



## Gateway Determination

**Planning proposal (Department Ref: PP\_2018\_SYDNE\_007\_00):** to amend the Sydney Local Environmental Plan 2012 by inserting a site-specific provision to allow bonus floor space and height to facilitate the delivery of commercial premises at 30-62 Barcom Avenue, Darlinghurst.

I, the Executive Director, Regions at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Sydney Local Environmental Plan (LEP) 2012 to insert a site-specific clause to allow bonus building height and floor space controls to facilitate the delivery of commercial development at 30-62 Barcom Avenue, Darlinghurst should proceed subject to the following conditions:

1. The planning proposal is to be amended prior to community consultation as follows:
  - (a) update the objectives and intended outcomes section of the planning proposal to align with the explanation of provisions;
  - (b) amend the explanation of provisions to clarify 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.
  - (c) amend the planning proposal to remove the provision for a 6-star NABERS Energy Commitment Agreement; and
  - (d) update the project timeline.
2. The revised planning proposal is to be provided to the Department for review and approval prior to community and agency consultation.
3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
  - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment 2016).

4. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of the relevant 9.1 Directions:

- Office of Environment and Heritage;
- Transport for NSW; and
- Roads and Maritime Services.

Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.

5. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. The planning proposal authority is authorised as the local plan-making authority to exercise the functions under section 3.36(2) of the Act subject to the following:
- (a) the planning proposal authority has satisfied all the conditions of the Gateway determination;
  - (b) the planning proposal is consistent with section 9.1 Directions or the Secretary has agreed that any inconsistencies are justified; and
  - (c) there are no outstanding written objections from public authorities.
7. The time frame for completing the LEP is to be **12 months** following the date of the Gateway determination.

Dated *11<sup>th</sup>* day of *July* 2019.

  
**Stephen Murray**  
Executive Director, Regions  
Department of Planning, Industry and  
Environment

**Delegate of the Minister for Planning and  
Public Spaces**





Ms Monica Barone  
Chief Executive Officer  
City of Sydney Council  
GPO Box 1591  
SYDNEY NSW 2001

Dear Ms Barone

**Planning proposal PP\_2018\_SYDNE\_007\_00 to amend Sydney Local Environment Plan 2012**

I am writing in response to Council's request for a Gateway determination under section 3.34(1) of the Environmental Planning and Assessment Act 1979 (the Act) in respect of the planning proposal to allow bonus floor space and height controls for non-residential development to facilitate the delivery of commercial premises at 30-62 Barcom Avenue, Darlinghurst.

As delegate of the Minister of Planning and Public Spaces, I have now determined that the planning proposal should proceed subject to the conditions in the enclosed Gateway determination.

The intended outcomes and explanation of provisions of the planning proposal do not align. The Department consulted with Council on this matter and Council has advised what will permit the additional height and floor space. Consequently, the Department has included a Gateway condition requiring the objectives, intended outcomes and explanation of provisions to be updated in the planning proposal report.

The planning proposal is to be amended to remove the provision for a 6-star National Australian Built Environment Rating System (NABERS) Energy Commitment Agreement. This provision would restrict the use of acceptable verification methods to demonstrate energy efficiency in the National Construction Code (NCC) 2019, require detailed building design to be known at the planning proposal stage and duplicate the requirements of the site-specific amendment to the Sydney DCP 2012. The Department fully supports sustainable development outcomes in the natural and built environment, including water and energy efficiency. Removal of this provision from the planning proposal will not prevent appropriate energy efficiency standards being achieved through the NCC 2019 and the site-specific DCP.


I have considered Council's request to be the local plan-making authority and have determined to condition the Gateway for Council to be the local plan-making authority. However, the revised planning proposal will have to be provided to the Department for review and approval prior to community and agency consultation.

The amending local environmental plan (LEP) is to be finalised within 12 months of the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the LEP should be made directly to Parliamentary Counsel's Office 8 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment.

The state government is committed to reducing the time taken to complete LEPs by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister for Planning and Public Spaces may take action under section 3.32(2)(d) of the Act if the time frames outlined in this determination are not met.

Should you have any enquiries about this matter, I have arranged for Ms Kate Masters to assist you. Ms Masters can be contacted on 9274 6321.

Yours sincerely

 11 July 2019  
**Stephen Murray**  
**Executive Director, Regions**

Encl: Gateway determination



## Planning Services

### Gateway Determination Report

LGA	City of Sydney
PPA	City of Sydney Council
NAME	The planning proposal seeks to provide bonus height and floor space controls to promote the delivery of a commercial premises.
NUMBER	PP_2018_SYDNE_007_00
LEP TO BE AMENDED	Sydney Local Environment Plan 2012
ADDRESS	30-62 Barcom Avenue, Darlinghurst
DESCRIPTION	Lot B DP111138
RECEIVED	10 October 2018
FILE NO.	IRF18/5753
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

#### INTRODUCTION

##### Description of planning proposal

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 premises<sup>1</sup> (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.

##### Site description

The site is irregular in shape with an area of 992.5m<sup>2</sup> 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.

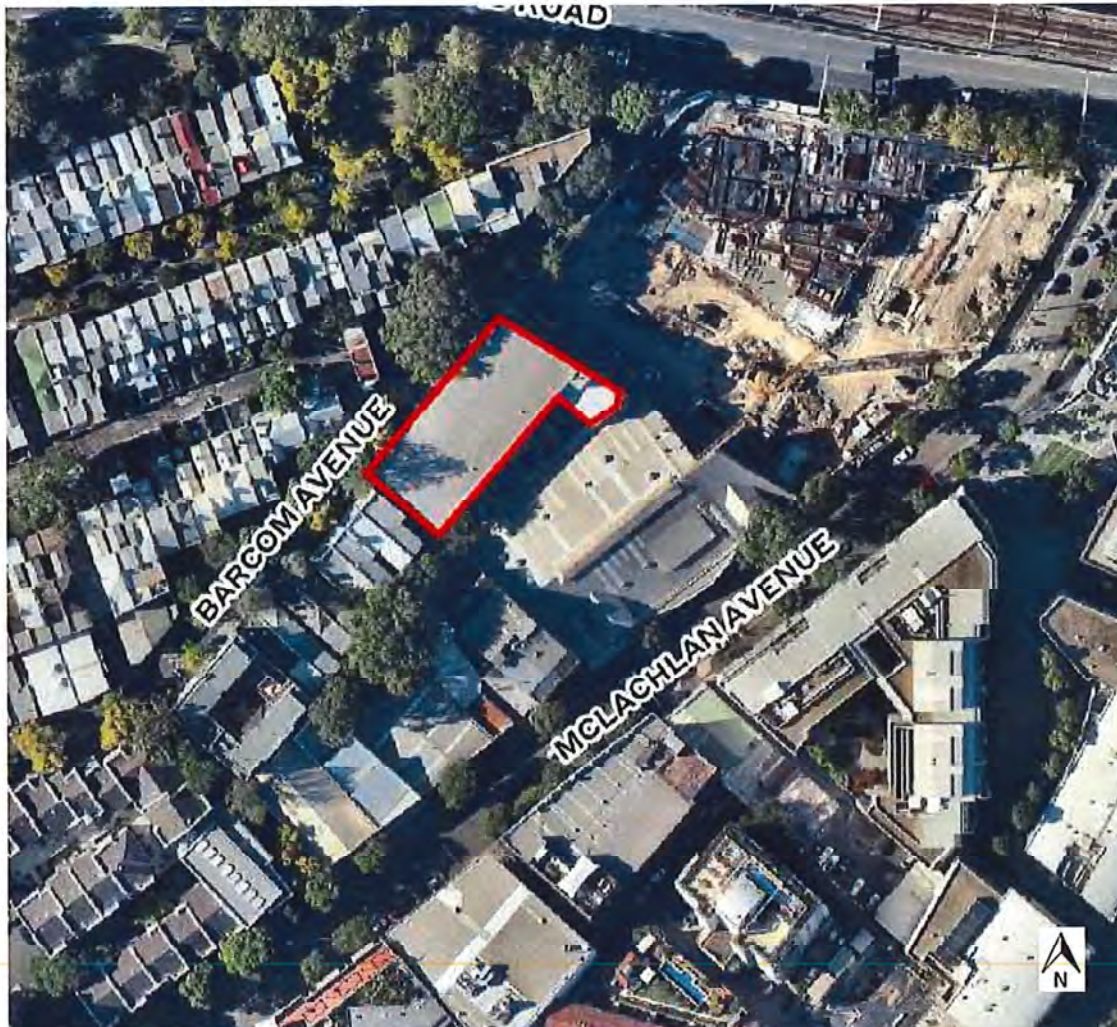
<sup>1</sup> 'Commercial premises' is defined under Sydney LEP 2012 as meaning a business premises, office premises and/or retail premises.



The site slopes significantly from RL 14.97m AHD at Barcom Avenue to RL 12.1m AHD at the basement level towards the rear boundary. The cross-fall equates to approximately 2.9m over the depth of the site (**Figure 4**). The height of the existing building ranges from 8.39m to 13.51m as measured from the existing ground level.

The building is built to the boundary and has a GFA of approximately 2,432m<sup>2</sup>, equating to an existing FSR of approximately 2.45:1 (**Table 1**).

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



**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).



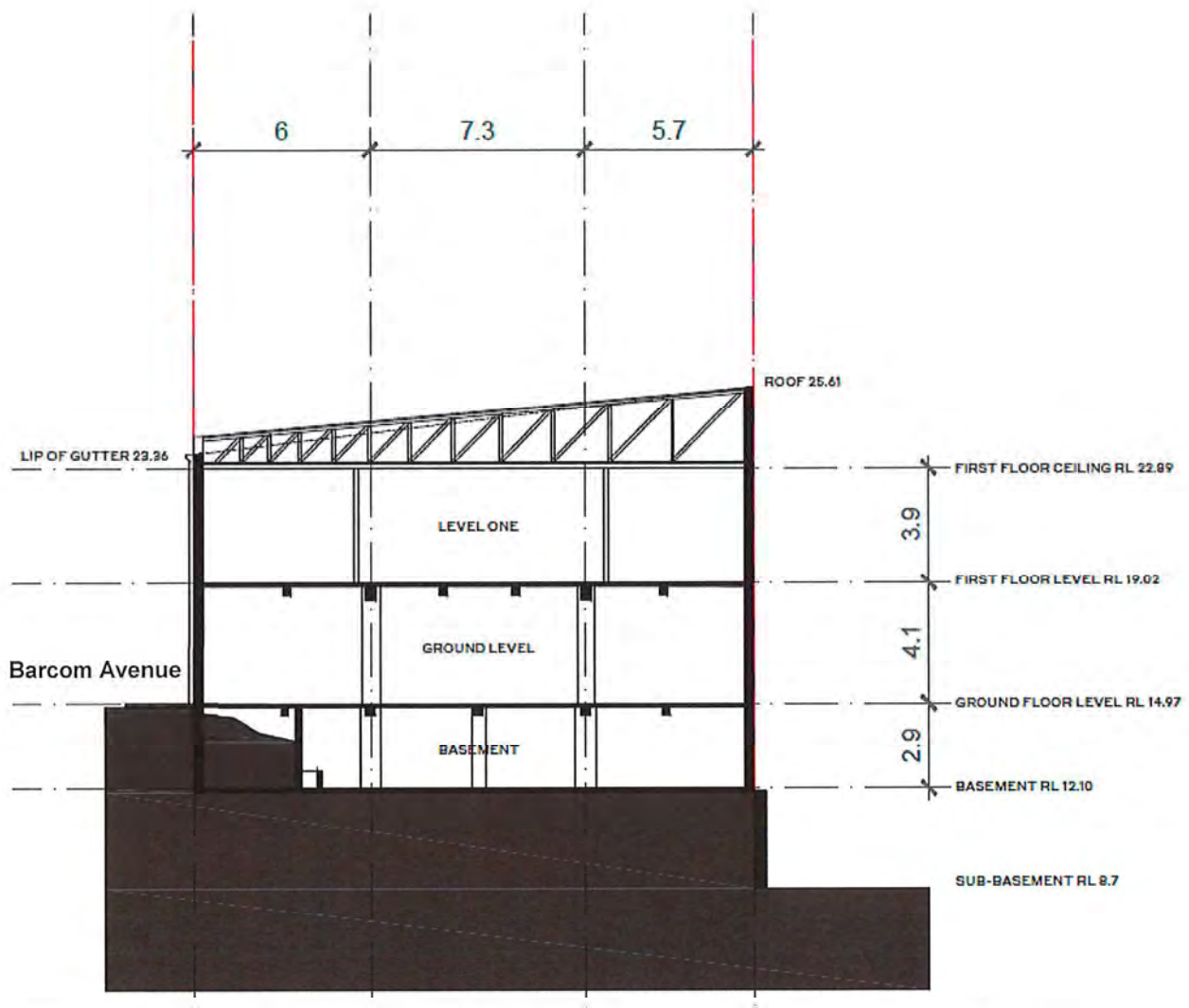


Figure 4: Cross-section of height transition of existing building (source: Ethos urban design study).

### 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 as shown in **Figure 8**.

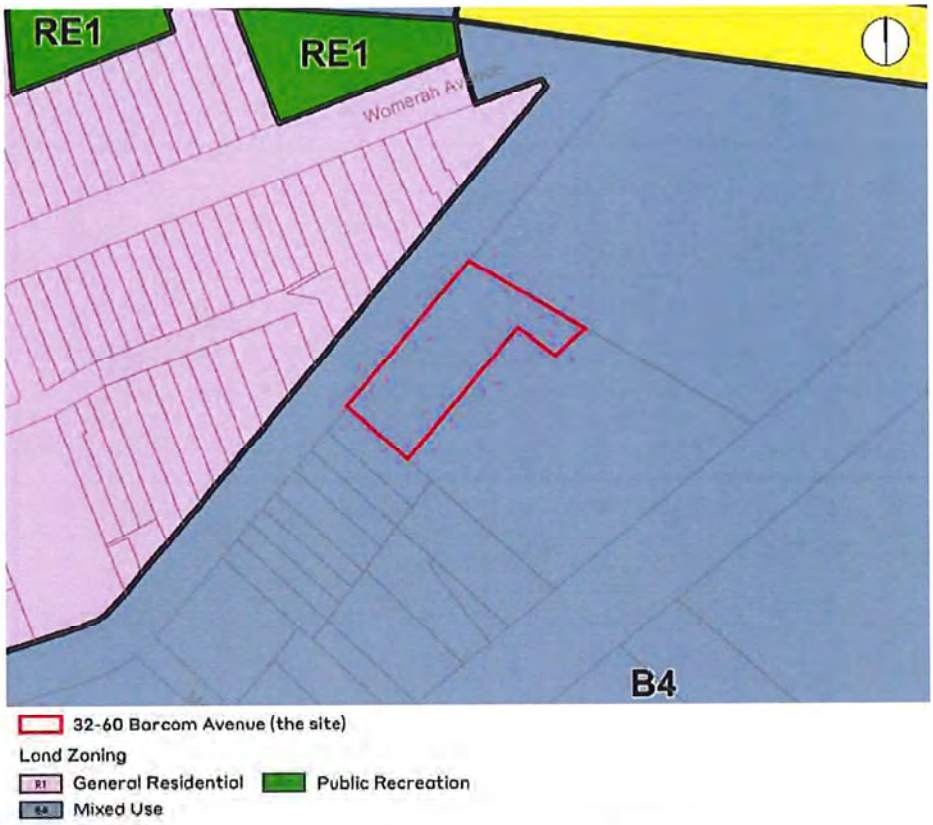


Figure 5: Existing land zoning map showing the subject site outlined in red.



Figure 6: Existing FSR map showing the subject site outlined in red.



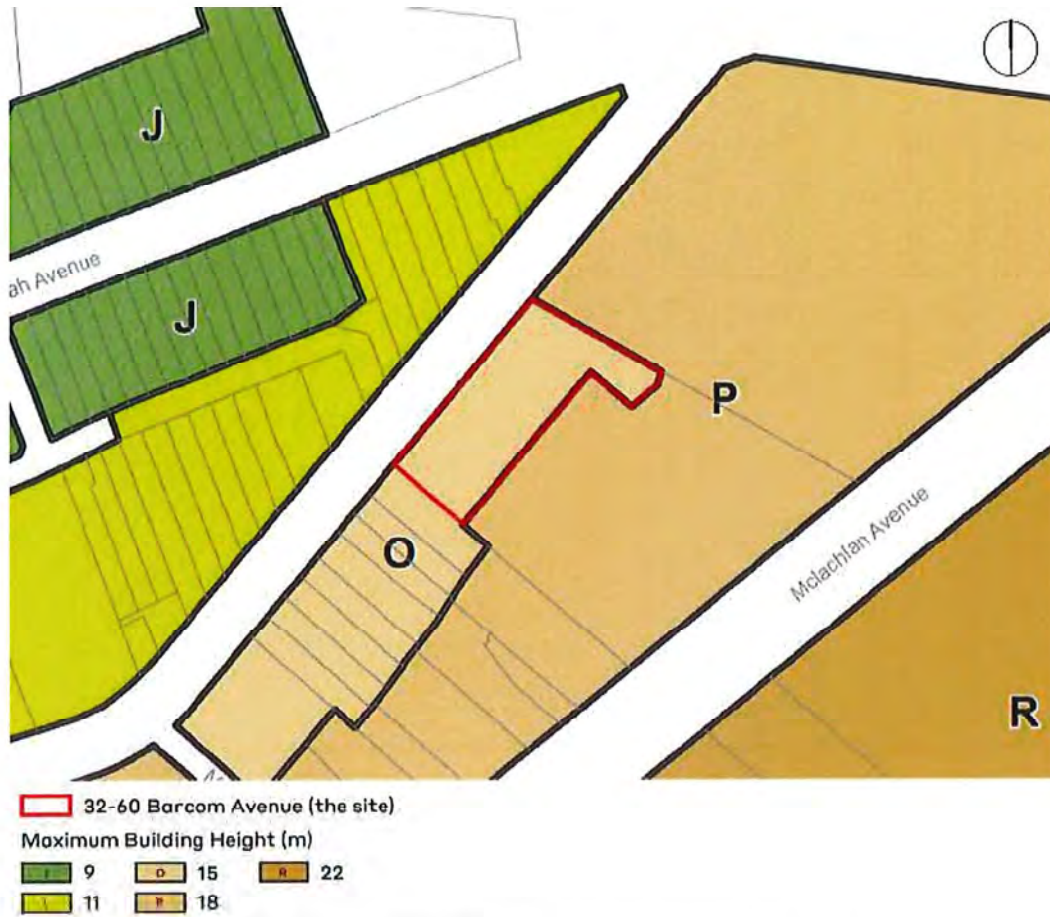


Figure 7: Existing height of building map showing the subject site outlined in red.



Figure 8: Existing heritage map of the immediate locality, showing the subject site in red.



## Surrounding area

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.

The local character surrounding the subject site is a mix of Victorian and Federation terraces to the west and north-west, with commercial developments to the north-east and south. Barcom Avenue has a predominantly residential character, dominated by terrace houses dating from the late 19<sup>th</sup> century. The streetscape has a dense street tree canopy, which further contributes to a leafy residential amenity.

The character at the northern end of Barcom Avenue is in transition, with a four to five storey BMW motor vehicle dealership building under construction (**Figure 9**). Adjoining the eastern boundary of the site is a Mercedes-Benz motor vehicle showroom, which is one to two storeys in height. Two-storey residential terraces adjoin the subject site to the south-west and west of the site, within the Barcom Heritage Conservation Area. There is also a small three-storey residential apartment building adjacent to the Mercedes-Benz motor vehicle showroom at 61-63 McLachlan Avenue. The northern end of McLachlan Avenue hosts a mix of commercial and residential uses.

The subject site is within the Darlinghurst East Locality, as identified in section 2.4.8 of the Sydney DCP 2012. These areas are identified in **Figure 9** below.



Figure 9: Locality map of 30-62 Barcom Avenue, Darlinghurst.

## Background

The site is the subject of two previous development applications. In July 1997, a development application for the renovation and refurbishment of the self-storage facility, including an additional floor providing an extra 860m<sup>2</sup> of floor area, was refused by Council. This DA had included a variation to floor space control under the LEP.



In September 2008, a new development application (DA/2008/1705) sought consent for several amendments to the building, including the construction of an additional floor. Council granted consent to most of the amendments but did not grant consent for the additional storey, which was a variation to the height control applying to the site. The planning officer's report noted that the proposed additional storey would have resulted in a building of a significantly greater scale than the adjoining vehicle dealership that fronts New South Head Road.

The previous applications were determined 8 to 19 years ago, when a 12m height limit applied to the site and prior to the redevelopment of several other sites near the subject site, which includes the adjacent BMW vehicle dealership to the immediate north of the site. This adjoining development is now under construction and is approved to reach a maximum height 15.7m (five storeys) along Barcom Avenue, with a maximum permissible height of 18m elsewhere on the site.

### **Summary of recommendation**

It is recommended that the proposal proceed subject to conditions on the basis that it:

- is consistent with the Greater Sydney Region Plan, 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.

### **PROPOSAL**

It is noted that the objectives and intended outcomes, and the explanation of provisions annotated in the planning proposal report by Council do not align.

As outlined in the planning proposal the intended outcomes the bonus floor space and height are only for non-residential development and that the additional floor space be for commercial uses. However, the explanation of provisions of the planning proposal require the entire development to be used as a commercial premises in order to be awarded the bonus height and floor space.

By limiting the entire building to a commercial premises use or uses in order to obtain the bonus height and floor space would preclude the use of the building for storage premises, which is proposed to be retained. The Department consulted with Council on this matter and Council advised and clarified that the additional building height and floor space is only afforded if:

- the entire building is not used for residential accommodation or tourist and visitor accommodation;
- the additional building height and floor space afforded by the bonus is only for commercial premises<sup>2</sup>;
- car parking associated with the additional building height and floor space is prohibited; and

<sup>2</sup> 'Tourist and visitor accommodation' is defined under Sydney LEP 2012 as a building or place that provides temporary or short-term accommodation.



- a 6-star NABERS Energy Commitment Agreement for the base building is provided.

The Department has included a Gateway condition requiring the intended outcomes and explanation of provisions of the planning proposal to be updated.

The planning proposal does not seek to amend the current zoning or the LEP maps applicable to the site under LEP 2012. It is intended that the site will be described by its legal title under a site-specific LEP clause.

The indicative concept design in support of the planning proposal shows the basement, ground and first floors of the building remaining as a self-storage facility, while the proposed two additional floors are shown as co-share office space.

By their design and operation, co-share office spaces seek to facilitate new business start-ups, foster innovation and the transfer of knowledge by providing flexible, collaborative, open plan and affordable working spaces. The proposal indicates that Darlinghurst is a desirable location for such office premises as it provides lower rental costs compared to the Sydney CBD, is in a creative cluster with a number of young, highly educated professionals living in the locality and there are a number of existing co-share office spaces in the area.

The existing self storage building on the site achieves an FSR of 2.45:1, which exceeds the current maximum permissible FSR of 2:1 under the Sydney LEP 2012. If the self-storage facility is retained and a maximum FSR of 3.75:1 is permitted, the development in accordance with the proposal would result in 1,289m<sup>2</sup> of additional floor area. This is slightly greater (186m<sup>2</sup>) than the indicative proposed concept design submitted with the planning proposal (see **Table 1** below). Under the indicative concept, minor modifications to the storage premises floorplates would be required to facilitate the separation of uses and access to the offices.

**Table 1:** Existing and proposed concept design FSR and gross floor area (GFA)

Component	Existing building		Indicative concept design	
Site area	992.5m <sup>2</sup>			
Basement GFA (storage premises)	670m <sup>2</sup>	Existing building FSR: 2.45:1, which equates to a GFA of 2,432m <sup>2</sup> .	675m <sup>2</sup>	Concept design FSR: 3.56:1, which equates to a GFA of 3,535m <sup>2</sup> .
Ground floor GFA (storage premises)	867m <sup>2</sup>		840m <sup>2</sup>	
Level 1 GFA (storage premises)	895m <sup>2</sup>		860m <sup>2</sup>	
Level 2 GFA (proposed office premises)	N/A		700m <sup>2</sup>	
Level 3 GFA (proposed office premises)	N/A		460m <sup>2</sup>	
Existing permissible FSR under the Sydney LEP 2012	FSR: 2:1, which equates to a GFA of 1,985m <sup>2</sup> .			
Proposed bonus FSR and GFA	FSR: 3.75:1, which equates to a GFA of 3,721m <sup>2</sup> .			



### Objectives or intended outcomes

Based on the above clarifications the intended outcomes of the planning proposal are to encourage and incentivise:

- the provision of additional job opportunities through retention and expansion of the premises;
- delivery of additional development that is complementary and compatible with the future desired and existing character of this part of Darlinghurst;
- use of alternative transport options due good proximity to existing public transport services; and
- provision of energy and water efficient building.

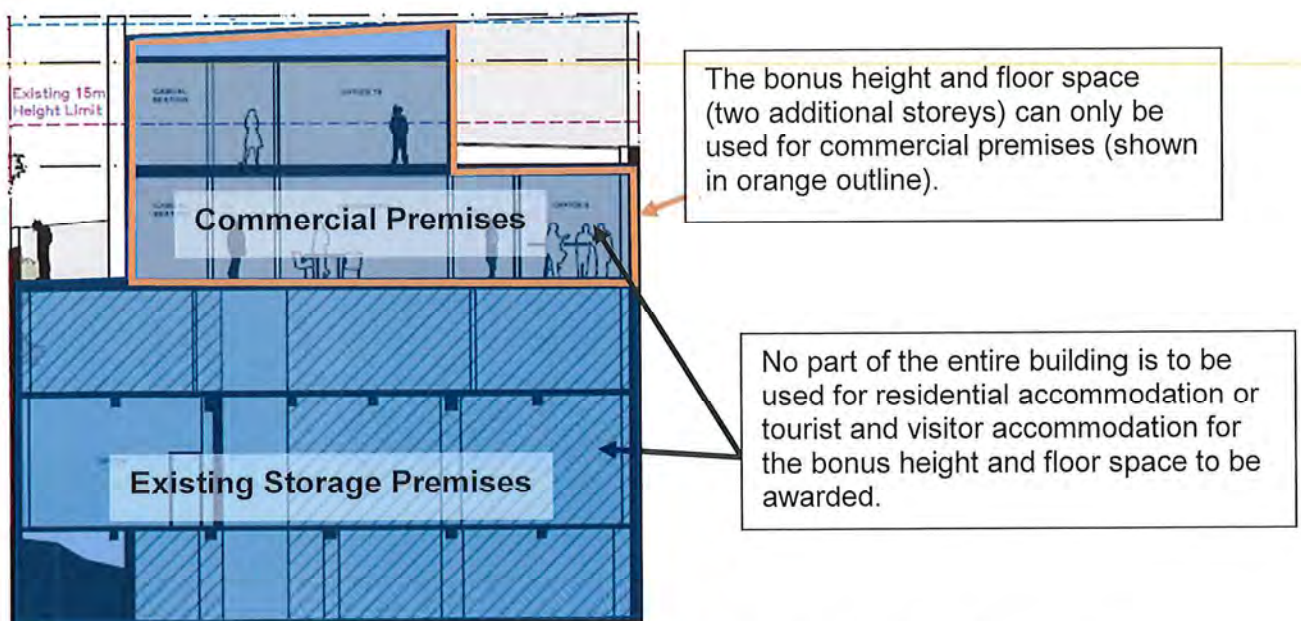
### Explanation of provisions

The intent of the proposal is to amend the Sydney LEP 2012 to include a site-specific provision to allow development on the site to exceed the development controls in clauses 4.3 (Height of buildings) and 4.4 (Floor space ratio) in the Sydney LEP 2012 provided the following criteria are met:

- the entire building is used is not used for residential accommodation or tourist and visitor accommodation;
- that additional development afforded by the bonus height and floor space provisions is only used for commercial 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 proposal states that if all the above criteria are met, a building with a maximum height of 18m and an FSR of up to 3.75:1 would be permitted subject to development consent. The proposal does not seek to exclude the application of Clause 4.6 of the Sydney LEP 2012.

**Figure 10** demonstrates the breakdown of the uses required to trigger the bonus building height and floor space.



**Figure 10:** Breakdown of uses in the building required to trigger bonus building height and floor space.



## Sydney Development Control Plan 2012 (Sydney DCP 2012)

### *Darlinghurst East Locality – Section 2.4.8 of the Sydney DCP 2012*

This section of the Sydney DCP 2012 discusses the desired character for Darlinghurst East, which is achieved through development principles. The principles applicable to the subject site concern maintaining, conserving and responding to heritage significance in the locality. An assessment of heritage impacts can be found on page 15 of this report.

### *NABERS provisions in the Sydney DCP 2012*

Section 3.6.1 of the Sydney DCP 2012 requires NABERS Energy Commitments for new office buildings and alterations to existing office buildings. The requirements for development applications for office premises include:

- new office premises with a net lettable area of 1,000m<sup>2</sup> or greater require a NABERS Energy Commitment agreement of 5.5 stars; and
- alterations, additions and refurbishments to existing office premises where the estimated cost of works is more than \$5 million, with a net lettable area of 1,000m<sup>2</sup> or greater, require a NABERS Energy Commitment of 5 stars. However, this may be reduced if the consent authority is satisfied that the upgrade works will not negatively impact on the heritage significance of a heritage item or the costs are unreasonable when compared to the cost of works of the alterations.

The proposal would result in an office premises with a GFA of approximately 1,289m<sup>2</sup>. However, the net lettable area would not be known until detailed design has been conducted at the development application stage. It is possible that the net lettable area could be less than 1,000m<sup>2</sup>.

### *Draft site-specific Sydney DCP 2012*

Further to the LEP amendments, Council has prepared site-specific amendments to the Sydney DCP 2012. These include proposed building setbacks and further height limits for the site. These proposed DCP controls are reflected in the concept design submitted with the planning proposal. The draft site-specific development controls seek to:

- limit the number of storeys permitted on the site, ranging from two to four storeys (not including the basement level) (**Figure 11**);
- provide setbacks to the building envelope;
- provide a 6-star base building NABERS Energy Commitment Agreement;
- encourage a photovoltaic system on the roof of the building, which can include solar water and heating for the building;
- consider building design and how best to maximise the rooftop solar potential and avoid high parapet walls, unnecessary roof clutter and the like; and
- encourage a green roof, intensive or extensive, covering 30% of available roof space, with available roof space being the total roof area minus areas for renewable energy, where the renewable energy system cannot be incorporated into and work appropriately with a green roof.

Through the development application process, these development controls will be applied to the proposed development.



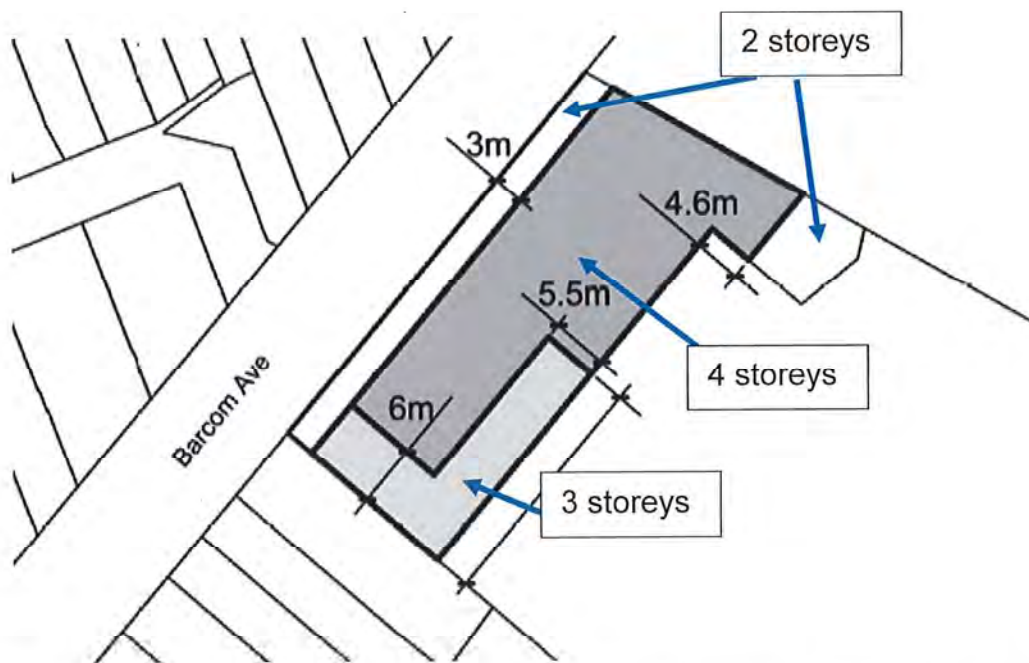


Figure 11: Extract of draft DCP amendment for 23-30 Barcom Avenue, showing proposed setbacks and maximum storey heights.

### Mapping

The planning proposal does not propose any amendments to the Sydney LEP 2012 mapping. It is intended that the proposed site specific provisions will be described by its legal title in the relevant LEP clause.

### NEED FOR THE PLANNING PROPOSAL

The planning proposal is not a result of a strategic study or report. In preparing this planning proposal, Council considered three options to facilitate the intended objective of the planning proposal. These options were:

1. do nothing;
2. approving a development application subject to a clause 4.6 variation to the FSR and height of building; and
3. preparing and implementing a planning proposal to amend the maximum FSR and height of building for the site.

Council has stated that the proposed maximum FSR would represent a 79% variation to the current maximum FSR and a 20% height variation to the current maximum building height permitted under LEP 2012. As this development pathway has been unsuccessfully pursued in the past for the previous DAs, it is not considered to be an appropriate means of facilitating the intended outcomes.

Consequently, a planning proposal is the best means of permitting a development that responds to the nearby heritage conservation area and local character.

## STRATEGIC ASSESSMENT

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### State

#### Greater Sydney Region Plan

In March 2018, the Greater Sydney Commission released *Greater Sydney Region Plan*, which aims to coordinate and manage Sydney's growth. The plan contains objectives for the region over the next 40 years and informs the actions and directions of the district plans.

The Greater Sydney Region Plan sets out four goals:

1. Infrastructure and collaboration: securing 'a city supported by infrastructure' and 'a collaborative city';
2. Liveability: achieving 'a city for people', 'housing the city' and 'a city of green places';
3. Productivity: creating 'a well-connected city' and 'jobs and skills for the city'; and
4. Sustainability: delivering 'a city in its landscape', 'an efficient city' and 'a resilient city'.

To achieve these goals and directions, the plan proposes 40 objectives, with 15 associated actions. Objectives relevant to this planning proposal include:

- Objective 4: Infrastructure use is optimised;
- Objective 13: Environmental heritage is identified, conserved and enhanced;
- Objective 18: Harbour CBD is stronger and more competitive;
- Objective 22: Investment and business activity in centres; and
- Objective 33: A low-carbon city contributes to net-zero emissions by 2050 and mitigates climate change.

The planning proposal is consistent with the above objectives as it would:

- optimise the use of infrastructure by enabling adaptive reuse of a building;
- enable development of a scale and density that is sympathetic to nearby heritage items and heritage conservation areas that acts as a transition between more intensive commercial development and residential development;
- encourage start-ups and small businesses to create a strong and more complete Harbour CBD;
- promote business growth and co-location, and retain jobs in an accessible area; and
- promote use of alternative means of transport.

### District

#### Eastern City District Plan

The *Eastern City District Plan*, released in March 2018, identifies 22 planning priorities and associated actions that are important to achieving a liveable, productive and sustainable future for the district, including the alignment of infrastructure with growth.



This planning proposal is consistent with the following planning priorities of the plan:

- Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage;
- Planning Priority E7: Growing a stronger and more competitive Harbour CBD;
- Planning Priority E10: Delivering integrated land use and transport planning and a 30-minute city;
- Planning Priority E11: Growing investment, business opportunities and jobs in strategic centres; and
- Planning Priority E19: Reducing carbon emissions and managing energy, water and waste efficiently.

This planning proposal is consistent with the relevant objectives in the district plan as it would:

- respect the district's local heritage through ensuring the bulk and scale of the development is consistent with the surrounding character;
- make use of an existing site that has good access to transport infrastructure;
- support the growth of a stronger and more competitive Harbour CBD through the provision of new and co-office space which will foster investment and employment opportunities, especially for small business; and
- reduce carbon emissions by encouraging the use of public transport by prohibiting car parking for the additional height and floor space.

## Local

### Sustainable Sydney 2030 Community Strategic Plan

Council's *Sustainable Sydney 2030 Community Strategic Plan* is the vision for the sustainable development of the City of Sydney to 2030 and beyond. It includes 10 strategic directions to guide the future of the City and 10 targets against which to measure progress. This planning proposal is consistent with key directions of the strategic plan as demonstrated in **Table 2**.

**Table 2:** Consistency with Sustainable Sydney 2030

Consistency with Sustainable Sydney 2030	
Direction	Comment
Direction 1 – A globally competitive and innovative city	The proposal will provide additional employment floor space on the fringe of the Sydney CBD. The co-working office space will facilitate jobs growth and promote collaboration and innovation, supporting small businesses and start-ups.
Direction 2 – A leading environmental performer	The planning proposal will support a more ecologically sustainable development on the site. A 6-star NABERS energy rating and site-specific DCP controls will seek to encourage sustainable environmental outcomes. These could use photovoltaic cells, a green roof and/or energy-efficient construction materials.
Direction 3 – Integrated transport for a connected city	The proposal will capitalise on its close proximity to Kings Cross Station and bus routes connecting with the CBD and Bondi Junction. The proposal does not incorporate on-site car parking provision, further limiting potential future trips by private vehicle and encouraging sustainable transport behaviour.

Consistency with Sustainable Sydney 2030	
Direction	Comment
Direction 4 – A city for walking and cycling	The site is in an inner-city suburb, close to local centres including Kings Cross, Edgecliff, Paddington and Darlinghurst. It benefits from convenient public transport and on-road and separated cycleways connecting to the CBD.
Direction 9 – Sustainable development, renewal and design	The proposed planning controls seek to achieve a building envelope in keeping with its surroundings, cognisant of the heritage items and Heritage Conservation Area near the site and its impact on adjoining residential buildings.

### Section 9.1 Ministerial Directions

The proposal is consistent with the following section 9.1 Ministerial Directions.

- 1.1 Business and Industrial Zones;
- 2.3 Heritage Conservation;
- 3.4 Integrating Land Use and Transport;
- 4.1 Acid Sulfate Soils;
- 6.1 Approval and Referral Requirements;
- 6.2 Reserving Land for Public Purposes;
- 6.3 Site Specific Provisions; and
- 7.1 Implementation of A Plan for Growing Sydney.

#### 1.1 Business and Industrial Zones

The planning proposal gives effect to the objectives of this Direction by encouraging employment growth through bonus floor space and building height for commercial premises in a suitable location. The planning proposal will support small businesses and start-ups, promoting a collaborative working environment.

The planning proposal facilitates the provision of additional employment floor space and aligns with the *Greater Sydney Region Plan* and the *Eastern City District Plan*.

#### 6.3 Site Specific Provisions

This planning proposal seeks to facilitate site-specific bonus provisions that must be satisfied to obtain additional floor space and building height for commercial premises.

The planning proposal will allow for the continued use of the site for uses that are permitted within the B4 Mixed Use zone. The proposal will not restrict the use of the self-storage premises. A planning proposal is the best means of achieving the planning proposal's objectives.

#### **State environmental planning policies (SEPPs)**

The proposal is consistent with the application of the following relevant SEPPs:

- SEPP No 33 – Hazardous and Offensive Development;
- SEPP No 55 – Remediation of Land;
- SEPP No 60 – Exempt and Complying Development;
- SEPP No 64 – Advertising and Signage;



- SEPP (Exempt and Complying Development Codes) 2008; and
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

#### SEPP No 55 – Remediation of Land

Clause 6 of SEPP 55 requires the planning authority to be satisfied that the land is suitable, or can be made suitable, for all the uses permissible in the zone. The planning proposal does not seek to amend the zoning or change the land use and, as such, the site is suitable for its intended use. Any future development applications will nonetheless need to consider SEPP No 55.

#### Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Under the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, the site is within the Sydney Harbour Catchment boundary but not within the foreshores and waterways area boundary. The planning proposal does not contradict any planning principles for the Sydney Harbour Catchment as set out in clause 13 of the Sydney Regional Environmental Plan.

### **SITE-SPECIFIC ASSESSMENT**

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#### **Social**

The proposal will allow for positive social effects given that:

- it will increase co-working office space that promotes collaborative and innovative working environments, accommodates start-ups and establishes business ventures; and
- Darlinghurst is geographically, demographically and economically well located to support co-working spaces.

#### **Environmental**

The site is occupied by a building built to boundary and does not contain any known critical habitat or threatened species, populations or ecological communities or habitats.

#### Heritage

There are no listed heritage items within the site. However, there are several heritage items of local significance near the site, including the Barcom Heritage Conservation Area (**Figure 8**).

NBRS Architecture has provided a heritage impact statement for the proposal, which concluded:

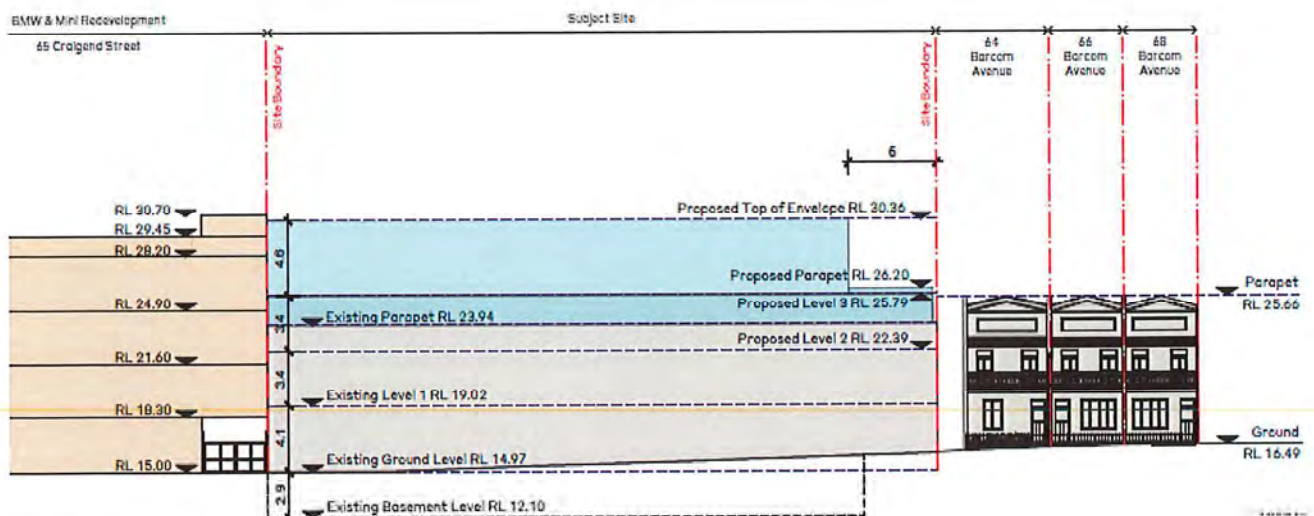
- the height of the new development is consistent with the desired future character of the Darlinghurst East locality;
- the increased height of the building envelope is sympathetic to the two-storey and three-storey Victorian terraces near the site and in the adjacent heritage conservation area as the two storey addition will be set back from the existing building form, which will be reflected through the Sydney DCP 2012 amendments;
- the two storey addition achieves a sensitive transition in scale due to building separation and setbacks of the upper levels which is sympathetic to surrounding smaller-scale development such three-storey Victorian terraces near the site and in the adjacent heritage conservation area; and



- there may be a minor change to the appreciation and interpretation of the group of terraces from the public domain as seen along Barcom Avenue due to the height of the new building. This is considered acceptable as the immediate setting has already been altered with the under construction BMW car dealership. The increased height will transition between this larger-scale development immediately to the north and east and the three-storey Victorian terraces near the site and in the adjacent heritage conservation area to the south and west.
- The Department agrees with these findings, such that the proposed planning controls will achieve a building envelope that is cognisant of heritage items, the Barcom Heritage Conservation Area and adjoining residential terraces (**Figure 12**).

The proposal is not anticipated to alter the streetscape significantly as the BMW motor vehicle showroom (which is under construction) will alter the character of this section of the street. Likewise, the proposal will provide a built form transition from the existing residential Victorian terraces to the south and west and the new buildings under construction for the BMW showroom to the north and larger scale development to the east.

Notwithstanding, due to the proposal's proximity to the Barcom Heritage Conservation Area, it is proposed to require consultation with the Office of Environment and Heritage.



**Figure 12:** Height transition to adjoining terraces at 64-68 Barcom Avenue.

### Built form

To illustrate what the proposed additional building height and floor space may look like once the site is redeveloped is shown in the concept drawings supporting the proposal (**Figure 13**). The proposal will result in a further two storeys of development over and above the height of the existing building and will only generate 1289m<sup>2</sup> more floor space that currently on accommodated in the existing building.

This outcome does not substantially increase the bulk or scale of the building and with additional application of the DCP controls for the site will apply appropriate setbacks to ensure stepping down towards the adjoining terraces. It is on this basis that the resultant bulk and scale of the proposal is considered to be consistent with the surrounding built form.



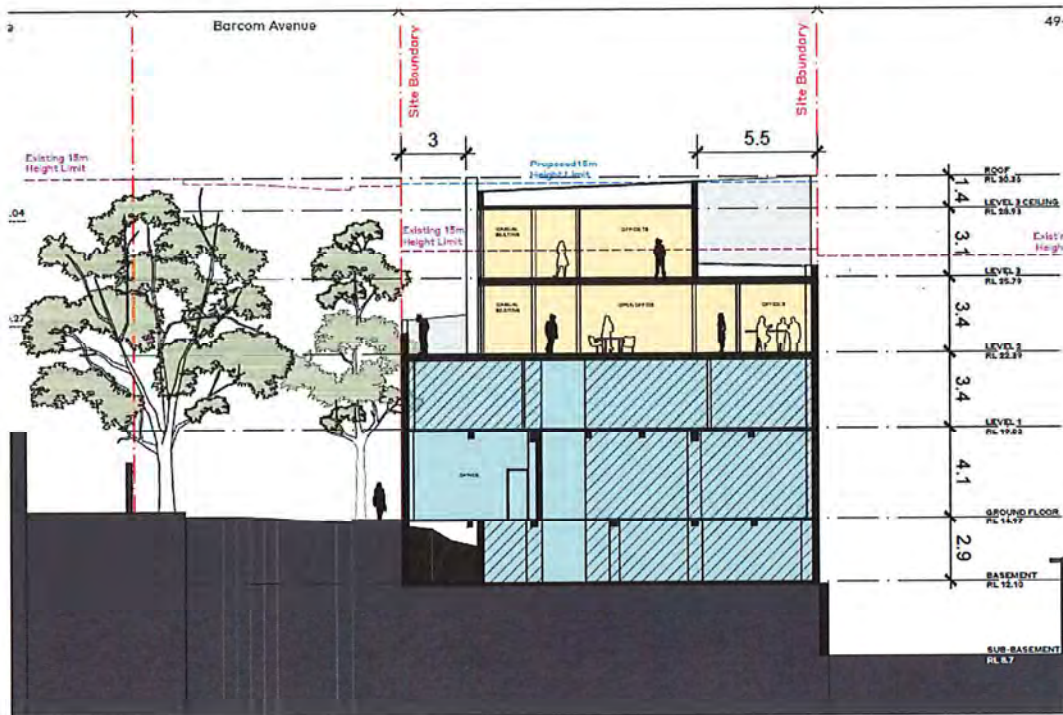


Figure 13:

Cross-section of the development concept.

### Overshadowing

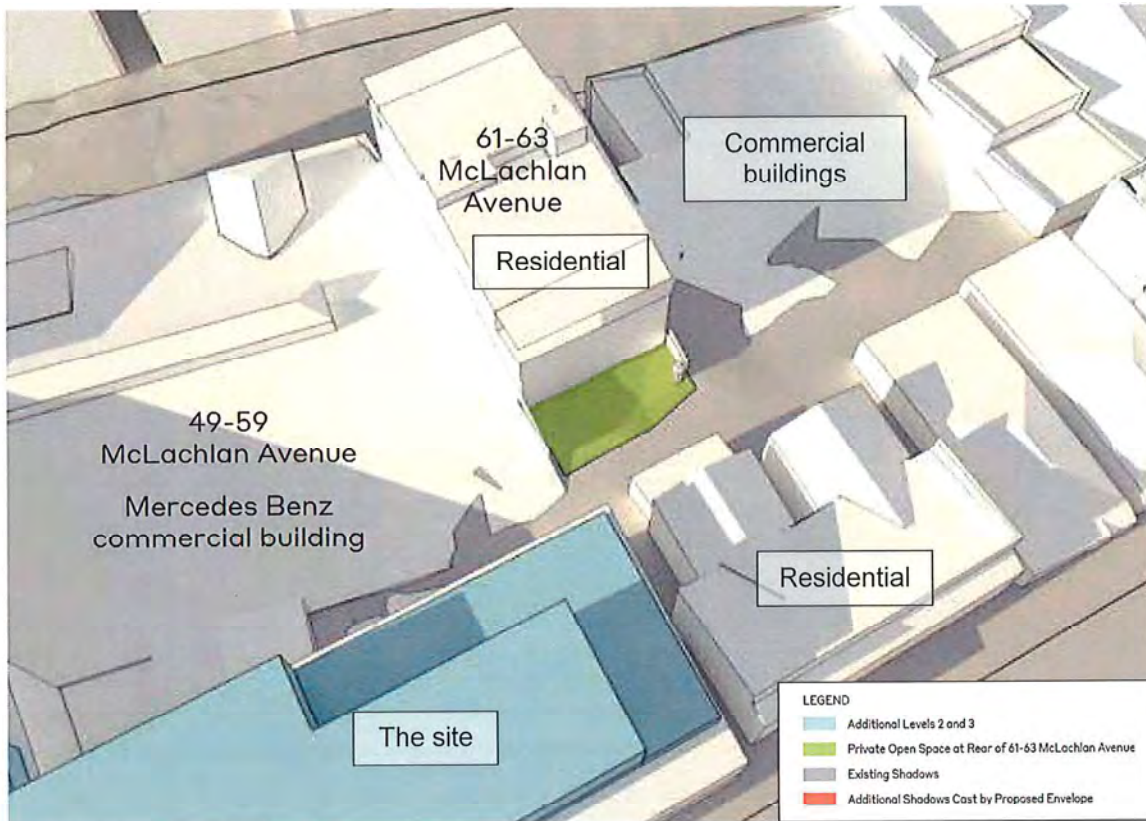
A shadow analysis has been undertaken as part of the planning proposal (**Figures 14-17**). Based on these drawings and during mid-winter residential premises at 61-63 McLachlan Avenue will:

- receive at least 2 hours of solar access to the rear private open space of this premises; and
- have additional overshadowing to the side façade of the building, but windows to habitable rooms will still receive solar access (**Figure 16**).

Additional overshadowing occurs to the roof of the commercial building at 49-59 McLachlan Street (**Figures 15 to 17**). However, given the use commercial use of the building and that it is only the building's roof that is impacted, this is considered acceptable.

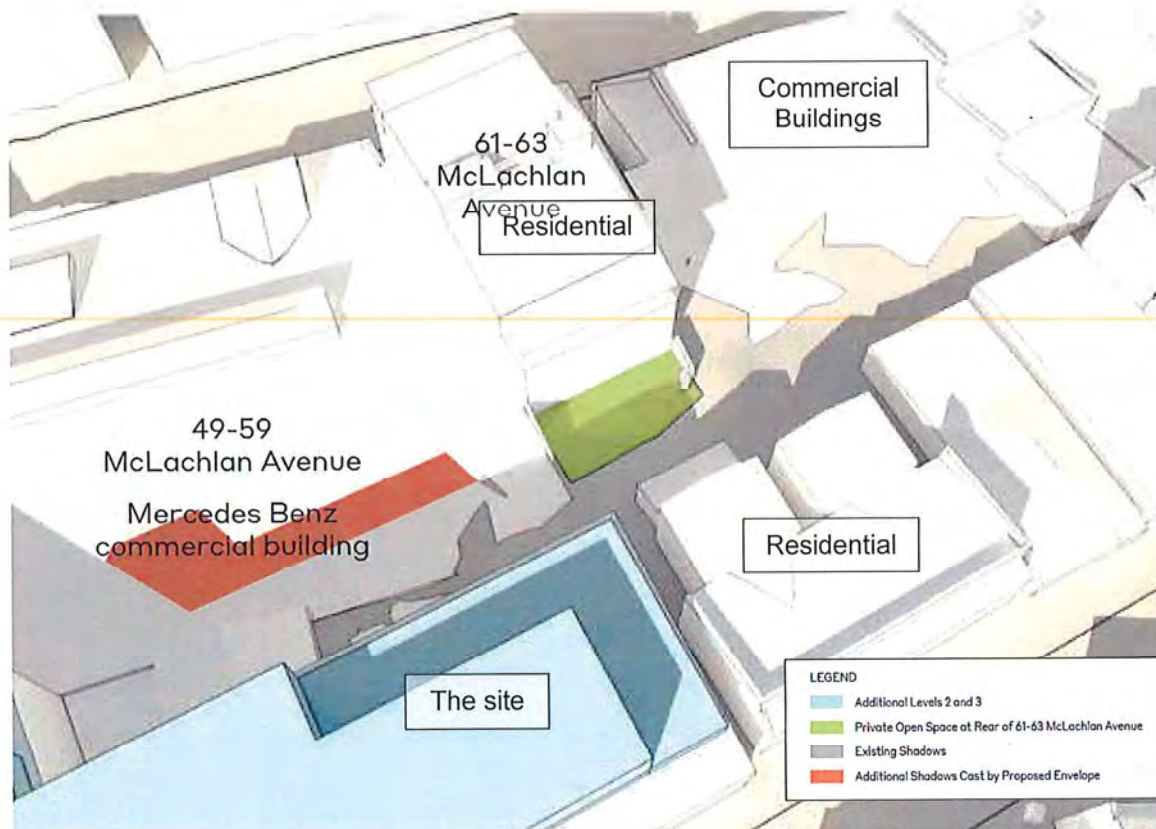
The proposal will generate minor additional overshadowing to the roof, parapet and upper façade of the residential terrace at 64 Barcom Avenue. However, this would only be from 10am to 11am in midwinter and won't increase overshadowing of either the private open space or living area windows of the dwelling.

Therefore, the proposal achieves the solar access requirements under Sydney DCP 2012 to and the resulting impacts are considered acceptable. Furthermore, the proposal can be further refined as part of any detailed design done for any subsequent development application to further improve and minimise overshadowing to adjoining development.



36 9:00 am - 21 June

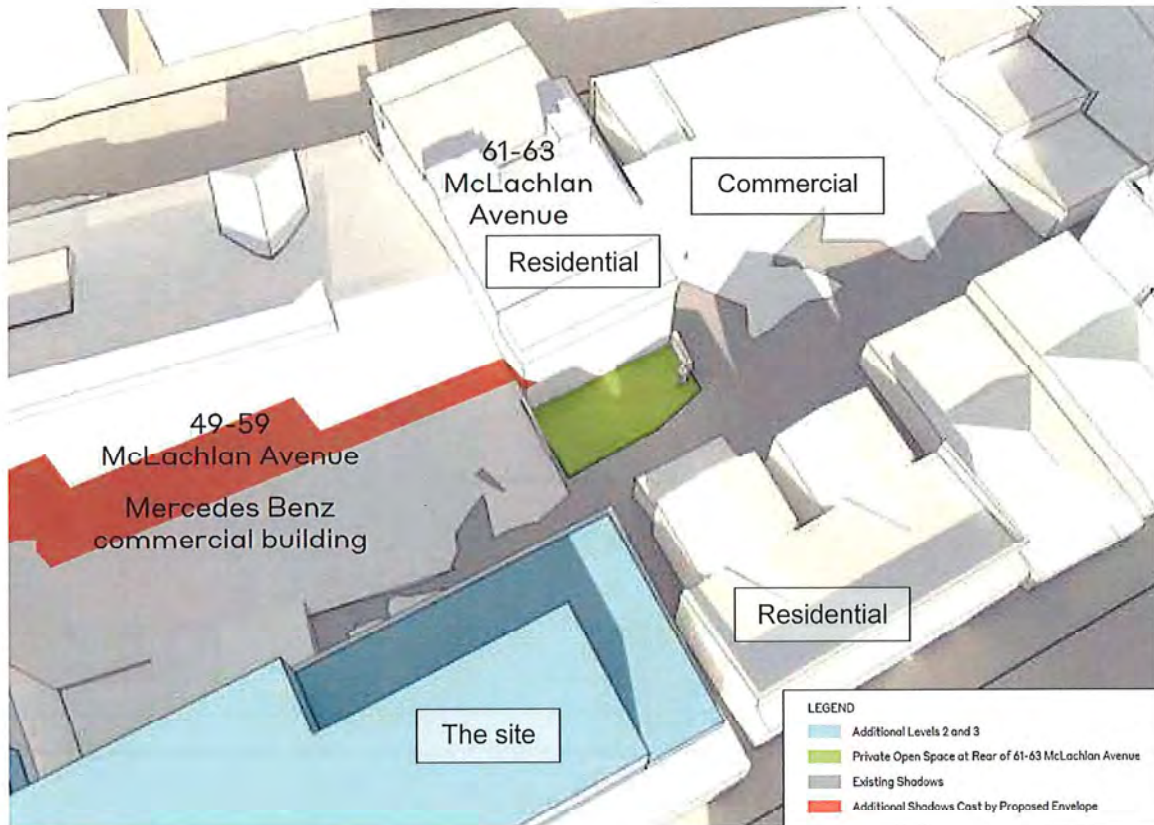
Figure 14: 9am midwinter shadow diagram (source: Ethos' urban design study)



39 12:00 pm - 21 June

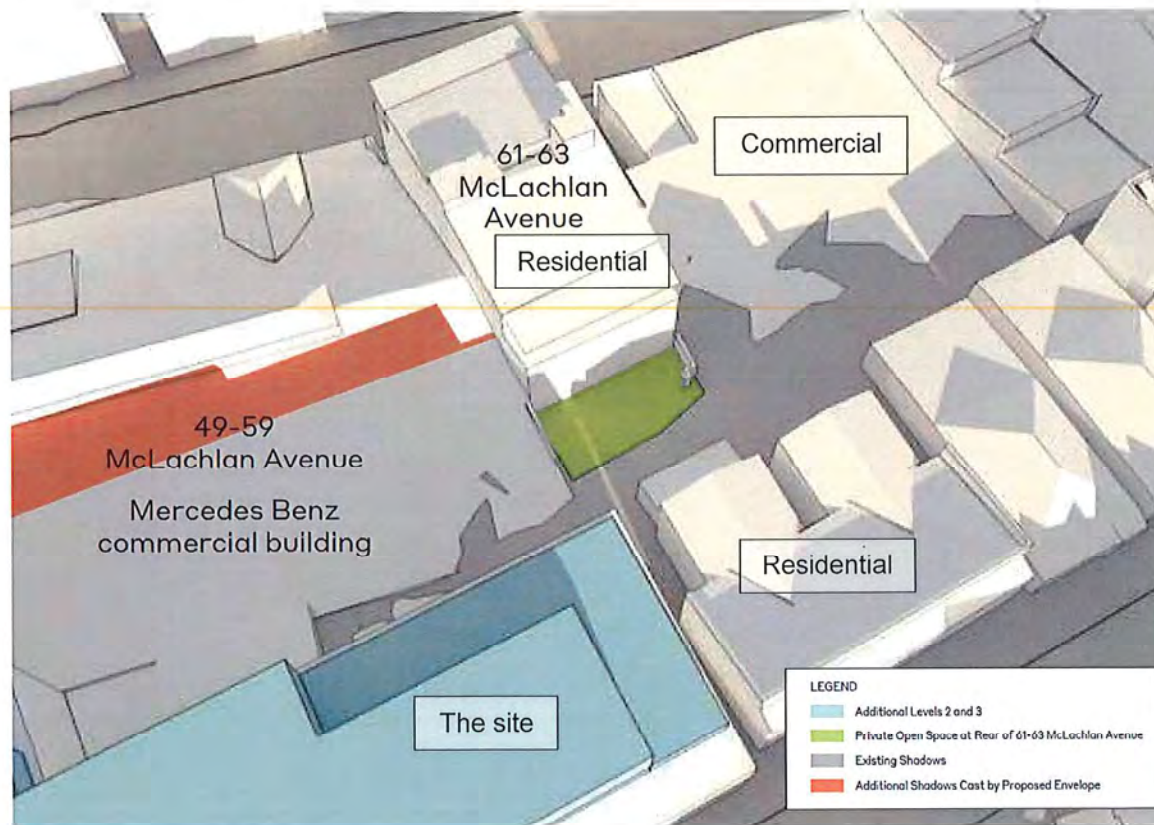
Figure 15: 12pm midwinter shadow diagram (source: Ethos' urban design study)





41 2:00 pm - 21 June

Figure 16: 2pm midwinter shadow diagram (source: Ethos' urban design study)



42 3:00 pm - 21 June

Figure 17: 3pm midwinter shadow diagram (source: Ethos' urban design study)



## NABERS Energy Commitment Agreement

NABERS is a national government program used to measure a building's energy efficiency, carbon emissions and water consumption. It is administered by the NSW Office of Environment and Heritage (OEH). 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 DCP also requires a 6-star base building NABERS Energy Commitment Agreement to be put in place.

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 has not provided adequate justification for the inclusion of a NABERS energy commitment agreement or demonstrated that the 6-star rating can be achieved.

The proponent has since expressed concerns with the development concept achieving a 6-star NABERS energy rating as the storage premises is proposed to be retained. The proponent has requested that either the provision be removed or reduced to a 5-star NABERS energy rating to align with the current Sydney DCP 2012 provisions.

The Department consulted with the OEH and the Department's Building Policy team in relation to the inclusion of the NABERS ratings in the LEP. 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 National Construction Code (NCC) 2019, which came into effect on 1 May 2019, is to be adopted by all states and territories. Section J of the NCC 2019 identifies mandatory energy efficiency requirements that are applicable to different building types. 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.

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



Whilst the Department 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.

As such, the Department has recommended under condition 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.

#### Car parking

The Council has indicated that the proposed expanded office premises will create approximately 35 jobs. The existing development does not provide any on-site car parking and no car parking is proposed in the concept design accompanying the planning proposal. Car parking associated with the additional floor space and height is prohibited.

Clause 7.6 of the Sydney LEP 2012 identifies the maximum number of car spaces permitted for office and business premises and does not require a minimum number of car spaces. The objective of the clause is to minimise the amount of vehicular traffic generated by proposals.

The provision to prohibit car parking associated with the bonus height and floor space is supported as it would encourage sustainable transport behaviour. The subject site has good accessibility in terms of cycling, walking and public transport. The subject site is within 800m walking distance of Kings Cross Station, while bus routes 324, 325 and L24 service the locality from New South Head Road, with services every 10 to 20 minutes on weekdays. Buses 324 and 325 also stop at Kings Cross Station.

The proponent is also proposing to provide 13 bicycle parking spaces within the basement and ground levels. Further details on the bicycle spaces would be provided in a future development application.

The locality has restrictive on-street parking provisions and, as such, public transport would be the best means of accessing the site. Notwithstanding, it is recommended that Transport for NSW and Roads and Maritime Services are consulted during exhibition of the planning proposal.

#### End-of-journey floor space

In addition to the proposed floor space bonus, the site may benefit from existing clause 6.13 of the Sydney LEP 2012, which allows additional floor space of up to 0.3:1 on the site where end-of-journey facilities are provided.



The end-of-journey bonus is only permitted and would apply only where the entire building is used for commercial purposes also. However, it is noted that the development concept accompanying the planning proposal intends to retain the self-storage facility (which is strictly not defined under LEP 2012 as commercial development) and therefore if developed in this way could not benefit from this additional bonus floor space.

### **Economic**

The proposed development will achieve a mix of land uses on the site, comprising the storage premises and two additional storeys of co-working office space. The planning proposal will have the following economic benefits and is considered acceptable as it will:

- assist small business and innovative industries gain low-cost entry into the marketplace;
- provide a potential to bridge the gap between the Eastern Suburbs and Sydney CBD start-up communities, continuing the growth of the entrepreneurial ecosystem of Sydney; and
- ensure the additional GFA will be exclusively used for employment-generating uses.

### **Infrastructure**

The site is well serviced by a range of public utilities including electricity, telecommunications, water, sewer and stormwater. It is expected that these services would be upgraded where required by the developer.

## **CONSULTATION**

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### **Community**

Council has proposed a public exhibition period of 28 days. This is considered to be appropriate as reflected in the Gateway conditions.

Council, as the planning proposal authority, will be responsible for public consultation. It has advised that this will include newspaper notification, displays at Council customer service centres, on Council's webpage and written notification to affected and adjoining property owners and occupiers.

### **Agencies**

The proposal does not specify any agencies that are to be notified of the planning proposal. As the proposal is near several local heritage items, it is recommended that OEH be consulted during exhibition of the planning proposal.

As no car parking provisions are proposed and the site would be accessed via public transport, it is recommended that Transport for NSW and Roads and Maritime Services be consulted during the exhibition of the planning proposal.

## **TIME FRAME**

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Council has included a project timeline of six months. However, a time frame of 12 months is considered appropriate. This does not prevent the proposal from being finalised sooner.

The Gateway determination will be conditioned to update the project timeline.



## **LOCAL PLAN-MAKING AUTHORITY**

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Council has requested delegation to make the plan. The Department recommends issuing an authorisation for Council to exercise delegation to make this plan, provided the revised planning proposal is submitted to the Department prior to community and agency consultation for review and approval.

## **CONCLUSION**

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It is recommended that the proposal proceed subject to conditions on the basis that it:

- 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 explanation of provisions do not completely align with the intended outcomes of the planning proposal. A condition has been recommended to update the planning proposal to resolve this inconsistency. This will ensure that if the existing storage premise is retained and the development meets the required criteria that it not be precluded from being awarded the bonus height and floor space.

Whilst the Department supports ecological sustainable development, the planning proposal is to be amended 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.

As car parking is prohibited for the bonus height and floor space and the site would be accessed by public transport, it is recommended that Transport for NSW and Roads and Maritime Services be consulted during exhibition of the planning proposal.

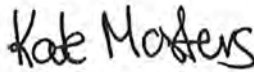
## **RECOMMENDATION**

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It is recommended that the delegate of the Minister for Planning and Public Spaces determine that the planning proposal should proceed subject to the following conditions:

1. The planning proposal is to be amended prior to community consultation as follows:
  - (a) update the objectives and intended outcomes section of the planning proposal to align with the explanation of provisions;
  - (b) 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;
- (c) amend the planning proposal to remove the proposed provision for a 6-star NABERS Energy Commitment Agreement; and
- (d) update the project timeline.
2. The revised planning proposal is to be provided to the Department for review and approval prior to community and agency consultation.
  3. The planning proposal must be made publicly available for a minimum of 28 days.
  4. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the *Environmental Planning and Assessment Act 1979*:
    - Office of Environment and Heritage;
    - Transport for NSW; and
    - Roads and Maritime Services.
  5. The time frame for completing the LEP is to be 12 months from the date of the Gateway determination.
  6. Given the nature of the planning proposal, Council should be the local plan-making authority.

 21.6.19

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 25.6.19

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**Planning Services**

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