Exhibition Submission

Novus on Albert: SSD – 59805958

Objection 1 - Objection to the Use of Private Certifiers or Developer-Appointed Assessors

Consent conditions fulfilled through Novus-appointed professionals — without external scrutiny — may carry a procedural risk, particularly where access, tenancy rights, or demolition staging are disputed. This concern is grounded in a **documented history of premature assertions**, omissions, and unresolved issues, outlined as follows:

[redacted]

[redacted]

[redacted]

[redacted]

I completed a Submission to the HillPDA Stakeholder Engagement, on 21st May 2024 (Appendix C) and Exhibition Submission on the NSW Planning Portal (Appendix C) – which can be publicly viewed on https://www.planningportal.nsw.gov.au/major-projects/projects/novus-albert-763-769-pacific-highway-chatswood-build-rent.

According to the NSW Department of Planning, Housing and Infrastructure (DPHI) *Undertaking Engagement Guidelines for State Significant Projects* (October 2022), proponents must engage in a way that is fair, inclusive, and continuous. Key requirements include:

- Ensuring procedural fairness.
- Transparency and proper documentation of engagement outcomes.
- Consideration of stakeholder concerns throughout the process.
- Avoiding the use of power imbalance to secure cooperation.

[redacted]

- [redacted]
- [redacted]
- Did **not** continue direct engagement at any point throughout the exhibition period.
- Did not document or address our concerns in their published EIS or Response to Submissions Report (Appendix D).

In their *Response to Submissions Report* (4 November 2024, p. 55), Novus stated:

"Engagement was conducted in accordance with the DPHI's guideline Undertaking Engagement Guidelines for State Significant Projects (October 2022)." (Appendix D)

After reviewing Novus's response to my submission, On 9th November 2024, I emailed Mr Hirst's correspondence (Appendix A) directly to a DHPI Senior Planning Officer. On 11th November, the DHPI Senior Planning Officer acknowledged receipt, and her response was simply to state she would forward it to Novus and that the DHPI do not publish correspondence on the website but that she had saved a record of my email (Appendix E).

No action was taken by the Department to address the contents of Mr Hirst's communication. It was not published or referenced in their RTS, or its implications for planning integrity. Mr Hirst's communication was not referenced in the Department's Assessment Report and appears to have been procedurally neutralised by being handed back to the proponent — the very subject of the concern. Furthermore, our solicitor's letter was addressed directly to Novus and also was not referenced or rebutted in their published documentation.

The outcome – Novus's RTS claim was accepted without challenge by the Department in its Assessment Report (June 2025, p. 43-44), based on self-reported information by Novus's private consultants:

"The Department considers that the engagement was conducted in a manner consistent with the relevant guidelines contained in Undertaking Engagement Guidelines for State Significant Projects (October 2022)." (Appendix D)

This procedural handling and lack of scrutiny resulted in a presentation of engagement as compliant despite the omission of critical stakeholder-related correspondence and unresolved procedural issues - a clear illustration of how current consent conditions, in the absence of independent oversight, may be vulnerable to procedural bias.

[redacted]

[redacted]

Request to the IPC

I respectfully request:

1. That any certification of conditions involving site access, structural integrity, or WHS compliance — including Condition D27 — be carried out by an independent and appropriately accredited third-party assessor not engaged by the proponent or any party with a financial interest in the development.

[redacted]

3. To preserve procedural fairness and planning system integrity, that the IPC require the proponent to disclose, as part of its compliance documentation, any contractual milestones, possession timelines, or third-party obligations that influence the sequencing or timing of SSD-59805958 implementation — where such obligations intersect with live site access, staging, or tenancy rights. [redacted]

Objection 2 - Objection to Condition D27

Condition D27 of the SSD-59805958 consent requires:

- A compliance statement in accordance with *AS 2601-2001: The Demolition of Structures*.
- Any work plans required by AS 2601 - 2001

AS 2601 imposes strict criteria that include:

- Site-specific risk assessments
- Occupant and public safety planning
- Detailed sequencing of demolition works
- Establishment of exclusion zones based on existing conditions and operational constraints

These elements **cannot be satisfied** without full legal and physical access to the entire development site.

Active Lease Prevents Legal Access to 763 Pacific Highway:
I am the registered leaseholder of the property at 763 Pacific Highway, under a legally binding lease that remains in effect until **March 2026**, **with an additional five-year renewal option**. This lease grants exclusive possession, access rights, and the legal entitlement to quiet enjoyment — including freedom from interference or demolition-related disruptions during the lease term.

