

Item No: R1 Recommendation to Council
Subject: **PROPOSED COMMERCIAL FLOOR SPACE CONTROLS FOR DOUBLE BAY CENTRE**
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File No: 18/111423
Reason for Report: To recommend amendments to the Woollahra LEP 2014 and Woollahra DCP 2015 in response to recent development proposals seeking to reduce the amount of commercial floor space in the Double Bay Centre.
To obtain a Council resolution to prepare and exhibit a planning proposal to amend the Woollahra LEP 2015.
To obtain a Council resolution to prepare and exhibit a draft development control plan to amend Chapter D5 Double Bay Centre of the Woollahra Development Control Plan 2015.

Recommendation:

- A. THAT Council resolve to prepare a planning proposal to amend *Woollahra Local Environmental Plan 2014* by introducing new provisions that:
 - i. Protect the provision of commercial floor space in the Double Bay Centre
 - ii. Require active street frontages 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 Planning 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 Local Planning Panel regarding the planning proposal.
- D. THAT the planning proposal 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, active street frontages and remove the requirement for development in certain precincts to include colonnades.

1. Summary

Double Bay Centre is one of the largest business centres in Woollahra. It services the local community with groceries and a range of professional and personal services. People from outside the area visit for the high-end boutique fashion, dining, and personal services.

A recently emerging trend in Double Bay is for development proposals for shop top housing comprising a single level of ground floor retail with residential apartments above. This displaces existing business and office uses located on the first floor and above.

*Note: **Shop top housing** is defined in the Standard Instrument LEP as “one or more dwellings located above ground floor retail or business premises”.*

To maintain Double Bay’s high level of liveability it is important to have a balance of business, retail, community and residential uses in the centre. This position is consistently identified in Council’s plans and strategies for Double Bay and also for all centres in Sydney in the District Plans prepared by the NSW Government.

A reduction in commercial floor space undermines the vision for Double Bay as Sydney’s stylish bayside village and Woollahra’s premier shopping and community precinct (*Double Bay Place Plan 2014*). This loss in floor space threatens the Centre’s long-term viability and its capacity to provide:

- Local, district and broader employment opportunities,
- High-quality businesses and activities that attract people to the centre,
- Daytime foot traffic to support businesses such as retail uses,
- Products and services for the needs of residents.

This report considers how the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) can ensure floor space for a range of employment generating uses is maintained across the Double Bay Centre. It is recommended that the Woollahra LEP 2014 is amended to ensure development facilitates the following:

- Active ground floor retail and business uses such as cafes, shops and restaurants
- First floor non-residential use such as business, office uses and specialist medical rooms.

*Note: In the Standard Instrument LEP definitions, the group term **commercial premises** includes offices, business, retail, restaurants and cafes and other services (see extracts at **Annexure 1**).*

There is no restriction proposed for development on upper floors which may be used for residential apartments, further commercial floor space or other uses identified in the B2 Local Centre zone which applies to the Centre.

The recommended provisions include updates to the business objectives for the Double Bay Centre, a new minimum commercial floor space ratio (FSR) of 1.3:1, and the introduction of an active street frontage clause. There are also consequential changes proposed to the *Woollahra Development control Plan 2015* (Woollahra DCP 2015).

The amendments will only apply to land within the Double Bay Centre which is zoned B2 Local Centre under Woollahra LEP 2014 (see **Figure 1**).

It is relevant to note that this report draws on work completed as part a comprehensive review of the planning controls for the Double Bay Centre. A separate report on the review will be provided to a future meeting of the Environmental Planning Committee.

If Council resolves to support the proposed amendments to Woollahra LEP 2014 the next step is for staff to prepare a planning proposal and seek advice from the Woollahra Local Planning Panel.

