

**Report to General Manager**

Attachments:

1. Gateway Determination by Department of Planning and Environment 23/08/18
2. Gateway Determination Report – Department of Planning and Environment

SUBJECT: Gateway Determination for Planning Proposal – 41 McLaren Street, North Sydney

AUTHOR: Marcelo Occhiuzzi, Manager Strategic Planning

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

On 1 September 2017, Council received a Planning Proposal to amend the North Sydney Local Environmental Plan 2013 to enable an increase in building height of 126m at 41 McLaren Street, North Sydney. In early December 2017, the applicant lodged a request for a Rezoning Review with the Department of Planning and Environment (DPE) in response to Council not having made a decision within 90 days.

Council subsequently resolved to refuse this proposal at its meeting on 19 February 2018. Amongst other reasons, the proposal was considered to potentially undermine strategic planning work that was being undertaken in the locality, specifically the work relating to the Ward Street Masterplan.

The Sydney North Planning Panel considered the Rezoning Review at its meeting on 7 March 2018 and recommended that the Planning Proposal be submitted for a Gateway Determination contrary to Council's decision and be exhibited concurrently as one of the options for the Ward Street Masterplan. Subsequently, on 23 August 2018, the DPE issued a Gateway Determination enabling the exhibition of the Planning Proposal to proceed, subject to various conditions. Given the extent of planning work that has been conducted in the Ward Street precinct and the strong emphasis placed by the Greater Sydney Commission on consultative and long term strategic planning leading the development and growth of Sydney, the issuing of the Gateway Determination by the DPE is perplexing.

This report recommends that Council endorse the lodgement of a Gateway Review with the DPE. The Gateway Review process essentially challenges the Gateway Determination issued by the DPE. This is based on previously expressed concerns about this site-specific proposal potentially influencing or undermining the capacity to realise a more holistic outcome expressed by Council's Ward Street Masterplan. This Masterplan is currently on public exhibition and the final version of this document will be a strategic planning document that is both holistic and informed by a comprehensive and wide ranging consultation process. The Planning Proposal, on the other hand, is essentially a site specific proposition that is heavily influenced by a desire to increase value on one site and which may potentially undermine the realisation of other opportunities.

The DPE's report that the Gateway Determination relied on, is also critiqued in this report and is considered deficient in certain areas. Importantly, that report does not reference Council's comprehensive assessment report nor does it review the Planning Proposal in any great detail against the Ward Street Masterplan, which was publicly available for several months prior to the Gateway determination.

FINANCIAL IMPLICATIONS:

Nil.

RECOMMENDATION:

1. **THAT** Council endorse the submission of a Gateway Review in response to the issue of a Gateway Determination dated 23 August 2018 by the Department of Planning and Environment for the Planning Proposal for 41 McLaren Street, North Sydney (PP_2018_NORTH_001_00).
2. **THAT** the submission of the Gateway Review broadly include the following, as discussed in the report:
 - a. The pursuit of a site specific Planning Proposal potentially undermines a preferred Masterplan outcome for the Ward Street Precinct that is currently the subject of stakeholder consultation.
 - b. A site specific Planning Proposal for the site is premature and is contrary to the Greater Sydney Commission's strong preference for the holistic, consultative and comprehensive strategy led management of urban change.
 - c. The report upon which the Gateway Determination is based is considered deficient in certain areas.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

- Direction: 2. Our Built Infrastructure
- Outcome: 2.2 Vibrant centres, public domain, villages and streetscapes
2.1 Infrastructure and assets meet community needs
- Direction: 3. Our Future Planning
- Outcome: 3.2 North Sydney CBD is one of NSW's pre-eminent commercial centres
3.4 North Sydney is distinctive with a sense of place and quality design
- Direction: 5. Our Civic Leadership
- Outcome: 5.1 Council leads the strategic direction of North Sydney
5.3 Community is informed and consulted

BACKGROUND

On 1 September 2017, Council received a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) as it relates to land at 41 McLaren Street, North Sydney. In particular, the Planning Proposal sought to increase the height limit on the site by 126m.

The Planning Proposal was also accompanied by a Voluntary Planning Agreement (VPA), which sought to offer a contribution to the value of \$10,557,750 to fund the following public benefits:

- 50% of the north-south pedestrian spine between Berry and McLaren Streets / public open space area (i.e. public domain embellishment works) within the Ward Street Precinct; and
- 6 x affordable housing units.

On 8 December 2017, the applicant submitted a request to the Department of Planning and Environment (DPE) for a Rezoning Review, due to Council not having made a determination within 90 days.

On 19 February 2018, Council considered an assessment report (https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/Council_Meetings/Council_19_Feb_2018) in relation to the Planning Proposal, which recommended that Council refuse the Planning Proposal from proceeding to Gateway Determination for the following reasons:

- *It has the potential to significantly undermine strategic planning work currently being undertaken in the locality, specifically the work relating to the Ward Street Precinct Masterplan and the North Sydney Centre Review;*
 - *It is contrary to meeting a number of objectives and actions under the relevant regional and district plans applying to the land. In particular, the proposal does not:*
-

-
- *protect nor promote lands for commercial development within an important existing Strategic Centre on the Global Economic Corridor nor allow for future growth; and*
 - *sufficient residential capacity is already provided under NSLEP 2013 to meet State housing targets, without the need to significantly change the land use mix on the subject site.*
 - *It is inconsistent with the desired outcomes of the draft Ward Street Precinct Masterplan. In particular, the proposal:*
 - *does not apply a precinct scale planning approach;*
 - *does not provide clarity on the future growth of the Precinct;*
 - *does not balance growth within the Centre or amenity to surrounding properties;*
 - *may result in poor pedestrian interfaces and connections with future potential public open spaces;*
 - *may not result in a significant public benefit being achieved;*
 - *does not achieve a no nett increase in traffic generation.*
 - *It is difficult to determine if the quantum of proposed public benefits identified within the Planning Proposal, which would ultimately form part of a future VPA is reasonable with respect to the anticipated uplift that the Planning Proposal seeks.*

At that meeting, Council resolved not to support the Planning Proposal and that the applicant be invited to make a submission to the Ward Street Precinct Masterplan as well as being invited to submit a new planning proposal upon the completion of the Ward Street Precinct Masterplan.

Pre-Gateway Review

After lodgement of the Rezoning Review with the DPE on 8 December 2017, Council attended the hearing of the Sydney North Planning Panel (SNPP) on 7 March 2018, to discuss the merits of the Planning Proposal.

On 9 March 2018, the SNPP forwarded a letter to Council advising of its decision in relation to the Rezoning Review. The SNPP recommended that the Planning Proposal be submitted for a Gateway Determination, subject to the following recommendations:

1. *That the Planning Proposal for increased height, including the “Alternative Masterplan” which justifies it, proceed to Gateway Determination.*
2. *That the Planning Proposal and Alternative Masterplan not proceed to exhibition until Council exhibits its review of its proposed strategy (which the Panel understands will have multiple options).*
3. *That the Planning Proposal and Alternative Masterplan be exhibited as one of the Precinct options.*
4. *That, in exhibiting the Planning Proposal and Alternative Masterplan, a development standard requiring a minimum of 3:1 floor space ratio be included for non-residential gross floor area.*
5. *Any Precinct Plan should not increase car parking beyond the existing levels.*

Concerningly, Council’s report and resolution were absent from the list of materials that had been considered by the SNPP in making its determination. This determination was made in the absence of considering Council’s considered position.

The SNPP letter also invited Council to be the Relevant Planning Authority for the Planning

Proposal and was given 42 days within which to accept the offer. Council accepted this offer by way of resolution at its meeting on 26 March 2018. Report link:

https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/Council_Meetings/Council_Reports_26_Mar_2018

Issue of Gateway Determination

Council received notification on 23 August 2018 that a Gateway Determination had been issued to enable the exhibition of the Planning Proposal for 41 McLaren Street, North Sydney (Attachment 1). Council staff reviewed the implications of the Gateway Determination and concluded that such determination was problematic and issued a response on 4 September 2018, formally indicating an intent to lodge a Gateway Review. The Gateway Review process enables either the proponent or Council, to challenge the Gateway Determination or conditions attached thereto. Council has 42 days to formally lodge this review (i.e. until 4 October 2018). Notwithstanding the non-compliance with the 42 days, a discussion with a DPE representative after the Council meeting of 24 September 2018, indicated that under the circumstances of the previous Council meeting, they would still be willing to consider a late review submission.

Council Meeting of 24 September 2018

Council considered a version of this report at its meeting of 24 September 2018. Whilst Council was addressed by the applicant, it did not have a *quorum* and a decision on this matter could therefore not be made.

In the lead up to that Council meeting, the applicant made a submission dated 24.09.18 in response to the Council officer's report that was presented at that meeting. A strong theme of that submission was that Council's processes including any review of the Gateway Determination, represents "further delays".

The Ward Street Masterplan is an attempt to provide a holistic framework to guide individual landowners to develop their land in the context of a well-considered context which has been the subject of high levels of consultation. There are a number of landowners in the precinct who expressed an interest in developing their land and acknowledge the value of an overall guiding framework. Its value is in realising a vision that would otherwise not be achievable if landowners were able to put forward their versions of development scenarios for individual sites. A masterplan also enables public benefit to be identified and funds pooled to achieve coordinated precinct wide benefits and outcomes which may otherwise be missed with individual Planning Proposals pursuing site specific outcomes. The development of individual sites via Planning Proposals ahead of an endorsed Masterplan cannot achieve such integrated outcomes. What is therefore perceived as delays by the proponent, is recognised by the majority of stakeholders, including Council, as an investment in a holistic and considered outcome for the entire precinct. Importantly, Council's masterplan is in the context of the wider CBD and other planning initiatives and directions that are relevant for this complex precinct. It should be noted that one of the objects of the Environmental Planning and Assessment Act is to promote the orderly and economic use and development of land. Council is working towards this objective by planning what is a complex precinct, but which contains significant opportunities locally and for the wider CBD.

If individual Planning Proposals were lodged for those sites that have signalled an intent to develop, there would be no point or useful purpose in preparing a masterplan for the precinct.

CONSULTATION REQUIREMENTS

Community engagement is not required.

SUSTAINABILITY STATEMENT

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

DETAIL

Whilst Council understands that the Gateway Determination (GD) follows positive consideration of the Planning Proposal by the SNPP, it remains, nonetheless, disappointed with the Department's decision to progress this matter. In the current climate of increased emphasis by the Greater Sydney Commission for Sydney's growth to be led by strategy and consultation led planning, Council is perplexed that a site specific proposal has been supported in the context of Council having endorsed two comprehensively considered and holistic Masterplan outcomes for the entire precinct which the Department is well aware of. The Ward Street Masterplan (WSMP) was considered and endorsed by Council at its meeting on 25 June 2018 and has been placed on public exhibition between 7 August and 8 October 2018.

A review of the Department's Gateway Determination Report highlights a number of issues that are discussed below.

1. Ward Street Masterplan

Council exhibited the first iteration of the Ward Street Masterplan in early 2017. Following extensive stakeholder feedback, Council resolved that the Masterplan should be reviewed and refined. Following an extensive review and refinement process, Council at its meeting on 25 June 2018, adopted a further iteration of the Masterplan, which outlines two potential outcome options, for public exhibition. This exhibition process commenced on 7 August and is scheduled to be completed on 8 October 2018.

Council has spent considerable time in developing a considered and holistic draft Masterplan for the Ward Street precinct. The future form and function of this precinct in the wider role of the North Sydney CBD is critically important. This is especially so given the confluence of the arrival of Metro in 2024, the commercial development interest currently experienced by North Sydney and the strong need to ensure both a viable supply of commercial floor space and the provision of an attractive and engaging public domain in the CBD. The *North District Plan* requires that Council provide for between 15,600 and 21,100 new jobs by 2036 as well as providing for "high quality civic and public spaces befitting a globally oriented CBD". The North Sydney CBD has a limited commercial footprint from which to provide such commercial growth and Ward Street is central to delivering this.

