



IRF 24/553

Plan finalisation report – PP-2022-1646

Woollahra Local Environment Plan 2014 (Amendment 38)
136-148 New South Head Road, Edgecliff

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Acknowledgment of Country

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

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Woollahra Local Environmental Plan 2014 (Amendment No. 38).

The planning proposal seeks to facilitate a 12 storey mixed use commercial and residential development at 136-148 New South Head Road, Edgecliff.

1.1.2 Site description

Table 1 | Site description

Site Description	The planning proposal (Attachment A) applies to land at 136-148 New South Head Road, Edgecliff
Type	Site
Lot/DP	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)
Council	Woollahra Municipal Council (Council)
LGA	Woollahra Local Government Area (LGA)

The site (**Figures 1 and 2**) is located at the north-east corner of New South Head Road and Darling Point Road and comprises five lots and has an area of approximately 1,746m².

The site is zoned MU1 Mixed Use. A maximum height control of 14m and a maximum FSR of 1.5:1 apply to the site. The corner of 136 New South Head Road is affected by land acquisition reservation (classified road) with Transport for NSW (TfNSW) as the relevant public authority.

The site is currently occupied by three buildings, including a two-storey local heritage item at the street corner, a part three-and four-storey apartment building, and a two-storey former residential building used as commercial and medical suites.

The surrounding area is characterised by a mix of office, retail, residential and educational buildings, including:

- The R3 Medium Density Residential area and adjacent 31 storey “Ranelagh” apartment building to the north
- Ascham School to the north-east
- The Edgecliff Centre and Edgecliff train station and bus interchange to the south.



Figure 1 | Subject site outlined in red. The land acquisition reservation area (classified road) is circled in blue (Source: Planning Proposal 2023)

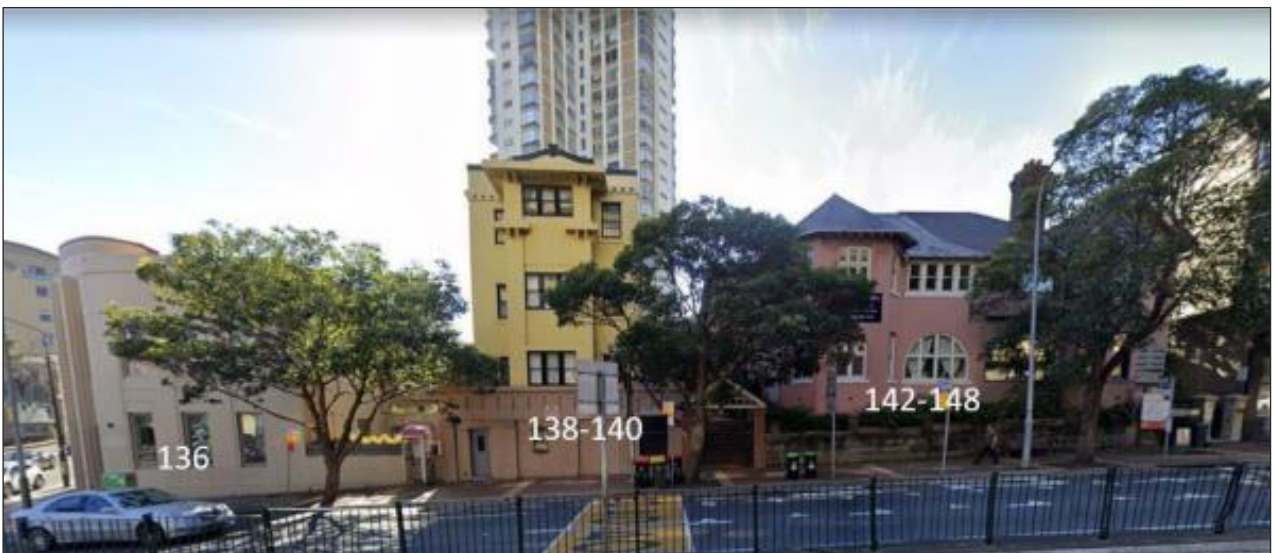


Figure 2 | View of buildings from New South Head Road (Source: Google 2024)

1.1.3 Purpose of plan

The objectives of the planning proposal (as exhibited) are:

- To put in place exceptions to the envelope controls that would allow redevelopment of the site by 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.

