

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	
<b>FILE No.</b>	DA 215/2011/1
<b>PROPERTY DETAILS</b>	88-96 Newcastle Street, Rose Bay
<b>Lot &amp; DP No.:</b>	LOTS: 14, 15, and 16 SEC: D DP: 5092 LOT: 1 SEC: DP: 92579 LOT: 1 SEC: DP: 1079086
<b>Side of Street:</b>	East
<b>Site Area (m<sup>2</sup>):</b>	3470.7m <sup>2</sup>
<b>Zoning:</b>	Residential 2(b)
<b>PROPOSAL:</b>	Staged development consisting of the following: <ul style="list-style-type: none"><li>- Demolition:</li><li>- Stage 1 - Demolition of the existing dwelling-house and ancillary structures at 88 Newcastle Street</li><li>- Stage 2 - Demolition of the existing dwelling-house and ancillary structures at 94 Newcastle Street; demolition of the former St Paul's Anglican Church and former Parish Hall (Possums Pre-School) at 96 Newcastle Street; removal of existing landscaping and trees</li><li>- Retention of the existing Greek Orthodox Church at 90-92 Newcastle Street</li></ul> Construction: <ul style="list-style-type: none"><li>- Stage 1 - Construction of a new 34 place Childcare Centre</li><li>- Stage 2 - Construction of a new 4 storey residential flat building (RFB) comprising of 20 residential units with basement car parking; landscaping and siteworks</li><li>- Consolidation of the existing allotments into one allotment</li></ul>
<b>TYPE OF CONSENT:</b>	Integrated - RTA
<b>APPLICANT:</b>	Beraldo Design Pty Ltd
<b>OWNER:</b>	Greek Orthodox Parish Of St George, Rose Bay
<b>DATE LODGED:</b>	31/05/2011
<b>AUTHOR:</b>	Ms E Smith
<b>CONSENT AUTHORITY</b>	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 Regional Panel because:

- It will adversely impact upon the local environment such that refusal is justified, specifically:
  - The proposal fails to accord with SEPP 65 – Design Quality of Residential Flat Buildings.
  - The non-compliances with the height standard and front setback control would result in the scale and bulk of the proposed RFB appearing visually intrusive to the detriment of the Newcastle Street streetscape.
- 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).

## 2. PROPOSAL PRECIS

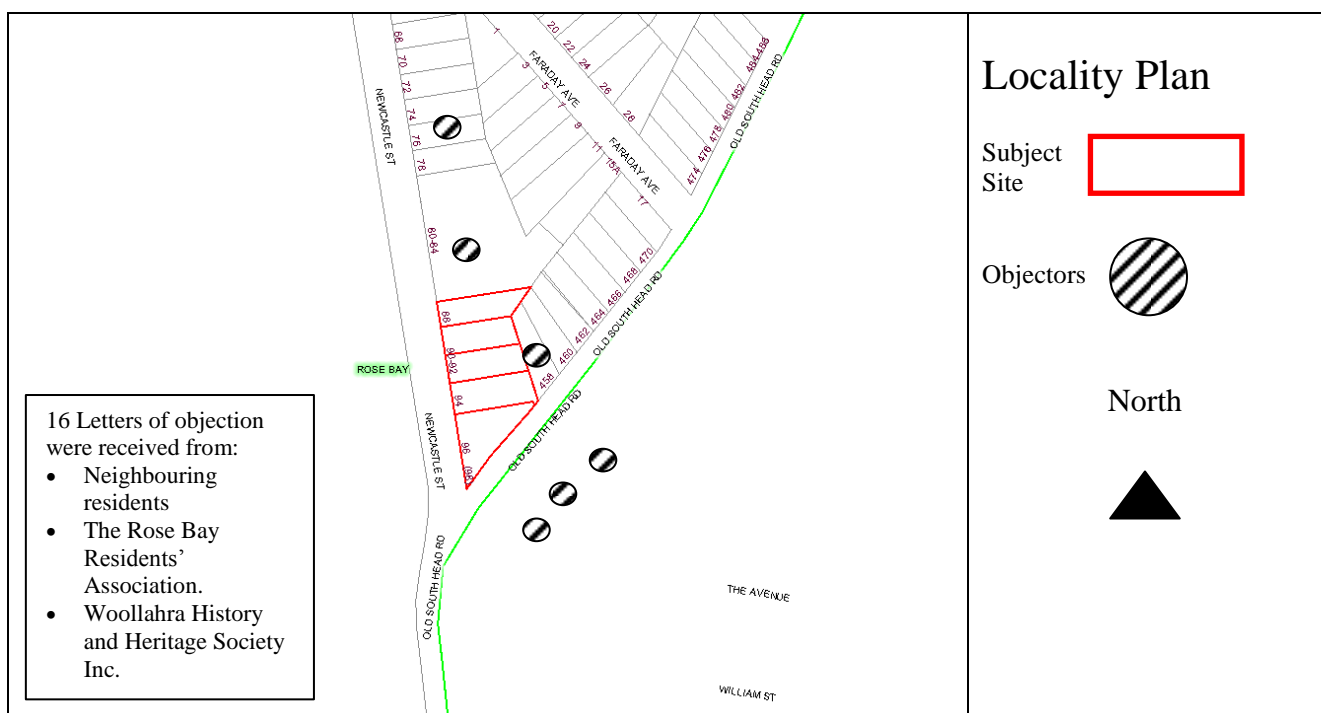
The Regional Panel is the consent authority for this development application as the application is for:

- 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 10 November 2011.

The proposal is for the demolition of 88 Newcastle Street (dwelling), 94 Newcastle Street (dwelling), 96 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 6pm 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 waste room, 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 which comprises of a rubberised soft surface, and deep soil landscaping. A further landscaped courtyard is 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 20 residential dwellings (18 x 2 bedrooms and 2 x 1 bedroom plus study).
- The basement level contains car parking for 37 vehicles (with 2 spaces being adaptable). The basement level car park is accessed by a single point of entry/exit from Newcastle Street.
- The ground level comprises of four 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 six apartments with various private balconies to the northern and southern side elevations and western front elevation.
- Level two comprises of six apartments with various private balconies to the northern and southern side elevations and western front elevation.
- Level three comprises of four apartments with various private roof terraces to the northern 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.

- Two of the proposed ground floor dwellings (G.01 and G.02) and two car spaces are identified on the architectural plans as being capable of adaption for use by people with disabilities.

The plans and elevations are attached as **Annexure 1**.

## 5. SUMMARY

Reasons for report	Issues	Submissions
<ol style="list-style-type: none"><li>1. To assist the Regional Panel in determining the development application, and</li><li>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:<ul style="list-style-type: none"><li>▪ It does not satisfy the criteria for determination under staff delegation as it involves works costing in excess of \$3 million, and</li><li>▪ It is for a new RFB</li></ul></li></ol>	<ul style="list-style-type: none"><li>• SEPP 65 – design quality for residential flat buildings</li><li>• Floor space ratio non-compliance.</li><li>• Height non-compliance.</li><li>• Number of storeys non-compliance.</li><li>• Setback non-compliances.</li><li>• Fence height non-compliances.</li><li>• Building footprint non-compliance.</li><li>• Excavation.</li><li>• Streetscape.</li><li>• Ceiling heights.</li><li>• Private open space.</li><li>• Deep soil landscaping.</li><li>• Non-compliances with the Child Care Centre DCP.</li><li>• Objectors' concerns.</li></ul>	Objections were received from 16 neighbouring properties, societies or associations.

## 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 \$10,114,280.00. The application was accompanied by an indicative estimate, prepared by Kinlay Grinham, Quantity Surveyor dated April 2011.

