

Planning Proposal



Woollahra LEP 2014 Interpretation of Desired Future Character

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1. Introduction

1.1. Summary

This planning proposal seeks to amend the *Woollahra Local Environmental Plan 2014* (Woollahra LEP 2014) to clarify the interpretation of desired future character as contained in various aims and objectives of the plan. This will strengthen the relationship between the objectives for desired future character, development standards and the *Woollahra Development Control Plan 2015* (Woollahra DCP 2015).

The intended effect is to facilitate a consistent interpretation of the adopted development standards and controls in relation to desired future character. This will ensure that future development is of a height and scale that achieves the visions for the LGA. Importantly, this will help to ensure consistent and transparent development outcomes for our community and for applicants.

This planning proposal responds to a recent decision of the Land and Environment Court (LEC). The LEC found that recently approved adjoining development set the desired future character of the area, rather than the objectives and development standards of the Woollahra LEP 2014 or provisions of the Woollahra DCP 2015.

Specifically, in *Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115*, the LEC found that the drafting of the Woollahra LEP 2014 had not confirmed that the interpretation of desired future character is influenced by zoning, permitted and prohibited development, and development standards.

The LEC also found that there was no statutory obligation for the interpretation of desired future character in the Woollahra LEP 2014 to reference the corresponding provisions in the Woollahra DCP 2015. The LEC stated that for this to occur the Woollahra LEP 2014 would have to expressly refer to the provisions in the Woollahra DCP 2015.

Accordingly, this planning proposal seeks to ensure that the objectives for desired future character are applied with the intent of the original drafting of the Woollahra LEP 2014. This will be achieved by inserting an additional local provision to strengthen the relationship between the term desired future character, development standards, and the Woollahra DCP 2015.

Council is aware of the NSW Department of Planning, Industry and Environment's (DPIE) ongoing work to introduce a standard approach for local character. The amendments outlined in this planning proposal will address the immediate interpretation issue arising from the LEC decision. However, we acknowledge that the introduction of a local character model clause or map overlays, and/or a local character statement may further refine the proposed amendments.

In preparing this planning proposal, we have considered the DPIE's *Local Character and Place Guideline* (2019), *Discussion Paper – Local Character Statements* (2019) and *Planning System Circular 18-001 – Respecting and enhancing local character in the planning system* (2018).

This planning proposal has been prepared in accordance with section 3.33 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the relevant DPIE guidelines, including 'A Guide to Preparing Local Environmental Plans' and 'A Guide to Preparing Planning Proposals'.

1.2. Background

Drafting of SILEP and WDCP

Council takes a place-based approach to strategic planning and preparing planning controls. This approach guided the original drafting of both the Woollahra LEP 2014 and Woollahra DCP 2015. Our place-based approach seeks to deliver superior place outcomes and public benefits for Woollahra's neighbourhoods and villages.

The Woollahra LEP 2014 contains 18 references to desired future character in its aims and in the objectives for land use zones, minimum lot size, height of buildings and floor space ratio. More detailed provisions for the desired future character of various precincts, localities and streets are contained in the Woollahra DCP 2015.

In the Woollahra DCP 2015 the unique character of each business centre, heritage conservation area and residential precinct is recognised in a desired future character statement and place-based provisions. This approach is the result of a considered strategic planning and urban design process and extensive community engagement to ensure it reflects the community's expectations for future development.

Council's commitment to place-based planning was recently reaffirmed by the *Woollahra Local Strategic Planning Statement 2020* (Woollahra LSPS 2020). Local character is a critical part of the vision set out in the LSPS.

Development application for 28-34 Cross Street, Double Bay

In 2017, a development application (DA) for 28-34 Cross Street Double Bay (DA 617/2017) proposed a six storey mixed-use development. The applicable development standards and controls for the *B2 Local Centre* zone envisaged a four storey building on the site.

The Woollahra LEP 2014 sets out maximum Height of Buildings of 14.7m and floor space ratio (FSR) of 2.5:1 for the site. The proposal had a building height of 19.7m to the main roof and 21.2m to the plant/lift overrun and an FSR of 3.5:1. This exceeded the development standards by more than 40%.

The Applicant sought a variation under *clause 4.6 Exceptions to development standards* of the Woollahra LEP 2014. Their justification was that it was consistent with the height and built form of the approved developments to the east at 16-18 and 20-26 Cross Street.

On 4 October 2018, the DA was refused by the Sydney Eastern Planning Panel. In its reasons for refusal, the Panel noted that the only grounds on which a variation to the development to the extent proposed could be justified is if the recent approvals had resulted in the abandonment of development standards. The Panel did not accept that the development standards had been abandoned in the Double Bay Business Centre.

On 12 December 2018, the Applicant requested a review of the DA determination under section 8.2 of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 19 March 2020, the review of the DA determination was refused by the Panel. In its reasons for refusal the Panel was not persuaded that the clause 4.6 variation demonstrated that compliance with the development standards was unreasonable or unnecessary. It was also noted that the approval of the DA would potentially constitute abandonment of Council's planning controls.

Section 8.15 appeal of the Panel's determination

SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112

On 22 March 2019, the Applicant filed a Class 1 Appeal with the LEC. The appeal was upheld by Acting Commissioner Clay on 22 March 2020 and development consent was granted (see **Annexure 1**).

The appeal considered the objectives of the *B2 Local Centre* zone being:

- 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.

