



IRF22/4535

Gateway determination report – PP-2022-1646

136-148 New South Head Road, Edgecliff

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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.

Contents

1	Planning proposal.....	1
1.1	Overview.....	1
1.2	Objectives of planning proposal	1
1.3	Explanation of provisions	2
1.4	Site description and surrounding area.....	8
1.5	Mapping.....	10
1.6	Local planning panel (LPP) recommendation.....	13
1.7	Background	14
2	Need for the planning proposal	19
3	Strategic assessment	19
3.1	District Plan	19
3.2	Local.....	20
3.3	Section 9.1 Ministerial Directions	24
3.4	State environmental planning policies (SEPPs)	31
4	Site-specific assessment	33
4.1	Environmental.....	33
4.1.1	Urban design and heritage.....	33
4.1.2	Building height	34
4.1.3	Amenity	36
4.1.4	Design Excellence	37
4.1.5	Site amalgamation	38
4.1.6	Site-specific development control plan.....	38
4.2	Social and economic.....	39
4.3	Infrastructure	41
4.3.1	Community infrastructure.....	41
5	Consultation.....	43
5.1	Community	43
5.2	Agencies.....	43
6	Timeframe	43
7	Local plan-making authority	44
8	Assessment summary	44
9	Recommendation.....	44

Table 1 Reports and plans supporting the proposal

Relevant reports and plans
A – Planning proposal prepared by Council (November 2022)
D – Council’s letter requesting Gateway determination
E – Planning proposal report prepared by Ingham Planning (September 2021)
F – Rezoning review - Record of decision
G – Planning Panel’s letter to Council – invitation to be PPA
H – Council’s letter accepting the role of PPA
I – Urban design report
J – Indicative concept report
K – Heritage assessment
L – Traffic assessment
M – Environmental wind assessment
N – Acoustic assessment
O – Economic impact assessment
P – Preliminary arboricultural report
Q – Geotechnical investigation
R – Detailed site investigation (contamination)
S – Survey plan
T – Draft Edgecliff Commercial Centre Planning and Urban Design Strategy
U – Correspondence from proponent regarding local clause (2 December 2022)
V – Correspondence from Council regarding non-residential FSR (13 December 2022)
W – Correspondence from proponent regarding non-residential FSR (15 December 2022)

1 Planning proposal

1.1 Overview

Table 2 Planning proposal details

LGA	Woollahra
PPA	Woollahra Municipal Council
NAME	136-148 New South Head Road, Edgecliff
NUMBER	PP-2022-1646
LEP TO BE AMENDED	Woollahra Local Environmental Plan (LEP) 2014
ADDRESS	136-148 New South Head Road, Edgecliff
DESCRIPTION	Lot 1 DP663495 Lot 1 DP1092694 Lot 2 DP983678 Lot A DP443992 Lot B DP443992
RECEIVED	28/11/2022
FILE NO.	EF22/13997 (IRF22/4535)
POLITICAL DONATIONS	There are no donations or gifts to disclose and a political donation disclosure is not required
LOBBYIST CODE OF CONDUCT	There have been no meetings or communications with registered lobbyists with respect to this proposal

1.2 Objectives of planning proposal

The planning proposal contains objectives and intended outcomes that adequately explain the intent of the proposal.

The objectives of the planning proposal are:

- *To put in place exceptions to the envelope controls that would allow redevelopment of the site for a 12-storey mixed use development.*
- *To facilitate a built form that is compatible with the existing and emerging context and character of the locality.*
- *To ensure the scale of development is commensurate with the capacity of existing and planned infrastructure.*

1.3 Explanation of provisions

The following is based on Council's planning proposal (dated 18 November 2022).

As will be detailed in the "Background" section of this report, there have been several iterations of the proposal; these include:

- the initial planning proposal request prepared by the proponent (September 2021),
- the planning proposal prepared by Council (April 2022) that was considered at the rezoning review (along with documents prepared by the proponent in support of their planning proposal request); and
- the current planning proposal prepared by Council following the decision of the rezoning review by the Sydney Eastern City Planning Panel (District Planning Panel).

The current planning proposal seeks to amend the Woollahra LEP 2014 by introducing a local provision under Part 6 *Additional Local Provision*.

The local provision seeks to introduce a site-specific clause to allow exceptions to the mapped maximum height of buildings of 14.5m to permit up to 42m¹ (alternative maximum height control), and to the mapped floor space ratio (FSR) of 1.5:1 to 5:1 (alternative maximum FSR control), where the following site-specific requirements are met:

- Desired future character;
- Site amalgamation;
- Non-residential floor space;
- Conservation of the heritage item on the land;
- Housing diversity;
- Design excellence; and
- Community infrastructure – which according to the planning proposal includes affordable housing.

It is noted that at its meeting on 12 September 2022, Council resolved to support an increased maximum building height of up to 46m, not 42m as mostly outlined in the planning proposal.

The planning proposal is based on a concept development scheme prepared by the proponent (**Figure 1**) that features the following:

- A 12-storey mixed commercial and residential building with rooftop terrace and basement parking.
- Approximately 41 apartments (net increase of 35).
- Retention of the existing heritage item at 138 New South Head Road.
- A total gross floor area (GFA) of 8,723m² (equivalent to an FSR of 5:1), comprising 5,872m² residential floor space (FSR 3.36:1) and 2,851m² commercial floor space (FSR 1.63:1).

¹ **Note:** the planning proposal contains an inconsistency in the description of the maximum alternative height control, where this is stated to be both 42m and 46m in the same paragraph under section 1.2 *Description of this planning proposal* (p. 9). Upon a review of the rest of the planning proposal, the proposed maximum alternative height control appears to be 42m.

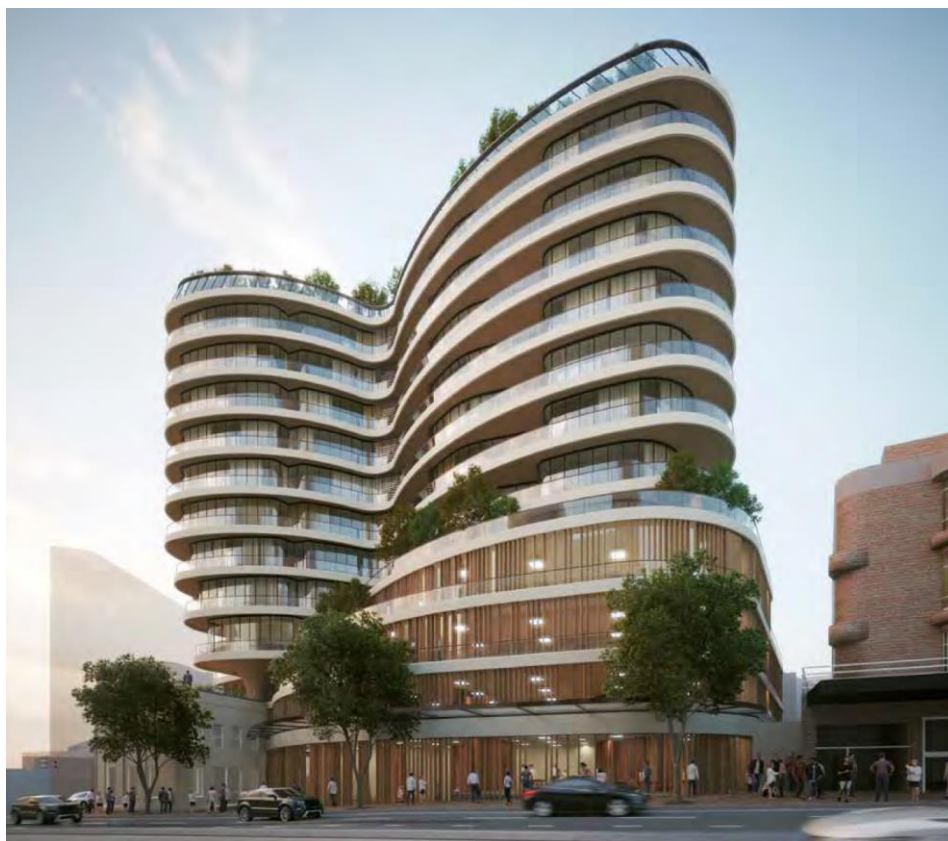


Figure 1: Artist's impression of the concept development scheme (north-westerly view from New South Head Road) prepared by the proponent (source: Indicative Concept Report).

The planning proposal contains an explanation of proposed LEP provisions relating to the following elements:

Height of buildings (HOB)

The proposal seeks to introduce an incentivised alternative height of buildings control of 42m, provided certain requirements are met.

An objective of the proposal is to permit development of the subject site for a building up to 12 storeys, with a four-storey podium. The proposed building height is considered by Council to be similar to the Eastpoint development (where the bus interchange is situated), on the opposite side of New South Head Road. This height would be lower than the proposed 14 to 26 storeys for the southern side of New South Head Road under the draft Edgecliff Commercial Centre Planning and Urban Design Strategy (draft ECC Strategy), as well as the 31-storey residential flat building known as "Ranelagh" directly to the north of the site. As such, the proposed height would provide a transition in scale between Edgecliff centre and the surrounding residential neighbourhoods.

However, the proposal is not sufficiently clear that the existing control of 14.5m as shown on the HOB map would be retained if the conditional provisions are not satisfied. A Gateway condition is recommended to require clarification of this aspect prior to exhibition.

Floor space ratio / Non-residential floor space ratios

The proposal will introduce an incentivised alternative FSR of 5:1, provided certain requirements are met. This is to facilitate a building with approximately 8,723m² of GFA.

The proposal is not sufficiently clear that the existing control of 1.5:1 as shown on the FSR Map would be retained if the conditional provisions are not satisfied. A Gateway condition is recommended to require clarification of this aspect prior to exhibition.

The proposal includes a minimum and maximum non-residential FSR of 3:1 and 3.5:1 respectively. This requirement is to be met to utilise the alternative and upper maximum height and FSR controls. The intent is to deliver a mixed-use development with functional commercial spaces and flexibility for various uses, while not dedicated entirely to commercial purposes.

The proposal seeks to ensure the site could “*meaningfully contribute to the supply of dwellings and commercial floor space in Edgecliff, without resulting in an unnecessarily bulky form*” (p. 20).

On 13 December 2022, Council wrote to the Department suggesting that a minimum non-residential FSR of 2:1 would be appropriate as “*the draft ECC Strategy [draft Edgecliff Commercial Centre Planning and Urban Design Strategy] recommends a minimum non-residential component of 2:1 for other sites in the vicinity of the subject site with lower overall FSRs...*”

The proposal needs to be altered to reflect this change prior to exhibition. A Gateway condition is recommended to alter the proposal to address this prior to exhibition.

Land reservation acquisition

A separate council-initiated planning proposal sought to lift the existing land reservation zoning that applies to the subject site at 136 New South Head Road (see **Figure 2** – Area 4).

On 8 June 2022, the Department issued a Gateway determination that the proposal should not proceed as Transport for NSW (TfNSW), as the relevant public authority for acquiring this land, has identified the subject road reservation as being required for future active and public transport improvements, among other reasons.

Council subsequently requested that the Independent Planning Commission (IPC) undertake a Gateway review of this determination.

On 10 October 2022, the IPC issued its advice, including a recommendation that the road reservation affecting 136 New South Head Road should be removed after consultation with TfNSW.

On 23 December 2022, TfNSW advised the Department in writing that it does not provide consent to the removal of any of the land reservation, as New South Head Road has been identified as part of an important public transport corridor. As such, the proposal to remove the road reservation is inconsistent with section 9.1 Ministerial Direction 5.2(1), which requires approval of the relevant public authority for any reduction of land reservation, and the inconsistency is not of minor significance.

On 12 April 2023, the Department advised the IPC, TfNSW and Council that the existing Gateway determination to not proceed with the road reservation removal proposal will be maintained and will not be altered.

It is further noted that for the subject planning proposal for 136-148 New South Head Road, Council resolved on 12 September 2022 “*that due to an existing road reservation being over the corner part of the site, that Council recommends that the issue of the road reservation is resolved by the applicant with Transport for NSW (TfNSW) prior to the making of any LEP*”².

Nonetheless, the subject site-specific planning proposal expressly states it does not seek to alter the land reservation affectation.

² Woollahra Council Meeting Minutes, 12 September 2022.

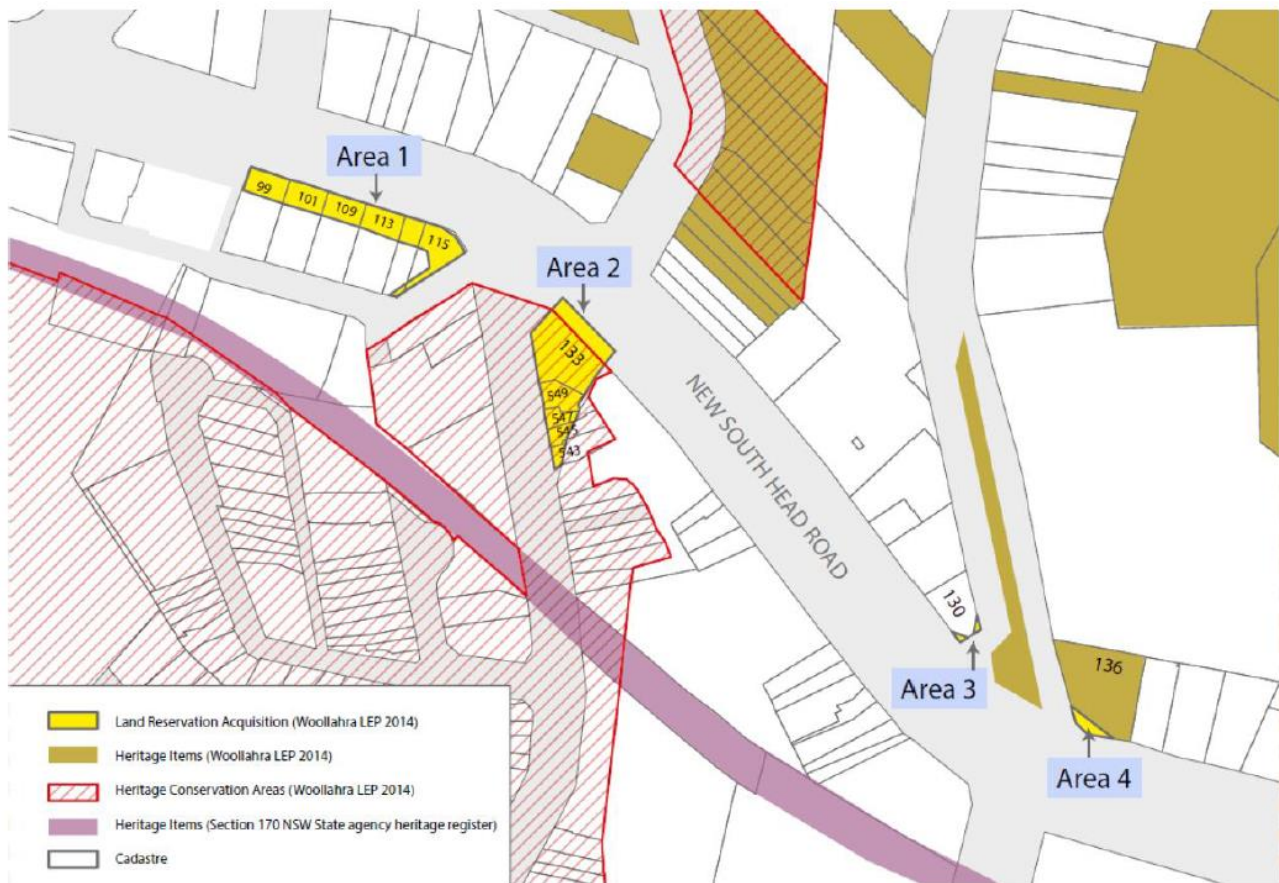


Figure 2: Existing land acquisition reservation in New South Head Road, Edgecliff. “Area 4” falls within the boundary of the subject site.

