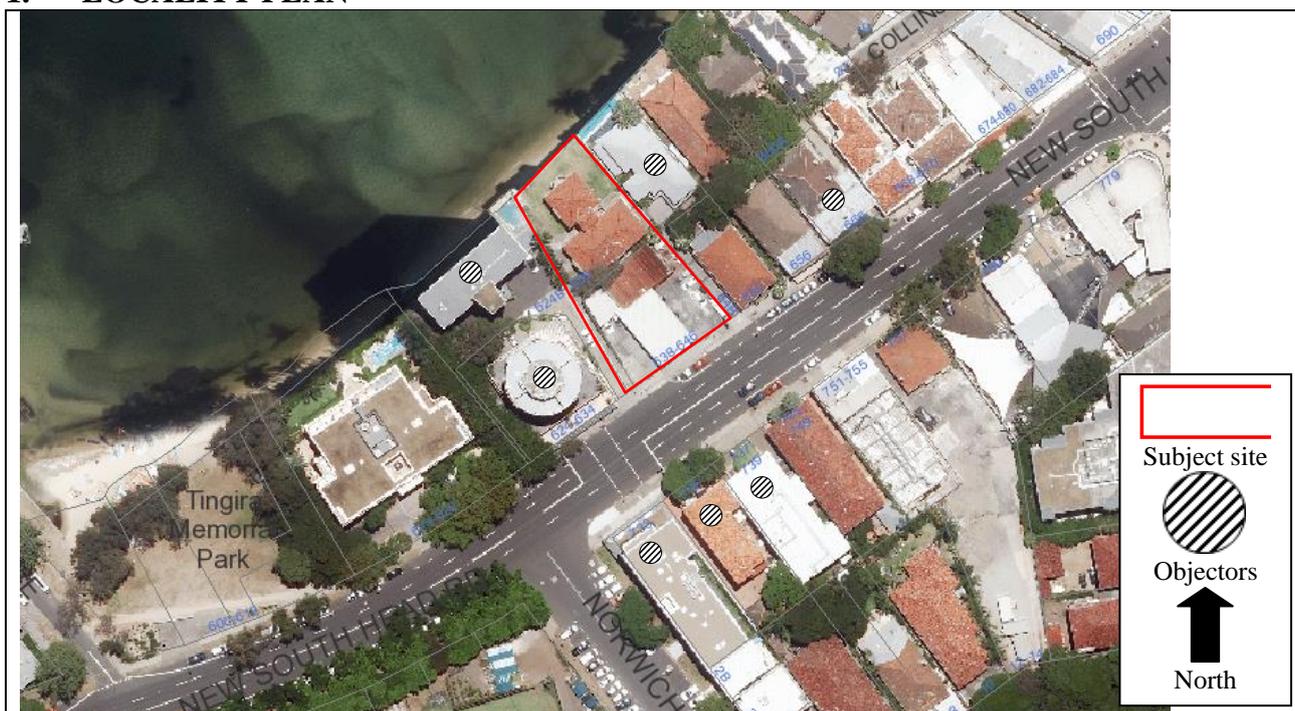


SECTION 96 APPLICATION ASSESSMENT REPORT

FILE No.	DA377/2016/4
ADDRESS	638-646 New South Head Road ROSE BAY
SITE AREA	1,496m ²
ZONING	R3 Medium Density Residential (No.636 NSHR) B2 Local Centre (Nos. 638-646 NSHR)
EXISTING CONSENT	Demolition of the existing service station at 638-646 New South Head Road & residential flat building at 636 New South Head Road, remediation of the site(s), the erection of a new Seniors Living Development comprising of nine (9) residences, two (2) retail and two (2) commercial tenancies & 19 car parking spaces
DATE OF CONSENT	16/02/2017
TYPE OF CONSENT	Integrated development
PROPOSED MODIFICATION	Modification to the existing development including additional senior housing within a new upper level
DATE S96 LODGED	18/09/2017
APPLICANT	RBJV Nominees Pty Limited
OWNER	Mr A & Mrs I Spindel
AUTHOR	Ms L Samuels
TEAM LEADER	Ms E Smith
SUBMISSIONS	10
RECOMMENDATION	Refusal

SUMMARY

1. LOCALITY PLAN



2. LEVEL OF DELEGATION

The application is to be determined by the Sydney Central Planning Panel (SCPP) as the original development consent under DA377/2016/1 had a capital investment value in excess of \$20 million, and was determined by the Joint Regional Planning Panel on 16/02/2017. Given that the application is a section 96(2) it is required to be determined by SCPP.

