

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_2019_SYDNE_001_00
LGA	City of Sydney
LEP to be Amended:	Sydney Local Environmental Plan 2012
Address/Location:	30-62 Barcom Avenue, Darlinghurst
Proposal:	<p>The planning proposal seeks to amend the Sydney Local Environment Plan 2012 (LEP 2012) to provide a site-specific provision for 30-62 Barcom Avenue, Darlinghurst to permit the following development bonuses:</p> <ul style="list-style-type: none"> ○ increase the maximum building height from 15 metres (m) to 18m; and ○ increase the floor space ratio (FSR) from 2:1 to 3.75:1. <p>The bonus building height and floor space would only be afforded if:</p> <ul style="list-style-type: none"> ○ the entire building is used as a commercial premise (including the additional development); ○ there is no increase in car parking on the site; and ○ a 6-star National Australian Built Environment Rating System (NABERS) Energy Commitment Agreement is in place for new development. <p>The planning proposal (Attachment A) outlines the explanation of provision 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 Sydney Local Environment Plan 2012 (LEP 2012) to provide a site-specific provision for 30-62 Barcom Avenue, Darlinghurst to permit the following development bonuses:

- increase the maximum building height from 15 metres (m) to 18m; and
- increase the floor space ratio (FSR) from 2:1 to 3.75:1.

The bonus building height and floor space would only be afforded if:

- the entire building is used as a commercial premise (including the additional development);
- there is no increase in car parking on the site; and
- a 6-star National Australian Built Environment Rating System (NABERS) Energy Commitment Agreement is in place for new development.

The subject site is legally described as Lot B DP 111138 is irregular in shape with an area of 992.5m² with a direct frontage to Barcom Avenue of approximately 45m (**Figure 1**).

The site contains a part two-storey (fronting Barcom Avenue) part three-storey storage premises at the rear with a basement level (**Figures 2 and 3**). Currently, the building is used as a storage premises building and does not contain any on-site car parking.

The building is built to the boundary and has a Gross Floor Area (GFA) of approximately 2,432m², equating to an existing FSR of approximately 2.45:1.

The site does not contain any heritage items, vegetation or threatened species.

The subject site is on the eastern fringe of the Sydney CBD in Darlinghurst and is within 800m walking distance of Kings Cross Station, 250m walking distance of bus stops on New South Head Road and 600m from St Vincent's Hospital.

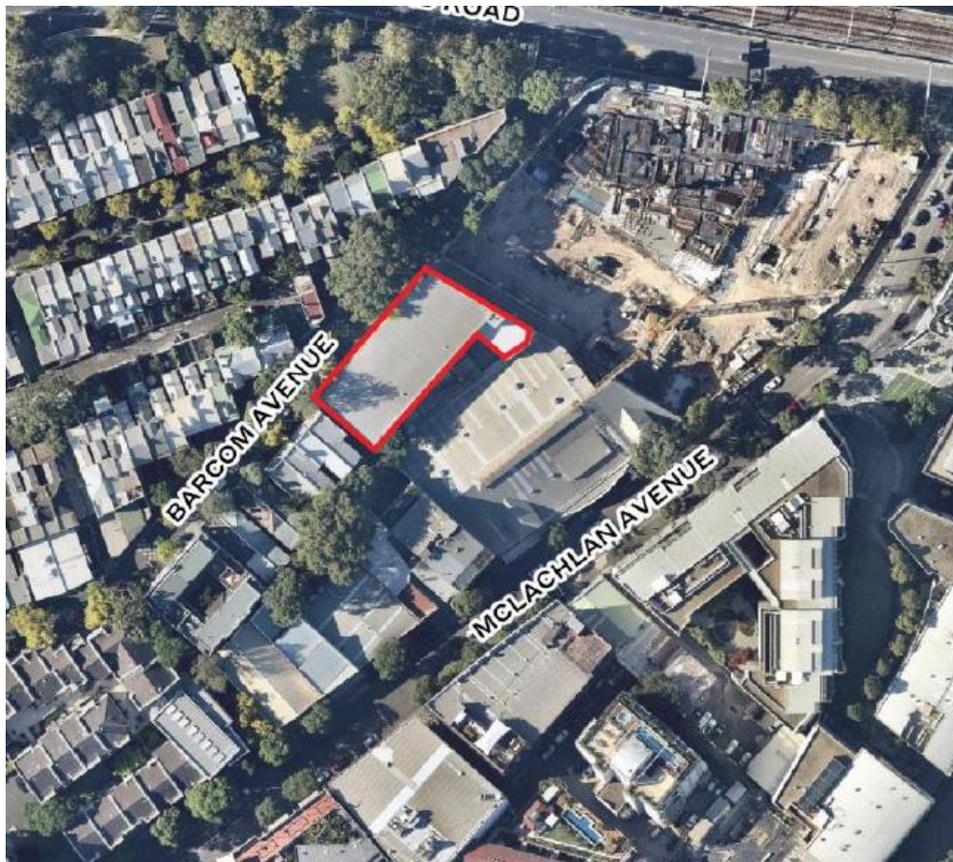


Figure 1: Aerial photo of the subject site outlined in red.



