



New South Wales Government
Independent Planning Commission

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13-27 Riddell Street and 14-15 Buller Street, Bellevue Hill Gateway Review

PP-2022-1663/GR-2022-31

Advice Report

Wendy Lewin (Chair)
30 March 2023

1. Introduction

1. On 2 March 2023, the NSW Independent Planning Commission (**Commission**) received a request from the NSW Department of Planning and Environment (**Department**) for advice pursuant to section 2.9(1)(c) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) in relation to planning proposal PP-2022-1663 (**Planning Proposal**).
2. On 10 May 2022, Woollahra Municipal Council (**Council**) lodged the Planning Proposal with the Department, seeking to amend the zoning and planning controls for the properties at 13-27 Riddell Street and 14-15 Buller Street, Bellevue Hills (the **Site**) and introduce residential-flat-buildings as an additional permitted use on land at 21-23 Riddell Street, Bellevue Hill, under the *Woollahra Local Environmental Plan 2014* (**WLEP 2014**).
3. On 17 October 2022, as delegate of the Minister for Planning (**Minister**), officers of the Department issued a Gateway Determination that the Planning Proposal should not proceed (the **Gateway Determination**).
4. On 1 December 2022, Council initiated Gateway Determination Review GR-2022-31 to review the Department's decision (**Review Request**).
5. On 2 March 2023, the Department requested the Commission review the Planning Proposal, consider the merits of the Review Request and provide advice, including a clear and concise recommendation to the Minister's delegate as to whether the Gateway Determination should be altered.
6. Professor Mary O'Kane AC, Chair of the Commission, nominated Wendy Lewin to constitute the Commission Panel in providing advice to the Department on the Gateway Determination Review Request.

2. Gateway Determination Review

2.1 The Planning Proposal

7. The Department's Gateway Determination Report, dated 17 October 2022 (**Gateway Determination Report**), stated that the Planning Proposal's objective is to ensure that future development on the Site is responsive to the constraints of each site and is compatible with the desired future character of the area.
8. The Planning Proposal seeks to amend the WLEP 2014 for the Site as follows (Gateway Determination Report, pg 1-2):
 - rezone from R3 Medium Density Residential to R2 Low Density Residential;
 - permit residential flat buildings at 21-23 Riddell Street as an "additional permitted use" under Schedule 1;
 - delete the floor space ratio (**FSR**) standard;
 - decrease the maximum height of buildings standard from 10.5m to 9.5m; and
 - decrease the minimum lot size standard from 700 sqm to 675 sqm.

2.2 Site and Locality

10. The Site is located on the southern side of Riddell Street, between Bellevue Road and Bradley Avenue Reserve to the northeast (**Figure 1**). The Site is currently zoned R3 Medium-Density under the WLEP 2014. The Site is occupied by single-detached dwellings, except for number 21-23 Riddell Street, Bellevue Hill, where a 3-storey residential flat building is under construction (Gateway Determination Report, pg 3).

Figure 1 – The location of the Site



11. The legal description of the Site is set out in **Table 1** below.

Table 1 - The Site description (Source: Gateway Determination Report, pg 3)

Address	Property Description
13 Riddell Street	Lot A in DP 300636
15 Riddell Street	Lot 4 in DP 6028 & Lot B in DP 300636
17 Riddell Street	Lot 2 in DP 220814
19 Riddell Street	Lot 1 in DP 220814

21-23 Riddell Street	Lot 2 in DP 6028 & Lot 1 in 658568
25 Riddell Street	Lot 1 in DP 950091
27 Riddell Street	Lot D in DP 984055
14 Buller Street	Lot 1 in DP 726797
15 Buller Street	Lot 1 in DP 300636

2.3 Background

12. The background to the Planning Proposal and Gateway Determination Review is set out in **Table 2** below.

Table 2 - The Gateway Determination Review background actions timeline

Date	Action
8 November 2018	Development Application DA 487/2018 was lodged with Council for the construction of a residential flat building at 21-23 Riddell Street.
12 August 2019	Council resolved to examine amending the WLEP 2014 to rezone the Site from R3 to R2.
4 June 2020	The NSW Land and Environment Court (LEC) determined that DA 487/2018 be granted development consent.
2 July 2021	Studio GL undertook a Planning and Urban Design Review on behalf of Council (GL Report).
26 July 2021	Council resolved that the Planning Proposal be prepared.
24 March 2022	Woollahra Local Planning Panel advised Council to proceed with the Planning Proposal.
10 May 2022	Council lodged the Planning Proposal with the Department.
17 October 2022	The Department issued a Gateway Determination not to proceed with the Planning Proposal.
1 December 2022	Council submitted its Gateway Review Request to the Department.
2 March 2023	The Commission received the request for advice from the Department.

