

SSD-66826207 – Fiveways Site including affordable in fill housing.

Closing date for submissions: 5:00pm 6 June 2024

NSW Planning Portal:

<https://www.planningportal.nsw.gov.au/major-projects/projects/mixed-use-development-including-fill-affordable-housing-five-ways-crows-nest>

Submission from: Prof Geoff Hanmer (Reg Architect 5147 NSW) and Jo Mausolf.

Geoff Hanmer and Jo Mausolf object to this submission:

This site has already been the subject of significant uplift in height and floor space because of the government-led 2036 Plan gazetted on 29 August 2020.

The applicant had submitted two planning proposals the result of which was an amendment to the North Sydney LEP (2013) for a mixed-use top shop development with a maximum FSR of 5.8:1, a minimum non-residential FSR of 2.5:1 and maximum building height of 58.5m. The amendment was dated 6 December 2023.

It should be noted that the department of planning asked for and received from the government architect, advice on the most appropriate development including height for the site. The height recommended was 16 storeys.

The approval did not include such things as car parking rates and other DCP issues expected to be covered at the DA stage.

On 9 May, the applicant submitted a proposal for a 22-story tower having a FSR of 7.54:1 taking excessive advantage of the very generous SEPP bonus provisions for affordable housing which has the basic principle of a 30% bonus of extra housing floor space providing there is 15% of that 30% extra floor space made affordable (for a period of 15 years). There is no strategic basis for this change given that the Department of Planning's own work including the advice from the government architect, has set a significantly lower height for this site. We do not believe that these provisions are enforceable or even rational; if affordable housing is needed, it will be needed for more than 15 years.

One important strategy of the 2036 Plan was that maximum height in the plan area would be at the two railway stations at St Leonards and Crows Nest and building heights would transition down towards the lower surrounding residential and conservation areas. In the case of the Fiveways site, the government architect recommended a maximum height equal to 16 storeys (which in terms of a mixed-use development would be ~55 metres). The community objected.

The first proposal from this applicant was for 19 storeys. The SNPP refused to support that application as having excessive height. The next application was for 16 storeys with unusually high roof top structures giving a height of around 18 storeys. At the final stages of consultation, the panel deliberated over arguments on height with one

dissenting member arguing for much lower height to transition to the nearby residential Holtermann conservation area toward the northeast and the North Sydney Girls high school towards the South. The majority prevailed and to our disappointment, the maximum height is 58.5 metres.

The request to go even higher is blatant refusal to accept the government's strategic planning, and to the sensitivity of taller bulky scale buildings that will overshadow and dominate the landscape. This strategy alone should be enough reason to refuse the application.

The 2036 Plan was a government-led proposal for increased density in St Leonards Crows Nest, a zone defined by government partially based on two planning studies done by North Sydney Council, first in St Leonards and later in Crows Nest. Extensive community consultation helped inform those studies which were adopted by Council prior to the department of planning commencing its work on the draft 2036 Plan. The motivation for this work was the planned introduction of the Sydney Metro Southwest metro line with a station in Crows Nest.

The draft plan was exhibited in 2018 for community consultation closing in February 2019. There was significant objection to building heights, compared to the planning studies prepared by Council. The final Plan had very significant uplift of height. In some areas the draft plan heights were increased further - by as much as much as 33% between Oxley and Hume Street on the western side of the Highway (from 18 to 24 floors) and on another site between Shirley Road and Bruce Street by 60% (from 8 to 13 floors). Those uplifts and others were gifts of money to the developers without any quid pro quo for the public or the local community.

The project proposal should be refused because the 2036 Plan has already provided significant uplift and the proposal as submitted has no further strategic merit. It represents an unmerited transfer of public amenity to the benefit of the applicant with little or no benefit to the public in return. It is a poorly designed building with little amenity at the ground plane and of insufficient architectural quality for what the Government Architect deems to be a gateway site.

We append Appendix A from the submission by Wollstonecraft Precinct

**SSD-66826207 – Fiveways Site including SEPP for affordable in fill housing
Section 16 - Affordable Housing requirements for additional FSR**

- (1) 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 housing component calculated in accordance with subsection (2). This definition provides the same outcomes for residential flat buildings and for housing on top of a podium (shop top housing).

