



7 June 2019

**Advice for Gateway Determination Review
41 McLaren Street, North Sydney (PP_2018_NORTH_001_00)**

1. INTRODUCTION

1. On 14 March 2019, the Independent Planning Commission of NSW (the **Commission**) received a referral to review a Gateway determination pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to a planning proposal for a site at 41 McLaren Street, North Sydney (the **site**).
2. Architectus Group Pty Ltd (the **Proponent**) seeks to amend the planning controls of the North Sydney Local Environmental Plan (North Sydney LEP) 2013 (the **planning proposal**) in relation to the site to:
 - increase the maximum building height control from RL 100 metres (m) Australian Height Datum (AHD) to RL 226m AHD; and
 - increase the minimum non-residential floor space ratio (FSR) from 0.5:1 to 3:1.
3. The planning proposal would facilitate a 45-storey mixed-use development that is intended to include:
 - the refurbishment of a heritage-listed eight-storey commercial building;
 - the addition of a residential tower comprising 37 storeys over the existing building, containing approximately 224 units; and
 - the construction of additional basement parking to accommodate a further 128 parking spaces to provide a total of 219 spaces.
4. On 23 August 2018, the Minister for Planning's delegate supported the planning proposal and issued a Gateway determination, subject to conditions. On 4 September 2018, Council requested a review of the Gateway determination to challenge the basis of the Gateway determination.
5. The matter was referred to the Commission for advice from the Minister's delegate. In providing its advice the Commission has been:

“requested to review the planning proposal and prepare advice concerning the merits of the review request. The advice should include a clear and concise recommendation to the Minister’s delegate confirming whether, in its opinion, the planning proposal should proceed past Gateway.”
6. Professor Mary O’Kane, Chair of the Commission, nominated Chris Wilson (Chair), Wendy Lewin and Alan Coutts to constitute the Commission to undertake the review and provide advice.

1.1 Subject Site

7. The site is legally described as Lot 1 DP 557103 and comprises a rectangular-shaped

allotment that includes an eight-storey commercial building known as Simsmetal House (refer to *Figure 1*). Completed in 1972, the building was designed by Harry Seidler and Associates and is identified as a local heritage item under the North Sydney LEP 2013.

8. The site is located at the northern extent of the North Sydney Centre of the North Sydney LEP 2013 in an area largely characterised by medium to high-rise commercial and residential development. The area surrounding the site comprises primarily of mixed-use buildings and lower-scale residential development. The site lies on a street block that is bound by Miller, Walker and Berry Streets.

Figure 1 – Site Map



Source: Department of Planning and Environment's Gateway Review – Justification Assessment Report

9. Under the North Sydney LEP 2013 the site is subject to the following development controls:
 - land use zone: B4 Mixed Use;
 - maximum building height: RL 100m; and
 - minimum non-residential FSR: 0.5:1.

1.2 History of Planning Proposal and Gateway Determination

10. On 1 September 2017, North Sydney Council (**Council**) received the planning proposal for the site. On 8 December 2017, the Proponent lodged a request for a rezoning review with the Department of Planning and Environment (the **Department**) as Council had failed to make a decision within 90 days of accepting the planning proposal.
11. At its meeting on 19 February 2018, Council resolved to refuse the planning proposal because it could potentially undermine strategic planning work that was being undertaken in the locality,

specifically work relating to the Ward Street Precinct (the draft Ward Street Precinct Masterplan (**draft WSPM**)).

12. A summary of Council's draft Ward Street Precinct Masterplan is outlined below:

Stage 1 (2017)

- *The draft WSPM identified the site for adaptive reuse to retain the existing building and proposes a building height change to RL 11m AHD, which was calculated to be an additional five levels of residential floor space that could accommodate approximately 25-30 apartments.*
- *Council confirmed that investigations of the Stage 1 building envelope of the site would be economically unfeasible.*

Stage 2 (2018)

- *Two masterplan options were outlined which superseded the draft Stage 1 masterplan:*

Option 1: Miller Street Square masterplan

- *Proposed the creation of a public domain square facing Miller Street*
- *The Site should accommodate a mixed-use building with supporting retail/commercial uses and a slim hotel tower above.*
- *This option allows for a building envelope with approximate FSR of 13.9:1 which would accommodate the GFA of approximately 32,935 square metres (m²), with a tower of up to 30 storeys within a maximum height up to 160m AHD.*

Option 2: Central Square masterplan

- *The site is to retain the existing LEP height controls to protect solar access and amenity to the public square and does not afford any additional building height or floor space beyond the currently achieved over the site or under the North Sydney LEP 2013.*
- *At its meeting of 25 February 2019, Council has reported the preferred masterplan option as Option 2 for the precinct.*

13. The draft WSPM is yet to be endorsed by Council. At a meeting between the Commission and Council on 10 April 2019, Council indicated that Option 2 is its preferred option.

14. The following table presents a comparison of the existing and expected built form outcomes for the site under the draft WSPM options, the current LEP controls and per the planning proposal:

| | WSPM Option 1 | WSPM Option 2 | Current Controls NSLEP 2013 | Planning Proposal |
|--|--|---|--|--|
| Building Height (approx. storeys) | RL 160 (30 storeys) | Existing building height: 8 storeys | Permitted maximum height of RL100 (approx.8 storeys) | RL 226 (45 storeys) |
| Max FSR | No proposed max FSR. Approx. yield of 13.9:1 | Existing building: 3.68:1 | No max FSR | 13.1:1 |
| Min Non-residential FSR | No proposed min FSR. Approx. yield of 13.9:1 | Existing building non-residential FSR: 3.68:1 | 0.5:1 | 3:1 |
| GFA | 24,635m ² | Approx. 8,674m ² (existing building) | No limit | 7,285m ² – Commercial 23,637m ² – Residential |
| Use | Commercial (retail/hotel/convention) | Commercial (existing building) | A range of uses permitted under B4 zone | Commercial/Residential |