2.4 Review Request

13. On 1 December 2022, the Department received a request from Council seeking a review of the Department's Gateway Determination. Council's request was accompanied by a justification report, dated November 2022 (**Justification Report**), responding to each of the reasons given by the Department.

3. The Commission's Consideration

3.1 Material Considered by the Commission

14. The Commission has considered the following material (**Material**) in the preparation of its advice:

- the judgement of the Court in *Riddell Street Development Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1017;

- Planning and Urban Design Review: Riddell Street, Bellevue Hill, prepared by Studio GL, dated 2 July 2021;
- Council's report to the Environmental Planning Committee of 12 July 2021;
- Council's report to the Environmental Planning Committee of 7 February 2022;
- Council's Planning Proposal, dated 14 March 2022 (**Planning Proposal Report**);
- Council's report to the Woollahra Local Planning Panel of 24 March 2022;
- Council's report to the Environmental Planning Committee of 4 April 2022;
- Council's Resolution, dated 26 April 2022;
- Council's letter to the Department, dated 10 May 2022;
- the Department's Gateway Determination Report, dated 17 October 2022;
- the Department's Gateway Determination, dated 17 October 2022;
- Council's Justification Report, dated November 2022;
- the Department's Justification Assessment, dated 2 March 2023 (**Justification Assessment**); and
- comments and presentation material at meetings with the Department and Council, as referenced in **Table 3** below.

3.2 The Commission's Meetings

15. To inform its advice, the Commission undertook a site inspection and met with various persons as set out in Table 3. All meeting and site inspection notes were made available on the Commission's website.

Table 3 – Commission's Meetings

Meeting	Date	Transcripts/Notes Available on
Site inspection	7 March 2023	13 March 2023
Council	14 March 2023	16 March 2023
Department	16 March 2023	20 March 2023

3.3 Key Issues

3.3.1 Site-specific merit

16. Council in its Justification Report stated that the Planning Proposal demonstrates site-specific merit. According to Council, the GL Report undertook scenario testing and modelled the various buildings that could be developed within the Site under various zonings. The GL Report then considered the impacts associated with each scenario. As a result, the GL Report recommended that the Site be rezoned from R3 Medium Density Residential to R2 Low Density Residential. The following reasons were provided in Council's Justification Report (pg 4):
- the Site is located on a ridge and have a local character more similar to the adjacent Bradley Avenue and Lennox Street;
 - the landscaped character of the Site forms a gateway to the adjoining lower density areas;
 - the Site contains a topographic high point, meaning that higher density development would be visually prominent from the surrounding public domain.

17. Council stated the Planning Proposal would not have an impact on critical habitat areas, threatened species, populations or ecological communities or their habitats present on the subject Site. Council stated that there are no likely environmental effects that would arise as a result of the Planning Proposal and that it would ensure the protection and enhancement of the natural environment to create resilient, sustainable and liveable neighbourhoods. Council stated that the Planning Proposal would have a positive social impact on residential amenity and wellbeing. Council further stated that the Planning Proposal would not result in significant economic impacts and would not unreasonably diminish the development potential of the subject properties (Planning Proposal Report pg 39).
18. The Department concluded that the Planning Proposal does not adequately demonstrate site-specific merit. The Department stated that while the low density residential uses are characteristic of the area immediately west and south of the subject properties, the scale of development and streetscape character in the surrounding area is mixed. The Department stated that the existing R3 zone would provide a transition to the higher density built form within the B1 Neighbourhood Centre area along Bellevue Road to the south-west (Justification Assessment, pg 8).
19. The Department stated that potential impacts to parking, amenity and tree canopy could all be appropriately mitigated through design and the application of development controls contained in the Woollahra Development Control Plan 2015 (**Woollahra DCP**) at any future DA stage (Justification Assessment, pg 9).
20. The Department disagreed with Council's assertion that the Planning Proposal would not have any significant social or economic impacts. The Department stated that the Planning Proposal would reduce the supply and diversity potential of housing within the subject properties that are accessible and well serviced and located within the Woollahra LGA. The Commission has given consideration to housing supply and diversity in section 0 below.