The proposal will facilitate up to 35 additional dwellings and approximately 2,851m² commercial floor space on the site.

To achieve this, the planning proposal seeks to amend the Woollahra LEP 2014 to introduce a site-specific local provision under Part 6 *Additional local provisions* which will allow an alternative maximum height of 46m and FSR of 5:1, where certain requirements are met:

- Site amalgamation into one lot and a single development
- No vehicular access from New South Head Road
- Non-residential floor space of minimum 1:1 and maximum 2:1
- Design Excellence and review by a Design Excellence Panel at development application stage
- Preparation of a site-specific development control plan (DCP) which includes provisions for:
 - a building envelope that includes a podium with tower above
 - setbacks
 - height of buildings in storeys
 - a mix of apartment types, including the number of bedrooms in each apartment
 - conservation of the heritage item
 - car parking
 - vehicle access and egress.

The site will be identified as 'Area 1' on a new Key Sites Map to show where the new local provision applies.

No changes are proposed to the current MU1 Mixed Use land zoning.

Concept development scheme

The planning proposal is supported by an Indicative Concept Report prepared by GroupGSA (**Figures 3 and 4**) which shows how the proposed controls could facilitate development on the site and retain the heritage item.

Voluntary Planning Agreement

A draft Voluntary Planning Agreement (VPA) was exhibited concurrently with the planning proposal. It proposes benefits worth up to \$5 million, including \$2.7m allocated to affordable housing and \$2.3m allocated to infrastructure provision in addition to the payment of Section 7.11 or Section 7.12 contributions.

The draft VPA was endorsed by Council on 12 February 2024 and executed on the 26 February 2024 by the General Manager on behalf of Council.



Figure 3 | Artist's impression of indicative development concept from New South Head Road looking north-west (Source: Planning Proposal 2023)

