

State Environmental Planning Policy No. 1 Development Standards, Objection

This State Environmental Planning Policy No. 1 Development Standards (SEPP 1) Objection accompanies a Development Application (DA) proposing a mixed use development at 88-98 Newcastle Street, Rose Bay (the site).

Calculations in this SEPP 1 Objection are based on plans and information provided by Beraldo Design (are in accordance with the relevant definitions) and should be read in conjunction with the detailed Statement of Environmental Effects (SEE) prepared by Lockrey Planning and Development Solutions Pty Ltd (LPDS).

1.0 Standards objected to

This SEPP 1 objection relates to the following development standards in Woollahra Local Environmental Plan 1995 (LEP 1995):

1.1 Clause 11 - Floor Space Ratios

Clause 11 of LEP 1995 states (in part):

(1) *A building (other than a dwelling-house or a dual occupancy) shall not be erected on land to which this plan applies if:*

(a) *the floor space ratio would exceed the ratio indicated for that land on the density map, or*

...

The accompanying density map identifies a floor space ratio (FSR) for the site of 0.875:1.

A comparison of the existing and proposed gross floor area (GFA)¹ and FSR² is shown overleaf at Table 1.

¹ Pursuant to Clause 6 (Schedule 1) of LEP 1995, **gross floor area**, in relation to a building, means the sum of the areas of each level of the building, including:

- (a) the thickness of the external walls, and
- (b) the area of voids, staircases and lift shafts, counted at each level, and
- (c) that part of the area of balconies and verandahs which is in excess of 20m² per dwelling in the case of a building used or intended for use for residential purposes, or in excess of 10% of the site area in the case of a building used or intended for use for non-residential purposes, and
- (d) any other areas of the building where the height of those areas exceeds 1.5 metres above ground level, and excluding:
 - (e) car parking to meet the requirements of the Council and any vehicular access to the car park, and
 - (f) any area used or intended for use as a car parking station, and
 - (g) uncovered roof terraces, and
 - (h) any area used or intended for use as an arcade.

² Pursuant to Clause 6 (Schedule 1) of LEP 1995, **floor space ratio**, in relation to a building, means the ratio of the gross floor area of the building to the site area of the land on which the building is or is proposed to be erected.

Table 1 – Comparison of existing and proposed GFA and FSR

Element	Existing (m ²)	Proposed (m ²)	Difference
GFA (including balconies and terraces)	1,188	4,490	+3,302m ²
FSR	0.34:1	1.29:1	+0.95:1
GFA (excluding balconies and terraces)	1,188	3,941	+2,753m ²
FSR	0.34:1	1.14:1	+0.80:1

Therefore based on the above, the proposed development departs from the FSR standard at Clause 11 of LEP 1995.

1.2 Clause 12 - Height of Buildings LEP 1995

Clause 12(1) of LEP 1995 states:

'A building shall not be erected on land within a height zone to a height greater than the maximum height shown on the height map as applicable to land within that height zone.'

The accompanying height map shows a maximum building height of 9.5 metres applying to the site.

The maximum building height³ of the proposal varies as follows:

- 10.47 metres for the childcare centre building;
- unaltered 13.02 metres to the roof ridge (RL 25.68) of the retained Greek Orthodox Church building. The bell tower at RL 30.47 results in a building height of 17.7 metres; and
- from 7.040 metres (RL 25.5), at the Old South Head Road elevation to 12.1 metres (RL 27.50) within the centre of the apartment building) and 13.3 metres (RL 27.50) at the Newcastle Street elevation for the residential apartment building.

The above heights are demonstrated below at **Figure 1**.

