



Council Ref: 24/71583

7 May 2024

Mr Douglas Cunningham
Manager Agile Planning
Department of Planning, Housing and Infrastructure
4 Paramatta Square
12 Darcy Street
Parramatta NSW 2150

Dear Mr Cunningham,

Submission – Planning Proposal for 488-492 Old South Head Road & 30 Albemarle Avenue, Rose Bay

Thank you for notifying us on the exhibition of the planning proposal for 488-492 Old South Head Road and 30 Albemarle Avenue, Rose Bay.

We are writing to express our concerns with the subject planning proposal. We believe it is crucial to address these critical aspects post-exhibition to ensure best planning outcome for the sites.

Background

On 23 February 2024, the DPHI issued a Gateway determination stating the proposal should proceed subject to conditions, including to:

- Remove the requirement for a site-specific Development Control Plan (DCP) that would have provided detailed planning and design guidance for any future development; and
- Remove proposed local provisions relating to setbacks, deep soil landscaped areas and a publicly accessible area (pocket park).

Staff reviewed the conditions and identified some concerns regarding the Gateway determination report.

Having discussed this with staff at the Department of Planning, Housing and Infrastructure (DPHI) on 6 March 2024, we were advised to put our concerns in writing. In particular, we wanted to highlight our concerns regarding the removal of the setback provisions and the absence of a site-specific DCP.

On 8 March 2024, an email was sent detailing our proposed amendments (prior to public exhibition). However, we were directed to submit a formal submission during the exhibition period. We were informed that, post exhibition, the DPHI would review these matters and provide recommendations to the Sydney Eastern City Planning Panel (SECPP) if amendments should be made to the planning proposal.

Concerns with Gateway conditions

At its meeting on 14 August 2023, Council resolved not to proceed with the planning proposal request. In line with Council's decision, staff do not support the DPHI in amending the *Woollahra Local Environmental Plan 2014* to facilitate a 4 storey mixed use development on the sites.

Notwithstanding this resolution, staff maintain our concerns that the planning proposal, as exhibited, may have unintended effects on adjoining properties and lacks clarity for the community regarding the built form outcomes. These concerns are outlined as below:

- **Building setbacks provision**

We would like to stress the importance of retaining the building setbacks provision in the Local Environmental Plan (LEP). These setbacks ranging from 9m to 13.5m have been carefully developed through ongoing collaboration between Council and the proponent. These setbacks facilitate a high-quality development that maintains appropriate separation distances, transition and amenity.

The Gateway determination report recommended removing the building setbacks provision, assuming that the Apartment Design Guide (ADG) would apply if both sites were developed together. However, the proposed *Schedule 1* and site specific provisions do not guarantee the application of ADG. See detailed discussion under 'Maximum 2,400sqm non-residential GFA' below.

Without the proposed setbacks, there is a risk of inadequate building separation, particularly concerning the transition from the proposed development to the adjacent R2 Low Density Residential zoned land. At development applicant (DA) stage, the applicant may argue that only a 2m side setback is required based on the existing R2 zoning of 30 Albemarle Avenue. Setbacks less than the specified 9m to 13.5m setbacks would not provide a suitable building separation and height transition to 28A Albemarle Avenue.

We request that the DPHI reinstates a site specific provision relating to building setbacks to protect the interface with the adjacent R2 Low Density Residential zone, to address privacy concerns, and provide certainty to the development outcome.

- **Site specific development control plan**

Staff have concerns about the removal of the requirement for a site specific DCP.

While the Gateway determination report asserted that including such a provision contradicts Ministerial Direction 1.4, we disagree. The inclusion of a DCP requirement in the LEP aligns with Section 3.44 of the *Environmental Planning & Assessment Act 1979*. This approach is also consistent with other planning proposals including the planning proposal (PP) involving land at [252–254 New South Head Road, Double Bay](#).

We request that a LEP provision is applied to have the effect that:

“Development consent must not be granted for development on land to which this clause applies unless a development control plan has been prepared for the land.”

The purpose of the DCP provision is to ensure that a site specific DCP is in place before any development may be carried out.

A site specific DCP for these sites would address key matters such as the proportion and distribution of non-residential versus residential uses, and how traffic impacts will be managed.