Commission's Findings

21. The Commission agrees with the Department and finds that the Planning Proposal does not adequately demonstrate site-specific merit. The Commission acknowledges Council's view that the Site is considered to have a local character more similar to the adjacent Bradley Avenue and Lennox Street. However, the Commission notes that construction is underway for the development of 11-13 Buller Street and 21-23 Riddell Street into 3 storey apartment buildings and as a result, the character of the streetscape is changing. The Commission agrees with the Department that maintaining the existing R3 zone would provide a transition from the higher density built form along Bellevue Road to the low density residential uses to the north-west of the Site.
22. The Commission acknowledges Council's view that the Site contains a topographic high point and that higher density development would be visually prominent from the surrounding public domain. However, the Commission agrees with the Department that potential impacts to amenity (including views from the public domain) are capable of being mitigated through the design and application of development controls in the development assessment process.

3.3.2 Strategic Merit

Woollahra Local Housing Strategy 2021

23. Council was of the view that the Planning Proposal is consistent with the Woollahra Local Housing Strategy (LHS). Council in its Justification Report stated that the Planning Proposal would:
- sustain a diverse range of housing types and protect low density neighbourhoods and villages;
 - provide for the continued supply of low to medium density residential dwellings; and
 - ensure all new development adopts a scale that is compatible with the desired future character of Riddell Street.
24. The Department in its Gateway Determination Report (pg 11 and 12), stated that the Planning Proposal is inconsistent with the LHS as it:
- does not align with the LHS's objectives to maintain a high percentage of diverse housing choices, and does not sustain diverse housing choices;
 - does not maintain existing R3 Medium Density residential zones that were identified in the Strategy for retention because they are appropriately located close to centres, public transport, parks and schools; and
 - reduces housing opportunity and supply capacity for the Local Government Area (LGA), which will likely contribute to reducing Council's capability to meet its six to ten year housing targets and longer term housing supply capacity for the district as identified within the Eastern City District Plan.
25. Council, in its meeting with the Commission on 14 March 2023, stated that Council exceeded its housing targets by over 300 per cent in 2021 and was on track to meet its current targets. The Department in its meeting with the Commission on 16 March 2023 stated that Woollahra's dwellings target is the lowest out of the Eastern Harbour Cities and that the housing targets are minimum and should not be seen as limits to housing growth.

Greater Sydney Region Plan 2018 and Eastern City District Plan 2018

26. Council, in its Justification Report, stated that the Planning Proposal is consistent with the objectives of the Greater Sydney Region and Eastern City District Plan as it would have minimal impact on supply and will protect existing housing diversity. Council stated that the GL Report estimates that the Planning Proposal would reduce the theoretical yield of the 10 subject properties by approximately 20 dwellings. Council stated that due to market factors and Site constraints, the realistic loss is likely to be 10 dwellings. Council also stated that it is committed to increasing housing supply in appropriate areas and is pursuing initiatives in Edgecliff that will ensure long term housing targets are capable of being exceeded while also protecting the character of our local villages (Justification Report pg 5).
27. The Department, in its Gateway Determination Report, stated that the Planning Proposal is inconsistent with the Greater Sydney Region and Eastern City District Plan as it:
- would reduce the housing supply and diversity potential of the Site;
 - will reduce the opportunity for greater housing diversity and supply, with accessible jobs and services in the Bondi Junction strategic centre and nearby local and neighbourhood centres, existing public transport, social infrastructure, open space and recreational areas;
 - is not consistent with the need to provide places with fine grain urban form, diverse land use mix, high amenity and walkability in and within a 10-minute walk of centres.

28. The Department also stated that matters relating to maintaining urban tree canopy cover can be adequately addressed as part of any development assessment process.

