

REZONING REVIEW – Briefing Report

Date of request	17 August 2021 (formally lodged)	
Department ref. no	RR-2021-87	
LGA	North Sydney Council	
LEP to be amended	North Sydney Local Environmental Plan 2013	
Address	Fiveways Triangle Site 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest	
Reason for review	<input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment	<input type="checkbox"/> Council failed to indicate support for the proposal within 90 days, or failed to submit the proposal after indicating its support
Is a disclosure statement relating to reportable political donations under s10.4 of the Act required and provided?	<input type="checkbox"/> Provided <input checked="" type="checkbox"/> Not required	

1. SUMMARY OF THE PROPOSAL

1.1 Introduction

The request for a rezoning review (**Attachment F**) was submitted by City Plan on behalf of Deicorp Projects (Crows Nest) Pty Ltd and relates to a planning proposal (**Attachment F1**) at the 'Fiveways Triangle', (the site) including a street block of 19 allotments at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest. The planning proposal seeks to amend the North Sydney Local Environmental Plan (LEP) 2013 by:

- Increasing the maximum building height from 16m to 75m.
- Establishing a maximum floor space ratio (FSR) control of 9.3:1.
- Increasing the minimum non-residential (FSR) from 0.5:1 to 2.5:1.

The proposed amendment to the North Sydney LEP 2013 proposes to facilitate a 19-storey mixed use tower which includes:

- 233 dwellings.
- 8,002sqm of non-residential gross floor area (an additional 302 jobs).
- 385 car parking spaces across seven basement levels.

The proposal is also accompanied by a letter of offer to enter in a voluntary planning agreement (VPA) for the delivery of:

- A monetary contribution of \$10 million to North Sydney Council (Council) to be used for public benefit including improved community meeting spaces, open spaces or equivalent.
- Dedication to Council of one-bedroom apartments within the proposed development up to a total of \$10 million for key worker housing.

Further detail on the proposed provisions has been provided in **Section 1.6** of this report.

The planning proposal has also been informed by the Department's ongoing strategic planning investigations in the St Leonards and Crows Nest area which culminated in the release of the St Leonards and Crows Nest 2036 Plan (2036 Plan), which was finalised in August 2020. The 2036 Plan includes recommended planning controls for this site which have been compared with the proposed provisions in **Table 1** below.

Table 1: Comparison of proposed planning controls.

Control	Current LEP	Proposed Controls	2036 Plan
Zone	B4 Mixed Use	B4 Mixed Use	B4 Mixed Use
Building Height	16m	75m (19 storeys)	16 storeys
FSR	Nil	9.3:1	5.8:1
Minimum non-residential FSR	0.5:1	2.5:1	2.5:1

1.2 Planning Background

1.2.1 Draft St Leonards and Crows Nest 2036 Plan (2018)

In October 2018, the Department of Planning, Industry and Environment placed the Draft 2036 Plan on public exhibition for a period of 16 weeks until February 2019.

The Fiveways Triangle was designated as a 'significant site' within the Draft 2036 Plan which identified five sites within the plan area as being appropriate for additional building height, subject to further assessment and consultation.

Significant sites were exhibited in the Draft 2036 Plan without any planning controls (aside from a minimum non-residential FSR), however were to be the subject of a rigorous design excellence process to determine the appropriate building height, FSR and other design details.

1.2.2 Previous Planning Proposal (2020)

In June 2020, a planning proposal relating to the subject site was originally submitted to Council. This planning proposal proposed to:

- Increase the maximum height of buildings from 16m to 140m (36 storeys).
- Establish a minimum non-residential FSR of 12:1.
- Increase the minimum non-residential FSR from 0.5:1 to 3:1.

This proposal would allow for the development of a 36-storey mixed use building including:

- 310 dwellings.
- 10,000sqm of non-residential FSR being 8,000sqm of commercial/retail uses and 2,000sqm of community uses.
- Basement carparking for approximately 400 vehicles.

In September 2020, the proponent agreed to withdraw the planning proposal following the release of the Department's Final 2036 Plan to allow the proposal to be reconsidered in light of the recommendations included within the 2036 Plan.

1.2.3 Final St Leonards and Crows Nest 2036 Plan (2020)

In August 2020, the Department released its Final 2036 Plan which provides the vision to facilitate the urban renewal of St Leonards and Crows Nest and capitalises on the significant infrastructure investment in the area by the State Government through the Sydney Metro Network and construction of the new Crows Nest Metro Station, due to open in 2024.

Following the Department's review of the Draft 2036 Plan and in response to submissions received against the exhibited material, the Final 2036 Plan was revised to include several key changes, one of which was the removal of the 'significant site' designation which originally applied to the subject site and included planning controls.

1.3 Locality and Context

The site is located within the suburb of Crows Nest within the St Leonards and Crows Nest Strategic Centre, approximately 5.5km to the north of the Sydney CBD (**Figure 1**). The site is approximately 240m from the new Crows Nest Metro Station (opening in 2024) and 1km from St Leonards Station.

The local area is characterised by a variety of uses including:

- High-rise commercial, mixed use and residential clustered around the St Leonards Station and along the Pacific Highway.
- The St Leonards health and education precinct which incorporates Royal North Shore Hospital, North Shore Private Hospital, TAFE NSW and associated land uses.
- The Artarmon industrial area.
- Medium density residential to the south of the Pacific Highway.
- Fine grain retail around Crows Nest and Willoughby Road.
- Low density residential to the north of Chandos Street and east of Alexander Street, including the Naremburn and Holtermann Estate Heritage Conservation Areas.

Directly to the north of the site on the opposite side of Falcon Street is the Crows Nest Hotel, a local heritage item (I0181), a small two storey commercial/retail building and a new three storey commercial building that includes a shopping centre, a Woolworths supermarket and above ground carparking.

To the south of the site along the Pacific Highway is a variety of mixed-use buildings, ranging in scale from 2 to 15 storeys. The Mater Hospital, Cammeraygal High School and North Sydney Girls High School are located 200m further down the Pacific Highway from the subject site and forms a health and education sub-precinct.

To the west of the site on the opposite side of the Pacific Highway is a mix of commercial and shop-top housing development, ranging from two to six storeys.

To the east of the site, on the opposite side of Alexander Street is a series of one, two and three storey buildings containing retail uses on the ground floor and a mix of commercial and residential uses above.



Figure 1: Locality Map – Site location within St Leonards and Crows Nest Precinct (source: DPIE)

1.4 Site description

The Fiveways Triangle (**Figure 2**) comprises 16 separate properties (**Table 1**) which are bound by the Pacific Highway, Falcon Street and Alexander Street to create an island at the south of the Five Ways intersection. The site is visually prominent from all vantage points, especially when travelling north and southbound along the Pacific Highway.

The site contains a mix of 1-4 storey retail and commercial buildings, which are generally built to their respective lot boundaries. The buildings are occupied by a range of uses including office, retail, education, mechanic and sex services premises. Vehicular access is only obtained to several properties fronting Alexander Street.

It is estimated that the existing uses contain approximately 4,600sqm of gross floor area (GFA) of mixed use employment space and provides 154 jobs.

The site has a total area of 3,200.6sqm with the following frontages:

- Falcon Street – 70m.
- Alexander Street – 85m.
- Pacific Highway – 110m.

Table 2: Property descriptions of subject site

Address	Lot	DP	Ownership
3 Falcon Street	2	29672	Applicant
7 Falcon Street	3	29672	Applicant
9-11 Falcon Street	1	127595	Applicant
15 Falcon Street	1	562966	Under option for applicant
8 Alexander Street	11	29672	Applicant

Address	Lot	DP	Ownership
391-393 Pacific Highway	6	16402	Applicant
395 Pacific Highway	4 and 5	16402	Under contract for applicant
399 Pacific Highway	3	16402	Applicant
401 Pacific Highway	1 and 2	16402	Applicant
407 Pacific Highway	10	29672	Applicant
411 Pacific Highway	8 and 9	29672	Applicant
413 Pacific Highway	7	29672	Applicant
415 Pacific Highway	6	29672	Applicant
417 Pacific Highway	5	29672	Applicant
419 Pacific Highway	4	29672	Applicant
423 Pacific Highway	1	29672	Applicant

