



IRF25/391

## Plan finalisation report – PP-2023-760

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North Sydney Centre – Height of Buildings Variation

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# Acknowledgment of Country

The Department of Planning, Housing and Infrastructure acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

North Sydney Local Environmental Plan 2013 (Amendment No. 41).

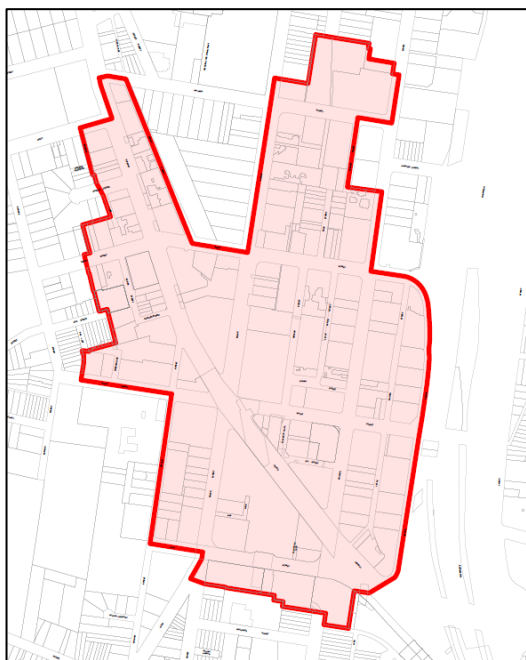
The draft LEP makes several changes to the height of buildings provisions for the North Sydney Centre.

### 1.1.2 Site description

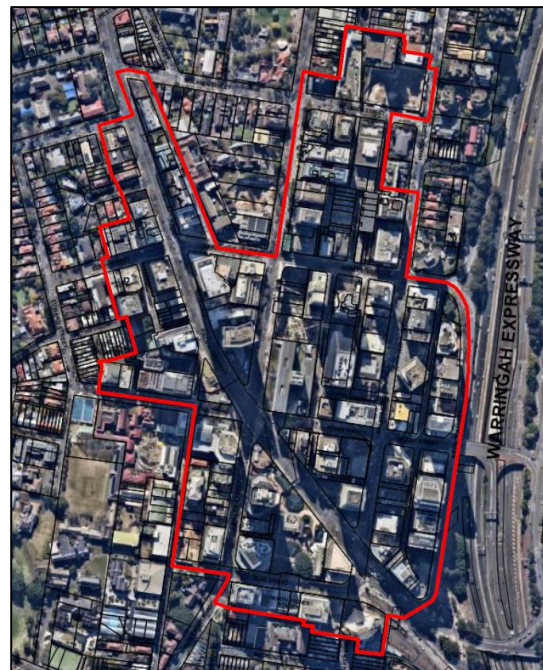
The draft LEP applies to all land within the North Sydney Centre (**Figures 1 and 2**) as designated by the North Sydney Centre Map (**Figure 3**) established under Division 1 of Part 6 of the North Sydney LEP 2013. The North Sydney Centre is predominantly zoned E2 Commercial Centre, with parts of the northern and western extents zoned MU1 Mixed Use.

The Centre is a significant commercial and employment precinct and is identified as being part of the 'Harbour CBD' metropolitan centre in the North District Plan. Several build to rent (BTR) developments are proposed within the Centre.

