



17 June 2025

Secretary  
Department of Planning, Housing & Infrastructure  
12 Darcy Street  
PARRAMATTA NSW 2150

SSD 79240223  
JD6 (P&E)

ATTENTION: Mr A Kunz, Senior Planning Officer  
Key Sites & TOD Assessments

**STATE SIGNIFICANT DEVELOPMENT APPLICATION 67175465**  
**APPLICANTS: CBUS PROPERTY, GALILEO GROUP, PLATFORM PROPERTY SERVICES**

Dear Sir,

I refer to the recent public exhibition of the application and thank the Department for the opportunity providing feedback to the proposed development of land at 378-and advise that following a review of the documents submitted, Council objects to the development proposal.

In summary, grounds for objection are:

- The addition of an 'additional layer' of planning control, the Crows Nest TOD Precinct Design Guide (PDG), and the exclusion of development control plans, when the former relies on the latter, has resulted in an impractical, complex and consequently less-than-transparent planning framework for the precinct.
- Excessive building height is proposed, potentially establishing an undesirable precedent for breaching the recently established height controls, which have already added considerable additional height permitted under the previous St Leonards-Crows Nest planning framework. Provisions to prevent variation of development standards of the LEP should be considered for inclusion in clause 4.6 (8) of the North Sydney LEP 2013.
- Inadequate non-residential floor area, to promote an appropriate mix of residential and employment-generating floor space, given the site's immediate proximity to the Metro Station.
- Various design improvements are required to address scale, number of storeys and response to the site's context, including adjacent heritage buildings.
- The PDG and LEP not being sufficiently supported by provisions and procedures to properly consider and require payment of a contribution towards affordable housing.
- The PDG does not indicate that suitable analysis of future open space demand for the fast growing precinct and more broadly, has been conducted. . Such evidence should be made available or a study undertaken to deliver open space required to satisfy population growth.

***Detailed Submission***

This submission has been prepared with input from across Council's departments, and addresses:

- Urban Planning and Design,
- Heritage,
- Affordable Housing,

- Development and Infrastructure Engineering,
- Landscape and Tree Protection,
- Transport and Traffic,
- Waste Management, and
- Statutory Evaluation, a “high-level” assessment

### ***Overview of planning controls***

The submitted environmental impact statement and several volumes that support it have comprehensive information relating to the planning instruments, design guides and the development control plan (DCP) which apply to the site. It is noted that DCPs do not apply to state significant development in the TOD precinct. The planning instruments that apply to the site include:

- The Environmental Planning & Assessment Act 1979, section 4.40, which states section 4.15 of the Act applies to determination of State Significant Development.
- State Environmental Planning Policy (SEPP) (Planning Systems) 2021, clause 2.10 states that DCPs do not apply to State Significant Development.
- Several other SEPPs are procedural or administrative in nature and others establish procedures and standards for assessing certain types of development and infrastructure,
- The principal local planning instrument, the North Sydney Local Environmental Plan 2013,
- The Apartment Design Guide, which applies to the residential component of the proposed mixed-use building,
- The Crows Nest TOD Precinct Design Guide, precinct-specific controls introduced to complement new height and floor space ratio standards, amongst addressing to other requirement such as connection with Country and open space, and
- The North Sydney DCP 2013 which applies controls for mixed use development and locality-specific controls for the St Leonards Crows Nest area, noting that as mentioned, it does not apply to this and other state significant development.

As the Department is aware, the site has been the subject of significant increase in development capability since the adoption of the St Leonards Crows Nest 2036 Plan (2020) and more recently the TOD Accelerated Precinct rezoning, published 24 November 2024.

### ***Zone & development standards***

The site now has a MU1 Mixed Use zoning, which permits the proposed development with consent, a maximum height control of 135m and an overall maximum FSR of 12:1 with a minimum non-residential FSR of 1.5:1.

With an area of 1,980m<sup>2</sup>, the site has a maximum overall permissible gross floor area of 23,760m<sup>2</sup> and a minimum non-residential gross floor area of 2,970m<sup>2</sup>.

### ***New controls for Crows Nest: Part 7 North Sydney LEP 2013***

A range of new planning controls complements these development standards, included in a new Part 7 of the North Sydney LEP 2013. Key controls include:

**Objectives:** address increasing housing supply, enabling a variety of uses to optimise walking access to public transport, delivering support for housing with access to public spaces, vibrancy and amenity, and increasing the amount of affordable housing.

**Crows Nest TOD precinct design guide:** the consent authority must be satisfied the proposed development is consistent with provisions of the precinct design guide (PDG) for the TOD precinct.

**Design excellence:** meaning the consent authority must be satisfied that the development will “deliver the highest standard of architectural, urban and landscape design.”

**Affordable Housing:** the site is part of Area 4, meaning that a monetary contribution for the equivalent of 10% of the residential component of the development, or a combination of one or more units may be dedicated to Council with a monetary contribution making up the difference, may also fulfil this clause's requirement.