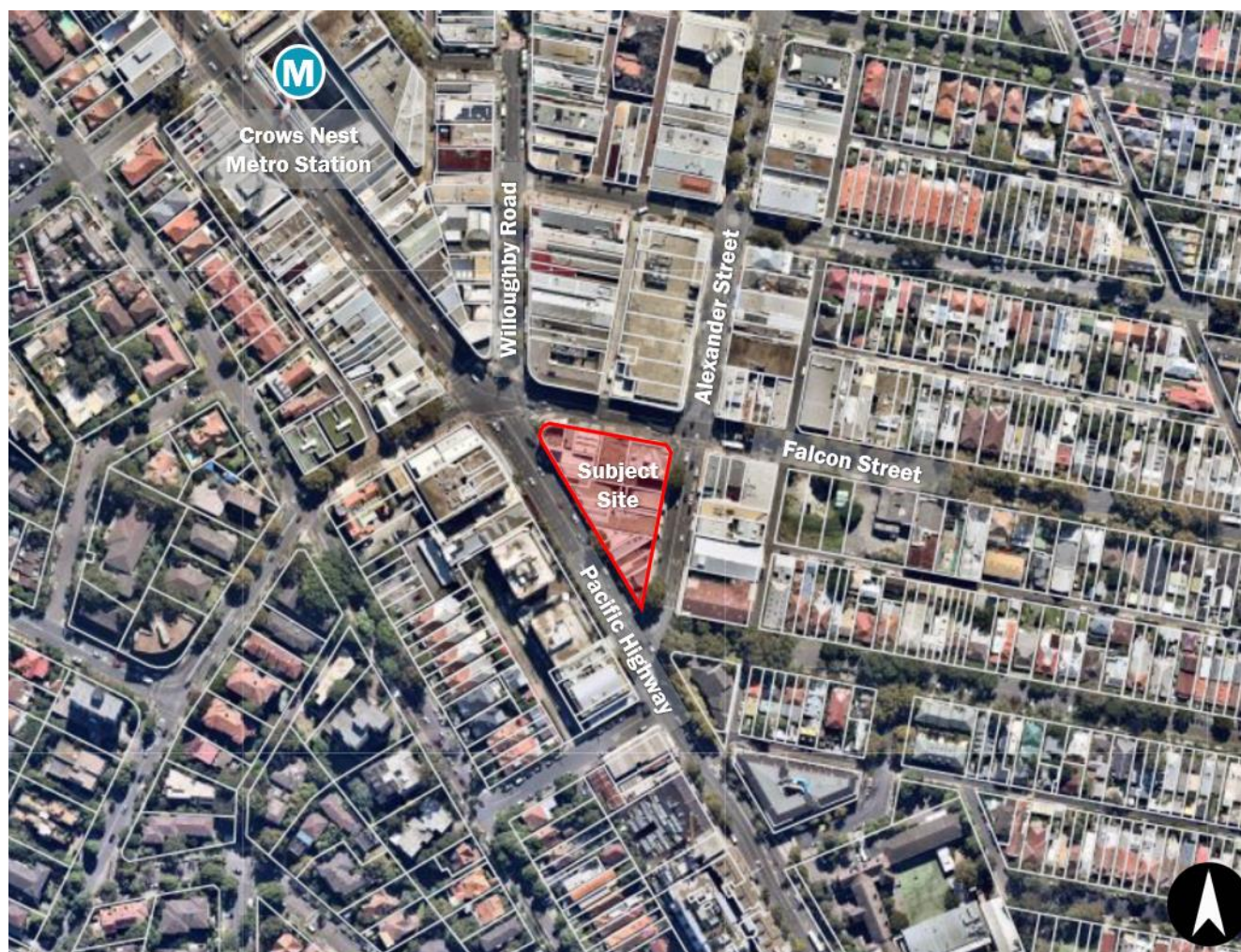


Figure 2: Site map (source: Nearmap)

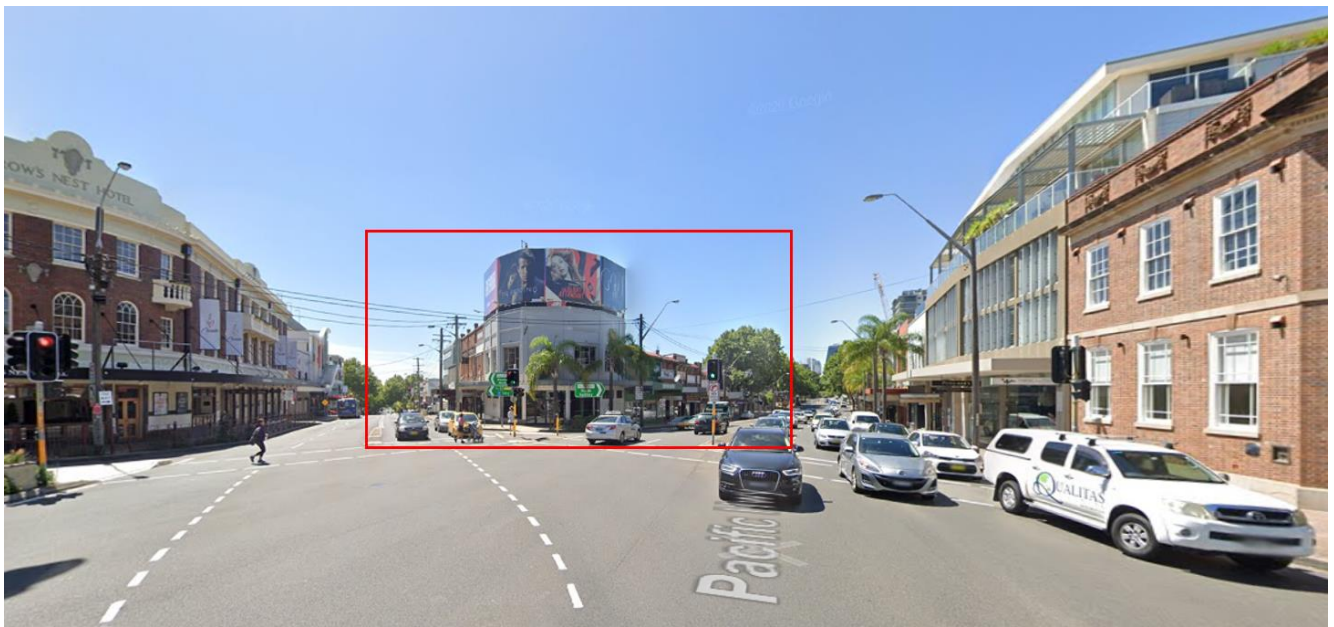


Figure 3: View of site from Fiveways intersection looking south east (source: Google Maps)



Figure 4: View of site from intersection of Falcon Street and Alexander Street looking west (source: Google Maps)



Figure 5: View of site from intersection of Pacific Highway and Alexander Street (source: Google Maps)

1.5 Current planning provisions

Under the North Sydney LEP 2013 the following principle planning provisions affect the site:

- A zoning of B4 Mixed Use (**Figure 6**).
- A maximum building height of 16m (**Figure 7**).
- A minimum non-residential FSR of 0.5:1 (**Figure 8**).

While the site does not contain any heritage items, there are numerous local heritage items that are located near the site (**Figure 9**) including:

- Item I0151 – 306 Pacific Highway, the former Crows Nest Branch of the Bank of NSW.
- Item I0152 – 308 Pacific Highway, an example of a two-storey interwar rendered masonry commercial building.
- Item I0172 – 429 Pacific Highway, an example of an interwar Functionalist commercial building.
- Item I0181 – 1-3 Willoughby Road, Crows Nest Hotel.

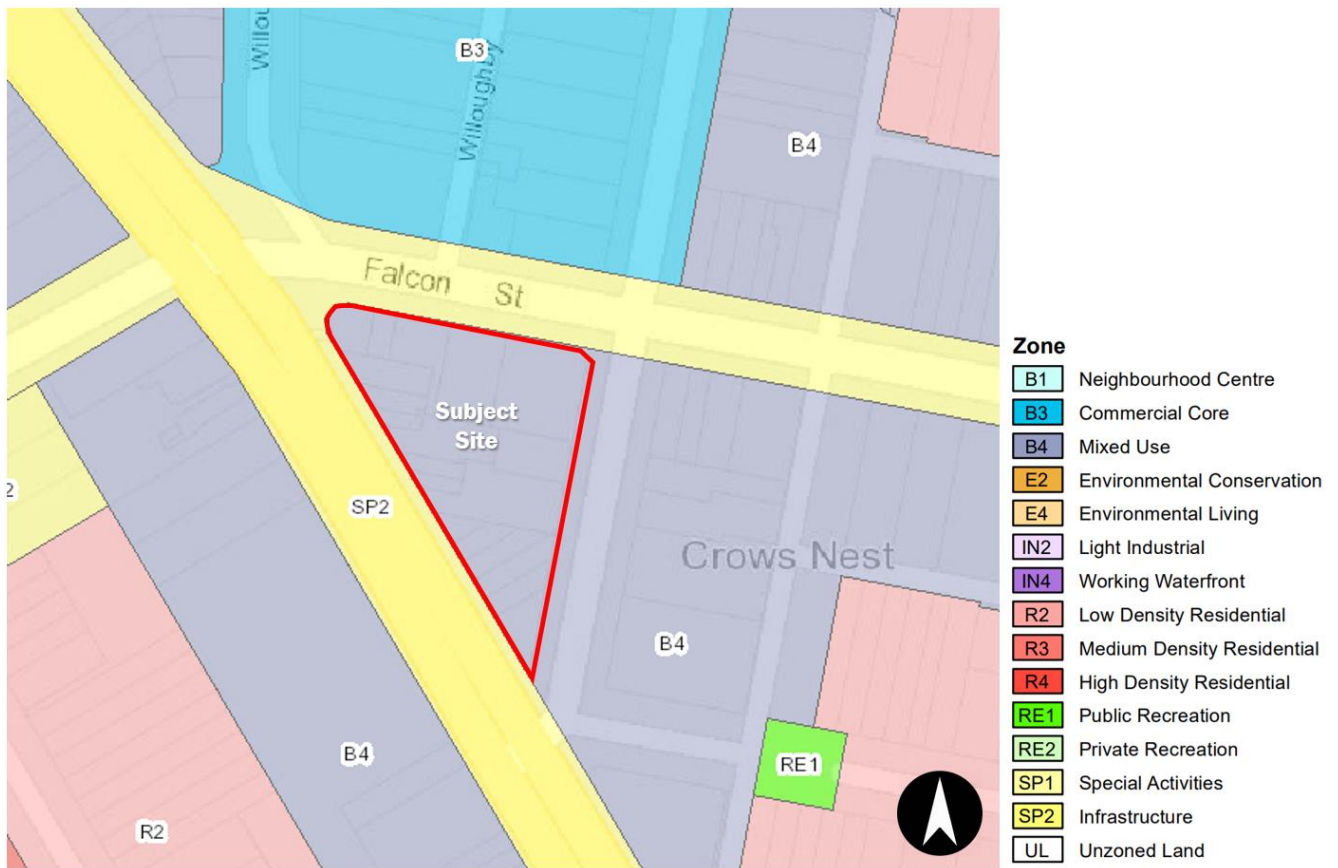


Figure 6: Current North Sydney LEP 2013 land zoning map (source: DPIE)

