

10.5. Planning Proposal 8/21: North Sydney Centre: Height of Buildings Variation - Post Exhibition Report

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ATTACHMENTS	<ol style="list-style-type: none"> 1. Gateway Determination 6 July 2023 [10.5.1 - 3 pages] 2. Gateway Determination Condition 1 Endorsement 24 July 2023 [10.5.2 - 1 page] 3. Planning Proposal as exhibited [10.5.3 - 41 pages] 4. Public Submissions Summary Table - Building Height Variation in NSC [10.5.4 - 15 pages]
CSP LINK	<ol style="list-style-type: none"> 2. Our Built Infrastructure <ol style="list-style-type: none"> 2.2 Vibrant public domains and villages 3. Our Innovative City <ol style="list-style-type: none"> 3.3 Distinctive sense of place and design excellence 5. Our Civic Leadership <ol style="list-style-type: none"> 5.1 Lead North Sydney's strategic direction

PURPOSE:

The purpose of this report is to seek Council's endorsement to progress a Planning Proposal to amend the North Sydney LEP 2013, following its consideration of public submissions.

EXECUTIVE SUMMARY:

- At its meeting on 21 February 2022, Council resolved to support Planning Proposal 8/21 proceeding to Gateway Determination to amend North Sydney Local Environment Plan (NSLEP) 2013. Its purpose was to rationalise and improve clarity as to the application of clauses within NSLEP 2013 that enable variations to the maximum height of buildings development standards applying to land located within the *North Sydney Centre*. In particular, it sought to ensure that when a development application is received with a request to exceed the maximum height of buildings development standard, that the request to vary the development standard must consider the criteria currently contained under both clauses 4.6 – *Exceptions to Development Standards* and 6.3(3) – *Building Heights and Massing* to NSLEP 2013.
- On 6 July 2023, the Minister for Planning issued a Gateway Determination, allowing the Planning Proposal to be placed on public exhibition. In issuing the Gateway Determination, Council was not granted authorisation to be the local plan-making authority to finalise and make this plan. This aspect resides with the NSW Department of Planning and Environment.
- In accordance with the Gateway Determination issued by the Minister for Planning, the Planning Proposal was placed on public exhibition for a period of 43 calendar days (31

working days) from 14 August 2023 to 25 September 2023 inclusive.

- Seven submissions were received during the exhibition period, of which three were in support of the intended outcomes of the Planning Proposal, and four opposed.
- Having regard to the issues raised in the submissions made, it is recommended that the Planning Proposal proceed to the next stage of the plan making process subject to incorporating some minor amendments to further improve clarity and flexibility.

RECOMMENDATION:

1. THAT Council note the submissions made.

2. THAT in response to the submissions made, Council endorse the Planning Proposal forming Attachment 3 to this report, subject to the following amendments:

- (a) Recognition of the recent State led amendments made to clause 4.6 within NSLEP 2013;
- (b) Revising the solar access test to:
 - (i) apply to “living areas” rather than “habitable rooms”;
 - (ii) clarify what a “living area” comprises; and
 - (iii) apply to the midwinter (21 June) period only.
- (c) Ensuring that the solar access test only applies to that part of a proposed building that exceeds the maximum height limit.

3. THAT having completed the community consultation requirements outlined in the Gateway Determination, Council forward the Planning Proposal, as amended, to the Department of Planning and Environment with a request that a Local Environmental Plan be made in accordance with section 3.36 of the Environmental Planning and Assessment Act 1979, to give effect to the Planning Proposal.

4. THAT Council notify all submitters of Council’s decision.

BACKGROUND

The following outlines the chronology and milestones of the Planning Proposal process to date:

26 October 2018 – Amendment 23 to North Sydney Local Environmental Plan (NSLEP) 2013 was made giving effect to the outcomes of *the North Sydney CBD Land Use and Capacity Strategy* which had been adopted by Council in May 2017. Of particular note, Amendment 23 to NSLEP 2013 resulted in significant increases to the maximum permitted building heights on some land located within the commercial core of the North Sydney Centre, whilst managing impacts on solar access to Special Areas and public recreation spaces within the North Sydney Centre and to residential and public recreation areas located outside of the North Sydney Centre. Clauses 4.6 – *Exceptions to Development Standards* and 6.3(3) – *Building Heights and Massing* enabled the consent authority to consider a request to vary the maximum height of buildings under clause 4.3 – *Height of Buildings*.

October 2018 – September 2021 – Council receives numerous development applications that seek to vary the maximum height of buildings within the North Sydney with the view that only clause 6.3(3) is required to be considered.

15 September 2021 – Council initiates Planning Proposal (PP 8/21) to rationalise and improve clarity as to the application of clauses within NSLEP 2013 that enable variations to the maximum height of buildings development standards applying to land located within the North Sydney Centre. In particular, it seeks to ensure that when a development application is received with a request to exceed the maximum permitted building height under clause 4.3 on land within the North Sydney Centre, that the request to vary the development standard must consider the criteria currently contained under both clauses 4.6 and 6.3(3) to NSLEP 2013.

29 September 2021 – The North Sydney Local Planning Panel considers the Planning Proposal and recommends that the Planning Proposal be supported to proceed to Gateway Determination.

25 October 2021 – Council considers the recommendations of the North Sydney Local Planning Panel and resolves to defer making a determination on the progression of the Planning Proposal such that it is considered by the newly elected Council.

21 February 2022 – Council resolves to support the progression of Planning Proposal 8/21 to Gateway Determination to amend the planning controls under NSLEP 2013.

18 March 2022 – Council submits the Planning Proposal to the Department of Planning and Environment (DPE) requesting a Gateway Determination.

25 August 2022 – The DPE issues a Gateway Determination (DPE ref: PP-2022-901) enabling the Planning Proposal to proceed to public exhibition, subject to meeting a number of conditions.

August 2022 – April 2023 – Council commences updating of Planning Proposal to satisfy the conditions of consent. During this period, Council staff identified that that the stated intent of the Planning Proposal is unlikely to be met as initially proposed.

12 April 2023 – Council submits a revised Planning Proposal (DPE ref: PP-2023-760) to the DPE for a new Gateway Determination and a request to withdraw the former Planning Proposal (DPE Ref: PP-2022-901).

14 April 2023 – DPE issues a Gateway Alteration to PP-2022-901 confirming that this version of the Planning Proposal will no longer proceed, on the basis that a new Planning Proposal has been lodged.

6 July 2023 – DPE issues a new Gateway Determination (DPE ref: PP-2023-760) enabling the revised Planning Proposal to proceed to public exhibition, subject to meeting a number of conditions.

13 July 2023 – Council submits a revised Planning Proposal to the DPE for Ministerial review and endorsement as per the requirements of Condition 1 of the Gateway Determination.

24 July 2023 – DPE endorses the revised Planning Proposal to proceed to public exhibition, having satisfactorily met the requirements to Condition 1 of the Gateway Determination.

REPORT

1. Issue of Gateway Determination

On 6 July 2023, the DPE issued a Gateway Determination (refer to Attachment 1) enabling the Planning Proposal to proceed to the public exhibition stage of the plan making process, subject to satisfying seven conditions.

2. Assessment against Gateway Determination Conditions

The seven conditions imposed in the Gateway Determination are addressed in the following subsections.

2.1. Amendment of Planning Proposal prior to public exhibition

Condition 1 of the Gateway Determination required the Planning Proposal to be amended to address the following and submitted to the Minister for Planning for review and endorsement prior to public exhibition:

- a) *include a plain English explanation of the intent of the intended outcomes of the planning proposal under explanations of provisions;*
- b) *remove Council's draft clauses from the body of the planning proposal, include as an annexure and note that they are indicative only and will be subject to drafting by Parliamentary Counsel should the planning proposal proceed to finalisation;*

- c) *update the planning proposal to accurately reflect the current land zonings in the North Sydney Centre following commencement of the employment zones reform on 26 April 2023;*
- d) *include an updated project timeline to ensure completion in a timely manner.*

2.1.1. Condition 1(a) Plain English Explanation

The Planning Proposal underwent substantial revision to simplify the explanation of the intent of what is being requested and how that may be achieved. These matters are specifically addressed in sections 1, 2, 5.1 and 5.2.1 of the revised Planning Proposal.

2.1.2. Condition 1(b) Relocation of Detailed Explanation

The specific suggested amendments to identified clauses were relocated to Annexure A to the revised Planning Proposal and include further clarification that they are subject to drafting by Parliamentary Counsel.

2.1.3. Condition 1(c) Zoning Updates

The relevant references and maps to NSLEP 2013 that depict the extent of land use zonings applying within the North Sydney Centre were replaced to reflect the implementation of the Employment Zone Reforms on 26 April 2023 and any other amendments made to date.

2.1.4. Condition 1(d) Timeline

The timeline within Section 5.6 of the Planning Proposal was amended to reflect the timings of the issue of the Gateway Determination and anticipated milestones set by the Gateway Determination.

2.1.5. Ministerial Endorsement

Condition 1 requires that following the revision of the Planning Proposal in accordance with Conditions 1(a)-(d), that it be submitted to the Minister for Planning for review and endorsement prior to being placed on public exhibition.

A copy of the Planning Proposal, revised in accordance with Condition No.1 was provided to the DPE on 13 July 2023, for its review and endorsement. Endorsement was granted on 24 July 2023 (refer to Attachment 2), with no further amendments required.

2.2. Public Exhibition

Condition 2 of the Gateway Determination required that the Planning Proposal be placed on public exhibition for a minimum of 20 working days, with the commencement of the public exhibition to occur within three months (i.e., before 6 October 2023) of the date that the Gateway Determination was issued.

The Planning Proposal has been placed on public exhibition for a total period of 43 calendar days or 31 working days¹ in accordance with this Condition.

The public exhibition commenced on 14 August 2023, which was well within the three-month timeframe and thereby complies with the Condition.

2.3. Consultation with Public Bodies

Condition 3 stated that no consultation was required with public authorities or government agencies.

No consultation was undertaken with any public authorities or government agencies. This was deemed appropriate given the primary intent of the Planning Proposal was to simplify the variation process to the maximum height of buildings development standard when applying to land within the North Sydney Centre and did not result in any change to the development potential of land.

2.4. Public Hearing

Condition 4 of the Gateway Determination did not require the undertaking of a public hearing in accordance with s.3.34(2)(e) of the Environmental Planning and Assessment Act, 1979 (EP&A Act). However, the Condition stated that this did not remove the need to undertake a public hearing in relation to the reclassification of land under the Local Government Act, 1993.

The Planning Proposal does not seek to reclassify any land under the Local Government Act, 1993 and therefore did not warrant the holding of a public hearing under s.3.34(2)(e) of the EP&A Act.

2.5. Council as planning proposal authority

Condition 5 of the Gateway Determination states that Council is not authorised to exercise the functions of the local plan-making authority under section 3.36(2) of the EP&A Act. The role of the local plan-making authority will therefore be retained by the DPE. Accordingly, Council is required to forward any recommendation to this report to the DPE for its action.

2.6. Council Reporting Timeframe

Condition 6 of the Gateway Determination, states that the Planning Proposal “must” be reported to Council for a final recommendation 6 months (i.e., by 6 January 2024) from the date of the Gateway Determination.

The post exhibition report is being reported to Council approximately 5 months after the issue of the Gateway Determination, which is within the required timeframe.

¹ As defined under the DPE’s Local Environmental Plan Making Guideline (September 2022)

2.7. Completion Timeframe

Condition 7 requires that an LEP that implements the intent of the Planning Proposal, “should” be made within nine months (i.e., by 6 April 2024) of the issuing of the Gateway Determination.

Should Council resolve to recommend the making of the LEP, it will leave almost 4 months to make the LEP. A review of previous LEP-making processes indicates that on average, an LEP of similar complexity can be made within approximately two to three months after the consideration of the post exhibition report.

As Council has not been granted delegation to be the local plan-making authority, it does not have carriage of the finalisation of the LEP, with the onus falling on the DPE to finalise the LEP within this timeframe. Notwithstanding, Council staff will assist the DPE in the finalising of the LEP in a timely matter.

3. Public exhibition

The Planning Proposal (Attachment 3) was placed on public exhibition concurrently for 43 “calendar days” or 31 “working days”, from Monday 14 August 2023 to Monday 25 September 2023 inclusive.

All property owners and occupiers located within the North Sydney Centre (approximately 4,750) were directly notified by letter of the public exhibition of the Planning Proposal. The Property Council of Australia, Urban Development Institute of Australia and all Precinct Committees were also directly notified.

In addition, formal notices were placed on the NSW Planning Portal and Council’s website in accordance with the EP&A Act and Council’s Community Engagement Protocol.

Electronic copies of the exhibition documentation were made available on Council’s website, the NSW Planning Portal for the entirety of the exhibition period. In addition, hard copies of the exhibition documents were made available at Council’s Customer Service Centre and Stanton Library for the entirety of the exhibition period.

4. Consideration of Submissions

Seven submissions were received:

- three submissions supported or did not object to the intent of the proposal; and
- four submissions objected to the intent of the proposal.

Of those who objected to the proposal, the following issues were identified:

- the proposal reduces flexibility to increase height (3);
- the proposal is contrary to endorsed strategic planning policies (2);
- Option 1 narrows the discretionary power of consent authorities (2);
- the proposal reduces the ability to increase density (2);
- there is no justification for amending the controls (1);

- the proposal would be more onerous than the current process (1);
- the proposal removes an option to increase height (1);
- the solar access test is difficult to apply (1);
- the solar access test is inconsistent with the tests under NSDCP 2013 (1);
- it will reduce vibrancy within the North Sydney Centre (1);
- there is a duplication of objectives (1).

Of those who supported the proposal, the following reasons were identified:

- do not want to see any increases in height above that permitted; and
- a singular variation control should be required.

A summary and response to all submissions received are provided in the Submissions Summary Table (Attachment 4). It is recommended that the recommendations outlined in the Submissions Summary Table be adopted as part of this report.

The Neutral Bay Precinct Committee's submission unanimously the intended outcomes of the Planning Proposal.

The key issues raised in the submissions are discussed in detail in the following subsections.

4.1. Flexibility

Three submissions stated that the proposal would reduce the level of flexibility to increase development within the North Sydney Centre. In particular:

- the proposal will remove the level of flexibility currently afforded under clause 6.3(3);
- it will remove one of two avenues to vary the maximum height limits; and
- the current and proposed solar access test is merely a numerical test irrespective of the public interest and nature of the dwelling affected;

4.1.1. Comment

Generally, the submissions had inferred that all sites were entitled to an automatic right to exceed the maximum height limits.

Variation control

The proposal does not seek to remove the ability to vary the height requirements within the North Sydney Centre. It merely seeks to consolidate all variation requirements into the one location, such that all base requirements for variations are comparable.

Reduction in variation options

One submission suggested that the proposal will reduce the number of options to vary the maximum height limit within the North Sydney Centre.

It was never Council's intention to provide multiple avenues to vary a single development standard. Such an approach reduces clarity and expectations of what can be accommodated

on a site and the criteria against which variations are assessed. One of the main reasons for proposing the consolidation of the current variation requirements was to simplify the process and ensure that all requests for a variation to a development standard are subject to the same base level criteria.

Solar Access Test

The issue with the application of the solar test primarily relates to the application of the term “habitable room”. This issue is discussed in more detail at section 4.3 to this report. It is recommended that the term “habitable room” be replaced with the term “living area” consistent with the solar access considerations under the Apartment Design Guide (ADG).

4.1.2. Recommendation

No amendment be made to the planning proposal with respect to this issue.

4.2. Contrary to endorsed strategic planning policies

Two submissions objected to the proposal on the basis that the proposal was contrary to the desired outcomes of the *North Sydney Centre Capacity and Land Use Strategy*. In particular, it was suggested that the proposal would:

- not enable the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre and to accommodate forecast demand for additional commercial / employment floor space;
- not “unlock” development potential on sites within the North Sydney Centre; and
- removes flexibility to deliver increased development potential.

4.2.1. Comment

The primary purpose of the *North Sydney Centre Capacity and Landuse Strategy* was to provide direction as to how Council could deliver increased development capacity to meet the employment targets set by the State government and ensure it delivers upon the requirements of a major economic centre as outlined in higher order strategic plans.

The endorsed *Strategy* principally sought to do this by increasing the permitted maximum height limits through the North Sydney Centre, where that additional density did not result in any increase in overshadowing to residential or recreational zoned land located outside of the North Sydney Centre between 10am and 2pm.

The *Strategy* further recognised that the establishment of new heights within the North Sydney Centre was a largely quantitative approach and acknowledged that there may under certain circumstances, be merit for the new LEP heights to be varied from the strict 10am-2pm application. In particular, it suggested that continuing to allow a variation to the new LEP heights could potentially unlock additional employment floor space that may cause additional overshadowing between 10am-2pm to a residential property, but where that residential property currently enjoys significant levels of solar access and may not decrease that solar access below acceptable levels such as that established under the ADG.

The proposed amendments still allow a level of flexibility by maintaining an ability to vary the height of buildings development standard consistent with the requirements to vary any other development standard under NSLEP 2013. Whilst it is acknowledged that the solar access test is additional to a height variation request in other locations in the LGA, it is important that the solar test remain. This is due to the significant and abrupt transitions in height, bulk and scale to development located on land located outside of the North Sydney Centre.

Following a further review of the existing and proposed solar access test, it was noted that the technical application of the solar access test could result in the undermining the ability to deliver on the outcomes of the *North Sydney Centre Capacity and Landuse Strategy*. In particular, where an existing building was below the maximum height limit and the proposed building sought to exceed the maximum height limit, the solar test would apply to all parts of the proposed building that projected beyond the existing built form envelope. This is unreasonable, given that a proposed building that fully complies with the maximum height control should not be subject to the test. Accordingly, the test should be amended such that it only applies to that part of the development that seeks to exceed the maximum height limit and not the development as a whole. This would ensure that the anticipated development capacity afforded to a site under the LEP can be reasonably achieved.

