

## 10.1. Planning Proposal 2/23 - 601 Pacific Highway St Leonards

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<b>ATTACHMENTS</b>	Nil
<b>CSP LINK</b>	2. Our Built Infrastructure 2.2 Vibrant public domains and villages 2.3 Prioritise sustainable and active transport  3. Our Innovative City 3.1 Our commercial centres are prosperous and vibrant 3.3 Distinctive sense of place and design excellence  4. Our Social Vitality 4.2 A centre for creativity and learning  5. Our Civic Leadership 5.1 Lead North Sydney's strategic direction

### PURPOSE:

The purpose of this report is to present to Council the assessment report of Planning Proposal No. 2/23 for 601 Pacific Highway St Leonards which seeks to amend North Sydney Local Environmental Plan 2013, following its consideration by the North Sydney Local Planning Panel on 19 July 2023.

### EXECUTIVE SUMMARY:

- On 19 January 2023, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to 601 Pacific Highway St Leonards.
- The subject site is located within the area covered by the St Leonards and Crows Nest 2036 Plan (2036 Plan), adopted by the Department of Planning and Environment in August 2020. It is accompanied by a Ministerial Direction under section 9.1 of the Environmental Planning and Assessment Act 1979 that requires Planning Proposals to be consistent with the 2036 Plan.
- The Planning Proposal seeks to increase the maximum building height control for the site from 49m to RL276.5 (equivalent to 189m) and establish a maximum floor space ratio control (FSR) of 20:1. The Planning Proposal does not propose to amend the land use zone, which is currently E2 – Commercial Centre under NSLEP 2013.
- The intent of the Planning Proposal is to facilitate the delivery of a 42-storey commercial building with a part five and part six-storey podium and 36-storey tower above. The indicative concept design includes 56,348 sqm of commercial office floor space; 408 sqm of retail floor space; and 128 car spaces over four basement levels.

- On 19 July 2023, the North Sydney Local Planning Panel (NSLPP) considered the Planning Proposal and agreed with the recommendations of a report prepared by Element Environment (on behalf of Council). The report found the requested maximum building height of RL276.5 (189m) to be excessive for the number of storeys envisaged under the 2036 Plan for the site, which would result in a greater level of impact (overshadowing and visual) than necessary.
- The Panel concurred with the recommendations of the report, that the Planning Proposal and supporting concept design should be amended to a maximum building height of RL 259 (equivalent to 171m) for 42 storeys and a maximum street wall (podium) height of 20.5m for 4 to 5 storeys. Subject to these amendments, the Panel recommended that the Planning Proposal be supported to proceed to a Gateway Determination.
- The Panel noted, however, that the Planning Proposal is not accompanied by a Voluntary Planning Agreement (VPA) to deliver public benefits, and that the State Government’s current Special Infrastructure Contribution (SIC) does not apply to commercial development.
- The Panel recommended the applicant be invited to consider making an offer to deliver public/community benefits via a VPA with Council, in addition to the applicable section 7.11 local infrastructure contributions which will be levied with any future Development Application (DA) approval for the site and the State Government’s proposed Residential and Productivity Contribution, which will replace the existing SIC.

**RECOMMENDATION:**

- 1. THAT** the Planning Proposal, including the accompanying indicative concept scheme, be amended to Council’s satisfaction addressing the recommendations of the detailed assessment report undertaken by Element Environment (on behalf of Council). Specifically, the maximum building height be amended to RL259 (equivalent to 171m) and a maximum street wall (podium) height of 20.5m for 4 to 5 storeys.
- 2. THAT** the applicant be invited to consider making an offer to deliver public/community benefits via a Voluntary Planning Agreement (VPA) with Council, and that the outcome be reported to Council.
- 3. THAT** upon completion of Recommendation 1 and 2, the Planning Proposal be forwarded to the Department of Planning and Environment in accordance with section 3.34 of the Environmental Planning and Assessment Act 1979 to seek a Gateway Determination.
- 4. THAT** upon receipt of a Gateway Determination, the Planning Proposal and any associated draft VPA be exhibited concurrently.
- 5. THAT** the outcomes of any public exhibition be reported to Council.

