

**DECISION OF 3667th COUNCIL MEETING
HELD ON 29 JULY 2015**

225. CiS04: Post Exhibition Report - Amendments to *B4 Mixed Use Zone*

Report of Mark Yee, Strategic Planner

On 15 December 2014, Council resolved to forward three separate Planning Proposals (Attachment 1 and 2) to the Department of Planning and Environment (DPE). They proposed to make the following amendments to North Sydney Local Environmental Plan 2013 (NSLEP 2013):

- permit 'residential flat buildings' with development consent in the B4 Mixed Use zone, but only if they are provided as part of mixed use development and achieve active street frontages to address shortcomings with the definition of 'shop top housing';
- remove the maximum non-residential floor space ratio requirement over land subject to clause 4.4A, to improve the flexibility of the existing planning controls, especially in the B4 Mixed Use zone; and
- exclude 'serviced apartments' from the calculation of 'non-residential floor space' under subclause 4.4A(8), to prevent the provision of unviable serviced apartments and undermining of the objectives of the B4 Mixed Use zone, that seek to protect and promote employment generation.

On 6 February 2015, the Minister for Planning issued a Gateway Determination (Attachment 3), permitting all three Planning Proposals to proceed to public exhibition. For efficiency and clarity purposes, the Gateway Determination required the consolidation of all three Planning Proposals into a single Planning Proposal (Attachment 4).

In addition to the amendments to NSLEP 2013, Council resolved to make associated amendments to North Sydney Development Control Plan 2013 (NSDCP 2013). In particular, it was proposed to introduce maximum parking rates for 'residential flat buildings' within the *B4 Mixed Use* zone and clarify that the 'shop top housing' parking rates apply.

The consolidated Planning Proposal and associated draft DCP amendment were placed on public exhibition for 28 days from 26 March to 22 April 2015. A total of seven (7) submissions were received in relation to the consolidated Planning Proposal of which:

- four (4) submissions wholly supported the proposed LEP amendments;
- two (2) submissions objected to the proposed LEP amendments;
- one (1) submission requested deferral of the proposed LEP amendments.

No submissions were received with regard to the proposed amendment to NSDCP13. This report outlines the key issues raised in these submissions and where appropriate provides commentary on these issues. A minor amendment to the Planning Proposal is recommended which introduces a threshold number for serviced apartments that will enable viable serviced apartment operations with an employment function to be considered non-residential floor space.

Recommending:

1. THAT having completed the community consultation requirements outlined in the Gateway Determination, Council resolves to forward the consolidated Planning Proposal, as amended, to Parliamentary Counsel and request that a Local Environmental Plan be made in accordance with section 59 of the Environmental Planning and Assessment Act 1979, so as to give effect to the Planning Proposal.

2. THAT Council adopts the amendment to North Sydney Development Control Plan 2013 forming Attachment 6 to this report.

3. THAT in accordance with clause 21 of the Environmental Planning and Assessment Regulation 2000, public notice of the adoption of the amendments to North Sydney Development Control Plan 2013 be given.

4. THAT in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000, a copy of the adopted amendments to North Sydney Development Control Plan 2013 along with this Council report and resolution be forwarded to the Director General of the Department of Planning and Environment.

The Motion was moved by Councillor Marchandean and seconded by Councillor Clare.

Voting was as follows:

For/Against 10/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Beregi	Y	
Reymond	Y		Barbour	Y	
Clare	Y		Morris	Y	
Baker	Y		Marchandean	Y	
Carr	Y		Bevan	Y	

RESOLVED:

1. THAT having completed the community consultation requirements outlined in the Gateway Determination, Council resolves to forward the consolidated Planning Proposal, as amended, to Parliamentary Counsel and request that a Local Environmental Plan be made in accordance with section 59 of the Environmental Planning and Assessment Act 1979, so as to give effect to the Planning Proposal.

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**Report to General Manager**

Attachments:

1. Council Report of 15 December 2014 (CIS05)
2. Council Report of 15 December 2014 (CIS07)
3. Gateway Determination dated 6 February 2015
4. Consolidated Planning Proposal (as amended July 2015)
5. Legal and Planning Committee Report of 2 March 2015 (LP03)
6. Amendment to NSDCP 2013
7. Report from HillPDA Consulting dated 30 June 2015

SUBJECT: Post Exhibition Report - Amendments to *B4 Mixed Use Zone***AUTHOR:** Mark Yee, Strategic Planner**ENDORSED BY:** Joseph Hill, Director City Strategy**EXECUTIVE SUMMARY:**

On 15 December 2014, Council resolved to forward three separate Planning Proposals (Attachment 1 and 2) to the Department of Planning and Environment (DPE). They proposed to make the following amendments to North Sydney Local Environmental Plan 2013 (NSLEP 2013):

- permit 'residential flat buildings' with development consent in the *B4 Mixed Use* zone, but only if they are provided as part of mixed use development and achieve active street frontages to address shortcomings with the definition of 'shop top housing';
- remove the maximum non-residential floor space ratio requirement over land subject to clause 4.4A, to improve the flexibility of the existing planning controls, especially in the *B4 Mixed Use* zone; and
- exclude 'serviced apartments' from the calculation of 'non-residential floor space' under subclause 4.4A(8), to prevent the provision of unviable serviced apartments and undermining of the objectives of the *B4 Mixed Use* zone, that seek to protect and promote employment generation.

On 6 February 2015, the Minister for Planning issued a Gateway Determination (Attachment 3), permitting all three Planning Proposals to proceed to public exhibition. For efficiency and clarity purposes, the Gateway Determination required the consolidation of all three Planning Proposals into a single Planning Proposal (Attachment 4).

In addition to the amendments to NSLEP 2013, Council resolved to make associated amendments to North Sydney Development Control Plan 2013 (NSDCP 2013). In particular, it was proposed to introduce maximum parking rates for 'residential flat buildings' within the *B4 Mixed Use* zone and clarify that the 'shop top housing' parking rates apply.

The consolidated Planning Proposal and associated draft DCP amendment were placed on public exhibition for 28 days from 26 March to 22 April 2015. A total of seven (7)

submissions were received in relation to the consolidated Planning Proposal of which:

- four (4) submissions wholly supported the proposed LEP amendments;
- two (2) submissions objected to the proposed LEP amendments;
- one (1) submission requested deferral of the proposed LEP amendments.

No submissions were received with regard to the proposed amendment to NSDCP13.

This report outlines the key issues raised in these submissions and where appropriate provides commentary on these issues. A minor amendment to the Planning Proposal is recommended which introduces a threshold number for serviced apartments that will enable viable serviced apartment operations with an employment function to be considered non-residential floor space.

FINANCIAL IMPLICATIONS:

Nil

RECOMMENDATION:

- 1. THAT** having completed the community consultation requirements outlined in the Gateway Determination, Council resolves to forward the consolidated Planning Proposal, as amended, to Parliamentary Counsel and request that a Local Environmental Plan be made in accordance with section 59 of the Environmental Planning and Assessment Act 1979, so as to give effect to the Planning Proposal.
- 2. THAT** Council adopts the amendment to North Sydney Development Control Plan 2013 forming Attachment 6 to this report.
- 3. THAT** in accordance with clause 21 of the Environmental Planning and Assessment Regulation 2000, public notice of the adoption of the amendments to North Sydney Development Control Plan 2013 be given.
- 4. THAT** in accordance with Clause 25AB of the Environmental Planning and Assessment Regulation 2000, a copy of the adopted amendments to North Sydney Development Control Plan 2013 along with this Council report and resolution be forwarded to the Director General of the Department of Planning and Environment.

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

BACKGROUND

On 15 December 2014, Council resolved to forward three (3) separate Planning Proposals to the Department of Planning and Environment (DPE) to make the following amendments to North Sydney Local Environmental Plan 2013 (NSLEP 2013):

- permit ‘residential flat buildings’ with development consent in the *B4 Mixed Use* zone, but only if they are provided as part of mixed use development and achieve active street frontages to address shortcomings with the definition of ‘shop top housing’;
- remove the maximum non-residential floor space ratio requirement over land subject to clause 4.4A, to improve the flexibility of the existing planning controls, especially in the *B4 Mixed Use* zone; and
- exclude ‘serviced apartments’ from the calculation of ‘non-residential floor space’ under subclause 4.4A(8), to prevent the provision of unviable serviced apartments and undermining of the objectives of the *B4 Mixed Use* zone, that seek to protect and promote employment generation.

On 6 February 2015, the Minister for Planning issued a Gateway Determination permitting all three of the Planning Proposals to proceed to public exhibition. For efficiency and clarity purposes, the Gateway Determination required the consolidation of all three Planning Proposals into a single Planning Proposal. Council has also been authorised to exercise the functions of the Minister for Planning under s.59 of the Environmental Planning and Assessment Act, 1979 (EP&A Act) in relation to this Planning Proposal.

In addition to the amendments to NSLEP 2013, Council also resolved on 15 December 2014 to make associated amendments to North Sydney Development Control Plan 2013 (NSDCP 2013). In particular, the amendments sought to introduce maximum parking rates for ‘residential flat buildings’ within the *B4 Mixed Use* zone and clarify and clarify that the ‘shop top housing’ parking rates apply.

DETAIL

1. Pre - public exhibition requirements

Condition 1 of the Gateway Determination required the consolidation of the three Planning Proposals into a single Planning Proposal prior to being placed on public exhibition. A consolidated Planning Proposal that satisfactorily addressed Condition 1 of the Gateway Determination was subsequently prepared and placed on public exhibition (refer to Attachment 3).

Condition 2 of the Gateway Determination required amendment to the fourth objective of the proposed *B4 Mixed Use* zone to consider the consolidated Planning Proposal's objective to permit residential flat buildings within the *B4 Mixed Use* zone, prior to being placed on public exhibition. In accordance with the Gateway Determination, the fourth objective was amended as follows:

To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on ~~above those~~ the levels above.

Condition 3 of the Gateway Determination required that the Planning Proposal be revised to demonstrate consistency with *A Plan for Growing Sydney*, prior to public exhibition. In accordance with this Condition, Section 5.3.2 to the Planning Proposal was amended to address this Strategic Planning Policy.

2. Public Exhibition

In accordance with Condition 4 of the Gateway Determination, the Planning Proposal and associated draft DCP amendment were placed on public exhibition for a period of 28 days from Thursday 26 March 2015 to Wednesday 22 April 2015.

3. Consultation

Condition 5 of the Gateway Determination required that Council consult with Destination NSW under section 56(2Xd) of the EP&A Act. In particular, a copy of the Planning Proposal and any relevant supporting material was to be provided to Destination NSW and given at least 21 days to comment on the proposal.

In accordance with the condition, a copy of the Planning Proposal and relevant supporting material was forwarded to Destination NSW on 25 March 2015. No correspondence was received from Destination NSW.

4. Consideration of Submissions

A total of seven (7) submissions were received as a result of the public exhibition of the Planning Proposal and draft amendments to NSDCP 2013. All of the submissions relate to the exhibited Planning Proposal, with no submissions raised in response to the proposed amendments to NSDCP 2013.

4.1 Planning Proposal Submissions

The following identifies the types of submissions received:

- four (4) submissions wholly supported the proposed LEP amendments;
- two (2) submissions objected to the proposed LEP amendments;
- one (1) submission requested deferral of the proposed LEP amendments.

A complete copy of all submissions has been made available to Councillors via the submissions folder placed in the Councillor's Room.

The key issues raised in the submissions relate to the following and are discussed in more detail in the following subsections:

- Deferral of the amendments;
- Calculation of non-residential floor space calculation;
- Application of non-residential floor space ratio controls;
- Retention of non-residential floor space controls; and
- Preparation of a Transport and Accessibility Assessment.

4.1.1 Deferral of amendments

One submission in relation to proposed changes to the non-residential floor space controls requested that the Planning Proposal be deferred until the Economic Development Strategy has been completed. In particular, the reasons why the Planning Proposal should be deferred included:

- That the Economic Development Strategy provides the opportunity to review the provision of employment generating floor space in the *B4 Mixed Use* zone;
- That since the introduction of non-residential floor space controls in 1989, they do not reflect current market conditions. In particular:
 - competing centres have emerged such as Macquarie Park, Norwest, Sydney Olympic Park;
 - higher employment densities are occurring within office buildings; and
 - changes in technology that allow working from home, hot desking, etc., have reduced the need for commercial floor space.
- That recent developments in the *B4 Mixed Use* zone have struggled to attract commercial tenants, providing the following examples:
 - 12-16 Berry Street, North Sydney
 - 156-158 Pacific Highway, North Sydney
 - 239-247 Pacific Highway, North Sydney
 - 136-144 Walker Street, North Sydney
 - 200-220 Pacific Highway, North Sydney

It was also requested that the North Sydney Economic Development Strategy be expanded to model the demand for retail floor space in North Sydney.

Comment

The proposed amendments to NSLEP 2013 were identified as part of the preliminary research undertaken for the Economic Development Strategy. This preliminary research identified that

there has been a gradual decline of the employment generating floor space in the *B4 Mixed Use* zone and that this decline is at odds with Council's economic and employment related objectives.

The primary focus of the Economic Development Strategy is the creation and retention of jobs. Council has made a clear commitment to the retention of employment generating floor space, particularly within the *B4 Mixed Use* zone where the pressure is greatest to convert it for residential purposes.

The proposed LEP amendments in question are interim measures to help prevent loss of employment floor space until a more comprehensive review of policy positions occurs as part of the Economic Development Strategy. In the absence of a change in Council policy regarding the desirability of employment generating uses in the *B4 Mixed Use* zone, it is appropriate that Council strengthen its non-residential requirements to address the unintended loss of employment floor space. Delaying the LEP amendments until the Economic Development Strategy is finalised is not considered appropriate given the risk of further losses in the short term.

The issues raised in the submission, including the role of employment generating uses in the *B4 Mixed Use* zone, will be given focus during preparation of the Economic Development Strategy.

4.1.2 Calculation of non-residential floor space

One submission objected to the exclusion of serviced apartments from the calculation of non-residential floor space. In particular, it states that it would be inconsistent with the meeting the demand for serviced apartments for the office worker market of North Sydney.

It was recommended that the Planning Proposal be amended such that the floor space of serviced apartments be included in the calculation of non-residential floor space, but only where the serviced apartment floor space is equal to or exceeds 2,000sqm. The suggested threshold is based on the provision of 40 serviced apartments of at least 50m² each, which the submission claims is the minimum required for a serviced apartment scheme to be economically viable.

Comment

Council is seeking, in part, to prevent the approval of unviable serviced apartments where they are provided merely to comply with the non-residential floor space controls. Once such developments are approved, some applicants have subsequently sought to convert these serviced apartments to residential apartments. This has occurred on recent developments on sites which are zoned *B4 Mixed Use*, including:

- 200-220 Pacific Highway, Crows Nest
- 225 Miller Street, North Sydney
- 1A Eden Street, North Sydney

Council obtained independent advice on this matter from Hill PDA Consulting, who reviewed all DAs within the *B4 Mixed Use* zone which included serviced apartments as part of the non-residential floor space. From this review, Hill PDA identified the following trends:

- **Operations seeking modification** - All DAs have sought some form of modification to change the serviced apartments (or partially) to residential use. This has either been undertaken through submission of a DA Modification, Planning Proposal or Withdrawal of a DA where there are a small number of units proposed;
- **Smaller Operations Seeking to Convert** - The majority of DAs are for smaller operations with six of the nine DAs proposing less than 25 serviced apartments. Of these DAs, all six had either applied for a change of use or have withdrawn the DA.
- **The one exception is the larger proposed Major Project (MP) at 6 - 16 Atchison Street (MP09-0187).** This MP sought and received approval to reduce the number of serviced apartments from 76 to 64.

Further, serviced apartments, along with other tourist and visitor facilities, do not contribute to a high generation of jobs in comparison to the same amount of floor space occupied by office and retail premises. As such, the proposal not to include serviced apartments in the calculation of non-residential floor space was also partly justified as a means of promoting more employment intensive land uses.

HillPDA Consulting also considered whether a threshold or critical mass exists beyond which serviced apartments are viable in the long term (see Attachment 7). This advice indicates that, due to market trends and conditions, serviced apartment operations with a minimum of 50-70 serviced apartments are more likely to be viable in the long term.

Importantly, the HillPDA advice also provides a distinction between small and large serviced apartment operations on the basis of whether they can be considered a commercial operation. Larger operations are more likely to provide a range of services such as food, concierge, business centre or recreational facilities and associated employment. This is contrasted with smaller operations that have little or no on-site commercial function and are considered more of a residential use.

Given these findings, the Planning Proposal has been amended such that serviced apartments are excluded from non-residential floor space calculations only if they are '*serviced apartments in a development containing less than 50 serviced apartments*'. It is considered that this approach adequately addresses questions around the commercial viability of serviced apartment operations as well as ensuring such operations are consistent with the employment oriented objectives of the *B4 Mixed Use* zone and non-residential floor space controls.

It should be noted that serviced apartments will remain a permissible use in the *B4 Mixed Use* zone and *B3 Commercial Core* zone. This means that serviced apartment operations with less than 50 serviced apartments can still be provided in North Sydney, but will not be included towards non-residential floor space calculations in the *B4 Mixed Use* zone.

There have been a number of recent approvals for hotels and serviced apartments in the *B3 Commercial Core* zone. This includes the recent approvals at 100 Miller Street, North Sydney for the development of a hotel and at 90 Arthur Street, North Sydney for the development of 219 serviced apartments. As these developments are in the *B3 Commercial Core* zone, there is likely a greater intent for these developments to provide this accommodation, rather than propose this land use simply to meet the non-residential floor space requirements.

The scale of these developments is consistent with the threshold proposed by the advice from

Hill PDA. These developments will ensure that hotels and other visitor accommodation will still be provided in North Sydney.

Amending the Planning Proposal so that serviced apartments above the threshold will now be included in the calculation of non-residential floor space, represents a reduced impact to future development than what was previously proposed under the exhibited Planning Proposal.

The proposed change does not require re-exhibition as the intent of the planning proposal objectives are still met.

4.1.3 Application of non-residential FSR control

One submission states that the application of the non-residential floor space ratio control to battleaxe sites is not appropriate. In particular, such allotments are considered to be unsuited for commercial uses due to their lack of street frontage and restricted access arrangements. The submission recommends that the Planning Proposal be amended such that the non-residential floor space requirements do not apply to battle axe allotments.

In addition, the submission requests amending the Planning Proposal such that a residential flat building could be permitted in the *B4 Mixed Use* zone, but not as a mixed use building, and only if it is developed as part of a mixed use development which achieves active street frontages.

Comment

Implementing the requested amendments would enable a solely residential development to be constructed on a battleaxe allotment.

Only one (1) battleaxe allotment exists in the LGA that is also zoned *B4 Mixed Use*. The subject property is located at 229 Miller Street, North Sydney. This site currently comprises a building which was originally constructed as a residential flat building in about 1960, but is now occupied by a mix of both commercial and residential tenants.

Council has in the last few years, received many queries regarding the potential redevelopment opportunities for this site, including proposals for wholly residential development.

However, the intent of the Planning Proposal is to address a specific development trend and not site specific concerns. Therefore, further amendment of the proposed controls to allow the exclusion for a singular site is not deemed appropriate in this instance.

4.1.4 Retention of non-residential floor space ratio controls

A submission was received from Lane Cove Council who supported the intent of the Planning Proposal. However, it requested that Council retain its non-residential floor space ratio requirements for sites in the *B4 Mixed Use* zone in St Leonards.

Comment

One of the key objectives of the St Leonards/Crows Nest Planning Study is the retention of the employment generating land in the *B4 Mixed Use* zone in St Leonards.

The Planning Study proposes to retain the existing requirements for non-residential floor space over large portions of the Planning Study area with recommendations for increased non-residential floor space where increased height is also proposed. This shows a clear commitment from Council to providing jobs and employment in and around St Leonards.

The proposed amendments to NSLEP 2013 will not reduce non-residential floor space ratio controls thereby protecting employment generating lands.

Council will continue to liaise with Lane Cove and Willoughby Councils and the Department of Planning & Environment in planning for employment land uses in St Leonards. No changes to the Planning Proposal are recommended as a result of this submission.

4.1.5 Transport and Accessibility Assessment

Whilst generally supportive of the intent of the Planning Proposal, a submission received from Transport for NSW also recommended that a Transport and Accessibility Assessment should be prepared to support the Planning Proposal. In particular, the assessment should address the following:

- An estimate of the total daily and peak hour trips which would be generated by the proposal;
- The traffic and safety impact of additional vehicle movements on the existing and future road network;
- An assessment of the additional public transport trips generated by the proposal;
- Details of measures to mitigate traffic, public transport and road safety impacts;
- Consideration and assessment of measure to promote travel choices that support the achievement of State targets.

The need for the assessment was based on potential impacts on public, active and road transport services and infrastructure as a result of the removal of the maximum non-residential FSR controls.

Comment

The intent of removing the maximum non-residential floor space controls is to provide increased flexibility regarding the provision of non-residential floor space in the *B4 Mixed Use* zone.

It is acknowledged that the Planning Proposal may result in changes in land use, and that such changes may affect trip generation rates. For example, a commercial use may generate greater public transport trips than a residential use. However, it is difficult to determine exactly what impact the Planning Proposal will have on changes in land use as the decision whether a development is primarily residential or primarily commercial will generally be left to the market.

Despite this flexibility, it is not anticipated that the LEP amendment will result in a significant number of developments seeking to provide more commercial floor space. This is due to the current relative value of residential floor space. This trend can be seen in the majority of

recent developments which have sought to maximise their residential floor space at the expense of non-residential floor space. This trend is expected to continue.

Also of note is that while removal of the maximum non-residential floor space controls would provide the opportunity for developments to provide greater commercial floor space relative to residential floor space, it will not allow for a significant overall increase in floor space. This is because the majority of existing built form controls which dictate achievable floor space, such as building height controls, will remain unamended by this proposal.

Any changes to land use and trip generation that do occur as a result of this Planning Proposal are considered to be acceptable from a transport and accessibility perspective given that all land zoned *B4 Mixed Use* in the North Sydney LGA is located in highly accessible areas. The location of more densely populated *B4 Mixed Use* zones along major transport corridors and in local centres is part of North Sydney's long tradition of integrating transport and land use planning with the aim of reducing trip generation and promoting sustainable transport.

Consistent with this approach, Council recently adopted the St Leonards/Crows Nest Planning Study - Precincts 2 & 3 which will facilitate greater density within walking distance of St Leonards railway station. Part of this initiative involves capping traffic generation to existing levels despite increasing density. This is being achieved by reducing on-site parking rates.

It should be noted that the subregional planning process is currently underway for the Northern Subregion and includes input from Transport for NSW. As this process is likely to set population/job targets, it would be the appropriate forum to undertake holistic transport planning as it relates to land use and density.

Based on the findings above, the request to undertake a Traffic and Accessibility Assessment and incorporate its findings into the Planning Proposal is considered unwarranted in this instance. Accordingly, no amendment to the Planning Proposal is recommended.

5. Conclusion

The Planning Proposal seeks to amend NSLEP 2013 as follows:

- to permit 'residential flat buildings' with development consent in the *B4 Mixed Use* zone, but only if they are provided as part of mixed use development and achieve active street frontages;
- to remove the maximum non-residential floor space ratio requirement over land subject to clause 4.4A; and
- to exclude 'serviced apartments' from the calculation of 'non-residential floor space' under subclause 4.4A(8).

A minor amendment to the Planning Proposal is recommended which introduces a threshold number for serviced apartments that will enable viable serviced apartment operations with an employment function to count towards non-residential floor space calculations. This change is considered minor in nature and does not warrant re-exhibition of the Planning Proposal. It is therefore recommended that Council, support the forwarding of the Planning Proposal as amended to Parliamentary Counsel requesting that the plan be made under the EP&A Act.

The proposed amendments to NSDCP 2013 are required as a consequence of implementing

the Planning Proposal. No changes are recommended to the proposed amendments to NSDCP 2013 as a result of the public exhibition process. It is therefore recommended that Council adopt the proposed amendments to NSDCP 2013 unamended.

**DECISION OF 3659th COUNCIL MEETING
HELD ON 15 DECEMBER 2014**

SUSPEND STANDING ORDERS

It was moved by Councillor Baker, seconded by Councillor Clare and carried unanimously that Standing Orders be suspended and Items GMO03, CIS04, CIS05, CIS06, CLS01, CLS02, CLS03, CLS04, CLS05, CLS07, CLS08, COS01, COS02, COS03, COS05, COS06, COS07, COS08, EPS01, EPS02, OSE01, OSE02, OSE04, OSE05, OSE06, OSE07, OSE08 (Min. No. 543, 547, 548, 549, 553, 554, 555, 556, 557, 559, 560, 562, 563, 564, 566, 567, 568, 569, 570, 571, 581, 582, 584, 585, 586, 587, 588) be voted on “en globo”.

Voting was as follows:

For/Against 10/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Y		Burke		Out
Baker	Y		Marchandean	Y	
Carr	Y		Bevan	Y	
Beregi	Y				

It was moved by Councillor Baker and seconded by Councillor Barbour and carried that Standing Orders be resumed.

Councillor Burke left the meeting at 8.40pm during discussion of Item CIS09 (Minute No. 552) and returned at 8.44pm.

548. CIS05: Planning Proposal - Residential flat buildings in the B4 - Mixed Use zone

Report of Ben Boyd, Executive Strategic Planner

Council has considered a number of development proposals for mixed use developments in the *B4 - Mixed Use* zone under North Sydney Local Environmental Plan 2013 (NSLEP 2013) which incorporate ‘shop top housing’. Shop top housing is the only form of residential accommodation that is permitted in the *B4 - Mixed Use* zone. As part of its consideration of these proposals, an unforeseen issue has arisen whereby Council is not in a position to approve a mixed use development which proposes residential accommodation at the ground floor level of a building, whilst still meeting non-residential floor space and active street frontage requirements under Clause 4.4A of NSLEP 2013. This is due to the definition of shop top housing prohibiting any form of residential accommodation being located at the ground floor levels of the building. This has resulted in Council requesting the amendment of proposals to comply with the definition of shop top housing or refusal of the proposal. To provide increased flexibility and ensure the orderly and economic use and development of land, a Planning Proposal has been prepared that seeks to amend NSLEP 2013 as follows:

- include residential flat buildings as a permissible use with development consent in the *B4 - Mixed Use* zone; and
- include a new local clause within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible if they are provided as part of mixed use development and achieve active street frontages.

The Planning Proposal is supported as it:

- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;

- generally complies with the Department of Planning's '*A guide to preparing planning proposals*' (October 2014);
- is unlikely to result in any adverse impacts on the environment or wider community;
- will not impact on Council's ability to provide sufficient levels of employment floor space;
- will not impact on the ability to provide active street frontages; and
- will provide increased flexibility for the redevelopment of land in the B4 - Mixed use zone.

The Planning Proposal is considered to be satisfactory and should be forwarded to the Department of Planning and Environment for Gateway Determination.

If implemented, the Planning Proposal will also have implications for the application of North Sydney Development Control Plan 2013 (NSDCP 2013). To improve certainty as to which sections of NSDCP 2013 apply when a mixed use development incorporating a residential flat building is proposed, an amendment to Section 1 to Part B of NSDCP 2013 is recommended.

Recommending:

- 1. THAT** Council resolves to adopt the attached Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
- 2. THAT** Council resolves to adopt the attached draft amendment to North Sydney Development Control Plan 2013 and place that draft amendment on public exhibition concurrently with the Planning Proposal.

RESOLVED:

- 1. THAT** Council resolves to adopt the attached Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
- 2. THAT** Council resolves to adopt the attached draft amendment to North Sydney Development Control Plan 2013 and place that draft amendment on public exhibition concurrently with the Planning Proposal.

**Report to General Manager**

Attachments:

1. Planning Proposal - Residential flat buildings in the B4 - Mixed Use zone
2. Draft Amendment to NSDCP 2013

SUBJECT: Planning Proposal - Residential flat buildings in the B4 - Mixed Use zone**AUTHOR:** Ben Boyd, Executive Strategic Planner**ENDORSED BY:** Joseph Hill, Director City Strategy**EXECUTIVE SUMMARY:**

Council has considered a number of development proposals for mixed use developments in the *B4 - Mixed Use* zone under North Sydney Local Environmental Plan 2013 (NSLEP 2013) which incorporate 'shop top housing'. Shop top housing is the only form of residential accommodation that is permitted in the *B4 - Mixed Use* zone. As part of its consideration of these proposals, an unforeseen issue has arisen whereby Council is not in a position to approve a mixed use development which proposes residential accommodation at the ground floor level of a building, whilst still meeting non-residential floor space and active street frontage requirements under Clause 4.4A of NSLEP 2013. This is due to the definition of shop top housing prohibiting any form of residential accommodation being located at the ground floor levels of the building. This has resulted in Council requesting the amendment of proposals to comply with the definition of shop top housing or refusal of the proposal.

