

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-449
DA Number	297/23
LGA	North Sydney Council
Proposed Development	Redevelopment of the site at 617-621 Christie Street, St Leonards for a 50-storey mixed-use development comprising retail and commercial uses within the podium, residential apartments above as well as basement car parking and loading and servicing areas.
Street Address	617-621 Pacific Highway, St Leonards
Applicant/Owner	Applicant – Mr. Edmand Lee Owners – Anson City Developments 1
Date of DA lodgement	20 October 2023 Amended 6 September 2024
Total number of Submissions Number of Unique Objections	One hundred and seventeen (117) 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 \$187,179,158.00 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 (Planning Systems) 2021 • State environmental Planning Policy (Housing) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021. • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • North Sydney Local Environmental Plan 2013 • North Sydney Development Control Plan 2013 • North Sydney Local Infrastructure Contributions Plan 2020 • An executed Voluntary Planning Agreement has been entered into under Section 7.4 of the Environmental Planning and Assessment Act 1979
List all documents submitted with this report for the	Survey Architectural Plans Design Report

Panel's consideration	Quantity Surveyor Report Landscape Plans and report Arborist Report ESD Report BCA Statement Access Statement Traffic Impact Assessment Waste Management Plan Civil Engineering Plans Structural Engineering Statement Wind Impact Assessment BASIX Certificate Stormwater Drainage Concept Plan Geotechnical Report Acoustic Report Environmental (Contamination) Site Investigation	
Clause 4.6 requests	Yes – Clause 4.4A – Non-residential floor space ratios	
Report prepared by	Damon Kenny Executive Assessment Planner	
Report date	28 April 2025	
Summary of s4.15 matters Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes	
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes	
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 – Non-residential floor space ratio less than the minimum	
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 (DA297/23) seeking consent for the redevelopment of the site at 617-621 Christie Street, St Leonards for a 50-storey mixed-use development comprising retail and commercial uses within the podium, residential apartments above as well as basement car parking and loading and servicing areas.
2. A Voluntary Planning Agreement (VPA) was entered into on 2 July 2018 requiring the construction and fit out of a community arts centre and dedication to North Sydney Council.
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 site is legally described Lot 1 DP DP1022881, Lot 1 DP577070, Lot 1 DP455937 and Lot 2 DP455937 and known as 617-621 Pacific Highway, St Leonards.
5. The subject site is bounded by Atchison Street to the north, Christie Street to the west, Pacific Highway to the south, and the adjoining property at 601 Pacific Highway to the east.
6. The site has total area of 1,062 square metres and currently accommodates two commercial office buildings: a 7-storey building at 617–619 Pacific Highway and a 12-storey building at 621 Pacific Highway.
7. The site is located within the centre of St Leonards, a short walking distance from the existing St Leonards Station and the Crows Nest Metro Station.

State Environmental Planning Policies

8. 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 (Housing) 2021
 - State Environmental Planning Policy (Sustainable Buildings) 2022
 - State Environmental Planning Policy (Biodiversity and Conservation) 2021
 - State Environmental Planning Policy (Transport and Infrastructure) 2021

Zoning and NSLEP 2013 Compliance - LEP

9. The site is zoned E2 Commercial Core pursuant to the provisions of the North Sydney Local Environmental Plan 2013. The proposed mixed-use development comprising commercial premises (including retail and office premises) and residential apartments (defined as shop top housing), and a community facility is permitted with development consent within the E2 Commercial Centre zone and Schedule 1, clause 47 of North Sydney LEP specifically applies to the site. This provision acts to permit Shop top housing on the site as an additional permitted use.
10. The proposed development complies with the maximum permissible building height and the maximum permissible floor space ratio of NSLEP 2013.
11. The application has been accompanied by a Clause 4.6 – exceptions to development standards request for variation to Clause 4.4A – Non-residential floor space ratios development standard. The request is considered to be well founded, 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

12. 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.

13. 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. These controls were adopted post the Planning Proposal Process.
14. A detailed assessment of the proposal against the controls in NSDCP 2013 is provided later in this report.

Submissions

15. The subject application was notified on 23 November 2023 from 1 December 2023 to 19 January 2024. The application was renotified on 18 December 2024 from 3 January 2025 to 25 January 2025. A total of one hundred and seventeen (117) submissions were received. were in opposition to the proposal. Issues of concern included:

- View loss
- Traffic and carparking
- Reduced real estate value
- Construction impacts
- Privacy
- Noise
- Non-compliant side setback
- Height, bulk and scale
- Solar access
- Overcrowding
- Light pollution
- Pollution
- Community arts centre
- Impact on infrastructure
- Fire safety

Level of Determination

16. The proposal as provided at the time of lodgement, has a CIV of \$187,179,158.00 (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.

Conclusion

17. 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.
18. The proposal is inconsistent with various design quality principles of State Environmental Planning Policy (Housing) including context and neighbourhood character, built form and scale, and amenity.
19. The Council's notification of the proposal attracted a total of total of one hundred and seventeen (117) submissions. The concerns raised have been considered and addressed and do warrant refusal of the proposal.
20. Following assessment of the development application, the development is recommended for **refusal**.

Report in Full

Site and Locality

21. The site is Lot 1 DP 1022881, Lot 1 DP 577070 and Lots 1 & 2 DP 455937100. Its street address is 617-621 Pacific Highway St Leonards. With an area of 1,062m², the site is formed on three sides by the Pacific Highway, Christie Street and Atchison Street. It is within about 180 m of the St Leonards train and bus interchange.
22. The site is located within the centre of St Leonards, a short walking distance from the existing St Leonards Station and the Crows Nest Metro Station. The St Leonards area is well advanced in its transition from an underutilised commercial precinct into a thriving mixed-use area incorporating a combination of tower developments including commercial, retail and residential land uses. The area immediately surrounding the site comprises predominantly medium to high-rise mixed-use buildings with commercial uses at the lower levels and residential above.



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

23. The surrounding are is as follows:

- North – The site is bound to the north by Atchison Street, a one way street within a road reserve. There are a range of mixed-use buildings varying from 6 storeys to 34 storeys (a recently constructed mixed- use building known as 'Quest/Air' Apartments).
- South – The site is bound to the south by Pacific Highway. The Friedlander Place Precinct is located directly opposite the site, which is a large 44 storey mixed-use development (Landmark development) with a ground floor public place. Further south-west at 472-494 Pacific Highway is the St Leonards Square which contains a mixed-use development comprising a new public plaza, a retail, recreation and leisure precinct, and two residential towers of 28 and 36 storeys. The site at 524 to 542 Pacific Highway has the benefit of a recently issued consent by the Department of Planning for a mixed use building with a height of 154 meters and containing 41 storeys.
- East – 601 Pacific Highway is located immediately to the east of the site. It comprises a 17-storey commercial office building. 601 Pacific Highway is currently subject to a Planning Proposal that seeks to increase the building height to 189m whilst maintaining the E2 Commercial Centre zoning.
- West – The site is bound by Christie Street to the west. Further west at 100 Christie Street is a newly proposed mixed use development of 39 storey (currently under assessment). St Leonards Railway Station is also located to the west.

Strategic Context

24. The Site is located within the area identified by the St Leonards and Crows Nest 2036 Plan (2036 Plan).

25. 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.

Description of Proposal

26. Development consent is sought for the redevelopment of the site at 617-621 Pacific Highway, St Leonards for a 50-storey mixed-use development comprising retail and commercial uses within the podium, residential apartments above as well as basement car parking and loading and servicing areas

The application seeks consent for the following:

- Demolition of all existing buildings and structures on the site.
- Construction of a 50-storey mixed-use building with a maximum height of 180m (RL266.745) including retail, Community Arts Centre and commercial uses within the 6-storey podium, and residential apartments within the tower above.
- A maximum GFA of 26,962.39m² which equates to a maximum FSR of 25.4:1.
- Six (6) basement levels for parking, loading and servicing, storage and associated plant, services and utilities. The basement will comprise 72 residential car parking, 1 loading dock turntable and 253 bicycle spaces, as well as associated end of trip facilities.
- Consolidated vehicular access to the basement from Atchison Street.
- A Community Arts Centre has been provided within mezzanine to Level 2 and will be delivered as part of the Voluntary Planning Agreement (VPA).
- Landscaping on upper podium and roof terrace levels.
- Embellishment of the public domain area, including new paving and accent and groundcover along Pacific Highway, Christie Street and Atchison Street.

- The tower comprises a mix of residential apartments between Level 7 and Level 50. The proposed development includes 190 residential apartments as follows:
 - One-bedroom – 36 apartments (19%)
 - Two-bedroom – 104 apartments (55%)
 - Three-bedroom – 50 apartments (26%)

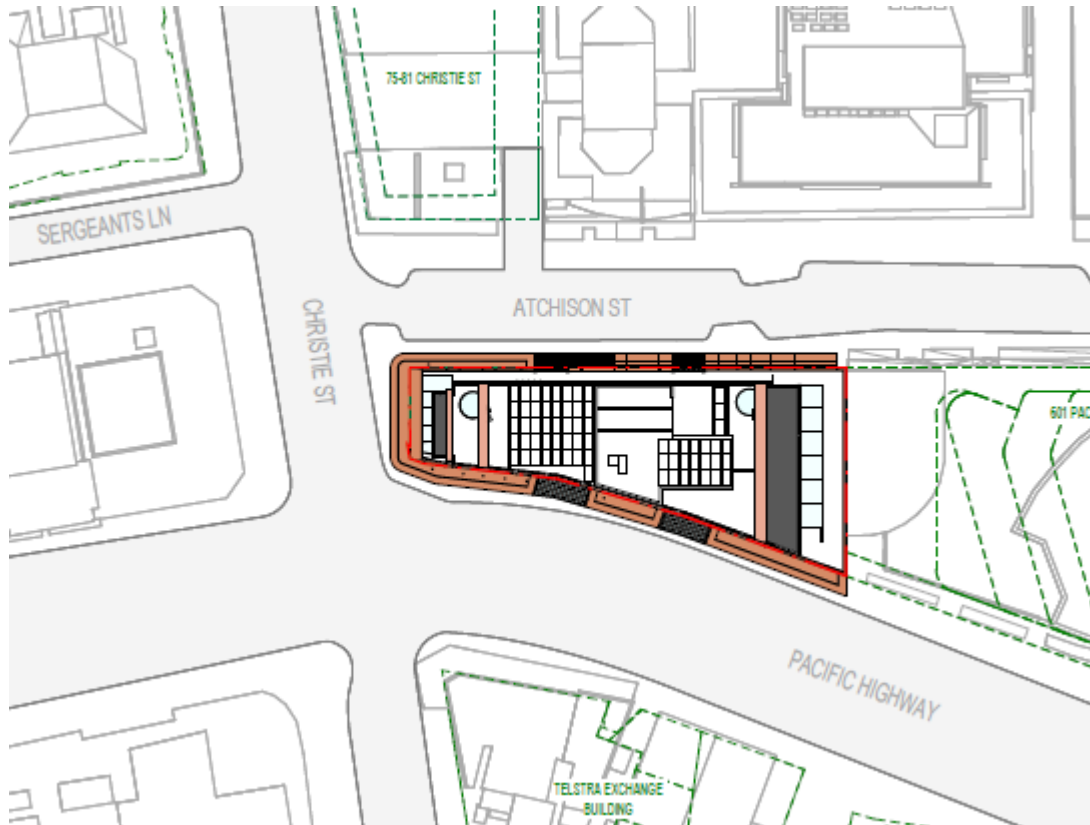


Figure 2: Site Plan (Source: BVN Architects)



Figure 3: Perspective of proposal as viewed from Pacific Highway Street (Source: BVN Architects)

27. A detailed breakdown of the proposed development is as follows:

Demolition and excavation

Demolition of the existing buildings and structures on site. Excavation for 6 basement levels to a depth of approximately 22m (below the existing ground level).