## Background

This is the second Planning Proposal to be lodged by the applicant, Stockland Development Pty Ltd, for the subject site.

The previous Planning Proposal (PP4/18) was lodged with Council on 27 June 2018 and sought to amend NSLEP 2013 as follows:

- *amend the Land Zoning Map from B3 Commercial Core to B4 Mixed Use to permit residential uses;*
- *increase the maximum Height of Buildings (HOB) from 49 metres to 212 metres;*
- *establish a site-specific minimum non-residential floor space ratio control of 3.9:1; and*
- *establish a site-specific maximum overall floor space ratio control of 20:1.*

It was envisaged the proposed amendment would deliver a 65-storey mixed-use building comprising a total 56,870 sqm GFA, with 11,174 sqm of non-residential floor space, 45,696 sqm of residential floor space (516 apartments), and 255 car spaces over 5 basement levels.

The Planning Proposal was refused by Council for strategic and site-specific reasons on 29 October 2018. In response to Council's refusal, the applicant lodged a Rezoning Review request with the State Government which was considered by the Sydney North Planning Panel (SNPP) on 15 March 2019. The SNPP recommended the Planning Proposal not proceed to a Gateway Determination as it found the Planning Proposal was inconsistent with the strategic plans relating to the site, including the land use and certain 'significant site' principles under the draft St Leonards and Crows Nest 2036 Plan (previously known as and the Land Use and Infrastructure Implementation Plan or LUIIP).

## Ministerial Direction

On 26 November 2021, the Minister for Planning made the Environmental Planning and Assessment (Statement of Expectations) Order 2021. The Order established various expectations in relation to Council's development assessment, planning proposal and strategic planning roles and expected levels of performance. In particular, the Minister confirmed his expectations that Councils should:

*... make a decision as to whether to support or not a proponent led planning proposal as soon as practical and no longer than 90 days.*

The Order includes an explanatory note which states:

*... If a Council is found to not be meeting these expectations, the Minister can take these matters into consideration as part of determining if it is appropriate to appoint a planning administrator or regional panel to exercise Council's functions.*

In the context of this order, Council staff have sought to finalise its assessment and reporting of the proposal with minimal delay.

# Report

## 1. Planning Proposal

### 1.1. Applicant

The subject Planning Proposal (PP2/23) was lodged by Stockland Development Pty Ltd. Owner's consent has been obtained.

### 1.2. Site Description

The subject site comprises a single allotment of land located at 601 Pacific Highway St Leonards and is legally described as Lot 71 in DP 749690.

The site is irregular in shape covering an area of 2,843.63m<sup>2</sup>, with a frontage of approximately 71m to the Pacific Highway, 70m to Atchison Street, and 53m to Mitchell Street.

The land generally falls in a south-westerly direction from its north-eastern corner down to its south-western corner. There is an approximate 2.6m fall from east to west along the Pacific Highway frontage; 3.7m fall from east to west along the Atchison Street frontage; and 2.2m fall from north to south along the Mitchell Street frontage.

The site currently accommodates a 14-storey commercial office building with ground level retail uses, and 158 carparking spaces across four basement levels.



FIGURE 1: Subject Site

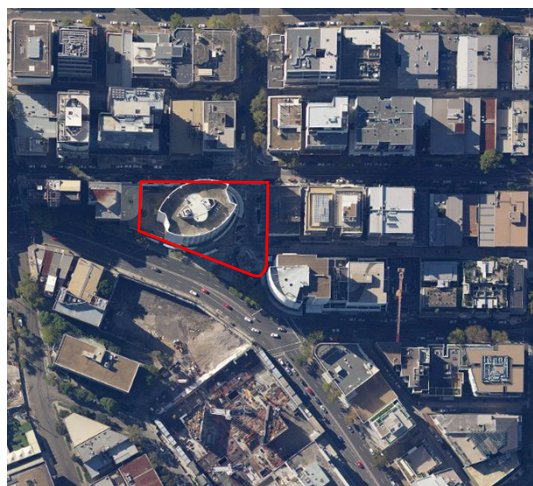


FIGURE 2: Aerial Photo

### 1.3. Proposed Instrument Amendment

The Planning Proposal seeks to;

- amend the Height of Buildings Map to NSLEP 2013 such that the maximum building height for 601 Pacific Highway is increased from 49m to RL276.5 (equivalent to 189m); and
- amend the Floor Space Ratio Map to NSLEP 2013 such that a floor space ratio (FSR) control of 20:1 is introduced for 601 Pacific Highway.

