SUBJECT: Planning Proposal - 200-220 Pacific Highway, Crows Nest

AUTHOR: Ben Boyd, Executive Strategic Planner

ENDORSED BY: Joseph Hill, Acting Director Planning and Development Services

EXECUTIVE SUMMARY:

On 28 April 2014, Council considered an assessment of a Planning Proposal for the site known as 200-220 Pacific Highway Crows Nest. The Planning Proposal sought to amend the non-residential floor space ratio range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from 0.5:1 - 2:1 to 0.2:1 - 2:1. It was proposed to achieve this by amending clause 4.4A and the Non-residential Floor Space Ratio Range Map (LCL_001) to NSLEP 2013. The intent of the Planning Proposal was to allow the conversion of 6 approved serviced apartments to residential accommodation.

The report recommended the following:

1. THAT Council resolve to forward the attached Planning Proposal to the Minister for Planning and Infrastructure in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979, subject to the following amendment:
   a. The non-residential floor space ratio range for the subject site be amended to 0.24:1 – 2:1.

2. THAT Council include a review of the non-residential floor space requirements of mixed use areas during the undertaking of the Planning Study for Precinct 4 of the St Leonards / Crows Nest Town Centres.

3. THAT Council undertake a planning study that reviews the non-residential floor space requirements of mixed use areas as required.

4. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council’s planning controls so that developments incorporating serviced apartments do not undermine Council’s ability to meet employment targets.

Council resolved (Min. No.124) to:

1. THAT Council include a review of the non-residential floor space requirements of mixed use areas during the undertaking of the Planning Study for Precinct 4 of the St Leonards / Crows Nest Town Centres.

2. THAT Council undertake a planning study that reviews the non-residential floor space requirements of mixed use areas as required.

3. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council’s planning controls so that developments incorporating serviced apartments do not undermine Council’s ability to meet employment targets.
Council did not make a resolution with respect to Recommendation No.1, on which the report relies. Accordingly, this report seeks Council’s determination with respect as to whether or not it should proceed with the Planning Proposal.

FINANCIAL IMPLICATIONS:
 Nil.

RECOMMENDATION:
1. THAT Council determine its position with respect to the Planning Proposal. In particular, that Council resolves to do one of the following:
   a. forward the attached Planning Proposal to the Minister for Planning and Environment in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979, subject to the following amendment:
      i. The non-residential floor space ratio range for the subject site be amended to 0.24:1 - 2:1.
   b. defer the Planning Proposal from proceeding to Gateway Determination to enable the following to be undertaken:
      i. Council include a review of the non-residential floor space requirements of mixed use areas during the undertaking of the Planning Study for Precinct 4 of the St Leonards / Crows Nest Town Centres.
   c. refuse the Planning Proposal from proceeding to Gateway Determination.
LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence
        2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

Direction: 3. Our Economic Vitality

Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy

BACKGROUND

On 28 April 2014, Council considered an assessment of a Planning Proposal for the site known as 200-220 Pacific Highway Crows Nest. The Planning Proposal sought to amend the non-residential floor space ratio range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from 0.5:1 - 2:1 to 0.2:1 - 2:1. It was proposed to achieve this by amending clause 4.4A and the Non-residential Floor Space Ratio Range Map (LCL_001) to NSLEP 2013. The intent of the Planning Proposal was to allow the conversion of 6 approved serviced apartments to residential accommodation.

The report recommended the following:

1. THAT Council resolve to forward the attached Planning Proposal to the Minister for Planning and Infrastructure in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979, subject to the following amendment:
   a. The non-residential floor space ratio range for the subject site be amended to 0.24:1 – 2:1.
2. THAT Council include a review of the non-residential floor space requirements of mixed use areas during the undertaking of the Planning Study for Precinct 4 of the St Leonards / Crows Nest Town Centres.
3. THAT Council undertake a planning study that reviews the non-residential floor space requirements of mixed use areas as required.
4. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council’s planning controls so that developments incorporating serviced apartments do not undermine Council’s ability to meet employment targets.

Council resolved (Min. No.124) the following:

1. THAT Council include a review of the non-residential floor space requirements of mixed use areas during the undertaking of the Planning Study for Precinct 4 of the St Leonards / Crows Nest Town Centres.
2. THAT Council undertake a planning study that reviews the non-residential floor space requirements of mixed use areas as required.
3. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council’s planning controls so that developments incorporating serviced apartments do not undermine Council’s ability to meet employment targets.
Council did not make a resolution with respect to Recommendation No.1, to which the report ultimately relates. Accordingly, this report seeks Council’s determination with respect to whether or not the Planning Proposal should proceed to Gateway Determination.

CONSULTATION REQUIREMENTS

Should Council determine that the Planning Proposal can proceed, community engagement will be undertaken in accordance with Council’s Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

DETAIL

Under s.56 of the Environmental Planning and Assessment Act 1979 (EP&A Act), Council’s are required to consider and make a determination on any Planning Proposal that it receives. Whilst consideration was given to the Planning Proposal on 28 April 2014 (refer to attached report), no formal determination was made as to whether it should:

- forward the Planning Proposal to the Minister for Planning and Environment in order to receive a Gateway Determination
- defer the Planning Proposal from proceeding to Gateway Determination to enable additional work to be undertaken
- refuse the Planning Proposal from proceeding to Gateway Determination

Accordingly, to ensure compliance with the requirements of the EP&A Act, Council should determine its position in relation to the Planning Proposal.

Where a Council does not make a determination within 90 days of a Planning Proposal’s lodgement, the applicant may seek to have the Planning Proposal reviewed by the Department of Planning and Environment and obtain a determination as to whether or not the Planning Proposal should proceed to Gateway Determination. Applicants may also seek a review if Council determines not to allow the Planning Proposal to proceed to Gateway Determination.

As at the time that this report is considered, Council will have taken a total of 87 days to assess the Planning Proposal, but only 79 days once consideration is given to request for additional information from the applicant. Accordingly, if Council refuses or defers making a determination in relation to this Planning Proposal, the applicant would have the ability to have the determination or non-determination reviewed by the Department of Planning and Environment.
PDS01: Planning Proposal - 200-220 Pacific Highway, Crows Nest

Report of Ben Boyd, Executive Strategic Planner

Council has received a Planning Proposal for the site known as 200-220 Pacific Highway Crows Nest. The Planning Proposal seeks to amend the non-residential floor space ratio range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from 0.5:1 - 2:1 to 0.2:1 - 2:1. It is proposed to achieve this by amending clause 4.4A and the Non-residential Floor Space Ratio Range Map (LCL_001) to NSLEP 2013. The intent of the Planning Proposal is to allow the conversion of 6 approved serviced apartments to residential accommodation.

The Planning Proposal is supported as it:
- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- generally complies with NSW Planning and Infrastructure’s “A guide to preparing planning proposals”;
- is unlikely to result in any adverse impacts on the environment or wider community;
- is unlikely to result in an adverse impact upon employment generation in the locality; and
- does not contradict the ability to achieve the objectives and actions of high level planning strategies.

As such, the Planning Proposal is considered to be satisfactory and should be forwarded to the NSW Planning and Infrastructure for Gateway Determination.

It is noted that Planning Proposal could result in further minor losses of non-residential floor space, as the proposed minimum non-residential floor space requirement is less than the loss of non-residential floor space that would result from the conversion of the existing serviced apartments to residential accommodation. Accordingly, to ensure that there is no further loss, it is recommended that the Planning Proposal is amended requiring a non-residential floor space ratio range of 0.24:1-2:1 prior to it being forwarding it to NSW Planning and Infrastructure for Gateway Determination.

As part of its assessment of the Planning Proposal, Council staff have also recognised a need to review:
- the non-residential floor space ratio range requirements in some, but not all mixed use areas; and
- controls relating to the provision of serviced apartments.

Addressing these issues would provide Council with a firm policy position in how it treats such applications in the future.

Recommending:
1. THAT Council resolve to forward the attached Planning Proposal to the Minister for Planning and Infrastructure in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979, subject to the following amendment:
   a. The non-residential floor space ratio range for the subject site be amended to 0.24:1 – 2:1.
2. THAT Council include a review of the non-residential floor space requirements of mixed use areas in undertaking Precinct 4 of the St Leonards/Crows Nest of the Planning Study.
3. THAT Council reviews the non-residential floor space requirements of mixed use areas as opportunities arise through planning studies or development strategies.
4. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council’s planning controls so that developments...
incorporating serviced apartments do not undermine Council’s ability to meet employment targets.

Mr Shand addressed the Meeting.

Councillor Morris arrived at the Meeting at 7.07pm.

It was moved by Councillor Baker and seconded by Councillor Barbour
1. THAT Council include a review of the non-residential floor space requirements of mixed use areas in undertaking Precinct 4 of the St Leonards/Crows Nest of the Planning Study.
2. THAT Council reviews the non-residential floor space requirements of mixed use areas as opportunities arise through planning studies or development strategies.
3. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council’s planning controls so that developments incorporating serviced apartments do not undermine Council’s ability to meet employment targets.

It was moved as an amendment by Councillor Gibson and seconded by Councillor Bevan

1. THAT Council resolve to forward the attached Planning Proposal to the Minister for Planning and Infrastructure in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979, subject to the following amendment:
   a. The non-residential floor space ratio range for the subject site be amended to 0.24:1 – 2:1.
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4. THAT Council undertake a review of planning controls relating to serviced apartments with the aim to amend Council’s planning controls so that developments incorporating serviced apartments do not undermine Council’s ability to meet employment targets.

The amendment was put and lost.

Voting on the amendment was as follows: For/Against 2/9

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The Motion was put and carried.

Voting was as follows: For/Against 9/2

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RESOLVED:
1. THAT Council include a review of the non-residential floor space requirements of mixed use areas in undertaking Precinct 4 of the St Leonards/Crows Nest of the Planning Study.
2. THAT Council reviews the non-residential floor space requirements of mixed use areas as opportunities arise through planning studies or development strategies.
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ADOPTED
Executive Summary:

Council has received a Planning Proposal for the site known as 200-220 Pacific Highway Crows Nest. The Planning Proposal seeks to amend the non-residential floor space ratio range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from 0.5:1 - 2:1 to 0.2:1 - 2:1. It is proposed to achieve this by amending clause 4.4A and the Non-residential Floor Space Ratio Range Map (LCL_001) to NSLEP 2013. The intent of the Planning Proposal is to allow the conversion of 6 approved serviced apartments to residential accommodation.

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Addressing these issues would provide Council with a firm policy position in how it treats such applications in the future.

FINANCIAL IMPLICATIONS:

Nil

RECOMMENDATION:

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LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction : 2. Our Built Environment
Outcome: 2.2 Improved mix of land use and quality development through design excellence
2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

Direction : 3. Our Economic Vitality
Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy

BACKGROUND

Development Applications:

A development application (DA 404/10) was received by Council on 31 October 2010 for the redevelopment of 200-220 Pacific Highway, Crows Nest. The proposed development sought to demolish one building in its entirety, partially demolish the two remaining buildings and redevelop the site for a mixed use development comprising 203 apartments, 7 serviced apartments ground floor retail and 150 car parking spaces. The redevelopment results in a 5 storey building fronting the Pacific Highway, an 8 storey building to the southern part of the site and a 17 storey tower to the western part of the site. The development proposed a total non-residential floor space of 1,270sqm resulting in a non-residential floor space ratio (FSR) of 0.38:1.