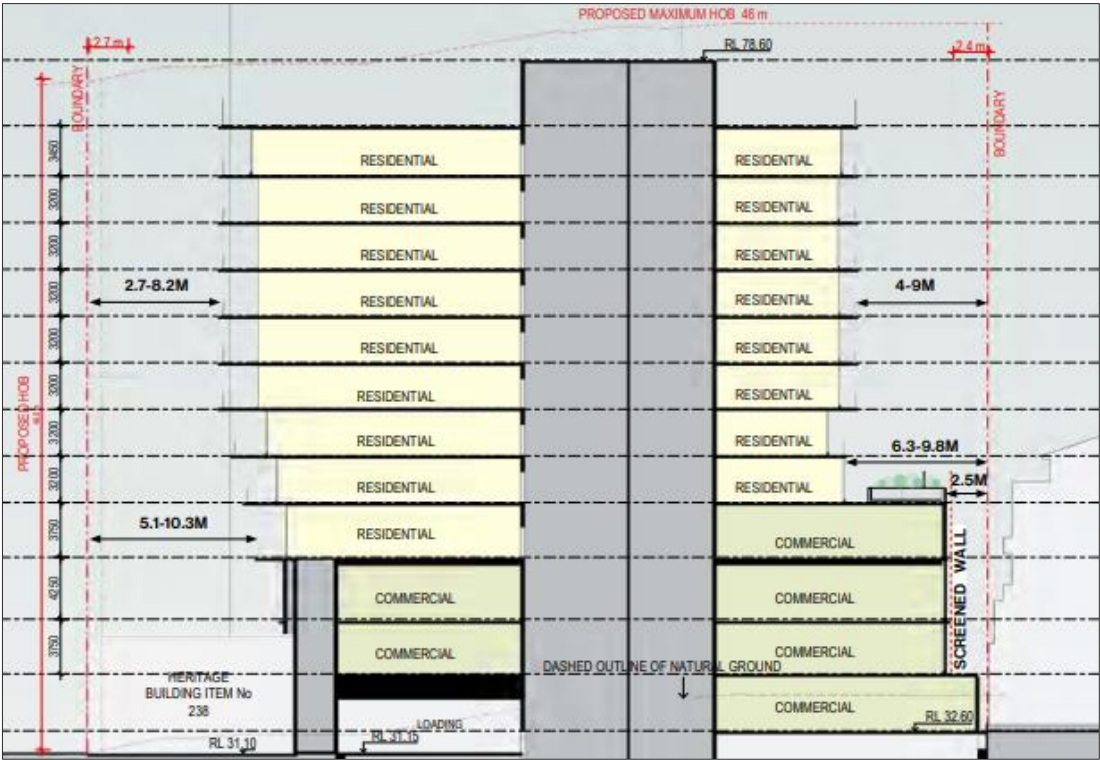


Figure 4 | Cross-section of indicative development concept (Source: Planning Proposal 2023)

1.1.4 State electorate and local member

The site falls within the following state and federal electorates:

Electorate	Member
State electorate: Vaucluse	The Hon Kellie Anne Sloanne MP
Federal electorate: Wentworth	The Hon Allegra Spender MP

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

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

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

1.1.5 Background

The planning proposal is the result of a rezoning review. On 18 August 2022, the Sydney Eastern City Planning Panel determined that the planning proposal should be submitted for a Gateway determination because it demonstrates strategic and site-specific merit.

As the planning proposal was submitted to Council prior to the commencement of the current LEP Making Guideline, Council was given the opportunity to be the planning proposal authority (PPA).

On 12 September 2022, Council resolved to accept the PPA role to progress the planning proposal. The proposal was submitted for Gateway assessment on 28 November 2022.

2 Gateway determination and alterations

The Gateway determination issued on 21 April 2023 (**Attachment B**) determined that the proposal should proceed subject to conditions. On 11 September 2023, the Department issued a Gateway alteration (**Attachment D**) to reflect the revisions to the planning proposal to address the Gateway conditions and extend timeframes.

Council has met all of the Gateway determination conditions (as altered), with the exception of the LEP completion timeframe condition. The planning proposal was due to be finalised by 11 March 2024. Council formally submitted the planning proposal to the Department for finalisation on 11 March 2024. Whilst the Gateway determination date was not met, this is considered minor as the intent of the planning proposal is clear and it was exhibited in accordance with the Act.

The Department is satisfied that there are no outstanding issues relating to Gateway conditions which would prevent finalisation.

3 Public exhibition and post-exhibition changes

The proposal was publicly exhibited by Council in accordance with the Gateway determination from 26 September 2023 to 5 November 2023. The exhibition included:

- Notices in the local newspaper
- A public exhibition page on Council's website

- Notification letter or email to adjoining and nearby property owners, community organisations, and government agencies.

A total of 76 submissions were received during the exhibition period including four agency submissions from Heritage NSW, TfNSW, Sydney Water and Ausgrid. Ingham Planning also provided a detailed submission on behalf of the proponent.

3.1 Submissions during exhibition

Council received 47 community submissions supporting the proposal and 24 objections.

Key matters issues in submissions supporting include:

- The planning proposal will encourage the renewal of older building stock.
- It will provide a new supply of residential and commercial floor space near the train station.
- The new building will enhance accessibility for people with disabilities and the elderly.
- A building built under the proposed controls will deliver more housing in the local area.
- The proposal will take pressure off nearby lower density residential areas, with respect to delivering housing.

Key issues raised in submissions objecting to the proposal include:

- Excessive height
- Loss of harbour views
- Overshadowing of adjoining properties
- Loss of privacy as the result of insufficient building separation
- Lack of consideration of impacts on draft Brantwood Heritage Conservation Area
- Potential impacts of excavation on heritage item
- Inconsistency with the Edgecliff Strategy and Draft Woollahra Integrated Transport Strategy
- Creation of wind tunnel
- Traffic impacts of vehicular access to site
- Insufficient traffic assessment
- Affordable housing not provided.