Tree removal

One (1) tree is proposed to be removed.

Built form

A 50-storey tower with a maximum height of RL266.74 and residential uses between Level 7 and Level 50 comprising a sculpted tower form with a strong horizontal façade expression.

A 6-storey lower level podium comprising predominantly retail uses at the ground floor and commercial uses from Level 3 to Level 6. At the mezzanine to Level 2, there will be a Community Arts Centre.

Landscaping

The streetscape will be upgraded to integrate with the existing public domain treatment and local council standards

At level 5, two outdoor terraces will be provided on the eastern and western elevations of the proposed development. It will include awnings, outdoor seating areas and planters.

Retail and lobby

The podium component comprises of a lower ground floor retail and commercial offering with a retail tenancy and a commercial tenancy. The retail tenancy is envisaged to comprise a cafe / restaurant with a 'pop out' space being provided on Atchison Street to further activate this part of the site. The main entrance to the commercial and retail tenancy is via Atchison Street.

The upper ground floor offers a retail premises. The secondary entrance to the commercial and tenancy provided via Pacific Highway.

Community Arts Centre

Community Arts Centre is located within the mezzanine to Level 2. This will be dedicated to Council as part of the VPA

Commercial office

The remaining four floors within the podium will be delivered as commercial office tenancies. They will be flexible shells, with outdoor terraces provided on Level 5.

Vehicle Access, Parking and Servicing

Car parking for the proposed development is to be accommodated within six basement levels, with consolidated vehicular access from Atchison Street to the north. Cars will be transported between the basement levels via a two car lifts.

The proposed basement will comprise:

- Car parking – 72 car parking spaces, including:
 - 72 residential car parking spaces (including 16 accessible spaces and 4 small spaces)
 - No residential visitor car parking spaces
 - No commercial / retail / community facility car parking spaces
- Motorcycle parking – 8 motorcycle parking spaces
- Bicycle parking – 253 bicycle parking spaces including:
 - 209 residential bicycle spaces
 - 31 commercial / retail bicycle spaces
 - 13 community and art bicycle spaces
- 1 loading bay turntable for servicing

Background

Planning Proposal and Voluntary Planning Agreement

28. In June 2019, a proponent led Planning Proposal was gazetted at the site. The Planning Proposal related to the amendment to the North Sydney Local Environmental Plan 2012 to include 'shop top housing' as a permissible use on the site. The amendment also

introduced a maximum floor space ratio (FSR) of 25.4:1, a minimum non-residential FSR of 4.7:1 and increased the maximum building height to 180 metres.

29. The building envelope that informed the Planning Proposal, including density uplift at the site was designed in accordance with a former version of DCP controls that predates the 2036 Plan.
30. The gazettal of the LEP amendment was accompanied by a VPA. The VPA was executed by Council on the 25 June 2018. The VPA incorporated the dedication to Council two entire floor levels within the podium of the future development for the purposes of an Arts Centre, with an approximate value of \$16.5m.
31. The Arts Centre is to be designed and constructed in accordance with the Arts Centre Design Brief (prepared by Kannfinch Architects dated 17 May 2017), which outlines the space requirements and general fit out guideline of the Arts Centre, as informed by Council.

Pre-DA

32. A Pre DA meeting was held with Council Officers on 21 January 2022 to provide an overview of the proposal and discuss key elements of the proposal.
33. The key issues and concerns identified in the meeting were as follows:
 - Street wall height
 - Above podium setbacks
 - Eastern boundary setback
 - Street activation
 - Voluntary Planning agreement
 - Apartment design guide
 - Podium setback
 - Unit mix

Development Applications

34. On 7 September 2011, the Sydney East Region Joint Regional Planning Panel, as the consent authority, approved 2011SYE060 – North Sydney – DA No. 163/11 for demolition of an existing 7 storey commercial building and construction of a 15 storey mixed use development at 619 Pacific Highway, St Leonards
35. On 7 November 2012, the Sydney East Region Joint Regional Planning Panel, as the consent authority, approved 2012SYE051 – North Sydney – Development Application No. 136/12 for demolition of existing building and construction of a 17 storey mixed use development at 621 Pacific Highway, North Sydney.
36. Both approvals appear to have lapsed.

Current Application

37. DA297/23 lodged with Council on 20 October 2023 seeking development consent for the redevelopment of the site at 617-621 Christie Street, St Leonards for a 50-storey mixed-use development comprising retail and commercial uses within the podium, residential apartments above as well as basement car parking and loading and servicing areas.

38. The subject application was notified on 23 November 2023 from 1 December 2023 to 19 January 2024. The application was renotified on 18 December 2024 from 3 January 2025 to 25 January 2025.

A total of one hundred and seventeen (117) submissions were received. These submissions are discussed later in this report.

39. On 12 December 2023, the Development application was reviewed by the Design Excellence Panel (DEP). The Panel provided qualified support for the proposal, subject to issues identified in the report, being addressed.

40. Sydney North Planning Panel (SNPP) Preliminary 'Kick Off' briefing undertaken on 13 March 2024, during which the following was discussed:

- Design Quality Principles
- ADG and NSDCP 2013 setbacks
- Over shadowing
- Landscaping
- Design Excellence Panel
- Waste management
- CPTED

41. On 3 May 2024 a request for additional information provided to the Applicant. The key issues of the RFI Letter are listed below:

- Eastern setback
- Landscaping
- VPA (community arts centre)
- Awnings
- Waste
- CPTED
- DEP
- Submissions

42. On 6 September 2024 the applicant provided a response to the request for additional information.

43. On 4 December 2024 the applicant provided further amended plans and additional information, including a Clause 4.6 request to the non-residential floor space ratio.

Statutory Framework

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

44. 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

Water Management Act 2000

45. The proposed development is Integrated Development pursuant to Section 91 of the Water Management Act 2000 and requires a concurrent consent from the Water NSW.

46. The application was referred to Water NSW who have provided their concurrence subject to requirements and conditions as detailed within their letter

State Environmental Planning Policy (Resilience and Hazards) 2021

47. The following chapters are relevant to the proposal:

Chapter 4 Remediation of Land

48. Chapter 4 of the SEPP relating to remediation applies to the site.

49. 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.

50. A Preliminary and Detailed Site Investigation report has been prepared by Douglas Partners and based on the submitted report, the site is considered suitable for the proposed redevelopment and the anticipated mixed residential / commercial land use.

51. The report confirmed that the site can be suitable for the proposed development provided the following recommendations are undertaken prior to / during construction:

- Re-testing of heavy metals in groundwater at BH1 to confirm the consistency of the detection of high concentration of zinc and nickel. Inspection and validation sampling, following removal of the existing underground fuel storage tanks.
- Final waste classification (including further testing) to be undertaken following demolition to confirm classification prior to soils being removed from the site for legal disposal. Whilst the preliminary waste classification indicated that the fill across the site was classified as general solid waste, this will need to be confirmed by further testing prior to removal from the site and disposal or re-use.
- An unexpected asbestos finds protocol should be prepared and implemented during site works to address any potentially impacted fill (e.g., asbestos contamination)
- Hazardous materials, if present, will need to be removed in accordance with relevant legislation and guidelines prior to demolition and managed appropriately in the interim or where buildings are to be retained.

52. 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

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

Chapter 2 Vegetation in non-rural areas

54. Chapter 2 of the SEPP relating to vegetation in non-rural areas applies to the site.

55. Chapter 2 regulates clearing of native vegetation on urban land and land zoned for environmental conservation/management that does not require development consent.

56. 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 E2 Commercial core zone.

57. It is proposed to remove 1 trees the removal of these trees is unavoidable due to building envelope and basement excavation.

58. The tree removal has been assessed by Council's Landscape Officer who raises no objection.

Chapter 6 Water Catchments

59. Chapter 6 of the SEPP relating to Water Catchments applies to the site.
60. 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

61. The following chapters are relevant to the proposal:

Chapter 2 Infrastructure

62. 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.

Clause 2.48 Determination of development applications—other development

63. The application was referred to Ausgrid pursuant to clause 2.48 of the SEPP. No objection was received from Ausgrid.

Clause 2.99 - Excavation in, above, below or adjacent to rail corridors

64. This clause requires development that involves the penetration of ground to a depth of at least 2m below ground level (existing) and above a rail corridor, the consent authority must give written notice of the application to the rail authority for the rail corridor to assess its impact.
65. In deciding whether to provide concurrence, the rail authority must take into account:
- (a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on—
 - (i) the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and
 - (ii) the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and
 - (b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects
66. At the time of preparing this report concurrence has not been provided, however a request for additional information was provided on 27 February 2024.
67. This matter is of determinative weight.

Clause 2.119 - Development with frontage to classified road

68. 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 Pacific Highway which is a classified road, and vehicular access will be via Atchison Street.

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

69. The proposed development is located adjacent to a busy road being Pacific Highway. An acoustic assessment has been provided with the application. It recommends appropriate glazing treatment and mechanical ventilation to be provided for units on all facades to ensure compliance with relevant internal noise criteria and ventilation requirements.

2.121 Excavation in or immediately adjacent to corridors

70. This clause requires development that involves the penetration of ground to a depth of at least 3m below ground level (existing) on land adjacent to the Pacific Highway, the consent authority must give written notice of the application to the TfNSW to assess its impact.

71. The application was referred to Transport for NSW who have provided their concurrence subject to requirements and conditions as detailed within their letter.

Clause 2.122 - Traffic-generating development

72. 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.

73. 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 (Sustainable Buildings) 2022

74. A compliant BASIX certificate has been submitted with the application.

State Environmental Planning Policy (Planning Systems) 2021

75. 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.

