



6 June 2024

Executive Director
Key Sites and Regional Assessments
Department of Planning, Housing and Infrastructure

NM2 (P&E)

Sent via Planning Portal

Dear Sir/Madam

**Re: SSD-66826207 - Mixed-use Development - 391-423 Pacific Highway,
3-15 Falcon Street and
8 Alexander Street, Crows Nest (Five Ways)**

Introduction

Please find below North Sydney Council's submission to the abovementioned State Significant Development Application (SSDA). For the purposes of clarity and interpretation, pursuant to Section 4.5 of the *Environmental Planning and Assessment Act, 1979* and Section 2.7 of State Environmental Planning Policy (Planning Systems) 2021, this submission represents an objection by North Sydney Council.

Background and Policy context

Post-exhibition changes to the State-led St Leonards Crows Nest 2036 Plan introduced a sixteen (16) storey height limit on the subject site at the time of its finalisation in August 2020. The 16-storey height limit was a recommendation of the Government Architects Office and the St Leonards Crows Nest 2036 Plan was supported by a Ministerial Direction requiring consistency with the Plan. A nineteen (19) storey planning proposal on the site was subsequently rejected by both Council and the Sydney North Planning Panel on the basis that it failed to demonstrate and satisfy the Strategic Merit test.

Following this, the site was the subject of an LEP amendment of 58.5 metres maximum building height (16 storeys), a minimum non-residential Floor Space Ratio (FSR) of 2.5:1 and an overall maximum FSR of 5.8:1 which was made in December 2023.

The current State Significant Development Application comprises a 22-storey tower at 79.5 metres and an FSR of 7.54:1.

The Environmental Planning and Assessment Act 1979 (Sec 4.39) and Regulations (2021) - cl 190(2) require a State Significant Development Application to have regard to both the '*State Significant Development Guidelines - March 2024*' and '*State Significant Development guidelines - preparing an environmental impact statement - July 2022*'. Section 3.3 of the guidelines make specific reference to a requirement to consider strategic context. In light of the above, and for the reasons further outlined below the State Significant Development Application as submitted fails to satisfy these statutory requirements.

The advancement of this scheme offends both proper strategic and statutory planning and established urban design principles for the site particularly given the precinct has only just undergone significant density uplift under the 2036 Plan and subsequent LEP amendments. Any level of trust or understanding of proper planning processes is further compromised as a result.

The scheme as presented does not satisfy the State Government's own strategic planning policy for the site with respect to solar access, height transitions and interfaces, street wall height and heritage impact. The excessive FSR sought along with the provision of a central void space results in an excessive level of bulk, overshadowing and extreme visual impact with expansive, dominating façades on what is a visually prominent site.

Affordable Housing

North Sydney Council acknowledges the acute need for the provision of affordable housing to accommodate essential key workers. However, any affordable housing being contemplated needs to be provided in perpetuity. This has been a position publicly stated, and recently implemented in some precincts, by the State Government in the context of the recent Transport Oriented Development (TOD) program. This time limiting of any affordable housing provision on the site fails to address the long-term need for provision of accommodation of key workers and impacts (social and financial) of intended occupants and the community at large.

In the context of the significant uplift recently applied to the site and the need for any SSDA to consider and respond to strategic context it is therefore reasonable for the State Government to require the applicant to provide affordable housing in perpetuity. It is also noted that the extent of the bonus provisions being sought have been calculated on the basis of the overall maximum FSR applicable to the site which includes a current 2.5:1 minimum non-residential obligation. This disproportionately amplifies the extent of bonus residential floorspace being sought.

Excessive bulk and scale

The proposed delivery of an additional 5,571 square meters of gross floor area above that previously modelled and anticipated for the site results in a built form of substantial bulk and scale. A key urban design principle established in the State-led St Leonards Crows Nest 2036 plan was the concentration of building height and density around the two 'knuckles' of the St Leonards station and Crows Nest Metro station with development transitioning down (in height and density) to surrounding lower scale development and Heritage Conservation Areas. The height and density achieved under the recent LEP amendment challenged this principle but was eventually implemented.

The extent of increase in bulk and scale proposed is further exacerbated by the attributes of the site being at a key junction of major roads and its location along a ridge top where it is effectively viewed in-the-round in a prominent location. The visual impact assessment accompanying the SSDA appears to misrepresent the likely actual extent of apparent building mass that will be visible from the public and private domain. In this regard it is requested that this be carefully reviewed for accuracy and remove any photoshopped trees/structures from the foreground of view impact images.

