

Rezoning Review Briefing Report – RR-2022-24

360 Pacific Highway, Crows Nest (42 dwellings) – Planning proposal seeks to increase maximum height for the site from 10m to RL166 (18 storeys), introduce a floor space ratio (FSR) of 5.5:1 and increase the non-residential FSR from 0.5:1 to 2:1

| Element | Description |
|---|---|
| Date of request | 6 September 2022 |
| Department ref. no | RR-2022-24 |
| LGA | North Sydney |
| LEP to be amended | North Sydney LEP 2013 |
| Address | 360 Pacific Highway, Crows Nest |
| Reason for review | <div><input checked="" type="checkbox"/> Council notified the proponent it will not support the proposed amendment</div> <div><input type="checkbox"/> Council failed to indicate support for the proposal within 90/115 days, or failed to submit the proposal after indicating its support</div> |
| Has council nominated PPA role | No. As Council has resolved not to support the application, the Panel may appoint itself as PPA in accordance with the LEP Making Guidelines (Sept 2022). |
| Consultation | <p>The North Sydney Local Planning Panel (NSLLP) considered the planning proposal on 8 June 2022. The NSLLP stated that the proposal:</p> <ul style="list-style-type: none">did not adequately respond to the six local heritage items, the 'Higgins Buildings' at 366-376 Pacific Highway Crows Nest, adjoining the north boundary of the site; andproposes inadequate setbacks and has not adequately considered streetscape, laneway and the lower scale development to the west. |
| Brief overview of the timeframe/progress of the planning proposal | <p>4 August 2021 – Pre-lodgement meeting with Council.</p> <p>8 October 2021 – Second pre-lodgement meeting with Council.</p> <p>8 December 2021 – Planning proposal lodged with Council.</p> <p>30 March 2022 – Meeting with Council to discuss the proposal and amended concept scheme submitted.</p> <p>8 June 2022 – North Sydney Local Planning Panel recommended to not support the proposal.</p> <p>27 June 2022 – North Sydney Council recommended the proposal not be supported and not proceed for a Gateway determination.</p> |

| Element | Description |
|---------------------|---|
| Department contact: | Christina Brooks, A/Senior Planning Officer, Metro Central and North District |

Planning Proposal

Table 1. Overview of planning proposal

| Element | Description |
|---|--|
| Site Area | 1,406m ² |
| Site Description | <p>One lot, legally described as SP72954 with the main frontage to the Pacific Highway and a secondary rear frontage and vehicular access via Nicholson Place. The site currently contains a 3 storey commercial development built to the boundaries.</p> <p>The site does not contain any heritage items and is not within a heritage conservation area (HCA). However, it is adjacent to and in the vicinity of a number of local heritage items (Figure 7). The site is within the St Leonards Crows Nest 2036 Plan (SLCN Plan) area and within the Crows Nest Town Centre.</p> |
| Proposal summary | <p>The planning proposal (Attachment A2) seeks to amend the North Sydney LEP 2013 for 360 Pacific Highway, Crows Nest to:</p> <ul style="list-style-type: none"> • increase the maximum height from 10m to RL166 (18 storeys); • introduce an FSR of 5.5:1; and • increase the non-residential FSR from 0.5:1 to 2:1. <p>The proposal will facilitate the redevelopment of the site within 70m of the new Crow Nest Metro Station. The proposed concept (Attachment A3) includes 3 storeys of retail/commercial with a FSR of 2:1 (GFA of 2,812m²) and 14 storeys of residential with a FSR of 3.5:1 (GFA of 4,921m²). There is 1 storey of void that provides a break between the podium and the tower. Level 3 is for the use of a podium garden.</p> <p>The applicant submitted amendments in March 2022 including a revised indicative concept (Attachment A18) to reduce the height of the building to RL 163.8m and an amended podium to include a setback of 3m for the third podium storey from the two-storey podium façade adjacent to Pacific Highway. The applicant has based their rezoning review request (Attachment A1) on the amended concept.</p> |
| Relevant State and Local Planning Policies, Instruments | <ul style="list-style-type: none"> • Greater Sydney Region Plan • North District Plan • St Leonards Crows Nest 2036 Plan • North Sydney LEP 2013 |

Rezoning Review – Briefing Report

PP-2021-7169 (RR-2022-24)



| Element | Description |
|---------|---|
| | <ul style="list-style-type: none">• Draft North Sydney DCP 2013• Ministerial Directions:<ul style="list-style-type: none">• 1.1 Implementations of Regional Plans• 1.13 Implementation of St Leonards Crows Nest 2036 Plan• 3.2 Heritage Conservation• 4.4 Remediation of Contaminated Land• 5.1 Integrating Land Use and Transport• 5.3 Development Near Regulated Airports and Defence Airfields• 6.1 Residential Zones• 7.1 Business and Industrial Zones• State Environmental Planning Policies<ul style="list-style-type: none">• SEPP (Resilience and Hazards) 2021• SEPP (Transport and Infrastructure) 2021• SEPP 65 Design Quality of Residential Apartment Development |

Rezoning Review – Briefing Report

PP-2021-7169 (RR-2022-24)



Figure 1. Subject site (source: Six Maps)

The planning proposal seeks to amend the North Sydney LEP 2013 per the changes below.

