

Item No: R3 Recommendation to Council
Subject: **PLANNING PROPOSAL - NON-RESIDENTIAL FLOORSPEACE CONTROLS FOR DOUBLE BAY CENTRE**
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Approvers: Anne White, Team Leader - Strategic Planning
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File No: 18/152981
Reason for Report: To provide Council with the advice of the Woollahra Local Planning Panel in relation to a planning proposal to amend Woollahra LEP 2014 by introducing new non-residential floor space provision to protect commercial and other employment generating land uses in the Double Bay Centre.
To obtain a Council resolution to seek a gateway determination allowing the public exhibition of the planning proposal to amend Woollahra LEP 2014.
To obtain a Council resolution to concurrently exhibit a draft development control plan to amend Chapter D5 Double Bay Centre of Woollahra DCP 2015.

Recommendation:

- A. THAT Council note the advice of the Woollahra Local Planning Panel of 13 September 2018.
- B. THAT the planning proposal at **Annexure 3** of the report to the Environmental Planning Committee of 15 October 2018 be forwarded to the Greater Sydney Commission with a request for a gateway determination to allow public exhibition.
- C. THAT when requesting a gateway determination for the planning proposal, Council seek delegation of the plan-making steps under section 3.36 of *the Environmental Planning and Assessment Act 1979*.
- D. THAT Council resolve to exhibit the planning proposal in accordance with the conditions of the gateway determination and the *Environmental Planning and Assessment Act 1979*.
- E. THAT Council resolve to exhibit a draft development control plan to amend Chapter D5 - Double Bay Centre of Woollahra Development Control Plan 2015 concurrently with the planning proposal, consistent with the amendments shown in **Annexure 4** of the report to the Environmental Planning Committee of 15 October 2018.

1. Background

On 6 August 2018 a report was presented to the Environmental Planning Committee recommending floor space controls to protect commercial and other employment generating uses in the Double Bay Centre (see **Annexure 1**). It responded to a recent development trend for shop top housing which is

resulting in residential uses displacing existing business and office uses located on the first floor and above. On 20 August 2018, Council resolved the following:

- A. *THAT Council resolve to prepare a planning proposal to amend Woollahra Local Environmental Plan 2014 by introducing new provisions which protect the provision of commercial floor space in the Double Bay Centre.*
- B. *THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice in accordance with the Local Panels Direction – Planning Proposals issued by the Minister for Planning on 23 February 2018.*
- C. *THAT Council be provided with the advice of the Woollahra Planning Panel regarding the planning proposal.*
- D. *THAT, if the planning proposal is supported by Council, it be forwarded to the Greater Sydney Commission requesting a gateway determination to allow public exhibition.*
- E. *THAT when requesting a gateway determination for the planning proposal, the council seek delegation of the plan-making steps under section 3.36 of the Environmental Planning and Assessment Act 1979.*
- F. *THAT Council resolve to prepare and exhibit a draft development control plan to amend Chapter – D5, Double Bay Centre of the Woollahra Development Control Plan 2015 to clarify and strengthen requirements for minimum commercial floor space.*
- G. *THAT Council adopt the following process for the consideration and review of the planning controls for the Double Bay commercial centre in relation to maximum FSRs and building heights, arising from consideration of the HillPDA economic feasibility study:*
 1. *Any proposed changes to floor space ratio, height controls, colonnades as well as other related amendments, be submitted as soon as possible to a meeting of the Environmental Planning Committee.*
 2. *Following endorsement of the planning control changes Council commence an inclusive and representative community engagement program which includes:*
 - i. *a series of community workshops at which the control changes and likely impacts will be explained and feedback sought from participants*
 - ii. *publication of relevant explanatory material on Council’s website under “Our Woollahra – Your Say.”*
 - iii. *an on-line survey*
 - iv. *a public exhibition of proposed changes to be held at Council’s customer service area and at a suitable location in Double Bay.*
 - v. *3D visualisations of indicative future development.*
 - vi. *a community impact statement which explains the likely impacts of the proposed changes.*
 - vii. *Other innovative engagement methods as may be recommended by Council’s communications team.*
 3. *Following completion of the community engagement program a planning proposal and associated DCP amendments be prepared and referred to the Woollahra Local*

Planning Panel for advice prior to submission to the Environmental Planning Committee.

2. The planning proposal

In accordance with Council's resolution of 20 August 2018 a draft planning proposal was prepared to introduce a new control into Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) to protect the provision of non-residential floor space and to protect employment generating uses in the Double Bay Centre (see **Annexure 3**). Consistent with the advice of the Woollahra Local Planning Panel, the planning proposal has been amended to provide further information on the definition of non-residential uses, and the consistent use of this term (see part 4 for further information).

2.1. Objective

The objective of the planning proposal is to amend Woollahra LEP 2014 by introducing a new control to protect the provision of non-residential uses in the Double Bay Centre. The intended effect is that the centre retains employment generating floor space.

It is anticipated that the amendments will help to ensure development facilitates the following:

- Active ground floor retail and business uses such as cafes, shops, hairdressers and restaurants.
- First floor non-residential uses such as business premises, office premises, medical services and community uses. However, this should not include car parking or serviced apartments.

2.2. Explanation of provisions

The planning proposal seeks the following amendments to Woollahra LEP 2014:

- Insert a new provision setting a minimum non-residential FSR of 1.3:1.
The proposed 1.3:1 will work in conjunction with the primary FSR controls, and seeks to ensure that part of the development is used for non-residential uses that support the role of the centre. This would only apply to development in the Double Bay Centre and does not increase or otherwise affect the application of other relevant controls such as maximum building height or the maximum FSR.

An FSR control of 1.3:1 allows sufficient area for a well-designed mixed use development to include ground floor retail and first floor non-residential uses such as offices, businesses, community uses, or health services. It also takes into account the floor area required for back-of-house and ancillary uses including waste storage, stair and lift cores, fire safety equipment, building services, and driveways.
- Amend the objectives for the B2 Local Centre Zone as they apply to the Double Bay Centre to reinforce the proposed amendments and ensure consistency.

The amendment will only apply to land zoned B2 Local Centre under Woollahra LEP 2014 (as shown in **Figure 1** below).

Double Bay Local Centre

Map extract from Woollahra LEP 2014

Legend

Zone

- B2** Local centre
- R2** Low density residential
- R3** Medium density residential
- RE1** Public recreation
- SP2** Infrastructure

— Centre outline

3. Amendments to Woollahra DCP 2015

The proposed changes to the DCP include amended controls to reinforce and provide consistency with the proposed new requirement for non-residential floor space on the ground and first level of development in the Centre. The proposed amendments to Chapter D5 Double Bay Centre are attached at **Annexure 4**. These amendments will be incorporated into the format of a draft DCP for the purpose of public exhibition.

On 13 September 2018 the draft planning proposal was reported to the Woollahra Local Planning Panel (see **Annexure 2**). Associated amendments to Woollahra DCP 2015 were also reported to the Panel. The Panel provided the following advice:

- A. *THAT the Woollahra Local Planning Panel advises Council that it supports the Planning Proposal in **Annexure 3** of the report to the Panel of 13 September 2018 to amend the Woollahra Local Environmental Plan 2014 by introducing a new control for the inclusion of a minimum floor space ratio requirement of 1.3:1 for commercial and other non-residential uses in the Double Bay Centre.*
- B. *The Panel supports the amendments to the Woollahra Development Control Plan 2015 to reinforce and provide greater detail regarding the requirement for commercial floor space on the ground and first levels of development in the Double Bay Centre, as contained in **Annexure 4** of the report to the Local Planning Panel of 13 September 2018, subject to the Council including a definition of non-residential uses, and the consistent use of this term.*

4.1. Staff response to the Panel's advice

Staff have amended the planning proposal and the proposed amendments to the DCP to clarify the definition of non-residential uses and to ensure the consistent use of this term.

It is recommended that Council note the advice and support of the Woollahra Planning Local Panel and proceed with the planning proposal and draft DCP.

5. The gateway process and a request for delegated authority

If Council resolves to proceed with the planning proposal it will be forwarded to the Department (as the delegate of the GSC) to request a gateway determination under section 3.34 of the Act. The gateway determination allows Council to proceed with the public exhibition of the planning proposal.

To streamline the plan making process, the Minister can delegate some plan making powers to Council for routine matters. For the subject planning proposal, Council will request authorisation to exercise the functions of the Greater Sydney Commission to make an LEP under section 3.36 of the Act.

5.1. Community consultation

The public exhibition of the planning proposal will be undertaken in accordance with the requirements of the Act, the Environmental Planning and Assessment Regulation 2000 and the gateway determination issued by the Department of Planning and Environment as delegate for the Greater Sydney Commission. The Act requires a minimum exhibition of 28 days unless otherwise specified in the gateway determination. This is consistent with Council's standard practice for the exhibition of a planning proposal of this type.

A draft DCP to amend Chapter D5 of Woollahra DCP 2015 will be placed on public exhibition concurrently with the exhibition of the planning proposal. Public notification of the exhibition will comprise:

- A weekly notice in the local newspaper (the Wentworth Courier) for the duration of the exhibition period.
- A notice on Council's website.
- A letter to the land owners in the Double Bay Centre.
- A letter to land owners in the vicinity of the Double Bay Centre.
- Local community and business groups such as the Double Bay Residents' Association and the Sydney East Business Chamber.

During the exhibition period the following material will be available on Council's website and in the customer service area at Woollahra Council offices:

- The planning proposal, in the form approved by the gateway determination.
- The gateway determination.
- Information relied upon by the planning proposal, such as relevant Council and consultant reports.
- A draft DCP amending Ch D5 Double Bay Centre of Woollahra DCP 2015

5.2. Making the draft LEP under delegated authority

If Council resolves to proceed with and finalise the planning proposal after public exhibition (and Council is authorised to make the amending LEP), staff will request that the Parliamentary Counsel (PC) prepare a draft LEP. Once the draft LEP has been prepared, PC will issue an opinion that it can be made. Alternatively, if Council decides not to finalise the planning proposal, it should resolve to write to the Minister requesting him or his delegate not to proceed with it under section 3.35(4) of the Act.

6. Amending Woollahra DCP 2015

A draft DCP amendment will be publicly exhibited with the planning proposal. The outcome of the public exhibition of the draft DCP will be reported to a future meeting of the Environmental Planning Committee for consideration. If Council resolves to proceed with the amendment and adopts the draft DCP, the new planning controls will come into effect after a notice is published in the local paper. It is intended that the draft DCP will come into effect on the same day as the amending LEP.

7. Conclusion

There is a trend with development applications in the Double Bay Centre to provide residential dwellings above a ground floor area of retail uses. These applications are removing the potential for floor space to provide employment generating land uses. The trend is inconsistent with important objectives of the Double Bay Centre.




The planning proposal which seeks amendments to the floor space ratio controls will help to promote a balance of business, office, retail, health, community and residential uses in the centre. This is consistent with the strategic framework that applies to Woollahra and the approaches adopted by other Greater Sydney councils. A consequential amendment to Chapter D5 Double Bay Centre of Woollahra DCP 2015 should also be made.

The planning proposal has been prepared in accordance with the Act, and the Woollahra Local Planning Panel has advised that it supports the planning proposal and the amendments to the DCP subject to some minor amendments.

We seek a decision of the Council to:

- Forward the planning proposal to amend Woollahra LEP 2014 by introducing new non-residential floor space provisions to the GSC requesting a gateway determination to allow public exhibition.
- Request delegation from the Department in relation to the planning proposal, to carry out the functions of the GSC under section 3.36 of the Act.
- Concurrently exhibit a draft DCP to amend Chapter D5 Double Bay Centre of Woollahra DCP 2015.

Annexures

1. Report to the Environmental Planning Committee of 6 August 2018 (Annexures removed) [↓](#) 
2. Report to the Woollahra Local Planning Panel meeting of 13 September 2018 (Annexures removed) [↓](#) 
3. Planning Proposal - Proposed commercial floor space for the Double Bay Centre (Annexures removed) [↓](#) 
4. Draft Amendments to Chapter D5 - Double Bay Centre of Woollahra DCP 2015 [↓](#) 