

8.12. Deferred Report - Planning Proposal 8/21 - North Sydney Centre, Height of Buildings Variation

AUTHOR: Marcelo Occhiuzzi, Manager Strategic Planning

Resolution of Council, 25 October 2021

Council at its meeting on 25 October 2021 considered a report into Planning Proposal 8/21 - North Sydney Centre, Height of Buildings Variation and resolved:

1. THAT the matter be deferred for consideration by the new Council.

This report presents the deferred matter.

Purpose of deferred report

To amend North Sydney Local Environmental Plan 2013 by amending clauses 6.3(3) and 6.3(5) and thereby confine all applications that seek to vary the building height development standards to clause 4.6 (*Exceptions to Development Standards*) ensuring greater consistency and transparency.

North Sydney Council endorsed the *North Sydney CBD Land Use and Capacity Strategy* in March 2017. One of the important outcomes of this work was the preparation of a Planning Proposal (PP 7/19) to amongst other things, increase building heights in parts of the North Sydney CBD to accommodate increased heights, whilst managing impacts on solar access to surrounding residential development and Special Areas within the CBD. PP 7/19 (which resulted in Amendment 23) was gazetted on 26 October 2018.

Clause 6.3(3) of the North Sydney Local Environmental Plan 2013 (NSLEP) contains provisions that enable the consent authority to consider variations to height standards within the North Sydney Centre. Clause 4.6 of the NSLEP represents a more generic mechanism that enables consideration of applications to vary any development standard throughout the Local Government Area including height in the North Sydney Centre.

Clause 6.3(3) is a mechanism that is increasingly being used to vary the height of buildings on sites that have already been afforded significant increases in height.

There is an increasing body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered to vary height limits in the North Sydney Centre. This is problematic as clause 6.3(3) limits the matters for consideration by the consent authority in conducting this assessment. The two clauses have the same capacity to provide a framework for consideration of variation to height standards, but clause 6.3(3) represents a narrower set of matters for consideration which limits the consent authority's discretion considerably. In addition, at a time that significant increases in CBD height limits was pursued and gazetted to achieve increased heights (via Amendment 23), clause 6.3(3) is now considered superfluous

as it represents a less restrictive approach to seeking height variations in the North Sydney CBD. Clause 4.6 can perform this function effectively, as it does in virtually every local government area in NSW.

Then North Sydney Local Planning Panel considered this Planning Proposal at its meeting on 29 September 2021. It resolved to *recommend* to the Council that the Planning Proposal be forwarded to the Department of Planning and Environment to seek a Gateway Determination.

The Planning Proposal seeks to serve an important governance role in improving the transparent functioning of the North Sydney LEP 2013. It has no financial implications for Council apart from the need to invest resources in its preparation and exhibition which will be sourced from existing budget allocations.

RECOMMENDATION:

- 1. THAT** Council note the recommendation of the North Sydney Local Planning Panel that the Planning Proposal be forwarded to the Department of Planning, Industry (DPIE) and Environment to seek a Gateway Determination.
- 2. THAT** Council forward the Planning Proposal to DPIE in accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979, seeking a Gateway Determination.
- 3. THAT** upon receipt of a Gateway Determination, the Planning Proposal be exhibited for public exhibition in accordance with the conditions of the Gateway Determination.
- 4. THAT** a further report be prepared for Council's consideration outlining any submissions received.

The Recommendation was moved by {mover} and seconded by {seconder}.

The Motion was put and **{carried-or-lost}**.

Voting was as follows:

For/Against {votes-count}

For: {for}

Against: {against}

Absent: {absent}

{resolution-number}. RESOLVED:

- 1. THAT** Council note the recommendation of the North Sydney Local Planning Panel that the Planning Proposal be forwarded to the Department of Planning, Industry (DPIE) and Environment to seek a Gateway Determination.
- 2. THAT** Council forward the Planning Proposal to DPIE in accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979, seeking a Gateway Determination.
- 3. THAT** upon receipt of a Gateway Determination, the Planning Proposal be exhibited for public exhibition in accordance with the conditions of the Gateway Determination.
- 4. THAT** a further report be prepared for Council's consideration outlining any submissions received.

8.12. Deferred Report - Planning Proposal 8/21 - North Sydney Centre, Height of Buildings Variation

AUTHOR: Marcelo Occhiuzzi, Manager Strategic Planning

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. P P 8 21 Height of Buildings Variation rpt [8.12.1 - 41 pages]

PURPOSE:

Resolution of Council, 25 October 2021

Council at its meeting on 25 October 2021 considered a report into Planning Proposal 8/21 - North Sydney Centre, Height of Buildings Variation and resolved:

- 1. THAT the matter be deferred for consideration by the new Council.*

This report presents the deferred matter.

Purpose of deferred report

To amend North Sydney Local Environmental Plan 2013 by amending clauses 6.3(3) and 6.3(5) and thereby confine all applications that seek to vary the building height development standards to clause 4.6 (*Exceptions to Development Standards*) ensuring greater consistency and transparency.

EXECUTIVE SUMMARY:

North Sydney Council endorsed the *North Sydney CBD Land Use and Capacity Strategy* in March 2017. One of the important outcomes of this work was the preparation of a Planning Proposal (PP 7/19) to amongst other things, increase building heights in parts of the North Sydney CBD to accommodate increased heights, whilst managing impacts on solar access to surrounding residential development and Special Areas within the CBD. PP 7/19 (which resulted in Amendment 23) was gazetted on 26 October 2018.

Clause 6.3(3) of the North Sydney Local Environmental Plan 2013 (NSLEP) contains provisions that enable the consent authority to consider variations to height standards within the North Sydney Centre. Clause 4.6 of the NSLEP represents a more generic mechanism that enables consideration of applications to vary any development standard throughout the Local Government Area including height in the North Sydney Centre.

Clause 6.3(3) is a mechanism that is increasingly being used to vary the height of buildings on sites that have already been afforded significant increases in height.

There is an increasing body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered to vary height limits in the North Sydney Centre. This is problematic as clause 6.3(3) limits the matters for consideration by the consent authority in conducting this assessment. The two clauses have the same capacity to provide a framework for consideration of variation to height standards, but clause 6.3(3) represents a narrower set of matters for consideration which limits the consent authority's discretion considerably. In addition, at a time that significant increases in CBD height limits was pursued and gazetted to achieve increased heights (via Amendment 23), clause 6.3(3) is now considered superfluous as it represents a less restrictive approach to seeking height variations in the North Sydney CBD. Clause 4.6 can perform this function effectively, as it does in virtually every local government area in NSW.

Then North Sydney Local Planning Panel considered this Planning Proposal at its meeting on 29 September 2021. It resolved to *recommend* to the Council that the Planning Proposal be forwarded to the Department of Planning and Environment to seek a Gateway Determination.

FINANCIAL IMPLICATIONS:

The Planning Proposal seeks to serve an important governance role in improving the transparent functioning of the North Sydney LEP 2013. It has no financial implications for Council apart from the need to invest resources in its preparation and exhibition which will be sourced from existing budget allocations.

