

## 8.14. Planning Proposal PP6-19 - 27-57 Falcon Street, Crows Nest

**AUTHOR:** Jayden Perry, Strategic Planner

The purpose of this report is to present the outcomes of the public exhibition of a Planning Proposal, Development Control Plan (DCP) and Voluntary Planning Agreement (VPA) for 27-57 Falcon Street, Crows Nest. The report seeks Council's endorsement to forward the Planning Proposal to the Department of Planning, Infrastructure and Environment with a request that the plan be made. It is also recommended that Council adopts the accompanying DCP amendments and enters in the exhibited VPA.

On 27 July 2020, Council resolved to forward a Planning Proposal (PP 6/19) to the Department of Planning, Industry and Environment (DPIE) to amend the planning controls relating to 27-57 Falcon Street, Crows Nest under *North Sydney Local Environmental Plan 2013* (NSLEP 2013). The proposed amendments include:

- Rezone the site from B4 – Mixed Use to R4 – High Density Residential;
- Increase the maximum building height from 10m to part 21m and part 14.5m;
- Apply a maximum floor space ratio control of 1.85:1;
- Remove the current non-residential floor space requirement applying to the site;
- Retain 'retail premises' as a permitted land use on the site; and
- Include a site-specific provision under Part 6 Division 2 of the LEP to allow minor exceedances to the Height of Building control to facilitate access to roof / lift overrun.

The Planning Proposal is accompanied by a Draft Voluntary Planning Agreement (VPA), comprising monetary and in-kind contributions towards open space infrastructure in the precinct and land dedication and embellishment works on Alexander Lane and Hayberry Lane frontages. A site specific DCP amendment is also proposed to help guide built form outcomes of any future Development Application.

The Planning Proposal was placed on public exhibition from Monday 15 March to Friday 16 April 2021. A total of sixteen (16) submissions was received, three (3) of which were in support, eleven (11) opposed parts of or the entire proposal and two (2) were neutral (public agencies).

The primary issues raised included concerns regarding; the height and scale of the development, inconsistency with the *St Leonards and Crows Nest 2036 Plan*, potential precedent effect, the number of parking spaces proposed, traffic and vehicular access, limitation of development potential of sites to the east due to proposed setbacks and general concerns including solar access, visual amenity and privacy.

The precinct is undergoing significant change and there is an opportunity to manage growth appropriately through the delivery of the identified general objectives and outcomes within the endorsed St Leonards Crows Nest 2036 Plan and Council's Civic Precinct Planning Study. The issues raised in the submissions when critiqued against these studies and both the immediate and broader surrounds are not considered to warrant any significant amendments to the Planning Proposal.

It is therefore recommended that Council resolves to forward the Planning Proposal to the DPIE with a request that the Plan be made. It is also recommended that the accompanying DCP amendments be adopted and VPA be finalised.

Should the draft VPA be executed, it will result in various in-kind and monetary contributions to Council, including:

- A monetary contribution of \$800,000 towards increased open space opportunities payable to Council.
- Land Dedication including Embellishments to the value of approximately \$330,000.

**RECOMMENDATION:**

**1.THAT** having completed the community consultation requirements outlined in the Gateway Determination, Council forward the Planning Proposal (Attachment 2) to the Department of Planning and Environment with a request that a Local Environmental Plan be made in accordance with section 3.36 of the Environmental Planning and Assessment Act 1979, to give effect to the Planning Proposal.

**2.THAT** Council finalise the Voluntary Planning Agreement with the view to have it executed and in force prior to the gazettal of the LEP amendment.

**3.THAT** Council, in accordance with Clause 21 of the Environmental Planning and Assessment Regulation 2000, adopt the amendments to the North Sydney DCP provided at Attachment 4, including the minor amendment proposed in this report.

**4.THAT** all submitters be notified of Council's decision.

The Recommendation was moved by Councillor Gibson and seconded by Councillor Brodie.

The Motion was put and **Carried**.

Voting was as follows:

For/Against 7 / 0

**For:** Councillor Gibson, Councillor Keen, Councillor Brodie, Councillor Carr,  
Councillor Barbour, Councillor Drummond, Councillor Mutton

**Against:** nil

**Absent:** Councillor Beregi, Councillor Gunning and Councillor Baker

**100. RESOLVED:**

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**AUTHOR:** Jayden Perry, Strategic Planner

**ENDORSED BY:** Joseph Hill, Director City Strategy

### **ATTACHMENTS:**

1. Signed Gateway - 27-57 Falcon Street - Gateway determination [**8.14.1** - 2 pages]
2. Planning Proposal Report - Gateway Revised - 27-57 Falcon Street, Crows Nest [**8.14.2** - 59 pages]
3. Draft VPA - 27-57 Falcon Street, Crows Nest [**8.14.3** - 43 pages]
4. Draft Site Specific DCP - pp 6-19 - 27-57 Falcon Street Crows Nest - May 2021 [**8.14.4** - 5 pages]
5. 5 - Public Submissions Table - pp 6 19 - 27-57 Falcon Street Crows Nest [**8.14.5** - 16 pages]

### **PURPOSE:**

The purpose of this report is to present the outcomes of the public exhibition of a Planning Proposal, Development Control Plan (DCP) and Voluntary Planning Agreement (VPA) for 27-57 Falcon Street, Crows Nest. The report seeks Council's endorsement to forward the Planning Proposal to the Department of Planning, Infrastructure and Environment with a request that the plan be made. It is also recommended that Council adopts the accompanying DCP amendments and enters in the exhibited VPA.

### **EXECUTIVE SUMMARY:**

On 27 July 2020, Council resolved to forward a Planning Proposal (PP 6/19) to the Department of Planning, Industry and Environment (DPIE) to amend the planning controls relating to 27-57 Falcon Street, Crows Nest under *North Sydney Local Environmental Plan 2013* (NSLEP 2013). The proposed amendments include:

- Rezone the site from B4 – Mixed Use to R4 – High Density Residential;
- Increase the maximum building height from 10m to part 21m and part 14.5m;
- Apply a maximum floor space ratio control of 1.85:1;
- Remove the current non-residential floor space requirement applying to the site;
- Retain 'retail premises' as a permitted land use on the site; and
- Include a site-specific provision under Part 6 Division 2 of the LEP to allow minor exceedances to the Height of Building control to facilitate access to roof / lift overrun.

The Planning Proposal is accompanied by a Draft Voluntary Planning Agreement (VPA), comprising monetary and in-kind contributions towards open space infrastructure in the precinct and land dedication and embellishment works on Alexander Lane and Hayberry Lane frontages. A site specific DCP amendment is also proposed to help guide built form outcomes of any future Development Application.

The Planning Proposal was placed on public exhibition from Monday 15 March to Friday 16 April 2021. A total of sixteen (16) submissions was received, three (3) of which were in

support, eleven (11) opposed parts of or the entire proposal and two (2) were neutral (public agencies).

The primary issues raised included concerns regarding; the height and scale of the development, inconsistency with the *St Leonards and Crows Nest 2036 Plan*, potential precedent effect, the number of parking spaces proposed, traffic and vehicular access, limitation of development potential of sites to the east due to proposed setbacks and general concerns including solar access, visual amenity and privacy.

The precinct is undergoing significant change and there is an opportunity to manage growth appropriately through the delivery of the identified general objectives and outcomes within the endorsed St Leonards Crows Nest 2036 Plan and Council's Civic Precinct Planning Study. The issues raised in the submissions when critiqued against these studies and both the immediate and broader surrounds are not considered to warrant any significant amendments to the Planning Proposal.

It is therefore recommended that Council resolves to forward the Planning Proposal to the DPIE with a request that the Plan be made. It is also recommended that the accompanying DCP amendments be adopted and VPA be finalised.

#### **FINANCIAL IMPLICATIONS:**

Should the draft VPA be executed, it will result in various in-kind and monetary contributions to Council, including:

- A monetary contribution of \$800,000 towards increased open space opportunities payable to Council.
- Land Dedication including Embellishments to the value of approximately \$330,000.

#### **RECOMMENDATION:**

**1.THAT** having completed the community consultation requirements outlined in the Gateway Determination, Council forward the Planning Proposal (Attachment 2) to the Department of Planning and Environment with a request that a Local Environmental Plan be made in accordance with section 3.36 of the Environmental Planning and Assessment Act 1979, to give effect to the Planning Proposal.

**2.THAT** Council finalise the Voluntary Planning Agreement with the view to have it executed and in force prior to the gazettal of the LEP amendment.

**3.THAT** Council, in accordance with Clause 21 of the Environmental Planning and Assessment Regulation 2000, adopt the amendments to the North Sydney DCP provided at Attachment 4, including the minor amendment proposed in this report.

**4.THAT** all submitters be notified of Council's decision.

## **LINK TO COMMUNITY STRATEGIC PLAN**

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.2 North Sydney is sustainable and resilient

2. Our Built Infrastructure

2.2 Vibrant centres, public domain, villages and streetscapes

2.4 Improved traffic and parking management

3. Our Future Planning

3.1 Prosperous and vibrant economy

3.4 North Sydney is distinctive with a sense of place and quality design

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

## **BACKGROUND**

### **Strategic Planning St Leonards Crows Nest**

In July 2016, the Minister for Planning and Public Spaces announced that the Department of Planning, Industry and Environment (DPIE) would undertake a strategic planning investigation into the Crows Nest, St Leonards and Artarmon industrial areas (refer to Figure 11).

On 15 October 2018, the DPIE released the draft *St Leonards and Crows Nest 2036 Plan* (draft 2036 Plan) and a suite of supporting documents for public exhibition. The draft 2036 Plan outlined capacity for significant residential and employment growth within the precinct (principally as a result of the new Crows Nest Metro station opening in 2024) and identified desired building heights, density (FSR), employment (non-residential FSR), land use, overshadowing and building setback controls.

On 29 August 2020, the 2036 Plan was published. The final Plan did not identify the subject site for any growth or change beyond that available under the current planning controls.



Figure 1 – St Leonards and Crows Nest Precinct.

### **Civic Precinct Planning Study**

On 18 May 2020, Council endorsed the Draft Civic Precinct Planning Study (CPPS) for public exhibition. The CPPS was prepared in response to the construction of the Victoria Cross Metro Station northern portal with the intent of developing a holistic and long-term framework for guiding future development and improvements within the study area.

The CPPS identified the application site as a deferred matter (from the study) due largely to Council's earlier (24 February 2020) in-principle decision, to support the progression of a site specific planning proposal on the site.

On 20 November 2020, Council adopted the Civic Precinct Planning Study (CPPS).

### **Site Specific Background**

The Planning Proposal relates to a site known as 27-57 Falcon Street, Crows Nest (Figure 2 below). It is 4,325m<sup>2</sup> in area and located on the southern side of Falcon Street on the corner of Alexander Lane and has a rear boundary to Hayberry Lane.

The site has a fall of some 6m from west to east and is occupied by 2-3 storey commercial buildings at No's 43-57 Falcon Street with the remainder of the site being vacant. The Holtermann Estate Conservation Area is located to the south of the site.





*Figure 2 – Subject site location map.*

In 2009, a site compatibility certificate for an aged care facility was issued by the then Department of Planning, for an aged care facility. This subsequently lapsed and no development was pursued.

In July 2015, Council considered a Planning Proposal for the site. At that meeting, Council resolved to reject the Planning Proposal and associated draft Voluntary Planning Agreement. It also resolved to invite a revised Planning Proposal which addressed Council's concerns as well as a revised VPA. The applicant at the time, did not proceed with a revised scheme nor was any agreement reached on the associated VPA offer. It is noted, however, that the assessment report undertaken for the proposal included in-principle support for; a change in zoning to R4, the application of a maximum FSR control of 1.9:1, an increase in building heights up to 19m and 16m, removal of the (0.5:1) non-residential floor space requirement and retaining retail premises as a permitted land use on the site. The need was also identified to amend the NSDCP to provide for setback and building separation controls.

After another change in ownership, in May and June 2019, pre-lodgment discussions were held with Council officers. Written advice was provided on two occasions outlining key issues and matters for consideration.

### **Chronology and Milestones of the Planning Proposal Process to Date**

The following chronology of events documents to process to date leading to the exhibition of the Planning Proposal and associated documents.

#### 16 August 2019

Applicant lodged the Planning Proposal with Council. The Planning Proposal sought to:



- Rezone the site from B4 – Mixed Use to R4 – High Density Residential;
- Increase the maximum building height from 10m to part 24.5m and part 14.5m;
- Apply a maximum floor space ratio control of 1.85:1;
- Remove the current non-residential floor space requirement applying to the site; and
- Retain ‘retail premises’ as a permitted land use on the site.

#### 25 November 2019

Council considered an Interim Assessment Report on the Planning Proposal. The report sought to discern Council’s direction on key issues. At that meeting, Council resolved to note the proposal and to refer the application to the North Sydney Local Planning Panel to seek further advice on the proposal.

#### 5 February 2020

The Local Planning Panel considered a report on this Planning Proposal. The panel supported its progression in principle, however, made recommendation that the proposal be accompanied by a site-specific DCP to address in more detail considerations including; overshadowing, height and bulk distribution, laneway treatment and activation, vehicular access and parking, Falcon Street frontage and setback, and deep soil planting on the site.

#### 24 February 2020

Council considered a report on the Planning Proposal which provided the outcomes of the referral to the Local Planning Panel. At this meeting Council resolved to provide in-principle support to the proposal but sought further revisions to the proposal and to seek advice from TfNSW in relation to whether it will support a left-hand turn from Falcon Street into the site or alternative access arrangement.

#### 24 March 2021

Council received revised documentation from the applicant which included a reduction in the overall bulk and scale of the proposal. Following receipt of the amended documentation, further issues were raised with the applicant and these included the proposed height and scale of the proposal, DCP issues and concerns including proposed parking rates and concerns with the proposed terms of the VPA offer.

#### 23 April 2020

In response to Council resolution, Council wrote to TfNSW seeking feedback on the car access arrangements proposed for the site. This was received on 23 April 2020 and in-principle support was provided to the proposed access arrangements. This would be the subject of further formalization and design detail at the DA stage.

#### 5 June 2020

Council received a further revised Planning Proposal (attachment 1). As lodged, the revised proposal sought to:

- Rezone the site from B4 – Mixed Use to R4 – High Density Residential;
- Increase the maximum building height from 10m to part 21m and part 14.5m;
- Apply a maximum floor space ratio control of 1.85:1;
- Remove the current non-residential floor space requirement applying to the site; and
- Retain ‘retail premises’ as a permitted land use on the site.

- Include a site-specific provision under Part 6 Division 2 of the LEP to allow minor exceedances to the Height of Building control.

#### 27 July 2020

At its meeting on 27 July 2020, Council considered an assessment report in relation to Planning Proposal 6/19 where it resolved to support the Planning Proposal. However, it deferred forwarding the Planning Proposal to the Minister for Planning in order to receive a Gateway Determination, until a number of issues were resolved with regard to the associated VPA and site specific DCP.

#### 24 August 2020

At its meeting on 24 August 2020, Council resolved to endorse the draft site-specific DCP proposing parking rates.

#### 28 September 2020

Council forwarded the proposal to DPIE seeking a Gateway Determination.

#### 5 February 2021

Council received Gateway Determination to allowing the proposal to proceed to public exhibition.

#### 15 March – 16 April 2021

The proposal was publicly exhibited in accordance with the Gateway Determination.

## **CONSULTATION REQUIREMENTS**

Community engagement has been undertaken in accordance with Council's Community Engagement Protocol.

## **DETAIL**

### **1. Assessment against Gateway Determination Conditions**

Seven (7) conditions were imposed on the Gateway Determination (refer to Attachment 1) and have been addressed in the following subsections.

#### **1.1 Revision of Planning Proposal**

Condition 1 of the Gateway Determination required that:

1. Prior to public exhibition the planning proposal is to be updated to:
  - a. Remove the proposed maximum building height clause and replace it with a plain English explanation.
  - b. Address the now finalised St Leonards and Crows Nest 2036 Plan and accompanying section 9.1 Direction (7.11 Implementation of St Leonards and Crows Nest 2036 Plan). The proposal is also to remove all references to the Draft Plan.

- c. Remove references to the Draft North Sydney Strategic Planning Statement as this has now been finalised.
- d. Clearly explain the objectives and intended outcomes and site specific provision for 'exceedances to building height' in the planning proposal report.
- e. Include a timeframe and milestones for the completion of the planning proposal, including time for the Department to prepare a finalisation report and make an LEP.
- f. Update the status of the Planning Process and Next Stages section within the planning proposal report.
- g. Include draft LEP mapping within the planning proposal report.
- h. Ensure all documentation associated with the Gateway determination is uploaded to the NSW Planning Portal.

Council received a revised Planning Proposal on 25 February 2021 which satisfactorily addressed requirements 1(a) – 1(g) of the condition by way of updating various sections in the report and providing additional mapping. All documentation associated with the proposal was uploaded to the portal on 15 March 2021 thus satisfying condition 1(h) of the determination.

## **1.2 Public Exhibition**

Condition 2 of the Gateway Determination required that:

Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:

- (a) the planning proposal must be made publicly available for a minimum of 28 days; and
- (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material IRF20/5536 that must be made publicly available along with planning proposals as identified in section 6.5.2 of A guide to preparing local environmental plans (Department of Planning and Environment, 2018).

In accordance with this condition, the Planning Proposal was on public exhibition from 15 March 2021 to 16 April 2021 inclusive in accordance with this condition. Council notified all landowners who are directly affected by the Planning Proposal.

The following inform methods were used:

- Council sent 452 letters to surrounding landowners;
- Council's website - 40 views (included link to Applications Tracking site project page);
- Your Say North Sydney website - 286 views, including a total of 353 downloads from the document library;
- E-newsletters - including Council E-news, Precincts E-news and Business E-news;
- Hard copies available for inspection from Council's Customer Service and Stanton Library;
- Memorandum distributed to all active Precinct Committees;

## **1.3 Consultation with Public Bodies**

Condition 3 of the Gateway Determination required that the Planning Proposal be referred to the following public bodies and be provided the opportunity to comment within 21 days:

- Transport for NSW;
- Ausgrid;
- Sydney Water Corporation.

A copy of the Planning Proposal and all public exhibition material was forwarded to all of the above public authorities and provided with 28 days in which to comment.

Council received responses from the following public authorities:

- Sydney Water Corporation;
- Transport for NSW;

A summary and response to their comments is contained within subsections 2.2.1 to 2.2.2 of this report.

#### **1.4 Public Hearing**

Condition 4 did not require the undertaking of a public hearing in accordance with s. 3.34(2)(e) of the Act. No hearing was held.

#### **1.5 Timeframes**

Condition 5 required that the Planning Proposal must be exhibited within 3 months from the date of the Gateway determination. The proposal was exhibited within 1.5 months from the date of gateway determination.

Condition 6 requires that the proposal be reported to Council for a final recommendation 6 months from the date of the Gateway determination. This report is being reported within the required 6 month timeframe.

Condition 7 requires that the Planning Proposal be submitted to the Department for finalisation 9 months from the date of the Gateway determination. It is intended that the proposal will be submitted to the Department within this timeframe following any endorsement by Council.

## **2. Consideration of Submissions**

A total of 16 submissions was received in response to the public exhibition of the Planning Proposal, which comprised the following:

- 14 public submissions (including one from a Precinct Committee); and
- 2 public authority submissions.

A summary and response to all public submissions received are located in the attached Submissions Summary (Attachment 5).

These submissions are further discussed in the following subsections.

## **2.1 Public Submissions**

Of the 14 public submissions:

- 3 supported the proposal;
- 11 objected to the proposal (one of these was from a Precinct committee).

The primary issues raised included concerns regarding; the height and scale of the development, inconsistency with the 2036 Plan and potential precedent effect, the number of parking spaces proposed, traffic and vehicular access, limitation of development potential of sites to the east due to proposed setbacks and general concerns including solar access, visual amenity and privacy. The issues raised are discussed in detail in the subsections following.

### **2.1.1 Height and Scale of the Development**

A large number of submissions stated that the height of the proposal was excessive and would set an unacceptable precedent in the area.

#### Comment:

The building form proposes a concentration of massing on the Falcon Street/Alexander Lane corner, graduating down toward Hayberry Lane and sites to the east. This appropriately responds to surrounding development and speaks to the transitional nature of the site. The proposed draft DCP provides greater clarity on building height and setbacks which will act to ensure any future development applications respect the transitional nature of the site.

The development itself is not expected to significantly impact the amenity of surrounding residents, with any overshadowing and visual bulk impacts being sufficiently mitigated by the stepped form of the building envelopes.

In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station, the transitional nature of the site and responsive building design, the proposed height and scale are considered acceptable.

### **2.1.2 Inconsistency with St Leonards Crows Nest 2036 Plan**

Several submissions noted that the proposal was not consistent with the recently finalised 2036 Plan which indicated no change to the controls on the site. It was also raised that this meant the proposal was inconsistent with the section 9.1 Ministerial Direction which requires rezoning and development to be consistent with the Plan. Concerns were raised that approval of the proposal would result in the erosion of the public's trust of the Plan and planning system and would set a precedent for other developers to challenge the rules of the Plan.

#### Comment:

It is noted that the proposal was in its advanced stages upon finalisation of the 2036 Plan, having already been endorsed by Council at its July 2020 meeting, with the Plan being released on 29 August 2020. As noted previously in this report, the development of this site to the approximate scale as reflected in the current Planning Proposal, was already foreshadowed by Council in 2015.

The 2036 Plan is accompanied by a section 9.1 Ministerial Direction requiring rezoning and development to be consistent with the Plan. The Plan states that, under this Direction, Planning

Proposals may be inconsistent with the Plan if, in addition to achieving the vision, objectives, planning principles and actions identified in the Plan, the proposal clearly demonstrates that better outcomes and supporting infrastructure can be delivered.

It is considered that the proposal is consistent with the broader vision and principles of the plan insofar as it will:

- Assist in achieving a vibrant community by providing an active frontage, while avoiding any significant impact on built heritage;
- Provide uplift in an accessible place and improve permeability and legibility through the provision of improved pedestrian amenity;
- Result in the creation of approximately 87 new dwellings incorporating a mix of household sizes which will help to bring vibrancy to the outer edge of the precinct.
- Apply casual surveillance and universal access principles and contribute to the improvement of the walking network through the inclusion of active street level uses and pedestrian amenity,
- Provide an adequate transition from high rise down towards existing lower scale areas so as to not adversely impact on surrounding areas,
- Result in a sufficiently articulated design which will seek to avoid creating a large street wall along Falcon Street.

Furthermore, the proposal is in keeping with the vision and principles outlined in Council's endorsed 'Civic Precinct and Surrounds Planning Study' in that it will:

- Contribute to the modern, connected atmosphere of the precinct;
- Facilitate the generation of more journeys by walking.
- Act to define the edges of Crows Nest Village;
- Promote housing diversity and affordability.
- Will result in a mixed-use development which acts to complement the transition between the centre of the precinct and the higher density node of Crows Nest centre.

The site itself is unique given its unusually large size (4,325sqm) and location on the fringe of the Crows Nest commercial area, being bordered by commercial uses to the west and by residential uses to the south and east of the site. Proposals are assessed on a site-by-site basis and are considered on their merits with regard to established planning principles, site circumstances, relevant controls and surrounding context. The site is located within an unusual context being a transitional site on the fringe of the Crows Nest centre and lower scale residential development to the east and south. The proposal demonstrates compliance with the broader vision and principles of both the 2036 Plan and the Civic Precinct study and as such will not set an undesirable precedent for surrounding development.

For reasons outlined above, the Planning Proposal demonstrates that, on balance, better outcomes and supporting infrastructure can be delivered through the proposed uplift and public benefits proposed and as such the non-conformity with the 2036 Plan is considered to be acceptable and will not set a precedent for surrounding development.

### **2.1.3 Car Parking**



A number of concerns were raised in relation to the quantum of car-spaces proposed within the development. These included submissions seeking more parking to be provided on site and others seeking less parking be provided on site.

Those who were in favor of additional parking were concerned that the number of spaces proposed to be provided will not be enough to accommodate the expected number of cars resulting from the development, thus resulting in increased competition for on-street parking making it harder for surrounding residents to find a park.

Those who wanted the number of spaces to be reduced were concerned that the high number was contrary to the directions outlined in the 2036 Plan and advice from TfNSW and would result in increased traffic generation. Also of note was the concern that it would set an undesirable precedent for the area and was contradictory in that part of the justification for an uplift in development potential is the sites proximity to the soon to be completed Metro station and as such does not need a high number of car spaces.

Comment:

There is a need to balance the demand for parking spaces resulting from the development (both internally and within the surrounding area) with Council's adopted policy position with respect to increased development within the St Leonards Crows Nest Area as well Council's Transport Strategy.

The draft DCP would allow, depending on final apartment type and mix, up to 96 car spaces being provided on site, which is lower than the current DCP controls for R4 zoned sites which would potentially allow for up to 122 cars on site. It is acknowledged that this is higher than St Leonards Crows Nest Planning Studies Study stages 2/3, which would allow for a maximum of 62 car spaces on site.

After consideration of the relative merits of different approaches to this issue, Council endorsed, at its meeting on 24 August 2020, the exhibited rate of off street car space provision in the DCP. TfNSW's comments on the proposal indicate support for the number of spaces proposed, noting Council's previously endorsed position.

The exhibited number of car parking spaces to be provided on site seeks to strike a balance between the two competing perspectives expressed in response to the exhibition of the draft controls and reflects Council's previously endorsed position on the matter.

#### **2.1.4 Traffic Congestion and Vehicular Access**

Multiple submissions identified that the proposal would result in an increase in traffic congestion which is unacceptable given that the locality is already heavily congested. Concern was also raised that the proposal would result in additional traffic using Hayberry Lane and Alexander Lane, both of which are relatively quiet roads that accommodate children playing. Comment was made that Council should undertake an independent traffic and access study at the proposal. It was requested that traffic treatment measures be put in place to further restrict traffic movement on Hayberry Lane and that a set of traffic lights be put in place at the junction of Alexander Lane and Falcon Street to facilitate traffic flow.

Comment:

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The primary vehicular access point is proposed to be provided via Alexander Lane. TfNSW provided comment on the proposal on 23 April 2020 and gave 'in principle' support to the proposed access arrangements. They again provided additional comment on the proposal on 29 April 2021 in response to the public exhibition period reconfirming this support, subject to further formalisation and design detail at the DA stage including the provision of updated plans with respect to access arrangements. In the interests of clarity, TfNSW also recommended a minor amendment (emphasis added) be incorporated into the draft DCP as exhibited.

### **Traffic, Access and Parking Provisions**

P1. Vehicular access to the site must be from Alexander Lane. **and be located as far as practicable from Falcon Street.**

It is recommended that Council support this recommendation from TfNSW and incorporate the additional wording as requested.

With respect to increased traffic in the surrounding area, the Traffic Report associated with the proposal indicates that there is expected to be on average, an additional car every 2-3 minutes using the local road network. In the broader context, this is considered to be inconsequential and will not significantly impact the performance of the broader road network. Council's Traffic Operations team have previously reviewed the proposal and raised no objection to the proposed access arrangements (subject to resolution of detailed design and engineering aspects at the development application stage).

Specifically along Hayberry Lane, the proposed access arrangements are expected to sufficiently manage traffic and access such that there will not be a significant impact resulting from cars using the lane. Additionally, the proposed treatment to the northern footpath of Hayberry Lane including street trees will act as traffic calming measures, increasing a greater sense of pedestrian ownership/sharing of the street/laneway.

*With respect to traffic lights at the junction of Alexander Lane and Falcon Street, this is a matter for consideration by TfNSW and will be considered in detail at the development application stage.*

It is considered in this instance, that traffic impacts resulting from the development can be appropriately managed by way of proposed access arrangements, sufficient signage and traffic calming measures along Hayberry Street and that in context of the broader road network the proposal will not result in a noticeable increase to traffic. As such, no further amendments are recommended in this regard.

### **2.1.5 Setbacks to Eastern Boundary Limiting Development Potential**

Two submissions raised the issue that the proposed setback of 4.5m to the east unfairly restricts the development potential of the site to the east at 59 - 61 Falcon Street. They propose that a 6m setback would better accommodate any future development.

#### Comment:

The adjacent property to the east, at 59 Falcon Street, contains a single residential dwelling adjoining the commercial building existing at 57 Falcon Street. It is noted that the existing commercial building is of approximately 3 storeys in height and has a nil setback to 59 Falcon

Street. The proposal will include a minimum side boundary setback of 4.5m which will increase the separation distance between the structures than that which currently exists. In recognising the transitional nature of the site, it is considered that the establishment of a 4.5m setback strikes an appropriate balance between allowing for a separation of the three main building forms addressing Falcon Street and providing for the reasonable amenity and potential future development of the adjacent site to the east and is therefore acceptable. This is not inconsistent with the existing North Sydney Development Control Plan 2013 provisions for development within the R4 – High Density zone.