Certain "Affordable Housing Principles" apply, which must be considered before granting consent. Key principles are:

- Affordable rental housing being provided and managed "...to accommodate a residential population within areas representative of all income groups in North Sydney."
- Rent not exceeding a benchmark of 30% of actual household income,
- Affordable rental housing being managed to maintain continued availability as affordable housing,
- Council using rent received or the proceeds of disposal, less expenses, to replace, improve or provide additional rental housing, and
- Affordable rental housing being built, in the consent authority's opinion, to a standard consistent with the standard of other housing in the development.

These are discussed below.

***Consideration of the Crows Nest TOD precinct design guide and other planning controls***

Like a DCP, Part 3 of the PDG establishes precinct-wide objectives and provisions for design and assessment of development. The preceding two parts are strategic in nature and their over-arching, broad statements do not readily apply to assessment of development applications. Parts 4 and 5 have locality specific guidance for development of two sites, in Herbert Street St Leonards (in the Willoughby LGA) and the St Leonards Telstra Exchange site (530-542 Pacific Highway, in the North Sydney LGA).

According to the PDG, applicable provisions of the North Sydney DCP should also be considered, however if DCP controls are inconsistent with the PDG, the latter prevails. The guide also notes that if the DCP makes provision for an aspect of planning the PDG does not, the DCP is to be considered.

As noted, the Planning Systems SEPP (cl. 2.10) states DCPs do not apply to state significant development, resulting in an inconsistency between the SEPP and the LEP. Clause 2.5 of this SEPP states that provisions of Chapter 2 – State and regional development, prevail over those of other planning instruments.

The consequence of this inconsistency is that the North Sydney DCP 2013 does not apply to State Significant development applications and would apply to local development applications in the TOD Precinct.

***Recommendation***

1. A review of the Crows Nest TOD Precinct Design Guide should be undertaken, to include those provisions of the North Sydney DCP 2013 that should apply to state significant and/or local development.

SEPPs (including the Apartment Design Guide (ADG)) are given statutory weight by SEPP (Housing) 2021), the LEP and DCP are matters for consideration in accordance with s. 4.15 (1) of the Environmental Planning & Assessment Act 1979, noting that section 4.40 (EP&A Act) requires state significant development to be evaluated in accordance with section 4.15.

Under cl. 7.3 of the North Sydney LEP 2013, the consent authority must be satisfied that the proposed development is consistent with the PDG for consent to be granted, assigning the PDG similar weight as the ADG.

In contrast, per s. 4.15 (3A) of the Act, more onerous controls than that of a DCP must not be required and any requirement of a DCP is to be applied flexibly, when a DCP applies. This aspect of the PDG does not apply to state significant development.

A matter not considered by the PDG is which would prevail if there were any inconsistency between the PDG and the ADG. As the PDG is given weight by the LEP and the ADG is applied by virtue of being a requisite consideration of SEPP (Housing) 2021. Like the Planning Systems SEPP, the Housing SEPP contains provisions that it prevails over any other planning instrument in the event of inconsistency. Arguably therefore, the SEPP could prevail over the LEP, and the ADG may prevail over the PDG.

Assessment of the proposed building against key controls of the above planning regime is provided in this submission.

## **URBAN DESIGN**

Council's urban designers have reviewed the project having focussed on proposed built form and its consistency with PDG and DCP provisions, the latter providing guidance in preparing this submission:

### ***Supported elements***

The following elements of the proposal are supported:

- Location of the proposed vehicular access from the southern end of Hume Street, consistent with the existing driveway entry.
- Integration of the proposed substation and services along Hume Street, with clearly separated commercial and residential lobbies fronting Pacific Highway.
- Articulation of the podium façade with brickwork to reflect the local character, complemented by fine-grain vertical detailing that enhances the human scale at street level.
- Expressing the tower form through vertical and horizontal breaks to reduce its perceived bulk and create a visually balanced and refined built form.

### ***Comments***

The following commentary assesses and makes recommendations for the proposal.

### ***Building exceeds maximum height***

The proposal exceeds the 135m height of building permitted under the Crows Nest TOD framework by 7.2m (5.3%), resulting in a total building height of 142.2m. This exceedance is not supported.

The height of building control is to include all rooftop plant and building services, which should be fully contained within the maximum height limit. In this case, the breach is not solely attributable to rooftop services but is also primarily the result of generous floor-to-floor heights at the podium and upper levels, notably levels 21, 37 and 39.

While the shadow analysis demonstrates compliance with the limited solar access provisions of the Design Guide, no analysis has been provided for the March and September equinoxes, which represent a greater portion of the year. Shadows cast by development in the precinct during these periods extend further west in the morning and east in the afternoon, increasing overshadowing to key parts of Crows Nest Village, including Ernest Place and the dining precinct along Willoughby Road. These public spaces are highly valued and rely on solar access throughout the day and year.

Further, the cumulative impact of height breaches across the precinct risks undermining the strategic intent of the TOD framework, which already delivers significant uplift from the 2036 Plan. Further exceedances are not supported.

***Recommendations***

2. Reduce the overall building height to comply with the 135m maximum building height limit.
3. Apply floor-to-floor heights in line with the Design Guide.
4. Contain all rooftop plant and building services within the maximum height limit.
5. Provide equinox shadow analysis to detail impact on Crows Nest, including Willoughby Road, Ernest Place and Hume Street Park, having regard to clause 7.4 Design excellence subclauses (3)(d)(vi) and (3)(d)(ix).

