

11 March 2021

**Our Ref:** P-19320

**Mr Jim Betts**

Secretary  
Department of Planning, Industry and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Dear Mr Betts

## **REQUEST FOR REZONING REVIEW - PLANNING PROPOSAL 7/20 - FIVEWAYS TRIANGLE SITE, CROWS NEST**

### **Introduction**

We are writing on behalf of Deicorp Projects (Crows Nest) Pty Ltd (**the proponent**) in support of an application for a Rezoning Review.

Enclosed with this letter is the proponent's request for North Sydney Council (**the Council**) to prepare and submit a planning proposal for Gateway determination including all supporting material and information that was formally lodged with Council on 4 December 2020 (**the Planning Proposal**). We have also enclosed the correspondence subsequently received from the Council.

The purpose of this letter is to address the substantive reason why the Council has indicated in their letter dated 27 February 2021 that it will not support the Planning Proposal from progressing to Gateway determination. This letter should be read with the Planning Proposal.

### **Background**

*St Leonards and Crows Nest 2036 (the Precinct Plan)* is a precinct plan that was prepared by the NSW Department of Planning, Industry and Environment and published in August 2020. The Precinct Plan is shaped by design priorities and objectives which were informed by the planning priorities in the North District Plan and provides the framework for achieving the North District Priorities.<sup>1</sup> In this regard the Precinct Plan is the relevant strategic plan applying to the Fiveways Triangle Site.

The Plan is supported by a Local Planning Direction made under Section 9.1 of the *Environmental Planning and Assessment Act* which says that:

*(4) A planning proposal authority must ensure that a planning proposal is consistent with the St Leonards and Crows Nest 2036 Plan, approved by the Minister for Planning and Public Spaces and published on the Department of Planning, Industry and Environment website on 29 August 2020.*

*(5) A planning proposal may be inconsistent with the terms of this direction only if the planning proposal authority can satisfy the Secretary of the Department of Planning, Industry and Environment (or their nominee), that:*

*(a) the provisions of the planning proposal that are inconsistent are of minor significance, and*

<sup>1</sup> Page 7, St Leonards Crows Nest 2036 Final Plan, August 2020.

*(b) the planning proposal achieves the overall intent of the Plan and does not undermine the achievement of the Plan's vision, objectives and actions.*

In their letter of 27 February 2021, the Council has said that in their opinion, the Planning Proposal "is inconsistent with the outcomes of the 2036 Plan with respect to Height and FSR, with the degree of variation not being of minor significance" and that it cannot be supported.

We submit that the Planning Proposal is consistent with the Precinct Plan. Even if it were deemed to be inconsistent (which we dispute), we would contend that any provisions that are inconsistent are of minor significance, and that the planning proposal achieves the overall intent of the Plan and does not undermine the Plan's vision, objectives and actions and is, therefore, consistent with the Local Planning Direction.

### Consistent with St Leonards and Crows Nest 2036

The question of whether the planning proposal is consistent with the 2036 Plan hinges on the role of the indicative height and floor space ratio (**FSR**) controls shown on pages 66 and 67 of the Plan.

The role of the indicative height and FSR controls is explained as follows on page 63 of the Plan:

*This section outlines the proposed changes to existing planning controls to support the objectives and actions within this Plan.*

*The identified changes are **indicative** and demonstrate the planning and other interventions which would give effect to the changes described in earlier sections of this Plan. These potential built form parameters have been developed to achieve the key urban design principles envisaged by the Plan.*

*Final planning controls will be developed as part of any future rezoning process.*

*(emphasis added)*

A further indication of the role of the indicative height and FSR controls is outlined on page 36 of the Precinct Plan where it states:

*There may be opportunities for specific sites to accommodate additional density [FSR] and height where the public benefits proposed to be delivered as part of a development proposal is of exceptional value, beyond what could be secured under a standard practice approach that should be considered within the precinct. In these instances, the proposal would still need to be consistent with the vision, objectives and actions, including solar access controls, in this Plan.*

The statements on page 63 and 36 of the Precinct Plan demonstrate that the test of whether a planning proposal is consistent with the Plan does not hinge on whether a planning proposal strictly complies with the indicative height and FSR controls.