Table 2. Current and proposed controls

| Control | Current | SLCN 2036 Plan | Proposed |
|--|--------------|----------------|--|
| Zone | B4 Mixed Use | B4 Mixed Use | B4 Mixed Use |
| Maximum height of the building | 10m | 18 storeys | RL 166m* (18 storeys) (71m) *revised scheme RL163.8m (68.8m) |
| Floor space ratio | N/A | 5.5:1 | 5.5:1 |
| Minimum Non-Residential Floor Space Ratio | 0.5:1 | 2:1 | 2:1 (2,812m ² GFA) |

Rezoning Review – Briefing Report

PP-2021-7169 (RR-2022-24)

| Control | Current | SLCN 2036 Plan | Proposed |
|-----------------------|------------------------------------|---|--|
| Street wall height | N/A | Heritage - As adjoining heritage storey wall height | 3 storey podium* *revised scheme reads as 2 storey podium from street level with 3 rd storey setback 3m. |
| Street level setbacks | N/A | 0m setback to Pacific Highway | 0m setback to Pacific Highway |
| Number of dwellings | N/A – commercial/retail floorspace | N/A | 42 (4,921m ² GFA) |
| Number of jobs | N/A | N/A | 17 |

*Note: the applicant submitted a revised scheme which has been reviewed by Council as noted in the council assessment report to the LPP and Council's response to the rezoning review request (**Attachment C1** and **E**). The applicant has submitted the rezoning review request (**Attachment A1**) based on the amended scheme (**Attachment A18**).

The planning proposal contains an explanation of provisions that adequately explains how the objectives of the proposal will be achieved.

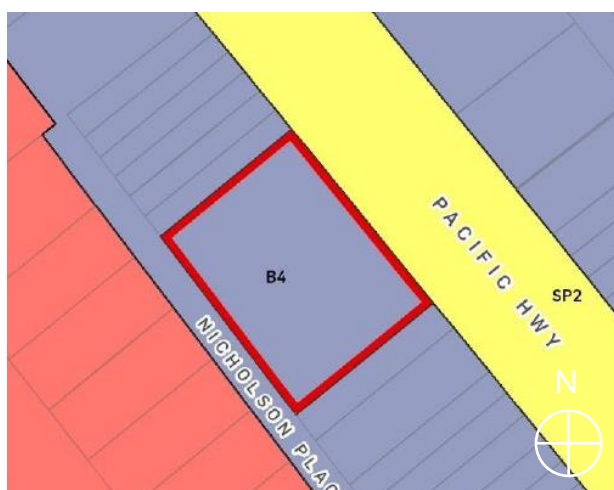


Figure 2. Current zoning map – no change proposed (source: Urbis)

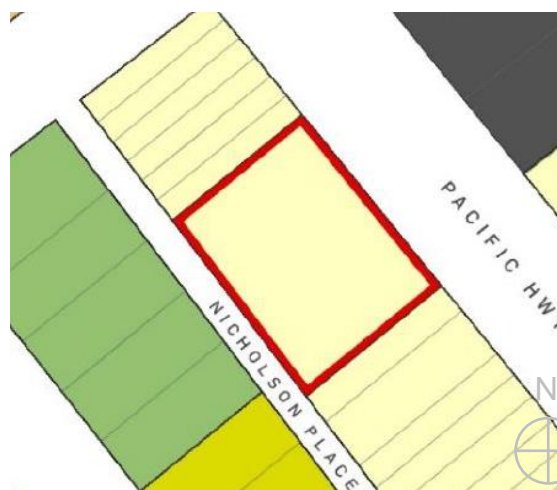


Figure 4. Current HOB map – indicating a HOB of 10m (source: Urbis)

Rezoning Review – Briefing Report

PP-2021-7169 (RR-2022-24)



Figure 5. Current FSR map – indicating no FSR applicable (source: Urbis)

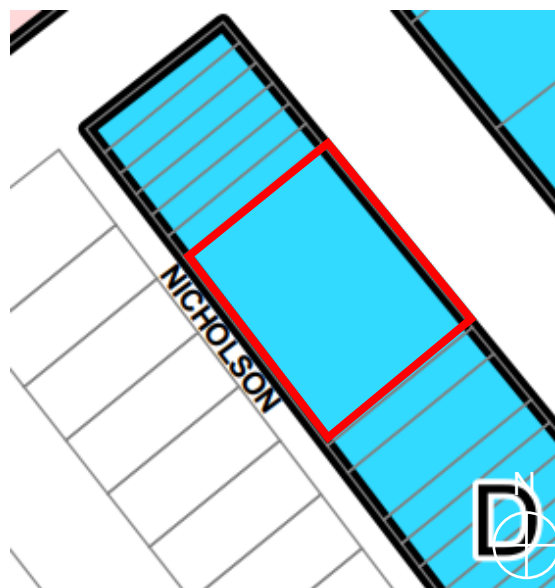


Figure 6. Current Non-residential FSR map – indicating a non-residential FSR of 0.5:1 (source: NSW Legislation)

