

Department of Planning, Housing and Infrastructure

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Mixed-use development with in-fill affordable housing, North Sydney

State Significant Development Assessment Report (SSD 84416958)

April 2026





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Executive Summary

This report details the Department's assessment of the State significant development application SSD-84416958 for a mixed-use development (shop top housing), including infill affordable housing at 253-265 Pacific Highway, North Sydney.

Legpro 45 Proprietary Limited as trustee for Legpro 45 Unit Trust (the Applicant) seeks approval for the demolition of existing buildings at 253-265 Pacific Highway, retention and reuse of the existing heritage building at 265 Pacific Highway, construction and operation of a 14-storey building containing a two-storey podium with commercial uses and a 12-storey residential tower with 35 residential apartments (10 affordable housing apartments), basement car parking, and strata and stratum subdivision of the building.

The proposal is classified as SSD under section 4.36 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) because it is infill affordable housing as specified in clause 26A of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP). The Minister for Planning and Public Spaces (Minister) is the consent authority for the proposal under section 4.5(a) of the EP&A Act.

The Department exhibited the Environmental Impact Statement (EIS) from 7 August 2025 until 3 September 2025. During the exhibition period, the Department received:

- 14 submissions from the public (8 objections, 3 support and 3 comment)
- an objection from North Sydney Council (Council)
- advice from six government agencies/public authorities.

A submission made outside of the exhibition period, considered as feedback was also received.

Key issues raised in submissions include built form and height, overshadowing impacts, heritage, traffic and noise impacts.

The Applicant submitted a submissions report to address the issues raised in submissions and agency advice. The Applicant also submitted further additional information on 26 February 2026.

The Department has considered the merits of the proposal in accordance with the relevant matters under section 4.15(1) of the EP&A Act, the issues raised in the submissions, the Applicant's response and additional information. The Department considers the proposal is acceptable for the following reasons:

- it will support the NSW Government's priorities to deliver well-located housing, including 10 affordable housing apartments to be managed by a CHP for at least 15 years

- it is consistent with the strategic and statutory planning instruments which permit and incentivise increased height and density where affordable housing is provided in accessible locations
- while the proposal does not comply with the floor space ratio or height controls, it provides a bulk and scale that is compatible with the desired future character of the North Sydney CBD
- it achieves a high level of residential amenity for future residents in accordance with the Apartment Design Guide
- it will not result in unreasonable overshadowing, view, privacy or traffic/access impacts on adjoining development or the public domain
- it is permissible with consent and consistent with the objectives of the zone.

For these reasons, the Department considers that the project is in the public interest and recommends that the application be approved, subject to recommended conditions.

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1 Introduction

1.1 Project location

The site is located at 253-265 Pacific Highway, North Sydney, within the North Sydney Council local government area (LGA). It is situated directly north of the North Sydney Central Business District and within the boundaries of the North Sydney Civic Precinct.

The site has a primary frontage to the Pacific Highway and secondary frontage to Church Lane. The site currently contains 3-storey and 2-storey commercial buildings, including a locally listed heritage item, 10959 “The Cloisters”, a 3-storey terrace built in the Victorian Free Gothic style. The surrounding context of the site is characterised by medium density commercial and residential uses.

The site is shown in Figures 1 to Figure 7. Further details of the site and the surrounding area are described in Table 1.

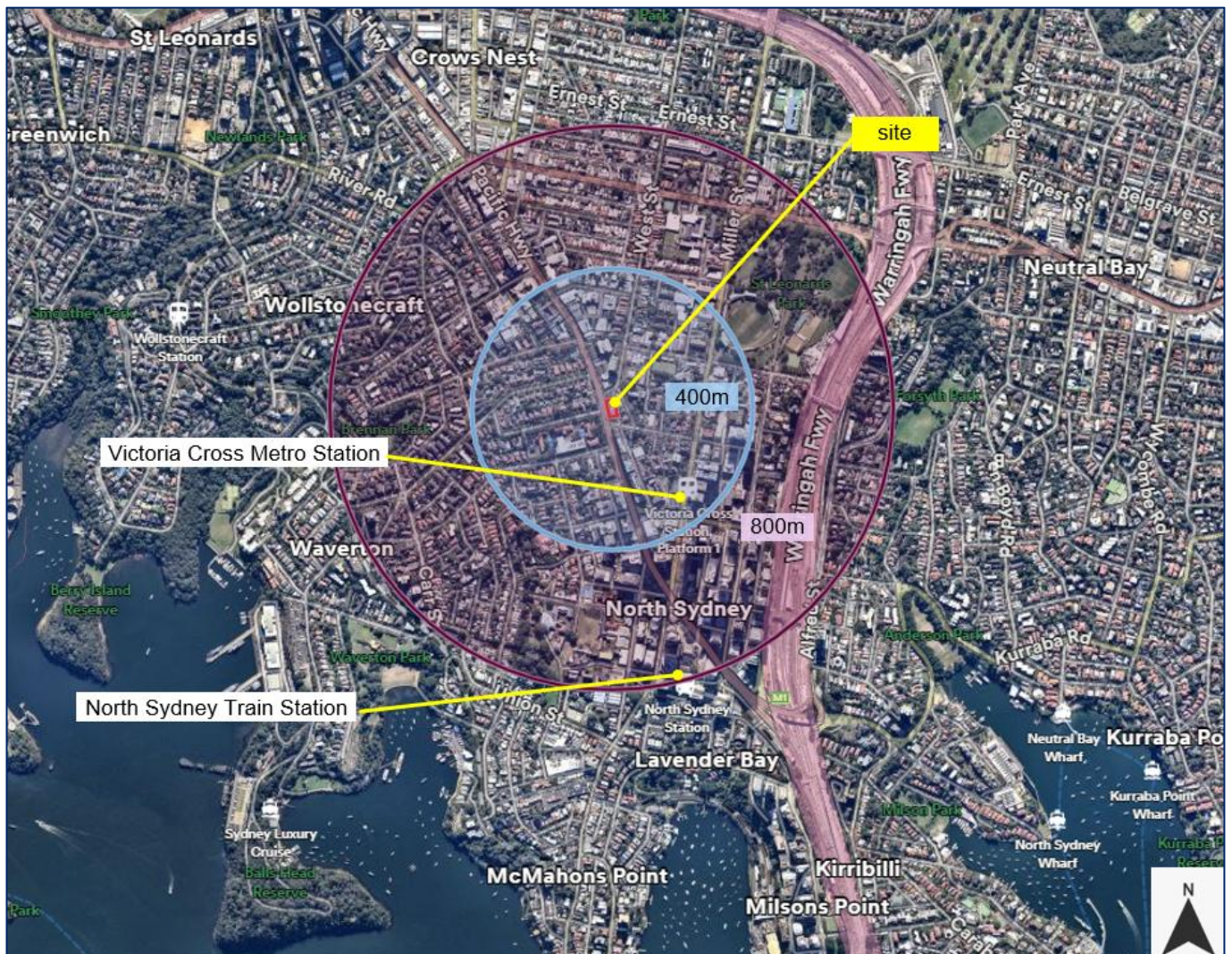


Figure 1 | Regional context map (base source: Nearmap May 2025)



Figure 2 | Site location – shaded in red (base source: Nearmap, May 2025)



Figure 3 | Site viewed from Pacific Highway looking north-east (source: Department's photograph, July 2025)

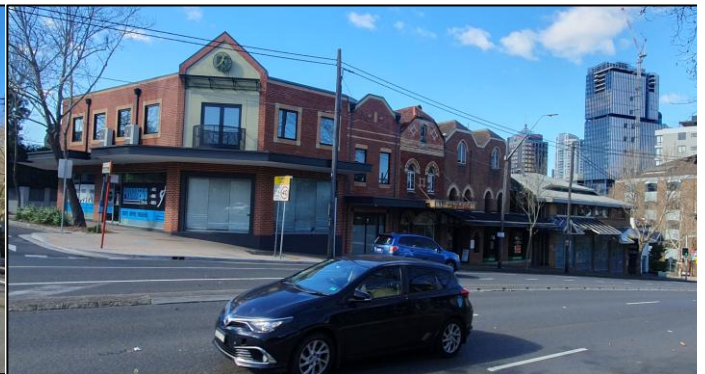


Figure 4 | Site viewed from Pacific Highway looking south-east (source: Department's photograph, July 2025)



Figure 5 | View of Church Lane, looking south (source: Department’s photograph, July 2025)



Figure 6 | View of Church Lane, looking north (source: Department’s photograph, July 2025)



Figure 7 | View of the front façade of the heritage building ‘The Cloisters’ looking east (source: Department’s photograph, July 2025)

Table 1 | Key aspects of the project site

Aspect	Description
Address and legal description	253 Pacific Highway, North Sydney (SP 16134) 255-259 Pacific Highway, North Sydney (SP 22870) 261-263 Pacific Highway, North Sydney (Lot 51 DP 714323) 265 Pacific Highway, North Sydney (Lot B DP 321904)
Local Government Area (LGA)	North Sydney
Site area	1,099m ²
Existing development	Two to three storey commercial buildings

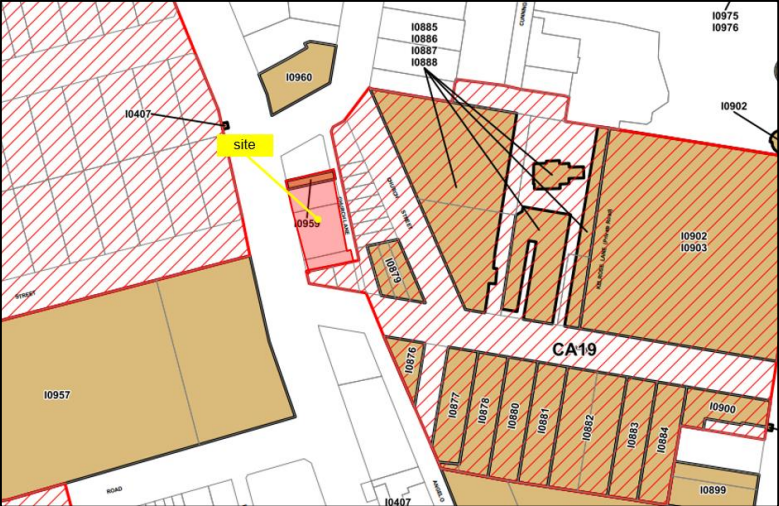
Aspect	Description
Surrounding roads	Pacific Highway (west), Church Lane (east), West Street (north) and McLaren Street (south)
Topography	Approximately 3 m fall from west to east, with levels ranging from 90.4 m AHD in the western corner to 87 m AHD in the eastern corner.
Existing access	Existing vehicle access via Church Lane and pedestrian access from Pacific Highway.
Public transport	Less than 400 m walking distance to Victoria Cross metro station, 900 m to North Sydney train station, and 50 m to bus stops located on Pacific Highway.
Heritage	<p>Part of the site (265 Pacific Highway) is listed as a local heritage item under the North Sydney LEP 2013, as Shop 9 The Cloisters. The site is also located in the vicinity of the following local heritage items:</p> <ul style="list-style-type: none"> • 12 McLaren Street, (House) – Item No. 10879 • 271 Pacific Highway (Union Hotel) – Item No: 10960 • 182 Pacific Highway (Gates and fence of former Crows Nest House) - Item No: 10957 <p>The site is also located in the vicinity of the McLaren Street Heritage Conservation Area (CA19) and the Crows Nest Road Heritage Conservation Area (CA23).</p> 
Flooding	The site is not impacted by flooding.

Figure 8 | Heritage items and heritage conservation area (source: North Sydney LEP 2013 Heritage Map)

Aspect	Description
Soil and water	The site is not mapped as containing acid sulfate soils and contains the potential for land contamination.
Easements or covenants	253 and 255-259 Pacific Highway are affected by a stratum below the site for the purpose of the construction for the Western Harbour Tunnel Corridor.

1.2 Relevant planning background

1.2.1 Planning proposal

An Applicant-led planning proposal (PP) for the site and 1 West Street, was finalised in November 2023. The PP resulted in the following amendments to the North Sydney Local Environmental Plan 2013 (North Sydney LEP 2013):

- an increase to the maximum permissible building height from 10 m to 15 m for 1 West Street and 265 Pacific Highway, 29 m for 261 Pacific Highway, and 37 m for 253-259 Pacific Highway (3 storey; 8 storey and 10 storey built form)
- a floor space ratio (FSR) of 4.83:1 for 253-261 Pacific Highway, and 1.83:1 for 265 Pacific Highway and 1 West Street
- an increase to the minimum non-residential FSR control from 0.5:1 to 1:1.

The PP finalisation report considered a reference scheme involving two towers between 8 and 10 storeys, over a 2-storey podium, and preservation and integration of the heritage item into the podium design (Figure 9 and Figure 10).



Figure 9 | Reference scheme - View looking north (left) and south (right) along Pacific Highway (Source: Department's PP finalisation report 2023)

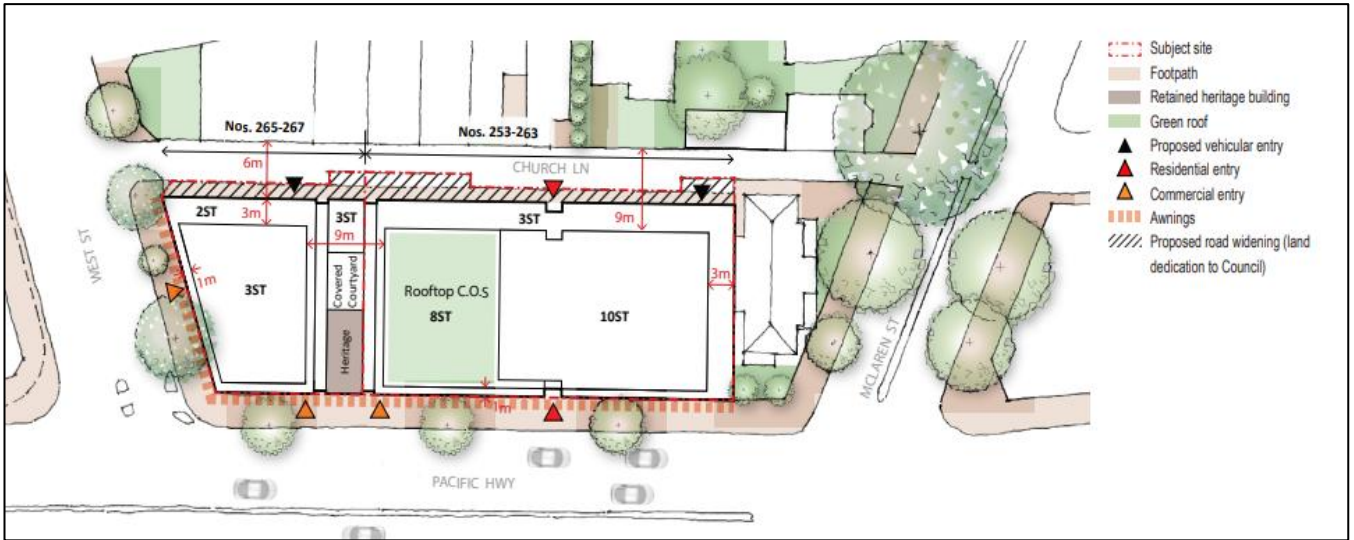


Figure 10 | Reference scheme – Site plan (Source: Department's PP finalisation report 2023)

2 Project

2.1 Project overview

The proposal seeks approval for a mixed-use development (shop top housing) with in-fill affordable housing within a 14-storey building. The key aspects of the project, as amended by the submissions report, are further outlined in Table 2. Images of the proposal are shown in Figures 11 to 13.

