <i>Liriodendron tulipifera</i> (200l)	council verge in Atchison Street outside the subject site	Improve streetscape, soften built form
1 x <i>Olea europaea</i> var <i>Africana</i> -subject to replacement planting of 1 x <i>Liriodendron tulipifera</i> (200l)	council verge in Atchison Street outside the subject site	Improve streetscape, soften built form
1 x <i>Callistemon viminalis</i> (3m) - subject to replacement planting of 1 x <i>Liriodendron tulipifera</i> (200l)	council verge outside 21 Atchison Street	Improve streetscape, soften built form

Landscape Plan

The Landscape Plan prepared by Ground Ink dated 21/7/20 includes a considered palette of site suitable species.

Further input from the relevant council department overseeing the future streetscape strategies may be required to determine whether any further input is required to the design or

implementation of the extended public use street frontage along Oxley Street.

It is considered to be generally acceptable subject to the following amendments:

REQUIRED AMENDMENTS

- *A report by a suitably qualified horticulturalist or engineer (or both) shall be provided to council, confirming that adequate levels of light of the correct spectrum shall be available to the basement level plantings via the skylights proposed, and /or shall include additional artificial light of the correct spectrum to these areas. (While it is recognised that the species chosen within this area have low light requirements, the above confirmation of available light levels is still required)*
- *The artificial grass proposed in the rooftop communal space shall be replaced with living lawn, and consideration given to increasing the area of living lawn on this area, possibly via the reduction in some of the decking area, in order to further encourage recreational use of this area, and reduce heat levels.*
- *A fully automatic irrigation system shall be installed to all lawn and garden areas, and such installation shall not be at the discretion of the developer as proposed within the existing landscape plan.*
- *Further consultation with the community shall be required to determine the suitability of the exact items of public art to be installed*

Comment: Amended plans and additional information has been submitted in response to issues and concerns raised by Council's Landscape Development Officer. The applicant has confirmed that the overhead powerhead lines will be removed and a condition is recommended to be imposed accordingly. Amended plans have been submitted which outlines:

- The artificial grass proposed in the rooftop communal space has been replaced with living lawn and the area has been increased.
- More landscape including street trees are proposed as per the updated Landscaped Plan.

With regards to lighting levels for the lower level plantings, a statement has been provided by Ground Ink Landscape Architects outlining:

Our studio is comprised of highly experienced landscape architects and horticulturalists and have prepared this statement which should be read in conjunction with the Lower Ground Terrace Lighting Report prepared by SLR Consulting Australia.

*As the SLR Report identifies, the lighting levels to the lower ground terrace do not fall below 1000 lux for all analysed scenarios which will support the proposed landscape design scheme illustrated on drawing LDA-08. The plant species selected include *Aspidistra elatior*, *Zamifolia* and *Acer 'Sango Kaku'*; all of which enjoy shaded conditions. It is envisaged that the design of the garden beds will also include feature stone sculptures and potential swathes of decorative gravel. It is envisaged that these areas of hardscape materials will be utilised in areas of minimal light ie along the northern wall.*

It is envisaged that the artificial lighting may be used to aid the successful establishment and longevity of the proposed plant species; however, as demonstrated by this statement and the SLR Lighting Report, the below ground terrace will receive sufficient natural lighting through the proposed skylights to support the specified plant species.

The landscaping is considered to be satisfactory and recommended conditions will be imposed.

DESIGN EXCELLENCE PANEL

The Design Excellence Panel considered the development application on 8 September 2020 and provided the following comments:

The Panel appreciates the presentation and the detailed response to the issues raised at the Panel's previous meeting. A number of the issues have been resolved, however there are a few concerns that the Panel raised.

Materials and finishes – The Panel requested details from the architect that were submitted to Council and the Panel on 14 September 2020. The following comments were made by the Panel: The Panel commended the wall sections which indicate molded GRC panels fixed to both lightweight upstands and concrete slabs in places. A sample board of all materials including a portion of the GRC panel in selected colour as well as other materials including external glazing should be included with the council application consistent with the renders shown to the Panel. The GRC panel joints to be shown on the elevations and aligned to relevant elements such as openings etc.

Overshadowing analysis shows that the proposal is consistent with the Planning Proposal envelope. There was concern that part of Hume Park was being overshadowed. It was suggested that shadow information be provided at 15 minute intervals to show the exact area affected. Council needs to ensure that this overshadowing was accepted in its consideration of the Planning Proposal.

Panel understands that the height control for the site to the north has not been increased with a planning proposal, however the St Leonards and Crows Nest 2036 Plan identifies this site with a potential future building height of 16 storeys. The Panel notes that the proposed lower level apartments would be impacted with overshadowing.

It was recommended that solar access to some of the living rooms could be achieved by swapping the living areas to face the street and access the balcony rather than being located behind the balcony.

Additional public domain to the Atchison Street frontage has been provided, however the water feature is considered excessive and slightly odd for an urban frontage, with a potential lack of eating etc. in this area. The seating indicated on the plan is around the corner and does not benefit from the water feature. Replacement of parts of the water feature with landscaping and seating could be developed into something that provides amenity and be more useful. More landscape including tree canopy along street frontages in particular are recommended. Noted that street trees in Atchison Street are likely to be replaced. A street tree plan should be developed for Atchison Street and Oxley Street where existing trees are appropriate for replacement.

It was noted that the commercial entry and through site link was improved and the ground floor masterplan generally improved.

There is still a concern with Atchison Street frontage being cluttered. The zone adjoining the building is quite narrow and mostly stairs on the eastern side. This area could be opened up significantly and have some canopy trees extending upwards where the upper level "gaps" occur.

The lower levels are improved, the Oxley St elevation could provide a more human scale treatment and/or elements. Entrance doors to retail space #3 need small awning for shelter over doors.

Albany Lane planting and associated structures should be setback 1.5m from boundary to allow for extension of footpath for pedestrian safety. The indicative layout of the upper ground floor

non-residential tenancy currently orients away from on Albany Lane as a result of the proposed location of back of house functions. The design should consider a range of uses for this space that provide the potential to activate and achieve passive surveillance to Albany Lane.

The design and layout of the lower ground floor non-residential floor space should be simplified to provide flexibility for different uses over time. The level changes and column grid appears to significantly compromise future flexibility and should be reconsidered.

The Panel noted that part of the non-residential floor space is to be provided below ground level. The Panel were concerned that this space is a substitute for commercial space being provided within podium levels.

The through site link should be designed to ensure that its long term usability will allow for future activation with windows and entry points from 21 Atchison Street, should this adjoining site be redeveloped. Landscaping and other elements which appear to preclude this activation should be provided as a short term/interim design only.

The balcony amenity is generally improved with curves modified to provide two metre-deep balconies adjacent to living areas. South facing apartments also improved with the inclusion of winter gardens.

Apartment mix – there is a lack of studios. This makes it hard for some to either get into the market or provide affordable rentals. Larger apartments are supported including large studios. Such a large project should be able to provide a diverse mix, consistent with council's requirements.

Level 16 communal space, there needs to be enclosed room off lobby provided there is no additional shadowing to Hume Park.

The screen between the private and communal spaces on level 16 needs to be significantly reduced from 2.4m to improve solar access. The screen does not need to be so high for privacy particularly with landscape planters either side.

Skylights to 1602 would improve solar access to the living areas and open space.

Conclusion

The Panel supports the proposal subject to the above issues being resolved to Council's satisfaction.

Comment: Amended plans have been submitted in response to the comments raised which include:

- Additional justification has been provided in relation to overshadowing to Hume Street Park discussed elsewhere in this report and to solar access received within the development.
- A number the living areas have been relocated to maximise sunlight.
- Landscaping within the northern setback has been reconfigured, with the footpath increased and landscaping rationalised.
- Council's Landscape Development Officer confirmed support for the removal of street trees on Atchison Street and replacement planting is proposed.
- With regards to the Oxley Street elevation, an awning is proposed at single storey height.
- Planting on Albany Lane has been removed and a footpath instead has been provided.
- The design and layout of the lower ground floor level has been provided generally as open plan to allow for flexibility. The column grids however still remain.
- Whilst a portion of the lower non-residential floor space continues to be retained, some non-

- residential space has been relocated to the podium.
- The through site link has been designed to remove permanent structures and to allow for future useability by the adjoining property should this property be redeveloped.
- Amended plans include studio apartments.
- A small communal room has been provided off the lobby which is considered to provide a flexible indoor / outdoor communal area. An accessible WC is also provided off the communal room.
- The screen located between the private and communal spaces on level 16 has been reduced to 1.8m to improve solar access.
- Additional roof skylights have been provided.

EXTERNAL REFERRALS

AUSGRID

Comment: Ausgrid's response has been included as an advising to this development consent.

TRANSPORT for NSW

TfNSW provided the following comments:

Reference is made to Council's correspondence dated 7 August 2020, regarding the abovementioned application which was referred to Transport for NSW (TfNSW) for comment. TfNSW has reviewed the submitted application and has the following comments for Council's consideration in the determination of the application:

1. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1- 2004 and AS 2890.2-2002 for heavy vehicle usage.

2. The swept path of the longest vehicle entering and exiting the subject site, as well as manoeuvrability through the site, shall be in accordance with AUSTROADS. In this regard, a plan shall be submitted to Council for approval which shows that the proposed development complies with this requirement.

3. A Construction Traffic Management Plan detailing construction vehicle routes, number of trucks, hours of operation, access arrangements and traffic control should be submitted to Council for determination prior to the issue of a construction certificate.

Comment: Recommended conditions will be imposed.

SYDNEY WATER

Sydney Water recommended a number of conditions that are included in the attached conditions.

SUBMISSIONS

Originally notified plans

Council notified adjoining properties and the Holtermann Precinct of the proposed development seeking comment between 14/8/2020 – 4/9/2020. Council received 27 individual submissions. The matters raised in the submissions are listed below:

- Building height
- Scale of building
- Overshadowing
- Traffic
- Privacy
- Loss of natural light
- Noise from traffic
- Loss of property value
- Noise from new apartments including communal open space
- Poor interface with adjacent residential units
- Construction hours and noise
- Wind tunnel
- Loss of views

Amended Plans

The amended plans were notified to adjoining owners and the Holtermann precinct between 27/11/2020-18/12/2020. Council received 17 additional submissions and the matters raised in submissions are listed below:

- Amended plans fail to address previously raised concerns.
- Shadow diagrams are inadequate
- Shadow diagrams inaccurate label my apartment
- Overshadowing to our rooftop
- Building height
- Scale of building
- Lack of building separation
- 5 storey podium increases overshadowing
- Poor interface with adjacent residential units
- Privacy
- Loss of amenity for surrounding properties
- Loss of health and wellbeing from additional overshadowing
- Noise from traffic
- Loss of property value
- Loss of views
- Construction hours and noise

Full copies of all submissions have been provided to the Sydney North Planning Panel for their consideration.

CONSIDERATION

The relevant matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), are assessed under the following headings:

SREP – (Sydney Harbour Catchment) 2005

Having regard to the SREP (Sydney Harbour Catchment) 2005 and the Sydney Harbour Foreshores and Waterways Area DCP 2005, the proposed development is not considered to be detrimental to the Harbour and will not unduly impose upon the character of the foreshore given the site's location in St Leonards with limited visibility from the foreshore and is considered to have no other impacts thereupon. As such, the development is acceptable having regard to the provisions contained within SREP 2005 and the Sydney Harbour Foreshores and Waterways DCP 2005.

SEPP 55 – Remediation of Land & Draft and Contaminated Land Management Issues

The provisions of SEPP 55 require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The applicant submitted an 'Updated Preliminary Site Investigation' report dated June 2020, prepared by Alton Property Group Pty Ltd. The report concludes:

'Based on our assessment, WSP consider that the environmental liability associated with the site is low and is suitable for the proposed mixed use development incorporating commercial and residential uses'.

Council's Environmental Health Officer provided the following comments:

The Preliminary Site investigation by WSP dated 10 June 2020, considered the site to be low risk and suitable for the proposed development.

The above report notes that the site was constructed prior to 2004 and an asbestos survey is required. In addition, no assessment of soils and groundwater of the site was carried out as part of the PSI however given the previous uses of the site the risk of contamination is considered to be low.

Regardless, conditions should be included regarding potentially contaminated soil/fill, which are included in the recommendations below.

Conditions will be imposed as recommended to require further investigation prior to the commencement of work, and also during the proposed work. Subject to imposition of these conditions, the requirements of SEPP 55 and the Draft SEPP have been satisfactorily addressed.

SEPP – (Vegetation in Non-Urban Areas) 2017

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

The SEPP will ensure the biodiversity offset scheme (established under the Land Management and Biodiversity reforms) will apply to all clearing of native vegetation that exceeds the offset thresholds in urban areas and environmental conservation zones that does not require development consent. The proposal meets the objectives of the SEPP because there would be no clearance of native vegetation or any materials impacts on bushland (if any) in the vicinity of the subject site.

SEPP 64 – Advertising & Signage

No advertising is proposed and a condition of consent is recommended to be imposed accordingly. The applicant has advised in any case that signage would be for part of a future development application.

SEPP (Building Sustainability Index: BASIX) 2004

A valid BASIX Certificate (*No.1117747M_03*) for multi-dwelling housing has been submitted with the application to satisfy the Aims of the SEPP.

Draft SEPP Environment 2017

This draft SEPP proposes to integrate the provisions of seven (7) SEPPs/SREPs including SREP (Sydney Harbour Catchment) 2005. The majority of the current provisions of SREP (Sydney Harbour Catchment) 2005 would be transferred to the draft SEPP with necessary updates and some amendments. The proposal would not offend the relevant provisions of the draft SEPP due to the location of the proposed development not being highly visible from the harbour and negligible impacts on the scenic quality and the ecology of Sydney Harbour and its foreshores.

SEPP 65 Design Quality of Residential Apartment Development

The proposal has been considered against the principles of SEPP 65 as follows:

Principle 1 – Context and neighbourhood character – The proposed development is generally consistent with the height and scale permitted under current planning controls and is also consistent with the scale envisaged by the *St Leonards and Crows Nest 2036 Plan*. Accordingly, the proposal is in keeping with the desired future character of the locality.

Principle 2 – Built form & scale – The bulk and scale of the proposed development is generally considered to be in keeping with the desired future character of the locality. Setbacks provided are considered to be appropriate. The western setback over the through site link provides an appropriate setback to the western boundary.

Principle 3 – Density – The overall density of the building is considered to be acceptable and is as envisaged by the relevant planning controls.

Principle 4 – Sustainability – A BASIX Certificate has been submitted. A roof garden is proposed with live lawn and planting.

Principle 5 – Landscaping – The submitted landscape plan is considered to provide a reasonable response with regards to landscaping across the site. The Oxley Street setback will provide a new landscaped linear park for residents and the northern setback will incorporate new plantings. Street trees on Atchison Street will be replaced with new trees, allowing for longevity in the provision of street trees.

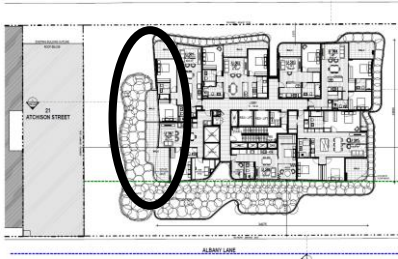
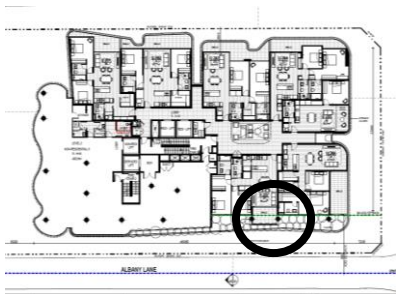
Principle 6 – Amenity – The development provides a reasonable level of amenity for new apartments and results in a reasonable level of amenity for surrounding apartments, in the context of the planning controls.

