

# **Review of the Environmental Impact Statement for the Crows Nest OSD Site A Amending Concept SSDA (SSD-75662958)**

## **Introduction**

This submission provides an evidence-based critique of the [Environmental Impact Statement \(EIS\) for the Crows Nest Over Station Development \(OSD\) Site A Amending Concept State Significant Development Application](#) (SSDA). The purpose of this submission is to identify specific weaknesses, internal inconsistencies, underdeveloped assessments, and instances of non-compliance with the [Planning Secretary's Environmental Assessment Requirements](#) (SEARs) issued on 18 October 2024.

The analysis is structured around four key areas of concern where the submitted documentation appears to fall significantly short of the standards required for a State Significant Project. These areas are:

1. the procedural and substantive failures of the community engagement process;
2. the resulting deficiencies in the Social Impact Assessment (SIA);
3. the inadequate assessment of transport and parking impacts arising from a zero-resident-parking strategy; and
4. the unresolved land use conflicts and residential amenity impacts.

This submission concludes with a consolidated summary of identified instances of non-compliance and provides a series of recommendations for the consent authority. The objective is to ensure that any future determination of this application is based on a robust, credible, and compliant assessment of the project's true impacts.

## Section 1: Procedural and Substantive Failures in Community Engagement

The engagement process presented in the EIS is fundamentally flawed, both procedurally and substantively, rendering its outcomes unreliable as a basis for a credible social impact assessment. This represents a failure to meet the core principles of the NSW Government's [Undertaking Engagement Guidelines for State Significant Projects](#).

### 1.1 Chronological Inconsistencies in Documentation

The EIS presents an illogical and procedurally impossible timeline for its community engagement activities. The fundamental principle of statutory planning and project management is that a strategy must precede execution and subsequent reporting. The proponent's documentation inverts this process. The [Engagement Outcomes Report](#) is dated 17 February 2025, yet the [Community and Stakeholder Engagement Strategy](#), the document that should have guided the entire process, is dated more than two weeks later on 3 March 2025. This is compounded by a forward-looking [Community Consultation and Engagement Plan](#) dated 3 March 2025.

This discrepancy is not a minor typographical error; it suggests a "tick-a-box" and seemingly duplicitous approach to documentation, where reports may have been prepared retrospectively to satisfy a checklist rather than as part of a genuine, planned process. This procedural anomaly suggests that the engagement was not conducted in accordance with the strategy presented, raising significant questions about the authenticity of the entire engagement narrative. It undermines the credibility of the proponent's claims of a "comprehensive engagement approach" and is in direct contradiction to the *Undertaking Engagement Guidelines*, which state proponents must "Plan early".

Furthermore, the [Social Impact Assessment](#) (SIA) claims that the Social Impact Practitioner was involved in the "co-design of the Community and Stakeholder Engagement Strategy". This claim is chronologically incongruous, as it is impossible to have co-designed a strategy that was finalized after the engagement outcomes were already documented and reported. This inconsistency erodes confidence in the integrity of the assessment process.

### 1.2 Disparity Between Stated Intent and Actual Outcomes

The proponent repeatedly claims to have undertaken a "comprehensive engagement approach" and a "comprehensive program of community and stakeholder engagement". The evidence presented, however, starkly contradicts these assertions.

The primary method offered for broad community feedback was an online survey, promoted via a flyer distributed to "approximately 2,500 residences and businesses". The SAI reveals that this "comprehensive" process yielded only two (2) responses!

A response rate of less than 0.1% for a State Significant Project in a dense urban environment cannot be considered "comprehensive," "effective," or "meaningful" engagement. The *Undertaking Engagement Guidelines* explicitly require that engagement be "proportionate to the scale, likely impacts, and likely level of community interest in the project". For a multi-tower, high-density residential development with significant potential impacts on local amenity, traffic, and character, this level of participation is manifestly disproportionate and inadequate. The proponent's characterisation of the engagement as 'comprehensive' is therefore misleading and unsupported by the evidence. The proponent has either failed to design activities that genuinely "encourage and facilitate participation" or is misrepresenting the nature of the engagement undertaken.

### **1.3 Consequential Non-Compliance with SEAR 28 (Engagement)**

SEAR 28 requires the proponent to "Detail engagement undertaken and demonstrate how it was consistent with the *Undertaking Engagement Guidelines for State Significant Projects*". The procedural flaws identified in Section 1.1 and the substantive failure to achieve meaningful participation detailed in Section 1.2 mean the proponent has not and cannot, demonstrate this required consistency.

