

8.9. Residential Flat Buildings in the Medium Density Residential R3 zone

AUTHOR: Marcelo Occhiuzzi, Manager Strategic Planning

ENDORSED BY: Joseph Hill, Director City Strategy

ATTACHMENTS:

1. Report to NSLPP 9 March 2022 [**8.9.1** - 26 pages]
2. Minutes NSLPP PP 9_ March 2022 [**8.9.2** - 5 pages]
3. PP RF Bs in R 3 zone [**8.9.3** - 18 pages]

PURPOSE:

To respond to Council's resolution of 10 January 2022 that required that work commence urgently on the appropriate process to amend the North Sydney Local Environmental Plan to remove the addition of residential flat buildings as a permissible use in the R3 Medium Density Zone.

EXECUTIVE SUMMARY:

At its meeting on 10 January 2022, Council resolved prohibit RFBs in the R3 zone. This report is in response to that resolution and represents the commencement of this process.

A Planning Proposal was prepared by staff in accordance with the resolution and as is required for the preparation of Planning Proposals, it was considered by the North Sydney Local Planning Panel (NSLPP) on 9 March 2022. The Planning Panel performs an advisory role to Council. The Panel endorsed the progression of the matter.

If Council endorses the Planning Proposal, it will be referred to the Department of Planning, Environment (DPE) for a Gateway Determination, which when issued, will enable the formal public exhibition of the amendment.

Following exhibition, the matter will be reported to Council including a discussion of all submissions made. Council will then consider the final endorsement of the amendment. If endorsed, it will be referred to the DPE for its review approval and ultimate gazettal.

Although this can vary considerably, amendments to a Local Environmental Plan can typically take 12-18 months from inception to gazettal.

FINANCIAL IMPLICATIONS:

Preparing and exhibiting a Planning Proposal to amend the North Sydney Local Environmental Plan in the manner proposed represents a modest investment in Council resources. These can be accommodated within existing budget lines.

RECOMMENDATION:

1. **THAT** Council resolves to endorse the Planning Proposal forming Attachment 3 to this report and forward it to the Minister for Planning in order to obtain a Gateway Determination in accordance with section 3.34 of the Environmental Planning and Assessment Act, 1979.
2. **THAT** the Planning Proposal be exhibited consistent with Council's Community Engagement Protocol.
3. **THAT** a further report be presented to Council following the public exhibition of the Planning Proposal outlining submissions received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment

1.2 North Sydney is sustainable and resilient

3. Our Future Planning

3.4 North Sydney is distinctive with a sense of place and quality design

3.5 North Sydney is regulatory compliant

5. Our Civic Leadership

5.2 Council is well governed and customer focused

5.3 Community is informed and consulted

BACKGROUND

At its meeting of 20 March 2017, Council considered Notice of Motion No. 8/17 regarding the possibility of reinstating previous planning controls that applied prior to the gazettal of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) that removed existing use rights for residential flat buildings within residential zones. Council subsequently resolved:

THAT Council call for a report on its previous controls which applied to existing use rights in residential zones where flats were not permissible uses and whether any measures can now be taken to reintroduce these controls in some form.

Council considered the initial report in November 2019 (as part of the broader LEP review) and endorsed the amendment for exhibition. The amendments were exhibited between May 2020 and June 2020 and they were finally endorsed by Council in August 2020. The resulting amendment to NSLEP 2013 was gazetted on 30 June 2021 (amendment 30).

At its meeting on 10 January 2022, Council resolved:

THAT Council urgently begins the appropriate process to amend the North Sydney LEP to remove the addition of residential flat buildings as a permissible use in the R3 Medium Density Zone in the land use table which came into force in Amendment 30 to the North Sydney LEP on 30 June 2021 by removing residential flat building from the R3 Land use table and updating the LEP as required to remove the residential flat buildings in the R3 Zone.

CONSULTATION REQUIREMENTS

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

DETAIL

Attachment 1 is the detailed report considered by the North Sydney Local Planning Panel on 9 March 2022 and includes a detailed assessment of the Planning Proposal, including the background to amendment 30 and the planning considerations and requirements to achieve the amendment of the NSLEP 2013 to prohibit residential flat buildings (RFBs) in the Medium Density Residential R3 zone.

Local Planning Panel

As mandated, the Planning Proposal was considered by the North Sydney Local Planning Panel (NSLPP) on 9 March 2022. The Planning Panel performs an advisory role to Council. Attachment 2 provides the minutes of that meeting. The Panel provided the following advice in response:

The Council Officer's Report is endorsed by the Panel and the Planning Proposal should proceed to Gateway Determination to allow public exhibition. The Panel notes it would appear in the light of community concerns, that Council resolved that the recent amendment in June 2021 to the LEP made residential flat buildings an additional permissible use in the R3 Zone.

This Planning Proposal would reverse this. The Panel also notes that when the June 2021 amendment was made that Council resolved to review this provision. The Panel notes that this Planning Proposal to remove residential flat buildings as a permissible use in the R3 zone will not impact on Council's Housing Strategy. This additional use was not calculated into and number of dwellings and is therefore not relied on to provide additional housing supply for council as part of its housing strategy.

The Panel notes that since the amendment to the LEP in June 2021 that recent case law for existing use rights provisions have been interpreted differently and this, together with submissions received during the exhibition can be further considered during exhibition. The submission already received raises concern about current applications continuing to be being assessed and determined under the existing controls that permit RFB's

The Panel notes that since the amendment to the LEP in June 2021 that recent case law for existing use rights provisions have been interpreted differently and this, together with submissions received during the exhibition can be further considered during exhibition. The submission already received, raises concern about current applications continuing to be being assessed and determined under the existing controls that permit RFB's.

Existing Use Rights

Existing use rights under the Environmental Planning and Assessment Act are essentially uses that are lawfully commenced (i.e. was a permissible form of development at the time of approval), but subsequently becomes 'prohibited' under a new environmental planning instrument. Applications are able to be lodged for a prohibited use if existing use rights are

established. This gave rise to a number of applications for RFBs both in the Low Density Residential R2 zone as well as the Medium Density Residential R3 zone.

Council was able to deal with this aspect of the Act prior to the NSLEP 2013 coming into effect by essentially allowing alterations and additions to RFBs in the lower density residential zones. This ensured that such development was not prohibited thereby no triggering the existing use rights provisions of the Act. The “standard instrument” approach to the making of LEPs, which was mandated by the Department of Planning at the time, however, required a rigid approach to the preparation of LEPs, which precluded the previous manner in which existing use rights were managed by North Sydney Council.

Amendment 30

Amendment 30 resulted from consideration of the need to address the risks associated with the exploitation of the existing use rights provisions of the Act within the Medium Density Residential R3 zone. It was gazetted on 30 June 2021.

Importantly, the existing built form controls (height, setbacks, site coverage etc) have remained in place that would have applied to the continuing permissible medium density housing such as town houses and the like.

Local Strategic Planning Statement and Local Housing Strategy

The amendment required as part of this resolution is included at attachment 3. It is a relatively straightforward amendment in an administrative sense. Council does, however, need to address the North Sydney Local Strategic Planning Statement (LSPS).

The LSPS is a statutory document that has been adopted by Council and “assured” (approved) by the Greater Sydney Commission. All Planning Proposals are required to be consistent with Council’s LSPS as well as a range of other endorsed strategic planning documents. The LSPS also references the Local Housing Strategy (LHS). The LSPS expresses the desired future direction for housing, employment, transport, recreation, environment and infrastructure for the LGA as a whole and reflects the outcomes sought by the Metropolitan Plan and North District Plan.

The LSPS includes Local Planning Priorities and Actions as follows:

Local Planning Priority N5

Providing housing supply, choice and affordability with access to jobs, services and public transport.

Action L1.1- *Implement the North Sydney Local Housing Strategy (2019) to achieve the housing directions, objectives and actions of the GSC’s Regional and North District Plans and deliver 0-5 and 6-10 year housing supply targets.*

Action L1.6 - *Amend NSLEP 2013 and NSDCP 2013 to manage the impacts of any existing use rights application and minimise increases in density away from transport and services. (short term)*

It is considered that the planning proposal will continue to allow for housing supply and choice. As discussed below, the management of the existing use rights issue that was the precursor to amendment 30 to the North Sydney Local Environmental Plan, has somewhat dissipated with more recent land and Environment Court decisions.

The LHS includes the following discreet action relating to this issue:

Action 10: *Amend NSLEP to allow Residential Flat Buildings in the R3 zone to address existing use rights issues.*

As a monitoring indicator, the LHS identifies the following:

Monitor the number of DA's application received and built form outcomes of approved DA's for RFBs in the R3 zone in the LGA annually.

In response to this annual monitoring requirement of Council's LHS, it is noted that the following development applications have been lodged since 30 June 2021:

- a) 115-119 Holt Avenue, Cremorne
- b) 1 Warung Street, McMahons Point

The application for an RFB at 1 Warung Street (DA379/21) whilst permissible in the zone by virtue of Amendment 30, would have been permissible under the existing use rights provisions of the Act notwithstanding that amendment.

Amendment 30 - Not an additional source of new housing

It is important to note that Amendment 30 as it relates to RFBs in the R3 zone, was never intended as additional housing supply for Council. It was solely intended to address the existing use rights issue. The LHS states:

Amend the NSLEP to allow Residential Flat Buildings in the R3 zone to address existing use rights issues. Manage impacts through existing use rights application by minimising increases in density away from transport and services (Action 10).

There is a considerable list of approvals that exploited the existing use rights provisions of the Act. More recently, however, there has been a softening of the interpretation of the extent to which development standards and development controls provisions may be taken into account as relevant matters for consideration (in particular *Saffioti v Kiama Council* [2019] NSWLEC 57). As a result, the urgency of addressing the existing use rights issues that resulted in Amendment 30 to the NSLEP 2013, may have dissipated somewhat.

