

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-377
DA Number	DA66/23
LGA	North Sydney Council
Proposed Development	Partial demolition of the existing heritage building, construction of a 13 storey mixed use building comprising ground floor and first floor commercial tenancies, 61 residential apartments, basement parking, public domain works and landscaping.
Street Address	286 – 294 Pacific Highway, Crows Nest Lot 1 DP 1279891
Applicant/Owner	Applicant – Eastinwest Pty Ltd and Visionvest Pty Ltd. Owners – Eastinwest Pty Ltd and Visionvest Pty Ltd.
Date of DA lodgement	8 March 2023
Total number of Submissions Number of Unique Objections	Eighteen (18) submissions received.
Recommendation	Refusal
Regional Development Criteria Schedule 6 of the SEPP (Planning Systems) 2021	Regional Development is defined in Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 Development with a capital investment value (CIV) over \$30 million is classified as “Regional”. The CIV of this development as outlined in the application is \$50,030,000 excluding GST.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Environmental Planning and Assessment Act 1979. • Environmental Planning and Assessment Regulation 2021. • State Environmental Planning Policy (Resilience and Hazards) 2021. • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Building Sustainability Index: BASIX) • North Sydney Local Environmental Plan 2013 • North Sydney Development Control Plan 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural plans • Clause 4.6 variation request for Building Height • Reasons for refusal
Clause 4.6 requests	Clause 4.3 Building Height
Report prepared by	Michael Hornery Executive Assessment Planner

Report date	1 November 2023
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? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
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 – Building exceeds Clause 4.3 Height of Building Standard
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not applicable
Conditions Have draft conditions been provided to the applicant for comment? <i>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</i>	No

Executive Summary

Proposal

1. Council received a development application (DA66/23) seeking consent for the partial demolition of the existing heritage building, and construction of a 13 storey mixed use development containing 61 residential apartments, above four (4) basement levels of parking containing 105 car spaces and tree removal.
2. A draft Voluntary Planning Agreement (VPA) proposing the payment of additional contributions has been lodged with the development application for Council's consideration.
3. The plans lodged with the development application are the plans that have been assessed as part of this report.

Site and Locality

4. The subject development site is known as Lot 1 DP 1279891, No 286-294 Pacific Highway, Crows Nest (formally known as 286-288 Pacific Highway and 290-294 Pacific Highway).
5. The Site is located on the western side of Pacific Highway between Shirley Road to the north and Bruce Street to the south. The Site is an irregular shaped allotment with a frontage of 24.4m frontage to Pacific Highway and a 36.5m frontage to Sinclair Street at the rear of the site. Vehicular access is obtained via Sinclair Street.

6. The Site has a total area of approximately 2790m². The Site falls approximately 4.75m from the northern corner of the allotment fronting Pacific Highway to the southern corner of the allotment fronting Sinclair Street.
7. Located on 286-288 Pacific Highway, is a heritage listed two storey commercial building, being the Former North Shore Gas Co Office (Item No I0150). With the rear portion of the site comprising a hardstand parking area with frontage to Sinclair Street. Located on 290-294 Pacific Highway is a two-storey office building.
8. The Site is located within close proximity to the Crows Nest Commercial Centre and St Leonards Commercial Centre. The future Crows Nest Metro Station and St Leonards train station are also located within close proximity.

State Environmental Planning Policies

9. The proposal has been considered to be satisfactory in respect to the following policies which have been considered in respect to the application:
 - State Environmental Planning Policy (Planning Systems) 2021
 - State Environmental Planning Policy (Resilience and Hazards) 2021
 - State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development.
 - State Environmental Planning Policy (Building and Sustainability Index:2004).
 - State Environmental Planning Policy (Biodiversity and Conservation) 2021.
 - State Environmental Planning Policy (Transport and Infrastructure) 2021.

Zoning and NSLEP 2013 Compliance - LEP

10. The site is zoned MU1 Mixed Use and R2 Low Density Residential pursuant to the provisions of the North Sydney Local Environmental Plan 2013. The proposal fails to satisfy the objectives for both the MU1 and R2 zoned land. The proposed application is for a shop top housing development comprising a residential flat development and commercial premises which are all permitted land uses in the MU1 Mixed Use zone under NSLEP 2013, they are however not permitted land uses in the R2 Low Density zoned land. The applicant is seeking to rely upon the heritage conservation incentives contained within Clause 5.10 (10) of NSLEP 2013 in respect to overcoming this permissibility issue.
11. The application is seeking an increase to the statutory height limit of 8.5m for the R2 zoned land to 42.93m, a variation of 34.43m (405.1%) and an increase to the maximum height limit of 16m for the MU1 Mixed Use zone to 53.77m, a variation of 37.77m (236.1%).
12. The application has been accompanied by a Clause 4.6 – exceptions to development standards request for variation to Clause 4.3 – Height of buildings development standard. The request is not considered to be well founded, not having demonstrated that compliance is unreasonable or unnecessary and that there are environmental planning grounds are sufficient to justify the contravention.

North Sydney Development Control Plan 2013

13. The provisions of North Sydney Development Control Plan 2013 are applicable to the proposed development. The proposal is considered to be an unacceptable urban design and planning outcome for the site and fails to satisfy a number of the applicable provisions contained within the NSDCP.

Part C Section 3 – St Leonards/Crows Nest Planning Area.

In addition to the NSDCP, site specific controls have been developed for the St Leonards/ Crow Nest Planning Area. The proposal fails to satisfy a number of the key planning controls including the required setbacks, solar access provisions, and the form, massing and scale of the building which results in an inappropriate built form in relation to the applicable planning controls that is not consistent within the context of the area.

A detailed assessment of the proposal against the controls in NSDCP 2013 is provided later in this report.

Submissions

14. The application was advertised for a period of twenty- eight (28) days between 24 March 2023 and 21 April 2023 in accordance with the North Sydney Community Engagement Protocol criterion. Eighteen (18) submissions were received, of which fifteen (15) submissions were in opposition to the proposal. Issues of concern included:

- The Site is already subject to proposed controls in the 2036 St Leonards and Crows Nest plan. The plan considered what should be permissible use, density and height in the context of the coming Metro station and a wide range of other factors. Taking all that into account, the plan considered a maximum height limit for the site of 8 stories fronting Pacific Highway and 2 stories fronting Sinclair Street.
- The combined impacts of the proposals for 270-272 and 290 Pacific Highway sites will mean the Sinclair Street residents will be exposed to construction noise, dust, traffic congestion and disruption during many years, with a significant impact on quality of life.
- Traffic congestion generated and potential vehicular and pedestrian safety issues. The traffic report submitted as part of the DA is insufficient and flawed.
- Reduction in sunlight to properties within Sinclair Street.
- Extent of partial demolition of the heritage item.
- Extent of height variation unacceptable. The bulk and scale is far too large.
- Blank wall to the northern side is visually.
- The Voluntary Planning Agreement proposed does not reflect the considerable height variation and its impacts.
- Amount of parking proposed is excessive given its location to the new Metro Station.
- Does not appear to be provision made for waste collection in Sinclair Street.
- Concern the lift over run will be required to be higher exceeding the maximum building height.
- Fire escapes don't comply with regulations.
- Units do not comply with required sunlight and cross ventilation.
- Concerns with carpark mechanical exhaust system.
- Solar panels in Sinclair Street will be affected by the proposal.
- The proposed 'BBQ' deck will be located directly above a number of the resident's backyards in Sinclair Street, which will significantly limit their privacy and will likely cause additional noise disturbance.
- Increase in population density.

Level of Determination

15. The proposal has a CIV of \$50,030,000 (excluding GST). The development application is to be determined by the Sydney North Planning Panel due to the capital investment value (CIV) exceeding \$30 million for a mixed-use development pursuant to the definition of regional development contained within Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021. The CIV has been confirmed and is outlined in the Registered Quantity Surveyors Detailed Cost Report which accompanies the Development Application.

16. A preliminary 'kick off' briefing was held with the Sydney North Planning Panel (SNPP) on 19 April 2023. The Panel identified a number of key issues that needed to be addressed.
17. The SNPP briefing was held on 27 September 2023. The Panel required that the Council provide the Panel with an assessment based on the information at hand.

Key Planning Issues

18. A summary of the key issues associated with the proposal include:
 - **Permissibility** – The applicant is reliant upon the heritage conservation incentives of Clause 5.10 (10) to overcome the permissibility issues of this type of development within the R2 Low Density zoned land.
 - **Urban Design** – The proposal presents an excessive bulk and scale that does not provide a sympathetic response to the existing or desired future character of the area. The design of the proposed facades to the side and rear boundaries are considered unacceptable. This does not present a harmonious fit to the context and is considered excessive in its current form. The proposal also fails to satisfy some of the design quality principles and provisions of SEPP 65 and the ADG.
 - **Building Height and Clause 4.6 Request** – The proposal exceeds the maximum height of building development standard pursuant to Clause 4.3 of NSLEP 2013. The height exceedance outlined in the Clause 4.6 request represents an abrupt change in the scale of development in the streetscape and contributes to the proposal being incompatible with the prevailing character of the area and is not supported.
 - **Privacy, solar access and overshadowing** – Amenity impacts on adjoining properties result from the proposal, including visual privacy concerns with numerous overlooking opportunities to adjoining properties, potential overshadowing and impacts on solar access arising from the proposal on adjoining properties to the south in Sinclair Street have not been sufficiently addressed.
 - **Heritage impacts** – The site contains a heritage item that is proposed to be partially demolished and conserved through the development. Insufficient details have been provided showing how and what is to be retained and conserved.
 - **Traffic generation and non-compliance with parking rates** – It is considered that the likely additional traffic generation and servicing requirements resulting from the proposal are unsatisfactory. The proposal fails to comply with the maximum non-residential parking rates and has not sought to minimise residential parking rates.
 - **Landscaping, landscaped area and tree impacts** – The concerns include impacts on trees on adjoining sites and the amount of deep soil and landscaped area.
 - **Technical design issues** – There are a number of technical design issues including waste management and car parking.

Conclusion

19. The application has been assessed having regard to the matters for consideration under section 4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant State Environmental Policies, North Sydney Local Environmental Plan 2013 and North Sydney Development Control Plan 2013.
20. Following a preliminary assessment of the proposal and a briefing with the Panel, a number of key issues were identified. In June 2023, the applicant commenced Class 1

proceedings in the Land and Environment Court of NSW, appealing Council's deemed refusal of the DA.

21. On balance, it is considered that the proposal cannot be supported in its current form. The proposal presents an excessive bulk and scale that does not provide a sympathetic response to the existing or desired future character or context of the area. The significant exceedence of the building height development standards, the lack of adequate landscaped area and the likely impacts on heritage and amenity of adjoining properties results in an unacceptable outcome on the site.
22. The proposal is an unreasonable planning and urban design outcome in the context of the site and performs poorly against the design quality principles of State Environmental Planning Policy No 65. As a result, the proposed Development Application (DA66/23) is recommended for refusal.

Report in Full

Site and Locality

23. The subject development site is known as Lot 1 DP 1279891, No 286-294 Pacific Highway, Crows Nest (formally known as 286-288 and 290-294 294 Pacific Highway) Crows Nest.



Figure 1: Aerial view of subject **development** site shown hatched in red

24. The Site is located on the western side of Pacific Highway between Shirley Road to the north and Bruce Street to the south. The Site is an irregular shaped allotment with a frontage of 24.4m frontage to Pacific Highway and a 36.5m frontage to Sinclair Street at the rear of the site. Vehicular access is obtained via Sinclair Street.
25. The Site has a total area of approximately 2790m². The Site falls approximately 4.75m from the northern corner of the allotment fronting Pacific Highway to the southern corner of the allotment fronting Sinclair Street.

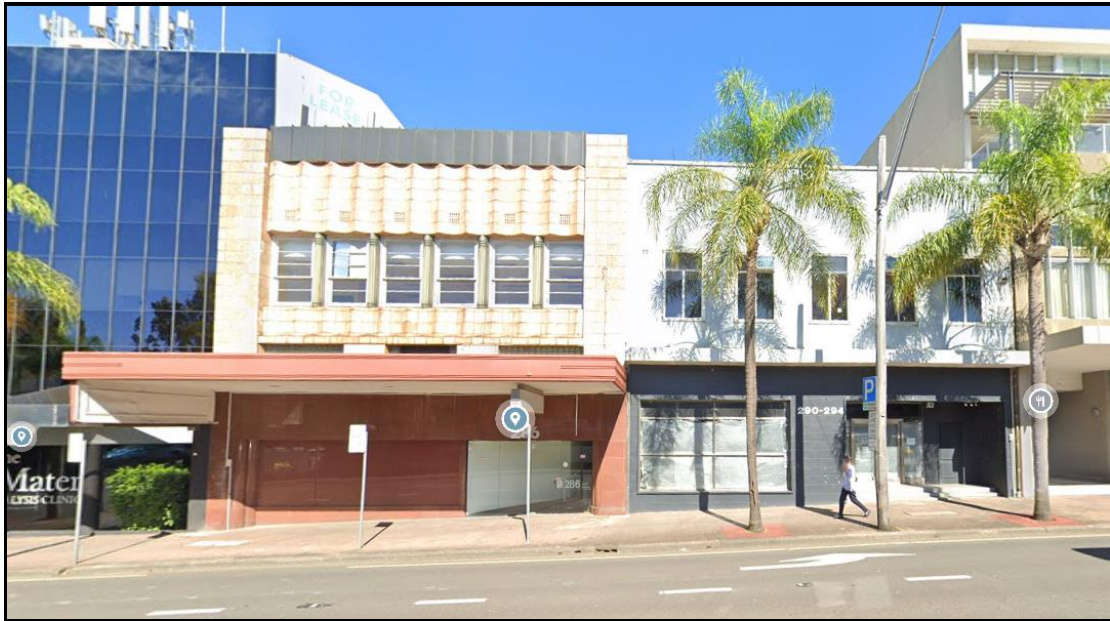


Figure 2: Subject site as viewed from the Pacific Highway.

26. Located on 286-288 Pacific Highway, is a heritage listed two storey commercial building, being the Former North Shore Gas Co Office (Item No I0150). With the rear portion of the site comprising a hardstand parking area with frontage to Sinclair Street. Located on 290-294 Pacific Highway is a two-storey office building.



Figure 3: Subject site as viewed from Sinclair Street.

27. The Site is located within close proximity to the Crows Nest Commercial Centre and St Leonards Commercial Centre. The future Crows Nest Metro Station and St Leonards train station are also located within close proximity.

Surrounding Development

28. The surrounding context contains a mix of multi storey commercial and retail buildings along Pacific Highway and single storey residential dwellings and multi storey residential flat buildings along Sinclair Street to the rear.
29. There are a number of Planning Proposals within the immediate vicinity of the subject site including 270-272 Pacific Highway, which adjoins the Site to the south and 391 -423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest (**the Five Ways**

Triangle Site) which is bounded by the Pacific Highway, Falcon Street and Alexander Avenue and located across the road from the Site. Further to the south is 253-267 Pacific Highway.

30. The Planning Proposal for 270-272 Pacific Highway was recently approved which permits a commercial building with a maximum building height of 54m and a maximum FSR of 5.6:1 (up to 6.02:1 subject to certain criteria including that any additional FSR above 5.6:1 is located below ground level). A minimum non-residential FSR of 5.6:1 is required. A development application was lodged for 270-272 Pacific Highway with Council on 30 June 2023.
31. The Planning Proposal for the Five Ways Triangle Site sought approval for a mixed use development with a maximum building height of 62.5m, FSR of 5.8:1 and minimum non residential FSR of 2.5:1.
32. Immediately adjoining the site to the north is a multi storey building with a to storey building located on the corner of Pacific Highway and Shirley Rd.



Figure 4: Adjoining the site to the north is No 300 Pacific Highway.

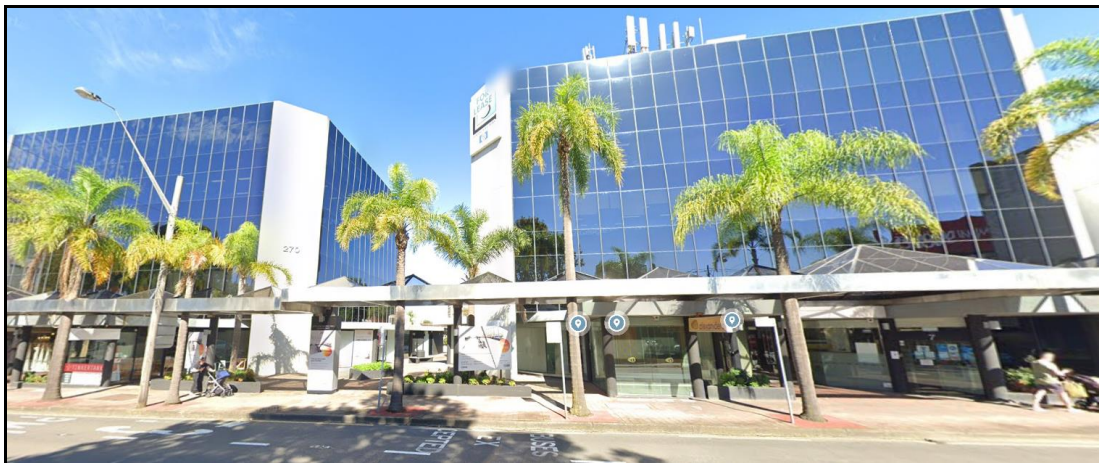


Figure 5: Buildings located on 270- 272 Pacific Highway.

33. Adjoining the site to the south at 270-272 Pacific Highway are two (2) x five (5) storey commercial buildings with one level of basement parking for 97 vehicles. Vehicular access to the site is via Bruce Street via a private driveway.
34. Adjoining the site and located on the corner of Sinclair Street and Shirley Rd is the Crows Nest Fire Station.

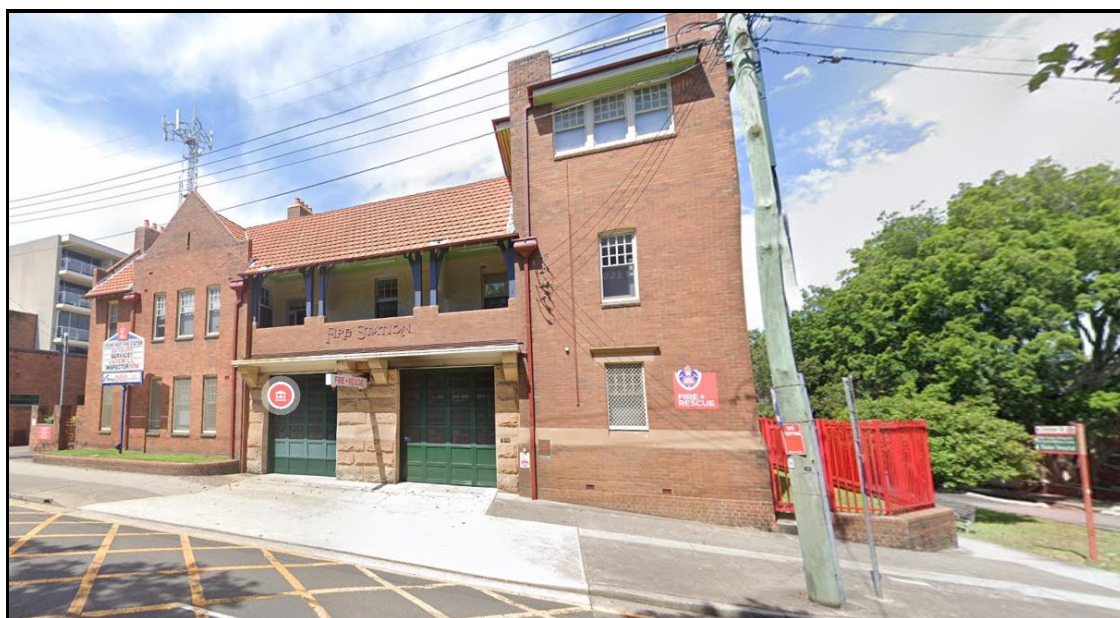


Figure 6: Crows Nest Fire Station located on the corner of Shirley Rd and Sinclair Street.

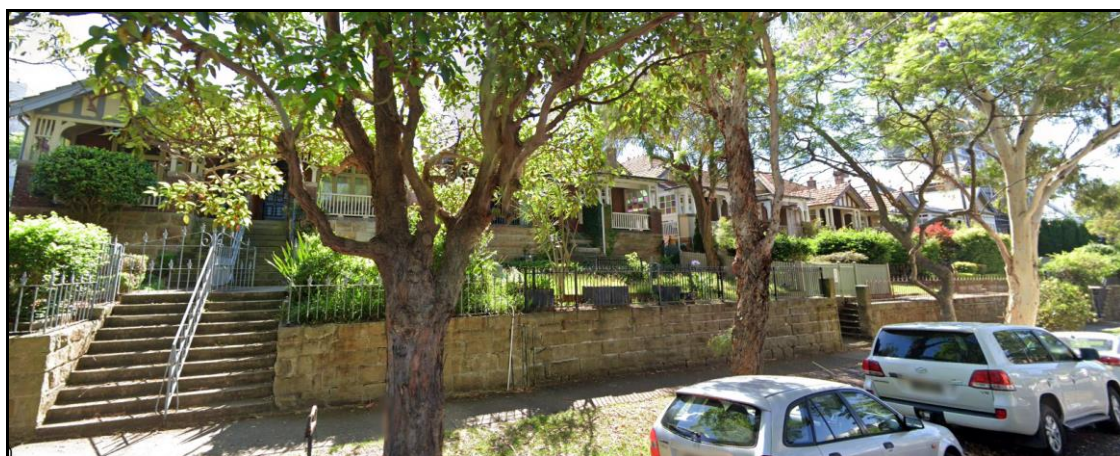


Figure 7: Semi-detached dwellings located in Sinclair Street.

35. To the south west and located in Sinclair Street is a pocket of land zoned R2 Low Density Residential that contains a number of semi-detached dwellings (see figure 7 above).

Strategic Context

36. The Site is located within the area identified by the St Leonards and Crows Nest 2036 Plan (**2036 Plan**).
37. The 2036 Plan was prepared by the Department of Planning and Environment, and was finalised in August 2020. The plan sets a vision to 2036 for the urban renewal of the St Leonards and Crows Nest area, and seeks to expand the area's role as an employment centre and improve its public spaces and connections.

38. The 2036 Plan envisages a building height of approximately 4 storeys to 8 storeys on the part of the site fronting Pacific Highway and retention of a two storey height limit (i.e 8.5m) across the part of the site fronting Sinclair Street.

Description of Proposal

39. Development consent is sought for the partial demolition of the existing heritage building, and construction of a 13 storey mixed use development containing 61 residential apartments, above four (4) basement levels of parking containing 105 car spaces and tree removal.



Figure 8: Perspective of proposal as viewed from the Pacific Highway(Source:Fuse Architects)



Figure 9: Perspective of proposal as viewed from Sinclair Street (Source: Fuse Architects)

40. The main components of the proposal include:

- Partial demolition of existing buildings on site.
- Retention of the significant fabric of the local heritage-listed Former North Sydney Gas Works Co office building.
- Conservation and renewal of the remaining Former North Sydney Gas Works Co office building.