Figure 2: 30-62 Barcom Avenue, looking south (source: Ethos planning proposal).



Figure 3: 30-62 Barcom Ave, looking north-east (source: Ethos planning proposal).



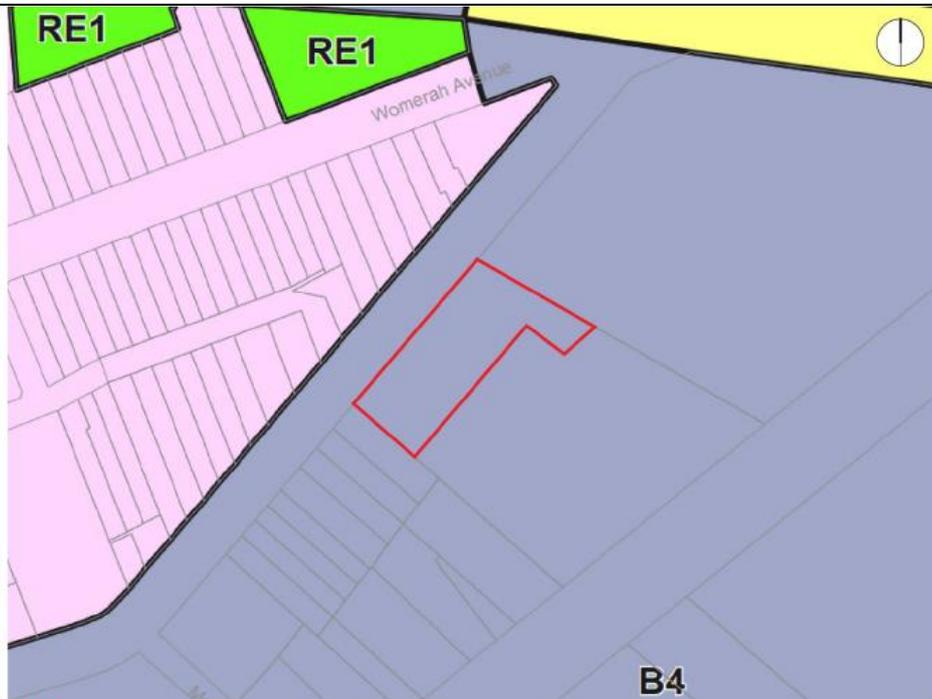
Figure 4: Locality map

Existing Planning Controls

Under the Sydney LEP 2012, the site is:

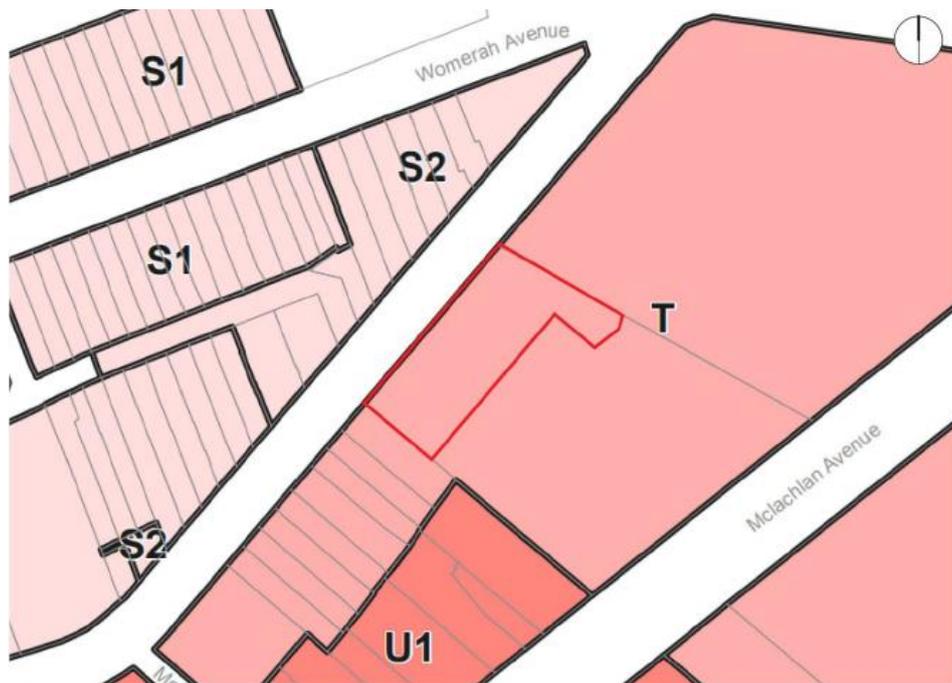
- zoned B4 Mixed Use (**Figure 5**) permitting residential accommodation and commercial premises;
- has a maximum permitted FSR of 2:1 (**Figure 6**); and
- has a maximum building height of 15m (**Figure 7**).

