



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

Clause 4.6 Variation Request – Height of Buildings

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1.0 Introduction

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

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

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

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

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

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

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

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

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

This Clause 4.6 variation request should be read in conjunction with the Environmental Impact Statement (EIS) dated 9 November 2018 in relation to the proposed development of the Crows Nest OSD.

2.0 Development Standard to be Varied

The development standard to be varied as part of this application is 'Clause 4.3 Height of Buildings' relating to the maximum height of building permitted for development. Under the NSLEP 2013, the site has a maximum height of 20m for Site A and Site C, and a maximum height of 10m for Site B, as shown below in Figure 1.



Figure 1 – Existing height of buildings development standard

The NSW State Government is in the process of amending the relevant Height of Buildings development standards within the NSLEP 2013 as shown below in Figure 2, which is extracted from the Crows Nest Sydney Metro Site Rezoning Proposal October 2018. This planning proposal will increase the relevant height of buildings development standard as follows:

- Site A – increased from 20m to RL 183m (approximately 72m);
- Site B – increased from 10m to RL 155m (approximately 52m); and
- Site C – increased from 20m to RL 127m (approximately 24.5m).



Legend

- 127 RL metre (8 storey-24.5 metre)
- 155 RL metre (17 storey-52 metre)
- 183 RL metre (27 storey-72 metre)

Figure 15: Proposed maximum building heights

Figure 2 – Proposed amendments to the height of buildings development standards within the NSLEP 2013.

3.0 Nature of the Variation Sought

The proposed development seeks concept approval for three building envelopes, one located on each of Site A, Site B, and Site C. The proposed height of the roof slab of each building envelope corresponds to the 'proposed maximum building heights' contained within the Crows Nest Sydney Metro Site Rezoning Proposal October 2018, which will be reflected in the future development standards that will apply to the site.

The proposed development includes provision for a 5m top of building 'services zone'. The definition of Building Height, as provided by the NSLEP 2013 is as follows:

building height (or height of building) means:

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

As the above definition includes 'plant and lift overruns' the 5m building top services zone on Site A and Site C in addition to a 3m building services zone on Site B is included within the defined building height. The nature of the variation requested within this application is summarised below in Table 1.

Table 1 – Summary of variation sought

Block	Proposed Building height		Development Standard (and variation)	
	Roof slab height	Building height	Current	Future
Block A	RL 183 m	RL 188 m	RL 131 m (+ 57 m)	RL 183 m (+ 5 m)
	72 m	77 m	20 m (+ 57 m)	72 m (+5 m)
Block B	RL 155 m	RL 158 m	RL 113 m (+45 m)	RL 155 m (+3 m)
	52 m	57 m	10 m (+45 m)	52m (+3 m)
Block C	RL 127 m	RL 132 m	RL 122.5 m (+ 9.5 m)	RL 127 m (+ 5 m)
	24.5 m	29.5 m	20 m (+ 9.5 m)	24.5m (+5 m)

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

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

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

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

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

The five methods outlined in *Wehbe* include:

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

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

In this instance the relevant matter for consideration is:

- For Site B it is the whole of the OSD development above the CSSI approval which is the relevant consideration, as the existing CSSI approval already exceeds the maximum height development standard and therefore any addition of height would require a further variation to that standard.
- For Site A, the existing CSSI approval is at approx. 14.5 metres and hence an additional 2 floors would fit within the maximum height limit of 20 metres. Hence, whether the additional to 27 storeys in total, is reasonable and justified as per the tests under Clause 4.6.

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

Section 4.2 this clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary because the development standard has been virtually abandoned given the significant shift in the strategic planning context of the St Leonards / Crows Nest precinct and with the approval of the CSSI for the delivery of the metro infrastructure (i.e. Government made decisions have rendered the development standard unreasonable and unnecessary), consistent with the Fourth Method outlined in Wehbe.

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

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

The objectives of this clause are as follows:

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

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

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

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

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

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

The proposed building height, although in exceedance of the existing development standard, responds to the natural high point of the area but also seeks to ensure that the OSD provides a landmark feature within the precinct to allow the public to easily identify the Crows Nest Metro Station located within. The concentration of activity in centres well served by public transport is integral to containing the expansion of urban areas – and instead achieving greater density in existing urban areas.

Placing a cluster of high-density mixed-use development between St Leonards and Crows Nest station, as demonstrated in Figure 3 responds to the natural topography and ridgelines of the area. A 'height peak' around the metro site is commensurate with the location of mass transit infrastructure and the built form proposed under this concept SSD Application an appropriate response to these factors (topography and infrastructure). This identifying feature does not compromise the ability of building height to follow the general natural land form and topography.

