



PLANNING PROPOSAL

North Sydney Centre – Height of Buildings Variation

V6_14 December 2023
(Post Public Exhibition Report)

1 INTRODUCTION

Background

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

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

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

Issue

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

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

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

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

Proposal

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

The intent of the Planning Proposal may be achieved by amending clauses 4.3, 4.6, 6.1 and 6.3 to NSLEP 2013. Following the public exhibition of the Planning Proposal after the Gateway Determination had been issued, and consideration of submissions made, it is also proposed to make some minor amendments to the current solar access test within clause 6.3(3) to provide increased flexibility, clarity and to better align with the outcomes of the *North Sydney Centre Capacity and Landuse Strategy*. For the purposes of clarity and transparency, it would be preferable to consolidate the two sets of variation criteria within the same clause. Parliamentary Counsel will determine the best approach to amending the clauses within NSLEP 2013.

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

2 BACKGROUND

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

The key components of the Review were:

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

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

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

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

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

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

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

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

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

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

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

2.1 Affected Applications

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

TABLE 1: DA register of affected DAs		
DA No.	Address	Proposal
DA 393/22	153-157 Walker Street, North Sydney	Demolish 2 x 13-storey commercial buildings and erect a 45-storey commercial building. (Seeks a 12.5m variation under clause 6.3(3)).

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

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

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

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

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

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

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

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

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

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

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

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

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

The Planning Proposal (V5_5 July 2023) was amended to comply with the conditions as imposed by the Gateway Determination and was endorsed by the Minister for Planning's delegate on the 24 July 2023 for the purposes of public exhibition.

2.4 Public Exhibition

Following the public exhibition of the Planning Proposal, a number of submissions were made raising concerns over the proposed amendments as exhibited. Following its consideration of the submissions made, Council resolved on 11 December 2023 to endorse the progression of the Planning Proposal to the next stage of the plan making process, subject to the following amendments:

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

This version of the Planning Proposal (V6_14 December 2023), has been amended to address these concerns.