Draft clause and other requirements

The proposal conditional requirements that must be undertaken to enable the alternative and upper height and FSR controls proposed by this planning proposal as follows:

Site amalgamation

Amalgamation of all lots comprising the site into one lot, and development of the whole site as one development.

Vehicular access

The future development will not have vehicular access from New South Head Road.

Heritage

The existing heritage item (at Lot 1 DP 663485, item 238 – “Building and interiors”) will be conserved and incorporated into the development.

Community infrastructure (including affordable housing)

Provision of new and upgraded community infrastructure to support the increased density.

The proposed definition for “community infrastructure” encompasses the following items, **or recoupment of the cost of providing such items:**

- Public amenities or services, including community facility and public domain works;
- Affordable housing (provision of, or recoupment of cost);
- Transport or other infrastructure relating to the land (provision of, or recoupment of cost);

- Funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure;
- Monitoring of the planning impacts of development;
- Conservation or enhancement of the natural environment.

Design excellence

The future development is to exhibit design excellence to utilise the alternative height and FSR controls. The draft clause provides a list of matters that the consent authority must consider before granting development consent, which relate to architectural design, relationship with the context, sustainability, amenity, transport, housing diversity and public domain interface, etc. In particular, it also requires a proposed development to be “*consistent with an urban design and planning strategy, and public domain plan, adopted by the Council.*”

Additionally, the proposal also requires that development consent is not to be granted unless a “design review panel” has been convened to provide advice to the Council on the design excellence aspect of a development application (see sub-clause (6) of the draft clause). According to the definition in the draft clause, which inconsistently refers the panel as “design advisory panel”, it will be one that is established by Council to provide its officers with independent expert advice and expertise on urban design, architecture, landscape architecture, art and sustainability.

A Gateway condition is recommended to clarify whether the two panels are the same and use consistent terms throughout the document.

Site-specific development control plan

A site-specific development control plan (DCP) is to be prepared prior to the issuing of any development consent for a proposed development that exceeds the existing FSR (1.5:1) and height of buildings (14.5m) controls, unless it is minor in nature and does not result in any significant adverse impacts on the surroundings. The matters to be addressed in the DCP are not clearly explained in the draft clause (see the error in the draft clause below). A Gateway condition is recommended to address this issue.

Draft Clause

The above requirements are currently embedded in a the following drafted clause but are not explained in plain English in the planning proposal document.

A Gateway condition is recommended to require a plain English explanation of each of these conditional provisions.

6.8 136-148 New South Head Road, Edgecliff

(1) *The objectives of this clause, in relation to the land to which this clause applies, are –*

(a) to allow for increased density of development, where that development meets the requirements of subclauses (3)-(9),

(b) to ensure that development in accordance with this clause:

(i) reflects the desired future character for the site,

(ii) retains the scale of, and does not overwhelm the heritage item on the land,

(iii) includes an appropriate amount of non-residential floor space,

(iv) achieves diverse housing, including affordable housing,

(v) exhibits design excellence,

(c) to ensure the scale of development is commensurate with the capacity of existing and planned infrastructure,

(d) to ensure that community infrastructure is available to support the increased density permitted by this clause.

(2) *This clause applies to the land known as 136-148 New South Head Road, Edgecliff being:*

(a) Lot 1 DP663495 (No. 136),

- (b) Lot 1 DP1092694 (No. 138-140),
- (c) Lot 2 DP983678 (No 138-140),
- (d) Lot A DP443992 (No 142-144),
- (e) Lot B DP443992 (No 146-148).

(3) Despite clauses 4.3 and 4.4, consent may be granted to development on the land to which this clause applies that results in a floor space ratio that does not exceed 5:1 and a height that does not exceed 42m if –

- (a) All lots comprising the land will be amalgamated into one lot,
- (b) The whole of the amalgamated lot will be developed as one development,
- (c) There will be no vehicular access from New South Head Road to the development,
- (d) The heritage item (currently Lot 1 [sic – Lot 1] DP 663485) will be conserved, and incorporated into to [sic] the development,
- (e) The development will include non-residential floor space as a minimum of 3:1 floor space ratio and a maximum of 3.5:1 floor space ratio,
- (f) New and upgraded community infrastructure will be available to support the increased density permitted by this clause,
- (g) The development will achieve Design Excellence in accordance with sub clauses (6) and (7),

(4) Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.

(5) In considering whether a development exhibits design excellence, the consent authority must have regard to the following matters –

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,
- (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,
- (c) how the proposed development responds to the environment and built characteristics of the site and whether it achieves an acceptable relationship with other buildings on the same site and on neighbouring sites,
- (d) whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy, and water efficiency,
- (e) whether the proposed development detrimentally impacts on view corridors and landmarks,
- (f) pedestrian, cycle, vehicular and service access, and circulation requirements, including the permeability of the pedestrian network,
- (g) the impact on, and any proposed improvements to, the public domain,
- (h) appropriate interfaces at ground level between the building and the public domain,
- (i) whether the proposed development contains a mix of retail, commercial and residential uses,
- (j) whether the proposed development contains a diversity of residential dwelling types,
- (k) whether the proposed development is consistent with an urban design and planning strategy, and public domain plan, adopted by the Council.

(6) Development consent must not be granted to development on the land to which this clause applies unless a design review panel has provided advice to the Council on the design excellence to inform the assessment of the development application for the development.

(7) In this clause -

community infrastructure means a public purpose including any of the following:

- (a) The provision of (or recoupment of the cost of providing) public amenities or services, including community facility and public domain works,
- (i) The provision of (or the recoupment of the cost of providing) affordable housing,
- (ii) The provision of (or the recoupment of the cost of providing) transport or other infrastructure relating to land,
- (iii) The funding of recurrent expenditure relating to the provision of public amenities or public services, affordable housing or transport or other infrastructure,
- (iv) The monitoring of the planning impacts of development,
- (v) The conservation or enhancement of the natural environment.

design advisory panel** means a panel established by Woollahra Municipal Council to provide Woollahra Municipal Council officers with independent expert advice and expertise on urban design, architecture, landscape architecture, art, and sustainability

(8) Development consent must not be granted to development on the following land unless a development control plan that provides for the matters in subclause (4) [**sic – it appears to be referring to sub-clause (3) and/or sub-clause (5)**] has been prepared for the land—

a) The land known as 136-148 New South Head Road, Edgecliff, if the development will result in a building with a height greater than 14.5 metres above ground level (existing), or a floor space ratio greater than 1.5:1

(9) A development control plan is not required to be prepared if the consent authority is satisfied that such a plan would be unreasonable or unnecessary in the circumstances or that the development—

(a) involves only alterations or additions to an existing building, and

(b) does not significantly increase the height or gross floor area of the building, and

(c) does not have significant adverse impacts on adjoining buildings or the public domain, and

(d) does not significantly alter any aspect of the building when viewed from public places.

****Note:** Sub-clause (6) refers to “design review panel” which differs from “design advisory panel” here. A Gateway condition is recommended to seek clarification of the above.

1.4 Site description and surrounding area

The subject site is located at the corner of New South Head Road and Darling Point Road and is known as 136-148 New South Head Road, Edgecliff (**Figures 3 and 4**). It has an area of approximately 1,746m² (based on survey plan), and comprises the following lots:

- Lot 1 DP663495 (No. 136)
- Lot 1 DP1092694 (No. 138-140)
- Lot 2 DP983678 (No. 138-140)
- Lot A DP443992 (No. 142-144)
- Lot B DP443992 (No. 146-148)

The site consists of three buildings (**Figure 3**). A two-storey Inter-War Functionalist building listed in the Woollahra LEP as a local heritage item (I238) is located at 136 New South Head Road. It is currently used for commercial and residential purposes with an at grade car park to the rear. The site also accommodates a part three, part four-storey Inter-War residential flat building and a two-storey Federation Arts and Crafts former residential building currently used as commercial and medical suites.

The site also contains a very small residential lot (Lot 2 DP983678) at the north-eastern corner of No. 138-140 (**Figure 3** – circled in blue). This lot is not currently owned by Council or the applicant.



Figure 3: Subject site (source: Planning Proposal, November 2022) – a small lot currently not under the proponent or Council’s ownership is circled in blue).

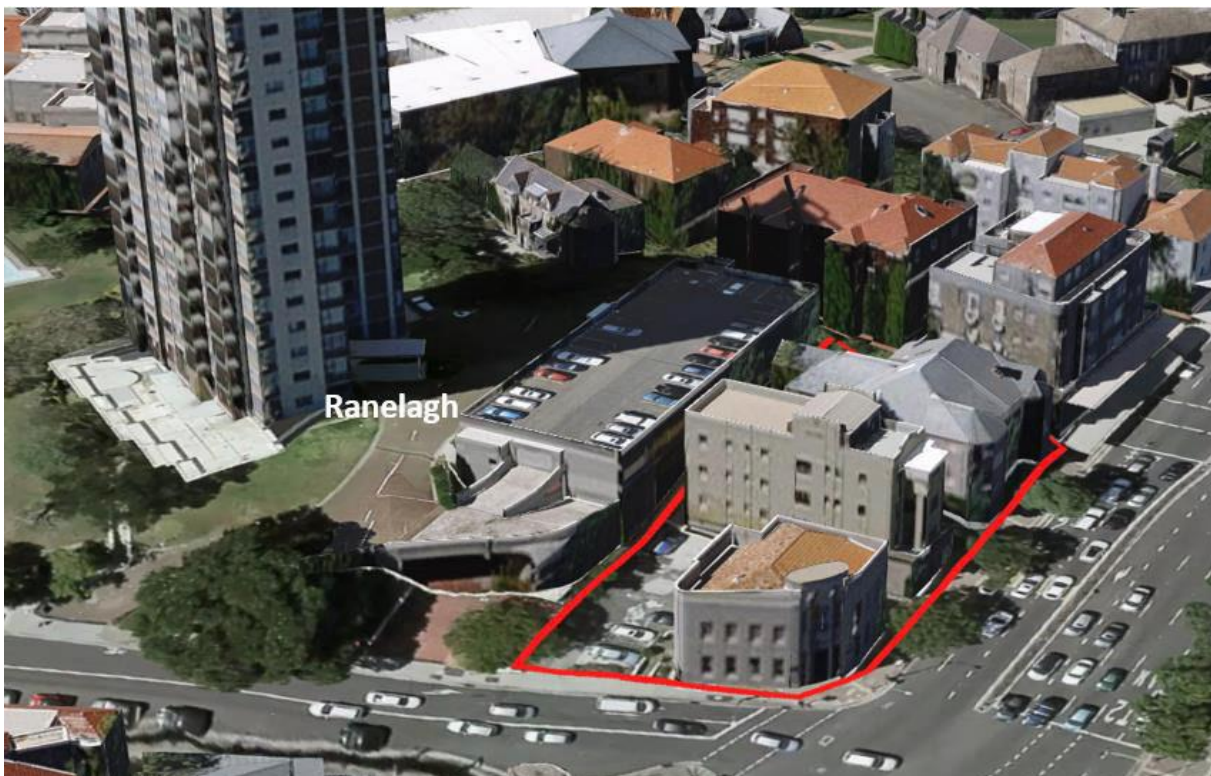


Figure 4 Subject site (source: Planning Proposal, November 2022)

The site is located within the Edgecliff local centre and is zoned B4 Mixed Use.

The surrounding context of the site is characterised by a mix of office, retail, residential and educational buildings. To the west of the site, within the Darling Point Road reserve, is a concrete balustrade listed as a local heritage item (I114). The area north of the site is zoned R3 Medium Density Residential, including the adjacent 31-storey “Ranelagh” apartment building. North-east of the site is Ascham School, which consists of several local heritage items, but does not share a boundary with the site. To the south of the site, the opposite side of New South Head Road is zoned B2 Local Centre, containing Edgecliff railway station and bus interchange within the East Point mixed-use development and a commercial building known as “Edgecliff Centre”.

The Department’s Employment Zones Reform work that, among other things, translates existing mixed use zone (“B4” zone) to the new MU1 Mixed Use zone is currently progressing and will be effective on 26 April 2023.

A Gateway condition is recommended to ensure the planning proposal makes reference to the new employment zones.

1.5 Mapping

The existing Land Zoning, HOB, FSR, Heritage and Land Acquisition Reservation Maps are extracted below. The proposal does not seek to alter these maps.

A Gateway condition is recommended to require the above existing mapping to be included in the planning proposal as per the Department’s LEP Making Guideline.

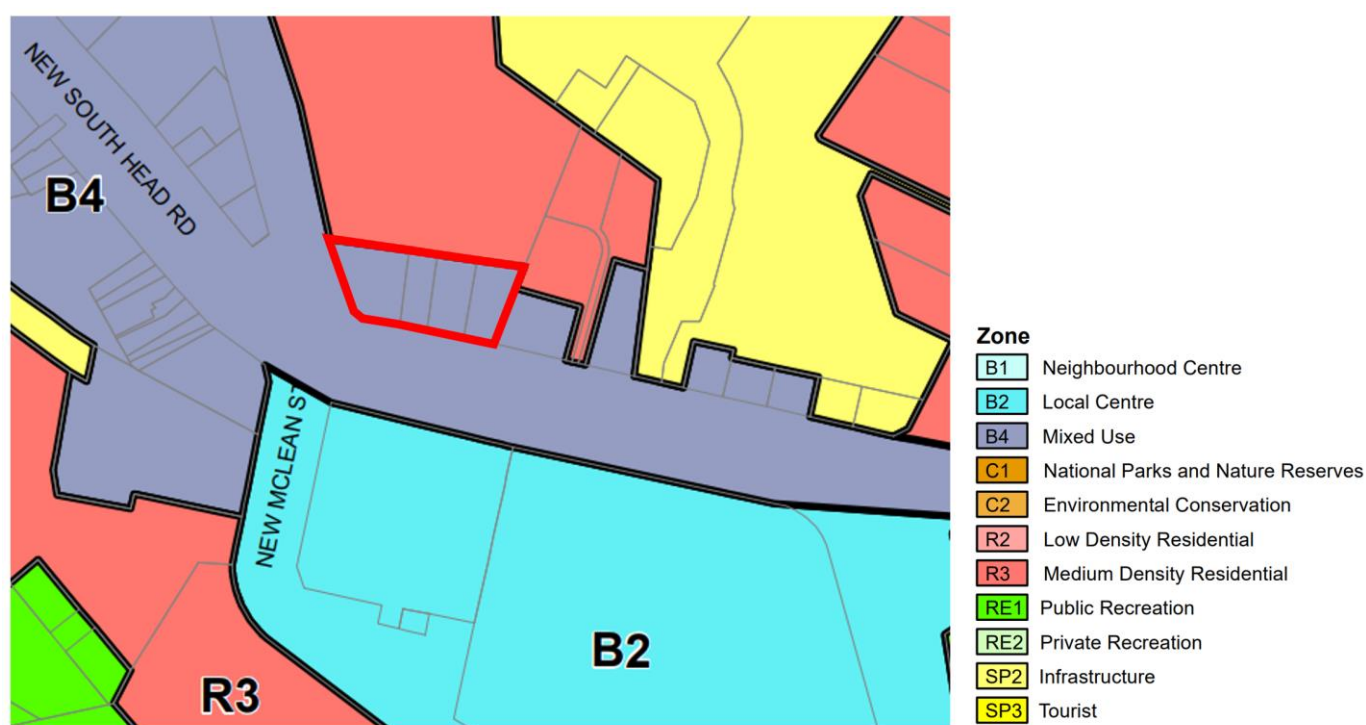


Figure 5: Existing Land Zoning map indicating the B4 zoning of the site (outlined in red)
(source: Woollahra LEP 2014)