Table 2 | Key aspects of the project

Aspect	Description
Built form	<ul style="list-style-type: none"> • Part 11 storey and 14 storey building, with a 2-storey podium • Four basement levels for parking, storage and services
Gross floor area (GFA)	<ul style="list-style-type: none"> • Total GFA of 6,437 m², comprising: <ul style="list-style-type: none"> ○ Residential GFA of 5,392 m² ○ Non-residential (commercial) GFA of 1,045 m²
Floor space ratio (FSR)	<ul style="list-style-type: none"> • FSR of 5.85:1, comprising <ul style="list-style-type: none"> ○ Residential FSR of 4.9:1 ○ Non-residential FSR of 0.95:1
Building height	<ul style="list-style-type: none"> • Maximum building height of 51.21 m (RL 138.4 AHD to the top of parapet)
Residential	<ul style="list-style-type: none"> • 35 apartments, comprising: <ul style="list-style-type: none"> ○ 25 market dwellings: <ul style="list-style-type: none"> - 24 x 3-bedroom unit - 1 x 4-bedroom unit ○ 10 affordable housing dwellings: <ul style="list-style-type: none"> - 4 x 1-bedroom unit - 6 x 2-bedroom unit
Commercial	<ul style="list-style-type: none"> • Provision of commercial tenancies on the ground floor and Level 1
Heritage building	<ul style="list-style-type: none"> • Retention and re-use of the existing heritage building for commercial purposes, including demolition of a rear shed and chimney, conservation or 'make good' works to the building, a new glazed opening to the rear, construction of a first-floor balcony and timber decking to the rear, a rear substation, and landscaping works

Aspect	Description
Parking	<ul style="list-style-type: none"> • Four basement levels, providing: <ul style="list-style-type: none"> ○ 53 car parking spaces, including 7 accessible spaces, 5 spaces allocated to the affordable housing units, and 1 car wash bay ○ 3 motorcycle parking spaces • 27 bicycle parking spaces, comprising: <ul style="list-style-type: none"> ○ 14 spaces for residents, located on the lower ground floor ○ 13 spaces for commercial tenants, located within the commercial tenancies ○ End-of-trip facilities comprising 13 lockers and 2 showers/change rooms
Access and servicing	<ul style="list-style-type: none"> • Vehicular access provided via Church Lane • Residential pedestrian access to the lobby via Pacific Highway and Church Lane. • Commercial tenant pedestrian access via Pacific Highway • On-site loading zone in Church Lane to accommodate a 6.4m small rigid vehicle for servicing and commercial waste collection
Communal areas	<ul style="list-style-type: none"> • 276 m² (equating to 25% of the site area) of communal space, comprising: <ul style="list-style-type: none"> ○ 205 m² of communal open space on the ground floor ○ 71 m² of communal open space on the rooftop of Level 13
Landscaping / Deep soil	<ul style="list-style-type: none"> • 106 m² of landscaping (equating to 9.6% of the site area) • 12 m² of deep soil plantings (equating to 1% of the site area)
Associated works	<ul style="list-style-type: none"> • Demolition • Remediation in accordance with a Remedial Action Plan • Earthworks • Augmentation of utilities and service infrastructure • Landscaping and public domain works
Subdivision	<ul style="list-style-type: none"> • Consolidation of the four allotments • Subdivision into three stratum lots with strata subdivision, comprising: <ul style="list-style-type: none"> • Lot 1 – Residential (Build-to-Sell) Stratum, comprising: <ul style="list-style-type: none"> ○ Four basement levels (housing most of the residential car parking and services) ○ Lower ground level

Aspect	Description
	<ul style="list-style-type: none"> ○ Part of the ground level (including the heritage building) ○ Levels 4 to 12 (containing 25, build-to-sell residential apartments and Roof Level shared facilities) ● Lot 2 – Affordable Residential Stratum <ul style="list-style-type: none"> ○ Comprising the affordable housing component of the development, located on Levels 2 and 3, along with associated car parking and storage areas in the basement ○ subdivision into 10 residential lots, along with areas associated with parking spaces and storage ● Lot 3 – Commercial Stratum <ul style="list-style-type: none"> ○ Comprising ground floor and first floor commercial suites ○ Subdivision into 8 lots, comprising 2 ground floor, and 6 first floor commercial lots.
Construction staging	<ul style="list-style-type: none"> ● Staging of the construction works, to include a stage for demolition works, early works, structure and façade works, services and fit-out works, and public domain works.
EDC	\$ 99,838,493



Figure 11 | Perspective of proposal – view from Pacific Highway (source: Applicant’s submissions report)

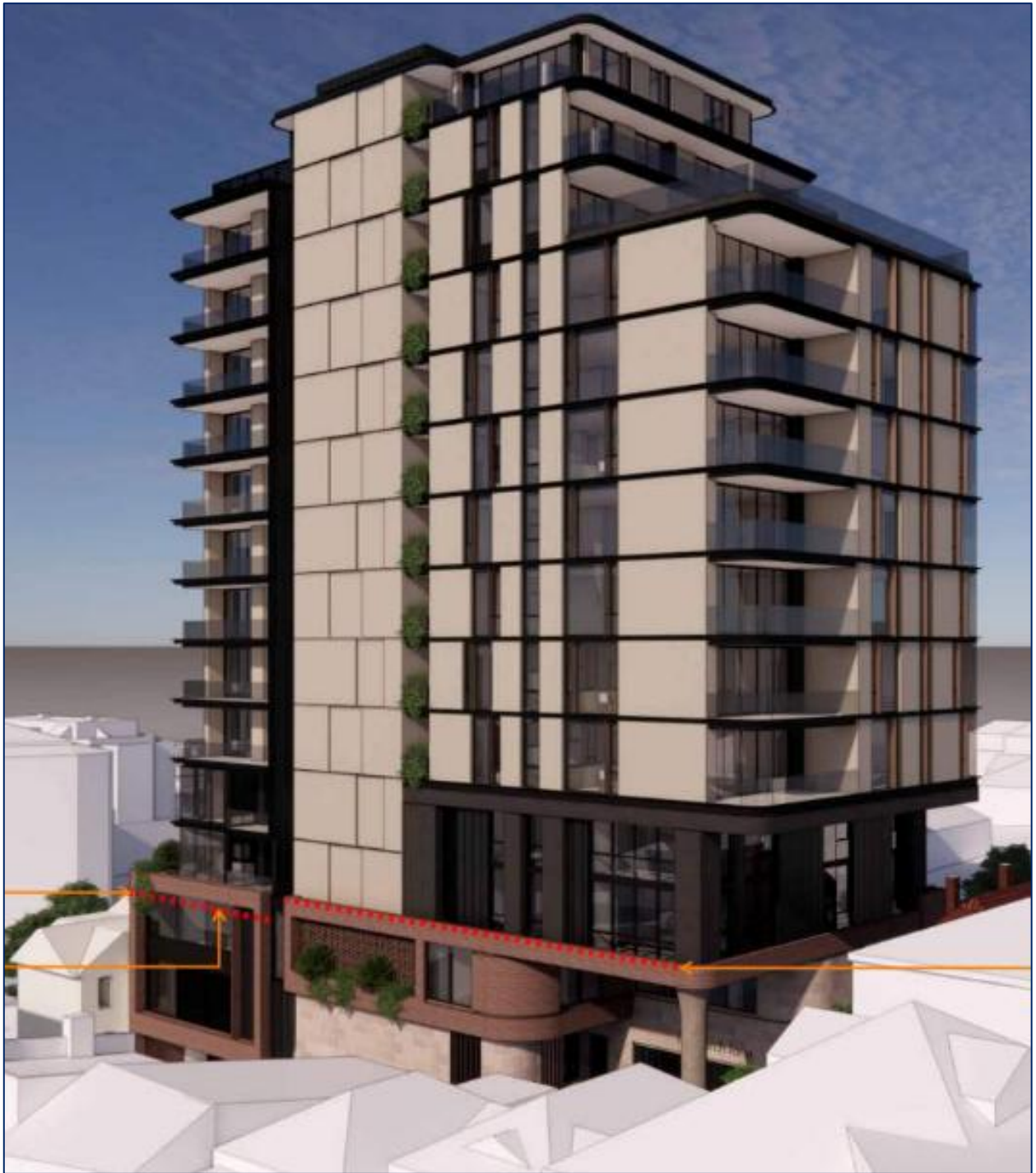


Figure 12 | Perspective of proposal – view from Church Lane (source: Applicant’s submissions report)

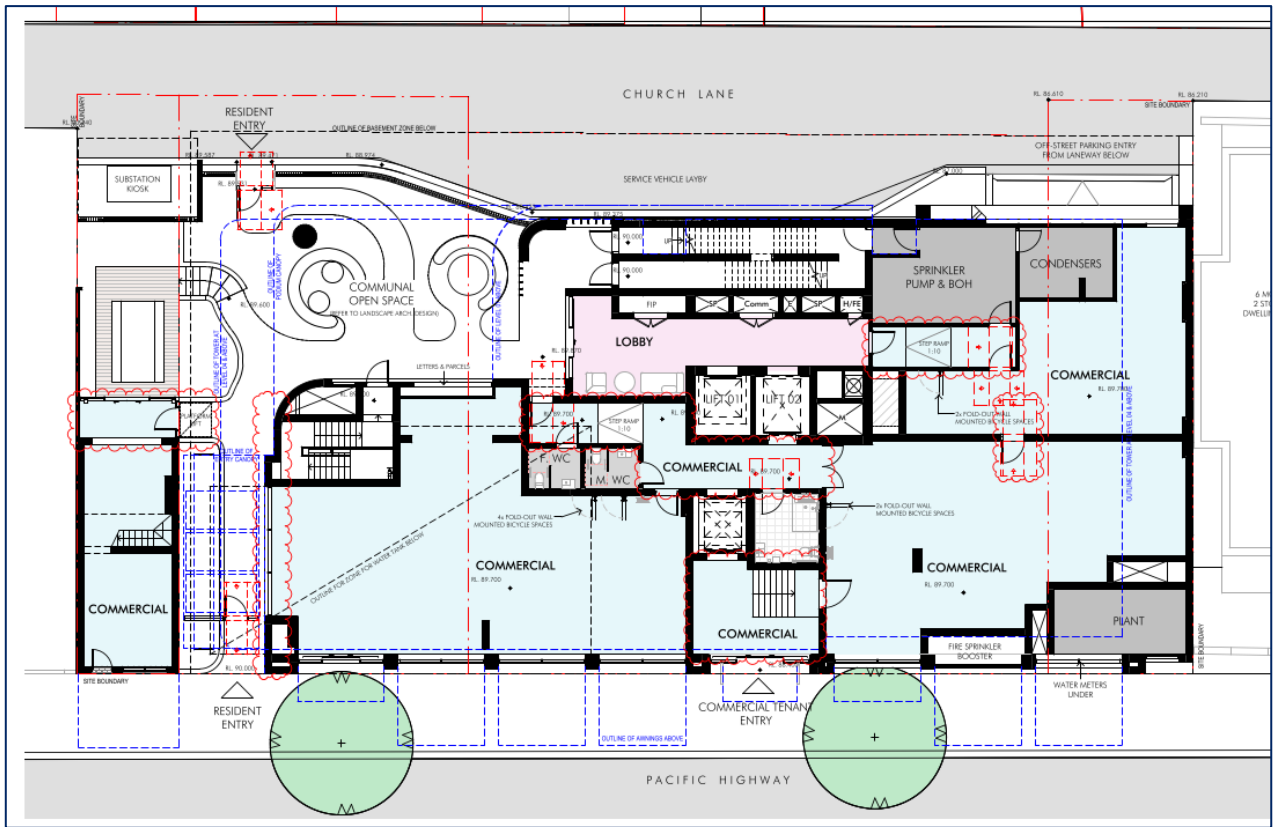


Figure 13 | Site layout plan (source: Applicant's submissions report)

3 Statutory context

3.1 Housing supply

The NSW Government has set a target of 377,000 well-located homes over the next five years. This policy is in support of the National Housing Accord which aims to deliver a national target of 1.2 million new, well-located homes over five years to June 2029.

In December 2023, an SSD pathway was introduced for residential development with an EDC of over \$75 million in Greater Sydney, and \$30 million outside Greater Sydney, which includes at least 10% affordable housing. Additionally, the State Environmental Planning Policy (Housing) 2021 (Housing SEPP) was amended to introduce new in-fill affordable housing provisions which permit FSR and building height bonuses of 20-30% for proposals that include residential development and at least 10-15% of GFA as affordable housing. This SSD application has been submitted pursuant to these reforms that aim to support the delivery of well-located affordable and market housing.

3.2 Permissibility and assessment pathway

Details of the legal pathway under which consent is sought, and the permissibility of the project are provided in Table 3 below.

Table 3 | Permissibility and assessment pathway

Consideration	Description
Assessment pathway	The project is declared SSD under section 4.36 of the EP&A Act as it has an EDC in excess of \$75 million for development providing in-fill affordable housing, as specified in clause 26A of Schedule 1 of State Environmental Planning Policy (Planning Systems) 2021.
Consent authority	The Minister is the consent authority under section 4.5(a) of the EP&A Act.
Decision-maker	Under the Minister’s delegation, the Director, Key Sites and TOD Assessments, may determine the application as: <ul style="list-style-type: none">• a political disclosure statement has not been made;• there are less than 15 submissions in the nature of an objection made under the mandatory requirements for community participation in Schedule 1 of the Act; and• submissions made by Council and members of the public in the assessment of the application, as required by section 4.15(1)(d) of the Act have been taken into consideration.

Consideration	Description
Permissibility	The proposal for housing and commercial uses in the MU1 mixed use zone is permissible with consent under the provisions of North Sydney Local Environmental Plan 2013.

3.3 Other approvals and authorisations

Under section 4.41 of the EP&A Act, several other authorisations required under other Acts are not required for SSD and SSI. This is because all relevant issues are considered during the assessment of the SSD application.

Under section 4.42 of the EP&A Act, certain approvals cannot be refused if they are necessary to carry out the SSD. These authorisations must be substantially consistent with any SSD development consent for the project.

The Department has consulted with and considered the advice of the relevant government agencies responsible for these other authorisations in its assessment of the project (see Sections 4 and 5). Suitable conditions have been included in the recommended conditions of consent (Appendix E).

3.4 Planning Secretary's environmental assessment requirements

The Department's review determined that the EIS addresses each matter set out in the Planning Secretary's environmental assessment requirements (SEARs) issued on 29 May 2025 and is sufficient to enable an adequate consideration and assessment of the project for determination purposes.

3.5 Mandatory matters for consideration

Mandatory matters for consideration include:

- matters of consideration required by the EP&A Act
- objects of the EP&A Act and ecologically sustainable development (ESD)
- matters of consideration required by the EP&A Regulation
- matters of consideration required by environmental planning instruments.

The Department's consideration of these matters is summarised in Appendix C. As a result of this consideration, the Department is satisfied that the development meets statutory requirements.

4 Engagement

4.1 Exhibition of the EIS

After accepting the development application and EIS, the Department:

- publicly exhibited the project from 7 August 2025 until 3 September 2025 (28 days) on the NSW Planning Portal
- notified occupiers and landowners in the vicinity of the site about the public exhibition
- notified and invited comment from relevant government agencies and Council
- undertook a site visit on 10 July 2025.

During the public exhibition period, the Department received:

- advice from 4 government agencies, Sydney Water and energy provider Ausgrid
- an objection from North Sydney Council
- 14 public submissions.

Feedback from one person from the community was received, outside of the exhibition process.

4.1.1 Summary of advice received from government agencies

A summary of the final agency advice is provided in Table 4. A link to the full copy of the advice is provided in Appendix A.

Table 4 | Summary of agency advice

Agency	Advice summary
Conservation Programs, Heritage and Regulation Group	Raised no concerns.
NSW Environment Protection Authority	Raised no concerns.
Heritage NSW – European Heritage	Raised no concerns, subject to recommended conditions, including a heritage induction for all site personnel, and an unexpected finds procedure.

Agency	Advice summary
Transport for NSW (TfNSW)	Raised no concerns, subject to recommended conditions to ensure the development does not impact the Western Harbour Tunnel Corridor and Pacific Highway, and requirement for a road occupancy license.
Sydney Water	Raised no concerns, subject to recommended conditions.
Ausgrid	Raised no concerns, subject to recommended conditions.

4.1.2 Summary of Council's submission

Council objected to the project in its submission on the EIS and submissions report. A summary of the outstanding issues raised is provided in Table 5. A link to the full copy of Council's submissions is provided in Appendix A.

Table 5 | Summary of issues raised by council

Issue	Summary
Built form	<ul style="list-style-type: none"> • Raises concerns to bulk and scale in response to site context and potential future redevelopment of adjoining sites. • Recommends a condition to protect privacy of adjoining occupants to the south at 6-8 McLaren Street.
Height	<ul style="list-style-type: none"> • Objects to the exceedance of the height limit.
Heritage	<ul style="list-style-type: none"> • The proposal would result in unacceptable heritage impacts, noting <ul style="list-style-type: none"> ○ inadequate tower setback to the southern boundary ○ the podium is out of scale with the heritage item on site ○ the building not stepping with the topography ○ lack of detail in the facades, including the blank podium wall on the southern boundary ○ fenestration not responding to the heritage item and buildings in the conservation area ○ poor resolution of the 'link' between the building and the heritage item ○ the cantilevered section of the tower is not lightweight or elegant.

Issue	Summary
Affordable housing	<ul style="list-style-type: none"> • Requests the proposed affordable housing dwellings remain as affordable housing in perpetuity.
Apartment design guidelines	<ul style="list-style-type: none"> • Raises concerns regarding non-compliance with deep soil zones, building separation distances, and apartment depths under the Apartment Design Guidelines.

4.1.3 Summary of public submissions

The Department received 14 public submissions during the public exhibition period of the EIS, of which 8 submissions objected to the project, three submissions provided comments, and three submissions were in support. Feedback from one person from the community was received, outside of the exhibition process.

The key issues raised in the public submissions and feedback from the community is provided in **Table 6** and a link to all submissions in full is provided in **Appendix A**.

The Department’s consideration of community views is provided in **Appendix B**.

