

## 12. General Manager and Officer's Report

<b>Item No:</b>	12.1
<b>Subject:</b>	<b>REQUEST TO BE THE PLANNING PROPOSAL AUTHORITY FOR 252-254 NEW SOUTH HEAD ROAD, DOUBLE BAY</b>
<b>Author:</b>	Anne White, Manager - Strategic Planning
<b>Approvers:</b>	Scott Pedder, Director - Planning & Place Craig Swift-McNair, General Manager
<b>File No:</b>	21/146746
<b>Reason for Report:</b>	To report the decision of the rezoning review for 252-254 New South Head Road, Double Bay (RR-2021-69). To recommend that Council takes on the role as Planning Proposal Authority.

### Recommendation:

- A. THAT Council accept the role of Planning Proposal Authority for 252-254 New South Head Road, Double Bay (RR-2021-69) and prepare a planning proposal for the site which seeks to amend the Woollahra Local Environmental Plan 2014 in the following manner:
  - i. Increase the maximum building height standard from 13.5 to 22m.
  - ii. Introduce a secondary height control of reduced level 45.90m Australian Height Datum at the New South Head Road frontage.
  - iii. Increase the maximum floor space ratio from 1.3:1 to 2.6:1.
- B. THAT the applicant prepare, in consultation with Council staff:
  - i. Further site testing to establish if the proposed FSR is appropriate.
  - ii. A site specific development control plan informed by the site testing.
- C. THAT any Planning Agreement proposed by the applicant be prepared in accordance with the adopted Woollahra Voluntary Planning Agreement Policy 2020.
- D. THAT should a gateway determination be received, the Planning Proposal, draft Development Control Plan and any draft Planning Agreement be publicly exhibited.
- E. THAT the applicant pays the relevant planning proposal fees as identified in Council's adopted Fees and Charges for 2021/2022.

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### Background:

On 12 June 2020, a request for a planning proposal was submitted by Antoniades Architects for 252-254 New South Head Road (the subject site), Double Bay. The objective of the request is to amend the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) to increase the development potential of the subject site. The request seeks the following amendments to Woollahra LEP 2014 to:

- Increase the maximum building height from 13.5 metres to 22 metres.
- Introduce a secondary height control of reduced level (RL) 45.90m Australian Height Datum (AHD) at the New South Head Road frontage.
- Increase the maximum floor space ratio (FSR) from 1.3:1 to 2.6:1.

An indicative development concept, which could be constructed in accordance with the proposed standards was submitted with the request. The development concept is for a part seven, part eight storey residential flat building comprising:

- 33 apartments, with a mix of studios (14), 1 bedroom units (13), and 2 bedroom units (6)
- Six car spaces (4 resident and 2 car share), 1 motorcycle space and 38 bicycle spaces.

On 2 November 2020, the Environmental Planning Committee considered a report on this matter (see **Annexure 1**), where Council staff did not support the request for the planning proposal as:

- 1) The proposed maximum building height and FSR standards are excessive and would create a building envelope which has an excessive bulk and scale.
- 2) The requested increase in both the maximum building height and FSR standards are inconsistent with the existing and desired future character of the Double Bay residential precinct.
- 3) The proposed standards would create a building envelope that will adversely impact on the site and its surroundings, particularly with regard to streetscape; landscape character and views.

Subsequent to this, on 23 November 2020 Council resolved the following:

- A. *THAT Council resolves not to support the request for a planning proposal for 252-254 New South Head Road, Double Bay, which seeks to amend the Woollahra Local Environmental Plan 2014 in the following manner:*
  - i. *Increase the maximum building height standard from 13.5 to 22m.*
  - ii. *Introduce a secondary height control of reduced level 45.90m Australian Height Datum at the New South Head Road frontage.*
  - iii. *Increase the maximum floor space ratio (FSR) from 1.3:1 to 2.6:1.*
- B. *THAT Council notify the applicant that it does not support the request for a planning proposal for the following reasons:*
  - i. *The proposed maximum building height and FSR standards are excessive and would create a building envelope which has an excessive bulk and scale.*
  - ii. *The requested increase in both the maximum building height and FSR standards are inconsistent with the existing and desired future character of the Double Bay residential precinct.*
  - iii. *The proposed standards would create a building envelope that will adversely impact on the site and its surroundings, particularly with regard to streetscape; landscape character and views.*
- C. *THAT the applicant is notified that Council does not support the request for a planning proposal in accordance with clause 10A of the Environmental Planning and Assessment Regulation 2000.*

### **Rezoning review:**

Under part 3.32 of the *Environmental Planning and Assessment Act 1979* (the Act), a rezoning review may be requested by an applicant where council:

1. has not supported a request for a planning proposal, or

2. not made a decision within 90 days on a request for a planning proposal, or has not submitted a planning proposal for a gateway determination within a reasonable time after indicating its support.