The guidelines require proponents to "report back on what was heard". Reporting on the views of two individuals and presenting this as representative of a community of thousands is not a credible fulfillment of this requirement (regardless of how wise and prescient these individuals may be!). The engagement reporting fails to meet the evidentiary standard required by SEAR 28. The submitted documents describe a process that is neither procedurally logical nor substantively effective, constituting a clear non-compliance with this key SEAR from the outset.

## Section 2: Deficiencies in the Social Impact Assessment

The Social Impact Assessment (SIA) is built upon the flawed and unreliable foundation of the engagement process. It employs questionable assessment methodologies to arrive at its conclusions, thereby failing to provide a credible analysis of the project's social impacts as required by SEAR 21.

### 2.1 Unsubstantiated Positive Impact Claims

The SIA concludes a "Very High Positive" impact for "housing supply, diversity and affordability" and a "High Positive" impact for "high density living". While the project does provide housing (an output), the SIA leaps to the conclusion that this will have a universally positive social impact (an outcome) without a robust evidence base from the affected community.

The SIA bases its understanding of community sentiment on the feedback from only two survey respondents (those wise and prescient individuals mentioned earlier). This is a statistically insignificant sample size and an insufficient evidence base from which to validate community aspirations or concerns on a project of this scale. The *Social Impact Assessment Guidelines* require an understanding of how impacts are "experienced (from their perspective)" and the collection of "relevant data, evidence, and insights... to ensure representativeness of views". By relying on only two responses, the SIA fails this fundamental requirement. It also fails to adequately explore potential negative social impacts associated with high-density Build-to-Rent (BTR) developments, such as issues of transience, community cohesion challenges, or the perception of "over-development" that was explicitly raised by one of the two respondents. The SIA confuses project outputs with social outcomes and bases its highly positive ratings on a sample size that cannot be considered representative, but more accurately, misrepresentative!

### 2.2 Illogical Assessment of Cultural and Amenity Impacts

The SIA's assessment of "Impacts related to Connecting with Country" is particularly problematic. It initially assesses the impact as "High Negative B2" on the grounds that "the design does not adequately reflect the inputs from the Walk on Country" engagement. It then proposes a single, non-guaranteed "enhancement measure": "Consider the commission of a First Nations artist to develop the public artwork for the Site". With this measure alone, the impact is re-rated to "High Positive" – obviously alluding to the aspirational view of the restorative power of art!

This represents a flawed "mitigation via re-rating" methodology. A "high negative" impact stemming from a fundamental failure to integrate cultural design principles into the building's architecture cannot be logically transformed into a "high positive" impact by merely *considering* the commissioning of a separate artwork (despite the

view of the restorative power of art). A genuine impact assessment requires mitigation measures to directly address the cause of the negative impact. In this case, the SIA identifies a core design failure but proposes a mitigation that does not fix the design. It then re-rates the impact as if the problem has been solved, leaving the fundamental issue unaddressed.

Similarly, the SIA assesses the impact of "alcohol and licensed premises" as "Low", downplaying the potential amenity impacts of a 250-patron rooftop bar and a 60-patron ground floor bar on hundreds of co-located residents. It relies on broad demographic data to suggest that "alcohol related harms associated with licensed premises are unlikely". This is a sociological generalization, not a site-specific impact assessment that properly considers the direct amenity conflicts of noise and disturbance for residents within the same building complex, and as such is valueless.

### **2.3 Non-Compliance with SEAR 21 (Social Impact)**

SEAR 21 requires a "Social Impact Assessment... prepared in accordance with the *Social Impact Assessment Guidelines for State Significant Projects*". Due to its reliance on a flawed engagement process and the use of illogical assessment methodologies, the submitted SIA does not meet the standards of the guideline. It fails to provide a credible, evidence-based assessment of potential social impacts and therefore does not comply with SEAR 21.

## Section 3: Inadequate Assessment of Transport and Parking Impacts

The proposed zero-resident-parking strategy is a significant feature of the proposal. The assessment of its consequences is insufficient and fails to address the reasonably foreseeable impacts on the local road network and community amenity, thereby failing to comply with the requirements of SEAR 10.

### 3.1 The Zero-Parking Premise for 474 Dwellings

The [Traffic, Transport and Accessibility Assessment](#) (TTAA) confirms that the development "does not propose any off-street car parking spaces" for its 474 residential apartments. The justification rests entirely on the site's proximity to public transport and the aspirational targets of a [Green Travel Plan](#) (GTP). The GTP sets a target mode share of 97% for public and active transport, with only 3% for private vehicles (as passengers). Based on this, the TTAA concludes the traffic impact will be "negligible".