Table 6 | Key issues raised in public submissions on the EIS

Issue	Number and % of Submissions
Bulk form and height <ul style="list-style-type: none"> • Built form is inconsistent with existing development • Excessive height • Lack of setbacks • Proposal should incorporate the adjoining building at 6-8 McLaren Street into the redevelopment of the site. 	5 (33%)
Overshadowing <ul style="list-style-type: none"> • Overshadowing impacts to: <ul style="list-style-type: none"> ○ residents at 225 Pacific Highway (the Lucent building), 245 Pacific Highway (The Montrose building) ○ North Sydney Public School, classrooms and outdoor play areas. 	3 (20%)
Traffic	3 (20%)

Issue	Number and % of Submissions
<ul style="list-style-type: none"> Increased traffic generation and congestion along Church Lane, and constrained width of Church Lane, which could lead to increased property damage, and safety risks for pedestrians, cyclist and motorists using Church Lane. 	
Noise <ul style="list-style-type: none"> Building design will result in an increase in noise impact to Church Lane residences, due to the through-site link from Pacific Highway to Church Lane. 	3 (20%)
Impact on local infrastructure, amenities and services	2 (13%)
Construction impacts <ul style="list-style-type: none"> The construction management plan shall consider impacts to North Sydney Public School, including construction traffic, and air quality impact. Construction impacts to adjoining building at 6-8 McLaren Street Construction noise impact to North Sydney Public School 	2 (13%)
Reflectivity impacts from glazing	1 (7%)
Heritage impact to St Thomas' Anglican Church	1 (7%)
Parking <ul style="list-style-type: none"> Adequate on-site parking should be provided to limit demand to on-street parking. 	1 (7%)

4.2 Response to submissions

Following the public exhibition period, the Department requested the Applicant respond to the issues raised in submissions, the advice received from government agencies and the Department's issues letter.

On 9 December 2025, the Applicant provided a submissions report to the Department (see Appendix A). In response to the submissions received and issues raised by the Department, the Applicant made refinements to the design of the podium and revisions to the landscaping and communal open space areas on the ground level.

The Department published the submissions report on the NSW Planning Portal and forwarded the submissions report to relevant government agencies and Council for comment.

The Department received further advice from Heritage NSW and a submission from Council, which has been summarised above in Sections 4.1.1 and 4.1.2.

On 26 February 2026, the Applicant provided additional information, which was published on the NSW Planning Portal.

5 Assessment

The Department has assessed the proposal, considering all documentation submitted by the Applicant, all issues raised in submissions and all advice provided by government agencies. The Department considers the key assessment issues are:

- built form
- heritage.

The Department's consideration of other issues is outlined in Section 5.3 and the appendices of this report.

5.1 Built form

5.1.1 Building height and scale

The site is subject to two FSR controls: 6.28:1 for 253-263 Pacific Highway and 2.38:1 for 265 Pacific Highway. Additionally, three maximum building height controls apply across the site consisting of 48.1 m for 253-259 Pacific Highway, 37.7 m for 261 Pacific Highway and 19 m for 265 Pacific Highway. These controls comprise:

- a base FSR of 4.83 for 253-263 Pacific Highway and 1.83:1 for 265 Pacific Highway under the North Sydney LEP 2013
- a base height of 37 m for 253-259 Pacific Highway, 29 m for 261 Pacific Highway and 15 m for 265 Pacific Highway under the North Sydney LEP 2013
- an additional 30% increase to the base FSR and height controls under section 16 of the Housing SEPP, as 15% of the total GFA of the development is for the purposes of affordable housing.

The proposal complies with the maximum permissible FSR and building height for 265 Pacific Highway. However:

- for 253-263 Pacific Highway, it exceeds the maximum permissible FSR, by 2.31 % or 144 m² and a portion of the top storey and roof parapet exceed the maximum permissible building height by 6.4% (3.11 m)
- for 261 Pacific Highway, minor elements of the balconies of Levels 12 and 13, the roof parapet and pool decking of Level 11 extend into maximum permissible building height across the boundary, resulting in a non-compliance of up to 28.3% (10.68 m) (Figure 14).

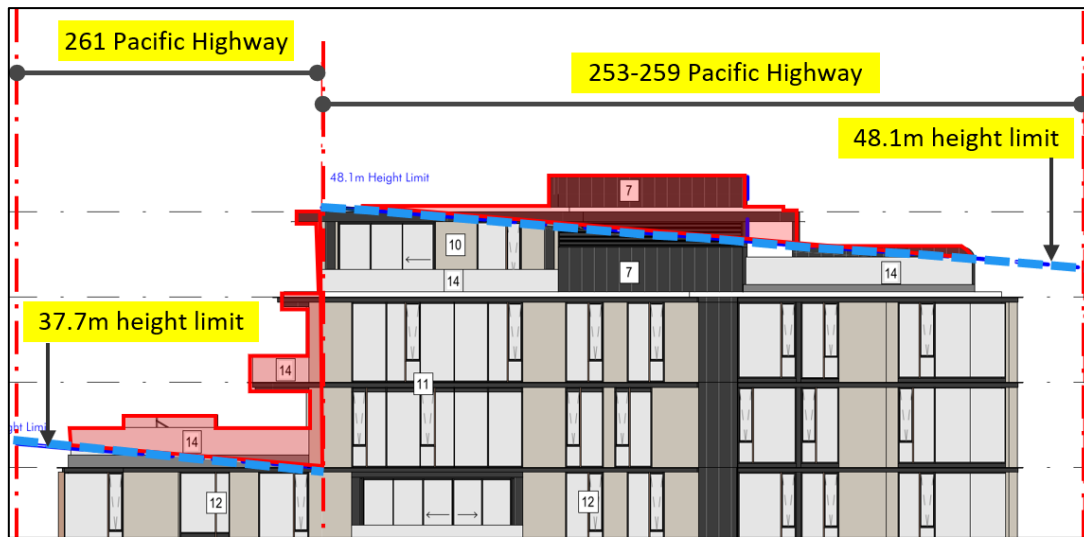


Figure 14 | Extract of the Pacific Highway elevation with extent of height breach in red (Base source: Applicant's submissions report)

The Applicant submitted a written request under Clause 4.6 of the North Sydney LEP 2013 to vary the maximum FSR and height of the building beyond the permissible FSR and building height under the Housing SEPP (see **Appendix D**). In summary, the Applicant contends that compliance with the development standard is unnecessary and there are sufficient environmental planning grounds to justify the variations as:

- the FSR exceedance is minor (a 2.31 % or 144m² variation), noting the proposal's total GFA of 6,437 m² complies with the total maximum site GFA of 6,491 m²
- the height exceedance would not result in any unreasonable visual, overshadowing or other impacts on the neighbouring properties.

Council raised concerns regarding the building height exceedance, overall bulk and scale in response to site context and potential future redevelopment of adjoining sites.

Public submissions also raised concern about the scale of the proposed development, its compatibility with the surrounding neighbourhood character, and that the proposal should incorporate 6-8 McLaren Street.

The Department has carefully considered the proposal along with the concerns raised in the submissions and is satisfied the proposed built form is acceptable for the following reasons:

- the FSR variation applying to the portion of the development at 253-263 Pacific Highway is minor, equating to 2.31 % or 144 m² and would not result in any significant visual, built form or amenity impacts. Further, when calculated across the entire site, the Department notes the proposal complies with the total FSR applying to both sites.
- the proposal generally meets the building height controls, with only minor roof, plant and balcony projections exceeding the limit as illustrated in **Figure 14**. These exceedances are minor

and would not result in any discernible visual or amenity impacts compared to a complying scheme

- the proposed built form and stepping down of the tower towards the northern boundary is generally consistent with that anticipated under the North Sydney Civic Precinct Planning Study and reference scheme of the planning proposal
- the bulk and scale of the proposal is compatible with the wider North Sydney CBD and the existing surrounding development, including mixed-use (shop top housing) developments to the south of McLaren Street along the eastern side of Pacific Highway
- the proposal applies the 30% uplift allowed under the Housing SEPP and, in return, provides 15% of the overall GFA as affordable housing for a minimum of 15 years
- the 2-storey podium provides an appropriate scale at its interface with 6-8 McLaren Street and with the existing heritage item
- the built form will allow for a 6 m widening of Church Lane to improve access, neighbourhood amenity, and passive surveillance to the public domain
- the amenity impacts on surrounding properties, particularly overshadowing, are acceptable (see Section 5.1.2 and Section 5.1.3).

5.1.2 Building Separation

The ADG recommends the following setbacks to ensure adequate building separation and privacy is shared between neighbouring buildings:

- buildings up to 4 storeys – 6 m between habitable rooms and balconies 3m between non-habitable rooms.
- buildings 5-8 storeys – 9 m between habitable rooms and balconies, 4.5m between non-habitable rooms.
- buildings over 9 storeys – 12 m between habitable rooms and balconies, 6 m between non-habitable rooms.

The ADG also recommends increasing the building setback from the boundary by 3 m, between a change in zone from apartment buildings to a lower density area.

The proposal departs from the numerical guidelines in respect of the following:

- the setback between the proposal and the southern side boundary is 3 m which is less than the recommended 6 m (for level 2 and 3), 9 m (for levels 3 to 7), and 12 m (for levels 8 to 13)
- the setback between the proposal and the northern side boundary is 6 m which is less than the recommended 9 m (for levels 4 to 7), and 12 m (for levels 8 to 11)

- the setback between the proposal and the lower density residential zone development to Church Lane is 8 m which is less than the recommended 15 m (for levels 2 to 3), 21 m (for levels 4 to 7) and 27 m (for levels 8 to 13).

Council considers there is inadequate separation distance between the proposal and existing development to the south and to the east across Church Lane. Council also recommended a condition for privacy mitigation measures to protect the privacy of adjoining occupants to the south at 6-8 McLaren Street.

In response, the Applicant submitted a detailed view analysis plan, including additional privacy treatments for eastern-facing windows, including translucent glazing.

The Department has carefully considered the building setbacks and separation to the northern and southern boundary, and to residential dwellings to the east and considers that they are acceptable in this instance as:

- setbacks to the northern and southern boundary are consistent with the indicative reference scheme endorsed under the planning proposal and it is largely consistent with the site's maximum height and FSR controls, notwithstanding the minor variations discussed above. Accordingly, the proposal is in keeping with the anticipated visual impact and the desired future character of the area
- it would not result in any privacy impacts to the southern site, noting it sits within the McLaren Street Heritage Conservation Area and is subject to a maximum building height of 10 m under the North Sydney LEP 2013. The proposal provides a blank wall to the boundary up to height of approximately 12.2 m above ground level, with residential levels (levels 2 and above) sitting higher than the adjacent maximum building height limit, thereby avoiding direct overlooking impacts
- it would not result in any unreasonable privacy impact to the northern site, which is subject to a maximum building height of 15 m under the North Sydney LEP 2013. Levels 4 and above, of the proposal (which depart from the numerical ADG separation guidelines) are above the adjacent maximum building height limit and therefore would not give rise to direct overlooking or privacy impacts
- the proposed design will maintain privacy between the proposal and residential development to the rear by:
 - locating the building's lift core on the east façade to minimise the number of habitable spaces facing existing dwellings to the east
 - the primary outlook for east-facing apartments are distant views rather than down to the existing dwellings at the rear of Church Lane

- o providing translucent glazing to lower-level windows (Unit 202 and Unit 302) that directly face Church Lane to prevent overlooking.

The Department is satisfied that the proposal is consistent with the endorsed planning proposal and the applicable planning controls, and that it appropriately addresses the objectives of the Apartment Design Guide. Notwithstanding departures from the ADG recommended building separation distances, the proposal would maintain reasonable visual privacy for adjoining properties through considered building design, including effective screening and appropriate window and balcony configurations.

5.1.3 Overshadowing impacts to adjoining properties

Public submissions expressed concerns that the proposal will overshadow:

- 225 Pacific Highway (the Lucent building) and 245 Pacific Highway (The Montrose building)
- North Sydney Public School, classrooms and outdoor play areas.

In response, the Applicant submitted additional shadow diagrams illustrating the overshadowing impacts of the proposal, which exceed the 30% height bonus under the Housing SEPP compared to a compliant building envelope (LEP plus a 30% FSR and height bonus as permitted under the Housing SEPP) (Figure 15).

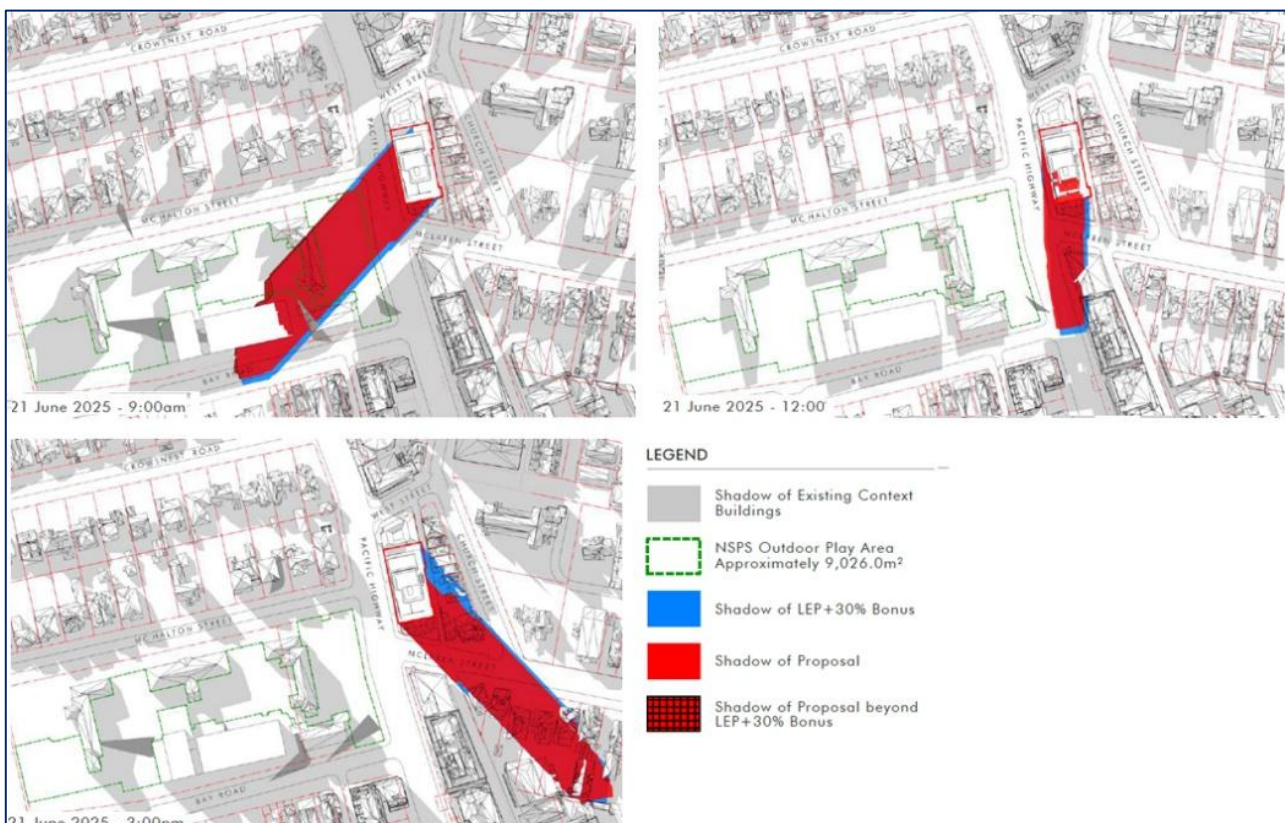


Figure 15 | Overshadowing diagrams (source: Applicant’s submissions report)

The Department has carefully considered the concerns raised in submissions and the submitted shadow diagrams. The Department finds:

- the extent of overshadowing is commensurate with the scale of development anticipated under the North Sydney LEP 2013, including the additional 30% FSR and height bonus permitted under the Housing SEPP. Accordingly, the proposal is not expected to result in any unacceptable impacts on the surrounding area beyond those already contemplated by the applicable planning controls.
- overshadowing to 225 Pacific Highway (the Lucent building) and 245 Pacific Highway (The Montrose building) development is unavoidable, as the sites are located directly south of the proposal. However, these sites would still achieve an appropriate level of amenity, noting overshadowing from the proposal occurs only for approximately 2 hours between 12 midday and 2 pm.
- the proposal would not result in any unreasonable overshadowing of the school site, noting:
 - it would result in less shadowing than a compliant scheme because it provides greater setbacks between the heritage item and the building's lower levels (ground to Level 4) compared with the PP reference scheme and adopts a two-storey podium where the North Sydney DCP 2013 allows a four-storey podium. As a result, the proposal results in an overall net decrease in overshadowing of 10 m² compared to a compliant building envelope
 - overshadowing is confined to the period between 9.00 am and 11.00 am and would not adversely affect school recess periods commencing at 10.40 am (Years 3–6) and 10.50 am (Kindergarten to Year 2). By 11.00 am, shadows have almost entirely cleared the school site, with the exception of a small, non-primary play area adjoining the Pacific Highway, which already contains a dense tree canopy

The Department therefore considers that the overshadowing impacts are consistent with those anticipated under the applicable planning controls for the site, which envisage increased height and density within North Sydney. Accordingly, the Department is satisfied that the proposal would not result in unreasonable overshadowing of neighbouring residential developments or North Sydney Public School.

5.2 Heritage

Part of the site (265 Pacific Highway) is listed as an item of local heritage significance on Schedule 5 of the North Sydney LEP 2013 as The Cloisters, 265 Pacific Highway, North Sydney, 10959. The subject site is also located in the vicinity of several heritage items listed in Schedule 5 of the North Sydney LEP 2013, being:

- 271 Pacific Highway, North Sydney (Union Hotel) – Item I0960
- 182 Pacific Highway, North Sydney (Gates and fence of former Crows Nest House) - Item I0957
- St Thomas’ Church – Item I0885

The site is also located in the vicinity of the McLaren Street heritage conservation area (Figure 8).