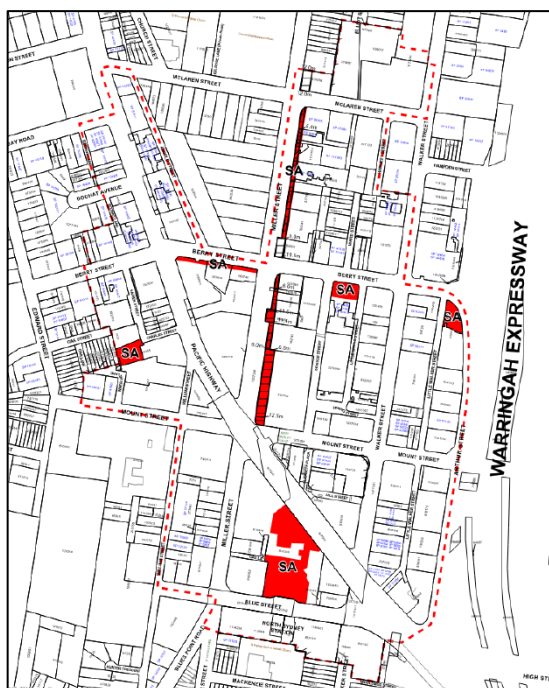
It is noted that the North Sydney Centre is immediately adjacent to established residential areas and heritage items / conservation areas.



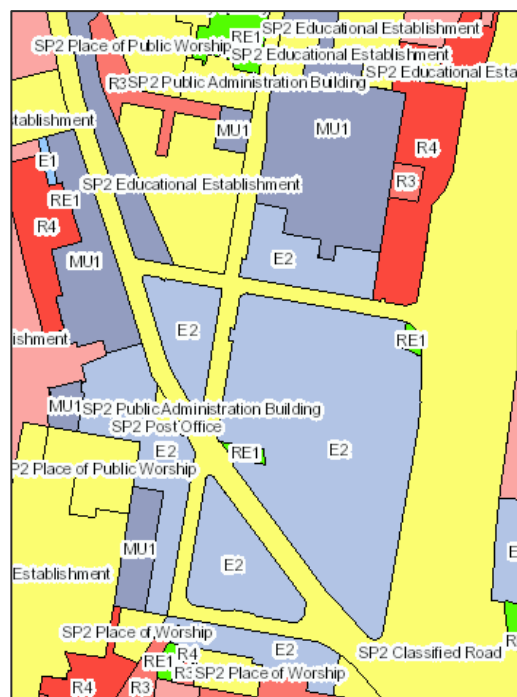
**Figure 1 Site identification map (source: Site identification map)**



**Figure 2 North Sydney Centre aerial photograph (source: Planning Proposal)**



**Figure 3 North Sydney Centre Map (red dashed outline) (source: Planning Proposal)**



**Figure 4 Land zoning within the North Sydney Centre (source: Planning Proposal)**

### 1.1.3 Purpose of plan

The planning proposal as exhibited seeks to amend the NSLEP 2013 to ensure development that seeks to exceed the maximum building height in the North Sydney Centre is considered in a consistent manner.

Council's planning proposal sought to clarify the mechanism to vary maximum building height for development in the North Sydney Centre where additional building height is sought via Clause 6.3 Building heights and massing. The Department has recommended this aspect of the amendment not be supported, refer to **Section 4.1**.

The proposal also seeks to include a new clause that requires the consent authority to consider the objectives of Division 1 to Part 6 where development is proposed within the North Sydney Centre. The Department has also recommended this aspect of the amendment not be supported, refer to **Section 4.1**.

The proposal notes that the solar access test (clause 6.3(3)) would remain. Post-exhibition changes to the proposal seek to revise the solar access test to provide clarity and apply to “living areas” rather than “habitable rooms”, clarify what a “living area” comprises and apply the test to the midwinter (21 June) period only. The post-exhibition changes also seek to ensure that the solar access test only applies to that part of a proposed building that exceeds the maximum height limit. The Department recommends these post-exhibition changes be supported.

The Department notes that a post-exhibition change seeks to acknowledge the state wide reforms made to clause 4.6 within the Standard Instrument LEP which came into effect on 1 November 2023. The final planning proposal does not justify the need to specifically call out the reform updates which are reflected within the NSLEP 2013. The Department recommends this post-exhibition change not be supported, refer to **Section 4.1**.

