



New South Wales Government  
Independent Planning Commission

# Gateway Determination Review for Cabramatta Town Centre East

## Gateway Determination Advice Report

Prof Richard Mackay, AM (Chair)  
Dr Peter Williams

22 May 2020

## DEFINED TERMS

ABBREVIATION	DEFINITION
<b>Amended Planning Proposal</b>	Council's Amended Planning Proposal that accompanied its request to the Department for the Gateway Determination review
<b>Commission</b>	Independent Planning Commission of NSW
<b>Condition 1</b>	Condition 1 of the Gateway Determination
<b>Council</b>	Fairfield City Council
<b>DCP</b>	Development Control Plan
<b>Department</b>	Department of Planning, Industry and Environment
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>Fairfield LPP</b>	Fairfield Local Planning Panel
<b>FLEP</b>	<i>Fairfield Local Environmental Plan 2013</i>
<b>FSR</b>	maximum Floor Space Ratio
<b>Gateway Determination</b>	The Department's Determination of the Planning Proposal
<b>Height</b>	maximum Height of Buildings
<b>Justification Assessment</b>	The Department's Gateway Justification Assessment Report prepared for the Commission outlining the Proponent's Request, the Planning Proposal, the Gateway Determination and the Amended Planning Proposal
<b>LGA</b>	Local Government Area
<b>Material</b>	The material set out in paragraph 21
<b>Planning Proposal</b>	The Planning Proposal submitted to the Department by Council, as amended by Council following its meeting on 25 September 2018
<b>Proponent</b>	Moon Investments Pty Ltd
<b>Proponent's Request</b>	The request lodged by the Proponent to Council on 14 August 2017 to amend the FLEP
<b>SEPP</b>	State Environmental Planning Policy
<b>Site</b>	Land bounded by Fisher Street, Broomfield Street and Cabramatta Road East, Cabramatta.
<b>Submission Report</b>	The report accompanying Council's Gateway Determination review application

# 1 INTRODUCTION

1. On 27 April 2020, the NSW Independent Planning Commission (**Commission**) received from the NSW Department of Planning, Industry and Environment (**Department**) a request for advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979 (EP&A Act)* in relation to a planning proposal and Gateway determination on Land bounded by Fisher Street, Broomfield Street and Cabramatta Road East, Cabramatta (the **Site**), within the Fairfield City Council Local Government Area (**LGA**).
2. On 14 August 2017, Moon Investments Pty Ltd (**Proponent**) lodged a request with Fairfield City Council (**Council**) seeking to amend the *Fairfield Local Environment Plan 2013 (FLEP)* to increase the maximum Floor Space Ratio (**FSR**) and maximum height of buildings (**Height**) at the Site (**Proponent's Request**).
3. Based on the assessment undertaken by Council Officers, advice received during an independent urban design review and from the Fairfield Local Planning Panel (**Fairfield LPP**), Council Officers prepared a report for the Councillors to consider at the Council meeting on 25 September 2018. The Council Officer report recommended a Council resolution to support the Proponent's Request and send it to the Department for the Gateway determination.
4. However, at their meeting on 25 September 2018, Councillors resolved to reduce the proposed Heights of 59m, 66m, 57m and 48m in Stages A to D respectively to a blanket 48m (approximately 15 storeys) across the Site (**Planning Proposal**). Council Officers revised the Planning Proposal accordingly and submitted it to the Department for Gateway determination under Section 3.34 of the EP&A Act.
5. On 18 July 2019, the Department made a Gateway determination (**Gateway Determination**) and found that the Planning Proposal should proceed with a Condition 1 requiring Council to revise the Planning Proposal to incorporate the original heights of 59m, 66m, 57m and 48m in Stages A to D in accordance with the Proponent's Request.
6. On 6 August 2019 the Council resolved to amend the Planning Proposal and submit a request to the Department to review the Gateway Determination (**Amended Planning Proposal**).
7. On 28 August 2019, an application was filed by Fairfield City Council, accompanied by the Amended Planning Proposal, seeking to amend Condition 1 to require a maximum building height of 48m to Stage D and 57m-59m (16 storeys) to Stages A, B & C across the Site.
8. The Department prepared a Gateway Review Justification Assessment dated 27 June 2019 (**Justification Assessment**), which outlined the Planning Proposal and the reasons for the Gateway Determination, for the Commission's consideration as part of the review of the Gateway Determination.
9. Mr Peter Duncan AM, acting Chair of the Commission, appointed Prof Richard Mackay, AM (Panel Chair) and Dr Peter Williams to comprise the Commission's Panel to undertake the Gateway Determination Review and provide advice to the Department.