3. SUMMARY OF APPROVED DEVELOPMENT

The approved development involved the following works:

- Demolition of the existing service station at No. 638-646 New South Head Road & the existing residential flat building at No. 636 New South Head Road.
- Remediation of the site.
- Construction of a 3-4 storey (plus basement) Seniors Living Development, including:
 - Nine (9) self-contained seniors housing units.
 - Retail and commercial uses on the ground floor level with frontage to New South Head Road (two retail and two commercial tenancies).
 - Two levels of basement car parking (19 car parking spaces).
- Consolidation of the two allotments.

4. SUMMARY OF PREVIOUS SECTION 96 MODIFICATIONS

DA 377/2016/2 was approved by Council on 30/05/2017 and involved the following modifications:

- Modification of the table of contents of the consent by the replacement of the word 'any' with the word 'relevant' wherever the word 'any' is used in a category title, to enable the issue of progressive construction certificates.

DA 377/2016/3 was approved by Council on 20/10/2017 and involved the following modifications:

- Addition of a new electricity sub-station adjacent to Retail R1 facing the street frontage.
- Minor adjustment of configuration of Retail R2 and the plant rooms.
- Addition of w/c and access doors to Commercial C1 and C2.
- Minor adjustment of the rump access from the street level to the retail shops (the proposed ground level).

5. SUMMARY OF PROPOSED MODIFICATION

The Section 96 application involves the following works:

- The addition of a new level to the approved four storey Seniors Living Development on the land at 638 – 646 New South Head Road.
- This results in an increase from 9 to 10 self-contained units.
- The proposal does not involve any change to the approved development at 636 New South Head Road.
- Reconfiguration of the internal and external layout of level 3.
- Deletion of the spa on the balcony (level 3).

6. ISSUES

6.1. Primary Issues

Issue	Conclusion	Section
Objectors' concerns	The objectors' concerns have been addressed under Section 10.1 of the report.	10.1

Issue	Conclusion	Section
Height	The proposed height of 18.42 breaches the height control (Clause 4.3 of WLEP 2014) by 4.32m which is considered to be excessive, particularly as almost the entire level is in breach of the control. This forms a reason for refusal.	16.3
FSR Objectives	The additional gross floor area presents excessive bulk and scale to the streetscape and is inconsistent with the FSR objectives under Clause 4.4(1) of WLEP 2014. This forms a reason for refusal.	16.4
Number of storeys	The proposed fifth storey would be out of character with the existing and desired future character of the Rose Bay Centre, as identified within the WDCP 2015.	17
Streetscape	The five storey built form presents excessive bulk and scale to New South Head Road and provides an inappropriate streetscape presentation. This forms a reason for refusal.	16

PROPERTY DETAILS AND REFERRALS

7. SITE AND LOCALITY

Physical features
<p>The subject site is located on the northern side of New South Head Road, between Norwich Road and Newcastle Street and comprises two separate allotments. The lot fronting New South Head Road is known as Nos. 638-646 New South Head Road, Rose Bay, is described as Lot A in DP 393087 and has a site area of 705m². The lot fronting the Harbour is known as No. 636 New South Head Road, Rose Bay, is described as SP 22533 and has a site area of 791m².</p> <p>The combined site has a northern frontage to the Harbour of 20.77 metres, an eastern boundary of 59.005 metres, a southern frontage to New South Head Road of 28.785 metres and a western boundary of 55.92 metres, providing a total site area of 1,496m².</p>
Topography
<p>The site has a 0.13m fall along the street frontage, from 4.28 AHD to 4.15 AHD at the eastern and western corners of the site respectively. The site also has a south to north fall of 2.43m, from 4.19 AHD at the centre of the street boundary to 1.76 AHD at the centre of the rear boundary fronting the Harbour.</p>
Existing buildings and structures
<p>The buildings previously on the site have been demolished. 636 New South Head Road was occupied by a two storey Inter War residential flat building constructed circa 1929. 638-646 New South Head Road was occupied by a service station and workshop.</p>
Surrounding Environment
<p>Development in the surrounding area comprises mixed retail, commercial and residential development. Heights range generally from two to four storeys along New South Head Road. The buildings vary considerably in architectural style and character, with most having large site coverage and minimal landscaping. A number of properties in the immediate areas have vehicular access from New South Head Road.</p>