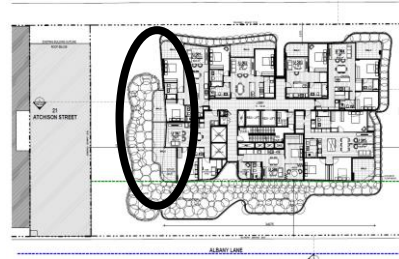
Principle 7 – Safety – The proposed development raises no known issue regarding safety and security.

Principle 8 – Housing diversity and social interaction – The proposed development provides an appropriate mix of dwelling types and provides communal spaces to encourage social interaction.

Principle 9 – Aesthetics – The Design Excellence Panel raised no issues with the aesthetics of the proposed development regarding the proposed development's design and materials.

The proposal has also been assessed against the relevant provisions within the ADG as follows:

Amenity	Design Criteria	Comment	Compliance
2F - Building Separation	<p>Minimum separation distances for buildings are: Up to four storeys (approximately 12m):</p> <ul style="list-style-type: none">• 12m between habitable rooms/balconies (6m to boundary)• 9m between habitable and non-habitable rooms (4.5m to boundary)• 6m between non-habitable rooms (3m to boundary)	<p>East – Oxley Street has a width of 20m, and the 5m setback to habitable rooms means that this elevation meets the minimum setback controls, being at least 12m to the centreline of Oxley Street.</p>	Yes
	 <p><i>Level 5 western balconies</i></p>  <p><i>Apartment 307 balcony</i></p>	<p>North – Atchison Street has a width of 20m. Levels 5 and above provide approximately a 3m setback, resulting in a setback of at least 12m to the centreline of Oxley Street.</p> <p>West – A 12m setback is provided from the residential levels to the western boundary. Part of the balconies on Level 5 will protrude into the 12m setback, providing a 10m setback in total. The design provides planting adjacent to the balconies to ameliorate privacy impacts. Presently, there are no existing residential apartments that would be impacted upon adjoining sites to the west and in any case, the primary useable balcony area for each of the apartments 501 and 507 will meet setback requirements.</p> <p>South – A 9m setback to the centre of Albany Lane is provided to levels 2 to 4 with the exception of one balcony on Level 2 (Apartment 207) and one balcony on Level 3 (Apartment 307) which provide approximately a 7m setback wherein a 9m setback is required. However, a privacy screen to the southern balcony end is proposed to prevent overlooking and further, planters are proposed to levels 2-5 between the habitable rooms/ balconies to reduce the privacy impacts. A condition is recommended to ensure these screens are provided.</p> <p>A 12m setback is provided from the centre of Albany Lane to apartments within Level 5 and above.</p> <p>On balance, the proposal is considered to provide an appropriate response to ADG setback requirements.</p>	Yes Yes (habitable rooms) No (balconies – acceptable on merit with landscaping provided to address privacy)
3D- Communal Open Space	Communal open space has a minimum area equal to 25% of the site.	The proposed development proposes communal open space:	No (acceptable on merit)



Level 5 western balconies



Apartment 307 balcony

	<p><i>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p>	<ul style="list-style-type: none">• An internal 20.66sqm communal room on Level 2• A 90.84sqm outdoor communal space on Level 4• A 269.94sqm rooftop communal space on level 16 incorporating a covered internal room, a disabled WC as well as landscaped outdoor areas including live lawn areas. <p>To comply with the requirement for 25% of the site provided for communal space, an area of 527sqm would be required.</p> <p>A total area of 381sqm is proposed in this instance, however this is acceptable on this site, given the high quality design proposed for the rooftop and the mix of indoor and outdoor spaces that are provided across the site. It is considered these spaces could provide for a variety of user requirements across the site, as well as contributing to opportunities for social interaction.</p> <p>Whilst not a consideration under the ADG, the applicant also considers that opportunities for open space are provided in this instance within the Atchison Street landscaped setback, the new Oxley Street Linear Park and also within the through-site link, and ready access to the future Hume Street Park.</p>										
3E – Deep Soil Zones	<p><i>Deep soil zones are to meet the following minimum requirements:</i></p> <ul style="list-style-type: none">• 3m minimum width• Minimum 7% of the site area	A deep soil zone is not required within the mixed use zone.	N/A									
3F - Visual privacy	<p><i>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</i></p> <table border="1"><tr><th><i>Building height</i></th><th><i>Habitable rooms and balconies</i></th><th><i>Non-habitable rooms</i></th></tr><tr><td><i>Up to 12m (4 storeys)</i></td><td><i>6m</i></td><td><i>3m</i></td></tr><tr><td><i>Up to 25m (5-8 storeys)</i></td><td><i>9m</i></td><td><i>4.5m</i></td></tr></table>	<i>Building height</i>	<i>Habitable rooms and balconies</i>	<i>Non-habitable rooms</i>	<i>Up to 12m (4 storeys)</i>	<i>6m</i>	<i>3m</i>	<i>Up to 25m (5-8 storeys)</i>	<i>9m</i>	<i>4.5m</i>	<p>As set out within discussion in 2F above, all setbacks meet minimum separation requirements, with the exception of the following balconies:</p> <ul style="list-style-type: none">• West facing balconies Level 5 serving U507 and 501 – provide a 10m setback. Planting is proposed to improve privacy impacts for future redevelopment of No.21 Atchison Street.• Southern balconies serving U207 and 307 providing a 7m setback however screening is proposed to the southern face of the	No (however screening is provided and this is considered acceptable on merit)
<i>Building height</i>	<i>Habitable rooms and balconies</i>	<i>Non-habitable rooms</i>										
<i>Up to 12m (4 storeys)</i>	<i>6m</i>	<i>3m</i>										
<i>Up to 25m (5-8 storeys)</i>	<i>9m</i>	<i>4.5m</i>										

	<table><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>	Over 25m (9+ storeys)	12m	6m	balconies as well as surrounding planters.	
Over 25m (9+ storeys)	12m	6m				
		On balance, privacy is considered to be satisfactorily addressed.				
3G – Pedestrian Access & Entries	<i>Building entries and pedestrian access connects to and addresses the public domain Access, entries and pathways are accessible and easy to identify</i>	Residential lobby to Atchison Street is accessible and visible. Access to ground level retail and commercial tenancies is acceptable. The through site link will improve pedestrian access within the locality.	Yes			
3H – Vehicle Access	<i>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes</i>	Vehicular access within Albany Lane is acceptable.	Yes			
3J – Bicycle and Car parking	<i>For development in the following locations:</i> <ul style="list-style-type: none"><i>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</i><i>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</i> <i>The car parking needs for a development must be provided off street.</i> <i>Parking and facilities are provided for other modes of transport</i>	Car parking and bicycle parking generally complies with Council’s requirements. (Refer to DCP table). End of trip bicycle facilities are proposed within the basement level.	Yes			
Amenity	Design Criteria					
4A - Solar and daylight access	<i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i>	84 out of 100 apartments will achieve a minimum of 2 hours of solar access. Estimated 71 of out of 100 apartments will achieve a minimum of 2 hours of solar access when taking into consideration a likely built form on the adjoining site to the north, envisaged under the <i>St Leonards and Crows Nest 2036 Plan</i> .	Yes			
4B - Natural ventilation	<i>All habitable rooms are naturally ventilated.</i>	66.6% of apartments achieve cross ventilation	Yes			

	<p><i>The layout and design of single aspect apartments maximises natural ventilation.</i></p> <p><i>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents – At least 60% of apartments are naturally cross ventilated</i></p>		
4C - Ceiling Heights	<p><i>Ceiling height achieves sufficient natural ventilation and daylight access - Minimum 2.7m (habitable rooms), 2.4m for second floor where it does not exceed 50% of the apartment area.</i></p>	Floor to floor levels for residential levels are a minimum of 3.1m, which will allow compliance with finished ceiling heights.	Yes
4D 1 - Apartment size and layout	<p><i>Apartments are required to have the following minimum internal areas: 50m² (1B), 70m² (2B), 90m² (3B)</i></p> <p><i>Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each</i></p> <p><i>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms</i></p>	All apartments generally meet minimum ADG requirements in terms of apartment sizes.	Yes
4D 2 - Apartment size and layout	<ol style="list-style-type: none"> <i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i> <i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i> 	All apartments are generally provided with appropriate room depths and are provided with appropriate access to natural light.	Yes
4D 3- Apartment size and layout	<ol style="list-style-type: none"> <i>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</i> <i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i> <i>Living rooms or combined living/dining rooms have a minimum width of:</i> <ul style="list-style-type: none"> <i>3.6m for studio and 1 bedroom apartments</i> <i>4m for 2 and 3 bedroom apartments</i> 	All bedrooms are provided with reasonable sizes and amenity.	Yes
4E - Private open space and balconies	<p><i>All apartments are required to have primary balconies as follows: Studio apartments - 4m²</i></p>	All apartments are provided with either a balcony or winter garden, which generally meet the ADG	Yes (subject to conditions)

	<p>1 bedroom apartments - 8m2, minimum depth 2m</p> <p>2 bedroom apartments 10m2 minimum depth 2m</p> <p>3+ bedroom apartments 12m2 minimum depth 2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m</p> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m</p> <p>Primary private open space and balconies are appropriately located to enhance livability for residents.</p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p> <p>Private open space and balcony design maximises safety.</p>	<p>requirements, with the exception of Apartment 308.</p> <p>Despite this facing south, it is considered that either a balcony or winter garden should be provided to this apartment. Given the generous size of the apartment (97sqm) a condition is recommended to be imposed to require an 8sqm balcony or winter garden be provided, within the currently proposed apartment floorplate.</p> <p>Further, it is also noted that 3 apartments being Apartment No.103, 205 & 305 are east facing and provided with winter gardens. It is considered this eastern outlook together with its substantial eastern setback would provide high amenity balconies and accordingly, a condition is recommended to be imposed to require these 3 winter gardens be designed to be able to be used as balconies.</p> <p>With regards to the provision of the remaining winter gardens on the rear elevation, these are considered to be acceptable in this instance given their south facing orientation.</p>	
4F - Common circulation and spaces	<p>1. The maximum number of apartments off a circulation core on a single level is eight</p> <p>2. For buildings 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>No more than 8 apartments are proposed on any circulation space.</p> <p>A total of 2 lifts are proposed, which is considered acceptable.</p>	<p>Yes</p> <p>Yes</p>
4G -Storage	<p>Studio apartments- 4m3</p> <p>1 bedroom apartments- 6m3</p> <p>2 bedroom apartments- 8m3</p> <p>3+ bedroom apartments- 10m3</p>	<p>At least 50% of the storage requirements are to be provided within the apartments, with additional storage proposed within basement levels.</p>	<p>Yes</p>

NORTH SYDNEY LOCAL ENVIRONMENT PLAN (NSLEP 2013)

Principal Development Standards – North Sydney Local Environmental Plan 2013			
Site Area – 2,109.8m ²	Proposed	Control	Complies
Clause 4.1 – Subdivision lot size	Proposed lot size is 2,109.8sqm	No minimum lot size in B4 zone	Yes
Clause 4.3 – Heights of Building	57.85m	56m	No (Clause 4.6 request for variation lodged)
Clause 4.4 – Floor Space Ratio	6.3:1	6.3:1 (maximum)	Yes
Clause 4.4a – Non residential FSR	1.5:1	1.5:1 (minimum)	Yes

1. Permissibility

The proposed works comprising the demolition of existing structures and the construction of a shop top housing development including a through site link and embellishment work within the Oxley Street Linear Park are permissible under the NSLEP 2013 in the B4 Mixed Use zone with development consent.

2. Objectives of the zone

The objectives for the B4 Mixed Use zone are:

- *To provide a mixture of compatible land uses*
- *To integrate suitable business, office, residential and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

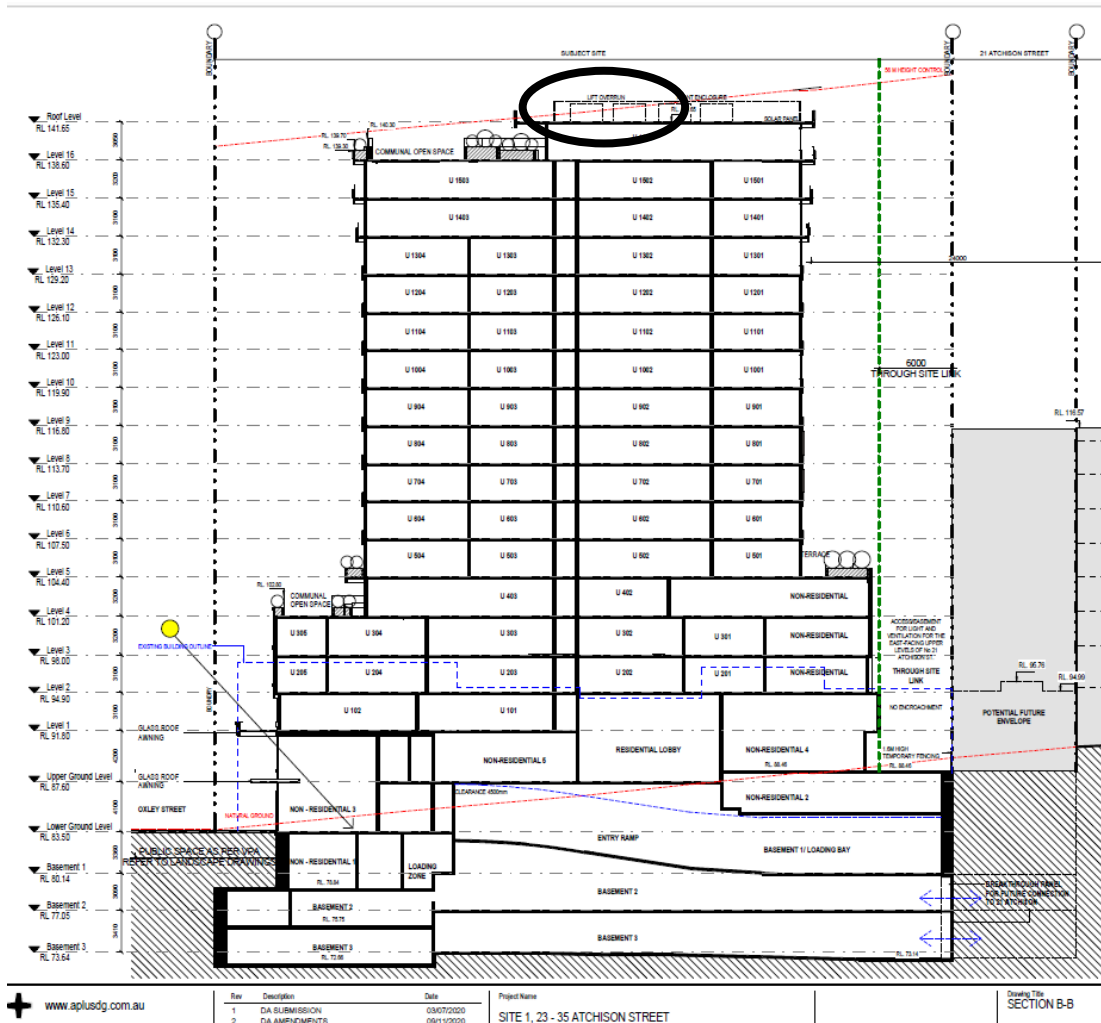
The proposed shop top housing development provides non-residential uses at the ground level, lower ground level and upper levels. The eastern setback will contribute to a linear pocket park and the through site link will also contribute to increased amenity in the locality with increased permeability. The proposal is consistent with the relevant objectives of the zone.

3. Minimum subdivision lot size

The proposal involves subdivision of the land to amalgamate the site into a single allotment 2109sqm. There is no minimum subdivision size in the B4 Mixed Use Zone.