The Ward Street Masterplan brings these elements together and seeks to plan for significant increases in commercial floor space, investment in new public domain, cultural and community facilities all of which complement the arrival of Mero in 2024.

2. Council's Review of Gateway Determination Report

Of paramount importance, is that whilst the applicant's submission is widely quoted and referenced, Council's comprehensive assessment report which was considered by Council at its meeting on 25 February 2018, has not been referenced and there is no evidence that it has been taken into account when preparing the Department's report (attachment 2). This is despite the Department having been provided with a copy of this report and its resolution. This omission is also contrary to the Department's normal procedure to address Council's position on the matter when preparing Gateway Determination Reports.

Given that the Ward Street Masterplan was adopted by Council at its meeting of 25 June 2018, it would have been prudent to review the Planning Proposal in this context more holistically and comprehensively prior to the issue of the GD. Whilst not formally yet on public exhibition, the revised Masterplan was publicly available for about two months prior to the issue of the GD by the Department.

Of particular concern, is the apparent reference to an updated alternative masterplan (Architectus 2018) which Council has not sighted. It is likely, however, that this represents a typographical error in the labelling of the "visionary" masterplan (p.12 of attachment 2). If this is not the case, it is only reasonable, that a significant change should be able to be reviewed by Council.

Further to this, clarification is required as to whether the visionary masterplan is to be exhibited. On page 10 (attachment 2), it states that is to be exhibited (in accordance with the Planning Panel's recommendations) and conversely on page 17, it says it's not to be exhibited.

The Planning Proposal needs to be revised to provide an assessment against both options outlined under the revised draft WSMP and include these in the exhibition.

The Planning Proposal acknowledged but did not 'fully contemplate', the impact the proposed amendments would have under Council's proposal. The Planning Proposal needs to be updated to consider and assess the amendments under Council's North Sydney Centre Planning Proposal which is expected to be gazetted shortly. Of significance here, is the context diagrams that appear in the proponent's supporting documentation that wrongly identify heights (in RLs) for various buildings in the vicinity. These include the Metro Over Station Development building which is identified as RL 300, whereas in fact, the recent State Significant Development Application lodged with the DPE (ref #SSD 17_8874) sought an overall maximum height of RL 230, which is significantly lower. These errors have been perpetuated in the Department's report at pages 11, 12 and 23 as shown in attachment 2.

2.1 Consistency with WSMP

Neither one of the current WSMP options align with the scope of the subject Planning Proposal. Option 1 of the WSMP aligns most closely to the Planning Proposal, however, it remains significantly incongruent with the draft Masterplan.

The building envelope proposed for 41 McLaren Street under the WSMP Option 1, is a carefully considered envelope that achieves much greater solar amenity for adjoining residences. It achieves near compliance with SEPP 65 in terms of separation and setbacks and North Sydney LEP solar access requirements.

The proposed height limit for the site under option 1 is RL160 compared to RL 226 proposed under the Planning Proposal. Option 1 of the WSMP ensures the solar protection of residential land to the east of the Warringah Freeway which is consistent with the approach taken under the North Sydney CBD Land Use and Capacity Strategy. It also ensures the building is of a suitable scale that considers adjoining residential tower envelopes and the proposed envelopes for the other sites within the Masterplan.

The outcome envisaged by the Planning Proposal would represent the blocking of the sunlight in the morning to early lunch period which would effectively block all direct sunlight hitting the square envisaged by Masterplan option 2 thus reducing its amenity to an unacceptable level.

The claim that the revised draft WSPM is not economically feasible (and thus the applicant's alternative masterplan warranted) is now effectively superseded given Council's endorsement of the draft WSPM which has revised the height limit and envelope to the subject site under Option 1, to ensure that the development uplift is economically feasible.

The Planning Proposal is clearly inconsistent with the Ward Street Masterplan.

2.2 State Environmental Planning Policy 65

The Planning Proposal states that it is considered to be consistent with the nine design principles of State Environmental Planning Policy (SEPP) 65. However, the proposed development does not comply with the visual privacy objectives, it provides inadequate building separation and setbacks as well as resulting in the adjoining residential developments not achieving the minimum requirements of solar access. Whilst the constrained nature of the Ward Street block is acknowledged, this outcome is unacceptable.

2.3 Public Benefits

The analysis and design for both options under the revised draft WSMP do not include a through-site link through 41 McLaren St. Rather, the two options include the upgrade of a "shared" zone along the 'right of way' through the site comprising 221 Miller Street. This link forms a primary objective of the revised draft WSMP which is to enable a continuous pedestrian 'laneway link' from Brett Whitely Place through Denison Street, Ward Street to McLaren Street. More importantly, such public access is to remain "open to the sky" and is an important design element in both Masterplan options. Whilst the offer of a through-site link across the subject site would be highly desirable if there were no other alternatives, this is clearly not the case.

2.4 Bulk and Scale

The proposal does not comply with the footprint and public domain expectations of either WSMP that have been exhibited.

Council supports the Department's recommendations that additional assessment be undertaken to consider what impact the proposal may have on these adjoining residential developments and what mitigation measures and built form setbacks could be applied to minimise these impacts.

2.5 Overshadowing

Council notes that additional shadow diagrams are requested to review the potential overshadowing by the development on the two options under the revised draft WSMP. Council

requests at least the provision of hourly shadowing diagrams at different times of the year, from 9am to 3pm to demonstrate the proposal's impact.

2.6 Conditions of Gateway Determination

Various conditions attached to the GD (1c, 1d, 1e and 1f) require the submission of additional information and justification that will require an element of qualitative assessment and determination. The level of analysis and discretion required by these conditions is better conducted during the process of assessment of the Planning Proposal and certainly prior to the issue of a GD.

3. Conclusion

Council has spent considerable time in developing a considered and holistic draft Masterplan for the Ward Street precinct. The future form and function of this precinct in the wider role of the North Sydney CBD is critically important. This is especially so given the confluence of the arrival of Metro in 2024, the commercial development interest currently experienced by North Sydney and the strong need to ensure both a viable supply of commercial floor space and the provision of an attractive and engaging public domain in the CBD.

The relationship of the Planning Proposal for 41 McLaren Street and the refinement of the draft Ward Street Masterplan is an important consideration in determining whether the Planning Proposal should be pursued at this moment. It is the conclusion of this report that the Ward Street Masterplan should be allowed to be refined and finalised before consideration of the Planning Proposal and not vice versa. For this reason and the various inadequacies identified in the Department's reporting of this matter, this report recommends that Council formally lodge a post Gateway Review to challenge the Gateway Determination issued by the Department.



PP_2018_NORTH_001_00/(IRF18/2893)

Mr Ken Gouldthorp
General Manager
North Sydney Council
200 Miller Street
NORTH SYDNEY NSW 2060

Dear Mr ~~Gouldthorp~~^{Ken}

Planning proposal PP_2018_NORTH_001_00 to amend North Sydney Local Environmental Plan 2013

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the *Environmental Planning and Assessment Act 1979* (the Act) in respect of the planning proposal to amend the height of building and introduce a non-residential floor space ratio at 41 McLaren Street, North Sydney.

As delegate of the Greater Sydney Commission, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

I have also agreed, as delegate of the Secretary, the planning proposal's inconsistency with section 9.1 Direction 1.1 Business and Industrial Zones is justified in accordance with the Direction. No further approval is required in relation to this Direction.

Council may still need to obtain agreement of the Department's Secretary to comply with the requirements of relevant Section 9.1 Ministerial Direction 3.5 Development Near Licensed Aerodromes. Council should ensure this occurs prior to public exhibition.

It is noted that Council has requested to be authorised as the local plan-making authority. I have considered that given the nature of the planning proposal and its context to Council's Ward Street Precinct plans, Council should not be authorised to be the local plan-making authority.

The amending local environmental plan (LEP) is to be finalised within 12 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request for the Department to draft and finalise the LEP should be made eight weeks prior to the projected publication date.

The state government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Greater Sydney Commission may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any further enquiries about this matter, I have arranged for Mr Max Chipchase to assist you. Mr Chipchase can be contacted on 9274 6304.

Yours sincerely

 23 August 2018
Stephen Murray
Executive Director, Regions
Planning Services

Encl: Gateway determination



Gateway Determination

Planning proposal (Department Ref: PP_2018_NORTH_001_00): to amend the height of building map and introduce a non-residential floor space ratio for land at 41 McLaren Street, North Sydney.

I, the Executive Director, Regions at the Department of Planning and Environment, as delegate of the Greater Sydney Commission, 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 (LEP) 2013 to amend and introduce planning controls at 41 McLaren Street should proceed subject to the following conditions:

1. Prior to agency and community consultation, the planning proposal is to be updated to address the following:
 - (a) to reflect the proposed map amendments to amend the height of building and introduce a non-residential floor space ratio map;
 - (b) update overshadowing diagrams to represent the extent of overshadowing from the proposed development on adjoining development and over Council's two draft masterplan options for the Ward Street Precinct;
 - (c) consider and demonstrate how adequate social and open space infrastructure will be provided to support the future development of the site;
 - (d) consider what impacts the proposal may have on adjoining residential developments, and what mitigation measures and/or built form setbacks could be applied to minimise impacts;
 - (e) assess the traffic and parking impacts of the proposal, and consider no increase in the provision of on-site parking beyond that currently accommodated within the site; and
 - (f) demonstrate consistency with the Greater Sydney Region Plan and the North District Plan.
2. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of 28 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 section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).



Planning & Environment

3. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:

- Transport for NSW, including Sydney Metro;
- Roads and Maritime Services;
- Office of Environment and Heritage;
- Sydney Airport Corporation Limited;
- Civil Aviation Safety Authority;
- Department of Education;
- Airservices Australia;
- Federal Department of Infrastructure and Regional Development;
- Ausgrid; and
- Sydney Water.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least 21 days to comment on the proposal.

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 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. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.

Dated *23rd* day of *August* 2018.


Stephen Murray
Executive Director, Regions
Planning Services
Department of Planning and Environment

Delegate of the Greater Sydney Commission

Planning Services

Gateway Determination Report

LGA	North Sydney
PPA	North Sydney Council
NAME	Proposal to amend height of building control and introduce a minimum non-residential floor space ratio for land at 41 McLaren Street, North Sydney (224 homes, 0 jobs)
NUMBER	PP_2018_NORTH_001_00
LEP TO BE AMENDED	North Sydney Local Environmental Plan 2013
ADDRESS	41 McLaren Street, North Sydney
DESCRIPTION	Lot 1 in DP 557103
RECEIVED	4 May 2018
FILE NO.	IRF18/2893
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required.
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal.

INTRODUCTION

Description of planning proposal

The subject planning proposal seeks to amend the North Sydney Local Environmental Plan (LEP) 2013 in relation to 41 McLaren Street, North Sydney to:

- increase the maximum building height control from RL 100m AHD to RL 226m AHD; and
- increase the minimum non-residential floor space ratio (FSR) from 0.5:1 to 3:1.

The proposal seeks to permit a mixed-use building that will include:

- the refurbishment of a heritage-listed eight-storey commercial building;
- the addition of a residential tower comprising 37 storeys over the existing building, which has the capacity to accommodate approximately 224 units; and
- the construction of additional basement parking to accommodate a further 128 parking spaces to a total 219 spaces.

Although the proposal retains the existing building, it will result in a minor decrease in commercial office space to accommodate structural and site servicing of the proposed residential tower above.

The planning proposal report is supported by the following key consultant documents:

- architectural drawings and design statement;
- urban design strategy;

- site survey;
- economic viability report;
- independent market report;
- development feasibility report;
- public art strategy;
- public domain landscape plans;
- wind assessment; and
- heritage impact assessments

Site description

The subject site is known as 41 McLaren Street, North Sydney and comprises a rectangular-shaped allotment containing an eight-storey commercial office building known as Simsmetal House. This building is identified as a local heritage item under the North Sydney LEP 2013 as it was designed by notable Australian architect Harry Seidler.