4.2.2. Recommendation

That the Planning Proposal be revised to ensure that when the solar access test is applied only to that component of the height proposed that exceeds the stated height limit outlined in the North Sydney LEP 2013.

4.3. Clarity and implications of the use of “habitable room”

One submission stated that the use of the term “habitable room” within the existing and proposed solar access control creates confusion and has unintended consequences. This is due in part to the term not being specifically defined under NSLEP 2013 nor the EP&A Act. It was recommended that a new definition of “habitable room” be incorporated into NSLEP 2013 provide increased clarity.

It was further suggested that the control as currently worded and proposed would result in almost no developments being awarded an increase in height.

4.3.1. Comment

Definition

It is acknowledged that “habitable rooms” are not defined under either NSLEP 2013 or the EP&A Act. The term is, however, used within the definition of “gross floor area” under NSLEP 2013 and has remained unchanged since NSLEP 2013’s commencement. In addition, the term has been continually used within clause 6.3(3) since 26 October 2018 upon the commencement of Amendment No.23 to NSLEP 2013.

To date, Council has no record of an applicant questioning the interpretation of the term “habitable room” for the purposes of determining gross floor area or compliance with clause 6.3(3) of NSLEP 2013.

It is further noted that “habitable rooms” are specifically defined under SEPP (Exempt and Complying Development Codes) 2008 as follows:

Habitable room has the same meaning as in the Building Code of Australia.

The Building Code of Australia (BCA) defines a habitable room as follows:

habitable room means a room used for normal domestic activities, and—

- a. includes a bedroom, living room, lounge room, music room, television room, kitchen, dining room, sewing room, study, playroom, family room and sunroom; but
- b. excludes a bathroom, laundry, water closet, pantry, walk-in wardrobe, corridor, hallway, lobby, photographic darkroom, clothes-drying room, and other spaces of a specialised nature occupied neither frequently nor for extended periods.

Habitable rooms are also defined under the Apartment Design Guide (ADG) in the same way that they are defined under the BCA.

Therefore, there is some level of certainty as to how habitable rooms may be interpreted under NSLEP 2013, despite an absence of a specific definition within NSLEP 2013.

Council could seek to include a definition of “habitable room” within the Dictionary to NSLEP 2013, similar to that used under SEPP (Exempt and Complying Development Codes) 2008 to provide increased clarity. However, pursuing this option would be contrary to the Directions under the Standard Instrument Local Environmental Plan (SI LEP), upon which NSLEP 2013 is based, and its associated practice guidelines.

Whilst it is preferable for terms to be defined in the Dictionary, consideration could be given to increasing clarity by incorporating a note or an associated subclause which seeks to clarify what a habitable room comprises. For example:

Note – Habitable room has the same meaning as in the Building Code of Australia.

or

(#)For the purposes of clause (#)(#) habitable room has the same meaning as in the Building Code of Australia.

Application of solar access control to habitable rooms

As discussed above, the term “habitable room” covers a broad number of uses within a dwelling and extends to include bedrooms, studies, music rooms and television rooms.

The need to maintain solar access to all types of habitable rooms is not necessarily the same. It is more important to provide solar access to the principal living areas of a dwelling which are most used during the day. Habitable rooms which are more likely to be used during daylight hours include kitchens, living rooms, lounge rooms and family rooms. Conversely, bedrooms are less likely to be used during daylight hours and therefore the need to maintain solar access to these rooms is considered a lower priority than other rooms in the dwelling.

This approach is reflected in the solar access controls used under the ADG to SEPP 65, which seek to ensure solar access “living rooms” or “living areas” (terms which are used interchangeably) between 9am and 3pm.

Since the implementation of Amendment No.9 to NSLEP 2001 in February 2003, Council has included provisions that allow a development to exceed the maximum height controls within the North Sydney Centre, subject to managing overshadowing impacts on residential and open space zoned lands located outside of the North Sydney Centre. At this time, the variation provision was purely merit based, as long as it could be demonstrated that the amenity of the dwellings was not unacceptably reduced.

Over the intervening years, these solar access controls have been amended to provide increased clarity of application. Most recently, Amendment No.23 sought to remove the ambiguity within Clause 6.3(3) which had only sought to ensure that any increase in overshadowing between 9 am and 3 pm was not likely to reduce the amenity of any dwelling located on land outside of the North Sydney Centre. In particular, in line with the recommendations of the *North Sydney Centre Capacity and Landuse Strategy*, it sought to generally apply the same solar access test as adopted under the ADG rather than leaving it to a vague interpretation of “reduced amenity”.

Section 4A of the ADG relates to solar and daylight access. The objective of the section is:

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

In order to meet these objectives, the ADG provides the following design criteria:

- 1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas*
- 2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter*
- 3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter.*

Whilst these criteria generally apply to a building being proposed, they are also commonly used to manage solar impacts to adjoining residential development. NSDCP 2013 has generally adopted these controls in relation to impacts on residential flat development.

When discussing solar access, the ADG makes reference to both providing and protecting solar access to “habitable rooms”, “living rooms” and “living areas”. The design criteria make references to all three terms, whereas the objectives relate to “habitable rooms” only. There may have been some misinterpretation when the term “habitable rooms” was initially incorporated into clause 6.3(3) of NSLEP 2013.

Having regard to the breadth of rooms captured by the definition of “habitable room” and the original intent to maintain solar access to the main living spaces within a dwelling and its private open space, the current LEP control is more restrictive than originally intended. It is therefore recommended that the solar access control be revised to relate to the main living areas of the dwelling rather than habitable rooms, consistent with the ADG.

“Living areas” are not defined under the ADG, nor are they defined under the EP&A Act or NSLEP 2013.

NSDCP 2013 seeks to protect solar access to “*the windows of main internal living areas*” of dwellings. The phrase “*main internal living areas*” is clarified under the DCP within a note as follows:

Main internal living areas excludes bedrooms, studies, laundries, storage areas.

A review of other Council DCPs has revealed that when defining or clarifying a “living area” they focus on what is included rather than what should be excluded. In particular, the term “living areas” is most typically defined as indoor spaces occupied for extended periods of time such as living rooms, lounge rooms, dining rooms, family rooms and/or other open plan living areas.

As previously indicated, it is not possible to add a definition to the Dictionary of NSLEP 2013. However, there may be potential to provide additional clarity through the incorporation of a note or subclause. To avoid any ambiguity, it is recommended that the term “living area” be adequately clarified under NSLEP 2013.

4.3.2. Recommendation

That the Planning Proposal be amended such that:

- (a) the term “habitable room” be replaced with word “living area” within the solar access test; and
- (b) an additional subclause or note be included to provide increased clarity as to what a “living room” comprises.

4.4. Consistency with solar access provisions under NSDCP 2013

One submission stated that the existing and proposed solar access test is more onerous than the solar access requirements under NSDCP 2013. In particular:

- NSDCP 2013 establishes a control date of midwinter (21 June), whereas the existing and proposed clauses establishes a control period between the March and September Equinox;
- NSDCP 2013 applies the solar access control to “living rooms” only, whereas the existing and proposed clauses requires an assessment against “any habitable rooms” (which extends to include bedrooms and studies); and
- NSDPC 2013 applies the solar access control to principal private open space areas only, whereas the existing and proposed control applies to “any private open space”.

This results in a level of inequity between these two sets of provisions, that will be further entrenched by the planning proposal. It was requested that the solar access test under the Planning Proposal be amended to reflect the requirements under NSDCP 2013.

4.4.1. Comment

It is acknowledged that the current and proposed wording of the solar access requirements are different.

Solar Access Period

It is acknowledged that the ADG and NSDCP 2013 make reference to solar impacts at the midwinter time only and NSLEP 2013 refers to the period between the March and September Equinoxes.

The current height limits applying to land within the North Sydney Centre were established with regard to the endorsed approach to increase density under the *North Sydney Centre Capacity and Landuse Strategy*. In particular, the *Strategy* sought to increase employment density through increased height, where those increases in height did not result in increased overshadowing to land outside of the North Sydney Centre between the hours of 10am and 2pm at midwinter.

In addition, the *North Sydney Centre Capacity and Landuse Strategy* recommended that the LEP retain a degree of flexibility by allowing an increase in height above the maximum height limits set, subject to dwellings located outside of the North Sydney Centre maintaining solar access consistent with the ADG.

It is not entirely clear as to why the time period under clause 6.3(3) was not restricted to the midwinter point only, based on the overshadowing analysis that underpinned the *North Sydney Centre Capacity and Landuse Strategy*. It is noted however, that the as the former variation control had applied “year round” since its inception in 2003, its reduction to between the Equinoxes as part of Amendment 23 to NSLEP 2013 was based on improving flexibility, noting that solar access during the summer months is less important.

To ensure a more consistent approach, it is recommended that the time frame for the solar access test be reduced to the midwinter period only.

Living rooms vs habitable rooms

Both the ADG to SEPP 65 and NSDCP 2013 make reference to maintaining at least 2 hours of solar access to the living areas and private open spaces of residential dwellings on adjoining and neighbouring properties.

As discussed at section 4.2 to this report, it is recognised that the ADG makes reference to both providing and protecting solar access to “habitable rooms” and “living areas/living rooms” and there may have been some misinterpretation when incorporating the control into NSLEP 2013. Further, it was recognised that the application of the solar access control to a

habitable room was more restrictive than to the main living areas of a dwelling, due to its broad definition.

To provide increased flexibility and ensure that the controls better align with the original intent of the clause, it is recommended that the existing control be revised to apply to living areas and that this term be clarified within the LEP.

Private open space

The *North Sydney Centre Capacity and Landuse Strategy* recommended that the solar access test to be applied when seeking a variation to the maximum height control in the North Sydney Centre, to be consistent with the ADG.

The objectives and design criteria for solar access within the ADG apply to “private open spaces” only and does not narrow this to “principal” private open spaces.

Therefore, despite the differences between NSDCP 2013 and the ADG, the solar access test with regards to private open space is consistent with the original intent of the *North Sydney Centre Capacity and Landuse Strategy*.

4.4.2. Recommendation

That the Planning Proposal be amended such that:

- (a) the term “habitable room” be replaced with word “living area”;
- (b) an additional subclause or note be included to provide increased clarity as to what a “living room” comprises; and
- (c) that the period when overshadowing impacts are to be measured is applied at midwinter only.

4.5. Narrowing of discretionary power

One submission suggested that the proposed wording under Option 1 within the Planning Proposal (i.e., relocation of clause 6.3(3) to Clause 4.6) narrows the discretionary power of the consent authority.

Clause 6.3(3) currently empowers the consent authority who, "*may grant development consent ... if the consent authority is satisfied*", whereas the proposed wording under Option 1 to cl.4.6 states that, "*development must not be granted consent ... unless the consent authority is satisfied*".

It is suggested that this changes the threshold of obtaining consent for any height variation and removes the necessary opportunity for a merit assessment to determine whether in the circumstances of the case, flexibility should be applied.

It was requested that the proposed wording of Clause 4.6(8A) to Option 1 be amended to ensure that some discretion is provided for the consent authority in determining satisfaction of the proposed new Clause 4.6 objective.

4.5.1. Comment

Clause 4.6(2) to NSLEP states (emphasis added):

Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Clauses 4.6(3) and (6) state that the consent authority *must not ... grant consent, unless a number of criteria are met*. This would indicate that subclause 4.6(2), provides the discretion, whilst clauses 4.6(3) and 4.6(6) provide the tests to justify the variation.

Clause 6.3(3) as currently worded is similar in intent to clause 4.6(2) by allowing a variation to a development standard. However, clause 6.3(3) also incorporates the relevant tests to vary the development standard, whereas clause 4.6 contains its required tests within other subclauses within clause 4.6.

It is therefore suggested that clause 4.6(2) enables a consent authority to approve a variation to the height requirement, but the proposed relocation of clause 6.3(3) necessitates a change to the wording to ensure that the requirements of the test are considered.

4.5.2. Recommendation

That the Planning Proposal not be amended with regard to this issue.

4.6. Consistency with recent amendments to clause 4.6

One submission stated that the proposal is inconsistent with the State Government's recent changes to clause 4.6 to simplify the variation process.

4.6.1. Comment

During the exhibition of the Planning Proposal, the Minister for Planning made *Standard Instrument (Local Environmental Plans) Amendment (Exceptions to Development Standards) Order 2023* on 15 September 2023 and came into force on 1 November 2023.

This Amendment Order specifically amends clause 4.6 to the Standard Instrument Local Environmental Plan (SI LEP) and subsequently clause 4.6 to NSLEP 2013. The primary purpose of that Amendment was to clarify the requirements for variations to development standards and improve transparency and accountability in the planning system by introducing a monitoring and performance framework. In particular, the clause has been amended to:

- retain the existing 'unreasonable and unnecessary' and 'sufficient environmental planning grounds' tests, but requiring consent authorities to consider the same matters as applicants are required to address in their written request;

- simplify the drafting, notably removing specific references to considering the public interest in the clause, noting that consideration of the public interest is already an obligation of consent authority; and
- remove the requirement to obtain the Planning Secretary's concurrence for a variation. A new reporting framework will replace the concurrence obligations to ensure transparency and accountability in decision making.

The existing test that applicants must meet in order to seek to vary development standards has not changed.

It specifically amends subclauses 4.6(3)-(5) and (7), which are omitted and replaced with new subclauses (3) and (4).

Despite this amendment to clause 4.6 to NSLEP 2013, the Planning Proposal does not recommend any amendments to those parts of clause 4.6 which have recently been amended. Accordingly, no further amendment is required to the Planning Proposal to address this change.

The proposal is also consistent with the relevant Guidelines and Section 9.1 Ministerial Direction prepared with regard to the application of Clause 4.6, in that the proposal does not introduce any additional matters where the application of clause 4.6 is to be excluded.

4.6.2. Recommendation

That the Planning Proposal be amended to address the coming into force of the recent amendments made to clause 4.6 of NSLEP 2013, but no further amendment be made with regard to the intent of the proposal as it relates to clause 4.6.

5. Amendment of the Planning Proposal

Section 3.35 of the EP&A Act states that the planning proposal authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason. However, if it does so, it must forward the planning proposal to the Minister to determine if further community consultation is required.

It is recommended that the Planning Proposal be amended as a result of consideration of the submissions made. The extent of the amendments are minor and unlikely to result in significant impacts on the wider community as they primarily seek to provide greater clarification and provide increased flexibility as originally intended consistent with the outcomes of the *North Sydney Centre Capacity and Land Use Strategy*. On this basis, it is unlikely that the Planning Proposal will require further community consultation.

As Council has not been authorised to be the local plan making authority, Council is required to forward the Planning Proposal to the DPE for its consideration and finalisation and where a decision is made as to whether the Planning Proposal should be re-exhibited or not.

6. Authorisation to Make the Plan

In issuing the Gateway Determination, the DPE did not grant Council delegation to be the local plan-making authority to finalise the making of the LEP amendment giving effect to the Planning Proposal (refer to Attachment 1).

Therefore, following Council's determination of the Planning Proposal post exhibition must be forwarded to the DPE for finalisation.

OPTIONS

Council has the following options in relation to this matter:

1. Resolve to progress with the making of an amendment to NSLEP 2013 giving effect to the Planning Proposal.
2. Resolve not to proceed with the making of an amendment to NSLEP 2013 giving effect to the Planning Proposal.
3. Do Nothing

These options are assessed in Table 1 below.

TABLE 1: Options			
Option	Finance/Resourcing	Risk/Opportunity	Consultation
1.	Progression of the Planning Proposal can be accommodated within existing budget lines. Reduced staff time spent justifying why the two variation requirements are required to be addressed.	Clarifies the expectations when seeking to exceed the maximum height limit on land within the North Sydney Centre. Will enable more efficient assessment of development applications.	No additional consultation is required. Submitters to be notified of Council's decision.
2.	Increased staff time spent justifying why the two variation requirements are required to be addressed.	Reduced clarity and expectations when seeking to exceed the maximum height limit on land within the North Sydney Centre. Ongoing delays to the assessment of development applications, which may adversely impact on Council's average assessment timeframes.	No additional consultation is required. Submitters to be notified of Council's decision.

TABLE 1: Options			
Option	Finance/Resourcing	Risk/Opportunity	Consultation
3.	Additional time and resources required to continue to justify as to why the two variation requirements are required to be addressed. Potential for staff to expend time and resources defending why Council should retain its plan making powers.	Council could have its plan making powers restricted or removed if it is seen to be obstructing the efficient processing of planning proposals without reasonable grounds.	No additional consultation is required. Submitters to be notified of Council's decision.

Option 1, is recommended for the following reasons:

- Progression of the Planning Proposal can occur with minimal impact on Council finances and resources.
- Progression of the Planning Proposal will improve clarity as to the extent of matters of consideration to be given when a proposal seeks to exceed the maximum height of buildings limit in the North Sydney Centre.
- Progression of the Planning Proposal will reduce time spent by Council staff and developers in debating the application of the variation requirements when consideration is to be given when a proposal seeks to exceed the maximum height of buildings limit in the North Sydney Centre.
- Progression of the Planning Proposal has the ability to improve development assessment timeframes.
- No further consultation is required other than to advise submitters of Council's resolution on the matter.

CONSULTATION REQUIREMENTS

Community engagement has occurred in accordance with Council's *Community Engagement Protocol* and the conditions of the Gateway Determination. The detail of this report provides the outcomes from the engagement for Council to consider prior to adoption.

FINANCIAL/RESOURCE IMPLICATIONS

Progressing and finalising the plan making process for this Planning Proposal to amend NSLEP 2013 in the manner proposed represents a modest investment in Council resources. This can be accommodated within existing budget lines.

LEGISLATION

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

CONCLUSION

The Planning Proposal as publicly exhibited seeks to rationalise and improve clarity as to the application of clauses within NSLEP 2013 that enable variations to the maximum permitted building height applying to land located within the North Sydney Centre.

In response to the submissions made, it is recommended that the Planning Proposal proceed to the next stage of the plan making process incorporating some minor amendments to further improve clarity and flexibility.