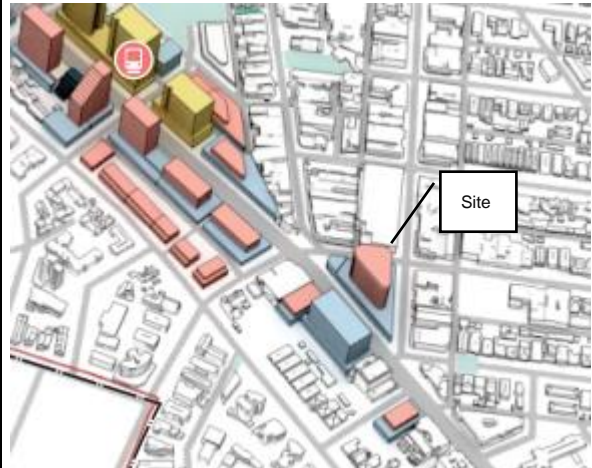
Rather, the test of consistency hinges on whether the Planning Proposal is consistent with the vision, objectives, and actions, including prescriptive solar access controls, and if the site presents an opportunity to accommodate additional density and height, whether the planning proposal will deliver public benefits that are of exceptional value, beyond what could be secured under a standard practice approach.

Pages 47 to 58 of the Planning Proposal (which draws on the Urban Design Report and various other documents submitted as part of the Planning Proposal) demonstrates that it is unequivocally consistent with the vision, objectives, and actions of the Plan. The Planning Proposal also includes a letter of offer to enter into a Voluntary Planning Agreement which would deliver public benefits which are of exceptional value and beyond what could be achieved under a standard practice approach. In this regard, the Planning Proposal is entirely consistent with the Precinct Plan.

## Specific matters raised by the Council

In the following table we have addressed the specific matters raised by the Council in their letter of 24 February 2021.

Table 1 - Specific matters raised in Council letter dated 26 February 2021

<p>The Department of Planning and Environment's (DPIE's) building massing modelling, as illustrated in SJB's Urban Design Study which underpins the accepted built form outcomes in the 2036 Plan, assumes that a 16-storey height for the site is based on a mixed-use building with a commercial podium and residential tower. This is also reflected in the Land Use and Activity Map 1 on page 51 of the SJB Urban Design Study.</p>	<p>As noted earlier, there is no such thing as an 'accepted built form outcome', instead, there are indicative built form controls with the final planning controls to be developed as part of any future rezoning process. There is also an explicit acknowledgment that there may be opportunities for specific sites to accommodate additional density [FSR] and height. It should be noted that in the draft Precinct Plan, the Fiveways Triangle site was identified as the only site in Crows Nest as being 'significant' and, therefore, capable of accommodating a taller building.</p> <p>Reproduced in Figure 1 below is the diagram taken from SJB's Urban Design Study. What is apparent from this diagram is that the Precinct Plan contemplates significant change on the Fiveways Triangle site. Whether the final building is 16 storeys or 19 storeys in height, it will be a new and prominent feature in the landscape.</p>  <p>Figure 1 - St Leonards &amp; Crows Nest 2036 Stage 02 Urban Design Study, SJB, p.36</p>
<p>The 2036 Plan's key transitional principle is termed the "height knuckle," where height is predominately concentrated around the Crows Nest metro site and transitions down towards the Civic Precinct. The proximity to the metro station is only one part of the immediate context of the</p>	<p>According to the Precinct Plan, the indicative maximum building height on the Crows Nest Metro site and immediately opposite the Metro site on the western side of the Pacific Highway is 27 storeys and 24 storeys respectively.</p>