The Applicant relied on two recent developments on neighbouring sites to establish desired future character, rather than the objectives and standards of the Woollahra LEP 2014 and Woollahra DCP 2015.

Acting Commissioner Clay supported the Applicant's interpretation, noting that:

The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. ... [69]

Section 56A appeal of the LEC decision

Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115

Council appealed the LEC decision under section 56A of the *Land and Environment Court Act 1979* (see **Annexure 2**).

Relevant to this planning proposal, one of the grounds for appeal was the interpretation of desired future character. Council's position is that:

- § The desired future character is defined and fixed by zoning and development standards in Woollahra LEP 2014. [11]
- § The Woollahra DCP 2015 gives effect to the provisions of the Woollahra LEP 2014 so as to describe the desired future character of the neighbourhood or area. [12 & 14]
- § Once defined by the Woollahra LEP 2014 and Woollahra DCP 2015, the desired future character cannot change until the LEP and DCP are amended. [27]

- \$ The desired future character cannot be changed by the approved DAs that contravene the development standards in the Woollahra LEP 2014. [27]

On 18 August 2020, Chief Justice Preston dismissed the appeal. Relevant to this planning proposal are the following findings (see **Annexure 2**):

- \$ The term ‘desired future character’ is not defined in the Woollahra LEP 2014 [52].
- \$ A DCP cannot be used to interpret the provisions of an LEP unless the LEP expressly refers to the provisions of the DCP for that purpose [46].
- \$ The Woollahra LEP 2014 does not refer to Woollahra DCP 2015 to define the term desired future character [46].
- \$ The Commissioner was not obliged to interpret the term desired future character in Woollahra LEP 2014 by reference to the Woollahra DCP 2015 [46]. The drafter of the Woollahra LEP 2014 has not confirmed that the interpretation of desired future character is influenced by zoning, permitted and prohibited development and development standards [54].
- \$ Where the term desired future character is not defined, the matters that may be taken into account in evaluating what is the desired future character are not defined [54].
- \$ There is no provision which prevents approved and constructed development being considered as part of the evolving local character and accordingly the desired future character of an area [54].

Council resolution to amend the Woollahra LEP 2014

On [6 October 2020](#), Council’s Environmental Planning Committee (EPC) considered a report on the LEC findings and its impact on Council’s place-based planning approach. On [26 October 2020](#), Council resolved:

- A. *THAT a planning proposal be prepared to amend references to desired future character in Woollahra LEP 2014 so that the meaning and interpretation of desired future character (across all parts of the municipality) is defined and cross referenced.*
- B. *THAT the planning proposal be referred to the Woollahra Local Planning Panel for advice.*
- C. *THAT the advice of the Woollahra Local Planning Panel be reported to the Environmental Planning Committee.*

Relationship to the local character policy context

This planning proposal seeks to avoid inconsistencies with the DPIE's approach to local character and ongoing work in relation to this matter. Consideration has been given to the following:

- *Local Character and Place Guideline (2019)*
- *Discussion Paper – Local Character Statements (2019)*
- *Planning System Circular 18-001 – Respecting and enhancing local character in the planning system (2018).*

Council's place-based strategic approach is generally consistent with the DPIE's guideline with respect to the evolution of local character. It is noted that the Guideline states:

Desired future character refers to an agreed vision of how an area will change over time, including an identification of characteristics to be retained or enhanced. Desired future character is often articulated through a character statement or integrated into development controls. (p.12)

The Local Environmental Plan (LEP) is the primary land use planning mechanism that influences character. The land use zones, objectives and development standards establish the context for decision making on individual developments which shape local character. Accordingly, where an area has been identified as requiring a stronger consideration of local character, the LEP should be reviewed to ensure that it delivers on the community's desired future character. (p.12)

Council is aware of the DPIE's ongoing work to introduce a standard approach to local character may include a model clause and/or map overlays, in the *Standard Instrument (Local Environmental Plans) Order 2006*.

Relevant to the approach taken by this planning proposal, the Discussion Paper and Circular note that a local character overlay could support local character by creating a link between a LEP, a local character statement and/or the provisions of a DCP.

Local character is an important feature in the delivery of housing supply and diversity that enhances our area and reflects the community's vision for the future. In line with Council's place-based approach and the views of our community, the importance of local character was recently reaffirmed by the adoption of the Woollahra LSPS 2020. Maintaining community confidence that development will maintain and enhance local character is vital to delivering appropriate housing supply and diversity to meet the unique needs of our community.

The amendments to the Woollahra LEP 2014 outlined in this planning proposal will address the immediate interpretation issue arising from the recent LEC decision. However, we acknowledge that when a local character model clause or map overlays are introduced by a future planning proposal and/or a local character statement is prepared, these may refine the proposed amendments.

It is noted that extensive community consultation is a critical input to the creation of new local character provisions. This will require a substantial amount of time to complete.

Accordingly, once implemented, this planning proposal ensures that the Woollahra LEP 2014 continues to facilitate development that is consistent with the desired future character of Woollahra's unique neighbourhoods and villages until such time as a transition to the new model provisions is facilitated.

Advice of the Woollahra Local Planning Panel

In accordance with Council's resolution, staff prepared this planning proposal. It was reported to the Woollahra Local Planning Panel (WLPP) meeting of [19 November 2020](#) for advice.

The WLPP provided the following [advice](#) to Council:

THAT the Woollahra Local Planning Panel advises Council to proceed with the planning proposal (at Annexure 1) to amend the Woollahra Local Environmental Plan 2014 to introduce provisions clarifying the interpretation of desired future character.