Council has adequately addressed submissions in the post exhibition report (**Attachment E**).

3.1.1 Submission from proponent

Ingham Planning made a submission on behalf of the proponent, which supported the proposal but requested several changes which are primarily administrative in nature. See summary in **Table 2** below.

Table 2 | Summary of key issues raised by proponent's planning consultant

Issue raised	Council response and adequacy assessment of response
<p>Renumbering the site-specific clause</p> <p>Site-specific clause 6.9 already exists in the Woollahra LEP 2014, which will require the renumbering of the proposed new clause.</p>	<p><u>Council Response:</u></p> <p>This is an administrative post exhibition change. At the time of preparing the planning proposal, clause 6.9 was not in use. Before finalisation, the clause will be renumbered.</p>

Issue raised	Council response and adequacy assessment of response
	<p><u>Department Response:</u></p> <p>The Department has no objection to this post-exhibition amendment.</p>
<p>Lot 2 DP 983678 acquired by the applicant</p> <p>The reference to Lot 2 DP 983678 as a property from a deceased estate should be removed. The applicant is now the registered owner of the land.</p>	<p><u>Council Response:</u></p> <p>Council staff have made post-exhibition amendments to the planning proposal to reflect that the applicant has acquired ownership of this lot.</p> <p><u>Department Response:</u></p> <p>The Department notes that the proponent is the owner of this lot and has removed any references to it being in separate ownership in this report.</p> <p>The Department has no objection to the post-exhibition amendment.</p>
<p>Remove reference to amending the Land Reservation Acquisition Map</p> <p>The applicant is not proposing to remove 136 New South Head Road from the affectation on the Land Reservation Acquisition Map as part of this planning proposal and any references to it should be removed.</p>	<p><u>Council Response:</u></p> <p>This information was retained in the planning proposal in error. Council staff have made post-exhibition amendments to the planning proposal to delete any reference to the removal of the lands reserved for acquisition.</p> <p><u>Department Response:</u></p> <p>The Department notes Council's response and has no objection to the post-exhibition amendment.</p>
<p>Remove references to housing diversity and dwelling types under the design excellence clause</p> <p>Under the proposed design excellence clause, objective (b)(iii) and subclause (5)(j) should be removed as there are sufficient existing provisions for housing diversity and dwelling types.</p>	<p><u>Council Response:</u></p> <p>Council staff support the proposed provisions in the planning proposal, as their inclusion in the clause will further ensure the strategic objectives of the planning proposal are realised. However, staff acknowledge that 'diversity of dwelling types' could be misinterpreted as dwelling types other than apartments. As such, a post exhibition amendment is recommended to the site-specific subclause 5(j) to state as follows:</p> <p><i>In considering whether a development exhibits design excellence, the consent authority must have regard to the following matters: ...</i></p> <p><i>(j) whether the proposed development contains a diversity of residential dwelling types a range of apartment types and sizes.</i></p> <p>Staff will also be seeking to include site-specific provisions in the DCP regarding unit mix.</p> <p><u>Department Response:</u></p> <p>The Department notes Council's response.</p>