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

State Environmental Planning Policy (Housing) 2021

77. State Environmental Planning Policy (Housing) commenced on 26 November 2021 under the affordable housing reforms. The SEPP has been amended since lodgement of this application and general savings provisions apply to Chapter 2 under Schedule 7A. New Chapter 4 also applies which is not subject to savings provisions, as discussed below.

Chapter 4 – Design of Residential Apartment Development

78. Chapter 4 of the Housing SEPP (previously State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development (SEPP 65)) now applies to all **pending** development applications, even those lodged before 14 December 2023 (i.e. the subject application). On 14 December 2023 the SEPP 65 was repealed, and a new Chapter 4 was inserted into the Housing SEPP, titled 'Design of residential apartment development'. This new chapter contains the substance of the former SEPP 65, with some changes (previously applicable under Chapter 2, Division 5, Clause 41).

79. However, under the initial arrangements put in place:

- The new Chapter 4 ('Design of residential apartment development') of the Housing SEPP did not apply to development applications that had been formally 'lodged' on the NSW Planning Portal before 14 December 2023 – ie. the subject application.
- There were no express savings or transitional provisions preserving the operation of SEPP 65 (for existing development applications) beyond its repeal on 14 December 2023.

80. On 15 March 2024 the NSW Government published the State Environmental Planning Policy Amendment (Housing) 2024. This document revised the transitional provision set out in section 8(1) of Schedule 7A of the Housing SEPP. A new provision applies the new Chapter 4 ('Design of residential apartment development') of the Housing SEPP to any development application (or modification application), including those lodged before 14 December 2023 (i.e. the subject application – lodged 20 June 2023). This provision is section 8(2A) of Schedule 7A of the Housing SEPP.

81. Of note:

- The relevant design quality principles are now in Schedule 9 of the Housing SEPP.
- The provision (formerly Clause 6A of SEPP 65) overriding some aspects of development control plans is now section 149 of the Housing SEPP.

82. New Clause 147 is provided below, pending development applications now benefit from a new provision in the Housing SEPP that expressly says that a consent authority is not obliged to require compliance with design criteria specified in the ADG (Section 147(3)).

147 Determination of development applications and modification applications for residential apartment development

- (1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—*
 - (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
 - (b) the Apartment Design Guide,*
 - (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.*
- (2) The 14-day period referred to in subsection (1)(c) does not increase or otherwise affect the period in which a development application or modification application must be determined by the consent authority.*
- (3) To avoid doubt, subsection (1)(b) does not require a consent authority to require compliance with design criteria specified in the Apartment Design Guide.*
- (4) Subsection (1)(c) does not apply to State significant development.*

83. Under this new Clause, it is apparent that the design criteria, including many numerical provisions, are not 'requirements'. They are merely one way of achieving the relevant objectives of the ADG. This is affirmed by NSW LEC matter of Construction Development Management Services Pty Ltd v City of Sydney [2023] NSWLEC 1620, whereby Commissioner Horton finds in relation to the design criteria of the ADG at [52] that "the criteria is not, of itself, a development standard but one means of achieving the objective at 4A-1 of the ADG."

84. The application has been reviewed having regard to the criterion and design principles as set out in the ADG.

Design Excellence Panel

85. The application was referred to the Design Excellence Panel (DEP) for comment on 12 December 2024. The Panel provided qualified support for the proposal, subject to issues identified in the report, being addressed. Those comments are reproduced later in the report within the external referral section.

Design Principles for Residential Apartment Development (SEPP Housing)

86. The proposal has been considered against the principals of SEPP housing as follows:

87. Principle 1 - Context and neighbourhood character: The proposed development does not respect the existing context, comprising the spatial; and visual qualities. Further the development fails to conform to the built form controls.

88. Principle 2 - Built form and scale: The bulk and scale of the proposed development is not in keeping with the desired future character of the locality. The eastern setback variation to the built form controls will have additional adverse impacts on the surrounding locality.

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

90. Principal 4 - Sustainability: A BASIX Certificate has been submitted.

91. Principle 5 - Landscape: The submitted landscape plan is considered to provide a reasonable response with regards to landscaping across the site.

92. Principle 6 - Amenity: The development provides a reasonable level of amenity for new apartments, however results in an unreasonable level of amenity for surrounding and potentially future apartments, in the context of the planning controls.

93. Principle 7 - Safety: The proposed development raises no known issue regarding safety and security.

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

95. Principle 9: - Aesthetics: The Design Excellence Panel generally supported the proposal in term of the aesthetics.

96. Apartment Design Guide (ADG)

The applicable design guidelines for the proposed development are contained within the ADG, which is based on the 9 design quality principles set out in Chapter 4 of the Housing SEPP. The ADG illustrates good practice, and these guidelines are largely replicated in Council's DCP. A table with a compliance checklist of the proposal against the ADG design criteria is provided below:

Clause	Standard	Proposal	Complies
2F Building separation	Up to 12m (4 storeys)	The residential tower is setback 24m from the adjoining development to the north, west and south. The proposed eastern setback is 6m above	No
	Habitable/habitable - 12m		
	Habitable/ Non-habitable – 9m Non-habitable/Non-habitable -6m		
	Up to 25m (5-8 storeys)		

	<p>Habitable/habitable - 18m Habitable/ Non-habitable – 12m Non-habitable/Non-habitable -9m</p> <p>Over 25m (9+ storeys) Habitable/habitable - 24m Habitable/ Non-habitable – 18m Non-habitable/Non-habitable -12m</p>	<p>podium for the full height of the tower element, this fails to ensure that new development is scaled to support the desired future character with appropriate massing and spaces between buildings</p> <p>Refer to 3F further below.</p>	
3D Communal open space	<p>1. Communal open space has a minimum area equal to 25% of the site.</p>	<p>The communal Space has been located at mid residential level (level 24) within an area of 472.19m² (44% of the site area). It is composed of a mix of internal and external room providing high level amenities to the residents (swimming pool, spa and a multipurpose room).</p>	Yes
	<p>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)</p>	<p>Direct sunlight is provided to 10% of the main communal open space on the principle communal open space on between 9am and 3pm on 21 June (mid-winter).</p> <p>The level of solar access to the is acceptable given the constraint of the site, and that the proposal responds to the site by providing a communal space that incorporate semi open and enclosed communal areas and facilities e.g. swimming pool, which provides equally high quality amenity for future residents.</p>	Yes - Variation acceptable
3E – Deep Soil zones	<p>1. Deep soil zones are to meet the following minimum requirements:</p>	<p>A deep soil zone is not required in the E2 Commercial Centre zone.</p>	N/A

	<p>Where the site has an area of between >1500sqm – 6m min dimension</p> <p>Minimum deep soil area of 7% (207.9sqm)</p>		
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>	<p>The residential tower is generally setback 24m from the adjoining development to the north, west and south, compliant with the ADG.</p> <p>The proposed eastern setback is 6m</p> <p>The eastern setback fails to provide adequate building separation distances that are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p>	No

<p>5 ADG BUILDING SEPARATION - L07 1:750</p>		
<p>6 ADG BUILDING SEPARATION - L25 1:750</p>		
<p>3G Pedestrian Access and entries</p>	<p>- Building entries and pedestrian access connects to and addresses the public domain</p> <p>Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge</p>	<p>Separate lobby entries have been provided to the residential and commercial components of the development.</p> <p>Yes</p>

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 Sergeants Lane.	Yes
3J-Bicycle and carparking	<p>For development in the following locations:</p> <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; or • On land zoned and sites within 400m of land zoned B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre. <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>	Refer to DCP compliance table below.	No
4A- Solar and daylight access	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	72.6% (138) of apartments receive a minimum of 2 hours direct sunlight between 9am and 3pm in mid-winter which exceeds the minimum 70% as required by the ADG.	Yes – Variation

	A maximum of 15% of apartments in a building receive no direct sunlight between 9am and 3pm in midwinter	18% (35) of apartments receive no direct sunlight in mid winter. This non-compliance is due to the south orientation of the site and the small site area, which orientate toward the distant scenic harbour views and thus constitutes a valid reason that meets the intent of the objective in the ADG.	
4B-3 Natural Ventilation	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	60% of apartments are naturally cross ventilated in the first 9 storeys of the building	Yes
4C-Ceiling Heights	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable rooms = 2.4m	Floor to floor levels for residential levels are a minimum of 3.2m, which will allow compliance with finished ceiling heights.	Yes
	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	Apartments are required to have the following minimum internal areas: Studio = 35sqm 1 bedroom = 50sqm 2 bedroom = 70sqm 3 bedroom = 90sqm The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each.	All apartments exceed the minimum internal areas.	Yes
	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.	Yes
4D-2 Apartment size and layout	Habitable room depths are limited to a maximum of 2.5 x the ceiling height In open plan layouts (where the living, dining and kitchen	All apartments are generally provided with appropriate room depths and are provided with	Yes

	are combined) the maximum habitable room depth is 8m from a window	appropriate access to natural light.	
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>	Yes
	<p>Living rooms or combined living/dining rooms have a minimum width of:</p> <p>-3.6m for studio and 1 bedroom</p> <p>- 4m for 2 and 3 bedroom apartments</p>	All living rooms meet the minimum requirements.	Yes
4E- Private Open space and balconies	<p>All apartments are required to have primary balconies as follows:</p> <p>-1 bedroom = 8sqm/2m depth</p> <p>-2 bedroom = 10sqm/2m depth</p> <p>-3+ bedroom = 12sqm/2.4m</p> <p>The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p>	All apartments have designed to exceed the minimum private open space requirements size for each dwelling type.	Yes
4F- Common circulation areas	The maximum number of apartments off a circulation core on a single level is eight	No more than eight (8) units are provided to any one core on a single level.	Yes
	For Buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	The total number of units is 190, which results in an average of 47.5 apartments sharing a single lift. The increase from the recommended maximum number while significant at nearly 20%, is considered acceptable.	Yes - Merit
4G- Storage	In addition to storage in kitchens, bathrooms and	Each unit is provided with sufficient storage space with at least 50%	Yes

	<p>bedrooms, the following storage is provided: 1 bedroom = 6m³ 2 bedroom – 8m³ 3 bedroom – 10m³</p> <p>At least 50% of storage is to be located within the apartment.</p>	located in individual units. The remaining is located in a dedicated secure location within the residential areas of the basement.	
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>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> <p>In addition, the building must comply with the specific requirements of the NCC – BCA.</p>	Yes
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 	<p>Site layout and floor plan design seeks to minimise acoustic disruption on the enjoyment of the future residents/users of the development.</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

		generated by traffic and industry		
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>A variety of apartment types is provided.</p> <p>The proposed apartment mix is appropriate, taking into consideration the distance to public transport, employment and education centres, as well as the current market demands and projected future demographic trends within the area.</p>	Yes
4M - Facades		<p>Facades should be well resolved with an appropriate scale and proportion to the streetscape and human scale.</p>	<p>The façade treatments is consistent with the desired streetscape character and the context of the area.</p>	Yes
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>	<p>Roof treatments have been integrated with the building design and materials to complement the architectural aesthetic.</p> <p>Service elements have been integrated within the building design.</p>	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.</p> <p>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.</p>	Yes
4P- Planting on Structures		<p>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</p>	<p>The proposed development includes planting on the podium level and provides appropriate soil volume to facilitate plant growth.</p>	Yes
4Q Universal Design	–	<p>Universal design – design of apartments allow for flexible housing, adaptable designs,</p>	<p>Satisfactory.</p>	Complies

	accommodate a range of lifestyle needs		
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 Council's 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)

