

Attachment C – Department of Planning and Environment Letter to Transport for NSW

Department of Planning and Environment



Our ref: IRF23/21(PP-2021-6740/GR-2022-17)

Mr Brendan Pegg
Acting Director, Land Use
Planning and Programs
Greater Sydney Division
Transport for NSW

Via email: [REDACTED]

12 April 2023

Subject: Gateway determination review (GR-2022-17) - Woollahra Municipal Council's planning proposal to remove land acquisition reservation in Edgecliff

Dear Mr Pegg

Thank you for your correspondence dated 23 December 2022 regarding the advice report provided by the Independent Planning Commission (IPC) on the Gateway determination review request in relation to planning proposal (PP-2021-6740). The proposal seeks to remove four areas of land reservation (identified as Areas 1 to 4) for future acquisition by Transport for NSW (TfNSW) on New South Head Road (classified road), Edgecliff.

I commend the collaborative effort of the staff members of TfNSW in providing advice and support to the Department throughout the Gateway determination review process.

The Department has carefully considered the IPC's advice report and TfNSW's correspondence referred to above.

The Department notes TfNSW's confirmation that it does not support the removal of any of the land reservation as New South Head Road, including the subject reserved land, forms part of an important public transport corridor; one of the strategic visions for this corridor over the next 20 years is to encourage the use of sustainable transport modes with efficient public transport services and high-quality active transport facilities. As such, TfNSW does not provide consent to remove the reservation pursuant to section 9.1 Ministerial Direction – 5.2 *Reserving Land for Public Purposes*. The Department is satisfied that TfNSW, as the relevant public authority, does not grant consent to the removal of any of the reserved land and that the inconsistency with the Ministerial Direction is not of minor significance.

Having considered the IPC's advice in detail, the Department does not agree with the IPC's recommendation that Areas 2 and 4 of the acquisition reservation be removed. The status of the relevant sites in these two areas as heritage items should not preclude reservation of the land for transport purposes. The local heritage listing provides the basis for the consent authority to consider the effect of future changes, including alteration, moving and demolition, on the heritage significance of the items concerned. It does not mean the listing should constrain public authorities from acquiring the land for public purposes.

The Department acknowledges the importance of identifying and safeguarding land for transport and other infrastructure, which is stated in Priority E1 and E10 of the *Eastern City District Plan*. As the subject land reservation has been identified by TfNSW as being required to implement future public and active transport improvements, the Department supports its retention for future acquisition by TfNSW. It is also noted that the land reservation would potentially provide an avenue for affected landowners to request acquisition of their land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.

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Locked Bag 5022, Parramatta NSW 2124

www.dpie.nsw.gov.au 1

On the above basis, the Department considers that the reasons for the Gateway determination of 8 June 2022 to not proceed with the planning proposal remain valid. Accordingly, the Gateway determination will not be altered by the Department. However, if there is a change in position from TfNSW in the future, the Department would appreciate a further discussion and may consider a new planning proposal.

Please be advised that the Department will write to Council and the IPC to explain its position accompanied with TfNSW's correspondence of 23 December 2022 as a reference.

One of the objectives of Council's planning proposal is to improve the public domain outcomes of New South Head Road and to support regeneration of the Edgecliff Commercial Centre. In this respect, there are opportunities for Council and TfNSW to collaborate and investigate place-making and active and public transport initiatives along the road corridor. The Department will be available to facilitate discussions on this matter.

Should you have any questions, you are welcome to contact Ms Laura Locke, Director, Eastern and South Districts at the Department on 8275 1307.

Yours sincerely



Monica Gibson
Acting Deputy Secretary
Planning and Land Use Strategy

Attachment D – Section 9.1 of the Environmental Planning & Assessment Act 1979, Ministerial Direction 5.2 Reserving Land for Public Purposes

5.2 Reserving Land for Public Purposes

Objectives

The objectives of this direction are to:

- (a) facilitate the provision of public services and facilities by reserving land for public purposes, and
- (b) facilitate the removal of reservations of land for public purposes where the land is no longer required for acquisition.

Application

This direction applies to all relevant planning authorities when preparing a planning proposal.

Direction 5.2

- (1) A planning proposal must not create, alter or reduce existing zonings or reservations of land for public purposes without the approval of the relevant public authority and the Planning Secretary (or an officer of the Department nominated by the Secretary).
- (2) When a Minister or public authority requests a relevant planning authority to reserve land for a public purpose in a planning proposal and the land would be required to be acquired under Division 3 of Part 2 of the *Land Acquisition (Just Terms Compensation) Act 1991*, the relevant planning authority must:
 - (a) reserve the land in accordance with the request, and
 - (b) include the land in a zone appropriate to its intended future use or a zone advised by the Planning Secretary (or an officer of the Department nominated by the Secretary), and
 - (c) identify the relevant acquiring authority for the land.
- (3) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal relating to the use of any land reserved for a public purpose before that land is acquired, the relevant planning authority must:
 - (a) include the requested provisions, or
 - (b) take such other action as advised by the Planning Secretary (or an officer of the Department nominated by the Secretary) with respect to the use of the land before it is acquired.
- (4) When a Minister or public authority requests a relevant planning authority to include provisions in a planning proposal to rezone and/or remove a reservation of any land that is reserved for public purposes because the land is no longer designated by that public authority for acquisition, the relevant planning authority must rezone and/or remove the relevant reservation in accordance with the request.

Consistency

A planning proposal may be inconsistent with the terms of this direction only if the relevant planning authority can satisfy the Planning Secretary (or an officer of the Department nominated by the Secretary) that:

- (a) with respect to a request referred to in paragraph (4), further information is required before appropriate planning controls for the land can be determined, or
- (b) the provisions of the planning proposal that are inconsistent with the terms of this direction are of minor significance.

Note: Clause 10 of the EP&A Reg 2000 provides that a planning proposal for a proposed local environmental plan may not contain a proposed reservation of land for a purpose referred to in section 3.14 (1)(c) of the EP&A Act unless the public authority that is to be designated for the purposes of section 3.15 of the Act as the authority required to acquire the land has notified the relevant planning authority of its concurrence to the reservation of the land for that purpose.

In this direction:

- “public authority” has the same meaning as section 1.4 of the EP&A Act.
- the use or reservation of land for a public purpose has the same meaning as in section 3.14(1)(c) of the EP&A Act.

Issued to commence 1 March 2022 (replaces previous Direction 6.2)

17 October 2023

Simon Ip

Manager Place and Infrastructure, Metro East and South

Department of Planning and Environment

[REDACTED]

RE: Planning Proposal PP-2022-1646 at 136-148 New South Head Road, Edgecliff

Thank you for notifying Sydney Water of the planning proposal listed above. The proposal seeks amendments to the Woollahra LEP 2014 including a site-specific clause to allow exceptions to the mapped Height of Buildings maximum of 14.5m (to a maximum of 46m) and to the mapped FSR maximum of 1.5:1 (to a maximum of 5:1), subject to certain conditions. The indicative development concept is for a 12-storey mixed use building comprising a total GFA of 8,723m², 41 apartments and three levels of basement parking.

We have reviewed the application based on the information supplied and provide the following comments for your information to assist in planning the servicing needs of the proposed development.

Water and Wastewater Servicing

- Water and wastewater servicing should be available to service the indicative development concept.
- Amplifications, adjustments, and/or minor extensions may be required.

The development servicing advice provided is not formal approval of our servicing requirements and is based on the best available information at the time of referral (e.g., planning proposal). It is important to note that this information can evolve over time in tandem with the progression of other development projects in the catchment, changes within the local systems and receiving works. This is particularly important in systems with limited capacity, where not previously identified for growth uplift or which has been identified for government acceleration or prioritisation

Furthermore, Sydney Water does not reserve or hold capacity for proposed developments, regardless of whether the area has been rezoned or not. To ensure accuracy and alignment with current conditions, it is best to approach Sydney Water for an updated capacity assessment particularly if an approval letter is more than 12 months old.

If you require any further information, please contact the Growth Planning Team at

[REDACTED]

Yours sincerely,

[REDACTED]

Kristine Leitch

Commercial Growth Manager

City Growth and Development, Business Development Group

Sydney Water, [REDACTED] Smith Street, Parramatta NSW 2150

2 November 2023

General Manager
Woollahra Council
P.O Box 61
DOUBLE BAY NSW 1360

Email: [REDACTED]

TO BE SUBMITTED HARD COPY & VIA EMAIL

Dear Sir/Madam

STRATA PLAN: [REDACTED]
ADDRESS: [REDACTED] NEW SOUTH HEAD ROAD, EDGECLIFF
SUBJECT: SC6604-23/133291: REZONING OBJECTION

We write to you as Strata Managing Agents for the above Strata Plan.

We have been asked by the Owners of [REDACTED] New South Head Road Edgecliff to submit the attached letter of objection to the subject planning proposal.

Please find attached a letter of objection from the owners of [REDACTED] New South Head Road. The owners of [REDACTED] New South Head Road are in support of the objections put forward by the owners of [REDACTED] New South Head Road.

We appreciate acknowledgement and confirmation of lodgement of the objection.

Yours faithfully
ALLDIS & COX (COOGEE) PTY LTD

[REDACTED]
MOE IOANE
STRATA MANAGER

Email: [REDACTED]

[REDACTED] Frenchmans Road,
Randwick NSW 2031

PO Box 335,
Coogee NSW 2034

Aldis & Cox
ESTATE AGENTS SINCE 1888

Liability limited by a scheme approved under Professional Standards Legislation.

Planning Proposal – 136 to 148 New South Head Road, Edgecliff

Objection to the proposed uplift in building height from 14.5m to 46m

Context and Executive summary

- The Gateway determination report – PP-2022-1646, dated April 2023 refers to the properties located between 136-148 New South Head Road, Edgecliff.
- The site is located on the north side of New South Head Road, opposite the Edgecliff Centre, in the block stretching between Darling Point Road on the west and Ocean Avenue on the east.
- The Planning Proposal before the NSW Department of Planning and Environment seeks to amend the Woollahra Local Environmental Plan 2014 by increasing the maximum:
 - Height of buildings control from 14.5m to 46m and,
 - Floor space ratio control from 1.5:1 to 5:1.
- This objection to the rezoning proposal outlines several key factors that haven't been appropriately considered and addressed through the Planning Proposal, Gateway determination report and Edgecliff Commercial Centre Heritage Study.

