

## **8.14. Planning Proposal 3/22 - 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest. Site also known as 'Five Ways Triangle Site'**

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**ATTACHMENTS:** Nil

### **PURPOSE:**

To present to Council the assessment report of Planning Proposal 3/22 at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest (also known as 'Five Ways Triangle site'), which seeks to amend North Sydney Local Environmental Plan 2013, following its review by the North Sydney Local Planning Panel on 8 June 2022.

### **EXECUTIVE SUMMARY:**

On 19 January 2022, Council received a Planning Proposal to amend the North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land at 391-423 Pacific Highway, 3-15 Falcon Street and 8 Alexander Street, Crows Nest (also known as 'Five Ways Triangle site'). The site is located within the area covered by the St Leonards Crows Nest 2036 Plan (2036 Plan), adopted by the then Department of Planning, Industry and Environment (DPIE) on 29 August 2020. It is accompanied by a s9.1 Ministerial Direction which requires planning decisions be made consistent with the Plan.

The Planning Proposal seeks to amend NSLEP 2013 to:

- increase the maximum building height control from 16m to 63.5m
- establish a maximum floor space ratio control of 5.8:1
- increase the minimum non-residential floor space ratio control from 0.5:1 to 2.5:1.

The intent of the proposal, as reflected in the accompanying indicative concept scheme, is to facilitate the delivery of a 16-storey mixed-use building with a 3-storey commercial podium and 13-storey residential tower above with approx. 129 apartments and 247 car parking spaces.

The Planning Proposal is also accompanied by suite of suggested site-specific development controls to be incorporated within North Sydney Development Control Plan 2013 (NSDCP 2013) to provide greater certainty over a future built form on the site.

On 8 June 2022, the North Sydney Local Planning Panel (NSLPP) considered a Council Officer's report on this Planning Proposal and generally agreed with its recommendations. Whilst the Panel acknowledged in its decision, that development of the proposed height and bulk on the

site will inevitably change the existing character of the Crows Nest Village, it also acknowledged that development of this nature is anticipated in the 2036 Strategy.

A copy of the NSLPP Minutes and Recommendation is available via the following link;

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/8\\_june\\_2022/final\\_minutes\\_jm\\_8\\_june\\_2022dl\\_13june.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/8_june_2022/final_minutes_jm_8_june_2022dl_13june.pdf)

On balance, it is considered that the Planning Proposal demonstrates strategic and site-specific merit as it:

- does not contradict the ability to achieve the objectives and actions of high-level planning policies and strategies;
- is generally consistent with the provisions of the St Leonards and Crows Nest 2036 (2036 Plan) and accompanying Ministerial Direction; and
- the bulk and scale of any future development on the site, and associated impacts to the surrounding environment and wider community, has the ability to be appropriately mitigated to comply with the intended outcomes of the 2036 Plan, as part of the implementation of appropriate standards within NSDCP 2013 and the development application process.

It is recommended the Planning Proposal be supported to proceed to a Gateway Determination subject to:

- the Planning Proposal being amended to a maximum building height of 60m; and
- the preparation of site-specific DCP provisions that satisfactorily address the recommendations of the Council Officer's Report with respect to building mass and transition, podium height and treatment, setbacks, heritage, future public open space/through-site links and parking rates.

The Panel agreed that a DCP for the site is necessary to ensure the massing and form of the development is appropriate and to minimise overshadowing, and that there should be a continuing dialogue between the applicant and Council as to the finer details contained within the DCP.

The Panel has also recommended Council review its DCP parking rates, as a matter of priority, to exclude the area covered by the 2036 Strategy in the DCP, to ensure reduced maximum parking rates apply, in line with the principle contained in the 2036 Strategy.

#### **FINANCIAL IMPLICATIONS:**

The costs associated with the administration and any exhibition of the Planning Proposal and DCP will be drawn from existing budget lines which anticipate this type of activity.

The site is subject to the State Infrastructure Contribution for the provision of infrastructure and facilities within the St Leonards and Crows Nest Precinct, as well as Council's s. 7.11 infrastructure contributions levied at the Development Application stage.

**RECOMMENDATION:**

**1. THAT** the Planning Proposal be amended to Council's satisfaction addressing the recommendations outlined in the Council Officer's Report and the North Sydney Local Planning Panel's Recommendations, prior to being forwarded to the Department of Planning and Environment with a request for a Gateway Determination. Specifically, the planning proposal is to be amended to:

- clearly specify a maximum building height control of 60m; and
- include a site-specific Development Control Plan with provisions addressing Council's recommendations with respect to podium height and treatment, setbacks, building mass and transition, heritage, future public open space/through-site links and parking rates.