Once a planning proposal is submitted for a rezoning review it is considered by an independent third party. In relation to matters in Woollahra Council, the *Sydney Eastern City Planning Panel* (the Panel) is responsible for making a recommendation on the merits of a rezoning review. However, the *Department of Planning, Infrastructure & Environment* (the DPIE) makes the final decision on whether each request should be forwarded to the Minister for Planning for a gateway determination.

This decision is informed by material submitted by the proponent, any relevant submissions (e.g. from Council), as well as independent advice from the Panel on the strategic/site specific merit of the proposal.

On 23 December 2020 a rezoning review (RR-2021-69) was lodged with DPIE for the subject site. On 22 July 2021 the Panel considered the review and determined that the request for a planning proposal should be submitted for a gateway determination because the proposal has demonstrated strategic and site specific merit. The decision of the Panel is attached at **Annexure 2**. The Panel provided the following reasons for their decision:

- *The Panel notes that whilst the subject site is not contained within either the Double Bay or Edgecliff strategic planning work that has or is being undertaken by Council, it is noted that this work has either not been adopted by Council or has not been completed after many years of consideration. However, the site does adjoin the study area of the Draft Edgecliff Commercial Centre Planning and Urban Design Strategy on public exhibition until 3rd September 2021.*
- *The Panel considers the site to be well located for increased residential density due to its proximity to the Edgecliff train station and bus interchange.*
- *The Panel notes the applicant's site is adjacent and, in many respects relates to the Edgecliff Centre. However, at the same time the Panel is cognisant of the fact that the site is in proximity to a lower density zone and regard must be given to the topography to ensure that this residential zone is not overwhelmed.*
- *The Panel is also aware that the development at 240-246 New South Head Road has been the subject of a site specific Planning Proposal which increased height and FSR.*
- *In respect of site specific issues, the proposed height and site specific clause allows for a transition from 240-246 New South Head Road to 256 New South Head Road and the proposed yields are not inconsistent with the existing built form in the area.*
- *The Panel notes the briefing report refers to the applicant's willingness to initiate discussions with Council regarding a VPA which would provide public benefit and the Panel encourages the applicant to finalise such discussions so that any draft VPA can be placed on exhibition with the draft Planning Proposal.*
- *Whilst the proposal has both strategic and site specific merit the Panel recommends to the delegate that in granting any Gateway determination a site specific DCP be prepared to address the unique constraints of this site, particularly to ensure that privacy (including aural privacy), overshadowing and view-sharing are addressed and that the DCP be exhibited at the same time as the Planning Proposal. The Panel further recommends that the DCP include the following matters:*
  1. *That due to the location immediately adjacent to the Edgecliff train Station and bus interchange that carparking on the site be minimised or deleted and that servicing only be provided.*

2. *The residential mix (noting that concept plans accompanying the Planning Proposal comprise 80% studio flat and one bedroom units) and provision of more affordable housing, which will meet a demand in the LGA and be appropriate given the convenience of a transport orientated location.*
  3. *The deep soil area to maintain the Jacaranda tree is to be shown on the DCP.*
  4. *A building envelope that establishes appropriate height and setbacks to maintain amenity to adjoining residential properties and deep soil planting.*
- *The Panel also recommends to the delegate that the proponent should undertake further testing to ensure the proposed FSR can be contained in the proposed height limit whilst satisfying the other built form and amenity outcomes, deep soil planting and tree canopy that would be required.*

### **Planning Proposal Authority:**

As the Panel supported the request for a planning proposal to progress to a gateway determination, Woollahra Council has been invited to be the *Planning Proposal Authority* (PPA) for this proposal.

Should Council take on the role as PPA, Council staff will be required to prepare a planning proposal under section 3.33 of the Act and submit this for a gateway determination within 42 days after accepting this role. Should a gateway determination be issued, Council will also become responsible for the community consultation, and assessment of submissions.

We are required to notify the Planning Panels Secretariat by 7 September 2021 identifying whether we will take on the role as PPA.

### **Additional documentation:**

It is noted that the Panel's decision requires the preparation of additional documentation which should be exhibited concurrently with the planning proposal. These are:

1. Further site testing to ensure the proposed FSR can be contained in the proposed height limit whilst satisfying the other built form and amenity outcomes, deep soil planting and tree canopy that would be required.
2. A site specific development control plan (DCP) to address car parking, residential unit mix, deep soil area and building envelopes which is informed by the site testing.

These documents should be prepared by the applicant, in consultation with Council staff.

We also note that the Panel decision encourages the applicant to finalise discussions regarding a draft voluntary planning agreement. The *Woollahra Voluntary Planning Agreement Policy 2020* (VPA Policy) was adopted by Council on 10 February 2020. Under this policy, Council may consider entering into a planning agreement where there will be an opportunity or likely requirement for a development contribution, including requests for planning proposals seeking a change to Woollahra LEP 2014 to facilitate the carrying out of development.

If approved, the proposed increase in Height of Buildings and FSR standards will substantially increase the development potential of the site and hence its land value. With this in mind, Council strongly supports the negotiation of a planning agreement prepared in accordance with the VPA Policy, to share in this value uplift for the community's benefit.

### **Staff recommendation:**

Council staff recommend that we notify the Planning Panels Secretariat that Council will take on the role as PPA for the following reasons:

- We will be responsible for overseeing the entire planning proposal process.
- The planning proposal will be prepared consistent with our standard template.
- We would have a greater control and involvement in the preparation of the additional site testing and the site specific DCP.
- We can ensure best practice community consultation in terms of notification and availability of material.
- We will have the opportunity to consider submissions received and recommend amendments.

Should Council not take on the role as PPA, the Panel will be appointed to prepare the planning proposal and manage the community consultation. The Panel would then be responsible for overseeing the additional site testing and the site specific DCP. This is not an appropriate outcome. Council staff are best placed to prepare these local and site specific documents.

Should Council accept the role of PPA, there is the potential for conflict and difficulties in the decision making process, particularly as Council has a pre-determined position on this site. Acting in the capacity of the PPA may also raise issues of objectivity and transparency (from the applicants perspective), as well as community misconception about Council's position with respect to these matters. However overall, Council staff recommend that the benefits of having the responsibility for overseeing the planning proposal and the detailed site specific documents outweighs these concerns.

### **Next steps:**

Subject to Council's decision, a planning proposal will be referred to the DPIE for a gateway determination. This will allow the planning proposal to be placed on public exhibition. Council staff will also commence discussions with the applicant on the preparation of the additional documentation, and the payment of fees as currently identified in Councils adopted Fees and Charges for 2021/2022.

The public exhibition of the planning proposal (and additional documentation) will be undertaken in accordance with the requirements of the Act, *the Environmental Planning and Assessment Regulation 2000* and the gateway determination issued by the Department as delegate for the Minister.

The gateway determination will specify the minimum duration of the public exhibition period. This period is usually a minimum of 28 days, which is consistent with Council's standard practice.

Public notification of the exhibition will comprise:

- A notice to the land owner of the site.
- A notice on Council's website.
- A notice to land owners adjoining and in the vicinity of the site.
- A weekly notice in the Wentworth Courier for the duration of the exhibition period (if a hardcopy is being published).
- A letter to local community groups.

After public exhibition, the submissions received will be reported to Council with a recommendation that the planning proposal and draft DCP should proceed, proceed with amendments or not proceed.

To streamline the plan-making process, the Minister can delegate some plan-making powers to Council for routine matters. However in this case, Council cannot request authorisation to exercise the functions of the Minister to make an LEP under section 3.36 of the Act as this request is the subject of a rezoning review. The Minister (or delegate) will be the approval body.

### **Conclusion:**


On 23 November 2020, Council resolved not to support a request for a planning proposal for 252-254 New South Head Road, Double Bay which is seeking the following changes to the Woollahra LEP 2014:

- Increase the maximum building height from 13.5 metres to 22 metres.
- Introduce a secondary height control of reduced level (RL) 45.90m Australian Height Datum (AHD) at the New South Head Road frontage.
- Increase the maximum FSR from 1.3:1 to 2.6:1.

Subsequent to this, on 22 July 2021 the Panel considered the same application, and determined that the request for a planning proposal should be submitted for a gateway determination because the proposal has strategic and site specific merit.

In order to progress this matter, the Planning Panels Secretariat has invited Council to take on the role of PPA. Council staff recommend that we take on this role to retain control over the exhibition process including the preparation of the site specific documents, ensure that the community consultation is extensive and that any submissions received are fully considered.

### **Annexures**

1. Report to the Environmental Planning Committee of 2 November 2020 (Annexures removed) [↓](#) 
2. Sydney Eastern City Planning Panel Decision of 22 July 2021 [↓](#) 