3 SITE LOCALITY

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

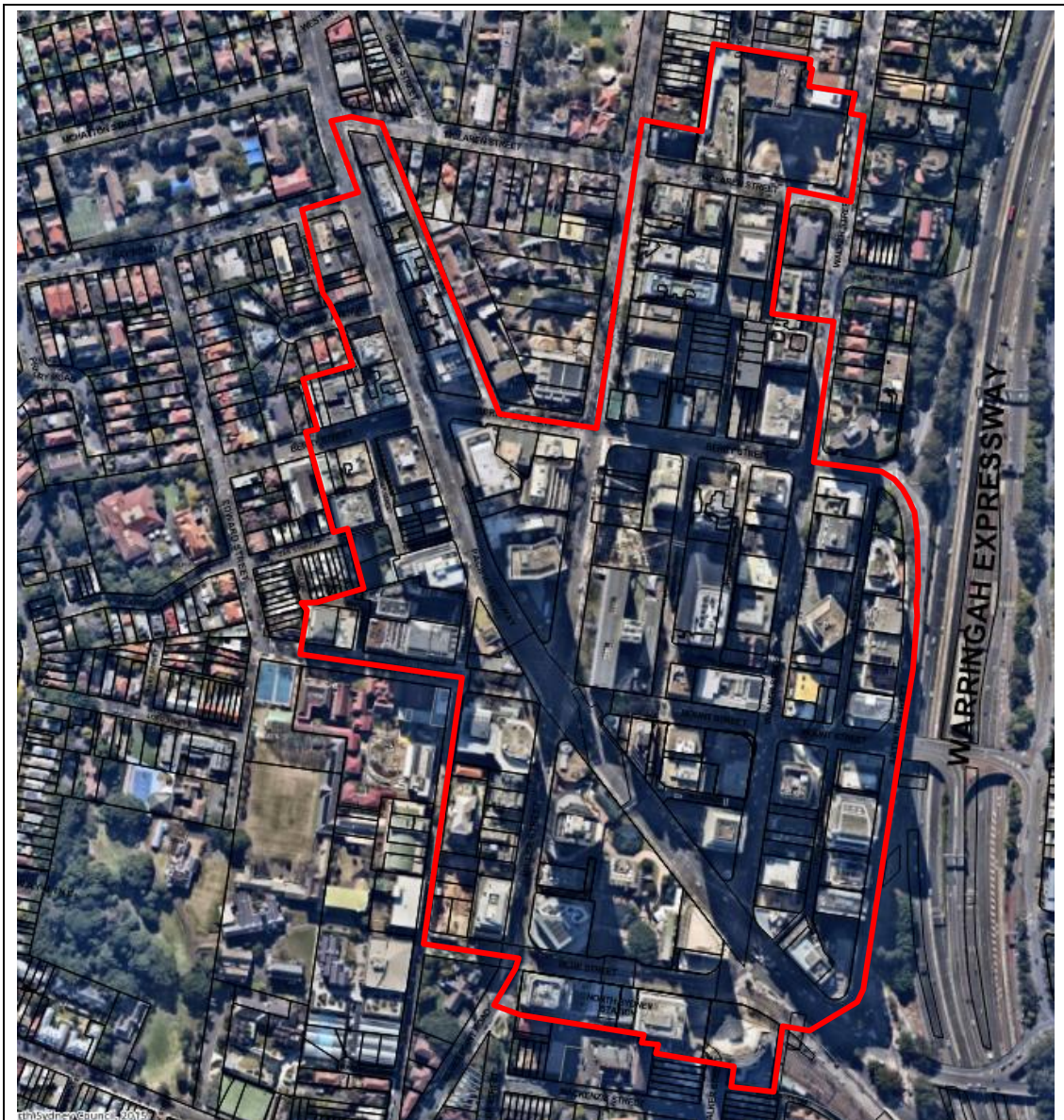


FIGURE 1:
Aerial Photograph (2021)

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

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

4 STATUTORY CONTEXT

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

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

4.1 Aims of Plan

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

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

4.2 Land Use Table

The Planning Proposal applies to land in the following zones:

- *E2 Commercial Centre;*
- *MU1 Mixed Use;*

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

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

Zone E2 Commercial Centre

1 Objectives of zone

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

2 Permitted without consent

Nil

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

Zone MU1 Mixed Use

1 Objectives of zone

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

2 Permitted without consent

Nil

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

Zone SP2 Infrastructure

1 Objectives of zone

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

2 Permitted without consent

Environmental protection works

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

Zone RE1 Public Recreation

1 Objectives of zone

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

2 Permitted without consent

Environmental protection works

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

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

4.3 Building Height

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

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

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

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

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

4.4 Variation of Development Standards

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