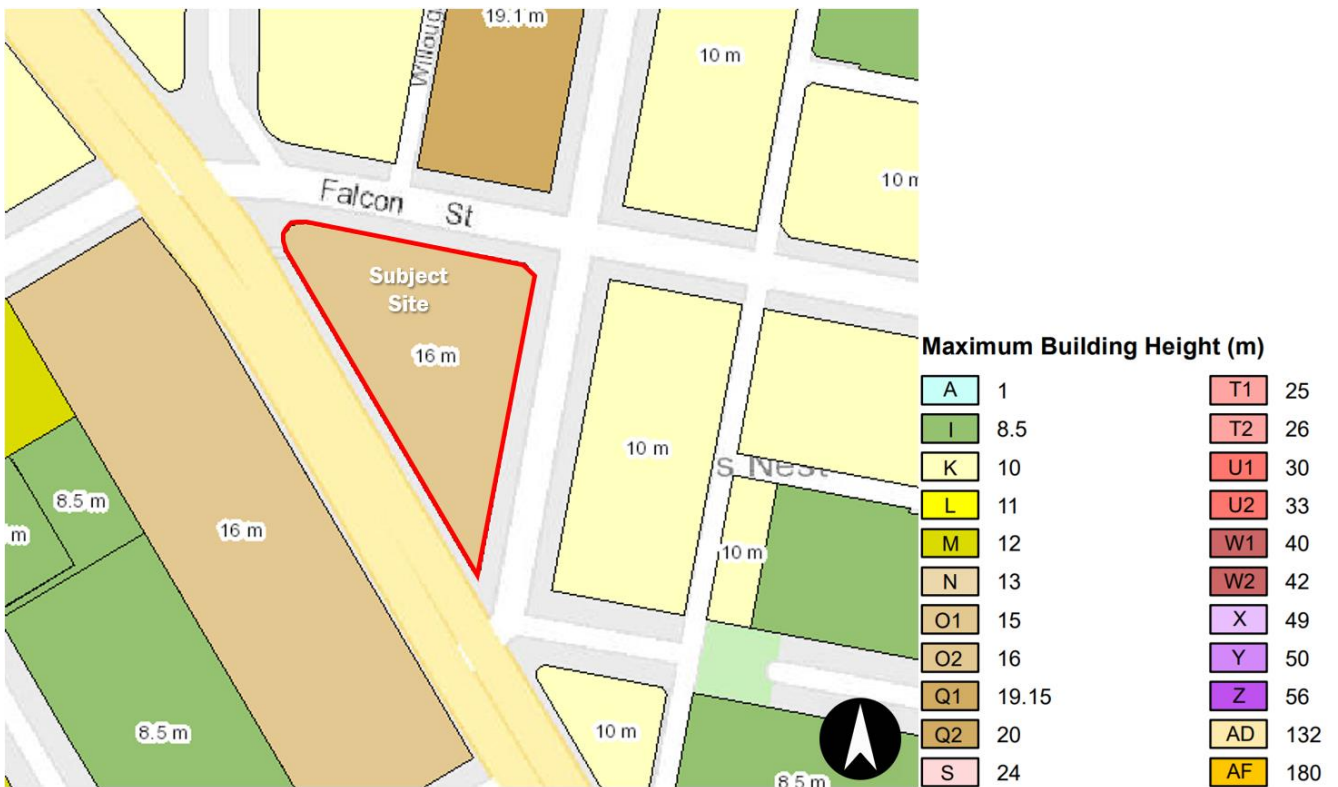


Figure 7: Current North Sydney LEP 2013 maximum height of buildings map (source: DPIE)



1.6 Proposed Planning Provisions

The planning proposal seeks to retain the current B4 Mixed Use zone on the site and proposed the following changes to the existing planning controls:

- Amending the maximum building height from 16m to 75m (**Figure 9**).
- Establishing a maximum FSR of 9.3:1 (**Figure 10**).
- Amending the minimum non-residential FSR 0.5:1 to 2.5:1 (**Figure 11**).

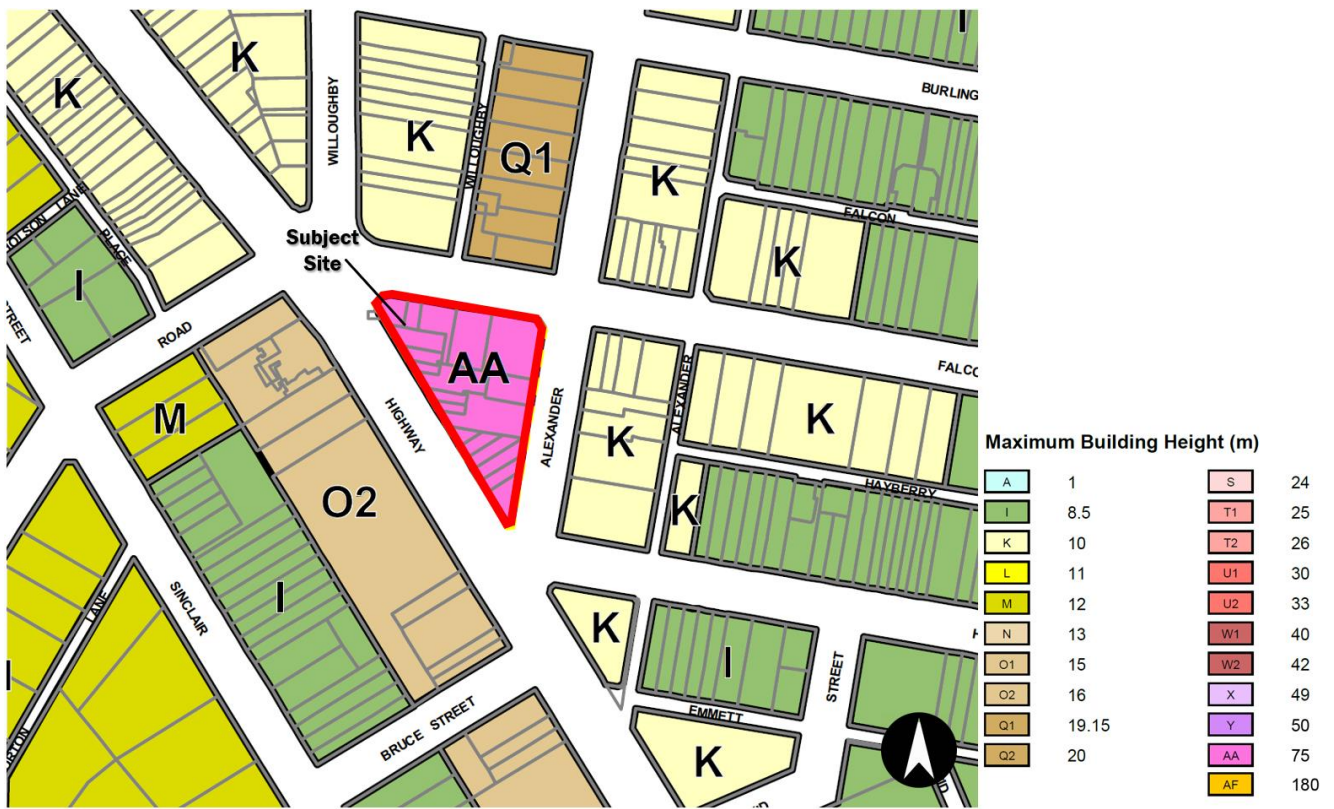


Figure 9: Proposed North Sydney LEP 2013 maximum height of buildings map (source: City Plan)