Due to the scale of the development to DA 404/10, the application was referred to the Joint Regional Planning Panel (JRPP) for determination with a recommendation for approval subject to a number of conditions. DA 404/10 was considered by the JRPP on the 2 March 2011, wherein it resolved to approve the application subject to conditions. The approved development had a non-residential floor space of 1,412sqm resulting in a non-residential FSR of 0.4:1.

On 18 May 2011, Council received a s.96 application to modify the development consent to DA 404/10. The modifications sought comprised (emphasis added):

- a reduction in the number of car share spaces;
- the deletion of serviced apartment 101 and replacement with a residential storage room;
- the deletion of approved residential storage within Basement Level 1; and
- the relocation of the Level 5 communal roof terrace.

This s.96 application to DA 404/10 was considered by Council on 8 August 2011, wherein it resolved to approve the application. The approved development resulted in the non-residential floor space being reduced to 1,338sqm resulting in a non-residential FSR of 0.4:1.
On 22 August 2011, Council received another s.96 application to modify the development consent to DA 404/10. The modifications sought comprised:

- Modified louvre system to western elevation;
- Facade modifications;
- Residential entry location reconfiguration;
- Convenience store reconfiguration;
- Apartment mix adjustment and increase from 203 to 204 units;
- Internal reconfiguration of fire stairs;
- Correction of minor anomalies; and
- Other minor modifications.

This s.96 application to DA 404/10 was considered by the JRPP, wherein it resolved on 19 December 2011 to approve the application. The approved development as modified, resulted in the non-residential floor space being increased to 1,351sqm resulting in a non-residential FSR of 0.4:1.

On 19 December 2011, Council received a further s.96 application to modify the development consent to DA 404/10. The modifications sought comprised a reduction in the non-residential gross floor area, by converting the six (6) approved serviced apartments on Level 1 into residential units. The justification provided in support of the modification essentially related to the claim that serviced apartments would be an unviable use due to the small scale of the serviced apartment component. Council refused the application for the following reasons:

1. The proposed modification is inconsistent with the objectives of the mixed use zone, particularly in relation to objective (c) of which seeks to “maintain existing commercial space and allow for residential development in mixed use buildings with non-residential uses at the lower levels and residential above...”. The variation being sought of 0.4:1 reduced down to 0.24:1 is excessive and is a 52% variation from the 0.5:1 development standard. The proposal would result in no non-residential use at Level 1.
2. The proposed 52% variation to the 0.5:1 minimum non-residential GFA development standard requires a variation to the provisions of North Sydney Local Environmental Plan 2001, by way of a planning proposal. Given that the Draft NSLEP 2009 maintains a 0.5:1 minimum non-residential GFA development standard, it is unlikely that the required planning proposal would be supported by Council.
3. The arguments and accompanying advice from serviced apartment operators in support of the modification do not warrant conversion of the approved serviced apartments to residential units and it is considered that there would be demand for serviced apartments in this location.
4. The proposed modification does not satisfy the provisions of s.96(1A)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal will result in the development not being substantially the same as the original form of development approved by Council, due the character of the approved development being significantly altered as a result of the non-residential GFA being substantially reduced from 0.4:1(1,351m²) to 0.24:1(820m²).
5. The proposed non-residential FSR of 0.24:1 is inconsistent with the 0.5:1 development standard in Draft NSLEP 2009.
Planned Proposal:

On 21 February 2014, Council received a Planning Proposal for the site known as 200-220 Pacific Highway, Crows Nest. The Planning Proposal sought to amend the non-residential FSR range requirements of North Sydney Local Environment Plan 2013 (NSLEP 2013) from 0.5:1 - 2:1 to 0.2:1 - 2:1. It sought to do this by amending clause 4.4A and the Non-Residential Floor Space Ratio Range Map to NSLEP 2013.

On 11 March 2014, Council forwarded a letter to the applicant stating that it could not support the progression of the Planning Proposal due to there being no adopted policy direction to support a reduction in the non-residential floor space ratio. The applicant was advised that the subject site forms part of Precinct 4 to the St Leonards / Crows Nest Planning Study which is likely to assess current arrangements to the non-residential floor space controls. This would result in the establishment of a formal planning policy position on the issue allowing for appropriate consideration of the proposal. It was therefore suggested that the applicant consider withdrawing the Planning Proposal to allow the St Leonards / Crows Nest Planning Study to be completed.

The letter also identified a number of issues with the Planning Proposal which would benefit from further consideration. These issues included:

- correction of the legal description of the subject property,
- the need to address the current version of the NSW Planning and Infrastructure’s (NSW P&I) A Guide to Preparing Planning Proposals,
- increased justification with respect to:
  - the demand for serviced apartments in the locality,
  - the potential to increase the number of serviced apartments on the site to make this component of the development viable,
  - the potential to accommodate other non-residential uses (i.e. other than offices) on the subject site, and
  - the potential to relocate the non-residential floor space to another part of the site,
- the provisions of relevant extracts from the approved plans of the development to clearly illustrate its context.

The applicant submitted a revised Planning Proposal (refer to Attachment 1) to Council on 19 March 2014 which sought to address the issues raised in Council’s letter.

**CONSULTATION REQUIREMENTS**

Should Council determine that the Planning Proposal can proceed, community engagement will be undertaken in accordance with Council’s Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal.

**SUSTAINABILITY STATEMENT**

The following table provides a summary of the key sustainability implications:
QBL Pillar | Implications
---|---
Environment | • No anticipated impacts.
Social | • The Planning Proposal if implemented will result in a reduction of commercial floor area that could be made available to future community and cultural services and facilities.
| • The Planning Proposal if implemented would result in a minor increase in residential accommodation.
Economic | • The Planning Proposal if implemented would result in a reduction in available floor space made available for commercial purposes which reduces the ability to meet employment targets set by the State Government.
Governance | • The Planning Proposal if implemented could have the potential to create a precedent that could undermine other established policies for the St Leonards/Crows Nest Planning Study Area and other mixed use zoned land.

DETAIL

1. Site Description

The subject site is located 200-220 Pacific Highway, Crows Nest and is legally described as:

- Lots 2 & 4, DP 1183313
- Lots and common property within SP 88827
- Lots and common property within SP 88890

It is located on the western side of the Pacific Highway, between Rocklands Road and Bruce Street. The subject site is rectangular in shape, 3,352.4sqm in area and has a 73.175m frontage to the Pacific Highway. The site contains 3 interconnecting mixed use buildings up to 17 storeys in height, containing 204 residential apartments, 6 serviced apartments, ground floor retail and basement parking for 140 cars. A total of 1,351sqm of non-residential floor space is provided across the site resulting in a non-residential FSR of 0.4:1.

The majority of the non-residential floor space comprises retail space at the ground floor level, and serviced apartments located on the first floor level of the building that fronts the Pacific Highway. The location of the non-residential floor space is illustrated in extracts of the approved plans to DA 404/10 a copy of which is provided in Attachment 2 to this report.

Works in relation to DA 404/10 are now complete and parts of the buildings are now occupied. None of the retail tenancies are currently occupied.
2. Local Context
The subject site is located approximately halfway between the commercial cores of the North Sydney CBD and St Leonards Town Centre. The Pacific Highway is generally dominated by commercial and mixed commercial and residential developments of varying scale.

Immediately to the north-west of the subject site at 222 Pacific Highway is an old two storey commercial building which is built to all boundaries with the exception of an approximately 6.5m setback to its rear south-western boundary. Further to the north-west lie a mixture of single to three storey commercial buildings built to all boundaries and up to 6 storey mixed use buildings containing ground level commercial tenancies and residential apartments above.

North Sydney Girls’ High School (a heritage item) and mixed commercial and residential buildings are located to the north-east of the site on the opposite side of the Pacific Highway. Further to the north-east lie one and two storey dwelling houses.

Immediately to the south-east lie 198 Pacific Highway, 52 Rocklands Road and 50 Rocklands Road. No.198 is a two storey retail building fronting the Pacific Highway and Rocklands Road. No. 52 and 50 Rocklands Road contain three storey commercial buildings. Further to the south-east is a mixture of residential and medical facilities associated with the Mater Hospital.

A mixture of single storey semi-detached dwellings, two storey town houses and a part 4 and part 7 storey residential flat building are located to the south-west of the site. Similar forms of development are located further to the south-west.

The following subsections identify the relevant principal planning instruments that apply to the subject site.

3.1 NSLEP 2013

NSLEP 2013 was made on 2 August 2013 through its publication on the NSW legislation website and came into force on the 13 September 2013. The principal planning provisions relating to the subject site are as follows:

- Zoned B4 - Mixed Use (refer to Figure 3)
- A maximum building height of 16m
- A non-residential FSR of 0.5:1 to 2:1 - Area 6 (refer to Figure 4)

4. Proposed LEP Amendment

The purpose of the Planning Proposal is to amend NSLEP 2013 such that the existing non-residential FSR range applying to the subject site is amended from 0.5:1 – 2:1 to 0.2:1 – 2:1. The submitted Planning Proposal proposes to achieve this by amending clause 4.4A and the Non-Residential Floor Space Ratio Range Map - LCL_001 - to NSLEP 2013, as described in the following subsections.
4.1 Clause 4.4A – Non-residential floor space ratio ranges

It is proposed to amend Clause 4.4A as follows (deleted words are shown in red strikethrough and additions in red underline):

(1) The objectives of this clause are as follows:
   (a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,
   (b) to encourage an appropriate mix of residential and non-residential uses,
   (c) to provide a level of flexibility in the mix of land uses to cater for market demands,
   (d) to ensure that a suitable level of non-residential floor space is provided to reflect the hierarchy of commercial centres.

(2) The non-residential floor space ratio for all buildings within a site on land identified on the Non-Residential Floor Space Ratio Range Map as specified in Column 1 of the Table to this subclause must not be less than the ratio shown for that land in Column 2 of that Table and must not exceed the ratio shown for that land in Column 3 of that Table.

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<td>Area 6</td>
<td>0.5:1</td>
<td>2:1</td>
</tr>
<tr>
<td>Area 7</td>
<td>0.5:1</td>
<td>1:1</td>
</tr>
<tr>
<td>Area 8</td>
<td>3:1</td>
<td>4:1</td>
</tr>
<tr>
<td>Area 14</td>
<td>0.2:1</td>
<td>2:1</td>
</tr>
</tbody>
</table>

(3) The non-residential floor space ratio for all buildings within a site on land identified as follows on the Non-Residential Floor Space Ratio Range Map must not be less than the ratio shown for that land:
   (a) Area 1—3:1,
   (b) Area 9—0.5:1,
   (c) Area 10—1:1,
   (d) Area 12—2:1,
   (e) Area 13—1.5:1.

(4) The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map must not exceed 2:1.

(5) Development consent must not be granted to the erection of a building on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map unless the consent authority is satisfied that the building will have an active street frontage after its erection.

(6) Despite subclause (5), an active street frontage is not required for any part of a building that is used for any of the following:
   (a) entrances and lobbies (including as part of a mixed use development),
   (b) access for fire services,
   (c) vehicular access.

(7) In this clause, a building has an active street frontage if no part of the ground floor of the building facing a street is used for residential accommodation.
In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose other than residential accommodation, a car park or a telecommunications facility, in all buildings within a site to the site area.

4.2 Non-residential floor space ratio ranges Map – LCL_001

It is proposed to amend the Non-Residential Floor Space Ratio Range Map (ref: 5950_COM_LCL_001_010_20130607) to NSLEP 2013 such that the subject site is identified as being located in Area 14 and a new Area 14 key added to the legend. It is anticipated that the map will be amended similar to that depicted in Figure 5.