8. REFERRALS

Referral	Summary of Referral Response	Annexure
Urban Design	Council's Urban Design Officer has determined that the proposed additional storey is unsatisfactory and inconsistent with the desired future four storey character of the Rose Bay Precinct.	2
Traffic	Council's Traffic Engineer has not raised any concerns with regard to the traffic impact of the proposed additional unit. If the application was recommended for approval, Council's Traffic Engineer would require additional conditions to be imposed relating to pedestrian splays and the driveway grade.	3

ASSESSMENT UNDER SECTION 96

The application is assessed under Section 96 of the Environmental Planning and Assessment Act 1979.

9. SECTION 96(2): OTHER MODIFICATIONS

Section 96(2) relates to the modification of a development consent for all other modifications. The application involves the addition of a new level to the approved Seniors Living Development.

The considerations in Section 96(2) require Council to consider the following:

- a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)*
- b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent*
- c) *It has notified the application in accordance with:*
 - i) *The regulations, if the regulations so require, or*
 - ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent*
- d) *It has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be*

The proposed modifications are considered to be minor relative to the scope of the development consent such that the development as sought to be modified is considered to be substantially the same as that which was originally approved.

ENVIRONMENTAL ASSESSMENT UNDER SECTION 79C

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979 include the following:

1. The provisions of any environmental planning instrument
2. The provisions of any proposed instrument that is/has been the subject of public consultation
3. The provisions of any development control plan
4. Any planning agreement that has been entered into
5. Any draft planning agreement that a developer has offered to enter into
6. The regulations
7. Any coastal zone management plan
8. The likely impacts of that development:
 - i) Environmental impacts on the natural and built environments
 - ii) Social and economic impacts
9. The suitability of the site
10. Any submissions
11. The public interest

10. ADVERTISING AND NOTIFICATION

10.1. Submissions

The application was advertised and notified from **27 September 2017 to 26 October 2017** in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. Submissions were received from:

1. David Caldwell, 5/735 New South Head Road, Rose Bay
2. Lara Solomon, 2/733 New South Head Road, Rose Bay
3. Dean Scotton on behalf of Mr Nuta, 737 – 739 New South Head Road, Rose Bay
4. Andromeda Neale, 666a New South Head Road, Rose Bay
5. Annette Lenehan, 4/733 New South Head Road, Rose Bay
6. Birgitta and Erik Ahlberg, 7 & 15/624B New South Head Road, Rose Bay
7. Peter Coyle, Strata Managing Agent, 624B New South Head Road, Rose Bay
8. Deborah and Peter Irvine, 7/735 New South Head Road, Rose Bay
9. Jill Zukerman, 1/624B New South Head Road, Rose Bay
10. Mark Heeley, 648 New South Head Road, Rose Bay

The submissions raised the following issues:

- **An additional storey is inappropriate in the Rose Bay centre. Non-compliance with the number of storeys control.**
The proposed five storey development would be out of character with the desired four storey built form within the Rose Bay Centre. This is discussed further under Section 17 of the report and forms one of the reasons for refusal of the application.
- **Breach of the LEP height control.**
The proposed building height (18.42m) is excessive and exceeds the control by 4.32m. The non-compliance relates to almost the entire level, which indicates that the proposed height is inappropriate. This is discussed further under Section 16 of the report and forms one of the reasons for refusal of the application.
- **Excessive bulk/over-development of the site.**
The proposed additional level presents excessive bulk to the streetscape and the neighbouring properties. This is discussed further under Sections 14, 16 and 17 of the report and forms one of the reasons for refusal of the application.
- **Impact on solar access to the neighbouring properties. 624 and 624B New South Head Road.**
While the proposal results in additional overshadowing to the windows at 624 New South Head Road and 745 New South Head Road, more than 3 hours sunlight is retained to the residential apartments, which is acceptable with regard to WDCP 2015.
- **Impact on solar access to New South Head Road/shopping areas.**
While this is not a consideration within the DCP, it is noted that the proposal involves minimal additional overshadowing to the street at 12pm. The proposal is considered to be acceptable in this regard.
- **Impact of the building on airflow to the neighbouring units.**

Given the separation between the neighbouring properties, the proposal is considered to be acceptable with regard to maintaining air flow.