<p>Fiveways Triangle Site, which includes low-scale conservation areas to the east and south.</p> <p>At 19-storeys, the proposal is close to or exceeds the maximum building heights for the Crows Nest metro site (21, 17 and 9 storeys) and is an abrupt increase in height from the adjacent 8-storey height limit immediately north. The concept scheme also proposes a massing of two 16-storey towers above a 3-4 storey podium, creating 'two separate forms instead of a singular mass,' however no stepping down or lowering in heights between the towers is proposed. This results in the mass being read as one, bulky tower form that overshadows surrounding residential properties and heritage conservation areas and provides a poor transition to the low-scale residential areas to the east and south of the site.</p>	<p>The Crows Nest Metro Site has been the subject of a separate planning proposal which was made at the same time the Precinct Plan was published. This planning proposal has established a maximum height limit on the Crows Nest Metro site of RL 180m, which equates to a lineal height of approximately 93m given the existing ground level. In December 2020 a concept approval was granted to the Sydney Metro Crows Nest Overstation Development (SSD-9579). Although the tallest building is described as being 21 storeys high, the approved building envelope is in fact 93m high, inclusive of a 4m allowance for rooftop plant. In this regard, it is 18 metres taller than the proposal for the Fiveways Triangle site (75m).</p> <p>The proposal for the Fiveways Triangle site does not detract from the "height knuckle" nor is it inconsistent with the Precinct Plan. The "height knuckle", as well as being a function of height, is also a function of development density (refer Figure 1). There are many tall buildings located around the Crows Nest Metro and St Leonards Train Station. The Fiveways Triangle site, at 16 storeys or 19 storeys, will 'pop up' in the landscape compared with the indicative 8 storey height control on the Pacific Highway to the north. In doing so, the Fiveways Triangle site will create a visual marker for the Crows Nest Village, however, it will not detract from the "height knuckle" in terms of either height or density. This is discussed on page 16 and illustrated on page 38 of the Urban Design Report which forms part of the Planning Proposal.</p>
<p>SJB's Urban Design Study explicitly states on page 61 that the labelling of a site as a "gateway" does not relate to increased height:</p> <p><i>"The location of land near 'gateways' does not relate to increased height. Land in these locations needs to function and respond to entry points to the area. This includes relating to the surrounding context and character of the area."</i></p>	<p>As a general principle we agree; however, it should be also be noted that the St Leonards &amp; Crows Nest 2036 Stage 02 Urban Design Study recognises that increased height is appropriate on this site (Figure 1). There are sound urban design reasons for creating a visual marker in this location, as well as the fact that it facilitates the consolidation of the site and expansion of the Crows Nest Village public domain.</p>
<p>The proposed height of 75m appears excessive for the number of storeys, even taking in account topography, and could potentially result in a building greater than 19 storeys. The concept design has a building height of 71m, with an additional allowance sought of 4m above the top of the roof plant. It appears excessive floor-to-floor height assumptions have been made for the non-residential components of the building. In particular, the proposed podium height of 17.4m</p>	<p>The building height required to ensure a high standard of amenity for workers, visitors and residents and design excellence and to accommodate the cross fall on the site has been carefully considered. The proposed 75m height of building control has been derived as follows:</p> <p><i>Ground Floor</i></p>

is excessive for 3-4 storeys and should be reduced.

The proposed height of 75m appears excessive for the number of storeys, even taking in account topography, and could potentially result in a building greater than 19 storeys. The concept design has a building height of 71m, with an additional allowance sought of 4m above the top of the roof plant. It appears excessive floor-to-floor height assumptions have been made for the non-residential components of the building. In particular, the proposed podium height of 17.4m is excessive for 3-4 storeys and should be reduced.

- The ground floor retail floor is 6.4m minimum but rises to 9.8m at the southern corner of the site due to the local topography.
- It was impractical to step the podium level (and hence reduce the retail FFH at the southern corner of the site) as the more centrally located towers would 'sit above' the taller parts of the podium to the north.
- The ground floor also accommodates the MRV vehicle entering from Alexander Street
- The additional floor height at the southern corner also facilitates a mezzanine level within the street wall.

