

31 January 2025

Kiersten Fishburn
Secretary
Department of Planning, Housing and Infrastructure
Locked Bag 5022
Parramatta NSW 2124

Attention: Amy Watson

Dear Kiersten,

Request for Industry-specific Secretary's Environmental Assessment Requirements – 270-272 Pacific Highway, Crows Nest

We write on behalf of *Silvernight (Crows Nest) Landowner Pty Ltd* (the Applicant) to request the Department of Planning, Housing and Infrastructure (DPHI) to issue industry-specific Secretary's Environmental Assessment Requirements (ISEARs) for a 16 storey mixed use building, incorporating Build-to-rent (BTR) housing, at 270-272 Pacific Highway, Crows Nest (site).

The proposal is classified State Significant Development (SSD) pursuant to Schedule 1 Clause 27 'Built-to-Rent' of the *State Environmental Planning (Planning Systems) 2021* (Planning Systems SEPP) as:

- it is located in the Eastern Harbour City
- it has an Estimated Development Cost (EDC) over \$50 million
- the tenanted component of the proposal is at least 60% of the EDC
- the proposal does not involve development that is prohibited under any environmental planning instrument applying to the land

Further, the proposal is applicable for ISEARs as it is:

- wholly permissible at the site
- does not meet thresholds for designated development
- is not a concept development application

This letter represents the formal request for SEARs, noting a Scoping Report prepared in accordance with the *State Significant Guidelines – Preparing a scoping report* is not required for ISEARs applications. Notwithstanding, in accordance with Section 173(2) of the *Environmental Planning and Assessment Regulation 2021* (EP&A regulation), this letter includes details of the location, nature, and scale of the proposed development.

This request is supported by the following attachments:

- Attachment A: Concept Architectural Plans
- Attachment B: Estimated Development Cost
- Attachment C: Market and Economic Assessment
- Attachment D: BDAR Waiver

As has been discussed with DPHI, the site is subject to a non-residential floor space ratio

(FSR) control of 5.6:1 under *North Sydney Local Environmental Plan 2013* (NSLEP 2013), which equates to the maximum FSR of 5.6:1. We understand DPHI considers that an amendment to NSLEP 2013 may be required to address this issue and could manage this process concurrently with the DA process. We will continue discussions with DPHI on this matter following the issue of SEARs.

Subject site and surrounding context

The site is known as 270-272 Pacific Highway, Crows Nest and is within the North Sydney Local Government Area (LGA). The site is legally described as SP 49574.

The site is located on the western side of the Pacific Highway, 400m from the Crows Nest Metro Station. The location of the site is shown at Figure 1 & 2 below.

The site is rectangular in shape with a leg on the southern end that extends to Bruce Street. This provides vehicular access to the site.

The site has the total area of 3,796m² and currently contains two 5 storey commercial buildings and one car park basement which has capacity for 97 cars.