## 1.1 Site and Locality

10. In its Justification Assessment the Department describes the Site as follows:

*“The planning proposal applies to the eastern portion of Cabramatta Town Centre, which is zoned B4 Mixed Use and located along the eastern boundary of Cabramatta Station. The site has an area of approximately 1.3ha (or 12,847m<sup>2</sup>) and is bounded by Fisher Street to the north, Broomfield Street to the west, Cabramatta Road East to the south and a commercial development to the east.”*

*“The existing land uses within the site include several small retail shops and commercial premises, a hotel, a coaching college, a church, a dwelling house and a vacant parcel of land.”*

11. The location of the Site is illustrated in **Figure 1** below.
12. The Justification Assessment states that under the FLEP, the Site is:
  - zoned B4 Mixed Use
  - has a maximum permitted FSR of 2.5:1
  - has a maximum building height of 14 metres
13. The Justification Assessment confirms the Proponent is not seeking to change the Site's current zoning under FLEP.

**Figure 1 – Site Location Map** (source: Justification Assessment)



## 1.2 The Planning Proposal

14. The Justification Assessment states that the Planning Proposal submitted for Gateway determination sought to amend the FLEP as follows:
  - *“increase the maximum building height for land within the site from 14m to 48m (approximately 15 storeys);*

- Increase the maximum floor space ratio (FSR) for land within the site from 2.5:1 to 3.85:1, 4:1, 6.1:1 and 6.45:1;
  - Identify the site as “Cabramatta - Area E” on the Town Centre Precinct, minimum site area map and apply a minimum site area of 1300m<sup>2</sup>, 1800m<sup>2</sup>, 2200m<sup>2</sup>, and 2700m<sup>2</sup> to certain land within the site; and
  - Introduce a new local clause for the site that provides additional controls for the redevelopment of the site in relation to building height and FSR, and the application of a development control plan”
15. Following the Gateway Determination (paragraph 5), Council provided an Amended Planning Proposal to seek a 48m height for Stage D and a 57m height for Stages A, B and C. The Amended Planning Proposal does not seek to change any other components of the Planning Proposal.

### 1.3 The Department’s Gateway Determination

16. The Department’s Justification Assessment states:

*“The Department recommends that the planning proposal proceeds with conditions including the application of a maximum building height of 48m (approx. 12 storeys), 57m (approx. 16 storeys), 59m (approx. 16 storeys), and 66m (approx. 19 storeys) to the site, given that it would facilitate the revitalisation of the eastern portion of Cabramatta Town Centre in a suitable manner.”*

17. Regarding the Height, the Gateway Determination considers potential solar access and visual impacts and concludes the overshadowing impact will be limited owing to the slender design that would result from future development undertaken in accordance with the Proponent’s Request. The Department further states the shadow impacts that would result from the Planning Proposal have not been fully assessed and would be likely to result in potentially greater impacts arising from bulkier building form.