- (1) *The objectives of this clause are as follows—*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
 - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
 - (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

Note— The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).
- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*
- (5) (Repealed)
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note—When this Plan was made it did not include all of these zones.
- (7) (Repealed)
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

- (c) clause 5.4,
- (caa) clause 5.5,
- (ca) clause 4.3 in relation to land identified as “Area 1” on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,
- (cab) clause 4.4, 5.6 or 6.19C in relation to land identified as “Area 1” on the Special Provisions Area Map,
- (cb) clause 6.3(2)(a) and (b),
- (cba) clause 6.19A,
- (cc) clause 6.20.
- (8A) (Repealed)

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

4.5 North Sydney Centre

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

6.1 Objectives of Division

The objectives of this Division are as follows—

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

6.2 Land to which this Division applies

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

6.3 Building heights and massing

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

- (a) (Repealed)
- (b) *to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,*
- (c) *to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,*
- (d) *to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,*
- (e) *to encourage the consolidation of sites for the provision of high grade commercial space.*

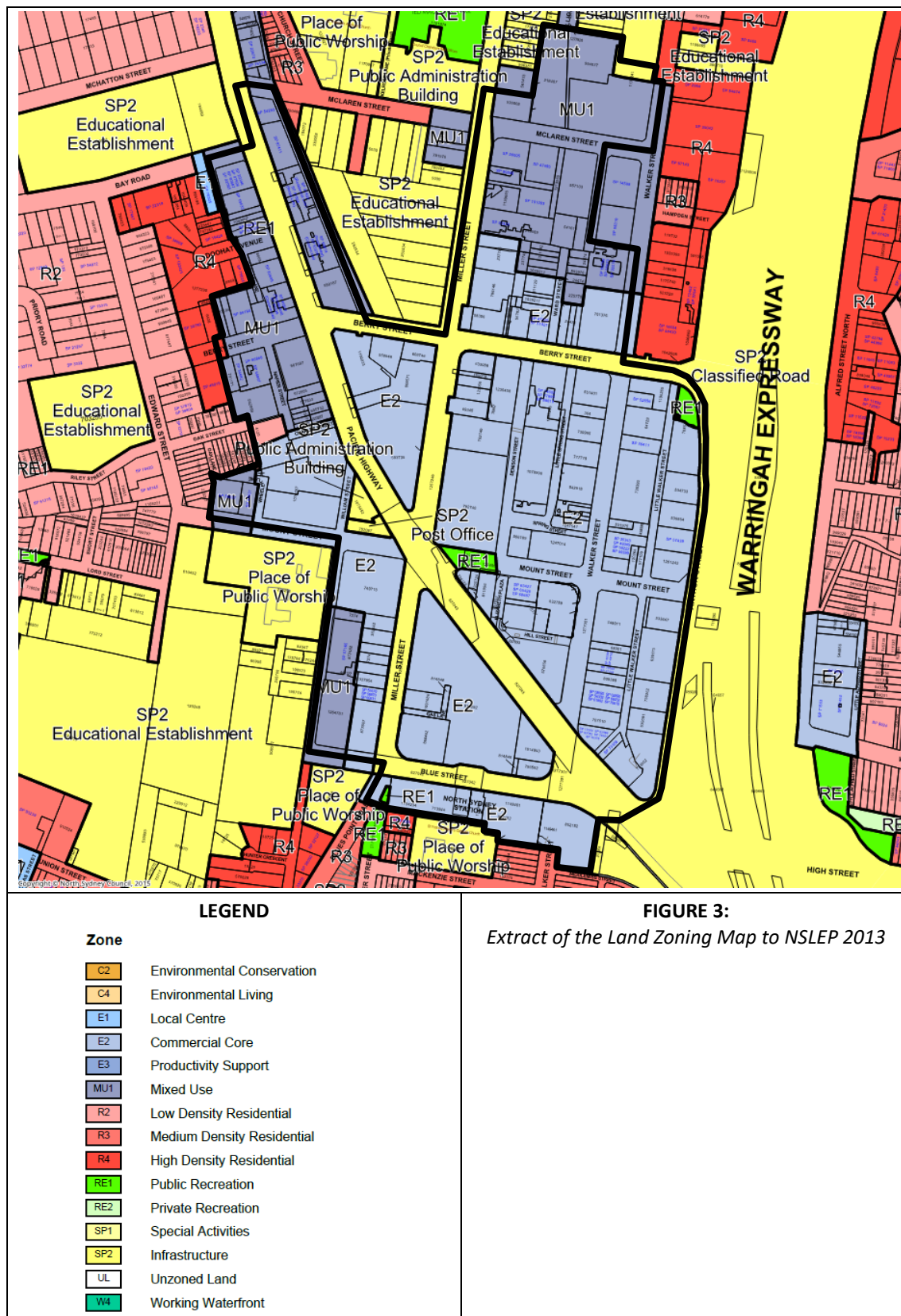
- (2) *Development consent must not be granted for the erection of a building on land to which this Division applies if—*
 - (a) *the development would result in a net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land to which this Division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