### **2.1.6 Privacy**

A number of submissions raised the concern that the proposal would result in overlooking to the courtyards of surrounding properties, particularly to the east of the site.

#### Comment:

The draft DCP includes the following objective in relation to privacy:

#### *3.2.5.2 Desired Built Form*

*To achieve appropriate separation distances between existing and proposed buildings and ensure reasonable privacy and solar access is maintained to surrounding dwellings, mindful of the need for renewal at the site.*

Through the assessment process, the broader site planning and massing arrangements have progressed to a level of detail such that it has been demonstrated that the proposed built form likely to result from the amended planning controls, will not give rise to unacceptable privacy impacts.

It is considered that privacy impacts can be dealt with more completely, at the Development Application stage. Council's existing DCP controls and the proposed site-specific DCP will adequately ensure the reasonable protection of privacy for surrounding residents.

### **2.1.7 Solar Access**

One submission expressed concern that the proposed increase in height would create significant overshadowing on Hayberry Lane, with another raising concern that the proposal would restrict solar access to surrounding rooftops to the south who may in the future want to install solar panels.

#### Comment:

It is noted that, whilst Hayberry Lane will be largely overshadowed during winter months, were the site to be redeveloped under current controls, the Lane would also be largely overshadowed.

This is due to the orientation of the site being directly north of the lane. As such, it would be difficult to maintain solar access to the Lane in mid-winter under any site re-development scenario. Furthermore, it is noted that solar access has been preserved for properties to the south of the Lane, with breaks in the building form allowing solar access penetration between buildings.

Having regard to overshadowing of surrounding rooftops, shadow diagrams submitted with the proposal show that solar access is maintained to all rooftops surrounding the proposal.

Noting the points raised above, the overshadowing on Hayberry Lane resulting from the proposal is largely unavoidable and is considered acceptable in this instance.

### **2.1.8 Visual Amenity**

One submission raised concern with the prospect of being able to view the proposal from their property due to the increase in height, impacting upon their visual amenity.

#### Comment:

The proposal includes a 'stepped' design, with the built form being broken into segments and transitioning to lower scale toward the south and east of the site. The proposal is sufficiently articulated and the massing appropriately placed so as to acceptably reduce the visual bulk of any future structure.

### **2.1.9 Landscaping**

A submission raised concern with the amount of landscaping and proposed that this be increased on the site.

#### Comment:

The proposed landscaping has been assessed as being acceptable given the transitional nature of the site. The proposal includes new street trees along Hayberry Lane which will help to provide a green buffer, increase tree canopy in the area and soften the built form.

### **2.1.10 Public Benefit**

#### Voluntary Planning Agreement

One submission made comment that the consideration should be given to re-examining the calculations considering more recent sales data and in light of the 'booming' real estate market.

#### Comment:

It is noted that the real estate market can fluctuate markedly within a short period of time, thus potentially dating valuation estimates. Notwithstanding this, the valuation at the time was made in good faith and has been the basis for VPA discussions. It would be inappropriate to reconsider the agreement at this time, having regard to the fact that it is entirely possible that the market could have fallen rather than risen which under this logic may also warrant a reconsideration to reducing the contribution. It is further noted that the market may further fluctuate in either direction prior to the actual payment of contributions, which may still be many months away.

## **2.2. Consideration of Public Authority Submissions**

Council received submissions from the following public authorities:

- Transport for NSW; and
- Sydney Water Corporation.

An assessment of these submissions is provided in the following subsections.

### **2.2.1 Transport for NSW**

The submission from TfNSW does not specifically object or endorse the outcomes of the Planning Proposal. However, it provides in-principle approval to amend Alexander Lane between Falcon Street and Hayberry Lane into a bi-directional lane, and have no objections to the proposal subject to compliance with various conditions including the provision of updated plans.

Comment:

This is noted. This will be dealt with at the Development Application stage.

Site Specific DCP – Vehicle access

As discussed under Section 2.1.4 - the following amendments have been requested within the draft Site Specific DCP as follows:

Traffic, Access and Parking Provisions

P1. Vehicular access to the site must be from Alexander Lane **and be located as far as practicable from Falcon Street.**

Comment:

This is a reasonable addition and will help reduce any chance of entering vehicles queuing back into Falcon Street. It is recommended that the DCP be updated to include the above amendment. An adjustment of this nature does not necessitate or trigger the need for re-exhibition as it simply provides a greater degree of clarity with respect to desired vehicle entry point to the site and does represent a policy change.

Limiting Retail traffic impacts

To ensure that the retail component doesn't increase significantly (resulting in increased traffic generation) as part of any future Development Application, consideration should be given to limiting the retail land use to 340m<sup>2</sup> by including a site-specific provision under Schedule 1 of the North Sydney LEP.

Comment:

The site is currently zoned B4 – Mixed Use which allows for a variety of commercial uses on the site. Whilst it is proposed to be rezoned to R4, given its location on the edge of the commercial core, it would not be appropriate to unduly restrict potential additional commercial area on the site above that included in the concept plan. The final size of any retail or commercial floorspace on the site could be considered in more detail at the Development Application stage.

Traffic Management Plan

As part of any future Development Application, a Traffic Management Plan is to be provided to support the proposed change to the road network plan.

Comment:

This is noted. This will be dealt with at the Development Application stage.

Car Parking

TfNSW have expressed a preference for total parking for this planning proposal to be capped at a maximum of 62 car spaces but acknowledge that the site at 27-57 Falcon Street, Crows Nest is located outside the St Leonards - Crows Nest Precinct 2/3 study area.

It is also acknowledged by TfNSW that there is a need to balance the demand for parking spaces resulting from the development with Council's adopted policy position with respect to increased development in the St Leonards Crows Nest Area, as well Council's Transport Strategy. TfNSW also note the potential for community concerns over potential unmet parking demands occurring on street.

Therefore, as a result of the above TfNSW is accepting of the total off street parking for this planning proposal being provided as per to exhibited DCP rates capped at a maximum of 94 car spaces.

Comment:

This is noted. No changes recommended.

Sydney Metro

Sydney Metro advised that the subject site is located above Metro tunnels which are approximately 30m deep in this location. Any future development application will need to comply with the Sydney Metro Underground Corridor Protection Guidelines and consider any requirements under Clause 86 of ISEPP 2007 and the Department of Planning's Development near Rail Corridors and Busy Roads - Interim Guidelines (2008).

Comment:

This is noted. This will be dealt with at the Development Application stage.

Active Transport

The 2036 Plan identifies the need for new development to contribute to the improvement of the walking and cycling network in the area, as well as help to connect to wider regional areas. Where possible, appropriate setbacks should be implemented on the Falcon Street frontage to accommodate suitable footpath widths to cater for the growth in pedestrian demands in the precinct.

Comment:

Noted. The existing road reserve is 4m wide (from the Falcon Street kerb line to property boundary). This is considered adequate to provide for a reasonable pedestrian environment in this location.

### **2.2.2 Sydney Water Corporation**

The submission from Sydney Water Corporation does not specifically object or endorse the outcomes of the Planning Proposal. Its submission included comment on water access points and further provided advice on how connections could be made and approvals sought at the time that development was to occur.

Comment:

Noted. This will be dealt with at the Development Application stage.

## **3. Conclusion**

The primary issues raised included concerns regarding; the height and scale of the development, inconsistency with the 2036 plan and potential precedent, the number of parking



spaces proposed, traffic and vehicular access, limitation of development potential of sites to the east due to proposed setbacks and general concerns including solar access, visual amenity and privacy.

These impacts also need to be considered in the context of the broader strategic direction of the St Leonards/Crows Nest area and its designation as a priority precinct by the State Government. The precinct is undergoing significant change and North Sydney Council have proactively sought to manage this change appropriately through significant planning work.

The proposal presents a good opportunity for Council to realise the objectives of the community endorsed outcomes of Council's *Civic Precinct Planning Study*, along with the associated public benefits to be delivered under the VPA.

Given the proposal's consistency with the desired visions and principles of the studies mentioned above, it is recommended that the Planning Proposal be forwarded to the Department of Planning, Industry and Environment with a request that the plan be made under the EP&A Act.



## Gateway Determination

**Planning proposal (27-57 Falcon Street, Crows Nest) to amend North Sydney Local Environmental Plan 2013 for the subject site by:**

- Rezoning the site to High Density Residential
- Increasing the maximum building height.
- Introducing a maximum floor space ratio (FSR).
- Removing the current non-residential FSR from the site.

I, the Director, North District at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the Environmental *Planning and Assessment Act 1979* (the Act) that an amendment to the North Sydney Local Environmental Plan (LEP) 2013 to should proceed subject to the following conditions:

1. Prior to public exhibition the planning proposal is to be updated to:
  - a. Remove the proposed maximum building height clause and replace it with a plain English explanation.
  - b. Address the now finalised St Leonards and Crows Nest 2036 Plan and accompanying section 9.1 Direction (7.11 Implementation of St Leonards and Crows Nest 2036 Plan). The proposal is also to remove all references to the Draft Plan.
  - c. Remove references to the Draft North Sydney Strategic Planning Statement as this has now been finalised.
  - d. Clearly explain the objectives and intended outcomes and site specific provision for 'exceedances to building height' in the planning proposal report.
  - e. Include a timeframe and milestones for the completion of the planning proposal, including time for the Department to prepare a finalisation report and make an LEP.
  - f. Update the status of the Planning Process and Next Stages section within the planning proposal report.
  - g. Include draft LEP mapping within the planning proposal report.
  - h. Ensure all documentation associated with the Gateway determination is uploaded to the NSW Planning Portal.
  
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material

that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).

3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
  - Transport for NSW
  - Ausgrid
  - Sydney Water Corporation

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

4. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
5. The planning proposal must be exhibited within **3 months** from the date of this Gateway determination.
6. The planning proposal must be reported to Council for a final recommendation **6 months** from the date of this Gateway determination.
7. The planning proposal is to be submitted to the Department for finalisation **9 months** from the date of the Gateway determination.

Dated 5th day of February 2021.



**Brendan Metcalfe**  
**Director, North District**  
**Greater Sydney, Place and Infrastructure**  
**Department of Planning, Industry and Environment**

**Delegate of the Minister for Planning and Public Spaces**

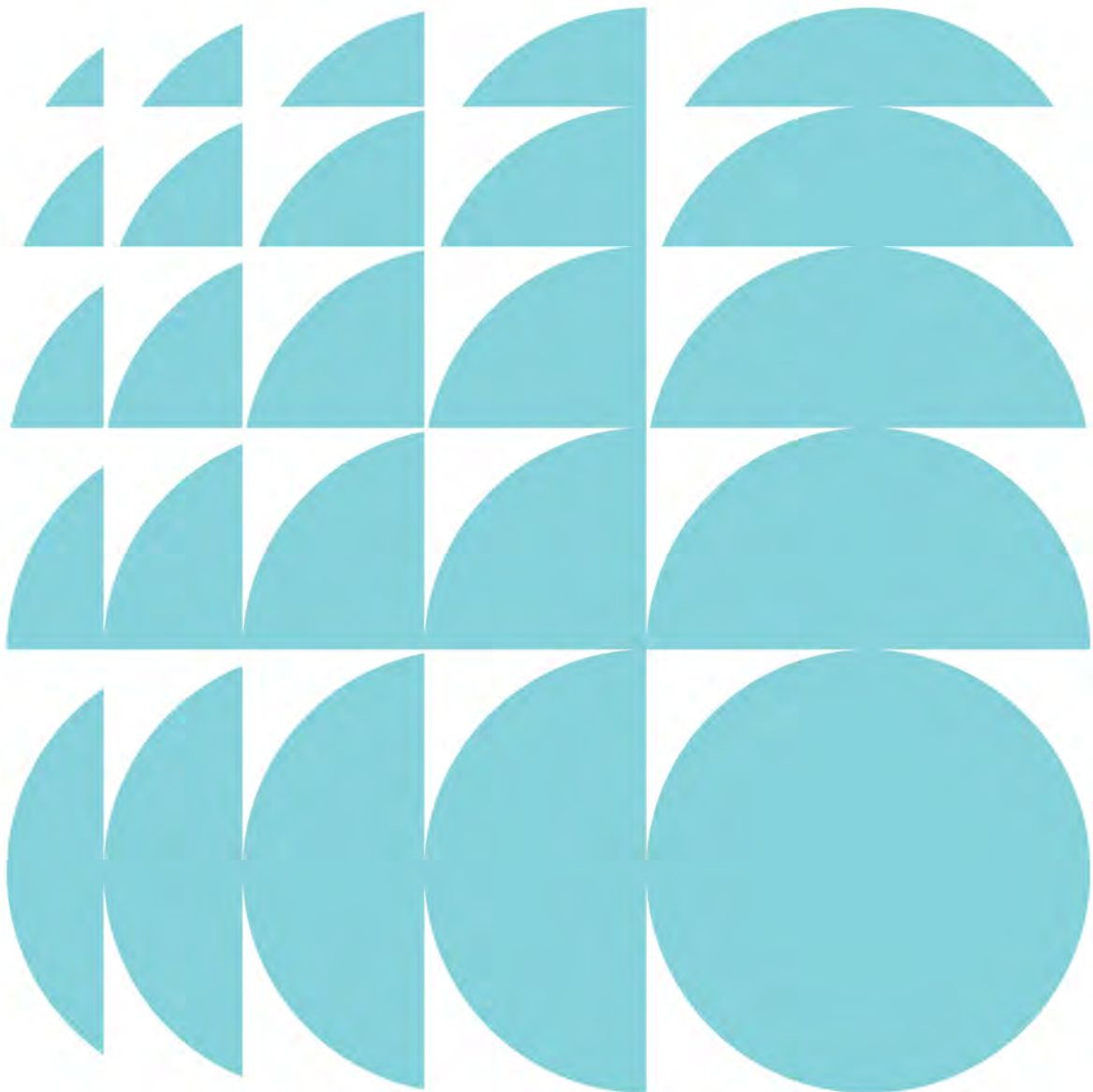
# ETHOS URBAN



## Planning Proposal

27-57 Falcon Street, Crows Nest  
Amendment to North Sydney LEP 2013

Submitted to North Sydney Council  
On behalf of Lindsay Bennelong Developments  
Pty Ltd

Amended 25 February 2021 | 2190018



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# Contents

1.0	Executive Summary	4
2.0	Introduction	8
2.1	2015 Planning Proposal	8
3.0	The Site	10
3.1	Site Location and Context	10
3.2	Site Description	11
3.3	Public Transport	13
3.4	Current Planning Controls	14
4.0	Surrounding Area	15
5.0	The Reference Design and Planning Proposal	19
5.1	Urban Design Principles	19
5.2	Reference Design Concept	19
5.3	Proposed amendments to the North Sydney Local Environmental Plan 2013	25
5.4	Proposed amendments to the North Sydney Development Control Plan 2013	30
5.5	Voluntary Planning Agreement	30
6.0	Strategic Justification	31
6.1	Greater Sydney Region Plan	31
6.2	North District Plan	32
6.3	St Leonards and Crows Nest 2036 Plan	33
6.4	North Sydney Local Strategic Planning Statement	35
6.5	Strategic and Site-Specific Merit	36
7.0	State Legislation and Planning Policies	38
7.1	Environmental Planning and Assessment Act 1979	38
7.2	State Environmental Planning Policies	40
7.3	North Sydney Local Environmental Plan 2013	41
8.0	Environmental Impacts	44
8.1	Impacts on Neighbouring Dwellings	44
8.2	Economic Impacts	45
8.3	Heritage Impacts	46
8.4	Traffic Impacts	46
8.5	Social Impacts	47
8.6	Residential Amenity	48
8.7	Comparison to Complying Scheme	49
9.0	NSW Department of Planning and Environmental Guidelines	51
9.1	Part 1 – The Intended Outcome	51
9.2	Part 2 – Explanation of Provisions	51
9.3	Part 3 – Justification	52
9.4	Part 4 – Mapping	54
9.5	Part 5 – Community Consultation	54
9.6	Part 6 – Project Timelines	54



# Contents

10.0	Conclusion	56
------	------------	----

## Figures

Figure 1	Intended timeframes.	7
Figure 2	2015 Planning Proposal	9
Figure 3	Site map of 27-57 Falcon Street	10
Figure 4	The vacant western part of the site looking south west from Falcon Street	12
Figure 5	The vacant land with the existing buildings looking east from Hayberry Lane	12
Figure 6	The rear of the 43-45 Falcon Street from Hayberry Lane.	12
Figure 7	Aerial context looking north west towards St Leonards	15
Figure 8	A mixed use apartment building currently being constructed across from the site on Falcon Street	16
Figure 9	Holterman Estate Conservation Area to the south of the site looking east along Hayberry Street	17
Figure 10	Adjoining residential properties at the site's eastern boundary along Falcon Street	17
Figure 11	Commercial premises to the west of the site on Falcon Street	17
Figure 12	Site plan showing Building A, B, C and D	22
Figure 13	Indicative Landscape Concept	23
Figure 14	Conceptual Render of the view east down Falcon Street	24
Figure 15	Proposed changes to the Land Use Zoning map relating to the site.	26
Figure 16	Proposed amendment to the FSR map relating to the site.	27
Figure 17	Proposed amendments to the Height of Buildings map relating to the site.	28
Figure 18	Proposed amendments to the non-residential floor space map relating to the site.	29
Figure 19	Hierarchy of future development considerations	33
Figure 20	Line of Sight from Communal Open Space Areas	44
Figure 21	Section of Hayberry Lane and the relationship between the basement and Council land.	45
Figure 22	Mixed Use and Residential Development Typologies	48
Figure 23	Intended time frames	55

## Tables

Table 1	Nearby Bus Routes	13
Table 2	Current LEP Provisions	14
Table 3	The site's distance from key locations in the surrounding area	15

# Contents

Table 4	Reference Design - Key Features	20
Table 5	Ministerial Directions	38
Table 6	Consistency with State Environmental Planning Policies	40
Table 7	Consistency with aims of the North Sydney LEP	41
Table 8	Consistency with objectives of the R4 High Density Residential Zone	42
Table 9	Consistency with the North Sydney LEP 2013 height objectives	42
Table 10	Consistency with the North Sydney LEP 2013 floor space ratio objectives	43
Table 11	DCP Car Parking Analysis	47
Table 12	Analysis against Split Site Controls	49

## Appendices

- A** Urban Design Report  
*Allen Jack and Cottier*
- B** Site Survey  
*Project Surveyors*
- C** Indicative Landscape Concept  
*Place Group Design*
- D** North Sydney Local Environmental Plan – Amended Mapping  
*North Sydney LEP, Ethos Urban*
- E** Assessment of Traffic and Parking Implications  
*Transport and Traffic Planning Associates*
- F** Economic Advice  
*Ethos Urban*
- G** Heritage Impact Statement  
*Weir Phillips Heritage and Planning*
- H** Letter of Offer  
*Lindsay Bennelong Developments*
- I** RMS Referral  
*RMS*
- J** Site Specific Development Control Plan  
*Ethos Urban*

## 1.0 Executive Summary

This report has been prepared by Ethos Urban on behalf of Lindsay Bennelong Developments Pty Ltd (Lindsay Bennelong), the landowners of the site at 27-57 Falcon Street, Crows Nest NSW 2065, in support of a planning proposal to amend the *North Sydney Local Environment Plan 2013*. Specifically, this planning proposal seeks to:

- Rezone the site to R4 High Density Residential;
- Amend the maximum building height to part 21 metres and part 14.5 metres;
- Apply a maximum floor space ratio of 1.85:1 to the site;
- Remove the non-residential floor space ratio requirement;
- Retain 'retail premises' as a permitted land use on the site; and
- Include a site-specific provision under Part 6 Division 2 of the LEP to allow minor exceedances to the Height of Building control to allow ancillary items such as building plant and lift overrun.

This planning proposal revisits the previous planning proposal for the site which was considered by North Sydney Council (Council) and given conditional support in 2015. An indicative reference design has been prepared by Allen Jack + Cottier (AJ+C) to demonstrate the site's capacity to accommodate higher density residential development that reflects the proposed amendments. The concept provides:

- 4 x buildings ranging in height from 3 storeys to 6 storeys
- Approximately 87 apartments and townhouses (comprising a mix of 1, 2 and 3 bedrooms)
- Approximately 7,965m<sup>2</sup> of gross floor area incorporating:
  - approximately 7,625m<sup>2</sup> of residential floor area, and
  - approximately 340m<sup>2</sup> of retail floor area at the corner of Falcon Street and Alexander Lane
- Basement parking
- Road widening of Alexander Lane
- Vehicular access via Alexander Lane
- Communal open space and landscaping.

This planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning & Assessment Act 1979* (EP&A Act), and 'A Guide to Preparing Planning Proposals' prepared by the NSW Department of Planning and Environment.

### The Site

The site is two blocks east of the Pacific Highway. It is in a well serviced area suitable for a greater intensity of development. The site is approximately 4,342m<sup>2</sup> and currently accommodates four two-three storey attached underutilised and poor-quality commercial buildings within the eastern portion of the site and vacant land to the west which has remained undeveloped for 20 years. The site is:

- a short walk from:
  - Bus stops on Falcon Street and the Pacific Highway
  - Crows Nest Shopping Centre Village (50m, less than 1 minutes' walk)
  - North Sydney Girls High School (150m, 2 minutes' walk)
  - North Sydney Boys High School (250m, 3 minutes' walk)
  - the future Crows Nest Metro Station (400m; 5 minutes' walk)
  - St Leonards Station (approx. 800m; 10 minutes' walk)

- in close proximity to district and metropolitan health care services - less than 400m from the Mater Hospital and 1km from Royal North Shore Hospital.
- under 30 minutes travel time on public transport to major existing and future employment centres in Sydney (RNSH, Macquarie Park, North Sydney and the Sydney CBD).
- the site has frontage to Falcon Street to the north, Alexander Lane to the west and Hayberry Lane to the south.
- subject to the *North Sydney Local Environmental Plan 2013* which zones the site B4 Mixed Use with a maximum building height of 10m. There is no existing FSR control.

Further, the site is not burdened by any environmental constraints that would prevent or restrict its development.

### Strategic Justification

- The Council note in their submission to the Draft St Leonards and Crows Nest Plan 2036 (which has since been finalised) that the Department of Planning, Industry and Environment (the Department) has undertaken 'regional scale' planning and as such, the 2036 Plan overlooks the specific context and attributes of the site. The 2036 Plan's proposition to maintain the existing controls on the site is contradictory to the Council's previous site-specific analysis which confirmed it was suitable for high density residential development. Notwithstanding, this planning proposal demonstrates that amending the planning controls for the site is justified as it will facilitate future development that is consistent with the vision, area wide design principles, design criteria and area specific design criteria identified in the 2036 Plan.
- Clearly there has been considerable change in infrastructure in the immediate context of the site which justifies the consideration of this planning proposal. The future Crows Nest Metro Station will provide fast connections to the major metropolitan employment centres.
- The site is underutilised and has been largely vacant for 20 years. The existing buildings are generally in poor repair and untenanted. Several development propositions for the site have been brought to Council over the last 13 years including: an aged care facility; a commercial complex comprising cinemas, a supermarket and retail; a mixed-use commercial and shop top housing development; and a predominantly residential flat building development. None of these developments progressed. The current condition of the site and the absence of any material development activity over the last 20 years clearly indicates that the renewal of the site for any purpose is not feasible nor will occur under the current statutory planning controls.
- Council recognise that the site's location on the periphery of the Crows Nest town centre adjacent to existing residential land makes it difficult to deliver significant non-residential floor space and that it is better suited to high density residential. To this end, in 2015 Council officers prepared a report to the General Manager providing conditional support for a proponent led planning proposal that sought the following amendments to the North Sydney LEP 2013:
  - Rezone the site to R4 High Density Residential
  - Apply a maximum floor space ratio of 1.9:1
  - Amend the maximum building heights by applying a stepped building height limit across the site to permit buildings between two and six storeys high
  - Remove the non-residential floor space ratio requirements
  - Retain retail premises as a permitted land use
- The planning proposal put forward is comparable to the planning proposal that received conditional support from Council in 2015.
- Removing the minimum non-residential floor space ratio requirement will not undermine the achievement of the employment targets outlined in the 2036 Plan. The 2036 Plan focuses employment along the Pacific Highway and in St Leonards - appropriate locations to achieve the employment targets without dispersing or fragmenting the employment core of St Leonards and Crows Nest. By not providing significant non-residential floor space at the site, the strength of the commercial core will be maintained and the potential for land use conflicts with the existing residential development will be reduced.
- The analysis undertaken as part of this planning proposal demonstrates that future development will:
  - Maintain solar access, visual and acoustic privacy to the existing dwellings adjacent to the site
  - Generate significantly less traffic than a complying development under the current planning controls

- Provide a sympathetic built form relationship to the heritage conservation area to south
- Provide a high level of residential amenity for future occupants

### The Intended Outcome

The intended outcome of this Planning Proposal is to amend the North Sydney LEP 2013 to enable the development of 27-57 Falcon Street, Crows Nest, for a three to six storey residential development with retail uses at the corner of Falcon Street and Alexander Lane.

### Explanation of Provisions

The intended outcome can be achieved by amending the North Sydney LEP 2013 as follows:

- Amend the Land Zoning Map Sheet LZN\_001 by rezoning the site to be R4 High Density Residential;
- Amend the Height of Building Map Sheet HOB\_001 by applying a part height limit of 14.5 metres and a part height limit of 21 metres.
- Amend the Floor Space Ratio Map Sheet FSR\_001 by applying a floor space ration of 1.85:1 to the site.
- Amend the Non-Residential Floor Space Ratio Map Sheet LCL\_001 by deleting the minimum non-residential floor space ratio of 0.5:1.
- Amend Schedule 1 Additional permitted uses by including a clause that permits, with development consent, the use of certain land at 27-57 Falcon Street, Crows Nest for the purposes of retail premises.
- Site specific provision under Part 6, Division 2 of the LEP to allow specific exceedances of the Height of Building control:
  1. *This clause applies to land at 27-57 Falcon Street, Crows Nest being Lots 25,26, 32 and 33 DP 1720, Lots X and Y DP 407774 and Lot A DP 377050\**
  2. *Despite any other provision of this plan, development consent can be granted for development that exceeds the maximum building height shown on the Height of Buildings map if the part of the development that exceeds the maximum building height is for:*
    - a. *providing lift access to rooftop communal open space;*
    - b. *mechanical plant*

A 'plain English' description of these provisions is provided within the document.

\*It is noted that these lots are likely to be consolidated following this Planning Proposal. Therefore, this clause shall also apply to the subsequently consolidated lot.

### Planning Process and Next Stages

This Planning Proposal was lodged with North Sydney Council on 16 August 2019 and subsequently underwent multiple amendments throughout 2020 in response to comments from Councillors and the North Sydney Local Planning Panel, including the preparation of a Voluntary Planning Agreement and site-specific development control plan relating to the Planning Proposal.

Following these amendments, Council at its meeting on 27 July 2020 resolved to support the Planning Proposal, which was subsequently forwarded to the Department of Planning, Industry and Environment in September 2020 for gateway approval.

A Gateway Determination was issued by the Department of Planning, Industry and Environment on 5 February 2021, which determined that the proposed amendments to the North Sydney LEP should proceed following the inclusion of some minor changes which have been incorporated into this document.

The proposal has been endorsed by Council's Local Planning Panel as well as at a full Council meeting. Further to this, correspondence from RMS has been provided and as such, the Planning Proposal proceeded to Gateway. (see **Appendix I**).

In terms of next stages, the DPIE have stipulated the following maximum timeframes:

- The planning proposal must be exhibited within 3 months from the date of this Gateway determination.
- The planning proposal must be reported to Council for a final recommendation 6 months from the date of the Gateway determination.
- The planning proposal is to be submitted to the Department for finalisation 9 months from the date of the Gateway determination.

Notwithstanding, as a result of previous community engagement and extensive Councillor engagement, the timeframes may be condensed.



**Figure 1** Intended timeframes.

Source: Ethos Urban



## 2.0 Introduction

This planning proposal report is submitted to North Sydney Council (Council) on behalf of Lindsay Bennelong Developments Pty Ltd (Lindsay Bennelong) in support of a planning proposal to amend the *North Sydney Local Environment Plan 2013* (the North Sydney LEP 2013) as it applies to 27-57 Falcon Street, Crows Nest (the site).