18. The Gateway Determination finds:

*“The proposal has strategic and site-specific merit as it would provide additional housing and jobs in a local centre with access to existing infrastructure and services, and adjacent to the Cabramatta Railway Station.”*

19. Condition 1 from the Gateway Determination, dated 18 July 2019 is set out as below:

*“1. Prior to public exhibition, Council is to revise the planning proposal, where required, to apply a maximum building height of 48m (approximately 12 storeys), 57m (approximately 16 storeys), 59m (approximately 16 storeys), and 66m (approximately 19 storeys) across the site, in accordance with the planning proposal considered by Council at its meeting of 25 September 2018.” (Condition 1).*

20. The Justification Assessment concludes the Proponent’s Request, which provides for a maximum building height of up to 16 and 19 storeys, is appropriate for the site and will achieve the requirements of Western City District Plan in accordance with section 3.8 of the EP&A Act.

## 2 THE COMMISSION'S CONSIDERATION

### 2.1 Material Considered by the Commission

21. In this advice report, the Commission has carefully considered the following material (**material**):

- the Urban Design Review of Planning Proposal prepared by TPG Town Planning and Urban Design, dated 28 March 2018
- the Proponent's original proposal, concept plans and shadow diagrams, prepared by Plus Architecture dated 18 June 2018 (**Proponent's Request**);
- Fairfield Local Planning Panel's resolution and meeting minutes dated 30 August 2018;
- Council Officer report prepared for the Fairfield Council meeting dated 25 September 2018;
- Council resolution and meeting minutes dated 25 September 2018;
- the Planning Proposal dated 22 October 2018, prepared in response to the Council resolution at the meeting on 25 September 2018 and submitted to the Department for the Gateway process;
- the Department's Gateway Determination Report dated 27 June 2019;
- the Department's Gateway Determination dated 18 July 2019;
- Council Officer report prepared for the Fairfield Council meeting dated 6 August 2019, described at paragraph 6;
- Council's resolution and meeting minutes dated 6 August 2019;
- The Amended Planning Proposal prepared by Council following the 6 August 2019 meeting;
- Council's Gateway Determination review notification letter dated 13 August 2019;
- Council's Gateway Determination review submission report (**Submission Report**), prepared by GM Planning Services dated August 2019;
- the Proponent's solar access analysis, prepared by Plus Architecture dated 2 December 2019;
- the Proponent's Gateway Determination Submission to the Department, prepared by GLN Planning dated 9 December 2019;
- the Proponent's shadow analysis, prepared by Plus Architecture dated 9 December 2019;
- the *Fairfield City Council Local Strategic Planning Statement 2040 (LSPS)* dated 30 March 2020;
- *Fairfield Local Environmental Plan 2013*, (current version as at 17 April 2020);
- *Apartment Design Guide* (NSW Department of Planning and Environment July 2015);
- the Department's Gateway Review Justification Assessment (**Justification Assessment**) and request for Gateway Determination review to the Commission dated 27 April 2020.

### 2.2 The Commission's Meetings and Site Inspection

22. As part of its review process, the Commission inspected the site and met with relevant stakeholders as set out below (Table 1). All meeting and site inspection notes were made available on the Commission's website.

**Table 1 – Commission's Meetings**

Meeting	Date of Meeting	Transcript/Notes Available
Department	11 May 2020	18 May 2020

Meeting	Date of Meeting	Transcript/Notes Available
Applicant	11 May 2020	18 May 2020
Council	11 May 2020	18 May 2020
Site Inspection	7 May 2020	12 May 2020

## 2.3 Strategic Merit

23. In considering the Proponent's Request, Council Officers found the proposed building heights (refer Table 2 below) are consistent with a number of Council's strategic documents including:

- Cabramatta Town Centre DCP No.5/2000;
- Draft Fairfield Residential Development Strategy 2009; and
- Fairfield City Centres Study 2015.