### 1.4. Indicative Concept Scheme

The Planning Proposal is accompanied by an indicative concept scheme to demonstrate what could be achieved if the proposed amendments were implemented. The scheme includes a 42-storey commercial development with a part five-storey and part six-storey podium and 36-storey tower above; comprising 56,348 sqm of commercial office floor space; 408 sqm of retail floor space; and 128 car spaces over four basement levels (refer to Figure 3 below).



*FIGURE 3: Artist's impression of the indicative concept design, viewed from the Pacific Highway, looking north-west – PP2/23 (Applicant's Urban Design Report)*

## **2. Assessment**

By Ministerial Direction, all Planning Proposals are required to be referred to the Local Planning Panel for advice prior to council determining whether the planning proposal should be forwarded to the DPE for the purposes of seeking a Gateway Determination.

A detailed assessment of the proposal was undertaken by Element Environment (on behalf of Council) and considered by the NSLPP on 19 July 2023:

<https://www.northsydney.nsw.gov.au/downloads/file/2631/pp01-601-pacific-highway-st-leonards-pp-2-23-report-19-july>.

## **3. Local Planning Panel**

The NSLPP considered the Planning Proposal at its meeting on 19 July 2023, when it agreed with the recommendations of a detailed assessment report undertaken by Element Environment (on behalf of Council) which recommended the Planning Proposal be supported to proceed to a Gateway Determination subject to amendment.

The Panel considered an amended concept scheme presented by the applicant at the meeting, which proposed a reduced podium height and overall building height of RL265 (equivalent 177m). The Panel, however, concurred with the recommendations of the assessment report that the Planning Proposal and supporting concept design should be amended to a reduced overall building height of RL259 (equivalent to 171m) and podium height of 20.5m for four to five storeys, to provide the necessary transition in heights envisaged by the 2036 Strategy, reduce overshadowing impacts, and provide a better urban design outcome.

The Panel recommended the Planning Proposal be accompanied by a site-specific DCP to promote design excellence and provide greater certainty over future built-form outcomes on the site. This is not considered necessary as Council recently amended NSDCP 2013 to introduce built form controls to better guide development associated with the implementation of the 2036 Plan. NSDCP 2013 contains site-specific controls relating to: form, massing and scale; podium height and treatment; setbacks; solar access; and ground level activation. Any future DA for the site will also be required to demonstrate consistency with other general DCP provisions relating to wind speeds, visual privacy, environmental efficiency, car parking and transport. It is considered that the various non-compliances identified with NSDCP 2013 can be addressed at the future detailed DA stage. It should be noted that any future DA for the site will also be subject to review by a Design Excellence Panel.

The Panel noted that the Planning Proposal is not accompanied by a Voluntary Planning Agreement (VPA) to deliver public benefits, and that the State Government's current Special Infrastructure Contribution (SIC) does not apply to commercial development. The Panel recommended the applicant be invited to consider entering into a VPA with Council to deliver public/community benefits. This would be in addition to the applicable section 7.11 local infrastructure contributions (estimate \$8.7 million), which will be levied with any future Development Application (DA) approval for the site and the State Government's proposed

Residential and Productivity Contribution (estimate \$1.25 million), which will replace the existing SIC and is proposed to be systematically phased in starting October 2023.

A copy of the NSLPP recommendation can be found at:

<https://www.northsydney.nsw.gov.au/downloads/file/2660/nslpp-minutes-19-july>

#### **4. Key Issues**

##### **4.1. Strategic Merit**

The site is located within the area covered by the St Leonards and Crows Nest 2036 Plan (*2036 Plan*), adopted by the DPE in August 2020.

