



IRF23/679

Plan finalisation report – PP-2022-1167

North Sydney Local Environmental Plan 2013
(Amendment No. 35)
Prohibition of Residential Flat Buildings in the R3
Medium Density Residential Zone

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Acknowledgement of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

North Sydney Local Environmental Plan 2013 (Amendment No. 35) – Prohibition of Residential Flat Buildings in the R3 Medium Density Residential Zone.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to all land zoned R3 Medium Density Residential under the North Sydney LEP 2013. A site identification map can be found at Figure 1 .
Type	Local Government Area
Council /LGA	North Sydney

1.1.3 Purpose of plan

The primary objective of the planning proposal is to prohibit residential flat buildings (RFBs) within the R3 Medium Density Residential zone. This will revert back to the adopted zoning regime that existed prior to North Sydney LEP 2013 (Amendment 30) that came into force on 30 June 2021. Since the commencement of this amendment, the Land and Environment Court revised its position, removing the need to rely on permitting RFBs in the R3 zone to address issues relating to existing use rights.

The planning proposal seeks to amend the Land Use Table for the R3 Medium Density Residential zone under the North Sydney LEP 2013 as follows (~~red strike through~~ represents deletion):

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

Environment 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 other development not specified in item 2 or 3.

The planning proposal does not contain any mapping amendments to the North Sydney LEP 2013. The extent of the subject land where the R3 Medium Density Residential zone applies is shown in **Figure 1**.



Figure 1: Land subject to the Medium Density Residential Zone (source: Planning proposal, North Sydney Council)

1.1.4 State electorate and local member

The North Sydney LGA is covered by the following state electorates:

- North Shore state electorate. Felicity Wilson MP is the State Member; and
- Willoughby state electorate. Tim James MP is the State Member.

The North Sydney LGA is covered by the following federal electorates:

- North Sydney federal electorate. Kylea Tink MP is the Federal Member.
- Warringah federal electorate. Zali Steggall MP is the Federal Member.

To the team's knowledge, there has been no written representations from the State and Local members regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 12 August 2022 (**Attachment B1**) determined that the proposal should proceed subject to conditions.

Gateway conditions required the planning proposal to be updated prior to exhibition. A revised planning proposal to address these conditions was uploaded for public exhibition (**Attachment A2**).

In response to condition 1 of the Gateway determination, Council revised the planning proposal for exhibition (**Attachment A2**) to include the following:

(a) *Contain details regarding a savings provision for DAs lodged prior to the proposed amendment of the LEP and not yet determined.*

- Council proposed two options for including a savings provision within the LEP, with the preferred option being to insert a new clause after Clause 1.8A of the North Sydney LEP 2013 as follows ([blue underline](#) represents an insertion):

[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 been exhibited but not commenced.](#)

(b) *Provide further detail of any concerns of built form outcomes resulting from DAs for RFBs in the R3 zone*

- The planning proposal was updated to recognise two DAs currently active within the R3 zone proposing RFBs, with these being:
 - i. 115, 117 & 119 Holt Avenue, Cremorne; and
 - ii. 1 Warung Street, McMahons Point
- Council notes the DA for Warung Street would have been permissible under the existing use rights provisions of the Act existing prior to North Sydney LEP 2013 notwithstanding that amendment.
- Additionally, Council acknowledge 3 DAs were lodged for multi-dwelling housing in the zone that were not RFBs during the period since they became permissible.
- Council revised the proposal to identify concerns including a rise in the use of clause 4.6 height variations to the North Sydney LEP 2013 with developments attempting to exceed the objectives of the height controls in residential zones. Council state should a consent

authority continually approve variations to height controls, it could potentially undermine the effectiveness of these height controls.

- Council recognise many parts of the LGA are subject to heritage and conservation provisions, stating reintroducing the prohibition of RFBs in the R3 zone would remove the possibility for more developments being introduced that are not sympathetic to surrounding built form character.
- It is noted that the proposal is consistent with Council's Local Housing Strategy Action A10, which identified that Council would monitor the number of DA's received and built form outcomes of approved DA's for RFBs in the R3 zone in the LGA annually.

(c) *Include an updated project timeline to ensure completion in a timely manner*

- An updated timeline was included in the planning proposal indicating exhibition, post exhibition and completion dates for the proposal which is generally consistent with the Gateway determination.

Council has met all the Gateway determination conditions.

The Gateway determination conditioned that Council should not be authorised to be the local plan making authority given the nature of the proposal.