The proponent has indicated a clear intent to both Council and the community to prepare a site specific DCP. For example, a draft DCP accompanied the planning proposal and the proponent made numerous references to a site specific DCP in its *Stakeholder Engagement Consultation Report* dated 12 April 2023.

Considering the reasons stated above, we believe there are sufficient legislative grounds and planning merit for the DPHI to require the preparation of a site specific DCP for the sites.

- **Maximum 2,400sqm non-residential GFA**

The proposal aims to facilitate shop top housing across the sites by permitting the expansion of 'retail premises' as part of 'shop top housing' on the R2 Low Density Residential zoned land at 30 Albemarle Avenue. Council staff recommend a maximum GFA or FSR be applied to the non-residential use to ensure the planning intent of the proposal is met.

It is recognised that a supermarket is already permitted in the E1 Local Centre zone without restriction. However, the existing FSR control restricts the maximum GFA on 488-492 Old South Head Road to 3,120sqm, compared to the proposed 4,200sqm GFA across both sites. If adopted, the proposed planning controls could enable commercial development totalling close to 4,200sqm across both sites.

According to the definition of 'shop top housing', only one dwelling is required to be provided, and the remaining of the building could be utilised for a supermarket. Consequently, staff note that the traffic impacts for a supermarket larger than 3,120sqm have not been sufficiently tested. Supporting such a scheme without fully understanding its impacts is against best planning practice.

Furthermore, staff note that while the concept proposal indicates that a total of 14 dwellings will be delivered across the sites, this may not be guaranteed at DA stage.

Changing the ratio of non-residential uses versus residential uses across the sites can substantially change the nature of the built form and its impacts. To address concerns regarding potential environmental planning impacts (including associated traffic impacts) and to ensure that a reasonable number of dwellings are delivered (i.e. not significantly depart from the indicated 14 dwellings), we propose inserting a maximum 2,400sqm non-residential GFA in the LEP provisions across the sites.

Conclusion and Request for Action

We look forward to meeting with the DPHI to discuss our concerns, and we hope that you reconsider our request to reinstate:

- site specific provisions relating to building setbacks adjoining the R2 zoned land;
- a site specific DCP is to be prepared for the sites, and
- a new local provision to restrict a maximum non-residential GFA of 2,400sqm across 488-492 Old South Head Road and 30 Albemarle Avenue, Rose Bay.

We look forward to working with you to progress this important matter. If you require any further information please contact Charmaine Tai, Strategic Planner, on 02 9184 1014 or via charmaine.tai@woollahra.nsw.gov.au.

Yours sincerely,



Lyle Tamlyn
Acting Team Leader – Strategic Planning

Ian Woods

From: Patrick Hay <patrick.hay@waverley.nsw.gov.au>
Sent: Wednesday, 8 May 2024 3:49 PM
To: Ian Woods
Cc: Douglas Cunningham; Tim Sneesby; Renee Ezzy
Subject: RE: [EXTERNAL]Public Exhibition Notification - 488-493 Old South Head Road and 30 Albemarle Avenue, Rose Bay (PP-2022-731)

Hi Ian,

We won't be providing a submission, thanks for reaching out.

Kind Regards,

Patrick Hay

Senior Strategic Planner

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Waverley Council acknowledges the Bidiagal, Birrabirragal and Gadigal people, who traditionally occupied the Sydney Coast. We pay our respects to Elders past and present.



WAVERLEY COUNCIL

From: Ian Woods <ian.woods@dpie.nsw.gov.au>
Sent: Wednesday, May 8, 2024 11:37 AM
To: Patrick Hay <patrick.hay@waverley.nsw.gov.au>
Cc: Douglas Cunningham <douglas.cunningham@dpie.nsw.gov.au>; Tim Sneesby <Tim.Sneesby@waverley.nsw.gov.au>; Renee Ezzy <renee.ezzy@dpie.nsw.gov.au>
Subject: Re: [EXTERNAL]Public Exhibition Notification - 488-493 Old South Head Road and 30 Albemarle Avenue, Rose Bay (PP-2022-731)

Hi Patrick,

Just following up with this to check if Waverley Council intend to provide a submission.

Kind regards,

Ian Woods (he/him)

Planning Officer, Planning Proposal Authority

Planning, Land Use Strategy, Housing, and Infrastructure | Planning Group

Department of Planning, Housing and Infrastructure

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