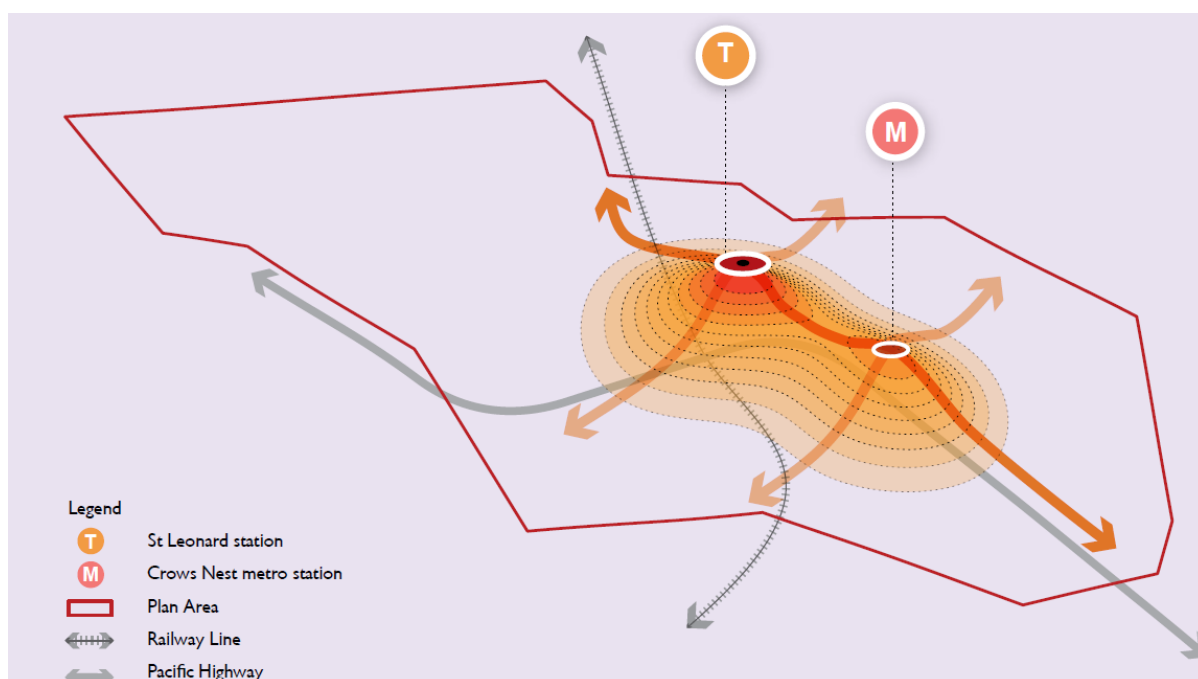


Figure 3 – Height Concept Map under the 2036 Draft Plan

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

Section 8.3 and Appendix N of the EIS provide a detailed assessment of the proposed building envelope on both district and immediate private views. This assessment demonstrates that the proposed building envelopes have been carefully designed to provide a balance between:

- optimising the economic opportunity associated with delivering floorspace above a new metro station
- providing an appropriate built form and response to locality by including a height cluster above the St Leonards Station and Crows Nest Metro Station
- where possible, not impeding long range views from private residences, with impacts isolated to only a small number of surrounding residential buildings
- enabling a suitable landmark building to identify the entry to the metro

Crows Nest is experiencing significant urban transition as a result of investment in transport infrastructure, in particular the proposed metro station at the subject site. Locating density on or near transport infrastructure is consistent with strategic planning outcomes of transit-oriented development, which discourage the use of private motor vehicles and maximise the efficiency of investment in public transport.

This change in urban density is reflected in the proposed height concepts under the 2036 Draft Plan, which identify that building height and density is most appropriate at the St Leonards heavy rail station and the Crows Nest metro station. Given this alignment with strategic policy,

this gives cause to an expectation of continued optimisation of land in the St Leonards / Crows Nest area for mixed use development of a significant nature.

Although the concept SSD Application will alter the nature of views from a number of surrounding premises, this is due to the low scale of the existing built form on the site, which can not be expected to be maintained due to the changing context of the St Leonards / Crows Nest area and the impacts are with impacts isolated to only a small number of surrounding residential buildings, which still retain sufficient sky exposure and outlook, as assessed in the detailed Visual Impact Assessment accompanying the EIS.

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

Section 8.4.1 and Appendix K of the EIS provide a detailed assessment of solar access to key public spaces. In summary, the proposed building envelope ensures that solar access to public spaces are prioritised as follows:

- **Willoughby Road:** No areas of Willoughby Road will be affected by overshadowing caused by the OSD prior to 2.30pm at any time of the year in accordance with the provisions in the *2036 Draft Plan* and the Rezoning Proposal.
- **Hume Street Park:** No areas of Hume Street Park will be affected by overshadowing caused by the OSD prior to 3.00pm at any time of the year in accordance with the provisions in the *2036 Draft Plan*.
- **Ernest Place, Holtermann Street Car Park and the Crows Nest Community Centre:** No areas of Ernest Place, Holtermann Street Car Park or the Crows Nest Community Centre (referred to collectively below as the 'Ernest Place Precinct') will be affected by overshadowing caused by the OSD prior to 3.45pm in accordance with the provisions of the *2036 Draft Plan*.