The planning proposal is informed by the reference design concept prepared by Allen Jack and Cottier Architects (AJ+C) which demonstrates that the site's location and size is suitable for increased density without generating any unacceptable environmental impacts. Therefore, this planning proposal seeks to:

- Rezone the site to R4 High Density Residential
- Amend the maximum building height to part 21 metres and part 14.5 metres
- Apply a maximum floor space ratio of 1.85:1 to the site
- Remove the non-residential floor space ratio requirement
- Retain 'retail premises' as a permitted land use on the site
- Include a site-specific provision under Part 6 Division 2 of the LEP to allow minor exceedances to the Height of Building control to allow ancillary items such as building plant and lift overrun.

The planning proposal will facilitate the provision of approximately 87 additional dwellings in an appropriate location within walking distance of the new Crows Nest Metro Station and Crows Nest town centre.

This planning proposal describes the site, the proposed amendments to the North Sydney LEP 2013 and provides an environmental assessment. The report should be read in conjunction with the Urban Design Report prepared by AJ+C Architects (**Appendix A**).

This planning proposal has been prepared in accordance with Section 3.33 of the *Environmental Planning & Assessment Act 1979* (EP&A Act), and 'A Guide to Preparing Planning Proposals' prepared by the NSW Department of Planning and Environment. **Section 5.0** of this report sets out the strategic justification for the planning proposal and provides an assessment of the relevant strategic plans, state environmental planning policies, ministerial directions and the environmental, social and economic impacts of the proposed amendment. This report should be read in conjunction with the relevant expert consultant reports appended (see Table of Contents).

### 2.1 2015 Planning Proposal

We have reviewed the Council's Report to the General Manager for the 2015 planning proposal (refer **Figure 2**) and understand the following received conditional Council officer support:

- Rezone the site to R4 High Density Residential.
- Amend the building heights by applying a stepped building height limit across the site of 19m, 16m and 10m.
- Remove the non-residential floor space ratio requirements.
- Retain retail premises as a permitted land use.
- Maximum floor space ratio of 1.9:1 (approx. 8,250m<sup>2</sup>).
- Rear boundary setback of 12m from Hayberry Lane. Not applicable within 20m of Alexander Lane.
- Minimum side setback of 1.5m at the first three storeys. Above the first three storeys, the minimum side setback is 5m.
- Development over the site should be broken into three separate buildings to provide through links between Falcon Street and Hayberry Lane.

We understand the Council did not finalise their assessment due to additional information not being provided and the planning proposal did not proceed. Notwithstanding, the planning proposal that is subject to this report essentially revisits the 2015 planning proposal.



**Figure 2** 2015 Planning Proposal

Source: *Marchese Partners*

### 3.0 The Site

#### 3.1 Site Location and Context

The site is located at 27-57 Falcon Street, Crows Nest, on the eastern edge of the Crows Nest town centre in the North Sydney Local Government Area (LGA). Falcon Street forms the boundary to the north of the site, Alexander Lane to the West and Hayberry Lane to the south. The site is approximately 1.3 kilometres north of the North Sydney CBD and 1 kilometre southwest of the St Leonards Town Centre.

The Crows Nest town centre is characterised by a mix of residential apartments, commercial offices, small, ground-floor retail shops and restaurant with outdoor dining facilities. The main road corridors through the town centre are the Pacific Highway and Falcon Street, while Willoughby Road is generally acknowledged as the focus of the retail precinct within the town centre. Buildings along the major road corridors feature multi-storey residential and commercial buildings of various sizes.

To the east of the site is a continuum of low to medium density residential development that addresses Falcon Street. Like the site, this adjoining development also has rear vehicular access from Hayberry Lane.



**Figure 3** Site map of 27-57 Falcon Street

Source: Ethos Urban, Nearmap

### 3.2 Site Description

The site is legally described as follows:

Address	Lot	DP
27 Falcon Street, Crows Nest	33, section 3	DP 1720
	32, section 3	DP 1720
	X	DP 407774
43 Falcon Street, Crows Nest	Y	DP 407774
47 Falcon Street, Crows Nest	A	DP 377050
49- 51 Falcon Street, Crows Nest	26, section 3	DP 1720
55-57 Falcon Street, Crows Nest	25, section 3	DP 1720

In summary, the site:

- Has a site area of approximately 4,325m<sup>2</sup> and is in a prominent position at the eastern entry of the Crows Nest Town Centre;
- Has a frontage of approximately 110 metres to Falcon Street and Hayberry Lane, and 40 metres to Alexander Lane (see Site Survey at **Appendix B**);
- Is currently situated between existing residential development and larger scale commercial buildings;
- Has a cross fall of approximately 6.48 metres across the site from the high point at Alexander Lane and Falcon Street to low point on the southern boundary.
- Is currently partially vacant, and the remnant commercial buildings on the site are in poor physical condition, including:
  - 53-57 Falcon Street, which is built to all four boundaries, rises three storeys and has undercroft parking at the rear;
  - 49-51 Falcon Street, which is also built to all four boundaries, is 3 storeys in height, is the tallest of the four existing buildings on the Site and also includes undercroft parking at the rear;
  - 47 Falcon Street, which is two storeys in height, is setback from Falcon Street, but is generally built to all other boundaries. This is the most recently constructed of the four existing buildings; and
  - 43 Falcon Street, which is a two-storey red brick building. Built to the boundary of Falcon Street, this building is setback from Hayberry Lane and includes a rear at grade parking area.
- Is within 350 metres of the new Crows Nest Metro Station, as well as numerous bus stops on the Pacific Highway and Falcon Street; and
- Is not burdened by environmental constraints including:
  - Heritage and conservation;
  - Critical habitats;
  - Road widening, realignment or Council land acquisition;
  - Bushfire;
  - Acid Sulfate Soils; and
  - Flooding or overland flow.

The location and size of the site establishes it as a key opportunity for development within the Crows Nest. Furthermore, the partial vacancy and lack of current physical aesthetic and amenity provides an opportunity for a positive outcome for the site. Site photographs are provided at **Figure 4-Figure 6**. Further site photos are provided in the Urban Design Report (**Appendix A**).





**Figure 4** The vacant western part of the site looking south west from Falcon Street  
*Source: Ethos Urban*



**Figure 5** The vacant land with the existing buildings looking east from Hayberry Lane  
*Source: Ethos Urban*



**Figure 6** The rear of the 43-45 Falcon Street from Hayberry Lane.  
*Source: Ethos Urban*

### 3.3 Public Transport

The site is located within close proximity of a number of public transport options. This includes a number of bus services and the new Crows Nest Metro Station, which is set to open in 2024. The current bus services that stop near the site are summarised in **Table 1** below.

**Table 1 Nearby Bus Routes**

Route	Destination	Frequency
<b>Falcon Street Bus Stops</b>		
144	Manly to Chatswood via Royal North Shore	Every 15-20 minutes from Chatswood, 5am to 11pm. Every 15-20 minutes from Manly, 5am to midnight.
257	Chatswood to Balmoral via Crows Nest	Every 15-20 minutes from Chatswood between 7am and 6pm. Every 15 to 20 minutes from Balmoral between 7am and 7pm.
143	Manly to Chatswood via Balgowlah and St Leonards	Every 20-30 minutes from Chatswood and Manly between 6:30am and 6:30pm.
<b>Pacific Highway Bus Stops</b>		
252	Gladesville to City King Street Wharf via North Sydney	Approximately every 30 minutes from City between 6am and midnight. Every 20-30 minutes from Gladesville between 6am and 11pm.
M20	Gore Hill to Botany	Every 10 minutes from Gore Hill between 6am and 10pm. Every 10 minutes from Botany between 6am and 8pm.
254	Riverview to McMahons Point	Every 20 minutes from McMahons Point between 7:30am and 11:30am. Every 30 minutes from Riverview between 6:30 and 11:00pm.
265	Lane Cove to North Sydney via Greenwich	Every 30 minutes from North Sydney between 6:30am and 7:00pm. Every 30 minutes from Lane Cove between 6:00am and 5:30pm.
291	Epping to McMahons Point	Every 20 minutes from McMahons Point between 6:30am and 11:00pm. Every 20 minutes from Epping between 5:30am and 10:00pm.
261	Lane Cove to City St Wharf via Longueville	Every 30 minutes from City between 7:00am and 9:30pm. Every 30 minutes from Lane Cove between 6:30am and 8:30pm.

### 3.4 Current Planning Controls

The key planning controls that currently apply to the site under the North Sydney LEP 2013 are outlined in **Table 2** below.

**Table 2 Current LEP Provisions**

Consideration	Existing Controls
Land use zoning	The site is zoned B4 Mixed Use which permits a range of residential uses (boarding houses, residential flat buildings, seniors housing, serviced apartments, shop top housing) and non-residential uses (amusement centres, backpackers accommodation, car parks, centre-based child care facilities, commercial premises, community facilities, educational establishments, entertainment facilities, function centres, hostels, hotel or motel accommodation, information and education facilities, medical centres, passenger transport facilities, places of public worship, recreation areas, recreation facilities (indoors), registered clubs, respite day care centres, restricted premises, sex services premises, signage, vehicle repair stations).
Building height	The maximum building height on the site is 10 metres above existing ground level.
Floor space ratio	There is no maximum floor space ratio provision currently applicable to the site.
Clause 4.4A Non-residential floor space ratio	The non-residential floor space ratio for the site is 0.5:1.
Clause 5.10 Heritage Conservation	The site is not of any heritage significance, nor is it within a heritage conservation area. However, the site is adjacent to the Hayberry Conservation Area, which is located across Hayberry Lane to the south.
Clause 6.12A Residential flat buildings in Zone B4 Mixed Use	The objective of this clause is to ensure that development for residential flat buildings on land in Zone B4 Mixed Use forms part of mixed-use developments and does not impact on activation of street frontages. As this proposal seeks to rezone the site to R4 High Density Residential, this clause no longer applies.

## 4.0 Surrounding Area

The site is situated between the commercial and retail precinct of the Crows Nest town centre to the north and west, and existing low to medium-scaled residential development to the south and the east. The surrounding area contains a number of land uses that support the strategic merit of the planning proposal. Key locations and their distance from the site are outlined in **Table 3** below. The site's locational context is shown in **Figure 7**.

**Table 3** The site's distance from key locations in the surrounding area

Location	Travel distance from the site
Future Crows Nest Metro Station	350 metres (4 min. walk)
Crows Nest Town Centre	100 metres (2 min. walk)
North Sydney Girls High School	350 metres (4 min. walk)
North Sydney Boys High School	350 metres (4 min walk)
Cammeraygal High School	400 metres (5 min. walk)
North Sydney Public School	1 kilometre (3 min. bus journey)
North Sydney Oval and associated open space	450 metres (5 min. walk)
North Sydney CBD	1.5 kilometres (5 min. bus journey)
Sydney CBD	4 kilometres (15 min. bus journey)



**Figure 7** Aerial context looking north west towards St Leonards

Source: Lindsay Bennelong



**North**

Development to the North of the site consists of two to three storey commercial and retail developments. The building heights along this section of Falcon Street follow the topography of the street, stepping up in height from the residential areas in the east towards the town centre. A mixed use apartment building is currently being constructed to the north of the site on Falcon Street. Refer to **Figure 8**.

**South**

Directly across Hayberry Lane to the south are a number of low-density dwellings. These dwellings have frontage to Hayberry Street, and typically consist of garages, with two separate habitable secondary dwellings that front Hayberry Lane. Also to the south of the site is a zoned conservation area, that extends from Hayberry Lane to Emmett Lane, bound by Alexander Lane to the west. Refer to **Figure 9**.

**East**

Immediately east of the site on Falcon Street, existing development consists of both attached and detached dwellings, with some residential flat buildings occurring further east along Falcon Street. The neighbouring dwelling at the site's eastern boundary is currently overshadowed and dominated by the existing commercial building and has no building separation provided by the site. Refer to **Figure 10**.

**West**

To the west beyond Alexander Lane, the existing built development consists of a mix of commercial offices and multi storey residential buildings, with rear vehicular access along Alexander Lane and primary street frontages to Alexander St. The buildings feature active ground floor uses with retail stores fronting Alexander Street and Falcon Street.



**Figure 8** A mixed use apartment building currently being constructed across from the site on Falcon Street  
Source: Ethos Urban



**Figure 9** Holterman Estate Conservation Area to the south of the site looking east along Hayberry Street  
Source: Ethos Urban



**Figure 10** Adjoining residential properties at the site's eastern boundary along Falcon Street  
Source: Ethos Urban



**Figure 11** Commercial premises to the west of the site on Falcon Street  
Source: Ethos Urban

### **The Road Network**

Falcon Street is a primary collector road that runs from the Pacific Highway in the west to Warringah Freeway in the East. It is two lanes wide and runs through Crows Nest town centre. The Pacific Highway is a main arterial road that runs north and south from Warringah Freeway through Sydney's northern suburbs.

Alexander Lane and Hayberry Lane are both one lane wide laneways, which provide no on-street parking. Both lanes service the rear of various residential and commercial tenancies on Alexander Street and Hayberry Street. The laneway frontages are mostly composed of garages and carports.

## 5.0 The Reference Design and Planning Proposal

This section of the report outlines the key features of the reference design prepared by AJ+C to demonstrate an indicative built form that could be achieved under the proposed amendments to the North Sydney LEP 2013.

### 5.1 Urban Design Principles

The primary objective of the planning proposal is to facilitate a development with a built form and land use mix that is complementary to the site's context. The proposed amendments will facilitate an outcome that is similar to the outcome conditionally supported by Council in 2015 and effectively 'unlock' the site's potential and enable a viable and environmentally friendly development. The reference design is cognisant of the concept scheme prepared for the 2015 planning proposal and has been informed by the following design principles:

- Maximise solar access to neighbouring properties, apartments and communal open space
- 'Green the site' by:
  - establishing courtyards to provide breaks in Falcon Street streetscape
  - providing a green link connecting Falcon Street and Hayberry Lane and communal open space separated from the street
  - identifying opportunities for landscaping and deep soil planting
- Create a sense of transition by:
  - proposing an appropriate scale between existing residential development to the south and east and mixed-use character of Crows Nest centre to the north and west
  - setback transition to Falcon Street from zero metres at the western end of the site where commercial use is proposed to 3 metres elsewhere
  - minimum 4.5 metre setback zone to the east adjacent to existing one and two storey Falcon Street neighbours
- Improve the street network by providing:
  - positive street address including clearly defined street entries
  - defined and coherent street edges
  - minimum 2 metre setback zone to Hayberry Lane to provide opportunity for wider footpaths, planting and appropriate separation to neighbours
  - adjusted site boundary to Alexander Lane to permit street widening which will allow two-way vehicle traffic and provide appropriate separations to neighbours

The design principles and design proposal are explained in further detail in the Urban Design Report (**Appendix A**).

### 5.2 Reference Design Concept

The intended outcome of this planning proposal is to enable the development of the site to accommodate a high-density residential development comprising of three (3) residential flat buildings between three and six storeys in height and eight (8) three storey townhouses, retail premises on ground at the corner of Falcon Street and Alexander Lane, landscaped communal open space and basement parking. The reference design prepared by AJ+C is attached as Appendix 1 to Urban Design Report and is summarised below.

**Table 4 Reference Design - Key Features**

Element	Detail
No. of buildings	Three residential flat buildings (Building A, B and C) and eight townhouses (Building D).
Building height*	Building A (residential flat building & ground floor retail) – maximum 6 storeys (21m) Building B (residential flat building) – maximum 6 storeys (21m) Building C (residential flat building) – maximum 4 storeys (14.5m) Building D (townhouses) – maximum 3 storeys (10m)
Gross Floor Area	Residential – approximately 7,576m <sup>2</sup> Non-residential – approximately 340m <sup>2</sup>
FSR	1.85:1 – the proposed FSR is marginally greater than the indicative yield derived from the reference design to allow for flexibility at the detailed design stage.
Setback to Falcon Street	Building A and B – 0 metres Building C – 3 metres
Setback to Alexander Lane	6m from centre line of laneway
Setback to Hayberry Lane	Buildings A and B – 3 metres Building D – 1.5 metres
Setback to eastern boundary	Building C – 4.5 metres Building D – 1.5 metres
Uses	Residential flat buildings (Building A, B and C), multi-dwelling housing (Building D) and retail premises (Building A ground floor)
Dwellings	Apartments – 77 Townhouses – 8
Vehicular access	Access to basement via widened Alexander Lane.
Communal open space	20.5%
Deep soil	21% (min. dimension >6m)
Landscaping	50.2%
Site Coverage	59%

*\*Note – the maximum height in storeys (six) is the same as the maximum height storeys proposed by the 2015 planning proposal. However, the proposed building height in metres is greater than the maximum height in metres proposed by the 2015 planning proposal. The height in metres proposed in the current planning proposal accounts for minimum floor to floor heights calculated in accordance with the requirements of the Apartment Design Guide, lift overrun and plant areas. It is intended that this will remove any requirement to prepare clause 4.6 variation to development standards as part of any future development application. Further, it is proposed that built form and massing will be regulated by site-specific development controls to ensure that the future development is consistent with the reference design.*

## 5.2.1 Built Form

### Buildings A

Building A is between three and six storeys and addresses the prominent Falcon Street and Alexander Lane corner. It also has frontage to Hayberry Lane. It has a zero street setback to the corner and Falcon Street which responds to the existing condition to the west and will provide a strong presence at the corner. The six storey component is setback from Alexander Lane and Hayberry Lane above a podium. The podium steps down to follow the natural fall of the land and to reduce the lower scale of the Hayberry Lane public domain. The podium reads as a four storey form to Alexander Lane and a three storey form to Hayberry Lane. The upper level apartments are two storey maisonettes which removes the requirement for any lift overrun. Retail premises are proposed on the corner to activate and articulate the street edge.

### Building B

Building B is between three and six storeys and addresses both Falcon Street and Hayberry Lane. Building B proposes a six storey street wall to Falcon Street. The Falcon Street façade is setback 2 metres from the street boundary and the podium steps down towards Hayberry Lane in a similar manner to Building A where it is setback 3 metres from the laneway. Building B accommodates communal open space on the podium and roof top. The communal open space will provide high quality district views and will be a high amenity communal asset for future residents and visitors. Lift access to the roof top communal open space will be centralised to mitigate visual, view and shadow impacts to the public or private domain in the surrounding area.

### Building C

Building C is a four storey building located towards the eastern boundary of the site. It is setback 3 metres from Falcon Street which reflects the existing residential street setbacks along Falcon Street to the east. It is setback 4.5 metres from the common boundary with the neighbouring properties. The upper level apartments are two storey maisonettes which removes the requirement for lift overruns. Building C provides a transition in scale between Building B and the existing lower density residential to the east.

### Building D

Building D comprises eight x three storey townhouses with frontage to Hayberry Lane that will serve to activate the laneway. They are setback three metres from the laneway and 1.5 metres from the eastern boundary. Building D provides a transition in scale between the built form along Falcon Street and the lower density character along Hayberry Lane.

## 5.2.2 Site Access and Parking

Basement carparking for residents, visitors and employees, and a lower ground floor loading dock will be accessed on Alexander Lane which would be widened in conjunction with the development scheme to provide two-way traffic movement and for trucks to turn from Falcon Street.

## 5.2.3 Landscape Concept

An Indicative Landscape Concept Design has been prepared by Place Design Group. The concept fulfils the design principle to green the site and proposes a variety of communal areas with varying themes and outlook. Landscaped setbacks and breaks in the massing will soften the built form and provide pleasant amenity for future residents and visitors.

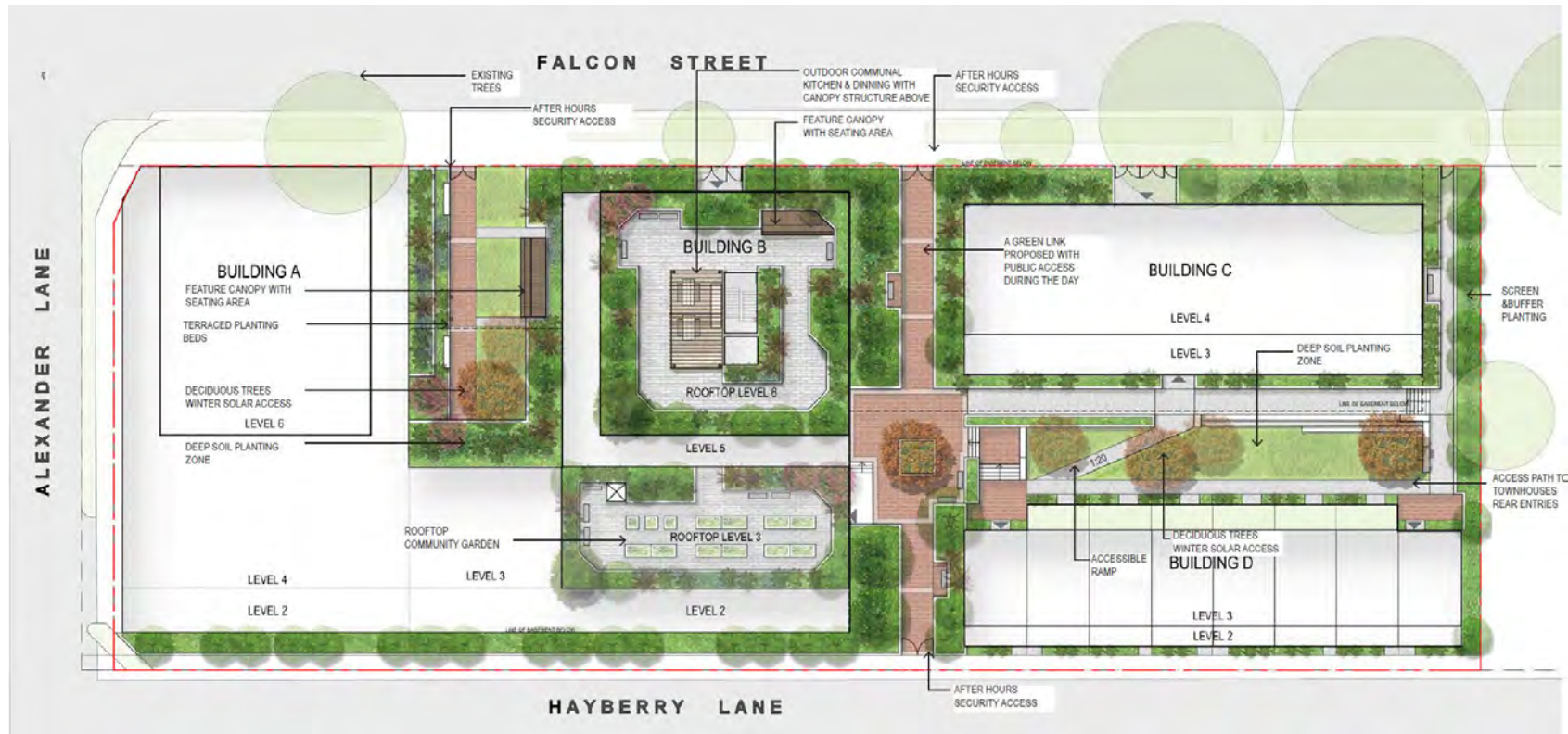
The following figures illustrate the reference design. Further detail is provided in the Urban Design Report (**Appendix A**) and Indicative Landscape Concept (**Appendix C**).





Figure 12 Site plan showing Building A, B, C and D  
Source: A/JC

Ethos Urban | 2190018



**Figure 13 Indicative Landscape Concept**  
 Source: Place Design Group





**Figure 14** Conceptual Render of the view east down Falcon Street

Source: AJ+C

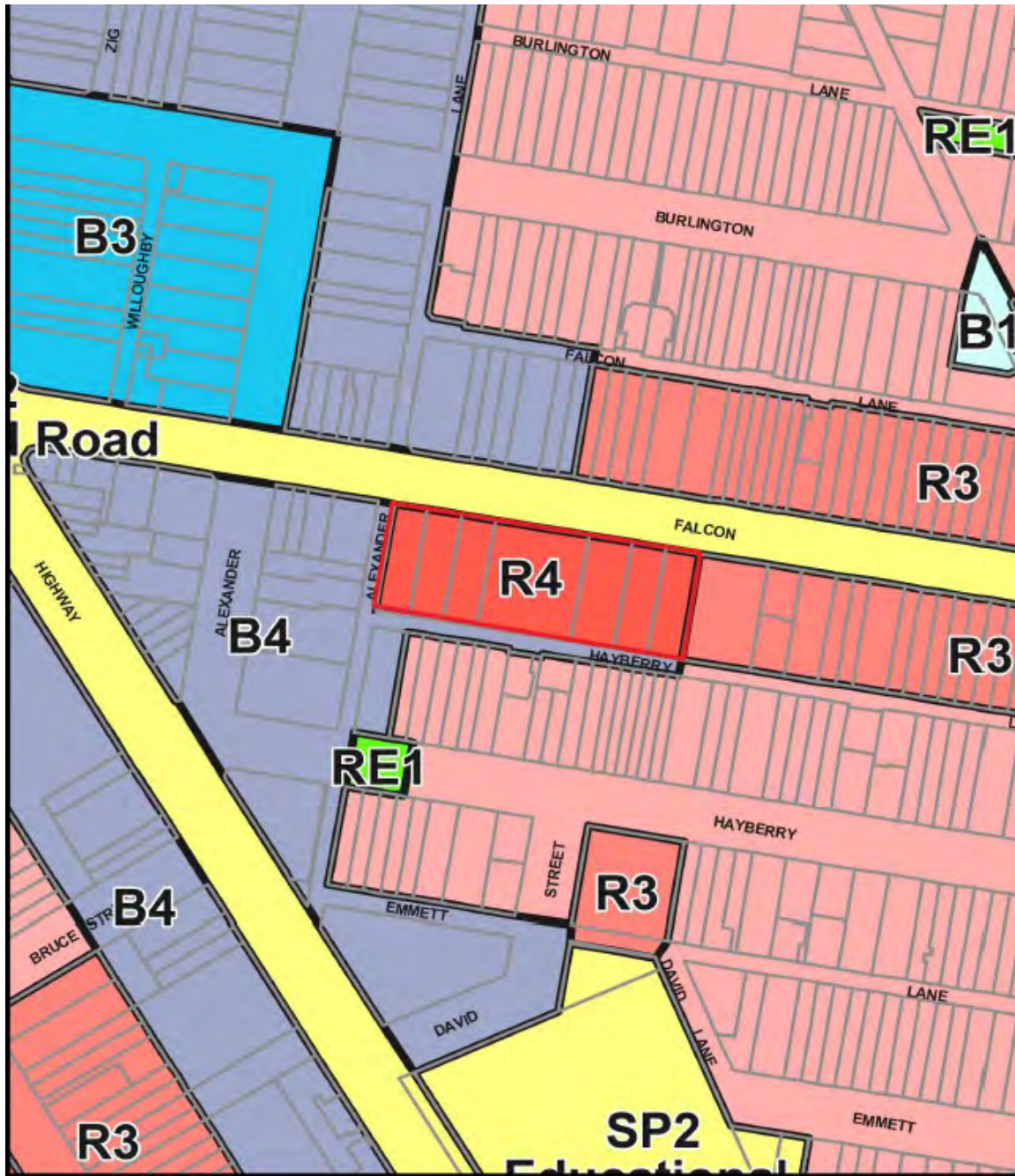
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### 5.3 Proposed amendments to the North Sydney Local Environmental Plan 2013

To enable the site to accommodate the reference design, the following amendments are required to the North Sydney LEP 2013.

- Rezone the site to R4 High Density Residential
- Amend the maximum building height to part 21 metres and part 14.5 metres
- Apply a maximum floor space ratio of 1.85:1 to the site
- Remove the non-residential floor space ratio requirement
- Retain 'retail premises' as a permitted land use on the site
- Site specific provision under Part 6, Division 2 of the LEP to allow specific exceedances of the Height of Building control

The following maps (also provided at **Appendix D**) show the updated amendments to the North Sydney LEP 2013 land use zone, height, FSR and non-residential FSR maps.



Legend

- The Site
- LZN\_001
- B1 Neighborhood Centre
- B3 Commercial Centre
- B4 Mixed Use
- R2 Low Density Residential
- R3 Medium Density Residential
- R4 High Density Residential
- RE1 Public Recreation
- SP2 Infrastructure

⊕ NOT TO SCALE

**Figure 15** Proposed changes to the Land Use Zoning map relating to the site.

Source: Ethos Urban





**Figure 16** Proposed amendment to the FSR map relating to the site.

Source: Ethos Urban



Figure 17 Proposed amendments to the Height of Buildings map relating to the site.