In accordance with the Gateway determination the proposal is due to be completed by 12 May 2023. No alterations to the Gateway determination have been issued.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 26 September 2022 to 7 November 2022, as required by section 29 of the *Local Government Act 1993*. Consultation with agencies was not required in the Gateway determination.

Council considered the submissions and post exhibition report at its meeting on 13 March 2023 and resolved to request the Department to make the plan in accordance with s3.36 of the Environmental Planning and Assessment Act 1979, to give effect to the planning proposal. A minor post-exhibition change was endorsed by Council to the wording of the proposed savings and transitional provision, as discussed in section 3.3 of this report.

Council submitted the proposal to the Department on 16 March 2023 requesting the plan be made.

3.1 Submissions during exhibition

A total of 152 community submissions were received, comprising of 31 objections and 121 submissions supporting the proposal as stated in Council officer's post-exhibition report **(Attachment C)**.

3.1.1 Submissions supporting the proposal

There were 121 submissions (approximately 80%) received in support of the planning proposal. All eight Council Precinct Committee submissions were in support of the proposal. **Table 2** provides a summary of the submissions and responses from Council and the Department.

Table 2 Summary of Key Issues

Issue raised	Submissions (% of support)	Council response and Department assessment of adequacy of response
Protection of Character	78%	<p><u>Council Response:</u></p> <p>Council recognises the proposal itself cannot guarantee that no development will occur but will result in the restriction of residential accommodation typologies in the R3 zone. It is acknowledged despite the proposal's intention, "Manor Houses" may be permitted as complying development within the R3 zone under the Codes SEPP, subject to the mandatory SEPP requirements.</p> <p>While approximately 20% of properties in the R3 zone contain lawfully approved RFBs, their bulk and scale vary greatly, with varying levels of site coverage and landscaped area. Council concludes that current built form controls would result in a largely similar physical bulk and scale despite what residential accommodation type is proposed in the zone.</p> <p><u>Department Response:</u></p> <p>The Department notes Council's consideration that the proposal will not entirely restrict development in the zone given Manor Houses are permitted as complying development under the State Environmental Planning Policy (Exempt and Complying Development Codes 2008) (Codes SEPP), however it is accepted that the impact of this type of development will be limited to smaller scale developments (2 storeys) in comparison to traditional RFBs typically of 3-4 storeys. It is considered Council has adequately responded to this issue.</p>

Issue raised	Submissions (% of support)	Council response and Department assessment of adequacy of response
Heritage Protection	66%	<p><u>Council Response:</u></p> <p>Several heritage submissions made direct reference to the recent example of DA 243/21 that proposes the demolition of detached dwelling houses at 115, 117 and 119 Holt Avenue, Cremorne, replacing them with a RFB.</p> <p>Council recognise heritage protection is afforded to many properties in the R3 zone, noting heritage status does not necessarily preclude redevelopment of a site. Council is committed to undertaking a comprehensive LGA wide Heritage Study, with temporary heritage protection being provided to properties through Interim Heritage Orders (IHOs) while this study is undertaken.</p> <p><u>Department Response:</u></p> <p>The Department is aware of the DA currently subject to a Land and Environment Court (LEC) appeal at 115-119 Holt Avenue as the potential heritage listing of these properties was part of a separate planning proposal for 115, 117, 119, 121, 123, 125, 131 and 133 Holt Avenue, Cremorne. The Department issued a Gateway determination for this heritage proposal not to proceed, a position that was supported by the Independent Planning Commission on 9 March 2023. Council is currently considering this advice to submit a new planning proposal to heritage list the properties at 115-125 Holt Avenue.</p> <p>The Department recognises that the properties subject to the DA appeal are subject to a second IHO that will expire on 2 March 2024. The other IHOs active in the North Sydney LGA do not apply to sites in the R3 zone.</p> <p>Should further properties be placed under an IHO, a planning proposal will be assessed by the Department should Council resolve to proceed with a heritage listing.</p>
Traffic and Parking	23%	<p><u>Council Response:</u></p> <p>Submissions supported the proposal on the expectation that a continuation of permitting RFBs in the R3 zone would lead to increased traffic generation, congestion and demand for on street parking. North Sydney DCP 2013 applies the same parking rate for multi-dwelling houses as it does RFBs in the R3 zone. Accordingly, Council state a RFB is likely to result in more dwellings and therefore generate more traffic.</p> <p><u>Department Response:</u></p> <p>Council has responded adequately to this issue in identifying the likelihood of RFBs containing more dwellings than those in multi-dwelling housing, particularly in the R3 zone.</p>