The site's current zoning is not proposed to be changed by the planning proposal. The subject site does not contain any heritage items. However, it is located near six locally significant heritage items and is adjacent to the Barcom Heritage Conservation Area (**Figure 8**).



32-60 Barcom Avenue (the site)
 Land Zoning
 R1 General Residential RE1 Public Recreation
 B4 Mixed Use

Figure 5: Land Use Zone Map (Sydney LEP 2012)



32-60 Barcom Avenue (the site)
 Maximum Floor Space Ratio (n:1)
 S1 1.5 T 2
 S2 1.75 U1 2.5

Figure 6: Maximum Floor Space Ratio Map (Sydney LEP 2012)

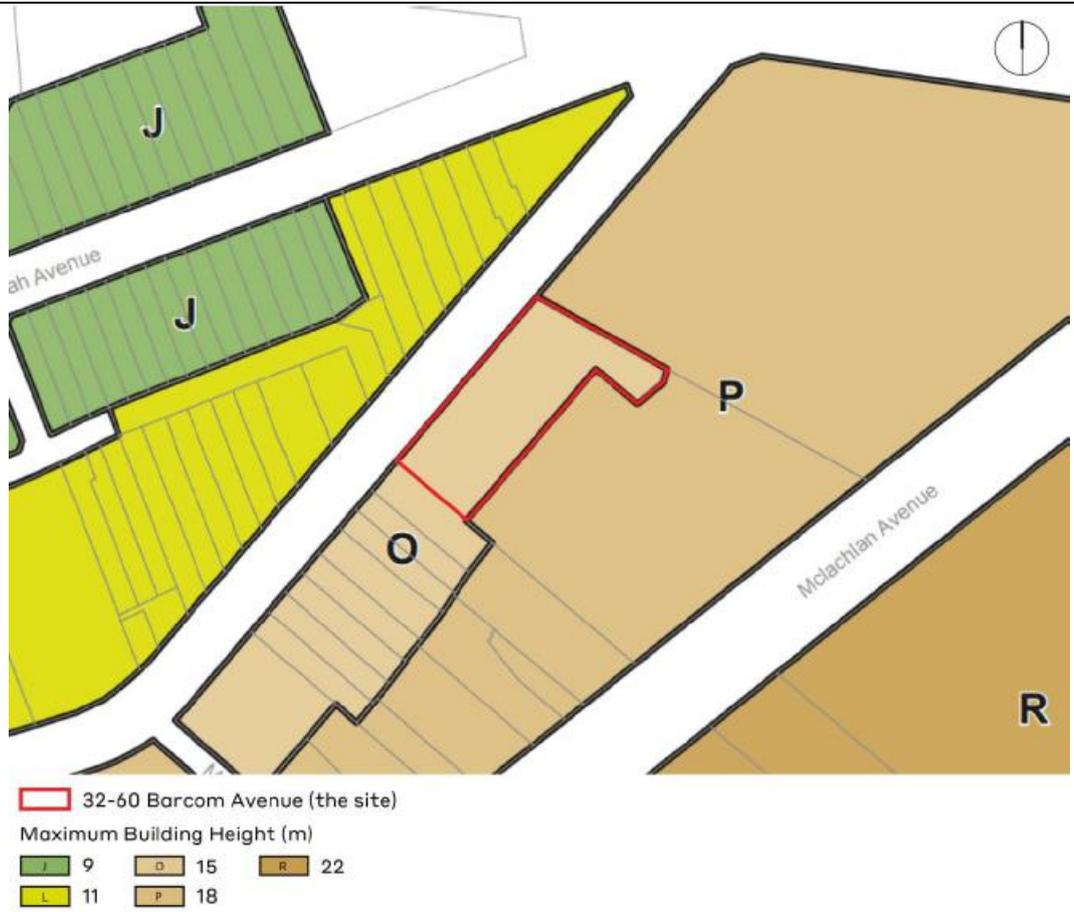


Figure 7: Maximum Building Height Map (Sydney LEP 2012)



Figure 8: Heritage Map (Sydney LEP 2012)

Reason for Gateway determination

On 10 October 2018, City of Sydney Council submitted the planning proposal to the Department for a Gateway determination.