Council resolution to submit the planning proposal for Gateway Determination

On [30 November 2020](#), Council's EPC considered a report on the advice of the WLPP. On [14 December 2020](#), Council resolved:

- A. *THAT Council note the advice provided by the Woollahra Local Planning Panel on 19 November 2020.*
- B. *THAT the planning proposal, as contained in **Annexure 1** of the report to the Environmental Planning Committee on 30 November 2020, be forwarded to the Department of Planning, Industry and Environment requesting a gateway determination to allow public exhibition.*
- C. *THAT Council request the Minister for Planning and Public Spaces (or delegate) authorise Council as the local plan-making authority in relation to the planning proposal to make the local environmental plan under section 3.36 of the Environmental Planning and Assessment Act 1979.*

2. Objectives of planning proposal

The term desired future character is used 18 times in Woollahra LEP 2014 across the aims of the plan, zone and clause objectives. The objective of the planning proposal is to define the term desired future character to ensure that the meaning and interpretation is defined by other provisions of both the Woollahra LEP 2014 and Woollahra DCP 2015.

The need for this planning proposal arose from the findings of a recent LEC case of *Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115* which granted consent for a development based on recently approved adjoining development. In coming to this decision, the Commissioner found that the

...WLEP has not defined the meaning of the term “desired future character” that is used in various provisions of WLEP. The drafter of WLEP has, therefore, not confined the meaning of the term “desired future character” by reference to the particular provisions in WLEP, including those concerning the zoning, the permitted and prohibited development, and the development standards, that shape the urban character and built form of neighbourhoods or areas in Woollahra. [54]

... provisions of a development control plan cannot be used to interpret [desired future character], unless the provisions of the local environmental plan expressly refer to the provisions of the development control plan for that purpose. [46]

These findings are inconsistent with Council’s place-based planning approach and the intent of the original drafting of the Woollahra LEP 2014 and Woollahra DCP 2015.

Accordingly, this planning proposal seeks to amend the Woollahra LEP 2014 to create a statutory link between the provisions containing the term desired future character, the LEP development standards, and the corresponding desired future character statements in the Woollahra DCP 2015.

The proposed amendment will reduce ambiguity about the interpretation of desired future character, and encourages the consistent application and interpretation of the adopted development standards and controls. This will help to ensure that development achieves the desired future character of the area and provides consistent and transparent planning outcomes.

3. Explanation of provisions

The proposed amendment seeks to make what is primarily an administrative change to Woollahra LEP 2014. The amendment will strengthen the relationship between the provisions containing the term desired future character and the relevant development standards and controls. The planning proposal will apply to all land in the Woollahra LGA.

This will be achieved by expressly stating in the Woollahra LEP 2014 that desired future character is derived from the development standards of Woollahra LEP 2014 and the desired future character provisions of Woollahra DCP 2015.

The existing and proposed provisions are discussed below.

3.1. Existing provisions

The Woollahra LEP 2014 makes reference to desired future character in:

- the aims of the plan
- certain zone objectives in the Land Use Table
- the objectives of development standards for minimum lot size, height of buildings and floor space ratio.

Specifically, the term desired future character is found 18 times in the Woollahra LEP 2014:

1. Part 1 Section 1.2 Aims of the Plan cl2.1(2)(l)
2. Land Use Table Zone R2 Low Density Residential – 1 Objectives of Zone
3. Land Use Table Zone R3 Medium Density Residential – 1 Objectives of Zone
4. Land Use Table Zone B1 Neighbourhood Centre – 1 Objectives of Zone
5. Land Use Table Zone B2 Local Centre – 1 Objectives of Zone
6. Land Use Table Zone B4 Mixed Use – 1 Objectives of Zone
7. Land Use Table Zone SP3 Tourist – 1 Objectives of Zone
8. Part 4 Section 4.1 Minimum subdivision lot size cl4.1(1)(a)
9. Part 4 Section 4.1 Minimum subdivision lot size cl4.1(1)(e)
10. Part 4 Section 4.1AA Minimum subdivision lot size for community title schemes cl4.1AA(1)(b)
11. Part 4 Section 4.1A Minimum lot sizes for dual occupancies, manor houses, multi dwelling housing and residential flat buildings cl4.1A(1)
12. Part 4 Section 4.3 Height of buildings cl4.3(1)(a)
13. Part 4 Section 4.3A Exceptions to building heights (Areas A–H) cl4.3A(1)(a)
14. Part 4 Section 4.4 Floor space ratio cl4.4(1)(a)(i)
15. Part 4 Section 4.4 Floor space ratio cl4.4(1)(b)
16. Part 4 Section 4.4A Exceptions to floor space ratio (Areas 1 and 1A—Double Bay) Principal development standards cl4.4A(3)

17. Part 4 Section 4.4B Exceptions to floor space ratio (Areas 2 and 3—selected Zone B1 and Zone B4 centres) cl4.4B(3)(a)
18. Part 4 Section 4.4C Exceptions to height and floor space ratio (Area 4—Rose Bay) cl4.4C(3)(a)

Provisions for the desired future character of various precincts, localities and streets are then contained in Woollahra DCP 2015, in particular:

- a) Chapter B1 – Residential Precincts
- b) Chapter B2 – Neighbourhood Heritage Conservation Areas
- c) Chapter C1 – Paddington Heritage Conservation Areas
- d) Chapter C2 – Woollahra Heritage Conservation Area
- e) Chapter C3 – Watsons Bay Heritage Conservation Area
- f) Chapter D1 – Neighbourhood Centres
- g) Chapter D2 – Edgecliff Centre
- h) Chapter D5 – Double Bay Centre
- i) Chapter D6 – Rose Bay Centre

The recent LEC decision has identified that there is ambiguity in how the existing provisions relating to desired future character are interpreted.

