

# **Review of the Environmental Impact Statement for the Crows Nest Over Station Development (Site A) SSD-75660711**

## **1.0 Executive Summary and Overview of Key Findings**

This report provides a review of the [Environmental Impact Statement](#) (EIS) dated 11 June 2025 and associated documentation submitted for the State Significant Development Application (SSDA) for the Crows Nest Over Station Development (OSD) Site A, identified as SSD-75660711.

The submitted EIS is substantially deficient in several critical areas. The documentation contains:

- fundamental procedural flaws,
- unsubstantiated claims regarding community support,
- weak justifications for significant departures from statutory amenity standards, and
- underdeveloped assessments of key environmental impacts.

These deficiencies are of such an extent that they prevent a robust and confident determination of the application in its current form and demonstrate a failure to adequately address the [Planning Secretary's Environmental Assessment Requirements](#) (SEARs).

The principal findings of this review are summarised in Table 1 below. The analysis concludes that the EIS is predicated on an unapproved and hypothetical planning context, its social impact assessment is invalidated by a failed community engagement process, and its design response falls short of the required standards for design excellence, residential amenity, and cultural integration. Furthermore, key technical assessments, particularly concerning traffic and transport, are incomplete and based on flawed assumptions.

It is recommended that the consent authority does not determine the application in its current form and instead requires the proponent to address the fundamental deficiencies outlined in this report before the assessment can proceed.

**Table 1: Summary of Key Deficiencies vs. SEARs Requirements**

SEARs Item #	SEARs Requirement	Key Deficiency in EIS
SEAR 3	Address the requirements of any approvals applying to the site, including any concept approval.	The entire Detailed SSDA is predicated on the <i>assumed</i> approval of a concurrently lodged Amending Concept SSDA, creating a procedurally flawed assessment based on a hypothetical planning framework.
SEAR 4	Demonstrate how the development will achieve design excellence.	The design fails to meaningfully integrate the co-designed principles from the 'Connecting with Country' workshop, treating it as a superficial decorative element rather than a core design driver.
SEAR 6	Assess amenity impacts... A high level of environmental amenity for any surrounding residential or other sensitive land uses must be demonstrated.	The proposal introduces a 250-patron rooftop bar into a residential building, creating inherent amenity conflicts. The assessment of this risk as "Low" is incongruous with the scale of the use, and mitigation measures are underdeveloped.
SEAR 6	For applicable developments, provide an assessment of the development against the Housing SEPP and the Apartment Design Guide (ADG).	The EIS provides weak and circular justifications for significant non-compliances with non-discretionary ADG standards for apartment size and ceiling heights, mischaracterizing design choices as unavoidable constraints.
SEAR 11	Provide a transport and accessibility impact assessment, which includes... a forecast of additional daily and peak hour multimodal network flows... using industry standard modelling.	The Traffic, Transport and Accessibility Assessment explicitly avoids industry-standard SIDRA modelling for key intersections, based on an unsubstantiated assumption of "minimal" impact. It fails to assess the true impact of a modal shift to on-demand services.
SEAR 29	Detail engagement undertaken and demonstrate how it was consistent with the <i>Undertaking Engagement Guidelines for State Significant Projects</i> .	The engagement methodology was demonstrably ineffective, yielding only two (2) survey responses from a distribution to ~2,500 properties. This statistically insignificant result invalidates the Social Impact Assessment's conclusions on community views.

## 2.0 Fundamental Procedural and Methodological Deficiencies

The EIS is built upon an unstable foundation, characterized by significant procedural irregularities and methodological failures. These foundational issues undermine the validity of the entire assessment and prevent a conclusive evaluation of the project.

### 2.1 Assessment Based on an Unapproved Planning Context

The EIS is procedurally flawed from the outset. It explicitly states that the "Detailed SSDA has been drafted based on the assumption that the Amending Concept SSDA will be approved". This [Amending Concept SSDA \(SSD-75662958\)](#), lodged concurrently, seeks to fundamentally alter the approved planning framework for the site, changing the use from predominantly commercial to a mixed-use residential development and significantly modifying the approved building envelope.

This approach contravenes the established and logical sequence of the staged development provisions under the [Environmental Planning and Assessment Act 1979 \(EP&A Act\)](#). The purpose of a staged SSDA process is to first establish and approve firm, high-level planning principles - such as land use, building envelopes, and gross floor area - at the concept stage. Only once these principles are determined and legally certain, can a subsequent detailed application be properly prepared and assessed for its consistency with that approved concept. The SEARs for this project reinforce this logic, requiring the EIS to "Address the requirements of any approvals applying to the site, including any concept approval". This clearly implies assessment against a finalised, legally binding instrument, not a speculative or hypothetical one.