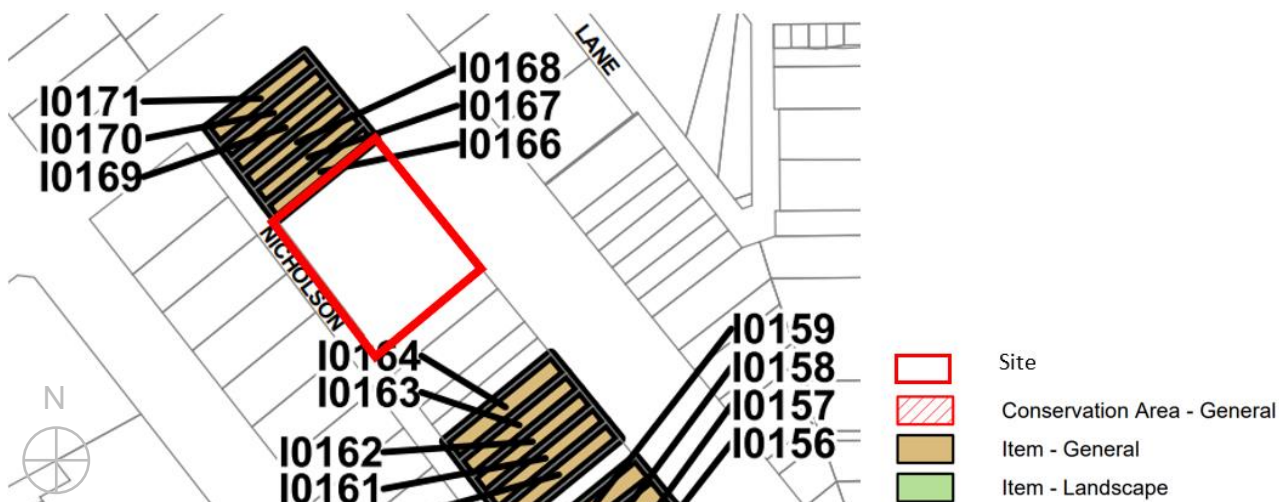


Figure 7. Heritage map (source: NSW Legislation)

Rezoning Review – Briefing Report

PP-2021-7169 (RR-2022-24)

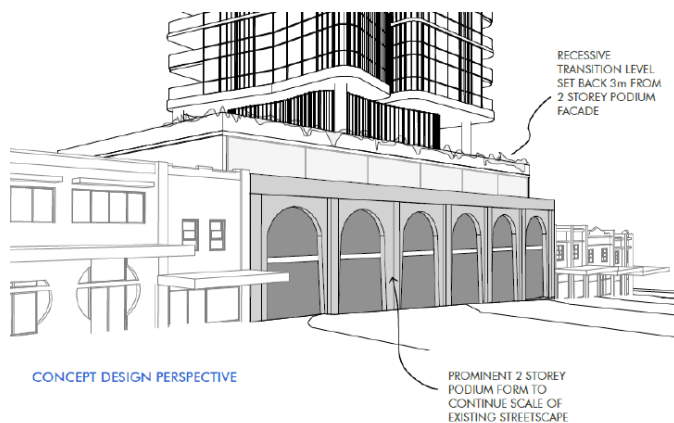


Figure 8. Concept massing from revised scheme of March 2022 (source: Urbis)



Figure 9. Detail of the 2-storey podium level with a setback 3rd podium level from revised scheme of March 2022 (source: Urbis)

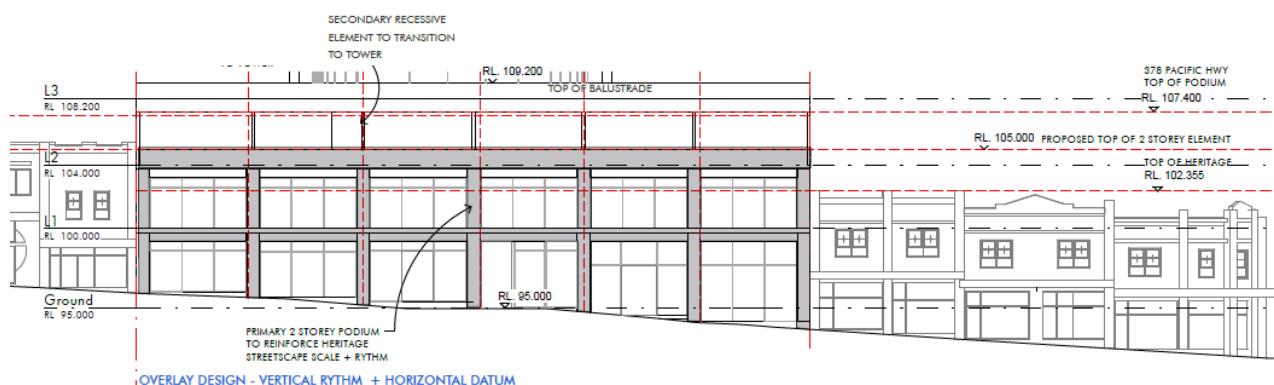


Figure 10. Podium concept to the Pacific Highway and response to the neighbouring heritage items (source: nettletontribe)

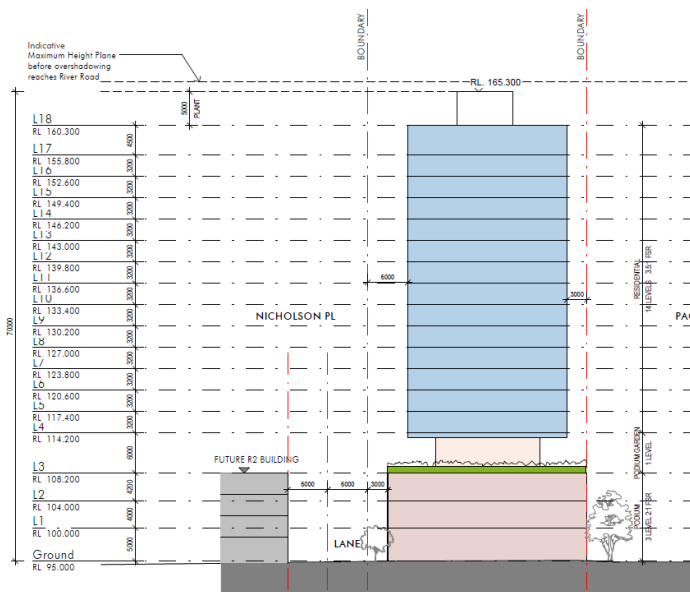


Figure 11. Approximate east-west elevation showing concept setbacks (source: nettletontribe)