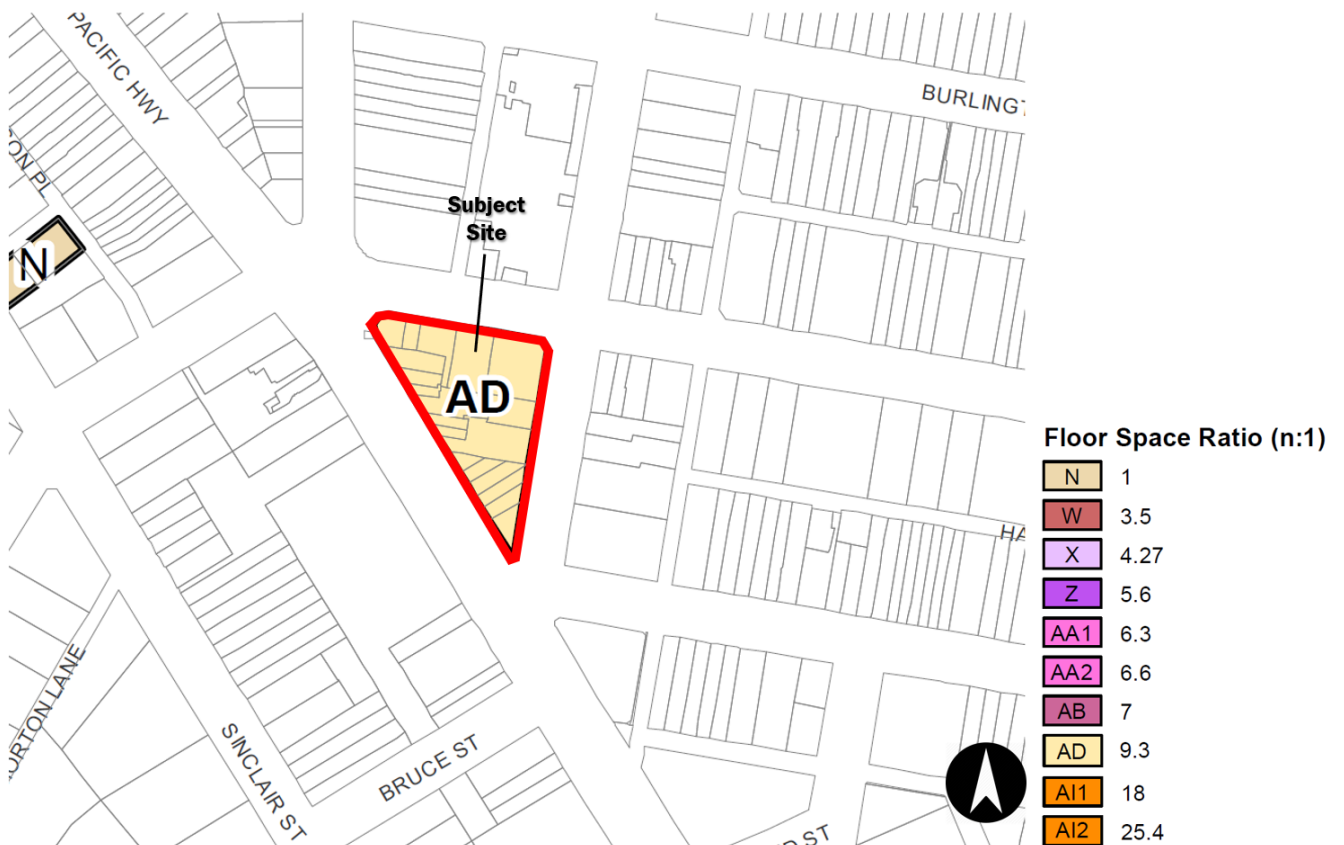


Figure 10: Proposed North Sydney LEP 2013 FSR map (source: City Plan)



Figure 11: Proposed North Sydney LEP 2013 minimum non-residential FSR map (source: City Plan)

1.7 St Leonards and Crows Nest 2036 Plan Recommendations

On 29 August 2020, the 2036 Plan was finalised by the Department and outlines the strategic vision for the St Leonards Crows Nest precinct over the next 16 years and will inform future development and infrastructure decisions within the area to support the delivery of new housing, job opportunities and improved public domain.

The subject site falls within the 2036 Plan area and recommends the following principal planning controls be applied as part of any future planning proposal:

- Retention of the existing B4 Mixed Use zoning (**Figure 12**).
- A maximum building height of 16 storeys (**Figure 13**).
- A maximum FSR of 5.8:1 (**Figure 14**).
- A minimum non-residential FSR of 2.5:1 (**Figure 15**).

The 2036 Plan also makes several other key considerations for the subject site, including:

- A maximum street wall height of three storeys to the Pacific Highway, Falcon Street and Alexander Street and four storeys to the corner of the Fiveways intersection (**Figure 16**).
- A nil setback to the Pacific Highway, Falcon Street and Alexander Street (**Figure 17**).

The 2036 Plan is supported by a section 9.1 Ministerial Direction (7.11 Implementation of St Leonards and Crows Nest 2036 Plan) which is the mechanism for a planning proposal authority to consider the recommendations of the 2036 Plan for any planning proposal that falls within the plan area.

The section 9.1 direction provides flexibility for minor inconsistencies to be considered on a case by case basis provided that any planning proposal can still achieve the overall intent of the 2036 Plan and does not undermine its vision, intent, objectives and actions.

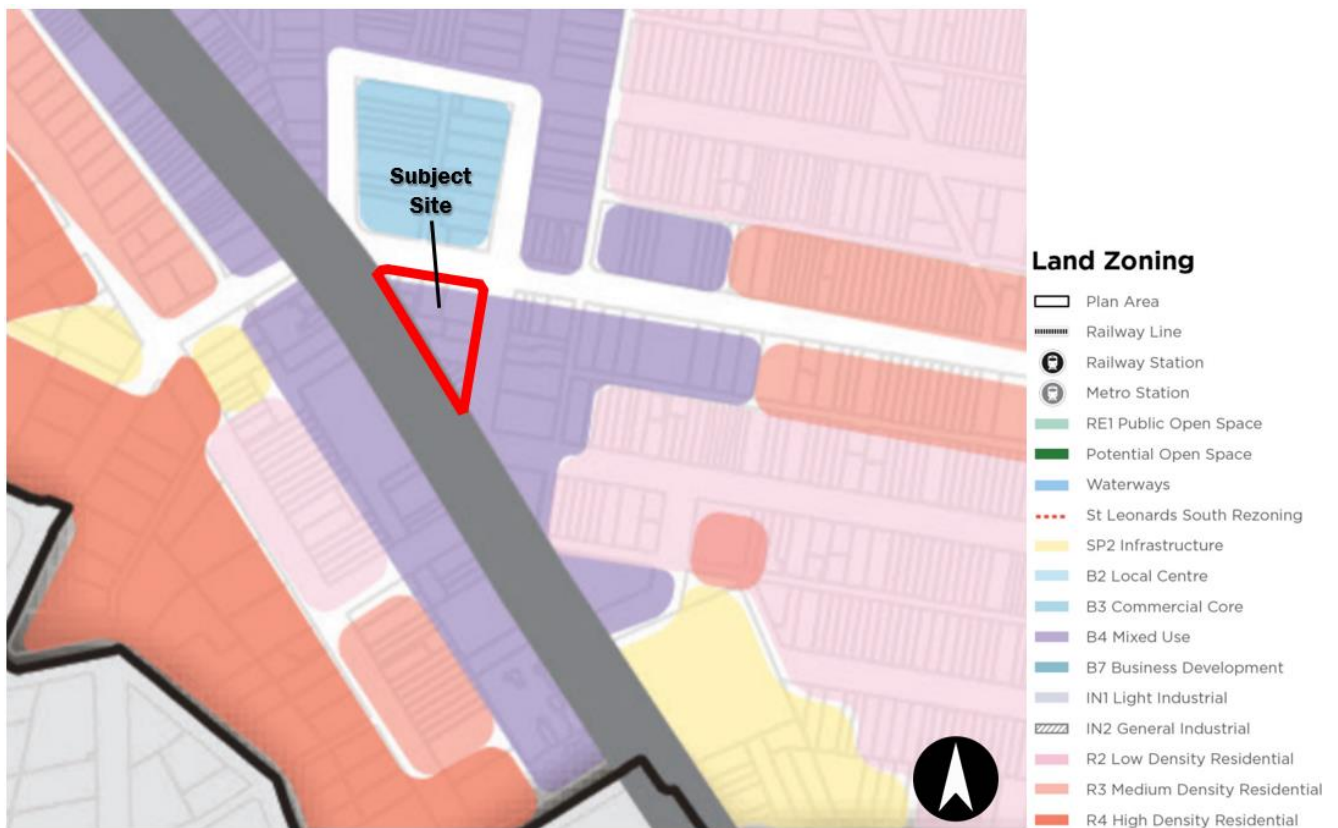


Figure 12: 2036 Plan recommended zoning (source: DPIE)



Figure 13: 2036 Plan recommended maximum building height (source: DPIE)



Figure 14: 2036 Plan recommended maximum FSR (source: DPIE)

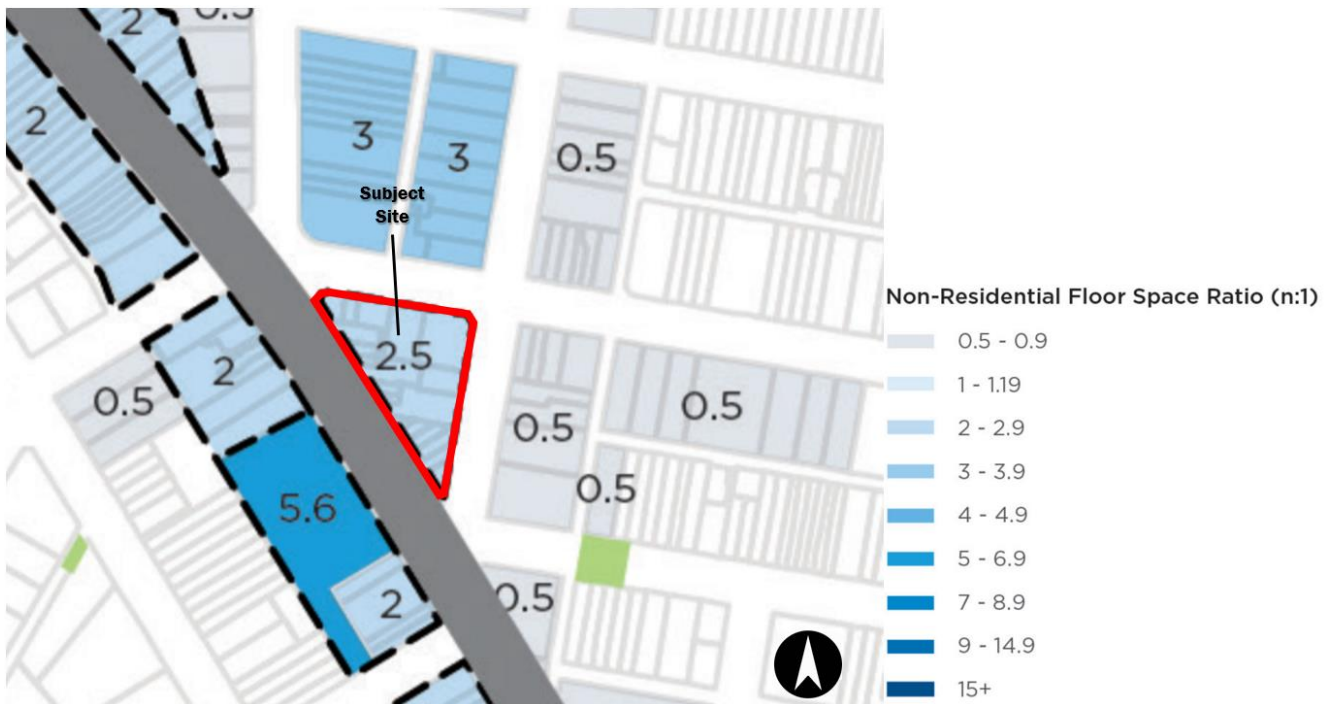


Figure 15: 2036 Plan recommended minimum non-residential FSR (source: DPIE)