On 11 July 2019, the Department issued a Gateway determination with conditions on the basis that the planning proposal:

- is consistent with the Greater Sydney Region Plan, will give effect to the Eastern City District Plan and the relevant section 9.1 Ministerial Directions and state environmental planning policies;
- provides additional employment opportunities on the Sydney CBD fringe near a cluster of existing business premises;
- facilitates a development with a bulk and scale that is consistent with the surrounding area and desired future character of the locality;
- achieves a building envelope that is cognisant of the heritage items, conservation area and adjoining residential buildings; and
- would have minimal environmental, social and economic impacts

The Department considered the proposal had strategic and site specific merit subject to 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:

- update the objectives and intended outcomes section of the planning proposal to align with the explanation of provisions;
- amend the explanation of provisions to explain that to be afforded the bonus building height and floor space:
 - the entire building cannot be used for residential accommodation or tourist and visitor accommodation;
 - the additional building height and floor space is restricted to commercial premises uses; and
 - car parking associated with the additional building height and floor space is prohibited;
- amend the planning proposal to remove the proposed provision for a 6-star NABERS Energy Commitment Agreement; and
- update the project timeline.

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

- Office of Environment and Heritage (now known as Environment, Energy and Science Group (EES) and Heritage NSW);
- Transport for NSW; and
- Roads and Maritime Services.

The following explains further the reasoning for some of these conditionals.

National Australian Built Environment Rating System (NABERS) Energy Commitment Agreement

NABERS is a national government program used to measure a building's energy efficiency, carbon emissions and water consumption.

The planning proposal seeks to support ecologically sustainable development by requiring a 6-star NABERS Energy Commitment Agreement for the base building to activate the bonus FSR and height. Council's draft site-specific Development Control Plan (DCP) also requires a 6-star base building NABERS Energy Commitment

Agreement to be put in place.

A Commitment Agreement is a contract between the NABERS National Administrator, the NSW Department of Planning, Industry and Environment (formerly Office of Environment and Heritage NSW (OEH)) and the building proponent to design, build, commission and operate the premises to achieve a NABERS Energy rating of 4 stars or higher without Greenpower.

The contract typically spans a number of years and remains in effect until the building has received its NABERS Energy rating in operation.

The Department understands that NABERS ratings cannot be determined until 12 months after the development has been in operation. Therefore, there is no way to pre-emptively ensure that a development will achieve the required rating at the planning proposal phase when the detailed design is not yet known.

The planning proposal lodged by the proponent did not include a proposed provision for a NABERS Energy Commitment Agreement, this was subsequently included by Council prior to reporting the proposal to the Central Sydney Planning Committee. Council did not provide adequate justification for the inclusion of a NABERS energy commitment agreement or demonstrate that the 6-star rating can be achieved.

The Department noted in its Gateway determination that whilst it supports ecological sustainable development, the planning proposal was conditioned to remove the provision for a 6-star NABERS Energy Commitment Agreement as the inclusion of the proposed provision in an LEP is not supported at this stage of the planning process when the detailed design is not yet known, a 5.5-star commitment is already required under Council's DCP and the National Construction Code requires achievement of a similar and mandatory requirement.

National Construction Code

The National Construction Code (NCC) 2019, which came into effect on 1 May 2019 and replaces the former NCC 2016, is adopted by all states and territories. Section J of the NCC 2019 identifies mandatory energy efficiency requirements that are applicable to different building types (**Attachment C**). The energy efficiency requirements set by the NCC are based off consultation with industry and development feasibility whilst also ensuring the Federal Government's broader strategy to reduce greenhouse gas emissions is implemented.

NABERS is just one of four energy efficiency verification methods that can be used for office buildings to demonstrate compliance with the NCC. The other verification methods include Green Star, reference buildings and building envelope sealing. For office buildings, the NCC requires a minimum 5.5-star NABERS energy rating or equivalent.

Allowing the energy requirements to be verified by multiple methods provides flexibility, promotes innovation and accommodates existing rating tools. The Department considers that limiting the verification method to only one method is overly restrictive and unnecessary.

A transition period for the NCC will apply until 30 April 2020, during this time the proponent can choose to either comply with NCC 2016 or NCC 2019. The NCC 2016 still includes energy efficiency requirements, however these requirements have been further strengthened by approximately 40% in the NCC 2019. The transition period is required to allow industry to adjust to the changes.

Australian Building Code Board Intergovernmental Agreement

The inclusion of a minimum NABERS energy requirement would undermine commitments made by the NSW Government under the Australian Building Code Board Intergovernmental Agreement. Under the agreement the NSW Government has committed to limit local governments from setting prescriptive standards that prevail over the NCC (**Attachment D**).

The Department noted in its Gateway determination that whilst it supports ecological

sustainable development, the inclusion of a NABERS rating provision in the LEP is not supported as it would:

- restrict the ability to utilise other acceptable verification methods, to demonstrate compliance with the NCC;
- be inconsistent with commitments made by the NSW Government under the ABCB Intergovernmental Agreement to limit local governments from setting prescriptive standards that override the NCC;
- require the detailed building design to be known at the planning proposal phase; and
- duplicates the requirements for a 6-star NABERS energy rating in the site-specific DCP.

The Department recommended under condition 1(c) of the Gateway determination that the proposed NABERS provision be removed from the planning proposal, noting that appropriate standards can be achieved through the site-specific amendment to the Sydney DCP 2012 and the National Construction Code.