This approach is based on aspirational targets rather than evidence-based predictions of travel behaviour. The TTAA provides no empirical evidence, case studies of comparable BTR developments in Sydney, or behavioural modelling to support the 97% target. It is an unsubstantiated assumption. A robust assessment would model a range of scenarios, including a "GTP failure" scenario where car ownership and use are higher than the target. By presenting a best-case scenario as the only possible outcome, the TTAA fails to provide a comprehensive impact assessment. The reliance on post-occupancy surveys to monitor the GTP's effectiveness is a reactive measure that fails to proactively assess and mitigate potential impacts before they occur.

### 3.2 Failure to Assess On-Street Parking Spillover

The most significant omission in the transport assessment is the failure to analyse the potential for parking demand to spill over into surrounding local streets. The TTAA and the main EIS contain no surveys of existing on-street parking occupancy in the Crows Nest/St Leonards area, nor any modelling of the impact of even a small fraction of the 474 new households seeking on-street parking for private or shared vehicles.

Research and experience show that while eliminating parking minimums can reduce car ownership, [it does not eliminate it entirely](#). In this case, with zero parking provided, the entire residual demand is displaced onto the public realm. The proponent has externalised the cost and risk of their zero-parking strategy onto the public and has failed to assess the consequences. This is a reasonably foreseeable impact on the "way of life" and "access" of the existing community that has been ignored.

### **3.3 Non-Compliance with SEAR 10 (Traffic, Transport and Accessibility)**

SEAR 10 requires an assessment of impacts on "road capacity, intersection performance and road safety... and any cumulative impact". The failure to assess parking spillover is a direct failure to assess impacts on road capacity (as increased on-street parking reduces effective lane widths and traffic flow) and road safety (due to increased vehicle movements, circling for parks, and potential conflicts). While the [Construction Traffic Management Plan](#) (CTMP) acknowledges cumulative construction impacts, the operational TTAA fails to adequately consider the cumulative impact of residential parking demand from this and other new developments on the finite on-street parking supply in the Crows Nest/St Leonards area. This omission constitutes a failure to meet the requirements of SEAR 10.

## Section 4: Unresolved Land Use Conflicts and Amenity Impacts

The EIS fails to adequately resolve inherent conflicts between the proposed high-intensity residential and commercial uses. It provides insufficient justification for design compromises that reduce residential amenity and fails to propose specific, enforceable mitigation measures for key impacts.

### 4.1 Inadequate Mitigation of Noise and Amenity Conflicts

The proposal includes a 250-patron rooftop bar and a 60-patron ground floor bar co-located with 474 residential apartments. This creates a significant and obvious potential for noise and amenity conflict, particularly from patron noise, music, and operational activities late at night. The SIA scoping study identifies these potential impacts.

However, the mitigation measures proposed are generic and non-committal. The [Noise and Vibration Impact Assessment](#) (NVIA) merely states that a detailed assessment of the bars "will be conducted" and will "include required acoustic design and management controls", but it does not provide those crucial details – and in any event is after the fact! The SIA simply refers to a future "Plan of Management". This defers the detailed assessment and mitigation of a key impact to a post-approval stage. The consent authority is being asked to approve a high-risk land use combination without being provided with the specific acoustic treatments, operational restrictions, and management protocols necessary to make it viable. This is an unacceptable deferral of a critical assessment.

### 4.2 Insufficient Justification for 'Flexibility' under the Apartment Design Guide

The EIS acknowledges non-compliance with several Apartment Design Guide (ADG) design criteria, particularly regarding solar access and natural ventilation for several apartments. It justifies these departures by invoking the "flexibility" afforded to BTR developments under the Housing SEPP and its associated fact sheet. The supposed argument is that the provision of communal spaces and amenities compensates for lower amenity within individual apartments.

The EIS does not provide a robust, evidence-based justification for *why* this flexibility is necessary or *how* the trade-off results in an equivalent or better amenity outcome for residents. The Housing SEPP allows for flexibility but does not remove the need to demonstrate that overall design quality and amenity are maintained. The proponent uses the 'BTR' classification as a blanket justification for design compromises that appear to be driven by site constraints and yield maximization, rather than a thoughtful application of BTR principles aimed at enhancing resident experience. This approach risks creating a precedent for lower-quality housing under the guise of housing diversity, contrary to the intent of the ADG.

