



18 September 2025

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

SSD 84416958
DA158/2025/1
JD6 (P&E)

ATTENTION: Rodger Roppolo, Senior Planning Officer

**STATE SIGNIFICANT DEVELOPMENT APPLICATION 84416958
253-265 PACIFIC HIGHWAY NORTH SYDNEY
BUILD TO RENT & INFILL AFFORDABLE RENTAL HOUSING
APPLICANT: LEGACY PROPERTY**

Dear Sir,

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

In summary, grounds for objection are:

- Non-compliance with ADG requirements for deep soil, apartment depth and building separation.
- Inadequate consideration of context: the application has not been considered regarding potential for adjacent properties south of the site on the eastern side of the highway, in accordance with the North Sydney Local Environmental Plan 2013 and potential bonuses enabled by State Environmental Planning Policy (Housing) 2021. The proposal has only been compared with existing development south of McLaren Street.
- Regarding heritage, there are unacceptable impacts on adjacent heritage items at 6-8 McLaren Street and on the site at 265 Pacific Highway, and
- The height of the building should not exceed the maximum permitted, due to recent uplift applied to the site via a planning proposal and the application taking full advantage of the Housing SEPP's bonus provisions for infill affordable housing.
- Floor space ratios have not been calculated correctly, and the application does not appear to have addressed objectives of applicable whole-building floor space ratio and non-residential floor space ratio standards.
- Despite the miscalculation in the application and based on Council's calculations, the overall maximum FSR is complied with, but the minimum non-residential FSR is not. Due to the variation being minor (<10%), it could be supported by a properly constructed request in accordance with cl. 4.6 of the LEP.

Detailed Submission

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

- Strategic Planning and Context
- Heritage, and
- Statutory Evaluation, a "high-level" assessment.

As requested, recommended conditions of consent are attached, which address the above matters, engineering, tree preservation, access and parking and likely impacts associated with the development.

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. 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 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.

As the Department is aware, the site has been the subject of significant increase in development capability since publication of a site-specific planning proposal (PP2021-2926).

The Apartment Design Guide (ADG) is given statutory weight by SEPP (Housing) 2021 and with other SEPPs and the LEP are matters for consideration in accordance with s. 4.15 (1) of the EP & A Act 1979.

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

Zone & development standards

Zone: The site has a MU1 Mixed Use zoning under the North Sydney LEP 2013, which permits the proposed development with consent.

FSR:

Two floor space ratios apply as follows:

- 4.83:1 – 253-263 Pacific Highway
- 1.83:1 - 265 Pacific Highway

The FSR/GFA must therefore be calculated separately for the land subject to each FSR standard.

253-263 Pacific Highway

Per cl. 16 of the Housing SEPP, a maximum 30% additional FSR is available provided the “affordable housing component” is 15% of the FSR/gross floor area.

Nos 235-263 have a combined area of 994m² and is affected by a maximum FSR of 4.83:1. This part of the site is proposed to accommodate the requisite 15% of GFA to be used for affordable housing to maximise the additional 30% FSR available. 30% of 4.83 is 1.45:1, making a total FSR of 6.28:1, which equates to a GFA of 6,243m².

At least 15% of the gross floor area is required as affordable housing to achieve the maximum additional FSR, that is: 6,243m² x 0.15 = 936.5 m².

The proposal includes 974.6m² GFA which is proposed to be affordable housing. As this figure exceeds the minimum 15%, the proposed development is entitled to use the maximum additional FSR of 30%, to achieve an overall FSR of 6.28:1.

According to the architectural plans a GFA of 6,021m² is proposed, which equates to a compliant FSR of 6.06:1.

265 Pacific Highway

No 265 has no affordable housing proposed and does not attract any additional FSR, resulting in a maximum GFA of 191.4m² (1.83 FSR x 104.6 m² site area). According to the architectural plans, the proposed GFA for this part of the site is 103.14m².

The FSR on No 265 is a compliant 0.54:1.

Non-residential floor space ratio

A minimum NRSFR of 1:1 applies to the whole site.

The area of the whole site is 1,099m². The NRGFA must be at least this area.

Architectural plans indicate the NRGFA is 995.4m².

The proposal does not comply with this standard, with a variation of 103.6m² (9.4%).

The written request to vary the FSR standard only relates to the part of the site where the 4.38:1 FSR (6.28:1, with additional FSR) applies.

Recommendation

1. The applicant be requested to revise their written request to vary the non-residential floor space ratio applicable to the site.