Section 8.4.2 and Appendix I of the EIS provide a detailed assessment of solar access to surrounding private dwellings. There are some affected properties directly to the west of the site along the Pacific Highway and Nicholson Street which do not receive the prescribed amount of solar access in the relevant planning provisions, however, varying hours of sunlight remains to these properties in mid winter and the effect of shadowing is measured at the mid winter worst case scenario and the impact at other times of year will be reduced. Further, refinement of the envelope at the detailed design stage will also occur which may result in further reductions in shadowing. In consideration of this, the concept SSD Application has:

- selected heights and built forms which minimises impact on key areas of public space and established residential areas to the west and south of the site
- options that provide taller slender building forms have not been contemplated. These taller options have not been pursued to respond to community concerns associated with the building height, density and the minimisation of overshadowing impacts to a number of public areas (despite analysis demonstrating that these overshadowing impacts would also be minimal).
- established a Sun Access Plane for the site in order to protect the Willoughby Road precinct. The Solar Plane seeks to protect solar access to Willoughby Road in the

late afternoon on the Winter Solstice (21st June), to ensure minimal overshadowing of public spaces and residential areas. The Sun Access Plane sets a maximum RL for Site A at RL 183 (27 storeys) (with the exception of a building services zones) which is the maximum extent of the concept DA being sought.

It is therefore considered that the proposed building envelope has minimised the impacts on existing private dwellings where possible, whilst prioritising solar access to public open space.

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

The proposed building envelope achieves building separation distances, consistent with those recommended by the design criteria of the Apartment Design Guides to achieve both visual and acoustic privacy. The development is adequately separated from all surrounding properties, which has been detailed further at Appendix G of the EIS. The following specific commentary is noted for buildings on the subject site in addition to each of the surrounding sites in regard to separation:

- The indicative design achieves a 24 metre separation between the facing facades of the balconies between buildings. All other windows do not look toward neighbouring units. The majority of the proposed balconies are at adequate distances from each other, and privacy screens will be installed where necessary to achieve privacy.
- The indicative design achieves a 24 metre separation between the two buildings on Site A.
- Along Clarke Lane, the lower floors of the residential building on Site A (below level 25) achieve a minimum separation of 10 metres from the adjacent buildings including 20 Clarke Street, 22-26 Clarke Street and the St Leonards Centre. Along all other facades, the buildings achieve a separation of more than 12 metres to adjacent buildings.

Therefore, the proposed exceedance of the maximum building height control does not impact on privacy to existing residential dwellings and ensures that new dwellings within the site will achieve a high level of amenity.

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

The concept SSD Application, notwithstanding the departure from the height of buildings standard, proposes a built form that considers the context of the site, including the existing development, the transitional nature of the local area and the proximity to public transport and in particular:

- The scale of the proposal will strengthen the streetscape and is in line with the desire to situate prominent buildings at major entrances or above train stations. Sound urban design principles point to the need for strong locational buildings as a marker to the station infrastructure contained within. Whilst it is acknowledged that the tallest

buildings in the precinct are located closer towards St Leonards, it remains appropriate to provide a locational marker to allow people to identify the location of the metro station.

- The proposal includes a diversity of heights which provides differentiation in built form and prevents the repetitive orientation of buildings which can result in a perception of greater density or a monolithic appearance of a wall of buildings. The diversity of heights, in conjunction with sufficient spatial separation between buildings, creates the perception of openness to the site which reduces the perception and appearance of density.
- The articulation of the proposed design either through podium, setbacks or materiality seeks to demarcate between the lower levels of the built form and the buildings above, thereby relating the concept SSD Application to the existing scale and the street character along the Pacific Highway.

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

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

4.2 The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method)

The Crows Nest OSD site is unique compared to other Sydney Metro City & Southwest sites in that it is currently located in an area that has a divergence of densities from the higher density at St Leonards to lower density at Crows Nest.

North Sydney Council prepared the *Crows Nest Planning Study* in 2010 to direct future development and infrastructure provision in Crows Nest. This study recognised the need for updated planning controls to support future development in Crows Nest. Council commenced further studies in 2016 which focused on identifying localities or streets important to the community and identifying land use, built form and public domain priorities, which included the preparation of the *Sydney Metro Planning Study (2017)* and the *Crows Nest Placemaking and Principles Study (2016)*.

In July 2016, DP&E announced it would also be undertaking strategic planning investigations into revitalising the surrounds of St Leonards railway station and the metro station at Crows Nest. This process resulted in the announcement of a St Leonards and Crows Nest Priority

Precinct in June 2017. In August 2017, DPE released the *St Leonards and Crows Nest Station Precinct Interim Statement (Interim Statement)*. These strategic investigations identify redevelopment sites within the precinct and provide the strategic planning framework to guide future development and infrastructure delivery. It is noted that the Crows Nest station precinct is identified in the Interim Statement as being located in the 'St Leonards and Crows Nest Station' character area which is described as a high density centre with new development providing opportunities for a mix of commercial, retail, community and/or childcare and public domain uses that complement St Leonards and Crows Nest.

In October 2018, DPE released a draft Rezoning Proposal for the Crows Nest Sydney Metro site. This Rezoning Proposal increases the relevant planning controls commensurate with the built form proposed in this concept SSD Application. The release of the Rezoning Proposal was simultaneous to the release of other draft strategic planning documents including the *St Leonards and Crows Nest 2036 Draft Plan*. The 2036 Draft Plan recommends significant changes to the planning controls for the immediate area surrounding the Crows Nest OSD site subject to consideration of community feedback to its exhibition. Detailed consideration of the Rezoning Proposal and the 2036 Draft Plan and associated reports is presented at Appendix MM.