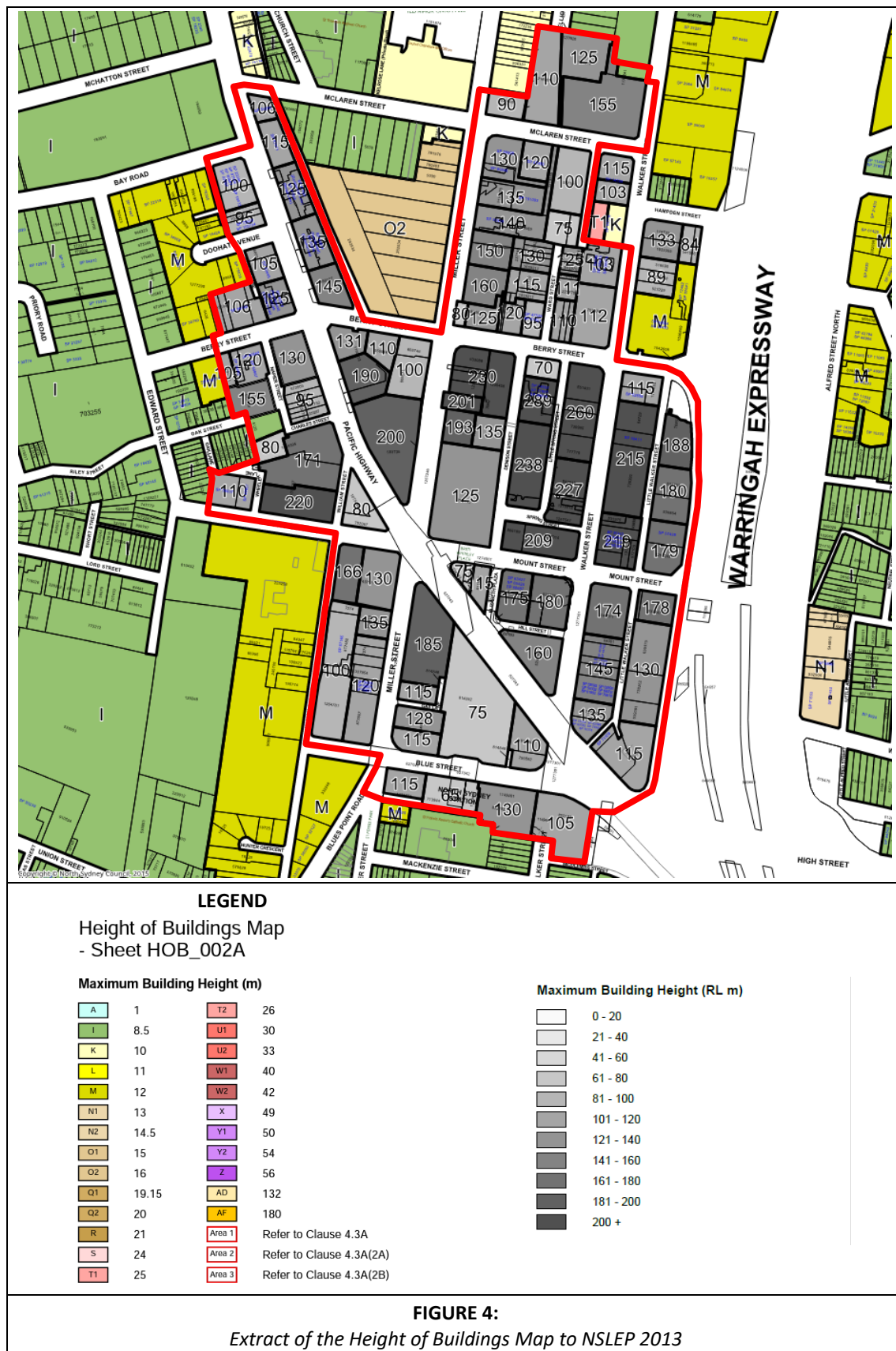
6.4 Miller Street setback

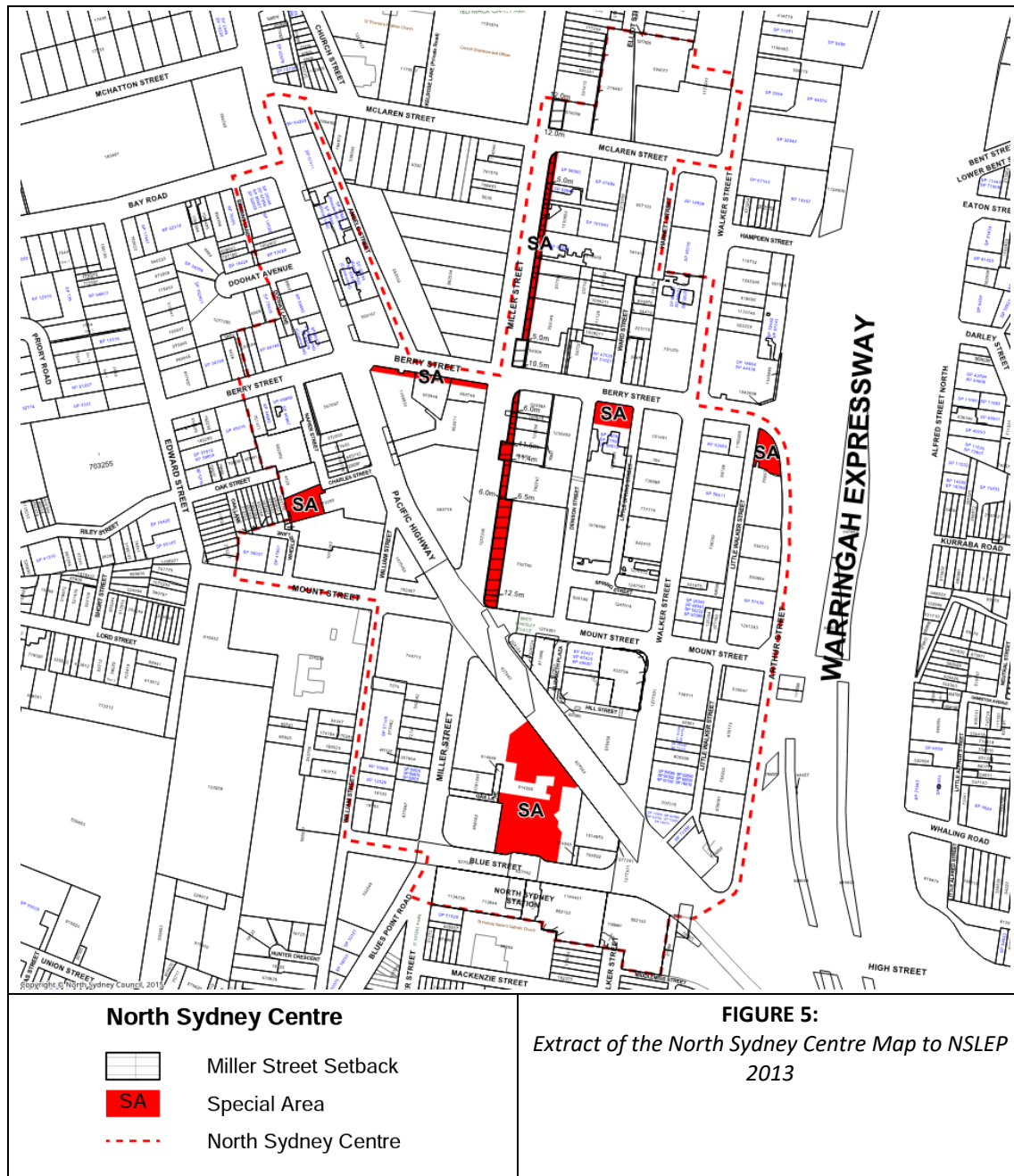
- (1) *The objective of this clause is to maintain the established setback and landscaped setting on the eastern side of Miller Street between McLaren Street and Mount Street.*
- (2) *Development consent must not be granted for the erection of a building on land identified as “Miller Street Setback”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

6.5 (Repealed)

