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Ms Karen Armstrong
Executive Director
Regions, Planning Services
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001



PCU064542

MO4 (CIS)

9 March 2016

Dear Ms Armstrong

**Re: Gateway Determination Review – 31-33 Albany Street, Crows Nest
(Dept Ref: (PP_2015_NORTH_009_00))**

I refer to the Department's Gateway Determination of the Planning Proposal for 31-33 Albany Street, Crows Nest dated 28 January 2016 and my email dated 15 February 2016, foreshadowing a request for a formal review of this Determination.

This application formally challenges the imposition of conditions 1(b) and 2 on the Gateway Determination referred to above.

Please find enclosed:

1. Gateway Determination Review Application form.
2. Detailed submission.
3. Appendix 1 - Council report of 19/10/2015 endorsing the Planning Proposal/Voluntary Planning Agreement.
4. Appendix 2 - Council letter to the Department of Planning and Environment requesting Gateway Determination.
5. Appendix 3 – the Department's Gateway Determination.
6. Appendix 4 - Council report of 7/03/2016 regarding proposed St Leonards Priority Precinct Process.

Please call me on (02) 9936 8302 should you wish to discuss anything further.

Yours sincerely,

Marcelo Occhiuzzi

MANAGER STRATEGIC PLANNING





Date received:

Reference No

LODGEMENT

Instructions to users

This form is to be completed if you wish to request an independent review related to plan-making under Part 3 of the Environmental Planning and Assessment Act 1979. A review can be requested at pre-Gateway stage and following a Gateway determination. This form relates to Gateway review requests.

A Gateway review can be sought following a Gateway determination where a determination is made that:

- a) the planning proposal should not proceed;
b) the planning proposal should be resubmitted to the Gateway; or
c) imposes requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Note: With reference to point 'c' above, a request to review a Gateway determination can only be made prior to the commencement of community consultation on the planning proposal.

Note: Gateway reviews can only be sought if the original Gateway determination was made by a delegate of the Minister.

Before lodging a request for review, it is recommended that you consult the Planning Circular 'Delegations and independent reviews of plan-making decisions' and 'A guide to preparing local environmental plans', which can be found on the department's website www.planning.nsw.gov.au. The guide gives a step-by-step explanation of the review procedure and necessary requirements.

To ensure that your request for review is accepted, you must:

- complete all relevant parts of this form
submit all relevant information required by this form.
provide one hard copy of this form and required documentation
provide the form and documentation in electronic format (e.g. CD-ROM)

Note: The department may request further information if your request for review is incomplete or inadequate.

A fee is not charged for a Gateway determination review.

All requests must be lodged with the department's relevant Regional Office. Please refer to www.planning.nsw.gov.au for contact details.

PART A - APPLICANT AND SITE DETAILS

A1 - Applicant Details

Principal contact

Mr Ms Mrs Dr Other

First name

MARCELO

Family name

OCCHIUZZI

Name of company (N/A if an individual)

NORTH SYDNEY COUNCIL

Street address

Unit/street no.

200

Street name

MILNER STREET

Suburb/town

NORTH SYDNEY

State

NSW

Postcode

2060

Postal address (or mark 'as above')

PO Box or Bag

PO Box 12

Suburb or town

NORTH SYDNEY

State

NSW

Postcode

2059

Daytime telephone

Fax

Email

marcelo.occhiuzzi@northsydney.nsw.gov.au

Mobile

A2 – Site Details

Identify the land that is to be the subject of the planning proposal and for which you seek a review

	Unit/street no.	Street name		
Street address	<input type="text" value="31-33"/>	<input type="text" value="ALBANY STREET"/>		
	Suburb/town		State	Postcode
	<input type="text" value="CROOKS NOST"/>		<input type="text" value="NSW"/>	<input type="text" value="2065"/>

NAME OF THE SITE

REAL PROPERTY DESCRIPTION

The real property description is found on a map of the land or on the title documents for the land. If you are unsure of the real property description, you should contact the Department of Finance and Services, Land and Property Information. Please ensure that you place a forward slash (/) to distinguish between the lot, section DP and strata numbers. If the proposal applies to more than one piece of land, please use a comma (,) to distinguish between each real property description.

PROVIDE DETAILS OF ALL AFFECTED LANDOWNERS WHERE THEY ARE NOT THE DIRECT APPLICANT

HAVE ALL OWNERS OF LAND TO WHICH THIS PLANNING PROPOSAL APPLIES BEEN NOTIFIED?

- Yes
- No
- Some have but not all
- N/A (Applicant is owner)

Note: If some land owners, but not all, have been notified, list below those notified:

CURRENT ZONING OF THE LAND AT THE SITE

CURRENT LAND USE AT THE SITE

PART B – REASON FOR REVIEW AND THE PLANNING PROPOSAL

B1 – Reason for Gateway Review

WAS THE ORIGINAL GATEWAY DETERMINATION MADE BY A DELEGATE OF THE MINISTER

- Yes
- No

Note: Requests for the review of Gateway determination will only be considered if the original Gateway determination was made by a delegate of the Minister.

Indicate below the reason for seeking a review of the Gateway determination. A review can only proceed if one of these three circumstances has occurred.

A determination has been made that the planning proposal should not proceed

In the case of the above, will this request for review be submitted no more than 40 days from the date of the original notification of the Gateway determination?

- Yes
- No

A determination has been made that the planning proposal should be resubmitted to the Gateway

In the case of the above, will this request for review be submitted no more than 40 days from the date of the original notification of the Gateway determination?

- Yes
- No



A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal

In the case of the above, have you indicated your intent to submit a request for review no more than 14 days from the date of the original notification of the Gateway determination?

- Yes
 No

Will this request for review itself be submitted no more than 40 days after this date from the date of the original notification of the Gateway determination?

- Yes
 No

B2 – The Planning Proposal

DEPARTMENT'S REFERENCE NUMBER:

PP 2015 - NORTH - 009 - 00

NAME OF THE LOCAL GOVERNMENT AREA

NORTH SYDNEY

DESCRIPTION OF PROPOSAL

SEEKING TO INCREASE HEIGHT TO 26M & FSR TO 4.27 : 1

LOCAL ENVIRONMENTAL PLAN (LEP) TO BE AMENDED BY THE PLANNING PROPOSED

NORTH SYDNEY LEP 2013

IS THE LEP TO BE AMENDED (ABOVE) A STANDARD INSTRUMENT LEP?

- Yes
 No

INFORMATION REQUIREMENTS

Requests should be accompanied by:

- an application form
- a copy of the planning proposal as submitted to the Gateway
- a copy of all additional information and documentation provided at the Gateway
- justification for why an alteration of the Gateway determination is warranted (if applicable), including, where relevant, responses to issues raised by the original Gateway decision maker
- if relevant, disclosure of reportable political donations under section 147 of the Act.

Please refer to 'A guide to preparing local environmental plans' for the necessary information requirements.

List below all the documents, maps, plans, studies, information and any other supporting information that comprises your proposed instrument and request for pre-gateway review.

INFORMATION PROVIDED

ATTACHED

PART C – DISCLOSURE AND SIGNATURES

C1 – Donation and Gift Disclosure

Section 147 of the Environmental Planning and Assessment Act 1979 requires the public disclosure of *reportable political donations* or gifts when lodging or commenting on a *relevant planning application*. This law is designed to improve the transparency of the planning system.

DO YOU HAVE ANY DONATIONS OR GIFTS TO DISCLOSE?

- Yes
 No

How and when do you make a disclosure?

The disclosure to the Minister or the Director-General of a *reportable political donation* or gift under section 147 of the Act is to be made:

- (a) in, or in a statement accompanying, the relevant planning submission if the donation is made before the submission is made, or
- (b) if the donation is made afterwards, in a statement of the person to whom the relevant planning submission was made within 7 days after the donation is made.

What information needs to be included in a disclosure?

The information requirements of a disclosure of reportable political donations are outlined in section 147(9) of the Act. A Disclosure Statement Template which outlines the information requirements for disclosures to the Minister or to the Director-General can be found on the department's website:

www.planning.nsw.gov.au/donation-and-gift-disclosure

C2 – Signature(s)

By signing below, I/we hereby declare that all information contained within this application form is accurate at the time of signing.

