

JRPP No:	2010SYE031
DA No:	2010/0257/1
PROPOSED DEVELOPMENT:	Demolition of 3 existing buildings & ancillary structures, the erection of a 23 unit RFB, a child care centre, 43 carspaces & consolidation of lots
APPLICANT:	Greek Orthodox Parish Of St George
REPORT BY:	Eleanor Smith, Senior Assessment Officer, Woollahra Municipal Council

Assessment Report and Recommendation

ITEM No.	R3
FILE No.	DA 257/2010/1
PROPERTY DETAILS	88-96 Newcastle Street, Rose Bay
	Lot & DP No.: LOTS: 14, 15, and 16 SEC: D DP: 5092 LOT: 1 SEC: DP: 92579 LOT: 1 SEC: DP: 1079086 Side of Street: East Site Area (m²): 3470.7m ² Zoning: Residential 2(b)
PROPOSAL:	The demolition of 88 Newcastle Street (dwelling), 94 Newcastle Street (dwelling), 96-98 Newcastle Street (St Paul's Anglican Church and former Parish Hall) and the construction of a new residential flat building, a new childcare centre, and the retention of the existing Greek Orthodox Church of the Parish of St George.
TYPE OF CONSENT:	Integrated - RTA
APPLICANT:	Beraldo Design Pty Ltd
OWNER:	Greek Orthodox Parish Of St George
DATE LODGED:	02/06/2010
AUTHOR:	Ms E Smith
CONSENT AUTHORITY	Joint Regional Planning Panel (Regional Panel)

DOES THE APPLICATION INVOLVE A SEPP 1 OBJECTION?

YES



NO



1. RECOMMENDATION PRECIS

The application is recommended for refusal to the Joint Regional Planning Panel because:

- It is considered to be unsatisfactory with regards to the provisions of Woollahra Local Environmental Plan 1995 (WLEP 1995) & Woollahra Residential Development Control Plan 2003 (WRDCP 2003).
- It will adversely impact upon the local environment such that refusal is justified, specifically:
 - The proposal does not replace the existing development with built form of a comparable quality.
 - The proposal fails to accord with SEPP 65 – Design Quality of Residential Flat Buildings.
 - The proposal represents an overdevelopment of the subject site.
 - The proposal would appear visually intrusive to the detriment of the streetscape.
 - The proposal would adversely impact upon the residential amenity of the neighbouring properties in terms of view loss and sense of enclosure.
 - The proposal would fail to maintain the landscape character of the locality.
 - Insufficient information has been submitted in relation to tree preservation, loss of solar access, loss of acoustic privacy, SEPP 55 – remediation of land and Acid Sulfate Soils.

2. PROPOSAL PRECIS

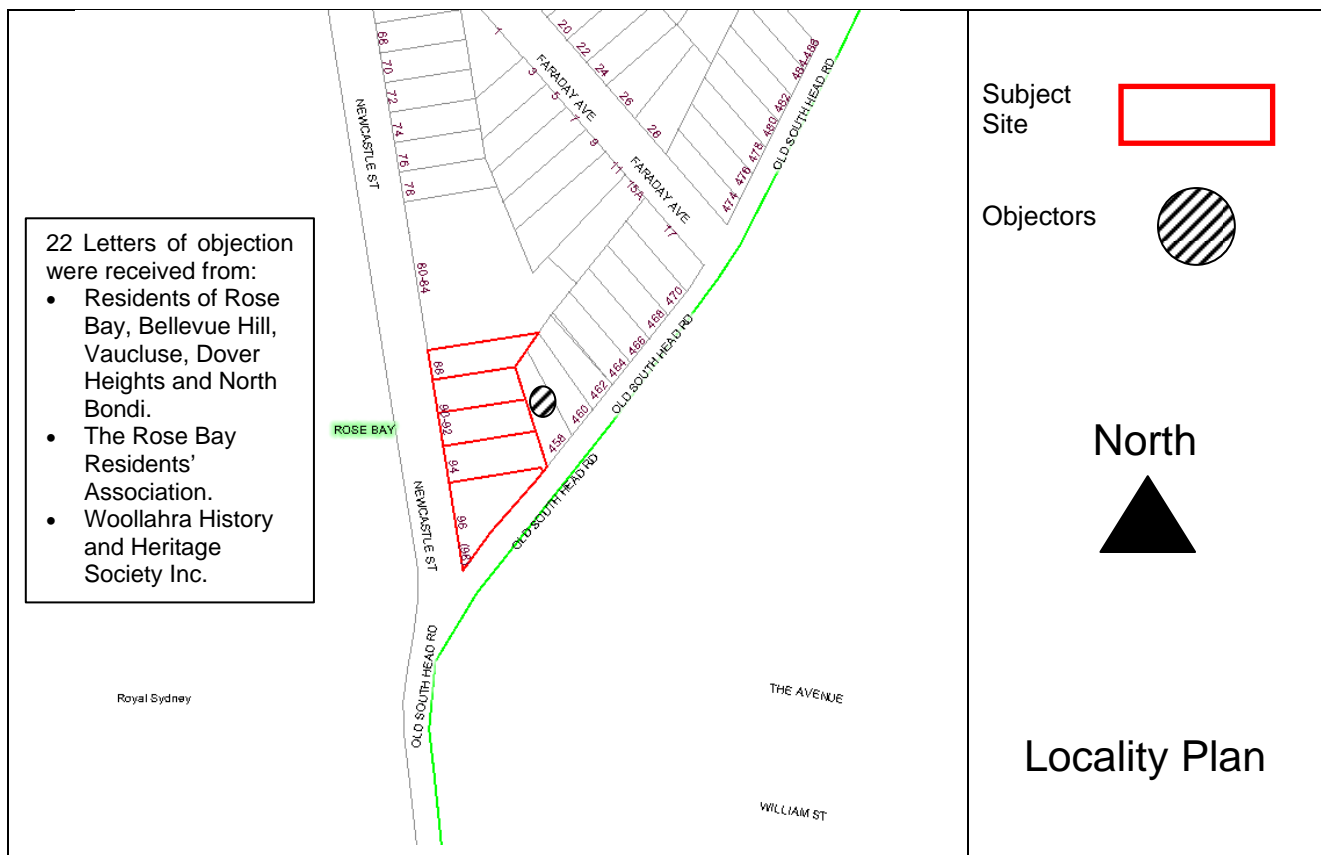
The Regional Panel is the consent authority for this development application as the application is for:

- A development with a capital investment value of more than \$5 million which incorporates a child care centre.

The matter is to be heard by the Regional Panel on Wednesday 20 October 2010.

The proposal is for the demolition of 88 Newcastle Street (dwelling), 94 Newcastle Street (dwelling), 96-98 Newcastle Street (St Paul's Anglican Church and former Parish Hall) and the construction of a new residential flat building (RFB), a new childcare centre, and the retention of the existing Greek Orthodox Church of the Parish of St George.

3. LOCALITY PLAN



4. DESCRIPTION OF PROPOSAL

The proposal involves the consolidation of the existing five allotments into one allotment and the following works:

Child Care Centre:

- The demolition of No. 88 Newcastle Street (single storey dwelling) and the construction of a child care centre.
- The child care centre would accommodate 34 children ranging in age from 3-5yrs.
- The proposed operating hours are 7am to 7pm Monday to Friday.
- The two storey child care centre comprises of two studios, storage areas, four offices, a pantry/staff room, a kitchen, a meeting room, two interview rooms, an education room, waiting and lobby areas, a shower room, five WCs, a laundry, a stairway and lift, and a first floor balcony to the front elevation.
- An outdoor play area is located to the rear of the dwelling with a further landscaped courtyard located to the southern side of the building.
- The child care centre is accessed from a single access point from Newcastle Street and provides two off street car parking spaces.
- A finalised plan of management for the Childcare Centre, although referenced in the Statement of Environmental Effects, has not been provided.

Greek Orthodox Church:

- The Greek Orthodox Church of the Parish of St George (90-92 Newcastle Street) is to be retained.
- Minor landscaping works will occur adjacent to the Greek Orthodox Church.

Residential Flat Building:

- The demolition of No. 94 Newcastle Street (single storey dwelling), the demolition of St Paul's Anglican Church (No. 96 Newcastle Street), the demolition of the former Parish Hall (No. 96 Newcastle Street – which currently contains 'Possums Pre-School') and the construction of a RFB.
- The proposed four storey RFB comprises of 23 residential dwellings (21 x 2 bedrooms and 2 x 1 bedroom plus study).
- The basement level contains car parking for 41 vehicles. The basement level car park is accessed by a single point of entry/exit from Newcastle Street.
- The ground level comprises of five apartments and an internal communal area, various private terraces located to the northern and southern side elevations and the western front elevation, and landscaped communal gardens to the northern and southern side boundaries.
- Level one comprises of seven apartments with various private balconies to the northern and southern side elevations and western front elevation.
- Level two comprises of seven apartments with various private balconies to the northern and southern side elevations and western front elevation.
- Level three comprises of four apartments with various large private roof terraces to the northern, southern, eastern and western sides of the building.
- The retention of the existing sandstone retaining wall to Newcastle Street frontage and the construction of a timber slat fence to the Old South Head Road frontage.
- There are two pedestrian entries from Newcastle Street to the RFB, with no pedestrian or vehicular entries from Old South Head Road.
- Three of the proposed ground floor dwellings (G.01, G.02, and G.03) and three car spaces are capable of being adapted for use by people with disabilities.

5. SUMMARY

Reasons for report	Issues	Submissions
<p>1. To assist the Regional Panel in determining the development application, and</p> <p>2. To permit the Development Control Committee (DCC) to decide if the council will make a submission to the Regional Panel. This is because under our current delegations the development application would have otherwise been referred to the DCC for determination as:</p> <ul style="list-style-type: none"> ▪ It does not satisfy the criteria for determination under staff delegation as it involves works costing in excess of \$3 million, and ▪ It is for a new RFB 	<ul style="list-style-type: none"> • SEPP 65 – design quality for residential flat buildings • Floor space ratio non-compliance. • Height non-compliance. • Number of storeys non-compliance. • Boundary setback non-compliances. • Fence height non-compliances. • Building footprint non-compliance. • Mature tree setback. • Streetscape. • Ceiling heights. • Solar access. • View loss. • Contamination. • Acid sulphate soils. • Private open space. • Deep soil landscaping. • Acoustic privacy. • Non-compliances with the Child Care Centre DCP. • Objectors' concerns. 	<p>Objections were received from 22 neighbouring properties, societies or associations.</p>

6. ESTIMATED COST OF WORKS

Council adopted (DCC 6 June 2005) administrative changes for determining DA fees based on the estimated cost of work. Where the estimated cost of work is greater than \$750,000 or where the applicant's estimate is considered to be neither genuine or accurate, the applicant has to provide a Quantity Surveyor's report. The capital investment value of the development (as provided by the applicant) is \$8,471,079.00. The application was accompanied by an indicative estimate, prepared by Simon Kelava, Quantity Surveyor dated 21 May 2010.

7. DESCRIPTION OF SITE OF LOCALITY



THE SITE AND LOCALITY	
Physical features	The subject site comprises of five allotments which are located in a prominent corner location at the junction of Newcastle Street and Old South Head Road. The site fronts the eastern side of Newcastle Street and is irregular in shape. The combined allotments have a western front boundary (to Newcastle Street) with a length of 101.71m, a south eastern side boundary (to Old South Head Road) with a length of 60.305m, an eastern rear boundary with a length of 66.73m and a northern side boundary with a length of 51.195m; an area of 3470.7m ² .
Topography	The site falls by approximately 6m from the Old South Head Road frontage to the north western corner of the site.
Existing buildings and structures	<p>The site is occupied by:</p> <ul style="list-style-type: none"> 88 Newcastle Street (to be demolished) a single-storey Federation Arts and Crafts cottage constructed c.1911 with a single garage located within the front setback. 90-92 Newcastle Street - The Greek Orthodox Church (to be retained) a large modern building built c. 1963-1964. Constructed from yellow face brick with a simple pitched and tiled roof, with a large square bell tower. 94 Newcastle Street (to be demolished) a single storey cottage constructed c.1913 with a brick garage located within the rear setback (accessed from Old South Head Road). 96 Newcastle Street – former St Paul's Anglican Church (to be demolished). The former St Paul's Church of England Parish church was built in 1927. The building is of face brick construction with a parapeted gable. Detailing includes small buttresses, stained glass windows, and arch double doors. 96 Newcastle Street – Parish Hall (to be demolished). This building was formerly St Paul's Church of England Parish Church, built c. 1918. The building was the original Anglican Church which was superseded by the neighbouring building in 1927 at which time the building became the Parish Hall. The building is a single storey structure of masonry construction with a tiled, gabled roof with spire and exposed rafter eaves. A retaining wall bounds the southern corner of the site adjacent to the Parish Hall.
Environment	<p>To the north of the site is:</p> <ul style="list-style-type: none"> 80-84 Newcastle Street (Wentworth Manor) a modern two storey aged care facility. <p>To the east of the site are:</p> <ul style="list-style-type: none"> 458, 460 and 462 Old South Head Road - detached single storey and two storey dwellings. <p>To the south of the site is:</p> <ul style="list-style-type: none"> The junction of Newcastle Street and Old South Head Road. To the south eastern side of Old South Head Road are a number of three/four storey residential flat buildings (449-451, 453, 455, 457 Old South Head Road) and a single storey dwelling (447 Old South Head Road). <p>To the west of the site is:</p> <ul style="list-style-type: none"> The Royal Sydney Golf Club (701-703 New South Head Road), which is listed in the Woollahra Local Environmental Plan 1995 as a Heritage Item.

8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential, Church, and Child Care Centre.
Previous relevant applications	None.
Pre-DA	<p>Pre DA 16/2009 was lodged on 31/07/2009 for a new residential building and child care centre, meeting minutes were provided to the applicant on 30/11/2009.</p> <p>Pre DA 49/2008 was lodged on 02/12/2008 for senior living apartments, a new child care centre and a new community church/hall, meeting minutes were provided to the applicant on 02/02/2009.</p>

Requests for additional information	<p>On 10 June 2010:</p> <ul style="list-style-type: none"> Elevational shadow diagrams – not received. Details of site area for the RFB – not received. <p>On 16 June 2010:</p> <ul style="list-style-type: none"> A traffic/parking report – received 27 July 2010. <p>On 29 June 2010:</p> <ul style="list-style-type: none"> A detailed assessment of the health and structure of trees within and adjacent to the site - received 27 July 2010. An arboricultural Impact Assessment Report - received 27 July 2010.
Amended plans/ Replacement Application	None.
Land & Environment Court appeal	None.