97. The subject development site is zoned E2 Commercial Centre under the NSLEP 2013 as shown in **figure 7** below:

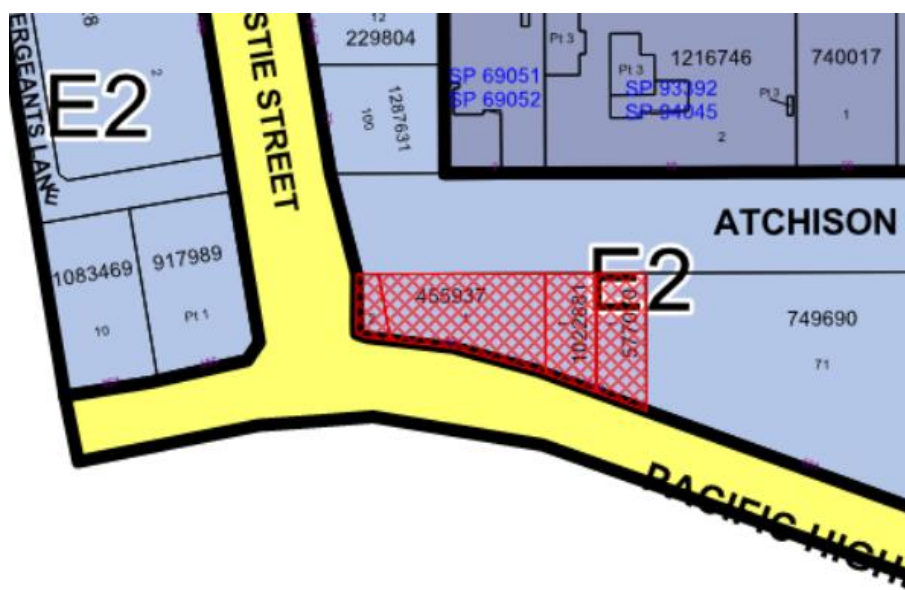


Figure 4: Land Zoning map with subject site hatched in red showing E2 zone.

98. The proposed mixed-use development comprising commercial premises (including retail and office premises) and residential apartments (defined as shop top housing), and a community facility is permitted with development consent within the E2 Commercial Centre zone as Schedule 1, clause 47 of North Sydney LEP specifically applies to the site. This provision acts to permit Shop top housing on the site as an additional permitted use.

99. Objectives of the E2 Zone:

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *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 the adverse effects of development on residents and occupiers of existing and new development.*

The proposal fails to provide residential development that is consistent with the Council's strategic planning for residential development in the area and fails to minimise adverse effects of development on residents and occupiers of existing and new development.

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

Clause	Standard	Proposal	Complies
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2.2 Zoning of Land to which Plan applies	E2 Commercial Core Schedule 1, clause 47	The proposed application is for a shop top housing and a community centre	Yes
2.3 Zone objectives and Land use table	Objectives of zone to be satisfied	The refer above	No
2.7 Demolition	Demolition requires development consent.	Consent for demolition of existing structures is sought.	Yes
4.3 Height of Buildings	Maximum permitted height as per height of building map: 180m	The proposed building has a maximum height of 180m	Yes
4.4 Floor Space Ratio	Maximum 25.4:1	The proposal provides a maximum GFA of 26,962.39m ² . This equates to a maximum FSR of 24.4:1	Yes
4.4A Non – Residential Floor Space Ratio	Minimum required 4.7:1 (4,991.4m ²)	The proposal provides a minimum non-residential GFA of 4,942.01 m ² . A cl4.6 submission has been provided.	No
4.6 Exception to Development Standards	A Clause 4.6 variation request has been submitted in relation to the non-residential floor space.		

Clause 4.6 Exemptions to development standards

101. Clause 4.4A of the North Sydney Local Environmental Plan 2013 relates to the minimum non-residential floor space for the site. The relevant map identifies the subject site having a minimum non-residential floor space ratio of 4.7:1.
102. The proposed development seeks a variation to the development standard relating to non-residential floor space ratio (Clause 4.4A). The proposal seeks to reduce the non-residential floor space from 4,991.4m² to 4,942.01m². This is equates to a 49.39m² GFA reduction and 0.5:1 below the minimum non-residential floor space required for the site. The percentage reduction in non-residential floor space is 0.99%.
103. 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.
104. 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”*.
105. 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”

106. To support the non-compliance, the applicant has provided a request for a variation to Clause 4.4A 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?

107. The Non-residential floor space ratios control under Clause 4.4A of the North Sydney Local Environment Plan 2013 is a development standard.

What are the underlying objectives of the development standard?

108. The objectives of the Non-residential development standard under Clause 4.4A of NSLEP 2013 are:

(a) to provide for development with continuous and active street frontages on certain land in Zone E1 Local Centre, Zone MU1 Mixed Use and Zone SP2 Infrastructure,

(b) to encourage an appropriate mix of residential and non-residential uses,

(c) to provide a level of flexibility in the mix of land uses to cater for market demands,

(d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.

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

109. 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.

110. 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.”

111. 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)."

112. 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."*

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

114. Applicants comment:

The relevant objectives of this development standard that apply to the proposed development are:

- (a) *to provide for development with continuous and active street frontages on certain land in Zone E1 Local Centre, Zone MU1 Mixed Use and Zone SP2 Infrastructure,*
- (b) *to encourage an appropriate mix of residential and non-residential uses,*
- (c) *to provide a level of flexibility in the mix of land uses to cater for market demands,*
- (d) *to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.*

The proposal complies with each of the listed objectives as outlined below:

a) *The proposed reduction in non-residential GFA does not alter the use of the lower ground floor as a retail/café premises. Further, it maintains the optimised extent of site's active frontages towards Atchison Street, Christie Street and Pacific Highway.*

b) *The proposed reduction in non-residential FSR from 4.7:1 to 4.65:1 (reduction in GFA from 4,991.4m² to 4,942.01m²), equates to a small 49.39m² reduction. This is 0.5:1 FSR and 0.99% reduction and is considered to be extremely minor with inconsequential effect.*

The slight reduction does not impact the site's ability to contribute to the economic function of the St Leonards Town Centre. It ensures that an appropriate mix of residential and non-residential uses can still be provided at the site.

c) *The proposed reduction in non-residential GFA does not undermine the site's ability to provide a mix of land-uses. As originally proposed, the development will*

provide space for a retail/café premises on the lower ground floor, Community Arts Centre on the upper ground to Level 2, commercial premises on Level 3 to Level 6 and residential accommodation on Level 7 to Level 50. This mix of land uses ensures the proposed development maintains an appropriate level of land use flexibility to cater for market demands in the St Leonards Town Centre. The mix of uses is comparably greater than all other recent tower developments in St Leonards.

d) As outlined in (b) above, the shortfall in non residential floorspace is considered to be minimal and will not undermine the intent of the requirement to provide a mix of employment uses.

Furthermore, the non-residential FSR requirement for the site is one of the highest non-residential FSR requirements in the North Sydney LGA and St Leonards town centre. The surrounding sites are required to provide a minimum non-residential FSR with comparable mixed use residential development sites ranging between of 3.1:1 to 4.25:1, whereas lower density sites have non-residential FSRs in the order of 0.5:1 to 1:1.

The reduction in non-residential FSR still maintains the integrity of the E2 commercial centre zoning of the site, whilst maximising its ability to provide a range of employment opportunities at the site including retail premises, Community Arts centre and commercial premises.

The proposed reduction also ensures the upper ground level of the Community Arts Centre has a ceiling height of 5.6m for the majority of the level. This will improve the amenity and useability of the Art Gallery Space.

115. Officers comment:

The non-residential component satisfies the objectives for the reasons set out below:

Objective a:

- The development delivers active uses along all principal street frontages—Pacific Highway, Atchison Street and Christie Street—through the inclusion of:
- Ground-floor retail and café premises, and
- A Community Arts Centre that spans multiple podium levels, activating the street at key pedestrian interfaces.
- Despite the minor shortfall in non-residential floor space (49.39m² or 0.99%), the built form maintains a highly legible and engaged frontage, fulfilling the objective of street-level activation and public interface.

Objective b:

- The development provides a well-balanced land use mix that exceeds the diversity of most recent tower developments in St Leonards, including:
- Retail at lower ground;
- Community facility (Art Centre) from upper ground to Level 2;
- Commercial office on Levels 3 to 6; and
- Residential apartments on Levels 7 to 50.
- This mix reflects the evolving needs of a high-density strategic centre and ensures the ongoing provision of employment-generating uses within the E2 zone.

Objective c:

- The proposed variation responds to site-specific design constraints and market flexibility by:

- Allowing reconfiguration of the mezzanine layout to achieve a 5.6-metre ceiling height in the Art Gallery (as requested by Council),
- Enhancing the amenity and future adaptability of this key community space, and
- Avoiding the creation of low-ceilinged, inefficient commercial floor space that would be impractical for tenants and users.
- The small reduction in GFA (from 4,991.4m² to 4,942.01m²) ensures the design remains market-responsive and adaptable while preserving planning intent.

Objective d:

- Although the proposed non-residential FSR is slightly below the control (4.65:1 vs 4.7:1), it remains one of the highest non-residential FSRs applied in the St Leonards Centre. The shortfall:
- Does not undermine the site's employment contribution;
- Maintains commercial, cultural, and retail uses consistent with the zone's role in the hierarchy of commercial centres;
- Enables the delivery of a high-quality public benefit in the form of a Council-supported Art Gallery, which would otherwise be compromised by a fully compliant floorplate.

Conclusion

The minor variation sought to the non-residential FSR control does not diminish the proposal's ability to meet the strategic objectives of Clause 4.4A. Accordingly, the development achieves all relevant objectives of the standard, despite the numerical non-compliance.

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

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

117. Applicants comment:

There are sufficient environmental planning grounds to justify contravening the non-residential FSR development standard as the proposed FSR reduction will:

- *Achieve equal or better amenity outcomes: The site is highly constrained due to its irregular shape and DCP envelope constraints. If the non-residential FSR standard was required to be met, it would require the upper ground mezzanine floor plate to extend further west resulting in approximately 50% of Council's Art Gallery Space achieving only approximately 2.4m clear ceiling height. This would result in a lower quality space and less useability of this space as an Art Gallery.*

The non-residential FSR reduction allows the western edge of the upper ground mezzanine level to move east to allow the majority of this space to achieve a 5.6m ceiling height. As agreed with Council's Art and Community Centre consultant this would create a higher quality space for Council's Art Gallery below and improve the useability of this space. It's noted that the layout of this space has been supported in principal by Council's Art and Community Centre consultant following recent ongoing meetings.