Inserting an additional local provision in the Woollahra LEP 2014 has been identified as an effective method to reduce this ambiguity and provide an appropriate statutory relationship between the aims, objectives, development standards and corresponding provisions.

3.2. Proposed provisions

The proposed provisions seek to strengthen the relationship between the provisions containing the term desired future character, development standards of the Woollahra LEP 2014, and corresponding provisions in the Woollahra DCP 2015. This will help to improve consistency and transparency of development outcomes.

The preferred option is to insert an additional local provision under *Part 6 Additional local provisions* of Woollahra LEP 2014. While it is acknowledged that this will be subject to drafting by the Parliamentary Counsel's Office, the additional local provision may be similar to the following:

6.8 Desired future character

- (1) *In this instrument, a reference to desired future character of the area, neighbourhood, zone or attribute of same, means the character prescribed in relation to that area, neighbourhood, zone or attribute by:*
 - (a) *the relevant aims, objectives and other provisions of this instrument; and*
 - (b) *to the extent not inconsistent, a development control plan in force, but whenever made, under or for the purposes of this instrument.*

The proposed provision provides a single definition applicable to the 18 references to desired future character in the Woollahra LEP 2014. It is the most appropriate way to achieve the intended outcomes of the planning proposal and help ensure consistent interpretation and planning outcomes.

The implementation of the planning proposal will not require any consequential changes to Woollahra DCP 2015.

Notably, the proposed amendments seek to reinforce the purpose and status of the Woollahra DCP 2015 by expressly linking it to the Woollahra LEP 2014. The reinforcement of the link between a LEP and DCP is consistent with Section 3.42 of the EP&A Act:

- (1) *The principal purpose of a development control plan is to provide guidance on the following matters to the persons proposing to carry out development to which this Part applies and to the consent authority for any such development—*
 - (a) *giving effect to the aims of any environmental planning instrument that applies to the development,*
 - (b) *facilitating development that is permissible under any such instrument,*
 - (c) *achieving the objectives of land zones under any such instrument.*

The provisions of a development control plan made for that purpose are not statutory requirements.
- (2) *The other purpose of a development control plan is to make provisions of the kind referred to in section 3.43(1)(b)–(e).*
- (3) *Subsection (1) does not affect any requirement under Division 4.5 in relation to complying development*

4. Justification

This planning proposal responds to a recent LEC decision regarding the interpretation of objectives in the Woollahra LEP 2014 relating to desired future character. This will help to improve consistency and transparency of development outcomes for our community and applicants.

The LEC found that recently approved adjoining development, rather than the objectives and development standards of the Woollahra LEP 2014, set the desired future character. This is inconsistent with the intent of the original drafting of the Woollahra LEP 2014.

The planning proposal has strategic merit and the key reasons to amend the Woollahra LEP 2014 are:

- The planning proposal is for administrative amendments to the Woollahra LEP 2014 to strengthen the relationship between the provisions containing the term desired future character and development standards. These changes also aim to establish a statutory relationship between the provisions of the Woollahra LEP 2014 and the desired future character statements set out in the Woollahra DCP 2015.
- The proposal to insert an additional local provision under Part 6 of Woollahra LEP 2014 will improve consistency in interpretation of desired future character and encourage future development in line with the community's vision for the future.
- The planning proposal is broadly consistent with the applicable section 9.1 directions.
- The planning proposal is broadly consistent with the objectives of *A Metropolis of Three Cities* and the initiatives of the *Eastern City District Plan*.
- The planning proposal is broadly consistent with the Standard Instrument and other applicable State Environmental Planning Policies.
- The planning proposal is consistent with the vision and planning priorities of the Woollahra LSPS 2020 and the community strategic plan, *Woollahra 2030 – Our community, our place, our plan* (Woollahra 2030).
- The planning proposal supports the purpose and status of the Woollahra DCP 2015 consistent with the Section 3.42 of the EP&A Act.

This section sets out the case for the proposed amendment to the Woollahra LEP 2014 and responds to the questions from the DPIE's 'A Guide to Preparing Planning Proposals'.

4.1. Need for planning proposal

1. Is the planning proposal a result of an endorsed local strategic planning statement, strategic study or report?

Maintaining and enhancing local character is a critical part of the vision and priorities of the Woollahra LSPS 2020. The following planning priorities are of particular relevance to this planning proposal:

- *Planning priority 4 – Sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes.*
- *Planning priority 6 – Placemaking supports and maintains the local character of our neighbourhoods and villages whilst creating great places for people.*

- *Planning priority 12: Protecting and enhancing our scenic and cultural landscapes*

This planning proposal responds to a recent decision of the LEC that granted consent for a DA based on its interpretation that recently approved adjoining development, rather than the objectives and development standards of the Woollahra LEP 2014, set the desired future character for the area. This is inconsistent with the original drafting of the Woollahra LEP 2014 and with the vision set out in the Woollahra LSPS 2020.