Figure 5: Proposed amendment to Non-residential floor space ratio range Map LCL_001

Extract from Planning Proposal prepared by Robinson Urban Planning

5. Planning Appraisal

The revised Planning Proposal as submitted (refer to Attachment 1) is considered to be generally in accordance with the requirements under s.55(2) of the Environmental Planning and Assessment Act 1979 and the NSW Planning and Infrastructure’s A guide to preparing planning proposals (dated October 2012). In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
An explanation of the provisions that are to be included in the proposed local environmental plan;

Justification for those objectives, outcomes and provisions and the process for their implementation; and

Details of the community consultation that is to be undertaken with regard to the Planning Proposal.

6. Justification of the Planning Proposal

6.1 S.117 Direction 1.1 - Business and Industrial Zones

Direction 1.1 - Business and Industrial Zones applies when a relevant planning authority prepares a Planning Proposal that will affect land within an existing or proposed business or industrial zone. The objectives of the Direction are to:

(a) encourage employment growth in suitable locations,
(b) protect employment land in business and industrial zones, and
(c) support the viability of identified strategic centres.

Subclause (4) to the Direction states:

A planning proposal must:
(a) give effect to the objectives of this direction,
(b) retain the areas and locations of existing business and industrial zones,
(c) not reduce the total potential floor space area for employment uses and related public services in business zones,
(d) not reduce the total potential floor space area for industrial uses in industrial zones, and
(e) ensure that proposed new employment areas are in accordance with a strategy that is approved by the Director-General of the Department of Planning.

The Planning Proposal is considered to be inconsistent with subclause (4)(c) as it will reduce the level of floor space made available for commercial purposes. However, subclause 5 to the Direction states:

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the provisions of the planning proposal that are inconsistent are:
(a) justified by a strategy which:
   (i) gives consideration to the objective of this direction, and
   (ii) identifies the land which is the subject of the planning proposal (if the planning proposal relates to a particular site or sites), and
   (iii) is approved by the Director-General of the Department of Planning, or
(b) justified by a study (prepared in support of the planning proposal) which gives consideration to the objective of this direction, or
(c) in accordance with the relevant Regional Strategy or Sub-Regional Strategy prepared by the Department of Planning which gives consideration to the objective of this direction, or
(d) of minor significance.
Accordingly, there are a number of options by which a Planning Proposal may justify an inconsistency with the requirements of the Direction.

The Planning Proposal is not justified by a strategy or study in accordance with subclauses 5(a)-(c). Therefore, the Planning Proposal has relied on the inconsistency being of minor significance. The Planning Proposal justifies the minor inconsistency on the basis that the site is unlikely to support significant employment potential.

It is considered that the minor inconsistency can be supported for the following reasons:

- It does not prevent the subject site from being used for business purposes.
- It does not prevent a future increase in non-residential development on the subject site.
- The subject site is not well served by mass public transport, being located approximately 1100m from St Leonards Railway Station and 1350m from North Sydney Railway Station (refer to Figure 6).
- The subject site is located at the southern extremity of the Crows Nest Town Centre, approximately 270m from its centre (refer to Figure 6).
- The difficulty in selling or finding tenants for the non-residential components of the building.

Legend

<table>
<thead>
<tr>
<th>Symbol</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>🌟</td>
<td>North Sydney Centre</td>
</tr>
<tr>
<td>🌟</td>
<td>St Leonards Town Centre</td>
</tr>
<tr>
<td>🌟</td>
<td>Crows Nest Town Centre</td>
</tr>
<tr>
<td>🌟</td>
<td>Subject site</td>
</tr>
<tr>
<td>🌟</td>
<td>Railway Station</td>
</tr>
</tbody>
</table>

Figure 6: Site context to North Sydney Centre
Furthermore, it is noted however, that the subject site is identified within Precinct 4 of the St Leonards/Crows Nest Planning Study. The Planning Study for Precinct 4 has yet to be commenced by Council and is unlikely to commence until at least 2015. This leaves a long period of time that the non-residential spaces could remain vacant. This in turn has the potential to prevent the development from meeting the objectives of the EP&A Act to promote the efficient and economic use of land. Accordingly, it is considered appropriate in this instance to enable the fast tracking of the proposed amendment.

6.2 Objectives of the non-residential floor space ratio range controls

Clause 4.4A(1) of NSLEP 2013 contain the objectives to the non-residential floor space ratio range controls. The Planning Proposal is considered to be consistent with the objectives of this Clause as outlined in Table 2.

<table>
<thead>
<tr>
<th>Objective</th>
<th>Consistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>(a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,</td>
<td>The Planning Proposal essentially seeks to enable the conversion of the first floor serviced apartments with residential accommodation. Accordingly, it will not impact on the ability to provide an active street front to the Pacific Highway, which it currently achieves.</td>
</tr>
<tr>
<td>(b) to encourage an appropriate mix of residential and non-residential uses,</td>
<td>The Planning Proposal will still enable a mix of uses to be provided on the subject site.</td>
</tr>
<tr>
<td>(c) to provide a level of flexibility in the mix of land uses to cater for market demands,</td>
<td>The Planning Proposal provides some increased flexibility in response to current market demands without adversely impacting upon the ability to meet employment targets.</td>
</tr>
<tr>
<td>(d) to ensure that a suitable level of non-residential floor space is provided to reflect the hierarchy of commercial centres</td>
<td>The subject site is located at the southern periphery of the Crows Nest Town Centre which is identified as a “Village” under the Metropolitan Plan for Sydney. It is located approximately 270m from its centre, where the desire for commercial floor space is low, especially when provided above the ground level. Its location approximately 1100m from St Leonards Railway Station and 1350m from North Sydney Railway Station also compromise its desirability for traditional office style development.</td>
</tr>
</tbody>
</table>

6.3 Objectives of the B4 - Mixed Use zone

The Land Use Table to Part 2 of NSLEP 2013 contains the objectives to the B4 - Mixed Use zone. The Planning Proposal is considered to be consistent with the objectives of the zone as outlined in Table 1.

<table>
<thead>
<tr>
<th>Objective</th>
<th>Consistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>(e) To provide a mixture of compatible land uses.</td>
<td>The Planning Proposal will not prevent the ability to provide a mix of uses on the subject site.</td>
</tr>
</tbody>
</table>
TABLE 1: Consistency with B4 –Mixed Use Zone Objectives

<table>
<thead>
<tr>
<th>Objective</th>
<th>Consistency</th>
</tr>
</thead>
<tbody>
<tr>
<td>(f) To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</td>
<td>The proposed reduction in the minimum non-residential FSR requirement is considered acceptable due to its distance from the centre of the Crows Nest Town Centre (approximately 270m), St Leonards Railway Station (1100m) and North Sydney Railway Station (1350m).</td>
</tr>
<tr>
<td>(g) To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.</td>
<td>The Planning Proposal will result in the retention of non-residential floor space across the majority of the ground floor level of the existing development, enabling appropriate activation at street level and within the development itself.</td>
</tr>
<tr>
<td>(h) To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.</td>
<td>Despite the proposed reduction in the level of non-residential floor space within the building, the Planning Proposal still enables a development which contains non-residential development at the ground level and residential above. The proposed reduction in the minimum non-residential FSR requirement is considered acceptable due to its distance from the centre of the Crows Nest Town Centre (approximately 270m), St Leonards Railway Station (1100m) and North Sydney Railway Station (1350m).</td>
</tr>
</tbody>
</table>

6.4 Proposed change to the non-residential floor space ratio requirements

The primary intent of the Planning Proposal is to enable the conversion of the approved serviced apartments on level 1 of the existing development to residential apartments (shop top housing as defined under NSLEP 2013). It seeks to achieve this by amending the non-residential FSR requirement applying to the subject site under clause 4.4A of NSLEP 2013. In particular, it seeks to reduce the minimum non-residential FSR such that a non-residential FSR range of 0.2:1 - 2:1 applies across the entire subject site.

Converting the serviced apartment component of the development to residential apartments would leave a total of 820sqm of non-residential floor space remaining on the subject site, resulting in a non-residential FSR of 0.24:1. Accordingly, the non-residential floor space requirement proposed by the applicant is less than (by 150sqm) than what is required to achieve the intent of the Planning Proposal. Should the requested minimum non-residential FSR be implemented, this would merely open up the ability for the applicant or future owner of the site to further reduce the level of non-residential floor space being provided on the site.

If Council were to endorse the Planning Proposal being forwarded to NSW P&I seeking a Gateway Determination, then it is recommended that the Planning Proposal be amended to request a minimum non-residential FSR of 0.24:1 to ensure that there is no further erosion of non-residential floor space on the subject site.

6.5 Use of the site for serviced apartments

There have been a number of development applications lodged with Council over the last few years that have sought approval for a mixed use development containing serviced apartments. In many instances, serviced apartments have merely been incorporated to meet the non-residential floor space requirements of NSLEP 2013 or the former NSLEP 2001. Despite
serviced apartments being a permissible use under the LEP, conversion to residential apartments in the future has been a concern.

With respect to this Planning Proposal, no evidence has been provided to demonstrate if there is a demand for serviced apartments in the locality. The applicant has however demonstrated that they have approached a number of larger serviced apartment operators (refer to Appendix C of the Planning Proposal located in Attachment 1 to this report) regarding the operation of the serviced apartment component of the development. Arguably, a wider approach, i.e. the open market, may have encouraged more interest from small scale operators. All of the operators approached stated that it would be unviable for them to operate and manage only 6 serviced apartments. One serviced apartment operator suggested that at least 40 serviced apartments would be required to make it a viable proposition.

Serviced apartments and other tourist related accommodation facilities result in very low employment densities (1-2 employees per 5 bedrooms or about 1 employee per 35-50sqm) in comparison with employment densities for retail (1 employee / 15-40sqm) and office (1 employee / 10-20sqm) development.

Accordingly, the low level of direct employment generated by serviced apartments can impact on meeting employment targets set out by the state government. In this instance, the conversion is assumed to result in the loss of 2 full time equivalent jobs.

Due to the issues arising from the provision of serviced apartments in the LGA, it is recommended that a review is undertaken of planning controls relating to serviced apartments to ensure that only legitimate proposals are put forward.

6.6 Precedent

The Planning Proposal has the potential to create a precedent which will place pressure on Council to reduce the minimum non-residential floor space ratio requirement on other sites in the Mixed Use zone.

Council is currently in receipt of three (3) Planning Proposals, including this one, which seek to reduce the minimum non-residential floor space ratio under NSLEP 2013. This increasing pressure to have the non-residential floor space ratio controls amended indicates that these controls may not be working effectively and may need to be reviewed. However, approving such variations to the LEP in an ad-hoc fashion, may have the potential to undermine Council’s ability to appropriately achieve the aims, objectives and outcomes of various strategic planning documents (e.g. Metropolitan Plan for Sydney 2006-2036). Whilst Council has previously approved amendments to the non-residential floor space requirements under NSLEP 2001, these amendments had been supported by justified and adopted strategic approach.

Accordingly, it is recommended that a Planning Study be undertaken that reviews the non-residential floor space ratio controls, which apply to all land zoned B4 –Mixed Use under NSLEP 2013. Such an undertaking would need to be reported back to Council to consider funding and Delivery Plan implications. It is likely, that this work could be a supporting document in addressing sub-regional planning issues as they arise. Furthermore, this issue could be incorporated into the St Leonards / Crows Nest Town Centre Planning Study for Precinct 4 when it is commenced.
6.7 Policy and Strategic Context

6.7.1 Section 117 Directions

Section 117 of the Environmental Planning and Assessment Act 1979 enables the Minister for Planning to issue directions regarding the content of Planning Proposals. There are a number of s.117 Directions that require certain matters to be addressed if they are affected by a Planning Proposal. Each Planning Proposal must identify which s.117 Directions are relevant to the proposal and demonstrate how they are consistent with that Direction.