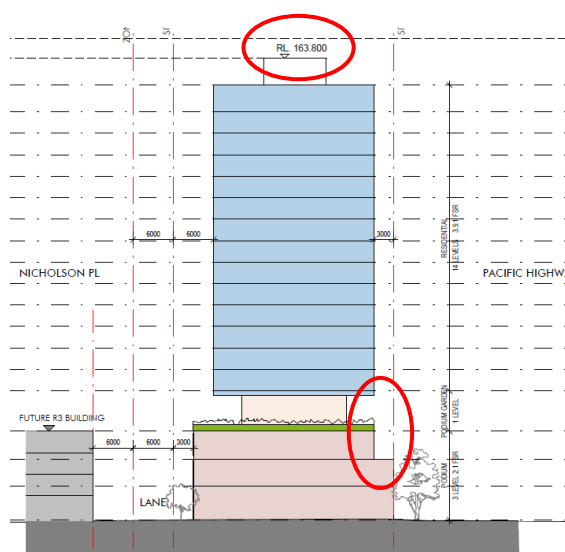


Figure 12. Revised scheme of March 2022 – reducing the height to RL163.8 and podium setback at level 3 (source: nettletontribe)

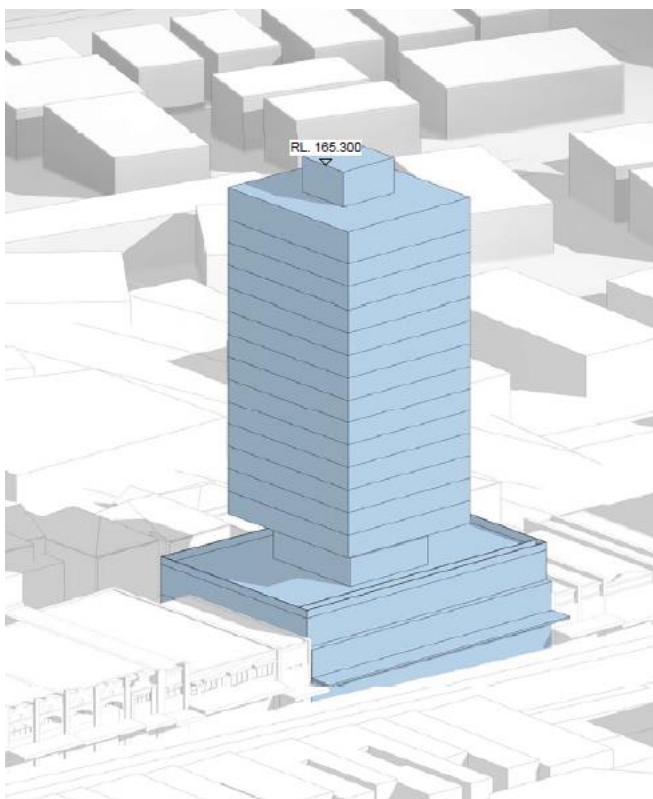


Figure 13. Concept massing (source: nettletontribe)



Figure 14. Concept (source: nettletontribe)

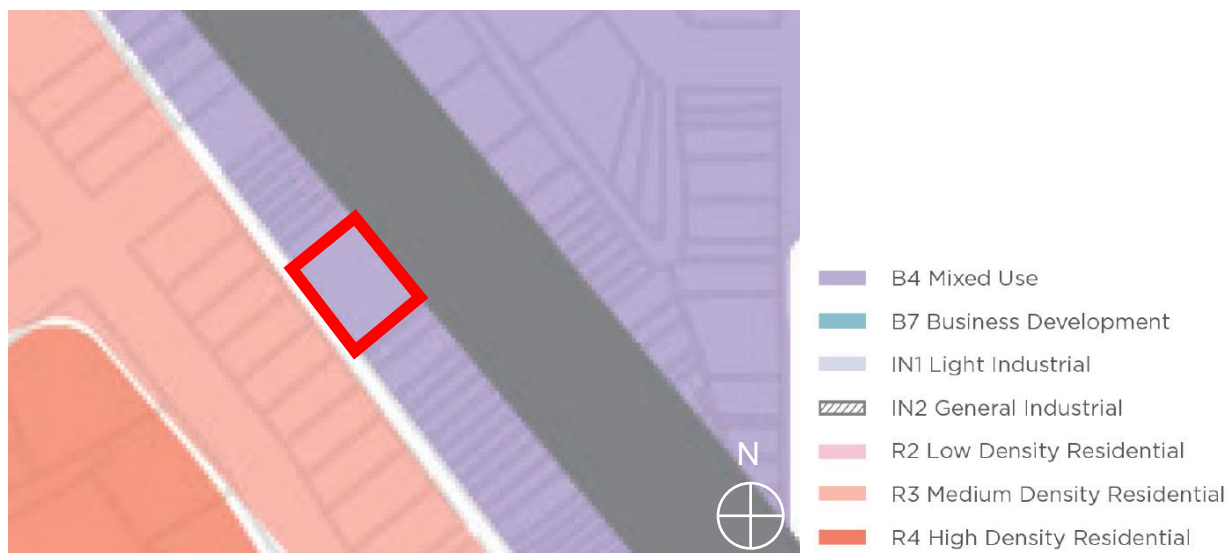


Figure 15. Land zoning in the SLCN 2036 Plan and the LEP – site is within the B4 Mixed Use zone. It adjoins the R3 Medium Density zone across Nicholson Place to the west (source: DPE)