4. Clause 4.3 - Height of Buildings

Clause 4.3(2) NSLEP 2013 sets a maximum building height on the site of 56m. The development application proposes a building height of 57.85m, with the breach caused mostly by the lift overrun as can be seen in the figure below:



Section B-B- detailing proposed building height breach

A written request pursuant to Clause 4.6 NSLEP 2013 seeking to justify the non-compliance has been submitted. The proposed non-compliance has been assessed in accordance with the requirements of Clause 4.6(3) and (4), the objectives of the control and the zone. These matters have been considered below.

The written request seeking to justify the proposed breach is considered to demonstrate that compliance with the development standard is unreasonable or unnecessary as the objectives of the standard are achieved notwithstanding the non-compliance within the building height standard.

The written request provided by the applicant is considered to provide sufficient environmental planning grounds to justify contravening the building height development standard, with the following conclusions provided by the applicant:

Sufficient environmental planning grounds:

There are sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it applies to the site. In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. The applicable circumstances that relate to the site are discussed below.

4.2.1 Ground 1: Clause 4.6(8)(ca) of the NSLEP 2013 – Land in St Leonards

The NSLEP 2013 contains special provisions for Land in St Leonards, including clause 4.6(8)(ca) as follows:

(8) This clause does not allow development consent to be granted for development that would contravene any of the following—

(ca) in relation to land identified as “Land in St Leonards” on the Exceptions to Development Standards Map—clause 4.3(2) by more than 3 metres (excluding plant rooms and similar structures),

As shown in the Architectural Plans and discussed in Section 3.2 above, the proposed development seeks approval for an exceedance to the 56m building height control by 1.85m and will only comprise the lift overrun and mechanical plant.

As noted in clause 4.6(8)(ca) the consent authority has the power to grant development consent for Land in St Leonards if it does not exceed more than 3m (excluding plant rooms and similar structures). Accordingly, given that the proposed development will only result in a 1.85m exceedance to the 56m building height control and only comprises the mechanical plant and lift overrun, the consent authority have the powers to approve the proposed development under clause 4.6(8)(ca). This forms the basis of sufficient environmental planning grounds to justify a flexible approach to the application of the height control as it is documented in Council’s LEP.

4.2.2 Ground 2: The site has a sloping topography

The site sits on the edge of a high point that occurs roughly at the intersection of Mitchell Street and Atchison Street and there is approximately 6m of elevation change across the site.

The development has been carefully designed to step down with the slope of the site; however, the topography has necessitated a protrusion in the centre, towards the eastern extent. This protrusion is minor in nature given it only comprises the lift overrun and will not substantially result in any additional overshadowing or any other impacts to the amenity of the surrounding buildings or public domain. The protrusion is discussed and illustrated in Section 3.2 above.

4.2.3 Ground 2: the development complies with the maximum floor space ratio

The proposed development complies with the maximum FSR for the site of 6.3:1. As such, the height variation has not been driven by an overdevelopment of the site, but to allow for appropriate building separation between adjoining development and to provide appropriate amenity. The proposed development includes significant public benefits and has acknowledged the possible future redevelopment of adjoining sites, in particular 21 Atchison Street. In this way, the location of the building on the site is a result of providing appropriate separation distances and given the topography of the land this has resulted in a minor exceedance to the building height control.

Notwithstanding this, the proposed exceedance does not result in an increase in gross floor area and the proposed development therefore complies with the maximum FSR control.

4.2.4 Ground 3: the recent LEP did not adequately consider detailed engineering requirements The proposal has been subject to detailed assessment as part of the LEP Amendment to increase the FSR and Height of Building control. However as part of this, some detailed structural requirements and adequate lift overrun heights were not accounted for.

4.2.5 Conclusion

There are considered to be sufficient environmental planning grounds to justify contravening the development standard as:

- Clause 4.6(8)(ca) allows for an exceedance to the maximum building height control if it is below 3m on Land in St Leonards and excludes plant rooms and similar structures;*
- The site is positioned to provide appropriate separation distances between adjoining*

development and is located on a significant slope;

- *Some detailed aspects of the development were not considered at the LEP Amendment stages;*
- *It is not uncommon or unreasonable to expect some minor height variation in such situations; and The building complies with the maximum floor space ratio.*

It is considered that in this instance, the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3) in NSLEP 2013. Clause 4.6(4)(a)(i) is satisfied. However, to be clarified, Clause 4.6(8)(ca) ceased to apply to land in St Leonards on 31 December 2015.

The proposal is considered against the objectives of the control as follows:

- (a) *To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient*** – The site provides a change in level by nearly 3m from west down to its eastern boundary. The building has been appropriately stepped to address the topography and following the natural gradient of the site. The stepping of the development is considered to reduce the non-compliance with the building height control and this objective is met.
- (b) *to promote the retention and, if appropriate, sharing of existing views*** – Significant views are enjoyed from a number of surrounding properties across the site. Given that St Leonards is generally located on a ridge, views include Sydney Harbour, the city skyline, district views, Chatswood views, Blue Mountain views. Some views include iconic views including the Sydney Harbour Bridge and Sydney Opera House. The proposed development will remove a significant level of views from surrounding properties.

Notwithstanding this, the building elements that result in a breach of the building height control being the roof plant is not considered to result in any material impact on views. That part of the roof plant which breach the building height control will be mostly set behind elements of the roof that comply with the building height control. Overall, the proposed breach of the building height control is not considered to result in any material impacts of views, satisfying this objective. An assessment against Tenacity is provided following the DCP Table of this report.

- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development*** – The proposed development results in a significant level of solar access impact to the adjoining shop top housing development at No. 30-36, and 38-46 Albany Street and also to a number of surrounding buildings including 48 Albany Street, 28 Albany Street, 9 Albany Street, 1 Albany Street, 599 Pacific Highway, 15 Atchison Street, 21 Atchison Street, residential properties east of Oxley Street, mixed use developments on the Pacific Highway and various other surrounding properties, including some overshadowing to Hume Street Park.

The overshadowing impact is considered to result from those elements of the building that comply with the building height control. Those elements on the rooftop in breach of the building height include the plant and screening and have been set back from the building edge to ensure they do not result in material overshadowing impacts. This objective is considered to be met. An assessment against the DCP overshadowing controls is provided following the DCP table of this report.

- (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings***, - Those elements in breach of the building height control are limited to roof plant and result in no new privacy impacts to surrounding properties.
- (e) *to ensure compatibility between development, particularly at zone boundaries***, - The breach of the building control is centrally located within the building. The site is located on a zone boundary, wherein lower density R4 residential zoned properties are located on the eastern side of Oxley

Street. The breach in the building height control does not result in an adverse impact to this separation at the boundary, nor impact the building's compatibility with surrounding development.

- (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area* – The breach in the building height results only from plant area, with no habitable rooms provided within the area of breach. On this basis, the scale and density are considered to be generally in accordance with the desired character of the locality, which is set by the recently adopted Planning Proposal for the site in particular, and the *St Leonards and Crows Nest 2036 Plan* more broadly.

The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives within the zone in which the development is proposed to be carried out – The proposal is considered to be in the public interest because it is consistent with the objectives of the building height control and the objectives of the B4 mixed use zone, as set out within this report.

The written request seeking a variation to the building height control is considered to demonstrate that compliance with the building height standard is unreasonable and unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the proposed breach. The variation results from plant room and associated screening, that is at a no higher RL than the adjacent roofline however with the steeply sloping topography the breach occurs. The development has included a step within the building to respond to the topography generally. On this basis, the proposal is considered to comply with the objectives of the control and is considered to be in the public interest. The Clause 4.6 request for variation is accepted.

5. Clause 4.4 - Floor space ratio

The permitted floor space ratio for the proposal is 6.3:1 and the proposed development will comply with this maximum.

6. Clause 4.4A - Non-Residential floor space ratios

The minimum non-residential floor space ratio is 1.5:1 and the applicant will comply with this minimum requirement.

7. Clause 5.10 Heritage

The site is not considered to materially impact or detract from any surrounding heritage items or conservation areas and will comply with the provisions of Clause 5.10 NSLEP 2013.

8. Clause 6.10 Earthworks

Clause 6.10 of NSLEP 2013 specifies that the consent authority must consider the following matters prior to granting consent for earthworks:

- (a) *The likely disruption of, or any detrimental effects on:*
 - (i) *drainage patterns and soil suitability in the locality of the development, and*
 - (ii) *natural features of, and vegetation on, the site and adjoining land*
- (b) *the effect of the development on the likely future use or redevelopment of the land;*
- (c) *the quality of the fill or the soil to be excavated, or both*
- (d) *the effect of the development on the existing and likely amenity of the adjoining properties*
- (e) *the source of any fill materials and the destination of any excavation material;*
- (f) *the likelihood of disturbing Aboriginal objects or relics;*
- (g) *the proximity to, and potential for adverse impacts, on any waterways, drinking water catchment or environmentally sensitive area;*

- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development

Comments - Consideration has been given to the provisions of Clause 6.10 NSLEP 2013 as follows:

- Council's Development Engineer raises no concerns with the method of stormwater water disposal subject to imposition of conditions
- Dilapidation reports will be required by conditions
- Conditions can be imposed to protect adjoining properties.

The proposal is considered to be consistent with the provisions of Clause 6.10 NSLEP 2013.

9. Division 3 Intensive urban development areas

The subject site is listed on the North Sydney LEP 2013 maps as being an 'Intensive Urban Development Area'. Section 6.20 (Arrangements for designated State public infrastructure) sets out:

- (1) *The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the development of land wholly or partly for residential purposes, to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.*
- (2) *Despite all other provisions of this Plan, development consent must not be granted for development for purposes of residential accommodation (whether as part of a mixed use development or otherwise) in an intensive urban development area that results in an increase in the number of dwellings in that area, unless the Planning Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land on which the development is to be carried out.*
- (3) *This clause does not apply to a development application on land in an intensive urban development area if all or part of the land to which the application applies is a special contributions area (as defined by section 7.1 of the Act).*

(4) *In this Division—*

designated State public infrastructure means public facilities or services that are provided or financed by the State (or if provided or financed by the private sector, to the extent of any financial or in-kind contribution by the State) of the following kinds—

- (a) State and regional roads,
- (b) bus interchanges and bus lanes,
- (c) land required for regional open space,
- (d) social infrastructure and facilities (such as schools, hospitals, emergency services and justice purposes).

intensive urban development area means the area of land identified as "Intensive Urban Development Area" on the Intensive Urban Development Area Map.

Intensive Urban Development Area Map means the North Sydney Local Environmental Plan 2013 Intensive Urban Development Area Map.

The Environmental Planning and Assessment Act 1979 describes:

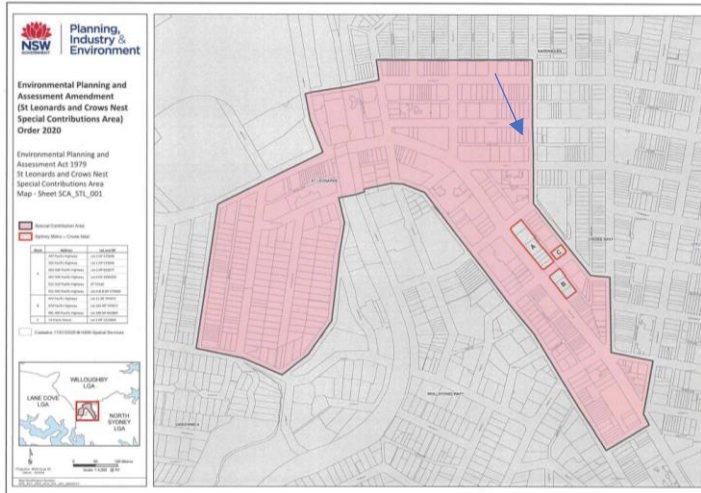
Special contributions area means land for the time being described in Schedule 4.

Schedule 4 Special Contributions areas includes:

6 *land shown edged heavy black and shaded pink on the map marked "St Leonards and Crows Nest Special Contributions Area Map"—*

- (a) approved by the Minister on the making of the Environmental Planning and Assessment Amendment (St Leonards and Crows Nest Special Contributions Area) Order 2020, and
- (b) kept and made available for public access in accordance with arrangements approved by the Minister

The subject site is included within the map 'Environmental Planning and Assessment Amendment (St Leonards and Crows Nest Special Contributions Area) Order 2020' as shown below:



Ministerial Determination – Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Determination 2020

The Ministerial Determination was made on 27 August 2020, with the main object of this Determination being to:

4. Object of Determination

The main object of this Determination is to require special infrastructure contributions to be made for the provisions of infrastructure in connection with the intensification of residential development in St Leonards and Crows Nest, as generally outlined in the 2036 St Leonards and Crows Nest Plan published by the Department of Planning, Industry and Environment.

Ministerial Direction – Environmental Planning and Assessment (Special Infrastructure Contribution – St Leonards and Crows Nest) Direction 2020

The Ministerial Direction was made on 27 August 2020 and sets out:

3 Councils and other planning bodies to whom Direction is given

(1) This Direction is given to:

- (a) consent authorities in relation to development within the St Leonards and Crows Nest Special Contributions Area, and*
- (b) councils and registered certifiers when determining applications for complying development certificates in relation to development within the St Leonards and Crows Nest Special Contributions Area.*

(2) To avoid doubt, this Direction also applies to:

- (a) any local planning panel when exercising, on behalf of a council constituted for a local government area that includes land within the St Leonards and Crows Nest Special Contributions Area, the functions of the council as a consent authority, and*
- (b) any officer or employee of such a council to whom the council delegates its functions as a consent authority. Note. The consent authorities to whom the direction is given include the*

councils for the local government areas of Lane Cove, North Sydney and Willoughby City and Sydney North Planning Panel. The Independent Planning Commission is also subject to the direction when determining development applications for development in the special contributions area.

4.5 Condition for special infrastructure contribution must be imposed on grant of development application

A consent authority must impose the following condition on the grant of consent to a development application to carry out development that consists of, or involves, development for the purpose of residential accommodation on intensive residential use land within the St Leonards and Crows Nest Special Contributions Area if a special infrastructure contribution is required to be made for that development under the Environmental Planning and Assessment (Special Infrastructure Contribution - St Leonards and Crows Nest) Determination 2020: A special infrastructure contribution must be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution - St Leonards and Crows Nest) Determination 2020 (as in force when this development consent takes effect).

A person may not apply for a construction certificate or occupation certificate (as the case may require, having regard to the Determination) in relation to development the subject of this development consent unless the person provides, with the application, written evidence from the Department of Planning, Industry and Environment that the special infrastructure contribution for the development (or that part of the development for which the certificate is sought) has been made or that arrangements are in force with respect to the making of the contribution. More information A request for assessment by the Department of Planning, Industry and Environment of the amount of the contribution that is required under this condition can be made through the NSW planning portal (<https://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service/>). Please refer enquiries to SICContributions@planning.nsw.gov.au.

A special infrastructure contribution must be made in accordance with the Environmental Planning and Assessment (Special Infrastructure Contribution - St Leonards and Crows Nest) Determination 2020 (as in force when this development consent takes effect).

A person may not apply for a construction certificate or occupation certificate (as the case may require, having regard to the Determination) in relation to development the subject of this development consent unless the person provides, with the application, written evidence from the Department of Planning, Industry and Environment that the special infrastructure contribution for the development (or that part of the development for which the certificate is sought) has been made or that arrangements are in force with respect to the making of the contribution.

More information

A request for assessment by the Department of Planning, Industry and Environment of the amount of the contribution that is required under this condition can be made through the NSW planning portal (<https://www.planningportal.nsw.gov.au/special-infrastructure-contributions-online-service/>). Please refer enquiries to SICContributions@planning.nsw.gov.au.

As set out within this report, on 23 October 2020 Council requested formal advice regarding an exemption from the SIC requirements, on the basis of an already executed VPA wherein monetary contributions together with other key deliverables have been offered and accepted by Council.