**2. THAT** upon receipt of a Gateway Determination, the associated draft DCP be exhibited concurrently with the amended Planning Proposal.

**3. THAT** the indicative reference scheme accompanying the Planning Proposal be amended in accordance with the provisions of the site-specific DCP prior to commencement of public exhibition.

## **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

2.3 Sustainable transport is encouraged

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

3.5 North Sydney is regulatory compliant

4. Our Social Vitality

4.1 North Sydney is connected, inclusive, healthy and safe

4.4 North Sydney's history is preserved and recognised

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

5.3 Community is informed and consulted

## **BACKGROUND**

The subject Planning Proposal (PP3/22) represents the third attempt by the applicant, Deicorp Property (Crows Nest) Pty Ltd, who has submitted two previous planning proposals for the Five Ways Triangle site.

The first Planning Proposal (PP4/20) sought to deliver a 36-storey mixed-use development with 310 residential apartments, was withdrawn by the applicant in September 2020. The second Proposal (PP7/20) sought to deliver a 19-storey mixed-use development with 233 residential apartments, was refused by Council and the Sydney North Planning Panel (SNPP) at rezoning review in October 2021.

### **Description of Planning Proposal**

On 19 January 2022, the subject Planning Proposal (PP3/22) was lodged by Gyde Consulting on behalf of Deicorp Projects (Crows Nest) Pty Limited, the owner of 18/19 allotments comprising the subject site.

The Planning Proposal seeks to amend NSDCP 2013 as it applies the subject site as follows:

- increase the maximum building height control from 16m to 63.5m

- establish a maximum floor space ratio control of 5.8:1
- increase the minimum non-residential floor space ratio control from 0.5:1 to 2.5:1.

The Planning Proposal is accompanied by an indicative reference design to demonstrate what could be achieved on the site if the proposed amendments to NSLEP 2013 were implemented. It would accommodate a 16-storey mixed-use commercial and residential building of approximately 18,566sqm Gross Floor Area (GFA), comprising 8,002sqm commercial floor space within a 3 storey podium and approx. 129 apartments incorporated within a 13-storey residential tower above the podium.

<b>TABLE 1: Numerical overview of reference design</b>	
<b>Building Height</b>	63.5m <ul style="list-style-type: none"> <li>• Podium 3 storeys + mezzanine</li> <li>• Tower 13 storeys</li> </ul>
<b>Floor Space Ratio (FSR)</b>	5.8:1 (total)
<b>Non-Residential Floor Space Ratio (FSR)</b>	2.5:1
<b>Gross Floor Area</b>	18,566sqm (total) <ul style="list-style-type: none"> <li>• 8,002 sqm non-residential GFA</li> <li>• 10,564 sqm residential GFA</li> </ul> (129 apartments)
<b>Car Parking</b>	247 car spaces over 7 basement levels

To provide increased certainty, the proposal is accompanied by suggested amendments to North Sydney Development Control Plan 2013 (NSDCP 2013) to assist in the future assessment of any development application. The proposed controls relate to setbacks, podium/street wall heights, pedestrian through-site links and vehicular access.

### **Panel Referral**

On 23 February 2018, the Minister for Planning released a section 9.1 Direction which outlines the instances when a Planning Proposal must be referred to a Local Planning Panel for advice prior to a council determining whether that Planning Proposal should be forwarded to the Department of Planning and Environment (DPE) for the purposes of seeking a Gateway Determination.

All Planning Proposals are required to be referred to the Local Planning Panel, unless they meet any of the following exemptions:

- the correction of an obvious error in a local environmental plan;
- matters that are of a consequential, transitional, machinery or other minor nature;  
or
- matters that Council's General Manager considers will not have any significant adverse impact on the environment or adjacent land.

The Planning Proposal does not meet any of the exemption criteria and therefore must be referred to the Local Planning Panel for advice prior to Council making any determination on the matter.

### **Ministerial Order (Statement of Expectations)**

On 26 November 2021, the Minister for Planning made the Environmental Planning and Assessment (Statement of Expectations) Order 2021. The Order establishes various expectations in relation to Council's development assessment, planning proposal and strategic planning roles and expected levels of performance. In particular, the Minister confirms 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 not to 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 and the various assessment requirements including internal assessment, referral to the Local Planning Panel and formal reporting to Council to occur within the 90-day threshold, amended plans and negotiations have not been invited and the application has been assessed on the basis of the information as lodged.