#### *Commercial levels*

- A base FFH of 3.6m is used for the commercial levels. This is probably too tight and should be increased to 3.85m in line with current commercial expectations.
- The upper floor level includes provision for transfer structure of 1.2-1.8m. This is important for this site in particular as the triangular site makes a simple structural solution with no transfer extremely difficult.
- The edge of the street wall is also higher than the level 3 podium height. This is to allow a balustrade and edge condition to the podium apartments and also facilitates a variation to street wall height along the street frontages which is more consistent with the varying heights of the context.

#### *Residential levels*

- A FFH of 3.1m is used for the residential levels which is the industry standard.
- Typically the architects would increase FFH by 0.1m where there is a roof level above to allow for insulation and set-downs for drainage, but this level of detail is not currently shown in the PP.

#### *Roof level*

- The roof level has a plant room height of 5.1m to allow for lift access to rooftop communal open space for residents.

Finally, we observe that:

- The relationship between building height and number of storeys is consistent with (and in fact less generous than) the Crows Nest Metro Overstation Development.
- The proposed FSR is calibrated to the number of storeys, and meaning that there would not

	<p>be sufficient FSR to accommodate additional storeys within the proposed 75m height limit if that is the concern.</p> <ul style="list-style-type: none"> <li>▪ The proposed height limit strictly satisfies the prescriptive and more onerous solar access controls.</li> </ul>
<p>To ensure development on the site provides an appropriate transition to the low-scale residential areas to the east and south; mitigate overshadowing impacts to the surrounding residential properties; and comply with the FSR control under the 2036 Plan, it is recommended that only a portion of the building footprint above the podium reach the maximum height of 16-storeys, and that the tallest element (at 16-storeys) be located towards the northwest corner of the site (Fiveways intersection).</p>	<p>The Precinct Plan includes prescriptive solar access requirements that are more onerous than the controls contained the North Sydney DCP. The Precinct Plan requires:</p> <ul style="list-style-type: none"> <li>▪ No overshadowing of nominated public open spaces between 10am and 3pm.</li> <li>▪ No overshadowing of nominated streetscapes between 11:30am and 2:30pm.</li> <li>▪ No overshadowing of residential areas outside of the Precinct Plan boundary between 9am and 3pm.</li> <li>▪ At least 2 hours of sunlight for residential areas inside the Precinct Plan boundary between 9am and 3pm.</li> <li>▪ At least 3 hours of sunlight for Heritage Conservation Areas inside the Precinct Plan boundary between 9am and 3pm.</li> </ul> <p>As demonstrated in the Planning Proposal and accompanying Urban Design Report, the building envelope strictly achieves the solar access requirements in the Precinct Plan.</p> <p>This is consistent with the provisions of the Precinct Plan which foreshadow that there may be opportunities for specific sites to accommodate additional density and height so long as the Planning Proposal is consistent with the vision, objectives, and actions, including solar access controls.</p>
<p>It is unclear from the plans provided how far the towers are setback above the podium, and this will need to be clarified.</p>	<p>The towers are generally setback 3.0m from the boundary to make a clear distinction between tower and podium.</p> <p>There is some articulation in the setback on the north and north-east corner of the building to give animation and articulation of form.</p> <p>The sunshades also project through the setback on some faces.</p>
<p>Section 2F of the ADG requires a minimum building separation of 18m (5 to 8 storeys) and 24m (9 storeys and above) between 'habitable' rooms. It is unlikely that the proposed concept scheme, which provides 12m separation between habitable rooms in the two towers could comply with ADG privacy requirements, even</p>	<p>The building separation between the two towers was tested during the preparation of the Planning Proposal and indicative plans are provided (p. 70 &amp; 160) to illustrate how the ADG privacy guidelines will be achieved.</p> <p>The apartments are designed so that every apartment has an outlook beyond the site and well in-excess of ADG guideline distances.</p>