9. REFERRALS

9.1 The following table contains particulars of internal referrals.

INTERNAL REFERRALS		
Referral Officer	Comment	Annexure
Development Engineer	Council's Team Leader-Development Engineer has determined that the proposal is satisfactory with regards to technical services concerns subject to conditions.	2
Landscaping Officer	Council's Landscaping Officer has determined that insufficient information has been submitted to demonstrate that the proposal is satisfactory with regards to tree and landscaping impacts.	3
Environmental Health Officer	Council's Environmental Health Officer has determined that insufficient information has been submitted to demonstrate that the proposal is satisfactory with regards to site contamination and acoustic privacy impacts.	4
Heritage Officer	Council's Heritage Officer has determined that the application is not acceptable as it would have an unsatisfactory heritage impact.	5
Urban Design Planner	Council's Urban Design Planner has determined that the proposal is unsatisfactory on the grounds that the proposal is visually intrusive and out of scale with surrounding development.	6
Fire Safety Officer	Council's Fire Safety Officer has determined that the proposal is satisfactory in relation to fire safety subject to conditions.	7
Community Services	Council's Community Development Officer has determined that the proposal is satisfactory in relation to community development.	8

9.2 The following table contains particulars of external referrals.

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
Roads and Traffic Authority	s.138 of the <i>Roads Act</i> 1993	No comments received to date.
Waverley Council	The subject site abuts the	No objection subject to the development being

EXTERNAL REFERRALS		
External Referral Body	Reason for referral	Comment
	Waverley Council boundary	compliant with Woollahra Council's Development Control Plans, existing statutes, policies and codes. The full comments are attached as Annexure 9 .

ENVIRONMENTAL ASSESSMENT UNDER S.79C

The relevant matters for consideration under section 79C of the *Environmental Planning and Assessment Act 1979* are assessed under the following headings:

10. RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

10.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") applies to the proposed development. The development application was accompanied by **BASIX Certificate 304764M** committing to environmental sustainability measures.

If the proposal was recommended for approval these requirements would be imposed by standard condition prescribed by clause 97A of the *Environmental Planning & Assessment Regulation 2000*.

State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration must be given as to whether the land is contaminated.

The proposal was referred to Council's Environmental Health Officer who provided the following comments in relation to land contamination:

Reference is made to the Pre-DA Lodgement Health Referral Response of 4 August, 2009 where it was recommended that the application shall have regard to State Environmental Planning Policy No. 55 – Remediation of Land and the Contaminated Land Management Act 1997. Comment is made in Section 4.2.3 'SEPP 55' in the Statement of Environmental Effects where it is stated that, "it is considered that portion of the site is suitable for the proposed use without the need for any further investigation. In addition to the aforementioned, the proposed childcare centre is also to be located on a property which has been used for residential purposes for many years".

Although it is likely that the site has been used for residential purposes, a more comprehensive appraisal of the site's history is required to ensure that no contaminating activities existed on the land to be developed taking into consideration that part of the proposal involves a sensitive use being a childcare centre. As such, the applicant shall

provide but not limited to the following information so that an appropriate evaluation of the suitability of the land for the proposed development can be made:

- *A detailed appraisal of the site's history being undertaken with the information referenced to enable Council to verify the information and determine its suitability.*
- *A visual site inspection and assessment of the land and building in terms of contamination being undertaken and included as part of the Initial Site Evaluation. Where the site's history is incomplete or the site inspection and assessment may suspect contamination, it may be necessary to undertake a preliminary sampling and analysis program.*
- *A statement shall be included in the report to indicate that as a result of the Initial Site Evaluation, that the site is suitable for the proposed development, or provide a basis for a more detailed investigation.*

Insufficient information has been submitted with the development application to demonstrate that the proposal is satisfactory with regards to clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land. This forms **reason for refusal 9**.

SEPP 65–Design Quality of Residential Flat Development

SEPP 65 applies to new buildings which comprise of three or more storeys and four or more self contained dwellings. The proposal includes a four (4) storey RFB containing twenty three (23) residential units.

The instrument provides for the proposal to be referred to a Design Review Panel. A panel has not been established for the Woollahra area. The instrument requires the assessment of the subject development application against the ten design quality principles contained in Clause 9-18 and against the considerations contained in the publication "Residential Flat Design Code." The proposal has been referred to Council's Urban Design Planner for comment. The full referral response is attached as **Annexure 6**.

Furthermore, SEPP 65 requires any development application that is lodged 12 months or more after the commencement of the SEPP must be accompanied by a design verification statement from a qualified designer. In this instance, Maurice Beraldo of Beraldo Design has provided a design verification statement which concludes that the proposal accords with the design quality principles set out in Part 2 of SEPP 65 (see **Annexure 10**).

Council's Urban Design Officer has provided the following comments in relation to site context and the proposal:

Site Context.

The site is at the fork of Newcastle and Old South Head (OSH) Roads. This location has a significant gateway role. OSH Rd. is the historic route from Sydney Cove to South Head and now a well used regional arterial road. The site accommodates the first built form to the north of OSH Rd. for a distance of over 900m (from O'Sullivan Road to Newcastle Street). This is also the point where the road has crossed the Rose Bay Bondi isthmus, veers to the east and starts to rise to Vacluse. All these factors combine to make this a highly prominent location.

The site, which is made up of five separate lots, is presently occupied by a low scale ecclesiastic cluster. A brick parish hall addresses the corner. Together the group, particularly viewed from the west, has a strong and dignified character. These buildings and vegetation on this site set the character for the suburb beyond.

Approximately 200m to the north east of the site is the Rose Bay South neighbourhood centre. This is a strip commercial centre stretching another 500m further north east. This centre is split by OSH Rd. between Woollahra and Waverley Councils. The south eastern Waverley side of the road is significantly more developed. The Woollahra side features only a short strip of pavement edge development. Residential development is also more

advanced on the south eastern Waverley side. Despite Woollahra Council controls along this section of OSH Rd. allowing medium density development, reflecting the road's usage levels, the present development is low density and low scale.

The site also has a frontage to Newcastle Street which is a secondary road running along the east side of the golf course. This street is predominantly residential but has a grouping of aged care and ecclesiastical buildings to its southern end. The site's frontage to Newcastle Street faces west.

The site, fronting on one side a main road, on another a residential/ecclesiastical street and acting as a significant gateway to the predominantly residential Vaucluse area, is significant and contextually complex.

The Proposal

This proposal consists of two buildings separated by an existing church. I am going to look at each building separately and then consider their combined effect. Between the development sites is the Greek Orthodox Church which is not being physically altered by the development.

The majority of the development is to the site south of the church. This building contains 23 residential units and a 41 car underground car park. The building rises 4 storeys with the top level set back from the road frontages.

The building is shrouded in a steel frame containing a louvre system operated automatically on both Newcastle and OSH Rd. This frame stands clear of the building behind. This frame is unlikely to be able to convey the texture and animation normally associated with a residential building. The frame features to the north, western and south elevations. On the north and west faces it may be justified as a solar control, but its presence on the south face suggests it is simply a visual device since it is unlikely to have any noise abating qualities. This screen considerably increases the bulk of the building.

The principle pedestrian entries are; on the western elevation off Newcastle Street to the western units and along the northern edge of the building to the eastern units. The pedestrian access to the eastern units is extremely convoluted.

The vehicle entry to the underground parking is also to this frontage.

It is noted that this application is actually for two unrelated buildings separated by an existing church which remains unaltered. Considered separately the FSR proposed on the residential (south western) part of the site is in the region of 1.9:1. The controls set a maximum FSR of 0.875:1. The proposed building is more than double the FSR intended on this site. The Day Care Centre has an FSR of approximately 0.36:1.

The building's footprint occupies a considerable amount of the southern part of the site. Similarly, deep soil is site that is free of structure, above or below ground. There is very little deep soil on the southern part of the site, when the location of the underground parking is considered. This proposal does not meet the WRDCP 2003 requirement.

The development capacity of the combined lots has been concentrated onto the southern corner. The result is a building which has compromised access, unit layouts and cross ventilation in a number of cases. The building is too big for the site and the result is poor amenity for the occupants and a visually bulky building on a very prominent site.

A Day Care Centre is proposed to the northern end of the site facing Newcastle Street. The front setback is used as a car park. This does not comply with the requirements of the WRDCP 2003. It is suggested in the Urban Design Statement, that the design is a response to the neighbouring church. I consider that the proposal compliments none of the qualities of the adjoining building. Indeed its relationship to the adjacent building illustrates the proposal's considerable aesthetic shortcomings.

The two buildings do not, from an urban design perspective, have characteristics which require them to be assessed together. They are visually and physically separated by the Greek Orthodox Church.

SEPP 65

I have assessed the residential component of the proposal against the ten principles of SEPP 65

1. Context

SEPP 65: “Good design responds and contributes to its context. Context can be defined as the key natural and built features of an area. Responding to context involves identifying the desirable elements of a location’s current character or, in the case of precincts undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identity of the area.”

This building proposal is in a highly significant location. The decision to address the building to Newcastle Street and treat OSH Rd. as the side boundary is a basic misreading of the site’s position in the urban fabric.

The proponent points out correctly that the site is well positioned close to bus and shops. However the design fails to respond to this proximity, facing away from the local centre.

2. Scale

SEPP 65: “Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area.”

The residential building is enveloped in a steel frame. The proponent claims that this reduces the perceived scale of the proposal. I do not agree. It may be that when viewed from the pavement immediately adjacent to the building the building appears to be two rather than four storeys, but this is from a very limited viewing area. This building is very prominent and when seen from afar this building will be perceived as bulky and out of scale with both the existing and the proposed character of the location. The model clearly illustrates the contrast in the scale of the development to the surrounding built form.

3. Built form

SEPP 65: “Good design achieves an appropriate built form for a site and the building’s purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.”

The shrouding the building in the steel frame and shading devices mean the building cannot respond to the particular contextural cues of each frontage. This screen also increases the perceived bulk. The proposal overpowers the adjacent church (which traditionally would have a prominent building role) and sits forward of the existing built form on OSH Rd. The built form on the OSH Rd. frontage is not considered satisfactory given the potential future character.

4. Density

SEPP 65: “Good design has a density appropriate for a site and its context, in terms of floor space yields (or number of units or residents). Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the stated desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.”

The proposal provides an acceptable population density in this location. There is no reason why this well positioned site close to facilities and on a public transport route cannot accommodate the proposed population.

The building bulk of the residential building is, however, excessive. The FSR on this part of the site when considered separately is approximately 1.9:1. This results in building bulk which is out of keeping with the desired character for the location as stated in the Woollahra Residential DCP and contributes to the building’s failure to provide a level of amenity which meets the requirements of SEPP 65.

5. Resource, energy and water efficiency

SEPP 65: “Good design makes efficient use of natural resources, energy and water throughout its full life cycle, including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.”

The development fails to meet the standards set by SEPP 65 with regard to solar access. Nine of the 23 units do not get three hours of sun between 9am and 3pm. Of the nine, two units are south facing, the other seven face west. Given the potential provided by the site, this shortfall is considered unacceptable.

The development meets the requirements of the code regarding cross ventilation. Only three out of 23 units have poor cross ventilation.

The development is potentially adequately shaded from solar gain. The use of screens separated from the building does however raise issues as to how controllable and responsive the devices will be.

There is stormwater detention proposed on site. There is no stormwater capture for re use proposed on the residential site. The southern residential site is under supplied with deep soil and site absorption is very limited. The performance of the proposal regarding water efficiency is considered unsatisfactory.

6. Landscape

SEPP 65: “Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site’s natural and cultural features in responsible and creative ways. It enhances the development’s natural environmental performance by co-ordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character.

The Landscape design associated with this proposal consists of treatments on the three frontages. The Newcastle Street frontage is treated with a formal row of Chinese Tallow trees. This design works well on this elevation.

The southern elevation has a “landscaped communal courtyard” associated with a communal room and is contiguous with an undercover paved area. One unit faces onto this space. There is a ramp leading down to the courtyard from the eastern units. This space is sunken below busy Old South Head (OSH) Road and will be noisy. It is on the southern face of the building and will receive no direct sun light. It is difficult to imagine how either the communal room or the garden will be used, because neither provide good amenity.

The spaces to the Northern side of the building are described as “central courtyards” in the documents. In fact this space seems to provide the only pedestrian access to the seven eastern units. This means that it is a pathway to a communal front door. There are no substantial usable outdoor spaces on this side of the development.

As previously mentioned the proposal suffers, as a result of the size of the footprint and underground car parking, from a considerable shortfall in deep soil area. The landscape proposal therefore is only able to provide substantial planting in deep soil along the OSH Rd. boundary, where six Tuckroos are proposed.

7. Amenity

SEPP 65: “Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.”

The seven units to the east of the development have compromised entry, as previously discussed. This means that these units don't have a satisfactory street address.

There is an unacceptable 35 percent of the development which does not receive the levels of solar access required by SEPP65.

Five of the units feature long winding corridor entries. The layout of the majority of units is satisfactory, however.

There is a 3.0m floor to floor height specified in the proposal. It has regularly proved to be impossible to meet the acoustic separation requirements in the Building Code of Australia (BCA) with a floor depth of 300mm. The proposed floor to floor heights are not therefore likely to provide for the 2.7m ceiling height required by SEPP 65

8. Safety and Security

SEPP 65: “Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.”

The entry to the eastern units has been noted before. The path to the door through a garden is a potential safety and security issue, providing opportunity for illegal entry. The lack of a

clear entry address is also a serious problem for emergency response teams such as the police and ambulance services.

The units on the ground level facing Newcastle Street will have to address the potential for illegal access directly from the street onto the balconies.

9. Social Dimensions

SEPP 65: “Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.”

The development proposes 21 x 2b and 2 x 1b units. Although there is a limited unit mix in the development the emphasis on 2b balances the recent provision of generally larger units in the surrounding area. The development’s location on Old South Head Road is suited to low levels of car dependency, however, to achieve this the design needs to engage with OSH Rd. and the local neighbourhood centre. This development presently turns away from Old South Head Road and hence emphasises car use.

10. Aesthetics

SEPP 65: “Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.”

The steel frame which surrounds this building on three sides creates an anonymous veil which is not suited to a residential building. The modelling of the façade needs to express the use and provide for a level of animation. The fact that the screen is the same on the three sides of development is particularly disturbing, as it suggests that the building is responding to the same issues on each facade. Each side of the site actually presents totally different conditions and the expectation is that the building should respond accordingly.

SEPP 65 Clause 30A. Standards that cannot be used as grounds to refuse development consent for residential flat buildings

- (1) A consent authority must not refuse consent to a development application for the carrying out of residential flat development on any of the following grounds:
 - (a) Ceiling height: if the proposed ceiling heights for the building are equal to, or greater than, the recommended ceiling heights set out in Part 3 of the Residential Flat Design Code.

The development fails to comply with the 2.7 m ceiling height requirement for habitable rooms, under the Residential Flat Design Code.

- (b) Apartment area: if the proposed area for each apartment is equal to, or greater than, the recommended internal area and external area for the relevant apartment type set out in Part 3 of the Residential Flat Design Code.

The Residential Flat Design Code recommends internal and external areas for two (2) bedroom units, range from 80m² – 121m² and 11m² - 33m² respectively. For one bedroom units, areas are 50m² and 8m² respectively. The internal and external areas of the proposed units generally accord with the requirements of the Residential Flat Design Code.