- **Impact on views from 624, 624B, 4/733 and 737 - 739 New South Head Road**
The provided montages indicate that the proposed additional level will not have an impact on water views or iconic views, and will only impact upon views of the sky. This is addressed further under Section 17.1 of the report.
- **The proposal is inconsistent with the SEPP (Seniors Living)**
It is considered that the proposed additional level is inconsistent with Clause 33 of the SEPP (Housing for Seniors and People with a Disability). This forms one of the reasons for refusal.
- **0.5 bonus should not apply to the site as there is a requirement to provide affordable places**
The assessment undertaken under DA 377/2016/1 determined that the FSR bonus is applicable to the development, subject to **Conditions A.8 and I.8** which require the creation of a restrictive covenant on the land for the continued provision of affordable places and the provision of on-site support services.
- **The proposal will set a precedent**
The proposed additional storey would be out of character with development in the Rose Bay Centre and therefore the proposal is recommended for refusal.
- **Insufficient parking/greater parking requirement associated with the additional level**
The proposal maintains 14 on-site parking spaces for the residential component of the development. Council's Traffic Officer is satisfied that the number of parking spaces is acceptable with regard to the controls within the SEPP and the DCP.
- **Privacy impacts**
The privacy of the neighbouring properties is maintained through the inclusion of privacy screens to the balconies and orienting the primary windows towards the harbour.
- **Remediation of the site will be dangerous to human health**
The remediation of the site was approved under DA 377/2016/1 and was addressed by conditions of consent. This does not form part of the Section 96 Application.

10.2. Statutory Declaration

The applicant has completed the statutory declaration dated 05/12/2017 declaring that the site notice for DA377/2016/4 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

11. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

State Environmental Planning Policy No.55 (SEPP 55) requires consideration to be given to previous uses on the site and whether the site needs to be remediated for future uses. Clause 7(1)(b) and (c) of SEPP 55 require that where land is contaminated, Council must be satisfied that the land is suitable in its contaminated state or will be suitable after remediation for the purpose for which the development is proposed.

No.636 New South Head Road was occupied by a service station and on 22 May 2012 the NSW EPA declared the subject land to be significantly contaminated. The assessment provided under DA 377/2016 concluded that the land can be made suitable for the development, subject to conditions and the Remediation Action Plan.

12. STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

SEPP 65: Design Quality of Residential Flat Development applies to all new residential flat buildings (or substantial redevelopment) where it comprises three or more storeys and four or more self-contained dwellings.

The aim of the SEPP is to improve the design quality of residential apartment development:

- a) *To ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *By providing sustainable housing in social and environmental terms, and*
 - (ii) *By being a long-term asset to its neighbourhood, and*
 - (iii) *By achieving the urban planning policies for its regional and local contexts*
- b) *To achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- c) *To better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- d) *To maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- e) *To minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions*
- f) *To contribute to the provision of a variety of dwelling types to meet population growth*
- g) *To support housing affordability*
- h) *To facilitate the timely and efficient assessment of applications for development to which this Policy applies*

The DA was accompanied by a design verification statement prepared by a qualified designer, as required by the EPA Regulations cl.50(1A) & cl.50(1B).

Clause 30(2) of SEPP 65 requires the assessment of the application against the design quality principles in Schedule 1.

12.1 Design Quality Principles

The following assessment has been provided by Council's Urban Design Officer:

“Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

This proposal relates to two principal contexts. These are; the transitional location on New South Head Road at the western edge of the Rose Bay commercial centre and the shoreline of Rose Bay Sydney Harbour.

The design response is a storey higher than the desired future character of the location as identified in WDCP2015

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation 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 proposed building's built form and bulk is appropriate in this location, except for the built form addressing the street which is a storey above that identified as the desired future character for the location.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

The proposed building's density is appropriate in this well serviced location.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

The proposal performs reasonably with regard to solar access and cross ventilation. There are no significant sustainability initiatives over and beyond those required by Basix. Outdoor clothes drying areas are required by the SEPP and WDCP2015

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

The landscape plan is satisfactory, but it should be noted that the four street trees proposed (Tuckeroos) are not the tree indicated by the Council Street Tree Master Plan 2014 and the

WDCP2015 which is Harpullia Pendula. I have a concern that, although the SEE suggest otherwise, this proposal may not meet the deep soil requirements for this site. Please refer to the assessment officer's report. Outdoor clothes drying areas are not provided but are required by the SEPP and WDCP2015.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Two of the nine apartments do not receive solar access directly into the living area. However these two apartments do have satisfactory amenity in my opinion. All apartments have good cross ventilation. Outdoor clothes drying areas are not provided but are required by the SEPP and WDCP2015.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

The proposal has a complex entry arrangement, which will need to be carefully design.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

This proposal provides housing for over 55 year olds.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

The aesthetics of the proposal are satisfactory.

