Agenda Lane Cove Local Planning Panel Meeting 25 March 2025



Notice of Meeting

Dear Panel Members,

Notice is given of the Lane Cove Local Planning Panel Meeting, to be held in the Council Chambers on Tuesday 25 March 2025 commencing at 5pm. The business to be transacted at the meeting is included in this business paper.

Steven Kludass Acting General Manager

Lane Cove Local Planning Panel Meeting Procedures

The Lane Cove Local Planning Panel (LCLPP) meeting is chaired by Jan Murrell or alternate Chairs. The meetings and other procedures of the Panel will be undertaken in accordance with any guidelines issued by the General Manager.

The order of business is listed in the Agenda on the next page. That order will be followed unless the Panel resolves to modify the order at the meeting. This may occur for example where the members of the public in attendance are interested in specific items on the agenda.

Members of the public may address the Panel for a maximum of 3 minutes. All persons wishing to address the Panel must register prior to the meeting by contacting Council's Office Manager – Environmental Services on 9911 3611. Where there are a large number of objectors with a common interest, the Panel may, in its absolute discretion, hear a representative of those persons.

Minutes of LCLPP meetings are published on Council's website www.lanecove.nsw.gov.au as soon as possible following the meeting. If you have any enquiries or wish to obtain information in relation to LCLPP, please contact Council's Office Manager – Environmental Services on 9911 3611.

Please note meetings held in the Council Chambers are Webcast. Webcasting allows the community to view proceedings from a computer without the need to attend the meeting. The webcast will include audio of members of the public that speak during the meeting. Please ensure while speaking to the Panel that you are respectful to other people and use appropriate language. Lane Cove Council accepts no liability for any defamatory or offensive remarks made during the course of these meetings.

The audio from these meetings is also recorded for the purposes of verifying the accuracy of the minutes and the recordings are not disclosed to any third party under the Government Information (Public Access) Act 2009, except as allowed under section 18(1) or section 19(1) of the PPIP Act, or where Council is compelled to do so by court order, warrant or subpoena or by any other legislation.

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APOLOGIES

NOTICE OF WEBCASTING OF MEETING

LANE COVE LOCAL PLANNING PANEL REPORTS

Item No:	LPP4/25
Subject:	Planning Proposal 40 - 2 Marshall Avenue, St Leonards
Record No:	SU10206 - 15171/25
Division:	Planning and Sustainability Division
Author(s):	Christopher Pelcz

Property:	2 Marshall Avenue, St Leonard's
PP No:	Planning Proposal No. 40
Legal Description:	Lot 4, Section 3, DP 7259
Date Lodged:	3/02/2025
Owner (Proponent):	Owner of property
Applicant:	Planning Ingenuity Pty Ltd
Site Area:	680 m ²
Description of Proposal:	 Maintain the existing R4 High Density Residential zone, Increase the height of buildings from 2.5 metres to 53 metres, Retain the Incentive floor space ratio of 3.85:1 and Provide a small open space.
Planning Proposal documents	Links to all the proponent's documents are provided in Attachments at the end of this report (AT-1 to AT-4).
Relevant Strategic Planning documents	A Metropolis of Three Cities – dated March 2018 North District Plan – dated March 2018 Crows Nest TOD plans – dated (AT-6 to AT-8) Section 9.1 Ministerial Directions Local Strategic Planning Statement 2020 – dated 30 March 2020 (AT-9) Local Housing Strategy (AT-10) Local Environmental Plan 2009
Recommendation	That Planning Proposal No. 40 not be supported.

PURPOSE

The Lane Cove Local Planning Panel is required to review the proposal in conjunction with Councils assessment report and provide advice in relation to the proposed LEP amendments.

REASON FOR REFERRAL

The Planning Proposal is referred to Council's Local Planning Panel under Section 9.1 of the *Environmental Planning and Assessment Act 1979*. This Section requires referral of any Planning Proposal to the Local Planning Panel for advice with an assessment report which sets out recommendations in relation to the Proposal.

The Planning Proposal does not meet any of the criteria for an exemption from referral to the Local Planning Panel. This criterion is as follows;

- a) the correction of an obvious error in a local environmental plan.
- b) matters that are of a consequential, transitional, machinery or other minor nature; or
- c) matters that Council's General Manager considers will not have any significant adverse impact on the environment or adjoining land.