Designing with Country Principles

It is noted that a 'Connecting with Country' document (Appendix 6) has been provided in support of the application. Council has not had the capacity to undertake a specialist review and critique of this document and design in this regard. It is requested that the proposal be carefully considered against the *Connecting with Country Framework* prepared by the NSW Government Architect and in particular given the attributes of this site whether the notion of sky country and viewpoint corridor considerations has been appropriately addressed given the excessive massing and scale of development proposed.

Podium height and scale

Consistent with representations made by Council to the reference design during the LEP amendment process, the podium as presented is excessive in height and scale. Again, the underpinning strategic planning policy identified a three-storey podium form to help maintain a human scale. The proposal includes a podium component including a mezzanine element which is effectively four storeys and at points close to 16m in height which, coupled with podium level balustrade elements and advertising structures, will present closer to a five-storey scale at some points.

Even accounting for the sloping topography of the site, this height is excessive and unnecessarily dominant and does little to ameliorate or successfully deal with the scale and intensity of overall development above podium level.

Historic Character

Whilst the subject property is not a heritage item and is not located in a conservation area, concern is raised given the site is located on a prominent corner location at Crows Nest Junction and is considered to form a gateway to Crows Nest and North Sydney. Four out of the five corner buildings that address the Junction are heritage listed and collectively contribute towards a significant heritage streetscape. The property is located within the visual curtilage of the following heritage items;

286 Pacific Hwy - The former North Shore Gas Company Office, with an Art Deco shopfront. It is located away from the junction but within the visual catchment of the subject site.

306 Pacific Hwy - The former Bank of NSW building that is designed in the Inter-War Georgian style located on Crows Nest Junction.

308 Pacific Hwy - The former National Australia Bank building that is designed in the Inter-War Georgian style located on Crows Nest Junction.

1-3 Willoughby Road - Crows Nest Hotel

429 Pacific Highway - This building is known as Willoughby House or the former OJ Williams store and is designed by eminent architect TD Esplin in the inter-war Functionalist style also located on Crows Nest Junction.

Given the above a more considered and responsive design response at both podium and tower level is necessary.

Solar access and overshadowing

A review of the shadow diagrams provided for the shadows generated from the proposed development at the LEP maximum height limit in comparison to the additional shadows generated as a result of the increased building height (sought under the 30% affordable housing bonus), has been undertaken and the following is observed:

- Between 9.00 am and 3.00 pm (mid-winter) there is an extension of the shadows generated by the new proposal (of approx. 60m greater length than previously contemplated), which results in an increase in overshadowing to a number of residential properties including areas of private open space and living windows.
- Between 2.00 pm and 3.00 pm, there is additional over shadowing generated by the proposal to the carpark, classroom building and open space areas located on the northeastern corner of North Sydney Girls High school.
- A greater extent of shadow impact on the adjacent Holtermann Estate Heritage Conservation Area between 1.00 pm to 3.00 pm.

The increased building height (and massing) creates a broad sweeping wall of shadow around the site well beyond that recently contemplated during the LEP amendment process.

Through site links

In response to the St Leonards Crows Nest 2036 Plan and a number of site-specific planning proposals, Council's DCP was amended in January 2023. Council's DCP identifies a preferred through site link located at the site's mid-point on the Pacific Highway extending in a north-easterly direction to the signalised intersection of Alexander and Falcon Streets. This was identified to break up the block length, conveniently connect the existing bus stop in a safe and direct desire line and provide opportunities for ground level activation. The proposal however contains two through site links that land at mid points of the site frontage on Falcon Street (north) and Alexander Street (east) which do not connect in with any existing (or desired) pedestrian laneway network in these locations. This does not promote a legible, or logical pedestrian network and does not result in pedestrians traversing the site arriving at a safe (signalised) crossing point allowing convenient connection to the Crows Nest centre north of Falcon Street. It is recommended that the proposal be amended to comply with Council's DCP in this regard.

Oversupply of off-street parking

The proposal seeks approval for a total of 324 car spaces as follows:

- 190 Residential parking spaces
- 134 Commercial retail spaces.

Residential spaces - Based on the maximum rates of Council's DCP, the maximum residential spaces should be 133 spaces. This proposed development exceeds the DCP maximum by 57 spaces.

Commercial spaces - The applicant has based the parking on one space per 60sqm of GFA being a rate now obsolete under the DCP. In this location being in a high accessibility area in close proximity to public transport the rate is one space per 400sqm. Based on the DCP rate the maximum permitted is 20 spaces. The proposed development exceeds the maximum by 114 spaces.

Parking to be reduced - Based on the above the amount of parking for the non-residential spaces should be reduced by 114 spaces with the residential spaces also being reduced. Reducing the total amount of parking will also assist in reducing the excavation required given seven (7) basement levels could be reduced as they would not be required further reducing the cumulative impacts both during and post construction.