<p>with the proposed outlook strategy and use of privacy screening.</p>	<p>While the objective of the ADG is to achieve "reasonable levels of external and internal visual privacy" (refer ADG Objective 3F-1), the design principle of the indicative plans is to achieve excellent outlook and privacy.</p> <p>The orientation of the apartments, positioning of non-habitable spaces and blank walls, and sparing amounts of screening allows each apartment to enjoy an outlook well beyond the ADG guidelines and achieve privacy from neighbours.</p> <p>The 12 metre 'slot' created between the buildings breaks up the building mass and creates visual interest compared with the indicative building envelope illustrated in the Urban Design Study.</p>
<p>The height and scale of the proposed residential towers cast significant, far reaching shadows to the east and west of the site onto residential dwellings within low-density areas, including the Holtermann Estate C Heritage Conservation Area and North Sydney Girls High School, which has been incorrectly identified as a commercial property in the proposal. It is considered that where significant variations to the Height and FSR are sought, overshadowing impacts should be compared to that of a fully compliant scheme to determine the true extent of the proposal's impact.</p>	<p>In the context of the Precinct Plan, a fully compliant scheme is one that achieves the prescriptive solar access controls that are detailed on page 38 of the Precinct Plan. As noted earlier, the Planning Proposal strictly satisfies these prescriptive solar access controls.</p>
<p>The proposal notes that the visual impact of the building massing is significant from several distant viewpoints. It also notes a loss of sky views from various viewpoints surrounding the site. Despite the high level of visual impact, the proposed justification is based on the site's role as a "gateway" element to the precinct. As mentioned previously, the proposed justification is not accepted on the basis that the SJB Urban Design Study no longer relies on "gateway" argument.</p>	<p>As noted earlier, the St Leonards &amp; Crows Nest 2036 Stage 02 Urban Design Study recognises that increased height is appropriate on this site. The visual impact analysis provided within the Urban Design Report illustrates that the proposal will not have an adverse visual impact in the immediate locality, and in fact is not visible from most vantage points, including Willoughby Road since the site sits beside the alignment of Willoughby Road. From distant vantage points, the visual impact is a positive attribute, with the proposed building serving to provide a visual marker for Crows Nest. This was recognised in the NSW Government Architect's Office Report that was exhibited with the draft Precinct Plan.</p>

## Conclusion

The purpose of a Gateway determination is ensure there is sufficient justification early in the process to proceed with the Planning Proposal. The Gateway determination settles what assessment is required to develop the details of the plan, including infrastructure needs, what community or agency consultation is required, and whether a public hearing is required. These provisions provide for flexibility and a strong emphasis on effective community consultation.<sup>2</sup>

The key factor in determining whether a planning proposal should proceed to a Gateway determination should be its strategic merit.<sup>3</sup> Given, as noted above, the Planning Proposal is demonstrably consistent with the Precinct Plan (being the relevant strategic plan applying to the site) the Planning Proposal has demonstrated strategic merit and should proceed to a Gateway determination. The Precinct Plan applies the North District Plan at the precinct level and sets out urban design principles, objectives and actions, including prescriptive solar access controls, which the Planning Proposal demonstrably achieves. As such, the Planning Proposal has demonstrated site-specific merit sufficient to warrant proceeding to Gateway determination also.

The draft *St Leonards Crows Nest 2036 Plan*, which began preparation in July 2016 and was publicly exhibited between 15 October 2018 and 8 February 2019, identified the Fiveways Triangle site as a 'significant site', meaning that it was deemed capable of accommodating a taller building. Due to its unique location it was the only site in Crows Nest deemed capable of accommodating a taller building.