Issue raised	Council response and adequacy assessment of response
	<p>The inclusion of this Design Excellence provision is not considered necessary as the ADG includes provisions for housing diversity including apartment layouts, sizes, and number of bedrooms.</p> <p>A post-exhibition amendment is recommended to remove this requirement (see Section 3.3.2 Department's Post-exhibition changes of this report for further discussion).</p>
<p>Replacing the word 'detrimentally' to 'unreasonably' for the impacts of view corridor under the proposed design excellence clause</p> <p>The use of the word 'detrimental' in subclause 5 under the design excellence clause implies that any adverse impact could be considered unreasonable. It is contrary to the principle of view 'sharing'.</p>	<p><u>Council Response:</u></p> <p>Council staff disagree. Council staff support the existing wording of subclause 5(e) in the planning proposal. The use of the term 'detrimental' is consistent with the NSW Land and Environment Court's view sharing principles. This will ensure the fair and consistent assessment of any issues pertaining to view sharing at the DA stage.</p> <p><u>Department Response:</u></p> <p>The Department notes Council's comment.</p> <p>The Department notes that the view sharing planning principle identifies that the term 'reasonable/unreasonable' does not allow for definitive assessment of view impacts. As such the term 'detrimental' is the appropriate term and should be retained.</p>
<p>Deleting item (f) and (i) under proposed design excellence clause</p> <p>Items (f) and (i) should be deleted. Item (f) is in relation to <i>'pedestrian, cycle, vehicular and service access, and circulation requirements, including the permeability of the pedestrian network'</i>. Permeability is not relevant given the small size of the site.</p> <p>Item (i) is in relation to <i>'i) whether the proposed development contains a mix of retail, commercial and residential uses'</i>. Land use mix is a commercial consideration and not a design one.</p>	<p><u>Council Response:</u></p> <p>Council staff disagree. Staff support the retention of item (f) but agree that the issue of permeability for the pedestrian network is not strictly relevant. Through-site links are unlikely to be employed, given the relatively small size of the site. Accordingly, changing the term <i>'permeability'</i> to <i>'quality'</i> is supported, to instead focus on the relationship of the site to the public domain. The planning proposal has been amended accordingly.</p> <p>Council staff support the provisions as drafted for land use mix. The incorporation of a satisfactory land use mix is important in fulfilling the strategic intent of the planning proposal. A mix of uses will contribute to the evolving role of the ECC and ensure a diversity of employment opportunities and housing close to a major transport hub.</p> <p><u>Department Response:</u></p> <p>The Department notes Council's response.</p> <p>Replacing the word <i>'permeability'</i> with <i>'quality'</i> is not necessary as <i>'permeability'</i> can refer to how urban spaces permit movement of people (pedestrians) and is not specific to the size of a site or through-site links.</p>

Issue raised	Council response and adequacy assessment of response
	A post-exhibition amendment is recommended to retain the word ' <i>permeability</i> ' (see Section 3.3.2 Department's Post-exhibition changes of this report for further discussion).
<p>Key Sites Map</p> <p>The proposed introduction of a Key Sites Map appears to be a generic clause intended to apply to other sites in the future. The existing draft clauses will negate the need to create a Key Sites Map.</p>	<p><u>Council Response:</u></p> <p>Council staff disagree. A map identifying the land to which the clause applies is preferred by staff. It is considered a simpler and clearer way of identifying that there is a site-specific clause applying to the site. Council staff have made post-exhibition amendments in the planning proposal to include references to the Key Sites Map in the draft clause. This has enhanced the linkage between the map and the site-specific clause.</p> <p><u>Department Response:</u></p> <p>The Department notes Council's response.</p> <p>A Key Sites Map identifying the land to which a site-specific clause applies is appropriate. The Department has no objection to the post-exhibition amendment.</p>
<p>Reference to finalisation of draft DCP under project timeline</p> <p>The timeline suggests that a draft DCP has been provided to the applicant for review. This has not occurred.</p>	<p><u>Council Response:</u></p> <p>Council staff agree. The applicant will be formally notified and invited to provide comments when the draft DCP is placed on exhibition. The reference in the project timeline has been updated by Council staff.</p> <p><u>Department Response:</u></p> <p>The Department notes that the proponent will have opportunity to comment on the site-specific DCP during exhibition.</p> <p>The Department has no objection to the project timeline being amended accordingly.</p>

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with the following government agencies under section 3.34(2)(d) of the Act:

- TfNSW
- Heritage NSW
- Sydney Water
- Ausgrid.

All agencies provided comments with the key issues summarised in **Table 3** below.