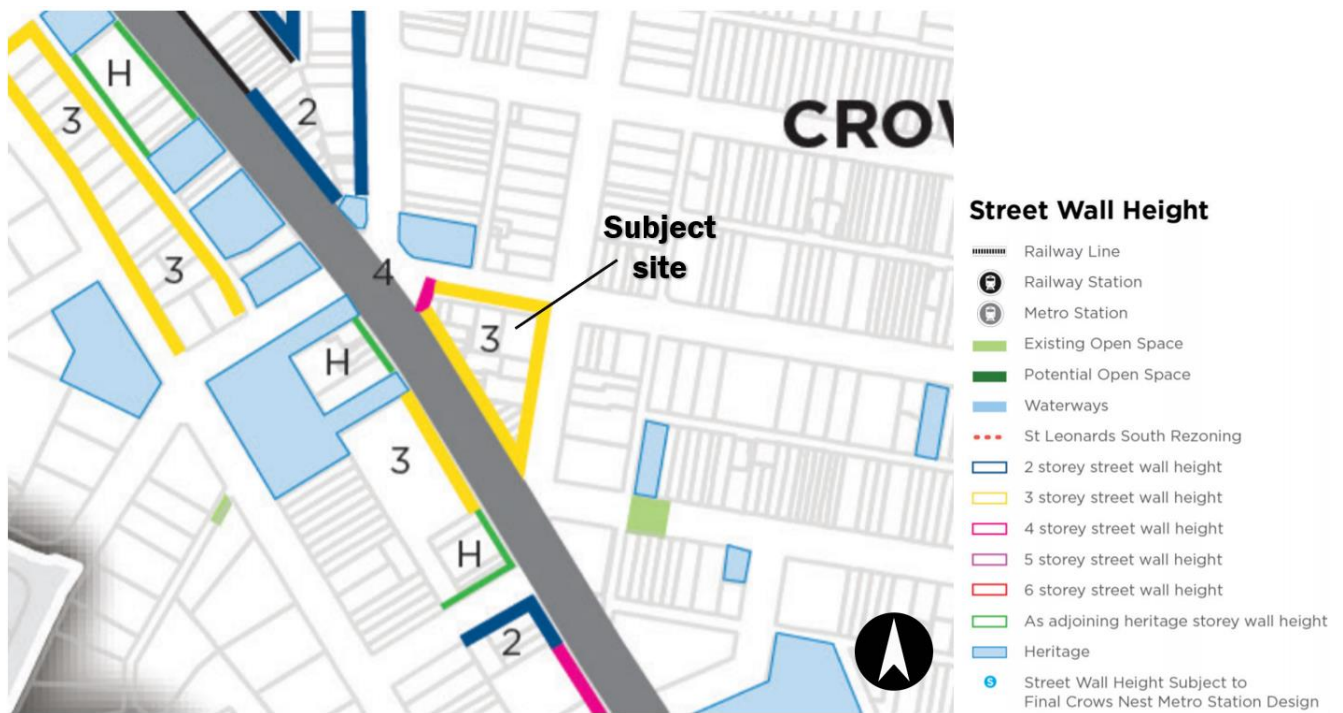


Figure 16: 2036 Plan recommended street wall heights (source: DPIE)



Figure 17: 2036 Plan recommended setbacks (source: DPIE)

1.8 Concept Design

The planning proposal is supported by a built form concept design (**Figures 18 to 24**) to demonstrate the application of the proposed planning controls. In summary the planning proposal could deliver the following built form outcome:

- A three-four storey podium containing approximately 8,000sqm of commercial, retail and community uses.
- Two 16-storey residential tower forms containing 233 dwellings with a typical floor plate of 800 sqm and 540sqm, and an indicative apartment split of 15% one bedroom, 75% two bedroom and 10% of three bedroom apartments.
- A 7-storey basement carpark containing 385 car parking spaces, 404 bicycle spaces and 22 motorcycle spaces.



Figure 18: Concept built form models (source: Turner)



Figure 19: Concept ground level commercial/retail floor plan (source: Turner)



Figure 20: Concept residential tower floor plan Streets (source: Turner)



Figure 21: Concept elevation from Pacific Highway (source: Turner)



Figure 22: Concept elevation from Alexander Street (source: Turner)



Figure 23: Concept elevation from Falcon Street (source: Turner)

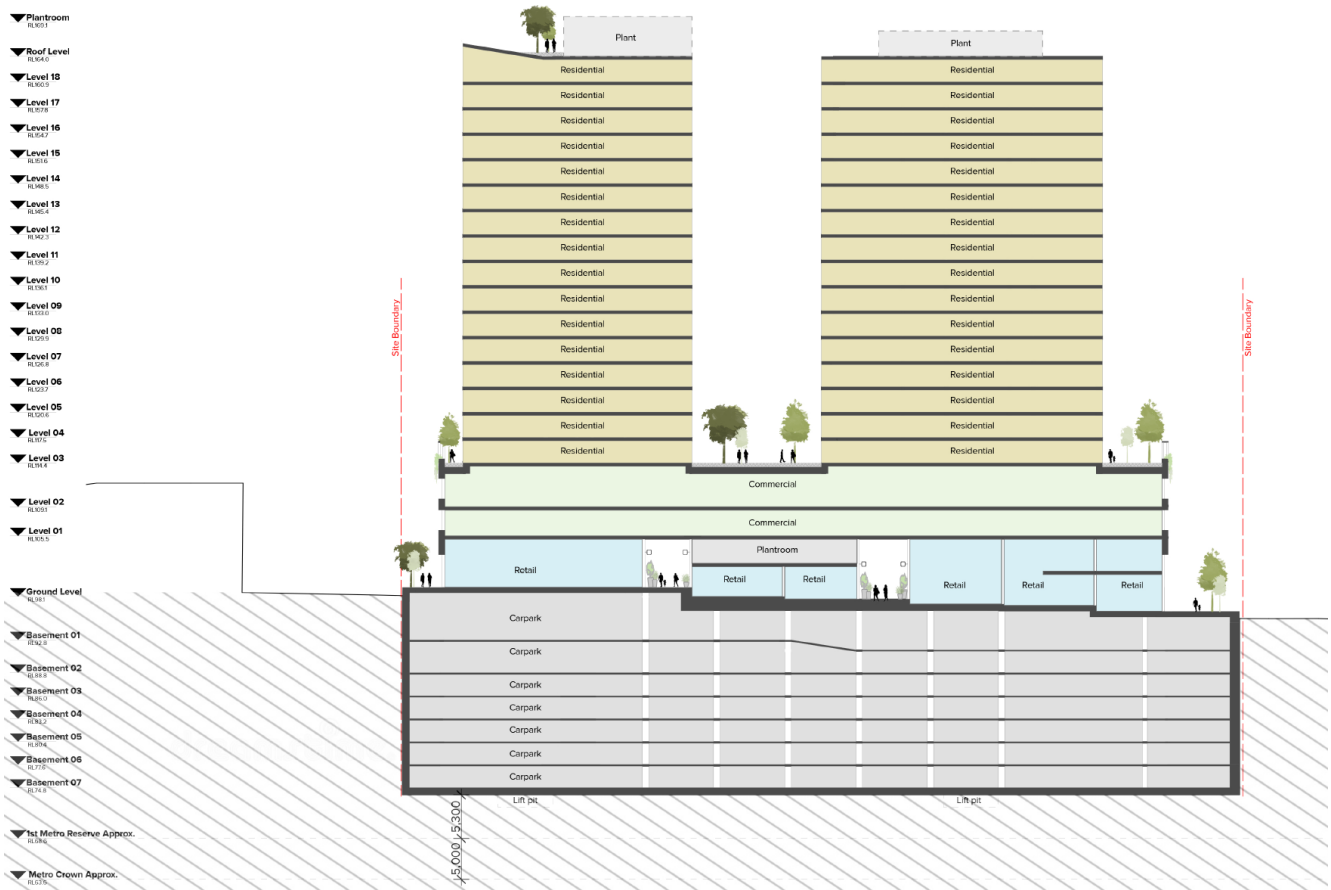


Figure 24: Concept section plan (source: Turner)

1.9 Objectives or intended outcomes

The proponent indicates that the key objectives and intended outcomes of the planning proposal are to:

- Implement the planning framework identified in the 2036 Plan, thereby satisfying the objectives of the Greater Sydney Region Plan and the North District Plan.
- Establish planning controls that enable feasible development, allowing renewal of the site and realisation of its significant potential to contribute to Crows Nest.
- Provide infrastructure that meets the needs of the existing and future community.
- Meet the forecast housing needs of the North Sydney community.
- Provide non-residential floor space that enables and supports the growth of Crows Nest and St Leonards as a medical and education precinct.
- Create a vibrant mixed-use community which will support the vitality of the Crows Nest Village Centre.
- Provide housing opportunities in a location with excellent access to transport, employment and social infrastructure.
- Respect the character and special quality of Crows Nest.
- Facilitate a high quality urban and architectural design that exhibits design excellence and responds to the emerging and future character of the precinct.
- Provide an opportunity to improve the presentation of the site to the public domain, and greatly enhance the streetscape in doing so.
- Integrate the subject site with the surrounding area through improvements to public spaces.