***Request to vary the building height standard***

While arguing via satisfactory performance against the standard's objectives that plant and other non-habitable works should be allowed to exceed the applicable height, what this enables, is additional habitable floor space beneath the height limit, that should be otherwise used to accommodate the whole building within the maximum height prescribed by the development standard, and as defined by the building height definition. This effectively enables more habitable floor space to be included as part of the height variation sought.

The applicant's submission to breach the height limit argues that, in addition to claiming acceptable performance against the standard's objectives, the height should be varied due to a discrepancy between the PDG nominating 4.5m for a lift overrun and the proposed overrun being 6.1m.

Given that this is the first state significant development application being considered in the Crows Nest TOD Precinct, the question of establishing consistent application of the standard in the precinct is raised by the proposed variation. This is a matter that must be given due consideration by the consent authority, in addition to the matters not adequately addressed, highlighted by the above analysis.

Finally, submission of clause the clause 4.6 submission contradicts clause 3.4, P7 of the PDG, clearly intended to discourage such requests. If this provision was to be assigned effective statutory weight, it should be transferred to clause 4.6 (8) of the LEP, which includes standards with which development must comply, and cannot be the subject of a request to vary the standard.

***Recommendations***

6. Should the proposed height not be amended to comply with the development standard, the application is unable to be approved, in accordance with clause 4.6 of the North Sydney LEP.
7. An amendment of the LEP to include building height in the TOD precinct in clause 4.6 (8) of the North Sydney LEP 2013 should be urgently considered.

***Reduced podium height and shortfall in non-residential floor space***

The Design Guide requires a 4-storey podium fronting the Pacific Highway and Hume Street. The proposal includes a 3-storey podium with oversized floor-to-floor heights, intended to align with the datum of the neighbouring 4-storey podium to the north. While the design rationale is acknowledged, a compliant 4-storey podium with standard floor-to-floor heights could maintain this alignment while supporting delivery of the required non-residential floor space.

The reduced podium height results in a proposed non-residential FSR of 1.39:1, which does not meet the 1.5:1 minimum requirement. This shortfall of approximately 213m<sup>2</sup> (7.3% variation) is concerning, given the importance of commercial floor space in supporting the employment role of the St Leonards and Crows Nest strategic centre. This is particularly critical given the site's prominent location directly opposite the new Metro station, where a strong employment presence is essential to precinct activation and long-term economic outcomes. In a built form sense, the 1.5:1 control should be treated as an absolute minimum as a 4-storey non-residential podium would be expected to achieve a 2:1 non-residential FSR at this location.

For these reasons, the request to provide non-residential floor space below the minimum required is not supported.

***Recommendations***

8. Provide a 4-storey podium in accordance with Design Guide, street wall height provision and maximise the commercial potential and capacity of the development, given its prime location for this purpose.
9. At least meet the minimum 1.5:1 non-residential FSR should be provided and increasing the ratio to 2.0:1 be considered, to support the employment and activation objectives of the precinct.
10. Should these aspects of the development not be amended to at least comply with the development standard, the application is unable to be approved, in accordance with clause 4.6 of the North Sydney LEP.
11. An amendment of the LEP to include the minimum non-residential floor space ratio in the TOD precinct in clause 4.6 (8) of the North Sydney LEP 2013 should be considered, urgently.

***Nil setback to Pacific Highway reduces pedestrian amenity***

The proposed nil setback to the site's eastern frontage along Pacific Highway is consistent with the Crows Nest TOD Precinct Design Guide. However, both the 2036 Plan and NSDCP 2013 previously identified the need for a 3m setback along Pacific Highway to widen the existing 2- 3m footpath, enhance pedestrian amenity and accommodate the high volumes of foot traffic anticipated to and from the Crows Nest Metro Station directly opposite the site. Given the significant growth anticipated in the precinct and corresponding increased pedestrian activity, this is important and cannot be retrospectively considered.

The corner treatment and ground-level setback included in earlier reference schemes during the previous Planning Proposal process on this site was supported/recommended by the Sydney North Planning Panel (SNPP).

The current nil setback compromises these outcomes and limits opportunities for additional tree planting and public domain improvements along this vehicle-dominated corridor. To support high quality and comfortable pedestrian environment in line with the PDG's broader objectives

***Recommendation:***

12. Introduce a ground level setback at the corner of Pacific Highway and Hume Street to improve visibility, safety and pedestrian amenity and better respond to clause 7.4 Design excellence subclause (3)(b).

***Non-compliant building separation to western boundary***

The proposal provides a 9m setback to the western boundary, where the ADG requires a minimum 15m setback for buildings 9-storeys and above. This comprises a 12m setback to achieve a 24m habitable-to-habitable room/balcony separation, plus an additional 3m to accommodate the transition to a lower-density zone. While it is acknowledged that a 15m setback may result in a compromised floor plate, the reduced separation has potential amenity impacts on the future adjacent 12-storey residential building to the west along Nicholson Street, particularly in terms of daylight access, privacy and sky views.