Source: Department of Planning and Environment's Gateway Review – Justification Assessment Report

15. The planning proposal outlines the Proponent's 'Alternative Masterplan' for the Ward Street Precinct. For the site, the 'Alternative Masterplan' proposes a building height of RL 226m (45 storeys) with a mix of uses comprising 7,285m² of commercial GFA and approximately 23,637m² of residential GFA, which conforms with the proposed amendments under the planning proposal.
16. The Sydney North Planning Panel (the **Planning Panel**) considered the request on 7 March 2018 and determined that the planning proposal has strategic and site-specific merit and should be submitted for a Gateway determination. This determination had regard to:
 - increased residential and commercial density requirements of the Greater Sydney Commission's (GSC) *North District Plan*;
 - the location of the new metro station access at the corner of Miller and McLaren Streets; and
 - Council's North Sydney Centre Capacity and Land Use Study (NSCCLUS), which increases in height to a maximum of RL 289m AHD.
17. On 5 April 2018, Council accepted the planning proposal authority role for this planning proposal.
18. On 4 May 2018, Council submitted the planning proposal to the Department for a Gateway determination.
19. A Gateway determination was issued by the Minister's delegate, subject to conditions, on 23 August 2018. The Department considers that these conditions should be satisfied prior to agency and community consultation.
20. On 4 September 2018, Council requested a review challenging the basis of the Gateway determination.

2. THE COMMISSION'S MEETINGS AND SITE INSPECTION

21. As part of its considerations, the Commission met with various parties and undertook a site inspection and locality tour.

2.1 Meeting with the Proponent

22. On 10 April 2019, the Commission met with the Proponent to discuss the planning proposal and the Gateway determination. Issues discussed at the meeting are recorded in a transcript which was made available on the Commission's website on 30 April 2019. A video and hard copy presentation provided to the Commission at the meeting are also available to view on the Commission's website, as is a photograph of the scale model of the proposed building envelope and surrounding area.
23. A summary of key matters discussed is as follows:
- consideration of Council's draft WSPM;
 - 'Alternative' masterplan;
 - overshadowing of Berry Square, adjacent buildings and new public open space;
 - design and visual impacts of the tower;
 - the Voluntary Planning Agreement (VPA);
 - traffic and parking;
 - response to Council's Report of 29 October 2018; and
 - response to the Department's Report of March 2019.
24. At the meeting, the Proponent also requested:
- the removal of condition 1 (d) of the Department's Gateway determination relating to impacts of the planning proposal on adjoining residential developments; and
 - the removal or amendment to condition 1 (e) of the Department's Gateway determination relating to car parking provision.

2.2 Meeting with North Sydney Council

25. On 10 April 2019, the Commission met with Council to discuss the planning proposal and the Gateway determination. Issues discussed at the meeting are recorded in a transcript which was made available on the Commission's website on 30 April 2019. A presentation provided to the Commission at the meeting is also available to view on the Commission's website.
26. A summary of key matters discussed is as follows:
- Council's preparation of its draft WSPM;
 - the two options outlined in Stage 2 of the draft WSPM;
 - the status of the draft WSPM and Council's recommendation of Option 2;
 - the protection of solar access to existing buildings in the precinct and public open space at Berry Square;
 - the current lack and proposed provision of public open space;
 - the inconsistencies of the planning proposal with the draft WSPM and the *North District Plan*; and
 - confirmation from the GSC that housing targets to 2021 for the North Sydney LGA will be met.

2.3 Meeting with the Department

27. On 17 April 2019, the Commission met with the Department to discuss the planning proposal and the Gateway determination. Issues discussed at the meeting are recorded in a transcript which was made available on the Commission's website on 30 April 2019.
28. A summary of key matters discussed is as follows:
 - the strategic planning context of the site;
 - Council's draft WSPM; and
 - amenity impacts on adjoining residential developments.

2.4 Site Inspection and Locality Tour

29. On 17 April 2019, the Commission conducted a site inspection and locality tour to understand the physical attributes and existing built form of the site and the surrounding area of North Sydney including the area the subject of Council's draft WSPM. A copy of the site inspection and locality tour notes was made available on the Commission's website on 30 April 2019.

3. ADDITIONAL INFORMATION

30. On 12 April 2019, the Proponent provided a desktop wind report and a supplementary letter in relation to traffic impacts. This information was made available on the Commission's website on 18 April 2019.
31. On 16 April 2019, Council provided a letter from the GSC, dated 21 December 2018, confirming that the housing targets to 2021 for the North Sydney LGA will be met. This information was made available on the Commission's website on 18 April 2019.

4. THE COMMISSION'S CONSIDERATION

4.1 Material considered by the Commission

32. In reviewing the Gateway determination and conditions the Commission has carefully considered the following material (the **material**):
 - the Proponent's Planning Proposal, dated 1 September 2017;
 - the Planning Panel's Rezoning Review Record of Decision, dated 7 March 2018;
 - the Department's Gateway Determination Report PP_2018_NORTH_001_00, dated 16 July 2018;
 - the Department's Gateway Determination and conditions, dated 23 August 2018;
 - the Department's referral letter to the Commission, dated 14 March 2019;
 - the Department's Gateway Review Justification Assessment Report and attachments A to J:
 - A. Planning Proposal 41 McLaren Street
 - B. Gateway Determination
 - C. Gateway Determination Report
 - D. Gateway Review notification letter 04 Sept 2018
 - E. Council report 29 October 2018
 - F. Ward Street Masterplan Summary Brochure
 - F. Ward Street Precinct Masterplan
 - G. Planning Panel Record of Decision 0732018