- Deliver significant public benefits including the dedication of key worker housing, high quality open domain and active street frontages.
- Maximise the use of public transport, walking and cycling for trips to, by integrating accessibility to services and public transport as well as the provision for on-site parking.
- Create land uses and facilities that attract people and create greater activity in the southern portion of Crows Nest.

2. INFORMATION ASSESSMENT

Does the proposal seek to amend a zone or planning control that is less than five years old?

No. The North Sydney LEP 2013 commenced in August 2013.

2.1 Strategic merit test

Consistency with the relevant regional plan outside the Greater Sydney region, district plan within the Greater Sydney region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment.

Proponents will not be able to depend on a draft regional, district or corridor/precinct plan when the Minister for Planning and Public Spaces or the Department of Planning, Industry and Environment have announced that such a plan will be updated before being able to be relied on.

North District Plan

The site is within the area covered by the North District Plan, which is one of five district plans to guide implementation of the Region Plan. The District Plan sets out a 20-year plan and aims to enhance liveability, productivity and sustainability. The North District Plan was released by the Greater Sydney Commission in March 2018.

The plan identifies the future role of North Sydney to strengthen the district's economic links to the Harbour CBD and its role in the Eastern Economic Corridor. The plan recognises the need to continue to provide housing close to jobs, services and infrastructure.

The proponent comments that the planning proposal is consistent with the following North District Plan Priorities:

Table 3: North District Plan Priorities.

North District Plan Priority	Proponent Response
Planning Priority N1 <i>Planning for a city supported by infrastructure</i>	<p>This planning proposal will increase residential and employment floorspace in a location which is or will be well serviced by road and metro based public transport routes, including road, metro, bus and cycle routes. These provide access to the Sydney CBD, St Leonards strategic centre and other location along the Eastern Economic Corridor.</p> <p>This planning proposal will optimise use of existing infrastructure (e.g. heavy rail) and future infrastructure (Metro) by providing new housing and employment floor space near it.</p>
Planning Priority N2 <i>Working through collaboration</i>	<p>This planning proposal will implement the vision and growth outcomes of 2036 Plan, which was collaboratively developed by government, the community, and business.</p> <p>The concept design for the site will continue to be developed with council and the community through the design excellence process.</p> <p>Developer contributions for the site will be negotiated with council, based on the needs of the existing and future community.</p>

North District Plan Priority	Proponent Response
Planning Priority N3 <i>Providing services and social infrastructure to meet people's changing needs</i>	<p>This planning proposal is accompanied by a letter of offer to enter into a planning agreement to provide additional development contributions of \$10 million.</p> <p>The offer and its terms were informed by a Demographic, Housing and Social Infrastructure Needs study and discussions with Council.</p>
Planning Priority N4 <i>Fostering healthy, creative, culturally rich and socially connective communities</i>	<p>This objective recognises streets and public places as key contributors to wellbeing by encouraging spontaneous social interaction and community cultural life when they are designed at a human scale for walkability. Active street life provides the greatest social opportunities when they are inclusive, intergenerational and multipurpose. This planning proposal provides the opportunity for active street life through active laneway retail at street level.</p> <p>The planning proposal will create framework to deliver a unique building, that activates the neighbourhood level and enhances connectivity from the site to the southern end of Willoughby Road.</p>
Planning Priority N5 <i>Providing housing supply, choice and affordability, with access to jobs, services and public transport</i>	<p>This objective notes the importance of providing ongoing housing supply and a range of housing types in the right locations to create more liveable neighbourhoods and support Greater Sydney's growing population.</p> <p>This planning proposal will provide housing in a location that is in close proximity to existing and soon to be completed city shaping infrastructure, and is readily accessible to the Sydney/North Sydney metropolitan centre and multiple strategic and regional centres and the jobs and services they offer.</p> <p>In addition, the VPA offer provides for a key worker housing offering which will assist in meeting the need for affordable housing within the District.</p>
Planning Priority N6 <i>Creating and renewing great places and local centres, and respecting the District's heritage</i>	<p>This planning proposal will facilitate the renewal of a rundown street block. The proposed articulated podium and the wide roads which surround the site will mitigate any impacts on adjacent heritage items.</p> <p>The site is located on the southern side of the Crows Nest village and will not overshadow any of the key spaces identified in the 2036 Plan.</p> <p>The proposed building envelope envisages a permeable development at ground/podium level to provide active laneways, walkways and connections to the Willoughby Road area and the Crows Nest centre from the southern part of the Planning Precinct.</p> <p>The residential tower element will be visible from Willoughby Rd, but its small footprint and segmented form minimise its visual bulk.</p>
Planning Priority N9 <i>Growing and investing health and education precincts</i>	<p>The subject site is an interface between the Education and Medical facilities in south Crows Nest and the Crows Nest village.</p> <p>The development of the subject site will provide non-residential floor space to accommodate complimentary uses and act as catalyst for investment south of Falcon Street.</p> <p>This planning proposal will bring forward non-residential floor space identified within the 2036 Plan. The space can be used by education and medical facilities and complimentary services, strengthening and supporting the role of the precinct.</p>
Planning Priority N10 <i>Growing investment,</i>	<p>St Leonards has been identified as a strategic centre. This planning proposal will support the development, servicing and</p>

North District Plan Priority	Proponent Response
<i>business opportunities and jobs in strategic centres</i>	housing supply of the St Leonards centre in a planned and strategic manner. The redevelopment of the site will increase commercial floorspace within the precinct.
Planning Priority N12 <i>Delivering integrated land use and transport planning and a 30-minute city</i>	The subject site is 240 metres from the new Crows Nest Sydney Metro station and is also well serviced by bus routes. The subject site's location will offer its residents and users access to Crows Nest and wider Sydney using low carbon transport methods. The accessibility to public transport of the site will reduce private vehicle dependency and access to a walkable and 30-minute city.
Planning Priority N21 <i>Reducing carbon emissions and managing energy, water and waste efficiently</i>	The objective seeks to mitigate climate change by reducing the emission of greenhouse gases to prevent more severe climate change and adapting to manage the impacts of climate change. This planning proposal seeks to facilitate greater use of public transport to combat the use of private vehicles and in doing so reduce greenhouse emissions. The site is well located in proximity to road and metro based public transport, as well as local employment opportunities in the St Leonards strategic centre, to enable access to jobs and services without reliance on private motor vehicles.

St Leonards and Crows Nest 2036 Plan

St Leonards is identified within the Greater Sydney Region Plan – A Metropolis of Three Cities and the North District Plan as a Strategic Centre and a health and education precinct. The area is marked for its potential to leverage these health and education assets for mixed-use growth delivering key employment and urban renewal.

In July 2016, the Minister for Planning revealed that the State Government would lead strategic planning investigations of the St Leonards and Crows Nest area following the announcement of a new metro station at Crows Nest.

After four years of investigations into the area, the Department released the St Leonards and Crows Nest 2036 Plan in August 2020 which provides a strategic framework to guide future development in the area and capacity for the delivery of approximately 16,500 new jobs and 6,680 dwellings over the next 15 years.

The rezoning review application notes that the proponent considers the planning proposal is consistent with the Precinct Plan and 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 consistent with the Local Planning Direction. The application also makes reference to sections of the St Leonards Crows Nest 2036 Plan including page 63 which notes that:

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.

The rezoning review application also refers to page 36 of the plan which 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.

Section 1.7 of this report identifies the key planning control recommendations for this site including land use, building height, FSR, minimum non-residential FSR, street wall height and setbacks. **Pages 48-58** of the planning proposal report (**Attachment F1**) provides the proponent's assessment of the proposal's consistency with the key actions and priorities of the 2036 Plan.

The rezoning review cover letter notes that the planning proposal 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, and in this regard the planning proposal is consistent with the precinct plan.

The proposed contributions includes either:

- (1) the provision of a monetary contribution of \$10 million to Council to be used for public benefit; or
- (2) the dedication to Council of 1 bedroom apartments within the proposed development with no car parking up to a total combined value of \$10 million to be used for the purpose of key worker housing.

As well as the proposed contributions, the planning proposal argues that public benefits arising from the additional height and density include the consolidation of the currently disparate street block through an amalgamation of 19 allotments to be developed as a coherent whole, with only a single vehicle access. This will allow a highly permeable and activated street level and an extension to the Crows Nest Village public domain. The ground plane (**Figure 19**) seeks to revitalise the Fiveways precinct and upgrade the public domain surrounding the site. It is also noted the amalgamation will facilitate large and flexible commercial floorplates needed for the health and education precinct.

