



IRF22/3901

Plan finalisation report – PP-2021-6330 - 252-254 - New South Head Road, Double Bay

Woollahra Local Environmental Plan 2014
(Amendment 30)

December 2022

Published by NSW Department of Planning and Environment

dpie.nsw.gov.au

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Woollahra Local Environmental Plan 2014 (Amendment No. 30).

The planning proposal seeks to amend planning controls in the Woollahra Local Environmental Plan (LEP) 2014 to facilitate the redevelopment of the site at 252-254 New South Head Road, Double Bay for a part 7-storey and part 8-storey residential flat building with basement car parking. To achieve this, the planning proposal seeks to amend the LEP to:

- Increase the maximum height of buildings (HOB) from 13.5 metres (m) to 22 metres.
- Introduce a secondary height control of reduced level (RL) 45.90m Australian Height Datum (AHD) for a designated area, which is at the highest part of the site adjacent to the New South Head Road frontage.
- Increase the maximum floor space ratio (FSR) from 1.3:1 to 2.6:1.

The planning proposal also provides for a site-specific development control plan (DCP) to be prepared and in place prior to the issuing of any development consent for the site.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at 252-254 New South Head Road, Double Bay
Type	Site
Council / LGA	Woollahra Municipal Council
LGA	Woollahra Local Government Area

The subject site is located at 252-254 New South Head Road (NSH Road), Double Bay, and is legally described as SP11702. The site is irregular in shape, approximately 934.9 square metres (sqm) in area, and has a frontage of 19m to NSH Road (**Figure 1**).

The site is zoned R3 Medium Density Residential and is occupied by a four-storey residential flat building (RFB) known as the 'Dalkeith Building' (**Figure 3**). The site is steep and falls by approximately 10m from the south-west to the north-east corner and the street frontage is elevated above the rest of the property.

There is vegetation in the front and rear setbacks, including an established and prominent Jacaranda tree at the NSH Road frontage. The existing building contains eight units and is accessible via two pedestrian entrances at its NSH Road frontage. There is no vehicle parking available on the site.

The subject site is located approximately 2.8km east of the Sydney central business district (CBD) and 1.5km north-west of the Bondi Junction strategic centre. The site is adjacent to the Edgecliff Commercial Centre, 200m east of the Edgecliff train station and bus interchange, and 200m west of the Double Bay Centre (**Figure 4**). The nearest open spaces to the site are Trumper Park (500m) and Steyne Park (800m).



Figure 1: Subject site – outlined in blue (source: Nearmap)

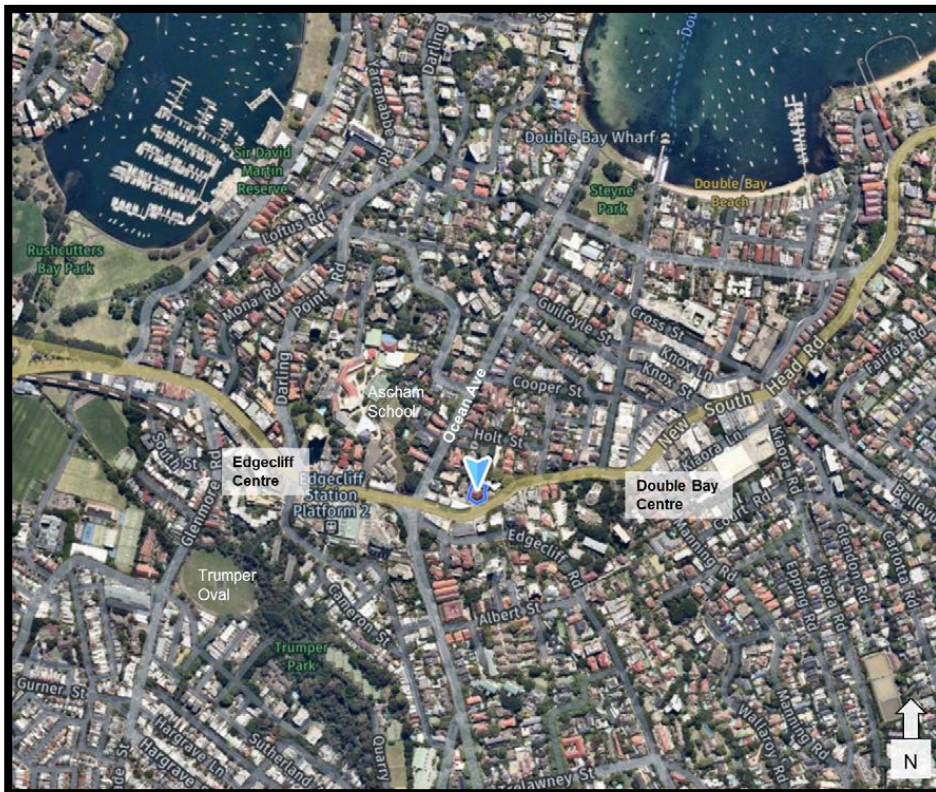


Figure 2: Site context (source: Nearmap)



Figure 3: Existing RFB on the site – western and southern elevations – three levels are below the street entry level (source: proponent's planning proposal report)

The streetscape character of the northern side of NSH Road includes both older RFBs and larger scale contemporary development with varied street setbacks – including buildings with nil setback (**Figure 4**). Directly to the south-west of the site is a recently completed part five/six-storey RFB at 240-246 NSH Road, which was the subject of a planning proposal to increase height and FSR (18m HOB and 4:1 FSR). To the north-west is a three-storey RFB at 248-250 NSH Road with a driveway abutting the southern boundary of the site. To the east is a three-storey Inter-War RFB at 256-258 NSH Road.

The southern side of NSH Road includes residential and commercial uses ranging from four to eight storeys. Due to the sloping topography, developments fronting Edgecliff Road to the south of the site are visible and form part of a layered streetscape profile when viewed from NSH Road.

The site is not a heritage item, is not located within a heritage conservation area or within the immediate vicinity of any heritage items.



Figure 4: New South Head Road – streetscape looking north-west (source: Google maps)



Figure 5: New South Head Road streetscape looking east (source: Google maps)

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

Table 2 Current and proposed controls

Control	Current	Proposed
Zone	R3 Medium Density Residential	No change
Maximum height of buildings	13.5m	22m
Secondary height control (The proposal seeks a change to Clause 4.3A <i>Exceptions to building heights</i> to implement this control)	N/A	RL 45.90 AHD within a designated area adjacent to NSH Road. Two options for depicting the designated area are provided (Figure 6A and 6B): Option A - an area 11m perpendicular to both the southern and south-eastern boundaries; or Option B – an area 5m from the southern corners of the site.
Floor space ratio	1.3:1	2.6:1
Number of dwellings	8 apartments (existing)	33 apartments (net increase 25 apartments)



Figure 6A: Secondary building height strategy – Option A (source: Antoniades Architects)



Figure 7B: Secondary building height strategy – Option B (source: Antoniades Architects)

1.1.4 State electorate and local member

The site falls within the Vaucluse state electorate. Gabrielle Cecelia Upton MP is the State Member.