Height: Three height control maxima respectively apply to parts of the site:

- 15m - 265 Pacific Highway
- 29m – 261 Pacific Highway
- 37m - 235-255 Pacific Highway

The maximum heights of the LEP, with the addition of the 30% bonus allowed by the Housing SEPP, are exceeded, as shown on the architectural plans.

Typically, the submitted cl 4.6 request to depart from the standard, claims acceptable environmental impacts, and that the breach is reasonable because only the lift overrun and other rooftop plant exceed the height limit.

The request fails to acknowledge that if the proposal was to strictly comply with the height control, then habitable space beneath the rooftop plant would have to be removed. It is therefore reasonable to conclude that strict compliance should be observed in circumstances where a bonus is available, the use of which has been maximised, also considering the site has had a significant increase in development capacity resulting from the recently implemented planning proposal.

That a compliant building would have lesser and more reasonable environmental impacts is axiomatic. Overshadowing of nearby lower density housing and educational facilities would be reduced.

Recommendation

2. The height breach and the submitted clause 4.6 request should not be supported in circumstances where development proposes use of additional floor space ratio or height, made available by the provisions of an environmental planning instrument.

STRATEGIC PLANNING & CONTEXT

Section 4.39 of the Environmental Planning and Assessment Act, 1979 and Section 190 (2) of the Regulations require a State Significant Development Application to have regard to 'State Significant Development Guidelines'. These guidelines contain a requirement to consider strategic context. It is Council's position that the State Significant Development, as submitted, fails to consider or satisfy these statutory requirements.

Background

The site was identified as a key site under the North Sydney Council led Civic Precinct Planning Study.

Following extensive consultation and community engagement, the study was adopted by Council on 30 November 2020. The Study was prepared to guide future development within the precinct in anticipation of the (then under construction) Victoria Cross Metro station as well as help deliver identified improvements to the public domain and supporting infrastructure and facilities.

Planning Proposal (Ref PP2021-2926) for the site was eventually progressed by the Sydney North Planning Panel which led to an amendment being made to the North Sydney Local Environmental Plan on 14 July 2023 that increased the maximum building height from 10m to part 15m, part 29m and part 37m.

In consideration of the appropriateness of ascribing increased building heights in this location, a high degree of care was taken to strike a reasonable and appropriate balance between the desire to facilitate new development and relevant issues, including urban form and context, interface with the adjacent heritage item to the south and Heritage Conservation Area immediately to the east. Solar access was also key and overshadowing impacts, particularly to the public primary school located immediately opposite the site on the western side of the Pacific Highway.

Detailed commentary on these issues is contained within the Council report recommending the PP proceed to Gateway Determination – 28 March 2022 which is accessible at:

northsydney.nsw.gov.au/ecm/download/document-9889870

The matters raised in this report are taken to form part of this submission in terms of acceptable built form and scale outcomes.

It is drawn to the Department's attention that Council's Design Excellence Panel also provided considerable input into the indicative-built form that was developed as part of the LEP amendment process and the need for which was also recognised in the Department's own post-exhibition report - which is accessible at:

<https://www.planningportal.nsw.gov.au/ppr/lep-decision/planning-proposal-253-267-pacific-highway-north-sydney>

In respect to shadow impacts, the DPHI finalisation report deemed the heights acceptable based on the extent of shadowing of the school being minimal. The proposed development now under consideration has considerably greater impact during winter on the outdoor play areas within the school as well as classroom windows in the early morning hours. This is unacceptable.

By way of comparison – below are extracts of the indicative-built form considered under the planning proposal and further below those currently proposed.



View looking south along Pacific Highway



View looking north from Pacific Highway

Indicative built forms Planning proposal March 2022 – source: PTW architects – March 2022



Proposed built form – source: Nettleton tribe architects - SSD 84416958

Notwithstanding the numerical bonus provisions available under the housing SEPP, the proposal as presented is over-scaled, overbearing and a jarring response to context. These matters are addressed below, particularly in respect of heritage items on the corner of the Pacific Highway and McLaren Street and the heritage item on the site, No 265 Pacific Highway. The need for increased housing supply is acknowledged; however, this should not be at the expense of recent and careful strategic planning processes that applied considerable development uplift in a measured and considered manner.

Affordable Housing

Given the significant development uplift previously resolved for the site and further bonuses being sought, any affordable housing proposed should be provided in perpetuity (not limited to 15 years) and any consent that may be granted should include conditions accordingly.