Therefore, the Planning Proposal is referred to the Local Planning Panel for advice prior to Council making any determination on the matter.

EXECUTIVE SUMMARY

The purpose of this report is to consider the planning merits and seek the Panel's advice on the proposal to redevelop land at 2 Marshall Avenue, St Leonard into a co-living / residential tower.

The Proposal (AT-1) seeks the following changes to the planning controls;

- Maintain the existing R4 High Density Residential zone,
- Increase the Incentive height of buildings from 2.5 metres to 53 metres,
- Retain the Incentive floor space ratio of 3.85:1 and
- Provide a small open space.

Planning Proposal 40 is also accompanied by:

- <u>Concept Building Envelope</u> (AT-2);
- Solar Access Analysis (AT-3);
- Flood Assessment (AT-4);
- Advice from the NSROC Design Review Panel (AT-5);
- <u>Crows Nest TOD Precinct Design Guide</u> (AT-6);
- Crows Nest TOD Final Urban Design Report (AT-7);
- <u>Crows Nest TOD Final Urban Design Report Appendix A</u> (AT-8);
- Lane Cove Local Strategic Planning Statement (AT-9): and
- Lane Cove Local Housing Strategy (AT-10).

The Panel is requested to review the proposal in line with the assessment report.

SITE HISTORY

The site known as 2 Marshall Avenue, St Leonards is part of the St Leonards South Precinct.

Under Council's Local Environmental Plan (Part 7) it was to form part of Area 1 (see figures below) which provided height and floor space incentives only if certain items were delivered on site.

It was intended that all sites within Area 1 were to be acquired and developed in accordance with Part 7 of the LEP as part of the Development Application (DA) process.

The property was not acquired by the subject developer and the development for Area 1 was determined without this property. The SNPP determined that the applicant met the criteria in attempting to acquire the site as outlined by the NSWLEC.

SITE

The subject site is located on the southern side of Marshall Avenue and sits at the corner of Marshall Avenue and Canberra Avenue (see **Figure 1**). The site is relatively rectangular in shape and contains an area approximately 688 m^2 .

The site has a primary northern frontage to Marshall Avenue measured at 15.6m, with a corner splay of approximately 4.4m, and a secondary eastern frontage to Canberra Avenue of 33.5m.



Figure 1: Location of site

Existing on the site is a single storey dwelling house with vehicle access provided from Canberra Avenue to a detached garage.

The immediate context of the site is dominated by high density residential buildings, either newly built or under construction, with building heights starting at 5 storeys and reaching more than 20 storeys in height.

To the north of the site is the Embassy Tower at No. 1-13 Marshall Avenue which sits on the opposite side of Marshall Avenue and reaches a height of 29 storeys.

The land directly adjoining the subject site to the east and south is currently under construction in accordance with the approval under DA79/2022. This DA was approved by Sydney North Planning Panel on 6 April 2023 for demolition of existing structures and constructions of three (3) residential flat buildings (ranging from 12 to 19 storeys) comprising a total of 232 apartments and basement parking for 348 vehicles.

Current LEP Planning Controls

Figure 2 shows the current LEP controls for maximum incentive height and incentive floor space ratio on the site.



Figure 2: Current Incentive building height (left side) and Incentive floor space ratio (right side)

Based on the existing controls and intended plans shown in Council's Development Control Plan (and other documents), the subject site was to form part of a public open space mainly connecting Areas 1 to 2 and beyond (see Figures 3 & 4).



Figure 3: Development Control Plan - Structure Plan (taken from Part C – Residential Localities)



Figure 4: Landscape Master Plan - intentions for the site (taken from DCP & Landscape Master Plan)

Crows Nest TOD Controls

Figure 5 indicates the proposed controls under the Crows Nest TOD Plan for maximum height on the site.



Figure 5: Approved Crows Nest height in storeys (taken from Precinct Design Guide and Urban Design Report)

During exhibition of the Crows Nest TOD plans, the owners made a submission requesting greater height and density. Based on **Figure 6**, this change was refused and no changes to the current controls were recommended.



Figure 6: Response to submissions (taken from Crows Nest TOD Urban Design Reports)

Based on the Crows Nest TOD controls (in the Design Guide) the site is also intended for public open space in accordance with Council's plans for the site. This is discussed further in the later sections of this report.

