

Item No: R3 Recommendation to Council
Subject: **252-254 NEW SOUTH HEAD ROAD, DOUBLE BAY - DRAFT DEVELOPMENT CONTROL PLAN**
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File No: 23/19978
Purpose of the Report: To obtain Council's approval to exhibit an amendment to the Woollahra Development Control Plan 2015 to add a site specific Chapter for the property at 252-254 New South Head Road, Double Bay (SP 11702)
Alignment to Delivery Program: Strategy 4.1: Encourage and plan for sustainable, high quality planning and urban design outcomes.

Recommendation:

- A. THAT the report on site-specific provisions in Chapter G Site-Specific Controls of the Woollahra Development Control Plan 2015 be received and noted.
- B. THAT Council resolves to exhibit Draft Woollahra Development Control Plan 2015 (Amendment No.22) as contained at **Attachment 1** of the report to the Environmental Planning Committee of 5 June 2023.

Executive Summary:

The purpose of this report is to obtain Council's approval to exhibit amendments to the *Woollahra Development Control Plan 2015* (Woollahra DCP 2015). The proposed Draft Woollahra Development Control Plan 2015 (Amendment No. 22) (draft DCP) provides objectives and controls for development of the site at 252-254 New South Head Road, Double Bay (the site) known as SP11702.

The site was subject to a planning proposal, which was finalised on 16 December 2022 as the Woollahra Local Environmental Plan 2014 (Amendment No. 30). Amendment No.30 increased the maximum building height and floor space ratio (FSR) permitted on the site, and required a site-specific development control plan (site-specific DCP) to be prepared and in place prior to the issue of any development consent for the site.

In response, staff propose amendments to the Woollahra DCP 2015, Chapter G Site-Specific Controls, as set out in the draft DCP at **Attachment 1**. The draft DCP provisions will support and enhance the amended *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) controls applying to the site and provide clarity on the scale and nature of the built form under those amendments. Staff recommend that Council endorse the draft DCP for public exhibition.

Discussion:

The site

The site is known as 252-254 New South Head Road, Double Bay (SP 11702) (refer to **Figure 1**). The site currently accommodates a four storey building containing eight units, landscaped front and rear setbacks, a large Jacaranda tree in the south-east corner and two mature palm trees.

The site falls 10 metres from the south-western corner to the north-eastern corner. It is zoned R3 Medium Density Residential Zone under the Woollahra LEP 2014, and is within 250 metres of both Edgecliff Station and the Double Bay Centre.



Figure 1: 252-254 New South Head Road (shaded blue) (Source: Nearmap)

Background

Antoniades Architects lodged a planning proposal for the site on 12 June 2020. The request sought to amend the Woollahra LEP 2014 to:

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

The applicant's indicative development concept (provided as supporting information to the planning proposal request) showed a part seven, part eight storey residential flat building comprising 33 apartments and indicates what could be constructed in accordance with the applicant's proposed envelope controls (refer to **Figure 2**).

On 2 November 2020, the Environmental Planning Committee (EPC) considered a report on the planning proposal request and on 26 November 2020, Council resolved not to support the planning proposal.

On Thursday 22 July 2021, the Sydney Eastern City Planning Panel (SECPP) considered the applicant's request for a rezoning review. Contrary to the Council recommendation, the SECPP supported the proposal being submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit. The reasons for this decision are outlined in **Attachment 2**.

On 23 August 2021, Council resolved to accept the role of planning proposal authority, and to be responsible for its submission for a Gateway determination and subsequent stages in the process.

On 18 October 2021, Council staff submitted the planning proposal to the NSW Department of Planning and Environment (DPE) for a Gateway determination.



Figure 2: 252-254 New South Head Road, Double Bay indicative development concept New South Head Road frontage (Source: Antoniades Architects)

On 15 December 2021, the DPE issued a Gateway determination (see **Attachment 3**) which contained a number of conditions, including that the planning proposal should be revised prior to public exhibition to address a number of different factors including the following:

- i. *provide further testing to ensure the proposed floor space ratio (FSR) of 2.6:1 is achievable within the proposed height controls, taking into consideration the Apartment Design Guide including overshadowing of adjoining properties*
- ii. *address and justify the inconsistency with section 9.1 Direction 6.3 Site Specific Provisions v. clarify the street wall height in storeys to New South Head Road and ensure consistency between architectural drawings and images*
- iii. *include a table that clarifies the extent of overshadowing impacts to individual units in the adjoining residential properties*

The Gateway determination also contained a condition stating that a Draft DCP should be prepared for the site. This condition is as follows:

The planning proposal is to contain a provision that a site-specific development control plan (DCP) is to be prepared and in place prior to the issuing of any development consent for the site. The DCP should address matters including, but not limited to:

- i. *built form and articulations, including the building's interface with adjoining developments and presentation to New South Head Road*
- ii. *provision of deep soil zones to support tree canopy and screen planting*
- iii. *apartment mix*
- iv. *environmental impacts such as overshadowing, visual and acoustic privacy and view-sharing.*

As part of the planning proposal package, the applicant lodged additional information in response to the conditions of the Gateway determination, which included additional information and a draft and indicative site-specific DCP. This DCP was preliminary in nature, not endorsed by Council, but did form part of the public exhibition of the planning proposal. This version is available at the following link:

https://yoursay.woollahra.nsw.gov.au/download_file/1295/822

The planning proposal (and supporting information) was placed on exhibition from 13 April 2022 to 27 May 2022, and the full package of exhibition information is available at the following link:

<https://yoursay.woollahra.nsw.gov.au/planning-proposal-for-252-254-new-south-head-road-double-bay>

In response to the public exhibition, we received 27 submissions, including two from government agencies. The majority of public submissions raised concerns with the proposal, with two being in support.

The concerns raised in the submissions are summarised below. Whilst these submissions were made to the exhibition of the planning proposal, they have been used to help inform the Draft DCP:

- Overdevelopment of the site: proposed height and FSR are excessive
- Scale and bulk will adversely impact the amenity of adjoining residential properties including:
 - View loss
 - Overshadowing to adjoining properties
 - Loss of privacy
- Inadequate building separation between the concept building and neighbouring buildings to facilitate airflow and ventilation between. Particularly the building at 250 New South Head Road, Double Bay.
- Proposal is not consistent with draft planning strategies
- Development will be inconsistent with the character of the area and detract from the village-like ambience
- Proposed building height does not fall with the natural topography from Edgecliff to Double Bay
- Traffic and parking concerns include:
 - Site entrance is dangerous for vehicles leaving or entering
 - Lack of parking
 - Traffic and parking congestion
- Cabbage tree palms need to be protected and remain in place.

In July 2022, Council staff engaged urban design consultancy Studio GL to conduct an independent urban design assessment of the applicant's supplementary information which was provided in response to the Gateway determination conditions. The Studio GL assessment concluded that the information '*does not sufficiently address the Gateway determination requests that relate to urban design*' (p 11). The following is a summary of the information reviewed and the associated conclusions.

1. Condition: Assurance the proposed FSR of 2.6:1 is achievable within the proposed height, taking into consideration the Apartment Design Guide – the assessment found that

Response: The FSR achieved by the indicative scheme relies on non-compliances with the ADG and creates negative environmental impacts on neighbouring properties.

2. Condition: Clarification of the street wall height in storeys to New South Head Road – the assessment found that the *applicant has stated that,*

Response: The street wall height in storeys to New South Head Road is maximum five (5) storey'. It is assumed the final design will be five storeys.

3. Condition: A table that clarifies the extent of overshadowing impacts to individual units in the adjoining residential properties.

Response: The assessment found that there is insufficient information to assess the overshadowing of neighboring properties. To assess overshadowing impacts, diagrams need to be produced that illustrate the situation during winter solstice (21 June) at a minimum of hourly intervals showing overshadowing of existing adjacent properties with elevation shadows if shadow is likely to fall on neighbouring windows. Elevation shadow diagrams, especially for 240 NSH Road, are required.

4. Condition: The planning proposal is to contain a provision that a site-specific DCP is to be prepared and in place prior to the issuing of any development consent for the site

Response: The assessment found that the applicant's indicative DCP:

- *Is not detailed and does not explain how development is likely to be suitable for the site's unique location and site conditions (p6)*
- *Unnecessarily replicates and references other controls that would already be applicable to the site (p6)*
- *Does not address the provision of deep soil zones to support canopy and screen planting and what is required to ensure the long-term health of the Jacaranda tree on the site (p11)*
- *Does not clearly identify the desired future character of the built form (specifically lacking dimensioned plans and sections through all key interfaces with neighbouring sites) (p6).*

On 5 September 2022, the EPC considered a post exhibition report on the planning proposal and urban design review (see **Attachment 4**) and on 27 September 2022 Council resolved:

- A. *THAT Council notes the matters raised during the public exhibition of the planning proposal for 252-254 New South Head Road, Double Bay.*
- B. *THAT Council forwards the submissions and exhibition report on the planning proposal for 252-254 New South Head Road, Double Bay to the Department of Planning and Environment, with a request that the Minister (or delegate) determine that the matter does not proceed under section 3.35(4) of the Environmental Planning and Assessment Act 1979, for the following reasons:*
- i. *The proponent has failed to demonstrate that the site can reasonably accommodate the proposed building height and FSR, and has not satisfactorily addressed the urban design issues raised in Gateway determination conditions.*
 - ii. *The proposed maximum building height and FSR standards are excessive and would create a building envelope which has an excessive bulk and scale.*
 - iii. *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.*
 - iv. *The proposal is not in the public interest.*
 - v. *The proposed building height and FSR standards are not achievable for the site and would create a building envelope that has excessive building depth, inadequate boundary setbacks, and inadequate building separation. This will result in:*
 - a. *Unacceptable amenity for future residents on the site arising from deep floor plates, lack of cross ventilation, and inadequate solar access to dwellings*
 - b. *Unreasonable amenity impacts to existing residential properties that adjoin the site; particularly in relation to a loss of privacy, view loss and overshadowing.*
 - vi. *The draft site-specific development control plan does not satisfactorily address the conditions in the Gateway determination. In particular, it does not:*
 - a. *Establish the site-specific controls to address built form and articulation, including the building's interface and separation distances with adjoining development and the building's presentation and street wall height to New South Head Road*
 - b. *Adequately address environmental impacts such as overshadowing, solar access, ventilation, visual impacts, acoustic privacy and view-sharing.*

- C. *THAT Council requests the following amendments to the planning proposal, should the Minister (or delegate) decide to make the local environmental plan:*
- i. *Reduce the maximum building height and FSR.*
 - ii. *Amend the secondary height control at the New South Head Road frontage to apply a street wall height of no more than 13.5m at any point (which equates to four storeys). The secondary height control is to be expressed in metres.*
- D. *THAT should the Minister (or delegate) determine to make the local environmental plan, that staff prepare a site specific development control plan for 252-254 New South Head Road, Double Bay that will be reported to a future meeting of Council.*

The DPE considered Council's reasons for the requested changes to the planning proposal. However, based on their internal design advice and the applicant's response to the submissions, the DPE concluded that the concerns raised could be addressed by a site specific DCP at the development assessment stage. The DPE finalisation (see **Attachment 5**) report concluded:

- *There is insufficient justification for a reduction to the overall height and FSR controls.*
- *Reduction to the secondary height control at the NSH Road frontage to 13.5m (approximately 4 storeys) is not warranted due to the existing streetscape pattern.*
- *The Department does not support Council's request to reduce the proposed maximum building heights and FSR.*
- *All matters identified in the Gateway determination have been satisfactorily resolved.*

The planning proposal was finalised and the Woollahra LEP 2014 was amended on 16 December 2022, without change, despite Council having expressed concerns about the potential bulk and scale being inappropriate for the site, and consequential amenity and character impacts. The finalisation introduced clause 4.3C that allows an exception to the applicable height of buildings control and provides a secondary height control of RL49.5 as follows:

4.3C Exceptions to building heights (Area K-252-254 New South Head Road, Double Bay)

- (1) *The objectives of this clause are as follows—*
 - (a) *to ensure new development is consistent with the desired future character of the neighbourhood, surrounding buildings and the streetscape,*
 - (b) *to protect the visual privacy and amenity of nearby residences,*
 - (c) *to protect views and vistas that are in the public domain.*
- (2) *This clause applies to land identified as "Area K" on the Height of Buildings Map.*
- (3) *Despite clause 4.3, the height of a building on land to which this clause applies must not be more than RL 45.90m if the building is within 11m of—*
 - (a) *the southern boundary of the land, adjoining the driveway of SP 4585, 248–250 New South Head Road, or*
 - (b) *the south-eastern boundary of the land, adjoining New South Head Road.*

New clause 6.8 requires a DCP to be prepared before any development consent is granted on the site, as follows:

6.8 Development of land at 252–254 New South Head Road, Double Bay

- (1) *This clause applies to SP 11702, 252–254 New South Head Road, Double Bay.*
- (2) *Development consent must not be granted for development on land to which this clause applies unless a development control plan has been prepared for the land that provides for the following—*
 - (a) *built form and building facade articulation controls to—*
 - (i) *ensure the scale of development is compatible with adjoining development, and*
 - (ii) *enhance the streetscape of New South Head Road,*
 - (b) *setbacks,*
 - (c) *height of buildings in storeys,*

- (d) *vehicular access to and from New South Head Road,*
- (e) *a mix of apartment types, including the number of bedrooms in each apartment,*
- (f) *deep soil zones to support tree canopies and the planting of vegetation screens,*
- (g) *management of environmental impacts, including overshadowing and visual and acoustic privacy*
- (h) *view sharing.*

Draft DCP

The draft DCP (**Attachment 1**) contains provisions specific to the site, which are needed as a result of the amendments to the Woollahra LEP 2014. The draft DCP provisions will support and enhance the amended Woollahra LEP 2014 controls applying to the site and provide clarity on the scale and nature of the built form under those amendments.

The draft DCP is a more robust version of the indicative DCP the applicant submitted on 7 March 2022. It is more consistent with the existing provisions of the Woollahra LEP 2014 and Woollahra DCP 2015, and will be a more suitable means of guiding future development on the site.