The proposal includes the reuse of the existing heritage item including demolition of a rear shed and chimney, conservation or ‘make good’ works to the building, a new glazed opening to the rear elevation, construction of a first-floor balcony and timber decking to the rear, a rear substation, and landscaping.

The EIS was accompanied by a Heritage Impact Statement (HIS) and further heritage advice submitted under the submissions report, which concluded the proposal has been designed to minimise heritage impacts on nearby heritage items and the heritage conservation area. Proposed changes to the heritage-listed building at 265 Pacific Highway are limited to the rear and interior, remaining largely unseen from the main streetscape and resulting in only minor impacts, with some works, such as removing an intrusive rear shed providing heritage benefits. The tower element of the proposal incorporates a red-brick podium and lighter, articulated upper façades to reduce visual bulk and blend traditional and contemporary materials.

Council raised concerns the proposal would result in unacceptable heritage impacts and recommended an alternative design for the podium level. Council also recommended conditions to mitigate heritage impacts should the recommended design amendments to the podium not be adopted. A public submission also raised heritage concerns regarding potential impact to St Thomas’ Church.

In response, the Applicant revised the design of the podium level to address concerns raised by Council to ensure the proposal appropriately responds to the context, scale, and massing of the heritage item, as well as to the buildings at 6-8 McLaren Street and the heritage conservation area.

Design changes to the podium level include lowering the southern brick wall to reflect the ridge line of 6-8 McLaren Street, stepping the brick form of the podium and the awning to reflect the slope of Pacific Highway, amending the material of the entry from brick to glass, and providing articulation through panelling and brick colour change on the southern elevation (Figure 16). The submissions report was also supported by further heritage advice.



Figure 16 | Pacific Highway podium elevation (source: Applicant’s submissions report)

The Department has carefully considered the proposal along with the concerns raised by Council and in public submissions and is satisfied the proposal would not result in adverse heritage impacts for the following reasons:

- the podium uses complementary brick materiality and aligns with the scale of the heritage item, ensuring the heritage item’s façade remains visually dominant while integrating with the varied commercial fabric along Pacific Highway
- the podium height sits below the ridge and gable of the heritage item, and a stepped form has been introduced (including stepped awnings) to follow the natural fall of Pacific Highway, reducing horizontal bulk and ensuring the heritage building retains visual primacy
- the canopy element between the building and the heritage item is low and set back behind the heritage building façade, ensuring no visual competition with the heritage building when viewed from Pacific Highway
- the podium incorporates glass elements to break up the brick mass, an extended brick corner for stronger definition, and articulation to the formerly blank McLaren Street wall through reduced height, detailed panels, and contrasting brickwork
- the northern elevation of the podium and tower design incorporates a cantilevered section of that achieves a minimum 6 m setback from the northern boundary (consistent with the planning proposal reference scheme), and greater setbacks to the podium below and Levels 2 and 3. This results in the opening of the northern section of the ground level to provide a separation with the heritage item building, as well as providing a communal open space area for residents and encourages use of the heritage building
- it would not result in adverse heritage impacts to the heritage item St Thomas’ Anglican Church, noting the physical distance and intervening extant of development, which includes roadways

and residential development to the east, which will ensure that the historic and aesthetic qualities of the heritage item is retained.

The Department has also recommended conditions to manage and mitigate heritage impacts, including:

- a heritage architect to oversee the works, including:
 - submission of plans that clearly illustrate and describe the built fabric of the heritage that is to be demolished, replaced or retained
 - schedule of materials and finishes, certified as being complementary to or compatible with the heritage item
 - any balustrades to the proposed rear addition of the heritage item to be steel palisade
- a heritage induction to be provided to all site personnel by a suitably qualified heritage consultant.

5.3 Other issues

The Department’s consideration of other issues is summarised in Table 7 below.

Table 7 | Assessment of other issues

Issue	Findings and conclusions	Recommended conditions
Apartment Design Guide	<ul style="list-style-type: none"> • The Department has undertaken a detailed assessment of the proposal against the Apartment Design Guide (ADG), at Appendix C. In summary, the Department is satisfied that the proposal is consistent with the ADG’s recommendations and that any variations are minor and acceptable. The proposed variation to building separation is considered in detail in Section 5.1.2. • Overall, the Department is satisfied that the proposed apartments would provide acceptable levels of amenity for future residents. 	No conditions required
Traffic	<ul style="list-style-type: none"> • Public submissions raised concerns that the proposal would increase traffic generation and congestion along Church Lane, and its constrained width could lead to increased property damage, and safety risks for pedestrians, cyclist and motorists using Church Lane. • The EIS included a Transport and Impact Assessment (TIA) that concludes the proposal is expected to generate a net increase of 16 trips during the morning peak and 12 trips during the evening 	Conditions are recommended requiring the preparation of a Transport Access Guide prior to occupation of the development.

Issue	Findings and conclusions	Recommended conditions
	<p>peak which would not cause any adverse impacts to the road networks.</p> <ul style="list-style-type: none"> • The Department has considered the TIA and the concerns raised in public submissions and is satisfied that the additional traffic predicted to be generated by the proposal would not result in adverse impacts to the performance of the surrounding road network. • The Department also notes the proposal includes widening of Church Lane from 3-4.5 m to 6 m along the length of the site boundary (approximately 47 m). This lane width is appropriate to control speeds whilst allowing sufficient width to accommodate vehicles without damaging adjacent properties or fences. • The Department also notes the site is well serviced by public transport helping to reduce the reliance on private car use. The Department is therefore satisfied the proposal would not result in any adverse traffic impacts. 	
Car Parking	<ul style="list-style-type: none"> • Public submissions raised concerns that there is an insufficient number of parking spaces to service the development, potentially increasing pressure on local street parking. • The proposal includes 53 car parking spaces, including 7 accessible spaces, 5 spaces allocated to the affordable housing units, and 1 car wash bay and 5 motorcycle parking spaces. • The Department considers the parking provision acceptable as: <ul style="list-style-type: none"> ○ the number of car parking spaces complies with the Housing SEPP requirements, which requires a minimum of 35 spaces ○ motorcycle parking complies with North Sydney DCP rates, which stipulates a maximum of 5 spaces ○ commercial and visitor parking spaces are not required under the North Sydney DCP ○ the site is well connected to public transport facilities and near amenities which would alleviate any additional on-site parking demand generated by the proposal. 	Conditions are recommended specifying the maximum number of car and motorcycle parking spaces.
Operational Noise	<ul style="list-style-type: none"> • Public submissions raised concerns that the proposed through-site link, linking Pacific Highway to Church Lane would increase 	Conditions are recommended

Issue	Findings and conclusions	Recommended conditions
	<p>noise impacts to dwellings along Church Lane, and requested that the Noise and Vibration Impact Assessment (NVIA) assess operational noise impacts to the school.</p> <ul style="list-style-type: none"> • The NVIA made recommendations to ensure that the noise emissions associated with the use of the proposal, including mechanical plant and equipment will be acceptable to sensitive receivers including the nearby school. • The Applicant also provided supplementary acoustic advice that concluded the proposal’s front entry gate and canopy provides shielding and acts like an acoustic barrier to residents in Church Lane and appropriate noise levels would still be achievable in accordance with the SEPP (Transport and Infrastructure) 2021 and NSW EPA Development Near Rail Corridors and Busy Roads. • The Department is satisfied that the proposal would not exacerbate noise impacts and potential operational noise impacts can be appropriately mitigated and managed, subject to conditions of consent requiring the recommendations of NVIA to be implemented, which include measures such as glazing and mechanical plant recommendations. 	<p>requiring the implementation of the NVIA.</p>
Construction impacts	<ul style="list-style-type: none"> • Public submissions raised concerns regarding construction noise, traffic, dust and construction works affecting surrounding dwellings and a nearby school. In response, the EIS included a preliminary Construction Traffic Management Plan and a Noise Impact Assessment to address these issues. • The Department has reviewed the submitted reports and considered the matters raised in submissions. The Department recommends conditions of consent requiring detailed construction management plans for traffic, air quality, noise, and waste to ensure impacts are appropriately controlled. • While the Department acknowledges that some construction impacts are inevitable, it is satisfied that these impacts can be effectively mitigated and managed to an acceptable level through the implementation of the recommended conditions of consent. 	<p>Conditions are recommended including the preparation of a detailed Construction Management Plan including sub-plans for management of noise, air quality, traffic, waste and standard hours of construction.</p>
Local infrastructure contributions	<ul style="list-style-type: none"> • The proposal is subject to local and state contributions as follows: 	<p>Conditions are recommended for the payment of the</p>

Issue	Findings and conclusions	Recommended conditions
	<ul style="list-style-type: none"> ○ payment of local section 7.11 development contributions in accordance the North Sydney Infrastructure Contributions Plan 2020 for the provision of local amenities ○ payment of Housing and Productivity Contributions towards the cost of providing regional amenities for the 25 market apartments. 	required developer contributions.
Operational Waste Management	<ul style="list-style-type: none"> ● At present, Council’s waste collection vehicle cannot access Church Lane due to its narrow width (varying from 3m to 4m width). As such, residential and commercial waste collection occurs at the kerbside from either West Street or McLaren Street. ● The Applicant’s submissions report included an amended operational waste management plan (OWMP), proposing the following: <ul style="list-style-type: none"> ○ residential chutes and recyclable cupboards on each level ○ a commercial waste storage room, a residential waste storage room and bulky goods room on the lower ground floor ○ building management will transport the residential bins to and from the bin waste storage rooms for kerbside collection on the McLaren Street road frontage for collection by Council’s waste collection vehicle ○ commercial waste collection by a private waste contractor with bins transported to the development’s service vehicle layby in Church Lane for collection ○ provision of FOGO bins for future FOGO collection service ● The OWMP demonstrates compliance with Council’s DCP, including waste and recycling generation rates and storage areas for waste and bulky waste. Turning paths submitted with the submissions report also demonstrates appropriate access to accommodate a private waste collection vehicle (6.4 m SRV) for commercial waste collection in Church Lane. ● Council raised no concerns in relation to operational waste management and advised the Applicant (in separate correspondence submitted to the Applicant) residential waste collection will continue to occur from McLaren Street. 	Conditions are recommended for the on-going waste management and collection procedures, the implementation of the OWMP, and prohibiting bins from being left along McLaren Street.

Issue	Findings and conclusions	Recommended conditions
	<ul style="list-style-type: none"> The Department acknowledges that on-site residential waste collection is generally preferable for large buildings. However, in this case, on-street collection is considered acceptable as the narrow width of Church Lane, prevents Council's residential waste collection vehicles from accessing the site. To support this arrangement, conditions are recommended requiring implementation of the OWMP and prohibiting bins from being left along McLaren Street. Subject to the recommended conditions, the Department is satisfied operational waste can be appropriately managed as sufficient bins and waste areas are provided in accordance with Council's DCP, suitable access is provided for commercial waste collection, and residential waste collection will continue to occur from McLaren Street. 	
Wind	<ul style="list-style-type: none"> The EIS included a Pedestrian Wind Report. The report indicates that wind conditions for trafficable outdoor locations within and around the development will be suitable for their intended uses. The Department has reviewed the Wind Report and is satisfied that the development will result in an acceptable pedestrian environment and alleviate adverse wind impacts, subject to the implementation mitigation measures, including a wind shelter airlock entrance along the Pacific Highway. 	Conditions are recommended requiring the recommendations of the Pedestrian Wind Report to be implemented.
Affordable housing	<ul style="list-style-type: none"> Council requested the proposed affordable housing dwellings remain as affordable housing in perpetuity. The Department notes the proposal complies with the Housing SEPP, which requires the provision of 15% of the total GFA (10 dwellings with a combined area of 974 m²) to be managed as affordable housing by a registered CHP for a minimum of 15 years, and is therefore acceptable. 	Conditions are recommended to secure the affordable housing for a minimum of 15 years in accordance with Housing SEPP.
Obstacle Limitation Surfaces	<ul style="list-style-type: none"> The proposed building height of RL 138.4 AHD is below Sydney Airport's obstacle limitation surface (OLS) of RL 156 AHD. However, crane operations during construction may protrude the OLS. 	Conditions are recommended to require approval from Sydney Airport for any crane

Issue	Findings and conclusions	Recommended conditions
	<ul style="list-style-type: none"> The Department recommends separate approval/s be obtained from Sydney Airport under the Airports (Protection of Airspace) Regulations 1996, for any cranes that may protrude the OLS. 	operation above the OLS.

6 Evaluation

The Department's assessment has considered the relevant matters and objects of the EP&A Act, including the principles of ESD, advice from government agencies, local council and public submissions, and Government policies and plans.

The Department's assessment concludes that the proposal is acceptable as it:

- will support State government priorities to deliver well-located housing, including affordable housing at a highly accessible location
- is consistent with strategic and statutory instruments which permit and incentivise increased height and density where affordable housing is provided
- is of an appropriate bulk and scale and will achieve a high level of residential amenity for future occupants
- will not result in unreasonable overshadowing, view, privacy or traffic/access impacts on adjoining development or the public domain
- is permissible with consent and consistent with the objectives of the zone.

Consequently, the Department considers the proposal is in the public interest and should be approved, subject to conditions.

7 Recommendation

It is recommended that the Director, Key Sites and TOD Assessments, as delegate of the Minister for Planning and Public Spaces:

- considers the findings and recommendations of this report
- accepts and adopts the findings and recommendations in this report as the reasons for making the decision to grant consent to the application
- agrees with the key reasons for approval listed in the notice of decision
- grants consent for the application in respect of the Shop top housing with infill affordable housing, North Sydney (SSD-84416958), subject to the conditions in the attached development consent
- signs the attached development consent (**Appendix E**).

Recommended by:



Rodger Roppolo
Senior Planning Officer
Key Sites and TOD Assessments

Recommended by:



Cameron Sargent
Team Leader
Key Sites and TOD Assessments

8 Determination

The recommendation is adopted by:



9 April 2026

Anthony Witherdin
Director
Key Sites and TOD Assessments

Appendices

Appendix A – List of referenced documents

The associated project documents can be accessed at

<https://www.planningportal.nsw.gov.au/major-projects/projects/shop-top-housing-infill-affordable-housing-253-265-pacific-highway-north-sydney>

Appendix B – Community views for draft Notice of Decision

Table 8 | Key issues and how they have been considered

Issue	Consideration
<p>Built form and height (Council and public issue)</p>	<p>Assessment:</p> <ul style="list-style-type: none"> • The Department has considered the built form and height in detail in Section 5 • The Department considers the built form and height is acceptable as: <ul style="list-style-type: none"> ○ apart from minor variations, the scale and height of the proposal generally complies with the density and height controls of the Housing SEPP and will deliver much-needed housing at this accessible location, including 15% affordable housing ○ the bulk and scale of the proposal is compatible with existing surrounding development ○ the 2-storey podium provides an appropriate scale at its interface with 6-8 McLaren Street and with the existing heritage item ○ the location/placement of the tower is generally consistent with that anticipated under the North Sydney Civic Precinct Planning Study and reference scheme of the planning proposal ○ the built form will allow for a 6 m widening of Church Lane inclusive of footpaths to improve neighbourhood amenity and passive surveillance to the public domain ○ the amenity impacts on surrounding properties, particularly overshadowing, are acceptable. <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> • No conditions are recommended.
<p>Heritage impacts (Council and public issue)</p>	<p>Assessment:</p> <ul style="list-style-type: none"> • The Department considers the proposal would not result in adverse heritage impacts as considered in detail in Section 5, noting: <ul style="list-style-type: none"> ○ proposed changes to the heritage listed building at 265 Pacific Highway are limited to the rear and interior, remaining largely unseen from the main streetscape ○ the podium element of the building appropriately responds to the context, scale, and massing of the heritage item at 265 Pacific Highway, as well as to the buildings at 6-8 McLaren Street and the heritage conservation area

Issue	Consideration
	<ul style="list-style-type: none"> ○ the site is distant from other heritage items <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> • Recommended conditions include the appointment of a heritage architect to oversee works, with plans detailing all heritage fabric to be demolished, replaced or retained, a certified schedule of compatible materials and finishes, steel palisade balustrades to the rear addition of the heritage item, and a heritage induction for all site personnel by a qualified heritage consultant.
<p>Overshadowing impacts (public issue)</p>	<p>Assessment:</p> <ul style="list-style-type: none"> • The Department considers the proposal would not result in adverse overshadowing impacts as considered in detail in Section 5, noting the shadow impact is proportional to the level of development expected under the North Sydney LEP 2013, together with the 30% FSR and height bonus permitted under the Housing SEPP. <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> • No conditions are recommended.
<p>Traffic (public issue)</p>	<p>Assessment:</p> <ul style="list-style-type: none"> • The Department considers the traffic impacts of the proposal on the surrounding road network is minor and acceptable as considered in detail in Section 5. <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> • No conditions are recommended.
<p>Parking (public issue)</p>	<p>Assessment:</p> <ul style="list-style-type: none"> • The Department considers the proposed parking to be acceptable as the proposal meets the non-discretionary development standards for car parking under the Housing SEPP for residential development and is consistent with Council's DCP, as considered in detail in Section 5. <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> • Recommended conditions include maximum car parking provision and preparation of a Transport Access Guide prior to occupation of the development.
<p>Operational noise impacts (public issue)</p>	<p>Assessment:</p> <ul style="list-style-type: none"> • The Department is satisfied that the proposal can achieve acceptable internal acoustic amenity for residents and can be designed to mitigate any

Issue	Consideration
	<p>noise impacts on surrounding properties as considered in detail in detail in Section 5.</p> <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> Recommended conditions include the requirement to implement the recommendations of the NVIA, and operational conditions, including regulating noise emissions from building plant and equipment.
Reflectivity (public issue)	<p>Assessment:</p> <ul style="list-style-type: none"> The Department has recommended conditions to ensure materials do not cause excessive glare that could cause discomfort or hazards to drivers, pedestrians and residents. <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> Recommended conditions include requiring materials to be of low glare and reflectivity properties.
Demand on local infrastructure and services (public issue)	<p>Assessment:</p> <ul style="list-style-type: none"> The Department considers the proposal would not result in any adverse impacts on local infrastructure and services, as the proposal is permissible within the zone, and consistent with NSW Government’s priority to deliver affordable housing in accessible areas that are close to public transport, jobs, and services <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> Recommended conditions include requiring the payment of local section 7.11 development contributions for the provision of local amenities and the payment of Housing and Productivity Contributions towards the cost of providing regional amenities.
Affordable Housing (Council issue)	<p>Assessment:</p> <ul style="list-style-type: none"> Council requested affordable housing dwellings remain as affordable housing in perpetuity. The proposal complies with the Housing SEPP, which requires the provision of 15% of the total GFA (10 dwellings with a combined area of 974 m²) to be managed as affordable housing by a registered Community Housing Provider for a minimum of 15 years only from the issue of the Occupation Certificate <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> Recommended conditions securing the 10 affordable housing units for a minimum of 15 years in accordance with Housing SEPP.