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







5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES

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

- remove the apparent primacy afforded to clause 6.3(3) over clause 4.6;
- ensure that regardless of where a development is proposed, that the broader provisions of clause 4.6 are applied to any variation to exceed the maximum height of buildings standard;
- ensure that the current criteria contained in clause 6.3(3) where a variation is sought to the maximum height of buildings control continue to apply to development within the North Sydney Centre;
- revise the current criteria contained within clause 6.3(3) to be more consistent with the outcomes of the *North Sydney Centre Capacity and Landuse Strategy* and solar access controls under the *Apartment Design Guide*;
- clarify that the solar access test is only applied to that part of the building which exceeds the maximum height of building standard; and
- include a new provision that requires all development within the North Sydney Centre to give consideration to the objectives of Division 1 to Part 6 of NSLEP 2013.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

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

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

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

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

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

5.2.2 Primacy of variation requirements

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

Option 1 – relocation to clause 4.6

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

relocate the objective of objective (c) to clause 6.3 to clause 4.3 (1), to ensure it is considered in any variation request for development within the North Sydney Centre.

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

Option 2 – Variation of Clause 6.3(3)

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

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

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

YES.

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

North Sydney Local Strategic Planning Statement

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

Local Planning Priority L2

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

Action L2.1

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

Local Planning Priority L3

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

Action L3.1

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

Action L3.2

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

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

Local Planning Priority P1

Grow a stronger, more globally competitive North Sydney CBD

Action P1.1

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

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

Action P1.3

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

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

North Sydney Centre Capacity and Land Use Strategy

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

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

CBD Setbacks DCP Amendment

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

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

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

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

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

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

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

YES

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

There is a body of opinion that if clause 6.3(3) can be complied with, clause 4.6 is not required to be considered in varying height limits within the North Sydney Centre. This is

problematic as proponents within the North Sydney Centre are increasingly preferring to seek variation to height standards pursuant to clause 6.3(3) alone, which is limiting the matters for consideration by the consent authority in conducting this assessment. This highlights the lack of transparency and clarifying the relationship between these clauses. The two clauses have the same capacity to provide a framework for consideration of variations to height standards, but clause 6.3(3) represents a narrower set of considerations which limits the consent authority's discretion considerably.

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

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

5.3.2 Section B – Relationship to strategic planning framework

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

Greater Sydney Region Plan - A Metropolis of Three Cities

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

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

Direction 1: A city supported by infrastructure

Objective 4: Infrastructure use is optimised

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

Direction 2: *A city for people*

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

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

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

Direction 4: *A city of great places*

Objective 12: *Great places that bring people together*

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

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

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

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

Direction 5: *A well connected city*

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

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

Objective 15: *The Eastern, 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, Kuring-gai, Ryde, Hunter Hill, Lane Cove, Willoughby, Mosman and Northern Beaches. The NDP sets the following relevant targets:

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

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

Planning Priority N1: Planning for a city supported by infrastructure

Objective 4: Infrastructure use is optimised

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

Action 3: Align forecast growth with infrastructure

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

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

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

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

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

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

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

Objective 12: Great places that bring people together.

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

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

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

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

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

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

Objective 18: Harbour CBD is stronger and more competitive

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

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

Action 25: Prioritise:

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

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

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

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

Objective 22: Investment and business activity in centres.

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

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

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

Action 39: Encourage opportunities for new smart work hubs.

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

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

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

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

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

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

Planning Priority N20: *Delivering high quality open space*

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

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

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

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

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

YES

North Sydney Local Strategic Planning Statement

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

Community Strategic Plan 2018-2028

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

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

Direction:	1	<i>Our Living Environment</i>
Outcome	1.2	<i>Quality urban green spaces</i>
Outcome	1.4	<i>Improved environmental footprint and responsible use of natural resources</i>
Strategies	1.4.1	<i>Promote sustainable energy, water and waste practices</i>
Outcome	1.5	<i>Public open space, recreation facilities and services that meet community needs</i>
Strategies	1.5.1	<i>Provide a range of recreational facilities and services for people of all ages and abilities</i>
	1.5.2	<i>Improve equity of access to open space and recreation facilities</i>
Direction:	2	<i>Our Built Environment</i>
Outcome:	2.1	<i>Infrastructure, assets and facilities that meet community needs</i>
Strategies:	2.1.2	<i>Expand capacity of existing community infrastructure</i>
	2.1.3	<i>Advocate for improved state infrastructure and adequate funding for maintenance and improvement of community assets</i>
Outcome:	2.2	<i>Improved mix of land use and quality development through design excellence</i>
Strategies:	2.2.1	<i>Maintain a contemporary Local Environmental Plan (LEP)</i>
	2.2.3	<i>Encourage sustainable design in future development and refurbishment of existing buildings for better environmental performance</i>
Direction:	3	<i>Our Economic Vitality</i>
Outcome:	3.1	<i>Diverse, strong, sustainable and vibrant local economy</i>
Strategies:	3.1.1	<i>Expand opportunities for business particularly after hours and weekends through planning initiatives e.g. late night trading and small bars</i>
	3.1.2	<i>Encourage a diverse mix of businesses</i>
	3.1.3	<i>Expand employment growth capacity</i>
Outcome:	3.2	<i>North Sydney CBD is one of Australia's largest commercial centres</i>
Strategies:	3.2.2	<i>Ensure major infrastructure and public domain design contributes to North Sydney's business needs</i>
Outcome:	3.3	<i>North Sydney is a place that attracts events</i>
Strategies:	3.3.1	<i>Balance visitor impacts with residents' lifestyles and economic development</i>