The site falls within the Wentworth federal electorate. Allegra Spender MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination

The Gateway determination issued on 15/12/2021 (**Attachment B**) determined that the proposal should proceed subject to conditions.

Condition 1 of the Gateway requires revision to the planning proposal prior to exhibition. In particular, the condition requires further testing to ensure the proposed FSR is achievable within the proposed height controls, clarification of the street wall height in storeys, and tabulated information clarifying the extent of overshadowing of adjoining residential properties.

In March 2022, the proponent provided additional information to Council, including:

- Diagrams illustrating the floor space calculations of the concept development scheme;
- Confirmation that the future development would be no more than five storeys at the NSH Road frontage;
- A table confirming whether the north-facing living room windows of the RFBs at 240-246 NSH Road and 365A NSH Road (on the opposite side of the road) will achieve 2 hours of sunlight in mid-winter (note: this information has been incorporated into the exhibited planning proposal); and
- A draft site-specific DCP (note: the Gateway determination requires a site-specific DCP to be prepared prior to the issuing of any development consent, and not prior to finalisation of the planning proposal).

Other information required by Condition 1, such as commentaries addressing the Woollahra Local Housing Strategy (LHS), relevant priorities of the District Plan, section 9.1 Direction – *1.4 Site specific provisions*, and other minor updates have been incorporated into the exhibited version of the planning proposal.

The requirements of Condition 1 have been met.

In accordance with the Gateway determination, the proposal is due to be finalised on 15 August 2022. The proposal was reported to the Council Meeting of 27 September 2022 and as such the following administrative conditions were not met:

- Condition 8 - *The planning proposal must be reported to council for a final recommendation no later than 6 months from the date of the Gateway determination.*
- Condition 9 - *The time frame for completing the LEP is to be 8 months following the date of the Gateway determination.*

Council resolved not to support the planning proposal for finalisation (**Attachment D**). The main concerns relate to excessive bulk and scale, inconsistency with the desired future character, unacceptable amenity for future residents on the site, and unreasonable amenity impacts on the adjoining properties. Council also requests the height and FSR to be reduced, with the secondary height control to be reduced to 13.5m (which equates to 4 storeys), should the Minister decide to make the LEP.

The finalisation package was submitted to the Department on 20 October 2022. The Department is the local plan-making authority (LPMA) for the proposal.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 13/04/2022 to 27/05/2022, as required by the Gateway determination.

A total of 25 community submissions were received (various individuals and one organisation – chairman of the Strata body of 230-238 NSH Road, Edgecliff), comprising of 23 objections and two

submissions supporting the proposal (**Attachment E and F**). Two submissions from Government agencies were also received.

3.1 Submissions during exhibition

A total 27 submissions were received in response to the public exhibition, including two submissions from Government agencies.

3.1.1 Submissions supporting the proposal

The two supporting submissions were received from the public. The submissions support the removal of the existing old building on site and consider the proposal will enhance the streetscape and neighbourhood.

3.1.2 Submissions objecting to and/or raising issues about the proposal

Of the 25 community submissions, 23 objected to the proposal (92%), two (2) supported the proposal (8%). The full details are in Council's post-exhibition report (**Attachment E**).

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Vegetation / tree protection	1/25 (4%)	<p>Council Response:</p> <p>Council staff agree that the important trees onsite should be retained and protected, including the two Cabbage tree palms that are identified in the proponent's draft DCP to be transplanted on site and the Jacaranda tree at the NSH Road frontage to be retained.</p> <p>These issues should be further resolved in the site specific DCP.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue.</p>
Infrastructure – roads, schools, hospitals, waste services	1/25 (4%)	<p>Council Response:</p> <p>The submission and proponent response are noted. Traffic concerns have been addressed in response to TfNSW's submission (see Section 3.2 of this report).</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue. The potential net increase in dwellings could be supported by existing infrastructure.</p>
Construction impact associated with truck traffic and equipment	2/25 (8%)	<p>Council Response:</p> <p>Construction management planning will be addressed at the development assessment (DA) stage.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue.</p>

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Setback and airflow	5/25 (20%)	<p>Council Response:</p> <p>The information provided in the planning proposal makes it difficult to understand the adequacy of the proposed setbacks, as there are no details on the proposed setback to windows of the adjoining properties provided.</p> <p>Department Response:</p> <p>The concept development scheme demonstrates that adequate side setbacks and separation from neighbouring buildings could be achieved, which can meet the objectives of the Apartment Design Guide (ADG). Detailed assessment against the ADG and relevant planning controls will be undertaken at the DA stage.</p>
Overshadowing and solar access	11/25 (44%)	<p>Council Response:</p> <p>The overshadowing impacts and inadequate solar access are unreasonable and significantly compromise residential amenity within the site and to adjoining properties. The overshadowing and solar access issues are a consequence of the excessive height and FSR proposed and these impacts cannot be adequately addressed at the development application stage. If the proposal proceeds, a reduction of the proposed height and FSR is required.</p> <p>Department Response:</p> <p>The proponent has provided sun eye diagrams and shadow analysis. The concept scheme can retain adequate solar access in mid-winter to the living room windows of the adjoining properties, including Nos. 240-246, 248-250, 256-258 and 365A NSH Road.</p> <p>The Department's urban design team has also tested the concept scheme and confirmed that the proposal can meet the design guidance of Objective 4A-1 in the ADG in terms of solar access to the future building on the subject site and the neighbouring RFBs.</p> <p>Considering the above, the proposal is not considered to have an unreasonable impact on adjacent properties in terms of overshadowing and solar access. The overshadowing impact is discussed further in section 4.1.</p>

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Excessive building heights and FSR	17/25 (68%)	<p>Council Response:</p> <p>The proposed building height and FSR controls are excessive, inconsistent with the existing and desired future character of the area and would have potential adverse impacts on the site and its surrounds.</p> <p>Council's independent urban design assessment of the planning proposal by Studio GL found that the "...<i>proposed FSR of 2.6:1 is well above the maximum FSR of most neighbouring properties (excluding 240 New South Head Road, Double Bay at 4:1, which is part of the Edgecliff centre). Additionally, the proposed height of 22m is well above the typical height of neighbouring dwellings of 13.5m and the 18m height limit on 240 New South Head Road, Double Bay</i>".</p> <p>The site cannot reasonably accommodate the proposed building height and FSR. The FSR and building height need to be reduced to adequately respond to the constraints and characteristics such as the limited street frontage, irregular shape of the site, steep topography, and interface with the 3 immediately adjoining residential properties.</p> <p>Department Response:</p> <p>The proposed FSR and building height controls, as informed by the concept scheme, are appropriate having regard to the streetscape, local character and amenity impacts on the adjoining and nearby properties. A secondary height control has been included to ensure the future development would be a maximum of 5 storeys at the NSH Road frontage, so as to respect the prevailing scale of the surrounding buildings. The draft LEP also requires a site-specific DCP to be prepared and in place prior to the issuing of any development consent, which will further address built form, façade articulations and deep soil planting matters to mitigate any visual impact.</p> <p>The FSR and building height are discussed further in section 4.1.</p>
Over development / excessive bulk and scale / streetscape and landscape character	16/25 (64%)	<p>Council Response</p> <p>The proposed bulk and scale of the indicative scheme are excessive and not appropriate for the site and the existing and desired future character of the Double Bay residential precinct. The proposed development relies on non-compliances with the ADG to achieve a development under the proposed standards which creates negative environmental impacts for the neighbouring properties.</p> <p>Department Response:</p> <p>The proposed controls would result in a built form that is appropriate to its context. Refer to comments above and further discussion in section 4.1.</p>