Furthermore, it is recommended that Council resolve to support the forwarding of the amended Planning Proposal to the DPE requesting that the plan be made under the EP&A Act.



Department of Planning and Environment

Ms Therese Manns
General Manager
North Sydney Council
PO Box 12
NORTH SYDNEY NSW 2059

Our ref: IRF23/906

Attention: Marcelo Occhiuzzi, Manager Strategic Planning

Dear Ms Manns

Planning proposal PP-2023-760 to amend North Sydney Local Environmental Plan 2013

I am writing in response to the planning proposal you have forwarded to the Minister under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to amend Clause 4.6 and Clause 6.3 of the North Sydney LEP 2013 as relating to building height variations within the North Sydney Centre.

As delegate of the Minister for Planning and Public Spaces, I have determined that the planning proposal should proceed subject to the conditions in the enclosed gateway determination. Council will need to update the planning proposal to address conditions of the Gateway determination and should ensure this occurs prior to exhibition.

The proposed local environmental plan (LEP) is to be finalised within 9 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal within 3 months of the Gateway determination.

Consistent with the previous Gateway determination issued on 25 August 2022, I have conditioned that the Department of Planning and Environment be authorised as the local plan-making authority.

The NSW Government has committed to reduce the time taken to complete LEPs. To meet these commitments, the Minister may appoint an alternate planning proposal authority if Council does not meet the timeframes outlined in the gateway determination.

The Department's categorisation of planning proposals in the *Local Environmental Plan Making Guideline* (Department of Planning and Environment, 2021) is supported by category specific timeframes for satisfaction of conditions and authority and Government agency referrals, consultation, and responses. Compliance with milestones will be monitored by the Department to ensure planning proposals are progressing as required.

Should you have any enquiries about this matter, I have arranged for Mr Matthew Rothwell to assist you. Mr Rothwell can be contacted on 8275 1066.

Yours sincerely

A handwritten signature in blue ink that reads 'Alison Burton'.

06.07.2023

Alison Burton
Acting Executive Director
Metro Central and North
Planning and Land Use Strategy

Encl: Gateway determination



Department of Planning and Environment

Gateway Determination

Planning proposal (Department Ref: PP-2023-760): to amend Clause 4.6 and Clause 6.3 of the North Sydney LEP 2013 as relating to building height variations within the North Sydney Centre.

I, the Acting Executive Director, Metro Central and North at the Department of Planning and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the North Sydney Local Environmental Plan 2013 to amend Clause 4.6 and Clause 6.3 should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated to address the following and submitted to the Minister for review and endorsement prior to public exhibition:
 - (a) include a plain English explanation of the intent of the intended outcomes of the planning proposal under explanations of provisions;
 - (b) remove Council's draft clauses from the body of the planning proposal, include as an annexure and note that they are indicative only and will be subject to drafting by Parliamentary Counsel should the planning proposal proceed to finalisation;
 - (c) update the planning proposal to accurately reflect the current land zonings in the North Sydney Centre following commencement of the employment zones reform on 26 April 2023;
 - (d) include an updated project timeline to ensure completion in a timely manner.
2. Public exhibition is required under section 3.34(2)(c) and clause 4 of Schedule 1 to the Act as follows:
 - (a) the planning proposal is categorised as standard as described in the *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021) and must be made publicly available for a minimum of 20 working days; and
 - (b) the planning proposal 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 *Local Environmental Plan Making Guidelines* (Department of Planning and Environment, 2021).

Exhibition must commence within **3 months** following the date of the gateway determination.

3. No consultation is required with public authorities or government agencies under section 3.34(2)(d) of the EP&A Act.
4. A public hearing is not required to be held into the matter by any person or body under section 3.34(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).

5. Given the nature of the proposal, Council should not be authorised to be the plan-making authority to make this plan.
6. The planning proposal must be reported to Council for a final recommendation **6 months** from the date of the Gateway determination.
7. The LEP should be completed within **9 months** of the date of the Gateway determination.

Dated 6th day of July 2023.



Alison Burton
Acting Executive Director, Metro Central and North
Planning and Land Use Strategy
Department of Planning and Environment
Delegate of the Minister for Planning and Public Spaces



Department of Planning and Environment

Ms Therese Manns
General Manager
North Sydney Council
PO Box 12
NORTH SYDNEY NSW 2059

Our ref: IRF23/1887

Attention: Ben Boyd, Executive Strategic Planner

Dear Ms Manns

Planning proposal PP-2023-760 to amend North Sydney Local Environmental Plan 2013

I am writing in response to Council's resubmission of the planning proposal relating to building height variations within the North Sydney Centre, to address conditions of the Gateway determination issued under section 3.34 of the *Environmental Planning and Assessment Act 1979* (the Act).

The revised planning proposal was submitted to the Department on 13 July 2023 as a requirement of condition 1 of the Gateway determination issued on 6 July 2023.

The revised document has now been reviewed. The planning proposal (dated 13 July 2023) has been adequately updated to address condition 1 of the Gateway determination and is endorsed to proceed to public exhibition.

Should you have any enquiries about this matter, I have arranged for Mr Matthew Rothwell to assist you. Mr Rothwell can be contacted on 8275 1066.

Yours sincerely

A handwritten signature in black ink, appearing to read 'L. Schramm'.

Leah Schramm
Acting Executive Director
Metro Central and North
Planning and Land Use Strategy

24 July 2023



PLANNING PROPOSAL

North Sydney Centre – Height of Buildings Variation

V4_25 July 2023
(For Public Exhibition)

1 INTRODUCTION

Background

North Sydney Council endorsed its *North Sydney CBD Land Use and Capacity Strategy* in March 2017. The Strategy sought to “provide a framework to allow for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre and to accommodate forecast demand for additional commercial/employment floor space”. One of the important outcomes of this work was the preparation of a Planning Proposal (PP 2/17) to, amongst other things, increase building heights in parts of the North Sydney CBD that could accommodate increases in employment capacity, whilst managing impacts on solar access to surrounding residential development and public spaces and Special Areas within the CBD. Amendment 23 to North Sydney Local Environmental Plan (NSLEP) 2013 was gazetted on 26 October 2018 giving effect to PP 2/17.

Clause 4.6 -*Exceptions to development standards* to NSLEP 2013 represents a generic mechanism that generally enables consideration of requests to vary any development standard (such as height and floor space ratio) applying to land under NSLEP 2013, except those which are specifically excluded and subject to satisfying a number of criteria.

In addition, Clause 6.3(3) to NSLEP 2013 contains provisions that enable the consent authority to consider variations to the maximum height of building standards identified on the *Height of Buildings Map* (clause 4.3) for land within the North Sydney Centre, subject to satisfying a number of criteria.

Issue

Since the commencement of Amendment 23 to NSLEP 2013, there has been an increasing number of development applications lodged within the North Sydney Centre which have/are seeking variations to substantially increase the maximum height of building control identified on the *Height of Buildings Map*, based solely on the application of clause 6.3(3) of NSLEP 2013. The need for such substantial variations is questioned, given the significant level of height uplift that was afforded to many sites as part of Amendment 23.

There is a body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered to varying height limits within the North Sydney Centre. This view stems from the interpretation of Clause 6.2(2) to NSLEP 2013, which states that Division 1 to Part 6 of NSLEP 2013 (within which clause 6.3(3) is located) prevails over any other provision of the Plan to the extent of any inconsistency. The problem with this, is that the matters for consideration in determining whether to vary height standards under clause 6.3(3) are relatively narrow (limited to overshadowing impacts) in comparison to clause 4.6 which contains a broader scope of criteria (i.e. objectives of the standard and zone on which the development is to be located and necessity and reasonableness of the standard). The considerations under clause 4.6 is preferred as a more mainstream and effective way in which to more holistically consider the merits of any variation request. There is also much applicable caselaw to draw on and to reference in applying clause 4.6.

Further, at the time that significant increases to height limits within the North Sydney Centre were pursued and gazetted to achieve greater development potential, clause 6.3(3) is now considered superfluous as it represents an overly liberal approach to seeking height variations in the North Sydney Centre. Clause 4.6 can perform this function more effectively, as it does in virtually every local government area in NSW. However, to ensure the initial premise to minimise overshadowing impacts outside of the North Sydney Centre beyond the recent height increases, the criteria under clause 6.3(3) should still be a valid consideration.

In addition, there is currently no provision requiring consideration of the objectives of Division 1 of Part 6 within clause 6.1 to NSLEP 2013 when determining a development application. In order to give effect to the strategic planning objectives, these objectives should be retained and a provision should be included to make it mandatory that the objectives are considered.

Proposal

The primary purpose of the Planning Proposal is to ensure that when an application is received with a request to exceed the maximum height of buildings development standard under clause 4.3 on land within the North Sydney Centre, that the request to vary the development standard must consider the criteria currently contained under both clauses 4.6 and 6.3(3) to NSLEP 2013.

The intent of the Planning Proposal may be achieved by amending clauses 4.3, 4.6, 6.1 and 6.3 to NSLEP 2013. For the purposes of clarity and transparency, it would be preferable to locate the two sets of criteria within the same clause. Parliamentary Counsel will determine the best approach to amending the clauses within NSLEP 2013.

The Planning Proposal has been prepared in accordance with Section 3.33 of the EP&A Act and the Department of Planning and Environment's (DPE) document "*Local Environmental Plan Making Guideline*" (September 2022).

2 BACKGROUND

In 2013, Council resolved to prepare the *North Sydney Centre Review* (the Review). Its intent was to “identify and implement policies and strategies to ensure that the North Sydney Centre retains and strengthens its role as a key component Sydney’s global economic arc, remains the principle economic engine of Sydney’s North Shore, and becomes a more attractive, sustainable and vibrant place for residents, workers and businesses”.

The key components of the Review were:

- Traffic and Pedestrian Management Study;
- Public Domain Review and associated strategy;
- Marketing and Promotion Strategy;
- Late Night Trading Strategy;
- Capacity and Land Use Strategy.

North Sydney Council endorsed the last of these components of the Review, the *North Sydney CBD Land Use and Capacity Strategy*, in March 2017. The Strategy sought to “provide a framework to allow for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre and to accommodate forecast demand for additional commercial/employment floor space”. One of the key outcomes of that work was the strategic basis for the preparation of an amendment to NSLEP 2013 to increase maximum building heights on land located within the North Sydney Centre. The effect was to significantly increase the capacity of the North Sydney CBD to accommodate increased levels of commercial floor space.

In setting the increased maximum building heights within the North Sydney Centre under Amendment 23, it was premised on maintaining existing solar access to residential and recreational zoned land located outside of the North Sydney Centre before 10am and after 2pm between the March and September equinoxes.

Clause 6.3(3) to NSLEP 2013 contains specific provisions enabling the consideration of a variation to the maximum height of buildings limit as identified on the *Height of Buildings Map* and enforced through clause 4.3 to NSLEP 2013. In particular, it sets out overshadowing criteria that needs to be met, if the height limits under clause 4.3 are to be exceeded. This clause was established as part of Amendment 23 to NSLEP 2013, to specifically ensure that levels of solar access to residential accommodation located outside of the North Sydney Centre was not further eroded, given the significant increases to the height of building limits within the commercial core of the North Sydney Centre. It was also established to provide some flexibility given the prevailing sloped topography of the North Sydney CBD.

Clause 4.6 to NSLEP 2013 is a more generic and mandatory mechanism that is included within the Standard Instrument LEP and enables some flexibility to the application of development standards within NSLEP 2013. In particular, consideration needs to be given to the following key matters:

- the reasonableness or necessity of compliance with the development standard;
- whether there are sufficient environmental planning grounds; and
- the public interest in terms of its consistency with the objectives to the development standard and the zone in which the development is proposed.

Since the commencement of Amendment 23 to NSLEP 2013, developers have increasingly sought to use clause 6.3(3) as a mechanism to further increase the height of proposed buildings on sites within

the North Sydney Centre that have already been afforded significant increases in height through Amendment 23.

There is a body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying maximum height limits within the North Sydney Centre. This view stems from the interpretation of clause 6.2(2) to NSLEP 2013, which states that Division 1 to Part 6 of NSLEP 2013 (within which clause 6.3(3) is located) prevails over any other provision of the Plan to the extent of any inconsistency. This approach is problematic as the quantum of matters to be considered is significantly reduced and could result in unintended impacts which are not in the public interest.

Whilst both clauses enable a variation to the maximum height controls, the scope of consideration is significantly different, with far fewer matters to be considered under clause 6.3(3), which limits the consent authority's discretion considerably. In addition, at the time that significant increases in CBD height limits were pursued and gazetted to achieve greater development potential, clause 6.3(3) is now considered somewhat superfluous as it represents a more liberal approach to seeking height variations in the North Sydney CBD. In particular, variations of up to 63m have been sought (DA 147/2020 – 105-153 Miller Street) utilising clause 6.3(3). It is considered that clause 4.6 can perform this function more effectively, as it does in virtually every local government area in NSW.

In addition, there is currently no provision requiring consideration of the objectives of Division 1 of Part 6 in clause 6.1 to NSLEP 2013 when granting consent or determining a development application. In order to give effect to the strategic planning objectives, these objectives should be retained and a provision should be included to make it mandatory that the objectives are considered.

2.1 Affected Applications

At the time of completing this version of the Planning Proposal, Council is in receipt of one (1) undetermined development application that seeks to vary the maximum height of buildings control under clause 6.3(3) to NSLEP 2013 as described in TABLE 1.

DA No.	Address	Proposal
DA 393/22	153-157 Walker Street, North Sydney	Demolish 2 x 13-storey commercial buildings and erect a 45-storey commercial building. (Seeks a 12.5m variation under clause 6.3(3)).

2.2 Previous Gateway Determination (DPE ref: PP-2022-901)

On 25 August 2022, a Gateway Determination was issued by the DPE allowing the Planning Proposal to proceed to public exhibition, subject to satisfying a number of conditions. Of particular note, Condition 1 required the Planning Proposal to be amended prior to being placed on public exhibition as follows:

Prior to public exhibition, the planning proposal is required to be updated to:

- (a) *Include a plain English explanation of the intent of the planning proposal under explanations of provisions.*
- (b) *Update the planning proposal to address development applications lodged but not determined.*
- (c) *Clarify the intent of the proposed amendments to apply clause 6.3(3) as a requirement to be met for all development on land within the North Sydney Centre or whether a trigger should be included so that the clause only applies to certain development applications.*

-
- (d) *Discuss potential implications on the delivery of commercial floorspace on sites within the North Sydney Centre and Council's independent review of proposed development control plan changes.*
 - (e) *Remove references to a 'draft' North District Plan;*
 - (f) *Include updated references to the Section 9.1 Ministerial Directions issued on 1 March 2022;*
 - (g) *Include consideration of the consolidated State Environmental Planning Policies (SEPPs) and remove reference to repealed SEPPs; and*
 - (h) *Include an updated project timeline to ensure completion in a timely manner.*

Upon review of the Gateway Determination conditions and the proposed methods of meeting the intent of the proposal as initially proposed, Council staff determined that if proceeded with, the Planning Proposal if eventually made could have unintended consequences of applying the solar access test under clause 6.3(3) to all DAs in the North Sydney Centre, not just those seeking to vary the building height control.

Having regard to the Gateway Determination's 9 month timeframe for completion, Council requested the withdrawal of the planning proposal prior to being publicly exhibited on 12 April 2023. The DPE issued a Gateway Alteration for the Planning Proposal not to proceed on 21 April 2023.

2.3 Gateway Determination (DPE ref: PP-2023-760)

On 12 April 2023, Council submitted a new request for Gateway Determination on the NSW Planning Portal concurrently with its request to withdraw PP-2022-901. The Planning Proposal that was submitted with the new request had been revised to address the issues raised in the previous Gateway Determination and providing increased clarification as to what was initially being sought.

On 6 July 2023, a new Gateway Determination was issued by the DPE allowing a revised Planning Proposal to proceed to public exhibition, subject to satisfying a number of conditions.

Condition 1 requires the Planning Proposal to be amended prior to being placed on public exhibition. In particular, this condition states:

Prior to community consultation, the planning proposal is to be updated to address the following and submitted to the Minister for Review and endorsement prior to public exhibition:

- (a) *include a plain English explanation of the intent of the provisions and the intended outcomes of the planning proposal under explanations of provisions;*
- (b) *remove Council's draft clauses from the body of the planning proposal, include as an annexure and note that they are indicative only and will be subject to drafting by Parliamentary Counsel should the planning proposal proceed to finalisation;*
- (c) *update the planning proposal to accurately reflect the current land zonings in the North Sydney Centre following commencement of the employment zones reform on 26 April 2023;*
- (d) *include an updated project timeline to ensure completion in a timely manner.*

This version of the Planning Proposal (V5_25 July 2023) has been amended to comply with the conditions as imposed by the Gateway Determination and was endorsed by the Minister for Planning or their delegate on the 24 July 2023 for the purposes of public exhibition.

3 SITE LOCALITY

The Planning Proposal applies to all land within the North Sydney Centre, as identified under NSLEP 2013 and illustrated by a red outline in FIGURE 1.