Incomplete heritage assessment

Woollahra Council has engaged GML Heritage Consultants to provide a heritage significance assessment of the Edgecliff Commercial Centre (ECC) study area. GML's final report is dated 9 August 2023. The report was presented at the Woollahra Local Planning Panel meeting - 20 October 2023 - Edgecliff Heritage Study.

The GML heritage report recommended that the group of 5 residential flat buildings, 164 to 172 New South Head Road, referred to as the Brantwood Estate Heritage Conservation Area (HCA), be heritage listed as a conservation area. These properties adjoin Ascham School on the east side (already heritage listed) and 136 – 148 New South Head Road on the west side (136 is already heritage listed).

The report was accepted and in the minutes of the WLLP meeting, it was resolved to put Brantwood Estate HCA forward for heritage listing, including interiors and gardens.

The heritage recommendations in this report do not appear to have been incorporated into this Planning Proposal. Any heritage impact assessment is incomplete and inaccurate without considering Brantwood Estate HCA and the character of all the buildings on the north side of New South Head Road, between Darling Point Road and Ocean Avenue.

Heritage impact of the proposed height increase

The Brantwood Estate HCA directly adjoins the proposed development on the eastern side. In the reports provided there's little reference to these buildings, and no assessment of the heritage context of these properties or the overwhelming visual, privacy and shadowing impact a 46m tower will have on the residents of this heritage enclave.

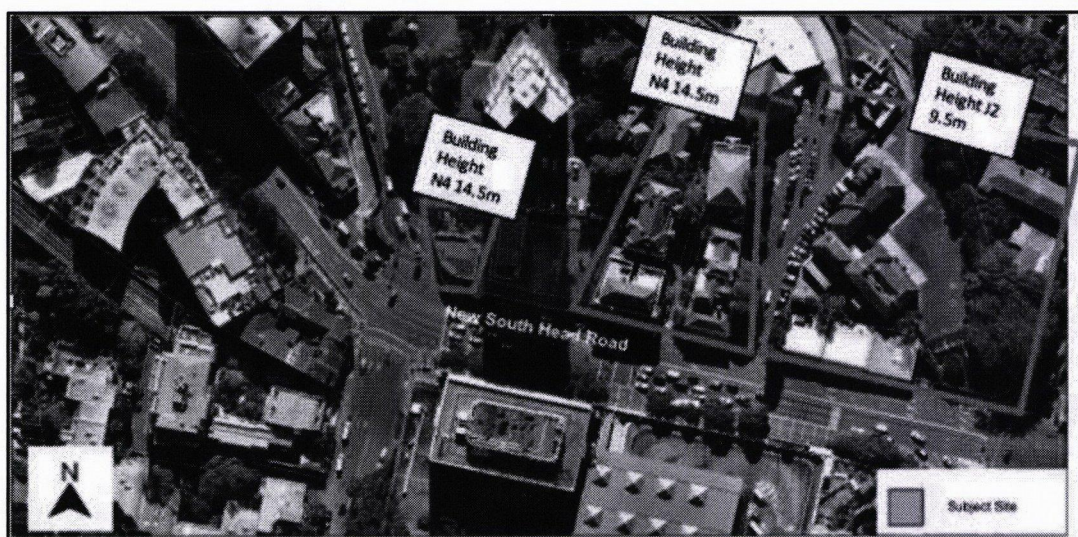
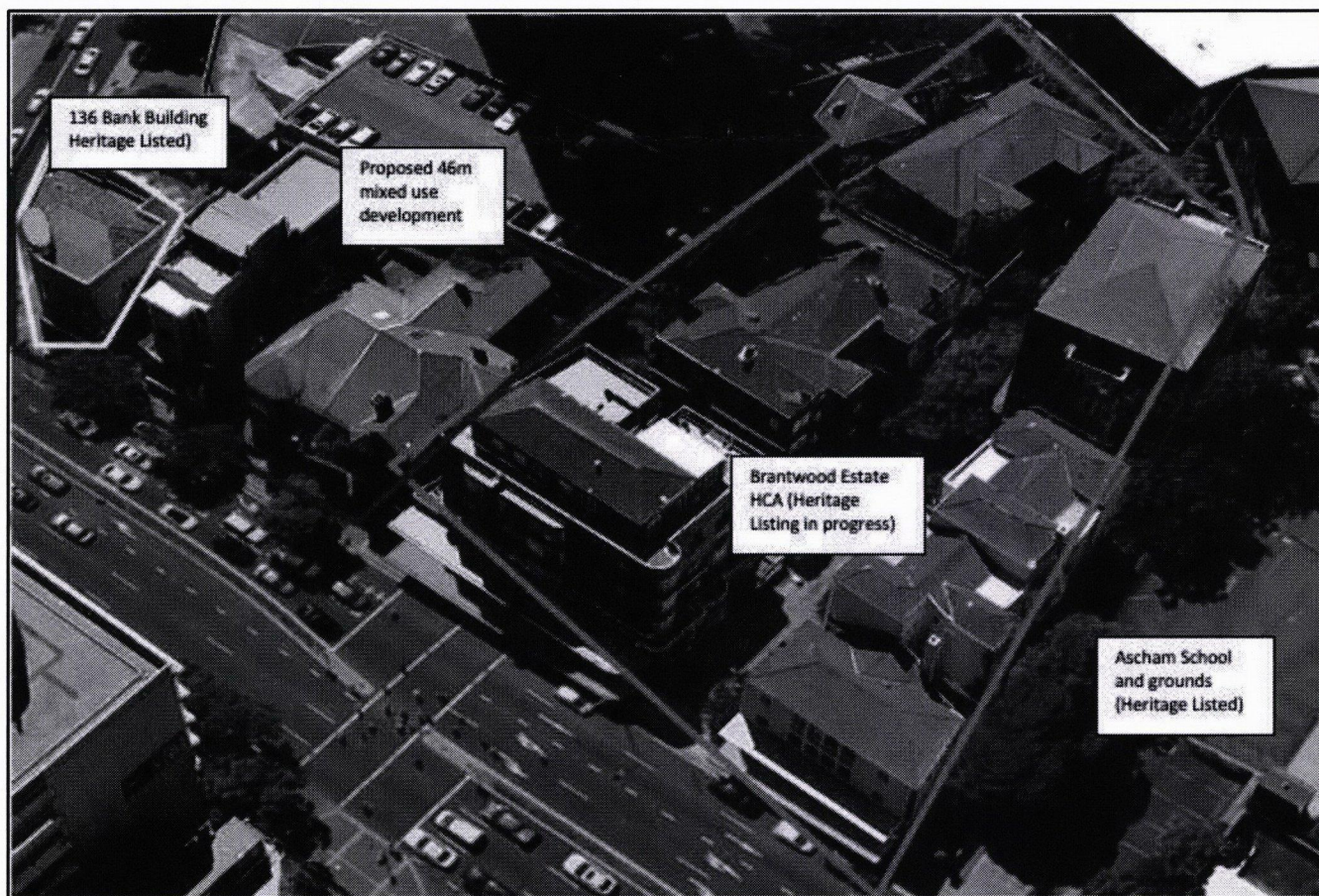
Each of the buildings fronting the north side of New South Head Road in this block, have a different architectural style. This individuality, the era in which they were built, their height, adaptation and form, all represent the unique character of this precinct.

Rezoning of the proposed development at 136 - 148 New South Head Road, with the imposition of a 46m building, will dominate the stretch of road, permanently change the character of the landscape and surroundings and will undermine the heritage value of the remaining buildings (which includes a direct impact on the proposed Brantwood HCA).

In the Draft Edgecliff Commercial Centre Urban Design Strategy it's noted this area was not identified for any uplift in the strategy's structure plan. Given the context and character of the area, and the now

completed heritage assessment of the Edgecliff Commercial Centre study area, this seems entirely appropriate.

Below are visuals of the buildings and character on the north side of New South Head Road, most of which are heritage listed (or are in the process of being heritage listed, e.g. Brantwood Estate HCA). As a heritage listed row of properties, building height along this whole block will never be uplifted to more than 14.5m and it's therefore inappropriate to allow a single 46m tower style building to dominate this heritage enclave.



The following is a photograph of buildings and unique garden setting of Brantwood Estate (from Council's ECC heritage study)



The following is an extract from the Brantwood Estate HCA Heritage Data Form detailing the uniqueness of the Estate.

<p>Rarity</p> <p>SHR criteria (f)</p>	<p>The Brantwood Estate has a unique setting because of its internal courtyard that is addressed by representative interwar flat buildings. The interwar group of flat buildings and central courtyard setting are rare, if not exclusive, within any identified HCAs and the broader Woollahra LGA. The focus on the central court and landscape area, shared by a collection of contemporaneous interwar residential flat buildings, is a unique surviving example of an intact interwar flat development. The flat buildings within the former Brantwood Estate address a courtyard and central garden space rather than a street in a broader streetscape setting. This relationship between buildings and central space is rare in the Woollahra LGA.</p> <p>The courtyard and elements of the garden, including the significant large Podocarpus specimen, date from at least the subdivision of the Brantwood Estate and the construction of the flat buildings. Each element of the garden and courtyard, including trees, plantings, sandstone flagging, stairs, garden bed and fountain element, together with the five representative examples of residential flat buildings in various interwar styles, contributes to a significant space.</p> <p>The courtyard and garden elements connect the five residential flat buildings and are all complementary. The group of flat buildings and grounds form a cohesive, rare and aesthetically unique site in the Woollahra LGA.</p> <p>As individual elements, the five flat buildings and the courtyard are not rare elements, but as a group the setting created by the relationship between these elements is assessed as rare.</p> <p>Brantwood Estate HCA has cultural significance at a local level under this criterion. Brantwood Estate HCA does not have cultural significance at a state level under this criterion.</p>
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Following are extracts from the Rezoning Review – Briefing Report attached to this Proposal.