Novus, **does not own** or lease this portion of the site and **has no legal right of access** to the premises for the purpose of demolition, hazardous materials surveying, or any works necessary for D27 compliance. Previous access requests made by Novus and the Landlord have been for the purpose of such investigations have been, and will continue to be, **lawfully denied** on the basis of lease rights, safety concerns, and failure to meet proper legal thresholds.

This means any demolition risk assessment or plan that Novus submits **would be incomplete or speculative** — lacking direct site inspection, occupancy safety planning, or risk sequencing related to 763.

Any attempt to certify Condition D27 while access to 763 remains legally restricted would:

- Violate WHS obligations (no full site access = no valid risk assessment)
- Breach the assumptions of AS 2601 compliance
- Risk legal invalidation of the consent and/or future construction certificates
- Create unacceptable risk of harm to staff and patrons operating within a live tenancy

This concern is heightened by earlier conduct from Novus (Appendix A), made in advance of any formal approval or CC lodgement, demonstrates a clear intent to pressure for access ahead of lawful entitlement — reinforcing the need for strict oversight and conditioning around D27.

Request to the IPC

I respectfully request that the IPC stipulate:

1. That no demolition work plan or compliance statement required under Condition D27 be accepted for certification or Construction Certificate (CC) lodgement while a lawful lease remains in effect over any portion of the development site.
2. That no demolition, excavation, hoarding installation, or construction staging works be undertaken on or adjoining the leased premises at 763 Pacific Highway until such time as the lease is lawfully extinguished, surrendered or expires in accordance with its terms.
3. That any certification of Condition D27 be undertaken by an independent and appropriately qualified third-party assessor who is not engaged by the proponent or any affiliated entity, to ensure that demolition planning and risk assessment processes meet the standard of objectivity and transparency required under AS 2601 and applicable WHS regulations.

Objection 3 - Objection to Condition D16

Procedural Inconsistency in Hazardous Materials Recommendation and Implication for Public Safety

The Department's Condition D16 requires strict adherence to the Detailed Site Investigation (DSI) dated 2 June 2023 and the Targeted Site Investigation (TSI) dated 4 September 2023. Both reports clearly specify that a **Hazardous Materials Survey (HMS) must be completed prior to any demolition works**, citing the need to identify and safely manage hazardous building materials (e.g., asbestos, lead) to protect demolition workers, nearby tenants, and surrounding soil from contamination.

However, just seven days after the Department's Request for Additional Information (dated 1 November 2024), the proponent's environmental consultant, EI Australia, issued an Environmental Addendum Letter (dated 7 November 2024) that **omits any reference to this mandatory pre-demolition Hazmat survey**. Instead, the letter proposes a post-demolition Detailed Site Investigation (DSI), with no new data and no additional fieldwork. This shift is justified solely by reference to known tenancy-related access constraints — an issue that had already been acknowledged in the original TSI report and did not prevent the recommendation for a pre-demolition HMS at that time.

This constitutes a **material procedural inconsistency**. The removal of the HMS recommendation without new investigative evidence is not only unsubstantiated but poses a **direct risk to public health and safety**. It appears to prioritise the expedition of the application process over environmental diligence and legal duty of care**.**

If recommendations regarding hazardous materials can be added or removed within seven days without explanation grounded in new site data**,** and if the same body of evidence is permitted to generate two diametrically opposed recommendations**,** it calls into question the evidentiary validity of environmental reporting within the SSD process**.**

Is this a regulatory safeguard — or a performative exercise?
If conclusions can shift without data, and if those shifts are accepted without scrutiny,

what purpose do these “recommendations” serve in protecting communities, workers, or the environment?

This contradiction undermines confidence in the integrity of the assessment process and raises legitimate concerns that environmental due diligence is being selectively applied to accommodate convenience and commercial imperatives — not public safety.

Worker and Public Exposure Risks are Being Transferred Downstream

The original DSI and TSI recognised that hazardous materials — if not identified and mitigated pre-demolition — may contaminate soil and present inhalation or contact risks. By deleting the HMS requirement without substitute safeguards, the proponent has effectively transferred **environmental risk to demolition crews, construction workers, neighbours, and passersby**. This change is not theoretical — it increases chance of introducing foreseeable and preventable risk to real people, which is unacceptable under WHS and environmental duty-of-care standards.