BACKGROUND

While this Planning Proposal in principle validates Council's approach, there are also other strategic planning documents to consider. These documents and their relationship to this site are briefly outlined below.

Australian Housing Accord

In August 2023, the Australian Federal Government signed the National Housing Accord. The Accord committed to building 1.2 million new homes across Australia in a five year period from 2024 to 2029.

It set housing targets for each State and Territory, with NSW required to complete 377,000 new homes within the same five-year period.

The current target for Lane Cove is 3,400 new dwellings by 2029. Based on analysis, Council is well on track to exceed its Housing Accord Target by 2029.

Transport Oriented Development Program

A key NSW Government response to the Accord is the Transport Oriented Development Program. This program has identified the new Crows Nest Metro Station as one of the new "Accelerated Precincts". It is important to note that the Planning Proposal is directly across the road from the new Crows Nest Metro Station.

Areas within 1,200 metres of the new Station will be rezoned by the NSW Government towards the end of 2024. Lane Cove Council has been advised that the rezonings will largely be consistent with the existing SLCN 2036 Plan.

Greater Sydney Region Plan

Objective 31 of the Greater Sydney Region Plan is relevant to the proposal. It states that "*public open space is accessible, protected and enhanced*". The subsequent Strategy 31.1 states that planning is to maximise the use of existing open space and protect, enhance and expand public open space by:

- "investigating opportunities to provide new open space so that all residential areas are within 400 metres of open space and all high density residential areas (over 60 dwellings per hectare) are within 200 metres of open space
- requiring large urban renewal initiatives to demonstrate how the quantity of, or access to high quality and diverse local open space is maintained or improved
- planning new neighbourhoods with a sufficient quantity and quality of new open space
- *delivering or complementing the Greater Sydney Green Grid*" (page 167 of Greater Sydney Region Plan).

Crows Nest TOD Plans

The Crows Nest TOD plans recently replaced the St Leonards/Crows Nest 2036 Plan. The St Leonards/Crow's Nest Planned Precinct is identified by the North District Plan (NDP) as "*a mixed-use centre with high-rise offices, and high-density residential development*".

The Crows Nest TOD plan delivers Action 31 of the NDP which is to deliver and implement a Place Strategy and Infrastructure Plan for the St Leonards health precinct. While Action 34 focuses on growth subject to *"growing jobs in the centre"* and to *"deliver new high open space, upgrade public areas, and establish collaborative place-making initiatives"*. Additional capacity for housing supply is a secondary but important function of the precinct along with public open spaces. It is from these two purposes of the *North District Plan* that the previous 2036 Plan & current Crows Nest TOD plan has emerged.

Previously, a Special Infrastructure Contributions rate was introduced which now applies to all new residential and mixed-use residential development in the area.

Special Infrastructure Contributions

As part of the final 2036 Plan, the Special Infrastructure Contribution (SIC) applies to this area of St Leonards and Crow's Nest for the residential development component.

Section 9.1 Ministerial Directions

All Planning Proposals are required to address Section 9.1 Ministerial Directions, where they are applicable to the site. However, in this instance Ministerial Direction 1.13 is relevant because it

specifically deals with the implementation of St Leonards and Crow's Nest 2036 Plan and now the Crows Nest TOD plan.

It states that Planning Proposals may be inconsistent with the Plan if it can be demonstrated that the inconsistency is of minor significance while still achieving the vision, objectives and actions identified in the Plan.

Local Strategic Planning Statement

Council's adopted *Local Strategic Planning Statement* (**AT-9**) outlines a 20-year vision, planning priorities and actions for land use in Lane Cove. The LSPS came into force on 30 March 2020 and was published to the NSW Planning Portal website.

This Statement and other relevant documents must now be used to inform future amendments to Council's Local Environmental Plan and Development Control Plan.

Local Housing Strategy

Council's adopted Local Housing Strategy (LHS) provides an evidence-based framework that informs how and where residential development is planned to be delivered in the LGA for the next 20 years.

Because the Planning Proposal involves mixed use development with a residential component, this Strategy (**AT-10**) is relevant.

NSROC Design Review Panel

The proposal was submitted to Council's Design Review Panel on 26 March 2024. The final minutes are attached to this report in **AT-5**.