By basing its entire detailed assessment on an unapproved amendment, the proponent has created a "cart before the horse" scenario. This approach circumvents the intended rigour of the staged assessment pathway. It effectively pre-empts the statutory determination of the Amending Concept SSDA and presents the consent authority with a fait accompli. If the consent authority were to find fault with the Amending Concept SSDA - for example, determining that a commercial use is more appropriate or that the proposed residential envelope is unacceptable - the voluminous and costly Detailed SSDA would be rendered invalid. This places undue pressure on the consent authority to approve the amendment simply to avoid making the detailed assessment moot, a situation that could compromise the independent and merits-based assessment of the concept itself. This would set a dire precedent for major projects, encouraging proponents to bundle concept amendments with detailed applications, thereby eroding the clarity, certainty, and public transparency that the staged approval pathway is designed to provide.

## 2.2 Inadequate Community Engagement and Consultation

The EIS fails to demonstrate that engagement was undertaken in a manner consistent with the [\*Undertaking Engagement Guidelines for State Significant Projects\*](#), a key requirement of SEAR 29. The proponent's primary method for soliciting community feedback was an online survey, promoted via a flyer distributed to approximately 2,500 residential and business properties. This process yielded a total of only two (2) responses!

Despite this self-evident failure to achieve meaningful participation, the [\*Social Impact Assessment\*](#) (SIA) and the main EIS proceed to draw definitive conclusions about community sentiment. For example, the EIS Executive Summary claims that community feedback was used to "promote feedback, identify any likely impacts... and listen to any mitigation of enhancement offered". The SIA similarly uses the two (2) survey responses to validate its assessment of community needs regarding housing and amenities. This is not a credible evidence base, in fact, it is grossly misrepresentative and misleading.

The extremely low participation rate is not merely a poor outcome; it is direct evidence of a flawed and ineffective engagement strategy. For a project of this scale, impact, and public visibility, a letterbox drop with a link to a website represents a passive, low-effort approach. The *Engagement Guidelines* require engagement to be "proportionate" and "effective." A two-person response rate from a catchment of thousands is self-evidently disproportionate and ineffective. There is no evidence in the documentation that the proponent, upon recognising the clear failure of their chosen method, deployed more active or appropriate techniques to elicit feedback, such as targeted workshops, staffed information kiosks in high-traffic public areas, or direct outreach to local strata bodies and community groups.

This failure invalidates the entire evidence base for the SIA. The consent authority has been provided with no credible, verifiable data on the community's views, concerns, or aspirations. Any assessment of social impacts presented in the EIS is therefore based on the proponent's own assertions and subjective interpretations and extrapolations, not on actual evidence gathered from the community it purports to have consulted. The disconnect between the claimed engagement and the actual participation is starkly illustrated in Table 2.

**Table 2: Assessment of Community Engagement Methodology**

<b>Engagement Method</b>	<b>Stated Reach / Purpose</b>	<b>Actual Participation</b>	<b>Critique of Effectiveness</b>
Online Community Survey	Distributed via flyer to ~2,500 residential and business properties to "encourage local residents and the wider community to provide feedback".	Two (2) responses.	Statistically insignificant. Fails to provide a credible sample of community views. The method was passive and inappropriate for a project of this scale and complexity.
Community Pop-up	A "community drop-in session" was held to allow community members to speak with the project team.	No verifiable attendance figures or summary of feedback provided. The SIA mentions pop-ups at a local festival but provides no quantitative data, other than "15,000 Hume Place tote bags were handed out on the day" and "An estimated 50,000 attended the festival".	The impact and reach of this method are undocumented and cannot be verified. It does not constitute a robust consultation program.
Project Website Contact Form	Established as a point of contact for neighbours and community members to access information and provide feedback.	No emails were received via the contact form.	Demonstrates a lack of community engagement with the proponent's chosen digital platform, further highlighting the ineffectiveness of the overall strategy.

### 3.0 Analysis of Statutory Non-Compliance and Justification

The EIS seeks approval for a design that contravenes several non-discretionary development standards intended to protect residential amenity. The justifications provided for these breaches are weak, often circular, and rely on mischaracterizing the proponent's own design choices as unavoidable external constraints. Approving these variations would set a harmful precedent, undermining the protective intent of state-level planning controls.