The Planning Proposal is considered to be generally consistent with all relevant s.117 Directions, with the exception of Direction 1.1 – Business and Industrial Zones. The assessment of the Planning Proposal against Direction 1.1 has been specifically addressed in Section 6.1 of this report. In particular, the applicant’s justification for supporting an inconsistency with the Direction is supported in the circumstances of the case.

6.7.2 Metropolitan Plan for Sydney 2006-2036

In December 2010, the State Government released the Metropolitan Plan for Sydney 2036 covering the North Sydney LGA. The Plan replaced the former 2005 City of Cities: A plan for Sydney’s Future. The Plan is to provide an additional 770,000 homes and 760,000 new jobs by 2036. The Plan sets targets for new dwellings and jobs of 44,000 and 62,000 respectively in 2036 for the Inner North Subregion, of which North Sydney is a part.

Objective B1 to the Plan is to focus activity in accessible centres. It is proposed to achieve this Objective through the following actions:

- **B1.1** Plan for centres to grow and change over time
- **B1.2** Establish appropriate mechanisms in Subregional Strategies to provide sufficient capacity for commercial development in centres, taking into account identified demand
- **B1.3** Aim to locate 80 per cent of all new housing within the walking catchments of existing and proposed centres of all sizes with good public transport

Of particular note the Plan states that in the preparation of LEPs, additional commercial capacity should be provided “in or adjacent to the existing commercial part of existing centres” to achieve more sustainable growth.

The subject site is located at southern periphery of the Crows Nest Town Centre, which is identified as a “Village” under the Plan and is located approximately 270 metres from its centre. It is also located over 1.1kms from both St Leonards and North Sydney Railway Stations which reduces the site’s desirability to accommodate business activities, especially office development.

The extent of non-residential floor space proposed to be lost over the subject site could easily be accommodated and better located within established town centres such as St Leonards or North Sydney.

Objective D1 to the Plan is to ensure an adequate supply of land and sites for residential development. In particular, the Plan identifies the provision of an additional 770,000 homes
by 2036, 44,000 of which are to be accommodated in the Inner North Subregion, of which North Sydney is a part. The Draft Inner North Subregional Strategy (refer to section 6.8.4 of this report) states that 5,500 additional dwellings are to be accommodated in the North Sydney LGA. Whilst the Planning Proposal will be able to assist in meeting this target, Council’s Residential Development Strategy (refer to section 6.5.5 to this report) clearly demonstrates that there is already sufficient capacity under NSLEP 2013 to easily accommodate the housing targets applied to North Sydney.

**Objective E1** to the Plan is to ensure adequate land supply for economic activity, investment and jobs in the right locations. In particular, the Plan identifies the provision of an additional 760,000 jobs by 2036, 62,000 of which are to be accommodated in the Inner North Subregion, of which North Sydney is a part. The Plan also identifies that an additional 14,000 jobs are to be accommodated within the North Sydney Centre.

The Planning Proposal would result in the loss of 6 serviced apartments or 531sqm of non-residential floor space. It is considered that the loss of this non-residential floor space as serviced apartments will generally result in an inconsequential loss of 2 jobs (based on 1-2 employees per 5 rooms). However, if the non-residential floor space to be lost comprised of office accommodation, it is considered that it would result in the loss of approximately 27-53 jobs (based on 10-20sqm per employee). The overall loss is considered to be minor in comparison to the requirements for the provisions of jobs across North Sydney in total. Furthermore, the loss is occurring at a location that has low access to mass public transport.

**Objective E2** to the Plan is to focus Sydney’s economic growth and renewal, employment and education in centres. In particular, it seeks to achieve this by the following actions:

- **E2.1** Plan for more commercial and retail jobs in highly accessible Strategic Centres
- **E2.2** Ensure an adequate supply of retail, office space and business parks
- **E2.3** Plan to meet future demand for business parks by establishing a framework to identify suitable sites in Subregional Strategies
- **E2.4** Deliver spatial components of the NSW Business Sector Growth Plan
- **E2.5** Strengthen clusters of activity in Specialised Centres, particularly those for high growth and high value sectors, and support emergence of new clusters
- **E2.6** Promote development of education, research and development (R&D) clusters around TAFEs, universities and health infrastructure in accessible centres to promote skills development, capacity for innovation and lifelong community learning
- **E2.7** Prepare and implement measures to assist development of low cost space for creative industries and business start-ups

As indicated, the subject site is located at the periphery of a “village” with low access to mass public transport. The loss of non-residential floor space in this location is considered to be acceptable in the circumstances of the case.

6.7.3 **Draft Metropolitan Strategy for Sydney to 2011-2031**

On 19 March 2013, the State Government released the *Draft Metropolitan Strategy for Sydney to 2031* which will replace the *Metropolitan Plan for Sydney 2036*. The Draft Plan is to provide an additional 545,000 homes and 625,000 new jobs by 2031. The Plan sets targets
for new dwellings and jobs of 138,000 and 230,000 respectively in 2031 for the Central Subregion, of which North Sydney is a part. In addition, it specifically identifies a need for an additional 12,000 jobs in the North Sydney Centre which forms part of “Global Sydney”.

**Objective 2** of the Draft Strategy is to strengthen and grow Sydney’s centres. The Planning Proposal does not appear to contradict the meeting of the identified Policy Directions. In particular, the applicant has adequately demonstrated that that they have been unable to sell or tenant the serviced apartments for approximately 2 years. Given the site’s location in relation to existing commercial centres and railway stations the loss of non-residential floor space is considered acceptable in the circumstances.

**Objective 4** of the Draft Strategy is to deliver strategic outcomes for its nine “city shapers”. In particular, the Policy to this objective is to transform the city by delivering the priorities for each city shaper. The subject site forms part of the “Global Economic Corridor” city shaper.

Two of the key priorities for this city shaper includes maintaining its significance in the expansion of Sydney’s economy and position as Australia’s number one city. They should also seek to reinforce economic clustering in established and emerging centres, particularly for globally competitive industries. Furthermore, an additional 59,000 jobs are to be provided in the existing Corridor in addition to the 114,000 new jobs to be created in Global Sydney.

The subject site is not located in an established or emerging centre that will positively contribute to the Global Economic Corridor. Due to the subject site being located at the periphery of a “village” sized centre and the failure to sell or occupy the commercial floor space over the last 2 years, it is considered that the proposed development is unlikely to impact upon the meeting of this objective.

**Objective 5** of the Draft Strategy seeks to deliver new housing to meet Sydney’s growth. In particular it seeks to do this by planning for at least 237,000 new dwellings by 2021 and 545,000 by 2031, with minimum targets for each subregion. North Sydney forms part of the Central Subregion where an additional 82,000 new dwellings by 2021 and 138,000 by 2031 is to be accommodated.

Council’s Residential Development Strategy indicates that Council has sufficient land zoned to accommodate an additional 6,199 dwellings by 2031, which is well in excess of the minimum targets set by the Draft Inner North Subregional Strategy. Accordingly, there is no pressure for Council to alter the residential / commercial mix on the subject site to meet these targets. However, the proposed development will help to attain those targets.

**Objective 6** of the Draft Strategy seeks to deliver a mix of well designed housing that meets the needs of Sydney’s population. In particular, it seeks to achieve this by planning for a range of housing types to meet demand and provision of affordable housing for a mix of very low, low and moderate income earners.

The proposed conversion of the serviced apartments will assist in providing more housing which is affordable to lower income earners due to the lower levels of amenity these dwellings will have as a result of increased traffic impacts emanating from the Pacific Highway (e.g. noise and fumes).
Objective 7 of the Draft Strategy is to deliver well designed and active centres that attract investment and growth. In particular, Policy (b) states that retail, employment, cultural and social infrastructure will be included in centres undergoing growth and renewal.

The subject site forms part of the Crows Nest Town Centre, which is currently in the preliminary stages of undergoing urban renewal. To ensure the appropriate redevelopment of this town centre and adjoining town centre of St Leonards, Council has already commenced the St Leonards / Crows Nest Town Centre Planning Study. The Planning Study area has been broken into 4 Precincts to enable progressive amendments to be made to the planning controls as pressure for development arises. The subject site is located within Precinct 4. The Planning Study has been completed for Precinct 1, nearing completion for Precincts 2 and 3 and has yet to commence for Precinct 4. As the Planning Study has yet to be commenced for Precinct 4, the controls relating to the mix of residential and non-residential development could be reviewed as part of this Study to ensure that this objective to the Draft Strategy can be achieved. It is considered however, that the Planning Proposal is unlikely to prevent the attainment of this objective.

Objective 10 of the Draft Strategy is to provide capacity for jobs growth and diversity across Sydney. This objective is largely to be met by meeting minimum employment targets, of which 6,000 are to be accommodated in North Sydney (Global Sydney) by 2021 and 12,000 by 2031.

The subject site is not located within Global Sydney, nor within a major or specialised centre, within which the majority of the targeted jobs are to be located. Accordingly, it is considered that the proposal will not prevent the attainment of this objective.

Objective 14 of the Draft Strategy is to provide a good supply of office space. The policies that seek to achieve this objective aim to locate office space within Strategic Centres and Specialised Precincts to boost centre growth and development opportunities while providing jobs closer to home and along key transport routes. The subject site is not located within strategic centre or specialised precinct and therefore the proposed reduction of the non-residential floor space ratio on the subject site is unlikely to prevent the attainment of this objective.

Objective 15 of the Draft Strategy is to provide a good level of retail space. Policy (a) sets out that retail is to be accommodated in centres of all sizes at a scale reflecting the level of public transport accessibility. The Planning Proposal only seeks to reduce the level of non-residential floor space at the first floor level which is unlikely to be used for retail purposes, and therefore it is unlikely to prevent the attainment of this objective.

6.7.4 Draft Inner North Subregional Strategy

In July 2007, the State Government released the draft Inner North Subregional Strategy. This Draft Strategy has yet to be finalised and adopted by the State Government.

The Inner North Subregion is proposed to provide an additional 30,000 homes (from 2004) and 60,000 new jobs (from 2001) by 2031. The Draft Strategy sets targets for new dwellings and jobs of 5,500 and 15,000 respectively in 2031 for the North Sydney LGA, of which 11,000 jobs are to be accommodated within the North Sydney Centre which is identified as a “Strategic Centre”.

(19)
The Planning Proposal would enable an increase in residential accommodation provided on the subject site in an urbanised centre which is capable of utilising reasonable access to services and facilities. However, the Planning Proposal would also result in a net loss of non-residential commercial floor space over that permitted under NSLEP 2013 and that currently existing on the subject site.

**Action A1** of the Draft Strategy is to provide suitable commercial and employment lands in strategic areas. It seeks to achieve this in part by planning for sufficiently zoned land and infrastructure to achieve employment targets. The subject site is not located within a strategic area identified for significant employment growth. Council has demonstrated that NSLEP 2013 is capable of delivering on the relevant employment targets set by the State Government. The Planning Proposal is not considered contrary to achieving this Action.

**Action B1** to the Draft Strategy is to provide places and locations for all types of economic activity and employment across the Sydney Region. It seeks to achieve this by establishing a typology of centres and employment targets for strategic centres. The targets for North Sydney and their ability to be met are addressed above.

**Action B2** to the Draft Strategy is to increase residential densities in centres whilst improving liveability. In particular, housing growth is to be planned such that it does not undermine the identified employment needs for a centre. It is considered that the Planning Proposal will not significantly undermine the attainment of this action as the reduction in non-residential floor space and the increase in housing is occurring at the periphery of an existing low order centre.