- H. Architectus preliminary comments
- I. Architectus Submission
- J. Council Meeting 25 February 2019 Resolution and Report
- J. Council report 19 February 2018
- *Planning Circular PS 18-012 – Independent reviews of the plan making (the **Planning Circular**)*, dated 14 December 2018;
- *Local Environment Plans: A guide to preparing local environment plans (a **Guide to LEPs**)*, dated December 2018;
- Minister’s section 9.1 Ministerial Directions issued 1 July 2009 under the EP&A Act;
- information presented and discussed with the Commission at its separate meetings with the Proponent and Council on 10 April 2019, and the Department on 17 April 2019, set out on the Commission’s website in the publicly available transcripts;
- the Commission’s site inspection and locality tour on 17 April 2019; and
- additional information received from the Proponent on 12 April 2019 and Council on 16 April 2019 (refer to paragraphs 30 and 31).

4.2 Strategic Context

Key Strategic Planning Documents

33. The Commission has identified and considered the key strategic planning documents in reviewing the Gateway determination as follows:

4.2.1 Greater Sydney Region Plan: A Metropolis of Three Cities

34. The GSR Plan identifies North Sydney within the Harbour CBD and the Eastern Economic Corridor, which is considered of national significance.

4.2.2 North District Plan

35. The *North District Plan* recognises North Sydney’s commercial core with its strategic transport links. The Plan has an action (Action 24) to grow economic development in North Sydney’s CBD. The Plan also sets out five-year housing supply targets that reflect the delivery potential under current planning controls, including a minimum target of 3,000 additional dwellings for the North Sydney local government area (LGA) between 2016 and 2021.

4.2.3 State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development

36. This policy aims to deliver a better living environment for the residents now choosing this form of housing and enhance streetscapes and neighbourhoods across the State by establishing a consistent approach to the design and assessment of apartments and the way they are assessed by councils.

4.2.4 Ministerial Section 9.1 Directions

37. The Commission has reviewed the planning proposal against the following Section 9.1 Directions:

- Direction 1.1 Business and Industrial Zones
- Direction 2.3 Heritage Conservation
- Direction 3.4 Integrating Land Use and Transport and
- Direction 3.5 Development Near Licensed Aerodromes

4.2.5 North Sydney Local Environmental Plan 2013

38. References to the site's relationship to the North Sydney LEP 2013 is provided in paragraphs 7, 9 and 14 above.

4.2.6 North Sydney Development Control Plan 2013

39. The North Sydney DCP contains development controls which are relevant to the site including in relation to residential development, commercial and mixed-use development and heritage and conservation.

4.2.7 North Sydney Council's draft Ward Street Precinct Masterplan

40. A summary of Council's draft WSPM is provided in paragraph 12 above.

4.3 Key Matters for Consideration

41. In undertaking a review of the Gateway determination, the Commission has identified the strategic and site-specific merits of the Gateway determination and the public interest as the key matters for consideration.

4.3.1 Strategic Merit

Council's Comments

42. From a local strategic planning context, Council stated in its report dated 19 February 2018 that the planning proposal *"has the potential to significantly undermine strategic planning work currently being undertaken in the locality, specifically the work relating to the Ward Street Precinct Masterplan and the North Sydney Centre Review"*.
43. Further, Council outlined its work to date on the draft WSPM and stated that, *"A holistic and integrated outcome on this Masterplanning process will not be able to be achieved if individual landowners pre-empt the process by lodging individual Planning Proposals such as that being considered for 41 McLaren Street."*
44. Council noted in its report dated 29 October 2018 that *"Neither one of the current WSPM options align with the scope of the subject Planning Proposal"*.
45. In its presentation to the Commission on 10 April 2019, Council noted that under the draft WSPM no uplift is proposed on 41 McLaren Street. Council also noted in its report dated 19 February 2018 that the planning proposal is inconsistent with the desired outcomes of the WSPM. In particular, Council noted that the planning proposal:
- *"does not apply a precinct scale planning approach;*
 - *does not provide clarity on the future growth of the Precinct;*
 - *does not balance growth within the Centre or amenity to surrounding properties;*
 - *may result in poor pedestrian interfaces and connections with future potential public open spaces; may not result in a significant public benefit being achieved; and*
 - *does not achieve a no net increase in traffic generation"*.
46. From a regional strategic planning context, Council stated in its report dated 19 February 2018

that the planning proposal is contrary to meeting a number of objectives and actions under the relevant regional and district plans applying to the land. In particular, Council stated that the planning proposal does not:

- *“protect nor promote lands for commercial development within an important existing Strategic Centre on the Global Economic Corridor nor allow for future growth; and*
- *sufficient residential capacity is already provided under NSLEP 2013 to meet State housing targets, without the need to significantly change the land use mix on the subject site”.*

47. Further to its comments in paragraph 42, Council stated at its meeting with the Commission on 10 April 2019 that it is on track to meet its current housing target under the *North District Plan* of 3,000 additional dwellings by 2021. As noted in paragraph 31, Council provided the Commission with a letter dated 16 April 2019 from the GSC outlining that, *“The DPE’s housing supply forecast confirms that North Sydney Council’s housing supply is on track to deliver 2,830 new dwellings between 2016/17 to 2020/21 which is close to the minimum 0-5 year target of 3,000”.*

Proponent’s Consideration

48. With regards to the relationship of the planning proposal with the draft WSPM, the Proponent states in its preliminary comments to the Department, dated 21 December 2018, that *“development of 41 McLaren Street in no way precludes the redevelopment of the remainder of the Ward Street Precinct as envisaged by either of the Masterplan options”.*