The final Precinct Plan also proposes significant change for the Fiveways Triangle site, which the Council does not accept. At their meeting of 30 November 2020, in full knowledge of the Precinct Plan published in August 2020, the Council resolved "*that the current maximum height controls under North Sydney LEP 2013 continue to apply to the "Fiveways Triangle" site.*" In other words, that a 16m height limit should be retained on the site. Should the Planning Proposal proceed to a Gateway determination, therefore, the Proponent asks that either the Planning Panel, or the Secretary is appointed as the planning proposal authority.

Yours sincerely



**Stephen Kerr**  
Executive Director

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<sup>2</sup> Second reading speech, Environmental Planning and Assessment Amendment Bill 2008.

<sup>3</sup> Planning circular PS 18-012, Independent reviews of planning making decisions.





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Deicorp Projects (Crows Nest) Pty Limited

**Attention: Greg Colbran**

161 Redfern Street

REDFERN NSW 2016

KP (CIS)

26 February 2021

Dear Greg,

**RE: Planning Proposal 7/20 – Fiveways Triangle Site, Crows Nest**

I refer to your Planning Proposal (PP) for 391-401 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest (also known as the Fiveways Triangle Site) which was submitted with North Sydney Council (Council) on 4 December 2020.

The Planning Proposal seeks to amend North Sydney Local Environmental Plan (NSLEP) 2013 as it applies to the subject site as follows:

- increase the maximum Building Height control from 16m to 75m;
- increase the minimum Non-Residential FSR control from 0.5:1 to 2.5:1; and
- establish an overall maximum FSR control of 9.3:1.

The accompanying indicative concept scheme presents a 19-storey mixed-use commercial and residential building comprising 233 residential apartments with a residential Gross Floor Area (GFA) of 21,818 sqm, a non-residential GFA of 8,002 sqm, and 385 car parking spaces over 7 basement levels.

The Planning Proposal is also accompanied by an offer to enter into a Voluntary Planning Agreement (VPA) to provide:

- a *monetary contribution of \$10 million to Council to be used for public benefit including improved community meeting spaces, open spaces and the like; or*
- *dedication to Council of 1-bedroom apartments within the proposed development up to a total combined value of \$10 million for affordable housing for key workers.*

Council has completed a preliminary assessment of the Planning Proposal and cannot support the proposal as lodged, from progressing to Gateway Determination in accordance with Direction 7.11 – *Implementation of St Leonards and Crows Nest 2036 Plan* to section 9.1 – Ministerial Directions of the *Environmental Planning and Assessment Act (EP&A Act) 1979*. The Direction states that a planning proposal authority must ensure that a Planning Proposal for land within the precinct is consistent with the *St Leonards and Crows Nest 2036 Plan* (2036 Plan). This is reiterated on page 76 of the 2036 Plan, which states that any inconsistency with the 2036 Plan needs to be demonstrated to be of minor significance while still achieving the vision, objectives and actions of the 2036 Plan.

Council is of the opinion that the Planning Proposal is inconsistent with the outcomes of the 2036 Plan with respect to Height and FSR, with the degree of variation not being of minor significance. The key issues are discussed in the following sub-sections. It should be noted, however, that there may be other issues arising from the non-compliances that would be addressed in a comprehensive assessment report.

### Proposed Height

The 2036 Plan identifies a maximum building height of 16-storeys for the subject site. The Planning Proposal seeks a maximum building height of 75m to accommodate a 19-storey mixed-use building on the site.

The Planning Proposal seeks to have an equivalent 19-storey building height established on the site. The justification being that a 16-storey commercial building would yield a height similar to a 19-storey mixed-use building (i.e. lower floor-to-floor heights for residential development).

It is also suggested in the Planning Proposal that the building heights identified in the 2036 Plan are indicative built form parameters to achieve the key urban principles envisaged by the Plan. In particular, the proposed 19-storey building would be consistent with the transition principles of the 2036 Plan, where taller buildings and density are located in close proximity to the metro stations and the Pacific Highway. It is also suggested that a taller form at the Fiveways Triangle Site is acceptable on the basis that it will act as a “gateway” element into the precinct.