Whilst not Council's actions per se, the case law references matters regarding Council's decisions and the abandonment of the standard. In this instance, the relevant Government decisions which render the applicability of the controls redundant, are the announcement of the transformative public transport infrastructure project that is Sydney Metro. In addition to decision to grant consent to the CSSI station development which already partially exceeds or is close to the controls in NSLEP 2013 is another key Government decision which renders the standard unreasonable or unnecessary. The controls in NSLEP 2013 predate both Government decisions. These planning studies, culminating in the 2036 Draft Plan and the Rezoning Proposal recognise the need to supersede the development standards of the NSLEP 2013 as they apply to the site. The above planning studies demonstrate that the existing planning controls are now not an appropriate fit nor have relevance within the strategic context of the St Leonards / Crows Nest area and therefore compliance with these controls is unreasonable and unnecessary.

The proposed OSD has been devised to integrate with the future development context in the immediate vicinity, while also having a close relationship to the evolving St Leonards Precinct. The future development on the site, will help to deliver and realise the opportunities afforded by the construction of the Sydney Metro including:

- **An employment hub** – the proposed development will protect and strengthen the area's commercial role with additional commercial and complementary uses to capitalise on renewed confidence in the commercial market as well as retail, creative, health and education sectors.
- **Transit-oriented development** - the proposed development will create future employment opportunities that leverage the increased transport capacity of the new Metro station.
- **Vibrant community** – the proposed development will encourage community uses on the Sydney Metro sites and improvements to the public domain to create a new community focal point in this accessible location.

- **Accessible place** – the proposed development will ensure the site is an attractive and easy place to visit, with improved pedestrian and cyclist connections.
- **A well-designed place** – the proposed development will provide new buildings to demonstrate the highest quality design that respects and enhances the diverse local character of the area.

As noted in Section 3.0, the proposed concept development includes a 'building top services zone' which will exceed the future development standards by up to 5m. The future development within the site (consistent with the currently proposed concept development) will be able to locate building plant within this area of the envelope provided that this element of the future built form does not detrimentally affect the ability of the development to achieve the principles for protecting solar access and local amenity, as outlined within the Rezoning Proposal. These are:

- No additional overshadowing of:
 - Residential areas within the draft 2036 Plan boundary for more than 3 hours between 9am and 3pm (winter solstice).
 - Residential areas outside of the draft 2036 Plan boundary between 9am and 3pm (winter solstice).
 - Willoughby Road between 11:30am and 2:30pm (winter solstice).
- Respect the village character of Crows Nest; and
- Minimise overshadowing on key public open spaces such as Hume Street Park and Ernest Place.

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

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

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

5.1 Existing CSSI approval

The existing CSSI approval exceeds the development standard on Site B (the approval is greater than the 10m standard), and is close to the development standard on Site A (i.e.

would only allow 2 additional floors above the approved station infrastructure within the 20 metre height limit)

In Four2Five, the Court found that the environmental planning grounds advanced by the applicant in a Clause 4.6 variation request must be particular to the circumstances of the proposed development on that site. In this regard, the proposed variation is particular to the circumstances of the proposed development on the site as the station infrastructure approved under the CSSI Approval already partially exceeds these height controls or has limited remaining development potential in order to comply with the development standard. Compliance with the standard would render any meaningful OSD density impossible without a variation to the building height development standard.

Overall, in light of the above, compliance with the development standard would result in the lost opportunity for a reasonable scaled transit-oriented development with housing, social infrastructure, tourist/visitor accommodation and commercial uses, as per the remaining points below.

5.2 Delivery of a transit-oriented development neighbourhood

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

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

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

Multiple strategic planning studies undertaken by North Sydney Council have identified that the most appropriate location for this density is on or nearby transport infrastructure along the Pacific Highway Corridor and away from areas such as Willoughby Road. This is further reinforced by the 2036 Draft Plan. This concept SSD Application is consistent with these studies, providing suitable justification for increased density on the site.

The concept SSD Application is directly consistent with the findings and ethos of multiple strategic planning documents in that it supports the provision of a mixed-use development

above the metro corridor as a way of increasing use of existing public transport, reducing car usage and encouraging connectivity within the area.

5.3 Protection of solar access to key public open spaces

As outlined in Section 4.1.3 above, the proposed building envelope has been developed to specifically respond to key public spaces. The building envelope has been designed to comply with the relevant overshadowing restrictions under current and draft controls. The concept SSD application ensures protection to Willoughby Road, Hume Street Park, and Ernest Place, Holtermann Street Car Park and the Crows Nest Community Centre. The project also establishes a Sun Access Plane for the site in order to protect the Willoughby Road precinct. The Solar Plane seeks to protect solar access to Willoughby Road in the late afternoon on the Winter Solstice (21st June), to ensure minimal overshadowing of public spaces and residential areas.

5.4 Consistency with the strategic planning framework

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

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

The proposed concept development will breach the current development standards, but (as outlined above) these development standards when gazetted did not contemplate the delivery of the Sydney Metro station at Crows Nest and therefore to not reflect the future character of the area as it is now envisaged.