49. In its planning proposal, the Proponent states that it will support the intended outcomes of *A Plan for Growing Sydney*, which was the relevant metropolitan planning strategy for Sydney at the time the planning proposal was lodged, as it,

- *“Seeks to increase the supply of housing while also retaining employment generating floor space, in the North Sydney Centre, being a major commercial centre within Sydney;*
- *Responds to the new planned Metro station at Victoria Cross and provides for density of development commensurate with a significant increase in public transport capacity; and*
- *Allows for public domain works and new open spaces in the form of the creation of a new pedestrian spine in line with the Draft Ward Street Precinct Masterplan”.*

50. The Proponent notes in its planning proposal that the GSC’s *Towards our Greater Sydney 2056* outlines a draft amendment to *A Plan for Growing Sydney*. The Proponent states that the proposal supports the following relevant metropolitan priorities of this draft amendment:

- A Growing City – *“...by facilitating increased mixed-use density, providing both employment and housing in a highly accessible location”;*
- A 30-minute City – *“...allowing increased densities within the Metro Corridor, and particularly for sites such as 41 McLaren Street, being located opposite the northern entry to the future Victoria Cross Metro Station, will allow a greater proportion of Sydney’s population to be able to access jobs within 30-minutes”;* and
- A city of housing choice and diversity – *“...the proposed development provides an opportunity to provide for a variety of unit types and sizes and close to existing services and facilities, and also existing and proposed public transport infrastructure, that will accommodate a range of household types, including those seeking to downsize from larger homes in less accessible locations in the surrounding localities”.*

51. With regards to the GSC’s *North District Plan*, the Proponent states that the planning proposal is consistent with this plan *“by providing for additional housing which is suited to smaller households, strategically located on the fringe of the North Sydney Centre, and in close*

proximity to both the existing North Sydney Train Station and the planned Metro station”.

52. The Proponent also states that the planning proposal *“also assists in allowing the North District’s five-year housing supply target to be achieved, noting that the target for North Sydney is anticipated at 3,000 new dwellings”.*
53. From a local strategic planning context, the Proponent states that the planning proposal is consistent with the relevant aims of the North Sydney LEP 2013 as it:
- *“Provides an increase in housing options in the North Sydney Centre;*
 - *Results in a built form which is consistent in bulk and scale with the envisaged scale of surrounding development under the Ward Street Precinct Masterplan and with the scale of development appropriate for a site in close proximity to the planned Victoria Cross Metro Station;*
 - *Is of the highest environmental quality; and*
 - *Exhibits exceptional architectural quality which will create an iconic, landmark tower at the site”.*

Department’s Consideration

54. The Department states in its Gateway Review Justification Assessment Report that in consideration of the draft WSPM, it doesn’t alter its assessment of the planning proposal on the basis that:
- *“the Department contemplated both masterplan options and was still of the view that the proposal was suitable for the site and its strategic context;*
 - *...impacts resulting from the proposal to the Ward Street precinct and its desired future layout are addressed by gateway conditions that require addressing additional impacts to future and existing development...;*
 - *Council does not intend to prepare an overall planning proposal to implement the draft masterplan, but rather to accept site specific planning proposals for within the precinct; and*
 - *the planning proposal can be additionally updated to assess and consider its impacts against the draft masterplan”.*
55. With regards to the planning proposal’s consistency with the GSC’s *Greater Sydney Region Plan*, the Department states in its Gateway determination report that:
“The planning proposal is considered to be generally consistent with the directions, objectives and strategies of the plan as it provides development opportunities to increase residential accommodation in the outer periphery of a major strategic centre and in proximity of high-frequency mass-transit public transport infrastructure”.
56. The Department notes that the planning proposal is consistent with relevant Planning Priorities within the GSC’s *North District Plan*, as it:
- *“facilitates a range of housing types;*
 - *promotes urban renewal;*
 - *offers housing close to jobs in North Sydney;*
 - *will contribute to the revitalisation of the locality and the Ward Street Precinct;*
 - *will contribute to housing supply targets; and*
 - *supports the existing commercial viability of the site by retaining and protecting the commercial floor space component”.*
57. However, the Department also states that the planning proposal is contrary to Planning Priority

N8 (Eastern Economic Corridor is better connected and more competitive) of the *North District Plan* as it decreases the commercial office space as specifically referenced for North Sydney.

58. At its meeting with the Commission on 17 April 2019, the Department acknowledged that the planning proposal formed *“part of the Council’s strategic framework for the whole of the CBD”*. The Department also stated that the planning proposal’s presence within Council’s proposed precinct and the strategic relationship to the metro station are *“two key impetuses for strategic merit”*.
59. With regards to the relevant section 9.1 Ministerial Directions, the Department notes in its Gateway determination report that the planning proposal is:
- *“inconsistent with Direction 1.1 Business and Industrial Zones as it will reduce commercial floor space;*
 - *consistent with Direction 2.3 Heritage Conservation as it seeks to retain a local heritage item (I0889), identified as Simsmetal House;*
 - *consistent with Direction 3.4 Integrating Land Use and Transport as it provides increased housing supply in a strategically well-located site close to existing and future transport and employment opportunities; and*
 - *inconsistent with Direction 3.5 Development Near Licensed Aerodromes as the proposed maximum building height of RL 226m AHD is above the obstacle limitation surface (OLS) for North Sydney of 150m AHD”*.
60. From a strategic merit perspective, the Department concluded in its Gateway determination report that the planning proposal:
- *“satisfies state, district and local planning objectives, which retain employment opportunities and encourage development that increases housing provision in locations well serviced by public transport and near employment opportunities”;*
 - *“contributes to the delivery of the housing target set for the North Sydney LGA (3000 additional dwellings by 2021) by allowing for the delivery of approximately 224 new dwellings”;* and
 - *“provides housing and employment in a location that is in close proximity and with convenient accessibility to the new Victoria Cross Metro Station”*.