Comment:

The proper calculation for shop top housing should be based on the maximum permissible floor space for the residential component of the land, not the maximum permissible FSR for the whole of the land: The current LEP prescribes:

the maximum FSR as 5.8:1 (3,200.6 x 5.8) = 18,564 sqm and

the minimum non-residential FSR as 2.5:1 (3,200.6 x 2.5) = 8,002 sqm

Maximum allowable floor space is 24,135 sqm (18,564 + 30%)

Under the SEPP policy the applicant is gaining 5,571 sqm of which 2,786 sqm is for affordable housing.

If the policy were based on the bonus applying to the residential floor space only, the floor space for the residential component would be 10,562 sqm (18,564-8,002)

Under the bonus provisions of 30% for in-fill housing, the maximum floor space for the residential component would be 10,562 + 30% = 13,730 sqm (3,168 sqm bonus provision of which 1,584 sqm is for affordable housing). Comparison is shown in table below:

	Current	SEPP	Alternative
Total floor space	18,564 sqm	24,135 sqm	18,564 sqm
Min non-residential	8,002 sqm	8,002 sqm	8,002 sqm
Residential floor space including bonus 30%	10,562 sqm	16,133 sqm max. 15,895 actual	13,730 sqm
No of apartments	129	191	168
Increase number	0	62	39
Increase %	0	48%	30%
Average per apartment	82 sqm	83.2 sqm	82 sqm

^ The application complies with this Section 16, but it is over-reach because the site has already been uplifted by way of the 2036 Plan.

Section 18 Affordable housing requirements for additional building height

This section applies to development that includes residential development to which this division applies if the development—

- a. includes residential flat buildings or shop top housing, and
- b. does not use the additional floor space ratio permitted under section 16.

Comment:

Based on the proper intent of additional floor space allowable as outlined in Section 16. (1) above, the maximum additional height of the building (all other parameters being unchanged)

should be 30% of the height resulting from 30% more floor space of the residential component. The reference design that accompanied the planning proposal approved by the SNPP on 13 September 2023 had 16 floors of which 3 were the non-residential podium and 13 were residential component or top shop. The maximum height gazetted in the LEP is 58.5 m.

The approved maximum height of the reference proposal would therefore be calculated on 30% more floors, thus lifting the residential component by four floors.

For the SSD application, the increase in height by four floors at 3.100 metres/floor would be 12.400 metres and the maximum allowable height for the new SSD application would be 58.5 + 12.4 = 70.9 metres (RL 169.00).

The 7m difference between maximum allowable height and the applicant's proposal can be seen in the new podium design. The bonus provisions of in-fill housing does not give license to the applicant to make other changes that push the height beyond the maximum height allowable.

The SSD Application does not comply with this Section 18.

End of Appendix "A"

. Appendix "B" SSD-66826207 – Fiveways Site including affordable in fill housing. Car Parking Spaces

1. Introduction:

- The building as proposed will occupy the whole site with 7 basement levels, 3 podium levels and 18 levels for apartments + roof. RLs are:
 - Basement 07 RL 74.100 (24 metres below ground)
 - Ground RL 98.100
 - Podium top - Level 03 RL 111.600 Set back above = 6m on all three sides
 - Level 21 RL 168.200
 - Roof top RL 171.500 (Equal to the OSD on site A)
 - Height from ground level excluding roof top structures and lift over-run = 73.4 metres. This height does not comply with SEPP Housing for maximum building height on this site.

Apartments are spread as follows:

Level	One BR	Two BR	Three BR	Total
03	2	2	0	4
04	4	8	0	12
05	4	8	0	12
06	4	8	0	12
07	5	6	1	12
08	5	6	1	12
09	3	6	2	11

10	3	6	2	11
11	3	6	2	11
12	3	6	2	11
13	3	6	2	11
14	1	4	4	9
15	0	6	3	9
16	0	6	3	9
17	0	6	3	9
18	0	6	3	9
19	0	6	3	9
20	0	6	3	9
21	0	6	3	9
	40	114	37	191

- The north-east corner of the building (triangular in shape, 50 m along Falcon Street x 25 m along Alexander Street ~area 625 sqm) sits directly above the Sydney Metro Southwest Tunnels. There are several reports dealing with this issue, but these have not been examined.