24. Council Officers stated that:

*"The intent of each of the above documents is to increase residential densities in and around Town Centres where there is optimum access to public transport and local community infrastructure. Council's Strategic documents support the revitalisation of Cabramatta Town Centre and recognise the potential for the eastern part of the Town Centre to achieve this and to contribute to Council's allocated dwelling and jobs target under the Western City District Plan.*

25. The Gateway Determination states:

*The planning proposal is the best way to achieve the intended outcomes for the precinct. Without amendments to the building height and floor space ratio controls within Fairfield LEP 2013, the proposed redevelopment of the precinct would not be able to be achieved.*

26. The Commission is satisfied that the Proponent's Request and the Gateway Determination are consistent with the relevant strategic planning documents, will provide for additional commercial space and residential development to revitalise the town centre east in an appropriate location adjoining transport options, and will result in a number of public benefits.

## 3 GATEWAY DETERMINATION REVIEW

### 3.1 Key Issues

27. Pursuant to the Planning Circular PS 18-012 Independent Reviews of Plan Making Decisions, in undertaking the review of the Gateway determination, the Commission is required to consider the Council's submission and the reasons given for the original Gateway Determination. In this regard, the Commission has considered the material listed in paragraph 21, and in particular the following:

- Reasons for Gateway Determination as outlined in paragraphs 16 to 19;
- Council's Submission Report.

28. The Heights supported by the Department and proposed by the Proponent and Council are summarised in Table 2 below.

**Table 2: Proposed Height controls for the Site**

STAGE	MAX BUILDING HEIGHT			
	Proponent's Request (Proponent)	Planning Proposal (Council)	Gateway Determination (Department)	Amended Planning Proposal (Council)
A	59m	48m	59m	57m
B	66m	48m	66m	57m
C	57m	48m	57m	57m
D	48m	48m	48m	48m

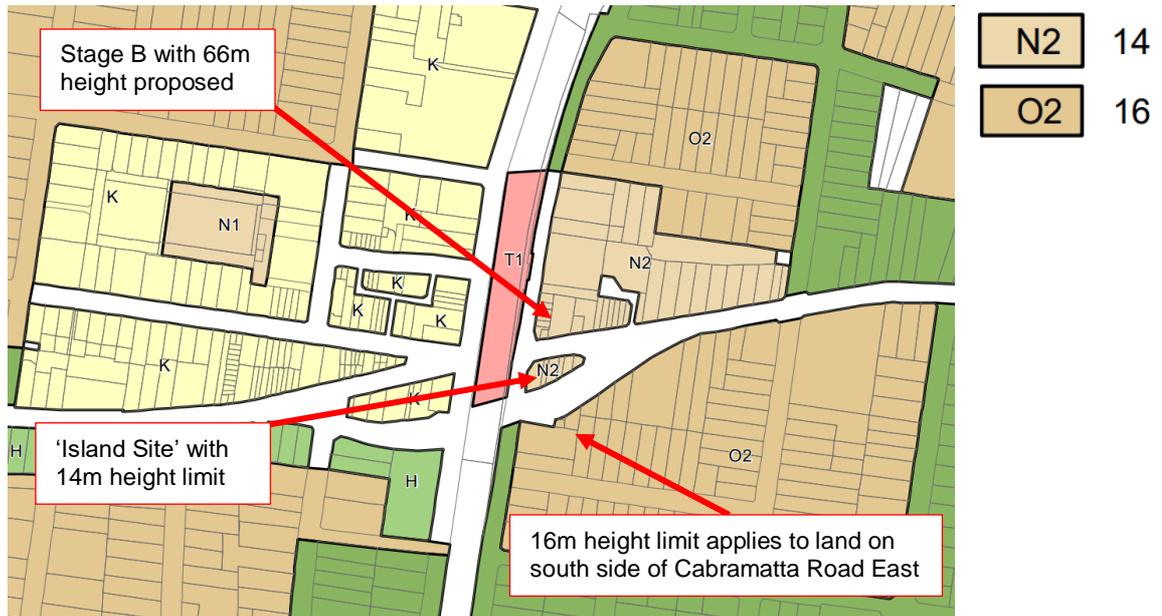
29. It is noted from Table 2 that the discrepancy between the Gateway Determination and the Amended Planning Proposal is 2m for Stage A and 9m for Stage B. The Amended Planning Proposal accords with the Gateway Determination for Stages C and D. Therefore, to clarify the scope of the Gateway Review, all parties agree with the increased density and bulk provided in the Applicant's Request in respect of Stages C and D, as approved in the Gateway Determination. The only matter for review is the height in Stages A and B.
30. With respect to the Commission's assessment of the Height sought by Council in the Amended Planning Proposal, the Commission considers the key issues to be urban design and solar access impacts from Stages A and B only.
31. Owing to the difference in opinion between the Councillors and the Council Officers on the issue of the height of the development, this advice report will distinguish between the two parties accordingly. It should also be noted that the Submission Report that accompanied the Amended Planning Proposal represents the justification of the Councillors' proposed height amendment.

