PLANNING PROPOSAL

Residential flat buildings & serviced apartments in the B4 Mixed Use zone

Removal of maximum non-residential floor space ratio requirements

16 February 2015
INTRODUCTION

Having assessed a number of development applications under NSLEP 2013 and conducted a number of preliminary development proposal meetings, Council has identified several issues which have the potential to undermine Council’s adopted planning objectives or result in poor planning outcomes. Accordingly, Council is seeking to amend North Sydney Local Environmental Plan 2013 (NSLEP 2013).

The primary intent of the Planning Proposal is to:

- improve the flexibility of the existing planning controls in the B4 Mixed Use zone by allowing residential accommodation to be provided at the ground floor and lower ground floor levels, where that residential accommodation does not prevent the provision of active street frontages or the meeting of the non-residential floor space ratio range controls;
- prevent the provision of serviced apartments in the B4 Mixed Use zone which undermine the objectives of the non-residential floor space ratio controls in the B4 Mixed Use zone and do little to promote employment generation; and
- improve the flexibility of the existing planning controls, especially in the B4 Mixed Use zone, by removing the maximum non-residential floor space ratio requirement over land subject to clause 4.4A.

The intent of the Planning Proposal can be achieved by:

- amending the fourth objective of the B4 Mixed Use zone such that it removes references to residential development only being allowed on the upper levels of mixed use buildings;
- amending the land use table such that ‘residential flat buildings’ are permissible with development consent in the B4 Mixed Use zone;
- amending clause 4.4A to:
  o amend the objectives to promote a focus on the provision of employment floor space;
  o remove the maximum non-residential floor space ratio requirements from affected lands; and
  o amend the definition of ‘non-residential floor space ratio’ to exclude serviced apartments from the calculation of non-residential floor space;
- incorporating a new a local clause within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible with consent in the B4 Mixed Use zone if they are provided as part of mixed use development and achieve active street frontages;
- amending the definition of Non-Residential Floor Space Ratio Range Map within the Dictionary to NSLEP 2013 to delete reference; and
- amending the Non-Residential Floor Space Ratio Range Map to NSLEP 2013.

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

2.1 Residential flat buildings in the B4 Mixed Use zone

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

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

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**FIGURE 1:**
*Dual street frontage* - The residential accommodation at the ground floor level (located to the left) cannot be considered as ‘shop top housing’.

**FIGURE 2:**
*Single street frontage* - The residential accommodation at the ground and lower ground floor levels (located to the left) cannot be considered as ‘shop top housing’.
Prior to the gazettal of NSLEP 2013, North Sydney Local Environmental Plan 2001 (NSLEP 2001) permitted proposals which incorporated both residential and non-residential activities in the Mixed Use zone. In particular, residential flat buildings were permitted in the zone, but only where developments complied with the requirements of Clause 32 which stated:

32 Design of development

(1) Design objectives
The specific objectives of the design of development in the mixed use zone controls are to:
(a) promote development containing a mix of residential and non-residential uses, and
(b) protect the amenity and safety of residents, and
(c) concentrate the non-residential component of development in the mixed use zone at the lower levels of a building.

(2) Design controls
A new building in the mixed use zone must not be erected unless:
(a) the building contains both residential and non-residential uses, and
(b) the non-residential component of the building is provided at the lower levels of the building and the ground level is not used for residential purposes, except access, and
(c) the residential component of the building is provided with an entrance separate from the entrances to the remainder of the building, and
(d) the building is set back above a podium.

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

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

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

In 2007, Council resolved to prepare a new comprehensive LEP (NSLEP 2013) in the State government’s Standard Instrument Local Environmental Plan (SI LEP) format. Council’s primary focus was to translate the existing provisions of NSLEP 2001 into the new SI LEP format, whilst incorporating minor amendments to ensure the meeting of relevant strategic directions. Shop top housing was originally defined under the SI LEP and draft versions of NSLEP 2013 as follows:
shop top housing means mixed use development comprising one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises.

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

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

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

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

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

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

A proposed amendment is therefore required to better match equivalent provisions under NSLEP 2001 and to improve the flexibility of the controls where impacts on street activation will not occur.

2.2 Serviced Apartments in the B4 Mixed Use zone

Since the commencement of NSLEP 1989 on 3 November 1989, Council has imposed non-residential floor space ratio controls under its LEPs, with the aim to provide a mixture of uses and to provide a suitable level of employment floor space to assist in meeting employment targets set under regional and subregional strategies.

Council is currently receiving a number of development applications that incorporate serviced apartments within the B4 Mixed Use zone. However, once approval has been received, several applicants are seeking to convert the serviced apartment components of those developments to residential accommodation. The primary justification for converting the serviced apartments typically relates to the financial viability of this component of the development.

In many instances, the serviced apartment component of the development forms a significant portion of the minimum non-residential floor space ratio requirement applying to the site. Accordingly, if requests to convert serviced apartments to residential accommodation were supported it would result in a reduction in employment floor space being made available for other non-residential uses.
Planning Proposal – Residential flat buildings and serviced apartments in the B4 Mixed Use zone & removal of maximum non-residential FSR requirements

One of the drivers behind this trend is that it is often easier and cheaper for developers to convert the serviced apartments to residential accommodation rather than retrofit the spaces back to some other form of non-residential use.

Where the extent of conversion has been substantially more than that can be considered under section 4.6 of NSLEP 2013, the applicant has proceeded to submit a Planning Proposal to reduce the minimum non-residential floor space ratio requirement. These requests have typically been rejected by Council due to impacts on the ability of Council to meet the employment targets set by the State government.

Preliminary research has identified that serviced apartments, along with other tourist and visitor facilities do not actually contribute to the generation of a high number of jobs in comparison to the same amount of floor space occupied by office and retail premises.

Council has commenced the development of an Economic Development Strategy for the North Sydney LGA. The primary objective of the Strategy will be to outline Council’s plan for economic development in a consolidated policy document. Despite the Strategy still being in its preliminary stages, initial research undertaken to date has indicated a pressing need to strengthen mechanisms that promote the provision of employment generating uses.