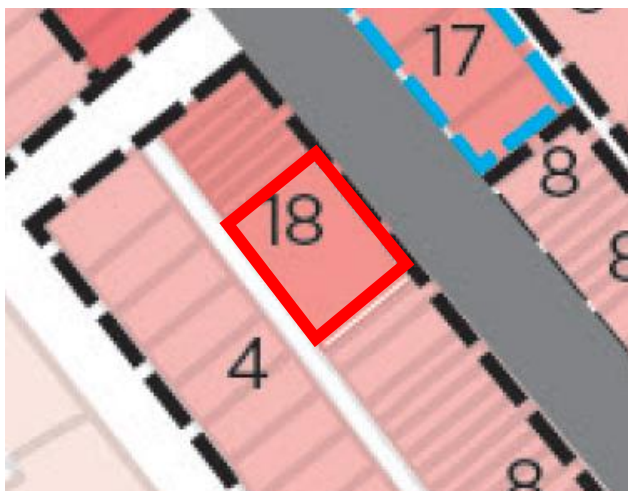


Figure 16. HOB of 18m recommended in the SLCN 2036 Plan (source: DPE)



Figure 17. FSR of 5.5 recommended in the SLCN 2036 Plan (source: DPE)

Council Comments

Council provided their response on 20 October 2022 to the rezoning review application at the request of the Department (**Attachment E**). Council confirmed that the planning proposal is generally identical to that submitted to Council for assessment.

However, the applicant's letter of request for a Rezoning Review (dated 31 August 2022) includes additional information that did not form part of the documentation submitted to Council for assessment. This includes further conceptual plans for the adjacent sites to the north, with suggested tower floorplates of 267m² for residential uses and 367m² for non-residential uses. Council consider that the tower floor plates rely on reduced setbacks to the south and west, which do not meet minimum ADG building separation requirements and still does not demonstrate how the land to the north could be developed.

Key Issues

Issue no. 1

Consistency with the St Leonards and Crows Nest 2036 Plan (2036 Plan).

Council view

The planning proposal does not satisfy key aspects of the North District Plan and SLCN Plan as:

- it has not demonstrated consistency with the objectives and actions of the SLCN Plan.
- the capacity for uplift potential identified in the SLCN Plan is across all sites in the precinct not just one and the progression of the planning proposal will likely isolate and limit development potential the neighbouring sites to the north at 366-376 Pacific Highway. These sites have the same density and height uplift under the 2036 Plan and this will undermine the intended outcomes of the SLCN Plans and the housing objectives of the North District Plan;
- the concept will likely result in reduced amenity and an inappropriate interface and transition outcomes contrary to the objectives of the SLCN Plan; and

- the cumulative impacts of the proposal are not considered to be of minor significance and could potentially undermine the intent, vision, objectives and actions of the SLCN Plan.

Proponent view

The rezoning review request states that the proposal demonstrates strategic merit as:

- the site is considered appropriate for uplift due to its close proximity to the future Crows Nest Metro Station;
- the concept is fully compliant with the NSW State Government's SLCN Plan, with the planned higher density buildings framing the highway near the Metro, transitioning to lower density in adjacent areas;
- it delivers the vision for the SLCN Precinct to increase development supporting employment and dwelling targets;
- it is consistent with Council's housing strategy which have not yet been met; and
- leverages off existing and future infrastructure and include the State Special Infrastructure Contributions (SIC) levy.

Issue no. 2

Building height

Council view

- The building height is greater than required to deliver 18-storeys and will result in excess overshadowing impacts, reduced amenity outcomes and interface issues.
- The proposed height of RL166m (71m) is excessive to accommodate an 18-storey mixed use building.
- An amended concept was submitted to reduce the height to RL163.8m (68.8m). However, the proposed height of the amenities level at 6m is still excessive.
- Based on the ADG, a maximum height of RL160 (65m) is recommended considering a 3.7m amenities level, 4m plant and standard residential floor to floor height.

Proponent view

- The site is located within a block considered appropriate for increased height and density given its proximity to the future Crows Nest Metro.
- The planning proposal was amended from a proposed building height of RL166 to a reduced height of RL163.8 (18 storeys) to respond to Council's comments on height.
- The amended planning proposal is fully compliant with the 2036 Plan.
- The elevated tower provides daylight and ventilation increasing amenity and reducing the visual perception of the building bulk to the west.
- Reference is made to council's assessment report which states:
 - the concept will enable the residential areas to the west to retain at least 2 hours of solar access between 9am and 3pm mid-winter;
 - that there is no overshadowing impact to the residential areas outside of the SLCN Plan boundary;

- measures have been incorporated into the concept to help mitigate pedestrian wind impacts. Council considered that this can be further assessed in a future development application (DA).