- *Promote good design and amenity: The proposed non-residential FSR reduction has helped to provide a well-articulated podium mass with visibility to all non-residential spaces such as the commercial levels, retail spaces and the Art and Community spaces.*

The reduction enables the majority of the Art Gallery space to have a ceiling height of 5.6m which was specifically requested by Council. This ceiling height will allow for greater amenity and useability of the Art Gallery Space.

Overall, the proposed non-residential FSR reduction is a result of the site's irregular shape, DCP envelope constraints and Council's request to provide an Art Gallery space that has a ceiling height of 5.6m for the majority of the space. This ceiling height will improve the amenity and useability of this space. Further, there is an absence of environmental harm resulting from the contravention of the development standard and positive planning benefits arising from the proposed development. It has been demonstrated:

- *The development is consistent with the E2 Commercial Centre zone*
- *The proposed development achieves the objectives listed in Clause 4.4A.*
- *The proposed reduction in non-residential GFA will improve the amenity for users of the site.*

118. Officers comment:

There are planning grounds to support the minor non-compliance with the non-residential floor space ratio (FSR) standard, primarily due to site-specific constraints and the opportunity to achieve enhanced amenity and functionality.

The site's narrow and irregular shape, along with DCP massing requirements, make full compliance with the non-residential FSR impractical without compromising internal amenity. A compliant scheme would lower the ceiling height of the Community Art Centre to approximately 2.4 metres across half the space, diminishing its functionality.

The proposed FSR reduction enables a ceiling height of 5.6 metres—improving the quality and flexibility of this space, consistent with the VPA.

The variation facilitates a more refined and legible podium form, with clear articulation between the commercial, retail, and community uses. This contributes to improved streetscape engagement and internal amenity for occupants.

The Community Art Centre provides meaningful public benefit. The proposal remains consistent with the objectives of Clause 4.4A and the strategic vision for the E2 Commercial Centre zone.

The minor reduction in non-residential GFA (less than 1%) does not result in any environmental harm or planning detriment and instead enables a more responsive and high-quality outcome, therefore supported.

North Sydney Development Control Plan 2013 (NSDCP 2013)

119. 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:

DEVELOPMENT CONTROL PLAN 2013 – Part B Section 2- Commercial and Mixed Use Development		
	<i>complies</i>	<i>Comments</i>
2.2 Function		
2.2.1 Diversity of Activities	Yes	The ground floor will feature retail spaces designed to enhance street-level activity and contribute positively to the site's social and economic vitality.
2.2.2 Maximise Use of Public Transport	Yes	Non-residential parking will be exclusively available in the basement. Additionally, showers and end-of-trip facilities will be provided for cyclists and pedestrians
2.2.3 Mixed Residential Population Size of units	Yes	<p>The proposal provides a total of 190 apartments. These include a mix of residential accommodation sizes which respond to the market demand, as follows:</p> <p>One-bedroom – 36 apartments (19%) Two-bedroom – 104 apartments (55%) Three-bedroom – 50 apartments (26%)</p> <p>The proposal includes 70 adaptable units, which exceeds the requirement for a minimum of 20% of apartments to comprise adaptable housing.</p>
2.3 Environmental Criteria		
2.3.2 Noise	Yes	An acoustic report was submitted. Addressing construction noise and vibration and operational noise, recommendations are made to address compliance with EPA and DCP criteria.
2.3.3 Wind Speed (no greater than 13m/s at footpaths and outdoor spaces)	Yes	A Wind Impact Report has been prepared by WindTech. The results of the wind tunnel study indicate that wind conditions for the majority of trafficable outdoor locations within and around the development will be suitable for their intended uses.
2.3.4 Reflectivity	Yes	The façade design has been informed by a considered balance of solid and void elements, and incorporates non-reflective materials to minimise potential impacts associated with reflectivity, meeting the objectives of the DCP.
2.3.6 Awnings	Yes	A continuous horizontal awning has been installed at ground level along all street frontages to offer weather protection.
2.3.7 Solar Access	No	Several concerns were raised from No.10 Atchison Street in relation to solar access. However as this site is located the south there will be no overshadowing to this building.

		<p>Based on a detailed review of the Urbis Setback Response Letter for DA 297/23 at 621 Pacific Highway, St Leonards, the non-compliant 6-metre eastern tower setback, as opposed to the required 12 metres under DCP 3.1.3.5, results in additional overshadowing of existing and future development that is not supported for the following reasons:</p> <p>Assessment of Additional Overshadowing Impact from Non-Compliant Setback</p> <p>1. Overshadowing of Adjacent Residential Development</p> <p>The proposed non-compliant setback introduces additional overshadowing to residential developments to the south—particularly 524–542 Pacific Highway—during the critical solar access period of 9am–3pm mid-winter. Key impacts include:</p> <ul style="list-style-type: none"> • 10am–11am: Living rooms and private open spaces (PoS) of corner units experience additional overshadowing from the non-compliant building mass. • 12pm–2pm: Eastern-facing units, including bedrooms and PoS, are further overshadowed, reducing potential for solar access through direct or oblique angles. • Overall Result: Solar access for the development drops from 10% compliance under the compliant scheme to just 1% compliance under the proposed scheme—a 9% decrease directly attributable to the reduced eastern setback. <p>Although the proponent suggests the shadow falls on façade elements unlikely to provide habitable outlook, this assumption lacks adequate verification and relies on floorplate interpretations that may not reflect lived amenity. These reductions fail the Apartment Design Guide (ADG) criteria for solar access and contradict the objectives of the DCP.</p> <p>As a result of the non-compliance eastern side setback the proposed variation will have additional impacts on solar access, therefore not supported.</p>
2.3.8 Views	No	<p>The proposed development seeks a variation to the North Sydney Development Control Plan (DCP) by reducing the required 12-metre above podium eastern setback to 6 metres. This non-compliance introduces demonstrable visual impacts that undermine residential amenity for neighbouring occupants.</p>

		<p>A detailed view impact assessment has been provided in response to community objections, particularly from 10 Atchison Street, a residential tower located immediately west of the site. The assessment acknowledges that:</p> <ul style="list-style-type: none"> • Views towards the southeast, previously comprising district views with potential glimpses of water and CBD skyline, are already constrained by existing buildings such as 500–520 Pacific Highway and developments permitted under the compliant planning envelope. • The non-compliant setback further encroaches into the remaining narrow view corridor, effectively eliminating what limited outlook remains from lower and mid-level units. • The proponent argues that the lost views are neither expansive nor iconic; however, planning principles recognise that loss of any view—particularly where it is the last remaining outlook—can have a material impact on residential amenity, especially in a dense urban context. <p>While some sky view and long-range visibility may still be achieved at higher levels, this does not mitigate the cumulative loss experienced at lower levels, which rely more heavily on any remaining oblique or narrow views for amenity.</p> <p>The eastern setback non-compliance also contributes to unreasonable cumulative view loss, contrary to the planning principles of equitable urban design and amenity preservation.</p> <p>The application not be supported in its current form. The proposal should be amended to comply with the 12-metre eastern tower setback to retain what limited outlook remains for adjoining properties and to ensure consistency with the established built form controls and amenity expectations of the locality.</p> <p>Refer below.</p>
<p>The documents titled “DA297/23 617-621 PACIFIC HIGHWAY, ST LEONARDS – REQUEST FOR ADDITIONAL INFORMATION” and “Appendix 3 – View Impact Assessment” (attached) provides a comprehensive report prepared by Cardno for the proposed development at 100 Christie Street, St Leonards. The assessment evaluates the visual impact of the proposed mixed-use development on its surroundings, focusing on how it affects regional and local views, as well as the visual character of the area. An analysis is provided below:</p>		

Introduction and Methodology

This assessment applies the planning principles established in Tenacity Consulting v Warringah Council [2004] NSWLEC 140, which require view loss to be evaluated in a four-step process:

1. Identify the affected views and from where they are obtained;
2. Assess the nature of those views;
3. Quantify the extent of view loss;
4. Determine whether the view loss is reasonable.

The purpose of this assessment is to determine the extent, significance, and reasonableness of view loss resulting from the proposal in comparison to a building form that complies with North Sydney DCP 2013.

2. Identification of Affected Properties and Viewpoints

The most significantly impacted properties are:

- 10 Atchison Street: A residential apartment building to the immediate west of the site, containing multiple view-sensitive apartments.
- 2–4 Atchison Street: Another mid-rise residential development further west with oblique easterly views between existing towers.
- Other elevated buildings in Christie Street or Chandos Street may experience reduced outlook, but impacts are less direct.

Key viewpoints assessed in the visual material include:

- Viewpoint A & A2: Facing southeast toward the Harbour and CBD (from 10 Atchison Street).
- Viewpoint B & B2: Facing south/southeast from upper and mid-levels (towards the skyline).
- Viewpoint C: Facing east from a westerly position, examining inter-building view corridors.

3. Nature and Value of Views

The affected views include:

- Oblique and framed views of the district, skyline, and possible water glimpses between built forms.
- Sky exposure, a critical aspect of amenity in high-density contexts, particularly for apartments without direct solar access.
- Views from living room windows, balconies, and communal areas, which under *Tenacity* are considered more sensitive than views from secondary spaces such as bedrooms.

While the views are not of iconic landmarks (e.g., Sydney Harbour Bridge), they include valued high-level district and skyline outlooks and water, which are highly sought-after in dense urban centres.

4. Extent of View Loss

The extent of view loss is assessed across three building levels (low, mid, and high):

Low Rise (Level 9)

- View corridors to the southeast are substantially narrowed.
- The proposed building form projects further eastward than the DCP envelope, resulting in the loss of filtered sky and skyline glimpses.
- For some units, this change removes the last remaining element of a distant view, resulting in total view loss in that direction.

Mid Rise (Level 18)

- Visual comparison shows the proposed form significantly intrudes into the southeastern view corridor compared to a compliant envelope.
- The combined bulk of the subject tower and surrounding towers (e.g., 601 Pacific Highway) leads to a sense of visual enclosure.
- View loss at this level is high, reducing the perceived openness and visual amenity of apartments.

High Rise (Level 27)

- While sky and some long-range outlooks are retained, the proposed building's increased horizontal mass results in a narrowing of panoramic field and further reduction in angular views.
- View loss is moderate but cumulative, particularly for dwellings where this forms one of few directional view corridors.