- Basement excavation to accommodate four levels of basement parking for 105 car parking spaces, 11 motorcycle spaces and 98 bicycle spaces. Vehicular access will be from Sinclair Street.
- Construction of a 13-storey mixed use building comprising ground floor and level 1 commercial spaces with 61 residential apartments containing 58 x 3 bedroom and 3 x 4 bedroom apartments above.
- Landscaped communal open spaces on Level 02 including a pool, spa and common room/gym, Level 11 and roof top communal open.
- A pedestrian walkway along the northern boundary linking the Pacific Highway to Sinclair Street and the construction of a publicly accessible garden fronting Sinclair Street.

A detailed breakdown of the proposed development is as follows:

Basement Level 4

Comprising 22 residential parking spaces including 6 accessible spaces, general services and storage, fire stairs and lift access.

Basement Level 3

Comprising 22 residential parking spaces including 7 accessible spaces, general services and storage, fire stairs and lift access.

Basement Level 2

Comprising 18 spaces including 17 residential parking spaces and 1 car wash bay, 11 motorcycle parking spaces, general services and storage, fire stairs and lift access.

Basement Level 1

Comprising 43 commercial parking spaces, 62 residential bicycle spaces, 22 commercial bicycle spaces, 14 visitor bicycle spaces, end of trip facilities accessible WC, general services and storage, fire stairs and lift access.

Lower Ground Plan

Comprising loading zone for MRV vehicle, grease arrestor pit, main switch room, fire pump room, commercial waste room, residential waste and bulky waste room, OSD tank, rainwater tank, general services and storage, fire stairs and lift access and driveway access from Sinclair Street.

Ground Floor Plan

Comprising commercial floor space 1 and commercial floor space 2, commercial lobby, residential lobby, male and female toilets and accessible toilet, sculptural garden within the Sinclair Street frontage, southern terrace and landscaped area accessed from commercial space, site through link along northern boundary connecting Pacific Highway to Sinclair Street, services and fire stairs and lift access.

Level 01 Plan

Comprising commercial floor space 3, accessible WC and male and female toilet facilities, services and fire stairs and lift access.

Level 02 Plan

Comprising 4 x 3 bedroom apartments with private terraces, lobby, common room and gym, swimming pool and spa area with male and female toilets and accessible toilet, landscaping, general services and storage, waste room, fire stairs and lift access and lightwell void.

Level 03 – Level 10 Plan

Comprising 6 x 3 bedroom apartments with balconies, lobby, general services and storage, waste room, fire stairs and lift access and lightwell void.

Level 11 Plan

Comprising 2 x 3 bedroom apartments and 1 x 4 bedroom apartment with balconies, lobby, communal open space area, landscaping, general services and storage, waste room, fire stairs and lift access and lightwell void.

Level 12 Plan

Comprising 2 x 3 bedroom apartments and 1 x 4 bedroom apartment with balconies, lobby, general services and storage, waste room, fire stairs and lift access and lightwell void.

Level 13 Plan

Comprising 2 x 3 bedroom apartments and 1 x 4 bedroom apartment with balconies, lobby, general services and storage, waste room, fire stairs and lift access and lightwell void.

Level 14 – Roof Terrace Plan

Comprising communal open space, lobby, landscaping, waste room, fire stairs and lift access.

Development Summary

41. A numerical summary of the proposed development is provided as follows:

Element	Proposal
Building Height R2 zoned land (maximum 8.5m) MU1 zoned land (maximum 16m)	42.93m 53.77m
Floor Space Ratio	2443m ² (4.24:1)
Non-Residential Floor Space Ratio (minimum 0.5:1)	0.9:1
Levels	Thirteen (13) storeys
Apartments	61 Residential apartments comprised as follows: <ul style="list-style-type: none">• 58 x 3 bedroom apartments (95.1%).• 3 x 4 bedroom apartments (4.9%). Note: Includes 13 adaptable apartments.
Car parking spaces <ul style="list-style-type: none">• Residential maximum 1 space per dwelling – 61 maximum• Commercial maximum 1 space per 400m². – maximum 6 spaces	105 car parking spaces comprising the following: <ul style="list-style-type: none">(i) 61 Residential spaces (including 13 accessible spaces).(ii) 43 Commercial spaces.(iii) One (1) car wash bay.
Bicycle parking spaces	98 bicycle spaces as follows: <ul style="list-style-type: none">- 62 Residential bicycle spaces.- 22 commercial bicycle spaces.- 14 visitor bicycle spaces
Motorcycle spaces <ul style="list-style-type: none">• 1 space per 10 car spaces (minimum)	11 motorcycle spaces provided.

Communal open space	2074 m ² (74%) Located on ground floor (lower and upper, Level 1, Level 11 and roof terrace.
Deep soil Area	243m ² (9%) with 3m dimension
Solar access for apartments • 70% minimum	44/61 apartments (72%) receive a minimum of 2 hours of solar access during mid-winter
Cross ventilation for apartments • 60% minimum.	43/61 apartments (70%)
Landscaped area	1303 m ²

Background

42. A Pre DA meeting was held with Council Officers on 27 August 2021 to provide an overview of the proposal and discuss key elements of the proposal including heritage conservation, built form impacts and car parking.
43. The Pre DA meeting advice was provided to the applicant on 20 September 2021. The key issues and concerns identified in the meeting were as follows:
 - Permissibility and reliance on heritage conservation incentives.
 - Building height and significant breaches.
 - Built form response to the surrounding context.
 - SEPP 65 and ADG – Design quality
 - Urban Design.
 - Setbacks.
 - Privacy and overshadowing impacts.
 - Streetscape character.
 - Safety and amenity.
 - Heritage conservation.
 - Landscaping
 - Traffic and parking.
 - Infrastructure.
 - St Leonards and Crows Nest 2036 Plan.
 - Stormwater Management.
44. DA66/23 lodged with Council on 8 March 2023 seeking development consent for the partial demolition of the existing heritage building, and construction of a 13 storey mixed use development containing 61 residential apartments, above four (4) basement levels of parking containing 105 car spaces and tree removal.
45. Sydney North Planning Panel (SNPP) Preliminary ‘Kick Off’ briefing undertaken on 19 April 2023, during which the following was discussed:
 - Previous DA approved for non-residential use in R2 zone area of the site
 - There is a planning proposal to increase HOB and FSR etc. on adjoining site
 - Potential impacts on heritage of scale and height of proposal • Dual zones apply with different height controls and objectives
 - Clause 4.6 involves HOB exceedance. Impacts on Sinclair Street terraces have been considered re solar access and visual impact. Clause 4.6 needs further site-specific justification (clause 5.10.10 is not sufficient justification alone for the extent of non-compliance sought).

- 4(h) of ADG needs be considered

The Panel set a tentative briefing date for September/October 2023.

46. On 9 May 2023, the Development application was reviewed by the Design Excellence Panel (DEP). The Panel did not support the proposal in its current form.
47. On 9 June 2023, the applicant commenced Class 1 proceedings in the Land and Environment Court of NSW, appealing Councils deemed refusal of the DA. The application is scheduled for a 34 conciliation conference on 12 December 2023.
48. On 28 July 2023, the Statement of Facts and Contentions was filed with the Court.
49. SNPP briefing meeting was held on 27 September 2023, during which the following key issues were discussed:
 - Height remains a problem. Applicant is relying on an approved Planning Proposal which adjoins the site.
 - Impacts of height causing issues to adjoining semi-detached dwellings relating to solar access, overlooking and amenity.
 - Heritage impacts associated with the proposed development.
 - Council to provide the Panel with an assessment based on the information at hand.

Statutory Framework

Environmental Planning and Assessment Act 1979 (EP & A) Act 1979

50. The proposal has been assessed and considered against the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act), as follows:

Compliance and Assessment

STATE ENVIRONMENTAL PLANNING INSTRUMENTS

51. The following State Environmental Planning Policies (SEPP) are relevant to this application:

State Environmental Planning Policy
State Environmental Planning Policy (Resilience and Hazards) 2021
State Environmental Planning Policy (Biodiversity and Conservation) 2021
State Environmental Planning Policy (Transport and Infrastructure) 2021
State Environmental Policy No 65 – Design Quality of Residential Flat Buildings (SEPP 65)
State Environmental Planning Policy – (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Planning Systems) 2021

A summary of the key matters for consideration in relation to these State Environmental Planning Policies are considered in more detail below:

State Environmental Planning Policy (Resilience and Hazards)2021

52. The following chapters are relevant to the proposal:

Chapter 4 Remediation of Land

53. Chapter 4 of the SEPP relating to remediation applies to the site.
54. Chapter 4 aims to promote the remediation of contaminated land in order to reduce the risk of harm to human health or any other aspect of the environment. Clause 4.6 requires

contamination and remediation to be considered in determining a development application. The consent authority must not consent to the carrying out of development on land unless it has considered whether or not the land is contaminated.

55. A Preliminary Site Investigation (PSI) report has been prepared by Environmental Consulting Services Pty Ltd and based on the submitted report, the site is considered suitable for the proposed redevelopment and the anticipated mixed residential / commercial land use.
56. Councils Environmental Health Officer has reviewed this report and concurs with the recommendations and conclusion of the report.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

57. The following chapters are of relevance to the proposal:

Chapter 2 Vegetation in non-rural areas

58. Chapter 2 of the SEPP relating to vegetation in non-rural areas applies to the site.
59. Chapter 2 regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.
60. The aims of this Chapter are to protect the biodiversity values of trees and other vegetation in non-rural areas of the State and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation. This policy is applicable pursuant to Clause 2.3 of the SEPP as the site is within both North Sydney Council and the R2 Low Density Residential zone and the MU1 Mixed Use zone (formerly B4 Mixed Use).
61. The proposed development will adversely impact a Eucalyptus sp located on the southern boundary of the adjoining site (within Fire Station car park). The proposed boundary to boundary construction would likely result in damage to this tree. The development also impacts two (2) existing trees on the northern boundaries of properties immediately to the south of the site, which are not shown on the plans, however are likely to be negatively impacted.
62. The tree removal has been assessed by Council's Landscape Officer who requires additional information including an arborist report which details the impact of the proposal on all site, street and neighbouring trees.

Chapter 6 Water Catchments

63. Chapter 6 of the SEPP relating to Water Catchments applies to the site.
64. All stormwater from the proposed development can be treated in accordance with Council's Stormwater Management Policy and would satisfy the relevant provisions of Chapter 6.

State Environmental Planning Policy (Transport and Infrastructure) 2021

65. The following chapters are relevant to the proposal:

Chapter 2 Infrastructure

66. Chapter 2 aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, providing greater flexibility in the location of infrastructure and service facilities, allowing development of surplus government owned land, identifying environmental assessment categories and matters to be

considered in assessments, and providing for consultation with relevant public authorities.

67. The application was referred to Ausgrid pursuant to clause 2.48 of the SEPP. No objection was received from Ausgrid.
68. Clause 2.119 relates to Development with frontage to a classified road, Clause 2.120 relates to the impact of road noise or vibration on non-road development, Clause 2.121 relates to excavation in or immediately adjacent to corridors and Clause 2.122 relates to traffic generating development.
69. The subject site is located on a classified road, has excavation more than 3m below Pacific Highway and the development is traffic generating so the provisions of Clause 2.119, Clause 2.121 and Clause 2.122 are applicable and a referral to Transport for NSW is required and was effected.

Section 2.119 - Development with frontage to classified road

70. Section 2.119 stipulates that the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that vehicular access to the land is provided by a road other than the classified road and the safety, efficiency and ongoing operation of the classified road will not be adversely affected. The development fronts the Pacific Highway which is a classified road, and vehicular access will be via Sinclair Street.

Section 2.120 - Impact of road noise or vibration on non-road development

71. Section 2.120 requires the consent authority to consider the likely impact of noise and vibration on residential accommodation. This applies to land located adjacent to a road with an annual average daily traffic volume of more than 20,000 vehicles. The acoustic report provided with the application indicates that development can achieve internal habitable noise criteria subject to inclusion of acoustic treatments to the north-eastern façade of the building.

2.121 Excavation in or immediately adjacent to corridors

72. Section 2.121 applies to development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land that is the road corridor of any of the roads or road projects described in Schedule 2 of the Transport and Infrastructure SEPP. This section is applicable to the proposed development as the site is located on the Pacific Highway and excavation is proposed below ground for more than 3m.

Section 2.122 - Traffic-generating development

73. Section 2.122 of the SEPP requires that DAs for certain traffic generating development, as set out in Column 1 Schedule 3 of the policy be referred to TfNSW and that any submission from the TfNSW be considered prior to the determination of the application.
74. The application was referred to Transport for NSW who have provided their concurrence subject to requirements and conditions as detailed within their letter.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

75. The BASIX SEPP applies to the proposed development. In accordance with the requirements, a compliant BASIX certificate has been submitted with the application.

State Environmental Planning Policy (Planning Systems) 2021

76. The proposal is a regionally significant development pursuant to Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 as it has a CIV of more than \$30 million in accordance with the SEPP.

77. In this case the Sydney North Planning Panel is the consent authority for the subject development application.

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

78. State Environmental Planning Policy No 65 – Design Quality of Residential Flat Buildings (State Environmental Planning Policy 65) was gazetted on 26 July 2002 and applies to the assessment of DAs for residential flat developments of three (3) or more storeys in height and containing at least four (4) dwellings. Amendment 3 to State Environmental Planning Policy 65 commenced on 17 July 2015 and implemented various changes including the introduction of the Apartment Design Guide (ADG) to replace the Residential Flat Design Code. Given the nature of the development proposed, State Environmental Planning Policy 65 applies.
79. Clause 28(2) of State Environmental Planning Policy 65 requires that the consent authority take into consideration the following as part of the determination of DAs to which State Environmental Planning Policy 65 applies:
- a) *the advice (if any) obtained from the design review panel, and*
 - b) *the design quality of the development when evaluated in accordance with the design quality principles, and*
 - c) *the Apartment Design Guide.*
80. The application has been reviewed having regard to the criterion and design principles as set out in the ADG.
81. The tables below provide a comprehensive assessment against the principles, objectives and controls of State Environmental Planning Policy No 65 and the ADG.
82. A design verification statement has been provided by Rachid Andary (Registration No 8627) of Fuse Architects in accordance with Clause 29 of the *Environmental Planning and Assessment Regulation 2021*.

Design Excellence Panel

83. The application was referred to the Design Excellence Panel (DEP) for comment on 9 May 2023. The Panel did not support the proposal in its current form. Those comments are reproduced later in the report within the external referral section.
84. Clause 28 of SEPP 65 requires the consent authority to take into consideration the provisions of the Apartment Design Code. The table below assesses the proposal against these provisions.

Design Quality Principles (SEPP 65)

85. The proposal does not comply with the following design principles:
86. Principle 1 - Current and Neighbourhood Character: The thirteen and eleven storey building does not respect the existing context, comprising the spatial; and visual qualities of Five Ways intersection and Willoughby Road, the heritage item on the site, the adjacent heritage item I0173, Crows Nest Fire Station and item I0151 at the corner of Shirley Road. The height of the development is inconsistent with the desired future character and built forms envisaged by the St Leonards and Crows Nest 2036 Plan.

87. Principle 2 - Built Form and Scale: The height, bulk and scale would be a significant departure from the existing context along the Pacific Highway and a dominating presence in the R2 zone in Sinclair Street. The setbacks of the proposed development do not provide adequate building separation at the side boundaries.

The north elevation would present large areas of blank wall visible from the public domain and the heritage listed Fire Station in Shirley Road. The proposed 42.93m building height in the R2 zone and 53.77m height in the MU1 zone is excessive and inappropriate. The built form should step down in height within the MU1 zone to the boundary with the R2 zone and be set back at the rear. The development would encourage creep of more tall buildings from the south towards the Five Ways intersection, creating an unacceptable sense of enclosure of the public domain.

The development is not consistent with the current built forms permissible under North Sydney Local Environmental Plan 2013 or the built forms envisaged under the St Leonards and Crows Nest 2036 Plan. The built form would produce a dominating presence towering above and over the heritage listed former North Shore Gas Company building and in the visual curtilage of the heritage listed Fire Station.

88. Principle 3 - Density: The floor space provided by a building that: exceeds height standards by a large margin; extends across the R2 zone boundary; has insufficient side and rear and front setbacks would result in unacceptable amenity outcomes and a significant overdevelopment of the site.
89. Principle 5 - Landscape: Insufficient deep soil is provided. The effective deep soil, discounting the through site link and driveway, is $141.8\text{m}^2 = 5.1\%$, which is confined to the rear of the site. An arborist's report must be provided to assess impacts on the tree at the north boundary and the trees on the northern boundaries of properties to the south.
90. The benefits of the proposed public open space bordering Sinclair Street are limited due to the remote location within the development, which is more likely to be used by residents of the apartments.

The proposed through site link is not required in the strategic planning framework for the locality and would be of limited value to the public.

91. Principle 6 - Amenity: The proposed development would adversely affect the privacy and outlook of properties in the R2 zone along Sinclair Street.

The shadow diagrams indicate that a significant increase of overshadowing would be experienced by residents in the dwelling houses in Sinclair Street. The proposed development responds poorly to various aspects of the Apartment Design Guide detailed at particular (n).

92. Principle 7 - Safety: A Crime Prevention through Environmental Design report has not been provided. Safety and security of the through site link and residential entry should be properly addressed.
93. Principle 9: - Aesthetics: The building steps out to zero setback above Level 7 above the podium, which would create an uncharacteristic built form with a dominating effect towards the Pacific Highway. The south-east corner of the eleven-story rear section of the building steps out above Level 3. That part of the building extends 22 metres beyond the R2 zone boundary and would present a dominant bulk and scale to the properties in the R2 zone.

Table - Design considerations of Part 3 and Part 4 of the Apartment Design Guide (ADG)

Clause	Standard	Proposal	Complies
2F Building separation	<p>Up to 12m (4 storeys) Hhabitable/hhabitable - 12m Hhabitable/ Non-hhabitable – 9m Non-hhabitable/Non-hhabitable - 6m</p> <p>Up to 25m (5-8 storeys) Hhabitable/hhabitable - 18m Hhabitable/ Non-hhabitable – 12m Non-hhabitable/Non-hhabitable - 9m</p> <p>Over 25m (9+ storeys) Hhabitable/hhabitable - 24m Hhabitable/ Non-hhabitable – 18m Non-hhabitable/Non-hhabitable - 12m</p>	No	No
Note: Where applying separation to buildings on adjoining sites, apply half the minimum separation distance measured to the boundary.			
3D - Communal open space	1. Communal open space has a minimum area equal to 25% of the site.	2074sqm (74%)	Yes, numerically compliant
Note: Although communal open space provided meets the 25% of site area in Design Criterion 1 in 3D-1, the distribution of the spaces is such that the communal/public open space at the rear of the site is isolated by a twelve-metre wall of commercial spaces and the communal open space at ground level is accessible only to occupants of the commercial accommodation and is overshadowed. A WC should be provided within the communal open spaces at levels 11 and 13.			
	2. 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)	Complies	Yes
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p> <p>Where the site has an area of between >1500sqm – 6m min dimension</p> <p>Minimum deep soil area of 7% (207.9sqm)</p>	<p>Applicants figure 243sqm (9%).</p> <p>Actually figure 5%</p>	No
The area identified as deep soil zone at the rear of the site is claimed to have an area 9% of the site area. The effective deep soil zone has an area of 5% of the site area due to the unavailability of land for planting on the through site link and the driveway			

3F- Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys) Habitable - 6m Non-habitable – 3m</p> <p>Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m</p> <p>Over 25m (9+ storeys) Habitable – 12m Non-habitable – 6m</p>	No	No, see discussion below.
<p><u>Comment on Separation distances (3F Visual Privacy):</u> The minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <p>Up to 12m (4 storeys) Habitable - 6m Non-habitable – 3m</p> <p>Up to 25m (5-8 storeys) Habitable – 9m Non-habitable – 4.5m</p> <p>Over 25m (9+ storeys) Habitable – 12m Non-habitable – 6m</p> <p>The side and rear setbacks of the proposed building are intended to provide a balanced approach to the setbacks identified in Objective 3F-1 of the Apartment Design Guide, as well as the need to avoid more than one step in the built form as the height increases which would result in a 'ziggurat' appearance.</p> <p><u>Southern boundary setback</u> The side setback from 270 - 272 Pacific Highway boundary is six metres for the full height of the building. The setback above four levels is required to be nine metres to provide building separation and privacy regardless of whether the adjacent building (proposed at similar height) is residential or commercial. Although angled windows are proposed (within the setback), balconies will face into a high narrow space with poor outlook and poor privacy, either to blank walls or commercial windows. The indented lightwell on the north side of the building separates opposing windows of bedrooms in different apartments. Privacy issues have not been adequately addressed.</p> <p><u>Northern boundary setback</u> The proposal has a blank wall for the extent of the building along the northern boundary to maintain amenity and minimise overlooking and loss of privacy.</p> <p><u>Comment on visual privacy and amenity between buildings on site:</u> The ADG requires that separation between buildings on the same site should combine required building separations depending upon the type of room as follows:</p>			

Up to 12m (4 storeys)

Non habitable to blank walls – 3m
Habitable room to blank walls – 6m
Habitable to Non-habitable – 9m
Habitable to Habitable -12m

Up to 25m (5-8 storeys)

Non habitable to blank walls – 4.5m
Habitable room to blank walls – 9m
Habitable to Non-habitable – 13.5m
Habitable to Habitable -18m

Over 25m (9+ storeys)

Non habitable to blank walls – 6m
Habitable room to blank walls – 12m
Habitable to Non-habitable – 18m
Habitable to Habitable -24m

The separation distances proposed between the habitable rooms (bedrooms) of apartments 801 – 806 should be a minimum of 12m -24m in accordance with the ADG, where separation distances between buildings on the same site should combine required building separations.

The 9m separation between the habitable rooms for the entirety of the building is considered to be inadequate and unacceptable. Concern is raised not only on privacy impacts but also whether adequate light and ventilation can be afforded to these rooms given the lightwell is their only source of light and ventilation.