PROPOSAL

The proponent-led Planning Proposal seeks the following amendments to Lane Cove LEP 2009 for the subject site:-

- Maintain the existing R4 High Density Residential zone,
- Amendment of the St Leonards South LEP clauses (Part 7) to permit the development with consent while excluding itself from the requirements for bedroom mixes, affordable housing, and minimum public open space;
- Increase the Incentive height of buildings from 2.5 metres to 53 metres,
- Retain the Incentive floor space ratio of 3.85:1 and
- Provide a small open space.

Overall, the proposed controls would result in a co-living development of 19 storeys on a 680 m² site. The only image of the built form is contained in **AT-2**.

DISCUSSION

This section of the report will discuss the strategic and site-specific merit requirements.

Crows Nest TOD Plans

The findings of the Crows Nest TOD plans are relevant because they give effect to the objectives and actions of both the Regional and North District Plan. The final controls are contained and have

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been implemented into the Crows Nest TOD Precinct Design Guide (AT-6). The built form controls are shown below in Figure 7.



Figure 7: Built form controls in Design Guide (page 19 of AT-6)

Based on this figure (and others shown in this report) the site is clearly intended to be a public open space in all State Government plans for the area. In addition, **Figure 8** also shows that the site is to be a public open space but also to be protected from overshadowing.



Figure 8: Solar Access Map in Design Guide (page 23 of AT-6)

Section 2.4 of the guide contains a series of objectives for both residential development and public open spaces.

Based on the endorsed State Government plans and figures attached to this report, it is clear that the proposal is **not consistent** with the State Government's endorsed plans for the area, nor is it appropriate to be rezoned for high density residential use.

Local Strategic Planning Statement

Council's Local Strategic Planning Statement (LSPS) contains a series of Planning Principles for the future location of additional housing and supporting actions.

Three key actions from this Statement are relevant:

- "Implement Council's planning responses in St Leonards South to facilitate delivery of the 6

 10 year (2021 2026) housing supply" (page 30 of AT-9);
- "Improve connections to the Green Grid, where possible, to enhance liveability; and
- Identify opportunities for the provision of more open space in the planning proposal and development assessment phases" (page 37 of **AT-9**).

Figure 9 (shown below) contains Council's planning responses in St Leonards South.



Figure 9: Extract from Local Strategic Planning Statement (page 30 of AT-9).

The figure clearly shows the site and its surrounds as 'proposed parks and public space'. It is also worth noting that since the LSPS was made, Council has delivered new open spaces at Friedlander Place, Wadanggari Park (Plaza), and open spaces associated with developments in St Leonards South.

Based on the above, the proposal is **not consistent** with Council's Local Strategic Planning Statement.

Local Housing Strategy

One action is related to this proposal, as follows:

"Only pursue planning proposals or other planning framework changes in the Lane Cove LGA if they include a principal affordable housing purpose and are consistent with Council's 'Principles for the location of additional housing' in its Local Strategic Planning Statement" (page 95 of **AT-10**).

There is no affordable housing being proposed and the owner is specifically seeking exemption from this requirement as part of the amendments. Not withstanding that, co-living development is not defined as Affordable Housing under the *State Environmental Planning Policy (Housing)* – it is defined as diverse housing. There are already a number of diverse housing development in the area including two separate (approved) developments for Build-to-Rent housing to meet this need.

As a result, the proposal is not consistent with this action, it is also not consistent with Council's Local Housing Strategy – which has been previously endorsed by the Department of Planning.

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In terms of a change in circumstance, this has already been considered by the recent Crows Nest TOD plans. As shown in **Figure 6**, no change to any planning controls was recommended and adopted.

Regarding <u>site-specific merit</u>, the issues are as follows:

- The Crows Nest TOD plans showed the site as potentially flood affected, however this has been addressed through a flood study (in **AT-4**). No other hazards are known.
- As shown in previous figures, both State Government and Council plans show this site as
 public open space (along with their surrounds) with no residential development. This is
 confirmed across a range of endorsed plans. It is correct that the area around the site was
 to be developed as residential with attached open space however Council's plans were for
 the developer to acquire this site and use it as public open space.
- Based on the building envelope, Council is not satisfied that such a building could be built on site to satisfy controls (particularly setbacks, basements and waste).
- Council's Design Review Panel found that the entire proposal lacked merit and "the design proposal does not demonstrate design excellence in terms of master planning, built form, sustainability or connection with Country. In addition, the proposal does not demonstrate adequate design quality in respect to the Apartment Design Guide" (AT-5).
- If the proposal is approved, it will reduce the amount of public open space infrastructure in the St Leonards South precinct. The amount provided in the proposal is not an improvement or an offset.