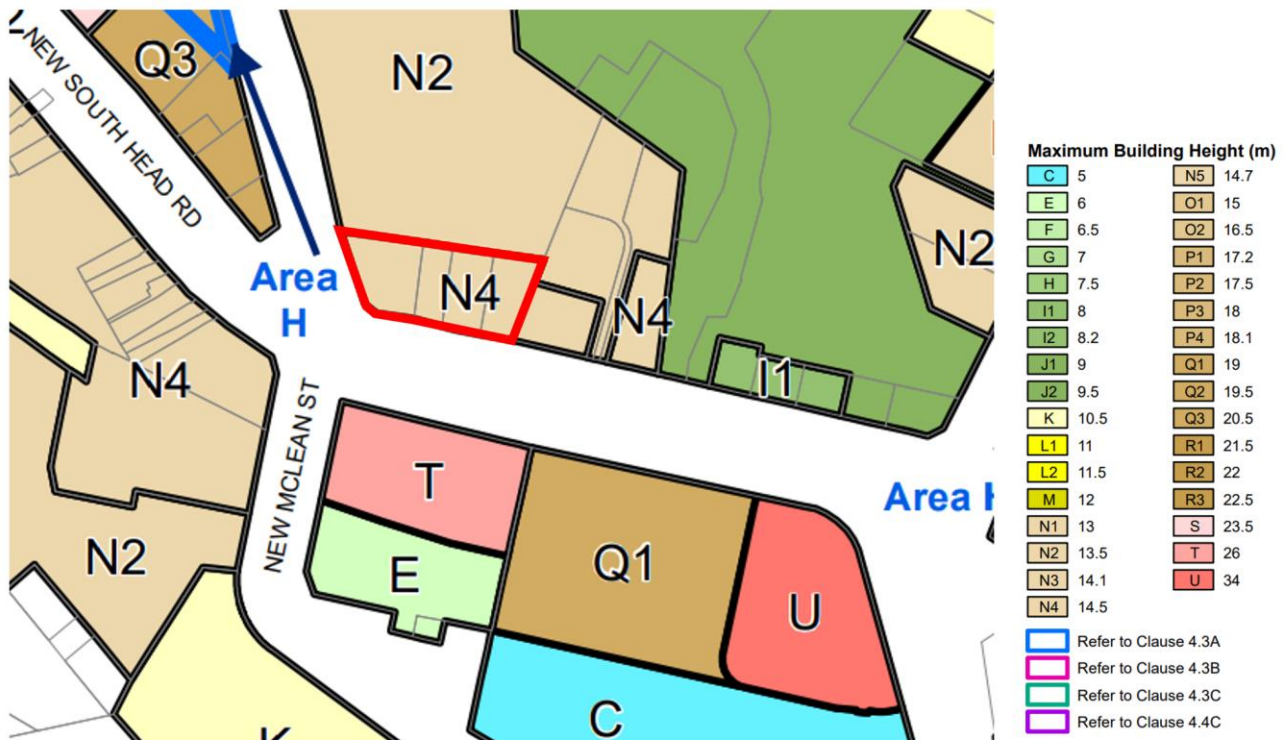


Figure 6: Existing Height of Buildings map indicating the 14.5m control for the site (outlined in red) (source: Woollahra LEP 2014)

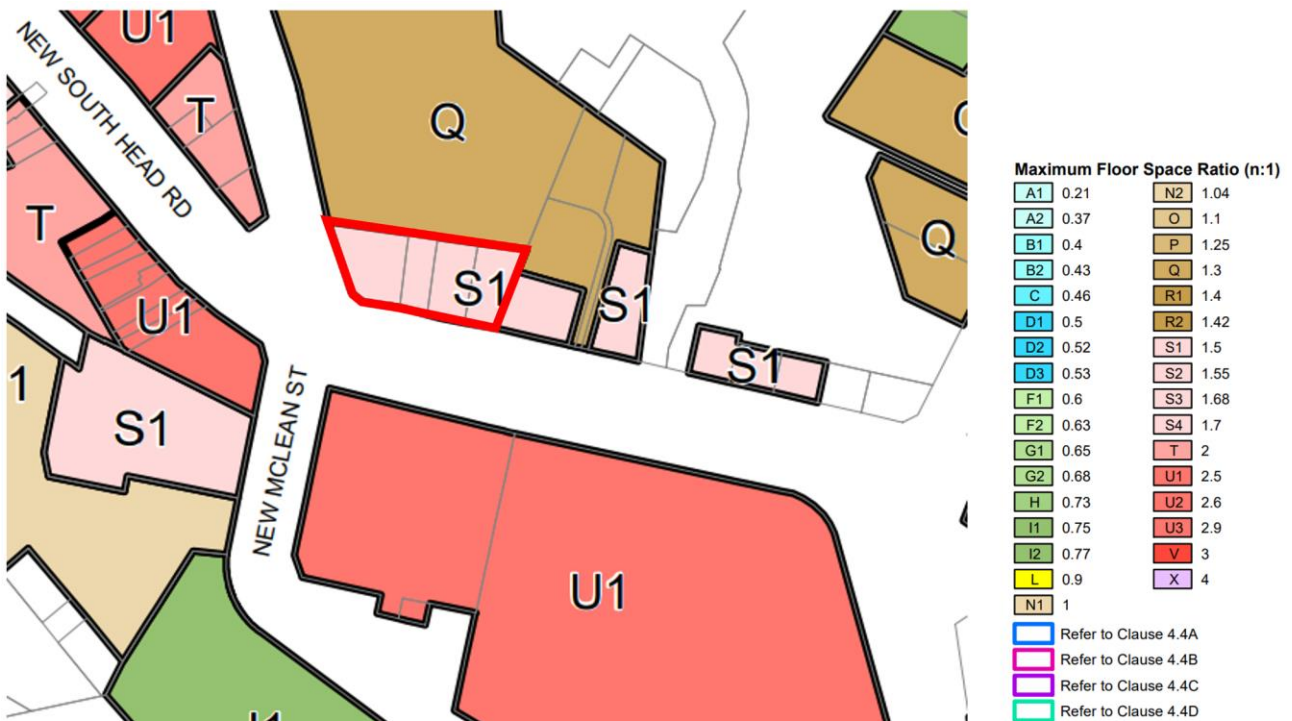


Figure 7: Existing FSR map indicating the 1.5:1 control for the site (outlined in red) (source: Woollahra LEP 2014)

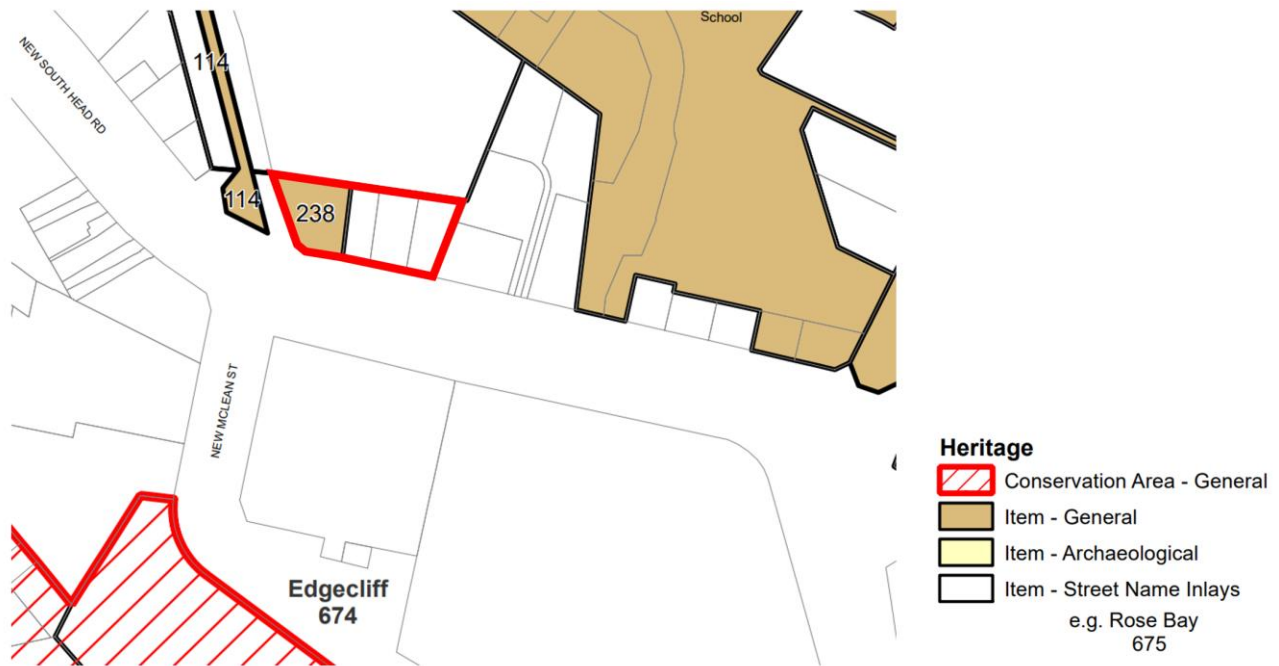


Figure 8: Existing Heritage map indicating the local heritage listing of 136 New South Head Road (the site is outlined in red) (source: Woollahra LEP 2014)

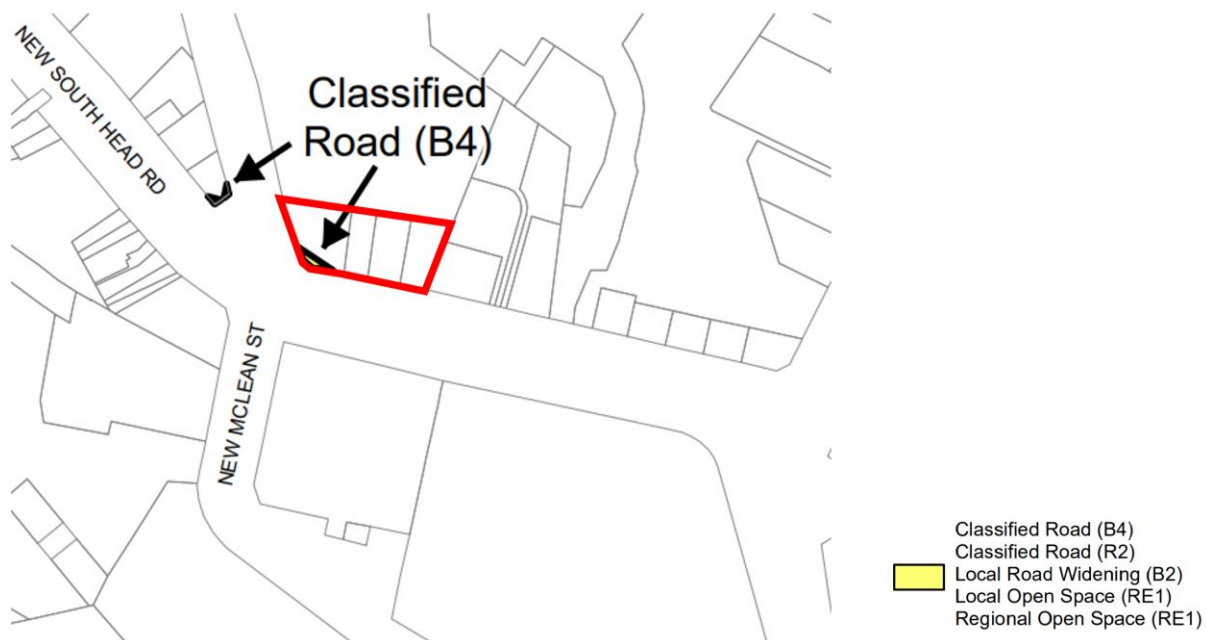


Figure 9: Existing Land Acquisition Reservation Map (the site is outlined in red) (source: Woollahra LEP 2014)

The planning proposal introduces a Key Sites Map to the Woollahra LEP 2014 and identifies the site on that map (**Figure 10**). It is unclear as to why a Key Sites Map is required. The draft map refers to Clause 6.8 of the LEP relating to the land at 252-254 New South Head Road, Edgecliff, which has recently been subject to a site-specific amendment for uplift. The draft local clause for the subject site does not refer to the Key Sites Map. A Gateway condition is recommended to require an explanation for the need of this map.

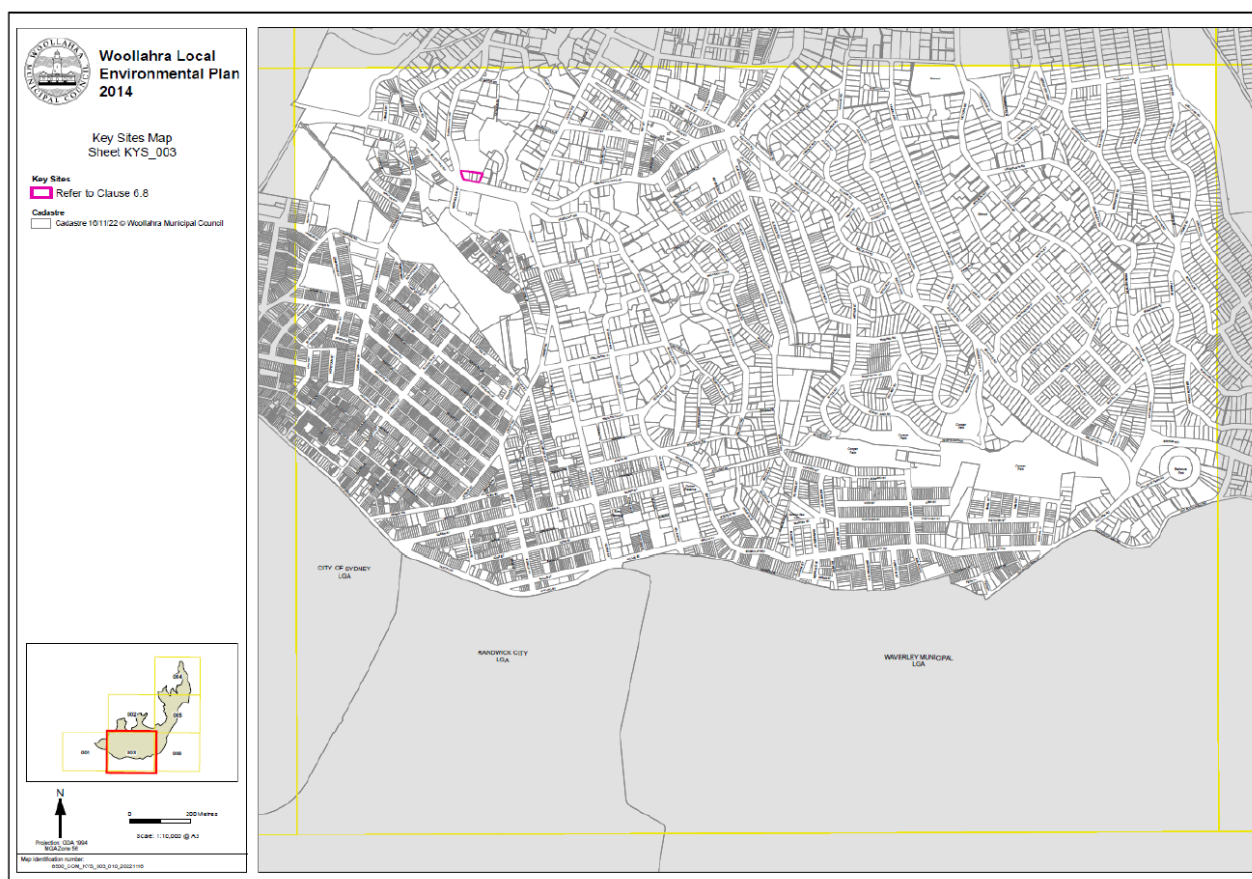


Figure 10: Proposed Key Sites Map (source: Planning Proposal, November 2022)

1.6 Local planning panel (LPP) recommendation

On 22 April 2022, the Woollahra LPP advised Council that it is premature to proceed with the proposal prior to the adoption of the draft ECC strategy. The LPP noted a number of unresolved strategic issues in relation to the capacity of the surrounding road network, status of the road reservation proposal, provision of community infrastructure, and the overall bulk and form of the centre. The LPP considered that the proposal does not have sufficient site-specific merit to proceed as a standalone proposal, particularly as it involves uplift without any mechanism within the LEP to ensure delivery of the benefits in the concept design.

