



GATEWAY REVIEW

Justification Assessment

Purpose: To outline the planning proposal, the reasons why the original Gateway determination was made and to consider and assess the request for a review of a Gateway determination.

Dept. Ref. No:	GR_2018_NORTH_001_00
LGA	North Sydney
LEP to be Amended:	North Sydney Local Environmental Plan 2013
Address/Location:	41 McLaren Street, North Sydney (Lot 1 DP 557103)
Proposal:	<p>The planning proposal seeks to amend the North Sydney Local Environmental Plan (LEP) 2013 in relation land at 41 McLaren Street, North Sydney to:</p> <ul style="list-style-type: none"> • increase the maximum building height control from RL 100m AHD to RL 226m AHD (45 Storeys); and • increase the minimum non-residential floor space ratio (FSR) from 0.5:1 to 3:1. <p>The planning proposal would facilitate a 45 storey mixed-use development that is intended to include:</p> <ul style="list-style-type: none"> • the refurbishment of a heritage-listed 8 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. <p>The planning proposal (Attachment A) outlines the explanation of provisions and details of the amendments.</p>
Review request made by:	<input checked="" type="checkbox"/> The council <input type="checkbox"/> A proponent
Reason for review:	<input type="checkbox"/> A determination has been made that the planning proposal should not proceed.
	<input type="checkbox"/> A determination has been made that the planning proposal should be resubmitted to the Gateway.
	<input checked="" type="checkbox"/> A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

BACKGROUND INFORMATION

Details of the planning proposal

Summary

The planning proposal seeks to amend the North Sydney Local Environmental Plan (LEP) 2013 in relation land at 41 McLaren Street, North Sydney to:

- increase the maximum building height control from RL 100m AHD to RL 226m AHD; and
- increase the minimum non-residential floor space ratio (FSR) from 0.5:1 to 3:1.

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.

The site at 41 McLaren Street, North Sydney (Lot 1 DP 557103) comprises a rectangular shaped allotment that includes an eight-storey commercial building known as Simsmetal house. This building was designed by Harry Seidler and is identified as a local heritage item under North Sydney LEP 2013.

The site is approximately 2,359m² in area and has frontages to McLaren Street and Harnett Street (see **Figure 1**).

Under North Sydney LEP 2013 the site is within the North Sydney Centre area and is subject to the following development controls:

- Land use zone: B4 Mixed Use (**Figure 2**)
- Maximum building height: RL 100m (**Figure 3**)
- Minimum non-residential FSR: 0.5:1 (**Figure 4**)