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Impact on views	6/25 (32%)	<p>Council Response:</p> <p>Council staff agree with the submissions that the proposal would allow a building envelope that would unreasonably affect visual amenity including view obstruction.</p> <p>Department Response:</p> <p>The proponent has provided a set of view analysis that depicts the potential impacts from the building envelope (based on the proposed controls) and concept scheme on the adjoining and nearby residences at Nos. 240-246 and 365A NSH Road. The analysis also compares the impact from the existing building on the site.</p> <p>The analysis demonstrates that the future building can be designed to ensure the existing water or CBD views from the above properties (where they currently exist) could be partially or wholly retained.</p> <p>It should be noted that the design scheme is conceptual in nature. The draft LEP requires the site-specific DCP to further address view sharing. The DA process will allow view sharing to be further resolved.</p>
Visual privacy	1/25 (4%)	<p>Council Response:</p> <p>Council staff agree with the submission that the proposal would allow a building envelope that would unreasonably affect visual amenity, including view obstruction, overshadowing, privacy and solar access issues. Other factors described in submissions regarding acoustic privacy would be addressed at DA stage.</p> <p>Department Response:</p> <p>The indicative scheme shows blank walls facing habitable space of the adjoining residential buildings and the orientation of the balconies and windows would minimise privacy impacts on the neighbouring windows and private open space. The draft LEP requires the site-specific DCP to address visual and acoustic privacy issues. Privacy measures can be further assessed and resolved at the DA stage.</p>
Noise	1/25 (4%)	<p>Council Response:</p> <p>Other factors described in the submission regarding acoustic privacy would be addressed at DA stage.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue. The concept scheme demonstrates that the future building could be designed to have the primary living room windows oriented away from the adjoining RFBs. Privacy measures can be further assessed and resolved at the DA stage.</p>

Issue raised	Submissions (%)	Council response and Department assessment of adequacy of response
Property values	2/25 (8%)	<p>Council Response:</p> <p>The issue raised regarding potential reduction in property value is noted.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue and notes that variation in property value is not a relevant planning consideration.</p>
Traffic safety, access, parking and congestion	10/25 (40%)	<p>Council response</p> <p>Regarding traffic and parking issues, particular attention should be paid to the comments made in the TfNSW submission (see Section 3.2 below) in any development on this site under the proposed standards. Council recommends that the comments by TfNSW be considered and addressed before the finalisation of the proposal.</p> <p>Department Response:</p> <p>The Department considers Council adequately responds to this issue.</p> <p>The traffic impact is discussed further in section 4.1.</p>
Site is not identified in the draft planning strategies for Edgecliff Centre and Double Bay Centre, a planning proposal should not be pursued	1/25 (4%)	<p>Department Response:</p> <p>This issue was not directly addressed in Council's post-exhibition report.</p> <p>Although the site is outside the Double Bay Centre and Edgecliff Centre, the proposal was considered to have adequate strategic and site-specific merits to proceed at the Gateway determination stage. The conclusion of the Gateway assessment has not changed and remains relevant.</p>

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in **Table 4** who have provided the following feedback.

- Ausgrid;
- Sydney Water; and
- Transport for NSW (TfNSW).

Council provided a copy of the planning proposal to these authorities and responses were received from all agencies, except for Ausgrid (**Attachment F**).

Table 3 Advice from public authorities

Agency	Advice raised	Council response
Sydney Water	<p>Sydney Water provided comments to assist in planning the future servicing needs of the proposed development and noted the following:</p> <ul style="list-style-type: none"> • Further investigation will be required to determine servicing requirements and a Water Servicing Coordinator should be engaged. • A feasibility application is to be lodged prior to development occurring. 	<p>Council noted that the comments made by Sydney Water should be taken into consideration and the issues raised should be addressed by the applicant before the proposal is finalised, and further resolved in the site-specific DCP and at DA stage.</p>
Transport for NSW (TfNSW)	<p>TfNSW raised road safety concerns of the proposed driveway location due to the crest located to the west, which may cause conflict with eastbound traffic. It made the following recommendations/requests:</p> <ul style="list-style-type: none"> • The driveway should be located as far as possible from the crest of the road, with a “left-in, left-out” arrangement. • The Traffic and Parking Impact Assessment should be amended to further justify the new vehicular access arrangement, and address safety risk concerning the site’s close proximity to the crest. 	<p>Council staff agreed with the comments made by TfNSW, noting that should the planning proposal proceed, the issues raised should be addressed before the proposal is finalised, and updated in the site-specific DCP.</p>

The Department considers Council has adequately addressed matters raised in submissions from the public authorities. The water servicing issues could be addressed in detail at the DA stage. The site constraints with respect to vehicular access are noted; the draft LEP contains a provision requiring the vehicular access issue to be addressed in the site-specific DCP, which will provide further guidance for the future DA.

3.3 Post-exhibition changes

3.3.1 Council resolved changes

At its Ordinary Meeting on 27/09/2022, Council resolved to not support the planning proposal. However, should the Department support the proposal at finalisation, Council requested that it consider the following amendments:

- *Reduce the maximum building height and FSR.*
- *Amend the secondary height control at the New South Head Road frontage to apply a street wall height of no more than 13.5m at any point (which equates to four storeys). The secondary height control is to be expressed in metres.*

- *That... staff prepare a site specific development control plan for 252-254 New South Head Road, Double Bay that will be reported to a future meeting of Council.*

The Department has reviewed these requests and does not consider that any amendments to the proposal are justified. Further details of the Department's consideration are in section 4 of this report.

3.3.2 The Department's recommended changes

The planning proposal states that the DCP is to address built form and façade articulation, deep soil zones, apartment mix, overshadowing, privacy and view-sharing matters, which are consistent with the Gateway determination.

As part of the finalisation process, the Department has included a post-exhibition change to identify additional elements to be addressed in the site-specific DCP:

- Building height in storeys; and
- Vehicular access to and from the site to minimise traffic impact on New South Head Road.

3.3.3 Justification for post-exhibition changes

The above post-exhibition changes by the Department are to address issues raised in the submission from TfNSW and to provide clearer design guidance for development proposals. They do not alter the intent of the planning proposal and are minor in nature. The changes above are justified and do not require re-exhibition.

4 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to an appropriate level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, State Environmental Planning Policies (SEPPs), Regional and District Plans and Council's Local Strategic Planning Statement (LSPS). It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment C**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with Council's LSPS.
- Remains consistent with all relevant Section 9.1 Directions, except for Direction 1.4 Site Specific Provisions. The inconsistency with Direction 1.4 is considered to be of a minor significance and was addressed at the Gateway stage.
- Remains consistent with all relevant SEPPs, except for SEPP No 65—Design Quality of Residential Apartment Development due to potential natural ventilation issue (further discussed in section 4.1.2 below).