5. Reasonableness of the View Loss

Under the *Tenacity* test, reasonableness depends on several factors:

a) Compliance with planning controls

The view loss results directly from a breach of DCP setback controls—specifically the 12m minimum eastern tower setback, of which only 6m is provided. A DCP-compliant scheme would preserve more of the southeast view corridor, as shown in the comparative diagrams.

b) View sharing principles

In a high-density precinct, some view loss is expected. However, the proposal offers no significant offsetting benefit in terms of public view creation or enhanced visual permeability. The reduced setback compromises equitable view sharing, especially when assessed against the narrowness of remaining view corridors.

c) Planning expectations and context

St Leonards is a designated strategic centre; intensification is supported. However, this does not justify avoidable amenity loss, particularly where planning controls already accommodate significant density through compliant built form.

d) Value and location of views

The affected views are from living rooms and balconies, facing open sky, district skyline, and possibly water. These are high-value in residential assessment. The loss of these views is qualitatively significant, particularly in lower levels with no compensating view.

6. Conclusion

The proposed development at 617–621 Pacific Highway results in material view loss that exceeds what would reasonably be anticipated to be caused by a compliant development. The extent of loss is:

- High for low- and mid-level apartments in adjacent buildings, where the remaining sliver of outlook is eliminated.
- Moderate for higher-level dwellings, where cumulative visual enclosure occurs.
- Avoidable, as a compliant DCP scheme demonstrates the ability to retain these views to a greater extent.

It is recommended that the proposal be amended to comply with the 12m eastern tower setback, or that significant compensatory architectural strategies be adopted to reduce bulk and restore some visual permeability.

The current extent of view loss, particularly for residents of 10 Atchison Street, does not represent a reasonable planning outcome and fails to adequately share available views, as per *Tenacity Consulting* and established view sharing principles.

It is noted that due to the relative age of the application no assessment has been provided as to impact of shadowing and view loss on the recently approved mixed use building at 524-542 Pacific Highway.

2.3.9 Acoustic Privacy	Yes	The Acoustic Report outlines a series of recommended treatments designed to ensure the proposed residential development meets the applicable acoustic insulation standards. Compliance with the DCP acoustic requirements will be achieved, subject to the implementation of these recommended measures.
2.3.11 Visual Privacy	Yes	The proposal has been assessed against the provision of the ADG (Refer to SEPP Housing considerations).
2.4 Quality built form		
2.4.1 Context	No	The proposal fails to ensure that the site layout and building design responds to the existing characteristics, opportunities and constraints of the site and within its wider context.
2.4.5 Building Design	Yes	Floor to ceiling heights are acceptable.
2.4.7 Junction and Termination of Streets	Yes	The development has been designed accordingly.
2.4.8 Balconies Apartments	Yes	The proposed balconies for the residential apartments are located within the building envelope and do not project over the public domain.
2.4.10 Streetscape	Yes	The ground level of the proposed development is designed to respond to the existing site context and align with the adjacent footpath's elevation, taking into account the level change.

2.4.11 Entrances and Exits	Yes	The primary entrance to the residential lobby is located on Atchison Street and enjoys clear visibility from the public domain. The commercial and retail entry is distinctly separated from the residential access point and is also positioned along Atchison Street, in closer proximity to Christie Street. Additional secondary access points for non-residential uses are provided from the Pacific Highway frontage. All entrances are clearly delineated and remain unobstructed by landscaping or built elements, ensuring ease of identification and access.
2.4.12 Nighttime appearance	Yes	Designed accordingly.
2.4.13 Public Spaces and facilities	Yes	The proposal incorporates a community centre.
2.5 Quality Urban Environment		
2.5.1 Accessibility	Yes	<p>An Access Report has been submitted and concludes the proposal is acceptable.</p> <p>On this basis, standard conditions of consent can be imposed to require compliance with accessibility.</p>
2.5.2 Safety and Security	Yes	No known issues of safety and security are considered to arise from the proposed development.
2.5.3 Illumination	Yes	No illumination of the building is proposed.
2.5.4 High Quality Residential Accommodation	Yes	<p>The proposed residential apartments have been designed to meet or exceed the minimum internal floor area requirements for each apartment type, as specified under the Apartment Design Guide (ADG). Each apartment will include private open space that supports residential amenity while maintaining appropriate levels of visual privacy.</p> <p>The design ensures that no more than six dwellings are accessed from a single common lobby on any floor, which is comfortably below the ADG's recommended maximum. Additionally, 60% of the apartments up to the ninth storey achieve effective cross-ventilation.</p> <p>The development also complies with the maximum allowable depth of habitable rooms from a window. For instance, the maximum depth of a habitable room in a south-facing, single-aspect apartment is 6.6 metres.</p> <p>Furthermore, apartment widths exceed the minimum ADG standards. As an example, the smallest south-facing single-aspect apartment in the proposal has a width of 8.9 metres, demonstrating a generous internal layout and enhanced access to natural light and ventilation.</p>

2.5.6 Private Open Space	Yes	All apartments have designed to meet or exceed the minimum private open space requirements size and are at least 2m in depth or 2.4 metres for 3+ bedroom apartments.
2.5.7 Vehicular Access	Yes	Vehicular access is provided from Atchison Street. The entry allows all vehicles to enter and exit the site in a forward direction via a right-in and right-out arrangement.
2.5.8 Car Parking	No	Refer to Council's Traffic Engineers referral response further below in this report.
2.5.9 Garbage Storage area within 2m of street or laneway boundary	No	The proposal fails to provide a temporary bin holding area which can accommodate 7 x 1100L bins (compacted waste) and 13 x 1100L recycling bins
2.5.10 Site Facilities	Yes	Designed accordingly.
2.6 Efficient Use of Resources		
2.6.1 Energy Efficiency	Yes	A valid BASIX Certificate has been submitted with the application.
2.6.2 Passive Solar Design	Yes	The building has been designed to maximise passive solar access to apartments.
2.6.4 Natural Ventilation	Yes	A total of 60% of units within the first 9 stories will be naturally cross ventilated. All residential dwellings will have direct access to fresh air.
2.6.7 Stormwater Management	Yes	Satisfactory.

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.

Section 3 .1 St Leonards Town Centre



Figure C-3.1-1: Locality Area Map

Figure 5: Locality Area Map for map for St Leonards Town Centre

DEVELOPMENT CONTROL PLAN 2013 – Part C Section 3 St Leonards / Crows Nest Planning Area		
Provision	Complies	Comments
3.1.2 Desired Future Character		
Diversity of activities, facilities, opportunities and services	Yes	Mixed use development will have commercial uses at ground level to activate the street.
Public spaces and facilities	Yes	Designed accordingly.
3.1.3 Desired Build Form		
3.1.3.2 Form, massing and scale	No	The proposal fails to provide a suitable eastern side setback at the upper levels to afford daylight and ventilation between buildings.
3.1.3.3 Setbacks	Yes	<p>The proposed development complies with the DCP street setbacks.</p> <p>Legend</p> <ul style="list-style-type: none"> 5m whole of building setback 3m whole of building setback 2.5m whole of building setback 2.1m whole of building setback 1.5m whole of building setback 1.2m whole of building setback 0m whole of building setback 0m whole of building setback except a 3m ground level setback for 1 storey 0m whole of building setback except a 3m ground level setback for 2 storey Heritage item Metro station and OSD
3.1.3.4 Podium Heights	Yes	The proposed development complies with the applicable 6-storey podium height control for the site. Owing to the natural topography, the podium

		presents as six storeys along the Christie Street frontage, and five storeys along the Pacific Highway frontage. This is considered acceptable.															
3.1.3.5 Above Podium Setbacks	No	<p>The proposed development has an above podium (tower) setback of:</p> <table border="1"> <thead> <tr> <th>above podium setback requirements</th><th>DCP control</th><th>Proposal</th></tr> </thead> <tbody> <tr> <td>Eastern setback</td><td>12m</td><td>6m</td></tr> <tr> <td>Northern setback to Atchison Street</td><td>2m</td><td>2m</td></tr> <tr> <td>Western Setback to Christie Street</td><td>6m</td><td>3m</td></tr> <tr> <td>southern Setback to Pacific Highway</td><td>0m</td><td>0m</td></tr> </tbody> </table> <p>The proposal does not comply with setback to Christie Street and eastern setback provision. Of concern is the eastern side setback.</p> <p>The proposal fails to meet the following objectives:</p> <p>O1 To protect daylight access to the street level to enable the successful growing of street trees.</p> <p>O2 To permit sky views from the street and neighbouring residential areas.</p> <p>O3 To ensure that built form achieves comfortable public domain conditions for pedestrians, with adequate daylight, appropriate scale, and mitigation of urban heat and wind effects of tower buildings.</p> <p>O5 To provide adequate privacy, access to light, air and outlook for the occupants of buildings, neighbouring properties and future buildings.</p> <p>O6 To ensure towers are sufficiently separated to be seen in the round and reduce the cumulative overshadowing impact of towers on neighbouring residential areas.</p> <p>O7 To ensure development does not prejudice the re-development of adjoining sites in the future.</p>	above podium setback requirements	DCP control	Proposal	Eastern setback	12m	6m	Northern setback to Atchison Street	2m	2m	Western Setback to Christie Street	6m	3m	southern Setback to Pacific Highway	0m	0m
above podium setback requirements	DCP control	Proposal															
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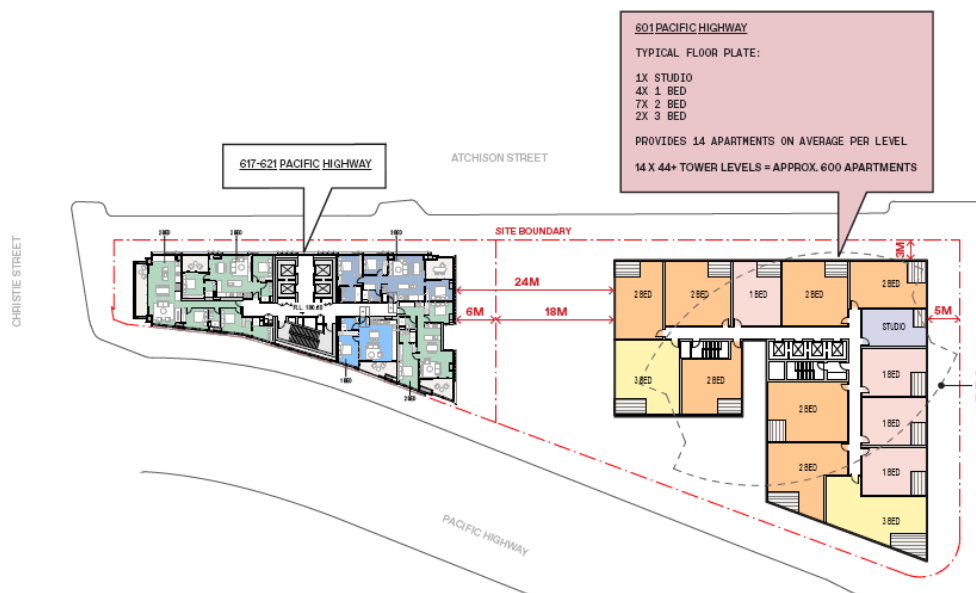
Figure C-3.1-5: Above Podium Setbacks Map

The eastern adjoining site (No. 601) submitted an expression of interest the Housing Delivery Authority proposing demolition of an existing commercial building and construction of a 50 storey shop top housing (No of dwellings (indicative): 600)

The HDA recommended to the Minister that this project be declared SSD under s4.36(3) of the EP&A Act.