Source: Ethos Urban





**Figure 18** Proposed amendments to the non-residential floor space map relating to the site.

Source: Ethos Urban

#### 5.4 Proposed amendments to the North Sydney Development Control Plan 2013

The North Sydney DCP contains development controls for high density residential development. The reference design has been prepared with reference to the DCP controls. However, for the intended outcome to be realised and to provide additional built form parameters to manage future development, it is necessary to apply site-specific development controls. The application of site-specific development controls is reasonable in these circumstances as, along with LEP amendments, they will facilitate the renewal of the site. Applying the generic residential controls to this site ignores the site's complexities and would likely constrain future development potential. It is proposed that a site-specific DCP is prepared to regulate the following:

- Site coverage
- Building height in storeys
- Falcon Street setback
- Eastern side setback
- Hayberry Lane setback
- Vehicular access
- Alexander Lane road widening

A site-specific Development Control Plan is provided at **Appendix J**.

#### 5.5 Voluntary Planning Agreement

A Voluntary Planning Agreement offer is made by the proponent to accompany the planning proposal, which will contribute to the dedication of land and provision of open space, as follows:

- A monetary contribution of \$800,000 towards increased open space opportunities (e.g. Stage 1 Hume Street Park upgrade), payable to Council.
- Land Dedication including Embellishments to the value of \$330,000 – which is 35% of the total value of these works in recognition of the value of these upgrades to the Subject Site, as set out below:

A Letter of Offer presented by Lindsay Bennelong Developments is attached as Appendix H.

## 6.0 Strategic Justification

In 2015 the Council determined there was strategic merit to rezone the site to R4 High Density Residential with a maximum FSR of 1.9:1. The Council's decision was made prior to the state government's announcement to locate a station at Crows Nest as part of the new Sydney Metro network which provides greater strategic merit to locate a mix of housing proximate to major state government transport infrastructure investment. Given the proximity of the site to the future Crows Nest Metro station and the continued underutilisation of the site, there is even greater merit to rezone the site in 2019.

### 6.1 Greater Sydney Region Plan

In March 2018, the Greater Sydney Commission released the *Greater Sydney Region Plan: A Metropolis of Three Cities* (the Plan). The Plan presents a strategy for accommodating Sydney's future population growth for the next 20 years and identifies Crows Nest as an area suitable for further strategic urban renewal. The Plan sets out objectives that will guide Sydney's growth; the following discussion demonstrates how the planning proposal is consistent with the relevant strategic objectives.

#### Objective 10: Greater housing supply

The NSW Government forecasts that an additional 725,000 homes will be needed by 2036 to meet demand based on current population projections. This strong need is forecast to continue, and by 2056 it is anticipated that significant further housing supply will be required to meet Greater Sydney's continued strong population growth.

To facilitate greater housing supply, the Plan sets housing targets for each District. The North District, which includes Crows Nest, is required to deliver a minimum of 25,950 homes in the five years between 2016 and 2021. Beyond this, the Plan sets a 20-year strategic housing target of 92,000 homes for the North District.

While dwelling completions are at their highest levels in 16 years for Greater Sydney, the North District has experienced fluctuations in the amount of dwelling approvals over the past decade from a high in 1999–2000.

While detail in terms of delivery will be determined by councils preparing housing strategies under the principles established by the Plan, given Sydney's sustained population growth, the primary intent is to pursue opportunities for additional housing over the next 20 years. The Plan states that developers play an important role in supporting housing outcomes:

*'The development industry needs to continually provide new housing and translate the development capacity created by the planning system into approvals and supply.'*

As it will facilitate delivery of additional dwellings on a site that under current planning controls cannot feasibly deliver additional homes, the planning proposal promotes this objective.

#### Objective 11: Housing is more diverse and affordable

Greater Sydney has been measured as being one of the least affordable housing markets globally and is the least affordable Australian city. Factors that contribute to rental and purchasing affordability challenges include the limited availability of smaller dwellings to meet both the growing proportion of small households, as well as the growing distance between areas where housing is affordable and the location of employment and educational opportunities.

This planning proposal will deliver smaller homes in the form of apartments and townhouses, in the St Leonards and Crows Nest precinct that provides job opportunities and access via public transport to other major employment nodes, such as North Sydney and the Sydney CBD.

#### Objective 12: Great places that bring people together

The architectural reference design developed by AJ+C will facilitate a high-quality public domain and built form response to its context, including the ability to:

- allow the reconnection of the urban fabric of the area, filling a significant gap in the current development pattern at the fringe of the Crows Nest town centre; and



- provide a contemporary urban response to Falcon Street that will improve the pedestrian experience along Falcon Street and will respond to the fine grain nature of the existing lower density dwellings to the south and east.

#### **Objective 14: A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities**

Under the Plan accommodating new homes needs to be linked to local infrastructure – both to optimise existing infrastructure and to maximise investment in new infrastructure.

In established parts of Greater Sydney such as Crows Nest, urban renewal opportunities exist around regional transport and strategic centres, where links for walking and cycling promote a healthy lifestyle and contribute to liveability.

Being located in Crows Nest which is also identified as a Planned Precinct within walking distance of the future Metro station which is the result of major government investment, the proposal is consistent with this objective.

#### **6.1.1 Summary**

The Planning Proposal is consistent with the above objectives of the Greater Sydney Region Plan as it will deliver new homes adjacent to the Crows Nest town centre; a short walk from shops, services, high frequency bus stops and the future Crows Nest Metro Station. These attributes make the site a suitable location for higher density housing.

## **6.2 North District Plan**

Consistent with the Regional Plan, overall the District Plan promotes three major housing themes:

- Greater housing supply;
- More diverse and affordable housing; and
- Better located and designed housing

Planning priority number 5 promotes this:

*‘Providing housing supply, choice and affordability, with access to jobs, services and public transport’*

Under the North District Plan, the North Sydney LGA is required to deliver a minimum of 3,000 homes in the five years between 2016 and 2021. The District Plan notes that more smaller homes, group homes and adaptable homes are required to meet changing population needs and diversity.

New housing should also be provided in the right locations and of the right design, close to local infrastructure and contribute to safe and vibrant neighbourhoods.

The proposal:

- Provides additional housing on a site that under current planning controls, cannot deliver housing or jobs in a location on the fringe of the Crows Nest town centre;
- Provides a greater diversity of housing in the form of apartments and town houses;
- Is located within walking distance of a future Metro station benefiting from major government investment; and
- Is well designed and will contribute to the vitality of Crows Nest.

On this basis, the proposal is consistent with the relevant planning priorities and actions of the District Plan.

The District Plan also contains specific actions for the St Leonards and Crows Nest precinct. Relevant actions are:

- leverage the new Sydney Metro Station at Crows Nest to deliver additional employment capacity
- reduce the impact of vehicle movements on pedestrian and cyclist accessibility

- protect and enhance Willoughby Road's village character and retail/restaurant strip

By providing varied accommodation opportunities in close proximity to the new Crows Nest Metro Station, the Willoughby Road retail/restaurant strip and various employment nodes such as North Sydney and St Leonards, the Planning Proposal meets the above District Plan actions for the St Leonards and Crows Nest area.

### 6.3 St Leonards and Crows Nest 2036 Plan

The 2036 Plan was finalised on the 29 August 2020 and outlines the strategic vision and direction for the St Leonards and Crows Nest Strategic Centre. The plan has been adopted by the Department including a supporting Section 9.1 Ministerial Direction and Special Infrastructure Contribution scheme.

We note that the 2036 Plan proposes no changes to the existing planning controls for the site. This is inconsistent with the overall vision and objectives of the plan to accommodate increased growth and transit orientated development around Crows Nest Metro Station, and contrary to Council's previous conditional support for building heights up to six storeys and an FSR of 1.9:1 on the site. Council acknowledges in their Local Strategic Planning Statement that the 2036 Plan attempts to undertake local planning at a regional scale which means '*many issues have been overlooked, inadequately considered or not been resolved and will require more work before these proposals can be supported and implemented, particularly of a built form nature.*'

This Planning Proposal represents an opportunity to undertake a considered strategic planning analysis to determine the appropriate built form and land use controls for the site.

The 2036 Plan requires that, in order to justify an increase in height and density, any proposal be consistent with the vision, area wide design principles, design criteria and area specific design criteria identified in the Plan. This hierarchy of considerations is shown in **Figure 19**, as extracted from the 2036 Plan.



**Figure 19 Hierarchy of future development considerations**

Source: Department of Planning & Environment

The following points demonstrate how the planning proposal is consistent with the vision, design principles and design criteria outlined in the Plan.

The planning proposal is consistent with the **vision** as it will:

- Increase vibrancy and life around, and within Crows Nest by replacing ageing, poor quality commercial buildings with contemporary dwellings that will provide high quality residential frontages to Falcon Street and activate Hayberry Lane to the rear.
- Protect the past by providing an appropriate built form transition to the heritage conservation area by stepping down the built form in a manner that relates to the scale along Hayberry Lane. Refer to **Section 8.3**.
- Improve pedestrian accessibility and movement by providing housing close to Crows Nest town centre and the future Metro Station.

- Facilitate a built form outcome that will respect the existing character of the local area. AJ+C have prepared a reference design that is conscious of, and responds to, the various types of surrounding development. The reference scheme's relationship to the surrounding area is discussed further at **Section 8.0**.
- Not undermine the delivery of 16,500 additional jobs over the next 20 years. The Economic Advice submitted at **Appendix F** concludes that the removal of the non-residential FSR standard will not have any material impacts on the delivery of job creating employment floor space in the St Leonards and Crows Nest precinct (refer to **Section 8.2**).
- Facilitate the provision of approximately 87 new dwellings of various types and sizes that will be suitable for a broad range of the community including singles, couples and families at all stages of the life cycle.
- Not preclude the provision of additional parks and open space throughout the St Leonards and Crows Nest area. Further, the proposal will add to the growing network of public domain in the area by activating Hayberry Lane which is currently a generally sterile environment comprised of garages and commercial loading areas.

The planning proposal is consistent with the relevant **design principles** as it will:

- Enhance the sense of place in Crows Nest by:
  - Facilitating a future built form that is sympathetic to the setting of the heritage conservation area.
  - Providing apartments and townhouses close to the town centre will contribute to civic atmosphere within and around Crows Nest. The planning proposal will improve the built form relationship between the site and the public domain and increase casual surveillance along Falcon Street and Hayberry Lane.
  - Not generating any additional overshadowing of public open spaces.
- Consider and mitigate potential overshadowing impacts on the surrounding area. The proposal has been developed with careful consideration of shadow impacts on the existing dwellings to the west and south. AJ+C have undertaken detailed analysis which is provided at **Appendix A** discussed further at **Section 8.1.2**.
- Respect and respond to the scale of the lower density dwellings to the south and east by proposing three-four storey buildings at the boundaries and then transitioning height across the site to respond to the higher density buildings to the west. The proposed street setbacks respond to the existing setbacks on adjoining properties and will improve the public domain experience along Falcon Street and Hayberry Lane.
- Provide a range of studio, 1, 2 and 3 bed apartments and 2 and 3 bed townhouses in a centre fringe location that will cater for all life cycles in the community.
- Provide residential land uses on site which will contribute to the activation of the public domain in way that providing non-residential uses would not. Maintaining the minimum non-residential FSR standard would result in either no future development on the site or a sterile Falcon Street ground plane comprised of vacant tenancies. The planning proposal will enable the site to accommodate retail premises at the corner of Falcon Street and Alexander Lane without the requirement to provide a minimum of 2,171m<sup>2</sup> non-residential floor area that is unlikely to be used.
- Contribute to the improvement of the walking network and pedestrian safety in Crows Nest by creating 'eyes on the street' along Falcon Street, Hayberry Lane and Alexander Lane. Further, replacing the bulk of the existing commercial buildings with future townhouse development setback along Hayberry Lane will improve the laneway environment and public domain amenity along the laneway making it a pleasant thoroughfare for pedestrians.
- Provide a 'balanced' entry from a design perspective to Crows Nest along the key collector of Falcon Street, noting the scale of development on the northern side of the road.

The planning proposal is consistent with the relevant **design criteria** as it will:

- Not overshadow any existing public open space or identified streetscapes. As illustrated in the AJ+C Urban Design Report the site can accommodate up to six storeys while maintaining solar access to adjoining properties.
- Setback from the street, laneways and side boundary in an appropriate manner. The reference design proposes a zero setback at the corner of Falcon Street and Alexander Lane which responds to the adjoining setbacks of the buildings immediately west in the Crows Nest. The street setback of the remainder of the built form along Falcon Street is consistent with the existing residential development to the east. The setbacks to Hayberry Lane respond to the setting and the heritage conservation area to the south.
- Not encroach on any key views or vistas. The building envelopes are orientated to address the street and laneways and activate the frontages of Falcon, Alexander Lane and Hayberry Street. It will also provide an appropriate transition from the edge of the Crows Nest centre to the residential areas to the east of the site and the heritage conservation area to the south.
- Provide an active, fine grain and integrated street frontage to all street frontages. The reference design provides clear and legible breaks in the massing and landscaped setbacks throughout the site further softens the address of the buildings to the streetscape and public realm.

### 6.3.1 Summary

This planning proposal is consistent with the 2036 Plan's vision as it seeks to provide additional housing within the walkable catchment of the new Crows Nest Metro Station. Furthermore, the proposal seeks to incorporate design principles that will facilitate a high-quality built form outcome, which responds closely to existing and future desired character of the area, especially as the site is located at the gateway to the Crows Nest town centre.

Maintaining the non-residential FSR standard and the three-storey height limit will continue to sterilise the site which has strategic value in a transitional location. Removing the non-residential FSR will not undermine the 2036 Plan's overarching employment objectives and will allow the site to accommodate future development that will represent a responsive and economical use of the land.

## 6.4 North Sydney Local Strategic Planning Statement

Council finalised the North Sydney Local Strategic Planning Statement (LSPS) in March 2020. The LSPS outlines the Council's strategic vision for Crows Nest, and was endorsed by the Greater Sydney Commission in March 2020. The following points demonstrate that the planning proposal is consistent with the Council's planning priorities outlined in the LSPS.

### Priority L1 – Providing a diversity of housing in the right locations that meet community needs

The planning proposal will provide a range of housing types and dwelling sizes in a location that Council have acknowledged is suitable for high density residential development.

### Priority L3 – Strengthening social connections through safe and accessible vibrant centres, public domain, villages and streetscapes

The site is currently in poor repair and does not make a positive contribution to the public domain along Falcon Street, Hayberry Lane or Alexander Lane. The planning proposal will facilitate the renewal of the site and significantly improve its relationship to the public domain by activating the Falcon Street and Alexander Lane corner, and by providing residential uses at and above ground level which will provide a strong address to the street and increase the vibrancy of the streetscape.

### Priority L4 – Preserving, maintaining and celebrating North Sydney's history and heritage

The planning proposal will facilitate a built form and land use outcome that responds to and respects the heritage conservation area to the south. The height and scale of the reference design transitions from higher density six storey forms along Falcon Street to lower density three storey forms, including townhouses along Hayberry Lane. A Heritage Impact Statement has been prepared (**Appendix G**) and further discussion is provided at **Section 8.3**.

### **Priority P2 - Providing opportunities for long-term employment growth in St Leonards/Crows Nest across a range of sectors**

The planning proposal will support the achievement of this priority by facilitating additional housing close to the Crows Nest Town Centre which will support the viability and vibrancy of the local day and night economy. There is land zoned for employment in St Leonards and Crows Nest that is better placed to meet long-term employment demand. Providing approximately 2,170m<sup>2</sup> of non-residential floor space on the site (as currently required by the North Sydney LEP 2013) will undermine the role and viability of Willoughby Road as the Crows Nest centre's focus. As discussed above, the location, context and attributes of the site are better suited to a greater proportion of residential uses, given the interface with existing residential to the south and east.

## **6.5 Strategic and Site-Specific Merit**

*A Guide to Preparing Planning Proposals* sets out that a planning proposal needs to justify that it meets the Strategic Merit Test. The consistency of this planning proposal with the mandated assessment criteria is set out below.

### **a) Does the proposal have strategic merit?**

Part 3 of *A Guide to Preparing Planning Proposals* establishes assessment criteria for determining if planning proposals have strategic merit:

#### *a) Does the proposal have strategic merit? Is it:*

- *Consistent with the relevant regional plan outside of the Greater Sydney Region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or*
- *Consistent with a relevant local council strategy that has been endorsed by the Department; or*
- *Responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls.*

The Guide also provides that there is a presumption against a rezoning review that requests to amend LEP controls that are less than 5 years old, unless the proposal can clearly justify that it meets the strategic merit test.

The North Sydney LEP was gazetted in 2013 and as such is now 6 years old. Notwithstanding this, the planning proposal clearly meets the Strategic Merit Test outlined above. Since gazettal of the North Sydney LEP in 2013, the following major changes to the strategic context of the site have occurred:

- The *Greater Sydney Region Plan* and the North District Plan were released which identified a need to increase housing supply in strategic centres close to transport and that the Greater Sydney Region required an additional 725,000 homes will be needed by 2036 to meet demand based on current population projections;
- In 2015, Council provided in-principle support to rezone the site to R4 High Density Residential.
- The announcement of the Sydney Metro, providing a train station (Crows Nest Station) within walking distance (400 m) of the site;
- Population forecasts released by DP&E in October 2016 (and included in the District Plan) identify that the North Sydney LGA will need to accommodate an additional 3,000 dwellings over the next 5 years.

For the reasons outlined above, the planning proposal has clear strategic merit and responds to a number of significant changes in the strategic planning context of the site that the LEP controls from 2009 do not respond to.

### **b) Does the proposal have site-specific merit?**

Part 3 of *A Guide to Preparing Planning Proposals* establishes assessment criteria for determining if planning proposals have site-specific merit:

#### *b) Does the proposal have site-specific merit, having regard to the following?*

- *the natural environment (including known significant environmental values, resources or hazards) and*

- *the existing uses, approved uses, and likely future uses of land in the vicinity of the proposal and*
- *the services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangements for infrastructure provision.*

The Planning Proposal has site-specific merit for the following reasons:

- There are no known environmental matters that would prevent the development of the site for higher density residential development.
- The Planning Proposal will facilitate a predominantly residential development whose form and scale will be compatible with the existing residential land uses in the vicinity of the site. This is anticipated under the current controls, with the amendments simply only seeking to delete the ground floor non-residential component from a land use perspective.
- The site is in an area where there is existing public infrastructure, transport, and community facilities, and is close to employment, leisure and other opportunities.
- Has been previously supported in-principle by Council.

### **Summary**

This planning proposal achieves the assessment criteria, as it demonstrates both strategic merit and site-specific merit. Therefore, it is considered that this planning proposal meets the Strategic Merit Test.

## 7.0 State Legislation and Planning Policies

### 7.1 Environmental Planning and Assessment Act 1979

The EP&A Act and *Regulation 2000* (EPA Reg.) set out amongst other things the:

- Requirements for rezoning land;
- Requirements regarding the preparation of a local environmental study as part of the rezoning process;
- Matters for consideration when determining a development application; and
- Approval permits and/or licenses required from other authorities under other legislation.

This planning proposal has been prepared in accordance with the requirements set out in Section 3.33 of the EP&A Act in that it explains the intended outcomes of the proposed instrument. It also provides justification and an environmental analysis of the proposal.

#### Section 9.1 Directions

Ministerial directions under Section 9.1 of the EP&A Act require councils to address a range of matters when seeking to rezone land. A summary assessment of the planning proposal against the Directions issued by the Minister under Section 9.1 of the EP&A Act is provided in **Table 5** below.

**Table 5 Ministerial Directions**

Ministerial Directions	Consistent		N/A	Comment
	YES	NO		
<b>1. Employment and Resources</b>				
1.1 Business and Industrial Zones		✓		<p>In accordance with clause 5(b) Economic Advice has been prepared which gives consideration to this direction and its objectives (refer Appendix F). In short, the planning proposal will not obstruct the achievement of the objectives as:</p> <ul style="list-style-type: none"> <li>• The planning proposal will provide a boost to local demand for goods and services, while also delivering a amount retail premises which will be a commercially viable employment outcome.</li> <li>• While the site is zoned to accommodate a minimum 2,170m<sup>2</sup> non-residential floor space, maintaining the current zoning is not protecting employment land. The market has shown a long-term lack of interest in development under current controls.</li> <li>• The planning proposal will assist in improving the viability of the St Leonards and Crows Nest centre. Currently the site is not making any meaningful contribution to the trading performance of the centre, and the low amenity is reducing the attractiveness of the area for potential tenants and developers.</li> <li>• Development of the site consistent with the reference design will improve the amenity and vitality of the area, with the potential for this to benefit adjacent commercial properties which are also underutilised.</li> <li>• It is forecast that the additional residents on the site will increase demand for local goods and services, with the retail spending of residents expected to be in the order of \$3.4 million annually. This increase in local demand will support existing local businesses, reduce current levels of underutilisation in the centre, place downward pressure on vacancies, incentivise further business investment and support greater employment densities within the centre.</li> </ul>
<b>2. Environment and Heritage</b>				
2.3 Heritage Conservation	✓			<p>There are no heritage items on site. Notwithstanding this, properties to the south of the site are within a heritage conservation area. The planning proposal does not seek to alter this area. A Heritage Impact Statement is provided at Appendix G and discussed further at <b>Section 8.3</b>.</p>
<b>3. Housing, Infrastructure and Urban Development</b>				

Ministerial Directions	Consistent		N/A	Comment
	YES	NO		
3.1 Residential Zones	✓			The site is proposed to be rezoned R4 High Density Residential. The planning proposal is consistent with this direction as it seeks to increase the residential density on the site which will make better use of infrastructure and proximity to services. The planning proposal will also increase the choice of building and housing types, in an area that is located close to transport, open space, schools, services, and employment in North Sydney, St Leonards and the Sydney CBD.
3.4 Integrating Land Use and Transport	✓			The planning proposal will increase the opportunities to provide new housing to support the use of public transport and improve access to jobs and services by walking, cycling and public transport. The planning proposal is consistent with the objectives of the Ministerial Direction as it will: <ul style="list-style-type: none"> <li>improve access between housing, jobs and services by walking, cycling and public transport;</li> <li>increase housing supply in an area well located to available alternative means of transport, and thereby reducing dependence on cars;</li> <li>reduce travel demand including the number of trips generated by development and the distances travelled, especially by car; and</li> <li>support the efficient and viable operation of the existing public buses transport services and road network.</li> </ul>
<b>4. Hazard and Risk</b>				
4.1 Acid Sulphate Soils			✓	The site is not identified under the North Sydney LEP as being potential Acid Sulphate Soils.
4.3 Flood Prone Land			✓	The site is not identified as being located on flood prone land.
<b>6. Local Plan Making</b>				
6.1 Approval and Referral Requirements	✓			No new concurrence provisions are proposed.
6.2 Reserving Land for Public Purposes	✓			The proposal provides the opportunities for laneway widening along Alexander Lane and upgrades to Hayberry Lane. This outcome is expected to improve the function of existing laneways and contribute to general improvement of the public domain.
6.3 Site Specific Provisions	✓			This Planning Proposal amends existing site-specific provisions, without being unnecessarily restrictive. The proposal to include an additional use for retail development will be carried out without applying any additional development standards or requirements in addition to those that pertain to the proposed zone.
<b>7. Metropolitan Planning</b>				
7.1 Implementation of a Plan for Growing Sydney	✓			The Planning Proposal is consistent with the objectives and strategies of the Metropolitan Plan in that it will facilitate the delivery of residential and employment generating floor space, which provides uses, which will contribute to the vitality of the locality close public transport and the St Leonards and Crows Nest centre.
7.11 Implementation of St Leonards and Crows Nest 2036 Plan	✓			The Planning Proposal is consistent with the objectives and strategies of the St Leonards and Crows Nest 2036 Plan in that it will facilitate additional housing within the walkable catchment of the new Crows Nest Metro Station and will provide a high-quality built form outcome, which responds closely to existing and future desired character of the area, especially as the site is located at the gateway to the Crows Nest town centre.



## 7.2 State Environmental Planning Policies

An assessment of the Planning Proposal against relevant State Environmental Planning Policies (SEPPs) is set out in **Table 6** below.

**Table 6 Consistency with State Environmental Planning Policies**

SEPP	Consistency		N/A	Comment
	Yes	No		
SEPP No. 1 Development Standards			✓	SEPP 1 does not apply to the North Sydney LEP 2013.
SEPP (State and Regional Development) 2011			✓	The future development of the site is likely to be deemed as 'regional development' (meeting the relevant thresholds under Schedule 4A of the EP&A Act), with the relevant Sydney Planning Panel acting as the determining authority.
SEPP (Affordable Rental Housing)			✓	Not relevant to the proposed amendment.
SEPP (Exempt and Complying Development Codes)	✓			Not relevant to proposed amendment.
SEPP No. 55 Remediation of Land			✓	The site has been previously remediated and is currently not known to be contaminated. Notwithstanding, contamination will be further addressed at the DA stage.
SEPP No. 64 Advertising and Signage	✓			Not relevant to the proposed amendment.
SEPP No. 65 Design Quality of Residential Apartment Development	✓			Detailed compliance with SEPP 65 will be demonstrated in any future DA for any building facilitated by this planning proposal. Testing of SEPP 65 and the Apartment Design Guide (ADG) was conducted throughout the design of the indicative scheme which is capable of satisfying the requirements of the SEPP and associated ADG.  As outlined in the Urban Design Report provided at <b>Appendix A</b> , the reference design can achieve the solar access and natural ventilation requirements of the ADG. It is demonstrated that a high level of residential amenity can be achieved on the site under the planning proposal. Continued detailed compliance with SEPP 65 will be demonstrated at the time of future development applications
SEPP No.70 Affordable Housing (Revised Schemes)			✓	Not relevant to the proposed amendments.
SEPP (Affordable Rental Housing) 2009			✓	Not relevant to the proposed amendment.
SEPP (BASIX) 2004	✓			Detailed compliance with SEPP (BASIX) will be demonstrated in a future development application for the scheme facilitated under this planning Proposal.
SEPP (Infrastructure) 2007	✓			SEPP (Infrastructure) will apply to any future development of the site facilitated by the planning proposal given the site's proximity to Falcon Street.

### 7.3 North Sydney Local Environmental Plan 2013

The North Sydney LEP is the key environmental planning instrument that applies to the site. **Table 7** demonstrates that the planning proposal is consistent with the overall aims and relevant objectives of the North Sydney LEP.

**Table 7 Consistency with aims of the North Sydney LEP**

Aim	Proposal
a. To promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment;	The planning proposal will facilitate the renewal of neglected site in a prominent location and is consistent with this aim.
b. to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and	Th reference design demonstrates that the planning proposal will result in a development that is compatible with the surrounding development and the desired future character.
c. to maintain a diversity of activities while protecting residential accommodation and local amenity, and	The planning proposal will facilitate a mix of residential accommodation and retail uses in close proximity of the Crows Nest town centre without generating any unreasonable amenity impacts.
d. to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries	Not applicable
e. to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and	The planning proposal has taken into consideration the residential amenity of the proposed development as well as those surrounding receivers. Residential amenity will continue to inform the design for the development on the site in the future. Refer to <b>Section 8.1</b> for further discussion.
f. to maintain and provide for an increase in dwelling stock, where appropriate,	The planning proposal directly aligns with this aim by providing an increase in dwelling stock close to social and physical infrastructure, services and community services.
g. to maintain a diversity of employment, services, cultural and recreational activities, and	The planning proposal intends to revitalise currently underutilised and partially vacant employment lands, and provide residential dwellings close to the employment centres of the Sydney and North Sydney CBD and St Leonards. The planning proposal will not undermine the achievement of this aim.
h. to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and	The minor component of non-residential floor space will not have an adverse impact on the surrounding area.
i. to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,	Not applicable
j. to maintain and protect natural landscapes, topographic features and existing ground levels, and	The planning proposal does not propose any changes to the existing natural landscape or topographic features. Furthermore, the height and siting of the indicative design is based on the natural topography of the site.
k. to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,	Stormwater run-off and local waterways will not be adversely affected by the planning proposal. Stormwater details will be further analysed throughout future applications.
l. To identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance	There will be no impact to the natural, archaeological and built heritage of North Sydney as a result of this planning proposal. The existing buildings on the site are of no significance and their removal will increase public amenity on Falcon Street.

Aim	Proposal
	A Heritage Impact Statement has been prepared with relation to nearby heritage items and conservation area (refer <b>Appendix G</b> ).
m. To provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.	The provision of various dwelling types in this Planning Proposal supports this aim. This will support the growth of a permanent residential population in the Crows Nest Area.