Signature(s)



Name(s)

MARCELO OCCHUZZI

In what capacity are you signing

MANAGER STRATEGIC PLANNING

Date

9 MARCH 2016

Gateway Determination Review **31-33 Albany Street, Crows Nest**

1. Introduction

On 28 January 2016, the Department of Planning and Environment (DPE) issued a Gateway Determination for the Planning Proposal at 31-33 Albany Street (Department Ref: PP_2015_NORTH-009-00). The Planning Proposal principally seeks to amend the North Sydney LEP 2013 in order to:

- Increase the maximum building height control is increased to 26m; and
- Impose a maximum floor space ratio control of 4.27:1.

The Planning Proposal is also accompanied by a draft Voluntary Planning Agreement (VPA) which includes a \$1.1 million contribution towards local public benefits.

Council received a copy of the Gateway Determination from the DPE on 2 February 2016.

This Gateway Determination Review is in response to conditions 1(b) and 2 which have been imposed by the Minister's delegate on that Planning Proposal.

2. Conditions Sought to be Reviewed

The Gateway Determination issued by the Acting Executive Director, Regions Planning Services on 28 January 2016 includes various standard conditions, with the following exceptions:

1. *Prior to undertaking public exhibition the planning proposal is to be updated to:*
 - a. *...; and*
 - b. *include a satisfactory arrangements provision for contributions to designated State public infrastructure identified as part of a draft or final strategic planning review for St Leonards.*
2. *Prior to finalisation, the planning proposal is to be amended to demonstrate consistency with any available findings of the St Leonards planning review work being undertaken by the Department in consultation with North Sydney, Lane Cove and Willoughby councils.*

Conditions 1(b) and 2 have been imposed by the Minister's delegate and introduce a high level of uncertainty for the proponent and for Council and highlight a lack of transparency in the process. These conditions were not endorsed by Council and in Council's opinion, represent a material change to the Planning Proposal. This submission elaborates on these fundamental principles.

3. Background

In 2012, Council adopted the St Leonards/Crows Nest Planning Study (Precinct 1), which presented the Open Space and Pedestrian Masterplan as well as the Built Form Masterplan that together, provide a holistic approach to planning and development in the Precinct.

Council staff have been working with developers and property owners in implementing the Built Form Masterplan and maximising open space and public amenity for the community through implementation of these Planning Studies. Council has successfully negotiated development outcomes for five sites within Precinct 1 alone and these have been given expression in five submitted planning proposals. While the proposals for three sites are still being progressed, two have been finalised with the LEP amendment process being undertaken well within timeframes stipulated on Gateway Determinations.

The Planning Study identified the site at 31-33 Albany Street, Crows Nest as having the potential for an increased height limit of 26 metres subject to a range of performance based requirements being met.

Importantly, the Planning Study identified a critical item of public benefit, being the creation of a significantly transformed Hume Street Park, to accommodate the planned additional growth. The expanded park seeks to provide improved amenity and recreation capacity for new residents, workers and visitors in the area. This was to be partly funded by Planning Agreements that proponents would enter into when preparing their planning proposals for the additional density of development anticipated by the Study.

Council received a planning proposal and draft VPA for the subject site on 31 July 2015 consistent with the Planning Study previously adopted by Council. This was proceeded by a negotiation process by which the submitted documentation was fine-tuned to ensure that the process would be as time efficient as possible for the proponent.

In summary, the process continued as follows:

31 July 2015	Planning Proposal and draft VPA lodged
19 October 2015	Council endorses the Planning Proposal and draft VPA for public exhibition (report at appendix 1)
27 October 2015	Council requests a Gateway Determination from the Department (appendix 2)
2 February 2016	Council receives Gateway Determination from the Department by email (hard copy letter is dated 28 January 2016) (appendix 3)
15 February 2016	Council advised the DPE that it intended to submit a formal Gateway Determination Review.

It should be noted that the negotiated outcome that is reflected in the subject planning proposal and associated VPA is entirely consistent with the adopted planning study for Precinct 1. It implements the Open Space and Pedestrian Masterplan as well as the Built Form Masterplan to the fullest extent practicable. In this context, but prior to Council receiving the subject Gateway Determination, Council and the proponent alike, were expecting to deliver an LEP amendment for this site with minimal delay.

3.1 Council's Planning Process

On 29 November 2010, Council resolved to undertake a planning study of the St Leonards/Crows Nest area with the following objectives:

- New open space in St Leonards/Crows Nest;
- Increased investment in St Leonards and decreased commercial vacancy rates, with particular focus on the rejuvenation of the Pacific Highway;
- Improved connectivity, particularly between St Leonards/Pacific Highway and Willoughby Road;
- Improved urban design and street level amenity particularly in St Leonards and along the Pacific Highway; and
- Improved building design and residential amenity in St Leonards.

The St Leonards/Crows Nest study area was divided into four precincts to allow detailed analysis and targeted planning solutions as identified below in Figure 1 below.



Figure 1 – St Leonards/Crows Nest planning precincts

Following the adoption of the Precinct 1 Planning Study on 22 October 2012, Council commenced work on Precincts 2 and 3. That work was adopted by Council in May 2015 and is in the process of being implemented with various discussions with landowners and their agents seeking to prepare Planning Proposals consistent with the Planning Study.

These Studies have served to proactively manage the high level of development interest in the precincts in a manner that has been comprehensive, collaborative, consultative and directly responsive to metropolitan planning objectives. These Studies represented much more than a simple analysis of development potential in the precinct. They have addressed the issues of employment, urban design, amenity issues, accessibility and created mechanisms to ensure that there is a significant public benefit that will underpin and support new development. This work provides for an unambiguous framework for new development, clear communication to landowners and neighbours about likely change and

a plan for the significant improvement of the public domain in a growth centre. This framework has been developed in a manner that is both consistent with and supportive of the NSW Government's *A Plan for Growing Sydney* and was supported and partly funded by the NSW Government.

It should also be noted that Council has formally endorsed commencement of stakeholder consultation in Crows Nest and surrounding areas in response to the Metro rail announcement. The consultation area is well beyond the area identified in Figure 1 for Precinct 4 and will include areas of Lane Cove and Willoughby City Councils. This consultation process marks the commencement of a planning study that will seek to achieve a similar framework to these studies already completed.

4. Designated State Public Infrastructure

The following section provides discussion in response to condition 1(b) which requires that

Prior to undertaking public exhibition the planning proposal is to be updated to include a satisfactory arrangements provision for contributions to designated State public infrastructure identified as part of a draft or final strategic planning review for St Leonards.

Infrastructure provision through the Environmental Planning & Assessment Act ("the Act") is typically provided by one of the following mechanisms:

- Developer's works consent conditions (s80A(1)(f))
- Section 94 Contributions
- Section 94A Levies
- Planning Agreements (s93F)
- Affordable Housing Contributions (s94F)
- Special Infrastructure Contributions (s94ED-EM)
- Provisions of Environmental Planning Instruments (Part 3)

Condition 1(b) of the Gateway Determination comprises the last type of infrastructure provision mechanisms listed above. It is also the only infrastructure provision mechanism that is imposed outside of *Division 6 – Development Contributions* to Part 4 of the Act.

To determine how prevalent the provision of infrastructure through Environmental Planning Instruments (EPIs) is, a review was undertaken of all in force NSW EPIs, which identified that:

- 63 LEPs (relating to 57 Councils) require the payment of contributions towards designated State public infrastructure, of which:
 - 61 directly apply to an "Urban Release Area" where the subdivision of land is proposed;
 - 1 (Auburn) applies to specified lands only where proposed development results in the increase of commercial or residential floor space;
 - 1 (Ryde) applies to specified lands only where proposed development results in the increase of residential floor space.

- One SEPP (SEPP Major Development) requires the payment of contributions towards designated State public infrastructure for two areas (Rise Bilambil Heights – Tweed; and Calderwood - Wollongong) where the subdivision of land is proposed.
- One SEPP (Sydney Employment Area) requires the payment of contributions towards designated State public infrastructure for all proposed development, except that which is of a “minor nature” or for a public purpose.

The Auburn and Ryde LEPs and Sydney Employment Area SEPP are the only examples that are not tied to the subdivision of land, but relate to the physical development of land.

The Special Infrastructure Contributions provisions of the Act (s.94ED-EM) was originally set up to formally enable the funding and provision of state or regional infrastructure arising from development occurring within Growth Centres. Such contributions are applied to Special Contributions Areas, which are identified under Schedule 5A to the Act. At present, only three Special Contributions Areas have been identified for the provision of state or regional infrastructure and include the following:

- Western Sydney Growth Area;
- Wyong Employment Zone; and
- Warnervale Town Centre.

