

**CLAUSE 4.6 VARIATION
REQUEST - MAXIMUM
HEIGHT OF BUILDINGS
AS IT APPLIES TO SITE B**

APPENDIX Z



Sydney Metro City & South West: Crows Nest Over Station Development

Clause 4.6 Variation Request – Height of Buildings, Site B

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|-----------------------|-------------------------------|
| Applicable to: | Sydney Metro City & Southwest |
| Author: | Ethos Urban |
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1.0 Introduction

This request to vary a development standard has been prepared under Clause 4.6 of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) and is submitted to the Department of Planning, Industry and Environment (DPIE) in support of a State Significant Development Application (SSDA 18_9579) for the over station development (OSD) above the new Crows Nest Metro Station. The proposed variation seeks to vary the development standard specified under Clause 4.3 Height of Building under the NSLEP 2013.

Clause 4.6 of the NSLEP 2013 allows consent for development to be granted even though the development contravenes a development standard imposed by the NSLEP 2013. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clauses 4.6 (3) and (4)(a)(ii) require that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard as detailed below:

- that the applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- that the applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard; and
- that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The consent authority's satisfaction to those matters must be informed by the objective of providing flexibility in the application of the relevant control to achieve better outcomes for and from the development in question.

The Land and Environment Court provides assistance on the approach to justifying a contravention to a development standard under State Environmental Planning Policy 1 – Development Standards (SEPP 1) through the judgement of Justice Lloyd, in *Winten Property Group Ltd v North Sydney Council* [2001] 130 LGERA 79 at 89. The test was later rephrased by Chief Justice Preston in the decision of *Wehbe v Pittwater Council* [2007] NSW LEC 827 (*Webbe*). These judgements are also of assistance to the assessment of variations under Clause 4.6 of an LEP.

Additional assistance can be found in the recent decision by Commissioner Pearson in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (*Four2Five*); *Micaul Holdings Pty Ltd v Randwick City Council* [2015] NSWLEC 1386; *Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511; and *Moskovich v Waverley Council* [2016] NSWLEC 1015 which was upheld by Pain J on appeal.

In accordance with the above requirements, this Clause 4.6 variation request:

- identifies the development standard to be varied (Section 2);
- identifies the variation sought (Section 3);
- establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (Section 4);
- demonstrates that there are sufficient environmental planning grounds to justify the contravention (Section 5);
- demonstrates the contravention of the development standard is in the public interest (Section 6); and
- provides an assessment of the matters that the Secretary is required to consider before providing concurrence (Section 7).

This Clause 4.6 variation request should be read in conjunction with the Environmental Impact Statement (EIS) dated 9 November 2018, and Response to Submissions Report dated 2 September 2020, in relation to the proposed development of the Crows Nest OSD.

1.1 Background to the Rezoning Proposal

The exhibition of the concept SSD Application was undertaken simultaneously to the exhibition of other important strategic planning documents released by DPIE. This included the (then) Draft Crows Nest Sydney Metro Station Site Rezoning Proposal (Draft Rezoning Proposal).

DPIE released the Draft Rezoning Proposal to amend the NSLEP 2013 as it applies to the site subject to this concept SSD Application.

The former planning controls for the subject site were adopted in 2013, prior to any commitment by the NSW Government to deliver the Sydney Metro project, including a new station at Crows Nest. Consequently, these controls did not reflect opportunities for transit-oriented development at the Crows Nest Sydney metro station.

The then Draft Rezoning Proposal sought to amend the maximum building height development standard, among other changes, as it applied to the Crows Nest sites. It was proposed to increase the maximum building heights for the sites, and to include a provision that would enable an additional 3-5m above the mapped maximum building height if this upper storey was solely for the provision of rooftop plant, equipment and lift overruns.

The rationale for this approach was to nominate and restrict the maximum height of buildings and associated habitable floor space through the NSLEP 2013 mapping, whilst still ensuring there was sufficient allocated space for the provision of essential plant, equipment and lift overruns.

DPIE has since finalised the Rezoning Proposal, and gazetted new controls for the Crows Nest site, on 31 August 2020 as the *State Environmental Planning Policy Amendment (Crows Nest Metro Station) 2020*.

Only Site C benefits from Clause 4.3A enabling development to breach the mapped maximum building height for the provision of rooftop plant, equipment, and lift overruns. In view of this, the services zone for Site B will marginally breach the mapped maximum

building height and is not able to rely on Clause 4.3A. This Variation Request addresses this minor proposed variation and confirms that strict compliance would be unreasonable and unnecessary in the circumstances.

2.0 Development Standard to be Varied

The development standard to be varied as part of this application is ‘Clause 4.3 Height of Buildings’ relating to the maximum height of building permitted for development. Under the NSLEP 2013, the Crows Nest metro station sites have a maximum height of RL 180m for Site A, RL 155m for Site B, and RL 127m for Site C, as shown below in Figure 1.

Site C is also subject to Clause 4.3A, which enables development to breach the mapped maximum building height by an additional 5m (up to RL 132m) for the provision of rooftop plant, equipment, and lift overruns.

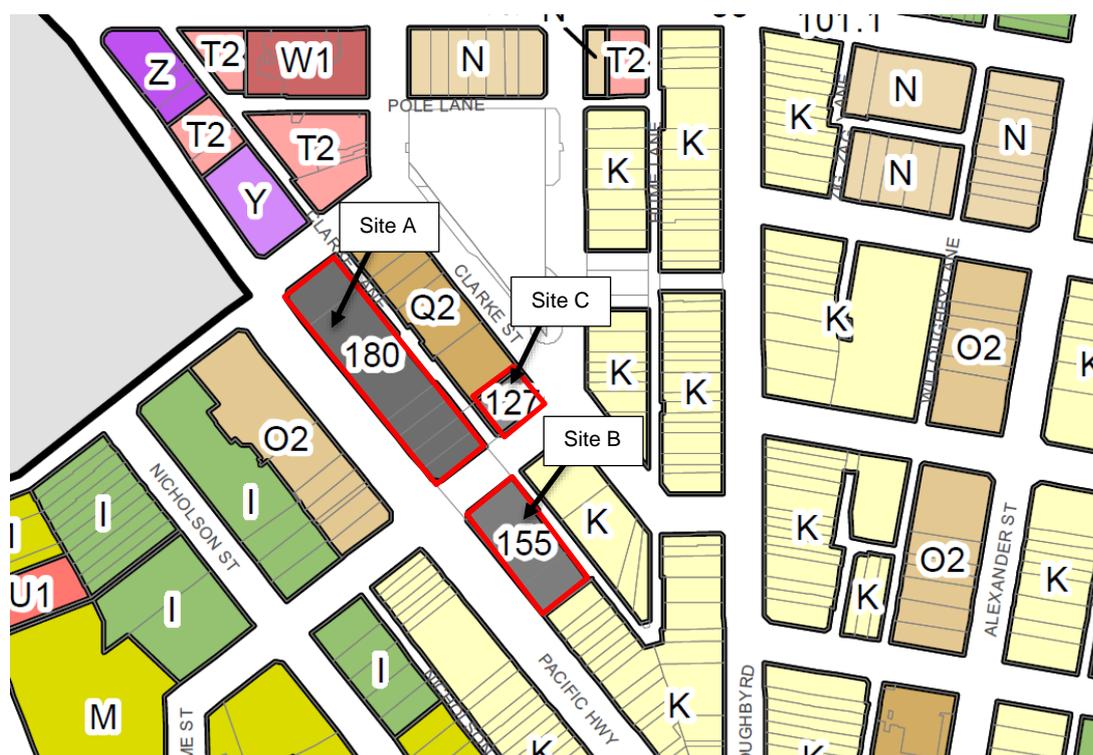


Figure 1 – Maximum height of buildings development standard (metres), with the sites outlined in red

3.0 Nature of the Variation Sought

The proposed development seeks concept approval for three building envelopes, one located on each of Site A, Site B, and Site C. The proposed height of the roof slab of each building envelope corresponds to, or is beneath, the ‘maximum building heights’ contained within the NSLEP 2013 shown in Figure 1. The ‘services zone’ for Site A has also been reduced to comply with the mapped height control, and the services zone for Site C will utilise Clause 4.3A of the NSLEP 2013.