**Action B4** seeks to concentrate activities near public transport. In particular, it seeks to concentrate retail activity in centres, business development zones and enterprise corridors. The subject site is located at the periphery of a low order centre in the centres hierarchy. Furthermore, the subject site is located over 1.1km from St Leonards and North Sydney Railway Stations. Accordingly, the minor loss of non-residential floor space on the subject site is considered to be acceptable in the circumstances.

**Action B5** is to protect and strengthen the primary role of economic corridors. The subject site is not located in an established or emerging centre that will positively contribute to the Global Economic Corridor. Due to the subject site being located at the periphery of a low order centre and the inability to sell or occupy the commercial floor space over the last 2 years, it is considered that the proposed development is unlikely to impact upon the meeting of this action.

**Action C1** is to ensure adequate supply of land and sites for residential development. In particular, the North Sydney LGA is to accommodate an additional 5,500 dwellings. As indicated in section 6.5.5 to this report, Council’s Residential Development Strategy indicates that Council has sufficient land zoned to accommodate an additional 6,199 dwellings by 2031, which is well in excess of the minimum targets set by the Draft Strategy. Accordingly, the minor alteration to the residential / commercial mix on the subject site is unlikely to adversely impact on the ability to meet these targets. Despite this, the Planning Proposal would only result in an increase in 6 additional dwellings and a loss of 531sqm of non-residential floor space.

**Action C4** is to improve housing affordability. The proposed conversion of the serviced apartments will assist in providing more housing which is affordable to lower income earners.
due to the lower levels of amenity these dwellings will have as a result of increased traffic impacts emanating from the Pacific Highway (e.g. noise and fumes).

6.7.5 Residential Development Strategy

The North Sydney Residential Development Strategy (RDS) identifies the potential for an additional 6,199 dwellings in the North Sydney LGA by 2031 under the provisions of NSLEP 2013. The RDS identifies that the Waverton / Wollstonecraft locality, incorporating the subject site, has the capacity to supply 322 additional residential dwellings over the next 18 years, of which 85 are identified in the B4 - Mixed Use zone.

The Planning Proposal will be capable of meeting these requirements.

6.7.6 North Sydney Local Development Strategy

The North Sydney Local Development Strategy (LDS) reflects the outcomes sought by the Metropolitan Plan, draft INSS and RDS. These issues are addressed in the previous subsections to this report.

7. Conclusion

The Planning Proposal seeks to amend the non-residential floor space ratio range requirements of NSLEP 2013 from 0.5:1 - 2:1 to 0.2:1 -2:1.

It is considered the relevant requirements under s.55 of the EP&A Act and the matters identified in NSW Planning & Infrastructure’s A guide to preparing planning proposals (2012) have been adequately addressed in the Planning Proposal. It is considered that the proposal is appropriate and is adequately justified. In particular, the proposal:

- does not prevent the subject site from being used for business purposes.
- does not prevent a future increase in non-residential development on the subject site.
- is not well served by mass public transport, being located approximately 1100m from St Leonards Railway Station and 1350m from North Sydney Railway Station.
- is located at the southern extremity of the Crows Nest Town Centre, approximately 270m from its centre.
- The difficulty in selling or finding tenants for the non-residential components of the building.

However, to remove the potential to further reduce the non-residential floor space on the subject site, it is recommended that the non-residential FSR range is amended from 0.2:1 - 2:1 to 0.24:1 - 2:1.

There is potential that if the Planning Proposal is approved, it could set a precedent to reduce the non-residential floor space requirement elsewhere in the LGA. However, the Proposal is considered to be acceptable given its location on the periphery of lower order commercial centre, its distance from mass public transport and the inability to sell or occupy non-residential floor space. However, to further ensure that a precedent is not set, it is recommended that the non-residential floor space ratio controls under NSLEP 2013 are
Report of Ben Boyd, Executive Strategic Planner  
Re: Planning Proposal - 200-220 Pacific Highway, Crows Nest

reviewed as part of the Planning Study for Precinct 4 of the St Leonards and Crows Nest Town Centres. This review could extend to other mixed use areas, when these areas become subject to a planning study, or when the subregional planning parameters are being reviewed and set for the relevant areas.

It is therefore recommended that Council support the forwarding of the Planning Proposal to NSW P&I, seeking a Gateway Determination under s.56 of the EP&A Act 1979.
Planning Proposal to North Sydney Council
Panorama, 200-220 Pacific Highway, Crows Nest

Prepared on behalf of B Cap 2 Pty Ltd
17 March 2014 (Rev 1) | 1020
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B Existing and Planning Proposal version of NSLEP 2013 Non-Residential FSR Range Map - Sheet LCL_001

C Correspondence from Mater Hospital, Waldorf Apartments, Toga Hospitality, Colliers International, Richardson & Wrench and Pharos Retail in relation to non-residential uses on the site
1.0 Preliminaries

1.1 Introduction

This Planning Proposal is submitted to North Sydney Council (the Council). It has been prepared by Robinson Urban Planning Pty Ltd on behalf of B Cap 2 Pty Ltd (the proponent and land owner). It relates to the mixed use development known as “Panorama” which is located at 200-220 Pacific Highway, Crows Nest (the site). Submission of the Planning Proposal follows a meeting between the proponent and Council Officers on 11 February 2014.

Construction of Panorama is complete, the building has been strata titled, the residential apartments have been sold and most are now occupied.

This Planning Proposal would facilitate residential use of six serviced apartments approved on the first floor of Panorama (which have been vacant since completion). As detailed in this Planning Proposal, the proponent has made considerable efforts for an extend period of time both before and after completion of the project, but failed, to find a serviced apartment operator (or alternate non-residential use for the first floor areas). There would be no change to the approved ground floor non-residential uses or Pacific Highway street activation.

The proposed amendment involves a reduction to the minimum non-residential floor space ratio (FSR) standard that applies to the site pursuant to North Sydney Local Environmental Plan 2013 (NSLEP 2013) as follows:

- Existing non-residential FSR standard 0.5:1 to 2:1
- Proposed non-residential FSR standard 0.2:1 to 2:1

The Planning Proposal explains the background to the requested amendment and consists of the following six parts (consistent with the document titled A guide to preparing planning proposals, by NSW Planning & Infrastructure, 2012):

- Part 1 Objectives or intended outcomes
- Part 2 Explanation of the provisions
- Part 3 Justification
- Part 4 Mapping
- Part 5 Community Consultation
- Part 6 Project timeline

It is accompanied by the following documents:

- Appendix A Building A - Level 1 Plan and Building A - East Elevation showing the location of the approved serviced apartments (by JPR Architects, CD 4100 and CD 4201, Rev A dated 14 March 2014)
- Appendix B Existing and Planning Proposal version of NSLEP 2013 Non-Residential FSR Range Map - Sheet LCL_001
- Appendix C Correspondence from Mater Hospital, Waldorf Apartments, Toga Hospitality, Colliers International, Richardson & Wrench and Pharos Retail in relation to non-residential uses on the site.
Figure 1 – Location plan
1.2 Brief description of the site

The key characteristics of the site are summarised below:

<table>
<thead>
<tr>
<th>Location</th>
<th>200-220 Pacific Highway, Crows Nest (Figure 1)</th>
</tr>
</thead>
</table>
| Legal description | Lots and common property in strata plan 88890  
Lots and common property in strata plan 88827  
Lot 2 in DP 1183313  
Lot 4 in DP 1183313 |
| Site area | 3,352.4m² |
| Existing consent | The Sydney East Joint Regional Planning Panel (JRPP) approved development application (DA) 404/10 (2010SYE088) which operated from 30 March 2011.  
The consent (which has been modified) approved partial demolition of existing buildings on the site and construction of a 17 storey mixed use building containing 204 residential apartments, six serviced apartments, ground floor retail and 140 car parking spaces. The total approved non-residential FSR is 0.4:1.  
The position of the approved service apartments (six) is illustrated on the plan and elevation at Appendix A. |

**Surrounding development**

| North | An old warehouse style two storey building at 222 Pacific Highway is built to the site’s northern boundary. A six storey mixed use building, known as “The Cosmopolitan” is further north at 236 Pacific Highway. The latter building has three non-residential tenancies at the street front on the ground level only, with residential uses above (making it shop top housing¹).  
Further north (on the south side of Bruce Street) are older one and two storey buildings occupied by non-residential uses. |
| South | A two storey retail/commercial building is to the south on the corner of Rocklands Road and the Pacific Highway at 198 Pacific Highway. This building has a ground floor shop with a dwelling above. The opposite side of this intersection is occupied by a six storey (plus attic) apartment building at 41 Rocklands Road.  
Mater Hospital is to the south-west, beyond Rocklands Road. |
| East | North Sydney Girls’ High School (a heritage item) and commercial/residential uses are to the east of the site, beyond the Pacific Highway. |
| West | Residential uses along Sinclair Street; comprising an apartment building (7 Sinclair St), townhouses (19-23 Sinclair Street) and semi-detached dwellings; are to the west (25-37 Sinclair Street). |

¹ Pursuant to the Dictionary to NSLEP 2013:  
*Shop top housing* means one or more dwellings located above ground floor retail premises or business premises.
1.3 Statutory context

An overview of the key planning provisions applying to the site under NSLEP 2013 follows:

- **Zone** – Zone B4 Mixed Use (refer to Figure 2). For Zone B4, the land use table shows the following objectives and permitted/prohibited uses:

  **Zone B4 Mixed Use**

  1. **Objectives of zone**
     - To provide a mixture of compatible land uses.
     - To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
     - To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
     - To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.

  2. **Permitted without consent**
     - Nil

  3. **Permitted with consent**
     - Amusement centres; Backpackers’ accommodation; Boarding houses; Car parks; Child care centres; 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 (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Seniors housing; Serviced apartments; Sex services premises; Shop top housing; Signage; Vehicle repair stations; Veterinary hospitals

  4. **Prohibited**
     - Any development not specified in item 2 or 3

- **Height of buildings** – 16m

- **Non-residential FSR** – Area 6 – 0.5:1 to 2:1 (refer to Figure 3)

- **Heritage** – The site is not a heritage item and is not located within a conservation area. Heritage items in the vicinity of the site include the former Mater Maternity Hospital at 7 Sinclair Street, on the corner of Rocklands Road, North Sydney Girls’ High School and adjoining buildings to the south (located within the Holtermann Estate Conservation Area).

NSLEP 2013 is supplemented by *North Sydney Development Control Plan 2013 (NSDCP 2013)* which provides guidelines on detailed aspects of development. The NSDCP 2013 contains Character Statements for the various planning areas within the municipality which describe the desired future outcomes for development in the area. The site (and the block on the west side of the Highway between Rocklands Road and Bruce Street) is located within the Waverton/Wollstonecraft Planning Area which is a predominantly residential area (refer to Figure 4). All other parts of the mixed use centre are located in the St Leonards/Crows Nest Planning Area.
Figure 2 – Extract from NSLEP 2013, Land Zoning Map - Sheet LZN_001 showing the site’s location at the southern extremity of the Zone B4 lands
Figure 3 – Extract from NSLEP 2013, Non-Residential FSR Range Map - Sheet LCL_001
Figure 4 – NSDCP 2013 Waverton/Wollstonecraft Planning Area showing the location of the site
2.0 Planning proposal

2.1 Part 1 - Objectives or intended outcomes
The objective of the Planning Proposal is to reduce the minimum non-residential FSR standard applying to the site. The intended outcome is to enable residential use of the approved first floor serviced apartments constructed on the site.