Heritage

*Also, there will be no impact on nearby heritage items (due to separation distances) and the lower height of the proposed building envelope reduces the potential for adverse visual impacts from the Paddington HCA. This is further detailed in the applicant's Heritage Report at **Attachment 7**.*

The above comments in relation to heritage impact are incomplete as there is no reference or consideration to the adjoining 5 buildings comprising Brantwood Estate HCA (proposed) or the fact that this whole block on the north side of New South Head Road is / will be heritage listed, except for 3 of the 4 buildings in this

Planning Proposal. Consideration of visual impacts from the Paddington HCA are called out above, however the dominating visual impact on the adjoining proposed Brantwood HCA is not mentioned at all.

The site is located within the Edgecliff local centre and is zoned B4 Mixed Use.

The surrounding context of the site is characterised by a mix of office, retail, residential and educational buildings. To the west of the site, within the Darling Point Road reserve, is a concrete balustrade listed as a local heritage item (I114). The area north of the site is zoned R3 Medium Density Residential, including the adjacent 31-storey "Ranelagh" apartment building. North-east of the site is Ascham School, which consists of several local heritage items, but does not share a boundary with the site. To the south of the site, the opposite side of New South Head Road is zoned B2 Local Centre, containing Edgecliff railway station and bus interchange within the East Point mixed-use development and a commercial building known as "Edgecliff Centre".

Brandwood Estate HCA does share a boundary with the site, however in the above extract there is no reference or acknowledgement of that fact. This Planning Proposal therefore provides inaccurate information regarding the context of the site and the direct impact on heritage items and their occupants.

Building design and character assessment doesn't consider context and character of its surroundings, failing to meet its stated objectives

For context, the Gateway Determination Report, Clause 1.2 states:

The objectives of the planning proposal are:

- *To put in place exceptions to the envelope controls that would allow redevelopment of the site for a 12-storey mixed use development.*
- *To facilitate a built form that is compatible with the existing and emerging context and character of the locality.*
- *To ensure the scale of development is commensurate with the capacity of existing and planned infrastructure.*

The Proposal provides detail on the building design and character, the materials used, height and how it fits in with the existing and emerging character of the locality. However, much of this is documented from the perspective of how it fits in with the Edgecliff Commercial Centre redevelopment (which is on the south side of New South Head Road) rather than whether it's compatible with the immediate surrounding – and adjoining properties – on the north side of New south Head Road.

The report references the surrounding context of the site as being characterised by a "mix of office, retail, residential and educational buildings" and only draws reference to the heritage items of the concrete balustrade within Darling Point Road, and the several local heritage items within the Ascham School which is north-east of the proposed site.

While the report references the need for heritage conservation in the area, it makes no mention of the adjoining properties of Brantwood Estate HCA. Given this, the report fails to address how the proposed development is compatible with and fits within the character of the locality. The proposed height, design, and use of material is not in character with the surrounding and neighbouring properties.

Misalignment with Council's Strategic Assessment

The site is within the Eastern City District and the Greater Cities Commission Plan released on 18 March 2018. The Plan contains planning priorities and actions to guide the growth of the district while improving its social, economic, and environmental assets.

Clause 3.2 of the Plan

The Planning Proposal states that it's consistent with the Woollahra Local Strategic Planning Statement (LSPS) 2020 plans and endorsed strategies, but fails to outline and demonstrate how, particularly in respect of the following extracts.

5: *Conserving our rich and diverse heritage.*

The proposal is supported by a heritage assessment, which states that only the existing heritage item at 136 New South Head Road is worthy of retention. The concept scheme demonstrates that the above item can be conserved and integrated into the future development, with the new building incorporating a cantilever across a portion of the heritage item and setbacks to minimise its visual impact. The

Given the proposed development overshadows and fails to acknowledge the heritage setting of the adjoining Brantwood Estate, and the whole block between Darling Point Road and Ocean Avenue, the proposal fails to demonstrate how it's 'conserving our rich and diverse heritage'.

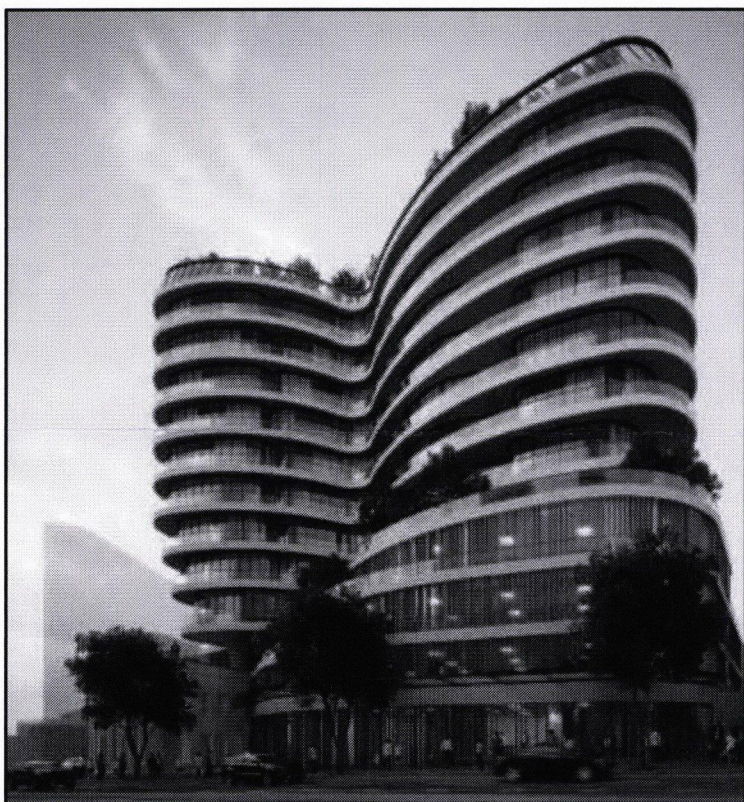
6: *Placemaking supports and maintains the local character of our neighbourhoods and villages whilst creating great places for people.*

The proposal would facilitate a development with commercial uses at ground and podium levels that activate the public domain. The proposed local provision would also contribute to design excellence of the future development. A site-specific DCP could provide further design guidance to enhance place-making and conservation of heritage.

The design and size of the proposed building is not in keeping with the heritage character of the adjoining heritage conservation area, but is reflective of the modern designs proposed for the future Edgecliff Commercial Centre on the opposite side of the road which has different zoning. This is noted through the below artist's impressions of the future Edgecliff Centre and the site at 136 – 148 New South Head Road



Figure 25. Artist's impression of the Edgecliff Centre site viewed from New South Head Road looking South-East (SJB 2018)



Artist impression of the proposed development at 136 – 148 New South Head Road

This 46m tower style development is not in any way sympathetic to the context and heritage of the surrounding buildings on the north side of New South Head Road or the Brantwood HCA next door. More broadly, the proposal is not in sympathy with the heritage significance of this precinct on the north side of New South Head Road, where the whole block, with the exception of 3 of the properties making up part of this rezoning proposal, are already heritage listed or are in the process of listing.

The rezoning Proposal, with the imposition of a 46m building, will permanently change the character of the landscape and surroundings and will undermine the heritage value of the remaining buildings.

Conclusion and points of objection

It's apparent that timing issues between this Planning Proposal and the ECC Heritage Study have resulted in a situation where critically relevant heritage information – impacting this Planning Proposal and the owners of the Brantwood Estate HCA – is missing.

The Planning Proposal to triple the height of buildings from 12.5m to 46m must not be considered in isolation of the ECC Heritage Study.

I / we strongly object to the rezoning for the following reasons:

1. Uplifting of building height to 46m would create a dominating visual impact upon the Brantwood Estate HCA.
2. The defining character of Brantwood HCA is its unique and rare central courtyard and garden setting. Uplift of the adjoining building will permanently change the character of the landscape and surrounds.
3. The entire block on the north side of New South Head Road from Darling Point Road in the west to Ocean Avenue in the east, will be heritage listed except for 3 of the 4 properties making up this proposal.
4. Therefore, building height along this whole block will never be uplifted to more than 14.5m and it's therefore out of character and inappropriate to allow a single 46m tower style building to dominate the heritage enclave.

5. The 46m development will have unacceptable privacy and shadowing impacts on the neighbouring residential low rise flat buildings making up Brantwood HCA. Given the HCA listing, these properties will have no ability to make changes or adapt to the dominating landscape around them. This significant impact must be considered when assessing the proposed development.
6. The design of the proposed development is aligned to the modern style of the Edgecliff Commercial Centre on the south side of New South Head Road and is not in keeping with the heritage context of the surrounding and neighbouring buildings on the north side of New South Head Road, most of which are heritage listed and will therefore remain unchanged.

Thank you for giving due consideration to the points raised above.

Yours sincerely,

Jonathan Walczak

Owner / Occupier / Resident
Brantwood Hall
[REDACTED] New South Head Road
Edgecliff NSW

From: [Marco Dardano](#)
To: [Wai Wai Liang](#); [REDACTED]
Subject: Planning Submission Objection - 136 - 148 New South Head Road Edgecliff
Date: Wednesday, 29 November 2023 11:58:24 AM
Attachments: [image001.jpg](#)
[4680.pdf](#)

Dear Planning and Woollahra Council,

Please see attached letter on behalf of the owners of Strata 4680 at 3 -17 Dalring Point Road Darling Point NSW.

Thanks

Marco Dardano



Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360
records@woollahra.nsw.gov.au

RE: OBJECTION TO PLANNING PROPOSAL – 136-148 NEW SOUTH HEAD ROAD, EDGECLIFF
COUNCIL FILE NO: 22/69145
DPE REF:PP- 2022-1646
PROPERTY: 136-148 NEW SOUTH HEAD ROAD, EDGECLIFF

ATTENTION: Manager – Strategy and Place

Dear Anne White,

We refer to **Planning Proposal (Council File No. 22/69145)** at 136-148 New South Head Road, Edgecliff which is currently being contemplated by Woollahra Municipal Council (Council) and Woollahra Local Planning Panel (WLPP). The PP seeks site specific amendments to the *Woollahra Local Environmental 2014* (WLEP 2014) as follows:

- **Clause 4.3 Height of Buildings (HOB)** – maximum 14.5m – proposed 42m (variation of 28.5m or approximately 197% to the standard);
- **Clause 4.4 Floor Space Ratio (FSR)** – maximum 1.5:1 or 2,619m² of Gross Floor Area (GFA) - proposed 5:1 or 8,730m² of GFA (variation of 3.5:1 or 6,111m² of GFA and approximately 333% departure to the standard).