The proposal requires variations to the [State Environmental Planning Policy \(Housing\) 2021](#) (Housing SEPP) and the associated [Apartment Design Guide \(ADG\)](#), specifically regarding minimum apartment internal areas and floor-to-ceiling heights. While the proponent has submitted Clause 4.6 variation requests, the arguments within them lack sufficient environmental planning grounds.

The core of the issue lies in the proponent's decision to pursue a high-density residential use on a site with a structural grid and podium originally designed to support a commercial tower under the CSSI and initial Concept Approval. Rather than adapting the development yield to suit the site's constraints, the design attempts to force a predetermined residential yield onto the site, resulting in compromised amenity outcomes. These self-imposed difficulties are then presented as justification for contravening development standards.

This is most evident in the justifications for breaches of apartment size and ceiling height standards vs. the ADG, as detailed in Table 3. The argument that the "structural constraints of the Metro box" necessitate lower ceilings is lacks validity and is unconvincing. The proponent *chose* to propose a maximised residential use for this structure, fully aware of its physical limitations. The constraint is a direct consequence of a commercial decision, not an inherent site condition that justifies delivering sub-standard amenity to future residents, particularly those in affordable housing.

Similarly, the justification for sub-sized apartments relies on the "flexibility" afforded to Build-to-Rent (BTR) developments. While the Housing SEPP does allow for flexibility, it is not a blanket permission to disregard minimum standards that ensure basic liveability. The proponent argues that the provision of communal amenities compensates for smaller private dwellings, on what basis is this justified or verifiable? Moreover, the public benefit of providing apartments that are smaller than the minimum standard - a standard established to ensure adequate living space - is not clearly reasoned or weighed against the permanent loss of private amenity for future tenants. Approving these variations would signal that developers can propose unsuitable uses for constrained sites and then leverage those self-imposed constraints to argue for lower amenity standards, effectively eroding the protective function of the ADG.

**Table 3: Analysis of Non-Compliance with ADG Amenity Standards**

<b>ADG Objective</b>	<b>Specific Non-Compliance</b>	<b>Proponent's Justification</b>	<b>Critique of Justification</b>
4A Solar and Daylight Access	Only 55% of apartments receive compliant solar access, falling short of the ADG objective of 70%.	Justified by stating that 72% of apartments are dual aspect to increase natural light and that south-facing apartments have premium views towards the CBD (in any event most likely blocked by developments of SSD-83076206 & SSD-79240223).	While dual aspect improves amenity, it does not replace the health and wellbeing benefits of direct solar access. The justification effectively trades a key, quantifiable amenity standard for a subjective, and most likely soon-to-be lost benefit (views), which is not an acceptable trade-off under the ADG framework.
4C Ceiling Heights	A 0.1m (3%) variation below the 3.3m minimum in the affordable housing tower (Level 1). More significant non-compliances in retail areas within the podium.	Justified by the "structural constraints" of the existing Metro station structure and the need for a structural connection between the towers at Level 3.	The justification is invalid as the constraint is self-imposed. The proponent chose to pursue a residential use on a structure designed for a commercial building. The resulting amenity compromise should not be accepted as an unavoidable outcome.
4D Apartment Size	82 units (17% of total) are below the minimum internal area requirements.	Attributed to the inclusion of an additional bathroom. Justified by the "flexibility" afforded to BTR projects under the Housing SEPP, with communal spaces supposedly compensating for smaller private dwellings.	The justification is weak. The decision to add a second bathroom to already small apartments is a design choice aimed at marketability, not a planning necessity. The public benefit of this variation has not been demonstrated to outweigh the detriment of providing sub-standard private living space for 17% of residents.



## 4.0 Deficiencies in Design Response and Amenity

The EIS asserts that the proposal will deliver a high-quality development that achieves design excellence and protects environmental amenity, as required by SEAR 4, 5, and 6. However, a detailed analysis of the design response reveals significant shortcomings in cultural integration and the management of inherent land-use conflicts, calling into question the project's ability to deliver a genuinely high-quality or liveable outcome.

### 4.1 Failure to Integrate 'Connecting with Country' Principles

A critical failure in achieving design excellence (SEAR 4) is the superficial and inadequate integration of First Nations design principles. The proponent's own SIA identifies the initial design outcome as having a "high negative" impact in relation to Connecting with Country, noting that the design "does not adequately reflect the inputs from the Walk on Country" engagement.