Issue no. 3

Site isolation and impact on the neighbouring site to the north (366-376 Pacific Highway)

Council view

- The sites to the north are six heritage listed terraces known as the “Higgins Buildings”.
- Council’s testing on the planning proposal subject site indicates compliance with the ADG setbacks to the west and south would achieve an FSR of 4.5:1 on the site. Consolidation with the sites to the north would be more appropriate to achieve the height and FSR in the SLCN Plan. Encouragement for site amalgamation to result in an area of 1,500m² was in the draft plan and was intended to achieve a more cohesive redevelopment outcome, although it was not formally adopted in the final SLCN Plan.
- Although the site to the north could be developed to the same height (18 storeys) and density (FSR 5.5:1) under the SLCN Plan, council’s examination of the applicant’s concept site plan and built form (**Figures 18 to 20**) for the adjacent properties to the north indicates that this site could not be developed on its own as it will result in:
 - a tower floorplate of only 220m² GFA; and
 - a non-compliance with the ADG minimum building separation.
- The podium should read as 2-storeys to align and respond to the adjoining heritage listed terraces, the 3rd podium level should be setback 3m to align with the tower form (Council noted that the applicant has agreed to this amendment in a revised scheme submitted to Council, March 2022).
- The Local Planning Panel noted that the 3m tower setback to the Pacific Highway was not adequate relative to the adjacent heritage items to the north and further south along the Pacific Highway.

Proponent view

The Concept Design Report (**Attachment A3**) submitted with the planning proposal indicates that the site at 366-376 Pacific Highway could be developed with a 3-storey podium matching the height of the one proposed at 360 Pacific Highway. The podium height complies with the SLCN Plan and is the appropriate scale to the adjacent local heritage listed ‘Higgins Buildings’.

On 29 March 2022, amended plans were submitted to Council which included a 3m setback to level 3 of the podium façade to respond to council concerns (**Figures 8, 9 and 11**).

The overall footprint for 366-376 Pacific Highway was determined to be 308m² with a GFA of 220m² per floor to accommodate one 3 bedroom and one 2 bedroom apartment per floor. The concept is fully compliant with the ADG resulting in:

- maximum height of 18 storeys;
- maximum FSR of 5.5:1;
- non-residential FSR of 2:1;
- podium built to the street frontage;

- tower setback of 3m to the Pacific Highway;
- overshadowing does not extend beyond the SCLN Plan boundary; and
- compliant with the ADG setbacks.

Council's focus is on the SJB modelling and an example of an amalgamated site. Site amalgamation was not adopted in the SLCN Plan with no minimum site areas required. The applicants modelling demonstrates that 366-376 Pacific Highway is capable of being developed in accordance with the SLCN Plan.

Further analysis was undertaken to determine the viability of a proposed development at 366-376 Pacific Highway, based on the concept plans. This analysis also found that the site is not isolated and can be developed in its own right.