The draft DCP aims to address matters identified in the submissions (in particular those related to amenity impacts and character). The matters raised by the SECPP, the Studio GL review and the issues raised in the DPE finalisation report have also informed the draft DCP.

The draft DCP is intended to include Chapter 8 in Part G: Site Specific Controls that would contain controls applying only to the site, and supplement the general residential controls in Part B3 of the Woollahra DCP 2014.

The draft DCP includes provisions on all the matters specified in clause 6.8 of the Woollahra LEP 2014, as summarised following:

- Desired future character – that incorporates aspects of the indicative development concept and includes detail on how the development can be improved to fit within its context
- Built form and building facade articulation controls – including height in storeys, height variations and transitions, and setbacks, and façade design
- Vehicular access – incorporating Transport for NSW feedback aimed at safe vehicular access given the proximity of the New South Head Road/Ocean Avenue intersection
- Apartment mix – specifying a percentage range for the provision of studio, one bed, two bed and three bed apartments
- Landscaped area and communal open space – specifying minimum areas required
- Deep soil zones – specifying minimum provision and measures regarding the continuing health of trees on the site
- Environmental impacts, including overshadowing, visual and acoustic privacy, and view sharing in relation to the site and surrounding residential properties
- Car parking – indicating reduced car parking rates are acceptable and that a car share scheme on site is required to compensate for the reduced car parking provision on site.

Options:

As a consequence of this report Council may resolve to do one of the following:

1. Endorse for public exhibition the Draft Woollahra DCP 2015 (Amendment No 22) as at **Attachment 1**.
2. Request staff to amend the Draft Woollahra DCP 2015 (Amendment No 22) at **Attachment 1** before it is placed on public exhibition.
3. Not make any changes to the Woollahra DCP 2015. Staff do not recommend this option as it would be inconsistent with Woollahra LEP 2014 *clause 6.8 Development of land at 252–254 New South Head Road, Double Bay*, which states that “development consent must not be granted for development on land to which this clause applies unless a development control plan has been prepared for the land” (cl 6.8(2)).

If Council supports the proposed amendments to the Woollahra DCP 2015, the next step is to exhibit the draft DCP. The process for amending a development control plan is set out in the *Environmental Planning and Assessment Act 1979*, the *Environmental Planning and Assessment Regulation 2021*, and the *Woollahra Community Participation Plan 2019*.

Community Engagement and / or Internal Consultation:

This document has been drafted in consultation with staff from Council's Development Assessment team. If supported, the draft DCP must be publicly exhibited for a minimum of 28 days.

The exhibition would include the following:

- Notices in the Wentworth Courier newspaper;
- A page on Council's Your Say Woollahra webpage;
- Notification letters/emails sent to the following government agencies and community groups:
 - Transport for NSW; and
 - Double Bay Residents Association.
- Referral to the owner and applicant team for comment.
- Notifications to surrounding properties

The outcome of the public exhibition of the draft DCP will be reported to a future meeting of Council.

Policy Implications:

Should Council resolve to progress the draft DCP, there will be policy implications as Woollahra DCP 2015 will be amended.

Financial Implications:

Should Council resolve to progress the draft DCP, there will be financial implications to facilitate the public exhibition.

Resourcing Implications:

Should Council resolve to progress the draft DCP, staff resources will be associated with managing the public exhibition and preparing a post-exhibition report to a meeting of Council.

Conclusion:

Council staff have prepared a draft DCP in response to the making of the Woollahra Local Environmental Plan 2015 (Amendment No.30), in relation to 252-254 New South Head Road, Double Bay. The draft DCP provides more detailed guidance to help ensure that development on the site suitably responds to issues concerning residential amenity and local character.

Staff recommend that Council resolve to exhibit the draft DCP contained in **Attachment 1**.

Attachments

1. 252-254 New South Head Road, Double Bay - Draft DCP (Amendment 22)
2. Sydney Eastern City Planning Panel Record of Decision - July 2021
3. Gateway Determination - 15 December 2021
4. Post exhibition report to EPC - 5 September 2022 (attachments removed)
5. Plan finalisation report from DPE - December 2022



Part G ► Site-Specific Controls

WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015
(Amendment 22)

Chapter G8

252-254 New South Head Road, Double Bay

Part G ► Site-Specific Controls

CHAPTER G8 APPROVED ON XXXXX

AND COMMENCED ON XXXXX

Chapter G8 ► 252-254 New South Head Road, Double Bay

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G8.1 Introduction

G8.1.1 Background

Land at 252-254 New South Head Road, Double Bay, is zoned R3 Medium Density Residential under the Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014). The site is approximately 100m from the Edgecliff Commercial Centre and about 200m from the Double Bay Centre. The site is immediately surrounded by residential flat buildings of heights varying between three to seven storeys. A visually prominent Jacaranda tree is located on the south-east corner of the site adjacent to the New South Head Road frontage.

The site was subject to a planning proposal that increased the height of buildings standard to 22m and the floor space ratio standard to 2.6:1. Woollahra Local Environmental Plan 2014 (Amendment No. 30) also introduced Clause 4.3C that allows an exception to the height of buildings standard and provides a secondary height of buildings standard of RL45.90m. Clause 6.8 also requires a site-specific DCP to be prepared before any consent is granted on the site.

A secondary height of buildings standard of not more than RL 45.90m applies if the building is within 11m of –

- (a) The southern boundary of the land, adjoining the driveway of SP 4585, 248-250 New South Head Road, or
- (b) The south-eastern boundary of the land, adjoining New South Head Road.

This chapter includes additional provisions to address adverse environmental and other amenity impacts that could result from development benefitting from the greater height and floor space permitted.

G8.1.2 Land where this chapter applies

This site specific chapter applies to the land identified on the map at Figure 1 (the site). The land comprises 252-254 New South Head Road, being legally described as SP 11702.

FIGURE 1 The site



G8.1.3 Development to which this chapter applies

This chapter applies to development requiring consent under the Woollahra Local Environmental Plan 2014.

G8.1.4 Objectives

The objectives of this chapter are to ensure that development on the site:

- O1 Reflects the desired future character for the site and its neighbourhood.
- O2 Has a scale, bulk and design that is compatible with nearby development and the streetscape, particularly in terms of the number of storeys and distribution of height.
- O3 Promotes environmental amenity on the site and surrounding properties
- O4 Does not unreasonably compromise the amenity of nearby residences having particular regard to overshadowing, visual and acoustic privacy, and view sharing.
- O5 Minimises traffic and parking impacts on New South Head Road and surrounding streets.
- O6 Provides a diversity of dwelling sizes.
- O7 Supports the retention of tree canopy and the planting of vegetation screening.

G8.1.5 Relationship to other parts of the DCP

This chapter is to be read in conjunction with other relevant parts of the DCP, including:

- ▶ Part B: Chapter B1.1.3 Double Bay Precinct;
- ▶ Part B: Chapter B3 General Development Controls; and
- ▶ Part E: General Controls for All Development - this part contains chapters on Parking and Access, Stormwater and Flood Risk Management, Tree Management, Contaminated Land, Waste Management, Sustainability, Signage and Adaptable Housing.

In the event of any inconsistency between this site specific chapter and the other chapters, this chapter prevails.

G8.2 Development Controls

G8.2.1 Desired future character

Objectives

- O1 To facilitate a built form that is consistent with the desired future character of the site and surrounding area.

Controls

- C1 Development on the site must align with the following:
- A building of no more than eight storeys;
 - A street wall height that is part four/part five storeys at the New South Head frontage;
 - Compatibility with the streetscape, in terms of height transition and tree canopy coverage;
 - A diverse range of apartment sizes;
 - Articulated facades that contribute to the visual interest of the building and the character of the local area;
 - A pedestrian entry **from** the New South Head Road frontage; and
 - No more than one vehicle crossover off New South Head Road.

Note: The desired future character for the Double Bay residential neighbourhood is described in Chapter B1.1.3 of the Woollahra DCP 2014.

G8.2.2 Built form and façade articulation

Objectives

- O1 To ensure the built form is compatible in height, bulk and design with the site, adjoining development and the streetscape.
- O2 To encourage variation in building height and setbacks to reduce the apparent bulk of any building.
- O3 To ensure a transition downwards in building height as the landform slopes from Ocean Avenue towards Double Bay.
- O4 To ensure built form has an address to the street, provides activation and surveillance, and enhances pedestrian safety.

Controls

- C1 Any building on the site must be no higher than eight storeys at its maximum, and no more than five storeys above the level of the New South Head Road frontage (refer to Figure 2).
- C2 Notwithstanding C1, the building height on the New South Head Road elevation must be varied so that it presents a maximum of four storeys adjacent to 256 New South Head Road.
- C3 The building height must be articulated across the development to break down visual bulk and respond to site topography.
- C4 Any building must be setback from site boundaries by the minimum amount shown in Figures 3A and 3B.

Note: Storey is defined in the Woollahra DCP 2015 as below:

storey means a space within a building that is situated between one floor level and the floor level next above, or if there is no floor above, the ceiling or roof above, but does not include—

- (a) a space that contains only a lift shaft, stairway or meter room, or*
- (b) a mezzanine, or*
- (c) an attic.*

Additionally, the total number of storeys is to be measured using a section view across the site (i.e. not the number visible from a given frontage like New South Head Road).

FIGURE 2 Secondary height control area (Clause 4.3C of the Woollahra LEP 2014)

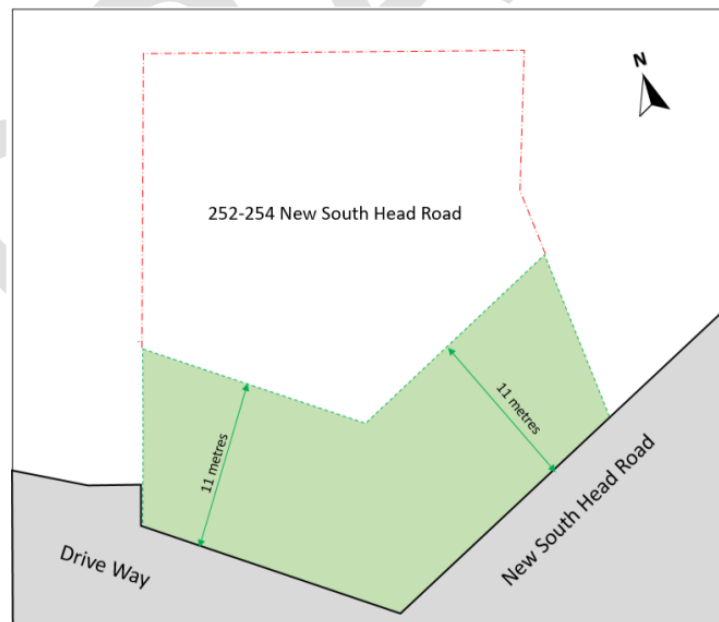


FIGURE 3A Minimum setbacks - storeys ground to four

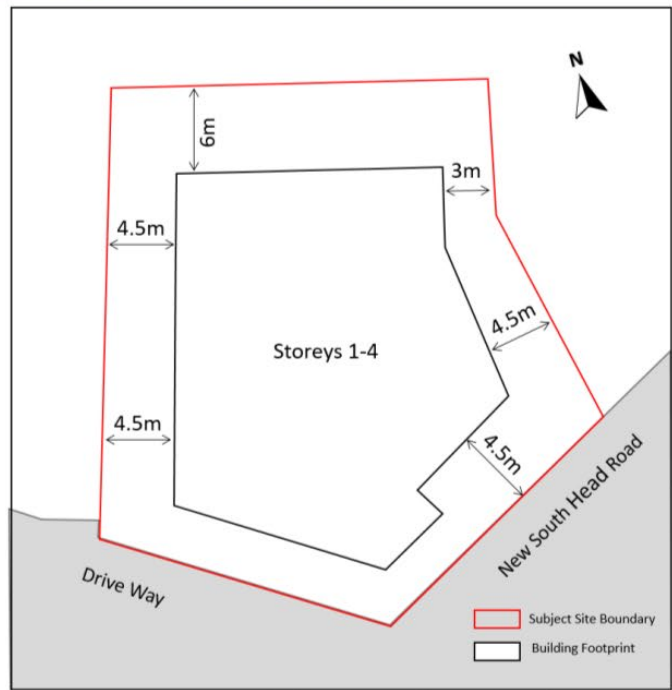
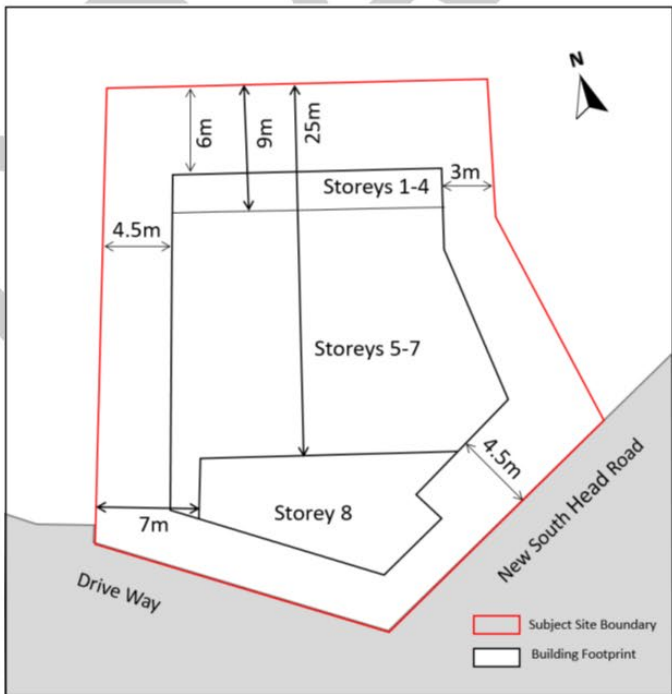


FIGURE 3B Minimum setbacks - storeys five to eight



G8.2.3 Environmental impacts

Objectives

- 01 To protect the amenity of nearby dwellings, having particular regard to visual and acoustic privacy.
- 02 To minimise overshadowing resulting from development on the site.
- 03 To minimise wind impacts on pedestrians in the public domain and occupants of the site and surrounding properties.