To provide increased flexibility and ensure the orderly and economic use and development of land, a Planning Proposal has been prepared that seeks to amend NSLEP 2013 as follows:

- include residential flat buildings as a permissible use with development consent in the *B4 - Mixed Use* zone; and
- include a new local clause within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible if they are provided as part of mixed use development and achieve active street frontages.

The Planning Proposal is supported as it:

- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- generally complies with the Department of Planning's 'A guide to preparing planning proposals' (October 2014);
- is unlikely to result in any adverse impacts on the environment or wider community;
- will not impact on Council's ability to provide sufficient levels of employment floor space;
- will not impact on the ability to provide active street frontages; and

Report of Ben Boyd, Executive Strategic Planner

Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

(2)

- will provide increased flexibility for the redevelopment of land in the B4 - Mixed use zone.

The Planning Proposal is considered to be satisfactory and should be forwarded to the Department of Planning and Environment for Gateway Determination.

If implemented, the Planning Proposal will also have implications for the application of North Sydney Development Control Plan 2013 (NSDCP 2013). To improve certainty as to which sections of NSDCP 2013 apply when a mixed use development incorporating a residential flat building is proposed, an amendment to Section 1 to Part B of NSDCP 2013 is recommended.

FINANCIAL IMPLICATIONS:

Nil.

RECOMMENDATION:

- 1. THAT** Council resolves to adopt the attached Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
 - 2. THAT** Council resolves to adopt the attached draft amendment to North Sydney Development Control Plan 2013 and place that draft amendment on public exhibition concurrently with the Planning Proposal.
-

Report of Ben Boyd, Executive Strategic Planner
 Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

(3)

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction : 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence
 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

Direction : 3. Our Economic Vitality

Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy

BACKGROUND

Since the commencement of North Sydney Local Environmental Plan 2013 (NSLEP 2013), Council has considered a number of proposals for mixed use developments in the B4 -*Mixed Use* zone generally incorporating commercial premises at the lowest levels of the building with residential apartments above (in the form of shop top housing). However, some of these proposals have been refused or required amendment due to the restrictive definition of '*shop top housing*' which prevents the location of dwellings at the ground or lower ground levels of a mixed use building.

The issue has predominantly arisen where a property has a substantial fall across a site and where there would be more than one level of the building having ground level access (refer to Figures 1 and 2). In addition, the issue becomes further exacerbated where a site is affected by a generally low non-residential floor space ratio (e.g. a minimum requirement of less than 0.5:1) which forces a site to take on additional commercial floor space where it may not be financially viable or desirable to do so.

CONSULTATION REQUIREMENTS

Should Council determine that the Planning Proposal can proceed, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal.

SUSTAINABILITY STATEMENT

The following table provides a summary of the key sustainability implications:

QBL Pillar	Implications
Environment	<ul style="list-style-type: none"> No anticipated impacts.
Social	<ul style="list-style-type: none"> If implemented, the Planning Proposal could result in the provision of additional residential accommodation without impacts upon the provision of employment.

Report of Ben Boyd, Executive Strategic Planner
 Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

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QBL Pillar	Implications
Economic	<ul style="list-style-type: none"> If implemented, it is considered that the ability to redevelop properties will be greatly improved provided through increased flexibility in the planning controls.
Governance	<ul style="list-style-type: none"> No anticipated impacts.

DETAIL

1. Proposed LEP Amendment

The primary purpose of this Planning Proposal is to improve the flexibility of the existing planning controls in the *B4 - Mixed Use* zone under North Sydney Local Environmental Plan 2013 (NSLEP 2013). In particular, it is to allow residential accommodation to be provided at the ground floor and lower ground floor levels, where that residential accommodation does not prevent the provision of active street frontages or the meeting of the non-residential floor space ratio range controls.

The Planning Proposal seeks to achieve this by amending NSLEP 2013 as follows:

1. Include residential flat buildings as a permissible use with development consent in the *B4 - Mixed Use* zone. It is proposed to achieve this by inserting the words '*Residential flat buildings;*' after the words '*Registered clubs;*' within the *B4 - Mixed Use* zone of the Land Use Table located at the end of Part 2 to NSLEP 2013;
2. That a local clause be inserted within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible with consent if they are provided as part of mixed use development and achieve active street frontages. The suggested wording for the proposed local clause is as follows:

6.# Residential flat buildings in Zone B4 Mixed Use

- (1) *The objective of this clause is to permit additional compatible uses within Zone B4 Mixed Use but only if that use does not impact on the activation of street frontages.*
- (2) *Development consent must not be granted for development for the purposes of residential flat buildings on land in Zone B4 Mixed Use unless:*
 - (a) *the residential flat building forms part of a mixed use development; and*
 - (b) *the consent authority is satisfied that any dwelling within the mixed use development:*
 - (i) *is located above the ground floor level; or*
 - (ii) *away from any street frontage at the ground floor level, of the building in which the residential flat building is located.*

2. Planning Proposal Structure

The Planning Proposal (Refer to Attachment 1) is considered to be generally in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 and the Department of Planning and Environment's (DPE) '*A guide to preparing*

Report of Ben Boyd, Executive Strategic Planner
Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

(5)

planning proposals' (2012). In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
- An explanation of the provisions that are to be included in the proposed local environmental plan;
- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken on the Planning Proposal.

3. Justification of the Planning Proposal

The proposed LEP amendment as detailed in the attached Planning Proposal will enable increased flexibility in how a site within the *B4 - Mixed Use* zone can be developed whilst still seeking to maintain minimum levels of employment floor space and the provision of active street frontages. Furthermore, the proposed amendment helps to achieve the aims and objectives of the EP&A Act by enabling the economic and orderly development of land.

4. Proposed DCP Amendment

Section 1.1.2 to Part B of North Sydney Development Control Plan 2013 (NSDCP 2013) states that Section 1 - *Residential Development* to Part B of NSDCP applies to development applications for the purposes of residential accommodation, including 'residential flat buildings'.

Section 2.1.2 to Part B of NSDCP 2013 states that Section 2 - *Commercial and Mixed Use Development* to Part B of NSDCP 2013 applies to development for any purpose in the *B1 - Neighbourhood Centre*, *B3 - Commercial Core*, *B4 - Mixed Use*, and *SP2 - Infrastructure* (in certain circumstances) zones and non-residential development in the *IN2 - Light Industrial* zone.

As the Planning Proposal relates to the development for residential flat buildings in the *B4 - Mixed Use* zone, there appears to be a conflict between Sections 1 and 2 to Part B of NSDCP 2013. To remove any confusion, it is proposed to amend Section 1.1.2 to Part B of NSDCP 2013 to specifically exclude the application of Section 1 to Part B of NSDCP 2013 where residential flat buildings are proposed in the *B4 - Mixed Use* zone.

A copy of the proposed amendment is provided in Attachment 2 to this report.

5. Conclusion

The Planning Proposal seeks to amend NSLEP 2013 such that it improves the flexibility of the existing planning controls in the *B4 - Mixed Use* zone. In particular, it is to allow residential accommodation to be provided at the ground floor and lower ground floor levels, where that residential accommodation does not prevent the provision of active street frontages or the meeting of the non-residential floor space ratio range controls.

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The relevant requirements under s.55 of the EP&A Act and the matters identified in the Department of Planning's '*A guide to preparing planning proposals*' (October 2012) have been adequately addressed in the Planning Proposal. The proposal is appropriate and is adequately justified.

It is therefore recommended that Council support the forwarding of the Planning Proposal to the Department of Planning and Environment, seeking a Gateway Determination under s56 of the EP&A Act 1979.

In addition, if implemented, the Planning Proposal will have implications for NSDCP 2013. To improve certainty over which sections of NSDCP 2013 apply when a mixed use development incorporating a residential flat building is proposed, an amendment to Section 1 to Part B of NSDCP 2013 is recommended.

**DECISION OF 3659th COUNCIL MEETING
HELD ON 15 DECEMBER 2014**

550. CIS07: North Sydney Economic Development Strategy and associated Planning Proposals

Report of Mark Yee, Strategic Planner

Council has commenced preliminary investigations to inform preparation of the 'North Sydney Economic Development Strategy'. The strategy is identified as project '3.1.2.1.1 Prepare Economic Development Strategy' in Council's Delivery Program.

North Sydney is one of the State's most economically important areas with the North Sydney CBD forming part of Global Sydney and the Global Economic Corridor as identified under the Sydney Metropolitan Strategy. To maintain this status, Council must lead by actively planning for economic growth and developing clear strategies. This should include a clear commitment to planning for the provision of jobs.

The primary objective of the Economic Development Strategy is to outline Council's plan for economic development in a consolidated policy document. In particular, the Strategy will:

- Provide an understanding of the existing operation of all employment land in the North Sydney LGA;
- Identify recent development trends and their impact on the provision of employment generating floor space;
- Provide an understanding of the market conditions which affect existing economic activity in North Sydney LGA and greater Sydney;
- Provide an understanding of the opportunities and constraints for future employment growth in the North Sydney LGA;
- Identify the demand for employment generating floor space in the North Sydney LGA;
- Address state government targets;
- Set strategies to actively encourage the provision of additional employment generating floor space and uses.

A key issue to be addressed is the decline in employment generating floor space (commercial floor space) being provided in the *B4 Mixed Use* zone. Preliminary research indicates that since 2007 there has been a loss of approximately 80,000sqm (as approved) of commercial floor space in the *B4 Mixed Use* zone, with developers seeking to maximise the amount of residential floor space.

From the preliminary research, Council staff have identified two amendments to North Sydney Local Environmental Plan 2013 (NSLEP 2013), which will support the provision of employment floor space as an interim measure whilst the broader *Economic Development Strategy* is being prepared. These amendments include:

- Amending clause 4.4A to NSLEP 2013 such that the maximum non-residential floor space requirements are removed, thereby providing greater flexibility regarding the provision of employment generating floor space.
- Amending clause 4.4A (8) to NSLEP 2013 to exclude serviced apartments from the calculation of non-residential floor space, thereby preventing the non-residential floor space ratio controls from being undermined where serviced apartments are proposed and protecting employment floor space in the *B4 Mixed Use* zone.

Two Planning Proposals have been prepared and form Attachments 1 and 2 to this report. It is recommended that Council forward the attached Planning Proposals to the Department of Planning and Environment seeking a Gateway Determination.

Funding for the preparation of the Economic Development Strategy has been identified in the 2014/15 and 2015/16 budget.

Recommending:

1. THAT Council notes the commencement of the *North Sydney Economic Development Strategy*.

2. THAT Council resolves to forward the two attached Planning Proposals to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.

It was moved by Councillor Baker and seconded by Councillor Barbour

1. THAT Council notes the commencement of the *North Sydney Economic Development Strategy*.

2. THAT Council resolves to forward the two attached Planning Proposals to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.

3. THAT Council staff be congratulated on this Strategy.

4. THAT a Councillor briefing on the Strategy be held in the New Year.

It was moved as an amendment by Councillor Gibson and seconded by Councillor Bevan

1. THAT the matter be deferred to the earliest Councillor Briefing in the New Year for further information on possible impacts on the revitalisation of the North Sydney CBD.

The amendment was put and **lost**

Voting on the amendment was as follows: For/Against 3/8

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour		N
Reymond		N	Morris		N
Clare		N	Burke	Y	
Baker		N	Marchandean		N
Carr		N	Bevan	Y	
Beregi		N			

The Motion was put and **carried**.

Voting was as follows: For/Against 9/2

Councillor	Yes	No	Councillor	Yes	No
Gibson		N	Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Y		Burke	Y	
Baker	Y		Marchandean	Y	
Carr	Y		Bevan		N
Beregi	Y				

RESOLVED:

1. THAT Council notes the commencement of the *North Sydney Economic Development Strategy*.

2. THAT Council resolves to forward the two attached Planning Proposals to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.

3. THAT Council staff be congratulated on this Strategy.

4. THAT a Councillor briefing on the Strategy be held in the New Year.



Report to General Manager

Attachments:

1. Planning Proposal - Removal of maximum non-residential FSR requirements
2. Planning Proposal - Serviced apartments in the B4 Mixed Use zone

SUBJECT: North Sydney Economic Development Strategy and associated Planning Proposals

AUTHOR: Mark Yee, Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

Council has commenced preliminary investigations to inform preparation of the '*North Sydney Economic Development Strategy*'. The strategy is identified as project '*3.1.2.1.1 Prepare Economic Development Strategy*' in Council's Delivery Program.

North Sydney is one of the State's most economically important areas with the North Sydney CBD forming part of Global Sydney and the Global Economic Corridor as identified under the Sydney Metropolitan Strategy. To maintain this status, Council must lead by actively planning for economic growth and developing clear strategies. This should include a clear commitment to planning for the provision of jobs.

The primary objective of the Economic Development Strategy is to outline Council's plan for economic development in a consolidated policy document. In particular, the Strategy will:

- Provide an understanding of the existing operation of all employment land in the North Sydney LGA;
- Identify recent development trends and their impact on the provision of employment generating floor space;
- Provide an understanding of the market conditions which affect existing economic activity in North Sydney LGA and greater Sydney;
- Provide an understanding of the opportunities and constraints for future employment growth in the North Sydney LGA;
- Identify the demand for employment generating floor space in the North Sydney LGA;
- Address state government targets;
- Set strategies to actively encourage the provision of additional employment generating floor space and uses.

A key issue to be addressed is the decline in employment generating floor space (commercial floor space) being provided in the *B4 Mixed Use* zone. Preliminary research indicates that since 2007 there has been a loss of approximately 80,000sqm (as approved) of commercial

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

(2)

floor space in the *B4 Mixed Use* zone, with developers seeking to maximise the amount of residential floor space.

From the preliminary research, Council staff have identified two amendments to North Sydney Local Environmental Plan 2013 (NSLEP 2013), which will support the provision of employment floor space as an interim measure whilst the broader *Economic Development Strategy* is being prepared. These amendments include:

- Amending clause 4.4A to NSLEP 2013 such that the maximum non-residential floor space requirements are removed, thereby providing greater flexibility regarding the provision of employment generating floor space.
- Amending clause 4.4A (8) to NSLEP 2013 to exclude serviced apartments from the calculation of non-residential floor space, thereby preventing the non-residential floor space ratio controls from being undermined where serviced apartments are proposed and protecting employment floor space in the *B4 Mixed Use* zone.

Two Planning Proposals have been prepared and form Attachments 1 and 2 to this report. It is recommended that Council forward the attached Planning Proposals to the Department of Planning and Environment seeking a Gateway Determination.

FINANCIAL IMPLICATIONS:

Funding for the preparation of the Economic Development Strategy has been identified in the 2014/15 and 2015/16 budget.

RECOMMENDATION:

- 1. THAT** Council notes the commencement of the *North Sydney Economic Development Strategy*.
 - 2. THAT** Council resolves to forward the two attached Planning Proposals to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
-

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

(3)

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence

Direction: 3. Our Economic Vitality

Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy
3.2 North Sydney CBD is one of Australia's largest commercial centres

BACKGROUND

The strategy is identified as project '3.1.2.1.1 Prepare Economic Development Strategy' in Council's Delivery Program and is set to be delivered at the completion of 2015.

The primary objective of the Strategy will be to outline Council's plan for economic development in a consolidated policy document.

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

SUSTAINABILITY STATEMENT

The following table provides a summary of the key sustainability implications:

QBL Pillar	Implications
Environment	<ul style="list-style-type: none"> The protection of employment floor space in existing areas will assist the ongoing protection of environmental lands.
Social	<ul style="list-style-type: none"> The provision/retention of employment in the North Sydney LGA is a vital issue for both residents and workers.
Economic	<ul style="list-style-type: none"> The development of an 'Economic Development Strategy' is necessary for ensuring the continued economic growth of the North Sydney LGA.
Governance	<ul style="list-style-type: none"> The strategy is identified as project '3.1.2.1.1 Prepare Economic Development Strategy' in Council's Delivery Program.

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

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DETAIL

1. INTRODUCTION

Council has commenced preliminary investigations to inform preparation of the 'North Sydney Economic Development Strategy'. North Sydney is one of the State's most economically important areas with North Sydney identified as part of Global Sydney and the Global Economic Corridor in the Sydney Metropolitan Strategy.

The economic strength of the North Sydney LGA is largely based on the area's proximity to the Sydney CBD and other commercial centres, its excellent transport links and its access to a highly skilled workforce.

The North Sydney LGA provides valuable employment floor space with the 2013 Global Competitive Index (University of Canberra and the Commonwealth Department of Immigration and Citizens) finding that the North Sydney LGA has the Sydney region's highest proportion of workers in knowledge-intensive industries.

However for North Sydney retain its status as the principal economic engine of Sydney's North Shore, Council must be proactive in planning for economic growth. This requires the development of robust strategies and a clear commitment to the provision of additional jobs. This work is required to ensure that North Sydney can continue to compete with other commercial centres such as the Sydney CBD and Macquarie Park/North Ryde.

2. STUDY AREA

The Strategy will address all land in the North Sydney LGA which can provide employment floor space. The sites are located in the following zones:

- B3 Commercial Core
- B4 Mixed Use
- B1 Neighbourhood Centre
- IN2 Light Industrial
- IN4 Working Waterfront
- SP1 Special Activities
- SP2 Infrastructure

These zones are highlighted in the following map.

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

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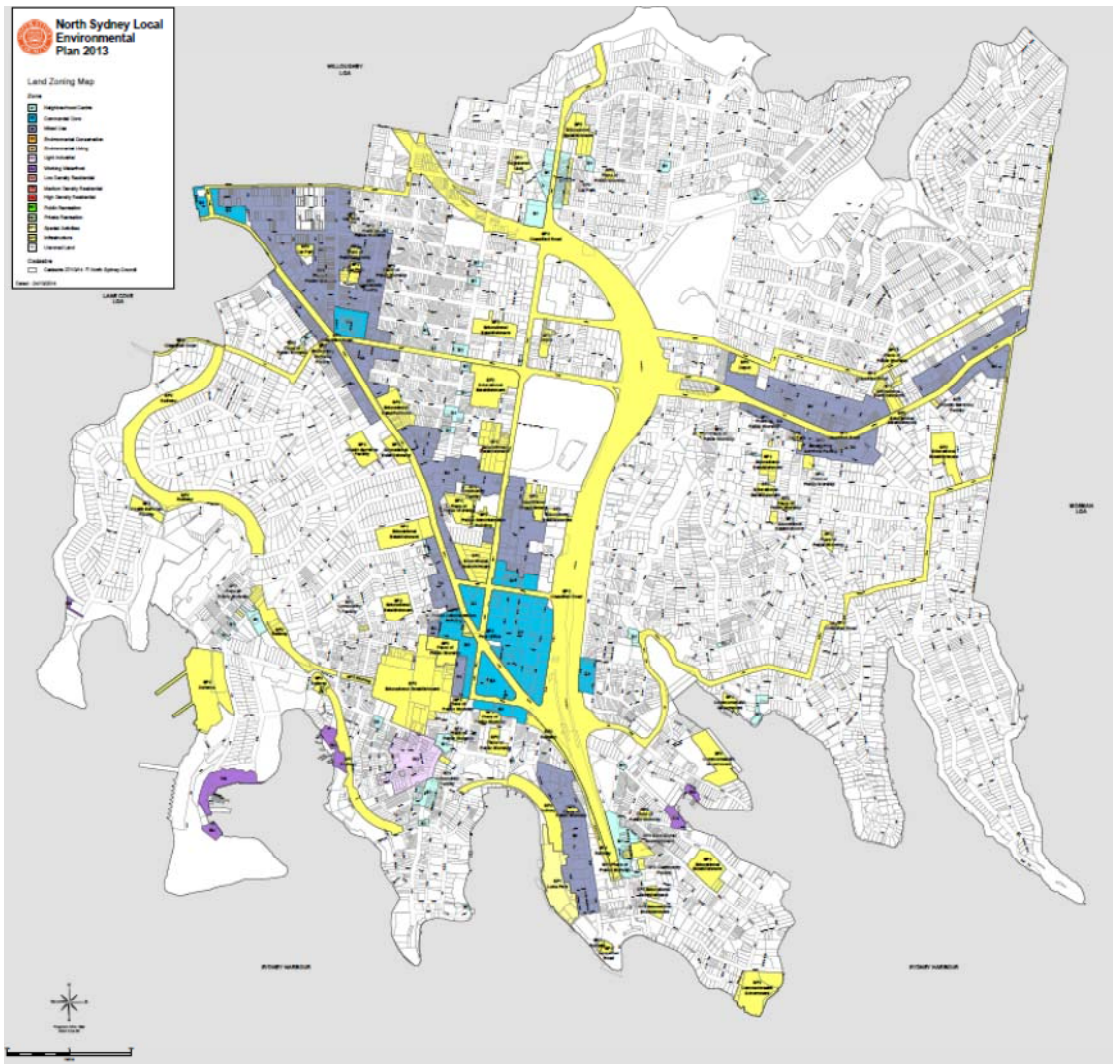


Figure 1: Extract of zoning map showing zones capable of accommodating employment generating development

The majority of jobs are provided in the major centres of North Sydney, St Leonards/Crows Nest and Milsons Point. Jobs are also located in other pockets such the neighbourhood shops and along foreshore areas.

3. NEED TO UNDERTAKE PROJECT

3.1 Delivery Program

The strategy is identified as project '3.1.2.1.1 Prepare Economic Development Strategy' in Council's Delivery Program. Funding for this project has been incorporated in the 2014/15 and 2015/16 budgets.

3.2 Existing Economic Issues

The importance of developing an Economic Development Strategy has increased due to the decline in employment floor space in the *B4 Mixed Use* zone. Outside of the *B3 Commercial Core* zone, this is the principle zone which provides significant employment capacity in the LGA.

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

(6)

Preliminary research indicates that there has been a loss of approximately 80,000sqm (as approved) of commercial floor space in the *B4 Mixed Use* zone since 2007. These losses have predominantly occurred in St Leonards/ Crows Nest and Milsons Point.

These losses are often permitted by NSLEP 2013 where minimum non-residential FSR requirements are below the existing quantum provided.

Significant losses have been approved at the following sites:

Address	Loss of non-residential floorspace
74-80 Alfred Street, Milsons Point	8,489m ²
1A Eden Street, North Sydney	1,826m ²
225-235 Pacific Highway, North Sydney	2,283m ²
100 Christie Street, St Leonards	5,583m ² *
200-220 Pacific Highway Crows Nest	13,533m ²
144-154 Pacific Highway, North Sydney	2,265m ²
221 Miller Street, North Sydney	1,151m ²
225 Miller Street, North Sydney	2,310m ²
239-247 Pacific Highway, North Sydney	1,359m ²
211-213 Pacific Highway, North Sydney	3,826m ²
225-235 Pacific Highway, North Sydney	2,283m ²
10-18 Cliff Street, Milsons Point	200m ²
545 Pacific Highway, St Leonards	535m ²

* This site was zoned *Mixed Use* at the time of approval under NSLEP 2001, however is now zoned *B3 Commercial Core* under NSLEP 2013

This decline of employment floor space is primarily the result of recent market conditions where the value of residential floor space has far exceeded the value of commercial floor space. This has seen developers seeking to maximise the amount of residential floor space in the *B4 Mixed Use* zone, with minimal employment floor space being provided. This has resulted in two noticeable trends:

- Proponents seeking developments below the existing minimum non residential FSR requirement; and/or
- Developments proposing serviced apartments, which provide negligible employment generation, to meet the non-residential FSR requirements.

Section 7 of this report addresses these issues in further detail.

3.3 Employment Targets

Targets for employment floor space have been identified in State Government planning documents, principally the Sydney Metropolitan Plan/Strategy and the corresponding draft subregional strategy.

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

(7)

Council has continually strived to meet the targets outlined in these documents, primarily through the preparation of NSLEP 2013. To date the clearest employment target for the North Sydney LGA has been set within the draft Inner North Subregional Strategy (INSS).

For the North Sydney LGA the draft INSS set a job target of 15,000 additional jobs by 2031, with 11,000 jobs of these jobs to be within the North Sydney Centre. This results in a target of an additional 4,000 jobs for the remainder the North Sydney LGA.

Council should comfortably meet the jobs target for the North Sydney Centre. However given the overall loss of employment generating floor space in the *B4 Mixed Use* zone, Council is in danger of not being able to meet the employment target for areas outside of the North Sydney Centre.

The 'Economic Development Strategy' will set clear strategies to ensure that North Sydney will meet employment targets. It is anticipated that new targets will be provided once the draft 'Metropolitan Strategy for Sydney 2011-2031' is finalised and is supported by a corresponding subregional plan.

4. OBJECTIVES OF THE STRATEGY

The primary objective of the Economic Development Strategy is to outline Council's plan for economic development in a consolidated policy document. Other important objectives are to:

- Understand the existing operation of all employment land in the North Sydney LGA;
- Identify recent development trends and their impact on the provision of employment generating floor space;
- Understand the market conditions which affect existing economic activity in North Sydney LGA and greater Sydney;
- Understand the opportunities and constraints for future employment growth in the North Sydney LGA;
- Identify the demand for employment generating floor space in the North Sydney LGA;
- Address state government targets;
- Set strategies to actively encourage the provision of additional employment generating floor space and uses.

5. PROJECT TASKS

The Strategy will be completed in the following stages:

- **Stage 1** - Analysis of the existing operation of employment zones;
- **Stage 2** - Economic market analysis; and
- **Stage 3** - Setting of employment targets and developing strategies to meet these targets.

These stages are discussed in more detail in the following subsections.

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

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5.1 Stage 1 - Audit

The first stage of the Strategy is to undertake a comprehensive audit of the current operation of all employment floor space. The analysis will assess the current supply of employment floor space and analyse recent development trends.

5.1.1 Database of existing floor space

A database of all employment floor space will be created. This database will detail:

- The location of all employment generating sites;
- The total supply of employment generating floor space/land;
- The amount of additional employment generating floor space which can be provided under Council's existing planning controls;
- Current occupancy/vacancy rates;
- Employment densities (i.e. workers/sum);
- What industries/land uses operate in North Sydney.

The databases will provide an insight into the existing operation/performance of all employment floor space in North Sydney. In particular, this database will reveal the current supply of employment floor space and what capacity exists for additional floor space to be provided under the existing controls.

The database will also highlight what industries are successfully operating within the LGA and where they are clustered. This information will assist Council when determining what forms of development Council should actively plan for and promote in the LGA.

5.1.2 Analysis of Development Trends

Recent development trends in the North Sydney LGA will be analysed. Focus will be given to the identified trend of significant employment floor space losses in the *B4 Mixed Use* zone.

The study will investigate where these losses have occurred and what industries have been leaving the LGA. The analysis will also examine what employment floor space is being provided in new developments.

5.2 Stage 2 - Market Analysis

Once the comprehensive analysis of employment generating land is completed, a property economics consultant will be engaged to undertake a detailed market analysis. Council has allocated \$100,000 in the 2015/16 budget to engage a consultant to undertake this work.

The market analysis will examine the economic operation of the North Sydney LGA and compare it to overall market trends throughout Sydney. The analysis will then outline the future market demand for employment generating floor space for the North Sydney LGA.

5.2.1 Identify Market Constraints

The market analysis will also identify the constraints that may exist in providing additional employment floor space. Recent experience has shown that whilst there is often a demand for employment floor space, market or regulatory conditions may exist that may limit the supply of such floor space.

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

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The *Market Feasibility Study* prepared by SGS Economics and Planning as part of the St Leonards/Crows Nest Planning Study for Precincts 2 and 3 revealed that whilst there would be a demand for non-residential floor space in the precinct, as the value of residential floor space far exceeded non-residential floor space and as such developers have little incentive to provide non-residential floor space.

Should the study identify existing economic constraints, recommendations should be provided as to how to address these constraints and strengthen the employment function of the North Sydney LGA.

5.3 5.3 Stage 3 - Targets and Strategies

Once the market analysis is completed, the next stage of the Strategy will see employment targets proposed for the North Sydney LGA. These targets will outline:

- The overall target for employment generating floor space for the North Sydney LGA;
- Where this floor space will be provided, with separate targets for each suburb;
- What forms of land use should provide this floor space; and
- Whether Council needs to amend its planning controls to meet these targets.