RECOMMENDATION:

- 1. THAT** Council note the recommendation of the North Sydney Local Planning Panel that the Planning Proposal be forwarded to the Department of Planning, Industry (DPIE) and Environment to seek a Gateway Determination.
- 2. THAT** Council forward the Planning Proposal to DPIE in accordance with Section 3.34 of the Environmental Planning and Assessment Act 1979, seeking a Gateway Determination.
- 3. THAT** upon receipt of a Gateway Determination, the Planning Proposal be exhibited for public exhibition in accordance with the conditions of the Gateway Determination.
- 4. THAT** a further report be prepared for Council's consideration outlining any submissions received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

3. Our Future Planning

3.1 Prosperous and vibrant economy

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

3.5 North Sydney is regulatory compliant

5. Our Civic Leadership

5.1 Council leads the strategic direction of North Sydney

5.2 Council is well governed and customer focused

BACKGROUND

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

One of the important components of that work was the *North Sydney Centre Capacity and Land Use Study* (CLU Study). Amongst other things, that Study sought to:

- Develop a framework that allows for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre;
- Accommodate forecast demand for additional commercial floor space in the North Sydney Centre;
- Inform district planning, particularly employment and commercial floor space targets for the North Sydney Centre;
- Take advantage of planned infrastructure upgrades by intensifying land use around significant transport infrastructure...

After exhibition in late 2016, Council adopted the CLU Study in October 2016. The subsequent *North Sydney CBD Capacity and Land Use Strategy* was adopted in March 2017.

Subsequent LEP and DCP amendments were prepared and exhibited through September and October 2017. These were adopted and the former was gazetted on 26 October 2018 (as Amendment 23).

Whilst there were a number of amendments that were made to the NSLEP as part of Amendment 23, the most notable of these, was a series of building height increases throughout the CBD. Many of these increases were very significant.

The Operation of clause 6.3(3)

Part 6, Division 1 of the NSLEP 2013 contains provisions specifically relating to the North Sydney Centre.

Clause 6.2 identifies that this Division only applies to the North Sydney Centre. Subsection 2 also states that:

(2) A provision in this Division prevails over any other provision of this Plan to the extent of any inconsistency.

Clause 6.3(3) deals with height and massing in the North Sydney Centre. It states:

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

Together, these clauses act as a discreet mechanism to enable the consideration to vary height standards within the North Sydney Centre if certain narrow overshadowing requirements are met. Clause 6.2 appears to, arguably, give clause 6.3(3) primacy over any other provision of the LEP, including clause 4.6.

Clause 4.6

Clause 4.6 - *Exceptions to development standards*, is a mandatory clause required under the Department of Industry and Environment's standard LEP instrument. It is used widely throughout NSW as the mechanism to:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

There is an increasing body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying height limits in the North Sydney Centre. This is problematic as proponents of development within the North Sydney Centre are increasingly preferring to seek variation to height standards exclusively pursuant to clause 6.3(3) and this

is limiting the matters for consideration by the consent authority in conducting this assessment. The two clauses have the same capacity to provide a framework for consideration of variation to height standards, but clause 6.3(3) represents a narrower set of matters for consideration which limits the consent authority's discretion considerably. In addition, at a time that significant increases in CBD height limits were proactively pursued by Council and gazetted to achieve increased building heights (via Amendment 23), clause 6.3(3) is now considered superfluous as it represents a less restrictive approach to varying building height in the North Sydney Centre. Clause 4.6 can perform this function effectively, as it does in virtually every local government area in NSW.

Consideration by the North Sydney Local Planning Panel

On 23 February 2018, the Minister for Planning released a section 9.1 Direction which outlines the instances when a planning proposal must be referred to a Local Planning Panel for advice prior to a council determining whether that planning proposal should be forwarded to the DPIE for the purposes of seeking a Gateway Determination.

All planning proposals are required to be referred to the Local Planning Panel, unless they meet any of the following exemptions:

- the correction of an obvious error in a local environmental plan;
- matters that are of a consequential, transitional, machinery or other minor nature;
or
- matters that council's general manager considers will not have any significant adverse impact on the environment or adjacent land.

The Planning Proposal does not meet any of the exemption criteria and therefore the Planning Proposal must be referred to the Local Planning Panel for advice prior to Council making any determination on the matter.

The matter was considered by the North Sydney Local Planning Panel ("the Panel") on 29 September 2021 (report at attachment 1). The Panel resolved:

...to recommend to the Council that the Planning Proposal be forwarded to the Department of Planning and Environment to seek a Gateway Determination.

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

DETAIL

Context

In the context of the relationship primarily between clauses 4.6 and 6.3(3) and the issues identified in the assessment of development applications in the North Sydney Centre, the Planning Proposal proposes the following amendments (~~red strike through~~ represents a deletion and blue underline represents an insertion):

- a) Amendment of clause 6.3(3)
- b) Amendment of clause 6.3(5); as outlined below:

Clause 6.3(3)

The consent authority must not grant consent to ~~may grant development consent to~~ development on land in the North Sydney Centre ~~that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map~~ unless if the consent authority is satisfied that the any increase in overshadowing between 9am and 3pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—

- (a) if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or
- (b) if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.

Clause 6.3(5) In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following—

(a1) the objectives of this Division;

- (a) the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining the North Sydney Centre,
- (b) ...

As previously discussed, the flexibility provided for the height limit in the North Sydney Centre, is already covered by clause 4.6. The amendment of clause 6.3(3) as identified above, will provide for a much clearer and more transparent statutory environment for those conducting assessment of development applications in the North Sydney Centre and other stakeholders more broadly. Further, the need for a specific provision which enable the variation of height limits in the North Sydney Centre has been somewhat mitigated by the gazettal of Amendment 23 in 2018, which significantly increased heights in many parts of the North Sydney Centre.

The Planning Proposal has been principally motivated by the increasing tendency for proponents of development applications in the North Sydney Centre seeking to circumvent the requirements of clause 4.6 in preference to compliance with the much narrower requirements of clause 6.3(3).

There is an increasing body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying height limits in the North Sydney Centre. This is problematic as applications to vary height in the North Sydney Centre pursuant to clause 6.3(3) are required to address a narrower set of considerations in comparison with clause 4.6.

In addition to this and in the context of significant increases in building heights within the North Sydney Centre which was delivered via the gazettal of Amendment 23, clause 6.3(3) is considered both superfluous and potentially undermining the breadth of consideration enabled by clause 4.6. The specific objective (clause 6.1(b)) *to maximise commercial floor space capacity and employment growth within the constraints of the environmental context of the North Sydney Centre*, has been delivered given the many considerable increases in height determined by Council as part of Amendment 23.

Item PP03 - REPORTS - 29/09/21

N O R T H S Y D N E Y C O U N C I L R E P O R T S



NSLPP MEETING HELD ON 29/09/21

Attachments:

1. Planning Proposal
2. Design Report (Concept Design)

ADDRESS/WARD: North Sydney Centre – Height of Buildings Variation (W)

PROPOSAL NO: 8/21

PROPOSAL: To amend North Sydney Local Environmental Plan 2013 by amending clauses 6.3(3) and 6.3(5) and thereby confine all applications that seek to vary the building height development standards to clause 4.6 (*Exceptions to Development Standards*) ensuring greater consistency and transparency.

OWNER: N/A

APPLICANT: North Sydney Council

AUTHOR: Marcelo Occhiuzzi, Manager Strategic Planning

DATE OF REPORT: 17 September 2021

EXECUTIVE SUMMARY

North Sydney Council endorsed the *North Sydney CBD Land Use and Capacity Strategy* in March 2017. The Strategy sought to “provide a framework to allow for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre and to accommodate forecast demand for additional commercial/employment floor space”. One of the important outcomes of this work was the preparation of a Planning Proposal (PP 7/19) to amongst other things, increase building heights in parts of the North Sydney CBD that could accommodate increases, whilst managing impacts on solar access to surrounding residential development and Special Areas within the CBD. PP 7/19 (which resulted in Amendment 23) was gazetted on 26 October 2018.