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1.

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment
Regional Plan	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1 Note: The exhibited planning proposal has addressed planning priorities E1, E6, E10, E16 and E17 in accordance with the Gateway determination.
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Community Strategic Plan (CSP)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Woollahra Local Housing Strategy (LHS) 2021	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1 Note: The exhibited planning proposal has addressed the LHS in accordance with the Gateway determination.
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No, refer to section 4.1

Table 5 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment
Social and economic impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, refer to section 4.1

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

4.1.1 Social and economic impact

An assessment of the potential social and economic impacts associated with the proposal is provided in **Table 7**.

Table 6: Social and economic impact assessment

Social and Economic Impact	Assessment
Social	The proposal is considered to provide social benefits by increasing housing availability and choice in an accessible location.
Economic impacts	The proposal would provide economic benefits by creating additional demand for goods and services, which would contribute to the local economy. Additional employment and economic activities would be created during future construction phase of the development.

4.1.2 Infrastructure

The site is in an area well serviced by public transport as it has access to existing train services at Edgecliff and bus services along NSH Road, including connections to Bondi Junction and the Sydney CBD.

The site is in an established urban area that is well serviced by electricity, telecommunications, water and sewerage infrastructure.

Consultation has been carried out with the relevant agencies (**Table 4**) concerning the availability of utilities. No objections were raised against the proposal. Further assessment can be undertaken at the DA stage.

4.1.3 Environmental impact

Built form

At its meeting on 27 September 2022, Council resolved to not support the planning proposal, determining that it failed to demonstrate the site can reasonably accommodate the building height and FSR being sought, and that the resultant building envelope would have an excessive bulk and scale that is inconsistent with the existing and desired future character of the Double Bay residential precinct.

Council engaged urban design consultants, Studio GL, to review the proposal, which concluded that *‘some increase in height and FSR may be appropriate for this location particularly given the opportunity for development of this site to provide a transition between taller buildings around the Edgecliff Centre and lower development to the north and west of the site, however the current planning proposal, LEP heights and FSR’s and the draft DCP are not supported’*. It was argued that the FSR achieved by the indicative scheme relies on non-compliances with the ADG and creates negative environmental impacts on neighbouring properties.

Furthermore, Council found the draft site-specific DCP did not satisfactorily address environmental impacts such as overshadowing, solar access, ventilation, visual impacts, acoustic privacy and view-sharing.

Proponent’s submission

On the 27 September 2022, the proponent provided a response to Council’s Post-Exhibition Report and Studio GL report (**Attachment H**). A summary of the proponent’s key points is included below:

- Many of the comments made by Council were beyond the relevant matters for the making of an LEP and were not matters directly outlined in the Gateway Conditions.
- The urban design peer review by AE (engaged by the proponent) concluded that:
 - The proposed envelope is appropriate in terms of bulk and scale, noting the “*visual bulk is consistent with the existing street wall and building heights along New South*

Head Road on both the northern and southern sides and does not detract from the amenity of the surrounding area”.

- The proposed front setback to NSH Road is compatible with the adjoining developments and will ensure the existing Jacaranda tree can be retained.
- The proposed side and rear setbacks provide acceptable separation to neighbouring buildings and allow for deep soil planting. Furthermore, building modulation can be achieved at the DA stage to increase these setbacks where necessary.

Department's assessment

Street frontage height:

The subject section of NSH Road is characterised by residential and commercial buildings ranging from two to eight storeys in height at the street frontage. On the northern side of the street where the site is located, the recently completed RFB at No. 240-246 NSH Road is 5 to 6 storeys (including the under-croft), and the Inter-War RFB at No. 256-258 is 3 storeys (**Figure 7**).

Recognising the sloping topography of the site, a secondary height control is proposed to impose a cap on the street frontage height at RL45.90 AHD, which would limit the future building to approximately five storeys when viewed from NSH Road. The proposed street wall height is compatible with the adjoining developments.

The concept scheme also illustrates that the proposed controls could create a built form with a possible stepping in height from five to four storeys, providing a transition between Nos. 240-246 and 256-258 NSH Road. While the detailed design, including any stepping and modulation to the built form, is to be resolved at the DA stage, the draft LEP contains a provision requiring the site-specific DCP to address matters including built form, façade articulations and height in storeys, among other things, to facilitate a high quality design outcome. The DCP is to be in place prior to the issuing of any development consent.

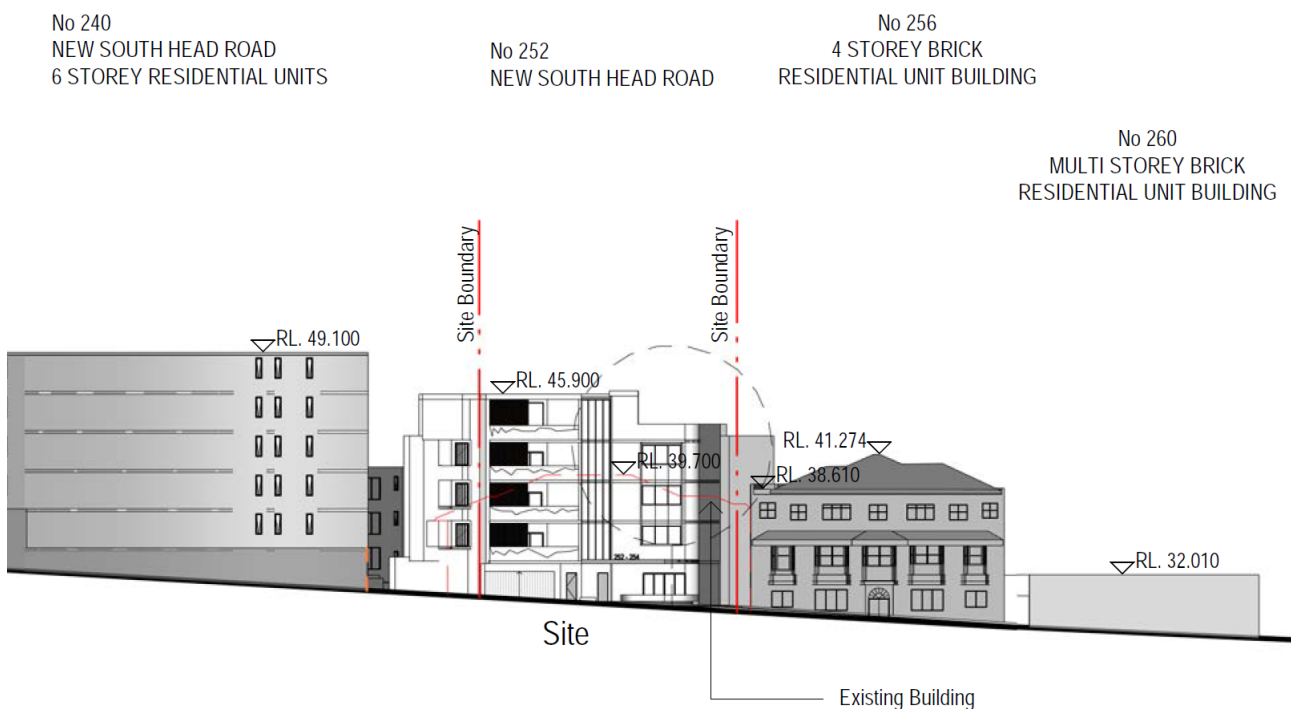


Figure 8: Streetscape elevation (Source: Antoniades Architects)

The planning proposal provides two options for delineating the secondary height control at the NSH Road frontage (**Figures 6A and 6B**). Option A depicts an area that is 11m perpendicular from the southern and south-western boundaries. The configuration of this area is less restrictive than Option B. It may also allow the top floor level to be designed to better address the street frontage while achieving a functional floor plate. As such, the draft local provision and corresponding mapping will utilise Option A for the purposes of the secondary height control.