SEPP 65: 8 Topic Criteria

SEPP 65 Clause 28(2)(c) provides that the consent authority must take into account particular design criteria in the Apartment Design Guide. Eight topics are listed in SEPP 65 clause 6A and override any controls in the WDCP2015 when the development is being evaluated.

Topic Area	Subject	Compliance												
3F Building separation	<p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th> <th>Habitable rooms and balconies</th> <th>Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td>up to 12m (4 storeys)</td> <td>6m</td> <td>3m</td> </tr> <tr> <td>up to 25m (5-8 storeys)</td> <td>9m</td> <td>4.5m</td> </tr> <tr> <td>over 25m (9+ storeys)</td> <td>12m</td> <td>6m</td> </tr> </tbody> </table>	Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	Yes
Building height	Habitable rooms and balconies	Non-habitable rooms												
up to 12m (4 storeys)	6m	3m												
up to 25m (5-8 storeys)	9m	4.5m												
over 25m (9+ storeys)	12m	6m												
4A Solar access	<ol style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter 	Yes												
4F Common circulation spaces	<ol style="list-style-type: none"> The maximum number of apartments off a circulation core on a single level is eight For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40 	Yes												
4D Apartment size	<p>1. Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m²</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m²</td> </tr> </tbody> </table> <p>2. Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>3. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p> <p>1. Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</p> <p>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>1. Living rooms or combined living/dining rooms have a minimum width of:</p> <p>3.6m for studio and 1 bedroom apartments</p> <p>4m for 2 and 3 bedroom apartments</p> <p>2. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	Yes		
Apartment type	Minimum internal area													
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<p>4C Ceiling Height</p>	<p><i>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</i></p> <p><i>Minimum ceiling height for apartment and mixed use buildings</i></p> <p><i>Habitable rooms 2.7m</i></p> <p><i>Non-habitable 2.4m</i></p> <p><i>For 2 storey apartments 2.7m for main living area floor</i> <i>2.4m for second floor, where its area does not exceed 50% of the apartment area</i></p> <p><i>Attic spaces 1.8m at edge of room with a 30 degree minimum ceiling slope</i></p> <p><i>If located in mixed used areas 3.3m for ground and first floor to promote future flexibility of use</i></p>	<p>Yes</p>															
<p>4E Private open space</p>	<p><i>1. All apartments are required to have primary balconies as follows:</i></p> <table border="1"> <thead> <tr> <th><i>Dwelling type</i></th> <th><i>Minimum area</i></th> <th><i>Minimum depth</i></th> </tr> </thead> <tbody> <tr> <td><i>Studio apartments</i></td> <td><i>4m²</i></td> <td><i>-</i></td> </tr> <tr> <td><i>1 bedroom apartments</i></td> <td><i>8m²</i></td> <td><i>2m</i></td> </tr> <tr> <td><i>2 bedroom apartments</i></td> <td><i>10m²</i></td> <td><i>2m</i></td> </tr> <tr> <td><i>3+ bedroom apartments</i></td> <td><i>12m²</i></td> <td><i>2.4m</i></td> </tr> </tbody> </table>	<i>Dwelling type</i>	<i>Minimum area</i>	<i>Minimum depth</i>	<i>Studio apartments</i>	<i>4m²</i>	<i>-</i>	<i>1 bedroom apartments</i>	<i>8m²</i>	<i>2m</i>	<i>2 bedroom apartments</i>	<i>10m²</i>	<i>2m</i>	<i>3+ bedroom apartments</i>	<i>12m²</i>	<i>2.4m</i>	<p>Yes</p>
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<p>4B Cross ventilation</p>	<p><i>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</i></p> <p><i>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</i></p>	<p>Yes</p>															
<p>4G Storage volumes</p>	<p><i>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</i></p> <table border="1"> <thead> <tr> <th><i>Dwelling type</i></th> <th><i>Storage size volume</i></th> </tr> </thead> <tbody> <tr> <td><i>Studio apartments</i></td> <td><i>4m³</i></td> </tr> <tr> <td><i>1 bedroom apartments</i></td> <td><i>6m³</i></td> </tr> <tr> <td><i>2 bedroom apartments</i></td> <td><i>8m³</i></td> </tr> <tr> <td><i>3+ bedroom apartments</i></td> <td><i>10m³</i></td> </tr> </tbody> </table> <p><i>At least 50% of the required storage is to be located within the apartment</i></p>	<i>Dwelling type</i>	<i>Storage size volume</i>	<i>Studio apartments</i>	<i>4m³</i>	<i>1 bedroom apartments</i>	<i>6m³</i>	<i>2 bedroom apartments</i>	<i>8m³</i>	<i>3+ bedroom apartments</i>	<i>10m³</i>	<p>No <i>there is no indication of storage in the apartments and 7 store rooms in the basement for 9 apartments</i></p>					
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SEPP 65 Summary