Clause 6.3(3) of the North Sydney Local Environmental Plan 2013 (NSLEP) contains provisions that enable the consent authority to consider variations to height standards identified on the height of buildings map (clause 4.3) within the North Sydney Centre. Clause 4.6 of the NSLEP represents a more generic mechanism that enables consideration of applications to vary any applicable development standard throughout the Local Government Area including height in the North Sydney Centre.

Clause 6.3(3) is a mechanism that is increasingly being used to vary the height of buildings on sites that have already been afforded significant increases in height.

There is an increasing body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying height limits in the North Sydney Centre. This is problematic as proponents within the North Sydney Centre are increasingly preferring to seek variation to height standards pursuant to clause 6.3(3) and this is limiting the matters for consideration by the consent authority in conducting this assessment. The two clauses have the same capacity to provide a framework for consideration of variation to height standards, but clause 6.3(3) represents a narrower set of matters for consideration which limits the consent authority's discretion considerably. In addition, at a time that significant increases in CBD height limits were pursued and gazetted to achieve greater development potential, (via Amendment 23) clause 6.3(3) is now considered superfluous as it represents a less restrictive approach to seeking height variations in the North Sydney CBD. Clause 4.6 can perform this function effectively, as it does in virtually every local government area in NSW.

The Planning Proposal is supported as it:

- generally complies with the relevant LEP making provisions under the EP&A Act;
- generally complies with the Department of Planning, Industry and Environment's (DPIE) 'A guide to preparing planning proposals' (December 2018); and
- is unlikely to result in any adverse impacts on the environment or wider community.

For these reasons, the Planning Proposal is considered to be satisfactory and it is recommended that the Local Planning Panel supports the progression of the Planning Proposal to the DPIE seeking a Gateway Determination.

LOCATION MAP

FIGURE 1:
Aerial Photograph North Sydney Centre (outlined in red)

DESCRIPTION OF PROPOSAL

Planning Proposal 8/21 seeks to amend the North Sydney Local Environmental Plan (NSLEP) 2013 by amending clauses and 6.3(3) and 6.3(5).

These clauses occur within Part 6, Division 1 of the NSLEP 2013 which contains provisions specifically relating to the North Sydney Centre. These clauses act as a discreet mechanism to enable consideration to vary height standards within the North Sydney Centre if certain narrow overshadowing requirements are met. Clause 6.2 appears to arguably give clause 6.3(3) primacy over any other provision of the LEP, including clause 4.6. Clause 6.2(2) states:

A provision in this Division prevails over any other provision of this Plan to the extent of any inconsistency.

Clause 4.6 (*Exceptions to development standards*) is a mandatory clause required under the Department of Industry and Environment's standard LEP instrument. It is used widely throughout NSW as the mechanism to consider the variation of any development standard within the LEP.

In the context of recent significant increases in building height limits in various parts of the North Sydney Centre (Amendment 23 - gazetted on 26 October 2018), clause 6.3(3), as drafted, is considered superfluous given that clause 4.6 is the widely accepted and used mechanism for seeking variations to development standards. It is therefore proposed to be amended to provide for another matter for consideration in assessing development in the North Sydney Centre, rather than being matters for consideration specifically to vary height limits.

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

PANEL REFERRAL

On 23 February 2018, the Minister for Planning released a section 9.1 Direction which outlines the instances when a planning proposal must be referred to a Local Planning Panel for advice prior to a council determining whether that planning proposal should be forwarded to the DPIE for the purposes of seeking a Gateway Determination.

All planning proposals are required to be referred to the Local Planning Panel, unless they meet any of the following exemptions:

- the correction of an obvious error in a local environmental plan;
- matters that are of a consequential, transitional, machinery or other minor nature; or
- matters that council's general manager considers will not have any significant adverse impact on the environment or adjacent land.

The Planning Proposal does not meet any of the exemption criteria and therefore the Planning Proposal must be referred to the Local Planning Panel for advice prior to Council making any determination on the matter.

BACKGROUND

North Sydney Land Use and Capacity Study and Resulting Amendment 23

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

One of the important components of that work was the *North Sydney Centre Capacity and Land Use Study* (CLU Study). That Study sought to:

- Develop a framework that allows for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre;
- Accommodate forecast demand for additional commercial floor space in the North Sydney Centre;
- Inform district planning, particularly employment and commercial floor space targets for the North Sydney Centre;
- Take advantage of planned infrastructure upgrades by intensifying land use around significant transport infrastructure;
- Offset commercial floor space losses in the mixed use zone of the Centre;
- Identify residential development opportunities in the mixed use periphery; and
- Identify and facilitate specific land uses to contribute to the Centre’s diversity, amenity and commercial sustainability.

After exhibition in late 2016, Council adopted the CLU Study in October 2016. The subsequent *North Sydney CBD Capacity and Land Use Strategy* was adopted in March 2017.

Subsequent LEP and DCP amendments were prepared and exhibited through September and October 2017. These were adopted and the former was gazetted on 26 October 2018 (Amendment 23).

Whilst there were a number of amendments that were made to the NSLEP as part of Amendment 23, the most notable of these, was a series of building height increases throughout the CBD. Many of these increases were very significant.

The Operation of clause 6.3(3)

Part 6, Division 1 of the NSLEP 2013 contains provisions specifically relating to the North Sydney Centre. The objectives of the Division are:

6.1 Objectives of Division

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

Clause 6.2 identifies that this Division only applies to the North Sydney Centre (Figure 1). Subsection 2 also states that:

- (2) *A provision in this Division prevails over any other provision of this Plan to the extent of any inconsistency.*

Clause 6.3(3) deals with height and massing in the North Sydney Centre. It states:

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

Together, these clauses act as a discreet mechanism to enable the consideration to vary height standards within the North Sydney Centre if certain narrow overshadowing requirements are met. Clause 6.2, appears to arguably give clause 6.3(3) primacy over any other provision of the LEP, including clause 4.6.

Clause 4.6

Clause 4.6 - *Exceptions to development standards*, is a mandatory clause required by the Department of Industry and Environment's standard LEP instrument. It is used widely throughout NSW as the mechanism to:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

There is an increasing body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying height limits in the North Sydney Centre. This is problematic as proponents of development within the North Sydney Centre are increasingly preferring to seek variation to height standards exclusively pursuant to clause 6.3(3) and this is limiting the matters for consideration by the consent authority in conducting this assessment. The two clauses have the same capacity to provide a framework for consideration of variation to height standards, but clause 6.3(3) represents a narrower set of matters for consideration which limits the consent authority's discretion considerably. In addition, at a time that significant increases in CBD height limits were proactively pursued by Council and gazetted to achieve increased building heights (via Amendment 23), clause 6.3(3) is now considered superfluous as it represents a less restrictive approach to varying building height in the North Sydney Centre. Clause 4.6 can perform this function effectively, as it does in virtually every local government area in NSW.

Current Planning Proposal

In the context of the relationship primarily between clauses 4.6 and 6.3(3) and the issues this is beginning to create in the assessment of development applications in the North Sydney Centre, the Planning Proposal proposes the following (~~red strike through~~ represents a deletion and blue underline represents an insertion):

- a) Amendment of clause 6.3(3)
- b) Amendment of clause 6.3(5); as outlined below:

Clause 6.3(3)

The consent authority must not grant consent to ~~may grant development consent to~~ development on land in the North Sydney Centre ~~that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map~~ unless if the consent authority is satisfied that the any increase in overshadowing between 9am and 3pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—

- (a) if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or

- (b) if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.