Figure 1: Site map

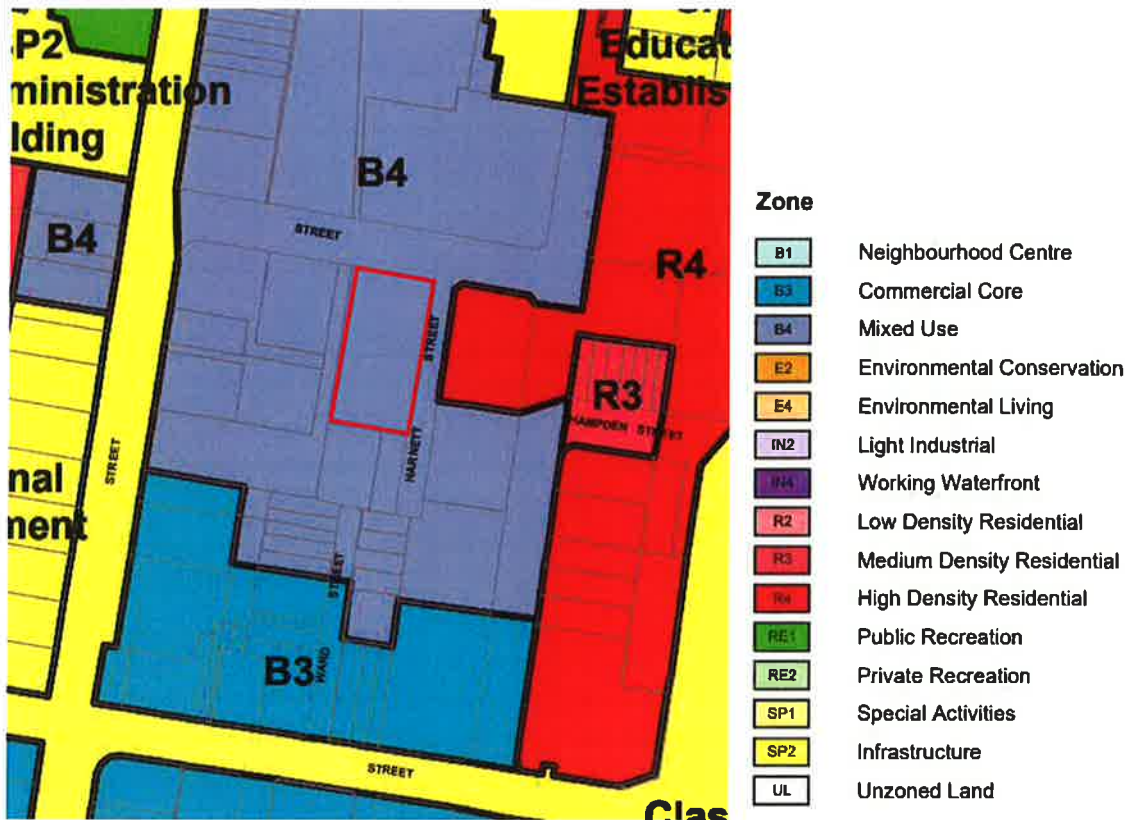


Figure 2: Land Use Zone Map

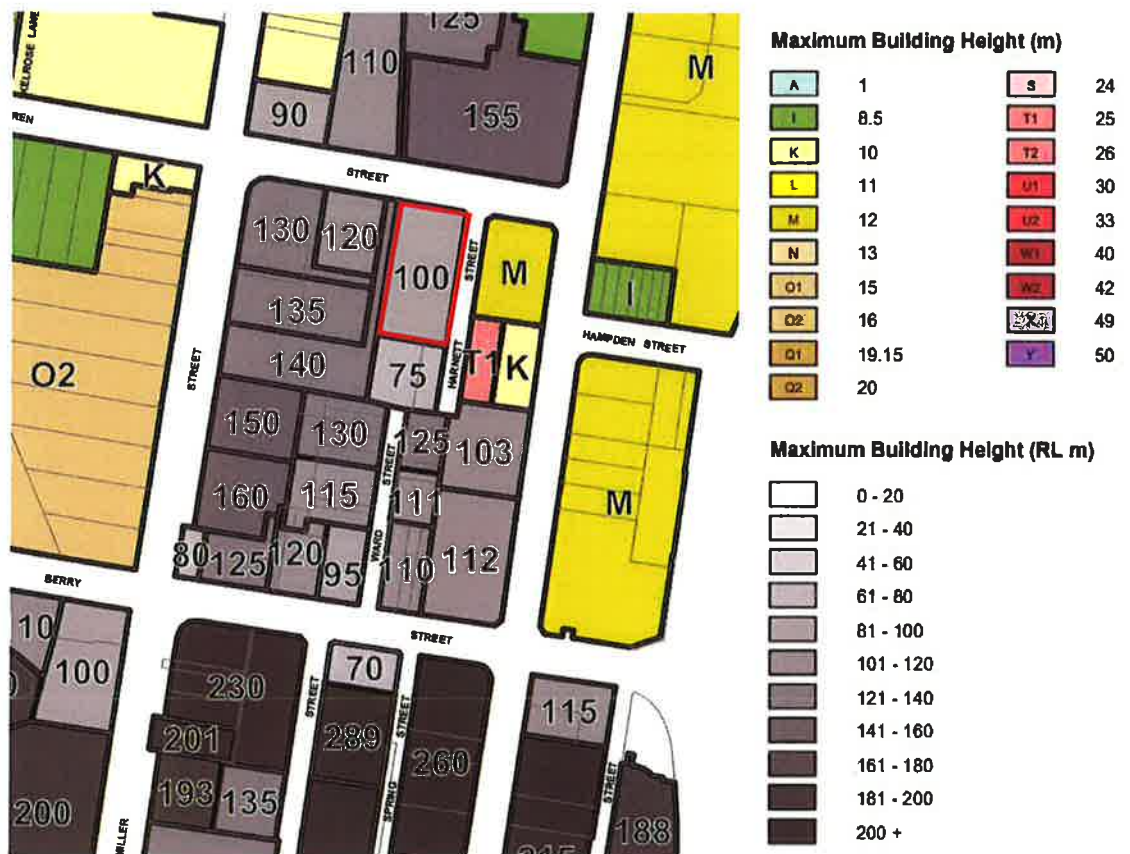


Figure 3: Maximum Building Height Map



Figure 4: Minimum non-residential Floor Space Map

Background

The planning proposal is the result of a rezoning review request.

On 1 September 2017, Council received a planning proposal to amend North Sydney LEP 2013 to enable an increase in building height and minimum floor space ratio at 41 McLaren Street, North Sydney.

On 8 December 2017, the proponent lodged a request for a rezoning review with the Department as Council failed to make a decision within 90 days.

At its meeting on 19 February 2018 (**Attachment J**), Council resolved to refuse this proposal because the proposal could potentially undermine strategic planning work that was being undertaken in the locality, specifically work relating to the Ward Street Precinct.

The Sydney North Planning Panel (the Panel) considered the request on 7 March 2018 and determined (**Attachment G**) the planning proposal has strategic and site specific merit and should be submitted for a Gateway determination.

The Panel determined that the site and the change in density on the site had strategic and site-specific merit having regard to:

- increased residential and commercial density requirements of the North District Plan;
- the location of the new metro access at the corner of Miller and McLaren Streets; and
- the North Sydney Centre Capacity and Land Use Study (NSCCLUS), with increase in height to a maximum of RL 289m AHD.

The Panel noted that while the planning proposal and the alternative masterplan do not provide for separation distances required by the Apartment Design Guide, this is generally true of most sites in the North Sydney CBD. Also, the concern of overshadowing of public open space on Council land, the Panel notes that this would be true of any realistic planning option for the precinct.

The Panel made the following recommendations as part of their determination:

- that the planning proposal and alternative masterplan not proceed to exhibition until Council exhibits its review of its proposed strategy;
- that the planning proposal and alternative masterplan be exhibited as one of the precinct options;
- that in exhibiting the planning proposal and alternative masterplan, a development standard requiring a minimum of 3:1 floor space ratio be included for non-residential gross floor area; and
- any precinct plan should not increase car parking being the existing levels.

On 5 April 2018, Council accepted the planning proposal authority role for this planning proposal.

On 4 May 2018, Council submitted the planning proposal to the Department for a Gateway determination.

Ward Street Precinct Masterplan – Stage 1 (2017)

Council prepared the draft Ward Street Precinct Masterplan (WSPM), which was exhibited in 2017 and is now referred to as the Stage 1 WSPM. The aim of the masterplan was to improve the public domain areas at the northern end of the North Sydney CBD and centres around utilising Council's Ward Street car park both for redevelopment and the provision of a new public domain square. The Ward Street car park site directly adjoins the subject site to the south.

The subject site is located within Council's nominated Ward Street Precinct (**Figures 5 and 6**).

The draft WSPM proposed to replace the Ward Street car park with a community facility and a 1450m² public plaza connected by active pedestrian-focused laneways. This plaza was referred to as the Ward Street North of Centre (NoC) Square.

The draft masterplan identified the subject site for adaptive reuse to retain the existing building and proposed a building height change to RL 111m, which is calculated to be an additional five levels of residential floor space that could accommodate approximately 25-30 residential apartments.

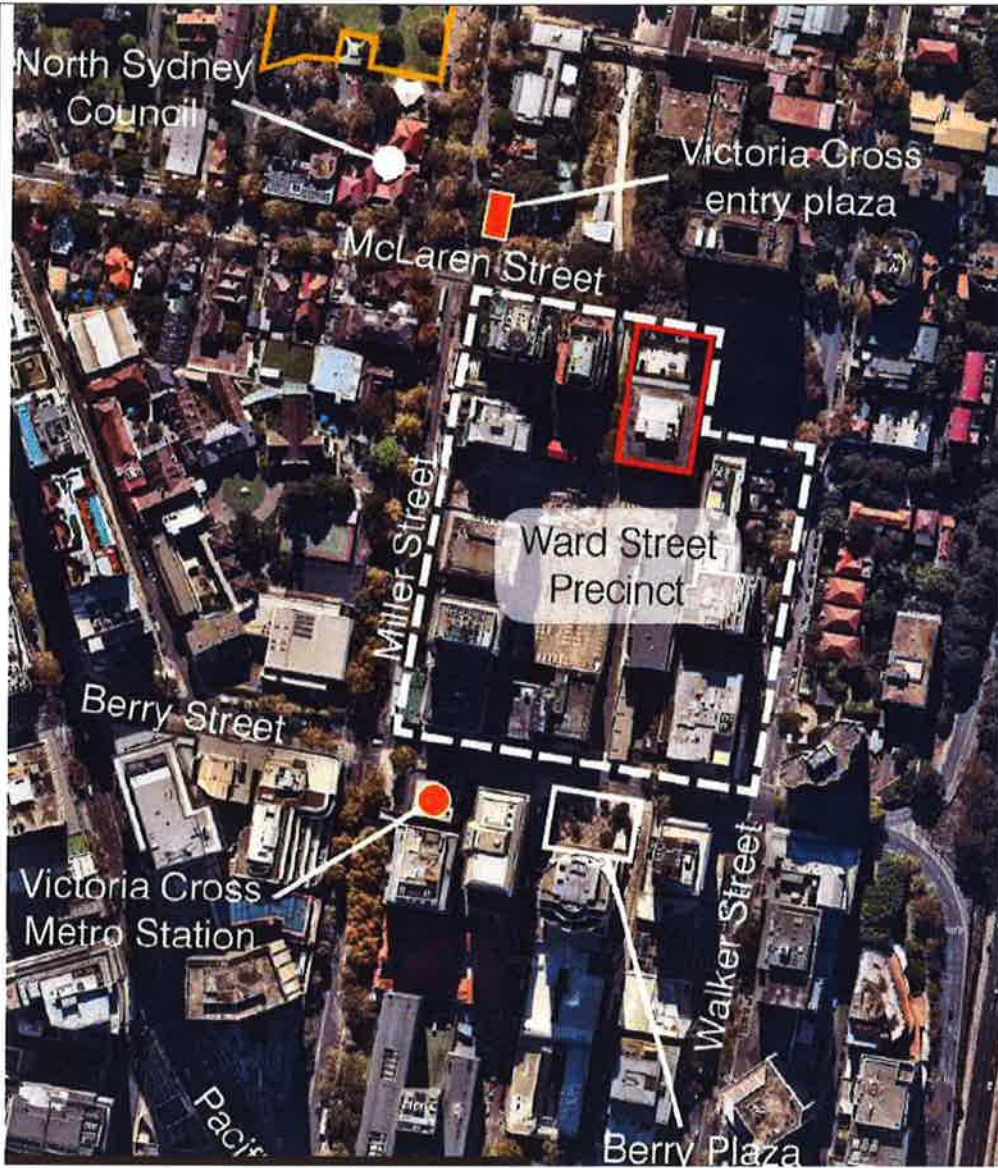


Figure 5: Ward Street Precinct (source: Architectus)







-  Ward Street Precinct Masterplan Area
-  Site Boundaries (within precinct)
-  Site owned by Council within Precinct
-  Street owned by Council within Precinct

Figure 6: Stage 1 - Ward Street Precinct Boundaries

Stage 2 Ward Street Precinct Masterplan (2018)

On 25 June 2018, Council resolved to place the Stage 2 Ward Street Precinct Masterplan (WSPM) options on public exhibition for 60 days. The Stage 2 WSPM was publicly exhibited from 7 August to 8 October 2018.