Issue	Consideration
Apartment Design Guidelines (Council issue)	<p>Assessment:</p> <ul style="list-style-type: none"> The Department has considered the Apartment Design Guidelines, and considers the proposal achieves an acceptable level of residential amenity as detailed in Section 5 and Appendix C. <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> No conditions are recommended.
Construction impacts (public issue)	<p>Assessment:</p> <ul style="list-style-type: none"> The Department has recommended conditions to ensure the construction of the development does not have an unreasonable impact on the amenity (traffic, noise, vibration, air quality, etc.) of nearby residents and North Sydney Public School or result in any damage to neighbouring development and public domain. <p>Recommended conditions/response:</p> <ul style="list-style-type: none"> Recommended conditions include the preparation of dilapidation survey for adjoining buildings, geotechnical report for excavation works, and a detailed construction environmental management plan, including sub-plans for the management of noise, air quality, traffic, water and waste.

Appendix C – Statutory considerations

Matters of consideration required by the EP&A Act

Section 4.15 of the EP&A Act sets out matters to be considered by a consent authority when determining a development application. The Department’s consideration of these matters is shown in Table 9.

Table 9 | Section 4.15(1) Matters for consideration

Section 4.15(1) Evaluation	Department’s consideration
(a)(i) any environmental planning instrument	The proposal is consistent with the relevant Environmental Planning Instruments (EPIs) as addressed below.
(a)(ii) any proposed instrument	Not applicable.
(a)(iii) any development control plan	Under clause 11 of the SEPP (Planning Systems) 2021, development control plans (DCPs) do not apply to SSD.
(a)(iiia) any planning agreement	Not applicable.
(a)(iv) the regulations Refer Division 8 of the EP&A Regulation	The SSD application satisfactorily meets the relevant requirements of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation), including the procedures relating to applications (Part 6), public participation procedures for SSD and Schedule 2 of the EP&A Regulation relating to EIS.
(a)(v) repealed	Not applicable.
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	The Department has considered that the likely impacts of the proposed development are acceptable and/or have been appropriately managed by recommended conditions of consent, as addressed in Section 5.
(c) the suitability of the site for the development	The site is suitable for the development as addressed in Section 5 of this report.
(d) any submissions	The Department has considered the submissions received during the exhibition period, as addressed in Section 4 and Section 5.

Section 4.15(1) Evaluation	Department's consideration
(e) the public interest	The Department considers the proposal to be in the public interest.

Objects of the EP&A Act

In determining the application, the consent authority should consider whether the project is consistent with the relevant objects of the EP&A Act (section 1.3) including the principles of ESD. Consideration of those factors is described in Table 10.

As a result of its analysis, the Department is satisfied that the development is consistent with the objectives of the EP&A Act and the principles of ESD.

Table 10 | Objects of the EP&A Act and how they have been considered

Object	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources	<p>The proposed development would promote the social and economic welfare of the community through the delivery of increased affordable housing.</p> <p>The proposed development would not have any impacts on the State's natural or other resources.</p>
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment	<p>The proposal includes ESD initiatives and sustainability measures, which aims to meet the ESD requirements via achieving a 7-star NatHERS for all residential apartments and a BASIX energy score of 62 and water score of 49.</p>
(c) to promote the orderly and economic use and development of land	<p>The proposal represents the orderly and economic use of the land primarily as it would increase commercial and housing opportunities near services and public transport.</p> <p>The proposed land use is permissible, and the form of the development has regard to the planning controls that apply to the site, the character of the locality and the context of surrounding sites.</p>

Object	Consideration
<p>(d) to promote the delivery and maintenance of affordable housing</p>	<p>The proposal would provide the delivery of 10 affordable housing dwellings.</p>
<p>(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats</p>	<p>The proposed development would not have an adverse impact on the natural environment as discussed below.</p>
<p>(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)</p>	<p><u>Built Heritage</u></p> <ul style="list-style-type: none"> The Department is satisfied the proposal would not have any adverse heritage impacts, as addressed in Section 5. <p><u>Aboriginal Cultural Heritage</u></p> <ul style="list-style-type: none"> The Applicant submitted an initial assessment of potential impacts to Aboriginal cultural heritage, in accordance with the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW 2010. The assessment found there were no Aboriginal objects or areas of archaeological potential identified in an archaeological survey, determined the proposal unlikely to impact Aboriginal cultural heritage and further assessments were not required. The assessment recommended an Aboriginal unexpected finds procedure. The Department is satisfied it is unlikely that the proposed development would not reveal any significant archaeological remains given no Aboriginal objects or places are registered within the site, the site has been previously highly developed, and the preliminary assessment confirms the Indigenous archaeological significance of the site is low to nil. The Department concludes the proposal would not result in any significant Aboriginal cultural heritage impacts, subject to implementing the recommendations of the Aboriginal cultural heritage assessment.

Object	Consideration
	<p><u>Historical Archaeology Heritage</u></p> <ul style="list-style-type: none"> The Applicant submitted a Historical Archaeological Assessment (HAA) which confirmed that the site is unlikely to retain any archaeological relics of local or State significance, due to significant development of the site. Heritage NSW reviewed the HAA and provided recommended conditions, including the requirement for a heritage induction and unexpected finds procedure. The Department supports Heritage NSW's recommended conditions. The Department has considered the HAA and comments raised by Heritage NSW and considers the proposal would not result in any adverse historical archaeological impacts when adopting the recommended conditions.
<p>(g) to promote good design and amenity of the built environment</p>	<p>The proposal demonstrates a good design approach to the relevant planning controls and local character. The building has been designed to minimise amenity impacts to neighbours and the surrounding environment and to provide good levels of internal amenity.</p> <p>Other amenity impacts would be managed by the recommended conditions of consent during the construction and operational phases of the development.</p> <p>The Department is satisfied the proposal would achieve a high standard of design and amenity as addressed in Section 5.</p>
<p>(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants</p>	<p>The proposal demonstrates that construction work will be undertaken in accordance with national construction standards, relevant regulation and the site-specific construction management plan. Any impacts during this phase will be monitored and managed in keeping with the conditions of consent set out to mitigate any impacts. Ongoing management and maintenance of the development shall be managed by building management.</p>
<p>(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State</p>	<p>The Department publicly exhibited the SSD application as outlined in Section 4, which included consultation with Council and other government agencies.</p>

Object	Consideration
(j) to provide increased opportunity for community participation in environmental planning and assessment	Section 4 sets out details of the Department’s exhibition of the proposal. Appendix B details Department’s consideration of the issues set out by the community.

Ecologically sustainable development

The EP&A Act adopts the definition of ecologically sustainable development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- the precautionary principle
- inter-generational equity
- conservation of biological diversity and ecological integrity
- improved valuation, pricing and incentive mechanisms.

The Applicant has committed to achieving the following minimum sustainability targets:

- achieve minimum average of 7-star NatHERS rating
- meet or exceed BASIX minimum Energy and Water and thermal performance requirements.

The proposal also provides for good sustainable design through the provision of adequate cross-ventilation and solar access.

The Department has considered the proposal in relation to the ESD principles. The precautionary and inter-generational equity principles have been applied in the decision-making process via a thorough and rigorous assessment of the environmental impacts of the proposal. The conservation principle has been applied through the provision of new landscaping around, on and within the proposal and the valuation principle has been applied through the efficient use of the site, application of sustainability measures and creation of new employment opportunities.

The Department has recommended conditions requiring the implementation of ESD measures and minimum sustainability targets.

Subject to the above conditions, the proposal will be consistent with ESD principles, and the Department is satisfied the future detailed development can encourage ESD, in accordance with the objects of the EP&A Act.

Biodiversity Conservation Act 2016

Section 7.9(2) of the *Biodiversity Conservation Act 2016* (BC Act) requires all SSD applications to be accompanied by a Biodiversity Development Assessment Report (BDAR) unless the Planning Agency Head and the Environment Agency Head determine that the project is not likely to have any significant impact on biodiversity values (as identified in the BC Act and in the *Biodiversity Conservation Regulation 2017*).

A BDAR waiver request was submitted to the Department on 16 June 2025. The Environment Agency Head of DECCEW and the Acting Team Leader Key Sites Assessments, as delegate of the Planning Secretary, determined that the development is not likely to have any significant impact on biodiversity values. Consequently, a BDAR waiver was granted on 10 July 2025.

EP&A Regulation

The EP&A Regulation requires the Applicant to have regard to the *State Significant Development Guidelines* when preparing their application. In addition, the SEARs require the applicant to have regard to the following:

- Social Impact Assessment Guideline for State Significant Projects
- Undertaking Engagement Guidelines for State Significant Projects

The Department considers the requirements of the EP&A Regulations have been complied with.

Environmental Planning Instruments (EPIs)

State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP)

The proposal is SSD under section 2.6(1) and section 26A of Schedule 1 of the Planning Systems SEPP, being an in-fill affordable housing development pursuant to Chapter 2, Part 2, Division 1 of the State Environmental Planning Policy (Housing) 2021 as it is located on land within the Eastern Harbour City in the Six Cities Region with an estimated development cost of more than \$75 million.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The SEPP (Transport and Infrastructure) 2021 aims to facilitate the effective delivery of infrastructure across the State by improving regulatory certainty and efficiency, identifying matters to be considered in the assessment of development adjacent to types of infrastructure development, and providing for consultation with Government agencies about certain development during the assessment process.

Section 2.12 of the SEPP (Transport and Infrastructure) 2021 states that for residential developments adjoining a busy road corridor, bedrooms must not exceed the maximum noise level of 35db(A)

between 10pm and 7am and other rooms must not exceed 40db(A) at any time. The Applicant has provided an Acoustic report which demonstrates the individual apartments will be built to comply with the internal amenity requirements and resist impacts from external noise due to Pacific Highway, with windows and doors closed. Acoustic amenity cannot be retained for the apartments facing Pacific Highway, north and south, if the windows/doors are opened. The Department has assessed this in detail in Section 5.

Section 2.48 requires referral to the relevant electricity supply authority for works in proximity to electricity infrastructure. The proposal has been referred to Ausgrid, who raised no objection and provided standard recommendations for construction.

The proposal has a frontage to the classified road, Pacific Highway. Section 2.119 of the SEPP (Transport and Infrastructure) 2021 requires that the consent authority must ensure the safety, efficiency and ongoing operation of the classified road would not be impacted by the development. The Department finds that the proposal would have a minimal impact on the surrounding road network as detailed in Section 5. The site has vehicular access off Church Lane, in compliance with the SEPP (Transport and Infrastructure) 2021 which recommends vehicular access to be provided by a road other than the classified road where possible.

Under Clause 2.122 and Schedule 3 of the SEPP (Transport and Infrastructure) 2021, the proposed development constitutes a traffic generating development and requires referral to TfNSW and TfNSW (RMS) for comment. The proposal was referred to TfNSW who raised no objection to the development.

Given the above, the Department's assessment of traffic, accessibility, safety, parking and noise finds the proposed development to be consistent with the SEPP (Transport and Infrastructure) 2021, subject to the recommended conditions of consent.

State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

Chapter 2 of the Housing SEPP relates to affordable housing and sets out provisions relating to the development of infill affordable housing.

Chapter 4 of the Housing SEPP seeks to improve the design quality of residential developments and support the increasing demand for residential apartment development.

Section 147(1)(a) of Chapter 4 of the Housing SEPP requires the consent authority to consider the design principles for residential apartment development set out in Schedule 9 while Section 147(1)(b) requires the consent authority to consider the Apartment Design Guide (ADG). Importantly, Section 147(3) of the Housing SEPP does not require a consent authority to require compliance with the design criteria specified in the ADG.

The Department has assessed the development’s compliance with the Housing SEPP in Table 11. The Department has assessed the proposal against the design quality principles for residential apartment development in Table 12 and design principles of the ADG in Table 13.

Table 11 | Department’s consideration of the SEPP (Housing)

Housing SEPP	Consideration
<p>Chapter 2, Part 2 Development for affordable housing</p> <p>15C Development to which division applies</p> <p>(1) This division applies to development that includes residential development if –</p> <p>(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and</p> <p>(b) the affordable housing component is at least 10%, and</p> <p>(c) all or part of the development is carried out –</p> <p>(i) for development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area – in an accessible area, or</p> <p>(ii) for development on other land – within 800 m walking distance of land in a relevant zone or an equivalent land use zone.</p> <p>(2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.</p>	<ul style="list-style-type: none"> • The development is permitted with consent. • The affordable housing component exceeds 10% (15% proposed). • The development is located on land in the Six Cities Region in an accessible area (i.e. within 800 m walking distance of North Sydney railway station, Victoria Cross metro station and within 400 m walking distance of multiple bus stops used by a regular bus service that has at least 1 bus per hour servicing the bus stop between 6 am and 9 pm each day from Monday to Friday; and 8 am and 6 pm Saturdays and Sundays).
<p>16 Affordable housing requirements for additional floor space ratio</p> <p>(2) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable</p>	<ul style="list-style-type: none"> • The proposal includes 15% of the GFA (974 m²) as affordable housing GFA, and therefore subject to an additional floor space ratio and building height bonus of 30%. • The site is subject to two different maximum permissible FSR under the North Sydney LEP 2013, as follows:

Housing SEPP

Consideration

housing component calculated in accordance with subsection (2).

(3) The minimum affordable housing component, which must be at least 10%, is calculated as follows-

Affordable housing component = additional floor space (as a percentage) divided by 2

(4) If the development includes residential flat buildings or shop top housing, the maximum building height used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).

- 253-263 Pacific Highway: 4.83:1, equating to a GFA of 4,802 m²

- 265 Pacific Highway: 1.83:1 equating to a GFA of 191 m²

- The 30% bonus increases the maximum permissible FSR to:

- 253-263 Pacific Highway: 6.28:1 equating to a GFA of 6,242 m²

- 265 Pacific Highway: 2.38:1 equating to a GFA of 249 m²

- The proposal provides a FSR for each site as follows:

- 253-263 Pacific Highway: 6.42:1 or 6,386 m² equating to a variation of 2.31% or 144 m²

- 265 Pacific Highway: 0.81:1 or 85 m²

- The proposal is supported by a Clause 4.6 Request to vary the maximum permissible floor space ratio. The Department considers the variation acceptable, as discussed in Appendix D.

Building height

- The site is subject to three different maximum permissible building heights under the North Sydney LEP 2013, as follows:

- 253-259 Pacific Highway: 37 m

- 261 Pacific Highway: 29 m

- 265 Pacific Highway: 15 m

- The 30% bonus increases the maximum permissible building height to:

- 253-259 Pacific Highway: 48.1 m

- 261 Pacific Highway: 37.7 m

- 265 Pacific Highway: 19 m
- The proposal provides a building height of:
 - 253-259 Pacific Highway: 51.21 m equating to a variation of 3.11m or 6.4%
 - 261 Pacific Highway: 48.38 m equating to a variation of 10.68 m or 28.3%
 - 265 Pacific Highway: no change in building height
- The proposal is supported by a Clause 4.6 Request to vary the maximum permissible building height. The Department considers the variation acceptable, as discussed in Appendix D.