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

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

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

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

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

5. *Is the planning proposal consistent with any other applicable State and regional studies or strategies*

Future Transport Strategy 2056

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

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

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

NSW State Infrastructure Strategy 2018-2038

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

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

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

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

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

TABLE 2: Consistency with SEPPs		
Direction	Consist -ency	Comment
SEPP (Biodiversity and Conservation) 2021		
2 – Vegetation in Non-Rural Areas	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
3 – Koala Habitat Protection 2020	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
4 – Koala Habitat Protection 2021	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
5 – Murray River Lands	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
6 – Water Catchments	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP
SEPP (Building Sustainability Index: BASIX) 2004	N/A	The Planning Proposal does not relate to building sustainability.
SEPP (Exempt and Complying Development Codes) 2008	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Housing) 2021		
2 - Affordable Housing	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
3 – Diverse Housing	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Industry and Employment) 2021		
2 – Western Sydney employment area	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
3 - Advertising and signage	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Planning Systems) 2021		
2 - State and Regional Development	N/A	This aspect of the SEPP does not apply as the Planning Proposal does not relate to state or regional development nor the operation of joint regional planning panels.
3 – Aboriginal Land	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
4 - Concurrences and Consents	YES	The Planning Proposal is consistent with this aspect of the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
SEPP (Precincts-Eastern Harbour City) 2021		

TABLE 2: Consistency with SEPPs		
Direction	Consist-ency	Comment
2 – State Significant Precincts	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP’s aims and objectives.
3- Darling Harbour	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
4 – City West	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
5 – Walsh Bay	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
6 – Cooks Cove	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
7 – Moore Park Showground	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
SEPP (Primary Production) 2021		
2 – Primary Production and Rural Development	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
3 – Central Coast Plateau	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
SEPP (Resilience and Hazards) 2021		
2 - Coastal Management	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP’s aims and objectives.
3 - Hazardous and offensive development	N/A	This SEPP does not apply as the Planning Proposal does not relate to land upon which hazardous and offensive development is permitted.
4 - Remediation of land	YES	The Planning Proposal does not seek to amend the permissibility of land use within any zone nor introduce a site-specific use which may be sensitive to contamination issues (e.g. rezoning land zoned for commercial or industrial purposes to residential or recreational uses).
SEPP (Resources and Energy) 2021		
2 - Mining, Petroleum Production and Extractive Industries	YES	The Planning Proposal is consistent with this aspect of the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
3 – Extractive Industries	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
SEPP (Transport and Infrastructure) 2021		
2- Infrastructure	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP’s aims and objectives.
3 - Educational Establishments and Child Care Facilities	YES	The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP’s aims and objectives.
4 – Major Infrastructure Corridors	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.

TABLE 2: Consistency with SEPPs		
Direction	Consistency	Comment
5 – Three Ports	N/A	The planning proposal does not apply to land affected by this aspect of the SEPP.
SEPP No. 65 - Design Quality of Residential Apartment Development	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.