2. Car Parking Spaces:

The State Environmental Planning Policy (SEPP) mandated car parking rates for affordable housing are:

- One BR apartments - 0.4 space per apartment
- Two BR apartments - 0.5 space per apartment
- Three BR apartments - 1.0 space per apartment

The SEPP also mandates car parking rates for housing not used as affordable housing are:

- One BR apartments - 0.5 space per apartment
- Two BR apartments - 1.0 space per apartment
- Three BR apartments - 1.5 space per apartment

The applicant has assumed the more generous rates will apply to all dwellings with the result being 190 car parking spaces.

The SEPP car parking rates for non-affordable housing disregards Transport for NSW recommendations for dwellings which are well served by close-proximity to public transport such as this proposal which is about 400 metres from the new Crows Nest Station. These recommendations led to North Sydney Council formulating and approving its DCP for new high-rise developments close to high rates of public transport, specifically near Crows Nest, St Leonards, and Kirribilli stations which are well served by rail and bus transport. The NS Council controls for new high-rise developments close to new Metro stations should determine allowable spaces based on those controls in DCP Table 10.1 – Residential Car Parking Rates. The allowable numbers would be:

- One BR apartments - 40 0.4 space per apartment 16 spaces
- Two BR apartments - 114 0.7 space per apartment 80 spaces
- Three BR apartments - 37 1.0 space per apartment 37 spaces
- TOTAL Residential- 191 133 spaces

- Non-residential (3 level) 1.0 / 400 sqm 14 spaces
- Service/delivery incl above
- TOTAL 147 spaces

Alternatively: If the number of apartments were to conform to the proper intent of the SEPP requirements for in-fill affordable housing as outlined in Appendix “A”, and car parking spaces were to conform to North Sydney Council DCP for new high-rise apartments close to Crows Nest Station, the number of car spaces (assuming a spread as below) would be:

- One BR apartments - 40 0.4 space per apartment 16 spaces
- Two BR apartments - 88 0.7 space per apartment 62 spaces
- Three BR apartments - 40 1.0 space per apartment 40 spaces
- TOTAL Residential - 168 118 spaces
- Non-residential 1.0 / 400 sqm 14 spaces
- Other service/delivery incl above
- TOTAL 132 spaces

The applicant is planning enough basement levels to allow for 328 carparking spaces. These are identified on the plans. 190 for residential and 138 for commercial and retail. Because car parking numbers determine the number of basements, we conclude it would be possible to reduce the number of basements to a maximum of four (4), thus saving three (3) levels of basement.

End of Appendix “B”

Further comment on the detail of the new SSD proposal: The announced policy for approval of extra floor space of up to 30% provided 15% of that extra floor space is made available for affordable housing (for 15 years) is stated as being applicable to the whole of the development floor space and height.

This broad policy results in much more than 30% of extra floor space when compared to the residential component of this development - a top shop above a podium - not a residential flat building.

The policy, designed to provide incentive for additional housing may have relevance when starting from a low height base of an LEP but it overcompensates in relation to this development which has already had significant uplift and the LEP already amended. This overcompensation is obvious when measured by the number of extra apartments.

So how does the applicant arrive at 191 apartments (48% more than the approved proposal) and a building height of 78.65m (RL176.0)? The simple answer is: The applicant has interpreted the SEPP provisions for in-fill affordable housing in a way that has taken advantage of the FSR applying to the whole of the land. It is acknowledged that the SEPP does say the whole of the land.

The proper interpretation would be to apply the bonus provision to the residential part of the land. The residential part of the land begins on top of the podium and has 10,562 sqm. The 30% bonus provision would be 3,169 sqm or about 38 apartments at the average of 83.2 sqm/apartment in the proposal as submitted. The affordable housing component would be 1,584 sqm.