On 23 March 2021 Council received confirmation from DPIE that *'the developer will not be required to make a contribution under the SIC. However, to address the requirements of the Ministerial Direction, the correspondence also sets out 'Please note that Council must include a SIC condition on the development consent as required under the adopted St Leonards and Crows Nest SIC determination and direction. However, the developer will not be required to make a contribution under this SIC for this application as the Department intends to issue a SIC Clearance Certificate based on the above.'*

The above-mentioned condition will be imposed on the development consent however as indicated in DPIE's correspondence, no SIC will be required.

NORTH SYDNEY DEVELOPMENT CONTROL PLAN 2013

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development																										
		<i>complies</i>	<i>Comments</i>																							
2.2 Function																										
2.2.1 Diversity of Activities		Yes	<p>The proposed ground and lower ground floor provides a range of retail and business opportunities.</p> <p>The proposed commercial western tower is provided with a separate entry and provides for commercial uses.</p> <p>The through site link will provide for further opportunities to activation.</p> <p>A series of high quality common areas are proposed for use by the residential occupancy which will also be provided with an accessible lift.</p>																							
2.2.2 Maximise Use of Public Transport		Yes	<p>Car parking is generally to be provided in accordance with Section 10 NSDCP 2013.</p> <p>The basement will facilitate the provision of a medium rigid vehicle.</p> <p>Adequate bicycle parking including end of trip facilities are proposed.</p>																							
2.2.3 Mixed Residential Population – Size of units		No (acceptable on merit)	<table><tr><th>Required</th><th>Proposed</th><th>Compliance</th></tr><tr><td>No of Studio/1 bedroom units <55%</td><td>26%</td><td>Yes</td></tr><tr><td>Dwelling Size: Studio (10-20%)</td><td>11%</td><td>Yes</td></tr><tr><td>1 Bedroom (25-35%)</td><td>15%</td><td>No</td></tr><tr><td>2 Bedroom (35-45%)</td><td>57%</td><td>No</td></tr><tr><td>3+ bedroom (10-20%)</td><td>17%</td><td>Yes</td></tr><tr><td>Adaptable Housing: (more than 5 dwellings) – 15%</td><td>15%</td><td>Yes</td></tr></table> <p>On balance, the mix of apartments is considered to provide a variety of dwelling types and is acceptable. The predominance of 2 bedroom apartments will suit the average occupancy across the North Sydney LGA of 1.87 persons.</p> <p>The proposed development will provide 15% adaptable housing apartments. At the time of lodgment, this complied with Council’s</p>			Required	Proposed	Compliance	No of Studio/1 bedroom units <55%	26%	Yes	Dwelling Size: Studio (10-20%)	11%	Yes	1 Bedroom (25-35%)	15%	No	2 Bedroom (35-45%)	57%	No	3+ bedroom (10-20%)	17%	Yes	Adaptable Housing: (more than 5 dwellings) – 15%	15%	Yes
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		DCP control. Whilst Council has since modified its DCP to require 20% adaptable apartments, on balance the provision is acceptable in the circumstances.
2.3 Environmental Criteria		
2.3.1 Clean Air	Yes	Car parking is proposed generally in accordance with DCP parking rates.
2.3.2 Noise <ul style="list-style-type: none"> No > 5dba above background during day & evening 	Yes	An Acoustic Report has been submitted by Acoustic Logic dated 6/7/2020 which details that the building can comply with relevant noise criteria. On this basis, standard conditions can be imposed requiring the development to comply with all relevant noise criteria.
2.3.3 Wind Speed (no greater than 13m/s at footpaths and outdoor spaces)	Yes	<p>A Qualitative Wind Assessment Public Space Analysis was submitted prepared by SLR Consulting Pty Ltd. The wind report assessed the impact of the building upon surrounding public spaces and concluded that the wind impacts were acceptable, with no mitigation treatments required, other than:</p> <p>Through site link pedestrian pathway – Winds could be above 13 m/s southerly winds.</p> <ul style="list-style-type: none"> Mitigation required: <i>Additional landscaping or other practical wind shielding is recommended along the eastern side of the pedestrian link. Exact mitigation measures are to be determined during the detailed design phase of the proposal.</i> <p>Through-site link entry – moderate wind impact potential – Winds could be above 13 m/s southerly winds.</p> <ul style="list-style-type: none"> Mitigation required: <i>Additional landscaping or other practical wind shielding is recommended along the eastern side of the pedestrian link. Exact mitigation measures are to be determined during the detailed design phase of the proposed.</i> <p>A condition is recommended to ensure the recommendations of the wind report are implemented.</p>
2.3.4 Reflectivity	Yes	<p>A Reflectivity Report has been submitted by SLR dated November 2020 to provide an assessment of the reflectivity and glare caused by the proposed development. The report outlines that the proposed development is assumed to have glazing with a reflectivity value no greater than 20% and recommends the following be implemented or retained to the proposed design:</p> <ul style="list-style-type: none"> <i>Fins or privacy screens recommended to northern facades of the development in order to obscure glazing from angles of incidence associated with adverse glare conditions are to be retained.</i> <i>As glazing to the eastern façade is unable to be obscured by elements of the development or surrounds, SLR proposes that anti-reflective glazing with a reflective coefficient of less than 10% be applied to eastern aspect glazing.</i> <i>Existing and proposed landscaping is recommended to be retained to the surrounds of the proposed development.</i> <i>Balustrades are to retain current levels of glazing and continue to incorporate non-reflective elements.</i> <i>Façade elements including setbacks, building orientations, screens privacy fins and mullion protrusions are to be retained as specified unless</i>

		<p><i>otherwise stated within the body of this report.</i></p> <ul style="list-style-type: none"> <i>The development should retain current proportions and orientation of glazing.</i> <p>A condition is recommended to ensure the recommendations of the Reflectivity Report are implemented.</p>
2.3.5 Artificial Illumination Zones B1, B4, IN2 – 11pm	Yes	There is no illumination proposed to the building. The communal rooftop and podium areas will be required to cease use by 11pm daily.
2.3.6 Awnings	Yes	<p>The site has been provided with a reverse podium to Atchison Street in line with Council's controls, which will provide for weather protection over part of an extended footpath of Atchison Street located within the site.</p> <p>A high level awning is proposed on Oxley Street however a lower level awning is also proposed, to address comments raised by the Design Excellence Panel.</p> <p>On balance, the proposed awnings are considered to be an appropriate response to the site in the context of the controls applicable to the site.</p>
2.3.7 Solar Access 2 hours (70% of dwellings within RFB/shoptop housing)	No (acceptable on merit)	Refer to solar access discussion following the DCP table.
2.3.8 Views	No (acceptable on merit)	Refer to view loss analysis discussion following the DCP table.
2.3.9 Acoustic Privacy <ul style="list-style-type: none"> Living areas (day/night < 40 dBA) Sleeping areas (day/night) ≤ 40 dBA 	Yes	<p>An Acoustic Report has been submitted by Acoustic Logic dated 6/7/2020 which details that the building can comply with relevant noise criteria. On this basis, standard conditions can be imposed requiring the development to comply with all relevant noise criteria.</p> <p>It is noted that the use of the non-residential tenancies have not been provided and conditions are recommended to ensure these uses are subject to future development applications, including for outdoor dining, to ensure that their impact on the surrounding locality can be assessed.</p> <p>With regards to the use of the podium and rooftop level, conditions are recommended to require that the use of the rooftop areas are not occur between 11pm and 7am.</p>
2.3.10 Vibration	Yes	An Acoustic Report has been submitted by Acoustic Logic dated 6/7/2020 which provides recommendations to ensure satisfactory outcomes are achieved with regards to impacts to internal amenity. Standard conditions can be imposed.
2.3.11 Visual Privacy	Yes	<p>The proposal has been assessed against the provision of the ADG (Refer to SEPP 65 considerations) as being acceptable on the basis that:</p> <ul style="list-style-type: none"> Proposed setbacks will generally comply with ADG requirements other than: Balconies 207 and 307 on the southern elevation wherein privacy screening is proposed to the southern balcony end. Balconies 501 and 507 wherein a planter is proposed to ameliorate privacy impacts.

		<ul style="list-style-type: none"> A condition is recommended to be imposed to ensure that privacy louvres to the non-residential components are fixed and angled to prevent overlooking to residential properties. <p>The communal open space is considered to be suitably located and set back from common boundaries.</p> <p>On balance, privacy is considered to be appropriately addressed.</p>
2.4 Quality built form		
2.4.1 Context	Yes	The proposed development is considered to be contextually appropriate as it is consistent with the desired future character of St Leonards.
2.4.2 Site Consolidation	Yes	<p>The DCP Area Character Statement for St Leonards and Crows Nest sets out:</p> <p><i>‘Maintain a frontage of 20m – 40m, which equates to approximately to the amalgamation of two or three original allotments.’</i></p> <p>Whilst the amalgamated blocks are greater in length, the tower element will have a length of approximately 35m, and on this basis is considered to meet the intent of the control. The Design Excellence Panel raised no concerns with the proposed design.</p>

2.4.3	Setback – Side/rear – Zero required	No (acceptable on merit)	<p>The building height plane control applies to the eastern elevation as the site is it adjoins the R4 high density residential development. The building height plane is measured at 3.5m from the centre of the road and projected at an angle of 45 degrees internally to the site. The site will provide a significant breach. Despite this breach, the proposed development will generally comply with height, setback and podium controls and the resultant development is consistent with that envisaged by the indicative concept plan as part of the Planning Proposal. Strict compliance in this instance would essentially sterilize the site in the context of the current planning controls. Notwithstanding, a significant (5m) whole of building setback is provided which is considered to have an acceptable impact on the adjacent R4 high density residential development zone.</p>
2.4.4	Podiums		<p>The non-residential building components will be set back at least 3m from either the property boundary or centre line of the road.</p> <p>A 1.5m setback below ground is proposed within the rear Albany Lane setback to allow for provision of services.</p> <p>The DCP St Leonards and Crows Nest Character Statement sets the following setback and podium controls:</p> <p><u>Atchison Street</u></p> <ul style="list-style-type: none"> • 6m ground level setback – 2 storeys • 4 storey podium • 3m above podium setback <p>A 6m ground level setback for 2 storeys.</p> <p>A 4 storey podium is provided on Atchison Street, however in line with the topography, the podium is maintained for the length of the frontage and results in a 5 storey podium at its eastern end. This is considered to be an acceptable response to the site in this instance, particularly given the significant 5m whole of building setback to Oxley Street, which will reduce the impact of the bulk within the streetscape. It is noted that this approach was proposed and accepted on the development at No.9 Albany Street with a similar topography and 5 level podium was provided at its eastern end.</p>



9 Albany Street – viewed from the corner of Oxley Street and Albany Street

A 3m setback is provided above the podium.

Oxley Street

- *5m whole of building setback*
- *4 storey podium*
- *7m above podium setback*

A 5m whole of building setback is proposed.

As set out above, the proposal provides a 5 storey podium at the site's eastern end, however for reasons set out above this podium is considered to be a satisfactory design response given the significant building setbacks that are proposed.

A 7m above podium setback is proposed.

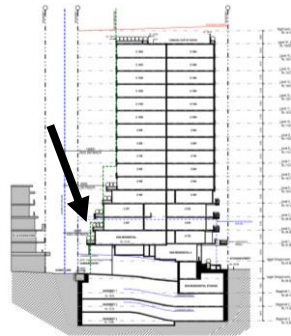
Albany Lane

- *3 storey podium*
- *1.5m whole of building setback*

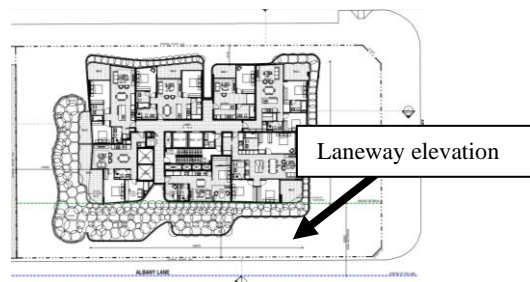
The appearance of the development will be that a part 4 and part 5 storey podium is provided, wherein the controls require a 3 storey podium. Notwithstanding, the proposed design is considered to meet the intent of control given that:

- The building will be set back over 2m from the boundary.
- Habitable rooms are to be set back above the podium after 3 levels. It is the planter structures that are proposed to ameliorate privacy impacts that would extend to level 5.
- The setback to the laneway is varied and includes cut outs.
- The DCP provides no requirements for the above podium setbacks on this site.

The proposed setback and podium, as well as the level 5 floor plan, can be seen below:



Section A-A



Level 5 floor plan

Provision P3 sets out that where the ground level change across the width of a site, the podium should be stepped at an appropriate location to maintain a characteristic podium height. However, for reasons set out above, the proposed design is considered to meet the objectives for podiums in that the design will reinforce a human scale when read from the public domain.

Overall, the Design Excellence Panel supported the proposed setbacks and podiums. It is also noted that the applicant has set back the south-east podium to reduce any overshadowing impacts.

2.4.5 Building Design	No (acceptable on merit)	<p>The ground and lower ground floor levels provide a range of floor to ceiling heights, mostly providing 3.1m floor to floor heights, allowing for reasonable future floor to ceiling heights.</p> <p>Whilst there are some non-residential spaces constrained with regards to floor to ceiling heights, a variety of spaces is to be provided and on balance, are considered to provide an acceptable level of amenity and flexibility. The building's design was supported by the Design Excellence Panel.</p>
2.4.6 Skyline	Yes	The proposed development will result in a reasonable skyline appearance. The proposed screening to the roof plant will assist with ameliorating impacts from the roof plant.
2.4.7 Junction and Termination of Streets	Yes	Overall, the building proposes the use of curves and setbacks to provide an appropriate response to its corner location.
2.4.8 Balconies - Apartments	Yes (subject to conditions)	<p>As set out within the ADG discussion, balconies are considered to be acceptable with the exception of Apartment 308 wherein no balcony is proposed. A condition recommending the incorporation of either a balcony or winter garden is recommended.</p> <p>In addition 3 east-facing apartments No.103, 205 & 305 are provided as winter gardens. A condition is recommended to require these winter gardens can be utilised as balconies, given their primary eastern orientation and outlook.</p> <p>The provision of south-facing winter gardens on balance is considered to be acceptable to address the constraints of providing south-facing apartments.</p>
2.4.9 Through Site Pedestrian Links	Yes	<p>A through site pedestrian link is proposed at the site's western end providing access from Atchison Street through to Albany Lane. The link is to be provided in accordance with the VPA requirements. The link is 6m wide and is considered to satisfy DCP requirements.</p> <p>The amended plans propose to design the link to enable the adjoining development at 21 Atchison Street to connect with openings at ground level should they redevelopment in the future. The long term vision for the use of the link is supported, with active uses desirable on both sides.</p>
2.4.10 Streetscape	Yes	<p>Land levels surrounding the development will appropriately align with the building entries.</p> <p>A 1.5m setback is proposed along the northern setback to provide an extension to the Atchison Street setback to allow for pedestrian thoroughfare.</p> <p>The Albany Lane setback of more than 2m will allow for pedestrian circulation.</p> <p>Streetscape elements will be required to be undertaken in accordance with Council's Public Domain Style Manual and Design Codes.</p> <p>A condition is recommended to require the overhead infrastructure to be undergrounded.</p>
2.4.11 Entrances and Exits	Yes	<p>The proposed residential entry is acceptable.</p> <p>Entry into the non-residential tenancies is separated and</p>

		considered to be acceptable.
2.4.12 Nighttime appearance	Yes	No external lighting is proposed.
2.4.13 Public Spaces and facilities	Yes	The Oxley Street Linear Park is proposed to be a public park. Its design is required to meet the requirements of the VPA.
2.5 Quality Urban Environment		
2.5.1 Accessibility	Yes	<p>An Access Report has been submitted, prepared by Ergon Consulting dated 13 July 2020. The Report concludes:</p> <p><i>This statement confirms accessibility can be appropriately achieved within this development with the provided comments and recommendations. This report confirms the client's commitments to providing an equitable and accessible environment for all. As such, we believe the development approval may be issued as the development can achieve a reasonable level of access and meet statutory requirements, subject to further assessment of the construction design documentation.</i></p> <p>On this basis, standard conditions of consent can be imposed to require compliance with accessibility.</p>
2.5.2 Safety and Security	Yes	No known issues of safety and security are considered to arise from the proposed development.
2.5.3 Illumination	Yes	<p>No illumination of the building is proposed.</p> <p>With regards to illumination of the rooftop and podium communal areas, a condition is recommended to be imposed to require no lighting or use of these areas between 11pm and 7am.</p>
2.5.4 High Quality Residential Accommodation	Yes	Refer to SEPP 65 discussion. The proposal will result in an acceptable level of amenity for future occupants.
2.5.5 Lightwells	Yes	A lightwell is proposed to provide light to the lower level non-residential space which is considered to improve its amenity. The applicant has provided advice from landscape designers that the lightwell will be adequate to provide light for the proposed plantings on this level.
2.5.6 Private Open Space	No (acceptable on merit)	Refer to Section 2.4.8 for discussion of balconies and communal open space. Balconies and communal open space are considered to be acceptable on merit.
2.5.7 Vehicular Access	Yes	<p>Vehicular access is proposed to be provided from Albany Lane.</p> <p>Access and parking is provided within the basement level for a medium rigid vehicle.</p> <p>The application makes provision for a shared basement, in that it is proposed to enable the adjoining property at No.21 Atchison Street to access their basement through 23-35 Atchison Street should they redevelop in the future.</p> <p>The design of the vehicular access will allow for cars to enter and exit in a forward direction.</p>