The building is built to the southern (rear) and eastern boundaries, and has a minor setback from the northern (front) and western boundaries. It also provides for three articulated built form heights, stepping down from the rear to the front of the allotment.

The site has a land area of 2359m² and is legally described as Lot 1 in DP 557103.

The site has two street frontages and is on the corner of McLaren Street (primary frontage) and Harnett Street, which is a laneway immediately parallel to the site's eastern boundary (Figures 1 and 2, next page).

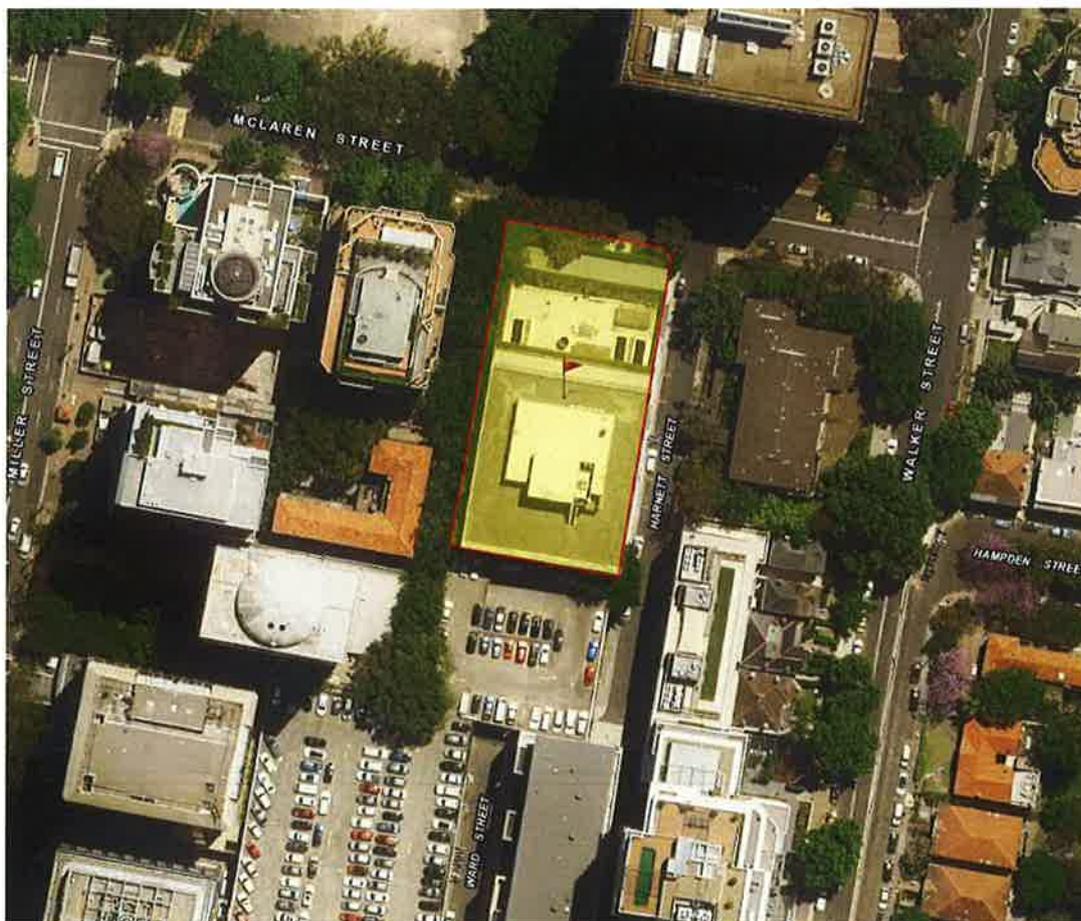


Figure 1: Locality map (source: SixMaps 2018).

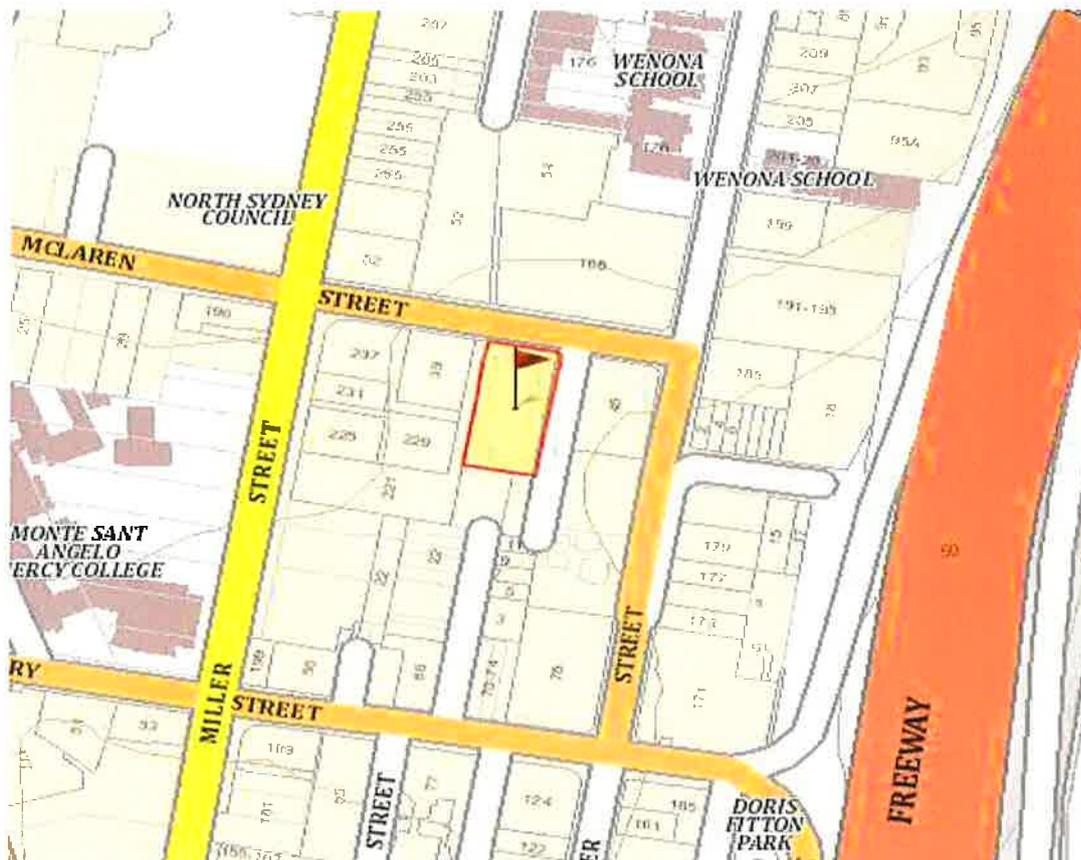


Figure 2: Cadastre map (source: SixMaps 2018).

Existing planning controls

Under the North Sydney LEP 2013, the site is zoned B4 Mixed Use and has a maximum building height of RL 100m AHD. The site is not subject to an overall maximum FSR but is subject to a non-residential minimum FSR control of 0.5:1.

The site is listed as a local heritage item (I0889) but is not located within a heritage conservation area.

The site is within the North Sydney Centre area as identified by the North Sydney LEP 2013. The following objectives of clause 6.1 of the LEP apply to the site and its development:

- a) to maintain the status of the North Sydney Centre as a major commercial centre,
- b) to require arrangements for railway infrastructure to be in place before any additional non-residential gross floor area is permissible in relation to any proposed development in the North Sydney Centre,
- c) to permit an additional 250,000 square metres of non-residential gross floor area in addition to the estimated existing (as at 28 February 2003) 700,000 square metres of non-residential gross floor area
- d) to ensure that transport infrastructure, and in particular North Sydney station, will enable and encourage a greater percentage of people to access the North Sydney Centre by public transport than by private transport and:
 - (i) be convenient and accessible, and
 - (ii) ensure that additional car parking is not required in the North Sydney Centre, and

- (iii) *have the capacity to service the demands generated by development in the North Sydney Centre,*
- e) *to encourage the provision of high-grade commercial space with a floor plate, where appropriate, of at least 1,000 square metres,*
- f) *to protect the privacy of residents, and the amenity of residential and open space areas, within and around the North Sydney Centre,*
- g) *to prevent any net increase in overshadowing of any land in Zone RE1 Public Recreation (other than Mount Street Plaza) or any land identified as "Special Area" on the North Sydney Centre Map,*
- h) *to prevent any increase in overshadowing that would adversely impact on any land within a residential zone,*
- 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.*

Clauses 6.3(2) and (3) of the LEP also apply to the site and its development and state that:

- (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 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 of the Don Bank Museum, or*
 - c) *the site area of the development is less than 1,000 square metres.*
- (3) *Development consent for development on land to which this Division applies may be granted for development 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 is not likely to reduce the amenity of any dwelling located on land to which this Division does not apply.*

Draft planning controls – North Sydney CBD Capacity and Land Use Strategy

North Sydney Council has sought to amend the planning controls for the North Sydney Centre under its North Sydney CBD Capacity and Land Use Strategy. The accompanying planning proposal for this strategy has been publicly exhibited and was being finalised at the time of writing this report.

Council's planning proposal seeks to:

- prohibit development for the purposes of serviced apartments within the B3 Commercial Core zone;
- apply new height controls to the North Sydney Centre based on the following:
 - maintaining solar access to residential land outside the North Sydney Centre between 10am and 2pm; and
 - the continued prohibition of additional overshadowing to land identified as 'Special Areas';

- enable development to occur on sites less than 1000m², but only where new development does not exceed 45m in height;
- remove clauses relating to the provision of railway infrastructure within the North Sydney Centre;
- remove clauses relating to the restriction on the amount of additional commercial floor space that can be accommodated within the North Sydney Centre;
- remove Elizabeth Plaza, Blue Street and Tower Square as 'Special Areas'; and
- apply a 'Special Area' to the rear of 100 Pacific Highway.

The effect of Council's proposal for the North Sydney Centre will increase maximum building heights under the North Sydney LEP 2013 for specific sites in the North Sydney Centre. However, these sites do not include the subject site at 41 McLaren Street.

Council's proposal will also amend clause 6.3 to ensure the objectives and provisions of this clause seek to prevent overshadowing impacts occurring on key public spaces in the North Sydney Centre, and to minimise impacts on residential development and open space areas located outside the North Sydney Centre. This amendment will relate to the subject site and its proposal.

Council's proposal seeks to include a provision to maintain solar access to residential land outside the North Sydney Centre between 10am and 2pm and the continued prohibition of additional overshadowing to land identified as 'Special Area' that includes Berry Square, which is 150m south of the site, both of which are relevant to the proposal for 41 McLaren Street.

The original planning proposal reporting for the subject site acknowledged Council's North Sydney Centre proposal, but did not fully contemplate what impact the proposed amendments under Council's proposal would have. Consequently, the Department of Planning and Environment requires that the planning proposal be updated to consider and assess the amendments under Council's North Sydney Centre proposal.

Surrounding area

The site is located at the northern extent of the North Sydney Centre in an area largely characterised by medium to high-rise commercial and residential development. The area surrounding the site comprises primarily of mixed-use buildings and lower-scale residential developments. The site lies on a street block that is bound by Miller, Walker and Berry Streets.

To the north of the site on the opposite side of McLaren Street at 168 Walker Street is an 18-storey commercial office building. Approval for redevelopment of this site has been granted for a 29-storey residential building with a maximum height of RL 167.51m AHD.

The corner of McLaren and Miller Streets to the north is vacant and will include the northern access point to the Victoria Cross Metro Station, which will serve the new Sydney Metro service connecting Rouse Hill to Bankstown through the Sydney CBD.