2.2 Part 2 – Explanation of provisions
The objective and intended outcome set out above will be achieved by the following amendments to NSLEP 2013:

1. Map amendment
   Amend the Non-Residential Floor Space Ratio Range Map - Sheet LCL_001 to nominate the site as Area 14 and add Area 14 to the Key (refer to the existing and Planning Proposal map at Appendix B)

2. Instrument amendment
   Amend Clause 4.4A(2) - Non-residential floor space ratio ranges as follows (deleted words are shown in strikethrough and new words are shown in red bold):

4.4A Non-residential floor space ratio ranges
   (1) The objectives of this clause are as follows:
   (a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,
   (b) to encourage an appropriate mix of residential and non-residential uses,
   (c) to provide a level of flexibility in the mix of land uses to cater for market demands,
   (d) to ensure that a suitable level of non-residential floor space is provided to reflect the hierarchy of commercial centres.

   (2) The non-residential floor space ratio for all buildings within a site on land identified on the Non-Residential Floor Space Ratio Range Map as specified in Column 1 of the Table to this subclause must not be less than the ratio shown for that land in Column 2 of that Table and must not exceed the ratio shown for that land in Column 3 of that Table.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Area 2</td>
<td>0.75:1</td>
<td>2:1</td>
</tr>
<tr>
<td>Area 3</td>
<td>3:1</td>
<td>4:1</td>
</tr>
<tr>
<td>Area 4</td>
<td>1:1</td>
<td>2:1</td>
</tr>
<tr>
<td>Area 5</td>
<td>0.6:1</td>
<td>2:1</td>
</tr>
<tr>
<td>Area 6</td>
<td>0.5:1</td>
<td>2:1</td>
</tr>
<tr>
<td>Area 7</td>
<td>0.5:1</td>
<td>1:1</td>
</tr>
<tr>
<td>Area 8</td>
<td>3:1</td>
<td>4:1</td>
</tr>
<tr>
<td><strong>Area 14</strong></td>
<td><strong>0.2:1</strong></td>
<td><strong>2:1</strong></td>
</tr>
</tbody>
</table>

   (3) The non-residential floor space ratio for all buildings within a site on land identified as follows on the Non-Residential Floor Space Ratio Range Map must not be less than the ratio shown for that land.
(a) Area 1—3:1,
(b) Area 9—0.5:1,
(c) Area 10—1:1,
(d) Area 12—2:1,
(e) Area 13—1.5:1.

(4) The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map must not exceed 2:1.

(5) Development consent must not be granted to the erection of a building on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map unless the consent authority is satisfied that the building will have an active street frontage after its erection.

(6) Despite subclause (5), an active street frontage is not required for any part of a building that is used for any of the following:
(a) entrances and lobbies (including as part of a mixed use development),
(b) access for fire services,
(c) vehicular access.

(7) In this clause, a building has an active street frontage if no part of the ground floor of the building facing a street is used for residential accommodation.

(8) In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose other than residential accommodation, a car park or a telecommunications facility, in all buildings within a site to the site area.

2.3 Part 3 – Justification

A. Need for the Planning Proposal

1. Is the Planning Proposal a result of any strategic study or report?

The Planning Proposal is not the result of any strategic study or report. Instead, the need for a Planning Proposal is the result of the applicant’s unsuccessful efforts to find occupants for the first floor non-residential areas in the building. As detailed by the following points, there are sound justifications for a Planning Proposal:

(a) The applicant has made considerable efforts to find a productive use for the first floor non-residential floor space, but has failed to find a viable occupant.

An outline of the applicant’s endeavours to make productive use of the approved ground and first floor non-residential space follows (the referenced emails/letters are attached at Appendix C):

- Mater Hospital – As detailed in the attached emails, Barana approached Mater Hospital to see if it was interested in potentially leasing or purchasing the first floor serviced apartments to accommodate relatives, friends and carers of patients admitted from rural and regional areas and/or as specialist medical office accommodation. The hospital has advised that it has entered into leases over other properties and that it is unlikely to need any additional space in the near term.

- Toga Hospitality - Toga Hospitality operate Adina Serviced Apartments, Medina Serviced Apartments, Vibe Hotels and Travelodge. The attached letter notes that it is not viable to operate sic serviced apartments (noting that a minimum of 40 apartments is needed to
achieve the critical mass required to support the management, marketing, maintenance and administration functions).

- **Waldorf Apartments** – The attached letter notes that the Waldorf operates many serviced apartments on the North Shore, that Crows Nest would be of interest, but that it is not possible to run a serviced apartment operation with only six apartments.

- **Colliers International** – Colliers reviewed the first floor non-residential space to assess its suitability for use as a commercial office. As detailed in the attached letter, it is Colliers’ view that commercial space would not work in the development, noting that there are significant vacancies in the fringe North Shore market as the location is outside the main core, located too far from rail transport and not a desirable location for office occupants. It is Colliers’ view that there would be little if any demand for office space in the development if it were created.

- **Richardson & Wrench** - R&W reviewed the plans and noted that the site is not in a commercial office location, is too isolated and there is no critical mass being located in a large residential complex. R&W also noted that there are better located commercial office suites available on the North Shore.

- **Pharos Retail** – Since October 2013, Pharos Retail has been responsible for leasing the approved ground floor retail tenancies on the site. They have received approximately 15 enquiries from prospective tenants (including gymnasiums, cafes, retail/office tenants etc). None of the leasing enquiries has evolved into firm interest. Pharos Retail express the view that the ground floor tenancies are “vastly superior” to the Level 1 non-residential space and that there would be very little prospect of leasing Level 1 for retail or office uses.

(b) **The site has a unique location, sitting at the outer fringe of the St Leonards/Crows Nest Centre**

As demonstrated by the Zoning Plan extract at Figure 2, the site sits at the southern extremity of lands in the Crows Nest/St Leonards Zone B4 – Mixed Use.

Unlike other lands in Crows Nest/St Leonards Zone B4, the site and properties on the western side of the Pacific Highway between Rocklands Road and Bruce Street, are located in the Waverton/Wollstonecraft Planning Area in the Character Statements for NSDCP 2013 (refer to Figure 4). This Planning Area is predominantly residential in use and character. Other Zone B4 sites in the Centre are located in the St Leonards/Crows Nest Planning Area, which emphasises the Specialist Centre role of St Leonards Town Centre.

Given the location of the site at the southern edge of the Zone B4 lands and its inclusion in the Waverton/Wollstonecraft (instead of the Leonards/Crows Nest) Planning Area, the site is not part of the centre core and a reduction in non-residential FSR does not set a precedent for more centrally located sites.

(c) **Mixed developments in the vicinity of the site have small ground floor non-residential activities with apartments above**

The Planning Proposal would be consistent with the following mixed use developments in the vicinity of the site, on the western side of the Pacific Highway, which have small street front non-residential uses at the ground level, with apartments above:

- 236 Pacific Highway (The Cosmopolitan) which has three small ground floor shops with apartments above
- 258 Pacific Highway which has one ground floor shop (vacant) with five apartments above
- 250 Pacific Highway which has two ground floor shops (one vacant) with 28 apartments above.

These existing mixed use developments show that the mixed use character is able to be created by street/ground level activities.

(d) The Panorama development has a scale and design that will effectively create a mixed use character

Panorama incorporates the following attributes that will create a mixed use character:

- The site will have an “active street frontage” to the Pacific Highway, being addressed by at least five non-residential tenancies and having two apartment entrances (consistent with NSLEP 2013, cl. 4.4A(5))
- No part of the ground floor facing the Pacific Highway will be used for residential accommodation (consistent with NSLEP 2013, cl. 4.4A(7))
- Shops 1 to 6 (some of which may be subdivided into smaller tenancies depending on demand) have a variety of sizes and attributes and are capable of accommodating a mixture of compatible non-residential uses
- The tenancies are easily accessed and serviced with a common loading dock and retail garbage room located on the ground floor, ensuring that site conditions do not preclude any non-residential users
- The proponent is endeavouring to tenant the shops with a café, gym, medical suites etc; to achieve a complementary mix of non-residential uses on the site
- The ground floor is occupied by an internal street/laneway addressed by non-residential tenancies, accommodating an outdoor seating area and traversed by the residential lobby entrances. This characteristic adds to the mixed use character of the development and enables the wider community to access internal areas on the site.

The variety of non-residential spaces and the internal street/laneway add to the mixed use character of the site and zone. These attributes are unlikely to be replicated on other smaller sites in Crows Nest (noting that the site has an area of 3,352.4m²) including the underdeveloped properties in the subject street block on the western side of the Pacific Highway.

(e) The Planning Proposal does not compromise achievement of the Zone B4 objectives consistent

The Planning Proposal is consistent with the objectives of Zone B4 as follows:

- To provide a mixture of compatible land uses.
  
  As noted at point (d) above, Panorama accommodates six (or more depending on demand) non-residential tenancies with apartments above. The tenancies have a variety of sizes and characteristics to cater to a mixture of compatible uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
  
  Retail, recreation (gym), health related office and residential uses will be collocated on the site which sits on the edge of the Crows Nest/St Leonards Centre. Efforts to promote non-car travel include constrained parking and bicycle parking.
- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
The site itself will become a vibrant mixed use place, sitting on the edge of the Crows Nest/St Leonards (mixed use) Centre. The internal street will be a high quality urban space, activated by non-residential tenancies, outdoor seating and two residential lobbies (as illustrated on the images at Figure 5). The first floor serviced apartments (or another first floor non-residential use) would make a limited contribution to this vibrant environment.

- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.

The Planning Proposal would facilitate ground floor non-residential uses on the site with residential above.

Photograph of the internal street (non-residential tenancies are still vacant)

Photomontage of the internal street, lobby and internal non-residential tenancy

Figure 5 – Photograph and photomontage of the Panorama internal street
2. Is the Planning Proposal the best means of achieving the objective or intended outcomes or is there a better way?

Alternatives to the Planning Proposal, that are not achievable in the circumstances, include the following:

- Section 96 application for modification
  
  The applicant lodged a Section 96 application for modification seeking consent to reduce the non-residential FSR approved for the site down to 0.24:1 from 0.4:1 approved (Application No. 404/10/5).

  On 30 March 2012, Council refused the Section 96 application. One of the reasons being that the variation required an amendment to North Sydney Local Environmental Plan 2009 (the applicable instrument at the time).

- Compliance with the non-residential FSR standard
  
  The development is complete and fully utilises the site’s development potential. Buildings have been strata subdivided, residential apartments have been sold and are now mostly occupied. The provision of additional non-residential GFA (to say increase the number of serviced apartments to a viable level) is impossible as the development potential of the site has been fully utilised and the site ownership is now fragmented.

  Given that Council has determined that a Section 96 is not an appropriate means to achieve the objectives and intended outcome described above at Section 2.1, and that compliance with the non-residential FSR standard is impossible, a Planning Proposal is the best mechanism.

B. Relationship to strategic planning framework

3. Is the Planning Proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Assessment Criteria

a. Does the proposal have strategic merit and:

  - Is consistent with a relevant local strategy endorsed by the Director General or
  - Is consistent with the relevant regional strategy or Metropolitan Plan or
  - Can it other demonstrate strategic merit, giving consideration to the relevant section 117 Directions applying to the site and other strategic considerations (e.g. proximity to existing urban areas, public transport and infrastructure accessibility, providing jobs closer to home etc)

  The Planning Proposal is consistent with the Draft Metropolitan Strategy for Sydney to 2031 and the Draft Inner North Subregional Strategy (DINSS). The DINSS identifies housing choice as a key direction for the subregion. The DINSS also requires that an additional 5,500 dwellings be provided in the North Sydney LGA by 2031. The Planning Proposal will make a contribution to achieving local and regional residential targets.

