



Brendan Metcalfe  
Director, North District  
NSW Department of Planning and Environment  
Locked Bag 5022  
PARRAMATTA NSW 2124

Our Ref: PP4/22  
BB3 (CIS)

(Submitted via the NSW Planning Portal)

16 March 2023

Dear Brendan,

**RE: PP-2022-1167 – PROHIBITION OF RESIDENTIAL FLAT BUILDINGS IN THE R3 MEDIUM  
DENSITY RESIDENTIAL ZONE  
– REQUEST TO MAKE PLAN**

On 28 March 2022, Council resolved to forward a Planning Proposal (PP 4/22: Council's reference) to the Department of Planning and Environment (DPE), seeking to amend the North Sydney Local Environmental Plan (NSLEP) 2013 to prohibit residential flat buildings in the R3 *Medium Density Residential* zone.

On 12 August 2022, the Minister for Planning issued a Gateway Determination (PP-2022-1167: DPE's Reference) enabling the Planning Proposal to proceed to public exhibition, subject to meeting a number of conditions.

In accordance with the Gateway Determination, the Planning Proposal was placed on public exhibition for a period of 43 days (30 working days), from 26 September 2022 to Monday 7 November 2022.

A total of 152 submissions were received during the exhibition period, of which:

- 121 were in support of the intended outcomes of the Planning Proposal, and
- 31 objected to the intended outcomes of the Planning Proposal.

Council considered the implications of these submissions on 13 March 2023. In broad terms, the key issues raised in the submissions related to:

- impacts on character, heritage and amenity;
- dwelling supply, accessibility and diversity;
- impacts on traffic and parking;
- bulk, scale and height; and
- loss of existing use rights.

Of those that objected, some suggested additional amendments to NSLEP 2013, including:

- • amending the savings and transitional clause to remove the need to consider a future amendment as a “draft environmental planning instrument”;
- • incorporation of a clause to ensure residential flat buildings are permissible for those lands zoned *R3 Medium Density Residential* which currently contain a lawfully approved residential flat building;
- • requests for spot rezonings to ensure that residential flat buildings are permissible with consent on the identified lands; and
- • amendment of built form controls to enable greater building height.

In response to the issues raised, the report recommended that the Planning Proposal proceed to the next stage of the plan making process, subject to the incorporation of a minor amendment to the proposed savings provision to provide increased clarity. Council subsequently resolved:

**1. THAT** Council note the submissions made.

**2. THAT** in response to the submissions made, Council endorse the Planning Proposal, forming Attachment 2 to this report, subject to amending the wording of the first suggested savings provision on Page 9 of the Planning Proposal to read:

*If a development application has been made on land in Zone R3 Medium Density Residential before the commencement of North Sydney Local Environment Plan 2013 (Amendment X) and the application has not been finally determined before that commencement, the application must be determined as if that amendment had not commenced.*

**3. THAT** having completed the community consultation requirements outlined in the Gateway Determination, Council without delay forward the Planning Proposal (Attachment 2), as amended by Recommendation 2, to the Department of Planning and Environment with a request that a Local Environmental Plan be made in accordance with section 3.36 of the Environmental Planning and Assessment Act 1979, to give effect to the Planning Proposal.

**4. THAT** all submitters be advised of Council's resolution.

The post exhibition amendment to the Planning Proposal merely seeks to provide increased clarity and does not change the intent of the Planning Proposal. Therefore, re-exhibition of the Planning Proposal is not considered necessary in this instance.

In issuing the Gateway Determination, the DPE did not require any further any further approval with respect to compliance with the s.9.1 Ministerial Directions.

The Gateway Determination did not exercise delegation to Council to make this plan. Accordingly, Council formally requests that a Local Environmental Plan be made in accordance with s.3.36 of the Environmental Planning and Assessment Act 1979, so as to give effect to the Planning Proposal as amended post public exhibition.

Please find attached to this letter the following:

- 1) Gateway Determination;
- 2) Planning Proposal as exhibited;
- 3) Post-exhibition report considered by Council on 13 March 2023, including it's resolution. The report contains the following:
  - Response to Gateway Determination Conditions;
  - Summary of submissions made;

- Recommended amendments to the Planning Proposal post Gateway Determination;
- 4) Amended Planning Proposal, consistent with Council's resolution of 13 March 2023; and
- 5) A copy of all submissions.

Should you have any queries, please direct them to either Ben Boyd, Executive Strategic Planner or the undersigned on **9936-8100**.

Yours faithfully



MARCELO OCCHIUZZI

**MANAGER STRATEGIC PLANNING**