<p>2.5.8 Car Parking</p>	<p>Yes</p>	<table border="1"> <thead> <tr> <th colspan="3">Required car parking</th></tr> <tr> <th></th><th>Maximum</th><th>Proposed</th></tr> </thead> <tbody> <tr> <td>Residential</td><td>43.5</td><td>43</td></tr> <tr> <td>Adaptable spaces</td><td>15 (required)</td><td>15</td></tr> <tr> <td>Motorbike parking (residential)</td><td>4.4</td><td>4</td></tr> <tr> <td>Visitor spaces</td><td>-</td><td>-</td></tr> <tr> <td>Commercial</td><td>17.6</td><td>17</td></tr> <tr> <td>Motorbike parking (commercial)</td><td>2.4</td><td>3</td></tr> <tr> <td>Car wash facilities</td><td>1</td><td>1</td></tr> </tbody> </table> <p>Car parking generally meets the provisions of Section 10 NSDCP 2013.</p> <p>The applicant submitted a Traffic and Parking Assessment Report, prepared by Varga Traffic Planning dated 18 November 2020. The Traffic Engineer outlined:</p> <p><i>It is likely that the proposed development will result in a net increase in the traffic generation of the site of approximately 7 vph during the AM peak hour, and 5 vph during the PM peak hour.</i></p> <p><i>The projected net increase in traffic activity as a consequence of the development proposal is statistically insignificant and will clearly not have any unacceptable traffic implications in terms of road network capacity.</i></p> <p>The proposed loading dock accommodating a medium rigid vehicle is proposed to serve both the residential and commercial uses. The Traffic Report outlines:</p> <p><i>A separate loading dock management plan could be prepared to facilitate the shared use of the loading dock by commercial tenants and residential removalists.</i></p> <p>A condition is therefore recommended to require a loading dock management plan be prepared and implemented between the proposed uses.</p> <p>The Traffic Report concludes:</p> <p><i>In summary, the proposed parking and loading facilities satisfy the relevant requirements specified in Council's DCP and the rearranged car parking layout achieves better compliance with the current Australian Standards and it is therefore concluded that the proposed development will not have any unacceptable parking or loading implications.</i></p> <p>The proposed level of car parking and subsequent traffic is consistent with that envisaged as part of various studies regarding the capacity of the site and the surrounding sites under <i>St Leonards and Crows Nest 2036 Plan</i>.</p>	Required car parking				Maximum	Proposed	Residential	43.5	43	Adaptable spaces	15 (required)	15	Motorbike parking (residential)	4.4	4	Visitor spaces	-	-	Commercial	17.6	17	Motorbike parking (commercial)	2.4	3	Car wash facilities	1	1
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Motorbike parking (commercial)	2.4	3																											
Car wash facilities	1	1																											
<p>2.5.9 Garbage Storage area within 2m of street or laneway boundary</p>	<p>Yes</p>	<p>Garbage chutes are provided within the residential components of the building.</p> <p>The proposed design will enable garbage collection from Albany Lane.</p> <p>A separate holding area is proposed for non-residential waste.</p>																											

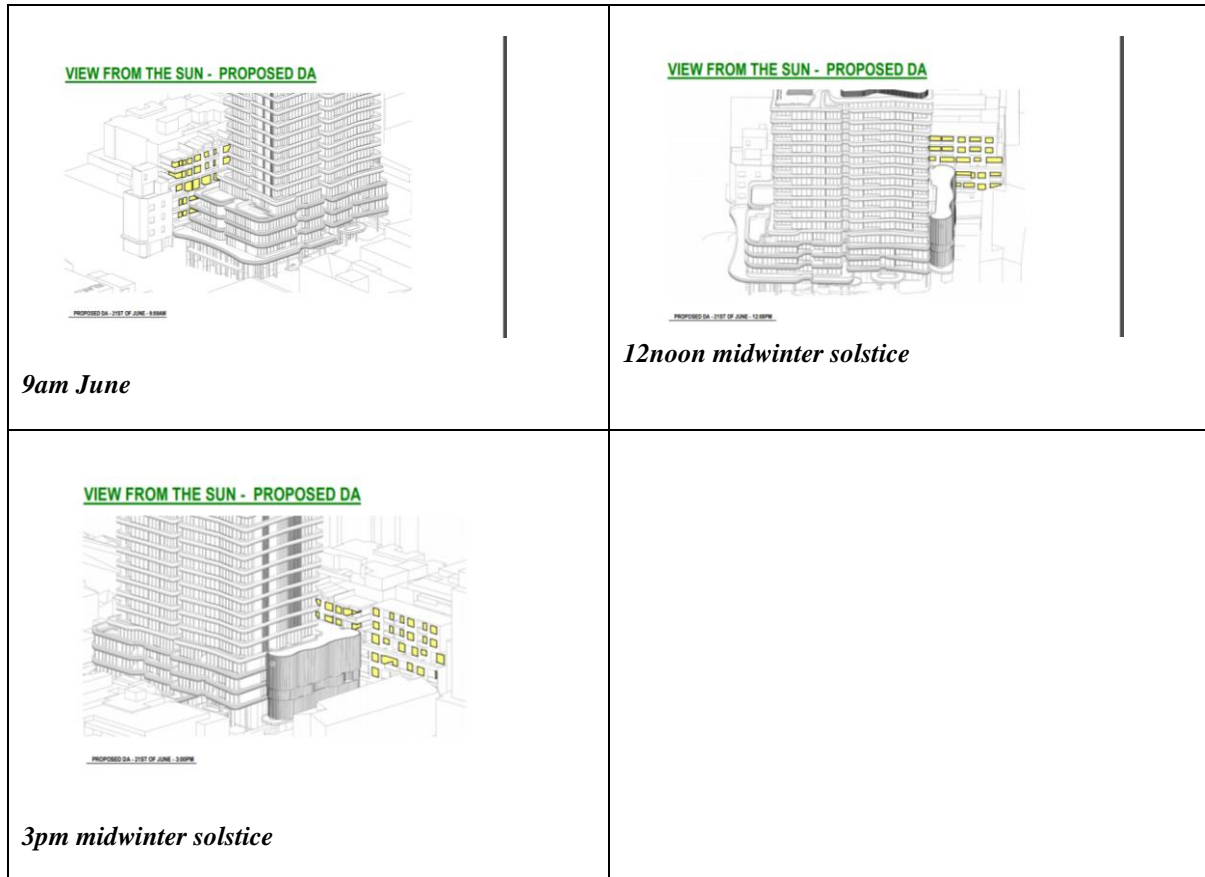
2.5.10 Site Facilities	Yes	The applicant details that at least 50% of the required storage will be provided within each residential apartments, in accordance with ADG requirements. The remainder is proposed to be provided within the basement level and each storage area will be required to be capable of storing a bicycle. A mail room is located within the residential lift lobby.
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency	Yes	A Basix Certificate has been submitted and conditions will be imposed to require compliance.
2.6.2 Passive Solar Design	Yes	The building has been designed to maximise passive solar access to apartments. The common lift lobby is also provided with external windows.
2.6.4 Natural Ventilation	Yes	The design of the building will meet ADG cross ventilation requirements. In addition, common lift lobbies are provided with windows providing natural light.
2.6.7 Stormwater Management	Yes	The building proposes the provision of on-site detention to ensure that the stormwater runoff is reduced compared to the existing development.
2.6.9 Adaptive Reuse of Buildings	No (acceptable on merit)	The building is proposed to be demolished.
2.6.11 Green Roofs	Yes	The common area is to be provided with live lawn and plantings.
2.7 Public Domain		
2.7.1 Street Furniture, Landscaping Works	Yes	The VPA requires the Oxley Street Linear Park is required to be designed in accordance with: <ul style="list-style-type: none"> • The North Sydney Centre Public Domain Strategy • St Leonards Public Domain Strategy • North Sydney Council Infrastructure Manual A detailed design is required to be submitted for Council's approval prior to the issue of a Construction Certificate.
2.7.3 Public Art	N/a	The applicant originally sought to include artwork within the setback areas. Council advised that the artwork is required to go through a consultation process. The applicant subsequently deleted the proposed artwork at this stage.
2.7.4 Paving	Yes	Conditions of consent are recommended to ensure new paving surrounding the site will be in accordance with Council's public domain requirements.
2.7.5 Native Vegetation and Water	Yes	Conditions are recommended to ensure WSUD is incorporated in the Linear Park, in accordance with the requirements of Public Domain Strategy for St Leonards.

Overshadowing Analysis

The proposed development results in a significant level of overshadowing given its proposed height and its location centrally within a generally dense urban environment. The proposed development results in overshadowing to properties across St Leonards, in particular, 30-36 Albany Street, 38-46 Albany Street and also to a number of surrounding buildings including 48 Albany Street, 28 Albany Street, 9 Albany Street, 1 Albany Street, 599 Pacific Highway, 15 Atchison Street, 21 Atchison Street, residential properties east of Oxley Street, mixed use developments on the Pacific Highway and various other surrounding properties, including some overshadowing to Hume Street Park.

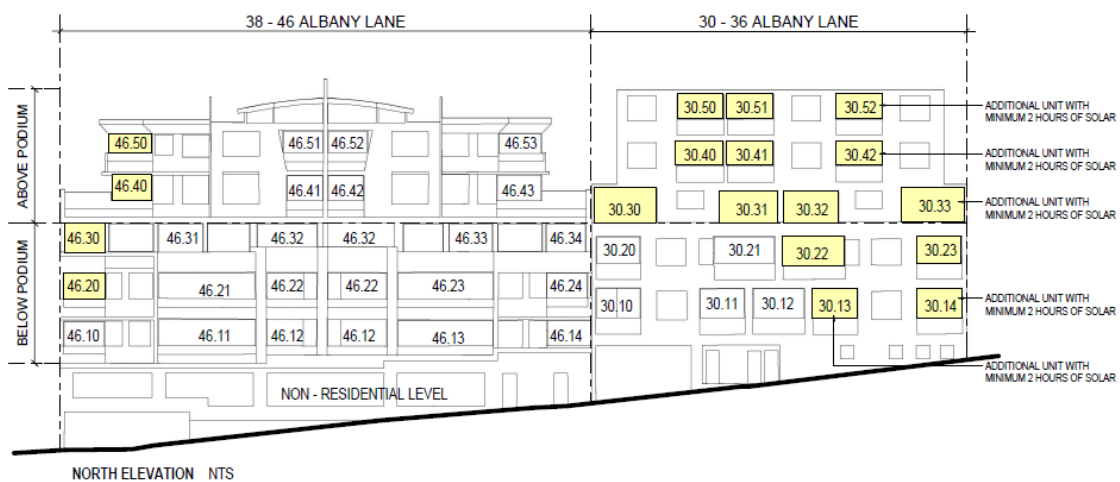
The properties to be most significantly impacted are those apartments within the mixed use developments at No.30-36 Albany Street and No.38-46 Albany Street, located to the immediate south of the subject site.

Between 9am and 3pm during the midwinter solstice, the rear north-facing elevations of these properties are significantly overshadowed. The applicant has prepared sun's eye view shadow diagrams which are detailed below:



Applicant's overshadowing plans – sun's eye view

The applicant has also provided an elevation of these properties which details those apartments which will continue to receive in excess of 2 hours and which will have their sunlight removed and can be seen below:



Detailing those apartments which will receive more than 2 hours of sunlight between 9am – 3pm during the midwinter solstice

38 - 46 ALBANY LANE SOLAR ANALYSIS _ BELOW PODIUM			30 - 36 ALBANY LANE SOLAR ANALYSIS _ BELOW PODIUM			38 - 46 ALBANY LANE SOLAR ANALYSIS _ ABOVE PODIUM			30 - 36 ALBANY LANE SOLAR ANALYSIS _ ABOVE PODIUM		
UNIT NO.	SOLAR ACCESS HOURS	UNIT ACHIEVES 2H	UNIT NO.	SOLAR ACCESS HOURS	UNIT ACHIEVES 2H	UNIT NO.	SOLAR ACCESS HOURS	UNIT ACHIEVES 2H	UNIT NO.	SOLAR ACCESS HOURS	UNIT ACHIEVES 2H
46.10	0.5H	NO	30.10	0H	NO	46.40	2.25H	YES	30.30	2H	YES
46.11	0.25H	NO	30.11	0H	NO	46.41	1H	NO	30.31	2.25H	YES
46.12	0H	NO	30.12	1.5H	NO	46.42	0.5H	NO	30.32	2H	YES
46.13	0H	NO	30.13	2H	YES	46.43	0.75H	NO	30.33	3.5H	YES
46.14	0H	NO	30.14	2H	YES	46.50	2.25H	YES	30.40	2H	YES
46.20	2H	YES	30.20	0H	NO	46.51	1H	NO	30.41	2.25H	YES
46.21	0.25H	NO	30.21	1H	NO	46.52	0H	NO	30.42	2.25H	YES
46.22	0H	NO	30.22	2.25H	YES	46.53	0.75H	NO	30.50	2H	YES
46.23	0H	NO	30.23	2.25H	YES				30.51	2.25H	YES
46.24	0H	NO							30.52	2.25H	YES
46.30	2.75H	YES									
46.31	1.75H	NO									
46.32	0.75H	NO									
46.33	0H	NO									
46.34	0H	NO									

A TOTAL OF 18 UNITS INCLUDING 4 ADDITIONAL UNITS ACHIEVE MINIMUM 2 HOURS OF SOLAR

Table detailing those apartments which will receive more than 2 hours of sunlight between 9am – 3pm during the midwinter solstice

The northern elevation of 30-36 and 38-46 Albany Street can be seen below:



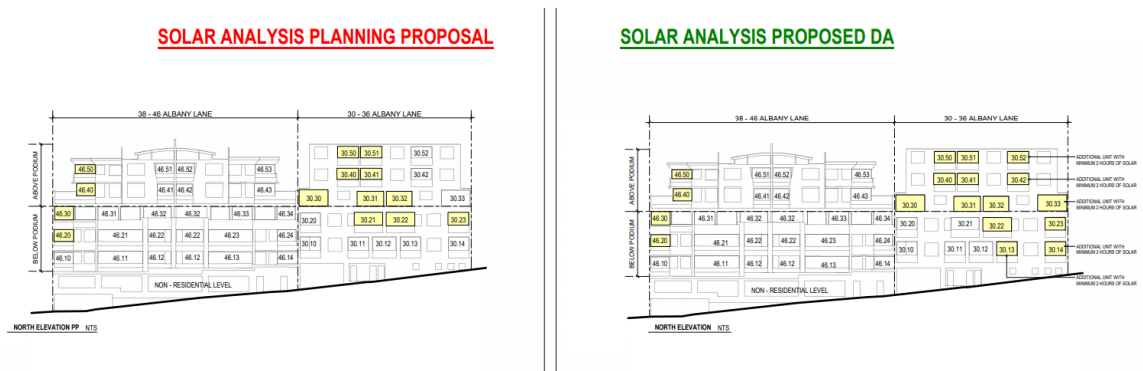
North-facing elevation 30-36 and 38-46 Albany Street

It can be concluded from this submitted information, that across both developments 38-46 Albany Street and 30-36 Albany Street, there are a total of 24 apartments in the podium levels 1, 2 and 3. Only 6 out of these 24 will continue to receive a minimum of 2 hours sunlight between 9am – 3pm during the midwinter solstice.