  Relevant s. 117 directions are considered later in Table 1.

b. Does the proposal have site-specific merit and is it compatible with the surrounding land uses, 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

There are no natural environmental constraints or issues relevant to the Planning
Proposal.

As demonstrated above in the Justification at Section 2.3, the Planning Proposal has
site specific merit and is compatible with surrounding land uses noting that:
• Experts in real estate and serviced apartment operators have advised that there is
very little prospects for leasing the first floor serviced apartments (refer to
correspondence at Appendix C)
• The site is in the Waverton/Wollstonecraft Planning Area which is predominantly
residential in character
• Consistent with other development sites in Zone B4, a mixed use character will be
established on the site by the approved ground floor non-residential tenancies
• The site has excellent access to transport, jobs and community services. Section 94
contributions for development on the site have been paid and any additional
charges that might arise from a change of use from serviced apartments to
dwellings could be levied on a future change of use development application.

4. Is the Planning Proposal consistent with a council’s local strategy or other local strategic
plan?

Productive/residential occupation of the approved serviced apartments would make a small
contribution towards achieving local residential capacity targets for North Sydney (Council’s
Residential Development Strategy 2009 targets 1,453 additional dwellings in St
Leonards/Crows Nest).

The Planning Proposal is also consistent with Council’s North Sydney Community Strategic
Plan 2013-2023 vision to the extent that the provision of additional dwellings responds to
State and regional planning initiatives.

Importantly, the Planning Proposal would not reduce the amount of non-residential GFA
located on the Ground Floor of the development, ensuring that the mixed use character of
the area and street activation along the Pacific Highway is retained.

5. Is the Planning Proposal consistent with applicable State Environmental Planning
Policies?

The Planning Proposal is consistent all relevant State Environmental Planning Policies
(SEPPs), notably it promotes urban consolidation consistent with SEPP 32—Urban
Consolidation (Redevelopment of Urban Land) which includes the following aims and
objectives

2 Aims and objectives

(1) This Policy aims:

(a) to promote the orderly and economic use and development of land by enabling
urban land which is no longer required for the purpose for which it is currently
zoned or used to be redeveloped for multi-unit housing and related
development, and

(b) to implement a policy of urban consolidation which will promote the social and
economic welfare of the State and a better environment by enabling:

(i) the location of housing in areas where there are existing public infra-structure,
transport and community facilities, and
increased opportunities for people to live in a locality which is close to employment, leisure and other opportunities, and

(iii) the reduction in the rate at which land is released for development on the fringe of existing urban areas.

(2) The objectives of this Policy are:

(a) to ensure that urban land suitable for multi-unit housing and related development is made available for that development in a timely manner, and

(b) to ensure that any redevelopment of urban land for multi-unit housing and related development will result in:

(i) an increase in the availability of housing within a particular locality, or

(ii) a greater diversity of housing types within a particular locality to meet the demand generated by changing demographic and household needs, and

(c) to specify:

(i) the criteria which will be applied by the Minister to determine whether the redevelopment of particular urban land sites is of significance for environmental planning for a particular region, and

(ii) the special considerations to be applied to the determination of development applications for multi-unit housing and related development on sites of such significance.

6. Is the Planning Proposal consistent with applicable Ministerial Directions (s.117 directions)?

It is considered that the Planning Proposal is generally consistent with the relevant Directions issued under Section 117(2) of the Environmental Planning and Assessment Act, 1979 by the Minister to Councils, as demonstrated in the assessment at Table 1.
Table 1 – Consistency with Ministerial Directions

<table>
<thead>
<tr>
<th>Direction</th>
<th>Consistency</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1. Employment and Resources</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1. Business &amp; Industrial Zones</td>
<td>Minor inconsistency</td>
<td>The Planning Proposal has a minor inconsistency with this direction as the achievement of the existing non-residential FSR standard could provide employment. However, given the proponent’s inability to find a viable use for the Level 1 non-residential GFA (see Section 2.3 A. 1 above), the site is not a suitable location for serviced apartments or Level 1 commercial office space. Therefore the inconsistency is of minor significance as the site is unlikely to accommodate significant employment potential.</td>
</tr>
<tr>
<td><strong>2. Environmental Heritage</strong></td>
<td>N/A</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>3. Housing, Infrastructure &amp; Urban Development</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1. Residential Zones</td>
<td>Yes</td>
<td>The Planning Proposal will provide more housing and make a contribution to house choice in a location that has excellent access to existing infrastructure and services. Additionally, residential use of the Level 1 serviced apartments will not have any adverse environmental impacts.</td>
</tr>
<tr>
<td>3.4. Integrating Land Use &amp; Transport</td>
<td>Yes</td>
<td>The Planning Proposal will facilitate additional housing in a location that has access to jobs and services that can be readily accessed by walking, cycling and public transport. The development also includes bicycle parking and space for a car share scheme.</td>
</tr>
<tr>
<td><strong>4. Hazard and Risk</strong></td>
<td>N/A</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>5. Regional Planning</strong></td>
<td>N/A</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>6. Local Plan Making</strong></td>
<td>N/A</td>
<td>Not applicable</td>
</tr>
<tr>
<td><strong>7. Metropolitan Planning</strong></td>
<td></td>
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</tr>
<tr>
<td>7.1. Implementation of the Metropolitan Plan for Sydney 2036</td>
<td>Yes</td>
<td>The Planning Proposal is consistent with the Metropolitan Strategy as discussed above in Section 2.3, B.4 above.</td>
</tr>
</tbody>
</table>
C. Environmental, social and economic impact

7. 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?

No.

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

In theory, the proposed change of use from six serviced apartments to six dwellings will reduce the potential availability of visitor accommodation in the locality. In reality, the proponent has been unable to find a serviced apartment operator, therefore the serviced apartments have not been available to visitors to the area. Additionally, the Mater Hospital which is located very close to the site, has confirmed that it is not interested in taking up the serviced apartments for visiting specialist or for the families of patients.

9. Has the Planning Proposal adequately addressed any social and economic effects?

Potential social effects include the merit of providing additional housing in the Waverton/Wollstonecraft Planning Area which is predominantly residential in character. This positive has been addressed above.

Potential economic impacts include a diminution in mixed use character and non-residential uses in Crows Nest. These issues have been adequately addressed above.

D. State and Commonwealth interests

10. Is there adequate public infrastructure for the Planning Proposal?

It is considered that the Planning Proposal will have no adverse effect on the demand or availability of public infrastructure. As noted above, additional section 94 contributions can be levied (if relevant) at the development application stage.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

The views of State and Commonwealth agencies will be made known after the gateway determination (noting that the only agency likely to have an interest in the Planning Proposal is the Planning and Infrastructure (P&I)).

2.4 Part 4 – Mapping

Mapping included in the Planning Proposal comprises:

- Site location plan (Figure 1)
- Extract from NSLEP 2013, Land Zoning Map - Sheet LZN_001 showing the site’s location at the southern extremity of the Zone B4 lands (Figure 2)
- Extract from NSLEP 2013, Non-Residential FSR Range Map - Sheet LCL_001 (Figure 3)
- NSDCP 2013 Waverton/Wollstonecraft Planning Area showing the location of the site (Figure 4)
- Building A - Level 1 Plan and Building A - East Elevation showing the location of the approved serviced apartments (by JPR Architects, CD 4100 and CD 4201, Rev A dated 14 March 2014) (Appendix A)
- Relevant existing and Planning Proposal version of NSLEP 2013 Non-Residential FSR Range Map - Sheet LCL_001 (Appendix B).
2.5 Part 5 – Community consultation
Community consultation will be undertaken in accordance with Council’s guidelines and any specific requirement made by the P&I’s gateway determination. At this stage, public exhibition of the Planning Proposal is likely to be undertaken in the following manner:

- Notification in a newspaper that circulates in the area affected by the Planning Proposal (North Shore Times)
- Notification on Council’s website
- Notification in writing to affected and adjoining landowners.

It is considered that the Planning Proposal is a “low impact proposal” requiring exhibition for 14 days.

2.6 Part 6 – Project timeline
An indicative timeline for the Planning Proposal is set out below:

- Submission of Planning Proposal to Council: March 2014
- Reporting of Planning Proposal to Council: April 2014
- Referral to Minister for Gateway determination: April 2014
- Date of Gateway determination: May 2014
- Public exhibition period (14 days): June 2014
- Timeframe for government agency consultation: June 2014
- Timeframe for consideration of submissions: July 2014
- Reporting of exhibition of Planning Proposal: August 2014
- Date of submission to Department to finalise LEP: August 2014
- Anticipated date RPA will make plan: September 2014
- Anticipated date RPA will forward to Department for notification: October 2014

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2 Pursuant to A guide to preparing local environmental plans p. 24 (Planning & Infrastructure, April 2013)

‘Low’ impact planning proposal is a planning proposal that, in the opinion of the person making the Gateway determination is:

- consistent with the pattern of surrounding land use zones and/or land uses
- consistent with the strategic planning framework
- presents no issues with regard to infrastructure servicing
- not a principal LEP
- does not reclassify public land.
3.0 Summary and Conclusion

This Planning Proposal relates to the mixed use development known as “Panorama” located at 200-220 Pacific Highway, Crows Nest. It has been prepared by Robinson Urban Planning Pty Ltd on behalf of B Cap 2 Pty Ltd (the proponent and landowner).

The objective of the Planning Proposal is to reduce the minimum non-residential FSR standard applying to the site under NSLEP 2013 as follows:

- Existing non-residential FSR standard 0.5:1 to 2:1
- Proposed non-residential FSR standard 0.2:1 to 2:1

The intended outcome of the Planning Proposal is to enable residential use of the approved first floor serviced apartments constructed on the site.

The Planning Proposal demonstrates that the circumstances in this instance are unique and that the amendment has considerable merit as:

1. The site (and the block on the western side of the Pacific Highway between Rocklands Road and Bruce Street) is located within the Waverton/Wollstonecraft Planning Area in the Character Statements to NSDCP 2013. As noted in the Character Statement, this is predominantly residential area. All other parts of the mixed use centre are located in the St Leonards/Crows Nest Planning Area which emphasises the Specialist Centre role of St Leonards Town Centre.

2. The site has a unique location, sitting at the outer fringe of the St Leonards/Crows Nest Centre and at the southern extremity of lands in the Crows Nest/St Leonards Zone B4 – Mixed Use.

3. The applicant has made considerable efforts to find a productive use for the first floor non-residential floor space, but has failed to find a viable occupant. Included in the Planning Proposal are letters from Mater Hospital, Toga Hospitality, Waldorf Apartments, Colliers International, Richardson & Wrench and Pharos Retail explaining that the approved serviced apartments are not viable and that there is little if any demand for first floor retail/commercial uses in this location. (Additionally, it is proving difficult to lease the eminently more suitable ground floor retail tenancies).

4. The development is complete and fully utilises the site’s development potential. Buildings on the site have been strata subdivided, residential apartments have been sold and are now mostly occupied. The provision of additional non-residential GFA (to say increase the number of serviced apartments to a viable level) is impossible as the development potential of the site has been fully utilised and the site ownership is now fragmented.