While the LPP did not support the proposal for Gateway due to insufficient strategic or site-specific merit, it also made recommendations on the additional work to be undertaken:

- Further urban design and traffic analysis of whether the 46m height standard is beyond what is required to accommodate a 12-storey building and the cumulative traffic and transport implications and required mitigation measures.
- A site specific clause to be included to permit additional height and FSR, only if the following matters are satisfied:
 - Site amalgamation.
 - Conservation of the heritage item without being overwhelmed by the new building.
 - Provision of a minimum quantum of non-residential floor space.
 - Provision of affordable housing.

- Design excellence and commitment to sustainability beyond those required by the BASIX SEPP.

The LPP also recommended a site-specific DCP to be prepared and any draft voluntary planning agreement (VPA) to be exhibited concurrently with the proposal.

The subject planning proposal does not seek to remove or alter the road reservation affecting the corner of 136 New South Head Road. As discussed earlier, this matter has been the subject of a Gateway determination review. TfNSW has advised that the road reservation is required to be retained to facilitate future public and active transport improvements. A Gateway condition is recommended to require consultation with TfNSW to seek their advice on this current proposal.

1.7 Background

Date	Event
19 March 2021	Pre-application meeting: Council staff and the proponent discussed a concept plan for a building with a height of 66m (18 storeys) and an FSR of 6:1.
12 April 2021	Council requested the proponent address the following matters: reduce height to 12 storeys, reduce FSR, include an appropriate minimum non-residential FSR, and provide further documentation.
13 October 2021	<p>A planning proposal request was accepted by Council. The planning proposal report prepared by the proponent (dated September 2021) sought a maximum building height of 46m (12 storeys) and an FSR of 5:1, which was supported by a conceptual scheme and a draft DCP. The proposal sought to permit these alternative (higher) controls under certain conditions through a site-specific clause under Part 4 of the Woollahra LEP. The proposal described its intent via a draft clause that:</p> <ul style="list-style-type: none"> • Outlines objectives that seek to: <ul style="list-style-type: none"> - Permit a greater maximum FSR - Conserve and recognise the significance of the existing heritage item on the site - Promote design excellence - Facilitate provision of additional community infrastructure - Contribute to the growth of the Edgecliff centre - To ensure building design have regard to amenity impacts on surrounding properties. • Specifies requirements to enable application of the higher FSR and height of buildings standards: <ul style="list-style-type: none"> - Amalgamation of existing lots into one lot. - The development will achieve design excellence, contribute to additional community infrastructure and have regard to amenity impacts on surrounding properties. <p>Note: part (3) of the draft clause does not include any specific heritage provision that relates back to the proposed heritage objective.</p> <p>The requirements in the draft clause are broad, and generally seek to align with, in part, the implementation criteria of the draft ECC Strategy, being site amalgamation, design excellence, delivery of community infrastructure, and</p>

Date	Event
	consistency with the draft ECC Strategy. However, the last implementation criterion regarding consistency with the ECC Strategy is not mentioned in the draft clause.
5 November 2021	Council submitted planning proposal (PP-2021-6740) for the removal of four areas of land acquisition reservation in New South Head Road, Edgecliff (for future acquisition by TfNSW) to the Department for Gateway determination. Among other things, the proposal seeks to remove the land reservation (Area 4 – 136 New South Head Road) that affects the corner of the subject site (also see Section 1.3 “Explanation of Provisions” of this report).
April 2022	<p>In response to the proponent’s planning proposal request, Council prepared a draft planning proposal (dated 12 April 2022). The objective of the proposal was to redevelop the site for a 12-storey mixed use development. The proposal sought to increase the maximum height of buildings from 14.5m to 46m and the FSR from 1.5: to 5:1 by amending the relevant LEP map sheets (i.e. replacing the existing height and FSR controls with the proposed new maximums).</p> <p>This planning proposal noted on page 16 that <i>“It is envisaged the GFA will include non-residential use in the 4-storey podium and residential use above. These details will be included in a site-specific development control plan.”</i></p>
22 April 2022	<p>The Woollahra Local Planning Panel (LPP) advised Council that the planning proposal has insufficient strategic or site-specific merit to proceed as a stand-alone proposal, and that it should be incorporated into the Draft Edgecliff Commercial Centre Planning and Urban Design Strategy.</p> <p>The LPP also recommended that if Council does proceed with the proposal, then further urban design and traffic analyses should be undertaken. This is to test whether the 46m height standard is beyond what is required to accommodate a 12-storey building, and the cumulative transport and traffic implications of the proposal and required mitigation measures.</p> <p>The LPP also advised that the proposal should provide for a site-specific clause to permit increased FSR and height only if the followings are achieved:</p> <ul style="list-style-type: none"> • Site amalgamation • Retention and conservation of the heritage item, ensuring the scale of the building is maintained and not overwhelmed by the future building • Provision of a minimum quantum of non-residential FSR • Provision of affordable housing consistent with the Council’s adopted policy • Design excellence and commitments to sustainability beyond <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i>
31 May 2022	The proponent lodged a rezoning review (RR-2022-12) as Council had not made a determination within 90 days (the proposal was accepted by Council on 13 October 2021). The request was accepted by the Department on 1 July 2022 after the proponent has lodged the rezoning review request on the Planning Portal.
8 June 2022	The Department issued Gateway determination for planning proposal (PP-2021-6740) to not proceed with the removal of the road reservations, as TfNSW, as the relevant acquisition authority, has advised that the subject reservations are required for future public and active transport improvements.

Date	Event
4 July 2022	<p>Council's Environmental Planning Committee (EPC) recommended Council to endorse the proposal, subject to an addendum to identify that an increase in the maximum height of buildings and FSR is subject to satisfaction of the following requirements via a specific clause in the LEP:</p> <ul style="list-style-type: none"> • Site amalgamation • Retention and conservation of the heritage item, ensuring the scale of the item is maintained and not overwhelmed by the future building [note: this requirement is more specific than that mentioned in the proponent's planning proposal] • Specifying a minimum quantum of non-residential FSR [note: this is not mentioned in the proponent's draft clause. The proponent's draft DCP provisions include a requirement for the ground and first floors to comprise non-residential uses.] • Provision of affordable housing consistent with Council's adopted policy (as a percentage of the additional residential floor space) [note: this is not mentioned in the proponent's draft clause] • Design excellence (to be achieved through a competitive design process) [note: the competitive design process is not mentioned in the proponent's draft clause] • Commitments to sustainability beyond SEPP: BASIX [note: this is not mentioned in the proponent's draft clause. The proponent's draft DCP provisions include specific NABERS and BASIX target scores.] • A specified mix of apartment sizes [note: this is not mentioned in the proponent's draft clause. The proponent's draft DCP provisions include a requirement for providing a mix of dwelling sizes.] • Provision of, or contribution towards, community infrastructure [note: Council has been negotiating with the proponent regarding a potential voluntary planning agreement.]
22 July 2022	<p>Council submitted a request for Gateway determination review of the planning proposal (PP-2021-6740) for removal of road reservation to the Department.</p>
25 July 2022	<p>Council resolved to refuse the proposal and seek to incorporate the site into the post-exhibition version of the draft ECC Strategy.</p>
18 August 2022	<p>The Sydney Eastern City Planning Panel undertook the rezoning review and recommended that the planning proposal should be submitted for a Gateway determination with the Department because it has demonstrated strategic and site-specific merit.</p> <p>The Panel specifically recommended the proposal to include the following:</p> <ul style="list-style-type: none"> • <i>a clause requiring a design excellence competition or equivalent.</i> • <i>a clause requiring the subject site to be amalgamated to ensure no vehicle access to New South Head Road.</i> • <i>a clause for maximum number of storeys / height and Floor Space Ratio.</i> • <i>a draft DCP to be exhibited concurrently with guidelines for future development including massing; number of storeys; sustainability measures; relationship to local heritage item; wind analysis; minimal overshadowing of</i>

Date	Event
	<p><i>the public domain, including Trumper Park and plaza areas opposite and the appropriate mix of commercial and residential given characteristics of site.</i></p> <p>The Panel also recommended the existing road reservation affectation to be resolved prior to the making of an LEP.</p>
25 August 2022	The Planning Panel invited Council to be the Planning Proposal Authority (PPA).
12 September 2022	<p>Council resolved at the Ordinary Meeting to accept the PPA role and progress the planning proposal, and prepare an LEP clause in consultation with the applicant requiring, among other things:</p> <ul style="list-style-type: none"> <i>i. A design excellence competition or equivalent</i> <i>ii. Amalgamation to ensure no vehicle access to New South Head Road</i> <i>iii. Maximum number of storeys, height and floor space ratio</i> <i>iv. Affordable housing consistent with Council's adopted Affordable Housing Policy</i> <i>v. Provision of, or contribution towards, community infrastructure.</i> <p>Council also resolved that a draft DCP be prepared and exhibited concurrently with the planning proposal.</p>
10 October 2022	<p>The IPC issued advice for the Gateway determination review of planning proposal (PP-2021-6740). The advice supports consideration of the removal of Areas 2 and 4 of the road reservation, primarily due to their heritage status and that there appears to be no active/public transport work proposed. The IPC advises that Areas 1 and 3 should be considered for retention.</p>

Date	Event										
28 November 2022	<p>Council submitted the planning proposal to the Department for Gateway determination.</p> <p>There are differences between specific components of the planning proposal and the recommendations of the Sydney Eastern City Planning Panel. A comparison is provided below:</p> <table> <tr> <th>District Planning Panel advice</th><th>Planning proposal</th></tr> <tr> <td>A clause requiring design excellence competition or equivalent.</td><td>A list of design excellence criteria that future development applications (DAs) must satisfy, and a requirement for obtaining advice from a design review/advisory panel prior to the issuing of any consent.</td></tr> <tr> <td>A clause requiring site amalgamation to ensure no vehicular access to New South Head Road.</td><td>Consistent.</td></tr> <tr> <td>A clause for maximum number of storeys / height and FSR.</td><td>There is a set of alternative maximum FSR and height (in metres) controls, but not maximum number of storeys.</td></tr> <tr> <td>A draft DCP with guidelines including: massing, number of storeys, sustainability measures, relationship to local heritage item, wind analysis, minimal overshadowing of the public domain (including Trumper Park and plaza areas opposite), and mix of commercial and residential uses.</td><td> <p>The range of matters the site-specific DCP should address is not clearly stated.</p> <p>The planning proposal has identified a minimum and maximum non-residential FSR to be incorporated in the LEP and not the DCP. The proposal has also included heritage requirements in the draft LEP clause.</p> </td></tr> </table> <p>The Panel did not make specific recommendation on community infrastructure or affordable housing.</p>	District Planning Panel advice	Planning proposal	A clause requiring design excellence competition or equivalent.	A list of design excellence criteria that future development applications (DAs) must satisfy, and a requirement for obtaining advice from a design review/advisory panel prior to the issuing of any consent.	A clause requiring site amalgamation to ensure no vehicular access to New South Head Road.	Consistent.	A clause for maximum number of storeys / height and FSR.	There is a set of alternative maximum FSR and height (in metres) controls, but not maximum number of storeys.	A draft DCP with guidelines including: massing, number of storeys, sustainability measures, relationship to local heritage item, wind analysis, minimal overshadowing of the public domain (including Trumper Park and plaza areas opposite), and mix of commercial and residential uses.	<p>The range of matters the site-specific DCP should address is not clearly stated.</p> <p>The planning proposal has identified a minimum and maximum non-residential FSR to be incorporated in the LEP and not the DCP. The proposal has also included heritage requirements in the draft LEP clause.</p>
District Planning Panel advice	Planning proposal										
A clause requiring design excellence competition or equivalent.	A list of design excellence criteria that future development applications (DAs) must satisfy, and a requirement for obtaining advice from a design review/advisory panel prior to the issuing of any consent.										
A clause requiring site amalgamation to ensure no vehicular access to New South Head Road.	Consistent.										
A clause for maximum number of storeys / height and FSR.	There is a set of alternative maximum FSR and height (in metres) controls, but not maximum number of storeys.										
A draft DCP with guidelines including: massing, number of storeys, sustainability measures, relationship to local heritage item, wind analysis, minimal overshadowing of the public domain (including Trumper Park and plaza areas opposite), and mix of commercial and residential uses.	<p>The range of matters the site-specific DCP should address is not clearly stated.</p> <p>The planning proposal has identified a minimum and maximum non-residential FSR to be incorporated in the LEP and not the DCP. The proposal has also included heritage requirements in the draft LEP clause.</p>										
23 December 2022	TfNSW issued a letter to the Department confirming that all four areas of road reservation in New South Head Road, Edgecliff are required to be retained.										
12 April 2023	The Department wrote to the IPC, TfNSW and Council that the existing Gateway determination for planning proposal (PP-2021-6740) is to be maintained.										

2 Need for the planning proposal

The planning proposal is not the result of a study or strategy. However, the proposal has strategic merit having regard to the Region, District and Local strategic plans and policies.

The Draft Edgecliff Commercial Centre Planning and Urban Design Strategy (ECC Strategy), which was exhibited from 31 May to 30 September 2021, has outlined the vision for the revitalisation of Edgecliff centre and identified growth opportunities along with public benefits. The subject site falls within the study area boundary of the draft Strategy, however, is not identified for any uplift in the strategy's structure plan. According to the planning proposal, it was because the site was under separate ownership when the draft Strategy was prepared.