## 7. DESCRIPTION OF SITE OF LOCALITY



THE SITE AND LOCALITY	
<b>Physical features</b>	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 <sup>2</sup> .
<b>Topography</b>	The site falls by approximately 6m from the Old South Head Road frontage to the north western corner of the site.
<b>Existing buildings and structures</b>	<p>The site is occupied by:</p> <ul style="list-style-type: none"> <li>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.</li> <li>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.</li> <li>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).</li> <li>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.</li> <li>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.</li> </ul>
<b>Environment</b>	To the north of the site is:

	<ul style="list-style-type: none"> <li>80-84 Newcastle Street (Wentworth Manor) a modern two storey aged care facility.</li> </ul> <p>To the east of the site are:</p> <ul style="list-style-type: none"> <li>458, 460 and 462 Old South Head Road - detached single storey and two storey dwellings.</li> </ul> <p>To the south of the site is:</p> <ul style="list-style-type: none"> <li>The junction of Newcastle Street and Old South Head Road.</li> <li>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).</li> </ul> <p>To the west of the site is:</p> <ul style="list-style-type: none"> <li>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.</li> </ul>
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## 8. PROPERTY HISTORY

PROPERTY HISTORY	
Current use	Residential, Church, and Child Care Centre.
Previous relevant applications	DA 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 residential flat building, a new childcare centre, and the retention of the existing Greek Orthodox Church of the Parish of St George was refused at a meeting of the Regional Panel on 20 October 2010. This is discussed in greater detail below.
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 08 July 2011:</p> <ul style="list-style-type: none"> <li>Additional acoustic information – received 15 August 2011.</li> <li>An initial site evaluation under SEPP 55 – received 12 September 2011.</li> <li>Preliminary Acid Sulfate Soil investigation – received 12 September 2011.</li> </ul> <p>On 13 July 2011:</p> <ul style="list-style-type: none"> <li>An aboricultural impact assessment – received 12 September 2011.</li> <li>An amended landscape plan – received 12 September 2011.</li> <li>Surveyed height poles – non-surveyed 12m height pole provided 23 August 2011.</li> </ul> <p>On 16 September 2011:</p> <ul style="list-style-type: none"> <li>Additional acoustic information – received 27 September 2011.</li> </ul> <p>On 30 September 2011:</p> <ul style="list-style-type: none"> <li>Clarification in relation to the acoustic report – received 30 September 2011.</li> </ul> <p>On 04 October 2011:</p> <ul style="list-style-type: none"> <li>Additional information regarding the landscape works within the childcare centre – received 04 October 2011.</li> <li>Additional view analysis – received 06 October 2011.</li> </ul>
Amended plans/ Replacement Application	None.
Land & Environment Court appeal	None.

## Previous Relevant Applications

### DA 257/2010:

DA 257/2010 for the demolition of 88 Newcastle Street (dwelling), 94 Newcastle Street (dwelling), 96 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 was refused at a meeting of the Regional Panel on 20 October 2010.

The resolution of the Regional Panel was:

- 1) *The Panel resolves, by a majority of 3:2 (for: Julie Savet-Ward, Toni Zeltzer and Malcolm Young; against: John Roseth and David Furlong) to accept the recommendation of the planning assessment report to refuse the application for the reasons mentioned in the report, except as expanded on below.*
- 2) *Those members of the Panel who voted for refusal are particularly concerned with:*
  - a) *the poor performance of the proposed apartments in regard to amenity when measured against the requirements of SEPP 65;*
  - b) *the significant non-compliance with the FSR and height controls and the failure of the SEPP 1 Objections to justify these departures;*
  - c) *the lack of adequate communal open space with deep-soil landscaping.*
- 3) *The Panel notes that the demolition of the two churches is **not** a reason for refusal.*
- 4) *The Panel considered the applicant's request for an approval of the demolition part of the application, but believes that demolition should not be approved without knowledge of what will be built in its place.*
- 5) *John Roseth and David Furlong would approve the application for the following reasons:*
  - a) *the site is a corner "gateway" site and ideal for increased density;*
  - b) *the non-compliance with density and height control has minimal impact on nearby buildings;*
  - c) *they do not consider the amenity of the apartments to be as poor as do the other three members of the Panel.*
- 6) *However, John Roseth and David Furlong believe that the proposal's setback from its northern boundary with 458 Old South Head Road is inadequate and, had they the power to approve the application, they would require a larger setback, with the resultant area being devoted to landscaping.*

The recommendation of the planning assessment report was to refuse development consent. The reasons are summarised as follows:

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.*

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.*
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.*
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.*
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.*
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.*
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.*
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.*

### **Differences between DA 257/2010 and the subject application:**

Below is a summary of the key changes between DA 257/2010 and the subject application:

#### **Residential Flat Building:**

- The number of units within the RFB has been reduced from 23 units to 20 units as a result of the following amendments:
  - The proposed RFB is setback approximately 3.4m further from the northern side elevation with the Greek Orthodox Church.
  - The proposed RFB has been setback by approximately 4m further from the eastern rear boundary with No. 458 Old South Head Road.
  - The roof terraces on the upper level have been reduced in area from approximately 350m<sup>2</sup> to 80m<sup>2</sup>.



- The proposed RFB has been setback approximately 0m-2m further from the western front boundary to Newcastle Street. The steel frame to Newcastle Street has been setback approximately 0.85m further from the western front boundary.
- The steel frame has been setback approximately 1m further from the south eastern front boundary to Old South Head Road.
- The height of the north eastern section of the RFB been reduced by 1m from RL 28.5 to RL 27.5.
- At the ground level, level 1, and level 2 the north western corner of the building has been reduced and replaced with terraces.
- The level of deep soil landscaping has been increased by approximately 90m<sup>2</sup>.
- The following information has been provided: a view loss analysis, shadow diagrams, an acoustic report, a contaminated land assessment and an acid sulfate soils assessment.

#### **Child Care Centre:**

- The height of the child care centre has been reduced by 2.02m from RL 23.13 to RL 21.11. This has been achieved by replacing the pitched roof with a flat roof.
- The child care centre now incorporates a modern design. The front elevation largely comprises of glazing and louvers.

## **9. REFERRALS**

### **9.1 The following table contains particulars of internal referrals.**

<b>INTERNAL REFERRALS</b>		
<b>Referral Officer</b>	<b>Comment</b>	<b>Annexure</b>
<b>Development Engineer</b>	<b>Council's Team Leader-Development Engineer has determined that the proposal is satisfactory with regards to technical services concerns subject to conditions.</b>	<b>2</b>
<b>Landscaping Officer</b>	<b>Council's Landscaping Officer has determined that subject to conditions the proposal could be satisfactory with regards to tree and landscaping impacts. As the proposal is recommended for refusal draft conditions have not been provided.</b>	<b>3</b>
<b>Environmental Health Officer</b>	<b>Council's Environmental Health Officer has determined that the proposal is satisfactory with regards to environmental health concerns subject to conditions.</b>	<b>4</b>
<b>Heritage Officer</b>	<b>Council's Heritage Officer has determined that the proposal is satisfactory with regards to heritage concerns subject to conditions.</b>	<b>5</b>
<b>Urban Design Planner</b>	<b>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.</b>	<b>6</b>
<b>Community Services</b>	<b>Council's Community Development Officer has determined that the proposal is satisfactory in relation to community development.</b>	<b>7</b>

## 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	The RTA has reviewed the proposal and determined that the development is not integrated development. The RTA have provided a number of advisory comments. If the proposal was recommended for approval these would form conditions of consent. The referral response is attached as <b>Annexure 8</b> .
Department of Planning	21 BA (2c) of Woollahra Local Environmental Plan 1995	<i>The preliminary Acid Sulfate Soil assessment by Environmental Investigations Pty Ltd for the proponents found no evidence of actual or potential ASS (p16) and therefore the NSW ASS Management Manual stipulates Council may decide that no further action is required.</i>

## 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 366239M** 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:

- Based on the findings in the report prepared by Environmental Investigations titled *Stage 1 Environmental Site Assessment, 88-96 Newcastle Street, Rose Bay* (Report No. E1424.1 AA

*dated 7th September, 2011), including the site walk over inspection; search of historical photos; review of historical ownership; search of Council records pertaining to site uses; search of DECCW records (statutory notices); and data interpretation and reporting. Environmental Investigations has concluded that the site soils present a low risk to human health and the environment. On this basis the subject site is considered suitable for the proposed development.*

If the proposal was recommended for approval conditions could be imposed on the consent to ensure the proposal is satisfactory with regard to SEPP 55.

### **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 (20) 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 Clauses 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 9**).