**Table 8 Consistency with objectives of the R4 High Density Residential Zone**

Aims	Proposal
To provide for the housing needs of the community within a high-density residential environment	The planning proposal will respond to the various housing needs of the community within the precinct, as per this aim.
To provide a variety of housing types within a high-density residential environment	Various dwelling types will be facilitated by the planning proposal. This includes studio, 1,2 and 3 bedroom apartments and 2 bedroom townhouses.
To enable other land uses that provide facilities or services to meet the day to day needs of residents	Non-residential uses will be provided on the site. Furthermore, the site is located in close proximity to the Crows Nest town centre, where various local services and infrastructure is located.
To encourage the development of sites for high density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area	The planning proposal will not compromise the amenity of the surrounding area as discussed at <b>Section 8.0</b> .
To ensure that a reasonably high level of residential amenity is achieved and maintained.	The planning proposal will facilitate future development that is capable of achieving high levels of residential amenity in accordance with the objectives of the Apartment Design Guide.

**Table 9 Consistency with the North Sydney LEP 2013 height objectives**

Aims	Proposal
To promote development that conforms to and reflects natural landforms by stepping development on sloping land to follow the natural gradient	The reference design reflects the topography by stepping down in response to the natural gradient of the site.
To promote the retention and, if appropriate, sharing of existing views	The planning proposal will not impact any notable existing views.
To maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,	The planning proposal will maintain reasonable levels of solar access to the surrounding dwellings and public domain. Refer to analysis in the Urban Design Report ( <b>Appendix A</b> ) and further discussion at <b>Section 8.1.2</b> .
To maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,	The reference design has been prepared to mitigate opportunities for overlooking between the site and the neighbouring dwellings. Refer to <b>Section 8.1.1</b> .
To ensure compatibility between development, particularly at zone boundaries	The reference design demonstrates how the planning proposal will facilitate a future built form that is compatible with the lower density residential zone to the south and east and the mixed use zone to the north and west.
To encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.	The scale and density of the planning proposal design has taken into consideration the character of the area and surrounding development. The relationship with the Crows

Aims	Proposal
	Nest Town Centre has also informed the scale and density of the development. Due to the proximity to the new Crows Nest Metro Station and the Town Centre, the proposed level of density is appropriate.

**Table 10 Consistency with the North Sydney LEP 2013 floor space ratio objectives**

Aims	Proposal
To ensure the intensity of development is compatible with the desired future character and zone objectives for the land	The reference design demonstrates how the planning proposal will facilitate a future built form that is compatible with the desired future character of the surrounding area. <b>Table 8</b> demonstrates that the planning proposal is consistent with the zone objectives.
Limit the bulk and scale of development	The proposed maximum FSR is 1.85:1. In 2015, the Council provided in-principle support for a maximum FSR of 1.9:1 for the site. The bulk and scale achievable under the proposed FSR is below that previously supported by Council in-principle.

**Summary**

The North Sydney LEP 2013 is the principal planning instrument for the site. The assessment above demonstrates that the planning proposal and the reference design are consistent with the relevant aims and objectives of the North Sydney LEP 2013. In summary, the planning proposal will:

- Provide appropriate housing types to meet a range of lifestyles in close proximity to transport and services;
- Provide a built form that is sensitive to the existing character of the surrounding residential areas and will not generate any unacceptable impacts on the amenity of the neighbouring dwellings.

## 8.0 Environmental Impacts

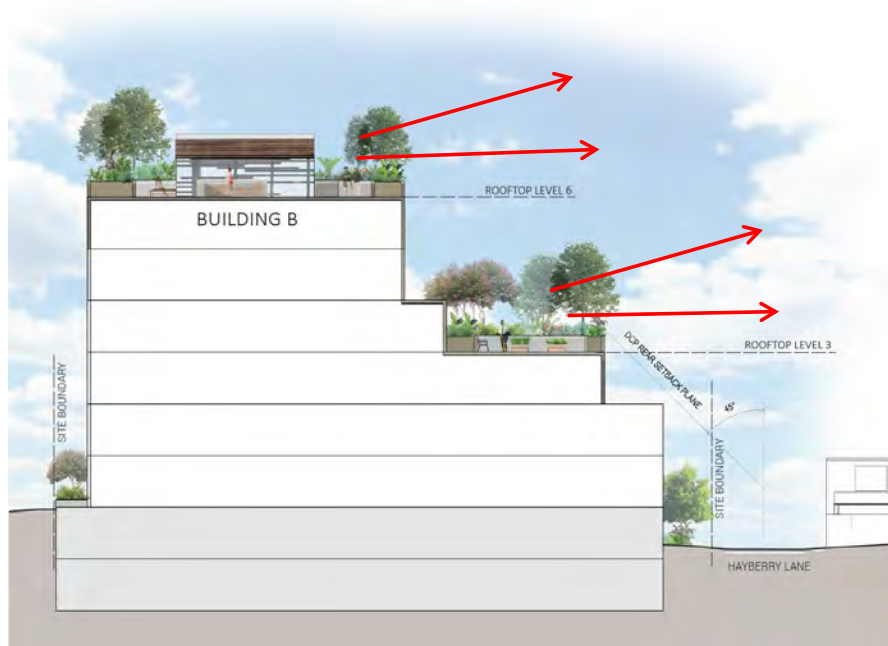
### 8.1 Impacts on Neighbouring Dwellings

#### 8.1.1 Privacy

The reference design will maintain visual privacy to the neighbouring dwellings. The six storey elements of Buildings A and B are located towards Falcon Street away from the lower density dwellings to the south and east to prevent overlooking. The south facing apartments at the upper levels are setback greater than 20m from the southern boundary which is a reasonable distance to prevent overlooking to the south. The private open space and communal open space areas on Building B are designed with edge planters which will also prevent overlooking to the south (refer to **Appendix C** and **Figure 20**).

The existing setback to the eastern boundary is zero. The planning proposal improves the existing circumstances by setting back Building C a minimum of 4.5m and Building D a minimum of 1.5m. Both buildings are generally orientated to the north and south which will prevent direct overlooking to the existing dwellings to the east.

The existing development on site has windows on the first and second floors at the Hayberry Lane frontage directly overlooking the dwellings to the south. The proposed built form to Hayberry Lane will increase the existing setback to Hayberry Lane by between two – three metres and is located to maintain visual privacy to the existing dwellings at which reference design has been positioned to avoid direct overlooking to the existing dwellings at 26, 28A and 30 Hayberry Lane.



**Figure 20** Line of Sight from Communal Open Space Areas

Source: Place Design Group

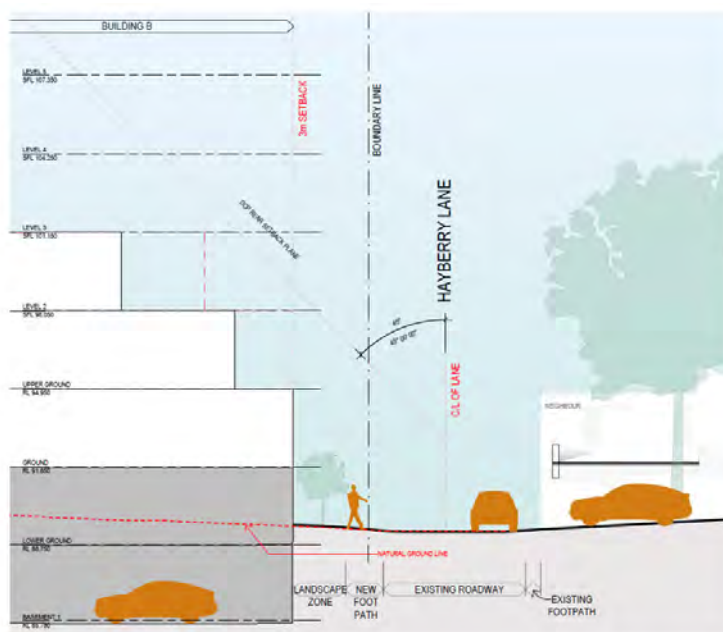
### 8.1.2 Overshadowing

Shadow studies and sun-eye analysis is included in the Urban Design Report prepared by AJ+C Architects (**Appendix A**). The shadow studies demonstrate that in mid-winter the reference design will increase solar access to the properties to the east and to those properties on Hayberry Street that are currently impacted by the existing commercial buildings. Properties on Hayberry Street and Hayberry Lane that are impacted by the planning proposal still receive solar access for the same time period as they currently receive to a minimum of 4m<sup>2</sup> of private open space at mid-winter. The existing dwellings to the south and east will receive good levels of solar access throughout the day at the equinox and mid-summer.

### 8.1.3 Traffic and parking

The planning proposal will accommodate all resident and visitor parking in basements on site. There will be no impact on the existing availability of on-street parking in the surrounding area. Traffic generation will be minor with one vehicle movement every 2 to 3 minutes during peak periods. The impact on the existing intersection performance for local residents will be negligible.

It is noted that no basement or supporting structures will be located under land which is to be dedicated to Council.



**Figure 21** Section of Hayberry Lane and the relationship between the basement and Council land.

Source: AJ+C

## 8.2 Economic Impacts

Economic Advice has been prepared to consider the proposed amendments to the land use zoning and removal of the minimum non-residential floor space ratio (refer **Appendix F**). In short, the advice concluded that:

- While the site is zoned with a minimum non-residential floor space ratio, the market has shown a lack of interest in developing these lands under the current controls. This is evident by the longstanding vacant lots. Furthermore, existing buildings on the site are either underutilised or vacant. This is evident by these buildings being boarded up and a lack of signage. That these commercial buildings are under-utilised demonstrates that the market cannot deliver employment outcomes on these sites under the current controls. Development of the site consistent with the reference design attached to this planning proposal will help protect employment land in more suitable areas.
- The planning proposal will contribute to the viability of the St Leonards and Crows Nest centre. Currently the site is not contributing, rather, in its current state, it is reducing the viability of the area. Additional residents on

the site will increase demand for local goods and services, with the increase in retail spending expected to be in the order of \$3.4 million annually. This increase in local demand will improve the viability of the centre by supporting existing local businesses, reducing current levels of underutilisation in the centre, place downward pressure on vacancies and incentive further business investment and support greater employment densities within the centre.

The planning proposal will have a positive economic impact and is supportable on these grounds.

### 8.3 Heritage Impacts

A Heritage Impact Statement has been prepared by Weir Phillips Heritage and Planning to consider the planning proposal with regard to the nearby heritage items and heritage conservation area (HCA) (refer **Appendix G**). Weir Phillips concluded that the *'impact on the heritage items in the vicinity made by the proposed changes to the planning controls is acceptable'* for a number of reasons, including:

- The proposed development is opposite the rear of the dwellings in the HCA, which is not the primary or significant aspect.
- The architectural, historic and social significance of the heritage items and HCA in the vicinity of the site will not be impacted upon.
- The degree of separation from the heritage items is sufficient to have no direct impact on the lot boundary curtilage.
- The wider setting surrounding the heritage items and HCA will change over time in line with strategic planning objectives.
- The proposal responds to the setting of the HCA with improved setbacks from Hayberry Lane and responding podium heights.
- The mass of the proposed built forms responds to the existing built forms along the boundaries of the site, and the density of the proposal reduces to the east and south where adjacent to smaller scale development, the heritage items and the HCA.

Furthermore, none of the existing buildings on site are of any heritage significance and their removal will not impact upon existing heritage conditions in the surrounding context. The planning proposal is supportable on heritage grounds.

### 8.4 Traffic Impacts

TTPA have undertaken an Assessment of Traffic and Parking Implications for the planning proposal (**Appendix E**). The assessment considered the future development of the site as per the reference design and as a complying development under the current controls. The assessment concluded that:

- *the site will have ready access to bus/rail services and within close proximity to retail, entertainment and employment facilities*
- *there will not be any adverse traffic/safety implications and the traffic generation will be significantly less than that of potential development which is compliant with the current planning provisions*
- *an appropriate parking provision can be made which will be compatible with Council's transport strategy to minimise reliance on private car travel*
- *the envisaged vehicle access, internal circulation and servicing arrangements will be suitable and appropriate subject to the proposed widening of section of Alexander Lane*

Further, the servicing and parking will be accessed via Alexander Lane which will reduce the amount of service traffic that currently utilises Hayberry Lane. For these reasons, the planning proposal is supportable on traffic and parking grounds.

In terms of car parking, the DCP provided as part of the proposal puts forward a significantly reduced car parking ratio than that which is required by the current NSDCP. This is in recognition of the site's location at the fringe of the Crows Nest centre, but within walking distance to the future Crows Nest Metro.



As part of the process of referral to the North Sydney Local Planning Panel and full Council meeting, Council sought referral of the preliminary proposal to the RMS for comment. This is attached as Appendix I.

Whilst we note that the RMS advice is for guidance only, we note the following key concerns.

- The RMS incorrectly references the applicable DCP rate for the scheme – which is for an R4 zone (not B4 as referenced by the RMS).
- Nor is the subject site in the densely developed, high rise ‘Collaboration Precinct’ of St Leonards, with jobs targets of 63,500 by 2036 and corresponding number of new residences.

The applicable control is NSC DCP Residential Rate (i.e. ‘all zones other than B4 – Mixed Use’), however the Proponent accepts that the site’s proximity to the future Sydney Metro presents opportunities to reduce car parking rates. To demonstrate the reduction the proposal puts forward in the DCP, an analysis of the DCP rates and that proposed by the Proponent are provided in the table below.

**Table 11 DCP Car Parking Analysis**

Unit Type	Studio	1B	2B	3B	Visitor	Retail (sqm)	TOTAL
Mix	14%	18%	44%	25%			
Units	12	15	37	21		300	
NSDCP B4 Rate	0.5	0.5	1	1	1 per 4 dw	1 per 60sqm	
NSDCP B4 Reqmt	6	7.5	37	21	21	5	98
St Leonards B4 Rate	0.25	0.25	0.5	0.5	1 per 4 dw	1 per 60sqm	
St Leonards B4 Reqmt	3	3.75	18.5	10.5	21	5	62
NSCDCP R4 Rate	1	1	1	1.5	1 per 4 dw	1 per 60sqm	
NSCDCP R4 Reqmt	12	15	37	31.5	21	5	122
PP Rate	0	0.5	1	1.5	1 per 6 dw	1 per 60sqm	
PP Reqmt	0	7.5	37	31.5	14	5	95

As per the NSDCP, these rates are maximums and the Proponent is intending a maximum of 90 car spaces to support the proposal which represents a 27% reduction on the applicable rate. The rates will be documented in the DCP, with the maximum total spaces of 90 stipulated.

These car parking rates must be balanced with the overwhelming response from early Community Engagement which saw residents resoundingly seek adequate parking to address their concerns with on-street parking.

We also ask that Council is mindful of the project viability which is directly affected by car parking. The site has a long history of previous proposals that were of far greater yield than that proposed in this Planning Proposal and has lain undeveloped for nearly two decades.

## 8.5 Social Impacts

The fundamental strategic vision of the North District Plan is the creation of the ‘30-minute city’ whereby residents live within 30 minutes travel of their place of work. The North District Plan also identifies immediate demand for an additional 3,000 dwellings in the LGA. The site is located within walking distance of Crows Nest town centre, high frequency bus stops, and the future Crows Nest Metro Station which will provide frequent and short journeys to the major metropolitan employment centres. The planning proposal will facilitate the provision of a range of smaller housing types in a suitable location. The planning proposal will have a positive social impact on the North Sydney LGA.

## 8.6 Residential Amenity

The indicative design concept for the residential flat buildings proposed have been designed to meet the requirements of the Apartment Design Guide (ADG) and the indicative concept design for the townhouses has been designed to generally meet the requirements of the North Sydney DCP to achieve good levels of residential amenity for the future residents. Notably, the indicative design concept demonstrates that the site can accommodate high density residential development that will provide:

- Apartments consistent with the ADG minimum size requirements;
- Balconies and private open spaces consistent with the ADG minimum size requirements;
- A minimum of two hours solar access to 90% of the indicative dwellings on the site;
- Natural cross ventilation to 72% of the indicative apartments;
- Separation distances between buildings in accordance with the minimum requirements of the ADG and will provide adequate privacy for residents;
- Circulation cores that service no more than eight apartments per floor; and
- 1,154sqm of communal open space (26.5% of total site) and 752sqm of deep soil area (17% of total site).

It is noted that the reference design prepared by AJ+C is indicative for the purposes of understanding the opportunities on the site. Further design detail regarding apartment and townhouse layouts would be resolved as part of any subsequent development applications. Any future detailed design would also ensure that facades and glazing on the dwellings facing Falcon Street, Alexander Lane and Hayberry Lane mitigate any traffic noise and achieve the relevant internal noise standards.

Notwithstanding the proposed LEP amendment also puts forward a site-specific DCP, in terms of assessment of the proposed concept against the NSDCP 2013, there are two non-compliances:

- Site coverage of 59% (2,537sqm): DCP seeks a maximum site coverage of 45% (1,935sqm) for R4 High Density development;
- Landscaped Area of 19% landscaped area (817sqm): DCP seeks a minimum of 40% landscaped area (1,720sqm).

In response to these, firstly, the scheme meets the Apartment Design Guide requirements of SEPP 65.

Secondly, Council should consider the transitional nature of the site, and the resultant two typologies of land use – western part being B4 Mixed Use in nature and eastern part R4 High Residential in nature. As a result, we have undertaken a review of the proposal against both the R4 Residential and B4 Mixed Use controls for the eastern and western parts of the site as shown in **Figure 22** below:



**Figure 22 Mixed Use and Residential Development Typologies**

Source: AJC + Ethos Urban

The findings are summarised in the below table:

**Table 12 Analysis against Split Site Controls**

Control	Proposed	Compliance	Comment
<b>Commercial &amp; Mixed Use</b>			
Site area	2,551sqm	–	
Site coverage n/a		✓	
Landscape Area n/a	592.86sqm	✓	Deep Soil: 23.24% where ADG requires 15% Communal Open Space: 27.9% where ADG requires 25%
<b>R4 Residential Development</b>			
Site area	1,791sqm		
Site coverage 45%	50%	✗	Site coverage is 50% (895sqm) which is a 90sqm variation. A Site-specific control is proposed
Landscape Area 40%	40.3%	✓	

When analysed against the relevant provisions, the following is clear that the proposed development is suitable in this context:

- There are no DCP site coverage or landscaped area controls for Mixed Use Development, which reflects the more urban nature of these sites, which expect a higher intensity of development. Council recognise that this is a transitional site and that simply applying the R4 High Density Residential controls is inappropriate.
- When analysed against the split provisions of Council's DCP, only the site coverage control of 50% is not met – by only 5% (90sqm). This is a minor exceedance only and Council should be mindful that the North Sydney DCP applies to all of the North Sydney LGA – from Cammeray to Neutral Bay. It cannot therefore respond to the nuances of every site within the LGA; which is recognised in the wording of Section 3.42 of the EP&A Act. Importantly, the nuances of this site have been recognised by Council as an interface between a key centre undergoing transition and a finer grain residential area. A blanket approach is neither supported by the EP&A Act, nor in the interests of a place-based response to the site.
- Some level of non-compliance with a strict control site coverage is not unusual for nuanced site such as this. A site-specific DCP control has therefore been provided for the site of no more than 65%.
- Where the proposal does not meet Council's site cover DCP controls, the corresponding SEPP 65 ADG Deep Soil and Communal Open Space controls are met. From a planning hierarchy perspective, these take precedence.
- Further, due to the nuance characteristics of the site, the Planning Proposal is submitted with a site-specific DCP that addresses the particulars of the site.

## 8.7 Comparison to Complying Scheme

The following provides a comparison of the potential development outcomes resulting from the current planning controls and the planning proposal:

The Urban Design Report (**Appendix A**) provide illustrations of the likely scale, bulk and form of the buildings that could potentially be developed as a complying scheme under the currently applicable controls, and a proposed scheme under the proposed provisions and R4 zoning in the context of the Site's surrounds.

The compliant scheme retained the existing commercial building shells, which are built to boundary and exceed the existing height control. In addition to this, the compliant scheme included an additional mixed use building on the western edge, with three floors

The key advantages of the proposed amendments are that:

- The scale of the development transitions between the scale of existing development to the north and west of the site, down towards the south and east;

- Greater form compatibility can be achieved between low density development to the southern edge of Hayberry Lane and the future development on the site;
- The bulk of the development is to be situated along the site's Falcon Street frontage, which is compatible with the scale of existing development along the northern side of Falcon Street;
- Land use outcomes will be more compatible with the surrounding residential development to the south and east, with the ground floor non-residential uses providing a transition into the Crows Nest town centre;
- The bulk of the development is to be situated along Falcon Street, allowing for greater street activation as a result of a variety of density and non-residential frontages; and,
- Improved setback opportunities allow for greater separation from heritage items and conservation areas, and improved privacy outcomes for existing and future residences.
- The planning proposal achieves high levels of residential amenity
- The overall traffic generation would be significantly less.

## 9.0 NSW Department of Planning and Environmental Guidelines

### 9.1 Part 1 – The Intended Outcome

The intended outcome of this Planning Proposal is to amend the North Sydney LEP 2013 to enable the development of 27-57 Falcon Street, Crows Nest, for a three to six storey residential development with retail uses at the corner of Falcon Street and Alexander Lane.

### 9.2 Part 2 – Explanation of Provisions

The intended outcome can be achieved by amending the North Sydney LEP 2013 as follows:

- *Amend the Land Zoning Map Sheet LZN\_001 by rezoning the site to be R4 High Density Residential;*
  - **Reason:** This Planning Proposal seeks to amend the zone applying to the site to reflect the changing context of the site and its interface between the Crows Nest Town Centre and lower density areas to the east and south, as well as the focus for jobs away from this fringe site and towards the centre core.
- *Amend the Height of Building Map Sheet HOB\_001 by applying a part height limit of 14.5 metres and a part height limit of 21 metres.*
  - **Reason:** To reflect the change in zone, additional height is proposed to allow for a high-quality design outcome on the site that responds to the site's location at the gateway to the Crows Nest Town Centre and proximity to the Crows Nest Metro Station, mindful of solar impacts as per Council's DCP controls.
- *Amend the Floor Space Ratio Map Sheet FSR\_001 by applying a floor space ratio of 1.85:1 to the site.*
  - **Reason:** The site does not currently have a floor space ratio applying to the site. Therefore, this Planning Proposal seeks to apply an FSR of 1.85:1 to ensure that the future built form is in line with the indicative scheme proposed.
- *Amend the Non-Residential Floor Space Ratio Map Sheet LCL\_001 by deleting the minimum non-residential floor space ratio of 0.5:1.*
  - **Reason:** This Planning Proposal seeks to remove the minimum non-residential floor space ratio that applies to the site as it does not reflect the revised land use zone. The non-residential FSR of 0.5:1 requires a significant portion of the site to be for non-residential uses, which does not respond to the changing commercial nature of both St Leonards and North Sydney CBD to deliver these forms of uses nor the sensitive residential uses to the site's south and east.
- *Amend Schedule 1 Additional permitted uses by including a clause that permits, with development consent, the use of certain land at 27-57 Falcon Street, Crows Nest for the purposes of retail premises.*
  - **Reason:** Despite the above clause to remove the non-residential FSR, a small portion of non-residential use is appropriate on the site. Therefore, this clause seeks to retain some retail uses on the north-west corner of the site.
- *Site specific provision under Part 6, Division 2 of the LEP to allow specific exceedances of the Height of Building control:*
  1. *This clause applies to land at 27-57 Falcon Street, Crows Nest being Lots 25,26, 32 and 33 DP 1720, Lots X and Y DP 407774 and Lot A DP 377050.*
  2. *Despite any other provision of this plan, development consent can be granted for development that exceeds the maximum building height shown on the Height of Buildings map if the part of the development that exceeds the maximum building height is for:*
    - a. *providing lift access to rooftop communal open space;*
    - b. *mechanical plant*
  - **Reason:** The tallest building in the indicative scheme accompanying this Planning Proposal has a top of parapet height of 21 metres, meaning that the main portion of the building will not exceed 21 metres. However, the scheme also proposes to provide resident access to the rooftop, which will require lift overrun and mechanical plant to be located on the roof up to 24 metres. Therefore, this clause seeks to allow for

these features (which are included in the North Sydney LEP definition for Building Height) to sit beyond the main building height. This provides certainty for the future built form and removes the need for a clause 4.6 modification request to allow for a variation of the Height of Building control.

- It should be noted that the cited lots may be amalgamated as part of a future development application.

The proposed mapping changes are submitted as **Appendix D**.

## 9.3 Part 3 – Justification

### 9.3.1 Section A - Need for a Planning Proposal

#### Q1 – Is the Planning Proposal a result of an endorsed local strategic planning statement, strategic study or report?

The Planning Proposal is not the result of any specific strategic study or report. The Planning Proposal revives the previous strategic planning process that was commenced by Council for the site. It has been demonstrated at **Section 5.0** that the Planning Proposal is generally consistent with the objectives of the relevant strategic plans and has merit to proceed.

#### Q2 – Is the Planning Proposal the best means of achieving the intended outcome?

The Planning Proposal is the best means of achieving the intended outcome – the current land use zoning, height and FSR controls prohibit the redevelopment of the site. The proposed outcome has been compared against two options, being ‘do nothing’ and a complying development scheme. This has been discussed below.

#### ***Do Nothing***

In this option, the site would remain as it is currently and – as history has told us – development is unlikely to occur. This option results in a negative outcome for the site and the surrounding residents, as the site would remain derelict. The buildings on the site are partially vacant and derelict, while the remaining portion of the site is used for parking. The site at present does not provide any amenity outcomes for the surrounding streetscape and its state of disrepair diminishes the visual quality of Falcon Street.

#### ***Complying Scheme***

The Design Report at **Appendix A** has prepared a scheme that would be permissible under the existing controls applicable to the site. This complying scheme would result in approximately 68% commercial GFA on the site, with the remaining 32% being residential. As outlined in **Section 8.2** and **Appendix F**, there has been an increasing rate of vacancies for commercial premises in the Crows Nest area, as can be seen throughout the commercial vacancies on the site. In addition, the traffic impact of this alternative would not likely be supportable, nor desirable in terms of the amenity of local residents.

Therefore, the current controls do not deliver an outcome that responds to the needs of the area.

#### ***Proposed Controls***

The controls proposed are intended to develop the site in a way that responds to the site conditions and surrounding context of the Crows Nest village. The controls allow for four separate residential buildings that respond to the neighbouring buildings, with the taller building located towards Crows Nest Village and smaller townhouses located on Hayberry Lane. These controls are designed to maximise solar access, green the site, improve the surrounding street network and create a sense of transition from the site into the adjoining village. The retention of a small portion of commercial on the corner of Falcon Street and Alexander Lane allows for activation of the street and extends the Crows Nest Village.

Therefore, this is the preferred option as the controls proposed respond to the context of the site and provide for amenity for the surrounding streets.

### **9.3.2 Section B - Relationship to the strategic planning framework**

**Q3 - Will the planning proposal give effect to the objectives and actions of the applicable regional, or district plan or strategy (including any exhibited draft plans and strategies)?**

Yes - refer to **Section 6.1 – Section 6.3**

**Assessment Criteria – Does the proposal have strategic and site-specific merit?**

Yes, refer to **Section 6.5**

**Q4 – Will the planning proposal give effect to a council’s endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?**

The Planning Proposal will contribute to the achievement of the relevant planning priorities of the North Sydney LSPS. Refer to **Section 6.4**.

**Q5 - Is the planning proposal consistent with applicable State Environmental Planning Policies?**

Yes, refer to **Section 7.2**

**Q6 - Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?**

Yes, refer to **Section 7.1**.

### **9.3.3 Section C - Environmental, social and economic impacts**

**Q7 – Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

The Planning Proposal will not adversely affect critical habitat or threatened species, population or ecological communities in their habitats, as none have been identified on the site.

**Q8 – Are there any other likely environmental effects as a result of the Planning Proposal and how are they proposed to be managed?**

An assessment of the environmental impacts of the Planning Proposal is provided at **Section 8.0**. No unacceptable impacts will result from the achievement of the intended outcome.

**Q9 – Has the Planning Proposal adequately addressed any social and economic impacts?**

An assessment of the social impacts of the Planning Proposal is provided at **Section 8.5**. An assessment of the economic impacts of the Planning Proposal is provided at **Section 8.2**.



### 9.3.4 Section D – State and Commonwealth Interests

There is no significant Commonwealth or State interests in the Planning Proposal other than the general objectives to achieve an appropriate planning and development outcome on the site that has considered the State's regional and subregional strategic planning framework as described in this report.

#### Q10 – Is there adequate public infrastructure for the Planning Proposal?

The site is located in close proximity to a number of public transport options, as discussed in **Section 3.3**. This includes a number of bus routes and the future Crows Nest Metro Station. Additionally, the site is well serviced by social infrastructure in the form of local shops, schools, recreational and sporting facilities.

