Item No:	R2 Recommendation to Council
Subject:	**PLANNING PROPOSAL FOR 374 AND 376-382 NEW SOUTH HEAD ROAD, DOUBLE BAY (SC2873)**
Author:	Brendan Metcalfe, Strategic Planner
Approvers:	Chris Bluett, Manager - Strategic Planning Allan Coker, Director - Planning & Development
File No:	15/82753
Reason for Report:	To report on the request for a planning proposal prepared by Eeles Trelease Pty Ltd Architects, Tony Moody, Consultant Planner and Hill Thalis Architecture + Urban Planning on behalf of the land owner Fivex Pty Ltd.

Recommendation:

That the planning proposal prepared by Eeles Trelease Pty Ltd Architects, Tony Moody, Consultant Planner and Hill Thalis Architecture + Urban Planning Pty Ltd on behalf of Fivex Pty Ltd as contained in Annexure 1 of the report to the Urban Planning Committee meeting of 27 July 2015 is not supported. In summary the request:

- seeks height and floor space ratio controls that are inconsistent with the strategic review of controls in the Double Bay Centre being carried out by the Council.
- is inconsistent with the desired future character of the Double Bay Centre that is defined by objectives and development standards in Woollahra Local Environmental Plan 2014 and Chapter D5 Double Bay Centre of the Woollahra Development Control Plan 2015,
- would facilitate development that would have unacceptable shadowing impacts to the south side of New South Head Road,
- would result in a building envelope which is inconsistent with building separation distances for 5 to 8 storey apartments identified in the Apartment Design Guide which supports *State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development.*

1. Summary

In June 2015 a request for a planning proposal (hereafter called the planning proposal) was submitted to Council by Eeles Trelease Pty Ltd Architects in association with Tony Moody, Consultant Planner and Hill Thalis Architecture + Urban Planning Pty Ltd on behalf of the owner Fivex Pty Ltd (**Annexure 1**). The planning proposal would facilitate a seven storey mixed use development at 374 and 376-382 New South Head Road, Double Bay (the site) which comprises Lot B in DP 162458 and Lot 11 in DP 608859.

The planning proposal is to amend the height and floor space ratio (FSR) controls applying to the site under Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) by:

- Increasing the maximum FSR from 2.5:1 to 5:1 on 374 New South Head Road
- Increasing the maximum FSR from 3:1 to 5:1 on 376-382 New South Head Road
- Increasing the maximum building height from 14.7m (4 storeys) to 26m (7 storeys)

In summary, we do not support the amendment to the planning controls as the planning proposal:

- seeks height and floor space ratio controls that are inconsistent with the strategic review of controls in the Double Bay Centre being carried out by the Council.
- is inconsistent with the desired future character of the Double Bay Centre that is defined by objectives and development standards in Woollahra Local Environmental Plan 2014 and Chapter D5 Double Bay Centre of the Woollahra Development Control Plan 2015,

- would facilitate development that would have unacceptable shadowing impacts to the south side of New South Head Road,
- results in a building envelope which is inconsistent with building separation distances for 5 to 8 storey apartment development identified in the Apartment Design Guide (Department of Planning and Environment 2015) which supports *State Environmental Planning Policy 65 – Apartment Design Quality* (SEPP 65)

2. The site

The site is located in Double Bay at the western corner of New South Head Road and Knox Street. The site is approximately 650m from the Edgecliff Bus and Rail Interchange which is located in the Edgecliff Commercial Core and adjacent to the Edgecliff Commercial Corridor as shown below in Figure 1: *Local area map*. An aerial of the site is shown in Figure 2. It comprises two properties at 374 and 376-382 New South Head Road with a total area of 669.8m^2.

Figure 1: Local area map (refer to Figure 2 for site details)

Figure 2: Aerial photo of the site

Existing local environmental plan development standards

The height and floor space ratio controls that currently apply to the site are identified in the table below.

	FSR	Height
Woollahra LEP 2014	374 New South Head Road - 2.5:1 376- 382 New South Head Road - 2.5:1 with 3:1 under clause 4.4A *Exceptions to floor space ratio (Area 1—Double Bay)*	14.7 (4 storeys)

Clause 4.4A

Generally land in the Double Bay Commercial Centre has an FSR of 2.5:1 However, clause 4.4A *Exceptions to floor space ratio (Area 1—Double Bay)* allows an FSR of 3:1 on 17 corner sites, including 376-382 New South Head Road. The 3:1 FSR is permitted if:

> *the consent authority is satisfied that the development will be compatible with the desired future character of the zone in terms of building bulk and scale.*

Although these corner sites may be granted additional FSR, no additional building height is permitted.

Existing built form

Commercial buildings currently occupy both properties which have no off-street parking.
No. 374 New South Head Road is the eastern half of a pair of one storey Inter-War shops. The building, shown below in Figure 3, is approximately 7m high with an FSR of approximately 0.74:1. The property has frontages to New South Head Road and Goldman Lane and is currently occupied by the pizzeria "Crust". An electricity substation is located on the property at the Goldman Lane frontage.

Nos. 376-382 New South Head Road contain a four storey retail and commercial building which is bounded on three sides by Knox Street, New South Head Road and Goldman Lane. The building, shown in Figures 3 to 6 below, has a maximum height of 15.3m and an FSR of 3.12:1. Each frontage is activated at the ground floor by shops or a business use. An office and a health services facility operate on the floors above, with the fourth floor currently vacant. There is a roof terrace that houses mechanical plant and equipment as well as lift access.

Figure 3: View of the site from New South Head Road looking north

Figure 4: View of the site from New South Head Road looking north west.

Photos of existing context. Figure 5 (Left image): View from New South Head Road looking north east, Figure 6 (right image):View from Knox Street looking south east.

3. Existing consent for 376-382 New South Head Road

On 7 July 2014 Council approved alterations and additions to the existing building on 376-382 New South Head Road under DA 568/2013. The consent is for a change of use of level 4 from commercial to residential and an additional fifth level for residential use. Thirteen dwellings would be provided in the form of studio/1 bedroom dwellings.

The approved building has a maximum height of 19.4m and an FSR of 4.42:1. The development exceeds the current Woollahra LEP 2014 height control by 4.7m and maximum floor space ratio control by 1.42:1. The consent does not apply to 374 New South Head Road which forms part of the planning proposal site.