However, since October 2007, the State Government has been progressively introducing a defacto state infrastructure contribution regime outside of the identified Growth Centres and Special Infrastructure Contributions provisions of the Act. This regime was typically applied to greenfield sites and applied to substantial land holdings.

The State Government has also encouraged Councils to adopt and incorporate model clauses within their LEPs where they have identified an “Urban Release Area”. These model clauses, however, reduce the meaningfulness of rezonings because a new arbitrary power is created for the DPE to impose infrastructure charges without regard to any safeguards of the existing state infrastructure contribution statutory framework (s.94ED-EM) that Councils have been required to observe for many years.

By using LEPs to impose compulsory infrastructure levies, key provisions of the existing infrastructure provision scheme are circumvented, in particular:

- The Minister is not obliged to make a determination of the level of development contributions up-front. Instead the Secretary of the DPE makes a decision on compulsory charges specific to each individual development application. This reduces transparency and certainty. The lack of up-front information acts as a disincentive to invest.
- There is no obligation on the government to publicly exhibit the proposed charges or consult with land owners or other relevant stakeholders. Again this increases the perception that charges are arbitrary.
- There is no obligation for the contribution to be “reasonable”.
- There is no obligation to identify a special contributions area or any similar area to which the contributions relate.

- There is no requirement that the funded infrastructure be provided within a particular area.
- There is no requirement for the decision on the quantum of charges to be made publicly available.

More recently (since 2011), the DPE has sought to extend this defacto state infrastructure contribution regime to include infill development in metropolitan centres (Auburn and Ryde).

With regard to the imposition of Condition 1(b) to the Gateway Determination, a number of issues are raised which are addressed below.

5.1 To what area will the infrastructure clause apply?

There is no indication as to whether the proposed provision is to only apply to the subject site or the wider St Leonards area.

If the condition is intended to apply to the wider St Leonards Area (as alluded to by the DPE through the undertaking of a Planning Review of St Leonards), then the intent of the Planning Proposal has completely changed and would require a new Gateway Determination to be issued as the objectives and intent of the planning proposal will have changed.

Furthermore, no details have been provided to support the imposition of the condition. The justification is subject to the outcomes of a future Planning Review that has little to no status. It is recommended that if the DPE seeks to apply an infrastructure contributions provision to the wider area of St Leonards, then the DPE should prepare a separate planning proposal to ensure that the intent of the provision is applied in a clear, transparent and holistic way.

5.2 What infrastructure will be required?

There are no details as to what infrastructure is to be provided. This is to be determined through the DPE's Planning Review of St Leonards. It is therefore inequitable to impose such a requirement on a planning proposal when the outcomes of such a review are completely unknown. The imposition of such a provision could also be premature if the review finds that no additional state or regional infrastructure is required as a result of the proposed development. Without identifying the types of infrastructure required, it is also impossible to determine the level of contribution that would be required. It is currently unclear what types of state and regional infrastructure that development in St Leonards would fund. The extent of infrastructure would be dependent upon identification by relevant public authorities.

Furthermore, delaying the progression the Planning Proposal is considered to be contrary to the Objects of the Act, in particular to encourage "*the promotion and co-ordination of the orderly and economic use and development of land*". It also places unreasonable financial constraints on the property owner (holding costs) by waiting for an unknown outcome, despite the proponents being ready to develop now.

In contrast and as discussed previously, Council has prepared two planning studies that have undergone comprehensive community and stakeholder consultation which clearly articulate the changes foreshadowed for the precinct including built form, public domain and public benefit contributions expected of proponents. These documents set a clear direction and provide an unambiguous vision and expectations for all stakeholders.

5. The Department's Gateway Process

The Department's *Guide to Preparing Planning Proposals* includes the following statement:

The Gateway will need to be confident that the level of information provided with the planning proposal will enable the plan making process to be completed within a reasonable time.

The imposition of conditions 1(b) and 2 undermines the level of confidence required in the determination behind progressing the planning proposal to the next stage. In other words, conditions have been imposed that place at risk the attainment of this certainty as these conditions are open ended and lack substance.

In addition, these Guidelines appropriately require consistency with the objectives and actions of the applicable regional or subregional strategy. To supplement this, the Guidelines refer to the planning proposal being consistent with Council's local strategy or other local strategic plan. The Gateway Determination appears to have ignored these Guidelines by requiring that the planning proposal be consistent with as yet unprepared, undefined and non measurable future initiatives that may or may not occur.

6. The Department's St Leonards Review

It is unreasonable to require the holding back of the planning proposal to await the outcome of a Review that has little to no status or momentum at present and would be contrary to achieving the Objects of the Act.

Furthermore, the condition alludes to the potential for a change to other planning controls in St Leonards as a result of the review. If this is the case, and the controls applying to the subject site change, then a new Gateway Determination will need to be obtained, as it will result in a change to the Planning Proposal's objectives and intended outcomes.

It is further noted that the NSW Government's review process has stagnated since Council first being made formally aware of such process in October 2015. Appendix 4 describes Council's response to this process in more detail. As discussed, at the time of preparing this submission, Council is in the process of conducting a consultation process for Crows Nest to ensure that local stakeholders are aware that a Metro is proposed for that precinct and that change to the urban form is a potential eventuality.

A previous planning proposal for 75-89 Chandos Street, 58-62 Atchison Street and 23-35 Atchison Street, St Leonards (Dept Ref: PGR_2015_NORTH_001_00) which sought very

significant variations from the current height limits, was recommended to be refused by the Joint Regional Planning Panel on 18 November 2015. In its assessment, the JRPP noted that:

The Panel notes that there is a government proposal for a St Leonards Strategic Review in which all three Councils (North Sydney, Lane Cove and Willoughby) will participate. Any decision which significantly increases the development potential of this site ahead of that review would be premature.

Furthermore, in their decision, the Panel stated:

...If the planning proposal were reasonably consistent with the Planning Study (for precincts 2/3) the Panel would probably recommend that it proceed to gateway determination. However, the proposal is inconsistent with the Study ...

It is clear that Council's strategic planning in these precincts provides specific and appropriate guidance for the consideration of planning proposals at the local level. This position is clearly supported by the JRPP. The Department's commitments to review the planning framework cannot be relied on to provide guidance on planning proposals given the lack of progress that has been made in the development of this process.

7. Other Matters

Condition 6 requires that the timeframe for completing the LEP is to be 12 months from the week following the date of the Gateway Determination. While it is unfortunate that the subject Gateway Determination conditions have prevented the expeditious processing of this planning proposal, it is considered unlikely that this timeframe can be met, given that it could take some time for the Planning Review to be completed. Assuming it would take approximately a further 8 months to revise the planning proposal, receive a new Gateway Determination, public exhibition, prepare and consider a post exhibition report and finalise the LEP, this would greatly exceed 12 month period given by the DPE. Should the Planning Proposal proceed as per the other requirements of the Gateway Determination, then this timeframe requires extension as it is completely unreasonable.

Concern is also raised that the imposition of the infrastructure conditions may render the scheme on the subject site unviable. Should the development not go ahead for this reason, a community endorsed planning outcome will not be implemented, including the provision of significant public benefit.

In Summary

Conditions 1(b) and 2 imposed on the planning proposal for 31-33 Albany Street, Crows Nest undermine what should be a clear and transparent process. They represent significant changes to the planning proposal with condition 1b. in particular, being an open ended, undefined additional monetary charge that has not been foreshadowed by consultation with Council. It is an abrupt, unforeseen and unreasonable imposition on the planning proposal. The process by which this condition was imposed, and as discussed previously, the manner in which a new monetary charge may be rolled out and implemented, is completely at odds with the transparent and highly managed manner in which Council must operate.

Council has established comprehensive and detailed growth plans for St Leonards and Crows Nest which have been the subject of extensive community and stakeholder consultation and which guide the assessment of planning proposals for the precinct. This framework provides all stakeholders with a clear and unambiguous vision for the precinct including public domain works and other benefits derived directly from sharing value from such growth. The subject planning proposal is consistent with this vision both in terms of built form and its response to public benefit outlined in Council's study.

