



13 March 2019

Request for a Rezoning Review  
44-78 Rosehill Street, Redfern (RR\_2018\_SYDNE\_001\_00)

## 1. INTRODUCTION

1. On 14 December 2018, the Independent Planning Commission of NSW (**Commission**) received a rezoning review request from the NSW Department of Planning and Environment (**Department**) to review and determine the suitability for a Gateway Determination for a planning proposal at 44-78 Rosehill Street, Redfern (the **site**).
2. WillowTree Planning Pty Ltd on behalf of Redfern Rosehill Pty Ltd (**Proponent**) has prepared a planning proposal that seeks to amend the *Sydney Local Environmental Plan 2012* (**SLEP 2012**) by increasing development standards at the site to facilitate a mixed-use development comprising 312 dwellings and commercial floor space.
3. The planning proposal was not supported by the City of Sydney Council (**Council**) who notified the Proponent that it would not support the proposed amendments to the SLEP 2012. A rezoning review request was subsequently submitted to the Department on 17 September 2018.
4. The Commission has been requested by the Department, in accordance with section 3.34(5) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**), to review and determine the planning proposal's suitability for being referred to the Department for a Gateway Determination. The Department's referral letter states "*The IPC is encouraged to meet with the Department, Council and the proponent as part of the review process*".
5. Professor Mary O'Kane AC, Chair of the Commission, nominated Mr Peter Duncan, AM (Chair) and Professor Richard Mackay, AM to constitute the Commission for the rezoning review.

### 1.1 Subject site

6. The site is located within the Sydney local government area and is approximately 3 kilometres (km) south of Sydney's central business district (**CBD**). Redfern Station and Redfern CBD are approximately 300-400 metres (m) north and north east of the site respectively.
7. The Australian Technology Park is to the west of the site. The Waterloo Precinct which comprises the proposed Sydney Metro Waterloo station and the Waterloo Estate are south east of the site. The Eveleigh Carriage works is west of the site on the northern side of the railway line. Figure 1 shows the site locality.



Figure 1: Site Locality Map  
 (Source: Department of Planning and Environment Briefing Report)

8. The site contains a two-storey building with commercial tenancies and ground level car parking. The building provides approximately 3,200 square metres (m<sup>2</sup>) of net lettable area accommodating four businesses and employing approximately 240 people.
9. The site has an area of approximately 2,540m<sup>2</sup> with three frontages, Rosehill Street to the east, Margaret Street to the north and Cornwallis Lane to the west.
10. The site is zoned B4 Mixed Use and is subject to the following development standards under SLEP 2012:
  - a maximum building height of 18m; and
  - a floor space ratio (FSR) of 2:1.
11. The Department's Rezoning Review Briefing Report (the **Department's briefing report**) notes that the site is not identified as a heritage item nor within a heritage conservation area. It is not subject to any land reservations identified in the SLEP 2012.

12. The site has been identified as containing class 5 acid sulphate soils under the SLEP 2012.
13. The Department's briefing report notes that as the planning proposal seeks to facilitate development higher than 25 m it would trigger the need for a competitive design process under clause 6.21 of the SLEP 2012, which would be considered at a future development application stage. A building greater than 25 m in height would also require a development control plan (DCP) pursuant to clause 7.20 of the SLEP 2012.

## 1.2 Summary of Planning Proposal

14. The planning proposal seeks to amend the SLEP 2012 for land at 44-78 Rosehill Street, Redfern by:
  - increasing the maximum floor space ratio from 2:1 to 10.4:1;
  - increasing the maximum building height from 18 m to 99.6 m; and
  - amending the SLEP 2012 maps accordingly.

No change to the current B4 Mixed Use zoning is proposed.