A comparison of the existing Woollahra LEP 2014 controls, the approved DA and the proponent's suggested controls for the site is provided in a table in section 4.1 below.

4. The proponent's planning proposal

In summary, the objective of the planning proposal is to increase the height and FSR controls applying to the site. The changes would allow an additional two storeys of development above the five storeys approved for Nos. 376-382 New South Road and an additional three storeys above the existing maximum building height that applies to both No.374 and Nos 376-382 New South Head Road. The existing B2 Local Centre zoning would remain unchanged.

To support the planning proposal the proponents submission included:

- A concept for a 7 storey mixed use building with four levels of commercial development and three levels of residential apartments
- Photomontages of the concept
- Shadow modelling of the concept
- Comment on views from the immediate surroundings
- An urban design opinion from Philip Thalis Architecture + Urban Projects Pty Ltd
- A planner's report prepared by Tony Moody, Consultant Planner

4.1 Proposed controls

A summary of the height and floor space ratios permitted under Woollahra LEP 2014, approved under DA568/2013 and proposed for the site are shown in the table below:

	FSR	Height
Woollahra LEP 2014	2.5:1 on 374 New South Head Road 2.5:1 with 3:1 under clause 4.4A on 376- 382 New South Head Road	14.7 (4 storeys)
Approved DA (568/2013)	4.42:1 (47% increase)	19.4m (5 storeys) (32% increase)
Planning proposal	5:1 over the site under clause 4.4A **100% increase** on 2.5:1 control and **66% increase** 3:1 control	26m (7 storeys) **77% increase**
Note: All percentage increases are from the existing Woollahra LEP 2014 controls.		

Compared to the existing Woollahra LEP 2014 controls, the proponent seeks an increase of:

- 11.3m to maximum building height and
- 2.5:1 over 374 New South Head Road and 2:1 in FSR over 376-382 New South Head Road.

4.2 Proponent's concept

The proponent's documentation included a concept for the site under the proposed controls. The building shown is a seven storey mixed use development comprising four levels of commercial development from the ground floor to level 4 and three levels of residential development on levels 5 to 7. No parking is proposed within the development.

The floor plate of the existing building at Nos. 376-382 New South Head Road would be extended laterally to the west to include No. 374. The concept building does not have setbacks on any side.

The ground floor would remain as retail and levels 2 to 4 would be commercial. A total of fifteen residential apartments are shown over levels 5 to 7. Levels 5 and 6 each contain six studios/one bedroom apartments with balconies to all street frontages. Level 7 shows three, one bedroom dwellings set against Goldman Lane. A roof garden is shown at the corner of New South Head Road and Knox Street with a cutaway roof. The proponent's photomontage of the concept is shown below in Figure 7 and the proponent's oblique view of the concept is shown in Figure 8.

Figure 7: Proponent's photomontage of a seven storey mixed use building constructed to a height of 26m as viewed from New South Head Road looking west.

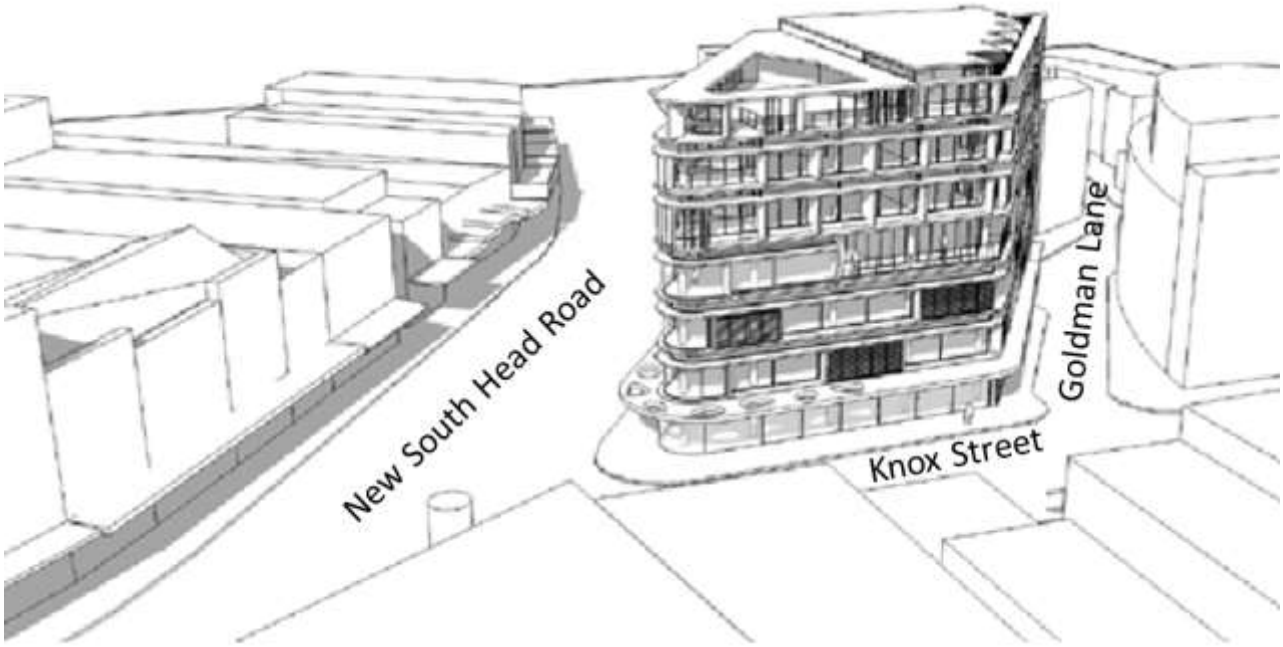


Figure 8: Proponent's oblique view of concept looking west

Figures 9 and 10 below show the proponent's concept in elevation at the New South Head Road frontage and Knox Street frontage. The existing building on Nos. 376-382 New South Head Road is shown in white, the alterations and additions approved under DA568/2013 are shown in green and the proponent's proposed concept is shown in blue.