One of the interim mechanisms identified for protecting and promotion of employment floor space involves the removal of serviced apartments from the calculation of non-residential floor space under clause 4.4A to NSLEP 2013. This will help protect the provision of non-residential floor space in the B4 Mixed Use zone and ensure such floor space contributes to employment within the LGA. It should be noted that serviced apartments will continue to be permissible in the B3 Commercial Core zone.

2.3 Removal of maximum non-residential floor space ratio controls

The application of non-residential floor space ratio controls date back to the commencement of North Sydney Local Environmental Plan 1989 (NSLEP 1989). The application of maximum non-residential floor space ratio controls was primarily imposed to ensure a mixture of residential and non-residential development is provided within the B4 Mixed Use zone. The maximum quantum of non-residential floor space required is thought to relate to a desire to retain an overall quantum of non-residential floor space in the B4 Mixed Use zone and to the requirement for meeting other planning controls such as the establishment of podiums. The actual quantum depended upon a site’s location.

The non-residential floor space requirements of NSLEP 1989 have generally been carried over to NSLEP 2001 and NSLEP 2013, largely unchanged.

The non-residential floor space ratio controls were not subject to a detailed review when NSLEP 2013 was being prepared. However, the non-residential floor space ratios were reviewed within the North Sydney Centre during the preparation of Draft Amendment No.28 to NSLEP 2001, which was ultimately rolled into NSLEP 2013. This review however resulted in the lowering of the minimum non-residential floor space ratio requirements and no changes made to the maximum.

As indicated, Council has commenced the development of an Economic Development Strategy for the North Sydney LGA. One of the interim mechanisms
identified for protecting and promotion of employment floor space involves the removal of the maximum non-residential floor space ratio controls imposed under clause 4.4A to NSLEP 2013. This will also improve the economic and orderly development of land in accordance with the objectives of the EP&A Act.
3 SITE LOCALITY

The Planning Proposal as it relates to residential flat buildings and serviced apartments applies to all land zoned *B4 Mixed Use* on the Land Zoning Map (refer to FIGURE 3) to NSLEP 2013.

![FIGURE 3 – NSLEP 2013 - Land Zoning Map (LAP_001)](image)

The Planning Proposal as it relates to non-residential floor space ratios applies to all land to which clause 4.4A currently applies as identified on the Non-residential Floor Space Ratio Range Map to NSLEP 2013 (refer to FIGURE 4).
Planning Proposal – Residential flat buildings and serviced apartments in the B4 Mixed Use zone & removal of maximum non-residential FSR requirements

FIGURE 4 – NSLEP 2013 – Non-residential Floor Space Ratio Map
4 STATUTORY CONTEXT

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

4.1 Land Use Table

The Planning Proposal applies to land in the B1 Neighbourhood Centre, B4 Mixed Use and SP2 Infrastructure zones. The relevant objectives and provisions to these zones state:

Zone B1 Neighbourhood Centre

1 Objectives of zone
   • To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
   • To encourage active street life while maintaining high levels of residential amenity.
   • To encourage development for the purpose of shop top housing.

2 Permitted without consent
   Environmental protection works

3 Permitted with consent
   Boarding houses; Business premises; Child care centres; Community facilities; Entertainment facilities; Health services facilities; Information and education facilities; Kiosks; Medical centres; Neighbourhood shops; Office premises; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Respite day care centres; Restaurants or cafes; Roads; Shops; Shop top housing; Signage; Take away food and drink premises

4 Prohibited
   Any development not specified in item 2 or 3

Zone B4 Mixed Use

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

2 Permitted without consent
   Nil

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

4 Prohibited
   Any development not specified in item 2 or 3
Zone SP2 Infrastructure

1 **Objectives of zone**
   - To provide for infrastructure and related uses.
   - To prevent development that is not compatible with or that may detract from the provision of infrastructure.

2 **Permitted without consent**
   Environmental protection works

3 **Permitted with consent**
   Roads; The purpose shown on the Land Zoning Map, including any development that is ordinarily incidental or ancillary to development for that purpose

4 **Prohibited**
   Any development not specified in item 2 or 3

4.2 Definitions

Clause 1.4 of NSLEP 2013 makes reference to the Dictionary which provides definitions of terms used within the LEP. In particular, the relevant terms to the Planning Proposal are defined as follows:

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

**Non-Residential Floor Space Ratio Range Map** means the North Sydney Local Environmental Plan 2013 Non-Residential Floor Space Ratio Range Map

**residential accommodation** means a building or place used predominantly as a place of residence, and includes any of the following:
- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers’ dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

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

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

**serviced apartment** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner’s or manager’s agents.

Note. Serviced apartments are a type of tourist and visitor accommodation— see the definition of that term in this Dictionary.
shop top housing means one or more dwellings located above ground floor retail premises or business premises.

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

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following:
(a) backpackers accommodation,
(b) bed and breakfast accommodation,
(c) farm stay accommodation,
(d) hotel or motel accommodation,
(e) serviced apartments,
but does not include:
(f) camping grounds, or
(g) caravan parks, or
(h) eco-tourist facilities.

4.3 Non–residential floor space ratios

Clause 4.4A of NSLEP 2013 sets minimum and maximum floor space ratios for non-residential development on certain land in the B1 Neighbourhood Centre, B4 Mixed Use and SP2 Infrastructure zones. In particular, it states:

(1) The objectives of this clause are as follows:
(a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,
(b) to encourage an appropriate mix of residential and non-residential uses,
(c) to provide a level of flexibility in the mix of land uses to cater for market demands,
(d) to ensure that a suitable level of non-residential floor space is provided to reflect the hierarchy of commercial centres.

(2) The non-residential floor space ratio for all buildings within a site on land identified on the Non-Residential Floor Space Ratio Range Map as specified in Column 1 of the Table to this subclause must not be less than the ratio shown for that land in Column 2 of that Table and must not exceed the ratio shown for that land in Column 3 of that Table.

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<td>Area 8</td>
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(3) The non-residential floor space ratio for all buildings within a site on land identified as follows on the Non-Residential Floor Space Ratio Range Map must not be less than the ratio shown for that land:
(a) Area 1—3:1,
(b) Area 9—0.5:1,
(c) Area 10—1:1,
(d) Area 12—2:1,
(e) Area 13—1.5:1.

(4) The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map must not exceed 2:1.
(5) Development consent must not be granted to the erection of a building on land identified as Area 1–13 on the Non-Residential Floor Space Ratio Range Map unless the consent authority is satisfied that the building will have an active street frontage after its erection.