The services zone identified at the rooftop of the Site B building envelope has a maximum height of RL 158m, and as such exceeds the maximum permitted height by 3m. Site B does not benefit from Clause 4.3A of the NSLEP 2013, permitting an additional 5m for rooftop plant, equipment, and lift overruns.

Accordingly, the nominated 3m building ‘services zone’ for Site B is included in the definition of building height, which is defined as:

building height (or height of building) means:

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Table 1 – Summary of variation sought

| | Proposed Building height | | Proposed variation to height in metres | |
|--------|--------------------------|---|--|------------|
| | Roof slab height | Building height (including services zone) | Height | Percentage |
| Site B | RL 155 m | RL 158 m | - | - |
| | 52 m | 57 m | +3 metres | +5.8% |

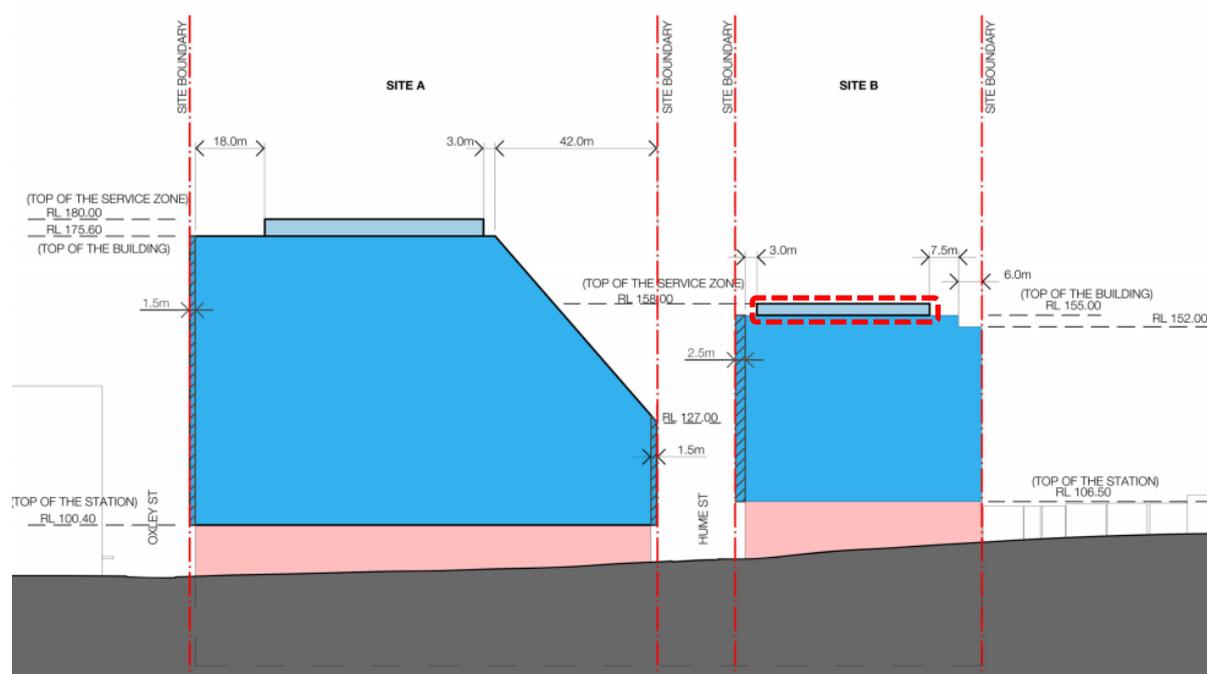
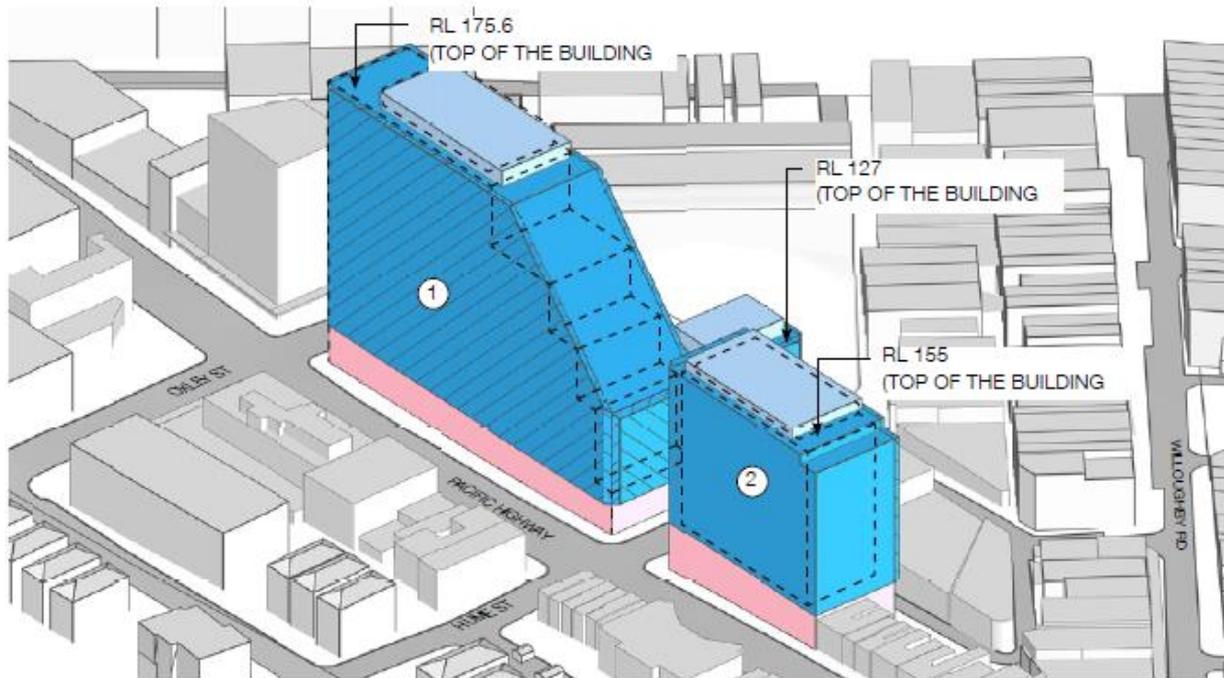


Figure 2 – Site B building envelope with services zone indicated on the roof (red dashed)