Planning Panel’s Consideration

61. In its record of decision dated 7 March 2018, the Planning Panel considered *“the site and density in the Ward Street Precinct has strategic...merit, having regard to the increased residential and commercial density requirements of the draft District Plan, the location of the new metro access at the corner of Miller and McLaren Streets and the newly adopted North Sydney CBD Local Environmental Plan...”*.

Commission’s Consideration

62. The Commission acknowledges Council’s statements, in paragraph 42, that the planning proposal has the potential to undermine its work relating to the draft WSPM and is inconsistent with its desired outcomes.
63. The Commission accepts the statements from the Proponent and the Department, in paragraphs 49 and 55, and considers that the planning proposal is consistent with *A Plan for Growing Sydney* and *Greater Sydney Region Plan* as it will provide residential and commercial

development opportunities in a highly accessible location, adjacent to the Victoria Cross Metro Station.

64. The Commission accepts the statements from the Proponent and the Department, in paragraphs 51 and 56, and considers that the planning proposal is consistent with the *North District Plan* as it would offer a range of housing types close to jobs in North Sydney and would assist in achieving the housing supply target of 3,000 new dwellings in the North Sydney LGA, as prescribed under the *North District Plan*.
65. With regards to the Ministerial Directions (Section 9.1), the Commission accepts the Department's statements, in paragraph 59, that the planning proposal is inconsistent with Direction 1.1, as it would reduce commercial floor space, and 3.5, as the proposed maximum building height is above the obstacle limitation surface (OLS) for North Sydney, and consistent with Direction 3.4, as it provides increased housing supply close to existing and future employment opportunities. However, the Commission does not accept the Department's statement that the planning proposal is consistent with Direction 2.3. The Commission's consideration of this matter is discussed in section 4.3.2.4.
66. Based on the material, the Commission considers that the planning proposal has strategic merit for the reasons set out in paragraphs 63, 64 and 65 above.

4.3.2 Site-specific Merit

67. The key site-specific matters that the Commission has considered include impacts on overshadowing of public open space, residential amenity – overshadowing of adjoining residences and privacy, wind and heritage.

4.3.2.1 Overshadowing of public open space

Council's Comments

68. With regards to overshadowing, Council states in its report dated 19 February 2018 that the Proponent's desired overshadowing outcomes "*are inconsistent with Council's current endorsed policy with regard to the extent of overshadowing impact from development located within the North Sydney Centre*".
69. Council also stated in its report dated 29 October 2018 that:
"The outcome envisaged by the Planning Proposal would represent the blocking of the sunlight in the morning to early lunch period which would effectively block all direct sunlight hitting the square envisaged by Masterplan option 2 thus reducing its amenity to an unacceptable level".
70. Council further noted that whilst the final location and design of any future open space has yet to be determined, "*Regardless of where it is eventually located, the proposal is likely to have a significant impact on any future open space provided within the Precinct, due to the site lying centrally along the Precinct's northern boundary*".

Proponent's Consideration

71. In acknowledging Council's comments in paragraphs 69 and 70 above, the Proponent states in

its letter to the Department dated 21 December 2018 that:

“... the Alternative Masterplan proposed to widen the public domain ‘spine’ through the precinct, such that development uplift could be achieved while still maintaining solar access to parts of the spine throughout the day. Elements of the Alternative Masterplan have been incorporated into the Stage 2 WSPM, however the spine has been narrowed by the expansion of the podium on the existing Council car park site. The result of this is that the only way that any solar access can be achieved to the public domain is to remove the ability for additional height to be achieved on 41 McLaren Street and 45 McLaren Street”.

72. With regards to its consideration of overshadowing of the development scenarios for the Ward Street Precinct, the Proponent states in its letter to the Department dated 21 December 2018 that its ‘Alternative Masterplan’ acknowledged that solar access to the public domain is severely limited under any development scenario.
73. The Proponent noted in its meeting with the Commission on 17 April 2019 that the area where Council has proposed public open space as part of the draft WSPM is already overshadowed and that its planning proposal wouldn’t significantly further overshadow this area. In its presentation to the Commission at this meeting, the Proponent states that during the winter solstice, *“Direct sunshine to the new public open space is reduced during the main time of 11am-12pm”* and *“It is unrealistic to expect good sunlight to a mid-city block of highest density in mid-winter”*.

Department’s Consideration

74. The Department noted at its meeting with the Commission on 17 April 2019 that after reviewing Council’s shadow diagrams for its draft WSPM options the overshadowing of the proposed public open space was likely to be caused by the Council’s redevelopment of a car parking site south of 41 McLaren Street and questioned whether some of the expected overshadowing would come from the development of 41 McLaren Street itself.
75. The Department also noted in its Gateway Review Justification Assessment that given the Proponent’s shadow diagrams for its planning proposal were based on a particular scheme design and did not consider the impacts the planning proposal would have on the two options under Council’s draft WSPM, it recommends a condition to update overshadowing diagrams to represent the extent of overshadowing on these two options.

Planning Panel’s Consideration

76. With regards to the impacts of overshadowing on the public domain, the Planning Panel concluded in its Record of Decision dated 7 March 2018 that *“As concerns the overshadowing of public open space on Council land, the Panel notes that this would be true of any realistic planning option for the precinct”*.

Commission’s Consideration

77. The Commission also acknowledges the Proponent’s comments in paragraph 71 relating to the planning proposal to widen its proposed public domain spine to maintain solar access whilst also achieving its desired development uplift and that its planning proposal wouldn’t significantly further overshadow the proposed public open space.