The land use, height and density provisions set out in the 2036 Plan for the subject site are as follows:

- B3 'Commercial Core' zone (now referred to as E2 'Commercial Centre' under recent Employment Zone Reforms);
- a maximum building height of 42-storeys;
- a overall FSR of 20:1; and
- a minimum non-residential FSR control of 20:1;

The 2036 Plan is implemented under section 9.1 of the EP&A Act 1979, which requires Planning Proposals for land within the precinct to be consistent with the 2036 Plan.

Council's St Leonards/Crows Nest Planning Study – Precincts 2 & 3 (2015) also envisaged the delivery of a commercial building on the subject site (B3 'Commercial Core' zone) and identified it as a 'tall building' site which is defined as developments over 18 storeys in height.

Whilst the indicative concept scheme accompanying the Planning Proposal reflects a 42-storey building consistent with the 2036 Plan, the requested maximum building height of RL276.5 (189m) is considered excessive and could potentially accommodate a commercial building with a greater number of storeys.

To ensure future development on the site is for no more than 42-storeys, it is recommended that the Planning Proposal be amended to a maximum building height of RL 259 (171m), which has been established based on a reduced podium height and reduced height allowance above the top-level plant room for architectural roof features. This will ensure that future development will remain consistent with the 2036 Plan's maximum building height of 42 storeys and reduce overshadowing and visual impacts.

On this basis, the proposal is considered to satisfy the following aspects of the strategic merit test:

- does not contradict the ability to achieve the objectives and actions of high-level planning strategies;

- is generally consistent with the provisions of the St Leonards and Crows Nest and accompanying Ministerial Direction 1.13 Implementation of St Leonards and Crows Nest 2036 Plan; and
- the bulk and scale of any future development on the site, and impacts to the surrounding environment and wider community, can be appropriately mitigated as part of the implementation of appropriate standards within NSDCP 2013 and the DA process.

#### **4.2. Site-specific Merit**

A detailed assessment of the Planning Proposal indicates that an improved built form scale and height transition could be achieved on the site that better meets the objectives and intended outcomes of the 2036 Plan and further minimise impacts to the surrounding area. This is outlined in the subsections below.

##### *Building Height*

As previously noted in this report, the requested maximum building height of RL276.5 (189m) for a 42-storey commercial building is considered excessive and could potentially result in a future development with a greater number of storeys, contrary to the intent of the 2036 Plan.

The excessive building height is not supported for the following reasons:

- the floor-to-floor heights of the podium as shown in the indicative concept design are greater than required and could be reduced;
- the additional height sought above the top-level plant room, for plantroom clearance and an architectural roof feature, could potentially result in additional developable floor area and a development that is greater than 42 storeys; and
- the proposed maximum building height is inconsistent with the height and transition principles of the 2036 Plan.

The applicant's submitted documentation provides some rationale for the proposed floor-to-floor heights, stating they are appropriate to achieve PCA A-Grade quality commercial accommodation and to accommodate relevant mechanical ventilation and building servicing equipment (plan, fire safety etc).

Whilst the intention to develop a PCA A-Grade commercial building is supported, a comparison of other recently approved and constructed premium commercial development in North Sydney LGA reveals that the proposed floor-to-floor heights for the podium are greater than required to be provided for commercial spaces (typically 3.7m) and could be reduced. The applicant's proposed floor-to-floor heights for the tower (3.75m) and plantroom levels (6-8m) do not appear unreasonable when compared to other recently approved/constructed commercial buildings such as Victoria Cross Over Station Development (OSD) and 1 Denison Street North Sydney. However, the height



proposed for top-level plantroom clearance and architectural roof feature (19.9m) is much greater than the roof allowances of comparable commercial developments.