Detailed justification for this condition is addressed in the Department's Gateway Determination Assessment Report (**Attachment E**).

COUNCIL'S JUSTIFICATION FOR REVIEW

Details of justification:

On 22 July 2019, the Department received notice of intention from Council to request a Gateway Review (**Attachment F**).

On 4 September 2019, the Department received the formal Gateway review request from Council (**Attachment G**).

Council is requesting to remove condition 1(c) of the Gateway determination and retain the provision for a 6-star NABERS Energy Commitment Agreement in the planning proposal.

Council did not object to any other conditions of the Gateway determination.

The Department's Gateway determination report raised the following issues with the inclusion of NABERS in planning proposal as it:

1. restricts the use of other verification methods to demonstrate energy efficiency in the National Construction Code (NCC) 2019;
2. requires detailed building design to be known at the planning proposal stage;
3. duplicates the requirements of the draft site-specific DCP amendment;
4. sets a prescriptive local standard which prevails over the NCC, inconsistent with the NSW Government's commitment to the Australian Building Code Board Intergovernmental Agreement.

Council provides the following response to the issues raised in the Gateway determination assessment report.

1. The proposed clause restricts the use of other verification methods

The NCC 2019 allows for energy efficiency to be demonstrated through four performance methods:

- a) JV1 – NABERS Energy for Offices;
- b) JV2 – Green Star;
- c) JV3 – Verification using a reference building; and
- d) JV4 – Building envelope sealing.

Council lists out a number of benefits in choosing NABERS as a preferred verification method such as:

- The Investment Property Database Australia Markets Results (2014), the benefits of incorporating NABERS energy rating have been quantified showing:
 - 10.6% average return on buildings that achieve a 5 star NABERS Energy and higher, compared to 8.5 per cent return for 4 - 4.5 star and 7.6% for 3.5 star or lower; and
 - high performing NABERS Energy buildings have a vacancy rate of 0.4 percentage points lower than the average lower performing buildings, have 17% higher net income (\$/sqm), have a 21% higher capital value (\$/sqm), and a longer weighted average lease expiry by 45%.
- A Guide to Office Building Quality (2019) requires all Grade buildings to achieve a NABERS Energy 5.5 star energy rating or higher, via a Commitment Agreement, or equivalent, to align with the NCC requirements.
- The benefits of NABERS Energy Commitment Agreements to proponents, building owners and tenants are:
 - reduced base building energy costs;
 - costs to design and construct a higher efficiency building can be

minimised by including energy targets in the planning and design phase of a development;

- a building rating system which allows for the achievement of corporate sustainability targets;
- a building rating system which allows for developers, building owners and tenants to promote and market environmental performance whilst the building is being designed, constructed and leased;
- NABERS Rating Estimate associated with a NABERS Energy Commitment Agreement can be used to show compliance with energy efficiency Performance Requirements JP1 and JP3 of National Construction Code Volume One Energy Efficiency Provisions 2016; and
- NABERS Energy modelling associated with a NABERS Energy Commitment Agreement can be used to claim Energy points in Green Star - Design & As Built.

Council identifies that there are Federal, State and industry programs and policies that reference or require NABERS energy ratings such as:

- Commercial Building Disclosure Program (CBD) (Federal);
- NSW Government Resource Efficiency Policy (State); and
- Property Council of Australia's A Guide to Office Building Quality (industry).

Council prefers NABERS-specific ESD mechanism in the planning proposal as it is an industry-supported ratings scheme and the least onerous verification method for the proponent, given that a NABERS rating would be required in any case under the CBD program. Council also considers NABERS to be the most transparent and straightforward verification method of those offered in the NCC 2019 with which to establish a building's energy efficiency at both design and as-built stage. Council also consider that the NABERS Commitment Agreement process, through independent review and verification, will deliver the expected building performance providing greater confidence to the developer, owner and tenant.

2. The proposed clause requires detailed building design to be known at the planning proposal stage

A NABERS Energy Commitment Agreement is a commitment by a building owner to design, build and commission a building to a selected NABERS star rating. It is a contractual commitment between the NABERS national administrator and a building owner to achieve actual operational performance.

Council clarifies that the NABERS Energy Commitment Agreement would not require detailed design to be known at the planning proposal stage. Stipulating this requirement in the LEP is to ensure that achieving a 6 star NABERS Energy rating becomes a parameter for the design, in much the same way that a designer would work towards key yield targets and numbers of parking spaces.

The planning proposal does not stipulate a timeframe for execution of the Commitment Agreement as this is expected after the detailed design stage.

Following preparation of the detailed design, an ESD consultant will be able to simulate a NABERS rating estimate that the building is likely to achieve in operation. It is at the detailed design stage that the proponent would execute the Commitment Agreement, to accompany a detailed development application. Council suggest this process could be clarified in the site-specific DCP amendment if necessary.