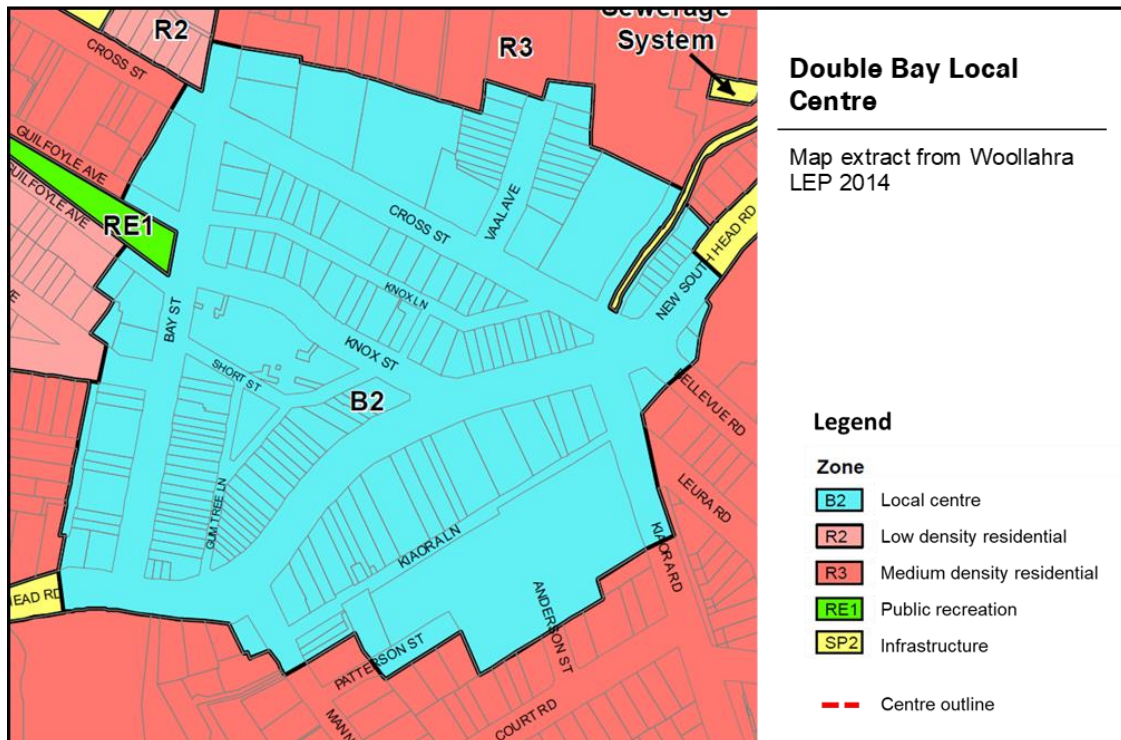


Figure 1: Map of Double Bay Centre (shown in blue)

2. Background

Recently, there have been several development applications for new shop-top housing developments on sites in Bay Street, Cross Street, Manning Road and Knox Street.

An example is a DA for shop top housing at 28 and 30-36 Bay Street and 2 Guilfoyle Avenue, Double Bay (DA359/2017/1). The existing four storey commercial building has retail on the ground floor with approximately 30 business and office suites above comprising more than 1800sqm.

The DA proposed a seven storey development containing three retail spaces which comprise approximately 265sqm, 39 units above and parking for 33 spaces. Other than the ground floor retail spaces, no business or office space was proposed.

On 14 June 2018 the Sydney Eastern Planning Panel refused the application.

Non-compliances with the FSR and height controls were key reasons for the Panel's decision to refuse the proposal. A full copy of the reasons for the Panel's decision is **Annexure 2**.

Notably, one of the reasons for the Panel's decision was:

The loss of commercial use of the site and the lack of any replacement will be detrimental to the Double Bay Centre.

The trend for apartments replacing the existing commercial floor space reflects the premium sale price for residential apartments in the Double Bay Centre.

If redevelopment continues to propose the deletion of commercial floor space, it will undermine the Centre's capacity to provide employment opportunities, and potentially affect the long-term economic viability of the Centre. Furthermore, a significant reduction in commercial floor space is inconsistent with the vision for Double Bay and the strategic planning framework as outlined in Section 3 of this report.