19 Non-discretionary development standards

(2) The following are non-discretionary development standards in relation to the residential development to which this division applies-

- (a) a minimum site area of 450 m²
- (b) a minimum landscaped area that is the lesser of-
 - (i) 35 m² per dwelling, or
 - (ii) 30% of the site area
- (c) a deep soil zone of at least 15% of the site area
- (d) living rooms and private open spaces in at least 70% of dwellings receive at least 3 hours of direct solar access between 9am and 3pm at midwinter
- (e) the following number of parking spaces for dwellings used for affordable housing-
 - (i) for each dwelling containing 1 bedroom – at least 0.4 parking spaces
 - (ii) for each dwelling containing 2 bedrooms – at least 0.5 parking spaces
 - (iii) for each dwelling containing at least 3 bedrooms – at least 1 parking space

- (a) Complies, the site has an area of 1,099 m².
- (b) Does not comply. A minimum landscaped area of 329 m² is required. The proposal provides 106 m² of landscaping comprising 12 m² of deep soil and 94 m² of landscaping over structures. The proposal is supported by a Clause 4.6 Request to vary the minimum landscape requirement. The Department considers the variation acceptable, as discussed in Appendix D.
- (c) Not applicable under section 19(3)
- (d) Not applicable under section 19(3)
- (e) and (f) Complies. A minimum of 4.6 parking spaces (rounded up to 5) is required for affordable housing and a minimum of 37.5 parking spaces (rounded up to 38) is required for the non-affordable housing. The proposal provides 53 car parking spaces, including 7 accessible spaces, 5 spaces allocated to the affordable housing units, and 1 car wash bay

Housing SEPP	Consideration
<p>(f) the following number of parking spaces for dwellings not used for affordable housing-</p> <ul style="list-style-type: none"> (i) for each dwelling containing 1 bedroom – at least 0.5 parking spaces (ii) for each dwelling containing 2 bedrooms – at least 1 parking space (iii) for each dwelling containing at least 3 bedrooms – at least 1.5 parking spaces <p>(g) the minimum internal area, if any, specified by the ADG for the type of residential development.</p> <p>(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.</p>	<p>(g) Complies, the proposal would achieve the minimum internal areas nominated in the ADG. A detailed consideration of the ADG is provided in Table 13.</p>
<p>20 Design Requirements</p> <p>(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with –</p> <ul style="list-style-type: none"> (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition— the desired future character of the precinct. 	<ul style="list-style-type: none"> • The site was recently rezoned to encourage the development of shop top housing. The development is in accordance with the North Sydney Civic Precinct Study and the having regard to the in-fill affordable housing provisions available under the Housing SEPP. • The proposal will result in an appropriately scaled building that generally complies with the built form controls, activates its street frontages, and encourages pedestrian activity. The proposal is consistent with the desired future character of the site having regard to the North Sydney Civic Precinct Study.
<p>21 Must be used for affordable housing for at least 15 years</p> <p>(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development-</p>	<ul style="list-style-type: none"> • The EIS includes a letter from the community housing provider (Cubic) confirming the 10 affordable housing apartments will be managed as affordable housing for at least 15 years commencing from the date an occupation certificate is issued. • A condition is recommended to ensure the affordable housing component will be

Housing SEPP	Consideration
<p>(a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and</p> <p>(b) the affordable housing component will be managed by a registered community housing provider.</p>	<p>managed by a registered community housing provider for at least 15 years.</p>

Chapter 4, Design of residential apartment development

<p>147 Determination of development applications and modification applications for residential apartment development</p> <p>(1) Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following –</p> <p>(a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,</p> <p>(b) the ADG,</p> <p>(c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.</p>	<ul style="list-style-type: none"> • The Department has considered the proposal against the design principles for residential apartment development in Table 12, and the ADG in Table 13. • Section 1(c) does not apply to SSD.
<p>148 Non-discretionary development standards for residential apartment development – the Act, s 4.15</p> <p>(1) The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p>(2) The following are non-discretionary development standards –</p> <p>(a) the car parking for the building must be equal to, or greater than, the recommended minimum</p>	<ul style="list-style-type: none"> • Car parking has been provided in accordance with Clause 19(2)(e) and (f) of the Housing SEPP which governs development for in-fill affordable housing. Further assessment against the parking rates in the ADG is provided in Table 13. • The proposal would achieve the minimum internal areas and ceiling heights nominated in the ADG. A detailed consideration of the ADG is provided in Table 13.

Housing SEPP	Consideration
<p>amount of car parking specified in Part 3J of the ADG,</p> <p>(b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the ADG,</p> <p>(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the ADG.</p>	

Table 12 | Department's consideration of the design quality principles of residential apartment development

Design Quality Principles	Departments Response
1. Context and Neighbourhood Character	<p>The proposal is compatible with the desired future character of the area. The proposal appropriately responds and contributes to the key natural and built features of the area through its architectural and landscape design.</p> <p>The proposal would result in a residential flat building that is commensurate with the scale of existing nearby development and will have acceptable amenity impacts on existing and future neighbouring development.</p>
2. Built Form and Scale	<p>The built form and scale of the proposal is appropriate within the context of the site and the desired future character of the area. The proposed built form is considered in Section 5.</p> <p>The proposal will meet high standards of architectural design and appearance as discussed in Section 5.1.</p>
3. Density	The proposal has an appropriate density and scale, consistent with the character of North Sydney and the provisions of the SEPP (Housing) 2021.
4. Sustainability	The proposal satisfies BASIX requirements in relation to water conservation, thermal performance and energy efficiency, and achieves an average 7 Star NatHERs.
5. Landscape	The proposal includes landscaping to the ground floor and level 13 rooftop communal open space areas, level 11 rooftop, and retention of two existing street trees. The landscaped design includes the planting of 3 new trees, shade shrubs and ground covers which will provide a high level of amenity for occupants and visitors.
6. Amenity	The Department is satisfied the proposal would achieve the principles of SEPP 65 and the intent of the ADG in terms of providing a high level of residential amenity for future residents as addressed in Table 13 below.

Design Quality Principles	Departments Response
7. Safety	The proposal implements design initiatives to ensure safety and security within the development and public domain, including clear and secure entrances to the building and car park, well-lit communal spaces, passive surveillance opportunities from balconies and common areas, and a carparking design with clear sight lines and minimal obstructions.
8. Housing Diversity and Social Interaction	The proposal provides a range of one to four-bedroom apartments with a variety of sizes and types. Of the 35 apartments, 10 will be affordable and 7 will be adaptable. The proposal provides communal open space areas on the ground floor and level 11 rooftop, creating opportunities for social interaction amongst residents.
9. Aesthetics	The proposal demonstrates a high standard of architectural design and uses an appropriate variety of materials, colours and textures which responds to the existing setting and the desired future character of the surrounding neighbourhood.

Table 13 | Department's consideration of ADG best practice design principles

ADG Criteria	Consideration
3A Site Analysis <ul style="list-style-type: none"> Site analysis illustrates design decisions have been based on opportunities and constrains of the site conditions and their relationship to the surrounding context. 	<ul style="list-style-type: none"> The Applicant's Design Report demonstrates how the proposal has been informed by a site analysis, including the opportunities and constraints of the site and the surrounding context.
3B Orientation <ul style="list-style-type: none"> Building types and layouts respond to the streetscape and site while optimising solar access within the development. Overshadowing of neighbouring properties is minimised during mid-winter. 	<ul style="list-style-type: none"> The proposed building is appropriately oriented to respond to the streetscape of Pacific Highway and Church Lane, optimise solar access and minimise overshadowing of neighbouring properties
3C Public Domain Interface <ul style="list-style-type: none"> Transition between public/private domain is achieved without compromising safety and security. Amenity of the public domain is retained and enhanced. 	<ul style="list-style-type: none"> The residential lobby will be suitably separated from the commercial lobby, not compromising the safety and security of the future occupants. Passive surveillance of the public domain will be available from balconies, windows, communal open space and commercial tenancy lining the ground and first floor, activating the street frontage.
3D Communal and Public Open Space <ul style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site. Minimum 50% direct sunlight to principal usable part of the communal 	<ul style="list-style-type: none"> The proposal would provide 276 m² (25% of the site area) of communal open space, comprising 205 m² on the ground floor and 71 m² on the level 13 rooftop. The ground floor communal open space does not achieve 50% direct sunlight in mid-winter with only 16% (32m²) provided

ADG Criteria	Consideration												
<p>open space for a minimum of two hours in mid-winter.</p> <ul style="list-style-type: none"> Communal open space is designed to allow for a range of activities and to maximise safety. Public open space should be well connected with nearby parks and other landscape elements. 	<p>instead. The Department considers the departure from the communal open space numerical guidelines acceptable as:</p> <ul style="list-style-type: none"> 50% (36 m²) of the communal open space on level 13 would achieve direct sunlight to the principal usable part of the communal open space for a minimum of two hours in mid-winter increased private open space is provided for apartments with larger balconies the site is within good proximity to public open space and facilities 												
<p>3E Deep Soil Zones</p> <ul style="list-style-type: none"> For sites greater than 1,500 m², a minimum of 7% of the site with a minimum dimension of 6 m should provide for deep soil zone(s). 	<ul style="list-style-type: none"> The proposal provides 1% of the site area (12 m²) as deep soil zone, with minimum dimensions of 0.75 m. The Department considers the departure from the deep soil zones numerical guidelines acceptable, as: <ul style="list-style-type: none"> the site has limited opportunity for deep soil zones, given its location within the CBD and the site's zoning as a mixed-use zone, where building boundary to boundary is permissible alternative forms of planting are provided such as planters on structures, which provide a total landscape area of 106 m² (equating to 9.6% of the site area) acceptable stormwater management measures are proposed to ensure adequate stormwater drainage 												
<p>3F Visual Privacy</p> <ul style="list-style-type: none"> Minimum separation distance from building to side and rear boundaries: <table border="1" data-bbox="129 1435 630 1883"> <thead> <tr> <th>Height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>Up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>Over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room.</p>	Height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<ul style="list-style-type: none"> The Department notes the proposal would depart from the visual privacy/separation numerical guidelines in respect to the separation distance between the proposal and development at 626 Mowbray Road West and 31-39 Mindarie Street for: <ul style="list-style-type: none"> setback between the proposal and the southern side boundary is 3 m being less than the recommended 6m (for level 2 and 3), 9 m (for levels 3 to 7), and 12 m (for levels 8 to 13) setback between the proposal and the northern side boundary is 6 m being less than the recommended 9 m (for levels 4 to 7), and 12 m (for levels 8 to 11) setback between the proposal and lower density residential development to Church Lane is 8 m being less than the recommended 9 m (for levels 4 to 7) and 12 m (for levels 8 to 13).
Height	Habitable rooms and balconies	Non-habitable rooms											
Up to 12m (4 storeys)	6m	3m											
Up to 25m (5-8 storeys)	9m	4.5m											
Over 25m (9+ storeys)	12m	6m											

ADG Criteria	Consideration
	<ul style="list-style-type: none"> The Department considers the variation acceptable, as discussed in detail in Section 5.
<p>3G Pedestrian Access to Entries</p> <ul style="list-style-type: none"> Building entries and pedestrian access connects to and addresses the public domain. Access, entries and pathways are accessible and easy to identify. Large sites provide pedestrian links for access to streets and connection to destinations. 	<ul style="list-style-type: none"> The proposal incorporates a pedestrian entry from Pacific Highway and Church Lane, with a through-site link. The entries to the buildings address the public domain and have been designed to be easily accessible and easy to identify.
<p>3H Vehicle Access</p> <ul style="list-style-type: none"> Vehicle access points are to be designed to achieve safety, minimise conflicts between pedestrians and vehicles and create high-quality streetscapes. 	<ul style="list-style-type: none"> A vehicle access point is provided for residential access, which is integrated into the façade and located on Church Lane.
<p>3J Bicycle and Car Parking</p>	<ul style="list-style-type: none"> The proposal has incorporated car parking in accordance with the SEPP (Housing) 2021, and motorcycle parking and bicycle parking in accordance with the North Sydney DCP, as discussed in Section 5
<p>4A Solar and Daylight Access</p> <ul style="list-style-type: none"> To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space. Minimum of 70% of apartments' living rooms and private open spaces receive 2hrs direct sunlight between 9 am -3 pm in mid-winter in the Sydney Metropolitan Area. Maximum of 15% of apartments have no direct sunlight between 9 am - 3 pm in mid-winter. Daylight access is maximised where sunlight is limited. Design incorporates shading and glare control, particularly for warmer months. 	<ul style="list-style-type: none"> All units would receive some direct sunlight in mid-winter, complying with the control. The proposal achieves two hours of solar access to 74% (26 units) of the units between 9am and 3pm.
<p>4B Natural Ventilation</p> <ul style="list-style-type: none"> At least 60% of apartments are cross ventilated in the first nine storeys (apartments 10 storeys or greater are deemed to be cross ventilated). 	<ul style="list-style-type: none"> The Applicant's analysis demonstrates that 72% (18 out of 25) of apartments within the first 9 storeys of the building (ground floor to Level 8) will be capable of being naturally cross-ventilated due to their dual aspects. However, the Department notes that all the naturally cross ventilated apartments are either partially (to some

ADG Criteria	Consideration
<ul style="list-style-type: none"> Overall depth of a cross-over or cross-through apartment does not exceed 18 m. 	<p>doors/windows) or fully (all doors/windows) impacted by road noise from the Pacific Highway and are unable to achieve the acoustic amenity criteria when the doors/windows are opened.</p> <ul style="list-style-type: none"> The Acoustic Report acknowledges that the doors and windows of these apartments must be closed to meet internal noise criteria as specified in the Guidelines for Developments Near Busy Road Corridors. The Applicant therefore proposes alternate mechanical ventilation methods to allow airflow in the apartments, including in-ceiling fan coil units and grilles within bulkheads. The Department has reviewed the proposal and considers it has been designed in response to the site's location near a busy and noisy road corridor. Consistent with the principles of Guidelines for Developments Near Busy Road Corridors, winter gardens are provided (in lieu of balconies) on the lower levels, in response to the noisy environment. The Department is satisfied that the proposed ventilation strategy will provide acceptable access to outside air to all apartments and recommends conditions requiring the implementation of the proposed acoustic and mechanical ventilation measures
<p>4C Ceiling Heights</p> <ul style="list-style-type: none"> Measured from finished floor level to finished ceiling level, minimum ceiling heights are: <ul style="list-style-type: none"> Habitable rooms 2.7 m Non-habitable rooms 2.4 m. 	<ul style="list-style-type: none"> A ceiling height of 2.7 m is proposed across all habitable rooms in the proposal with a ceiling height of 2.4 m for bulkheads (to conceal services) limited to non-habitable rooms (kitchen and bathrooms). The commercial levels within the podium have ceiling heights of 4 m. All ceiling heights comply with the guidelines.
<p>4D Apartment Size and Layout</p> <ul style="list-style-type: none"> Minimum apartment sizes: <ul style="list-style-type: none"> Studio 35 m² 1 bedroom 50 m² 2 bedroom 70 m² 3 bedroom 90 m² Every habitable room must have a window in an external wall with a total glass area of not less than 10% of the floor area. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to 2.5 x the ceiling height. In open plan layouts the maximum habitable room depth is 8m from a window. Master bedroom have a minimum area of 10 m² and other bedrooms have 9 m². 	<ul style="list-style-type: none"> All apartments meet the minimum size recommendations. All apartments provide windows in habitable rooms on external walls. All apartments satisfy the habitable room depth and width recommendations. All open plan layout apartments comply with the maximum habitable room depth of 8 m from a window, except for Units 402, 502, 602, 702, 802, 902 and 1002, which have a room depth of approximately 8.5 m, measured from a window to the back of the kitchen. This is considered acceptable, as reasonable solar access will still be achieved, noting a depth of 7.8 m is achieved to the kitchen bench.

ADG Criteria	Consideration
<ul style="list-style-type: none"> • Bedrooms have a minimum dimension of 3m (excluding wardrobes). • Living rooms have a minimum width of: <ul style="list-style-type: none"> - 3.6m for studio and one bed - 4 m for 2 and 3 bed. • The width of cross-over or cross-through apartments are at least 4m internally. 	
<p>4E Private Open Space and Balconies</p> <ul style="list-style-type: none"> • Primary balconies are provided to all apartments providing for: <ul style="list-style-type: none"> - Studios apartments min area 4 m² - 1-bedroom min area 8 m² min depth 2m - 2-bedroom min area 10 m² min depth 2m - 3-bedroom min area 12 m² min depth 2.5m. • For apartments at ground floor level or similar, private open space must have a minimum area of 15 m² and depth of 3 m. • Private open space and primary balconies are integrated into and contribute to the architectural form and detail of the building. • Primary open space and balconies maximises safety. 	<ul style="list-style-type: none"> • All apartments include balconies that meet the minimum size and depth recommendations. • The proposed balconies within each building are suitably integrated into, and contribute to, the architectural form and detail of the building. • Apartments balconies achieve the minimum size and depth.
<p>4F Common Circulation and Spaces</p> <ul style="list-style-type: none"> • Maximum number of apartments off a circulation core is eight – where this cannot be achieved, no more than 12 apartments should be provided off a single circulation core. • For buildings 10 storeys and over, the maximum number of apartments sharing a single lift is 40. • Natural ventilation is provided to all common circulation spaces where possible. • Common circulation spaces provide for interaction between residents. • Longer corridors are articulated. 	<ul style="list-style-type: none"> • A maximum of 5 apartments is proposed off a circulation core with two lifts. • The residential lobbies and circulation spaces provide opportunities for interaction in each building. Windows for daylight are provided to all corridors.