Controls

- C1 Balconies, terraces and windows of habitable rooms must not face the side setbacks or towards the driveway of 248 - 250 New South Head Road.
- C2 Balconies, terraces and windows of habitable rooms must be located only on north elevations or the elevation facing New South Head Road, and are to have solid screening walls for the full height and width.
- C3 An Environmental Wind Assessment must be provided to demonstrate acceptable pedestrian level wind conditions on and around the site. The assessment is to be prepared by a suitably qualified wind engineer, and include modelling of the detailed design and appropriate ameliorations for negative effects from impacts such as high pressure on entry doors and potential for internal flow issues, high winds on roof terraces and balconies, Helmholtz resonance, and local wind conditions for stationary activities.
- C4 Any development must minimise overshadowing to habitable rooms and private open space serving dwellings on the site and in surrounding properties, consistent with requirements of the Apartment Design Guide.
- C5 Any building must be designed to reasonably preserve view sharing corridors, consistent with the principles in Tenacity Consulting v Warringah Council [2004] NSWLEC 140.

G8.2.4 Apartment mix

Objectives

- 01 To encourage a range of dwelling sizes within residential development on the site.
- 02 To provide a mix of dwellings to cater for the needs of the existing and future resident population, and to encourage a diverse population.

Controls

- C1 Any development on the site is to achieve the apartment mix outlined in Table 1:

Table 1 Apartment Mix

Apartment Type	Maximum
Studio	20%
1 Bed	30%
2 Bed	50%
3 Bed or more	10%

Note: The above maximums may be varied on a merit basis if affordable housing is being provided on the site.

G8.2.5 Deep soil landscaped area

Objectives

- O1 To provide deep soil landscaped area to support existing trees and substantial new plantings, enhance residential amenity, provide communal open space and reinforce streetscape character.
- O2 To ensure the long-term health of the existing Jacaranda tree and existing palms.
- O3 To enable screen planting for visual privacy along the side and rear boundaries.

Controls

- C1 A minimum of 25% of the site area must comprise deep soil landscaping, with minimum dimensions of 3m in any direction and no overhang from any building.
- C2 The existing Jacaranda tree adjoining the south-east boundary with New South Head Road must be retained and protected in accordance with AS4970 'Protection of trees on development sites', with adequate deep soil to ensure its long term health.
- C3 Screen planting must be provided along the full extent of the rear boundary, and where possible along the side boundaries.
- C4 Any proposed works must be located outside of the drip line of trees on adjoining properties, which are to be protected in accordance with AS4970 'Protection of trees on development sites'.
- C5 An Arboricultural Impact Assessment must be provided with any development application. It must be prepared by a qualified Level 5 Consulting Arborist and in line with AS4970 'Protection of trees on development sites', Woollahra Municipal Council DA guide and industry best practice. The assessment must clearly indicate trees to be retained and to be removed, and include recommendations and methodologies to mitigate any impact on trees to be retained and a Tree Protection Plan and Specification.

G8.2.6 Vehicular access

Objectives

- O1 To address potential road safety issues that could occur due to landform and proximity of the main intersection at Ocean Avenue.
- O2 To ensure safe vehicular access and minimise potential conflict with eastbound traffic on New South Head Road.

Controls

- C1 Any vehicular traffic must move using a left in/left out (LILO) motion only.
- C2 Driveway design must ensure access/egress to and from the site uses the kerbside lane only, with no encroachment into the second lane from the kerb.
- C3 A Traffic and Parking Report is to be provided with any application to redevelop the site. It must provide sufficient detail to justify any new vehicular crossover to New South Head Road, and in doing so must demonstrate that other options have been explored. It also must address the safety risk concerning the site's proximity to the crest of New South Head Road at Ocean Avenue.

G8.2.7 Car parking

Objectives

- O1 To minimise car parking due to site constraints and its location close to public transport.

Controls

- C1 A minimum of six car parking spaces must be provided on the site, with two of these being dedicated car share spaces.
- C2 Prior to lodging a development application, the applicant must negotiate a car share agreement for the dedicated car share spaces. The applicant must include a letter from a commercial car share operator confirming their intention to place the car share vehicles within the development.
- C3 Nominated commercial car share spaces must be placed in publicly accessible locations within the development.

G 8.2. 8 Site facilities

Objectives

- O1 To ensure that essential infrastructure and other site facilities are addressed at the DA stage so that these facilities are accessible and functional, but do not detract from the streetscape character, adversely impact upon the amenity of adjoining residential dwellings, reduce the required deep soil landscaped area at the New South Head Road frontage, or threaten the long term health of the existing Jacaranda tree within the site.
- O2 To ensure any required substation is not visible from the street.

Controls

- C1 A chamber substation must be provided instead of a kiosk substation.
- C2 Any screening or enclosure to conceal the substation is to be visually unobtrusive, particularly having regard to the location, materials/treatment, height and size of the substation and its enclosure.
- C3 The substation should be installed outside of the mature growth root zone of any trees to be retained, or proposed to be planted, to prevent roots tangling and damaging underground cables to the substation.

Notes:

- A kiosk substation is a totally enclosed, free-standing, self-contained substation not designed for bodily entry and which is generally operated from door openings.
- A chamber substation is a chamber which is dry and completely isolated from the remainder of the building with walls, floor, ceiling and doors that meets minimum fire resistance levels. Chamber substations may take the form of surface chamber substations, elevated chamber substations, upper-level chamber substations and basement chamber substations.
- At the DA stage the applicant should demonstrate that they have engaged with Ausgrid and have a network capacity assessment undertaken for their proposed development.
- Where a substation is required, the substation should be identified on the DA plans and addressed in the SEPP 65 Design Verification Statement (also see Apartment Design Guide Objective 3C-2 *Amenity of the public domain is retained and enhanced*).
- The DCP requirements for substations apply in addition to the Ausgrid Network Standards.
- The substation is to be identified on the DA plans. The need to modify an existing consent to install a substation should be avoided, and is an approach not supported by Council. Section 4.55 modification applications for substations will need to demonstrate compliance with the DCP including requirements for setbacks, deep soil landscaped area, and tree retention.
- A dedicated access way/easement through the site to the substation may need to be provided in accordance with the requirements of the energy authority and Council.



Planning
Panels

**REZONING REVIEW
RECORD OF DECISION**
SYDNEY EASTERN CITY PLANNING PANEL

DATE OF DECISION	22 July 2021
PANEL MEMBERS	Jan Murrell (Chair), Susan Budd, Sue Francis, Mary-Lou Jarvis, Toni Zeltzer
APOLOGIES	Carl Scully, Roberta Ryan
DECLARATIONS OF INTEREST	None

REZONING REVIEW

Rezoning Review - RR-2021-69 – Woollahra at 252 – 254 New South Head Road, Double Bay (AS DESCRIBED IN SCHEDULE 1).

Reason for Review:

- ☒ The Council has notified the proponent that the request to prepare a planning proposal has not been supported.
- ☐ The Council has failed to indicate its support 90 days after the proponent submitted a request to prepare a planning proposal or took too long to submit the proposal after indicating its support.

PANEL CONSIDERATION AND DECISION

The Panel considered the material listed at item 4 and the matters raised and/or observed at meetings and site inspections listed at item 5 in Schedule 1.

Based on this review, the Panel determined that the proposed instrument:






- ☒ **should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- ☐ **should not** be submitted for a Gateway determination because the proposal has
 - ☐ not demonstrated strategic merit
 - ☐ has demonstrated strategic merit but not site specific merit

The decision was unanimous.

REASONS FOR THE 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.

PANEL MEMBERS	
 Jan Murrell (Chair)	 Sue Francis
 Susan Budd	 Toni Zeltzer
 Mary-Lou Jarvis	

SCHEDULE 1		
1	PANEL REF – LGA – DEPARTMENT REF - ADDRESS	Rezoning Review - RR-2021-69 – Woollahra at 252 – 254 New South Head Road, Double Bay
2	LEP TO BE AMENDED	Woollahra Local Environmental Plan 2014
3	PROPOSED INSTRUMENT	<p>The Proposal seeks to amend development standards within the Woollahra Local Environmental Plan (LEP) 2014 as it applies to 252-254 New South Head Road, Double Bay to:</p> <ul style="list-style-type: none"> • Increase the maximum permissible floor space ratio (FSR) from 1.3:1 to 2.6:1; • Increase the maximum permissible building height from 13.5 metres to 22 metres; and • Introduce a secondary height control of reduced level (RL) 45.90 Australian Height Datum (AHD) to a portion of the site at the New South Head Road frontage. The proponent has presented two options to implement this control: <ul style="list-style-type: none"> o Option A: RL 45.90 AHD within an area 11m perpendicular to both the southern and south-eastern boundaries (Figure 1); or o Option B: RL 45.90 AHD within an area south of a line 5m from the southern and south-eastern boundaries, running across the site (Figure 2). <p>If approved, the concept plans envisage a part 7-storey, part 8-storey residential flat building, with a part 5-storey, part 6-storey street wall height at the New South Head Road frontage, due to the proposed secondary height control.</p> <p>The proponent has indicated they are willing to initiate discussions with Council regarding a potential voluntary planning agreement (VPA) for the planning proposal.</p>
4	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Rezoning review request documentation • Briefing report from Department of Planning, Industry and Environment
5	BRIEFINGS AND SITE INSPECTIONS BY THE PANELS	<ul style="list-style-type: none"> • Site inspection: Panel members visited the site independently, prior to 22 July 2021. • Briefing with Department of Planning, Industry and Environment (DPIE), Council and Proponent: 22 July 2021 <ul style="list-style-type: none"> o Panel members in attendance: Jan Murrell (Chair), Susan Budd, Sue Francis, Mary-Lou Jarvis, Toni Zeltzer o DPIE staff in attendance: Simon Ip, Lawren Drummond o Council representatives in attendance: Neda Vandchali, Anne White o Proponent representatives in attendance: George Karavanas, Elina Braunstein, Yvette Middleton, Mitchell Corn, Andreas Antoniadis, Hpone Thaug



Gateway Determination

Planning proposal (Department Ref: PP-2021-6330): to increase the floor space ratio and maximum building height controls, and introduce a secondary height control for land at 252-254 New South Head Road, Double Bay

I, the Director, Eastern and South Districts at the Department of Planning, Industry and Environment, as delegate of the Minister for Planning and Public Spaces, have determined under section 3.34(2) of the *Environmental Planning and Assessment Act 1979* (the Act) that an amendment to the Woollahra Local Environmental Plan (LEP) 2014 to increase the floor space ratio and maximum building height controls, and introduce a secondary height control for land at 252-254 New South Head Road, Double Bay should proceed subject to the following conditions:

1. The planning proposal (including attachments) is to be revised prior to public exhibition to address the matters set out below:
 - i. provide further testing to ensure the proposed floor space ratio (FSR) of 2.6:1 is achievable within the proposed height controls, taking into consideration the Apartment Design Guide including overshadowing of adjoining properties
 - ii. address the draft Woollahra Local Housing Strategy
 - iii. address Planning Priorities E1, E6, E10, E16 and E17 of the Eastern City District Plan
 - iv. address and justify the inconsistency with section 9.1 Direction 6.3 Site Specific Provisions
 - v. clarify the street wall height in storeys to New South Head Road and ensure consistency between architectural drawings and images
 - vi. include an advisory upfront in section 5 'Explanation of provisions' that draft amendments to clauses are indicative only and will be subject to drafting by Parliamentary Counsel should the planning proposal progress to finalisation
 - vii. include a table that clarifies the extent of overshadowing impacts to individual units in the adjoining residential properties
 - viii. update the existing and proposed maps in section 7 'Mapping' to ensure legibility and clarity
 - ix. correct the statement in section 9 'Project timeline' as Council has not been authorised as the local plan-making authority to exercise the functions under section 3.36 of the Act.
2. The planning proposal is to contain a provision that a site-specific development control plan (DCP) is to be prepared and in place prior to the issuing of any development consent for the site. The DCP should address matters including, but not limited to:
 - i. built form and articulations, including the building's interface with adjoining developments and presentation to New South Head Road
 - ii. provision of deep soil zones to support tree canopy and screen planting

- iii. apartment mix
 - iv. environmental impacts such as overshadowing, visual and acoustic privacy and view-sharing.
3. Public exhibition is required under section 3.34(2)(c) and schedule 1 clause 4 of the Act as follows:
- (a) the planning proposal must be made publicly available for a minimum of **28 days**; and
 - (b) the planning proposal authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 6.5.2 of *A guide to preparing local environmental plans* (Department of Planning and Environment, 2018).
4. Consultation is required with the following public authorities/organisations under section 3.34(2)(d) of the Act and/or to comply with the requirements of relevant section 9.1 Directions:
- Ausgrid;
 - Sydney Water; and
 - Transport for NSW
- Each public authority/organisation is to be provided with a copy of the planning proposal and any relevant supporting material and given at least 21 days to comment on the proposal.
5. A public hearing is not required to be held into the matter by any person or body under section 3.34(2)(e) of the Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. Given the nature of the planning proposal, Council is not authorised to be the local plan-making authority to make this plan.
7. The planning proposal must be placed on exhibition no later than 4 months from the date of the Gateway determination.
8. The planning proposal must be reported to council for a final recommendation no later than 6 months from the date of the Gateway determination.

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9. The time frame for completing the LEP is to be **8 months** following the date of the Gateway determination.

Dated 15 day of December 2021.



Laura Locke
Director, Eastern and South Districts
Greater Sydney, Place and
Infrastructure
Department of Planning, Industry and
Environment

Delegate of the Minister for Planning
and Public Spaces

PP-2021-6330 (IRF21/4438)

Woollahra Municipal Council
Environmental Planning Committee Agenda

5 September 2022

Item No: R2 Recommendation to Council
Subject: **POST EXHIBITION REPORT - PLANNING PROPOSAL FOR 252-254 NEW SOUTH HEAD ROAD, DOUBLE BAY**
Authors: Fiona Aghili, Strategic Planner
Jacquelyne Della Bosca, Executive Planner
Approvers: Anne White, Manager - Strategic Planning & Place
Scott Pedder, Director - Planning & Place
File No: 22/107962
Purpose of the Report: To report on the public exhibition of the planning proposal for 252-254 New South Head Road, Double Bay.
Alignment to Delivery Program: Strategy 4.1: Encourage and plan for sustainable, high quality planning and urban design outcomes.

Recommendation:

- A. THAT Council notes the matters raised during the public exhibition of the planning proposal for 252-254 New South Head Road, Double Bay.
- B. THAT Council forwards the submissions and exhibition report on the planning proposal for 252-254 New South Head Road, Double Bay to the Department of Planning and Environment, with a request that the Minister (or delegate) determine that the matter does not proceed under section 3.35(4) of the *Environmental Planning and Assessment Act 1979*, for the following reasons:
- i. The proponent has failed to demonstrate that the site can reasonably accommodate the proposed building height and FSR, and has not satisfactorily addressed the urban design issues raised in Gateway determination conditions.
 - ii. The proposed maximum building height and FSR standards are excessive and would create a building envelope which has an excessive bulk and scale.
 - iii. 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.
 - iv. The proposed building height and FSR standards are not achievable for the site and would create a building envelope that has excessive building depth, inadequate boundary setbacks, and inadequate building separation. This will result in:
 - a. Unacceptable amenity for future residents on the site arising from deep floor plates, lack of cross ventilation, and inadequate solar access to dwellings
 - b. Unreasonable amenity impacts to existing residential properties that adjoin the site; particularly in relation to a loss of privacy, view loss and overshadowing.
 - v. The draft site-specific development control plan does not satisfactorily address the conditions in the Gateway determination. In particular, it does not:
 - a. Establish the site-specific controls to address built form and articulation, including the building's interface and separation distances with adjoining development and the building's presentation and street wall height to New South Head Road
 - b. Adequately address environmental impacts such as overshadowing, solar access, ventilation, visual impacts, acoustic privacy and view-sharing.
- C. THAT Council requests the following amendments to the planning proposal, should the Minister (or delegate) decide to make the local environmental plan:
- i. Reduce the maximum building height and FSR.
 - ii. Amend the secondary height control at the New South Head Road frontage to apply a street wall height of no more than 13.5m at any point (which equates to four storeys). The secondary height control is to be expressed in metres.
- D. THAT should the Minister (or delegate) determine to make the local environmental plan, that staff prepare a site specific development control plan for 252-254 New South Head Road, Double Bay that will be reported to a future meeting of Council.

Executive Summary:

The planning proposal seeks to amend the *Woollahra Local Environmental Plan 2014* by increasing the maximum building height from 13.5m to 22m, introducing a secondary height control at the New South Head Road frontage, and increasing the maximum floor space ratio (FSR) from 1.3:1 to 2.6:1. A concept design has been provided with the planning proposal which depicts a part seven, part eight storey residential flat building (RFB) comprising 33 apartments.

When the Department of Planning and Environment (DPE) issued a Gateway determination for the planning proposal, it did so subject to a number of conditions including a requirement that further site testing is to be carried out to ensure the proposed FSR of 2.6:1 is achievable within the proposed height controls, taking into consideration the Apartment Design Guide. The conditions recognised that future redevelopment of the site in accordance with the proposed controls could have a detrimental impacts on the adjoining residential properties. Specifically, the Gateway determination required the proponent to provide supplementary information to demonstrate the suitability of the proposed building height and floor space ratio (FSR). Alternatively, the applicant was to revise the proposal and reduce the FSR to a more appropriate scale. Supplementary information addressing the Gateway determination was submitted by the applicant, and no reductions were recommended.

In July 2022 Council engaged urban design consultants, Studio GL, to review and assess the proponent's supplementary information. Studio GL found that the proponent's information failed to satisfactorily address the Gateway determination conditions that relate to urban design. Studio GL concluded that "*some increase in height and FSR may be appropriate for this location.....however the current planning proposal, LEP heights and FSR's and the draft DCP are not supported.*"

Council received 27 submissions to the public exhibition of the planning proposal. Overwhelmingly the submissions raised concerns with the proposed building height and FSR standards, identifying these as excessive and an overdevelopment of the site that will result in loss of privacy, view loss, and overshadowing to existing adjoining properties.

Council staff agree that the proposed building height and FSR are excessive and unsuitable for the site, and recommend that Council requests that Minister determines that the matter not proceed under section 3.35(4) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Discussion:

Background

The subject site is located in Double Bay on the northern side of New South Head Road. The site is in a R3 Medium Density residential zone under the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014), approximately 100m from the Edgecliff Commercial Centre and about 200m from the Double Bay Centre (see **Figure 1** below).

The site is irregular in shape, with a frontage of 19m to New South Head Road and a total area of 934m². The land slopes down to the north towards the rear of the property, with a fall of 10m from the south-western corner to the north-eastern corner.

The site is currently occupied by a four-storey RFB containing eight residential units with substantial landscaping in the front and rear setbacks. The site is immediately surrounded by residential flat buildings of heights varying between three to seven storeys. A visually prominent Jacaranda tree is located on the south-east corner of the site adjacent to the New South Head Road frontage.



Figure 1: 252-254 New South Head Road (outlined in blue) (source: Nearmap)

A planning proposal was lodged by Antoniades Architects (the proponent) on 12 June 2020. The planning proposal seeks to amend the Woollahra LEP 2014 to increase the development potential on the site and seeks to:

- Increase the maximum height of building from 13.5m to 22m
- Increase the floor space ratio (FSR) from 1.3:1 to 2.6:1
- Introduce a secondary height control in Clause 4.3A Exceptions to building heights for a reduced level (RL) 45.90m Australian Height Datum (AHD) at the highest part of the site for a designated area adjacent to New South Head Road frontage. The proposal has two options for the designated area:
 - Option A: RL 45.90 AHD within an area 11m perpendicular to both the southern and south-eastern boundaries (see **Figure 3**).
 - Option B: RL 45.90 AHD within an area south of a line 5m from the southern and south eastern boundaries, running across the site (see **Figure 4**).

An indicative design was submitted with the planning proposal which indicates what could be built under the proposed controls (see **Figure 2**).

On 2 November 2020 the Environmental Planning Committee considered a report on this matter and on 23 November 2020, Council resolved that it did not support the request because the proposed height and FSR are excessive and would create a building envelope that would be inconsistent with the existing and desired future character of the Double Bay residential precinct, and would adversely impact on the site and its surroundings, particularly with regard to streetscape; landscape character and views. (see **Attachment 3**)

On 23 December 2020 and in response to Council's decision, the proponent requested a rezoning review. On 22 July 2021 the Sydney Eastern City Planning Panel (the Panel) determined that the request for a planning proposal should progress to Gateway determination because the proposal demonstrated strategic and site specific merit. In its decision, the Panel stated the following:

- *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 car parking 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.

On 23 August 2021 Council considered a report on the Panel's rezoning review, and Council resolved to undertake the role as *Planning Proposal Authority* (PPA) for this proposal. On 18 October 2021 Council as the PPA submitted the planning proposal through the NSW Planning Portal for a Gateway determination.



Figure 2: 252-254 New South Head Road building envelope (in blue) (source: Antoniades Architects)



Figure 3: Building height strategy – Option A (source: Antoniades Architects)



Figure 4: Building height strategy – Option B (source: Antoniades Architects)

Gateway determination

On 15 December 2021 the DPE issued a Gateway determination (see **Attachment 2.**) The Gateway determination included conditions which addressed, amongst other matters:

1. *The planning proposal (including attachments) is to be revised prior to public exhibition to address the matters set out below:*
 - i. *provide further testing to ensure the proposed floor space ratio (FSR) of 2.6:1 is achievable within the proposed height controls, taking into consideration the Apartment Design Guide including overshadowing of adjoining properties*
 - ii. *clarify the street wall height in storeys to New South Head Road and ensure consistency between architectural drawings and images*
 - iii. *include a table that clarifies the extent of overshadowing impacts to individual units in the adjoining residential properties*
2. *The planning proposal is to contain a provision that a site-specific development control plan (DCP) is to be prepared and in place prior to the issuing of any development consent for the site. The DCP should address matters including, but not limited to:*
 - i. *built form and articulations, including the building's interface with adjoining developments and presentation to New South Head Road*
 - ii. *provision of deep soil zones to support tree canopy and screen planting*
 - iii. *apartment mix*
 - iv. *environmental impacts such as overshadowing, visual and acoustic privacy and view-sharing.*

These conditions required the proponent to provide more information about the proposal to address urban design issues (i.e. potential built form, visual privacy, overshadowing, ventilation, and view impacts) having regard to the site's steep topography and urban infill context. As set out in the DPE's Gateway determination report of December 2021,

"more attention is required around building depth and building separation. If the proposed FSR is not achievable, the proposal should be revised to be of a lesser FSR." (p 21)

The Gateway determination did not identify Council as the local plan-making authority.

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On 7 March 2022, the applicant lodged additional information in response to the Gateway determination that included:

- Calculation of floor space – the diagrams show the gross floor area (GFA) of each level of the development concept and that the FSR of 2.6:1 is achieved within its floor plan and not in the overall building envelope
- Confirmation that the development would be no more than four storeys at the New South Head Road frontage
- A table of the two properties potentially affected by overshadowing – the table shows that the northern living room windows of all units within those properties will receive at least two hours of direct sunlight mid-winter between the hours of 9.00am and 3.00pm
- A draft DCP.

Public Exhibition

The planning proposal and supporting material were on public exhibition for 45 days, from Wednesday 13 April 2022 to Friday 27 May 2022 (inclusive), consistent with the requirements of the EP&A Act, the *Environmental Planning and Assessment Regulation 2000* (the Regulation), the *Woollahra Community Participation Plan 2019*, relevant guidelines, and the conditions of the Gateway determination.

The exhibition included the following:

1. Seven notices in the Wentworth Courier newspaper providing details of the exhibition, appearing on 13, 20 and 27 April 2022, and 4, 11, 18 and 25 June 2022.
2. A public exhibition webpage for the planning proposal and supporting material on *Your Say Woollahra*. This webpage was visited by 123 people during the exhibition period.
3. A notification letter or email was sent to the stakeholders, including:
 - The property owners
 - Adjoining and nearby property owners
 - Sydney Water
 - Transport for NSW.

Submissions

Twenty seven submissions were received in response to the public exhibition, including two submissions from Government agencies. Of the 25 submissions, the majority raised concerns with the planning proposal, with only two submissions providing full support. A redacted copy of all submissions is attached at **Attachment 4**.

The concerns raised in the submissions can be summarised as follows:

- Overdevelopment of the site – proposed height and FSR are excessive
- Scale and bulk will adversely impact on amenity of adjoining residential properties including:
 - View loss
 - Overshadowing to adjoining properties
 - Loss of privacy
- Inadequate building separation between the concept building and existing neighbouring building to facilitate airflow and ventilation between, particularly building at 250 New South Head Road, Double Bay.
- Proposal is not consistent with draft planning strategies
- Development will be inconsistent with character of the area and detract from village-like ambience
- Building height does not fall with natural topography from Edgecliff to Double Bay
- Traffic and parking concerns including:
 - Site entrance is dangerous for vehicles leaving or entering
 - Lack of parking
 - Traffic and parking congestion

- Cabbage tree palms need to be protected and remain in place.

Those people that supported the planning proposal identified that the redevelopment of the site will improve streetscape, liveability and aesthetics of the area. It is noted that five submissions that gave in principle support to the redevelopment of the site, raised concerns that the proposed height and FSR in the planning proposal were excessive and would result in an unsuitable built form.

Sydney Water identified that the proposal will have large servicing demands and recommended that a Water Servicing Coordinator to be engaged as soon as possible.

Transport for NSW raised road safety concerns with the location of the proposed driveway location.

Consistent with the *Local Environmental Plan Making Guidelines* (DPE, December 2021) a copy of the submissions was provided to the proponent to respond to the issues raised.

The submissions have been summarised, and include a response from the proponent and Council staff, see **Attachment 5**. The proponent's amended draft Site-specific DCP is at **Attachment 6**.

Independent Urban Design Review

In July 2022, Council staff engaged urban design consultancy Studio GL to conduct an independent assessment of the supplementary information provided by the proponent in response to the Gateway determination conditions relating to urban design. The Studio GL assessment concluded that the information 'does not sufficiently address the Gateway determination requests that relate to urban design' (p 11.) Below is a summary of the assessment. The full urban design referral response is provided at **Attachment 7**.

1. Gateway determination condition 1.
(i). Provide further testing to ensure the proposed floor space ratio (FSR) of 2.6:1 is achievable within the proposed height controls, taking into consideration the Apartment Design Guide (ADG) including overshadowing of adjoining properties.

The assessment found that:

- *The response fails to satisfactorily address concerns raised by Condition 1.(i). The critical issue raised by this condition was to assess if the proposed FSR is suitable for this site or if it relies on insufficient setbacks along site boundaries that will compromise the amenity of existing and future residents (p 3)*
- *The FSR achieved by the indicative scheme relies on non-compliances with the ADG and creates negative environmental impacts on neighbouring properties. Appropriate building setbacks, building depth and building separation distances will require a reduction in FSR. (p 11)*
- *The proposed bulk and scale of the indicative scheme does not comply with the building separation and setbacks identified in the ADG, especially along the eastern, western, and southern side boundaries....Parts of the building above level 4 along the western and eastern boundaries only provide a 3m setback. The inadequate building separation distances particularly impact properties on 248-250 NSH Road and 256-258 NSH Road. (p7-8)*
- *On the indicative plan, the building depth is up to 27m on levels below Level 4. The excessive depth compromises the ability of the apartments to receive adequate daylight and natural ventilation and optimise natural cross ventilation.*
 - *7 apartments out of 33 receive less than 2 hours of sunlight in mid-winter, 2 of which receive less than 15 minutes of solar access.*
 - *only 8 of 33 (24%) units are cross ventilated. The ADG requires minimum of 60% (p 4 and 9)*

2. Gateway determination condition 1.(v).
Clarify the street wall height in storeys to New South Head Road and ensure consistency between architectural drawings and images

The assessment found that:

The request to 'clarify the street wall height in storeys to New South head Road and ensure consistency between architectural drawings and images' has not been addressed. The applicant has stated that, 'The street wall height in storeys to New South Head Road is maximum five (5) storey'. It is assumed the final design will be five storeys. (p11)

- The building envelope of the indicative scheme shown on the height plane and sun eye diagrams, do not distinguish individual floor levels which makes it difficult to identify the street wall height in storeys. A sectional drawing has been submitted with the indicative scheme which shows the total height of the development, however there is inadequate information shown on the architectural drawings to determine where the section line has been cut. (p 5)*
- 3D views of the proposed building envelope illustrate a 22m maximum Building Height Plane (BHP) but do not show the impact of the proposed additional height restriction of RL45.90 on this BHP nor are all elements of the proposed building envelope (i.e., lifts, rooftop planters, etc) shown on the proposed building envelope. (p5)*
- The street wall heights as shown in the Indicative Street Elevation appear acceptable however the height controls in the Planning Proposal would not guarantee that the development would step down to 4 storeys adjoining 250 NSH Road as the proposed height of RL45.90 AHD would encourage a 5-storey street wall height. (p5)*

3. Gateway determination condition 1.(vii).
Include a table that clarifies the extent of overshadowing impacts to individual units in the adjoining residential properties

The assessment found that:

- Antoniades Architects provided a North Elevation of 240 NSH Road and 365a NSH Road and table stating that all windows receive 2 hours solar access. These do not show the extent of additional overshadowing created by the proposed non-compliance with the setbacks. (p4)*
- The sun-eye diagrams provided only show the position of the sun at various hours and do not provide adequate information about the resulting shadows created. This diagram does not accurately show the bulk and scale of the proposed development as lift overruns and roof top planters are not shown on the model. (p4)*
- There is insufficient information to assess the overshadowing of neighboring properties. To assess overshadowing impacts, diagrams need to be produced that illustrate the situation during winter solstice (21 June) at a minimum of hourly intervals showing overshadowing of existing adjacent properties with elevation shadows if shadow is likely to fall on neighbouring windows. Elevation shadow diagrams, especially for 240 NSH Road, are required.(p10, 12)*

4. Gateway determination condition 2.
The planning proposal is to contain a provision that a site-specific DCP is to be prepared and in place prior to the issuing of any development consent for the site. The DCP should address matters including, but not limited to: built form and articulations, including the building's interface with adjoining developments and presentation to New South Head Road; provision of deep soil zones to support tree canopy and screen planting; apartment mix; environmental impacts such as overshadowing, visual and acoustic privacy and view-sharing.

The assessment found that:

- The draft site-specific DCP is not detailed and does not explain the type of development that is likely to be suitable for the site's unique locations and site conditions. (p6)*

- *It unnecessarily replicates and references other controls that would already be applicable to the site including the proposed LEP height control, the ADG controls and the Woollahra DCP 2015. (p6)*
- *The draft site-specific DCP is insufficient to address the provision of deep soil zones to support canopy and screen planting and what is required to ensure the long-term health of the Jacaranda tree at the New South Head Road frontage.(p11)*
- *To clearly identify the desired future character of the built form, the DCP should provide dimensioned plans and sections through all key interfaces with neighbouring sites.(p6)*

The Studio GL assessment report concludes that “Some increase in height and FSR may be appropriate for this location particularly given the opportunity for development of this site to provide a transition between taller buildings around the Edgecliff Centre and lower development to the north and west of the site, however the current planning proposal, LEP heights and FSR’s and the draft DCP are not supported.” (p12)

Staff recommendation

Having considered the matters raised in the submissions and the independent urban design assessment by Studio GL, Council staff do not support the planning proposal for the following reasons:

- The proposed maximum building height and FSR standards are excessive and would create a building envelope which has an excessive bulk and scale that would be overbearing on the adjoining residential properties.
- 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.
- The proposed building height and FSR standards are not achievable for the site and would create a building envelope that has excessive building depth, inadequate boundary setbacks, and inadequate building separation. This will result in:
 - Unacceptable amenity for future residents on the site arising from deep floor plates, lack of cross ventilation, and inadequate solar access to dwellings
 - Unreasonable amenity impacts to existing residential properties that adjoin the site, particular in relation to a loss of privacy, view loss and overshadowing.
- The proposed secondary height control will not guarantee a street wall height no greater than four storeys at the New South Head Road frontage as proposed in the proponent’s Planning Proposal of March 2020 which states “*The proposed FSR would allow a residential flat building that has a part three and part four storey streetscape appearance, when viewed from New South Head Road.*” (pg 20) The Gateway determination included a condition requiring the proponent “clarify the street wall height in storeys to New South Head Road and ensure consistency between architectural drawings and images”. In response the proponent provided advice and indicative street elevations showing a street wall height up to five storeys. The Studio GL urban design assessment also found that “*the height controls in the Planning Proposal would not guarantee that the development would step down to 4 storeys adjoining 250 NSH Road as the proposed height of RL45.90 AHD would encourage a 5-storey street wall height.*” (p5)

Staff also make the following comments about the proponent’s draft site-specific DCP. The draft DCP:

- Does not address the conditions in the Gateway determination, and in particular does not establish the site-specific controls to address the built form and articulation, including the building’s interface and separation distances with adjoining development and the building’s presentation and street wall height to New South Head Road.
- Only restates the provisions in the planning proposal and duplicates broad provisions from the Apartment Design Guide and Woollahra DCP 2015. There has been no genuine attempt to craft site-specific provisions that have regard to the site, its steep topography and its context.

- Does not suitably address critical issues and impacts to adjoining properties such as overshadowing, solar access, ventilation, visual impacts, acoustic privacy and view-sharing.

For more information see **Attachment 5** for the staff response to issues raised in submissions.

Options:

The DPE as the delegate for the Minister, is the local plan-making authority for this planning proposal, and Council is the PPA. Under the EP&A Act section 3.35:

- (1) *The planning proposal authority may, at any time, vary its proposals as a consequence of its consideration of any submission or report during community consultation or for any other reason.*
- (2) *If it does so, the planning proposal authority is to forward a revised planning proposal to the Minister.*
- (3) *Further community consultation under Schedule 1 is not required unless the Minister so directs in a revised determination under section 3.34.*
- (4) *The planning proposal authority may also, at any time, request the Minister to determine that the matter not proceed.*

As a consequence of this report Council may resolve to do the following:

1. Not support the planning proposal and request the Minister to determine that the matter not proceed under section 3.35(4) of the EP&A Act.
2. Support the planning proposal with the following amendments:
 - a. Reduce the maximum building height and FSR as the exhibited height and FSR standards are excessive for the site and its context, and are inconsistent with the existing and desired future character of the Double Bay residential precinct
 - b. Amend the secondary height control at the New South Head Road frontage to apply a street wall height of no more than 13.5m at any point (which equates to four storeys). The secondary height control is to be expressed in metres

and accordingly advise the Minister under sections 3.35(1) and (2) of the EP&A Act
Note: It is the opinion of staff that these amendments would not increase the impact of the proposal, and are not so significant as to require further consultation or re-exhibition consistent with section 3.35 of the EP&A Act.

3. Support the planning proposal without amendments and request that the Minister make the local environmental plan under section 3.36 of the EP&A Act.

Should the DPE not support Option 1, staff recommend that Council's request includes advice that, if the DPE decides to proceed it only does so with amendments to the planning proposal as set out in Option 2.

Community Engagement and / or Internal Consultation:

See Public Exhibition and Submissions in the Discussion section of this report.

Policy Implications:

Should the DPE as local plan-making authority resolve to make the plan under the EP&A Act section 3.36 (2)(a), the Woollahra LEP 2014 will be amended.

Consistent with the Gateway determination condition 2, a site-specific DCP will need to be prepared and in place prior to the issuing of any development consent for the site. Should the planning proposal proceed, a further report on a draft DCP will be reported to a future meeting of Council and then placed on public exhibition consistent with the EP&A Act and Regulation, and the *Woollahra Community Participation Plan 2019*.

Financial Implications:

There will be costs associated with the preparation and exhibition of the site-specific DCP, but it is anticipated that these will be borne by the proponent, consistent with Council's adopted *Fees and Charges 2022/23*.

Resourcing Implications:

Should the DPE choose to finalise the planning proposal, staff resources will be associated with liaising with the DPE and preparing the site-specific DCP.

Conclusion:








A planning proposal for 252-254 New South Head Road, Double Bay to increase the height, FSR and introduce a secondary height control was placed on public exhibition. Twenty seven submissions were received during the exhibition, most raising concerns with the proposed height and FSR. Having considered the matters raised in submissions and the Studio GL assessment, staff recommend that Council does not support the planning proposal due to the excessive height and FSR standards proposed.

The proponent has failed to demonstrate that the site can reasonably accommodate the proposed building height and FSR. The height and FSR need to be reduced to adequately respond to the constraints and site characteristics such as the limited street frontage, irregular shape of the site, steep topography, and interface with the immediately adjoining residential properties. Future development under the proposed standards will result in significant and unreasonable amenity impacts for residents within and adjoining the site.

Staff recommend that Council resolves to inform the DPE that it does not support the planning proposal and requests the Minister (or delegate) to determine that the matter does not proceed in accordance with section 3.35(4) of the EP&A Act.

However, should the Minister decide to make the local environmental plan, we recommend that Council requests the Minister to amend the proposal by reducing the FSR and building height, and apply a 13.5m secondary height limit at the New South Head Road frontage. A further report on the site-specific DCP will be prepared for a future meeting of Council.

Attachments

1. 252-254 New South Head Road, Double Bay - Planning proposal (as exhibited) [↓](#) 
2. 252-254 New South Head Road, Double Bay - Gateway determination [↓](#) 
3. Environmental Planning Committee Report 2 Nov 2020 and Council Minutes 23 Nov 2020 [↓](#) 
4. Redacted copy of submissions [↓](#) 
5. Summary of submissions including proponent response and Council staff response [↓](#) 
6. Proponent response - Amended draft Site-specific DCP - 1 July 2022 [↓](#) 
7. Urban design referral response by Studio GL- 12 July 2022 [↓](#) 



IRF22/3901

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Woollahra Local Environmental Plan 2014
(Amendment 30)

December 2022



NSW Department of Planning and Environment | dpie.nsw.gov.au

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

Title: Plan finalisation report – PP-2021-6330 - 252-254 - New South Head Road, Double Bay

Subtitle: Woollahra Local Environmental Plan 2014 (Amendment 30)

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Acknowledgment of Country

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

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Woollahra Local Environmental Plan 2014 (Amendment No. 30).

The planning proposal seeks to amend planning controls in the Woollahra Local Environmental Plan (LEP) 2014 to facilitate the redevelopment of the site at 252-254 New South Head Road, Double Bay for a part 7-storey and part 8-storey residential flat building with basement car parking. To achieve this, the planning proposal seeks to amend the LEP to:

- Increase the maximum height of buildings (HOB) from 13.5 metres (m) to 22 metres.
- Introduce a secondary height control of reduced level (RL) 45.90m Australian Height Datum (AHD) for a designated area, which is at the highest part of the site adjacent to the New South Head Road frontage.
- Increase the maximum floor space ratio (FSR) from 1.3:1 to 2.6:1.

The planning proposal also provides for a site-specific development control plan (DCP) to be prepared and in place prior to the issuing of any development consent for the site.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at 252-254 New South Head Road, Double Bay
Type	Site
Council / LGA	Woollahra Municipal Council
LGA	Woollahra Local Government Area

The subject site is located at 252-254 New South Head Road (NSH Road), Double Bay, and is legally described as SP11702. The site is irregular in shape, approximately 934.9 square metres (sqm) in area, and has a frontage of 19m to NSH Road (**Figure 1**).

The site is zoned R3 Medium Density Residential and is occupied by a four-storey residential flat building (RFB) known as the 'Dalkeith Building' (**Figure 3**). The site is steep and falls by approximately 10m from the south-west to the north-east corner and the street frontage is elevated above the rest of the property.

There is vegetation in the front and rear setbacks, including an established and prominent Jacaranda tree at the NSH Road frontage. The existing building contains eight units and is accessible via two pedestrian entrances at its NSH Road frontage. There is no vehicle parking available on the site.

The subject site is located approximately 2.8km east of the Sydney central business district (CBD) and 1.5km north-west of the Bondi Junction strategic centre. The site is adjacent to the Edgecliff Commercial Centre, 200m east of the Edgecliff train station and bus interchange, and 200m west of the Double Bay Centre (**Figure 4**). The nearest open spaces to the site are Trumper Park (500m) and Steyne Park (800m).

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Figure 1: Subject site – outlined in blue (source: Nearmap)

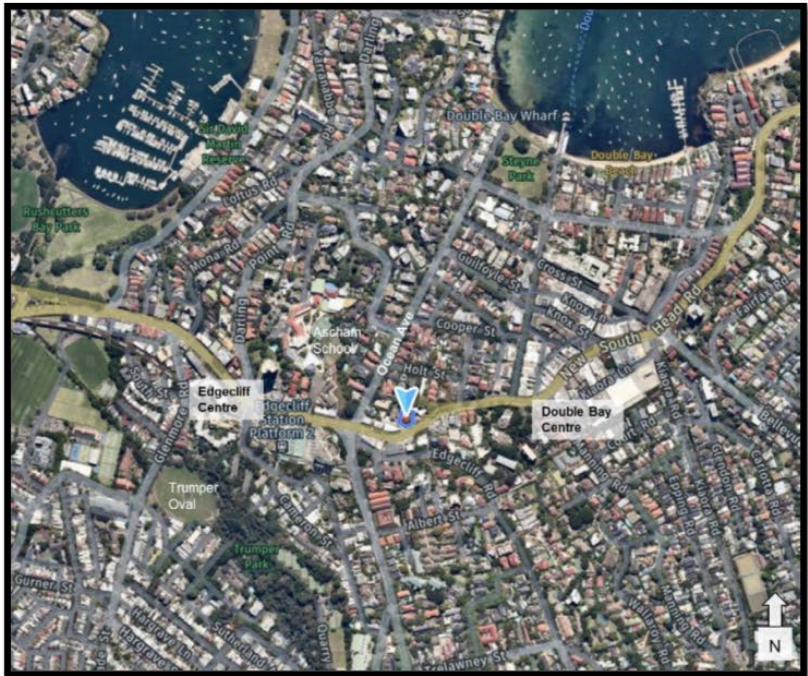


Figure 2: Site context (source: Nearmap)



Figure 3: Existing RFB on the site – western and southern elevations – three levels are below the street entry level (source: proponent's planning proposal report)

The streetscape character of the northern side of NSH Road includes both older RFBs and larger scale contemporary development with varied street setbacks – including buildings with nil setback (**Figure 4**). Directly to the south-west of the site is a recently completed part five/six-storey RFB at 240-246 NSH Road, which was the subject of a planning proposal to increase height and FSR (18m HOB and 4:1 FSR). To the north-west is a three-storey RFB at 248-250 NSH Road with a driveway abutting the southern boundary of the site. To the east is a three-storey Inter-War RFB at 256-258 NSH Road.

The southern side of NSH Road includes residential and commercial uses ranging from four to eight storeys. Due to the sloping topography, developments fronting Edgecliff Road to the south of the site are visible and form part of a layered streetscape profile when viewed from NSH Road.

The site is not a heritage item, is not located within a heritage conservation area or within the immediate vicinity of any heritage items.



Figure 4: New South Head Road – streetscape looking north-west (source: Google maps)

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Figure 5: New South Head Road streetscape looking east (source: Google maps)

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	R3 Medium Density Residential	No change
Maximum height of buildings	13.5m	22m
Secondary height control (The proposal seeks a change to Clause 4.3A <i>Exceptions to building heights</i> to implement this control)	N/A	RL 45.90 AHD within a designated area adjacent to NSH Road. Two options for depicting the designated area are provided (Figure 6A and 6B): Option A - an area 11m perpendicular to both the southern and south-eastern boundaries; or Option B – an area 5m from the southern corners of the site.
Floor space ratio	1.3:1	2.6:1
Number of dwellings	8 apartments (existing)	33 apartments (net increase 25 apartments)

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Figure 6A: Secondary building height strategy – Option A (source: Antoniades Architects)



Figure 7B: Secondary building height strategy – Option B (source: Antoniades Architects)

1.1.4 State electorate and local member

The site falls within the Vaucluse state electorate. Gabrielle Cecelia Upton MP is the State Member.

The site falls within the Wentworth federal electorate. Allegra Spender MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

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

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

2 Gateway determination

The Gateway determination issued on 15/12/2021 (**Attachment B**) determined that the proposal should proceed subject to conditions.

Condition 1 of the Gateway requires revision to the planning proposal prior to exhibition. In particular, the condition requires further testing to ensure the proposed FSR is achievable within the proposed height controls, clarification of the street wall height in storeys, and tabulated information clarifying the extent of overshadowing of adjoining residential properties.

In March 2022, the proponent provided additional information to Council, including:

- Diagrams illustrating the floor space calculations of the concept development scheme;
- Confirmation that the future development would be no more than five storeys at the NSH Road frontage;
- A table confirming whether the north-facing living room windows of the RFBs at 240-246 NSH Road and 365A NSH Road (on the opposite side of the road) will achieve 2 hours of sunlight in mid-winter (note: this information has been incorporated into the exhibited planning proposal); and
- A draft site-specific DCP (note: the Gateway determination requires a site-specific DCP to be prepared prior to the issuing of any development consent, and not prior to finalisation of the planning proposal).

Other information required by Condition 1, such as commentaries addressing the Woollahra Local Housing Strategy (LHS), relevant priorities of the District Plan, section 9.1 Direction – *1.4 Site specific provisions*, and other minor updates have been incorporated into the exhibited version of the planning proposal.

The requirements of Condition 1 have been met.

In accordance with the Gateway determination, the proposal is due to be finalised on 15 August 2022. The proposal was reported to the Council Meeting of 27 September 2022 and as such the following administrative conditions were not met:

- Condition 8 - *The planning proposal must be reported to council for a final recommendation no later than 6 months from the date of the Gateway determination.*
- Condition 9 - *The time frame for completing the LEP is to be 8 months following the date of the Gateway determination.*

Council resolved not to support the planning proposal for finalisation (**Attachment D**). The main concerns relate to excessive bulk and scale, inconsistency with the desired future character, unacceptable amenity for future residents on the site, and unreasonable amenity impacts on the adjoining properties. Council also requests the height and FSR to be reduced, with the secondary height control to be reduced to 13.5m (which equates to 4 storeys), should the Minister decide to make the LEP.

The finalisation package was submitted to the Department on 20 October 2022. The Department is the local plan-making authority (LPMA) for the proposal.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 13/04/2022 to 27/05/2022, as required by the Gateway determination.

A total of 25 community submissions were received (various individuals and one organisation – chairman of the Strata body of 230-238 NSH Road, Edgecliff), comprising of 23 objections and two

submissions supporting the proposal (**Attachment E and F**). Two submissions from Government agencies were also received.

3.1 Submissions during exhibition

A total 27 submissions were received in response to the public exhibition, including two submissions from Government agencies.

3.1.1 Submissions supporting the proposal

The two supporting submissions were received from the public. The submissions support the removal of the existing old building on site and consider the proposal will enhance the streetscape and neighbourhood.

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

Of the 25 community submissions, 23 objected to the proposal (92%), two (2) supported the proposal (8%). The full details are in Council's post-exhibition report (**Attachment E**).

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Vegetation / tree protection	1/25 (4%)	<p>Council Response:</p> <p>Council staff agree that the important trees onsite should be retained and protected, including the two Cabbage tree palms that are identified in the proponent's draft DCP to be transplanted on site and the Jacaranda tree at the NSH Road frontage to be retained.</p> <p>These issues should be further resolved in the site specific DCP.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue.</p>
Infrastructure – roads, schools, hospitals, waste services	1/25 (4%)	<p>Council Response:</p> <p>The submission and proponent response are noted. Traffic concerns have been addressed in response to TfNSW's submission (see Section 3.2 of this report).</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue. The potential net increase in dwellings could be supported by existing infrastructure.</p>
Construction impact associated with truck traffic and equipment	2/25 (8%)	<p>Council Response:</p> <p>Construction management planning will be addressed at the development assessment (DA) stage.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue.</p>

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Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Setback and airflow	5/25 (20%)	<p>Council Response:</p> <p>The information provided in the planning proposal makes it difficult to understand the adequacy of the proposed setbacks, as there are no details on the proposed setback to windows of the adjoining properties provided.</p> <p>Department Response:</p> <p>The concept development scheme demonstrates that adequate side setbacks and separation from neighbouring buildings could be achieved, which can meet the objectives of the Apartment Design Guide (ADG). Detailed assessment against the ADG and relevant planning controls will be undertaken at the DA stage.</p>
Overshadowing and solar access	11/25 (44%)	<p>Council Response:</p> <p>The overshadowing impacts and inadequate solar access are unreasonable and significantly compromise residential amenity within the site and to adjoining properties. The overshadowing and solar access issues are a consequence of the excessive height and FSR proposed and these impacts cannot be adequately addressed at the development application stage. If the proposal proceeds, a reduction of the proposed height and FSR is required.</p> <p>Department Response:</p> <p>The proponent has provided sun eye diagrams and shadow analysis. The concept scheme can retain adequate solar access in mid-winter to the living room windows of the adjoining properties, including Nos. 240-246, 248-250, 256-258 and 365A NSH Road.</p> <p>The Department's urban design team has also tested the concept scheme and confirmed that the proposal can meet the design guidance of Objective 4A-1 in the ADG in terms of solar access to the future building on the subject site and the neighbouring RFBs.</p> <p>Considering the above, the proposal is not considered to have an unreasonable impact on adjacent properties in terms of overshadowing and solar access. The overshadowing impact is discussed further in section 4.1.</p>

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Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Excessive building heights and FSR	17/25 (68%)	<p>Council Response:</p> <p>The proposed building height and FSR controls are excessive, inconsistent with the existing and desired future character of the area and would have potential adverse impacts on the site and its surrounds.</p> <p>Council's independent urban design assessment of the planning proposal by Studio GL found that the "...proposed FSR of 2.6:1 is well above the maximum FSR of most neighbouring properties (excluding 240 New South Head Road, Double Bay at 4:1, which is part of the Edgecliff centre). Additionally, the proposed height of 22m is well above the typical height of neighbouring dwellings of 13.5m and the 18m height limit on 240 New South Head Road, Double Bay".</p> <p>The site cannot reasonably accommodate the proposed building height and FSR. The FSR and building height need to be reduced to adequately respond to the constraints and characteristics such as the limited street frontage, irregular shape of the site, steep topography, and interface with the 3 immediately adjoining residential properties.</p> <p>Department Response:</p> <p>The proposed FSR and building height controls, as informed by the concept scheme, are appropriate having regard to the streetscape, local character and amenity impacts on the adjoining and nearby properties. A secondary height control has been included to ensure the future development would be a maximum of 5 storeys at the NSH Road frontage, so as to respect the prevailing scale of the surrounding buildings. The draft LEP also requires a site-specific DCP to be prepared and in place prior to the issuing of any development consent, which will further address built form, façade articulations and deep soil planting matters to mitigate any visual impact.</p> <p>The FSR and building height are discussed further in section 4.1.</p>
Over development / excessive bulk and scale / streetscape and landscape character	16/25 (64%)	<p>Council Response</p> <p>The proposed bulk and scale of the indicative scheme are excessive and not appropriate for the site and the existing and desired future character of the Double Bay residential precinct. The proposed development relies on non-compliances with the ADG to achieve a development under the proposed standards which creates negative environmental impacts for the neighbouring properties.</p> <p>Department Response:</p> <p>The proposed controls would result in a built form that is appropriate to its context. Refer to comments above and further discussion in section 4.1.</p>

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Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Impact on views	6/25 (32%)	<p>Council Response:</p> <p>Council staff agree with the submissions that the proposal would allow a building envelope that would unreasonably affect visual amenity including view obstruction.</p> <p>Department Response:</p> <p>The proponent has provided a set of view analysis that depicts the potential impacts from the building envelope (based on the proposed controls) and concept scheme on the adjoining and nearby residences at Nos. 240-246 and 365A NSH Road. The analysis also compares the impact from the existing building on the site.</p> <p>The analysis demonstrates that the future building can be designed to ensure the existing water or CBD views from the above properties (where they currently exist) could be partially or wholly retained.</p> <p>It should be noted that the design scheme is conceptual in nature. The draft LEP requires the site-specific DCP to further address view sharing. The DA process will allow view sharing to be further resolved.</p>
Visual privacy	1/25 (4%)	<p>Council Response:</p> <p>Council staff agree with the submission that the proposal would allow a building envelope that would unreasonably affect visual amenity, including view obstruction, overshadowing, privacy and solar access issues. Other factors described in submissions regarding acoustic privacy would be addressed at DA stage.</p> <p>Department Response:</p> <p>The indicative scheme shows blank walls facing habitable space of the adjoining residential buildings and the orientation of the balconies and windows would minimise privacy impacts on the neighbouring windows and private open space. The draft LEP requires the site-specific DCP to address visual and acoustic privacy issues. Privacy measures can be further assessed and resolved at the DA stage.</p>
Noise	1/25 (4%)	<p>Council Response:</p> <p>Other factors described in the submission regarding acoustic privacy would be addressed at DA stage.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue. The concept scheme demonstrates that the future building could be designed to have the primary living room windows oriented away from the adjoining RFBs. Privacy measures can be further assessed and resolved at the DA stage.</p>

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Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Property values	2/25 (8%)	<p>Council Response:</p> <p>The issue raised regarding potential reduction in property value is noted.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue and notes that variation in property value is not a relevant planning consideration.</p>
Traffic safety, access, parking and congestion	10/25 (40%)	<p>Council response</p> <p>Regarding traffic and parking issues, particular attention should be paid to the comments made in the TfNSW submission (see Section 3.2 below) in any development on this site under the proposed standards. Council recommends that the comments by TfNSW be considered and addressed before the finalisation of the proposal.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue.</p> <p>The traffic impact is discussed further in section 4.1.</p>
Site is not identified in the draft planning strategies for Edgecliff Centre and Double Bay Centre, a planning proposal should not be pursued	1/25 (4%)	<p>Department Response:</p> <p>This issue was not directly addressed in Council's post-exhibition report.</p> <p>Although the site is outside the Double Bay Centre and Edgecliff Centre, the proposal was considered to have adequate strategic and site-specific merits to proceed at the Gateway determination stage. The conclusion of the Gateway assessment has not changed and remains relevant.</p>

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in **Table 4** who have provided the following feedback.

- Ausgrid;
- Sydney Water; and
- Transport for NSW (TfNSW).

Council provided a copy of the planning proposal to these authorities and responses were received from all agencies, except for Ausgrid (**Attachment F**).

Table 3 Advice from public authorities

Agency	Advice raised	Council response
Sydney Water	<p>Sydney Water provided comments to assist in planning the future servicing needs of the proposed development and noted the following:</p> <ul style="list-style-type: none"> • Further investigation will be required to determine servicing requirements and a Water Servicing Coordinator should be engaged. • A feasibility application is to be lodged prior to development occurring. 	<p>Council noted that the comments made by Sydney Water should be taken into consideration and the issues raised should be addressed by the applicant before the proposal is finalised, and further resolved in the site-specific DCP and at DA stage.</p>
Transport for NSW (TfNSW)	<p>TfNSW raised road safety concerns of the proposed driveway location due to the crest located to the west, which may cause conflict with eastbound traffic. It made the following recommendations/requests:</p> <ul style="list-style-type: none"> • The driveway should be located as far as possible from the crest of the road, with a “left-in, left-out” arrangement. • The Traffic and Parking Impact Assessment should be amended to further justify the new vehicular access arrangement, and address safety risk concerning the site’s close proximity to the crest. 	<p>Council staff agreed with the comments made by TfNSW, noting that should the planning proposal proceed, the issues raised should be addressed before the proposal is finalised, and updated in the site-specific DCP.</p>

The Department considers Council has adequately addressed matters raised in submissions from the public authorities. The water servicing issues could be addressed in detail at the DA stage. The site constraints with respect to vehicular access are noted; the draft LEP contains a provision requiring the vehicular access issue to be addressed in the site-specific DCP, which will provide further guidance for the future DA.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At its Ordinary Meeting on 27/09/2022, Council resolved to not support the planning proposal. However, should the Department support the proposal at finalisation, Council requested that it consider the following amendments:

- *Reduce the maximum building height and FSR.*
- *Amend the secondary height control at the New South Head Road frontage to apply a street wall height of no more than 13.5m at any point (which equates to four storeys). The secondary height control is to be expressed in metres.*

- *That... staff prepare a site specific development control plan for 252-254 New South Head Road, Double Bay that will be reported to a future meeting of Council.*

The Department has reviewed these requests and does not consider that any amendments to the proposal are justified. Further details of the Department's consideration are in section 4 of this report.

3.3.2 The Department's recommended changes

The planning proposal states that the DCP is to address built form and façade articulation, deep soil zones, apartment mix, overshadowing, privacy and view-sharing matters, which are consistent with the Gateway determination.

As part of the finalisation process, the Department has included a post-exhibition change to identify additional elements to be addressed in the site-specific DCP:

- Building height in storeys; and
- Vehicular access to and from the site to minimise traffic impact on New South Head Road.

3.3.3 Justification for post-exhibition changes

The above post-exhibition changes by the Department are to address issues raised in the submission from TfNSW and to provide clearer design guidance for development proposals. They do not alter the intent of the planning proposal and are minor in nature. The changes above are justified and do not require re-exhibition.

4 Department's assessment

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

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

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

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with Council's LSPS.
- Remains consistent with all relevant Section 9.1 Directions, except for Direction 1.4 Site Specific Provisions. The inconsistency with Direction 1.4 is considered to be of a minor significance and was addressed at the Gateway stage.
- Remains consistent with all relevant SEPPs, except for SEPP No 65—Design Quality of Residential Apartment Development due to potential natural ventilation issue (further discussed in section 4.1.2 below).

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

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Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment
Regional Plan	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1 Note: The exhibited planning proposal has addressed planning priorities E1, E6, E10, E16 and E17 in accordance with the Gateway determination.
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Community Strategic Plan (CSP)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Woollahra Local Housing Strategy (LHS) 2021	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1 Note: The exhibited planning proposal has addressed the LHS in accordance with the Gateway determination.
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, refer to section 4.1

Table 5 Summary of site-specific assessment

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

4.1 Detailed assessment

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

4.1.1 Social and economic impact

An assessment of the potential social and economic impacts associated with the proposal is provided in **Table 7**.

Table 6: Social and economic impact assessment

Social and Economic Impact	Assessment
Social	The proposal is considered to provide social benefits by increasing housing availability and choice in an accessible location.
Economic impacts	The proposal would provide economic benefits by creating additional demand for goods and services, which would contribute to the local economy. Additional employment and economic activities would be created during future construction phase of the development.

4.1.2 Infrastructure

The site is in an area well serviced by public transport as it has access to existing train services at Edgecliff and bus services along NSH Road, including connections to Bondi Junction and the Sydney CBD.

The site is in an established urban area that is well serviced by electricity, telecommunications, water and sewerage infrastructure.

Consultation has been carried out with the relevant agencies (**Table 4**) concerning the availability of utilities. No objections were raised against the proposal. Further assessment can be undertaken at the DA stage.

4.1.3 Environmental impact

Built form

At its meeting on 27 September 2022, Council resolved to not support the planning proposal, determining that it failed to demonstrate the site can reasonably accommodate the building height and FSR being sought, and that the resultant building envelope would have an excessive bulk and scale that is inconsistent with the existing and desired future character of the Double Bay residential precinct.

Council engaged urban design consultants, Studio GL, to review the proposal, which concluded that *'some increase in height and FSR may be appropriate for this location particularly given the opportunity for development of this site to provide a transition between taller buildings around the Edgecliff Centre and lower development to the north and west of the site, however the current planning proposal, LEP heights and FSR's and the draft DCP are not supported'*. It was argued that the FSR achieved by the indicative scheme relies on non-compliances with the ADG and creates negative environmental impacts on neighbouring properties.

Furthermore, Council found the draft site-specific DCP did not satisfactorily address environmental impacts such as overshadowing, solar access, ventilation, visual impacts, acoustic privacy and view-sharing.

Proponent's submission

On the 27 September 2022, the proponent provided a response to Council's Post-Exhibition Report and Studio GL report (**Attachment H**). A summary of the proponent's key points is included below:

- Many of the comments made by Council were beyond the relevant matters for the making of an LEP and were not matters directly outlined in the Gateway Conditions.
- The urban design peer review by AE (engaged by the proponent) concluded that:
 - The proposed envelope is appropriate in terms of bulk and scale, noting the *"visual bulk is consistent with the existing street wall and building heights along New South*

Head Road on both the northern and southern sides and does not detract from the amenity of the surrounding area”.

- The proposed front setback to NSH Road is compatible with the adjoining developments and will ensure the existing Jacaranda tree can be retained.
- The proposed side and rear setbacks provide acceptable separation to neighbouring buildings and allow for deep soil planting. Furthermore, building modulation can be achieved at the DA stage to increase these setbacks where necessary.

Department's assessment

Street frontage height:

The subject section of NSH Road is characterised by residential and commercial buildings ranging from two to eight storeys in height at the street frontage. On the northern side of the street where the site is located, the recently completed RFB at No. 240-246 NSH Road is 5 to 6 storeys (including the under-croft), and the Inter-War RFB at No. 256-258 is 3 storeys (**Figure 7**).

Recognising the sloping topography of the site, a secondary height control is proposed to impose a cap on the street frontage height at RL45.90 AHD, which would limit the future building to approximately five storeys when viewed from NSH Road. The proposed street wall height is compatible with the adjoining developments.

The concept scheme also illustrates that the proposed controls could create a built form with a possible stepping in height from five to four storeys, providing a transition between Nos. 240-246 and 256-258 NSH Road. While the detailed design, including any stepping and modulation to the built form, is to be resolved at the DA stage, the draft LEP contains a provision requiring the site-specific DCP to address matters including built form, façade articulations and height in storeys, among other things, to facilitate a high quality design outcome. The DCP is to be in place prior to the issuing of any development consent.

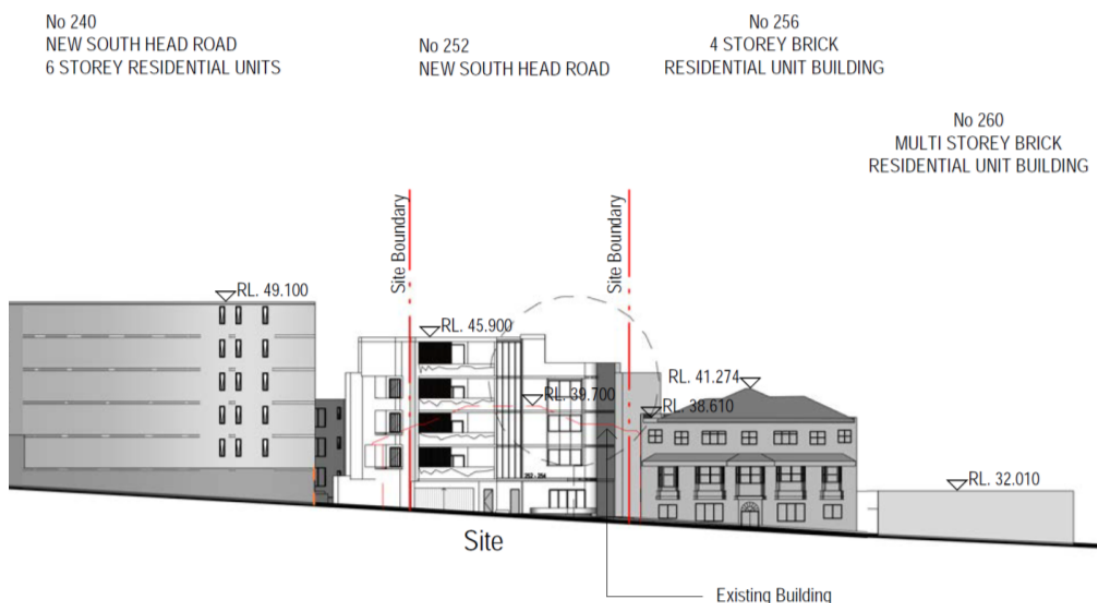


Figure 8: Streetscape elevation (Source: Antoniades Architects)

The planning proposal provides two options for delineating the secondary height control at the NSH Road frontage (**Figures 6A and 6B**). Option A depicts an area that is 11m perpendicular from the southern and south-western boundaries. The configuration of this area is less restrictive than Option B. It may also allow the top floor level to be designed to better address the street frontage while achieving a functional floor plate. As such, the draft local provision and corresponding mapping will utilise Option A for the purposes of the secondary height control.

The site has a steep slope from the south-western to the north-eastern corner. The concept scheme demonstrates that an overall height limit of 22m in conjunction with the secondary height control could facilitate an 8-storey building that incorporates stepping to relate to the topography (**Figure 8**). The visual bulk of the future development could be mitigated by articulations to the built form and screen planting (refer to further discussion below).



The concept scheme illustrates setbacks ranging from 3m - 4.5m along the western and eastern side boundaries, 6m – 9m along the northern rear boundary and 1.6m – 4.5m along the southern street boundary (**Figure 9**).

Existing developments on the northern side of NSH Road have varied front setbacks. The proposed front (street) setback as illustrated in the concept scheme is compatible with the nearby

developments, noting the adjacent buildings at No. 240-246 and No. 256-258 have no front setbacks.



Figure 9: Boundary setbacks (Source: GMU Urban Design and Architecture)

The Department's in-house Urban Design Team have reviewed the planning proposal and associated documents (both Council's and proponent's reports) and concluded that the building envelope enabled by the FSR and height controls is appropriate to the locality in terms of streetscape, height, scale and amenity impacts. The side setbacks in the indicative scheme are within an acceptable range, as habitable room windows would not be provided on the side elevations and avoid directly facing those in the adjoining buildings. The advice also confirms that the indicative building envelope provided meets the requirements of the ADG, except for natural ventilation which will be discussed in the following paragraphs.

Redevelopment of the site based on the proposed controls could provide an appropriate building transition from the higher built forms in the east to the lower scaled forms in the west and north. The proposal responds to the existing development pattern and topography of the site and would not visually dominate the streetscape profile. Further assessment of the built form and amenity impacts will be undertaken at the DA stage, both against the proposed LEP provisions, the site-specific DCP controls and the ADG guidance.

Council's intent to protect the local character and existing amenity of the surrounding properties is acknowledged. However, there is insufficient justifications for a reduction to the overall height and FSR controls. Additionally, a reduction to the secondary height control at the NSH Road frontage to 13.5m (approximately 4 storeys) is also not warranted due to the existing streetscape pattern.

As such, the Department does not support Council's request to reduce the proposed maximum building heights and FSR.

Landscape and deep soil zones

The concept scheme illustrates a total landscape area of 457.1m² (49% of site area), comprising deep soil zone of 355.8m² (38%) and on-structure landscaping of 101.3m² (11%) (**Figure 10**).

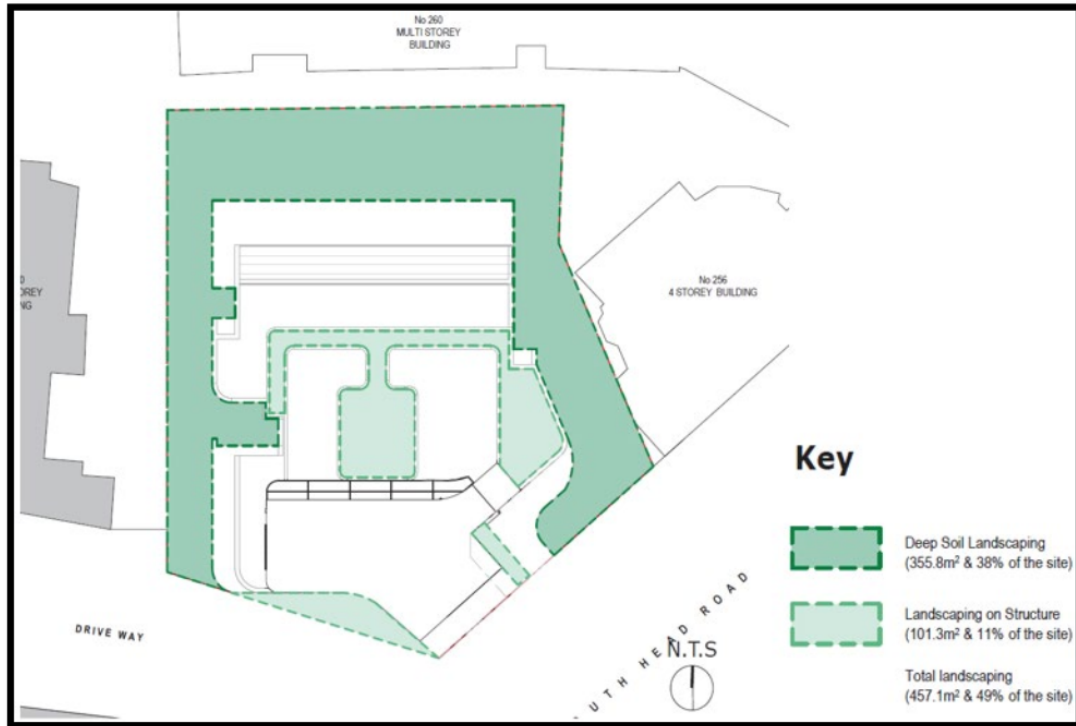


Figure 90: Landscaped area diagram (Antoniades Architects)

The indicative design shows that vegetation removal is required to accommodate the new building envelope, including nine existing trees, and the relocation of two existing palm trees. The design would retain the mature Jacaranda tree located adjacent to the NSH Road frontage. The proposal is supported by an Arboriculture Impact Assessment Report.