Overall building height:

The site has a steep slope from the south-western to the north-eastern corner. The concept scheme demonstrates that an overall height limit of 22m in conjunction with the secondary height control could facilitate an 8-storey building that incorporates stepping to relate to the topography (**Figure 8**). The visual bulk of the future development could be mitigated by articulations to the built form and screen planting (refer to further discussion below).

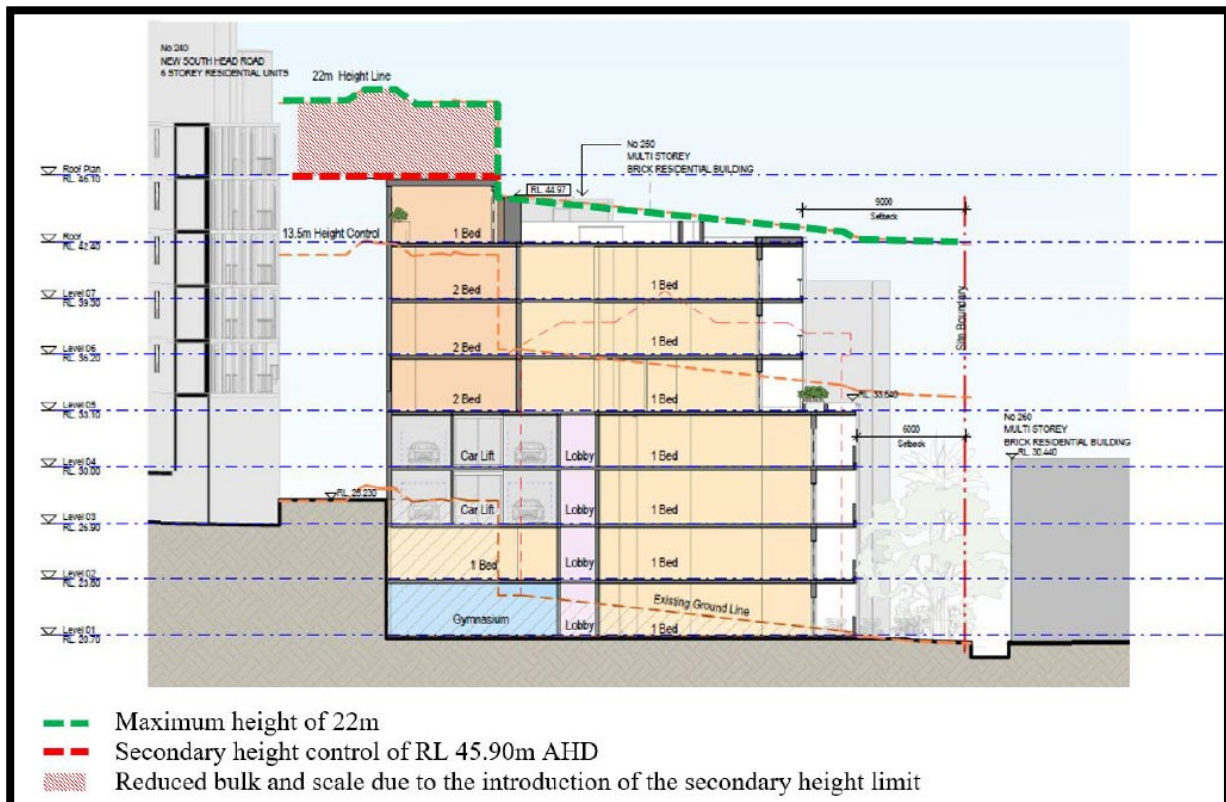


Figure 8: North-south cross section of the indicative development concept showing the combination of height controls (Source: Antoniades Architects)

Building separation and setbacks:

The concept scheme illustrates setbacks ranging from 3m - 4.5m along the western and eastern side boundaries, 6m – 9m along the northern rear boundary and 1.6m – 4.5m along the southern street boundary (**Figure 9**).

Part 2F Building separation of the ADG provides a range of separation distances depending on the nature of the rooms and height of the building. The indicative design demonstrates that the ADG provisions could be generally met through arrangements of habitable and non-habitable rooms, orientation of windows and balconies, and use of blank walls or other design measures. Building setbacks and separation could be further resolved at the DA stage.

Existing developments on the northern side of NSH Road have varied front setbacks. The proposed front (street) setback as illustrated in the concept scheme is compatible with the nearby

developments, noting the adjacent buildings at No. 240-246 and No. 256-258 have no front setbacks.