(6) Despite subclause (5), an active street frontage is not required for any part of a building that is used for any of the following:
   (a) entrances and lobbies (including as part of a mixed use development),
   (b) access for fire services,
   (c) vehicular access.

(7) In this clause, a building has an active street frontage if no part of the ground floor of the building facing a street is used for residential accommodation.

(8) In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose other than residential accommodation, a car park or a telecommunications facility, in all buildings within a site to the site area.

4.4 Non-Residential Floor Space Ratio Range Map

The Non-Residential Floor Space Ratio Range Map comprises the following:

- LCL_001 5950_COM_LCL_001_010_20130607
- LCL_002 5950_COM_LCL_002_010_20130607
- LCL_002A 5950_COM_LCL_002A_005_20130607
- LCL_003 5950_COM_LCL_003_010_20130607
- LCL_004 5950_COM_LCL_004_010_20130607

A copy of these Plans are provided in Annexure A.
5 THE PLANNING PROPOSAL

5.1 PART 1: STATEMENT OF OBJECTIVES

The primary intent of the Planning Proposal is to:

- improve the flexibility of the existing planning controls in the B4 Mixed Use zone by allowing residential accommodation to be provided at the ground floor and lower ground floor levels, where that residential accommodation does not prevent the provision of active street frontages or the meeting of the non-residential floor space ratio range controls;
- prevent the provision of serviced apartments in the B4 Mixed Use zone which undermine the objectives of the non-residential floor space ratio controls in the B4 Mixed Use zone and do little to promote employment generation; and
- improve the flexibility of the existing planning controls, especially in the B4 Mixed Use zone, by removing the maximum non-residential floor space ratio requirement over land subject to clause 4.4A.

5.2 PART 2: EXPLANATIONS OF PROVISIONS

The intent of the Planning Proposal can be achieved by:

- amending the fourth objective of the B4 Mixed Use zone such that it removes references to residential development only being allowed on the upper levels of mixed use buildings;
- amending the land use table such that 'residential flat buildings' are permissible with development consent in the B4 Mixed Use zone;
- amending clause 4.4A to:
  - amend the objectives to promote a focus on the provision of employment floor space;
  - remove the maximum non-residential floor space ratio requirements from affected lands; and
  - amend the definition of 'non-residential floor space ratio' to exclude serviced apartments from the calculation of non-residential floor space;
- incorporating a new a local clause within Part 6 of NSLEP 2013 stating that residential flat buildings are only permissible with consent in the B4 Mixed Use zone if they are provided as part of mixed use development and achieve active street frontages;
- amending the definition of Non-Residential Floor Space Ratio Range Map within the Dictionary to NSLEP 2013 to delete reference; and
- amending the Non-Residential Floor Space Ratio Range Map to NSLEP 2013.

The specific amendments sought are identified in the following subsections:

5.2.1 Land Use Table

The intent of the Planning Proposal is proposed to be achieved by amending the land use table to the B4 Mixed Use zone as follows (red strike through represents a deletion and blue underline represents an insertion):
Zone B4 Mixed Use

1 Objectives of zone

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

2 Permitted without consent
   Nil

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

4 Prohibited
   Any development not specified in item 2 or 3

5.2.2 Clause 4.4A – Non-residential floor space ratio ranges

The intent of the Planning Proposal is proposed to be achieved by amending clause 4.4A as follows (red strike through represents a deletion and blue underline represents an insertion):

4.4A Non-residential floor space ratio ranges

(1) The objectives of this clause are as follows:

(a) to provide for development with continuous and active street frontages on certain land in Zone B1 Neighbourhood Centre, Zone B4 Mixed Use and Zone SP2 Infrastructure,
(b) to encourage an appropriate mix of residential and non-residential uses,
(c) to provide a level of flexibility in the mix of land uses to cater for market demands,
(d) to ensure that a suitable level of non-residential floor space is provided to promote employment and reflect the hierarchy of commercial centres.

(2) The non-residential floor space ratio for all buildings within a site on any land identified on the Non-Residential Floor Space Ratio Map as specified in Column 1 of the Table to this subclause must not be less than the ratio shown for that land on the Non-Residential Floor Space Ratio Map in Column 2 of that Table and must not exceed the ratio shown for that land in Column 3 of that Table.

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Planning Proposal – Residential flat buildings and serviced apartments in the B4 Mixed Use zone & removal of maximum non-residential FSR requirements

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<td>4:1</td>
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(3) The non-residential floor space ratio for all buildings within a site on land identified as follows on the Non-Residential Floor Space Ratio Range Map must not be less than the ratio shown for that land:
(a) Area 1 – 3:1,
(b) Area 9 – 0.5:1,
(c) Area 10 – 1:1,
(d) Area 12 – 2:1,
(e) Area 13 – 1.5:1.

(4) The non-residential floor space ratio for all buildings within a site on land identified as Area 11 on the Non-Residential Floor Space Ratio Range Map must not exceed 2:1.

(5) Development consent must not be granted to the erection of a building on land in Zone B1 Neighbourhood Centre and Zone B4 Mixed Use, identified as Area 1–13 on the Non-Residential Floor Space Ratio Range Map unless the consent authority is satisfied that the building will have an active street frontage after its erection.

(6) Despite subclause (5), an active street frontage is not required for any part of a building that is used for any of the following:
(a) entrances and lobbies (including as part of a mixed use development),
(b) access for fire services,
(c) vehicular access.

(7) In this clause, a building has an active street frontage if no part of the ground floor of the building facing a street is used for residential accommodation.

(8) In this clause, non-residential floor space ratio means the ratio of the gross floor area of that part of a building used or proposed to be used for any purpose other than residential accommodation, serviced apartments, a car park or a telecommunications facility, in all buildings within a site to the site area.

5.2.3 New Local Clause – Part 6
The intent of the Planning Proposal is proposed to be achieved by inserting a new local clause within Part 6 of NSLEP 2013 as follows (red strike-through represents a deletion and blue underline represents an insertion):

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

The intent of the Planning Proposal is proposed to be achieved by amending the definition of Non-residential Floor Space Ratio Range Map follows (red strike through represents a deletion and blue underline represents an insertion):

**Non-Residential Floor Space Ratio Range Map** means the North Sydney Local Environmental Plan 2013 Non-Residential Floor Space Ratio Range Map.