3G – Pedestrian Access and entries	Building entries and pedestrian access connects to and addresses the public domain Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge	Separate lobby entries have been provided to the residential and commercial components of the development.	Yes
3H-Vehicle Access	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	The vehicular access point is located to the rear of the site in Sinclair Street	Yes
3J-Bicycle and carparking	For development in the following locations: <ul style="list-style-type: none">On sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; orOn land zoned and sites within 400m of land zoned B3 Commercial Core, B4	The Council's DCP are the relevant controls applicable to this assessment. 61 Residential spaces proposed 54 spaces for retail/commercial	Yes, the maximum residential spaces are numerically compliant. The non-residential spaces however

	<p>Mixed Use or equivalent in a nominated regional centre.</p> <p>The minimum car parking requirement for residents and visitors is set out in the Roads and Maritime Services Guide to Traffic Generating Developments (RMS), or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The subject site is in a High Accessibility Area and as such Councils DCP prescribes a maximum of 1 car space per dwelling for 3+ bedrooms.</p> <p>Maximum Residential spaces permitted = 61 spaces.</p>	<p>have also been provided.</p> <p>A loading dock has been provided and accessed via Sinclair Street.</p>	<p>exceed the maximum permitted.</p>
3J-2	<p>Conveniently located and sufficient numbers of parking spaces should be provided for motorbikes and scooters.</p>	<p>Provided in accordance with minimum rates of DCP.</p>	<p>Complies</p>
	<p>Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas.</p>	<p>Provided in accordance with minimum rates of DCP.</p>	<p>Complies</p>
	<p>Conveniently located charging stations are provided for electric vehicles, where desirable.</p>	<p>Can be provided</p>	<p>Can be provided</p>
4A- Solar and daylight access	<p>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter in the Sydney Metropolitan Area</p>	<p>A minimum of 44/61 apartments (72%) receive a minimum of 2 hours of solar access during mid-winter.</p>	<p>Complies</p>
	<p>A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter</p>	<p>17/61 apartments (28%) receive no direct sunlight.</p>	<p>No</p>
4B-3 Natural Ventilation	<p>At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.</p>	<p>70% (43) of apartments are natural cross ventilated</p>	<p>Yes</p>
4C-Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable rooms = 2.4m</p>	<p>A minimum 3100mm floor to floor height has been provided to enable a minimum 2.7m</p>	<p>No, the building with the exception of kitchens is compliant</p>

		ceiling height to be achieved to the residential component with the exception of the kitchens which are 2.4m.	with the minimum 2.7m.
	3.3m for ground floor and first floor in mixed use areas to promote flexibility of use	Ground floor and first floor exceed 3.3m.	Yes
4D- 1 Apartment size and layout	<p>Apartments are required to have the following minimum internal areas: Studio = 35sqm 1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.</p>	<p>Three bedroom units with two bathrooms have minimum internal areas of 100sqm - 178sqm.</p> <p>Four bedroom apartments with two bathrooms have an area of 158sqm.</p>	Complies
	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	Every habitable room has window openings larger than 10% of the room area.	Complies
4D-2 Apartment size and layout	<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	Satisfactory.	Complies
4D-3 Apartment size and layout	<p>Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p>	<p>All master bedrooms have a minimum internal size of 10sqm.</p> <p>All bedrooms have minimum 3m dimensions.</p>	Complies
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>-3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments</p>	<p>3.6m for 3 bedroom 4m for 4 bedroom</p>	No

4E- Private Open space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <ul style="list-style-type: none"> -1 bedroom = 8sqm/2m depth -2 bedroom = 10sqm/2m depth -3+ bedroom = 12sqm/2.4m <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	Each dwelling has access to a 12sqm balcony with minimum 2.4m depth.	Complies
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	No more than six (6) units are provided to any one core on a single level.	Complies
	For Buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	Maximum number of apartments being served by one lift is 31.	Yes
4G- Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <ul style="list-style-type: none"> 1 bedroom = 6m³ 2 bedroom – 8m³ 3 bedroom – 10m³ <p>At least 50% of storage is to be located within the apartment.</p>	Each unit is provided with sufficient storage space with at least 50% located in individual units. The remaining is located in a dedicated secure location within the residential areas of the basement.	Yes
4H- Acoustic Privacy	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. Window and door openings are generally orientated away from noise sources</p> <p>Noisy areas within buildings including building entries and corridors should be located next to or above each other and quieter areas next to or above quieter areas</p> <p>Storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources</p>	<p>Building separation, orientation and arrangements are designed to mitigate noise pollution with openings shielded through setbacks and other arrangements from noise sources. Recommendations have been provided to ensure separation between buildings comply. In</p>	Complies

		<p>addition, the building must comply with the specific requirements of the NCC – BCA.</p> <p>The application is accompanied by an acoustic report addressing potential noises issues on the site from the roadways, relating to traffic generation and vehicle movements, noise from commercial usage and from mechanical plant.</p>	
4J – Noise and Pollution	<p>To minimise impacts the following design solutions may be used:</p> <ul style="list-style-type: none"> • physical separation between buildings and the noise or pollution source • residential uses are located perpendicular to the noise source and where possible buffered by other uses • buildings should respond to both solar access and noise. Where solar access is away from the noise source, non-habitable rooms can provide a buffer • landscape design reduces the perception of noise and acts as a filter for air pollution generated by traffic and industry 	<p>Site layout and floor plan design seeks to minimise acoustic disruption on the enjoyment of the future residents/users of the development. The communal open space within the development is shielded from Princes Highway and Gladstone Street by the proposed building to create a calm space.</p> <p>The vehicle entry is located and designed to minimise further noise impacts, and the placement of non-residential uses aids in separating residents from noise sources.</p>	Yes

4K – Apartment Mix	<p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p> <p>The apartment mix is distributed to suitable locations within the building</p>	<p>The development offers 3 and 4 bedroom apartments only as follows:</p> <ul style="list-style-type: none"> • 58 x 3 bedroom apartments (95.1%) • 3 x 4 bedroom apartments (4.9%) 	No
4L – Ground Floor Apartments	<p>Street frontage activity is maximised where ground floor apartments are located.</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	No ground floor apartments proposed.	N/A
4M - Facades	<p>Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.</p>	The façade treatments is inconsistent with the desired streetscape character and the context of the area.	No
4N – roof design	<p>Roof treatments are integrated into the building design and positively respond to the street. Opportunities to use roof space for residential accommodation and open space are maximised. Incorporates sustainability features.</p>	Complies	Yes
4O – Landscape Design	<p>Landscape design is viable and sustainable, contributes to the streetscape and amenity</p>	<p>A detailed landscape design has been prepared. Planting is provided throughout the design. The range and type of species and planting is consistent with the requirements of the ADG and DCP requirements. Impacts on trees however needs to be addressed.</p>	Yes

4P- Planting on Structures	Planting on structures – appropriate soil profiles are provided, plant growth is optimised with appropriate selection and maintenance, contributes to the quality and amenity of communal and public open spaces	Deep soil and planting zones have been integrated into the design to ensure appropriate growing conditions, drainage and placement are facilitated as well as an attractive, welcoming and usable environment.	Yes
4Q – Universal Design	Universal design – design of apartments allow for flexible housing, adaptable designs, accommodate a range of lifestyle needs	Satisfactory.	Complies
4R – Adaptive reuse	Adaptive reuse as apartment of existing buildings- new additions are contemporary and complementary, provide residential amenity while not precluding future adaptive reuse. Additions to heritage items should be clearly identifiable from the original building.	The design has an adverse impact upon the heritage item.	No
4S Mixed Use	Mixed use development are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	A range of public transport options, including bus and train, are located within close proximity. Within the development ground level uses will create active frontages, encourage movement and curiosity, and contribute to the public domain.	Yes
4U – Energy Efficiency.	Development incorporates passive environmental design, passive solar design to optimise heat storage in winter and reduce heat transfer in summer, natural ventilation minimises need for mechanical ventilation	A compliant BASIX Certificate accompanies the application.	Yes

4V – Water management and conservation	Water management and conservation – potable water use is minimised, stormwater is treated on site before being discharged, flood management systems are integrated into the site design	The development incorporates appropriate stormwater measures and Council's Development Engineers are satisfied with the design subject to conditions.	Yes
4W – Waste Management	Waste management – storage facilities are appropriately designed, domestic waste is minimised by convenient source separation and recycling	The proposal fails to provide suitable waste management facilities to meet Councils DCP.	No
4X – Building Maintenance	Building design provides protection from weathering Enables ease of maintenance, material selection reduces ongoing maintenance cost	The design incorporates a mix of external finishes that require minimal maintenance.	Yes

North Sydney Local Environmental Plan 2013 (NSLEP 2013)

94. The subject development site is zoned MU1 Mixed Use and R2 Low Density Residential under the NSLEP 2013 as shown in **figure10** below:

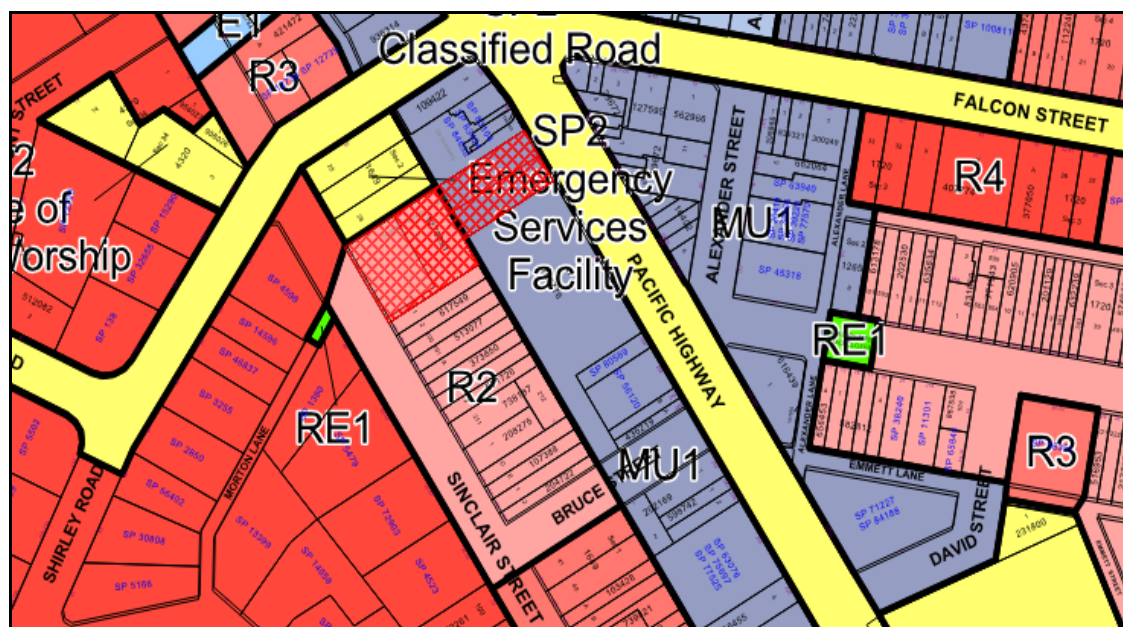


Figure 10: Land Zoning map with subject site hatched in red showing MU1 and R2 zones.

The proposed development being defined as 'shop top housing' is a permissible land use within the MU1 Mixed Use zone however is not permissible within the R2 Low Density Residential zone.

The objectives of the R2 zone are:

- (a) *To provide for the housing needs of the community within a low density residential environment.*
- (b) *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- (c) *To encourage the development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- (d) *To ensure that a high level of residential amenity is achieved and maintained.*

The objectives of the MU1 Mixed Use zone are:

- (a) *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- (b) *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- (c) *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- (d) *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- (e) *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- (f) *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 proposal fails to comply with all of the zone objectives for the R2 Low Density zoned land and the objectives under (a), (b) and (e) above for the MU1 Mixed Use zone.

95. An assessment of the proposal against the relevant LEP clauses and development standards is as follows:

Clause	Standard	Proposal	Complies
Part 2: Permitted or Prohibited Development			
2.2 Zoning of Land to which Plan applies	R2 Low Density Residential and MU1 Mixed Use	The proposed application is for a shop top housing comprising residential apartments and commercial premises. They are permitted within the MU1 zone however not permitted in the R2 zone.	No, applicant is reliant upon the heritage conservation incentives of Clause 5.10 (10).
2.3 Zone objectives and Land use table	Objectives of zone to be satisfied	The proposal fails to satisfy the objectives of the R2 and MU1 zone.	No
2.7 Demolition	Demolition requires development consent.	Consent for demolition of existing structures is sought.	Yes
Part 4: Principal Development Standards			

4.3 Height of Buildings MU1 zoned land	Maximum permitted height as per height of building map: 16m	53.77m Variation of 37.77m (236.1%)	No, see clause 4.6 submitted
4.3 Height of Buildings R2 Low Density Residential zoned land	Maximum permitted height as per height of building map: 8.5m	34.43m Variation of 25.93m (405.1%)	No, see clause 4.6 submitted.
Note: Clause 4.6 objection has been submitted requesting a variation to the development standards for the maximum building height in both the R2 and MU1 zoned land. As the development is not permissible within the R2 zoned land, the Clause 4.6 objection for the R2 zoned land is also reliant upon the heritage conservation provisions of Clause 5.10 (10) of NSLEP 2013.			
4.4A Non – Residential Floor Space Ratio	Minimum required 0.5:1	0.9:1	Yes
4.5 Calculations of Floor space and Site area	Floor space to be calculated in accordance with Clause.	Floor space has been calculated in accordance with this clause.	Yes
4.6 Exceptions to Development Standards	A Clause 4.6 variation request has been submitted in relation to the proposed building height.		
Part 5: Miscellaneous Provisions			
5.10 Heritage Conservation	(5) Heritage assessment The consent authority may, before granting consent to any development— (a) on land on which a heritage item is located, or (b) on land that is within a heritage conservation area, or (c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that	A Heritage Fabric Assessment, Heritage Interpretation Strategy and a Heritage Management document has been submitted with the application.	No

	assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.		
	<p>(10) Conservation incentives The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that—</p> <p>(a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and</p> <p>(b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and</p> <p>(c) the consent to the proposed development would require that all necessary conservation work</p>	The proposal is contrary to the provisions of Clause 5.10 (10).	No

	<p>identified in the heritage management document is carried out, and</p> <p>(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and</p> <p>(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.</p>		
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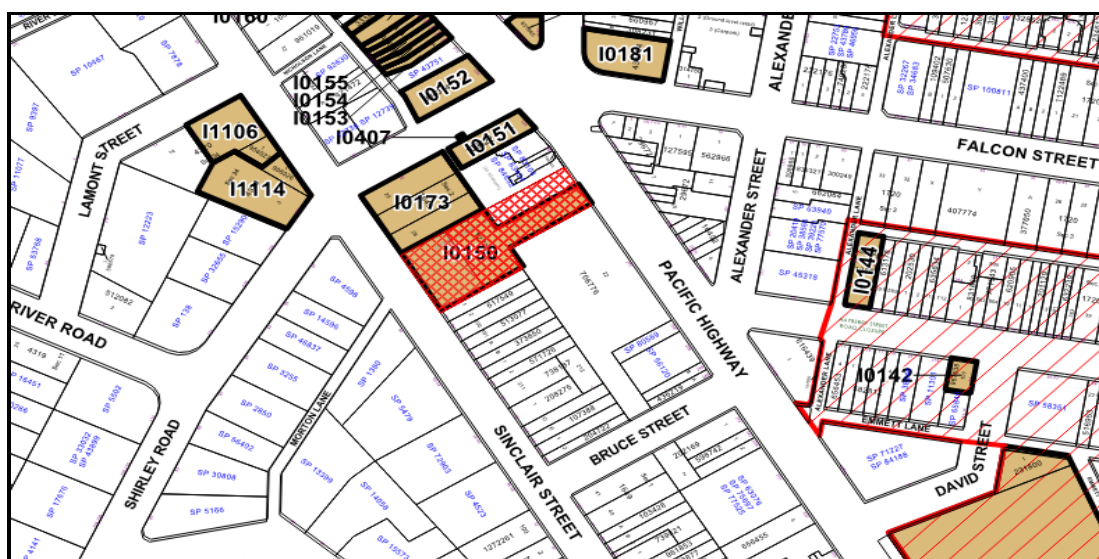


Figure 11: Map showing Heritage items and Heritage Conservation Area. Heritage items are shown in brown with the heritage conservation area is shown with red hatching

Part 6: Additional Local Provisions

6.10 Earthworks	<p>(2) Development consent is required for earthworks unless—</p> <p>(a) the earthworks are exempt development under this Plan or another applicable environmental</p>	<p>The proposal includes the provision of four (4) levels of basement car parking.</p> <p>The amount of excavation could be reduced by reducing the amount of parking.</p>	Yes
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	<p>planning instrument, or</p> <p>(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.</p>		
6.12A Residential flat buildings in Zone MU1 Mixed Use	(1) The objective of this clause is to ensure that development for residential flat buildings on land in Zone MU1 Mixed Use forms part of mixed use developments and does not impact on the activation of street frontages.	The development is a mixed use development comprising commercial and residential apartments above.	Yes
	(2) This clause applies to land in Zone MU1 Mixed Use.	The site is zoned MU1 Mixed Use	Yes
	(3) Development consent must not be granted for development for the purpose of a residential flat building on land to which this clause applies unless the consent authority is satisfied that— (a) the residential flat building is part of a mixed use development, and (b) no part of the ground floor of the building that is facing a street is used for residential accommodation.	The development contains commercial premises on the ground and first floor with residential apartments above.	Yes

Clause 4.6 Exceptions to development standards
Detailed assessment of variation to Clause 4.3 Height of Buildings

96. Clause 4.3 of the North Sydney Local Environmental Plan 2013 (NSLEP) relates to the maximum permitted building height for a site and refers to the Height of Buildings Map. The relevant map identifies the subject site as having a maximum height of 16m for the land zoned MU1 Mixed Use and 8.5m for the land zoned R2 Low Density Residential. Building Height is defined as:

“Building height (or height of building) means:

- In relation to the height of a building in metres – the vertical distance from ground level (existing) to the highest point of the building, or*
- In relation to the RL of a building – the vertical distance from the Australian Height Datum to the highest point of the building*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

The maximum height zones within the immediate area are shown below:

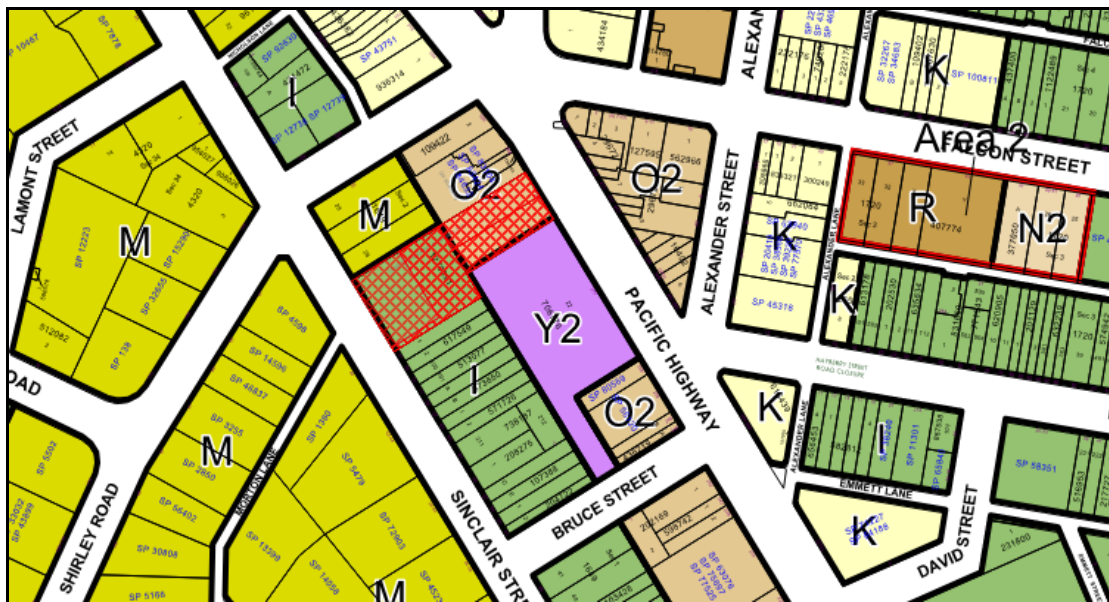


Figure 12: Maximum Building height map (“O2” denotes 16m maximum and “I” denotes 8.5m maximum) with subject site identified hatched in red.

The location and extent of the non-compliance is provided in the images below:

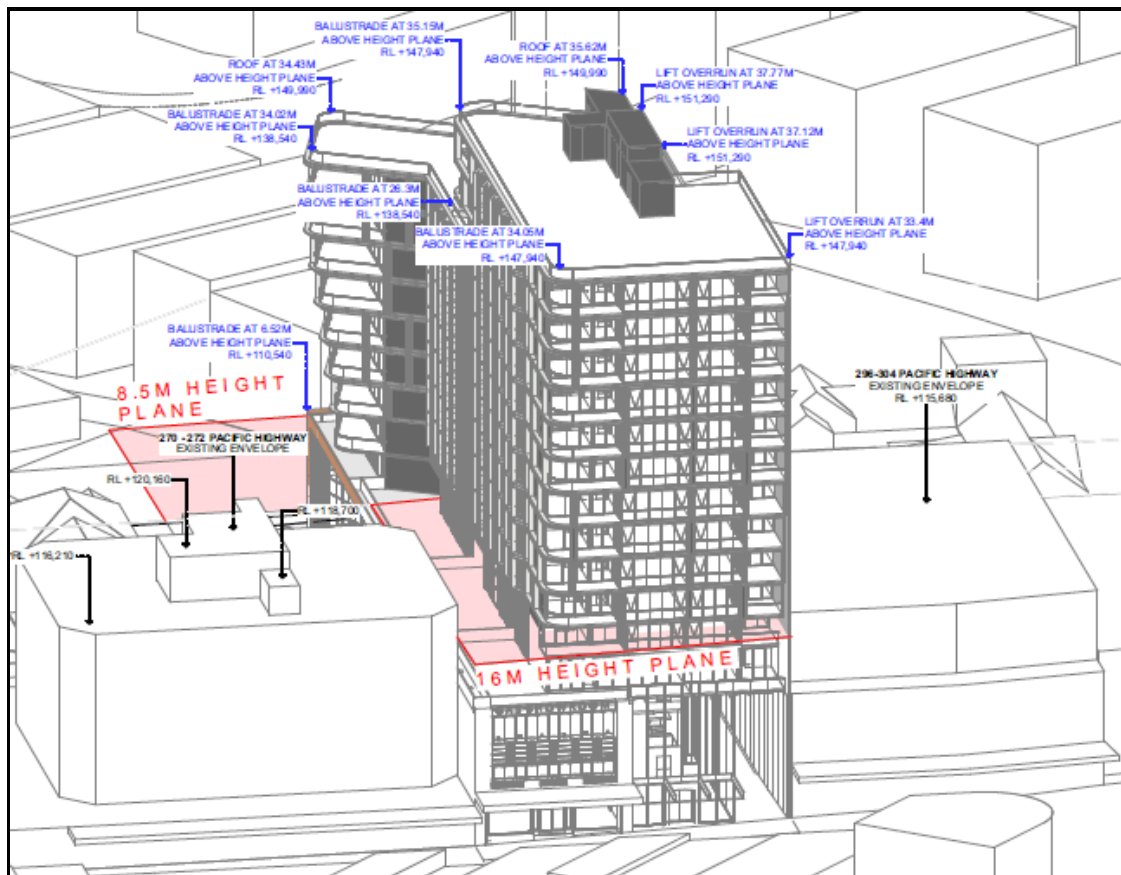


Figure 13: LEP Height plane drawing which illustrates the components which are above the height control as viewed from Pacific Highway (Source: Fuse Architects).