Consequently, this planning proposal seeks to re-establish the intent of the original drafting that desired future character is established by the development standards in the Woollahra LEP 2014 and corresponding character statements and provisions in the Woollahra DCP 2015. This will encourage future development that is consistent with the community's vision for the LGA and particular, for local character, great places, and scenic landscapes.

2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Yes. This planning proposal to amend the Woollahra LEP 2014 will result in the term desired future character being interpreted as intended by the original drafting of the Woollahra LEP 2014. The proposal to insert a local provision to define local character for the purposes of the Plan is the best way to achieve the objectives and intended outcomes whilst preventing inconsistencies with the DPIE's ongoing local character program.

The proposed amendment seeks to address the interpretation issues raised by the recent LEC decisions. Key to this decision was the LEC's interpretation that desired future character can be set by the approved adjoining development, rather than the objectives and development standards of the Woollahra LEP 2014.

The proposed amendment to the Woollahra LEP 2014 seeks to re-establish that desired future character is reflected in the development standards of the Woollahra LEP 2014, such as maximum building height and FSR, and in the local character statements and corresponding provisions in the Woollahra DCP 2015.

It is noted that the term desired future character is not defined in the *Standard Instrument (Local Environmental Plans) Order 2006 (SILEP)*. The Dictionary in the Standard Instrument is a compulsory provision. It is therefore not possible to insert a definition of desired future character other than by an amendment being made to the Standard Instrument. Any such amendment would have state-wide application and is inappropriate in this instance.

Another alternative suggested was the inclusion of a note or definition in each of the 18 references to desired future character. However, this was considered overly onerous and potentially confusing.

Council is aware of the Department's ongoing work to introduce a standard approach to local character, which may include map overlays and/or a model clause in the SILEP. The local character Discussion Paper and Planning Circular identify that SILEP could support local character by creating a link between an LEP, a local character statement and a DCP.

The proposed amendment to the Woollahra LEP 2014 outlined in this planning proposal will address the immediate interpretation issue arising from the LEC decision. However, we acknowledge that when a local character model clause or map overlays are introduced by a future planning proposal and/or a local character statement is prepared it may further refine the proposed amendments.

It is noted that extensive community consultation is a critical input to the creation of new local character provisions. This will require a substantial amount of time to complete. In the interim, the proposed amendment to the Woollahra LEP 2014 provides an effective and timely method for achieving the intended outcomes of this planning proposal.

Accordingly, this planning proposal is the best way to ensure that the Woollahra LEP 2014 continues to facilitate development that is consistent with the desired future character of Woollahra's unique neighbourhoods and villages until such time as a transition to the new model provisions is appropriate.

4.2. Relationship to strategic planning framework

3. Will the planning proposal give effect to the objectives and actions of the applicable regional or district plan or strategy (including exhibited draft plans or strategies)?

Yes. The planning proposal is consistent with the *Greater Sydney Region Plan: A Metropolis of Three Cities* (2018) and the *Eastern City District Plan* (2018) and will give effect to the relevant objectives and actions the relevant actions, as discussed below.

- ***Greater Sydney Region Plan: A Metropolis of Three Cities***

The *Greater Sydney Region Plan: A Metropolis of Three Cities* is the Greater Sydney Commission's 40-year vision for Greater Sydney. It is to be implemented by District Plans.

The planning proposal is broadly consistent with the vision of the Plan, particularly in its aim to create great places that recognise local characteristics and the qualities people value. In particular the planning proposal will give effect to the following directions and objectives:

- *A city of great places*
Objective 12: Great places that bring people together

Council used a place based approach to develop the Woollahra LEP 2014 and Woollahra DCP 2015 to ensure development standards respond to the characteristics of the local area. The proposed amendments to the Woollahra LEP 2014 will help to maintain and enhance Woollahra's local character and great places by building on local characteristics through place-based planning.

- *A city in its landscape*
Objective 28: Scenic and cultural landscapes are protected

Located on the southern shores of Sydney harbour and the eastern coast line, Woollahra has unique scenic and cultural landscapes which are highly valued by the local community and visitors. As identified in 'A Metropolis of Three Cities', the continued protection of these landscapes is important for their aesthetic, social and economic values and for the character of the region.

The planning proposal supports the protection and enhancement of the scenic and cultural elements of the Woollahra LGA by clarifying the interpretation of desired future character articulated in the development standards of the Woollahra LEP 2014 and provisions of the Woollahra DCP 2015.

- **Eastern City District Plan**

The Eastern City District Plan sets out a vision, planning properties and actions for implementing the long term vision for Greater Sydney at a local level.

The planning proposal is broadly consistent with the planning priorities and actions of the *Eastern City District Plan*. It seeks to maintain and enhance Woollahra's local strengths and deliver quality places that represent the unique qualities of the local area.

In particular, the planning proposal will give effect to the following priorities and actions:

- *Planning Priority E6: Creating and renewing great places and local centres, and respecting the District's heritage*
Action 18(e): Using a place-based and collaborative approach throughout planning, design, development and management, deliver great places by:
 - *recognising and celebrating the character of a place and its people.*

Council's place-based approach to strategic planning seeks to maintain and enhance our great places by recognising local characteristics. The planning proposal will help ensure that Council's place-based planning approach continues to be reflected in the interpretation of the Woollahra LEP 2014 and Woollahra DCP 2015.

The proposed amendment will ensure consistent interpretation of the term desired future character in relation to development standards in the Woollahra LEP 2014 and local character provisions in the Woollahra DCP 2015. Consistent interpretation of desired future character will encourage future development that aligns with the community's vision for Woollahra's unique villages, neighbourhoods and scenic landscapes.