Council’s Urban Design Officer has reviewed the proposal and has concluded that the scheme does not satisfy the requirements of SEPP 65. The full comments are provided below:

#### ***SEPP 65***

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

***1. Context “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 Old South Head Road (OSH Rd) as the side boundary is a 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 fully utilise this proximity, with the entry facing away from the local centre.*

***2. Scale “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 limited viewing area. This building is very prominent and regularly seen from afar. The proposed building is 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, particularly on Newcastle Street.*

***3 . Built form “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 whole building in a steel framed shading device means the building cannot respond to the particular contextural cues of each frontage. The proposal’s size challenges the adjacent church, which traditionally would have a prominent building role.*

***4. Density “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 residential building’s bulk is, however, excessive. The FSR on this part of the site when considered separately is over twice that permitted by the controls. This results in a building which is out of keeping with the desired character for the location as stated in the Woollahra Residential DCP.*

***5. Resource, energy and water efficiency “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 provides solar access to 75% of the 20 units. 70% of the units get good cross ventilation. This is considered acceptable.*

*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.*

**6. Landscape** *“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 OSH Rd and will be noisy. It is on the southern face of the building and will receive very little direct sunlight.*

*The proposal suffers, as a result of the size of the footprint and underground car parking, from a 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** *“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 remote entries, as previously discussed. This means that these units don’t have a clear street address.*

*The layout of the units is satisfactory. The entry point to units 1.03, 1.04, 2.03, 2.04 is too restricted. Certain entry doors open outwards, which is not considered welcoming design.*

*There is a 3.0m floor to floor height specified in the proposal. It regularly proves to be impossible to meet the acoustic separation requirements in the Building Code of Australia (BCA) within a 300mm floor depth. The proposed floor to floor heights are therefore unlikely to be able to provide the 2.7m ceiling height required by SEPP 65.*

**8. Safety and Security:** *“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. There needs to be*

*a physical barrier at the street. The lack of a clear entry address facing the street, is also a serious problem for emergency response teams such as the police and ambulance services.*

**9. Social Dimensions:** *“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 18 x 2bed and 2 x 1bed units. Although there is a limited unit mix in the development the emphasis on 2bedroom units 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 fully realise this the design needs to engage with OSH Rd. and the local neighbourhood centre.*

**10. Aesthetics:** *“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. 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 suggests that the building is responding to the same issues on each facade. Each side of the site actually presents totally different conditions. The expectation is that the building should respond accordingly.*

#### **SEPP 65 Summary**

*The revised scheme performs far better than the original with a greater percentage of the units receiving solar access. The aesthetics of the scheme still lack a texture and richness that would be appropriate in this location.*

*Placing the entries on Newcastle Street means that the principle open space is compromised by being on the south side of the building. It is recognised that the however that the north facing terrace has been enlarged and would provide good amenity.*

*The revised proposal provides apartments with acceptable internal amenity. However the site planning and the buildings response to its context mean that it does not meet the expectations of SEPP 65.*

The proposal is unsatisfactory with regard to the aims, objectives and provisions of SEPP 65.

## **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 \$10,114,280.00 (proposed cost of development)  
= \$101,142.80

The total contribution = \$101,142.80

### 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:

- To the Newcastle Street frontage, the proposed RFB breaches the height standard by 4m and projects significantly forward of the existing building line. This combined with an excess FSR of over 1300m<sup>2</sup>, results in the proposed RFB appearing excessive in scale when compared to the Newcastle street context. Accordingly:
  - 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 properties to the north which front Newcastle Street (zoned residential 2(a)). 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).

The proposed development is unsatisfactory with regards to the zone interface for the following reasons:

- The 2(a) residential zone to the north of the site (which fronts Newcastle Street) is a lower density zone than the subject site. The 2(a) residential zone is predominantly characterised by single and two storey residential development with a maximum height of 9.5m and a relatively consistent building line.



- The proposed RFB's greatest height non-compliance occurs on the Newcastle Street frontage, adjacent to the existing church where the RFB will be seen in the context of the adjoining residential 2(a) zone.
- At the north western corner to Newcastle Street, the proposed RFB presents a height to the street of 13.8m, 4.5 storeys, and a minimal front setback of 2.25m. This represents significant exceedances of the 9.5m height standard, 3 storey control, and 8.1m front setback control.
- The excessive height and insufficient setback to the Newcastle Street frontage, results in the proposed RFB appearing visually intrusive to the detriment of the Newcastle Street streetscape.
- Furthermore, locating the most significant height non-compliance of the RFB in the closest proximity of the transition zone, fails to provide a satisfactory response to the zone interface.

## 11.2 Statutory compliance table

Site Area: 3470.7m <sup>2</sup>	Existing	DA 257/2010	Proposal	Control	Complies
Site Area and Lot Frontage	3470.7m <sup>2</sup> 101.71m (amalgamated sites)	3470.7m <sup>2</sup> 101.71m (amalgamated sites)	3470.7m <sup>2</sup> 101.71m (amalgamated sites)	930m <sup>2</sup> 21m	<b>YES</b> <b>YES</b>
Overall Height	<9.5m	10.7m (child care centre) 9.5m-13.3m (RFB)	8.455m (child care centre) 9.5m-13.5m (RFB)	9.5m 9.5m	<b>YES</b> <b>NO</b>
Floor Space Ratio	<0.875:1 (3036.86m <sup>2</sup> )	1.34:1 (4640.82m <sup>2</sup> )	1.27:1 (4400.8m <sup>2</sup> )	0.875:1 (3036.86m <sup>2</sup> )	<b>NO</b>

## 11.3 Site area requirements

The proposal has a total site area of 3,470.7m<sup>2</sup> 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 objective (a) of Clause 10A of WLEP 1995. Objective (a) is as follows:

- (a) *to achieve compatibility between the scale, density, bulk and landscape character of buildings and allotment size*

## 11.4 Height

Clause 12 of WLEP 1995 stipulates a maximum height of 9.5m. With a height of 8.2m the proposed child care centre fully accords with the maximum height standard. The proposed RFB provides a maximum height of 13.5m resulting in a non-compliance with this control of 4m.

A SEPP 1 objection was submitted by the applicant, which is attached as **Annexure 10**. The SEPP 1 concludes that the proposal upholds the objectives behind the height standard and compliance with the building height standard is unreasonable for the following reasons:

- *Only the apartment building departs from the standard. The proposed childcare centre complies and the existing Greek Orthodox Church building is unaltered and also benefits from existing use rights;*

- *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.*

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:

- If the proposal was recommended for approval, subject to conditions, the proposal could accord with objectives a), c) and d).
- 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 applicant has stated that the height of the proposal is reflective of the surrounding context as the site is a gateway to the Old South Head Road Rose Bay Village.
  - There is no objection to the streetscape presentation to Old South Head Road.
  - However, at the Newcastle Street frontage a transition zone occurs between the subject site and a lower density residential 2(a) zone. The residential 2(a) zone predominantly comprises of single and two storey residential development with a relatively consistent front building line.
  - To Newcastle Street the north western corner of the proposed RFB will be seen in the context of this one/two storey development and the existing Greek Orthodox Church.
  - It is at the north western corner of the building that the greatest height non-compliance (up to 4m) occurs. This corner of the building also presents as 4.5 storeys to Newcastle Street. The prominence of the north western corner of the building is exacerbated by the fact the proposed RFB will breach the front setback control and project approximately 5.8m forward of the Greek Orthodox Church.
  - The Greek Orthodox Church is currently considerable in scale and bulk when compared to the neighbouring residential (2(a) zone (pictured below).



- The proposed RFB will project 5.8m forward of the Orthodox Church and will have a considerably greater building width to Newcastle Street (the steel frame is approximately 42m in length as opposed to the Church which is a width of

approximately 18m). At RL 27.500 the proposed RFB is approximately 1.8m higher than the ridge of the Greek Orthodox Church (RL 25.68).