The two masterplan options supersede the previous draft Stage 1 masterplan and propose amendments to the subject site scheme in terms of the concept design and built form characteristics. Council advised that investigations of the Stage 1 showed that the building envelope of the site would be economically unfeasible. Notably no economic feasibility modelling was provided to demonstrate this.

The proposed Stage 2 masterplan options seek to include alternative public square arrangements in the Ward Street Precinct and different building form outcomes for the sites within the precinct.

Option 1: Miller Street Square masterplan

This masterplan option proposes the creation of a public domain square of approximately 1280m² facing Miller Street at 213-219 Miller Street (Figures 7 and 8).

This option identifies that 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 32,935m², with a tower up to 30 storeys with a maximum height up to RL 160m AHD.

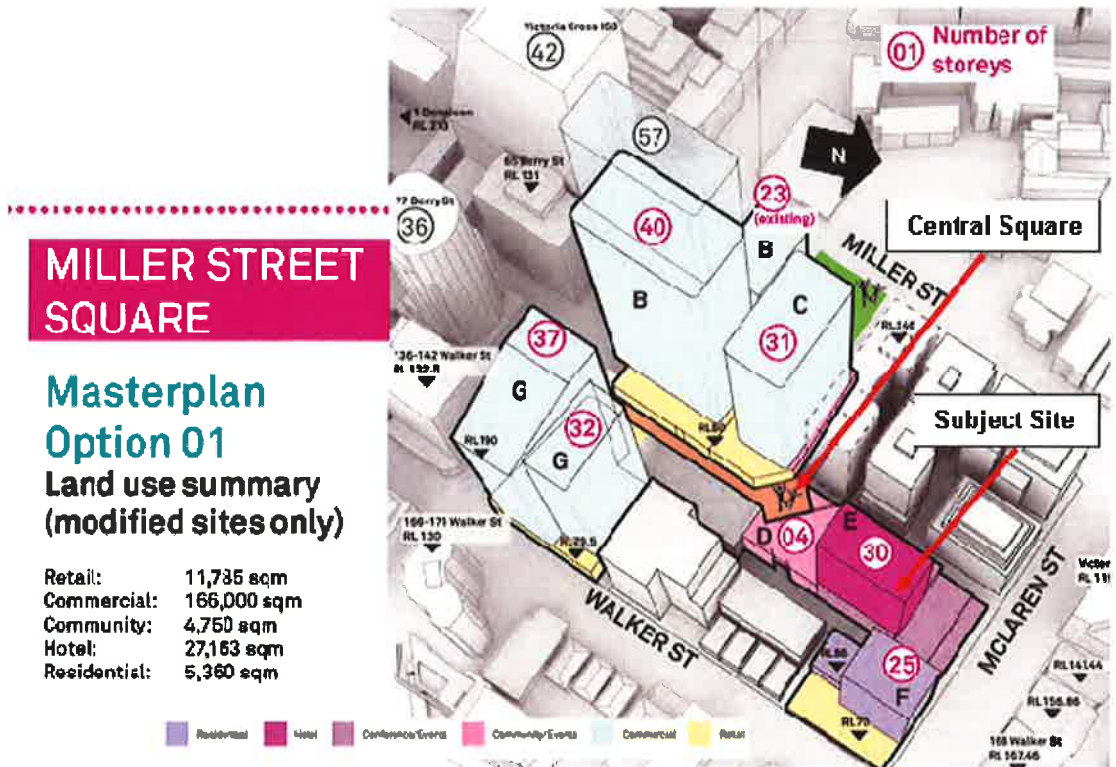


Figure 7: Stage 2 Ward Street Precinct Masterplan Option 1 (source: North Sydney Council)

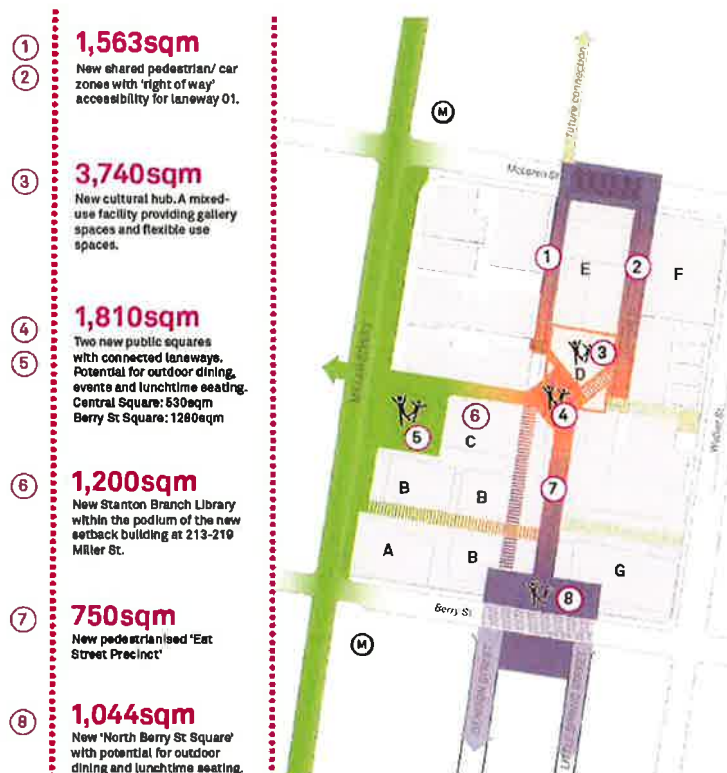


Figure 8: Stage 2 Ward Street Precinct Masterplan Option 1 (source: North Sydney Council)

Option 2: Central Square masterplan

This masterplan option focuses on a Central Square that offers a public square connected by laneways between McLaren and Berry Streets (Figures 9 and 10).

The masterplan identifies the site at 41 McLaren Street 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 NSLEP 2013.