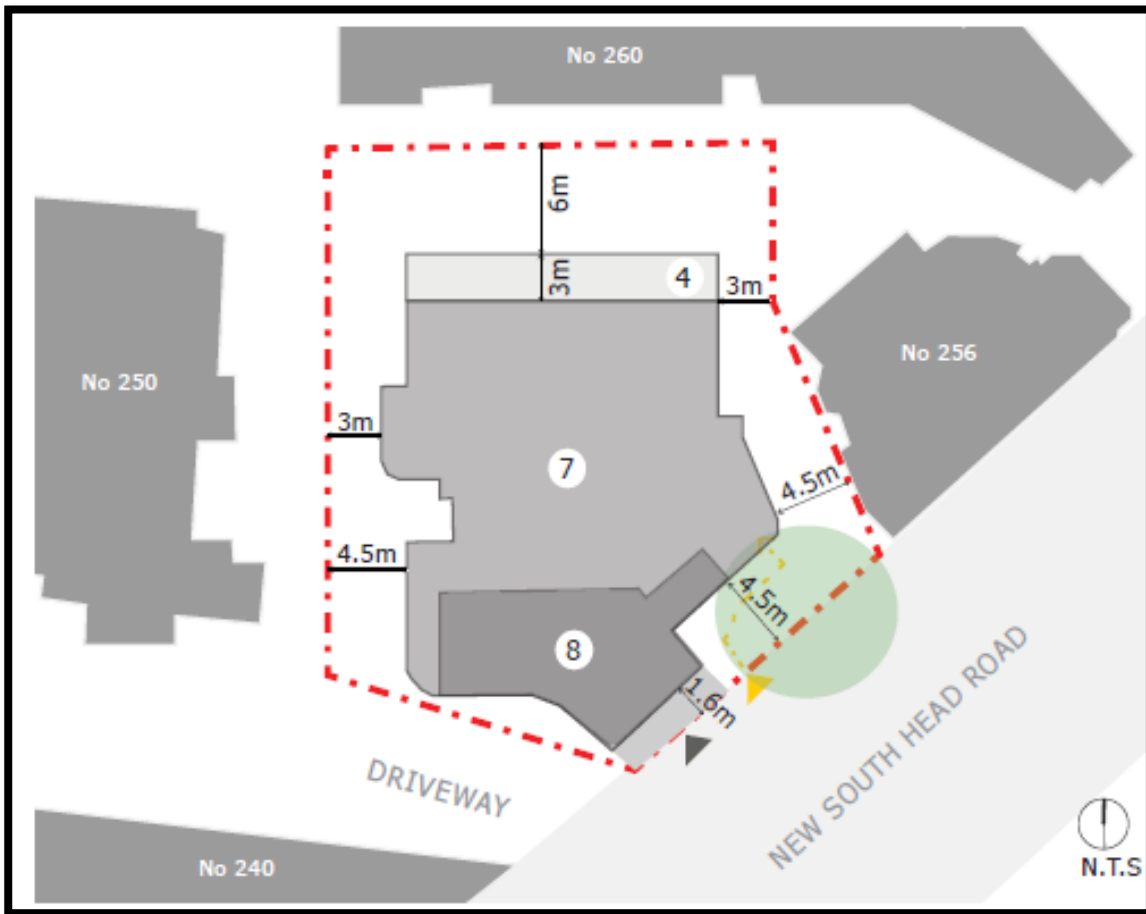


Figure 9: Boundary setbacks (Source: GMU Urban Design and Architecture)

The Department's in-house Urban Design Team have reviewed the planning proposal and associated documents (both Council's and proponent's reports) and concluded that the building envelope enabled by the FSR and height controls is appropriate to the locality in terms of streetscape, height, scale and amenity impacts. The side setbacks in the indicative scheme are within an acceptable range, as habitable room windows would not be provided on the side elevations and avoid directly facing those in the adjoining buildings. The advice also confirms that the indicative building envelope provided meets the requirements of the ADG, except for natural ventilation which will be discussed in the following paragraphs.

Redevelopment of the site based on the proposed controls could provide an appropriate building transition from the higher built forms in the east to the lower scaled forms in the west and north. The proposal responds to the existing development pattern and topography of the site and would not visually dominate the streetscape profile. Further assessment of the built form and amenity impacts will be undertaken at the DA stage, both against the proposed LEP provisions, the site-specific DCP controls and the ADG guidance.

Council's intent to protect the local character and existing amenity of the surrounding properties is acknowledged. However, there is insufficient justifications for a reduction to the overall height and FSR controls. Additionally, a reduction to the secondary height control at the NSH Road frontage to 13.5m (approximately 4 storeys) is also not warranted due to the existing streetscape pattern.

As such, the Department does not support Council's request to reduce the proposed maximum building heights and FSR.

Landscape and deep soil zones

The concept scheme illustrates a total landscape area of 457.1m² (49% of site area), comprising deep soil zone of 355.8m² (38%) and on-structure landscaping of 101.3m² (11%) (**Figure 10**).

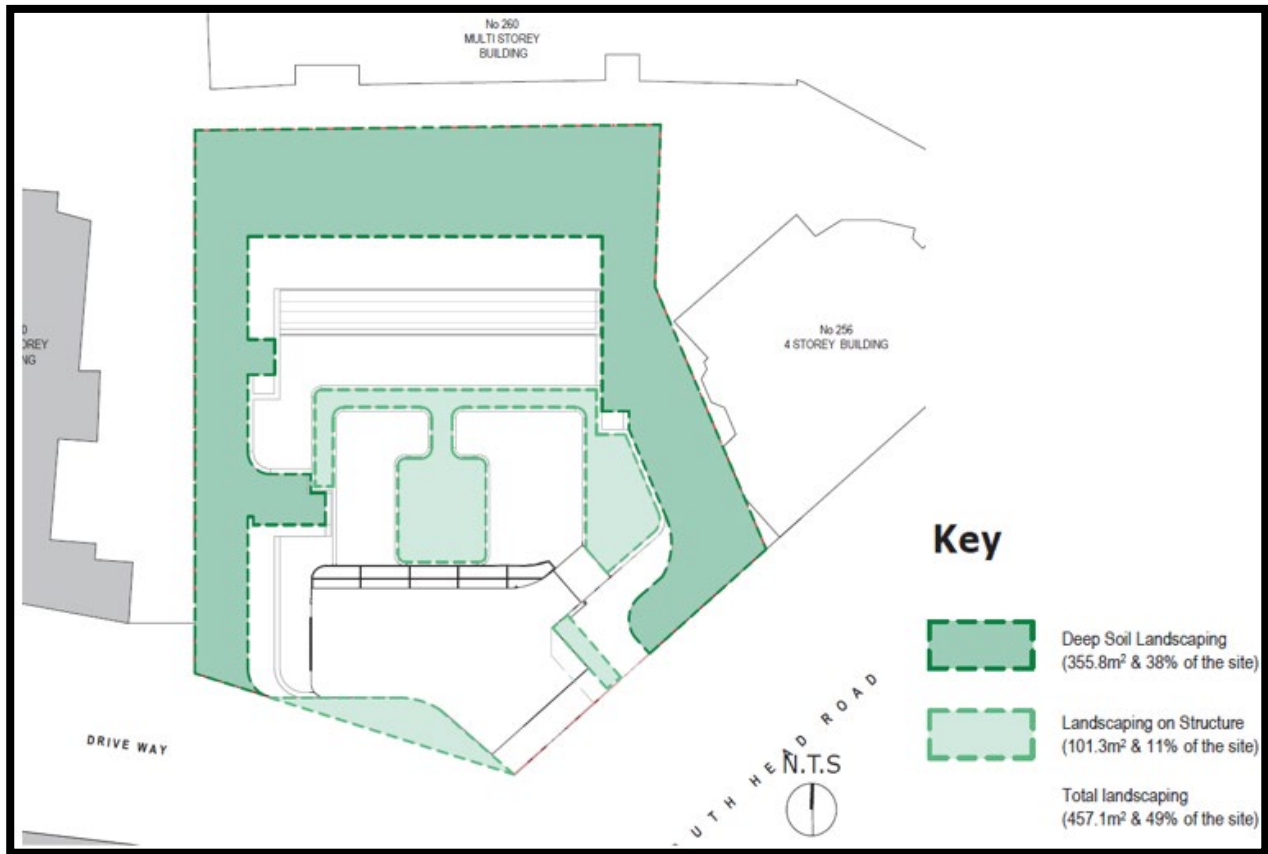


Figure 90: Landscaped area diagram (Antoniades Architects)

The indicative design shows that vegetation removal is required to accommodate the new building envelope, including nine existing trees, and the relocation of two existing palm trees. The design would retain the mature Jacaranda tree located adjacent to the NSH Road frontage. The proposal is supported by an Arboriculture Impact Assessment Report.

The proposed controls would result in a building footprint that provides setbacks of at least 3m along the western and eastern boundaries and 6m along the southern boundary (**Figure 9**). These setback areas could be used as deep soil zones for canopy trees and screen planting, and green roof treatments on the upper level would also be possible.