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

- **A city supported by infrastructure:**
 - **Infrastructure supports the three cities:** The Crows Nest OSD is located immediately above transport infrastructure, in a location which will encourage use of the Sydney Metro project by future building occupants.
 - **Infrastructure use is optimised:** The Crows Nest OSD would provide for dwellings and tourist / visitor accommodation in a location where use of the future Metro line can be optimised, as well as the broader Sydney public transport network as principal modes of transport.
- **A city for people:**
 - **Communities are healthy, resilient and socially connected:** The Crows Nest OSD would provide for residential and tourist and visitor accommodation development within close proximity to the Crows Nest station which will populate the area and add to the vibrancy of the area both during and outside

traditional business hours. It is also noted that the proposal has been designed such that the majority of residents will not have access to a private vehicle, thereby encouraging the use of public transport, walking and cycling when making journeys.

- **A collaborative city:**
 - **Benefits of growth realised by collaboration of governments, community and business:** The Crows Nest OSD comprises an initiative by Sydney Metro to ensure that the development of the site reflects the extensive collaboration undertaken through this project. A rapidly changing economy and society has meant that the gulf between people and communities has widened in recent years. Social and community infrastructure, such as a metro station or proposed community space, play an important role in bridging this gap through a variety of means, including through the establishment of networks and collaborative activity, decreasing isolation and promoting skills and education. The concept SSD Application can therefore contribute to these collaborative benefits through the provision of this infrastructure and community space (i.e. community facilities and child care centre).
- **Housing the city:**
 - **Greater housing supply:** The Crows Nest OSD proposes a substantial boost to housing supply in the St Leonards / Crows Nest Strategic Centre, delivering approximately 350 dwellings at the site.
 - **Housing is more affordable and diverse:** The Crows Nest OSD would contribute to the provision of an array of different dwelling typologies, making provision for studios, 1, 2 and 3 bedroom apartments. It would also deliver an increased housing supply in a highly accessible location.
- **A city of great places:**
 - **Great places that bring people together:** The Crows Nest OSD would play a key role in the creation of a high-quality Crows Nest Station precinct and will contribute to the creation of a great future place in the St Leonards / Crows Nest Strategic Centre.
 - **Environmental heritage is identified, conserved and enhanced:** The Crows Nest OSD has been designed to ensure that the development relates well to the surrounding heritage context. This is discussed further at Chapter 8.6 and specific provisions have been included in the Crows Nest Design Guidelines to ensure a sympathetic design response to neighbouring heritage items (including the adjacent St Leonards Centre) through the design development of the detailed SSD Application.
- **A well-connected city:**
 - **A Metropolis of three cities – integrated land use and transport creates walkable and 30-minute cities:** The Crows Nest OSD will contribute to the provision of a 30-minute Eastern City, co-locating housing and employment at a site which directly benefits from very strong access to services and employment, seven days a week. The concept proposal epitomises integrated land use and transport planning.
 - **The Eastern, Greater Parramatta and the Olympic Peninsula and Western Economic Corridors are better connected and more competitive:** The Crows Nest OSD would strengthen Sydney's Eastern

Economic Corridor by contributing to the continued growth of the St Leonards / Crows Nest Strategic Centre. The OSD would also harness the catalytic effects of the metro station by offering commuting advantages to residents, visitors and workers. Residents and workers in the OSD also would be better connected to Sydney CBD and other major centres, which will improve business linkages and access to employment opportunities.

- **Jobs and skills for the city:**
 - **Investment and business activity in centres:** The Crows Nest OSD would facilitate business investment in the St Leonards / Crows Nest Strategic Centre through the provision of commercial and visitor accommodation in a highly accessible and sought after location.
 - **Economic sectors are targeted for success:** The Crows Nest OSD would contribute to the provision of additional tourist / visitor accommodation capacity in the St Leonards / Crows Nest Strategic Centre, which would assist in the continued development and expansion of the target tourism sector within Sydney. The provision of a tourist and visitor accommodation within close proximity to the identified Health and Education Precinct will also support these precincts as well as commercial activity in the wider area.

5.5 Social and Economic Impacts

5.5.1 Social Impacts

The OSD would have a positive social impact on the St Leonards / Crows Nest Strategic Centre by creating an integrated station development that provides residential dwellings, tourist / visitor accommodation, community uses and office floor space above the Crows Nest Station. It will create a focal point for community activity and a vibrant place for the community to gather, work and reside. In conjunction with the public domain upgrades and retail activated street frontages to be delivered under the terms of the CSSI Approval, the OSD will add to the civic qualities of the precinct and encourage healthy sustainable modes of transport such as walking and cycling, in addition to the use of the Metro.

The provision of a mixed-use scheme accommodating residential apartments, tourist / visitor accommodation and commercial floor space responds to a wide range of community needs. Additional housing would create opportunities for people to live close to where they work, whether within the St Leonards / Crows Nest Strategic Centre or via the new Sydney Metro, aligning with the concept of the '30-minute city'. New tourist / visitor accommodation would provide increased capacity for Sydney to grow its national and international profile as a destination for travel and would complement the health precinct anchored around Royal North Shore Hospital. By supporting a wide range of land uses, the OSD would support a range of activities and occupancy throughout the day and evening. This would contribute towards a vibrant transport precinct that is safe, well-utilised and which acts as a focal point for the North Shore in regard to both transport and land use.

The concept SSD Application also includes opportunities for social infrastructure on Site A or Site C. Provision for this space has been made in response to work undertaken by North Sydney Council in the Sydney Metro Planning Study 2016, which identified the need for a

community use on site. This facility will be used by the community to encourage social interaction and community development in a highly accessible location.