5.3.1 Strategies to encourage Employment Floor space

Once the targets are set Council will also need to devise strategies to encourage the provision of greater employment generating floor space. These strategies should build on the recommendations identified in the market analysis study.

As stated earlier, there may be constraints for the provision of additional employment floor space. Council may therefore need to devise strategies to address these constraints such as planning incentives (e.g. increasing height limits or floor space bonuses). Council may also need to consider other innovative strategies to make the North Sydney LGA more appealing to businesses and workers such as marketing, public domain upgrades and other initiatives.

6. OTHER COUNCIL DOCUMENTS

Council has completed a number of studies in recent years which have examined economic activity and the provision of employment generating land. However, all of these studies have been focused around a particular location and have not addressed or planned for economic development in a comprehensive basis across the entire LGA.

The Economic Development Strategy will bring together many of the findings/strategies from these studies into a consolidated strategy for the whole of the North Sydney LGA. In particular, it will incorporate the work from the following previously completed studies:

- North Sydney Commercial Centre Study;
 - North Sydney Centre Economic Study;
 - St Leonards/Crows Nest Planning Study for Precincts 1, 2 & 3;
 - Crows Nest South Planning Study; and
 - Cliff Street Planning Study.
-

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

(10)

The Strategy will also feed into future projects such as the ‘*Capacity, Built Form and Land Use Study*’ which will be undertaken as part of the *North Sydney Centre Review*. That Study will review the current supply of employment floor space in the North Sydney Centre and identify if additional employment floor space is needed and how it should be provided.

7. INTERIM ACTIONS

It is anticipated that the Economic Development Strategy will be finalised in 2015. However, there is potential for future losses of employment floor space prior to the Strategy being completed. Council staff have identified two interim measures to prevent further losses of employment floor space through amendments to NSLEP 2013 via the Planning Proposal process:

- Amending Clause 4.4A to remove the maximum requirements to the non-residential floor space ratio ranges;
- Amending Clause 4.4A to exclude serviced apartments from the calculation of non-residential floor space.

Details of the proposed two amendments are discussed in the following two subsections.

7.1 Planning Proposal - Removal of the maximum non-residential FSR requirement

This Planning Proposal forms Attachment 1 to this report.

7.1.1 Proposed LEP Amendment

The primary purpose of this Planning Proposal is to improve the flexibility of the existing planning controls by removing a restriction on the provision of employment floor space. In particular, it seeks to remove the maximum non-residential FSR requirements from clause 4.4A to NSLEP 2013 leaving only minimum non-residential FSR requirements.

The Planning Proposal seeks to achieve this by amending NSLEP 2013 as follows:

1. Amending clause 4.4A to remove the maximum non-residential floor space ratio requirements from affected lands;
2. Amending the definition of Non-Residential Floor Space Ratio Range Map within the Dictionary to NSLEP 2013; and
3. Replacement of the Non-Residential Floor Space Ratio Range Map with the Non-Residential Floor Space Ratio Map.

7.1.2 Planning Proposal Structure

The Planning Proposal (Refer to Attachment 1) is considered to be generally in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the Department of Planning and Environment’s (DPE) ‘*A guide to preparing planning proposals*’ (2012). In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
- An explanation of the provisions that are to be included in the proposed local environmental plan;

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

(11)

- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken on the Planning Proposal.

7.1.3 Justification of the Planning Proposal

The proposed LEP amendment as detailed in the Planning Proposal (refer to Attachment 1) will enable increased flexibility in how a site can be developed without adversely restricting the ability to develop a fully non-residential development within the maximum building envelopes. Furthermore, the proposed amendment helps to achieve the aims and objectives of the EP&A Act by enabling the economic and orderly development of land.

7.2 Planning Proposal - Serviced Apartments in the B4 Mixed Use zone

This Planning Proposal forms Attachment 2 to this report.

7.2.1 Proposed Amendment

The primary purpose of this Planning Proposal is to prevent the provision of unviable serviced apartments and undermining of the objectives and controls to the provision of non-residential floor space in the B4 Mixed Use zone, that seek to protect and promote employment generation. In particular, it seeks to remove serviced apartments from the calculations of non-residential floor space.

The Planning Proposal seeks to achieve this by amending NSLEP 2013 as follows:

1. Amending clause 4.4A(1)(d) to reinforce the provision of employment floor space; and
2. Amending clause 4.4A(8) to include serviced apartments as an exclusion in calculating non-residential floor space.

7.2.2 Planning Proposal Structure

The Planning Proposal (Refer to Attachment 2) is considered to be generally in accordance with the requirements under Section 55(2) of the EP&A Act and the DPE's 'A guide to preparing planning proposals' (2012). In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
- An explanation of the provisions that are to be included in the proposed local environmental plan;
- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken on the Planning Proposal.

7.2.3 Justification of the Planning Proposal

The proposed LEP amendment as detailed in the Planning Proposal (refer to Attachment 2) will help to prevent the potential undermining of the objectives of the *B4 Mixed Use* zone, the objectives of the non-residential floor space ratio control; and the future integrity of an Economic Development Strategy for North Sydney LGA.

Report of Mark Yee, Strategic Planner

Re: North Sydney Economic Development Strategy and associated Planning Proposals

(12)

8. CONCLUSION

Council will commence work on the development of the 'North Sydney Economic Development Strategy' in accordance with the project tasks outlined in this report.

The Strategy will provide a clear direction for the North Sydney LGA to maintain employment, promote economic growth and ensure its position as the economic engine of Sydney's North Shore.

The Planning Proposals support the provision of employment floor space as an interim measure whilst the broader *Economic Development Strategy* is being prepared.



Planning & Environment

Mr Warwick Winn
General Manager
North Sydney Council
PO Box 12
North Sydney NSW 2059

NORTH SYDNEY COUNCIL
RECEIVED DMS

09 FEB 2015

SCANNED DMS

Contact: Nava Sedghi
Phone: (02) 8575 4117
Email: nava.sedghi@planning.nsw.gov.au
Postal: GPO Box 39 SYDNEY NSW 2001

Our ref: PP_2015_NORTH_003_00(15/01478)

Dear Mr Winn

Planning proposal to amend North Sydney Local Environmental Plan 2013

I am writing in response to your request for a Gateway determination under section 56 of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) in respect of the planning proposals to include residential flat buildings as a permissible use within the B4 Mixed Use zone, remove maximum non-residential floor space ratio controls and exclude serviced apartments from the calculation of non-residential floor space under North Sydney Local Environmental Plan 2013.

As delegate of the Minister for Planning, I have now determined the planning proposals should proceed subject to the conditions in the attached Gateway determination. Please note that prior to public exhibition, Council is to consolidate the three individual planning proposals into one proposal for efficiency and clarity purposes.

Plan making powers were delegated to councils by the Minister in October 2012. It is noted that Council has requested to be issued with delegation for this planning proposal. I have considered the nature of Council's planning proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan is to be finalised within 9 months of the week following 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 Local Environmental Plan should be made directly to Parliamentary Counsel's Office 6 weeks prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment's regional team for administrative purposes.

The State Government is committed to reducing the time taken to complete Local Environmental Plans 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 may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

If you have any queries in regard to this matter, I have arranged for Ms Nava Sedghi to assist. Ms Sedghi can be contacted on (02) 8575 4117.

Yours sincerely

Tim Archer
A/Director Metropolitan Delivery (CBD)
Planning Services

Encl: Gateway Determination
Written Authorisation to Exercise Delegation
Attachment 5 – Delegated Plan Making Reporting Template



Gateway Determination

Planning proposal (Department Ref: PP_2015_NORTH_003_00): to include residential flat buildings as a permissible use within the B4 Mixed Use zone, remove maximum non-residential floor space ratio controls and exclude serviced apartments from the calculation of non-residential floor space under North Sydney Local Environmental Plan 2013.

I, the Acting Director, Metropolitan Delivery (CBD) at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* (the EP&A Act) that an amendment to North Sydney Local Environmental Plan 2013 should proceed subject to the following conditions:

1. Prior to public exhibition, Council is to consolidate the three individual planning proposals into one proposal for efficiency and clarity purposes.
2. Prior to public exhibition, Council is to amend the fourth objective of the proposed B4 Mixed Use zone to consider the planning proposal's objective to permit residential flat buildings within the B4 Mixed Use zone.
3. Prior to public exhibition, the planning proposal is to be revised to demonstrate consistency with A Plan for Growing Sydney, released on 14 December 2014.
4. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:
 - (a) the planning proposal is classified as low impact as described in *A Guide to Preparing LEPs (Department of Planning and Environment 2013)* and must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning 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 LEPs (Department of Planning and Environment 2013)*.
5. Consultation is required with Destination NSW under section 56(2)(d) of the EP&A Act. Destination NSW 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.
6. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A 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).

7. A written authorisation to exercise delegation under section 59 of the EP&A Act is issued to Council in relation to the planning proposal.
8. The timeframe for completing the Local Environmental Plan is to be **9 months** from the week following the date of the Gateway determination.

Dated 6th day of February 2015



Tim Archer
A/Director Metropolitan Delivery (CBD)
Planning Services

Delegate of the Minister for Planning



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

North Sydney Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2015_NORTH_003_00	Planning Proposal to include residential flat buildings as a permissible use within the B4 Mixed Use zone, remove maximum non-residential floor space ratio controls, and exclude serviced apartments from the calculation of non-residential floor space under North Sydney Local Environmental Plan 2013.

In exercising the Minister's functions under section 59, the Council must comply with the Department of Planning and Environment's "*A guide to preparing local environmental plans*" and "*A guide to preparing planning proposals*".

Dated 6th day of February 2015

A handwritten signature in blue ink, appearing to read 'Tim Archer'.

Tim Archer
A/Director Metropolitan Delivery (CBD)
Planning Services



Attachment 5 – Delegated plan making reporting template

Reporting template for delegated Local Environmental Plan amendments

Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- The Relevant Planning Authority is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the Relevant Planning Authority should add additional rows to **Table 2** to include this information
- The Relevant Planning Authority must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible Plan Making Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the Relevant Planning Authority's request to have the Local Environmental Plan (the Plan) notified

Table 1 – To be completed by Department of Planning and Environment

Stage	Date/Details
Planning Proposal Number	PP_2015_NORTH_003_00
Date Sent to Department under s56	6 January 2015
Date considered at LEP Review Panel (if applicable)	
Gateway determination date	6 February 2015

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft Plan exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt Plan		
Date Plan made by GM (or other) under delegation		
Date sent to the Department requesting notification		

Table 3 – To be completed by Department of Planning and Environment

Stage	Date/Details
Notification Date and details	

Additional relevant information:



PLANNING PROPOSAL

***Residential flat buildings & serviced
apartments in the B4 Mixed Use zone***

***Removal of maximum non-residential
floor space ratio requirements***

July 2015

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

1 INTRODUCTION

Having assessed a number of development applications under NSLEP 2013 and conducted a number of preliminary development proposal meetings, Council has identified several issues which have the potential to undermine Council's adopted planning objectives or result in poor planning outcomes. Accordingly, Council is seeking to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The primary intent of the Planning Proposal is to:

- improve the flexibility of the existing planning controls in the *B4 Mixed Use* zone by allowing residential accommodation to be provided at the ground floor and lower ground floor levels, where that residential accommodation does not prevent the provision of active street frontages or the meeting of the non-residential floor space ratio range controls;
- prevent the provision of serviced apartments in the *B4 Mixed Use* zone which undermine the objectives of the non-residential floor space ratio controls in the *B4 Mixed Use* zone and do little to promote employment generation; and
- improve the flexibility of the existing planning controls, especially in the *B4 Mixed Use* zone, by removing the maximum non-residential floor space ratio requirement over land subject to clause 4.4A.

The intent of the Planning Proposal can be achieved by:

- amending the fourth objective of the *B4 Mixed Use* zone such that it removes references to residential development only being allowed on the upper levels of mixed use buildings;
- amending the land use table such that 'residential flat buildings' are permissible with development consent in the *B4 Mixed Use* zone;
- amending clause 4.4A to:
 - amend the objectives to promote a focus on the provision of employment floor space;
 - remove the maximum non-residential floor space ratio requirements from affected lands; and
 - amend the definition of '*non-residential floor space ratio*' to exclude serviced apartments from the calculation of non-residential floor space;
- incorporating a new a local clause within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible with consent in the *B4 Mixed Use* zone if they are provided as part of mixed use development and achieve active street frontages;
- amending the definition of *Non-Residential Floor Space Ratio Range Map* within the Dictionary to NSLEP 2013 to delete reference; and
- amending the *Non-Residential Floor Space Ratio Range Map* to NSLEP 2013.

The Planning Proposal has been prepared in accordance with Section 55 of the Environmental Planning and Assessment Act, 1979 (EP&A Act) and the Department of Planning and Environment's (DPE) document "*A guide to preparing planning proposals*" (October 2012).

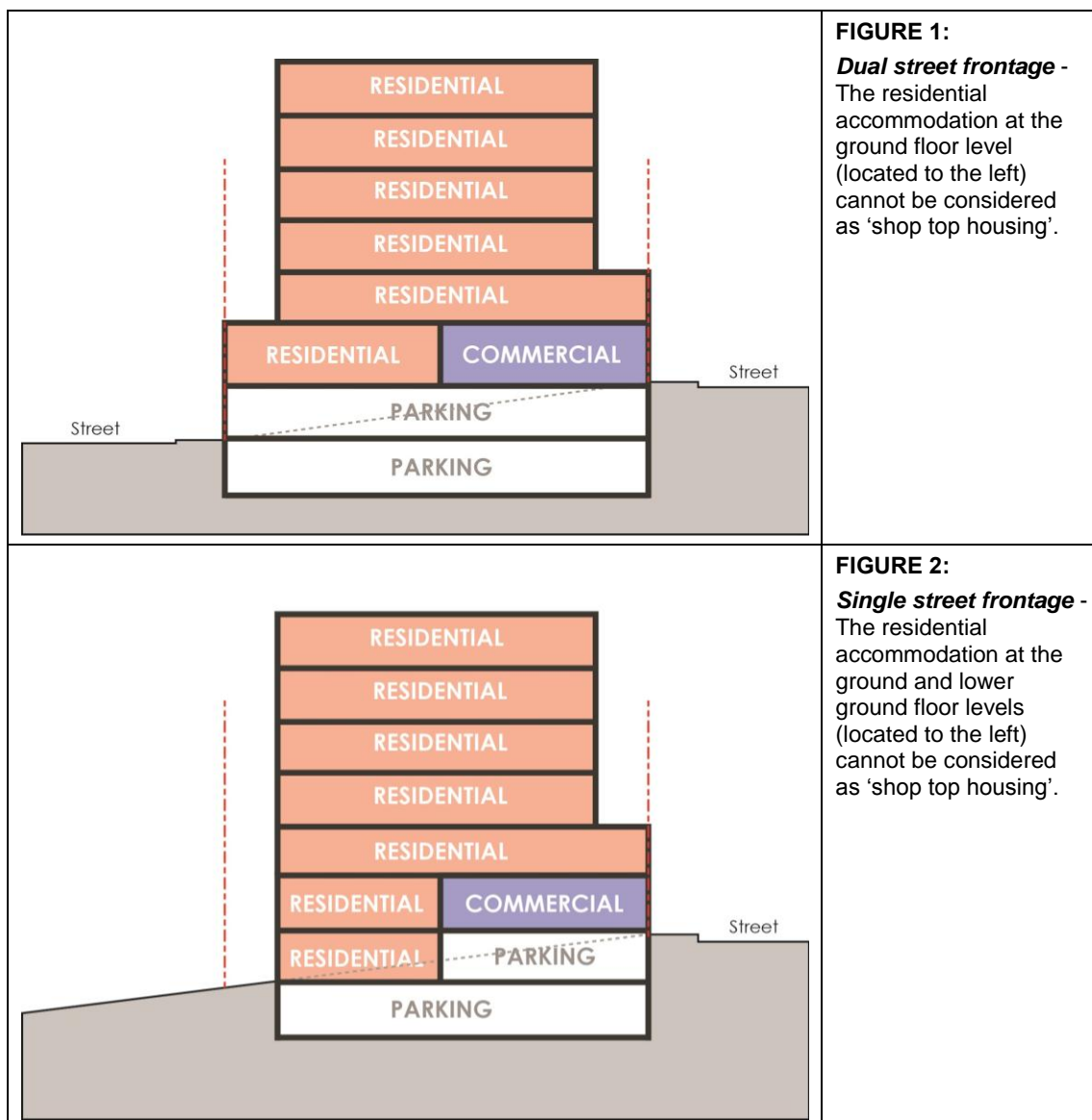
Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

2 BACKGROUND

2.1 Residential flat buildings in the *B4 Mixed Use* zone

Since the commencement of NSLEP 2013, Council has considered a number of proposals for mixed use developments in the *B4 Mixed Use* zone generally incorporating commercial premises at the lowest levels of the building with residential apartments above (in the form of shop top housing). However, some of these proposals have been refused or required amendment before they could be progressed due to the restrictive definition of ‘shop top housing’ which prevents the location of dwellings at the ground or lower ground levels of a mixed use building.

The issue has predominantly arisen where a property has a substantial fall across a site and where there would be more than one level of the building having ground level access (refer to FIGURES 1 and 2). In addition, the issue becomes further exacerbated where a site is affected by a generally low non-residential floor space ratio (e.g. a minimum requirement of less than 0.5:1).



Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

Prior to the gazettal of NSLEP 2013, North Sydney Local Environmental Plan 2001 (NSLEP 2001) permitted proposals which incorporated both residential and non-residential activities in the *Mixed Use* zone. In particular, residential flat buildings were permitted in the zone, but only where developments complied with the requirements of Clause 32 which stated:

32 Design of development

(1) *Design objectives*

The specific objectives of the design of development in the mixed use zone controls are to:

- (a) *promote development containing a mix of residential and non-residential uses, and*
- (b) *protect the amenity and safety of residents, and*
- (c) *concentrate the non-residential component of development in the mixed use zone at the lower levels of a building.*

(2) *Design controls*

A new building in the mixed use zone must not be erected unless:

- (a) *the building contains both residential and non-residential uses, and*
- (b) *the non-residential component of the building is provided at the lower levels of the building and the ground level is not used for residential purposes, except access, and*
- (c) *the residential component of the building is provided with an entrance separate from the entrances to the remainder of the building, and*
- (d) *the building is set back above a podium.*

(3) *Despite any other provision of this plan, any development in the mixed use zone may contain both residential and non-residential uses.*

(4) *Prohibited development*

Development that contravenes subclause (2) (a) is prohibited development.

However, the application of subclause 32(2) did not apply to proposals seeking to convert existing commercial buildings into mixed commercial and residential buildings. Therefore, residential dwellings proposed to be located at the lower levels of a development to convert a commercial building to a mixed commercial and residential building were permitted. In addition, Council had approved a number of development applications for new buildings under NSLEP 2001 with residential development at the ground floor level subject to the lodgement of a satisfactory SEPP 1 objection to the development standard under clause 32(2)(b) of NSLEP 2001.

In 2007, Council resolved to prepare a new comprehensive LEP (NSLEP 2013) in the State government's Standard Instrument Local Environmental Plan (SI LEP) format. Council's primary focus was to translate the existing provisions of NSLEP 2001 into the new SI LEP format, whilst incorporating minor amendments to ensure the meeting of relevant strategic directions. Shop top housing was originally defined under the SI LEP and draft versions of NSLEP 2013 as follows:

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

shop top housing means mixed use development comprising one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises

This definition allowed a similar transition of the existing provisions under NSLEP 2001 into NSLEP 2013, but provided additional flexibility as to where residential accommodation can be accommodated which Council supported. Shop top housing is a mandated use within the *B4 Mixed Use* zone under the SI LEP and NSLEP 2013.

However, on 25 February 2011 the definition of ‘shop top housing’ under the SI LEP was amended as follows:

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

Note. Shop top housing is a type of residential accommodation—see the definition of that term in this Dictionary.

Amendments to the SI LEP automatically amended all LEPs which have been prepared in accordance with the SI LEP format, even those in draft form. This amendment to the SILEP subsequently prohibited residential dwellings from being located at the ground level of a mixed use building.

There have also been a number of Land and Environment Court cases in relation to what comprises shop top housing. In particular, in *Hrsto V Canterbury City Council (No.2)(2014) NSWLEC121* it was ruled that for a development to be classified as shop top housing, the residential apartments must be physically above the level containing the ground floor commercial or retail premises.

A proposed amendment is therefore required to better match equivalent provisions under NSLEP 2001 and to improve the flexibility of the controls where impacts on street activation will not occur.

2.2 Serviced Apartments in the B4 Mixed Use zone

Since the commencement of NSLEP 1989 on 3 November 1989, Council has imposed non-residential floor space ratio controls under its LEPs, with the aim to provide a mixture of uses and to provide a suitable level of employment floor space to assist in meeting employment targets set under regional and subregional strategies.

Council is currently receiving a number of development applications that incorporate serviced apartments within the *B4 Mixed Use* zone. However, once approval has been received, several applicants are seeking to convert the serviced apartment components of those developments to residential accommodation. The primary justification for converting the serviced apartments typically relates to the financial viability of this component of the development.

In many instances, the serviced apartment component of the development forms a significant portion of the minimum non-residential floor space ratio requirement applying to the site. Accordingly, if requests to convert serviced apartments to residential accommodation were supported it would result in a reduction in employment floor space being made available for other non-residential uses.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

One of the drivers behind this trend is that it is often easier and cheaper for developers to convert the serviced apartments to residential accommodation rather than retrofit the spaces back to some other form of non-residential use.

Where the extent of conversion has been substantially more than that can be considered under section 4.6 of NSLEP 2013, the applicant has proceeded to submit a Planning Proposal to reduce the minimum non-residential floor space ratio requirement. These requests have typically been rejected by Council due to impacts on the ability of Council to meet the employment targets set by the State government.

Following exhibition of the Planning Proposal, Council sought independent advice from HillPDA Consulting regarding whether a threshold or critical mass exists beyond which serviced apartments are viable in the long term.

This advice indicated that due to market trends and conditions, serviced apartment operations with a minimum of 50-70 serviced apartments are more likely to be viable in the long term.

Importantly, the HillPDA advice also provides a distinction between small and large serviced apartment operations on the basis of whether they can be considered a commercial operation. Larger operations are more likely to provide a range of services such as food, concierge, business centre or recreational facilities and associated employment. This is contrasted with smaller operations that have little or no on-site commercial aspect and are considered more of a residential use.

The majority of recent approvals for developments which included serviced apartments did not meet this threshold of a minimum of 50-70 apartments. This explains why developments have sought to convert these approved serviced apartments to residential apartments.

Council has commenced the development of an *Economic Development Strategy* for the North Sydney LGA. The primary objective of the Strategy will be to outline Council's plan for economic development in a consolidated policy document. Despite the Strategy still being in its preliminary stages, initial research undertaken to date has indicated a pressing need to strengthen mechanisms that promote the provision of employment generating uses.

One of the interim mechanisms identified for protecting and promotion of employment floor space involves the removal of serviced apartments from the calculation of non-residential floor space under clause 4.4A to NSLEP 2013. This will help protect the provision of non-residential floor space in the *B4 Mixed Use* zone and ensure such floor space contributes to employment within the LGA. It should be noted that serviced apartments will continue to be permissible in the B3 Commercial Core zone.

2.3 Removal of maximum non-residential floor space ratio controls

The application of non-residential floor space ratio controls date back to the commencement of North Sydney Local Environmental Plan 1989 (NSLEP 1989). The application of maximum non-residential floor space ratio controls was primarily imposed to ensure a mixture of residential and non-residential development is provided within the *B4 Mixed Use zone*. The maximum quantum of non-residential floor space required is thought to relate to a desire to retain an overall quantum of non-residential floor space in the B4 Mixed Use zone and to the requirement for

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

meeting other planning controls such as the establishment of podiums. The actual quantum depended upon a site's location.

The non residential floor space requirements of NSLEP 1989 have generally been carried over to NSLEP 2001 and NSLEP 2013, largely unchanged.

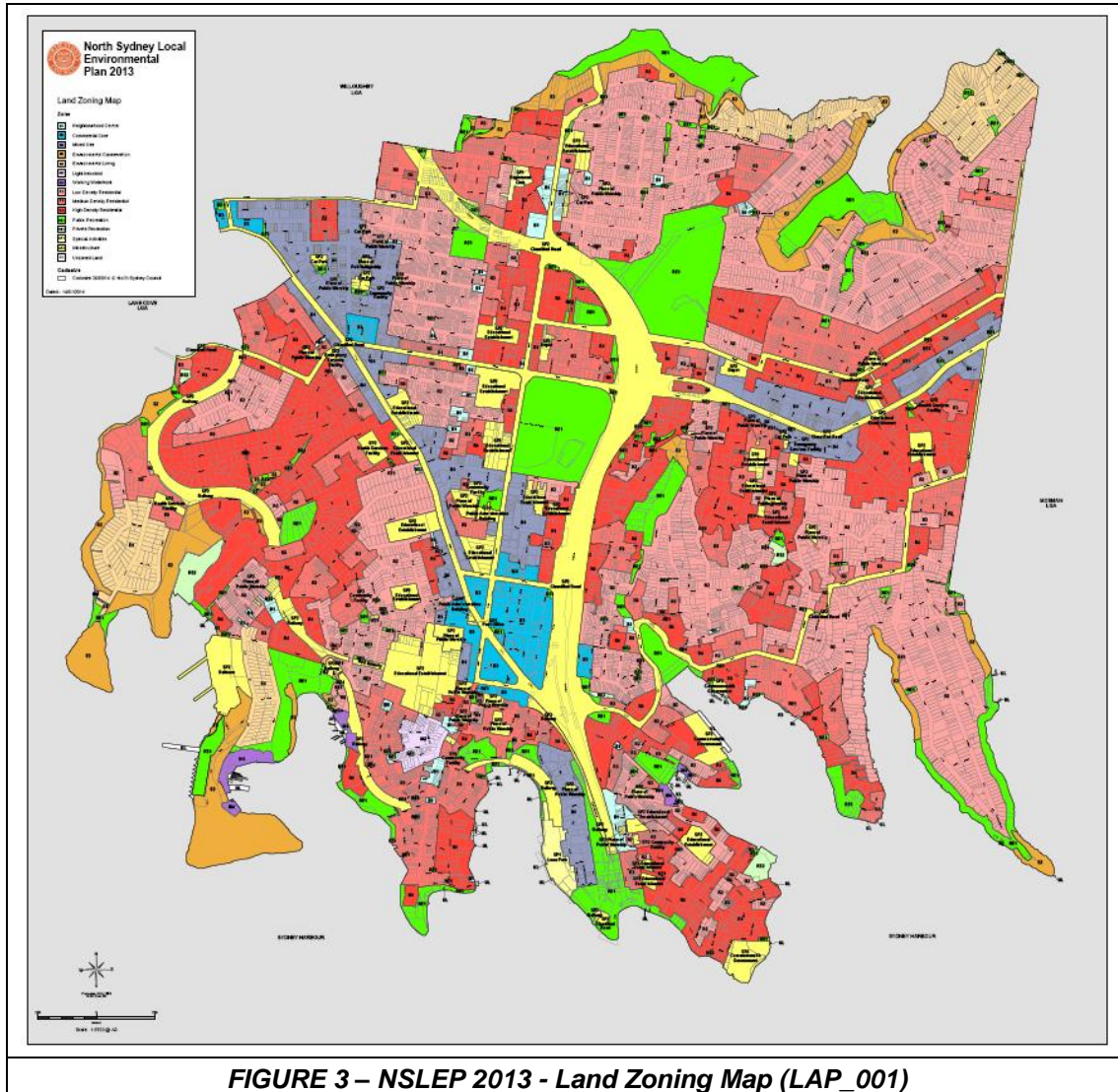
The non-residential floor space ratio controls were not subject to a detailed review when NSLEP 2013 was being prepared. However, the non-residential floor space ratios were reviewed within the North Sydney Centre during the preparation of Draft Amendment No.28 to NSLEP 2001, which was ultimately rolled into NSLEP 2013. This review however resulted in the lowering of the minimum non-residential floor space ratio requirements and no changes made to the maximum.