The inclusion of the NABERS requirement in the LEP will give legislative weight to the sustainability target ensuring that the building design work is revisited until it demonstrates that the specified NABERS rating can be achieved.

3. The proposed clause duplicates the requirements of the DCP

amendment

Council considers that the requirement for NABERS in the LEP is crucial as it acts as a development standard that must be adhered to in order to secure the additional height and floor space being proposed.

Council states that the LEP will provide the legislative framework and the DCP will provide the detail on how this can be achieved. The planning proposal was submitted to the Department for Gateway in October 2018 which was more than 6 months prior to the update to the NCC ESD targets in May 2019. A transition period for the NCC will apply until 30 April 2020, during this time the proponent can choose to either comply with NCC 2016 or NCC 2019. The NCC 2016 includes energy efficiency requirements, however these requirements have been strengthened by approximately 40% in the NCC 2019. Council's draft site-specific DCP ESD target is higher still.

Due to the difference in targets between the NCC 2016 and 2019 and the draft site-specific DCP, Council is of the view that the proponent may be able to argue for whichever target they preferred, particularly given DCPs lack the statutory weight compared to an LEP. Thus, there is no guarantee that the 6 star NABERS Energy target will be achieved, resulting in an ESD outcome approximately 40% lower.

4. Inconsistency with the Intergovernmental Agreement

The Intergovernmental Agreement "discourages the setting of prescriptive standards [by local governments] for Building and Construction that override the performance requirements in the NCC" (Recital 1.3 (h)).

Given that the NCC presents the minimum necessary energy efficiency ratings required for development, Council considers that achieving a rating in excess of this is still operating within the intentions of the code.

In Council's opinion, seeking to achieve a NABERS rating in excess of 5.5 stars for the subject development does not contradict the objectives or detail of the NCC, as it does not represent a "local government intervention" in relation to the Intergovernmental Agreement.

The State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 makes allowance for local planning provisions which encourage or offer incentives for the adoption of measures beyond BASIX requirements.

The Sydney DCP 2012 currently contains provisions that require all new office developments to achieve 5.5 star NABERS Energy with a Commitment Agreement. Given that a 5.5 star rating is required by an existing Council standard, the requirement for a 6 star NABERS Energy Commitment Agreement in this Planning Proposal as an appropriate stretch-target to demonstrate ESD benefits over and above the standard requirements in the Sydney DCP 2012.

5. Inadequate justification for NABERS Energy 6 star

The Department asked Council on 29 October 2018 to provide detail on the need to achieve a 6 star rating for the building, noting that previous planning proposals had nominated 5 stars.

On 31 October 2018, Council advised the Department that the 6 star Energy rating was being nominated for two reasons. Firstly, if the revised NCC was to create a minimum standard of 5.5 star NABERS Energy Commitment Agreement for commercial office developments, Council is of the view that a 6 star requirement for additional floor space secured through a site specific planning proposal is reasonable. Secondly, the proposed commercial premises is low-rise and it is far easier for low rise buildings to achieve 6 stars than taller commercial buildings, which usually achieve 5.5 stars.

Council justifies that it is easier for a smaller building to achieve a higher NABERS

	<p>Energy rating. An office that takes up two levels (GFA of approximately 1,289m²) could be passively heated and cooled, or otherwise utilise a hybrid heating, ventilating and air conditioning system, which entails a mix of active and passive systems, such as openable windows to allow fresh air intake with an automated component.</p> <p>The storage premises will not impact the NABERS Energy rating, as long as energy use associated with the storage space is separately metered.</p> <p>At the time of the Gateway assessment, the Department did not request Council for further evidence to support the 6 star NABERS Energy requirement.</p> <p>To support its Gateway Review request, Council provided a list of examples of buildings (5 in NSW) achieving 6 star NABERS is provided at Attachment G5.</p> <p>6. Suggested alternative</p> <p>Council suggests as alternative that the planning proposal's explanation of provisions be amended as follows:</p> <ul style="list-style-type: none"> • amend the Sydney Local Environment Plan 2012 (LEP 2012) to provide a site-specific provision for 30-62 Barcom Avenue, Darlinghurst to permit the following development bonuses: <ul style="list-style-type: none"> ○ increase the maximum building height from 15 metres (m) to 18m; and ○ increase the floor space ratio (FSR) from 2:1 to 3.75:1. • the bonus building height and floor space would only be afforded if: <ul style="list-style-type: none"> ○ the entire building is used as a commercial premise (including the additional development); ○ there is no increase in car parking on the site; and ○ a 6-star National Australian Built Environment Rating System (NABERS) Energy Commitment Agreement <i>or equivalent</i> is in place for new development. <p>Council is of the view that this amendment would allow for the same sustainability outcome to be achieved but would allow the proponent the option of demonstrating this via one of the other three verification methods identified in the NCC 2019.</p>
<p>Material provided in support of application/proposal:</p>	<p>Council has provided the following documents to support its Gateway Review request (Attachment G1-G6):</p> <ul style="list-style-type: none"> • Gateway Review Request Application Form; • Justification letter; • Email Correspondence between Council and DPIE; • Gateway Determination, cover letter and Gateway determination report; • Background information; • Table of 6 Star NABERS Energy development in Australia; and • Council's performance standard pathways project.