***Recommendation:***

13. Further consideration be given to the impacts of the reduced separation distance on the future 12-storey buildings on Nicholson Street and proposed mitigation measures to improve the daylight access, privacy and sky views of the affected apartments, having regard also to the PDG, clause 7.4 Design excellence, subclause (3)(d)(iv), and relevant provisions of the SEPP (Housing) 2021 and the Apartment Design Guide. The tower setback to the rear boundary should be increased to at least 15.0m.

***Breaks in awning compromise weather protection and amenity***

The proposed awning maintains a consistent datum along Pacific Highway and aligns with the adjacent awning at 398 Pacific Highway. Its stepped heights at the residential and commercial lobbies respond appropriately to site topography and reinforce a coherent streetscape. The bronze aluminum finish and fine detailing complement the brick podium and contribute positively to the material articulation of the overall building.

However, the awning is broken into discrete segments rather than forming a unified element. This reduces its effectiveness in providing sufficient weather protection. A more integrated treatment would better support pedestrian amenity.

***Recommendation:***

14. Ensure the awning is a continuous element along all frontages, avoiding fragmentation that reduces shelter. The height of sections of the awnings should be lowered to match the awning height of the adjacent building on the Pacific Highway.

***Lack of active frontage to Hume Street***

The extent of active frontages to Pacific Highway is supported. However, the proposal currently provides no activation along Hume Street. Given the proposed substation and vehicular access occupy a significant portion of this frontage, it is important that the remaining retail edge contributes to street activation.

Improved access and visibility to retail uses along Hume Street would help support local pedestrian movement and would be consistent with PDG objectives to create a well-connected, activated centre, particularly given the site's key corner location directly across from the Metro station.

***Recommendation***

15. Provide direct pedestrian access to retail tenancies along Hume Street to improve activation and enhance the interface with the public domain.

**HERITAGE**

***Heritage status***

The subject properties where the development is proposed are not listed as heritage items and are not located in a conservation area. The lots are however, located in the vicinity of the following locally listed heritage items:

- I0141 – “St Leonards Centre,” (28–34 Clarke Street, St Leonards);
- I0166 – “Higgins Buildings,” (366 Pacific Highway, Crows Nest);
- I0167 – “Higgins Buildings,” (368 Pacific Highway, Crows Nest);
- I0168 – “Higgins Buildings,” (370 Pacific Highway, Crows Nest);
- I0169 – “Higgins Buildings,” (372 Pacific Highway, Crows Nest);
- I0170 – “Higgins Buildings,” (374 Pacific Highway, Crows Nest); and
- I0171 – “Higgins Buildings,” (376 Pacific Highway, Crows Nest)

***Demolition***

No objection is raised to the demolition of the existing buildings as they have no heritage significance.

There will be no detrimental impact to the nearby heritage items resulting from the demolition of the existing buildings.

***Proposed development***

Podium - The proposed new building will be located immediately opposite the heritage listed Higgins Buildings, a group of two storey Interwar Free Classical commercial buildings. The corner building has a

splayed frontage. The front facades of the Higgins Buildings will be seen in the context of the new development from the traffic intersection of Pacific Hwy/Hume St.

The applicant however, has not submitted an elevational drawing indicating the street elevation in the context of the Higgins Buildings, so it is not possible to properly assess the heritage impact and specifically, the relationship of the proposed podium to the Higgins Buildings.



***Photomontage of proposal, looking northwest along the Pacific Highway (Cox Architecture)***

The above photomontage clearly indicates that the three-storey podium height of the new development will be higher than that of the top of the two storey Higgins Buildings which will have a negative impact upon the aesthetic significance and setting of the Higgins Buildings.

The proposed podium will appear as an over-scaled form, in comparison to the two storey height of the Higgins Buildings. Notably, the storey heights will also exceed those of the existing building located immediately north of the site. The difference in the height of the glazing will also exacerbate this issue due to the perceived difference in storey height.

The podium design does not satisfy clause 5.10 in NSLEP 2013 and Part B Section 13.4 in NSDCP 2013 that states:

*Objectives O1 Ensure that new work is designed and sited so as to not detrimentally impact upon the heritage significance of the heritage item and its setting.*

*Provisions P1 Respect and respond to the curtilage, setbacks, form, scale and style of the heritage item in the design and siting of new work.*



### ***Recommendation***

16. It is recommended that the applicant reconsider the podium design, by emphasising verticality and further articulating the facades to reduce their scale and improve the podium's relationship with the smaller scale and massing of the Higgins Buildings. Further, the applicant should reconsider the street level detailing, to introduce character and reflect the rhythm, massing and scale of the Higgins Buildings on both the Pacific Highway and Hume Street frontage. Drawings should also be provided to enable a proper assessment of the building, in context with its surroundings.

Tower – The tower is noted as being monolithic in scale compared to the Higgins Buildings. No objection is raised however, subject to the resolution of the podium level as discussed above.

Materials- The proposed materials selection is acceptable. The use of brickwork for the podium is supported as it responds not only to the Metro building but also the exposed brick façade of 372 Pacific Highway, one of the Higgins Buildings.

### ***Connection to Country report***

Consultation - It is noted that that the applicant has not consulted with the Aboriginal Heritage office (AHO) or Land Council. Consultation with these agencies should be undertaken by a consultant recognised by the AHO.

Landscape - The landscape design 'will draw narrative from the wider landscape, of which can be observed from the upper levels of the tower.' This does not indicate a connection to Cammeraygal country. The proposal should directly connect with Cammeraygal country.

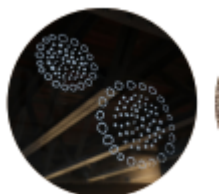
Artwork- The document and submitted drawings do not specify what the outcomes will be. The plan and legend as below are inadequate as no assessment can be made as to whether they respond to and/or reference Cammeraygal culture.

#### **Key**

- ✱ INTEGRATED ART ELEMENTS
- SUBTLE PLANT SIGNAGE ELEMENTS
- RAISED PLANTER WALL 900MM
- UNIT PAVING ART INLAY
- ||||| SOFFIT INTEGRATED STORY INLAY
- ① NATIVE BUSH TUCKER PLANTING



The dot painting design referenced on page 26 is not supported.



Dot paintings originate from the Panunya Tula artists in Central and Western Australian. By contrast, the Cammeraygal rock art showed outlines of humans and animals. The use of dot paintings will likely de-value the cultural significance to their original mob and will also perpetuate a stereotypical indigenous design. Council recommends that the source material be taken from existing rock carvings, and/or the documented artwork in Attenbrow and WD Campbell's 1899 survey of rock art.

Cammeraygal - The report appears to be a cut and paste version of other reports for developments in Lane Cove and Sutherland as it references Lane Cove National Park and the Royal National Park, neither of which are in the North Sydney LGA. It is not specific about North Sydney and Cammeraygal.

It also makes assumptions that are not based on known facts. For example, the statement '378-398 Pacific Highway will be at the forefront of tower development within the Crows Nest area. The building will stand as a beacon upon the prominent ridgeline, that has seen so many generations of indigenous peoples trek the walking trails to their significant sites', as there is no known physical or colonial documentary evidence of any indigenous trail along the Pacific Highway route in North Sydney. Council's Historian, Dr Ian Hoskins advises that whilst it is a logical assumption that colonists used existing paths rather than blazing new routes through forest or heath, they had very different imperatives to the people they displaced. They sought to link places which may not have been of interest to the Cammeraygal. Neither does it follow that the best route to take by foot with a light load, as was the Aboriginal way of travel, could be negotiated by an oxen and cart.

***Recommendations:***

17. The applicant is to consult with the relevant Land Council, the Aboriginal Heritage Office and Council's Historian, Dr Ian Hoskins.
18. Dot paintings should be avoided.
19. Reference should be made to existing Cammeraygal art.
20. -Plant species be locally indigenous.

**AFFORDABLE HOUSING**

***Dwelling Mix***

The proposal seeks to deliver:

- 26 x 1 Bedroom apartments (14.6%)
- 101 x 2 Bedroom Apartments (56.7%)
- 47 x 3 Bedroom Apartments (26.4%)
- 4 x 4 Bedroom Apartments (2.2%) (inclusive of 2 x 4 Bedroom Penthouse Apartments)

The North Sydney Council DCP (Part B, Section 1.2.1) requires the following dwelling mix:

TABLE B-1.1: Dwelling Mix	
Dwelling Size	% of Total Dwellings
Studio	10-20%
1 bedroom	25-35%
2 bedroom	35-45%
3 bedroom+	10-20%

Despite development control plans not applying to state significant development, dwelling mix provisions in the DCP account for local need and should be taken into consideration.

- Further, over the next 10 years (to 2036), lone person households in the LGA along the housing continuum are projected to increase from 13,327 to 15,527.
- Currently, the household type most in need of affordable housing in the LGA is lone persons (543 households, per Housing Monitor data).
- The Crows Nest precinct is a high growth area for the LGA, meaning the need for housing diversity will be acute in that locality.
- The proposal will increase pressure on existing infrastructure, including community resources, local services and open space.

**Recommendation:**

21. Recalibration of the dwelling mix to better align with Council's DCP requirements (as a guide) and local needs, by providing more studio/one bedroom dwellings and proportionally reducing the quantity of 2/3/4 bedroom dwellings proposed.

**Monetary contributions towards affordable housing in the precinct**

As the TOD Precinct controls in the LEP were developed by the State Government, Council has sought clarification from the Department regarding the policy intent in calculating the equivalent monetary affordable housing contributions. This is particularly important, as the SSD under consideration is the first to apply the provisions of the TOD through this development pathway.

At the time of writing, while Council's request has been verbally acknowledged by the Department, Council is awaiting a formal written response, limiting Council's consideration of this component of the assessment, within limitation of the exhibition period, and in the absence of a precedent.

**Recommendation**

22. Council and the Department engage collaboratively to assess and determine the most effective way forward for calculating the appropriate affordable housing monetary contribution to give effect to the need for affordable housing and ensuring a clear and transparent inter-governmental process.

**LANDSCAPE DESIGN**

The proposal requires the removal of 3 x street trees, with 3 x to be retained, though all will likely be impacted to some degree. It is considered that an improved outcome will be achieved by removing all street trees and replacing them with 6 x *Liriodendron tulipifera* (200l) evenly spaced across the Pacific Highway frontage from the site of T6 towards the corner of Hume Street, & 6 x *Corymbia maculata* (100l) evenly spaced across the Hume Street frontage.

**Recommendations**

23. An amended landscape plan should be submitted, or conditions of consent require replacement and planting of 6 x *Liriodendron tulipifera* (200l) evenly spaced across the Pacific Highway frontage from the site of T6 towards the corner of Hume Street, & 6 x *Corymbia maculata* (100l) evenly spaced across the Hume Street frontage.
24. Authorising removal of these trees:

Species	Height	Location
T1-T4 <i>Melaleuca quinquenervia</i>	14m	Council verge in front of 378 Pacific Hwy-Hume St frontage
T5 & T6 <i>Platanus x acerifolia</i>	16m	Council verge in front of 378-390 Pacific Hwy-Pac Hwy frontage

25. Requiring landscaping to be carried out in accordance with the landscape design report prepared by Arcadia, 28 February 2025.
26. Providing cut-outs in the awnings, of sufficient size to allow the six street trees to be planted, to grow to maturity.
27. Ongoing maintenance of landscaping carried out in accordance with the landscape design report.
28. The six street trees to be planted shall be watered and for a period of six (6) months after the final construction certificate is issued. Watering shall be approximately 160 litres per week (min), per tree, (40 l per tree x4 times per week) delivered gently by hose or watering can so that the surrounding soil can absorb the water. Liquid fertilizer is recommended monthly over this period.

29. A Landscape Maintenance Plan is to be prepared by a qualified horticulturalist to ensure the ongoing viability and vigour of plant species. The Landscape Maintenance plan is to be prepared having regard for the practicalities of undertaking landscape maintenance are met as well as the retention of the vision and objectives of Arcadia's landscape design report.

## **ENGINEERING**

### ***Development engineering***

Council's development engineer has assessed the proposal regarding the following matters and concludes conditions can be imposed to ensure compliance with Council's requirements:

- Traffic management,
- Parking and access,
- Stormwater,
- Sediment and erosion control, and
- Excavation and retaining walls.

### ***Flooding***

The site is not located within the Flood Planning Area. The driveway entrance is proposed to be located above the Probable Maximum Flood level. No further comments or conditions are necessary.

### ***Transport and traffic engineering***

#### ***Traffic generation***

The TIA report does not clearly identify the source documents referenced for the trip generation calculations. It appears that the residential trip generation rates have been based on the RMS report titled "High Density Residential Trip Generation Surveys (2012)" for St Leonards. However, Transport for NSW has since released the "Guide to Transport Impact Assessment" (November 2024), which supersedes both the Guide to Traffic Generating Developments (2002) and Technical Direction TDT 2013/04a as of 4 November 2024. As such, the trip generation rates used in the TIA may no longer be valid.

While the TIA states that "Transport for NSW published a Technical Direction that described vehicular trip rates for commercial developments," it does not specify which document this refers to, making the basis for the commercial trip generation rates unclear. Furthermore, the report does not address or identify trip generation rates for the proposed retail component.

#### ***Loading Dock***

Requirement – DCP Section 10.4 P3, Developments containing more than 60 dwellings must provide 1 service delivery space to accommodate at least:

- (a) 1 HRV or
- (b) 2 MRVs

The SSDA proposes one MRV bay at ground level and four additional service vehicle spaces in the basement. However, this arrangement does not satisfy the DCP requirement for residential land use, as it fails to provide the minimum HRV or two MRV spaces exclusively for residential servicing.

Additionally, the proposed loading dock is intended to be shared between multiple land uses, which is not considered appropriate for servicing a residential component and may result in operational conflicts.

A turntable is included on-site to facilitate forward entry and exit for service vehicles. Waste collection is proposed to occur from Hume Street.

#### ***Bicycle Parking***

The 178 bicycle parking spaces proposed is insufficient, Council's DCP recommends a minimum 222 spaces be provided.

It is also noted that motor cycle parking, a car wash bay and accessible parking has not been addressed by the traffic assessment.

***Recommendation***

30. That the application be revised having regard to the above transport and traffic assessment.

**WASTE MANAGEMENT**

The operational waste management plan and facilities for the proposed development must satisfy the following recommendations.

***Recommendations***

31. The bin storage room must be large enough to accommodate 11 x 660L compacted waste bins and 22 x 660L recycling bins. The proprietors are responsible for the supply and maintenance of the 1100L/660L bins. Alternatively, 13 x 1100L bins may be used for recycling.
32. Servicing of waste bins is weekly, the bin room must be designed to enable access to the bins.
33. The development is to be serviced by onsite Council collection using Council's 12.5m HRV with a height clearance of 4.5m. The applicant must ensure sprinkler heights and service ducts are taken into consideration. Swept path(s) for a 12.5m HRV with a 4.5m height clearance is to be provided for the loading dock in a forward direction when entering and leaving the site.
34. Properties with a lift must have a garbage chute and a 240L recycling bin on each level or dual waste/recycling chutes.
35. Space must be provided for a 120L food waste bin on each level or a dedicated food waste chute.
36. A bulky waste storage area is required to hold household clean up material. This should be separate from the waste room.
37. The door width for the bin room and bulky waste room must be at least 1.5m.
38. Commercial waste is to be physically separated from residential waste management and managed on a commercial basis. Council does not provide commercial waste services and adequate storage and disposal facilities must be provided.

**EVALUATION: Section 4.15 EP&A Act**

A 'high-level' assessment of the proposed development is presented below considering the key controls of:

- **SEPP (Housing) 2021**, Chapter 4, principally the 9 Design Principles for Residential Apartment Development. Key inconsistencies with the ADG are discussed in relation to the design principles, they are not repeated in a separate ADG assessment.
- **Part 7, North Sydney LEP 2013**, a high-level assessment has been made.
- **Crows Nest TOD Precinct Design Guide**, a high-level assessment has been made.
- 

The **North Sydney DCP**, Part B Section 2, Commercial and mixed-use development, and Part C Section 3 St Leonards Crows Nest Planning Area, have not been considered against otherwise applicable DCP provisions, in accordance with cl. 2.10, Planning Systems SEPP, as discussed.

***Recommendation***

39. The Precinct Design Guide be amended to include other provisions of Council's DCP, in collaboration with Council.

***Housing SEPP- Design Principles***

**1. Context and neighbourhood character**

As noted above in the urban design and heritage assessments, the proposal's contribution to local character can be improved.

## **2. Built form and scale**

Building height should be complied with, to better-attain the scale and form envisaged by the planning controls and to avoid establishing an undesirable approach to considering variations to development standards. Setbacks should be increased at street level to the Highway and to the rear. The 9.0m setback to the rear relies on a greater setback being applied to the sites on Nicholson Street. The proposal is therefore using the adjacent land's amenity, especially the site on the corner of Hume and Nicholson Streets. As recommended, the rear setback of the tower should be increased to at least 15.0m.

## **3. Density**

The density is inappropriate, in relation to built form as described and regarding under-provision of non-residential FSR.

## **4. Sustainability**

It is noted that there is a non-compliance with the design guidance for solar access, with 63% of dwellings receiving 2 hours mid-winter sun, not the minimum 70%. There do not appear to be any extenuating circumstances to warrant this under-performance.

### ***Recommendation***

40. The proposal's design be revised to improve solar access performance to at least the minimum guidelines of the Apartment Design Guide.

## **5. Landscaping**

This is discussed above. None of the site offers deep soil, as proposed, which is typical in transitional, high density locations. Whether adequate provision of public open space is provided at the precinct level via acquisition or other means has not been addressed and should have been, except for the small park (relative to likely demand) proposed in the in the "Lithgow Street block", the area bounded by Lithgow Stret, River Road, Christie Street and Oxley Street.

## **6. Amenity**

It has been observed that the building separation to the rear resulting from the proposed 9.0m setback is inadequate, adversely impacting amenity, visual privacy and solar access/overshadowing of the existing and perhaps more-so future development expected on land fronting Nicholson Street.

To protect the amenity of residents on the northwest side of the building and of the adjacent building next to the site, it is expected that a condition of consent will require protecting of the airspace above the part of the site not being redeveloped.

The areas made available for communal open space appear inadequate for the building's population. Being complemented by rooftop facilities should be considered.

### ***Recommendation***

41. A condition be imposed, should consent be granted to guarantee provision for no development occurring in the airspace above the part of the site north of the proposed building, being Lot 1 DP 1258791, in accordance with the submitted stratum subdivision plan.
42. Increasing the amount of communal open space, especially by providing equitably accessible, high-quality space on the rooftop, should be considered.

## **7. Safety**

No specific comment is provided.

## **8. Housing diversity and social interaction**

Discussed previously, is the need to attune the proposed dwelling mix to local conditions.

## 9. Aesthetics

No comment, although the materials and vernacular proposed to be used are locally popular and will probably serve to mark a period of Sydney's design and architecture of the early to mid-21<sup>st</sup> Century, in years to come.

### Part 7 North Sydney LEP 2013

#### 7.1 Objectives

The proposed development is consistent with objectives for development in the precinct objectives, with these exceptions:

**(b) enable a variety of land uses within walking distance of St Leonards and Crows Nest Stations:** with the site being directly across the highway from Crows Nest station, the amount of non-residential floor area should be maximised by enforcing, as a minimum, strict compliance with the Non-residential FSR standard.

**(c) deliver housing supported by public spaces, vibrancy and community amenity:** as discussed above, this objective would be better served by increasing the footpath widths on both frontages and reducing floor to floor heights of and adding another level to the podium. Although beyond the scope of this development application, the Government is strongly encouraged to properly address the paucity of open space in the Crows Nest - St Leonards area.

#### 7.3 Design guide

The consent authority must be satisfied that proposed development is consistent with the precinct design guide (PDG). It is further considered below.

#### 7.4 Design excellence

This clause sets out assessment criteria, the majority (if not all) of which are requisite considerations under the s. 4.15 of the Act, the LEP, the DCP (if it applied to the subject DA), the ADG and Housing SEPP and of course, they are complemented by the PDG. They require no further consideration by this submission.