The proposed controls would result in a building footprint that provides setbacks of at least 3m along the western and eastern boundaries and 6m along the southern boundary (**Figure 9**). These setback areas could be used as deep soil zones for canopy trees and screen planting, and green roof treatments on the upper level would also be possible.

The draft LEP requires the site-specific DCP to address matters, including deep soil zones to provide tree canopies and screen planting, which would also facilitate protection of significant existing trees on the site, such as the prominent mature Jacaranda tree at the site frontage, and replacement planting, ensuring high landscape quality and residential amenity.

Overall, the proposed controls are considered to enable adequate provisions of deep soil zones. Tree canopy, screen planting and tree protection can be further addressed and resolved at the DA stage.

Overshadowing and solar access

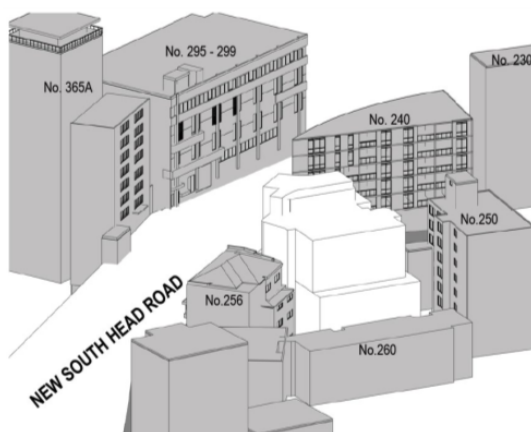
Council considers that the proposal will cause adverse overshadowing impacts and inadequate solar access that will compromise residential amenity within the site and to adjoining properties. Council is of the view that these impacts are consequences of the excessive height and FSR proposed and cannot be adequately addressed at the development application stage.

Overshadowing of surrounding properties

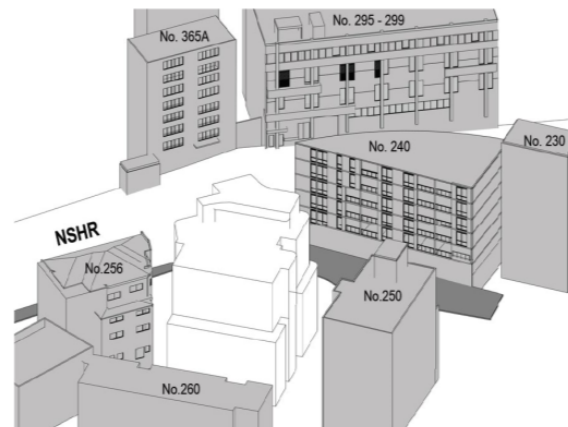
In testing the potential impacts on the adjoining and nearby properties, the proponent has submitted plan-view shadow diagrams, sun-eye diagrams and elevation drawings / tables confirming solar access to north-facing windows of selected neighbouring properties. In summary, the potential shadow impacts based on the concept scheme would be:

- 240-246 NSH Road: the living room windows and balconies to the apartments will retain at least 2 hours of sunlight in mid-winter.
- 248-250 NSH Road: the east-facing habitable room windows will not be affected by the concept scheme.
- 256-258 NSH Road: the north-western habitable room windows will retain at least 2 hours of sunlight in mid-winter. There will be additional impact to the south-western side windows; however, these windows are constrained in solar access due to their orientation towards the side boundary and aspect.
- 365A NSH Road (southern side of the road): all living room windows will retain at least 2 hours of sunlight in mid-winter.

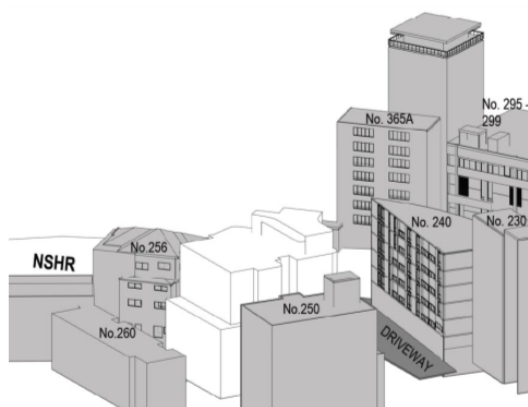
The Studio GL Report commissioned by Council notes that the proposal “*do not show how overshadowing has been minimised nor the extent of additional overshadowing created by the proposed non-compliance with the setbacks.*” The above report argues that the upper levels (above level 5) should be provided with additional side setbacks to meet the ADG. Detailed assessment of the shadow impacts will be undertaken at the DA stage, and further modelling of the built form has the potential to reduce shadow impacts as currently depicted by the concept scheme. The draft LEP requires the site-specific DCP to address overshadowing impacts on the surrounding properties. Regardless, there is sufficient analyses provided to demonstrate a reasonable level of solar access can be retained for neighbouring properties based on the proposed controls.



Sun-eye diagram – 9am, mid-winter



Sun-eye diagram – 12 noon, mid-winter



Sun-eye diagram – 3pm, mid-winter

Figure 101: Sun-eye diagrams (source: Antoniadis Architects)

Solar access to future development

The proponent's Solar Access Assessment report by SLR (dated September 2022 – Attachment H) concluded that direct sunlight to the proposed apartments in the concept scheme for June 21, between the hours of 9.00 am and 3.00 pm:

- 78.8 % (26 of 33) of apartments will achieve 2 hours solar access across the assessment window.
- 6.1 % (2 of 33) of apartments will receive no solar access across the assessment window.
- 15.2% (5 of 33) of apartments will receive less than 2 hours of solar access across the assessment window.

Based on the information submitted, the proposed controls are capable of creating an envelope that could satisfy the solar access requirements of the ADG.

The site-specific DCP will address building articulation and modulation and management of overshadowing impacts, which could ensure shadow impacts are adequately mitigated and suitable solar access is achieved. These aspects can be further addressed at the DA stage.

Natural Ventilation

Council's view

Council has advised that the proposed building height and FSR standards are not achievable for the site, stating the building depth is up to 27m on levels below Level 4 of the concept scheme. The Studio GL Urban Design report prepared on behalf of Council noted that as the corner units on Levels 1-7 "...indicate cross ventilation is achieved by windows that face the same side as the inlet windows, they cannot be considered cross ventilated apartments" (p. 4). The report concluded that the proposal only provides cross ventilation for 8/33 units (24%).

Council concludes that the level of amenity for the indicative units is inadequate as the concept plans show deep floor plates and the excessive depth will compromise the ability for the apartments to provide natural cross ventilation.

Proponent's view

The proponent has provided a 'Natural Ventilation Assessment' report by SLR, dated September 2022. The report states the "recesses and articulations create pressure and velocity differences across the various facades and encourage cross ventilation through an increased number of apartments" (p. 18). SLR have assessed the proposed height and FSR controls and has

determined that the building envelope will be capable of achieving compliance with the ADG requirements, concluding that “60.6% (20 out of 33) of the apartments will be naturally cross ventilated” (p. 27).

Department's assessment

The ADG Design Criteria for Objective 4B-3 states:

1. *At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.*
2. *Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.*

The Department's Urban Design team have reviewed the proposal and reports from both Council and the proponent. It was determined that 18 out of 33 (54.5%) of the apartments in the concept scheme are naturally cross ventilated, and therefore does not currently meet the minimum requirement of the ADG. In particular, the two (2) top-floor 1-bedroom units rely on ventilated skylights to achieve cross air flow within the units, which are not considered to meet the ADG requirements, and hence the discrepancy with the SLR findings of 60.6% (20 out of 33).

Based on the concept scheme, the design of the apartments on the side elevations could be adjusted to achieve cross ventilation in accordance with the Design Criteria of the ADG. The unit mix and layout may need to be adjusted to meet the ADG. It is acknowledged that this may potentially require a reduction in the number of dwellings. These issues can be addressed in detail and resolved at the DA stage.

Overall, it is considered that the proposed FSR and height controls can result in a building envelope with apartments meeting the ADG provisions. The draft LEP also requires the site-specific DCP to address apartment mix, which could contribute to optimising the amenity performance of the future building.

Visual and acoustic privacy

The concept scheme demonstrates reasonable levels of privacy could be achieved between habitable rooms and balconies of adjoining buildings and the future development by:

- Incorporating blank walls that do not require a specific separation distance.
- Habitable rooms are orientated to maximise visual privacy between the proposed and neighbouring buildings; direct lines of sight to windows and balconies of the adjoining buildings are avoided.

Visual and acoustic privacy matters can be addressed in detail at the DA stage. The draft LEP requires the site-specific DCP to contain information to address privacy matters.

Transport and traffic

The site is located on NSH Road (a classified road) in an area well serviced by public transport, being approximately 250m from the train services and bus interchange at Edgecliff Station and approximately 800m from Double Bay Ferry Wharf.

A Traffic and Parking Impact Assessment (TPIA) (**Attachment I**) was submitted with the planning proposal.

The Woollahra DCP specifies maximum parking provision (for residential apartments within 400m of a railway station) which equates to 37 spaces for the concept scheme. The scheme aims to provide six parking spaces, being four resident spaces and two car share spaces, along with motorcycle and bicycle parking. Based on the provision of six parking spaces, the TPIA anticipates the development will not generate significant vehicular traffic during peak periods that adversely affects the local road network.

The Sydney Eastern City Planning Panel in its Decision Notice for the rezoning review for this proposal suggests that on-site car parking should be minimised or deleted and that only servicing be provided. Details on parking provision and design will be addressed at the DA stage.

During public exhibition, TfNSW raised concerns regarding the proposed driveway location noting the crest located to the west. TfNSW has made specific recommendations to mitigate potential impact on traffic safety. The draft LEP requires the site-specific DCP to address vehicular access to minimise traffic impact on NSH Road. It is considered that vehicular access design could be further addressed and resolved at the DA stage.

4.1.4 Section 9.1 Directions

The following Section 9.1 Directions were considered as part of the Department's original Gateway determination report, with no further approvals required in relation to these directions:

- 1.4 Site Specific Provisions;
- 4.4 Remediation of Contaminated Land;
- 4.5 Acid Sulfate Soils;
- 5.1 Integrating Land Use and Transport;
- 5.3 Development Near Regulated Airports and Defence Airfields; and
- 6.1 Residential Zones.

Condition 1(iv) of the Gateway determination requires the planning proposal to be revised prior to exhibition to address and justify the inconsistency with the section 9.1 Direction relating to Site Specific Provisions. The proposal was amended in accordance with the condition. The Department agrees with Council's consideration that a site-specific control is necessary to ensure the future development will be of a scale that is compatible with the built form context along New South Head Road, and a secondary height control applying to the southern portion of the site is appropriate.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 7 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	2 maps have been prepared by Woollahra Municipal Council and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Council provided comments on the draft LEP on 1/12/2022. Refer to Attachment L and the comments below.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

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Stakeholder	Consultation	The Department is satisfied with the draft LEP
Parliamentary Counsel Opinion	On 12/12/2022 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No, see below for details

Council has reviewed the draft LEP and confirmed that the planning controls are correct, when compared to the exhibited planning proposal. Council also requests certain changes to the LEP to be made. The Department has considered Council's request and agreed to including visual privacy and amenity in the objective for Clause 4.3C *Exceptions to building heights*, and including building setbacks as another matter to be addressed in the site-specific DCP. Council also requests the site-specific DCP to include requirements for a landscape plan to ensure retention of significant trees on site. The Department considers that the existing Woollahra DCP already contains tree protection requirements; retention and protection of significant trees could be further addressed at the DA stage.

6 Recommendation

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

- The proposal is consistent with the Gateway Determination;
- All matters identified in the Gateway determination have been satisfactorily resolved;
- It provides additional housing within close proximity to services, employment and public transport, and would contribute to the 30-minute city pursuant to the Greater Sydney Region Plan and Eastern City District Plan;
- It is consistent with and gives effect to the relevant objectives, directions and priorities of the Greater Sydney Region Plan and Eastern City District Plan;
- It is consistent with all relevant section 9.1 Directions and SEPPs;
- Any potential environmental impacts could be adequately addressed and resolved at the development application stage;
- All community concerns have been adequately addressed and there are no outstanding or unresolved issues raised in submissions from agencies.



Simon Ip
Manager, Place and Infrastructure



Laura Locke
Director, Eastern and South Districts

Plan finalisation report – PP-2021-6330 - 252-254 - New South Head Road, Double Bay

Assessment officer

Cameron Brooks

Planning Officer, Eastern and South Districts

8837 6033

Attachments

Attachment	Document
A	Planning Proposal (exhibition version)
B	Gateway Determination
C	Gateway Determination Report
D	Woollahra Municipal Council Minutes - Resolution (27 September 2022)
E	Woollahra Environmental Planning Committee (EPC) Agenda (5 September 2022)
F	Redacted Submissions
G	Urban Design peer review by Studio GL, commissioned by Council (July 2022)
H	Proponent's response to EPC report – letters from GSA, Urban Design Peer Review by AE, Natural Ventilation Assessment by SLR, Solar Access Assessment by SLR (September 2022)
I1	Letter from GSA – response to Gateway Determination (March 2022)
I2	Letter from GSA – response to Council (March 2022)
I3	Setback diagrams, height plane diagrams, GFA diagrams, streetscape elevation, sun eye diagrams, solar access tables and elevations (March 2022)
I4	Draft Site-Specific DCP
I5	Urban Design Report by GMU (March 2020)
I6	Shadow diagrams by Antoniades Architects (June 2020)
I7	View analysis by Antoniades Architects (June 2020)
I8	Architectural drawings by Antoniades Architects (February 2020)
I9	Traffic and Parking Impact Assessment by TTPA (March 2020)
I10	Arboricultural Impact Assessment by Russell Kingdom (March 2020)
I11	Acoustic Assessment by Renzo Tonin (March 2020)

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Attachment	Document
I12	Survey plan by Cibar Surveying (September 2019)
J	Planning Panel Record of Decision – Rezoning Review (July 2021)