#### Q11 – What are the views of State or Commonwealth public authorities consulted in accordance with the Gateway determination?

No formal consultation at the time of writing this Planning Proposal has been undertaken with Commonwealth or State authorities. Where necessary, consultation with relevant authorities will be undertaken with the initial Gateway determination.

## 9.4 Part 4 – Mapping

Maps of the proposed amendments to the North Sydney LEP zoning, height, FSR and non-residential FSR controls applying to the site are provided at **Appendix D**.

## 9.5 Part 5 – Community Consultation

Following an earlier request by Council that the development was to be communicated with the local community, a community engagement session was held in Hayberry Street on 12 February. Approximately 50 people attended the community session, which communicated the design intent and the positive outcomes for the wider community. Of the 50 that attended, there were three (3) objections. The key issues raised in relation to this meeting were:

- Traffic and parking impacts on the surrounding street network.
- Potential impact of height and privacy.
- Access by garbage trucks.
- Affordable housing.
- Noise from air conditioning.

It is proposed that in accordance with '*A guide to preparing local environmental plans*' that the Planning Proposal undergo a 28-day public exhibition period. It is noted that confirmation of the public exhibition period and requirements for the Planning Proposal will be given by the Minister as part of the LEP Gateway determination. Any future DA for the site would also be exhibited in accordance with the Council's notification requirements at which time the public and relevant authorities can make further comments on the redevelopment of the site.

The proposal has now been endorsed by the North Sydney Planning Panel, as well as Council.

## 9.6 Part 6 – Project Timelines

The DPIE have stipulated the following maximum timeframes in their Gateway Determination:

- The planning proposal must be exhibited within 3 months from the date of this Gateway determination.
- The planning proposal must be reported to Council for a final recommendation 6 months from the date of the Gateway determination.
- The planning proposal is to be submitted to the Department for finalisation 9 months from the date of the Gateway determination.

Notwithstanding, as a result of previous community engagement and extensive Councillor engagement, the timeframes may be condensed. At present, the anticipated Project Timeline is as per the below:



**Figure 23 Intended time frames**

Source: Ethos Urban

## 10.0 Conclusion

This Planning Proposal seeks to:

- Rezone the site to R4 High Density Residential
- Amend the maximum building height to part 21 metres and part 14.5 metres
- Apply a maximum floor space ratio of 1.85:1 to the site
- Remove the non-residential floor space ratio requirement
- Retain 'retail premises' as a permitted land use on the site
- Provide a site-specific provision under Part 6 Division 2 of the LEP to allow specific and localised exceedances of the Height of Buildings control.

This Planning Proposal is justified for the following reasons:

- The proposal has been endorsed by Council's Local Planning Panel and full Council (with conditions that have now been met)
- The proposal is consistent with the objects of the EP&A Act, in that it promotes the orderly and economic use and development of land;
- The site is underutilised and has been partially vacant for 20 years. The existing buildings are generally in poor repair and untenanted. Several development propositions for the site have been brought to Council over the last 13 years including: an aged care facility; a commercial complex comprising cinemas, a supermarket and retail; a mixed-use commercial and shop top housing development; and a predominantly residential flat building development. None of these developments progressed. The current condition of the site and the absence of any material development activity over the last 20 years clearly indicates that the renewal of the site for any purpose is not feasible nor will occur under the current statutory planning controls.
- Council recognise that the site's location on the periphery of the Crows Nest town centre adjacent to existing residential land makes it difficult to deliver significant non-residential floor space and that it is better suited to high density residential. To this end, in 2015 Council officers prepared a report to the General Manager providing conditional support for a proponent led planning proposal that sought the following amendments to the North Sydney LEP 2013:
  - Rezone the site to R4 High Density Residential
  - Apply a maximum floor space ratio of 1.9:1
  - Amend the maximum building heights by applying a stepped building height limit across the site to permit buildings between two and six storeys high
  - Remove the non-residential floor space ratio requirements
  - Retain retail premises as a permitted land use
- The planning proposal put forward is comparable to the planning proposal that received conditional support from Council in 2015.
- The proposed building heights will ensure an appropriate transition in scale to the existing lower density residential dwellings to the south and east. The planning proposal will not create any unacceptable or unreasonable privacy or shadow impacts to the surrounding dwellings.
- The planning proposal can meet the design criteria of the Apartment Design Guide.
- The planning proposal will not have any adverse impacts on the future operation of the surrounding road network.
- The planning proposal will deliver preferable outcomes when compared to development that complies with the current planning controls.
- The proposal is consistent with the applicable SEPPs and Ministerial Directions.

In light of the above, we would have no hesitation in recommending that the planning proposal proceed through the Gateway to public exhibition.

# Voluntary Planning Agreement

## Final Pre-Exhibition

**8 March 2021**

North Sydney Council  
*ABN 32 353 260 317*

CN Land Pty Limited  
*ACN 630 395 961*

### **Newcastle**

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# Contents

<b>Parties</b>	<b>4</b>
<b>Background</b>	<b>4</b>
<b>Operative part</b>	<b>5</b>
1 <i>Definitions</i>	5
2 <i>Interpretation</i>	8
3 <i>Planning Agreement under the Act</i>	9
4 <i>Application of this agreement</i>	9
5 <i>Operation of this agreement</i>	9
6 <i>Contributions to be made under this agreement</i>	10
6.1 Monetary Contribution	10
6.2 Works	10
6.3 Dedication of Land	11
7 <i>Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development</i>	11
8 <i>Registration of this agreement</i>	12
8.1 Developer Interest	12
8.2 Registration of this agreement	12
8.3 Removal from Register	13
8.4 Caveat	13
9 <i>Review of this agreement</i>	13
9.1 Review by agreement	13
9.2 State Infrastructure Contribution	13
10 <i>Dispute Resolution</i>	15
10.1 Reference to Dispute	15
10.2 Notice of Dispute	15
10.3 Representatives of Parties to Meet	15
10.4 Further Notice if Not Settled	15
10.5 Mediation	16
10.6 Expert determination	16
10.7 Litigation	17
10.8 No suspension of contractual obligations	17
11 <i>Enforcement</i>	17
11.1 Default	17
11.2 Bank Guarantee	18

11.3	Compulsory Acquisition	19
11.4	Restriction on the issue of Certificates	19
11.5	General Enforcement	20
<b>12</b>	<b><i>Assignment and Dealings</i></b>	<b>20</b>
12.1	Transfer of Land	20
<b>13</b>	<b><i>Approvals and consents</i></b>	<b>20</b>
<b>14</b>	<b><i>No fetter</i></b>	<b>20</b>
14.1	Discretion	20
14.2	No fetter	21
<b>15</b>	<b><i>Notices</i></b>	<b>21</b>
15.1	Notices	21
<b>16</b>	<b><i>General</i></b>	<b>22</b>
16.1	Relationship between parties	22
16.2	Time for doing acts	22
16.3	Further assurances	22
16.4	Variation	22
16.5	No assignment	22
16.6	Counterparts	22
16.7	Legal expenses and stamp duty	22
16.8	Entire agreement	23
16.9	Representations and warranties	23
16.10	Severability	23
16.11	Invalidity	23
16.12	Waiver	23
16.13	GST	24
16.14	Governing law and jurisdiction	24
	<b>Schedule 1 Scope of works</b>	<b>25</b>
	<b>Schedule 2 Construction terms</b>	<b>26</b>
	<b>Schedule 3 Summary of requirements (section 7.4)</b>	<b>355</b>
	<b>Schedule 4 DCP</b>	<b>35</b>
	<b>Annexure A Plan showing Land and Works</b>	<b>38</b>
	<b>Annexure B Draft Explanatory note</b>	<b>40</b>



# Agreement

## Date

## Parties

### First party

**Name** North Sydney Council (**Council**)  
**ACN** 32 353 260 317  
**Contact** General Manager  
**Telephone** 02 9936 8100

### Second party

**Name** CN Land Pty Limited (**Developer**)  
**ACN** 630 395 961  
**Contact** Leigh Manser  
**Telephone** 0438 741 077

## Background

- A. The Developer owns the Land.
- B. The Developer proposes to carry out the Development which will include a high density residential development, retail premises, associated landscaping and basement parking.
- C. To facilitate the Development, the Developer has lodged a Planning Proposal seeking an amendment to LEP 2013 as follows:
  - a. amending the Land Zoning Map by rezoning the site from B4 Mixed Use to R4 High Density Residential;
  - b. amending the Height of Buildings Map to allow a maximum part building height limit of 14.5m and a maximum part building height limit of 21m;
  - c. amending the Floor Space Ratio Map to allow a maximum FSR for the Land of 1.85:1;
  - d. amending the Non-Residential Floor Space Ratio Map by deleting the minimum non-residential FSR of 0.5:1;
  - e. amend Schedule 1— Additional permitted uses of LEP 2013 to permit the use of retail premises on the Land with development consent; and
  - f. include a site-specific provision under Part 6 Division 3 of LEP 2013 to allow minor exceedances to the Height of Building control to facilitate a roof/lift overrun.
- D. The Planning Proposal is supported by a draft site specific DCP to help guide future detailed design and assessment of the Development.

- E. The Developer has made an offer to enter into this agreement in connection with the Planning Proposal and Development to provide the following public benefits at the Developer's cost:
- a. provision of the Monetary Contribution; and
  - b. Dedication of Land to Council including embellishment works.
- F. Council has accepted the offer to enter into this agreement. The parties wish to formalise that offer by entering into this agreement in accordance with section 7.4 of the Act.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

**Act** means the *Environmental Planning and Assessment Act 1979* (NSW);

**Address** means a party's address set out in the Notices clause of this agreement;

**Approval** means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

**Authority** means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

**Bank Guarantee** means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

**Bond** means an insurance bond provided by an insurer licensed by the Australian Prudential Regulatory Authority (APRA) to operate in Australia or has an investment grade rating from an industry recognised rating agency such as Moody's, Standard & Poors or Bests;

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

**Certificate of Practical Completion** means the written certificate confirming the Works, or part of the Works, have been completed in accordance with the requirements of this agreement (including the Construction Terms), issued under **clause 8.1(b)** of the Construction Terms;

**Claim** means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

**Construction Certificate** means a construction certificate as defined under section 6.4 of the Act;

**Construction Terms** means the terms set out in Schedule 2;

**Contributions** means the monetary contributions, dedication of land and works to be delivered by the Developer in accordance with this agreement;

**CPI** means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

**Damages** means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

**DCP** means the site-specific Development Control Plan sought by the Developer and more particularly described in Schedule 4;

**Dealing**, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

**Dedication Land** means that part of the Land to be dedicated to Council in accordance with this agreement, being 129 sqm of land adjacent to Alexander Lane and 245 sqm of land adjacent to Hayberry Lane as shown on the plan at Annexure A;

**Development** means the future development of the Land consisting of high density residential development, retail premises, associated landscaping and basement parking as anticipated by the Planning Proposal;

**Development Application** has the same meaning as in the Act;

**Development Consent** has the same meaning as in the Act;

**Floor Space Ratio Map** means the Floor Space Ratio Map in the LEP 2013;

**FSR** means floor spaced ratio as defined in the LEP 2013;

**GFA** means gross floor area as defined in the LEP 2013;

**GST** has the same meaning as in the GST Law;

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

**Height of Buildings Map** means the Height of Buildings Map in the LEP 2013;

**Insolvent** means the occurrence of any of the following:

- (a) a Party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a Party becomes unable to pay its debts as they fall due;
- (c) a Party enters into any arrangement with creditors;
- (d) a Party becomes subject to external administration within the meaning of Chapter 5 of the Corporations Act 2001 (Cth), including having a receiver or administrator appointed over all or any part of its assets; or

- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (b) above occurs in relation to a Party, including the court appointment of a receiver.

**Instrument Change** means an amendment to LEP 2013 in response to the Planning Proposal;

**Land** means Lot 33 Section 3 DP 1720, Lot 32 Section 3 DP 1720, Lot X DP 407774, Lot Y DP 407774, Lot A DP 377050, Lot 26 Section 3 DP 1720, and Lot 25 Section 3 DP 1720 known as 27-57 Falcon Street, Crows Nest;

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

**LEP 2013** means the *North Sydney Local Environmental Plan 2013*;

**Monetary Contribution** means \$800,000 payable by the Developer under **clause 6.1** of this agreement;

**Non-residential Floor Space Ratio Map** means the Non-Residential Floor Space Ratio Map in the LEP 2013;

**Occupation Certificate** means an occupation certificate as defined under section 6.4 of the Act, and includes a partial Occupation Certificate;

**Permitted Encumbrances** means easements in favour of utility service providers or required by any Authority or as otherwise agreed in writing by Council;

**Planning Proposal** means Planning Proposal 6/19 seeking to amend LEP 2013 by amending:

- (a) the Land Zoning Map to rezone the Land to R4 High Density Residential;
- (b) the Height of Buildings Map to allow a maximum building height limit of 14.5m on part of the Land and a maximum building height limit of 21m on part of the Land;
- (c) the Floor Space Ratio Map to allow a maximum FSR for the Land of 1.85:1;
- (d) the Non-Residential Floor Space Ratio Map by deleting the minimum non-residential FSR of 0.5:1 for the Land;
- (e) Schedule 1 Additional permitted uses of LEP 2013 to permit the use of retail premises on the Land with development consent; and
- (f) Part 6 Division 3 of LEP 2013 by including a site-specific provision to allow minor exceedances to the Height of Building control applying to the Land to facilitate a roof/lift overrun.

**Register** means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*;

**Security** means a Bank Guarantee or Bond;

- (a) until the part payment of the Monetary Contribution is paid under clause 6.1(b)(i), in the amount of \$1,130,000.00; and
- (b) thereafter, in the amount of \$730,000.00; and

**Works** means the works required to embellish the Dedication Land, including but not limited to design, survey, planning, obtaining approvals, engineering and construction generally in accordance with the scope of works set out in Schedule 1 and the concept plan at Annexure A.

## 2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in City or State, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

### 3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 3 of this agreement summarises the requirements for planning agreements under s 7.4 of the Act and the way this agreement addresses those requirements.

### 4 Application of this agreement

This agreement applies to:

- (a) the Instrument Change,
- (b) the Development, and
- (c) the Land.

### 5 Operation of this agreement

- (a) This agreement commences on and from the date it is executed by all parties.
- (b) For the avoidance of doubt, the obligations to deliver contributions under clause 6 of this agreement do not take effect until the Instrument Change is made and the DCP (generally in accordance with the draft document at Schedule 4) is adopted.



## 6 Contributions to be made under this agreement

### 6.1 Monetary Contribution

- (a) The Developer will pay to Council the Monetary Contribution in accordance with this **clause 6.1**.
- (b) The Monetary Contribution must be paid to Council as follows:
  - (i) prior to the issue of a Construction Certificate for any above-ground works forming part of the Development, the Developer must pay to Council 50% of the Monetary Contribution increased but not decreased in accordance with movements in the CPI from the date of this agreement to the date of payment; and
  - (ii) prior to the issue of the first Occupation Certificate for the Development, the Developer must pay to Council the remaining 50% of the Monetary Contribution increased but not decreased in accordance with movements in the CPI from the date of this agreement to the date of payment.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developers in writing as soon as reasonably practicable that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council as it sees fit to:
  - (i) acquire land for the improvement of Hume Street Park, as required;
  - (ii) carry out the embellishment of Hume Street park; and
  - (iii) care for and maintain Hume Street Park.
- (f) In the event the Council determines not to acquire the land for the purposes of establishing the Hume Street Park, the Council agrees that the contributions made under this agreement will be applied towards the embellishment and maintenance of other land for the purposes of public open space and recreation within the North Sydney Local Government Area.
- (g) For the avoidance of doubt, nothing in this agreement requires the Council to:
  - (i) spend the Monetary Contribution made under this agreement by a particular date; or
  - (ii) refund to the Developer any contribution made under this agreement.

### 6.2 Works

- (a) Prior to the dedication of the Dedication Land in accordance with **clause 6.3**, the Developer must carry out the Works, in accordance with the Construction Terms.
- (b) The Works or any part of the Works required under this agreement will be taken to have been completed for the purposes of this agreement when a Certificate of Practical Completion has been issued for those Works.

- (c) The Works required under this agreement will be taken to have been delivered to Council when the land on which those Works are located is dedicated to Council.

### 6.3 Dedication of Land

- (a) The Dedication Land must be dedicated or transferred to Council prior to the issue of an Occupation Certificate for the Development or any part of the Development.
- (b) The dedication of the Dedication Land is made for the purposes of this agreement when:
  - (i) a deposited plan is registered in the register of plans held with the Registrar-General that dedicates the Dedication Land as public road under the *Roads Act 1993* (NSW) and Council must, provided a subdivision certificate has been issued, without delay do all things reasonably necessary including signing documents and providing all such consents to allow for the plan to be registered; or
  - (ii) the Council is given:
    - (A) an instrument in registrable form under the *Real Property Act 1900* (NSW) duly executed by the Developer as transferor that is effective to transfer the title to the Dedication Land to the Council when executed by the Council as transferee and registered;
    - (B) the written consent to the registration of the transfer of any person whose consent is required to that registration; and
    - (C) a written undertaking from any person holding the certificate of title to the production of the certificate of title or the CoRD Holder consent eForm lodged through PEXA (as applicable) for the purposes of registration of the transfer.
- (c) The Developer is to ensure that the Dedication Land is dedicated or transferred to the Council under this agreement, at no cost to Council, is free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except for the Permitted Encumbrances.
- (d) If, having used all reasonable endeavours, the Developer cannot ensure that land to be dedicated to the Council under this agreement is free from all encumbrances and affectations except for the Permitted Encumbrances, the Developer may request that Council agree to accept the land subject to those encumbrances and affectations, but the Council may withhold its agreement in its absolute discretion.
- (e) The parties agree and acknowledge that the Works and dedication of the Dedication Land serve the public purpose of upgrading and improving pedestrian access and amenity in the vicinity of the Development.

## 7 Application of s 7.11, s 7.12 and s 7.24 of the Act to the Development

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.

- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

## 8 Registration of this agreement

### 8.1 Developer Interest

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land.

### 8.2 Registration of this agreement

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land in accordance with section 7.6 of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
  - (i) The consent of each person who:
    - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
    - (B) is seized or possessed of an estate or interest in the Land,
  - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
  - (iii) The execution of any documents; and
  - (iv) The production of the relevant duplicate certificates of title or the CoRD Holder consent eForm lodged through PEXA (as applicable),

to enable the registration of this agreement in accordance with this **clause 8.2**.
- (c) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
  - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after the execution of this agreement, but in any event, no later than 10 Business Days after that date; and
  - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.
- (d) The Council must promptly comply with any requisitions that may be raised with regard to the registration of this agreement that are properly for the Council to satisfy.

### 8.3 Removal from Register

The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is satisfied, acting reasonably, that the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

### 8.4 Caveat

- (a) The Developer acknowledges and agrees that:
  - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with **clause 8.2** and must not lodge any other caveats on the titles to any of the Land.

## 9 Review of this agreement

### 9.1 Review by agreement

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purposes of this **clause 9.1** and subject to **clause 9.2**:
  - (i) no modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement; and
  - (ii) a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

### 9.2 State Infrastructure Contribution

- (a) The parties acknowledge that as at the date of this agreement, the NSW State Government has released the St Leonards and Crows Nest 2036 Plan and a Ministerial determination has been made to levy a Special Infrastructure Contribution (**SIC Determination**) under section 7.24 of the Act to help fund infrastructure to support the implementation of that 2036 Plan.
- (b) St Leonards and Crows Nest 2036 Plan notes that a developer may enter into a planning agreement under section 7.4 of the Act to provide State or local infrastructure associated with a change to planning controls or a development application in St Leonards and Crows Nest in lieu of a contribution to the SIC or local contribution schemes.

- (c) As at the date of this agreement, the Land is not identified within the St Leonards and Crows Nest Special Contributions Area in the SIC Determination and consequently the SIC Determination does not apply to the Land.
- (d) The Land may be identified as "intensive residential use land" within the St Leonards and Crows Nest Special Contributions Area in accordance with the SIC Determination following the making of the Instrument Change such that the SIC Determination will apply to the Land.
- (e) In the event that the Contributions have not been made under this agreement and either:
  - (i) the SIC Determination, or any other Special Infrastructure Contribution (SIC) determination made under Part 7, Division 7.1, Subdivision 4 of the Act or any other similar state or regional development contribution applies to the Land and the Development, and imposes a requirement for the Developer to pay a SIC in relation to the Development or the Land; or
  - (ii) LEP 2013, following the Instrument Change, contains a provision requiring satisfactory arrangements for the provision of contributions to designated state or regional infrastructure,

within 20 Business Days of either party making a request for a review, the Council and the Developer must meet to review this agreement in accordance with the principles in **clause 9.2(f)** and **clause 9.2(g)**, using their best endeavours and acting in good faith.
- (f) If a review of the agreement is carried out under **clause 9.2(b)**, the parties must consider during that review process a reduction of the quantum of Monetary Contribution payable by the Developer to the Council under this agreement (and any subsequent release of all or part of the Security provided by the Developer under this agreement) taking into account:
  - (i) the amount of the SIC that is payable by the Developer in connection with the Development; and/or
  - (ii) the infrastructure to be provided and the amount of any contributions or works required as a result of the requirement to enter into satisfactory arrangements to provide contributions for designated state or regional infrastructure.
- (g) For the avoidance of doubt, before seeking to reduce the quantum of Monetary Contribution payable under this agreement, the Developer and the Council must jointly apply for and diligently pursue an offset against any liability to pay any SIC on the basis that the Developer is obliged to pay the Monetary Contribution under this agreement.
- (h) Any agreement reached during a review under this **clause 9.2** will not constitute an amendment to this agreement until the amendment has been:
  - (i) confirmed in writing as a proposed amendment to this agreement;
  - (ii) publicly notified in accordance with the Regulation;
  - (iii) approved by Council after consideration of any public submissions; and
  - (iv) signed by the parties.

- (i) A failure by a Party to agree to participate in a review under this **clause 9.2** is taken to be a dispute for the purposes of **clause 10**.
- (j) If the Parties cannot agree to the terms of any amendment following a review under **clause 9.2**, either Party may refer the matter to dispute resolution under **clause 10**.
- (k) Nothing in this clause operates as a requirement for Council to pay any money to the Developer (for example if the SIC is greater than the quantum of Monetary Contributions otherwise payable by the Developer) or to refund to the Developer or any other entity, any amount paid to it under this agreement or for any other purpose.

## 10 Dispute Resolution

### 10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

### 10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

### 10.3 Representatives of Parties to Meet

- (a) The representatives of the parties must promptly (and in any event within 15 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
  - (i) resolve the dispute during the course of that meeting,
  - (ii) agree that further material or expert determination in accordance with **clause 10.6** about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
  - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

### 10.4 Further Notice if Not Settled

If the dispute is not resolved within 15 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under **clause 10.5** or by expert determination under **clause 10.6**.



### 10.5 Mediation

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply;
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this **clause 10.5** must:
  - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
  - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);
- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
  - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
  - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

### 10.6 Expert determination

If the dispute is not resolved under **clause 10.3** or **clause 10.5**, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
  - (i) Agreed upon and appointed jointly by the parties; and
  - (ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert,

appointed on application of a party by the then President of the Law Society of New South Wales;

- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
  - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
  - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

#### 10.7 *Litigation*

If the dispute is not finally resolved in accordance with this **clause 10**, then either party is at liberty to litigate the dispute.

#### 10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under **clause 10.1**, the referral to or undertaking of a dispute resolution process under this **clause 10** does not suspend the parties' obligations under this agreement.

### 11 **Enforcement**

#### 11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under **clause 10** of this agreement.

## 11.2 Bank Guarantee

- (a) Within 5 Business Days after the Instrument Change is made, the Developer is to provide to Council the Security.
- (b) The Council may call on the Security provided under this clause if:
  - (i) the Developer fails to pay the Monetary Contribution and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
  - (ii) fails to carry out the Works as required by this Agreement and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
  - (iii) the Council acquires the Dedication Land in accordance with clause 11.3; or
  - (iv) the Developer becomes Insolvent.
- (c) Subject to this clause, the Council may apply the proceeds of the Security in satisfaction of:
  - (i) any obligation of the Developer to deliver Contributions under this agreement;
  - (ii) any obligation of the Developer to pay Council's costs of acquiring the Dedication Land; and
  - (iii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement.
- (d) At any time following the provision of any Security, the Developer may provide the Council with one or more replacement Securities totalling the amount of all the Securities required to be provided under this clause for the time being.
- (e) At any time following the provision of a Security under this clause, the Developer may provide the Council with one or more replacement Securities totalling the amount of all Bank Guarantees or Bonds required to be provided under this clause for the time being. On receipt of such replacement Security, the Council must release and return to the Developer, as directed, the Security(ies) which it holds that have been replaced as soon as reasonably practicable.
- (f) The Council must promptly return the Security at the request of the Developer, if any of the following circumstances occur:
  - (i) the Developer fulfils the relevant obligations under this Agreement for that Security as set out in this agreement; or
  - (ii) a Court of competent jurisdiction invalidates the Instrument Change and all avenues of appeal from that decision have been exhausted.
- (g) Nothing in this **clause 11.2** prevents or restricts the Council from taking any enforcement action in relation to:
  - (i) any obligation of the Developer under this agreement; or

- (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this agreement,

that is not or cannot be satisfied by calling on a Security.

### 11.3 Compulsory Acquisition

- (a) If the Developer does not dedicate the Dedication Land to Council as required by this agreement, the Council may compulsorily acquire the relevant land, in which case the Developer consents to the Council compulsorily acquiring that land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may call upon any Security provided under **clause 11.2** to cover any costs, including legal costs, incurred by the Council on acquisition of the land.
- (b) **Clause 11.3(a)** constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) Except as otherwise agreed between the Developer and Council, the Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this agreement on the date that the Council will acquire the land in accordance with **clause 11.3(a)**.
- (d) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the relevant land under **clause 11.3(a)**.
- (e) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under **clause 11.3(a)** that are not or cannot be recovered by calling on a Bank Guarantee.

### 11.4 Restriction on the issue of Certificates

- (a) In accordance with section 6.8 of the Act and clause 146A of the Regulation the following obligations must be satisfied before a Construction Certificate for any above-ground works forming part of the Development can be issued:
  - (i) payment of the first instalment of the Monetary Contribution in accordance with **clause 6.1(b)(i)**;
  - (ii) provision of Security in accordance with **clause 11.2**.
- (b) In accordance with section 6.10 of the Act and clause 154E of the Regulation, the following obligations must be satisfied before an Occupation Certificate can be issued for the Development:
  - (i) payment of the second instalment of the Monetary Contribution in accordance with **clause 6.1(b)(ii)**;
  - (ii) completion of the Works as required by **clause 6.2**; and
  - (iii) dedication or transfer of the Dedication Land as required by **clause 6.3**.

### 11.5 General Enforcement

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
  - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

## 12 Assignment and Dealings

### 12.1 Transfer of Land

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
  - (i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
  - (ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
  - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
  - (iv) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
  - (v) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.

## 13 Approvals and consents

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

## 14 No fetter

### 14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other

application for Development Consent (all referred to in this agreement as a "**Discretion**").

#### 14.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

## 15 Notices

### 15.1 *Notices*

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email at the address below, or at the address last notified by the intended recipient to the sender after the date of this agreement:
  - (i) to North Sydney Council: 200 Miller Street, Sydney NSW 2060  
Email: council@northsydney.nsw.gov.au  
Attention: General Manager
  - (ii) to CN Land Pty Limited: [party to insert]  
Email: leigh@bennelong.com  
Attention: Leigh Manser
- (c) is taken to be given or made:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
  - (iii) in the case of an email, when it is sent provided the sender does not receive any notification that the email was unable to be delivered to the recipient; and
- (d) if under **clause (c)** a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

## 16 General

### 16.1 *Relationship between parties*

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### 16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

### 16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

### 16.4 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

### 16.5 *No assignment*

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

### 16.6 *Counterparts*

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### 16.7 *Legal expenses and stamp duty*

The Developer agrees to pay or reimburse Council all reasonable costs incurred with:

- (a) the negotiation, preparation and execution of this agreement, including the reasonable costs of any legal advice Council has received in connection with this agreement;
- (b) any other costs required to be paid by the Developer under this agreement, within 10 Business Days after receipt of a notice from the Council as to the amount of those costs.



**16.8 Entire agreement**

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

**16.9 Representations and warranties**

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

**16.10 Severability**

- (a) The parties acknowledge and agree that under and by virtue of section 7.4(4) of the Act, any provision of this agreement is not invalid by reason only that there is no connection between the Planning Proposal or the Development and the object of the expenditure of any money required to be paid under this agreement.
- (b) If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- (c) If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

**16.11 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

**16.12 Waiver**

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party. A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular

obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

**16.13 GST**

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) The parties agree, in accordance with Class Ruling CR2013/13, that the contributions required to be made under this agreement are exempt from GST.
- (d) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances provided the Developer first receives a tax invoice in respect of the taxable supply.