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

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

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
1. Planning Systems		
1.1 Implementation of Regional Plans	YES	Refer to question 3 to Section 5.3.2 of this report.
1.2 Development of Aboriginal Land Council land	N/A	This Direction does not apply as the Planning Proposal does not relate to any land identified under State Environmental Planning Policy (Aboriginal Land) 2019.
1.3 Approval & Referral Requirements	YES	The Planning Proposal does not seek to introduce new concurrence, consultation or referral requirements, nor identify development types for the purpose of designated development.
1.4 Site Specific Provisions	N/A	This Direction does not apply as the Planning Proposal does not relate to any site specific land use controls, nor introduce new development standards not already contained in the LEP.
1.4A Exclusion of Development Standards from Variation	YES	The proposal does not introduce any additional matters where the application of clause 4.6 is to be excluded.
1.5 Parramatta Road Corridor Transformation Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.6 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.7 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any land comprising the Greater Parramatta Priority Growth Area.
1.8 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
1.9 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.10 Implementation of Western Sydney Aerotropolis Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.11 Implementation of Bayside West Precincts 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.12 Implementation of Planning Principles for the Cooks Cove Precinct	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
1.13 Implementation of St Leonards and Crows Nest 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to the identified area.
1.14 Implementation of Greater Macarthur 2040	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
1.15 Implementation of the Pyrmont Peninsula Place Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
1.16 North West Rail Link Corridor Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
2 Design and Place		
3 Biodiversity and Conservation		
3.1 Conservation Zones	YES	The Planning Proposal does not alter the existing environmental protection to land within an environmental protection zone.
3.2 Heritage Conservation	YES	The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 (refer to Clause 5.10) which already satisfy the requirements of the Direction. The Planning Proposal seeks to provide increased clarity with respect to when a height variation may be considered and will not impact upon the significance of heritage items or conservation areas.
3.3 Sydney Drinking Water Catchment	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
3.4 Application of C2 and C3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
3.5 Recreation Vehicle Areas	N/A	The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
4 Resilience and Hazards		
4.1 Flooding	YES	Several sites within the North Sydney Centre, to which the Planning Proposal relates are identified as being within the Flood Planning Area. The Planning Proposal is consistent with the Direction by not seeking to rezone any land, change the permissibility of land uses on any land or increase the dwelling density on any land which is identified within the Flood Planning Area. Furthermore, the Planning Proposal is unlikely to give rise to an increase in risk to the safety of people or property with regard to flooding.
4.2 Coastal Management	N/A	The Planning Proposal does not affect land that covered by the Coastal Management SEPP.
4.3 Planning for Bushfire Protection	YES	The Planning Proposal is consistent with the direction as it does not result in: <ul style="list-style-type: none"> • inconsistencies with the Planning for Bushfire Protection 2006; • permitting increased density on land affected by bushfire; and • bushfire hazard reduction being prohibited with Asset Protection Zones.
4.4 Remediation of Contaminated Land	YES	The proposal does not seek to alter the zoning of any land, thereby increasing the potential risk to exposure to contamination.
4.5 Acid Sulfate Soils	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by Acid Sulfate Soils.
4.6 Mine Subsidence & Unstable Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by mine subsidence nor has it been identified as being unstable land.
5 Transport and Infrastructure		
5.1 Integrating Land Use & Transport	YES	The Planning Proposal does not seek to minimise development potential in close proximity to mass public transport.
5.2 Reserving Land for Public Purposes	YES	The Planning Proposal does not create or alter existing zonings or reservations of land for public purposes.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
5.3 Development Near Regulated Airports and Defence Airfields	YES	Despite not being located in close proximity to Sydney Airport, almost the entire LGA is affected by an Obstacle Limitation Surface (OLS) of 156m AHD. The Planning Proposal does not seek to increase the maximum height permitted on any land within the North Sydney Centre. Clause 6.15 to NSLEP 2013 requires the consideration of airspace operations when applications are made that seek to penetrate the Obstacle Limitation Surface or Procedures for Air Navigation Services Operations Surface.
5.4 Shooting Ranges	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a shooting range.
6 Housing		
6.1 Residential Zones	YES	The Planning Proposal is consistent with the requirements of the Direction as it will not reduce the ability to undertake residential development on those parcels of land where residential development is currently permitted
6.2 Caravan Parks & Manufactured Home Estates	N/A	This Direction does not apply as the Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.
7 Industry and Employment		
7.1 Business & Industrial Zones	YES	The Planning Proposal does not seek to reduce any commercial zoning under NSLEP 2013 nor does it seek to reduce the level of permissible non-residential floor space achievable on the affected lands.
7.2 Reduction in non-hosted short term rental accommodation period	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
7.3 Commercial and retail development along the Pacific Highway, North Coast	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
8 Resources and Energy		
8.1 Mining, Petroleum Production & Extractive Industries	YES	The Planning Proposal does not seek to alter the permissibility of these types of land uses.
9 Primary Production		
9.1 Rural Zones	N/A	This Direction does not apply as there are no existing rural zones under NSLEP 2013 nor proposed under the Planning Proposal.
9.2 Rural Lands	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.

TABLE 3: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
9.3 Oyster Aquaculture	N/A	This Direction does not apply as the Planning Proposal is not located in a water catchment area that directly drains to a water body containing a Priority Oyster Aquaculture Area or a current oyster aquaculture lease in the national parks estate.
9.4 Farmland of State and Regional Significance on the NSW Far North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.

5.3.3 Section C – Environmental, social and economic impact.

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

No.

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

No.

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

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

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

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

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

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

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

5.4 PART 4 : MAPPING

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

5.5 PART 5: COMMUNITY CONSULTATION

Consultation was undertaken in accordance with the requirements made by the Gateway Determination and Council's internal stakeholder engagement guidelines. There was no requirement to consult with any public authorities.

Council received a total of seven (7) submissions. The issues raised in these submissions were addressed in the post exhibition report considered by Council on 11 December 2023. This version of the Planning Proposal has been amended in response to the issues raised by the community and include:

- Revising the solar access test to be consistent with that under the Apartment Design Guide;
- Ensuring that the solar access test only applies to any non-compliance with the maximum height of buildings control; and
- Provide increased clarification as to terms used within the solar access test.

5.6 PART 6: PROJECT TIMELINE

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

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

ANNEXURE A

– Possible suggested amendments to NSLEP 2013

Possible suggested amendments to NSLEP 2013

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

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

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

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

The suggested wording of the clause could be as follows:

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

2. Primacy of variation requirements

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

2.1 Option 1 – relocation to clause 4.6

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

The solar access test is to be revised such that it only applies to that part of a building proposing to exceed the maximum height of building limits under clause 4.3. This is to remove any unintended consequences that may unfairly restrict the development potential of a site, particularly where a site has not yet been built to the current maximum height limit.