For the subject site, the public benefit expressed in the adopted planning study for the precinct has been the basis of a detailed draft planning agreement which accompanies the planning proposal. In this case, it is a monetary contribution towards the transformational upgrade of the Hume Street Park which has been roundly supported by the local and wider community. The planning studies that have preceded and informed this and other planning proposals and draft agreements, have been characterised by consultation, transparency and certainty. Given the extensive community involvement in the preparation of these planning studies, any erosion of the public benefit arising from the growth identified as will potentially occur under condition 1(b), will be very poorly received.

Council is responsibly facilitating the growth of the precinct which is resulting in new large scale, carefully managed development and the delivery of associated public benefit. The conditions imposed on the subject planning proposal threaten to undermine the progress made on other proposals which seek to strike a balance between responsible growth and predefined community benefit.

Council has demonstrated its commitment to guiding responsible growth within this general precinct, however, the uncertainty represented by the conditions imposed cannot be supported as they lack transparency and certainty, which should be fundamental to planning processes.

Appendix 1

Council report of 19/10/2015 endorsing the Planning Proposal/VPA



Report to General Manager

Attachments:

1. Planning Proposal - 31-33 Albany Street, Crows Nest
2. Draft Voluntary Planning Agreement - 31-33 Albany Street, Crows Nest
3. Shadow diagrams

SUBJECT: Planning Proposal and draft Voluntary Planning Agreement - 31-33 Albany Street, Crows Nest

AUTHOR: Mark Yee, Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

Council has received a Planning Proposal and draft Voluntary Planning Agreement (VPA) for the site at 31-33 Albany Street, Crows Nest.

The site is located within the study area of the St Leonards/Crows Nest Planning Study - Precinct 1, which was adopted by Council in October 2012.

The Planning Proposal and draft VPA have been assessed against the implementation recommendations contained within the St Leonards/Crows Nest Planning Study - Precinct 1. The Planning Proposal and draft VPA implement the Built Form Masterplan and Open Space and Pedestrian Masterplan for Precinct 1 to the fullest extent practicable.

This report recommends that Council supports the Planning Proposal and draft VPA and that it be forwarded to the Minister for Planning for a Gateway Determination.

FINANCIAL IMPLICATIONS:

The Planning Proposal is accompanied by a draft Voluntary Planning Agreement that proposes a monetary contribution of \$1,150,000 to assist Council in meeting the open space objectives for the area as articulated by the St Leonards/Crows Nest Planning Study - Precinct 1.

RECOMMENDATION:

1. **THAT** Council forwards the Planning Proposal to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
 2. **THAT** the associated draft Voluntary Planning Agreement be exhibited concurrently with the subject Planning Proposal conditioned on it receiving a Gateway Determination.
-

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 1 Our Living Environment

Outcome: 1.2 Quality urban greenspaces
1.5 Public open space, recreation facilities and services that meets community needs

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
2.5 Sustainable transport is encouraged

Direction: 3 Our Economic Vitality

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

Direction: 4 Our Social Vitality

Outcome: 4.1 North Sydney community is connected
4.7 North Sydney community is active and healthy

BACKGROUND

St Leonards/Crows Nest Planning Study

The St Leonards/Crows Nest Planning Study - Precinct 1 was adopted by Council on 22 October 2012 and presents an Open Space and Pedestrian Masterplan and a Built Form Masterplan that together provide a holistic approach to planning and development in the precinct.

The Masterplans include provision for:

- An expanded Hume Street Park with a pedestrian link to Willoughby Road;
- Widened footpaths along the Pacific Highway and key pedestrian routes; and
- High amenity mixed use buildings on key sites.

Council staff have been working with developers and property owners in implementing the Built Form Masterplan and maximising open space and public amenity for the community through implementation of the Open Space and Pedestrian Masterplan.

This is the fourth Planning Proposal and VPA received seeking to take advantage of, and implement, the St Leonards / Crows Nest Planning Study - Precinct 1. Other Planning Proposals / VPAs in Precinct 1 include:

- 545-553 Pacific Highway, St Leonards;
 - 7-19 Albany Street, St Leonards; and
-

- 521 Pacific Highway, Crows Nest.

CONSULTATION REQUIREMENTS

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

SUSTAINABILITY STATEMENT

The following table provides a summary of the key sustainability implications:

QBL Pillar	Implications
Environment	<ul style="list-style-type: none"> • New green spaces in built up areas reduce heat island effects and reduce the need for artificial cooling. • Open space and greening of public domain potentially provides for ecological processes and habitat.
Social	<ul style="list-style-type: none"> • Improved street level amenity will make pedestrian journeys more enjoyable. • Improved linkages between origins and destinations (train station, Willoughby Road, etc) will improve connectivity and make areas of high amenity more accessible for residents/workers. • Rejuvenation and activation of depressed areas will result in improved night-time safety. • New civic and/or open space in areas of high demand will operate as community meeting places. • Improved building design will improve residential amenity.
Economic	<ul style="list-style-type: none"> • Improved amenity in St Leonards will improve its attractiveness for investment and boost local economic activity.
Governance	<ul style="list-style-type: none"> • The Planning Proposal aims to implement higher order policy and strategic documents such as the St Leonards/Crows Nest Planning Study - Precinct 1, the draft INSS and the St Leonards Strategy. • The Planning Proposal is consistent with multiple Directions and Goals contained in Vision 2020 document. • The Planning Proposal progresses many of Council's policies - E.g. there is a strong policy framework acknowledging that additional open space and amenity improvements are required in St Leonards/Crows Nest.

DETAIL

Council received a Planning Proposal and draft Voluntary Planning Agreement (VPA) on 31 July 2015 relating to the site at 31-33 Albany Street, Crows Nest (see location plan at Figure 1).

- A monetary contribution of \$1,150,000 to be paid to Council for the purposes of providing new open space within the precinct;
- A setback of 3 metre from Hume Lane to allow for increased footpath width and greater separation to buildings to the east of the site.

3. Planning appraisal

The Planning Proposal as submitted is considered to be generally in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 and the Department of Planning's 2012 'guide to preparing planning proposals'.

3.1. Consistency with St Leonards/Crows Nest Planning Study

The St Leonards/Crows Nest Planning Study - Precinct 1 recommends that the Built Form Masterplan for Precinct 1 be implemented through developer initiated changes to local planning provisions. It states that in order to gain Council's support site specific Planning Proposals should:

- Relate to a parcel of land with a minimum street frontage of 20 metres;
- Relate to a parcel of land that does not isolate, sterilise or unreasonably restrict the development potential of adjacent parcels of land;
- Propose an amendment to the LEP height control consistent with the Built Form Masterplan for Precinct 1;
- Propose a site specific floor space ratio LEP control determined in a manner consistent with that identified in the Built Form Masterplan for Precinct 1;
- Propose mechanisms that ensure slender tower elements retain, where practicable, views and solar access currently enjoyed by existing residents;
- Include satisfactory arrangements for the provision of new open space within Precinct 1;
- Propose a ground level setback DCP control consistent with the Open Space and Pedestrian Masterplan (if applicable); and
- Propose a 3 storey podium height DCP provision consistent with the Built Form Masterplan (if applicable).

It is considered appropriate to assess the Planning Proposal against the above points and to consider the degree to which it implements the Built Form Masterplan and Open Space and Pedestrian Masterplan for Precinct 1.

Does the Planning Proposal relate to a parcel of land with a minimum street frontage of 20 metres?

The site has street frontage of 20 metres.

Does the Planning Proposal relate to a parcel of land that does not isolate, sterilise or unreasonably restrict the development potential of adjacent parcels of land?

The site includes two lots (31 & 33 Albany Street) in a block of three lots. The other lot (29 Albany Street) was recently developed and it is therefore considered that the development will not isolate, sterilise or restrict this adjoining parcel. No other lots adjoin the subject site.

Does the Planning Proposal propose an amendment to the LEP height control consistent with the Built Form Masterplan for Precinct 1?

The Planning Proposal seeks to increase the maximum height limit for the subject site from the present 13 metres to 26 metres consistent with the height identified for the site under the St Leonards/Crows Nest Planning Study - Precinct 1.

Does the Planning Proposal propose a site specific floor space ratio LEP control determined in a manner consistent with that identified in the Built Form Masterplan for Precinct 1?

The Planning Proposal seeks to introduce a site specific floor space ratio control of 4.27:1. Built form modelling indicates that a development constructed under the existing planning controls applying to the site, including the existing 13 metre height control, could accommodate an FSR of 2.88:1.