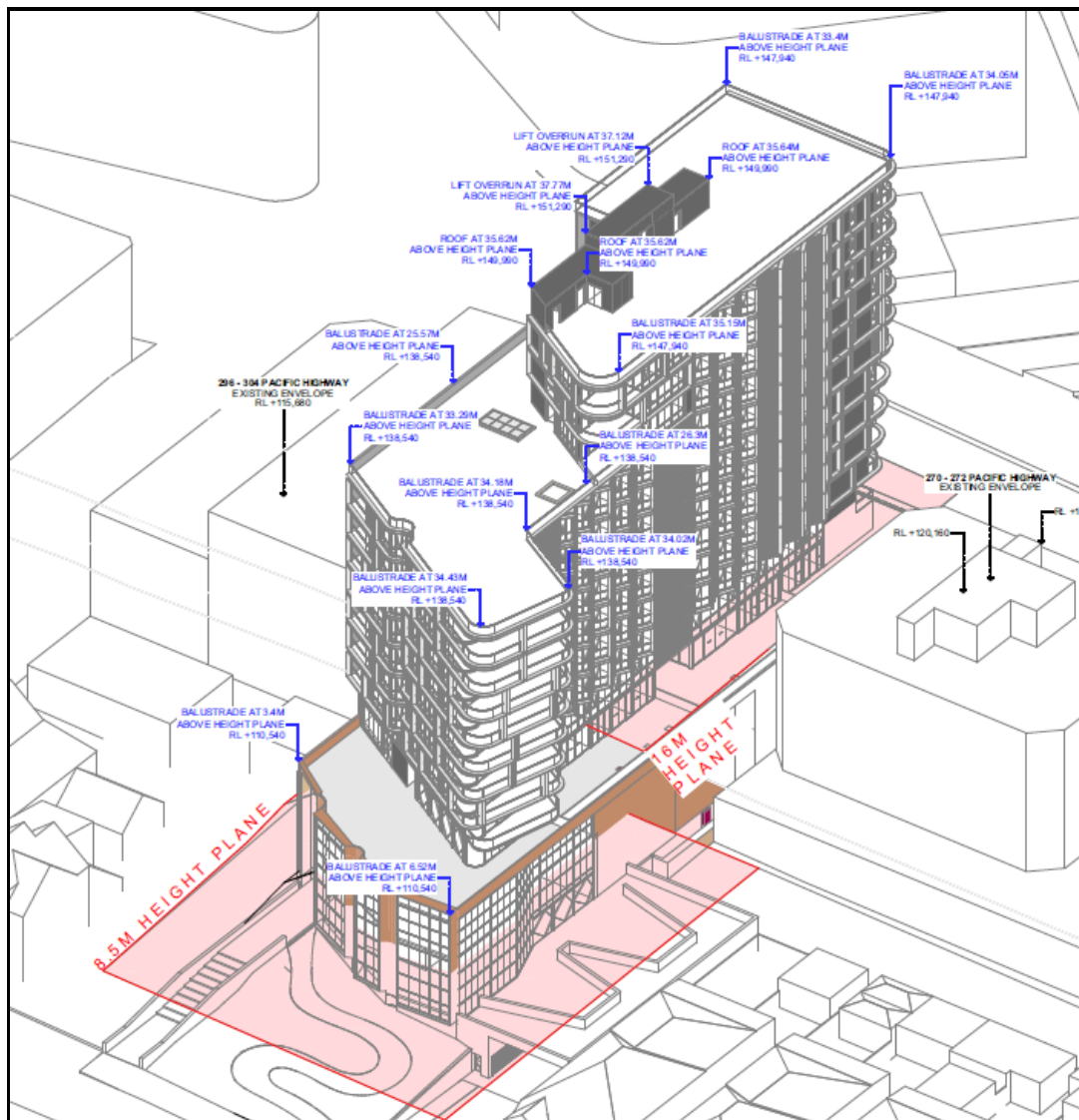


Figure 14: LEP Height plane drawing which illustrates the components which are above the height control as viewed from Sinclair Street (Source: Fuse Architects).

97. The proposed development seeks a variation to the development standard relating to height (Clause 4.3). The NSLEP identifies a maximum height control of 16m of the area of the site zoned MU1 Mixed Use and 8.5m for the area of the site zoned R2 Low Density Residential. The building is proposed to be 34.43m in height in the R2 zoned land which exceeds the maximum building height by 25.93m, a variation of 405.1% to the development standard. The building is proposed to be 53.77m in height in the MU1 zoned land, which exceeds the maximum building height by 37.77m, a variation of 236.1% to the development standard.
98. Any variation to a statutory control can only be considered under Clause 4.6 – Exceptions to Development Standards of the NSLEP. An assessment of the proposed height against the survey plan levels was conducted to indicate the Applicant's calculations are generally accurate.
99. Clause 4.6(1) outlines the objectives of the standard which are to "provide an appropriate degree of flexibility in applying certain development standards to particular development" and "to achieve better outcomes for and from development by allowing flexibility in particular circumstances".

100. Clause 4.6(3) states that:

“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard”*

101. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.3 in accordance with Clause 4.6 of NSLEP 2013. The Clause 4.6 request for variation is assessed as follows:

Is the planning control in question a development standard?

102. The Height of Buildings control under Clause 4.3 of the North Sydney Local Environment Plan 2013 is a development standard.

What are the underlying objectives of the development standard?

103. The objectives of the Height of Buildings development standard under Clause 4.3 of NSLEP 2013 are:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
- (e) to ensure compatibility between development, particularly at zone boundaries,*
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
- (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living.*

Compliance is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a))

104. There have been several Court cases that have established provisions to assist in the assessment of Clause 4.6 statements to ensure they are well founded and address the provisions of Clause 4.6.

105. In *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

“An objection under State Environmental Planning Policy 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

106. The judgment goes on to state that:

“The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

107. Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
- 2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
- 3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
- 4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
- 5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.”*

108. The Clause 4.6 statement was prepared having regard to the recent court cases and their judgements.

109. Applicants comment: *“Five methods of determining whether a development standard is ‘unreasonable or unnecessary’ are identified in Wehbe v Pittwater Council [2007] NSWLEC 827 and summarised as follows:*

To establish that the objectives of the standard are achieved despite the non-compliance with the standard (Ground 1). This is the most common method used in determining cl 4.6 variations.

To establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary (Ground 2).

To establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable (Ground 3). To establish that the development standard has been virtually abandoned or destroyed by the Council’s own actions in granting consents departing from the standard (Ground 4).

The zoning of the land is unreasonable or inappropriate (Ground 5).

This Request addresses the first method (Ground 1) which is sufficient to satisfy the ‘unreasonable and unnecessary’ requirement.

Additionally, the Chief Judge in Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118 at [16]-[17]. Similarly, in Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 at [34] held that:

‘establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary’.

These considerations are addressed in the following sections.

The objectives of the development standard are achieved notwithstanding non-compliance with the standard

Each of the objectives of the building height standard specified in clause 4.3 of NSLEP are assessed below and which demonstrates that they are achieved notwithstanding the proposed non-compliance with the standard.

Objective: to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient

As described earlier, existing ground level of the site slopes approximately 4.75m from RL98.6 at the site’s frontage at Pacific Highway to RL93.65 at the Sinclair Street frontage.

The proposal is designed to ‘conform and reflect’ the natural landform by scaling development appropriately reflecting the slope of the land. The highest part of the proposed development (13 storeys) is located on the Pacific Highway frontage highpoint and then steps down to 11 storeys in the central portion of the site, and then down to 6 storeys at the boundary with 77 Sinclair Street following the natural slope of the site. In addition, a 2-storey podium element is proposed to the building’s Sinclair Street frontage at a height of 11.9m which is a 3.4m variation above the 8.5m building height specified by the NSLEP.

The proposed development conforms to and reflects the natural landform, with the development stepping with the natural gradient of the site down from the Pacific Highway to Sinclair Street in accordance with this objective.

Objective: to promote the retention and, if appropriate, sharing of existing views

The site is in an area identified to undergo significant change with increased density and building heights reflecting the directions of the 2036 Plan. Having regard to existing development and the desired future character of the area defined in the 2036 Plan, the proposal appropriately retains and promotes the sharing of existing views. This is demonstrated as follows:

- From the public domain, the key view that is impacted by the Proposal is from Willoughby Road looking south. Notwithstanding this, the view corridor opens to the Five Ways Intersection and therefore the Proposal would be read together with the future taller buildings in the site’s immediate context.*
- In locations along Willoughby Road north of Burlington Street, where the heart of retail activity occurs, views to the Pacific Highway are screened by existing tree plantings. Accordingly, it is not expected that the proposed development will*

adversely impact views and therefore the village feel of Willoughby Road is likely to be maintained.

Detailed view sharing analysis has been prepared by Urbis to determine the potential view impacts of the proposed development on surrounding residential development. The 'View Sharing Report' prepared by Urbis dated November 2022, concludes that:

'Of the surrounding residential dwellings considered, the majority will be unaffected by potential view loss or may be affected to a negligible extent, where existing built form would be replaced by new contemporary built form or where additional built form predominantly blocks areas of sky or compositions of low scenic quality or value in Tenacity terms. Therefore, in our opinion, for the majority of residents who may have potential views that include the subject site, view loss would be negligible or less, view impacts minor, and view sharing outcomes reasonable and acceptable.'

This analysis confirms that the proposed variation to the height controls does not undermine achievement of this objective cl 4.3 of the NSLEP.

Objective: to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development

Shadow diagrams during mid-winter (21 June) for the proposed development have been prepared by Fuse Architects and are attached to the architectural plans. These diagrams include reference to the potential shadow cast from the proposed development of the property at 270-272 Pacific Highway consistent with the heights proposed for that site in the 2036 Plan. The shadow analysis includes a comparative analysis of the existing and proposed solar access to the principle private open spaces of neighbouring properties. The shadow plans are illustrated in Figure 15 and Figure 16 below.

This analysis reveals the following:

- Most of the adjoining residential properties on the east side of Sinclair Street already experience significant amounts of overshadowing of both the dwellings and private open spaces arising from shadows cast from existing taller buildings located to the north and east fronting the Pacific Hwy.*
- During the morning period (ie 9am to 12.30pm) additional overshadowing from the proposal is generally limited to fall over residential properties at 63-77 Sinclair Street being immediately to the south of the site and onto the existing residential flat buildings at 42 and 46 Sinclair Street. The shadow over 42 and 46 Sinclair Street passes after 11am remaining unaffected for the rest of the day. No public open space is overshadowed from the proposal in the morning period and only a small part of Sinclair Street is overshadowed in this period.*
- During the afternoon period (ie 12.30pm to 3pm), overshadowing remains limited primarily to the properties at 51-77 Sinclair Street with no residential apartments or public open spaces being affected and with Sinclair Street itself being unaffected.*
- Many of the residential properties on both sides of Sinclair Street to the south of the site will be affected by shadows cast from future development of the property at 270-272 Pacific Highway consistent with the heights proposed for that site in the 2036 Plan.*

Shadow analysis reveals that the proposed height variation will not result in unacceptable additional impacts on neighbouring properties, public open space or streets to that already experienced or likely to arise with future development reflecting the provisions of the 2036 Plan.

Objective: to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings

Notwithstanding the variation to the height standard, the proposed development of the site has been designed to maintain appropriate privacy for residents of existing dwellings and to promote privacy for residents of new buildings. This is achieved by the following:

- The existing building located to the north at 296-298 Pacific Highway is built to the boundary of the site and with openings in the wall towards the site. The proposed development matches the built to the boundary arrangement with the adjoining site and also with no openings (other than in the inset 'light court') towards the adjoining site which ensure there are no privacy impacts on the existing dwellings.*
- The existing building to the south of the site at 270-272 Pacific Highway is use for commercial purposes and therefore there are no residents in this existing building affected by the proposal.*
- The privacy for residents of the dwellings located to the south of the site in Sinclair Street is maintained through the provision of a large, physical separation (being a minimum of 17 metres) to the nearest dwelling (77 Sinclair Street) and minimising the number of apartments in the proposed development directly adjacent to these properties to one unit per floor.*
- It is noted that balconies and communal open spaces are proposed to the western frontage of the building facing Sinclair Street. These spaces are setback approximately 17m from Sinclair Street at upper levels which allows sufficient separation to existing residential flat buildings on the western side of Sinclair Street*
- The proposal incorporates angled windows and screening on apartments located on the southern side of the building which mitigate potential privacy issues to the existing dwellings in Sinclair Street and also to future residents of the proposed development arising from future redevelopment of the property at 270- 272 Pacific Highway.*

Objective: to ensure compatibility between development, particularly at zone boundaries.

The site is located in an area anticipated to undergo significant change with increased density and building heights reflecting the directions of the 2036 Plan. The 2036 Plan proposes building heights of 8 to 13 storeys in the B4 Mixed Use Zone and 2 to 3 storeys in the R2 Low Density Residential Zone in this area. Having regard to existing development and the desired future character of the area defined in the 2036 Plan, the proposal achieves appropriate compatibility between development at the zone boundary as follows:

- The proposal focuses the highest part of development to 14 storeys consistent with the directions of the 2036 Plan as it applies to the immediate adjoining property at 270-272 Pacific Highway.*

- *The proposed development steps down from the highest element located within the B4 zoned part of the site towards the Pacific Highway to lower height in the R2 zoned part of the site towards Sinclair Street.*
- *The proposal incorporates a new, large area of publicly accessible open space across the rear part of the site hereby reducing the building mass in the R2 zoned part of the site*

Objective: to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The site is located in an area expected to undergo significant change with increased density and building heights reflecting the strategic directions of the 2036 Plan. The site's location close to the intersection of Pacific Highway, Willoughby Road and Shirley Road, places it at one of the key 'nodes' for the future development of Crows Nest.

The scale and density of development supporting achievement of the strategic objectives and local character expressed in the 2036 Plan is dramatically different to that reflected in the current provisions of the NSLEP. In this context, the current height controls of 16m and 8.5m applying to the site under the NSLEP are of limited relevance to informing appropriate development on the site.

The proposal is designed to provide a scale and density of development that is consistent with and enhances the desired future character of the area, highlighted by the following:

- *The proposed scale and density of the proposal sits comfortably within the planned and emerging cluster of high-density, mixed-use developments anticipated in this part of Crows Nest.*
- *The proposed development is of a scale that maintains a transition of height along this part of the Pacific Highway from the 13-16 storey development adjacent to the site down to the 5 storey building at 296-298 Pacific Highway adjacent to the 'Five Ways' intersection.*
- *The proposal focuses the highest part of development to 14 storeys consistent with the directions of the 2036 Plan as it applies to the immediate adjoining property at 270-272 Pacific Highway.*
- *The proposed development steps down from the highest element located within the B4 zoned part of the site towards the Pacific Highway to lower height in the R2 zoned part of the site towards Sinclair Street.*
- *The proposal incorporates a new, large area of publicly accessible open space across the rear part of the site hereby reducing the building mass in the R2 zoned part of the site*

Objective: to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone E4 Environmental Living.

The proposal is generally consistent with this objective in that the majority of the proposed bulk and scale of the development is situated towards the site's Pacific

Highway frontage. The built form of the development steps down from 14 storeys to 8 storeys and further steps down to a 2-storey podium element towards the site's boundary with 77 Sinclair Street.

The lower scale rear podium element to the building's Sinclair Street frontage is 11.9m to the northern end and 15.02m at the southern end. This results in an appropriate transition to the lower scale residential dwellings along Sinclair Street to the east of the site.

A publicly accessible sculptured garden is proposed at the site's frontage to Sinclair Street which provides an opportunity for significant community benefit in the form of high-quality, publicly accessible open space. The addition of this open space will increase the amount of open space within a 5-minute walking distance of the site.

The design of the development is sympathetic to the adjoining development along the Sinclair Street frontage and will assist with retaining an appropriate height interface with the Low Density Residential Development zone.

In summary, the objectives of the development standard are achieved notwithstanding non-compliance with the standard and therefore compliance with the development standard is unreasonable or unnecessary in the circumstances of the case."

110. Officer's comment: In respect to Prestons CJ judgement the NSW Land and Environment Court and in accordance with a recent decision (Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 118), the NSW Land and Environment Court has established a "five part test" for consent authorities to consider when assessing a DA proposing a clause 4.6 request for variation has established the five part test (as outlined above). In this case it is considered that the proposal fails to satisfy the five part test for the following reasons

- As previously discussed the objectives of the height standard are not considered to be satisfied.
- The underlying objective of the standard remains relevant and therefore compliance is necessary and warranted.
- In this case the underlying objective has not been defeated or thwarted as there are no other recent examples of developments in the immediate locality that have been approved with height variations of this scale and magnitude. This further justifies that within the immediate vicinity of the site there have to date been no variations to the height control as mentioned and as such the control has not been abandoned or destroyed.
- The MU1 Mixed Use zone is an appropriate zoning for the site, however the R2 Low Density Residential use zone is not an appropriate zoning for this type and scale of development. The proposed scale of the development as a whole is inconsistent with the anticipated height for developments within these zones and the subject site.

111. The height control objectives articulate the ultimate function of the establishing the height of buildings. The maximum height for buildings on land is identified on the Height of Buildings Map. As previously described, the maximum building height permitted on the subject site is 8.5m for the R2 zoned land and 16m for the MU1 zoned land, with the maximum height proposed being 34.43m and 53.77m respectively. The proposal contravenes the standard, as a result the amount and degree of non-compliance and its resultant impact needs to be considered.

112. The proposed height of the development and proposed breaches are not considered to be in keeping with the desired future character of development within this area.

Clause 4.6(3)(b) are there sufficient environmental planning grounds to justify contravening the standard

113. Clause 4.6 (3)(b) states that (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

114. Applicants Comment: “The Land & Environment Court judgment in *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 2018, assists in considering whether there are sufficient environmental planning grounds to justify a variation from the development standard. Preston J observed at [24]:

“...First, the environmental planning grounds advanced in the written request must be sufficient to justify contravening the development standard. The focusis on the aspect or element of the development that contravenes the development standard, not on the development as a whole and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied...that the written request has adequately addressed this matter.”

At [87]:

... cl 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development”.

115. The planning grounds justifying contravention to the maximum height controls are identified as follows:

Ground 1 – Facilitates conservation and rejuvenation of a heritage item

116. Reflecting the heritage significant of the site, the Proposal seeks to rely on the provisions of Clause 5.10(10) ‘Heritage Conservation Incentive’ provisions of the North Sydney Local Environmental Plan 2013 (the LEP) for the contravention of the maximum height of building control under Clause 4.3 of the LEP, along with land use permissibility of the proposed Mixed Use within the R2 Low Density Residential Zone under Clause 2.1 of the LEP.

The heritage conservation and rejuvenation of the site is not financially viable if development is limited to the height controls applied by the NSLEP. The existing height controls constrain the scale of development generally to the current built form on site, essentially ‘sterilising’ the site for restoration and reuse for contemporary purposes. Funds from the proposed development including the additional space created from the variation to building height standard are essential to facilitate the desired conservation and rejuvenation of this site in accordance with the applicable Heritage Management Document and including the following key elements:

- Reinstatement of the ground floor façade to its original form.
- Conservation and incorporation of the original steel windows into a new public art structure

- Original internal finishes are to be reinstated and reference in new internal finishes.
- Incorporation of the pressed metal ceilings in the redevelopment.
- Original terrazzo flooring to be interpreted and included in internal finishes.
- Original parquet flooring to be reinstated or interpreted into the new building.
- Lighting design should interpret the original electro copper lighting fixtures. ♣ Implementation of an interpretation strategy creating heightened awareness of the important role that the North Shore Gas Company played in providing gas to the local community.

Ground 2 – Enables development consistent with the desired future character of the area

117. The site is located in an area expected to undergo significant change with increased density and building heights reflecting the strategic directions of the 2036 Plan. The site's location close to the intersection of Pacific Highway, Willoughby Road and Shirley Road, places it at one of the key 'nodes' for the future development of Crows Nest. The scale and density of development supporting achievement of the strategic objectives and local character expressed in the 2036 Plan is dramatically different to that reflected in the current provisions of the NSLEP. In this context, the current height control of 16m applying to the site under the NSLEP is largely irrelevant. The proposal is designed to provide a scale and density of development that is consistent with and enhances the desired future character of the area.

Ground 3 – Enables development that appropriately addresses the objectives of the height control.

118. As illustrated in Section 7.1.3 of this document, the objectives of the building height development standard are achieved notwithstanding non-compliance with the standard and therefore compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

Ground 4 – Facilitates development that does not give rise to unacceptable off-site impacts.

119. As illustrated in Section 7.1.3 of this document, the proposed contravention of the height standard is consistent with the objectives of the height standard and will result in negligible view loss, overshadowing, and privacy impacts.

Ground 5 – Facilitates achievement of the object of the Act

120. The proposal is consistent with the objects of the Environmental Planning and Assessment Act 1979 under section 1.3 as demonstrated below:
- The proposal promotes the orderly and economic use and development of the land. The existing height controls constrain the scale of development generally to the current built form on site, essentially 'sterilising' the site for restoration and reuse for contemporary purposes. Funds from the proposed development including the additional space created from the variation to building height standard are essential to facilitate the desired conservation and rejuvenation of this site.
 - The proposal promotes the sustainable management of built and cultural heritage. The Proposal enables the conservation, development and viable use of the heritage item whilst bringing the building into compliance with contemporary building standards and practices.
 - The proposal promotes good design and amenity of the built environment with the building exhibiting high quality design contributing positively to the desired future character of the area.

Based on the above, there are sufficient environmental planning grounds to justify the proposed height of buildings non-compliance in this instance. These environmental planning grounds are particular to the circumstances of the site and support the proposed variation."