Clause 6.3(5) In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following -

(a1) the objectives of this Division;

- (a) the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining the North Sydney Centre,
- (b) ...

As previously discussed, the flexibility provided for the height limit in the North Sydney Centre, is already covered by clause 4.6. The amendment of clause 6.3(3) as identified above, will provide for a much clearer and more transparent statutory environment for those conducting assessment of development applications in the North Sydney Centre and other stakeholders more broadly. Further, the need for a specific provision which enable the variation of height limits in the North Sydney Centre has been somewhat mitigated by the gazettal of Amendment 23 in 2018, which significantly increased heights in many parts of the North Sydney Centre.

DETAIL

1. Applicant

The applicant for the proposal is North Sydney Council.

2. Site Description

The planning proposal applies to the North Sydney Centre as identified on the North Sydney Centre Map to NSLEP 2013.

3. Local Context

The North Sydney Centre includes the North Sydney Commercial Business District (i.e. that generally zoned *B3 Commercial Core*) and high density mixed use areas (i.e. that generally zoned *B4 Mixed Use*) at its fringes.

The North Sydney Centre is an important commercial centre as reflected by its “CBD” status under *A Metropolis of Three Cities* and North District Plan, which represents the highest order commercial centre in NSW. At present, it is estimated that there is approximately 900,000sqm of non-residential floor space within the North Sydney Centre accommodating approximately 60,000 jobs.

4. Current Planning Provisions

NSLEP 2013 was made on 2 August 2013 through its publication on the NSW legislation website and came into force on the 13 September 2013. The relevant planning provisions are outlined within Section 4 of the Planning Proposal (refer to Attachment 1).

5. Proposed Instrument Amendment

The objectives and primary intent of the Planning Proposal are described in the “Description of Proposal” section of this report, with a detailed description of all amendments to NSLEP 2013 contained within Section 5 of the Planning Proposal (refer to Attachment 1).

ASSESSMENT

6. Planning Proposal Structure

The Planning Proposal is considered to be generally in accordance with the requirements of s.3.33 of the Environmental Planning and Assessment (EP&A) Act 1979 and DPIE’s *‘A guide to preparing planning proposals’* (December 2018). In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
- An explanation of the provisions that are to be included in the proposed local environmental plan;
- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken on the Planning Proposal.

7. Justification of the Planning Proposal

The Planning Proposal has been principally motivated by the increasing tendency for proponents of development applications in the North Sydney Centre seeking to circumvent the requirements of clause 4.6 in preference to compliance with the much narrower requirements of clause 6.3(3). There is an increasing body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying height limits in the North Sydney Centre.

This is problematic as applications to vary height in the North Sydney Centre pursuant to clause 6.3(3) are required to address a narrower set of considerations in comparison with clause 4.6. In addition to this and in the context of significant increases in building heights within the North Sydney Centre which was delivered via the gazettal of Amendment 23, clause 6.3(3) is considered both superfluous and potentially undermining the breadth of consideration enabled by clause 4.6. The specific objective (clause 6.1(b)) *to maximise commercial floor space capacity and employment growth within the constraints of the environmental context of the North Sydney Centre*, has been delivered given the many considerable increases in height determined by Council as part of Amendment 23.

The proposed amendments do not give rise to any adverse environmental, social or economic impacts.

8. Submissions

There are no statutory requirements to publicly exhibit a Planning Proposal before the issuance of a Gateway Determination.

At the time of reporting, no (0) submissions were received.

CONCLUSION

The Planning Proposal seeks to amend NSLEP 2013 to remove superfluous provisions that specifically provide for height variations in the North Sydney Centre, which arguably prevail over the provisions of clause 4.6. The recent trend by applicants to bypass clause 4.6 and address the narrower requirements of clause 6.3(3) is an undesirable consequence of the latter.

The relevant requirements under s.3.33 of the EP&A Act and the matters identified in the DPIE's 'A guide to preparing planning proposals' (December 2018) have been adequately addressed in the Planning Proposal. The proposal is appropriate and is adequately justified.

It is therefore recommended that North Sydney Local Planning Panel support the forwarding of the Planning Proposal to the DPIE, seeking a Gateway Determination under s.3.34 of the EP&A Act 1979. In addition, it is also recommended that if supported, that the Planning Proposal be amended to be consistent with the final adopted version of the LSPS and LHS, prior to forwarding it to the DPIE with a request for a Gateway Determination.

RECOMMENDATION

That the Panel resolves to support the Planning Proposal being forwarded to the Department of Planning and Environment to seek a Gateway Determination.

Marcelo Occhiuzzi
MANAGER STRATEGIC PLANNING

Attachment 1



PLANNING PROPOSAL

North Sydney Centre – Height of Buildings Variation

**... September 2021
(Draft)**

1 INTRODUCTION

Background

North Sydney Council endorsed its *North Sydney CBD Land Use and Capacity Strategy* in March 2017. The Strategy sought to “provide a framework to allow for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre and to accommodate forecast demand for additional commercial/employment floor space”. One of the important outcomes of this work was the preparation of a Planning Proposal (PP 7/19) to amongst other things, increase building heights in parts of the North Sydney CBD that could accommodate increases, whilst managing impacts on solar access to surrounding residential development and Special Areas within the CBD. PP 7/19 was gazetted on 26 October 2018 (Amendment 23).

Clause 6.3(3) of the North Sydney Local Environmental Plan 2013 (NSLEP) contains provisions that enable the consent authority to consider variations to height standards identified on the height of buildings map (clause 4.3) within the North Sydney Centre. Clause 4.6 of the NSLEP represents a more generic mechanism that enables consideration of applications to vary any development standard on any land within the NSLEP.

Clause 6.3(3) is a mechanism that is increasingly being used to seek variation to the height of buildings on sites that have already been afforded significant increases in height pursuant to NSLEP Amendment 23. The problem with this is that the matters for consideration in determining whether to vary height standards are narrow within this clause. Clause 4.6 is broader and is preferred as a more mainstream and effective way in which to more holistically consider applications to vary height. There is also much applicable caselaw to draw on and to reference in applying clause 4.6.

Issue

There is an increasing number of applications in the North Sydney Centre that are seeking variations to increase the height identified on the *Height of Buildings Map*, based solely on clause 6.3(3) of the NSLEP.

There is an increasing body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying height limits in the North Sydney Centre. This is problematic as proponents within the North Sydney Centre are increasingly preferring to seek variation to height standards pursuant to clause 6.3(3) and this is limiting the matters for consideration by the consent authority in conducting this assessment. The two clauses have the same capacity to provide a framework for consideration of variation to height standards, but clause 6.3(3) represents a narrower set of matters for consideration which limits the consent authority's discretion considerably. In addition, at a time that significant increases in CBD height limits were pursued and gazetted to achieve greater development potential, clause 6.3(3) is now considered superfluous as it represents a less restrictive approach to seeking height variations in the North Sydney CBD. Clause 4.6 can perform this function effectively, as it does in virtually every local government area in NSW.

In addition, there is currently no provision requiring consideration of the objectives of Division 1 of Part 6 in clause 6.1 in the NSLEP when granting consent or determining a development application. In order to give effect to the strategic planning objectives,

these objectives should be retained and a provision should be included to make it mandatory that the objectives are considered.