Table 3 | Summary of key issues raised by agencies

Agency	Key issue(s) raised	Council response
TfNSW	<ul style="list-style-type: none"> Vehicle access should be from Darling Point Road, located as far away as possible from the traffic signals Left in/left out movements should be used A Green Travel Plan and a Travel Access Guide should be prepared Onsite parking should be reduced to encourage active and public transport use. <p>Note: TfNSW objected to the removal of the land reserved for acquisition at 136 New South Head Road. On 10 November 2023, Council staff advised TfNSW that all references would be deleted from the planning proposal. On 21 December 2023, TfNSW formally withdrew their objection to the planning proposal and indicated their support for finalisation.</p>	<p>Council staff agree in principle with these suggestions. These design elements can be incorporated into the detailed design and assessed at the development application (DA) stage.</p> <p>Council staff agree that parking rates should be reviewed having regard to the site's close proximity to the train station. This will be considered in the preparation of a site-specific DCP, which will be reported to a future meeting of Council.</p>
Heritage NSW	<ul style="list-style-type: none"> There are no identified impacts on any items listed on the State Heritage Register. The proponent is to assess the likelihood of 'relics' and any subsequent management required under the <i>Heritage Act 1977</i>. Council is responsible for the heritage assessment and consideration of any impacts on an item of local heritage. Prior to finalisation of the proposal, Council should be satisfied that all necessary heritage assessments have been undertaken and any impacts addressed. 	The comments from Heritage NSW are acknowledged.
Sydney Water	<ul style="list-style-type: none"> Water and wastewater servicing should be available. Amplifications, adjustments, and/or minor extensions may be required. 	Sydney Water's comment has been acknowledged.
Ausgrid	Ausgrid has no comment at this stage. The development will be reviewed at the development application stage.	Ausgrid's comment has been acknowledged.

Council has adequately addressed submissions in the post exhibition report (**Attachment E**).

3.3 Post-exhibition changes

3.3.1 Council's post-exhibition changes

On the 5 February 2023, Council's Environmental Planning Committee (EPC) considered a post-exhibition report on the outcomes of the public exhibition including public and agency submissions (**Attachment E**).

At its Ordinary Meeting on the 12 February 2024, Council resolved (**Attachment G**) to proceed with the planning proposal with the following post-exhibition changes:

- Update the numbering of the proposed site-specific clause to 6.11.

- Delete the ownership information for Lot 2 DP 983678.
- Remove all references to the proposed amendment to the Land Reservation Acquisition Map.
- Amend clause 6.11 to include references to the Key Sites Map.
- Amend item (j) of subclause 5 - Design Excellence to include '*a range of apartment types and sizes*' in the sentence.
- Amend item (f) of subclause 5 – Design Excellence to replace the word '*permeability*' with '*quality*'.
- Update the project timeline and remove references to the DCP being finalised concurrently with the planning proposal and the draft VPA.
- Update the business zone names in the planning proposal to reflect the recent employment zone reforms that came into effect on 26 April 2023.
- Update the project timeline to reflect that Council is not the LPMA.

The Department has reviewed the post exhibition changes and considers them to be justified except the proposed changes discussed below relating to Design Excellence provision (5)(j) '*a range of apartment types and sizes*' and replacing the word '*permeability*' with '*quality*' in subclause (5)(f).

3.3.2 The Department's recommended changes

The Department recommend the following changes to the planning proposal submitted for finalisation (as amended by Council post exhibition):

- Council's post-exhibition changes include rewording the Design Excellence provision to require '*a range of apartment types and sizes*'.
Future development will be assessed against the Apartment Design Guide which includes provisions for housing diversity including apartment layout, size, and number of bedrooms. These provisions will also be included in the site-specific DCP.
The Department recommends a post-exhibition change that this proposed provision is not included in the draft LEP.
- Council's post exhibition changes include replacing the word '*permeability*' with '*quality*' in subclause (5)(f) '*pedestrian, cycle, vehicular and service access, and circulation requirements, including the permeability of the pedestrian network*' of the Design Excellence provision.
The term '*permeability*' includes how the design of urban spaces permits movement of people (pedestrians) including in and around a building/development and is not specific to the size of a site or through-site links (which is Council's justification for the change). '*Permeability*' is also standard wording for similar design excellence clauses.
The Department recommends a post-exhibition change that this proposed provision is not included in the draft LEP.