### **CONSULTATION REQUIREMENTS**

Should Council determine that the Planning Proposal proceeds, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination issued by the Department of Planning and Environment (DPE).

### **DETAIL**

#### **1. Panel recommendation**

On 8 June 2022, the North Sydney Local Planning Panel (NSLPP) considered a Council Officer's Report on this Planning Proposal. A copy of the NSLPP Minutes and Recommendation is available via the following link;

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/8\\_june\\_2022/final\\_minutes\\_jm\\_8\\_june\\_2022dl\\_13june.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/8_june_2022/final_minutes_jm_8_june_2022dl_13june.pdf)

The Panel recommended the following:

*The Panel members have undertaken independent site inspections prior to the meeting.*

*The Panel considers that development of the proposed height and bulk on this site will inevitably change the existing character of the Crows Nest Village. Nevertheless, it is acknowledged that development of this nature is anticipated in the 2036 Strategy.*

*Subject to the further recommendations below, and the need to ensure the massing of the development is appropriate to minimize overshadowing of the Conservation Area, the Panel considers the concept proposed presents a considered option that is generally consistent with the 2036 Strategy.*

*Council Officer's Report and the Recommendation is generally endorsed by the Panel subject to a maximum height of 60 metres. The Panel recognizes the need to facilitate sustainable building methods to satisfy the Design and Building Practitioners Act 2020, and the Building Practitioners Regulation 2021. At the same time this provides certainty as to the number of storeys capable of being built within the 60 metre height limit, that is, 16 storeys.*

*The Panel agrees that a development control plan for the site is necessary given the prominence of this 'Five Ways Triangle Site' and that there should be continuing dialogue between the applicant and council as to the finer details contained within the DCP. This includes: ensuring there are clear public/community benefits of any through site link; guidelines for the overall massing to minimize overshadowing of the extensive and significant Conservation Areas to the south and east; appropriate materials and finishes; the tower to be setback a minimum 6 metres above the podium (from all sides), given that the building will be seen in the round; affordable housing; sustainability measures; wind analysis; and the lower parking rates as recommended in the Council officer's report. A development of this size also warrants inclusion of car share spaces.*

*Any future DA will also be the subject of review by the Council's Design Excellence Panel. As anticipated in the 2036 Strategy, the site can accommodate increased densities for both commercial and residential purposes given the investment in public infrastructure that has occurred in this area. It follows that the Panel considers that it is imperative, and in line with best practice, that the car parking be reduced and indeed this is a prerequisite of the 2036 Strategy that has identified this site for substantial uplift in densities.*

*The Panel's recommendation to the Council is that having regard to the above comments the Planning Proposal proceed to a Gateway Determination.*

*By way of comment, the Panel encourages Council to review its DCP for parking rates, as a matter of priority, to exclude the area covered by the 2036 Strategy in the DCP, to ensure reduced maximum parking rates apply, in line with the principle contained in the 2036 Strategy.*

## **2. Key issues**

A copy of the Council Officer's detailed assessment report can be viewed via the following link;

[https://www.northsydney.nsw.gov.au/files/assets/public/docs/1\\_council\\_meetings/committees/nslpp/8\\_june\\_2022/pp01 - 391-423\\_pacific\\_hwy\\_pp322\\_rpt.pdf](https://www.northsydney.nsw.gov.au/files/assets/public/docs/1_council_meetings/committees/nslpp/8_june_2022/pp01_-_391-423_pacific_hwy_pp322_rpt.pdf)

Pursuant to Ministerial Direction 7.11 (renumbered Direction 1.13) to section 9.1 of the Environmental Planning & Assessment Act 1979, Council is required to assess the planning proposal for its consistency against the provisions of the St Leonards and Crows Nest 2036 Plan (2036 Plan).

It is considered that the requested increase in density (FSR controls) is generally consistent with the recommendations of the 2036 Plan. However, the requested maximum building height of 63.5m is greater than that required to deliver a 16-storey mixed-use building on the site and should be reduced.

The Council Officer's Report recommended the proposal be amended to a maximum building height of 56m. A building height of 56m for a 16-storey building has been considered appropriate on other mixed-use sites within the precinct with similar non-residential podium requirements, and consistent with the height recently awarded to 23-35 Atchison Street and 50-56 Atchison Street, St Leonards.