121. The Clause 4.6 variation requests sets out five grounds to establish that there are sufficient planning grounds to justify contravening the development standard. The justification cites *Initial Action v Woollahra Council* (2018) NSWLEC 118 where Preston CJ at (24) wrote:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient." There are two respects in which the written request needs to be "sufficient." First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard." The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter:*

122. The first ground is *"Rejuvenates conservation and rejuvenation of a heritage item."* Notwithstanding the view already expressed in this commentary that the development irreversibly impacts on the fabric of the heritage item and the interventions proposed to construct the tower building would severely diminish its significance and setting, reliance on Clause 5.10(10) to justify a breach of a development standard is not appropriate.
123. Clause 5.10(10) states *"The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected"*. Purpose can be interpreted as *'a purpose for which land may be used'*. The development must also satisfy (a) to (e) of this clause.
124. It is claimed that *"the heritage conservation and rejuvenation of the site is not financially viable if development is limited to the height controls of the LEP."* There is an obligation on an owner of a heritage item to care for and maintain it. No reliable costing of the works proposed for what would be left of the heritage item has been provided. It is beyond belief that a project in excess of \$50 million is necessary to conserve the 2-storey heritage item. The first ground is flawed,
125. The second ground is *"Enables development consistent with the desired future character of the area"*. The justification references the St Leonards Crows Nest 2036 Plan to argue that the local character would be drastically different to that reflected in the current provisions of the NSLEP. However, the heights proposed by the 2036 Plan show that the intention is to intensify development from St Leonards Station to the new Crows Nest Metro Station with taller buildings along the Pacific Highway stepping down to 8 storeys either side of the Five Way intersection to transition to the 3-storey scale along the active Willoughby Road Precinct in accordance with the Priority Actions set out on Page of the Plan. See below:

*Provide appropriate transitions in height to adjoining low scale residential areas”
Provide transitions in height from the lower scale development at Willoughby
Road, Crows Nest, to the tall buildings in the St Leonards core.*

126. A building of this scale and size is not consistent with the desired future character of the area.
127. The third ground is: *Enables development that appropriately addresses the objectives of the height control.*” As previously discussed, the objectives of the height control are not met in the MU1 and R2 zones. The disparity between the proposed 14 and 11 storey building with 16 metres in the MU1 zone and 8.5 metres in the R2 zone is not satisfactorily addressed. Nor is the disparity with the 8-storey height standard to achieve the desired future character under the St Leonards Crows Nest 2036 Plan addressed.
128. The fourth ground is: *“Facilitates development that does not give rise to unacceptable site impacts.”* The Clause 4.6 variation request argues that *“the proposed contravention of the height standard is consistent with the objectives of the height standard and will result in negligible view loss, overshadowing, and privacy impacts”*. To substantiate this claim, it is necessary to compare the impacts of the proposed development at 14 and 11 storeys extending into the R2 zone and a complying development of 16 metres in the MU1 Zone and 8.5 metres in the R2 zone. This has not been done.
129. The fifth ground is *“Facilitates achievement of the object of the Act”*. Three reasons are given as bullet points.
130. The first reason argues that the existing height controls constrain the scale and development on the site, essentially sterilizing its development potential. The argument seeks to justify the proposed height and bulk of the development because the variation to the building height standard would fund *“conservation and rejuvenation of the site.”* No explanation is given, or realistic costing provided, to explain why the number of storeys making up the breach of the height standard should be 3 to 5 times the permissible storeys in the MU1 zone, depending on whether the storeys in a complying development are commercial or residential, and 5.5 times the two storeys expected in the R2 zone.
131. The second reason is that the development would *“promote the sustainable management of built and cultural heritage”*. As discussed at the beginning of this commentary, the heritage item and its setting will be irreversibly damaged by the proposed development. I also contend that the Clause 4.6 variation request is a misuse of Clause 5.10(10) to vary a development standard.
132. The third reason is: *“The proposal promotes good design and amenity of the built environment with the building exhibiting high quality design contribution positively to the desired future character of the area”*. This reason focuses on the development as whole and is irrelevant and contrary to the approach to sufficient planning grounds as expressed by Preston CJ in Initial Action v Woollahra Council (2018) NSWLEC 118:, which states: *The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

Clause 4.6(4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

133. Clause 4.6(4) states that:

“Development consent must not be granted for development that contravenes a development standard unless:

- the consent authority is satisfied that:

(a) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(b) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,”

134. *Applicants comment:* *“Cl 4.6(4)(a)(ii) of the NSLEP states development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied the Proposal will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Consistency of the development with the objectives of the development standard is demonstrated in Section 7.1.3 above. The Proposal is also consistent with the land use objectives that apply to the site for development under NSLEP.

The site is partly located within the B4 (Mixed Use) Zone and partly located within the R2 (Low Density Residential) Zone pursuant to the NSLEP. The Proposal is consistent with the relevant land use zone objectives as outlined in Table 4 below.

The Proposal also meets the objectives of the development standard for heritage conservation as contained in clause 5.10(1)(a) and (b) of the NSLEP, together with the requirements under the heritage conservation clause at Clause 5.10(10) of the NSLEP.”

135. *Assessment of compliance with the land use zone objectives in table below:*

<i>Zone</i>	<i>Objectives of B4 Zone</i>	<i>Discussion</i>
<i>B4 Mixed Use</i>	<i>To provide a mixture of compatible land uses.</i>	<i>The Proposal is consistent with this objective in that it provides for a mixed-use development which includes commercial spaces in the podium levels and residential accommodation above</i>
	<i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	<i>The Proposal comprises a mixed-use development located within the Crows Nest town centre which has excellent access to existing and planned public transport services.</i>
	<i>To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.</i>	<i>The Proposal results in a high-quality mixed-use development within the Crows Nest town centre. External and internal amenity is provided in the form of generous outdoor landscaped areas, roof top communal zones, pool, gym, and sauna to promote</i>

		<i>social interaction and community between residents.</i>
	<i>To maintain existing commercial space and allow for residential development in mixed use buildings, with nonresidential uses concentrated on the lower levels and residential uses predominantly on the higher levels</i>	<i>To maintain existing commercial space and allow for residential development in mixed use buildings, with nonresidential uses concentrated on the lower levels and residential uses predominantly on the higher levels</i>
<i>R2 Low Density Residential</i>	<i>To provide for the housing needs of the community within a low density residential environment.</i>	<i>The Proposal provides high density housing as part of a mixed-use development reflecting the strategic direction for Crows Nest contained in the 2036 Plan. Notwithstanding the above, the Proposal does not hinder the application of the above objective in that there is an absence of significant amenity impacts arising from the Proposal to the existing low-density residential environment immediately surrounding the site along Sinclair Street. In addition, the Proposal provides additional housing at varying price points in a well serviced location close to public transport connections which will contribute to meeting the housing targets for the area. The increase in housing diversity and supply will also assist in the availability (and affordability) of housing stock in the broader area, thereby providing a broader social and economic benefit.</i>
	<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents</i>	<i>The Proposal includes commercial spaces in the podium levels which accommodate facilities or services to meet the day to day needs of residents in the Crows Nest locality. The proposal also provides a new large area of publicly accessible open space available for use by the community.</i>
	<i>To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.</i>	<i>The Proposal provides high density housing as part of a mixed-use development reflecting the strategic direction for Crows Nest contained in the 2036 Plan. Notwithstanding the above, the Proposal does not hinder the application of the above objective</i>

		<p><i>in that there is an absence of significant amenity impacts arising from the Proposal to the existing low-density residential environment immediately surrounding the site along Sinclair Street. In addition, the Proposal facilitates improving the existing condition and conservation works of the significant fabric of the ground floor showroom and primary façade of the Former North Shore Gas Co Office building</i></p>
	<p><i>To ensure that a high level of residential amenity is achieved and maintained</i></p>	<p><i>A high level of residential amenity is maintained to the existing residential buildings along Sinclair Street outlined as follows:</i></p> <ul style="list-style-type: none"> <i>• The proposed height variation does not significantly impact on neighbouring properties greater than the existing situation in terms of overshadowing.</i> <i>• No significant views from private properties are impacted by the Proposal.</i> <i>• Privacy issues to surrounding dwellings are mitigate mitigated through building design and the height noncompliance will not detrimentally impact the visual privacy of neighbouring properties</i>

136. *On the basis of the above assessment, the proposed development is in the public interest because it is consistent with the objectives of the height standard and the objectives for development within the zones in which the development is proposed to be carried out.*

In conclusion, this cl 4.6 Request satisfactorily demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case because:

- 1. The objectives of the development standard are achieved notwithstanding the non-compliance.*
- 2. There are sufficient environmental planning grounds to justify contravening the development standard including because the proposed works will enable and facilitate the conservation of the heritage item pursuant to the conservation incentive in cl 5.10(10) and is consistent with the objects under clause 1.3 of the EPA Act.*
- 3. This cl 4.6 Request has adequately addressed the matters required to be demonstrated in subclause (3).*
- 4. The proposed development is in the public interest because it is consistent with the objectives of the particular standard, the objectives for development within the zone in which the development is proposed to be carried out, and the objectives of clause 5.10(1)(a) and (b) of the NSLEP.*

5. Concurrence of the Secretary has been obtained. Given this, it is requested that the consent authority agrees to vary the development standard in clause 4.3 relating to the height of buildings and grants the development application."

137. Officer's comment: The amenity impacts associated with the non-compliance have been considered. There will be significant adverse impacts in terms of impacts upon the solar access of adjoining properties, overshadowing and overlooking to adjoining properties.
138. The subject site is located partly within the R2 Low Density zone and the MU1 Mixed Use zone. The objectives of both zones along with the height objectives are discussed below.
139. The proposed development fails to satisfy the objectives of the building height development standard for the following reasons:
- The development is inconsistent with the built form envisaged for the St Leonards and Crows Nest Planning Area and the MU1 Mixed Use zone within the town centre and the R2 Low Density Residential zone.
 - The bulk and scale of the development is incompatible with the existing buildings within the immediate vicinity.
 - When considered in the context of the development, the variation is unreasonable and unnecessary and the visual impacts generated by the departures from the development standard are highly visible from street level.
 - The height variation will result in unreasonable adverse amenity impacts such as overshadowing, loss of privacy and loss of solar access on neighbouring properties and the public domain.
 - The proposed height and scale of the development will adversely affect the amenity of immediately adjoining properties and the streetscape in that the variations requested would significantly accentuate the overall height, visual bulk and scale of the building. The variation in the height will be visible from the public domain streetscape.
 - The proposed building extends an 11-storey built form into the R2 zone up to 22 metres and a fifteen-metre-high podium 27 metres across the zone boundary, producing an unacceptable interface with the existing and future low scale development along Sinclair Street.
 - The non-compliant development height will result in overlooking of private properties in Sinclair Street from 8 storeys of balconies and windows of apartments and an elevated communal open space.
 - The proposed development denies the opportunity to respond to the objectives on the R2 zoned part of the site. It compromises the existing and future amenity of nearby properties in the R2 zone and adversely intrudes into the settings of the heritage listed former North Shore Gas Company Building and the Crows Nest Fire Station
 - Transgression of the development deep into the R2 zone will severely impact the existing and future amenity of compliant development in the zone.
140. The Clause 4.6 variation request also relies on application of Clause 5.10(10) of North Sydney Local Environmental Plan 2013 to justify the exceedance of the development standard to support conservation works to the Former North Shore Gas Works Company building, which is heritage item I0150 in Schedule 5 of North Sydney Local Environmental Plan 2013. Such justification is untenable in circumstances where:

- the conservation incentive under clause 5.10(10) of the NSLEP 2013 allows the consent authority, upon being certain criteria are met, to grant consent for a development for a purpose that is not otherwise allowed by the NSLEP 2013 – the conservation incentive does not permit the granting of consent for development that contravenes the applicable development standard;
- the conservation works proposed by the applicant will cost a small fraction of the project's estimated total cost of \$55,030,000, and thus the amount of non-conformance sought by the clause 4.6 variation request is grossly disproportionate to the value of the conservation works;
- The proposed heritage management document has not been approved by the consent authority, and it should not be approved for reasons outlined in contention 3 below;
- the variation request does not demonstrate the following tests in Clause 5.10(10) can be satisfied:
 - (d) *the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
 - (e) *the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

141. The R2 Low Density Residential zone objectives require the development to:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage development of sites for low density housing, including dual occupancies, if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

142. The proposal is considered to be inconsistent with these zone objectives as it presents an excessive bulk and scale which is unsympathetic to the existing and desired future character of the area.

The proposal does not provide for the housing needs of the community within a low density residential environment as the proposed built form is more aligned with a medium to high density development resulting from the additional height, and the lack of adequate setbacks and articulation in the facades.

The proposal is also considered to result in various adverse impacts on the amenity of the surrounding area and does not achieve a high level of residential amenity for residents in the area. This is further discussed below.

143. The proposal fails to satisfy the objectives of the R2 Low Density Residential zone for the following reasons:

- Whilst the proposal will provide additional housing, the zone objective requires that the housing needs are within a low density zone. The proposed development is a high density development that is aligned with a high density zoning.
- The proposal is a high density development which is inconsistent with the zone objective which requires that low density housing including dual occupancies are developed within this zoning.

- The proposed mixed use development is not a permissible land use within the zone.
- The applicant is reliant upon the heritage conservation incentives of Clause 5.10(10) to overcome the non-permissible land uses.
- The proposed development fails to provide a high level of amenity for the semi-detached dwellings located within the R2 Low Density zone. The dwellings are significantly impacted by the departure to the building height development standard in terms of solar access, overshadowing and loss of privacy through overlooking.

The applicant's justification that the proposal is consistent with the zone objectives is not supported and therefore it is considered that the proposal is not in the public interest as it is not consistent with the objectives of the standard and the zone.

144. The MU1 Mixed Use zone objectives require the development to:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *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.*

145. It is fair to say that the proposed development satisfies some of the MU1 objectives of the zone by providing commercial premises within an accessible location. The development will contribute to economic growth and employment opportunities whilst the building is under construction and also when the commercial premises are operational. The development provides ground floor commercial premises to activate the street frontages. It is however noted that all the above could still be provided and maintained with a compliant development.

The proposal does however, fail to satisfy the following MU1 zone objectives:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To create interesting and vibrant mixed-use centres with safe, high quality urban environments with residential amenity.*

146. The area of non-compliance is considered to be unreasonable and will establish an undesirable precedent and undermine the objectives of the zone and height control. It will have an adverse effect on the surrounding locality, which is inconsistent within both the R2 and MU1 zoning. The proposal in its current form is inconsistent with the zones and their purpose.

147. In this case the proposal fails to meet the preferred and appropriate design and built form outcome for this site with the building failing to comply with the height standard.

There will be adverse amenity and visual impacts generated by the variation, the proposal fails to satisfy the objectives of the zone and the development standard. In this case the justification to vary the height control is not considered to be a reasonable or well-founded request.

148. There is considered to be a public benefit in maintaining the development standard as it provides for a greater level of amenity to the surrounding area. The variation would result in adverse impacts to the streetscape and adjoining properties and is inconsistent with the objectives of the development standard and the zone.

Clause 4.6(4)(b) the concurrence of the Director-General has been obtained.

149. In accordance with clause 55 of the Environmental Planning and Assessment Regulation 2021, Council may assume the Secretary's concurrence for exceptions to development standards for applications made under clause 4.6 of the LEP. This was further confirmed by directions provided within Planning Circular PS 18-003 issued on 21 February 2018.

Whether contravention of the development standard raises any matter of significance for State or regional environmental planning (Clause 4.6(5)(a))

150. Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning as the request does not satisfactorily requisite criteria.

Conclusion – Assessment of Clause 4.6 Request for Variation

151. Despite the request to support the non-compliance in terms of the height, the proposed variation is considered to be unacceptable and does not satisfy the provisions of Clause 4.6.
152. The proposed development does not satisfies the objectives of the height control as it will be a visually dominating and a bulky structure in this prominent corner location. The proposed design response is not considered to be in the public interest and does not minimise impacts as stipulated by the objectives of the height control. The additional height is considered to establish an undesirable urban design and planning precedent in the immediate locality and the scale of the development will not be sympathetic with the existing scale and form of existing adjoining developments.
153. For these reasons the Clause 4.6 Statement is not considered to be well-founded and there are not sufficient environmental planning grounds to justify contravening the standard given that in this case the proposal fails to satisfy the objectives of both the R2 and MU1 zones and the development standard (Clause 4.3, building height control). As such the Clause 4.6 cannot be supported.

North Sydney Development Control Plan 2013 (NSDCP 2013)

154. The proposed development is subject to the provisions of North Sydney Development Control Plan 2013 (NSDCP 2013).

The proposal needs to address and satisfy the relevant provisions of Part B of NSDCP 2013. The most relevant parts of Part B have been addressed and reproduced below:

Part B Section 2 Commercial and Mixed Use Development

Part B Section 2 of NSDCP 2013 is discussed in the table below:

North Sydney Development Control Plan 2013 Part B Section 2
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Provision	Complies	Comments
2.2 Function		
2.2.1 Diversity of activities, facilities, opportunities and services		
P1 Non-residential buildings or components of buildings should incorporate a variety of different sized spaces that reflect a site's location in the commercial centre (i.e. large floor plates should be provided in higher order centres with small floor plates in lower order centres).	Yes	Floor spaces and sizes are generally acceptable.
P2 Consideration should be given to incorporating community and entertainment facilities within a development.	Yes	There is a communal open space within the landscaped gardens with frontage to Sinclair Street.
P3 A variety of uses should be provided at street level, which contributes positively to economic and social vitality.	Yes	There are retail and commercial spaces with frontage to Pacific Highway which can positively contribute to the economic and social vitality.
P4 Avoid blank walls that face streets and laneways at the ground level.	Yes	No blank walls across street frontage.
P5 Enhance the amenity of the public domain to meet the needs of the workforce, residents and visitors.	Yes	Generally acceptable.
P6 Mixed use developments within the B1 Neighbourhood Centre, B4 Mixed Use or IN2 Light Industrial zones should: (a) ensure all residential common areas of the building (including the principal entrance to the building) are accessible to all persons regardless of mobility; and (b) have the retail/commercial uses located on the ground floor, retail/commercial or residential uses on the first floor, and residential uses on upper floors.	Yes	Common areas are accessible. Retail/commercial uses are located on the ground and first floor with residential uses on the upper floors.
2.2.2 Maximise Use of Public Transport		
P1 Locate pick up and drop off points for public transport and taxi ranks as close as possible to public spaces and activities.	Yes	Development is located close to public transport with bus stops and St Leonards Train Station within close proximity.
P2 Locate short stay (ten minute) parking spaces within	Yes	There is visitor parking within the basement and timed parking within the vicinity in Sinclair and surrounding streets.

North Sydney Development Control Plan 2013 Part B Section 2
COMMERCIAL AND MIXED USE DEVELOPMENT

COMMERCIAL AND MIXED USE DEVELOPMENT												
Provision	Complies	Comments										
or as close as possible to meeting places.												
P3 Limit the amount of long stay off street commuter parking to that which existed at the time of gazettal of NSLEP 2001 (Amendment No.9 – North Sydney Centre) on the 28 February 2003.	No	The proposed commercial parking exceeds the maximum permitted.										
P4 Minimise any non-residential parking on site.	No	Non-residential parking exceeds the maximum permitted.										
P5 Bicycle storage facilities are provided in accordance with Part B: Section 10 - Car Parking and Transport of the DCP.	Yes	See Section 10.										
P6 Provide showers for use by cyclists and people that walk to work.	Yes	See Section 10										
2.2.3 Mixed Residential Population												
P3 Mixed use developments incorporating residential accommodation containing 20 or more dwellings should provide a mix of dwelling sizes in accordance with Table B-2.1. <table border="1"><caption>TABLE B-2.1: Dwelling Mix</caption><thead><tr><th>Dwelling Size</th><th>% of Total Dwellings</th></tr></thead><tbody><tr><td>studio</td><td>10-20%</td></tr><tr><td>1 bedroom</td><td>25-35%</td></tr><tr><td>2 bedroom</td><td>35-45%</td></tr><tr><td>3 bedroom+</td><td>10-20%</td></tr></tbody></table>	Dwelling Size	% of Total Dwellings	studio	10-20%	1 bedroom	25-35%	2 bedroom	35-45%	3 bedroom+	10-20%	No	The development provides 58 x 3 bedroom apartments and 3 x 4 bedroom apartments. The applicant has stated that the mix is in response to market demands and population trends
Dwelling Size	% of Total Dwellings											
studio	10-20%											
1 bedroom	25-35%											
2 bedroom	35-45%											
3 bedroom+	10-20%											
P4 Variations to the dwelling mix within P2 or P3 will not be considered, unless the applicant can adequately demonstrate by an authoritative analysis of current and future market demand that the suggested mix is not reasonable.	No	The applicant has stated that the mix is in response to market demands and population trends.										
P6 A minimum of 20% of dwellings in mixed use developments containing more than 5 dwellings must comprise adaptable housing ² , and be designed and constructed to a minimum	Yes	The proposal has 13 adaptable apartments which equates to 21.3% of the apartments.										

North Sydney Development Control Plan 2013 Part B Section 2 COMMERCIAL AND MIXED USE DEVELOPMENT		
Provision	Complies	Comments
Class C Certification under AS 4299 – Adaptable Housing.		
P7 Where adaptable housing is to be provided, the adaptable housing components must: (a) be integrated into the overall design of the development, and must not be isolated; and (b) not use a different standard of materials and finishes to the remainder of the building.	Yes	Generally acceptable
P8 Where universally designed and adaptable dwellings are proposed, those dwellings must be clearly identified as such on the submitted development application plans.	Yes	The adaptable dwellings are labelled on the plans. 405, 505, 605, 705, 802, 805, 902, 905, 1002, 1102, 1202, 1302, 802,
P9 Developments requiring adaptable housing must also satisfy the provisions of Part B: Section 12 - Access of this DCP.	Yes	See discussion in Section 12
P10 Provide services and facilities within the development that meet the needs of different population groups and build flexibility into communal spaces to meet changing needs.	Yes	Generally acceptable
2.3 Environmental Criteria		
2.3 Clean Air		
P1 Operating plant, building materials and finishes should be incorporated that are nontoxic and reduce toxic emissions.	Yes	Generally acceptable
P2 Discourage use of the private motor car and encourage walking, cycling and use of public transport.	No	The proposal provides residential parking to the maximum and exceeds the amount of commercial parking. It is note that bicycle parking has been provided.
P3 Car parking is provided in accordance with Part B: Section 10 - Car parking and Transport of the DCP.	No	Residential car parking is proposed to be provided to the maximum permitted and non-residential car parking exceeds the maximum.
2.3.2 Noise		
P1 Noise emission associated with the operation of non-residential premises or non-	Yes	A noise and vibration impact assessment report were submitted. Addressing construction noise and vibration and

North Sydney Development Control Plan 2013 Part B Section 2
COMMERCIAL AND MIXED USE DEVELOPMENT

Provision	Complies	Comments
residential components of a building must not exceed the maximum 1 hour noise levels (LAeq 1 Hour) specified in Table B-2.3.		operational noise, recommendations are made to address compliance with EPA and DCP criteria.
P2 In terms of determining the maximum noise levels as required by P1 above, the measurement is to be taken at the property boundary of the nearest residential premises. Within a mixed use development, the boundary is taken to be nearest floor ceiling or wall to a residential dwelling on the site.	Yes	Acoustic report indicates that noise levels were measured at the property boundary.
P3 Despite P1 above, the noise emission associated with the operation of non-residential premises or non-residential components of a building must not exceed 5 dBA above the background maximum 1 hour noise level (LAeq 1 Hour) during the day and evening and not exceeding the background level at night when measured at the boundary of the property.	Yes	Can also be conditioned
P4 Council may require the submission of an Acoustic Report to ensure compliance with P1 above.	Yes	An acoustic report was submitted with the application
2.3.3 Wind Speed		
P1 Buildings should be designed to reduce wind velocity at footpaths and public outdoor spaces.	No	Additional details required
P2 Development should not result in the wind speed exceeding 13m/s at footpaths and accessible outdoor spaces.	No	Additional details required
P3 A Wind Impact Report, prepared by an appropriately qualified person, must be submitted with any application where the proposal results in the building exceeding 33m in height.	No	A pedestrian wind environment study was also lodged with the DA. However its recommendations do not appear to have been included in the submitted design. Whether the submitted report is acceptable is questionable.

North Sydney Development Control Plan 2013 Part B Section 2 COMMERCIAL AND MIXED USE DEVELOPMENT		
Provision	Complies	Comments
2.3.4 Reflectivity		
P1 Buildings should provide a greater proportion of solid to void on all facades and use non-reflective materials.	Yes	Generally satisfactory
P2 Buildings should use non-reflective glass and / or recess glass behind balconies.	Yes	Generally satisfactory
P3 Sun shields, such as awnings, canopies and pergolas should be provided to glazed areas.	Yes	Generally satisfactory
P4 Council may require the submission of a Reflectivity Study prepared by a suitably qualified consultant.	N/A	
2.3.5 Artificial illumination		
P1 External facades of buildings should not be floodlit.	Can comply	Can be conditioned
P2 Where external artificial illumination is proposed: (a) it should be designed and sited to minimise glare. (b) It must comply with the standards set out in Australian Standard AS 4282 – Control of the Obtrusive Effects of Outdoor Lighting.	Can comply	Standard conditions can be applied recommending compliance with Australian Standards
P3 Illumination of roof top and/or podium level facilities is not to exceed the curfew outlined in Table B-2.4.	Can comply	Can be conditioned
2.3.6 Awnings		
P1 Provide continuous, horizontal awnings on all street frontages which are activated by ground floor uses and those streets identified in the relevant area character statement (refer to Part C of the DCP), using materials that are sun, rain and wind proof.	Yes	Awnings are proposed along all street frontages
P2 Awnings must be provided as required in Table B-2.5.	Yes	
P3 New awnings should match the height of existing awnings on adjacent sites.	Yes	
2.3.7 Solar access		
P2 Developments located outside of the North Sydney Centre should be designed	No	Solar access to residential properties in Sinclair Street would be significantly reduced.