### 1.1.4 State electorate and local member

The site falls within the North Sydney state electorate. Ms Felicity Wilson, MP is the State Member. The site falls within the North Sydney federal electorate. Ms Kylea Tink MP is the Federal Member. To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 2 Gateway determination and alterations

The Gateway determination issued on 6/07/2023 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

## 3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 14/08/2023 to 25/09/2023.

### 3.1 Submissions during exhibition

A total of 7 community submissions were received, comprising of 4 objections and 3 submissions that supported the proposal or did not object (**Attachment C**).

Key issues identified in Council's Post Exhibition Report (**Attachment C**) include:

- The proposal would reduce the level of flexibility to increase development within the North Sydney Centre.
- The proposal is contrary to the desired outcomes of the North Sydney Capacity and Land Use Strategy (NSCLUS).
- The use of the term "habitable room" within the existing and proposed solar access control creates confusion and has unintended consequences.
- The existing and proposed solar access test is more onerous than the solar access requirements under the North Sydney Development Control Plan 2013.
- The proposed wording under option 1 (Council's preferred option) within the planning proposal narrows the discretionary power of the consent authority.
- The proposal is inconsistent with the State Government's recent changes to clause 4.6 to simplify the variation process.

Council's summary of key issues and responses are included in Council's Post Exhibition Report (**Attachment C**). The Department is satisfied that Council has generally provided an adequate response to submissions.

The Department notes some aspects of the planning proposal discussed in Council's response are not supported by the Department, refer to **Section 4.1** for further discussion.

### 3.2 Advice from agencies

In accordance with the Gateway determination, Council was not required to consult with agencies.

## 3.3 Post-exhibition changes

### 3.3.1 Council resolved changes

At Council's Ordinary Meeting on 11/12/2023, Council resolved to proceed with the planning proposal with the following post-exhibition changes:

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

Council noted that these amendments have considered issues raised in public submissions, are minor and will further improve the clarity and flexibility of the application of clauses 4.6 – *Exceptions to Development Standards* and 6.3(3) – *Building Heights and Massing* to NSLEP 2013. See **Section 3.1.2** for reasoning behind Council's recommendations.

### 3.3.2 The Department's recommended changes

Following the receipt of the revised planning proposal from Council, the Department has made further changes to the proposal as follows:

- Remove the proposed requirement for all development within the North Sydney Centre to consider the objectives of Division 1 to Part 6 of NSLEP 2013.
- Remove the proposed amendment to clarify the mechanism for exceeding the maximum building height regarding clause 4.6 and 6.3(3).

### 3.3.3 Justification for post-exhibition changes

The Department notes that the post-exhibition changes do not require re-exhibition. Please refer to **Section 4.1** for further justification of these changes.

It is considered that Council's post-exhibition changes do not require re-exhibition as they do not alter the intent of and are minor amendments to the planning proposal.

## 4 Department's assessment

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment D**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions.
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment,



requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

**Table 1 Summary of strategic assessment**

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

**Table 2 Summary of site-specific assessment**

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

## 4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

### Building Height Variation Mechanism

#### *Amendments to Clause 4.6 and 6.3(3)*

Council's planning proposal seeks to clarify that the mechanism to exceed the maximum height of building in the LEP is via clause 4.6 Exceptions to development standards. As discussed in **Section 1.1.3**, it is Council's view that clause 6.3(3) provides a less restrictive approach to seeking height variations in the North Sydney CBD. Council consider that this is no longer appropriate, and clause 4.6 can perform the function effectively.

The proposal as submitted would apply where an applicant proposes to exceed the maximum building height using clause 6.3 Building heights and massing. Council seeks to formalise its current practice of requiring applicants to prepare a written justification under the matters outlined in clause 4.6 Exceptions to development standards. The solar access test within clause 6.3(3) to buildings outside the North Sydney Centre would remain with some modification as discussed in the report.