Proposal

The intent of the Planning Proposal is proposed to be achieved by:

- Amending clause 6.3(3) to mandate that the solar issues be considered before granting development consent; and
- Amending clause 6.3(5) by including an additional sub clause requiring consideration of the objectives of Division 1 of Part 6 in clause 6.1.

The Planning Proposal has been prepared in accordance with Section 3.33 of the EP&A Act and the Department of Planning, Industry and Environment's (DPIE) document "*A guide to preparing planning proposals*" (December 2018).

2 BACKGROUND

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

The key components of the review were:

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

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

Clause 6.3(3) of the North Sydney Local Environmental Plan 2013 (NSLEP) contains specific provisions enabling the consideration of the variation of the applicable height limit identified on the height of buildings map (clause 4.3). Clause 4.6 is a more generic mechanism that is included in the standard instrument and enables consideration of flexibility in applying any development standard within the NSLEP 2013.

Clause 6.3(3) is a mechanism that is increasingly being used to seek to vary the height of buildings on sites that have often already been afforded significant

3 SITE LOCALITY

[illegible]

FIGURE 1:
Aerial Photograph (2021)

The North Sydney Centre includes the North Sydney Commercial Business District (i.e. that generally zoned *B3 Commercial Core*) and high density mixed use areas (i.e. that generally zoned *B4 Mixed Use*) at its fringes.

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

4 STATUTORY CONTEXT

NSLEP 2013 was made on 2 August 2013 through its publication on the NSW legislation website and came into force on the 13 September 2013. The LEP has been amended 31 times since its coming into force.

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

4.1 Aims of Plan

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

- (1) *This Plan aims to make local environmental planning provisions for land in North Sydney in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
 - (a) *to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*
 - (b) *in relation to the character of North Sydney's neighbourhoods:*
 - (i) *to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and*
 - (ii) *to maintain a diversity of activities while protecting residential accommodation and local amenity, and*
 - (iii) *to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*
 - (c) *in relation to residential development:*
 - (i) *to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (ii) *to maintain and provide for an increase in dwelling stock, where appropriate,*
 - (d) *in relation to non-residential development:*
 - (i) *to maintain a diversity of employment, services, cultural and recreational activities, and*
 - (ii) *to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (iii) *to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,*
 - (e) *in relation to environmental quality:*
 - (i) *to maintain and protect natural landscapes, topographic features and existing ground levels, and*
 - (ii) *to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*
 - (f) *to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance,*
 - (g) *to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

4.2 Land Use Table

The Planning Proposal applies to land in the following zones:

- *B3 Commercial Core;*
- *B4 Mixed Use;*
- *SP2 Infrastructure; and*
- *RE1 Public Recreation.*

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

Zone B3 Commercial Core

1 Objectives of zone

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To prohibit further residential development in the core of the North Sydney Centre.*
- *To minimise the adverse effects of development on residents and occupiers of existing and new development.*

2 Permitted without consent

Nil

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

Zone B4 Mixed Use

1 Objectives of zone

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

2 Permitted without consent

Nil

3 Permitted with consent

Amusement centres; Backpackers' accommodation; Boarding houses; Car parks; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres;

Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Serviced apartments; Sex services premises; Shop top housing; Signage; Tank-based aquaculture; Vehicle repair stations; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

Zone SP2 Infrastructure

1 Objectives of zone

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

2 Permitted without consent

Environmental protection works

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

Zone RE1 Public Recreation

1 Objectives of zone

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

2 Permitted without consent

Environmental protection works

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

The zoning of land is identified on the Land Zoning Map, and the land to which the Planning Proposal principally relates is identified on Sheet LNZ_002A.

4.3 Building Height

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

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

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

- (e) to ensure compatibility between development, particularly at zone boundaries,
- (f) to encourage an appropriate scale and density of development that is in accordance with, and promotes the character of, an area.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.
- (2A) - (2C) (Repealed)

The maximum height of buildings is identified on the Sheet 002A of the Height of Buildings Map, an extract of which is illustrated in FIGURE 4.

4.4 Variation of Development Standards

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

4.5 North Sydney Centre

Division 1 to Part 6 of NSLEP 2013 applies to land within the North Sydney Centre as identified on the North Sydney Centre Map (Figure 3). In particular, it states:

6.1 Objectives of Division

The objectives of this Division are as follows—

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

6.2 Land to which this Division applies

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

6.3 Building heights and massing

- (1) The objectives of this clause are as follows—

- (a) (Repealed)
- (b) to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as "Special Area" on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,
- (c) to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,