5.2.5 Non-residential Floor Space Ratio Range Map

The Planning Proposal also requires the deletion of the following NSLEP 2013 maps:

- LCL_001 5950_COM_LCL_001_010_20130607
- LCL_002 5950_COM_LCL_002_010_20130607
- LCL_002A 5950_COM_LCL_002A_005_20130607
- LCL_003 5950_COM_LCL_003_010_20130607
- LCL_004 5950_COM_LCL_004_010_20130607

And replacement with a new set of maps as identified within Annexure B to this Planning Proposal.

5.3 PART 3: JUSTIFICATION

5.3.1 Section A – Need for the planning proposal

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

**Permitting residential flat buildings in the B4 Mixed Use zone**

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

**Serviced apartments in the B4 Mixed Use zone and removal of Non-residential FSR requirements**

Yes. The need for the Planning Proposal has arisen from preliminary work that has been undertaken by Council in relation to the **North Sydney Economic Development Strategy**.

The primary objective of the Strategy will be to outline Council’s plan for economic development in a consolidated policy document. In particular, the Strategy will:

- Provide an understanding of the existing operation of all employment land in the North Sydney LGA;
- Identify recent development trends and their impact on the provision of employment generating floor space;
- Provide an understanding of the market conditions which affect existing economic activity in North Sydney LGA and greater Sydney;
- Provide an understanding of the opportunities and constraints for future employment growth in the North Sydney LGA;
• Identity the demand for employment generating floor space in the North Sydney LGA;
• Set clear employment targets which are consistent with state government targets;
• Set strategies to actively encourage the provision of additional employment generating floor space and uses.

Despite the Strategy still being in its preliminary stages, initial research undertaken to date has indicated a pressing need to strengthen mechanisms that promote the provision of employment generating uses.

In particular, it was identified that Council is in receipt of a number of development applications that incorporated serviced apartments within the B4 Mixed Use zone. However, once approval had been received, several applicants have sought to convert the serviced apartment components of those developments to residential accommodation. The primary justification for converting the serviced apartments typically relates to the financial viability of this component of the development.

In many instances, the serviced apartment component forms a significant portion of the minimum non-residential floor space ratio requirement applying to the subject site. Accordingly, the request to convert the serviced apartments to residential accommodation will result in a reduction in employment floor space being made available for other non-residential uses.

In addition, it was identified that where a property is affected by a maximum non-residential floor space ratio, the land cannot be developed to its maximum potential as a non-residential development. This generally occurs where a site has a relatively high maximum building height and a low maximum non-residential FSR. For example a site which has a maximum height of 40m (or approximately 13 storeys) and a maximum non-residential FSR of 2:1 (equating to approximately 3 storeys) removes the potential to undertake a non-residential development of equivalent scale to a mixed use development.

The proposed amendments to NSLEP 2013 have been identified as simple measures to encourage the provision of more employment generating floor space in North Sydney.

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

*Permitting residential flat buildings in the B4 Mixed Use zone*

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

The additional proposed restriction that residential flat buildings can only be approved if they form part of a mixed use development will also ensure that the intent of development permitted in the mixed use zone is achieved (i.e. no stand alone residential developments).
Serviced apartments in the B4 Mixed Use zone

Yes. There are potentially six options that could be pursued to address the intent of the Planning Proposal, including:

- Excluding serviced apartments from contributing to non-residential floor space;
- Inserting a local provision stating that serviced apartments may only be granted consent the B4 Mixed Use zone, but only if they form part of a wholly non-residential development;
- Removing serviced apartments from the B4 Mixed Use zone as a permissible use with consent;
- Requiring additional information to be provided at the Development Application (DA) stage to demonstrate that there is a demand for serviced apartments and that they are financially viable;
- Placing a minimum requirement on the number of serviced apartments being provided in a development; and
- Placing a maximum requirement on the number of serviced apartments being provided in the LGA or a specific precinct; and

Each of these options are discussed in further detail below.

Option 1 – Calculation of non residential floor space (preferred)
Clause 4.4A of NSLEP 2013 sets requirements for the provision of non-residential floor space on certain lands within the B1 Neighbourhood Centre and B4 Mixed Use zones, including its calculation.

All land uses that do not comprise residential accommodation, car parks or telecommunication facilities are excluded from the calculation of non-residential floor space. The principle purposes of the non-residential floor space ratio requirements are to ensure that an appropriate mix of residential and non-residential uses on certain lands within the B1 Neighbourhood Centre and B4 Mixed Use zones and the provision of a suitable level of non-residential floor space to reflect the hierarchy of commercial centres.

This option involves removing serviced apartments from the calculation of non-residential floor space. Implementation of this option would ensure that truly employment generating land uses contribute to meeting of employment targets for the North Sydney LGA.

Serviced apartments, along with other tourist and visitor facilities do not contribute to a high generation of jobs in comparison to the same amount of floor space occupied by office and retail premises.

In the current market, this option may result in no serviced apartments being provided in the B4 Mixed Use zone. This is because the use would be competing directly with residential uses, rather than other non-residential uses which is currently the case. However, serviced apartments would remain permissible in the zone as well as in the B3 Commercial Core zone.

This option is preferred as it results in the least amount of impact on the provision of serviced apartments in the long term. Furthermore, additional research that forms part of the North Sydney Economic Development...
Strategy may result in finding alternative options to improve the uptake of serviced apartments in an appropriate context and thereby only resulting in a short term impact.

Option 2 – Local Provision
This option involves inserting a local provision stating that serviced apartments are only permissible in the B4 Mixed Use zone but only if they form part of a wholly non-residential development.

Traditionally, serviced apartments are provided as a standalone development, or located in conjunction within ground level commercial uses such as retail and restaurants and cafes. However, there has been a recent trend to incorporate serviced apartments within developments that also include residential accommodation. As part of this trend some developers have merely being filling their minimum non-residential floor space requirement with no intention of using that space for serviced apartments.

This option would ensure that serviced apartments are not incorporated within a development proposal just to meet employment floor space requirements and with no intention of using them as such.