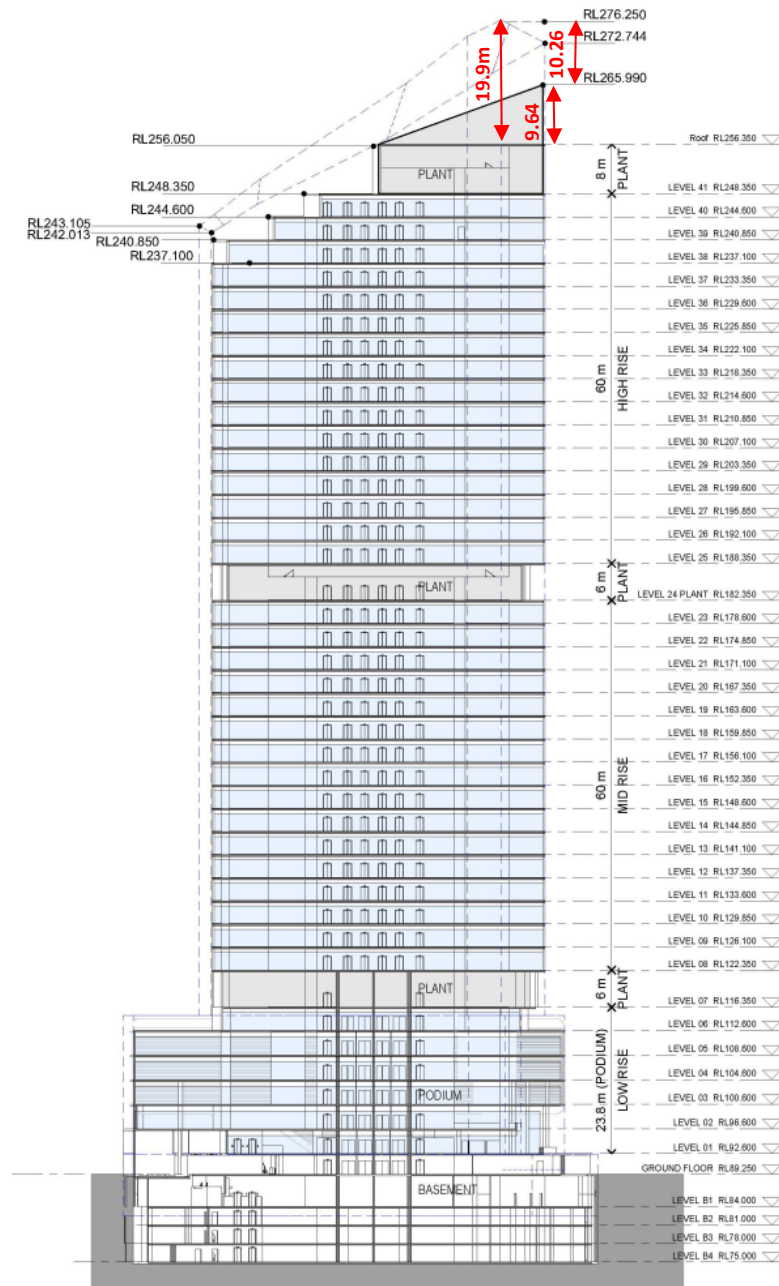


FIGURE 4: Indicative Section Plan (Applicant's Urban Design Report, p.80)

The applicant's indicative concept scheme represents one way of achieving the height and FSR control changes. At this stage of the planning process there is no certainty that the additional height sought above the top-level plant room will be utilised for the purposes of an architectural roof feature. The increased height could potentially result in a taller building and with a greater overall bulk and scale, and overshadowing, visual and wind impacts than that of a 42-storey building as envisaged under the 2036 Plan. As such, it is recommended that the additional proposed 19.9m above the plant room level be

reduced to 3m to allow for some flexibility in building design whilst ensuring the final proposed building is no more than 42-storeys in height.

The proposed overall maximum building height of RL 276.5 (189m) would also result in a built form outcome that would be taller than the maximum building height of the adjacent site at 617-621 Pacific Hwy (180m) and would therefore be inconsistent with the height and transition principles of the 2036 Plan.

### *Bulk and Scale*

The applicant's supporting concept design presents a five-storey podium to Mitchell Street Plaza frontage and a six-storey podium along the Pacific Highway and Atchison Street frontages. This is inconsistent with the 2036 Plan and NSDCP 2013 and will result in an over-scaled podium.

