

Our ref: 270 Pacific Hwy Crows Nest BTR (SSD-79658964)

Mr Steven Papadopoulos

The Trustee for the Silvernigh (Crows Nest) Landowner Trust

PO Box 2137

Concord NSW 2137

19 September 2025

Subject: Request for Additional Information

Dear Mr Papadopoulos

I refer to the Department's letter dated 5 September 2025 requesting a written response to the issues raised in submissions received during the exhibition of the above development application under section 59(2) of the *Environmental Planning and Assessment Act 1979*.

The Department has undertaken a preliminary assessment of the application and reviewed the submissions from agencies and North Sydney Council (Council).

The Department also requests that you provide a response to the key issues in **Attachment 1**.

The Department requests that you incorporate your response to the Department's key issues, Council and public submissions and all agency advice in your submissions report. Should your response include amendments to the proposal, an amendment report would be required.

Please ensure your submissions report or amendment report has regard to the *State Significant Development* Guidelines and provide your response via the Major Projects Portal within two months of the date of this letter.

If you have any questions, please contact Tia Mills, on 02 4063 6437 or via email at tia.mills@dpie.nsw.gov.au.

Yours sincerely,



Paulina Wythes

Director

Social and Diverse Housing Assessments as delegate for the Planning Secretary

ATTACHMENT 1 – KEY ISSUES

1. Concurrent Rezoning

- a) Provide an updated Planning Report that provides further justification of the site-specific merit of the proposed rezoning. Specifically, the Planning Report should be updated to demonstrate that the quantum of residential development is appropriate for this site and the locality, with consideration of the future potential residential development capacity within the locality unlocked through the Crows Nest TOD controls.
- b) Update the Economic Assessment to:
 - i. Provide further evidence-based justification for the proposed 1:1 non-residential FSR, i.e. why 1:1 is the most appropriate FSR. Include analysis of the rates for comparable properties in the vicinity of the site.
 - ii. Assess the employment land demand with detailed consideration of surrounding lot sizes, floor space ratio, take up rates and employment densities.

2. Non-residential Floor Space Ratio (FSR)

Based on a site area of 3,796m², the proposed development provides a non-residential FSR of 0.95:1 (3,593m² GFA) and does not meet the 1:1 non-residential FSR proposed in the concurrent rezoning. The development is required to be amended to ensure compliance with the proposed 1:1 non-residential FSR (or revised non-residential FSR based on item 1).

3. Clause 4.6 Building Height

The clause 4.6 variation request for height has assessed the maximum building height using the 'Merman' method. The Department does not consider that the decision in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582 (Merman) sets a precedent for the meaning of 'existing ground level' and the calculation of maximum building height that the Department is required to adhere to.

The Department considers that the more appropriate way to extrapolate 'existing ground level' in this instance is to use the 'Bettar' method (*Bettar v Council of the City of Sydney* [2014] NSWLEC 1070). The Department considers that the determination of the existing ground level should relate to the overall topography of the site. This can include considering the footpath level and the rear laneway level for this site. This approach would result in a more appropriate height plane for the site consistent with the intention of the height control described in the *North Sydney Local Environmental Plan 2013*.

This method of determining ground level (existing) has been affirmed in several other recent cases. It is requested that the clause 4.6 variation request is updated to reflect this application of determining ground level (existing).

4. GFA Calculations – Outdoor Terraces/Balconies

The level 2, 12 and 14 communal terrace/balcony areas are surrounded by barriers that exceed 1.4 m in height. The Department has reviewed the articles from Mills Oakley provided by the Applicant (dated 31 July 2020 and 14 July 2021) on calculating gross floor area (for FSR purposes) in NSW. It is considered that these scenarios do not directly apply to this development and do not satisfactorily justify that these areas do not constitute gross floor area.

The Department maintains its position that these areas meet the definition of gross floor area as described in *North Sydney Local Environmental Plan 2013* and are to be included in the GFA calculations. It is noted that this will result in the development exceeding the maximum 5.6:1 FSR and a clause 4.6 variation request will be required to support the exceedance of floor space.

5. Amenity of units fronting Pacific Highway

The proposed development achieves only 12% natural cross ventilation due to units fronting Pacific Highway not being provided with private open space or operable windows. The Design Report acknowledges that if these units were provided with balconies and/or operable windows then over 60% natural ventilation could be achieved within the development.

It is acknowledged that Pacific Highway produces intrusive noise that could impact the amenity of residents. Notwithstanding, several existing and recent residential developments with balconies exist immediately adjacent to the site and surrounding the Crows Nest Metro Station. The Department also does not consider that the site is disproportionately impacted by bushfire pollution than other areas in the immediate locality.

This means, at a minimum, that operable windows with acoustically treated seals can be provided and it be at the discretion of residents when these windows are utilised.

The proposed use of mechanical ventilation to provide amenity to the units is noted. However, it is not considered that this provides the same level of amenity as operable windows and balconies would provide.

The Department considers that the current amenity outcome achieved for these units can be improved. The Department recommends that the design is amended to include operable windows on all units, at a minimum, to achieve an acceptable level of amenity for all units, being a minimum of 60% of units receiving natural cross ventilation.

6. Wind assessment

The Qualitative Wind Assessment is to be updated to provide a clear assessment of each external area of the development. The assessment of the external areas is to define what comfort rating each area achieves in line with the 'Wind Comfort and Safety Criteria' and ensure that each area achieves the rating required for the use, i.e. private balconies are to achieve a minimum 'sitting' rating to ensure they can be used as designed. If any further mitigation measures are required to achieve the rating, these are to be clearly identified and shown on the Architectural Plans.

7. Traffic Impact Assessment (TIA)

The following additional information is to be included in an updated TIA:

- a) Provide further detail on the TfNSW Services Trip Generation Surveys Medical Centres Analysis Report used to determine the medical centre traffic generation. Detail how it has been determined that 4.08 spaces/100 m² GFA equates to approximately 1 vehicle trip per 100 m² GFA.
- b) Demonstrate where a medical centre trip generation rate approach (i.e., based on parking spaces within a development) has been applied to other developments? The direct link between parking spaces and trip generation has not been clearly articulated.

8. Other Matters

- a. Statutory Compliance Table
 - i. All non-discretionary development standards outlined in section 74 of the Housing SEPP for BTR developments apply to the proposal and are to be addressed in the statutory compliance table.
 - ii. Provide adequate detail on how the development has achieved design excellence with a direct assessment of the requirements of clause 7.4 of NSLEP 2013.
- b. Provide a Hazardous Materials Survey as recommended in the Detailed Site Investigation and as requested by the Department at the test of adequacy.
- c. Provide a Design Verification Statement.
- d. Provide details of how vehicular access will be maintained and managed to the rear laneway during construction.