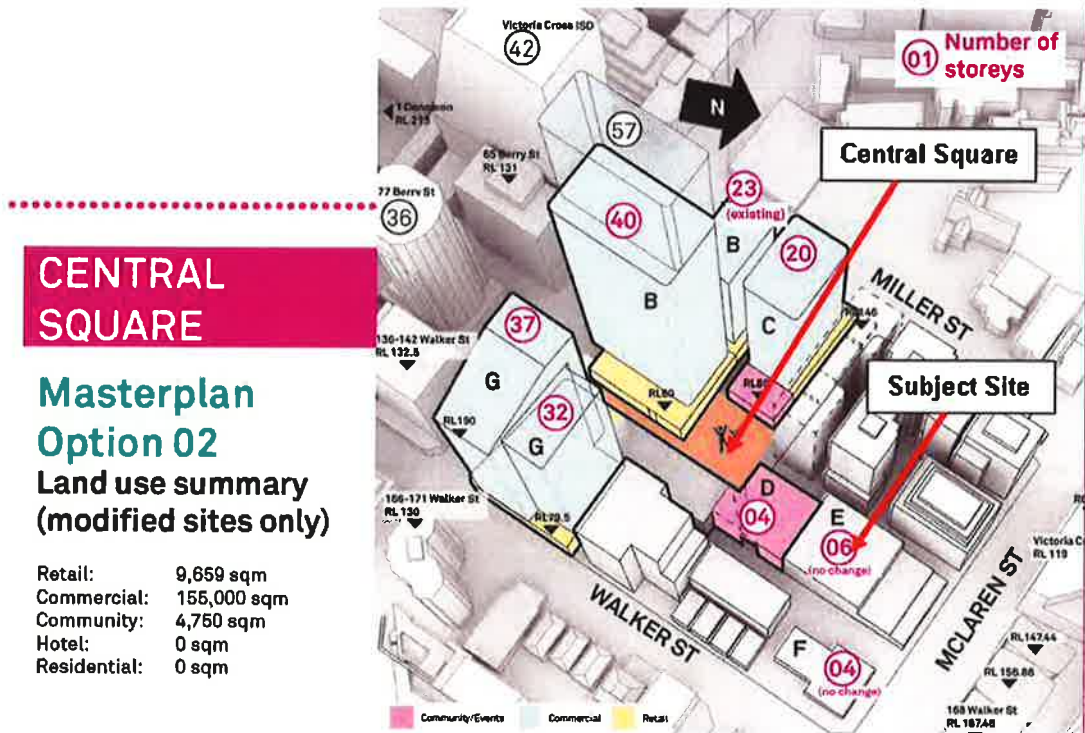


Figure 9: Stage 2 Ward Street Precinct Masterplan Option 2 (source: North Sydney Council)

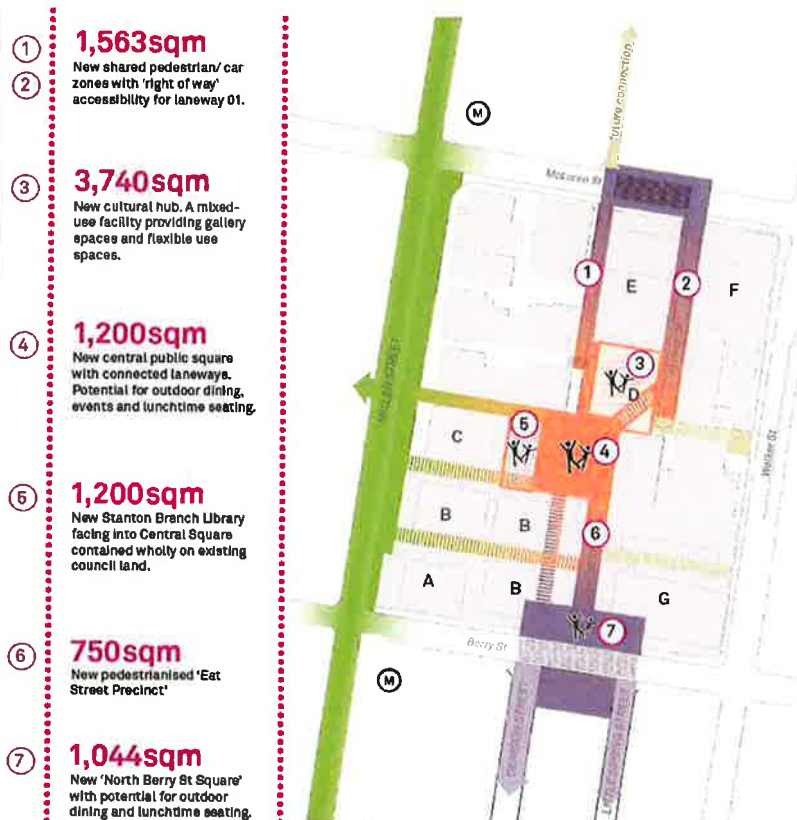


Figure 10: Stage 2 Ward Street Precinct Masterplan Option 2 (source: North Sydney Council)

The exhibited Ward Street Precinct Masterplan undertook to assess the subject planning proposal for 41 McLaren Street against SEPP 65 separation requirements (see page 57 at **Attachment F**). This assessment reviews what separation would be accommodated between the concept scheme supporting the proposal and adjoining existing developments. It is noted that the nearest residential property at 37 McLaren Street (directly to the west of the site) would have most impact, but yet the masterplan states that this site is "excluded as site is identified for development uplift under the masterplan). However, in both masterplan options there is no indication what this adjoining site will be redeveloped to or for what future land use(s).

It is also noted that the masterplan document indicates that there are already a number of built residential developments in the precinct that do not fully achieve SEPP 65 solar access provisions (page 54 at **Attachment F**).

The following table presents a comparison of existing and expected built form outcomes for the site under the masterplan options, the current LEP controls and per the subject 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

Council has reported the preferred masterplan option as Option 2 for the precinct at its meeting of 25 February 2019, which identifies no uplift for the subject site. The matter was deferred by Council for further consideration and review of the site at 45 McLaren Street and reduction of the 57 storey proposal at Site B (201 Miller Street, 56 Berry Street and 66 Berry Street). Council's report and minutes is at **Attachment J**.

In its report the Council has clarified it will not be pursuing a 'precinct-wide' planning proposal to rezone the land within the precinct. Instead after adoption of the preferred masterplan Council will commission an implementation plan that will cover how the public infrastructure for the precinct is to be delivered and funded by private development. Once the implementation plan is established, Council will welcome individual planning proposals for consideration against this plan.

Proponent's Alternative Masterplan (Architectus 2017)

The planning proposal provides an alternative masterplan for the Ward Street Precinct in response to the exhibition of the original draft masterplan.

For the site, the alternative masterplan proposes a building height of RL 226m (45 storeys) with a mix of uses comprising of approximately 7,285m² of commercial GFA and approximately 23,637m² of residential GFA, which conforms with the proposed amendments under the subject planning proposal.

With regard to the subject site the key differences between Council's masterplan options and the alternative masterplan proposed by Architectus relate to scale and built form above the existing building, which will act as a podium.



Figure 11: Alternative Masterplan (Architectus 2017)

Reason for Gateway determination

The planning proposal was supported and issued a Gateway determination on the basis that it:

- satisfies state, district and local planning objectives, which encourage development that will facilitate increased 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;
- retains the heritage listed Simsmetal House and commercial viability of the site;
- provides for employment generation by requiring a minimum non-residential FSR of 3:1;
- generally consistent relevant Section 9.1 Directions and State Environmental Planning Policies;
- is generally consistent with the Greater Sydney Region Plan and North District Plan, which encourage developments that will enable increased housing provision in locations well serviced by public transport and near employment opportunities;
- provides housing and employment in a location that is near to and has convenient accessibility to the new Victoria Cross Metro Station; and
- is consistent with the Sydney North Planning Panel's rezoning review determination.

The Department considered the proposal had merit subject to the imposition of a number of modifications that were imposed through Condition 1 of the Gateway determination (**Attachment B**), which requires that prior to agency and community consultation, the planning proposal is to be updated to address the following:

- to reflect the proposed map amendments to amend the height of building and introduce a non-residential floor space ratio map;
- update overshadowing diagrams to represent the extent of overshadowing from the proposed development on adjoining development and over Council's two draft masterplan options for the Ward Street Precinct;
- consider and demonstrate how adequate social and open space infrastructure will be provided to support the future development of the site;
- consider what impacts the proposal may have on adjoining residential developments, and what mitigation measures and/or built form setbacks could be applied to minimise impacts;
- assess the traffic and parking impacts of the proposal, and consider no increase in the provision of on-site parking beyond that currently accommodated within the site; and
- demonstrate consistency with the Greater Sydney Region Plan and the North District Plan.