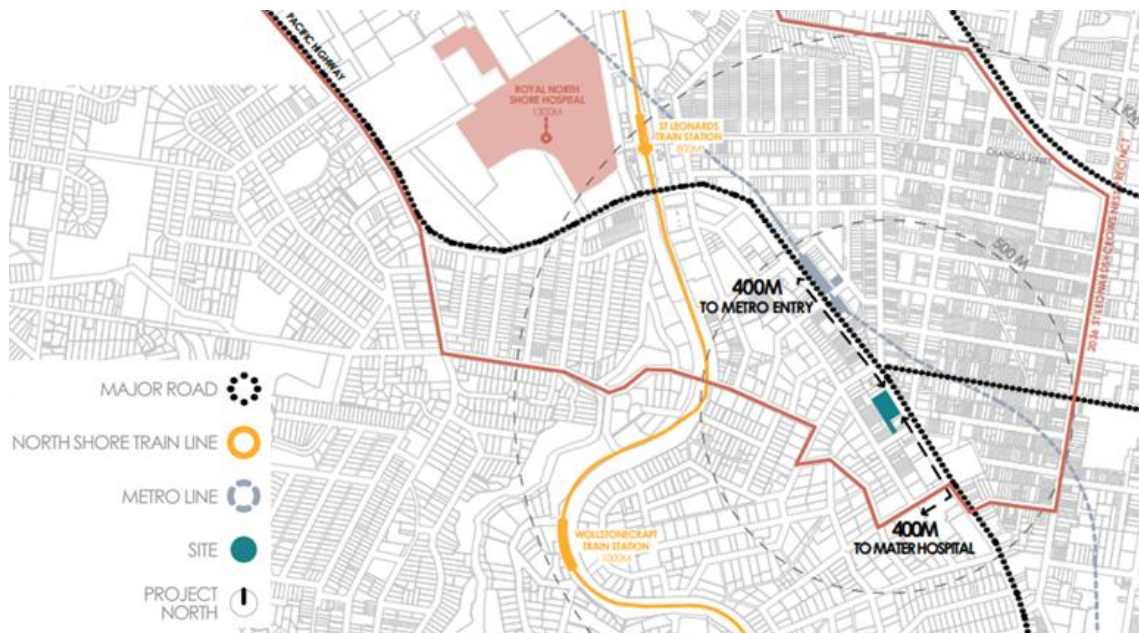


Figure 1: Broader site context (Source: Fitzpatrick Partners)



Figure 2: Immediate site context (Base source: Near Maps)

Background

A DA (DA193/2023) was submitted to North Sydney Council (Council) and approved by the Land and Environment Court (LEC) on 28 October 2024 (NSWLEC 1661). In summary, the DA approved the following at the site:

- demolition of two existing 5 storey commercial buildings
- construction of a 13 storey (54m) commercial building, containing:
 - 22,628m² total GFA
 - 806m² of medical centre and 269m² of retail premises on ground floor
 - 124m² of food and drinks premises (café) on ground level
 - 19, 695m² of office premises on levels 1 to 12
 - 572m² of landscaped area
 - two levels of basement parking with 72 car and 7 motorcycle spaces



Figure 3: Approved DA (DA193/2023) indicative built form as viewed from Pacific Highway (Source: Fitzpatrick + Partners)

The Proposal

Given the structural changes to the commercial market since the COVID-19 pandemic, and the growing demand for well-located housing, it is no longer commercially feasible to redevelop the site for wholly commercial purposes. On this basis, the landowner now proposes a mixed use development at the site incorporating both employment generating uses and housing, in accordance with the objectives of the site's MU1 zoning.

Specifically, the SSD application will seek approval for a 16 storey mixed use development at the site incorporating the following:

- demolition of two existing 5 storey commercial buildings
- construction of a 16 storey building, including:
 - 3 storeys of non-residential uses in the podium
 - 13 storeys of residential in the tower (approximately 172 BTR units)
 - affordable housing in accordance with Section 7.5 of the *North Sydney Local Environmental Plan 2013* (NSLEP 2013)
 - basement car parking in accordance with the rate for BTR set by the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP)
- streetscape upgrades, an effective landscape design and rooftop solar panels

The proposal is consistent with the building envelope approved under DA193/2023 and does not seek any additional height or density. More specifically, the building design has been refined to reflect more slender tower elements and, therefore, a slightly reduced enveloped, which maximises solar access and ventilation in response to the proposed residential use. In addition, the proposed development will also incorporate:

- an active street frontage along the Pacific Highway
- an appropriate mix of residential and non-residential floor space, noting the proposal will not reduce the amount of non-residential floor space currently at the site within the

- two existing buildings and will incorporate a mix of commercial, medical and retail uses
- the provision of residential accommodation to respond to current market demands, enabling the provision of housing, considering:
 - the MU1 zone objectives
 - the current National and State housing targets and reforms (further discussed below and in the Market and Economic Assessment at Attachment 3)
- the non-residential component will generate sufficient employment, also considering the hierarchy of centres and the role of Crows Nest relative to St Leonards

A Clause 4.6 request to vary the height of building control is proposed to be submitted with the SSD application. Similar to the approved DA, this is largely due to a technical non-compliance with the 54m height control, as outlined later in this letter.

Conceptual Architectural Plans are provided at Attachment A.