It should also be noted that Court interpretations and decisions do fluctuate and change over time, so relying solely on current interpretations is not without a degree of risk. Notwithstanding this, Council's decision on 24 January 2022 seeks to balance the somewhat

reduced risk of the exploitation of existing use rights in the Medium Density Residential R3 zone, with the widespread permissibility of RFBs in this zone.

Submission

Whilst this Planning Proposal has not been exhibited, a submission was received by a landowner within the R3 zone. The comments included in the submission to the Local Planning Panel are summarised below.

- The Planning Proposal has been prepared “at a whim” without due regard for broader housing, employment and planning considerations.
- The current controls were the subject of community consultation and detailed planning. They have only been in place for 8 months. The existing built form controls have been retained.
- The permissibility of RFBs within the R3 zone is consistent with the zone objectives
- If the Planning Proposal is pursued, it should include a savings provision.

The matters raised above are generally discussed throughout the report included at attachment 1. With regard to the savings provision, it should be noted that the LEP amendment process is an involved one and it may be 12 months or more before the amendment that is being pursued as part of this report, is ultimately gazetted. Notwithstanding this, the existing savings provision of the NSLEP 2013 (clause 1.8A), would apply which performs the function that the submitter requests.

Process

If Council endorses the Planning Proposal, it will be referred to the Department of Planning, Environment (DPE) for a Gateway Determination, which when issued, will enable the formal public exhibition of the amendment.

Following exhibition, the matter will be reported to Council including a discussion of all submissions made. Council will then consider the final endorsement of the amendment. If endorsed, it will be referred to the DPE for its review approval and ultimate gazettal.

Although this can vary considerably, amendments to a Local Environmental Plan can typically take 12-18 months from inception to gazettal.

Item PP02 - REPORTS - 9/03/22

N O R T H S Y D N E Y C O U N C I L R E P O R T S



NSLPP MEETING HELD ON 9/03/22

Attachments:

1. Planning Proposal

ADDRESS/WARD: All land zoned R3 Medium Density Residential throughout the entire North Sydney local government area.

APPLICATION No: PP 4/22

PROPOSAL: To amend North Sydney Local Environmental Plan 2013 by prohibiting residential flat buildings within the R3 Medium Density Residential zone throughout the local government area.

OWNER: Various

APPLICANT: North Sydney Council, 200 Miller Street, North Sydney NSW 2060

AUTHOR: Marcelo Occhiuzzi, Manager Strategic Planning

DATE OF REPORT: 28 February 2022

EXECUTIVE SUMMARY

In response to the ongoing submission and approval of development applications exploiting the existing use rights provisions of the Environmental Planning and Assessment Act (the Act) for residential flat buildings (RFBs) in the lower density residential zones, in March 2017, Council resolved to:

...call for a report on its previous controls which applied to existing use rights in residential zones where flats were not permissible uses, and whether any measures can now be taken to reintroduce these controls in some form.

To remove this capacity, Council pursued an amendment to make RFBs permissible in the Medium Density R3 zone ("R3 zone"). This automatically removed existing use rights for older RFBs that occurred within this zone whilst ensuring compliance with the envelope controls that would otherwise apply to the medium density development that was already permissible in the zone.

Council considered the initial report in November 2019 (as part of the broader North Sydney Local Environmental Plan review) and endorsed the amendment for exhibition. The amendments were exhibited between May 2020 and June 2020 and they were finally endorsed by Council in August 2020. The resulting amendment to NSLEP 2013 was gazetted on 30 June 2021 (amendment 30).

At its meeting on 10 January 2022, Council resolved:

THAT Council urgently begins the appropriate process to amend the North Sydney LEP to remove the addition of residential flat buildings as a permissible use in the R3 Medium Density Zone in the land use table which came into force in Amendment 30 to the North Sydney LEP on 30 June 2021 by removing residential flat building from the R3 Land use table and updating the LEP as required to remove the residential flat buildings in the R3 Zone.

This report is in response to that resolution and represents the commencement of this process.

There is a considerable list of approvals that exploited the existing use rights provisions of the Act. More recently, however, there has been a softening of the interpretation of the extent to which development standards and development controls provisions may be taken into account as relevant matters for consideration (in particular *Saffioti v Kiama Council* [2019] NSWLEC 57). As a result, the urgency of addressing the existing use rights issues that resulted in Amendment 30 to the NSLEP 2013, may have dissipated somewhat.

DESCRIPTION OF PROPOSAL

The purpose of the Planning Proposal is to remove “residential flat buildings” as a permissible land use within the Medium Density Residential R3 zone.

The Planning Proposal has been prepared in accordance with Section 3.33 of the EP&A Act and the Department of Planning, Industry and Environment’s (DPIE) document “Local Environmental Plan Making Guideline” (December 2021).

PANEL REFERRAL

On 23 February 2018, the Minister for Planning released a Section 9.1 Direction which outlines the instances when a planning proposal must be referred to a Local Planning Panel for advice prior to a council determining whether that planning proposal should be forwarded to the Department of Planning, Industry and Environment (DPIE) for the purposes of seeking a Gateway Determination.

All planning proposals are required to be referred to the Local Planning Panel, unless they meet any of the following exemptions:

- the correction of an obvious error in a local environmental plan;
- matters that are of a consequential, transitional, machinery or other minor nature; or
- matters that Council’s General Manager considers will not have any significant adverse impact on the environment or adjacent land.

The Planning Proposal does not meet any of the exemption criteria and therefore must be referred to the Local Planning Panel for advice prior to Council making any determination on the matter.

BACKGROUND

At its meeting of 20 March 2017, Council considered Notice of Motion No. 8/17 regarding the possibility of reinstating previous planning controls that applied prior to the gazettal of the North Sydney Local Environmental Plan 2013 (NSLEP 2013) that removed existing use rights for residential flat buildings within residential zones. Council subsequently resolved:

***THAT** Council call for a report on its previous controls which applied to existing use rights in residential zones where flats were not permissible uses and whether any measures can now be taken to reintroduce these controls in some form.*

Council considered the initial report in November 2019 (as part of the broader LEP review) and endorsed the amendment for exhibition. The amendments were exhibited between May 2020 and June 2020 and they were finally endorsed by Council in August 2020. The resulting amendment to NSLEP 2013 was gazetted on 30 June 2021 (amendment 30).

At its meeting on 10 January 2022, Council resolved:

***THAT** Council urgently begins the appropriate process to amend the North Sydney LEP to remove the addition of residential flat buildings as a permissible use in the R3 Medium Density Zone in the land use table which came into force in Amendment 30 to the North Sydney LEP on 30 June 2021 by removing residential flat building from the R3 Land use table and updating the LEP as required to remove the residential flat buildings in the R3 Zone.*

DETAIL

1. Legislative Context

The previous Council report considered by Council in March 2019 described in some detail the notion of existing use rights and its role in enabling small scale, older residential flat buildings (RFBs) being able to be redeveloped in areas where RFBs were otherwise prohibited.

An 'existing use' is essentially a use that is lawfully commenced (i.e. was a permissible form of development at the time of approval), but subsequently becomes 'prohibited' under a new environmental planning instrument (EPI), often a local environmental plan (LEP). under sections 4.65 - 4.70 of the Act and Part 5 of the Environmental Planning and Assessment Regulation 2000 (the Regulation).

Under section 4.67 of the Act and clauses 41-46 of the Regulation, a proponent who has a development which has the benefit of existing use rights, may lodge a development application seeking development consent for the:

- carrying out of alterations, extensions, or rebuilding of a building or work being used for an existing (prohibited) use;
- change of prohibited use (existing use) to another prohibited use, and
- enlargement, expansion or intensification of an existing (prohibited) use.

In practical terms, this means that most of the provisions of NSLEP 2013 had no effect, if existing use rights were pursued.

2. Historical Context

Between 1919 and the 1950s, RFBs were not specifically prohibited anywhere in the LGA. As a result, this type of development occurred throughout the LGA and was generally market driven rather than being controlled by planning rules.

This degree of permissibility of RFBs generally continued unchanged through until 1989 under the North Sydney Planning Scheme Ordinance (1963 - 1989) and Interim Development Order 57 (1975-1989).

3. NSLEP 2001 and NSLEP 2013

During the operation of NSLEP 2001, there was no exploitation of existing use rights for RFBs located in the lower density residential zones. This was achieved by allowing 'apartment building adaptation' and 'apartment building revision' as permissible uses in these lower density residential zones.

When NSLEP 2013 was gazetted using the Standard Instrument LEP template, the situation changed. Whilst new RFBs continued to be prohibited in the Low Density Residential R2, Medium Density Residential R3 and Environmental Living E4 zones, alterations and/or additions to existing RFBs within these zones was made prohibited. This was due to the inflexibility and the tight restrictions under the Standard Instrument LEP. This meant that existing use rights for lawfully constructed RFBs became relevant and resulted in an increase in the exploitation of the desired built form set by Council's LEP and DCP.

4. Extent of the Issue

There is a considerable list of approvals that exploited the existing use rights provisions of the Act. More recently, however, there has been a softening of the interpretation of the extent to which development standards and development controls provisions may be taken into account as relevant matters for consideration (in particular *Saffioti v Kiama Council* [2019] NSWLEC 57). As a result, the urgency of addressing the existing use rights issues that resulted in Amendment 30 to the NSLEP 2013, may have dissipated somewhat.

Council has expressed concern that the density represented by applications seeking approval for RFB development in the R3 zone may be an unintended consequence of Amendment 30 and therefore resolved to prohibit RFBs within the zone.

5. Amendment 30

Amendment 30 resulted from consideration of the need to address the risks associated with the exploitation of the existing use rights provisions of the Act within the Medium Density Residential R3 zone as discussed briefly above. It was gazetted on 30 June 2021.

Importantly, the existing built form controls (height, setbacks, site coverage etc) have remained in place that would have applied to the continuing permissible medium density housing such as town houses and the like.

6. Prohibiting RFBs in the R3 Zone

At its meeting on 10 January 2022, Council resolved:

THAT Council urgently begins the appropriate process to amend the North Sydney LEP to remove the addition of residential flat buildings as a permissible use in the R3 Medium Density Zone in the land use table which came into force in Amendment 30 to the North Sydney LEP on 30 June 2021 by removing residential flat building from the R3 Land use table and updating the LEP as required to remove the residential flat buildings in the R3 Zone.

The amendment required as part of this resolution is relatively straightforward in an administrative sense. Council does, however, need to address the North Sydney Local Strategic Planning Statement (LSPS).

6.1 Local Strategic Planning Statement and Local Housing Strategy

The LSPS is a statutory document that has been adopted by Council and “assured” (approved) by the Greater Sydney Commission. All Planning Proposals are required to be consistent with Council’s LSPS as well as a range of other endorsed strategic planning documents. The LSPS also references the Local Housing Strategy (LHS). The LSPS expresses the desired future direction for housing, employment, transport, recreation, environment and infrastructure for the LGA as a whole and reflects the outcomes sought by the Metropolitan Plan and North District Plan.

The LSPS includes Local Planning Priorities and Actions as follows:

Local Planning Priority N5

Providing housing supply, choice and affordability with access to jobs, services and public transport.

Action L1.1 - *Implement the North Sydney Local Housing Strategy (2019) to achieve the housing directions, objectives and actions of the GSC’s Regional and North District Plans and deliver 0-5 and 6-10 year housing supply targets.*

Action L1.6 - *Amend NSLEP 2013 and NSDCP 2013 to manage the impacts of any existing use rights application and minimise increases in density away from transport and services. (short term)*

It is considered that the planning proposal will continue to allow for housing supply and choice. As discussed below, the management of the existing use rights issue that was the precursor to amendment 30 to the North Sydney Local Environmental Plan, has somewhat dissipated with more recent land and Environment Court decisions.

The LHS includes the following discreet action relating to this issue:

Action 10: Amend NSLEP to allow Residential Flat Buildings in the R3 zone to address existing use rights issues.

As a monitoring indicator, the LHS identifies the following:

Monitor the number of DA's application received and built form outcomes of approved DA's for RFBs in the R3 zone in the LGA annually.

In response to this annual monitoring requirement of Council's LHS, it is noted that the following development applications have been lodged since 30 June 2021:

- a) 115-119 Holt Avenue, Cremorne
- b) 1 Warung Street, McMahons Point

It is noted that the application for an RFB at 1 Warung Street (DA379/21) whilst permissible in the zone by virtue of Amendment 30, would have been permissible under the existing use rights provisions of the Act notwithstanding that amendment.

6.2 Amendment 30 - Not an additional source of new housing

It is important to note that Amendment 30 as it relates to RFBs in the R3 zone, was never intended as additional housing supply for Council. It was solely intended to address the existing use rights issue. The LHS states:

Amend the NSLEP to allow Residential Flat Buildings in the R3 zone to address existing use rights issues. Manage impacts through existing use rights application by minimising increases in density away from transport and services (Action 10).

There is a considerable list of approvals that exploited the existing use rights provisions of the Act. More recently, however, there has been a softening of the interpretation of the extent to which development standards and development controls provisions may be taken into account as relevant matters for consideration (in particular *Saffioti v Kiama Council* [2019] NSWLEC 57). As a result, the urgency of addressing the existing use rights issues that resulted in Amendment 30 to the NSLEP 2013, may have dissipated somewhat.

It should also be noted that Court interpretations and decisions do fluctuate and change over time, so relying solely on current interpretations is not without a degree of risk. Notwithstanding this, Council's decision on 24 January 2022 seeks to balance the somewhat reduced risk of the exploitation of existing use rights in the Medium Density Residential R3 zone, with the widespread permissibility of RFBs in this zone.

RECOMMENDATION

That the Panel resolves to support the Planning Proposal being forwarded to the Department of Planning, Industry and Environment seeking a request for a Gateway Determination.

MARCELO OCCHIUZZI
MANAGER STRATEGIC PLANNING



PLANNING PROPOSAL

Residential Flat Buildings in R3 Medium Density R3 Zone

**... March 2022
(Draft)**

1 INTRODUCTION

Background

Residential flat buildings (RFBs) were widely permissible throughout the North Sydney Local Government Area (LGA) throughout the 20th century until 1989. As a result, there are many such developments throughout the LGA which occur in lower density residential zones and under contemporary residential zoning regimes, this gives rise to “existing use rights”.

Up until the establishment of the standard Local Environmental Plan, which Council implemented in 2013, Council had dealt with existing use rights of RFBs in lower density zones by effectively making additions and alterations to RFBs a permissible and use.

Under the standard instrument, however, the capacity to retain permissibility of additions and alterations to RFBs in lower density residential zones, was removed. This gave rise to existing use rights within the lower density Residential R2 and R3 zones where RFBs were prohibited. To remove this capacity, in 2019 Council pursued an amendment to make Residential RFBs permissible in the Residential Medium Density R3 zone. The resulting amendment 30 to the North Sydney Local Environmental Plan 2013 made RFBs in the Medium Density R3 zone.

This automatically removed existing use rights for older RFBs that occurred within this zone whilst ensuring compliance with the envelope controls that would otherwise apply to the medium density development that was already permissible in the zone. The R3 zone allows for various forms of medium density development including townhouses, villa homes and the like. The amendment was pursued noting that the same built form controls (like height, setbacks, site coverage) for RFBs within the R3 zone would apply as they had done for medium density development that was already permissible within the zone.

Issue

Under section 4.67 of the Act and clauses 41-46 of the Regulation, a proponent who has a development which has the benefit of existing use rights, may lodge a development application seeking development consent for the:

- carrying out of alterations, extensions, or rebuilding of a building or work being used for an existing (prohibited) use;
- change of prohibited use (existing use) to another prohibited use, and
- enlargement, expansion or intensification of an existing (prohibited) use.

In practical terms, this means that most of the existing provisions of NSLEP 2013 had no effect if existing use rights were pursued by applicants. This included height limits, floor space ratios and other envelope controls. As a result of the relatively high number of RFBs in the R3 zone, this was a growing issue for North Sydney Council.

More recently, however, there has been a softening of the interpretation of the extent to which development standards and development controls provisions may be taken into account as relevant matters for consideration (in particular *Saffioti v Kiama Council* [2019] NSWLEC 57).

Proposal

The intent of the Planning Proposal is proposed to be achieved by removing “residential flat buildings” as a permissible land use within the Medium Density Residential R3 zone.

The Planning Proposal has been prepared in accordance with Section 3.33 of the EP&A Act and the Department of Planning, Industry and Environment’s (DPIE) document “*Local Environmental Plan Making Guideline*” (December 2021).

2 BACKGROUND

Up until the establishment of the standard Local Environmental Plan, which Council implemented in 2013, Council had dealt with existing use rights of RFBs in lower density zones by making additions and alterations to RFBs a permissible and use.

Under the standard instrument, however, the capacity to retain permissibility of additions and alterations to RFBs was removed. This gave rise to existing use rights within the lower density Residential R2 and R3 zones where RFBs were prohibited. To remove this capacity, in 2019 Council pursued an amendment to make Residential FBs permissible in the Residential Medium Density R3 zone. The resulting amendment 32 to the North Sydney Local Environmental Plan 2013 made RFBs in the Medium Density R3 zone (“R3 zone”).

This automatically removed existing use rights for older RFBs that occurred within this zone whilst ensuring compliance with the envelope controls that would otherwise apply to the medium density development that was already permissible in the zone. The R3 zone allows for various forms of medium density development including townhouses, villa homes and the like. The amendment was pursued noting that the same built form controls (like height, setbacks, site coverage) for RFBs within the R3 zone would apply as they had done for medium density development that was already permissible within the zone.

Amendment 30 resulted from consideration of the need to address the risks associated with the exploitation of the existing use rights provisions of the Act within the Medium Density R3 zone as discussed above. It was gazetted on 30 June 2021. Importantly, the existing built form controls (height, setbacks, site coverage etc) have remained in place that would have applied to previously permissible medium density housing such as town houses and the like.

At its meeting on 10 January 2022, North Sydney Council resolved:

THAT Council urgently begins the appropriate process to amend the North Sydney LEP to remove the addition of residential flat buildings as a permissible use in the R3 Medium Density Zone in the land use table which came into force in Amendment 30 to the North Sydney LEP on 30 June 2021 by removing residential flat building from the R3 Land use table and updating the LEP as required to remove the residential flat buildings in the R3 Zone.

3 SITE LOCALITY

The Planning Proposal applies to all Medium Density Residential R3 zoned land within the North Sydney local government area.

4 STATUTORY CONTEXT

NSLEP 2013 was made on 2 August 2013 through its publication on the NSW legislation website and came into force on the 13 September 2013. The LEP has been amended 31 times since its coming into force.

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

4.1 Aims of Plan

Clause 1.2 of NSLEP 2013 outlines the aims of the LEP. In particular, it states:

- (1) *This Plan aims to make local environmental planning provisions for land in North Sydney in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
 - (a) *to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*
 - (b) *in relation to the character of North Sydney's neighbourhoods:*
 - (i) *to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and*
 - (ii) *to maintain a diversity of activities while protecting residential accommodation and local amenity, and*
 - (iii) *to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*
 - (c) *in relation to residential development:*
 - (i) *to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (ii) *to maintain and provide for an increase in dwelling stock, where appropriate,*
 - (d) *in relation to non-residential development:*
 - (i) *to maintain a diversity of employment, services, cultural and recreational activities, and*
 - (ii) *to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (iii) *to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,*
 - (e) *in relation to environmental quality:*
 - (i) *to maintain and protect natural landscapes, topographic features and existing ground levels, and*
 - (ii) *to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*
 - (f) *to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance,*

- (g) *to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

4.2 Land Use Table

The Planning Proposal applies to land in the *R3 Medium Density Residential* zone.

The relevant objectives and provisions of this zone state:

Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Attached dwellings; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Group homes; Home-based child care; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Tank-based aquaculture.

4 Prohibited

Any development not specified in item 2 or 3

5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES/INTENDED OUTCOMES

The primary purpose of this Planning Proposal is to prohibit residential flat buildings within the Medium Density Residential R3 zone, and revert this zoning regime prior to NSLEP amendment 30 coming into force in June 2021.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The proposed amendments only affect the written instrument to the maps to the LEP, the extent of which are identified in the following subsections.

5.2.1 Land Use Table – Medium Density Residential R3 zone3

The intent of the Planning Proposal is proposed to be achieved by amending clauses 6.3(3) and 6.3(5) as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Attached dwellings; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Group homes; Home-based child care; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; ~~Residential flat buildings~~; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Tank-based aquaculture.

4 Prohibited

Any development not specified in item 2 or 3

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

1. ***Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?***

YES.

Whilst this Planning Proposal does not result from specific provisions of the *North Sydney Local Strategic Planning Statement (LSPS)*, the envisaged amendment is a subtle one that is consistent with the general objectives of the LSPS as discussed below.

North Sydney Local Strategic Planning Statement

On 25 November 2019, Council resolved to adopt an LSPS for the LGA. The LSPS expresses the desired future direction for housing, employment, transport, recreation, environment and infrastructure for the LGA as a whole and reflects the outcomes sought by the Metropolitan Plan and NDP. The Greater Sydney Commission gave its assurance to the LSPS on 20 March 2020. The relevant *Local Planning Priorities and Actions* of the LSPS are identified as follows:

Local Planning Priority N5

Providing housing supply, choice and affordability with access to jobs, services and public transport.

Action L1.1

Implement the North Sydney Local Housing Strategy (2019) to achieve the housing directions, objectives and actions of the GSC's Regional and North District Plans and deliver 0-5 and 6-10 year housing supply targets.

Action L1.6

Amend NSLEP 2013 and NSDCP 2013 to manage the impacts of any existing use rights application and minimise increases in density away from transport and services. (short term)

North Sydney Local Housing Strategy

North Sydney Council endorsed the North Sydney Housing Strategy (LHS) on 25 November 2019. It was subsequently endorsed by the Department of Planning Industry and Environment on 10 May 2021.

The LHS is characterised by three broad pillars. They are:

1. *Continue Council's long-term housing approach of concentrating residential density in and around existing centres and relying on the existing capacity of current land use planning controls.*
2. *Managing housing delivery in the St Leonards Crows Nest Planned Precinct.*
3. *Continue Council's approach of place-based planning with detailed consultation to seek the best planning outcomes.*

Action A10 of the LHS outlined the following:

Amend NSLEP to allow Residential Flat Buildings in the R3 zone to address existing use rights issue.

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

YES

Prohibiting residential flat buildings in the Medium Density Residential R3 zone is the only way of achieving Council stated objective for this Planning Proposal.

5.3.2 Section B – Relationship to strategic planning framework

3. *Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?*

Greater Sydney Region Plan - A Metropolis of Three Cities

In March 2018, the State Government released *A metropolis of three cities – Greater Sydney Region Plan* (Regional Plan). It provides a 40-year vision of Sydney to be a city where people will live within 30 minutes of jobs, education and health facilities, services and great places. The Regional Plan seeks to provide an additional 725,000 homes and 817,000 new jobs by 2036. No targets are set for any of the Districts, of which the North Sydney LGA is part of the North District. District Plans, consistent with the Regional Plan were released at the same time as the Regional Plan. North Sydney is identified as part of a Metropolitan Centre (Harbour CBD – Incorporating North Sydney CBD) which is also identified as part of an Economic Corridor under the Regional Plan.

The Directions, Objectives and Strategies identified in the Regional Plan which are relevant to the Planning Proposal are as follows:

Direction 4: Giving people housing choices

Objective 10 - Greater housing supply

Action 3 - Prepare housing strategies

Objective 11 -Housing is more diverse and affordable

Action 4 - Develop 6–10 year housing targets

The Planning Proposal is not inconsistent with the above Direction or Objectives of the Regional Plan. The proposed amendment provides for a subtle change to the housing mix but does not impact upon the delivery or implementation of the North Sydney Housing Strategy.

North District Plan

In March 2018, the NSW Government released the North District Plan (NDP). The North Sydney LGA is located within the North District along with the other LGAs of Hornsby, Ku-ring-gai, Ryde, Hunter Hill, Lane Cove, Willoughby, Mosman and Northern Beaches. The NDP sets the following relevant targets:

- Employment: an additional 15,600-21,100 jobs by 2036 in the North Sydney portion of the Harbour CBD; and
- Housing: an additional 3,000 dwellings by 2021 for the North Sydney LGA;

an additional 25,950 dwellings by 2021 for the North District; and
an additional 92,000 dwellings by 2036 for the North District.

Planning priorities, objectives and actions identified in the NDP which are relevant to the Planning Proposal are as follows:

Planning Priority N5 - *Providing housing supply, choice and affordability with access to jobs, services and public transport.*

Action 17 - *Prepare local or district housing strategies that address the following:*

- a. *the delivery of five-year housing supply targets for each local government area*
- b. *the delivery of 6–10 year (when agreed) housing supply targets for each local government area*
- c. *capacity to contribute to the longer term 20-year strategic housing target for the District*
- d. *the housing strategy requirements outlined in Objective 10 of A Metropolis of Three Cities that include:*
 - i. *creating capacity for more housing in the right locations*
 - ii. *supporting planning and delivery of growth areas and planned precincts as relevant to each local government area*
 - iii. *supporting investigation of opportunities for alignment with investment in regional and district infrastructure*
 - iv. *supporting the role of centres.*

Action 18 - *Prepare Affordable Rental Housing Target Schemes following development of implementation arrangements*

The Planning Proposal is not inconsistent with the above Planning Priorities, Objectives and Actions of the NDP. The proposed amendment merely seeks to return the permissibility of residential flat buildings within the Medium Density Residential R3 zone as it was prior to NSLEP 2103 Amendment 30.

4. ***Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?***

YES

North Sydney Local Strategic Planning Statement

Consistency with this document is addressed above.

Community Strategic Plan 2018-2028

The North Sydney Community Strategic Plan 2018–2028 (CSP) outlines the community-wide priorities and aspirations for the LGA, and provides long-term goals, objectives and actions to achieve these visions. The CSP is Council's most important strategic document and is used to guide and inform Council's decision making and planning for the next ten years.

The relevant Directions, Outcomes and Strategies of the are identified as follows:

- Direction: 1 Our Living Environment**
- Outcome 1.2** *Quality urban green spaces*
- Outcome 1.4** *Improved environmental footprint and responsible use of natural resources*
- Strategies 1.4.1** *Promote sustainable energy, water and waste practices*
- Outcome 1.5** *Public open space, recreation facilities and services that meet community needs*
- Strategies 1.5.1** *Provide a range of recreational facilities and services for people of all ages and abilities*
- 1.5.2** *Improve equity of access to open space and recreation facilities*
- Direction: 2 Our Built Environment**
- Outcome: 2.1** *Infrastructure, assets and facilities that meet community needs*
- Strategies: 2.1.2** *Expand capacity of existing community infrastructure*
- 2.1.3** *Advocate for improved state infrastructure and adequate funding for maintenance and improvement of community assets*
- Outcome: 2.2** *Improved mix of land use and quality development through design excellence*
- Strategies: 2.2.1** *Maintain a contemporary Local Environmental Plan (LEP)*
- 2.2.3** *Encourage sustainable design in future development and refurbishment of existing buildings for better environmental performance*
- Direction: 3 Our Economic Vitality**
- Outcome: 3.1** *Diverse, strong, sustainable and vibrant local economy*
- Strategies: 3.1.1** *Expand opportunities for business particularly after hours and weekends through planning initiatives e.g. late night trading and small bars*
- 3.1.2** *Encourage a diverse mix of businesses*
- 3.1.3** *Expand employment growth capacity*
- Outcome: 3.2** *North Sydney CBD is one of Australia's largest commercial centres*
- Strategies: 3.2.2** *Ensure major infrastructure and public domain design contributes to North Sydney's business needs*
- Outcome: 3.3** *North Sydney is a place that attracts events*
- Strategies: 3.3.1** *Balance visitor impacts with residents' lifestyles and economic development*

The Planning Proposal will allow these Directions, Outcomes and Strategies to be pursued in a robust and strategic manner. In particular, it will:

- Continue to enable the North Sydney Centre to maintain its status as one of Australia's largest commercial centres; and
- Continue to encourage public and sustainable transport as the mode choice for movements to, from and within the LGA.

North Sydney Council Delivery Program 2018/19-2021/22

The North Sydney Council Delivery Program 2018/19-2021/22 (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 that will contribute to the long-term strategies and desired outcomes of the Plan.

The Planning Proposal directly supports the vision of the Delivery Program as the five Directions mirror those of the CSP.

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 LGA, as demonstrated in TABLE 1.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP No. 19 - Bushland in urban areas	YES	The Planning Proposal does not seek to further reduce the extent of land zoned in the E2 Environmental Conservation zone nor will it affect the attainment of the SEPP's aims and objectives.
SEPP No.21 – Caravan parks	N/A	This SEPP does not apply as the Planning proposal does not relate to land upon which caravan parks are permitted.
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 does not seek to amend the permissibility of land use within any zone nor introduce a site specific use which may be sensitive to contamination issues (e.g. rezoning land zoned for commercial or industrial purposes to residential or recreational uses).
SEPP No. 64 - Advertising and signage	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP No. 65 - Design Quality of Residential Apartment 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.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP (Coastal Management) 2018	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Concurrences and Consents) 2018	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
SEPP (Educational Establishments and Child Care Facilities) 2017	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Exempt and Complying Development Codes) 2008	YES	The Planning Proposal seeks to remove exempt and complying development types that are permitted under this SEPP.
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 (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.
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.
SEPP (State Significant Precincts) 2005 - <i>formerly SEPP Major Development, SEPP Major Projects & SEPP State Significant Development</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 (Vegetation in Non-Rural Areas) 2017	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
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.9.1 directions)?*

The Planning Proposal is consistent with the relevant Directions issued under Section 9.1 of the EP&A Act by the Minister to councils, as demonstrated in TABLE 2.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
1. Employment and Resources		
1.1 Business & Industrial Zones	YES	The Planning Proposal does not seek to reduce any commercial zoning under NSLEP 2013 nor does it seek to reduce the level of permissible non-residential floor space achievable on the affected lands.
1.2 Rural Zones	N/A	This Direction does not apply as there are no existing rural zones under NSLEP 2013 nor 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 is not located in a water catchment area that directly drains to a water body containing a Priority Oyster Aquaculture Area or a current oyster aquaculture lease in the national parks estate.
1.5 Rural Lands	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
2 Environmental Heritage		
2.1 Environmental Protection Zones	YES	The Planning Proposal does not alter the existing environmental protection to land within an environmental protection zone.
2.2 Coastal Protection	N/A	The Planning Proposal does not affect land that covered by the Coastal Management SEPP.
2.3 Heritage Conservation	YES	The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 (refer to Clause 5.10) which already satisfy the requirements of the Direction. The Planning Proposal seeks to provide increased clarity with respect to when a height variation may be considered and will not impact upon the significance of heritage items or conservation areas.
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.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
2.6 Remediation of Contaminated Land	YES	The proposal does not seek to alter the zoning of any land, thereby increasing the potential risk to exposure to contamination.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
3 Housing, Infrastructure & Urban Development		
3.1 Residential Zones	YES	<p>Clause 3.1(5)(b) requires that a Planning Proposal must not contain provisions which will reduce the permissible residential density of land.</p> <p>The height, setbacks and coverage requirements applicable to the Medium Density Residential R3 zone remained consistent for both medium density development as well as residential flat buildings. The density between the two different development types is somewhat inconsequential. The outcome of the planning proposal will be to revert to the traditional permissibility within the R3 zone prior to amendment 30.</p> <p>The Planning Proposal is therefore consistent with the requirements of the Direction as it will not reduce the ability to undertake residential development on those parcels of land where residential development is currently permitted.</p>
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.
3.4 Integrating Land Use & Transport	YES	The Planning Proposal does not seek to minimise development potential in close proximity to mass public transport.
3.5 Development Near Regulated Airports and Defence Airfields	YES	Despite not being located in close proximity to Sydney Airport, almost the entire LGA is affected by an Obstacle Limitation Surface (OLS) of 156m AHD. The Planning Proposal does not seek to increase the maximum height permitted on any land within the North Sydney Centre.
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.
3.7 Reduction in non-hosted short term rental accommodation period	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
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.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
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	YES	The Planning Proposal is consistent with the direction as it does not result in: <ul style="list-style-type: none"> • inconsistencies with the Planning for Bushfire Protection 2006; • permitting increased density on land affected by bushfire; and • bushfire hazard reduction being prohibited with Asset Protection Zones.
5 Regional Planning		
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.
5.9 North West Rail Link Corridor Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.10 Implementation of Regional Plans	YES	Refer to question 3 to Section 5.3.2 of this report.
5.11 Development of Aboriginal Land Council land	N/A	This Direction does not apply as the Planning Proposal does not relate to any land identified under State Environmental Planning Policy (Aboriginal Land) 2019.
6 Local Plan Making		
6.1. Approval & Referral Requirements	YES	The Planning Proposal does not seek to introduce new concurrence, consultation or referral requirements, nor identify development types for the purpose of designated development.
6.2 Reserving Land for Public Purposes	YES	The Planning Proposal does not create or alter existing zonings or reservations of land for public purposes. However, it does remove the identification of 3 parcels of land to be acquired for public purposes due to that land having been acquired by the relevant acquisition authority. Two of these properties have been acquired by Council the other by DPIE.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
6.3 Site Specific Provisions	N/A	This Direction does not apply as the Planning Proposal does not relate to any site specific land use controls, nor introduce new development standards not already contained in the LEP.
7 Metropolitan Planning		
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any land comprising the Greater Parramatta Priority Growth Area.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.9 Implementation of Bayside West Precincts 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.11 Implementation of St Leonards and Crows Nest 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
7.12 Implementation of Greater Macarthur 2040	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
7.13 Implementation of the Pyrmont Peninsula Place Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.

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?***

No.

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

No.

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

No social or economic impacts. The Planning Proposal merely seeks to increase transparency in the relationship between clauses that perform a similar function.

5.3.4 Section D – State and Commonwealth interests

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

Implementation of the Planning Proposal is likely to have a minimal impact upon the provision of public infrastructure services within the locality as it is the land affected is already highly serviced.

Consultation with relevant public infrastructure agencies during the public exhibition of the planning proposal will ensure any concerns are addressed prior to allowing any increase in the development potential of the land.

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 and would be typically gained through the Gateway Determination process.

In light of the proposed changes to NSLEP 2013, Council considers that for the abundance of caution, the following public authorities should be consulted with during the public exhibition process:

- (a) Sydney Water;
- (b) Transport for NSW;
- (c) Ausgrid;
- (d) Telstra / Optus
- (e) Gas providers

5.4 PART 4: MAPPING

It is not proposed to amend any of the maps to the LEP.

5.5 PART 5: COMMUNITY CONSULTATION

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

For the abundance of caution, it is envisaged that the following public authorities will need to be consulted as part of any public exhibition:

- Sydney Water
- Transport for NSW

- Department of Education
- Telecommunication providers
- Gas providers
- Electricity providers

5.6 PART 6: PROJECT TIMELINE

TABLE 3 provides a project timeline having regard to identified milestones and estimating approximately 11 months from submitting the planning proposal to the DPIE for a Gateway Determination to the amending LEP being made.

TABLE 5 – Project Timeline												
Milestone	Mar 2022	May 2022	May 2022	Jun 2022	Jul 2022	Aug 2022	Sept 2022	Oct 2022	Nov 2022	Dec 2022	Feb 2022	Mar 2022
1. Local Planning Panel considers Planning Proposal												
2. Council determines whether to progress to Gateway Determination												
3. Request for Gateway Determination sent to DPIE												
4. DPIE considers request												
5. Gateway Determination issued to Council												
6. Amendment of Planning Proposal to align with Gateway Determination												
7. Public exhibition undertaken												
8. Council considers submissions												
9. Council considers post exhibition report												
10. Submission to DPIE requesting making of LEP												
11. Drafting of LEP and making												



N O R T H S Y D N E Y C O U N C I L

NORTH SYDNEY LOCAL PLANNING PANEL

PLANNING PROPOSAL

DETERMINATIONS OF THE NORTH SYDNEY LOCAL PLANNING PANEL MEETING HELD IN THE COUNCIL CHAMBERS, NORTH SYDNEY, ON WEDNESDAY 9 MARCH 2022, AT 12.00PM.

PRESENT

Chair:

Jan Murrell in the Chair.

Panel Members:

Peter Brennan, Panel Member
Kenneth Robinson, Community Representative

Staff:

Administrative Support

Ben Boyd, Executive Strategic Planner
Neal McCarry, Team Leader Policy
Peita Rose, Governance Officer (Minutes)

In accordance with the Covid 19 Public Health Order this meeting was conducted by remote (Zoom) means.

1. Minutes of Previous Meeting

The Minutes of the NSLPP Meeting of Wednesday, 23 February 2022 were confirmed following that meeting.

2. Declarations of Interest

Nil

This is Page No 1 of the Minutes of the North Sydney Local Planning Panel Meeting – Planning Proposal held on Wednesday, 9 March 2022.

3. Business Items

The North Sydney Local Planning Panel is a NSW Government mandated Local Planning Panel exercising the functions of North Sydney Council, as the Consent Authority, under Section 4.8(2) of the Environmental Planning and Assessment Act, 1979 as amended in relation to development applications, and acts pursuant to a Direction of the Minister for Planning issued under Section 9.1 of the Act, dated 23 February 2018 in relation to Planning Proposals.

The Panel has considered the following Business Items and resolves to recommend each matter as described within these minutes.

ITEM 1

PP No:	4/21
ADDRESS:	153 and 157 Walker Street, North Sydney
PROPOSAL:	To amend North Sydney Local Environmental Plan 2013 by inserting a site specific clause to permit a 23m height bonus at 153 and 157 Walker Street, if the two properties are redeveloped under a single proposal and meet a number of criteria relating to setbacks delivery of a through site link and sustainability outcomes.
REPORT BY NAME:	Ben Boyd, Executive Strategic Planner
APPLICANT:	APP Corporation Pty Limited

No Written Submissions

Submitters	Applicant/Representative
	James Kingston - Shaw Reynolds Lawyers – for the applicant
	Marko Damic - Architectus
	Jacob Dwyer - Town Planner speaking for owners of 157 Walker Street
	Nathan Michael – Applicant, Acquisition Manager - Marprop Pty Ltd – While registered did not attend the meeting as an observer of speaker
	Rick Miller - Observing for 153 Walker St

Background

The Applicant's solicitor, James Kingston advised that a review of the rezoning application was made to the Department within a few days of the additional information being uploaded to the Portal in February. Mr Kingston requested that the Panel defer the matter if it is minded to recommend the matter not proceed to Gateway.

The Panel does not agree to a further deferral and it is appropriate it makes a recommendation to allow the Council to consider it in a timely manner.

This is Page No 2 of the Minutes of the North Sydney Local Planning Panel Meeting – Planning Proposal held on Wednesday, 9 March 2022.

The North Sydney Local Planning Panel in September 2021 deferred the matter to allow issues identified in the Council report to be addressed and for the Applicant to have a meaningful dialogue with the owner of No. 157 Walker St, as owner's consent for this site had not been obtained at that time, or now. The Panel notes that owner's consent is not a requirement to lodge a planning proposal and this in itself is not a reason for not supporting the Proposal. It is noted at the meeting the representative for the owner of 153 Walker Street advised the Panel that there is "no aspiration to develop the site at this time".

It is also noted the Applicant has engaged in informal discussions with the owner of the adjoining site. The Applicant submits the Proposal will allow the two sites to be incentivized to amalgamate with the uplift and this will provide sizable floor plates and prevent site isolation.

Panel Recommendation:

The Panel members have undertaken independent site inspections prior to the meeting and the Panel has considered all written and oral submissions made on the Planning Proposal in making its recommendation to Council.

Council Officers Report is endorsed and the Panel recommends the Planning Proposal not proceed to Gateway for the reasons outlined in the Officer's Report, except reference to the lack of owner's consent. This Panel notes the other matters requiring information as identified in the September report have not been adequately satisfied to warrant the Proposal proceeding to Gateway.

The Panel agrees with the Council Officer's report that the Proposal does not have strategic or site-specific merit and these sites should be considered in the context of the studies for the North Sydney CBD. Furthermore, the Panel considers it inappropriate to include the site-specific envelope controls in the LEP, as this is contrary to the Ministerial Direction. A fixed envelope as proposed should be subject to a merits assessment at the development application stage rather than being contained in an LEP. For example, the envelope of the Proposal has negative public domain outcomes including overshadowing. The site isolation of No.153 is a matter that would need to be addressed for a development application.

Furthermore it has not been demonstrated that the current controls would not allow sustainable development to achieve a through site link.

The Panel notes that Council staff would not object to an increase in building height, where consistent with achieving adopted existing overshadowing policies for the North Sydney CBD.

The Panel considers that the Planning Proposal is premature and not in the public interest given the studies and reviews currently being progressed and the subject of future consideration by Council. This will provide a more comprehensive context for the future development of sites in the CBD, including these sites, in an economic and orderly manner.

Voting was as follows:

This is Page No 3 of the Minutes of the North Sydney Local Planning Panel Meeting – Planning Proposal held on Wednesday, 9 March 2022.

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Ken Robinson	Y	
Peter Brennan	Y				

ITEM 2

PP No:	4/22
ADDRESS:	All land zoned R3 Medium Density Residential throughout the entire North Sydney local government area.
PROPOSAL:	To amend North Sydney Local Environmental Plan 2013 by prohibiting residential flat buildings within the R3 Medium Density Residential zone throughout the local government area.
REPORT BY NAME:	Marcelo Occhiuzzi, Manager Strategic Planning
APPLICANT:	North Sydney Council

Public Submissions

No persons elected to speak on this item.

1 Written Submission**Panel Recommendation:**

The Panel members have undertaken independent site inspections where considered necessary prior to the meeting, and the Panel has considered the one submission received made on the Planning Proposal in making its recommendation to Council.

The Council Officer's Report is endorsed by the Panel and the Planning Proposal should proceed to Gateway Determination to allow public exhibition. The Panel notes it would appear in the light of community concerns, that Council resolved that the recent amendment in June 2021 to the LEP made residential flat buildings an additional permissible use in the R3 Zone. This Planning Proposal would have the effect of deleting this. The Panel also notes that when the June 2021 amendment was made that Council resolved to review this provision.

The Panel notes that this Planning Proposal to remove residential flat buildings as a permissible use in the R3 zone will not impact on Council's Housing Strategy. This additional use was not calculated into the number of dwellings and is therefore not relied on to provide additional housing supply for Council as part of its housing strategy.

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The Panel notes that since the amendment to the LEP in June 2021 that recent case law for existing use rights provisions have been interpreted differently and this, together with submissions received during the exhibition can be further considered following exhibition. The one submission already received raises concern about current applications continuing to be being assessed and determined under the existing controls that permit RFB's.

Voting was as follows:

Panel Member	Yes	No	Community Representative	Yes	No
Jan Murrell	Y		Ken Robinson	Y	
Peter Brennan	Y				

The public meeting concluded at 12.45pm.

The Panel Determination session commenced at 12.45pm.

The Panel Determination session concluded at 1.45pm.

Endorsed by Jan Murrell
North Sydney Local Planning Panel
9 March 2022



PLANNING PROPOSAL

Residential Flat Buildings in R3 Medium Density R3 Zone

**... March 2022
(Draft)**

1 INTRODUCTION

Background

Residential flat buildings (RFBs) were widely permissible throughout the North Sydney Local Government Area (LGA) throughout the 20th century until 1989. As a result, there are many such developments throughout the LGA which occur in lower density residential zones and under contemporary residential zoning regimes, this gives rise to “existing use rights”.

Up until the establishment of the standard Local Environmental Plan, which Council implemented in 2013, Council had dealt with existing use rights of RFBs in lower density zones by effectively making additions and alterations to RFBs a permissible and use.

Under the standard instrument, however, the capacity to retain permissibility of additions and alterations to RFBs in lower density residential zones, was removed. This gave rise to existing use rights within the lower density Residential R2 and R3 zones where RFBs were prohibited. To remove this capacity, in 2019 Council pursued an amendment to make Residential RFBs permissible in the Residential Medium Density R3 zone. The resulting amendment 30 to the North Sydney Local Environmental Plan 2013 made RFBs in the Medium Density R3 zone.

This automatically removed existing use rights for older RFBs that occurred within this zone whilst ensuring compliance with the envelope controls that would otherwise apply to the medium density development that was already permissible in the zone. The R3 zone allows for various forms of medium density development including townhouses, villa homes and the like. The amendment was pursued noting that the same built form controls (like height, setbacks, site coverage) for RFBs within the R3 zone would apply as they had done for medium density development that was already permissible within the zone.

Issue

Under section 4.67 of the Act and clauses 41-46 of the Regulation, a proponent who has a development which has the benefit of existing use rights, may lodge a development application seeking development consent for the:

- carrying out of alterations, extensions, or rebuilding of a building or work being used for an existing (prohibited) use;
- change of prohibited use (existing use) to another prohibited use, and
- enlargement, expansion or intensification of an existing (prohibited) use.

In practical terms, this means that most of the existing provisions of NSLEP 2013 had no effect if existing use rights were pursued by applicants. This included height limits, floor space ratios and other envelope controls. As a result of the relatively high number of RFBs in the R3 zone, this was a growing issue for North Sydney Council.

More recently, however, there has been a softening of the interpretation of the extent to which development standards and development controls provisions may be taken into account as relevant matters for consideration (in particular *Saffioti v Kiama Council* [2019] NSWLEC 57).

Proposal

The intent of the Planning Proposal is proposed to be achieved by removing “residential flat buildings” as a permissible land use within the Medium Density Residential R3 zone.

The Planning Proposal has been prepared in accordance with Section 3.33 of the EP&A Act and the Department of Planning, Industry and Environment’s (DPIE) document “*Local Environmental Plan Making Guideline*” (December 2021).

2 BACKGROUND

Up until the establishment of the standard Local Environmental Plan, which Council implemented in 2013, Council had dealt with existing use rights of RFBs in lower density zones by making additions and alterations to RFBs a permissible and use.

Under the standard instrument, however, the capacity to retain permissibility of additions and alterations to RFBs was removed. This gave rise to existing use rights within the lower density Residential R2 and R3 zones where RFBs were prohibited. To remove this capacity, in 2019 Council pursued an amendment to make Residential FBs permissible in the Residential Medium Density R3 zone. The resulting amendment 32 to the North Sydney Local Environmental Plan 2013 made RFBs in the Medium Density R3 zone (“R3 zone”).

This automatically removed existing use rights for older RFBs that occurred within this zone whilst ensuring compliance with the envelope controls that would otherwise apply to the medium density development that was already permissible in the zone. The R3 zone allows for various forms of medium density development including townhouses, villa homes and the like. The amendment was pursued noting that the same built form controls (like height, setbacks, site coverage) for RFBs within the R3 zone would apply as they had done for medium density development that was already permissible within the zone.

Amendment 30 resulted from consideration of the need to address the risks associated with the exploitation of the existing use rights provisions of the Act within the Medium Density R3 zone as discussed above. It was gazetted on 30 June 2021. Importantly, the existing built form controls (height, setbacks, site coverage etc) have remained in place that would have applied to previously permissible medium density housing such as town houses and the like.

At its meeting on 10 January 2022, North Sydney Council resolved:

THAT Council urgently begins the appropriate process to amend the North Sydney LEP to remove the addition of residential flat buildings as a permissible use in the R3 Medium Density Zone in the land use table which came into force in Amendment 30 to the North Sydney LEP on 30 June 2021 by removing residential flat building from the R3 Land use table and updating the LEP as required to remove the residential flat buildings in the R3 Zone.

3 SITE LOCALITY

The Planning Proposal applies to all Medium Density Residential R3 zoned land within the North Sydney local government area.

4 STATUTORY CONTEXT

NSLEP 2013 was made on 2 August 2013 through its publication on the NSW legislation website and came into force on the 13 September 2013. The LEP has been amended 31 times since its coming into force.

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

4.1 Aims of Plan

Clause 1.2 of NSLEP 2013 outlines the aims of the LEP. In particular, it states:

- (1) *This Plan aims to make local environmental planning provisions for land in North Sydney in accordance with the relevant standard environmental planning instrument under section 33A of the Act.*
- (2) *The particular aims of this Plan are as follows:*
 - (a) *to promote development that is appropriate to its context and enhances the amenity of the North Sydney community and environment,*
 - (b) *in relation to the character of North Sydney's neighbourhoods:*
 - (i) *to ensure that new development is compatible with the desired future character of an area in terms of bulk, scale and appearance, and*
 - (ii) *to maintain a diversity of activities while protecting residential accommodation and local amenity, and*
 - (iii) *to ensure that new development on foreshore land does not adversely affect the visual qualities of that foreshore land when viewed from Sydney Harbour and its tributaries,*
 - (c) *in relation to residential development:*
 - (i) *to ensure that new development does not adversely affect residential amenity in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (ii) *to maintain and provide for an increase in dwelling stock, where appropriate,*
 - (d) *in relation to non-residential development:*
 - (i) *to maintain a diversity of employment, services, cultural and recreational activities, and*
 - (ii) *to ensure that non-residential development does not adversely affect the amenity of residential properties and public places, in terms of visual and acoustic privacy, solar access and view sharing, and*
 - (iii) *to maintain waterfront activities and ensure that those activities do not adversely affect local amenity and environmental quality,*
 - (e) *in relation to environmental quality:*
 - (i) *to maintain and protect natural landscapes, topographic features and existing ground levels, and*
 - (ii) *to minimise stormwater run-off and its adverse effects and improve the quality of local waterways,*
 - (f) *to identify and protect the natural, archaeological and built heritage of North Sydney and ensure that development does not adversely affect its significance,*
 - (g) *to provide for the growth of a permanent resident population and encourage the provision of a full range of housing, including affordable housing.*

4.2 Land Use Table

The Planning Proposal applies to land in the *R3 Medium Density Residential* zone.

The relevant objectives and provisions of this zone state:

Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Attached dwellings; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Group homes; Home-based child care; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; Residential flat buildings; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Tank-based aquaculture.

4 Prohibited

Any development not specified in item 2 or 3

5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES/INTENDED OUTCOMES

The primary purpose of this Planning Proposal is to prohibit residential flat buildings within the Medium Density Residential R3 zone, and revert this zoning regime prior to NSLEP amendment 30 coming into force in June 2021.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The proposed amendments only affect the written instrument to the maps to the LEP, the extent of which are identified in the following subsections.

5.2.1 Land Use Table – Medium Density Residential R3 zone3

The intent of the Planning Proposal is proposed to be achieved by amending clauses 6.3(3) and 6.3(5) as follows (~~red strike through~~ represents a deletion and blue underline represents an insertion):

Zone R3 Medium Density Residential

1 Objectives of zone

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the development of sites for medium density housing if such development does not compromise the amenity of the surrounding area or the natural or cultural heritage of the area.*
- *To provide for a suitable visual transition between high density residential areas and lower density residential areas.*
- *To ensure that a high level of residential amenity is achieved and maintained.*

2 Permitted without consent

Environmental protection works

3 Permitted with consent

Attached dwellings; Boarding houses; Centre-based child care facilities; Community facilities; Dual occupancies (attached); Dwelling houses; Group homes; Home-based child care; Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Recreation areas; ~~Residential flat buildings~~; Respite day care centres; Roads; Semi-detached dwellings; Seniors housing; Tank-based aquaculture.

4 Prohibited

Any development not specified in item 2 or 3

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

1. ***Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?***

YES.

Whilst this Planning Proposal does not result from specific provisions of the *North Sydney Local Strategic Planning Statement (LSPS)*, the envisaged amendment is a subtle one that is consistent with the general objectives of the LSPS as discussed below.

North Sydney Local Strategic Planning Statement

On 25 November 2019, Council resolved to adopt an LSPS for the LGA. The LSPS expresses the desired future direction for housing, employment, transport, recreation, environment and infrastructure for the LGA as a whole and reflects the outcomes sought by the Metropolitan Plan and NDP. The Greater Sydney Commission gave its assurance to the LSPS on 20 March 2020. The relevant *Local Planning Priorities and Actions* of the LSPS are identified as follows:

Local Planning Priority N5

Providing housing supply, choice and affordability with access to jobs, services and public transport.

Action L1.1

Implement the North Sydney Local Housing Strategy (2019) to achieve the housing directions, objectives and actions of the GSC's Regional and North District Plans and deliver 0-5 and 6-10 year housing supply targets.

Action L1.6

Amend NSLEP 2013 and NSDCP 2013 to manage the impacts of any existing use rights application and minimise increases in density away from transport and services. (short term)

North Sydney Local Housing Strategy

North Sydney Council endorsed the North Sydney Housing Strategy (LHS) on 25 November 2019. It was subsequently endorsed by the Department of Planning Industry and Environment on 10 May 2021.

The LHS is characterised by three broad pillars. They are:

1. *Continue Council's long-term housing approach of concentrating residential density in and around existing centres and relying on the existing capacity of current land use planning controls.*
2. *Managing housing delivery in the St Leonards Crows Nest Planned Precinct.*
3. *Continue Council's approach of place-based planning with detailed consultation to seek the best planning outcomes.*

Action A10 of the LHS outlined the following:

Amend NSLEP to allow Residential Flat Buildings in the R3 zone to address existing use rights issue.

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

YES

Prohibiting residential flat buildings in the Medium Density Residential R3 zone is the only way of achieving Council stated objective for this Planning Proposal.

5.3.2 Section B – Relationship to strategic planning framework

3. ***Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including any exhibited draft plans or strategies)?***

Greater Sydney Region Plan - A Metropolis of Three Cities

In March 2018, the State Government released *A metropolis of three cities – Greater Sydney Region Plan* (Regional Plan). It provides a 40-year vision of Sydney to be a city where people will live within 30 minutes of jobs, education and health facilities, services and great places. The Regional Plan seeks to provide an additional 725,000 homes and 817,000 new jobs by 2036. No targets are set for any of the Districts, of which the North Sydney LGA is part of the North District. District Plans, consistent with the Regional Plan were released at the same time as the Regional Plan. North Sydney is identified as part of a Metropolitan Centre (Harbour CBD – Incorporating North Sydney CBD) which is also identified as part of an Economic Corridor under the Regional Plan.

The Directions, Objectives and Strategies identified in the Regional Plan which are relevant to the Planning Proposal are as follows:

Direction 4: Giving people housing choices

Objective 10 - Greater housing supply

Action 3 - Prepare housing strategies

Objective 11 -Housing is more diverse and affordable

Action 4 - Develop 6–10 year housing targets

The Planning Proposal is not inconsistent with the above Direction or Objectives of the Regional Plan. The proposed amendment provides for a subtle change to the housing mix but does not impact upon the delivery or implementation of the North Sydney Housing Strategy.

North District Plan

In March 2018, the NSW Government released the North District Plan (NDP). The North Sydney LGA is located within the North District along with the other LGAs of Hornsby, Ku-ring-gai, Ryde, Hunter Hill, Lane Cove, Willoughby, Mosman and Northern Beaches. The NDP sets the following relevant targets:

- Employment: an additional 15,600-21,100 jobs by 2036 in the North Sydney portion of the Harbour CBD; and
- Housing: an additional 3,000 dwellings by 2021 for the North Sydney LGA;

an additional 25,950 dwellings by 2021 for the North District; and
 an additional 92,000 dwellings by 2036 for the North District.

Planning priorities, objectives and actions identified in the NDP which are relevant to the Planning Proposal are as follows:

Planning Priority N5 - *Providing housing supply, choice and affordability with access to jobs, services and public transport.*

Action 17 - *Prepare local or district housing strategies that address the following:*

- a. *the delivery of five-year housing supply targets for each local government area*
- b. *the delivery of 6–10 year (when agreed) housing supply targets for each local government area*
- c. *capacity to contribute to the longer term 20-year strategic housing target for the District*
- d. *the housing strategy requirements outlined in Objective 10 of A Metropolis of Three Cities that include:*
 - i. *creating capacity for more housing in the right locations*
 - ii. *supporting planning and delivery of growth areas and planned precincts as relevant to each local government area*
 - iii. *supporting investigation of opportunities for alignment with investment in regional and district infrastructure*
 - iv. *supporting the role of centres.*

Action 18 - *Prepare Affordable Rental Housing Target Schemes following development of implementation arrangements*

The Planning Proposal is not inconsistent with the above Planning Priorities, Objectives and Actions of the NDP. The proposed amendment merely seeks to return the permissibility of residential flat buildings within the Medium Density Residential R3 zone as it was prior to NSLEP 2103 Amendment 30.

4. ***Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?***

YES

North Sydney Local Strategic Planning Statement

Consistency with this document is addressed above.

Community Strategic Plan 2018-2028

The North Sydney Community Strategic Plan 2018–2028 (CSP) outlines the community-wide priorities and aspirations for the LGA, and provides long-term goals, objectives and actions to achieve these visions. The CSP is Council's most important strategic document and is used to guide and inform Council's decision making and planning for the next ten years.

The relevant Directions, Outcomes and Strategies of the are identified as follows:

- Direction: 1 Our Living Environment**
- Outcome 1.2 Quality urban green spaces*
- Outcome 1.4 Improved environmental footprint and responsible use of natural resources*
- Strategies 1.4.1 Promote sustainable energy, water and waste practices*
- Outcome 1.5 Public open space, recreation facilities and services that meet community needs*
- Strategies 1.5.1 Provide a range of recreational facilities and services for people of all ages and abilities*
- 1.5.2 Improve equity of access to open space and recreation facilities*
- Direction: 2 Our Built Environment**
- Outcome: 2.1 Infrastructure, assets and facilities that meet community needs*
- Strategies: 2.1.2 Expand capacity of existing community infrastructure*
- 2.1.3 Advocate for improved state infrastructure and adequate funding for maintenance and improvement of community assets*
- Outcome: 2.2 Improved mix of land use and quality development through design excellence*
- Strategies: 2.2.1 Maintain a contemporary Local Environmental Plan (LEP)*
- 2.2.3 Encourage sustainable design in future development and refurbishment of existing buildings for better environmental performance*
- Direction: 3 Our Economic Vitality**
- Outcome: 3.1 Diverse, strong, sustainable and vibrant local economy*
- Strategies: 3.1.1 Expand opportunities for business particularly after hours and weekends through planning initiatives e.g. late night trading and small bars*
- 3.1.2 Encourage a diverse mix of businesses*
- 3.1.3 Expand employment growth capacity*
- Outcome: 3.2 North Sydney CBD is one of Australia's largest commercial centres*
- Strategies: 3.2.2 Ensure major infrastructure and public domain design contributes to North Sydney's business needs*
- Outcome: 3.3 North Sydney is a place that attracts events*
- Strategies: 3.3.1 Balance visitor impacts with residents' lifestyles and economic development*

The Planning Proposal will allow these Directions, Outcomes and Strategies to be pursued in a robust and strategic manner. In particular, it will:

- Continue to enable the North Sydney Centre to maintain its status as one of Australia's largest commercial centres; and
- Continue to encourage public and sustainable transport as the mode choice for movements to, from and within the LGA.

North Sydney Council Delivery Program 2018/19-2021/22

The North Sydney Council Delivery Program 2018/19-2021/22 (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 that will contribute to the long-term strategies and desired outcomes of the Plan.

The Planning Proposal directly supports the vision of the Delivery Program as the five Directions mirror those of the CSP.

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 LGA, as demonstrated in TABLE 1.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP No. 19 - Bushland in urban areas	YES	The Planning Proposal does not seek to further reduce the extent of land zoned in the E2 Environmental Conservation zone nor will it affect the attainment of the SEPP's aims and objectives.
SEPP No.21 – Caravan parks	N/A	This SEPP does not apply as the Planning proposal does not relate to land upon which caravan parks are permitted.
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 does not seek to amend the permissibility of land use within any zone nor introduce a site specific use which may be sensitive to contamination issues (e.g. rezoning land zoned for commercial or industrial purposes to residential or recreational uses).
SEPP No. 64 - Advertising and signage	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP No. 65 - Design Quality of Residential Apartment 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.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
SEPP (Coastal Management) 2018	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Concurrences and Consents) 2018	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
SEPP (Educational Establishments and Child Care Facilities) 2017	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Exempt and Complying Development Codes) 2008	YES	The Planning Proposal seeks to remove exempt and complying development types that are permitted under this SEPP.
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 (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.
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.
SEPP (State Significant Precincts) 2005 - <i>formerly SEPP Major Development, SEPP Major Projects & SEPP State Significant Development</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 (Vegetation in Non-Rural Areas) 2017	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
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.9.1 directions)?

The Planning Proposal is consistent with the relevant Directions issued under Section 9.1 of the EP&A Act by the Minister to councils, as demonstrated in TABLE 2.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
1. Employment and Resources		
1.1 Business & Industrial Zones	YES	The Planning Proposal does not seek to reduce any commercial zoning under NSLEP 2013 nor does it seek to reduce the level of permissible non-residential floor space achievable on the affected lands.
1.2 Rural Zones	N/A	This Direction does not apply as there are no existing rural zones under NSLEP 2013 nor 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 is not located in a water catchment area that directly drains to a water body containing a Priority Oyster Aquaculture Area or a current oyster aquaculture lease in the national parks estate.
1.5 Rural Lands	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
2 Environmental Heritage		
2.1 Environmental Protection Zones	YES	The Planning Proposal does not alter the existing environmental protection to land within an environmental protection zone.
2.2 Coastal Protection	N/A	The Planning Proposal does not affect land that covered by the Coastal Management SEPP.
2.3 Heritage Conservation	YES	<p>The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 (refer to Clause 5.10) which already satisfy the requirements of the Direction.</p> <p>The Planning Proposal seeks to provide increased clarity with respect to when a height variation may be considered and will not impact upon the significance of heritage items or conservation areas.</p>
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.
2.5 Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
2.6 Remediation of Contaminated Land	YES	The proposal does not seek to alter the zoning of any land, thereby increasing the potential risk to exposure to contamination.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
3 Housing, Infrastructure & Urban Development		
3.1 Residential Zones	YES	<p>Clause 3.1(5)(b) requires that a Planning Proposal must not contain provisions which will reduce the permissible residential density of land.</p> <p>The height, setbacks and coverage requirements applicable to the Medium Density Residential R3 zone remained consistent for both medium density development as well as residential flat buildings. The density between the two different development types is somewhat inconsequential. The outcome of the planning proposal will be to revert to the traditional permissibility within the R3 zone prior to amendment 30.</p> <p>The Planning Proposal is therefore consistent with the requirements of the Direction as it will not reduce the ability to undertake residential development on those parcels of land where residential development is currently permitted.</p>
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.
3.4 Integrating Land Use & Transport	YES	The Planning Proposal does not seek to minimise development potential in close proximity to mass public transport.
3.5 Development Near Regulated Airports and Defence Airfields	YES	Despite not being located in close proximity to Sydney Airport, almost the entire LGA is affected by an Obstacle Limitation Surface (OLS) of 156m AHD. The Planning Proposal does not seek to increase the maximum height permitted on any land within the North Sydney Centre.
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.
3.7 Reduction in non-hosted short term rental accommodation period	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
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.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
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	YES	The Planning Proposal is consistent with the direction as it does not result in: <ul style="list-style-type: none"> • inconsistencies with the Planning for Bushfire Protection 2006; • permitting increased density on land affected by bushfire; and • bushfire hazard reduction being prohibited with Asset Protection Zones.
5 Regional Planning		
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.
5.9 North West Rail Link Corridor Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.10 Implementation of Regional Plans	YES	Refer to question 3 to Section 5.3.2 of this report.
5.11 Development of Aboriginal Land Council land	N/A	This Direction does not apply as the Planning Proposal does not relate to any land identified under State Environmental Planning Policy (Aboriginal Land) 2019.
6 Local Plan Making		
6.1. Approval & Referral Requirements	YES	The Planning Proposal does not seek to introduce new concurrence, consultation or referral requirements, nor identify development types for the purpose of designated development.
6.2 Reserving Land for Public Purposes	YES	The Planning Proposal does not create or alter existing zonings or reservations of land for public purposes. However, it does remove the identification of 3 parcels of land to be acquired for public purposes due to that land having been acquired by the relevant acquisition authority. Two of these properties have been acquired by Council the other by DPIE.

TABLE 2: Consistency with s.9.1 Directions		
Direction	Consistency	Comment
6.3 Site Specific Provisions	N/A	This Direction does not apply as the Planning Proposal does not relate to any site specific land use controls, nor introduce new development standards not already contained in the LEP.
7 Metropolitan Planning		
7.4 Implementation of North West Priority Growth Area Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.5 Implementation of Greater Parramatta Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any land comprising the Greater Parramatta Priority Growth Area.
7.6 Implementation of Wilton Priority Growth Area Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.7 Implementation of Glenfield to Macarthur Urban Renewal Corridor	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.8 Implementation of Western Sydney Aerotropolis Interim Land Use and Infrastructure Implementation Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.9 Implementation of Bayside West Precincts 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.10 Implementation of Planning Principles for the Cooks Cove Precinct	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs.
7.11 Implementation of St Leonards and Crows Nest 2036 Plan	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
7.12 Implementation of Greater Macarthur 2040	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.
7.13 Implementation of the Pyrmont Peninsula Place Strategy	N/A	This Direction does not apply as the Planning Proposal does not relate to any the identified area.

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?*

No.

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

No.

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

No social or economic impacts. The Planning Proposal merely seeks to increase transparency in the relationship between clauses that perform a similar function.

5.3.4 Section D – State and Commonwealth interests

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

Implementation of the Planning Proposal is likely to have a minimal impact upon the provision of public infrastructure services within the locality as it is the land affected is already highly serviced.

Consultation with relevant public infrastructure agencies during the public exhibition of the planning proposal will ensure any concerns are addressed prior to allowing any increase in the development potential of the land.

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 and would be typically gained through the Gateway Determination process.

In light of the proposed changes to NSLEP 2013, Council considers that for the abundance of caution, the following public authorities should be consulted with during the public exhibition process:

- (a) Sydney Water;
- (b) Transport for NSW;
- (c) Ausgrid;
- (d) Telstra / Optus
- (e) Gas providers

5.4 PART 4: MAPPING

It is not proposed to amend any of the maps to the LEP.

5.5 PART 5: COMMUNITY CONSULTATION

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

For the abundance of caution, it is envisaged that the following public authorities will need to be consulted as part of any public exhibition:

- Sydney Water
- Transport for NSW

- Department of Education
- Telecommunication providers
- Gas providers
- Electricity providers

5.6 PART 6: PROJECT TIMELINE

TABLE 3 provides a project timeline having regard to identified milestones and estimating approximately 11 months from submitting the planning proposal to the DPIE for a Gateway Determination to the amending LEP being made.

TABLE 5 – Project Timeline												
Milestone	Mar 2022	May 2022	May 2022	Jun 2022	Jul 2022	Aug 2022	Sept 2022	Oct 2022	Nov 2022	Dec 2022	Feb 2023	Mar 2023
1. Local Planning Panel considers Planning Proposal												
2. Council determines whether to progress to Gateway Determination												
3. Request for Gateway Determination sent to DPIE												
4. DPIE considers request												
5. Gateway Determination issued to Council												
6. Amendment of Planning Proposal to align with Gateway Determination												
7. Public exhibition undertaken												
8. Council considers submissions												
9. Council considers post exhibition report												
10. Submission to DPIE requesting making of LEP												
11. Drafting of LEP and making												