Located to the west of the site at 39 McLaren Street is a 15-storey residential building and a concentration of mixed-use towers along the Miller Street corridor. Council's Ward Street car park adjoins the site to the south. The site is approximately 600m north of North Sydney train station. The Victoria Cross Metro Station southern entry and associated over-station development will be located 170m south-west of the site, on the corner of Miller and Berry Streets (Figure 3, next page).

To the east of the site is a townhouse and low-rise flat residential development. The Warringah Freeway is approximately 170m east of the site.

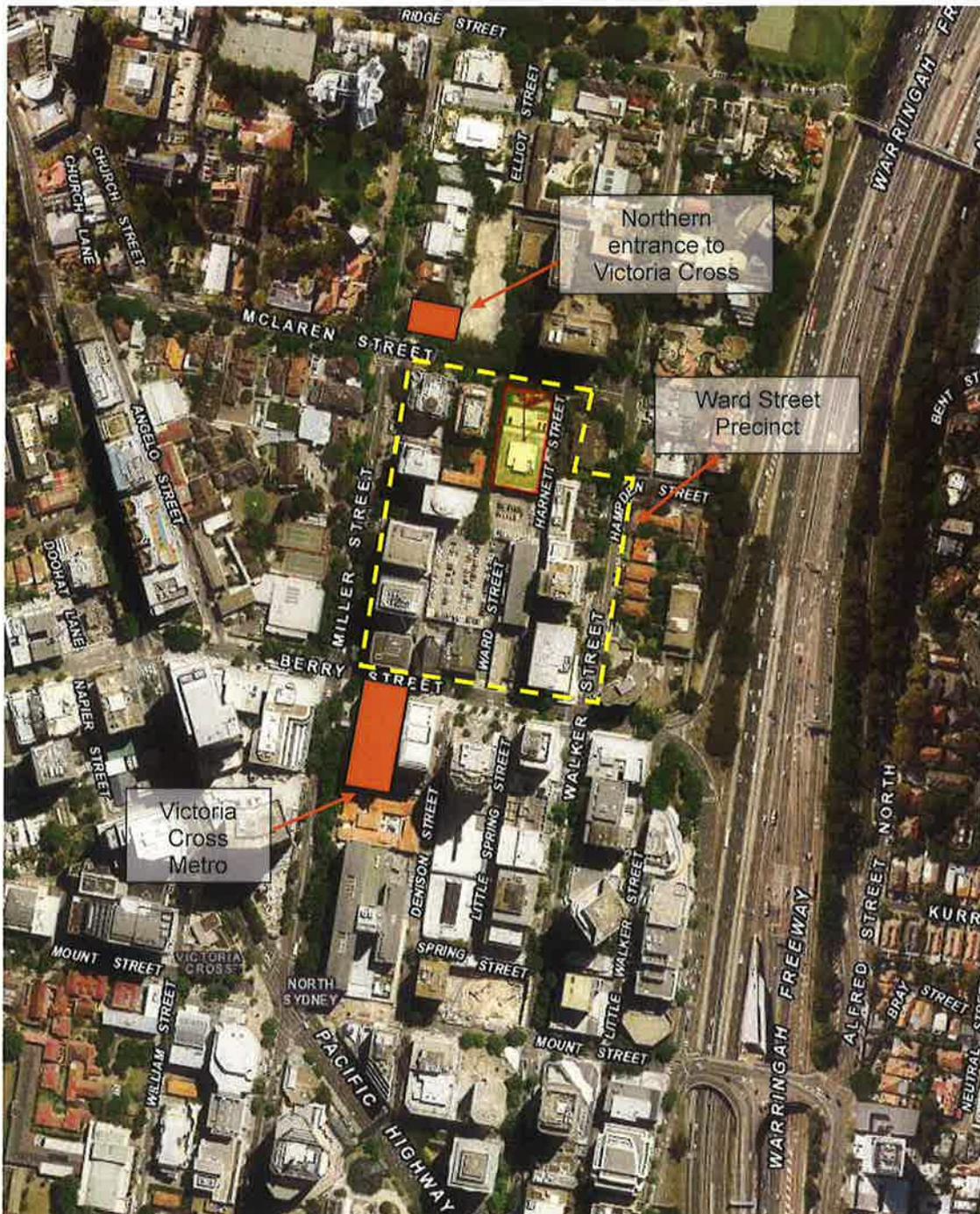


Figure 3: Local context map (source: SixMaps 2018).

Ward Street Precinct

The site is located within Council's nominated Ward Street Precinct (Figure 3).

Council prepared a draft Ward Street Precinct Masterplan (WSPM), which was exhibited in 2017 (Figure 4, next page). The aim of the masterplan was to improve the public domain areas at the northern end of the North Sydney CBD, utilising Council's Ward Street car park.

The draft WSPM proposed to replace the Ward Street car park with a community facility and a 1450m² public plaza (Figure 5, page 8) connected by active pedestrian-

focused laneways. This plaza was referred to as the Ward Street North of Centre (NoC) Square.

The draft masterplan identified the subject site for adaptive reuse to retain the existing building and proposes a building height change to RL 111m AHD, which is calculated to be an additional five levels of residential floor space that could accommodate approximately 25-30 apartments.

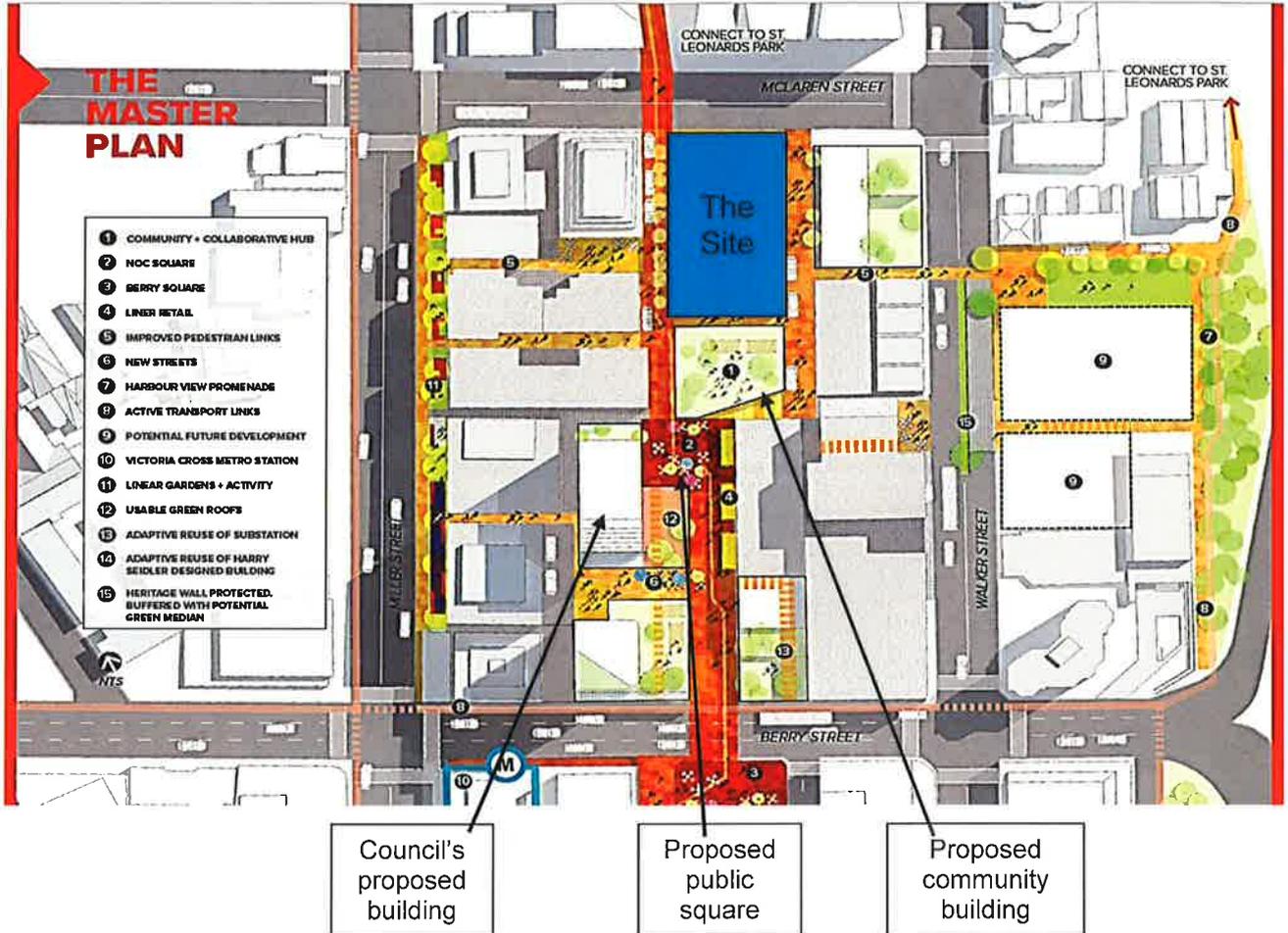


Figure 4: Draft Ward Street Precinct Masterplan as exhibited (North Sydney Council, 2017).

URBAN DESIGN FRAMEWORK

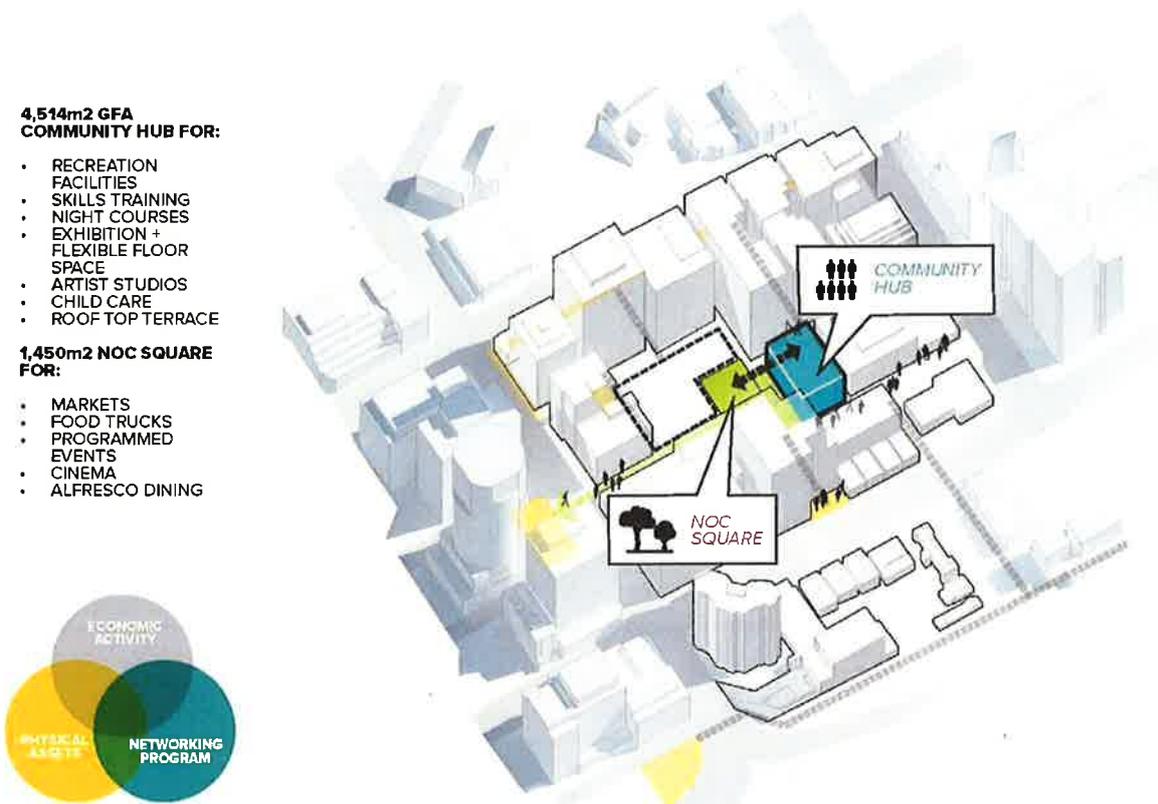
CREATE A COLLABORATIVE SWEET SPOT

Figure 5: Draft Ward Street Precinct Urban Design Framework as exhibited (North Sydney Council, 2017).