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

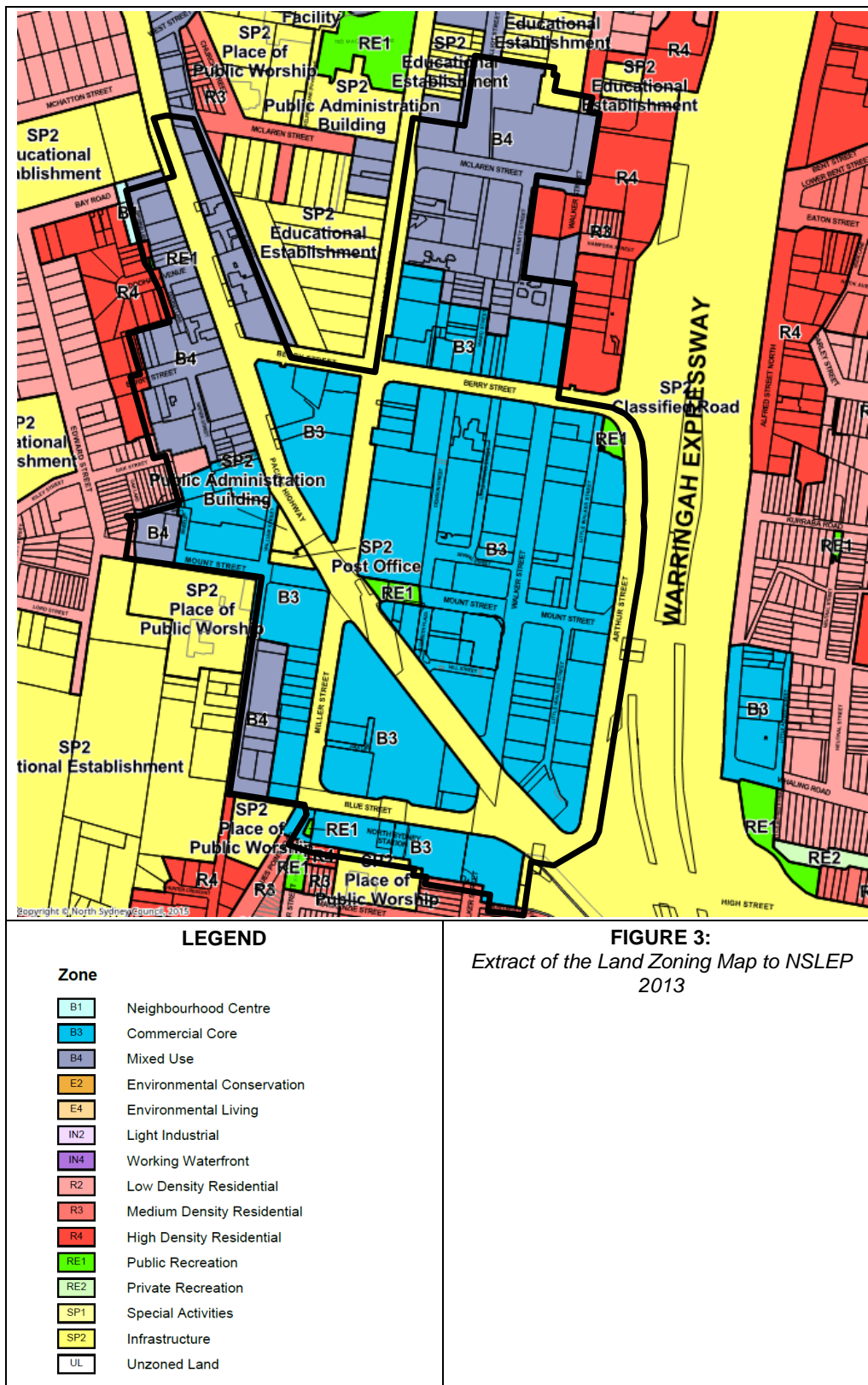
6.4 Miller Street setback

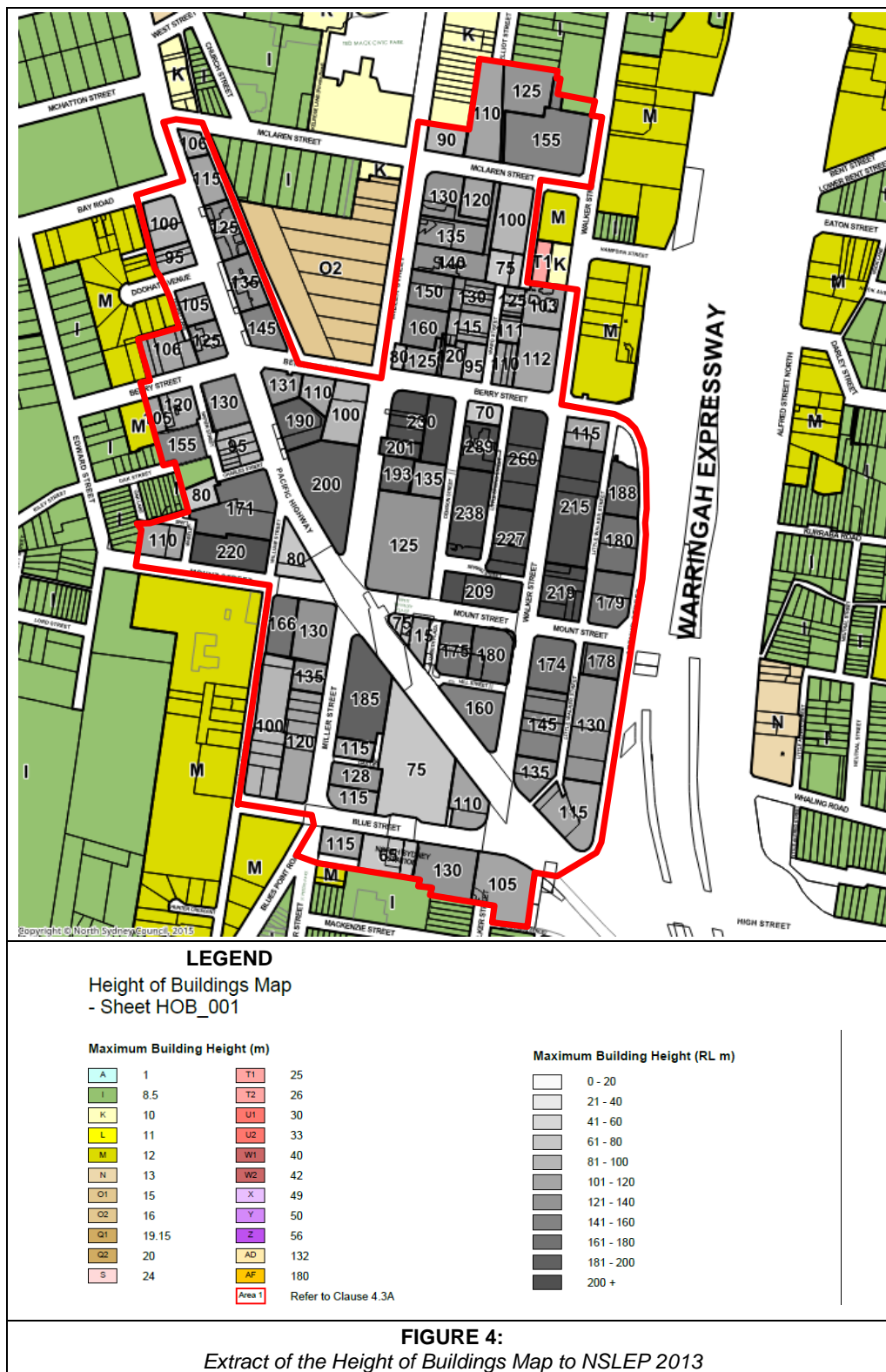
- (1) *The objective of this clause is to maintain the established setback and landscaped setting on the eastern side of Miller Street between McLaren Street and Mount Street.*
- (2) *Development consent must not be granted for the erection of a building on land identified as “Miller Street Setback”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

6.5 (Repealed)

The North Sydney Centre is identified on the Sheet 002A of the North Sydney Centre Map and is represented in Figure 3.

4.6 Figures





5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES

The primary purpose of this Planning Proposal is to rationalise the relationship between clauses in the NSLEP, being clauses 4.6 and 6.3(3) that enable variations to height in the North Sydney Centre. In particular, the apparent primacy provided to clause 6.3(3) and its narrow set of considerations, is problematic and this Planning Proposal seeks to address this. In addition, this Planning Proposal seeks to include a provision to ensure consideration of the objectives of Division 1 of Part 6 in the NSLEP when granting consent or determining a development application in the North Sydney Centre.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The proposed amendments only affect the written instrument to the maps to the LEP, the extent of which are identified in the following subsections.

5.2.1 Clause 6.3

The intent of the Planning Proposal is proposed to be achieved by amending clauses 6.3(3) and 6.3(5) as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

6.3 Building heights and massing

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

- equinox to the September equinox (inclusive) of the Don Bank Museum, or
- (c) the site area of the development is less than 1,000 square metres and any building resulting from the development would have a building height greater than 45 metres.
- (3) The consent authority ~~must not grant consent to may grant development consent~~ to development on land in the North Sydney Centre ~~that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map~~ unless if the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) will not result in any private open space, or window to a habitable room, located outside the North Sydney Centre receiving—
- (a) if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or
- (b) if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.
- (4) Brett Whiteley Plaza Development consent may be granted to development on land at 105–153 Miller Street, North Sydney, known as the MLC Building, that would result in a net increase in overshadowing of the land known as Brett Whiteley Plaza that is within Zone RE1 Public Recreation from the March equinox to the September equinox (inclusive).
- (5) In determining whether to grant development consent for development on land to which this Division applies, the consent authority must consider the following—
- (a1) the objectives of this Division;
- (a) the likely impact of the proposed development on the scale, form and massing of the locality, the natural environment and neighbouring development and, in particular, the lower scale development adjoining the North Sydney Centre,
- (b) whether the proposed development preserves significant view lines and vistas,
- (c) whether the proposed development enhances the streetscape in relation to scale, materials and external treatments.

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

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

YES.