The Gateway determination also requires consultation with the following public authorities:

- Transport for NSW, including Sydney Metro;
- Roads and Maritime Services;
- Office of Environment and Heritage;
- Sydney Airport Corporation Limited;
- Civil Aviation Safety Authority;
- Department of Education;
- Airservices Australia;
- Federal Department of Infrastructure and Regional Development;
- Ausgrid; and
- Sydney Water.

Relevant to the subject Gateway Review the following explains further the reasoning for some of these conditional requirements:

Overshadowing diagrams - Condition 1(b)

The development of the site under the proposed controls will likely result in an increase in overshadowing in the North Sydney Centre and surrounding area, as illustrated within the solar access assessment that accompanies the planning proposal. Therefore, condition 1(b) was included as part of the gateway determination to reflect and consider the overshadowing impacts of the proposal (**Attachment A**), especially with regard to the Council's masterplan options for the Ward Street Precinct. Given that there was no preference in the material provided by Council for either masterplan option, the condition requires consideration of both masterplan outcomes with regard to overshadowing.

Impacts to adjoining development - Condition 1(d)

This condition requires that there be detailed consideration of what impacts the development of the site, in accordance with proposal, would have to adjoining residential development. The gateway assessment recognised that there were a number of existing residential sites in the vicinity or adjacent to the site. While the condition doesn't specify

what impacts need to be considered, in the context of the site and the proposal (being for a mixed use development with residential), this was intended to include impacts associated with overshadowing, views and built form character. Although these matters often relate to SEPP 65 (which was addressed in Attachment P of the planning proposal document), the Department felt that the proposal need to ensure than an evidence-based assessment be conducted to review the impacts of the proposal and to consider what separation and built form treatments could be considered to minimise impacts to adjoining residential development.

Further details of the Department's assessment of the planning proposal is provided in **Attachment C**.

COUNCIL'S JUSTIFICATION FOR REVIEW

Details of justification:

On 4 September 2018, the Department received notice of intention from Council to request a Gateway Review (**Attachment D**).

On 30 October 2018, the Department received the formal Gateway review request from Council (**Attachment E**).

Council's request does not seek removal of any conditions of the Gateway determination but rather raises issue with the Gateway determination assessment and the basis for the Gateway determination.

Council's request raises the following concerns:

1. Consistency with and consideration of the Ward Street Precinct Masterplan

Council's submission highlights the importance of the Ward Street Precinct Masterplan to support the delivery of new and additional commercial office space, provide public domain spaces and provide community and cultural facilities within the northern part of the North Sydney CBD. Council also seeks to highlight in its request that it has spent considerable time and work to develop masterplan options for this part of the North Sydney CBD.

Council contends that none of their options for the Ward Street precinct align with the subject panning planning proposal. However, Council recognised that Option 1 afforded additional development potential beyond the current LEP controls and was suitable as it had been tested against separation and setbacks under SEPP 65 and against the solar access requirements under NLEP 2013.

Council indicates that the subject proposal would 'represent the blocking of the sunlight in the morning to early lunch period'. This is understood to mean that the proposal is expected to result in overshadowing of some or all of the public domain areas proposed under the masterplan options. However, as part of its gateway review submission Council did not provide any evidence regarding the degree to which overshadowing will occur over this period as result of the proposal.

Council states the claim that the Stage 1 WSPM is not economically feasible is superseded given Council's adoption of the draft Stage 2 WSPM for public exhibition, which has revised the height limit and envelope to the subject site under Option 1, to ensure that the development uplift is economically feasible.

2. Council's Review of Gateway Determination Report

Council identifies the following concerns with the Gateway determination report:

- the Department's Gateway determination report did not reference Council's reports on the Ward Street Masterplan and did not address Council's position;
- the planning proposal should have been assessed against the Ward Street Masterplan options adopted for exhibition by Council at its meeting of 25 June 2018;
- mislabelling of the 'Visionary Masterplan (Architectus 2018)' on page 12 of the Gateway determination report and other errors are noted in the report therefore did not properly contemplate the impacts of the proposal;
- clarification as to whether the alternative masterplan is to be exhibited in accordance with the Panel's recommendation; and
- that the planning proposal should be revised to provide an assessment against both options outlined under the revised draft WSMP and be included for exhibition.

North Sydney Centre Planning Proposal

Council states the planning proposal did not consider the impact of the proposed amendment under Council's North Sydney Centre Planning Proposal (PP_2017_NORTH_002_00).

The LEP amendment sought to:

- increase maximum building heights under the North Sydney LEP 2013 for specific sites in the North Sydney Centre. However, these sites do not include the subject site at 41 McLaren Street;
- amend clause 6.3 'Building heights and massing' to ensure the objectives and provisions of this clause prevents overshadowing on key public spaces in the North Sydney Centre, and to minimise impacts on residential development and open space areas located outside the North Sydney Centre. This amendment is relevant to the site at 41 McLaren Street;
- include a provision to maintain solar access to residential land outside the North Sydney Centre between 10am and 2pm and the continued prohibition of additional overshadowing to land identified as 'Special Area' that includes Berry Square, which is 150m south of the 41 McLaren Street.

Council requests the planning proposal be updated to consider and assess the amendments. In addition, Council noted that the planning proposal identifies the maximum building height of the Victoria Cross Metro Over Station Development as RL 300m but the correct height is RL 230m.

Council requests that the planning proposal be updated to consider and assess the amendments under Council's North Sydney Centre planning proposal, notified on 26 October 2018.

3. State Environmental Planning Policy 65

Council states the proposed development does not comply with the visual privacy objectives of State Environmental Planning Policy (SEPP) 65 as the proposal doesn't provide sufficient building separation and setbacks, and that it will not allow adjoining residential developments to achieve the minimum solar access requirements.

Council acknowledges that the current Ward Street block development is constrained in this regard but indicates that the outcome generated by the proposal to be unacceptable.

4. Public Benefits

Council states the proposed development does not provide a "shared" zone along the 'right of way' through the site comprising 221 Miller Street that is consistent with the WSPM. Council state that this link forms a primary objective of the revised draft WSMP that is designed to enable a continuous pedestrian 'laneway link' from Brett Whitely Place through Denison Street and Ward Street through to McLaren Street. Council also note that an element of the WSPM is for public access to remain 'open to the sky'.

Council did not indicate how these comments expressly relate to the proposal or the proposal documentation. Any offer of a through link across the site would be subject of negotiation between the proponent and the Council. This comment is therefore noted and does not require additional response by the Department.

5. Bulk and Scale

Council states the proposal does not comply with the footprint and public domain outcomes sought by the exhibited WSPM options.

Council supports Condition 1 (d) requiring additional assessment be undertaken to consider what impact the proposal may have on these adjoining residential developments and what mitigation measures and built form setbacks could be applied to minimise these impacts. This comment is therefore noted and does not require additional response by the Department.