As indicated, Council has commenced the development of an *Economic Development Strategy* for the North Sydney LGA. One of the interim mechanisms identified for protecting and promotion of employment floor space involves the removal of the maximum non-residential floor space ratio controls imposed under clause 4.4A to NSLEP 2013. This will also improve the economic and orderly development of land in accordance with the objectives of the EP&A Act.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

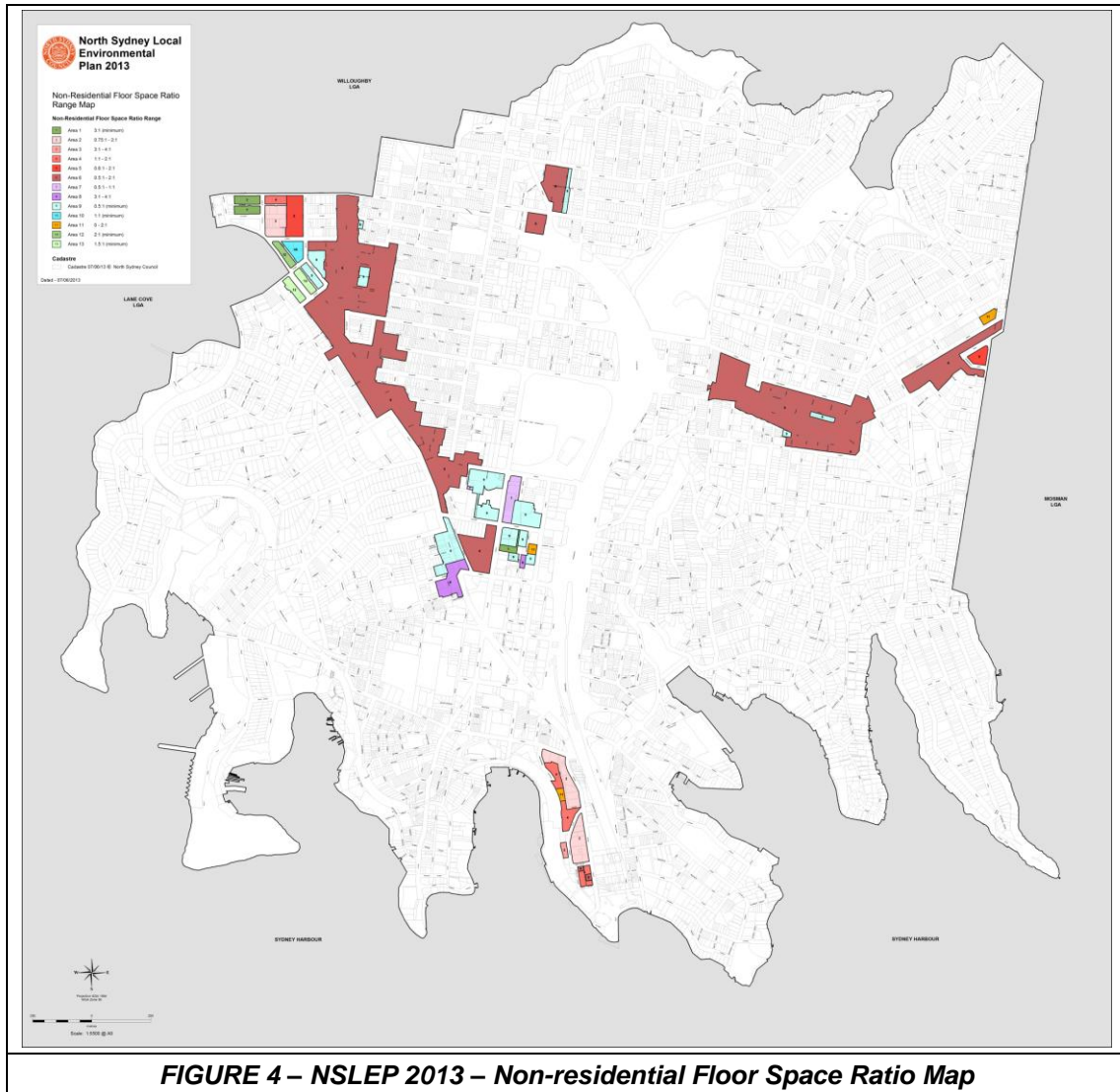
3 SITE LOCALITY

The Planning Proposal as it relates to residential flat buildings and serviced apartments applies to all land zoned *B4 Mixed Use* on the Land Zoning Map (refer to FIGURE 3) to NSLEP 2013.



The Planning Proposal as it relates to non-residential floor space ratios applies to all land to which clause 4.4A currently applies as identified on the Non-residential Floor Space Ratio Range Map to NSLEP 2013 (refer to FIGURE 4).

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements



Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

4 STATUTORY CONTEXT

The relevant provisions of NSLEP 2013 that relate to the Planning Proposal are discussed in the following subsections.

4.1 Land Use Table

The Planning Proposal applies to land in the *B1 Neighbourhood Centre*, *B4 Mixed Use* and *SP2 Infrastructure* zones. The relevant objectives and provisions to these zones state:

Zone B1 Neighbourhood Centre

1 Objectives of zone

- *To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To encourage active street life while maintaining high levels of residential amenity.*
- *To encourage development for the purpose of shop top housing.*

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Boarding houses; Business premises; Child care centres; Community facilities; Entertainment facilities; Health services facilities; Information and education facilities; Kiosks; Medical centres; Neighbourhood shops; Office premises; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Respite day care centres; Restaurants or cafes; Roads; Shops; Shop top housing; Signage; Take away food and drink premises

4 Prohibited

Any development not specified in item 2 or 3

Zone B4 Mixed Use

1 Objectives of zone

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.*
- *To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses on the lower levels and residential uses above those levels.*

2 Permitted without consent

Nil

3 Permitted with consent

Amusement centres; Backpackers' accommodation; Boarding houses; Car parks; Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Seniors housing; Serviced apartments; Sex services premises; Shop top housing; Signage; Vehicle repair stations; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

Zone SP2 Infrastructure

- 1 Objectives of zone**
 - To provide for infrastructure and related uses.
 - To prevent development that is not compatible with or that may detract from the provision of infrastructure.
- 2 Permitted without consent**
Environmental protection works
- 3 Permitted with consent**
Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose
- 4 Prohibited**
Any development not specified in item 2 or 3

4.2 Definitions

Clause 1.4 of NSLEP 2013 makes reference to the Dictionary which provides definitions of terms used within the LEP. In particular, the relevant terms to the Planning Proposal are defined as follows:

mixed use development means a building or place comprising 2 or more different land uses

Non-Residential Floor Space Ratio Range Map means the North Sydney Local Environmental Plan 2013 Non-Residential Floor Space Ratio Range Map

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Note. Residential flat buildings are a type of residential accommodation— see the definition of that term in this Dictionary.

serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

Note. Serviced apartments are a type of **tourist and visitor accommodation**— see the definition of that term in this Dictionary.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

Note. Shop top housing is a type of residential accommodation—see the definition of that term in this Dictionary.

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:

- (a) backpackers accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include:

- (f) camping grounds, or
- (g) caravan parks, or
- (h) eco-tourist facilities.

4.3 Non-residential floor space ratios

Clause 4.4A of NSLEP 2013 sets minimum and maximum floor space ratios for non-residential development on certain land in the *B1 Neighbourhood Centre*, *B4 Mixed Use* and *SP2 Infrastructure* zones. In particular, it states:

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,*
 - (b) *to encourage an appropriate mix of residential and non-residential uses,*
 - (c) *to provide a level of flexibility in the mix of land uses to cater for market demands,*
 - (d) *to ensure that a suitable level of non-residential floor space is provided to reflect the hierarchy of commercial centres.*
- (2) *The non-residential floor space ratio for all buildings within a site on land identified on the Non-Residential Floor Space Ratio Range Map as specified in Column 1 of the Table to this subclause must not be less than the ratio shown for that land in Column 2 of that Table and must not exceed the ratio shown for that land in Column 3 of that Table.*

Column 1	Column 2	Column 3
Area 2	0.75:1	2:1
Area 3	3:1	4:1
Area 4	1:1	2:1
Area 5	0.6:1	2:1
Area 6	0.5:1	2:1
Area 7	0.5:1	1:1
Area 8	3:1	4:1

- (3) *The non-residential floor space ratio for all buildings within a site on land identified as follows on the Non-Residential Floor Space Ratio Range Map must not be less than the ratio shown for that land:*
 - (a) *Area 1—3:1,*
 - (b) *Area 9—0.5:1,*
 - (c) *Area 10—1:1,*
 - (d) *Area 12—2:1,*
 - (e) *Area 13—1.5:1.*
- (4) *The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map must not exceed 2:1.*

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- (5) *Development consent must not be granted to the erection of a building on land identified as Area 1–13 on the Non-Residential Floor Space Ratio Range Map unless the consent authority is satisfied that the building will have an active street frontage after its erection.*
- (6) *Despite subclause (5), an active street frontage is not required for any part of a building that is used for any of the following:*
- (a) entrances and lobbies (including as part of a mixed use development),*
 - (b) access for fire services,*
 - (c) vehicular access.*
- (7) *In this clause, a building has an active street frontage if no part of the ground floor of the building facing a street is used for residential accommodation.*
- (8) *In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose other than residential accommodation, a car park or a telecommunications facility, in all buildings within a site to the site area.*

4.4 Non-Residential Floor Space Ratio Range Map

The Non-Residential Floor Space Ratio Range Map comprises the following:

- LCL_001 5950_COM_LCL_001_010_20130607
- LCL_002 5950_COM_LCL_002_010_20130607
- LCL_002A 5950_COM_LCL_002A_005_20130607
- LCL_003 5950_COM_LCL_003_010_20130607
- LCL_004 5950_COM_LCL_004_010_20130607

A copy of these Plans are provided in Annexure A.

5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES

The primary intent of the Planning Proposal is to:

- improve the flexibility of the existing planning controls in the *B4 Mixed Use* zone by allowing residential accommodation to be provided at the ground floor and lower ground floor levels, where that residential accommodation does not prevent the provision of active street frontages or the meeting of the non-residential floor space ratio range controls;
- prevent the provision of serviced apartments in the *B4 Mixed Use* zone which undermine the objectives of the non-residential floor space ratio controls in the *B4 Mixed Use* zone and do little to promote employment generation; and
- improve the flexibility of the existing planning controls, especially in the *B4 Mixed Use* zone, by removing the maximum non-residential floor space ratio requirement over land subject to clause 4.4A.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The intent of the Planning Proposal can be achieved by:

- amending the fourth objective of the *B4 Mixed Use* zone such that it removes references to residential development only being allowed on the upper levels of mixed use buildings;
- amending the land use table such that ‘residential flat buildings’ are permissible with development consent in the *B4 Mixed Use* zone;
- amending clause 4.4A to:
 - amend the objectives to promote a focus on the provision of employment floor space;
 - remove the maximum non-residential floor space ratio requirements from affected lands; and
 - amend the definition of ‘*non-residential floor space ratio*’ to exclude serviced apartments in a development containing less than 50 serviced apartments, from the calculation of non-residential floor space;
- incorporating a new a local clause within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible with consent in the *B4 Mixed Use* zone if they are provided as part of mixed use development and achieve active street frontages;
- amending the definition of *Non-Residential Floor Space Ratio Range Map* within the Dictionary to NSLEP 2013 to delete reference; and
- amending the *Non-Residential Floor Space Ratio Range Map* to NSLEP 2013.

The specific amendments sought are identified in the following subsections:

5.2.1 Land Use Table

The intent of the Planning Proposal is proposed to be achieved by amending the land use table to the *B4 Mixed Use* zone as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

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Zone B4 Mixed Use

1 Objectives of zone

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
- To maintain existing commercial space and allow for residential development in mixed use buildings, with non-residential uses concentrated on the lower levels and residential uses predominantly on above those the levels above.

2 Permitted without consent

Nil

3 Permitted with consent

Amusement centres; Backpackers' accommodation; Boarding houses; Car parks; Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; Residential flat buildings; Respite day care centres; Restricted premises; Roads; Seniors housing; Serviced apartments; Sex services premises; Shop top housing; Signage; Vehicle repair stations; Veterinary hospitals

4 Prohibited

Any development not specified in item 2 or 3

5.2.2 Clause 4.4A –Non-residential floor space ratio ranges

The intent of the Planning Proposal is proposed to be achieved by amending clause 4.4A as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

4.4A Non-residential floor space ratio ~~ranges~~

(1) The objectives of this clause are as follows:

- (a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,
- (b) to encourage an appropriate mix of residential and non-residential uses,
- (c) to provide a level of flexibility in the mix of land uses to cater for market demands,
- (d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.

(2) The non-residential floor space ratio for all buildings within a site on any land ~~identified on the Non-Residential Floor Space Ratio Range Map as specified in Column 1 of the Table to this subclause~~ must not be less than the ratio shown for that land on the Non-Residential Floor Space Ratio Map in Column 2 of that Table and ~~must not exceed the ratio shown for that land in Column 3 of that Table.~~

Column-1	Column-2	Column-3
Area-2	0.75:1	2:1
Area-3	3:1	4:1
Area-4	1:1	2:1
Area-5	0.6:1	2:1
Area-6	0.5:1	2:1

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Area 7	0.5:1	1:1
Area 8	3:1	4:1

- ~~(3) The non-residential floor space ratio for all buildings within a site on land identified as follows on the Non-Residential Floor Space Ratio Range Map must not be less than the ratio shown for that land:~~
- ~~(a) Area 1 3:1,~~
- ~~(b) Area 9 0.5:1,~~
- ~~(c) Area 10 1:1,~~
- ~~(d) Area 12 2:1,~~
- ~~(e) Area 13 1.5:1.~~
- ~~(4) The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map must not exceed 2:1.~~
- ~~(53)~~ Development consent must not be granted to the erection of a building on land in Zone B1 Neighbourhood Centre and Zone B4 Mixed Use, ~~identified as Area 1–13 on the Non-Residential Floor Space Ratio Range Map~~ unless the consent authority is satisfied that the building will have an active street frontage after its erection.
- ~~(64)~~ Despite subclause ~~(53)~~, an active street frontage is not required for any part of a building that is used for any of the following:
- (a) entrances and lobbies (including as part of a mixed use development),
- (b) access for fire services,
- (c) vehicular access.
- ~~(75)~~ In this clause, a building has an active street frontage if no part of the ground floor of the building facing a street is used for residential accommodation.
- ~~(86)~~ In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose other than residential accommodation, serviced apartments in a development containing less than 50 serviced apartments, a car park or a telecommunications facility, in all buildings within a site to the site area.

5.2.3 New Local Clause – Part 6

The intent of the Planning Proposal is proposed to be achieved by inserting a new local clause within Part 6 of NSLEP 2013 as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

6.# Residential flat buildings in Zone B4 Mixed Use

- (1) The objective of this clause is to permit additional compatible uses within Zone B4 Mixed Use but only if that use does not impact on the activation of street frontages.
- (2) Development consent must not be granted for development for the purposes of residential flat buildings on land in Zone B4 Mixed Use unless:
- (a) the residential flat building forms part of a mixed use development; and
- (b) the consent authority is satisfied that any dwelling within the mixed use development:
- (i) is located above the ground floor level; or
- (ii) away from any street frontage at the ground floor level, of the building in which the residential flat building is located.

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5.2.4 Definitions

The intent of the Planning Proposal is proposed to be achieved by amending the definition of *Non-residential Floor Space Ratio Range Map* follows (~~red-strike-through~~ represents a deletion and blue underline represents an insertion):

Non-Residential Floor Space Ratio ~~Range~~ Map means the North Sydney Local Environmental Plan 2013 Non-Residential Floor Space Ratio ~~Range~~ Map.

5.2.5 Non-residential Floor Space Ratio Range Map

The Planning Proposal also requires the deletion of the following NSLEP 2013 maps:

- LCL_001 5950_COM_LCL_001_010_20130607
- LCL_002 5950_COM_LCL_002_010_20130607
- LCL_002A 5950_COM_LCL_002A_005_20130607
- LCL_003 5950_COM_LCL_003_010_20130607
- LCL_004 5950_COM_LCL_004_010_20130607

And replacement with a new set of maps as identified within Annexure B to this Planning Proposal.

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

1. *Is the planning proposal a result of any strategic study or report?*

Permitting residential flat buildings in the B4 Mixed Use zone

No. The need to amend NSLEP 2013 has arisen through the assessment of a number of development applications and consideration of proposals at pre-development application meetings. These assessments and meetings have highlighted the unreasonable restriction placed on some proposals for mixed use developments where the applicant can clearly demonstrate that the proposal can satisfy the minimum non-residential floor space ratio and provision of active street frontages applying to a site.

Serviced apartments in the B4 Mixed Use zone and removal of Non-residential FSR requirements

Yes. The need for the Planning Proposal has arisen from preliminary work that has been undertaken by Council in relation to the *North Sydney Economic Development Strategy*.

The primary objective of the Strategy will be to outline Council's plan for economic development in a consolidated policy document. In particular, the Strategy will:

- Provide an understanding of the existing operation of all employment land in the North Sydney LGA;
- Identify recent development trends and their impact on the provision of employment generating floor space;
- Provide an understanding of the market conditions which affect existing economic activity in North Sydney LGA and greater Sydney;
- Provide an understanding of the opportunities and constraints for future employment growth in the North Sydney LGA;

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- Identify the demand for employment generating floor space in the North Sydney LGA;
- Set clear employment targets which are consistent with state government targets;
- Set strategies to actively encourage the provision of additional employment generating floor space and uses.

Despite the Strategy still being in its preliminary stages, initial research undertaken to date has indicated a pressing need to strengthen mechanisms that promote the provision of employment generating uses.

In particular, it was identified that Council is in receipt of a number of development applications that incorporated serviced apartments within the *B4 Mixed Use* zone. However, once approval had been received, several applicants have sought to convert the serviced apartment components of those developments to residential accommodation. The primary justification for converting the serviced apartments typically relates to the financial viability of this component of the development.

In many instances, the serviced apartment component forms a significant portion of the minimum non-residential floor space ratio requirement applying to the subject site. Accordingly, the request to convert the serviced apartments to residential accommodation will result in a reduction in employment floor space being made available for other non-residential uses.

In addition, it was identified that where a property is affected by a maximum non-residential floor space ratio, the land cannot be developed to its maximum potential as a non-residential development. This generally occurs where a site has say a relatively high maximum building height and a low maximum non-residential FSR. For example a site which has a maximum height of 40m (or approximately 13 storeys) and a maximum non-residential FSR of 2:1 (equating to approximately 3 storeys) removes the potential to undertake a non-residential development of equivalent scale to a mixed use development.

The proposed amendments to NSLEP 2013 have been identified as simple measures to encourage the provision of more employment generating floor space in North Sydney.

2. *Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?*

Permitting residential flat buildings in the B4 Mixed Use zone

Yes. The only alternative to achieving the desired outcome is to amend the definition of 'shop top housing' which is a mandated land use term under the SI LEP. As per the DPE's LEP Practice Note PN11-003, councils are not able to alter the standard definitions or directly add definitions to the Dictionary to the SI LEP.

The additional proposed restriction that residential flat buildings can only be approved if they form part of a mixed use development will also ensure that the intent of development permitted in the mixed use zone is achieved (i.e. no stand alone residential developments).

Serviced apartments in the B4 Mixed Use zone

Yes. Initially six options were considered to address the intent of the Planning Proposal, including:

- Excluding serviced apartments from contributing to non-residential floor space;
- Inserting a local provision stating that serviced apartments may only be granted consent the *B4 Mixed Use* zone, but only if they form part of a wholly non-residential development;
- Removing serviced apartments from the *B4 Mixed Use* zone as a permissible use with consent;
- Requiring additional information to be provided at the Development Application (DA) stage to demonstrate that there is a demand for serviced apartments and that they are financially viable;
- Placing a minimum requirement on the number of serviced apartments being provided in a development; and
- Placing a maximum requirement on the number of serviced apartments being provided in the LGA or a specific precinct; and

Each of these options are discussed in further detail below.

Option 1 – Calculation of non residential floor space

Clause 4.4A of NSLEP 2013 sets requirements for the provision of non-residential floor space on certain lands within the *B1 Neighbourhood Centre* and *B4 Mixed Use* zones, including its calculation.

All land uses that do not comprise residential accommodation, car parks or telecommunication facilities are excluded from the calculation of non-residential floor space. The principle purposes of the non-residential floor space ratio requirements are to ensure that an appropriate mix of residential and non-residential uses on certain lands within the *B1 Neighbourhood Centre* and *B4 Mixed Use* zones and the provision of a suitable level of non-residential floor space to reflect the hierarchy of commercial centres.

This option involves removing serviced apartments from the calculation of non-residential floor space. Implementation of this option would ensure that truly employment generating land uses contribute to meeting of employment targets for the North Sydney LGA.

Serviced apartments, along with other tourist and visitor facilities do not contribute to a high generation of jobs in comparison to the same amount of floor space occupied by office and retail premises.

In the current market, this option may result in no serviced apartments being provided in the *B4 Mixed Use* zone. This is because the use would be competing directly with residential uses, rather than other non-residential uses which is currently the case. However, serviced apartments would remain permissible in the zone as well as in the B3 Commercial Core zone.

This option is preferred as it results in the least amount of impact on the provision of serviced apartments in the long term. Furthermore, additional research that forms part of the *North Sydney Economic Development*

Strategy may result in finding alternative options to improve the uptake of serviced apartments in an appropriate context and thereby only resulting in a short term impact.

Option 2 – Local Provision

This option involves inserting a local provision stating that serviced apartments are only permissible in the *B4 Mixed Use* zone but only if they form part of a wholly non-residential development.

Traditionally, serviced apartments are provided as a standalone development, or located in conjunction within ground level commercial uses such as retail and restaurants and cafes. However, there has been a recent trend to incorporate serviced apartments within developments that also include residential accommodation. As part of this trend some developers have merely been filling their minimum non-residential floor space requirement with no intention of using that space for serviced apartments.

This option would ensure that serviced apartments are not incorporated within a development proposal just to meet employment floor space requirements and with no intention of using them as such.

This option is not supported because it restricts the flexibility in the provision of serviced apartments within a mixed use development where there is a demonstrated demand in an appropriate location.

Option 3 – Permissibility in the *B4 Mixed Use* Zone

This option involves removing serviced apartments from the *B4 Mixed Use* zone as a land use that is permissible with development consent.

Pursuing this option would limit the permissibility of serviced apartments to the *B3 Commercial Core* zone only. This would represent a significant reduction in the permissibility of the development type in the North Sydney LGA. In addition, the removal of the land use type from the *B4 Mixed Use* zone could be considered to be inconsistent with the objectives, actions and directions to relevant regional and subregional planning strategies/plans in relation to employment creation. In particular, it would not support the provision of a broad range of local employment types.

Option 4 – DA requirements

This option involves requiring applicants to provide additional information at the DA stage. In particular, applications for proposals incorporating serviced apartments should be made to demonstrate that there is a demand for serviced apartments and that they are financially viable.

This could be achieved by requiring applicants of such proposals to provide:

- An economic feasibility study showing the viability of the serviced apartments in the current market; and/or
- A signed agreement between the developer and a serviced apartment management company that the serviced apartments will be owned/managed by the company once constructed.

These additional requirements could be requested as part of a DA checklist that accompanies the DA form. Alternatively, they could form a requirement to a Development Control Plan (DCP).

Despite requesting such information, it would be difficult to refuse such development applications where that information has not been provided or Council does not support the arguments put forward by the applicant. This is due to the lack of statutory weight that such provisions would have and would ultimately come down to a merit assessment.

If this option is pursued, it would still result in a loss of employment floor space. It may also not prevent a Planning Proposal being lodged to reduce the non-residential floor space ratio control, but it would provide a little more certainty at DA stage that the use is viable.

Therefore, this option is not supported, as it cannot provide any certainty that the serviced apartment component of a development is a legitimate proposal, or merely a stop gap to have the proposal approved with the intent to convert to residential at a later stage.

Option 5 – Minimum Requirements

This option involves placing a minimum requirement on the number of serviced apartments being provided in a development.

Before a minimum requirement can be set, research would be required to be undertaken to determine if a numerical threshold exists, below which it is not viable to manage serviced apartments. If a threshold exists, it could then be incorporated into the planning controls to ensure that only applications proposing a viable number of serviced apartments are given consideration.

The suggested research above has not been undertaken to date and therefore it would be unreasonable to impose such a control at this point in time. Furthermore anecdotal evidence suggests that the number of serviced apartments may not be the prime determinant of viability.

Option 6 – Maximum Requirements

This option involves placing a maximum requirement on the number of serviced apartments being provided in the LGA or a specific precinct.

Before a maximum requirement can be set, research would be required to be undertaken to determine the market demand for serviced apartments in the LGA. The upper level of demand could then be embedded in planning controls as a cap on floor space and/or number of serviced apartments. The cap could apply LGA wide or specific caps could be applied to different areas depending on the findings of the research. Applications for serviced apartments beyond the cap would not be supported.

In the preparation of the Crows Nest South Planning Study, Council investigated the demand for serviced apartments in the LGA. It determined that there was clearly a market for them in major centres such as North Sydney and St Leonards where they support business purposes, but no quantum of demand was determined. More detailed research, as discussed above, has not been undertaken to date. No certainty exists regarding whether such a cap can be included within the Standard Instrument template.

Option 7 – Amendment Identified Following Public Exhibition

Option 1 was proposed when the Planning Proposal was on public exhibition.

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A submission was received during the public exhibition which suggested that Council consider a minimum threshold in the amount of serviced apartments, before they could be included in the calculation of non-residential floor space.

Council subsequently sought independent advice from HillPDA Consulting as to whether a threshold or critical mass exists beyond which serviced apartments are viable in the long term.

This advice indicated that due to market trends and conditions, serviced apartment operations with a minimum of 50-70 serviced apartments are more likely to be viable in the long term.

The Planning Proposal has been amended such that serviced apartments are excluded from non-residential floor space calculations only if they are:

“serviced apartments in a development containing less than 50 serviced apartments”.

It is considered that this option adequately addresses questions around the commercial viability of serviced apartment operations as well as ensuring such operations are consistent with the employment oriented objectives of the B4 Mixed Use zone and non-residential floor space controls.

Removal of Non-residential FSR requirements

Yes. Allowing the market the flexibility to determine the amount of non-residential floor space above specified minimum requirements can only be achieved through the removal of the maximum non-residential floor space requirements.

The removal of the maximum requirement for non-residential floor space can only be achieved via an amendment to NSLEP 2013.

The North Sydney Economic Development Strategy will also seek to identify other strategies which encourage the provision of additional employment generating floor space.

5.3.2 Section B – Relationship to strategic planning framework

3. *Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

A Plan for Growing Sydney (2014)

Released in December 2014, *A Plan for Growing Sydney* (Metropolitan Plan) sets the planning framework for the growth of the Sydney metropolitan area over the next 25 years. The Metropolitan Plan sets targets for an additional 664,000 homes and 689,000 jobs by 2031.

Goals, Directions and Actions identified in the Metropolitan Plan which are relevant to the Planning Proposal are as follows:

Goal 1: A competitive economy with world-class services and transport

- Direction 1.1: Grow a more internationally competitive Sydney CBD

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- Action 1.1.1: Create new and innovative opportunities to grow Sydney CBD office space by identifying redevelopment opportunities and increasing building heights in the right locations
- Action 1.1.2: Create new opportunities to grow Sydney CBD office space by expanding the CBD's footprint, particularly along the Central to Eveleigh corridor
- Direction 1.6: Expand the Global Economic Corridor
 - Action 1.6.1: Grow high-skilled jobs in the Global Economic Corridor by expanding employment opportunities and mixed-use activities
 - Action 1.6.2: Invest to improve infrastructure and remove bottlenecks to grow economic activity
- Direction 1.7: Grow strategic centres – providing more jobs closer to home
 - Action 1.7.1: Invest in strategic centres across Sydney to grow jobs and housing and create vibrant hubs of activity

Goal 2: A city of housing choice, with homes that meet our needs and lifestyles

- Direction 2.1: Accelerate housing supply across Sydney
 - Action 2.1.1: Accelerate housing supply and local housing choices
- Direction 2.2: Accelerate urban renewal across Sydney – providing homes closer to jobs
 - Action 2.2.2: Undertake urban renewal in transport corridors which are being transformed by investment, and around strategic centres
- Direction 2.3: Improve housing choice to suit different needs and lifestyles
 - Action 2.3.3: Deliver more opportunities for affordable housing

Goal 3: A great place to live with communities that are strong, healthy and well connected

- Direction 3.1: Revitalise existing suburbs
 - Action 3.1.1: Support urban renewal by directing local infrastructure to centres where there is growth
- Direction 3.3: Create healthy built environments
 - Action 3.3.1: Deliver guidelines for a healthy built environment

The Planning Proposal is considered to be generally consistent with the above goals, directions and actions of the Metropolitan Plan, as it will:

- provide development opportunities to increase residential accommodation without impacting upon the provision of employment services and active street frontages;
- help strengthen the employment function of North Sydney's centres and the Mixed Use zone; and.
- increase the potential employment generating capacity in the North Sydney LGA on sites which generally have excellent access to transport infrastructure

One particular issue with the Metropolitan Plan is that it does not clearly indicate whether preference is given to the provision of jobs or housing. Whilst housing can essentially be accommodated anywhere, it's far more

difficult to appropriately locate floor space for employment purposes. Given the importance of locating employment generating floor space close to public transport, greater weight should be given to retaining existing employment related functions over housing, within and adjacent to existing commercial centres. These issues are further exacerbated by strata titling of residential development rarely being converted back for commercial purposes.

Increasing the provision of employment floor space within existing centres may come at the expense of the provision of residential accommodation which the Metropolitan Plan also seeks to achieve.

If preference is given to the provision of housing over employment generating opportunities, the strategic economic importance of identified centres under the Metropolitan Plan will be severely undermined. Preference should therefore be given to the provision of jobs over housing in this instance.

Draft Inner North Subregional Strategy

In July 2007, the NSW Government released the draft Inner North Subregional Strategy (draft INSS). The North Sydney LGA is located within the Inner North subregion with the other LGAs of Lane Cove, Ryde, Willoughby, Hunters Hill and Mosman. The Draft INSS sets targets of an additional 5,500 homes and 15,000 jobs by 2031 for the North Sydney LGA.

Directions and Actions identified in the draft INSS which are relevant to the Planning Proposal are as follows:

- Direction A1 – Provide suitable commercial sites and employment lands in strategic areas
 - Action A1.1 – Provide a framework for accommodating jobs across the city
 - Action A1.2 – Plan for sufficient zoned land and infrastructure to achieve employment capacity targets in employment lands
 - Action A1.4 – Retain the rezoning of employment lands to residential zonings across Sydney
- Direction B1 – Provide places and locations for all types of economic activity and employment across the Sydney region
 - Action B1.1 Establish a typology of centres
 - Action B1.2 Establish employment capacity targets for strategic centres
- Direction B2 – Increase densities in centres whilst improving liveability
 - Action B2.1 – Plan for housing in centres consistent with their employment role
 - Action B3.4 – Ensure sufficient commercial office sites in strategic centres
- Direction B3 – Cluster businesses and knowledge-base activities in strategic centres
 - Action B3.2 - Strengthen centres management
 - Action B3.4 – Ensure sufficient commercial office sites in strategic centres
- Direction B4 – Concentrate activities near public transport
 - Action B4.1 – Concentrate retail activity in centres, business development zones and enterprise corridors
- Direction B5 – Protect and strengthen the primary role of economic corridors

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- Action B5.1 – Establish a stronger corridors planning and development initiative
- Direction C1 – Ensure adequate supply of land and sites for residential development
 - Action C1.2 – Apply sustainability criteria for new urban development
- Direction C2 – Plan for a housing mix near jobs, transport and services
 - Action C2.1 – Focus residential development around centres, town centres, villages and neighbourhood centres
 - Action C2.3 – Provide a mix of housing
- Direction C3 – Renew local centres
 - Action C3.1 – Renew local centres to improve economic viability and amenity
- Direction F4 – Enhance cultural life and tourism precincts
 - Action F4.2 – Recognise the night time economy and protect entertainment and nightlife clusters.
 - Action F4.3 – Continue to coordinate and plan for the improvement of tourism precincts in Sydney to maximise the visitor experience.

The Planning Proposal is considered to be consistent with the above directions and actions of the draft INSS as it will:

- provide development opportunities to increase residential accommodation without impacting upon the provision of employment services and active street frontages.
- will help strengthen the employment function of North Sydney's centres and mixed use zone;
- will increase the potential employment generating capacity in the North Sydney LGA on sites which generally have excellent access to transport infrastructure

However, increasing the provision of employment floor space within existing centres may come at the expense of the provision of residential accommodation which the draft INSS also seeks to achieve.

One particular issue with the draft INSS is that it does not clearly indicate whether preference is given to the provision of jobs or housing. As indicated in response to the Metropolitan Plan, it is considered appropriate that preference should be given to the provision of jobs over housing in this instance.

North Sydney Residential Development Strategy

The North Sydney Residential Development Strategy (RDS) identifies the potential for an additional 6,199 dwellings in the North Sydney LGA by 2031 under the provisions of NSLEP 2013.

Conversely, the Planning Proposal has the potential to reduce the level of residential accommodation on the affected lands. However, due to the strong demand for residential accommodation over non-residential accommodation at this point in time it is unlikely to have an adverse impact on the provision of housing in accordance with regional and subregional plans and strategies.

Furthermore, due to the current strong demand for residential over non-residential floor space, it is unlikely that the removal of the maximum non-

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residential floor space ration control will impact on the ability to meet the additional residential development envisaged by the RDS.

4. *Is the planning proposal consistent with a council's local strategy or other local strategic plan?*

North Sydney Council Delivery Program 2010/11-2013/14

The North Sydney Council Delivery Program 2010/11-2013/14 (Delivery Program) was prepared in accordance with NSW State Government's Integrated Planning and Reporting Framework requirements. The Delivery Program outlines Council's priorities and service delivery programs over four years, set out under five key Directions.

The directions and goals of the Delivery Program which are relevant to the Planning Proposal are as follows:

Direction: 2 Our Built Environment

Outcomes: 2.2 Improved mix of land use and quality development through design excellence

Outcomes: 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

Direction: 3 Our Economic Vitality

Outcomes: 3.1 Diverse, strong, sustainable and vibrant, local economy

Outcomes: 3.2 North Sydney CBD is one of Australia's largest commercial centres

Direction: 4 Our Social Vitality

Outcomes: 4.10 Improved affordable housing and accommodation

Direction 5: Our Civic Leadership

Outcomes 5.5: Ensure the long term financial sustainability of North Sydney

The Planning Proposal will allow these directions and outcomes to be pursued in a robust and strategic manner.

5. *Is the planning proposal consistent with applicable state environmental planning policies?*

The Planning Proposal is consistent with those State Environmental Planning Policies (SEPPs) which are relevant to the North Sydney Local Government Area, as demonstrated in TABLE 1.

Direction	Consist-ency	Comment
SEPP No. 1 – Development Standards	N/A	This SEPP does not apply pursuant to Clause 1.9 of NSLEP 2013.
SEPP No. 19 - Bushland in urban areas	N/A	This SEPP does not apply as the lands affected by the Planning Proposal do not contain bushland or are located adjacent to land containing bushland.
SEPP No. 32 - Urban consolidation (redevelopment of urban land)	YES	The Planning Proposal is consistent with the SEPP as it will improve the opportunities for providing increased residential accommodation and employment generating floor space on land zoned <i>B4 Mixed Use</i> .

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

TABLE 1: Consistency with SEPPs		
Direction	Consist -ency	Comment
SEPP No. 33 - Hazardous and offensive development	N/A	This SEPP does not apply as the Planning Proposal does not relate to land upon which hazardous and offensive development is permitted.
SEPP No. 50 - Canal estate development	YES	The Planning Proposal is consistent with the SEPP by maintaining a prohibition on canal estate development.
SEPP No. 55 - Remediation of land	YES	The Planning Proposal seeks to introduce a new permissible use within the <i>B4 Mixed Use</i> zone which may be sensitive to contamination issues. However, shop top housing, a form of residential accommodation, is already permissible in the zone which shares the same group definition as residential flat buildings. Accordingly, no detailed contamination assessments are required in this instance. Contamination can be dealt with at development application stage if required.
SEPP No. 64 - Advertising and signage	N/A	The Planning Proposal does not relate to development for the purposes of advertising and signage.
SEPP No. 65 - Design Quality of Residential Flat Development	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Affordable Rental Housing) 2009	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Building Sustainability Index: BASIX) 2004	N/A	The Planning Proposal does not relate to building sustainability.
SEPP (Exempt and Complying Development Codes) 2008	N/A	The Planning Proposal does not seek to introduce any additional exempt or complying development types.
SEPP (Housing for Seniors or People with a Disability) 2004 - <i>formerly SEPP (Seniors Living) 2004</i>	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Infrastructure) 2007	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Major Development) 2005 - <i>formerly SEPP Major Projects & SEPP State Significant Development</i>	N/A	The Planning Proposal does not relate to any state significant sites identified under this SEPP and therefore does not apply.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

TABLE 1: Consistency with SEPPs		
Direction	Consist-ency	Comment
SEPP (Miscellaneous Consent Provisions) 2007 - <i>formerly SEPP (Temporary Structures) 2007</i>	N/A	This SEPP does not apply as the Planning Proposal does not relate to development for the purposes of temporary structures.
SEPP (State and Regional Development) 2011	N/A	This SEPP does not apply as the Planning Proposal does not relate to state or regional development nor the operation of joint regional planning panels.
Sydney REP (Sydney Harbour Catchment) 2005	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.

6. *Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?*

The Planning Proposal is consistent with the relevant Directions issued under Section 117(2) of the EP&A Act by the Minister to Councils, as demonstrated in TABLE 2.

TABLE 2: Consistency with s.117 Directions		
Direction	Consist-ency	Comment
1. Employment and Resources		
1.1 Business & Industrial Zones	YES	The Planning Proposal does not seek to reduce any commercial or industrial zoning under NSLEP 2013 nor does it seek to reduce the level of permissible non-residential floor space achievable on the affected lands. Despite potentially restricting the provision of serviced apartments in the <i>B4 Mixed Use</i> zone, it will enable the minimum required amount of non-residential floor space to be occupied by non-residential land uses that have a higher density of employment and thereby reinforcing the objectives of the Direction.
1.2 Rural Zones	N/A	This Direction does not apply as there are no existing rural zones under NSLEP 2013 or proposed under the Planning Proposal.
1.3 Mining, Petroleum Production & Extractive Industries	YES	The Planning Proposal does not seek to alter the permissibility of these types of land uses.
1.4 Oyster Aquaculture	N/A	This Direction does not apply as the Planning Proposal does not propose any changes in land use.
1.5 Rural Lands	N/A	This Direction does not apply as the Planning Proposal does not propose any changes that will affect development in a rural or environmental protection zone.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

TABLE 2: Consistency with s.117 Directions		
Direction	Consist -ency	Comment
2 Environmental Heritage		
2.1 Environmental Protection Zones	N/A	This Direction does not apply as the Planning Proposal does not affect land in an environmental protection zone.
2.2 Coastal Protection	N/A	This Direction does not apply as the Planning Proposal does not affect land within a coastal zone.
2.3 Heritage Conservation	YES	The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 which already satisfy the requirements of the Direction.
2.4 Recreation Vehicle Areas	N/A	The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area.
3 Housing, Infrastructure & Urban Development		
3.1 Residential Zones	YES	The Planning Proposal is consistent with the requirements of the Direction as it will enhance the ability to provide increased residential development within a mixed use building utilising existing infrastructure and services.
3.2 Caravan Parks & Manufactured Home Estates	N/A	This Direction does not apply as the Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.
3.3 Home Occupations	YES	The Planning Proposal does not alter the existing provisions within NSLEP 2013 that relate to home occupations, which already satisfy the requirements of the Direction.
3.4 Integrating Land Use & Transport	YES	The Planning Proposal is considered to be consistent with the aims objectives and principles of <i>“Improving Transport Choice – Guidelines for planning and development”</i> and <i>“The Right Place for Business and Services – Planning Policy”</i> . It achieves this by maximising the provision of high generating employment floor space in highly accessible areas and enables the ability to increase non-residential development in close proximity to high levels of transport.
3.5 Development Near Licensed Aerodromes	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a licensed aerodrome nor does it propose to amend a height limit that exceeds the Obstacle Limitation Surface level that applies to the North Sydney LGA.
3.6 Shooting Ranges	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a shooting range.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

TABLE 2: Consistency with s.117 Directions		
Direction	Consist-ency	Comment
4 Hazard and Risk		
4.1 Acid Sulfate Soils	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by Acid Sulfate Soils.
4.2 Mine Subsidence & Unstable Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by mine subsidence nor has it been identified as being unstable land.
4.3 Flood Prone Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land identified as being flood prone land.
4.4 Planning for Bushfire Protection	N/A	This Direction does not apply as the Planning Proposal does not relate to land identified as being bushfire prone land.
5 Regional Planning		
5.1 Implementation of Regional Strategies	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by one of the identified strategies.
5.2 Sydney Drinking Water Catchment	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.8 Second Sydney Airport: Badgerys Creek	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
6 Local Plan Making		
6.1. Approval & Referral Requirements	YES	The Planning Proposal does not alter any concurrence, consultation or referral requirements under NSLEP 2013, nor does it identify any development as designated development.
6.2 Reserving Land for Public Purposes	YES	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	N/A	This Direction does not apply, as it does not allow a particular type of development to be carried out.
7 Metropolitan Planning		
7.1 Implementation of the Metropolitan Plan for Sydney 2036	YES	Refer to question 4 to Section 5.3.2 of this report.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

5.3.3 Section C – Environmental, social and economic impact.

7. **Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?**

The Planning Proposal relates to land in a densely urbanised area and it is unlikely that the Planning Proposal will adversely affect any critical habitat or threatened species, populations or ecological communities, or their habitats.

8. **Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?**

The Planning Proposal merely seeks to:

- adjust the location where residential development can be located within a mixed use development,
- alter the way that non-residential floor space is calculated,
- increase the flexibility in the provision of non-residential floor space on certain lands,

and is unlikely to result in any adverse environmental impacts.

9. **How has the planning proposal adequately addressed any social and economic effects?**

The Planning Proposal in part will provide increased flexibility to enable the redevelopment of sites where residential accommodation can be located at the ground level of a building where it does not adversely impact on the ability to provide active street frontages and satisfies the need to provide employment floor space. The Planning Proposal will enable a better mix of uses in the zone, by allowing more non-residential uses to be located at the ground level as opposed to just retail or business premises as permitted by the definition of 'shop top housing'.

The Planning Proposal in part seeks to address the issue of maintaining and promoting employment generating floor space in the *B4 Mixed Use* zone. The provision of employment generating floor space is vital to overall economic vitality of the North Sydney LGA, greater Sydney and the state of NSW.

It should be noted that serviced apartments will still be permissible in the *B4 Mixed Use* zone where the development is able to meet the non-residential floor space requirements with employment floor space that does not comprise serviced apartments. They will also remain permissible in the *B3 Commercial Core* zone.

Council's concurrent proposal to remove the maximum non-residential FSR controls in the *B4 Mixed Use* zone will allow for wholly non-residential developments to be constructed anywhere in the *B4 Mixed Use* zone. It is therefore considered that this proposal will not impact on the ability of the market to supply serviced apartments.

The Planning Proposal also seeks to remove an unreasonable restriction on the development of a site for entirely non-residential purposes. Despite non-residential uses being permissible in the *B1 Neighbourhood Centre* and *B4 Mixed Use* zones, as a stand alone use, they are generally unable to obtain an approval for a building of the same size and scale as would be permitted if

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

it was a mixed residential and non-residential building. This is contrary to the attainment of the objectives of the EP&A Act.

In addition, the proposed removal of the maximum non-residential floor space ratio controls provides the opportunity for developments to provide greater employment generating floor space which is vital to overall economic vitality of the North Sydney LGA, greater Sydney and the state of NSW.

5.3.4 Section D – State and Commonwealth interests

10. *Is there adequate public infrastructure for the planning proposal?*

The Planning Proposal does not seek to allow an increase the overall developable yield on any site. Rather the amendments will provide the opportunity to allow a greater proportion of employment generating floor space or residential development to be accommodated on affected sites.

It is therefore considered that the Planning Proposal does not increase the demand for public infrastructure.

11. *What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?*

The Planning Proposal has not yet been considered by State or Commonwealth public authorities. Views of the State will be gained through the Gateway Determination process.

Condition 5 of the Gateway Determination dated 6 February 2015 requires Destination NSW to be consulted and given 21 days within which to make a comment on the proposal. Their comments will be considered as part of the post exhibition report to be considered by Council.

5.4 PART 4 : MAPPING

The Planning Proposal requires the replacement of all the *Non-Residential Floor Space Ratio Range Maps* to NSLEP 2013. The maps to be replaced include:

- LCL_001 5950_COM_LCL_001_010_20130607
- LCL_002 5950_COM_LCL_002_010_20130607
- LCL_002A 5950_COM_LCL_002A_005_20130607
- LCL_003 5950_COM_LCL_003_010_20130607
- LCL_004 5950_COM_LCL_004_010_20130607

Replacement maps are provided within Annexure B to this report.

5.5 PART 5: COMMUNITY CONSULTATION

Consultation will be undertaken in accordance with the requirements made by the Gateway Determination and Council's guidelines.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

5.6 PART 6: PROJECT TIMELINE

TABLE 3 provides a project timeline having regard to identified milestones and estimating approximately 9 months from submitting the proposal to the DPE to the amending LEP being made.

Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

TABLE 3 – Project Timeline									
Milestone	Dec 2014	Jan 2015	Feb 2015	Mar 2015	April 2015	May 2015	June 2015	July 2015	Aug 2015
1. Request for Gateway Determination sent to DPE									
2. DPE considers Request									
3. Gateway Determination Issued to Council									
4. Public Exhibition Undertaken									
5. Council considers post exhibition report									
6. Submission to DPE requesting making of LEP									
7. Drafting of LEP and making									

ANNEXURE A

- Current Non-Residential Floor Space Ratio Range Map

Planning Proposal – Residential flat buildings and serviced apartments in the B4 Mixed Use zone & removal of maximum non-residential FSR requirements

ANNEXURE B

- Proposed Non-Residential Floor Space Ratio Map



North Sydney Local Environmental Plan 2013

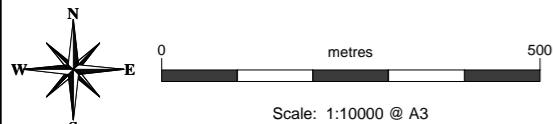
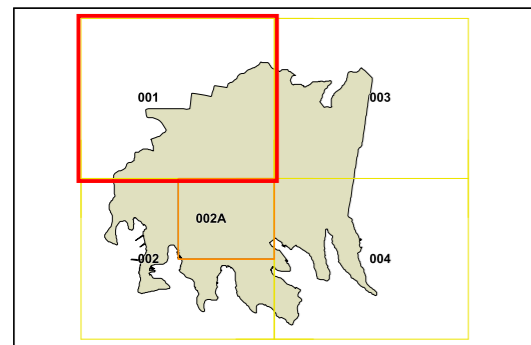
Non-Residential Floor Space Ratio Range Map - Sheet LCL_001

Non-Residential Floor Space Ratio Range

- Area 1
- Area 2
- Area 3
- Area 4
- Area 5
- Area 6
- Area 7
- Area 8
- Area 9
- Area 10
- Area 11
- Area 12
- Area 13

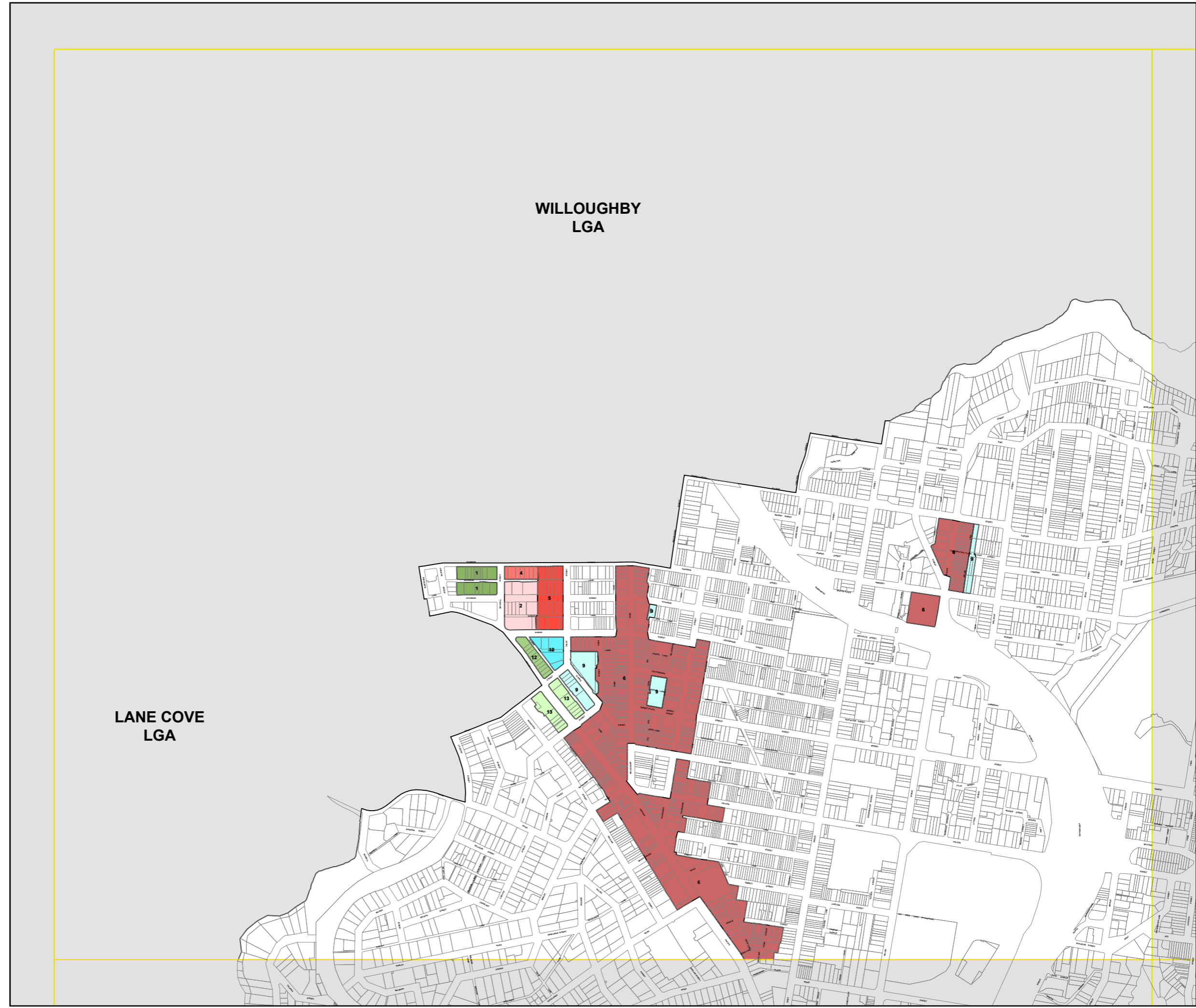
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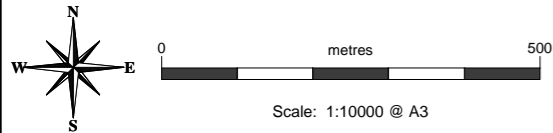
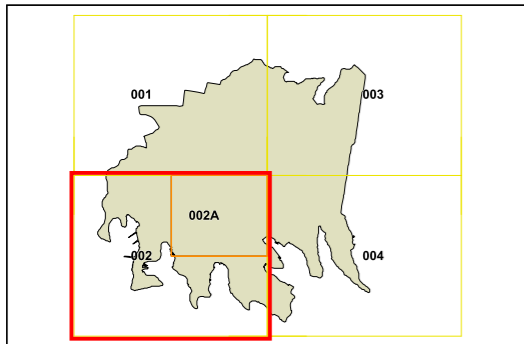
Non-Residential Floor Space Ratio Range Map - Sheet LCL_002

Non-Residential Floor Space Ratio Range

- Area 1
- Area 2
- Area 3
- Area 4
- Area 5
- Area 6
- Area 7
- Area 8
- Area 9
- Area 10
- Area 11
- Area 12
- Area 13

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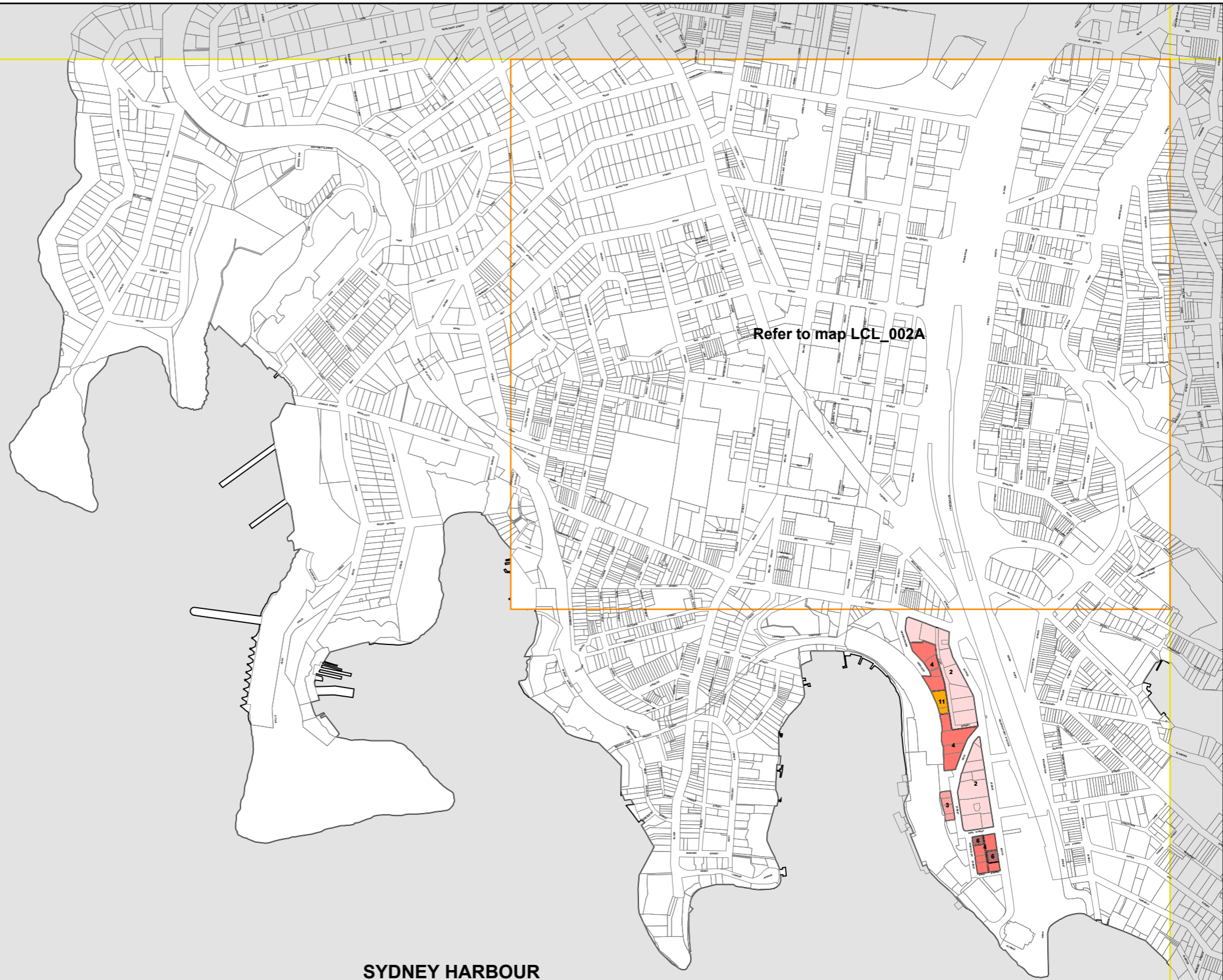
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LANE COVE
LGA



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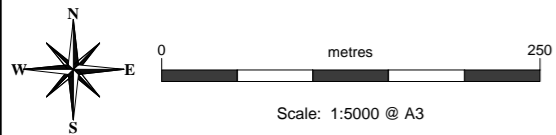
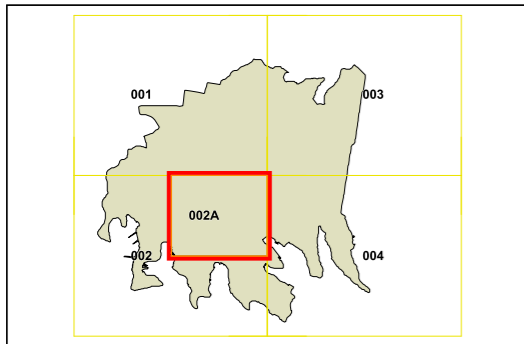
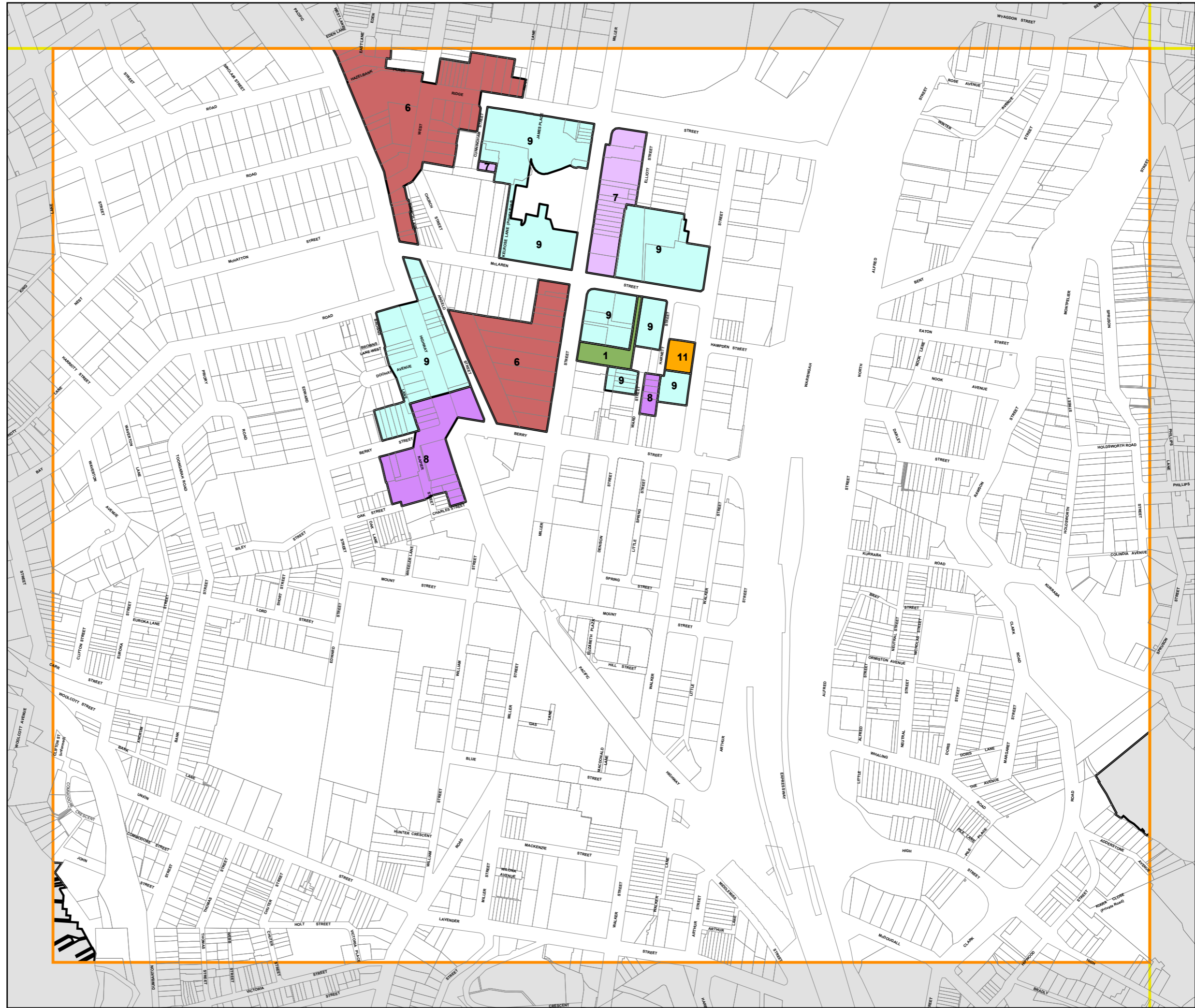
Non-Residential Floor Space Ratio Range Map - Sheet LCL_002A

Non-Residential Floor Space Ratio Range

- Area 1
- Area 2
- Area 3
- Area 4
- Area 5
- Area 6
- Area 7
- Area 8
- Area 9
- Area 10
- Area 11
- Area 12
- Area 13

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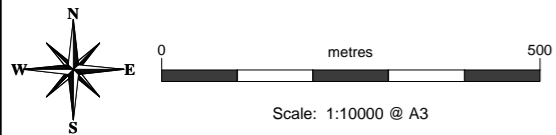
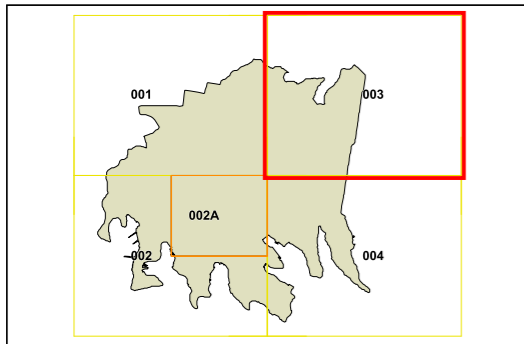
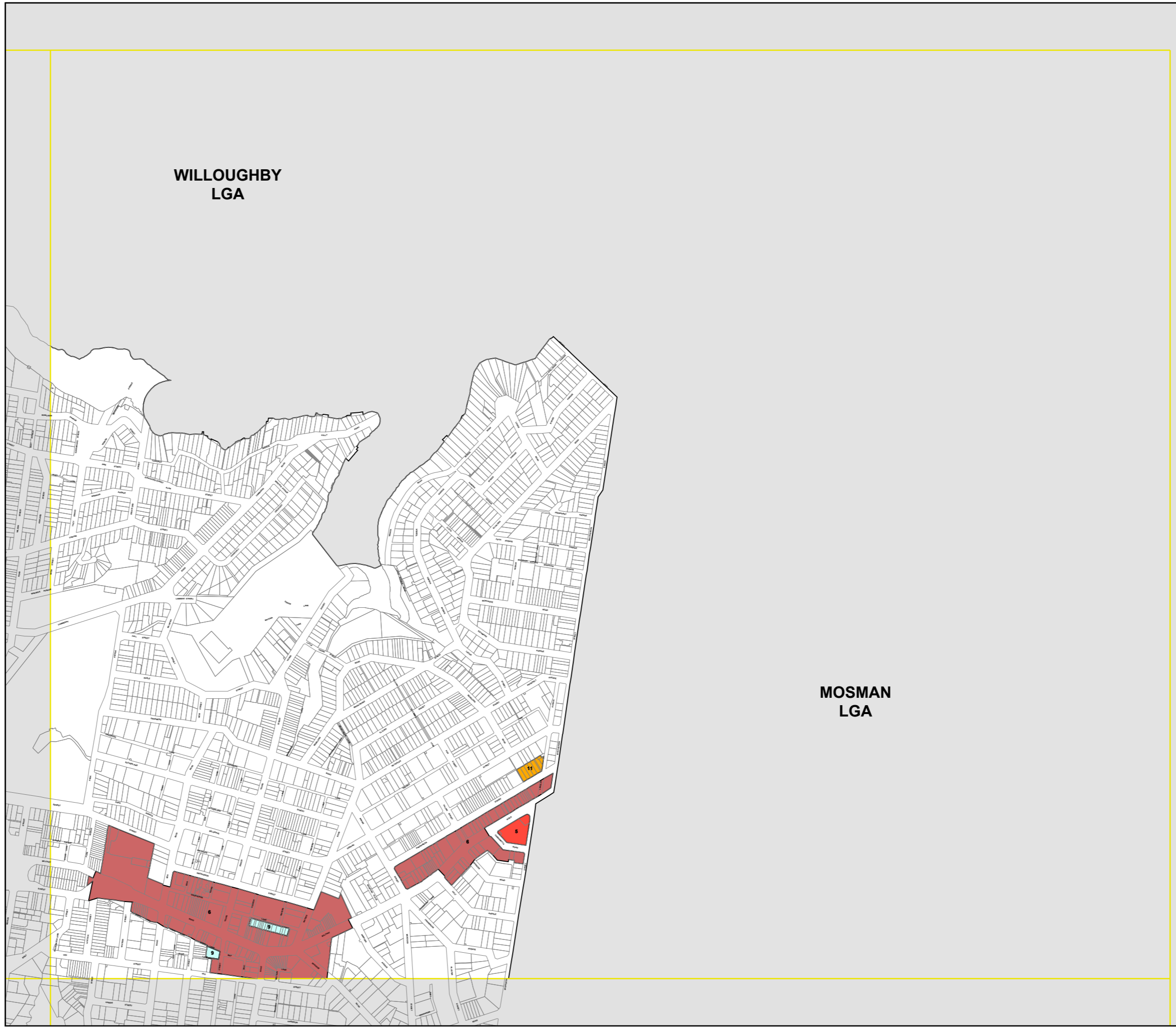
Non-Residential Floor Space Ratio Range Map - Sheet LCL_003

Non-Residential Floor Space Ratio Range

- Area 1
- Area 2
- Area 3
- Area 4
- Area 5
- Area 6
- Area 7
- Area 8
- Area 9
- Area 10
- Area 11
- Area 12
- Area 13

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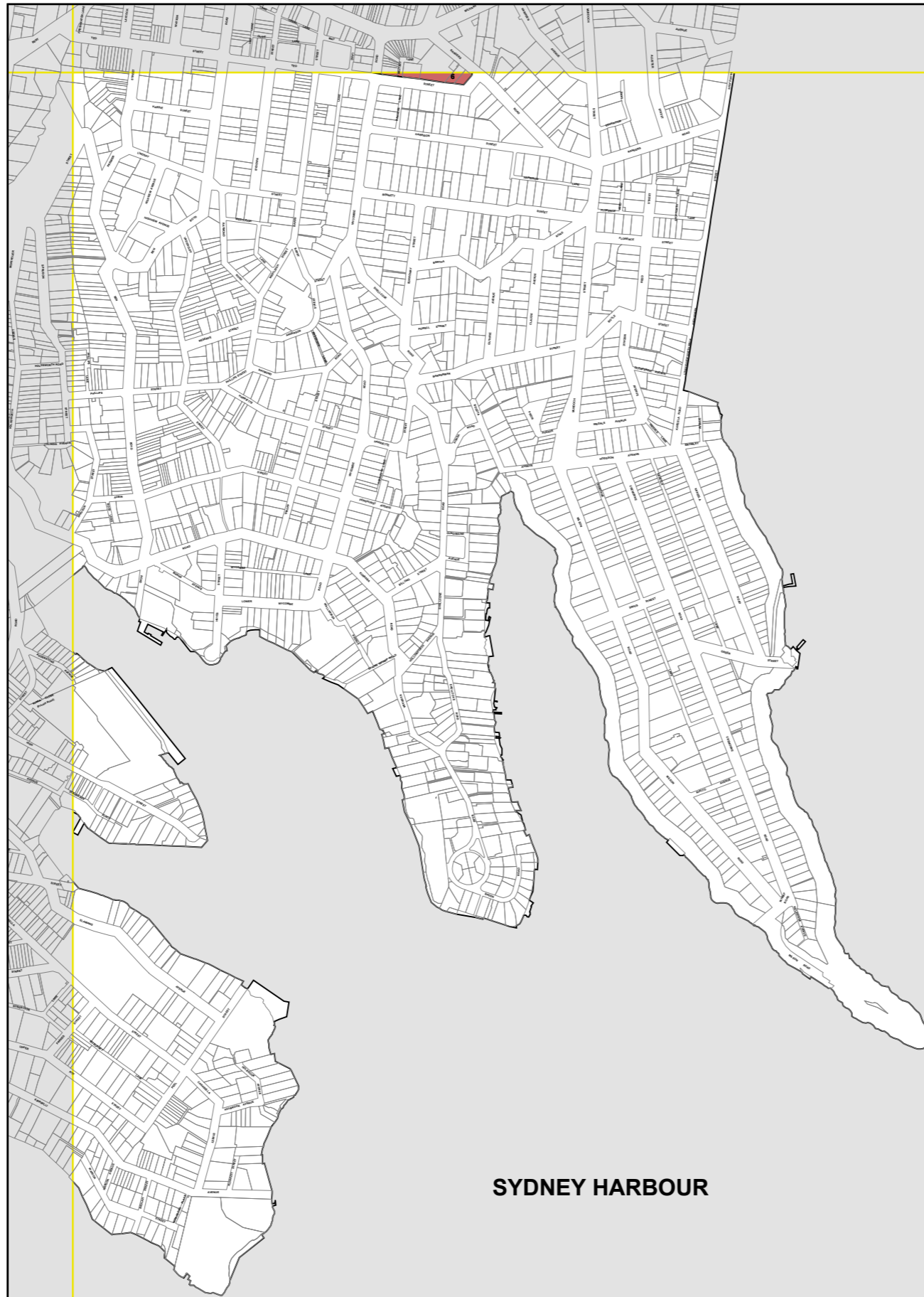
Non-Residential Floor Space Ratio Range Map - Sheet LCL_004

Non-Residential Floor Space Ratio Range

- Area 1
- Area 2
- Area 3
- Area 4
- Area 5
- Area 6
- Area 7
- Area 8
- Area 9
- Area 10
- Area 11
- Area 12
- Area 13

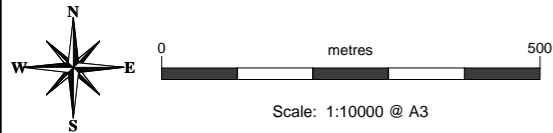
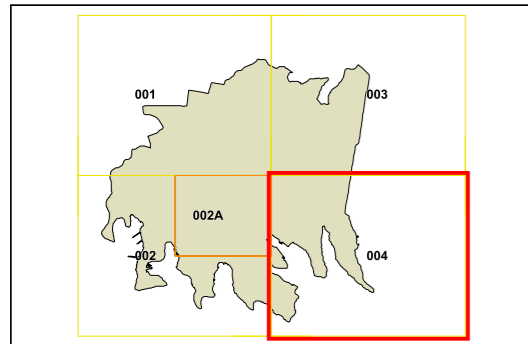
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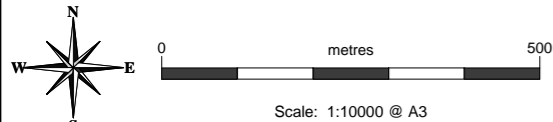
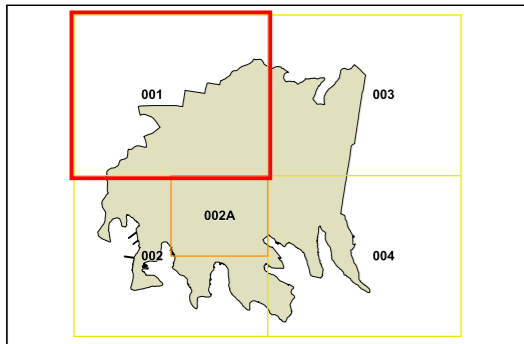
Non-Residential Floor Space Ratio Map - Sheet LCL_001

Minimum Non-Residential Floor Space Ratio (n:1)

D	0.5
F	0.6
I	0.75
N	1
S	1.5
T	2
V	3

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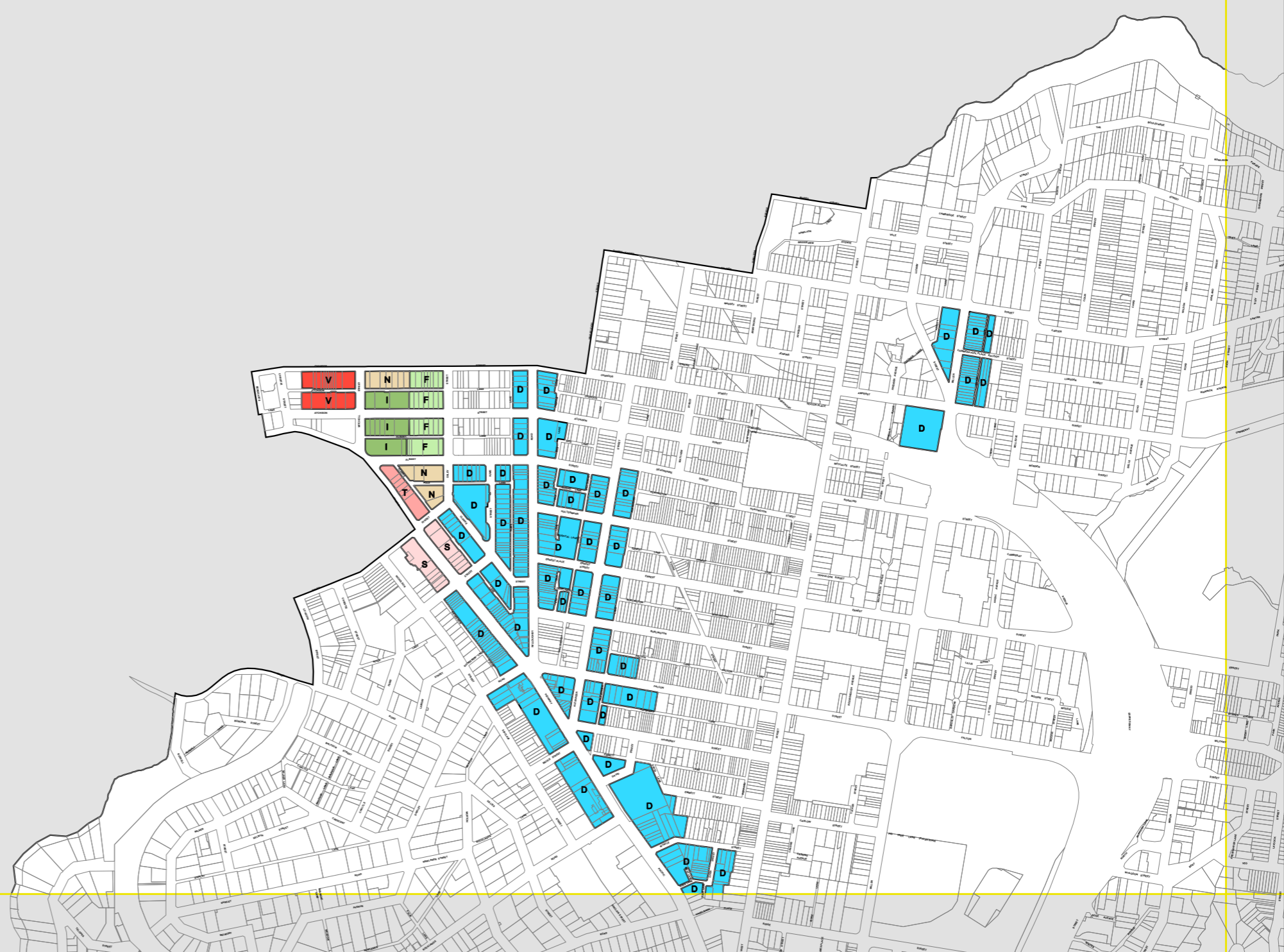
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LGA

WILLOUGHBY
LGA





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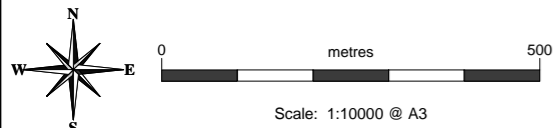
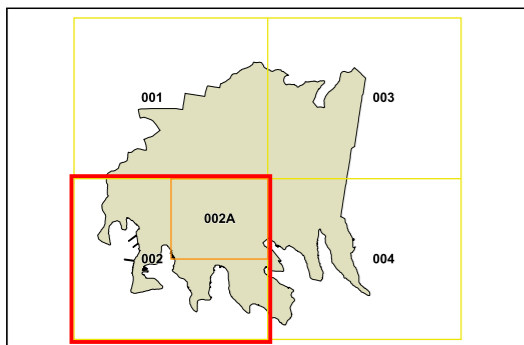
Non-Residential Floor Space Ratio Map - Sheet LCL_002

Minimum Non-Residential Floor Space Ratio (n:1)

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F	0.6
I	0.75
N	1
S	1.5
T	2
V	3

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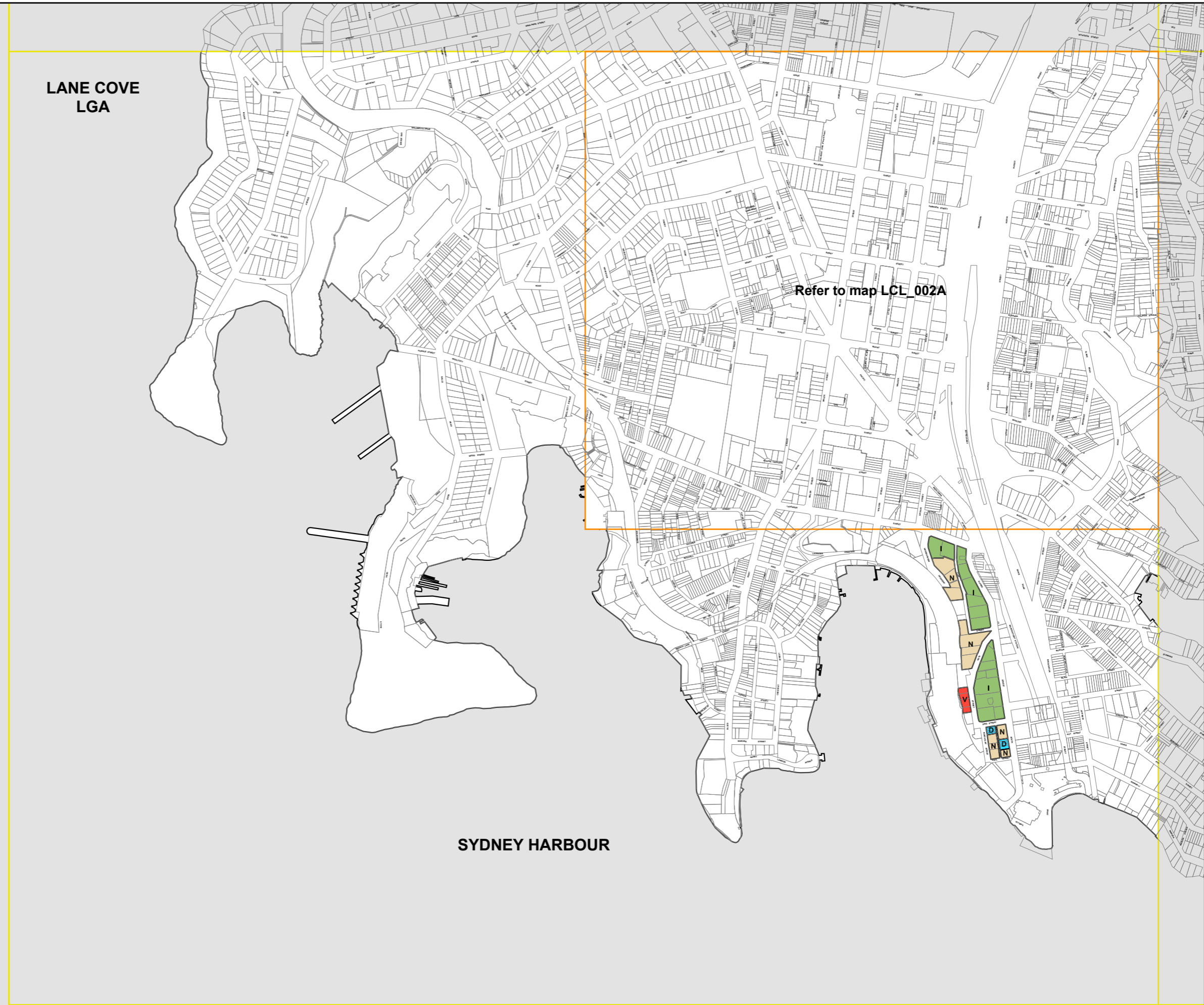
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LANE COVE
LGA

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Refer to map LCL_002A





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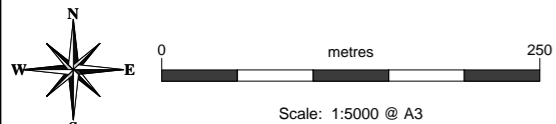
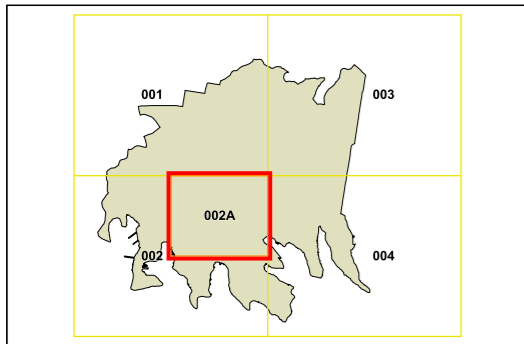
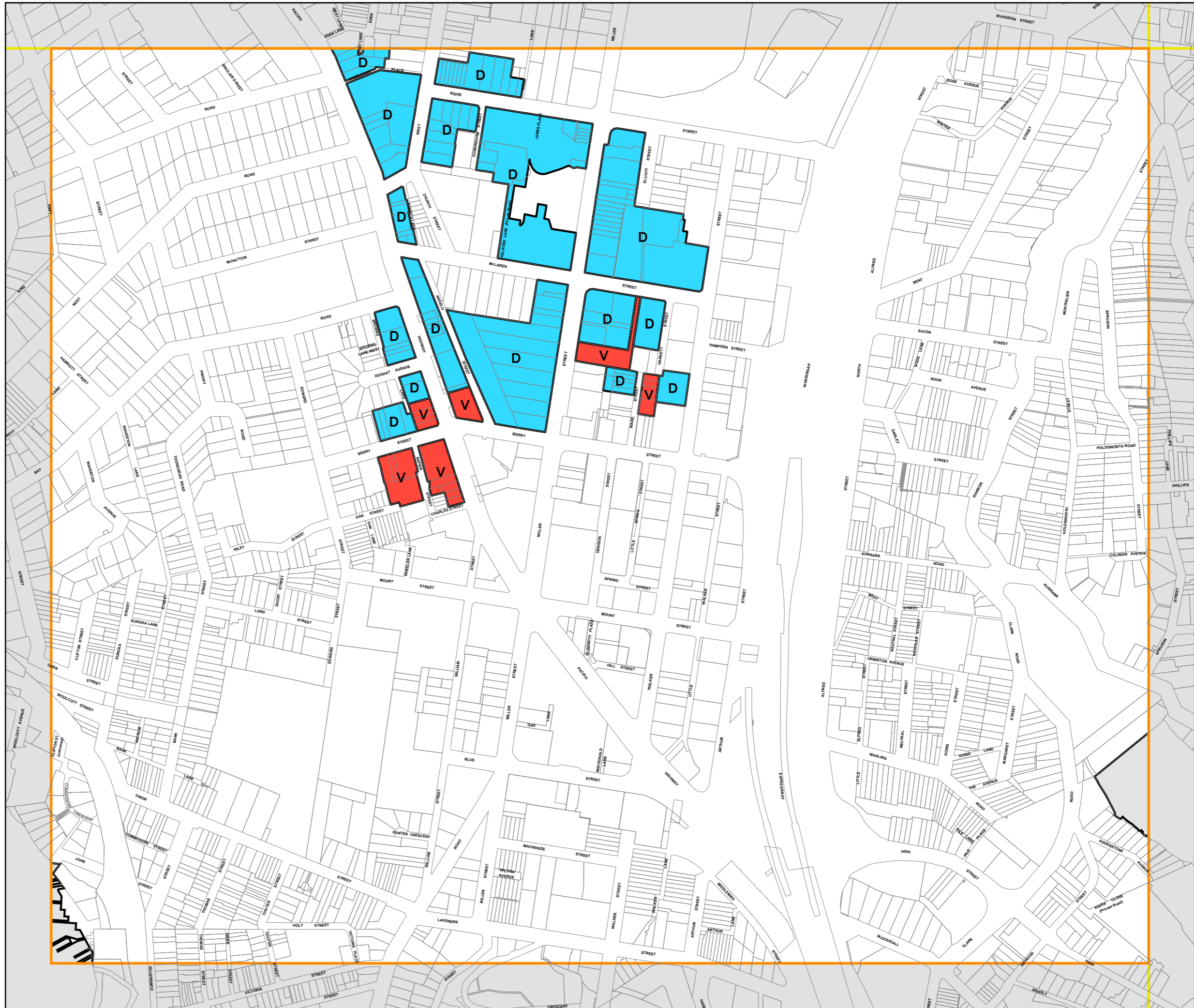
Non-Residential Floor Space Ratio Map - Sheet LCL_002A