North Sydney Development Control Plan 2013 Part B Section 2
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Provision	Complies	Comments
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).	Yes	
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.	No	
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.	No	
P7 Provide a mix of sun-protected and unprotected areas in public open space, roof top gardens and other outdoor spaces.	Yes	
P8 Avoid providing apartments within mixed use developments that have a sole orientation to the south. Where	No	

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Provision	Complies	Comments
south facing apartments cannot 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.		
P9 The use, location and placement of photovoltaic solar panels take into account the potential permissible building form on adjoining properties.	N/A	
2.3.8 Views		
P1 Where appropriate, the opening up of views should be sought to improve the legibility of the area.	Yes	
P2 Provide public or semi-public access to top floors where possible (e.g. restaurants, roof top gardens and facilities).	No	Access to upper floors is for residents and guests only.
P3 Use setbacks, design and articulation of buildings to maintain street views, views from public areas and those identified in the relevant area character statement (refer to Part C of the DCP).	No	
P4 Maintain and protect views identified in the relevant area character statement (refer to Part C of the DCP) from future development.	Yes	
P5 Where a proposal is likely to adversely affect views from either public or private land, Council will give consideration to the Land and Environment Court's Planning Principles for view sharing established in <i>Rose Bay Marina Pty Ltd v Woollahra Municipal Council and anor</i> [2013] NSWLEC 1046 and <i>Tenacity Consulting v Warringah Council</i> [2004]	Yes	

North Sydney Development Control Plan 2013 Part B Section 2
COMMERCIAL AND MIXED USE DEVELOPMENT

Provision	Complies	Comments
NSWLEC 140. The Planning Principles are available to view on the Land and Environment Court's website (http://www.lec.justice.nsw.gov.au/planning_principles).		
2.3.9 Acoustic Privacy		
P1 This subsection only applies to the residential component of any mixed use development.	Noted	
P3 Where multiple dwellings are provided within the same building, the residential components of the building shall be designed and constructed to comply with the requirements in Table B-2.7 regarding acoustic insulation of walls and floors.	Can comply	
P4 An acoustic report prepared by a certified acoustic consultant must be submitted with all development applications which involves the construction of 4 or more new dwellings and must address the requirements to P2.	Yes	Acoustic report submitted with application.
P11 Where dwellings are located on busy roads incorporate the following into the design of the development to reduce traffic noise within the dwelling: (a) cavity brick walls; (b) double glazing; (c) solid core doors; (d) concrete floors; and (e) recessed balconies.	Yes	Design generally includes most of these.
2.3.10 Vibration		
P1 Development on land which is on or is within 60m of a railway corridor, or is adjacent to a road corridor for a freeway, a tollway, a transit way or any other road with an annual average daily traffic volume of more than 40,000 vehicles (based on the traffic volume data published on the website of the RMS) must	Yes can comply	An acoustic assessment report was submitted with the application. Recommendations were provided to address 2.120 of the Transport and Infrastructure SEPP (formerly 102(2) of Infrastructure SEPP).

North Sydney Development Control Plan 2013 Part B Section 2
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Provision	Complies	Comments
consider the requirements of the DoP's Development Near Rail Corridors and Busy Roads – Interim Guideline (19 December 2008) in accordance with cl.87(2) and cl.102(2) of SEPP (Infrastructure) 2007. In particular, consideration should be given to the vibration criteria contained within the Department of Environment Climate Change and Water's Assessing Vibration: a technical guideline. A vibration assessment report may be required to be prepared to demonstrate compliance with these Guidelines.		
2.3.11 Visual Privacy		
P1 Locate windows to avoid direct or close views into the windows, balconies or private open space of adjoining dwellings.	No	Overlooking of the residential properties within Sinclair is raised as an issue.
P2 Where windows are located with a direct outlook to windows of an adjacent dwelling, the windows must be provided with a minimum sill height of 1.5m, or use fixed obscure glazing or other privacy devices.	No	
P3 Provide suitable screening structures or planting to minimise overlooking from proposed dwellings to the windows, balconies or private open space of adjacent dwellings, to windows, balconies or private open space of dwellings within the same development.	No	
P4 Provide visual separation between any non-residential use and residential uses within buildings and sites.	No	
P5 The residential components of mixed use developments are to provide	No	

North Sydney Development Control Plan 2013 Part B Section 2
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Provision	Complies	Comments
adequate separation between habitable rooms, balconies and non-habitable rooms, consistent with SEPP 65. The relevant separation distances are reproduced in Table B-2.8.		
P6 Council may consider a variation to the building separation control within P5 above, but only where the applicant can demonstrate that the variation has been made in response to site and context constraints and that the variation is not made at the expense of amenity (e.g. visual and acoustic privacy, outlook, solar access). However, Council will not consider a variation if an apartment's only outlook is onto an area that is under the minimum building separation distance.	No	
2.4 Quality built form		
2.4.1 Context		
P1 Proposed developments must be designed to respond to the issues identified in the site analysis and in the relevant area character statement (refer to Part C of the DCP).	No	The application does not satisfy the clause's objectives, for development to respond to site and context conditions, regarding bulk, scale, visual impact and other issues discussed in this report.
P2 A Site Analysis is undertaken in accordance with Part A: Section 5 - Site Analysis of this DCP.	Yes	Has been provided.
2.4.2 Site Consolidation	Yes	Subject site is consolidated.
2.4.3 Setbacks	No	See urban design comments in the referral section of this report and assessment below regarding controls of the DCP's Part C for the St Leonards/Crows Nest Planning Area.
2.4.4 Podiums	No	See assessment below in relation to Part C for the St Leonards/Crows Nest Planning Area.
2.4.5 Building Design	Yes	Floor to ceiling heights are acceptable
2.4.8 Balconies – Apartments		
P1 Balconies must be incorporated within building envelope (as specified by	Yes	Balconies do not cantilever.

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Provision	Complies	Comments
setbacks and or building height plane) and should not be located on roofs, podiums or be cantilevered.		
P2 Balconies should be integrated into the overall architectural form and detail of the building.	Yes	Balconies integrated into the building.
P3 No balconies, verandahs or the like are to project over the public domain.	Yes	No balconies project over the public domain.
P4 Where a proposal involves the conversion of an existing commercial building, and that commercial building's envelope does not comply with the setback and/or building envelope controls for the site, any new balcony must not project beyond the existing building's envelope.	Yes	
P5 Balconies should not be enclosed.	Yes	No balconies are enclosed
2.4.9 Through-site Pedestrian Links		
P1 Provide linkages through sites to other streets and laneways as identified in the relevant area character statement (refer to Part C of the DCP) applying to the site or where enhancing pedestrian movement to public transport infrastructure.	N/A	Not required although the applicant proposes a site link from Pacific Highway to Sinclair Street.
P2 Provide linkages to facilities, outdoor spaces and public transport.	Yes	Links to public communal space in Sinclair Street.
P3 Provide public access through pedestrian links from 6am to 10pm daily.	Yes	
P4 Pedestrian links must be lined with active uses along at least one side of the link to engage pedestrians.	Yes	Active ground floor uses are proposed along the site through link.
P5 Pedestrian links must be a minimum of 6m in width that is free from obstructions.	No	Whilst not required the pedestrian link is approximately 4m wide.
P8 The extent of natural light to the link should be maximised where possible.	No	
P9 Where a through-site link is to be provided along the side	No	The site through link is only open to the sky at the rear of the site.

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Provision	Complies	Comments
boundary of a property, it should be open to the sky.		
P11 Opportunities for integration of public art installations within the link are to be maximised.	No	Details to be provided and reviewed by Councils Public Art Officer.
2.4.10 Streetscape		
P1 The ground level of buildings should align with the corresponding level of the adjacent footpath, laneway or outdoor space.	Yes	Aligns with adjoining path along Pacific Highway.
P2 Continuous active uses, such as shops and cafes, should be provided at the ground level of the building to all streets, laneways and public spaces.	Yes	Active uses proposed.
P4 Landscaping and changes in level at building frontages is to be avoided where possible to facilitate natural surveillance of public areas and views into buildings.	Yes	Ground floor frontage adjoins the footpath on the Pacific Highway. The rear of the site contains an accessible public garden and path.
P5 All ground level windows fronting street, laneways and public spaces must be glazed with clear glass, to promote active surveillance of the public domain.	Yes	Clear glass proposed to be used.
P6 All ground level shopfronts are to have a zero metre setback unless specified in the relevant area character statement (refer to Part C of the DCP).	Yes	Zero setback proposed.
P7 Introduce visually interesting elements to the building façade such as articulation, detailing and art works.	No	Public art details are to be provided.
2.4.11 Entrances and exits		
P1 Main entrances and exits located at the front of the site must be directly visible from the street.	Yes	
P2 At least one main entrance to the building provides a continuous path of travel.	Yes	
P8 Access to the building must be designed in accordance	Yes	See Section 12

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Provision	Complies	Comments
with the provisions contained within Part B: Section 12 – Access of the DCP.		
P9 Separated pedestrian entrances and lobbies are to be provided where it is proposed to accommodate within the same building, the following mixture of land uses: (a) residential accommodation and non-residential development; or (b) hotel or motel accommodation or serviced apartments and any other form non-residential development.	Yes	Separate entrances and lobbies proposed.
2.4.12 Nighttime Appearance		
P1 Encourage the use of large windows to enable internal illumination to spill onto public footpaths and public areas.	Yes	
2.4.13 Public Spaces and Facilities		
P1 In terms of built form and intensity, new development should respect the scale, character and density of existing development located adjacent to business zoned land.	No	The proposed sed development does not consider the neighbouring R2 zoned land that contains dwellings and also existing context.
2.5 Quality Urban Environment		
2.5.1 Accessibility		
P1 Buildings are to be designed in accordance with the provisions contained within Part B: Section 12 - Access of the DCP.	Yes	See Section 12
2.5.2 Safety and Security		
P1 Design routes between building entrances to maximise personal safety. Routes from parking areas to lift lobbies are particularly important in this regard. Clear lines of sight and well lit routes are required.	Yes	The entrance directly adjoins the pathway along the Pacific Highway.
P2 Where open space and pedestrian routes are provided, they must be clearly defined, and have clear and direct sightlines for the users.	Yes	

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Provision	Complies	Comments
P3 Adequate lighting must be provided to open spaces, entrances and pedestrian areas to avoid the creation of shadowed areas.	Yes	
P5 Land use activities which operate after normal business hours should be located along well-used pedestrian routes.	Yes	
P6 Public toilets, telephones and other public facilities must be provided with direct access and good visibility from well-used public spaces.	Yes	
P7 Robust and durable design features should be used where relevant to discourage vandalism.	Yes	
2.5.3 Illumination		
P1 The following areas must be illuminated in accordance with AS 1158.3.1 - Pedestrian (P): (a) public footpaths; (b) laneways; (c) areas under publically accessible awnings over public or private property.	Yes	Requirements would typically be enforced via conditions of consent.
2.5.4 High Quality Residential Accommodation		
P1 Apartments within mixed use developments, must be designed to provide the following minimum internal areas ³ : (a) Studio 35m ² (b) 1 bedroom 50m ² (c) 2 bedrooms 70m ² (d) 3+ bedrooms 90m ²	Yes	All 3 bedroom and 4 bedroom apartments exceed 90sqm.
P2 Include courtyards, balconies and gardens as the principal open space area for residents. These should have solar access for a minimum of 2 hours a day measured at June 21st.	Yes	See SEPP 65 and ADG assessment
P3 Communal corridors must have a minimum width of 2m to facilitate movement (i.e. no right angled corners).	No	Appear to be approximately 1.6m.

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Provision	Complies	Comments
P4 No more than 8 dwellings are to be accessible from a single common lobby space.	Yes	See SEPP 65 and ADG assessment
P5 Avoid the use of double loaded corridors.	Yes	See SEPP 65 and ADG assessment
P6 Maximum depth of a habitable room from a window, providing light and air to that room, is 10m.	Yes	See SEPP 65 and ADG assessment
P7 Apartments have a minimum width of 4m. An apartment's width should increase relative to an increase in its depth.	No	3.6m proposed for 3 bedroom apartments, 4m for 4 bedroom apartments. See SEPP 65 and ADG assessment
P8 Single aspect apartments have a maximum depth of 8m from a window.	Yes	See SEPP 65 and ADG assessment
P9 The habitable space serviced by a window is no more than 10 times the glazed area of the window.	Yes	See SEPP 65 and ADG assessment
P10 At least 60% of apartments are to be provided with cross ventilation (i.e. window openings that face different directions). For apartments with no cross ventilation, ceiling fans must be provided.	Yes	See SEPP 65 and ADG assessment
P11 Utilise double glazing, awnings or window solar screens to reduce reliance on artificial cooling of buildings.	Noted	
P12 The amount of glazing on eastern and western elevations is to be minimised and incorporate external shading devices.	Yes	
P13 Amenity and safety of residents is protected from intrusion by users of the non-residential parts of the development (e.g. through the use of security access to lifts and car parking.	Yes	Security access will be implemented as part of the operation of the building.
2.5.6 Lightwells and Ventilation		
P1 Council does not support the use of lightwells for the provision of light and ventilation to dwellings. However, Council may	No	

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Provision	Complies	Comments
consent to the use of lightwells, but only if the following criteria are satisfactorily met: (a) the lightwell does not provide the primary source of natural daylight and ventilation to any habitable room of a dwelling within the development; and (b) the dimensions of the lightwell comply with the building separation requirements set out in P5 to s.2.3.11 to this Part of the DCP (e.g. if non-habitable rooms face into a lightwell under 12m in height, the lightwell should measure 6m x 6m in plan); and (c) the lightwell is directly connected at ground level to streets or lanes in buildings greater than 30m in height to allow air movement in the lightwell; and (d) all building services (e.g. utility installations, pipes, cabling and the like) are concealed and not overlooked by principal living rooms or bedrooms; and (e) the lightwell is fully open to the sky.		
2.5.6 Private Open Space		
P1 Apartments within mixed use developments must provide at least one private open space with the following minimum areas: (a) Studio 4m ² (b) 1 bedroom 8m ² (c) 2 bedrooms 10m ² (d) 3+ bedrooms 12m ² Note: Best practice standard for balcony size is 15% of floor area of the apartment.	Yes	
P2 Private open spaces must provide a minimum depth of 2m, or 2.4m where it relates to a 3+ bedroom apartment.	Yes	

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Provision	Complies	Comments
P4 Private open spaces should be located such that they are directly accessible off a main living area of the dwelling.	Yes	All private open spaces area accessed via the living space. a
P6 Communal residential spaces: (a) should comprise a mixture of indoor and outdoor spaces (such as gymnasium, pool and meeting rooms for residents); (b) must be provided in developments containing more than 15 bedrooms, with a minimum area of 20m ² or 1m ² per bedroom, whichever is the greater; (c) may be provided in form of an internal room as long as it has a minimum area of 75% of the total residential communal area requirement (as required in P6(b) above), with the remainder appropriately located in the external recreation area; and (d) must be provided with access to natural light and not be located in basements.	Yes	Indoor and outdoor spaces are proposed inclusive of a pool, gym and outdoor areas. Additionally public spaces are proposed on the ground floor.
2.5.7 Vehicular Access		
P1 Where available and practical, all vehicle access must be provided from laneways.	N/A	No laneway. Access is from Sinclair Street to the rear of the site.
P2 Service vehicle access should be combined with parking access.	Yes	There is only one vehicle access point to the building.
P3 Vehicular access points should be limited to a maximum of one access point per building.	Yes	Only one vehicle access point.
P6 Service ducts and pipes should be concealed when viewed from the public domain.	Yes	Service ducts are to be concealed.
P7 Parking areas must be designed to enable vehicles to enter and leave the site in a forward direction.	Yes	
2.5.8 Car Parking		

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Provision	Complies	Comments
P1 Provide on-site car parking in accordance with Part B: Section 10 – Car Parking and Transport of the DCP.	No	See discussion in Section 10
P2 All car parking must be provided underground.	Yes	
2.5.9 Garbage Storage		
P1 Communal on-site waste storage, recycling and collection points must be provided for each development site.	Yes	
P2 Separate waste storage facilities must be provided where a development contains a mixture of both residential and commercial uses. Access to these separate storage areas is to be restricted to their respective users.	Yes	Separate waste storage rooms provided for commercial and residential.
P3 A garbage storage area should be located within 2m of the street or laneway boundary.	No	
P4 Notwithstanding P3 above, a garbage storage area may be located anywhere on a site, but only if a garbage collection area, capable of accommodating all of the required bins for the entire development is located within 2m of the street or laneway boundary.	No	
P6 Garbage bins stored in a collection facility should be located within 3m of the facility's entrance.	No	
P14 Where a garbage chute is provided or required: (a) a separate garbage chute must be provided for the residential and commercial components of the building; (b) the garbage chute room must be adequately ventilated and incorporate fire safety and other services in accordance with the BCA.	No	
P15 Garbage facilities are to be designed and constructed	No	

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Provision	Complies	Comments
in accordance with Council's Waste Management Guide (refer to Appendix 3).		
Commercial components		
P16 On-site garbage storage areas must be provided which are capable of accommodating the number of garbage and recycling bins as indicated in Table B-2.10. However, industry standards for waste generation rates may be used where these differ from the Council rates or if no Council rate is given.	No	
P17 Notwithstanding the rates to P16, Council may permit a reduction in the number of bins required, but only if a garbage compactor is required or proposed to be incorporated within the development.	Noted	
P19 The area allocated must accommodate any privately arranged collection (e.g. daily or weekly, etc. collections).	Yes	
Residential component		
P24 On-site garbage storage areas must be provided which are capable of accommodating at least the number of garbage and recycling bins as indicated in Table B-2.11.	No	
P25 Notwithstanding the rates to P24, Council may permit a reduction in the number of bins required, but only if a garbage compactor is required or proposed to be incorporated within the development.	Noted	
P26 All developments containing a lift must provide: (a) a garbage chute leading to a central garbage storage room that has a waste compaction unit attached with a minimum compaction ratio of at least 2:1; and (b) an interim recycling room with a minimum dimension of 1.5m square on each level of the	No	Does not provide a garbage chute and recycling bins on each level. Council does not permit dual use chutes, recycling must be on each level.

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Provision	Complies	Comments
building, with at least one point of access to the garbage chute, which is provided with space to accommodate 1 x 240 litre bin for the separate collection of recyclable materials.		
2.5.10 Site facilities		
P1 Site facilities should be located in the most accessible and convenient location and, if possible, located near regularly staffed areas such as reception areas.	Yes	
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency		
P2 Consider the following issues when assessing the energy rating of buildings and whether any of these issues prevent the achievement of the energy ratings: (a) orientation or shape of the block; (b) existing overshadowing due to either the surrounding terrain or existing development; (c) topography, geology or geo-technical constraints preclude energy saving design such as slab-on-ground construction; and (d) conflict with requirements or guidelines in relation to privacy, area character, building design, bulk and scale or heritage considerations set out in the LEP or the DCP.	Noted	
P7 Car parking areas should be designed and constructed so that electric vehicle charging points can be installed at a later time.	Can comply	Can be conditioned
P8 Where appropriate and possible, the development of the public domain should include electric vehicle charging points or the capacity for electric vehicle charging	Can comply	Can be conditioned

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Provision	Complies	Comments
points to be installed at a later time.		
Residential component		
P16 A BASIX Certificate is required to be submitted with all developments incorporating residential development types nominated under SEPP (Building Sustainability Index: BASIX) 2004.	Yes	A compliant BASIX certificate has been submitted.
2.6.2 Passive Solar Design	Yes	
2.6.3 Thermal Mass and Insulation	Yes	
2.6.4 Natural Ventilation	Yes	
2.6.5 Water Conservation	Yes	
2.6.6 Waste Management & Minimisation		
P1 A Waste Management Plan for the demolition, construction and operation of the building must be provided in accordance with Part B: Section 19 - Waste Minimisation and Management of the DCP.	No	Not in accordance with DCP requirements.
2.6.7 Stormwater Management		
P1 An Erosion and Sediment Control Plan for the construction of the building is required in accordance with Part B: Section 17 - Erosion and Sedimentation Control of the DCP.	Yes	Submitted
P2 A Stormwater Management Plan for the operation of the building is required demonstrating compliance with this subsection as well as Part B: Section 18 – Stormwater Management of the DCP.	Yes	Submitted
P3 Demonstrate how run-off from the site will be minimised and the quality of water leaving the site will be improved.	Yes	
P4 Rainwater tanks should be installed for all developments, including major alterations and additions and mixed-use developments. Rainwater tanks should be plumbed to	Yes	

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Provision	Complies	Comments
appropriate end uses, including toilet flushing, water features, car washing and garden irrigation, to ensure sufficient use of tank water so that capacity exists to accommodate rainwater from storm events.		
P7 On-site stormwater detention, including the use of grass swales and detention basins, should be pursued where practicable to minimise and filter stormwater runoff	Yes	
P10 In addition to a Stormwater Drainage Plan, residential developments with a gross floor area greater than 2000m ² must also submit a Water Sensitive Urban Design report from a suitably qualified consultant demonstrating that WSUD has been incorporated to the maximum extent practicable and that stormwater discharge will be reduced to the maximum extent practicable.	Yes	
2.6.8 Building Materials	Yes	
2.6.9 Adaptive Reuse of Buildings	Yes	
2.6.10 Hot Water systems	Yes	
2.6.11 Green Roofs	Yes	
2.6.12 Wind Turbines	Yes	
2.7 Public Domain		
2.7.1 Street Furniture, Landscaping Works, Utilities and Equipment		
P1 Where relevant, all works should be designed in accordance with: (a) North Sydney Centre Public Domain Strategy; (b) St Leonards Public Domain Strategy; and (c) North Sydney Council Infrastructure Manual.	Can comply where relevant	
P2 Where present, overhead wires are to be relocated underground along property boundaries, consistent with the North Sydney Council Undergrounding Master Plan.	Can comply	

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Provision	Complies	Comments
P3 Seating should be provided in public spaces that are not allocated to a specific use (e.g. a café) for people to 'hang out', take refuge and rest.	Can comply	
2.7.3 Public Art		
P1 The design of public art should be in accordance with North Sydney Centre Public Domain Strategy.	No	Details are to be provided for consideration.
P2 Artworks should be integrated into the design of public spaces and the publically accessible locations of private developments (i.e. main entrances, lobbies, street frontages, gardens, walls and rooftops).	No	
P3 Council's Arts and Culture Officer should be consulted in the design and execution stages for any public artwork, prior to development consent being issued.	No	
P4 Community groups should be consulted in the design of artworks.	No	
2.7.4 Paving		
P1 Except where negotiated with the Council, all footpath paving along property frontages must be provided in accordance with Council's specifications (including requirements for disabled access).	Noted	
2.7.5 Native vegetation and water	Yes	