In response, staff have identified that planning controls in Woollahra LEP 2014 need to be strengthened to ensure floorspace for employment generating uses is maintained across the Double Bay Centre (See Section 5 of this report). Consequential changes are also recommended to the Woollahra DCP 2015.

3. Strategic context

Place-based planning that promotes vibrant local centres with a mix of land uses is an approach common to most councils in NSW. It is also the approach used consistently in the plans and strategies which provide the strategic framework for development in Woollahra (see outline in **Table 1** below).

Table 1: Summary of strategic framework applying to Woollahra

Strategic plan	Comment
Eastern City District Plan (Commenced on 18 March 2018)	The <i>Eastern City District Plan</i> is the NSW Government's plan to ensure all council's implement its vision for Greater Sydney as set out in <i>A Metropolis of Three Cities</i> . The Plan emphasises the importance of a diversity of uses and economic activities in centres to create vibrant places for people and help deliver the 30-minute city. These are both key priorities for local centres across Greater Sydney.
Woollahra LEP 2014 and Woollahra DCP 2015 (Commenced on 23 May 2015)	The <i>Woollahra LEP 2014</i> and <i>Woollahra DCP 2015</i> set out the objectives and development controls for development types, built form and uses in the Municipality. The Plans promote a range of land uses in our local centres. Controls for built form such as maximum heights, building envelopes and specific requirements for individual land uses. These controls reflect the hierarchy of centres and Council's place-based planning approach.
Double Bay Place Plan 2014 (Adopted by Council on 15 December 2014)	The <i>Double Bay Place Plan 2014</i> sets out a series of strategies, priorities and actions to achieve the vision of Double Bay as Sydney's stylish bayside village. Key priorities include strengthening and developing the capacity of businesses in Double Bay and maintaining the high quality service, retail, employment and leisure offerings.
Double Bay Public Domain Strategy and Public Domain Lighting Strategy (Public Domain Strategy - adopted on 8 August 2016. Lighting Strategy adopted on 27 June 2016.)	These strategies identify opportunities and actions for public domain initiatives to increase the success of Double Bay as Sydney's stylish bayside village. A key part of this plan is to enhance the urban environment to support a rich street life, outdoor dining, retail and cultural experiences.

Promoting business and diverse uses in local centres is supported by the NSW Government, in the Greater Sydney Regional Plan and the District Plans. A Ministerial Direction issued to guide assessment of planning proposals also requires protection of business and industrial zones (Direction 1.1 under Section 9.1 of the EP&A Act (previously section 117) This Direction was revised on 1 May 2017).

Consistent with this strategic framework, a key part of the vision for Double Bay Centre is the maintenance of a vibrant centre with a diverse mix of land uses. Staff have been investigating ways to facilitate this.

A diverse mix of uses in the Centre sustains activity levels and maintains vitality and vibrancy throughout the week and the weekend:

- Offices and business provide daytime population during the week, increasing footfall and their employees contribute to retail, cafes, services, medical, and restaurant demand,
- In the evening and on weekends residents and visitors provide customers for retail, leisure and restaurant activities.

The Double Bay Place Plan 2014 acknowledges that an important part of making Double Bay a great place of people is ensuring that there is a suitable level of activity throughout the day and evening. This is reflected in our planning controls which promote a range of land uses in our local centres including residential, retail, business and community uses.

4. Existing provisions in Woollahra LEP 2014

The Woollahra LEP 2014 contains the following aims relevant to this matter:

1.2 Aims of plan

- (c) *to provide for an appropriate balance and distribution of land for commercial, retail, residential and tourist development and for recreation, open space, entertainment and community facilities,*
- (d) *to provide greater population densities in and around centres that are well serviced by public transport*

The specific objectives of the Zone B2 Local Centre which applies to Double Bay are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To attract new business and commercial opportunities.*
- *To provide active ground floor uses to create vibrant centres.*
- *To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.*
- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

Specific controls relating to the diversity of land uses and active street frontages are contained only in the Woollahra DCP 2015. This is largely the result of the significant restrictions of the Standard Instrument LEP at the time the Woollahra LEP 2014 was being prepared.