The methodology identified in the Built Form Masterplan for calculating a maximum FSR under a new height control of 26 metres results in an FSR of 4.27:1. This figure has been arrived at by taking into consideration the impact that the proposed 3 metre setback from Hume Lane will have on the building envelope. This proposed FSR therefore represents an appropriate amount of floor space to be accommodated within the proposed building envelope and is consistent with the upper FSR envisaged by the planning study.

Given the proposed public domain improvements, including the 3 metre setback from Hume Lane (which is not required by the planning study but is considered worthy of support), and the contribution towards new open space proposed by the Planning Proposal and associated draft VPA, the proposed floor space is considered to be reasonable and worthy of support.

It should be noted that the proposed FSR control represents an absolute maximum that may not be wholly achievable due to urban design and other considerations at development application stage.

Does the Planning Proposal propose mechanisms that ensure slender tower elements retain, where practicable, views and solar access currently enjoyed by existing residents?

The site is only 20 metres in width and is constrained due to the adjoining development at 29 Albany Street. Further, the draft VPA proposes a 3 metre setback from Hume Lane which will further constrain development on the site.

It is considered that the resulting building envelope will facilitate an appropriate built form which will minimise overshadowing of surrounding sites (see shadow diagrams at Attachment 3). There are no significant views obtained across the site.

Does the Planning Proposal include satisfactory arrangements for the provision of new open space within Precinct 1?

The St Leonards / Crows Nest Planning Study: Precinct 1 states the following:

... a planning proposal accompanied by a proposed voluntary planning agreement (VPA) made in accordance with Council's voluntary planning agreements policy may constitute satisfactory arrangements for the provision of new open space within Precinct 1 if the proposed VPA:

1. *Contributes to the costs associated with land acquisition required to achieve a new plaza and pedestrian link to Willoughby Road as envisaged by the Open Space and Pedestrian Masterplan ...*

Yes. The draft VPA submitted with the Planning Proposal provides for a monetary contribution of \$1,150,000 to be paid to Council for the purposes of providing new open space within the precinct. Taking into consideration expected land acquisition costs the proposed contribution is considered fair and reasonable. These funds will contribute towards the realisation of the expansion of Hume Street Park as outlined within the Open Space and Pedestrian Masterplan for Precinct 1.

The Planning Proposal will not be finalised unless the subject VPA has been executed. This provides the necessary certainty that satisfactory arrangements are in place for the provision of new open space.

Does the Planning Proposal propose a ground level setback DCP control consistent with the Open Space and Pedestrian Masterplan (if applicable)?

Since adoption of the St Leonards / Crows Nest Planning Study - Precinct 1, DCP controls requiring the ground level setbacks identified in the study have been brought into force. Site specific DCP controls are therefore no longer necessary.

Regardless, the draft VPA contains clauses requiring any future building to be setback 3 metres from Hume Lane. This setback is a fundamental component of the proposal and key to obtaining Council support.

To provide greater certainty regarding the setback area, Council's lawyers have included clauses within the draft VPA which require a covenant restricting the erection of any structures or buildings in the setback area.

Does the Planning Proposal propose a 3 storey podium height DCP provision consistent with the Built Form Masterplan (if applicable)?

The 3 storey podium height is not applicable to the subject site. A requirement for a 4 storey podium height to the primary street frontage and a 3 storey podium height to laneways will continue to apply as per existing provisions within DCP 2013.

3.2. Environmental impacts

No significant views are obtained across the subject site. The proposal will not therefore affect views.

It is noted that the proposed 3 metre setback from Hume Lane will provide for a greater setback to properties fronting Willoughby Road (should they ever be redeveloped for residential purposes) than would normally be required.

The proponent has provided shadow diagrams which appropriately demonstrate the likely impact on surrounding properties (see Attachment 3). It is considered that the impact is reasonable in the circumstances of the case.

There are no other foreseeable environmental impacts at this stage as the proposal is very

Report of Mark Yee, Strategic Planner

Re: Planning Proposal and draft VPA - 31-33 Albany Street, Crows Nest

(8)

much in keeping with Council's endorsed strategy. Notwithstanding, it is noted that the public exhibition process will provide an opportunity for input from the public. Further, any future development on the site will be subject to an assessment at Development Application stage.

4. Conclusion

The Planning Proposal and associated draft VPA are consistent with the implementation recommendations of the draft St Leonards/Crows Nest Planning Study - Precinct 1 and are considered to implement the Built Form Masterplan and Open Space and Pedestrian Masterplan for Precinct 1 to the fullest extent practicable.

The Planning Proposal and draft VPA should be exhibited concurrently so as to allow the community a full appreciation of what is being proposed. Council will have the opportunity to execute the draft VPA when the post-exhibition report is reported to Council.

Appendix 2

Council letter to the DPE requesting Gateway Determination



address 200 Miller Street North Sydney NSW 2060
all correspondence General Manager North Sydney Council
PO Box 12 North Sydney NSW 2059
DX10587

telephone (02) 9936 8100
facsimile (02) 9936 8177
email council@northsydney.nsw.gov.au
internet www.northsydney.nsw.gov.au
ABN 32 353 260 317

Mr Lee Mulvey
Director Metro Delivery CBD
NSW Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Yolande Miller

MY(CIS)

26 October 2015

Dear Yolande,

RE: PLANNING PROPOSAL – 31 ALBANY STREET, CROWS NEST

The attached Planning Proposal seeks to amend the planning controls for the subject under North Sydney Local Environmental Plan 2013, (NSLEP 2013) to increase the height control from 13 metres to 26 metres and introduce a floor space ratio (FSR) control of 4.27:1. Associated with the Planning Proposal is a draft Voluntary Planning Agreement, (VPA) which provides for significant public benefit.

The Planning Proposal and draft VPA are consistent with, and will help deliver, the built form and public domain outcomes envisaged by the St Leonards/Crows Nest Planning Study – Precinct 1, which has been formally adopted by Council.

At its meeting on 19 October 2015, Council resolved to support the Planning Proposal so that it may be forwarded to the Department of Planning and Environment to receive a Gateway Determination. Please refer the Planning Proposal to the LEP Review Panel for determination, under the 'gateway process'.

Please find attached the following

- Council Officer's report including Council's resolution;
- Planning Proposal; and
- Draft Voluntary Planning Agreement.

Enquiries should be directed to Mark Yee of Council's Strategic Planning Department on 9936 8100.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Marcelo Occhipinti'.

Marcelo Occhipinti
MANAGER STRATEGIC PLANNING

Appendix 3

The Department's Gateway Determination



Mr Warwick Winn
General Manager
North Sydney Council
PO Box 12
NORTH SYDNEY NSW 2059

Our ref: PP_2015_NORTH_009_00 (15/16208)

Dear Mr Winn

Planning Proposal – 31 Albany Street, Crows Nest

I am writing in response to Council's letter dated 26 October 2015, requesting a Gateway determination for a planning proposal at 31-33 Albany Street, Crows Nest, which seeks to implement a maximum building height control of 26 metres and a maximum floor space ratio control of 4.27:1.

As delegate of the Minister for Planning, I have determined that this planning proposal should proceed subject to the conditions in the attached Gateway determination.

The subject site is located within the area subject to the St Leonards strategic planning review being undertaken by the Department in consultation with North Sydney, Lane Cove and Willoughby councils. Prior to public exhibition, the planning proposal is to be updated to include a new satisfactory arrangements clause in regard to contributions to the provision of designated State public infrastructure identified as part of a draft or final strategy for this precinct. The Department is available to assist Council in the wording of such a clause.

Council should also demonstrate that the proposal is consistent with any available findings of the St Leonards strategic planning review prior to finalisation.

The Minister delegated plan making powers to councils in October 2012. Given the strategic importance of St Leonards and the planning review work underway, I have decided not to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan is to be finalised within **12 months** of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the Local Environmental Plan should be made 6 weeks prior to the projected public date.

The State Government is committed to reducing the time taken to complete Local Environmental Plans by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

If you have any queries in regard to this matter, I have arranged for Ms Sandy Shewell of the Department's Metropolitan (CBD) branch to assist you. Ms Shewell can be contacted on 02 9228 6591.

Yours sincerely



29 January 2016

Brett Whitworth
Acting Executive Director, Regions
Planning Services

Delegate of the Minister for Planning

Encl: Gateway Determination



Gateway Determination

Planning proposal (Department Ref: PP_2015_NORTH_009_00): to allow a maximum height of buildings of 26 metres and a maximum floor space ratio of 4.27:1 for the site at 31-33 Albany Street, Crows Nest.