Minimum Non-Residential Floor Space Ratio (n:1)

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F	0.6
I	0.75
N	1
S	1.5
T	2
V	3

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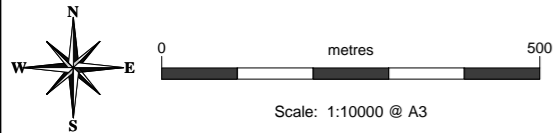
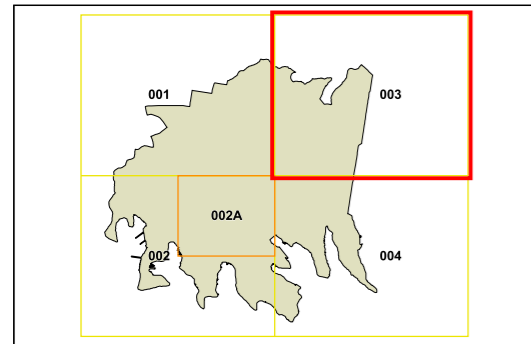
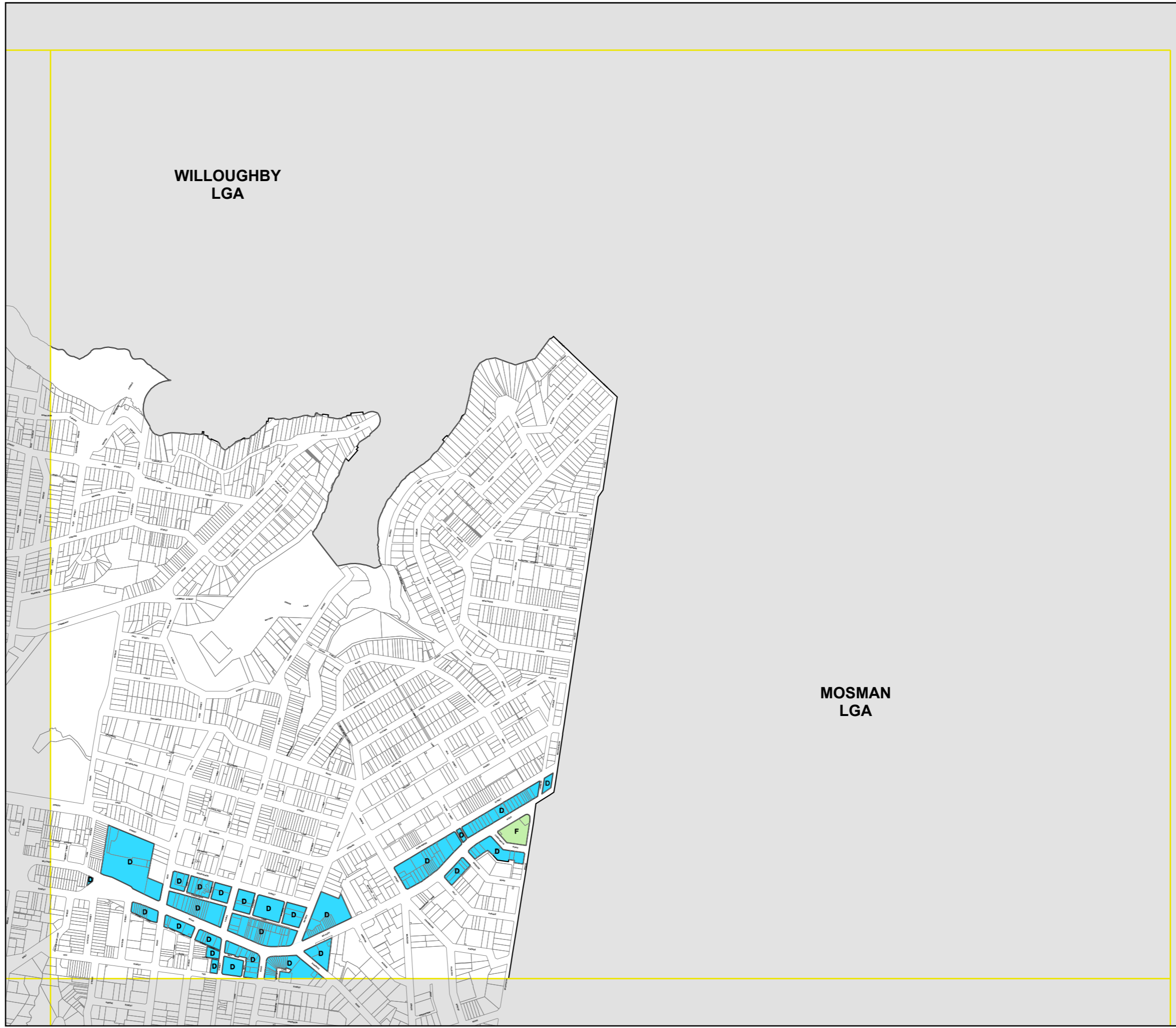
Non-Residential Floor Space Ratio Map - Sheet LCL_003

Minimum Non-Residential Floor Space Ratio (n:1)

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F	0.6
I	0.75
N	1
S	1.5
T	2
V	3

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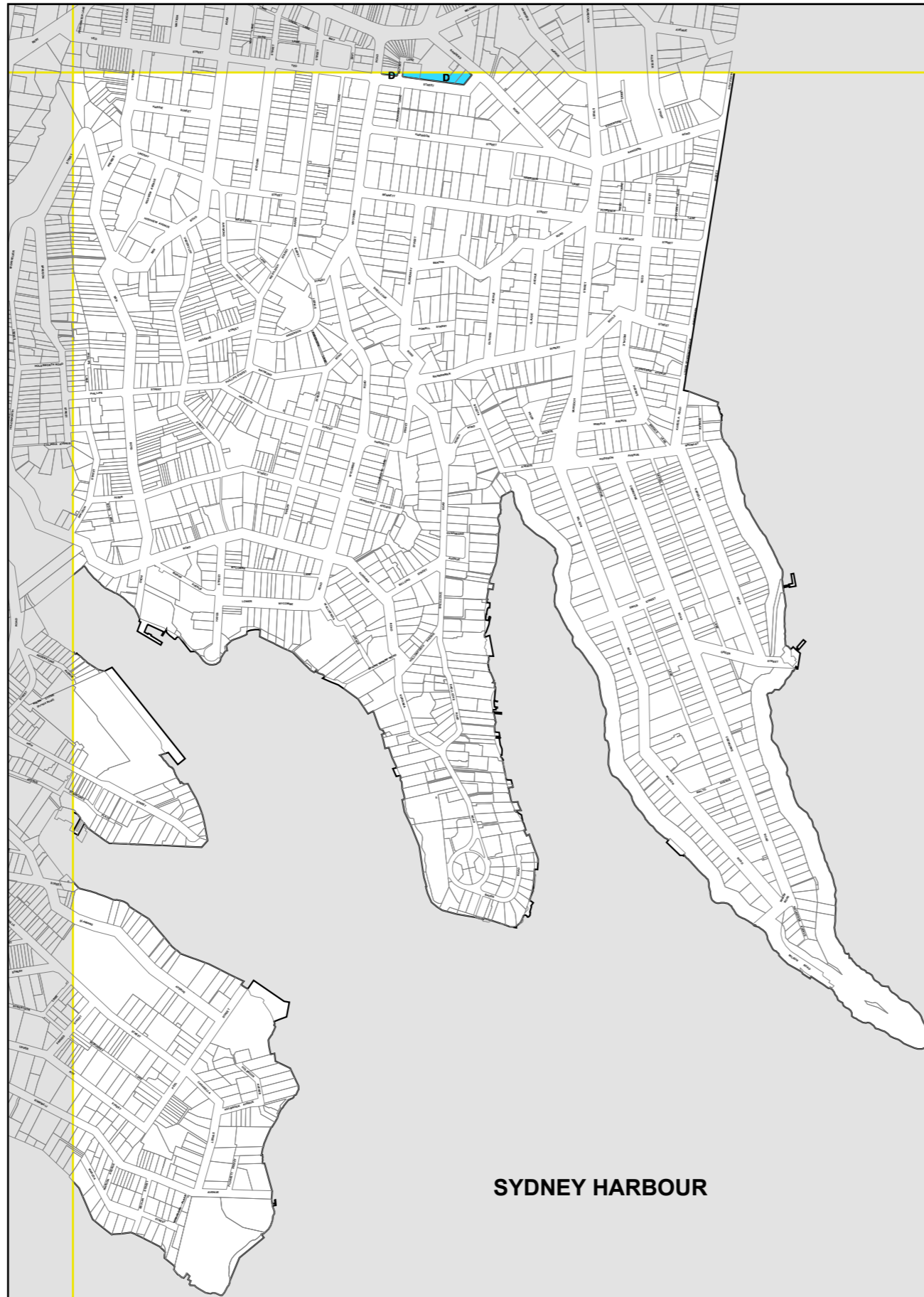
Non-Residential Floor Space Ratio Map - Sheet LCL_004

Minimum Non-Residential Floor Space Ratio (n:1)

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F	0.6
I	0.75
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T	2
V	3

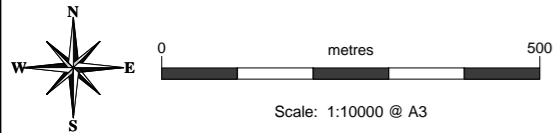
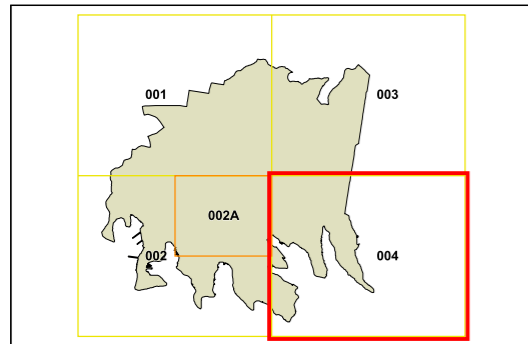
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**DECISION OF 3661st COUNCIL MEETING
HELD ON 16 MARCH 2015**

63. CoS02: Legal and Planning Committee - Minutes 2 March 2015

RESOLVED:

1. **THAT** the report (LP01: Current Appeals and Results - February 2015) be received.
2. **THAT** Council adopts the attached draft amendment to North Sydney Development Control Plan 2013 for public exhibition.
3. **THAT** the public exhibition occurs concurrently with the exhibition of the Planning Proposal which seeks to make residential flat buildings permissible with consent in the B4 Mixed Use zone.
4. **THAT** Council prepare a Planning Proposal to amend NSLEP 2013, such that the heritage provisions prevail over all other provisions of the LEP, similar to that incorporated within NSLEP 2001.
5. **THAT** Council provide a copy of this report and correspondence to LGNSW and request they take it up as policy and lobbying on behalf of Council.
6. **THAT** Council provide copies of this report and its resolutions from the 2 March 2015 Legal and Planning Committee to other metropolitan Councils who have significant heritage issues, and call on those Councils to write in similar terms to the State Government on their behalf.
7. **THAT** Council note the coming into force of Amendment No.7 to NSLEP 2013.
8. **THAT** Council resolves to adopt the attached Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
9. **THAT** if North Sydney Local Environmental Plan 2013 is amended as a result of carrying out Recommendation No.1, that the North Sydney Heritage Inventory sheet in relation to Heritage Item I0407 be updated.
10. **THAT** Council resolves to prepare and submit a nomination to the NSW Heritage Council to have bus shelter BS004: The Oval included on the State Heritage Register.
11. **THAT** upon completing of the required nomination form and any associated documents to include bus shelter BS004: The Oval on the State Heritage Register, that delegated authority be granted to the General Manager to forward the nomination to the NSW Heritage Council.
12. **THAT** the Committee notes that items 22 and 60 in the consultant's report have been erroneously mapped and that this be rectified in finalising the submission to the Department of Planning.
13. **THAT** the independent consultant be congratulated on the report.
14. **THAT** in relation to Item 4 Norman Turkington and Associates be appointed to conduct the conflict resolution process between the Mayor and all Councillors.
15. **THAT** Council seek a second opinion on the advice in relation to Items 5 and 6 of the Performance Improvement Order.
16. **THAT** Council write to the Minister for Local Government outlining its concerns, and seeking indemnification from any subsequent costs arising from the Minister's directive to Council on Item 6 of the Performance Improvement Order.
17. **THAT** the legal advice sought on Items 5 and 6 of the Performance Improvement Order be obtained from an eminent Senior Counsel.
18. **THAT** a report be submitted to the next Legal and Planning Committee regarding the naming of the unnamed bus shelters.

4. LP03: Draft Amendment to NSDCP 2013 - Car Parking rates in the B4 Zone

Report of Mark Yee, Strategic Planner

At its meeting on 15 December 2014, Council resolved (Minute No. 548) to forward a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) to permit 'residential flat buildings' in the B4 Mixed Use Zone to the Minister

for Planning and Environment for a Gateway Determination.

Council received a Gateway Determination on 9 February 2015, allowing the Planning Proposal to proceed to public exhibition.

Since its determination to proceed with the Planning Proposal, Council staff have identified an unforeseen issue relating to car parking requirements for residential flat buildings under the North Sydney Development Control Plan 2013 (NSDCP 2013). In particular, the maximum parking rates for 'residential flat buildings' would be significantly higher than the rates applied for 'shop top housing' within the *B4 Mixed Use* zone.

To address this issue, a draft amendment to NSDCP 2013 has been prepared which sets car parking rates for residential flat buildings in the B4 Mixed Use Zone in line with the existing policy position adopted for 'shop top housing' in the zone.

This report seeks Council's adoption of the draft amendment to NSDCP 2013 (refer to Attachment 2) so that it may be placed on public exhibition concurrently with the corresponding Planning Proposal.

Recommending:

1. THAT Council adopts the attached draft amendment to North Sydney Development Control Plan 2013 for public exhibition.

2. THAT the public exhibition occurs concurrently with the exhibition of the Planning Proposal which seeks to make residential flat buildings permissible with consent in the *B4 Mixed Use* zone.

The Motion was moved by Councillor Baker and seconded by Councillor Marchandeanu

Voting was as follows:

For/Against 10/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Y		Burke	Absent	
Baker	Y		Marchandeanu	Y	
Carr	Y		Bevan	Y	
Beregi	Y				

Resolved to recommend:

1. THAT Council adopts the attached draft amendment to North Sydney Development Control Plan 2013 for public exhibition.

2. THAT the public exhibition occurs concurrently with the exhibition of the Planning Proposal which seeks to make residential flat buildings permissible with consent in the *B4 Mixed Use* zone.

**Report to General Manager**

Attachments:

1. Council Report of 15 December 2014
2. Draft amendment to NSDCP 2013

SUBJECT: Draft Amendment to NSDCP 2013 - Car Parking rates in the B4 Zone**AUTHOR:** Mark Yee, Strategic Planner**ENDORSED BY:** Joseph Hill, Director City Strategy**EXECUTIVE SUMMARY:**

At its meeting on 15 December 2014, Council resolved (Minute No. 548) to forward a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) to permit 'residential flat buildings' in the B4 Mixed Use Zone to the Minister for Planning and Environment for a Gateway Determination.

Council received a Gateway Determination on 9 February 2015, allowing the Planning Proposal to proceed to public exhibition.

Since its determination to proceed with the Planning Proposal, Council staff have identified an unforeseen issue relating to car parking requirements for residential flat buildings under the North Sydney Development Control Plan 2013 (NSDCP 2013). In particular, the maximum parking rates for 'residential flat buildings' would be significantly higher than the rates applied for 'shop top housing' within the *B4 Mixed Use* zone.

To address this issue, a draft amendment to NSDCP 2013 has been prepared which sets car parking rates for residential flat buildings in the B4 Mixed Use Zone in line with the existing policy position adopted for 'shop top housing' in the zone.

This report seeks Council's adoption of the draft amendment to NSDCP 2013 (refer to Attachment 2) so that it may be placed on public exhibition concurrently with the corresponding Planning Proposal.

FINANCIAL IMPLICATIONS:

Nil

RECOMMENDATION:

1. **THAT** Council adopts the attached draft amendment to North Sydney Development Control Plan 2013 for public exhibition.
2. **THAT** the public exhibition occurs concurrently with the exhibition of the Planning Proposal which seeks to make residential flat buildings permissible with consent in the *B4 Mixed Use* zone.

Report of Mark Yee, Strategic Planner
Re: Draft Amendment to NSDCP 2013 - Car Parking rates in the B4 Zone

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LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction: 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence

BACKGROUND

At its meeting on 15 December 2014, Council resolved (Minute No. 548) to forward a Planning Proposal to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013) to permit 'residential flat buildings' in the B4 Mixed Use Zone to the Minister for Planning and Environment for a Gateway Determination.

A copy of the report and determination are attached 1 to this report.

Currently, the only type of residential accommodation permitted in the *B4 Mixed Use* zone is 'shop top housing'. The definition of shop top housing prohibits any form of residential accommodation being located at the ground floor levels of the building.

The Planning Proposal was initiated to allow the approval of a development which includes residential accommodation at the ground floor level of a building, whilst still meeting non-residential floor space and active street frontage requirements under Clause 4.4A of NSLEP 2013 and overcoming the restrictive nature of the definition of 'shop top housing', which may not be amended.

The Planning Proposal seeks the following amendments to NSLEP 2013:

- include 'residential flat buildings' as a permissible use with development consent in the *B4 Mixed Use* zone;
- include a new local clause within Part 6 of NSLEP 2013 stating that residential flat buildings will only be permissible with consent if they are provided as part of mixed use development and achieve active street frontages;

Council received a Gateway Determination on 9 February 2015, allowing to the Planning Proposal to proceed to public exhibition.

CONSULTATION REQUIREMENTS

Community engagement will be undertaken in accordance with Council's Community Engagement Protocol.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of

Report of Mark Yee, Strategic Planner
 Re: Draft Amendment to NSDCP 2013 - Car Parking rates in the B4 Zone

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this project.

DETAIL

1. Issue

Since its determination to proceed with the Planning Proposal, Council staff have identified an unforeseen issue relating to car parking requirements for residential flat buildings within the *B4 Mixed Use zone* under North Sydney Development Control Plan 2013 (NSDCP 2013). Under NSDCP 2013 the maximum parking rates for 'residential flat buildings' are significantly higher than the rates for 'shop top housing' as illustrated in the below table.

2. Existing Parking Rates

Under section 10.2.1 of NSDCP 2013, the maximum parking rates for all residential development are as follows:

Residential Development

P1 Provide on-site car parking, including visitor parking at the maximum rates stated in Table B-10.1.

TABLE B-10.1 – Residential Parking Rates				
Development Type	Zone	Location	Maximum Parking Rate	
<ul style="list-style-type: none"> dual occupancies dwelling houses semi-detached dwellings 	All	All	1-2 bedrooms	1 space / dw*
			3 or more bedrooms	2 spaces /dw
<ul style="list-style-type: none"> attached dwellings multi-dwelling housing residential flat buildings 	All	All	Studio, 1-2 bedrooms	1 space / dw
			3 or more bedrooms	1.5 spaces / dw
			Visitor	0.25 space / dw (min of 1 space)
<ul style="list-style-type: none"> shop top housing 	B4 – Mixed Use	All	Studio, 1 bedroom	0.5 space / dw
			2 or more bedrooms	1 space / dw
			Motorcycle parking	1 space / 10 car spaces
	All zones other than B4 – Mixed Use	All	Studio, 1-2 bedrooms	1 space / dw
			3 or more bedrooms	1.5 spaces / dw
<ul style="list-style-type: none"> boarding houses 	All	All	1 / 12 beds	
<ul style="list-style-type: none"> seniors housing 	All	All	1 / 5 dw	

* dw = Dwelling

Report of Mark Yee, Strategic Planner

Re: Draft Amendment to NSDCP 2013 - Car Parking rates in the B4 Zone

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Sites which are zoned *B4 Mixed Use* in the North Sydney Local Government Area (LGA) all have good access to public transport as well as shops and other services. To discourage car dependency/usage in this zone, the DCP provides more restrictive maximum parking rates than other zones in which residential development is permissible.

Should 'residential flat buildings' become permitted in the *B4 Mixed Use* zone as proposed, it is appropriate to apply the same off-street parking rates that currently apply to 'shop top housing'. Without this amendment, Council's adopted policy regarding increasing public transport usage and reducing traffic congestion may be undermined.

3. Proposed Parking Rates

To address this issue, a draft amendment to NSDCP 2013 has been prepared (refer to Attachment 2) which sets car parking rates for 'residential flat buildings' in the *B4 Mixed Use* zone the same as the existing rates for 'shop top housing' in the *B4 Mixed Use* zone.

The proposed amendment to NSDCP 2013 clearly addresses the potential issue by clearly identifying new maximum parking rates for residential flat buildings in the *B4 Mixed Use* zone.

4. Conclusion

The preparation and progression of the Planning Proposal to permit residential flat buildings within the *B4 Mixed Use* zone has resulted in an issue arising that has the potential to undermine Council's adopted policy position with regards to parking provision. To address this issue, a draft amendment to NSDCP 2013 has been prepared which sets car parking rates for 'residential flat buildings' in the *B4 Mixed Use* zone the same as the existing rates for 'shop top housing'.

To ensure increased clarity and transparency, it is recommended that the proposed DCP amendments be placed on exhibition concurrently with the corresponding Planning Proposal.

**DECISION OF 3659th COUNCIL MEETING
HELD ON 15 DECEMBER 2014**

SUSPEND STANDING ORDERS

It was moved by Councillor Baker, seconded by Councillor Clare and carried unanimously that Standing Orders be suspended and Items GMO03, CIS04, CIS05, CIS06, CLS01, CLS02, CLS03, CLS04, CLS05, CLS07, CLS08, COS01, COS02, COS03, COS05, COS06, COS07, COS08, EPS01, EPS02, OSE01, OSE02, OSE04, OSE05, OSE06, OSE07, OSE08 (Min. No. 543, 547, 548, 549, 553, 554, 555, 556, 557, 559, 560, 562, 563, 564, 566, 567, 568, 569, 570, 571, 581, 582, 584, 585, 586, 587, 588) be voted on “en globo”.

Voting was as follows:

For/Against 10/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Reymond	Y		Morris	Y	
Clare	Y		Burke		Out
Baker	Y		Marchandean	Y	
Carr	Y		Bevan	Y	
Beregi	Y				

It was moved by Councillor Baker and seconded by Councillor Barbour and carried that Standing Orders be resumed.

Councillor Burke left the meeting at 8.40pm during discussion of Item CIS09 (Minute No. 552) and returned at 8.44pm.

548. CIS05: Planning Proposal - Residential flat buildings in the B4 - Mixed Use zone

Report of Ben Boyd, Executive Strategic Planner

Council has considered a number of development proposals for mixed use developments in the *B4 - Mixed Use* zone under North Sydney Local Environmental Plan 2013 (NSLEP 2013) which incorporate ‘shop top housing’. Shop top housing is the only form of residential accommodation that is permitted in the *B4 - Mixed Use* zone. As part of its consideration of these proposals, an unforeseen issue has arisen whereby Council is not in a position to approve a mixed use development which proposes residential accommodation at the ground floor level of a building, whilst still meeting non-residential floor space and active street frontage requirements under Clause 4.4A of NSLEP 2013. This is due to the definition of shop top housing prohibiting any form of residential accommodation being located at the ground floor levels of the building. This has resulted in Council requesting the amendment of proposals to comply with the definition of shop top housing or refusal of the proposal. To provide increased flexibility and ensure the orderly and economic use and development of land, a Planning Proposal has been prepared that seeks to amend NSLEP 2013 as follows:

- include residential flat buildings as a permissible use with development consent in the *B4 - Mixed Use* zone; and
- include a new local clause within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible if they are provided as part of mixed use development and achieve active street frontages.

The Planning Proposal is supported as it:

- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;

- generally complies with the Department of Planning's '*A guide to preparing planning proposals*' (October 2014);
- is unlikely to result in any adverse impacts on the environment or wider community;
- will not impact on Council's ability to provide sufficient levels of employment floor space;
- will not impact on the ability to provide active street frontages; and
- will provide increased flexibility for the redevelopment of land in the B4 - Mixed use zone.

The Planning Proposal is considered to be satisfactory and should be forwarded to the Department of Planning and Environment for Gateway Determination.

If implemented, the Planning Proposal will also have implications for the application of North Sydney Development Control Plan 2013 (NSDCP 2013). To improve certainty as to which sections of NSDCP 2013 apply when a mixed use development incorporating a residential flat building is proposed, an amendment to Section 1 to Part B of NSDCP 2013 is recommended.

Recommending:

1. **THAT** Council resolves to adopt the attached Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
2. **THAT** Council resolves to adopt the attached draft amendment to North Sydney Development Control Plan 2013 and place that draft amendment on public exhibition concurrently with the Planning Proposal.

RESOLVED:

1. **THAT** Council resolves to adopt the attached Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.
2. **THAT** Council resolves to adopt the attached draft amendment to North Sydney Development Control Plan 2013 and place that draft amendment on public exhibition concurrently with the Planning Proposal.



Report to General Manager

Attachments:

1. Planning Proposal - Residential flat buildings in the B4 - Mixed Use zone
2. Draft Amendment to NSDCP 2013

SUBJECT: Planning Proposal - Residential flat buildings in the B4 - Mixed Use zone

AUTHOR: Ben Boyd, Executive Strategic Planner

ENDORSED BY: Joseph Hill, Director City Strategy

EXECUTIVE SUMMARY:

Council has considered a number of development proposals for mixed use developments in the *B4 - Mixed Use* zone under North Sydney Local Environmental Plan 2013 (NSLEP 2013) which incorporate '*shop top housing*'. Shop top housing is the only form of residential accommodation that is permitted in the *B4 - Mixed Use* zone. As part of its consideration of these proposals, an unforeseen issue has arisen whereby Council is not in a position to approve a mixed use development which proposes residential accommodation at the ground floor level of a building, whilst still meeting non-residential floor space and active street frontage requirements under Clause 4.4A of NSLEP 2013. This is due to the definition of shop top housing prohibiting any form of residential accommodation being located at the ground floor levels of the building. This has resulted in Council requesting the amendment of proposals to comply with the definition of shop top housing or refusal of the proposal.

To provide increased flexibility and ensure the orderly and economic use and development of land, a Planning Proposal has been prepared that seeks to amend NSLEP 2013 as follows:

- include residential flat buildings as a permissible use with development consent in the *B4 - Mixed Use* zone; and
- include a new local clause within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible if they are provided as part of mixed use development and achieve active street frontages.

The Planning Proposal is supported as it:

- generally complies with the relevant Local Environment Plan making provisions under the Environmental Planning & Assessment Act 1979;
- generally complies with the Department of Planning's '*A guide to preparing planning proposals*' (October 2014);
- is unlikely to result in any adverse impacts on the environment or wider community;
- will not impact on Council's ability to provide sufficient levels of employment floor space;
- will not impact on the ability to provide active street frontages; and

Report of Ben Boyd, Executive Strategic Planner

Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

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- will provide increased flexibility for the redevelopment of land in the B4 - Mixed use zone.

The Planning Proposal is considered to be satisfactory and should be forwarded to the Department of Planning and Environment for Gateway Determination.

If implemented, the Planning Proposal will also have implications for the application of North Sydney Development Control Plan 2013 (NSDCP 2013). To improve certainty as to which sections of NSDCP 2013 apply when a mixed use development incorporating a residential flat building is proposed, an amendment to Section 1 to Part B of NSDCP 2013 is recommended.

FINANCIAL IMPLICATIONS:

Nil.

RECOMMENDATION:

1. THAT Council resolves to adopt the attached Planning Proposal and forward it to the Minister for Planning in order to receive a Gateway Determination in accordance with Section 56 of the Environmental Planning and Assessment Act, 1979.

2. THAT Council resolves to adopt the attached draft amendment to North Sydney Development Control Plan 2013 and place that draft amendment on public exhibition concurrently with the Planning Proposal.

Report of Ben Boyd, Executive Strategic Planner
 Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

(3)

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction : 2. Our Built Environment

Outcome: 2.2 Improved mix of land use and quality development through design excellence
 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

Direction : 3. Our Economic Vitality

Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy

BACKGROUND

Since the commencement of North Sydney Local Environmental Plan 2013 (NSLEP 2013), Council has considered a number of proposals for mixed use developments in the B4 -*Mixed Use* zone generally incorporating commercial premises at the lowest levels of the building with residential apartments above (in the form of shop top housing). However, some of these proposals have been refused or required amendment due to the restrictive definition of '*shop top housing*' which prevents the location of dwellings at the ground or lower ground levels of a mixed use building.