3.3.3 Justification for post-exhibition changes

The Department notes that these post-exhibition changes are justified and do not require re-exhibition. It is considered that the post-exhibition changes:

- Are a reasonable response to matters raised in submissions.
- Do not alter the intent of the planning proposal and are minor amendments to the planning proposal.

4 Department's assessment

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

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

The planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with Council's LSPS.
- Remains consistent with all relevant SEPPs.

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

Table 4 | Summary of strategic assessment

	Consistent with Gateway determination report assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Woollahra Local Housing Strategy (LHS) 2021	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 5 | Summary of site-specific assessment

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

4.1 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable. This assessment should be read in conjunction with the assessment undertaken as part of the Department's original Gateway determination.

4.1.1 Consistency with Ministerial Direction 1.4 - Site Specific Provisions

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.

The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls. Clause (1)(c) states that a planning proposal must *"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."*

Condition 1.o) of the Gateway determination required that the planning proposal:

Provide an updated discussion to demonstrate that the inconsistency with Ministerial Direction 1.4 – Site Specific Provisions is justified in accordance with the terms of the direction.

Specifically, the Gateway assessment considered that the following matters required resolution:

Design excellence

Council's proposal included a requirement for the consent authority to consider a range of matters to determine whether a development exhibits design excellence including *"whether the proposed development is consistent with an urban design and planning strategy, and public domain plan, adopted by the Council."*

The Gateway assessment considered the reference to planning documents adopted by Council to be very broad and non-specific particularly as they refer to the draft ECC Strategy and related public domain plan that have not been endorsed by Council. Detailed planning and design guidance for future development in the Edgecliff centre could be provided in the site-specific DCP.

As such, Gateway condition 1.c) required this item to be removed from the design excellence provision.

Council amended the planning proposal prior to exhibition to remove reference to *"urban design and planning strategy and public domain plan"* from the Design Excellence provision.

Community infrastructure and affordable housing

Council's planning proposal included an LEP clause to secure public benefits from development that utilises the alternative building height and FSR controls with an option for the provision of infrastructure in-kind, or the recoupment of the cost of provision.

The Gateway assessment considered that this did 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, Gateway condition 1.d) required its removal.

Council amended the planning proposal prior to exhibition to remove all references to community infrastructure and affordable housing requirements from the proposal.

Heritage

Council's planning proposal included a local provision for conservation of heritage items. The Gateway assessment noted that Clause 5.10 of the Standard Instrument LEP already provides for conservation of heritage, and that detailed guidance on protecting heritage and integrating it with

new development should be contained in the site-specific DCP. As such Gateway condition 1.e) required removal of heritage conservation from the local provision.

Council amended the planning proposal prior to exhibition to remove the heritage conservation provision. The site-specific DCP includes conservation of the heritage item located on the subject site.

Non-residential FSR

The Gateway assessment acknowledged 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 the Edgecliff centre. However, it was considered that there was no feasibility testing or economic analysis to support the proposed minimum 3:1 and maximum 3.5:1 non-residential FSR.

There was merit to support a minimum non-residential FSR of 1.6:1 as demonstrated in the indicative concept scheme. It was also considered that a maximum non-residential FSR was not necessary as this would impose a restriction on commercial or employment generating uses in the local centre.

As such, Gateway condition 1.f) required:

- a minimum non-residential FSR of 1.6:1 subject to an economic analysis to test the feasibility of the minimum non-residential FSR of 1.6:1 or a higher quantum
- removal of the maximum non-residential FSR requirement.

This condition has been resolved through the Altered Gateway determination.

Building height

The Gateway assessment noted that the proponent seeks an alternative building height of 46m, however Council in its role as the planning proposal authority (PPA) revised the height to a maximum of 42m.

The reduction of building height was considered to constrain the ability to deliver commercial floor space as shown in the indicative concept scheme, would not provide flexibility to allow any potential additional commercial storey/s in the building envelope, and would be contrary to the proposal's intent to contribute to the supply of commercial floor space in Edgecliff. It was also noted that the floor-to-floor heights for the podium commercial levels may be more than necessary.