I, the Acting Executive Director, Regions, at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) that an amendment to the *North Sydney Local Environmental Plan 2013* should proceed subject to the following conditions:

1. Prior to undertaking public exhibition the planning proposal is to be updated to:
 - a. include Site Identification, Height of Buildings, and Floor Space Ratio Maps which clearly show both the existing and proposed controls for the site; and
 - b. include a satisfactory arrangements provision for contributions to designated State public infrastructure identified as part of a draft or final strategic planning review for St Leonards.

Note: Maps should be prepared to the standards identified in 'Standard Technical Requirements for LEP Maps' (Department of Planning and Environment 2013).

2. Prior to finalisation, the planning proposal is to be amended to demonstrate consistency with any available findings of the St Leonards planning review work being undertaken by the Department in consultation with North Sydney, Lane Cove and Willoughby councils.
3. Prior to public exhibition, consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Transport for NSW (Sydney Trains);
 - Transport - Road and Maritime Services;
 - Lane Cove Council; and
 - Willoughby City Council

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least **21 days** to comment on the proposal, or to indicate that they will require additional time to comment. The planning proposal should be updated to respond to this consultation.



Planning & Environment

4. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:
 - a. the planning proposal must be made publicly available for a minimum of **28 days**; and
 - b. the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A Guide to Preparing LEPs' (Department of Planning and Environment 2013).
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 28th day of January 2016.

A handwritten signature in blue ink that reads 'Brett Whitworth'.

**Brett Whitworth,
A/Executive Director, Regions
Planning Services**

Delegate of the Minister for Planning

Appendix 4

***Council report of 7/03/2016 regarding proposed St Leonards
Priority Precinct Process***



Report to General Manager

Attachments:

1. Department of Planning and Environment - Planning Proposal - 31 Albany Street, Crows Nest Correspondence
2. North Sydney Council Response to Department of Planning and Environment Correspondence

SUBJECT: Update on the Department of Planning and Environment's "Strategic Review" of St Leonards

AUTHOR: Marcelo Occhiuzzi, Manager Strategic Planning

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

The Department of Planning and Environment has previously advised Council that it would be progressing a strategic review of the St Leonards Centre and surrounding areas. Council considered a report on this issue on 16 November 2015. At that time, Council resolved to participate in this work on the basis that it is guided by a Memorandum of Understanding that embodies a partnership approach characterised by collaboration and consultation and that Council's previous planning work is recognised and respected.

This process, which has been coordinated by the Department, has faltered in the past, however, it now looks to be gaining momentum. The Department has indicated that it will be running a two stage process with the first stage characterised by information gathering and formulation of ideas that will lead to a land use and infrastructure strategy. This is anticipated to take 6-9 months. The second stage will be an implementation strategy which is yet to be fully scoped and the Department has indicated that it is open minded about how and where this is applied but may include actual changes to the existing planning controls such as zoning, heights and densities. The Department has provided Council officers with various preliminary draft documents for comment to commence the process including a Terms of Reference to guide this work..

Council has adopted land use, built form and public domain strategies for precincts 1, 2 and 3 of St Leonards/Crows Nest which has been characterised by comprehensive planning work and stakeholder consultation and an update of the implementation of this work is discussed in a separate report to the Legal and Planning Committee.

The biggest risk factor for Council in the Department's review process is the potential undermining of the public benefit component of these plans. These have been clearly articulated in Council's adopted planning studies.

The Department has indicated that part of this work will be the formulation of a State Infrastructure Contributions (SIC) framework for matters such as roads, schools and other state infrastructure. These SICs would be based on the same value capture approach that

Report of Marcelo Occhiuzzi, Manager Strategic Planning
Re: Update on the Department of Planning and Environment's "Strategic Review" of St
Leonards

(2)

Council has applied in negotiating planning agreements with proponents but will be applied at the development application stage of the process similar to Section 94 contributions.

An unusual and unexpected condition has been imposed by the Department on the Gateway Determination for the Planning Proposal for 31-33 Albany Street, Crows Nest which essentially gives effect to a SIC without any detail as to amount or ultimate expenditure of such contribution. This approach is completely devoid of transparency or certainty.

Clearly, there is only so much value capture to be that can be negotiated without impacting the viability of development projects. The SIC process threatens to undermine Council's public benefit commitments to the community. It is important to remember that such commitments were an integral part of the strategic vision for these precincts including growth.

FINANCIAL IMPLICATIONS:

Nil. No financial or significant resource commitments will be made to the proposed Priority Precinct process.

RECOMMENDATION:

- 1. THAT** Council officers respond to the Department's Terms of Reference for the St Leonards Review Process consistent with Council's previous resolution requiring that such document clarify roles, responsibilities, reporting and resourcing as well as being characterised by collaboration and a shared purpose for the work, being respectful of Council's good planning and implementation work already completed including public benefit contribution methodology for the precinct and planned expenditure for these contributions.
 - 2. THAT** Council pursue a Gateway Determination Review issued for the Planning Proposal for 31-33 Albany Street, Crows Nest, with specific reference to condition 1b for the reasons outlined in this report.
-

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
Outcome:	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
Direction:	4. Our Social Vitality
Outcome:	4.2 Community is diverse
Direction:	5. Our Civic Leadership
Outcome:	5.1 Council leads the strategic direction of North Sydney

CONSULTATION REQUIREMENTS

Community engagement is not required.

SUSTAINABILITY STATEMENT

This report deals with (draft) State Government Legislation/Policy which may have a substantial effect on sustainability. This report is for information purposes only; a sustainability assessment was not undertaken.

DETAIL

Background

North Sydney Council received correspondence from Willoughby Council in May 2015 after that Council had dealt with an unsolicited Planning Proposal for the "St Leonards Central Concept Plan". This was a bold proposal situated immediately to the east of the railway station which challenged Willoughby Council's planning controls. In its resolution, Willoughby Council requested that it "explore options with the Department of Planning and the two neighbouring Councils for the funding and coordination of a review of the St Leonards Centre in light of the current St Leonards Strategy, existing development pressures, current studies (and) future plans...". This was requested to be undertaken in conjunction with the sub regional plan (now referred to as the "District Plan").

In response to this initiative, Council officers were invited to a "St Leonards Strategic Review" workshop with the Department of Planning and Environment (DPE), Willoughby and Lane Cove Councils. Council indicated that whilst happy to attend an initial meeting, North Sydney Council had undertaken a comprehensive planning study for the area and that it would be mindful of duplicating this exercise.

The 'workshop' was convened on 7 October 2015 and conducted by the Director of Urban Renewal responsible for Urban Activation Precincts/Priority Precincts.

North Sydney Council officers advised the meeting that Council's planning for the centre was well advanced and had been formally adopted including plans for the public domain. It was reiterated that Council had invested heavily in this comprehensive, consultative and responsible planning for the precinct and that any process to review the planning framework by the Department would be approached with caution. It was also pointed out that we are in active discussions with a number of landowners and their agents about the implementation of Council's two adopted studies for St Leonards/Crows Nest.

Strong concern was further expressed that local planning continue to be conducted by the local authority and not by the DPE, and that the DPE has a primary role to prepare regional strategic plans and enforcing them. At its meeting on 16 November 2015, Council resolved:

1. ...
 2. *THAT Council staff participate in the potential Priority Precinct process coordinated by the Department of Planning and Environment (DPE) for St Leonards.*
 3. *THAT this participation be conditional upon a Memorandum of Understanding being entered into clarifying the roles, responsibilities, reporting and resourcing and that the process be:*
 1. *A partnership between Councils, the DPE and other agencies and that this be characterised by collaboration and a shared purpose for the work to be undertaken, and*
 2. *Respectful of Council's good planning and implementation work already completed including public benefit contribution methodology for the precinct and planned expenditure for these contributions.*
 4. *THAT the Department of Planning and Environment clarify its role in the Priority Precinct process to ensure that Councils existing processes and discussions with individual landowners and their agents may continue without undue disruption.*
 5. *THAT Council write to the Minister expressing strong concerns and opposition to the proposed outsourcing of strategic planning to the private sector. Particularly in relation to probity, potential conflicts of interest and corruption risks as well as the shifting of costs to local government to pay for private consultants to undertake strategic planning where this Council has strong and acknowledged leaders in strategic planning on staff.*
 6. ...
-

Since that time, the Department has conducted individual meetings with Councils but little progress seems to have been made between the initial October 2015 workshop and the present. It is clear, however, that the Department is now keen to commence work on this initiative and re-engage with the three Councils.