Stage 2 – Ward Street Precinct Masterplan (North Sydney Council, 2018)

On 25 June 2018, Council resolved to place the Stage 2 Ward Street Precinct Masterplan options on public exhibition for 60 days.

The masterplan options supersede the previous draft masterplan and propose amendments to the scheme in terms of the concept design and built form characteristics. Council confirmed that investigations of the Stage 1 building envelope of the site would be economically unfeasible. The proposed Stage 2 options seek to include alternative public square arrangements in the Ward Street Precinct and are detailed below.

None of the Ward Street Precinct options align with the scope of the subject planning proposal.

Option 1: Miller Street Square masterplan

This masterplan option proposes the creation of a public domain square of approximately 1280m² facing Miller Street at 213-219 Miller Street (Figure 6, next page).

This option identifies that the site should accommodate a mixed-use building with supporting retail/commercial uses and a slim hotel tower above. This option allows for a maximum FSR of 14:1 for the site (yielding a gross floor area of approximately 32,935m²), with a tower up to 30 storeys with a maximum height up to RL 160m AHD (Figure 7, next page).

Council has advised that solar studies completed for the masterplan showed the addition of a slim tower positioned over the south-east corner of the existing

heritage-listed building at 41 McLaren Street would not create unacceptable additional shadowing to the proposed public square during midwinter.



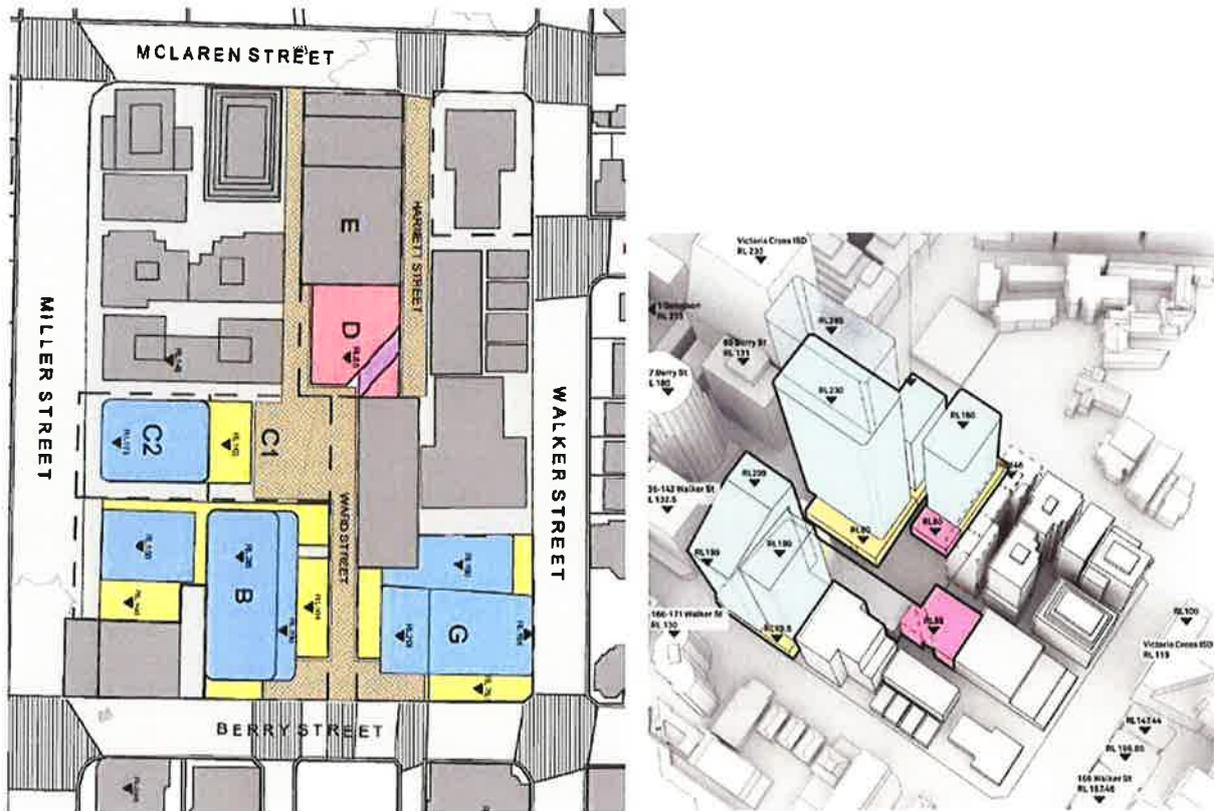
Figures 6 and 7: Miller Street Square masterplan option (brown areas are public domain) (left) and proposed built form envelopes as viewed from the east (right).

Option 2: Central Square masterplan

The masterplan focuses on a Central Square that offers a public square (Figure 8, next page) connected by laneways between McLaren and Berry Streets.

For most of the year, sunlight will reach the square from late morning until lunchtime. The testing for this masterplan option shows a high-rise development over the subject site at 41 McLaren Street, which would impact on the amenity of the square by blocking sunlight in the morning to early lunch period.

The masterplan identifies the site at 41 McLaren Street (Figure 9, next page) to remain, with existing LEP height controls to protect solar access and amenity to the public square.



Figures 8 and 9: Central Square masterplan option (brown areas are public domain) (left) and built form envelopes as viewed from the west and in plan (right).

Alternative masterplan (Architectus, 2017)

The proponent proposed an alternative masterplan (Figure 10, next page) for the Ward Street Precinct in response to the exhibition of the original draft masterplan.

The planning proposal is supported by an urban design study, which supports an alternative masterplan to achieve the proposed outcomes for the precinct. The Architectus masterplan proposed an alternative masterplan for the Ward Street Precinct providing different urban design outcomes to the concept design of the draft masterplan.

The alternative masterplan proposed a tower on the amalgamated site at 20 Ward Street, 56 Berry Street and 66 Berry Street of comparable height to the Metro Station. It also proposed a stepped wing tower on the subject site at 41 McLaren Street that enabled sun access to the new Ward Street North of Centre (NoC) Square and Berry Square as similarly expressed in the draft Ward Street Precinct Masterplan from 11am to 2pm.

In accordance with the Sydney North Planning Panel's recommendations as a result of a rezoning review (page 14), the planning proposal will exhibit the alternative masterplan as one of the precinct options for Ward Street.

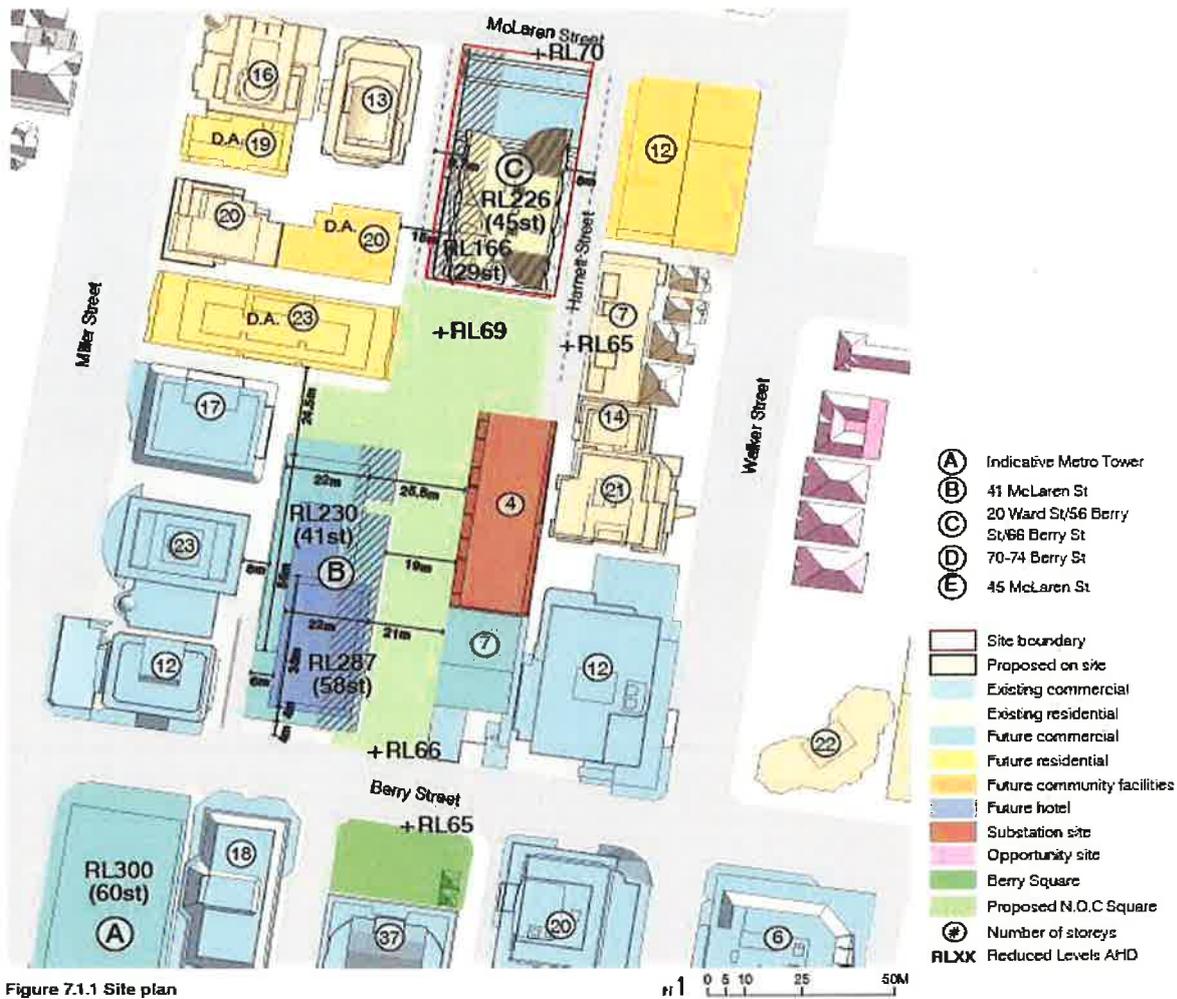


Figure 7.1.1 Site plan

Figure 10: Alternative masterplan (source: Architectus 2017).

Visionary masterplan (Architectus, 2017)

The proponent provided a second option to the draft Ward Street Precinct Masterplan, identified as the visionary masterplan (Figure 11, next page).

This plan provides for the potential uplift in capacity for the Ward Street Precinct, where the potential height of a future over-station development above Victoria Cross Metro Station is taken to establish the context for tower height in the precinct and is based on Council supporting the removal of sun access controls from Berry Square.