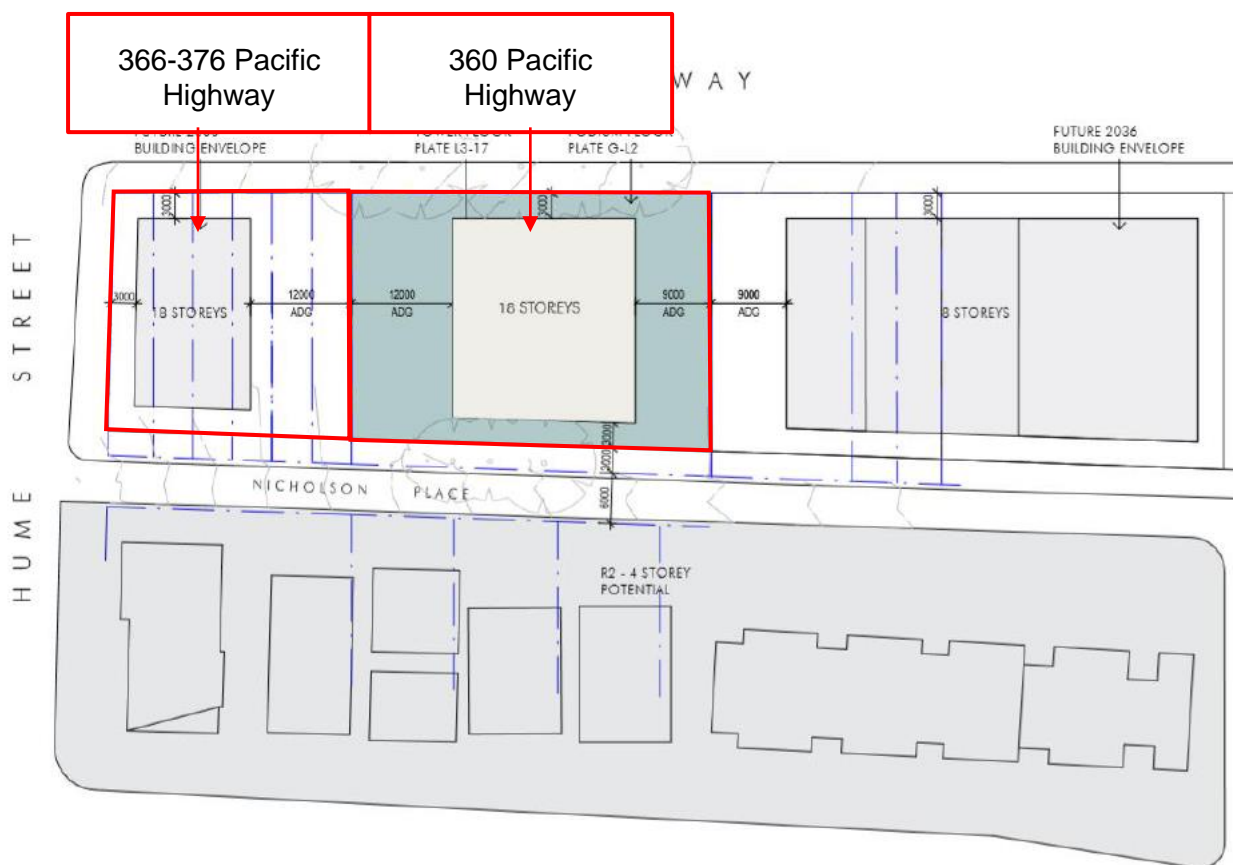


Figure 18. Proposed setbacks to the neighbouring site at 366-376 Pacific Highway (source: nettletontribe)

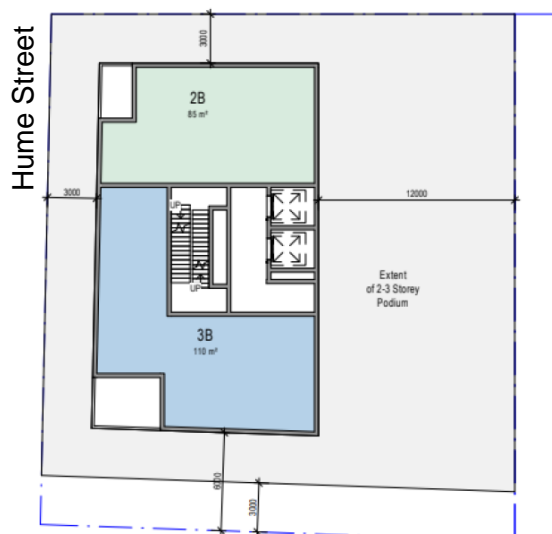


Figure 19. Example of a proposed footprint and setbacks for the neighbouring site at 366-376 Pacific Highway (source: nettletontribe)

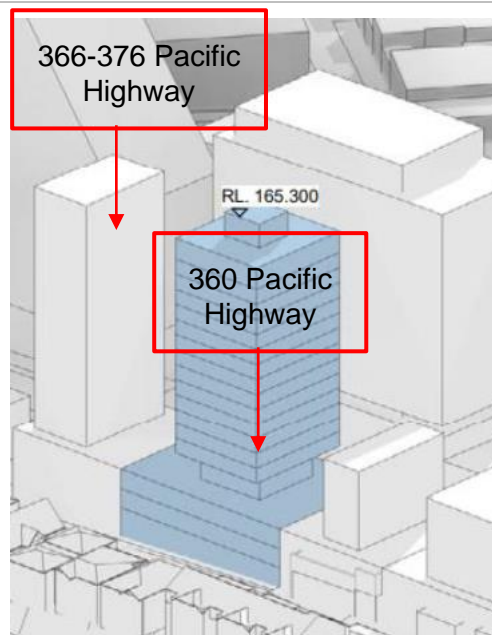


Figure 20. Proposed built form massing for the neighbouring site at 366-376 Pacific Highway (source: nettletontribe)

Issue no. 4

Appropriate setbacks of the tower, interface and transition outcomes and ADG compliance

Council view

- The proposed setbacks to the western and southern boundaries are less than required in the Apartment Design Guide (ADG) resulting in a poor interface and also a poor planning outcome to the site to the north;
- The interface between the adjoining lower density development and the proposed 18 storey tower is dramatic. ADG compliant setbacks would improve solar access and reduce the impacts to privacy and visual amenity to the existing and future surrounding area and improve the transition between the existing and proposed built form;
- The tower setback of 6m to the western (rear) boundary is significantly below the minimum ADG separation requirements of 12m (for 5-8 storeys) and 15m (for 9 storeys and above) from the centreline of Nicholson Place;
- To the south, a tower setback of 9m is proposed and, the ADG requires a minimum of 12m (for 9 storeys and above);
- As this is one of the early proposals for the precinct, it is important that the future desired character of Crows Nest is not undermined and a negative precedent set in a prominent location; and
- the ADG should be adhered to for a fair and equitable planning across the precinct.

Proponent view

The SLCN Plan is the built form pattern adopted by the Department, including the interface to the R3 Medium Density zoned land to the west. The planning proposal is consistent with the SLCN Plan.

The planning proposal includes the following setbacks:

- 3m podium setback from the rear (western) boundary;
- 6m tower setback to the rear (western) boundary.

The building setbacks shown in the concept are fully compliant with the ADG and strongly disagree with Council officers comments that the proposal will result in reduced amenity, interface and transition outcomes. Further assessment can be undertaken at the DA stage.

The tower complies with the ADG setback requirements and separation distances to the north, south and western boundaries.

A peer review of the rear setbacks to the R3 Medium Density zone to the west states that:

- the ADG requires a 24m separation between buildings of 18 storeys, however, in this instance Nicholson Lane creates a condition similar to a front setback rather than a side or rear boundary setback;
- Nicholson Place to the west establishes a total of 12m separation between the B4 Mixed Use and the R3 Medium Density zone (**Figure 19**). The relative proximity of the 18-storey tower to the (possible) 4 storey residential built form is considered to be appropriate.