Current Status

The DPE met with Council officers on 10 February 2016 and broadly outlined its proposed approach to the planning review of St Leonards and surrounding areas. It has indicated that it will be running a two stage process with the first characterised by information gathering and formulation of ideas that will lead to a land use and infrastructure strategy. This first stage will produce a "vision" for the precinct and stakeholder consultation as well as a public domain strategy with its own public consultation. Both of these processes will then lead to the generation of a final strategy. The Department has advised that this is anticipated to take 6-9 months.

The second stage will be an implementation strategy which is yet to be fully scoped and the Department has indicated that it is open minded about how and where this is applied. This stage would include potential changes to planning controls, identification of infrastructure and public domain works. The Department advised that at this implementation stage of the process, potential new planning controls, such as height and density, will be sought to be implemented, however, a decision about how and when to proceed on this stage, will be made at the completion of stage 1.

The Department has provided Council officers with various draft documents for review and comment, including a draft brief to engage consultants to prepare an employment review analysis, draft terms of reference for the wider St Leonards review process and ancillary material.

The "Terms of Reference" in particular, will be closely reviewed to ensure that the intent of Council's resolution of November 2015 and general approach to the management of this precinct, is reflected in this document. Council staff will respond to the Department's offer to provide feedback to the various documents provided.

Has the Case for a Priority Precinct Been Made?

The driver for this work remains somewhat unclear. In the Department's letter to Council in October 2015, it states that St Leonards was identified as a potential Priority Precinct "as it meets the criteria for the Priority Precinct Program identified in *A Plan for Growing Sydney*". Whilst this rationale is somewhat vague, it also ignores the quantity and quality of work conducted by Council. In other words, if Council had been irresponsible as a planning authority and ignored the strategic significance of St Leonards, the Department would have a case for initiating a Priority Precinct for the centre and surrounds.

Council's work has been methodical, comprehensive and is resulting in carefully planned and delivered growth which St Leonards/Crows Nest will benefit from in the long term. It is important to remember that this Council led work deals with both the private and public domain in a manner that residential and commercial growth is intimately associated with public domain improvements, place making initiatives and the delivery of other public benefit.

The Department has been provided with various opportunities to critique this planning work and provide feedback about deficiencies or problems. No feedback has ever been received. The implementation phases of this work are outlined in more detail in a separate report to the Legal and Planning Committee.

The significant resourcing, collaboration, consultation and care that has been taken to get the balance right in St Leonards/Crows Nest is reflective of Council's role and responsibility as the long term custodian of the place and is absolutely consistent with the objectives of *A Plan for Growing Sydney*. This work has been driven by a significant jobs growth agenda that is accompanied by strong residential growth and a focus on place making through significant improvements to the public domain and community facilities. Council officers are yet to be convinced that a reasonable case has been made for the establishment of a Priority Precinct for St Leonards/Crows Nest. There are 32 "strategic centres" identified in *A Plan for Growing Sydney*. St Leonards is arguably a centre that has been the subject of more planning work than most. It remains unclear why St Leonards was chosen from this list.

Whilst the Department has made an informal case that one of the drivers for this work is to resolve the alleged fragmented approach to planning associated with local government boundary issues, the potential imminence of amalgamation initiatives of the NSW Government must surely have the potential to address this point from the Department's perspective. Council's submission to the Council Boundary Review process includes a case for including the entire St Leonards centre and immediate area of influence in one local government area. This clearly addresses the problematic governance issues inferred by *A Plan for Growing Sydney*. It is noteworthy that Willoughby Council has reportedly made a very similar proposal, recognising the importance of St Leonards being administered by one local government entity.

Risks and Concerns

As previously reported, there are risks in attempting to collaborate with the DPE on this project. In a legislative and public administration sense, Council's involvement in this process is essentially at the Department's indulgence. Council enters the process with little legislative support should significant differences of direction and approach not be able to be negotiated.

The documentation and motivation for the review work has not been shared by the Department. Council's request for the review to be collaborative and to be approached in a spirit of partnership, is difficult to achieve when information is not shared.

The timeframes that are being discussed for the preparation of Stage 1 is 6-9 months. From previous experience of the work conducted in precincts 1-3, we know that this timeline is extremely ambitious. The work previously conducted by Council invested heavily in stakeholder consultation and management. The timeframes to do this effectively should not be underestimated and if not conducted well, can undermine the success and integrity of the adopted outputs.

It is clear that Council has an excellent and well researched understanding of St Leonards in a planning context. This has helped formulate the two planning studies that have been prepared and adopted by Council. Whilst it is recognised that further work is required in the context of

the proposed Metro station in Crows Nest, the bulk of Council's work remains contemporary and relevant and should be respected and utilised in this process. There is no guarantee that this will happen.

This review work, when first introduced to Council in the second half of 2015, proposed to culminate in changes to Council's planning instruments. This approach has been avoided by Council as it provides a direct uplift to individual land owners, without the opportunity of leveraging a level of public benefit from the increase in value to individual development sites. The Department's most recent approach seems to provide for a decision point prior to embarking on a change to the planning controls.

The additional area of risk for Council is the Department's commitment to prepare a State Infrastructure Contributions (SIC) framework for development in this precinct. This will seek to leverage significant monetary contributions for state matters as such as roads, schools and other State infrastructure from development in the precinct. The risk for Council is that this potentially significant level of monetary contribution may undermine Council's capacity to negotiate public benefit as committed in the two planning studies adopted for these precincts. In other words, there is only so much development contributions that may be leveraged from development uplift before a project becomes unviable.

It should be noted that the anticipated growth within St Leonards will be very significant. This will result from both Lane Cove Council and North Sydney Council preparing a combination of strategies to provide for such growth. The extent of this is likely to generate tens of millions of dollars of additional stamp duty revenue for the NSW Government. Regional and State infrastructure should be funded from this, not insignificant, additional source of revenue within the precinct.

At a time when Council's planning resources are fully engaged on a comprehensive strategic planning agenda for North Sydney, it is regrettable that much of the work that is slated for St Leonards, will inevitably represent a duplication of work and thinking already applied by Council. Nonetheless, as discussed below, Council will need to devote resources to the process.

Notwithstanding these threats and risks, there is merit in being involved and attempting to influence from within the process rather than reacting to matters as they arise from outside the process. The alternative would be to withdraw and be critical from the outside and leave matters somewhat to chance. This is clearly a poor option.

Gateway determination - 31-33 Albany Street, Crows Nest

Council would recall that at its meeting on 19 October 2015, it resolved to support a Planning Proposal for increased height at 31-33 Albany Street, Crows Nest, consistent with the previously endorsed Precinct 1 Planning Study.

Council received a Gateway Determination from the DPE on 2 February 2016 (see attachment 1), outlining that the Planning Proposal should proceed subject to certain conditions. Two of these conditions (1b and 2) are unusual in that they introduce a significant level of uncertainty to the process. Condition 1b, in particular, is an open ended, undefined additional monetary charge that has not been foreshadowed by any consultation with Council.

It is an abrupt, unforeseen and unreasonable imposition on the planning proposal. Given this condition's lack of definition, it has the real potential to undermine, and/or erode, Council's public benefit commitments that are anticipated to be provided through the planning agreements process. This is a clear commitment to public benefit that is described in Council's adopted planning studies which the community has a reasonable expectation around. In this case, the applicant and Council have negotiated a monetary contribution towards the upgrade to Hume Street Park. The concern is that an unquantified provision in the Planning proposal to impose further monetary impost on the proposal may begin to erode Council's negotiated position.

Council officers have made a submission in response to this Gateway Determination (attachment 2). At the time of writing, Council is yet to receive a response. Condition 1b in particular, is a significant change to that adopted by Council and requires Council awareness of such change.