Issue raised	Submissions (% of support)	Council response and Department assessment of adequacy of response
Council is achieving its housing targets	11%	<p><u>Council Response:</u></p> <p>Council's Local Housing Strategy (LHS) outlines in the first five years, the majority of housing growth will be concentrated in areas with high levels of access to public transport. This is predominately to occur in the B4 and R4 zones, concentrated in the St Leonards and Crows Nest locality.</p> <p>The LHS considered a recommendation to permit RFBs in the R3 zone to address existing use rights issues, acknowledging this would not significantly increase the potential dwelling density of the zone, nor cause significant residential growth. Accordingly, this recommendation to permit RFBs in the R3 zone was excluded from the calculation of Council's housing supply forecasts.</p> <p>Council has identified that the housing potential identified in its LHS does not include potential additional dwellings that could be achieved in the redevelopment of residential flat buildings in the R3 Medium Density Residential Zone</p> <p><u>Department Response:</u></p> <p>As noted in the Department's Gateway determination report, the proposal is consistent with Council's LHS as the LHS does not identify additional dwellings that could be achieved in the redevelopment of RFBs in the R3 zone. Action A10 of Council's LHS indicated that Council would monitor the construction and impact of RFB's annually, with the intention to amend the LEP if desired. Landowners of existing RFBs will still have the ability to exercise their existing use rights.</p> <p>.</p>

3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 31 submissions (approximately 20%) received from the community raising objections to the planning proposal. **Table 3** provides a summary of the submissions and responses from Council and the Department.

Table 2 Summary of Key Issues

Issue raised	Submissions (% of objections)	Council response and Department assessment of adequacy of response
Housing diversity	65%	<p><u>Council Response:</u></p> <p>Despite multi-dwelling housing and attached dwelling housing being permissible with consent in the R3 and R4 zones, these residential housing types are less likely to be pursued as a development option in these areas, with larger profits achievable for redeveloping a site with a RFB. This in turn reduces the diversity of housing types within the LGA.</p> <p>Council's LHS acknowledges the majority of new housing to be delivered in the LGA will comprise apartments within the R4 and B4 zones. Therefore, permitting RFBs in the R3 zone could contribute to more affordable forms of housing across a larger portion of the LGA, however it would be at the expense of increasing housing diversity.</p> <p>Council has also identified that 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><u>Department Response:</u></p> <p>As noted previously, the Department notes that the intention of the current permissibility of RFBs was not to increase or address Council LHS housing targets.</p>
Current policy position has only been in force for 1 year	29%	<p><u>Council Response:</u></p> <p>The original decision to permit RFBs in the R3 zone was to specifically address the exploitation of existing use rights provisions. On 24 August 2020 Council resolved to review this change in policy position after one year of operation. As the policy position commenced on 1 June 2021, its review was required by 1 June 2022.</p> <p>Despite commencing the review approximately three months before the amendment had been in force for a year, the clear change in the LECs position of the interpretation and application of existing use rights provisions has reduced the need to rely on the former amendment permitting RFBs in the R3 zone.</p> <p><u>Department Response:</u></p> <p>The Department recognises the intention of the proposal and that Council had previously resolved to review the position after a year. The change in the LEC is a justifiable reason to move forward the review led to this proposal.</p>

Issue raised	Submissions (% of objections)	Council response and Department assessment of adequacy of response
Housing affordability	26%	<p><u>Council Response:</u></p> <p>Council agrees that retaining the permissibility of RFBs in the R3 zone could result in the provision of dwellings that are more affordable than traditional detached and attached dwelling houses, townhouses, or villas.</p> <p>If RFBs remain permissible in the R3 zone, it is likely that RFBs will be given preference over the construction of new multi dwelling housing developments, which may result in increased prices for all other low density dwelling types in the LGA due to a reduced supply.</p> <p><u>Department Response:</u></p> <p>Consistent with previous comments, the proposal reverts back to a rezoning regime that was only in force for one year and has not had any significant impact on the diversity of dwellings within the zone.</p>
RFBs are permissible in other LEP R3 zones	26%	<p><u>Council Response:</u></p> <p>The Standard Instrument (SI) LEP does not mandate that Councils adopt all of the zones contained within the SI LEP as it is up to the discretion of Councils which zone is adopted. There is an ability for Councils to add to the list of mandated land uses permitted with consent or prohibited within all zones. For example, some Councils do not use the R4 zone, with the R3 zone being their highest order residential zone. Accordingly, providing direct comparisons between Councils is not appropriate.</p> <p><u>Department Response:</u></p> <p>It is noted that RFBs can still be constructed within the LGA in the R4 zone, with the R3 zoning regime being reverted to what was previously in effect.</p> <p>Council has noted in its LHS that a small number of additional dwellings have been constructed under the existing use rights provision since NSLEP 2013 (Amendment 30) came into effect. However, continued construction of high density dwellings will alter desired future character of some areas.</p>