- *Planning Priority E16: Protecting and enhancing scenic cultural landscapes*
Action 63: Identify and protect scenic and cultural landscapes
Action 64: Enhance and protect views of scenic and cultural landscapes from the public realm

Woollahra's unique harbour and coastal setting is a highly valued aspect of the LGA's local character. The proposed amendment will ensure consistent interpretation of the term desired future character in relation to development standards in the Woollahra LEP 2014 and local character provisions in the Woollahra DCP 2015. This will help to ensure future development adheres to development standards that aim to protect and enhance Woollahra's unique landscapes.

4. Will the planning proposal give effect to a council's endorsed local strategic planning statement, or another endorsed local strategy or strategic plan?

Yes. The planning proposal is consistent with the Woollahra LSPS 2020 and Council's community strategic plan, *Woollahra 2030 – Our community, our place, our plan (Woollahra 2030)*.

- **Woollahra LSPS 2020**

The Woollahra LSPS 2020 sets out a 20 year vision and planning priorities for managing future land use and preserving our community's values and the special characteristics of the LGA. Local character is a critical part of the vision set out in the Woollahra LSPS 2020.

The planning proposal is consistent with the vision and planning priorities of the Woollahra LSPS 2020. The following priorities are of particular relevance to this planning proposal:

- *Planning priority 4: Sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes*
- *Planning priority 6: Placemaking supports and maintains the local character of our neighbourhoods and villages whilst creating great places for people*
- *Planning priority 12: Protecting and enhancing our scenic and cultural landscapes*

The planning proposal will give effect to Woollahra LSPS 2020 by strengthening the link between desired future character and the development standards of the Woollahra LEP 2014 and corresponding provisions of the Woollahra DCP 2015. The proposed amendment will encourage future development in alignment with the desired future character of Woollahra's neighbourhoods and villages.

- **Woollahra 2030**

Woollahra 2030 sets out the long term vision for Woollahra and is structured around five themes each supported by goals and strategies to deliver a sustainable future for our community.

The planning proposal is consistent with the goals and strategies identified in *Woollahra 2030*, including:

- *Goal 4: Well planned neighbourhoods*
 - 4.1: *Encourage and ensure high quality planning and urban design outcomes*
 - 4.3: *Protect our heritage, including significant architecture and the natural environment*
 - 4.6: *Ensure that planning and building requirements are complied with*
- *Goal 5: Liveable places*
 - 5.5: *Enhance the physical environment of our local suburbs, neighbourhoods and town centres*
- *Goal 9: Community focused economic development*
 - 9.1: *Encourage vibrant and vital local suburbs, villages and neighbourhoods that support a healthy community*

The intended effect of the planning proposal supports the goals of *Woollahra 2030* by encouraging place-based development outcomes that support the desired future character vision for the area. Our local character provisions encourage the evolution of unique local suburbs, neighbourhoods and town centres, creating great places through high quality and diverse urban design.

5. Is the planning proposal consistent with applicable State Environmental Planning Policies?

Yes. The planning proposal is consistent with the *Standard Instrument – Principal Local Environmental Plan* and other applicable State Environmental Planning Policies (refer to **Schedule 1**).

6. Is the planning proposal consistent with applicable Ministerial Directions (s.9.1 directions)?

Yes. The planning proposal is consistent with the applicable section 9.1 directions (refer to **Schedule 2**).

4.3. Environmental, social and economic impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

No. This planning proposal relates to the administrative function of the Woollahra LEP 2014. There will be no adverse impacts on critical habitat areas or threatened species, populations or ecological communities, or their habitats.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

No. This planning proposal relates to the administrative function of the Woollahra LEP 2014 and there will be no environmental effects.

9. Has the planning proposal adequately addressed any social and economic effects?

Yes. The planning proposal is administrative in nature and does not propose to increase jobs, dwellings or demand for social or economic infrastructure. The planning proposal will have no social or economic effects on items of European or Aboriginal cultural heritage, social infrastructure or commercial centres.

4.4. State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

Yes. The planning proposal is administrative in nature and will not generate increase jobs, dwellings, or community need for transport or other services. The planning proposal will not create any additional demand on public infrastructure.

11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

Council will consult with the DPIE's policy team to prevent inconsistencies with the DPIE's approach used in developing their local character program.

Consultation with other State and Commonwealth public authorities will be undertaken in accordance with the conditions of the Gateway Determination.

5. Mapping

The planning proposal does not amend any maps.

6. Community consultation

The planning proposal will be publicly exhibited in accordance with the requirements of:

- the EP&A Act
- the *Environmental Planning and Assessment Regulation 2000*
- *Woollahra Community Participation Plan (2019)*
- *Local Environmental Plans – a guide to preparing local environmental plans (2018)*
- any conditions of the Gateway Determination.

We recommend that the planning proposal is exhibited for a minimum of 28 days.

Public notification of the exhibition will comprise:

- weekly notice in the local newspaper (the Wentworth Courier) for the duration of the exhibition period, when a hardcopy version of that newspaper is being published
- a notice on Council's website
- a notice to local community, resident and business groups including:
 - Darling Point Society
 - Double Bay Residents Association
 - HarbourView Neighbourhood Watch & Residents Group
 - Point Piper Association
 - Queen Street & West Woollahra Association
 - Rose Bay Residents Association
 - The Paddington Society
 - The Watsons Bay Association
 - Vacluse West Residents Association.