The maximum height also using the more logical interpretation of the SEPP would be 4 floors equal to an extra height of 12.4m, thereby lifting the maximum height from 58.5m to 70.9m (RL169.0).

The podium, which has increased height in this new proposal compared to the height incorporated into the already approved proposal, would need to be amended. The bonus provisions do not give license to the applicant to make major changes to any part of the design that push the height above the maximum allowable under the bonus policy.

A detailed explanation of apartment numbers and building height is attached as Appendix "A".

Environmental Impact Statement: As can be read in our reasons for objecting to this proposal, the EIS has made no critical examination of the proposal. The purpose of an EIS is to identify all issues and if necessary, to produce recommendations for solution. It provides no comment on the Traffic Impact report, Shadow Diagrams, Bulk and Scale of the building, Wind Effects and other factors of design that will add negative impacts to amenity. The EIS regrettably reads like it is a marketing proposal in full support. The following comments highlight some of the more obvious deficiencies.

Section 2: Strategic Context

2.1 Summary: The development does nothing to increase strategic merit than the already approved development. The only difference is that it increases to excess, the provision of affordable housing, but only for 15 years when the obligation expires. The long-term effect is no permanent increase in affordable housing and the eventual return of the affordable housing crisis we are now facing. The absence of policy insisting on affordable housing in perpetuity is puzzling.

2.2 Strategic Justification: The justifications listed are entirely similar that can be said of the already approved development for this site. There is nothing added or improved except for the initial increase and eventual demise of affordable housing on this site.

2.3 Key Features of Site and Surrounds: This description is information that supports the existing LEP approved development but adds nothing. All benefits are the same. However, impacts from the now proposed development are quite different and adverse about which the EIS makes no comment.

2.5 Consideration of cumulative Effects: This is nothing more than a list of approved developments. There is no consideration offered. This proposal if approved would very likely inspire owners of some or all those sites and other sites yet to submit planning

proposals to apply for the bonus provisions for affordable housing without any strategic benefits whatsoever. The cumulative effect will be a significant increase in density without any benefits accruing or additional infrastructure being provided and a significant decrease in public amenity.

3. Description of Proposed development:

3.1 Overview -Table 6: We disagree with:

GFA which should be Total: 21,731 sqm. Others should be:

All Residential: 13,730 sqm

Affordable: 1,584 sqm

FSR Max: 6.79:1

Residential apartments: 168 subject to selection of numbers of Bedrooms

Affordable Apartments: 20 approx..

Maximum height: 70.9m (RL 69.0)

Residential parking spaces: 118

Non-residential parking spaces: 24.

Communal open space: Not checked at this stage.

3.6 Affordable Housing allocation: Number 20 or equivalent to minimum affordable housing floor area of 1,584 sqm.

3.7 Physical Layout and Design: The first paragraph dealing with the above ground podium makes no comment about its increase in height and that impact on overall height of the proposed development. There should have been a comment about this in this EIS.

Car parking spaces are not supported as per table 6. There is also a compelling reason to not comply with the SEPP on the mandated parking spaces for the non-affordable housing component and to address the lesser number of apartments arising from the proper interpretation of the SEPP Affordable Housing requirements. In addition, there must be consideration of Transport for NSW recommendations on reducing parking rates for buildings in close proximity to excellent public transport.

North Sydney Council has developed a DCP to address this issue. The proposed amendment to numbers of apartments and car parking spaces will have a significant and material effect on the number of basement levels required. The Traffic Impact report nominates a car-parking rate for non-residential area based on one space per 60 sqm (53 spaces). The applicant goes further and nominates 308 spaces. The North Sydney Council DCP is for one space per 400sqm (24 spaces over 3 levels). The number of basement levels is excessive. Three levels of basement parking would more than satisfy even the SEPP minimum parking rates.

A more detailed analysis of this issue is attached as Appendix “B”

3.7.1 Construction of new Buildings: This will be subject to a decision on the proper interpretation of the SEPP Housing legislation.