Post-Exhibition Environmental Addendum Undermines Public Participation

The Environmental Addendum Letter by EI Australia — dated 7 November 2024 — was submitted after the public exhibition period concluded. It materially alters the approach to contamination risk management by removing the requirement for a pre-demolition HMS. This shift affects how the public might have assessed the safety and environmental integrity of the proposal. If substantial new information or risk management changes occur **after** the exhibition period, without re-exhibition, then **meaningful public consultation is compromised**. A statutory public consultation process loses value if critical safeguards can be quietly removed after submissions close and without public notice.

Risks Tactical Workaround to Bypass Whole-Site Compliance

In the Environmental Addendum – 7th November 2024, EI Australia stated “A TSI has been undertaken across the accessible areas of the site, noting that portions of the site are subject to existing operating tenancies and are not accessible for the purposes of intrusive investigations prior to demolition”; However, the accessibility was further

limited at the time the TSI (and DSI) was conducted, nevertheless, a pre-demolition HMS report was recommended on both occasions.

[redacted] Together with condition F35, the proponent may segment the site into “accessible” and “inaccessible” portions — proceeding with demolition in the former while bypassing investigation requirements in the latter.

The effect:

1. Environmental and WHS safeguards are diluted, because they do not apply equally across all lots or structures.
2. The leaseholder’s rights and quiet enjoyment are eroded, as demolition may proceed as described in Appendix A based on incomplete risk assessments from which the leaseholder was procedurally excluded, possibly leading to escalation of legal disputes with risk of injunction, caveats and media exposure.

It normalises a strategy where legal tenancies are treated as logistical problems rather than planning parameters. Such practices, if accepted, could set a dangerous precedent that undermines integrated environmental protection standards for SSD sites.

Potential Non-Compliance with Clause 7 of SEPP 55

Clause 7 of the former SEPP 55 (now Housing SEPP Clause 4.6.1-4.6.4) prohibits consent from being granted unless the land is suitable — or can be made suitable — for the intended use.

“A consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated, and if so, it is suitable (or can be made suitable) for the proposed use.”

- The DSI and TSI acknowledge incomplete assessment due to the restricted access of live tenancies.
- The DSI and TSI both explicitly recommend pre-demolition hazardous materials investigation.
- No updated site investigation has been conducted with full access to the entire site.

Key Precedents and Principles:

1. **NSW Land and Environment Court** and **Planning Panels** have regularly held that:
    - "*A contamination report based on partial access or hypothetical assumptions is insufficient for a lawful determination under Clause 7 of SEPP 55.*"
2. **EPA and Planning Circulars** (e.g. DUAP/EPA 1998) state:
    - *"Where contamination status cannot be confirmed due to site inaccessibility, the site should be assumed potentially contaminated and further investigation must occur prior to approval."*

Removing a critical environmental recommendation because the tenancy still exists may be convenient for the proponent – but it does not resolve the Clause 7 requirement to demonstrate site suitability for redevelopment. This is especially true if the change in the recommendation is not due to improved environmental confidence or data, but merely to accommodate and expedite the development consent process.

By selectively removing one of their core recommendations (HMS) after the fact — the proponent appears to be **simulating compliance while undermining its substance**. This practice erodes the reliability of planning conditions and sets a precedent where consent requirements can be met on paper while quietly gutted in practice.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Request to the IPC

I respectfully request:

1. That the IPC direct the proponent to reinstate the pre-demolition Hazardous Materials Survey (HMS) as required by both the DSI (2 June 2023) and TSI (4 September 2023) and confirm it will be conducted prior to any demolition works, in accordance with Condition D16.
2. Declare the 7 November 2024 Environmental Addendum to be a material amendment to the environmental documentation and require its public exhibition as part of a supplementary exhibition period, given its impact on demolition safety protocols.
3. That Condition D16 be amended to prohibit any demolition or partial demolition, investigation, site activation or site disturbance until the full site is accessible and a Hazardous Materials Survey has been completed, as originally required in the DSI and TSI — not deferred due to leasehold status.

4. Require that all future contamination, environmental or WHS-compliance certification (including DSI revisions, HMS documentation, or demolition plans) be independently reviewed and verified by a third-party occupational hygienist or environmental risk assessor unaffiliated by Novus or its consultants.
5. [redacted]
6. [redacted]

Objection 4 - Objection of Condition F35

1. Statutory Compliance with Clause 72(3)(b) of the Housing SEPP (2021)

Clause 72(3)(b) of the State Environmental Planning Policy (Housing) 2021 provides:

> *"Development consent may be granted for development to which this Part applies if-*
> *(a) the development will result in at least 50 dwellings occupied, or intended to be occupied, by individuals under residential tenancy agreements, and*
> *(b) all buildings containing the dwellings are located on the same lot."*

This provision establishes a necessary precondition by stating that *development consent **may** be granted **if***. The "may" gives discretion to the exercise of power to grant consent only after preconditions are met. It does not give discretion to waive them or grant consent irrespective of these conditions.