This option is not supported because it restricts the flexibility in the provision of serviced apartments within a mixed use development where there is a demonstrated demand in an appropriate location.

Option 3 – Permissibility in the B4 Mixed Use Zone
This option involves removing serviced apartments from the B4 Mixed Use zone as a land use that is permissible with development consent.

Pursuing this option would limit the permissibility of serviced apartments to the B3 Commercial Core zone only. This would represent a significant reduction in the permissibility of the development type in the North Sydney LGA. In addition, the removal of the land use type from the B4 Mixed Use zone could be considered to be inconsistent with the objectives, actions and directions to relevant regional and subregional planning strategies/plans in relation to employment creation. In particular, it would not support the provision of a broad range of local employment types.

Option 4 – DA requirements
This option involves requiring applicants to provide additional information at the DA stage. In particular, applications for proposals incorporating serviced apartments should be made to demonstrate that there is a demand for serviced apartments and that they are financially viable.

This could be achieved by requiring applicants of such proposals to provide:

- An economic feasibility study showing the viability of the serviced apartments in the current market; and/or
- A signed agreement between the developer and a serviced apartment management company that the serviced apartments will be owned/managed by the company once constructed.

These additional requirements could be requested as part of a DA checklist that accompanies the DA form. Alternatively, they could form a requirement to a Development Control Plan (DCP).
Despite requesting such information, it would be difficult to refuse such development applications where that information has not been provided or Council does not support the arguments put forward by the applicant. This is due to the lack of statutory weight that such provisions would have and would ultimately come down to a merit assessment.

If this option is pursued, it would still result in a loss of employment floor space. It may also not prevent a Planning Proposal being lodged to reduce the non-residential floor space ratio control, but it would provide a little more certainty at DA stage that the use is viable.

Therefore, this option is not supported, as it cannot provide any certainty that the serviced apartment component of a development is a legitimate proposal, or merely a stop gap to have the proposal approved with the intent to convert to residential at a later stage.

**Option 5 – Minimum Requirements**

This option involves placing a minimum requirement on the number of serviced apartments being provided in a development.

Before a minimum requirement can be set, research would be required to be undertaken to determine if a numerical threshold exists, below which it is not viable to manage serviced apartments. If a threshold exists, it could then be incorporated into the planning controls to ensure that only applications proposing a viable number of serviced apartments are given consideration.

The suggested research above has not been undertaken to date and therefore it would be unreasonable to impose such a control at this point in time. Furthermore anecdotal evidence suggests that the number of serviced apartments may not be the prime determinant of viability.

**Option 6 – Maximum Requirements**

This option involves placing a maximum requirement on the number of serviced apartments being provided in the LGA or a specific precinct.

Before a maximum requirement can be set, research would be required to be undertaken to determine the market demand for serviced apartments in the LGA. The upper level of demand could then be embedded in planning controls as a cap on floor space and/or number of serviced apartments. The cap could apply LGA wide or specific caps could be applied to different areas depending on the findings of the research. Applications for serviced apartments beyond the cap would not be supported.

In the preparation of the Crows Nest South Planning Study, Council investigated the demand for serviced apartments in the LGA. It determined that there was clearly a market for them in major centres such as North Sydney and St Leonards where they support business purposes, but no quantum of demand was determined. More detailed research, as discussed above, has not been undertaken to date. No certainty exists regarding whether such a cap can be included within the Standard Instrument template.

**Removal of Non-residential FSR requirements**

Yes. Allowing the market the flexibility to determine the amount of non-residential floor space above specified minimum requirements can only be
achieved through the removal of the maximum non-residential floor space requirements.

The removal of the maximum requirement for non-residential floor space can only be achieved via an amendment to NSLEP 2013.

The North Sydney Economic Development Strategy will also seek to identify other strategies which encourage the provision of additional employment generating floor space.

5.3.2 Section B – Relationship to strategic planning framework

3. *Is the planning proposal consistent with the objectives and actions of the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?*

*A Plan for Growing Sydney (2014)*

Released in December 2014, *A Plan for Growing Sydney* (Metropolitan Plan) sets the planning framework for the growth of the Sydney metropolitan area over the next 25 years. The Metropolitan Plan sets targets for an additional 664,000 homes and 689,000 jobs by 2031.

Goals, Directions and Actions identified in the Metropolitan Plan which are relevant to the Planning Proposal are as follows:

**Goal 1: A competitive economy with world-class services and transport**

- **Direction 1.1: Grow a more internationally competitive Sydney CBD**
  - Action 1.1.1: Create new and innovative opportunities to grow Sydney CBD office space by identifying redevelopment opportunities and increasing building heights in the right locations
  - Action 1.1.2: Create new opportunities to grow Sydney CBD office space by expanding the CBD’s footprint, particularly along the Central to Eveleigh corridor
- **Direction 1.6: Expand the Global Economic Corridor**
  - Action 1.6.1: Grow high-skilled jobs in the Global Economic Corridor by expanding employment opportunities and mixed-use activities
  - Action 1.6.2: Invest to improve infrastructure and remove bottlenecks to grow economic activity
- **Direction 1.7: Grow strategic centres – providing more jobs closer to home**
  - Action 1.7.1: Invest in strategic centres across Sydney to grow jobs and housing and create vibrant hubs of activity

**Goal 2: A city of housing choice, with homes that meet our needs and lifestyles**

- **Direction 2.1: Accelerate housing supply across Sydney**
  - Action 2.1.1: Accelerate housing supply and local housing choices
- **Direction 2.2: Accelerate urban renewal across Sydney – providing homes closer to jobs**
  - Action 2.2.2: Undertake urban renewal in transport corridors which are being transformed by investment, and around strategic centres
Planning Proposal – Residential flat buildings and serviced apartments in the B4 Mixed Use zone & removal of maximum non-residential FSR requirements

- Direction 2.3: Improve housing choice to suit different needs and lifestyles
  - Action 2.3.3: Deliver more opportunities for affordable housing

**Goal 3: A great place to live with communities that are strong, healthy and well connected**

- Direction 3.1: Revitalise existing suburbs
  - Action 3.1.1: Support urban renewal by directing local infrastructure to centres where there is growth

- Direction 3.3: Create healthy built environments
  - Action 3.3.1: Deliver guidelines for a healthy built environment

The Planning Proposal is considered to be generally consistent with the above goals, directions and actions of the Metropolitan Plan, as it will:

- provide development opportunities to increase residential accommodation without impacting upon the provision of employment services and active street frontages;
- help strengthen the employment function of North Sydney’s centres and the Mixed Use zone; and.
- increase the potential employment generating capacity in the North Sydney LGA on sites which generally have excellent access to transport infrastructure.