3.7.5. Tree removal: Removal of 6 trees is acknowledged, The EIS makes no effort to quantify the benefit of these 6 trees and to acknowledge them as lost contribution to the LGA Forest Canopy (how much is lost by removal of these 6 trees). They are mature trees and mature trees are needed to replace them. We are continually seeing agreement to developments without addressing the quantity and quality of existing canopy that will be removed. For a government that has a legal responsibility to address climate change, the attention to this issue is inadequate and more so, in the rush to solve a housing crisis. We are in a Climate Emergency crisis that is just as critical to the housing emergency. This developer, in fact all developers, should have as a condition of approval, to make a very positive contribution to the forest canopy of the LGA. The community deserves a very substantial improvement in tree canopy, not a reduction.

3.7.6. Ecologically Sustainable Development: The strategies described are common for major/significant projects and would be no different to the previously approved proposal for 16 stories. All are common-sense and practical. This adds nothing to the strategic importance of the development over and above what could be achieved by the previous approved proposal.

3.7.7 Vehicular Access: The EIS covers this in detail. We note that this aspect of the proposal is similar to the already approved proposal.

3.7.9 Bicycle Access and Parking: Noted as compliant but adds no strategic merit over and above the previous 16 storey proposal.

3.7.10 Service Vehicle Access and Parking: Also covered in detail and we note the complexity of the need to employ a full-time parking manager whose role will include bookings for service vehicles and for residents moving in and out. Presumably those duties will also include some control of waste removal.

3.8 Uses and Activities: Noted but no different to the previous 16 story proposal and therefore adds no further strategic merit. The proposal has no obligation to provide a voluntary planning agreement, without which it will have an overall negative impact on existing residential amenity, traffic density and congestion.

3.8.2 Excavation: Underground basements (7 levels if approved) x average 22.5 m deep) will involve 72,000 compacted cubic metres having to be moved. When excavated the volume will increase by about 20% meaning about 85,000 cubic meters of loose fill has to be transported off-site. The site is constricted by surrounding roads such that B-Double trucks would not be suitable or acceptable for transport. All movements would have to be from Alexander Street and at 20 cubic metres/truck there would be 4,250 truck movements.

Traffic will be severely impacted by a line of trucks waiting in remote side streets to the south to pick up. The time taken to move this spoil would depend on traffic congestion which is high every day. The response to the EIS section 3.10 indicates 24 months from consent to completion of the whole project. Excavation allowance is 6 months (approximately 150 days) requiring 30 trucks/day/every day. This seems very unlikely.

The Traffic Impact Report makes no constructive comment about construction traffic other than a crude diagram of arrivals and departures. Heavy trucks as described in the report will have no place to park and wait without impacting local traffic. All trucks will have to enter Alexander Street from the south but there is no side street where trucks can park easily let alone access. Imagine them paring in Bruce Street, or Rockland Road, Hazelbank Road, Crows Nest Road or Bay Road by which time it is in the CBD of North Sydney. The method of excavated material removal from the site has not been properly considered at all.

3.8.3 Construction: The hours of work for excavation seem totally inappropriate for excavation spoil removal. Working between peak times or at night, seems the only solution to traffic problems. Trucks would compete with morning and afternoon peak time traffic to such an extent that this aspect of the project would require a special approach to comply with approval. This is seen as a major issue.

3.8.4 Waste Management:
Domestic waste removal.

Waste bins are specified as seven (7) x 1100 litres capacity for domestic waste. The allowable amount of domestic waste from each residential dwelling in North Sydney is 80 litres. At 191 apartments the maximum load is 15,280 litres/week. The consultant's report converts this to 50% (7640 litres) of compacted waste using a compactor in the bin room on basement level 01.

A vertical chute will feed the waste from each floor above to a bin which when full, will be compacted, moved to a rail line and later transferred to the bin collection storage room on the ground level above using a lift (L8) between the two levels. This process of compaction, storage, transferring to an upper level and storage for a weekly pick up is the job allocated to a building manager. In theory, one bin will be filled each day, compacted, and elevated to the bin storage level one floor above. It is complex at best.