In attempting to address this issue the applicant has provided a Parking Market analysis (Appendix 57) as part of the EIS. This document includes empirical market data that the provision of a parking space adds approximately +\$200,000 to the sale price of an apartment. Apart from the traffic impacts arising from an oversupply of private parking, this further adds to the general challenges of affordability of housing facing Sydney.

Excess parking to be included within Gross Floor Area (GFA) - As per the definition contained within the LEP standard instrument order, any parking which exceeds the maximum permitted is to be included in GFA calculation. This would result in a significant increase in GFA well above the maximum permitted including any additional allowance for the affordable housing. The site has been the subject of a planning proposal to increase the FSR to 5.8:1 with a further increase of 30% with the provision of affordable housing. It is expected that the maximum FSR/GFA inclusive of both the uplift from the planning proposal and any bonuses be compliant. There should be no further additional GFA above the maximum inclusive of these.

The over provision of parking will generate a significant amount of additional traffic movements and the impact upon traffic within this location at the subject site will be significant on what is already a constrained local road network. The amount of non-residential and residential spaces should be reduced to comply with Council's DCP.

The strategic premise of the allocation of increased density on this site was largely based on proximity to high-speed rapid transport (Crows Nest Metro) as well as numerous bus services. To seek to supply private parking at these rates well in excess of established policy is confounding.

Proposed advertising signage

The development includes a proposal to replace the existing top of building billboard style advertising signage seemingly unrelated to any on site activities or businesses. North Sydney Local Environmental Plan (NSLEP) 2013 currently permits "signage" in the MU1 Mixed Use Zone. Section 9 - Advertising and Signage to Part B of the North Sydney Development Control Plan (NSDCP) 2013 provides guidance as to the type, form, and location of advertising and signage that may be considered appropriate. NSDCP 2013 does not seek to specifically prohibit any form of advertising but seeks to manage their impacts through appropriate placement and sizing considerations. Of particular note is the long-standing and continued policy position of minimising visual clutter.

Chapter 3 of the Infrastructure and Employment State Environmental Planning Policy (SEPP) specifically relates to advertisements and signage. Part 3.3 of the SEPP contains guidelines for the location, design, and form of third-party commercial advertising.

As the existing building and structures are being demolished, the existence of the current signage is not a valid reason to justify the provision of new signage being provided within the new development in the approximate same form and location, noting the context of the area is evolving and changing. The signage represents a form of unnecessary visual clutter, sets an undesirable precedent on a largely residential tower and will further contribute the bulk and scale of the signage and is objected to.

Procedural incorrectness

Division 5, Section 56 of the Environmental Planning and Assessment Regulation 2021 applies to State significant development. This Section requires the consent authority to, among other things, publish a notice of the application on the consent authority's website, and give notice of the application to the persons that own or occupy the land adjoining the land to which the application relates. The notification area for sending out individual letters was extremely limited and was only sent to property owners directly opposite the application site on the eastern side of Alexander Street, the northern side of Falcon Street and the western side of Pacific Highway.

This matter was raised with Department staff and it was suggested that a much wider notification catchment was necessary, particularly in the context of a 79m tall tower and the ensuing visual, overshadowing and view impact considerations that it was essential for surrounding landowners and occupants to (directly) be made aware of. The Department declined to accede to this request and the reasoning given that the notification area was based on the landowners/occupiers who, in their opinion, be directly affected by the development.

The purpose of direct notification is to allow the community to have the opportunity to participate in planning decisions consistent with the broader objectives of the Environmental Planning and Assessment Act as well as the provisions outlined in Division 2.6 - Community Participation of the Act. The failure to undertake a notification extent commensurate with the scale (and impact) of the proposed development directly fails to comply with the Departments of Planning, Housing and Infrastructure own *Community participation plan (dated April 2024)*.

The progression of the determination of this proposal may leave any approval granted, open to legal challenge on procedural grounds.

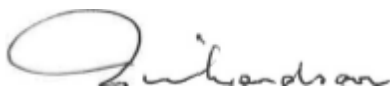
Conditions of consent on any determination

Whilst not supportive of the proposal, Council requests, on a without prejudice basis, it be consulted on any conditions of consent that may be drafted in the future by any consent authority.

Summary

For the reasons outlined above objection is raised to the progression of this State Significant Development Application and requests that the application be determined by way of refusal. Council would welcome the opportunity to discuss or clarify the concerns raised in this submission directly with you at your convenience.

Yours sincerely



Mark Richardson
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