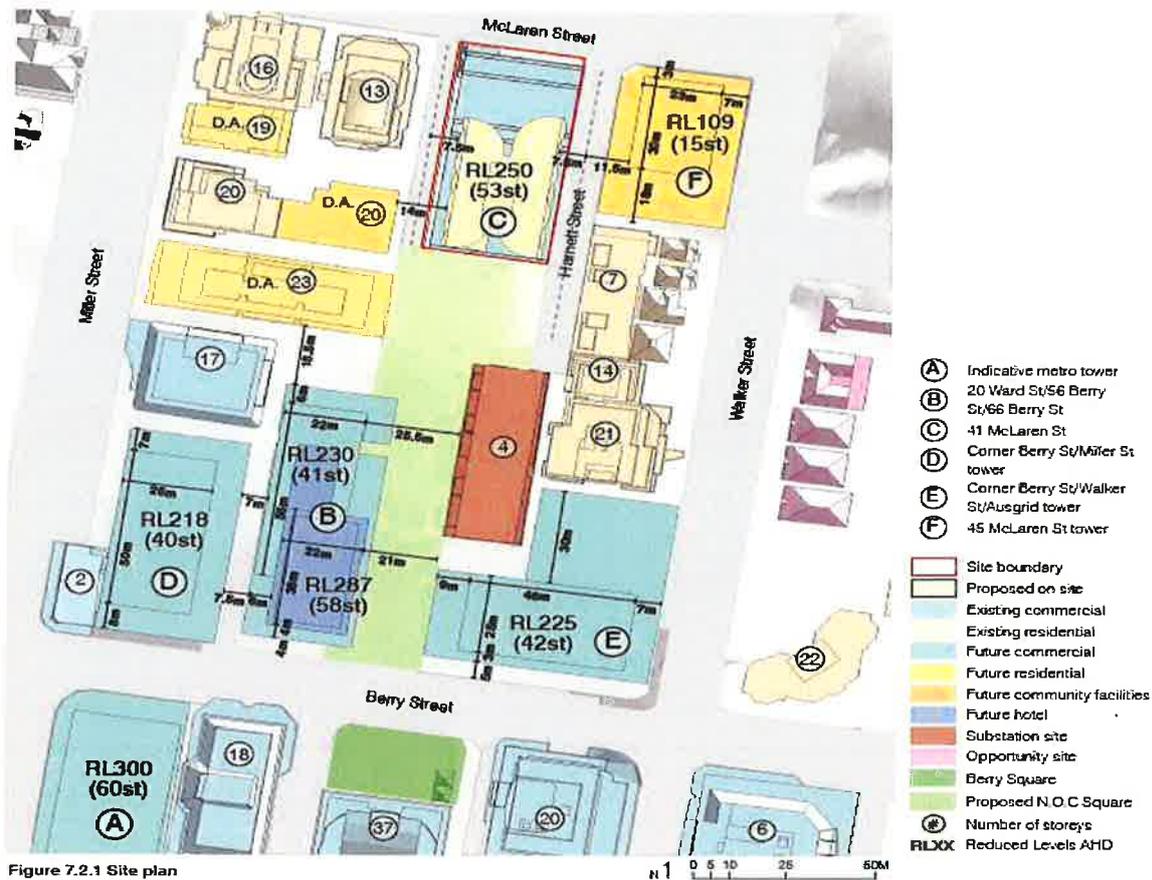


Figure 11: Visionary masterplan (source: Architectus, 2018).

Summary of recommendation

It is recommended that the planning proposal proceed subject to conditions as it:

- satisfies state, district and local planning objectives, which encourage development that will facilitate increased housing provision in locations well serviced by public transport and near employment opportunities;
- contributes to the delivery of the housing target set for the North Sydney LGA (3000 additional dwellings by 2021) by allowing for the delivery of approximately 224 new dwellings;
- provides for employment generation by requiring a minimum non-residential FSR of 3:1; and
- provides housing and employment in a location that is near to and has convenient accessibility to the new Victoria Cross Metro Station.

PROPOSAL

Objectives or intended outcomes

The principle objective of the proposal is to facilitate the redevelopment of the site, including the retention of the existing heritage-listed commercial building and the addition of a residential tower above. Other key objectives of the proposal are to:

- provide opportunity for increased residential dwelling provision to meet growing demand and support renewal of the site;
- allow an uplift in density for the site commensurate with its location opposite the planned Victoria Cross Metro Station; and

- enable redevelopment of the site in conjunction with the renewal of the Ward Street Precinct.

The objectives and intended outcome are considered clear and adequate for the purposes of the planning proposal. The proposal intends to increase housing supply in a strategically well-located site close to existing and future transport and employment opportunities. The existing commercial floor space will provide a commercial podium for the proposed mixed-use development.

Explanation of provisions

The planning proposal states two potential means of amending the North Sydney LEP 2013 to achieve the objectives and intended outcomes of the planning proposal, which include:

- the introduction of a site-specific clause under *Division 2 General provisions* of the NSLEP 2013 allowing for a development up to RL 226m AHD where the development satisfies certain requirements (as referenced below); or

6.20 Development at 41 McLaren Street, North Sydney

- 1) *The objective of this clause is to provide for additional building height on land at 41 McLaren Street (Lot 1 DP 557103) if the development of the site provides for retention and conservation of 'Simsmetal House' and pedestrian links through the site.*
 - 2) *Despite clause 4.3, development consent may be granted to a building on the land with a maximum height of RL 226 metres.*
 - 3) *Development consent must not be granted under this clause unless the consent authority is satisfied that the development will;*
 - a) *Conserve key components and attributes of 'Simsmetal House';*
 - b) *Be consistent with a heritage management document prepared in accordance with clause 5.10(5);*
 - c) *Provide publicly accessible, unobstructed external access through the site (a through-site link); and*
 - d) *Provide active uses with frontages at ground level addressing the through-site link.*
 - 4) *This clause prevails in the result of any inconsistency clause 6.3(3).*
- to amend the height of building map to allow for a building height of up to RL 226m AHD and amend the non-residential FSR map from 0.5:1 to 3:1.

The most appropriate mechanism to achieve the intended outcome is to amend the height of buildings map, as the requirements within the site-specific clause can be achieved at the development application stage and do not need to be stipulated in an LEP.

The Department recommends the planning proposal update the explanation of provisions to reflect the appropriate means of achieving the intended outcomes facilitated by the proposed map amendments to building height and non-residential FSR.

Mapping

It is recommended the Gateway determination require the proposed amendment maps in the planning proposal be updated to reflect a building height of RL 226m AHD and a non-residential FSR of 3:1. The planning proposal should be updated prior to community consultation.

NEED FOR THE PLANNING PROPOSAL

The planning proposal is the result of an urban design study containing an alternative masterplan (Architectus) prepared on behalf of the site's landowners. The study forms the basis of the submission provided to Council regarding the public exhibition of the Draft Ward Street Precinct Masterplan (WSPM).

The current draft WSPM identifies the site for adaptive reuse to retain the existing building and proposes two options for building height. The urban design study acknowledges that while the objectives and principles in the draft WSPM are supported, it claims the envisaged development outcomes are not economically feasible.

The study considers the new Victoria Cross Metro Station and appropriate levels of development uplift that would be considered appropriate given this level of investment in public transport and the increased public transport capacity.

The proposal states that the intended outcomes of the proposal can only be achieved through a significant increase in height than what is currently permissible under the North Sydney LEP 2013. The current maximum building height does not allow additional development above the existing development on-site. The existing commercial use is proposed to be retained and will be protected by the increase in the minimum non-residential FSR. The existing built form of the building will be retained; however, the commercial gross floor area (GFA) will be decreased to accommodate the structural and functional servicing for the proposed residential component.

It is considered that the proposed increase in height is adequately justified and the proposal to amend the current height of building development standard and increase the minimum non-residential FSR will facilitate the intended outcomes of the proposal. The proposal will preserve the heritage significance of the site and adaptively reuse the building.

Sydney North Planning Panel determination

On 7 March 2018, based on a rezoning review request, the Sydney North Planning Panel determined that the planning proposal should proceed to Gateway as the proposal had demonstrated strategic and site-specific merit. The panel considered that the site and the change in density on the site had strategic and site-specific merit having regard to:

- increased residential and commercial density requirements of the former draft North District Plan;
- the location of the new metro access at the corner of Miller and McLaren Streets; and
- the North Sydney Centre Capacity and Land Use Study (NSCCLUS), with increase in height to a maximum of RL 289m AHD.

The panel also recommended that:

- the planning proposal for increased height, including the alternative masterplan (or visionary masterplan prepared by Architectus), which justifies it, proceed to Gateway;
- the planning proposal and alternative masterplan not proceed to exhibition until Council exhibits its review of its proposed strategy (which the panel understood would have multiple options);
- the planning proposal and alternative masterplan be exhibited as one of the precinct options;

- in exhibiting the planning proposal and alternative masterplan, a development standard requiring a minimum FSR of 3:1 be included for non-residential GFA; and
- any precinct plan should not increase car parking beyond the existing levels.

STRATEGIC ASSESSMENT

Regional/District

Greater Sydney Region Plan

The Greater Sydney Region Plan was released by the Greater Sydney Commission in March 2018. The plan is guided by 10 overarching directions, which provide interconnected infrastructure, productivity, liveability and sustainability to all Greater Sydney residents.

The planning proposal is considered to be generally consistent with the directions, objectives and strategies of the plan as it provides development opportunities to increase residential accommodation in the outer periphery of a major strategic centre and in proximity of high-frequency mass-transit public transport infrastructure.

The planning proposal was lodged prior to the plan's release and has therefore not been addressed by the proponent. It is requested that prior to community consultation, the planning proposal be revised to provide an assessment against the plan.

North District Plan

The North District Plan (March 2018) is relevant to the site. The planning proposal provides an assessment against the Draft North District Plan, which was the current plan at the time of the planning proposal's submission to Council. It is requested that prior to community consultation, the planning proposal be revised to provide an assessment against the North District Plan.

The plan identifies the role of North Sydney to strengthen the district's economic links to the Harbour CBD and its role in the Eastern Economic Corridor. The plan identifies the need to provide housing close to jobs, services and infrastructure. The plan identifies several priorities for the district, which should be considered in the assessment of planning proposals.

The plan identifies the following relevant employment and housing targets for the North Sydney LGA:

- employment: an additional 15,600–21,100 jobs by 2036; and
- housing: an additional 3000 dwellings by 2021 for the North Sydney LGA and an additional 92,000 dwellings by 2036 for the North District.

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

The proposal is contrary to Planning Priority N8 as it decreases the commercial office space as specifically referenced for North Sydney. The proposal will result in a loss of non-residential floor space that conflicts with the strengthening of the employment role of the Eastern Economic Corridor. It is considered that the reduction to the existing commercial space is due to the requirements to provide a larger building core to service the additional residential use above (i.e. lift shaft and servicing). The department considers that the proposal continues the commercial viability of the site and provides for additional ground floor-activated uses and therefore provides connectivity and negates any potential inconsistency with this priority.

Relevant priorities identified in the North District Plan are as follows:

- Planning Priority N1: Planning for a city supported by infrastructure;
- Planning Priority N4: Fostering healthy, creative, culturally rich and socially connected communities;
- Planning Priority N5: Providing housing supply, choice and affordability, with access to jobs, services and public transport;
- Planning Priority N6: Creating and renewing great places and local centres, and respecting the District's heritage;
- Planning Priority N7: Growing a stronger and more competitive Harbour CBD; and
- Planning Priority N12: Delivering integrated land use and transport planning and a 30-minute city.

The proposal facilitates a range of housing types, including a mix of studio and one-bedroom, two-bedroom and three-bedroom apartments located in the northern extent of the North Sydney Centre, connected to employment and public transport. The proposal will promote urban renewal by providing housing intensification in direct proximity to the North Sydney CBD. The proposal will provide additional capacity for mixed-use development in North Sydney and offer housing close to jobs in North Sydney.

The proposal retains the heritage-listed Simsmetal House and associated commercial viability of the site. The proposal provides for conservation and restoration works to the existing building to ensure the heritage value is retained. Furthermore, the proposal adaptively reuses the building by providing a renewed focal point for the entry and exit of the Ward Street Precinct and an appropriate solution for the longevity of the existing building.

The increased residential densities will contribute to the revitalisation of the locality and the Ward Street Precinct. The proposed redevelopment of the site will provide a mix of uses that will promote street activation and provide a pedestrian spine within the Ward Street Precinct in immediate proximity to transport, open space, services and the commercial core of the North Sydney CBD.

The proposal will contribute to housing supply targets, providing approximately 224 dwellings in the form of apartments. It is considered that the planning proposal is generally consistent with the above priorities as it will increase housing in a strategic location that assists in delivering Council's five-year housing target. The proposal supports the existing commercial viability of the site by retaining and protecting the commercial floor space component.