The Proposal performs satisfactorily regarding most of the SEPP 65 design principles. However, the development does not meet the desired future character for the location. The proposal also lacks the provision of outdoor clothes drying and a storage provision for all apartments.”

The additional level is considered to be inconsistent with the design quality principles in the following ways:

- The proposed additional storey is inappropriate with regard to the desired future neighbourhood character of the Rose Bay Centre as identified within the WDCP2015.
- The character statement within the DCP identifies that developments should present a unified four storey street wall to New South Head Road. The proposed fifth storey would be out of character with regard to the existing and desired future character of the commercial precinct.
- The five storey built form presents excessive bulk and scale to New South Head Road and provides an inappropriate streetscape presentation.

13. STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The Section 96 application was accompanied by BASIX Certificate 713823M_03 demonstrating compliance with the SEPP. These requirements are addressed by conditions.

14. STATE ENVIRONMENTAL PLANNING POLICY (HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY) 2004

SEPP (Housing for Seniors or People with a Disability) 2004 aims to increase the supply and diversity of residences that meet the needs of seniors or people with a disability and make efficient use of existing infrastructure and services.

The SEPP provides provisions for seniors, people with a disability, seniors housing, residential care facilities, hostels and self-contained dwellings. The proposal contains ten (10) self-contained seniors housing units.

Part 1A Site compatibility certificates

14.1 Clause 24: Site compatibility certificates required for certain development applications

Clause 24(1)(b) identifies development applications that require site compatibility statements and includes development applications that involve buildings that have a floor space ratio that require the consent authority to grant consent under clause 45.

Clause 24(1A) states that the clause does not apply if the proposed development is permissible with consent under another environmental planning instrument. 'Seniors housing' is a permissible use on the land at 636 and 638 – 646 New South Head Road under WLEP 2014. Therefore, a site compatibility statement is not required.

Division 1 General

14.2 Clause 33: Neighbourhood amenity and streetscape

Clause 33(a) requires that development should recognise the desired future character of the precinct so that new buildings contribute to the quality and identity of the area. Clause 33(c) requires that development maintains a reasonable neighbourhood amenity and appropriate residential character by: i) Providing building setbacks to reduce bulk and overshadowing, ii) Using building form and siting that relates to the site's land form iii) Adopting building heights at the street frontage that are

compatible in scale with adjacent development and iv) Considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours.

The proposal is unsatisfactory with regard to Clause 33 for the following reasons:

- The development will read as five storeys from New South Head Road and from the neighbouring properties. The proposed five storey built form would be out of character with the desired four storey built form within the Rose Bay Centre.
- The proposed upper level is not recessive and will achieve an inappropriate residential character in the context of the existing and desired future development.
- The proposed building height (18.42m) is excessive and exceeds the control by 4.32m. The non-compliance relates to almost the entire level, which indicates that the proposed height is inappropriate.
- It is acknowledged that the subject site is located adjacent to 624 New South Head Road, an eight storey seniors housing development. However, as depicted in the 3D visual below, the height of this building is an anomaly in the immediate vicinity of the New South Head Road streetscape. This is discussed in greater detail under Section 17.
- It is noted that the proposed new level results in additional overshadowing to the streetscape and the neighbouring properties (including 624 New South Head Road, 745 and 737 New South Head Road). Nevertheless, more than 3 hours sunlight is retained to the residential apartments, which is considered to be acceptable. The proposal does not result in any additional overshadowing to the private open space of the neighbouring properties.