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

5.5.2 Economic Impacts

The delivery of the OSD above the Crows Nest Station is expected to make a significant and positive contribution to the St Leonards / Crows Nest Strategic Centre by providing for additional direct and indirect employment, supporting additional economic activity in the tourism and commercial office sectors, and contributing to additional housing supply. Specifically, the OSD is expected to result in 725 jobs (Full Time Equivalent or FTE) during the construction phase (subject to detailed design and planning approval) and provide for 730 - 1,230 ongoing jobs (FTE) on-site during the operational phase, depending on the final land use mix. This will significantly contribute to employment targets listed in the 2036 Draft Plan, which target 3,020 new jobs in Crows Nest by 2036.

Businesses in the completed building are estimated to generate industry value-add of \$51 million per annum, which increases to \$71 million when combined with the project's residential components. Resident, tourist / visitor and employee spending at local retail store and service centres is estimated to generate almost \$30 million annually in local expenditure.

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

6.1 Consistency with objectives of the development standard

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

6.2 Consistency with the objectives of the land use zone

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

6.2.1.1 Objective: To provide a mixture of compatible land uses

The concept SSD Application, as provided at Section 4.5 of the EIS, seeks approval for the following land uses:

- residential accommodation;
- tourist and visitor accommodation;
- commercial premises; and
- social infrastructure including but not limited to opportunities for community facilities / child care centre / recreation areas / co-working space / library

These land uses respond to both the housing and employment targets identified in the North District Plan and will complement and support existing businesses in Crows Nest and St Leonards. The social infrastructure (i.e. community facilities / child care centre / recreation area / library / co-working space) provides floorspace to meet an identified need for such facilities in North Sydney Council's Sydney Metro Planning Study 2016 and the Draft St Leonards & Crows Nest 2036 Plan. The concept proposal seeks flexibility to locate this social infrastructure in either on Site A or Site C.

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

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

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

clearly identify public transport infrastructure and thereby promoting public transport usage within the community surrounding the development.

The provision of community infrastructure within the development will provide not only to the residents and workers of the future buildings but will provide services within walking or cycling distance of existing residences and workplaces.

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

The proposed concept SSD application relates to a building envelope that will facilitate the delivery of an OSD design with an indicative land use mix comprising approximately 350 residential apartments on Site A, 250 hotel rooms on Site B and up to 2,700 square metres of commercial floor space on Site C. In addition, the indicative OSD design for Site A incorporates up to 2,700 square metres of social infrastructure GFA (child care centre, community centre and recreation area) equivalent to one level of the podium of the building.

The Crows Nest OSD Design Guidelines (Design Guidelines) have been prepared as part of this concept SSD Application and submitted at Appendix O of the EIS. These Design Guidelines establish key principles which the future detailed design of the project is required to respond to. Additionally, a competitive selection involving an open Expression of Interest (EOI) process and Request for Tender (RFT) process will be completed to select a detailed concept design for the project.

The Design Excellence Strategy (Appendix N of the EIS) will ensure that a high quality urban outcome is achieved for the development and that the attainment of this outcome is not compromised but enhanced by the variation to the building height development standard in this request.

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

- At least 2 hours direct sunlight to living rooms and private open space of 75% of indicative apartments (exceeding the design criteria of 70%);
- Provides natural cross ventilation to 67% of indicative apartments within the first nine levels (exceeding the design criteria of 60%);
- Minimises the impact of shadowing to the private open space and living areas of existing residential dwellings in the vicinity of the site; and
- Achieves the minimum building separation distances, ensuring that visual and acoustic privacy is maximised.

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

The total GFA for the integrated station development, including the station GFA (i.e. station retail, station circulation and associated facilities) and the OSD GFA is 60,400 square metres. This is to include the following non-residential floor space:

- 2,700m² of social infrastructure floor space (on Site A or Site C)

- 15,200m² of hotel / visitor or commercial floor space (on Site B)
- 2,700m² of commercial floor space (on Site C – subject to replacement by social infrastructure floor space as described below)

The final location of social infrastructure space is to be influenced by ongoing negotiations with relevant stakeholders to occupy all available floorspace on Site C, or alternatively, to be located on the podium rooftop of Site A. However, across all three sites, non-residential components are located at lower levels with residential uses above.

6.3 Overall public interest

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

- it would provide additional employment and residential capacity in the context of the St Leonards / Crows Nest Strategic Centre as targeted in the North District Plan, ensuring that jobs and dwellings are co-located in a manner which reduces commute times and improves the level of access to facilities, services, transport options and public open space
- it includes a substantial tourist / visitor accommodation component, providing additional capacity and continuing to grow Sydney's tourism economy which is currently experiencing a shortage of accommodation supply. This would have flow on positive economic impacts within the context Greater Sydney and NSW economies more broadly and meet the needs of the health and education precinct more locally.
- it provides sufficient spaces to accommodate social infrastructure including child care facilities to support the local population, which is in alignment with direction provided by North Sydney Council in the Sydney Metro Planning Study 2016 and 2036 Draft Plan.
- as part of the integrated station development, it would contribute to the delivery of major improvements to the public domain and activation of the streetscape, providing for a higher quality pedestrian environment around the site which would link the various civic, open space and entertainment precincts in proximity to the site
- a commercial component would be provided, enabling the provision of further employment generation at the site which is located in a context with excellent access to both the Sydney CBD as well as the Greater Sydney region. In this regard, the proposal would:
 - directly contribute to the provision of 280 additional jobs during the construction period
 - indirect contribution of 445 jobs during the construction period
 - accommodate approximately 730-1,230 jobs on an ongoing basis, generated by the visitor accommodation and commercial components of the development (variation due to flexibility in land use proposed on Site B)