5. Mixed developments in the vicinity of the site have small ground floor non-residential activities with apartments above (including 236 Pacific Highway which has three small ground floor shops with apartments above, 258 Pacific Highway which has one ground floor shop (vacant) with five apartments above and 250 Pacific Highway which has two ground floor shops (one vacant) with 28 apartments above). These existing mixed use developments close to the site show that a mixed use character is able to be created by street/ground level activities.

6. Panorama has a scale and design that will effectively create a mixed use character including:
   (a) An “active street frontage” to the Pacific Highway, being addressed by at least five non-residential tenancies and having two apartment entrances
   (b) No residential accommodation on the ground floor facing the Pacific Highway
(c) Six non-residential tenancies (some of which may be subdivided into smaller tenancies depending on demand) which have a variety of sizes and attributes and are capable of accommodating a mixture of compatible non-residential uses

(d) Tenancies that are easily accessed and serviced with a common loading dock and retail garbage room located on the ground floor, ensuring that site conditions do not preclude any non-residential users

(e) The proponent is endeavouring to tenant the shops with a café, gym, medical suites etc; to achieve a complementary mix of non-residential uses on the site

(f) An internal street/laneway addressed by non-residential tenancies, accommodating an outdoor seating area and traversed by the residential lobby entrances, adding to the mixed use character of the development and enabling the wider community to access internal areas on the site

(g) Consistency with the objectives of Zone B4 noting that non-residential uses on the first floor would contribute little if any additional activity.

7. The scale and variety of non-residential spaces and the internal street/laneway add to the mixed use character of the site and zone. These attributes are unlikely to be replicated on other smaller sites in Crows Nest (noting that the site has an area of 3,352.4m²) including the underdeveloped properties in the subject street block on the western side of the Pacific Highway.

Given the merits and unique circumstances, the Planning Proposal is worthy of Council’s support.
Appendix A

Building A - Level 1 Plan and Building A - East Elevation showing the location of the approved serviced apartments (by JPR Architects, CD 4100 and CD 4201, Rev A dated 14 March 2014)
Appendix B

Existing and Planning Proposal version of NSLEP 2013 Non-Residential FSR Range Map - Sheet LCL_001
Appendix C

Correspondence from Mater Hospital, Waldorf Apartments, Toga Hospitality, Colliers International, Richardson & Wrench and Pharos Retail in relation to non-residential uses on the site
It is the responsibility of the building contractor to ensure that all work executed on this project complies with the relevant legislation including but not limited to the Building Code of Australia and the relevant Australian Standards.

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From: Sandra Robinson
Sent: Tuesday, 11 February 2014 4:52 PM
To: sandra@robinsonplanning.com.au
Cc: Andrew Urquhart
Subject: FW: Panorama"-200-220 pacific highway-serviced apartments

From: Greg Shand
Sent: Tuesday, 17 September 2013 6:51 PM
To: 'John Pitsonis'
Cc: Margaret Benjafield
Subject: RE: Panorama"-200-220 pacific highway-serviced apartments

No problem john. let me know if you want to revisit

Regards,

Greg Shand
Barana Group Pty Limited

A: 3A Macquarie Street, Sydney NSW 2000
T: (612) 8272 4222
F: (612) 8272 4242
E: greg@baranagroup.com.au
W: www.baranagroup.com.au

From: John Pitsonis
Sent: Tuesday, 17 September 2013 1:50 PM
To: Greg Shand
Cc: Margaret Benjafield
Subject: RE: Panorama"-200-220 pacific highway-serviced apartments

Hi Greg. Thank you for your email. Since we last spoke, the Mater has taken leases over two apartments at the rear of our Hospital for the accommodation of relatives, friends and carers of patients admitted from rural and regional areas. We have also recently entered into the commercial lease of additional property in Rocklands Road for the purpose of providing additional specialist medical office accommodation, so, at this stage, we are probably reasonably well serviced. I was originally interested in the possibility of renting/leasing some space from you but this is now unlikely in the near term. Thank you for your follow up all the same. Regards, John

John Pitsonis | General Manager | Mater Hospital Sydney | 25 Rocklands Road North Sydney NSW 2060 | T +61 2 9900 7499 | M +61 4 1864 2739 | E jpitsonis@matersydney.com.au | www.materhospital.com.au

From: Greg Shand
Sent: Tuesday, 17 September 2013 12:40 PM
To: John Pitsonis
Subject: Panorama"-200-220 pacific highway-serviced apartments

John
Following our earlier correspondence, I'm not sure whether the Mater has ongoing interest in potentially leasing or purchasing the serviced apartment component at Panorama. You may have noticed that the project is nearing completion and will be launched this weekend. If you do have any interest, please let me know so I can organize for you to inspect and send you some details.

Regards,

Greg Shand
Barana Group Pty Limited

A: 3A Macquarie Street, Sydney NSW 2000
T: (612) 8272 4222
F: (612) 8272 4242
E: greg@baranagroup.com.au
W: www.baranagroup.com.au

From: Greg Shand
Sent: Monday, 1 July 2013 4:14 PM
To
Subject: "Panorama"-200-220 pacific highway-serviced apartments

John
Thank you for your time on the phone today.
As I mentioned my company is developing the building at 200-220 pacific highway (close to the corner of Rocklands Road). Before we commenced the development we did have a meeting with one of your colleagues but unfortunately I've lost the contact details.
Our development has 3 components being residential, retail (on the ground floor) and a dedicated area comprising 6 serviced apartments. The serviced apartments have a separate reception the ground floor and are located on and occupy the entire 1st floor of the building on the pacific highway.
Five of the serviced apartments are large 1 bed units with a separate small 2nd bed/study area and a separate wintergarden. There is also 1 larger 2 bed serviced apartment with a private garden area. All are finished to a high standard (stone bench tops/European appliances etc)
Ultimately we would be looking to selling the serviced apartments however depending on the Mater’s objectives, we could consider leasing them to the Hospital. There may be other options as well.
We expect that the development will be finished in October.
I would be happy to show you through the relevant part of the development at a time which suits you. I can also give you some plans and other materials at that time.
Please let me know if you are interested in having a look.

Regards,

Greg Shand
Barana Group Pty Limited

A: 3A Macquarie Street, Sydney NSW 2000
T: (612) 8272 4222
F: (612) 8272 4242
E: greg@baranagroup.com.au
W: www.baranagroup.com.au

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1 December 2011

Mr Greg Shand  
Barana Group Pty Limited  
3A Macquarie Street  
SYDNEY NSW 2000

Dear Greg,

PANORAMA DEVELOPMENT

Waldorf operates serviced apartments at many locations on the North Shore (I refer you to www.waldorf.com.au). Whilst Crows Nest would be of interest to us, it is not possible to run a serviced apartment operation with only 6 apartments. Thank you for bringing this opportunity to our attention however we have no further interest.

Yours faithfully

[Signature]

Frank Wolf

Rinbac Pty. Ltd. (ABN: 28 098 546 098) Trading as Waldorf Apartments Australia
Email: webmaster@waldorf.com.au  •  Website: www.waldorf.com.au  
P.O. Box 431 St.Ives NSW 2075  •  Tel: 61 - 2 - 8356 1500  •  Fax: 61 - 2 - 9356 4839  
• Sydney  •  North Sydney  •  South Sydney  •  East Sydney  •  Parramatta  •  Hornsby  •  Drummoyne  •  Carringford  
• Randwick  •  Woolloomooloo  •  Perth  •  Melbourne  •  Canberra  •
25 November 2011

Mr Greg Shand
Barana Group
3a Macquarie Street
Sydney NSW 2000

Dear Greg

RE: PANORAMA DEVELOPMENT, 200-220 PACIFIC HIGHWAY CROWS NEST

Thank you for giving Toga Hospitality the opportunity to consider operating the serviced apartment component of the Panorama Development.

We have reviewed the plans for the development that you have forwarded to us. As I understand it the development incorporates approximately 200 apartments and some retail space along the Pacific Highway frontage. Relevantly the plans allow for 6 serviced apartments on the first floor of the "Apartment" Building on the Pacific Highway frontage.

As you are aware as part of Toga Hospitality we operate the Medina Serviced Apartment business which is the leading operator of serviced apartments and apartment hotels around Australia (www.medina.com.au). Medina is recognised as a premier brand delivering a consistently quality product.

It is our view that it is not feasible to operate a serviced apartment complex at Panorama when it is limited to 6 apartments. To be viable, there would need to be a minimum of 40 serviced apartments so as to achieve the critical mass required to handle all the management, marketing and maintenance and administrative functions associated with the operation.

For these reasons and whilst we appreciate the opportunity very much, we have no further interest.

Yours sincerely

Allan Vidor
Managing Director
23 November 2011

Mr Andrew Urquhart
Barana Group Pty Ltd
3A Macquarie Street
Sydney NSW 2000

Dear Andrew,

200-220 PACIFIC HIGHWAY, CROWS NEST

As requested we have reviewed the plans of the redevelopment of the above property and in particular the level 1 space located in the future front building on Pacific Highway, to assess its suitability for use as commercial office space.

As you know we have experience in commercial leasing on the north shore and in particular in the St Leonards, Crows Nest and North Sydney office markets.

It is our opinion that commercial offices will not work in your development. There is and always has been significant vacant office space available for sale and for lease in this fringe north shore market as this location is not an office market location being located outside of the main cores, it is located too far from rail public transport and is simply not a market where office occupiers wish to be located in. It is our view that there will little if any demand for office space in this development if it were to be created.

If you require any further information please contact me.

Yours sincerely,

[Signature]

Sara Pratt
National Director
Client Engagement Team
7 December 2011

Andrew Urquhart
Barana Group
3A Macquarie Street
Sydney NSW 2000

Andrew

PANORAMA DEVELOPMENT AT CROWS NEST

Thanks for sending us your plans of the redevelopment of your property at Crows Nest. We have had a look at the level 1 space in the Apartments building which you suggested could be a location for commercial offices to be created. We have discussed this at length with our leasing and sales team and unfortunately we dont believe this will be a viable use due to the anticipated lack of demand from occupiers or buyers.

Whilst your development will no doubt be a successful residential development this is not a commercial office location, it is too isolated and has no critical mass being located in a large residential complex. There is also already a lot of commercial office suites available in the north shore market in much superior locations to this and such users are unlikely to view this location as a “real” option to consider to locate to and operate from. Also in our experience in residential project marketing we do not consider that the buyer market in your development will have any demand for office suites in the complex. For all these reasons we do not suggest this type of use in this location.

We wish you well with the development.

Yours sincerely

[Signature]

David Dent

Richardson and Wrench North Sydney
Andrew Urquhart  
Barana Group Pty Limited  
3A Macquarie Street,  
Sydney NSW 2000  

14 March 2014

Dear Andrew

PANORAMA, 200-220 PACIFIC HIGHWAY, CROWS NEST RETAIL LEASING

This is to confirm that we commenced leasing efforts to lease the ground floor retail shops at Panorama, Crows Nest in October 2013. Since that time we have had approximately 15 enquiries from a range of prospective tenants from gymnasiums, café's, quasi retail/office tenants and other traditional retail tenants, however to date there has been no firm interest in leasing any of the shops. The marketing initiatives that we have implemented include signboards on all shop windows facing pacific highway, mail outs to prospective tenants in Crows Nest, St Leonards and North Sydney, enquiries made to our own data base of retail tenants, an internet listing on realcommercial.com.au and listing the shops on our agency website.

We consider that the ground floor with its direct exposure to Pacific Highway to be vastly superior to the 1st floor space for retail uses and given the efforts to date have resulted in none of the ground floor shops having been leased there would be very little prospect of leasing level 1 for any retail or office type use.

Yours faithfully,
Pharos Retail

[Signature]

Tom Mitsoulas
NA