78. The Commission acknowledges Council's comments in paragraphs 69 and 70 in relation to the planning proposal's overshadowing impact on the proposed public open space under Council's draft WSPM.
79. Based on the material, the Commission considers that the planning proposal is likely to have an adverse impact on public open space as it would increase overshadowing and reduce solar access to the area in general and that area proposed under Council's draft WSPM.

4.3.2.2 Residential Amenity – Overshadowing of adjoining residences

Council's Comments

80. With regards to the planning proposal's impact on residential amenity, Council states in its report dated 29 October 2018 that:
"the proposed development does not comply with the visual privacy objectives, it provides inadequate building separation and setbacks as well as resulting in the adjoining residential developments not achieving the minimum requirements of solar access. Whilst the constrained nature of the Ward Street block is acknowledged, this outcome is unacceptable".
81. Council also states in its report dated 19 February 2018 that:
"Despite these non-compliances, these issues may be able to be satisfactorily resolved at the development application stage. But in doing so, the concept proposal may never be able to achieve the proposed height requested".
82. With regards to the planning proposal's impacts on views from adjoining residences, Council states in its report dated 19 February 2018 that:
"...the proposed increase in height would result in views to Sydney Harbour (extending from Rushcutters Bay out to Sydney Heads) being blocked. These Harbour views would also be lost to residential dwellings located at the upper levels of 231 and 239 Miller Street".
83. Council concludes that *"Given the subject site's location in a dense urban environment and the need to accommodate more development to satisfy State targets for housing and employment, there is a reasonable expectation that views may be impacted upon"* but *"As a standalone site, the proposed level is deemed unreasonable and alternative outcomes may be able to be achieved"*.

Proponent's Consideration

84. The Proponent states in its planning proposal that it would likely result in an increase in overshadowing of the east of Walker Street. However, the Proponent considers that *"the impact on this land is acceptable, given the land is already substantially overshadowed by the approved development of 168 Walker Street; that densification and increased heights are likely for this land in the future; and that overshadowing of this land from any development of 41 McLaren Street would not preclude any future residential development on the land from achieving solar access in accordance with the ADG"*.
85. With regards to the overshadowing impacts to adjacent properties along Miller Street within the boundary of Council's WSPM, the Proponent concludes in its planning proposal that:
"...221 and 229 Miller Street would not achieve 2 hours of direct solar access to 70% of apartments between 9am and 3pm at midwinter as per the Apartment Design Guide under the draft WSPM".

86. The Proponent further notes that:
“There would be a modest reduction to solar access under the Architectus Alternative Masterplan, in part due to the increased tower height on 41 McLaren Street. In total the Architectus Alternative Masterplan would result in a reduction of 9% of units at 229 Miller Street receiving 2 hours of solar access between the specified times and a 16% reduction for 221 Miller Street”.
87. However, in its letter to the Department dated 14 January 2019, the Proponent states that:
“In the case of both 221 and 229 Miller Street, both of which do not currently achieve solar access in accordance with the Apartment Design Guide (ADG) the overshadowing impact is within an acceptable range, well below the 20% additional impact allowed for by the Guide (Design guidance under Objective 3B-2)”.
88. The Proponent acknowledges in its letter to the Department dated 21 December 2018 that
“Any additional height on the subject site will result in overshadowing of surrounding residential buildings”. However, the Proponent states that *“This issue is largely the result of existing non-compliances of surrounding buildings, both in relation to building separation/boundary setbacks to 41 McLaren Street, and solar access which is inconsistent with the Apartment Design Guide (ADG)”.*

Department’s Consideration

89. The Department’s Gateway determination report states that:
“The proposed development for the site will likely result in an increase in overshadowing within and outside of North Sydney Centre” and *“will result in long shadows over different parts of North Sydney at different times of the day during midwinter”.*
90. The Department notes that the planning proposal does not comply with the visual privacy objectives of SEPP 65 and provides inadequate building separation and setbacks. The Department also notes that *“The Concept will likely result in adjoining residential developments not achieving the minimum requirements of solar access”.*
91. The Department has included a gateway condition for the planning proposal to be updated to consider the impacts on adjoining residential development and considers that *“this condition adequately addresses Council’s concern regarding the visual privacy and solar access objectives of SEPP 65”.*
92. With regards to the planning proposal’s impact on views, the Department states in its Gateway determination report that *“the proposed development will likely have an impact on neighbouring residential views, namely existing buildings to the immediate west of the site, including the existing building at 39 McLaren Street (15 storeys) and the approved 19-storey building at 229 Miller Street”.*

Planning Panel’s Consideration

93. In its Record of Decision dated 7 March 2018, the Planning Panel stated that *“...while the Planning Proposal and the Alternative Masterplan do not provide for separation distances required by the ADG (Apartment Design Guide under SEPP 65), this is generally true of most sites in the North Sydney CBD”.*

Commission's Consideration

94. The Commission notes Council's and the Department's statements, in paragraphs 80 and 90, that the planning proposal does not comply with the design principles of SEPP 65 and the Apartment Design Guide with regards to building separation, setbacks and solar access. The Commission also notes that the Department has provided a condition which the Department feels adequately addresses Council's concerns.
95. The Commission notes the Proponent's statement, in paragraph 88, that any additional height on the site will result in overshadowing of surrounding residential buildings but that this issue is largely the result of existing non-compliances of building setbacks and solar access requirements with SEPP 65. While the Commission acknowledges this statement, it does not consider this sufficient justification for the planning proposal's non-compliance given the likely impacts associated with bulk and scale of the planning proposal.
96. The Commission does not accept the Planning Panel's statement in paragraph 93. As observed at its site inspection, the Commission noted that most of sites in the North Sydney CBD are commercial developments which would be subject to different design objectives and guidelines, including for building separation and setbacks, to residential developments.
97. Based on the material, the Commission considers that the planning proposal would result in adverse impacts on the amenity of adjoining residential buildings as it would increase overshadowing and reduce solar access to these buildings as well as reduce visual privacy.