**16.14 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## Schedule 1            Scope of works

The Works consists of the following:

- Widen Eastern side of Alexander Lane between Falcon Street and Hayberry Lane by approx. 1200mm including new concrete kerb and gutter to Eastern side of road and any required associated re-surfacing works arising.
- Construction of kerb buildouts of approx. 5740mm wide x 7050mm long to the Southern side of proposed new driveway location along Alexander Lane. Build outs to be designed so as to provide kerb and gutter around perimeter with low height shrubs/plantings of a species to be determined by Council.
- Installation of appropriate directional and street signage as required and determined by Council.
- Install new concrete footpath approx. 2000mm wide to Eastern side of Alexander Lane between Falcon Street and Hayberry Lane. Footpath will include vehicle crossover for proposed new driveway
- Install new concrete footpath approx. 1500mm wide to Northern side of Hayberry Lane (within existing boundary) that will link up with the new footpath on Alexander Lane and run to the eastern extent of the subject property boundary on Hayberry Lane.
- Construct landscaped zone approx. 1600mm wide to the southern side of new footpath including new concrete kerb and gutter along length of boundary on Northern side of Hayberry Lane. Landscaped strip to include turfing and a minimum of 4 appropriate size street trees with species to be determined with Council prior to planting.
- Adjust any existing stormwater pits along the Northern side of Hayberry Lane that are adjoining the property boundary to suit new footpath and kerb and gutter.
- With respect to Hayberry Lane works the developer will not be responsible for changing kerb and gutter levels or adjusting any services including stormwater inlets and/or services on the southern side of Hayberry Lane.

All works will be constructed in accordance with the North Sydney Infrastructure Specification Manual for Roadworks, Drainage and Miscellaneous Works and the footpath will be constructed in accordance with the North Sydney Public Domain Style Manual and Design Codes. Consistent with Council's established policy Council will act reasonably with respect to determining the extent of civil works surrounding the side.

## Schedule 2 Construction terms

### 1 Interpretation

For the purposes of this Schedule 2, the defined terms in **clause 1** of this agreement and the Interpretation principles in **clause 2** of this agreement will apply and, unless context indicates a contrary intention:

**Builder** means any entity contracted under the Construction Contract to carry out the Works.

**Construction Contract** means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

**Defects Liability Period** means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Works are delivered to Council in accordance with this agreement.

**Detailed Design** means the final specifications and finishes for the Works prepared in accordance with **clause 5.2** of this Schedule 2 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

**Services** means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

**Superintendent** means the Superintendent appointed under any Construction Contract.

### 2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this agreement and any Approval the terms of the Approval shall take precedence.

### 3 Costs of Works

All costs of the Works must be borne by the Developer.

#### 4 Project Management and Contractor Engagement

- 4.1 The Developer will be responsible for managing the Works.
- 4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to carry out the Developer's obligations in these Construction Terms as part of any Construction Contract.

#### 5 Design Development and Approvals

##### 5.1 Works Design

- (a) Prior to submitting a Development Application for the Development, the Developer must prepare a draft concept design for the Works in accordance with:
- (i) the scope of works at **Schedule 1**;
  - (ii) the concept plan at **Annexure A**;
  - (iii) the North Sydney Public Domain Style Manual and Design Codes; and
  - (iv) any other standards or specifications provided to the Developer by the Council.
- (b) The Developer and Council must work in consultation with each other to prepare and agree the concept design and must both act reasonably and with due expedition in their consultations with each other.
- (c) The Developer must incorporate into the final concept design any amendments required by Council that are consistent with clause 5.1(a).

##### 5.2 Detailed Design

- (a) Prior to submitting an application for a Construction Certificate for the Development, the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (b) The draft Detailed Design must be consistent with the scope of works in **Schedule 1** and the concept plan at **Annexure A**, the standards and specifications referred to in **clause 5.1** of this Schedule and the concept design agreed in accordance with **clause 5.1** of this Schedule.
- (c) Within 15 Business Days of receiving the draft Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design that are consistent with clause 5.2(b).
- (d) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (e) If the Detailed Design is not completed and agreed within 15 Business Days of Council providing its suggested amendments in accordance with **clause 5.2(c)** of this Schedule 2, to avoid possible delays to the issue of a Certificate of Practical Completion, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
- (i) is consistent with the obligation to carry out the Works and dedicate the Dedication Land under this agreement; and

- (ii) is consistent with the Development Consent; and
- (iii) does not materially and adversely affect the Development; and
- (iv) is not unreasonable.

5.3 Any acceptance by the Council of the Detailed Design under this **clause 5** of Schedule 2 is not to be taken as approval of or to any Construction Certificate for the Works.

#### 5.4 **Good faith**

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

### **6 Carrying out of Works**

#### 6.1 **Communication**

The Developer must keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

#### 6.2 **Standard of Works**

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.
- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
  - (i) Any relevant Australian Standard;
  - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in **clause 6.2(b)(ii)** of this Schedule 2 from Council if the Council fails to deliver them to the Developer.
- (d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:
  - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this agreement; or
  - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

### **7 Inspection**

- (a) On completion of the Detailed Design, the Council will provide a reasonable schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Developer must

request the Inspection Schedule from the Council prior to the Works commencing.

- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.
- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
  - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
  - (ii) giving reasonable notice to the Developer;
  - (iii) complying with all reasonable directions of the Developer; and
  - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under **clause 7(c)** or **7(d)** of this **Schedule 2**), notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
  - (i) removal of defective or non-complying material;
  - (ii) demolishing defective or non-complying work;
  - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
  - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Developer is issued a direction to carry out further work under **clause 7(e)** of this **Schedule 2**, the Developer must, at their cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with a direction to carry out work given under **clause 7(e)** of this **Schedule 2**, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer have rectified a defect or non-compliance identified in a notice issued under 7(e) of this Schedule 2 does not constitute:



- (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
- (ii) an Approval by the Council in respect of the Works; or
- (iii) an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this agreement.

## **8 Completion**

### **8.1 Practical Completion**

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.
- (b) Within 10 Business Days of receipt of the notice under **clause 8.1(a)** of this Schedule 2, the Council will carry out an inspection of the Works and will, acting reasonably, either:
  - (i) provide written certification to the Developer that the Works have been completed; or
  - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under **clause 8.1(b)(ii)** of this Schedule 2, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under **clause 8.1(a)** of this Schedule 2 for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

### **8.2 Delivery of documents**

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:
  - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
  - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
  - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land

subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

### 8.3 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

### 8.4 Defects Liability Period

- (a) During the Defects Liability Period not more than 3 times, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
  - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified being a date that, having regard to the nature of the Rectification Works and the surrounding circumstances, allows a reasonable time for those works to be carried out (**Rectification Date**).
- (b) The Developer must comply with the Rectification Notice by:
  - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
  - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under **clause 8.1(d)** of this Schedule 2 and, acting reasonably:
  - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this **clause 8.4**.
- (g) If the Developer fail to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification

Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:

- (i) call upon any Bond or Bank Guarantee provided to the Council under **clause 8.5** of this Schedule 2 to meet its costs of carrying out Rectification Works; and
  - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (h) The Developer must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before the end of the Defects Liability Period.
- (i) If, prior to the end of the Defects Liability Period:
- (i) the Developer fails to request the inspection, or
  - (ii) the Council does not carry out the inspection,
- the Council may extend the Defects Liability Period so that the inspection may be carried out.

#### 8.5 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.
- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
  - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this agreement; and
  - (ii) the Developer procure an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in **clause 8.5(a)** of this Schedule 2 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding **clause 8.5(c)** of this Schedule 2, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.

- (e) The Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

## **9 Risk**

The Developer undertakes the Works entirely at its own risk.

## **10 Insurance**

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
  - (i) construction works insurance for the value of the Works;
  - (ii) public risk insurance for at least \$20 million;
  - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by **clause 10(a)** of this Schedule 2 upon request by the Council, acting reasonably, throughout the term of this agreement.

## **11 Indemnities**

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

## **12 Intellectual Property Rights**

The Council acknowledges that the Developer or its contractors holds all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer has or receives intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

## **13 Risk of contamination**

The Developer acknowledges and agrees:

- (a) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
- (b) it will attend to any necessary remediation at their own costs; and
- (c) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.

## **14 Plans**

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this agreement; or
- (b) by agreement between the parties.

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## Schedule 3 Summary of requirements (section 7.4)

Subject and subsection of the Act	Planning Agreement
<p><b>Planning instrument and/or Development Application – Section 7.4(1)</b></p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p><b>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</b></p>	<p>Lot 33 Section 3 DP 1720, Lot 32 Section 3 DP 1720, Lot X DP 407774, Lot Y DP 407774, Lot A DP 377050, Lot 26 Section 3 DP 1720, and Lot 25 Section 3 DP 1720, known as 27-57 Falcon Street, Crows Nest.</p>
<p><b>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(b)</b></p>	<p>See clauses 6.1, 6.2 and 6.3.</p>
<p><b>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.11 of the Act is not excluded in respect of the Development.</p>
<p><b>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.12 of the Act is not excluded in respect of the Development.</p>
<p><b>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</b></p>	<p>The application of section 7.24 of the Act is not excluded in respect of the Development.</p>
<p><b>Mechanism for dispute resolution – Section 7.4(3)(f)</b></p>	<p>See clause 10.</p>
<p><b>Enforcement of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>See clause 11.</p>
<p><b>Registration of the Planning Agreement – Section 7.4(3)(g)</b></p>	<p>See clause 8.2.</p>
<p><b>No obligation to grant consent or exercise functions – Section 7.4(9)</b></p>	<p>See clause 14 (no fetter).</p>

Schedule 4

DCP

[To be inserted]

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Executed as an agreement

Executed for and on behalf of **North Sydney Council** by its authorised delegate in accordance with a resolution of the Council dated [insert date]:  
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Witness

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Signature of Authorised Representative

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Name of Witness

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Name of Authorised Delegate

**Executed by CN Land Pty Limited** )  
ACN 630 395 961 in accordance with )  
section 127 of the *Corporations Act 2001* )  
(Cth) by: )  
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Signature of Director

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Signature of Director/Secretary

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Print name of Director

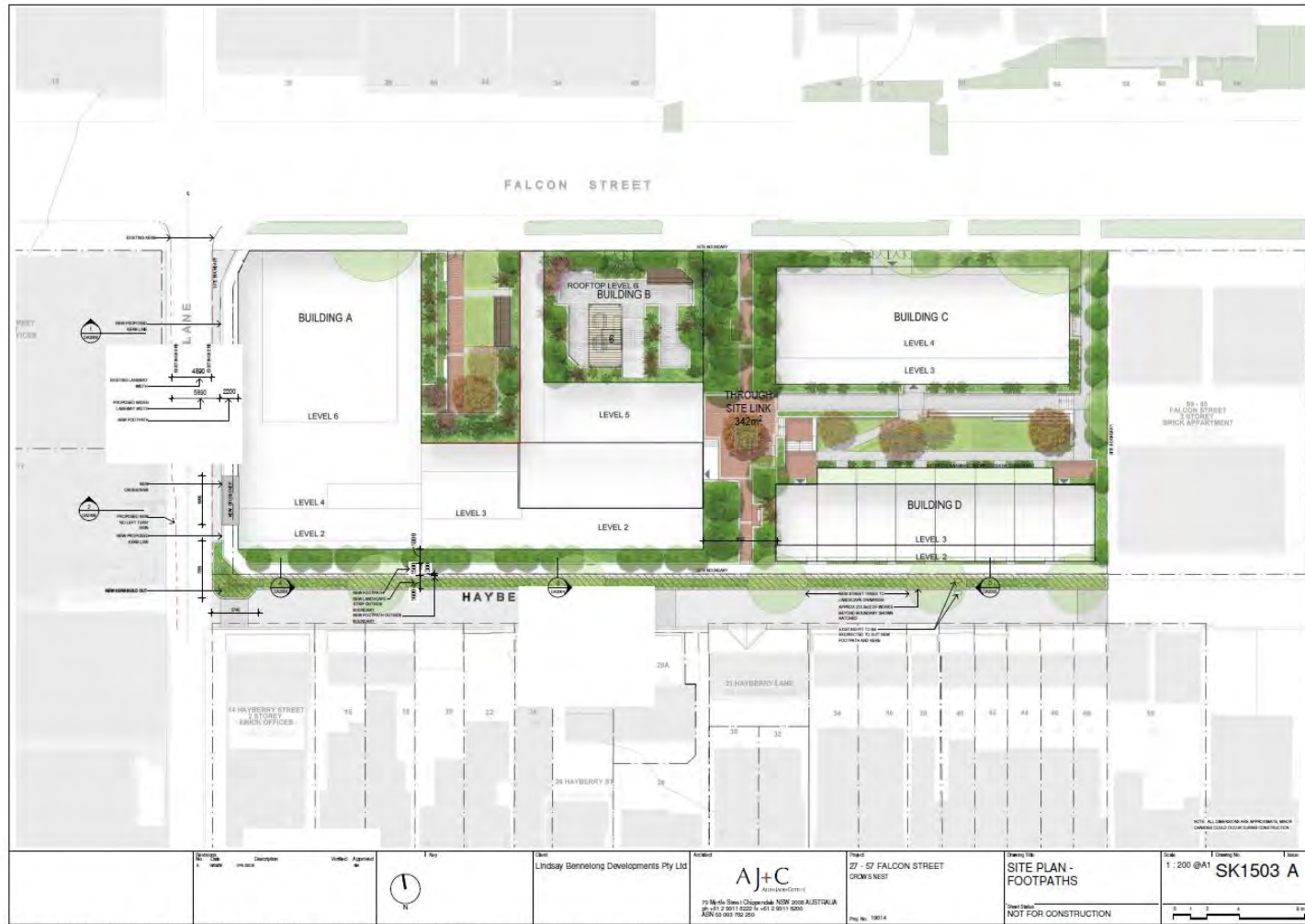
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Sparke Helmore Lawyers

Annexure A Plan showing Land and Works



Sparke Helmore Lawyers



## Annexure B Draft Explanatory note

## Explanatory Note

### Exhibition of draft Voluntary Planning Agreement

Lot 33 Section 3 DP 1720, Lot 32 Section 3 DP 1720, Lot X DP 407774, Lot Y DP 407774, Lot A DP 377050, Lot 26 Section 3 DP 1720, and Lot 25 Section 3 DP 1720, known as 27-57 Falcon Street, Crows Nest. *Environmental Planning & Assessment Regulation 2000 (clause 25E)*

#### Planning Agreement

The purpose of this Explanatory Note is to provide a plain English summary to support the notification of a draft voluntary Planning Agreement (**the Planning Agreement**) under Section 7.4 of the *Environmental Planning and Assessment Act 1979 (the Act)*.

The Planning Agreement will require the provision of both monetary and in-kind contributions to community infrastructure in the St Leonards / Crows Nest precinct in connection with a proposed change to provisions of the *North Sydney Local Environmental Plan 2013 (NSLEP 2013)*. The contributions include:

- (a) The dedication of the Dedication Land to Council for pedestrian pathways, including embellishment of that land; and
- (b) \$800,000 in monetary contributions towards the upgrade of Hume Street Park or public open space within the North Sydney Local Government Area.

The total value of the public benefit to be provided under the Planning Agreement has been calculated at \$1,130,000.00, including apportionment of 35% of the embellishment works cost as providing a public benefit.

This Explanatory Note has been prepared jointly between the parties as required by clause 25E of the *Environmental Planning and Assessment Regulation 2000 (the Regulation)*.

This Explanatory Note is not to be used to assist in construing the Planning Agreement.

#### Parties

CN Land Pty Limited (**the Developer**) made an offer to North Sydney Council (**Council**) to enter into a voluntary Planning Agreement, in connection with Planning Proposal 6/19 relating to the subject land.

#### Description of subject land

The land to which the Planning Agreement applies is described as Lot 33 Section 3 DP 1720, Lot 32 Section 3 DP 1720, Lot X DP 407774, Lot Y DP 407774, Lot A DP 377050, Lot 26 Section 3 DP 1720, and Lot 25 Section 3 SP 1720, known as 27-57 Falcon Street, Crows Nest (**the Land**).

#### Description of the Planning Proposal to which the Planning Agreement applies

The Planning Proposal seeks to amend the NSLEP 2013 to:

- (a) change the Land Zoning Map by rezoning the Land to be R4 High Density Residential;
- (b) increase the maximum building height limit to 14.5m for part of the Land and to 21m for part of the Land;

- (c) increase the maximum FSR for the Land to 1.85:1;
- (d) delete the minimum non-residential FSR of 0.5:1 applying to the Land;
- (e) amend Schedule 1 Additional permitted uses of LEP 2013 to permit the use of retail premises on the Land with development consent; and
- (f) include a site specific provision in Part 6 Division 3 of LEP 2013 to allow minor exceedances to the Height of Building control to facilitate access to roof/lift overrun.

## **Summary of Objectives, Nature and Effect of the Planning Agreement**

### **Monetary Contribution**

The Planning Agreement requires a monetary contribution in the amount of \$800,000 to be applied towards increased space opportunities

### **Land**

The Planning Agreement requires dedication of 129 sqm of land adjacent to Alexander Lane and 245 sqm of land adjacent to Hayberry Lane (**the Dedication Land**) to create a new public pedestrian footpath as well as associated public domain, landscaping and traffic calming measures.

### **Works**

The Planning Agreement requires embellishment works on the Dedication Land to upgrade and improve pedestrian access and amenity.

### **Sections 7.11, 7.12 and 7.24 of the Act**

The Planning Agreement does not exclude the application of sections 7.11, 7.12 or 7.24 of the Act to the Development. This means that contributions will continue to be payable for the Development under those provisions. The Planning Agreement does provide that a review of the contributions to be made under the agreement will occur if a Special Infrastructure Contribution is payable for the development under section 7.24 of the Act. Any change required to the Planning Agreement as a consequence of that review will be exhibited in accordance with the provisions of the Regulation.

## **Assessment of the Merits of the Planning Agreement**

### **How the Planning Agreement Promotes the Objects of the Act and the public interest**

The draft Planning Agreement promotes the following objectives of the *Environmental Planning and Assessment Act 1979*:

- Promotes the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources (section 1.3(a)).
- Promotes the orderly and economic use and development of land (section 1.3(c)).
- Promotes good design and amenity of the built environment (section 1.3(g)).

The draft Planning Agreement promotes the public interest by requiring the provision of public domain improvements that will benefit existing and future residents and workers of the St Leonards / Crows Nest Area.

### **The Planning Purposes served by the Planning Agreement**

The Planning Agreement provides for monetary contributions that will enable the Council to provide adequate public amenities for new development in the area as well as increased space opportunities.

The Planning Agreement will require the developer to provide funds for the acquisition, embellishment and maintenance of public open space. The proposed amendments to NSLEP 2013 are consistent with the St Leonards / Crows Nest Planning Study and other strategic plans applying to the Land. The proposed development anticipated by the Planning Proposal will;

- Contribute to housing demand and targets identified,
- Provide housing in close proximity to public transport,
- Deliver significant public domain improvements including active street frontages and high quality public domain, and
- Contribute to the rejuvenation of Crows Nest by encouraging and supporting development activity.

### **How the Planning Agreement promotes the objectives of the *Local Government Act 1993* and the elements of the Council's Charter**

The Planning Agreement is consistent with the following purposes of the *Local Government Act 1993*:

- to facilitate engagement with the local community by councils, councillors and other persons and bodies that constitute the system of local government; and
- to provide for a system of local government that is accountable to the community and that is sustainable, flexible and effective.

The provision of public benefits under the Planning Agreement, consistent with the St Leonards / Crows Nest Planning Study and the exhibition of the Planning Agreement are consistent with the following guiding principles for councils set out in section 8A of the *Local Government Act 1993* (which has replaced the Council's Charter):

- Councils should provide strong and effective representation, leadership, planning and decision making.
- Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- Councils should work with others to secure appropriate services for local community needs.
- Councils should act fairly, ethically and without bias in the interests of the local community.
- Councils should consider the long term and cumulative effects of actions on future generations.

- Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.
- Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

**Whether the Planning Agreement Conforms with the Council's Capital Works Program**

The Planning Agreement offers contributions that will enable the Council to provide and embellish new public open space areas, the need for which will be created by the Development, and will improve pedestrian amenity in the vicinity of the Development. The Planning Agreement will enable Council to provide for the current and future open space needs of the local community.

**Whether the Planning Agreement specifies that certain requirements must be complied with before a construction certificate, occupation certificate or subdivision certificate is issued**

The Planning Agreement requires:

Contribution	Timing
50% of the monetary contribution to be paid to Council	Prior to the issue of a Construction Certificate for above-ground works
50% of the remaining monetary contribution to be paid to Council	Prior to the issue of an Occupation Certificate for the Development
Completion of embellishment works and dedication of the Dedication Land	Prior to the issue of an Occupation Certificate for the Development



### 3.2.5 – 27-57 Falcon Street, Crows Nest

#### 3.2.5.1 - Desired Future Character, Design Objectives and Key Principles

- P1. Development is to respond to the scale and character of the existing development and desired future character of the surrounding area.
- P2. Built form, scale and massing is to transition in scale across the site from a mixed use, higher density typology in the western portion reflective of the Crows Nest Strategic Centre to a lower to medium density residential typology on the eastern portion.
- P3. Development should balance the provision of new residential apartment buildings within a Strategic Centre, while maintaining a reasonable level of amenity, privacy and solar access for low density neighbouring residents on Alexander Lane, Falcon Street and in the Hayberry Conservation Area.
- P4. A mixed-use typology with medium rise residential apartment buildings built to the boundary with commercial on ground level at the corner of Falcon Street and Alexander Lane. A residential typology to the eastern part of the site along Falcon Street setback from the street, with townhouses fronting Hayberry Lane to respond to the existing scale of the Hayberry Conservation Area.
- P5. Built form to transition to the existing lower scale development in the Hayberry Conservation Area
- P6. Road widening along Alexander Lane with pedestrian amenity and road widening with a landscaped response and pedestrian amenity to Hayberry Lane.
- P7. Vehicular access from Alexander Lane with two-way access from / to Falcon Street.
- P8. A Secure pedestrian through site link between Falcon Street and Hayberry Lane.

#### 3.2.5.2 Desired Built Form

##### **Objectives**

- To provide for increased opportunity for height and density in the growing Crows Nest Local Centre, close to public transport and services.
- Building envelopes are to respond to the site's surrounding context which transitions in character from the Crows Nest Strategic Centre to the lower scale Heritage Conservation Area on Hayberry Street.
- To achieve appropriate separation distances between existing and proposed buildings and ensure reasonable privacy and solar access is maintained to surrounding dwellings, mindful of the need for renewal at the site.
- To ensure appropriate building lengths, a variety of building facades and a 'fine-grain' response to the public domain.

**Building Height Provisions**

- P1. The maximum height in storeys of any building must comply with the heights in storeys shown on the Site Layout Plan at Figure 1.
- P2. Building A is to be a maximum height of 6 storeys and step down in height to a maximum of 3 storeys at the Hayberry Lane frontage.
- P3. Building B is to be a maximum of 6 storeys and step down in height to a maximum of 2-3 storeys at the Hayberry Lane frontage.
- P4. A site-specific LEP clause will allow minor exceedances of the LEP Height of Building control for plant and lift overruns only.
- P5. Building C is to be a maximum of 4 storeys.
- P6. Building D is to be a maximum of 3 storeys with a 2 storey street frontage height to Hayberry Lane. The third storey is to be generally accommodated within the roof form.

**Street and Side Setbacks Provisions**

- P1. Building setbacks must, at a minimum, comply with the setbacks shown on the Site Layout Plan at Figure 1.
- P2. The following minimum setbacks are required to Falcon Street:
- a. Building A is to be setback zero metres.
  - b. Building B is to be setback zero metres.
  - c. Building C is to be setback 2 metres.
- P3. The following minimum setbacks are required from Hayberry Lane:
- a. Buildings A and B are to be setback from Hayberry Lane by 3 metres.
  - b. Building D is to be setback by 1.5 metres.
- P4. The following minimum side setbacks are required to 56-63 Falcon Street:
- a. Building C is to be setback 4.5 metres.
  - b. Building D is to be setback 1.5 metres.
- P5. Building A is to be setback a minimum of 6 metres from the existing centreline of Alexander Lane.

**3.2.5.3 Residential Apartment Building Design****Objectives**

- Ensure that the residential apartment buildings consider and are consistent with the nine design quality principles within *State Environmental Planning Policy 65 – Design Quality of Residential Flat Development*.

**Provisions**

- P1. The residential apartment building design is subject to the requirements of State Environmental Planning Policy 65 – Design Quality of Residential Flat Development including the Design Quality Principles and the Apartment Design Guide.

### 3.2.5.4 Site Coverage

#### Objectives

- To ensure that development is balanced and in keeping with the optimum capacity of the site acknowledging its unique size and location within the Crows Nest Strategic Centre at the interface between business and residential zones that accommodates a mix of building typologies.
- To achieve appropriate building envelopes that ensure the development responds to its surrounding context and provides appropriate open space and landscaped area for residents and visitors.

#### Site Coverage Provisions

P1. The maximum site coverage for this site is 65%.

### 3.2.5.5 Communal Open Space

#### Objectives

- To provide high quality communal open space at ground level and on buildings with a reasonable level of outdoor amenity without reducing privacy to neighbouring dwellings.
- To provide a level of communal open space commensurate with Apartment Design Guidelines that is mindful of the site's unique location and building typologies.
- To ensure communal open space is useable.

#### Communal Open Space Provisions

P1. Communal open space is provided in the locations shown on the Site Layout Plan at Figure 1.

P2. Communal open space can be provided on the Building B rooftop only if the space is designed such that there is no potential for overlooking into private open space and its location will not create any noise issues for surrounding dwellings.

### 3.2.5.6 Landscaped Area

#### Objectives

- To ensure that landscaping is used to provide appropriate amenity for development and soften the appearance of buildings and their interface with the neighbouring dwellings and the public domain.
- To provide a level of landscaped area commensurate with Apartment Design Guidelines that is mindful of the site's unique location and building typologies.

#### Landscaped Area Provisions

P1. The minimum landscaped area for the site is 20%

### 3.2.5.7 Traffic, Access and Parking

#### Objectives

- To regulate traffic movements and reduce congestion on Falcon Street.
- To ensure that vehicular access is safe for motorists and pedestrians.
- To facilitate road widening along Alexander Lane.
- To facilitate road widening and the provision of a shared way along Hayberry Street.
- To create a safe, accessible and shared laneway network.
- To provide appropriate amount of basement parking spaces for residents, visitors and staff.

**Traffic, Access and Parking Provisions**

- P1. Vehicular access to the site must be from Alexander Lane and be located as far as practicable from Falcon Street.
- P2. To facilitate vehicular access from Hayberry Lane, Alexander Lane is to be widened to allow for the provision of two-way traffic between Falcon Street and Hayberry Lane.
- P3. Provide on-site parking, including visitor parking at the maximum rates stated in the table below;

Development Type	Maximum Parking Rate
Studio/1 bedroom	0.5 space/dwg
2 or more bedroom	1.0 space/dwg
Visitor	0.25 space/dwg
Non – Residential use	1 space/60sqm non-residential GFA

- P4. On-site car parking provision significantly below maximum rates specified in the table above will only be considered if the proposed development has good access to public transport due to the impact that unmet on-site parking demand may have on surrounding residential streets, if viable alternative transport modes are not available.