To-date the assessment of development has relied primarily on the DCP controls and the merit of individual proposals. Staff recommend that this is not the best way to provide consistent planning outcomes and transparency for the community.

A review of other council's LEPs shows that there is now scope within the Standard Instrument to introduce controls for the Double Bay Centre to protect diversity of land uses. Section 5 of this report outlines the recommended amendments to Woollahra LEP 2014.

5. Proposed amendments

5.1. Amendments to the Woollahra LEP 2014

We recommend amending Woollahra LEP 2014 by introducing a combination of objectives and controls requiring all development in Double Bay Centre to accommodate commercial floor space suitable for retail, business and office use. At a minimum this means development should facilitate:

- Active ground floor retail and business uses such as cafes, shops and restaurants,
- First floor non-residential uses, including business, office uses and specialist medical rooms.

To achieve this it is recommended that Woollahra LEP 2014 is amended to introduce the following:

A. Minimum commercial FSR

It is recommended that to maintain commercial uses in the Double Bay Centre a new provision setting a minimum commercial FSR of 1.3:1 is adopted. This would only apply to development in the Double Bay Centre and it does not increase or otherwise affect the application of other relevant controls such as maximum building height or FSR.

The existing FSR control (or primary FSR control) will still apply to the site. The proposed 1.3:1 FSR will work in conjunction with the primary FSR control, and seeks to ensure that part of the development is used for commercial floor space.

No amendments are recommended affecting other parts of a development such as the basement or upper levels. Consistent with the existing controls, upper floors may be developed for residential apartments, further commercial floor space or other permissible uses.

Staff consider that 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 office or business. 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.

Consequential amendments to the relevant clause objectives in Woollahra LEP 2014 will also be required to reinforce the intent of the proposed amendments and ensure consistency in their application.

The proposed FSR control will help to ensure that retail, business and office spaces within developments are of good size and have adequate amenity and servicing. This is important to attract the diversity of retail, business and office uses required to maintain a healthy and vibrant level of commercial activity in the centre consistent with the vision for Double Bay.

B. Active street frontages clause

It is recommended that the model active street frontages clause is adopted for the Double Bay Centre as part of the proposed amendment to Woollahra LEP 2014. The model clause was prepared by the Department of Planning as part of the Standard Instrument LEP. It has been adopted by most Greater Sydney councils.

The Woollahra DCP 2015 defines active frontages as a combination of building entrances, retail shopfronts, and cafes or restaurants. “Active” street frontages add visual interest, liveliness and activity to streets and laneways by including elements such as:

- Frequent and varied building entries and windows with few blank walls,
- Fine grain tenancy frontages at ground level giving vertical rhythm and continuity of shops along streets and lanes,
- Well detailed architecture with articulated facades that enhance local character and create visual interest,
- Lively internal uses and well-designed window displays that connect indoor spaces with pedestrians on the street.

Consequential amendments to the relevant clause objectives within Woollahra LEP 2014 will be required to reinforce the intent of the proposed amendments and ensure consistency in their application.

The combination of these proposed provisions is considered to be a comprehensive methodology to ensure that the vision for Double Bay is realised.

5.2. Amendments to the Woollahra DCP 2015

If Council proceeds with the proposed amendments to the Woollahra LEP 2014, amendments to Chapter D5 Double Bay Centre of the Woollahra DCP 2015 will be required. This is to ensure consistency with the proposed minimum commercial floor space requirements and active street frontages clause. The proposed changes include new and updated controls to:

- Reinforce and provide greater detail regarding the requirement for commercial floor space on the ground and first levels of development in the Centre,
- Clarify and reinforce the proposed new LEP requirement for active street and lane frontages
- Remove the existing requirement for colonnades which is not consistent with delivering active street frontages (see **Annexure 3** for an extract of the existing controls).