Issue raised	Submissions (% of objections)	Council response and Department assessment of adequacy of response
Housing accessibility	23%	<p><u>Council Response:</u></p> <p>Submissions suggested RFBs should remain permissible as it would enable the construction of new dwellings with higher levels of accessibility, enabling residents to age in place.</p> <p>The North Sydney DCP 2013 contains provisions to improve physical accessibility to and within new dwellings, requiring some residential development types to be “adaptable”. This involves designing dwellings that can be made fully accessible. Therefore, permitting RFBs in the R3 zone has no bearing on the delivery of future accessible dwellings.</p> <p><u>Department Response:</u></p> <p>It is noted that the North Sydney DCP 2013 contains a number of provisions aimed at improving and maintaining physical accessibility to development within the LGA. .</p>
Removes the right to redevelop sites with existing RFBs	19%	<p><u>Council Response:</u></p> <p>Six submissions suggested the proposal would prevent them from redeveloping existing lawfully approved RFB. Council understands the proposal does not automatically mean an existing RFB in the zone cannot be altered, added to, or rebuilt.</p> <p>Provisions of the EP&A Act and EP&A Regulation effectively permit a current use on a site to continue, despite the use being prohibited under an LEP. There may have been some confusion with the proposal not specifically stating “existing use rights” would turn back on for sites currently containing a RFB.</p> <p>In March 2019 Council investigated options to address the existing use rights issue. These options are explored in detail in section 4.9.1 of Attachment C.</p> <p><u>Department Response:</u></p> <p>The Department recognises that reverting to the previous zoning regime will reactivate existing use rights for current RFBs in the R3 zone, with development still possible irrespective of this proposal.</p>

3.1.3 Other issues raised

Other matters of concern raised by submissions included:

- **Bulk and scale**
Five submissions stated the proposal should not proceed as there are sufficient controls in place under both the North Sydney LEP 2013 and DCP 2013 to ensure RFB built form outcomes are adequately addressed. Conversely, six submissions requested the proposal proceed as RFBs would result in unacceptable increases in bulk, scale, and height in the R3 zone.
- **Savings provision**
One submission objected to the proposed wording of the savings provision, questioning how any development application, although permissible due to the provision, would not be

considered to be contrary to the new R3 zone controls. Council subsequently amended the proposed wording of this clause to avoid confusion as outlined in section 3.2 of this report.

- Spot rezonings

Three submissions specifically sought amendments to the proposal to make RFBs permissible with consent, and in some instances proposed changes to rezone the land R4 High Density Residential and increase built form controls. This was requested for the following sites:

- 90 Blues Point Road, McMahon's Point – currently contains a 9 storey RFB;
- 62 Palmer Street, Cammeray – currently contains a 3 storey RFB; and
- 26 & 28 Barry Street and 15, 17 & 19 Lindsay Street, Neutral Bay – currently comprises 5 separate allotments including two 2 storey RFBs.

Council has indicated should the owners seek to rezone the site, it should be undertaken as a separate planning proposal to ensure all potential issues are adequately addressed.

The Department considers that Council has responded adequately to the issues raised.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was not required to consult with any public agencies.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At Council's Ordinary Meeting on 13 March 2023, Council resolved to proceed with the planning proposal with the following minor post-exhibition change to the wording of the proposed savings provision. The change was made to increase clarity in response to submissions received.

Council's post-exhibition proposal seeks to insert a new clause after Clause 1.8A of the North Sydney LEP 2013 as follows (~~red strike through~~ represents deletion from the exhibited proposed clause, blue underline represents an insertion to the LEP):

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 ~~been exhibited but~~ not commenced.

The final instrument provides the following clause, as drafted by Parliamentary Counsel:

Insert at the end of clause 1.8A before the note -

(2) If a development application has been made, but not finally determined, before the commencement of North Sydney Local Environmental Plan 2013 (Amendment No 35), the application must be determined as if that plan had not commenced.

3.3.2 Justification for post-exhibition changes

The Department notes that this post-exhibition change is justified, and the proposal does not require re-exhibition. It is considered that the post-exhibition change does not alter the intent of the proposal and gives greater effect to the savings provision condition included in the Gateway determination.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B1**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as amended).