Relevant Case Law

Plaintiff S4/2014 v Minister for Immigration (2014) 253 CLR 219:

> In this case, the High Court emphasized that when legislation confers a power to be exercised "if" certain criteria are met, the satisfaction of those criteria is a **jurisdictional fact**—a legal prerequisite to the valid exercise of that power. This means that the authority cannot lawfully exercise the power unless the conditions are fulfilled.

Project Blue Sky v Australian Broadcasting Authority (1998) 194 CLR 355:

> Failure to comply with a precondition that goes to the scope of the statutory power can render the decision invalid.

Here, invalidating a consent granted in breach of 72(3)(b) would protect the planning system's integrity, not cause unfairness — because the applicant had no legal right to proceed in the first place without unifying the lots.

While the Department of Planning, Housing and Infrastructure (DPHI) has previously permitted post-consent consolidation through conditions, we submit that such an approach **only maintains integrity if the site is otherwise unified in legal control and physical access**. When that is not the case — as here, there is an active tenancy — Clause 72(3)(b) risks being rendered ineffective in both intent and application. Under *Project Blue Sky* and *Plaintiff S4/2014*, if a mandatory precondition is not met, the power to approve the application does not exist — and any decision based on it is ultra vires (beyond power).

The legal requirement triggered by this clause is at the point prior to any development that would be unlawful unless the land is treated as one lot. In other words, lot consolidation must occur before any works commence that rely on unified ownership or titling to ensure structural, safety, or planning compliance.

Based on Novus' own documents, including architectural drawings and environmental plans, the development design relies on unified structures, integrated setbacks, shared services, and common access points spanning multiple existing lots. This means the development cannot lawfully proceed unless the lots are treated as one at the point of issuing the first Construction Certificate — not delayed until the Occupation Certificate.

Deferring Lot Consolidation until Prior to Occupation Certificate Risks

- False claims of full-site access (breaching D27 and CMP compliance)
- Partial commencement of demolition/excavation while lease is active (breach of quiet enjoyment etc and WHS risk)
- Planning Integrity, Legal Clarity and Exploit Prevention
  (creates loopholes around structural and life safety, setback, FSR, etc)
- Strategic staging that isolates the leaseholder (risk of procedural unfairness and unconscionable conduct)

Allowing deferred lot consolidation for this project introduces inconsistent application of planning law, creates an unfair advantage for Build-to-Rent developers, undermines certainty for leaseholders and weakens public confidence in the planning system.

Contextual Planning Risks

This objection must be read in light of the broader procedural pattern outlined in Objection 1. The proponent has, throughout the SSD process, benefited from a lack of scrutiny and transparency — including a late-stage environmental addendum that removed critical safety obligations without new data, and landlord-facilitated pressure communications. When viewed in context, the deferral of lot consolidation under Condition F35 cannot be treated as administratively neutral. It instead reflects a broader trend of regulatory navigation strategies that structurally exclude lawful tenants from participation, expose them to early-stage disruption, and enable fragmented compliance across the site. These dynamics significantly raise the risk that Clause 72(3)(b) will not be meaningfully upheld in practice.

Request to the IPC

I respectfully request the IPC:

1. Formally examine whether the consent granted in its current form satisfies Clause 72(3)(b) of the Housing SEPP 2021, and whether the inclusion of post-consent lot consolidation undermines the legal validity of the approval. If the condition is found to be inconsistent with jurisdictional preconditions, we respectfully submit that the consent conditions be amended accordingly or referred for legal clarification. If the IPC considers legal clarification of Clause 72(3)(b) necessary, we respectfully submit that such advice be obtained from an independent legal source, such as the Crown Solicitor's Office or external counsel, rather than from internal DPHI legal advisors involved in the assessment process, to avoid any further perception of internal self-verification or procedural inconsistency.
2. Amend Condition to F35 to require that lot consolidation occur prior to the issue of any Construction Certificate, ensuring that works can only proceed on a legally unified site.
3. Alternatively, if F35 is retained in its current form, impose a new condition stating that no demolition, excavation, or other enabling work may commence until all lots within the development footprint are vacant and subject to uniform environmental and WHS documentation.

4. Clarify the application of Clause 72(3)(b) and require justification as to why consolidation was deferred to OC in this case, despite legal, structural, and operational dependencies requiring earlier unification.
5. Ensure all environmental and risk assessments are updated to reflect a whole-of-site approach, acknowledging the presence of leaseholders and removing the potential for staged compliance.