#### **4.3 Non-Compliance with SEAR 5 (Environmental Amenity) and SEAR 12 (Noise and Vibration)**

SEAR 5 requires the proponent to demonstrate a "high level of environmental amenity for any surrounding residential or other sensitive land uses". This requirement extends to the new residential uses *within the development itself*. By failing to provide specific mitigation for noise impacts from the bars and by justifying lower internal amenity through an unsubstantiated application of 'flexibility', the EIS fails to demonstrate that a high level of amenity will be achieved for future residents, nor for surrounding neighbours.

SEAR 12 requires a quantitative assessment of noise sources and the outlining of mitigation measures. The deferral of a detailed acoustic assessment for the licensed premises means this SEAR has not been met.

## Section 5: Consolidated Summary of Non-Compliance

The following table provides a consolidated summary of the key instances where the submitted Environmental Impact Statement and its supporting documentation fail to comply with the Planning Secretary's Environmental Assessment Requirements (SEARs).

Identified Weakness/Inconsistency	Relevant SEARs Clause	Nature of Non-Compliance
Chronologically impossible engagement documentation.	SEAR 28 - Engagement	Fails to demonstrate consistency with <i>Undertaking Engagement Guidelines</i> due to illogical process documentation where outcomes are reported before the strategy is finalized.
Claim of "comprehensive" engagement is contradicted by a 0.08% survey response rate.	SEAR 28 - Engagement	Fails to demonstrate that engagement was "effective" or "proportionate" as required by the guidelines, rendering the process substantively inadequate.
SIA conclusions are based on a statistically insignificant sample of two survey responses.	SEAR 21 - Social Impact	Fails to meet the <i>Social Impact Assessment Guidelines</i> requirement for a representative evidence base, making its positive impact ratings unsubstantiated.
Flawed SIA methodology re-rates a "high negative" cultural impact to "high positive" with a weak, non-committal quantitative mitigation measure.	SEAR 21 - Social Impact	Fails to provide a credible assessment methodology, undermining the integrity of the SIA and its

		compliance with the guidelines.
Failure to assess on-street parking spillover from 474 zero-parking apartments.	SEAR 10 - Traffic, Transport and Accessibility	Fails to assess a key, reasonably foreseeable impact on road capacity, safety, and local amenity, resulting in an incomplete traffic assessment.
Deferral of detailed acoustic assessment for high-impact licensed premises.	SEAR 12 - Noise and Vibration	Fails to provide a quantitative assessment and outline specific mitigation measures for a key noise source, deferring critical assessment to a post-approval stage.
Insufficient justification for ADG non-compliances, relying on a blanket claim of 'BTR flexibility'.	SEAR 5 - Environmental Amenity	Fails to demonstrate that a high level of environmental amenity will be achieved for future residents, as required by the SEAR.

## Section 6: Conclusion and Recommendations

The EIS for the Crows Nest OSD Site A Amending Concept is procedurally and substantively flawed. The community engagement process lacks credibility, which in turn invalidates the findings of the SIA. The assessment of transport impacts is critically underdeveloped, failing to address the reasonably foreseeable consequences of the zero-resident-parking strategy. Furthermore, the EIS defers the assessment of key land use conflicts and relies on a poorly justified application of 'flexibility' to excuse substandard residential amenity. As a result, the EIS fails to comply with multiple key SEARs and does not provide the consent authority with a sufficient basis upon which to make an informed determination.

It is recommended that the relevant authorities, deem the submitted EIS inadequate for public exhibition and issue a formal Request for Additional Information to the proponent, requiring, at a minimum:

1. **Rectification of Documentation:** The correction of all chronological and procedural errors in the engagement documentation to present a logical and credible process.
2. **New, Robust Engagement:** The undertaking of a new, genuine, and properly documented community engagement process that is proportionate to the scale of the project and demonstrably consistent with the *Undertaking Engagement Guidelines for State Significant Projects*.
3. **Revised SIA and TTAA:** The preparation of a revised Social Impact Assessment and a revised TTAA based on the outcomes of the new engagement. The revised TTAA must include a comprehensive assessment of existing on-street parking conditions and model the potential impacts of parking spillover.
4. **Specific and Enforceable Mitigation:** The provision of a detailed acoustic assessment for the licensed premises, including specific, design-integrated, and operational mitigation measures that can be translated into enforceable conditions of consent, rather than being deferred to a future management plan.
5. **Robust Justification for ADG Variations:** A detailed, evidence-based justification for each requested departure from the ADG, demonstrating how overall residential amenity is maintained or enhanced, consistent with the objectives of the Housing SEPP.