The height of 624 New South Head Road is an anomaly in the immediate New South Head Road streetscape.

14.3 Clause 34: Visual and Acoustic Privacy

Clause 34 states:

The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by:

- (a) *appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and*
- (b) *ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.*

Acoustic and visual privacy is considered as follows:

- It is considered that the additional level would not significantly alter any acoustic privacy impacts associated with the approved development.
- Windows and balconies to habitable rooms are primarily orientated towards the street and harbour, not towards side boundaries.
- With regard to the proposed balconies, it is considered that adequate separation distances have been provided in order to maintain the privacy of the neighbouring properties.

Accordingly, the proposal is considered to be acceptable with regard to Clause 34.

14.4 Clause 40: Development Standards – Minimum Sizes and Building Height

Clause 40(1) states that a consent authority must not consent to a development application made pursuant to this clause unless it complies with the following controls.

Table 9: SEPP Seniors Housing - Development Standards

Site Area: 1,496m ²	Proposed	Control	Complies
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Site Area: 1,496m ²	Proposed	Control	Complies
Site Area	1,496m ²	1,000m ²	YES
Site Frontage	28.8m	20m	YES

The proposal remains compliant.

14.5 Clause 45: Vertical villages

Clause 45 applies to land on which the development of residential flat buildings is permitted. Given the amendment within Schedule 1 of the WLEP 2014, 'Seniors housing' is a permissible use on the land at 636 and 638 – 646 New South Head Road. The clause therefore applies to the site.

Clause 45(2) states that a development can exceed the maximum FSR permitted under another environmental planning instrument (in this case the Clause 4.4 of WLEP 2014) by a bonus 0.5:1, provided the following is undertaken:

- The proposed development will deliver on-site support services for its residents;
- At least 10% of dwellings will be affordable places.
- The applicant identifies the locations of the dwellings to be set aside as affordable places.

The proposed development relies on the bonus FSR provision under Clause 45. This allows an FSR of 2:1 plus a bonus of 0.5:1 on the land at 638 – 646 New South Head Road.

The assessment undertaken under DA 377/2016/1 determined that the bonus is applicable, subject to **Conditions A.8 and I.8** which require the creation of a restrictive covenant on the land for the continued provision of affordable places and the provision of on-site support services.

The proposed FSR is assessed under Section 16.4 of this report.

14.6 Clause 50: Standards That Cannot be used to Refuse Consent

A consent authority must not refuse consent to a development application on the following relevant consideration:

Table 10: SEPP Seniors Housing – Standards that cannot be used to refuse consent

Site Area: 1,496m ²	Proposed	Control	Complies
Height – All Buildings	18.42m	8m or less	NO

Clause 50 provides standards whereby the consent authority cannot refuse consent of these is compliance with the standards. These standards do not impose maximum or minimum standards and the consent authority may approve a development where it exceeds the provisions.

The proposal involves increasing the building height from 15.3m to 18.42m. The proposed increase is considered to be unacceptable and is addressed under Section 16.3 of the report.

Based on the consideration of the relevant clauses, the proposal is unacceptable with regard to SEPP (Housing for Seniors or People with a Disability) 2004.

15. SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005

The provisions of Clauses 13, 25 and 26 of this instrument and the accompanying Development Control Plan for the SREP 2005 require Council to consider the visual impact that a development proposal will have upon Sydney Harbour and adjoining foreshore areas and the likely impact upon available views to and from Sydney Harbour.

The additional storey would present additional bulk when viewed from long views from the harbour and is considered to be unsatisfactory with regard to the provisions of SREP (Sydney Harbour Catchment) 2005.

16. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

16.1. Part 1.2: Aims of Plan

The proposal is unsatisfactory in terms of the aims in Part 1.2(2)(1) of the Woollahra LEP 2014. The objective requires that ‘development achieves the desired future character of the area’. The proposal is unsatisfactory in this regard for the following reasons:

- The proposed five storey development (height of 18.42m) is inconsistent with the desired future character of the Rose Bay Centre, which requires four storey development (height of 14.1m) in order to achieve a coherent streetscape character with consistent building forms.
- The proposed five storey built form would be out of character with the desired four storey street edge for the Rose Bay Centre, as identified within the DCP.
- The neighbouring 8 storey tower pre-dates the controls and is inconsistent with the desired future character of the precinct. It is also noted that the tower is setback approximately 5.6m from the street frontage, which is inconsistent with the envisaged four storey street edge. A consistent approach is important to ensure that the urban design quality of the Rose Bay Centre is maintained.