Part B Section 10 – Car Parking and Transport

Part B Section 10 provides car parking and transport controls. If there is a discrepancy between Part B and Part C of the DCP, Part C will always prevail. The following table summarises the proposal against the relevant controls:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 10 – Car parking and transport		
Provision	Complies	Comments
10.2 Parking Provision		
10.2.1 Quantity Requirement		

Residential Development		
P1 Provide on-site car parking, not exceeding the maximum rates stated in Table B-10.1.	Yes	Car parking has been provided at the maximum rate for the residential component of the development
P2 For residential flat buildings, shop-top housing and attached dwellings, on-site car parking provision below maximum rates specified in Table B-10.1 is encouraged where the proposed development has good access to public transport.	Yes	Car parking has been provided at the maximum rate for the residential component of the development.
P3 For residential developments containing 4 or more dwellings, a car wash bay is to be provided within the visitor parking area. The car wash bay may comprise a visitor car space. The wash bay is to be adequately drained and connected to the sewer line.	Yes	A car wash bay has been provided.
P4 The use of car spaces is restricted to the occupiers(s) of a development.	Noted	Should approval be granted a condition of consent can be imposed restricting the use of the car spaces.
P5 Designate visitor car parking spaces as common property.	Noted	Can be conditioned.
P6 Developments containing adaptable housing must allocate at least one accessible parking space to each adaptable dwelling.	Yes	Thirteen accessible spaces have been provided for the thirteen adaptable apartments.
Non-Residential Development		
P7 Provide on-site car parking not exceeding the maximum rates specified in Table B10.2.	No	
P8 For specific non-residential uses, provide on-site car parking not exceeding the maximum rates specified in Table B-10.3. The parking requirements within Table B10.2 take precedence over the rates within Table B-10.3.	No	
P9 On-site car parking provision below maximum rates specified in Tables B-10.2 and B10.3 is encouraged where the proposed development has good access to public transport.	No	

P11 In addition to P7 and P8 above, parking for motorcycles must be provided at the minimum rate of 1 space per 10 cars or part thereof.	Yes	
Note: Submit a Traffic and Transport Study prepared by an appropriately qualified person, if required.		
10.3 Design and Layout		
10.3.1 General		
P1 The size and design of all parking spaces, loading facilities and any associated manoeuvring areas must be in accordance with AS2890.	No	The design of the accessible space do not comply with AS2890.6.
P2 1-2% of all non-residential parking spaces are to be designated for use by the disabled.	Yes	
P3 Car parking spaces for people with disabilities or their associates are provided adjacent or close to the principal public entrance in accordance with AS 1428.2.	Yes	Next to lifts
P4 Motorcycle parking must have a minimum dimension of 1.2m x 3m.	No	Further details required.
P5 Council does not support the use of use of turntables for vehicular manoeuvring unless there is no feasible alternative.	N/A	No turntable proposed
P6 Where security doors/gates are proposed, an intercom system is to be provided to facilitate visitor/service access to underground parking areas.	Noted	
P7 Where resident parking and non-resident parking is to be provided within the same development, vehicular access to the private residential areas of the parking area is to be restricted through appropriate security measures.	Noted	
10.4 Loading and Servicing Facilities		
P1 Off-street loading and unloading facilities should be provided for all commercial and industrial premises as required by Council. The requirement for, number and size of loading bays will be determined by Council having regard to the:	No	

(a) Intended use of the premises; (b) Frequency of deliveries / collections; (c) Size and bulk of goods to be delivered / collected; (d) Size of vehicles to be used; (e) Practicality of accommodating delivery and service vehicles on site; and (f) Likely impacts on traffic safety and efficiency on adjoining roads.		
P3 Developments containing more than 60 dwellings must provide at least 1 service delivery space, capable of accommodating at least: (a) 1 Heavy Rigid Vehicle; or (b) 2 Medium Rigid Vehicles.	No	2 x MRV are shown to be accommodated. Unacceptable number of turn movements are required when entering the western loading bay and that a MRV may not be able to satisfactorily exit the site into Sinclair street.
P5 Height clearances, including access routes to the required loading spaces must comply with Australian Standard AS 2890.2.	No	
10.5 Bicycle Parking and Associated Facilities		
P1 All new development is to provide on-site, secure bicycle parking spaces and storage for residential accommodation in accordance with the minimum rates specified in Table B-10.4	Yes	
P2 Bicycle parking facilities are to be additional to other parking requirements.	Yes	Facilities are provided in addition to other parking
P3 The minimum number of bicycle parking spaces is to be rounded up to the nearest whole number if it is not a whole number.	Noted	
Design		
P5 Design bicycle parking and storage facilities in accordance with the relevant Australian Standards that apply at the time.	Yes	
Location		
P6 Locate private bicycle storage facilities within basement parking levels of the building where provided.	Yes	Located within the basement
Access		
P8 A safe path of travel from Security Class A and B	Noted	

facilities to entry/exit points is to be clearly marked.		
Changing/shower facilities		
<p>P11 For non-residential uses, the following facilities for bike parking are to be provided at the following rates:</p> <p>(a) 1 personal locker for each bike parking space;</p> <p>(b) 1 shower and change cubicle for up to 10 bike parking spaces;</p> <p>(c) 2 shower and change cubicles for 11 to 20 or more bike parking spaces are provided;</p> <p>(d) 2 additional shower and change cubicles for each additional 20 bike parking spaces or part thereof;</p> <p>(e) Showers and change facilities may be provided in the form of shower and change cubicles in a unisex area or in both female and male change rooms; and</p> <p>(f) Locker, change room and shower facilities are to be located close to the bicycle parking area, entry/exit points, and within an area of security camera surveillance where there are such building security systems.</p>	Yes	Facilities provided on basement level 01.
10.6 Travel Plans		
<p>P1 A Travel Plan must be submitted with all development applications that involve:</p> <p>(a) New, or redevelopment of, educational establishments which result in the total number of students exceeding 100 persons.</p> <p>(b) New, or redevelopment of, non-residential developments which result in the total floor space of the development exceeding 2,000m² (approximately 100 employees in an office development).</p> <p>(c) The provision of 50 or more dwellings.</p>	Yes	Travel Plan provided by McClaren Traffic Engineering and Road Safety Consultants.
10.7 Traffic & Parking Impact Assessment		

P1 A Traffic & Parking Impact Assessment must be submitted with all development applications that are also required to be referred to Transport for NSW under cl.2.122 and Schedule 3 of the SEPP (Transport and Infrastructure) 2021, and for all applications which are classified as designated development pursuant to s.4.10 of the EP&A Act 1979.	Yes	Traffic and Parking Impact Assessment Report prepared by McLaren Traffic Engineering and Road Safety Consultants was submitted with the development application.
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Part B Section 12 Access

Part B Section 12 provides access controls. If there is a discrepancy between Part B and Part C of the DCP, Part C will always prevail. The following table summarises the proposal against the relevant controls:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 12 – Access		
Provision	Complies	Comments
12.4 Design Criteria		
12.4.1 Continuous Accessible Path of Travel		
P1 Continuous accessible paths of travel are to: (a) comply with the requirements under AS 1428.1 and 1428.2; (b) be well lit and sheltered from the weather where possible; (c) incorporate rest stations if the travel route is long; (d) provide for the physical separation of pedestrian traffic from vehicular traffic; (e) have the shallowest possible gradient for the distance available; and (f) incorporate walkways, ramps, step ramps or lifts at changes of level along the path of travel.	Yes	
12.4.2 Parts of a building to be accessible		
P1 Access to buildings and their facilities should be provided in accordance with Table D3.2 of the BCA unless it can be shown that access to an area would be inappropriate because of the particular purpose for which the area is to be used.	Yes	Can comply

12.4.4 Walkways, Ramps and Landings		
P1 Walkways, paths, ramps and landings must be provided in accordance with AS1428.1.	Yes	Can comply
12.4.5 Doorways and Doors	Yes	Can comply
12.4.6 Circulation Spaces	Yes	Can comply
12.4.7 Lifts	Yes	Can comply
12.4.8 Sanitary Facilities	Yes	Can comply
12.4.9 Car Parking facilities	Yes	Can comply
12.4.10 Fire safety	Yes	Can comply

Part B Section 13 Heritage & Conservation

Part B Section 13 provides heritage and conservation controls. If there is a discrepancy between Part B and Part C of the DCP, Part C will always prevail. The following table summarises the proposal against the relevant controls:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 13 – Heritage & Conservation		
Provision	Complies	Comments
13.4 Development in the Vicinity of Heritage Items		
P1 Respect and respond to the curtilage, setbacks, form, scale and style of the heritage item in the design and siting of new work.	No	See Heritage Consultant comments.
P2 Maintain significant public domain views to and from the heritage item.	No	See Heritage Consultant comments.
P3 Ensure compatibility with the orientation and alignment of the heritage item.	No	See Heritage Consultant comments.
P4 Provide an adequate area around the heritage item to allow for its interpretation.	No	See Heritage Consultant comments.
P5 Retain original or significant landscape features that are associated with the heritage item or that contribute to its setting.	No	See Heritage Consultant comments.
P6 Protect and allow interpretation of archaeological features (as appropriate and relevant).	No	See Heritage Consultant comments.
13.5 Heritage Items		
13.5.1 Protecting Heritage Significance		
P1 Retain features (including natural and cultural landscape features) that contribute to the significance of the item.	No	See Heritage Consultant comments.
P2 Remove unsympathetic elements, especially where substantial changes are	No	See Heritage Consultant comments.

proposed to a heritage item, and there is potential for an improved heritage outcome.		
P3 New work is to be consistent with the setback, massing, form and scale of the significant features of the heritage item.	No	See Heritage Consultant comments.
P4 Retain significant fabric, features or parts of the heritage item that represent key periods of the item's history or development.	No	See Heritage Consultant comments.
P5 Locate change away from original areas of the heritage item that are intact. For example, where a building's significance is related to the front of a building, locate new work to the rear.	No	See Heritage Consultant comments.
P6 All works are to be consistent with an adopted Conservation Management Plan/s where applicable.	No	See Heritage Consultant comments.
13.5.2 Form, massing, scale		
P1 Locate alterations and additions away from principal elevations and primary forms, and behind and below the main ridge line. Note: Alterations and additions should occur to the rear of heritage items such that they are not visible from the public domain.	No	See Heritage Consultant comments.
P2 Ensure that alterations and additions are smaller in scale, height and massing than the existing building.	No	See Heritage Consultant comments.
P3 Locate additions within characteristic setbacks.	No	See Heritage Consultant comments.
13.8 Demolition		
P1 Heritage items must not be demolished and demolition will not be supported by Council.	No	Partial demolition and retention proposed. Not supported with current detail and information
13.9.4 Materials, colours and finishes		
O1 To ensure that materials and finishes are consistent with the characteristic elements of the heritage item or heritage conservation areas.	No	See Heritage Consultant comments.
13.11.2 Retail buildings and shops		
P1 Original shopfronts, and original building elements and	No	See Heritage Consultant comments.

materials of existing shopfronts are to be retained.		
P2 Original shopfronts or significant characteristic elements are to be reinstated or reconstructed where there is evidence of the original style or detailing on the building or within the row or group.	No	See Heritage Consultant comments.
P3 Solid non-transparent shutters are not supported. Where required, open lattice type security grilles may be installed behind the glazing.	No	See Heritage Consultant comments.
P4 Shopfronts in new buildings may be contemporary in style, but are to be based on the characteristic elements of traditional and significant shopfronts of adjoining or nearby sites.	No	See Heritage Consultant comments.
P5 Reinstating previously removed awnings is encouraged, and should be based on historical or physical evidence or typical styles from the period of the building.	No	See Heritage Consultant comments.
P6 Where additional storeys are contextually appropriate, the new work is to respect the form, scale and detailing of the existing building and not interrupt the parapet line or other significant characteristics of the streetscape.	No	See Heritage Consultant comments.

Part C – Area Character Statements

Part C Section 3 St Leonards/ Crows Nest Planning Area

Part C Section 3 provides specific planning objectives and controls for the St Leonards/Crows Nest Planning Area. If there is a discrepancy between Part B and Part C, the provisions within this Part take precedence over the provisions within Part B of the DCP. In addition to the Character Statement for the Planning Area, the character statement for the Locality Areas also require consideration. The part of the site fronting the Pacific Highway is located in the locality area known as the Crows Nest Town Centre.

Section 3 .2 Crows Nest Town Centre



Figure 15: Locality Area Map for map for Crows Nest Town Centre

DEVELOPMENT CONTROL PLAN 2013 – Part C Section 3 St Leonards / Crows Nest Planning Area		
Provision	Complies	Comments
3.2.2 Desired Future Character		
3.2.2.1 Diversity of activities, facilities, opportunities and services		
P1 Intensify commercial and mixed use development in close proximity to the Metro station and along the Pacific Highway with active uses at the ground floor levels, commercial within the podium levels and residential above.	Yes	Mixed use development will have commercial uses at ground level to activate the street along the Pacific Highway with residential above.
P3 Predominantly medium rise mixed use development,	No	

built boundary to boundary, with setbacks to laneways, and above the podium, with shops at ground level, non-residential/residential on first floor and residential above.		
3.2.2.2 Accessibility and permeability		
P1 Provide, retain and enhance through site links for pedestrians identified on the Through Site Link Map (refer to Figure 3.2-2).	N/A	No through site link is identified on the map for the site. The proposal however, seeks to provide a through site link from the Pacific Highway to Sinclair Street along the northern boundary.
P2 New through site links are to align as best as possible with existing through site links to maximise permeability.	No	There is no connectivity with any other site through link.
P3 Through site links that are proposed in addition to those identified under P1 must demonstrate that it meets the objectives and provisions of this subsection.	No	Benefits and functionality of this site through link are questionable.
P4 Through site links are to be provided in accordance with Section 2.4.9 to Part B of the DCP and the following criteria: (a) The design and finish must be in accordance with the relevant Public Domain Strategy. (b) Include landscaping where practical to assist guiding people along the link while maintaining long sightlines. (c) Be fully open to the sky. Internal through site links will only be considered where they are provided with double height spaces to convey a sense of publicness. (d) Provide public access 24 hours a day 7 days a week. (e) Be activated on both sides of the link. (f) Be clearly distinguished from vehicular accessways.	N/A	The applicant proposes a site through link from the Pacific Highway to Sinclair Street.
3.2.2.3 Public spaces and facilities		
P5 Ensure that community facilities are integrated with public open spaces to maximise their use.	Yes	The applicant proposes a public open space area in Sinclair Street.
3.2.3 Desired Built form		

3.2.3.1 Subdivision		
P1 Maintain a frontage of 20m - 40m along the Pacific Highway, which generally equates approximately to the amalgamation of two or three original allotments.	Yes	The Pacific Highway frontage is 24.4m.
P3 Development on consolidated allotments with a frontage wider than that identified in P1 or P2 is to be broken down by articulation, design and detailing, change in materials and colours.	No	
3.2.3.2 Form, massing and scale		
P1 Buildings should generally transition in height from the Crows Nest Metro Station and Pacific Highway down to the surrounding areas and the lower scale development within the Crows Nest Town Centre, the Upper Slopes Neighbourhood and Crows Nest Neighbourhood.	No	
P2 Roof design presents a varied, composed and interesting skyline when viewed from a regional context.	Yes	
P3 Architectural detailing and ornamentation provides a rich visual texture and a symbolic reference to the history of the place, the building's use or occupant.	No	
P4 Consistent parapet facade heights are provided along Willoughby Road and the Pacific Highway.	No	
P5 Developments on land greater than 1,000sqm should consider the incorporation of internal courtyards adjacent to laneways and through site links to broaden the range and form of open space in the locality.	Yes	The applicant has provided a site through link connecting to a public open space landscaped area.
P6 Development is to be designed to maximise year round solar access to existing and the new public spaces to be created within the Planning Area.	No	

P7 Tower elements located above the podium level should not exceed 45m in width, unless it can be adequately demonstrated that sufficient physical vertical articulation can be provided to break the tower elevation into two distinct elements.	Yes	
P8 Minimum floor to floor heights on land zoned B3 Commercial Core or B4 Mixed Use must be provided: (a) Ground floor level: 4.0 – 4.5m (b) First floor level: 3.6m (c) Levels above: 3.0m (residential uses) or 3.6m (non-residential uses)	Yes	
P9 Residential floor to floor heights should generally not exceed 3.2m, except on the first floor level in accordance with P7 above.	Yes	
P10 Rooftop plant and structures should be designed and positioned to comprise a minor element of the roofscape and minimise any increases to the building's overall overshadowing impacts.	Yes	
3.2.3.3 Setbacks		
P1 Buildings are to be setback from all street frontages in accordance with the Building Setbacks Map (refer to Figure C-3.2-3). Where a street setback is not indicated on the Buildings Setback Map, setbacks are to be in accordance with: (a) Section 1.4.6 to Part B of the DCP for land zoned R3 Medium Density Residential; or (b) Section 3.2.5 to Part C of the DCP for land zoned R4 High Density Residential.	Yes	Nil setback required as shown on Figure C-3.2-3
P2 A nil setback is permitted to all side and rear boundaries without a street frontage on land zoned B3	Noted	

Commercial Core or B4 Mixed Use.		
P3 Despite P2, a minimum 6m setback is required where land zoned B3 Commercial Core or B4 Mixed Use directly adjoins land which is residentially zoned along the zone interface. This requirement does not apply if the land is separated by a public road.	Yes	
P4 Side and rear setbacks on residentially zoned land are required to be setback in accordance with Section 1.4.6 to Part B of the DCP.	No	
P5 Despite P1 and P2, setbacks may be varied to be consistent with the built form envelope approved as part of the approval for the Crows Nest Metro Station and Over Station Development (OSD).	Noted	
P6 Despite P1-P4, where a site contains a heritage item and that item is to be retained, the heritage item may maintain its existing setback.	Noted	
P7 Despite P1-P4, increased setbacks may be required for the podium levels contain residential uses to achieve adequate building separation in accordance with SEPP 65.	Noted	
P8 Building alignments and setbacks should also respond to important elements of the nearby context including public spaces and heritage buildings, monuments and landscape elements, in order to complement the streetscape. In some places, this may require greater building setbacks than those specified in Figure C-3.2-3).	No	The building in its current location, scale, size and form is unacceptable.
3.2.3.4 Podium Heights		
P1 Podiums are to be provided to in accordance with the Podium Heights Map (refer to Figure C-3.2-4).	Yes	3 storey podium required as per figure C-3.2-4

P2 Despite P1, corner sites are to maintain a consistent podium height to all street frontages to achieve consistent built form.	N/A	Site is not a corner site.
P3 Despite P1, sites containing a heritage item and where that heritage item is to be retained the existing podium height may be retained.	Noted	
P4 Despite P1 podium heights may be varied to be consistent with the built form envelope approved as part of the approval for the Crows Nest Metro Station and Over Station Development (OSD). However, distinct architectural elements are to be incorporated to reflect the desired podium heights.	Noted	
P5 If required, podiums are to step down with the topography.	Noted	
3.2.3.5 Above Podium Setbacks		
P1 All buildings are to be designed to provide setbacks above the podium in accordance with the Above Podium Setbacks Map (refer to Figure C-3.2-5). Setbacks above the podium are to be measured from the outer wall of the podium.	No	3m above podium setback required as per Figure C-3.2-5.
P2 A minimum above podium setback to all side and rear boundaries is required as follows: (a) 4.5m for buildings up to 8 storeys in height; or (b) 6m for buildings from 9 storeys up to 18 storeys in height; or (c) 12m for buildings over 18 storeys in height.	No	
P3 Despite P1 and P2, above podium setbacks may be varied to be consistent with the built form envelope approved as part of the approval for the Crows Nest Metro Station and Over Station Development (OSD).	Noted	

P4 Despite P2, the following minimum above podium setbacks, measured from the property boundary, is required where land zoned B3 Commercial Core or B4 Mixed Use directly adjoins land which is residentially zoned along the zone interface. (a) 12m for buildings up to 8 storeys in height; or (b) 15m for buildings over 8 storeys in height. This requirement does not apply if the land is separated by a public road.	No	
P5 Despite P1, P2 and P3, increased setbacks above the podium may be required to achieve adequate building separation in accordance with SEPP 65.	Noted	
P6 Only one step in the built form between the podium walls and tower is permissible.	Noted	
P7 An existing adjacent building, even if heritage listed, cannot be used to justify a reduced setback that would compromise the development potential of the adjacent site in the future. Note. Above podium setbacks are measured to the outer face of any part of the building including balconies, architectural detailing and the like.	Noted	
Note: Above podium setbacks are measured to the outer face of any part of the building including balconies, architectural detailing and the like.		
3.2.3.6 Active Frontages		
P1 Buildings must contain active frontages to all street frontages, with the exceptions of public laneways.	Yes	
P4 Active frontages to public laneways are encouraged where practical but not where they do not have an interface with residentially zoned land.	N/A	There is no public laneway.
P5 Where a site has multiple street frontages, all service and vehicular access points	Yes	Vehicular and service points are located from the rear in Sinclair Street.

must not be provided off the primary street frontage.		
P6 Fire escapes and service doors must be seamlessly incorporated into the facade with quality materials.	Yes	
3.2.3.7 Solar access		
P1 Development is to be designed to maximise year round solar access to existing and proposed new public spaces to be created within the Planning Area.	No	
3.2.3.8 Awnings		
P1 Awnings must be provided to all street frontages on land zoned B3 Commercial Core and B4 Mixed Use, except laneways.	Yes	Awnings proposed.
3.2.3.9 Car accommodation		
P1 Where a property has a frontage to a laneway, vehicular access must be made from the laneway	N/A	The site has no frontage to a laneway.
P2 No vehicular access is permitted to: (a) Willoughby Road, (b) Pacific Highway, or (c) Falcon Street	Yes	Vehicular access will be from the rear of the site in Sinclair Street.
P3 Shared vehicular access to Shirley Road must be maintained to all properties between 286 and 306 Pacific Highway.	No	
P4 All off-street car parking must be provided underground, except when owned and operated by Council as a public car park.	Yes	Off street car parking is proposed to be underground within the basement levels.
P5 The level of parking provided on sites in close proximity to the metro station should be minimised as far as practical.	No	The residential parking has been provided up to the maximum and the non-residential parking exceeds the maximum.

Local Infrastructure Contributions Plan

155. The proposed development if approved would require the payment of developer contributions under Section 7.11/7.12 of the Environmental Planning and Assessment Act 1979 as the proposal is increasing the density of the locality. If the development was to be approved a condition outlining the required contributions will be imposed.

All Likely Impacts of the development

156. All likely impacts of the proposed development have been appropriately considered by 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. | Relevant S4.15 considerations of the Environmental Planning and Assessment Act 1979 | Yes |

Natural Environment

157. The proposed development is likely to have an adverse impact upon the health and retention of a number of trees that adjoin the site to the north and south. The boundary to boundary excavation for the basement car parking will result in unsustainable damage to the tree and it is unlikely it will survive.
158. The proposed excavation of the site is for the purposes of providing four (4) levels of basement for car parking. The excavation could be reduced should the amount of non-residential parking be reduced to comply with the maximum parking rates, and the residential parking be reduced, given its close proximity and access to public transport.