Recommendation

3. The proposed infill affordable housing should be provided in perpetuity, enforced by a condition of consent, should the application be approved.

HERITAGE

A heritage assessment of the proposal has been conducted which concludes that the proposal is unacceptable on heritage conservation grounds.

1. *The Adjacent Heritage Item (I0959) located at 265 Pacific Highway and the McLaren Street Conservation Area*

Context

A more contextual design would be appropriate, given the location of the adjacent heritage item and the dwellings in the McLaren Street Conservation Area.

Setbacks

The setback from 6 McLaren Street is unacceptable. The tower should be set back from the Pacific Highway further so that is not so legible in the streetscape in the context of the heritage items.

Scale

The parapet wall on the podium appears too high relative to the heritage building at 265 Pacific Highway because the heritage item has a gabled roof and is not square on its roof edges. The parapet wall is a heavy, visually dominant element with no detail, decoration, articulation or stepping down the slope.

Massing

The podium does not step down the hill and appears monolithic as it has a horizontal emphasis which is unsympathetic to the heritage items at 265 Pacific Highway and 6 McLaren Street. The brick piers between the glazing should project through the parapet wall to give more vertical emphasis. The massing should have greater articulation and respond to the hipped and gabled roof forms.

Fine grain detail

The heritage item and buildings in the conservation area are rich in character whilst the proposal is bland, could be located anywhere in Australia and does not respond specifically to the context where there are many buildings with fine grain detail.

An example of a successful infill commercial building in the context of heritage items would be the 'Skye Suites' at 300 Kent St, Sydney.

The blank wall adjacent to 6 McLaren Street is a poor aesthetic outcome and detracts from the significance of the conservation area.

Fenestration

The fenestration does not respond to the context of the adjacent heritage item or to the contributory items in the McLaren Street Conservation Area that back onto Church Lane and on the corner of McLaren Street/Pacific Highway. The glazing should appear to be visually submissive by being recessed and vertically proportioned.

Separation

The link element between the proposed building and the on-site heritage item is poorly resolved in the documentation. The cantilevered element is not visually lightweight or 'elegant'.

Recommendations:

4. The design be revised having regard to the above heritage assessment.

2. *Works to the Heritage Item*

Proposed works to the building at 265 Pacific Highway are not documented on the plans. They are only described in the Heritage Impact Statement, which will not be part of the consent drawings.

Separate plans should be provided that clearly describe the fabric that is retained, demolished and replaced.

A separate schedule of finishes is required.

Information regarding signage, if proposed, to be provided.

Recommendations:

5. A requirement is included in the recommended conditions, to ensure proposed buildings and materials are used, which complement the adjacent heritage item.

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.
- Key provisions of the ***North Sydney LEP*** were addressed earlier.
- ***The North Sydney DCP***, Part B Section 2, Commercial and mixed-use development, and Part C, Section 2, North Sydney Planning Area, have not been considered against otherwise applicable DCP provisions, in accordance with cl. 2.10, Planning Systems SEPP, as discussed.

Housing SEPP - Design Principles

Cl. 147 of SEPP (Housing) 2021 requires consideration of the SEPP's design principles (SEPP's Schedule 9). Cl. 29 of the EP&A Act Regulation 2021 requires an application for residential flat development (including the residential component of a mixed-use building) to be accompanied by a statement by a qualified designer that explains how the development addresses the SEPP's design principles and the objectives of Parts 3 and 4 of the ADG.

The EIS was accompanied by such a report (Appendix 12 to the EIS), prepared by the project architect.

A review of the plans indicate that the following items do not properly satisfy the SEPP's design principles.

- Deep soil, landscaped area includes above ground open space, a terrace with pool (level 11) and rooftop garden (level 13). Ground level open space mainly provides pedestrian access from Church Lane and to other parts of the site, with a link through the site to the Pacific Highway.
- Building depth - Part 2E addresses building depth, not apartment depth as noted in the submitted compliance table, and
- Building separation, there is inadequate building separation with adjacent heritage buildings to the south and east, across Church Lane in the adjacent conservation area.

Recommendation

6. A revised assessment against applicable criteria of the Apartment Design Guide is required so the consent authority can properly consider the requirement of clause 147 of SEPP (Housing) 2021.

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 Planner, on 9336 8378, or at jim.davies@northsydney.nsw.gov.au.

Yours sincerely,



David Hoy

ACTING SERVICE UNIT MANAGER DEVELOPMENT SERVICES