Woollahra Community Strategic Plan and Woollahra Local Strategic Planning Statement

29. Council is of the view that the Planning Proposal is consistent with the strategies and planning priorities of the Woollahra Community Strategic Plan and Woollahra Strategic Planning Statement as it would:
- encourage housing diversity by ensuring an appropriate supply of dwelling houses, semi-detached and dual occupancies, whereas apartments which formed 63% of the existing housing stock;
 - preserve the local character of Riddell St by maintaining view corridors and vegetation in front setbacks, and
 - restrict higher-density development in areas not planned for uplift and housing growth.
30. The Department stated that the Planning Proposal is inconsistent with these policies as it will reduce the potential opportunity for a greater diversity of housing choice on the Site, which is accessible and well-served (Gateway Determination Report, pg 11).
31. The Department Justification Report also stated that the Planning Proposal is:
- inconsistent with the Government's objective for the planning system to boost the supply of new homes and housing affordability, and the NSW Premier's Priority to increase the proportion of homes in urban areas within 10 minutes' walk of quality green, open and public space by 10% by 2023.*

Commission's Findings

32. The Commission agrees with the Department and finds that the Planning Proposal is inconsistent with the overarching regional and local strategic plans and does not have strategic merit. The Commission is of the view that the Planning Proposal would reduce the housing supply and diversity of the Site, which is currently well-served by infrastructure and has a suitable proximity to public transport and community facilities. The Commission is of the view that the Council's concerns regarding the potential impacts to local character, visual amenity, and tree canopy cover are capable of being addressed through development controls in the development assessment process.

3.3.3 Consistency with Section 9.1 Ministerial Directions

33. Council, in its Justification Report (pg 7-8), stated that the Planning Proposal is generally consistent and justifiably inconsistent with the following section 9.1 Ministerial Directions:
- **Direction 1.1 - Implementation of Regional Plans:** The Planning Proposal is generally consistent with the Regional Plan and supporting District Plan. The new controls will require new development to respect the existing scale of the streetscape and appropriately relate to the surrounding low density neighbourhood. The new controls will also ensure that street trees are not affected by vehicle crossovers for apartment buildings and will provide for landscaped setbacks associated with lower density uses.

Direction 1.4 - Site Specific Provisions: This direction does not apply to this Planning Proposal as the intention of this direction is to allow a particular development to be carried out, whereas this Planning Proposal seeks to prohibit the residential flat building development on the Site. Notwithstanding, Direction 1.4 allows for a planning proposal to be inconsistent where it is of minor significance. As set out in section 0 above, the Planning Proposal would only result in a reduction of 10 dwellings across the Site and would therefore have negligible impact on housing supply in the Woollahra LGA.

- **Direction 5.1 - Integrating Land Use and Transport:** The Planning Proposal is consistent with this direction as there is minimal public transport access close to the Site. There are no dedicated cycleways easily accessible from the area and the nearest railway station, Bondi Junction, is a 20 minute walk along a busy road corridor. Council is focusing housing growth in areas with better access to employment and transport, such as Edgecliff Commercial Centre.
- **Direction 6.1 - Residential Zones:** The Planning Proposal is consistent with this direction as it will encourage housing that is of good design and will not significantly affect the choice of housing types and locations in the market. The reduction of permissible residential density is justified by the GL Report and is negligible in the context of the housing targets for the entire LGA.

34. The Department, in its Justification Assessment (pg 10-11), stated that the Planning Proposal is inconsistent with the following Ministerial Directions for the following reasons:

- **Direction 1.1 - Implementation of Regional Plans:** The Planning Proposal is inconsistent with the Greater Sydney Region Plan as it undermines the intent of Objective 10 'Greater housing supply' and Objective 11 'Housing is more diverse and affordable'.
- **Direction 1.4 - Site Specific Provisions:** The recently approved residential flat building at 21-23 Riddell Street, Bellevue Hill, would become a prohibited land use under the proposed R2 zone. *Residential flat buildings* are permitted with consent in the R3 Medium Density Residential zone. Rezoning the Site to the R2 zone and then using an 'additional permitted use' approach for an existing development with preventive development controls is not a sound planning outcome. The Planning Proposal would impose unnecessarily restrictive site-specific controls.
- **Direction 5.1 - Integrating Land Use and Transport:** The Planning Proposal will reduce the potential supply and diversity of housing that can be achieved on the subject properties, which are accessible and well-serviced, located within walking distance (<300m) of bus services which provide direct links to Edgecliff Station, Bondi Junction and services in these centres.
- **Direction 6.1 - Residential Zones:** The Planning Proposal will reduce the residential density and diversity of land which in turn will reduce the utilisation potential of existing infrastructure and services. The Planning Proposal is inconsistent with the housing objectives of the Greater Sydney Region Plan and Eastern City District Plan.