To provide an appropriate human scale to Mitchell Street Plaza and better contextual response, it is recommended that the proposal be redesigned to provide a podium height of four to five storeys in accordance with NSDCP 2013. A podium height of four storeys (approximately 15.6m-17.8m) to Mitchell Street is recommended which increases to a maximum of five storeys along the Atchison Street and Pacific Highway frontages (i.e., up to approximately 19.3m for five storeys along Atchison Street, and 20.4m for five storeys along Pacific Highway when taking into account the ground level changes across the site). These heights assume a ground floor level of 4.5m-6.7m and a floor-to-floor of 3.7m for commercial levels above.

### *Overshadowing*

The applicant has provided shadow diagrams to show the extent of impact from the proposal on key public open spaces, valued streetscapes and surrounding residential areas.

The proposal complies with the 2036 Plan's solar access controls and does not create additional overshadowing to Newlands Park, Ernest Place and Hume Street Park between 10am-3pm in mid-winter or create additional overshadowing to Oxley and Mitchell Streetscapes and Willoughby Road between 11.30am and 2.30pm in mid-winter.

The proposed built form will however, result in additional overshadowing to properties to the south and south-west. Whilst the majority of residential properties within the St Leonards and Crows Nest precinct boundary will continue to receive at least two hours solar access between 9am-3pm in mid-winter, the applicant's analysis indicates that there are a number of north facing apartments at 500 Pacific Highway ('Landmark Building') which will receive less than two hours solar access between 9am-3pm in mid-winter.

In a dense urban environment, an inevitable degree of overshadowing is expected when redevelopment of the scale envisaged occurs. During the preparation of the 2036 Plan, it was recognised that, whilst additional height and density may lead to impacts on

residential amenity (such as solar access), the concentration of development in close proximity to mass public transport, employment and services would better accommodate significant housing and jobs targets than dispersing this growth throughout more sensitive neighbourhoods with lower levels of accessibility and services.

Notwithstanding, the excessive building height results in shadow lengths longer than necessary to accommodate a 42-storey commercial building and the recommended reduction in height will assist in reducing the extent of overshadowing impacts to surrounding residential areas.

### *Wind*

The applicant's Wind Assessment identifies significant wind tunnelling/velocity impacts and a series of wind mitigation measures to conclude that the site is capable of accommodating future development aligned with the proposed planning control changes.

The assessment, however, only addresses the general wind effects identifiable by visual inspection of the architectural drawings and does not include wind tunnel testing. In the absence of wind tunnel testing to accurately quantify existing and future expected wind speeds, it is unclear whether the suggested mitigation measures will provide an acceptable level of wind comfort and amenity compliant with NSDCP 2013.

Due to the nature of the existing wind environment and overall massing of the subject development and complexity of building form, further wind tunnel testing is required to quantify existing and future expected wind speeds in and around the proposed development. These matters can be addressed in greater detail at the future detailed DA stage when refined designs are better articulated.

### *Transport*

The indicative concept design proposes to reduce the number of car spaces on site from 158 to 128 car spaces across the four basement levels, which is compliant with the NSDCP 2013 maximum car parking rates. The submitted Traffic and Parking Assessment indicates the development will generate an overall reduction in traffic generation to that currently experienced due to the overall reduction in on-site parking provision. The proposal's impact to the surrounding network is expected to be negligible.

### *Public domain*

The Planning Proposal identifies a number of opportunities to upgrade the public domain interface (within the site boundary), including upgrades to paving and planter boxes along Pacific Highway and Mitchell Street. A key objective of the 2036 Plan is that new development provides opportunities for street tree planting, particularly along Mitchell Street, Pacific Highway and Atchison Street. NSDCP 2013 contains provisions requiring basements to be adequately setback to provide sufficient soil depth for canopy streets.

Additionally, the 2036 Plan identifies Atchison Street as an important ‘Civic Street’ and the ‘retail heart of St Leonards’. The NSDCP 2013 also requires that development along Atchison and Mitchell Streets maximise ground level activation by focusing food and drink premises and retail within a fine grain built form. The indicative concept design does not adequately address these design considerations. It is considered, however, that these matters can be resolved through the future detailed DA process.

## 5. Submissions

There are no statutory requirements to publicly exhibit a planning proposal before the issuance of a Gateway Determination. However, Council sometimes receives submissions in response to planning proposals which have been lodged but not determined for the purposes of seeking a Gateway Determination. The generation of submissions at this stage of the planning process arise from the community becoming aware of their lodgement through Council’s application tracking webpage and on-site signage.