### 3.2 Urban Design

#### *Council Comments*

32. In the Submission Report prepared on behalf of Council, it is acknowledged that from an urban design perspective at the street level, it would be very difficult to distinguish between the 48m height proposed by Council in the Planning Proposal, the 66m in the Department's Gateway Determination and the 57m in the Council's Amended Planning Proposal (page 21).
33. However, the Submission Report also states if the Site were to be developed in accordance with the Planning Proposal, it would create a built form 'valley' for the Site to the immediate south (the 'Island Site' at 144-158 Cabramatta Road East). The reason for this statement is because the Island Site Height control under FLEP is 14m, and land further south of this site is 16m (see Figure 2). The Submission Report concludes a height reduction from 66m to 57m as proposed by the Council will lessen the 'valley affect'.

**Figure 2: Extract from FLEP 2013 showing existing height limits for the Island Site and surrounds**



34. Notwithstanding the Council resolutions to seek a reduced height for Stages A and B, the Urban Design Review of Planning Proposal commissioned by the Council found the Site would support increased heights, resulting in buildings that will provide a landmark destination to define the character at the street and with a ground floor site plane that enhances permeability and the amenity of the public realm. This report further notes the development concept submitted by the Proponent demonstrates an articulated built form can be achieved to reflect the human scale at the street edge, with a lighter weight and setback construction at the upper levels to reduce the visual appearance of future buildings.

#### *Proponent's Consideration*

35. In its Gateway Determination Submission to the Department, the Proponent states:

*"The 19-storey element creates a place making gesture at the corner of Broomfield Street and Cabramatta Road East that identifies the station location and the location of the new pedestrian overbridge direct to the Cabramatta Station rail concourse to be delivered as part of the redevelopment."*

#### *Department's Assessment*

36. The Gateway Determination notes that in the preparation of the Fairfield LSPS, Council advised that the future growth of the LGA would be focussed within the main town centres such as Cabramatta Town Centre and the Site. The Department's Assessment states:

*"The adopted urban design study prepared for the Fairfield Town Centre proposes a density increase of up to 10-20 storey buildings for key sites within the centre and it is expected Cabramatta Town Centre would have comparable heights, once the initiated urban design study is finalised by Council."*

37. In its Justification Assessment, the Department also raised concerns about the implications of reducing the height as proposed by Council in the Amended Planning Proposal, but making no amendments to the maximum FSR, stating:

*“there is no justification, or studies, provided by Council to support the blanket 48m building height for the site. In addition, the blanket building height of 48m and the identified FSRs of 2.5:1 to 3.85:1, 4:1, 6.1:1 and 6.45:1 for the site are not considered to be compatible.”*

38. The Department further notes that a building with fewer levels but the same density would result in larger floor plates and a bulkier built form. In its Justification Assessment, the Department concludes:

*“The built form outcome of the proposed development based on these development standards would result in an entirely different building compared to the version assessed by council officers, the Fairfield Local Planning Panel, and the independently appointed urban designers.”*

39. With respect to urban design matters, in its Justification Assessment the Department maintains its support for the heights in the Proponent's Request and the Gateway Determination, noting the visual impact from the additional three storeys in Stage B would be *“minor from the street level and the surrounding public domain”*.