One particular issue with the Metropolitan Plan is that it does not clearly indicate whether preference is given to the provision of jobs or housing. Whilst housing can essentially be accommodated anywhere, it’s far more difficult to appropriately locate floor space for employment purposes. Given the importance of locating employment generating floor space close to public transport, greater weight should be given to retaining existing employment related functions over housing, within and adjacent to existing commercial centres. These issues are further exacerbated by strata titling of residential development rarely being converted back for commercial purposes.

Increasing the provision of employment floor space within existing centres may come at the expense of the provision of residential accommodation which the Metropolitan Plan also seeks to achieve.

If preference is given to the provision of housing over employment generating opportunities, the strategic economic importance of identified centres under the Metropolitan Plan will be severely undermined. Preference should therefore be given to the provision of jobs over housing in this instance.

**Draft Inner North Subregional Strategy**

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

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

- Direction A1 – Provide suitable commercial sites and employment lands in strategic areas
o Action A1.1 – Provide a framework for accommodating jobs across the city
o Action A1.2 – Plan for sufficient zoned land and infrastructure to achieve employment capacity targets in employment lands
o Action A1.4 – Retain the rezoning of employment lands to residential zonings across Sydney

• Direction B1 – Provide places and locations for all types of economic activity and employment across the Sydney region
  o Action B1.1 Establish a typology of centres
  o Action B1.2 Establish employment capacity targets for strategic centres

• Direction B2 – Increase densities in centres whilst improving liveability
  o Action B2.1 – Plan for housing in centres consistent with their employment role
  o Action B3.4 – Ensure sufficient commercial office sites in strategic centres

• Direction B3 – Cluster businesses and knowledge-base activities in strategic centres
  o Action B3.2 - Strengthen centres management
  o Action B3.4 – Ensure sufficient commercial office sites in strategic centres

• Direction B4 – Concentrate activities near public transport
  o Action B4.1 – Concentrate retail activity in centres, business development zones and enterprise corridors

• Direction B5 – Protect and strengthen the primary role of economic corridors
  o Action B5.1 – Establish a stronger corridors planning and development initiative

• Direction C1 – Ensure adequate supply of land and sites for residential development
  o Action C1.2 – Apply sustainability criteria for new urban development

• Direction C2 – Plan for a housing mix near jobs, transport and services
  o Action C2.1 – Focus residential development around centres, town centres, villages and neighbourhood centres
  o Action C2.3 – Provide a mix of housing

• Direction C3 – Renew local centres
  o Action C3.1 – Renew local centres to improve economic viability and amenity

• Direction F4 – Enhance cultural life and tourism precincts
  o Action F4.2 – Recognise the night time economy and protect entertainment and nightlife clusters.
  o Action F4.3 – Continue to coordinate and plan for the improvement of tourism precincts in Sydney to maximise the visitor experience.

The Planning Proposal is considered to be consistent with the above directions and actions of the draft INSS as it will:

• provide development opportunities to increase residential accommodation without impacting upon the provision of employment services and active street frontages.
• will help strengthen the employment function of North Sydney’s centres and mixed use zone;
Planning Proposal – Residential flat buildings and serviced apartments in the B4 Mixed Use zone & removal of maximum non-residential FSR requirements

- will increase the potential employment generating capacity in the North Sydney LGA on sites which generally have excellent access to transport infrastructure

However, increasing the provision of employment floor space within existing centres may come at the expense of the provision of residential accommodation which the draft INSS also seeks to achieve.

One particular issue with the draft INSS is that it does not clearly indicate whether preference is given to the provision of jobs or housing. As indicated in response to the Metropolitan Plan, it is considered appropriate that preference should be given to the provision of jobs over housing in this instance.

North Sydney Residential Development Strategy
The North Sydney Residential Development Strategy (RDS) identifies the potential for an additional 6,199 dwellings in the North Sydney LGA by 2031 under the provisions of NSLEP 2013.

Conversely, the Planning Proposal has the potential to reduce the level of residential accommodation on the affected lands. However, due to the strong demand for residential accommodation over non-residential accommodation at this point in time it is unlikely to have an adverse impact on the provision of housing in accordance with regional and subregional plans and strategies.

Furthermore, due to the current strong demand for residential over non-residential floor space, it is unlikely that the removal of the maximum non-residential floor space ration control will impact on the ability to meet the additional residential development envisaged by the RDS.

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

North Sydney Council Delivery Program 2010/11-2013/14
The North Sydney Council Delivery Program 2010/11-2013/14 (Delivery Program) was prepared in accordance with NSW State Government’s Integrated Planning and Reporting Framework requirements. The Delivery Program outlines Council’s priorities and service delivery programs over four years, set out under five key Directions.

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

Direction: 2 Our Built Environment
Outcomes: 2.2 Improved mix of land use and quality development through design excellence
Outcomes: 2.3 Vibrant, connected and well maintained streetscapes and villages that build a sense of community

Direction: 3 Our Economic Vitality
Outcomes: 3.1 Diverse, strong, sustainable and vibrant, local economy
Outcomes: 3.2 North Sydney CBD is one of Australia’s largest commercial centres

Direction: 4 Our Social Vitality
Outcomes: 4.10 Improved affordable housing and accommodation

Direction 5: Our Civic Leadership
Outcomes 5.5: Ensure the long term financial sustainability of North Sydney

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

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

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

<table>
<thead>
<tr>
<th>TABLE 1: Consistency with SEPPs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Direction</strong></td>
</tr>
<tr>
<td>SEPP No. 1 – Development Standards</td>
</tr>
<tr>
<td>SEPP No. 19 - Bushland in urban areas</td>
</tr>
<tr>
<td>SEPP No. 32 - Urban consolidation (redevelopment of urban land)</td>
</tr>
<tr>
<td>SEPP No. 33 - Hazardous and offensive development</td>
</tr>
<tr>
<td>SEPP No. 50 - Canal estate development</td>
</tr>
<tr>
<td>SEPP No. 55 - Remediation of land</td>
</tr>
<tr>
<td>SEPP No. 64 - Advertising and signage</td>
</tr>
<tr>
<td>SEPP No. 65 - Design Quality of Residential Flat Development</td>
</tr>
</tbody>
</table>
TABLE 1: Consistency with SEPPs