4.3.2.3 Wind

Council's Comments

98. In its report of 19 February 2018, Council stated the planning proposal would create negative wind impacts because of the proposed height of development, bulk and minimal setbacks to council land, which are unlikely to provide an appealing or pleasant public open space for workers or residents.
99. Council also states in its assessment of the planning proposal against the draft Ward Street Precinct Masterplan desired outcomes, in its report of 19 February 2018, that the planning proposal could have an adverse impact upon future public open space located to the south of the subject site, including potential wind impacts.

Proponent's Consideration

100. The Proponent notes in its planning proposal that a Wind Assessment was undertaken for the residential tower by Cermak Peterka Petersen Pty Ltd. The Proponent states that *"the report provides that detailed wind tunnel testing for sites in the vicinity of 41 McLaren Street has indicated that most sites are classified as suitable for pedestrian standing or walking from a comfort perspective, and pass the relevant distress criterion"*.
101. The Proponent's Wind Assessment stated:
"It is considered unlikely that the existing wind conditions around the site would meet the 13 metres per second (m/s) criterion contained in the North Sydney DCP, and this would be

unlikely to change with the inclusion of the proposed development”.

102. While the Proponent acknowledges that it is unlikely that the existing wind conditions around the site would meet the 13 m/s criterion provided by the North Sydney Development Control Plan (DCP) 2013, it notes that detailed design and further analysis of the proposed development on wind conditions will need to be determined, which will be addressed as part of a future development application.

Commission’s Consideration

103. The Commission acknowledges Council’s concerns, in paragraphs 98 and 99, over the wind impacts of the planning proposal.
104. The Commission notes the Proponent’s statement, in paragraph 101, that further analysis of the wind conditions will be determined as part of a future development application. It also notes the Proponent’s view that the planning proposal does not meet the wind speed criterion of the North Sydney DCP. The Commission considers that insufficient information has been provided to justify the planning proposal’s impacts in relation to wind, particularly upon future public open space.

4.3.2.4 Heritage

Council’s Comments

105. In its report of 19 February 2018, Council stated that it did not support the planning proposal on heritage grounds for the following reasons:
- *“...the extent of adaptation to enable the existing building to function as a podium to the tower above will have a detrimental impact on heritage significance.*
 - *The extent of demolition works associated with the adaptation works are excessive resulting in the loss of much of the existing structure, layout and landscaping that give it significance.*
 - *The proposed scale and height is excessive in the context of the heritage items in the vicinity of the Study Area and will have a detrimental impact on their significance and be incongruent within its site context as part of the Masterplan area.*
 - *The Planning Proposal does not meet the provisions set out in Planning Priority N6 of the draft North District Plan relating to heritage which seeks to understand heritage values early in the process to ensure fine grain outcomes to urban form that is place based”.*

Proponent’s Considerations

106. The Proponent states in its planning proposal that one of the key objectives and outcomes which informed its Alternative Masterplan included:
“Allow development uplift to incentivise heritage conservation works to the existing heritage building by allowing for a residential tower above the existing heritage building”.
107. The Proponent also states that the planning proposal is consistent with the *North District Plan* objective to *“conserve heritage and unique local characteristics”* and the Ministerial Direction 2.3 Heritage Conservation as it *“does not propose to amend the heritage status of the subject site, or any site in the vicinity”*.

108. The Proponent notes that its Heritage Assessment Report undertaken by GML Heritage identifies that the site should be afforded uplift to ensure that the heritage building is appropriately maintained, and
“The proposed amendments to the North Sydney LEP 2013 seek to improve and revitalise the existing building, now listed as a local heritage item, to become more adaptable and sustainable within its changing surrounding context”.
109. The Proponent states that the planning proposal *“respects the existing locally heritage listed commercial building”* and its Heritage Assessment Report concludes that *“the proposed development of the site...represents an appropriate solution for the meaningful conservation and long-term maintenance of the existing building”*.
110. Further, the Heritage Assessment Report states that *“the 3-5 storey addition to 41 McLaren Street suggested by the draft WSPM is an inappropriate response to the heritage significance of the building”*.

Department’s Consideration

111. In its Gateway determination report, the Department notes the Proponent’s comment in paragraph 108 that the site should be afforded uplift to ensure that the heritage building is appropriately maintained and states *“While this may be true, the challenge of integrating new development without compromising the architectural integrity and heritage values of the existing building are considered to be important”*.
112. The Department concludes that:
“Overall, the proposal provides the opportunity for the conservation of the heritage significance of the existing commercial office building, while allowing for new development that will complement the building’s character and accommodate future development growth in a key strategic centre”.

Commission’s Consideration

113. The Commission notes Council’s statements in paragraph 105 that the planning proposal would have a detrimental impact on the heritage significance of the existing heritage building and the context of heritage items near the site as the residential tower would be of a scale and height that is excessive. The Commission considers that the structural interventions below, within and above the existing building as set out in the planning proposal are extensive and would likely have a detrimental impact on the design and material fabric of the heritage item.
114. Given the Commission’s view outlined paragraph 113, the Commission does not accept the Proponent’s statement, in paragraph 106, that the development uplift will incentivise heritage conservation works to the existing heritage building and considers that this justification is inappropriate in this context.
115. Further to its consideration in paragraph 114, the Commission does not accept the Department’s statement, in paragraph 112, that the planning proposal provides for the conservation of the heritage significance of the existing commercial office building due to the excessive scale and height of the residential tower which would likely have a detrimental impact on the design and material fabric of the heritage item.
116. The Commission also considers that the planning proposal is inconsistent with Planning

Priority N6 (Creating and renewing great places and local centres, and respecting the District's heritage) of the *North District Plan* and Section 9.1 Direction 2.3 Heritage Conservation as it would not provide for the conservation of existing heritage building and heritage items near the site.