The proposal could complement Council's vision for Edgecliff local centre and contribute to meeting Woollahra's employment and housing targets. A planning proposal is the only means to introduce alternative height and FSR controls in the LEP, which could be accessed by developments when specific planning objectives and requirements are satisfied.

3 Strategic assessment

3.1 District Plan

The site is within the Eastern City District and the Greater Cities Commission released the Eastern City District Plan on 18 March 2018. The plan contains planning priorities and actions to guide the growth of the district while improving its social, economic and environmental assets.

The planning proposal is consistent with the priorities for infrastructure and collaboration, liveability, productivity, and sustainability in the plan as outlined below.

The Department is satisfied the planning proposal gives effect to the District Plan in accordance with section 3.8 of the *Environmental Planning and Assessment Act 1979*. The following table includes an assessment of the planning proposal against relevant directions and actions.

Table 2 District Plan assessment

District Plan Objectives	Justification
Liveability	<p><i>E5 – Providing housing supply, choice and affordability with access to jobs, services and public transport</i></p> <p>The proposal seeks to facilitate approximately 35 additional dwellings (the concept scheme indicates the provision of 41 dwellings in total) and 153 additional jobs (post-construction) on the site, which has high accessibility in close proximity to the Edgecliff railway station, bus interchange and local services.</p> <p><i>E6 – Creating and renewing great places and local centres, and respecting the District's heritage</i></p> <p>The proposal would contribute to the regeneration of Edgecliff centre by facilitating a new development with additional housing and employment opportunities.</p> <p>The concept scheme that informs the proposal has demonstrated that the existing heritage item at 136 New South Head Road can be conserved with its form, scale and character retained. The proposal is also supported by a heritage assessment that considers the values of the existing buildings on the site, and</p>

District Plan Objectives	Justification
	<p>potential impacts of the future development on the significance of the heritage items on the site and in the vicinity (the concrete balustrades on Darling Point Road I114 and Ascham School I239).</p> <p>Further consideration of the potential heritage impacts could be addressed by DCP controls and resolved at the development application stage.</p>
Productivity	<p><i>E10 – Delivering integrated land use and transport planning and a 30-minute city</i></p> <p>The proposal will facilitate an increase in jobs and housing within close proximity to businesses and services in Edgecliff centre and public transport.</p>
Sustainability	<p><i>E19 – reducing carbon emissions and managing energy, water and waste efficiently</i></p> <p>The proposal seeks to introduce design excellence requirement, which could facilitate the incorporation of sustainable design measures in the future development.</p>

3.2 Local

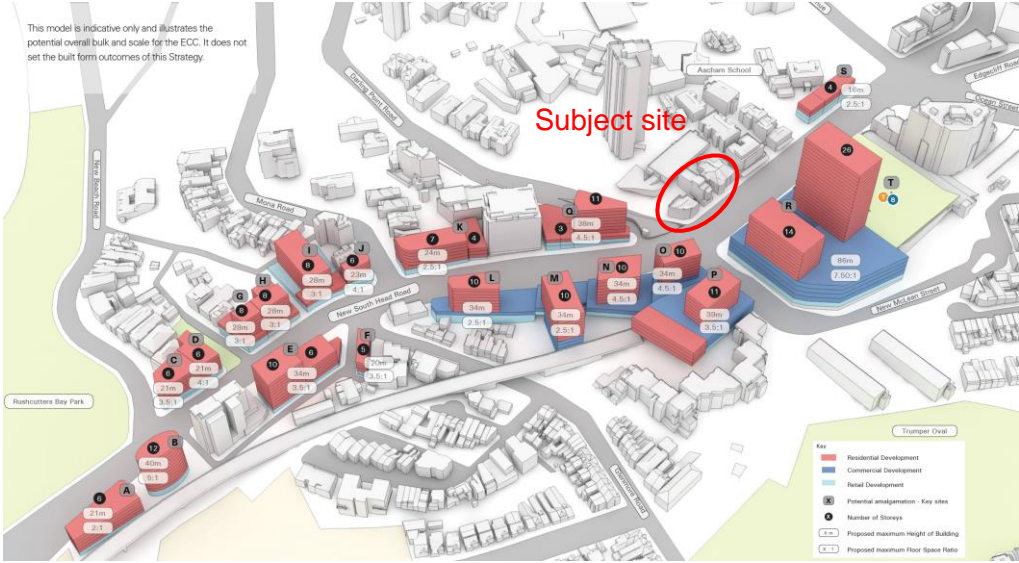
The proposal states that it is consistent with the following local plans and endorsed strategies. It is also consistent with the strategic direction and objectives, as stated in the table below:

Table 3 Local strategic planning assessment

Local Strategies	Justification
Woollahra Local Strategic Planning Statement (LSPS) 2020	<p>The LSPS identifies Edgecliff as a key local centre. This proposal will contribute to the revitalisation and strengthening of the centre. The proposal is consistent with the following Planning Priorities:</p> <p><i>1: Planning for integrated land use and transport for a healthy, sustainable, connected community and a 30-minute city.</i></p> <p>The proposal would facilitate approximately 35 additional dwellings and 153 additional on-going jobs in a highly accessible location close to public transport and services. The proposal would reinforce the role of Edgecliff as a key transport interchange.</p> <p><i>4: Sustaining diverse housing choices in planned locations that enhance our lifestyles and fit in with our local character and scenic landscapes.</i></p> <p>The proposal would broaden housing choice in Edgecliff centre by facilitating the provision of different sized dwellings.</p> <p><i>5: Conserving our rich and diverse heritage.</i></p> <p>The proposal is supported by a heritage assessment, which states that only the existing heritage item at 136 New South Head Road is worthy of retention. The concept scheme demonstrates that the above item can be conserved and integrated into the future development, with the new building incorporating a cantilever across a portion of the heritage item and setbacks to minimise its visual impact. The</p>

Local Strategies	Justification
	<p>conservation of heritage can be further addressed in a site-specific DCP and resolved at the development application stage.</p> <p><i>6: Placemaking supports and maintains the local character of our neighbourhoods and villages whilst creating great places for people.</i></p> <p>The proposal would facilitate a development with commercial uses at ground and podium levels that activate the public domain. The proposed local provision would also contribute to design excellence of the future development. A site-specific DCP could provide further design guidance to enhance place-making and conservation of heritage.</p> <p><i>8: Collaborating to achieve great placemaking outcomes in our local centres which are hubs for jobs, shopping, dining, entertainment and community activities.</i></p> <p>The proposal seeks to introduce minimum and maximum non-residential FSR controls to ensure there will be functional commercial floor space for different types of uses. As will be discussed in this report, there is an absence of economic analysis behind these proposed controls and as such they are not supported in their current form. However, the concept scheme demonstrates the provision of non-residential floor space equivalent to an FSR 1.63:1. A revised control based on this quantum and subject to further economic analysis would ensure an adequate mixed-use development outcome to enhance the diversity and vibrancy of Edgecliff centre.</p> <p><i>13: Improving the sustainability of our built environment, businesses, transport and lifestyles by using resources more efficiently and reducing emissions, pollution and waste generation.</i></p> <p>The proposal could facilitate a transit-oriented development that encourages the use of public transport. The introduction of design excellence requirements could also encourage the use of sustainable design measures in the future building.</p>
Woollahra 2030, Community Strategic Plan (CSP)	<p>The planning proposal is consistent with the relevant goals in the CSP:</p> <p><i>Goal 4: Well-planned neighbourhoods</i></p> <p>The Edgecliff centre has been identified by Council for revitalisation and growth supported by infrastructure. The proposal would deliver additional commercial floor space and housing within a modern building that contributes to the regeneration of the centre. The proposal would enhance the urban form and function of the local centre.</p> <p><i>Goal 5: Liveable places</i></p> <p>The proposal would enhance the urban design outcomes of Edgecliff centre by promoting design excellence, conserving local heritage, providing commercial opportunities to activate the pedestrian environment and encouraging usage of public transport.</p> <p><i>Goal 6: Getting around</i></p> <p>The proposal would provide additional dwellings and employment on a site with good access to public transport.</p> <p><i>Goal 9: Community focussed economic development</i></p>

Local Strategies	Justification
	<p>The proposal seeks to provide additional commercial floor space that would support new employment and business opportunities, provide additional local services and contribute to the revitalisation of Edgecliff centre.</p>
<p>Woollahra Local Housing Strategy (LHS)</p>	<p>The proposal does not address the LHS in detail. The relevant objectives and actions of the LHS are discussed below.</p> <p><i>Objective 1: Sustain a diverse range of housing types and protect low density neighbourhoods and villages</i></p> <p><i>Objective 2: Facilitate opportunities for housing growth in locations identified in the Woollahra Local Housing Strategy</i></p> <p><i>Objective 3: Ensure housing conserves heritage, maintains local character and achieves design excellence</i></p> <p><i>Objective 4: Support increased supply of accessible housing and affordable rental housing</i></p> <p>The LHS notes that Edgecliff centre has the potential to accommodate growth based on the local context and infrastructure and servicing level.</p> <p>The proposal would deliver additional housing within Edgecliff centre with access to high-frequency public transport and aligns with Council's vision to revitalise the centre. It could provide a variety of apartments within a tower plus podium built form that responds to the local character. The proposal is informed by a concept scheme demonstrating the conservation of the heritage item at 136 New South Head Road and that the new building could be setback to minimise visual impacts on the item. The provision of non-residential floor space would support the employment and business role of the centre.</p> <p>The LHS provides that 'uplift' must contribute to provision of infrastructure upgrades and maintain or increase affordable housing. The proposal has included specific requirements for community infrastructure and affordable housing, further discussion about these aspects is in later sections in this report.</p> <p>In the Department's approval of the LHS, dated 11 March 2022, Condition 10 provides that only affordable housing schemes that are based on areas of uplift and have undergone feasibility testing will be supported. Condition 11 further provides that Council is to prepare an affordable housing contributions scheme (AHCS) in accordance with the Guideline for Developing an Affordable Housing Contribution Scheme. The Department notes that Council is investigating the preparation of an AHCS for the Edgecliff Commercial Centre, in line with the discussions in the draft ECC Strategy that a minimum of 5% of new residential floor space is to be provided as affordable housing.</p> <p>The proposal includes a 'community infrastructure' requirement that encompasses the provision of affordable housing or the recoupment of the cost of providing such. The proposed local provision does not specify the quantum of affordable housing to be delivered, is not informed by any feasibility testing, and is not based on any affordable housing scheme set out or referenced in the LEP. This aspect of the proposal is inconsistent with the LHS approval.</p> <p>Condition 3 of the LHS requires Council to continue its strategic planning work for the Edgecliff centre, and a planning proposal is to be lodged for Gateway for all or some</p>

Local Strategies	Justification
	<p>of the study area identified in the draft ECC Strategy by end of 2024. This is considered necessary to contribute to sufficient housing capacity beyond 2026.</p> <p>Although the subject site is not identified for any development uplift under the draft ECC Strategy, it is within the study area boundary of the strategy. The proposal would complement the directions of the strategy and contribute to housing growth within the Edgecliff centre. As such, the proposal is consistent with the requirement of Condition 3.</p> <p>A Gateway condition is recommended to require specific commentary addressing the LHS and relevant requirements of the Department's approval to be included in a revised planning proposal prior to exhibition.</p>
<p>Draft Edgecliff Commercial Centre Planning and Urban Design Strategy (ECC Strategy)</p>	<p>The draft ECC Strategy was exhibited from 31 May to 30 September 2021. The Strategy identifies a vision to revitalise the Edgecliff centre and makes recommendations on key planning outcomes including land uses, density, building heights, heritage conservation, active street frontages, affordable housing, community infrastructure, transport and design excellence.</p> <p>The draft Strategy identifies maximum FSRs and heights as well as opportunities for amalgamation across multiple sites. It proposes maximum building heights ranging from 17-89 metres (4 to 26 storeys), maximum FSRs of 2.0:1 to 7.5:1 and minimum non-residential FSRs of between 1:1 and 3:1 based on site constraints and context for various sites across the strategy's area, but does not signal any changes for the subject site. The largest landholding in the Strategy is "Edgecliff Centre" located directly opposite to the subject site.</p>  <p>Figure 11 Massing diagram in the draft ECC Strategy (source: draft ECC Strategy 2021)</p> <p>The subject site is not identified in the Strategy as a 'key site' with uplift opportunity (see Figure 11). This is because when the Strategy was prepared, the site was under separate ownership and Council was not satisfied that appropriate vehicular access could be provided without amalgamation.</p> <p>However, all properties constituting the site except for a small lot have now been acquired by the proponent. The proposal is generally consistent with the vision of the Strategy to recognise the role of Edgecliff as a key local hub, which <i>"will continue to serve an important economic function and provide diverse opportunities for a range of services, commercial and retail, community facilities and housing"</i>. At the time of writing, Council is progressing further studies relating to the centre, including heritage,</p>

Local Strategies	Justification
	<p>which may inform any post-exhibition changes to the Strategy before being referred to the Council Meeting for a decision.</p> <p>The draft ECC Strategy currently remains in draft form and has not been endorsed by Council. If the Strategy is endorsed by Council, it will inform a planning proposal(s) for changes to the planning controls of the centre.</p>

3.3 Section 9.1 Ministerial Directions

The planning proposal's consistency with relevant section 9.1 Directions is discussed below:

Table 4 9.1 Ministerial Direction assessment

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
1.1 Implementation of Regional Plans	Consistent	The proposal is consistent with the priorities and actions of the Eastern City District Plan, which give effect to the objectives and directions of the Region Plan. Refer to Section 3.1 of this report.
1.4 Site Specific Provisions	Unresolved	<p>This Direction applies as the planning proposal seeks to introduce a site-specific local provision that will incentivise additional building height and FSR, subject to certain requirements.</p> <p>The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. Clause (1)(c) states that a planning proposal must <i>“allow that land use on the relevant land without imposing any development standards or requirements in addition to those already contained in the principal environmental planning instrument being amended.”</i></p> <p>The Direction provides that a planning proposal may be inconsistent with its terms if the inconsistency is of minor significance. Several aspects of the proposed local provision are inconsistent with this direction. An assessment of these elements against the terms of the Direction is provided below:</p> <p><u>Non-residential FSR</u></p> <p>Council's planning proposal includes a maximum and minimum non-residential FSR control of 3:1 (Council later suggests 2:1) and 3.5:1 respectively. The proponent sought to include non-residential floor space on the ground and first storeys via DCP controls, and the District Planning Panel also recommended the DCP to identify an appropriate land use mix for the site.</p> <p>As will be discussed in section 4.2 of this report, a Gateway condition is recommended to amend the minimum non-residential FSR to 1.6:1 in line with the concept scheme and for this control to be subject to feasibility testing. A minimum non-residential FSR would ensure that Edgecliff commercial centre would continue to perform as a key local economic hub for the LGA. However, a maximum non-residential FSR is considered to be unnecessarily restrictive by capping the amount of potential employment floor space within the centre. Subject to the Gateway condition, the</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>inconsistency with the Direction would be minor in nature and justified.</p> <p><u>Site amalgamation</u></p> <p>Council's planning proposal seeks to require site amalgamation with no vehicle access to New South Head Road. The proponent's proposal included a requirement that <i>"the existing lots are to be amalgamated into one lot."</i> The District Planning Panel recommended the proposal include <i>"a clause requiring the subject site to be amalgamated to ensure no vehicle access to New South Head Road."</i></p> <p>The site amalgamation requirement would ensure orderly development of the site and minimise potential impact on traffic safety and the streetscape of New South Head Road. The inconsistency with the Direction is minor in nature and justified.</p> <p><u>Site-specific DCP</u></p> <p>Council's proposal includes a requirement for a site-specific DCP to be prepared before the consent authority may grant consent to a development proposal that utilises the alternative FSR and height controls. The proponent had prepared a set of draft DCP provisions in support of their planning proposal request, and the District Planning Panel also recommended a DCP to be prepared to address various matters.</p> <p>As the site is within Edgecliff commercial centre which has been identified by Council for planning changes, a site-specific DCP is appropriate to ensure future development on the subject site aligns within Council's vision for the broader centre. As will be discussed in section 4.1.6 of this report, a Gateway condition is recommended to require clarification of the matters to be addressed by the DCP. Subject to this condition, the inconsistency with the Direction is considered to be minor in nature and justified.</p> <p><u>Heritage</u></p> <p>The draft clause in Council's planning proposal requires the existing heritage item on the site to be conserved and incorporated into the development. The proponent's planning proposal request included an objective in its draft clause <i>"to conserve and recognise the heritage significance of the existing heritage building on the site"</i> but did not include a more substantive control. The District Planning Panel has recommended that the site-specific DCP provide guidelines to address the relationship between the future development and the local heritage item.</p> <p>Clause 5.10 of the Standard Instrument LEP already provides for conservation of heritage. Detailed guidance on protecting heritage and integrating with new development should be contained in the DCP. As such, it is not necessary for the above-mentioned requirement to be prescribed in the local provision. A Gateway</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>condition is recommended to require removal of the above requirement from the proposed local provision.</p> <p><u>Design excellence</u></p> <p>Council's proposal includes a requirement for the consent authority to consider a range of matters to determine whether a development exhibits design excellence; the consent authority is to form the opinion that a proposed development exhibits design excellence before granting any development consent. The range of matters, among other things, include <i>"whether the proposed development is consistent with an urban design and planning strategy, and public domain plan, adopted by the Council."</i></p> <p>The proponent's planning proposal request included an objective <i>"to promote design excellence"</i> and a draft requirement that <i>"the consent authority is satisfied that the development will achieve design excellence..."</i> in order for a development to utilise the alternative FSR and height controls. The District Planning Panel recommended <i>"a clause requiring a design excellence competition or equivalent"</i>.</p> <p>The reference in Council's planning proposal to planning documents adopted by Council is very broad and non-specific. It appears they refer to the ECC Strategy and related public domain plan which are both in draft form and have not been endorsed by Council. Detailed planning and design guidance for future development in the Edgecliff centre could be provided in the DCP. It is considered to be too restrictive to require consideration of such documents via an LEP provision. A Gateway condition is recommended to remove this item from the proposed design excellence provision.</p> <p>The other design excellence matters are considered to be appropriate to ensure a high quality design outcome is achieved for development that utilises the alternative height and FSR controls. Refer to section 4.1.4 for further discussion on this matter.</p> <p><u>Community infrastructure and affordable housing</u></p> <p>Council's planning proposal includes a requirement for the provision of (or recoupment of the cost of provision) community infrastructure, such as public amenities or services, community facilities, public domain works, affordable housing and transport infrastructure, etc.</p> <p>The proponent's planning proposal included a requirement that <i>"the consent authority is satisfied that the development will... contribute to the provision of additional community infrastructure..."</i> The District Planning Panel did not make any specific recommendation relating to community infrastructure.</p> <p>As will be discussed in section 4.3 of this report, the proposed community infrastructure requirement cannot be supported having</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>regard to the provisions of the <i>Environmental Planning and Assessment Act</i>. The Department considers that:</p> <ul style="list-style-type: none"> • The proposed requirement for community infrastructure (and affordable housing) is very broad and non-specific. • Council does not yet have an affordable housing contributions scheme that is referenced in the LEP. • There is no feasibility analysis of the cumulative impacts of the applicable development contributions, levies and the proposed infrastructure requirements on the viability of development. It is noted the proponent does not support this element in its correspondence to the Department. • The proposed recoupment of cost would, in effect, function as a monetary development contribution. The proposal appears to establish a new development contributions regime that is outside the legal framework under section 7.11 or section 7.12 of the <i>Environmental Planning and Assessment Act 1979</i>. <p>A Gateway condition is recommended to remove the community infrastructure and affordable housing requirements.</p> <p>It is also recommended that the proposal be revised to include a plain-English explanation of the intended provisions. An updated draft clause may be included as an example only. A Gateway condition is recommended to the above effect.</p> <p>The consistency of the proposal in its current form with the direction is unresolved.</p>
3.2 Heritage Conservation	Consistent	<p>The objective of this Direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p> <p>The site contains a heritage item at 136 New South Head Road (I238). The nearby heritage items include the concrete balustrade within Darling Point Road (I114) and the Ascham School (I239). The proposal does not seek to alter the existing heritage provisions or listing.</p> <p>The proposal is informed by a heritage assessment report. The proposal has also considered how the existing heritage item can be conserved and integrated with the new development.</p> <p>Further planning and design guidance on conserving heritage items on or adjacent to the site could be addressed in the site-specific DCP and resolved at the development application stage.</p>
4.1 Flooding	Consistent	<p>The objectives of this Direction are to ensure that development of flood prone land is consistent with the Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual, and to ensure the provisions of an LEP are commensurate</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>with flood behaviour and consider potential flood impacts both on and off the subject land.</p> <p>The proposal states that it will not rezone flood liable land or affect the application of controls relating to flood management. To avoid doubt, it is recommended that a Gateway condition be included to require confirmation on whether the site is flood-prone land or not as defined in the Floodplain Development Manual 2005.</p>
4.4 Remediation of Contaminated Land	Consistent	<p>The objective of the Direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and remediation are considered by planning proposal authorities.</p> <p>The planning proposal does not relate to land that is within an investigation area under the Contaminated Land Management Act 1997. The proposal is accompanied by a detailed site investigation (Attachment R) that found that the site can be made suitable for the proposed development.</p> <p>The Department is satisfied that the land can be remediated and made suitable for the proposed development. Further consideration of this matter can be undertaken at the development application stage.</p>
4.5 Acid Sulfate Soils	Consistent	<p>The objective of the Direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulfate soils.</p> <p>This planning proposal relates to land identified as being affected by Class 5 acid sulfate soils. Further consideration of this matter can be undertaken at the development application stage.</p>
5.1 Integrating Land Use and Transport	Consistent	<p>The objectives of this Direction are to ensure that urban structures, building forms, land use locations, development designs, subdivision and street layouts achieve the following planning objectives:</p> <p><i>(a) improving access to housing, jobs and services by walking, cycling and public transport, and</i></p> <p><i>(b) increasing the choice of available transport and reducing dependence on cars, and</i></p> <p><i>(c) reducing travel demand including the number of trips generated by development and the distances travelled, especially by car, and</i></p> <p><i>(d) supporting the efficient and viable operation of public transport services, and</i></p> <p><i>(e) providing for the efficient movement of freight.</i></p> <p>This direction applies as the proposal seeks to create a local provision relating to urban land.</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>The proposal seeks to facilitate a mixed-use development on land with good access to public transport. The site is within walking distance to Edgecliff Station and bus interchange. A range of bus and train services provide regular links between Bondi Junction, Vaucluse, Watsons Bay, Darling Point, Walsh Bay, Sydney CBD and Chatswood. The site is also within the catchments of several public and secondary schools and walking distance from public open space.</p> <p>The proposal is accompanied by a traffic and parking assessment. Council has previously commissioned a traffic study to support its draft ECC Strategy, which recommends a range of mitigation measures and road works to facilitate growth in the centre. The traffic and parking report that informs the proponent's proposal states that the subject proposal would not generate a level of traffic that requires additional mitigation works beyond that outlined in the draft ECC Strategy. The proposal also does not require vehicular access directly from New South Head Road, which is a Classified Road.</p> <p>Council's planning proposal states that "... <i>Council staff have concerns about some of the traffic generation calculations, these can be addressed should the planning proposal progress</i>" (p. 24). An advisory note should be provided to encourage Council to continue to work with the proponent with regard to traffic related matters. A Gateway condition is also recommended to require consultation with TfNSW as the site has a frontage to New South Head Road and would have implications on its performance.</p> <p>The proposal is consistent with this direction as it does not contain a provision which is contrary to the aims, objectives and principles of <i>Improving Transport Choice – Guidelines for planning and development</i> (DUAP 2001) and <i>The Right Place for Business and Services – Planning Policy</i> (DUAP 2001).</p> <p>There is a road reservation affecting part of the site. This matter is discussed in Ministerial Direction 5.2 below.</p>
5.2 Reserving Land for Public Purposes	Consistent	<p>The objectives of this Direction are to facilitate the provision of public services and facilities by reserving land for public purposes, and to facilitate the removal of reservations of land for public purposes where it is no longer required for acquisition. This direction applies to all planning proposals.</p> <p>Part of the site (corner of 136 New South Head Road) is affected by road acquisition reservation with TfNSW as the relevant public authority. As outlined in sections 1.3 "Explanation of Provisions" and 1.7 "Background" of this report, Council has sought to have the road reservation removed via a separate planning proposal (PP-2021-6740), which was subsequently the subject of a Gateway determination review by the IPC. The IPC recommended, among</p>

Directions	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
		<p>other things, that removal of the road reservation affecting the subject site be considered.</p> <p>However, following the Gateway determination review, TfNSW advised the Department that all four areas of road reservation, including the one that affects the subject site, are required to be retained. However, the current proposal does not seek to remove this road reservation. On 12 April 2023, the Department wrote to Council, TfNSW and IPC that the existing Gateway determination to not proceed with the proposal will be maintained.</p> <p>The road reservation extends across the corner of the existing heritage item at 136 New South Head Road; the concept scheme shows that this item will be retained with the new building cantilevering over part of the building and positioning away from the reserved land.</p> <p>A Gateway condition is recommended to require consultation with TfNSW to ascertain whether there are any concerns with the proposal having regard to the road reservation. Feedback from TfNSW would assist in determining whether the FSR should be adjusted at the finalisation stage.</p>
7.1 Industry and Employment	Consistent	<p>The objectives of this Direction are to encourage employment growth in suitable locations, protect employment land in business and industrial zones, and support the viability of identified centres.</p> <p>This Direction applies as the planning proposal affects land within an existing B4 zone. The proposal is consistent with this direction as it seeks to increase the employment floor space in an accessible area.</p>

3.4 State environmental planning policies (SEPPs)

The planning proposal is consistent with all relevant SEPPs as discussed in the table below.

Table 5 Assessment of planning proposal against relevant SEPPs

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
SEPP 65 Design Quality of Residential Apartment Development	<p>The SEPP aims to improve the design quality of residential apartment development.</p> <p>Clause 28 provides that a DA to which this SEPP applies is to be referred to the relevant design review panel (if any) prior to consent being granted. It further provides that the consent authority is to consider the advice from that panel and the design quality principles and Apartment Design Guide (ADG) before the DA is determined.</p>	Yes	<p>The planning proposal is supported by an Indicative Concept Report (Attachment J) with information that addresses the Apartment Design Guide. In particular, the report has considered the building envelope, privacy, open space provision and deep soil planting requirements of the ADG. An Urban Design Report (Attachment I) was also prepared that explains the building envelope having regard to the site context, heritage, views, solar access and other constraints and opportunities.</p> <p>Section 4 below provides a more detailed assessment of the urban design and amenity aspects of the proposal. Further assessment against the ADG could be undertaken at the development assessment stage.</p> <p>The planning proposal seeks to establish a design review/advisory panel to provide advice to the Council officers for future development on the site that utilises the alternative FSR and height controls. There is adequate merit in setting up the panel to ensure a high quality design outcome for future development on the site. Refer to Section 4 below for a further discussion on this matter.</p>

SEPPs	Requirement	Consistent/ Not Applicable	Reasons for Consistency or Inconsistency
Resilience and Hazards 2021	The object of the applicable chapter is to provide for a State-wide planning approach to the remediation of land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.	Yes	<p>Chapter 4 of this SEPP applies. The planning proposal does not relate to land that is within an investigation area under the Contaminated Land Management Act 1997. The planning proposal is accompanied by a detailed site investigation that found that remediation of contaminated fill will be required, but that the site can be made suitable for the proposed development.</p> <p>The Department is satisfied that the land can be remediated and made suitable for the proposed development.</p> <p>Further consideration of this matter can be given at the development application stage.</p>
Biodiversity and Conservation 2021	This SEPP aims to protect the biodiversity values of trees and other vegetation, provide habitat for koalas, enhance the riverine environment of the River Murray and Hawkesbury-Nepean River system, preserve bushland within certain urban areas, prohibit canal estate development, provide healthy water catchments, and protect the Sydney Harbour Catchment area.	Yes	<p>Chapter 2 of the SEPP that aims to protect the biodiversity values of trees and vegetation applies to land zoned B4 Mixed Use in the Woollahra LGA. Specific provisions apply to clearing of vegetation on development sites. The proposal will not interfere with the operation of the SEPP.</p>

4 Site-specific assessment

4.1 Environmental

The site is not identified as an environmentally sensitive area or containing endangered ecological communities.

The potential environmental impacts associated with the proposal are discussed below.

4.1.1 Urban design and heritage

The planning proposal prescribes a maximum alternative FSR of 5:1 and maximum alternative building height of 42m. The proponent's planning proposal report (September 2021) and Council's draft planning proposal referred to the Planning Panel at the rezoning review both indicated a maximum building height of 46m. Notably council's own resolution at its meeting on 12 September also mentions 46m as the proposed maximum building height. The proposal needs to be revised to correctly refer to Council's resolution for a maximum building height of 46m.

The proposal is supported by a concept development scheme that features a 12-storey building, consisting of a 3 to 4-storey podium with commercial uses and a residential tower above (**Figure 12**). Council's planning proposal states that the 12-storey height is similar to the existing Eastpoint tower where the transport interchange is located; but would be lower than the 14 to 26 storeys recommended for the opposite side of New South Head Road under the draft ECC Strategy. In this regard the proposed general height of 42-46m would provide a suitable built form transition between the Edgecliff centre and the adjoining residential neighbourhoods.

The podium and tower typology is consistent with that recommended for the "key sites" under the draft ECC Strategy. The suggested podium would assist in maintaining a 'human scale' to the street and the built form could be further modelled and articulated to minimise visual bulk. The relevant design guidance can be included in the site-specific DCP to accommodate this type of built form typology and include suitable building setbacks.

The concept scheme also illustrates a development outcome that would conserve the heritage item at 136 New South Head Road (I238), which incorporates setbacks from the eastern elevation of the item with the tower partially cantilevering over it. The indicative design shows that the overall form and scale of the heritage item as an individual building would be maintained. Detailed site-specific design guidance on protecting the heritage values of the site could be addressed in the DCP and resolved at the development application stage.

The proposal is informed by a heritage assessment that finds that the other two existing buildings on the site do not reach the threshold for local listing.

The concept scheme proposes commercial uses (i.e. retail and office) at the ground and podium levels. The retail uses would contribute to activation of the New South Head Road frontage. Further consideration of the non-residential FSR component of the proposal is provided below.