The proposed justification is not accepted for the following reasons:

- (1) The Department of Planning and Environment’s (DPIE’s) building massing modelling, as illustrated in SJB’s Urban Design Study which underpins the accepted built form outcomes in the 2036 Plan, assumes that a 16-storey height for the site is based on a mixed-use building with a commercial podium and residential tower. This is also reflected in the Land Use and Activity Map 1 on page 51 of the SJB Urban Design Study.
- (2) The 2036 Plan’s key transitional principle is termed the “height knuckle,” where height is predominately concentrated around the Crows Nest metro site and transitions down towards the Civic Precinct. The proximity to the metro station is only one part of the immediate context of the Fiveways Triangle Site, which includes low-scale conservation areas to the east and south.

At 19-storeys, the proposal is close to or exceeds the maximum building heights for the Crows Nest metro site (21, 17 and 9 storeys) and is an abrupt increase in height from the adjacent 8-storey height limit immediately north. The concept scheme also proposes a massing of two 16-storey towers above a 3-4 storey podium, creating ‘two separate forms instead of a singular mass,’ however no stepping down or lowering in heights between the towers is proposed. This results in the mass being read as one, bulky tower form that overshadows surrounding residential properties and heritage conservation areas and provides a poor transition to the low-scale residential areas to the east and south of the site.

- (3) SJB’s Urban Design Study explicitly states on page 61 that the labelling of a site as a “gateway” does not relate to increased height:

*The location of land near ‘gateways’ does not relate to increased height. Land in these locations needs to function and respond to entry points to the area. This includes relating to the surrounding context and character of the area.*

It is further noted that the notion of “gateway” sites was abandoned in the finalisation of the adopted 2036 Plan as this did not create any certainty.

The proposed height of 75m appears excessive for the number of storeys, even taking in account topography, and could potentially result in a building greater than 19 storeys. The concept design has a building height of 71m, with an additional allowance sought of 4m above the top of the roof plant. It appears excessive floor-to-floor height assumptions have been made for the non-residential components of the building. In particular, the proposed podium height of 17.4m is excessive for 3-4 storeys and should be reduced.

Council has consistently applied Apartment Design Guideline (ADG) considerations in setting height controls, and a building height of 56 metres for a 16-storey mixed-use building has been considered appropriate on other mixed-use sites within the precinct with similar non-residential podium requirements and will be used as a benchmark. This is consistent with the height awarded to 23-35 Atchison Street and 50-56 Atchison Street, St Leonards. It takes into consideration reasonable floor-to-floor height assumptions for both the residential and non-residential components, and an appropriate allowance for topography and rooftop articulation.

The proposed height of 75m represents a variation of approximately 19m (or 33%). This is not considered to be a “minor” variation. It is therefore recommended that the Planning Proposal be revised to comply with a 16-storey building height based on a commercial podium with residential tower above, as identified in the 2036 Plan, including any adjustments to the FSR.

To ensure development on the site provides an appropriate transition to the low-scale residential areas to the east and south; mitigate overshadowing impacts to the surrounding residential properties; and comply with the FSR control under the 2036 Plan, it is recommended that only a portion of the building footprint above the podium reach the maximum height of 16-storeys, and that the tallest element (at 16-storeys) be located towards the northwest corner of the site (Fiveways intersection).

#### Proposed FSR

The proposed FSR of 9.3:1 yields a GFA of approximately 29,760 sqm on the subject site. The FSR identified under the 2036 Plan for the subject site is 5.8:1, which equates to a GFA of approximately 18,560 sqm. This represents a variation of 11,200 sqm (or 60%).

The justification provided within the Planning Proposal for the proposed variance is based on site testing of solar access and visual impact to surrounding streets which demonstrates ‘*a greater density is possible within the envelope controls of the 2036 Plan.*’

The proposed justification is not accepted on the basis that FSR is used in the 2036 Plan to manage density and not envelope controls.