At the time this report was completed, a total seven submissions had been received including six individual submissions and one from the St Leonards Strata Community Group. All seven submissions object to the Planning Proposal.

Concerns were raised with respect to the proposed increase in height and density, and overall scale and impact of the proposed development including overshadowing, privacy, wind impacts, traffic congestion and pedestrian movement, overcrowding, public domain comfort and safety, sustainability, noise, and air quality impacts, as well as the overall cumulative impact of development in the area. These concerns have been addressed throughout the body of the detailed assessment report.

## Options

Council has the following options in relation to this matter:

1. Not support the Planning Proposal.
2. Support the Planning Proposal in its current form.
3. The Recommended option. Support the Proposal, subject to it being amended to Council’s satisfaction addressing the recommendations of the detailed assessment report undertaken by Element Environment (on behalf of Council). Specifically, the maximum building height be amended to RL259 (equivalent to 171m) and a maximum street wall (podium) height of 20.5m for 4 to 5 storeys.

These options are assessed in the table below.

Option	Finance/Resourcing	Risk/Opportunity	Consultation
1.	Not supporting the Planning Proposal will have a negligible financial impact, although from a resourcing perspective,	The applicant can lodge a Rezoning Review with the State Government. There is a risk that the Sydney North Planning Panel could support	Should the Planning Proposal be refused, no further consultation is required beyond this report and notifying

<b>Option</b>	<b>Finance/Resourcing</b>	<b>Risk/Opportunity</b>	<b>Consultation</b>
	additional staff time will be required to make representations to the State Government if a Rezoning Review is lodged by the applicant.	the progression of the Planning Proposal contrary to Council's decision.	the applicant and submitters of Council's decision.
2.	Supporting the Planning Proposal will have a negligible financial impact.	The Planning Proposal, in its current form, is seeking a maximum building height of RL276.5 (189m) which is considered excessive for the number of storeys envisaged under the 2036 Plan for the site and could potentially result in a future development with a greater number of storeys, contrary to the intent of the 2036 Plan. This will result in a greater level of impact (overshadowing and visual) than necessary.	If progressed in its current form, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the conditions of any Gateway Determination issued by the DPE.
3.	Supporting the Planning Proposal in an amended form will have a negligible financial impact.	This report recommends the Planning Proposal be amended such that the requested maximum building height be reduced from RL176.5 (189m) to RL259 (171m) to ensure any future development on the site is consistent with built form scale and height transition principles of the 2036 Plan and minimise overshadowing and visual impacts.	If progressed in an amended form, Community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the conditions of any Gateway Determination issued by the DPE.

Option 3, is recommended for the following reasons:

- The Planning Proposal, subject to being amended in accordance with the recommendations of the detailed assessment report undertaken by Element Environment (on behalf of Council), satisfies the required strategic and site-specific merit criteria for progressing Planning Proposals by virtue of its consistency with the St Leonards and Crows Nest 2036 Plan and accompanying Ministerial Direction 1.13 Implementation of St Leonards and Crows Nest 2036 Plan.

- If Council were to refuse the Planning Proposal, the applicant can lodge a Rezoning Review with the State Government and there is a risk that the Planning Proposal will progress via an alternate approval pathway.

### **Consultation requirements**

Should the Planning Proposal be supported, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the conditions of any Gateway Determination issued by the Department of Planning and Environment.

### **Financial/Resource Implications**

This report recommends the Planning Proposal be supported subject to amendment. Whilst the Planning Proposal is not accompanied by a Voluntary Planning Agreement (VPA), it is recommended that the applicant be invited to consider making an offer to deliver public/community benefits via a VPA with Council. This would be in addition to the applicable section 7.11 local infrastructure contributions (estimated to be \$8.7 million) which will be levied with any future Development Application (DA) approval for the site.

### **Legislation**

The proposal's compliance with the relevant provisions of the Environmental Planning and Assessment Act, 1979 and accompanying Regulations (2021) have been addressed throughout this report.