15. The Department's briefing report states that the change in planning controls would enable a two-tower concept development of 30 storeys and 18 storeys, comprising 312 residential apartments with a gross floor area (GFA) of 23,409 m<sup>2</sup>, 2,745 m<sup>2</sup> of commercial floor space and 243 car parking spaces. The planning proposal would continue to accommodate 240 jobs on the site through ground level and level one commercial premises.
16. Tower 1 is proposed to be 30 storeys and comprises a total GFA of 20,533 m<sup>2</sup> (residential GFA 18,602 m<sup>2</sup>, commercial GFA 1931 m<sup>2</sup>). Tower 2 is proposed to be 18 storeys and comprises a total GFA 5620 m<sup>2</sup> (residential 4807 m<sup>2</sup>, commercial 813 m<sup>2</sup>).
17. The planning proposal seeks to dedicate 813 m<sup>2</sup> of affordable floor space to facilitate start up hubs and provide opportunities for 50-55 entrepreneurs and dedicate 5% of its apartments to affordable housing.
18. An overview chronology of the history of the planning proposal is provided below:
  - 9 May 2018 – the Proponent lodges the planning proposal with Council;
  - 30 May 2018 – Council requests further information regarding the effects of shadowing and solar access for surrounding public open space and residences;
  - 13 June 2018 – Proponent lodges additional information with Council;
  - 10 September 2018 – Council resolves not to proceed with the planning proposal;
  - 17 September 2018 – the Proponent lodges a request to the Minister for Planning (**Minister**) for a rezoning review which was subsequently referred to the Department;
  - 16 October 2018 – the Department prepares a Briefing Report. And submits it to the Commission.

## 2. REFERRAL OF THE PLANNING PROPOSAL TO THE COMMISSION

19. In response to Council's decision not to proceed with the planning proposal, the Proponent lodged a request with the Minister for a rezoning review.
20. On 17 December 2018, the Commission received a request from the Department to review and determine the suitability of the proposal for a Gateway Determination.

### 3. THE COMMISSION'S MEETINGS AND SITE INSPECTION

21. As part of its rezoning review, the Commission met with the Proponent, Council and the Department and undertook a site inspection. A summary of the meetings and site inspection is provided below.
22. The meeting transcripts, a copy of the proponent's presentation and site inspection notes were made available on the Commission's website on 11 February 2019.

#### 3.1 Meeting with the Department

23. On 5 February 2019, the Commission met with the Department. Key points of discussion included the following:
  - the Department provided an overview of the rezoning review administrative process and its role in the process. The Department emphasised that its briefing report was factual only and did not provide recommendations as to whether the proposal should proceed to Gateway Determination;
  - the Department provided an overview of the planning proposal;
  - the Department described the process whereby councils are required to prepare local strategic planning statements (**LSPS**) which set the planning vision for precincts for the next 20 years. This will enable planning controls in LEPs to be updated over the next two years and put into effect the District Plans. The Department noted that the subject planning proposal sits outside this process;
  - the Department requested the Commission to consider the strategic merit of the planning proposal against the relevant strategic plans;
  - the Department advised that should the proposal not meet the strategic merit test then a site-specific merit test would not be required; however, should the proposal pass a strategic merit test, then a site-specific merit test would be required;
  - The Department noted that, as the proposal was a rezoning matter, the outcome is to determine appropriate building envelopes as opposed to final built form or design.

#### 3.2 Meeting with Council

24. On 5 February 2019, the Commission met with Council. Key points of discussion included the following:
  - Council tabled a diagram indicating the strategic influences relating to the site and surrounds; (this diagram is available to view on the Commission's website). Council stated that in meetings with the proponent that Council had expressed concern that the planning proposal was not appropriate at this time;
  - Council indicated that after assessing of the planning proposal it had consistently maintained its position that the planning proposal fails the strategic merit test and the site-specific merit test;
  - Council indicated that the Central to Redfern corridor has been identified as an innovation corridor to support knowledge intensive industries, creative industries and health education and research. Council noted that the Eastern City District Plan (**District Plan**) identified an upper level of 230,000 jobs needed to be provided in the corridor to 2036 and it was concerned that the planning proposal was focussed on a residential outcome for the site and did not seek to contribute to economic growth;
  - Council observed that there is no strategic rationale for a site-specific planning proposal being progressed ahead of other sites in the area when it will not contribute substantively to the wider strategic jobs growth goals of the corridor;

- Council indicated that it expected the its strategic planning work to be completed within two years and that it was likely that development in the area would create a substantial demand for infrastructure and the consequent burden of funding through developer contributions to be shared equitably across the area;
- Council indicated that the planning proposal was premature as it was ahead of work being undertaken by the Greater Sydney Commission and other state agencies (including Transport for NSW) that will heavily influence the development of the area over time. Council expressed concern that the planning proposal also pre-empts the outcomes of the strategic work being done by the Department and the Council;
- Council advised that it was commencing preparation of its LSPS which will lead to amendments to the existing LEP to bring the District Plan into play;
- Council indicated that it had an expectation that new development would contribute 10 -12% contribution to affordable housing under its new affordable housing planning proposal which is currently with the Department;
- Council addressed the site-specific merit issues of the planning proposal. Council addressed the issue of site context and built form. Council noted the proponent had compared its proposal to existing towers blocks to the north of the site. Council also observed that these towers were lower than the proposed development;
- Council referred to the proposed upgrade of Redfern station and that the detail of that upgrade should inform the development constraints of sites around the station;
- Council advised that the building proposed for the site was very detailed and highly articulated model that would more-typically be presented at the DA stage of a proposal; and
- Council raised the issues of visual and acoustic privacy and the Department's Apartment Design Guidelines (**ADG**) criteria for minimum separation between apartment buildings. Council expressed the view that wind and solar access requirements were problematic. Council advised that the indicative wind attenuation measures proposed by the proponent in the public domain area where not desirable.

### 3.3 Meeting with the Proponent

25. On 5 February 2019, the Commission met with the Proponent. Key points of discussion included the following:

- the Proponent provided a presentation on the planning proposal and outlined the project background to date including the rationale of submitting the planning proposal ahead of the finalisation of several strategic planning documents and precinct plans proposed for the area;
- the Proponent expressed its view that certain incomplete planning documents should not be relied on by the Commission in forming its advice; specifically, the Department's Central to Eveleigh Land Use and Infrastructure Implementation Plan (**LUIIP**) and Council's Local Strategic Planning Statement (**LSPS**);
- the Proponent noted that the planning proposal will include a blend of affordable housing as business start-up spaces for extra small start-ups. The proponent also indicated that the proposal was likely to generate increased employment space;
- the Proponent stated that the planning proposal allowed for 7.2% of the space to be provided for affordable housing which meets the current criteria as per the District Plan of between 5% to 10%;
- the Proponent advised that the planning proposal is consistent with the District Plan regarding intensification of development along railway corridors;
- the Proponent advised that it had prepared a detailed solar analysis for the proposal at the request of Council;

- the Proponent advised that it had undertaken a detailed wind analysis and modelling for the site that concluded that appropriate wind treatment options were available;
- the Proponent advised that it had undertaken a detailed analysis to demonstrate that the building envelopes envisaged by the planning proposal complied with the ADG in respect of building separation and privacy;
- the Proponent addressed the juxtaposition between the proposed building height and the existing terraces to the immediate south of the site. The Proponent indicated that this transition was “envisaged in the Central to Eveleigh Strategy”;
- the Proponent indicated that the communal open space proposed is well over the required minimum provision; and
- the Proponent advised that it had prepared preliminary floor plans for every level of the building. The proponent indicated that the floor plans showed it was possible to meet the ADG in terms of solar amenity and building separation and that the plans were reviewed by a builder who indicated that the indicative design could be built.

### 3.4 Site Inspection

26. On 5 February 2019, the Commission conducted an inspection of the site. The site inspection provided the opportunity to view the site and the surrounding locality. The site inspection notes were published on the Commission’s website on 6 February 2019.

## 4. ADDITIONAL INFORMATION

27. On 21 January 2019 the Proponent provided the Commission an independent review document titled ‘*Gibbons Place 44-78 Rosehill Street, Redfern*’ (**Gibbons Place document**) prepared by Sydney Architecture Studio. The document was also sent to the Department. The Gibbons Place document was published on the Commission’s website on 23 January 2019.

28. On 23 January 2019 the Commission invited the Department and Council to provide comments on the Gibbons Place document. Council provided a response on 30 January 2019. The Department provided a response on 1 February 2019. Both responses were published on the Commission’s website on 4 February 2019.

29. On 11 February 2019 the Commission requested the Department to comment further on the content of the Gibbons Place document. On 25 February 2019 the Department advised that it did not have any further comment on the Gibbons Place document.

30. On 1 February 2019 the Proponent provided the Commission an advance copy of a PowerPoint presentation to which it intended to refer to at its meeting with the Commission on 5 February 2019. The presentation was published on the Commission’s website on 14 February 2019.

31. On 6 February 2019 the Commission requested the Department to contact UrbanGrowth NSW regarding the boundaries of the Central to Eveleigh Urban Transformation Strategy (**CEUTS**). The Department was also requested to provide a status update for the LUIP. The information regarding the LUIP was received from the Department on 14 February 2019 and was published on the Commission’s website on 15 February 2019. The information regarding the CEUTS boundaries was received 15 February 2019 and was published on the Commission’s website on 18 February 2019.

32. On 8 February 2019 the Commission requested information from Council regarding its affordable housing policy. Council was also requested to provide a digital copy of the strategic planning diagram it produced in its meeting with the Commission on 5 February 2019. This information was received from Council on 8 February 2019. The strategic planning diagram was published on the Commission's website on 8 February 2019. The information regarding Council's affordable housing policy was published on the Commission's website on 14 February 2019.
33. On 11 February 2019 the Proponent was invited to provide comments on Council's strategic planning document provided in its meeting with the Commission on 5 February 2019. This information was received by the Commission on 13 February 2019 and was published on the Commission's website on 14 February 2019.
34. On 12 February 2019 Council was requested to provide a status update on its Local Strategic Planning Statement. This information was received by the Commission on 13 February 2019 and was published on the Commission's website on 14 February 2019.
35. On 13 February 2019 the Commission received a request from the Proponent that certain correspondence between it and Council, including a Voluntary Planning Agreement (VPA) offer letter from the Proponent to Council dated 9 August 2018, (available on the Department's website) be published directly on the Commission's website. This information was made available on the Commission's website on 25 February 2019 and 27 February 2019 respectively.
36. On the 26 February 2019 the Commission received email correspondence from Council requesting that a letter dated 3 July 2017 in relation to a previous planning proposal for the site be published on the Commission's website. This letter was published on the Commission's website on 28 February 2019, was subsequently removed on 4 March 2019 and republished to include the covering email from Council on 6 March 2019.

## 5. THE COMMISSION'S CONSIDERATION

37. In reviewing the planning proposal, the Commission has carefully considered the following material (the **Material**):
  - request from Council to the Proponent to prepare a planning proposal for the site dated 20 December 2017;
  - planning proposal for the Amendment to *Sydney Local Environmental Plan 2012* for Additional Building Height and Floor Space Ratio for a Mixed-Use Tower, prepared by WillowTree Planning Pty Ltd and dated 9 May 2018;
  - Council report to its Transport, Heritage and Planning Committee, dated 10 September 2018;
  - Request for Rezoning Review Application form and attached submission, prepared by WillowTree Planning Pty Ltd and dated 17 September 2018;
  - Rezoning Review – Briefing Report, prepared by the Department and dated 16 October 2018;
  - the Department's *Guide to Preparing Local Environmental Plans 2018 (Guide to LEPs)*;
  - the Department's Planning Circular PS 18-012 'Independent reviews of plan making decisions', dated 14 December 2018;
  - additional information received from the Proponent on 21 January 2019, 1 February 2019 and 13 February 2019 (refer to paragraphs 27,30,33 and 35 respectively);

- additional information received from the Department on 1 February 2019, 14 February 2019 and 15 February 2019 (refer to paragraphs 28 and 31 respectively); and
  - additional information received from Council on 30 January 2019, 8 February 2019, 13 February 2019 and 26 February 2019 (refer to paragraphs 28,32,34 and 36 respectively).
38. In the course of the rezoning review the Commission's attention was drawn to the following documents:
- UrbanGrowth NSW's Central to Eveleigh Urban Transformation Strategy (**CEUTS**);
  - the Redfern to Waterloo State Significant Precinct;
  - the Central to Eveleigh Land Use and Infrastructure Implementation Plan (**LUIIP**);
  - Council's local strategic planning statement (**LSPS**);
39. As noted in the Department's briefing report, the site is not within the CEUTS or the Redfern to Waterloo State Significant Precinct. On 14 February 2019 the Department advised that it was considering options for the progression of the LUIIP and that no time frame was available for its exhibition at this stage. On 13 February 2019 Council advised that it had not completed its LSPS and that it would be reported to Council in June 2019.
40. As the site was either outside of existing strategy boundaries or the strategies (specifically the LUIIP and the LSPS) are incomplete and /or have not been placed on public exhibition the Commission did not rely on these documents in its deliberations.
41. The Commission notes that the VPA offer was made to Council by the Proponent on 9 August 2018. In accordance with the Department's Guide to LEPs, there is no requirement for VPAs to be considered as part of the strategic or site-specific merit of a planning proposal in a rezoning review or Gateway process. The Commission has not considered the specifics of the VPA offer to Council as part of its review and advice.
42. In providing advice on the rezoning review, the Commission firstly considered the strategic merit of the planning proposal.

### 5.1 Strategic Context

43. The Commission has considered the following key strategic planning document in reviewing the planning proposal:

#### *Eastern City District Plan (District Plan)*

44. The District Plan is a 20-year plan to manage growth in the context of economic, social and environmental matters. The District Plan guides the decisions of State agencies and informs the private sector and the wider community of approaches to manage growth and change.
45. The District Plan states "*Place based planning is a design led and collaborative way of examining the complexity of the city by viewing its mosaic of different places, each with unique potential and characteristics. It is a means better understanding a place and building relationships and collaboration to deliver a vision and solutions that respond to a place's potential*".

46. The following District Plan Planning priorities are relevant to the site:
- Planning Priority E5: Providing housing supply, choice and affordability, with access to jobs, services and public transport.
  - Planning Priority E8: Growing and investing in the health and education precincts in the Innovation Corridor. The Innovation Corridor includes the Redfern to Eveleigh Precinct.
  - Planning Priority E11: Growing investment, business opportunities and jobs in strategic centres which includes the Harbour CBD.
  - Planning Priority E13: Supporting growth and targeted industry sectors.
47. The site is within the Harbour CBD, which forms part of the wider Eastern Economic Corridor that stretches from Macquarie Park, Chatswood, St Leonards, the Harbour CBD and Randwick to Green Square, Mascot and the international trade and tourism gateways of Sydney Airport and Port Botany.
48. The site is within the Innovation Corridor identified in the District Plan. The Innovation Corridor contains knowledge intensive, creative and start up industries along with health, education and research services that support the global competitiveness of the Harbour CBD.
49. The site is within the Camperdown-Ultimo Collaboration Area which is part of the Innovation Corridor along the western and southern fringes of the Harbour CBD. The Collaboration Area is identified as a health and education precinct. The Greater Sydney Commission (**GSC**) will facilitate collaboration between key stakeholders and agencies to deliver a place strategy for the Camperdown-Ultimo health and education precinct as an action in the District Plan.

## 5.2 Strategic Merit Test

50. A key factor in determining whether a planning proposal should proceed to a Gateway Determination is whether the proposal demonstrates strategic merit. The Commission notes that the Department's Guide to LEPs states that there will be a presumption against a rezoning review request that seeks to amend LEP controls that are less than 5 years old, unless the proposal clearly meets the strategic merit test.
51. The planning proposal seeks to amend the SLEP 2012 which commenced on 14 December 2012. Therefore, it is not seeking to amend a planning control that is less than five years old.
52. In relation to the strategic merit test the Commission notes that Planning Circular PS18-012 (the **Circular**) states:
- ✓ *"...the proponent may ask for a rezoning review... to determine if (it is) they are:*
    - *consistent with the relevant regional plan outside of the greater Sydney region, the relevant district plan within the Greater Sydney Region, or corridor/precinct plans applying to the site, including any draft regional, district or corridor/precinct plans released for public comment; or*
    - *consistent with a relevant local strategy that has been endorsed by the Department; or*
    - *responding to a change in circumstances, such as the investment in new infrastructure or changing demographic trends that have not been recognised by existing planning controls."*

### *Proponent's Consideration*

53. In relation to the Proponent's consideration of the District Plan, the Department's briefing report states:

*"The planning proposal states the provision of commercial space, new housing and other retail, community and open space facilities in a mixed-use environment on the site would be key to achieving the plan's infrastructure and collaboration, liveability, productivity and sustainability priorities".*

54. The Department's briefing report also states in respect of the Proponent's consideration that:

*"The planning proposal states the following regarding consistency with the district plan:*

- *Infrastructure and Collaboration:*
  - *The proposed development would support the transformation that is being used by various levels of government in conjunction with the Central to Eveleigh Urban Transformation strategy and the Sydney metro by aligning jobs and housing growth with new infrastructure.*
- *Liveability*
  - *The subject site is identified within the Central to Eveleigh Urban Renewal Corridor and the proposed development would contribute to the delivery of the 157,000 additional homes required by 2036; and*
  - *The new residential accommodation in conjunction with ground floor and first floor commercial premises as a mixed-use development on the site would accommodate a wide range of people, as required by the plan's priorities;*
- *Productivity*
  - *The proposed mixed-use development would deliver a range of affordable and flexible commercial spaces in a highly amenable and walkable precinct serviced by major public transport infrastructure; and*
- *Sustainability*
  - *The redevelopment of the site for higher density mixed use development would augment the efficiency with which the land is used through the diversification and densification of uses that are highly compatible with surrounding development and coordinated with supportive infrastructure".*

55. Although the site is not within the boundaries of any local planning or infrastructure strategies that have been endorsed by the Department, the Proponent has submitted that the planning proposal is consistent with the *Sustainable Sydney 2030 Community Strategic Plan* and presents a significant opportunity to contribute to the vision for the area as outlined in the UrbanGrowth NSW's CEUTS.

56. A strategic merit consideration, namely that the planning proposal is responding to a change in circumstances that have not been recognised by existing planning controls, is addressed by the Proponent advising that the planning proposal site falls within the catchment of the proposed Waterloo Metro station and stating:

*“that the planning proposal would contribute to the revitalisation of the Waterloo-Redfern corridor, responds to the employment and housing targets for the precinct and would provide suitable commercial floor space to accommodate business and foster jobs growth within the creative, education, knowledge and digital industries, of which Redfern is becoming a hub”.*

### *Council’s Consideration*

57. Council does not support the planning proposal on the basis that it fails to meet strategic merit. The Department’s briefing report states that:

*“Council states that the proposal:*

- does not align with the place-based planning approach fostered by the District Plan. Council’s report to its Transport, Heritage and Planning Committee states “it is inappropriate to change planning controls for an individual site with such strategic importance in isolation of place-based planning strategies for the wider area that consider local context and infrastructure needs” ...A place-based strategy will ensure development can be shared equitably across a wider range of land owners and future developers;*
- proposes controls in isolation and which do not reflect the broader strategic investigation for the Redfern and Waterloo area, which will consider associations between infrastructure and population growth;*
- pre-empts current strategic and infrastructure planning for the wider area, specifically the Central to Eveleigh Land Use and Infrastructure Implementation Plan (LUIIP) and will result in an inequitable planning outcome as one site may benefit from a greater share of future uplift than if it was considered in the context of the broader strategic plan;*
- undermines the employment based strategic vision for the Camperdown-Ultimo Collaboration Area as the proposal is primarily residential and would result in a net reduction in employment floor space;*
- Does not align with the strategic intent for the Eastern City District Plan Innovation Corridor because it proposes large scale residential development on the site which will compromise future opportunities for employment uses;*
- Does not form part of the strategic vision for the locality, which will be provided in Council’s local strategic planning statement (LSPS), which council is currently preparing; and*
- Does not adequately consider the future infrastructure needs of Redfern Station and the proposed Waterloo Metro Station.”*

### *Commission’s Consideration*

58. The District Plan states *“A place-based and collaborative approach is required to maintain and enhance the liveability of the Eastern City District”*. The Commission agrees with Council’s position that *“place-based’ planning requires a methodical and sequenced approach, particularly the need to sequence infrastructure in places where significant growth is planned or anticipated”*. This site-specific planning proposal for significantly increased housing does not adopt a place-based approach and pre-empts the appropriate sequencing of development across Redfern-Waterloo corridor.

59. The Commission considers any changes to planning controls should reflect a broader strategic investigation that better understands the future infrastructure needs of Redfern and Waterloo. The proposed changes to local planning controls, in isolation, do not reflect a broader strategic vision for the local area.
60. The site is located within the Eastern City District's Innovation Corridor and the Camperdown-Ultimo Collaboration Area as identified in the District Plan. The District Plan's vision for the Camperdown-Ultimo Collaboration Area is that there is a clear emphasis that the prevailing characteristic of the area is enabling innovation and knowledge-based jobs. The Commission therefore finds that the planning proposal is not consistent with the District Plan in that it proposes large scale residential development above commercial floor space, which may compromise future opportunities for new employment space.
61. The Commission agrees with Council's position that there is the potential for other sites in the precinct to be disadvantaged by a development of this scale, as it could receive a greater proportion of future uplift than it might otherwise have received had it been considered in the broader strategic context.
62. Based on its consideration of the Material, and for the reasons outlined in paragraphs 58 to 61, the Commission finds that there is insufficient strategic merit to warrant referral of the planning proposal to the Department for a Gateway Determination.

### 5.3 Site Specific Merit Test

63. The Commission notes that Planning Circular PS18-012 (the **Circular**) states that:

*“having met the Strategic Merit Test, the relevant Planning Panel or the Commission must then determine if the proposal has site specific merit...”*

64. As noted in paragraph 62, the Commission finds that the planning proposal has insufficient strategic merit.
65. Notwithstanding the above, the Commission has considered the planning proposal's site-specific merit in reviewing the rezoning review request in accordance with the Circular and Guide to LEPs having regard to:

- i. The natural environment (including known significant environmental values, resources or hazards);*
- ii. The existing uses approved uses and likely future uses of land near the land subject to the proposal; and*
- iii. The services and infrastructure that are or will be available to meet the demands arising from the proposal and any proposed financial arrangement for infrastructure provision.”*

### *Proponent's Consideration*

66. The Department's briefing report, in respect of the Proponent's consideration of the planning proposal, states:
- *“Natural Environment*
    - *...the subject site is not identified as being near any area of biodiversity and accordingly the proposal would not adversely impact on the natural environment, hazards or other resources.*

- **Solar Access**
  - ...that shadow modelling has been carried out as part of the urban design report. The proposal states the concept scheme will comply with Council's policy and the Apartment Design Guide.
  - additional overshadowing information was requested by Council. A separate overshadowing impacts assessment prepared by Roberts Day was submitted to Council as part of the planning proposal".
- **Noise**
  - The planning proposal includes a noise impact assessment which recommends number a noise attenuation treatments to deal with traffic and railway noise. The planning proposal states that a full assessment of the treatments will be carried out at the development application stage.
- **Wind impacts**
  - The planning proposal includes a wind environment study which found that:
    - certain locations around the site experience adverse wind conditions and will require treatments to achieve the desired wind speed criteria for pedestrian comfort and safety; and
    - the predominately wind issues are due to the prevailing southerly and westerly winds, combined with limited shielding from neighbouring buildings;
    - the study states that with the inclusion of wind attenuation treatments in the final design it is expected that wind conditions for all outdoor trafficable areas within and around the proposed development will be suitable for their intended uses.
- **Environmentally Sustainable Development**
  - The planning proposal includes an environmental sustainable design (ESD) strategy report to detail how ESD principles could be incorporated in the design, construction and operation of the proposed development".

67. In respect of site-specific merit regarding existing uses, approved uses and likely future uses of land near the proposal, the planning proposal addresses issues regarding optimal development outcomes that uplift the surrounding public domain and level of amenity, the complementary nature of support for surrounding land uses including the stepping down of the building envelope to provide an appropriate interface with the existing terrace house development to the south of the site.

68. The planning proposal states that the proposed height and FSR are generally consistent with existing high-density development nearby and that new high-density developments near Redfern station and the proposed Waterloo Metro Station are anticipated to define the future built form character of the surrounding context.

69. Regarding site-specific merit relating to services and infrastructure that are or will be available to meet the demands arising from the proposal the planning proposal states that the site is serviced by (existing) infrastructure that can service higher density commercial and residential development.

70. The Proponent has prepared an economic and community assessment and a traffic impact assessment reports that indicate the future population resulting from the proposal would be adequately serviced by current and planned infrastructure in the surrounding area.

### *Council's Consideration*

71. Council does not support the planning proposal because Council states that it fails to meet site specific merit criteria. The Department's briefing report in respect of Council's consideration indicates that:

*"Council states that the proposal,*

- would enable a development with unmanageable wind impacts;*
- would enable a development that is of excessive scale;*
- cannot comply with the Department's Apartment design Guide due to insufficient setbacks between the proposed towers;*
- relies on existing and proposed transport infrastructure to justify a large increase in population; and*
- relies on existing open space adjacent and nearby the which does not have the amenity to support the proposed increase in population."*

### *Commission's Consideration*

72. The Commission accepts Council's position that the proposed building design and envelope has not demonstrated that it can adequately deal with issues relating to privacy, solar access and wind for the reasons outlined below.

73. The Commission finds that approval of the planning proposal would potentially restrict or constrain adjacent development proposals due to the proposal adopting inadequate building separation requirements, relating to the site immediately to the west of the subject site.

74. The Commission finds that solar access and privacy issues in relation to the residential apartments have not been adequately addressed, particularly as building separation setbacks rely on potentially constraining the setback and design of adjoining developments.

75. The Commission finds that wind issues in relation to the residential apartments have not been adequately addressed, particularly as the indicative design relies on the introduction of wind shield structures within the proposed public domain.

76. The Commission finds that the planning proposal relies on existing open space infrastructure which does not offer the amenity required to service the proposed large increase in apartments/population and would require significant improvements and would require a significantly increased maintenance regime.

77. The Commission finds that the detailed nature of the indicative design of the built form of the planning proposal may pre-empt the requirement of clause 6.21 of the SLEP 2012 wherein a development higher than 25 m triggers the need for a competitive process which would normally be considered at a future development application stage.

78. For the reasons outlined in paragraphs 73 to 77 the Commission considers that the planning proposal does not sufficiently demonstrate site-specific merit outlined in paragraph 65.

## 6. THE COMMISSION'S ADVICE

79. The Commission has undertaken a rezoning review, as requested by the Minister's delegate, as set out in paragraph 20, and provides the following advice on whether the proposal should be submitted for a Gateway Determination.
80. The Commission has reviewed and carefully considered all the Material before it, as set out in paragraph 35, met with the Department, Council and the Proponent and carried out a site inspection.
81. Based on its consideration of the Material, the Commission finds:
- this 'site-specific' proposal for significantly increased housing lacks strategic merit because it does not adopt a 'place-based' approach to planning, and pre-empts the appropriate sequencing of development across the Redfern-Waterloo corridor, as outlined in paragraph 58;
  - the proposed changes to planning controls, in isolation, do not reflect the broader strategic vision for the Redfern and Waterloo areas, as outlined in paragraph 59;
  - the planning proposal is inconsistent with the Eastern City District Plan because it proposes large-scale residential development above some commercial floor space which may compromise future opportunities for new employment space, as set out in paragraph 60;
  - other local sites may be disadvantaged by a development of this scale receiving a greater share of future uplift than it might otherwise have received had it been considered in a broader strategic context, as set out in paragraph 61;
  - the planning proposal does not sufficiently demonstrate site-specific merit, as set out in paragraph 77;
  - the building design and envelope have not demonstrated, as set out in paragraphs 72 to 77, that issues relating to privacy, solar access and wind can be adequately dealt with; and
  - the planning proposal relies on existing open space which does not have the amenity to support the proposed significant increase in population, as set out in paragraph 76 the detailed nature of the indicative design of the built form may trigger the need for a competitive process, which is a requirement for developments over 25m, as set out in paragraph 77.
82. Based on its findings, as outlined above, the Commission has concluded the planning proposal does not demonstrate strategic merit nor site-specific merit and, as such, the current height and FSR controls under SLEP 2012 should not be varied.
83. The Commission has, therefore, determined the planning proposal is not suitable for Gateway Determination.



**Peter Duncan, AM (Chair)**  
Member of the Commission



**Professor Richard Mackay, AM**  
Member of the Commission