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

North Sydney Local Strategic Planning Statement

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

Local Planning Priority L2

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

Action L2.1

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

Local Planning Priority L3

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

Action L3.1

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

Action L3.2

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

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

Local Planning Priority P1

Grow a stronger, more globally competitive North Sydney CBD

Action P1.1

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

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

Action P1.3

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

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

North Sydney Centre Capacity and Land Use Strategy

North Sydney Council endorsed its North Sydney CBD *Land Use and Capacity Strategy* in March 2017. The Strategy sought to “provide a framework to allow for the growth of the North Sydney Centre to ensure it maintains and improves its status as a resilient, vibrant and globally relevant commercial centre and to accommodate forecast demand for additional commercial/employment floor space”. One of the important outcomes of this work was the preparation of a Planning Proposal (PP 7/19) to amongst other things, increase building heights in parts of the North Sydney CBD that could accommodate increases, without significantly impacting on solar access to surrounding residential development nor Special Areas within the CBD. Planning Proposal 7/19 (which resulted in Amendment 23) was gazetted on 26 October 2018.

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

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

YES

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

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

In addition, at a time that significant increases in CBD height limits were pursued and gazetted to achieve greater development potential (as previously described pursuant to the *Land Use and Capacity Strategy*), clause 6.3(3) is now considered superfluous as it represents a less restrictive approach to seeking height variations in the North Sydney CBD. In the context of the above, this is no longer appropriate. Clause 4.6 can perform this function effectively, as it does in virtually every local government area in NSW.

5.3.2 Section B – Relationship to strategic planning framework

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

Greater Sydney Region Plan - A Metropolis of Three Cities

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

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

Direction 1: *A city supported by infrastructure*

Objective 4: *Infrastructure use is optimised*

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

Direction 2: *A city for people*

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

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

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

Direction 4: A city of great places

Objective 12: Great places that bring people together

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

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

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

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

Direction 5: A well connected city

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

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

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

Direction 6: Jobs and skills for the city

Objective 18: Harbour CBD is stronger and more competitive

Strategy 18.1: Prioritise:

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

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

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

Objective 22: *Investment and business activity in centres*

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

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

Direction 7: *A city in its landscape*

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

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

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

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

North District Plan

In March 2018, the NSW Government released the North District Plan (NDP). The North Sydney LGA is located within the North District along with the other

LGAs of Hornsby, Ku-ring-gai, Ryde, Hunter Hill, Lane Cove, Willoughby, Mosman and Northern Beaches. The NDP sets the following relevant targets:

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

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

Planning Priority N1: Planning for a city supported by infrastructure

Objective 4: Infrastructure use is optimised

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

Action 3: Align forecast growth with infrastructure

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

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

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

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

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

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

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

Objective 12: Great places that bring people together.

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

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

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

a. ...

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

d. ...

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

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

Objective 18: Harbour CBD is stronger and more competitive

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

a. maximise the land use opportunities provided by the new station

b. grow jobs in the centre and maintain a commercial core

c. strengthen North Sydney's reputation as an education centre, to grow jobs and add diversity

d. expand after hours' activities

e. encourage growth in business tourism as a conference location that takes advantage of North Sydney's identity as a business hub, its location, access and views

f. provide a variety of high quality civic and public spaces befitting a globally-oriented CBD, which can be utilised for a range of cultural and entertainment activities

g. improve amenity by reducing the impact of vehicle movements on pedestrians

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

Action 25: Prioritise:

a. ...

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

c.

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

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

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

Objective 22: Investment and business activity in centres.

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

a. attracting significant investment and business activity in strategic centres providing jobs growth

b. diversifying the range of activities in all centres

c. creating vibrant, safe places and quality public realm

d. focusing on a human-scale public realm and locally accessible open space

e. balancing the efficient movement of people and goods with supporting the liveability of places on the road network

f. improving the walkability within and to the centre

g. completing and improving a safe and connected cycling network to and within the centre.

h. improving public transport services to all strategic centres

- i. conserving and interpreting heritage significance
- j. designing parking that can be adapted to future uses
- k. providing for a diverse and vibrant night-time economy in a way that responds to potential negative impacts
- l.

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

Action 39: Encourage opportunities for new smart work hubs.

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

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

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

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

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

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

Planning Priority N20: Delivering high quality open space

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

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

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

The Planning Proposal is not inconsistent with the above Planning Priorities, Objectives and Actions of the NDP. The proposed amendment merely seeks to increase transparency in the relationship between clauses that perform a similar function. Moreover, with regard to employment targets, Council has demonstrated a commitment to increase capacity as previously discussed through its *North Sydney Centre Land Use and Capacity Strategy* and the

subsequent amendment to the NSLEP (Amendment 23) which considerably increased building heights in many parts of the North Sydney Centre.

4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

YES

North Sydney Local Strategic Planning Statement

Consistency with this document is addressed above.

Community Strategic Plan 2018-2028

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

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

Direction: 1 Our Living Environment

Outcome 1.2 Quality urban green spaces

Outcome 1.4 Improved environmental footprint and responsible use of natural resources

Strategies 1.4.1 Promote sustainable energy, water and waste practices

Outcome 1.5 Public open space, recreation facilities and services that meet community needs

Strategies 1.5.1 Provide a range of recreational facilities and services for people of all ages and abilities

1.5.2 Improve equity of access to open space and recreation facilities

Direction: 2 Our Built Environment

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

Strategies: 2.1.2 Expand capacity of existing community infrastructure

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

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

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

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

Direction: 3 Our Economic Vitality

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

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

3.1.2 Encourage a diverse mix of businesses

3.1.3 Expand employment growth capacity

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

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

Outcome: 3.3 North Sydney is a place that attracts events

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

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

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

North Sydney Council Delivery Program 2013/14-2016/17

The North Sydney Council Delivery Program 2013/14-2016/17 (Delivery Program) was prepared in accordance with NSW State Government's Integrated Planning and Reporting Framework requirements. The Delivery Program outlines Council's priorities and service delivery programs over four years that will contribute to the long-term strategies and desired outcomes of the Plan.

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

5. *Is the planning proposal consistent with applicable state environmental planning policies?*

The Planning Proposal is consistent with those State Environmental Planning Policies (SEPPs) which are relevant to the North Sydney LGA, as demonstrated in TABLE 1.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP No. 19 - Bushland in urban areas	YES	The Planning Proposal does not seek to further reduce the extent of land zoned in the E2 Environmental Conservation zone nor will it affect the attainment of the SEPP's aims and objectives.
SEPP No.21 – Caravan parks	N/A	This SEPP does not apply as the Planning proposal does not relate to land upon which caravan parks are permitted.
SEPP No. 33 - Hazardous and offensive development	N/A	This SEPP does not apply as the Planning Proposal does not relate to land upon which hazardous and offensive development is permitted.
SEPP No. 50 - Canal estate development	YES	The Planning Proposal is consistent with the SEPP by maintaining a prohibition on canal estate development.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP No. 55 - Remediation of land	YES	The Planning Proposal does not seek to amend the permissibility of land use within any zone nor introduce a site specific use which may be sensitive to contamination issues (e.g. rezoning land zoned for commercial or industrial purposes to residential or recreational uses).
SEPP No. 64 - Advertising and signage	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP No. 65 - Design Quality of Residential Apartment Development	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Affordable Rental Housing) 2009	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Building Sustainability Index: BASIX) 2004	N/A	The Planning Proposal does not relate to building sustainability.
SEPP (Coastal Management) 2018	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Concurrences and Consents) 2018	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
SEPP (Educational Establishments and Child Care Facilities) 2017	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Exempt and Complying Development Codes) 2008	YES	The Planning Proposal seeks to remove exempt and complying development types that are permitted under this SEPP.
SEPP (Housing for Seniors or People with a Disability) 2004 - <i>formerly SEPP (Seniors Living) 2004</i>	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Infrastructure) 2007	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP (State and Regional Development) 2011	N/A	This SEPP does not apply as the Planning Proposal does not relate to state or regional development nor the operation of joint regional planning panels.
SEPP (State Significant Precincts) 2005 - <i>formerly SEPP Major Development, SEPP Major Projects & SEPP State Significant Development</i>	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Vegetation in Non-Rural Areas) 2017	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
Sydney REP (Sydney Harbour Catchment) 2005	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.