- it would result in additional economic benefits to surrounding services and business following the completion of the development, which is estimated at a \$30 million per annum increase in local expenditure
- it would work alongside the Crows Nest Station development under the CSSI Approval in order to create an overall station precinct which is integrated, high quality, enjoyable and safe for future public transport users
- it would provide a variety of different uses above the station, which would work to activate the station precinct, both within traditional business hours as well as during the evening, late night and weekend periods
- it would enable the delivery of a future OSD form which is memorable, reinforcing the legacy of the Sydney Metro project and its mark on the broader Sydney skyline
- the assessment in this EIS has demonstrated that the building envelope is capable of achieving high amenity and a high quality future development that could achieve design excellence
- it provides a framework which would ensure that future development at the site exhibits design excellence, working alongside the future railway station to deliver a very high design quality building form outcome. The ESD strategy will ensure that recognised sustainability targets are achieved or exceeded in the future design of the development
- it includes provision for future public art, which would contribute to the vibrancy and interest generated by the surrounding built environment
- it is a premier example of a transit oriented development, which includes minimal car parking to reduce the impact on the local road network

7.0 Secretary's Concurrence

Under Clause 4.6(5) of NSLEP 2013, the Secretary's concurrence is required prior to any variation being granted. The following section provides a response to those matters set out in Clause 4.6(5) of the NSLEP 2013, which must be considered by the Secretary.

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

The CSSI Approval already partially exceeds these height controls or has limited remaining development potential in order to comply with the development standard, rendering any meaningful OSD density impossible without a variation to the building height development standard. The opportunity cost of not pursuing the OSD would be significant, given the multitude of benefits which would be foregone if no OSD is pursued, including:

- job creation, including 725 jobs during the construction phase and an additional 730 - 1,230 jobs during the ongoing operation of the site
- businesses in the completed building are estimated to generate industry value-add of \$51 million per annum, which increases to \$71 million when combined with the project's residential components
- residential, hotel guest and employee spending at local retail stores and service centres is proposed to generate almost \$30 million annually in local expenditure
- community facilities and / or child care space being delivered as part of the development
- significant improvements to design and sense of place as the result of design excellence process.

The proposed development responds more closely to the future maximum height of buildings development standard that is envisaged within the Crows Nest Planning Proposal. The variation from these future development standards is considered to be minor and will not raise any matter which could be deemed to have State or regional significance.

As set out in Section 5.3 above, the proposed development gives effect to The *Greater Sydney Region Plan 2018*.

7.2 The public benefit of maintaining the development standard

Strict compliance with the existing height of buildings development standard would severely impede the ability of the project to achieve the desired future character as established in the 2036 draft Plan and the Rezoning Proposal. In fact approval of the CSSI station infrastructure approved under the CSSI Approval already partially exceeds in some areas of the sites or is near these height controls in other areas of the site, rendering a meaningful OSD density impossible without a variation to the building height development standard.

The application of the existing building height control would result in a development that is unable to achieve the primary objectives for the project, in that the development would be unable to:

- support the NSW Government's planning strategies and objectives, including the *Greater Sydney Region Plan (2018)* and the *North District Plan (2018)*
- enable the development of mixed-use buildings at the site which cater to various uses and work to create a fully integrated station precinct within the heart of Sydney's North Shore
- enable building forms which responds to the emerging character of St Leonards while providing a mediating transition in built form between St Leonards and Crows Nest,
- minimise, to the fullest extent possible, overshadowing impacts on public open spaces including Hume Street Park, Ernest Place and the Willoughby Road restaurant precinct
- enhance the customer experience and urban amenity through the development of an integrated design concept that ensures delivery of a quality public domain experience with strong connections to the surrounding area
- create an urban environment that drives the high usage of the Sydney Metro network, responding directly to the principles of transit-oriented development
- provide the opportunity to deliver the OSD as early as possible with the aim of opening concurrently or shortly following completion of the Crows Nest Metro Station
- enable a design that responds sensitively to surrounding heritage items
- create a framework which works to achieve design excellence in the final integrated station development.

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

The concept SSD Application is a fundamental projected in delivering a number of significant objectives for the State of NSW. The project will achieve:

NSW State Priorities

- **Strong budget and economy:** The proposed development would contribute to the strengthening of the NSW economy by providing for additional jobs (both during the construction and operation phases of the development) and investment at a key site in the St Leonards / Crows Nest strategic centre. The integration of transport and land use in this manner would also improve the productivity benefits derived from the Sydney Metro project and provide an incentive for further development.
- **Encouraging business investment:** This application comprises a significant opportunity to encourage investment by the private sector to facilitate the delivery of a mixed-use precinct above the station. The use of this air space above the station is an innovative move by the NSW Government to facilitate private sector investment whilst leveraging government investment for improved urban outcomes.
- **Increasing housing supply:** Increased housing supply in suitable locations has been identified by the government as being a key solution to the issue of housing affordability. The government has set a target of more than 50,000 dwelling approvals each year in order to respond to housing demand. The Crows Nest OSD

would contribute to this priority through the delivery of approximately 350 dwellings in a highly accessible location. The concept application provides a range of dwelling sizes and layouts in order to address the diversity in housing demand and affordability.