North Sydney Local Strategic Planning Statement

North Sydney Council publicly exhibited the draft North Sydney Local Strategic Planning Statement (LSPS) in June 2019. A letter of support was received from the Greater Sydney Commission on 20 March 2020 and the LSPS was finalised by Council on 24 March 2020.

The intent of the North Sydney LSPS is to provide a 20-year vision for land use planning within the North Sydney LGA outlining how expected growth and change will be managed now and in the future. It also guides the North Sydney LEP 2013 and development control plans in identifying where further strategic planning work is required to deliver local and regional objectives.

Table 4 below provides the proponent's assessment of the proposal's consistency with the North Sydney LSPS.

Table 4: Consistency of proposal against North Sydney LSPS

Local Planning Priority	LSPS Action	Proponent Response
Infrastructure and Collaboration		
I2 – Collaborate with State Government Agencies and the community to deliver new housing, jobs, infrastructure and great places	I2.6 – Continue to seek opportunities to collaborate with Willoughby and Lane Cove Councils, the DPIE and other relevant State Government agencies to further refine and finalise the St Leonards and Crows	The 2036 Plan has been the result of numerous consultations between State Government Agencies, local government and the community, which developers and landowners form part of. The

Local Planning Priority	LSPS Action	Proponent Response
	Nest 2036 Plan, State Levy and Metro rezoning proposal to ensure the delivery of new housing, jobs, infrastructure and services within the Planning Precinct are well managed and development phased, drawing on place based studies and community consultation carried out by Council.	identification of the subject site as a 'significant site' enables further collaboration with State Government Agencies, local government and the community throughout the process of the facilitating and delivering the redevelopment of the subject site.
Liveability		
L1 – Diverse housing options that meet the needs of the North Sydney community	L1.3 – Collaborate with the DOPIE to refine and finalise the St Leonards and Crows Nest 2036 Plan and prepare a development phasing plan , to achieve coordinated and well managed housing growth in the St Leonards / Crows Nest Planned Precinct, drawing on the outcomes of the NSLHS and adopted place-based studies.	This planning proposal offers Council the opportunity to facilitate delivery of development in a coordinated manner, aligned with the provision of transport infrastructure delivery. Council has the ability to capture public infrastructure and community benefit through the redevelopment of the subject site and provision of additional housing units.
	L1.5 – Only support Planning Proposals that are consistent with Council's endorsed planning studies, that have identified growth being delivered in locations that support the role of centres and have critical infrastructure and services in place to support the North Sydney Community.	The 2036 Plan envisages that planning proposals will be submitted for these significant sites which is the reason for this planning proposal. The 2036 Plan identifies indicative building form controls which will be developed through the rezoning process which this proposal seeks to achieve.
L2 – Provide a range of community facilities and services to support a healthy, creative, diverse and socially connected North Sydney community	L2.7 - Investigate opportunities for affordable and accessible long-term exhibition and creative spaces, including: <ul style="list-style-type: none"> • Develop inclusive planning strategies which aim to generate cultural activity through the provision of creative private and public spaces; and • Develop partnerships with external stakeholders and the business section regarding provision of creative spaces 	This planning proposal proposes to offer community benefit through enhanced public domain, activation of the Fiveways site and retail/commercial floorspace and key worker housing. The planning proposal will facilitate the delivery of these services within the Southern part of the Planned Precinct.
L3 – Create great places that recognise and preserve		This planning proposal provides the opportunity to develop the subject site into a

Local Planning Priority	LSPS Action	Proponent Response
North Sydney's distinct local character and heritage		gateway development to the Planned Precinct. It also facilitates the renewal of an underperforming part of Crows Nest and amalgamation of a key site to create a new and interesting element within the Planned Precinct.
Productivity		
P6 – Support walkable centres and a connected, vibrant and sustainable North Sydney	P6.1 – Implement the North Sydney Transport Strategy (2017) to deliver the community's vision for transport in North Sydney.	North Sydney's Transport Strategy vision is that transport will play a positive role in supporting a happy, healthy and prosperous North Sydney community. This planning proposal will allow its residents and users access to a variety of public transport nodes and improve the connectivity through the site and local area.

Local Planning Priority	LSPS Action	Proponent Response
Sustainability		
S3 – Reduce greenhouse gas emissions, energy, water and waste		This planning proposal provides the opportunity to deliver high amenity residential apartments which exceed cross ventilation and solar access requirements which will reduce energy consumption. The site will be serviced by public transport to enable residents to a walkable 30-minute city contributing to reducing greenhouse gases and reliance of private motor vehicles.

North Sydney Local Housing Strategy

The North Sydney Local Housing Strategy (LHS) was adopted by Council on 25 November 2019 and has been approved by the Department on 10 May 2021

The LHS establishes the vision for housing in the LGA over the next 20 years and is a mandated strategy which aligns with the housing objectives and targets set out in the North District Plan.

The planning proposal comments that while North Sydney is on track to meet its 10-year housing target to 2026, a decline in housing supply in that period may eventuate because of slowing housing activity in North Sydney.

The proponent identifies that the planning proposal will incorporate approximately 233 apartments and will assist in addressing gaps in the current provision for housing within the LGA to meet the needs of the current and future community.

Civic Precinct Planning Study (not endorsed by Department)

On 30 November 2020, Council resolved to endorse its Civic Precinct Planning Study (CPPS) to provide a framework for development for the area from the north of the North Sydney CBD to Crows Nest to coincide with the delivery of the new metro stations at Crows Nest and Victoria Cross.

The key objectives of the CPPS include:

- Outlining of the vision and urban structure for the precinct.
- Establishing a desired character and feel for the precinct that is supported by a series of urban design principles to guide future growth.
- Outlining a series of actions to achieve the vision for the precinct.
- Identifying opportunities to deliver additional public domain, public transport networks and provide jobs and housing in appropriate locations.

In relation to the subject site the CPPS makes the following indicative built form recommendations:

- A maximum building height of four storeys (**Figure 25**).
- A minimum non-residential FSR of 1:1 (**Figure 26**).

The CPPS however does note that the 2036 Plan recommends a 16-storey building height for the subject site and that a planning proposal would be required to consider any amendments to the height of buildings.



Figure 25: Civic Precinct Planning Study maximum building height recommendation for subject site (source: North Sydney Council)

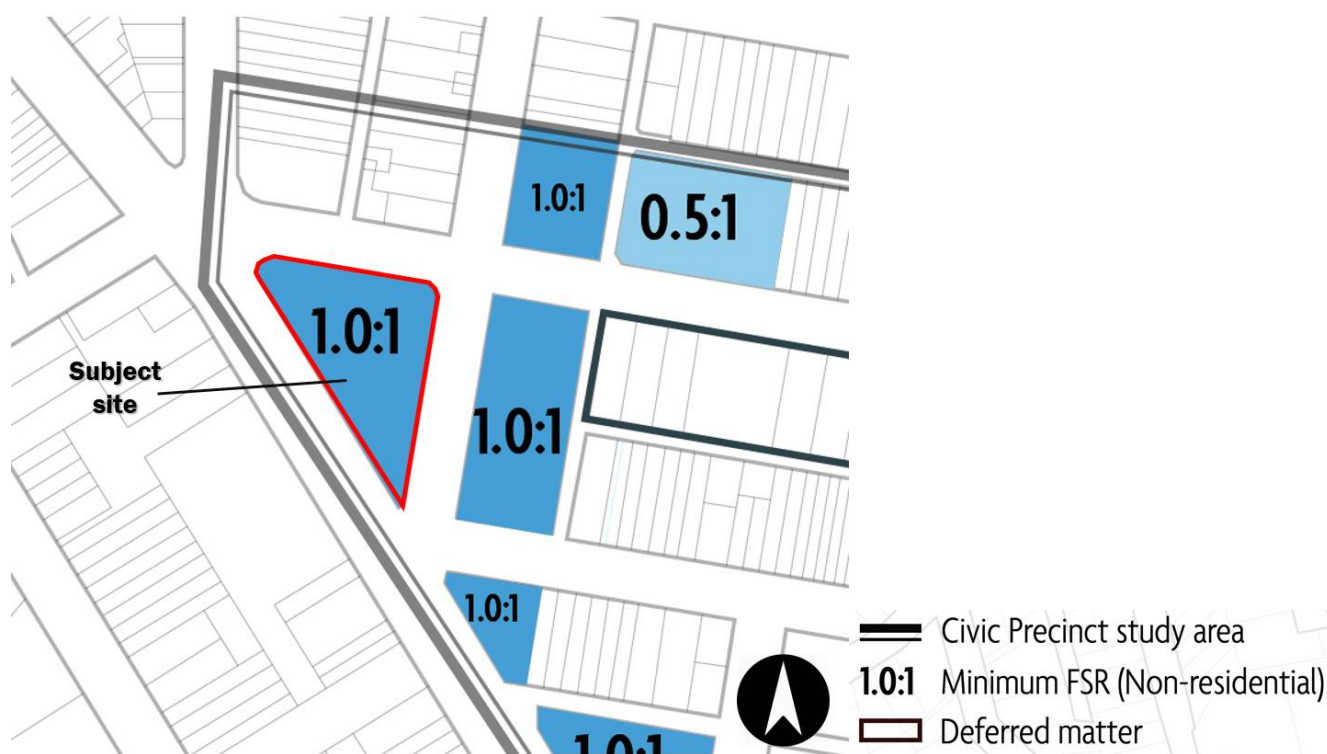


Figure 25: Civic Precinct Planning Study minimum non-residential recommendation for subject site (source: North Sydney Council)

2.2 Site-specific merit test

Table 5 provides the proponents summary of the proposal's alignment with the site-specific merit test.