The planning proposal provided two approaches to achieve this outcome:

- Option 1 (Council's preferred approach) involves the removal of the variation criteria from clause 6.3(3) (and potentially objective (c) within clause 6.3) for inclusion within clause 4.6 as an additional head of consideration for development located in the North Sydney Centre.
- Option 2 sought to include a provision within clause 6.3 to ensure that the requirements of clause 4.6 are taken into consideration for a request to exceed the height of buildings criteria for development located in the North Sydney Centre.

The Department undertook a State-wide review of clause 4.6 of the Standard Instrument LEP, the outcome of which came into effect on 1 November 2023, during the exhibition of the planning proposal. The Department notes that these policy changes sought to clarify the requirements for variations to development standards and improve transparency and accountability in the planning system by introducing a monitoring and performance framework.

As discussed in **Section** Error! Reference source not found., Council have noted that the planning proposal does not recommend any amendments to the parts of clause 4.6 which have recently been amended. Notwithstanding, it is the Department's view that any further amendment to clause 4.6 would be considered inappropriate given the recent review of clause 4.6 which has streamlined and simplified the approach to varying development standards.

Regarding Option 2, a new provision with clause 6.3(3) to ensure the requirements of clause 4.6 are considered is also deemed inappropriate. The Department notes it is the expectation for consent authorities (and applicants) to determine when clause 4.6 applies as per the Department's Guide to Vary Development Standards.

Council has noted in its planning proposal that clause 6.3(3) is now considered redundant because of the additional development uplift that has already occurred within the North Sydney Centre (a result of Council's North Sydney Land Use and Capacity Study and the introduction of NSLEP 2013 Amendment 23) while confirming the solar access test within the clause remains an important consideration. Given this, Council may wish to investigate a more nuanced approach to minimising overshadowing impacts outside of the North Sydney Centre.

#### *Amendment to Division 1 Part 6 of the NSLEP 2013*

The planning proposal also sought to include a new clause within Division 1 to Part 6 of the NSLEP requiring that the consent authority consider the objectives of Division 1 to Part 6 where development is proposed within the North Sydney Centre.

The Department is of the view that this proposed amendment is unnecessary. The Department notes that section 4.15(1)(a)(i) of the EP&A Act 1979 already specifies that in determining a development application, the consent authority is to consider the provisions of any environmental planning instrument that are relevant to the development that is the subject of the development application.

### **Post-exhibition changes**

#### *Solar access test*

Following public exhibition, post-exhibition changes were made to the proposal (refer to **Section 3.3.1**) to revise the solar access test to provide clarity and apply to "living areas" rather than "habitable rooms", clarify what a "living area" comprises and apply the test to the midwinter (21 June) period only. The changes also sought to ensure that the solar access test only applies to that part of a proposed building that exceeds the maximum height limit.

The Department supports Council's requested changes to the solar access test within clause 6.3(3).

#### *Recognition of State led amendments to clause 4.6 within NSLEP 2013*

Council included a post-exhibition change to the planning proposal (refer to **Section 3.3.1**) for “*Recognition of the recent State led amendments made to clause 4.6 within NSLEP 2013*”. The Standard Instrument (Local Environmental Plans) Amendment (Exceptions to Development Standards) Order 2023 came into force on 1 November 2023, during public exhibition, and has not resulted in the alteration of amendments as a part of this proposal. The final planning proposal does not justify the need to specifically call out the reform updates which are reflected within the NSLEP 2013. The Department finds this post-exhibition change to be unnecessary.

## 5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

**Table 3 Consultation following the Department’s assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> ( <b>Attachment E</b> ).	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 5/03/2025 , Parliamentary Counsel provided the Certificate that the draft LEP could legally be made. This Certificate is provided at <b>Attachment PC</b> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 6 Recommendation

It is recommended that the Minister’s delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with North District Regional plan.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.
- The draft LEP responds to post exhibition changes to simplify the solar access test provisions within the North Sydney Centre.

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## Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination dated 6 July 2023
C	Council Post-exhibition report dated 11 December 2023
D	Gateway Determination Report
E	Council comments on draft LEP
PC	Parliamentary Counsel Certificate