### *Commission's Findings*

40. The Commission notes the commentary in Council documents described in paragraphs 32 and 33. The Commission agrees with the findings of the Submission Report and the Department (paragraph 38) that the height difference of 66m as against 57m will be largely imperceptible from the street, at the pedestrian and vehicular level.

41. The Commission does not agree with the assertion in the Submission Report, described in paragraph 33, that a 'valley effect' will be created for the Island Site. The FLEP height of 16m for the properties further south of the Island Site will not result in a built form that dominates the 14m buildings permitted on the Island Site. Furthermore, the difference in visual impact from a 66m building at Stage B in comparison to a 57m building as proposed by Council in the Amended Planning Proposal will be negligible at the pedestrian/vehicle scale.

42. The Commission agrees with the Proponent's justification described in paragraph 35, that the tower element in Stage B will provide a strong corner presence in an appropriate location adjacent to the train station. The proposed height of 66m will provide a landmark destination that will contribute to placemaking and wayfinding principles. The Commission notes that this proposed height and the location adjacent to the railway station align strategically with the direction and actions set out in the LSPS as stated on page 36:

*“The main centres of Fairfield and Cabramatta East, as well as other areas close to rail stations, will be the focus of future growth, given the availability of services and infrastructure in these locations. Housing types in these areas will be predominantly apartment buildings ranging from 3–4 storeys on the periphery of centres, with higher-scale buildings within town centres’*

43. The Commission also agrees with the Department's concerns (paragraph 37) that a reduced height without a corresponding reduced FSR could result in larger floor plates to accommodate the density, the impacts of which have not been assessed.

44. The Commission is therefore of the view that the discrepancy of 9m for Stage B (being approximately three storeys), will not result in significantly different urban design outcomes and will not be materially obvious when viewed from surrounding properties or the public domain. The Commission further finds that reducing the number of storeys without amending the maximum density may result in a bulkier built form than would be permitted in the Gateway Determination, which would have more of a visual dominance in the streetscape than a taller, more slender tower.

### 3.3 Solar Access

#### *Council Comments*

45. As summarised by the Justification Assessment, Council contends that the Gateway Determination undertook no assessment nor comparison of the potential reduction on overshadowing on the land that would result from the 57m height proposed in the Amended Planning Proposal.
46. As described in the Submission Report, Council maintains the reduction in height “*should address the identified potential overshadowing impact issue that will result in the unfairly prejudice of the development potential of those lots to the south of the site*”. This conclusion is based on the recommendation of the independent Urban Design Review that further consideration was required by the Proponent and Council to investigate the overshadowing impact on the properties to the south of the Site.
47. The Submission Report justifies the Councillor’s proposed height limit of 57 metres by stating:

*“A rule of thumb for overshadowing is that for each 1 metre reduction of height at midday will normally result in approximately a 3 [sic] reduction in shadow length. As such for the proposed reduction from 66 metres to 59 metres should result in a shadow length reduction in approximately 18 metres.”*

At its meeting with the Commission, the Council representative acknowledged Council had not undertaken any specific analysis of solar access impacts to inform the proposed 57 metre height limit.

#### *Proponent’s Consideration*

48. The Proponent’s submission to the Department dated 9 December 2019, states that there are two properties to the south of the site that would potentially be overshadowed by the proposed development. These properties are 144-158 Cabramatta Road East (the Island Site) and vacant residential properties at 126-142 Cabramatta Road East.
49. The Proponent provided to the Department a Visual Impact Assessment that included concept plans for a six-storey building on the Island Site described in paragraph 33 and the ten-storey building on the vacant residential property described in paragraph 48. The Proponent provided solar access diagrams for the development concepts to show that in all cases, the sites to the south can be developed with buildings that are capable of meeting solar access requirements in the *Apartment Design Guide*.