The solar access test as currently worded under Clause 6.3(3) is to be further amended such that it is more consistent with the requirements under the Apartment Design Guide, North Sydney Development Control Plan 2013 and the establishment of heights under Amendment No.23 to NSLEP 2013. In particular, it should be limited to the midwinter period only and impact to the primary “living areas” within a dwelling outside of the North Sydney Centre.

To ensure added clarity, an additional subclause or note should be incorporated to the relevant clause to define what rooms of a dwelling the solar access provisions apply.

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

Clause 4.3 Height of Buildings

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

- (a) *to promote development that conforms to and reflects natural landforms, by stepping development on sloping land to follow the natural gradient,*
- (b) *to promote the retention and, if appropriate, sharing of existing views,*

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

Clause 4.6 Exceptions to Development standards

- (1) The objectives of this clause are as follows—
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) ...
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.5,
 - (ca) clause 4.3 in relation to land identified as “Area 1” on the Special Provisions Area Map, other than subject land within the meaning of clause 6.19C,
 - (cab) clause 4.4, 5.6 or 6.19C in relation to land identified as “Area 1” on the Special Provisions Area Map,
 - (cb) clause 6.3(2)(a) and (b),
 - (cba) clause 6.19A,
 - (cc) clause 6.20.
- (8A) ~~(Repealed)~~ Development must not be granted consent under this clause for development on land identified in the North Sydney Centre on the North Sydney Centre Map that exceeds the maximum height stipulated on the Height of Buildings Map, unless the consent authority is satisfied that any increase in overshadowing between 9 am and 3 pm from the March equinox to the September equinox (inclusive) at midwinter arising from that exceedance will not result in any private open space or window to a living area within a dwelling 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.
- Note** – A living area comprises an indoor space occupied for extended periods of time such as a living room, lounge room, dining room, family room and/or other open plan living areas, but does not include a bedroom or a study.

Clause 6.3 Building heights and massing

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

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

2.2 Option 2 – Variation of Clause 6.3(3)

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

The solar access test is to be revised such that it only applies to that part of a building proposing to exceed the maximum height of building limits under clause 4.3. This is to remove any unintended consequences that may unfairly restrict the development potential of a site, particularly where a site has not yet been built to the current maximum height limit.

The solar access test as currently worded under Clause 6.3(3) is to be further amended such that it is more consistent with the requirements under the Apartment Design Guide, North Sydney Development Control Plan 2013 and the establishment of heights under Amendment No.23 to NSLEP 2013. In particular, it should be limited to the midwinter period only and impact to the primary “living areas” within a dwelling outside of the North Sydney Centre.

To ensure added clarity, an additional subclause or note should be incorporated to the relevant clause to define what rooms of a dwelling the solar access provisions apply.

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

6.3 Building heights and massing

- (1) *The objectives of this clause are as follows—*
 - (a) *(Repealed)*
 - (b) *to promote a height and massing that has no adverse impact on land in Zone RE1 Public Recreation in the North Sydney Centre or land identified as “Special Area” on the North Sydney Centre Map or on the land known as the Don Bank Museum at 6 Napier Street, North Sydney,*
 - (c) *to minimise overshadowing of, and loss of solar access to, land in Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone RE1 Public Recreation or land that is located outside the North Sydney Centre,*
 - (d) *to promote scale and massing that provides for pedestrian comfort in relation to protection from the weather, solar access, human scale and visual dominance,*
 - (e) *to encourage the consolidation of sites for the provision of high grade commercial space.*
- (2) *Development consent must not be granted for the erection of a building on land to which this Division applies if—*
 - (a) *the development would result in a net increase in overshadowing between 12 pm and 2 pm from the March equinox to the September equinox (inclusive) on land to which this Division applies that is within Zone RE1 Public Recreation or that is identified as “Special Area” on the North Sydney Centre Map, or*
 - (b) *the development would result in a net increase in overshadowing between 10 am and 2 pm from the March equinox to the September equinox (inclusive) of the Don Bank Museum, or*
 - (c) *the site area of the development is less than 1,000 square metres and any building resulting from the development would have a building height greater than 45 metres.*
- (3) *The consent authority may grant development consent to development on land in the North Sydney Centre that would exceed the maximum height of buildings shown for the land on the Height of Buildings Map if the consent authority is satisfied that:*
 - (a) *any increase in overshadowing between 9 am and 3 pm ~~from the March equinox to the September equinox (inclusive)~~ midwinter arising from that exceedance will not result in any private open space, or window to a ~~habitable room~~ living area of a dwelling, located outside the North Sydney Centre receiving—*
 - ~~(i)~~ *if it received 2 hours or more of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less than 2 hours of direct sunlight, or*
 - (ii) *if it received less than 2 hours of direct sunlight immediately before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 23)—less direct sunlight than it did immediately before that commencement.*
 - (b) *the requirements under clause 4.6 have been addressed.*
- (4) ...

Note – A living area comprises an indoor space occupied for extended periods of time such as a living room, lounge room, dining room, family room and/or other open plan living areas, but does not include a bedroom or a study.