OSD BUILDING ENVELOPE

- | | | | |
|---|--------------------------------------|---|--|
|  | OSD CONCEPT SSDA - BUILDING ENVELOPE |  | CROWS NEST METRO STATION CSSI (INCLUDES STRUCTURE, BUILDING INFRASTRUCTURE AND SPACE FOR FUTURE LIFT CORES, ACCESS AND BUILDING SERVICES FOR FUTURE OSD.) |
|  | OSD CONCEPT SSDA - ARTICULATION ZONE |  | INDICATIVE OSD BUILDINGS |
|  | OSD CONCEPT SSDA - SERVICE ZONE | | |
| ① | SITE A - BUILDING A (COMMERCIAL) | | |
| ② | SITE B - BUILDING B (RESIDENTIAL) | | |

Figure 3 – Site B building envelope with services zone indicated on the roof

4.0 Clause 4.6(3)(a): Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the recent judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7, the Chief Judge upheld the Commissioner's approval of large variations to height and FSR controls on appeal. He noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses the matters in Clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary. Accordingly, Section 4 sets out how, in the specifics of this development, strict compliance with Clause 4.3 of the NSLEP 2013 is unreasonable or unnecessary.

In *Wehbe*, Preston CJ of the Land and Environment Court provided relevant assistance by identifying five ways in which a variation to a development standard had been shown as unreasonable or unnecessary. However, it was not suggested that the methods described were a closed class.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under Clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) of the NSLEP 2013 is the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this Clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (Initial Action v Woollahra Municipal Council [24] and Turland v Wingecarribee Shire Council [42]).

In this instance, the base of the building envelope commences at RL 106.5m defined by the 'transfer slab' level for Site B, with the first two storeys of the building attributed to the metro station and services approved under the CSSI Approval. The servicing and design requirements for the metro station have, therefore, effectively elevated the OSD building envelope by between approximately 11.5m-16m. Accordingly, while the building envelope for Site C benefits from the special provisions under Clause 4.3A of the NSLEP 2013 and Site A can be designed to comply, Site B requires the additional nominal 3m to accommodate non-habitable services, equipment, and lift overruns.

Strict compliance with the standard would impact the ability to appropriately service the building, and would prevent potential lift access to open space on the building rooftop in accordance with the Crows Nest Design Guidelines. Alternatively, strict compliance could require the loss of a floor of the building equating to approximately 957 square metres of floor space or 11 apartments. This would result in a lesser urban design outcome for the site and impact the provision of housing and affordable rental housing. Compliance with the development standard would ultimately result in the lost opportunity for a reasonably scaled transit-oriented development and housing in an appropriate location.

Section 4.1 of this Clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height control pursuant to the First Method outlined in Wehbe.

4.1 The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)

The objectives of the height of buildings development standard are prescribed at clause 4.3(1) of the NSLEP 2013, providing:

The objectives of this clause are as follows:

- (a) to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) to promote the retention and, if appropriate, sharing of existing views,*
- (c) to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*

(e) to ensure compatibility between development, particularly at zone boundaries

(f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposed building envelope achieves each of these objectives notwithstanding the departure from the numerical control identified on the height of buildings map. Each objective is addressed below.

4.1.1 Objective (a): To promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient

The site is located on a sloping ridgeline from a high point at the intersection of Falcon Street and Pacific Highway to a low point at the intersection of Herbert Street and Pacific Highway. Land to the south west of the site slopes away from the Crows Nest town centre. The building heights proposed across the Crows Nest site respond to this natural topography with the St Leonards / Crows Nest precinct capitalising on its ridgeline setting.

The proposed services zone on Site B has been designed to respect the sun access plane and fall in topography to Willoughby Road. It has been setback a minimum 3m from the site frontages, and aligned to sit closer to the northern edge of the Site B building envelope with a 13.5m setback from the southern boundary, to provide an appropriate transition to the taller building envelope on Site A (see Figure 4 below).

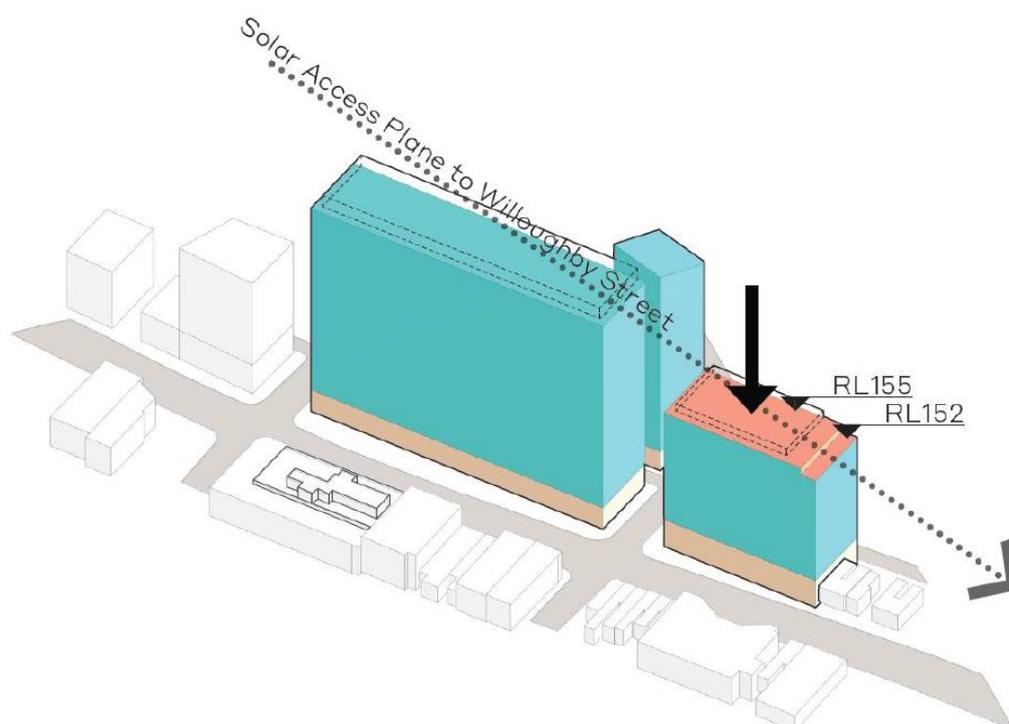


Figure 4 – Site B services zone in response to fall in topography and sun access plane

The proposed minor services zone on Site B also reinforces the height profiles developed for the Crows Nest metro sites and their relationship to the St Leonards core. Namely, the services zone supports and does not undermine:

- The concentration of activity in centres well served by public transport, which is integral to containing the expansion of urban areas – instead achieving greater density in existing urban areas.
- Creating two ‘height peaks’ at the two key transport nodes (see Figure 5) that respond to the natural topography and ridgelines of the area. A ‘height peak’ around the metro site is commensurate with the location of mass transit infrastructure and the built form proposed under this concept SSD Application an appropriate response to these factors (topography and infrastructure).