	<p>6. Overshadowing</p> <p>Council requests the additional overshadowing diagrams required under Condition 1 (b) be conducted at different times of the year and at hourly intervals from 9am to 3pm.</p> <p>7. Conditions of Gateway determination</p> <p>Council states the additional information required under Conditions 1(c), 1(d), 1(e) and 1(f) should have been conducted during the process of the assessment of the planning proposal and certainly prior to the issue of the Gateway determination.</p> <p>Conditions 1(c) to 1(f) state the following:</p> <ul style="list-style-type: none"> • Condition 1(c) – consider and demonstrate how adequate social and open space infrastructure will be provided to support the future development of the site; • Condition 1(d) – consider what impacts the proposal may have on adjoining residential development, and what mitigation measures and/or built form setbacks could be applied to minimise impacts; • Condition 1(e) – assess the traffic and parking impacts of the proposal. And consider no increase in the provision of on-site parking beyond that currently accommodated within the site; and • Condition 1(f) – demonstrate consistency with the Greater Sydney Region Plan and the North District Plan.
<p>Material provided in support of application/proposal:</p>	<p>Council has provided the following documents to support its Gateway Review request:</p> <ul style="list-style-type: none"> • Gateway Review Request Application Form; • Planning proposal; • Ward Street Precinct Masterplan Exhibition Brochure; • Council Reports of 19 February 2018 and 29 October 2018; and • Council’s letter of intent to request a Gateway Review.

Proponent's Views

Date Proponent advised of request:	6 December 2018
Date of Proponent response:	The proponent provided preliminary comments on 21 December 2018 (Attachment H) and detailed comments on 14 January 2019 (Attachment I).
Proponent's Response:	<p>Architectus (the proponent) on behalf of the land owners, Erolcene Pty Ltd and Claijade Pty Ltd provided comments in response to Council's Gateway review request.</p> <p>The proponent is in support of the Gateway determination and their comments are summarised below.</p> <p>Heritage considerations</p> <p>The existing building on site, Simsmetal House is designed by Harry Siedler in 1971. The planning proposal is supported by a concept scheme prepared by Harry Seidler and Associates Architects and the heritage impact of the concept scheme was assessed in a Heritage Impact Statement prepared by GML Heritage. The study concludes that the proposed development will appropriately conserve and protect the heritage building.</p> <p>Furthermore, option 1 of the WSPM proposes a vertical extension above the existing heritage building, which would result in similar heritage impacts on the heritage item.</p> <p>View impacts</p> <p>The proponent states Option 1 of the WSPM would result in a similar impact on views from adjacent residential buildings to the west of the site (239 Miller Street, 229 Miller Street and 221 Miller Street). The loss of views should not preclude both 41 McLaren Street and 45 McLaren Street from any future development. A model of the potential view loss from Option 1 of the WSPM is illustrated in Attachment I.</p> <p>Loss of employment floor space in the North Sydney Centre</p> <p>The proponent states the GFA of the existing building is 8,674m², comprised entirely of commercial office and ground floor retail. The architectural scheme submitted with the planning proposal provides 7,285m² of non-residential GFA (FSR 3.09:1).</p> <p>The site is subject to a minimum non-residential FSR control of 0.5:1, if the site were to be developed under existing controls, it would result in a decrease of commercial floor space. To protect the commercial floor space on the site, the proposal seeks to increase the minimum non-residential FSR to 3:1.</p> <p>Relationship with the draft Stage 2 Ward Street Precinct Masterplan</p> <p>The proponent states the development of 41 McLaren Street would not preclude the redevelopment of the remainder of the Ward Street Precinct as envisaged by either of the Masterplan options.</p> <p>The proponent suggests the proposed height of RL 226m provides a transition in height between future development to the south of the site, including the development of the Council car park site, to lower scale development to the north of the Centre.</p> <p>It is the proponent's view that of the masterplan options presented in Council's WSPM, a version of Option 1 which reduces the extent to which the podium of the Council car park redevelopment extends into the central spine and allows a direct line-of-sight between Berry Street and McLaren Street as the best outcome. This relies on a through-site link provided at ground level through 41 McLaren Street, as proposed in the planning proposal.</p>

Consideration of Council's request for a Gateway review

The proponent states a Gateway determination is intended to identify whether a proposal has merit. The level of detail submitted with the planning proposal for 41 McLaren Street was far beyond what would typically be provided with a planning proposal, especially prior to a Gateway determination.

Through the rezoning review process the Sydney North Planning Panel considered Council's assessment of the proposal in determining that the planning proposal had both strategic merit and site-specific merit and provided a series of recommendations which were then considered in the issuing of the Gateway determination.

The proponent states that it is reasonable that a Gateway determination included conditions requiring the undertaking of further analysis to assess the impacts of the proposal on the revised Ward Street options, which had not been prepared at the time of preparing the planning proposal.

The proponent states that Council, in accepting the role of the Planning Proposal Authority (PPA), accepted responsibility for the progression of the planning proposal in accordance with the outcome and recommendations of the rezoning review. The proponent is of the view that it is appropriate for the Department to consider the contents of the planning proposal and supporting documentation submitted to it by Council as providing the justification for assessment when issuing a Gateway determination.

Visual Impact

The Urban Design Report accompanying the planning proposal for 41 McLaren Street indicatively illustrated a future building on the Metro site of up to RL 300m. However, at the time of when the planning proposal was submitted to Council there was no publicly available information in relation to the building height for the Victoria Cross Metro Station and so a future building height was assumed.

As part of their comments to the Gateway review, the proponent provided an updated visual diagram to reflect the updated height of RL 230m of Victoria Cross Metro Station and revised Ward Street Masterplan (**Figure 12**).

The proponent states the proposed height of RL 226m can be seen to appropriately relate to the future building heights within the Ward Street Precinct, providing a transition in height from the proposed Ward Street car park tower at RL 289m to the south of the subject site, and the approved development at 168 Walker Street (with a maximum height of RL 167.46m) to the north of the site.



Figure 12: View looking southwest from Falcon Street overpass

Overshadowing

Public domain

The alternative masterplan provided within the Urban Design Report which accompanies the planning proposal acknowledged that solar access to the public domain is severely limited under any development scenario for the Ward Street Precinct. To address this, the alternative Masterplan proposes 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.

Adjacent buildings

Additional height on the site will result in overshadowing of surrounding residential buildings. The proponent states 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).

As part of its submission, the proponent provides a comparative overshadowing analysis between the two WSPM options and alternative masterplan, focusing on the impact of overshadowing on nearby residential buildings at 136-140 Walker Street, and the buildings currently under construction at 221 and 229 Miller Street.

The proponent states the building envelope provided by the WSPM Option 1 compared to the alternative masterplan, results in only minor improvements to solar access to adjacent residential buildings which is entirely the result of shifting the building envelope towards the east and is in no way related to building height.

The proponent states the concept design of the tower provides for a balanced outcome when considering the following design limitations:

- Heritage impacts on the existing building at 41 McLaren Street ('Simsmetal House');
- Impacts on the future development potential of 45 McLaren Street to the east of the subject site;
- Overshadowing of existing residential buildings to the west of the site; and
- Overshadowing of the public domain.

The proponent concludes that the matters raised by Council in relation to the rezoning review had been previously considered by the Sydney North Planning Panel, where it was determined that the planning proposal should be submitted for a Gateway determination because it exhibited strategic merit and site-specific merit. The proponent states, the concerns raised by Council have been adequately addressed by the planning proposal and supporting documentation and will be addressed in detail through future refinement of the planning proposal and in the assessment of a future DA for the site.

Assessment summary

Department's Assessment

The Department's position on the Gateway determination review application is that the planning proposal should proceed with minor alteration to some of the conditions of the Gateway determination.

1. Consistency with and consideration of the Ward Street Precinct Masterplan

As part of its assessment for Gateway the Department undertook to assess the impacts of the proposal with regard to the two Stage 2 masterplan options for the Ward Street Precinct (see page 16 of the Gateway determination report **Attachment C**).

While the proposal did not fully align with either Ward Street masterplan option there were a number of parallels between these options and the proposal that were noted by the Department; and that the main difference was the scale and bulk of development for the site.