<table>
<thead>
<tr>
<th>Direction</th>
<th>Consistency</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>SEPP (Affordable Rental Housing) 2009</td>
<td>YES</td>
<td>The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP’s aims and objectives.</td>
</tr>
<tr>
<td>SEPP (Building Sustainability Index: BASIX) 2004</td>
<td>N/A</td>
<td>The Planning Proposal does not relate to building sustainability.</td>
</tr>
<tr>
<td>SEPP (Exempt and Complying Development Codes) 2008</td>
<td>N/A</td>
<td>The Planning Proposal does not seek to introduce any additional exempt or complying development types.</td>
</tr>
<tr>
<td>SEPP (Housing for Seniors or People with a Disability) 2004 - formerly SEPP (Seniors Living) 2004</td>
<td>YES</td>
<td>The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP’s aims and objectives.</td>
</tr>
<tr>
<td>SEPP (Infrastructure) 2007</td>
<td>YES</td>
<td>The Planning Proposal is consistent with the SEPP as it does not affect the attainment of the SEPP’s aims and objectives.</td>
</tr>
<tr>
<td>SEPP (Major Development) 2005 - formerly SEPP Major Projects &amp; SEPP State Significant Development</td>
<td>N/A</td>
<td>The Planning Proposal does not relate to any state significant sites identified under this SEPP and therefore does not apply.</td>
</tr>
<tr>
<td>SEPP (Mining, Petroleum Production and Extractive Industries) 2007</td>
<td>YES</td>
<td>The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.</td>
</tr>
<tr>
<td>SEPP (Miscellaneous Consent Provisions) 2007 - formerly SEPP (Temporary Structures) 2007</td>
<td>N/A</td>
<td>This SEPP does not apply as the Planning Proposal does not relate to development for the purposes of temporary structures.</td>
</tr>
<tr>
<td>SEPP (State and Regional Development) 2011</td>
<td>N/A</td>
<td>This SEPP does not apply as the Planning Proposal does not relate to state or regional development nor the operation of joint regional planning panels.</td>
</tr>
<tr>
<td>Sydney REP (Sydney Harbour Catchment) 2005</td>
<td>YES</td>
<td>The Planning Proposal is consistent with the SEPP as it will not impede the attainment of the aims and objectives of this SEPP.</td>
</tr>
</tbody>
</table>

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

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

TABLE 2: Consistency with s.117 Directions

<table>
<thead>
<tr>
<th>Direction</th>
<th>Consistency</th>
<th>Comment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Employment and Resources</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1 Business &amp; Industrial Zones</td>
<td>YES</td>
<td>The Planning Proposal does not seek to reduce any commercial or industrial zoning under NSLEP 2013 nor does it seek to reduce the level of permissible</td>
</tr>
</tbody>
</table>
### TABLE 2: Consistency with s.117 Directions

<table>
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<tr>
<td></td>
<td></td>
<td>non-residential floor space achievable on the affected lands. Despite potentially restricting the provision of serviced apartments in the B4 Mixed Use zone, it will enable the minimum required amount of non-residential floor space to be occupied by non-residential land uses that have a higher density of employment and thereby reinforcing the objectives of the Direction.</td>
</tr>
<tr>
<td>1.2 Rural Zones</td>
<td>N/A</td>
<td>This Direction does not apply as there are no existing rural zones under NSLEP 2013 or proposed under the Planning Proposal.</td>
</tr>
<tr>
<td>1.3 Mining, Petroleum Production &amp; Extractive Industries</td>
<td>YES</td>
<td>The Planning Proposal does not seek to alter the permissibility of these types of land uses.</td>
</tr>
<tr>
<td>1.4 Oyster Aquaculture</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not propose any changes in land use.</td>
</tr>
<tr>
<td>1.5 Rural Lands</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not propose any changes that will affect development in a rural or environmental protection zone.</td>
</tr>
<tr>
<td>2 Environmental Heritage</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.1 Environmental Protection Zones</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not affect land in an environmental protection zone.</td>
</tr>
<tr>
<td>2.2 Coastal Protection</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not affect land within a coastal zone.</td>
</tr>
<tr>
<td>2.3 Heritage Conservation</td>
<td>YES</td>
<td>The Planning Proposal does not alter the existing heritage conservation provisions within NSLEP 2013 which already satisfy the requirements of the Direction.</td>
</tr>
<tr>
<td>2.4 Recreation Vehicle Areas</td>
<td>N/A</td>
<td>The Planning Proposal does not enable land to be developed for the purposes of a recreational vehicle area.</td>
</tr>
<tr>
<td>3 Housing, Infrastructure &amp; Urban Development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.1 Residential Zones</td>
<td>YES</td>
<td>The Planning Proposal is consistent with the requirements of the Direction as it will enhance the ability to provide increased residential development within a mixed use building utilising existing infrastructure and services.</td>
</tr>
<tr>
<td>3.2 Caravan Parks &amp; Manufactured Home Estates</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not seek to permit caravan parks or manufactured home estates under NSLEP 2013.</td>
</tr>
<tr>
<td>3.3 Home Occupations</td>
<td>YES</td>
<td>The Planning Proposal does not alter the existing provisions within NSLEP 2013 that relate to home occupations, which</td>
</tr>
</tbody>
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<tr>
<td>3.4 Integrating Land Use &amp; Transport</td>
<td>YES</td>
<td>The Planning Proposal is considered to be consistent with the aims objectives and principles of “Improving Transport Choice – Guidelines for planning and development” and “The Right Place for Business and Services – Planning Policy”. It achieves this by maximising the provision of high generating employment floor space in highly accessible areas and enables the ability to increase non-residential development in close proximity to high levels of transport.</td>
</tr>
<tr>
<td>3.5 Development Near Licensed Aerodromes</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a licensed aerodrome nor does it propose to amend a height limit that exceeds the Obstacle Limitation Surface level that applies to the North Sydney LGA.</td>
</tr>
<tr>
<td>3.6 Shooting Ranges</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to land in the vicinity of a shooting range.</td>
</tr>
<tr>
<td>4.1 Acid Sulfate Soils</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to land affected by Acid Sulfate Soils.</td>
</tr>
<tr>
<td>4.2 Mine Subsidence &amp; Unstable Land</td>
<td>N/A</td>
<td>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.</td>
</tr>
<tr>
<td>4.3 Flood Prone Land</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to land identified as being flood prone land.</td>
</tr>
<tr>
<td>4.4 Planning for Bushfire Protection</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to land identified as bushfire prone land.</td>
</tr>
<tr>
<td>5.1 Implementation of Regional Strategies</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to land affected by one of the identified strategies.</td>
</tr>
<tr>
<td>5.2 Sydney Drinking Water Catchment</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.</td>
</tr>
<tr>
<td>5.3 Farmland of State and Regional Significance on the NSW Far North Coast.</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.</td>
</tr>
<tr>
<td>5.4 Commercial and Retail Development along the Pacific Highway, North Coast.</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.</td>
</tr>
</tbody>
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<tr>
<th>Direction</th>
<th>Consistency</th>
<th>Comment</th>
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<tbody>
<tr>
<td>5.8  Second Sydney Airport: Badgerys Creek</td>
<td>N/A</td>
<td>This Direction does not apply as the Planning Proposal does not relate to any of the identified LGAs.</td>
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6 Local Plan Making