- The non-compliant height and insufficient front setback of the north western corner of the RFB results in the RFB appearing excessive in scale when compared to the Greek Orthodox Church and the adjacent two storey residential development. As a result the proposed RFB would appear unduly prominent within the streetscape to the detriment of the public domain.
- The proposal fails to provide a transition between the higher development to Old South Head Road and the lower development to Newcastle Street.
- This could potentially be addressed by setting back the north western corner of the building in line with the Greek Orthodox Church.
- Council's Urban Design Planner has reviewed the proposal and provided the following comments in relation to height and scale:
  - *The building is over the height limit 9.5m height limit for this location by approximately 4m. The greatest non compliance occurs on the Newcastle Street frontage, adjacent to the existing church and at the most remote point from the shops on Old South Head Road where a 13.5m height is permitted. This makes the non compliance difficult to justify since it both impacts on the scale of the church which should be the dominant building and it doesn't reinforce the neighbourhood centre*
  - *The proposed building is 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, particularly on Newcastle Street.*
  - *The proposal's size challenges the adjacent church, which traditionally would have a prominent building role.*

For these reasons, the proposal fails to accord with the objectives of the height standard, specifically objectives b), and e) of Clause 12AA of the WLEP 1995.

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

As the proposal fails to accord with the objectives of the development standard contained under Clause 12AA of WLEP 1995, the proposed non-compliance with the height standard is not considered to be reasonable or necessary.

**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 **reason for refusal 3**.

**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 (3036.8m<sup>2</sup>).

The proposed development has a floor space ratio of 1.27:1 or 4400.8m<sup>2</sup>, which would breach the maximum FSR standard by 1363.94m<sup>2</sup> (a breach of 44.9% over the permissible amount).

A SEPP 1 objection was submitted by the applicant, which is attached as **Annexure 10**. The SEPP 1 concludes that the proposal upholds the objectives behind the FSR standard, and compliance with the FSR standard is unreasonable for the following reasons:

- *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.*

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. 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 proposal breaches the FSR standard by 1363.94m<sup>2</sup> (a breach of 44.9% over the permissible amount). The excess FSR combined with the insufficient front setback to Newcastle Street, and excessive height, results in the bulk and scale of the RFB 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.
  - The excessive bulk and scale of the RFB would result in the proposed RFB appearing unduly prominent within the Newcastle Street streetscape. This is discussed in greater detail above.
  - 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.

- Council's Urban Design Planner, has commented that the buildings are on a combined site, the FSR of which is 0.875:1. It is noted that this application is actually for two unrelated buildings separated by an existing church, which remains unaltered. The proposed residential building taken on its own site has an FSR which is nearly double the permitted amount. The development capacity of the combined lots has been concentrated onto the southern corner. The result is a visually bulky building on a very prominent site.
- Objective c) aims to minimise adverse environmental effect on the use or enjoyment, or both, of adjoining properties. If the proposal was recommended for approval, conditions could be imposed on the consent to ensure that an adequate level of residential amenity is maintained to the neighbouring properties.
- 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 RFB fails to respect the established building line to Newcastle Street which results in the building appearing unduly prominent within the Newcastle Street streetscape.
  - The proposed RFB fails provide to a transition between the larger scale development to Old South Head Road and the lower scale development to Newcastle Street.
- For these reasons, the proposal fails to accord with the objectives b) and d) of the FSR standard.

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

As the proposal fails to accord with the objectives of the development standard contained under Clause 12AA of WLEP 1995, the proposed non-compliance with the height standard is not considered to be reasonable or necessary.

As the proposal fails to accord with objectives b) and d) of the FSR standard the proposed non-compliance with the FSR standard is not considered to be reasonable or necessary. Furthermore, 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 FSR standard is not considered to be well founded in this instance.

Accordingly, this form **reason for refusal 3**.

**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 1120m<sup>2</sup>; a total volume of approximately 3920m<sup>3</sup>.

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, with the exception of a section of the basement which abuts the south eastern boundary of the site with Old South Head Road.

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, 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.

If the proposal was recommended for approval, conditions could be imposed upon the consent to ensure the adequate preservation of existing landscaping.

(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.

If the proposal was recommended for approval, subject to conditions, the excavation associated with the proposal could accord with Clause 18 of WLEP 1995.

**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 matter was referred to the Department of Planning. The following comments were provided:

*In relation to comments from the Department regarding acid sulphate soil (ASS) management.*

*I note that the preliminary ASS assessment by Environmental Investigations Pty Ltd for the proponents found no evidence of actual or potential ASS (p16) and therefore the NSW ASS Management Manual stipulates Council may decide that no further action is required.*

The matter was referred to Council's Environmental Health Officer, who has determined that subject to conditions the proposal is satisfactory with regards to Acid Sulfate Soil and the preparation of an Acid Sulfate Soils Management Plan for the development site is not required.

**Clause 24 Land adjoining public open space:** The proposal is acceptable in terms of Clause 24(2).

**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.

**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). Council's Environmental Health Officer has concluded that the proposal is satisfactory with regards to Clause 25D.

**Clauses 26-33 Heritage and conservation area provisions:** Clause 26 applies to heritage items. The subject site is not designated as a heritage item within the WLEP (1995).

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.*

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 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.*

Following the gateway determination this matter was reported to Council on 31 January 2011 with the following resolution:

- A. That the report on the planning proposal for 96-98 Newcastle Street, Rose Bay, be received and noted.*
- B. That the proposal to list the former Anglican Church buildings at 96-98 Newcastle Street, Rose Bay as individual heritage items and a heritage item group be included with the work being done on the review of heritage items for the new LEP.*
- C. That Council call for a clear separation between heritage assessment and planning assessment at the State Government level.*

**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 is attached as **Annexure 5**. This concludes that:

*The application is acceptable as it complies with all the relevant statutory and policy documents and would have a satisfactory heritage impact, subject to the conditions below being met as part of the development.*

The recommended conditions comprise of the requirement for an archival recording of the buildings to be demolished on site, and a design for the interpretation of the site which must include the reuse of the two church building foundation stones.

## 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 <sup>2</sup>	Existing	Proposed	Control	Complies
Maximum Number of Storeys	1 (Dwelling - No. 94, Anglican Church & Parish Hall)	4	3	<b>NO</b>
Building Boundary Setbacks				
Front Newcastle Street (West)	1.7m (Anglican Church)	2.25m (enclosing steel frame structure)	8.1m	<b>NO</b>
	2.4m (Parish Hall)	2.7-5.8m (elevation)	8.1m	<b>NO</b>
Rear (East)	>11.2m	6.4m	11.2m	<b>NO</b>
Side Old South Head Road (South)	N/A	0m-10.6m	3m	<b>PART</b>
Basement level	2.2m-6.6m	3m or greater	3m	<b>YES</b>
Ground level	N/A	3m or greater	3m	<b>YES</b>
Level one	N/A	3m-13.5m	3m-3.5m	<b>PART</b>
Level two	N/A	5m or greater	3m-5m	<b>YES</b>
Level three		4.4m roof overhang	5m	<b>PART</b>
Setback from Significant Mature Trees	N/A	<3.0m	3.0m	<b>NO</b>
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	2.6m-2.7m	2.7m	<b>NO</b>
Bulk Excavation Piling and Subsurface Wall Setback	N/A	0mm or greater	1.5m	<b>NO</b>

<b>Site Area: 3470.7m<sup>2</sup></b>	<b>Existing</b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Private Open Space at Ground Level – Total	>35m <sup>2</sup> Min dimension 3m	<35m <sup>2</sup> Min dimension 3m	35m <sup>2</sup> Min dimension 3m	<b>NO</b>
Private Open Space at Ground Level – Principal Area	>16m <sup>2</sup> Min dimension 4m	<16m <sup>2</sup> Min dimension 4m	16m <sup>2</sup> Min dimension 4m	<b>PART</b>
Private Open Space at Ground Level – Maximum Gradient	<1:10	<1:10	1:10	<b>YES</b>
Private Open Space – Upper Floor Units in RFBs	N/A	<8m <sup>2</sup> Min dimension 2m	8m <sup>2</sup> Min dimension 2m	<b>PART</b>
Front Fence Height	Unknown	1.6m-2.6m	1.2m	<b>NO</b>
Side and Rear Fence Height	Unknown	1.8m-2.4m	1.8m	<b>NO</b>
Car Parking Excavation	N/A	Not Within Building Footprint	Within Building Footprint	<b>NO</b>
Car Parking Spaces – RFB/Dual Occupancy	N/A	34 car parking spaces	34 car parking spaces	<b>YES</b>

#### Child Care Centre

<b>Site Area: 3470.7m<sup>2</sup></b>	<b>Existing</b>	<b>Proposed</b>	<b>Control</b>	<b>Complies</b>
Maximum Number of Storeys	1 ( dwelling -No. 88)	2 (child care centre)	3	<b>YES</b>
Building Boundary Setbacks				
Front Newcastle Street (West)	6.8m	6.9m	6.4m	<b>YES</b>
Rear (East)	16.4m	8.8m-14.6m (building)	11.2m (25% of the average site length)	<b>PART</b>
Side (North)		6.6m-13m (rear canopy)	11.2m	<b>PART</b>
Ground Floor	0.8m	1.5m	3m	<b>NO</b>
First Floor	N/A	1.5m	3m-4m	<b>NO</b>
Setback from Significant Mature Trees	N/A	3.0m	3.0m	<b>NO</b>
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	<b>YES</b>
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	>50% (or 35m <sup>2</sup> ) for 2 hours	>50% (or 35m <sup>2</sup> ) for 2 hours	50% (or 35m <sup>2</sup> ) for 2 hours	<b>YES</b>
Solar Access to Nth Facing Living Areas of Adjacent Properties (Hrs on 21 June)	>3.0 hours	>3.0 hours	3.0 hours	<b>YES</b>
Side and Rear Fence Height	Unknown	2.2m-2.6m (acoustic fence)	1.8m	<b>NO</b>
Minimum Number of North Facing Habitable Rooms	>1	>1	1	<b>YES</b>

Site Area: 3470.7m <sup>2</sup>	Existing	Proposed	Control	Complies
Car Parking Spaces	N/A	2 car parking spaces	3 car parking spaces	<b>NO</b>

### Site Controls

Site Area: 3470.7m <sup>2</sup>	Existing	Proposed	Control	Complies
Building Footprint	<40% (1388.28m <sup>2</sup> )	47% (1642.17m <sup>2</sup> )	40% (1388.28m <sup>2</sup> )	<b>NO</b>
Deep Soil Landscaping –	>40% (1388.28m <sup>2</sup> )	17% (603m <sup>2</sup> )	40% (1388.28m <sup>2</sup> )	<b>NO</b>
Deep Soil Landscaping – Front Setback	Unknown	28% (211.45m <sup>2</sup> )	40% (300.6m <sup>2</sup> )	<b>NO</b>
Deep Soil Landscaping – Front Setback (Consolidated Area)	>20m <sup>2</sup>	>20m <sup>2</sup>	20m <sup>2</sup>	<b>YES</b>

### 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.

In its current form the proposed RFB would appear unduly prominent within the Newcastle Street streetscape. 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, as set out under section 4.9 of the Woollahra Residential 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 proposed RFB fails to provide a transition in development scale from Old South Head Road to Newcastle Street. In fact the closest point of the RFB to the lower density Residential 2(a) zone presents the greatest level of non-compliance by exceeding the height standard by 4m and the storey height by one level. The proposal fails to uphold the desired future precinct character objectives for the Rose Bay precinct.

### 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 following comments are made in relation to the proposed RFB with regards to storey height:

- The proposed RFB has a satisfactory three storey presentation to Old South Head Road.
- The three-four storey presentation to south western corner of the building (at the junction of Newcastle Street and Old South Head Road) is also supported as the building form will be

read in conjunction with the higher density development on the opposite side of Old South Head Road.

- However, the north western corner of the building adjacent to the proposed vehicular entrance will present as 4 and a half storeys to the street. This would appear out of character with the Newcastle Street frontage which comprises of one and two storey residential buildings, and the Greek Orthodox Church.
- The storey height non-compliance is exacerbated by the front setback non-compliance to Newcastle Street. This locates the proposed RFB in close proximity to the Newcastle Street frontage.
- Long views of the subject site are available, particularly along Newcastle Street, the non-compliant fourth storey combined with the non-compliant front setback would result in the RFB being unduly prominent within the Newcastle Streetscape.

### **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.

### **RFB – side setbacks**

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

- At basement level two sections of the basement level results in a side setback non-compliance of between 0.7m-3m.
- At level two a small section of the steel frame structure and roof overhang is setback 3m from the side boundary, which results in the upper section of the steel frame exceeding the side setback control by up to 0.5m..
- At level 3 the pergola represents a 0.5m 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.
- The non-compliances with the side setback control would result in minimal additional bulk and mass which would not result in any unreasonable amenity impacts.

### **Child Care – side setbacks**

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:

- The proposed childcare centre is setback by a greater distance from the side boundary than the existing dwelling on site.
- The use of high level windows ensures that this non-compliance would not result in any unreasonable impacts in terms of loss of visual privacy.



- Whilst the northern elevation lacks articulation, No. 80-84 Newcastle Street to the north of the subject site is a two storey aged care facility, which is setback by a sufficient distance to ensure that this would not result in any adverse visual impacts.

Accordingly, the proposal is satisfactory with regards to side setbacks.

### **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 300.6m<sup>2</sup> of deep soil landscaping. The proposal provides 211.45m<sup>2</sup> (28%) of deep soil landscaping, a non-compliance of 89.15m<sup>2</sup>.

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

- Setting back the north western corner of the RFB by a greater distance from the Newcastle Street frontage would enable a greater provision of soft landscaping which would benefit the landscape character of the locality.

### **Building articulation**

Control C4.9.9.1 requires buildings to have a maximum unarticulated length of 6m to the public street frontage. A steel louvre frame structure is proposed to the Newcastle Street and Old South Head Road frontages of the RFB. Whilst the louvres form a shading device they also reduce the visible articulation of the building and add to its bulk and scale.

### **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 (with a height of 0.5m - 2.6m) is to be retained and a new fence is to be constructed above (maximum height of 2.4m).
- 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 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.
- If the proposal was recommended for approval this could be addressed by condition of consent.

### **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 proposed RFB results in a satisfactory streetscape outcome to Old South Head Road. However, the non-compliances with the front setback control, height and FSR standards would result in the north western corner of the RFB appearing 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.

Accordingly, this forms **reason for refusal 2**.

### **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 if the proposal was recommended for approval, conditions could be imposed upon the consent, to ensure that the proposal is satisfactory with regards to the preservation of existing mature trees. Such conditions would include tree preservation measures, and modifications to the proposed landscaping works to the rear of the child care centre (the relocation of the sand pit, the deletion of the soft surface and the retention of existing ground levels).

#### **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 1388.28m<sup>2</sup>.

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 47% of the site area (1642.17m<sup>2</sup>); a non-compliance of 253.89m<sup>2</sup>. The following comments are made with regards to the non-compliance with the building footprint of the site:

- Reducing the building footprint of the RFB by setting back the north western corner of the building would reduce the non-compliance with the building footprint control and ensure that the proposal has a satisfactory impact upon the Newcastle Street streetscape. This would ensure that the form and scale of the proposed RFB would maintain the continuity of building form and scale in accordance with objective O5.2.3.

#### **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 three and a half storey high steel frame to the proposed RFB is setback only 2.25m, the terraces at all levels are setback 2.7m, on average the lower levels of the building are setback 4.3m and the upper level is setback 5.8m. The following comments are made in relation to the proposed front setback:

- The setback of the south western corner of the building (at the junction of Newcastle Street and Old South Head Road) is supported as this corner of the building will predominantly read as only three storeys. Furthermore the development will be read in conjunction with the higher density development on the opposite side of Old South Head Road.
- However, the north western corner of the building adjacent to the proposed vehicular entrance will be read in conjunction with the existing development to Newcastle Street, which is characterised by a relatively consistent building line. The proposed RFB will project approximately 5.8m forward of the adjoining Greek Orthodox Church. This combined with the 4 and a half storey presentation of the RFB would result in the north western corner of the RFB appearing out of character with the existing building line and unduly prominent within the streetscape.
- Setting back this corner of the building by a greater distance would reduce the proposals non-compliance with the FSR and Height development standards and would ensure that the RFB maintains the continuity of building forms and front setbacks in Newcastle Street.

### **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 with a setback of 6.4m. The following comments are made in relation to the proposed rear setback non-compliance:

- The north eastern corner of the RFB has been redesigned, the rear setback has been increased from 2.6m to 6.4m and the terraces at the upper level have been setback further from the rear.
- At the closest point there is over 10m between the RFB and No. 458 Old South Head Road (the property to the north east). This is a sufficient separation distance to ensure that the proposal would not present any unreasonable visual impacts.
- Furthermore, due to the level changes between the subject site and No. 458 Old South Head Road, the north eastern corner of the building will only present as three storeys above the natural ground level.

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.

### **Ceiling Heights**

Control C5.2.10, requires a minimum ceiling height of 2.7m for habitable rooms. With the exception of the kitchens and bathrooms, the proposal would provide ceiling heights of 2.6m-2.7m this is supported as the proposal would accord with the BCA ceiling height requirements and would not significantly impact upon the internal amenity of the units.

## **Sunlight access.**

Control C5.2.13 requires sunlight to be retained to at least 35m<sup>2</sup> 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.

A review of the submitted shadow diagrams demonstrates that the proposal would not result in any unreasonable impacts in terms of loss of sunlight access.

## **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 35m<sup>2</sup>;*
- *a minimum dimension of 3.0m;*
- *a maximum gradient of 1 in 10; and*
- *one part (the "principal area") with a minimum area of 16m<sup>2</sup> 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 8m<sup>2</sup> and a minimum dimension of 2.0m.*

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

- The ground floor dwellings are provided with 15m<sup>2</sup> to 20m<sup>2</sup> of private open space.
- Whilst this represents a non-compliance with the C.5.3.4, the proposal has been amended to provide a useable landscaped courtyard to the northern side of the building which would benefit from good solar access.
- The majority of the dwellings located above ground level accord with control C 5.3.5 and provide 8m<sup>2</sup> 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.

- Council's Urban Design Officer has advised that this area could be utilised by providing a set of pedestrian steps to provide access to Old South Head Road. If the proposal was recommended for approval this would form a condition of the consent.

### **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 1388.28m<sup>2</sup> of deep soil landscaping.

The proposal affords 17% of the site area (603m<sup>2</sup>) to deep soil landscaping, a non-compliance of 785.28m<sup>2</sup>. The following comments are made with regards to the non-compliance with deep soil landscaping requirement:

- Setting back the north western corner of the RFB by a greater distance from the Newcastle Street frontage would enable a greater provision of soft landscaping which would benefit the landscape character of the locality.

Council's Tree and Landscaping Officer has reviewed the proposal and determined that if the proposal was recommended for approval conditions could be imposed to ensure the proposal is satisfactory with regards to trees and landscaping.

### **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 if there is a difference in level either side of the boundary.

The proposal includes an acoustic fence to the northern and eastern boundaries of the childcare centre. It is proposed that the northern boundary fence be 1.8m in height, with a 45 degree canopy to a total height of 2.6m. To the eastern boundary a 1.8m high fence, with a 45 degree canopy to a total height of 2.2m, is proposed. If the proposal was recommended for approval, conditions could be imposed to ensure that these fences would not unduly impact upon the trees proposed to be retained, or the amenity of the neighbouring properties.

If the proposal was acceptable conditions could be imposed upon the consent ensuring the proposal is satisfactory with regards to section 5.4.

### **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 properties have objected to the proposal on the basis of loss of views:

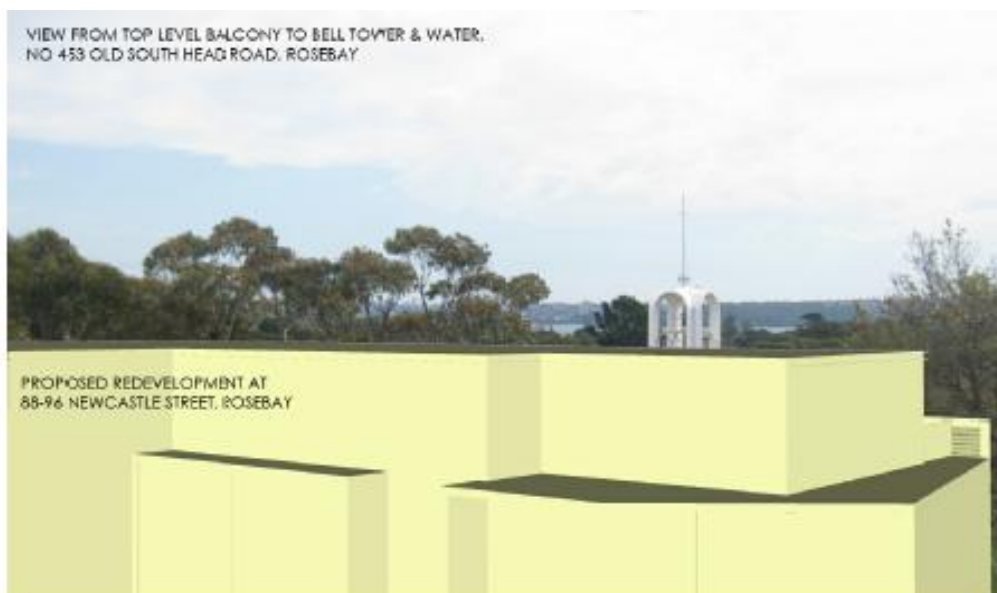
- Unit 3, 455 Old South Head Road, which is located to the south east of the site.
- Units 5 and 6, 453 Old South Head Road, which are located to the south east of the site.
- 458 Old South Head Road, which is located to the north east of the site.

In addition a view loss inspection has previously been carried out from Unit 3, 453 Old South Head Road, which is located to the south east of the site.

On 13 July 2011 the applicant was requested to erect certified height poles to enable an accurate assessment of the view impacts to the neighbouring properties. In particular to establish to what extent any potential view loss was a result of the proposed height non-compliance. The requested height pole locations were to depict the outermost points of the proposal.

The applicant subsequently advised that it was not feasible to erect fixed and certified height poles at the subject site. Alternatively a 12m telescopic height pole was provided to mark the north western corner of the building. However, due to the presence of power lines and the stability of the poles it was not possible to mark the exact location of the north western corner of the building.

The applicant has provided a view line from the balcony of unit 5 and 6 Old South Head Road which depicts that the main roof at RL 27.50. This depicts that the main roof would not impact upon the water views afforded to this property. Furthermore, an analysis has been carried out to assess the impact of the proposal upon the views to Rose Bay Golf Course, and the city skyline. This depicts that the view loss can largely be attributed to the complying component of the RFB.



No analysis has been provided to demonstrate that the lift over runs at RL 29.00 would not impact upon the water views to units 5 and 6. The applicant has advised that the lift could be redesigned to

allow the lift over runs to be deleted. If the proposal was recommended for approval this could form a condition of consent.

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

**Units 5 and 6, 453 Old South Head Road:** Views of the Royal Sydney Golf Club, and potentially water views, and partial views of the city skyline and north Sydney skyline line.

**Unit 3, 455 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).

**458 Old South Head Road:** District Views.

## 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 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 dining 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 dining room and kitchen windows.

**Unit 3, 455 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.

**458 Old South Head Road:** The views are available across the front boundary from the western kitchen window and side terrace.



### 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 3, 453 Old South Head Road:

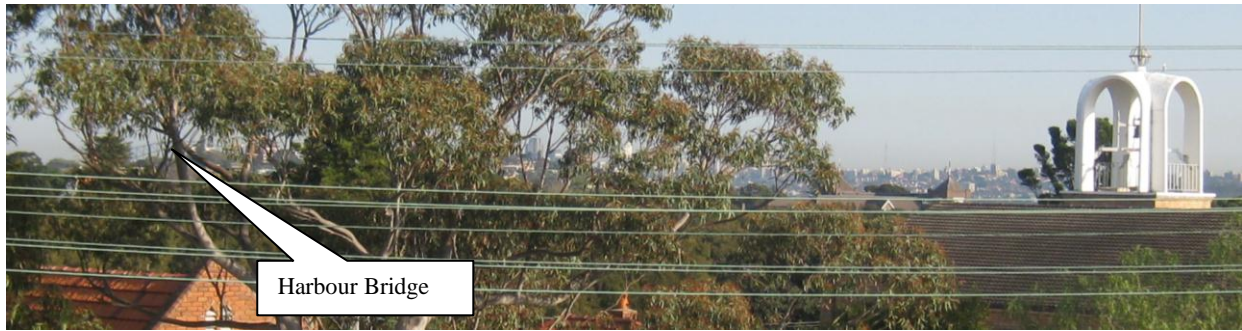


View from across the front boundary from the western front balcony to the living room.



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





Magnified view from across the front boundary from the side dining room window.

The proposal will reduce or remove the views of the City Skyline, Harbour Bridge and North Sydney. Given that the proposal will substantially remove or reduce the iconic views available from a standing position, across a front boundary, 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 from a standing position, across a front boundary. The view loss is considered to be moderate.



### Unit 3, 455 Old South Head Road:



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



Magnified view from across the front boundary from the western front window to the living room (including Sydney Tower).

The proposal will remove the views of Sydney Tower and partial views of the City Skyline. Given that the proposal will remove the iconic views available to unit 3, from a standing position across a front boundary, the view loss is considered to be moderate-severe.

#### 458 Old South Head Road:



View from across the side boundary from the western kitchen window.

The proposal will largely retain the district views depicted in the photo above. Given that the views are district views available across a side boundary the view loss is considered to be minor.

#### 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 views to the neighbouring properties are largely available across the roof of a number of single storey buildings which are well below Council's 9.5m height standard. A degree of view loss is therefore unavoidable if the site is redeveloped.
- The south eastern elevation to Old South Head Road largely complies with Council's 9.5m height standard. It is this elevation which causes the majority of the view loss. A similar level of view loss could occur from a fully compliant proposal.
- Redesigning the proposal to retain the views to the neighbouring properties would unreasonably impact upon the development potential of the subject site.

If the proposal was recommended for approval, conditions could be imposed upon the consent to ensure the proposal accords with the requirement of section 5.5.

#### Energy efficiency performance criteria (Part 5.6)

The development application was accompanied by **BASIX Certificate 366239M** 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. The proposed child care centre includes a 240m<sup>2</sup> playground area for passive and active use by the children. The proposed childcare centre operating hours (as identified in the amended acoustic report) are 7am-6pm, 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 accompanied by an acoustical assessment of the proposed child care centre. The acoustic report proposes the following measures to ensure that the proposal is satisfactory with regards to acoustic privacy:

- All mechanical plant equipment to be selected and treated to comply with the DECCW Industrial Noise Policy and Woollahra Council requirements.
- The bi-fold doors to the indoor play area shall be kept closed while the indoor play area is in use.
- Signage reminding staff and visitors to minimise noise.
- The provision of a contact phone number at the front of the centre for complaints.
- The construction of an acoustic barrier with canopy, with a total height of 2.6m to the northern boundary and the construction of an acoustic barrier with canopy, with a total height of 2.2m to the eastern boundary.

Council's Environmental Health Officer has reviewed the proposal and confirmed that the proposal is satisfactory with regards to acoustic impacts, subject to the recommendations contained within the acoustic report forming conditions of any consent.

#### **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.
- The communal space 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:

- The bedroom windows to the eastern elevation of the RFB have a sufficient sill height to ensure the proposal will maintain an adequate level of visual privacy to the neighbouring property to the east (No. 458 Old South Head Road).
- There is a sufficient separation distance between the proposed balcony and terraces, 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.

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

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

A number of objectors have raised concern in relation to traffic generation. Council's Development Engineer has reviewed the proposal and provided the following comments:

*Traffic generation from the site is unlikely to impact on the surrounding road network as the site adjoins a State road.*

If the proposal was recommended for approval, conditions could be imposed upon the consent to ensure that the proposal is satisfactory with regards to part 5.9.

### **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 34 off street car parking spaces for the RFB which are located within a basement level car park.

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

### Vehicle Access and Accommodation

*Parking demand for the proposed development has been determined based on the requirements stipulated by Councils Parking DCP which was recently adopted in March 2011.*

*The number of offstreet parking spaces required by the Parking DCP for this development is tabled as follows.*

<i>Component</i>	<i>Parking demand rate (Refer to Parking DCP)</i>	<i>Quantity</i>	<i>Parking Spaces Required</i>	<i>Parking Proposed</i>
<i>Childcare Centre</i>	<i>0.5 spaces / 100m<sup>2</sup></i>	<i>571 m<sup>2</sup></i>	<i>3 (2.855)</i>	<i>2</i>
<i>2 bedroom unit</i>	<i>1.5 spaces / unit</i>	<i>18 Units</i>	<i>27</i>	<i>27</i>
<i>1 bedroom unit</i>	<i>1 space / unit</i>	<i>2 Units</i>	<i>2</i>	<i>2</i>
<i>Visitor</i>	<i>.25 spaces/ unit</i>	<i>20 Units</i>	<i>5</i>	<i>5</i>
<b><i>TOTAL</i></b>			<b><i>37</i></b>	<b><i>36</i></b>

*The proposed development is deficient by one carspace, allocated for the childcare centre. There is a good level of parking availability in Newcastle Street due to there being no development on the western side of the road (golf course) and most residents have offstreet parking. As such, the parking shortfall of only one car space will not adversely effect parking availability or the existing parking needs of the surrounding community. The applicant's Traffic consultant notes that the Woollahra RDCP requires one car wash bay per 10 dwellings and accordingly the development incorporates two wash bays in the basement garage.*

*The basement garage ramp leading to the RFB parking area constricts to 3.5m wide at its base. The ramp must be sufficient for two way traffic for its full length to ensure safe and efficient flow from the road frontage to the parking area and so this component must be redesigned.*

### Construction Management Plan

*No information has been provided regarding construction routes, material delivery/ removal of spoil or the proposed storage area for construction vehicles on site.*

*It is considered that this may be addressed by a condition of consent as;*

- A great portion of construction activities can be performed in the site boundaries due to the relatively large site area.*
- Both stage 1 and stage 2 has relatively extensive site frontage to Newcastle Street and so it is unlikely that construction vehicles would stand over the frontage to neighbouring sites or impose on access to those sites.*

### Traffic Generation

*Traffic generation from the site is unlikely to impact on the surrounding road network as the site adjoins a State road.*

### Other Matters

*The applicant has requested provision for 10minute parking fronting the proposed childcare centre in Newcastle Street. Council's Traffic section does not consider this is warranted given there is ample parking availability at this present time.*

### **Recommendation**

***Council's Traffic section has reviewed the submitted Development Application and does not have any objection to the proposed development in terms of traffic or parking matters.***

***As noted in the comments above, the base of the proposed driveway ramp must be widened to accommodate two way traffic flows in accordance with AS2890.1.***

If the proposal was recommended for approval, conditions of consent could be included to ensure that 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 20 dwellings. For class 2 buildings the Woollahra Access DCP requires 1 in 10 dwellings or part thereof to be adaptable. This equates to two adaptable dwellings.

The proposal provides two units which are capable of being adaptable and two 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 proposal incorporates a large level of glazing to the east and west elevations, which provide natural light and ventilation. External louvres are provided to a number of the first floor windows to the western elevation. This will enable sunlight access from these windows to 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

If the proposal was recommended for approval, conditions could be imposed upon the consent to ensure that sufficient information has been provided to demonstrate that the mature vegetation on the subject site is capable for retention. Such conditions would include tree preservation measures, and modifications to the proposed landscaping works to the rear of the child care centre. The modifications required to the landscaping works comprise of the relocation of the sand pit, the deletion of the soft surface and the retention of existing ground levels.

- 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 accords with the predominant built form and character for the following reasons:

- The child care centre incorporates a modern design, which does not compete with the character of the adjacent church.
- The incorporation of the flat roof ensures that the height of the child care centre is lower than both adjoining buildings.
- The front setback accords with the predominant building line.
- The non-compliances with the rear and side setback control are supported for the reasons set out under section 13.1 of this report.

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

The two main studio areas, incorporate bi fold doors to the eastern elevation and high level windows to the northern and southern elevations this ensures that there is sufficient provision of natural light and views to the rooms where the children will spend the majority of time when inside the child care centre.

- 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).

The scale and design of the proposed child care centre ensures that the building is consistent with the existing streetscape.

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

The application was accompanied by an acoustic report which demonstrated that, subject to conditions of consent, the proposal would maintain an adequate level of acoustic privacy to the neighbouring properties. This included the provision of an acoustic fence to the northern and eastern boundaries of the site. If the proposal was recommended for approval conditions could be imposed upon the consent to ensure that an adequate level of amenity is maintained to the neighbouring properties.

### **Built Form**

The proposed child care centre accords with the height standard and front setback control. Furthermore, the design of the building is consistent with development in the surrounding area. The non-compliances with the side and rear setback controls would not result in any unsatisfactory impacts.

### **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 demonstrates 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 and centre noise operation plan were provided by the applicant.

The application was reviewed by Council's Environmental Health Officer, who has confirmed that subject to conditions, the proposal would be satisfactory with regards to acoustic privacy.

### **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 and rear boundaries, visual privacy is maintained to all adjoining properties.

### **Indoor and outdoor areas**

C.2.4.1 requires indoor space to accord with the provisions prescribed by the Children's Services Regulation 2004.

- The two studios provides at least 3.25m<sup>2</sup> 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.

7m<sup>2</sup> of outdoor space per child is required in accordance with the provisions prescribed by the Children's Services Regulation 2004. This equates to 238m<sup>2</sup>. The rear outdoor space is an area of 240m<sup>2</sup>. However, part of the rear outdoor space comprises of landscaped garden beds. This is considered to be satisfactory as there is a further enclosed landscaped courtyard located to the southern side of the child care centre.

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 principle play area is the rear yard which 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

Subject to acoustic privacy conditions, the proposals separation from surrounding dwellings could be satisfactory.

- Adequately fenced on all sides

If the proposal was considered to be acceptable conditions of consent could be imposed to ensure the site is adequately fenced.

- 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**

The proposed development breaches the height and FSR development standards, and the front setback control. The proposed RFB will project approximately 5.8m forward of the adjoining Greek Orthodox Church, and breaches the height standard by up to 4m. This combined with the 4 and a half storey presentation of the RFB and 1300m<sup>2</sup> excess FSR, would result in the north western corner of the RFB appearing out of character with the existing building line and unduly prominent within the streetscape.

The proposal fails to comply with a number of objectives contained in the WLEP 1995 and WRDCP 2003. In particular, the proposal fails to accord with the objectives behind the FSR and Height standards. The SEPP 1 objection is not considered to be well founded.

The proposals shortcomings could be significantly addressed by providing a greater front setback to the north western section of the proposed RFB.

#### **17. SUBMISSIONS**

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

1. C. Cleminson – 27 Chaleyer Street, Rose Bay NSW 2029
2. Woollahra Heritage Society – C/o Woollahra Library, P.O. Box 61, Double Bay NSW 1360

3. Falk and Company Pty. Ltd. – 24 Albermarle Avenue, Rose Bay NSW 2029
4. R.B. Crosson – Seattle, 12 Mitchell Road, Rose Bay NSW 2029
5. D. & L. Strizhevsky – 5/453 Old South Head Road, Rose Bay NSW 2029
6. A. Strizhevsky – 6/453 Old South Head Road, Rose Bay NSW 2029
7. REGIS – Wentworth Manor Aged Care, 80-84 Newcastle Street, Rose Bay NSW 2029
8. C. Garibaldi and K.M. Griffiths – 6/20 The Avenue, Rose Bay NSW 2029
9. The Rose Bay Residents Association – P.O. Box 156, Rose Bay NSW 2029
10. R. Michaels – 58 Newcastle Street, Rose Bay NSW 2029
11. M.L. Scala – 458 Old South Head Road, Rose Bay NSW 2029
12. E. Phair – Sherilee, 14/39 Newcastle Street, Rose Bay NSW 2029
13. B. & G. Selley – 76 Newcastle Street, Rose Bay NSW 2029
14. A. Edelman – 4 Chaleyer Street, Rose Bay NSW 2029
15. M. Loutsopoulos – 3/455 Old South Head Road, Rose Bay NSW 2029
16. J. Turner – 46 Dover Road, Rose Bay NSW 2029

The objectors raised the following issues:

**Car parking and Traffic generation:** This is addressed within the ‘Car parking and driveways performance criteria’ section of the report.

**Building Footprint:** This is addressed within the ‘Building size and location performance criteria’ section of the report.

**Number of stories:** This is addressed within the ‘Desired future precinct character objectives performance criteria’ section of the report.

**Height:** This is addressed in section 11.4 of the report.

**FSR:** This is addressed in section 11.5 of the report.

**Bulk and Scale:** This is addressed within the ‘Building size and location performance criteria’ section of the report.

**Open Space and Landscaping:** This is addressed within the ‘Open Space and Landscaping performance criteria’ section of the report.

**Heritage significance of the buildings to be demolished:** This is addressed within section 11.6 of the report.

**Design and Streetscape:** This is addressed within section 13.1 of the report.

**Views:** This is addressed within the ‘Views performance criteria’ section of the report.

**Sunlight:** This is addressed within the ‘Building size and location performance criteria’ section of the report.

**Privacy:** This is addressed within the ‘Acoustic and visual privacy performance criteria’ section of the report.

**The loss of the existing childcare centre:** Council’s Community Development Officer has determined that the proposal is satisfactory as it results in an overall increase in the provision of child care facilities.

A further submission was received from:

1. Waverly Council – P.O. Box 9, Bondi Junction NSW 1355.

The submission made the following request:

**Any consent should include a Construction Vehicle Management Plan prepared in consultation with Waverly Council:** If the proposal was recommended for approval this could be addressed by condition.

## **18. CONCLUSION - THE PUBLIC INTEREST**

The proposal is unacceptable against the relevant considerations under s79C and would not be 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. DA 215/2011/1 for Staged development consisting of the following:

### **Demolition:**

Stage 1 - Demolition of the existing dwelling-house and ancillary structures at 88 Newcastle Street  
Stage 2 - Demolition of the existing dwelling-house and ancillary structures at 94 Newcastle Street; demolition of the former St Paul's Anglican Church and former Parish Hall (Possums Pre-School) at 96 Newcastle Street; removal of existing landscaping and trees  
Retention of the existing Greek Orthodox Church at 90-92 Newcastle Street

### **Construction:**

Stage 1 - Construction of a new 34 place Childcare Centre  
Stage 2 - Construction of a new 4 storey residential flat building (RFB) comprising of 20 residential units with basement car parking; landscaping and siteworks  
Consolidation of the existing allotments into one allotment

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 north western section of the proposed residential flat building is out of scale with both the existing and proposed character of the area.
  - The proposal's size challenges the church, which would traditionally have a prominent building role.
2. The proposed development breaches the height development standard, the FSR development standard, and the front setback control. The proposed RFB will project approximately 5.8m forward of the adjoining Greek Orthodox Church, breaches the 9.5m height standard by up to 4m and the FSR standard by 1300m<sup>2</sup>. The north western corner of the RFB will present as 4 and a half storeys to Newcastle Street. As a result, the north western corner of the RFB would appear out of character with the existing building line and is out of scale with both the existing and proposed character of Newcastle Street. 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 (b) and (e).
  - FSR: WLEP (1995), Part 3, Clause 11 and Clause 11AA, objectives (b) and (d).
  - The desired future character objectives Rose Bay Precinct: WRDCP (2003), Section 4.9, objectives: O 4.9.5.
  - 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 5.2.3.
  - Building setbacks: WRDCP (2003), Section 5.2, control C 5.2.2.
3. The proposal breaches the FSR and height development standards contained in Clauses 11 and 12 respectively of the WLEP (1995). The SEPP1 objections in relation to these development standards are not considered to be well founded.

Ms E Smith  
**ASSESSMENT OFFICER**

Mr P Kauter  
**ACTING MANAGER  
DEVELOPMENT CONTROL**

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## **ANNEXURES**

1. Plans and elevations.
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. Community Services Officer referral response.
8. RTA referral response
9. SEPP 65 Design Verification Statement.
10. SEPP1 objection to the height and FSR standard.