#### *Department’s Assessment*

50. The Gateway Determination notes some overshadowing impact will be created to the south of the site, but acknowledges that:

“...this is limited at each time of the day due to the slender design of the proposed development. The shadow impacts of the (Amended Planning Proposal) have not been provided or assessed, but it is considered that the shadow impacts could be potentially greater due to the bulkier building form.”

### Commission's Findings

51. The Commission has considered the views of the Council, the Proponent and the Department and finds that all parties agree there will be a degree of overshadowing impact resulting from the Proponent's Request. The Commission agrees with the findings of the Gateway Determination (paragraph 50) that the shadow impacts would be reduced by the slender design that is likely to result from the amended height controls.
52. The Commission has considered the Council views described in paragraph 46 but notes the independent Urban Design Review was prepared prior to the Proponent's submission of concepts for the two properties to the south to test the overshadowing impacts. The Commission is satisfied this modelling now provides evidence that the two properties to the south can accommodate a compliant building with reasonable solar access. At its meeting with the Commission (Table 1) the Council representative acknowledged there are no material errors in the submitted solar access analysis.
53. The Commission also notes the approximation provided in the Submission Report that a reduced height would result in less overshadowing (paragraph 47), but also notes that no further shadow modelling was provided to support the Council's overshadowing concerns. Further to this, the Commission notes the Council has not provided information demonstrating what impacts may result from reducing the height but not the density (by changes to the allowable FSR).
54. The Commission finds that potential overshadowing impacts have been explored by the Proponent, including conceptual development designs under current controls as well as the possibility of an up zoning of adjoining sites. In all cases, designs have been shown to be able to achieve the solar access requirements of the *Apartment Design Guide*. The Commission further finds a reduced height may not potentially improve solar access to surrounding developments because of the bulkier development permissible under the unamended FSR controls. The Commission therefore concludes that, in the absence of supporting evidence, claims of increased overshadowing are insufficient to warrant a height reduction on the Site.

## 4 THE COMMISSION'S ADVICE

55. The Commission has undertaken a review of the Gateway Determination, as requested by the Department, and provides the following advice on whether Condition 1 of the Gateway Determination issued on 18 July 2019 should be amended as per Council's request in the Amended Planning Proposal.
56. Based on its consideration of the material, the Commission advises that the merit of altering Condition 1 of the Gateway Determination to require a maximum building height of 48m to Stage D and 57m to Stages A, B & C across the Site has not been demonstrated.
57. The Commission agrees with the Department's Condition 1 of the Gateway Determination, providing for increased heights of 59m (Stage A), 66m (Stage B), 57m (Stage C) and 48m (Stage D) for the following reasons:

- The Commission is satisfied that the Proponent's Request as approved in the Gateway Determination is consistent with the relevant strategic planning documents, will provide for additional commercial space and residential development to revitalise the town centre east in an appropriate location adjoining transport options, and will result in a number of public benefits.
  - All parties involved, including the Proponent, Department, Council Staff and Councillors agree with the increased density provided in the Proponent's Request, as approved in the Gateway Determination. The Commission concurs that the increased density is appropriate and that the only matter for review is the height in Stages A and B.
  - From an urban design perspective, the discrepancies of 2m (Stage A) and 9m, being approximately three storeys, (Stage B) would be largely imperceptible from the street and would not have a material impact on the visual impact of the future built form.
  - The potential overshadowing impacts have been sufficiently assessed and the Commission is satisfied that any future developments on sites to the south of the proposed development can achieve reasonable solar access in accordance with the requirements in the *Apartment Design Guide*.
58. The Commission advises that Condition 1 of the Gateway Determination has planning merit and should not be altered dated 22 May 2020.



**Prof Richard Mackay, AM (Chair)**  
Member of the Commission



**Dr Peter Williams**  
Member of the Commission