117. The Commission considers that the planning proposal has not sufficiently justified site-specific impacts on heritage as the proposed residential tower is likely to adversely affect the heritage significance of the existing heritage building and heritage items near the site. It is also inconsistent with strategic planning principles relating to heritage conservation specifically the *North District Plan* and Ministerial Direction 2.3 Heritage Conservation.

4.3.2.5 Public Benefit

Council's Comments

118. With regards to the planning proposal's public benefits, Council states in its report dated 19 February 2018 that the planning proposal *"may not result in a significant public benefit being achieved"*. Council also stated that *"It is difficult to determine if the quantum of proposed public benefits identified within the Planning Proposal, which would ultimately form part of a future VPA is reasonable with respect to the anticipated uplift that the Planning Proposal seeks"*.
119. Council states in its report dated 29 October 2018 that, *"The analysis and design for both options under the revised draft WSMP do not include a through-site link through 41 McLaren St. Rather, the two options include the upgrade of a "shared" zone along the 'right of way' through the site comprising 221 Miller Street. This link forms a primary objective of the revised draft WSMP which is to enable a continuous pedestrian 'laneway link' from Brett Whitely Place through Denison Street, Ward Street to McLaren Street. More importantly, such public access is to remain "open to the sky" and is an important design element in both Masterplan options"*.

Proponent's Consideration

120. In its planning proposal, the Proponent considers that the planning proposal would provide public benefits as it would:
- *"Allow for essential heritage conservation and restoration works;*
 - *Provide a vital through-site link via a double height colonnade at the ground level of the building which will provide a connection from McLaren Street to the proposed public open space to the south of the building; and*
 - *Allow for a density and mix of uses commensurate with its located opposite the future Victoria Cross Metro Station and also contribute positively to the development of the Ward Street Precinct, a precinct which is envisaged to include high quality public domain and a vibrant day and night economy"*.

Department's Consideration

121. The Department states in its Gateway determination report that the planning proposal would provide public benefits through:
- *"delivering a pedestrian link through the Ward Street Precinct, enabling a key connection between McLaren Street and any public open space located south west of the site:*
 - *enabling both the retention and reuse of the existing heritage-listed and Harry Siedler-designed building, reinforcing the heritage values of the site and its association with the*

- notable architect;*
- *helping to further progress the regeneration of this part of the North Sydney CBD that is aligned with the timing for the delivery of the new metro service; and*
 - *proposing uplift in density that will enable colocation of new housing and commercial activities that has excellent accessibility to new mass-transit metro services and within a key strategic business centre of Sydney”.*

Commission’s Consideration

122. The Commission accepts the Proponent’s and the Department’s statements, in paragraphs 120 and 121, that the planning proposal will deliver development that will be supported by new public transport infrastructure, which the Commission considers are public benefits.
123. The Commission does not accept the Proponent’s and Department’s statements, in paragraphs 120 and 121, that the planning proposal would respect local heritage and allow for essential heritage conservation works as the Commission considers that the structural interventions below, within and above the existing building as set out in the planning proposal are extensive and would likely have a detrimental impact on the design and material fabric of the heritage item.
124. The Commission considers that the planning proposal would reduce the opportunity for an unencumbered shared pedestrian and vehicular zone to be introduced directly from McLaren Street to Council’s proposed public open space. The Commission also considers that it is not in the public interest for utility or service vehicles and emergency services to not have direct access to what could effectively be a ‘land locked’ public open space.
125. On balance, the Commission considers that the site-specific impacts are unlikely to result in significant public benefits.

5. THE COMMISSION’S ADVICE

126. The Commission has undertaken a review of the Gateway determination, as requested by the Minister’s delegate, and provides the following advice on whether the planning proposal should proceed past Gateway.
127. Based on its consideration of the material, the Commission considers that the planning proposal has:
- demonstrated strategic merit for the reasons set out in paragraphs 63-65;
 - not demonstrated site specific merit for the reasons set out in paragraphs 79, 97, 104 and 117. Specifically, the impacts associated with the residential tower have not been adequately justified given its proposed bulk and scale and:
 - the expected increase in overshadowing and the reduction in solar access likely to occur on public open space including the public open space proposed under Council’s draft WSPM;
 - the increased impact on the adjoining residential buildings, in particular the increased overshadowing, reduced solar access and reduced visual privacy;
 - wind impacts upon future public open space;
 - the likely adverse impacts on the heritage significance of the existing heritage building and heritage items near the site;

- its inconsistency with strategic planning principles relating to heritage conservation; and
- the likely public benefits.

128. The Commission has also reviewed the conditions attached to the Gateway determination and considers that these are unlikely to overcome the site-specific merit issues associated with the residential tower that would justify progression of the planning proposal in its current form. The Commission considers that progressing the planning proposal in its current form would be premature as the impacts associated with the residential tower have not been justified. The current residential tower should be reviewed in light of the expected impacts before progressing past Gateway.

129. Based on its findings in paragraph 127, the Commission concludes that the planning proposal has sufficiently demonstrated strategic merit but has not sufficiently demonstrated site specific merit given the significance of impacts likely to result from the bulk and scale of the residential tower. As such, the Commission recommends that the planning proposal not proceed past Gateway in its current form.



Chris Wilson (Chair)
Member of the Commission



Wendy Lewin
Member of the Commission



Alan Coutts
Member of the Commission