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

- the planning proposal, in the form approved by the gateway determination
- the gateway determination
- information relied upon by the planning proposal (such as a copy of the LEC decisions, Woollahra DCP 2015 and relevant Council reports)
- Woollahra LEP 2014
- Section 9.1 Directions.

7. Project timeline

Council intends to expedite this planning proposal to as the LEC decision has resulted in some ambiguity in the application of the Woollahra LEP 2014.

We are seeking to exercise the functions of the Minister for Planning under section 3.36 of the EP&A Act. Accordingly, the proposed timeline for completion is as follows:

Plan-making step	Estimated completion
Report to Environmental Planning Committee (EPC) requesting preparation of a planning proposal	6 October 2020
Staff seek confidential legal advice on options	Mid October
Council resolution to proceed	26 October 2020
Ongoing liaison with DPIE/Parliamentary Counsel	Ongoing
Woollahra Local Planning Panel (WLPP) provides advice	19 November 2020
Advice of WLPP to EPC	30 November 2020
Council resolution to proceed	14 December 2020
Gateway determination	January 2021
Completion of technical assessment	Usually none required
Government agency consultation	Feb 2021
Public exhibition period (min 28 days)	Feb 2021
Submissions assessment	March 2021
EPC considers assessment of planning proposal post exhibition	April 2021
Council decision to make the LEP amendment	May 2021
Council to liaise with Parliamentary Counsel to prepare LEP amendment	May 2021
Forwarding of LEP amendment to DPIE for notification	June 2021
Notification of the approved LEP	June 2021

Schedules

Schedule 1 – Consistency with State Environmental Planning Policies (SEPPs)

State environmental planning policy	Comment on consistency
SEPP No 19 – Bushland in Urban Areas	Consistent. The planning proposal will not affect the application of this SEPP.
SEPP No 21 – Caravan Parks	Consistent. The planning proposal will not affect the application of this SEPP.
SEPP No 33 – Hazardous and Offensive Development	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this SEPP.
SEPP No 36 – Manufactured Home Estates	Not applicable
SEPP No 47 – Moore Park Showground	Not applicable
SEPP No 50 – Canal Estate Development	Not applicable. The proposal does not include a canal estate.
SEPP No 55 – Remediation of Land	Consistent. The planning proposal does not seek to rezone land and will not affect the application of the SEPP for the purpose of promoting the remediation of contaminated land and reducing the risk of harm to human health or any other aspect of the environment.
SEPP No 64 – Advertising and Signage	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 65 – Design Quality of Residential Apartment Development	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 70 – Affordable Housing (Revised Schemes)	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Aboriginal Land) 2019	Not applicable. No land within the Woollahra LGA is owned by an Aboriginal Land Council or identified on the Land Application Map of the SEPP.
SEPP (Activation Precincts) 2020	Not applicable. No land within the Woollahra LGA is identified as an Activation Precinct.

State environmental planning policy	Comment on consistency
SEPP (Affordable Rental Housing) 2009	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Building Sustainability Index: BASIX) 2004	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Coastal Management) 2018	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Concurrences and Consents) 2018	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Educational Establishments and Child Care Facilities) 2017	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Exempt and Complying Development Codes) 2008	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Gosford City Centre) 2018	Not applicable.
SEPP (Housing for Seniors or People with a Disability) 2004	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Infrastructure) 2007	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Koala Habitat Protection) 2019	Not applicable. Woollahra Council is listed in Schedule 1 of the SEPP.
SEPP (Kosciuszko National Park - Alpine Resorts) 2007	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Kurnell Peninsula) 1989	Not applicable. This SEPP applies to land within the Sutherland Shire.
SEPP (Major Infrastructure Corridors) 2020	Not applicable. No future corridors are identified within the Woollahra LGA.

State environmental planning policy	Comment on consistency
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Penrith Lakes Scheme) 1989	Not applicable. This SEPP applies to land in the Penrith LGA.
SEPP (Primary Production and Rural Development) 2019	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (State and Regional Development) 2011	Consistent. No development sites of State Significance are identified within the Woollahra LGA.
SEPP (State Significant Precincts) 2005	Consistent. No State Significant Precincts are identified within the Woollahra LGA.
SEPP (Sydney Drinking Water Catchment) 2011	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Sydney Region Growth Centres) 2006	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Three Ports) 2013	Not applicable.
SEPP (Urban Renewal) 2010	There are currently no potential urban renewal precincts in the Woollahra LGA identified in the SEPP.
SEPP (Vegetation in Non-Rural Areas) 2017	Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Western Sydney Aerotropolis) 2020	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Western Sydney Employment Area) 2009	Not applicable. No land within the Woollahra LGA is identified on the Land Application Map.
SEPP (Western Sydney Parklands) 2009	Not applicable.