The draft LEP requires the site-specific DCP to address matters, including deep soil zones to provide tree canopies and screen planting, which would also facilitate protection of significant existing trees on the site, such as the prominent mature Jacaranda tree at the site frontage, and replacement planting, ensuring high landscape quality and residential amenity.

Overall, the proposed controls are considered to enable adequate provisions of deep soil zones. Tree canopy, screen planting and tree protection can be further addressed and resolved at the DA stage.

Overshadowing and solar access

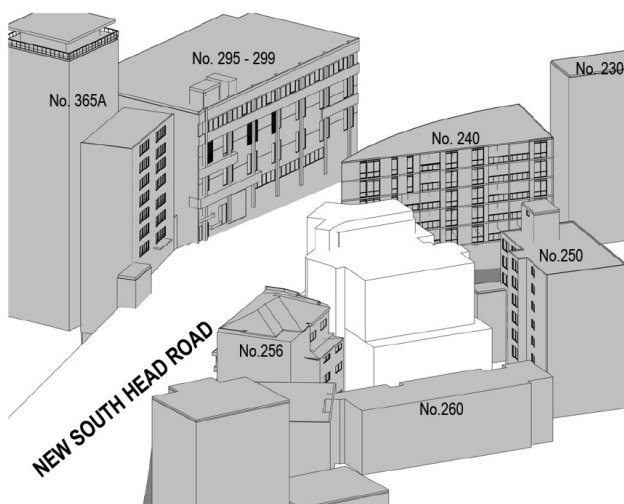
Council considers that the proposal will cause adverse overshadowing impacts and inadequate solar access that will compromise residential amenity within the site and to adjoining properties. Council is of the view that these impacts are consequences of the excessive height and FSR proposed and cannot be adequately addressed at the development application stage.

Overshadowing of surrounding properties

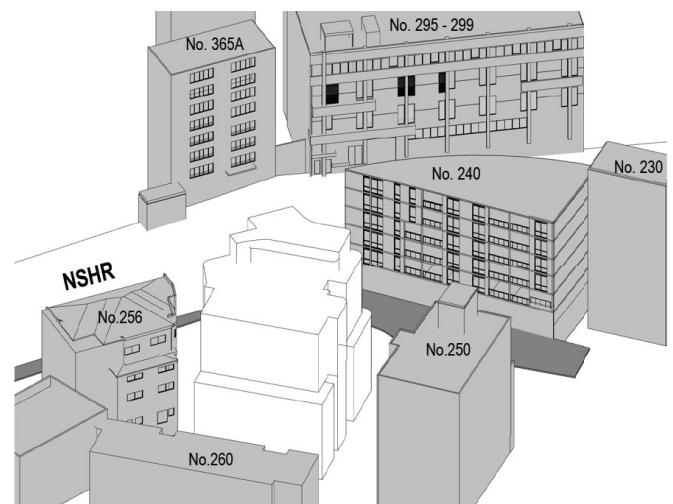
In testing the potential impacts on the adjoining and nearby properties, the proponent has submitted plan-view shadow diagrams, sun-eye diagrams and elevation drawings / tables confirming solar access to north-facing windows of selected neighbouring properties. In summary, the potential shadow impacts based on the concept scheme would be:

- 240-246 NSH Road: the living room windows and balconies to the apartments will retain at least 2 hours of sunlight in mid-winter.
- 248-250 NSH Road: the east-facing habitable room windows will not be affected by the concept scheme.
- 256-258 NSH Road: the north-western habitable room windows will retain at least 2 hours of sunlight in mid-winter. There will be additional impact to the south-western side windows; however, these windows are constrained in solar access due to their orientation towards the side boundary and aspect.
- 365A NSH Road (southern side of the road): all living room windows will retain at least 2 hours of sunlight in mid-winter.

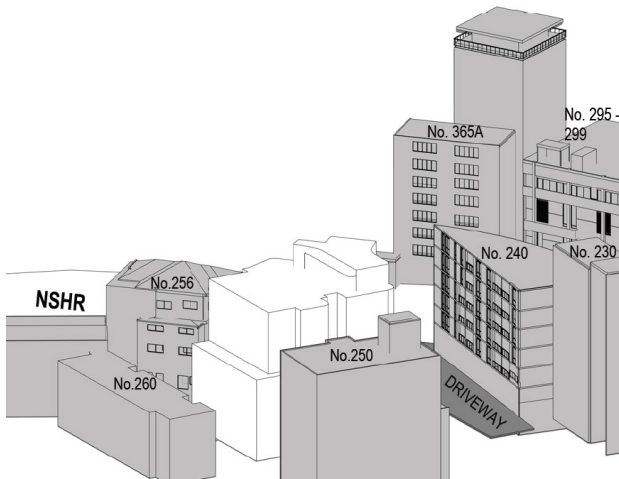
The Studio GL Report commissioned by Council notes that the proposal “*do not show how overshadowing has been minimised nor the extent of additional overshadowing created by the proposed non-compliance with the setbacks.*” The above report argues that the upper levels (above level 5) should be provided with additional side setbacks to meet the ADG. Detailed assessment of the shadow impacts will be undertaken at the DA stage, and further modelling of the built form has the potential to reduce shadow impacts as currently depicted by the concept scheme. The draft LEP requires the site-specific DCP to address overshadowing impacts on the surrounding properties. Regardless, there is sufficient analyses provided to demonstrate a reasonable level of solar access can be retained for neighbouring properties based on the proposed controls.



Sun-eye diagram – 9am, mid-winter



Sun-eye diagram – 12 noon, mid-winter



Sun-eye diagram – 3pm, mid-winter

Figure 101: Sun-eye diagrams (source: Antoniades Architects)

Solar access to future development

The proponent's Solar Access Assessment report by SLR (**dated September 2022 – Attachment H**) concluded that direct sunlight to the proposed apartments in the concept scheme for June 21, between the hours of 9.00 am and 3.00 pm:

- 78.8 % (26 of 33) of apartments will achieve 2 hours solar access across the assessment window.
- 6.1 % (2 of 33) of apartments will receive no solar access across the assessment window.
- 15.2% (5 of 33) of apartments will receive less than 2 hours of solar access across the assessment window.

Based on the information submitted, the proposed controls are capable of creating an envelope that could satisfy the solar access requirements of the ADG.

The site-specific DCP will address building articulation and modulation and management of overshadowing impacts, which could ensure shadow impacts are adequately mitigated and suitable solar access is achieved. These aspects can be further addressed at the DA stage.

Natural Ventilation

Council's view

Council has advised that the proposed building height and FSR standards are not achievable for the site, stating the building depth is up to 27m on levels below Level 4 of the concept scheme. The Studio GL Urban Design report prepared on behalf of Council noted that as the corner units on Levels 1-7 "...indicate cross ventilation is achieved by windows that face the same side as the inlet windows, they cannot be considered cross ventilated apartments" (p. 4). The report concluded that the proposal only provides cross ventilation for 8/33 units (24%).

Council concludes that the level of amenity for the indicative units is inadequate as the concept plans show deep floor plates and the excessive depth will compromise the ability for the apartments to provide natural cross ventilation.