The issue has predominantly arisen where a property has a substantial fall across a site and where there would be more than one level of the building having ground level access (refer to Figures 1 and 2). In addition, the issue becomes further exacerbated where a site is affected by a generally low non-residential floor space ratio (e.g. a minimum requirement of less than 0.5:1) which forces a site to take on additional commercial floor space where it may not be financially viable or desirable to do so.

CONSULTATION REQUIREMENTS

Should Council determine that the Planning Proposal can proceed, community engagement will be undertaken in accordance with Council's Community Engagement Protocol and the requirements of any Gateway Determination issued in relation to the Planning Proposal.

SUSTAINABILITY STATEMENT

The following table provides a summary of the key sustainability implications:

QBL Pillar	Implications
Environment	<ul style="list-style-type: none"> No anticipated impacts.
Social	<ul style="list-style-type: none"> If implemented, the Planning Proposal could result in the provision of additional residential accommodation without impacts upon the provision of employment.

Report of Ben Boyd, Executive Strategic Planner
 Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

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QBL Pillar	Implications
Economic	<ul style="list-style-type: none"> If implemented, it is considered that the ability to redevelop properties will be greatly improved provided through increased flexibility in the planning controls.
Governance	<ul style="list-style-type: none"> No anticipated impacts.

DETAIL

1. Proposed LEP Amendment

The primary purpose of this Planning Proposal is to improve the flexibility of the existing planning controls in the *B4 - Mixed Use* zone under North Sydney Local Environmental Plan 2013 (NSLEP 2013). In particular, it is to allow residential accommodation to be provided at the ground floor and lower ground floor levels, where that residential accommodation does not prevent the provision of active street frontages or the meeting of the non-residential floor space ratio range controls.

The Planning Proposal seeks to achieve this by amending NSLEP 2013 as follows:

1. Include residential flat buildings as a permissible use with development consent in the *B4 - Mixed Use* zone. It is proposed to achieve this by inserting the words '*Residential flat buildings;*' after the words '*Registered clubs;*' within the *B4 - Mixed Use* zone of the Land Use Table located at the end of Part 2 to NSLEP 2013;
2. That a local clause be inserted within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible with consent if they are provided as part of mixed use development and achieve active street frontages. The suggested wording for the proposed local clause is as follows:

6.# Residential flat buildings in Zone B4 Mixed Use

- (1) *The objective of this clause is to permit additional compatible uses within Zone B4 Mixed Use but only if that use does not impact on the activation of street frontages.*
- (2) *Development consent must not be granted for development for the purposes of residential flat buildings on land in Zone B4 Mixed Use unless:*
 - (a) *the residential flat building forms part of a mixed use development; and*
 - (b) *the consent authority is satisfied that any dwelling within the mixed use development:*
 - (i) *is located above the ground floor level; or*
 - (ii) *away from any street frontage at the ground floor level, of the building in which the residential flat building is located.*

2. Planning Proposal Structure

The Planning Proposal (Refer to Attachment 1) is considered to be generally in accordance with the requirements under Section 55(2) of the Environmental Planning and Assessment Act 1979 and the Department of Planning and Environment's (DPE) '*A guide to preparing*

Report of Ben Boyd, Executive Strategic Planner
Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

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planning proposals' (2012). In particular, the Planning Proposal adequately sets out the following:

- A statement of the objectives or intended outcomes of the proposed local environmental plan;
- An explanation of the provisions that are to be included in the proposed local environmental plan;
- Justification for those objectives, outcomes and provisions and the process for their implementation; and
- Details of the community consultation that is to be undertaken on the Planning Proposal.

3. Justification of the Planning Proposal

The proposed LEP amendment as detailed in the attached Planning Proposal will enable increased flexibility in how a site within the *B4 - Mixed Use* zone can be developed whilst still seeking to maintain minimum levels of employment floor space and the provision of active street frontages. Furthermore, the proposed amendment helps to achieve the aims and objectives of the EP&A Act by enabling the economic and orderly development of land.

4. Proposed DCP Amendment

Section 1.1.2 to Part B of North Sydney Development Control Plan 2013 (NSDCP 2013) states that Section 1 - *Residential Development* to Part B of NSDCP applies to development applications for the purposes of residential accommodation, including 'residential flat buildings'.

Section 2.1.2 to Part B of NSDCP 2013 states that Section 2 - *Commercial and Mixed Use Development* to Part B of NSDCP 2013 applies to development for any purpose in the *B1 - Neighbourhood Centre*, *B3 - Commercial Core*, *B4 - Mixed Use*, and *SP2 - Infrastructure* (in certain circumstances) zones and non-residential development in the *IN2 - Light Industrial* zone.

As the Planning Proposal relates to the development for residential flat buildings in the *B4 - Mixed Use* zone, there appears to be a conflict between Sections 1 and 2 to Part B of NSDCP 2013. To remove any confusion, it is proposed to amend Section 1.1.2 to Part B of NSDCP 2013 to specifically exclude the application of Section 1 to Part B of NSDCP 2013 where residential flat buildings are proposed in the *B4 - Mixed Use* zone.

A copy of the proposed amendment is provided in Attachment 2 to this report.

5. Conclusion

The Planning Proposal seeks to amend NSLEP 2013 such that it improves the flexibility of the existing planning controls in the *B4 - Mixed Use* zone. In particular, it is to allow residential accommodation to be provided at the ground floor and lower ground floor levels, where that residential accommodation does not prevent the provision of active street frontages or the meeting of the non-residential floor space ratio range controls.

Report of Ben Boyd, Executive Strategic Planner

Re: Planning Proposal for Residential Flat Buildings in the B4 - Mixed Use Zone

(6)

The relevant requirements under s.55 of the EP&A Act and the matters identified in the Department of Planning's '*A guide to preparing planning proposals*' (October 2012) have been adequately addressed in the Planning Proposal. The proposal is appropriate and is adequately justified.

It is therefore recommended that Council support the forwarding of the Planning Proposal to the Department of Planning and Environment, seeking a Gateway Determination under s56 of the EP&A Act 1979.

In addition, if implemented, the Planning Proposal will have implications for NSDCP 2013. To improve certainty over which sections of NSDCP 2013 apply when a mixed use development incorporating a residential flat building is proposed, an amendment to Section 1 to Part B of NSDCP 2013 is recommended.



10.2 PARKING PROVISION

10.2.1 Quantity Requirements

Objectives

- O1 To ensure that sufficient car parking is provided on-site to cater for the users of the development.
- O2 To minimise the reliance on private car usage.
- O3 To facilitate the use of public and alternative transport modes including walking and cycling.

Provisions

Residential Development

- P1 Provide on-site car parking, including visitor parking at the maximum rates stated in Table B-10.1.

TABLE B-10.1 – Residential Parking Rates				
Development Type	Zone	Location	Maximum Parking Rate	
<ul style="list-style-type: none"> dual occupancies dwelling houses semi-detached dwellings 	All	All	1-2 bedrooms	1 space / dw*
			3 or more bedrooms	2 spaces / dw
<ul style="list-style-type: none"> attached dwellings multi-dwelling housing residential flat buildings 	All	All	Studio, 1-2 bedrooms	1 space / dw
			3 or more bedrooms	1.5 spaces / dw
			Visitor	0.25 space / dw (min of 1 space)
<ul style="list-style-type: none"> residential flat buildings shop top housing 	B4 – Mixed Use	All	Studio, 1 bedroom	0.5 space / dw
			2 or more bedrooms	1 space / dw
			Motorcycle parking	1 space / 10 car spaces
	All zones other than B4 – Mixed Use	All	Studio, 1-2 bedrooms	1 space / dw
			3 or more bedrooms	1.5 spaces / dw
			Visitor	0.25 space / dw (min of 1 space)
<ul style="list-style-type: none"> boarding houses 	All	All	1 / 12 beds	
<ul style="list-style-type: none"> seniors housing 	All	All	1 / 5 dw	

* dw = Dwelling

- P2 For residential flat buildings, shop-top housing and attached dwellings, on-site car parking provision significantly below maximum rates specified in Table B-10.1, will generally only be considered if the proposed development has good access to public transport, due to the impact that unmet on-site parking demand may have on surrounding residential streets, if viable alternative transport modes are not available.



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Mark Yee
Strategic Planner
North Sydney Council
200 Miller Street
North Sydney NSW 2060

30 June 2015

Dear Mark

Subject: Advice on the Feasibility of Serviced Apartments in North Sydney

Thank you for commissioning HillPDA to undertake this study to provide Council with advice regarding the viability of serviced apartments in North Sydney. HillPDA understands that Council is seeking clarification as to the commercial viability of serviced apartments beyond a given apartment threshold and/or offer of services.

This clarification will help enable Council to make a decision as to whether serviced apartments should be permissible as a non-residential component of a proposed development in a B4 Mixed Use Zone.

This letter outlines four key points of discussion:

- A review of recent Development Applications (DA's) involving serviced apartments in North Sydney LGA;
- Key market indicators in the serviced apartment market;
- Commercial viability of small and large serviced apartment operations; and
- A summary of findings for Council

Review of DA Submissions, Approvals and Modifications

HillPDA has reviewed a number of Development Applications (DAs) which have been submitted to North Sydney Council (Council) over the past three years which have included serviced apartments as part of the commercial FSR in a proposed development within the B4 Mixed Use Zone. These DAs are listed below:

- 200-220 Pacific Highway (DA 404/10);
- 1A Eden Street (DA 215/13);
- 619 Pacific Highway (DA131/11);
- 621 Pacific Highway (DA 136/12);

- 225 Miller Street (DA 658/06);
- 20-22 Atchison Street (DA 187/13);
- 6-16 Atchison Street (MP09_0187); and
- 74-80 Alfred Street.

A review of the DAs submitted to Council reveal prominent trends. These include:

- **Operations seeking modification** - All DAs have sought some form of modification to change the serviced apartments (or partially) to residential use. This has either been undertaken through submission of a DA Modification, Planning Proposal or Withdrawal of a DA where there are a small number of units proposed;
- **Smaller Operations Seeking to Convert** - The majority of DAs are for smaller operations with six of the nine DAs proposing less than 25 serviced apartments. Of these DAs, all six had either applied for a change of use or have withdrawn the DA.
- **The one exception is the larger proposed Major Project (MP) at 6 - 16 Atchison Street (MP09-0187).** This MP sought and received approval to reduce the number of serviced apartments from 76 to 64.

Summary

The assessment essentially highlights that a number of DAs are incorporating serviced apartments into their overall floorspace plans as a mechanism of achieving their required commercial FSR in a B4 Mixed Use Zone. The majority of these developments have then sought to modify their commercial floorspace component to a much lower FSR and convert the remainder of the floorspace to residential.

This is reflective of a broader issue across multiple markets in Sydney where the return on investment (ROI) for residential use is far more profitable than commercial use (including serviced apartments). It also carries less risk with new residential developments in the current market generally selling off the plan. Conversely the return on a commercial use such as serviced apartments is riskier and a lower return on investment.

This has been an issue across multiple asset classes in the North Shore Metropolitan Market including North Sydney. As a whole, commercial floorspace has actually contracted on the North Shore by 24,734 square metres throughout 2014, representing a reduction of

office space by 1.1%¹. This has occurred primarily as a result of conversions to residential uses.

The Serviced Apartment Market

The serviced apartment market comprises the commercial activity of leasing apartments directly or through a secondary platform to short term (overnight to monthly rate) visitors.

The serviced apartment industry in Australia has approximately 633 registered business operators. Of this total, just six operators comprise over 30% of the total rooms and collect nearly 50% of the total revenue².

IBIS World Industry Report "Serviced Apartments in Australia" outlines that the serviced apartment sector is a strong contributor to the Australian economy and nearly a third of the market is concentrated in NSW (32.1%).

Current Market Conditions

At present, the market in terms of revenue is relatively stable for serviced apartments across Australia, particularly New South Wales. The market has benefited over the past decade through growth in the sector at expense to the traditional hotel/motel sector as people seek a greater level of choice, personal freedom in a larger unit size, ability to self-cater and a lower room rate, of which serviced apartments are able to charge.

Some key financial indicators of the serviced apartment market outlined in the IBIS World Report include:

- Annual revenue of \$3.0bn 2014;
- Profit of \$432.9m in 2014;
- \$620m per annum in paid wages;
- 2.3% per annum industry growth from 2010 to 2015;
- Forecast 3.0% per annum growth projected from 2015-2020;
- 633 registered businesses; and
- 3/4 of new supply in commercial accommodation (number of rooms) from 1999 to 2010 was in Serviced Apartments.

¹ Savills Spotlight North Shore Office Market: April 2015

² IBIS World Report H4404 Serviced Apartments in Australia

Key Market Indicators

As an industry, the serviced apartment market is impacted by business market fluctuations and performance of the broader tourism industry.

Broader Market Implications

The market share of serviced apartments has grown to 25% of all traveller accommodation, up from 21% (2010) at the expense of more mainline hotel operations³.

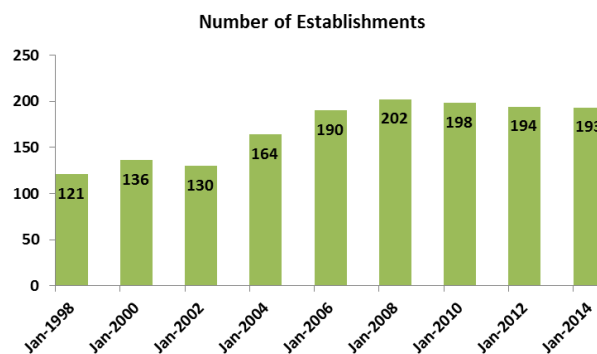
This increase in market share has helped to negate some of the potential loss caused by a sluggish Australian tourism market. IBIS World's report outlines that profit margins over the five years to 2015 have seen profits accounting for 14% of industry revenue. The appeal of serviced apartments from an operations perspective is that costs can be controlled as there is relatively lower staff overheads which make it competitive against the hotel industry and less exposed to wage and labour volatility.

Operators in the Market

In New South Wales, the ABS counts that as of 2014 there are 193 serviced apartment establishments with 15 or more rooms.

Figure 1 shows that since 1998, the number of establishments has actually been fairly static and dropped slightly. CBRE's "Australian Serviced Apartments: The Formation of an Industry" report outlines that smaller operators actually have less cost efficient models. The report notes that operational efficiencies are gained from larger operators among others such as Quest, Mantra, Toga and Accor.

Figure 1: Number of Establishments in NSW 1998-2014



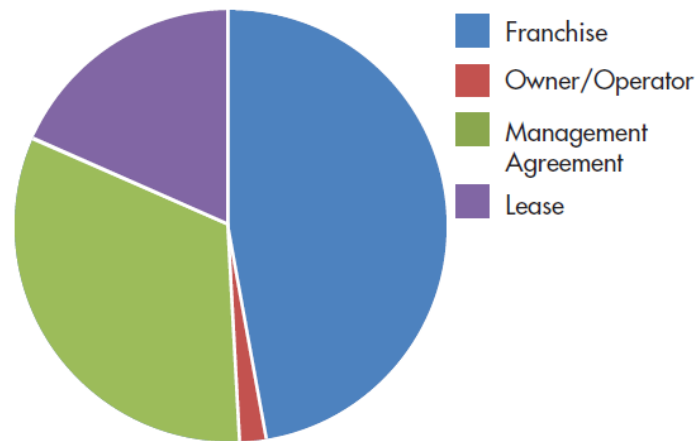
³ IBIS World Report H4404 Serviced Apartments in Australia

Source: ABS 8635.0 - Tourist Accommodation, Australia, 2013-14

IBIS World's report outlines that 40% of the revenue from serviced apartments in Australia is collected through the four largest players in the market which are Quest, Mantra, Oaks and Toga. CBRE point out that larger operators are able to lease, manage and franchise more cost effectively than smaller players in the market.

Figure 2 shows the operating structure of serviced apartments in Australia. The chart shows that nearly half are run through a franchise. Leasing and Management Agreement operational models are also popular. Owner operators are actually only a very small proportion of the market.

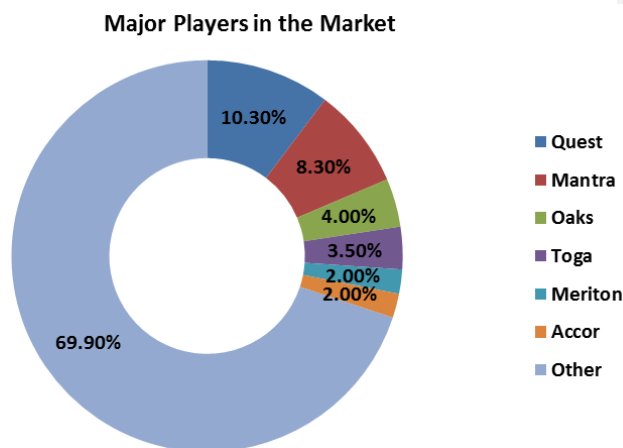
Figure 2: Type of Operator



Source: CBRE: Australian Serviced Apartments: The Formation of an Industry

The serviced apartment market is becoming more global and a large proportion of new serviced apartment establishments entering the market are run by larger operators. Figure 3 below shows the largest operators in the Australian market. The six largest operators control 31.1% of total market share (number of rooms) and the four largest operators earn collect 40% of all revenue.

Figure 3: Key Market Operators of Serviced Apartments

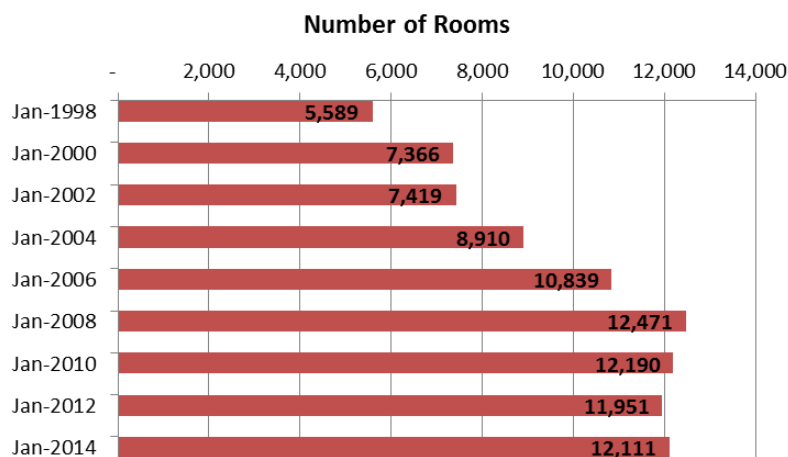


Source: IBIS World Report H4404 Serviced Apartments in Australia

Availability & Occupancy

The slight drop in the number of establishments shown in Figure 1 is consistent with the number of total available rooms in the serviced apartment sector. Figure 4 shows that the total number of rooms across NSW from 1998 to 2014 peaked in 2008 and has been relatively steady since then.

Figure 4: Number of Rooms in Serviced Apartments in NSW 1998 - 2014

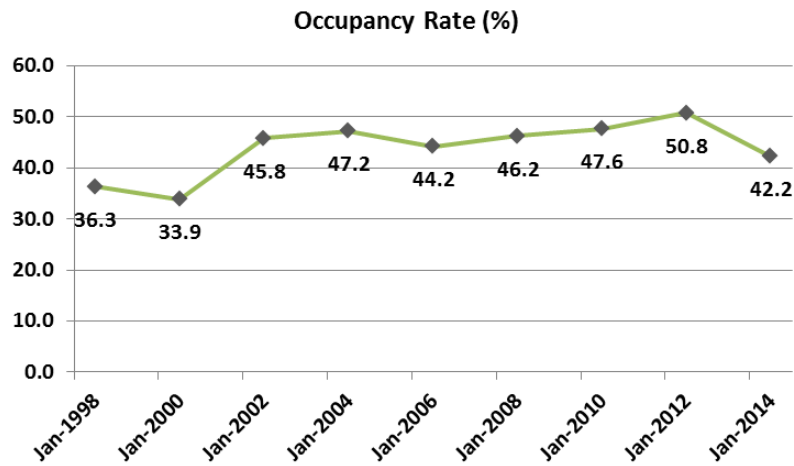


Source: ABS 8635.0 - Tourist Accommodation, Australia, 2013-14

In terms of recent performance one concerning indicator shown in Figure 5 is the fact that the occupancy rate in serviced apartments in NSW has dropped from 50.8% in January 2012 down to 42.2% in June 2014. This is consistent with a general broader drop in domestic

tourism but is a reflection none the less that the market is fairly mature. This is an indication that new entries into the market would need to be very competitive and attract a broader share of the overall accommodation market. This is something that is likely to be more attainable by larger establishments which have greater operational flexibility to compete with other markets such as hotels.

Figure 5: Occupancy rate in Serviced Apartments in NSW 1998-2014

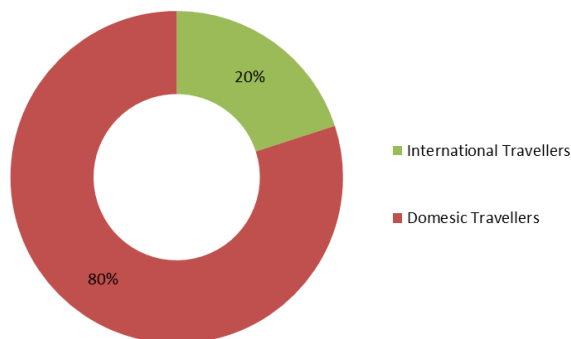


Source: ABS 8635.0 - Tourist Accommodation, Australia, 2013-14

Travellers

The serviced apartment market is heavily oriented towards domestic travellers. Figure 6 shows that in 2014 80% of visitor nights were by domestic tourists. Research indicated that hotels conversely catered to a large international market, especially in high value locations such as the CBD's or coastal areas.

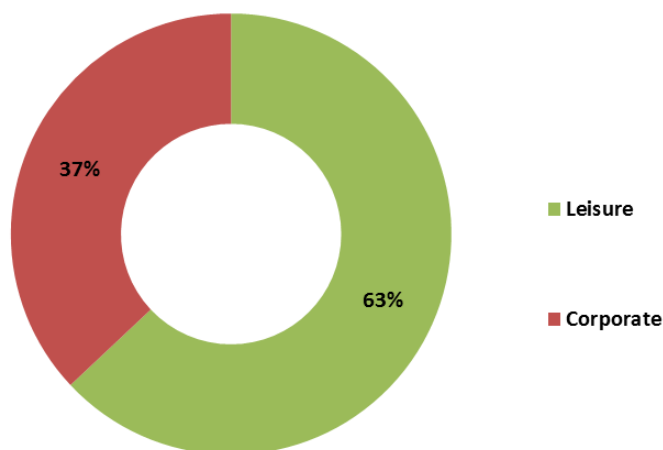
Figure 6: Split of International and Domestic Traveller Nights



Source: IBIS World Report H4404 Serviced Apartments in Australia

Figure 7 below shows that leisure travellers comprise 63% of all traveller nights in serviced apartments. This has considerable impact on the location of the operations, with a heavy concentration of serviced apartment in key holiday destinations including the Gold Coast and Northern NSW. For a market like North Sydney, the demand for space from corporate travellers is likely to be stronger, given its importance as a business centre. However, given its very close proximity to Sydney CBD, consultation indicated it is also appealing as an alternate option for leisure travellers, especially for affordability reasons compared to the CBD.

Figure 7: Split of Leisure & Corporate Traveller Nights in Serviced Apartments



Source: CBRE Australian Serviced Apartments : The Formation of an Industry

Summary

The key market indicators show that the market is reaching maturity, reflected by the fact that it hasn't been growing in terms of number of rooms or establishments in the past five years. The serviced apartment market however is remaining stable from a revenue perspective in a turbulent Australian tourism market through increasing market share and maintaining profits, which is assisted by its lower operation costs.

There is an increasing trend of larger players and global operators in the market. This is reflected by the significant market share held by the larger companies in terms of both number of rooms and total revenue. Further, as the franchise system now constitutes nearly half

of all serviced apartment establishments the trend will be for larger establishments to maximise operation and referral systems. The smaller serviced apartments (<50 - 70 rooms) will be increasingly less competitive.

Commercial Viability of Smaller & Larger Operators

The review of recent DAs in this letter indicates that of all the recent submissions and approvals for DAs incorporating serviced apartments, all but one have been withdrawn or modified for complete conversion into residential uses. The one development (MP09_0187) which goes against the trend is the only larger proposed operation and it still has sought modification to reduce the number of serviced apartments from 76 to 64 - a figure that is still likely to be considered viable to run as a commercial operation.

Room Threshold

HillPDA undertook consultation with a number of operators and real estate observers of serviced apartments in regards to the market in North Sydney. The general consensus was that a minimum threshold of 50 - 70 apartments was necessary to operate as a long term viable use.

There are several key factors driving this minimum threshold including:

- **Operational Arrangement:** The larger operators are able to work generally on a long term Management Lease or Franchise Agreement whereby they are operating as a business and not entirely through a third party platform;
- **Greater Market Capture:** The larger operators are also able to effectively capture a greater share of the market due to offering a product between private residential and a hotel. They are generally able to provide more internal facilities (kitchen, living room, spare room), while still maintaining minimal staff costs. As the serviced apartment market is heavily dominated by domestic leisure travellers, the ability to offer some level of catering, reception services and recreation amenities opens these services up to a broader market share of both holiday and business travel markets;
- **Cost Efficiency:** Large Hotel operators are able to generate greater cost savings on providing essential services such as cleaning, administration and marketing than smaller players. The low-intensity staffing structures means they can benefit from a

high yield (number of apartments) while still operating with minimal costs; and

- **Commercial Structures:** There is a greater upfront cost associated with the development of larger serviced apartment operations rather than smaller holdings. This relates to the greater level of amenities and facilities that need to be developed as well as staffing requirements. As such it is likely that for cost recovery considerations, larger operations are developed with a significantly longer proposed lifespan, whereby short term conversion would carry greater cost/loss than conversion of a smaller operation.

Commercial vs Residential Uses

In addition to considering a minimum threshold, it is also necessary to consider whether a smaller serviced apartment constitutes a commercial use or in fact a residential use let on a short term rental.

The majority of respondents in consultation indicated that the majority of smaller operators lease out the serviced apartments through a third party operator such as Airbnb, Stayz or Expedia. These smaller operations therefore require very little, if no "services" to support the ongoing leasing of the apartments and it is therefore difficult to ascertain if they are a commercial use or simply a short term residential use.

Larger serviced apartment operations generally offer a number staff services and amenities which place it between a total self-catered apartment and a hotel. This includes food and beverage options such as a restaurant or bar, cleaning services and a reception/concierge. These services legitimise that they are thus operating as a commercial service with longer term structures in place to continue as a commercial operation.

Summary of Findings

In summary there are four key points to consider when assessing the threshold of serviced apartments as a viable and genuine commercial use:

- **Current Trends** - Assessing recent DAs involving serviced apartments indicate that applications with a small component of serviced apartments (mainly <25 units) could be viewed as using this as a mechanism of gaining approval for the eventual goal of converting to residential. Of the nine recent DAs reviewed from the past three years, all have sought some level of modification

and reduction of commercial FSR (made up of serviced apartments). Further six of the nine have sought complete change in uses to residential, whilst only one DA/MP (MP09_0187) was considered to have the minimum threshold to be considered a commercial operation;

- **Market Conditions** - Increasingly, market conditions are favourable to larger operators as they are able to attract a greater capture of the overall serviced apartment and accommodation market. This is driven by the ability of large operators to offer a greater range of services and amenities than smaller operators. They are further advantaged against smaller operators by the fact they can attract this greater market share, whilst still maintaining minimal operating costs and stable revenue due to the low human labour component;
- **Commercial Viability** - Consultation indicated that commercial viability can be potentially achieved with a minimum threshold of between 50 - 70 serviced apartments. At this yield, there is enough revenue to ensure that the additional costs of operating with a greater number of services and amenities do not impact viability. Further, the cost of the staffing component is less impacted by trend and seasonal market fluctuations; and
- **Genuine Commercial Uses** - In the context of serviced apartments, it is considered that short term residential uses and commercial operations should be differentiated. A short term let serviced apartment run through a third party operator (Airbnb, Stayz) where there is no commercial aspect to the service offered other than the booking could be considered a short term residential use. A serviced apartment operation where there is a range of services offered such as food, concierge, business centre or recreational facilities is a commercial operation. It is the latter which is generally found in larger operations and those with 50 - 60 + serviced apartments as a minimum.

Sincerely



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