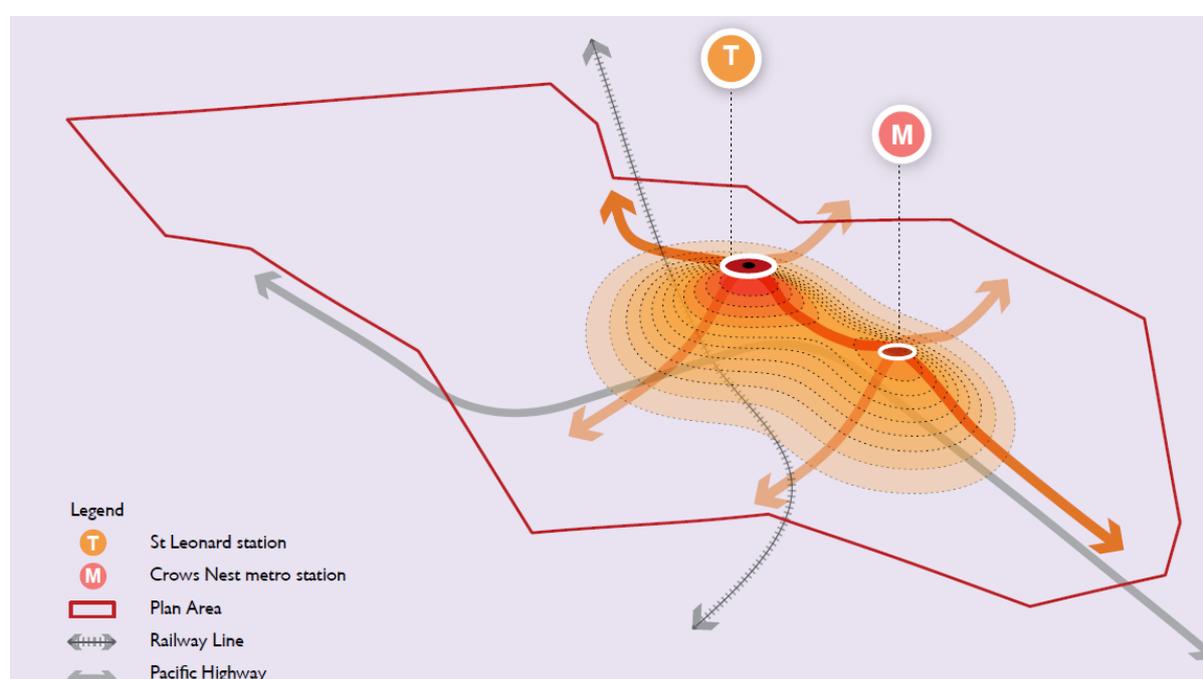


Figure 5 – Height Concept Map under the 2036 Plan

4.1.2 Objective (b): To promote the retention and, if appropriate, sharing of existing views

Section 8.3 and Appendix R of the Submissions Report provides a detailed assessment of the proposed Site B building envelope, including the services zone, on both district and immediate private views. This assessment demonstrates that:

- The services zone is negligible in scale in the context of the remainder of the Site B building envelope, the other compliant envelopes on the remaining Crows Nest sites, and the scale of development occurring elsewhere in the Crows Nest and St Leonards area.

- The services zone assists in transitioning building heights to Site A and the planned and future development occurring in the site's context, contributing to a legible and high-quality skyline in district views.
- The services zone may be visible from mid level and upper level eastern and south-eastern views taken from 402-420 and 400 Pacific Highway. However, the minor proposed services zone does not impact or significantly reduce these views beyond the otherwise compliant Site B building envelope. The services zone will be designed as an integrated element of the building rooftop.



Figure 6 – Indicative scheme under the Amended Proposal (shown in blue) from Ernest St, Cammeray within the context of future proposed development (shown in yellow)



Figure 7 – Amended Scheme (with indicative development) as viewed from the top level southeast view of 400 Pacific Highway



Figure 8 – Amended Scheme (with indicative development) as viewed from the top level east view of 400 Pacific Highway

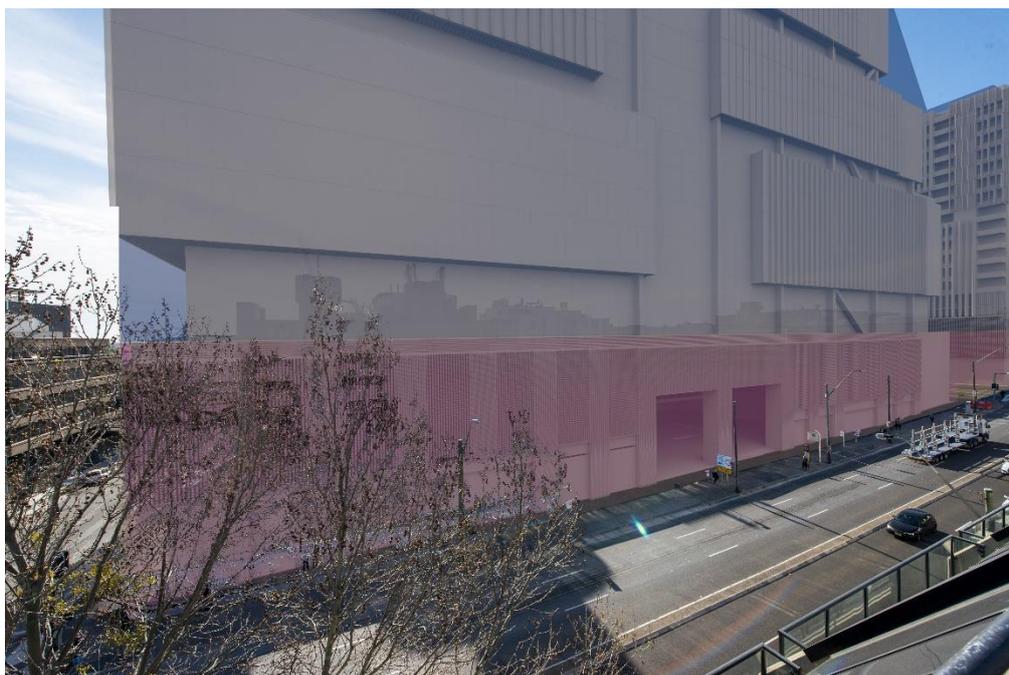


Figure 9 – Amended Scheme (with indicative development) as viewed from the top level southeast view of 402-420 Pacific Highway

Although the concept SSD Application will alter the nature of views from a number of surrounding premises, the minor proposed services zone on Site B does not significantly or adversely contribute to the scale of the building and as such does not impact the quality or extent of views. The potential impacts of the additional height are minor and are isolated to only a small number of surrounding residential buildings, which still retain sufficient sky exposure and outlook.

4.1.3 Objective (c): To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development

Section 8.4.1 and Appendix K of the EIS, and Section 8.2 of the Submissions Report, provide a detailed assessment of solar access to key public spaces. In summary, the proposed minor services zone does not undermine the following outcomes:

- **Willoughby Road:** No areas of Willoughby Road will be affected by overshadowing caused by the OSD prior to 2.30pm at any time of the year in accordance with the provisions in the finalised 2036 Plan and the Rezoning Proposal. The proposed services zone has been specifically aligned to sit closer to the northern edge of the Site B building envelope rooftop with a 13.5m setback from the southern boundary, in response to the sun access plane for Willoughby Road (see Figure 4 above).
- **Hume Street Park:** No areas of Hume Street Park will be affected by overshadowing caused by the OSD prior to 3.00pm at any time of the year in accordance with the provisions in the 2036 Plan.

- **Ernest Place, Holtermann Street Car Park and the Crows Nest Community Centre:** No areas of Ernest Place, Holtermann Street Car Park or the Crows Nest Community Centre (referred to collectively below as the 'Ernest Place Precinct') will be affected by overshadowing caused by the OSD prior to 3.45pm in accordance with the provisions of the 2036 Plan.

Section 8.4.2 and Appendix I of the EIS, and Section 8.2 and Appendix J of the Submissions Report, also provide a detailed assessment of solar access to surrounding private dwellings. This analysis confirms that surrounding residential flat buildings are capable of achieving at least two hours of solar access at midwinter, with the exception of 400 Pacific Highway. Solar access to 400 Pacific Highway is reduced to approximately 1-2 hours on the north-east façade and 1-3 hours on the roof of the building at the winter solstice.

The proposed minor services zone on the roof of the Site B building envelope does not significantly or adversely contribute to the scale of the building and the shadows cast. Further, refinement of the envelope at the detailed design stage will also occur which may result in further reductions in the scale of any essential plant, services, and lift overrun required to service Site B.

4.1.4 Objective (d): To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings

This Clause 4.6 variation request pertains exclusively to a services zone on Site B, which will be used for rooftop plant, equipment and lift overruns, and will be non-habitable. The proposed minor exceedance of the maximum building height control, therefore, does not impact on the privacy of any existing or future residential dwellings.

4.1.5 Objective (e): To ensure compatibility between development, particularly at zone boundaries

The site is not located at the boundary of land use zones, notwithstanding this the Site B building envelope has been designed with consideration of the scale of development on the remaining Crows Nest sites, existing and future development occurring in the surrounding Crows Nest and St Leonards area, the transitional nature of the local area and the proximity to public transport.

The proposed minor services zone on Site B reinforces the height profiles developed for the Crows Nest metro sites and does not undermine the following outcomes for the concept SSD Application:

- The scale of development on the Crows Nest sites will strengthen the streetscape and is in line with the desire to situate prominent buildings at major entrances or above train stations. Sound urban design principles point to the need for strong locational buildings as a marker to the station infrastructure contained within. It remains appropriate to provide a locational marker to allow people to identify the location of the metro station.
- A diversity of heights are provided across the Crows Nest metro sites which provide differentiation in built form and prevent the repetitive orientation of buildings which can result in a perception of greater density or a monolithic appearance of a wall of

buildings. The diversity of heights, in conjunction with sufficient spatial separation between buildings, creates the perception of openness to the site which reduces the perception and appearance of density.

- The articulation of the design either through podium, setbacks or materiality will demarcate between the lower levels of the built form and the buildings above, thereby relating the concept SSD Application to the existing scale and the street character along the Pacific Highway.

4.1.6 Objective (f): To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.

The proposed services zone on the roof of the Site B building envelope is minor in scale, and does not significantly contribute to the scale or density of development on the site. The services zone has been setback from the site frontages and aligned to sit closer to the northern edge of the Site B building envelope with a 13.5m setback from the southern boundary to provide an appropriate transition to the taller building envelope on Site A.

The detailed design of the building as part of a subsequent future DA will also ensure that all services are integrated into the overall design of the building rooftop, to read as one structure, and reduce scale. The Urban Design Guidelines require that works within the services zone are minimised to reduce visual prominence and overshadowing.

As stated above, the St Leonards / Crows Nest area is undergoing a significant change in character. The approval of the CSSI to deliver the Crows Nest Metro Station, is a catalyst for an emerging neighbourhood character for the precinct, based on the principles of transit-oriented development and locating additional density in close proximity to transport services. Although the concept SSD Application presents a scale and density that departs from the existing character of the area, this application is reflective of the desired future character of the precinct and will deliver homes, workplaces and community facilities in a planned and connected manner. It is also emphasised that the concept SSD Application complies with the NSLEP 2013 development standards, with the exception of the minor services zone for Site B.

5.0 Clause 4.6(3)(b): There are sufficient environmental planning grounds to justify contravening the development standard

Clause 4.6(3)(b) of the NSLEP 2013 requires the applicant's written request to vary a development standard to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. The following environmental planning grounds, in relation to the proposed development, are set out in Section 5:

- Delivery of a transit-oriented development neighbourhood;
- Protection of solar access to key public open spaces; and
- Consistency with the strategic planning framework, establishing the future desired character for the St Leonards/Crows Nest precinct under the 2036 Plan.

5.1 Existing CSSI approval

The vertical extent of the approved station works is defined by the transfer slab, which is distinguished at RL 106.5m for Site B. The station box beneath this transfer slab includes station areas, structures, plant, and services, as well as areas and works necessary for the construction of the integrated OSD. The servicing and design requirements for the metro station have, therefore, effectively elevated the OSD building envelope by between approximately 11.5m-16m. Station areas are approved under the CSSI Approval, and are not proposed as part of this application.

In *Four2Five*, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site as the station infrastructure approved under the CSSI Approval contributes to the exceedance of the height.

Compliance with the standard would impact the ability to appropriately service the building and restrict the ability to provide accessible open space for future occupants on the rooftop, or alternatively could require the loss of a floor of the building equating to approximately 957 square metres of floor space or 11 apartments. This would result in a lesser urban design outcome for the site and impact the provision of housing and affordable rental housing. Compliance with the development standard would ultimately result in the lost opportunity for a reasonably scaled transit-oriented development and housing in an appropriate location

5.2 Delivery of a transit-oriented development neighbourhood

The Crows Nest station presents an excellent opportunity to develop a transit-oriented development (TOD) neighbourhood. A TOD neighbourhood typically has a centre with a transit station or stop (train station, metro station, tram stop, or bus stop), surrounded by relatively high-density development with progressively lower density development spreading outward from the centre. TODs generally are located within a radius of 400m to 800m from a transit stop, as this is considered to be an appropriate walking distance for pedestrians.

Locating density above a metro corridor benefits the community by generating income for funding future infrastructure projects, facilitating sustainable urban renewal and development, encouraging use of public transport (hence, reducing car usage) and improving the connectivity of local communities. Development above the metro corridor further provides an opportunity to meet housing targets, in line with those outlined in the North District Plan.

Further to the above, the provision of a metro station within such proximity to an existing heavy rail station at St Leonards makes the site highly strategic. In terms of rail accessibility, the St Leonards / Crows Nest area will have the same level of accessibility and capacity as North Sydney / Victoria Cross. It provides quick, direct access to other key employment areas including Chatswood and the Sydney CBD. This is resulting in (and is predicted to continue to result in) strong demand for commercial and residential floorspace in the St Leonards / Crows Nest area which is contributing to the changing built form and density of the precinct.

Multiple strategic planning studies undertaken by North Sydney Council have identified that the most appropriate location for this density is on or nearby transport infrastructure along the

Pacific Highway Corridor and away from areas such as Willoughby Road. This is further reinforced by the 2036 Plan. This concept SSD Application is consistent with these studies.

The concept SSD Application is directly consistent with the findings and ethos of multiple strategic planning documents in that it supports the provision of a mixed-use development above the metro corridor as a way of increasing use of existing public transport, reducing car usage and encouraging connectivity within the area. Strict compliance with the development standard in this instance could result in the loss of dwellings, and impact the potential to deliver affordable rental housing, as part of this mixed-use TOD outcome.

5.3 Protection of solar access to key public open spaces

As outlined in Section 4.1.3 above, the proposed building envelope has been developed to comply with the relevant overshadowing restrictions under current controls notwithstanding the minor proposed non-compliance. The concept SSD application, including the minor proposed services zone on Site B, ensures protection to Willoughby Road, Hume Street Park, and Ernest Place, Holtermann Street Car Park and the Crows Nest Community Centre. It aligns with the Sun Access Plane applying to the site intended to protect the Willoughby Road precinct in the late afternoon on the Winter Solstice (21st June), to ensure minimal overshadowing of public spaces and residential areas.

Further, the design excellence provisions in Clause 6.19B(4) of the SEPP Amendment specify solar access criteria, which all future SSD Applications will address.

5.4 Consistency with the strategic planning framework

As set out above, multiple strategic planning studies undertaken by North Sydney Council and DPIE have identified that the most appropriate location for this density is on or nearby transport infrastructure along the Pacific Highway Corridor and away from areas such as Willoughby Road. This is further reinforced by the 2036 Plan. The proposed development is consistent with these studies, providing suitable justification for the proposed density on the site.

The concept SSD Application is directly consistent with the findings and ethos of multiple strategic planning documents in that it supports the provision of a mixed-use development above the metro corridor as a way of increasing use of existing public transport, reducing car usage and encouraging connectivity within the area.

The minor proposed breach of the maximum building height for the services zone on Site B does not significantly contribute to the scale of the building or development across the Crows Nest metro sites which reflect the future character of the area. The services zone is, however, essential to the delivery of the Site B building envelope and the vision for the future use of this site.

The *Greater Sydney Region Plan 2018* sets out key concepts for the future growth of Sydney including the 'Metropolis of Three Cities' and the '30-minute city'. The Crows Nest OSD is a direct implementation of a number of relevant directions and objectives of the plan, including:

- **A city supported by infrastructure:**
 - **Infrastructure supports the three cities:** The Crows Nest OSD is located immediately above transport infrastructure, in a location which will encourage use of the Sydney Metro project by future building occupants.
 - **Infrastructure use is optimised:** The Crows Nest OSD would provide for dwellings, including potential affordable rental housing, in a location where use of the future Metro line can be optimised, as well as the broader Sydney public transport network, as principal modes of transport.
- **A city for people:**
 - **Communities are healthy, resilient and socially connected:** The Crows Nest OSD would provide for residential development, including potential affordable rental housing, within close proximity to the Crows Nest station to contribute to the vibrancy of the area both during and outside traditional business hours. It is also noted that the proposal has been designed such that the majority of residents will not have access to a private vehicle, thereby encouraging the use of public transport, walking and cycling.
- **A collaborative city:**
 - **Benefits of growth realised by collaboration of governments, community and business:** The Crows Nest OSD comprises an initiative by Sydney Metro to ensure that the development of the site reflects the extensive collaboration undertaken through this project. A rapidly changing economy and society has meant that the gulf between people and communities has widened in recent years. Social and community infrastructure, such as a metro station, and affordable housing play an important role in bridging this gap through a variety of means, including through the establishment of networks and collaborative activity, decreasing isolation and promoting skills and education. The concept SSD Application can contribute to these collaborative benefits through the provision of this infrastructure.
- **Housing the city:**
 - **Greater housing supply:** The Crows Nest OSD proposes a substantial boost to housing supply in the St Leonards / Crows Nest Strategic Centre, delivering approximately 143 dwellings at the site. There is also the opportunity to provide affordable rental housing, or an equivalent contribution for housing elsewhere in the LGA, as part of the housing supply.
 - **Housing is more affordable and diverse:** The Crows Nest OSD would contribute to the provision of an array of different dwelling typologies, making provision for studios, 1, 2 and 3 bedroom apartments. It would also deliver an increased housing supply and potential affordable rental housing in a highly accessible location.
- **A city of great places:**
 - **Great places that bring people together:** The Crows Nest OSD would play a key role in the creation of a high-quality Crows Nest Station precinct and will contribute to the creation of a great future place in the St Leonards / Crows Nest Strategic Centre.
 - **Environmental heritage is identified, conserved and enhanced:** The Crows Nest OSD has been designed to ensure that the development relates well to the surrounding heritage context. This is discussed further at Chapter

8.6 of the EIS and specific provisions have been included in the Crows Nest Design Guidelines to ensure a sympathetic design response to neighbouring heritage items (including the adjacent St Leonards Centre) through the design development of the detailed SSD Application.

- **A well-connected city:**
 - ***A Metropolis of three cities – integrated land use and transport creates walkable and 30-minute cities:*** The Crows Nest OSD will contribute to the provision of a 30-minute Eastern City, co-locating housing and employment at a site which directly benefits from very strong access to services and employment, seven days a week. The concept proposal epitomises integrated land use and transport planning.
 - ***The Eastern, Greater Parramatta and the Olympic Peninsula and Western Economic Corridors are better connected and more competitive:*** The Crows Nest OSD would strengthen Sydney's Eastern Economic Corridor by contributing to the continued growth of the St Leonards / Crows Nest Strategic Centre. The OSD would also harness the catalytic effects of the metro station by offering commuting advantages to residents, visitors and workers. Residents and workers in the OSD also would be better connected to Sydney CBD and other major centres, which will improve business linkages and access to employment opportunities.
- **Jobs and skills for the city:**
 - ***Investment and business activity in centres:*** The Crows Nest OSD would facilitate business investment in the St Leonards / Crows Nest Strategic Centre through the provision of commercial uses, well above the previous minimum non-residential floor space standards for the site, in a highly accessible and sought after location.

The proposed development also adheres to North Sydney Council's Local Strategic Planning Statement, and associated Housing Strategy, which nominate the following:

- The new Metro Station will be a catalyst for growth and development in the precinct, including the opportunity to increase employment and housing capacity in the area whilst delivering high-quality public domain upgrades and services.
- There is a desired to focus intensification of development in St Leonards Centre and along the Pacific Highway connecting the Crows Nest Metro Station and St Leonards Station. In this way, growth can be coordinated with the planning and delivery of infrastructure.
- There is a growing demand from lone person households in North Sydney LGA, which will place more pressure on the demand for affordable and social housing in the future. Mechanisms to increase affordable rental housing provision are supported.

5.5 Social and Economic Impacts

5.5.1 Social Impacts

The OSD would have a positive social impact on the St Leonards / Crows Nest Strategic Centre by creating an integrated station development that provides residential dwellings,

including potential affordable rental housing, and office floor space above the Crows Nest Station. It will create a focal point for community activity and a vibrant place for the community to gather, work and reside. In conjunction with the public domain upgrades and retail activated street frontages to be delivered under the terms of the CSSI Approval, the OSD will add to the civic qualities of the precinct and encourage healthy sustainable modes of transport such as walking and cycling, in addition to the use of the Metro.

The provision of a mixed-use scheme accommodating residential apartments and commercial floor space responds to a wide range of community needs. Additional housing, and the contribution of or towards affordable rental housing, would create opportunities for people to live close to where they work, whether within the St Leonards / Crows Nest Strategic Centre or via the new Sydney Metro, aligning with the concept of the '30-minute city'. These land uses encourage a range of activities and occupancy throughout the day and evening, contributing to a vibrant transport precinct that is safe, well-utilised and which acts as a focal point for the North Shore.

The employment generated by the development during the construction and operational phases (described in further detail in Section 9.2 below) has further social benefits associated with the ability for workers to provide for their families and spend money in the local community.

5.5.2 Economic Impacts

The delivery of the OSD above the Crows Nest Station is expected to make a significant and positive contribution to the St Leonards / Crows Nest Strategic Centre by providing for additional direct and indirect employment, supporting additional economic activity, and contributing to additional housing supply, including affordable rental housing. Specifically, the OSD is expected to result in 265-419 jobs direct and indirect jobs during the construction phase (subject to detailed design and planning approval) and provide for 2,225 ongoing jobs on-site during the operational phase and 1,355 indirect jobs during the operational phase. This will significantly contribute to employment targets listed in the 2036 Plan, which target 16,500 new jobs in the St Leonards and Crows Nest area by 2036.

Businesses in the completed buildings are estimated to generate industry value-add of \$284 million per annum. Employee spending at local retail stores and service centres are estimated to generate almost \$5.4 million annually in local expenditure, with the residential component contributing a further \$2.4 million annually.

6.0 Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

6.1 Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the height of buildings development standard, for the reasons discussed in section 4.1 of this report.

6.2 Consistency with the objectives of the land use zone

The proposed development is consistent with the objectives of the B4 Mixed Use Zone, as demonstrated below.

6.2.1.1 Objective: To provide a mixture of compatible land uses

The concept SSD Application, as provided at Section 2.2 of the Submissions Report, seeks approval for residential accommodation, including potential affordable rental housing, and commercial premises.

These land uses respond to both the housing and employment targets identified in the North District Plan and will complement and support existing businesses in Crows Nest and St Leonards. The provision of affordable rental housing on site, or an equivalent contribution for housing in the LGA, will also benefit housing affordability and mix.

The proposed development, notwithstanding the exceedance of the height of buildings standard on Site B, facilitates a compatible mix of land uses on the site. Additionally, the height of the proposed building envelope does not give rise to any environmental impacts that would limit the attainment of this objective on surrounding properties.

6.2.1.2 Objective: to integrate suitable business, office, residential, retail and other development in accessible locations as to maximise public transport patronage and encourage walking and cycling.

As demonstrated at **Section 5.1** of this variation request, this project represents a unique opportunity to deliver a transit-oriented development. Located directly above the Crows Nest Metro Station, the range of land uses described above will have direct access to transport infrastructure. This connectivity and integration of development will actively facilitate a greater patronage of public transport. As discussed at **Section 5.2**, the proposed building height, although exceeding the maximum building height control, contributes to delivering a landmark to clearly identify public transport infrastructure and thereby promoting public transport usage within the community surrounding the development.

Compliance with the maximum building height control for Site B would likely require the loss of approximately 957 square metres of floor space or 11 apartments. This would impact the provision of housing and affordable rental housing, and represents a lost opportunity to

provide additional homes in an appropriate location as part of a transit-oriented development.

6.2.1.3 Objective: To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity

The proposed minor services zone on the rooftop of the Site B building envelope contributes to the achievement of a high-quality urban design outcome, and residential amenity. The services zone has been setback from the site frontages and aligned to sit closer to the northern edge of the Site B building envelope with a 13.5m setback from the southern boundary to provide an appropriate transition to the taller building envelope on Site A and surrounding development more broadly. This zone enables the appropriate servicing of the future building and provides the opportunity for accessible rooftop open space benefitting residential amenity.

Strict compliance in this instance would impact these outcomes and would also likely require the loss of approximately 957 square metres of floor space or 11 apartments, adversely impacting the SSD Application's provision or contribution to affordable rental housing and the mix of land uses to be provided on the site. The majority of OSD is for non-residential uses, and as such the proposed residences will positively contribute to the vibrancy of the area both during and outside traditional business hours.

The Crows Nest OSD Design Guidelines (Design Guidelines) have also been prepared as part of this concept SSD Application to establish key principles which the future detailed design of the project is required to respond to. Along with the Design Excellence Strategy, these ensure that a high quality urban outcome is achieved by development on the site which is not undermined by the proposed minor services zones assessed in this request.

Further, a SEPP 65 Analysis Report is submitted at Appendix I of the Submissions Report demonstrating that the proposed building envelope is capable of delivering a design that achieves:

- At least 2 hours direct sunlight to living rooms and private open space of 73% of indicative apartments (exceeding the design criteria of 70%);
- Provides natural cross ventilation to 63% of indicative apartments within the first nine levels (exceeding the design criteria of 60%);
- Minimises the impact of shadowing to the private open space and living areas of existing residential dwellings in the vicinity of the site; and
- Achieves the minimum building separation distances, ensuring that visual and acoustic privacy is maximised.

6.2.1.4 Objective: To maintain existing commercial space and allow for residential development in mixed use buildings, within non-residential uses concentrated on the lower levels and residential uses predominately on the higher levels

The proposed services zone for Site B does not impact the non-residential floor space provision on the site, or the Crows Nest metro sites as a whole. The concept SSD Application will provide a minimum non-residential floor space ratio for the OSD across

combined Sites A, B and C of 6.8:1, or the equivalent of 43,300 square metres of GFA. Each of the sites, when considered separately, also comply with the non-residential FSR nominated for these individual sites under the NSLEP 2013.

The proposed building envelope for Site B also achieves this objective by providing non-residential components at lower levels, and residential uses above.

6.3 Overall public interest

In addition to achieving the objectives of the height of buildings development standard and the objectives of the B4 Mixed Use land use zone, the Crows Nest OSD inclusive of Site B is considered to be in the public interest as:

- it would provide additional employment and residential capacity, including potential affordable rental housing, in the context of the St Leonards / Crows Nest Strategic Centre as targeted in the North District Plan, ensuring that jobs and dwellings are co-located in a manner which reduces commute times and improves the level of access to facilities, services, transport options and public open space.
- as part of the integrated station development, it would contribute to the delivery of major improvements to the public domain and activation of the streetscape, providing for a higher quality pedestrian environment around the site which would link the various civic, open space and entertainment precincts in proximity to the site.
- a large commercial component would be provided, enabling the provision of further employment generation at the site which is located in a context with excellent access to both the Sydney CBD as well as the Greater Sydney region. In this regard, the proposal would:
 - directly contribute to the provision of 265 additional jobs during the construction period.
 - indirectly contribute 419 jobs during the construction period and 1,355 during the operational period.
 - directly contribute approximately 2,225 jobs on an ongoing basis.
- it would result in additional economic benefits to surrounding services and business following the completion of the development, which is estimated at a \$7.8 million per annum increase in local expenditure and \$284 million per annum generated by businesses in the completed building.
- it would work alongside the Crows Nest Station development under the CSSI Approval in order to create an overall station precinct which is integrated, high quality, enjoyable and safe for future public transport users.
- it would provide a variety of different uses above the station, which would work to activate the station precinct, both within traditional business hours as well as during the evening, late night and weekend periods.

- it would enable the delivery of a future OSD form which is memorable, reinforcing the legacy of the Sydney Metro project and its mark on the broader Sydney skyline.
- the assessment in this EIS and Submissions Report has demonstrated that the building envelope is capable of achieving high amenity and a high quality future development that could achieve design excellence. This includes compliance with the relevant overshadowing restrictions under current controls, notwithstanding the minor proposed variation to the height control, to Willoughby Road, Ernest Place, Hume Street Park.
- it provides a framework which would ensure that future development at the site exhibits design excellence, working alongside the future railway station to deliver a very high design quality building form outcome. Services zones will be reduced where possible and will be designed to integrate with the overall building roof form. The ESD strategy will ensure that recognised sustainability targets are achieved or exceeded in the future design of the development.
- it includes provision for future public art, which would contribute to the vibrancy and interest generated by the surrounding built environment.
- it is a premier example of a transit oriented development, which includes minimal car parking to reduce the impact on the local road network.

7.0 Secretary's Concurrence

Under Clause 4.6(5) of NSLEP 2013, the Secretary's concurrence is required prior to any variation being granted. Under Clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018 to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. We note that none of the conditions in the table apply to the proposed development, therefore the Secretary's concurrence is assumed. Nevertheless, the following section provides a response to those matters set out in Clause 4.6(5) of the NSLEP 2013 which must be considered by the Secretary.

7.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed minor services zone on the rooftop of the Site B building envelope does not raise any matter of significance for State or regional environmental planning. It is emphasised that all remaining development for the Crows Nest OSD, including Site B to the roof line, complies with the NSLEP 2013 provisions with the exception of this services zone.

Compliance with the standard would impact the ability to appropriately service the building and restrict the ability to provide accessible open space for future occupants on the rooftop, or alternatively could require the loss of a floor of the building equating to approximately 957 square metres of floor space or 11 apartments. This would result in a lesser urban design outcome for the site and impact the provision of affordable rental housing. Compliance with the development standard would ultimately result in the lost opportunity for a reasonably scaled transit-oriented development and housing in an appropriate location.

As set out in Section 5.4 above, the proposed development gives effect to The *Greater Sydney Region Plan 2018*.

7.2 The public benefit of maintaining the development standard

Strict compliance with the existing height of buildings development standard would severely impede the delivery of an appropriately scaled and high-quality transit orientated development on Site B, and impact the concept SSD Application as a whole.

The application of the existing building height control would result in a development that is unable to achieve the primary objectives for the project, and ultimately represents a lost opportunity to provide affordable rental housing or an equivalent contribution. The resultant development would be unable to effectively:

- support the NSW Government's planning strategies and objectives, including the *Greater Sydney Region Plan (2018)* and the *North District Plan (2018)*
- contribute to the development of mixed-use buildings at the site which cater to various uses and work to create a fully integrated station precinct within the heart of Sydney's North Shore

- enable building forms which responds to the emerging character of St Leonards while providing a mediating transition in built form between St Leonards and Crows Nest, and minimising overshadowing impacts on public open spaces including Hume Street Park, Ernest Place and the Willoughby Road restaurant precinct
- enhance the customer experience and urban amenity through the development of an integrated design concept that ensures delivery of a quality public domain experience with strong connections to the surrounding area
- create an urban environment that drives the high usage of the Sydney Metro network, responding directly to the principles of transit-oriented development
- provide the opportunity to deliver the OSD as early as possible with the aim of opening concurrently or shortly following completion of the Crows Nest Metro Station
- enable a design that responds sensitively to surrounding heritage items
- create a framework which works to achieve design excellence in the final integrated station development.

7.3 Any other matters required to be taken into consideration by the Secretary before granting concurrence

The concept SSD Application is a fundamental project in delivering a number of significant objectives for the State of NSW. We are not aware of any other matters that the Secretary (or the consent authority, under delegation) is required to consider before granting concurrence.

8.0 Conclusion

Clause 4.3 of the NSLEP 2013 applies a maximum height of buildings development standard of RL 155m for Site B, which does not benefit from Clause 4.3A permitting an additional 5m for rooftop plant, equipment, and lift overruns.

The Rezoning Proposal sought to amend the maximum building height development standard, among other changes, and include a provision that would enable an additional 3-5m above the mapped maximum building height if this upper storey was solely for the provision of rooftop plant, equipment and lift overruns. The rationale for this approach was to nominate and restrict the maximum height of buildings and associated habitable floor space through the NSLEP 2013 mapping, whilst still ensuring there was sufficient allocated space to service the buildings.

Accordingly, while the proposed height of the roof slab of each building envelope corresponds to, or is beneath, the 'proposed maximum building heights' contained within the NSLEP 2013, the 'services zone' identified at the rooftop of the Site B building envelope exceeds the maximum permitted height by 3m (representing a 5.8% variation to the maximum building height).

This variation is influenced by the 'transfer slab' level for Site B, which commences at RL 106.5m so that the first two storeys of the building are attributed to the metro station and services approved under the CSSI Approval. The servicing and design requirements for the metro station have elevated the OSD building envelope by between approximately 11.5m-16m.

Compliance with the standard would impact the ability to appropriately service the building and restrict the ability to provide accessible open space for future occupants on the rooftop, or alternatively could require the loss of a floor of the building equating to approximately 957 square metres of floor space or 11 apartments. This would result in a lesser urban design outcome for the site and impact the provision of affordable rental housing. Compliance with the development standard would ultimately result in the lost opportunity for a reasonably scaled transit-oriented development and housing in an appropriate location.

The services zone will be designed as part of the future detailed design of the Site B building and will be required to demonstrate that it does not detrimentally affect the ability of the building to achieve design excellence, or impact on the amenity of local residents of the public. The impacts of the proposed height for the concept envelope have been suitably assessed and are deemed to be acceptable. As demonstrated in this Variation Request, the Submissions Report, and accompanying technical assessments, the proposed building envelope notwithstanding the minor non-compliance with the maximum height of buildings development standard does not result in any significant or adverse impacts in terms of overshadowing, visual impacts or view loss.

The placement of height and density above a metro station also has sound planning benefits, including generating income for funding future infrastructure projects, facilitating sustainable urban renewal and development, encouraging use of public transport (hence, reducing car usage), and improving the connectivity of local communities. It provides an

opportunity to meet housing targets, including the provision of or contribution to affordable rental housing, in line with the North District Plan and Council's Housing Strategy.

Further to the above, the provision of a metro station within such proximity to an existing heavy rail station at St Leonards means the site is highly strategic. In terms of rail accessibility, the St Leonards / Crows Nest area will have the same level of accessibility and capacity as North Sydney / Victoria Cross. It provides quick, direct access to other key employment areas including Chatswood and the Sydney CBD. This is resulting in (and is predicted to continue to result in) strong demand for commercial and residential floorspace in the St Leonards / Crows Nest area which is contributing to the changing built form and density of the precinct.

Multiple strategic planning studies undertaken by North Sydney Council and DPIE have identified that the most appropriate location for this density is on or nearby transport infrastructure along the Pacific Highway Corridor and away from areas such as Willoughby Road. This is further reinforced by the 2036 Plan. This concept SSD Application is consistent with these studies, providing suitable justification for increased density on the site. Further, as set out in Section 5.4 above, the proposed development gives effect to The *Greater Sydney Region Plan 2018* and local strategies.

Therefore, for the reasons outlined in this request, compliance with the height control in NSLEP 2013 is unreasonable and unnecessary. Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a minor departure from the Height of Building development standard is considered appropriate in these circumstances.