Proponent's Views

Date Proponent advised of request:	30 September 2019
Date of Proponent response:	23 October 2019
Proponent's Response:	<p>Ethos Urban, on behalf of the land owners Clanricarde, made a submission to the Gateway determination review (Attachment H), the proponent expressed they are willing to enter into a voluntary planning agreement (VPA) with Council to ensure that a 6 star NABERS energy rating or equivalent is implemented into the proposed scheme at the development application stage.</p> <p>The proponent is of the view that given the relatively minor nature of the proposal a NABERS requirement in the LEP is unnecessary as the same outcome can be achieved through the DCP and a VPA.</p> <p>In addition, the imposition of a requirement for NABERS is a detailed design matter that is more appropriate in a DCP as per the current application of this requirement by Council.</p> <p>Whilst Clanricarde is prepared to enter into a VPA with Council to ensure that a 6 Star NABERS or equivalent is implemented into the proposed scheme at DA stage, it is noted that Council's request to incorporate NABERS into the LEP is not appropriate and represents a misapplication of provisions/contents that can be included within an LEP pursuant to Clause 3.14 of the EP& A Act.</p> <p>Furthermore, the proponent notes that alternative process was adopted for 4-6 Bligh Street which was the subject of a VPA with NABERS commitments in lieu of an LEP requirement.</p>

Assessment summary

Department's Assessment

The Department's position on the Gateway determination review application is that the planning proposal should proceed without change to the conditions.

National Construction Code

The aim of the NCC is to provide the minimum necessary requirements for safety, health, amenity and sustainability in the design and construction of new buildings (and new building work in existing buildings) throughout Australia.

In accordance with the NCC, the energy use of an office building can be verified through one of four verification methods:

- a) JV1 – NABERS Energy for Offices;
- b) JV2 – Green Star;
- c) JV3 – Verification using a reference building; and
- d) JV4 – Building envelope sealing.

NABERS is only one of four verification methods, and for office buildings compliance is verified when:

- i) *a minimum 5.5-star NABERS Energy for Offices base building Commitment Agreement is obtained; and*
- ii) *the energy model required for (i) demonstrates—*
 - (a) the base building's greenhouse gas emissions are not more than 67% of the 5.5-star level when excluding—*
 - (aa) tenant supplementary heating and cooling systems; and*
 - (bb) external lighting; and*
 - (cc) carpark services; and*
 - (b) a thermal comfort level of between a Predicted Mean Vote of -1 to +1 is achieved across not less than 95% of the floor area of all occupied zones for not less than 98% of the annual hours of operation of the building; and*
- iii) *the building complies with the additional requirements in Specification JV4.*

The Department notes the number of benefits in choosing NABERS as the preferred verification method, however the aim of the NCC is to set a consistent benchmark for the design and construction of buildings.

The energy efficiency (and to some extent water efficiency) of new buildings and new building work is regulated by the NCC therefore the Department considers the need for an LEP to prescribe standards addressing these aspects is unnecessary. Based off internal Policy advice provided, the inclusion of energy efficiency provisions which are different to the NCC within LEP's is not supported to minimise the potential for inconsistent requirements and regulatory duplication. This applies to bonus provisions as well as the 6-star NABERS rating would appear to be a mandatory condition of the planning proposal.

Currently Council is able to implement NABERS through the following mechanisms:

- via the NCC as a requirement of construction;
- via conditions of development consent;
- as a condition on a VPA; and
- through a DCP.

In addition to the justification outlined on Page 6 of this report and in the Department's Gateway Determination Assessment Report (**Attachment E**), a response to Council's

reasoning is assessed below.

NABERS rating above the minimum 5.5 stars

The Department does not agree with Council's reasoning that a NABERS rating in excess of 5.5 stars for the subject development is consistent with the objectives of the NCC. The aim of the NCC is to set nationally consistent minimum necessary technical requirements for the design and construction of buildings.

Although a 6 star NABERS energy commitment agreement would satisfy the NCC requirements, it would be inconsistent with the aims of the NCC as it would be addressing an aspect that is already regulated by the NCC and is setting prescriptive standards which are above the minimum specified in the NCC.

Australian Building Codes Board Intergovernmental Agreement

The ABCB Intergovernmental Agreement is an agreement between the Governments of the Commonwealth of Australia, the States and the Territories to provide for the operation of the ABCB.

In accordance with the Intergovernmental Agreement, the NSW Government has committed to as far as practicable to further limit local government interventions and discourage the setting of prescriptive standards for Building and Construction that override the performance requirements in the NCC. The proposed 6 star NABERS requirement would undermine the Intergovernmental Agreement.