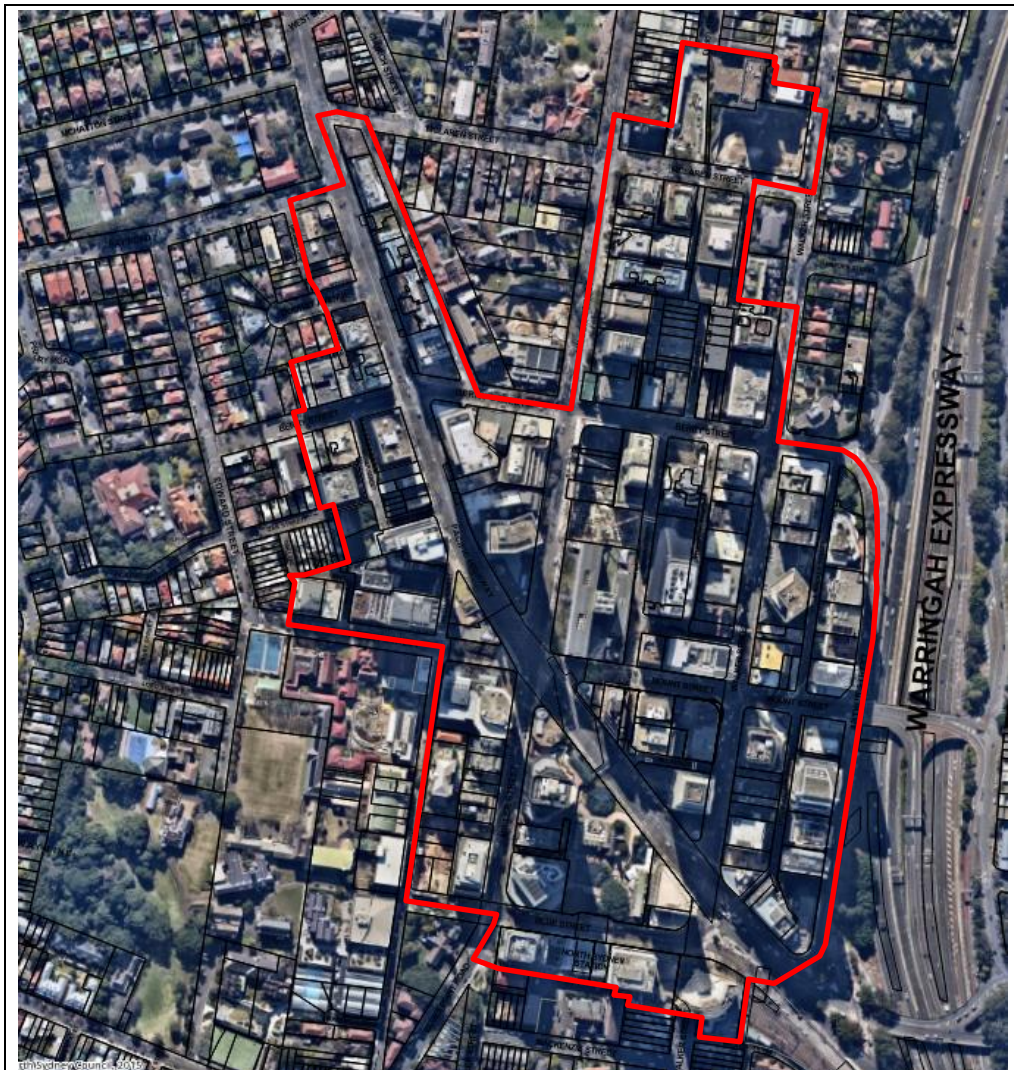


FIGURE 1:
Aerial Photograph (2021)

The North Sydney Centre includes the North Sydney Commercial Business District (i.e. that generally zoned *E2 Commercial Centre*) and high density mixed use areas (i.e. that generally zoned *MU1 Mixed Use*) at its fringes.

The North Sydney Centre is an important commercial centre as reflected by its “CBD” status under *Greater Sydney Region Plan - A Metropolis of Three Cities and North District Plan*, which represents the highest order commercial centre in NSW. At present, it is estimated that there is approximately 900,000sqm of non-residential floor space within the North Sydney Centre accommodating approximately 45,000 jobs.

4 STATUTORY CONTEXT

NSLEP 2013 was made on 2 August 2013 through its publication on the NSW legislation website and came into force on the 13 September 2013. NSLEP 2013 has been amended 37 times (excluding SEPP and SI LEP amendments) since its coming into force.

The relevant provisions of NSLEP 2013 that relate to the Planning Proposal are discussed in the following subsections.

4.1 Aims of Plan

Clause 1.2 of NSLEP 2013 outlines the aims of the LEP. In particular, it states:

- (1) *This Plan aims to make local environmental planning provisions for land in North Sydney in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.*
- (2) *The particular aims of this Plan are as follows:*
 - (a) *to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*
 - (b) *in relation to the character of North Sydney's neighbourhoods:*
 - (i) *to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and*
 - (ii) *to maintain a diversity of activities while protecting residential accommodation and local amenity, and*
 - (iii) *to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*
 - (c) *in relation to residential development:*
 - (i) *to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (ii) *to maintain and provide for an increase in dwelling stock, where appropriate,*
 - (d) *in relation to non-residential development:*
 - (i) *to maintain a diversity of employment, services, cultural and recreational activities, and*
 - (ii) *to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (iii) *to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,*
 - (e) *in relation to environmental quality:*
 - (i) *to maintain and protect natural landscapes, topographic features and existing ground levels, and*
 - (ii) *to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*
 - (f) *to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance,*
 - (g) *to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

4.2 Land Use Table

The Planning Proposal applies to land in the following zones:

- E2 Commercial Centre;
- MU1 Mixed Use;

- *SP2 Infrastructure; and*
- *RE1 Public Recreation.*

The relevant objectives and provisions of these zones, other than those zones that only apply to road reserves, state:

Zone E2 Commercial Centre

1 Objectives of zone

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise the adverse effects of development on residents and occupiers of existing and new development.*

2 Permitted without consent

Nil

3 Permitted with consent

Amusement centres; Artisan food and drink industries; Backpackers' accommodation; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Home businesses; Home industries; Home occupations; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Mortuaries; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Sex services premises; Signage; Tank-based aquaculture; Vehicle repair stations; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

Zone MU1 Mixed Use

1 Objectives of zone

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on the higher levels.*

2 Permitted without consent

Nil

3 Permitted with consent

Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Hostels; Information and education facilities; Light industries; Local distribution premises; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Sex services premises; Shop top housing; Signage; Tank-based aquaculture; Tourist and visitor accommodation; Vehicle repair stations; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

Zone SP2 Infrastructure**1 Objectives of zone**

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Aquaculture; Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3

Zone RE1 Public Recreation**1 Objectives of zone**

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To ensure sufficient public recreation areas are available for the benefit and use of residents of, and visitors to, North Sydney.*

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Aquaculture; Building identification signs; Business identification signs; Community facilities; Environmental facilities; Information and education facilities; Kiosks; Recreation areas; Recreation facilities (outdoor); Restaurants or cafes; Roads; Water recreation structures

4 Prohibited

Any development not specified in item 2 or 3

The zoning of land is identified on the *Land Zoning Map*, an extract of which is illustrated in FIGURE 3.

4.3 Building Height

Clause 4.3 of NSLEP 2013 sets maximum building heights for all land identified on the *Height of Buildings Map*. In particular, it states:

(1) *The objectives of this clause are as follows:*

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*
- (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*

-
- (d) to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,
 - (e) to ensure compatibility between development, particularly at zone boundaries,
 - (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,
 - (g) to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) - (2C) (Repealed)

The maximum height of buildings is identified on Sheet HOB_002A of the *Height of Buildings Map*, an extract of which is illustrated in FIGURE 4.

4.4 Variation of Development Standards

Clause 4.6 of NSLEP 2013 enables certain development standards to be varied subject to a merit assessment against relevant assessment criteria.

- (1) The objectives of this clause are as follows—
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

- (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note—

When this Plan was made it did not include all of these zones.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
- (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) *clause 5.4,*
- (caa) *clause 5.5,*
- (ca) *clause 4.3 in relation to land identified as "Area 1" on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,*
- (cab) *clause 4.4, 5.6 or 6.19C in relation to land identified as "Area 1" on the Special Provisions Area Map,*
- (cb) *clause 6.3(2)(a) and (b),*
- (cba) *clause 6.19A,*
- (cc) *clause 6.20.*
- (8A) *(Repealed)*

Of particular note, is that a number of development standards that apply within the North Sydney Centre may not be varied under clause 4.6 of the LEP. In particular, development consent cannot be issued to a development where a proposal seeks a variation to the development standards under clauses 6.3(2)(a) and (b) of NSLEP 2013.

4.5 North Sydney Centre

Division 1 to Part 6 of NSLEP 2013 applies to land within the North Sydney Centre as identified on the *North Sydney Centre Map*. It states:

6.1 Objectives of Division

The objectives of this Division are as follows—

- (a) *to maintain the status of the North Sydney Centre as a major commercial centre,*
- (b) *to maximise commercial floor space capacity and employment growth within the constraints of the environmental context of the North Sydney Centre,*
- (c), (d) *(Repealed)*
- (e) *to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres,*
- (f) *(Repealed)*
- (g) *to prevent any net increase in overshadowing during winter months of any land in Zone RE1 Public Recreation (other than Brett Whiteley Plaza) or any land identified as "Special Area" on the North Sydney Centre Map,*
- (h) *to ensure that any land within a residential zone is afforded a reasonable amount of solar access,*
- (i) *to maintain areas of open space on private land and promote the preservation of existing setbacks and landscaped areas, and to protect the amenity of those areas.*

6.2 Land to which this Division applies

- (1) *This Division applies to the North Sydney Centre.*
- (2) *A provision in this Division prevails over any other provision of this Plan to the extent of any inconsistency.*

6.3 Building heights and massing

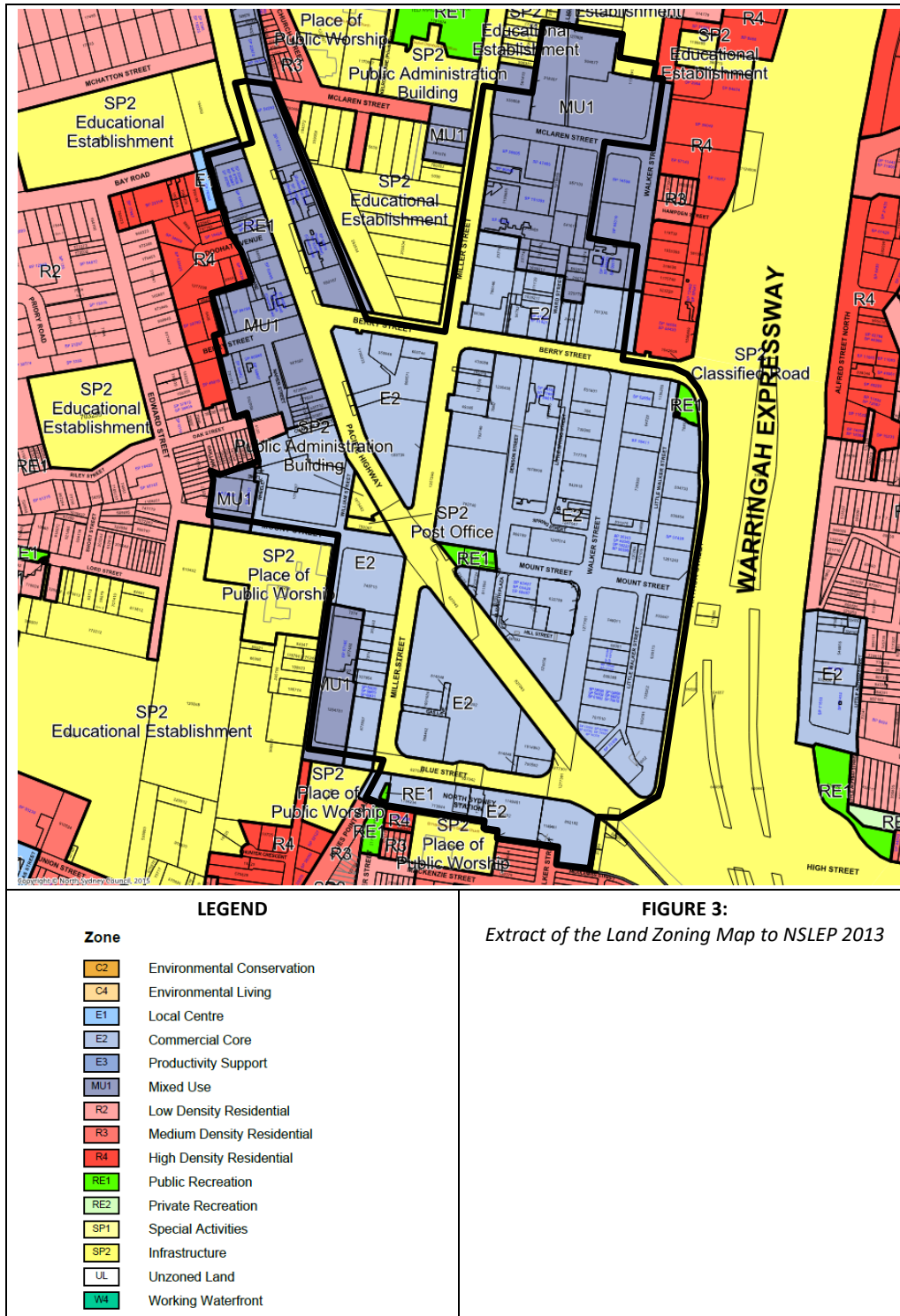
- (1) *The objectives of this clause are as follows—*
- (a) *(Repealed)*
 - (b) *to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,*
 - (c) *to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,*
 - (d) *to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,*
 - (e) *to encourage the consolidation of sites for the provision of high grade commercial space.*
- (2) *Development consent must not be granted for the erection of a building on land to which this Division applies if—*
- (a) *the development would result in a net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as “Special Area” on the North Sydney Centre Map, or*
 - (b) *the development would result in a net increase in overshadowing between 10 am and 2 pm from the March equinox to the September equinox (inclusive) of the Don Bank Museum, or*
 - (c) *the site area of the development is less than 1,000 square metres and any building resulting from the development would have a building height greater than 45 metres.*
- (3) *The consent authority may grant development consent to development on land in the North Sydney Centre that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—*
- (a) *if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or*
 - (b) *if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.*
- (4) *Brett Whiteley Plaza Development consent may be granted to development on land at 105–153 Miller Street, North Sydney, known as the MLC Building, that would result in a net increase in overshadowing of the land known as Brett Whiteley Plaza that is within Zone RE1 Public Recreation from the March equinox to the September equinox (inclusive).*
- (5) *In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following—*
- (a) *the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining the North Sydney Centre,*
 - (b) *whether the proposed development preserves significant view lines and vistas,*
 - (c) *whether the proposed development enhances the streetscape in relation to scale, materials and external treatments.*

6.4 Miller Street setback

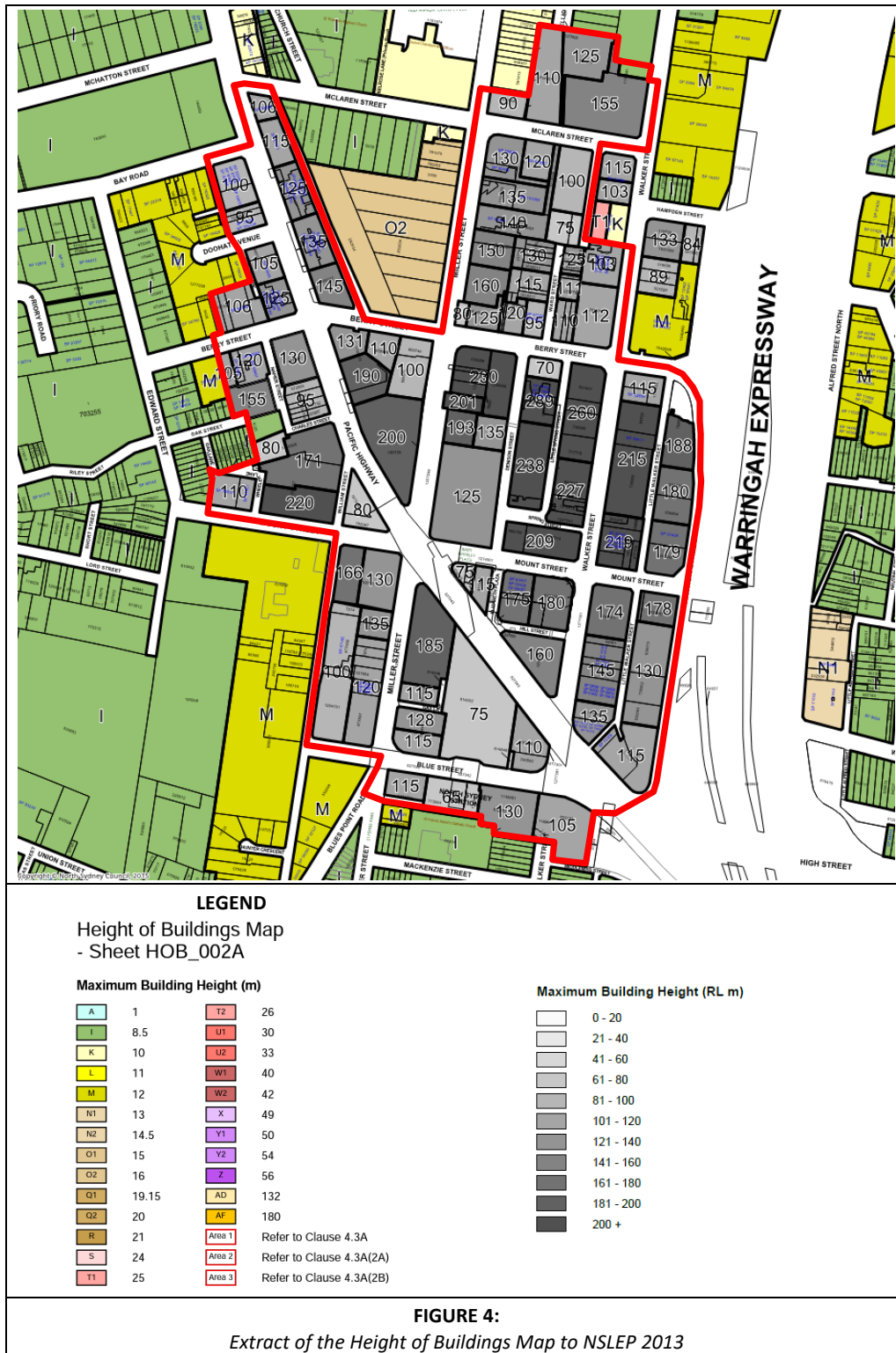
- (1) *The objective of this clause is to maintain the established setback and landscaped setting on the eastern side of Miller Street between McLaren Street and Mount Street.*
- (2) *Development consent must not be granted for the erection of a building on land identified as “Miller Street Setback” on the North Sydney Centre Map unless—*
- (a) *the building height will be less than 1.5 metres, and*
 - (b) *the part of the building that will be on that land is used only for access to the building or landscaping purposes.*

6.5 (Repealed)

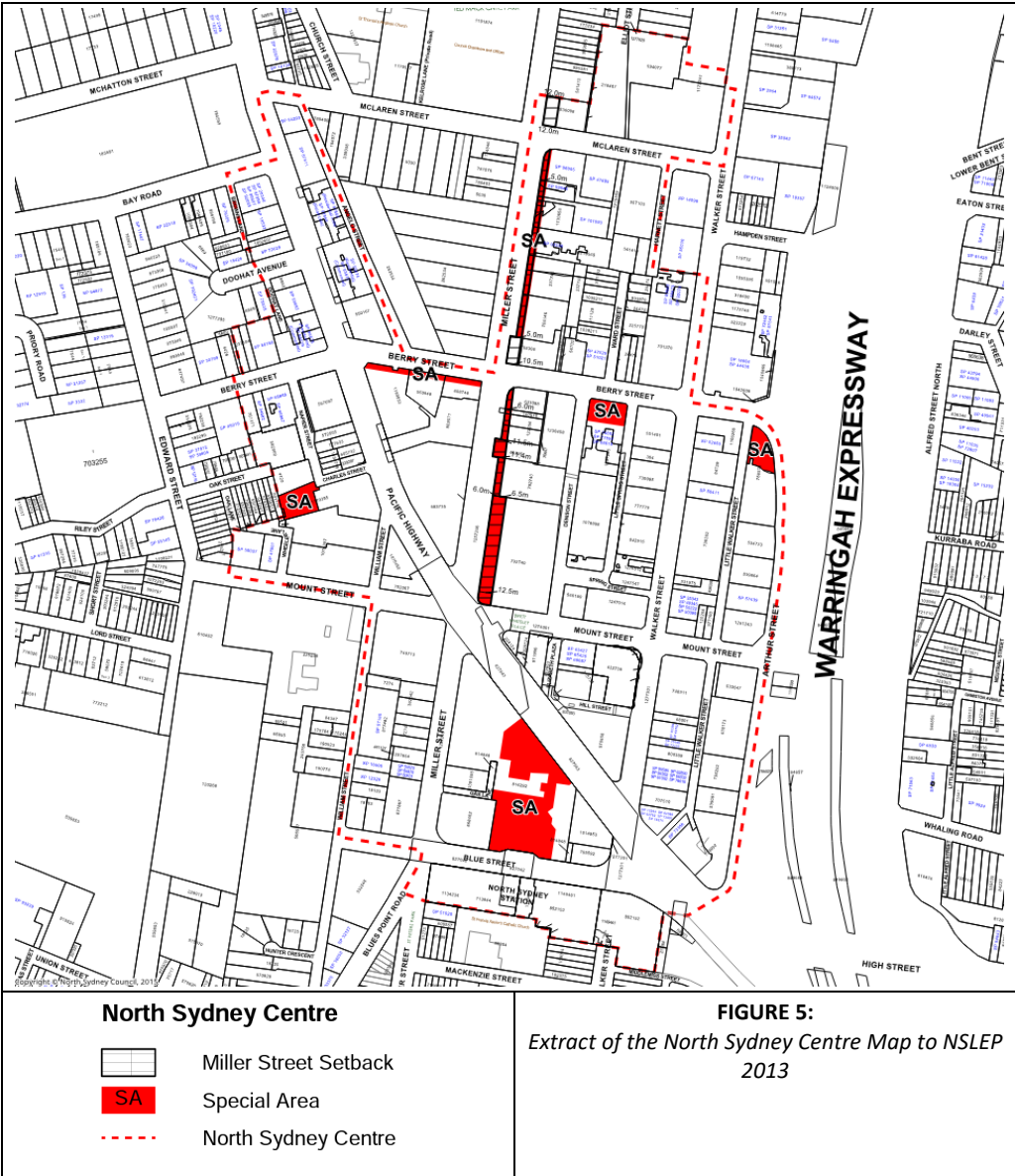
The North Sydney Centre is identified on Sheet CL1_002A of the *North Sydney Centre Map*, an extract of which is illustrated in FIGURE 5.



Planning Proposal – North Sydney Centre – Height of Buildings Variation



Planning Proposal – North Sydney Centre – Height of Buildings Variation



5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES

The primary purpose of this Planning Proposal is to rationalise the application of the clauses within NSLEP 2013, being clauses 4.6 and 6.3(3), that enable variations to the maximum height of buildings development standard on land within the North Sydney Centre. In particular, the proposal will seek to:

- remove the apparent primacy afforded to clause 6.3(3) over clause 4.6;
- ensure that regardless of where a development is proposed, that the broader provisions of clause 4.6 are applied to any variation to exceed the maximum height of buildings standard;
- ensure that the current criteria contained in clause 6.3(3) where a variation is sought to the maximum height of buildings control continue to apply to development within the North Sydney Centre; and
- include a new provision that requires all development within the North Sydney Centre to give consideration to the objectives of Division 1 to Part 6 of NSLEP 2013.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The proposed amendments only affect the written instrument to NSLEP 2013.

There are a number of alternative ways of drafting the intended amendments to meet the primary intent of the proposal. Parliamentary Counsel will ultimately determine the most appropriate way to give effect to the intent of the proposal. Possible suggested amendments to meet the intent of the Planning Proposal are outlined in Annexure A. They effectively investigate the possible amendment of clauses 4.3, 4.6, 6.1 and 6.3(3) to achieve the objectives of the amendment.

The following subsections outline at a high level how the objectives may be achieved.

5.2.1 Consideration of Objectives to Division 1 to Part 1 of NSLEP 2013

It is suggested that a new clause be inserted within Division 1 to Part 6 of NSLEP 2013 requiring that the consent authority give consideration to the objectives of Division 1 to Part 6 where development is proposed within the North Sydney Centre.

5.2.2 Primacy of variation requirements

The simplest way to remove the primacy between the two sets of variation requirements is to consolidate the variation requirements within the one clause. Two options are available to address this issue.

Option 1 – relocation to clause 4.6

This option involves the removal of the variation criteria from clause 6.3(3) and including them within clause 4.6 as an additional head of consideration for development located in the North Sydney Centre. This would also necessitate the removal of objective (c) to clause 6.3 as there would no longer be a development control within this clause relating to building height. Potential also exists to relocate the objective of objective (c) to clause 6.3 to clause 4.3 (1), to ensure it is considered in any variation request for development within the North Sydney Centre.

This option is preferred as it contains all development variation requirements within the one location.

Option 2 – Variation of Clause 6.3(3)

This option involves the incorporation of a provision within clause 6.3 to ensure that the requirements of clause 4.6 are taken into consideration when a request to exceed the height of buildings criteria for development located in the North Sydney Centre, despite the application of Clause 6.2(2).

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

1. *Is the planning proposal a result of an endorsed LSPS, strategic study or report?*

YES.

The Planning Proposal is principally informed by the outcomes of the *North Sydney Local Strategic Planning Statement* and the *North Sydney Centre Capacity and Land Use Strategy*, which are further discussed in the following subsections.

North Sydney Local Strategic Planning Statement

On 25 November 2019, Council resolved to adopt an LSPS for the LGA. The LSPS expresses the desired future direction for housing, employment, transport, recreation, environment and infrastructure for the LGA as a whole and reflects the outcomes sought by the Metropolitan Plan and NDP. The Greater Sydney Commission gave its assurance to the LSPS on 20 March 2020. The relevant *Local Planning Priorities and Actions* of the LSPS are identified as follows:

Local Planning Priority L2

Provide a range of community facilities and services to support a healthy, creative, diverse and socially connected North Sydney community.

Action L2.1

Investigate initiatives to enhance the capacity of existing open space resources whilst minimising overuse; and review the impact of such initiatives against current and forecast demand to refine the quantum for additional increases in capacity. (short – medium term)

Local Planning Priority L3

Create great places that recognise & preserve North Sydney's distinct local character & heritage

Action L3.1

Continue to incorporate placemaking principles in the planning and engagement activities of North Sydney Council's various departments responsible for the design and management of public spaces, in accordance with Council's Placemaking Policy (ongoing)

Action L3.2

Continue to prepare and implement precinct-based planning studies to ensure the delivery of growth and development is balanced and well-managed, and has a strong focus on placemaking and community benefit. This includes:

- *undertake/implement the North Sydney CBD Public Domain Strategy – Stage 2 (short term)*
- *...*

Local Planning Priority P1

Grow a stronger, more globally competitive North Sydney CBD

Action P1.1

Continue to implement the North Sydney CBD Capacity and Land Use Strategy (2017), in collaboration with the DPIE, industry stakeholders and the community to:

- *increase commercial floorspace capacity and employment growth for the North Sydney CBD;*

- *deliver high quality commercial floorspace that caters to the needs of existing and emerging industries;*
- *restrict residential development to the mixed-use periphery to preserve a critical mass of employment in the North Sydney CBD;*
- *encourage a diverse mix of entertainment, recreation, retail and commercial uses that contribute to the North Sydney CBD’s diversity, amenity and commercial sustainability; and*
- *ensure high-quality design that responds to context and enhances the amenity of the North Sydney CBD. (short -long term)*

Action P1.3

Implement the North Sydney CBD Public Domain Strategy, North Sydney CBD Laneways and Ward Street Precinct Masterplan to ensure the delivery of high-quality, safe and attractive public spaces and provide for a greater range of activities to facilitate a more engaging and vibrant CBD. (short – medium term)

The Planning Proposal does not prevent the attainment of the relevant planning priorities and actions of the LSPS, as it merely seeks to temper the extent of variations to the maximum building heights set within the North Sydney Centre.

North Sydney Centre Capacity and Land Use Strategy

North Sydney Council endorsed its North Sydney CBD *Land Use and Capacity Strategy* in March 2017. The Strategy sought to “provide a framework to allow for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre and to accommodate forecast demand for additional commercial/employment floor space”. One of the important outcomes of this work was the preparation of a Planning Proposal (PP 2/17) to amongst other things, increase building heights in parts of the North Sydney CBD that could accommodate increases, without significantly impacting on solar access to surrounding residential development nor Special Areas within the CBD. Planning Proposal 2/17 (which resulted in Amendment 23) was gazetted on 26 October 2018.

This amendment provided for significant increases to building heights in the North Sydney Centre largely within the core of the CBD. This included the Metro “Over Station” Development on Miller Street, 1 Denison Street, 100 Mount Street and 110 Walker Street. All these sites have either been developed, are in the process of construction or gaining development consent. The amendment represented a very significant increase in building height within the North Sydney Centre which has resulted in a significant increase in development interest within the CBD.

CBD Setbacks DCP Amendment

At its meeting on 10 October 2022, Council amended the CBD setback controls as they applied to commercial towers. The net effect was to provide for better urban design outcomes, better solar access between buildings and views as well as amenity for workers. The amendment supports well-designed, better separated commercial towers that contribute to the future desired character and urban design of the North Sydney CBD.

During the exhibition, some submitters raised the concern that commercial viability may be impacted as a result of the setback amendments. Council appointed consultants to undertake an independent analysis of this concern.

That analysis suggests the CBD can comfortably meet the 2036 employment targets set by the Greater Cities Commission. It estimates the CBD needs between 242,000 – 323,000sqm of office floor space over the next 14 years to meet its target. The hypothetical capacity of sites over 1,000sqm under the draft amendment is estimated at around 722,000sqm (this is in addition to smaller sites that may still redevelop, the current development pipeline and take up of vacant space). Therefore, the draft amendment will not impede North Sydney achieving its employment target.

The economic review notes that there would be some short term and marginal impact upon feasibility as a result of the introduction of the setback amendments. It also notes, however, that amalgamations are already necessary under the current planning framework given the existing small lot configurations. The recently approved ‘Warada on Walker’ (63-83 Walker St) redevelopment is a good example of this. Further, it suggests the financial impact of the draft amendment is mitigated in part through further site amalgamations which increase site efficiency and overall floorspace yield as well as increased rental yields from better views and sunlight. There are other amalgamations that have occurred more recently.

The review concludes that considering the current approvals in the pipeline, and with the impacts of COVID-19 upon workplace practices, supply chains and the wider development industry still largely unknown, it is surmisable that additional development over and above existing approvals in the short to medium term is somewhat unlikely given these factors.

Notwithstanding the importance of enabling new development in the CBD, the economic performance of the CBD is also affected by the quality, design, and scale of both new development and amenity of both surrounding public domain and future building occupants. The DCP amendments will ensure that necessary building setbacks and breaks are provided to promote high-quality design and a high level of amenity to the public spaces of the CBD. This will contribute to increasing the productivity and commercial viability of North Sydney CBD as it continues to grow as a vibrant and inviting area for workers, residents, and visitors alike. It is noted that there is a healthy pipeline of approved commercial development that has not yet been built.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

YES

There are no known alternative mechanisms available to achieve the intent of the Planning Proposal.

There is a body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying height limits within the North Sydney Centre. This is problematic as proponents within the North Sydney Centre are increasingly preferring to seek variation to height standards pursuant to clause 6.3(3) alone, which is limiting the matters for consideration by the consent authority in conducting this assessment. This highlights the lack of transparency and clarifying the relationship between these clauses. The two clauses have the same capacity to provide a framework for consideration of variations to height standards, but clause 6.3(3) represents a narrower set of considerations which limits the consent authority's discretion considerably.

In addition, at the time that significant increases to the maximum height limits within the North Sydney Centre were pursued and gazetted to achieve greater development potential

(as previously described pursuant to the *Land Use and Capacity Strategy*), clause 6.3(3) is now considered somewhat superfluous as it represents a less restrictive approach to seeking height variations in the North Sydney Centre. In the context of the above, this is no longer appropriate. Clause 4.6 can perform this function effectively, as it does in virtually every local government area in NSW.

At present there is only one undetermined development application (DA 393/22) for a proposal at 153-157 Walker Street, North Sydney which seeks to vary the maximum height of buildings requirement via clause 6.3(3). It was lodged in December 2022 and seeks to achieve a building of height RL 227.5, compared to the height control contained in the North Sydney LEP 2013 of RL 215. A clause 4.6 variation request has also been lodged with this application.

5.3.2 Section B – Relationship to strategic planning framework

3. *Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?*

Greater Sydney Region Plan - A Metropolis of Three Cities

In March 2018, the State Government released *A metropolis of three cities – Greater Sydney Region Plan* (Regional Plan). It provides a 40-year vision of Sydney to be a city where people will live within 30 minutes of jobs, education and health facilities, services and great places. The Regional Plan seeks to provide an additional 725,000 homes and 817,000 new jobs by 2036. No targets are set for any of the Districts, of which the North Sydney LGA is part of the North District. District Plans, consistent with the Regional Plan were released at the same time as the Regional Plan. North Sydney is identified as part of a Metropolitan Centre (Harbour CBD – Incorporating North Sydney CBD) which is also identified as part of an Economic Corridor under the Regional Plan.

The Directions, Objectives and Strategies identified in the Regional Plan which are relevant to the Planning Proposal are as follows:

Direction 1: *A city supported by infrastructure*

Objective 4: *Infrastructure use is optimised*

Strategy 4.1: *Maximise the utility of existing infrastructure assets and consider strategies to influence behaviour changes, to reduce the demand for new infrastructure, including supporting the development of adaptive and flexible regulations to allow decentralised utilities*

Direction 2: *A city for people*

Objective 7: *Communities are healthy, resilient and socially connected*

Strategy 7.1: *Deliver healthy, safe and inclusive places for people of all ages and abilities that support active, resilient and socially connected communities by:*

- *providing walkable places at a human scale with active street life*
- *....*

Direction 4: *A city of great places*

Objective 12: *Great places that bring people together*

Strategy 12.1: *Using a place-based and collaborative approach throughout planning, design, development and management, deliver great places by:*

- *prioritising a people-friendly public realm and open spaces as a central organising design principle*

- *recognising and balancing the dual function of streets as places for people and movement*
- *providing fine grain urban form, diverse land use mix, high amenity and walkability in and within a 10-minute walk of centres*
- *integrating social infrastructure to support social connections and provide a community hub*
- *recognising and celebrating the character of a place and its people*

Strategy 12.2: *In Collaboration Areas, Priority Precincts and planning for centres:*

- *investigate opportunities for precinct-based provision of adaptable car parking and infrastructure in lieu of private provision of car parking*
- *ensure parking availability takes into account the level of access by public transport*
- *consider the capacity for places to change and evolve, and accommodate diverse activities over time*
- *incorporate facilities to encourage the use of car sharing, electric and hybrid vehicles including charging stations.*

Direction 5: *A well connected city*

Objective 14: *A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities*

Strategy 14.1: *Integrated land use and transport plans to deliver the 30-minute city*

Objective 15: *The Eastern, GOP and Western Economic Corridor are better connected and more competitive*

Direction 6: *Jobs and skills for the city*

Objective 18: *Harbour CBD is stronger and more competitive*

Strategy 18.1: *Prioritise:*

- *public transport projects to the Harbour CBD to improve business-to-business connections and support the 30-minute city*
- *infrastructure investments, particularly those focused on access to the transport network, which enhance walkability within 2 kilometres of metropolitan or strategic centres or 10 minutes walking distance of a local centre*
- *infrastructure investments, particularly those focused on access to the transport network, which enhance cycling connectivity within 5 kilometres of strategic centres or 10 kilometres of the Harbour CBD.*

Strategy 18.2: *Develop and implement land use and infrastructure plans which strengthen the international competitiveness of the Harbour CBD and grow its vibrancy by:*

- *further growing an internationally competitive commercial sector to support an innovation economy*
- *providing residential development without compromising commercial development*
- *providing a wide range of cultural, entertainment, arts and leisure activities*
- *providing a diverse and vibrant night-time economy, in a way that responds to potential negative impacts.*

Objective 22: *Investment and business activity in centres*

Strategy 22.1: *Provide access to jobs, goods and services in centres by:*

- *attracting significant investment and business activity in strategic centres to provide jobs growth*
- *diversifying the range of activities in all centres*

- *creating vibrant, safe places and a quality public realm*
- *focusing on a human-scale public realm and locally accessible open space*
- *balancing the efficient movement of people and goods with supporting the liveability of places on the road network*
- *improving the walkability within and to centres*
- *completing and improving a safe and connected cycling network to and within centres*
- *improving public transport services to all strategic centres*
- *conserving and interpreting heritage significance*
- *designing parking that can be adapted to future uses*
- *providing for a diverse and vibrant night-time economy in a way that responds to potential negative impacts*
- *creating the conditions for residential development within strategic centres and within walking distance (up to 10 minutes), but not at the expense of the attraction and growth of jobs, retailing and services; where appropriate, strategic centres should define commercial cores informed by an assessment of their need.*

Direction 7: *A city in its landscape*

Objective 31: *Public open space is accessible, protected and enhanced*

Strategy 31.1: *Maximise the use of existing open space and protect, enhance and expand public open space by:*

- ...
- *requiring large urban renewal initiatives to demonstrate how the quantity of, or access to high quality and diverse local open space is maintained or improved*
- ...

The Planning Proposal is not inconsistent with the above Directions, Objectives, Strategies and Actions of the Regional Plan. The proposed amendment merely seeks to increase transparency in the relationship between clauses that perform a similar function.

North District Plan

In March 2018, the NSW Government released the North District Plan (NDP). The North Sydney LGA is located within the North District along with the other LGAs of Hornsby, Kuring-gai, Ryde, Hunter Hill, Lane Cove, Willoughby, Mosman and Northern Beaches. The NDP sets the following relevant targets:

- **Employment:** an additional 15,600-21,100 jobs by 2036 in the North Sydney portion of the Harbour CBD; and
- **Housing:** an additional 3,000 dwellings by 2021 for the North Sydney LGA; an additional 25,950 dwellings by 2021 for the North District; and an additional 92,000 dwellings by 2036 for the North District.

Planning priorities, objectives and actions identified in the NDP which are relevant to the Planning Proposal are as follows:

Planning Priority N1: *Planning for a city supported by infrastructure*

Objective 4: *Infrastructure use is optimised*

Action 2: *Sequence growth across the three cities to promote north-south and east-west connections.*

Action 3: *Align forecast growth with infrastructure*

Action 6: Maximise the utility of existing infrastructure assets and consider strategies to influence behaviour changes, to reduce the demand for new infrastructure, including supporting the development of adaptive and flexible regulations to allow decentralised utilities

Planning Priority N4: Fostering healthy, creative, culturally rich and socially connected communities

Objective 7: Communities are healthy, resilient and socially connected.

Objective 9: Greater Sydney celebrates the arts and supports creative industries and innovation

Action 11: Deliver healthy, safe and inclusive places for people of all ages and abilities that support active, resilient and socially connected communities by:

- a. providing walkable places at a human scale with active street life
- b. prioritising opportunities for people to walk, cycle and use public transport
- c.

Planning Priority N6: Creating and renewing great places and local centres, and respecting the District's heritage

Objective 12: Great places that bring people together.

Action 19: Using a place-based and collaborative approach throughout planning, design, development and management, deliver great places by:

- a. prioritising a people-friendly public realm and open spaces as a central organising design principle
- b. recognising and balancing the dual function of streets as places for people and movement
- c. providing fine grain urban form, diverse land use mix, high amenity and walkability, in and within a 10-minute walk of centres
- d. integrating social infrastructure to support social connections and provide a community hub
- e. recognising and celebrating the character of a place and its people

Action 20: In collaboration Area, Planned Precincts, growth Areas and planning for centres:

- a. ...
- c. consider the capacity for places to change and evolve and accommodate diverse activities over time.
- d. ...

Action 22: Use place-based planning to support the role of centres as a focus for connected neighbourhoods.

Planning Priority N7: Growing a stronger and more competitive Harbour CBD.

Objective 18: Harbour CBD is stronger and more competitive

Action 24: Grow economic development in the North Sydney CBD to:

- a. maximise the land use opportunities provided by the new station
- b. grow jobs in the centre and maintain a commercial core
- c. strengthen North Sydney's reputation as an education centre, to grow jobs and add diversity
- d. expand after hours' activities
- e. encourage growth in business tourism as a conference location that takes advantage of North Sydney's identity as a business hub, its location, access and views
- f. provide a variety of high quality civic and public spaces befitting a globally-oriented CBD, which can be utilised for a range of cultural and entertainment activities
- g. improve amenity by reducing the impact of vehicle movements on pedestrians

h. create capacity to achieve job targets by reviewing the current planning controls.

Action 25: *Prioritise:*

- a. ...*
- b. infrastructure investments particularly those focused on access to the transport network, which enhance walkability within 2 kilometres of metropolitan or strategic centres or 10 minutes walking distance of a local centre*
- c.*

Planning Priority N8: *Eastern Economic Corridor is better connected and more competitive.*

Objective 15: *The Eastern, GPOP and Western economic corridor are better connected and more competitive*

Planning Priority N10: *Growing investment, business, opportunities and jobs in strategic centres*

Objective 22: *Investment and business activity in centres.*

Action 36: *Provide access to jobs, goods and services by:*

- a. attracting significant investment and business activity in strategic centres providing jobs growth*
- b. diversifying the range of activities in all centres*
- c. creating vibrant, safe places and quality public realm*
- d. focusing on a human-scale public realm and locally accessible open space*
- e. balancing the efficient movement of people and goods with supporting the liveability of places on the road network*
- f. improving the walkability within and to the centre*
- g. completing and improving a safe and connected cycling network to and within the centre.*
- h. improving public transport services to all strategic centres*
- i. conserving and interpreting heritage significance*
- j. designing parking that can be adapted to future uses*
- k. providing for a diverse and vibrant night-time economy in a way that responds to potential negative impacts*
- l.*

Action 38: *Prioritise strategic land use and infrastructure plans for growing centres, particularly those with capacity for additional retail floor space.*

Action 39: *Encourage opportunities for new smart work hubs.*

Action 40: *Review the current planning controls and create capacity to achieve the job targets for each of the District's strategic centres*

Planning Priority N12: *Delivering integrated land use and transport planning and a 30-minute city*

Objective 14: *A Metropolis of Three Cities – integrated land use and transport creates walkable and 30-minute cities.*

Action 50: *Integrate land use and transport plans to deliver the 30-minute city.*

Action 52: *Support innovative approaches to the operation of business, educational and institutional establishments to improve the performance of the transport network.*

Action 53: *Plan for urban development, new centres, better places and employment uses that are integrated with, and optimise opportunities of, the public values and use of Sydney Metro City & Southwest, as well as other city-shaping projects.*

Planning Priority N20: *Delivering high quality open space*

Objective 31: *Public open space is accessible, protected and enhanced.*

Action 73: *Maximise the use of existing open space and protect, enhance and expand public open space by:*

- a. providing opportunities to expand a network of diverse, accessible, high quality open spaces that respond to the needs and values of communities as populations grow
- b. investigating opportunities to provide new open space so that all residential areas are within 400 metres of open space and all high density residential areas (over 60 dwellings per hectare) are within 200 metres of open space
- c. requiring large urban renewal initiatives to demonstrate how the quantity of, or access to, high quality and diverse local open space is maintained or improved
- d. planning new neighbourhoods with a sufficient quantity and quality of new open space
- e. delivering shared and co-located sports and recreational facilities including shared school grounds and repurposed golf courses
- f. delivering, or complementing the Greater Sydney Green Grid
- g. providing walking and cycling links for transport as well as leisure and recreational trips.

The Planning Proposal is not inconsistent with the above Planning Priorities, Objectives and Actions of the NDP. The proposed amendment merely seeks to increase transparency in the relationship between clauses that perform a similar function. Moreover, with regard to employment targets, Council has demonstrated a commitment to increase capacity as previously discussed through its *North Sydney Centre Land Use and Capacity Strategy* and the subsequent amendment to NSLEP 2013 (Amendment 23) which considerably increased building heights in many parts of the North Sydney Centre.

4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

YES

North Sydney Local Strategic Planning Statement

Consistency with this document is addressed at Question 1 to Section 5.3.1 of this report.

Community Strategic Plan 2018-2028

The North Sydney Community Strategic Plan 2018–2028 (CSP) outlines the community-wide priorities and aspirations for the LGA, and provides long-term goals, objectives and actions to achieve these visions. The CSP is Council’s most important strategic document and is used to guide and inform Council’s decision making and planning for the next ten years.

The relevant Directions, Outcomes and Strategies of the are identified as follows:

Direction:	1	Our Living Environment
Outcome	1.2	Quality urban green spaces
Outcome	1.4	Improved environmental footprint and responsible use of natural resources
Strategies	1.4.1	Promote sustainable energy, water and waste practices
Outcome	1.5	Public open space, recreation facilities and services that meet community needs
Strategies	1.5.1	Provide a range of recreational facilities and services for people of all ages and abilities
	1.5.2	Improve equity of access to open space and recreation facilities

Direction: 2 Our Built Environment

Outcome: 2.1 *Infrastructure, assets and facilities that meet community needs*

Strategies: 2.1.2 *Expand capacity of existing community infrastructure*

2.1.3 *Advocate for improved state infrastructure and adequate funding for maintenance and improvement of community assets*

Outcome: 2.2 *Improved mix of land use and quality development through design excellence*

Strategies: 2.2.1 *Maintain a contemporary Local Environmental Plan (LEP)*

2.2.3 *Encourage sustainable design in future development and refurbishment of existing buildings for better environmental performance*

Direction: 3 Our Economic Vitality

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

Strategies: 3.1.1 *Expand opportunities for business particularly after hours and weekends through planning initiatives e.g. late night trading and small bars*

3.1.2 *Encourage a diverse mix of businesses*

3.1.3 *Expand employment growth capacity*

Outcome: 3.2 *North Sydney CBD is one of Australia's largest commercial centres*

Strategies: 3.2.2 *Ensure major infrastructure and public domain design contributes to North Sydney's business needs*

Outcome: 3.3 *North Sydney is a place that attracts events*

Strategies: 3.3.1 *Balance visitor impacts with residents' lifestyles and economic development*

The Planning Proposal will allow these Directions, Outcomes and Strategies to be pursued in a robust and strategic manner. In particular, it will:

- Continue to enable the North Sydney Centre to maintain its status as one of Australia's largest commercial centres; and
- Continue to encourage public and sustainable transport as the mode choice for movements to, from and within the LGA.

North Sydney Council Delivery Program 2018/19-2021/22

The North Sydney Council Delivery Program 2018/19-2021/22 (Delivery Program) was prepared in accordance with NSW State Government's Integrated Planning and Reporting Framework requirements. The Delivery Program outlines Council's priorities and service delivery programs over four years that will contribute to the long-term strategies and desired outcomes of the Plan.

The Planning Proposal directly supports the vision of the Delivery Program as the five Directions mirror those of the CSP.

5. Is the planning proposal consistent with any other applicable State and regional studies or strategiesFuture Transport Strategy 2056

The Future Transport Strategy 2056 (2018) (the Strategy) sets six state-wide outcomes to guide investment, policy and reform. They provide a framework for network planning and investment aimed at supporting transport infrastructure.

The Strategy outlines the vision for the Greater Sydney mass transit network, detailing North Sydney as a 'strategic centre' linked directly to the 'Harbour City' (the Sydney CBD).

The proposed amendment merely seeks to relocate the variation requirements for building height within the North Sydney Centre to a centralised location within clause 4.6 to remove confusion as to which height variation requirements take precedence. Accordingly, there will be no anticipated impacts on the potential to contribute to and enhance walking and cycling connections associated with frequent public transport services.

NSW State Infrastructure Strategy 2018-2038

Infrastructure NSW published the Building Momentum State Infrastructure Strategy 2018-2038 (SIS). It is a 20-year infrastructure investment plan that sets out the infrastructure needs and priorities up to 2038.

It establishes six strategic directions which inform the recommendations contained within the SIS, including 'Integrating land use and infrastructure planning'.

The intent of the Planning Proposal will not lead to an increase in the demand for existing infrastructure and services.

6. *Is the planning proposal consistent with applicable SEPPs?*

The Planning Proposal is consistent with those State Environmental Planning Policies (SEPPs) which are relevant to the North Sydney LGA, as demonstrated in TABLE 2.

TABLE 2: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP (Biodiversity and Conservation) 2021		
2 – Vegetation in Non-Rural Areas	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
3 – Koala Habitat Protection 2020	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
4 – Koala Habitat Protection 2021	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
5 – Murray River Lands	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
6 – Water Catchments	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP
SEPP (Building Sustainability Index: BASIX) 2004		
N/A		
SEPP (Exempt and Complying Development Codes) 2008		
YES		
SEPP (Housing) 2021		
YES		
2 - Affordable Rental Housing	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.

TABLE 2: Consistency with SEPPs		
Direction	Consistency	Comment
3 – Diverse housing	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Industry and Employment) 2021		
2 – Western Sydney employment area	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
3 - Advertising and signage	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Planning Systems) 2021		
2 - State and Regional Development	N/A	This aspect of the SEPP does not apply as the Planning Proposal does not relate to state or regional development nor the operation of joint regional planning panels.
3 – Aboriginal Land	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
4 - Concurrences and Consents	YES	The Planning Proposal is consistent with this aspect of the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
SEPP (Precincts-Eastern Harbour City) 2021		
2 – State Significant Precincts	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
3- Darling Harbour	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
4 – City West	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
5 – Walsh Bay	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
6 – Cooks Cove	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
7 – Moore Park Showground	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
SEPP (Primary Production) 2021		
2 – Primary Production and Rural Development	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
3 – Central Coast Plateau	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
SEPP (Resilience and Hazards) 2021		
2 - Coastal Management	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.

TABLE 2: Consistency with SEPPs		
Direction	Consist-ency	Comment
3 - Hazardous and offensive development	N/A	This SEPP does not apply as the Planning Proposal does not relate to land upon which hazardous and offensive development is permitted.
4 - Remediation of land	YES	The Planning Proposal does not seek to amend the permissibility of land use within any zone nor introduce a site-specific use which may be sensitive to contamination issues (e.g. rezoning land zoned for commercial or industrial purposes to residential or recreational uses).
SEPP (Resources and Energy) 2021		
2 - Mining, Petroleum Production and Extractive Industries	YES	The Planning Proposal is consistent with this aspect of the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
3 – Extractive Industries	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
SEPP (Transport and Infrastructure) 2021		
2- Infrastructure	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
3 - Educational Establishments and Child Care Facilities	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
4 – Major Infrastructure Corridors	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
5 – Three Ports	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
SEPP No. 65 - Design Quality of Residential Apartment Development		
	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.

7. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

The Planning Proposal is consistent with the relevant Directions issued under Section 9.1 of the EP&A Act by the Minister to councils, as demonstrated in TABLE 3.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consist-ency	Comment
1. Planning Systems		
1.1 Implementation of Regional Plans	YES	Refer to question 3 to Section 5.3.2 of this report.
1.2 Development of Aboriginal Land Council land	N/A	This Direction does not apply as the Planning Proposal does not relate to any land identified under State Environmental Planning Policy (Aboriginal Land) 2019.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
1.3 Approval & Referral Requirements	YES	The Planning Proposal does not seek to introduce new concurrence, consultation or referral requirements, nor identify development types for the purpose of designated development.
1.4 Site Specific Provisions	N/A	This Direction does not apply as the Planning Proposal does not relate to any site specific land use controls, nor introduce new development standards not already contained in the LEP.
1.5 Parramatta Road Corridor Transformation Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any land comprising the Greater Parramatta Priority Growth Area.
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.10 Implementation of Western Sydney Aerotropolis Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.11 Implementation of Bayside West Precincts 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to the identified area.
1.14 Implementation of Greater Macarthur 2040	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
1.15 Implementation of the Pyrmont Peninsula Place Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
1.16 North West Rail Link Corridor Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
2 Design and Place		
3 Biodiversity and Conservation		
3.1 Conservation Zones	YES	The Planning Proposal does not alter the existing environmental protection to land within an environmental protection zone.
3.2 Heritage Conservation	YES	The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 (refer to Clause 5.10) which already satisfy the requirements of the Direction. The Planning Proposal seeks to provide increased clarity with respect to when a height variation may be considered and will not impact upon the significance of heritage items or conservation areas.
3.3 Sydney Drinking Water Catchment	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
3.5 Recreation Vehicle Areas	N/A	The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area.
4 Resilience and Hazards		
4.1 Flooding	YES	Several sites within the North Sydney Centre, to which the Planning Proposal relates are identified as being within the Flood Planning Area. The Planning Proposal is consistent with the Direction by not seeking to rezone any land, change the permissibility of land uses on any land or increase the dwelling density on any land which is identified within the Flood Planning Area. Furthermore, the Planning Proposal is unlikely to give rise to an increase in risk to the safety of people or property with regard to flooding.
4.2 Coastal Management	N/A	The Planning Proposal does not affect land that covered by the Coastal Management SEPP.
4.3 Planning for Bushfire Protection	YES	The Planning Proposal is consistent with the direction as it does not result in: <ul style="list-style-type: none"> inconsistencies with the Planning for Bushfire Protection 2006; permitting increased density on land affected by bushfire; and bushfire hazard reduction being prohibited with Asset Protection Zones.
4.4 Remediation of Contaminated Land	YES	The proposal does not seek to alter the zoning of any land, thereby increasing the potential risk to exposure to contamination.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
4.5 Acid Sulfate Soils	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by Acid Sulfate Soils.
4.6 Mine Subsidence & Unstable Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by mine subsidence nor has it been identified as being unstable land.
5 Transport and Infrastructure		
5.1 3.Integrating Land Use & Transport	YES	The Planning Proposal does not seek to minimise development potential in close proximity to mass public transport.
5.2 Reserving Land for Public Purposes	YES	The Planning Proposal does not create or alter existing zonings or reservations of land for public purposes.
5.3 Development Near Regulated Airports and Defence Airfields	YES	Despite not being located in close proximity to Sydney Airport, almost the entire LGA is affected by an Obstacle Limitation Surface (OLS) of 156m AHD. The Planning Proposal does not seek to increase the maximum height permitted on any land within the North Sydney Centre. Clause 6.15 to NSLEP 2013 requires the consideration of airspace operations when applications are made that seek to penetrate the Obstacle Limitation Surface or Procedures for Air Navigation Services Operations Surface.
5.4 Shooting Ranges	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a shooting range.
6 Housing		
6.1 Residential Zones	YES	The Planning Proposal is consistent with the requirements of the Direction as it will not reduce the ability to undertake residential development on those parcels of land where residential development is currently permitted
6.2 Caravan Parks & Manufactured Home Estates	N/A	This Direction does not apply as the Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.
7 Industry and Employment		
7.1 Business & Industrial Zones	YES	The Planning Proposal does not seek to reduce any commercial zoning under NSLEP 2013 nor does it seek to reduce the level of permissible non-residential floor space achievable on the affected lands.
7.2 Reduction in non-hosted short term rental accommodation period	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
7.3 Commercial and retail development along the Pacific Highway, North Coast	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
8 Resources and Energy		
8.1 Mining, Petroleum Production & Extractive Industries	YES	The Planning Proposal does not seek to alter the permissibility of these types of land uses.
9 Primary Production		
9.1 Rural Zones	N/A	This Direction does not apply as there are no existing rural zones under NSLEP 2013 nor proposed under the Planning Proposal.
9.2 Rural Lands	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
9.3 Oyster Aquaculture	N/A	This Direction does not apply as the Planning Proposal is not located in a water catchment area that directly drains to a water body containing a Priority Oyster Aquaculture Area or a current oyster aquaculture lease in the national parks estate.
9.4 Farmland of State and Regional Significance on the NSW Far North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.

5.3.3 Section C – Environmental, social and economic impact.

8. *Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?*

No.

9. *Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?*

No.

10. *How has the planning proposal adequately addressed any social and economic effects?*

No social or economic impacts. The Planning Proposal merely seeks to increase transparency in the relationship between clauses that perform a similar function.

5.3.4 Section D – Infrastructure (Local, State and Commonwealth)

11. *Is there adequate public infrastructure for the planning proposal?*

Implementation of the Planning Proposal is unlikely to have an impact upon the provision of public infrastructure services within the locality as the land affected is already highly serviced.

12. *What are the views of State and federal public authorities and government agencies consulted in order to inform the gateway determination?*

Condition 3 of the Gateway Determination states that no consultation is required with public authorities and government agencies under section 3.34(2)(d) of the EP&A Act.

5.4 PART 4 : MAPPING

It is not proposed to amend any of the maps to NSLEP 2013.

5.5 PART 5: COMMUNITY CONSULTATION

Consultation will be undertaken in accordance with the requirements made by the Gateway Determination and Council’s internal stakeholder engagement guidelines.

As the Planning Proposal does not seek to intensify development on any land, it is not considered necessary to inform agencies who deliver public infrastructure and services.

5.6 PART 6: PROJECT TIMELINE

TABLE 4 provides a project timeline having regard to identified milestones and estimating approximately 9 months from the DPE’s issuance of a Gateway Determination to the amending LEP being made.

TABLE 4 – Project Timeline																				
Milestone	Oct. 2021	Feb. 2022	Mar. 2022	Apr.-Jul 2022	Aug. 2022	Sep-Mar. 2023	Apr. 2023	May 2023	Jun. 2023	Jul. 2023	Aug. 2023	Sep. 2023	Oct. 2023	Nov. 2023	Dec. 2023	Jan. 2024	Feb. 2024	Mar. 2024	Apr. 2024	
1. Local Planning Panel considers Planning Proposal	█																			
2. Council determines whether to progress to Gateway Determination	█	█																		
3. Request for Gateway Determination sent to DPE			█																	
4. DPE considers request			█	█	█															
5. Gateway Determination issued					█															
6. Council reviews Gateway Determination for adequacy						█	█													
7. Gateway Withdrawn / New Gateway Determination sought							█													
8. DPE considers new request								█	█	█										
9. New Gateway Determination Issued										█										
10. Public exhibition undertaken											█	█								
11. Council considers submissions												█	█							
12. Council considers post exhibition report													█	█	█					
13. Submission to DPE requesting making of LEP															█	█				
14. Drafting of LEP and making																█	█	█	█	█

ANNEXURE A

– Possible suggested amendments to NSLEP 2013

Possible suggested amendments to NSLEP 2013

Note: These are suggestions only and are subject to Parliamentary Counsel further drafting and agreement.

1. Consideration of Objectives to Division 1 to Part 1 of NSLEP 2013

It is suggested that a new clause be inserted within Division 1 to Part 6 of NSLEP 2013 requiring that the consent authority give consideration to the objectives of Division 1 to Part 6 where development is proposed within the North Sydney Centre.

The objective could be located at the end of clause 6.1 to NSLEP 2013 or within a new clause between clauses 6.1 and 6.2.

The suggested wording of the clause could be as follows:

The consent authority must have regard to the objectives of this Division when determining a development application in respect of land to which this Division applies.

2. Primacy of variation requirements

The simplest way to remove the primacy between the two sets of variation requirements is to consolidate them within the one clause.

2.1 Option 1 – relocation to clause 4.6

This option involves the removal of the variation criteria from clause 6.3(3) and including them within clause 4.6 as an additional head of consideration for development located in the North Sydney Centre. This would also necessitate the removal of objective (c) to clause 6.3 as there would no longer be a development control within this clause relating to building height. Potential also exists to relocate the objective of objective (c) to clause 6.3 to clause 4.3 (1), to ensure it is considered in any variation request for development within the North Sydney Centre.

This Option may be achieved in part by amending clauses 4.3, 4.6 and 6.3 as follows (~~red-strike through~~ represents a deletion and blue underline represents an insertion):

Clause 4.3 Height of Buildings

- (1) *The objectives of this clause are as follows:*
 - (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
 - (b) *to promote the retention and, if appropriate, sharing of existing views,*
 - (c) *to maintain solar access to existing dwellings, public reserves and streets, and to promote solar access for future development,*
 - (d) *to maintain privacy for residents of existing dwellings and to promote privacy for residents of new buildings,*
 - (e) *to ensure compatibility between development, particularly at zone boundaries,*
 - (f) *to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area,*
 - (g) *to maintain a built form of mainly 1 or 2 storeys in Zone R2 Low Density Residential, Zone R3 Medium Density Residential and Zone C4 Environmental Living,*
 - (h) *to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2A) - (2C) *(Repealed)*

Clause 4.6 Exceptions to Development standards

- (1) The objectives of this clause are as follows—
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) ...
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.5,
 - (ca) clause 4.3 in relation to land identified as “Area 1” on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,
 - (cab) clause 4.4, 5.6 or 6.19C in relation to land identified as “Area 1” on the Special Provisions Area Map,
 - (cb) clause 6.3(2)(a) and (b),
 - (cba) clause 6.19A,
 - (cc) clause 6.20.
- (8A) ~~(Repealed)~~ Development must not be granted consent under this clause for development on land identified in the North Sydney Centre on the North Sydney Centre Map that exceeds the maximum height stipulated on the Height of Buildings Map, unless the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—
- (a) if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or
 - (b) if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.

Clause 6.3 Building heights and massing

- (1) The objectives of this clause are as follows—
- (a) ~~(Repealed)~~
 - (b) to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,
 - (c) ~~(Repealed) to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,~~
 - (d) to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,
 - (e) to encourage the consolidation of sites for the provision of high grade commercial space.
- (2) Development consent must not be granted for the erection of a building on land to which this Division applies if—
- (a) the development would result in a net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as “Special Area” on the North Sydney Centre Map, or

- (b) the development would result in a net increase in overshadowing between 10 am and 2 pm from the March equinox to the September equinox (inclusive) of the Don Bank Museum, or
 - (c) the site area of the development is less than 1,000 square metres and any building resulting from the development would have a building height greater than 45 metres.
- (3) ~~(Repealed). The consent authority may grant development consent to development on land in the North Sydney Centre that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—~~
- ~~(a) if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23) less than 2 hours of direct sunlight, or~~
 - ~~(b) if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23) less direct sunlight than it did immediately before that commencement.~~
- (4) ...

2.2 Option 2 – Variation of Clause 6.3(3)

This option involves the incorporation of a provision to ensure that the requirements of clause 4.6 are taken into consideration when a request to exceed the height of buildings criteria for development located in the North Sydney Centre, despite the application of Clause 6.2(2).

This Option may be achieved in part by amending clause 6.3 as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

6.3 Building heights and massing

- (1) *The objectives of this clause are as follows—*
- (a) ~~(Repealed)~~
 - (b) *to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,*
 - (c) *to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,*
 - (d) *to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,*
 - (e) *to encourage the consolidation of sites for the provision of high grade commercial space.*
- (2) *Development consent must not be granted for the erection of a building on land to which this Division applies if—*
- (a) *the development would result in a net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as “Special Area” on the North Sydney Centre Map, or*
 - (b) *the development would result in a net increase in overshadowing between 10 am and 2 pm from the March equinox to the September equinox (inclusive) of the Don Bank Museum, or*
 - (c) *the site area of the development is less than 1,000 square metres and any building resulting from the development would have a building height greater than 45 metres.*

- (3) *The consent authority may grant development consent to development on land in the North Sydney Centre that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that:*
- (a) any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—*
 - (i) if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or*
 - (ii) if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.*
 - (b) the requirements under clause 4.6 have been addressed.*
- (4) ...

ATTACHMENT 4

Planning Proposal 8/21 – North Sydney Centre -Height of Buildings Variation Summary of submissions received during public exhibition period (14 August 2023 to 25 September 2023)

The following criteria are used to analyse all submissions received, and to determine whether or not the plan would be amended:

1. The Planning Proposal **would be** amended if issues raised in the submission:
 - a provided additional information of relevance.
 - b indicated or clarified a change in government legislation, Council's commitment or management policy.
 - c proposed strategies that would better achieve or assist with Council's objectives.
 - d was an alternate viewpoint received on the topic and is considered a better option than that proposed or;
 - e indicated omissions, inaccuracies or a lack of clarity.

2. The Planning Proposal **would not be** amended if the issues raised in the submission:
 - a addressed issues beyond the scope of the proposal.
 - b was already in the proposal or will be considered during the development of a subordinate plan (prepared by Council).
 - c offered an open statement, or no change was sought.
 - d clearly supported the proposal.
 - e was an alternate viewpoint received on the topic but the recommendation was still considered the best option.
 - f was based on incorrect information.
 - g contributed options that are not possible (generally due to some aspect of existing legislation or government policy) or; involved details that are not appropriate or necessary for inclusion in a document aimed at providing a strategic community direction over the long term.

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
1	Deidre Sender Address withheld CREMORNE NSW 2090	Social Impacts	Objects to any increase in height, as: <ul style="list-style-type: none"> • Developers constantly seek to push height limits for profit and do not care about the amenity of existing residents; • It does not allow the sharing of views; and • Densification results in increased social impacts, especially mental wellbeing. 	The proposal does not seek to increase any height limits within the North Sydney Centre (NSC). The proposal merely seeks to ensure that a single variation control applies and that a higher threshold be met when considering variations to the height control within the North Sydney Centre, consistent with current practice.	Nil	2E/2F
2	Jean-Claude Branch Address withheld NORTH SYDNEY NSW 2060	Objection	Objects to the planning proposal for the following reasons: <ul style="list-style-type: none"> • contrary to endorsed strategic planning policies; • lack of capacity within the North Sydney CBD; and • Making it more difficult to increase density in a high accessibility area. These issues are addressed in detail below.	Noted.	Nil	2D
		Contrary to endorsed strategic planning policies	The proposal is contrary to Council's 2017 endorsed strategic planning documents which have set out to "provide a framework to allow for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre and to accommodate forecast demand for additional commercial / employment floor space".	Refer to Section 4.1 of the main report. The proposal does not seek to reduce the maximum height of buildings control on any site within the North Sydney Centre. The ability to vary the height of buildings control is to be retained. The proposal only seeks to simplify and clarify the process required when a proposal seeks to exceed the maximum height of buildings control within the North Sydney Centre.	Nil	2F
		Lack of capacity	Questioned why land adjacent to the new Victoria Cross Metro station only has a height limit of 10.8m and an R2 Low Density Residential zoning.	This view is incorrect. The majority of land located adjacent to the Victoria Cross Metro Station is zoned E2 Commercial Centre or MU1 Mixed Use which permits a variety of land uses. In addition, these lands are generally afforded the greatest building heights in the LGA, consistent with its identification as a major centre. The proposal does not seek to rezone any land nor alter the height limit of any property.	Nil	2A, 2F

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Reduced ability to increase density	The proposal makes it more difficult to increase density in and around the North Sydney Centre and in close proximity to public transport, particularly housing.	<p>Significant increases in density were permitted as part of Amendment 23 to NSLEP 2013 in 2018, primarily through increasing the maximum permitted building heights within the North Sydney Centre. Additional uplift is also envisaged under the <i>Ward Street Precinct Masterplan</i> adopted by Council in 2019.</p> <p>Both these planning studies acknowledged the North Sydney Centre's future increased accessibility through the delivery of the Metro line and stations.</p> <p>The proposal does not seek to reduce residential development potential within the North Sydney Centre and it does not prevent the ability to vary the maximum height of buildings control.</p> <p>The proposal only seeks to rationalise and clarify the process required when a proposal seeks to exceed the maximum permitted building height on land within the North Sydney Centre.</p>	Nil	2F
3	Phillipa Pritchett Address withheld CREMORNE NSW 2090	Support	<p>It is essential that when a development application (DA) is received with a request to exceed the maximum height of buildings development standard under clause 4.3 on land within the North Sydney Centre, that the request to vary the development standard must consider the criteria currently contained under both clauses 4.6 and 6.3(3) to NSLEP 2013.</p> <p>DAs must adhere to the current criteria that Council has set for developments in particular areas. If the DAs do not comply, then they need to submit a request to vary that criteria.</p>	<p>Noted</p> <p>The proposal will maintain the ability to vary the height control within the North Sydney Centre subject to a request from an applicant.</p>	Nil	2D

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
4	Ethos Urban on behalf of: Zurich Insurance Group Ltd Address withheld NORTH SYDNEY NSW 2060	Consistency with recent changes to simplify clause 4.6 <ul style="list-style-type: none"> • Increased complexity • Reduced discretion 	<p>On 15 September 2023, clause 4.6 to the Standard Instrument LEP was amended to improve the process when a variation is required to a development standard within an LEP.</p> <p>The proposed addition of the solar access criteria which currently exists in clause 6.3, will by its nature make the consideration of a clause 4.6 request more complicated and will remove the statutory discretion afforded to consent authorities in applying clause 4.6 of the LEP.</p> <p>The proposed changes to clause 4.6 will result in a circumstance where a proposal may be found to be satisfactory under the terms of clause 4.6 but given a minor exceedance of solar loss to a single window or area of private open space, the consent authority will have no choice but to refuse an application. This is not consistent with the intent of this recent review of clause 4.6 to simplify the consideration and use of clause 4.6 by consent authorities and applicants.</p>	<p>Refer to section 4.6 to the main report.</p> <p>The recent State led amendments to clause 4.6 of NSLEP 2013 were made partway through the public exhibition of the planning proposal, but did not take effect until after the public exhibition concluded and before Council's consideration of submissions.</p> <p>Notwithstanding, a review of the amendments to clause 4.6 did not directly affect those aspects of Clause 4.6 that are proposed to be amended.</p> <p>The assumption that everything needs to be left to sole a merit consideration under Clause 4.6 is overemphasised. In particular, Clause 4.6 places strict numerical compliance on variations that relate to allotment sizes in certain zones.</p> <p>As indicated in section 4.3 to this report, it is recommended that increased flexibility is incorporated such that amenity impacts are limited to the primary usable spaces within a dwelling.</p>	Nil	2E
		Removal of options	<p>The proposal represents a retrograde response.</p> <p>Under the current provisions, if a development could not satisfy the requirements under clause 6.3, then an option existed to seek a variation under clause 4.6.</p> <p>The planning proposal removes this optionality and adds complexity and costs to the application and use of clause 4.6 as it relates to the height of buildings in the North Sydney Centre.</p>	<p>Clause 6.3(3) was never intended to provide a separate avenue to vary the height of buildings development standard depending on the circumstances of the case.</p> <p>The primary purpose of the Planning Proposal is to remove complexity by providing a single avenue to vary the height of buildings standard regardless of the property's location.</p>	Nil	2E

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Clarification of terms	The term “habitable room” is undefined under NSLEP 2013 and the EP&A Act, creating a level of uncertainty though the use of an undefined term in a statutory test and is not considered good planning practice. It is recognised that the Building Code of Australia defines a ‘habitable room’, but it is assumed that the terms can be interchanged on a broad reading of the clause. However, this is based on an interpretation and is not made clear in the planning proposal.	<p>Refer to Section 4.3 to the main report</p> <p>Despite the term “habitable room” not being defined under NSLEP 2013 or the EP&A Act, it is defined elsewhere within planning related policies such as the BCA, the Apartment Design Guide (ADG) and SEPP (Exempt and Complying Development Codes). Accordingly, there is little ambiguity as to the interpretation of the term.</p> <p>It is recognised that the application of the solar access control to “habitable rooms” is more restrictive than the solar access controls under the ADG, which makes reference to “living areas” of a dwelling.</p> <p>It is recommended that to reduce the burden on the application of the clause, that the solar access provision be amended to replace “habitable rooms” with “living areas”.</p> <p>It is noted that the term “living areas” is generally defined under any planning instruments or policies. Whilst not usually contested in the Land and Environment Court, potential exists to include a provision that seeks to clarify what a “living area” comprises.</p>	Replace the term “habitable room” with “living area” and include a provision that clarifies what a “living area” comprises.	1A, 1C, 1E