RESPONSE TO NOTIFICATION

While the Gateway process does not provide for public exhibition prior to the submission to the Department, Lane Cove Councils policy requires exhibition upon lodgement.

The proposal was exhibited for 14 days from February to March 2025. Council received 52 submissions:

Concern	Comment
Site was open space under Council's plans. It should	Noted. The proposal does not comply with State Government and/or Council's plans for the site (to be a public open space in addition to the adjoining lots).
remain as such.	Further, in the Crows Nest TOD plans a submission was received from the site and no change to zoning or planning controls were recommended (see Figure 6).
Impacts on views	Noted. Under State Government and Council's plans this site is a public open space and has no impact on views. The approved building behind the site has been designed to achieve appropriate view sharing. To date, no analysis has been provided from the applicant.

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	Noted. Council's Design Review Panel raised considerable concern with this aspect as follows:			
Concerns about overshadowing	"The proposed building envelope <u>may result in considerable</u> <u>overshadowing of the proposed neighbouring park and</u> <u>adjacent buildings</u> currently under construction within Areas 1 and 2 of the South St Leonards Precinct. <u>The description</u> <u>provided by the Applicant of the levels of over-shadowing</u> <u>of the subject site by existing buildings to the north,</u> <u>appears to be at odds with the sun view diagrams</u> <u>provided</u> ." It also fails to address the Crows Nest TOD Design Guide requirement for no additional overshadowing of existing and proposed open spaces for the Precinct.			
Does not comply with SEPP requirements for Co-living developments	Noted. Due to the site's size, the proposal is unable to comply with the SEPP's minimum lot size standards for Co-living (Section 69). It is important to note that these standards are not non-discretionary standards and the lot size requirement in particular does not appear to be flexible. Amalgamation is not possible as the adjoining sites are being developed for open space by a separate developer.			
	Council is also concerned that due to the site's constraints and inability to comply with requirements (i.e. setbacks, basement & waste) any building may never be able to be built.			
Worsening traffic/parking	At this stage, the applicant has not provided any traffic/parking analysis to support their proposal or address concerns.			
Co-living development has no	Under the State Environmental Planning Policy (Housing), Co- living is not considered as affordable housing – it is considered diverse housing.			
affordable housing requirement	However, under Council's <i>Local Environmental Plan</i> , in order to achieve the incentive height and floor space ratio an applicant must provide affordable housing on-site (in perpetuity). The proposal does not comply with this.			
Concerns about the nature of co-living and its impact on the area	These types of concerns could be addressed at a future Development Application stage.			
Questions about property values	Under the Environmental Planning and Assessment Act, property values are not a relevant consideration in planning decisions.			
	One supporting submission was received from the owner of the site. The others focused on the housing crisis and short-term rental accommodation (STRA) and the need for a cafe.			
Some submissions supported the proposal	Lane Cove Council is well on track to exceed its Housing Accord Target of 3,400 new dwellings by 2029 and other forms of STRA are going to be available in the precinct. Council has also recently opened Wadanggari Park containing a supermarket, library, cafes, restaurants which this precinct has direct access to.			

CONCLUSION

Planning Proposal No. 40 has been reviewed by Council's Design Review Panel and staff.

Based on the above, the Planning Proposal is not consistent with either State Government or Council's plans for the site – which have consistently identified it as being for public open space only.

The owner previously made a submission to the State Government's Crows Nest TOD plans and no change was recommended (see **Figure 6**). The endorsed State Government plans continued to identify the site for public open space.

Council's Design Review Panel also found that it lacked merit and if approved would significantly overshadow buildings, open spaces and would not adequately consider the Apartment Design Guide.

Based on the building footprint provided, there are also doubts as to whether such a building could be built on site that complies with any required controls.

On balance as the proposed development does not achieve either strategic or site-specific merit, it is therefore recommended for refusal.