Built Environment

159. The siting, scale, bulk, and massing of the development are generally inconsistent with that anticipated for the site and represents a design that does not contribute positively to the character of the area.
160. The proposal exceeds the building height development standard of North Sydney Local Environmental Plan 2013. A Clause 4.6 Objection has been submitted in support of the non-compliance.
161. The variation to the building height has been assessed and is not supported, in this circumstance, the current form of the building, the development as a whole cannot be supported. The proposal is inconsistent with State Environmental Planning Policy 65 Design Quality Principles and does not reflect the desired future planning and design outcome for the site in its current form.
162. Accordingly, the proposal is inconsistent with the existing and future desired character of the area precinct and is recommended for refusal.

Social Environment

163. No adverse social impacts have been identified as part of the assessment. The provision of additional dwellings would in principle provide for additional housing in close proximity to a local centre for albeit for a certain section of the community, given only 3 and 4 bedroom apartments are proposed. However, the built form is not an appropriate outcome for the site.

Economic Environment

164. The proposed development will have no adverse economic impact, it will benefit in the longer term the sustainability of the St Leonards Crows Nest Town Centre and will in the immediate term contribute to maintaining jobs in the construction industry.
165. The proposed development will provide temporary employment through the construction of the development. In addition, the proposal will restore and increase employment associated with the use of the site.

Suitability of the Site

166. The site contains dual zonings for the site being MU1 Mixed Use for the land with frontage to the Pacific Highway and located within the St Leonards Crows Nest Town Centre and R2 Low Density Residential which fronts Sinclair Street and is not located within the St Leonards Crows Nest Town Centre. The proposed development is not permissible within the R2 zoned land.
167. The mixed use development does not respond to the constraints of the site, development controls, area and context, as evidenced by its various non-compliances with relevant building envelope controls as detailed previously within the report.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

168. The application was advertised for a period of twenty- eight (28) days between 24 March 2023 and 21 April 2023 in accordance with the North Sydney Community Engagement Protocol criterion. Eighteen (18) submissions were received, of which fifteen (15) submissions were in opposition to the proposal.

The concerns raised are summarised below:

- The Site is already subject to proposed controls in the 2036 St Leonards and Crows Nest plan. The plan considered what should be permissible use, density and height in the context of the coming Metro station and a wide range of other factors. Taking all that into account, the plan considered a maximum height limit for the site of 8 stories fronting Pacific Highway and 2 stories fronting Sinclair Street.
- The combined impacts of the proposals for 270-272 and 290 Pacific Highway sites will mean the Sinclair Street residents will be exposed to construction noise, dust, traffic congestion and disruption during many years, with a significant impact on quality of life.
- Traffic congestion generated and potential vehicular and pedestrian safety issues. The traffic report submitted as part of the DA is insufficient and flawed.
- Reduction in sunlight to properties within Sinclair Street.
- Extent of partial demolition of the heritage item.
- Extent of height variation unacceptable. The bulk and scale is far too large.
- Blank wall to the northern side is visually unacceptable.
- The Voluntary Planning Agreement proposed does not reflect the considerable height variation and its impacts.
- Amount of parking proposed is excessive given its location to the new Metro Station.
- Does not appear to be provision made for waste collection in Sinclair Street.
- Concern the lift over run will be required to be higher exceeding the maximum building height.
- Fire escapes don't comply with regulations.
- Units do not comply with required sunlight and cross ventilation.
- Concerns with carpark mechanical exhaust system.
- Solar panels in Sinclair Street will be affected by the proposal.

- The proposed 'BBQ' deck will be located directly above a number of the resident's backyards in Sinclair Street, which will significantly limit their privacy and will likely cause additional noise disturbance.
- Increase in population density.

The above issues were considered in the assessment of the development application.

Application Referrals

169. The application was referred to a number of external agencies and internal officers for comment as follows:

Council Referrals

Development Engineer

170. Council's Development Engineer has reviewed the proposal. Should the application be supported, draft conditions of development consent have been prepared.

Traffic Engineer

171. The DA was referred to Council's Traffic Engineer. Council's Traffic Engineer provided a preliminary assessment of the proposal and has provided the following comments:

It is recommended that the proposed development be refused until the applicant addresses the followings:

"Reduction in the proposed number of parking spaces to ensure it complies with the maximum parking rate as specified on Council's DCP.

Reduction in the proposed number of motorcycle spaces on the residential component to 6 and provision of 4 motorcycle spaces for the commercial component to comply with Council's DCP."

Upon the applicant appealing the development through the Land and Environment Court, the proposal was reviewed by Councils engaged Traffic Consultant who raised the following:

"The application does not comply with the relevant Australian Standards for car parking and service vehicle facilities and does not comply with the NSDCP 2013 Part B, Section 10.

Table B-10.2 of NSDCP 2013, Part B, Section 10 specifies a maximum car parking rate of 1 space per 400m² non-residential Gross Floor Area (GFA). The development proposes a total non-residential (commercial) GFA of 2,443m², which based on the applicant parking rate, requires the development to provide a maximum of 6 car parking spaces for the non-residential (commercial) use. The development proposes a total of 54 car parking spaces for the non-residential (commercial) use, which significantly exceeds and is non-compliant with Table B-10.2 of NSDCP 2013, Part B, Section 10.

The design of the proposed accessible car parking spaces do not comply with the relevant requirements of AS 2890.6-2022 and Clause 10.3 of the NSDCP 2013 Part B, Section 10.

The centrally located lift opens onto the vehicular roadway / parking aisle on Basement Levels 1-4. This arrangement is unsafe for pedestrians and motorists and does not comply with BCA requirements.

The design of the western loading bay on Lower Ground level does not allow for the required 2 metre clearance zone at the rear of parked Medium Rigid Vehicle (MRV), as is required under the Waste Management Plan prepared by MRA Consulting Group. Furthermore, the swept path analysis drawings included in the Traffic and Parking Impact Assessment report prepared by McLaren Traffic Engineering, demonstrate that an unacceptable number of turn movements are required when entering the western loading bay and that an MRV is unable to satisfactorily exit the site onto Sinclair Street. The proposed vehicle access and loading bay arrangements are therefore non-compliant against the requirements of AS 2890.2-2018 and Clause 10.4 of the NSDCP 2013 Part B, Section 10.

It has not been demonstrated how vehicular traffic including cars and service vehicles, will be managed at the vehicle access and how the basement car park and loading area will be secured, as per Clause 10.3.1 of the NSDCP 2013 Part B, Section 10, Provision P6.

The swept path analysis drawings included in the Traffic and Parking Impact Assessment report prepared by McLaren Traffic Engineering demonstrate that B99 and B85 Design Vehicles are unable to satisfactorily pass one another when circulating throughout the basement levels. The proposed traffic circulation and car parking arrangements are therefore non-compliant with AS 2890.1-2004 and Clause 10.3 of the NSDCP 2013 Part B, Section 10.

The retail trip generation rate adopted for the existing development in the Traffic and Parking Impact Assessment report prepared by McLaren Traffic Engineering is incorrect and significantly overestimates the traffic generation of the existing development. Furthermore, as a result of the required reduction in commercial car parking as per Particular (a), the traffic generation and distribution assessment, and SIDRA modelling included in the Traffic and Parking Impact Assessment is incorrect. It therefore has not been demonstrated that the proposed development satisfies Section 2.119 of SEPP (Transport and Infrastructure) 2021 and has not been demonstrated that the development will not result in unacceptable traffic impacts on the surrounding road network."

Landscape Officer

172. Council's Landscape Officer has reviewed the proposed development and raised the following concerns:

"The application fails to provide an arborist report detailing the impact of the proposal on all site, street, and neighbouring trees.

The proposed development will have an adverse impact on the Eucalyptus sp (14m) located on the southern boundary of property to the north of site (within Fire station car park). Although this tree is not overlaid on plans provided for basement excavation, it would appear that the proposed boundary to boundary excavation and construction would result in unsustainable damage to this tree, resulting in its failure and death.

Impact of the proposed pedestrian walkway along the northern boundary of the site, adjacent to this tree is unknown given lack of information on plans, but should such a walkway (or any construction within the TPZ of this tree) be proposed, sensitive construction techniques shall be required. No level changes would be permitted within TPZ of this tree. 2 x existing trees on northern boundaries of properties immediately to the south of the site are not shown on drawings, but are likely to be negatively impacted."

Waste Development Officer

173. The application was referred to Council's Waste Development Officer for assessment and review. The Waste Development Officer has advised that the proposed arrangements for ongoing waste management are inadequate and does not comply with the requirements of NSDCP 2013 as follows:

"A temporary bin holding area for the residential waste bins is to be provided for collection of garbage and recycling bins of sufficient size to accommodate the required garbage and recycling bins is required to be provided off the street and within 2 metres of the street alignment. The holding bay must be large enough to fit 40 x 240L bins (uncompacted waste) and 20 x 240L bins (compacted waste). There will be no onsite collection, the bin holding bay must be accessible to the kerb.

Properties with a lift must have a garbage chute and recycling bin on each level. The proposed development does not provide for a garbage chute and recycling bins on each level. Council does not permit dual use chutes, recycling must be on each level.

A functional bulky waste storage area has not been provided to hold household clean up material. This must be separate from the garbage room.

It has not been demonstrated that the proposed on-site loading bay arrangements are capable of accommodating Council's waste collection vehicle."

Environmental Health Officer

174. Council's Environmental Health Officer has reviewed the Preliminary Site investigation Report and the Noise Impact Assessment Report and raised no objection to the proposal subject to conditions of consent.

Heritage Consultant

175. The application was referred to Council's Heritage Consultant as the subject site contains a heritage item, being the former North Shore Gas Co. The following comments and contentions were raised:

"The proposed development will result in major adverse impacts on the significance of the heritage item 'Former North Shore Gas Co. Showroom and Office' and adverse impacts on the setting of a number of heritage items in the vicinity of the site. Further, the proposal relies on the NSLEP conservation incentives clause 5.10(10), but fails to conserve the heritage item, instead would have a major adverse impact on its heritage significance.

The proposal is contrary to NSLEP Clause 5.10 as it fails to conserve the environmental heritage of North Sydney. The proposed development would adversely impact the significance of the heritage item on the Site, including its fabric, setting and views, and adversely impact the setting of further heritage items located in the vicinity of the Site. The proposal involves the demolition of the majority of the fabric of the heritage item, including fabric identified as having a high level of significance.

The proposal is contrary to Clause 5.10 (10) subclause (a) in that the conservation of the heritage item is not facilitated by the proposal. The proposal involves the construction of several levels of basement and a large which requires the demolition of the majority of the fabric of the heritage item.

The proposal is contrary to Clause 5.10 (10) subclause (b) in that it is not in accordance with a heritage management document approved by the consent authority. The

heritage management documents submitted by the proposal are inadequate and have not been approved by Council as the consent authority.

The proposal is contrary to Clause 5.10 (10) subclause (c) as the proposal does not require the carrying out of all necessary conservation works.

The proposal is contrary to Clause 5.10 (10) subclause (d) in that the proposed development would adversely affect the heritage significance of the heritage item.

The proposal is contrary to NSDCP Section 13.4 in that the development will have an adverse impact on the setting of the heritage items in the vicinity by virtue of its excessive height, bulk and scale.

The proposal is contrary to NSDCP Section 13.5 in that the significance of the heritage item is not protected. The proposal involves the demolition of the heritage item including original spaces and fabric identified as having a high level of significance, only some of which is proposed for reconstruction. The proposed additional storeys will significantly alter the scale and character of the building and visually overwhelm the reinstated original front facade.”

External Referrals

Design Excellence Panel

176. Council's Design Excellence Panel (DEP) considered the application at its meeting on 9 May 2023. The DEP concluded that design excellence has not yet been achieved and does not support the current proposal. The following comments were provided to the applicant:

“Height, bulk and scale – The development represents a significant intensification of land use and increased density of built form, realised via a significant breach of the height limit and inappropriate front, side and rear setbacks.

The height, bulk and scale are not considered appropriate having regard to its relationship and interface with the lower density residential properties to the south on Sinclair St. The bulk and scale of the development is not compatible with the surrounding built form context.

The subject site is zoned R2 Low Density Residential and B4 Mixed Use with the envisaged maximum building heights within these zones being 8.5m and 16m respectively. The proposed 42.93m building height in the R2 zoned land and 53.77m in the MU1 zoned land is considered excessive and inappropriate. The proposal is also non-compliant with the building height plane requirements contained within P7 of 2.4.3 Quality built form of Part B Section 2 of the DCP.

Whilst the applicant is relying upon the heritage conservation principles pursuant to Clause 5.10 of the NSLEP 2013 and a Clause 4.6 to support a variation to the building height, the height, bulk and scale is not considered appropriate and does not adequately provide a suitable transition between the different zones both within the site and the adjoining properties.

It should also be noted that the St Leonards and Crows Nest 2036 Plan envisages a building height of approximately 4 storeys to 8 storeys on the part of the site fronting Pacific Highway and retention of the 8.5m height limit across the part of the site fronting Sinclair Street. The proposal is significantly inconsistent with this desired outcome which seeks the retention of the low-density zoning and built form within the

rear part of the site fronting Sinclair Street. The proposed development seeks significant departures from both the existing controls and the controls envisaged under the 2036 Plan. The proposal represents a significant over development of the site.

Street, side and rear setbacks – The setbacks proposed and the relationship to adjoining properties are unacceptable. Part of the site is located within the Crows Nest Town Centre. Part C Section 3.2 of NSDCP 2013 requires a 3m setback is to be provided above the podium level to Pacific Highway. The proposal fails to provide this setback.

A thirteen storey building should provide setbacks of 12m for habitable rooms and 6m for non-habitable rooms fronting the side boundary (under the ADG) and raking setbacks relative to height (under the DCP). The height and bulk impacts create an unacceptable transition to neighbouring lower density development to the site's south.

Building separation – The proposed side setbacks fail to satisfy the requirements of the ADG and fail to provide adequate separation and reasonable privacy with occupants of neighbouring buildings. The building proposes a 6m setback to the south-eastern side boundary from the habitable rooms/balconies which is non-compliant with the required 9m setback for 5-8 storeys and 12m setback for 9 storeys and above setbacks required under the ADG. Increased separation above the ADG minimums should be provided when adjacent to a zone that permits lower density residential development to provide for a transition in scale and increased landscaping.

The separation distance between the bedrooms opposite the void/lightwell is unsatisfactory and fails to meet the requirements of the ADG. The lightwell void should be increased in size to provide reasonable amenity to the bedrooms for each apartment.

Public domain interface – The site has two street frontages, Pacific Highway to the east and Sinclair Street to the west. Whilst the height fronting the Pacific Highway is not supported, the scale, bulk and height to the Sinclair Street frontage is not appropriate to the existing or desired future character of the street especially given its low-density zoning.

Retention/restoration of heritage item – The Panel commented that the proposed restoration of the heritage item was commendable and complimentary on the measures to restore and preserve the item, however this did not negate the need to create an overall appropriate built form response on the site including setbacks above the heritage item, side and rear setbacks and overall height. The Panel also noted that the impact of the application on the heritage item on 99 Shirley Rd, Crows Nest Fire Station had not been considered. The application will be highly visible from Shirley Rd and the visual appearance would likely to be highly problematic in terms of bulk, scale and aesthetic appearance relative to the heritage and non-heritage context. The application would adversely affect the heritage significance of the heritage item, including its setting.

Proximity to transport, employment, services – The site is well located and within walking distance of Crows Nest Commercial Centre and St Leonard's Commercial Centre. The future Crows Nest Metro station and St Leonard's train station are also located within close proximity.

Adjacent low/high density development – The development does not provide a suitable transition to low density residential development to the south and west of the site, nor does it provide appropriate boundary setbacks. The development proposes eleven storeys within the R2 zoned land adjoining the residential dwellings to the south in Sinclair Street. The proposal is significantly non-compliant with the maximum height control under NSLEP 2013 and does not step down to a comparable scale at the interface with the R2 zone to the south. The proposal represents a significant over development of the site.

Landscape character – There is a large tree located on the southern boundary of the property to the north (within the Fire Station carpark), that is likely to be affected by the basement excavation. In addition, there are also two existing trees located on the northern boundaries of properties to the south that are likely to be affected by the excavation. This may have an impact on the excavation proposed and the basement configuration.

Communal open spaces – Communal open spaces are located on ground floor, Level 02 and Level 11.

Public open space – The public benefit of the proposed pocket park is questionable, it is proposed in a fairly hidden away location and will likely be used predominantly by residents of the site rather than the wider public. The value of the proposed through site link was also questioned, as east-west pedestrian movement is already facilitated by Shirley Rd and the though site link does not directly connect to any other laneways or east-west movement corridors.

Configuration and planning – The building relies predominantly upon eastern and western sunlight for solar access for a number of units, given the northern façade, with the exception of the side boundary lightwell is a blank wall. Some apartments are up to 30m deep, which is extreme. Apartments also rely on the side boundary lightwell and a second small 3m 'void' in the plan to provide daylight and ventilation. This strategy is not appropriate in terms of visual and acoustic privacy. Any internal courtyards should comply with the ADG in terms of building separation, requiring opposing habitable rooms to achieve up 24m in lieu of the 9m proposed. Dual aspect through apartments should not exceed 18m depth.

Private open space and balconies – The location of the south facing balconies would not ensure good amenity for neighbouring properties particularly to the properties to the south of the site.

Visual Privacy – In addition to the comments above, the Panel has raised concerns with the potential for overlooking and loss of privacy from the development towards the properties to the south. Appropriate side setbacks are necessary.

Noise and natural ventilation – In relation to noise and ventilation, details of how it is proposed to minimise road noise whilst providing suitable ventilation are to be provided.

Shadow impacts

The Panel has concerns that the properties within Sinclair Street will suffer further overshadowing. Whilst the applicant advised at the meeting that these properties would not be worse off than the current condition, this advice is questioned. The shadow diagrams provided indicate that the proposed rear yards of a number of the semi-detached dwellings such as 77, 75, 73 and 71 Sinclair St may experience considerable additional overshadowing. Additional shadow diagrams and view from

sun diagrams should be provided at 15 minute intervals, to allow a more complete assessment.

Interaction at the public/private interface – The development provides communal open spaces to several levels to provide opportunities for social interaction. A ground floor communal open space accessed via Sinclair Street provides interaction between the public and residents.

Material palette – The Panel did not provide specific comments on the colours and materials proposed. Comments on specific materials and colours will be provided once the application has been reviewed by Council's Heritage Officer.

Treatment of northern wall – The proposed northern wall was not adequately represented in 3D renders, but appears to be treated as a blank party wall. This is anticipated to be highly visible and therefore, needs to be designed as a genuine facade. An appropriate northern boundary setback should also be provided and a facade created that can include windows, activation and articulation.

The Panel does not support the proposed development, a number of fundamental matters need to be addressed and significant amendments are required."

Ausgrid

177. The application was referred to Ausgrid in accordance with Clause 2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021. Comments were received from Ausgrid on 4 April 2023 and they have raised no objection to the proposed development. No conditions were recommended.

Sydney Water

178. The proposal was referred to Sydney Water who raised no objection to the proposal subject to the imposition of conditions.

TfNSW (RMS)

179. The application was referred to TfNSW (RMS) in accordance with Clause 2.119, 2.121 and 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021. A formal response was provided on 30 March 2023, concurrence was obtained subject to the imposition of conditions if the application was to be supported.

Conclusion

180. The proposal seeks consent for the partial demolition of the existing heritage building, and construction of a 13 storey mixed use development containing 61 residential apartments, above four (4) basement levels of parking containing 105 car spaces and tree removal

181. The proposal has been assessed in accordance with Section 4.15 (1) of the Environmental Planning and Assessment Act, 1979. The proposal is considered to be an unreasonable intensification of the site. It represents an unacceptable planning and design outcome for this site and will adversely affect both the character of development in the street, the immediate locality and the residential amenity of the area.

182. The proposal is inconsistent with various design quality principles of State Environmental Planning Policy 65 including context and neighbourhood character, built form and scale, amenity and aesthetics.

183. The proposal has been assessed against the relevant provisions of the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013.

The proposal fails to satisfy the key planning controls in the North Sydney Local Environmental Plan apart from Clause 4.3 Height of Buildings development standard. A Clause 4.6 Statement has been submitted with the application justifying the variation. In this case the variation is not considered to be reasonable or necessary in the circumstances of this case and there are insufficient environmental planning grounds to support varying the control in this instance.

184. The proposed development design fails to satisfy the zone objectives for area of the site that is zoned R2 Low Density Residential the site and the Clause 4.6 Statement and is not considered to be well founded and not in the public interest as there will be direct and adverse environmental impacts generated by the variation sought. The proposal fails to satisfy the objectives and requirements of Clause 4.3 of the North Sydney Local Environmental Plan 2013.

185. For the above reasons the, the proposal is recommended for refusal.

DETERMINATION AND STATEMENT OF REASONS

186. Statement of Reasons

- This part of Crows Nest is undergoing transition within this area due to its proximity to public transport, however the proposal fails to respond to both the existing context of the streetscape and the desired future character for development.
- The proposal fails to satisfy the objectives and requirements of Clause 5.10 (10) of NSLEP 2013 in that conservation of the heritage item is not facilitated by the proposal.
- The proposed development fails to satisfy the relevant objectives of the R2 Low Density Residential zone and the MU1 Mixed Use zone.
- The development proposed is not permissible in the R2 zoned land. The proposal is reliant upon the heritage conservation incentives of Clause 5.10 (10) to overcome this prohibition.
- The proposed development is not considered to be compatible with surrounding development and surrounding land uses.
- The proposed development fails to comply with the requirements and objectives of the relevant environmental planning instruments in relation to Clause 4.3 maximum building height. Clause 4.6 exception has been submitted in support of the application which is not considered to be acceptable having regard to the justification provided in the report above.
- The building will unreasonably affect the amenity of immediately adjoining properties in terms of unreasonable overlooking, privacy, solar access and, overshadowing.
- The Waste Management Plan (WMP) has not addressed the waste management criterion for the site. In addition, the applicant has not provided a functional bulky waste storage area and has not allowed for adequate space for all residential bins in the ground floor temporary bin holding area.

DETERMINATION

187. THAT the Sydney North Planning Panel, as the consent authority, refuse the written request for a variation under Clause 4.6 of North Sydney Local Environmental Plan 2021, in relation to the Height of Buildings (Clause 4.3) as the variation sought is not considered to be well founded and not in the public interest as there will be direct and adverse environmental impacts generated by the variation sought.

188. THAT pursuant to Section 4.16(1)(b) of the Environmental Planning and Assessment Act 1979 (as amended) the Sydney North Planning Panel refuse the development consent to DA66/23 for the partial demolition of the existing heritage building, and

construction of a 13 storey mixed use development containing 61 residential apartments, above four (4) basement levels of parking containing 105 car spaces and tree removal on Lot 1 DP 1279891 and known as 286-294 Pacific Highway, Crows Nest for the reasons set out in Attachment 1.