Gateway condition 1.g) required that the proposed alternative building height be amended from 42m to 46m. This was subject to further design testing of the floor-to-floor heights in the indicative concept scheme against the provisions of the ADG, the requirements of the National Construction Code, and the outcomes of the economic testing associated with the non-residential FSR (see discussion above).

Council amended the planning proposal prior to exhibition to provide an alternative building height of 46m.

Site-specific DCP

Council's proposal included 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. Gateway condition 1.h) required clarification of the matters to be addressed by the DCP.

Council amended the planning proposal prior to exhibition to include details to be addressed in the DCP.

Although a site-specific DCP may be considered inconsistent with this Direction it is justified under the circumstances. Council intends to prepare a DCP to support the Edgecliff Commercial Centres Strategy currently underway. A site specific DCP for the site as an interim measure to provide consistency with future development controls is therefore considered suitable.

The Department is satisfied that that the proposal has adequately addressed the matters raised in the Gateway determination and that the inconsistency with this Direction has been resolved.

4.1.2 Consistency with Ministerial Direction 4.1 - Flooding

This Direction seeks to ensure development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and principles of the Floodplain Development Manual, and to ensure the provisions of an LEP are commensurate with flood behaviour and consider potential impacts both on and off the land.

The Gateway assessment noted that 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 was recommended that a Gateway condition be included to require confirmation on whether the site is flood prone land as defined in the Floodplain Development Manual 2005.

The planning proposal has been updated and the land confirmed as not being flood prone.

The Department is satisfied that that the proposal is consistent with this Direction.

4.1.3 Consistency with Ministerial Direction 5.2 - Reserving Land for Public Purposes

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.

Part of the site at the corner of 136 New South Head Road is affected by road acquisition reservation with TfNSW as the relevant public authority. Council has sought to have the road reservation removed via a planning proposal (PP-2021-6740), that the Department determined should not proceed as TfNSW advised that the road reservation is required and should be retained.

The Gateway assessment for this planning proposal noted that the proponent does not seek to remove the road reservation and a Gateway condition required consultation with TfNSW regarding the road reservation and any implications it may have on the planning proposal.

As noted in the report above under **3.3 Post-exhibition changes**, Council has made post-exhibition amendments to the planning proposal to delete any reference to the removal of the land reserved for acquisition.

The Department is satisfied this matter has been appropriately addressed and that the inconsistency with this Direction has been resolved.

5 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 6 | Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	A Key Sites Map has been prepared by Woollahra Municipal Council and it meets the technical requirements.	<input checked="" type="checkbox"/> Yes, DPHI confirmed on the 11 April 2024 that it approved the mapping. <input type="checkbox"/> No
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment Consultation).</p> <p>Council provided comments on the draft instrument on 27/03/2024 (Attachment Consultation).</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 10 April 2024, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

6 Recommendation

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

- The proposal is consistent with the Gateway determination (as altered).
- All matters identified in the Gateway determination have been satisfactorily resolved.
- It provides additional housing and commercial opportunities near existing services, infrastructure, and public transport in alignment with Government policy and would contribute to the 30-minute city pursuant to the Greater Sydney Region Plan and Eastern City District Plan.
- It is consistent with and gives effect to the relevant objectives, directions, and priorities of the Greater Sydney Region Plan and Eastern City District Plan.
- It is consistent with all relevant section 9.1 Directions and SEPPs, excluding Direction 1.4 Site Specific Provisions where it is considered minor and justified.
- Any potential environmental impacts could be adequately addressed and resolved at the development application stage.
- It adequately addresses the issues raised during consultation and there are no outstanding agency objections to the planning proposal.



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6.1 Attachments

Attachment	Document
A	Planning proposal
B	Gateway determination
C	Gateway determination report
D	Gateway alteration
E	Post-exhibition report
F	Woollahra Council's Environmental Planning Committee minutes – 5 February 2024
G	Woollahra Council's resolution – 12 February 2024
Consultation	Section 3.36 Council consultation
PC	Parliamentary Counsel Opinion