The North Sydney Local Planning Panel (NSLPP) has recommended the proposal be amended to a maximum building height of 60m. The Panel's recommendation recognises the need to facilitate sustainable building methods to satisfy the Design and Building Practitioners Act 2020, and the Building Practitioners Regulation 2021, whilst also providing certainty as to the number of storeys capable of being built within the 60m height limit, that is, 16 storeys.

As previously noted, the overall FSR of 5.8:1 sought by the applicant is consistent with the recommendations of the 2036 Plan. However, Council's internal modelling indicates that if standard FSR efficiency rates are applied (i.e. 75% residential, 50% ground level retail, 80% commercial), the maximum FSR achievable within the proposed building envelope is approx. 6.6:1, and not the requested 5.8:1. This suggests that there is some flexibility within the proposed floorplate, and that it could either be reduced in size or the number of levels within a portion of the building reduced (stepped down) to achieve a more appropriate built form scale and height transition outcome than that reflected in the applicant's proof of concept. As such, further refinement and modification of the proposed built form is required.

To ensure the future bulk, scale and massing of development on the site is consistent with the urban design principles and objectives of the 2036 Plan, and the impacts (overshadowing, visual, heritage and traffic) arising from the Planning Proposal are not significantly different to those envisaged for the site under the 2036 Plan, it is recommended a Development Control Plan (DCP) be prepared that includes the following provisions:

- appropriate podium height and podium treatment, including removal of any existing visually intrusive signage and advertising;
- retention/interpretation of 423 Pacific Highway into the podium;
- appropriate setbacks above the podium;



- a reduced height on the eastern portion of site to achieve appropriate transition to surrounding low scale development to the east and minimise overshadowing impacts to the Holtermann Estate HCA;
- potential provision of a small open space area/plaza at the north-eastern corner of the site and a through-site link connecting the plaza to the existing bus stop on Pacific Highway, with active street frontages; and
- appropriate parking rates that minimise net traffic generation.

It is recommended the draft DCP be prepared addressing the recommendations outlined in the Council's Officers Report and NSLPP Recommendations prior to the proposal proceeding to the next stage of the plan making process. This would potentially require the applicant to revise their proof of concept.

### **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 of reporting, two submissions had been received. Concerns were raised with respect to the proposed height increase and associated density at such a sensitive and prominent corner. In particular, there is concern that the scale of development proposed will dominate and detract from the heritage value of the Five ways intersection and is inconsistent with the village character of Crows Nest. Concerns were also raised with respect to the proposal's impact on the amenity of the immediate precinct, including overshadowing, wind tunnel effects and traffic generation as a result of the proposed number of parking spaces.

The issues raised in the submissions received are largely addressed in the Council Officer's detailed assessment report.

As previously discussed, further refinement and modification of the proposal is required. It is recommended that the Planning Proposal be amended to addressing the recommendations of the Council Officer's Report and NSLPP Recommendations before progressing to the next stage of the plan making process. If the Planning Proposal proceeds to a Gateway Determination, the community will be formally consulted about the draft proposal and invited to comment.

### **Conclusion**

The Planning Proposal (PP3/22) seeks to amend North Sydney Local Environmental Plan as it applies to the site known as the 'Five Ways Triangle site' as follows:

- increase the maximum building height control from 16m to 63.5m

- establish a maximum floor space ratio control of 5.8:1
- increase the minimum non-residential floor space ratio control from 0.5:1 to 2.5:1.

On 8 June 2022, the North Sydney Local Planning Panel (NSLPP) considered a Council Officer's report on this Planning Proposal and generally agreed with the report's recommendations. Whilst the Panel acknowledged that development of the proposed height and bulk on the site will inevitably change the existing character of the Crows Nest Village, it also acknowledged that development of this nature is anticipated in the 2036 Strategy.

It is recommended that the Planning Proposal be supported to proceed to a Gateway Determination subject to:

- the Planning Proposal being amended to a maximum building height of 60m; and
- the preparation of site-specific DCP provisions that satisfactorily address the recommendations of the Council Officer's Report with respect to building mass and transition, podium height and treatment, setbacks, heritage, future public open space/through-site links and parking rates.

The Panel agreed that a DCP for the site is necessary to ensure the massing of the development is appropriate and to minimise overshadowing, and that there should be a continuing dialogue between the applicant and Council as to the finer details contained within the DCP.

The Panel has also recommended Council review its DCP parking rates, as a matter of priority, to exclude the area covered by the 2036 Strategy in the DCP, to ensure reduced maximum parking rates apply, in line with the principle contained in the 2036 Strategy.