<table>
<thead>
<tr>
<th>6.1. Approval &amp; Referral Requirements</th>
<th>YES</th>
<th>The Planning Proposal does not alter any concurrence, consultation or referral requirements under NSLEP 2013, nor does it identify any development as designated development.</th>
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<tr>
<td>6.2 Reserving Land for Public Purposes</td>
<td>YES</td>
<td>The Planning Proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.</td>
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<tr>
<td>6.3 Site Specific Provisions</td>
<td>N/A</td>
<td>This Direction does not apply, as it does not allows a particular type of development to be carried out.</td>
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7 Metropolitan Planning

| 7.1 Implementation of the Metropolitan Plan for Sydney 2036 | YES     | Refer to question 4 to Section 5.3.2 of this report. |

5.3.3 Section C – Environmental, social and economic impact.

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

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

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

The Planning Proposal merely seeks to:

- adjust the location where residential development can be located within a mixed use development,
- alter the way that non-residential floor space is calculated,
- increase the flexibility in the provision of non-residential floor space on certain lands,

and is unlikely to result in any adverse environmental impacts.

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

The Planning Proposal in part will provide increased flexibility to enable the redevelopment of sites where residential accommodation can be located at the ground level of a building where it does not adversely impact on the ability to provide active street frontages and satisfies the need to provide employment floor space. The Planning Proposal will enable a better mix of uses in the zone, by allowing more non-residential uses to be located at the
Planning Proposal – Residential flat buildings and serviced apartments in the *B4 Mixed Use* zone & removal of maximum non-residential FSR requirements

ground level as opposed to just retail or business premises as permitted by the definition of ‘shop top housing’.

The Planning Proposal in part seeks to address the issue of maintaining and promoting employment generating floor space in the *B4 Mixed Use* zone. The provision of employment generating floor space is vital to overall economic vitality of the North Sydney LGA, greater Sydney and the state of NSW.

It should be noted that serviced apartments will still be permissible in the *B4 Mixed Use* zone where the development is able to meet the non-residential floor space requirements with employment floor space that does not comprise serviced apartments. They will also remain permissible in the *B3 Commercial Core* zone.

Council’s concurrent proposal to remove the maximum non-residential FSR controls in the *B4 Mixed Use* zone will allow for wholly non-residential developments to be constructed anywhere in the *B4 Mixed Use* zone. It is therefore considered that this proposal will not impact on the ability of the market to supply serviced apartments.

The Planning Proposal also seeks to remove an unreasonable restriction on the development of a site for entirely non-residential purposes. Despite non-residential uses being permissible in the *B1 Neighbourhood Centre* and *B4 Mixed Use* zones, as a stand alone use, they are generally unable to obtain an approval for a building of the same size and scale as would be permitted if it was a mixed residential and non-residential building. This is contrary to the attainment of the objectives of the EP&A Act.

In addition, the proposed removal of the maximum non-residential floor space ratio controls provides the opportunity for developments to provide greater employment generating floor space which is vital to overall economic vitality of the North Sydney LGA, greater Sydney and the state of NSW.

5.3.4 **Section D – State and Commonwealth interests**

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

The Planning Proposal does not seek to allow an increase the overall developable yield on any site. Rather the amendments will provide the opportunity to allow a greater proportion of employment generating floor space or residential development to be accommodated on affected sites.

It is therefore considered that the Planning Proposal does not increase the demand for public infrastructure.

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

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

Condition 5 of the Gateway Determination dated 6 February 2015 requires Destination NSW to be consulted and given 21 days within which to make a comment on the proposal. Their comments will be considered as part of the post exhibition report to be considered by Council.
5.4 PART 4: MAPPING

The Planning Proposal requires the replacement of all the Non-Residential Floor Space Ratio Range Maps to NSLEP 2013. The maps to be replaced include:

- LCL_001 5950_COM_LCL_001_010_20130607
- LCL_002 5950_COM_LCL_002_010_20130607
- LCL_002A 5950_COM_LCL_002A_005_20130607
- LCL_003 5950_COM_LCL_003_010_20130607
- LCL_004 5950_COM_LCL_004_010_20130607

Replacement maps are provided within Annexure B to this report.

5.5 PART 5: COMMUNITY CONSULTATION

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

5.6 PART 6: PROJECT TIMELINE

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

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<td>1. Request for Gateway Determination sent to DPE</td>
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<td>3. Gateway Determination Issued to Council</td>
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<td>4. Public Exhibition Undertaken</td>
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<td>5. Council considers post exhibition report</td>
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<td>6. Submission to DPE requesting making of LEP</td>
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<td>7. Drafting of LEP and making</td>
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ANNEXURE A

- Current Non-Residential Floor Space Ratio Range Map
ANNEXURE B

- Proposed Non-Residential Floor Space Ratio Map