Sydney Regional Environmental Plans – now deemed State Environmental Planning Policies	Comment on consistency
SREP No 8 (Central Coast Plateau Areas)	Not applicable.
SREP No 9 - Extractive Industry (No 2 - 1995)	Not applicable.
SREP No 16 – Walsh Bay	Not applicable.
SREP No 20 - Hawkesbury- Nepean River (No 2 - 1997)	Not applicable.
SREP No 24 - Homebush Bay Area	Not applicable.
SREP No 26 – City West	Not applicable.
SREP No 30 - St Marys	Not applicable.
SREP No 33 - Cooks Cove	Not applicable.
SREP (Sydney Harbour Catchment) 2005	<p>Applicable</p> <p>Consistent. The planning proposal applies to land within the Sydney Harbour Catchment. Planning principles under Part 2, clause 13-15 Sydney Harbour Catchment of the SREP have been considered. The planning proposal is consistent with these principles.</p> <p>The intended effect of the planning proposal will protect and enhance the scenic qualities of harbour and foreshore areas by ensuring the scale and form of future development supports the desired future character for the area.</p>

Schedule 2 – Consistency with section 9.1 directions

Direction		Applicable/comment
1	Employment and resources	
1.1	Business and industrial zones	Consistent. The planning proposal will not reduce total potential floor space area for employment uses and related public services in business zones. It will not change the areas and locations of existing business and industrial zones. The planning proposal is consistent with the objectives and principles of this direction.
1.2-1.5	Directions 1.2-1.5	Not applicable. These directions are not relevant to the Sydney metropolitan area.
2	Environment and heritage	
2.1	Environment protection zones	Consistent. The planning proposal will not reduce the environmental protection standards of land within an environmental protection zone or land otherwise identified for environment protection purposes.
2.2	Coastal management	Consistent. The planning proposal does not propose the rezoning of any land and will therefore not result in increased development or more intensive land-use on land within a coastal area.
2.3	Heritage conservation	Consistent. The planning proposal will not reduce provision in Woollahra LEP 2014 for heritage conservation in the Woollahra LGA or the Sydney Harbour Catchment Area.
2.4	Recreation vehicle areas	Consistent. The planning proposal does not allow land to be developed for a recreation vehicle area.
2.5	Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs	Not applicable. The planning proposal does not apply to land in the Far North Coast.
2.6	Remediation of contaminated land	Consistent. The planning proposal is administrative in nature and does not does not propose any site specific development.
3	Housing, infrastructure and urban development	
3.1	Residential zones	Consistent. The planning proposal will not reduce the choice of building types and locations available in the housing market or reduce the permissible residential density of land. The planning proposal is consistent with the principles of this direction.

Direction		Applicable/comment
3.2	Caravan parks and manufactured home estates	Not applicable. The planning proposal does not affect caravan parks and manufactured home estates.
3.3	Home occupations	Not applicable. The planning proposal does not affect home occupations in dwelling houses.
3.4	Integrating land use and transport	Consistent. The planning proposal does not contain a provision which is contrary to the aims, objectives and principles of: <ul style="list-style-type: none"> • <i>Improving Transport Choice – Guidelines for planning and development (DUAP 2001), and;</i> • <i>The Right Place for Business and Services – Planning Policy (DUAP 2001).</i>
3.5	Development near regulated airports and defence airfields	Consistent. The planning proposal will not create, alter or remove a zone provision relating to land near a regulated airport which includes a defence airfield.
3.6	Shooting ranges	Not applicable. The planning proposal will not affect, create, alter or remove a zone or a provision relating to land adjacent to and/or adjoining an existing shooting range.
3.7	Reduction in non-hosted short term rental accommodation period	Not applicable. The planning proposal does not apply to land in the Byron Shire Council.
4	Hazard and risk	
4.1	Acid sulfate soils	Consistent. Existing acid sulfate soils provisions will not be altered by the planning proposal.
4.2	Mine subsidence and unstable land	Not applicable. The planning proposal does not apply to land within a proclaimed Mine Subsidence District or to land identified as unstable.
4.3	Flood prone land	Consistent. The planning proposal will not rezone flood liable land or affect the application of controls that ensure that development on flood liable land will not result in risk to life or damage to property.
4.4	Planning for bushfire protection	Not applicable. The planning proposal does not apply to land mapped as bushfire prone land.
5	Regional planning	
5.1 - 5.9	Strategies 5.1-5.9	Not applicable. These strategies do not apply to the Woollahra LGA.
5.10	Implementation of Regional Plans	Consistent. The planning proposal is broadly consistent with the <i>Greater Sydney Region Plan: A Metropolis of Three Cities (2018)</i> and the <i>Eastern City District Plan (2018)</i> as discussed in Section 4 of this report.

Direction		Applicable/comment
5.11	Development of Aboriginal Land Council land	Not applicable. The Woollahra LGA is not shown on the Land Application Map of <i>SEPP (Aboriginal Land) 2019</i> .
6	Local plan making	
6.1	Approval and referral requirements	Consistent. The planning proposal is administrative in nature. It is not expected to require any additional approval or referral requirements.
6.2	Reserving land for public purposes	Consistent. The planning proposal does not amend reservations of land for public purposes.
6.3	Site specific provisions	Consistent. The planning proposal does not apply to a specific site or a particular development.
7	Metropolitan Planning	
7.1	Implementation of <i>A Metropolis of Three Cities</i> (March 2018)	Consistent. The planning proposal is broadly consistent with the <i>Greater Sydney Regional Plan: A Metropolis of Three Cities</i> , particularly Objectives 12 and 28. This is discussed in section 4.
7.2 – 7.13	Directions 7.2 – 7.13	Not applicable. These strategies do not apply to the Woollahra LGA.

Supplementary material

Annexure 1 – *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*

Annexure 2 - *Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 115*

Annexure 3 – Woollahra Local Planning Panel report 19 November 2020 (annexures removed)

Annexure 4 – Environmental Planning Committee report 30 November 2020 (annexures removed)

Annexure 5 – Council resolution 14 December 2020