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		<p>Complexity of the solar access test</p> <ul style="list-style-type: none"> Flexibility 	<p>The solar access test, as existing and proposed, is simply a binary consideration irrespective of the public interest and the nature of dwelling affected. For example, a development that continued to provide the mandated solar access to say 4 out of 5 bedrooms of a dwelling plus all living areas and areas of private open space would fail the test if a single bedroom window fell below the mandated solar access hours. The clause does not permit any qualitative assessment of the provision of solar access.</p>	<p>Refer to Section 4.1 to the main report</p> <p>Term “habitable room” is very broad and extends to include bedrooms, studies. Solar access controls are typically aimed at protecting solar access to the primary living spaces within a dwelling, noting that is where most occupants are spending time during the day.</p> <p>The key imperative is to maintain solar access to the key living areas of a dwelling and its private open spaces. Solar access to rooms such as bedrooms is less important during the key solar access times, as these rooms tend to be primarily used outside of these hours.</p> <p>Therefore, to ensure greater flexibility and provide a more reasonable level of assessment based on the potential impacts to the primary used parts of a dwelling it is recommend that the solar access test be amended such that solar access is applied to the principle used living areas of a dwelling rather than all habitable rooms.</p>	<p>Replace the term “habitable room” with “living area” and include a provision that clarifies what a “living area” comprises.</p>	1A, 1C, 1E
		<p>Consistency with NSDCP 2013 solar access provisions</p>	<p>The proposed solar access provisions are greater than those contained within NSDCP 2013 for development elsewhere in the LGA.</p> <p>There is a level of inequity between these two provisions that will be further entrenched by the planning proposal.</p> <p>At a minimum the proposed the solar access test should be amended to reflect those in the DCP.</p> <p>These key differences include:</p>	<p>Refer to section 4.4 of the main report.</p>		
		<ul style="list-style-type: none"> Period of Year 	<p>NSDCP 2013 establishes a control date of Midwinter (21 June), whereas the existing and proposed clauses establishes a control period between the March and September Equinox;</p>	<p>The DCP controls are based on the solar access requirements established under the ADG which is based on the period of 9am to 3pm at midwinter only.</p> <p>The <i>North Sydney Centre Capacity and Land Use Strategy</i> sought to continue to apply a provision that permitted a variation to the maximum building height requirement based on compliance with a solar access test, generally</p>	<p>Amend the solar access controls to apply to midwinter only.</p>	1A, 1C

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
				consistent with that under the ADG. The current and proposed LEP controls are therefore inconsistent with the requirements of the ADG in that they extend beyond the current ADG test period. It is therefore recommended that the test be amended to reflect that under the ADG.		
		<ul style="list-style-type: none"> Parts of a dwelling permitted to be impacted 	NSDCP 2013 applies the solar access control to “living rooms” only, whereas the existing and proposed clauses requires an assessment against “any habitable rooms” (which extends to include bedrooms and studies); and	<p>Refer to Section 4.3 of the main report.</p> <p>Term “habitable room” is very broad and extends to include bedrooms, studies. Solar access controls are typically aimed at protecting solar access to the primary living spaces within a dwelling, noting that is where most occupants are spending time during the day.</p> <p>The key imperative is to maintain solar access to the key living areas of a dwelling and its private open spaces. Solar access to rooms such as bedrooms is less important during the key solar access times, as these rooms tend to be primarily used outside of these hours.</p> <p>Therefore, to ensure greater flexibility and provide a more reasonable level of assessment based on the potential impacts to the primary used parts of a dwelling it is recommend that the solar access test be amended such that solar access is applied to the principle used living areas of a dwelling rather than all habitable rooms.</p>	Replace the term “habitable room” with “living area” and include a provision that clarifies what a “living area” comprises.	1A, 1E
		<ul style="list-style-type: none"> Impact on Private Open Space 	NSDPC 2013 applies the solar access control to principal private open space areas only, whereas the existing and proposed control applies to “any private open space”.	The current control and proposed control is consistent with the requirements under the ADG and the outcomes of the <i>North Sydney Centre Capacity and Land Use Strategy</i> .	Nil	2E

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Solar modelling	<p>The submitter states that the level of architectural modelling required to demonstrate compliance with the solar access test (i.e. determining dwelling positions and their internal arrangements is onerous to the point of being prohibitive).</p> <p>The proposed provisions of clause 4.6(8A) require the knowledge of internal floorplan arrangements of resident’s dwellings that may often be located hundreds of metres away from the site of a development. Council does not maintain a digital model in which modelling can be readily undertaken and verified. This results in applicants having to establish a detailed digital model of resident’s housing around the North Sydney Centre which can add considerable costs to undertaking the solar analysis.</p> <p>If Council is to proceed, then it should create a digital model of land surrounding the North Sydney Centre showing the dwelling arrangement and their room configurations. This model should then be made available to applicants for those who seek to utilise proposed clause 4.6(8A).</p>	<p>The requirement to undertake such a detailed solar analysis is only required when proposing to exceed the maximum height requirement. Therefore, the onus is on the applicant to demonstrate that the potential impacts for increased height will not adversely impact on surrounding residential development.</p> <p>Even if clause 6.3(3) at present did not exist, therefore defaulting to the variation requirements under clause 4.6, there would still be a need to determine the layouts and room configurations to determine the level of impact on surrounding dwellings.</p> <p>As discussed at Section 4.2 to the main report, it is recognised that the current solar access test is more restrictive than current practices and that it is recommend that the test be limited to the principal used parts of a dwelling and to the Midwinter period. This will greatly reduce the level of modelling required.</p> <p>It should be recognised a new development located outside of the North Sydney Centre would also require detailed consideration of layouts of dwellings that are potentially impacted by overshadowing so is therefore no more onerous than current practices elsewhere in the LGA.</p>	<p>Replace the term “habitable room” with “living area” and include a provision that clarifies what a “living area” comprises.</p> <p>Amend the solar access controls to apply to Midwinter only.</p>	2E

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Duplication of solar access objectives	<p>Option 1 proposes to incorporate a subclause (h) to the objectives of clause 4.3. This proposed objective is superfluous as solar protection is already covered by existing subclause (c).</p> <p>This proposed additional subclause (h) will now apply to all development within the North Sydney LGA. This appears to be outside the scope of the planning proposal which is concerned with the height of buildings in the North Sydney CBD. It is recommended that that the proposed subclause (h) is removed.</p>	<p>The proposed new objective (h), which has been relocated from clause 6.3, specifically applies to development within the North Sydney Centre only, whereas the application of existing subclause (c) applies LGA wide.</p> <p>The context of the two subclauses is also different, with subclause (c) seeking to “maintain solar access” LGA wide, whereas proposed subclause (h) seeks to “minimise overshadowing” from development located within the North Sydney Centre.</p> <p>Therefore, the proposed relocation of the objective will not create additional impediments to development.</p>	Nil	2E

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
5	Urban Taskforce Level 12, 32 Martin Place SYDNEY NSW 2000	Objection	<p>Objects to the proposal for the following reasons:</p> <ul style="list-style-type: none"> removes an established, flexible approach to building heights in the North Sydney CBD; contrary to the directions of the new State Government and the significant investment in public transport in the North Sydney Centre. <p>These issues are discussed in further detail below.</p>	Refer to responses below		
		Reduced Flexibility Contrary to planning policies	<p>Clause 6.3(3) was introduced in 2017 through Amendment 23 to NSLEP 2013 and was a concerted effort of Council under its <i>North Sydney CBD Land Use and Capacity Strategy</i> to provide a “framework to allow for the growth of the North Sydney Centre as a resilient, vibrant and globally relevant commercial centre”.</p> <p>The purpose of clause 6.3(3) was to provide some level of flexibility where it can be demonstrated that residential amenity outside the North Sydney Centre is not unreasonably affected. However, the proposal will remove this flexibility to allow greater development potential which is contrary to State and Council planning policies.</p> <p>There are sufficient provisions within Division 1 to Part 6 of NSLEP 2013 to consider additional height in the context of solar access and overshadowing.</p> <p>The proposed changes represent a shift in emphasis that will create less certainty for those wishing to invest in the future of North Sydney CBD and will allow Council a greater say in rejecting height variations.</p> <p>Suggested that maintaining the outcomes of the <i>North Sydney Centre Capacity and Land Use Strategy</i> is all the more relevant now with the construction of the Sydney Metro and the even closer linkages between North Sydney CBD and the Sydney CBD.</p>	<p>Refer to section 4.1 and 4.2 to the main report.</p> <p>Provisions permitting variations to the height controls on land located within the North Sydney Centre have been in force since 28 February 2003 upon the commencement of Amendment No.9 to NSLEP 2001.</p> <p>These variation provisions have been amended over time to maintain a level of flexibility and provide increased certainty (originally, applicants were required to ensure that residential amenity was not diminished).</p> <p>The proposal does not seek to remove the flexibility to vary the height controls under the LEP. It principally seeks to achieve this through clause 4.6 which is the principal means by which development standards are varied and ensure all are subject to the same level of consideration.</p> <p>The North Sydney Land Use and Capacity Strategy was made with due consideration of the extension of the Metro through North Sydney and its CBD.</p>	Nil	2E

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Authority to finalise the Plan	Supports the Department of Planning and Environment's (DPE) decision to refuse Council's ability to finalise any plan giving effect to the planning proposal. This will ensure Council does not tinker with its LEP and will maintain its consistency with the State Government's broader approach to the development with strategic centres like North Sydney Centre is not undermined.	The reason for the DPE not granting authorisation to be the local plan making authority related to the number of properties affected by the proposal, rather than any perceived "tinkering" with the LEP. The proposal does not seek to remove the flexibility to vary the height controls under the LEP. Nor does it seek to further restrict any as of right development potential.	Nil	2B
		No case for change	The proposal does not contain any evidence that the existing regime doesn't work (e.g. provided through an analysis of applications seeking variations under cl.6.3, or comparison indicating that if an application was successful under Clause 6.3, but would not have been successful under Clause 4.6). Suggests that Council does not like the current approach provided through cl.6.3(3) and that it wishes to have a greater say on development within the North Sydney Centre with no justification for the change. To be a truly global centre, matching the Sydney CBD and comparable with other cities internationally, North Sydney Council should embrace height, density and flexible approaches to planning.	The planning proposal details the complexity in the application of clause 6.3(3). In particular, it points out there has been a general disregard for the lodgement of compliant development schemes straight after granting significant increases in building height (Amendment 23), with limited justification being provided to exceed the new height controls.	Nil	2B, 2E
		Reduced capacity in proximity to infrastructure	The proposal does not respond to the massive investment in public transport infrastructure, particularly the completion of the Metro line in the North Sydney Centre. Jobs and homes should be co-located in mixed use developments as a response to demand for more houses close to workplaces and public transport options.	Significant increases in density were permitted as part of Amendment 23 to NSLEP 2013 in 2018, primarily through increasing the maximum height of building limits within the North Sydney Centre. Additional uplift is also envisaged under the <i>Ward Street Precinct Masterplan</i> adopted by Council in 2019. Both these planning projects acknowledged the North Sydney Centre's future increased accessibility through the delivery of the Metro line and stations. The proposal does not seek to reduce residential development potential within the North Sydney Centre and it does not prevent the ability to vary the maximum height of buildings control.	Nil	2F

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		Vibrancy	<p>The North Sydney Centre has never matched its potential as set out in the 2017 <i>North Sydney Centre Land Use and Capacity Strategy</i>, namely, to provide for the “growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre.”</p> <p>Council policies have produced a sad, second-rate windswept CBD, devoid of population or activity outside business hours. It is a CBD that tends to look backwards rather than forwards.</p> <p>The broader community is identifying height and density as a means of transforming the way in which Sydney works, lives and recreates. This proposal would work against what the community and the newly elected NSW Government seeks when it comes to planning a future Sydney.</p> <p>While the City of Sydney has done much of the heavy lifting in terms of housing supply in the Eastern Harbour City, the North Sydney CBD area has not and its exclusion of residential dwellings has rendered it an unattractive ghost-town during the evenings and on weekends.</p> <p>The intent of the proposal seeks to further undermine the potential of the North Sydney Centre.</p>	<p>Significant increases in density were permitted as part of Amendment 23 to NSLEP 2013 in 2018, primarily through increasing the maximum height of building limits within the North Sydney Centre. Additional uplift is also envisaged under the Ward Street Precinct Masterplan adopted by Council in 2019.</p> <p>Both these planning projects acknowledged the North Sydney Centre’s future increased accessibility through the delivery of the Metro line and stations.</p> <p>Further, increased height over and above that currently permitted will not necessarily equate to vibrancy. This is an oversimplistic view.</p>	Nil	2F

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
6	Aqualand 15 Blue Street NORTH SYDNEY NSW 2060	Objection	<p>Objects to the proposal for the following reasons:</p> <ul style="list-style-type: none"> It will remove flexibility to support height variations in appropriate locations; It will introduce more onerous requirements; Contrary to endorsed planning strategies. 	Refer to responses below		
		Contrary to endorsed strategic planning policies Flexibility	<p>The purpose of clause 6.3(3) is to “unlock certain development” within the North Sydney Centre to allow for additional height on sites which would not result in additional solar access amenity impacts between 10am and 2pm on sites outside of the North Sydney Centre.</p> <p>This provision recognises that there was a strong need to increase development capacity within the North Sydney Centre to reflect its status within the Eastern Economic Corridor.</p> <p>The North Sydney Centre Capacity and Land Use Strategy states the purpose the current drafting of Clause 6.3(3) is “to provide some level of flexibility where it can be demonstrated that residential amenity outside the North Sydney CBD is not unreasonably affected.”</p> <p>The Planning Proposal presents an outcome which directly contradicts the objectives of the <i>North Sydney Centre Strategy</i> and has the potential to significantly adversely affect the growth of floorspace capacity within the North Sydney Centre.</p>	<p>Refer to sections 4.1 and 4.2 to the main report.</p> <p>Clause 6.3(3) was not initially designed to unlock development potential, but provide a level of flexibility where overshadowing impacts to residential development and open space zoned lands located outside of the North Sydney Centre are adequately managed.</p> <p>The proposal does not seek to remove the flexibility to vary the height controls under the LEP. It principally seeks to achieve this through clause 4.6 which is the principal means by which development standards are varied and ensure all are subject to the same level of consideration.</p> <p>The proposal does not seek to reduce the maximum height of buildings control on any site within the North Sydney Centre.</p> <p>The ability to vary the height of buildings control is to be retained.</p> <p>The proposal only seeks to clarify the process required when a proposal seeks to exceed the maximum height of buildings control within the North Sydney Centre.</p>	Nil	2E

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		More onerous requirement	<p>The Planning Proposal seeks to apply an additional test when seeking to vary height in the North Sydney Centre, requiring consideration of both clauses 6.3(3) and 4.6.</p> <p>This creates a more onerous test for height variations within the North Sydney Centre in comparison to requests for height variations elsewhere in the North Sydney LGA.</p> <p>Justification for the additional test to pursue a height variation in the North Sydney Centre is not outlined in the Planning Proposal documentation and is not supported.</p>	<p>Increased heights within the North Sydney Centre was premised on no additional overshadowing to sensitive lands outside of the Centre. It is important that the solar access test remain for any requested increase in height, given the significant transition in height to development outside of the North Sydney.</p> <p>It is not as imperative to include such a test to development locate outside of the North Sydney Centre as overshadowing impacts are much better modulated.</p>	Nil	2E
		Narrowing of discretionary power (Option 1)	<p>The proposed wording under Option 1 is not the same as the existing wording under cl.6.3(3). In particular, the proposed wording narrows the discretionary power of the consent authority.</p> <p>Clause 6.3(3) currently empowers the consent authority who, "may grant development consent ... if the consent authority is satisfied", whereas the proposed wording under cl.4.6 states that, "development must not be granted consent ... unless the consent authority is satisfied".</p> <p>This changes the threshold of obtaining consent for any height variation and removes the necessary opportunity for a merit assessment to determine whether in the circumstances of the case, flexibility should be applied.</p> <p>Option 1 therefore results in both a more onerous requirement for a height variation to be pursued in the North Sydney Centre, and removes any discretion from Council to flexibly apply the sun access protection controls.</p> <p>If Option 1 is pursued, we request that the wording in proposed Clause 4.6(8A) be amended to ensure that some discretion is provided for the consent authority in determining satisfaction of the proposed new Clause 4.6 objective.</p>	<p>Refer to section 4.5 to the main report.</p> <p>Clause 4.6(2) provides the discretionary power to vary a development standard under Option 1. The proposed wording under clause 4.6(8A) is to provide some certainty to when such variations should be approved and is consistent with the other tests located at clause 4.6(3) and (6) when seeking a variation.</p> <p>The submitter has overlooked that clause 6.3(3) only provides discretion as it is taking on the function of clause 4.6(2) within Division 6.1 of NSLEP 2013.</p> <p>Therefore, the proposed wording is considered appropriate.</p>	Nil	2E

ATTACHMENT 4: Planning Proposal 8/21 – North Sydney Centre – Height of Buildings Variation SUBMISSIONS SUMMARY (Exhibition Period – 14 August 2023 to 25 September 2023)						
No.	Name and Address	Issue/Theme	Key Points Raised	Council Response	Recommended Action	Criteria
		More onerous testing (Option 2)	<p>Option 2 proposes to include an additional subclause in Clause 6.3(3) to ensure that the consent authority is satisfied that, “the requirements under clause 4.6 have been addressed”.</p> <p>Option 2 will result in proposals which seek to vary the height control within the North Sydney Centre to have a more onerous test than for development located outside of the North Sydney Centre. However, this Option still provides some discretion for the consent authority in its application of this provision.</p> <p>This is preferred option if the proposal is progressed.</p>	<p>Clause 4.6 provides a consistent means by which all variations should be considered.</p> <p>There is a need to maintain an addition test for development within the North Sydney Centre, due to the significant height differences between the North Sydney Centre and adjoining lands.</p>	Nil	
7	Neutral Precinct Committee	Support	Supports the proposal	Noted	Nil	2D