Figure 9: Proponent's concept - New South Head Road elevation

Figure 10: Proponent's concept - Knox Street elevation

5. Review of the planning proposal

Section 55 of the *Environmental Planning and Assessment Act 1979* (the Act) sets out what information a planning proposal is to include when submitted for a gateway determination. The Department of Planning and Environment has prepared *A guide to preparing planning proposals* (the guidelines) dated October 2012 to help proponents meet the requirements of the Act.
We have reviewed the proponent's request for a planning proposal in accordance with section 55 of the Act and the guidelines. The review identified that the proposed height and FSR for the site are excessive and are not supported.

The assessment has been conducted in two parts; consideration of the strategic merit of the proposal and review of the proponent's concept and requested planning controls.

5.1 Strategic merit

The strategic merit of increasing the height and FSR is assessed below. The review considered the consistency of the planning proposal with:

- A Plan for Growing Sydney (Department of Planning and Environment 2014)
- the Draft East Subregional Strategy (Department of Planning 2007)
- the Double Bay Place Plan which is Council's vision for the Double Bay Centre

5.1.1 A Plan for Growing Sydney and the Draft East Subregional Strategy

The planning proposal is consistent with A Plan for Growing Sydney and Draft East Subregional Strategy. The proposed planning control changes would increase the site's development potential for residential or commercial floor space in the Double Bay Centre.

The Centre provides a broad range of services and jobs and is well serviced by public transport. Increasing housing choice within and around existing centres through urban renewal is considered best planning practice for the efficient use of resources and existing infrastructure.

Whilst acknowledging that the planning proposal would meet the broad objectives and outcomes in the two State Government planning strategies in so far as facilitating additional housing and employment, it should be noted that the quality and design of development and its impact on the overall character of centres is also an important consideration. The Draft East Subregional Strategy recognises the need for improved design quality.

A Plan for Growing Sydney is a high level strategic planning document and deals with urban design and design quality in a very superficial manner. These are matters which are taken up by SEPP 65 and Council's development control plan.

5.1.2 Double Bay Place Plan

The Double Bay Place Plan sets out a series of strategies, priorities and actions aimed at achieving a new vision and place story for Double Bay. It introduces a placemaking approach to the management, future planning and development of Double Bay to ensure that the vision and place story are achieved.

Strategy 3.2 of the Double Bay Place Plan is to provide increased housing opportunities for people to live in Double Bay. Action 3.2.1 is to create a more diverse housing mix in Double Bay to make housing more affordable for young people and to increase the residential population of the village. Action 3.2.1 contains four parts:

1. Commissioning an economic study to examine the opportunities for an additional residential population accommodated in Double Bay in smaller apartments with car share
2. Reporting the outcome of that study to Council
3. Amendment of Council's planning controls in the Woollahra LEP 2014 and Woollahra Development Control Plan 2015 as required to encourage new moderate scale housing
4. Working with and providing assistance to landowners to implement the revised planning controls

Stages one and two of this action are complete. The Double Bay Economic Feasibility Study prepared by Hill PDA was reported to the Urban Planning Committee meeting of 7 September 2015. On 28 September 2015 Council resolved to receive and note the report, conduct a review of planning controls in the Double Bay Centre and prepare a community engagement strategy. The review will be based on the recommendations and policy options presented to the Urban Planning Committee by Hill PDA Consulting on 7 September 2015.

The key recommendation from Hill PDA Consulting is to review Council's existing planning controls in the Double Bay Centre to facilitate redevelopment. This review should have particular regard to FSR. On the basis of economic feasibility only, the study identified that most sites in the Centre require an FSR of at least 2.8:1 and generally more than 3:1 for viable development to occur. Hill PDA recommend that Council considers a review of the planning controls to permit an FSR of between 3:1 and 3.5:1[1]. The appropriate FSR, within this range, would be dependent on urban design testing and other environmental considerations.

Council's planning and urban design staff will now carry out a fine-grain urban design review of the built form implications of permitting an FSR of between 3:1 and 3.5:1.

[1] Page 71 of the Double Bay Economic Feasibility Study 2015

Proponent's comments

The proponent's consultant, MD Planning, states that the Hill PDA study "in effect, recommends increased development yield for properties within the Double Bay Town Centre to encourage increased growth". MD Planning also notes that the Urban Planning Committee recommended that a further report be prepared based on the policy options identified in the Hill PDA study.
MD Planning suggests that both Hill PDA and the Urban Planning Committee support increased development yields in the Double Bay Centre to encourage growth. MD Planning also states that the additional housing that could be provided under the proposed planning controls is a desirable outcome that would add to the vitality and economic impetus of the Centre.

Staff response

Whilst the proponent's request would increase the development potential of the site, amending the height and FSR as suggested is not supported as:

- the proponent's request for an FSR of 5:1 is 1.5:1 greater than the maximum FSR identified by Hill PDA to facilitate viable redevelopment
- a seven storey height limit would not be required to accommodate a 3.5:1 FSR which is the maximum FSR identified in the Hill PDA report.

To complete Stage 3 of Action 3.2.1 of the Double Bay Place Plan, Council will be carrying out a review of the planning controls for the Centre over the coming months. That review should not be driven by ad-hoc requests to amend planning controls on individual sites. Rather, future planning control changes for the subject site should have regard to the broader strategy for the Double Bay Centre. In this respect the proposed planning control changes are not supported. The review will incorporate public participation with stakeholders in Double Bay which the owners of this site can take part in.

The existing consent under DA568/2013 would provide an additional 13 dwellings on Nos. 376-382 New South Head Road at an FSR of 4.42:1. The proponent's concept submitted with the planning proposal yields just three additional units despite:

- proposing an FSR of 5:1
- extending the site laterally to include No. 374 New South Head Road
- increasing maximum building height to 26m which would allow three additional storeys

Only an extra three dwellings are provided under the concept submitted with the planning proposal as level 4 of the existing building would not be converted to residential use. Whilst increasing residential density is desirable, the three additional units would have a negligible impact on the vitality and economic impetus of the Centre.

5.1.3 Approval history in the Double Bay Centre

Proponent's comments
The proponent's consultant, MD Planning, states that over recent years Council has approved development that exceeded the height and FSR controls for the Centre. The approvals for the Cosmopolitan Centre at 2-22 Knox Street and Kiaora Lands were specifically identified as two examples.

Staff response

The approval for the Cosmopolitan Centre was for alterations and additions to an existing six storey building. The maximum height of the building remained at 20.7m.

The approval for the Kiaora Lands development was for a new building which had a maximum building height of 19.9m. The non-compliance was for the plant equipment which was setback from New South Head Road and did not contribute to building bulk. The maximum height of the building at the New South Head Road frontage is 16.8m which complies with the current 18.1m Woollahra LEP 2014 control. The approved building also delivers a public benefit by providing a new public library.

These heights were assessed and considered to be suitable on individual merit. Neither development application exceeded the maximum building height control by the 77% margin requested by the proponent.

5.2 Review of proponent's concept and requested planning controls

The review of the proponent's concept considered the following matters:
- SEPP 65 and its supporting document the Apartment Design Guide,
- the objectives of Woollahra LEP 2014 and
- relevant controls in Chapter D5 Double Bay Centre of the Woollahra Development Control Plan 2015 (Woollahra DCP 2015).

The review identified a range of issues that have been addressed below in order of significance. Specifically:
- Consistency with the desired future character of the centre
- The need for additional height and FSR on corner sites
- Shadowing impacts
- Privacy impacts

The review concludes that based on the proponent's concept plans and shadow diagrams the proposed planning control changes are not appropriate in this location.

5.2.1 Consistency with desired future character of the Double Bay Centre

The desired future character of the Double Bay Centre is defined by a number of components of the Woollahra LEP 2014 and Chapter D5 Double Bay Centre of the Woollahra DCP 2015. The Woollahra LEP 2014 contains objectives and development standards and Woollahra DCP 2015 contains objectives, strategies, character statements and control drawings.

A building envelope for this site is defined using the maximum building height in Woollahra LEP 2014 and the setbacks in Chapter D5 Double Bay Centre of the Woollahra DCP 2015.
Relevant objectives of Woollahra LEP 2014 are objective (a) of clause 4.3 *Height of Buildings*:
(a) to establish building heights that are consistent with the desired future character of the neighbourhood,

and objective (b) of clause 4.4 *Floor space ratio* for development in the B2 zone:
(b) for buildings in Zone B1 Neighbourhood Centre, Zone B2 Local Centre, and Zone B4 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

In Chapter D5 Double Bay Centre, section D5.4 Street Character describes the desired future character of each street in the Double Bay Centre. This site is bounded by three streets, each of which have their own character statements:

- D5.4.3 New South Head Road
- D5.4.6 Knox Street
- D5.4.12 Goldman Lane

These statements identify that the desired future character of the site is a maximum of four storeys. Figure 11 is an extract from Council's 3D block model of the Double Bay Centre.
The model illustrates the building envelope for the north and south side of New South Head Road and the proponent's suggested maximum building height for the site. The envelope is based on the maximum building heights in Woollahra LEP 2014 and the setback controls in Chapter D5 Double Bay Centre.

Figure11: Council's 3D model of existing building envelopes on the north and south side of New South Head Road and the proponent's proposed building envelope.

Proponent's comments

The proponent's documentation states that the 26m height (7 storeys) would balance the future proportions of New South Head Road and Knox Street and is 'eminently reasonable'. The documentation refers to the planning principle *compatibility in the urban environment* which is outlined in the Land and Environment Court appeal *Project Venture Developments v Pittwater Council [2005] NSWLEC 191*.

Under this planning principle, two questions are posed to determine compatibility:
1. Are the physical impacts on the surrounding development acceptable?

The proponent states that there will not be unreasonable impacts on adjoining properties and includes comment on overshadowing and privacy.

2. Is the concept's appearance in harmony with the buildings around it and the street?
The proponent states that:

- significant weight must be put on the future built form permitted under Council's planning controls, and that many adjoining buildings are underdeveloped,
- the appearance of the foreshadowed development will be consistent with the existing building on 376-382 New South Head Road,
- that corner sites require strong corner buildings above the prevailing planning controls,
- that a seven storey building reflects the unique characteristics of this site.

Staff response

Planning principle: compatibility in the urban environment

1. Are the physical impacts on the surrounding development acceptable?

The physical impacts of the proponent's concept are addressed in detail in sections 5.2.3 and 5.2.4 of this report.

2. Is the concept's appearance in harmony with the buildings around it and the street?

The model in Figure 11 above shows that the requested 26m (7 storeys) height limit is inconsistent with the desired future character of the location. The model shows the maximum future built form on the north and south side of New South Head Road under Council's planning controls and what is requested for the subject site.

The requested height is an increase of 77% on the current controls that apply to the site and northern side of New South Head Road. The requested control would allow a building which is two storeys and 43% higher than the 18.1m (5 storeys) applying to the south side of New South Head Road. More broadly, the 3D model demonstrates that the requested height is inconsistent with the maximum building height of 18.1m (5 storeys) permitted in the Double Bay Centre. In this context, it cannot be concluded that the proponent's requested controls will result in a built form that is compatible with the Double Bay Centre.

The appearance of the proponent's concept is of similar design to the existing façade of the building at Nos. 376-382 New South Head Road. However, the requested height control is not in harmony with the buildings surrounding it as outlined above.

The need for a building which is 'above the planning controls' because the site is a corner site is assessed in detail below in section 5.2.2 of this report. In summary, the existing building on Nos. 376-382 New South Head Road exceeds the current maximum height and FSR controls, as does the consent for DA568/2013. The existing and approved building more than adequately enhance the corner presence and no further increase to height and FSR controls are necessary on this basis.

The site's characteristics include:

- being located at the corner of two important streets in the Double Bay Centre,
- having three frontages and
- being highly visible from Knox and New South Head Road.

This site is not the only site in the Centre with similar characteristics. There are nine other sites with similar characteristics along New South Head Road which are nominated for bonus FSR under Woollahra LEP 2014. No additional height and floor space ratio is required on this basis.

The requested FSR of 5:1 is an increase of more than 66% on the maximum FSR for this site and Double Bay generally. Such an increase is incompatible with the desired future character of the site and Double Bay Centre. It is also 1.5:1 greater than the maximum FSR identified by Hill PDA to facilitate viable redevelopment.

After comparing the requested controls to the maximum built form in this part of Double Bay it is evident that the building envelope created would be incompatible with the urban environment and the desired future character of the Centre. Further comment on the desired future character of the centre and objectives of Woollahra LEP 2014 is provided below.

Controls in Chapter D5 Double Bay Centre which define the desired future character
Chapter D5 of Woollahra DCP 2015 contains objectives, strategies and controls that help define the desired future character of the Double Bay Centre. Comment is provided on the relevant sections of Chapter D5 in the table below.

DCP Section	Comment on consistency
Objectives of Chapter D5	
O7 To ensure that new development is compatible with the existing built form, and streetscape and village character. Note: Objectives 1 to 5 are not relevant and the requested controls are not inconsistent with objectives 6, 8 and 9.	The planning proposal is inconsistent with objective 7 as the requested maximum building height is: • incompatible with the existing built form and streetscape of the block the site is located in and the north side of New South Head Road. • inconsistent with the desired future character of the site which is four storeys and the Double Bay Centre which is a maximum of five storeys.
Strategies for the Double Bay Centre	
Improve Double Bay's built form to provide appropriate definition to the public domain	The planning proposal is inconsistent with this strategy for the reasons outlined below.
a) Provide direction and certainty of outcome in relation to built form to ensure: – a coherent street scale; – compatibility with existing urban fabric; – a variety of building types; – a high level of environmental amenity. b) Promote high quality architectural design throughout the centre that positively contributes to the streetscape.	The requested maximum building height would not provide a coherent street scale on the north side of New South Head Road and would be incompatible with the existing urban fabric on the north and south side of New South Head Road. The requested height would therefore not positively contribute to the streetscape.
c) Ensure that new development is compatible with the existing built form, streetscape and village character.	The requested maximum building height is a 77% increase on the existing control and would be incompatible with the existing built form, existing streetscape and desired future character of the north and south side of New South Head Road.

DCP Section	Comment on consistency
d) Establish building envelopes that define building height and building lines (at lower and upper levels) to provide coherent street definition.	The requested controls will create inconsistent maximum building heights along the north side of New South Head Road, particularly at the east and west corners of Knox Street. This change will reduce the coherency of upper levels of the street.
e) Reinforce continuous active retail frontages along street boundaries.	The planning proposal is not inconsistent with this point.
f) Reinforce the presence of corner buildings addressing the public domain, recognising their importance in the centre in terms of street vistas, urban scale and identity.	Whilst the presence of the corner of Knox Street and New South Head Road would be increased, the requested height and FSR would result in a building that is inconsistent with the scale of development envisaged for this site and the Double Bay Centre as a whole. The existing building and the building approved under DA568/2013 sufficiently reinforce the presence of this corner site.
g) Encourage view sharing and privacy.	This point is addressed below in section 5.2.4 Privacy impacts
5.6.3.1 Building envelopes	
The building envelopes in Chapter D5 were established to allow development that maintains the environmental amenity of buildings and the public domain with regard to building bulk, overshadowing, access to natural light and ventilation and views. Objective O1 states: *Development should contribute to the desired future character of streetscapes with appropriate and consistent building forms.*	As outlined above, the planning proposal is inconsistent with the building envelope for the north side of New South Head Road and the Double Bay Centre generally. The impacts on amenity in terms of privacy and overshadowing are addressed in sections 5.2.3 and 5.2.4 below.

Consistency with relevant Woollahra LEP 2014 objectives

The planning proposal is inconsistent with objective (a) of clause 4.3 *Height of buildings* of Woollahra LEP 2014 as the proposed controls are incompatible with the desired future character of the Double Bay Centre.

The requested 5:1 FSR is inconsistent with objective (b) of clause 4.4 *Floor space ratios* as it will result in a building with a bulk and scale that is not compatible with the desired future character of the area for the reasons outlined above.

Planning conclusions

The requested planning controls are inconsistent with the desired future character of Double Bay and relevant objectives of Woollahra LEP 2014. The building envelope created by the planning proposal would be incompatible with the maximum built form permitted on the north and south side of New South Head Road and is not supported.

5.2.2 The need for additional height and FSR on corner sites

Chapter D5 Double Bay Centre, clause 5.6.3.5 *Corner buildings* encourages strong corner buildings for 17 sites in the Double Bay Centre as discussed in section 2 above. Nos. 376-382 New South Head Road is one of these sites. The proponent argues that the current building at the corner of New South Head Road and Knox Street lacks presence and prominence and does not take the opportunity to enhance the corner and strengthen the position of the Double Bay Centre.

The introduction of clause 5.6.3.5 *Corner buildings* states:

> *Corner buildings are highly visible and provide the opportunity for notable design solutions. Strong corner buildings can provide valuable street definition.* ***Existing buildings within the study area that provide this definition include the buildings on the corners of Knox Street and New South Head Road****, and Coopers Corner on the intersection of Bellevue Road and New South Head Road* (emphasis added).

As demonstrated by this extract and contrary to the proponent's submission, there is no need to increase the maximum height and floor space ratio on the site to enhance the street definition.

Further, the existing consent under DA568/2013 permits an additional storey of development above the existing maximum building height which will give the site prominence compared with any other building on the north side of New South Head Road.

The requested FSR control of 5:1 is 66% over the 3:1 FSR that is offered under clause 4.4A *Exceptions to floor space ratio (Area 1 – Double Bay)* in Woollahra LEP 2014. There are no characteristics of this site which warrant such an increase to FSR.

The purpose of clause 4.4A is to allow additional FSR on corner sites so that buildings can provide a continuous streetwall on each frontage. As the existing building already provides a continuous streetwall on all four levels to New South Head Road and Knox Street, additional FSR is not required to give the building prominence.

The planning proposal also seeks to increase the maximum building height on this corner site to increase prominence. Although corner sites may be permitted additional FSR, additional height is not granted to increase prominence. As the site is already identified as having a strong corner building, the site does not warrant additional height to increase its presence or prominence.

Council's Urban Designer provided advice on the planning proposal regarding the need to increase the prominence of the building on this site. The advice notes that neither Eeles Trelease nor Hill Thalis actually promote the necessity for height when producing strong corner buildings despite the proposed 11.3m increase to the maximum building height. The referral states:

> *In my opinion, along streets the width and character of those in Double Bay, the height of buildings required to create a strong corner expression need not be any higher than the adjacent buildings.*

Regarding the review of heights and floor space ratios in the Centre as part of the Double Bay Place Plan, Council's Urban Design Planner states that:

The current height limits of four and five storeys are being reviewed. The height that is determined to be appropriate for the street height will, in my opinion, also be appropriate for corners.

The height and floor space ratio for this site can be considered in the context of the review of height and FSR controls of the entire Centre. As stated above, the owners of this site will have opportunity to participate as stakeholders in this review.

The prominence of this corner site is acknowledged and the quality and modulation of the existing building should, and indeed does, reflect its position in the Centre. However, prominence is not dependant on the building being higher than those adjoining it.

Planning conclusions

The existing building appropriately defines this corner as noted in Chapter B3 of the Woollahra DCP 2015. The building approved under DA 568/2013 will further increase this site's prominence. Increasing height and floor space ratio controls for this site as proposed is not required to create a strong corner building on this site.

5.2.3 Shadowing

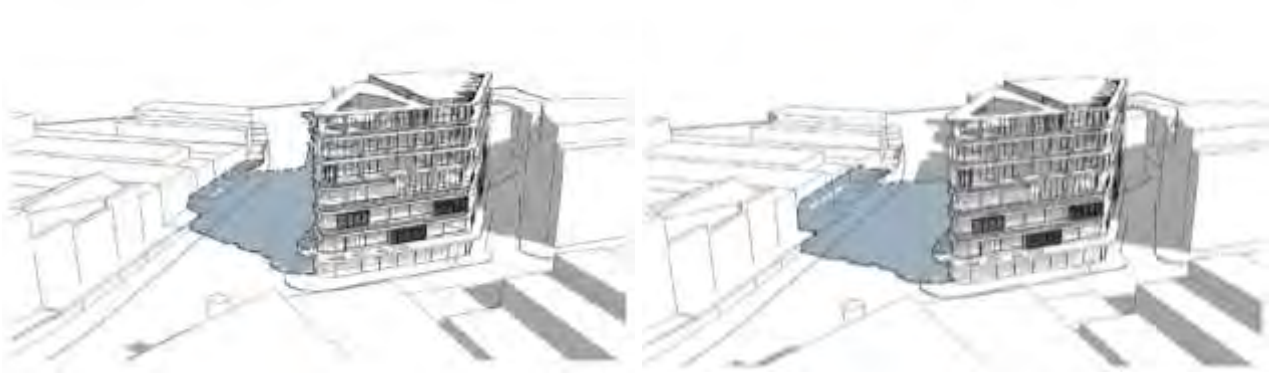
A 14.7m height limit applies to the north side of New South Head Road, partly to provide solar access to existing buildings and the public domain on the south side of New South Head Road. Objective (c) and (d) of clause 4.3 *Height of Buildings* of Woollahra LEP 2014 are:

(c) to minimise the loss of solar access to existing buildings and open space,
(d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

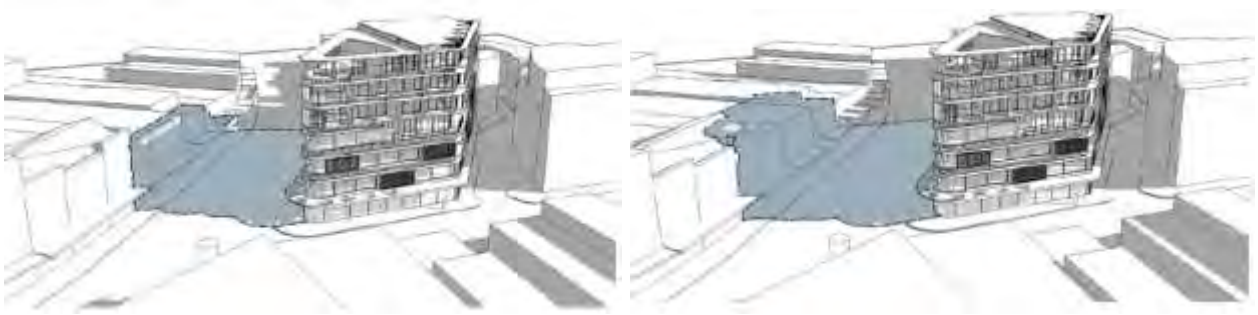
In the Woollahra Development Control Plan 2015, Chapter D5 Double Bay Centre addresses solar access in clause 5.6.6.1 *Solar access*. Objective O1 and control C1 of that clause are:

O1 Minimise overshadowing of adjoining properties or publicly accessible spaces.
C1 Preserve solar access to Guilfoyle Park and the footpath on the south side of Knox Street, Cross Street, and New South Head Road between 12 noon and 2pm on 21 June.

Proponent's comments
The proponent submitted shadow modelling of their concept for the site which is shown below in Figures 12 to 15.



Proponent's shadow modelling of the concept submitted with the planning proposal on 21 June - Figure 12 (left): 12:00pm and Figure 13 (right) 1:00pm



Proponent's shadow modelling of the concept submitted with the planning proposal on 21 June – Figure 14 (left): 2:00pm and Figure 15 (right): 3:00pm

Further shadow diagrams were included in the proponent's planning report which compare the shadowing created by the concept for the site and the 14.7m maximum building height that applies to the north side of New South Head Road.

This modelling shows that at 3pm, buildings constructed to a height of 14.7m would completely overshadow the footpath and part of the buildings on the southern side of New South Head Road. Examples of this modelling are shown below in Figures 16 and 17.

Proponent's shadow modelling of the concept and submitted with the planning proposal on 21 June – Figure 16 (left): 12:00pm and Figure 17 (right): 3:00pm

Staff response

As the shadow diagrams in Figures 12 to 15 above show, the planning proposal will not preserve solar access to the south side of New South Head Road between 12 noon and 2pm on June 21. Staff have verified the proponent's shadow modelling and identified that part of the southern side of New South Head Road opposite the site will be in shadow from 10am on 21 June onwards.

Public domain solar access is seen as a critical control within the Double Bay Centre. Council staff have consistently sought compliance with clause 5.6.6.1 *Solar access* of Chapter D5 Double Bay Centre. The proponent's submission shows a 26m height limit does not:

- minimise overshadowing as required by objective O1,
- maintain solar access to the south side of New South Head Road as required by control C1.

Regarding the shadowing potentially created by the current 14.7m height control, the maximum building heights in the Double Bay Centre were increased from 13.5m to 14.7m with the introduction of Woollahra LEP 2014.

The increase allows new development in the Double Bay Centre to provide floor to ceiling heights consistent with those identified in the Apartment Design Guide. The increase encourages more liveable buildings in the Centre by allowing more light to penetrate into buildings and for better noise insulation between floors.

The shadowing created by the increase from 13.5m to 14.7m is minimal. The south side of New South Head Road is partially affected by additional shadowing after 1pm, with the majority of footpath being in shadow at 1:30pm. By contrast, the proponents concept will overshadow the southern side of the road opposite the site in the peak period of activity between 10am and 2pm.

Consistency with relevant Woollahra LEP 2014 objectives

A 26m height limit is inconsistent with objectives (c) and (d) of clause 4.3 *Height of Buildings* of Woollahra LEP 2014, as it:

- does not minimise the loss of solar access to existing buildings,
- does not minimise the impacts of new development on adjoining or nearby properties in terms of overshadowing, and
- will have unacceptable overshadowing impacts on the public domain on the south side of New South Head Road.

Planning conclusions

The planning proposal does not meet the objectives of Woollahra LEP 2014 or the overshadowing objective and control in Chapter D5. The planning proposal will result in shadowing on the opposite side of the road three hours earlier than under the 14.7m maximum building height permitted by the current controls. For these reasons the proposed maximum building height of 26m is not supported.

5.2.4 Privacy impacts

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development (SEPP 65) seeks to improve the design quality of residential apartment development in New South Wales. SEPP 65 is supported by the Apartment Design Guide which provides greater detail on how residential development proposals can meet these principles through good design and planning practice.

The Apartment Design Guide was prepared, in part, to assist planning professionals in local government with strategic planning and in the preparation of local controls. Part 2 of the Apartment Design Guide explains the application of building envelopes and primary controls including height, floor space ratio, building depth, separation and setbacks. It provides tools to support the strategic planning process when preparing planning controls.

On the issue of privacy, Part 2F *Building separation* of the Apartment Design Guide outlines minimum distances between apartments to improve amenity and provide acoustic and visual privacy. These distances vary depending on building height as outlined in the table below.

Minimum separation distances for buildings are: *Up to four storeys (approximately 12m):* **12m between habitable rooms/balconies** 9m between habitable and non-habitable rooms 6m between non-habitable rooms
Five to eight storeys (approximately 25m): **18m between habitable rooms/balconies** 12m between habitable and non-habitable rooms 9m between non-habitable rooms
Nine storeys and above (over 25m): 24m between habitable rooms/balconies 18m between habitable and non-habitable rooms 12m between non-habitable rooms

Woollahra LEP 2014 objectives

Clause 4.3 *Height of Buildings* of Woollahra LEP 2014 includes one objective regarding privacy:

(d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,

Proponent's comments

The proponent states that:

- the issue of SEPP 65 would be the subject of a further assessment under a future DA,
- there is an intervening laneway which provides spatial separation between the site and the Cosmopolitan Centre at 2-22 Knox Street, and
- the issue of privacy can be resolved with 'appropriate privacy measures'.

Council response

It is relevant to consider the Apartment Design Guide during the assessment of the planning proposal as apartments may be provided in new development on this site. Building separation is a relevant consideration as the planning proposal would increase the maximum building height for the site from 14.7m (4 storeys) to 26m (7 storeys).

The Apartment Design Guide identifies that in five to eight storey apartment buildings, consideration should be given to a minimum separation distance of 18m between habitable rooms/balconies.

The Cosmopolitan Centre is located to the north west of the site. The upper levels of the Centre are residential dwellings with windows facing towards the site. The dwellings are between 10.5m and 14.5m from the western boundary of the site on Goldman Lane.

The proponent's concept includes apartments on levels 5 to 7. The proponent suggests that obscure privacy screens would be used between main living rooms and bedrooms on the western boundary. The apartments on level 5 and 6 are shown with balconies on Goldman Lane.

Figure 18 below shows the concept with balconies within 10.5m of the Cosmopolitan Centre and windows from primary living areas within 12m of the Cosmopolitan Centre. The separation distances are well below the 18m building separation identified in the Apartment Design Guide.