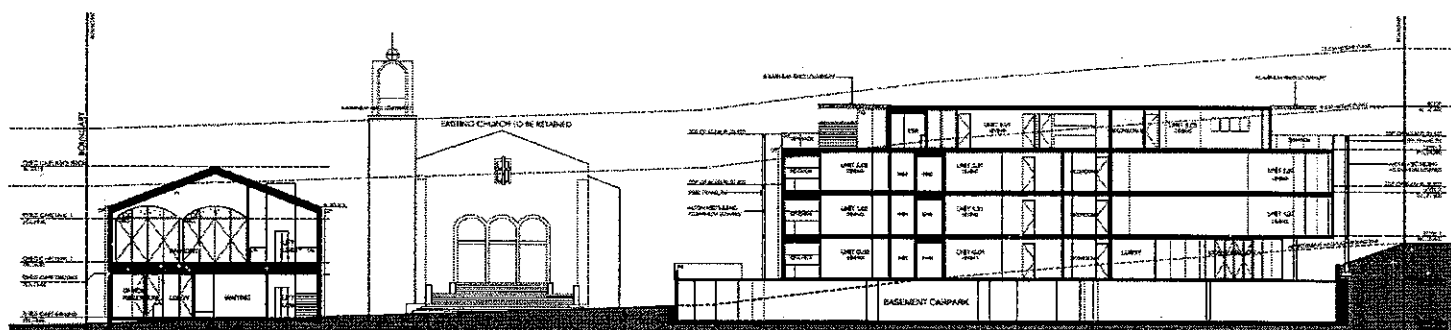


Figure 1 – Section 1 of the proposal demonstrating its varying building heights

³ Pursuant to Clause 6 (Schedule 1) of LEP 1995, **height**, in relation to a building, means the greatest distance measured vertically from any point on the building to the existing ground level immediately below that point.

Therefore all buildings on the site depart from the standard, however it is noted that no alterations are proposed to the existing Greek Orthodox Church building. This building also benefits from existing use rights.

2.0 SEPP 1 Considerations

Lloyd J, in *Winten Property Group Ltd v North Sydney Council* (2001) NSWLEC 46, posed five questions to be addressed in SEPP 1 objections. These questions are addressed below at Section 2.1 and 2.2.

2.1 FSR (Clause 11 of LEP 1995)

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

The FSR control is not framed as a prohibition and is therefore a 'development standard'⁴ as defined at clause 4 of the Act. It is noted that Parts (b), (c), (d) and (e) of the definition refers to density/floor space of a building.

2. What is the underlying object or purpose of the standard?

The objectives of the FSR development standard at Clause 11 of LEP 1995 are expressly stated at Clause 11AA of LEP 1995 and are:

- (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 or enjoyment, or both, of adjoining properties, and*
- (d) *to relate new development to the existing character of the surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point.*

The proposal's compliance with the abovementioned objectives at Clause 11AA of LEP 1995 are addressed below.

(a) *to set the maximum density for new development*

The density of the proposal is considered to be generally consistent with the prevailing character of the surrounding locality. As a result, the majority of existing residential flat buildings will depart from the maximum FSR development standard in LEP 1995 which was adopted with blanket coverage without having regard to the existing character and density of a particular area/locality.

Approval of the FSR proposed on the site that has a more than acceptable environmental performance and which relates to the existing character of the locality but which exceeds that prescribed for the locality in LEP

⁴ Pursuant to clause 4 of the EP&A Act, 1979, *development standards* means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

...

- (b) *the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) *the cubic content or floor space of a building,*
- (e) *the intensity or density of the use of any land, building or work,*

..

- (o) *such other matters as may be prescribed.*

1995 will not set a precedent for other non-conforming applications. Furthermore the proposed FSR is similar to or if not less than other existing development within Rose Bay, is significantly less than that permitted within the Rose Bay village (1.5:1) where the site acts as the southern gateway and the Woollahra local government area (LGA) generally. It is therefore considered the proposed density is appropriate given the site's and locality's built form and locational context.

(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

Having regard to the detailed justification for the proposal at subclauses (a), (d) and (e) (refer above and below), the proposed mixed use development is considered to be entirely consistent with the existing built form character (including density, bulk and scale) of the surrounding locality. In addition to the aforementioned justification, the proposal is also considered to be entirely consistent with the desired future character objectives for the Rose Bay Precinct as identified in DCP 2003.

The proposal is consistent with the identified future character objectives of the Rose Bay Precinct in DCP 2003 as:

- the mixed use development and in particular the proposed residential apartment building sits comfortably within its established locational context and respects the topographical features of the locality;
- the residential apartment building appropriately addresses both street frontages;
- the proposal does not alter the existing subdivision pattern of the locality and proposes an appropriate medium density development consistent with its zoning;
- a high quality contemporary design is proposed which sits comfortably within the site's locational characteristics. High quality and durable external materials and finishes are also proposed;
- the FSR of the proposal is reflective of the surrounding context and the site is a gateway to the Old South Head Road Rose Bay village where much higher density is permitted than that on the site;
- existing filtered long distance views and vistas have been retained through the complying 9 metre height limit proposed at the Old South Head Road frontage;
- the site and immediate locality does not contain any significant identified views/vistas in DCP 2003 (Rose Bay Precinct); and
- the proposal has no identifiable impact on the scenic quality of the locality. Frontage landscaping remains unaltered and new complementary plantings are proposed. Existing street trees and vegetation are also unaltered by the proposal as are stone and brick retaining walls at street frontages.