This submission has been prepared by way of objection to ensure Council and the WLPP appropriately consider the extent of the impact on the surrounding area.

1. PLANNING PRINCIPLE – SURROUNDING DEVELOPMENT COMPATIBILITY OF PROPOSAL WITH SURROUNDING DEVELOPMENT

The proposal may facilitate the significant redevelopment of the Site for a 12 storey mixed use building comprising of three (3) levels of commercial and nine (9) levels of residential. The envisaged concept plans as provided within the minutes of Council's Agenda for 22 April WLPP Meeting has failed to appropriately consider its relationship with the adjoining property at 3-17 Darling Point Road, Darling Point.

Reference is made to *Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*, which identifies *Planning principle: compatibility in the urban environment*. The Planning Principle provides a test in order to understand whether a proposal is compatible with its context and should be asked the following two (2) questions (bolded for emphasis):

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts **include constraints on the development potential of surrounding sites.***
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The Site adjoins an existing carpark which does not contribute to the overall corridor provided within the Draft Edgecliff Commercial Centre Planning and Urban Design Strategy nor the existing streetscape. It is considered that the adjoining carpark to the Site may offer further **development potential** for the Site of 3-17 Darling Point Road, Darling Point.

The PP Site, 136-148 New South Head Road, forms part of the Draft Edgecliff Commercial Centre Planning and Urban Design Strategy which is envisaged for significant uplift and built form outcomes to assist in Commercial Centre Planning in proximity to Edgecliff station and recognise an important local hub and gateway to the Woollahra Local Government Area (LGA). It is understood the Site was

not specified under the initial plan for uplift due to multiple ownerships of the land and appropriate vehicular access could not be established.

Whilst the redevelopment of the Site is still being contemplated, the anticipated impact to the adjoining development potential of the existing carpark or wider Site has not been appropriately considered. The PP in its current form does not consider potential cumulative impacts or sterilisation of future development potential of the adjoining carpark Site and the amenity impacts.

An extract of the concept having regard to the adjoining Site is provided in **Figure 1** below:



Figure 1. 9am View from the Sun Extract from Concept Plans (Group GSA, 2022)

As demonstrated above, bulk and scale of the proposed concept would impinge on the existing amenity including views and visual bulk and scale impacts of residents of Ranelagh Tower located at 3-17 Darling Point Road, Darling Point. Additionally, should any future redevelopment of the adjacent carpark be sought, the relationship of the subject PP should be appropriately demonstrated. Where the proposed uplift of 136-148 New South Head Road, Darling will not enable the redevelopment or hinder the development potential of the adjoining Site, the PP should not be progressed.

Should the adjoining carpark or the wider Site be redeveloped, the impacts on solar access amenity and the bulk and scale of the subject PP should be appropriately considered before it is progressed. Preliminary concepts have been provided in **Figure 2** below, however it is considered that there should be consideration given to future proposed uplift on adjoining sites as well as amenity impacts to the adjoining Sites.

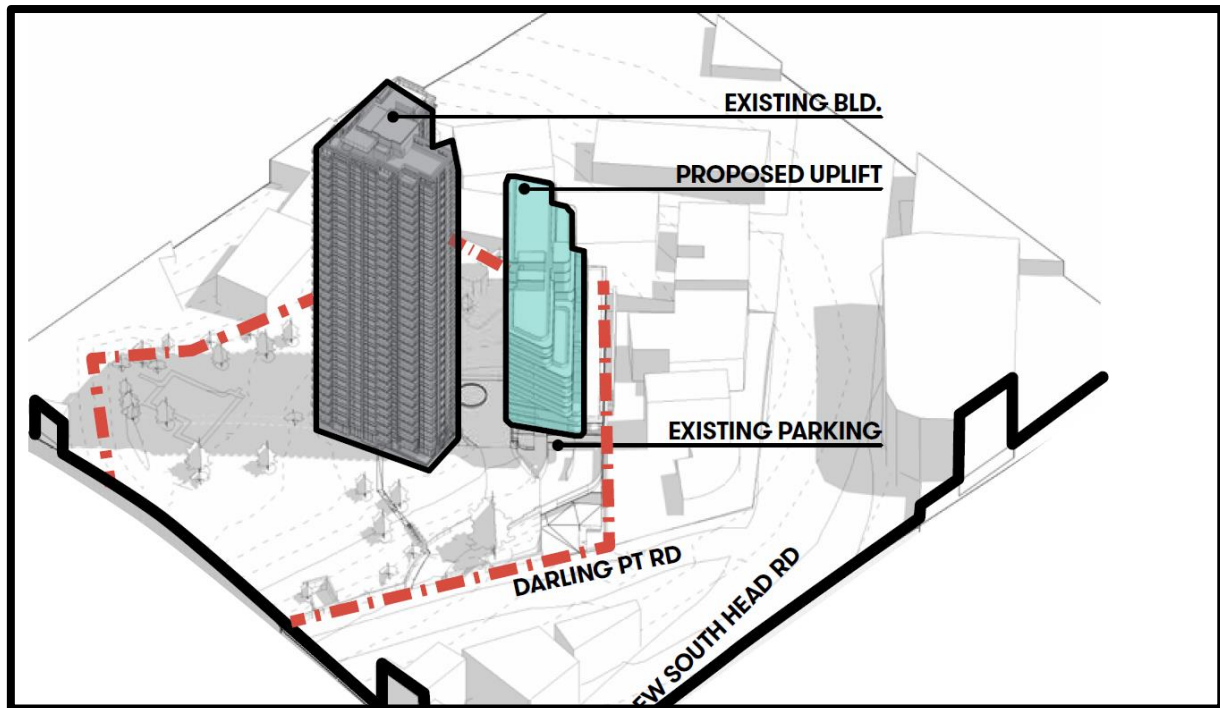


Figure 2. Scott Carver Concept Plan Adjoining Carpark (Scott Carver, 2022)

It is also noted that should the existing carpark be redeveloped, the requirements of the *State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)* would not be attainable including appropriate separation distances to adjoining buildings. The current concept shows a setback of around 3m to the adjoining boundary and would limit the redevelopment potential of the existing carpark as a setback of circa 6-12metres would be required. It is highlighted that no engagement with the Owners of Strata Plan 4680 was conducted throughout the development of the subject PP and a holistic precinct solution should be considered for the area.

2. SURROUNDING CHARACTER

It is noted that the PP does not consider the wider implications for Edgecliff and the nearby centre, and potential increased development of New South Head Road. The findings in terms of design, traffic and amenity implications are based on the current context, with a clear intention from Council for uplift and redevelopment of the Edgecliff area as a whole. Further consideration should be given to potential implications from the wider redevelopment of the area.

3. TRAFFIC AND TRANSPORT IMPACTS

The proposed traffic and transport impacts from any redevelopment of 136-148 New South Head Road, Edgecliff should be further considered. Primary vehicular access for any redevelopment is anticipated to be sought via Darling Point Road. Based on the anticipated traffic generation rates and parking rates per the prepared Traffic and Transport Impact Assessment, the following is required to accommodate the proposed uplift:

- *Some 130 parking spaces for the commercial option; and*
- *Maximum of some 61 residential spaces and minimum of some 43 non-residential spaces for the mixed-use option.*

The impacts of traffic and where vehicle access may be able to be achieved off Darling Point Road should be further considered. There is an existing vehicle crossover in close proximity to the New South Head Road intersection and an additional crossover in this location would cause significant

issues for entry and exit into both sites. The traffic solution proposed would further limit direction of travel for those utilising Darling Point Road, with the suggestion to stop right turns out onto New South Head Road. This would result in additional traffic onto the Mona Street intersection and increase travel distances and times for a number of residents.

- *We also note that the Darling Point Road carriageway is wider in the vicinity of the Site. This generally provides for vehicles to pass another vehicle turning right into the Site from Darling Point Road.*

Should any redevelopment of the adjoining Site at 3-17 Darling Point Road, Darling Point be sought, the car parking impacts and vehicular access arrangements for any such development should be further understood before the PP is progressed. Commitments to any traffic upgrades would be required as part of the PP.

4. SITE SPECIFIC DCP

It is acknowledged that a site specific Development Control Plan (DCP) would be required to be prepared prior to the development of the Site. It is considered that the site specific DCP should be developed now and exhibited as part of the PP so that all relevant issues can be considered and responded to. This would further ensure that the concept proposal outcomes and aims of the PP as a whole can be achieved without impacts to surrounding development.

5. RECCOMENDATIONS

This submission is made by way of objection and the following is noted:

- The relationship of the PP in the context of any redevelopment of the adjoining Site should be further assessed including any redevelopment of the adjoining existing carpark or the wider Site of 3-17 Darling Point Road, Darling Point.
 - Council and the WLPP should not progress the PP until a time further information is provided to understand the amenity impact to the adjoining Site. Conceptual drawings should be produced demonstrating that the adjoining Site will not be isolated by the proposed development, or the development potential of the Site hindered.
- The Owners of Strata Plan 4680 were not engaged throughout the development of the adjoining PP and it is considered that a holistic precinct solution should be considered to mitigate issues which will arise as a result of the subject PP.
- The traffic and transport implications including access arrangements from Darling Point Road require further consideration to understand the anticipated impact of the adjoining Site.
 - Further detail is required in this regard including assessment of the viability of use of the adjoining carriageway and relationship with the existing adjoining carpark. Given the location of the Classified Road it is not considered suitable that this should be dealt with at PP stage as the proposed uplift is considered significant.

6. SUMMARY AND CONCLUSION

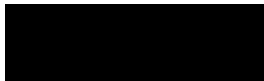
In light of the above, the proposal must further consider its impact on the adjoining property. In our opinion, the proposed development, in its current state, should not be progressed.

It is considered that the necessary planning considerations have not been adequately addressed and any future development of the Site would not be able to satisfactorily meet the provisions of Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

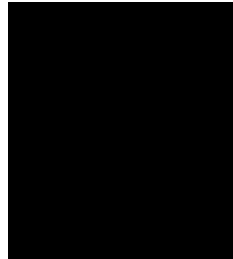
We thank Woollahra Municipal Council and the WLPP for their due consideration of the above matters raised within this submission for the assessment of the **PP (Council File No. 22/69145)** at 136-148 New South Head Road, Edgecliff.

Should you require further information, please contact the undersigned.

The common seal of The Proprietors Strata Plan
No 4680 was hereunto affixed in the presence of
the following being the person(s) authorised by
section 273 of the Strata Schemes Management Act
2015 to attest the affixing of the seal.



Signature



David Terry	Strata Manager	29 / 11 / 2023
Print name		

23/11/2023



██████████ Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T +61 ██████████
ausgrid.com.au

To Whom it May Concern,

RE: PP-2022-1646

Ausgrid would like to thank you for seeking input and feedback regarding this planning proposal.

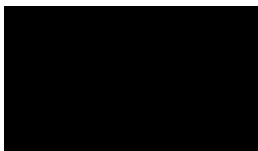
Ausgrid requires that due consideration be given to the compatibility of proposed development with existing Ausgrid infrastructure, particularly in relation to risks of electrocution, fire risks, Electric & Magnetic Fields (EMFs), noise, visual amenity and other matters that may impact on Ausgrid or the development.

Ausgrid has no comment to make regarding this planning proposal (Re zoning) at this point in time.

Ausgrid however does look forward to reviewing future Development Application submissions for any development attached to this proposal and will then provide further feedback accordingly.

Please do not hesitate to contact me for further information.

Regards,



Paul Nakhle - Portfolio Manager - Asset Protection | Transmission Services



Connecting communities,
empowering lives

21 December 2023

TfNSW Reference: SYD23/01072/02

Council References: Ref-2431; PP-2022-1646

Mr Craig Swift-McNair
General Manager
Woollahra Municipal Council
PO Box 61
DOUBLE BAY NSW 2028

Attention: Mr Lyle Tamlyn

RE: PLANNING PROPOSAL for 136-148 NEW SOUTH HEAD ROAD, EDGECLIFF

Dear Mr Swift-McNair,

Thank you for responding to TfNSW letter of advice (dated 10 November 2023) in relation to the Planning Proposal mentioned above.

Upon further advice in an email from Council dated 28 November 2023 (and including the letter of advice from Ingham Planning Pty Limited, dated 15 November 2023), TfNSW withdraws our objection to the proposal under Ministerial Planning *Direction 5.2 – Reserving land for Public Purposes*, subject to the following:

- It is noted that it is not Council's intention to include removal of the land reservation on 136 New South Head Road in the Planning Proposal. Woollahra Municipal Council acknowledges there was an error made in the exhibited Planning Proposal document, with text indicating that removal of the reservation was being proposed.
- Other issues raised in TfNSW's earlier submission (dated 10 November 2023) still stand, and need to be considered by Council in finalising the proposal.
- It is noted that TfNSW considers that there should be no encroachment of future development into the road reservation area. I note the plans attached show some minor encroachment (refer to the letter of advice from Ingham Planning Pty Limited, dated 15 November 2023, figures on page 2-4). These matters should be rectified at the DA stage.

For any further enquiries, please contact Stephen Briant – Land Use Planner on mobile 0414 949 990 or email: [REDACTED]

Yours sincerely,



Carina Gregory
Senior Manager Strategic Land Use (Eastern)
Land Use, Network & Place Planning

OFFICIAL

[REDACTED] Parramatta Square, [REDACTED] Parramatta NSW 2150
PO Box 973 Parramatta CBD NSW 2124

W transport.nsw.gov.au



15 November 2023

The General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: SC6602 Public Exhibition of Planning Proposal and Draft VPA for 136-148 New South Head Rd Edgecliff
Response to Submissions**

We act on behalf of the applicant and refer to the submissions made in relation to the above Public Exhibition. We make the following comments in response to these submissions.

Response from Transport for NSW (TfNSW)

Inclusion of removal of LEP road reservation as part of subject Planning Proposal

As noted in our previous submission regarding the Planning Proposal dated 3 November 2023, the applicant is not proposing and has never proposed, the removal of the LEP road reservation affecting No 136 New South Head Road. We further note that this was made abundantly clear in the Gateway Determination report prepared by DPE, where it was concluded:

Nonetheless, the subject site-specific planning proposal expressly states it does not seek to alter the land reservation affectation.

Council's error in stating this was part of the Planning Proposal appears to have been evident since the report prepared for consideration by Council's Environmental Planning Committee on 4 July 2022 where it was stated:

The applicant has also proposed to amend the Land Reservation Acquisition Map (Sheet FSR_003) to remove the partial Classified Road (B4) Reservation from 136 New South Head Road, Edgecliff.

Woollahra Council considers the land reservation redundant and is progressing a separate planning proposal (PP-2021-6740) to have it removed. As such, this matter does not form part of the subject planning proposal.

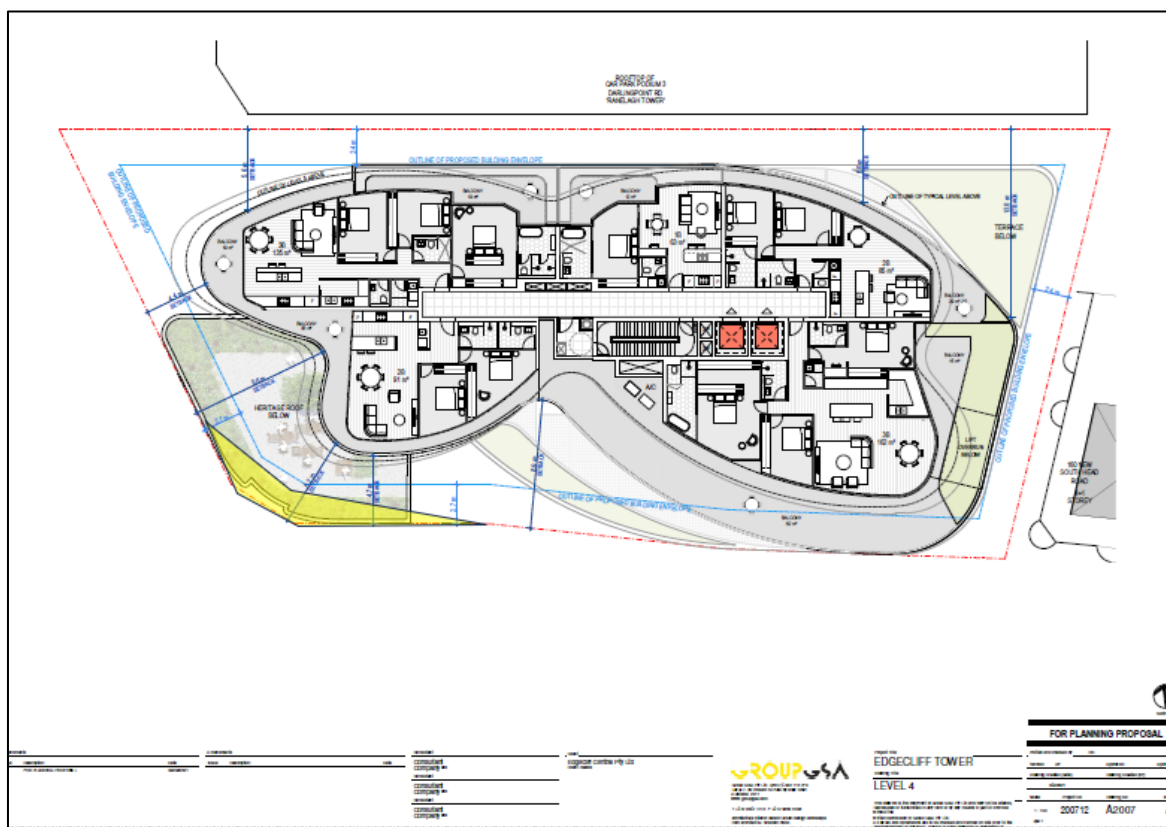
Notwithstanding the above, it is assumed that the noted inclusion of the removal of the road reservation in Council's latest Planning Proposal report (dated September 2023) and in their referral to TfNSW, has also been made in error. If it is not an error, we request that it be removed as it is inconsistent with DPE's Gateway Determination.

Impact of Planning Proposal in relation to existing LEP road reservation provisions

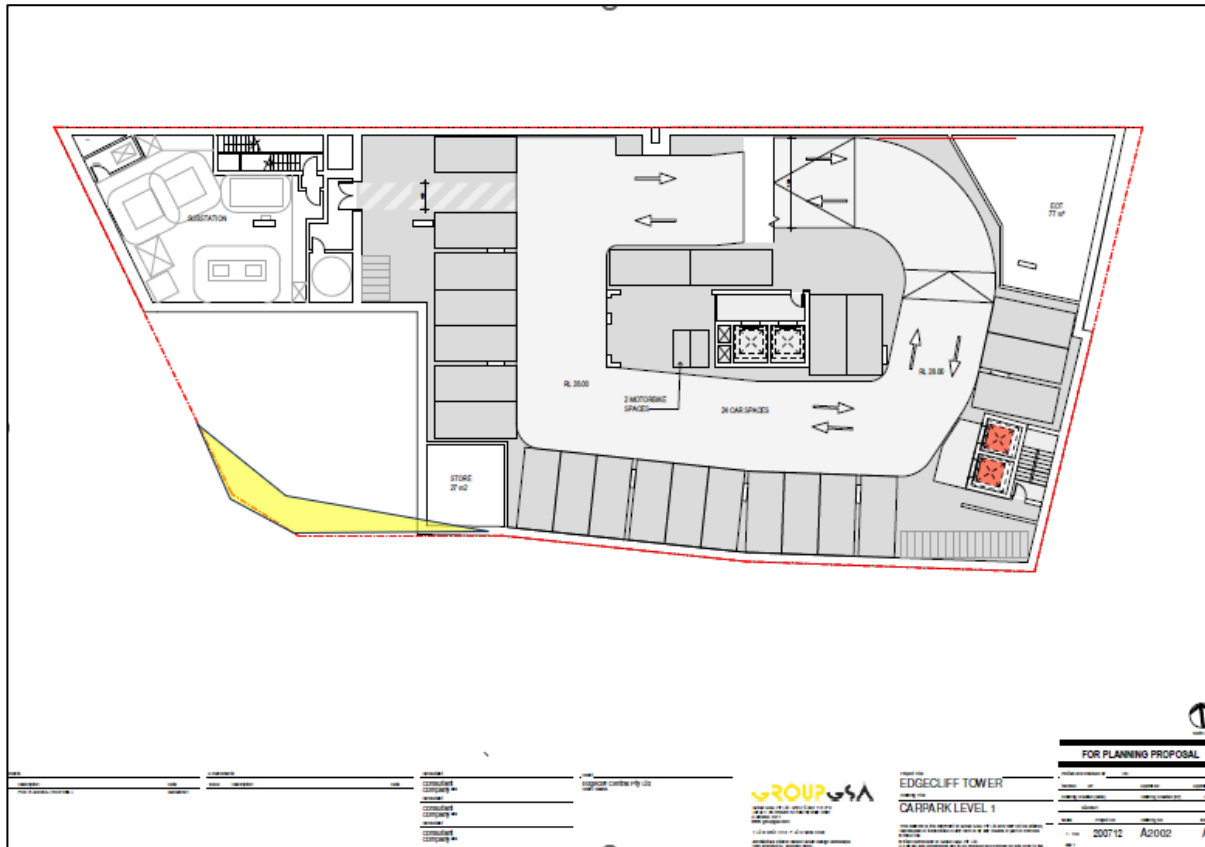
As previously noted in the legal advice from Mills Oakley previously provided (copy attached), whether Council's Planning Proposal to remove the New South Head Road, LEP road reservations proceeds or not, there is no impediment to the development of the land consistent with what is envisaged by the subject Planning Proposal. The Council's Planning Proposal is completely separate from the subject, applicant initiated, Planning Proposal and needs to be considered as such.

Further, assuming that the reservations will remain (having regard to the TfNSW's comments on Council's failure to get support for their Planning Proposal), the legal advice concludes that the reservation does not have any impact on the ability to development site as envisaged by the proposed provisions of the subject Planning Proposal, which will apply in conjunction with the existing LEP provisions. In this regard, notwithstanding any additional development rights that are provided by the site specific provisions, the provisions of LEP *Clause 5.1A - Development on land intended to be acquired for public purposes*, will continue to apply to the small part of No 136 affected by the road reservation ie consent cannot be granted for any purpose other than for a 'road' on the land affected by the reservation.

Being aware of these requirements, the Concept scheme prepared by the applicant indicates that the site can be developed taking into account this restriction. As indicated below, the indicative scheme demonstrates that a feasible development on the site, reflective of the existing and proposed planning controls, can occur without any impact on the reserved land, ie there are generally no works proposed on, above or below the land. The existing heritage building on the site will be used consistent with its existing use, ie commercial premises and as such no 'consent' is required for this portion of the whole redevelopment site.



Concept scheme - tower plan



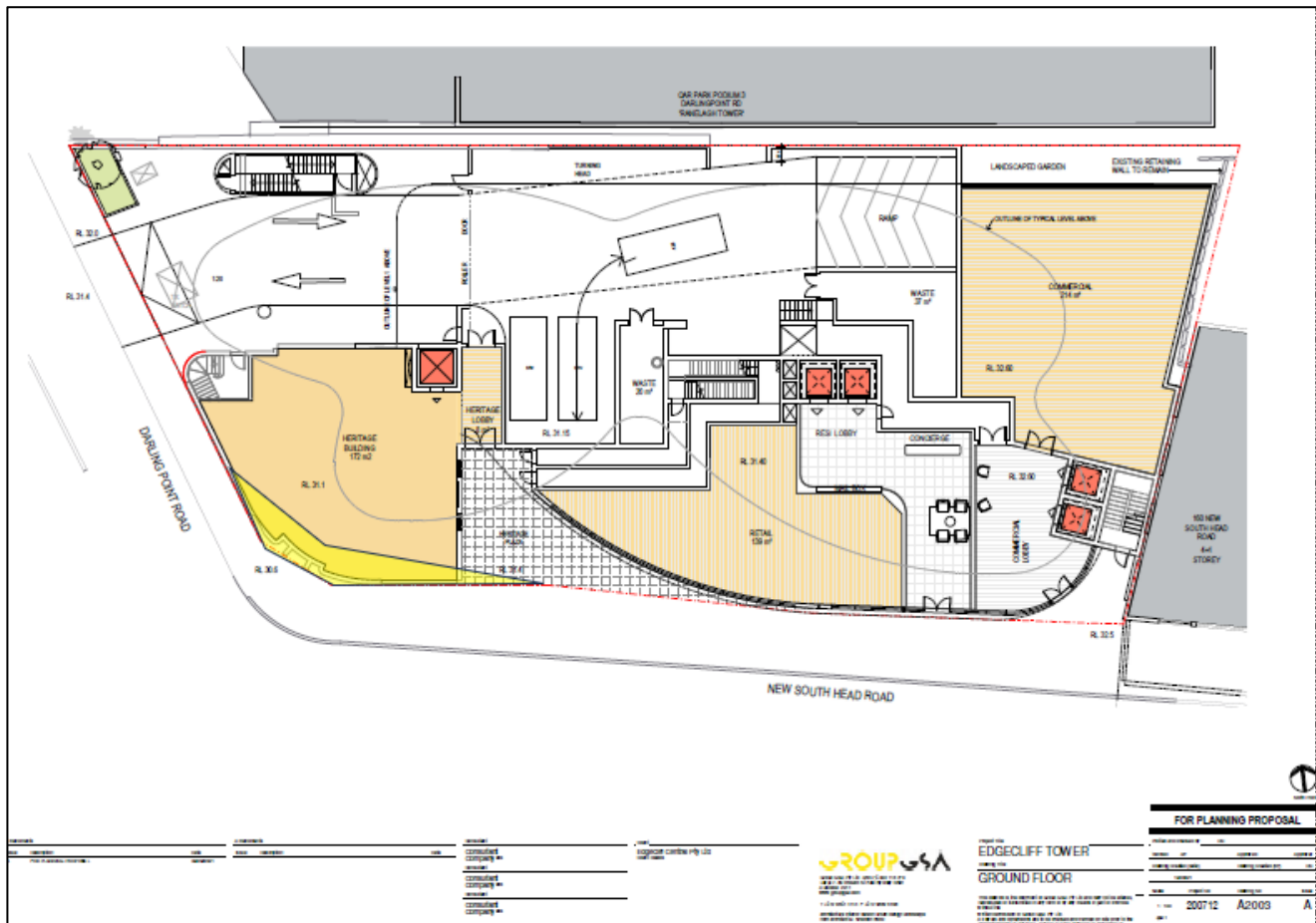
Concept scheme basement plan

Whilst the above indicates some very minor encroachments (the treatment of the rooftop of the heritage building and a small area of the basement), these works will be removed from any DA submission. Although it is not necessary (given the provisions of Clause 5.1A of the LEP), the above also indicates the setback line proposed for the site specific DCP, which requires any tower to be setback from the area affected by the road reservation. The creation of this DCP is also a requirement of the draft LEP site specific clause.

Vehicular access

In relation to the comments on vehicular access, in accordance with these comments:

- Access is not proposed via New South Head Road;
- The proposed access point is located as far as possible from the intersection with New South Head Road (see below); and
- The left in/left out only access requirement has also been flagged by Council and the applicant accepts that this will need to be part of any DA documentation. Council have also noted that this may necessitate median works and the applicant accepts this.



Concept Plan – proposed access

Other transport/traffic issues

As part of the DA process, the applicant will work with Council to ensure that the maximum community benefit is provided from the proposed contributions forming part of the VPA, including the potential to improve active transport infrastructure. The Concept scheme includes provision of parking at a lower rate than specified in Council's DCP, ensuring greater reliance on the excellent public transport available in close proximity.

The traffic implications of the Planning Proposal have been considered by Council and the Gateway determination does not require any specific further assessment. Resolution of any residual issues can be undertaken as part of the DA process.

Public submissions

We note that of the 72 submissions, 49 were in favour of the proposal. This reflects the overall understanding of the community that having increased development in appropriate locations such as this is a positive outcome for residents of Woollahra and Sydney generally and is highly consistent with the State government and Council planning strategies.

We have reviewed the public submissions raising concerns and are of the opinion that no issues have been raised that are not suitably addressed by way of reference to the documentation that forms part of the Planning Proposal or has been submitted by the applicant in support of the Planning Proposal.

Conclusion

Having regard to the above we are of the view that the Planning Proposal remains a reasonable and appropriate use of this highly suitable land, consistent with the previous conclusions of Council staff, the Regional Panel and DPE.

There are no matters raised in the submissions that should alter these conclusions, noting that the objection by TfNSW to the removal of the road reservation is erroneous as it was based on the incorrect advice from Council that this formed part of the subject Planning Proposal. Council needs to acknowledge this error and that in this circumstance, it is appropriate to ignore the objection raised by TfNSW in this regard. The other matters raised by TfNSW do not create any impediment to the Planning Proposal proceeding in its current form.

Regards,



Brett Brown
Director, Ingham Planning Pty Ltd

Mills Oakley

ABN: 51 493 069 734

29 September 2022

Your ref:

Our ref: AJWS/CYCS/3610143

Edgecliff Central Pty Ltd
c/o Dennis Meyer
ANKA PROPERTY GROUP
[REDACTED] New South Head Rd
Edgecliff NSW 2027

All correspondence to:
PO Box H316
AUSTRALIA SQUARE NSW 1215
DX 13025 Sydney Market Street

Contact

Clare Collett +61 [REDACTED]

Email: [REDACTED]

Fax: +61 [REDACTED]

Partner

Anthony Whealy +61 [REDACTED]

Email: [REDACTED]

By Email: [REDACTED]

Dear Dennis,

Advice on effect of road reservation on development of 136-148 New South Head Rd, Edgecliff

We refer to your request for advice in relation to your proposed development of 136-148 New South Head Rd, Edgecliff (**the Site**). You have asked us to provide legal advice relating to a road reservation which falls on part of your Site and the impact of this road reservation on your Planning Proposal and proposed development of the Site.

Summary of Advice

In our opinion it is clear that your Planning Proposal, which seeks to amend the FSR and height controls for the Site, can proceed despite the existence of a road reservation. This is primarily because the FSR and height controls apply to the entire site, including the land the subject of the road reservation so that the road reservation is not relevant for these specific controls. Furthermore, the local environmental plan specifically provides that the existence of a road reservation is to be taken into consideration at development consent stage. The Council can therefore have comfort that, regardless of the Planning Proposal, the road reservation must and will be taken into account at the development consent stage, as development consent **cannot be granted** for development within the road reserve, other than for the purpose of roads.

Although it is not strictly necessary to consider the merits of the proposed development at this stage, it is our view that the proposed development which would be facilitated by the Planning Proposal is permissible despite the road reservation. This is because the road reservation only applies to mapped land and the actual area of land mapped (within your site) as subject to the reservation is a small area that is confined to the corner of 136 New South Head Rd. If necessary, you could avoid "development" of the road reservation area through careful design.

We advise more fully as follows.

Background

- In 2020, 4 adjacent lots on New South Head Rd (136, 138-140, 142-146 and 148 New South Head Rd) which now form the Site, were purchased. The lots which make up the Site are shown below.

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Figure 1: 4 lots which make up the Site

- The Site is within the Woollahra Local Government Area and falls under the *Woollahra Local Environmental Plan 2014 (WLEP)*. The Site is zoned B4 mixed use under the WLEP.
- The “building and interiors” of 136 New South Head Rd are listed as an item of local heritage under the WLEP. 136 New South Head Rd is also mapped on the heritage map under the WLEP, marked as item 238 below. The entire lot comprising of 136 New South Head Rd is mapped.



Figure 2: Extract from WLEP Heritage Map

- This lot (136 New South Head Rd) is also impacted by way of a road reservation. The road reservation is shown on the WLEP map below, with the 4 lots comprising the Site marked in red.

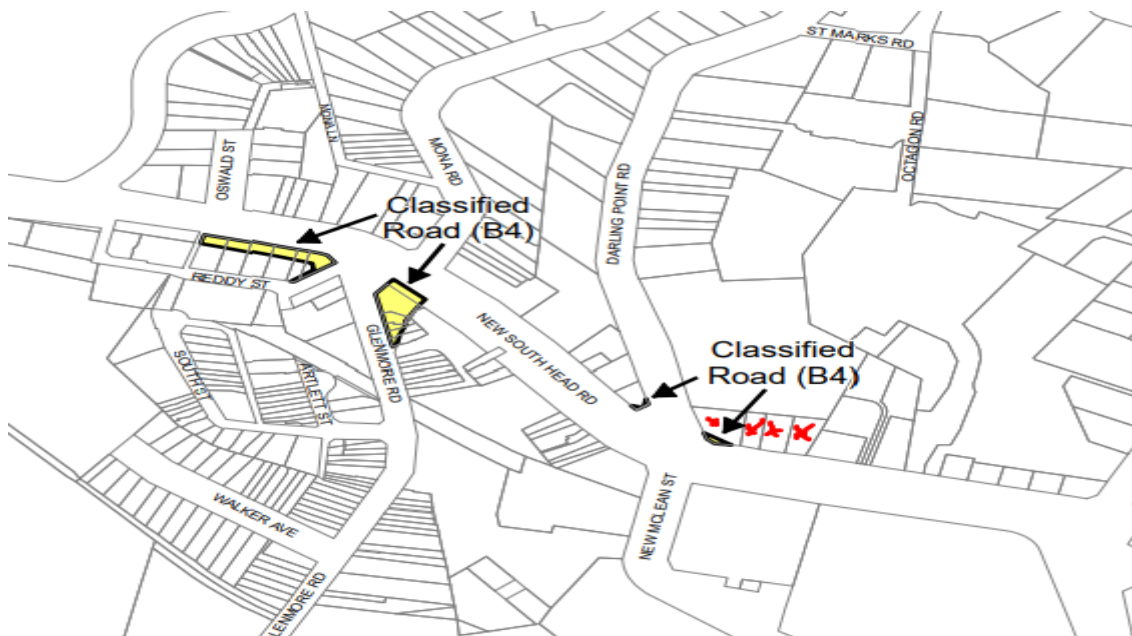


Figure 3: Extract from LEP land reservation acquisition map

- Woollahra Council (**Council**) has sought to remove the land reservation acquisition mapping, to allow the urban renewal of this part of New South Head Rd. Council has even gone so far as to submit a Planning Proposal which seeks to remove the road reservation areas along New South Head Rd, including that situated on your Site. However, Transport for NSW (**TfNSW**) has not agreed to the removal of the mapping, and this position appears to have the support of the Department of Planning and Environment. It therefore seems unlikely that the mapping of the land reservation acquisition will be removed.
- There is no detailed surveying as to the exact location of the road reservation. You asked TfNSW for this information and TfNSW was not able to provide survey or similar details. However, TfNSW did provide you with the mark up of an aerial map which shows the approximate location of the road reservation (in the opinion of TfNSW). This photograph provided by TfNSW is shown below:



Figure 4: Marked up photograph from TfNSW showing road reservation

- We have been informed that you have lodged a Planning Proposal PP-2022-1646 (**the Planning Proposal**) which seeks to amend the WLEP to increase the height of buildings from 14.5m to 46m and to increase the FSR from 1.5:1 to 5:1 for the Site.
- You were aware of the road reservation prior to lodging the Planning Proposal. However, as the road reservation runs through a heritage building, you remain uncertain as to whether the land will ever be acquired and a road constructed over the road reservation area (through the heritage item).
- Notwithstanding this, you have designed the concept for your new development so that it does not encroach on the road reservation area of the lot and is structurally independent of the heritage building (even though it cantilevers over it). In addition, the heritage building (being structurally independent) could be demolished if required in the future to allow the road reservation land to be acquired.
- This design is shown in the photograph of the proposal below.



Figure 5: Proposal which shows new building cantilevering over existing heritage building but clear of road reserve

- We have been informed that:
 - Council staff are generally supportive of the proposed development and supported the Planning Proposal (recommending the LEP change in height and FSR proceed to Gateway determination);
 - Councillors were not supportive however, so the Planning Proposal was referred to the Sydney Eastern City Planning Panel (**SECPP**);
 - The SECPP recommended the Planning Proposal go forward for a Gateway Determination; and
 - One recommendation of the SECPP was resolution of the road reservation prior to the making of any LEP. The Record of Decision contains the following statement:

The Panel notes the existence of a road reservation over the corner part of the site and this should be resolved with Transport for NSW. The effect of the current affectation for the heritage building is unknown at this time and if acquisition of, part or all, is required this will inform not only the final design but any compensation. Therefore, this needs to be resolved prior to the making of any LEP.
- We also understand that Council has submitted its own Planning Proposal, seeking to have a number of road reservations (including the one on your Site) removed from the WLEP to allow the broader area to be developed more fully. Council also noted that removing the road reservations would safeguard heritage items (such as the heritage building on your Site). However, the Department of Planning at this stage does not support Council's Planning Proposal and we have been informed by you that it seems unlikely that the land reservation will be removed from the WLEP, and you are therefore proceeding with the proposed development on this basis.

Please let us know if any of the above is not correct as it may impact on the substance of our advice.

Advice

1. Planning Controls

- 1.1 As you know, your Site is subject to a road reservation. This road reservation is mapped on the WLEP, as shown above and in more detail below. The actual area of the road reservation is very small (so small in fact that the yellow shading cannot be seen on the WLEP map).

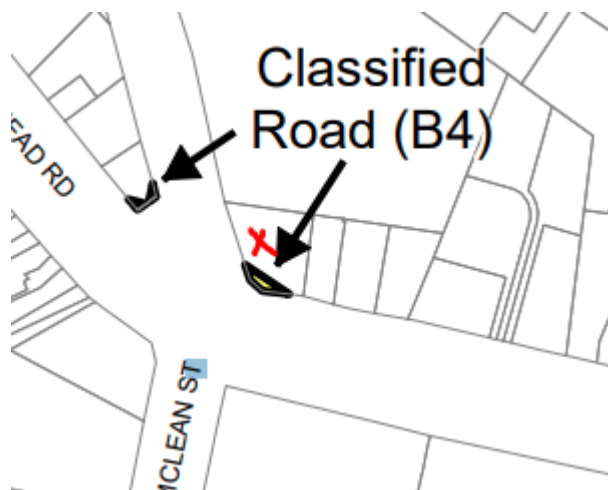


Figure 6: Extract from WLEP land acquisition map with 136 NSH Rd shown with red cross

- 1.2 The WLEP provides for development on land mapped for acquisition.
- 1.3 Clause 5.1A is titled "Development on land intended to be acquired for public purposes" and reads as follows:
- (1)The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.*

(2) This clause applies to land shown on the Land Reservation Acquisition map and specified in Column 1 of the table to this clause and that has not been acquired by the relevant authority of the State specified for the land in clause 5.1.

(3) Development consent must not be granted to any development on land to which this clause applies other than development for a purpose specified opposite that land in Column 2 of that table.

(our emphasis)

- 1.4 The table in clause 5.1A shows that land zoned B4 mixed use and marked “classified road” on the land acquisition map is to be used for the purpose of “roads”.
- 1.5 **Prima facie, clause 5.1A(3) means that development consent must not be granted for land marked on the land reservation acquisition map other than development for the purpose of a road. The clause is therefore powerfully restrictive.**
- 1.6 As an initial comment, **clause 5.1A restricts the granting of development consent for land marked on the road reservation acquisition map. It is not a clause which applies at Planning Proposal stage in relation to a request to change height and FSR controls which already apply. It applies at DA stage only.**
- 1.7 You have simply submitted a Planning Proposal seeking to change the FSR and height for the Site. The entire Site, including all of 136 New South Head Rd, is currently mapped under the height and FSR maps in the WLEP. For example, an extract of the WLEP FSR map confirms that all of 136 New South Head Rd is mapped with an FSR of 1.5:1. We confirm that all of 136 New South Head Rd, including the area of the road reservation, is mapped on the height of buildings and FSR maps.