Table 5: Summary of proposals site specific merits.

Site Specific Merit	Proponent Response
The natural environment (including known significant values, resources or hazards.	There are no known site-specific environmental considerations identified in the planning proposal and supporting material that would preclude further consideration of the proposed urban renewal.
The existing uses, approved uses, and likely future uses of	The Fiveways site is located within the St Leonards and Crows Nest Planned Precinct. Within the Planned Precinct it is

land in the vicinity of the proposal.	<p>envisaged that developments should be achieving heights and densities commensurate with its accessibility to public transport (metro, train and buses).</p> <p>Existing building heights in Crows Nest and St Leonards are around 35 storeys. Several planning proposals and development applications will exceed this, with towers up to 50 storeys.</p> <p>Subject to further urban design testing and overshadowing analysis within Precinct 4, it is envisaged that buildings within the vicinity of the site and in close proximity to Pacific Highway could accommodate a significant increase in building height, with buildings extending from 13 to 35-storeys along the Pacific Highway.</p> <p>The planning proposal has taken into consideration the surrounding context and its likely future context. The planning proposal reinforces Fiveways as a place of importance and interest, appropriate with its role as the</p>
The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.	<p>A Traffic Impact Assessment has been prepared and is submitted with the planning proposal at Appendix C. There are no traffic matters identified on the site that would preclude further consideration of the proposed urban renewal.</p> <p>There is sufficient infrastructure (water, electricity, sewer, etc.) available to accommodate the proposed development.</p>

3. COUNCIL VIEWS

The Department wrote to Council on 31 August 2021, advising that a rezoning review request had formally been lodged for the site and that Council was invited to provide comments on why it did not support the progression of the proposal.

Council wrote to the Department on 21 September 2021, providing an outline of why it did not support the progression of the proposal (**Attachment D**). Council's comments note its advice to the proponent on 26 February 2021 that the planning proposal could not be supported in its current form and requested the proposal to be withdrawn or revised so that it is compliant with the 2036 Plan. The comments also refer to Council's detailed assessment report dated 24 May 2021 (**Attachment E**) which outlines the reasons why Council does not support the proposal.

Council notes that it does not support the proposal as it is significantly inconsistent with the outcomes of the 2036 Plan, including both the development standards and vision, objectives and principles of the 2036 Plan.

Council is of the view that supporting the requested non-compliances in any degree, would establish a precedent for non-compliances with the 2036 Plan, undermining the processes that have occurred in the finalisation of the Plan.

In its response, Council details that both the Rezoning Review Request and information lodged on the Planning Portal are generally consistent with the information already considered by Council in its assessment of the planning proposal.

The North Sydney Local Planning Panel considered the proposal on 5 May 2021 and agreed with analysis and reasons in the Council officer's report for not supporting the proposal. The Panel noted the public benefits of the planning proposal however, did not consider this as justification for a height and FSR exceedance not envisaged in the 2036 Plan.

Strategic Merit:

In its response, Council outlines that it considers the proposal to be inconsistent with Section 9.1 *Direction 7.11 – Implementation of St Leonards and Crows Nest 2036 Plan*.

Council notes that under the direction, a planning proposal must be consistent with the 2036 Plan and may only be inconsistent if:

- a) *The provisions of the planning proposal that are inconsistent are of minor significance; and*
- 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.*

Council is of the view that the proposal is significantly inconsistent with the outcomes of the 2036 Plan with respect to maximum building height and FSR. Council outlines that the Plan identifies a maximum building height of 16-storeys and maximum FSR of 5.8:1 (18,560m² GFA) for the subject site. Council also outlines that the proposal seeks a maximum building height of 75m which is equivalent to 22 storeys and an FSR of 9.3:1 (29,760m² GFA), representing an exceedance of 11,200m² (60%) in GFA.

Council identifies that the proponent contests that the "test of consistency" with the 2036 Plan is not whether it complies with the height and FSR controls, but whether it achieves the vision, objectives and principles of the Plan. However, Council notes that page 34 of the Plan explicitly states that the "proposed built form controls and actions are informed by key urban design principles", suggesting that the built form controls have been developed to achieve the key urban design principles envisaged by the Plan.

Council is of the view that the numerical controls are an integral component of the Plan which were developed after four years of consultation and investigation. Council notes that exceedances of the magnitude proposed will result in outcomes for the Precinct not envisaged under the Plan.

Special Infrastructure Contributions

Council outlines that the Plan is supported by a Special Infrastructure Contributions (SIC) scheme which has been developed with an assumed level of uplift and subsequent funding that will be generated to support the growth of the precinct.

Council is of the view that the proposed increase in density, over and above the maximum capacity identified under the Plan for the site, will facilitate a level of growth for local and regional infrastructure (including open space, schools and community facilities) that have not been planned for and cannot be supported through the established infrastructure delivery mechanisms.

Council also maintains its concern that approving significant non-compliances with the plan will create a precedent for significant non-compliances that will facilitate unanticipated levels of growth with cumulative impacts across the precinct.

Site Specific Merit:

Height

Council notes that the proponent's primary justification for the 19-storey proposal, is that a 16-storey pure commercial building would yield a height similar to a 19-storey mixed-use building (lower floor-to-floor heights for residential development). At 19-storeys, the proponent contends that the proposal is still consistent with the height transition principles of the 2036 Plan.

Council is of the view that the proposed height of 75m is inconsistent with the 2036 Plan for the following reasons:

- The SJB Urban Design Study (which underpins the finalised built form outcomes in the 2036 Plan), assumes a 16-storey height for the site is based on a mixed-use building with a commercial podium and residential tower. This is reflected in the Land Use and Activity Map (on page 51) of the SJB Urban Design Study. It is therefore erroneous to rely upon a theoretical 16-storey pure commercial building height to justify a 19-storey proposal on the site;

- The subject site is located outside the height “Knuckle Area” (i.e., the 2036 Plan’s key transitional principle, where taller buildings are to be located 150-200 m of either station and transition in height, and bulk and scale to the surrounding neighbourhood areas) and located in a “transition area” (i.e., between low and high-rise developments). 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 proposed height of 75 m appears excessive for the proposed number of storeys and could potentially result in a built form of approximately 22-storeys on the subject site.

Floor Space Ratio:

Council outlines that the proponent’s justification for the proposed FSR of 9.3:1 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 proponent maintains that the Proof of Concept complies with the 2036 Plan’s solar access controls, and that the high level of visual impact is acceptable based on the site’s role as a “gateway” element to the precinct.

Council does not accept the proponent’s justification for the proposed FSR for the following reasons:

- The FSR control is the primary mechanism through which density is managed under the 2036 Plan and not ‘envelope controls’;
- The proposed height and scale of the residential towers casts significant, far-reaching shadows to the east and west of the site to surrounding low-density residential areas, including the nearby Heritage Conservation Areas (HCAs). Council’s internal modelling indicates that the proposed height and scale of the residential towers will result in a greater level of impact to the Holtermann Estate C HCA, than that of a compliant scheme. This is contrary to the 2036 Plan’s principles regarding the protection of HCAs, which states: ‘new development nearby HCAs is to ensure minimal overshadowing and avoid unreasonable visual impact to the public domain or private open spaces of dwellings within these areas.’
- The visual impact of the proposed building massing is significant from several close and distant viewpoints with the loss of sky views from various viewpoints surrounding the site. The notion of ‘gateway’ sites was abandoned in the finalisation of the 2036 Plan. Notwithstanding, the SJB Urban Design Study (on page 47) states that the Fiveways site should be retained ‘as a human scale entry point.’ On this basis, there is no justification for the significant visual impact of the proposal on the notion that it acts as a ‘gateway element.’
- The proposed built form seeks to maximise GFA on the site by proposing a building height well above 16 storeys with no stepping down, lowering or differentiation in heights across the site, minimal setbacks and building separation. Council notes the distance between the two proposed residential towers are substantially below minimum ADG requirements. Council’s view is that the overall height, bulk and scale of the podium and tower elements are excessive and does not respond appropriately to the site’s immediate context.

Public Benefits:

Council highlights that the proponent’s justification for the additional height and density sought, is that the proposed public benefits are of *‘exceptional value, beyond what could be secured in a standard practice approach that should be considered within the precinct’*.

Council also notes that the 2036 Plan suggests that the delivery of public benefits in exchange for additional height and density may be considered, but only in instances where the proposal is consistent with the vision, objectives and actions of the Plan. For the reasons detailed above, Council is not of the view that the proposal is consistent with the vision, objectives and actions of the 2036 Plan.

ATTACHMENTS

Attachment A – Locality Map

Attachment B – Site Map

Attachment C – Existing and Proposed North Sydney LEP 2013 maps

Attachment D – Council Comments

Attachment E – Council Assessment Report

Attachment F – Rezoning Review Request

- F1 – Planning proposal report, Architectus
- F2 – Urban Design Report, Architectus
- F3 – Place Design Framework and Urban Design Rationale
- F4 – Traffic and Parking Impact Assessment
- F5 – Travel Plan
- F6 – Economic Impact Assessment
- F7 – Social Infrastructure Needs Study
- F8 – Heritage Impact Statement
- F9 – Structural Report
- F10 – Section 9.1 Directions
- F11 – State Environmental Planning Policies
- F12 – Draft VPA Offer
- F13 – Draft LEP Maps
- F14 – Preliminary Contamination Report
- F15 – Pedestrian Wind Environment Statement
- F16 – Owners Consent Letters
- F17 – Draft Site Specific DCP