Additionally, the Sydney North Planning Panel was aware of the draft Ward Street Precinct Masterplan and that there would be two options that were close to being finalised by Council. The panel also acknowledged that the site was suited to additional density in the context of the Ward Street Precinct and that the proposed scale was not out of context with its broader surroundings given the foreshadowed height increases elsewhere in the North Sydney CBD, with heights of up to RL 289 (with the proposal being 63m less in height than this maximum), under the Council's North Sydney CBD proposal. North Sydney LEP 2013 has now been amended in accordance with Council's North Sydney CBD proposal.

It should be noted that the while assessment of the two masterplan options was undertaken by Department, there was no obvious preferred masterplan at the time of this assessment. Since this time, Council staff prepared a report to Council recommending a revised Option 2 masterplan as the preferred option for the Ward Street Precinct. The matter was deferred at the Council meeting on 25 February for further consideration and review of the site at 45 McLaren Street, and reduction of the 57 storey proposal at Site B (201 Miller Street, 56 Berry Street and 66 Berry Street). This option doesn't afford additional built form uplift for the site beyond that currently provided by North Sydney LEP.

In consideration of the draft masterplan for the Ward Street Precinct, this (in the Department's view) doesn't alter the assessment of the 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;
- Council has not strictly objected to the proposal, but rather has highlighted that the Department's Gateway determination assessment did not sufficiently assess the proposal against the masterplan options;
- 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 (in particular with regard to separation to adjoining development, which relates to potential impacts of view loss and overshadowing, traffic and parking and social and open space infrastructure) (see Conditions 1(b) - 1(e));
- Council does not intend to prepare an overall planning proposal to implement the draft masterplan, but rather to accept site specific planning proposals for sites within the precinct; and
- the planning proposal can be additionally updated to assess and consider its impacts against the draft masterplan.

Based on Council's gateway review documentation, a key reason that Council has concerns with the subject proposal is that it will overshadow the proposed public plaza/square options for the Ward Street precinct.

The Department gave consideration to the potential increased overshadowing as a result of the proposal. The Department notes that the shadow diagrams provided in the planning proposal do not consider what effect the proposal will have on Council's two options for the Ward Street precinct. Hence to address this the Department conditioned the Gateway determination to update the overshadowing diagrams to include the potential overshadowing impacts envisaged by the proposed development.

On review of the shadow diagrams for the Council's Ward Street masterplan options (see pages 138 and 139 of the Ward Street Precinct Master Plan (**Attachment F**)), it appears that the shadows cast over the central plaza area under Option 2 is cast by the redevelopment of Council's site directly south of 41 McLaren Street, which in turn results in impacts to the public square.

Another key consideration for Council with regard to overshadowing was what effect the proposal will have to existing development to the east of Walker Street.

Based on the above it is recommended that the gateway condition 1(b) be altered to ensure that the proposal is assessed against Council's two draft masterplan options or any endorsed masterplan for the Ward Street Precinct and other development beyond the precinct:

"Condition 1(b) – update overshadowing diagrams to represent the extent of overshadowing from the proposed development on adjoining development, and over the Council's two draft options or any endorsed masterplan options for the Ward Street Precinct and over any other development outside the Ward Street Precinct." The overshadowing diagrams are to be conducted at Winter and Summer Solstice and equinoxes at 1 hour intervals from 9am to 3pm. (additional text in bold).

Should further refinements be made to the proposal in the post exhibition phase of the process and as a result of public and/or agency submissions, shadowing can be further assessed by Council in their post exhibition report and by the Department at finalisation stage.

2. Council's Review of Gateway Determination Report

The planning proposal was submitted to the Department on 4 May 2018 and the Gateway determination was issued on 23 August 2018. Council's Ward Street Precinct Masterplan was publicly exhibited from 7 August to 8 October 2018.

In response to the reference to Council's report and position, the purpose of the Department's Gateway determination report is to undertake an assessment of the LEP amendment. The Department considered recommendations from the Sydney North Panel and Council's Ward Street Precinct Masterplan options in the assessment of the Gateway determination. In addition, Council's report on 19 February 2018 and position on the planning proposal was considered by the Sydney North Panel as part of the rezoning review.

The Department confirms the reference to the 'Visionary Masterplan (Architectus 2018)' on page 12 of the Gateway determination report is a typographical error. The correct reference should be 'Visionary Masterplan (Architectus 2017)'.

The Department ensured that the Gateway determination considered Council's Ward Street Masterplan options in accordance with the Panel's recommendation that the planning proposal not proceed to exhibition until Council exhibits its review of its proposed strategy.

The Panel recommended that:

- the planning proposal and alternative masterplan not proceed to exhibition until Council exhibits the Stage 2 WSPM; and
- the planning proposal and alternative masterplan be exhibited as one of the precinct options.

On 25 June 2018, Council resolved to place the Stage 2 WSPM option for exhibition. At that time the Gateway determination report was being prepared and Council advised that the Ward Street Precinct masterplan options would be exhibited in August 2018.

The Department considered it unnecessary for the alternative masterplan to be exhibited as a third option for the Ward Street Precinct. Rather, conditions were included in the Gateway determination to undertake additional assessment of the impacts the proposal may have on the two Council proposed masterplan options. It was the view of the Department that the proponent would have the opportunity to submit its proposed 'third' option to the Council as part of the public exhibition of the masterplan options, and it wasn't relevant to the planning proposal as this option related to the whole of the precinct, whereas the planning proposal relates only to the site at 41 McLaren Street.

North Sydney Centre Planning Proposal

The North Sydney Centre planning proposal sought to amend the North Sydney Local Environmental Plan 2013 to give effect to the recommended actions of Council's North Sydney CBD Capacity and Land Use Strategy.

This LEP amendment was gazetted on 26 October 2018 and sought to:

- increase maximum building heights under the North Sydney LEP 2013 for specific sites in the North Sydney Centre. These sites do not include the subject site at 41 McLaren Street;
- amend clause 6.3 'Building heights and massing' to ensure the objectives and provisions of this clause prevents overshadowing on key public spaces in the North Sydney Centre, and to minimise impacts on residential development and open space areas located outside the North Sydney Centre. This amendment is relevant to the site at 41 McLaren Street;
- include a provision to maintain solar access to residential land outside the North Sydney Centre between 10am and 2pm and the continued prohibition of additional overshadowing to land identified as 'Special Area' that includes Berry Square, which is 150m south of the 41 McLaren Street.

As part of this Gateway review, Council requests that the planning proposal be updated to consider and assess the amendments under Council's North Sydney Centre planning proposal, notified 26 October 2018.

The original planning proposal submitted to the Department for a Gateway determination acknowledged Council's North Sydney Centre proposal, but did not fully contemplate what impact the proposed amendments under Council's proposal would have.

The Department considers Council's request to be appropriate and recommends that the following Gateway condition be inserted requiring the planning proposal be updated to consider and assess the amendments under Council's North Sydney Centre proposal gazetted on 26 October 2018. In addition, the reference to the Victoria Cross Metro Station maximum building height of RL 230m can be corrected as a new condition.

1. Prior to agency and community consultation, the planning proposal is to be updated to address the following:
 - (a) consider the implications of the amendments to the North Sydney LEP 2013 for the North Sydney CBD Capacity and Land Use Strategy;
 - (b) correct references to the maximum building height of the Victoria Cross Metro Station from RL 300m to RL 230m.

3. SEPP 65

The Department's Gateway determination report highlights that the concept development does not comply with the visual privacy objectives, providing inadequate building separation and setbacks. The concept will likely result in adjoining residential developments not achieving the minimum requirements of solar access.