It is recommended that a draft DCP be prepared to accompany the planning proposal.

6. Comparison of proposed amendments with existing controls from other Sydney councils

Planning controls intended to promote a mix of residential and business uses in centres are common across LEPs in Greater Sydney. Different approaches have been used by councils to best reflect the scale of individual centres, their context, and their desired future character. The main approaches taken are:

- FSRs that mandate land use mix,
- Height and FSR incentives to promote certain land uses,
- Active street frontage provisions,

- Centre specific local provisions for key sites and centres.

Staff reviewed the LEPs of all Greater Sydney councils. The following councils set a minimum commercial FSR (or non-residential FSR) for business zoned land in centres or key sites:

- Parramatta
- Cumberland (formerly Holroyd)
- Hornsby
- Lane Cove
- North Sydney.

Other approaches to support commercial uses include FSR incentive clauses and FSRs to mandate a mix of specific uses on certain sites. A few councils have expressed controls as a percentage of gross floor area or minimum area rather than use FSR.

Another approach taken to maintain commercial uses in centres is a special local clause requiring ground and first floors to be developed only for non-residential uses. This is used by the following councils:

- Blacktown
- Ku-ring-gai
- Cumberland/Holroyd
- Warringah
- Bankstown
- Campbelltown

It is considered that the proposed amendments to Woollahra LEP 2014 outlined in Section 5 of this report are generally consistent with these existing approaches taken by other Greater Sydney councils.

7. Next steps

If Council decides to support amending the Woollahra LEP 2014 and Woollahra DCP 2015, the next step is for staff to prepare a planning proposal in accordance with NSW Government Guidelines. Staff will also prepare a DCP to amend chapter D5 Double Bay Centre of the WDCP 2015.

As of 1 June 2018, a new step in the process requires Council to refer all planning proposals to the Woollahra Local Planning Panel for advice. This advice must then be provided to Council.

If the Department of Planning and Environment (DPE) issues a Gateway Determination approving the planning proposal to proceed it will be placed on public exhibition with the amending DCP. It is recommended that when requesting the gateway determination that Council seek delegation of the plan-making steps under section 3.36 of the *Environmental Planning and Assessment Act 1979*.

The outcome of public exhibition will be reported to a future meeting of the Environmental Planning Committee for consideration. If Council resolves to proceed with the LEP amendment it will be forwarded to the NSW Parliamentary Counsel Office and the DPE for legal drafting and finalisation. The new planning controls within the Woollahra LEP 2014 will come into effect after the LEP amendment is notified on the NSW Legislation website.

Subject to Council's decision, the DCP amendments will be scheduled to come into effect on the same date as the LEP amendment.

8. Conclusion

There is a noticeable trend with major development applications in the Double Bay Local Centre to provide residential units above a ground floor area of retail uses. These applications are removing existing upper level commercial floor space and also removing potential for future commercial floor space and associated employment. The trend is inconsistent with important objectives of the B2 Business Zone which relate to the provision of a broad mix of non-residential uses and the encouragement of employment opportunities. The provision of diverse uses and employment opportunities for centres such as Double Bay is also recognised in the Eastern City District Plan. To ensure that the Centre's high level of liveability is maintained a balanced mix of land uses is essential.

The current floor space ratio provisions applying to the Centre need adjustment to protect the provision of commercial floor space and employment. This should be achieved through a planning proposal to amend Woollahra LEP 2014. The amendment will help to promote a balance of business, retail, 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 the Woollahra DCP 2015 should also be made.

The proposed amendments will work in conjunction with the existing controls to promote development that delivers well-designed buildings that contribute to a vibrant diversity of uses in Double Bay. This will assist us to realise the vision for Double Bay as Sydney's stylish bayside village and Woollahra's premier shopping and community precinct.

Annexures

1. Relevant Standard Instrument LEP definitions [↓](#)
2. Eastern City Sydney Planning Panel Determination for example DA [↓](#)
3. Extract from Woollahra DCP 2015 Chapter D5: Double Bay Centre [↓](#)