Commission's Findings

35. The Commission agrees with the Department that the Planning Proposal is inconsistent with the Ministerial Directions set out above. The Commission agrees with the Department that by down-zoning the Site, the Planning Proposal would impose unnecessarily restrictive site-specific controls. As set out in paragraph 32 above, the Commission agrees with the Department that the Planning Proposal would reduce the housing supply and diversity of the Site, which is accessible and well-serviced, located within walking distance of bus services which provide direct links to Edgecliff Station, Bondi Junction and services in these centres.

3.3.4 Site-specific land use matters and the Woollahra DCP

36. The Department's Gateway Determination stated:
Land use matters which the proposed amendments seek to control are more suitably addressed by the Woollahra Development Control Plan 2015 and the development assessment process. A Development Control Plan allows greater flexibility for proponents and Council in applying appropriate development control provisions for specific development types.
37. Council, in its Justification Report stated that the purpose of the Planning Proposal is to make residential flat buildings a prohibited use, while also introducing a set of zone objectives that better reflect the character of the street. Council stated that the new building height and FSR controls would also serve as the principal development standards for any proposal in Riddell Street.
38. The Department stated that although the R3 zone permits residential flat buildings, development as such would be subject to assessment against the relevant Council's planning controls as part of the development assessment process.
39. The Department stated that "*built form, setbacks, tree canopy, landscaping and car parking matters which the proposed amendments seek to control are more suitably addressed by the Woollahra DCP and the development assessment process*" (Justification Assessment, pg 12).

Commission's Findings

40. The Commission acknowledges that Council is seeking to make residential flat buildings a prohibited use and introduce a set of zone objectives that better reflect the character of the street as set out above. However, the Commission agrees with the Department above and is of the view that concerns regarding local character, built form, amenity, setbacks, parking and landscaping are more suitably addressed through the Woollahra DCP and in the development assessment process.

4. The Commission's Advice

41. The Commission has undertaken a review of the Gateway Determination as requested by the Department. In doing so, the Commission has considered the Material (see section 3.1 above), including heritage reports, Council and Department submissions, and the reasons given in the Department's Gateway Report.
42. The Commission agrees with the Department's findings that the Planning Proposal has not demonstrated sufficient strategic or site-specific merits for the following reasons:
- the Planning Proposal would reduce the housing supply and diversity of the Site, which is accessible, well-serviced and located within walking distance of bus services which provide direct links to Edgecliff Station, Bondi Junction and services in these centres;
 - the Planning Proposal is inconsistent with the overarching regional and local strategic plans;
 - the Planning Proposal is inconsistent with the relevant Ministerial Directions without the justification necessary to permit such an inconsistency;
 - impacts to local character, built form, amenity, setbacks, parking and landscaping are more suitably addressed through the Woollahra DCP and in the development assessment process; and
 - maintaining the existing R3 zone would provide a transition from the higher density built form along Bellevue Road to the low density residential uses to the north-west of the Site.
43. The Commission advises that the Gateway Determination issued on 17 October 2022 should be upheld, and the Planning Proposal should not proceed past Gateway Determination.
44. Notwithstanding the above, the Commission is of the view that there is merit in Council undertaking additional studies and investigations in Woollahra LGA to identify areas where built form, amenity and local character should be preserved together with a review of Council's DCP with the aim to strengthening development controls within these areas if appropriate.



Wendy Lewin (Chair)
Member of the Commission



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**For more information, please contact
the Office of the Independent Planning
Commission NSW.**

ipcn.nsw.gov.au

Phone (02) 9383 2100

Email ipcn@ipcn.nsw.gov.au

Mail Level 15 135 King Street Sydney NSW 2001

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