Comment 1. Exclusion of Leasehold Tenancy from Material Planning Determinations

The SSD-59805958 Assessment Report and recommended conditions of consent refer briefly to submissions from existing businesses, including mine. However, the Department fails to acknowledge the legally active commercial lease at 763 Pacific Highway as a material planning constraint — even though this leasehold directly obstructs full-site environmental compliance, access, and demolition sequencing. By addressing the issue solely in the context of "amenity impacts" and private commercial agreements, the report treats a legally binding tenure and access barrier as irrelevant to the pre-construction planning process. This minimisation constitutes a **material planning failure** in substance if not in form — with serious procedural, legal, and ethical consequences.

Acknowledging leaseholder rights in material planning is likely to function as a safeguard for all existing lawful stakeholders—including leaseholders—whose rights, entitlements, and commercial viability could otherwise be placed at risk. The downstream consequences are not hypothetical: they include disproportionate influence, reputational interference, contractual breaches, and the potential for formal disputes, injunctions, caveats, litigation, and media exposure.

Despite these risks, commercial lease agreements fall outside the regulatory scope of the Department of Planning, Housing and Infrastructure (DPHI). It is unacceptable to continue to agree to facilitate an application that places a live commercial lease at risk, and then, when consequences emerge, dismiss any responsibility for the fallout. This is an administrative asymmetry. The system in its current form enables public agencies to delegate risk downstream to private actors—who may not be bound by the same procedural safeguards—while declining to take any upstream responsibility for the structure of that risk.

The current system allows a developer to lodge an application for land it does not control, assumes eventual possession despite known legal leases, and then asserts that ensuring the protection of those leasehold interests is someone else’s

responsibility. That is not procedural fairness. That is structural vulnerability masked as process.

If it is beyond the Department's scope to resolve the consequences of facilitating a high-risk SSD with a live tenancy in place, then it must place a regulatory body whose regulatory powers are within the scope to address this. **Scope must be symmetrical**.

I do not make these observations lightly. But I raise them because, as the party with the least power in this process, I am left bearing the daily operational, emotional, legal, and commercial cost of upstream decisions made by people in positions of institutional protection. I am not seeking protection from the planning system. I am asking only that it stop enabling risk it refuses to take responsibility for.

Request to the IPC

To address this systemic imbalance and to reinforce procedural accountability, I respectfully request:

1. That the IPC Issue a formal recommendation to the Minister or Department that any future SSD application involving fragmented land ownership, active leasehold interests, or unresolved commercial occupancy must not proceed through the consent process unless all stakeholders holding enforceable property interests have been formally consulted and any unresolved objections have been independently reviewed.
2. That the IPC reinforce the principle that leaseholders must not be put in a position where the only way to protect their legal rights is via private litigation, simply because the planning process refused to integrate their interests into its risk model.

Concluding Statement

Novus's omission of critical engagement material (Appendix A), coupled with the Department's unqualified acceptance of self-reported engagement narratives, has imposed an unjust burden on lawful leaseholders. Condition F35, which delays lot consolidation until the Occupation Certificate stage, further compounds this imbalance by enabling premature approvals that externalise procedural, legal, and operational risks onto third parties — without adequate planning protections.

We have been forced to retain legal counsel, divert operational capacity, and disrupt business continuity in order to uphold rights that should have been self-evident under existing planning and leasehold frameworks. This burden should never fall on stakeholders who played no role in shaping the original consent pathway.

We acknowledge that the IPC does not adjudicate individual losses or enforce private agreements. However, the consequences we describe are not incidental — they are systemic symptoms of procedural breakdown. When essential engagement material is excluded from assessment, when Conditions like F35 and D27 are framed or certified in internal silos without full stakeholder input, and when formal leasehold rights are consistently treated as peripheral, the integrity of the planning process is eroded.

We submit this request not out of grievance, but in the sincere interest of restoring transparency, fairness, and accountability to this process. It is difficult to reconcile how a proposal marked by such early procedural failures — including the omission of key documents, disregard for formal legal correspondence, and unsupported assertions of demolition rights — has continued through assessment largely unchallenged.

Despite our efforts to raise these concerns through submissions, solicitor correspondence, and direct departmental engagement, no effective procedural remedy has been offered. We raise this matter to underscore the structural risks that have been normalised — and to respectfully urge the IPC to intervene in support of planning integrity and lawful stakeholder participation moving forward.