A preliminary "review" has been lodged by Council officers challenging the Department's imposition of condition 1b. The process requires that a more formal submission be made prior to 15 March 2016 should Council wish to pursue this course of action. If this is pursued, it would amount to a formal Gateway Review which is often lodged by proponents, but is also open to Council and challenges either a decision of the Gateway review process, or conditions imposed by such process. Before Council officers pursue this course of action, it would be beneficial that the Legal and Planning Committee endorses continuing down this formal review path. A formal challenge to the Gateway Determination will clearly slow the progress of the proposal through to gazettal which will introduce a level of uncertainty around this specific Planning Proposal. On the other hand, the principle of applying an open ended new monetary imposition without details relating to the amount payable and its ultimate purpose, is a question of principle that may have wider implications for Council and is worth pursuing. The terms of the review will be along the lines of the letter included at attachment 2.

Way Forward

It is important that North Sydney Council continue with the implementation of the two planning studies already endorsed for St Leonards/Crows Nest given the momentum and interest that these have generated. Council officers are actively discussing individual planning proposals with proponents and are at different stages of various planning agreement discussions.

It is also considered important to be part of any review work that the Department coordinates in order that North Sydney Council is able to be part of the process and have a say. Not participating is inherently risky as Council will not be able to share information or influence decisions that may have an important bearing on the future of St Leonards and Crows Nest.

Notwithstanding this, Council officers will reiterate that the Department has not made a reasonable case for the introduction of a Priority Precinct in St Leonards. For all the reasons outlined in this report and previously, St Leonards has been responsibly managed by North Sydney Council by planning for significant levels of jobs and housing growth in a manner that has been consultative and which has incorporated local infrastructure improvements and place making initiatives.



Our ref: PP_2015_NORTH_009_00 (15/16206)

Mr Warwick Winn
General Manager
North Sydney Council
PO Box 12
NORTH SYDNEY NSW 2059

Dear Mr Winn

Planning Proposal – 31 Albany Street, Crows Nest

I am writing in response to Council's letter dated 26 October 2015, requesting a Gateway determination for a planning proposal at 31-33 Albany Street, Crows Nest, which seeks to implement a maximum building height control of 26 metres and a maximum floor space ratio control of 4.27:1.

As delegate of the Minister for Planning, I have determined that this planning proposal should proceed subject to the conditions in the attached Gateway determination.

The subject site is located within the area subject to the St Leonards strategic planning review being undertaken by the Department in consultation with North Sydney, Lane Cove and Willoughby councils. Prior to public exhibition, the planning proposal is to be updated to include a new satisfactory arrangements clause in regard to contributions to the provision of designated State public infrastructure identified as part of a draft or final strategy for this precinct. The Department is available to assist Council in the wording of such a clause.

Council should also demonstrate that the proposal is consistent with any available findings of the St Leonards strategic planning review prior to finalisation.

The Minister delegated plan making powers to councils in October 2012. Given the strategic importance of St Leonards and the planning review work underway, I have decided not to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan is to be finalised within **12 months** of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department of Planning and Environment to draft and finalise the Local Environmental Plan should be made 6 weeks prior to the projected public date.

The State Government is committed to reducing the time taken to complete Local Environmental Plans by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

If you have any queries in regard to this matter, I have arranged for Ms Sandy Shewell of the Department's Metropolitan (CBD) branch to assist you. Ms Shewell can be contacted on 02 9228 6591.

Yours sincerely



28 January 2016

Brett Whitworth
Acting Executive Director, Regions
Planning Services

Delegate of the Minister for Planning

Encl: Gateway Determination



Gateway Determination

Planning proposal (Department Ref: PP_2015_NORTH_009_00): to allow a maximum height of buildings of 26 metres and a maximum floor space ratio of 4.27:1 for the site at 31-33 Albany Street, Crows Nest.

I, the Acting Executive Director, Regions, at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) that an amendment to the *North Sydney Local Environmental Plan 2013* should proceed subject to the following conditions:

1. Prior to undertaking public exhibition the planning proposal is to be updated to:
 - a. include Site Identification, Height of Buildings, and Floor Space Ratio Maps which clearly show both the existing and proposed controls for the site; and
 - b. include a satisfactory arrangements provision for contributions to designated State public infrastructure identified as part of a draft or final strategic planning review for St Leonards.

Note: Maps should be prepared to the standards identified in 'Standard Technical Requirements for LEP Maps' (Department of Planning and Environment 2013).

2. Prior to finalisation, the planning proposal is to be amended to demonstrate consistency with any available findings of the St Leonards planning review work being undertaken by the Department in consultation with North Sydney, Lane Cove and Willoughby councils.
3. Prior to public exhibition, consultation is required with the following public authorities under section 56(2)(d) of the EP&A Act:
 - Transport for NSW (Sydney Trains);
 - Transport - Road and Maritime Services;
 - Lane Cove Council; and
 - Willoughby City Council

Each public authority is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least **21 days** to comment on the proposal, or to indicate that they will require additional time to comment. The planning proposal should be updated to respond to this consultation.



Planning & Environment

4. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:
 - a. the planning proposal must be made publicly available for a minimum of **28 days**; and
 - b. the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A Guide to Preparing LEPs' (Department of Planning and Environment 2013).
5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The timeframe for completing the LEP is to be **12 months** from the week following the date of the Gateway determination.

Dated 28th day of January, 2016.

**Brett Whitworth,
A/Executive Director, Regions
Planning Services**

Delegate of the Minister for Planning

Original signed by Warwick Winn on 5/2/2016

Dr Liz Develin
Deputy Secretary
Growth, Design, Programs
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

5 February 2016

Dear Dr Develin

Re: Planning Proposal – 31 Albany Street, Crows Nest (PP_2015_NORTH_009_00)

I refer to the letter dated 28 January 2016 in relation to the Gateway Determination for the planning proposal for 31-33 Albany Street, Crows Nest, authored by Brett Whitworth Acting Executive Director, Regions Planning Services.

Council is extremely concerned that several unusual conditions (1a. and 2.) have been imposed on the Gateway Determination which create an unacceptable level of uncertainty for the final outcome of the planning proposal. Conditions 1a. and 2. undermine what should be a clear and transparent process. These conditions represent significant changes to the planning proposal with condition 1a. in particular, being an open ended, undefined additional monetary charge that has not been foreshadowed by consultation with Council. It is an abrupt, unforeseen and unreasonable imposition on the planning proposal.

As you are aware, Council has established comprehensive and detailed growth plans for St Leonards and Crows Nest which have been the subject of extensive community and stakeholder consultation and which guide the assessment of planning proposals for the precinct. This framework provides all stakeholders with a clear and unambiguous vision for the precinct including public domain works and other benefits derived directly from sharing value from such growth. The subject planning proposal is consistent with this vision both in terms of built form and its response to public benefit outlined in Council's study.

For the subject site, the public benefit expressed in the adopted planning study for the precinct has been the basis of a detailed draft planning agreement which accompanies the planning proposal. In this case, it is a monetary contribution towards the transformational upgrade of the Hume Street Park which has been roundly supported by the local and wider community. The planning studies that have preceded and informed this and other planning proposals and draft agreements, have been characterised by consultation, transparency and certainty. Given the extensive community involvement in the preparation of these planning studies, any erosion of the public benefit arising from the growth identified as will potentially occur under condition 1a, will be very poorly received.

Council is responsibly facilitating the growth of the precinct which is resulting in new large scale, carefully managed development and the delivery of associated public benefit. The conditions imposed on the subject planning proposal threaten to undermine the progress made on other proposals which seek to strike a balance between responsible growth and defined local benefit.

Before Council can proceed with any certainty with this planning proposal, the following questions need responses from the Department:

1. What is the likely timeframe for the triggers that conditions 1a and 2 refer to?
2. What is the order of monetary contribution that 1a. is likely to represent?
3. What type of State public infrastructure is likely to be captured?
4. How will Council's funding of local infrastructure envisaged through planning agreements resulting from increases in density, be impacted by the requirement of condition 1a?
5. Is condition 1a. legally upstanding given its open ended and uncertain nature?
6. How transparent is including unforeseen conditions that fundamentally change the outcomes of the planning proposal, mid stream through the process?
7. How sensible is a 12 month time limit for the planning proposal given that condition 2 may potentially result in significant changes and therefore further reporting and exhibition?
8. What level of transparency do these unforeseen conditions represent and why would they not undermine public confidence in the process compared with Council's consultative and measured approach to managing change in the precinct?

Please do not hesitate to contact me or Joseph Hill, Director City Strategy on 9936 8100 regarding this matter if you would like to discuss.

Yours sincerely

WARWICK WINN
GENERAL MANAGER

cc Brett Whitworth. Acting Executive Director. Regions Planning Services