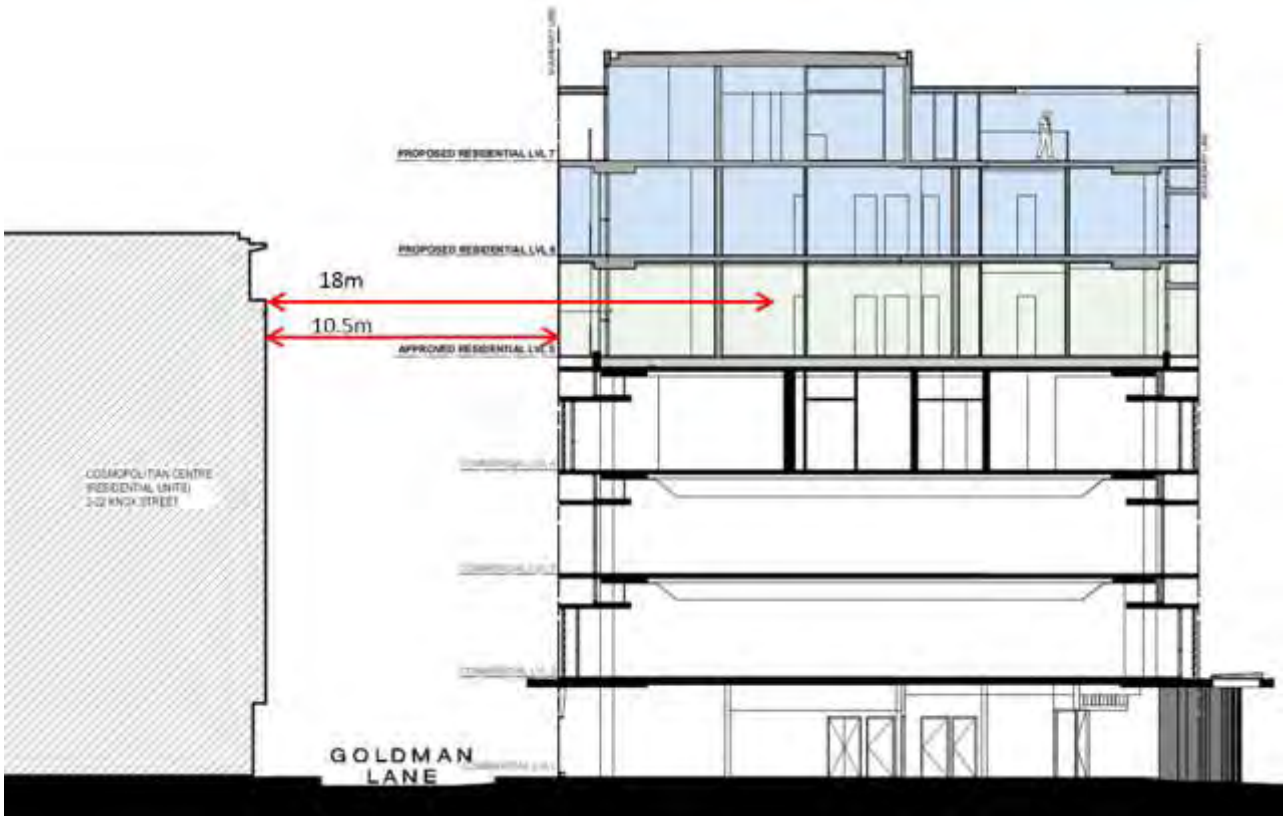


Figure 18: Section of proponent's concept and separation distances

Staff do not support the planning proposal as:

- the building envelope created by the maximum building height and existing setbacks in Chapter D5 Double Bay Centre are inconsistent with building separation distances in the Apartment Design Guide,
- the proponent's concept for the site is inconsistent with building separation distances in the Apartment Design Guide,
- no DCP amendments were suggested by the proponent to establish setbacks on levels 5 to 7 which are consistent with the Apartment Design Guide, and
- the use of privacy screens to manage acoustic and visual privacy between dwellings is an inferior alternative to building separation.

Consistency with relevant Woollahra LEP 2014 objectives

The planning proposal and proponent's concept do not minimise the impacts of new development on the privacy of 2-22 Knox Street by providing building separation that is consistent with the Apartment Design Guide. For this reason, the planning proposal is inconsistent with objective (d) of clause 4.3 *Height of Buildings*.

Planning conclusions

The building envelope created by the planning proposal does not provide adequate building separation between the site and 2-22 Knox Street Double Bay and is inconsistent with the relevant objective in clause 4.3 *Height of Buildings* in Woollahra LEP 2014.

6. Options

There are four options for responding to the planning proposal:
1. Prepare a planning proposal and submit it to the Department of Planning and Environment.
2. Prepare an amended version of the planning proposal and submit it to the Department of Planning and Environment.
3. Defer consideration of the planning proposal until the review of planning controls in the Double Bay Centre is complete.
4. Notify the proponent that the planning proposal is not supported.

Option 1: Prepare a planning proposal based on the proponent's requested planning controls and submit it to the Department of Planning and Environment requesting a gateway determination. A gateway determination would be requested under section 58(2) of the Act. The Minister, or delegate, will then issue a gateway determination specifying whether the planning proposal is to proceed and, if so, in what circumstances. The gateway determination would confirm the information and consultation required before the planning proposal can be publicly exhibited. Under section 59 of the Act, if a planning proposal is solely of local significance Council can seek the delegation of the plan-making steps. This planning proposal is considered to have local significance only. We consider that if the Council decides to proceed with the planning proposal, it should request the delegation of the plan-making steps. This delegation will be to the position of General Manager. It is sub-delegated to the position of Director, Planning and Development as provided in Council's resolution of 29 November 2012. Delegation of a planning proposal removes duplication and streamlines the plan-making process.

Option 2: Prepare an amended planning proposal based on the proponent's requested planning controls and submit it to the Department of Planning and Environment requesting a gateway determination. We would again request a gateway determination and seek delegation of the plan making steps.

Option 3: Defer consideration of the planning proposal until the review of planning controls for the Double Bay Centre is complete. The planning proposal could then be reconsidered in the context of recommendations on height and FSR for the Double Bay Centre generally.

Option 4: Notify the proponent that the planning proposal is not supported. This is our preferred approach.

For the reasons outlined in this report, the proponent would be notified that the planning proposal is not supported. If Council does not support the planning proposal or does not indicate its support within 90 days, the proponent can ask the Department of Planning and Environment for a pre-gateway review. Under this review mechanism, the Joint Regional Planning Panel will undertake an independent review of the planning proposal.

7. Planning agreement

The proponent has indicated that they would be open to negotiating a planning agreement with Council. We have not seen the terms of the proponent's offer. Should a planning agreement be submitted to Council it would be considered and reported to Council for consideration.

Notwithstanding, the merit of the planning proposal should be considered separately to the terms of the planning agreement. If a draft planning agreement was accepted by Council, it could be advertised concurrently with the planning proposal. If the Council decides not to proceed with the planning proposal, a planning agreement would not be pursued.

8. Conclusion

We conclude that the planning proposal does not have strategic merit and should not proceed. We note that:

- Future planning control changes for this site should be informed by the broader strategy for the Double Bay Centre. In this respect the requested planning control changes are excessive and are not supported.
- The requested planning control changes are inconsistent with the scope of review for the Double Bay Centre controls recommended in the Hill PDA study.
- The requested planning control changes are inconsistent with the desired future character of the Centre.
- No additional height and FSR is required to create a strong corner building on this site. The existing building together with its approved additional level adequately defines the corner.
- The requested maximum building height will create unacceptable overshadowing impacts to the public domain and buildings on the south side of New South Head Road.
- The building envelope created by the planning proposal does not provide adequate building separation between the site and the Cosmopolitan Centre.
- The planning proposal is inconsistent with the relevant objectives of Woollahra LEP 2014.

The maximum height and FSR for this site will be considered as part of the strategic review of heights and FSR in Double Bay Centre. The framework for this review was set by Council's decision of 28 September 2015. The owner of the site will be able to comment as part of any public participation during the review process.

Annexures

1. 374 and 376 - 382 New South Head Road, Double Bay - Planning Proposal - Annexure 1 *(circulated under separate cover)*