With regards to north-facing apartments located above the podium across both developments 38-46 Albany Street and 30-36 Albany Street, a total of 18 north-facing apartments are located above the podium level and 12 out of these 18 apartments will continue to receive a minimum of 2 hours of sunlight during the midwinter solstice. The rooftop open space is also mostly overshadowing given its due south location to the proposed development.

In addition to the impacts to 30-36 Albany Street and 38-46 Albany Street, the shadow diagrams detail that the overshadowing will fall on a number of properties. From 9am these impacts include 21 Atchison Street, 15 Atchison Street, 28 Albany Street, 599 Pacific Highway, 1 Albany Street, Albany Street, properties with a frontage to the Pacific Highway. By 12 noon during the midwinter solstice, overshadowing will fall on a number of properties including 48 Albany Street and 9 Albany Street. After 12 midday during the midwinter solstice, additional shadowing will fall upon 48 Albany Street and many residential properties to the east of Oxley Street, including a portion of Hume Street Park. Outside these times, these properties will continue to receive solar access.

As set out previously, the building height and FSR for the site were approved under Planning Proposal 1/18. At the time of consideration, overshadowing impacts were identified as being likely to be a significant issue. As part of the Planning Proposal, the applicant undertook an assessment of the likely impacts resulting from an indicative scheme on the site, wherein shadow impacts were accepted at the time, and the Planning Proposal recommended for approval. As part of the Development Application, the applicant was asked to undertake a comparison of the proposed impacts compared to those anticipated by the Planning Proposal. The analysis details that in terms of the total quantum, the assessment of the indicative concept scheme as part of the planning proposal anticipated 14 apartments across these 2 developments continuing to receive sunlight. The proposed scheme retains sunlight for a minimum of 2 hours to 18 apartments, being the addition of 4 apartments receiving sunlight that were not anticipated to. Whilst the location of those apartments receiving sunlight are not consistent with the apartments on the indicative scheme, it is also considered that the indicative scheme did not form part of any approved plans and that in any case, the building envelope now proposed was the result of the detailed design. The subject development application must be considered on its merits and in the context of the relevant planning controls. The comparison between the Planning Proposal concept / indicative scheme and the current development application is shown below:



The relevant overshadowing policies are considered below.

Section 2.3.7 NSDCP 2013 outlines:

P2 Developments located outside of the North Sydney Centre should be designed and sited such that solar access at the winter solstice (21st June) provides a minimum of 3 hours between the hours of 9.00am and 3.00pm to:

- (a) any solar panels;*
- (b) the windows of main internal living areas;*
- (c) principal private open space areas; and*
- (d) any communal open space areas. located on the subject property and any adjoining residential properties. Note: Main internal living areas excludes bedrooms, studies, laundries, storage areas.*

P3 Despite P2 above, living rooms and private open spaces for at least 70% of dwellings within a residential flat building or shoptop housing should receive a minimum of 2 hours of solar access between the hours of 9.00am and 3.00pm at the winter solstice (21st June).

Comment: The proposed development will overshadow adjoining properties as detailed above, however the overshadowing is considered to be acceptable given that:

- The building elements that cast the shadow comply with the building height, FSR and ADG setback requirements
- The proposed development will generally meet the provisions of the DCP setbacks
- The existing sunlight received by adjoining properties is considered to be essentially borrowed across the existing underdeveloped site.

- The building form is consistent with that envisaged by Council's controls and also by the *St Leonards and Crows Nest 2036 Plan*.

It is noted that any future redevelopment of No.21 Atchison Street would also resulting in overshadowing to properties with a northern frontage Albany Lane. Notwithstanding, any future development would be considered on its merits.

P4. New development should not overshadow existing or proposed public open spaces located outside of the North Sydney Centre between 11.30am and 2.30pm.

As part of the significant work that has been undertaken across St Leonards and Crows Nest, Council together with the State Government plan to expand the existing Hume Street Park. The existing Hume Street current comprises a park together with an above ground car park and basketball courts. It is envisaged the site will be reconfigured in the future and retention of sunlight is therefore critical to its future amenity. The aerial view and photo of the existing Hume Park, including the car park and basketball Courts can be seen below:



Aerial photograph – Hume Street Park



Future Hume Street Park - Corner of Hume Street and Pole Lane

The proposed development will not overshadow Hume Street Park between 11.30am and 2.30pm, complying with the DCP control.

Notwithstanding, the Character Statement for St Leonards and Crows Nest Planning Area sets out:

P14 Development should not increase overshadowing of the existing or proposed public open space area at Hume Street Park bounded by Pole Lane, Oxley Street, Clarke Street and Hume Street between the hours of 9am – 3pm.

Whilst not a relevant Environmental Planning Instrument for consideration for the subject development application, for information the *St Leonards and Crows Nest 2036 Plan* includes solar access controls that are contained in the solar access map and requires the retention of solar access:

Public Open Space 10.00am – 3.00pm – Hume Street Park.

The submitted shadow diagrams demonstrate that the proposed development will result in minor overshadowing to the north-eastern corner between 2.45pm – 3pm during the midwinter solstice. The level of overshadowing is detailed in yellow below. The proposed blue line indicates the shadow that was envisaged as part of the Planning Proposal. The red line indicates the applicant's indicative overshadowing from future building envelopes on surrounding sites should surrounding sites be developed in the future maximised by the current planning controls.

PROPOSED DA ENVELOPE
UNDER ST LEONARDS AND CROWS NEST 2036 PLAN
(SECTION 9.1 MINISTERIAL DIRECTION APPROVED ON 31ST AUGUST 2020)



Overshadowing to Hume Street park 2.45pm midwinter solstice

The overshadowing impact to Hume Street Park occurs between approximately 2.45pm – 3pm during the midwinter solstice. On balance, the overshadowing is considered to be acceptable given that:

- The overshadowing to Hume Street Park results from compliant building elements.
- The proposed overshadowing is within the building envelope of the indicative concept plan that was accepted as part of the planning proposal.
- The additional overshadowing is located on the future park edge, and not centrally within the park.

The applicant has also demonstrated that at 2.45pm during the midwinter solstice, the additional overshadowing would fall within future shadowing that would be cast should the sites to the immediate north of Hume Street Park be redeveloped under the current controls. This is considered to a relevant

considered, however, the development to the immediate north comprises existing electricity infrastructure.

Given the level of overshadowing resulting from non-compliant building elements, and given that the applicant has also demonstrated that the impacts are commiserate with the impacts considered under the approved planning proposal, and further, that the impact is will not be located centrally within the park and therefore unlikely to result in a significant impact on the useability of the park for recreation, between 2.45pm and 3pm during the midwinter solstice, with no other impact throughout the day, on balance, the level of overshadowing is considered to be reasonable.

Overshadowing is not a prohibition under Council's controls. On the basis, the proposal is considered to be satisfactory with regards to solar access.

P5 Spaces are to be created between taller buildings to avoid a solid mass of development and to allow daylight and/or sunlight to penetrate through to pedestrian level.

P6 Setbacks must be provided between buildings above the podium level.

The design of the building with the proposed eastern and western setback and a compliant ADG setback to Albany Lane is considered to result in greater retention of sunlight through to Albany Lane and properties to the south, avoiding a street wall effect.

P7 Provide a mix of sun-protected and unprotected areas in public open space, rooftop gardens and other outdoor spaces.

The proposal provides the Oxley Street Linear park which will provide a public open space area with access to north-eastern sunlight.

P8 Avoid providing apartments within mixed use developments that have a sole orientation to the south. Where south facing apartments can not be avoided, ensure that they are provided with adequate access to natural light (e.g. by providing enlarged windows, skylights and the like). No more than 15% of all dwellings in the development must not receive no direct sunlight between 9am and 3pm at mid-winter.

The development application meets the provisions of the ADG with regards to solar access.

Objective 3B-2 of the Apartment Design Guide provides design guidance that outlines:

Overshadowing of neighbouring properties is minimised during mid winter and that 'Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.'

In relation to this requirement, the proposal fails to comply. However, it is particularly relevant to note that in this instance, the subject site is considered to be under developed. The existing buildings on the site range from 2 – 4 storeys.

On the basis of the under-developed existing site, and the increased density provided by the planning proposal with the building height of 56m now applying to the site, the proposed impacts across the locality on balance, are considered to be reasonable. This assessment concludes that whilst the proposed development will result in significant overshadowing impacts to adjacent properties, this results from building elements that comply with the relevant controls and overall, are generally expected outcomes of the development as envisaged by the controls applying to the site. On balance, the impacts are considered to be able to be supported for reasons set out above.

View loss analysis

Planning Principle – View sharing

To understand whether the proposal will ensure a reasonable level of view sharing for adjoining properties, consideration is given to the four (4) step process adopted by Commissioner Roseth of the NSW Land and Environment Court centering around *Tenacity Consulting v Warringah [2004]* NSWLEC 140.

1. Assessment of views to be affected

‘Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.’



2. Consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

St Leonards is located on a ridge and the subject locality is within a dense urban environment, with the NSW Government’s *St Leonards and Crows Nest 2036 Plan* envisaging a higher density than is currently provided. Existing views from a number of taller buildings across the locality include sweeping views and outlook to the city, North Sydney, Sydney Harbour, Sydney Harbour Bridge, Chatswood and further district views including to the coastline and the Blue Mountains. The proposed 56m building will remove existing views to an extent to almost all surrounding properties. The subject site can be seen in its context below in its context.



Site plan detailing subject site

Assessment of the impacts on a number of surrounding buildings is considered below:

Site	Comment
<p>No.15. Atchison Street</p> 	<p>This is existing mixed use building is located adjacent to No.21 Atchison Street. This building has its primary outlook to the north and south which remain unaffected however a number of high level properties enjoy eastern views across the site that will be removed.</p> <p>However given the generous width of Atchison Street, the proposed 12m eastern setback from the common boundary and the proposed 12 setback to Albany Lane at the upper levels, a level of outlook will continue to be retained around the building. The building at No.15 Atchison Street is shown below as well as an indicative view taken from an upper level apartment within No.15 Atchison Street looking east.</p>
 <p><i>Location of 15 Atchison Street</i></p>	



An upper level apartment – 15 Atchison Street looking east across the subject site

No.48. Atchison Street







This existing mixed use building is located on the northern side of Atchison Street. This building has its primary orientation to the north and south. However, existing views across the site to the south-east include views to the city, North Sydney, Sydney Harbour, Sydney Harbour Bridge, city skyline and further district views. These views will be mostly removed where they are enjoyed across the subject site. However, given the width of Atchison, some views would be retained on either of the building. Other district views would be available from this building.




No.38. Atchison Street



This existing mixed use building is located on the northern side of Atchison Street. This building has its primary orientation to the north and south.

However, existing views across the site to the south-east include views to the city, North Sydney, Sydney Harbour, Sydney Harbour Bridge, city skyline and further district views. These views will be mostly removed where they are enjoyed across the subject site. However, given the width of Atchison, some views would be retained on either of the building. Other district views would be available from this building.

<p>22 Albany Street</p> 	<p>This existing mixed use building has its primary orientation to the east. Whilst north-eastern views would be removed by the proposed development, east-facing views would remain unaffected.</p>
<p>38-46 Albany Street</p> 	<p>This mixed use building enjoys north-facing views across the site and district views beyond. This building is located directly south of the site. Given No.38-46 Albany Street is approximately 6 storeys in height, the proposed development will remove all north facing views from these properties. Minimal views will be retained to north-facing apartments within this development.</p>
<p>30-36 Albany Street</p> 	<p>This mixed use building enjoys north-facing views across the site and district views beyond. This building is located directly south of the site. Given No.30-36 Albany Street is approximately 6 storeys in height, the proposed development will remove all north facing views from these properties. Minimal views will be retained to north-facing apartments within this development.</p>
<p>No.21 Atchison Street</p> 	<p>This existing commercial building is located immediately west of the subject site. Given this building is two storeys, with its primary orientation to the north and south which remains unaffected.</p>

<p>9 Albany Street</p> 	<p>This existing mixed use buildings has a maximum height of approximately 40m and enjoys a north-facing views across the site and district views beyond. The proposed development will generally remove the northern views from apartments within the development, however given the proposed eastern setbacks, north-eastern setbacks will continue to be retained.</p>
<p>1 Albany Street</p> 	<p>This existing mixed use building enjoys north-facing views across the site and district views beyond.</p> <p>Whilst existing north-eastern views across the site will removed, views towards the east will continue to be retained.</p>
<p>48 Albany Street</p> 	<p>This existing mixed use building enjoys north-facing views across the site and district views beyond. Due to the proposed eastern building setback, this building will retain a significant level of the north-east views across the subject site.</p>

Various other sites, including taller buildings located to the west, sites on the Pacific Highway, both existing and under construction would also lose views across the site from the proposed development.

Surrounding sites from a greater distance – St Leonards is an area in transition and on this basis, there are a number of existing and surrounding sites that exist or are being constructed, including within the Council areas of Willoughby and Lane Cove, with a building height greater than the subject site. Views from these buildings will likely be reduced or removed.

It is noted that the views to be lost are available from all surrounding buildings and include primary living areas, outdoor spaces, from both standing and sitting positions.

3. *Assess the extent of the impact in qualitative terms as negligible, minor, moderate, severe or devastating. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one*

of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.

Views to be lost are in some cases severe or devastating. Views from many of these properties will be significantly reduced, and in some instances wholly removed. In particular, those northern views across the site from 38-48 and 30-46 Albany Street, and also east-facing views from 15 Atchison Street. From other properties, what is currently an unobstructed outlook will be obscured and removed by the new development.

4. Assess the reasonableness of the proposal that is causing impact

A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The extent of views is considered to be severe and devastating to a number of properties. However, the loss of views in all instances is considered to result from those building elements that generally comply with the building height and setback controls. The design of the building is considered to be skilful, in that the generous eastern and western setbacks provide increased opportunities for view retention from surrounding properties. Given that the building represents a general level of compliance, the proposed outcomes are considered to be reasonable, and generally expected from the proposed development.