Future context

The proposal aligns with the objectives of the Crows Nest Transit Orientated Development (TOD) rezoning, which amended the NSLEP 2013 in November 2024. The objectives of the TOD are as follows:

- *increase housing supply in the Crows Nest Transport Orientated Development Precinct, and*
- *enable a variety of land uses within walking distance of the St Leonards train and Crows Nest metro stations, and*
- *deliver housing supported by public spaces, vibrancy and community amenity, and*
- *increase the amount of affordable housing in the precinct.*

As outlined in these objectives, and in accordance with the agreed targets under the National Housing Accord, the need for the rapid delivery of well-located housing is paramount. Given the site's location within the TOD precinct and its accessibility to transport and other services, it is entirely suitable for residential development.

This is further supported in the attached Market and Economic Assessment prepared by HillPDA (Attachment C) which highlights that the redevelopment of the site for commercial purposes is no longer feasible, as discussed in further detail below.

Whilst the TOD rezoning has not resulted in changes to development controls applying to the subject site, the low density residential properties to the rear of the site along Sinclair Street have been rezoned from R2 Low Density Residential to R4 High Density Residential, along with significant increases to their applicable height and FSR controls. This demonstrates the changing character of the area, towards increased heights and densities, of which the subject proposal is consistent.

Market Demand

The redevelopment of the site for wholly commercial uses, is no longer suitable as it does not reflect the changed economic circumstances and commercial market, nor the housing targets of the National Housing Accord and the TOD program.

In summary, an entirely commercial building:

- does not reflect the significant decline in demand for office accommodation that has occurred post the COVID-19 pandemic
- does not reflect structural changes towards more flexible work arrangements including working from home
- does not reflect record high vacancies and that it will take well over a decade for office space demand to catch up to current levels of supply noting there is currently 94,000m² of vacant office space in the St Leonards-Crows Nest precinct with a vacancy rate of 25% for A-grade stock and 27% for secondary stock (Attachment 3)
- does not incentivise the redevelopment of the site, and instead results in a foregone opportunity to deliver much needed housing close to transport, shops and other services as intended through the TOD program
- limits the redevelopment of the site to solely commercial uses, which is inconsistent with the MU1 mixed use zone and associated permitted uses, and is commercially unfeasible given the recent decline in demand for commercial office space
- does not reflect the immediate site context, including the site to the rear (off Sinclair St) and nearby sites with substantially lower minimum non-residential FSR controls
- nearby sites typically have minimum non-residential FSR controls that are approximately 30% of their overall base FSR control, also noting under the Crows Nest TOD reduced the minimum non-residential FSR for the Metro Over Station Development (OSD) from 10:1 to 1:1 (subject to an incentive provision for affordable housing), which was a direct response to the above factors

The proposal provides an appropriate amount of non-residential floor space as well as a residential component at the site, noting that shop top housing is a permissible use in the MU1 zone, and is envisaged by the zone objectives and Housing SEPP. This approach will ensure the site achieves the appropriate balance between preserving employment generating floorspace and providing opportunities for additional housing, on a suitably located site.

Statutory Context

| Legislation | Comment |
|---|--|
| North Sydney Local Environmental Plan 2013 (NSLEP 2013) | <p>Permissibility:</p> <ul style="list-style-type: none"> • The proposed development of the site for <i>shop top housing</i> is permissible with consent in the MU1 zone (and, therefore, BTR housing is permissible in the zone in accordance with the provisions of the Housing SEPP, discussed below). • The provision of a mix of residential and commercial uses on the site is also entirely consistent with the objectives of the MU1 zone. <p>Height:</p> <ul style="list-style-type: none"> • A Clause 4.6 request for height will be submitted with the SSD application. It is important to note that whilst the proposal is consistent with the 54m height control when building height is measured traditionally (from finished ground level), a Clause 4.6 request is required when building height is measured from existing ground level (in this case, from the bottom of the existing basement/lift pits) in accordance with the position adopted in <i>Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582</i>. • This is consistent with the approach taken in the approved DA on the site (DA193/2023). <p>FSR:</p> <ul style="list-style-type: none"> • The proposal complies the maximum FSR control for the site |