(c) to minimise adverse environmental effect on the use or enjoyment, or both, of adjoining properties

The objective of the FSR (in conjunction with other prescriptive controls such as height, deep soil landscaped area, setbacks and building footprint etc) standard is essentially to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity and visual quality of the area. The maximum FSR that a site can achieve is determined by its environmental constraints, in particular overshadowing, privacy, streetscape, parking, landscaping, visual impact and the capacity of the community infrastructure.

In terms of the above, the proposal clearly meets or surpasses these criteria. The proposal has been designed to minimise impacts and has had particular regard to site users and neighbours in terms of visual appearance,

overshadowing (significant improvement in direct solar access to the adjoining properties), traffic generation, parking and streetscape and which does not in any capacity restrict the residential amenity of the adjoining properties, nor their use and enjoyment.

Amenity relating to the site

All apartments are designed to have the balconies as an extension of the living room creating a much more efficient spatial quality for the unit. Also the kitchens are designed as extensions of the living or dining. Although the kitchen is an autonomous area defined by a clear boundary provided by the benchtop, the visual space created by the visual linkage of the combined living-dining-kitchen areas creates a much larger space. With the balcony on one side and kitchen on the other side, there is a perceived sense of additional living space. All the bedrooms are generous in size with each easily being able to accommodate a queen size bed. The bathrooms are also generous in size. All external private spaces exceed minimum areas and balconies offer good views, passive solar shade, are well proportioned and designed to act as outdoor rooms for dining and living in.

To get good access to light and ventilation, the quality of spaces around and between them has to be good. The setbacks provided are much more generous than what is required. Almost all apartments have living areas and outdoor rooms facing the sun. This enables all apartments to exceed the minimum requirement of 2 hours daylight into balconies and living areas.

The entries to the apartment building provide architectural, landscape and spatial interest and a clear address. The clear definition of the private and public domain and the sequences of the front landscaped areas and the building positively contribute to residential amenity. The building's design optimises safety and security both internal to the development and the public domain. Safety and security has been considered in accordance with the CPTED principles of surveillance, access, territorial reinforcement and space management.

Adjoining and adjacent amenity

Overshadowing

As referenced at Section 4.3.3 of the SEE, the proposed development will have the following overshadowing impacts:

- no material impact on properties to the north, south, east and west of the site at any critical time of the day or year, that is existing levels of sunlight have been retained to the adjoining and adjacent properties and their primary living rooms and private open space areas;
- as the site is a corner location, the majority of shadows cast by the proposal generally fall onto the carriageway or footpaths of either Newcastle Street and Old South Head Road;
- notwithstanding the above the proposed development casts minor additional shadows over the eastern adjoining properties at 3pm during the winter solstice, however, in this instance and the given circumstances of the case, this minor additional overshadowing is considered immaterial and acceptable for the following reasons:
 - this is the only time these properties are affected by the proposal;
 - the proposal forms part of an inconsistent built environment which establishes the special character of this part of the Rose Bay Precinct and the nearby public domain. The limited overshadowing of

the proposal is considered acceptable in the circumstances of the case as it occurs for short periods of time and only in the winter arc of the sun;

- the public benefit in the proposed high quality urban and architectural design compensates for the minor additional overshadowing;
 - small areas of land are affected and their relative useability is not compromised;
 - principle areas of private open space (balconies and terraces etc) remain free of additional shadow until 3pm and their useability is not compromised by the proposal;
 - existing built form on the adjoining properties will overshadow itself from approximately 1pm during all critical periods; and
 - private open space remains free of additional overshadowing during the equinox at all times.
- due to the site's aspect and levels, all primary and secondary living rooms will receive adequate levels of direct solar access throughout the day; and
 - a large portion of the site's landscaped and private open space area receives satisfactory levels of direct solar access and thus has a positive impact in relation to residential amenity.

The limited overshadowing of the proposal is acceptable in the circumstances of the case as it occurs for short periods of time and in the winter arc of the sun. Furthermore the public benefit of the proposed high quality urban and architectural design more than compensates for the existing and proposed overshadowing.