RECOMMENDATION

Pursuant to Section 9.1 of the Environmental Planning and Assessment Act 1979, the Lane Cove Local Planning Panel at its meeting of 25 March 2025 is recommended to not support Planning Proposal No. 40, for the following reasons:-

A. Does not Pass the Strategic Merit Test

Reasons:

- 1) Is inconsistent with the *Greater Sydney Region Plan* Objective 31 that "*public open space is accessible, protected and enhanced*".
- 2) Is inconsistent with the *North District Plan* Actions 31 & 34 which is to deliver and implement a Place Strategy and Infrastructure Plan for the St Leonards health precinct and to "*deliver new high open space, upgrade public areas, and establish collaborative place-making initiatives*" in St Leonards.
- 3) Is inconsistent with the State Government's Crows Nest TOD plans (including the Design Guide) which show this site specifically as public open space.
- Is inconsistent with Section 9.1 Ministerial Direction 1.13 because it does not achieve (and undermines) the intended outcomes of the Crows Nest TOD plans and is not of minor significance.
- 5) Is inconsistent with the following actions of Council's *Local Strategic Planning Statement*.
 - a. Implement Council's planning responses in St Leonards South to facilitate delivery of the 6 10 year (2021 2026) housing supply.
 - b. Improve connections to the Green Grid, where possible, to enhance liveability.
 - c. Identify opportunities for the provision of more open space in the planning proposal and development assessment phases.

6) Is inconsistent with Council's adopted Local Housing Strategy which states that Council should only pursue planning proposals or other planning framework changes in the Lane Cove LGA if they include a principal affordable housing purpose. The proposal actively seeks to remove itself from this requirement

B. <u>Does not comply with Section 3.33 of the NSW Environmental Planning and</u> <u>Assessment Act</u>

Reason:

This section of the Act deals with the preparation, explanation and justification of Planning Proposals – which requires Proposals to state whether they will give effect to both a Local Strategic Planning Statement and comply with the relevant directions under section 9.1.

Having considered the above, <u>the Planning Proposal is inconsistent with Section 3.33 (2)(c)</u> of the EP&A Act because the Planning Proposal will not "give effect to" Council's Local Strategic Planning Statement and does not comply with the relevant Section 9.1 Ministerial Direction (i.e. Direction 1.13).

C. Does not pass the Site-specific Merit Test

Reasons:

- Both State Government and Council plans show this site as public open space (along with their surrounds) with no residential development. This is confirmed across a range of endorsed plans. It is correct that the area around the site was to be developed as residential with attached open space however Council's plans were for the developer to acquire this site and use it as public open space.
- 2) Based on the building envelope, Council is not satisfied that such a building could be built on site to satisfy controls (particularly setbacks, basements and waste).
- 3) Council's Design Review Panel found that the entire proposal lacked merit and "the design proposal does not demonstrate design excellence in terms of master planning, built form, sustainability or connection with Country. In addition, the proposal does not demonstrate adequate design quality in respect to the Apartment Design Guide".
- 4) If the proposal is approved, it will reduce the amount of public open space infrastructure in the St Leonards South precinct. The amount provided in the proposal is not an improvement or an offset.

D. Does not comply with Council's intended plans for the site

As shown above, all State and Local Government planning have consistently designated this site (and the surrounding ones) as public open space.

Based on recent Development Application (DA) approvals in the area, Council should give consideration to a future rezoning of this site and others in the area as RE1 Public Recreation.

Mark Brisby

Director - Planning and Sustainability Planning and Sustainability Division

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ATTACHMENTS:						
AT-1 <u>View</u>	Planning Proposal No. 40	65	Available			
		Pages	Electronically			
AT-2 <u>View</u>	Concept Building Envelope	1 Page	Available			
		0	Electronically			
AT-3 <u>View</u>	Solar Access Analysis	1 Page	Available			
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		Pages	Electronically			
AT-5 <u>View</u>	Final minutes of the NSROC Design Review Panel	5 Pages	Available			
			Electronically			
AT-6 View	Crows Nest TOD - Precinct Design Guide	67	Available			
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AT-7 View	Crows Nest TOD - Final Urban Design Report	99	Available			
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AT-9 <u>View</u>	Local Strategic Planning Statement - March 2020	83	Available			
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