#### 7.5 Affordable housing

Addressed previously.

### Crows Nest TOD Precinct Design Guide (PDG)

As noted earlier, the first two parts of the PDG are introductory and strategic in nature.

Part 3 contains "Precinct-wide Design Guidelines". Chapters 4 & 5 apply to specific sites. Applicable provisions of Part 3 are considered below.

#### 3.2 Connecting with Country

The shortcomings of the submitted 'Connection to Country' report are detailed in the heritage assessment.

#### 3.3 Land use

The proposal is broadly consistent with the objectives for land use. However, consistency would be improved if the minimum non-residential floor space ratio were complied with or exceeded.

#### 3.4 Built form

In response to specific provisions:

- P2. Increasing the rear tower setback and compliance with height would lessen overshadowing impacts.
- P4. As detailed by the heritage assessment, the proposed development does not offer an sensitive transition to the Higgins Buildings opposite the site.

- P5. As argued above in urban design and heritage terms, the three levels of the podium should have lower ceiling heights to achieve four storeys (with an overall increase in podium height, if required, to 16.4, as suggested by the provision).
- P7. The intent of this clause is to prevent development breaching the overall height control, by stating rooftop plant must be “incorporated into the overall building height” prescribed by the Height of Buildings Map. The proposed development does not comply, despite lodging a clause 4.6 submission, in an attempt to contravene the development standard.
- P8. Access to ground level activity on Hume Street requires reconsideration.

#### ***3.4.1 Solar amenity and overshadowing***

None of the controls apply specifically to the subject land and the proposed development.

#### ***3.5 Minimum lot size***

The minimum lot size specified for the site is 1,500m<sup>2</sup>.

Site areas on the survey plan are 1320m<sup>2</sup> which comprises the six other lots which make up 378-388 Pacific Highway, on which the proposed building is proposed to be erected, and 390 Pacific Highway.

660m<sup>2</sup> is the area of Lot 1 DP 1258791, 398 Pacific Highway, where it is proposed to maintain the extant building and create by stratum subdivision of the area above, a space protected from future development to maintain building separation between the proposed building and redevelopment of the site on the corner of the Pacific Highway and Oxley Street, where a building of the same height as the proposal is permitted.

Total site area is a compliant 1,980m<sup>2</sup>.

#### ***3.6 Landscape and Environment***

##### ***3.6.1 Public spaces***

The objectives promote standards for providing open space close to (within 200m) of the Metro Station. The provisions do nothing to realise the intent of the objective, except propose one park on the corner of Christie Street and Oxley Street, which is about 280m from the main pedestrian entry of the station, in addition to other open space and its upgrading, such as Hume Park, Ernest Place and closed section of Christie Street opposite the site of the park proposed by the precinct plan.

There is no analysis in the PDG to indicate whether the population expected to be accommodated in the TOD precinct will be properly catered for in terms of the type, size and distribution of open space.

##### ***Recommendation***

43. In an apparent lack of analysis to inform an adequate provision of the type, size and suitable location of additional open space required, the analysis should be provided, or a study should be undertaken, as outlined above for the entire St Leonards-Crows Nest 2036 defined area, in a sub-regional (Lower North Shore) context, and the design guide and other planning controls be amended or introduced accordingly, to acquire land and embellish the land to provide for the long-term needs of existing and future residents of the district, based on the findings of such a study.

##### ***3.6.3 Tree canopy, deep soil and biodiversity***

Deep soil – it does not appear that the proposal includes any deep soil, unencumbered above or below ground level by structures or utilities, as promoted by the design guide. At least six street trees will be provided as recommended by this submission.



**3.7 Design excellence**

This clause reproduces the provisions of the LEP and need not be considered further. The urban design analysis has identified elements of the proposal that do not comply with urban design excellence requirements.

**3.8 Setbacks**

Setbacks have been considered in the urban design analysis above.

**3.9 Street wall heights**

As above.

**3.10 Movement**

There are no specific aspects of the PDG-promoted movement network that affect the site.

**3.11 Carparking**

Parking controls are the same as in the DCP and according to the application and the preceding St Leonards Crows Nest 2036 plan. Parking is below the minimum required for cars and 4 spaces short of the number required for motor bikes. The proposed number of bicycle spaces is deficient as addressed in the transport assessment below.

**3.12 Wind management**

This matter has been addressed in a wind tunnel study. Its recommendations are expected to be addressed in a condition, should consent be granted.

**3.13 Flooding**

Council's engineers advise the site is not in a flood planning area of Council's Interim Floodplain Management Policy, while noting the basement driveway is above flood planning levels.

**CONCLUSION**

Council appreciates the opportunity to make this submission. Further involvement in project planning and engagement is positively anticipated, with amendments recommended to be made to the proposal as detailed in this submission to resolve Council's grounds for objecting to the application.

Should you wish to discuss the contents of this submission, please contact Mr Jim Davies, Executive Assessment Planner, on 9336 8378, or at [jim.davies@northsydney.nsw.gov.au](mailto:jim.davies@northsydney.nsw.gov.au).

Yours sincerely,



Marcelo Occhiuzzi  
**DIRECTOR, PLANNING & ENVIRONMENT**