

DECISION OF 3659th COUNCIL MEETING HELD ON 15 DECEMBER 2014

SUSPEND STANDING ORDERS

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

Voting was as follows:

For/Against 10/0

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

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

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

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

Report of Ben Boyd, Executive Strategic Planner

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

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

The Planning Proposal is supported as it:

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

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

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

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

Recommending:

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

RESOLVED:

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

**Report to General Manager**

Attachments:

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

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

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

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

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

The Planning Proposal is supported as it:

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

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

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

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

FINANCIAL IMPLICATIONS:

Nil.

RECOMMENDATION:

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

LINK TO DELIVERY PROGRAM

The relationship with the Delivery Program is as follows:

Direction : 2. Our Built Environment

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

Direction : 3. Our Economic Vitality

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

BACKGROUND

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

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

CONSULTATION REQUIREMENTS

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

SUSTAINABILITY STATEMENT

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

QBL Pillar	Implications
Environment	No anticipated impacts.
Social	If implemented, the Planning Proposal could result in the provision of additional residential accommodation without impacts upon the provision of employment.

QBL Pillar	Implications
Economic	If implemented, it is considered that the ability to redevelop properties will be greatly improved provided through increased flexibility in the planning controls.
Governance	No anticipated impacts.

DETAIL

1. Proposed LEP Amendment

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

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

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

6.# Residential flat buildings in Zone B4 Mixed Use

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

2. Planning Proposal Structure

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

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

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

3. Justification of the Planning Proposal

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

4. Proposed DCP Amendment

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

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

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

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

5. Conclusion

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

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

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

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



PLANNING PROPOSAL

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

27 November 2014

1 INTRODUCTION

North Sydney Council (Council) has prepared a Planning Proposal to amend North Sydney Local Environmental Plan 2003 (NSLEP 2013).

The primary intent of the Planning Proposal is to provide increased flexibility with regard to the design of mixed used developments incorporating residential accommodation, whilst still achieving active street frontages.

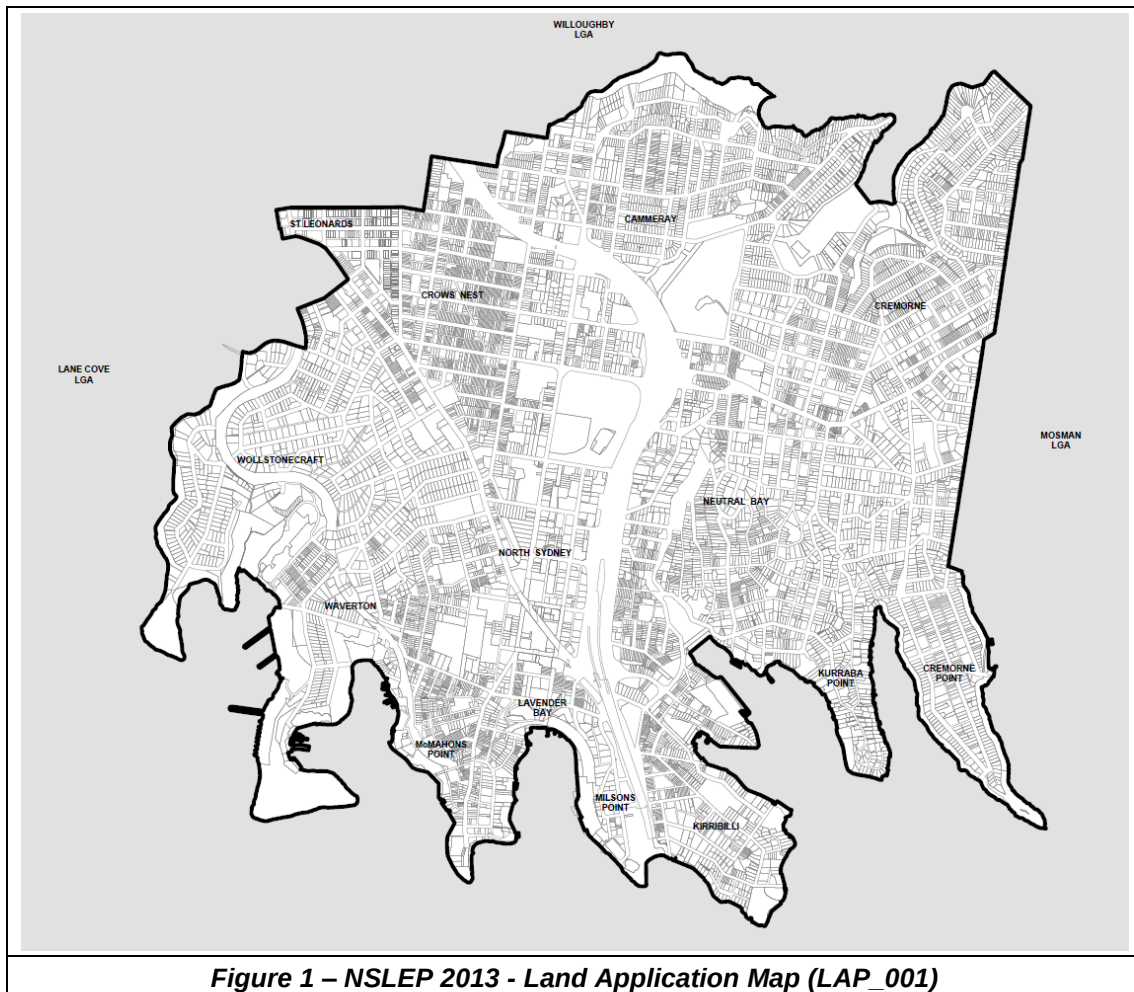
In particular, the proposed amendment seeks to:

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

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

2 SITE LOCALITY

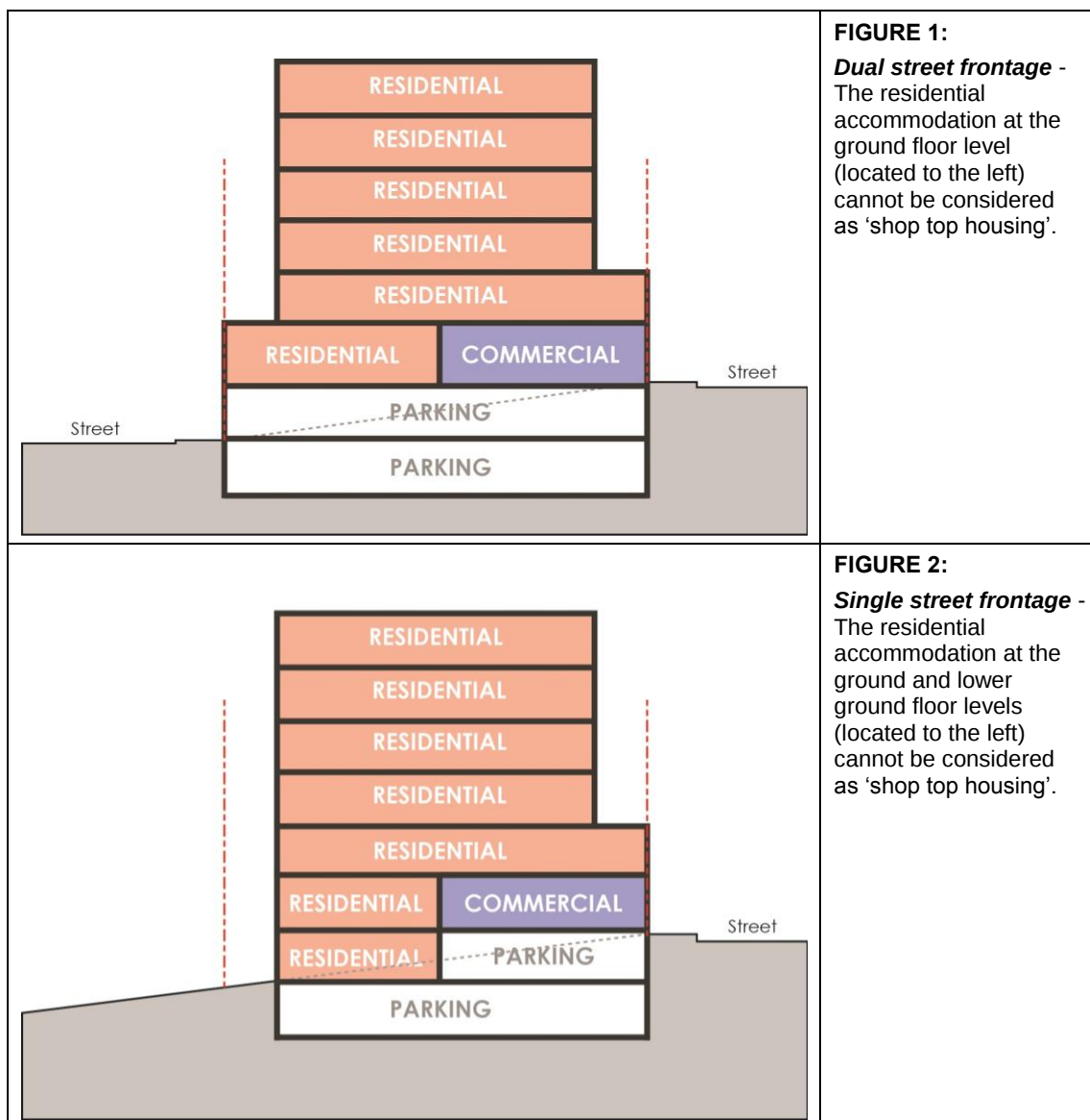
The planning proposal applies to all land zoned *B4 – Mixed Use* included within the Land Application Map to NSLEP 2013.



3 BACKGROUND

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

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



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

32 *Design of development*

(1) *Design objectives*

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

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

(2) *Design controls*

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

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

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

(4) *Prohibited development*

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

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

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

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

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

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

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

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

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

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

A proposed amendment is therefore required to improve the flexibility of the controls where impacts on street activation will not occur.

4 STATUTORY CONTEXT

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

4.1 Land Use Table

The objectives and provisions of the *B4-Mixed Use* zone to the Land Use Table under Part 2 of NSLEP 2013 state:

Zone B4 - Mixed Use

1 Objectives of zone

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

2 Permitted without consent

Nil

3 Permitted with consent

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

4 Prohibited

Any development not specified in item 2 or 3

4.2 Definitions

Clause 1.4 of NSLEP 2013 makes reference to the Dictionary which provides definitions of terms used within the LEP.

In particular, the definitions of mixed use development, residential flat buildings and shop top housing are stated as follows:

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

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

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

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

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

4.3 Non-residential floor space ratios & Active street frontages

Clause 4.4A of NSLEP 2013 sets minimum and maximum floor space ratios for non-residential development in the B4 – Mixed Use zone.

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

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

- (3) *The non-residential floor space ratio for all buildings within a site on land identified as follows on the Non-Residential Floor Space Ratio Range Map must not be less than the ratio shown for that land:*
 - (a) *Area 1—3:1,*
 - (b) *Area 9—0.5:1,*
 - (c) *Area 10—1:1,*
 - (d) *Area 12—2:1,*
 - (e) *Area 13—1.5:1.*
- (4) *The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map must not exceed 2:1.*
- (5) *Development consent must not be granted to the erection of a building on land identified as Area 1–13 on the Non-Residential Floor Space Ratio Range Map unless the consent authority is satisfied that the building will have an active street frontage after its erection.*
- (6) *Despite subclause (5), an active street frontage is not required for any part of a building that is used for any of the following:*
 - (a) *entrances and lobbies (including as part of a mixed use development),*
 - (b) *access for fire services,*
 - (c) *vehicular access.*

- (7) *In this clause, a building has an active street frontage if no part of the ground floor of the building facing a street is used for residential accommodation.*
- (8) *In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose other than residential accommodation, a car park or a telecommunications facility, in all buildings within a site to the site area.*

5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES

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

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The following amendments to NSLEP 2013 are proposed:

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

6.# *Residential flat buildings in Zone B4 Mixed Use*

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

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

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

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

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

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

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

5.3.2 Section B – Relationship to strategic planning framework**3. *Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?****Metropolitan Plan for Sydney 2036*

Released in December 2010, the Metropolitan Plan for Sydney 2036 (Metropolitan Plan) sets the planning framework for the growth of the Sydney metropolitan area over the next 25 years. The Metropolitan Plan sets targets of an additional 770,000 homes and 760,000 jobs by 2036.

Objectives and Actions identified in the Metropolitan Plan which are relevant to the planning proposal are as follows:

- Objective B1 – To focus activity in accessible centres;
 - Action B1.1 – Plan for centres to grow and change over time;
 - Action B1.3 – Aim to located 80% of all new housing within walking catchments of existing and proposed centres of all sizes with good public transport;
- Objective D1 – To ensure an adequate supply of land and sites for residential development
 - Action – D1.1 – Locate at least 70% of new housing within existing urban areas ...;
- Objective E2 – To Focus Sydney's economic growth and renewal, employment and education in centres
 - Action E2.1 – Plan for more commercial and retail jobs in high accessible strategic centres
 - Action E2.2 – Ensure that an adequate supply of retail, office space and business parks;

The Planning Proposal is considered to be consistent with the above objectives and actions of the Metropolitan Plan, as it will provide development opportunities to increase residential accommodation without impacting upon the provision of employment services and active street frontages.

Draft Metropolitan Strategy for Sydney to 2031

Released in March 2013, the Draft Metropolitan Plan for Sydney to 2031 (Draft Metropolitan Strategy) sets the planning framework for the growth of the Sydney metropolitan area over the next 25 years. The Draft Metropolitan

Strategy sets targets of an additional 545,000 homes and 625,000 jobs by 2031.

Objectives and Policies identified in the Draft Metropolitan Strategy which are relevant to the Planning Proposal are as follows:

- Objective 1 – Develop a new land release policy and make new areas available for housing a jobs;
 - Policy 1.B – Growth will be encouraged within the Metropolitan Urban Area to reflect market demand.
 - Policy 1.C – Increases in housing and employment will be encouraged in transport accessible centres and where existing infrastructure like schools are underutilised.
- Objective 2 – Strengthen and grow Sydney's centres
 - Policy 2.A – Plan for housing growth in centres of all sizes.
 - Policy 2.B – Strategic Centres will be the focus of medium and high density housing and business and commercial growth, with supporting infrastructure.
 - Policy 2.C – Encourage growth in all centres and Specialised Precincts within the Global Economic Corridor and extend its overall reach to Norwest and Parramatta.
 - Policy 2.D – Mixed use development will be encouraged in all centres, including central commercial core areas, where there is market demand and complementary land uses.
- Objective 4 – Deliver strategic outcomes - nine city shapers
 - Policy 4.A – Transform the city by delivering the priorities for each city shaper.
- Objective 5 – Deliver new housing to meet Sydney's growth
 - Policy 5.B – New housing will be encouraged in areas close to existing and planned infrastructure in both infill and greenfield areas.
 - Policy 5.E – The supply of housing in established urban areas and zoned release areas will be fasttracked.
- Objective 7 – Deliver well-designed and active centres that attract investment and growth
 - Policy 7.A – Existing centres will grow and change and new centres will be supported.
 - Policy 7.B – Retail, employment, cultural and social infrastructure will be included in centres undergoing growth and renewal.
- Objective 14: Provide a good supply of office space
 - Policy 14.A – Strategic Centres and Specialised Precincts that contain business parks/office clusters will be the primary location for office space.
 - Policy 14.B – Major new office developments will be supported in Global Sydney
- Objective 15 – Provide for a good supply of retail space
 - Policy 15.A – Centres of all sizes will be the primary location of retail, at a scale reflecting the level of public transport accessibility.

The Planning Proposal is considered to be consistent with the above objectives and policies of the draft Metropolitan Strategy as it will provide development opportunities to increase residential accommodation without

impacting upon the provision of employment services and active street frontages.

Draft Inner North Subregional Strategy

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

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

- Direction A1 – Provide suitable commercial sites and employment lands in strategic areas
 - Action A1.1 – Provide a framework for accommodating jobs across the city
 - Action A1.2 – Plan for sufficient zoned land and infrastructure to achieve employment capacity targets in employment lands
 - Action A1.4 – Retain the rezoning of employment lands to residential zonings across Sydney
- Direction B2 – Increase densities in centres whilst improving liveability
 - Action B2.1 – Plan for housing in centres consistent with their employment role
 - Action B3.4 – Ensure sufficient commercial office sites in strategic centres
- Direction B4 – Concentrate activities near public transport
 - Action B4.1 – Concentrate retail activity in centres, business development zones and enterprise corridors
- Direction B5 – Protect and strengthen the primary role of economic corridors
 - Action B5.1 – Establish a stronger corridors planning and development initiative
- Direction C1 – Ensure adequate supply of land and sites for residential development
 - Action C1.2 – Apply sustainability criteria for new urban development
- Direction C2 – Plan for a housing mix near jobs, transport and services
 - Action C2.1 – Focus residential development around centres, town centres, villages and neighbourhood centres
 - Action C2.3 – Provide a mix of housing
- Direction C3 – Renew local centres
 - Action C3.1 – Renew local centres to improve economic viability and amenity

The Planning Proposal is considered to be consistent with the above directions and actions of the draft INSS as it will provide development opportunities to increase residential accommodation without impacting upon the provision of employment services and active street frontages.

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

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

The North Sydney Council Delivery Program 2010/11-2013/14 (Delivery Program) was prepared in accordance with NSW State Government's

Integrated Planning and Reporting Framework requirements. The Delivery Program outlines Council's priorities and service delivery programs over four years, set out under five key Directions.

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

Direction: 2 Our Built Environment

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

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

Direction: 3 Our Economic Vitality

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

Direction: 4 Our Social Vitality

Outcomes: 4.10 Improved affordable housing and accommodation

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

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

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

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

TABLE 1: Consistency with SEPPs		
Direction	Consist-ency	Comment
SEPP No. 55 - Remediation of land	Yes	The Planning Proposal seeks to introduce a new permissible use within the B4 – Mixed Use zone which may be sensitive to contamination issues. However, shop top housing, a form of residential accommodation, is already permissible in the zone which shares the same group definition as residential flat buildings. Accordingly, no detailed contamination assessments are required in this instance. Contamination can be dealt with at development application stage if required.
SEPP No. 64 - Advertising and signage	N/A	The Planning Proposal does not relate to development for the purposes of advertising and signage.
SEPP No. 65 - Design Quality of Residential Flat Development	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Affordable Rental Housing) 2009	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Building Sustainability Index: BASIX) 2004	N/A	The Planning Proposal does not relate to building sustainability.
SEPP (Exempt and Complying Development Codes) 2008	N/A	The Planning Proposal does not seek to introduce any additional exempt or complying development types.
SEPP (Housing for Seniors or People with a Disability) 2004 - <i>formerly SEPP (Seniors Living) 2004</i>	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Infrastructure) 2007	YES	The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP's aims and objectives.
SEPP (Major Development) 2005 - <i>formerly SEPP Major Projects & SEPP State Significant Development</i>	N/A	The Planning Proposal does not relate to any state significant sites identified under this SEPP and therefore does not apply.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.
SEPP (Miscellaneous Consent Provisions) 2007 - <i>formerly SEPP (Temporary Structures) 2007</i>	N/A	This SEPP does not apply as the Planning Proposal does not relate to development for the purposes of temporary structures.
SEPP (State and Regional Development) 2011	N/A	This SEPP does not apply as the Planning Proposal does not relate to state or regional development nor the operation of joint regional planning panels.

TABLE 1: Consistency with SEPPs		
Direction	Consistency	Comment
Sydney REP (Sydney Harbour Catchment) 2005	YES	The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.

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

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

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
1. Employment and Resources		
1.1 Business & Industrial Zones	Yes	The Planning Proposal does not seek to reduce any commercial or industrial zoning under NSLEP 2013. The Planning Proposal will not 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 or proposed under the Planning Proposal.
1.3 Mining, Petroleum Production & Extractive Industries	Yes	The Planning Proposal does not seek to alter the permissibility of these types of land uses.
1.4 Oyster Aquaculture	N/A	This Direction does not apply as the Planning Proposal does not propose any changes in land use.
1.5 Rural Lands	N/A	This Direction does not apply as the Planning Proposal does not propose any changes that will affect development in a rural or environmental protection zone.
2 Environmental Heritage		
2.1 Environmental Protection Zones	N/A	This Direction does not apply as the Planning Proposal does not affect land in an environmental protection zone.
2.2 Coastal Protection	N/A	This Direction does not apply as the Planning Proposal does not affect land within a coastal zone.
2.3 Heritage Conservation	Yes	The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 which already satisfy the requirements of the Direction.
2.4 Recreation Vehicle Areas	N/A	The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area.

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
3 Housing, Infrastructure & Urban Development		
3.1 Residential Zones	Yes	The Planning Proposal is consistent with the requirements of the Direction as it will enhance the ability to provide increased residential development within a mixed use building utilising existing infrastructure and services.
3.2 Caravan Parks & Manufactured Home Estates	N/A	This Direction does not apply as the Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.
3.3 Home Occupations	Yes	The Planning Proposal does not alter the existing provisions within NSLEP 2013 that relate to home occupations, which already satisfy the requirements of the Direction.
3.4 Integrating Land Use & Transport	Yes	The Planning Proposal is considered to be consistent with the aims objectives and principles of <i>“Improving Transport Choice – Guidelines for planning and development”</i> and <i>“The Right Place for Business and Services – Planning Policy”</i> .
3.5 Development Near Licensed Aerodromes	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a licensed aerodrome nor does it propose to amend a height limit that exceeds the Obstacle Limitation Surface level that applies to the North Sydney LGA.
3.6 Shooting Ranges	N/A	This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a shooting range.
4 Hazard and Risk		
4.1 Acid Sulfate Soils	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by Acid Sulfate Soils.
4.2 Mine Subsidence & Unstable Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by mine subsidence nor has it been identified as being unstable land.
4.3 Flood Prone Land	N/A	This Direction does not apply as the Planning Proposal does not relate to land identified as being flood prone land.
4.4 Planning for Bushfire Protection	N/A	This Direction does not apply as the Planning Proposal does not relate to land identified as being bushfire prone land.
5 Regional Planning		
5.1 Implementation of Regional Strategies	N/A	This Direction does not apply as the Planning Proposal does not relate to land affected by one of the identified strategies.

TABLE 2: Consistency with s.117 Directions		
Direction	Consistency	Comment
5.2 Sydney Drinking Water Catchment	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.3 Farmland of State and Regional Significance on the NSW Far North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.4 Commercial and Retail Development along the Pacific Highway, North Coast.	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
5.8 Second Sydney Airport: Badgerys Creek	N/A	This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.
6 Local Plan Making		
6.1. Approval & Referral Requirements	Yes	The Planning Proposal does not alter any concurrence, consultation or referral requirements under NSLEP 2013, nor does it identify any development as designated development.
6.2 Reserving Land for Public Purposes	Yes	The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3 Site Specific Provisions	N/A	This Direction does not apply, as it does not allow a particular type of development to be carried out.
7 Metropolitan Planning		
7.1 Implementation of the Metropolitan Plan for Sydney 2036	Yes	Refer to question 4 to Section 5.3.2 of this report.

5.3.3 Section C – Environmental, social and economic impact.

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

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

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

The Planning Proposal merely seeks to adjust the location where residential development can be located within a mixed use development and is unlikely to result in any adverse environmental impacts.

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

The Planning Proposal will provide increased flexibility to enable the redevelopment of sites where residential accommodation can be located at the ground level of a building where it does not adversely impact on the ability

to provide active street frontages and satisfies the need to provide employment floor space. The Planning Proposal will enable a better mix of uses in the zone, by allowing more non-residential uses to be located at the ground level as opposed to just retail or business premises as permitted by the definition of 'shop top housing'.

5.3.4 Section D – State and Commonwealth interests

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

The Planning Proposal will enable the approval of increased residential densities within mixed use buildings located in the mixed use zone. The mixed use zones are primarily concentrated along major transport routes that are well serviced by public train and bus services. Therefore the Planning Proposal will allow the maximisation of existing public transport infrastructure.

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

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

5.4 PART 4: MAPPING

No mapping is required to be prepared as part of this Planning Proposal.

5.5 PART 5: COMMUNITY CONSULTATION

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

5.6 PART 6: PROJECT TIMELINE

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

Planning Proposal – Residential flat buildings in the B4 – Mixed Use zone

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

**1.1.2 When does this section of the DCP apply?**

This Section of the DCP applies to all development applications for residential accommodation, including:

- (a) Attached dwellings;
- (b) Boarding houses;
- (c) Dual occupancies;
- (d) Dwelling houses;
- (e) Group homes;
- (f) Multi dwelling housing;
- (g) Residential flat buildings, excluding those proposed in the B4 – Mixed Use zone;
- (h) Secondary dwellings;
- (i) Semi-detached dwellings; and
- (j) Seniors housing.

Non-residential development which is proposed within residential zones is covered by Part B: Section 3 - *Non-residential Development in Residential Zones* of the DCP.

1.1.3 Relationships to other sections

Where relevant this section of the DCP should be read in conjunction with the following Sections of the DCP:

- (a) Part A: Section 3 – Submitting an Application;
- (b) Part B: Section 10 – Car Parking;
- (c) Part B: Section 11 – Traffic Guidelines for Development;
- (d) Part B: Section 12 – Access;
- (e) Part B: Section 13 – Heritage;
- (f) Part B: Section 16 – Tree and Vegetation Management;
- (g) Part B: Section 15 – Bushland;
- (h) Part B: Section 17 – Erosion and Sediment Control;
- (i) Part B: Section 18 – Stormwater Drainage;
- (j) Part B: Section 19 – Waste Management; and
- (k) Part B: Section 20 – Public Infrastructure.

1.1.4 Relationships to other documents and planning policies

Where relevant, this section of the DCP should be read in conjunction with the following planning policies and documents:

- (a) [SEPP 65 – Design Quality of Residential Flat Development;](#)
- (b) The DoP's *Residential Flat Design Code*;
- (c) [SEPP \(Affordable Rental Housing\) 2009;](#)
- (d) [SEPP \(Housing for seniors and people with a disability\) 2004;](#)
- (e) The DoP's *Seniors Living Policy – Urban Design Guidelines for Infill Development*;
- (f) [SEPP \(Building Sustainability Index: BASIX\) 2005;](#)
- (g) [SEPP \(Infrastructure\) 2007;](#)