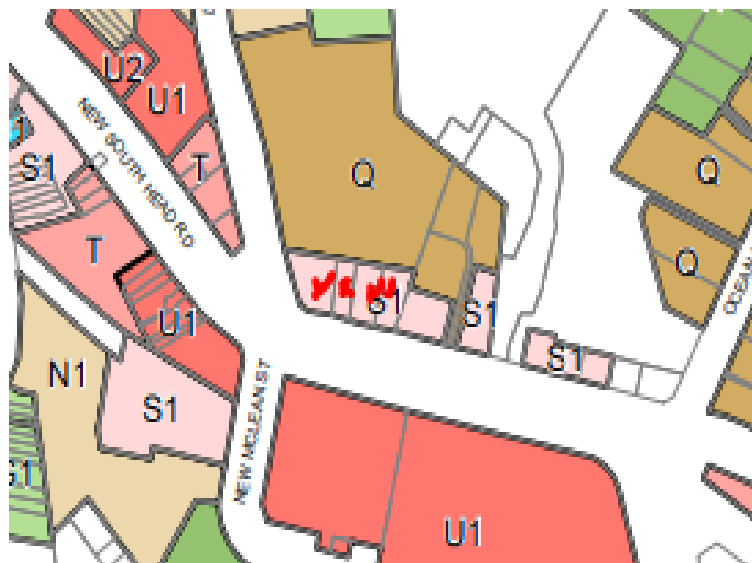


Figure 7: Extract from FSR map under WLEP

- 1.8 Therefore, the existence of the road reservation is not relevant to a Planning Proposal which simply seeks to amend the FSR and height controls. These controls currently apply to that part of the Site which is subject to the land reservation acquisition and any amendment to the controls would similarly apply to the entire Site. Rather, the existence of the road reservation is something which is relevant at the development consent stage.
- 1.9 In our opinion, the comment in the Panel report that the road reservation needs to be resolved **prior to the making of the LEP** is incorrect, both legally and practically. The Planning Proposal seeks to change the height and FSR controls which already apply to 135 New South Head Rd, including the road reservation area. The **Planning Proposal would increase the height and FSR standards and these would apply to the Site in the same way that they currently apply. It is not necessary (or appropriate) to resolve the road reservation issue at the Planning Proposal stage.**
- 1.10 In fact, **clause 5.1A clearly allows the Planning Proposal to proceed (despite the road reservation) as clause 5.1A (which will remain in force) ensures that development is**

limited on the road reservation area. This means that **any consent authority can take comfort that, regardless of the change sought by the Planning Proposal, clause 5.1A will continue to apply and will essentially “protect” the road reservation by preventing the granting of development consent for a purpose other than a road.**

- 1.11 Although it is not necessary to be covered at this stage, we note that your proposed development could proceed to development consent despite clause 5.1A in the WLEP. This is because clause 5.1A limits “development” on the road reservation area, but your proposed development could (by way of careful design) not include development on the road reservation area for the following reasons:
- Your proposed development involves the construction of a new building on part of 136 New South Head Rd. However, the new building will not be built over the road reservation area. The new building will partly cantilever over the existing heritage building, but will not cantilever over the road acquisition. The existing heritage building, which sits partly over the road reservation, will be retained;
 - Your proposed development can proceed without any works taking place on the heritage building, if necessary. It is your preference for the heritage building to be sympathetically upgraded, have an internal fit-out and be incorporated into the broader development. However, this is not essential to the proposed development. Alternatively, any works could be limited to that part of the building which is not mapped as road reservation area;
 - The actual part of the Site which is mapped as being a road reservation area is very small and relates to a small corner of 136 New South Head Rd. The actual area of land impacted by the road reservation is a small area;
 - There is already “development” on the heritage building at 146 New South Head Rd and the building is being used for a commercial use so there will not be any further development on the land.

- 1.12 We note that your design for the proposed development retains the existing heritage building (which the road reservation runs through) and has been designed so that the heritage building is structurally independent and could be knocked down in the future, should this be required due to the compulsory acquisition of the road reservation area.

2. Road reservation

- 2.1 We make a number of comments in relation to road reservation generally.

- 2.2 The road reservation only applies to that part of 136 New South Head Rd that is mapped. This is made clear by clause 5.1A which states that the clause applies to “Land shown on the Land Reservation Acquisition Map”.

- 2.3 The land reservation therefore only applies to mapped land. It does not apply to the entire lot or Site. That is, only the land which is mapped as “land reservation” under the WLEP is subject to clause 5.1A.**

- 2.4 “Land” is defined in the *Environmental Planning and Assessment Act 1979 (EP&A Act)* to include:

(a) the sea or an arm of the sea,

(b) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or non-tidal, and

(c) a river, stream or watercourse, whether tidal or non-tidal, and

(d) a building erected on the land.

- 2.5 Land is clearly not defined by the lot boundaries and can include part of a lot.**

- 2.6 This has been confirmed by the Courts, where it has been held on many occasions that a reference to “land” is not constrained to lot and DP boundaries. For example, in *Steven Scully and Veronica Scully v Leichhardt Council* (1994) 85 LGERA 109 the Court held:

The word “land” is a word of general meaning. It does not of itself suggest any specific limitation of size or measurement or any specifically identifiable area, such as is suggested by the word

"allotment". It is necessary, then, to consider the context in which the word appears, and the scope and purpose of the relevant statutory provisions, in order to determine how the word "land" is to be construed.

- 2.7 In this case, it is clear that only land marked on the land reservation map is subject to the reservation constraints (and all of 136 New South Head Rd is not impacted). As shown by the land reservation map, this area is a very small area on the corner of the block.**
- 2.8 We have been provided with a marked up aerial photograph which we understand has been prepared by TfNSW to show the land acquisition area. The area on the photograph marked as the land acquisition area is both different to and larger than the area marked on the WLEP land reservation map.
- 2.9 We confirm that it is the land mapped under the WLEP which dictates the land subject to the land reservation. The marked up aerial photograph prepared by TfNSW appears to us to be incorrect and, in any case, has no legal weight. Clause 5.1A in the WLEP refers to the land shown on the land reservation map in the WLEP.** The photograph which TfNSW is not relevant and only the mapping in the WLEP defines the extent of the road reservation. The Courts have confirmed the primacy of maps in local environmental plans (*Mulpha Norwest Pty Ltd v The Hills Shire Council [2020] NSWLEC 74*).
- 2.10 This means that only a very small portion of your Site, being a small corner of 136 New South Head Rd, is impacted by the road reservation.
- 2.11 If TfNSW were to compulsorily acquire the road reservation, they would only acquire that part of your Site which is mapped as road reservation. They would not acquire all of 136 New South Head Rd.
- 2.12 In this case, acquisition of the road reservation and the construction of a future road would require the demolition of at least some of the existing heritage building as this building sits over the road reserve. We have been informed that the heritage building can be demolished without impacting on the proposed building which will sit behind it (and in fact cantilever over it). Therefore, should the road reservation be acquired in the future, your proposed development could still proceed or continue to exist.
- 2.13 For completeness, we note that the mapping of the land as road reservation does not guarantee that the land will in fact be acquired by TfNSW in the future. It is possible that the land will remain mapped but that TfNSW will never acquire the land and it is possible that the mapping will be changed at some time in the future.
- 2.14 We also note that the *Land Acquisition (Just Terms Compensation) Act 1991* provides an avenue for owners to request that reserved land be acquired if the owner would suffer hardship due to the delay in the acquisition of the land (clause 23). This right is referenced in clause 5.1 of the WLEP. We understand that you do not wish to have the road reservation acquired and would prefer to incorporate the heritage building into the proposed development.
- 3. Other options**
- 3.1 In our view, the Planning Proposal can and should proceed, despite the existence of the road reservation. Furthermore, development consent can be obtained for your proposed development, despite the road reservation for the reasons outlined above.

Conclusion

In our view it is clear that the existence of the road reservation should not limit the progression of your planning proposal in any way. The road reservation currently exists and does not impact on FSR or height control maps and so a Planning Proposal which seeks to amend these controls should not be limited by the road reservation. The road reservation will be relevant at the development consent stage but, for the reasons outlined above, will not unduly constrain your proposed development. The road reservation therefore does not provide any reason to frustrate your Planning Proposal. Furthermore, the road reservation does not need to be dealt with prior to the WLEP amendment. This is because the WLEP already contains clause 5.1A, which provides for the road reservation to be considered despite any change to the height and FSR controls which may be achieved by way of the Planning Proposal.

If you have any questions or require further information, please do not hesitate to contact Anthony Whealy on [REDACTED] or [REDACTED] or Clare Collett at [REDACTED]

Yours sincerely

[REDACTED]



Anthony Whealy
Partner

Accredited Specialist Local Government & Planning

Our ref: DOC23/852892

Your ref: PP-2022-1646

Wai Wai Liang
Woollahra Municipal Council
536 New South Head Road
Double Bay NSW 2028

Wai Wai Liang [REDACTED]

Subject: 136 New South Head Road, Edgecliff

Dear Ms Liang,

Thank you for the opportunity to comment on the planning proposal for 136 New South Head Road, Edgecliff. The planning proposal has been reviewed and it is noted that there are no identified impacts on any items listed on the State Heritage Register.

In relation to historic archaeology, if the proponent has not already undertaken their own investigation to assess the likelihood of 'relics' and any subsequent management required under the Heritage Act 1977, they should do so.

However, it is noted that the proposal has the potential to impact on an item of local heritage significance under Council's LEP. Therefore, Council as the consent authority is responsible for the heritage assessment and consideration of any impacts on the item.

General Comments

Prior to finalisation of the proposal, Council should be satisfied that all necessary heritage assessments have been undertaken and that any impacts have been sufficiently addressed. Council's assessment should include, but not be limited to, a search of the State Heritage Inventory (<https://www.heritage.nsw.gov.au/search-for-heritage/search-for-nsw-heritage/>) and the Aboriginal Heritage Information Management System (<https://www.heritage.nsw.gov.au/protecting-our-heritage/record-aboriginal-sites/>).

If you have any questions, please contact Louise Doherty or Heritage NSW at louise.doherty@environment.nsw.gov.au or [REDACTED] or on [REDACTED] or [REDACTED]

Yours sincerely

Rajeev Maini

Rajeev Maini
Manager, Assessments

Heritage NSW
as Delegate of the Heritage Council of NSW
1 February 2024