The engagement process, which included a design workshop with First Nations representatives, established specific and meaningful themes and design opportunities. These included narratives of the "mother whale and the calf" and the "Dark Emu constellation," and tangible design ideas such as an entry statement sculpture, Gamaragal patterns in paving, and the creation of a yarning place. The EIS, however, reduces this rich cultural input to a single, vague architectural gesture: a "Lightweight design inspired by Indigenous sky country concept, sitting atop the brick podium".

This represents a fundamental failure of process, not just of design. It indicates that the 'Connecting with Country' engagement was treated as a perfunctory, box-ticking exercise, with its substantive and co-designed outputs largely ignored in the final architectural expression. The SIA's proposed mitigation measure - to "Consider the commission of a First Nations artist to develop the public artwork for the Site" - is, at best, a superficial remedy. While public art is valuable, it does not address the core failure to embed First Nations knowledge and narratives into the very fabric of the building's architecture, structure, and landscape as intended by the Government Architect NSW's [Connecting with Country Framework](#). This failure undermines the project's social license and its claim to be a high-quality, place-responsive development at a highly visible and significant public location.

### 4.2 Inadequate Mitigation of Amenity Impacts from Mixed Uses

The proposal introduces significant and inherent land-use conflicts by co-locating a 250-patron rooftop bar and other ground-floor licensed premises within a high-density building containing 474 residential apartments. This design choice directly



challenges the SEARs' requirement to demonstrate a "high level of environmental amenity for any surrounding residential or other sensitive land uses".

The [Noise and Vibration Impact Assessment](#) (NVIA) proposes a suite of standard mitigation measures, including a 3-metre-high solid parapet around the rooftop bar, limits on amplified music to 70dB(A), and a 12 midnight operational curfew. Based on these measures, the SIA concludes that the residual risk to amenity is "Low". This assessment appears overly optimistic and incongruous with the lived experience of such vertical mixed-use arrangements.

The primary amenity impacts extend beyond simple acoustic compliance at a receiver point. They include cumulative noise from patron activity, queuing for lifts, and dispersal onto public streets late at night. They also include potential conflicts in shared spaces such as lobbies and lifts, and general security concerns. The EIS mentions "Separate rooftop bar access off Pacific Highway", but the architectural plans and operational management details are insufficient to demonstrate how this will be effectively and safely managed to prevent conflict with residents entering and exiting the building.

The reliance on operational controls, such as curfews and security management, is a weak mitigation strategy that is prone to failure and leaves residents with little recourse. The design itself does not appear to have robustly engineered the separation of these incompatible uses. This design choice appears to prioritize commercial activation and commercial yield with the creation of a "destination" venue, over the protection of internal and neighbouring residential amenity, risking the creation of a building with endemic social conflict, high resident turnover, and a poor reputation. This outcome would directly undermine the stated strategic goal of providing stable, long-term rental housing. Moreover, no consideration is given to the impact of disbursing large numbers of intoxicated people late at night/early morning into the surrounding neighbourhood, with the expected noise disturbance, violence, vandalism, etc. issues – the proponent has externalised the cost of loss of surrounding neighbour amenity.

## 5.0 Underdeveloped Impact Assessments and Mitigation Strategies

Key technical assessments within the EIS are either incomplete or based on unsubstantiated assumptions, failing to provide the consent authority with a sufficient basis for determination. This is most apparent in the assessment of traffic and transport impacts.

### 5.1 Traffic, Transport, and Accessibility

The [Traffic, Transport and Accessibility Assessment](#) (TTAA) submitted with the EIS fails to meet the explicit requirements of SEAR 11. The SEARs require "a forecast of additional daily and peak hour multimodal network flows as a result of the development (using industry standard modelling)". The TTAA explicitly avoids undertaking this analysis, justifying the omission of industry-standard SIDRA intersection modelling by asserting that the proposal's zero-parking provision will result in "minimal" traffic generation.

This logic is circular and fundamentally flawed. The purpose of modelling is to *test* the assumption of impact, not to be avoided by first assuming the impact is low. The proponent's assessment of traffic generation is limited to a calculation of 24 vehicle trips in the AM peak and 12 in the PM peak, a figure that appears to grossly underestimate the true traffic impact of the development – if not the case, on what basis was this assumption derived?