In consideration of the impact of views of the proposed development, it is noted that the building mostly complies with the building height control, other than a 1.85m breach within the centre of the site, which is located in any case in line and no higher than those compliant building elements to the east, accordingly does not contribute to the view loss impacts. With regards to assessment of the compliant building elements, these impacts were considered as part of the Planning Proposal 1/18 as follows:

Impact on views

Whilst the proposal is likely to affect some regional views currently enjoyed by the upper levels of residential properties within 38-46 Albany Street and 7-19 Albany Street, these views are accepted as likely to be interrupted by future heights of 16 storeys envisaged under Council's SLCN Planning Study – Precincts 2 & 3, and the DPIE's St Leonards and Crows Nest Draft 2036 Plan on sites located along Atchison Street and Atchison Lane. Nevertheless, the proposal will unlikely affect city views of the North Sydney CBD and Sydney CBD enjoyed by these properties due to the subject site's location. Given this, the proposal's consistency with the community endorsed SLCN Planning Study – Precincts 2 & 3, the broader context of St Leonards and its role to satisfy state targets for housing and employment, amendments to facilitate the retention of regional and district views are not considered to be reasonable.

Further, the future character of the locality must also be considered. *St Leonards and Crows Nest 2036 Plan* is now in place and sets the desired future direction for the locality, with a number of surrounding properties also nominated for potential uplift to 16 storeys. Whilst a Planning Proposal is required for any proposed uplift, it is considered likely that in some form heights and density across St Leonards will be increased in the future. The proposed building heights map from *St Leonards and Crows Nest 2036 Plan* can be seen below:



St Leonards Crows Nest 2036 Plan –Building Height map

On this basis, and given the building's general level of compliance, on balance the loss of views is considered to be a reasonably expected outcome on the site. Existing views from all surrounding properties are considered to be generally borrowed views and outlook, across the subject site which benefits from a 56m building height limit.

The proposal is considered to be consistent with the relevant planning controls and with the State Government's desired future character for the locality and on this basis, is considered to satisfy the principles of tenacity and result in reasonable view impacts for reasons set out above. The area is considered as an area in transition.

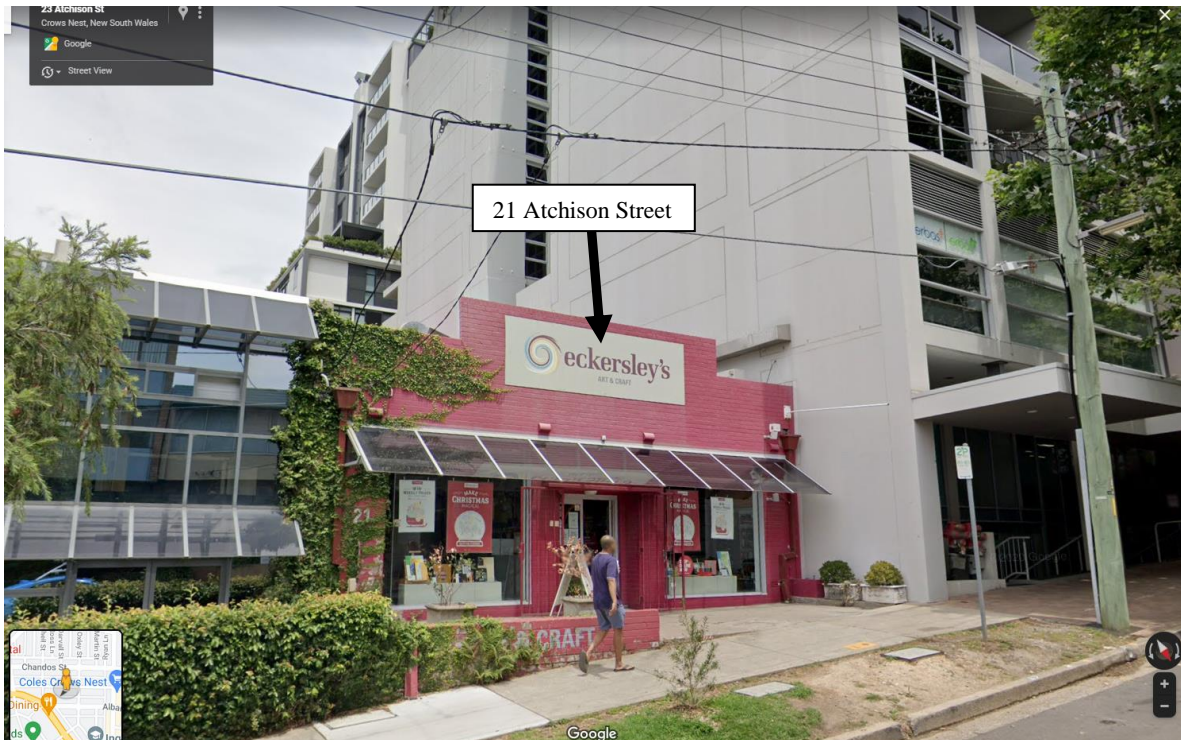
Whilst the view impacts are considered to be severe to some surrounding properties, this is generally an expected outcome of the locality in transition and on this basis, the proposal overall is considered to result in reasonable impacts on views.

Site Isolation – 21 Atchison Street, St Leonards

The subject site is located immediately adjacent to No.21 Atchison street, which is an existing two storey development. To the west of No.21 Atchison Street is No. 15 Atchison Street which has been previously developed as a shop top housing developments to a height of 40m. The proposed development therefore leaves No.21 Atchison Street as an isolated site with regards to an future amalgamation potential. The site can be seen in the plan below.



Northern elevation – No.21 Atchison Street



Northern elevation – No.21 Atchison Street

This issue of site isolation was raised at the Planning Proposal stage, given that the Planning Proposal 1/18 allowed an increase of the building height on the subject site (23-35 Atchison Street) from 20m to 56m. In response to submissions regarding the isolated site, the Officer's Report in considering this issue at the Planning Proposal stage provided the following assessment:

A number of submissions highlighted their concerns for the proposal and its potential to isolate the adjacent site at 21 Atchison Street. These submissions suggested that 21 Atchison Street would be immediately dwarfed by taller buildings and result in restricted development potential of the site. In particular, one submission from the representatives of the owner of 21 Atchison Street highlighted that their client's site would remain under the current maximum height of buildings of 20m under the existing NSLEP 2013, whilst the surrounding sites to the east and west would benefit from greater building heights. They also highlighted that, contrary to the proponent's claims, the owner of 21 Atchison Street was willing to enter into discussions to sell/work with the proponent to potentially arrive at a better planning outcome.

Comment: Following the receipt of the above submissions, Council contacted the proponent regarding this matter. The proponent stated that they had recommenced dialogue with the owner of 21 Atchison Street and were unable to reach an agreement. Prior to this, the proponent had provided documentation indicating the numerous attempts made between 2015-2018 to purchase the property, but despite all efforts, were unsuccessful in doing so. Given this, it is considered that the proponent has satisfactorily demonstrated that a reasonable number of attempts have been made to acquire 21 Atchison Street over the course of four (4) years. Moreover, it is of Council's understanding that the site amalgamation may not possibly drive the best outcome given the substantial amount of submissions regarding overshadowing received from owners/occupiers of properties south of the subject site. Should the proposal incorporate 21 Atchison Street, it is likely a building of greater width would be sought resulting in greater levels of overshadowing on the southern properties when compared to the current scheme under the Planning Proposal.

In order to address potential site isolation issues, the proponent has provided an appropriate number of design considerations including:

- a potential redevelopment scheme for the site at 21 Atchison Street to accommodate an 8-storey mixed use building;*
- shared basement parking access between 21 Atchison Street and 23-35 Atchison Street; and should any development of No 21 be pursued in the future;*
- the required building separation of 6m at the podium level and 12m above podium along the western boundary of 23-35 Atchison Street, enabling 21 Atchison Street to be able to be built up to its boundary.*

The above was considered at the DEP meeting in 2017 and Council's meeting dated 25 June 2018. This was considered an acceptable outcome in ensuring that 21 Atchison Street could be appropriately redeveloped on its own. Additional design considerations and planning mechanisms can be investigated at the DA stage to mitigate any amenity impacts for this site.

A letter of commitment from the proponent was also submitted to Council on 28 August 2019 to further provide assurance regarding the delivery of a future shared basement access between 21 Atchison Street. This letter was accompanied by advice from TTPP Transport Planning outlining how this could occur at the DA stage for 21 Atchison Street. Of particular note, is the provision of a right-of-way and a break out panel along the west of the proposed underground car park of 23-35 Atchison Street to help facilitate a future shared basement connection to 21 Atchison Street. This will assist in the reduction of loading bays/vehicular access points along Albany Lane and a more efficient basement layout within any future basement within No 21. Given the above, it is considered that the proponent has satisfactorily demonstrated that 21 Atchison Street can be redeveloped on its own, and thus, the issues of site isolation is not sufficient planning grounds to warrant the delay of the progress of the Planning Proposal.

The letter of commitment is attached to this report for information. This correspondence has been prepared by the applicant dated 28 August 2019 and advises:

'As part of the proposal, TWT Property Global are committed to providing vehicular access to the adjoining property at No. 21 Atchison Street, St Leonards from the proposed car park on our site. This will facilitate the orderly and economic development of an underground car park at 21 Atchison Street, St Leonards as part of any future redevelopment of that site.

The vehicular access will be facilitated by providing a right-of-way and break out panels but not limited to on our proposed underground car park as detailed in the enclosed Annexure A – concept diagrams included as part of traffic consultant report. This arrangement will be provided through further consultation with Council, future owner/s of 21 Atchison Street, St Leonards and will be detailed as part of any future development application and/or documentations for our subject site.

The plans submitted under the subject development application propose breakthrough panels at the western end of basement levels 2 and 3 to allow any redevelopment of No.21 Atchison Street to share the vehicular entry proposed at No.23-35 Atchison Street. This requirement is recommended to be reinforced with a condition of consent requiring a right of carriage across the basement levels.

In addition to the provision of shared vehicular access, the applicant was also asked to further address other built form issues associated within the site isolation. As part of the response to Council's request for amended plans, the applicant outlined in their correspondence the following:

Site isolation was considered as part of the endorsed Planning Proposal for the site which provided an assessment of development potential:

- *The finalisation report notes that the through site link adequately addresses site isolation at 21 Atchison Street.*
- *Council's responses also notes that adequate attempts had been made between 2015 and 2018 to purchase the property*
- *The report also found that the design considerations presented in the PP were an acceptable outcome and council considered that appropriate measures had been taken to mitigate site isolation.*

The SEE supporting this development application also addressed site isolation.

Further, a letter of commitment from the proponent was submitted to Council in August 2019 to provide assurance for the delivery of a future shared basement access which was discussed at the DEP meeting (#2) which has resulted in an amended design which provides:

- *Break through panels to Basement 2 and 3. A breakthrough panel is not provided to Basement 1 and Lower ground level for structural integrity issues. It is considered that this solution provides suitable access to 21 Atchison Street.*
- *The design of the through site link has been amended to allow for future (potential) access. All landscape elements proposed will be moveable.*
- *Temporary fencing will be provided along the existing building on 21 Atchison Street for the full length of the through-site link. The proponent is willing to accept a condition to this effect.*
- *An easement for light and ventilation can be provided and the proponent would welcome a condition to this point. We do seek that any ventilation or other building elements are suitably setback from the boundary line.*

A condition is therefore recommended to require the applicant to create easements to benefit 21 Atchison Street to include:

- 1) Easement to allow right of carriageway within basement levels to benefit 21 Atchison Street
- 2) Easement to allow right of access to benefit No.21 Atchison to allow a future development to provide ground level openings into the through site link as well as upper level windows.
- 3) The easement required as part of the Voluntary Planning Agreement for public access over the through site link to be amended to ensure it is unlimited in height (Note: The VPA requires this to be up to 3m above ground level).

These measures will achieve a number of design benefits for any future redevelopment of No.21 Atchison Street including to facilitate shared basement access, enable ground level openings to open onto the through site link, and also facilitating the provision of east-facing windows within No.21 Atchison Street. Notwithstanding, the redevelopment and these design measures would be subject to future assessment and development.

To consider the suitability of the proposal with regards to site isolation, the planning principle 'Karavellas v Sutherland Shire Council [2004] NSWLEC 251' is considered to be relevant. In 'Karavellas v Sutherland Shire Council [2004] NSWLEC 251' Planning Principles are established which set out:

The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

Firstly, is amalgamation of the sites feasible?

Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?

The principles to be applied in determining the answer to the first question are set out in Brown C in Melissa Grech v Auburn Council [2004] NSLEC 40. The Commissioner said:

Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property. Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s79 of the Environmental Planning and Assessment Act 1979.

*In the decision **Cornerstone Property Group Pty Ltd v Warringah Council [2004] NSWLEC 189**, I extended the principles of Brown C to deal with the second question and stated that:*

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the development will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.

With regards to negotiations between the owners of the properties, as set out within the consideration for the Planning Proposal, it is understood that negotiations did commence at an early stage however agreement was not reached. For reasons accepted by Council as part of the Planning Proposal and also as demonstrated by the applicant through the Development Application process, it is considered that satisfactory and reasonable attempts for amalgamation have been made. It is also Council's understanding that the owner of the isolated site has not raised an objection in principle to the proposed development on the basis of site isolation. The owner's representatives have also been consulted with regards to the proposal for shared basement access and the provision of openings within the through site link.

With regards to the relevant planning controls that apply to the No.21 Atchison Street, the site is located within the mixed use zone. There is no minimum lot size under the NSLEP 2013 within the mixed use zone. Despite this, Section 2.4.2 NSDCP (Site Consolidation) provides the following controls:

2.4.2 Site Consolidation

Objectives

- O1 To enable the creation of a human scale that also reflects a consistent subdivision pattern.*
- O2 To enable the creation of a suitably sized commercial floor plates that can be tenanted easily*

Provisions

- P1 Amalgamate lots to achieve lot frontage identified in the relevant area character statement (refer to Part C of the DCP)*
- P2 Break down the apparent length of buildings by incorporating articulation, design and detailing and or a change in materials, finishes and colours*

The DCP Area Character Statement for the St Leonards and Crows Nest Town Planning Area sets out the following controls for Desired Built Form

3.1.3 Desired Built Form

Subdivision

- P1 Maintain a frontage of 20m-40m, which equates approximately to the amalgamation of two or three original allotments*
- P2 Development on consolidated allotments with a frontage wider than 20m-40m frontage is to be broken down by articulation, design and detailing, change in materials and colours*

The site at No.21 Atchison Street will have a frontage of 10m, failing to meet the desired width of between 20-40m.

With regards to the question of whether the adjoining site at No.21 Atchison Street can achieve a development that is consistent with the planning controls, the key development controls for No.21 Atchison Street are:

- Clause 4.3 NSLEP2013 Building Height of 20m
- NSDCP2013 whole of building setback 3m to Atchison Street
- NSDCP2013 4 storey podium to Atchison Street
- NSDCP2013 3 storey above podium setback to Atchison Street
- NSDCP2013 1.5m whole of building setback to Albany Lane
- NSDCP2013 3 storey podium to Albany Lane
- SEPP 65 - ADG controls

The Project Architects for the Planning Proposal (AJC) previously undertook analysis and testing of the adjacent site at 21 Atchison Street to ascertain the redevelopment feasibility as a result of development at the subject site. Figure 32 below details the applicant's suggested potential building floorplates.

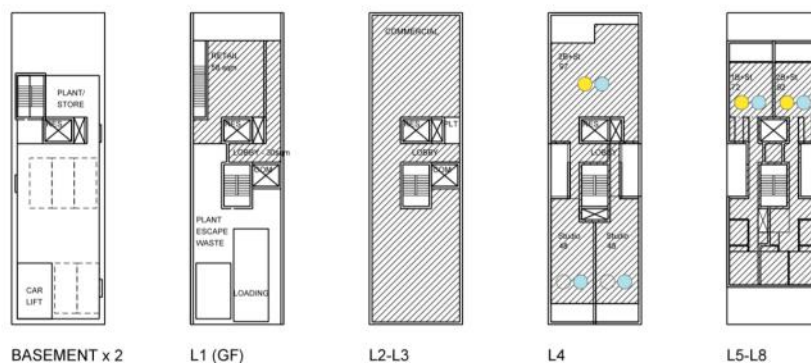


Figure 32 Potential development concept for 21 Atchison Street, St Leonards
Source: AJC

Whilst the above scheme represents only that considered by the applicant (and not the subject site at No.21 Atchison Street), it provides an indication as to a reasonable development that could be sought on the site. It is noted that this design takes into account a shared basement within No.21 Atchison Street, however has not incorporated the proposed design elements to enable ground level uses with direct access into the through site link, and possible east-facing openings on upper levels provided by an easement for a right of access. These elements would further benefit any future scheme.