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

The Planning Proposal is consistent with the relevant Directions issued under Section 9.1 of the EP&A Act by the Minister to councils, as demonstrated in TABLE 2.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
1. Employment and Resources		
1.1 Business & Industrial Zones	YES	The Planning Proposal does not seek to reduce any commercial zoning under NSLEP 2013 nor does it seek to reduce the level of permissible non-residential floor space achievable on the affected lands.
1.2 Rural Zones	N/A	This Direction does not apply as there are no existing rural zones under NSLEP 2013 nor proposed under the Planning Proposal.
1.3 Mining, Petroleum Production & Extractive Industries	YES	The Planning Proposal does not seek to alter the permissibility of these types of land uses.
1.4 Oyster Aquaculture	N/A	This Direction does not apply as the Planning Proposal is not located in a water catchment area that directly drains to a water body containing a Priority Oyster Aquaculture Area or a current oyster aquaculture lease in the national parks estate.
1.5 Rural Lands	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
2 Environmental Heritage		
2.1 Environmental Protection Zones	YES	The Planning Proposal does not alter the existing environmental protection to land within an environmental protection zone.
2.2 Coastal Protection	N/A	The Planning Proposal does not affect land that covered by the Coastal Management SEPP.
2.3 Heritage Conservation	YES	The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 (refer to Clause 5.10) which already satisfy the requirements of the Direction. The Planning Proposal seeks to provide increased clarity with respect to when a height variation may be considered and will not impact upon the significance of heritage items or conservation areas.
2.4 Recreation Vehicle Areas	N/A	The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
2.6 Remediation of Contaminated Land	YES	The proposal does not seek to alter the zoning of any land, thereby increasing the potential risk to exposure to contamination.
3 Housing, Infrastructure & Urban Development		
3.1 Residential Zones	YES	The Planning Proposal is consistent with the requirements of the Direction as it will not reduce the ability to undertake residential development on those parcels of land where residential development is currently permitted.
3.2 Caravan Parks & Manufactured Home Estates	N/A	This Direction does not apply as the Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.
3.4 Integrating Land Use & Transport	YES	The Planning Proposal does not seek to minimise development potential in close proximity to mass public transport.
3.5 Development Near Regulated Airports and Defence Airfields	YES	Despite not being located in close proximity to Sydney Airport, almost the entire LGA is affected by an Obstacle Limitation Surface (OLS) of 156m AHD. The Planning Proposal does not seek to increase the maximum height permitted on any land within the North Sydney Centre.
3.6 Shooting Ranges	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a shooting range.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
3.7 Reduction in non-hosted short term rental accommodation period	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
4 Hazard and Risk		
4.1 Acid Sulfate Soils	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by Acid Sulfate Soils.
4.2 Mine Subsidence & Unstable Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by mine subsidence nor has it been identified as being unstable land.
4.3 Flood Prone Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land identified as being flood prone land.
4.4 Planning for Bushfire Protection	YES	The Planning Proposal is consistent with the direction as it does not result in: <ul style="list-style-type: none"> • inconsistencies with the Planning for Bushfire Protection 2006; • permitting increased density on land affected by bushfire; and • bushfire hazard reduction being prohibited with Asset Protection Zones.
5 Regional Planning		
5.2 Sydney Drinking Water Catchment	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.9 North West Rail Link Corridor Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.10 Implementation of Regional Plans	YES	Refer to question 3 to Section 5.3.2 of this report.
5.11 Development of Aboriginal Land Council land	N/A	This Direction does not apply as the Planning Proposal does not relate to any land identified under State Environmental Planning Policy (Aboriginal Land) 2019.
6 Local Plan Making		
6.1. Approval & Referral Requirements	YES	The Planning Proposal does not seek to introduce new concurrence, consultation or referral requirements, nor identify development types for the purpose of designated development.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
6.2 Reserving Land for Public Purposes	YES	The Planning Proposal does not create or alter existing zonings or reservations of land for public purposes. However, it does remove the identification of 3 parcels of land to be acquired for public purposes due to that land having been acquired by the relevant acquisition authority. Two of these properties have been acquired by Council the other by DPIE.
6.3 Site Specific Provisions	N/A	This Direction does not apply as the Planning Proposal does not relate to any site specific land use controls, nor introduce new development standards not already contained in the LEP.
7 Metropolitan Planning		
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any land comprising the Greater Parramatta Priority Growth Area.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.9 Implementation of Bayside West Precincts 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.11 Implementation of St Leonards and Crows Nest 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
7.12 Implementation of Greater Macarthur 2040	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
7.13 Implementation of the Pyrmont Peninsula Place Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.

5.3.3 Section C – Environmental, social and economic impact.

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

No.

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

No.

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

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

5.3.4 Section D – State and Commonwealth interests

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

Implementation of the Planning Proposal is likely to have a minimal impact upon the provision of public infrastructure services within the locality as it is the land affected is already highly serviced.

Consultation with relevant public infrastructure agencies during the public exhibition of the planning proposal will ensure any concerns are addressed prior to allowing any increase in the development potential of the land.

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

The Planning Proposal has not yet been considered by State or Commonwealth public authorities and would be typically gained through the Gateway Determination process.

In light of the proposed changes to NSLEP 2013, Council considers that for the abundance of caution, the following public authorities should be consulted with during the public exhibition process:

- (a) Sydney Water;
- (b) Transport for NSW;
- (c) Road and Maritime Services Division of Transport of NSW;
- (d) State Transit Authority of New South Wales
- (e) Heritage Council of NSW;
- (f) Heritage Division of Department of Premier and Cabinet; and
- (g) Department of Education;
- (h) Ausgrid;
- (i) Jemena Gas Networks (NSW) Ltd
- (j) Telstra / Optus

5.4 PART 4: MAPPING

It is not proposed to amend any of the maps to the LEP.

5.5 PART 5: COMMUNITY CONSULTATION

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

For the abundance of caution, it is envisaged that the following public authorities will need to be consulted as part of any public exhibition:

- Sydney Water
- Transport for NSW
- Department of Education
- Telecommunication providers
- Gas providers
- Electricity providers

5.6 PART 6: PROJECT TIMELINE

TABLE 3 provides a project timeline having regard to identified milestones and estimating approximately 11 months from submitting the planning proposal to the DPIE for a Gateway Determination to the amending LEP being made.

TABLE 5 – Project Timeline												
Milestone	Oct 2021	Nov 2021	Dec 2021	Jan 2022	Feb 2022	Mar 2022	Apr 2022	May 2022	June 2022	Jul 2022	Aug 2022	Sept 2022
1. Local Planning Panel considers Planning Proposal												
2. Council determines whether to progress to Gateway Determination												
3. Request for Gateway Determination sent to DPIE												
4. DPIE considers request												
5. Gateway Determination issued to Council												
6. Amendment of Planning Proposal to align with Gateway Determination												
7. Public exhibition undertaken												
8. Council considers submissions												
9. Council considers post exhibition report												
10. Submission to DPIE requesting making of LEP												
11. Drafting of LEP and making												