The applicant submitted the following indicative floor plan for the adjoining site:

INDICATIVE FLOOR PLAN - 601 PACIFIC HIGHWAY



Whilst an indicative floor plan has been provided based on the very limited information provided in association with a future SSD, the adjoining site should not be burdened to provide a 18m setback to the benefit of the subject site. Additionally, the matter of the eastern setback was raised in the pre-applicant minutes.

The NSW Land and Environment Court has consistently held that developments should not achieve compliance at the expense of their neighbours. As stated in *Veloshin v Randwick City Council* [2007] NSWLEC 428:

“Development should respect the reasonable expectations of neighbours and not rely on the undeveloped nature of adjoining land to justify design shortcomings.”

Similarly, in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, the Court held that:

“A proposal that prejudices the development potential or reasonable amenity of an adjoining site is not consistent with orderly planning.”

Further, this contravenes the intent of the Environmental Planning and Assessment Act 1979 (NSW), specifically:

Section 1.3 (c):

“To promote the orderly and economic use and development of land.”

Section 1.3 (g):

“To ensure the protection of the environment, including the conservation of... the amenity of the area.”

Imposing design decisions on a neighbouring site does not promote orderly development, nor does it protect the amenity of that area or the future development potential of other landowners.

The proposal compromises the development rights of the neighbouring site and undermines equitable outcomes intended by the planning framework.

3.1.3.6 Active Frontages

Yes

The proposal delivers active street frontages to Pacific Highway, Christie Street and Atchison Street through the provision of retail and café tenancies addressing all three frontages. Activation of the Pacific Highway frontage is further enhanced through separate entries to the commercial premises, community art centre, and residential lobbies.

Primary pedestrian access is provided from Atchison Street and Christie Street, reflecting their finer-grain, pedestrian-friendly character. In contrast, Pacific Highway accommodates secondary pedestrian entries due to its function as a higher-order road with limited amenity for pedestrian activity.

Vehicular access to the basement parking levels is proposed via Atchison Street.

Colonnades are proposed within the setbacks along Christie Street and Pacific Highway. While this does not comply with Control P8 of the North Sydney DCP 2013, which seeks to avoid colonnades on street frontages, the inclusion of these elements is necessitated by structural design requirements. Notwithstanding the non-compliance, the proposed design is considered to meet the underlying objective of the control by maintaining an active, legible and human-scaled public domain interface.

3.1.3.7 Awnings	Yes	Awnings are provided to all street frontages.
3.1.3.8 Solar Access	Yes	<p>The proposed development will not result in a net increase in overshadowing to:</p> <ul style="list-style-type: none"> ▪ Christie Street Reserve; ▪ Hume Street Park; ▪ Ernest Place; ▪ Holtermann Reserve (proposed); ▪ Willoughby Road road reserve; ▪ Mitchell Street road reserve and the whole of building setback requirement to the western side of Mitchel Street; or ▪ Oxley Street road reserve, and the whole of building setback requirement to the western side of Oxley Street. <p>between 10am and 3pm from the March Equinox to the September Equinox (inclusive).</p>
3.1.3.9 Noise	Yes	The Acoustic Report outlines a series of recommended treatments designed to ensure the proposed residential development meets the applicable acoustic insulation standards. Compliance with the DCP acoustic requirements will be achieved, subject to the implementation of these recommended measures.
3.1.3.11 Car Accommodation	Yes	Vehicle access is from Atchison Street with off-street parking provided underground.

Local Infrastructure Contributions Plan

120. The proposed development would increase the number of residents within the locality and therefore a contribution levied under Section 7.11 the Act is required in accordance with Council's Infrastructure Contributions Plan 2020. This is based on what is required for the new mixed use development less an allowance for existing development.

s7.11 contribution

Open space and recreation facilities:	\$1,957,950.77
Public domain:	\$944,650.98
Active transport:	\$53,918.97
Community facilities:	\$393,263.01
Plan administration and management:	\$50,044.10
Total:	\$3,399,827.82

Housing Productivity Contribution

121. The Ministerial Order for Housing Productivity Contribution came to effect on 1 October 2023. The order applies to land in that includes the Greater Sydney Region in which North Sydney Council is located.

122. The application was lodged on 20 October 2023, however an amended application was received from the applicant and accepted on 6 September 2024. In accordance with Section 38 of EP&A Regulations 2021 the new lodgement date for the amended

application is 6 September 2024, and therefore, the application is subject to the Housing Productivity Contribution.

123. Correspondence was received from the Department of Planning, Housing and Infrastructure advising the St Leonards Arts Centre Local Planning Agreement (2 July 2018) secures a contribution to the provision of regional community facility in relation to Planning Proposal PP_2017_North_004_00. The application of section 7.24 of the Environmental Planning and Assessment Act 1979 is not excluded in respect of the development within the Local Planning Agreement. On 17 April 2018 the Deputy Secretary advised by letter that the regional community facility is recognised as State infrastructure and that satisfactory arrangements for the purposes of State infrastructure Contributions have been made for any ensuing development.

124. The certificate provided supports that there is no requirement to make a Housing and Productivity Contribution for DA/10.2023.00000297.001 as a contribution to the provision of State or regional infrastructure was made under a planning agreement.

All Likely Impacts of the development

125. 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 and Built Environment

126. The proposed building's form and design fails to ensure there will be no unacceptable effects on the surrounding buildings' amenity, including aspects such as building separation, visual privacy, views, and solar access.

127. The siting, scale, bulk, and massing of the development is inconsistent with that anticipated for the site which result in additional adverse impacts.

Social and Economic Environment

128. The proposal aims to offer numerous public benefits as part of the VPA, providing a community arts facility.

129. The proposed development includes employment-generating floor space, serviced by high-frequency public transport.

130. Contemporary residential accommodations will be provided in a highly accessible location, near St Leonards train station and the Crows Nest Metro Station.

131. The proposed development will deliver a variety of residential apartment sizes, contributing to the housing supply in St Leonards.

Suitability of the Site

132. 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.

133. The proposed development will enhance the activation of the surrounding public domain at the ground floor level, improve the street presence, and contribute to the area's character.

SUBMISSIONS, REFERRALS AND THE PUBLIC INTEREST

134. The subject application was notified on 23 November 2023 from 1 December 2023 to 19 January 2024. The application was renotified on 18 December 2024 from 3 January 2025 to 25 January 2025. A total of one hundred and seventeen (117) submissions were received. Many of the issues raised have been considered in other parts of this report and where relevant are summaries and addressed further below.

- *Noise from building servicing*

Should the application be supported conditions would be imposed to minimise the impacts.

- *Overcrowding*

The proposed commercial and residential uses are not uses associated with overcrowding.

- *Light pollution*

The proposed development is not anticipated to have adverse impacts on light pollution and light spill. Should the application be supported conditions would be imposed to minimise the impacts of external lighting.

- *Pollution*

Should the application be supported conditions would be imposed for waste management during demolition, construction and ongoing use.

- *Construction hours*

- *Impacts from construction including traffic, dust and noise*

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

- *Traffic and carparking*

The proposed development includes a minimal provision of car parking in order to limit traffic impacts on the surrounding road network and number of spaces generally complies with NSDCP 2013. Traffic modelling indicates that the development will generate approximately 19 vehicle trips per hour during both the morning and afternoon peak periods. As such, the traffic impact on nearby intersections and the broader road network is expected to be negligible. Any impacts with regards to traffic noise is considered to be a reasonable and expected impact of development on the site.

- *Community Arts Centre to be at ground level*

The community arts centre is subject of a VPA, which does not require being located on ground level.

- *Impact on infrastructure*

Adequate infrastructure is available for the proposed development.

- *Fire safety*

The building is required to comply with the National Construction Code.

- *Decreased property values*

No evidence has been provided to substantiate this claim.

Application Referrals

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

Council Referrals

Development Engineer

136. The application was referred to Council's Development Engineer who raised no objection to the proposal subject to conditions of consent.

Traffic Engineer

137. The application was referred to Council's Traffic Engineer who provided an assessment of the proposal and has provided the following conclusion:

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

- *Parking*

1. *Clarification on whether any adaptable units are proposed. Provision of accessible parking for adaptable units shall align with the DCP.*
2. *Clarification on any visitor car spaces proposed for each land use.*
3. *Confirmation on which land uses would be utilising the basement car parking and accessible spaces. Provision of car parking and accessible parking shall comply with the DCP.*
4. *Car parking areas should be designed and constructed so that electric vehicle charging points can be installed at a later time. (Clause P7, Section 2.6.1, Part B, DCP)*
5. *Bicycle parking provision and end of trip facilities should be provided in accordance to the DCP.*

6. *Loading and servicing facilities should comply with the requirements outlined in Section 10.4 of the DCP. The design vehicle shall be no smaller than a 8.8m MRV. The provision of 2 loading/unloading areas should be provided noting the nature of the development (i.e. retail, commercial, art community, 190 dwellings).*
7. *Clarification on any impacts to existing onstreet parking as a result of the proposed development.*
8. *The TA suggests there would be some set down and pick up trips related to the development. Clarification is required as to whether a specific pick up or set down area would be provided onsite.*
- **Traffic**
9. *Clarification on why vehicle trips from the retail, commercial and art community land uses have not been incorporated in the proposed traffic generation. A mode share analysis should be undertaken to justify the forecasted vehicle trips for such land uses.*
10. *Clarification on the assumptions related to the traffic generation and trip distribution adopted in the SIDRA modelling.*
- **Design**
11. *The number of turns required to access the basement car spaces should be minimised to align with the DCP and AS2890.1: 2004. With reference to AS2890.1: 2004 Appendix B, it states that “tests have shown that most vehicles larger than the B85 vehicle will need to make a 3 point turn if the manoeuvring space is the minimum allowable”. Hence, swept paths should be reviewed to ensure each space can be accessed in up to 3 turns. Circulation areas shall be assessed adopting a B99 while B85 may be acceptable for manoeuvring into the car spaces.*
12. *The access driveway, and any access control points required and any ramps should be designed in accordance with the DCP and AS2890 series. The development shall be designed to avoid queuing onto the public road network.*
13. *Access pathway to parking, loading zones, bicycle pathway and end of trip facilities from the public road for pedestrian, cyclist, and vehicles should be documented.*
- **Other Comments**
14. *A Travel Plan should be prepared with the development application as per Clause P1-P4, Section 10.6, Part B of the DCP and submitted to Council for approval by the North Sydney Council prior to issue of conditions of consent.”*

Landscape Officer

138. The application was referred to Council’s Landscape Development Officer who provided an assessment of the proposal and has provided the following comments:

“The issue of ownership of T11 Platanus x acerifolia (10x4m) located in front of the south western corner of 601-609 Pacific Highway, raised by LDO in previous comments of 18 February 2024 does not appear to have been addressed/resolved. This tree requires removal and this proposal cannot be supported without owners’ permission. It is unclear whether T11 is a public tree within an increased public domain setback, or a private tree within the front setback of 601-609 Pacific Hwy. If this is a private tree, it could not be removed as required without owner’s permission. Should it prove to be a council asset, or should owners’ permission be provided, no objection would be raised to its removal, subject to replacement, planting with 1 x Liriodendron tulipifera (200l) as proposed.