A zero-parking strategy for residents does not equate to zero traffic generation; it fundamentally changes the *type* of traffic generated. A development with 474 apartments, a gym, multiple retail tenancies, and two bars will generate hundreds of daily vehicle movements from on-demand services, including taxis, rideshare vehicles, food and grocery delivery, and couriers. These movements create intense and concentrated demand on kerbside space for pick-up and drop-off, particularly on Pacific Highway, Oxley Street and the narrow Clarke Lane. The TTAA provides no analysis, modelling, or management plan for this critical impact on traffic flow, local street congestion, and pedestrian and cyclist safety.

Moreover, the TTAA states "that assessing the cumulative traffic impacts of all developments will not be required, as the major developments mentioned have either already submitted or will submit independent Traffic, Transport, and Accessibility Assessments for review and approval by the relevant authorities" – a cavalier approach of washing their hands of the matter. The TTAA then makes the bold claim that "Furthermore, given the *minimal traffic generated by the proposed development*, the additional volumes are not anticipated to affect the safety or efficiency of the surrounding road network." – on what basis that this assertion be realistically made?

The entire transport strategy is predicated on the future effectiveness of a [Green Travel Plan](#) (GTP). This GTP is not a demonstrated solution but a collection of proposed future actions, such as appointing a coordinator, providing residents with pre-loaded Opal cards, and producing newsletters. The funding for this critical plan is vaguely committed for only five years, with no long-term mechanism to ensure its continuation or effectiveness. This represents a high-risk and underdeveloped mitigation strategy. The failure to properly model and assess the true transport impact of the development risks creating significant, unmanaged congestion and safety issues at the interface of a major new Metro station, undermining the core objective of a TOD, which is to integrate seamlessly with the transport network, not to disrupt it.

## 6.0 Conclusion and Recommendations

The EIS for SSD-75660711 is buoyed by critically deficient documentation. It fails to provide a certain and legally sound basis for assessment due to its reliance on an unapproved concept plan. Its claims of robust community consultation are not supported by the evidence, which in turn invalidates the conclusions of the SIA. The proposal seeks to justify sub-standard residential amenity through weak arguments and fails to adequately resolve inherent land-use conflicts arising from its mix of uses. Finally, key impact assessments, particularly for traffic and transport, are underdeveloped and based on flawed assumptions.

The proposal, in its current form, does not adequately address the Planning Secretary's Environmental Assessment Requirements and is not in the public interest to approve.

Based on the analysis highlighted in this report, it is recommended that the consent authority should not determine the application in its current form. The proponent should be required to undertake significant further work to address the identified deficiencies. It is recommended that the application be deferred until the proponent has:

1. **Resolved the Procedural Irregularity:** Awaited the formal determination of the Amending Concept SSDA (SSD-75662958). The Detailed SSDA should only be considered further once a final, approved Concept Plan is in place, providing a certain and legal basis for assessment.
2. **Undertaken Genuine Community Engagement:** Implemented a new, robust, and proportionate program of community engagement that is consistent with the *Undertaking Engagement Guidelines for State Significant Projects*. A revised SIA, based on the credible findings of this new engagement, must then be prepared and submitted.
3. **Revised the Design for Cultural Integrity:** Revised the architectural and landscape design to genuinely and meaningfully integrate the co-designed 'Connecting with Country' principles that emerged from the First Nations workshop. This must go beyond superficial decoration and be embedded in the core design.
4. **Resolved Amenity Conflicts:** Provided a revised design and a more robust Operational Management Plan that convincingly demonstrates how the amenity of 474 residential dwellings and surrounding neighbours will be protected from the impacts of the 250-patron rooftop bar and other licensed premises. This must include detailed plans for managing access, security, and acoustic and light spill impacts.

5. **Completed a Comprehensive Transport Assessment:** Undertaken a comprehensive Traffic Impact Assessment that meets the requirements of SEAR 11. This must include SIDRA modelling of key intersections (including Pacific Highway/Oxley Street, Pacific Highway/Albany Street, Oxley Street/Clarke Lane, Oxley Street/Clarke Street and Pacific Highway/Hume Street) and a detailed analysis of the impact of all generated vehicle movements, including on-demand services and deliveries. The assessment must propose robust, funded, and deliverable infrastructure or management solutions for kerbside demand.
  
6. **Provided Rigorous Justification for Non-Compliance:** Submitted revised Clause 4.6 variation requests that provide rigorous and sufficient environmental planning grounds to justify any proposed contravention of non-discretionary development standards, clearly demonstrating that the public benefit outweighs the detriment of the breach.