Figure 12: Images showing the concept development scheme as viewed from New South Head Road looking west (left) and Darling Point Road looking south-east (right)

4.1.2 Building height

The proponent seeks an alternative building height of 46m. Council in its role as the planning proposal authority (PPA) revised the height to a maximum of 42m. The Woollahra LPP has previously questioned whether the 46m height standard is beyond what is required to accommodate a 12-storey building and requested the staff to review this element. Despite this the council resolved to support 46m at its meeting of 12 September 2022.

Council's consideration and proponent's response

The proponent provided a letter to the Department dated 2 December 2022, which outlines Council's consideration of various aspects of the proposal, including building height, and the proponent's response. The following information is based on this correspondence.

Council has utilised the following floor-to-floor heights in their consideration of the height control:

- *Ground floor commercial/retail – 4.4m*
- *First floor commercial – 3.7m*
- *Residential – 3.1m*

The proponent's response states that *"using the floor to floor height suggested by Council, this provides a roof height of around 40.5m (incl waterproof roof slab but excluding any roof plant or parapets). An accessible roof garden means a lift shaft needs to service the roof resulting in another 3.1m plus lift overrun of approx. 2m resulting in a building height for the concept scheme of approx. 45.6m."* The above statement by the proponent is not consistent with the 42m maximum in the planning proposal, as 4.5m are allowed for the rooftop lift structure and plant room/equipment, and not 5.1m as suggested in the correspondence (3.1m + 2m).

Using Council's own assumptions and the mix of uses in the concept scheme, the 42m building height would be broken down as:

G/F commercial 4.4m + 1/F-3/F commercial 11.1m + 4/F-11/F residential 24.8m + rooftop lift structure / plant room 1.7m*** = 42m

***Note: the 1.7m allowance for rooftop structures is deduced from Council's assumptions and the proposed height control

Based on the above, the 42m height control would only allow for 1.7m to accommodate rooftop lift structures and plant room / equipment. This has not factored in the need for lift access to the rooftop communal open space.

To comply with the 42m height control, the rooftop communal area may need to be deleted. In any case, this would not achieve the minimum and maximum non-residential FSR of 3:1 and 3.5:1 being sought in Council's planning proposal. The proponent's concept scheme currently shows 1.63:1 non-residential FSR, in the concept plan which would occupy G/F to 3/F. Any additional commercial storeys over and above this (to achieve Council's requirement) would require extra heights beyond the 42m control to meet building requirements for commercial uses.

Concept scheme

The proponent's concept scheme has provided floor-to-floor height details as follows:

Level	Storeys	Use	Floor Height (m)	RL (m)
Level B3		Parking		
Level B2		Parking		
Level B1		Parking		
Level 0	1	Comm / Ret	3.9	32.6
Level 1	2	Commercial	3.75	36.5
Level 2	3	Commercial	4.25	40.25
Level 3	4	Comm / Resi	3.75	44.5
Level 4	5	Resi	3.2	48.25
Level 5	6	Resi	3.2	51.45
Level 6	7	Resi	3.2	54.65
Level 7	8	Resi	3.2	57.85
Level 8	9	Resi	3.2	61.05
Level 9	10	Resi	3.2	64.25
Level 10	11	Resi	3.2	67.45
Level 11	12	Resi	3.2	70.65
Roof		COS	4.5	74.1
		Plant / overrun		
Total			45.75	

Figure 13 Table showing the floor-to-floor heights and overall building height of the concept scheme (source: Indicative Concept Report).

The following matters are noted:

- The concept design proposes up to 4 commercial levels, which would accommodate approximately 2,851m² of non-residential floor space (equivalent to 1.63:1 FSR).
- The Apartment Design Guide (ADG) recommends a minimum floor-to-ceiling height of 4m for the ground level of mixed-use developments, and 3.3m for the first floor commercial use. The ADG also provides for a minimum ceiling height of 2.7m (habitable rooms) for residential storeys. The ADG does not provide guidance on floor-to-floor heights.

As a reference, the City of Sydney's DCP 2012 states that "A floor to ceiling height of 2.7m requires a minimum floor to floor height of 3.1m", implying a provision of 400mm for floor slab and services/ceiling cavity.

The concept scheme has allowed for a 3.2m floor-to-floor height (i.e. 500mm for slab and cavity) for the residential levels, which is more generous than the above Sydney DCP provision. It is also noted that the National Construction Code (Building Code of Australia) is being revised with respect to floor slab thickness for Class 2 buildings and this may affect the required minimum floor-to-floor height to achieve the minimum floor-to-ceiling heights under the ADG.

- The Department notes that Council's assumption for the floor-to-floor heights is based on the ADG's guideline for floor-to-ceiling heights, as follows:

	ADG floor-to-ceiling height guidelines	Council's floor-to-floor height assumptions
G/F commercial	4m	4.4m****
1/F commercial	3.3m	3.7m****
Residential	2.7m	3.1m****

****Note: Council's floor-to-floor height assumptions have factored in 0.4m for floor slab thickness / ceiling cavity consistent with the Sydney DCP 2012.

- The proponent's concept scheme allows for higher floor-to-floor heights for the podium commercial levels (being 1/F: 3.75m, 2/F: 4.25m and 3/F: 3.75m), which would meet or exceed the ADG guideline for ceiling height. However, the proposed floor-to-floor height for the ground storey (3.9m) would not achieve the ADG guideline for ceiling height of 4m. The scheme does not explain how the different floor levels in the podium were determined.
- The concept scheme also provides for a lift shaft to the rooftop and overrun amounting to 4.5m.

The Department considers that a reduction of building height from 46m to 42m is likely to constrain the ability to deliver commercial floor space as shown in the indicative scheme, as commercial storeys would typically require higher ceilings. It would not provide flexibility to allow any potential additional commercial storey/s to be accommodated in the envelope. The reduced height is contrary to the proposal's intent to contribute to the supply of commercial floor space in Edgecliff.

However, it is also noted the floor-to-floor heights for the podium commercial levels (i.e. 1/F to 3/F) may be more than necessary. A Gateway condition is recommended to require further testing of the adequacy of the 46m height control against the ADG guideline for floor to ceiling heights and the requirements of the NCC (also see discussion under the heading 'Non-residential FSR' in section 4.2 of this report).

4.1.3 Amenity

Solar access

The proponent's Indicative Concept Report (**Attachment J**) demonstrates the capability that 70.7% of apartments (29 apartments, more than 70%) would receive at least 2 hours of sunlight to living areas and balconies in mid-winter; approximately 9.8% (4 apartments, less than 15%) would receive no sun in mid-winter. The above is consistent with the design criteria of the ADG.

Natural ventilation

The design criteria of the ADG provides that at least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. The concept scheme shows that acceptably approximately 71% of apartments (22) on levels 3 to 8 would be naturally cross-ventilated due to their corner locations.

Overshadowing

Shadow analysis has been included in the proponent's Indicative Concept Report (**Attachment J**).

For the adjoining shop-top housing building to the east at 160 New South Head Road, the concept development would not affect sunlight to the north-facing apartments from 9am to 12noon, 21 June. A Gateway condition is recommended to require a written discussion of the expected overshadowing of this building to explain the 'sun-eye' diagrams provided.

The shadow analysis shows that the concept building would not cast additional shadows on the Eastpoint apartment tower, which is on the opposite side of the street at 235-287 New South Head Road. The analysis indicates that Trumper Park would not be affected by the concept development.

The draft ECC Strategy proposes a new mixed-use building with public plaza areas at 203-233 New South Head Road. To provide a complete analysis of the likely impact of the proposal, a Gateway condition is recommended to require shadow testing of the potential impacts on the proposed built forms on the southern side of New South Head Road under the draft Strategy.

View sharing

The proposal includes modelling that describes the potential impact on views from several units (Unit 0903, 0803, 1402 and 1103) within the Eastpoint residential tower at 235-287 New South Head Road. However, it is unclear as to the locations of these units within the building to which the view modelling relates, and whether the images depict the most impactful scenario.

A Gateway condition is recommended to require confirmation of the locations of those units. View sharing issues specific to the site or the Edgecliff commercial centre can be further addressed in the DCP.

Open space

The ADG provides that communal open space for future residential development on the site has to be a minimum area equal to 25% of the site area. The concept scheme shows the provision of rooftop gardens that could exceed the above threshold.

Other amenity related issues, such as privacy and landscaping, could be further addressed in the DCP.

4.1.4 Design Excellence

The planning proposal introduces design excellence requirements via a site-specific provision. The above sets out a list of matters to be considered by the consent authority when assessing a development application (DA) for the site and requires a design review/advisory panel to be convened to provide advice for informing Council's assessment. The matters of consideration range from architectural design, relationship to the context, sustainable design initiatives, access, public domain interface, mixture of uses and dwelling types.

The proponent's planning proposal report included a requirement that before any consent is granted for development utilising the alternative FSR and height controls, "*the consent authority is satisfied that the development will achieve design excellence*". As part of the rezoning review, the Sydney Eastern City Planning Panel has recommended a clause "*requiring a design excellence competition or equivalent*".

The exhibited draft ECC Strategy provides that where development uplift is proposed, design excellence will be required. The design excellence process would involve a new clause in the LEP and potentially a design review panel. The proposal is consistent with the approach outlined in the draft Strategy. As the site is within the Edgecliff centre and the uplift would result in a significant built form that has implications on the surrounding environment, a design excellence provision is supported to facilitate a high-quality urban design outcome.

The draft sub-clause for design excellence in Council's planning proposal has been subject to discussions with the proponent, who did not agree to a design competition requirement; it is noted the proponent still has concerns about the level of details in the current draft clause. The Department considers there is adequate merit in Council's planning proposal to expressly state the criteria by which design excellence may be exhibited, which would provide certainty and clarity to the community.

As the subject proposal is concerned with specific private properties, such a clause should not apply broadly to other sites within Edgecliff centre. Should the draft ECC Strategy be finalised in the near future and Council resolve to implement design excellence requirements for the whole centre, then the proposed site-specific clause may be amended via a separate planning proposal.

Additionally, if Council seeks to introduce a competitive design process for Edgecliff commercial centre, a separate planning proposal may be prepared to this effect.

4.1.5 Site amalgamation

The proposal seeks to require all lots to be amalgamated into one lot and to be developed as one development, to enable access to the alternative FSR and height controls.

The site includes a small parcel of land of 1m² (Lot 2 DP 983678, circled in red in **Figure 14** below.) The proponent has not yet acquired this parcel.

Based on the above it is considered that the proposal is reasonable as it would ensure orderly development of the site. This requirement should remain in the proposal during exhibition.

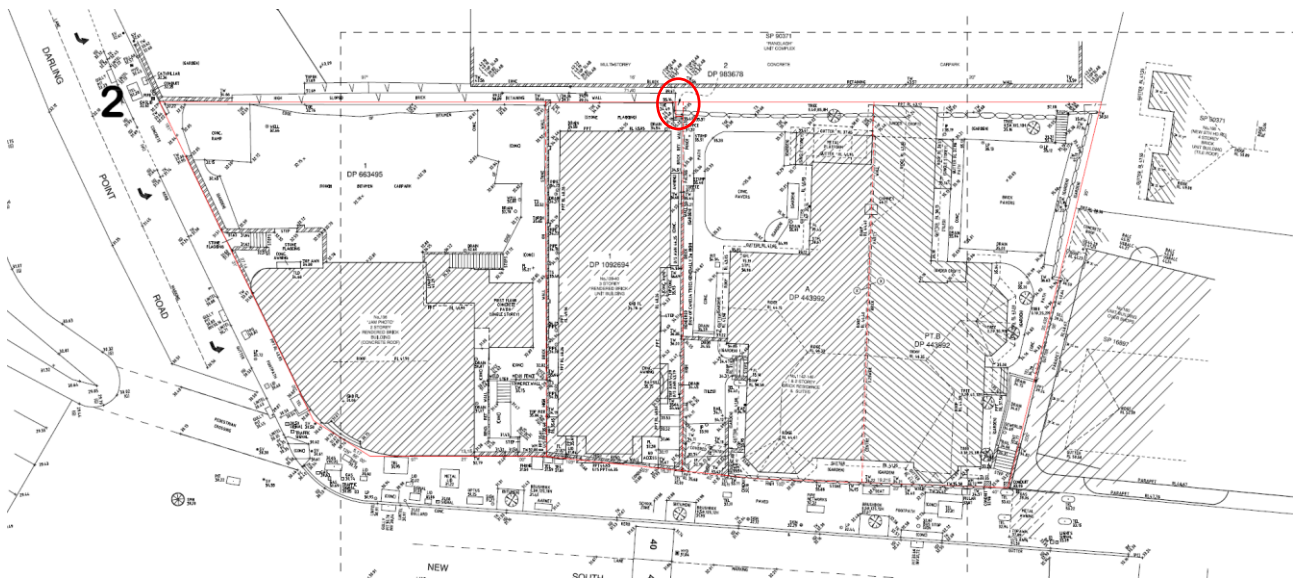


Figure 14: Extract of the survey plan, the site is bounded in fine red line. The red circle indicates a small land parcel that has yet to be acquired by the proponent (Source: survey plan).

4.1.6 Site-specific development control plan

The proposal includes a requirement for a site-specific DCP to be prepared and in place prior to the issuing of any development consent for the site, except for minor developments. This is considered reasonable as it would allow more detailed planning and design guidance to be established to achieve the intent of the proposal.

The proposed draft clause contains ambiguity and does not clearly state the matters to be addressed in the site-specific DCP. A Gateway condition is recommended to address this issue.

4.2 Social and economic

The following table provides an assessment of the potential social and economic impacts associated with the proposal.

Table 7 Social and economic impact assessment

Social and Economic Impact	Assessment
Economic	<p>The proposal would provide additional commercial floor space that would enhance the role of Edgecliff centre as a business and retail hub. It would also deliver additional housing that creates demand for local services, improves activation and contributes to the vitality of the centre.</p> <p>The proposal would also create additional jobs during construction and at the operational phase of the development.</p>
Social	<p>The proposal would broaden housing choice and facilitate additional commercial activities that support the local community.</p>

Non-residential FSR

The planning proposal includes a minimum and maximum non-residential FSR of 3:1 and 3.5:1 respectively. This is a requirement introduced by Council after the rezoning review to ensure employment generation is integral to the future development. The Woollahra LPP has previously recommended a requirement for a minimum quantum of non-residential floor space in the proposal. The Sydney Eastern City Planning Panel recommends a DCP provision to facilitate an appropriate mix of commercial and residential uses. The proposed minimum and maximum non-residential FSR controls are not supported by any economic study or analysis specific to the subject site.

On 13 December 2022, Council officers wrote to the Department explaining that the proposed controls would ensure Edgecliff to function as a local employment centre, and that under the draft ECC Strategy, a minimum non-residential FSR of 3:1 applies to the site at 203-233 New South Head Road (opposite the subject site and adjacent to Edgecliff train station). Council further states that the draft Strategy recommends a minimum non-residential FSR of 2:1 for other sites in the vicinity of the subject land.

The site falls within the study boundary of the draft ECC Strategy; however, the Strategy does not recommend any uplift for the site. The draft Strategy recommends a non-residential FSR ranging from 1:1 to 3:1 for a number of “key sites”, being L, M, N, O, P and R, and with T to be investigated (refer to **Figure 15**). All these sites are located on the southern side of New South Head Road. The draft Strategy does not recommend any non-residential FSR for sites along the northern side of the road, including ‘key sites’ Q and S to the west and east of the subject site respectively.