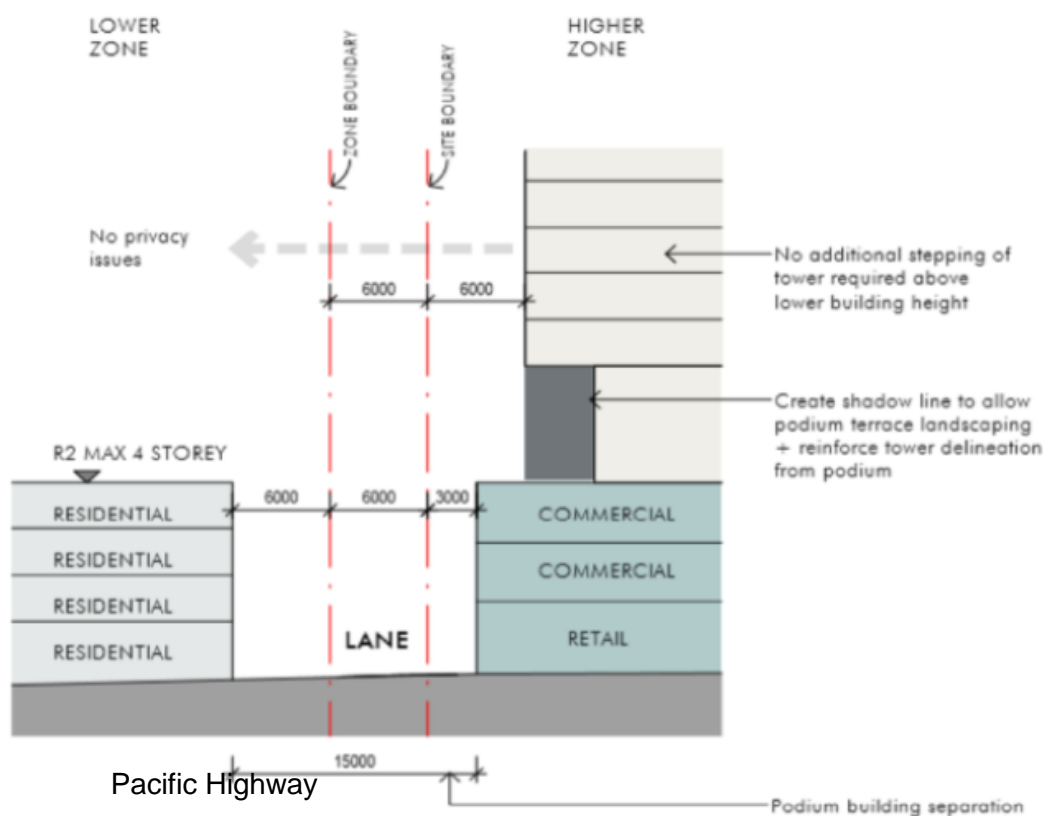


Figure 21. Proposed setback to the R3 Medium Density Residential zone to the west (source: *nettletontribe*)

Other Issues:

- **Parking and traffic generation**

Council view

The current car parking provisions in the NSDCP were developed prior to the Metro and the increased density as a result of the SLCN Plan. A total of 80 car parking spaces are provided over 4 basement levels and may alter depending on the apartment sizes. A reduction in the number of parking spaces is recommended in line with Council's draft DCP, on exhibition to 13 December 2022.

Proponent view

Council officers recommend a site-specific DCP amendment be prepared applying the St Leonards Precinct car parking rates reducing the parking spaces from 89 to 28.

This can be resolved at the DA stage.

Referral to Local Planning Panel (8 June 2022)

On 8 June 2022, the North Sydney Local Planning Panel (LPP) considered the Council Officer's report, where it recommended that the planning proposal not proceed to Gateway (**Attachment C2**).

The Panel considered that the planning proposal:

- is not an appropriate response to the neighbouring local heritage items:
 - the items to the north will be isolated;
 - the 3m setback is inadequate in relative to streetscape and the items to the north and south; and
 - with the scale of the tower with limited setbacks and contrary to the objectives of the SLCN 2036 Plan;
- concept built form does not adequately consider the streetscape, laneway and the low scale development to the west.

The LPP acknowledged that higher density in this area was appropriate, however, further analysis of the site in its context is required. The LPP also commented that a more holistic approach to the implementation of the 2036 Plan should be embarked upon to facilitate appropriate built form outcomes, suggesting that block by block approach could ensure the objectives and actions are more sensitively resolved.

Rezoning Review – Briefing Report

PP-2021-7169 (RR-2022-24)



Attachments

Attachment A – Rezoning Review Application (form and planning proposal)

Attachment B – Locality map

Attachment C – North Sydney Local Planning Panel response

Attachment D – Council report and minutes 27 June 2022

Attachment E – Council's response to the Rezoning Review application

A handwritten signature in black ink, appearing to read 'C. Nelson'.

27.10.2022

Charlene Nelson

Manager, Place and Infrastructure, North District

A handwritten signature in blue ink, appearing to read 'Brendan Metcalfe'.

1 November 2022

Brendan Metcalfe

Director, North District

Metro Central and North

Assessment officer

Christina Brooks

A/Senior Planning Officer, Metro Central and North

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