Aural and visual privacy

As referenced at Section 4.3.4 of the SEE, the proposal has adopted the following privacy measures to minimise amenity impacts on adjoining properties whilst providing for passive surveillance of the surrounding public domain:

- retention of existing building separation and setbacks;
- retention of existing uses;
- consistent building alignment with that of the adjoining properties;
- minimisation of openings along the side elevations;
- location, orientation and design of new openings to avoid the incidence of direct overlooking between the site and those adjoining and adjacent;
- location, orientation and design (sills, highlight and lowlight) of windows and openings to avoid the incidence of direct overlooking between the site and those adjoining and adjacent;
- provision of retaining walls, blade walls, glazing; and window design, retractable privacy screens, sliding louvre screens, adjustable louvres and translucent screens;
- significant topography changes between the site and its adjoining properties;
- appropriate orientation of primary living rooms;
- retention of existing boundary fencing and new fencing and retaining walls as/where required; and
- existing and proposed landscaping (trees, shrubs, hedges, planter boxes and climbers) around the perimeter and within the site.

The privacy impacts are created primarily by the building proximity when they were constructed rather than by the proposed new development. The nature of such an urban environment is that all future development

will seek to maximise levels of residential amenity and density through design. Furthermore privacy concerns have not impacted on the redevelopment of other properties in the surrounding locality and it's not considered the proposal will materially increase privacy concerns to unacceptable levels that would be fatal to the DA

Views

The site and immediate surrounding locality does not contain any significant identified views/vistas in DCP 2003 relative to the Rose Bay Precinct. However, properties located to the east of the site currently benefit from borrowed amenity across the site resulting from its under development and therefore are provided with filtered long distance views and vistas of parts of the Sydney Central Business District (CBD). Beraldo Design has prepared detailed view analysis diagrams which are submitted under separate cover.

Of particular relevance to the proposal is the planning principle in relation to views. This planning principle is **Tenacity Consulting v Warringah [2004] NSWLEC 140 (10996 of 2003)** (Tenacity). Tenacity creates a four step assessment process in relation to views and view impact in the absence of any detailed guidelines in Council planning documents.

As Section 5.5 (Views) of DCP 2003 specifically provides detailed objectives and planning guidelines in relation to the protection of views, the NSW LEC view sharing (Tenacity) planning principle is not considered relevant to the ultimate determination of the proposal. It is noted however, both DCP 2003 and Tenacity contain similar requirements/guidelines for the protection of views.

The proposed development is considered to be consistent with the stated view impact objectives and stated view impact planning guidelines at Section 5.5 of DCP 2003 (and therefore with Tenacity as well) for the following reasons:

- the site and immediate locality does not contain any significant identified views/vistas in DCP 2003 (Rose Bay Precinct);
- the proposal does not result in the loss of any public vistas or public views from the surrounding public domain;
- appropriate (equitable) land interface views across the site towards the Sydney CBD are available from the higher levels of the apartment buildings located to the east of the site;
- views over the site from lower levels of the apartments located to the east of the site cannot be guaranteed as the proposal at the Old South Head Road frontage complies with the height control. These apartments at the lower level have benefited from borrowed amenity;
- the height of the building (RL) is the same across the site and with the flat roof form, views across the site from upper levels are maintained;
- it is unrealistic to expect the retention of views from a seated position within any room. Historically view impacts (and privacy impacts) are taken from a standard standing height of 1500mm;
- it promotes the accepted practice of equitable view sharing from adjoining properties which are afforded the filtered views;
- resulting from the topographical features of the locality, the eastern side of Old South Head Road is higher than the western side and therefore the adjacent buildings on the eastern side of Old South Head Road look over the properties on its western side which includes the site;
- the proposal maintains a consistent building alignment with that of the adjoining buildings;

- the bulk and scale and building envelope of the building is generally consistent with that of adjacent development and that permitted within the Rose Bay village;
- existing and proposed levels on the site remain generally unaltered; and
- views from side boundaries and over built form cannot always be guaranteed.

It is considered the proposed development is entirely satisfactory in this regard and more than adequately adopts the accepted principles of view sharing in accordance with Section 5.5 of DCP 2003 and consequently the view sharing planning principles adopted in Tenacity.

(d) to relate new development to the existing character of the surrounding built and natural environment as viewed from the streetscape, the harbour or any other panoramic viewing point

The site is located at the southern gateway to the Old South Head Road section of the Rose Bay village. It is noted the planning controls within the Rose Bay village in general provide for higher density development as the height limit is 13.5 metres and an FSR of 1.5:1 is permissible. This is significantly more than that permissible on the site, which is 9.5 metres and 0.875:1 FSR, notwithstanding that the site forms the southern gateway to the village.

The site has a prominent frontage to both Old South Head Road (60.9 metres) and Newcastle Street (101.7 metres). Resulting from its topographical features, there is approximately a 6m level drop from Old South Head Road (RL18.1) to Newcastle Street (RL12.2). The site is currently occupied by Greek Orthodox Church, St Paul's Anglican Church building, a childcare centre (Possums Pre-School), and two dwelling houses and outbuildings. Existing development is predominantly residential and a higher density including three and four storey residential flat buildings. The Newcastle Street streetscape has a residential character, however two storey in scale. Royal Sydney Golf Course is located across the road to the west of the site.

The 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 proposal is setback from the junction of Old South Head Road and Newcastle Streets. 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 on the Newcastle Street elevation gives the perception of a lower scale building as the frame reinforces a two storey component. The scale of the proposal sits well within the Old South Head Road context as the site can support the bulk and scale of the building and the existing density of built form is higher.

The built form of the proposed development has been carefully considered particularly in view of the corner location of the site. The form of the development has been carefully considered in terms of the articulation and the massing on all elevations. This has been achieved by the appropriate articulation of the facades, the combination of vertical and horizontal elements, glass and glass curtains, screens and subtle colour variations in masonry elements and timber claddings. Although the proposal is a new building, it is sympathetic to the existing church in height and by using similar face brickwork and choice of material and paint colours. The bulk and scale of the built form has been shaped by the consideration of existing RFBs on the eastern side of Old South Head Road and their views to the Royal Sydney Golf Club.

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 built form presents a more urban face to Old South Head Road where the extent of the screening has been reduced. Where the proposal meets Newcastle Street at the ground level, the built form should appear cohesive and form a solid base. With its well proportioned form, casual informality of external elements and appropriate selection of finishes, the building will have a very contemporary look that will blend and respond well to the existing urban fabric as well as to the future vision of the Rose Bay Precinct.

The proposed child care centre integrates with the existing domestic two storey context and with the Church. The design has reflected the use of arches within the existing church and has used complementary materials, finishes and colours.

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 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

4. 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 non-conforming 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.

5. 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.

2.2 Height (Clause 12 of LEP 1995)

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

The building height control is not framed as a prohibition and is therefore a 'development standard' as defined at clause 4 of the Act. Part (b) of the definition refers to the *'siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work.'*

2) What is the underlying object or purpose of the standard?

The objectives of the maximum building height development standard at Clause 12 of LEP 1995 are expressly stated at Clause 12AA of LEP 1995 and are:

- (a) *to minimise 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 the special qualities of streetscapes.*

The proposal's compliance with the abovementioned objectives at Clause 12AA of LEP 1995 are addressed below (overleaf).

- (a) to minimise impact of new development on existing views of Sydney Harbour, ridgelines, public and private open spaces and views of the Sydney City skyline**
- (e) to maintain the amenity of the public domain by preserving public views of the harbour and surrounding areas and the special qualities of streetscapes.**

The site is located at the southern gateway to the Old South Head Road section of the Rose Bay village. It is noted the planning controls within the Rose Bay village in general provide for higher density development as the height limit is 13.5 metres and an FSR of 1.5:1 is permissible. This is significantly more than that permissible on the site, which is 9.5 metres and 0.875:1 FSR, notwithstanding that the site forms the southern gateway to the village.

The site has a prominent frontage to both Old South Head Road (60.9 metres) and Newcastle Street (101.7 metres). Resulting from its topographical features, there is approximately a 6m level drop from Old South Head Road (RL18.1) to Newcastle Street (RL12.2). The site is currently occupied by Greek Orthodox Church, St Paul's Anglican Church building, a childcare centre (Possums Pre-School), and two dwelling houses and outbuildings. Existing development is predominantly residential and a higher density including three and four storey residential flat buildings. The Newcastle Street streetscape has a residential character, however two storey in scale. Royal Sydney Golf Course is located across the road to the west of the site.

The 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 proposal is setback from the junction of Old South Head Road and Newcastle Streets. 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 on the Newcastle Street elevation gives the perception of a lower scale building as the frame reinforces a two storey component. The scale of the proposal sits well within the Old South Head Road context as the site can support the bulk and scale of the building and the existing density of built form is higher.

The built form of the proposed development has been carefully considered particularly in view of the corner location of the site. The form of the development has been carefully considered in terms of the articulation and the massing on all elevations. This has been achieved by the appropriate articulation of the facades, the combination of vertical and horizontal elements, glass and glass curtains, screens and subtle colour variations in masonry elements and timber claddings. Although the proposal is a new building, it is sympathetic to the existing church in height and by using similar face brickwork and choice of material and paint colours. The bulk and scale of the built form has been shaped by the consideration of existing RFBs on the eastern side of Old South Head Road and their views to the Royal Sydney Golf Club.

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 built form presents a more urban face to Old South Head Road where the extent of the screening has been reduced. Where the proposal meets Newcastle Street at the ground level, the built form should appear cohesive and form a solid base. With its well proportioned form, casual informality of external elements and appropriate selection of finishes, the building will have a very contemporary look that will blend and respond well to the existing urban fabric as well as to the future vision of the Rose Bay Precinct.

The proposed child care centre integrates with the existing domestic two storey context and with the Church. The design has reflected the use of arches within the existing church and has used complementary materials, finishes and colours.

In terms of view impacts on existing views of ridgelines, Sydney Harbour from public and private open spaces, the proposal is considered to be acceptable for the following reasons:

- the site and immediate locality does not contain any significant identified views/vistas in DCP 2003 (Rose Bay Precinct) that warrant absolute retention;
- views of Sydney Harbour are only available (if at all) from the top level of the residential flat buildings located to the east of the site. As these buildings are higher than that proposed, their existing views/vistas from this level are unlikely to be affected;
- the proposal does not result in the loss of any public vistas or public views from the surrounding public domain;
- appropriate (equitable) land interface views across the site towards the Sydney CBD are available from the higher levels of the apartment buildings located to the east of the site;
- views over the site from lower levels of the apartments located to the east of the site cannot be guaranteed as the proposal at the Old South Head Road frontage complies with the height control. These apartments at the lower level current benefit from significant borrowed amenity resulting from the under utilised existing development on the site;
- the height of the building (RL) is the same across the site and with the flat roof form, views across the site from upper levels are maintained;
- it is unrealistic to expect the retention of views from a seated position within any room. Historically view impacts (and privacy impacts) are taken from a standard standing height of 1500mm;
- it promotes the accepted practice of equitable view sharing from adjoining properties which are afforded the filtered views;
- resulting from the topographical features of the locality, the eastern side of Old South Head Road is higher than the western side and therefore the adjacent buildings on the eastern side of Old South Head Road look over the properties on its western side which includes the site;
- the proposal maintains a consistent building alignment with that of the adjoining buildings;
- the bulk and scale and building envelope of the building is generally consistent with that of adjacent development and that permitted within the Rose Bay village;
- existing and proposed levels on the site remain generally unaltered; and
- views from side boundaries and over built form cannot always be guaranteed.

(b) to provide compatibility with the adjoining residential neighbourhood,

The objective of the building height control (in conjunction with the FSR, building footprint, unbuilt upon area and deep soil landscaping controls) is essentially to ensure that the intensity of development respects and reflects the overall built form of a locality and does not detrimentally affect the amenity and visual quality of the area. The maximum height of a building is determined by its environmental constraints, in particular overshadowing, privacy, streetscape, landscaping, visual impact and views. In terms of the aforementioned, the proposal despite its technical increase in height (maximum RL unchanged along with predominant building

envelope) clearly meets or surpasses these criteria (as demonstrated within the SEE). The proposal has been designed to minimise impacts and has a positive contribution to the streetscape quality/character of the area.

The design approach has been informed by the site context, the existing building design, adjacent built form and topography. The design and height of the buildings responds to their locational context and existing built typology. The proposed mixed use development responds positively to the site's locational characteristics (topographical features) and will be a positive addition to and complements the existing streetscape character, height, bulk and scale of existing buildings in its immediate vicinity.

In addition to the aforementioned justification, the proposal is also considered to be entirely consistent with the desired future character objectives for the Rose Bay Precinct as identified in DCP 2003. The proposal is consistent with the identified future character objectives of the Rose Bay Precinct in DCP 2003 as:

- the mixed use development and in particular the proposed residential apartment building sits comfortably within its established locational context and respects the topographical features of the locality;
- the residential apartment building appropriately addresses both street frontages;
- the proposal does not alter the existing subdivision pattern of the locality and proposes an appropriate medium density development consistent with its zoning;
- a high quality contemporary design is proposed which sits comfortably within the site's locational characteristics. High quality and durable external materials and finishes are also proposed;
- the FSR of the proposal is reflective of the surrounding context and the site is a gateway to the Old South Head Road Rose Bay village where much higher density is permitted than that on the site;
- existing filtered long distance views and vistas have been retained through the complying 9 metre height limit proposed at the Old South Head Road frontage;
- the site and immediate locality does not contain any significant identified views/vistas in DCP 2003 (Rose Bay Precinct); and
- the proposal has no identifiable impact on the scenic quality of the locality. Frontage landscaping remains unaltered and new complementary plantings are proposed. Existing street trees and vegetation are also unaltered by the proposal as are stone and brick retaining walls at street frontages.

(c) to safeguard visual privacy of interior and exterior living areas of neighbouring dwellings,

A detailed assessment of the aural and visual privacy impacts of the proposal was undertaken at Section 4.3.4 of the SEE. Notwithstanding the departure from the height standard, the proposed mixed use development minimises amenity impacts to adjoining and adjacent properties, whilst providing for passive surveillance of the surrounding public domain. In particular the proposal:

- retention of existing building separation and setbacks;
- retention of existing uses;
- consistent building alignment with that of the adjoining properties;
- minimisation of openings along the side elevations;
- location, orientation and design of new openings to avoid the incidence of direct overlooking between the site and those adjoining and adjacent;

- location, orientation and design (sills, highlight and lowlight) of windows and openings to avoid the incidence of direct overlooking between the site and those adjoining and adjacent;
- provision of retaining walls, blade walls, glazing; and window design, retractable privacy screens, sliding louvre screens, adjustable louvres and translucent screens;
- significant topography changes between the site and its adjoining properties;
- appropriate orientation of primary living rooms;
- retention of existing boundary fencing and new fencing and retaining walls as/where required; and
- existing and proposed landscaping (trees, shrubs, hedges, planter boxes and climbers) around the perimeter and within the site.

The privacy impacts are created primarily by the building proximity when they were constructed rather than by the proposed new development. The nature of such an urban environment is that all future development will seek to maximise levels of residential amenity and density through design. Furthermore privacy concerns have not impacted on the redevelopment of other properties in the surrounding locality and its not considered the proposal will materially increase privacy concerns to unacceptable levels that would be fatal to the DA.

(d) to minimise detrimental impacts on existing sunlight access to interior living rooms and exterior open space areas and minimise overshadowing,

A detailed assessment of the proposal overshadowing impacts has been undertaken at Section 4.3.3 of the SEE. In summary the proposed development has the following overshadowing impacts:

- no material impact on properties to the north, south, east and west of the site at any critical time of the day or year, that is existing levels of sunlight have been retained to the adjoining and adjacent properties and their primary living rooms and private open space areas;
- as the site is a corner location, the majority of shadows cast by the proposal generally fall onto the carriageway or footpaths of either Newcastle Street and Old South Head Road;
- notwithstanding the above the proposed development casts minor additional shadows over the eastern adjoining properties at 3pm during the winter solstice, however, in this instance and the given circumstances of the case, this minor additional overshadowing is considered immaterial and acceptable for the following reasons:
 - this is the only time these properties are affected by the proposal;
 - the proposal forms part of an inconsistent built environment which establishes the special character of this part of the Rose Bay Precinct and the nearby public domain. The limited overshadowing of the proposal is considered acceptable in the circumstances of the case as it occurs for short periods of time and only in the winter arc of the sun;
 - the public benefit in the proposed high quality urban and architectural design compensates for the minor additional overshadowing;
 - small areas of land are affected and their relative useability is not compromised;
 - principle areas of private open space (balconies and terraces etc) remain free of additional shadow until 3pm and their useability is not compromised by the proposal;

- existing built form on the adjoining properties will overshadow itself from approximately 1pm during all critical periods; and
- private open space remains free of additional overshadowing during the equinox at all times.
- due to the site's aspect and levels, all primary and secondary living rooms will receive adequate levels of direct solar access throughout the day; and
- a large portion of the site's landscaped and private open space area receives satisfactory levels of direct solar access and thus has a positive impact in relation to residential amenity.

The limited overshadowing of the proposal is acceptable in the circumstances of the case as it occurs for short periods of time and in the winter arc of the sun. Furthermore the public benefit of the proposed high quality urban and architectural design more than compensates for the existing and proposed overshadowing.

In addition to the above, the design of the proposal takes advantage of the site's solar access potential without limiting solar access potential to adjoining properties as follows:

- 91% of apartments have living areas and outdoor terraces facing north, east or west to achieve maximum access to natural light;
- windows, openings and the internal open floor plan ensures appropriate levels of solar exposure to all areas of the apartments;
- the site is provided with direct solar access during all critical period/times of the year;
- primary living areas are connected to the external facades and glazing;
- all outdoor private spaces are designed as extension of the living room to enhance and encourage outdoor and indoor living, while at same time acting as a transition space to modulate temperature in the apartment;
- openings on facades allow direct solar access to primary living rooms and private open spaces;
- minimisation in reliance on artificial lighting and mechanical ventilation as follows:
 - open floor plans are provided;
 - the shape and design of the building, its height relative to surrounding buildings and topography of the locality plays a critical role in the interaction of the building and apartments with access to natural daylight and ventilation;
 - apartments benefits from both cross and stack effect ventilation, which results in enhanced thermal comfort and reduced reliance on artificial/mechanical cooling in the summer months; and
 - provision of operable doors and windows enables the use of natural ventilation for summer month cooling and at the same time, the opportunity to close these openings will allow adequate control to moderate the impact of higher than normal winds.

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 section 5(a)(i) and (ii) of the EP&A Act?

Clause 5(a)(i) and (ii) of the EP&A Act state:

The objects of the Act are:

(a) to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*

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.

4. 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.

5) 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.

3.0 Compliance with the planning objectives of the locality

The objectives in relation to residential development within the Woollahra local government area are expressly stated at Clause 2(a) of LEP 1995 and are:

- to promote the development of land to which this plan applies as a comprehensively planned residential community providing recreational, commercial, retail and community facilities of a type which are appropriate to meet the needs of the population to be accommodated,*
- to relate population density to the capacity of the existing road network, the availability of parking, the provision of public open space, the capacity of the natural environment to accept change without losing its attributes, the capacity of existing utility networks, the level of service by public transport, and the proximity to the city centre, schools, shops, health services and community facilities,*
- to zone land in order to create separate areas of residential and non-residential use in the interests of residential amenity, a balanced distribution of services and employment and efficient traffic distribution,*
- to encourage and facilitate opportunities for diversity in dwelling density, type and tenure in suitable locations throughout the area of Woollahra, and*
- to encourage and promote sustainable development by extending the use of existing and new residential buildings through the provision of fully accessible and adaptable housing requirements and by increasing the number of fully accessible and adaptable houses in the area of Woollahra,*

Pursuant to Clause 8 of LEP 1995, the site is located in the Residential 2(B) zone. The description of the zone is:

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. Floor space and height controls, contained in Part 3, set the maximum permissible density and building heights for new development. Site area and frontage controls, also contained in Part 3, specify minimum site requirements for new development.

The objectives of the Residential 2(B) zone are:

- (a) to provide for areas of medium and high density residential development in appropriate locations,*
- (b) to encourage a diversity of dwelling types and tenure,*
- (c) to allow non-residential development of low intensity which is compatible with the residential character and amenity of the locality,*
- (d) to improve access to and along the Sydney Harbour foreshore where opportunities arise, and*
- (e) to protect the environmental attributes of the foreshore lands.*

Notwithstanding the departure from the FSR and building heights development standard at Clauses 11 and 12 of LEP 1995, the proposal is nevertheless consistent with the objectives of LEP 1995 in relation to residential development and the Residential 2(B) zone in that it:

- provides an appropriate medium density mixed use development on an approved and planned residential allotment of land within an area with good access to services, facilities and public transport;
- proposes a density which is consistent with the character of the surrounding locality and therefore promotes urban consolidation;
- provides appropriate non-residential development, being the childcare centre;
- will not adversely reduce existing residential amenity levels of the locality;
- provides the opportunity to be able to work from home as/if required;
- has no identifiable impact on the Sydney Harbour foreshore or any coastal lands or access thereto as the site is not a foreshore location;
- the site is located in an area with excellent access to public transport, centres, schools, shops, health services and community facilities;
- the site has existing and adequate provision of utility services (electricity, telecommunications, sewer, gas and stormwater) and which can be extended if required without adverse impact on the provision or availability of these services;
- is located on a site of sufficient size to appropriately accommodate the proposal; and
- responds positively to the site's locational characteristics (topographical features) and will be a positive addition to and complements the existing streetscape character, height, bulk and scale of existing and future buildings in the immediate vicinity.

4.0 Objects of the Act

The objects of the Act as specified in Section 5(a) (i) and (ii), are in our opinion, achieved by the proposed development in that:

- It constitutes “proper management, development and conservation of natural and man-made resources”;
- It promotes “the social and economic welfare of the community and a better environment” by better utilising the existing resources and infrastructure of the community; and
- It would result in “the promotion and co-ordination of the orderly and economic use and development of land”.

5.0 Matters of State or Regional planning significance

The proposed development and variation from the development standards does not raise any matters of significance for State or regional environmental planning, nor does it conflict with any State planning policies or Ministerial directives.

6.0 Conclusion

Whilst the proposed development does not comply with the FSR development standard at Clause 11 and the Building heights development standard at Clause 12 of LEP 1995; it nevertheless satisfies the five SEPP 1 tests established by the Court and other relevant considerations.

Compliance with the development standards is therefore unreasonable in the circumstances of the case, and refusal of the DA on these grounds is not warranted.