*The considerations contained in the **Residential Flat Design Code** are as follows:*

Local context

For the reasons discussed in the SEPP 65 assessment above, the proposal is considered to be unsatisfactory with the local context requirements of this Code.

Site design

For the reasons discussed in the SEPP 65 assessment above, the proposal is considered to be unsatisfactory with regard to the site design requirements of this Code.

Building design

For the reasons discussed in the SEPP 65 assessment above, the proposal is considered to be unsatisfactory with the building design requirements of this Code.

The proposal is unsatisfactory with regard to the aims, objectives and provisions of SEPP 65. This forms **reason for refusal 1**.

10.2 REPs

SREP (Sydney Harbour Catchment) 2005 and DCP

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration in relation to this DA.

10.3 Section 94 contribution

If the proposal was recommended for approval a monetary contribution would form a recommended condition of consent in accordance with Council's Section 94A Development Contribution Plan 2005. The Section 94A contribution would be calculated as follows:

Levy = 1% (levy rate) x \$8,471,079.00 (proposed cost of development)
= \$84,710.79

The total contribution = \$84,710.79

10.4 Other relevant legislation

None relevant.

11. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

11.1 Aims and objectives of WLEP 1995 and zone (Clause 8(5))

Permissibility and general objectives of the WLEP 1995

The site is zoned residential 2(b) as set out under part 2 of the Woollahra Local Environmental plan. The description of the zone states that:

'The Residential "B" Zone applies to areas characterised by existing medium density residential flat buildings and areas where potential has been identified for increased medium density residential development.'

The proposed residential and child care centre uses are permissible within the 2(b) zone. However the proposal fails to accord with the following aims and objectives of the LEP:

- Insufficient information has been provided to demonstrate that the proposal promotes the retention of existing trees and minimises the impact of the development upon significant trees in accordance with Part 1, Section 2, Clause 2 (f), objectives (ii) and (iii).
- The proposal fails to promote energy efficient building development in accordance with Part 1, Section 2, Clause 2 (j), objectives (ii).
- The proposal fails to promote the creation of an attractive public environment in accordance with Part 1, Section 2, Clause 2 (k), objective (i).
- The design and siting of the development fails to enhance the attributes of the site and improve the quality of the public environment in accordance with Part 1, Section 2, Clause 2 (k), objective (iii).

Zone interface

A zone interface occurs between the subject site (zoned residential 2(b)) and the property to the north which fronts Newcastle Street (zoned residential 2(a)), and The Royal Sydney Golf Club (zoned open space 6) on the opposite side of Newcastle Street to the subject site. Consideration has been given to the planning principle set out in the *Seaside Property Developments Pty Ltd v Wyong Shire Council* [2004] NSW LEC 117 (30 March 2004). This states that:

'As a matter of principle, at a zone interface as exists here, any development proposal in one zone needs to recognise and take into account the form of existing development and/or development likely to occur in an adjoining different zone. In this case residents living in the 2(b) zone must accept that a higher density and larger scale residential development can happen in the adjoining 2(c) or 2(d) zones and whilst impacts must be within reason they can nevertheless occur. Such impacts may well be greater than might be the case if adjacent development were in and complied with the requirements of the same zone. Conversely any development of this site must take into account its relationship to the 2(b) zoned lands to the east, south-east, south and south-west and the likely future character of those lands must be taken into account. Also in considering the likely future character of development on the other side of the interface it may be that the development of sites such as this may not be able to achieve the full potential otherwise indicated by applicable development standards and the like.'

The proposed development is unsatisfactory with regards to the zone interface for the following reason: the excessive height, building footprint, number of storeys, and insufficient setbacks and deep soil landscaping, results in the bulk and scale of the proposed RFB appearing visually intrusive to the detriment of the streetscape and the amenity of the neighbouring properties. The excessive bulk and scale of the proposal is exacerbated by the fact that the subject site forms a zone interface to the north with a 2(a) residential zone. The 2(a) residential zone provides for a lower density of development, specifically, RFB's are prohibited in the 2(a) residential zone and more stringent FSR and number of storey height controls apply.

11.2 Statutory compliance table

Site Area: 3470.7m ²	Existing	Proposed	Control	Complies
Site Area and Lot Frontage	3470.7m ² 101.71m (amalgamated sites)	3470.7m ² 101.71m (amalgamated sites)	930m ² 21m	YES YES
Overall Height	<9.5m	10.7m (child care centre) 13.3m (RFB)	9.5m 9.5m	NO NO
Floor Space Ratio	<0.875:1 (3036.86m ²)	1.34:1 (4640.82m ²)	0.875:1 (3036.86m ²)	NO

11.3 Site area requirements

The proposal has a total site area of 3,470.7m² and a frontage width of 101.71m which complies with the requirements of Clause 10B(2) of WLEP 1995. However, the proposal fails to satisfy all of the objectives of the site area and frontage requirements under Clause 10A of WLEP 1995.

Specifically, the concentration of development to the southern corner of the subject site (the RFB) results in the proposal undermining objectives (a) and (b) of Clause 10A of WLEP 1995. Objectives (a) and (b) are as follows:

- (a) *to achieve compatibility between the scale, density, bulk and landscape character of buildings and allotment size, and*
- (b) *to provide sufficient space between buildings, to maximise daylight and sunlight access between buildings, to ensure adequate space for deep soil landscaping and to preserve view corridors.*

11.4 Height

Clause 12 of WLEP 1995 stipulates a maximum height of 9.5m. The proposed child care centre provides a maximum height of 10.7m resulting in a non-compliance with this control of 1.2m and the proposed RFB provides a maximum height of 13.3m resulting in a non-compliance with this control of 3.8m.

A SEPP 1 objection (**Annexure 11**) was submitted by the applicant and is summarised as follows:

Compliance with the building height development standard would tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act as:

- *It has been demonstrated the departure to the building height development standard does not result in any adverse impacts to the adjoining and adjacent properties and the surrounding public domain; and*
- *the height, bulk and scale of the proposal sits in context with the existing Greek Orthodox Church and the Newcastle Street streetscape. The impact of increase height is lessened by virtue of Newcastle Street having a down slope from the corner of Old South Head Road. Also a corner site can tolerate more height and bulk than a mid-block site as there is more separation from built form and 'breathing space' for the proposed building. Adequate separation is provided between the existing church and the proposal;*

- the perception of the height of the proposed four storeys built form has been reduced through the implementation of the proposed framing structure enclosing the building;
- the height of the building does not preclude redevelopment of the adjoining properties for a similar purpose/land use;
- the proposed childcare centre building is only two storeys in height, however, its design and in particular its roof angle/degree takes reference from the existing roof form of the retained Greek Orthodox Church building. This design increases the height of the building but at the same provides a consistent streetscape appearance to Newcastle Street and its perceived height is less than what it actually is; and
- the proposal may act as a catalyst for future development within the locality.

Obviously this would not constitute orderly development and would compromise the character/consistency of the existing streetscape of the immediate locality.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the building height development standard is unreasonable as:

- a consistent maximum RL is proposed over the apartment building area;
- the apartment building complies with the height standard at the Old South Head Road frontage;
- the apartment building acts as the southern gateway element to the Rose Bay village where much higher buildings are permitted;
- the site's topographical characteristics permit the additional height (technically) without it adding to the perceived height, bulk and scale of the existing development;
- the proposal positively contributes to the built form characteristics of the locality;
- the proposal has been sympathetically designed to be consistent with and be a positive contribution to the significance of the prestigious Rose Bay suburb;
- it has been demonstrated that the proposal will not result in any material environmental impacts to the adjoining and adjacent properties, particularly in terms of overshadowing, aural and visual privacy, solar access and natural ventilation, and views and vistas;
- The design and siting of the proposed mixed use development is consistent with and is a positive contribution to the prevailing character of the immediate and surrounding locality, in particular the desired future character objectives for the Rose Bay Precinct as identified in DCP 2003.

Is the objection well founded?

For the reasons set out above, the proposed departure from the height of buildings development standard is well founded. Council in the past has considered applications favourably which depart from the height guidelines subject to a satisfactory environmental performance. The proposed development is entirely consistent with this principle as it exhibits an appropriate architectural and urban design solution for the site without compromising or resulting in adverse environmental impacts to the adjoining and adjacent properties and the surrounding public domain and the increase in height of the building is only perceived from a technical point of view.

The following assessment of the SEPP 1 Objection applies the principles arising from *Hooker Corporation Pty Limited v Hornsby Shire Council* (NSWLEC, 2 June 1986, unreported) by using the questions established in *Winten Property Group Limited v North Sydney Council* (2001) NSW LEC 46 (6 April 2001) as reinforced in *Wehbe v Pittwater Council* (2007) NSWLEC 827. In applying the principles set out in the Winten case, the SEPP No. 1 objection has been considered by reference to the following tests:

1. Is the planning control in question a development standard?
2. What is the underlying object or purpose of the standard?

3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in s5(a)(i) and (ii) of the EPA Act?*
4. *Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?*
5. *Is the objection well founded?*

1. *Is the planning control in question a development standard?*

The planning control in question is the 9.5m height standard set by Clause 12 of the Woollahra LEP 1995. As such, any variation of this standard requires a SEPP No. 1 objection, as has been prepared in this case.

2. *What is the underlying purpose of the standard?*

The objectives of the height standard listed under Clause 12AA of Woollahra LEP 1995 are:

- a) *to minimise the impact of new development on existing views of Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney city skyline*
- b) *to provide compatibility with the adjoining residential neighbourhood*
- c) *to safeguard visual privacy of interior and exterior living areas of neighbouring dwellings*
- d) *to minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing*
- e) *to maintain the amenity of the public domain by preserving public views of the Harbour and surrounding areas and special qualities of streetscapes.*

3. *Is compliance with the development standard consistent with the aims of the Policy, and in particular, does the development standard tend to hinder the attainment of the objects specified in s5(a)(i) and (ii) of the EPA Act?*

Having considered the arguments presented by the applicant in the SEPP 1 submission against the relevant objectives of the development standard contained under Clause 12AA of WLEP 1995, it is considered that:

- The proposed non-complying element is inconsistent with objective a). An inspection of the subject site and surrounding development indicates that existing views of Sydney Harbour, ridgelines and views of the Sydney City skyline from a number of neighbouring private properties will be significantly affected by the proposal (refer to assessment under section 13).
- Objective b) requires development to be compatible with the adjoining residential neighbourhood and objective e) requires development to maintain the amenity of the public domain by preserving the special qualities of streetscapes. The proposal is inconsistent with objectives b) and e) for the following reasons:
- The eastern side of Newcastle Street and the north western side of Old South Head Road (the areas which immediately adjoin the subject site) predominantly contains a mix of one and two storey residential buildings of a relatively low scale and density. The southern end of Newcastle Street also contains an aged care facility and a Greek Orthodox Church. Although the subject site and land fronting Old South Head is identified as an area with the potential to provide a greater intensity of development, this area remains relatively under-developed.
 - Whilst the north western side of Old South Head Road (the area immediately adjoining the subject site) is likely, in the future, to undergo a progressive upgrade of the existing housing stock to reflect the increased density of the Residential 2(b) zoning, such development will be shaped by the desired future character as stated in planning and design policies.

- The height of the proposed RFB is incompatible with the existing pattern of development within Newcastle Street, which is predominantly characterised by dwellings which accord with the 9.5m maximum height standard. With a maximum height of 13.3m the proposed RFB would appear out of character with the adjoining residential neighbourhood and the desired future character objectives for the area.
- The RFB presents as a four storey development to Newcastle Street. This is out of character with the pattern of development within Newcastle Street which predominantly comprises of two-storey buildings. Furthermore, the proposal undermines the desired future character objectives for the area which identifies that development should be a maximum of three storeys in height. The non-compliance with the height standard and number of storeys control results in the development appearing unduly prominent within the streetscape.
- The incorporation of the steel frame to the Newcastle Street and Old South Head Road façade adds additional bulk and mass and reduces the articulation of the building, which results in an unsatisfactory streetscape outcome (refer to assessment under section 13).
- The non-complying height of the RFB combined with the setback non-compliances would result in an unreasonable visual impact and sense of enclosure to No. 458 Old South Head Road.
- Churches traditionally form landmark buildings within a locality. The proposed RFB exceeds the height of the adjacent Greek Orthodox Church and is significantly greater in scale. Council's Urban design Officer has determined that the proposal overpowers the adjacent church.
- The combination of the non-compliant height, non-compliant side setbacks and the design of the child care centre results in an unacceptable visual impact upon the streetscape and residents of No. 80-84 Newcastle Street.
- Insufficient information has been submitted to demonstrate that the proposed non complying element is consistent with objective d), as it has not been adequately demonstrated that the proposal fully accords with Council's sunlight access requirements and would not have any unreasonable impacts upon the solar access to the adjoining properties (refer to assessment under section 13).

As the proposal fails to accord with the objectives of the height standard, specifically objectives a), b), d), and e) of Clause 12AA of the WLEP 1995, requiring strict compliance with the height standard is considered reasonable and necessary.

4. *Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?*

A strict compliance with the height standard is reasonable and necessary as the proposal is inconsistent with the objectives of the development standard contained under Clause 12AA of WLEP 1995.

5. *Is the objection well founded?*

The SEPP No. 1 objection in relation to non-compliance with the height standard is not considered to be well founded in this instance.

Accordingly, this forms part of **reasons for refusal 2, 3, 4 and 5.**

11.5 Floor space ratio

Clause 11 of WLEP 1995 stipulates that a building shall not be erected on land to which this plan applies if the floor space ratio would exceed the ratio indicated for that land on the density map which is 0.875:1 (3036.8m²).

The proposed development has a floor space ratio of 1.34:1 or 4640.82m², which would breach the maximum FSR standard by 1603.96m² (a breach of 53% over the permissible amount).

A SEPP 1 objection (**Annexure 11**) was submitted by the applicant and is summarised as follows:

Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?

Compliance with the FSR would tend to hinder the attainment of the objects of the Act as it would:

- *not be consistent with the design quality principles of SEPP 65 and desired residential amenity;*
- *preclude redevelopment of the site in the manner proposed and which would not offer the level of amenity currently expected;*
- *preclude the design and siting of the proposal from being consistent with and becoming a positive contribution to the prevailing character of the immediate and surrounding locality;*
- *compromise the character/consistency of the existing streetscape of the immediate locality; and*
- *not constitute the orderly, economic and sympathetic redevelopment of land*

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the FSR development standard is unreasonable as:

- *549m² of the departure relates to the inclusion of balconies and terraces as part of GFA if they are over 20m² (per apartment and the residual amount). This technical additional GFA in no way adds to the perceived bulk and scale of the apartment building. Furthermore larger areas of private open space which are directly accessible from primary living rooms and therefore provide lifestyle/amenity options should be encouraged by Council as they are in the SEPP 65 design quality principles and the Residential Flat Design Code;*
- *approval of the FSR proposed on the site for a building envelope that has a more than acceptable environmental performance and which relates to the existing character of the locality but which at the same time exceeds that prescribed for the locality in LEP 1995 will not set a precedent for other nonconforming applications;*
- *the proposed FSR is similar to or if not less than other existing development within Rose Bay and in particular is significantly less than that permitted within the Rose Bay village, which the site acts as the southern gateway to;*
- *a mixed use development is proposed that has substantial architectural merit and which positively responds to the site's locational characteristics without adversely impacting on existing adjoining and adjacent properties or the surrounding public domain;*
- *the proposal positively contributes to the built form characteristics of the locality;*
- *the proposal has been sympathetically designed to be consistent with and be a positive contribution to the significance of the prestigious Rose Bay suburb and appropriately acts as a gateway to the Rose Bay village; and*
- *it has been demonstrated that the proposal will not result in any material environmental impacts to the adjoining and adjacent properties, particularly in terms of overshadowing, aural and visual privacy, solar access and natural ventilation, and views and vistas.*

Is the objection well founded?