The proposed FSR of 9.3:1 is considered excessive on the basis of:

- a proposed building height above 16-storeys;
- a massing of two 16-storey towers above the podium with no stepping down or lowering in heights between the towers to provide an appropriate transition in height to the low-scale residential areas; and
- non-compliant ADG building separation between the two proposed towers above the podium.

It is unclear from the plans provided how far the towers are setback above the podium, and this will need to be clarified.

Section 2F of the ADG requires a minimum building separation of 18m (5 to 8 storeys) and 24m (9 storeys and above) between ‘habitable’ rooms. It is unlikely that the proposed concept scheme, which provides 12m separation between habitable rooms in the two towers could comply with ADG privacy requirements, even with the proposed outlook strategy and use of privacy screening.

It is considered that a compliant FSR with the 2036 Plan would be able to address the above-mentioned non-compliances. An FSR of 5.8:1 assumes a height of 16 storeys, and a level of building separation and articulation on the site that is deemed inadequate. A reduced FSR can be achieved by lowering the height and bulk of the residential towers.

In its current form, the indicative concept design provides an excessively bulky and visually dominant built form in its local context with unacceptable overshadowing and visual impacts.

#### Overshadowing impact

The primary justification for the proposed variance to the FSR control within the Planning Proposal is based on the testing of solar access and visual impacts of the proposed scheme to surrounding streets. The proposal states that it complies with the 2036 Plan’s solar access requirements for residential areas inside and outside the precinct boundary to the extent that these residential areas still achieve the required 2-3 hours solar access between 9am – 3pm.

Despite this, the height and scale of the proposed residential towers cast significant, far-reaching shadows to the east and west of the site onto residential dwellings within low-density areas, including the Holtermann Estate C Heritage Conservation Area and North Sydney Girls High School, which has been incorrectly identified as a commercial property in the proposal. It is considered that where significant variations to the Height and FSR are sought, overshadowing impacts should be compared to that of a fully compliant scheme to determine the true extent of the proposal’s impact.

#### Visual impact

The proposal notes that the visual impact of the building massing is significant from several distant viewpoints. It also notes a loss of sky views from various viewpoints surrounding the site. Despite the high level of visual impact, the proposed justification is based on the site’s role as a “gateway” element to the precinct. As mentioned previously, the proposed justification is not accepted on the basis that the SJB Urban Design Study no longer relies on “gateway” argument.

#### Conclusion

Having undertaken a preliminary assessment of the Planning Proposal against the strategic planning policies of the 2036 Plan, the Planning Proposal cannot be supported in its current form for the following reasons:

- It is inconsistent with the site-specific Height and FSR controls identified in the St Leonards and Crows Nest 2036 Plan and by virtue of the degree of non-compliance and impacts arising, is inconsistent with the vision, objectives and actions of the 2036 Plan;
- It is inconsistent with Direction 7.11 – Implementation of St Leonards and Crows Nest 2036 Plan to section 9.1 Ministerial Directions under the Environmental Planning and Assessment Act (EP&A Act) 1979, which requires Planning Proposals be consistent with the 2036 Plan; and

- The Planning Proposal if implemented, would undermine the integrity of the strategic planning policies relating to the site, including:
  - Greater Sydney Regional Plan and North District Plan;
  - St Leonards and Crows Nest 2036 Plan and supporting Special Infrastructure Contribution (SIC) Plan; and
  - North Sydney Local Strategic Planning Statement (LSPS).

You are therefore requested to either withdraw your Planning Proposal or re-submit a revised Planning Proposal that is compliant with the 2036 Plan. You are requested to respond within 14 days of the date of this letter. Should Council not receive a response within the 14 days, Council will proceed to prepare an assessment report recommending refusal.

If you have any questions, please do not hesitate to contact Katerina Papas, Strategic Planner or the undersigned on 9936-8100.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by a horizontal line extending to the right.

**JOSEPH HILL**  
**DIRECTOR CITY STRATEGY**