Planting holes for the 11 x Liriodendron tulipifera (200l) to be planted in the council verges shall be minimum 1.5m (parallel to roadway) x 1.2m (perpendicular to

roadway), with tree trunk to be no closer (and ideally slightly further than) 600mm to edge of kerb.

Street trees are shown to be planted with a surrounding underplanting of *Murraya paniculata*. This underplanting was not supported by council due to the heavy maintenance requirement that would be borne by council. The applicants wind analysis requires the planting of these shrubs. Council would not object to the planting of , *Murraya paniculata* as proposed, subject to the conditioned ongoing maintenance being the responsibility of the owner of 621 Pacific Highway.

Awning cutouts large enough to allow for future canopy growth that minimise the need for directional pruning and reduce the likelihood of trunks leaning towards roadway seeking solar access shall be installed above each tree site.

All existing above-ground power poles and cables shall be undergrounded at the cost of the applicant, across all frontages.

REQUIRED AMENDMENTS

- Ownership of T11 *Platanus x acerifolia* (10x4m) located in front of the southwestern corner of 601-609 Pacific Highway shall be established, with owner's permission for removal obtained should this be a private tree.
- Awning cutouts large enough to allow for future canopy growth that minimise the need for directional pruning and reduce the likelihood of trunks leaning towards roadway seeking solar access shall be installed above each street tree site.
- All existing above-ground power poles and cables shall be undergrounded at the cost of the applicant, across all frontages.
- Planting holes for the 11 x *Liriodendron tulipifera* (200l) to be planted in the council verges shall be minimum 1.5m (parallel to roadway) x 1.2m (perpendicular to roadway) , with tree trunk to be no closer (and ideally slightly further than) 600mm to edge of kerb.
- The ongoing maintenance of the *Murraya paniculata* underplanting to street trees as proposed, shall be the responsibility of the owner of 621 Pacific Highway.

139. Planners comment: the above could be conditioned should the application be supported.

Waste Development Officer

140. The application was referred to Council's Waste Development Officer for assessment and review. The Waste Development Officer has advised

"The applicant has proposed for an offsite collection of bins via Atchison Street but has failed to provide a temporary bin holding area which can accommodate 7 x 1100L bins (compacted waste) and 13 x 1100L recycling bins. This area is to be provided.

It must also be noted that the applicant is proposing for bulky waste clean-up to be collected on site.

1. *The applicant needs to confirm if they wish to have both the bins and bulky clean-up collected either onsite or offsite?*

- *If offsite – a temporary bin holding area near the kerb (2-10m from the collection point on Atchison Street) needs to be made available. Bulky waste also needs to be presented on the kerb for collection.*
- *if the applicant wishes to have both the bulky waste clean-up & bins collected onsite – then a swept path for a 10.5m heavy rigid vehicle with a height clearance of 4.5m is to be provided. It must be noted that height of overhead service ducts needs to be taken into account along with the gradient”*

Environmental Health Officer

141. 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.

Community Development

142. The application was referred to Council’s Service Unit Manager, Arts Library and Events who provided the following comments:

“The general feedback on the scheme at this point is that the fundamentals are in place, but more work is needed to optimise the functionality of the use clusters. The clusters are:

- Entrance and gallery (public facing)*
- General meeting rooms*
- Performance*
- Music*
- Visual arts*

Across most of these clusters, more focus and attention is needed on design issues that impact operational efficiency such as:

- Relationship to windows and glazing*
- Adjacencies and access (including railroad configurations)*
- Relative size of spaces for improvement of usability and value*
- Amount of space dedicated to circulation and how that space is accounted for in the schedule of areas*
- Arrival/reception areas for each cluster to enable a tenant model as well as a centrally operated model”*

Strategic Planning

143. The application was referred to Council’s Strategic Planner who advised that the proposal is to be consistent with the terms of the VPA.

External Referrals

Design Excellence Panel

144. Council’s Design Excellence Panel (DEP) considered the application at its meeting on 12 December 2023. The Panel provided qualified support for the proposal, subject to issues identified in the report, being addressed.

“Principle 1: Context and neighbourhood character

- a) *The proposal is generally consistent with the urban context and emerging character of St Leonards town centre.*

Principle 2: Built form and scale

- a) *Height, bulk and scale*

The height and scale of the proposed development is generally supported, noting the development complies with the recently adopted key development controls applicable to the site and provides a landmark building to a highly visible within the town centre.

b) Street, side and rear setbacks

The setbacks proposed are generally supported, however further analysis of the impacts is required to demonstrate any additional impacts are reasonable, In particular, the over-shadowing impacts of the proposed reduced setback to the east boundary should be quantified.

Principle 3: Density

- a) The development capitalises on and supports the advantages of its location.*

Principle 4: Sustainability

- a) Not discussed. Further details are requested, including an overall sustainability strategy and compliance with the Sustainable Buildings SEPP*

Principle 5: Landscape

a) Public domain

Street trees and species should be consistent with the relevant public domain strategy.

Principle 6: Building configuration, planning, and amenity

a) Configuration and planning

- The commercial and residential lobbies are constrained, these lobbies are to be increased to provide functional circulation, waiting and delivery spaces.*
- Ground floor land uses, legibility and contribution to the public domain should be further explored. The three sides of the site have different urban characters and this should be reflected in the land uses and design.*
- Further investigation is required to relocate some of the services currently proposed on the ground floor.*

b) Apartments

There may be the potential to provide a 3rd bedroom to the western apartments.

c) Public domain

- The Pacific Highway colonnade and blank walls are not considered a suitable response for this site. Consideration of a public facing entry to the public arts facility in this location would be supported. A contiguous low level awning to support pedestrian amenity would still be required. The extension of the building footprint to boundary should be further discussed with Council.*
- The current scale, character and activity of Atchison Street is more suited to a colonnade, finer grain retail and lobby uses. The ground level land uses, facades, set backs and awnings should be explored in the context of improved public benefit if the colonnade space to Pacific Highway is removed.*

- *The Christie Street corner provides a unique opportunity to provide much needed public domain to the community. Further consideration should be given to the definition and articulation of open space edges in relation to the street edge, integrated public seating and planting, street tree planting and creating a direct connection to the retail.*
- *The proposal fails to provide a sense of awareness and connection to the public arts facility and the partly public nature of the overall podium.*
- *The substation access provided on Christie Street is not supported and alternative locations are to be considered.*

Principle 7: Safety

- The proposal needs to consider the principals of CPTED specifically along the colonnade.*

Principle 8: Housing diversity and social interaction

- The proposed residential apartment mix is supported.*
- A component of affordable housing should be considered.*

Principle 9: Aesthetics

- The height and scale of the awning should be reduced and raised ground levels provided to the colonnade to activate the Christie Street Frontage.*
- Further design refinement is required to provide both physical and visual vertical connectivity to the commercial and public levels above the ground floor.*
- The total facade strategy including the use of vertical articulation, sun-shading, screening and fine grain elements is positive and considered essential to the Panel's support for the proposal."*

Ausgrid

145. 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 15 January 2024 and they have raised no objection to the proposed development subject to conditions.

Sydney Water

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

TfNSW (RMS)

147. The application was referred to TfNSW (RMS) in accordance with Clause 2.121 and 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021. A formal response was provided on 16 January 2024, concurrence was obtained subject to the imposition of conditions if the application was to be supported.

Water NSW

148. The application was referred to Water NSW in accordance with Clause 90(2) of Water Management Act 2000. A formal response was provided on 4 September 2024, concurrence was obtained subject to the imposition of conditions if the application was to be supported.

Sydney Metro

149. The application was referred to Sydney Metro in accordance with Clause 2.99(3) of State Environmental Planning Policy (Transport and Infrastructure) 2021. At the time of

preparing this report a formal response has not been received, however a response to a request for additional information was provided by the applicant on 27 February 2024.

Sydney Airport Corporation

150. The application was referred to Sydney Airport Corporation as per the NSLEP 2013. A formal response was provided on 24 January 2024, concurrence was obtained subject to the imposition of conditions if the application was to be supported.

Conclusion and Reasons

151. 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 is considered that the proposal represents an unacceptable planning and design outcome for this site primarily due to the reduced tower setback from its eastern boundary. The proposal will adversely affect both the character of development in the street, the immediate locality and the residential amenity of the area which has significantly evolved since the commencement of the Planning Proposal process 7 years ago.
152. The proposal is inconsistent with various design quality principles of State Environmental Planning Policy (Housing) including context and neighbourhood character, built form and scale, and amenity.
153. The proposal results in a 44 storey facade located 6 meters from its common boundary with 601 Pacific Highway. While that site is significantly larger than this site and is less constrained, this setback has the potential to impact on any future redevelopment of that site.
154. The Council's notification of the proposal attracted a total of total of one hundred and seventeen (117) submissions. The concerns raised have been considered and addressed and do warrant refusal of the proposal.
155. Following assessment of the development application, the development is recommended for **refusal**.
156. It is open for the Panel to defer the application for further design amendments or grant approval to the development following the receipt of Metro concurrence, should it be considered that on balance, the issues raised by this report do not warrant refusal.

DETERMINATION

157. THAT the Sydney North Planning Panel, as the consent authority, approve the written request for a variation under Clause 4.6 of North Sydney Local Environmental Plan 2013, in relation to the Non-residential floor space ratios (Clause 4.4A) as the variation sought is considered to be well founded.
158. 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 DA297/23 for the redevelopment of the site at 617-621 Christie Street, St Leonards for a 50-storey mixed-use development comprising retail and commercial uses within the podium, residential apartments above as well as basement car parking and loading and servicing areas on Lot 1 DP DP1022881, Lot 1 DP577070, Lot 1 DP455937 and Lot 2 DP455937 and known as 617-621 Pacific Highway, St Leonards for the reasons set out in Attachment 1.