Local Government Intervention

The ABCB Intergovernmental Agreement defines 'intervention' as 'the process by which local government or other authorities who have administrative responsibility for regulating Building and Construction, set prescriptive standards that override the performance requirements in the NCC'.

As the subject planning proposal is addressing an aspect that is already regulated by the NCC and is setting prescriptive standards which are different to those specified in the NCC, the Department considers the proposed 6 star NABERS provision to be a local government intervention.

Inclusion of the word 'or equivalent' after the requirement for 6 star NABERS

The Department considers the words 'or equivalent' will allow flexibility in the selection of the verification method, however it will still in effect prescribe a different minimum standard to that prescribed by the NCC, which would be inconsistent with the aims of the NCC which is to set a consistent requirement for safety, health, amenity and sustainability in the design and construction of new buildings (and new building work in existing buildings) throughout Australia.

Evidence to support a 6 star energy rating

At the time of preparing the Gateway determination and this Gateway review report, Council has not provided or undertaken any study to demonstrate that the proposed development is able to achieve the 6 star energy rating. Rather Council has put the onus on the proponent to prove if a 6 star energy rating is achievable or not.

In addition, examples of office buildings achieving a 6-star energy rating provided by Council as part of its Gateway review documentation are not comparable or similar to the proposed development.

Evidence of a rigorously tested rationale and a net benefit to society are key principles considered in any change to the NCC. The Department considers that any proposal to mandate a minimum standard that is different to the NCC should be subject to the same level of regulatory assessment and justification. This would include an appropriate cost/benefit analysis to ensure that the benefits provided by the relevant provision are commensurate with the costs of compliance.

Considering there is a lack evidence to support whether a 6 star NABERS could be achieved, the Department is of the view that it is restrictive and excessive to include a 6

star NABERS energy rating in the planning proposal at this point. However, the Department acknowledges that the proponent is prepared to enter into a VPA to ensure a 6 star NABERS or equivalent is implemented into the proposed scheme at DA stage. It should be noted that the Gateway determination does not prevent the proponent from designing and construction a building which achieves a 6-star NABERS energy rating at DA Stage.

Commitment Agreement

A Commitment Agreement is a contract signed by a developer or owner to commit to design, build and commission a building to achieve a specific NABERS energy rating. Once a Commitment Agreement is signed, the developer must then design the building or space to operate at the energy performance level nominated in the Commitment Agreement. Simulation and modelling must also be done to develop an energy estimate. That estimate is then to be reviewed by a NABERS Independent Design Review Panel.

Although the proposed LEP provision will not stipulate the timeframe of when commitment agreement is to be executed, it commits the developer to a 6 star NABERS requirement which is inconsistent with the NCC.

Voluntary Planning Agreement

At the time of preparing this report, the Department has been advised that there is currently no VPA in place for the planning proposal. However, the proponent has indicated in its submission that they are prepared to enter into a VPA to ensure a 6 star NABERS or equivalent is implemented into the proposed scheme at DA stage.

<p>Conclusion</p>	<p>The Department has considered Council’s reasons for this Gateway review and recommends that the planning proposal should proceed without change to the conditions.</p> <p>The Department’s view is the proposed 6-star NABERS requirement is inconsistent with the aims of the NCC and undermines the ABCB intergovernmental agreement.</p> <p>The NCC 2019, which came into effect on 1 May 2019, is adopted by all states and territories. The energy efficiency requirements set by the NCC are based off consultation with industry and development feasibility whilst also ensuring the Federal Government’s broader strategy to reduce greenhouse gas emissions is implemented.</p> <p>The Department is of the view that any variation to the minimum energy and water efficiency standards in the NCC should be supported by rigorous rationale and tested benefits as variations could have implications on its broader application across the States and Territories.</p> <p>At this point, the Department does not support the inclusion of energy efficiency provisions within LEPs which are different to those in the NCC. This is to minimise the potential for inconsistent requirements and regulatory duplication.</p> <p>The Department understands the proponent is prepared to enter into a VPA to ensure a 6 star NABERS or equivalent is implemented into the proposed scheme at DA stage. It should be noted that the Gateway determination does not prevent the proponent from designing and construction a building which achieves a 6-star NABERS energy rating at DA Stage.</p> <p>Furthermore, should any 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 A1-A7 – Planning Proposal</p> <p>Attachment B – Gateway Determination and Letter</p> <p>Attachment C – National Construction Code</p> <p>Attachment D – Australia Building Code Board Intergovernmental Agreement</p> <p>Attachment E – Department’s Gateway Determination Assessment Report</p> <p>Attachment F – Council’s Gateway Review Notice of Intention</p> <p>Attachment G1-G6 – Council’s Gateway Review Request</p> <p>Attachment H– Proponent’s Submission</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.

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

Any additional comments: