

Planning Services

Gateway Determination Report

LGA	Canada Bay
RPA	Canada Bay Council
NAME	Planning Proposal to amend the Canada Bay Local Environmental Plan 2013 for various miscellaneous housekeeping amendments (0 dwellings, 0 jobs).
NUMBER	PP 2017 CANAD 006 00
LEP TO BE AMENDED	Canada Bay Local Environmental Plan 2013
RECEIVED	4 September 2017
FILE NO.	17/12461
QA NUMBER	qA418195
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

INTRODUCTION

Description of Planning Proposal

The proposal seeks to amend Canada Bay LEP 2013 to make a range of housekeeping amendments. This includes:

- rectify mapping anomalies in relation to the floor space ratio and height;
- update zoning and additional permitted uses anomalies;
- amend references to 'terrestrial biodiversity' to be referred to as 'environmentally sensitive land';
- update B4 Mixed Use zoning to remove the permissibility of residential flat buildings; and
- update Schedule 5 regarding heritage listings.

Summary of Recommendation

It is recommended that the proposal proceed subject to conditions as the amendments will generally rectify anomalies in the Canada Bay LEP 2013 to improve the function, content and consistency of the LEP, providing an accurate and consistent planning instrument for the use of the community. The proposed amendment to remove the permissibility of residential flat buildings within B4 Mixed Use zones will assist in providing suitable levels of ground level commercial floor space for the community whilst retaining residential uses above.

PROPOSAL

Objectives or Intended Outcomes

The statement of objectives accurately describes the intention of the planning proposal. The objective of the proposal is to improve the content and outcomes of the Canada Bay LEP 2013 in relation to height, floor space ratio, heritage listing and terminology. The intended outcome is to ensure that the LEP appropriately achieves intended development outcomes in relation to height, floor space ratio, heritage and zoning.

Explanation of Provisions

The explanation of provisions adequately addresses the intended method of achieving the various amendments of the planning proposal.

Mapping

The proposal includes mapping showing the proposed changes which is suitable for community consultation.

NEED FOR THE PLANNING PROPOSAL

The proposal is generally restricted to housekeeping amendments and as such is not supported by a specific strategic study or report. The proposal is the best means of achieving an update and refinement of the LEP provisions.

The following is a brief assessment of each proposed housekeeping amendment with Department comments:

Rectify mapping errors relating to floor space ratio

The proposal seeks to rectify a mapping error to show the correct floor space ratio (FSR) for properties at 282, 290-294 and 296 Lyons Road, Russell Lea. These properties are located adjacent to each other on the corner of Lyons Road and Russell Street.

The proposal states that the Canada Bay LEP 2008 allocated a Floor Space Ratio (FSR) of 1.0:1 to these properties, however maps associated with the Canada Bay LEP 2013 did not include an FSR for the land. The proposal therefore states that the absence of an FSR on the site is a mapping error and is inconsistent with the prevailing FSR applied to the B1 Neighbourhood Centres zone on Lyons Road. The proposal seeks to apply a FSR of 1.0:1 to these properties to reflect the intended FSR standard for these sites.

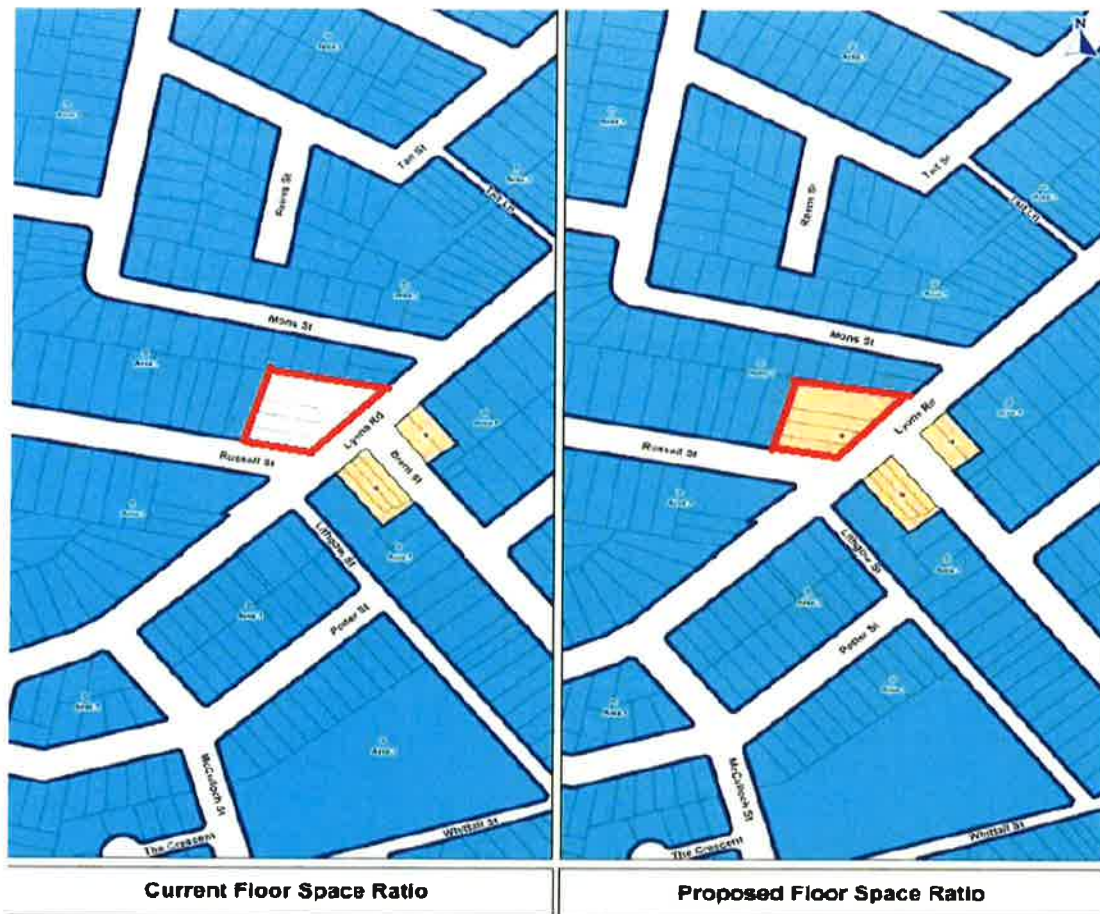


Figure 1: Current and proposed FSR map of subject properties

The department considers this amendment satisfactory.

Rectify mapping errors relating to height of buildings

64-92 Majors Bay Road, Concord

The proposal seeks to rectify a mapping error to clearly reflect the correct Height of Building label for a row of properties from 64-92 Majors Bay Road, Concord.

The Canada Bay LEP 2013 allocated an 11 metre building height to these properties. The proposal states that the LEP map reflects the correct Height of Building colour, however an incorrect label was shown on the map ("I" instead of "L"). This anomaly is proposed to be rectified.

The proposal states that the Canada Bay LEP 2013 has allocated an 8.5m building height to the properties. The colour on the Height of Building Map is correct, however no label is shown.

The Department considers this amendment satisfactory.

Additional Permitted Use – 380 Victoria Place, Drummoyne

The proposal seeks to include a lot located at 380 Victoria Place, Drummoyne as an additional permitted use for a Marina. The site currently comprises a Marina with the land legally described as:

- Lot B DP 401843;
- Lot 1 DP 549352; and
- Lot 1 DP 430123.

The land is currently zoned R3 Medium Density Residential which prohibits Marinas, although Marinas are made permissible on part of the site under Schedule 1 Additional Permitted Uses and the land is currently used for the purpose of a Marina.

Clause 10 – use of certain land at 380 Victoria Place, Drummoyne

- (1) *This clause applies to land at 380 Victoria Place, Drummoyne, being Lot B, DP 401843 and Lot 1, DP 549352.*
- (2) *Development for the purpose of marinas is permitted with development consent*

The proposal states that as part of the preparation of the Canada Bay LEP 2013, Clause 10 only included 2 of the 3 lots for the land. One lot known as Lot 1 DP 430123 was not included within Clause 10, despite this land currently being used as a Marina. The proposal states that the omission of this lot from Schedule 1 is an anomaly and is proposed to be rectified.

The Department considers this amendment satisfactory.

Terrestrial Biodiversity and Environmentally Sensitive Land

The proposal seeks to resolve a disparity in wording between the Canada Bay LEP 2013 and the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*. The SEPP identifies specific land-based exclusions under *Clause 1.19 – Land on which complying development may not be carried out*, that restrict complying development being carried out on that land.

In particular, Clause 1.19 states that development must not be carried out on land under the General Housing Code, Rural Housing Code, Commercial & Industrial (New Buildings and Additions) Code if that land is identified by an Environmental Planning Instrument (Canada Bay LEP 2013) as being 'Environmentally Sensitive Land'.

The proposal states that within the Canada Bay LEP 2013, properties considered to be 'Environmentally Sensitive Land' are currently labelled on a map titled 'Terrestrial Biodiversity Map', being land containing (or within the vicinity of land containing) threatened species or endangered ecological communities.

As both the wording for the map and the clause within the Canada Bay LEP 2013 refers to Terrestrial Biodiversity rather than Environmentally Sensitive Land, the proposal states that confusion is created with respect to whether the SEPP (Exempt and Complying) 2008 is a

land based exclusion. In this regard, there is a discrepancy between the wording used in the LEP and the SEPP.

The proposal therefore seeks to amend Clause 6.3 and the applicable map in the CBLEP 2013 to replace the term 'Terrestrial Biodiversity' with the term 'Environmentally Sensitive Land' to maintain consistency with the SEPP.

The proposed amendment was discussed with the Department's GIS team who confirmed the replacement map title is in keeping with the standard technical requirements for spatial datasets. The Department considers this amendment satisfactory to improve consistency between the LEP and SEPP.

Residential Flat Buildings in B4 Mixed Use zone

The proposal seeks to remove residential flat buildings as a permissible use in B4 Mixed Use zones under the Canada Bay LEP 2013.

Canada Bay Council recently undertook a review of approved buildings in the Five Dock and Drummoyne B4 Mixed Use zones. This review showed that some developments had minimised commercial uses (retail/office and other non-residential floor space) to an extent that the commercial component comprised less than 20% of gross floor area on the ground floor.

The proposal states that the only requirement for commercial uses to be included within the B4 Mixed Use is part of the Active Frontages clause of the Canada Bay LEP 2013 which requires non-residential uses adjacent to the main street frontage. However, these spaces are often too small to enable flexibility of use in the future life of the buildings. i.e. small commercial tenancies are provided to the street front, but residential uses are still permitted behind the street frontage.

The proposal considers that it is important to ensure that as the community grows, there continues to be sufficient floor space to provide for the basic needs of the growing residential population. Therefore, the proposal states that the removal of residential flat buildings as a permissible use will ensure commercial and retail uses will be provided in the future in appropriate locations.

The Department considers this amendment satisfactory. The standard instrument does not require residential flat buildings to be permitted in Mixed Use zones. The retention of shop top housing as a permitted use in the zone will ensure residential development continues to be permissible above ground floor commercial uses. B4 Mixed Use zoning is limited to small portions of the LGA where commercial activity currently exists. For these reasons, the proposed amendment is reasonable and will positively contribute to the future development of the LGA.

Zoning and Additional Permitted Use: 355 – 359 Lyons Road, Five Dock

The proposal seeks to rezone the properties at 355-359 Lyons Road from B4 Mixed Use to B1 Neighbourhood Centre.

This amendment is proposed as a result of the proposed removal of residential flat buildings from B4 Mixed Use zones which has the potential to impact on a recent planning proposal at 355-359 Lyons Road, Five Dock (PP_2015_CANAD_006_00). This proposal

approved the rezoning of the land from R2 Low Density Residential and B1 Neighbourhood Centre zoning to B4 Mixed Use.

A concept design was included reflecting both commercial and residential uses on the ground floor. The rezoning of the site to B4 Mixed Use permitted residential flat buildings on the ground floor and the intended development outcome was for residential uses to be located partly on the ground floor. It is stated that the proposal was prepared on the assumption that residential uses would be permitted on the ground floor due to the narrow nature of the site frontage to Lyons Road and to enable residential uses to address Ingham Avenue to the rear of the site.

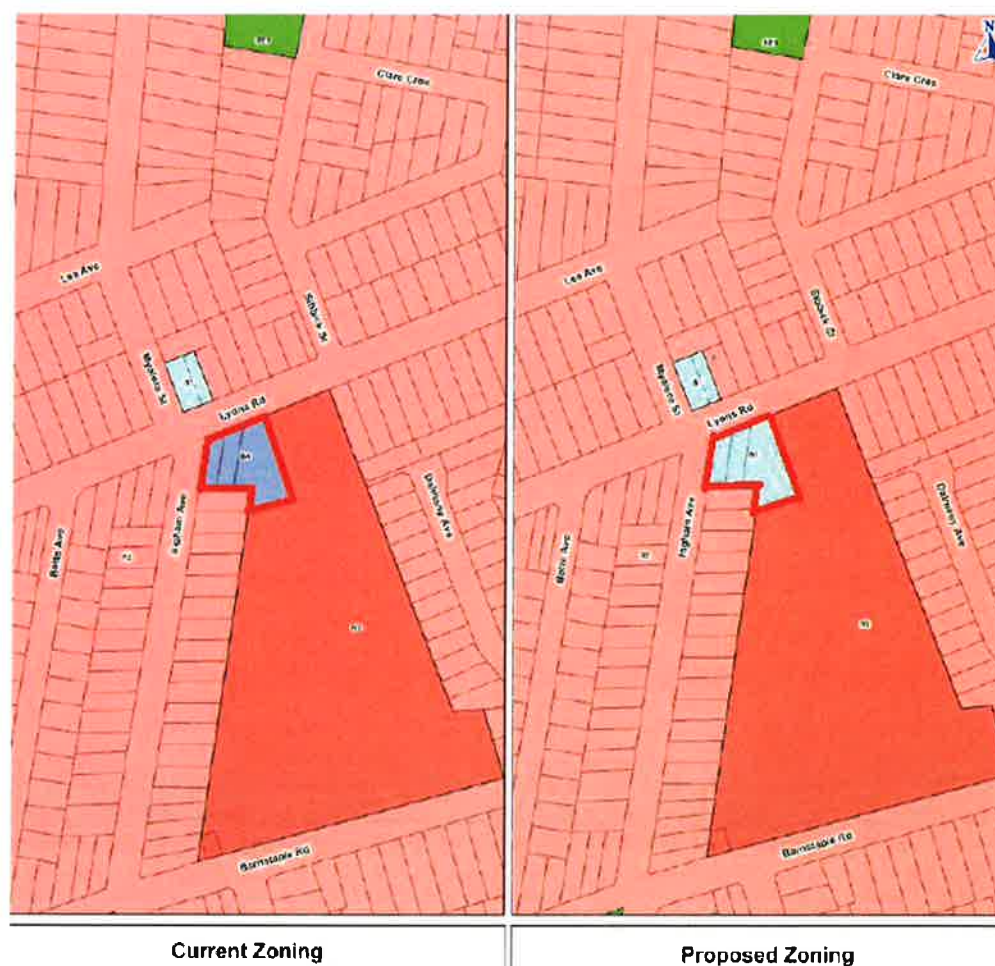


Figure 4: Current and proposed zoning changes for subject properties

The Department considers this rezoning amendment satisfactory. This will ensure this recent planning proposal is not unduly affected by prohibition of residential flat buildings from Mixed Use zones.

Zoning: 545-551 Great North Road, Five Dock

The proposal seeks to rezone land from 545-551 Great North Road from R3 Medium Density Residential to B1 Neighbourhood Centre.

The properties currently comprise ground level commercial/retail uses with shop top housing. These properties are in keeping with similar shop top housing buildings to the north of the site currently located within the B1 Neighbourhood Centre. The proposal states

that the zoning of 545-551 Great North Road, Five Dock as R3 Medium Density Residential is considered to be an anomaly given the existing neighbourhood shops on the site.



Figure 5: Current and proposed zoning changes for subject properties

The Department considers this amendment satisfactory. The proposed rezoning will provide a consolidated zoning of properties used for commercial/shop top housing in keeping with their current uses.

Heritage

The proposal includes a number of amendments to remove heritage listings from buildings as described below as outlined below.

6 Rodd Road, Five Dock

The proposal seeks to remove the heritage listing of the property located at 6 Rodd Road, Five Dock (Lot 27 DP 4855). The site is currently listed as a heritage item (known as Item 1408) listed in Schedule 5 of the Canada Bay LEP 2013. The proposal states that the house that was the subject of this description has been demolished and a new building erected.

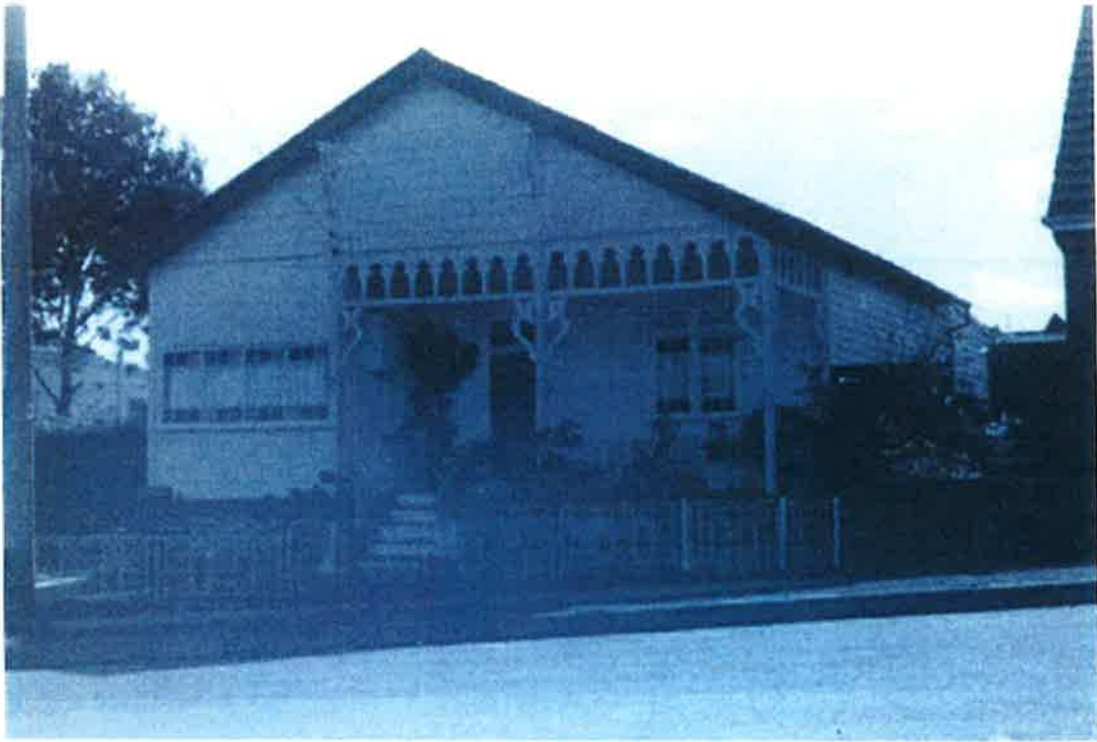


Figure 6: Image of previous dwelling at 6 Rodd Street now demolished



Figure 7: Image of current dwelling at site

Council's heritage advisor states there is a readily apparent discrepancy between the description of the house in the Council's heritage inventory and the house present on the site, as evidenced in photos. Therefore, the proposal states that the heritage listing should be removed from the property. In light of this advice confirming the discrepancy with the current heritage listing, the Department considers this amendment satisfactory.

Concord West Railway Station and Railway Station Park

The proposal seeks to remove the heritage listing of Concord West Railway Station and Concord West Station Park. The items are legally described as Lot 101 DP 1002884 in Schedule 5 of the Canada Bay LEP (known as item 1394 and 1395).

The proposal states that works to upgrade Concord West Station to improve station facilities and access for commuters have included modifications to the platform and the landscape elements of the railway station park. Council's heritage advisor has indicated that all historical elements have been removed. In light of this advice, the Department considers this amendment satisfactory.

St Ambrose School

The proposal seeks to remove the heritage listing of St Ambrose School at 227 Queen Street, Concord West. The Item is legally described as Lot 14 Sec 3 DP 6949 I Schedule 5 of the CBLEP 2013 (known as heritage item 1392).



Figure 8: Image of previous building at St Ambrose School (1998)



Figure 9: Image of current building at St Ambrose School

The proposal states that Council's heritage advisor has undertaken an assessment of the school in relation to the heritage significance and concluded that the historic built elements have been demolished and replaced with new elements. Therefore, the proposal seeks to remove the heritage listing of the property. In light of this advice, the Department considers this amendment satisfactory.

32 Wymston Parade, Wareemba

The proposal seeks to remove the heritage listing of the land located at 32 Wymston Parade, Wareemba. The Item is legally described as Lot 95 DP 6743 as listed in Schedule 5 or the Canada Bay LEP 2013 (known as heritage item 1519). The proposal states that the Sydney Water Corporation have put forward a request to amend the LEP Heritage List and associated map to remove Lot 95.

The site consists of the Sewerage Pumping Station SP0061 located on the southern half of the property (Lot 96 DP6743) with the remaining northern half previously comprising a depot building (Lot 95 DP6743) which the proposal confirms has now been demolished. Canada Bay Council advises this is currently under investigation by the Council.



Figure 10: View of building (now demolished) at Lot 95 DP6743

The proposal states that the pumping station is listed as a local heritage item under both the Canada Bay LEP 2013 and the Sydney Water Section 170 Heritage and Conservation Register. Sydney Water's Section 170 curtilage only covers the pumping station at Lot 96 and not the depot building as Lot 95 as shown in Figure 10. The heritage listing in the Canada Bay LEP 2013 includes both Lot 95 and 96.

Prior to demolition, Lot 95 consisted of a disused depot building and a few small concrete storage bays and picnic tables. The proposal states that Council's heritage advisor has undertaken an assessment of the heritage significance of Lot 95 and recommended that the building is not part of the significance of the adjoining pumping station. Therefore, the proposal seeks to remove the heritage listing of the property. In light of this advice, the Department considers this amendment satisfactory.

STRATEGIC ASSESSMENT

State

A Plan for Growing Sydney

The planning proposal is considered consistent with A Plan for Growing Sydney as it will not have an adverse impact on delivery of the Plan's impact or direction.

District

Draft Central District Plan

The draft Central District Plan (the Plan) was released by the Greater Sydney Commission on 21 November 2016. The proposed amendments will not have an adverse impact on delivery of the Plan's impact and is consistent with its direction.

Local

City of Canada Bay Local Planning Strategy 2010-2031

The proposal is consistent with the vision of the Canada Bay Local Planning Strategy. The amendments will assist in maintaining public confidence in Council's decision making process by keeping the Canada Bay LEP 2013 up to date, clear and accurate.

Section 117(2) Ministerial Directions

1.1 Business and Industrial zones

The objectives of this Direction, focuses on encouraging employment growth and opportunities in suitable locations. Some of the proposed amendments are applicable to this Direction as follows:

Zoning

545-551 Great North Road, Five Dock

The proposed zoning amendment from R3 Medium Density Residential to B1 Neighbourhood Centre will ensure suitable commercial uses will be retained in the future which is consistent with this Direction.

Amendment to B4 Mixed Use zone

The proposed removal of the permissibility of residential flat buildings from B4 Mixed Use zones will ensure the entirety of the ground floor of buildings will be encouraged for commercial and employment opportunities.

The proposed amendments are consistent with the requirements of this Direction.

2.3 Heritage Conservation

The objective for this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance. Planning proposals may be inconsistent with this direction where the extent of inconsistency is of minor significance.

The proposal seeks to remove heritage listings from Schedule 5 of the Canada Bay LEP 2013 including:

- 6 Rodd Road, Five Dock (Lot 27 DP 4855) known as Item 1408;
- Concord West Railway Station and Railway Station Park (Lot 101 DP 1002884) known as Item 1394 and 1395;
- St Ambrose School (Lot 14 Sec 3 DP 6949) known as Item 1392; and
- 32 Wymston Parade (Lot 95 DP 6743) known as Item 1519.

The removal of these listings has arisen from their previous demolition or the subject property's not reflecting the heritage significance of the listing. In light of the loss of heritage significance of the properties, the Secretary's delegate can be satisfied the inconsistency with this Direction is of minor significance.

3.1 Residential Zones

This Direction applies as part of the proposal affects land within existing residential zones. The direction states that a planning proposal must not contain provisions which will reduce the permissible residential density of land. Of relevance is the following proposed amendment:

545-551 Great North Road, Five Dock

The proposed zoning amendment from R3 Medium Density Residential to B1 Neighbourhood Centre seeks to update the zoning to reflect the current land use at the properties which comprise ground level commercial/retail uses with shop top housing. The change to the zoning will retain the permissibility of shop top housing residential accommodation. Whilst the amendment will remove the permissibility of ground level residential use, the retention of shop top housing will ensure residential uses remain permissible above the ground level.

The Planning Proposal does not currently address this Direction. Therefore, a Gateway condition is included requiring the proposal to address the minor inconsistency with this Direction.

3.4 Integrating Land Use and Transport

The proposal is considered to be consistent with the terms of this Direction as the amendments will not increase the density of land use or have a detrimental impact on the surrounding transport network.

4.1 Acid Sulphate Soils

This direction applies to the planning proposal as the proposal will affect land identified as containing acid sulphate soils. However, the proposal does not contain provisions that regulate works in relation to acid sulphate soils, nor does it propose an intensification of land uses. The proposal is therefore considered to be consistent with this Direction.

7.1 Implementation of a Plan for Growing Sydney

The proposal is considered to be not inconsistent with A Plan for Growing Sydney as it generally involves administrative amendments to the LEP.

State Environmental Planning Policies

SEPP (Exempt and Complying Development Codes) 2008

The proposed amendment to Clause 6.3 of the CBLEP 2013 to replace the term 'Terrestrial Biodiversity' with the term 'Environmentally Sensitive Land' will improve the application of this SEPP and functionality with the Canada Bay LEP 2013.

SEPP (Infrastructure) 2007

The proposal will not result in any provisions to hinder the application of this SEPP.

SITE SPECIFIC ASSESSMENT

Environmental

Critical Habitats and Threatened Species

The Planning Proposal states that the proposal does not apply to land that has been identified as containing critical or threatened species, populations or ecological communities, or their habitats.

Heritage

The proposal relates to four existing local heritage listings identified in the Canada Bay LEP 2013. As discussed, the proposal intends to remove these heritage listings due to previous demolition or the site's not currently reflecting the heritage significance of the listing. It is recommended consultation with the Office of Environment and Heritage be undertaken to consider any concerns as part of the plan making process.

Flooding

The proposal does not intensify or provide increased sensitive uses that requires further flood planning consideration as part of this planning proposal.

Acid Sulphate Soils

The proposal does not contain provisions that regulate works in relation to acid sulphate soils, nor does it propose an intensification of land uses.

Economic and Social

The proposed amendment to remove the permissibility of residential flat buildings within the B4 Mixed Use zone will improve opportunities for employment growth within identified commercial areas of the LGA where B4 Mixed Use zones are specifically located.

Due to the low impact of nature of the planning proposal, it is considered to not have any direct adverse effects on the socio-economic environment.

CONSULTATION

Community

The proposal outlines public consultation will be undertaken in accordance with the Gateway determination. The proposal suggests an exhibition period of 28 days, which is considered adequate.

Agencies

The proposal does not specifically raise which agencies will be consulted. It is recommended the Office of Environment and Heritage be consulted as per Section 56(2)(d) of the *Environmental Planning and Assessment Act 1979*.

TIMEFRAME

The Planning Proposal includes a project timeline which outlines the steps in the process for the future LEP amendment. However, no specific dates or timeframes have been provided with this timeline. A condition of Gateway is recommended requiring the Project Timeline be updated to clearly provide these details prior to community consultation.

DELEGATION

Council has requested a Written Authorisation to Exercise Delegation of the Minister's powers under S59 of the *Environmental Planning and Assessment Act 1979* for this matter. It is considered appropriate that an authorisation be granted to Council as the proposal is essentially a local planning issue.

CONCLUSION

The planning proposal is supported to proceed as:

- The housekeeping amendments will improve the function, content and consistency of the Canada Bay LEP 2013; and
- The prohibition of residential flat buildings within B4 Mixed Use zones will assist in providing increased levels of ground floor level commercial floor space for the benefit of the community whilst retaining residential uses above.

RECOMMENDATION

It is recommended that the delegate of the Secretary:

1. Agree the proposal is consistent with section 117 Directions 1.1 Business and Industrial Zones, 3.4 Integrating Land Use and Transport, 4.1 Acid Sulphate Soils and 7.1 Implementation of a Plan for Growing Sydney; and
2. Agree any inconsistencies with Section 117 Directions 2.3 Heritage Conservation is minor and justified; and
3. Note that the minor inconsistency with Direction 3.1 Residential Zones will require justification.

It is recommended that the delegate of the Greater Sydney Commission, determine that the planning proposal should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated to:
 - (a) address and justify the minor inconsistency with Section 117 Direction 3.1 Residential Zones as the proposal seeks to rezone land at 545-551 Great North Road, Five Dock from R3 Medium Density Residential to B1 Neighbourhood Centre; and
 - (b) update the project timeline to clearly state the anticipated dates and timeframes of the planning proposal.
2. The planning proposal should be made available for community consultation for a minimum of **28** days.
3. Consultation is required with the Office of Environment and Heritage under Section 56(2)(d) of the EP&A Act.

4. The timeframe for completing the LEP is to be **12 months** from the date of the Gateway determination.
5. Given the nature of the planning proposal, Council should be authorised to exercise delegation to make this plan.

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