For the reasons set out above, the proposed departure from the FSR development standard is well founded.

Council in the past has considered applications favourably which depart from the FSR guidelines subject to a

satisfactory environmental performance. The proposed development is entirely consistent with this principle

as it exhibits an appropriate architectural and urban design solution for the site without compromising or

resulting in adverse environmental impacts to the adjoining and adjacent properties and the surrounding public domain.

The following assessment applies the principles arising from *Hooker Corporation Pty Limited v Hornsby Shire Council*(NSWLEC, 2 June 1986, unreported) by using the questions established in *Winten Property Group Limited v North Sydney Council*(2001) NSW LEC 46 (6 April 2001), as reinforced in *Wehbe v Pittwater Council* (2007) NSWLEC 827.

1. Is the planning control in question a development standard?

The maximum floor space ratio is a development standard under Clause 11 of WLEP 1995.

2. What is the underlying purpose of the standard?

The underlying purpose of the standard is to control the bulk and scale of development and protect local amenity from overdevelopment of sites. The objectives of the maximum floor space ratio development standard in Clause 11AA of WLEP 1995 are as follows:

- a) *To set the maximum density for new development,*
- b) *To control building density, bulk and scale in all residential and commercial localities in the area in order to achieve the desired future character objectives of those localities,*
- c) *To minimise adverse environmental effect on the use of enjoyment, or both, of adjoining properties, and*
- d) *To relate new development to the existing character of surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point.*

3. Is compliance with the development standard consistent with the aims of the Policy, and in particular, would strict compliance with the development standard tend to hinder the attainment of the objectives specified in s.5(a)(i) and (ii) of the EPA Act?

Having considered the proposal against the relevant objectives of the development standard contained under Clause 11AA of WLEP 1995, it is considered that:

- Objective a) aims to set the maximum density for new development. The subject site is well positioned and the proposed number of residential units and child centre places can be accommodated by local services including public transport, health services, retail and professional services. The local traffic network is considered capable of accommodating the increase in traffic flows. In terms of the number of residential units and the number of child centre places the proposed density is considered to be acceptable.
- Objective b) aims to control building density, bulk and scale in all residential and commercial localities in the area in order to achieve the desired future character objectives of those localities. The proposal is inconsistent with objective b) for the following reasons:
 - The excess FSR combined with the excessive height, number of storeys and insufficient setbacks of the RFB results in the bulk and scale of the proposal appearing out of character with the existing and desired future character of the area. The proposal fails to provide a consistent building scale to Newcastle Street, which is contrary to the desired future character objective O. 4.9.2.
 - Council's Urban Design Officer has determined that the proposed buildings do not represent well designed contemporary buildings in accordance with the desired future character objective O. 4.9.4. The proposed steel frame to the RFB adds additional building bulk and reduces the interaction between the building and the public domain. The excessive scale of the RFB represents an overdevelopment of the site which results in reduced amenity for the future occupiers. Furthermore the proposed child care center is considered to be crudely designed and an inappropriate response to the qualities of the adjoining church building.

- Desired future character objective O 4.9.5 requires development to differentiate between the development pattern of the Rose Bay commercial centre and the density of the adjacent residential areas. The proposed FSR and height of the proposed buildings are in keeping with the FSR and Height provisions for the Rose Bay commercial (3c) zone, rather than the residential (2b) zone in which the subject site is located. The Rose Bay commercial area is removed from the subject site by over 200m. The provision of a development within the residential (2b) zone with a similar building density to that permitted in the commercial (3c) zone directly contrasts with the desired future character objective O 4.9.5.
- Desired future character objective O 4.9.6 requires residential development to address the street. Whilst the proposed RFB addresses Newcastle Street, the proposal presents a side elevation to Old South Head Road. This is considered to be inadequate with regards to objective O 4.9.6 given that Old South Head Road is a major road with good access to services and infrastructure.
- Objective c) aims to minimise adverse environmental effect on the use or enjoyment, or both, of adjoining properties. The proposal unreasonably impacts upon the residential amenity of the neighbouring properties in terms of loss of views, visual impact, and potentially loss of sunlight access, (refer to assessment below).
- Objective d) aims to relate new development to the existing character of surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point. The proposal is inconsistent with objective d) for the following reasons:
 - The proposed buildings result in numerous non-compliances with the building envelope controls which results in the RFB relating unsuccessfully with the existing character of the surrounding environment.
 - The bulk and scale of the proposed RFB is inconsistent with the existing character and desired future character objectives of the area.
 - The height and number of storeys of the proposed RFBs is inconsistent with surrounding development.
 - The built upon area of the proposed RFB is excessive and provides insufficient space for deep soil landscaping.
 - The combination of the non-compliant height, non-compliant side setbacks and the design of the child care centre results in an unacceptable visual impact upon the streetscape.
 - It is noted that the maximum permissible floor space ratio is not “as of right”. To achieve the maximum floor space ratio, development must satisfy the other relevant controls applicable to the land concerned. The proposal fails to accord with Council's, height standard, setback controls, building footprint controls, deep soil landscaping controls, and view sharing controls.
- As the proposal fails to accord with objectives b), c) and d), requiring a strict compliance with the FSR standard is considered reasonable and necessary.

4. Is compliance with the standard unreasonable or unnecessary in the circumstances of the case?

A strict compliance with the FSR standard is not unreasonable or unnecessary as the proposal fails to accord with the objectives b), c) and d) of the FSR standard. Insufficient evidence has been forward by the applicant to demonstrate that a strict compliance with the FSR development standard would hinder the attainment of the objectives specified in s.5(a)(i) and (ii) of the EPA Act).

5. Is the objection well founded?

The SEPP No. 1 objection in relation to non-compliance with the height standard is not considered to be well founded in this instance.

Accordingly, this forms part of **reasons for refusal 2, 3 and 5.**

11.6 Other special clauses/development standards

Clause 18 Excavation: The provisions of Clause 18 require Council, when considering a development application involving excavation, to have regard to how that excavation may temporarily or permanently affect:

- (a) *the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process*
- (b) *public safety*
- (c) *vehicle and pedestrian movements*
- (d) *the heritage significance of any heritage item that may be affected by the proposed excavation and its setting*
- (e) *natural landforms and vegetation and*
- (f) *natural water run-off patterns*

The extent of excavation associated with the proposal includes the following:

- Bulk excavation for the basement level car park to a maximum depth of approximately 6m over an area of approximately 1120m²; a total volume of approximately 3920m³.

C5.2.16 of WRDCP 2003 stipulates that excavation is required to be setback a minimum of 1.5m from all boundaries. The proposed bulk excavation associated with the basement level complies with this requirement.

Having regard to the above-mentioned heads of consideration, the following comments are made in relation to the impact of the proposed excavation upon the local environment:

- (a) *the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process*

The maintenance of the amenity of the neighbourhood in terms of minimising noise, vibration and dust could be addressed by conditions of consent requiring an erosion and sediment management plan, geotechnical and hydrogeological design certification & monitoring, ground anchors, dilapidation surveys for adjoining properties, protection for adjoining structures on loose foundations, erosion and sediment control installation, the maintenance of environmental controls, compliance with the geotechnical and hydrogeological monitoring program, support of adjoining land owners, vibration monitoring, maintenance of erosion and sediment controls and dust mitigation. Subject to the above-mentioned conditions, the amenity of the adjoining residential properties could be maintained.

- (b) *public safety*
- (c) *vehicle and pedestrian movements*

Issues relating to public safety and pedestrian movements during the excavation phase are inter-related and could be addressed by conditions requiring Council approval for road and public domain works, a Construction Management Plan, creation of a work construction zone, site fencing, maintenance of vehicular and pedestrian access and compliance with the Construction Management Plan.

- (d) *the heritage significance of any heritage item that may be affected by the proposed excavation and its setting*

Any heritage items in the vicinity of the site are located beyond the zone of influence associated with the proposed excavation and will not be adversely affected in this instance.

- (e) *natural landforms and vegetation*

The proposed excavation predominantly occurs below the footprint of the proposed RFB. This ensures that the site's topography is adequately maintained.

The proposal provides insufficient deep soil landscaping within the site to adequately maintain the landscape character of the locality. This is partly as a result of the level of excavation and size of the proposed basement level car park.

(f) *natural water run-off patterns*

Council's Development Engineer has assessed the proposal and considers the stormwater and runoff to be satisfactory, subject to conditions which could be imposed requiring a stormwater management plan, commissioning and certification of systems and works, positive covenant & Work as Executed certification of stormwater systems and on-going maintenance of on-site detention systems.

The excavation associated with the proposal is considered to be unsatisfactory with regard to the provision e) of Clause 18 of WLEP 1995. This forms part of **reason for refusal 6**.

Clause 25 Water, wastewater and stormwater: Clause 25(1) and (2) of WLEP 1995 requires council to consider the provisions of adequate stormwater drainage and the provisions of adequate water and sewage services.

The proposal has been assessed against the provisions of Clause 25 and is considered to be satisfactory, subject to conditions which could be imposed in the event the proposal was recommended for approval.

Clause 21BA Development on certain land in Rose Bay: Clause 21BA relates to the subject site, Clause 21BA, part 2 states that:

The Council must not grant consent to development involving works below the natural surface of the ground relating to land to which this clause applies unless it has considered the following:

- (a) *the adequacy of an acid sulfate soils management plan prepared for the proposed development in accordance with the Acid Sulfate Soils Assessment Guidelines published from time to time by the NSW Acid Sulfate Soils Management Advisory Committee and adopted by the Director-General, and*
- (b) *the likelihood of the proposed development resulting in the discharge of acid water, and*
- (c) *any comments received from the Department of Infrastructure, Planning and Natural Resources within 21 days of the Council having sent that Department a copy of the development application and of the related acid sulfate soils management plan.*

The proposal involves excavation to a depth of 6m below the natural surface of the ground to provide basement level car parking. The application was not accompanied by an acid sulphate management plan to enable the application to be assessed by Council's Environmental Health Officer or the Department of Infrastructure Planning and Natural Resources.

Accordingly, this forms **reason for refusal 10**.

Clause 25D Acid Sulfate Soils: The subject site is located within a Class 5 Acid Sulfate Soils Area and is within 40m of a Class 4 Acid Sulfate Soils Area (The Royal Sydney Golf Club). Insufficient information has been provided to enable an assessment of acid Sulfate soils under clause 25D of Woollahra LEP 1995.

Accordingly, this forms **reason for refusal 10**.

Clauses 26 Heritage items:

Clause 26 applies to heritage items. The subject site is not designated as a heritage item within the WLEP (1995).

However, at the Council Meeting of 26 July 2010, Council resolved:

That a planning proposal be prepared urgently to list the former Anglican Church buildings at 96 – 98 Newcastle Street, Rose Bay, as individual heritage items and a heritage item group in Schedule 3 of Woollahra LEP 1995.

The Environmental Planning and Assessment Amendment Act 2008 (the Amendment Act) was assented to on 25 June 2008. Provisions of the Amendment Act relating to the making of environmental planning instruments commenced on 1 July 2009 along with the Environmental Planning and Assessment Amendment (Plan Making) Regulation 2009 (the Plan Making Regulation).

Section 56 of the EP&A Act relates to gateway determination. The purpose of the gateway determination is to ensure there is sufficient justification early in the process to proceed with a planning proposal and to determine the ongoing information and assessment requirements. A gateway determination under section 56 of the EP&A Act must be obtained authorising a planning proposal to proceed before community consultation takes place.

On 2 August 2010 Council requested a Gateway Determination under section 56 of the EP&A Act in respect of the planning proposal to amend the WLEP 1995 to include the former Anglican Church buildings at 96 – 98 Newcastle Street, Rose Bay, as individual heritage items and a heritage item group.

On 25 August 2010, Tom Gellibrand – The Deputy Director General of Plan Making and Urban Renewal as a Delegate of the Minister of Planning, determined that the heritage listing should not proceed. The Gateway Determination states:

Planning Proposal (Department Ref: PP_2010_WOOLL_002_00): to include two former churches located at 96-98 Newcastle Street, Rose Bay as individual heritage items and as a heritage item group.

I, the Deputy Director General, Plan Making and Urban Renewal as delegate of the Minister for Planning, have determined under section 56(2) of the EP&A Act that an amendment to the Woollahra Local Environmental Plan 1995 to include two former churches located at 96-98 Newcastle Street, Rose Bay as individual heritage items and as a heritage item group should not proceed for the following reasons:

- 1. There is not sufficient justification provided for the need for the Planning Proposal, given the conflicting heritage advice.*
- 2. The Planning Proposal is not consistent with Council's strategic planning framework, given Council's earlier investigations of the site. Woollahra LEP 1995 Amendment No. 44 which rezoned the land, did not identify these properties as having any heritage significance and draft Woollahra LEP 1995 Amendment No. 66, which seeks to list additional heritage items in Woollahra, does not propose to list these properties.*

Clause 27 Development in the vicinity of heritage items:

The Royal Sydney Golf Club to the west of the site is designated as a heritage item within the WLEP 1995. The development is separated by a sufficient distance from the heritage item to prevent any detrimental impacts upon the heritage significance of the Royal Sydney Golf Club. Accordingly, the proposal is satisfactory with regards to Clause 27.

Council's Heritage Officer Referral Response:

The Council's Heritage Officer's referral response (**Annexure 5**) is summarised as follows:

Conclusion

The application is generally not acceptable as it does not comply with all the provisions of the relevant statutory and policy documents as shown in the above assessment and would have an unsatisfactory heritage impact.

Recommendation

- The applicant explore options for retention or partial retention of the existing buildings (by retaining and building upon their forms, materials, and styles) through adaptive re-use and additions.*

OR

- The applicant provide an alternative design based on high quality referential and sympathetic architecture that responds to the existing buildings on site.*

Council's Heritage Officer states that 'it is clear that the existing buildings do not have heritage protection from possible demolition, as they are not heritage listed items nor in a conservation area'.

Having reviewed the relevant statutory and policy documents, it is determined that there are insufficient grounds to warrant the refusal of the proposal on the basis that the proposal would have an unsatisfactory heritage impact. This is on the basis that the subject site is not a heritage item, or located within a heritage conservation area and the proposal would not detrimentally impact upon the heritage significance of any heritage items within the immediate locality of the site.

Notwithstanding the above, the Council's Heritage Officer's view that 'the proposed new buildings are of a generic design that has no reference to the local area of the local immediate character of the neighbouring buildings' is concurred with. This forms part of **reasons for refusal 1, 2 and 4**.

12. DRAFT AMENDMENTS TO STATUTORY CONTROLS

None relevant.

13. DEVELOPMENT CONTROL PLANS

13.1 Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Residential Flat Building

Site Area: 3470.7m ²	Existing	Proposed	Control	Complies
Maximum Number of Storeys	1 (Dwelling - No. 94, Anglican Church &	4	3	NO

Site Area: 3470.7m²	Existing	Proposed	Control	Complies
	Parish Hall)			
Building Boundary Setbacks				
Front Newcastle Street (West)	1.7m (Anglican Church)	1.35m (enclosing steel frame structure)	8.1m	NO
	2.4m (Parish Hall)	2.7m (elevation)	8.1m	NO
Rear (East)	>11.2m	2.6m	11.2m	NO
Side Old South Head Road (South)				
Basement level	N/A	2.49m-3.7m	3m	PART
Ground level	2.2m-6.6m	2.85m-14m	3m	PART
Level one	N/A	2.3m-13.5m	3m	PART
Level two	N/A	2.3m-13.5m	3m-4m	PART
Level three	N/A	3.25m-13.5m	3m-5m	PART
Setback from Significant Mature Trees	N/A	<3.0m	3.0m	NO
Building Footprint	See 'site controls' table below	See 'site controls' table below	See 'site controls' table below	See 'site controls' table below
Floor to Ceiling Height – Habitable Rooms	N/A	2.3m-2.6m	2.7m	NO
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	Unknown	Unknown	50% (or 35m ²) for 2 hours	Unknown
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	Unknown	Unknown	3.0 hours	Unknown
Bulk Excavation Piling and Subsurface Wall Setback	N/A	1.5m or greater	1.5m	YES
Private Open Space at Ground Level – Total	>35m ² Min dimension 3m	<35m ² Min dimension 3m	35m ² Min dimension 3m	NO
Private Open Space at Ground Level – Principal Area	>16m ² Min dimension 4m	<16m ² Min dimension 4m	16m ² Min dimension 4m	PART
Private Open Space at Ground Level – Maximum Gradient	<1:10	<1:10	1:10	YES
Private Open Space – Upper Floor Units in RFBs	N/A	<8m ² Min dimension 2m	8m ² Min dimension 2m	PART
Front Fence Height	Unknown	1.6m-3m	1.2m	NO
Side and Rear Fence Height	Unknown	1.8m-2.4m	1.8m	NO
Car Parking Excavation	N/A	Not Within Building Footprint	Within Building Footprint	NO
Location of Garages and Car Parking Structures	N/A	Behind Front Setback	Behind Front Setback	YES
Car Parking Spaces – RFB/Dual Occupancy	N/A	41 car parking spaces	41 car parking spaces	YES

Child Care Centre

Site Area: 3470.7m²	Existing	Proposed	Control	Complie s
Maximum Number of Storeys	1 (dwelling -No. 88)	2 (child care centre)	3	YES
Building Boundary Setbacks				
Front Newcastle Street (West)	6.8m	6.9m	6.4m	YES
Rear (East)	16.4m	8.8m-14.6m (building)	11.2m (25% of the average site length)	PART
		6.6m-13m (rear canopy)	11.2m	PART
Side (North)				
Ground Floor	0.8m	1.5m	3m	NO
First Floor	N/A	1.5m	3m-4m	NO
Setback from Significant Mature Trees	N/A	3.0m	3.0m	NO
Building Footprint	See 'site controls' table below	See 'site controls' table below	See 'site controls' table below	See 'site controls' table below
Floor to Ceiling Height – Habitable Rooms	N/A	2.7m	2.7m	YES
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	Unknown	Unknown	50% (or 35m ²) for 2 hours	Unknown
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	Unknown	Unknown	3.0 hours	Unknown
Side and Rear Fence Height	Unknown	1.8m	1.8m	YES
Minimum Number of North Facing Habitable Rooms	>1	>1	1	YES

Site Controls

Site Area: 3470.7m²	Existing	Proposed	Control	Complie s
Building Footprint	<40% (1388.28m ²)	50% (1730.82m ²)	40% (1388.28m ²)	NO
Deep Soil Landscaping – RFB	>40% (1388.28m ²)	15% (510.04m ²)	40% (1388.28m ²)	NO
Deep Soil Landscaping – Front Setback	Unknown	19% (145.27m ²)	40% (300.6m ²)	NO
Deep Soil Landscaping – Front Setback (Consolidated Area)	>20m ²	>20m ²	20m ²	YES

Site analysis performance criteria (*Part 3*)

Part 3 of Council's WRDCP 2003 requires adequate site analysis documentation for development applications. The submitted site analysis plan is generally consistent with the site analysis objectives and the relevant performance criteria.

Objective O3.2.1 aims to ensure that development preserves or enhances the special qualities of individual sites.

Performance criteria C 3.2.1 states that:

Development fits into the surrounding environment and pattern of development by responding to:

- *urban form;*
- *local topography and landscape;*
- *view corridors;*
- *surrounding neighbourhood character and streetscape; and*
- *the local street and pedestrian networks.*

The proposal fails to comply with Council's height standard, FSR standard, building envelope controls, sunlight access controls, view controls, and landscaping controls. The proposal unreasonably impacts upon the streetscape, and the views and potentially the sunlight access currently afforded to the neighbouring properties. This is discussed in greater detail below.

The proposal fails to accord with objective O3.2.1.

Desired future precinct character objectives and performance criteria (*Part 4*)

The site is located within the Rose Bay Precinct Street Section (4), as set out under section 4.9 of the Woollahra Residential Control Development Control Plan 2003. The description of the area states that:

'A change of character is also encouraged along Old South Head Road with a view to providing a greater intensity of development adjacent to the regional road, and a transition to smaller development behind, where a mix of residential houses and smaller residential flat buildings is envisaged.'

The objectives of the Rose Bay precinct relate to the mitigation of adverse impacts upon the local public domain, maintaining the existing landscape character of the locality and ensuring that development responds to the existing built forms in the streetscape.

The proposed RFB is inconsistent with the design, scale and form of development within Newcastle Street. The design of the proposed child care centre relates unsuccessfully with the existing buildings within the Newcastle Street streetscape. The proposal fails to uphold the desired future precinct character objectives for the Rose Bay precinct. The proposal fails to meet Council's deep soil landscaping requirements for the site as a whole, and fails to reinforce the landscape character of locality.

Number of storeys:

Control C 4.9.9.7 states that development is to have a maximum height of three storeys. With a proposed height of four storeys the proposed RFB represents a non-compliance with control C 4.9.9.7.

The proposed RFB storey height is unsatisfactory for the following reasons:

- Newcastle Street is characterised by one and two storey developments, predominantly comprising of residential buildings, but also including the Greek Orthodox Church (located within the subject site) which is two-three storey in scale.
- The applicant's statement of environmental effects states that 'the proposed framing structure which forms an outer 'skin' to the building, assists in reducing the scale and height, while providing support for solar shading devices. The framing structure gives the perception of a lower scale building as the frame reinforces a two storey component'. The proposed RFB is four storeys in height. Rather than reducing the scale and height of the building, the frame structure adds additional bulk and reduces the setback from the street alignment.
- Whilst the upper level of the building is setback from the street frontage, the majority of the upper level roof overhang aligns with the lower levels. The upper level would therefore be clearly visible from Newcastle Street. This evident from the submitted photomontage.

- Long views of the subject site are available, particularly along Newcastle Street, the four storey height of the building would be clearly visible and would appear out of character with the existing and desired future character of the area.
- The number of storey non-compliance is exacerbated by the basement floor level at the north western corner of the building, which projects above the existing ground level by up to 2m. Although this section of the building falls within the definition of four storeys it would present to the street as four and a half storeys.
- The fourth storey and height of the proposed building are out of character with the adjacent Greek Orthodox Church. Churches traditionally form a landmark building within a locality; the proposal exceeds the height and scale of the adjacent Church which overpowers the Church building.
- With the exception of the adjoining Greek Orthodox Church tower, the proposal exceeds the height of the adjacent buildings. The Greek Orthodox Church incorporates a gable roof form and the existing residential built form within Newcastle Street predominantly consists of one or two storeys and a pitched roof form. The proposal consists of a four storey building with a flat roof which presents greater visual bulk than the more recessive appearing existing pitched roof form of adjacent properties.
- The fourth storey would unreasonably impact upon private views.

Accordingly, this forms part of **reasons for refusal 2, 3, and 5.**

Side Boundary Setbacks

C 4.9.4 stipulates that development shall have a minimum side boundary setback of 3m. This side setback is increased on a pro rata basis by 0.5m for each metre or part thereof that the building height adjacent to the boundary exceeds 6.0m.

The purpose of the setback controls are to protect the visual and aural privacy of residents, provide side access to the rear of properties, avoid buildings or part of buildings encroaching onto adjoining properties, enable opportunities for screen planting, protect significant vegetation, avoid an unreasonable sense of enclosure, safeguard privacy and minimize the noise impacts.

The southern (side) boundary setback to the RFB is required to be 3-5m from the southern boundary. The proposal presents the following non-compliances:

- At basement level the proposal results in a maximum side setback non-compliance of 0m-0.51m.
- At ground floor level a small section of the eastern unit (G.05) represents a minor 0.15m non-compliance with the side setback control.
- At level one a small section of the eastern unit (1.05) represents a minor 0.15m non-compliance with the side setback control.
- At level one the steel frame structure is setback 2.35m-3.8m from the side boundary. Approximately three quarters of the steel frame structure represents a 0.1m-0.7m breach of the side setback control.
- At level two a small section of the eastern unit (2.05) represents a 0.15m-1.15m non-compliance with the side setback control.
- At level 2 the steel frame structure is setback 2.35m-3.8m from the side boundary. The majority of the steel frame structure represents a 0.1m-1.65m breach of the side setback control.
- At level 3 the glass balustrading to the non-accessible roof top to the south eastern corner of the building represents up to a 1.2m non-compliance with the side setback control.
- At level 3 the pergola to the southern unit (3.04) represents a 1.75m side setback non-compliance.

The following comments are made in relation to the proposed side setback non-compliances:

- The central section of the southern elevation is highly articulated through the incorporation of varied setbacks, balconies, and varying materials.

- However, the proposed steel frame structure and the level 3 pergola to the southern unit (3.04) result in a significant breach of the side setback control. Given that the pergola and louvres screen south facing windows these aspects of the proposal unreasonably and unnecessarily add to the bulk and scale of the building.
- The non-complying elements are located to the south of the proposed building, and have the potential to result in additional loss of sunlight access to neighbouring properties. Insufficient information has been submitted to demonstrate that the proposal complies with Council's solar access requirements.
- The non-compliances with the setback controls contribute to the proposal's failure to reinforce the landscape character of the locality.
- The proposed RFB fails to relate successfully with the existing building line to Old South Head Road and results in the RFB appearing unduly prominent within the streetscape.

The northern (side) boundary setback to the child care centre is required to be 3-4m from the northern boundary. The proposal presents the following non-compliances:

- At ground floor level the building is setback 1.5m from the side boundary representing a non-compliance of 1.5m.
- At first floor level the building is setback 1.5m from the side boundary representing a non-compliance of 1.5-2.5m.

The following comments are made in relation to the proposed side setback non-compliances:

- No. 80-84 Newcastle Street to the north of the subject site is a two storey aged care facility. Eight resident bedrooms are located directly to the north of the child care centre, the only windows and the ground floor terraces and first floor balconies to these rooms face the north elevation of the subject site.
- The northern elevation of the child care centre includes no significant articulation, the elevation comprises of a rendered and painted finish and six high level windows.
- The non-compliances with the height standard, side setback control and the design of the northern elevation would result in an unreasonable visual impact upon the residents of No. 80-84 Newcastle Street.
- The non-compliance with the side setback control provides insufficient space for screen planting within the side setback.

Accordingly, this forms part of **reasons for refusal 2, 3, 4, and 5.**

Deep soil landscaping – frontage

Control C 4.9.9.3 requires a minimum of 40% of the area of the front setback to be afforded to deep soil landscaping. The Newcastle Street frontage has a length of 101.71m. 40% of the front setback equates to a required 300.6m² of deep soil landscaping. The proposal provides 145.27m² (19%) of deep soil landscaping, a non-compliance of 155.33m².

The following comments are made in relation to the deep soil landscaping at the frontage non-compliance:

- The non-compliance with front setback control and the deep soil landscaping at the site frontage undermines the desired future character objectives the locality.
- The proposal results in an overall reduction to the existing level of deep soil landscaping to the Newcastle Street frontage.
- The proposed built upon area and level of deep soil landscaping fails to reinforce a consistent building scale to Newcastle Street.

Accordingly the insufficient deep soil landscaping at the frontage forms part of **reason for refusal 6.**

Building articulation

Control C4.9.9.1 requires buildings to have a maximum unarticulated length of 6m to the public street frontage. Building articulation is encouraged to a minimum depth of 1.2m from the front alignment and can be provided in the form of loggias, lightweight balconies and wall off sets.

The proposed RFB incorporates a steel louvre frame structure to the Newcastle Street and Old South Head Road frontages. The structure to Newcastle Street extends for a length of approximately 35m and the structure to Old South Head Road extends for a length of approximately 25m. The steel structure, screens the articulation which is to be provided by the balconies to the street frontages. When the louvres are shut the proposal will present a significantly blank elevation to Newcastle Street.

Front fence height

Control C 4.9.9.4 requires front fences to be no higher than 1.2m.

The proposed front fences comprise of:

- To Newcastle Street, the existing sandstone retaining wall (maximum height of 2.6m) is to be retained and a new fence is to be constructed above (maximum height of 3m).
- To Old South Head Road, a new fence is to be constructed with a maximum height of 2m.

The following comments are made in relation to the proposed front fences:

- The proposed fence to Newcastle Street incorporates the existing sandstone wall and the proposed fence above is lower in height than the existing front fence. The relatively high existing front fence height is a result of the change in ground levels between the section of the subject site containing the Parish Hall and Newcastle Street. The proposal alters the topography of the site, and as such the provision of such a high front fence is no longer required. The proposed 3m high fence fails to accord with the desired future character controls and objectives for the Rose Bay precinct.
- The proposed fence to Old South Head Road replaces a low wall with open metal railing above and a low timber fence. The 2m high front fence is inconsistent with the predominant height of front fences within Old South Head Road. Furthermore, the proposal fails to accord with the desired future character controls for the precinct which require front fences to be a maximum height of 1.2m.

Accordingly the excessive height of the proposed front fence forms part of **reason for refusal 2**.

Streetscape performance criteria (*Part 5.1*)

The objectives of Council's streetscape performance criteria require development to: achieve a scale and character in keeping with the desired future character for the locality; contribute to a cohesive streetscape and promote desirable pedestrian movements; provide a safe environment; and recognize predominant streetscape qualities.

The proposal involves the construction of a contemporary four storey RFB and a two storey child care centre. The height of the proposed buildings exceeds both the height of surrounding development within Newcastle Street, and the maximum 9.5m height standard.

The four storey form of the RFB is inconsistent with the character of adjacent properties and the desired future character objectives. The proposal fails to accord with objective O5.1.1 which aims to achieve housing forms of a scale and character in keeping with the desired future character of the locality.

The proposal significantly exceeds the maximum FSR standard, and fails to comply with the building footprint and setback controls resulting in an overdevelopment of the subject site. The building envelope control non-compliances result in the RFB appearing unduly prominent and out

of character with the streetscape. The non-compliances with the building envelope controls will result in the RFB forming an incongruous feature which would detract from the cohesive streetscape. In addition Council's Urban Design Officer has determined that the proposed child care centre does not represent a high quality design and fails to compliment the qualities of the adjoining buildings. The proposal fails to accord with objective O.5.1.3.

The introduction of the steel framed louvre screen to the majority of the street frontages reduces the perception of casual surveillance to Newcastle Street and Old South Head Road, which is contrary to objective O5.1.4 which requires crime prevention to be addressed through design.

The proposal's non-compliance with the existing building line and the scale of surrounding development, fails to recognise the existing pattern of development character which forms a predominant streetscape quality. The proposal fails to accord with objectives O5.1.5
The proposal fails to accord with objectives O5.1.1, O.5.1.3, O.5.1.4, and O5.1.5.

Accordingly, this forms part of **reasons for refusal 2 and 4.**

Building size and location performance criteria (*Part 5.2*)

Mature tree setbacks

Control C5.2.1 states that where significant mature trees are to be retained the development should be setback 3m from the base of the tree to minimise root damage.

The Council's Landscaping Officer has assessed the proposal and confirmed that insufficient information has been submitted to assess the impact of the proposal on existing mature trees.

The Council's Landscaping Officer's recommendations are as follows:

Trees 1, 2, 3 and 4 [street trees to Newcastle Street] combine to provide a high contribution to the amenity of the surrounding area. These trees have a remaining life expectancy range in excess of 15 years. The driveway crossover should be relocated outside the Tree Protection Zone of these trees to facilitate their retention.

Insufficient information has been provided regarding the impact of proposed works on Trees 18, 19, 21, 22 and 23 [trees within the subject site] which are proposed trees to be retained. A comprehensive assessment of the impact of proposed works on these trees could not be undertaken based on the provided information. Detail has not been provided on tree sensitive construction techniques, materials or protection measures for these trees.

Accordingly, the potential of the proposal to adversely impact upon existing trees within and adjacent to the site forms **reason for refusal 6.**

Building footprint

Control C 5.2.7 requires building footprints for residential flat buildings to be limited to 40% of the site area. This equates to a building footprint of 1388.28m².

The child care centre DCP requires the built form of new child care centres to comply with the provisions of the Woollahra Residential DCP. The building foot print of the child care centre is therefore included in the building footprint calculation. Furthermore, as the Greek Orthodox Church is being retained the building footprint of the Church is also included.

The building footprint of the proposed RFB and child care centre and the existing Greek Orthodox Church is 50% of the site area (1730.82m²); a non-compliance of 342.54m². The following comments are made with regards to the non-compliance with the building footprint of the site:

- The non-compliance with the building footprint, combined with the height, FSR, setback and deep soil landscaping requirements represents an overdevelopment of the subject site.
- The proposed building footprint provides insufficient space for deep soil landscaping in accordance with objective O5.2.1.
- The proposed development would result in an unacceptable loss of views for neighbouring residents which is contrary to objective O5.2.2. This is addressed in greater detail within the 'views performance criteria' section of the report.
- Insufficient information has been submitted to demonstrate that the proposed development would maintain an acceptable level of sunlight for neighbouring residents in accordance with objective O5.2.2.
- The form and scale of the proposed RFB fails to maintain the continuity of building form and scale in accordance with objective O5.2.3. The proposed RFB would appear unduly prominent within the Newcastle Street streetscape and would result in an unacceptable visual impact to the neighbouring properties.

Accordingly, the non-compliance with the building footprint forms part of **reasons for refusal 2, 3 and 5.**

Front setback

The proposed RFB addresses the Newcastle Street frontage. Control C5.2.2 requires the front setback of development to be consistent with those of adjoining buildings. The Greek Orthodox Church adjoins the proposed RFB and has a front setback of 8.1m. The proposed RFB is setback only 2.7m from the front boundary of the site in addition the steel louvre frame structure which encloses the Newcastle street elevation is only setback 1.35m. The following comments are made in relation to the proposed front setback:

- The proposed RFB fails to relate successfully with the existing building line to Newcastle Street.
- The non-compliance with the front setback control would result in the RFB appearing unduly prominent within the streetscape.
- The proposed steel louvre frame structure exacerbates the non-compliance with the front setback control, and adds to the bulk, scale and prominence of the building.
- The non-compliance with the front setback controls contributes to an excessive scale and form which fails to maintain the continuity of building forms and front setbacks in Newcastle Street. This is contrary to objective O 5.2.3.

The proposed child care centre building fronts Newcastle Street. Control C5.2.2 requires the front setback of development to be consistent with those of adjoining buildings. The average setback of the Greek Orthodox Church and aged care facility which adjoin the proposed child care centre is 6.4m. The proposed child care centre is setback 6.9m which maintains the existing front setback pattern.

Accordingly, this forms part of **reasons for refusal 2 and 5.**

Rear setback

Control C5.2.3 requires buildings to have a minimum rear setback of 25% of the average site length. This equates to an 11.2m rear setback.

In relation to the RFB, the eastern section of the building will breach the rear setback control. At the closest point the eastern section of the building is setback only 2.6m. The following comments are made in relation to the proposed rear setback non-compliance:

- The RFB will be located 2.6m from the side boundary of No. 458 Old South Head Road.
- The side windows and side terrace to No 458 Old South Head Road already experience a sense of enclosure as a result of the height and limited rear setback of the Greek Orthodox Church.
- The non-compliance with the rear setback control, combined with the non-compliant FSR, number of storeys and height will exacerbate the existing sense of enclosure.

- The non-compliance with the rear setback control and other building envelope controls will present an unreasonable bulk and mass to No. 458 Old South Head Road. This is exacerbated by the inclusion of the steel frame louvre structure to the northern elevation which adds additional bulk and mass.
- Given the close proximity of the RFB to the side elevation to No. 458 Old South Head Road, the level one and level two bedroom windows to the eastern elevation are highlight windows with a sill height of 1.7m. Whilst this will maintain privacy to No. 458, this is an inappropriate response to the issue of privacy as the internal amenity to these bedrooms would be compromised.
- The non-compliances with Council's building envelopes controls results in an unreasonable loss of private views.

In relation to the child care centre, the south eastern corner of the building and rear canopy will breach the rear setback control. The following comments are made in relation to the proposed rear setback non-compliance:

- There is sufficient separation distance between the proposed building and the neighbouring properties to the rear (east) to prevent any unreasonable visual impacts.
- There is sufficient separation distance between the rear elevation windows of the child care centre and the properties to the rear to ensure an adequate level of visual privacy is retained.
- The proposed non-compliance would not result in any unreasonable loss of views.

Accordingly, this forms part of **reasons for refusal 2, 3 and 5.**

Ceiling Heights

Control C5.2.10, requires a minimum ceiling height of 2.7m for habitable rooms. The proposed development proposes ceiling heights for habitable rooms of 2.3m-2.6m. The following comments are made with regards to the non-compliance with the ceiling height control:

- The non-complying ceiling heights are a further indicator of the overdevelopment of the subject site

Sunlight access.

A number of the neighbouring properties have raised concern regarding loss of sunlight access as a result of the proposal.

Control C5.2.13 requires sunlight to be retained to at least 35m² of the main ground level private open space of the neighbouring properties for a minimum of two hours between 9am and 3pm on June 21.

Control C5.2.14 requires sunlight to be retained to the north facing habitable room windows of neighbouring properties for no less than 3 hours between 9am and 3pm on June 21.

The horizontal shadow diagrams which were submitted with the development application shows that in mid winter the proposal will cast shadows upon No.'s 458, 449-451, 453, 455, and 457 Old South Head Road at 3pm. The shadow diagrams do not indicate the shadows cast on these properties by other surrounding development and no elevational shadow diagrams were provided. Additional shadow diagrams were requested on 10 June 2010, to enable an assessment of whether the proposal accords with Council's sunlight access controls. To date no additional shadow diagrams have been provided.

Accordingly this forms reason for **refusal 7.**

Lot amalgamation

C 5.2.18 stipulates that where a group of allotments is proposed to be amalgamated, those allotments should share a common road frontage. Allotments 88, 90, 92, 94 and 96 Newcastle Street all share a common frontage to Newcastle Street.

Open space and landscaping performance criteria (*Part 5.3*)

Open Space

Control C 5.3.4 states that:

Each dwelling located at ground level, including any dwelling house, is provided with private open space comprising:

- *a minimum area of 35m²;*
- *a minimum dimension of 3.0m;*
- *a maximum gradient of 1 in 10; and*
- *one part (the "principal area") with a minimum area of 16m² and a minimum dimension of 4.0m.*

Control C 5.3.5 states that:

For residential flat buildings each dwelling located above ground level is provided with private open space in the form of a balcony, verandah or uncovered roof terrace which has a minimum area of 8m² and a minimum dimension of 2.0m.

The following comments are made with regards to the provision of private open space:

- All of the ground floor dwellings provide less than 35m² private open space.
- Only two of the five ground floor dwellings provide a principal area of private open space with a minimum area of 16m².
- The proposal's failure to provide sufficient private open space at ground floor level is another indicator that the proposal represents an overdevelopment of the subject site.
- The majority of the dwellings located above ground level accord with control C 5.3.5 and provide 8m² or more private open space.

It is noted that the proposal provides an internal communal area and a number of external communal courtyards. The following comments are made in relation to the communal areas:

- The communal 'Landscaped Area' to the southern corner of the site which is accessed from the internal communal area is located beneath the overhang of the upper levels of the building and is in close proximity to a major road (Old South Head Road) as a result this south-eastern facing area will receive a poor level of amenity due to limited sunlight access and the proximity to road noise.
- The proposed 'Landscaped Communal Courtyard' to the south of the building is surrounded on three sides by four storey development and the other side is bound by Old South Head Road, which is elevated above the Courtyard. This area will also receive a poor level of amenity.
- The area to the north of the site is depicted as a 'landscape communal courtyard'. This area primarily forms the pedestrian access route to the secondary entrance to the building. This area provides limited useable communal open space.

Landscaping

For residential flat buildings, control C 5.3.1 requires that deep soil landscaping comprises at least 40% of the site area. This equates to 1388.28m² of deep soil landscaping.

The proposal affords 15% of the site area (510.04m²) to deep soil landscaping, a non-compliance of 878.24m². The following comments are made with regards to the non-compliance with deep soil landscaping requirement:

- The non-compliance with the deep soil landscaping requirements, combined with the height, FSR, setback and building footprint requirements represents an overdevelopment of the subject site.

- The proposed building footprint provides insufficient space for deep soil landscaping and fails to accord with objective O5.3.4.

Accordingly, the non-compliance with the deep soil landscaping control is included in **reason for refusal 6**.

Fences and walls performance criteria (*Part 5.4*)

Control C 5.4.10 states that side and rear boundary fences shall be no higher than 1.8m on level sites, or 1.8m as measured from the low side there is a difference in level either side of the boundary.

The proposal includes a 1.8m-2.4m fence located to the rear boundary of the subject site, which would form a side boundary fence to No. 458 Old South Head Road. If the proposal was acceptable a condition could be imposed upon the consent requiring the fence to be a maximum height of 1.8m.

Views performance criteria (*Part 5.5*)

Part 5.5 of Council's RDCP 2003 requires the maintenance of public views and the sharing of private views.

Public Views

The proposed development would not unreasonably impact upon any public views or vistas in accordance with the aims and objectives of section 5.5.

Private Views

The owners of the following property have objected to the proposal on the basis of loss of views:

- Unit 2, 453 Old South Head Road, which is located to the east of the site.
- Unit 3, 453 Old South Head Road, which is located to the east of the site.
- Units 5 and 6, 453 Old South Head Road, which is located to the east of the site.

In assessing the reasonableness of views loss, this report has had regard to the case law established by *Tenacity Consulting v Warringah* [2004] NSWLEC 140 (pars 23-33) which has established a four-step assessment of view sharing. The steps are as follows:

1. What is the value of the view?

The Court said: "*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*"

Views affected by the proposal are as follows:

Unit 2, 453 Old South Head Road: Partial views of the Harbour Bridge and north Sydney skyline line (filtered through existing vegetation).

Unit 3, 453 Old South Head Road: District views, partial views of the city skyline including the centre point tower and partial views of the north Sydney skyline line (filtered through existing vegetation).

Units 5 and 6, 453 Old South Head Road: Water views, district views, views of the Royal Sydney Golf Club, partial views of the city skyline including the centre point tower and partial views of the north Sydney skyline line (filtered through existing vegetation).

2. From what part of the property are views obtained?

The Court said: *"The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."*

The views are obtained as follows:

Unit 2, 453 Old South Head Road: The views are available across the front boundary from the northern side balcony to the living room.

Unit 3, 453 Old South Head Road: The views are available across the front boundary from the western front living area windows and balcony and from the northern side living room and kitchen windows.

Units 5 and 6, 453 Old South Head Road: The views are available across the front boundary from the western front living area windows and balcony and from the northern side living room and kitchen windows.

3. What is the extent of the impact?

The Court said: *"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."*

Unit 2, 453 Old South Head Road:



View from across the front boundary from the northern side balcony to the living room.



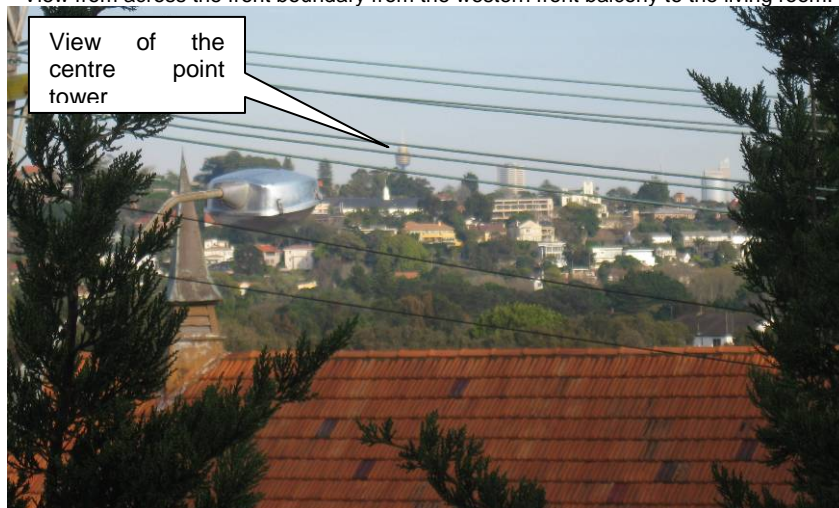
Magnified view from across the front boundary from the northern side balcony to the living room

The proposal will remove the views of the Harbour Bridge and North Sydney. Given that the proposal will remove the only iconic views to unit 2 the view loss is considered to be moderate-severe.

Unit 3, 453 Old South Head Road:



View from across the front boundary from the western front balcony to the living room.



Magnified view from across the front boundary from the western front balcony to the living room.



View from across the front boundary from the western front balcony to the living room.



Magnified view from across the front boundary from the western front balcony to the living room.

The proposal will remove the views of North Sydney and reduce the views of the City Skyline. Given that the proposal will substantially remove or reduce the iconic views available to unit 3 the view loss is considered to be moderate-severe.

Units 5 and 6, 453 Old South Head Road:



View from across the front boundary from the western front balcony to the living room.



View from across the front boundary from the western front balcony to the living room.

The proposal will remove the views of The Royal Sydney Golf Club and reduce the water views. The view loss is considered to be moderate.

The proposal removes or reduces views of the harbour, city skyline, north Sydney skyline and the Royal Sydney Golf Club. Although these are partial views, the views are available from a standing position across the front boundary of the subject site. Quantitatively and qualitatively the view loss is considered to be moderate-severe.

4. What is the reasonableness of the proposal that is causing the impact?

The Court said: *"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."*

The following comments are made with regards to the reasonableness of the proposal:

- The height of proposed building is 3.8m higher than Council's 9.5m maximum height standard. The non-compliant height would directly result in a reduction to the views afforded to the neighbouring properties.
- The four storey RFB exceeds Council's maximum number of storeys control by one storey. The non-compliant storey would directly result in a reduction to the views afforded to the neighbouring properties.
- The proposal fails to accord with Council's front setback control. The section of the building which breaches the front setback directly results in a reduction to the views afforded to the neighbouring properties.
- The proposal breaches Council's rear setback control. The non-complying element directly results in view loss to the neighbouring properties.
- The proposal breaches Council's floor space ratio by 1603.96m². The excess floor space directly contributes to the view loss to the neighbouring properties.
- Given that the proposal directly results in view loss which in part is in part directly related to the height, number of storeys, floor space ratio and setback non-compliances the extent of the proposed view loss is considered to be unreasonable.

The proposal fails to uphold the objectives of the WRDCP 2003 with regards to view sharing. Accordingly, this forms **reason for refusal 5**

Energy efficiency performance criteria (*Part 5.6*)

The development application was accompanied by **BASIX Certificate 304764M** committing to environmental sustainability measures.

The proposal generally accords with the requirements of section 5.6.

Stormwater management performance criteria (*Part 5.7*)

If the proposal was satisfactory conditions could be imposed to ensure the proposal is satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.7 of WRDCP 2003.

Acoustic and visual privacy performance criteria (*Part 5.8*)

Acoustic privacy Child Care Centre

The proposed child care centre would accommodate 34 children ranging from 3-5 years in age. The proposed child care centre includes a 240m² playground area for passive and active use by the children. The typical childcare centre operating hours are proposed to be 7am-7pm, Monday to Friday.

Objective O 5.8.1. aims to ensure that adequate acoustic and visual privacy is maintained for occupants and neighbours.

The application was not accompanied by an acoustical assessment of the proposed child care centre. Insufficient information was submitted with the application to determine whether the proposal would retain an adequate level of acoustic privacy to the neighbouring properties.

Accordingly, this forms **reason for refusal 8**.

Visual privacy Child Care Centre

The proposed child care centre will maintain an adequate level of visual privacy to the neighbouring properties for the following reasons:

- There is a sufficient separation distance between the rear elevation windows and the neighbouring properties to the rear of the site.
- The northern side elevation to the child care centre incorporates high level windows.
- The proposed 1.8m high side and rear boundary fence will adequately screen views from the rear playground area.

Acoustic privacy RFB

The following comments are made in relation to acoustic privacy:

- If the proposal was recommended for approval conditions could be imposed upon the consent to ensure the acoustic certification of the mechanical and plant equipment.
- The proposed roof terraces and balconies would not result in any unreasonable impacts in terms of loss of acoustic privacy as all of the terraces and balconies form areas of private open space to be used in conjunction with a single residential dwelling rather than communal areas of open space.
- As discussed previously the design of the area of communal space to the north of the RFB does not lend itself to being a highly useable area of communal open space and would not form the principal area of communal space.

- The principal area of communal space (the landscaped communal courtyard to the south of the site) is a sufficient separation distance from the neighbouring properties to ensure that this area would not result in any unreasonable impacts in terms of loss of acoustic privacy.

Visual privacy RFB

The following comments are made in relation to visual privacy:

- There is a sufficient separation distance between the proposed RFB and the properties to the south of the subject site (the properties located on the southern side of Old South Head Road).
- The bedroom windows to the eastern elevation of the RFB have a sill height of 1.7m. Whilst this will maintain an adequate level of visual privacy to the neighbouring property to the east (No. 458 Old South Head Road this response to the issue of visual privacy will negatively impact upon the internal amenity of these bedrooms; as these are the only windows to the bedrooms.
- There is a sufficient separation distance between the balcony and terraces to the northern elevation of the RFB and No. 458 to ensure that these areas of private open space would not result in any unreasonable impacts in terms of loss of visual privacy.
- The accessible area of the eastern roof terrace is setback from the eastern corner of the building which ensures that there is an adequate degree of separation between the useable area of the roof terrace and the habitable room windows and private open space to No. 458 Old South Head Road.

Car parking and driveways performance criteria (*Part 5.9*)

Section 4.9 provides controls for the provision of residential car parking and vehicular access. The proposal provides 41 car parking spaces for the RFB located within a basement car parking level.

The proposal accords with the on site car parking requirements for residential flat buildings outlined under control C.5.9.3.

The proposal was referred to Council's Traffic Engineer who has confirmed that the proposal is satisfactory with regards to vehicular access and parking provision.

Control C 5.9.1 requires the area of the site excavated for the purposes of underground car parking to be limited to the building footprint of the development. The proposal breaches control C 5.9.1 as the proposed basement level car park extends beyond the building footprint. As a result the proposal incorporates insufficient deep soil landscaping within the site.

Site facilities performance criteria (*Part 5.10*)

If the proposal was recommended for approval conditions could be imposed to ensure the proposal upholds the relevant objectives and performance criteria stipulated under Part 5.10 of WRDCP 2003.

Access and mobility performance criteria (*Part 5.13*)

The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under Part 5.13 of WRDCP 2003. Refer to *Access DCP* below.

13.2 DCP for off-street car parking provision and servicing facilities

The proposal provides two off street car parking spaces for the child care centre which are located to the front of the building and proposes a 6m pick up/drop off zone to the front of the site.

The application was referred to Council's traffic engineer who has provided the following comments:

A review of the development application has been undertaken and the following concerns were noted;

- The childcare component does not fully satisfy the offstreet parking capacity required by Council's Offstreet Parking DCP with one car space short of the required 3.*
- The childcare centre lacks a pickup/ dropoff area in the site however the applicants Traffic Report has requested that a 6m No Parking Zone during pickup/ dropoff times be provided at the front of the site. The provision for a No Parking zone is not supported for this application unless there is an established agreement between the carers and parents that the child can be escorted by the carer to and from the centre and pickup/ dropoff zone. Notwithstanding this, Councils traffic section would accept this activity could be accommodated on street as it occurs only for a relatively short period and the site has a long street frontage such that neighbouring residents aren't likely to be impacted. Should the arrangement present any problems in practise, it is noted that there is a 20m long No Parking zone fronting the church adjoining the proposed centre. Subject to the approval of the church, the No Parking restrictions could be altered to accommodate the childcare centres parking activities for the relatively short morning and late afternoon periods.*

Recommendation

The proposed development does not fully comply with Councils Offstreet Parking requirements as the proposed childcare centre is short a single carspace from complying with Council's Offstreet Parking DCP. Given there is a relatively low parking demand in this area and the parking demand for the childcare centre occurs only during operation hours on a weekday, the arrangement is acceptable.

The proposal generally accords with the aims and objectives of the DCP for off-street car parking provision and servicing facilities.

13.3 Woollahra Access

The proposal is for a class 2 building containing 23 dwellings. For class 2 buildings the Woollahra Access DCP requires 1 in 10 dwellings or part thereof to be adaptable. This equates to three adaptable dwellings.

The proposal provides three units which are capable of being adaptable and three disabled car parking spaces.

The proposal is considered to be satisfactory with regard to the relevant objectives and performance criteria stipulated under the Woollahra Access DCP.

13.4 Other DCPs, codes and policies

WOOLLAHRA CHILD CARE CENTRE DCP

The Woollahra Childcare Centre DCP outlines the following objective:

- a) *To encourage high quality child care centres to meet the child care needs of the community and which are in the public interest.*
- b) *To ensure child care centres are appropriately designed and located to minimise the adverse environmental impact to surrounding properties in terms of privacy, traffic generation and availability of on-street parking.*
- c) *To ensure adequate parking is available for the dropping off and picking up of children and to provide for the safe pedestrian transfer of children to and from the centre.*
- d) *To ensure child care centres are appropriately designed to a high level of safety, security, environmental health and amenity for their users.*
- e) *To ensure the physical environment of child care centres are safe and well equipped in accordance with the applicable statutory requirements and standards.*

Design and siting

C 2.1.1 requires consideration of the following when designing and siting a child care centre:

- Site orientation and solar access

The proposed building provides a minimal northern side setback and high level north facing windows. The design of the proposed child care centre fails to utilize the sites potential for northern solar access to the interior of the building.

The proposal incorporates a large level of glazing to the east and west elevations. No information has been provided regarding how the sunlight access from these windows will be regulated.

The play area is located to the east of the building where it allows for the ability to take advantage of sunlit areas and areas in shade.

- Existing vegetation

Insufficient information has been provided to demonstrate that the mature vegetation on the subject site is capable for retention. The proposal provides minimal replacement deep soil landscaping.

- Topography

The topography of the site is maintained and allows for good play spaces.

- Retention of any special features/qualities of the site

With the exception of existing vegetation, which is discussed above, there are no special features or qualities of the site.

- Views to and from the site

There are views from the site to The Royal Sydney Golf Course, which are retained by the proposal.

- Access (vehicular and pedestrian) to and from the site

Access to the site, both vehicular and pedestrian is considered to be acceptable.

- Location and uses of surrounding buildings

The surrounding dwellings comprise of an aged care facility and single residential dwellings. The establishment of a child care centre on the subject premises is permissible and appropriate in the residential context.

- Predominant built form and character

The proposal breaches the height standard and side setback control. The design of the proposed child care centre fails to compliment the character of the adjoining church and character of the surrounding area. Specifically the oversized arched glazing to the front elevation detracts from the features of the adjoining church.

Accordingly, this forms **reason for refusal 4**.

- The provision of windows to allow for natural light and views to the outdoors

The windows to the northern elevation are small high level windows. This would not adversely impact upon the rooms with dual aspects as the front and rear elevations include considerable glazing. However the ground floor meeting room, first floor library/education room and the first floor office are each only afforded one high level window. The proposed windows provide insufficient access to natural light and views to these rooms.

- Access to natural cross ventilation.

The incorporation of bi-fold doors to the rear elevation and awning windows to the side elevations ensures that there is adequate provision for cross ventilation.

C.2.1.2 requires child care centers to be designed in character with the existing streetscape (i.e. buildings located in residential areas must maintain an appearance consistent with the nearby residential streetscape).

Council's urban design officer has stated that the child care centre fails to compliment any of the qualities of the adjoining church building.

C2.1.3 also requires child care centres to be designed and sited so as to minimise disturbance to adjacent, nearby and surrounding properties.

Insufficient information has been provided to demonstrate that the proposal would not unreasonably impact upon the acoustic privacy afforded to the neighbouring properties.

Built Form

The proposed child care centre breaches the height standard and side setback control and the design of the building is inconsistent with development in the surrounding area.

Accordingly, this forms **reason for refusal 4**.

Acoustic privacy

C.2.3.1. states that child care centres must be acoustically designed and treated so as to minimise noise impacts to adjoining properties. In this regard, an acoustic study prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants) must be submitted with the development application.

C 2.3.2 states the need for a centre operation plan, which demonstrate how the child care centre will minimise noise impacts on adjoining properties and include, but not being limited to addressing noise generating activities such as outdoor play areas; vehicular activity and delivery vehicles.

An acoustic report was not provided with the application and only an incomplete draft plan of management was submitted with the traffic report.

Insufficient information has been submitted to demonstrate that the proposal will adequately minimise the impact of the proposal upon the acoustic privacy afforded to the neighbouring properties. Accordingly this forms **reason for refusal 8**.

Visual privacy

Control C 2.3.3 requires child care centres to comply with the visual amenity controls of the relevant precinct development control plan.

Control C 2.3.4 requires the location of open spaces and playground areas to be designed so as to minimise views from neighbouring and surrounding properties.

Through the provision of existing and proposed fencing along the side rear boundaries, visual privacy is maintained to all adjoining properties.

Indoor and outdoor areas

C.2.41 requires indoor space to accord with the provisions prescribed by the Children's Services Regulation 2004.

- The two studios provides at least 3.25m² of unencumbered indoor play space per child.
- A finalised plan of management has not been provided demonstrating compliance with the provisions prescribed by the Children's Services Regulation 2004 with regards to sanitary provisions, waste storage facilities and the operation of the child care centre. If the proposal was recommended for approval this could be addressed by condition.

C 2.4.4 requires outdoor space to accord with the provisions prescribed by the Children's Services Regulation 2004.

The proposal provides 7m² of outdoor space per child in accordance with the provisions prescribed by the Children's Services Regulation 2004.

C 2.4.5 requires outdoor play spaces are to be:

- Immediate access to toilets

There is provision for three ground floor toilets within close proximity to the studio 1 which adjoins the outdoor space. This is considered to be acceptable.

- Located to the northern or north-eastern end of the site

The play area is located to the east of the building. This is considered to be adequate.

- Located away from the main entrance of the child care centre, car parking area or vehicle circulation areas

The play area in the rear yard is removed from the main entrance or car parking area. The court yard to southern side of the building is separated from the front of the property by a 1.8m metal gate and fence. This is considered to be acceptable.

- Enables clear sight lines to all areas from other areas of the child care centre

The main rear play area is provided with clear sightlines from the ground floor studios.

- Provide adequate separation from the living/bedroom windows of surrounding dwellings

The proposal fails to accord with Council's side setback control and provides insufficient information to demonstrate that the proposal maintains an adequate level of acoustic privacy.

Accordingly, this forms **reason for refusal 8**.

- Adequately fenced on all sides

The proposal involves a 1.8m fence to the northern side and eastern rear boundary. If the proposal was considered to be acceptable a condition of consent would be imposed requiring any section of fence located to the front of the property to be a maximum height of 1.2m. This would ensure that the outdoor area is adequately fenced whilst not compromising the appearance of the streetscape.

- A rainwater tank with a minimum capacity of 2,000 litres

A rainwater tank is located underneath the child care centre driveway and parking area.

- At least half the outdoor area is to be unencumbered and available for free vigorous play and is to include a variety of surfaces such as grass, sand, hard paving and mounding

The two play areas provide sufficient space for vigorous play.

- An area for the adequate storage of garbage and recycling bins

If the proposal was considered to be acceptable this could be addressed by a condition of consent.

14. APPLICABLE REGULATIONS

If the proposal was acceptable this would be addressed by conditions of consent.

15. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts of the proposal have been assessed elsewhere in this report.

16. THE SUITABILITY OF THE SITE

Insufficient information has been submitted with the development application to demonstrate that the site is suitable for the proposed development with regards to clause 7 (1) (a) of State Environmental Planning Policy No. 55 (remediation of land) and Acid Sulfate Soils.

Accordingly this forms **reasons for refusal 9 and 10**.

17. SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. Submissions were received from:

1. Becky Honey and Gordon Pettigrew, Unit 12, 7 Bellevue Park Road, Bellevue Hill, NSW 2023
2. Sandra Di Bella, PO Box 38, Vaucluse NSW 2030
3. Yvonne Mitchell, 4B Gilbert Street, Dover Heights, NSW
4. Cristiano Garibaldi, Unit 6, 20 The Avenue, Rose Bay, NSW 2029
5. Sarah McSweeney, Unit 2, 11 Chapel Road, Vaucluse, NSW
6. Helen and Alan Sher, 6 Roe Street, North Bondi, NSW 2026
7. Jo Worner, Suite 6A, 13-17 Bellevue Road, Bellevue Hill, NSW 2023
8. Tash Clark, 17 Wilberforce Avenue, Rose Bay, NSW 2029
9. Lyn Oneil, 1 Polyblank Parade, North Bondi, NSW 2026
10. Jennifer Turner, 46 Dover Road, Rose Bay, NSW 2029
11. The Rose Bay Residents' Association, P.O. Box 156, Rose Bay, NSW 2029
12. David and Lana Strizhevsky, Unit 5, 453 Old South Head Road, Rose Bay, NSW 2029
13. Alex Strizhevsky, Unit 6, 453 Old South Head Road, Rose Bay, NSW 2029
14. Vanessa Mitchell, 30 Beresford Road, Rose Bay, NSW 2029
15. Rozanna Pleshet, 16 Faraday Avenue, Rose Bay, NSW 2029
16. Liza Ker, lizaandlol@yahoo.com.au
17. Ms Anastacia Lymberatos, Unit 3, 453 Old South Head Road, Rose Bay, NSW 2029
18. Bruce Crosson, 'Seattle', 12 Mitchell Road, Rose Bay, NSW 2029
19. Woollahra History and Heritage Society Inc, C/o Woollahra Library, P.O. Box 61, Double Bay, NSW 1360
20. Clare Soos (The owner of 445 Old South Head Road and 1 The Avenue, Rose Bay), P.O. Box 2096, Bondi Junction, NSW 1355
21. Margaret Vince, Unit 2/453 Old South Head Road, Rose Bay, NSW 2029
22. Ms M L Scala, 458 Old South Head Road, Rose Bay, NSW 2029

The objectors raised the following issues:

- *The demolition of the existing buildings*
 - Council's Heritage Officer has confirmed that '*the existing buildings do not have heritage protection from possible demolition, as they are not heritage-listed items nor in a conservation area*'. This is addressed within section 11.6 of the report.
- *Traffic*
 - This is addressed within sections 13 and 13.2 of the report.
- *The loss of Kristin's Possum Pre-school at the former Parish Hall, 96 Newcastle Street*
 - Council's Community Development Officer has determined that the proposal is satisfactory as it results in an increase in the provision of child care facilities, by providing an additional 8 places.
- *Quality of the design*
 - This is addressed within section 13 of the report and in Council's Urban Design Planner's and Heritage Officer's referral responses, which are attached as **Annexures 5 and 6**.

- *Height*
 - This is addressed within section 11.4 of the report.
- *Number of storeys*
 - This is addressed within section 13 of the report.
- *Building footprint*
 - This is addressed within section 13 of the report.
- *Deep soil landscaping*
 - This is addressed within section 13 of the report.
- *FSR*
 - This is addressed within section 11.5 of the report.
- *Bulk and scale/ visual impact*
 - This is addressed within sections 11.4, 11.5 and 13 of the report.
- *Overdevelopment*
 - This is addressed within sections 11.4, 11.5 and 13 of the report.
- *Sunlight access*
 - This is addressed within section 13 of the report.
- *View loss*
 - This is addressed within section 13 of the report.
- *Visual and Acoustic Privacy*
 - This is addressed within section 13 of the report.
- *Streetscape*
 - This is addressed within section 13 of the report.
- *Glare from reflective surfaces*
 - This could be addressed by condition if the proposal was recommended for approval.
- *The impact upon the efficiency of passive heating and cooling to neighbouring properties*
 - This is addressed within the section 13 of the report.
- *The suitability of the site for a child care centre.*
 - This is addressed within the body of the report.

18. CONCLUSION - THE PUBLIC INTEREST

In determining whether or not the proposal is in the public interest, both the wider public interest (in this instance, the provision of additional child care centre facilities, and 23 residential dwellings within a new RFB, and the protection of the public domain) and the sectionalised public interest (protecting the amenity of the owners of surrounding land) must be taken into consideration in a balanced manner. In the event that the wider public interest outweighs the sectionalised public interest, the proposal can be determined to be in the public interest.

With regard to the wider public interest, the proposal will provide additional child care facilities and 23 residential dwellings, but at the detriment of the public domain as the proposal would adversely impact upon the Newcastle Street streetscape.

In terms of the sectionalised public interest, insufficient information has been submitted to demonstrate that the proposal would not unreasonably impact upon the residential amenity currently afforded to the neighbouring properties.

Whilst it is accepted that the proposal would provide additional residential dwellings and child care facilities the proposal would adversely impact upon the character of the streetscape and the residential amenity of the neighbouring properties. Accordingly, it is considered that the proposal is not in the public interest.

19. DISCLOSURE STATEMENTS

Under S.147 of the Environmental Planning and Assessment Act, 1979 there have been no disclosure statements regarding political donations or gifts made to any councillor or gifts made to any council employee submitted with this development application by either the applicant or any person who made a submission.

20. RECOMMENDATION: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

THAT Joint Regional Planning Panel, as the consent authority, refuse development consent to Development Application No. 257/2010 for the demolition of 88 Newcastle Street (dwelling), 94 Newcastle Street (dwelling), 96-98 Newcastle Street (St Paul's Anglican Church and former Parish Hall) and the construction of a new RFB, new childcare centre, and the retention of the existing Greek Orthodox Church of the Parish of St George, on land at 88-96 Newcastle Street Rose Bay, for the following reasons:

1. The proposal fails to accord with SEPP 65 – Design Quality for Residential Flat Buildings. Specifically the proposal is contrary to the 10 design principles set out under Part 2, SEPP 65.
2. Due to the design, excessive height, FSR, number of storeys, building footprint, front fence height, insufficient setbacks, the bulk, scale and design of the proposed residential flat building relative to the existing character of the area and the development potential (likely future context) of surrounding land, the proposal would appear visually intrusive to the detriment of the streetscape and the existing character of the area. Furthermore the proposal fails to accord with the desired future character objectives for the area. Accordingly the proposal is contrary to the following objectives and controls:
 - Urban Design Objectives: WLEP (1995), Part 1, Section 2, Clause 2 (k), objectives (i) and (iii).
 - Height: WLEP (1995), Part 3, Clause 12 and Clause 2AA, objectives (a), (b), (d) and (e).
 - FSR: WLEP (1995), Part 3, Clause 11 and Clause 11AA, objectives (b), (c), and (d).

- WRDCP (2003) Section 1.4, objective (a)
 - The desired future character objectives Rose Bay Precinct: WRDCP (2003), Section 4.9, objectives: O 4.9.2, O 4.9.4, O 4.9.5, and O 4.9.6.
 - Number of storeys: WRDCP (2003), Section 4.9, control C 4.9.9.7.
 - Front fence height: WRDCP (2003), Section 4.9, control C 4.9.9.4.
 - Side setbacks: WRDCP (2003), Section 4.9, control C 4.9.4.
 - Articulation: WRDCP (2003), Section 4.9, Control C4.9.9.1
 - Streetscape: WRDCP (2003), Section 5.1, objectives: O 5.1.1, O 5.1.3, and O 5.1.5.
 - Building size and location: WRDCP (2003), Section 5.2, objectives: O 5.2.1, and O 5.2.3.
 - Building footprint: WRDCP (2003), Section 5.2, control C 5.2.7.
 - Building setbacks: WRDCP (2003), Section 5.2, control C 5.2.2, and C 5.2.3.
3. Due to the excessive height, FSR, building footprint, number of storeys, and insufficient setbacks, the bulk and scale of the proposed residential flat building would result in an unreasonable sense of enclosure to the owners of No. 458 Old South Head Road. Accordingly the proposal is contrary to the following objectives and controls:
- Height: WLEP (1995), Part 3, Clause 12 and Clause 2AA, objective (b).
 - FSR: WLEP (1995), Part 3, Clause 11 and Clause 11AA, objective (c).
 - WRDCP (2003) Section 1.4, objective (c)
 - Number of storeys: WRDCP (2003), Section 4.9 control C 4.9.9.7.
 - Side setbacks: WRDCP (2003), Section 4.9, control C 4.9.4.
 - Building size and location: WRDCP (2003), Section 5.2, objective: O 5.2.3.
 - Building footprint: WRDCP (2003), Section 5.2, control C 5.2.7.
 - Building setbacks: WRDCP (2003), Section 5.2, control C 5.2.3.
4. Due to the combination of the non-compliant height, non-compliant side setback, and the design of the proposed child care centre, the proposal would result in an unacceptable visual impact upon the streetscape and the residential amenity currently afforded to the owners and residents of 80-84 Newcastle Street. Accordingly the proposal is contrary to the following objectives and controls:
- Height: WLEP (1995), Part 3, Clause 12 and Clause 2AA, objectives (b), and (e).
 - WRDCP (2003) Section 1.4, objectives (a), and (c)
 - The desired future character objectives Rose Bay Precinct: WRDCP (2003), Section 4.9, objective: O 4.9.4.
 - Side setbacks: WRDCP (2003), Section 4.9, control C 4.9.4.
 - Streetscape: WRDCP (2003), Section 5.1, objectives: O 5.1.1, O 5.1.3, and O 5.1.5.
 - Building size and location: WRDCP (2003), Section 5.2, objective: O 5.2.3.
 - Child Care Centre DCP (2006) Section 1.5, Objective ii), and Section 2.1, Objective O 2.1.1, O 2.1.3, O 2.1.4, and Control C 2.1.2, and Section 2.2, Objective O 2.2.1 and control C.2.2.1.
5. Due to the excessive height, FSR, building footprint, number of storeys, and insufficient setbacks, the proposal would result in an unreasonable loss of views to the neighbouring properties to the east of the subject site, including units 2, 3, 5 and 6 at 453 Old South Head Road. Accordingly the proposal is contrary to the following objectives and controls:

- Height: WLEP (1995), Part 3, Clause 12 and Clause 2AA, objective (a).
• FSR: WLEP (1995), Part 3, Clause 11 and Clause 11AA, objective (c).
• WRDCP (2003) Section 1.4, objective (c)
• Number of storeys: WRDCP (2003), Section 4.9 control C 4.9.9.7.
• Building size and location: WRDCP 2003, Section 5.2, objective: O 5.2.2.
• Building setbacks: WRDCP (2003), Section 5.2, control C 5.2.2 and C 5.2.3.
• Building footprint: WRDCP (2003), Section 5.2, control C 5.2.7.
6. Due to insufficient deep soil landscaping, the proposal would fail to adequately maintain the landscape character of the locality. Furthermore insufficient information has been submitted with the development application to assess the impact of the proposal on the existing trees within and adjacent to the site. Accordingly the proposal is contrary to the following objectives and controls:
- WLEP (1995) Part 1, Section 2, Clause 2 (f), objectives (ii) and (iii) - in relation to landscape.
 - Excavation: WLEP (1995), Part 3, Clause 18, part 1 (e).
 - WRDCP (2003) Section 1.4, objective (b)
 - Deep soil landscaping at the frontage: WRDCP (2003), Section 4.9, control C 4.9.9.3.
 - Building size and location: WRDCP (2003), Section 5.2, objective: O 5.2.1 and control C 5.2.1.
 - Open space and landscaping: WRDCP (2003), Section 5.3, objective O 5.3.2 and control C 5.3.1.
7. Insufficient information has been submitted with the development application to assess the impact of the proposal in terms of loss of solar access to neighbouring properties, specifically No.'s 458, 449-451, 453, 455, and 457 Old South Head Road. Accordingly the proposal is contrary to the following objectives and controls:
- Height: WLEP (1995), Part 3, Clause 12 and Clause 2AA, objective (d).
 - FSR: WLEP (1995), Part 3, Clause 11 and Clause 11AA, objective (c).
 - WRDCP (2003) Section 1.4, objective (c)
 - Building size and location: WRDCP (2003), Section 5.2, objective: O 5.2.2.
 - Sunlight Access: WRDCP (2003) Section 5.2 controls C 5.2.1.3 and C.5.2.14.
8. Insufficient information has been submitted with the development application to assess the impact of the proposal in terms of loss of acoustic privacy to neighbouring properties. Accordingly the proposal is contrary to the following objectives and controls:
- WRDCP (2003) Section 1.4, objective (c)
 - WRDCP (2003) Section 5.8 objective, objective O 5.8.1
 - Child Care Centre DCP (2006) Section 1.5, Objective ii), and Section 2.1, Objective O 2.1.1, and Control C 2.1.3, and Section 2.3, Objective O 2.3.1 and controls C.2.2.1, and C.2.3.2.
9. Insufficient information has been submitted with the development application to demonstrate that the proposal is satisfactory with regards to clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land.

10. Insufficient information has been submitted with the development application to demonstrate that the proposal is satisfactory with regards to Acid Sulfate Soils. According the proposal is contrary to the following objectives and controls:
- Acid Sulfate Soils: WLEP (1995) Part 3, Clause 25D.
 - Development on certain land in Rose Bay: WLEP (1995) Part 3, Clause 21BA.

Ms E Smith

SENIOR ASSESSMENT
OFFICER

Mr A Coker

DIRECTOR OF PLANNING
AND DEVELOPMENT

ANNEXURES

1. Plans and elevation
2. Development Engineer referral response.
3. Landscaping Officer referral response.
4. Environmental Health Officer referral response.
5. Heritage Officer referral response.
6. Urban Design Officer referral response.
7. Fire Safety Officer referral response.
8. Community Services Officer referral response.
9. Waverley Council referral response.
10. SEPP 65 Design Verification Statement.
11. SEPP1 objection to the height and FSR standard.