It is considered that the above satisfactorily demonstrates that No.21 Atchison Street could be developed in the context of its existing planning framework, without relying on any significant planning control variation. The amenity of any future development on this site is considered to be enhanced by the proposed inclusions of the western setbacks, through site link as well as the possible east-facing windows to upper levels.

The *St Leonards and Crows Nest 2036 Plan* outlines future heights and FSR's for the locality which may be sought under a Planning Proposal, subject to addressing site constraints. The proposed heights and FSR identified in the Plan however, are generally only acceptable to be uptaken by larger sites given the site constraints of smaller sites. The isolation of this site would likely prevent further uplift. Notwithstanding this, there is no entitlement to the maximum indicative heights and FSR controls outlined in this Plan.

Whilst it is acknowledged that redevelopment of single sites of less than 20m in width are not desirable under current controls, there are recent examples of approval of smaller sites for redevelopment. The North Sydney Independent Planning approved an 11 storey shop top housing development at 65

Chandos Street wherein the site has a 12m wide frontage (DA219/13). The Land and Environment Court approved, through a conciliated outcome *TWT Development Pty Ltd v North Sydney Council [2020] NSWLEC 1353*, a 10 storey shop top housing development at No.67 Chandos Street wherein the site has a width of 12m. As such, these approvals demonstrate that redevelopment of the subject site is not made wholly unfeasible by its isolation, nor is it wholly uncharacteristic.

For reasons set out above, the proposal is considered acceptable with regards to site isolation and is considered to satisfy the Land and Environment Court planning principle. Whilst a better planning outcome may be achieved by amalgamating the sites, it is not considered to be reasonably feasible at this time.

Relevant Planning Area (St Leonards / Crows Nest) – Part C of NSDCP 2013

The relevant provisions of the NSDCP 2013 Character Statement have generally been outlined throughout this assessment report. The proposed development is considered to be generally consistent with the desired character of the locality.

SECTION 7.11 CONTRIBUTIONS PLAN

Section 7.11 contributions are required for the new development of 100 residential apartments comprising:

Dwelling No.	Proposed No. of apartments
Studio apartments	11
One bedroom apartments	15
2 bedroom apartments	57
3 bedroom apartments x 14	14
4 bedroom apartments x 3	3

Total non-residential floor gross floor area is **3167.85sqm**.

A credit for the demolition of the existing non-residential floor space can be granted, which the architect confirms on Plan No. A2.03 to be:

Existing building to be demolished	Area of building (sqm)
23 Atchison Street	506
25 Atchison Street	536
27 Atchison Street	492
31 Atchison Street	630
33-35 Atchison Street	2049
Total	4213sqm

In accordance with the North Sydney Contributions Plan 2020, the proposed development and relevant credits have been calculated as follows:

Proposed	Credit
26 x studio and 1 bedroom	2,049sqm x office 4 storeys or more
57 x 2 bed	506sqm x office 3 storeys or more
17 x 3 bed plus	1,658sqm x business premise
542sqm x food and beverage	
1100.05sqm x business	
1,525.8sqm x office 4 storeys or more	

The total contributions required are **\$1,705,819.00**

St Leonards and Crows Nest 2036 Plan

The NSW Government have released the *St Leonards and Crows Nest 2036 Plan* which identifies development potential for sites across the locality, subject to a successful planning proposal. The Plan identifies the following controls for the subject site:

- B4 Mixed Use zoning
- 16 Storeys maximum
- FSR if 6:1 maximum
- Minimum non-residential FSR of 1:1
- 4 storey street wall to Atchison Street, Oxley Street and Atchison Lane
- 5m setback to Oxley Street

The planning controls applicable to the site relating to building height, floor space ratio and minimum non-residential floor space, were approved under Planning Proposal 1/18 which was gazetted prior to the Plan being released. The Planning Proposal did, however, have regard to the draft *St Leonards Crows Nest 2036 Plan*. Notwithstanding this, and whilst noting these controls have some differences to the Plan, overall the proposed development is considered to achieve the intent of the Plan, meeting the relevant principles, providing an appropriate and envisaged built form, as well as delivering a linear park and providing a monetary contribution to upgrades for Hume Street Park. The proposed development is considered to be generally consistent with *St Leonards and Crows Nest 2036 Plan*.

Voluntary Planning Agreement Requirements

The Voluntary Planning Agreement relating to the site was offered by the applicant as part of Planning Proposal PP1/18, in accordance with the provisions of Section 7.4 of the Act and was executed on 17/9/2020. As set out within this report, the Developer and Landowner have made an offer to enter into this Agreement as part of the Planning Proposal to provide the following public benefits at the Developer's cost:

- a. Provision of a Monetary Contribution
- b. Dedication of the Contribution Land to Council; and
- c. Creation of an Easement in Gross for a pedestrian Through Site Link

To achieve this, the planning agreement requires:

Contribution	Timing
50% of the monetary contribution to be paid to Council.	Prior to the issue of a Construction Certificate.
50% of the remaining monetary contribution to be paid to Council	Prior to the issue of the first Occupation Certificate.
Dedication of the Contribution Land as public open space to Council. The Development must carry out the works on the Contribution Land prior to the dedication to Council.	Prior to the issue of the first Occupation Certificate.
The design and construction of the Thru Site Link.	Prior to the issue of any Occupation Certificate.
Registration of the Easement in Gross for the Thru Site Link.	Prior to the issue of the first Occupation Certificate.

The Planning Agreement also outlined design requirements for the Oxley Street Linear Park. Conditions are recommended to be imposed to align these requirements as part of the development consent.

Design of Oxley Street Linear Park

As part of the requirements under the Voluntary Planning Agreement, the applicant is required to design and construct the Oxley Street Linear Park, with the detailed design required to be submitted and agreed by Council prior to the issue of a Construction Certificate.

The applicant has submitted an amended landscape plan however the conditions of the VPA require compliance with a number of Council specifications, including the St Leonards East Public Domain Report wherein Water Sensitive Urban Design is required to be incorporated. To address this, as a minimum 3 rainwater gardens are required to be incorporated. Following consultation with Council's Engineers, the approved Landscape Plan LD07 Revision B, dated 9 November 2020 has been marked up Council and required to be provided by conditions of consent.

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 S4.15 considerations of Environmental Planning and Assessment (Amendment) Act 1979	Yes

SUBMITTERS CONCERNS

Council received 27 submissions and an additional 17 submissions to the amended plans. Issues raised have been addressed within this report and as follows:-

- ***Building height***
- ***Scale of building***

Comment: Overall the building will generally comply with the building height control on the site. The height non-compliance relates to roof plant and is a consequence of the topography of the site. As set out within this report, the subject site was provided with an increased building height through a Planning Proposal, wherein issues of building height and scale were carefully considered. The resultant building height and scale is consistent with that envisaged by Council's controls.

- ***Overshadowing***

- *Shadow diagrams are inadequate*
- *Shadow diagrams inaccurate label my apartment*
- *Overshadowing to our rooftop*
- *Loss of health and wellbeing from additional overshadowing*
- *Loss of natural light*

Comment: Overshadowing impacts have been addressed in detail within this report. The impacts of the overshadowing result from building elements that will generally comply with the planning controls relating to the site. The overshadowing impacts are generally consistent with the expected outcomes as envisaged by the concept plans and on this basis, are supported.

- *DA presents a different and greater impact than the concept scheme as part of the planning proposal*

Comment: The indicative concept scheme presented as part of the planning proposal was to provide an indicate scheme only. The subject development application has been considered on its merits in the context of the planning controls as being generally compliant. The applicant was, however requested to undertake an analysis of the solar access impacts arising from the proposed development compared to the concept scheme. Whilst the outcomes presented differ, overall the number of apartments located in mixed use buildings to the south and continuing to receive solar access is not reduced compared to the scheme presented under the planning proposal. Notwithstanding, the proposed development is required to be considered on its merits against the current planning controls.

- *5 storey podium increases overshadowing*

Comment: The podium height at the eastern end of the site is considered to result from the topography and on balance, is considered to be acceptable. This has been addressed further within the report. It is noted that much of the podium comprises planters that are provided to minimise privacy impacts. The DEP raised no concerns with this podium height or design. The applicant has undertaken some amendments to set back the upper level of the podium at the rear (south) to the south-eastern podium edge to minimise overshadowing impacts to adjoining properties to the south.

- *Traffic and parking*
- *Traffic congestion in Albany Lane and Oxley Street*
- *Varga Traffic Assessment was undertaken during covid and may not be indicative of general traffic impacts*

Comment: The proposed development will generally comply with NSDCP 2013 car parking controls. The proposed density was envisaged and considered as part of the Planning Proposal as being acceptable, including traffic and parking impacts.

- *No visitor parking is provided*

Comment: The NSDCP 2013 car parking controls do not require visitor parking in the B4 Mixed Use zone.

- *Privacy*
- *Lack of building separation*

Comment: As ADG setbacks are generally compliant, the proposed development is considered to satisfy privacy considerations. In addition, to improve the interface for apartments to the rear (south), the development includes planter boxes which will further reduce the impacts of the direct interface with these properties. On balance, the proposed development will result in a loss of privacy to a number of surrounding apartments, however this is considered to be a reasonable and expected impact of a generally compliant development on the site.

- *Noise from traffic*

Comment: The proposed level of car parking generally complies with Council's DCP controls. Any impacts with regards to traffic noise is considered to be a reasonable and expected impact of development on the site.

- *Council should require deeper footpath setbacks for waste collection*

Comment: The building has been set back 2m from the boundary at Albany Lane.

- *Loss of property value*
- *The developer should compensate residents located immediately to the south for their loss of sunlight*

Comment: The loss of property is not a relevant planning consideration. Compensation is not required.

- *Concerned the through site link will become a 'skate park'.*

Comment: The applicant as the land owner will be responsible for managing the through site link.

- *Noise from new apartments including communal open space*
- *Use of the communal outdoor areas should not occur after 10pm*

Comment: Given that ADG setbacks are generally compliant on the subject site, any impacts regarding noise from new residential apartments are considered to be a reasonable and expected impact of development on the site. It is noted that the communal outdoor spaces have been located on the north-eastern corner of the podium level (level 4) and the rooftop, both providing generous setbacks to adjoining properties. With regards to the use of communal open space, conditions are recommended to ensure these spaces are not used between 11pm – 7am daily, to reduce impacts on surrounding properties.

- *Poor interface with adjacent residential units*
- *Planter boxes should be included in separation distances*

Comment: The proposed development will generally meet all ADG setback requirements measured from the centerline of Albany Lane. Where balconies propose a minor non-compliance with regards to setbacks, landscape or screening is to be provided. The additional planters on the south elevation of levels 1 – 5 will provide additional privacy amelioration to facades which generally provide compliant rear setbacks. Any further setbacks requirements on the subject site are not considered to be reasonable.

- *Construction hours and noise*
- *Impacts from construction including dust*
- *Construction hours should be reduced from standard hours*
- *Construction traffic should not access the site from Albany Lane*

Comment: Standard construction hours and conditions relating to construction noise are recommended to be imposed. A Construction Management Plan is required to be submitted wherein Council's Traffic Engineer will assess the impacts of the construction impacts on the locality prior to the issue of a Construction Certificate.

- *Wind tunnel*

Comment: The applicant has submitted a wind report which includes recommendations to ameliorate the impacts of wind within the public domain. A condition is recommended to ensure these recommendations are implemented.

- *Loss of views*

Comment: Loss of views has been addressed within this report. The proposed development will result in the loss of views and outlook from a number of surrounding properties however this view loss almost wholly results from built form elements complying with Council's controls. The setbacks to the east

and west, and upper level setback to the rear (south) will allow some views past the building to be retained in some instances. An assessment against the Tenacity Planning Principals has been provided within this report. On balance, view loss impacts are considered to be reasonable in the context of the planning controls applying to the site.

- ***Provisions of the ESD report should be mandatory***

Comment: The development is required to meet BASIX provisions and a condition is imposed accordingly. A condition requiring ESD measures over and above BASIX requirements cannot be imposed.

- ***Loss of village atmosphere***
- ***Scale of development out of character***
- ***Overdevelopment***
- ***Object to increased population in the locality***
- ***Impact on utilities***
- ***Lack of green space for new residents***

Comment: The height, scale and density is consistent with Council's controls and the desired future character of the area as set out in the *St Leonards and Crows Nest 2036 Plan*. Detailed considerations have been undertaken as part of the strategic planning for this locality, including a plan for future improvements to Hume Street Park.

PUBLIC INTEREST

The proposal is considered to be in the public interest for the reasons stated throughout this report.

SUITABILITY OF THE SITE

The proposal would be located within a B4 Mixed Use zone where shop top housing is a permissible form of development. Consequently, the proposal is considered to be suitable for the site having regard to the merits of the proposal as described in the above report.

CONCLUSION AND REASONS

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013, NSDCP 2013, SEPP 65 and various other relevant plans and policies and general found to be satisfactory.

The application proposes a shop top housing development that is a permissible form of development in the mixed use zone.

As detailed within the report, the proposed development will provide a general level of compliance with the relevant planning controls applicable to the site. Whilst it is acknowledged that the proposed development will result in impacts on the surrounding locality, the proposed development is considered to be generally the expected outcome of development on the site, as expressed within the planning controls and more broadly within the *St Leonards and Crows Nest 2036 Plan*. The existing solar access and views that are currently enjoyed across the site by many properties are considered to be generally enjoyed across an under developed site.

Overall, the proposed development is considered to provide a high level of amenity to its future occupants. Conditions are recommended in relation to a number of elements to address privacy, the provision of balconies, on-going amenity considerations such as use of the common areas. The external form and appearance is supported by the Design Excellence Panel. A number of existing trees on Atchison Street are recommended for replacement to improve the future streetscape.

Council received 27 submissions in relation to the original plans and a further 17 in relation to the amended plans. Concerns raised included building height, scale, overshadowing, traffic, parking, loss of natural light, noise from traffic, loss of property value, noise from new apartments and communal open space, poor interface with adjacent residential apartments, construction noise, wind tunnel impacts and view loss and these have been discussed in this report and addressed with appropriate conditions of consent where appropriate.

On balance, the proposed development is considered to be satisfactory having regard to the relevant Environmental Planning Instruments, Development Control Plans and Council policies and is therefore recommended for **approval** subject to conditions.

HOW WERE THE COMMUNITY VIEWS TAKEN INTO CONSIDERATION?

The subject application was notified to adjoining properties and the Holtermann/Wollstonecraft Precincts for 21 days and the amended plans were also notified again for a period of 21 days. A number of issues were raised and have been addressed in this report where appropriate with conditions of consent recommended to maintain the amenity of adjoining properties.

RECOMMENDATION

PURSUANT TO SECTION 4.16 OF ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (AS AMENDED)

- A. **THAT** the Sydney North Planning Panel, assume the concurrence of the Secretary of the Department of Planning, Industry and Environment and invoke the provisions of Clause 4.6 in NSLEP 2013 with regards to the non-compliance with Building Height pursuant to Clause 4.3 NSLEP2013, and grant consent to Development Application No. 161/20 (PPSNH153) for demolition of buildings and the construction of a shop top housing development on land at 23-35 Atchison Street, St Leonards, subject to the attached conditions.

Lara Huckstepp
EXECUTIVE PLANNER

Stephen Beattie
MANAGER DEVELOPMENT SERVICES