- **Accelerating major project assessment:** Sydney Metro will work with the DPE to ensure an efficient, transparent and robust assessment of this concept proposal. This collaboration will assist the DPE in meeting its responsibilities under this priority.
- **Improving road travel reliability:** The OSD at Crows Nest would help meet journey time targets for road users by encouraging increased commuter use of public transport. The public transport accessibility of the St Leonards / Crows Nest area would increase as a result of the Crows Nest integrated station development, which would contribute to achieving this priority. The OSD would be physically integrated with the future Crows Nest Station, providing workers, residents and visitors within the development with a reliable and easily accessible mode of transport.
- **Ensure on-time running for public transport:** While Sydney Metro is not expected to be operational until 2024, the OSD at Crows Nest would contribute to the longer term improvement of Sydney's public transport system by forming an integral component of Sydney Metro which would significantly cut travel and waiting times.

NSW Premier's Priorities

- **Creating Jobs:** Sydney Metro has created thousands of jobs which will continue to increase as construction of Sydney Metro City & Southwest continues. The Crows Nest OSD will work to provide substantial additional employment during the construction phase of the development, with the proposed works resulting in the provision of an estimated 725 direct jobs over the construction phase of the development. Additionally, the various employment generating components of the Crows Nest OSD would provide capacity for an estimated 730 – 1,230 jobs on an ongoing basis. Finally, the Crows Nest OSD would increase residential capacity within the St Leonards / Crows Nest Strategic Centre, and Sydney more broadly, which will have a corresponding positive economic impact. An increase in the population of the St Leonards / Crows Nest Strategic Centre would increase activity in the surrounding area, meet demand for additional dwellings in the locality and contribute to creating activation in the area both day and night. In this regard, it is anticipated that the development will result in positive economic impacts to existing businesses in the area through increased population and visitations to the site, in addition to providing services to meet the needs of existing businesses.
- **Delivering Infrastructure:** Sydney Metro City & Southwest is Australia's biggest public transport project and the nation's biggest urban rail investment in history. The concept proposal supports the delivery of Sydney Metro and optimises the project's productivity benefits by facilitating employment and housing growth that is coordinated with the new Crows Nest station. The OSD component would capitalise on the NSW Government's investment in this infrastructure project, contributing to the growth of the St Leonards / Crows Nest Strategic Centre. Additionally, it is noted that the Crows Nest OSD has been designed to ensure that the OSD component of the site will not hinder the ability of Sydney Metro City and Southwest to commence operations on time in accordance with the NSW Government's timeframe.

8.0 Conclusion

Clause 4.3 of the NSLEP 2013 currently applies a maximum height of buildings development standard of 20m to Block A and Block C, and of 10m to Block B. The State Government has recently exhibited a Planning Proposal which, if adopted and gazetted as per the exhibited material, will increase the maximum height of buildings development standard to RL 183 m for Block A, RL 155 m for Block B, and RL 127 m for Block C. This amendment to the NSLEP 2013 will allow buildings with a maximum height of approximately 77 m to be delivered on Block A, 52 m on Block B, and 24.5 m on Block C.

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

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

Multiple strategic planning studies undertaken by North Sydney Council have identified that the most appropriate location for this density is on or nearby transport infrastructure along the Pacific Highway Corridor and away from areas such as Willoughby Road. This is further reinforced by the 2036 Draft Plan. This concept SSD Application is consistent with these studies, providing suitable justification for increased density on the site. Further, as set out in Section 5.3 above, the proposed development gives effect to The *Greater Sydney Region Plan 2018*.

The concept SSD Application is directly consistent with the findings and ethos of multiple strategic planning documents in that it supports the provision of a mixed-use development above the metro corridor as a way of increasing use of existing public transport, reducing car usage and encouraging connectivity within the area. For these reasons, compliance with the height control in NSLEP is unreasonable and unnecessary, a control which pre-dates even the announcement of this transformative public infrastructure project.

The concept development currently proposed is also largely consistent with these envisaged future development standards. The roof top slab of the concept proposal has been designed to correspond with the relevant future development standard for each block, however each concept envelope will allow a 5m 'building services zone' to exceed this level.

The 5m building services zone on Site A and C, in addition to a 3m building services zone on Site B will be designed as part of the future detailed design for each building but will be

required to demonstrate that the building services zone does not detrimentally affect the ability of the building to demonstrate design excellence, or impact on the amenity of local residents of the public.

Meanwhile impacts of the additional height have been suitably assessed and managed as per the detailed environmental impact assessment in the main EIS. Therefore, the impacts of the height control breach are deemed acceptable.

Consistent with the aim of Clause 4.6 to provide an appropriate degree of flexibility to achieve better outcomes for and from development, a departure from the Height of Building development standard is considered appropriate in these circumstances.