Recyclable waste removal:

There is no limit on the number of Recyclable waste bins allowed by Council. The plan allows for 11 x 1100 litre recyclable bins which will not be compacted. Bins will be stored in the same general area on basement 01. Waste will be delivered by hand to these bins. These 11 bins will also be transferred to the storage area above on ground level using the dedicated lift L8. Note that hand delivery of recyclable waste will be unpopular. It can be expected that some recyclable waste will be deposited in the domestic waste chute.

Pick up of compacted and recycle waste bins will be via Council contractor's trucks. They will pull up in Alexander Street for collection. The space allowed is only 2 m from the kerb (meaning no pedestrian access on the footpath) and very close to the car park exit. 1100 litre bins of compacted waste need to be lifted hydraulically. It will take the waste contractor and the building caretaker the best part of thirty minutes to collect, empty and reload the 7 bins into the bin collection area. And there is another pick-up for more - recycled waste (on the same day).

There is no provision for spilled waste to be collected so it will be hosed off into the gutter as there is no alternative. Pedestrians will not be able to use the footpath while all this is in progress.

These figures ignore the additional level of complexity of the government mandated requirement by 2030 for food scraps and organic waste to be separated into special bins collected weekly (and for other domestic waste to be collected bi-weekly.)

The whole design is cumbersome and unsafe. Collection on the footpath space along busy Alexander Street would be unacceptable. The system needs to be revisited. Conclusion: the Site is not suitable for the proposed level of development.

Commercial/Retail waste: This will be a separate contract arranged with the Owners Corporation. Trucks enter off Alexander Street turn hard left, then right around and down two radial bends then park on a turntable, pick up, empty, and return the (7) 1100 litre bins, then exit via the up ramp to Alexander Street. All this while traffic is going past to and from the six other basements below. This is an unsafe practice which will require traffic management personnel.

3.9 Contribution and Public Benefit: Noted but nothing more in than the already approved project. Its contribution to public benefit is more than offset by the lack of public amenity by way of increased traffic and congestion in Alexander Street and Crows Nest generally, the extra overshadowing by the increased height and the visual impact of the huge bulk and scale of the long walls of housing on all three streets.

3.10 Staging Timing and Sequencing: The times taken for each phase of the project are overly optimistic and not supported by any detail plan (as has been demonstrated for excavation to lack a plan).

4 Statutory Content: We make no comment on this which is best left to Council who has the skills and qualifications necessary to do so.

5 Engagement: The figures concerning community engagement are questionable because the consultant chosen to conduct the survey, did so only by a very narrow letterbox drop. Wollstonecraft Precinct was not included in the survey which is remarkable because our Precinct was one of, if not the most vocal critic of both planning proposals submitted by the applicant by way of submissions and address to the regional panel. Some residents in Hayberry Street did not receive the survey request until it was brought to their attention by our Precinct's submission copied to them.

The statistics for support versus no support, are a snapshot taken on a narrow basis and in short time. All figures in this section should be questioned. The community if properly surveyed and answered would provide overwhelming objection to this excessive development, The community did so on the approved project. In 2018, over 3,000 people signed a petition in which amongst other matters, took exception to this site being a significant high site when the details of the draft plan were pre-released.

Traffic Impact Report: The highly theoretical comments about traffic impacts commencing on page 24 are not credible. Comparing this new proposal with one presented in 2020 (which was withdrawn before it was to be considered by Council) is misleading. The author of this report has obviously never been in a vehicle trying to enter Alexander Street from the Pacific Highway and cross the Pacific Highway at Peak mornings and evenings, nor in the middle of the days when there is almost gridlock at the roundabout with Burlington Street. The report fails to contemplate the cumulative effect of other developments that will occur in the vicinity. That would require a whole of area holistic examination of the 2036 Plan area. The report takes no notice of Council's DCP for car parking rates at this site.

The proposal to amend the already approved and updated LEP is a “double whammy” without strategic justification. Precinct's comments on the proposal are to demonstrate the over-development of the proposal which is not supported.