The draft ECC Strategy is supported by an economic study (Edgecliff Commercial Centre Study, JLL, 22 December 2017) that examines the demand and supply, opportunities and constraints for office and retail uses. However, it does not provide specific recommendations on the quantum of non-residential floor space on particular sites within Edgecliff centre.



Figure 15: Map showing ‘key sites’ in the draft ECC Strategy, including those that should be subject to non-residential FSR controls; the subject site is outlined in red (Draft ECC Strategy).

The Department acknowledges Council's intent to ensure an adequate quantum of non-residential floor space is provided in the future development to reinforce the economic function of Edgecliff centre. However, the proposed controls in their current form cannot be supported as there is no evidence that the proposed range of non-residential FSRs is viable. Specifically, there is no feasibility testing or economic analysis to support the non-residential FSR controls, including the minimum of 3:1 initially proposed nor the 2:1 later suggested by Council.

The proponent's concept scheme incorporates non-residential floor space equivalent to an FSR of 1.63:1. The proponent wrote to the Department (by email) on 15 December 2022 requesting a minimum non-residential FSR of 1.5:1 (**Attachment W1**). There is merit to support a minimum non-residential FSR of 1.6:1 as this has been demonstrated via a concept scheme that illustrates the configuration and location of commercial floor space at the ground and podium levels. The Department recommends, via a Gateway condition, revision to the minimum non-residential FSR control to 1.6:1 in the site-specific provision to ensure Edgecliff will continue to function as a local employment centre to better reflect the concept plan. The condition should also require an economic analysis to test the feasibility of the minimum non-residential FSR of 1.6:1 or a higher quantum, taking into consideration the Draft ECC Strategy. A condition is also recommended to have the alternative height control being subject to further review pending the outcome of the economic analysis for the minimum non-residential FSR.

It is also considered that a maximum non-residential FSR is not necessary as this would impose a restriction on commercial or employment generating uses in the local centre and as such a Gateway condition is recommended to remove this maximum requirement.

4.3 Infrastructure

The following table provides an assessment of the adequacy of infrastructure to service the site and the development resulting from the planning proposal.

Table 8 Infrastructure assessment

Infrastructure	Assessment
Road reservation / widening	<p>The site contains an existing land acquisition reservation (Classified Road) across the corner of 136 New South Head Road. A Gateway condition is recommended to require consultation with TfNSW with regard to this affectation.</p> <p>Consultation with TfNSW is also required as the site has a frontage to New South Head Road, which is a Classified Road. This would confirm whether any local traffic management measures or strategies are required to support the increase in density on the site.</p>
Public and active transport	<p>The site is well serviced by public transport as it is opposite the Edgecliff train station and bus interchange. The provision of approximately 35 additional dwellings is not considered to adversely affect the capacity of the existing public transport facilities. The site is also within walking distance from open space and local services.</p>
Utilities	<p>The proposal is unlikely to require significant increase in local infrastructure. Augmentation to utility services may be required and can be addressed at the development application stage.</p> <p>To ensure infrastructure needs are adequately addressed, a Gateway condition is recommended to require consultation with Sydney Water and Ausgrid.</p>

4.3.1 Community infrastructure

The proposal prescribes a requirement to provide new and upgraded community infrastructure to support the increased density permitted by the local provision. The proposal defines community infrastructure as:

- Provision of, or recoupment of the cost of providing, affordable housing
- Provision of, or recoupment of the cost of providing, transport or other infrastructure
- Funding of recurrent expenditure for providing public amenities or services, affordable housing, or transport or other infrastructure
- Monitoring of the planning impacts of development
- Conservation or enhancement of the natural environment

The Department acknowledges the need for infrastructure and affordable housing, especially in areas identified for growth and renewal. The proposal seeks to establish a statutory mechanism via an LEP clause to secure public benefits from development that utilises the alternative building height and FSR controls. It offers an option for the provision of infrastructure in-kind, or the recoupment of the cost of provision.

Precedents exist in other local government areas for infrastructure provision as part of development uplift. For example, clause 6.17 *Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres* of Randwick LEP 2012 provides a mechanism where consent may be granted to development within the Kensington and Kingsford town centres, which results in additional height and/or FSR if the development provides defined

community infrastructure items on the site to which the development relates (not elsewhere in the town centre(s)). The above provision requires the consent authority to be satisfied that the community infrastructure is reasonably necessary at the two town centres and take into account the nature of the community infrastructure and its value to the community. Feasibility testing was undertaken to inform the above control.

Clause 6.13 *Development at Edina Estate, Waverley* of the Waverley LEP 2012 provides for specific design outcomes and benefits, including deep soil areas and affordable housing, to be provided in the future development on the site that utilises the alternative FSR and height controls. The above was informed by a concept scheme and supported by the proponent.

Clause 4.4A *Exceptions to floor space ratio* of Burwood LEP 2012 contains a provision for bonus floor space where defined community infrastructure is delivered on identified key sites.

Although the Council's proposed community infrastructure provision relates to uplift, it entails several critical issues:

- The proposed requirement for community infrastructure is very broad and non-specific.
- It is unclear whether the infrastructure items would be provided on the subject site. It appears that the items may be provided in areas outside of the site, especially conservation or enhancement of the natural environment and monitoring of planning impacts.
- There is no feasibility analysis of the cumulative impacts of the applicable development contributions, levies and the proposed infrastructure requirements on the viability of development. It is noted the proponent does not support this element in its correspondence to the Department.
- The proposed recoupment of cost would, in effect, function as a monetary development contribution. The proposal appears to establish a new development contributions regime that is outside the legal framework under section 7.11 or section 7.12 of the *Environmental Planning and Assessment Act 1979*.

The proposed control does not provide certainty or clarity to the community and industry about what is expected from the future development, and whether such infrastructure requirement could feasibly be provided or aligned with the legislative framework. As such, the Department does not support the proposed community infrastructure component and a Gateway condition is recommended to require its removal.

Affordable housing

The above community infrastructure provision also includes an affordable housing element.

Section 7.32 of the *Environmental Planning and Assessment Act* (EP&A Act) allows councils to levy contributions for affordable housing if a SEPP identifies a need for affordable housing in the LGA. *SEPP (Housing) 2021* identifies a need for affordable housing in all LGAs across the state.

Under section 7.32(3)(b) of the EP&A Act, any condition imposed on a development consent pursuant to section 7.32 must be authorised to be imposed by an LEP and be in accordance with an affordable housing contribution scheme for dedications or contributions set out in, or adopted by, the LEP.

The Department's *Guideline for Developing an Affordable Housing Contribution Scheme* ('the Guideline') (February 2019) assists councils with the preparation of affordable housing contribution schemes and provides guidance to satisfy the legislative requirements. The Guideline provides that affordable housing schemes should be applied where an uplift in land value is proposed to be created through zoning. This is commonly achieved through precincts that could support uplift and then an affordable housing charge is applied to that additional uplift only.

As stated in the Guideline (p. 17), '*This ensures contributions are drawn from the increase in land value generated by the rezoning and are consistent with the affordable housing targets established*

in the Greater Sydney Commission's District Plans.' By applying contributions to defined areas, it allows for a detailed viability assessment that is specific to the development conditions of the areas being rezoned. The Guideline also recommends that areas suitable for growth should be identified in the Local Housing Strategy (LHS).

It is acknowledged that Council's LHS identifies potential for growth in Edgecliff centre and that the proposal seeks to require affordable housing on a site where uplift is being sought. However, Council does not currently have any Affordable Housing Scheme that is set out in or adopted by the Woollahra LEP 2014. As such, the proposed affordable housing component is to be removed. A Gateway condition to the above effect is recommended. Council is encouraged to prepare an affordable Housing Contributions Scheme in accordance with the EP&A Act to allow contributions for affordable housing, consistent with the Department's approval of the LHS.

It is noted that Council has been in discussion with the proponent for a potential Voluntary Planning Agreement (VPA) with regard to the provision of public benefits. Council has the option to continue pursuing this option as a means of securing affordable housing.

5 Consultation

5.1 Community

Council proposes a community consultation period of 28 calendar days, which is equivalent to 20 working days.

Given the nature of the planning proposal, the proposed exhibition period is considered appropriate and forms a condition of the Gateway determination.

5.2 Agencies

The planning proposal does not specifically identify which agencies will be consulted.

Having regard to the nature and scope of the proposal, it is recommended the following agencies be consulted on the proposal and given 20 working days to comment:

- Transport for NSW
- Environment and Heritage Group (Department of Planning and Environment)
- Ausgrid
- Sydney Water

6 Timeframe

Council proposes a 10-month time frame to complete the LEP.

The Department's Local Environmental Plan Making Guide provides a benchmark of 225 working days from Gateway determination to finalisation for 'standard' planning proposals. Based on this benchmark, the proposal is targeted for finalisation 11 months from the lodgement of the proposal for Gateway by Council (lodgement date: 28 November 2022).

The Department recommends a time frame of 8 months from Gateway to ensure it is completed in line with its commitment to reduce processing times. It is also recommended that if the Gateway is supported, it also includes conditions requiring Council to exhibit and report on the proposal by specified milestone dates.

A condition to the above effect is recommended in the Gateway determination.

7 Local plan-making authority

Council has advised that it would like to exercise its function as the local plan-making authority.

As the planning proposal was previously refused by Council and subject to a rezoning review, the Department recommends that Council not be authorised to be the local plan-making authority for this proposal.

8 Assessment summary

The planning proposal is supported to proceed with conditions for the following reasons:

- It demonstrates strategic merit as it is consistent with the objectives and directions of the Eastern City District Plan, Woollahra Local Strategic Planning Statement and Woollahra Local Housing Strategy.
- It would facilitate additional housing, commercial and employment opportunities on a site, which is accessible to public transport and services, and would complement Council's vision to revitalise Edgecliff local centre and reinforce its role as an economic and service hub.
- It has site-specific merit as the future development is capable of achieving adequate urban design and heritage outcomes and would contribute to the regeneration of Edgecliff centre.

Based on the assessment in this report, the proposal is to be amended prior to community and agency consultation:

- Provide a plain-English explanation of the intended outcomes of the proposal;
- Clearly explain that the proposal seeks to introduce an incentivised provision to allow additional building height and FSR if certain requirements are met;
- Remove all references to community infrastructure and affordable housing requirements;
- Amend the proposed alternative height of buildings control from 42m to 46m and require additional testing of the floor-to-floor heights in the concept scheme;
- Amend the proposed non-residential FSR control to a minimum of 1.6:1 subject to feasibility analysis, with no maximum non-residential FSR requirement;
- Revise the design excellence requirement to remove the general reference to planning documents, which are not specific;
- Remove the site-specific heritage conservation requirement as this is addressed via Clause 5.10 *Heritage conservation* of the Standard Instrument LEP;
- Include various administrative changes to ensure adequate information is provided for exhibition and agency consultation purposes.

The inconsistency with section 9.1 Direction – 1.4 *Site Specific Provisions* remains unresolved and requires further justification or amendment to the planning proposal in accordance with the requirements of the Gateway determination.

9 Recommendation

It is recommended the delegate of the Secretary:

- Note that consistency with section 9.1 Direction 1.4 *Site Specific Provisions* is unresolved and will require justification or amendment to the planning proposal in accordance with the requirements of the Gateway determination.

It is recommended the delegate of the Minister determine that the planning proposal should proceed subject to the following conditions:

1. Prior to public exhibition, the planning proposal is to be amended to:
 - a) Provide a plain-English explanation of the planning proposal that covers all aspects of the site-specific provision. An updated draft clause may be provided with an advisory note that it is an example only and will be subject to legal drafting by Parliamentary Counsel, should the proposal progress to finalisation.
 - b) Clarify that the proposal seeks to introduce a local provision that allows alternative maximum height of buildings and floor space ratio (FSR) if certain requirements are met, as such the existing maximum height of buildings and FSR controls will remain in the LEP as base controls.
 - c) Remove reference to “*urban design and planning strategy and public domain plan*” as a matter of consideration from the design excellence provision.
 - d) Remove all references to community infrastructure and affordable housing requirements (which include the recoupment of cost of provision) from the proposal.
 - e) Remove the site-specific heritage conservation requirement as this is already addressed via Clause 5.10 *Heritage conservation* of the Standard Instrument LEP.
 - f) Amend the proposed minimum non-residential floor space ratio from 3:1 to 1.6:1; and remove the proposed maximum non-residential FSR of 3.5:1. Provide an economic analysis to test the feasibility of a minimum non-residential FSR of 1.6:1 or a higher quantum that takes into consideration the growth scenarios in the Draft Edgecliff Commercial Centre Planning and Urban Design Strategy.
 - g) Amend the proposed alternative height of buildings control from 42m to 46m, subject to further design testing of the floor-to-floor heights currently shown in the indicative concept scheme against the floor-to-ceiling heights provisions of the Apartment Design Guide, the requirements of the National Construction Code and the outcomes of the economic testing outlined in item f) above.
 - h) Outline the matters to be addressed in the site-specific Development Control Plan.
 - i) Clarify Council’s intent to establish a “design review panel” or “design advisory panel” to ensure design excellence is achieved for future development and utilise consistent terminology throughout the document.
 - j) Replace existing reference to “business” zones (i.e. “B” zones) with the new employment zones (i.e. “E” and “MU” zones) as a result of the Department’s Employment Zones Reform work.
 - k) Include extracts of relevant existing LEP maps that apply to the site, including Land Zoning, Floor Space Ratio, Height of Buildings, Heritage and Land Acquisition Reservation maps.
 - l) Explain the reasons for identifying the site on a new Key Sites Map; or alternatively, remove any reference to such a map if it is not required.
 - m) Include commentary that addresses the relevant provisions of the Woollahra Local Housing Strategy and relevant requirements of the Department’s approval of the Strategy.
 - n) Confirm whether the site is identified as “flood-prone land” as defined in the *NSW Floodplain Development Manual 2005* when addressing section 9.1 Direction – 4.1 *Flooding*.
 - o) Provide an updated discussion to demonstrate that the inconsistency with section 9.1 Direction 1.4 – *Site Specific Provisions* is justified in accordance with the terms of the direction.
 - p) Provide written explanation of the potential overshadowing impacts on the property at 160 New South Head Road to supplement the “sun-eye diagrams” in the concept scheme; and include additional shadow analysis relating to the proposed built forms

and public plaza areas on the southern side of New South Head Road under the *Draft Edgecliff Commercial Centre Planning and Urban Design Strategy*.

- q) Confirm the location of the apartments within 235-287 New South Head Road (known as “Eastpoint tower”) to which the view sharing modelling in the concept scheme relates to.
- r) Update the project timeline in accordance with the requirements of the Gateway determination.

2. Consultation is required with the following public authorities:

- Transport for NSW
- Environment and Heritage Group, Department of Planning and Environment
- Ausgrid
- Sydney Water

3. The planning proposal should be made available for community consultation for a minimum of 20 working days.

4. The planning proposal should be exhibited within 3 months from the date of the Gateway determination.

5. The planning proposal should be reported to council for a final recommendation not more than 6 months from the date of the Gateway determination.

6. The timeframe for completing the LEP is to be 8 months from the date of the Gateway determination.

7. Given the nature of the proposal, Council should not be authorised to be the local plan-making authority.

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19 April 2023

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