Local

Stage 2 – Ward Street Precinct Masterplan (WSPM)

As outlined earlier in this report, Council publicly exhibited the draft WSPM between 26 January and 10 March 2017, and has resolved to proceed to exhibit two new masterplan options for the precinct. The draft WSPM aims to improve the public domain offering of the CBD and plan for the urban renewal of the development within this precinct.

Although the proponent has provided an alternative masterplan in response to the exhibition of the Draft WSPM, there are parallels with this and Council's masterplan options for the precinct, including:

- the proposed development for the site is contained within the boundaries of the site;
- any future development of the site is to incorporate adaptive reuse of the existing heritage-listed building;
- the proposal for the site does not encroach into either proposed public domain square area;
- the site will continue to retain the same ground plane and built form footprint; and
- a pedestrian site through-link is to be provided to the western edge of the site to allow for a large portion of the north-south link through the Ward Street Precinct.

The key differences between Council's masterplan options and the alternative masterplan proposed by Architectus are the scale and built form above the podium of the existing building on the site. This is largely based on Council's desire to minimise impacts on the North of Centre (NOC) square in either location in the Ward Street Precinct.

The Panel recommended that the planning proposal and the Alternative Masterplan not proceed to exhibition until Council exhibits its review of its proposed strategy. On 25 June 2018, Council resolved to place Stage 2 WSPM option for exhibition. It is expected to be exhibited August 2018 as confirmed by Council.

For this reason, it is not considered necessary for the alternative masterplan to be exhibited as a third option for the Ward Street Precinct. Rather, it is proposed that the planning proposal test both options for the Ward Street Masterplan and include these in the exhibited planning proposal.

Residential Development Strategy (2009)

The North Sydney Residential Development Strategy (RDS) identifies the potential for an additional 6199 dwellings in the North Sydney LGA by 2031 under the provisions of the North Sydney LEP 2013. The RDS identifies North Sydney as accommodating an additional 2097 dwellings by 2031.

The RDS does not identify additional residential accommodation on the site as it is identified as a heritage item. However, the RDS does not consider the announcement of the Victoria Cross Metro Station. The planning proposal responds to the investment of new transport infrastructure, providing the opportunity to provide residential uplift near and with good accessibility to the new Victoria Cross Metro Station and other existing transport infrastructure.

Local Development Strategy (2009)

The Local Development Strategy is a translation of the strategic vision for Council as identified in A Plan for Growing Sydney, the Draft North District Plan and Council's RDS. The outcomes of these strategic plans are previously addressed in the assessment section of this report.

Community Strategic Plan 2013-2023

The North Sydney Community Strategic Plan 2013-2023 identifies the main priorities and aspirations for the LGA. The proposal is considered to appropriately facilitate the urban renewal of the site and promote the creation of a vibrant mixed-use precinct. The proposal will allow for the feasible redevelopment of the site, allowing for the public domain works including dedication of open space and commercial ground floor uses that will activate the northern entrance of the Ward Street Precinct. The

proposal is considered to be consistent with the identified directions of Council's Community Strategic Plan.

Section 9.1 Ministerial Directions

Direction 1.1 Business and Industrial Zones

The objective of this Direction is to encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the vitality of identified strategic centres.

The planning proposal is inconsistent with this Direction as it will reduce the commercial floor space by 2863m². The existing commercial development provides for 10,148m² of GFA, providing a total FSR of 4.3:1. The proposed development provides for a total of 7285m² of GFA, providing a total FSR of 3.09:1, which is 2.5:1 more FSR than the minimum non-residential FSR required for the site.

The inconsistency is considered to be adequately justified as the proposed decrease in commercial GFA is the compromise for structural and functional features to support the proposed residential uplift. This compromises the existing GFA for features such as site amenities, structural walls, building core and lifts. The proposal negates the inconsistency as it protects employment land within the B4 Mixed Use zone and supports the ongoing commercial viability of the site.

It is recommended that prior to exhibition the planning proposal be updated to reflect a minimum 3:1 FSR be included for non-residential GFA.

Direction 2.3 Heritage Conservation

The objective of this Direction is to protect items, areas, objects and places of heritage significance.

The subject site is listed as a local heritage item (10889), identified as Simsmetal House. The state heritage inventory listing for Simsmetal House lists the statement of significance as a good example of an eight-storey concrete-framed office building in the 20th-century international style with strong horizontality in its elevations.

The heritage impact statement notes that a range of measures have been implemented in the design of the future development to conserve significant building components and attributes to mitigate potential adverse impacts.

The planning proposal is considered consistent with this Direction as it seeks to retain the heritage item. Furthermore, the Department recommends consultation with Office of Environment and Heritage.

Direction 3.1 Residential Zones

The objectives of this Direction are to encourage a variety of housing types, make efficient use of existing infrastructure and services, and minimise the impact of development on environment and resource land.

The planning proposal is consistent with this Direction as it utilises the B4 Mixed Use zone to provide for the increase of residential densities. The proposal states that it provides housing near the future Victoria Cross Metro Station, the existing North Sydney Train Station and the North Sydney Centre. The proposal thereby makes efficient use of existing and future infrastructure, services and amenities. The proposal states that an appropriate mix of apartment types can be addressed at the development application stage.

It is considered that the extent to which infrastructure augmentation will be required can be confirmed by infrastructure providers during the agency consultation phase.

Direction 3.4 Integrating Land Use and Transport

The planning proposal is consistent with this Direction as it provides increased housing supply in a strategically well-located site close to existing and future transport and employment opportunities. The commercial use will be retained so the development operates as a mixed-use building.

Direction 3.5 Development Near Licensed Aerodromes

The planning proposal is inconsistent with this Direction as the proposed maximum building height of RL 226m AHD is above the obstacle limitation surface (OLS) for North Sydney of 156m AHD. The height is below the procedure for air navigation systems operations (PAN-OPS) surface of 335.2m AHD.

In accordance with the provisions of clause 4(d) of the Direction requires that permission from the relevant Department of the Commonwealth, or their delegate, prior to undertaking community consultation in satisfaction of Schedule 1, Clause 4 (former Section 57) of the EP&A Act 1979.

The Greater Sydney's Commission delegate, can be satisfied that the inconsistency is of minor significance and the Department of Infrastructure and Regional Development and Sydney Airport Corporation will be consulted as part of the Gateway determination. This direction will however be unresolved until consultation with the required authorities has been finalised, and the permission is obtained.

State environmental planning policiesState Environmental Planning Policy No 55 – Remediation of Land

Clause 6 of this SEPP requires the planning authority to be satisfied that the land is suitable, or can be made suitable, for all uses permissible in the zone.

The planning proposal states that the site is occupied by a commercial office building completed in 1973, which will be retained as part of the future development of the site with a residential tower above. Given the history of use of the land and that there is no proposed change to the permissible uses of the land, the site is likely to be suitable in accordance with SEPP 55. Additional investigations can be carried out and managed at the development application stage.

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

The planning proposal states that it is considered to be consistent with the nine design principles of this SEPP and the accompanying objectives of the Apartment Design Guide. The planning proposal states it is not considered to hinder the application of this SEPP or the accompanying guide.

The proposal provides an assessment against the provisions of the SEPP. The minimum deep soil objective cannot be achieved due to site constraints in relation to the retention of the existing building, which adheres to most of the subject site, and it is thus not possible to provide deep soil zones. The proposed development does not comply with the visual privacy objectives, providing inadequate building separation and setbacks. The concept proposal will result in adjoining residential developments not achieving the minimum requirements of solar access.

While the concept proposal generally appears to comply with the key principles of this SEPP, it is identified that the non-compliances can be further investigated and resolved at the development application stage.

SITE-SPECIFIC ASSESSMENT

Social

The planning proposal is not supported by a social infrastructure assessment.

The proposal has the potential to result in 224 apartment dwellings, which is equivalent to an added population of about 450 people. This will likely create additional pressure on community facilities. The proposal does not contemplate the provision of additional facilities to support this additional population increase.

It is noted that the proposed voluntary planning agreement seeks to contribute towards the cost of delivering public open space and associated public domain works in the Ward Street Precinct, and the double-height colonnade to then deliver part of the north-south pedestrian link between McLaren and Berry Streets.

Given the proposal is likely to increase demand on existing facilities and services, a social impact assessment is required as part of the revised planning proposal to demonstrate how adequate social and open space infrastructure will be provided to support the future development of the site.

Public benefits

The proposed development will be able to deliver a pedestrian link through the Ward Street Precinct, enabling a key connection between McLaren Street and the public open space NoC Square (if this were to be located to the south-west of the subject site). This potential link is equivalent to one-third of the proposed fuller through-link between McLaren and Berry Streets and could contribute towards and enhance the public domain areas in the North Sydney CBD.

The proposal enables both the retention and reuse of the existing heritage-listed and Harry Seidler-designed building, reinforcing the heritage values of the site and its association with the notable architect. The proposed concept scheme for the site demonstrates that there is capacity to extend this building while retaining the existing aesthetics of the building and including complementary development.

The proposal helps to further progress the regeneration of this part of the North Sydney CBD that is aligned with the timing for the delivery of the new metro service.

The planning proposal states that the proposed uplift in density will enable colocation of new housing and commercial activities that has excellent accessibility to new mass-transit metro services and within a key strategic business centre of Sydney.

The planning proposal is in the public interest as it aligns with the relevant planning priorities and directions of the North District Plan in that it provides the opportunity to:

- deliver infrastructure supporting development that aligns new development with new public transport infrastructure;
- provide additional public domain areas for the North Sydney CBD, contribute to the north-south link through North Sydney and enhance the walkability of this part of North Sydney;
- increase the delivery of housing for the North Sydney LGA;
- retain commercial activity in the North Sydney CBD; and
- renew and respect local heritage.

Environmental

Natural environment

The site is within the highly established urban area of the North Sydney CBD. There are no known critical habitats, threatened species, populations or ecological communities that will be adversely impacted as a result of the proposal.

Heritage

The planning proposal does not propose to amend the heritage status of the subject site. Rather, it seeks to enable the reuse of this building and include complementary additional development. The proposal will retain the existing building and conserve the three-storey front block with terraces and the original covered colonnade, and enable the reconstruction of the vertical sun-shading blades on the east and west elevations.

A heritage impact assessment accompanying the planning proposal states that the site should be afforded uplift to ensure the heritage building is appropriately maintained and improved. While this may be true, the challenge of integrating new development without compromising the architectural integrity and heritage values of the existing building are considered to be important. This design aspect is considered below.

Overall, the proposal provides the opportunity for the conservation of the heritage significance of the existing commercial office building, while allowing for new development that will complement the building's character and accommodate future development growth in a key strategic centre.

Bulk and scale

The proposal considers that the current Simsmetal House building is no longer of scale or built form that conforms with its CBD setting or the future desired character for development at scale in this part of the North Sydney Centre. Therefore, additional development of additional scale would better reflect and identify North Sydney as a key strategic business centre.

The retention of the existing building limits the opportunity for additional development on the site. However, the proposed development retains the existing commercial building and uses this as a podium for residential tower development. The concept scheme provided with the planning proposal illustrates a residential tower setback from the podium edges to enable exposure and appreciation of the existing building.

The Sydney North Planning Panel recommended the proponent's proposal and their alternative masterplan as outlined in the planning proposal be exhibited as a third option for the Ward Street Precinct. Council has not resolved to exhibit this third option.

When considered in the context of Council's masterplan options for the Ward Street Precinct, the extent of the development on the subject site and the proposed provision of a through-site link as proposed by the proponent are reflected in each of Council's masterplan options. Therefore, the proposal generally conforms with the footprint and public domain expectations of both masterplan options for the Ward Street Precinct.

On this basis, it is not warranted that the proponent's third precinct plan be exhibited with the planning proposal, and it would be expected that the proponent can draft and submit a submission to Council in response to the proposed masterplan options for the Ward Street Precinct separately.