This likely outcome was also acknowledged by the Planning Panel in its assessment of the proposal, expressing stating that:

"The Panel notes 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"
(Attachment G).

To address the impacts on adjoining residential developments, the Department included a gateway condition for the planning proposal to be updated to:

Condition 1(d) - consider what impacts the proposal may have on adjoining residential developments, and what mitigation measures and/or built form setbacks could be applied to minimise impacts

The Department considers this condition adequately addresses Council's concern regarding the visual privacy and solar access objectives of SEPP 65.

4. Public Benefits

The Department acknowledges Council's preference for an upgrade of a shared zoned along the right of way through the site comprising 221 Miller Street to enable a pedestrian laneway link from Brett Whitely Place through Denison Street, Ward Street to McLaren Street and that such public access is to remain open to the sky.

The proposal seeks to deliver a through-site link between McLaren Street in the north and Berry Street in the south, improving the accessibility of the future public space in the Ward Street Precinct, enabling a key connection between McLaren Street and the public open space in NoC Square (if this were to be located to the south-west of the subject site).

This potential link is equivalent to one-third of the proposed fuller through-link between McLaren and Berry Streets and could contribute towards and enhance the public domain areas in the North Sydney CBD.

Should further refinements be made to the proposal post exhibition as a result of public and/or agency submissions, this can be further assessed by Council in their post exhibition report and by the Department at finalisation stage.

5. Bulk and Scale

Council states that the proposal does not comply with the footprint and public domain expectations of either WSMP options.

The Department noted in its gateway assessment that a key difference between Council's then masterplan options and the alternative masterplan proposed by Architectus for the site was only the scale and built form elements above the podium of the existing building. The result for this was the footprint outcomes for the site remained the same as sought by both then masterplan options, primarily as the subject proposal intends to retain the existing heritage building.

Although the proposal does not fully align with the draft Masterplan options for the Ward Street Precinct with the bulk and scale of additional development, the Department acknowledged in its assessment that the proposal had a number of parallels with the alternative masterplan options. This assessment against the draft masterplan for the Ward Street Precinct remains the same given that:

- the proposed development for the site is contained within the boundaries of the site shown in the masterplan;
- any future development of the site is to incorporate adaptive reuse of the existing heritage-listed building;
- the proposal for the site does not encroach into the proposed central public domain square area;
- the site will continue to retain the same ground plane and built form footprint; and

- a pedestrian site through-link can be provided to the western edge of the site to allow for a large portion of the north-south link through the Ward Street Precinct.

Council's support of condition 1(d) is noted:

(d) consider what impacts the proposal may have on adjoining residential developments, and what mitigation measures and/or built form setbacks could be applied to minimise impacts

The Department considers that Condition 1(d) continues to appropriately address Council's comments.

6. Overshadowing

The Department's Gateway determination report highlights that the proposed development for the site will likely result in an increase in overshadowing in and outside of North Sydney Centre as shown within the solar access assessment that accompanies the planning proposal.

Given the shadow diagrams are based on a particular scheme design and did not consider the impacts the proposal will have on the two new masterplan options for the Ward Street Precinct, the Department included condition 1(b):

- *update overshadowing diagrams to represent the extent of overshadowing from the proposed development on adjoining development and over Council's two draft masterplan options for the Ward Street Precinct;*

As part of the Gateway review, Council requests that the additional overshadowing diagrams required under Condition 1 (b) be conducted at summer solstice, equinox and winter solstice, at hourly intervals from 9am to 3pm.

The Department considers this request to be appropriate. It is recommended that the condition be amended as follows:

Condition 1(b) – update overshadowing diagrams to represent the extent of overshadowing from the proposed development on adjoining development, ~~and~~ over the Council's **two draft options or any endorsed** masterplan options for the Ward Street Precinct **and over any other development outside the Ward Street Precinct.** The overshadowing diagrams are to be conducted at **Winter and Summer Solstice and equinoxes at 1 hour intervals from 9am to 3pm.** (additional text in **bold**).

7. Conditions of Gateway determination

Conditions 1(c), 1(d), 1(e), and 1(f) (as revised above) are required to be completed to the satisfaction of the PPA prior to agency and community consultation. If the conditions have not been satisfied, agency and community consultation cannot be commenced.

The Gateway determination may set out any conditions Council is required to comply with, it is standard process for the Department to require further analysis or amendments to the proposal as conditions.

It is noted that North Sydney Council accepted the PPA role on 5 April 2018 and submitted the planning proposal to the Department on 4 May 2018. North Sydney Council as the PPA had the opportunity to update the planning proposal to ensure their desired analysis was undertaken prior to submission to the Department.

The Department considers it appropriate that these conditions (as revised per this report) be undertaken prior to community consultation. Should further refinements be made to the proposal post exhibition, as a result of public and/or agency submissions, this can be further assessed by Council in their post exhibition report and by the Department at finalisation stage.

It should be noted that community consultation and further assessment of the proposal post exhibition is to occur before the proposed LEP amendment can be made. The Gateway determination is not consent for the proposed LEP amendment to be made.

<p>Conclusion</p>	<p>The Department notes that Council did not raise any objection to the Gateway conditions but rather challenges the Gateway determination assessment and the basis for the Gateway determination.</p> <p>The Department has considered Council's reasons for this Gateway review and recommends minor alterations to the Gateway determination to clarify matters raised by Council.</p> <p>It is recommended that new and revised conditions be inserted as follows:</p> <ol style="list-style-type: none"> 1. Prior to agency and community consultation, the planning proposal is to be updated to address the following: <ul style="list-style-type: none"> (b) update overshadowing diagrams to represent the extent of overshadowing from the proposed development on adjoining development, and over the Council's two draft options or any endorsed masterplan options for the Ward Street Precinct and over any other development outside the Ward Street Precinct The overshadowing diagrams are to be conducted at Winter and Summer Solstice and equinoxes at 1 hour intervals from 9am to 3pm; (g) consider the implications of the amendments to the North Sydney LEP 2013 for the North Sydney CBD Capacity and Land Use Strategy; and (h) correct references to the maximum building height of the Victoria Cross Metro Station from RL 300m to RL 230m. <p>(additional text in bold)...</p> <p>The Department's position on the Gateway determination review application is that the planning proposal should proceed to community consultation upon satisfaction of the Gateway conditions, as revised.</p> <p>Should further refinements be made to the proposal post exhibition as a result of public and/or agency submissions, this can be further assessed by Council in their post exhibition report and by the Department at finalisation stage.</p>
<p>Attachments</p>	<p>Attachment A - Planning Proposal</p> <p>Attachment B - Gateway determination</p> <p>Attachment C - Gateway determination report</p> <p>Attachment D- Gateway review notification letter</p> <p>Attachment E - Council Report 29 October 2018</p> <p>Attachment F - Ward Street Precinct Masterplan</p> <p>Attachment G - Sydney North Planning Panel Decision</p> <p>Attachment H - Proponent comments 21 December 2018</p> <p>Attachment I - Proponent addendum to comments 14 January 2019</p> <p>Attachment J - Council Report 19 February 2018</p>

COMMISSION'S RECOMMENDATION

Reason for review: A determination has been made that has imposed requirements (other than consultation requirements) or makes variations to the proposal that the proponent or council thinks should be reconsidered.

Recommendation:	<input type="checkbox"/>	The planning proposal should not proceed past Gateway.
	<input type="checkbox"/>	<input type="checkbox"/> no amendments are suggested to original determination.
	<input type="checkbox"/>	<input type="checkbox"/> amendments are suggested to the original determination.
	<input type="checkbox"/>	The planning proposal should proceed past Gateway in accordance with the original Determination.

Any additional comments: