



PLANNING PROPOSAL

Prohibition of Residential Flat Buildings in the R3 Medium Density Residential Zone

V4_16 March 2023
(Post Public Exhibition)

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, which gives rise to “existing use rights”.

Prior to the establishment of the Standard Instrument Local Environmental Plan (SI LEP), which Council implemented in 2013, Council had dealt with existing use rights of RFBs in lower density residential zones by making additions and alterations to RFBs a permissible land use type and incorporating a local clause within Council’s LEP to control built form and amenity outcomes.

Upon the introduction of the SI LEP, the ability to retain the 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. The use of the existing use rights provisions under the Environmental Planning and Assessment Act and Regulations enabled applicants to ignore all applicable built form controls applying to the land and rely solely on a merit assessment. This had given rise to a number of applications being approved where they were out of character with the prevailing and desired outcomes within the lower density residential zones.

In 2019, Council pursued an amendment to North Sydney Local Environmental Plan (NSLEP) 2013 to make RFBs permissible in the *R3 Medium Density Residential* zone to address this issue. This amendment (Amendment 30 to NSLEP 2013) came into effect in June 2021.

This amendment 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 Medium Density Residential* 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.

On 10 January 2022, Council considered a Matter of Urgency, wherein it resolved to reverse the policy position to permit RFBs in the *R3 Medium Density Residential* zone.

Issue

Under section 4.67 of the Environmental Planning and Assessment (EP&A) 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 Medium Density Residential* zone, this was a growing issue for North Sydney Council. This issue was addressed as part of Amendment 30 to NSLEP 2013.

Since the commencement of Amendment 30, 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). This has removed the need to rely on permitting RFBs in the *R3 Medium Density Residential* zone in addressing the primary issue.

Proposal

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

The Planning Proposal has been prepared in accordance with Section 3.33 of the EP&A Act and the Department of Planning and Environment’s (DPE) document “*Local Environmental Plan Making Guideline*” (September 2022).

2 BACKGROUND

2.1 Context

Residential flat buildings were widely permissible throughout the North Sydney LGA throughout the 20th Century up until the commencement of NSLEP 1989 on 3 November 1989.

From the commencement of NSLEP 1989, tighter restrictions were placed on the permissibility of RFBs in the LGA, reducing the number of zones within which they could be located. Part of the reasoning behind this was the introduction of significantly more residential development types (i.e. no longer limited to just a dwelling house and a residential flat building, which comprised a building containing two more dwellings) and the need to ensure increased dwelling density was occurring in close proximity to mass public transport and existing services and facilities. As a result, many RFBs throughout the LGA which occur in lower density residential zones and under contemporary residential zoning regimes gave rise to “existing use rights”.

Both NSLEP 1989 and its subsequent iteration NSLEP 2001, sought to minimise the impacts of those RFBs relying on existing use rights by incorporating local provisions making alterations and additions to existing RFBs a permissible land use type in the lower density residential zones. This provided Council with the ability to then moderate the built form impacts of this type of development type in the lower density residential zones, where such controls could be ignored under the existing use rights provisions of the EP&A Act and Regulations.

When the SI LEP Order was introduced in 2006, it removed the capacity to retain permissibility of additions and alterations to RFBs, as it was not possible to introduce new land use definitions. This gave rise to existing use rights within the lower density residential zones (i.e. the R2, R3 and E4 zones) where RFBs were prohibited.

Since the commencement of NSLEP 2013, Council was in constant receipt of development applications for the redevelopment of sites containing RFBs which relied on existing use rights. In particular, many of these applications sought to exploit the existing use rights provisions of the EP&A Act, whereby numerical controls could be dispensed with and propose buildings far in exceedance of that anticipated within the zone in terms of size and scale. Following the approval of many of these types of applications through the Land and Environment Court, Council considered Notice of Motion No. 8/17 at its meeting of 20 March 2017. The Motion sought an investigation into the possibility of reinstating previous planning controls that applied prior to the gazettal of the NSLEP 2013 that removed existing use rights for RFBs 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.

At its meeting of 25 March 2019, Council considered a report addressing the above resolution. This report considered the context of the issue and presented a number of options to address the issue including:

1. Introduce new land use terms and permit these land uses within the *R2 Low Density Residential* and *R3 Medium Density Residential* zones;
2. Rezone the land on which existing RFBs are prohibited under NSLEP 2013 to *R4 High Density Residential*;
3. Include clauses within Schedule 1 – *Additional Permitted Uses* to NSLEP 2013 to enable existing RFBs to be permissible with consent on land where they are currently prohibited;
4. Permit RFBs within the *R3 Medium Density Residential* zone under NSLEP 2013, and include a local provision to further control the redevelopment of residential flat buildings where they are permissible; and
5. Do nothing and rely on the existing planning controls.

Council subsequently resolved:

1. *THAT the report be received.*
2. *THAT Council incorporate the following amendments to North Sydney Local Environmental Plan 2013 as part of Council's Accelerated LEP Review program as follows:*
 - a. *include 'residential flat buildings' as a permissible use within the R3 Medium Density Residential zone.*
 - b. *Include a new local provision within Part 6 that further restricts the development of residential flat buildings in the R3 Medium Density Residential and R4 High Density Residential zones.*
3. *THAT Council prepare an amendment to North Sydney Development Control Plan 2013 to ensure that the objectives and provisions of development controls relating to developments relying on existing use rights are strengthened.*
4. *THAT the existing rights issue be further investigated and detailed during the preparation of the following Council documents:*
 - a. *Community Strategic Plan;*
 - b. *Local Strategic Planning Statement; and*
 - c. *Local Housing Strategy.*

In response to this resolution, Council pursued a comprehensive amendment to NSLEP 2013 in 2019, which included a proposal to make RFBs permissible in the *R3 Medium Density Residential* zone (R3 Zone). Amendment 30 to NSLEP 2013 gave effect to this proposed amendment, coming into force on 30 June 2021.

Amendment 30 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 Medium Density Residential* 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 Medium Density Residential* zone would apply as they had done for medium density development that was already permissible within the zone.

During its consideration of the post exhibition report to the Planning Proposal giving effect to Amendment 30 to NSLEP 2013, Council resolved:

7. *THAT once the LEP amendment giving effect to the Planning Proposal has been in operation for 1 year, that Council review the outcomes of the proposal to permit residential flat buildings within the R3 Medium Density Residential zone.*

This resolution came about in response to a recommendation within the adopted Local Housing Strategy and in relation to issues raised by submitters, to ensure that part of Amendment 30 to permit RFBs in the *R3 Medium Density Residential* zone was achieving its desired intent. This undertaking of this review was due to commence on 30 June 2022.

At its meeting on 10 January 2022, Council considered a *Matter of Urgency* with regard to the operation of NSLEP 2013, wherein it 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 Matter of Urgency had arisen in response to community opposition to a number of development applications being considered for RFBs in the *R3 Medium Density Residential* zone.

Since the commencement of Amendment 30 to NSLEP 2013, the Land and Environment Court has revised its stance with respect to 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.

2.2 Gateway Determination

On 12 August 2022, a Gateway Determination was issued by the DPE allowing the Planning Proposal to proceed to public exhibition, subject to satisfying a number of conditions.

Conditions 1 required the Planning Proposal to be amended prior to being placed on public exhibition. This condition stated.

Prior to public exhibition, the planning proposal is required to be updated to:

- (a) Contain details regarding a savings provision for DAs lodged prior to the proposed amendment of the LEP and not yet determined;*
- (b) Provide further detail of any concerns of built form outcomes resulting from DAs for RFBs in the R3 zone; and*
- (c) Include an updated project timeline to ensure completion in a timely manner.*

The Planning Proposal (V3_25 August 2022) was amended to comply with these Conditions as imposed by the Gateway Determination prior to being placed on public exhibition. This version of the Planning Proposal (V4_16 March 2023) does not deviate from compliance with these Conditions.

2.3 Public Exhibition

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

On 13 March 2023, Council considered the issues raised in the submissions received during the public exhibition of the Planning Proposal. In response to these issues, Council resolved to amend the Planning Proposal such that the application of both suggested savings provisions are identical, with the view to ensuring DAs (which have been lodged and not determined before any amendment giving effect to the Planning Proposal) are assessed as though the amendment had not been made. This version of the Planning Proposal (V4_16 March 2023) has been amended in accordance with this resolution.

3 SITE LOCALITY

The Planning Proposal applies to all *R3 Medium Density Residential* zoned land within the North Sydney LGA.



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 33 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 *R3 Medium Density Residential* zone, and revert back to the adopted zoning regime that existed prior to NSLEP Amendment 30 coming into force in June 2021. Pursuance of this amendment is in response to the Land & Environment Court's 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, removing the need to rely on permitting RFBs in the *R3 Medium Density Residential* zone in addressing Council's initial issue.

In accordance with Condition 1(a) of the Gateway Determination, it is proposed to include a savings and transitional provision to enable development applications lodged before an amendment to NSLEP 2013 giving effect to the Planning Proposal is made to be considered under the current zoning regime.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

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

5.2.1 Savings and Transitional Provision

To minimise the impact on applicants who have lodged development applications for RFBs in the *R3 Medium Density Residential* zone and those applications have yet to be determined before the commencement of the amendment to NSLEP 2013 giving effect to this Planning Proposal, it is recommended that a local savings and transitional clause be inserted.

It is suggested that a new clause is inserted after clause 1.8A of NSLEP 2013 as follows:

1.8B Savings Provisions relating to Development Applications in Zone R3 Medium Density Residential

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.

Alternatively, clause 1.8A could be revised (~~red strike through~~ represents a deletion and blue underline represents an insertion) as follows:

1.8A Savings provision relating to development applications

- (1) *If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.*
- (2) *The amendments made to this plan by North Sydney Local Environmental Plan 2013 (Amendment No #) do not apply to a development application made but not finally determined before the commencement of those amendments.*

5.2.2 Land Use Table – R3 Medium Density Residential zone

The intent of the Planning Proposal is proposed to be achieved by amending the Land Use Table 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)

The proposal is not inconsistent with the Planning Priorities and Actions as the Land and Environment Court has revised its position with regard to assessing development applications involving existing use rights and the weight to be given to development controls under a council's LEP and DCP. This has therefore removed the pressures associated with the amendments made under Amendment 30 to NSLEP 2013 in relation to existing use rights.

North Sydney Local Housing Strategy

North Sydney Council endorsed the North Sydney Local 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.

As a monitoring indicator, the LHS also 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.

This monitoring indicator was also reinforced when Council considered the post exhibition report to Amendment 30 to NSLEP 2013 on 24 August 2020.

This indicator was included to determine if the policy change was working in terms of built form outcomes and what sort of impact it would have on increased dwelling numbers.

Annual monitoring

In response to this annual monitoring requirement of Council's LHS, only 2 development applications for RFBs in the *R3 Medium Density Residential* zone have been lodged since 30 June 2021 and include:

- a) 115, 117 & 119 Holt Avenue, Cremorne
- b) 1 Warung Street, McMahons Point

It is noted that the application for the 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.

The application for the Holt Avenue properties was refused by the Land and Environment Court (L&EC) in August 2022 in response to Council's deemed refusal of the application. The application for Warung Street was refused by the North Sydney Local Planning Panel in June 2022 and is currently subject to an appeal to the L&EC.

The table to Appendix 1 highlights the issues that are arising from proposed RFBs in the *R3 Medium Density Residential* zone since the commencement of Amendment 30 and addresses the requirements of Condition 1(b) to the Gateway Determination. The key issues arising during the assessment of these applications relate to:

- excessive bulk and scale;
- breaches of the height limit;
- inconsistent built form with the local character of the area and surrounding built form;
- adverse impacts on the heritage character of an area;
- excessive excavation
- excessive loss of vegetation; and

- view losses.

These issues generally mimic those raised when the former prohibition on RFBs in the *R3 Medium Density Residential* zone was in place and applicants were relying on existing use rights. Despite Amendment 30 to NSLEP 2013 removing the need to rely on existing use rights, applicants are still seeking to exploit the built form development standards for development within the *R3 Medium Density Residential* zone. In particular, there has been a rise in the use of clause 4.6 to NSLEP 2013 to vary the height of buildings control to generally accommodate a 3-4 storey built form, despite one of the objectives to the height control being to maintain a built form of mainly 1 or 2 storeys in the *R2 Low Density Residential*, *R3 Medium Density Residential* and *E4 Environmental Living* zones. If Council or another consent authority were to continually approve variations to the height controls, it could potentially undermine the effectiveness of these controls.

Many parts of the LGA are subject to heritage and conservation provisions, which can sometimes limit the development potential of sites for RFBs in *R3 Medium Density Residential* zone as a particular conservation area may be characterised by a different residential built form. Reintroducing the prohibition of RFBs in the *R3 Medium Density Residential* zone would eliminate the possibility of having more developments that are unsympathetic to the surrounding built form character.

The Land and Environment Court's softening of its stance with respect to the interpretation of the extent to which development control standards and provisions may be taken into account as relevant matters of consideration (in particular *Saffioti v Kiama Council* [2019] NSWLEC 57), provides a level of comfort that inappropriate developments will not be lodged in the first instant.

Also of note, is that there were 3 development applications lodged for multi dwelling housing during the same time period. Accordingly, not everyone is seeking approval for residential flat buildings in the *R3 Medium Density Residential* zone.

Also of note is that the Action A10 was not included in the calculation of dwelling forecasting in the North Sydney LGA. Therefore, even if the Action 10 resulted in an increase in dwellings numbers, they were not relied upon for determining Council's ability to meet the State housing targets.

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

YES

Prohibiting RFBs in the *R3 Medium Density Residential* zone is the preferred way of achieving Council's stated objectives for this Planning Proposal.

Prior to the adoption of Amendment 30 to NSLEP 2013, consideration was given to 5 options to address the existing rights issues including:

1. Introduce new land use terms similar to 'apartment building revision', 'apartment building adaptation' and 'established apartment buildings' within

- the Dictionary to NSLEP 2013 and permit these land uses within the *R2 Low Density Residential* and *R3 Medium Density Residential* zones;
2. Rezone the land on which existing residential flat buildings are prohibited under NSLEP 2013 to *R4 High Density Residential*;
 3. Include clauses within Schedule 1 – *Additional Permitted Uses* to NSLEP 2013 to enable existing residential flat buildings to be permissible with consent on land where they are currently prohibited;
 4. Permit residential flat buildings within the R3 Medium Density Residential zone under NSLEP 2013, and include a local provision to further control the redevelopment of residential flat buildings where they are permissible;
 5. Do nothing and rely on the existing planning controls.

Option 1 – introducing new land use terms

This Option involves the creation of new residential development land use types and making those uses permissible with consent in the lower density residential zones where FRBs are currently prohibited. This requirement would also be accompanied by a new local provision with similar restrictions as what had been applied under NSLEP 2001.

This Option is inconsistent with the DPE's directives for preparing an LEP in the SI LEP format. In particular, the directives stipulate that councils may not alter the standard definitions or directly add definitions to the SI LEP Dictionary. As a result, the new land uses terms would not be permitted to be incorporated into either the Dictionary or land use table to NSLEP 2013 and also negate the introduction of a local clause to provide further guidance with respect to built form and amenity impacts.

In addition, such provisions would derogate from the those contained in the EP&A Act relating to existing use rights and therefore would have no effect.

Option 2 – amendment to land use zones

This Option involves the rezoning of all sites containing an RFB to zone *R4 High Density Residential*.

Implementing this Option would require Council to determine which sites contain existing lawfully approved RFBs which have subsequently become prohibited since the commencement of NSLEP 2013. An initial high-level review indicated that there are almost 800 sites within all residential zones which may have the potential of relying on existing use rights for the purposes of an RFB. A significant amount of staffing and funding resources would be required to accurately determine the full extent of all affected properties.

Pursuing this option was not supported due to:

- The potential to significantly alter the desired future character of a locality if properties were rezoned reflective of their current uses, on the basis that the land has been zoned to ensure any future redevelopment on that land is compatible with a desired future character of lower intensity development;
- Rezoning land to *R4 High Density Residential* would enable additional land uses to be permitted with consent on the land (including a number of less sensitive uses), which could potentially erode the desired future character of a locality and result in adverse impacts on residential amenity and privacy,

noise, and increased pressure on local road, transport and parking infrastructure;

- The potential to create inconsistencies between sites without a subsequent amendment to height limits (e.g. land zoned *R2 Low Density Residential* and *R3 Medium Density Residential* have an 8.5m height limit, whereas the *R4 High Density Residential* zone generally has a 12m height limit);

Therefore, without concurrent change to the height controls, it is likely that there would be a resultant rise in the use of Clause 4.6 to vary the height of buildings control. This could then potentially undermine the effectiveness of the heights of buildings development control. As such, this Option could also place pressure on Council to conduct broad-scale amendments to its building height controls to various sites.

Option 3 – Schedule 1 Additional permitted uses

This Option involves the inclusion of new clauses within Schedule 1 – *Additional permitted uses* to NSLEP 2013 to permit RFBs on all land containing an RFB which is currently prohibited by the land use table.

As with Option 2, this Option would require Council staff to determine which sites contain existing lawfully approved RFBs which have subsequently become prohibited since the commencement of NSLEP 2013. This would require a significant amount of staffing or funding resources to accurately determine the extent of all affected properties.

By permitting RFBs on specific sites, there would also be a presumption that these sites should also be entitled to the same height limit (12m) as applied to land within the *R4 High Density Residential* zone. Therefore, without a concurrent change to the height controls, it is likely that there would be a resultant rise in the use of Clause 4.6 to vary the height of buildings control. This could then potentially undermine the effectiveness of the heights of buildings development control. As such, this Option could also place pressure on Council to conduct broad-scale amendments to its building height controls to various sites.

In addition, Option 3 is inconsistent with the DPE directives for preparing an LEP in the SI LEP format. In particular, councils are to restrict the number of Schedule 1 entries within their LEPs and should be reserved for land uses that have yet to commence. Based on the preliminary research undertaken, there is potential to incorporate almost 800 additional entries into Schedule 1. Incorporating this number of entries would significantly reduce the clarity as to what uses are permissible on a subject site, through sheer volume. As such, there was no ability to pursue this approach.

Option 4 – Permit residential flat buildings in the R3 zone with consent

This Option involved the permitting of allowing RFBs with development consent on land within the *R3 Medium Density Residential* zone. This was the option adopted as part of Amendment 30 to NSLEP 2013.

This Option eliminated the possibility of existing use rights being applicable. The controls that apply to the *R3 Medium Density Residential* zone would continue to apply (e.g. height), including those under NSDCP 2013, to ensure appropriate urban outcomes are achieved.

By pursuing this approach, it was determined that there was unlikely to be a resultant increase in dwelling density as a result of consistently applying the same built form controls throughout the zone under NSLEP 2013 and NSDCP 2013 for all residential development types.

Option 5 – do nothing and rely on existing controls

This Option solely relied on the existing planning controls within NSLEP 2013 and NSDCP 2013 and the existing use rights provisions of the EP&A Act.

In contrast to the other four options, Option 5 allowed greater flexibility in the resulting built form of any alterations and additions to, and the rebuilding of existing RFBs to which existing use rights are being relied upon. As such, Council would have less ability to minimise the impacts resulting from uncharacteristic forms of development as all matters are effectively considered on merit.

Whilst this Option was not considered to be an unreasonable approach to maintaining and promoting the desired future character of a locality, which has been endorsed by the wider community during the preparation of NSLEP 2013 and NSDCP 2013, there was not enough certainty through a solely merit based assessment. It was recognised however, that the existing objectives and merit based controls could be further strengthened to give greater emphasis on addressing potential amenity impacts from such development. This was partially achieved through Amendment 30 to NSLEP 2013 and concurrent amendments to NSDCP 2013.

Current Position

Recent Land and Environment Court judgements have resulted in changes to the way existing use rights applications are being given consideration. In particular, there has been a move towards greater weight being given to the application of development standards applying to land to which existing use rights apply. This has in turn reduced the need to revise the planning controls as originally proposed in Option 4. It is on this basis that Council is seeking to revert back to its existing policy position (i.e. Option 5) of prohibiting RFBs in the R3 Medium Density Residential zone and more reliance on the new approach to considering existing use rights in conjunction with the already strengthened objectives and provisions under NSLEP 2013 and NSDCP 2013.

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 in a single zone and does not impact upon the delivery or implementation of the North Sydney Local Housing Strategy. Residential flat buildings remain permissible in the *R4 High Density Residential* and *B4 Mixed Use* zones (approximately 2,500 sites) enabling adequate housing choice opportunities. In addition, it will enable Council to continue to concentrate the delivery of increased housing densities in close proximity to existing and proposed public transport, services and facilities.

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 RFBs within the *R3 Medium Density Residential* zone as it was prior to NSLEP 2103 Amendment 30. In addition, it will enable Council to continue to concentrate the delivery of increased housing densities in close proximity to existing and proposed public transport, services and facilities.

Compliance with Council's adopted LHS is addressed at Question 1 to Section 5.3.1 of this report.

4. *Is the planning proposal consistent with a council's local strategic planning statement, that has been endorsed by the Planning Secretary or Greater Sydney Commission, or another endorsed local strategy or strategic plan?*

YES

North Sydney Local Strategic Planning Statement

Compliance with Council's adopted LSPS is addressed at Question 1 to Section 5.3.1 of this report.

North Sydney Local Housing Strategy

Compliance with Council's adopted LHS is addressed at Question 1 to Section 5.3.1 of this report.

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: 2 Our Built Environment

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)

The Planning Proposal will allow the relevant Directions, Outcomes and Strategies to be pursued in a robust and strategic manner.

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 any other applicable State and regional studies or strategies?*

Future Transport Strategy 2056

The Future Transport Strategy 2056 (2018) (the Strategy) sets six state-wide outcomes to guide investment, policy and reform. They provide a framework for network planning and investment aimed at supporting transport infrastructure.

The Strategy outlines the vision for the Greater Sydney mass transit network, detailing North Sydney as a 'strategic centre' linked directly to the 'Harbour City' (the Sydney CBD).

Land zoned R3 is not necessarily located in areas of high accessibility to public transport and therefore the removal of RFBs from the list of permissible uses is unlikely to have a negative impact on the potential to contribute to and enhance walking and cycling connections associated with frequent public transport services.

NSW State Infrastructure Strategy 2018-2038

Infrastructure NSW published the Building Momentum State Infrastructure Strategy 2018-2038 (SIS). It is a 20-year infrastructure investment plan that sets out the infrastructure needs and priorities up to 2038.

It establishes six strategic directions which inform the recommendations contained within the SIS, including 'Integrating land use and infrastructure planning'.

The intent of the Planning Proposal will not lead to an increase in the demand for existing infrastructure and services.

6. *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 (Biodiversity and Conservation) 2021 | | |
| 2 – Vegetation in Non-Rural Areas | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |

| TABLE 1: Consistency with SEPPs | | |
|---|--------------------|--|
| Direction | Consistency | Comment |
| 3 – Koala Habitat Protection 2020 | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 4 – Koala Habitat Protection 2021 | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 5 – Murray River Lands | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 6 - 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 this aspect of the SEPP's aims and objectives. |
| 7- Canal Estate Development | YES | The Planning Proposal is consistent with this aspect of the SEPP by maintaining a prohibition on canal estate development. |
| 8 – Sydney Water Drinking Catchment | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 9 – Hawkesbury Nepean River | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 10 - Sydney Harbour Catchment | YES | The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP |
| 11 – Georges River Catchment | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 12 - Willandra Lakes | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| SEPP (Building Sustainability Index: BASIX) 2004 | N/A | The Planning Proposal does not relate to building sustainability. |
| SEPP (Exempt and Complying Development Codes) 2008 | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |
| SEPP (Housing) 2021 | | |
| 2 - Affordable Rental Housing | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |
| 3 – Diverse housing | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |
| SEPP (Industry and Employment) 2021 | | |
| 2 – Western Sydney employment area | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 3 - Advertising and signage | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |

| TABLE 1: Consistency with SEPPs | | |
|---|-------------|---|
| Direction | Consistency | Comment |
| SEPP (Planning Systems) 2021 | | |
| 2 - State and Regional Development | N/A | This aspect of the SEPP does not apply as the Planning Proposal does not relate to state or regional development nor the operation of joint regional planning panels. |
| 3 – Aboriginal Land | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 4 - Concurrences and Consents | YES | The Planning Proposal is consistent with this aspect of the SEPP as it will not impede the attainment of the aims and objectives of this SEPP. |
| SEPP (Precincts-Eastern Harbour City) 2021 | | |
| 2 – State Significant Precincts | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |
| 3- Darling Harbour | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 4 – City West | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 5 – Walsh Bay | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 6 – Cooks Cove | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 7 – Moore Park Showground | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| SEPP (Primary Production) 2021 | | |
| 2 – Primary Production and Rural Development | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 3 – Central Coast Plateau | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| SEPP (Resilience and Hazards) 2021 | | |
| 2 - Coastal Management | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |
| 3 - 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. |

| TABLE 1: Consistency with SEPPs | | |
|--|-------------|--|
| Direction | Consistency | Comment |
| 4 - 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 (Resources and Energy) 2021 | | |
| 2 - Mining, Petroleum Production and Extractive Industries | YES | The Planning Proposal is consistent with this aspect of the SEPP as it will not impede the attainment of the aims and objectives of this SEPP. |
| 3 – Extractive Industries | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| SEPP (Transport and Infrastructure) 2021 | | |
| 2- Infrastructure | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |
| 3 - Educational Establishments and Child Care Facilities | YES | The Planning Proposal is consistent with this aspect of the SEPP as it does not affect the attainment of the SEPP's aims and objectives. |
| 4 – Major Infrastructure Corridors | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 5 – Three Ports | N/A | The planning proposal does not apply to land affected by this aspect of the SEPP. |
| 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. |

7. 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. Planning Systems | | |
| 1.1 Implementation of Regional Plans | YES | Refer to question 3 to Section 5.3.2 of this report. |
| 1.2 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. |

| TABLE 2: Consistency with s.9.1 Directions | | |
|---|--------------------|--|
| Direction | Consistency | Comment |
| 1.3 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. |
| 1.4 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. |
| 1.5 Parramatta Road Corridor Transformation Strategy | N/A | This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs. |
| 1.6 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. |
| 1.7 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. |
| 1.8 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. |
| 1.9 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. |
| 1.10 Implementation of Western Sydney Aerotropolis Plan | N/A | This Direction does not apply as the Planning Proposal does not relate to any the identified LGAs. |
| 1.11 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. |
| 1.12 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. |
| 1.13 Implementation of St Leonards and Crows Nest 2036 Plan | N/A | This Direction does not apply as the Planning Proposal does not relate to the identified area. |
| 1.14 Implementation of Greater Macarthur 2040 | N/A | This Direction does not apply as the Planning Proposal does not relate to any the identified area. |
| 1.15 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. |

| TABLE 2: Consistency with s.9.1 Directions | | |
|---|--------------------|--|
| Direction | Consistency | Comment |
| 1.16 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. |
| 2 Design and Place | | |
| 3 Biodiversity and Conservation | | |
| 3.1 Conservation Zones | YES | The Planning Proposal does not alter the existing environmental protection to land within an environmental protection zone. |
| 3.2 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> |
| 3.3 Sydney Drinking Water Catchment | N/A | This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs. |
| 3.4 Application of C2 and C3 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. |
| 3.5 Recreation Vehicle Areas | N/A | The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area. |
| 4 Resilience and Hazards | | |
| 4.1 Flooding | N/A | This Direction does not apply as the Planning Proposal does not relate to land identified as being flood prone land. |
| 4.2 Coastal Management | N/A | The Planning Proposal does not affect land that covered by the Coastal Management SEPP. |
| 4.3 Planning for Bushfire Protection | YES | <p>The Planning Proposal is consistent with the direction as it does not result in:</p> <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. |
| 4.4 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 |
| 4.5 Acid Sulfate Soils | N/A | This Direction does not apply as the Planning Proposal does not relate to land affected by Acid Sulfate Soils. |
| 4.6 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. |
| 5 Transport and Infrastructure | | |
| 5.1 Integrating Land Use & Transport | YES | The Planning Proposal does not seek to minimise development potential in close proximity to mass public transport. |
| 5.2 Reserving Land for Public Purposes | YES | The Planning Proposal does not create or alter existing zonings or reservations of land for public purposes. |
| 5.3 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 LGA. |
| 5.4 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. |

| TABLE 2: Consistency with s.9.1 Directions | | |
|---|-------------|---|
| Direction | Consistency | Comment |
| 6 Housing | | |
| 6.1 Residential Zones | YES | <p>Clause (4)(a) states that a planning proposal must include provisions that encourage the provision of housing that will broaden the choice of building types and locations available in the housing market.</p> <p>Despite the removal of RFBs as a permissible use in the <i>R3 Medium Density Residential</i> zone, this type of development will remain permissible in the <i>R4 High Density Residential</i> and <i>B4 Mixed Use</i> zones. Accordingly, there will be no reduction in housing choice within the LGA.</p> <p>Clause (5)(b) requires that a Planning Proposal must not contain provisions which will reduce the permissible residential density of land.</p> <p>When Amendment 30 was made, the built form requirements applicable to the <i>R3 Medium Density Residential</i> zone (i.e. height, setbacks and site coverage) remained generally consistent for both medium density development as well as RFBs. The resultant outcome was that the achievable density between the two different residential development types in the R3 zone remained virtually unchanged. . The proposal to revert back to the prohibition of RRBs within the R3 zone prior to Amendment 30 would therefore remain virtually unchanged in terms of achievable dwelling density in the zone.</p> <p>This particular point was identified in Council's adopted LHS and that the introduction of RFBs as a permissible use in the <i>R3 Medium Density Residential</i> zone would not contribute to Council's dwelling targets and delivery.</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> |
| 6.2 Caravan Parks & Manufactured Home Estates | N/A | <p>This Direction does not apply as the Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.</p> |

| TABLE 2: Consistency with s.9.1 Directions | | |
|--|-------------|--|
| Direction | Consistency | Comment |
| 7 Industry and Employment | | |
| 7.1 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. |
| 7.2 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. |
| 7.3 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. |
| 8 Resources and Energy | | |
| 8.1 Mining, Petroleum Production & Extractive Industries | YES | The Planning Proposal does not seek to alter the permissibility of these types of land uses. |
| 9 Primary Production | | |
| 9.1 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. |
| 9.2 Rural Lands | N/A | This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs. |
| 9.3 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. |
| 9.4 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. |

5.3.3 Section C – Environmental, social and economic impact.

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

No.

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

No.

10. *Has the planning proposal adequately addressed any social and economic effects?*

No social or economic impacts. The Planning Proposal merely seeks to reinstate an existing policy position.

5.3.4 Section D – State and Commonwealth interests

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

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

If required, 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.

12. *What are the views of State and federal public authorities and government agencies consulted in order to inform 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.

Condition 3 of the Gateway Determination stated that no consultation is required with public authorities and government agencies under section 3.34(2)(d) of the EP&A Act.

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

Council received 152 submissions, 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.

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 it’s consideration of submissions, Council resolved on 13 March 2023 to adopt the Planning Proposal subject to a minor amendment such that the application of both suggested savings provisions are identical, with the view to ensuring DAs (which have been lodged and not determined before any amendment giving effect to the Planning Proposal) are assessed as though the amendment had not been made. This version of the Planning Proposal (V4_16 March 2023) has been amended in response to the issues raised by the community.

As the Planning Proposal does not seek to intensify development on any land, it is not considered necessary to inform agencies who deliver public infrastructure and services.

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 planning proposal to the DPE for a Gateway Determination to the amending LEP being made.

| TABLE 3 – Project Timeline | | | | | | | | | | | | | | | |
|---|----------|----------|----------|----------|----------|----------|-----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Milestone | Mar 2022 | Apr 2022 | May 2022 | Jun 2022 | Jul 2022 | Aug 2022 | Sept 2022 | Oct 2022 | Nov 2022 | Dec 2022 | Jan 2023 | Feb 2023 | Mar 2023 | Apr 2023 | May 2023 |
| 1. Local Planning Panel considers Planning Proposal | | | | | | | | | | | | | | | |
| 2. Council determines whether to progress to Gateway Determination | | | | | | | | | | | | | | | |
| 3. Request for Gateway Determination sent to DPE | | | | | | | | | | | | | | | |
| 4. DPE considers request | | | | | | | | | | | | | | | |
| 5. Gateway Determination issued to Council | | | | | | | | | | | | | | | |
| 6. Amendment of Planning Proposal to align with Gateway Determination | | | | | | | | | | | | | | | |

| TABLE 3 – Project Timeline | | | | | | | | | | | | | | | |
|--|----------|----------|----------|----------|----------|----------|-----------|----------|----------|----------|----------|----------|----------|----------|----------|
| Milestone | Mar 2022 | Apr 2022 | May 2022 | Jun 2022 | Jul 2022 | Aug 2022 | Sept 2022 | Oct 2022 | Nov 2022 | Dec 2022 | Jan 2023 | Feb 2023 | Mar 2023 | Apr 2023 | May 2023 |
| 7. Public exhibition undertaken | | | | | | | | | | | | | | | |
| 8. Council considers submissions | | | | | | | | | | | | | | | |
| 9. Council considers post exhibition report | | | | | | | | | | | | | | | |
| 10. Submission to DPE requesting making of LEP | | | | | | | | | | | | | | | |
| 11. Drafting of LEP and making | | | | | | | | | | | | | | | |

APPENDIX 1

DA Monitoring of RFBs in the R3 Zone

| TABLE 1: Monitoring Residential Flat Building Development Applications in the R3 Zone | | | |
|---|-------------------------------------|--|--|
| DA Number | Address | Issues | Determination |
| DA 243/21 | 115, 117, 119 Holt Avenue, Cremorne | <p><i>Demolition of three existing detached dwelling houses and construction of a 3 storey residential flat building over basement carparking.</i></p> <p>Issues were:</p> <p>Potential for Heritage Listing and associated Interim Heritage Order.</p> <ul style="list-style-type: none"> Excessive bulk and scale (3 storeys and roof top access / terrace) Excessive site coverage Excessive excavation to accommodate additional storeys Built form character inconsistent to the heritage character of the local area. Poor interface with the neighbouring Heritage Conservation Area Visual privacy issues | <p>Council Deemed Refusal</p> <p>L&E Court Refused</p> |
| DA 379/21 | 1 Warung Street, McMahons Point | <p><i>Partial demolition of existing 3 storey residential flat building, construction of below ground basement and reconstructed and new apartment addition above and reconfiguration of remaining apartments.</i></p> <p>Issues were:</p> <ul style="list-style-type: none"> Quantum of breaches to planning controls and guidelines Height breaches (requested a 3.2m variation to accommodate 4 habitable storeys) Compliance with ADG in terms of solar access, floor to floor heights, Lack of side setbacks compliant with ADG and NSDCP 2013 Excessive site coverage and insufficient landscaped area Excessive excavation Excessive bulk and scale Inappropriate and uncharacteristic intrusion into the heritage conservation area Built form character inconsistent with the local character of the area. Privacy concerns Removal of significant and highly visible landscaped elements Visual impact from Sydney Harbour | <p>NSLPP Refused</p> <p>L&EC Appeal lodged</p> |