However, the planning panel recommended the planning proposal not proceed to public exhibition until Council exhibits its review of the Ward Street Strategy, which

has cumulated in the two masterplan options. It is understood that these options are expected to be exhibited August 2018 as confirmed by Council.

The use of a tower element above the podium allows for a reduction in the size of the upper floorplates, which would reduce the visual bulk of the building when viewed from a distance and ensure that the visual presence of the existing heritage-listed building is retained when viewed from the adjoining streets.

A key challenge for the proposal will be to ensure that any future development is complementary to the original architecture associated with Harry Seidler and does not compromise the design principles of the existing building. While the North Sydney LEP 2013 does not include any design excellence provisions, the implementation of SEPP 65, Council's development control plan and the design excellence panel process at the development application stage would guide appropriate built form and design for any future tower on the site and its integration with the existing building.

The scale and built form for the towers may have impacts on the solar access levels of adjoining development. Architectus's solar access review in its urban design study report for the planning proposal identifies several existing residential developments near the proposal that may be affected by future tower development on the site. The Department recommends that an additional assessment be undertaken to consider what impact the proposal may have on these adjoining residential developments and what mitigation measures and/or built form setbacks could be applied to minimise impacts.

Overshadowing

The proposed development for the site will likely result in an increase in overshadowing within and outside of North Sydney Centre as shown within the solar access assessment that accompanies the planning proposal. The planning proposal report states that it is an outcome of the North Sydney Centre Capacity and Land Use Study that seeks to amend the provisions of the North Sydney LEP 2013 in relation to the impacts of overshadowing.

The proposed development will result in long shadows over different parts of North Sydney at different times of the day during midwinter. The proposal is expected to generate overshadowing during parts of the day to the proposed NOC Square where this is proposed to be located to the south-west of the site (as shown in one of the options for the Ward Street Precinct Masterplan).

The shadow diagrams provided with the proposal are based on a detailed design scheme and have not been able to consider what shadowing impacts the proposal may have on the two masterplan options posed by Council for the Ward Street Precinct, due to the recent release of these options.

Clause 6.3(2) of the North Sydney LEP 2013 stipulates that development consent must not be granted to the erection of a building within the North Sydney Centre that would result in a net increase in overshadowing between 12pm and 2pm on land zoned RE1 Public Recreation or that is identified as a 'Special Area'. Berry Square is a nominated 'Special Area' that is located 150m south of the site. From the information provided with the planning proposal, the scheme will not result in a net increase in overshadowing to Berry Square during these nominated times at any time during the year.

However, given the shadow diagrams are based on a particular scheme design and do not consider what impacts the proposal will have on the two new masterplan options for the Ward Street Precinct, the Department recommends that

overshadowing diagrams be updated to include the potential overshadowing impacts envisaged by the proposed development as a condition of the Gateway determination.

Visual impact

The planning proposal provides a visual impact assessment of the proposal from representative locations in the public domain, including existing development and approved development towers near the site. This includes the proposed development as provided in detailed architectural design with existing building envelopes, current approved development applications, and the potential tower on the Metro Station site at the corner of Berry Street and Miller Street.

As illustrated in **Figure 12**, the proposed development will be visually apparent as part of the North Sydney cityscape. The proposed tower is perceived to be dominant due to its location on the northern extent of North Sydney's CBD. It is considered that the proposed height and scale of the proposed development is appropriate given the changing strategic nature of North Sydney, and the anticipated future development growth for this part of the North Sydney CBD. This scale will also help denote the importance of this part of the CBD as including the new metro station. It is considered that the visual impact will need to be further assessed at the development application stage if the proposal is to proceed.

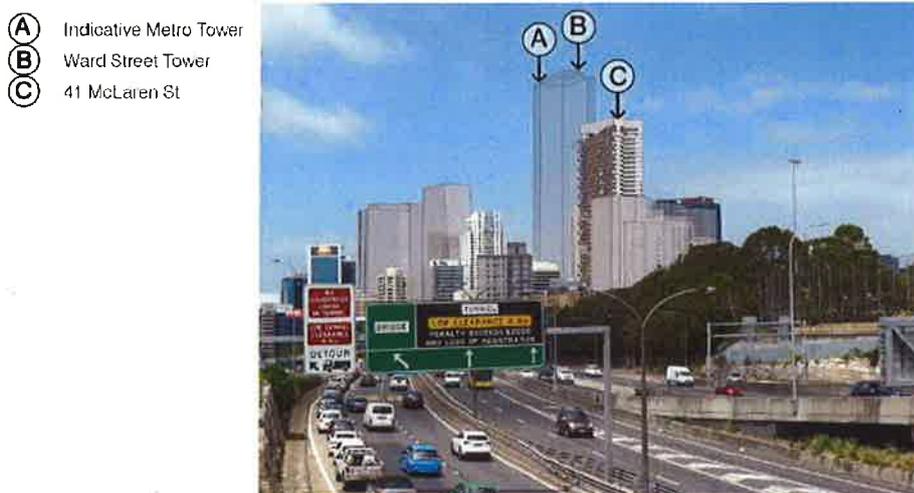


Figure 12: View looking south-west from Falcon Street overpass (Architectus, 2017), including Architectus's recommended consolidated tower development at 20 Ward, 56 Berry and 66 Berry Streets (site B).

View loss

The proposed development will likely have an impact on neighbouring residential views, namely existing buildings to the immediate west of the site, including the existing building at 39 McLaren Street (15 storeys) and the approved 19-storey building at 229 Miller Street. The planning proposal states that the tower has been designed to retain 60-degree views from the affected buildings. It is considered that view loss analysis will need to be further investigated and provided at the development application stage if the proposal proceeds.

Traffic

A traffic impact assessment prepared for the future development of the site considers the impact of the proposed development on the surrounding network and finds that the proposed development will have a negligible impact on the

performance of key intersections in the locality, with only minor increases to intersection delays.

The existing development contains 91 car parking spaces provided over two basement levels. In accordance with the North Sydney Development Control Plan 2013 (North Sydney DCP 2013), a maximum number of 192 spaces are permitted. The proposal provides for the addition of 27 more car spaces to accommodate visitor parking as Council's DCP does not provide for a visitor parking rate. In total, the proposed development for the site seeks to include 219 car spaces, being 128 additional car parking spaces.

The Stage 2 Ward Street Precinct Masterplan proposes a total of 59 car spaces for option 1 and no change to option 2, and the planning panel recommended no increase in the existing parking for the precinct. For this reason, the planning proposal is to include a traffic and parking assessment that considers no increase in car parking for the site, especially as the site will have direct access to a new mass-transit metro service.

Economic

The planning proposal contains a market analysis and commercial viability analysis. These highlight that the proposed development options for the site under the original masterplan include small and irregular commercial plates and insufficient uplift to encourage redevelopment. Based on these economic studies, an economically viable outcome can only be achieved through a greater increase in height and floor space yield, which provides the ability for the provision of public domain and precinct works.

Infrastructure

The site is located within existing and proposed transport infrastructure, including existing road connections. The site is in a locality that allows future residents and workers to capitalise on the wide range of infrastructure and services available and planned within the area. It will reinforce the proposed investment of the Victoria Cross Metro Station.

It is considered that at the development application stage, consultation will be required with utility providers to ensure that sufficient capacity exists in water, sewer, gas, telecommunications and other utility services.

As discussed earlier in this report, it is recommended that the proposal consider what needs the proposal may have in terms of social infrastructure and open space that will underpin future additional development on the site.

CONSULTATION

Community

The planning proposal states that public consultation will be undertaken in accordance with the Gateway determination. An exhibition period of 28 days is considered acceptable.

Agencies

The planning proposal states that consultation with public authorities will be undertaken within the requirements of the Gateway determination. It is recommended that the following agencies be consulted on the planning proposal and given 28 days to comment:

- Transport for NSW, including Sydney Metro;
- Roads and Maritime Services;
- Office of Environment and Heritage;

- Sydney Airport Corporation Limited;
- Civil Aviation Safety Authority;
- Department of Education;
- Airservices Australia;
- Federal Department of Infrastructure and Regional Development;
- Ausgrid; and
- Sydney Water.

TIME FRAME

The planning proposal provides an estimated project timeline of six months to complete the LEP. A time frame of 12 months is considered appropriate given the nature of the proposal.

LOCAL PLAN-MAKING AUTHORITY

The planning proposal was the subject of a rezoning review application. Council has requested to exercise its plan-making authorisation in relation to the planning proposal. As the site is within the Ward Street Precinct, Council should not be authorised to be the local plan-making authority for this proposal. Council have accepted the role of PPA.

CONCLUSION

The planning proposal is supported to proceed with conditions as it:

- satisfies state, district and local planning objectives, which retain employment opportunities and encourage development that increases housing provision in locations well serviced by public transport and near employment opportunities;
- contributes to the delivery of the housing target set for the North Sydney LGA (3000 additional dwellings by 2021) by allowing for the delivery of approximately 224 new dwellings;
- provides for employment generation by requiring a minimum non-residential FSR of 3:1; and
- provides housing and employment in a location that is in close proximity and with convenient accessibility to the new Victoria Cross Metro Station.

As discussed above, the planning proposal should be updated to:

- provide a project timeline outlining the anticipated time frames for the plan-making process;
- address the strategic planning framework in relation to the Greater Sydney Region Plan and the North District Plan;
- consider the implications of the proposed amendments to the North Sydney LEP 2013 for the North Sydney CBD Capacity and Land Use Strategy;
- demonstrate how adequate social and open space infrastructure will be provided to support the future development of the site;
- include additional assessment regarding what impacts the proposal may have on adjoining residential developments and what mitigation measures and/or built form setbacks could be applied to minimise impacts;

- include updated overshadowing diagrams that consider what impacts the proposal may have on the two Council proposed masterplan options for the Ward Street Precinct; and
- assess and consider no increase in the current amount of car parking for the site, especially as the site will have direct access to a new mass-transit metro service.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree that any inconsistencies with section 9.1 Ministerial Directions 1.1 Business and Industrial Zones are justified; and
2. note that consistency with section 9.1 Direction 3.5 Development Near Licensed Aerodromes is unresolved until consultation with the required authorities has been finalised.

It is recommended that the delegate of the Greater Sydney Commission determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal should be made available for community consultation for a minimum of 28 days.
2. Consultation is required with the following public authorities:
 - Transport for NSW, including Sydney Metro;
 - Roads and Maritime Services;
 - Office of Environment and Heritage;
 - Sydney Airport Corporation Limited;
 - Civil Aviation Safety Authority;
 - Department of Education;
 - Airservices Australia;
 - Federal Department of Infrastructure and Regional Development;
 - Ausgrid; and
 - Sydney Water.
3. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
4. Given the nature of the planning proposal and its context to Council's Ward Street Precinct plans, Council should not be authorised to be the local plan-making authority.
5. Prior to exhibition, the planning proposal should be updated to address the following:
 - (a) to reflect the proposed amendments to amend the height of building map and non-residential FSR map;
 - (b) update overshadowing diagrams to represent the likely extent of overshadowing from the proposed development to adjoining development and Council's two draft masterplan options for the Ward Street Precinct;
 - (c) consider and demonstrate how adequate social and open space infrastructure will be provided to support the future development of the site;

- (d) consider what impacts the proposal may have on adjoining residential developments, and what mitigation measures and/or built form setbacks could be applied to minimise impacts;
- (e) assess the traffic and parking impacts of the proposal, and consider no increase in the provision of on-site parking beyond that currently accommodated within the site; and
- (f) demonstrate consistency with the Greater Sydney Region Plan and the North District Plan.



12/06/2018

Luke Musgrave
Team Leader
Sydney Region East



16/07/2018

Amanda Harvey
Director, Sydney Region East

Contact Officer: Max Chipchase
Para-Planner, Sydney Region East
Phone: 9274 6304