| Legislation | Comment |
|---|--|
| | <p>under Clause 4.4 of NSLEP 2013 ensuring an appropriate bulk and scale.</p> <ul style="list-style-type: none"> The proposal is consistent with Clause 6.19D of NSLEP 2013 which allows a maximum FSR of 6.02:1, provided any floor space above 5.6:1 is located below ground level and comprises non-residential use. Under clause 4.4A, the site is subject to a non-residential FSR control of 5.6:1. We understand DPHI considers that an amendment to NSLEP 2013 may be required to address this issue and could manage this process concurrently with the DA process. We will continue discussions with DPHI on this matter following the issue of SEARs. <p>Heritage:</p> <ul style="list-style-type: none"> The site does not contain any heritage items and is not located within a heritage conservation area (HCA). The site adjoins a local heritage item and is in close proximity to a number of HCAs. Heritage impacts will be addressed accordingly in the EIS. <p>Affordable Housing:</p> <ul style="list-style-type: none"> Affordable housing will be provided in accordance with Section 7.5 of NSLEP 2013. |
| <p><i>State Environmental Planning Policy (Housing) 2021</i></p> | <ul style="list-style-type: none"> BTR housing is permissible with consent in the zone pursuant to Section 72(2) of the Housing SEPP. Section 72(3) of the Housing SEPP allows for development consent to be granted for residential flat buildings or shop top housing on the site that is to be used for built-to-rent housing. This provision overrides any inconsistency under the NSLEP 2013. The proposal is consistent with the principles of the Housing SEPP, in particular the following: <ul style="list-style-type: none"> <i>enabling the development of diverse housing types, including purpose-built rental housing,</i> <i>ensuring new housing development provides residents with a reasonable level of amenity,</i> <i>promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,</i> <i>minimising adverse climate and environmental impacts of new housing development,</i> <i>reinforcing the importance of designing housing in a way that reflects and enhances its locality</i> |
| <p><i>State Environmental Planning Policy (Planning Systems) 2021</i></p> | <ul style="list-style-type: none"> As outlined earlier, the proposal is classified SSD pursuant to Schedule 1, Clause 27 of the Planning Systems SEPP. The application is subsequently submitted to DPHI for assessment. |
| <p>Other approvals</p> | <ul style="list-style-type: none"> <i>Biodiversity Conservation Act 2016:</i> A Biodiversity Development Assessment Report (BDAR) waiver is provided at Attachment D. <i>National Parks and Wildlife Act 1974:</i> An Aboriginal Cultural Heritage Assessment Report (ACHAR) will be prepared as part of the SSD application. <i>Heritage Act 1977:</i> The site is not state heritage listed and therefore, approval under s68 or s139 will not be required. |
| <p>Other relevant legislation to be addressed in the EIS</p> | <ul style="list-style-type: none"> In addition to the above, the consent authority must consider the below matters in deciding whether to grant consent to the SSD application. These matters will be addressed in the EIS. |

| Legislation | Comment |
|-------------|--|
| | <ul style="list-style-type: none"> ○ <i>Environmental Planning and Assessment Act 1979</i> ○ <i>Environmental Planning and Assessment Regulation 2021</i> ○ <i>State Environmental Planning Policy (Housing) 2021</i> ○ <i>The Apartment Design Guide (ADG)</i> ○ <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> ○ <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> ○ <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> ○ <i>State Environmental Planning Policy (Industry and Employment Systems) 2021</i> ○ <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> |

Table 1: Statutory context

Assessment Issues

The EIS will be prepared in accordance with the ISEARs issued by DPHI as well as the legislative requirements defined under the EP&A Regulation. The EIS will also provide recommendations to address any environmental impacts of the project which will inform DPHI in its assessment and recommendations on the project.

Likely assessment issues include:

- built form, design, and interface with adjoining properties
- an economic assessment of the commercial office and housing markets
- traffic and parking
- heritage
- active street frontages

Conclusion

This letter represents a formal request for ISEARs to DPHI for a 16 storey mixed use development at 270 Pacific Highway, Crows Nest.

The proposal presents an opportunity to provide jobs and housing close to major public transport. In doing so, the proposal will transform the current site and surrounds resulting in a better planning outcome that delivers significant public benefits to the community.

We trust that the information in this letter is sufficient to enable DPHI to issue ISEARs for the proposed development.

If you wish to discuss any aspect of this letter, please contact Padraig Scollard, Associate, on 8459 7508 or PJ@keylan.com.au in the first instance.

Yours sincerely

Dan Keary

Dan Keary BSC MURP RPIA
Director

Attachment A – Concept Architectural Plans

Attachment B – EDC report

Attachment C – Market and Economic Assessment

Attachment D – BDAR Waiver