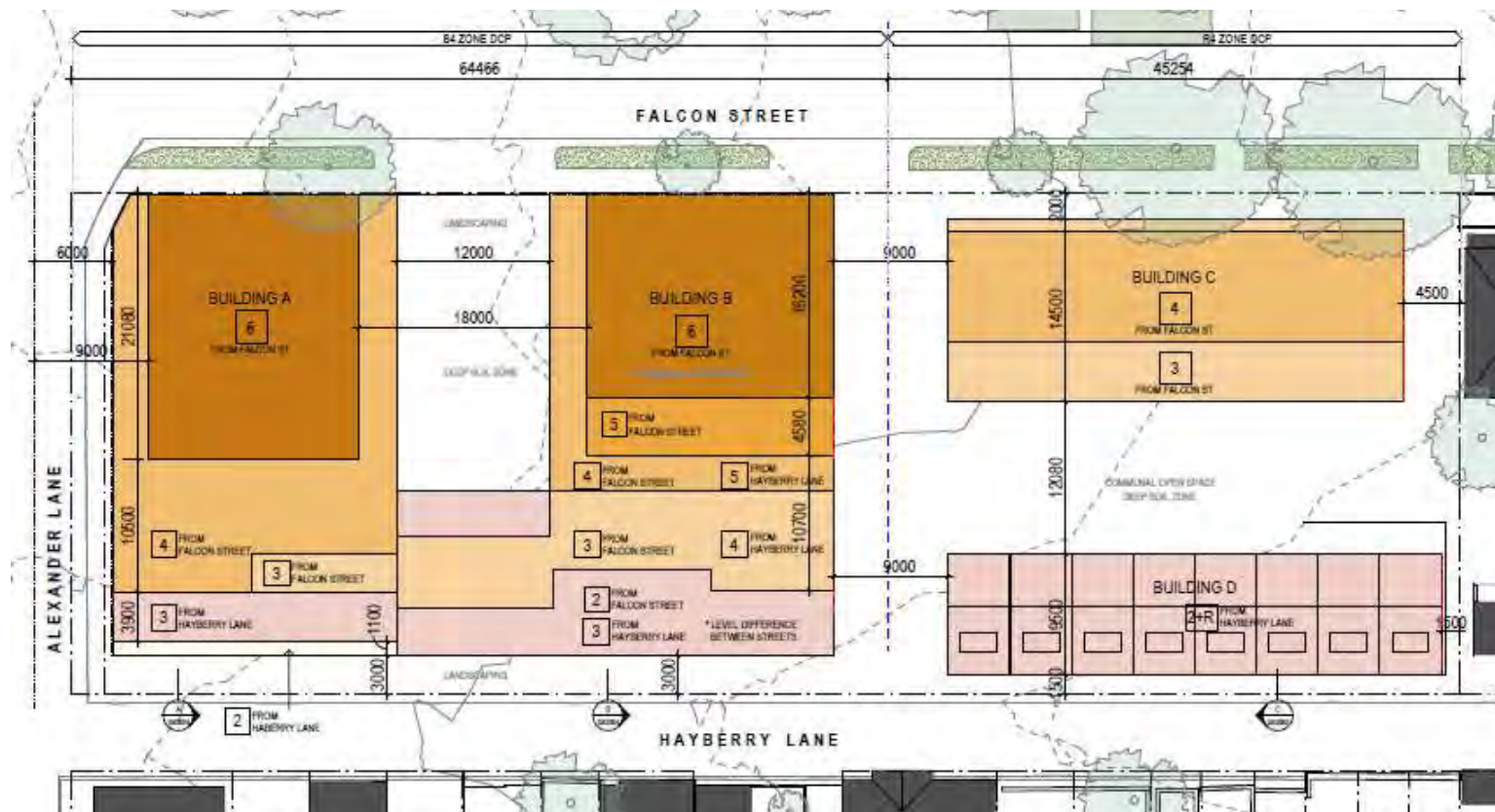


Figure 1 Site Layout Plan

## ATTACHMENT 5

### Planning Proposal 6/19 to amend North Sydney Local Environmental Plan 2013 Summary of submissions received during public exhibition period (15 March - 16 April 2021)

The following criteria are used to analyse all submissions received, and to determine whether or not the plan would be amended:

1. The Planning Proposal to amend North Sydney Local Environmental Plan 2013 **would be** amended if issues raised in the submission:
  - a provided additional information of relevance.
  - b indicated or clarified a change in government legislation, Council's commitment or management policy.
  - c proposed strategies that would better achieve or assist with Council's objectives.
  - d was an alternate viewpoint received on the topic and is considered a better option than that proposed in the Planning Proposal or;
  - e indicated omissions, inaccuracies or a lack of clarity.
  
2. The Planning Proposal to amend North Sydney Local Environmental Plan 2013 **would not be** amended if the issues raised in the submission:
  - a addressed issues beyond the scope of the Planning Proposal.
  - b was already in the Planning Proposal or will be considered during the development of a subordinate plan (prepared by Council).
  - c offered an open statement, or no change was sought.
  - d clearly supported the Planning Proposal.
  - e was an alternate viewpoint received on the topic but the recommendation of the Planning Proposal was still considered the best option.
  - f was based on incorrect information.
  - g contributed options that are not possible (generally due to some aspect of existing legislation or government policy) or; involved details that are not appropriate or necessary for inclusion in a document aimed at providing a strategic community direction over the long term.

ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
1	Stephen O'Flaherty 48 Falcon Street CROWS NEST	General Support	Support the proposal without changes.	Noted.	N/A	2D
2	Name and address withheld	Proposal limits development potential of the properties to the east	The current proposed 4.5m setback limits the neighbouring strata's development potential if/when the strata body proposes an increased residential density. A 6m setback would be more equitable in the scenario that minimum separations between apartments (e.g. balconies, living areas) were 12m.	See section 2.1.5 of Council Report. Currently at 59 Falcon Street exists a single residential dwelling adjoining the commercial building existing at 57 Falcon Street. It is noted that the commercial building is of approximately 3 storeys in height and has a nil setback to 59 Falcon Street. The proposal, whilst being up to 4 storeys will include a setback of 4.5m which will increase the separation distance between the structures. Within the DCP includes It is considered in this instance that the proposed setback will not unduly restrict the development potential of sites to the east and as such is acceptable in this instance.	N/A	2E
		Privacy	There are a number of ground-floor courtyards in the neighbouring strata, including their own. Request that the Development Control Plan has adequate measures to limit overlooking into the courtyards, as this is a significant concern, particularly considering the substantial increase in permissible building height being sought adjacent to own property i.e. 14.5m	See Section 2.1.6 of Council Report Noted. This will be addressed as part of the assessment of any future DA at the site. It is also noted that the site-specific DCP includes reference to protecting privacy of adjoining neighbours.	N/A	2E
		Parking and Traffic	Parking is difficult to find in the area and historically, there have been incidents of unauthorized individuals parking within private strata lots. Concerned about increased traffic and parking within Hayberry Lane and would like to understand how the development would address increased parking requirements.	See section 2.1.1 & 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. It is considered in this instance that traffic impacts resulting from the development can be appropriately managed by way of proposed access arrangements, sufficient signage and traffic calming measures along Hayberry Street and that in context of the broader road network the proposal will not result in a noticeable increase to traffic. As such it is considered that the proposal remain as is.	N/A	2E

ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
3.	Alison Crick 2/59 - 61 Falcon Street CROWS NEST	Parking and Traffic	Concerned about the amount of traffic flow through Hayberry and Alexander Laneways. The laneways are not designed for a significant amount of traffic and furthermore increased traffic will cause safety concern to pedestrians. What is the plan to limit traffic flow in Hayberry Lane specifically? In addition, surrounding parking for visitors and additional cars not housed in the development is limited and will cause additional issues for parking in surrounding local streets.	See section 2.1.1 & 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. It is considered in this instance that traffic impacts resulting from the development can be appropriately managed by way of proposed access arrangements, sufficient signage and traffic calming measures along Hayberry Street and that in context of the broader road network the proposal will not result in a noticeable increase to traffic. As such it is considered that the proposal remain as is.	N/A	2E
		Privacy	Consideration should be given to the degree of privacy in surrounding properties, specifically those bordering on Falcon Street. It is unclear from plans if balconies will overlook these properties so would like to understand the level of privacy impact of this development. Currently there are no overlooking windows or balconies into the neighbouring properties directly on Falcon Street.	See Section 2.1.6 of Council Report Noted. This will be addressed as part of the assessment of any future DA at the site. It is also noted that the site-specific DCP includes reference to protecting privacy of adjoining neighbours.	N/A	2E
		Proposal limits development potential of the properties to the east	The current proposal has a 4.5M setback which limits the development potential of the properties to the east. If at a future date the strata at 59-65 Falcon street was looking at potential development of increased residential density this has a limiting impact. A 6m setback would be more equitable in the scenario that minimum separations between apartments (e.g. balconies, living areas) were 12m.	See section 2.1.5 of Council Report. Currently at 59 Falcon Street exists a single residential dwelling adjoining the commercial building existing at 57 Falcon Street. It is noted that the commercial building is of approximately 3 storeys in height and has a nil setback to 59 Falcon Street. The proposal, whilst being up to 4 storeys will include a setback of 4.5m which will increase the separation distance between the structures. Within the DCP includes It is considered in this instance that the proposed setback will not unduly restrict the development potential of sites to the east and as such is acceptable in this instance.	N/A	2E



ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
4.	Ian Terley 93 Falcon Street CROWS NEST NSW 2065	Height	The suggested height increase is ridiculous and should not be allowed to increase beyond double the existing controls. The drawings do not indicate the actual height as they do not include the lift towers overrun that finish on top to the roof an additional floor. All the 3 buildings should be reduced by a minimum of one level.	See section 2.1.3 of Council Report In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station and given the transitional nature of the site and response in building design it is considered in this instance that the proposed height is acceptable. With regard to the lift overrun, it will largely not be visible and is relatively common on large developments to allow for a lift overrun.	N/A	2E
		Visual Impacts	Concerned will be able to see the new development from their rear garden, this will decrease their amenity.	See section 2.1.8 of Council Report The proposal includes a 'stepped' design, with the built form being broken into segments and transitioning to lower scale toward the south and east of the site. It is considered that the proposal is sufficiently articulated and the massing appropriately placed so as to reduce the visual bulk of any future structure.	N/A	2E
		Solar Access	There will not be any light on Hayberry Lane at any time of the day.	See section 2.1.7 of Council Report It is noted that, whilst Hayberry Lane will be largely overshadowed during winter months, were the site to be redeveloped under current controls the Lane would also be largely overshadowed. This is largely due to the orientation of the site being directly north of the lane. As such it would be difficult to maintain solar access to the Lane in mid-winter. Furthermore, it is noted that solar access has been preserved for properties to the south of the Lane, with breaks in the building form allowing some filtered light between buildings. Noting the points raised above, the overshadowing on Hayberry Lane resulting from the proposal is unavoidable and is acceptable in this instance.	N/A	2E

ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney						
PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Parking and Traffic	Concerned additional residents will reduce parking in the area meaning existing residents would need to park further from their homes. Also concerned about the significant increase in traffic on Hayberry Lane and how it will affect existing residents and pedestrians including children playing. A possible solution may be to make the western end of the lane a one-way street.	See section 2.1.1 & 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. It is considered in this instance that traffic impacts resulting from the development can be appropriately managed by way of proposed access arrangements, sufficient signage and traffic calming measures along Hayberry Street and that in context of the broader road network the proposal will not result in a noticeable increase to traffic. As such it is considered that the proposal remain as is.	N/A	2E
		Supports additional Retail Area	Support the retail section proposed to be on the Norwest of the development.	Noted.	N/A	2D
5.	Reginald Cattlin	Height	Object increase in height for the reason that the increase would create a dangerous precedent for other future developments on surrounding streets in Crow's Nest.	See section 2.1.3 of Council Report In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station and given the transitional nature of the site and response in building design it is considered in this instance that the proposed height is acceptable. Furthermore it is not considered that it will set a precedent considering the unique nature of the site.	N/A	2E
		Parking and Traffic	Object increase in density on the basis that it will mean increased car spaces on site, resulting in more traffic in an already congested area. Stated that the developer should comply with the planning proposal which aims to have residents use the ample public transport already operating or being constructed (Metro).	See section 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. Whilst being within close proximity to the metro, given the nature of the development it was appropriate to allow for additional car spaces beyond those proposed under existing controls.	N/A	2E
6.	Belinda Neville	Supports demolition of existing buildings	Support demolition of the existing buildings, currently on the site as they are dangerous and ugly and detract from the local area.	Noted.	N/A	2D

ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney						
PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
	54 Hayberry Street CROWS NEST	Parking and Traffic	Object to increase in density on the basis that it will mean increased car spaces on site, resulting in more traffic in an already congested area. It will also result in illegal parking along both adjoining lanes	See section 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. Whilst being within close proximity to the metro, given the nature of the development it was appropriate to allow for additional car spaces beyond those proposed under existing controls. With regards to illegal parking this can be dealt with by Council rangers and clear street signage.	N/A	2E
		Access	Concerned the development will result in people using Hayberry Lane to circumvent turning right onto Falcon Street from Alexander Lane.	See section 2.1.1 of Council Report Specifically along Hayberry Lane, the proposed access arrangements are expected to sufficiently manage traffic and access such that there will not be a significant impact resulting from cars using the lane.	N/A	2E
		Height	Disagree with proposed height on the basis that it exceeds the height of the new apartments recently completed on the north side of Falcon Street and exceeds the height of the buildings on the west side corner of Falcon St and Alexander Lane. Allowing additional height exceedances may set a precedence for future developments, such as those currently being built around St. Leonards station.	See section 2.1.3 of Council Report In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station and given the transitional nature of the site and response in building design it is considered in this instance that the proposed height is acceptable. Furthermore it is not considered that it will set a precedent considering the unique nature of the site.	N/A	2E
		Supports pedestrian improvements and tree planting on Hayberry Lane	Support the development of buildings which are set back from the Hayberry Lane allowing for the planting of trees, shrubs etc, and for a footpath to be installed. These elements are aesthetically pleasing and increase pedestrian safety.	Noted.	N/A	2D

ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
7.	Tony Gribben 29D Shirley Road WOLLSTONECRAFT	Height	Stated the proposal is non-compliant with existing NSLEP 2013 and St Leonards Crows Nest height controls, in some cases by nearly double.	See section 2.1.3 of Council Report In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station and given the transitional nature of the site and response in building design it is considered in this instance that the proposed height is acceptable. Furthermore it is not considered that it will set a precedent considering the unique nature of the site.	N/A	2E
		Car Parking	Stated the amount of car parking proposed is excessive given its close proximity to the new Metro Station at Crows Nest. Requested that the be declined.	See section 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. Whilst being within close proximity to the metro, given the nature of the development it was appropriate to allow for additional car spaces beyond those proposed under existing controls. With regards to illegal parking this can be dealt with by Council rangers and clear street signage.	N/A	2E
8.	Name and address withheld	Height and Scale	Object to the proposed height on the basis that it is too high, does not relate to buildings to the west or across Falcon Street and will result in visual impacts. The development should be stepped down to 10m on the eastern boundary to be consistent with adjoining buildings. There is fear that this will create an undesirable precedent for other developer sin the area to follow.	See section 2.1.3 of Council Report In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station and given the transitional nature of the site and response in building design it is considered in this instance that the proposed height is acceptable. Furthermore it is not considered that it will set a precedent considering the unique nature of the site.	N/A	2E
		Landscaping	Request that additional landscaping be provided on the site, as the proposed trees along Hayberry Lane may not be feasible due to egress concerns.	See section 2.1.9 of Council Report. The proposed landscaping has been assessed as being acceptable given the transitional nature of the site. Furthermore the proposal includes street trees along Hayberry Lane which will help to provide a green 'buffer' and increase tree canopy in the area.	N/A	2E

ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
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		Access	Concerned the development will result in more people using Hayberry and requests that a 'curb nib' or some other type of treatment be used to discourage people using the lane. This is particularly relevant considering children play in the lane and given the existing poor visibility in the lane.	See section 2.1.1 of Council Report Specifically along Hayberry Lane, the proposed access arrangements are expected to sufficiently manage traffic and access such that there will not be a significant impact resulting from cars using the lane. Additionally, the proposed treatment to the northern footpath of Hayberry Lane including street trees will act as traffic calming measures, increasing pedestrian ownership of the street and in effect slowing down car movement through the area. It is considered in this instance that traffic impacts resulting from the development can be appropriately managed by way of proposed access arrangements, sufficient signage and traffic calming measures along Hayberry Street and that in context of the broader road network the proposal will not result in a noticeable increase to traffic.	N/A	2E
9.	Wollstonecraft Precinct Committee	The proposal is inconsistent with St Leonards Crows Nest 2036 Plan / NSLEP 2013	Under the Plan the site has not been identified for any additional uplift and as per the section 9.1 Ministerial Direction and Council's resolution no proposal should be entertained that goes against the Plan. The proposal is not needed for the Plan to meet population targets.	See section 2.1.4 of Council Report The site itself is unique given its location on the fringe of the Crows Nest commercial area, being bordered by commercial uses to the west and by residential uses to the south and east of the site. Proposals are assessed on a site-by-site basis and are considered on their merits with regard to relevant controls and surrounding context. In this instance, the proposal is considered to be located within an unusual context and demonstrates compliance with the vision and principles of both the 2036 Plan and the Civic Precinct study and as such will not set a precedent for surrounding development.	N/A	2E

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No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Car Parking and Traffic	Concerned the proposal is seeking significantly more car parking than is allowed under the North Sydney B4 St Leonards Precincts 2 & 3 mixed use parking rates. States that the increase in uplift is partly due to its proximity to the soon to be completed Metro station and as such parking should be reduced so as to avoid traffic generation and from setting an undesirable precedent to the area.	See section 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. Whilst being within close proximity to the metro, given the nature of the development it was appropriate to allow for additional car spaces beyond those proposed under existing controls. With regards to illegal parking this can be dealt with by Council rangers and clear street signage.	N/A	2E
		Overdevelopment	The proposal represents an overdevelopment of the site and would set an undesirable precedent for other developers to follow.	See section 2.1.3 of Council Report In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station and given the transitional nature of the site and response in building design it is considered in this instance that the proposed height is acceptable. Furthermore it is not considered that it will set a precedent considering the unique nature of the site.	N/A	2E
10.	Suzanne Yelland 22 Balfour Street WOLLSTONECRAFT	Height and Precedent	Concerned the proposed heights will set a precedent for other 2-3 storey sites within the surrounding areas to also develop to the height proposed in this project.  Raised issue with the fact that the 'reduction' in height from 24, to 21.5m was in fact 'artificial' as there was no change to the number of stories on the site and also allows for a lift overrun which will likely come close to the originally proposed height.	See section 2.1.3 of Council Report In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station and given the transitional nature of the site and response in building design it is considered in this instance that the proposed height is acceptable. Furthermore it is not considered that it will set a precedent considering the unique nature of the site.	N/A	2E

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No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		The proposal is inconsistent with St Leonards Crows Nest 2036 Plan / NSLEP 2013	Concerned the proposal is significantly above what is shown in the 2036 Plan and by ignoring these controls it will erode the communities trust in the Plan and planning process.	See section 2.1.4 of Council Report The site itself is unique given its location on the fringe of the Crows Nest commercial area, being bordered by commercial uses to the west and by residential uses to the south and east of the site. Proposals are assessed on a site-by-site basis and are considered on their merits with regard to relevant controls and surrounding context. In this instance, the proposal is considered to be located within an unusual context and demonstrates compliance with the vision and principles of both the 2036 Plan and the Civic Precinct study and as such will not set a precedent for surrounding development.	N/A	2E
		Car Parking	Concerned the proposal is seeking significantly more car parking than is allowed under the North Sydney B4 St Leonards Precincts 2 & 3 mixed use parking rates. States that the increase in uplift is partly due to its proximity to the soon to be completed Metro station and as such parking should be reduced so as to avoid traffic generation and from setting an undesirable precedent to the area. Also concerned by the fact that the proposal goes against advice from TfNSW with regard to maximum parking numbers and Council officer recommendations.	See section 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. Whilst being within close proximity to the metro, given the nature of the development it was appropriate to allow for additional car spaces beyond those proposed under existing controls. With regards to illegal parking this can be dealt with by Council rangers and clear street signage. It is noted that in their most recent advice TfNSW provided support for the proposed parking rates.	N/A	2E
		Traffic	Concerned the applicant's Traffic Report is not independent and does not consider how local residents may be impacts including the broader community. Requests that Council undertake an independent traffic study for the whole area to avoid reliance on assurances from developers	Noted.	N/A	2E

ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Voluntary Planning Agreement (VPA)	Accept that Council Officer's checked the calculation of uplift at the time of lodgement however asks that consideration be given to re-examining the calculations in light of more recent sales data considering the 'booming' real estate market.	See section 2.1.10 of Council Report. It is noted that the real estate market can fluctuate wildly within a short period of time, thus quickly dating valuations. Notwithstanding this, the valuation at the time was made in good faith and has been the basis for initial VPA discussions. It would be inappropriate to reconsider the agreement at this time, having regard to the fact that it is entirely possible that the market could have gone backward rather than forward which under this logic may also warrant a reconsideration to reducing the contribution.	N/A	2E
11.	Stephanie Claire 38 Hayberry Street CROWS NEST	Supports the proposal in full and does not wish for it to be further delayed	Expressed that they are looking forward to the demolition of the unsightly burnt husk of a building that currently stands on this site. Pleased that some of the community concerns such as height, width of footpath and car access have been addressed, and do NOT wish for the development to be further delayed	Noted.	N/A	2D
12.	Davie Macdonald 32 Hayberry Street CROWS NEST	Supports the proposal and notes that additional parking would be a plus	Has no objections to this project going forward and speaks on behalf of surrounding residents in the immediate vicinity of the development. Any concerns that may have been raised were thoroughly answered with some changes to the original proposal. Notes that there could have been more parking provided on the site, but further makes note that concerns of increased traffic are refuted as Census travel data shows that there won't be a substantial increase in traffic and notes that the two way access onto Falcon Street from Alexander Lane will help to alleviate any increase.	Noted.	N/A	2D



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13.	Jennifer Sumsion 7/ 35 Gillies St WOLLSTONECRAFT	Height	Stated that the proposal is non-compliant with existing NSLEP 2013 and St Leonards Crows Nest height controls and is unreasonable in the context. Also states that the disregard for such controls will erode trust in the planning process. Linked the fact that the population targets will already be reached without additional development.	See section 2.1.3 of Council Report In consideration of the surrounding controls and development, the proximity of the site to the Crows Nest Metro station and given the transitional nature of the site and response in building design it is considered in this instance that the proposed height is acceptable. Furthermore, it is not considered that it will set a precedent considering the unique nature of the site. With regard to population targets, it is considered that the new metro station and existing road network and services will be able to absorb the addition 87 dwellings on the site.	N/A	2D
14.	Name and address withheld	Solar Access to rooftops	Concerned that future development resulting from the proposal will impact upon the feasibility of future rooftop solar panels of surrounding properties.	See section 2.1.7 of Council Report Shadow diagrams submitted with the proposal show that solar access is maintained to all rooftops surrounding the proposal. As such it is not expected that the proposal will result in future overshadowing of solar panels on surrounding buildings.	N/A	2E
		Vehicle Movements – Alexander Lane & Hayberry Lane	Concerned about the amount of traffic flow through Hayberry and Alexander Laneways will increase compared to what is currently used by the existing buildings on the site. In particular, that making the section of Alexander Lane two-way will result in people doing a 'rat-run' down Hayberry Lane and the other end of Alexander Lane. Requested that traffic lights be installed at the intersection of Alexander Lane and Falcon Street to improve traffic flow.	See section 2.1.1 of Council Report Specifically along Hayberry Lane, the proposed access arrangements are expected to sufficiently manage traffic and access such that there will not be a significant impact resulting from cars using the lane. Additionally, the proposed treatment to the northern footpath of Hayberry Lane including street trees will act as traffic calming measures, increasing pedestrian ownership of the street and in effect slowing down car movement through the area. It is considered in this instance that traffic impacts resulting from the development can be appropriately managed by way of proposed access arrangements, sufficient signage and traffic calming measures along Hayberry Street and that in context of the broader road network the proposal will not result in a noticeable increase to traffic.	N/A	2E

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		Parking	Object to increase in density and zoning on the basis that it will mean increased car spaces on site, resulting in more traffic in an already congested area, including different parking demands at different times resulting from residential development compared with commercial development.	See section 2.1.2 of Council Report It is considered in this instance that the proposed number of carparks is appropriate for the site and strikes the right balance between car spaces and traffic generation and as such has been assessed as being acceptable. Whilst being within close proximity to the metro, given the nature of the development it was appropriate to allow for additional car spaces beyond those proposed under existing controls. With regards to illegal parking this can be dealt with by Council rangers and clear street signage. It is noted that in their most recent advice TfNSW provided support for the proposed parking rates.	N/A	2E
15.	Transport for NSW	Vehicle Access – Alexander Lane	TfNSW have assessed the request for in-principle approval to amend Alexander Lane between Falcon Street and Hayberry Lane into a two-way operation, and have no objections to the proposal in-principle subject to compliance with various conditions including: <ul style="list-style-type: none"> <li>- request for additional / updated plans showing lane widths, signage, demonstrating a left-turn treatment onto Alexander Lane, swept paths and restrictions for left turn only.</li> </ul> <p>Makes note that the land will need to be dedicated to Council as public road at no cost to TfNSW and Council in order to facilitate some of the above.</p>	See section 2.2.1 of Council Report Noted.	N/A	2D
		Site Specific DCP – Vehicle access	The following changes should be made within the draft Site Specific DCP as follows: <b>Traffic, Access and Parking Provisions</b> P1. Vehicular access to the site must be from Alexander Lane and be located as far as practicable from Falcon Street.	See section 2.2.1 of Council Report Noted.	Update the draft DCP to include this provision.	1A

ATTACHMENT 5: PLANNING PROPOSAL TO AMEND NSLEP 2013 - PP 6/19 - 27-57 Falcon Street, North Sydney PUBLIC SUBMISSIONS TABLE (EXHIBITION PERIOD 15 March 2021 - 16 April 2021)						
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		Limiting Retail traffic impacts	To ensure that the retail component doesn't increase significantly (resulting in increased traffic generation) as part of any future Development Application consideration should be given to limiting the retail land use to 340m2 by including a site-specific provision under Schedule 1 of the North Sydney LEP.	See section 2.2.1 of Council Report Noted.	N/A	2B
		Traffic Management Plan	As part of any future Development Application, a Traffic Management Plan is to be provided to support the proposed change to the road network plan.	See section 2.2.1 of Council Report Noted. This will be considered as part of any future DA on the site.	N/A	2A
		Car Parking	<p>TfNSW would prefer to see total parking for this planning proposal capped at a maximum of 62 car spaces but acknowledge that the site at 27-57 Falcon Street, Crows Nest is located outside the St Leonards - Crows Nest Precinct 2/3 study area.</p> <p>It is also understood (based on Council's reports) that there is a need to balance the demand for parking spaces resulting from the development with Council's adopted policy position with respect to increased development in the St Leonards Crows Nest Area, as well Council's Transport Strategy. Council also indicates that there could be community concerns with unmet parking demands occurring on street.</p> <p>Therefore, as a result of the above TfNSW recommends that total parking for this planning proposal be capped at a maximum of 94 car spaces.</p> <p>However, should Council's report on the exhibited Planning Proposal recommend a maximum number of parking spaces below 94 car spaces, then we would also be supportive of such a recommendation.</p>	See section 2.2.1 of Council Report Noted.	N/A	2B

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		Sydney Metro	Sydney Metro advises that the subject site is located above Metro tunnels which are approximately 30m deep in this location. Any future development application will need to comply with the Sydney Metro Underground Corridor Protection Guidelines and consider any requirements under Clause 86 of ISEPP 2007 and the Department of Planning's <i>Development near Rail Corridors and Busy Roads - Interim Guidelines</i> (2008).	See section 2.2.1 of Council Report Noted. This will be considered as part of any future DA lodged at the site.	N/A	2A
		Active Transport	The draft St Leonards and Crows Nest 2036 Plan identifies the need for new development to contribute to the improvement of the walking and cycling network in the area, as well as help to connect to wider regional areas. Where possible, appropriate setbacks should be implemented on the Falcon Street frontage to accommodate suitable footpath widths to cater for the growth in pedestrian demands in the precinct.	Noted. See section 2.2.1 of Council Report	N/A	2B
15.	Sydney Water Corporation	Water Servicing	Potable water servicing to the site should be available via a 100mm CICAL water main (laid in 1922) on Falcon St. Amplifications, adjustments, and/or minor extensions may be required.	See section 2.2.2 of Council Report Noted.	N/A	2A
		Wastewater Servicing	Wastewater servicing should be available via 225mm VC wastewater mains (laid in 1892, 1893 and 1900) within the property boundary. Amplifications, adjustments, and/or minor extensions may be required	See section 2.2.2 of Council Report Noted.	N/A	2A
		General Information on Legislative Matters relating to approval and use of Sydney Water services	The submission includes general Information on legislative matters relating to approval and use of Sydney Water services and information on how to send through DA plans for approval. These include the following topics: <ul style="list-style-type: none"> <li>- Sydney Water Servicing</li> <li>- Building Plan Approval</li> <li>- Trade Wastewater Requirements</li> <li>- Backflow Prevention Requirements</li> <li>- Water Efficiency Recommendations</li> <li>- Contingency Plan Recommendations</li> </ul>	See section 2.2.2 of Council Report Noted. This will be dealt with at the DA stage.	N/A	2A