Proponent's view

The proponent has provided a 'Natural Ventilation Assessment' report by SLR, dated September 2022. The report states the "recesses and articulations create pressure and velocity differences across the various facades and encourage cross ventilation through an increased number of apartments" (p. 18). SLR have assessed the proposed height and FSR controls and has

determined that the building envelope will be capable of achieving compliance with the ADG requirements, concluding that “60.6% (20 out of 33) of the apartments will be naturally cross ventilated” (p. 27).

Department’s assessment

The ADG Design Criteria for Objective 4B-3 states:

1. *At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.*
2. *Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.*

The Department’s Urban Design team have reviewed the proposal and reports from both Council and the proponent. It was determined that 18 out of 33 (54.5%) of the apartments in the concept scheme are naturally cross ventilated, and therefore does not currently meet the minimum requirement of the ADG. In particular, the two (2) top-floor 1-bedroom units rely on ventilated skylights to achieve cross air flow within the units, which are not considered to meet the ADG requirements, and hence the discrepancy with the SLR findings of 60.6% (20 out of 33).

Based on the concept scheme, the design of the apartments on the side elevations could be adjusted to achieve cross ventilation in accordance with the Design Criteria of the ADG. The unit mix and layout may need to be adjusted to meet the ADG. It is acknowledged that this may potentially require a reduction in the number of dwellings. These issues can be addressed in detail and resolved at the DA stage.

Overall, it is considered that the proposed FSR and height controls can result in a building envelope with apartments meeting the ADG provisions. The draft LEP also requires the site-specific DCP to address apartment mix, which could contribute to optimising the amenity performance of the future building.

Visual and acoustic privacy

The concept scheme demonstrates reasonable levels of privacy could be achieved between habitable rooms and balconies of adjoining buildings and the future development by:

- Incorporating blank walls that do not require a specific separation distance.
- Habitable rooms are orientated to maximise visual privacy between the proposed and neighbouring buildings; direct lines of sight to windows and balconies of the adjoining buildings are avoided.

Visual and acoustic privacy matters can be addressed in detail at the DA stage. The draft LEP requires the site-specific DCP to contain information to address privacy matters.

Transport and traffic

The site is located on NSH Road (a classified road) in an area well serviced by public transport, being approximately 250m from the train services and bus interchange at Edgecliff Station and approximately 800m from Double Bay Ferry Wharf.

A Traffic and Parking Impact Assessment (TPIA) (**Attachment I**) was submitted with the planning proposal.

The Woollahra DCP specifies maximum parking provision (for residential apartments within 400m of a railway station) which equates to 37 spaces for the concept scheme. The scheme aims to provide six parking spaces, being four resident spaces and two car share spaces, along with motorcycle and bicycle parking. Based on the provision of six parking spaces, the TPIA anticipates the development will not generate significant vehicular traffic during peak periods that adversely affects the local road network.

The Sydney Eastern City Planning Panel in its Decision Notice for the rezoning review for this proposal suggests that on-site car parking should be minimised or deleted and that only servicing be provided. Details on parking provision and design will be addressed at the DA stage.

During public exhibition, TfNSW raised concerns regarding the proposed driveway location noting the crest located to the west. TfNSW has made specific recommendations to mitigate potential impact on traffic safety. The draft LEP requires the site-specific DCP to address vehicular access to minimise traffic impact on NSH Road. It is considered that vehicular access design could be further addressed and resolved at the DA stage.

4.1.4 Section 9.1 Directions

The following Section 9.1 Directions were considered as part of the Department's original Gateway determination report, with no further approvals required in relation to these directions:

- 1.4 Site Specific Provisions;
- 4.4 Remediation of Contaminated Land;
- 4.5 Acid Sulfate Soils;
- 5.1 Integrating Land Use and Transport;
- 5.3 Development Near Regulated Airports and Defence Airfields; and
- 6.1 Residential Zones.

Condition 1(iv) of the Gateway determination requires the planning proposal to be revised prior to exhibition to address and justify the inconsistency with the section 9.1 Direction relating to Site Specific Provisions. The proposal was amended in accordance with the condition. The Department agrees with Council's consideration that a site-specific control is necessary to ensure the future development will be of a scale that is compatible with the built form context along New South Head Road, and a secondary height control applying to the southern portion of the site is appropriate.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 7 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	2 maps have been prepared by Woollahra Municipal Council and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>Council provided comments on the draft LEP on 1/12/2022. Refer to Attachment L and the comments below.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Parliamentary Counsel Opinion	On 12/12/2022 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> No, see below for details

Council has reviewed the draft LEP and confirmed that the planning controls are correct, when compared to the exhibited planning proposal. Council also requests certain changes to the LEP to be made. The Department has considered Council's request and agreed to including visual privacy and amenity in the objective for Clause 4.3C *Exceptions to building heights*, and including building setbacks as another matter to be addressed in the site-specific DCP. Council also requests the site-specific DCP to include requirements for a landscape plan to ensure retention of significant trees on site. The Department considers that the existing Woollahra DCP already contains tree protection requirements; retention and protection of significant trees could be further addressed at the DA stage.

6 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The proposal is consistent with the Gateway Determination;
- All matters identified in the Gateway determination have been satisfactorily resolved;
- It provides additional housing within close proximity to services, employment and public transport, and would contribute to the 30-minute city pursuant to the Greater Sydney Region Plan and Eastern City District Plan;
- It is consistent with and gives effect to the relevant objectives, directions and priorities of the Greater Sydney Region Plan and Eastern City District Plan;
- It is consistent with all relevant section 9.1 Directions and SEPPs;
- Any potential environmental impacts could be adequately addressed and resolved at the development application stage;
- All community concerns have been adequately addressed and there are no outstanding or unresolved issues raised in submissions from agencies.



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Attachments

Attachment	Document
A	Planning Proposal (exhibition version)
B	Gateway Determination
C	Gateway Determination Report
D	Woollahra Municipal Council Minutes - Resolution (27 September 2022)
E	Woollahra Environmental Planning Committee (EPC) Agenda (5 September 2022)
F	Redacted Submissions
G	Urban Design peer review by Studio GL, commissioned by Council (July 2022)
H	Proponent's response to EPC report – letters from GSA, Urban Design Peer Review by AE, Natural Ventilation Assessment by SLR, Solar Access Assessment by SLR (September 2022)
I1	Letter from GSA – response to Gateway Determination (March 2022)
I2	Letter from GSA – response to Council (March 2022)
I3	Setback diagrams, height plane diagrams, GFA diagrams, streetscape elevation, sun eye diagrams, solar access tables and elevations (March 2022)
I4	Draft Site-Specific DCP
I5	Urban Design Report by GMU (March 2020)
I6	Shadow diagrams by Antoniades Architects (June 2020)
I7	View analysis by Antoniades Architects (June 2020)
I8	Architectural drawings by Antoniades Architects (February 2020)
I9	Traffic and Parking Impact Assessment by TTPA (March 2020)
I10	Arboricultural Impact Assessment by Russell Kingdom (March 2020)
I11	Acoustic Assessment by Renzo Tonin (March 2020)

Attachment	Document
I12	Survey plan by Cibar Surveying (September 2019)
J	Planning Panel Record of Decision – Rezoning Review (July 2021)