ADG Criteria	Consideration
<p>4G Storage</p> <ul style="list-style-type: none"> The following storage is required (with at least 50% located within the apartment): <ul style="list-style-type: none"> Studio apartments 4 m³ 1-bedroom apartments 6 m³ 2-bedroom apartments 8 m³ 3-bedroom apartments 10 m³ 	<ul style="list-style-type: none"> Residential storage within each building is located within the apartments and individual storage cages within the basement. The proposed volume of storage for each apartment is provided in accordance with the minimum rates recommended in the ADG, including the provision of at least 50% of the required storage within the apartments.
<p>4H Acoustic Privacy</p> <ul style="list-style-type: none"> Noise transfer is minimised through the siting of buildings and building layout and minimises external noise and pollution. Noise impacts within apartments are mitigated through layout and acoustic treatments. 	<ul style="list-style-type: none"> Noise transfer will be minimised through the appropriate layout of the buildings. Apartments are appropriately stacked and laid out to prevent noise transfer between apartments.
<p>4J Noise and Pollution</p> <ul style="list-style-type: none"> In noisy or hostile environments, the impacts of external noise and pollution are minimised through the careful siting and layout of buildings. Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission. 	<ul style="list-style-type: none"> In accordance with the recommendations of the acoustic report, apartments will be appropriately insulated to ensure compliance from external noise sources.
<p>4K Apartment Mix</p> <ul style="list-style-type: none"> Provision of a range of apartment types and sizes. Apartment mix is distributed to suitable locations within the building. 	<ul style="list-style-type: none"> The proposal offers a variety of apartment types and sizes, logically distributed within each building. The development proposes a total of 35 apartments in the following mix: <ul style="list-style-type: none"> 1 bed: 4 apartments (11%) 2 bed: 6 apartments (17%) 3+ bed: 25 apartments (71%) The development proposes a range of apartment types and sizes to cater for different households, including a range of market and affordable housing types, as follows: <ul style="list-style-type: none"> 25 market dwellings, comprising of 24 x 3-bedroom units and 1 x 4-bedroom units 10 affordable housing dwellings, comprising of 4 x 1-bedroom units and 6 x 2-bedroom units.
<p>4M Facades</p>	<ul style="list-style-type: none"> The proposed facades have been designed to break down the scale of the proposed building and will offer a positive

ADG Criteria	Consideration
<ul style="list-style-type: none"> • Building facades provide visual interest along the street while respecting the character of the local area. • Building functions are expressed by the façade. 	<p>contribution to the character of the development, the heritage item and streetscape.</p>
<p>4N Roof Design</p> <ul style="list-style-type: none"> • Roof treatments are integrated into the building design and positively respond to the street. • Opportunities to use roof space for accommodation and open space is maximised. • Roof design includes sustainability features. 	<ul style="list-style-type: none"> • The building would incorporate a flat roof with a parapet. • Services and the lift core have been integrated with the design. • Communal open space is provided on the level 13 rooftop and private open space on level 11.
<p>4O Landscape Design and 4P Planting on Structure</p> <ul style="list-style-type: none"> • Landscape design is viable and sustainable. • Landscape design contributes to streetscape and amenity. • Appropriate soil profiles are provided and plant growth is maximised (selection/maintenance). • Plant growth is optimised with appropriate selection and maintenance. • Building design includes opportunity for planting on structure. 	<ul style="list-style-type: none"> • A detailed landscape plan has been provided for the site, including the ground level and roof garden communal open space, and level 11 private terrace. Proposed landscaping includes 3 trees, shrubs and grasses across the development. • Adequate soil depth, consistent with ADG recommendations, is proposed.
<p>4Q Universal Design</p> <ul style="list-style-type: none"> • Universal design features are included in apartment design to promote flexible housing for all community members. Developments should achieve a benchmark of 20% of the apartments incorporating the Liveable Housing Guideline's silver level universal design features. • A variety of apartments with adaptable designs are provided. • Apartment layouts are flexible and accommodate a range of lifestyle needs. 	<ul style="list-style-type: none"> • The proposed development provides a total of 7 adaptable dwellings. • The Applicant's Access Assessment Report confirms all units would incorporate the silver level universal design features under the Liveable Housing Guideline's. • Apartments are of a size and layout that allows for flexible use and design and therefore can accommodate a range of lifestyle needs.

ADG Criteria	Consideration
4T Awning and Signage <ul style="list-style-type: none"> • Awnings are well located and complement and integrate with the building. • Signage responds to the context and design streetscape character. 	<ul style="list-style-type: none"> • Lobby entries would be protected by awnings and the building above. • The proposal does not include signage.
4U Energy Efficiency <ul style="list-style-type: none"> • Development incorporates passive environmental and solar design. • Adequate natural ventilation minimises the need for mechanical ventilation. 	<ul style="list-style-type: none"> • The proposal would achieve BASIX water, thermal and energy efficiency targets. • The building has been designed to maximise access to natural light and ventilation.
4V Water Management and Conservation <ul style="list-style-type: none"> • Potable water use is minimised. • Urban stormwater is treated on site before being discharged to receiving waters. • Flood management systems are integrated into the site design. 	<ul style="list-style-type: none"> • Water efficient fittings and appliances would be installed. • Stormwater would be collected in a 45 m³ OSD tank and would be treated onsite, before discharging to Council's drainage system. • Flood management systems are not required.
4W Waste Management <ul style="list-style-type: none"> • Waste storage facilities are designed to minimise impacts on streetscape, building entry and residential amenity. • Domestic waste is minimised by providing safe and convenient source separation and recycling. 	<ul style="list-style-type: none"> • The proposal includes a dedicated commercial waste room and a residential waste room area at ground level and residential waste would be transported to the waste room area via chutes. • Building management would transfer bins from the dedicated storage areas to the service layby for private collection for commercial waste, with residential waste collection continuing to occur from McLaren Street. • Separate waste and recycling containers would be provided.
4X Building Maintenance <ul style="list-style-type: none"> • Building design detail provides protection from weathering. • Systems and access enable ease of maintenance. • Material selection reduced ongoing maintenance cost. 	<ul style="list-style-type: none"> • The proposed building has been designed to incorporate robust materials and allow ease of maintenance.

State Environmental Planning Policy (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether the land is contaminated; and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out; and if the land requires remediation to be made suitable for the purpose

for which development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

The EIS included an assessment of SEPP (Resilience and Hazards) 2021, a Detail Site Investigation (DSI), and a Remediation Action Plan (RAP). The DSI identified contamination within the shallow fill material at site. The DIS recommended remediation of the site and a hazardous buildings survey prior to demolition works at 253 and 265 Pacific Highway.

The RAP identifies that the shallow fill material located at 265 and 253 Pacific Highway, will be the extent of remediation, and proposes a remediation strategy of excavation of all contaminated fill material and disposal offsite to an EPA licensed waste facility. The RAP also recommends validation of the remedial works to be conducted by an appropriately qualified environmental consultant to ensure remediation has been achieved.

The Department considers the site can be made suitable for the proposed development subject to remediation being carried out and is satisfied that the land will be remediated before the land is used for shop top housing with infill affordable housing, subject to recommended conditions requiring implementation of the RAP, implementation of a hazardous building survey prior to demolition works, preparation of an unexpected finds protocol for contamination and submission of Site Audit Reports to certify the suitability of the site.

State Environmental Planning Policy (Sustainable Buildings) 2022

The State Environmental Planning Policy (Sustainable Buildings) 2022 (Sustainable Buildings SEPP) provides requirements for the design and construction of more sustainable buildings. The proposal relates to the erection of a BASIX building under paragraph (a) of the definition of BASIX development in the Environmental Planning and Assessment Regulation 2021.

The Applicant has submitted a BASIX Certificate, which confirms the proposal would achieve BASIX water, thermal and energy efficiency targets established in Schedule 1.

Sydney Regional Environmental Plan (Biodiversity and Conservation) 2021

Relevant chapters of this SEPP (Biodiversity and Conservation) 2021 aim to protect the biodiversity values of vegetation in non-rural areas and to protect the water quality and quantity of water catchments.

The Department considers that water quality would be appropriately addressed through erosion and sediment control measures during construction. Stormwater quality controls are not required for implementation on site under Council's DCP requirements, as the site area is less than 2,000 m²

The site is located within the Sydney Harbour Catchment area. The proposal is consistent with the relevant Planning Principles of the SEPP (Biodiversity and Conservation) 2021 and would not have any significant adverse impact on the Sydney Harbour Catchment.

North Sydney Local Environmental Plan 2013

The Department considers the development is consistent with the relevant provisions of the North Sydney LEP 2013. Consideration of relevant provisions of the North Sydney LEP 2013 are addressed in Table 14 below.

Table 14 | Department's consideration of North Sydney LEP 2013

Clause	Department's consideration
Clause 2.3 – Zone objectives and Land Use Table	<ul style="list-style-type: none"> The proposal for shop top housing is permissible with consent in the MU1 mixed use zone. The proposal is consistent with the objectives of the zone as it would provide commercial uses, provides active street frontages through non-residential uses on the ground floor and provides for housing, including affordable housing.
Clause 4.3 – Height of buildings	<ul style="list-style-type: none"> The maximum height permitted under the North Sydney LEP for the site is 37 m for 253-259 Pacific Highway, 29 m for 261 Pacific Highway and 15 m for 265 Pacific Highway. However, the proposal is eligible for a 30% height bonus under the SEPP (Housing) 2021, which equates to a maximum building height of 48.1 m for 253-259 Pacific Highway, 37.7 m for 261 Pacific Highway and 19 m for 265 Pacific Highway. The proposed development has a maximum height of: <ul style="list-style-type: none"> 253-259 Pacific Highway: 51.21 m equating to a variation of 3.11 m or 6.4% 261 Pacific Highway: 48.38 m equating to a variation of 10.68 m or 28.3% 265 Pacific Highway: no change in building height The proposal is supported by a Clause 4.6 Request to vary the maximum permissible building height for 253-259 Pacific Highway and 261 Pacific Highway. The Department considers the variation acceptable, as discussed in Appendix D.
Clause 4.4 – Floor space ratio	<ul style="list-style-type: none"> The maximum FSR permitted by the North Sydney LEP is 4.83:1 for 253-263 Pacific Highway, and 1.83:1 for 265 Pacific Highway. However, the proposal is eligible for a 30% bonus FSR under the SEPP (Housing) 2021, which equates to a maximum FSR of 6.28:1 for 253-263 Pacific Highway, and 2.38:1 for 265 Pacific Highway. The proposed development has a maximum FSR of: <ul style="list-style-type: none"> 253-263 Pacific Highway: 6.42:1 or 6,386m² equating to a variation of 2.31% or 144m² 261 Pacific Highway: 0.81:1 or 85m² The proposal is supported by a Clause 4.6 Request to vary the maximum permissible floor space ratio for 253-263 Pacific Highway.

Clause	Department's consideration
	<p>The Department considers the variation acceptable, as discussed in Appendix D.</p>
<p>Clause 4.4A – Non residential floor space</p> <p>(2) The non-residential floor space ratio for all buildings within a site on any land must not be less than 1:1</p> <p>(3) Development consent must not be granted to the erection of a building on Zone MU1 Mixed Use unless the consent authority is satisfied that the building will have an active street frontage after its erection.</p>	<ul style="list-style-type: none"> • A non-residential FSR of 1:1 (1,099 m²) is required. The proposal provides an FSR of 0.95:1 (1,045 m²), which represents a shortfall of 4.9% or 54m². • The proposal is supported by a Clause 4.6 Request to vary the non-residential floor space requirement. The Department considers the variation acceptable, as discussed in Appendix D. • The proposal includes active street frontages to Pacific Highway and Church Lane, noting no residential accommodation is located on the ground floor.
<p>5.10 Heritage conservation</p>	<ul style="list-style-type: none"> • The Department has considered the potential heritage impacts of the proposal and considers the identified impacts acceptable, as discussed in Section 5.
<p>6.10 Earthworks</p>	<ul style="list-style-type: none"> • The Department considers the proposed earthworks would not have detrimental impact on environmental functions, processes, neighbouring uses, cultural or heritage items, subject to conditions.

Appendix D – Consideration of variation to development standards

Non-Residential Floor Space

The proposal seeks to vary a principal development standard prescribed by clause 4.4A - Non Residential floor space ratio of the North Sydney LEP 2013 which requires a minimum of 1:1 floor space ratio of all buildings to be used as non-residential floor space.

A non-residential FSR of 1:1 (equating to a GFA of 1,099 m²) is required. The proposal provides a non-residential FSR of 0.95:1 (equating to a GFA of 1,045 m²), which represents a variation of 4.9% or shortfall of 54 m².

Clause 4.6(2) of the North Sydney LEP 2013 permits the consent authority to consider a variation to a development standard imposed by an environmental planning instrument. The aim of clause 4.6 is to provide flexibility in applying development standards to achieve better development outcomes. The NRFS development standard is not excluded from the operation of clause 4.6 in the North Sydney LEP 2013.

Clause 4.6(3) states that development must not be granted consent unless the consent authority is satisfied that the Applicant has demonstrated that the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

In accordance with section 35B of the EP&A Regulation, the Applicant has prepared a written request to vary the non-residential floor space development standard. The following provides an assessment of the proposed exception to the non-residential floor space development standard by applying the tests summarised by Chief Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827*, as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34]*.

1. Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances?

The Applicant's Clause 4.6 variation request relies on the first of the five Wehbe tests and argues that the development achieves the objectives of the non-residential floor space standard despite the non-compliance.

The Applicant's request demonstrates that compliance with the standard is unreasonable and unnecessary as the objectives of clause 4.4A are achieved for the following reasons:

- the proposal includes commercial uses at street level, creating a continuous and active frontage along the Pacific Highway. The retention and upgrading of the heritage-listed building at 265 Pacific Highway will further enhance activation of the street frontage.

- the proposal provides an appropriate mix of residential uses (5,392 m²) and non-residential uses (1,045 m²)
- the proposal includes a variety of commercial tenancies and sizes, across both the ground floor and level 1 of the building and the heritage listed building, providing a suitable mix of retail and commercial office spaces for future occupants.
- the proposal includes a suitable level of non-residential floor space (1,045 m²) provided to promote employment and reflect the hierarchy of commercial centres, noting the North Sydney Civic Precinct Planning Study identifies the site within a Southern Transition Area along the Pacific Highway, providing a preferred building envelope and supporting an 8-10 storey, mixed-use redevelopment, to transition between the denser, high-rise buildings of the North Sydney CBD to the south, and the adjoining lower scale, heritage, civic and residential areas northwards up to Crows Nest.

The Department is satisfied that strict compliance with clause 4.4A of the WLEP is unnecessary in the circumstances and that the first of the five-part tests in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been satisfied.

2. *Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?*

The Applicant's written request offers the following environmental planning grounds to justify contravening the development standard:

- the proposed non-residential floor space rate achieves the intent of the North Sydney Civic Precinct Planning Study to deliver a reasonable amount of employment floorspace in the MU1 Mixed Use zone
- additional non-residential floor space would require a comparable reduction in residential floor space including affordable apartments and would be contrary to the objectives of the Housing SEPP to facilitate the delivery of in-fill affordable housing
- achieving compliance would require an additional 54 m² of non-residential floor space, necessitating design amendments to require either additional podium levels, commercial floor space within the towers or reduced landscaping, resulting in a poorer design outcome
- a shortfall of 4.9% (54 m²) is relatively minor and would likely be imperceptible in a CBD location that already has significant non-residential floor space and is expected to grow through the development of other similar mixed-use and new commercial developments elsewhere in the CBD.

The Department is satisfied that the Applicant's written request has sufficiently identified environmental planning grounds that justify contravening the development standard for the reasons summarised above.

In conclusion, the Department is satisfied the Applicant has demonstrated that strict compliance with clause 4.4A of the North Sydney LEP 2013 is unreasonable and unnecessary in the context of the proposal and that there are sufficient environmental planning grounds to justify the contravention.

Landscaped Area

The proposal seeks to vary a non-discretionary development standard prescribed by clause 19(2)(b) - Non-discretionary development standards of the Housing SEPP, which requires a minimum landscaped area that is the lesser of 35 m² per dwelling, or 30% of the site area.

A minimum landscaped area of 30% of the site area is required (equating to 329 m²). The proposal provides a landscaped area of 9.6% of the site area (equating to 106 m²), which represents a variation of 67% or 223 m².

Clause 4.6(2) of the North Sydney LEP 2013 permits the consent authority to consider a variation to a development standard imposed by North Sydney LEP 2013 or any other environmental planning instrument. The aim of clause 4.6 is to provide flexibility in applying development standards to achieve better development outcomes. The development standard is not excluded from the operation of clause 4.6 in the North Sydney LEP 2013.

Clause 4.6(3) states that development must not be granted consent unless the consent authority is satisfied that the Applicant has demonstrated that the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

In accordance with section 35B of the EP&A Regulation, the Applicant has prepared a written request to vary the landscaping area development standard. The following provides an assessment of the proposed exception to the landscape area development standard by applying the tests summarised by Chief Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827, as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34].

1. Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances?