As outlined in the Gateway determination report (**Attachment B2**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the Greater Sydney Region Plan and North District Plan.
- Remains consistent with North Sydney Council's Local Strategic Planning Statement.
- Remains consistent with the North Sydney Local Housing Strategy and has been updated to give effect to the Gateway determination in this regard.
- Remains consistent with all relevant Section 9.1 Directions, noting the Gateway determination report considered the proposal to be justifiably inconsistent with direction 6.1 Residential Zones.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 5 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Site-specific assessment	Consistent with Gateway determination report Assessment	
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

Section 9.1 Ministerial Direction 6.1 Residential Zones

This direction seeks to encourage a variety and choice of housing types to provide for existing and future housing needs. This direction ensures that the impacts of residential development on the environment and resource lands are minimised.

Under Direction 6.1 (1)(a), *a planning proposal must include provisions that encourage provision of housing that will.... broaden the choice of building types and locations available in the housing market....*

Council has addressed consistency with this direction noting that when Amendment 30 was made, the built form requirements applicable to the R3 Medium Density Residential zone (i.e. height, setbacks and site coverage) remained generally consistent for both medium density development as well as RFBs. Council considers the resultant outcome was that the achievable density between the two different residential development types in the R3 zone remained virtually unchanged.

Council concludes that with the proposal reverting back to the prohibition of RFBs within the R3 zone prior to Amendment 30, development would therefore remain virtually unchanged in terms of achievable dwelling density in the zone.

Council has also provided justification in its post exhibition report, that the amendment to permit RFBs in the R3 zone was to address existing use rights issues, acknowledging this would not significantly increase the potential dwelling density of the zone, nor cause significant residential growth. Accordingly, this recommendation to permit RFBs in the R3 zone was excluded from the calculation of Council's housing supply forecasts. Council's Local Housing Strategy (LHS) outlines the majority of housing growth will be concentrated in areas with high levels of access to public transport, predominately to occur in the B4 and R4 zones, concentrated in the St Leonards and Crows Nest locality.

This particular point was identified in Council's adopted LHS and that the introduction of RFBs as a permissible use in the R3 Medium Density Residential zone would not contribute to Council's dwelling targets and delivery.

As concluded during the Gateway assessment, the planning proposal is justifiably inconsistent with the direction as although the prohibition of RFBs is contrary to the above, this inconsistency is of minor significance as the proposal will revert to the previously adopted zoning regime, with landowners of existing RFBs retaining the ability to exercise their existing use rights under the Act and Regulations.

Council has updated the proposal as required in the Gateway to respond to all conditions, implementing a revised savings provision post-exhibition that gives greater effect to this condition.

Site-specific Assessment

The planning proposal does not seek to include additional permissible uses or amend the principal controls relating to land zoning, FSR or building height. It is therefore considered the proposal does not have any significant environmental impact on areas zones R3.

The Department recognises that Council has responded to all conditions of the Gateway, including providing greater detail on how the proposal will impact the development of RFBs in the zone. Council identifies one development application currently subject to the savings provision of the proposal that was lodged under the current zoning, this being 115-119 Holt Avenue, Cremorne. Council adequately addresses the built form outcomes the proposal would have on this application and any future proposals should RFBs remain permissible in the zone.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 3 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment E).</p> <p>Council confirmed on 18 April 2023 that it raised no objection to the draft and that the plan should be made (Attachment E).</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, see below for details</p>
Parliamentary Counsel Opinion	<p>On 20 April 2023, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC.</p>	<p><input checked="" type="checkbox"/> Yes</p> <p><input type="checkbox"/> No, see below for details</p>

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- it is not inconsistent with the Region Plan and the North District Plan;
- it is consistent with the Gateway determination;
- it is consistent with Council's Local Housing Strategy which recognised the proposed change in prohibition of RFBs in R3 zone to address existing use rights but did not attribute to future housing targets;
- the proposal as amended post-exhibition gives greater effect to the Gateway determination conditions;
- it is generally consistent with all relevant Section 9.1 Ministerial Directions and is considered justifiably inconsistent with Direction 6.1 Residential Zones;
- includes a savings provision for current development applications to continue to be considered; and
- issues raised during consultation have been appropriately addressed.

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Attachments

Attachment	Document
A1	Post-exhibition planning proposal (16 March 2023)
A2	Planning proposal – as exhibited (5 September 2022)
A3	Original planning proposal
A4	Council's request to make the plan (16 March 2023)
B1	Gateway determination (12 August 2022)
B2	Gateway determination report
C	Council post-exhibition resolution and report (13 March 2023)
D	North Sydney Local Planning Panel minutes and report (12 March 2022)
E	Consultation with Council – Confirmation to seek final PC opinion
PC	Parliamentary Counsel's Opinion
LEP	Draft LEP