The Applicant's Clause 4.6 variation request relies on the first of the five Wehbe tests and argues that despite the non-compliance, the development achieves the objectives of the non-discretionary standard under clause 19(1), the broader principles of the Housing SEPP under clause 3, and the

objective of the in-fill affordable housing division under clause 15A, Division 1 – Infill Affordable Housing, Part 2 of the Housing SEPP.

The Applicant's request demonstrates that compliance with the standard is unreasonable and unnecessary as the objectives and principles of Housing SEPP are achieved noting the scale, bulk and density of the proposal provides a suitable level of amenity with varied forms of communal open space and landscaping.

The Department is satisfied that strict compliance with clause 19(2)(b) of the Housing SEPP is unnecessary in the circumstances and that the first of the five-part tests in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been satisfied.

2. Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?

The Applicant's written request offers the following environmental planning grounds to justify contravening the development standard:

- the site's location within the CBD and proposed building typology provides limited space for landscaping, noting:
 - a podium containing commercial uses, which is required by the MU1 zone and by the active street frontage intent of Clause 4.4A of the North Sydney LEP 2013
 - the retention and adaptive reuse of the heritage item, the footprint of which cannot contribute to landscaped area
 - a constrained ground floor configuration where at grade planting cannot be increased without removing required pedestrian circulation, fire egress paths, or eliminating commercial tenancies
- achieving compliance would require an additional 223 m² of landscaped area, necessitating design amendments to require deleting the podium commercial floors, removing basement parking, or reducing the building footprint of the heritage item, resulting in a poorer design outcome.

The Department is satisfied that the Applicant's written request has sufficiently identified environmental planning grounds that justify contravening the development standard for the reasons summarised above.

In conclusion, the Department is satisfied the Applicant has demonstrated that strict compliance with clause 4.4A of the North Sydney LEP 2013 is unreasonable and unnecessary in the context of the proposal and that there are sufficient environmental planning grounds to justify the contravention.

Building Height

The proposal seeks a variation to the maximum building height permitted under section 16 of the Housing SEPP.

The proposal is located on the portion of the site that is mapped on the North Sydney LEP 2013 Heights of Building Map with a maximum permissible height of (Figure 17):

- 253-259 Pacific Highway: 37 m
- 261 Pacific Highway: 29 m
- 265 Pacific Highway: 15 m

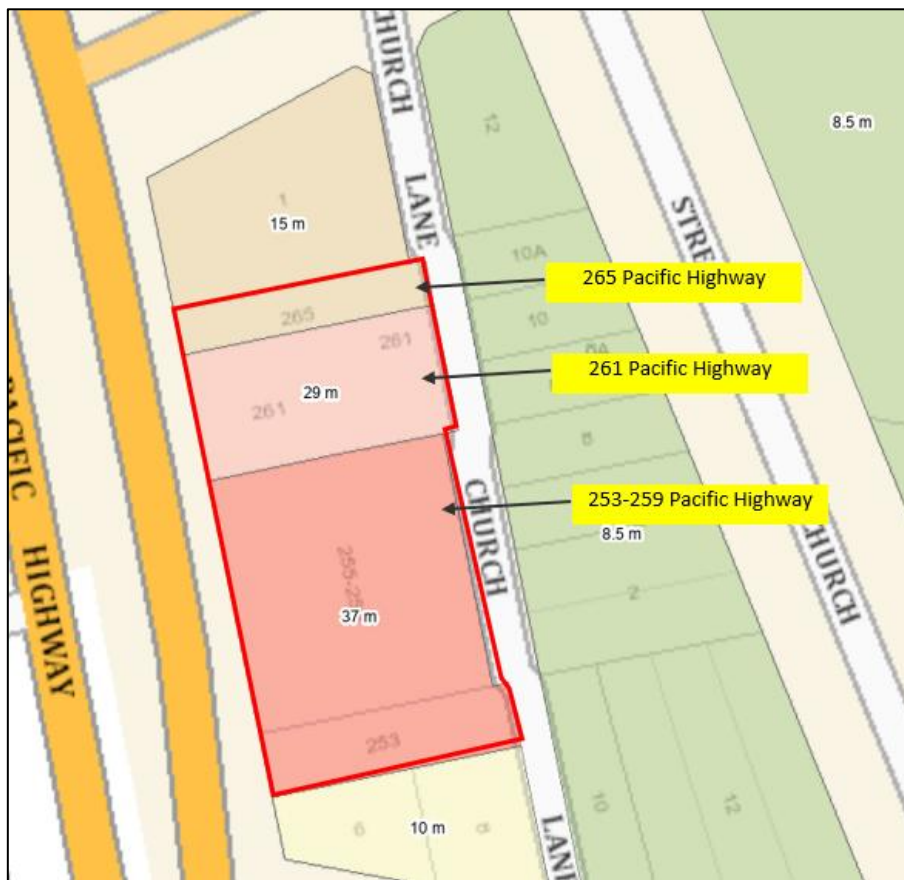


Figure 17 | Extract of North Sydney LEP 2013 Height of Building Map (base source: NSW Planning Spatial Viewer)

As the proposal includes 15% infill affordable housing, section 16 of the Housing SEPP allows for a 30% bonus to the permissible maximum building height. The site, therefore, has a maximum permissible building height of:

- 253-259 Pacific Highway: 48.1 m
- 261 Pacific Highway: 37.7 m
- 265 Pacific Highway: 19 m

The development over 265 Pacific Highway complies with the maximum permissible building height. The elements of the building that exceed the building height (as summarised in Table 15 and Figure 18) include:

- 253-259 Pacific Highway: a portion of the top storey of residential unit 1201, the fire staircase, lift over run, communal rooftop open space, and mechanical plant and services area
- 261 Pacific Highway: the balconies of Levels 12 and 13, the roof parapet and pool decking of level 11

Table 15 | Summary of proposed building height variations

Location	Development standard	Proposed Height	Variation
253-259 Pacific Highway	48.1 m	Ranges from 48.445 m (RL 135.1) to 51.21 m (RL 138.4)	Ranges from 0.345 m (0.7%) to 3.11 m (6.4%)
261 Pacific Highway	37.7 m	Ranges from 39.75 m (RL 128.9) to 48.38 m (RL 137.00)	Ranges from 2.095 m (5.5%) to 10.68 m (28.3%)
265 Pacific Highway (heritage building)	19 m	No change to existing building height	Not applicable

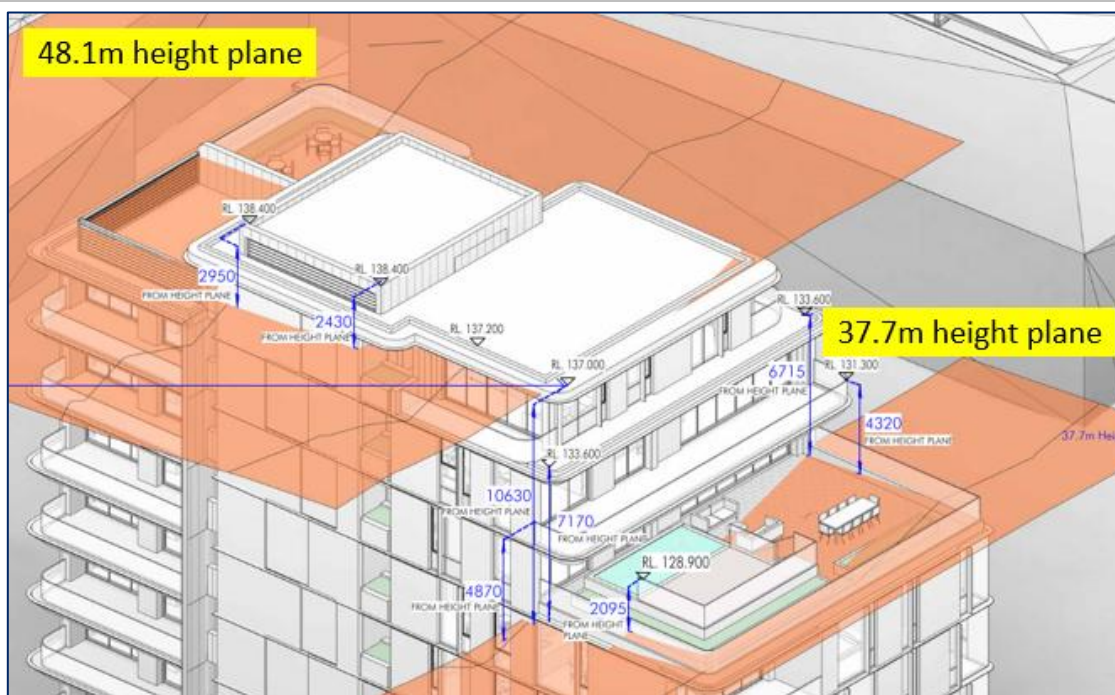


Figure 18 | Extract of height plane diagram with extent of height breach in red (base source: Applicant’s EIS)

Clause 4.6(2) of the North Sydney LEP 2013 permits the consent authority to consider a variation to a development standard imposed by an environmental planning instrument. The aim of clause 4.6 is to provide flexibility in applying development standards to achieve better development outcomes. The building height development standard is not excluded from the operation of clause 4.6 in the North Sydney LEP 2013.

Clause 4.6(3) states that development must not be granted consent unless the consent authority is satisfied that the Applicant has demonstrated that the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

In accordance with section 35B of the EP&A Regulation, the Applicant has prepared a written request to vary the building development standard. The following provides an assessment of the proposed exception to the building height development standard by applying the tests summarised by Chief Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827, as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 [34].

1. Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances?

The Applicant's Clause 4.6 variation request relies on the first of the five Wehbe tests and argues that the development achieves the objectives of the building height development standard under the North Sydney LEP 2013 and objectives of Division 1, Chapter 2 - Infill Affordable Housing of the Housing SEPP, despite the non-compliance.

The Applicant's request demonstrates that compliance with the building height development standard is unreasonable and unnecessary as the development is consistent with the building height development standard objectives under the North Sydney LEP 2013 and objectives of Division 1, Chapter 2 - Infill Affordable Housing of the Housing SEPP, for the following reasons:

- the site's 4 to 5 m north-south fall is managed by absorbing the slope within the ground-floor commercial tenancies, allowing continuous activation to Pacific Highway and vehicular access from Church Lane, while the tower above is stepped down in the north to protect the heritage item at 265 Pacific Highway
- the proposal is expected to have minimal impact on key southern and south-eastern harbour and CBD views, with only limited effects on other district outlooks already dominated by taller buildings within North Sydney and Crows Nest
- the variation will not result in unreasonable privacy or overshadowing impacts

- the proposal ensures compatibility at zone boundaries by delivering a mixed-use development that appropriately transitions between the Pacific Highway and the lower-scale residential and community zones to the east and west
- the scale of the proposal is compatible with the desired future scale and character of the locality which envisages high-density mixed-use development
- the proposal will facilitate the delivery of 10 new in-fill affordable dwellings to meet the needs of very low to moderate income households.

The Department is satisfied that strict compliance with the building height development standard is unnecessary in the circumstances and that the first of the five-part tests in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been satisfied.

2. *Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?*

The Applicant's written request offers the following environmental planning grounds to justify contravening the development standard:

- the building height variation is generally a result of the site's topography, noting a 4-5 m fall from north to south
- the additional floor space available under the Housing SEPP is allocated to the tower element of the building rather than the portion of the site containing the heritage item, ensuring heritage impacts are minimised
- the proposal would not result in any unreasonable impacts on neighbouring development in terms of view loss, overshadowing, bulk and scale or privacy
- strict compliance would mean less housing as the top storey of the building would need to be removed to comply with the building height control.

The Department is satisfied that the Applicant's written request has sufficiently identified environmental planning grounds that justify contravening the development standard for the reasons summarised above.

In conclusion, the Department is satisfied the Applicant has demonstrated that strict compliance with the building height development standard is unreasonable and unnecessary in the context of the proposal and that there are sufficient environmental planning grounds to justify the contravention.

Floor Space Ratio

The proposal seeks a variation to the maximum floor space ratio permitted under Section 16 of the Housing SEPP.

The proposal is located on the portion of the site that is mapped on the North Sydney LEP 2013 FSR Map with a maximum FSR of (Figure 19):

- 253-259 Pacific Highway: 4.83:1 (equating to a maximum GFA of 4802 m²)
- 265 Pacific Highway: 1.83:1 (equating to a maximum GFA of 191 m²)



Figure 19 | Extract of North Sydney LEP 2013 FSR Map (base source: NSW Planning Spatial Viewer)

As the proposal includes 15% infill affordable housing, section 16 of the Housing SEPP allows for a 30% bonus to the permissible maximum FSR. The site, therefore, has a maximum permissible FSR of:

- 253-259 Pacific Highway: 6.28:1 (equating to a maximum GFA of 6,242 m²)
- 265 Pacific Highway: 2.38:1 (equating to a maximum GFA of 249 m²)

The development over 265 Pacific Highway complies with the maximum permissible FSR. However, a FSR of 6.42:1 (6,386 m²) is proposed for 253-263 Pacific Highway, resulting in a variation of 2.31% or 144 m², as summarised in Table 16.

Table 16 | Summary of proposed FSR variation

Location	Development standard	Proposed FSR	Variation
253-263 Pacific Highway	6.28:1 (GFA 6,242 m ²)	6.42:1 (GFA 6,386 m ²)	2.31% or 144 m ²

Location	Development standard	Proposed FSR	Variation
265 Pacific Highway (heritage building)	2.38:1 (GFA 249 m ²)	0.81:1 (GFA 85 m ²)	Complies
Combined site FSR	5.91:1 (GFA 6,491 m ²)	5.86:1 (GFA 6,437 m ²)	Complies

Clause 4.6(2) of the North Sydney LEP 2013 permits the consent authority to consider a variation to a development standard imposed by an environmental planning instrument. The aim of clause 4.6 is to provide flexibility in applying development standards to achieve better development outcomes. The FSR standard is not excluded from the operation of clause 4.6 in the North Sydney LEP 2013.

Clause 4.6(3) states that development must not be granted consent unless the consent authority is satisfied that the Applicant has demonstrated that the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

In accordance with section 35B of the EP&A Regulation, the Applicant has prepared a written request to vary the floor space ratio development standard. The following provides an assessment of the proposed exception to the floor space ratio development standard by applying the tests summarised by Chief Justice Preston of the NSW Land and Environment Court in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* and *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827*, as reaffirmed in *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7 [34]*.

1. Has the consent authority considered a written request demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances?

The Applicant's Clause 4.6 variation request relies on the first of the five Wehbe tests and argues that the development achieves the objectives of the floor space ratio development standard under the North Sydney LEP 2013 and objectives of Division 1, Chapter 2 - Infill Affordable Housing of the Housing SEPP, despite the non-compliance.

The Applicant's request demonstrates that compliance with the building height development standard is unreasonable and unnecessary as the development is consistent with the floor space ratio development standard objectives under the North Sydney LEP 2013 and objectives of Division 1, Chapter 2 - Infill Affordable Housing of the Housing SEPP, for the following reasons:

- the proposal is consistent with the desired future character and zone objectives for the land, noting the scale and density are generally in accordance with that envisaged by the planning proposal and the bonus FSR and height afforded under the Housing SEPP

- the proposal limits the bulk and scale of the development by:
 - locating the tallest built form at the southern end of the site, away from the heritage item, reducing visual dominance
 - providing a stepped podium and tower setbacks to both Pacific Highway and Church Lane, which break down the building's mass, provides an active and human-scaled street edge, and provides an 8 m separation to residential properties opposite Church Lane
 - consolidating access, servicing and basement entry along Church Lane, avoiding additional built form that would add to the scale
 - the use of articulation and detailing on the podium and tower elevations to visually reduce bulk and create a finer grain consistent with the surrounding context.

The Department is satisfied that strict compliance with maximum floor space ratio permitted under Section 16 of the Housing SEPP is unnecessary in the circumstances and that the first of the five-part tests in *Wehbe v Pittwater Council [2007] NSWLEC 827* has been satisfied.

2. Has the consent authority considered a written request that demonstrates there are sufficient environmental planning grounds to justify contravening the development standard?

The Applicant's written request offers the following environmental planning grounds to justify contravening the development standard:

- the proposal achieves an appropriate overall site density. When the FSR is calculated based on the total area of the development site (253-265 Pacific Highway), the maximum permissible GFA is 4,491 m² (equating to a FSR 5.91:1). The proposed GFA of 6,437 m² results in an FSR of 5.86:1, which complies with the overall FSR for the development site
- the heritage item constrains opportunities for additional GFA within its site (265 Pacific Highway), as such the bonus GFA afforded under the Housing SEPP is appropriately concentrated within the tower form of the building which is located over 253-263 Pacific Highway.

The Department is satisfied that the Applicant's written request has sufficiently identified environmental planning grounds that justify contravening the development standard for the reasons summarised above.

In conclusion, the Department is satisfied the Applicant has demonstrated that strict compliance with the floor space ratio development standard is unreasonable and unnecessary in the context of the proposal and that there are sufficient environmental planning grounds to justify the contravention.

Appendix E – Recommended instrument of consent

The recommended instrument of consent can be accessed at:

<https://www.planningportal.nsw.gov.au/major-projects/projects/shop-top-housing-infill-affordable-housing-253-265-pacific-highway-north-sydney>