16.2. Land Use Table

The proposal is defined as Seniors Housing and is permitted and is consistent with the objectives of the B2 Local Centre zone, subject to Schedule 1 of the WLEP 2014.

16.3. Part 4.3: Height of Buildings

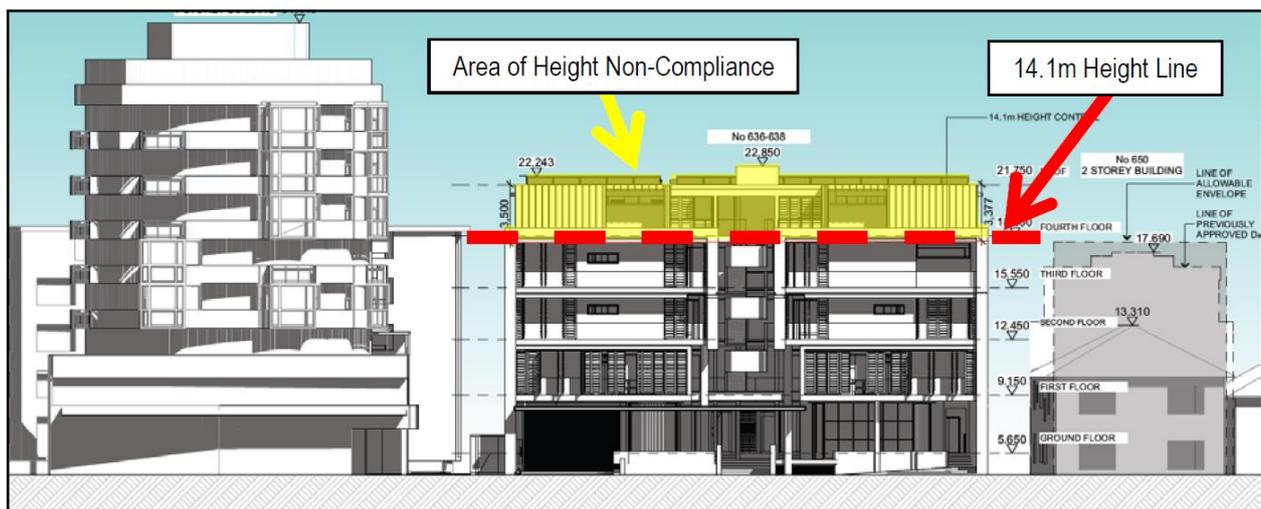
Clause 4.3 limits development to a maximum height of 9.5m for No. 636 NSHR and 14.1m for Nos. 638-646 NSHR.

Table 12: LEP Building Height

	Approved Development	Proposed	Control	Complies
Height – No. 636 NSHR (harbourfront)	9.2m – 12.2m	9.2m – 12.2m	9.5m	NO
Height – Nos. 638-646 NSHR (streetfront)	8.8m – 15.3m	18.42m	14.1m	NO

The proposed increase in height is considered to be unacceptable and inconsistent with the objectives for the following reasons:

- The proposed five storey development (height of 18.42m) is inconsistent with the desired future character of the Rose Bay Centre, which requires four storey development (height of 14.1m) in order to achieve a coherent streetscape character with consistent building forms.
- The proposal breaches the height control by 4.32m which is considered to be excessive, particularly as almost the entire level is in breach of the control.
- The height of the building at 624 should not be used as justification for the height non-compliance as the neighbouring 8 storey tower pre-dates the controls and is inconsistent with the desired future character of the precinct. It is also noted that the tower is setback approximately 5.6m from the street frontage, which is inconsistent with the envisaged four storey street edge. A consistent approach is important to ensure that the urban design quality of the Rose Bay Centre is maintained.
- Woollahra LEP 2014 (WLEP 2014) was introduced in 2014 following extensive community consultation, and replaced the Woollahra LEP 1995 (WLEP 1995). Under the previous LEP (WLEP 1995) a 12m height standard applied to the subject site and the adjoining properties which front New South Head Road. The introduction of the WLEP 2014 increased the height standard by 2m to 14m. At this time it was open to Council to increase the height standard further, but it was determined that a 14m height standard was appropriate for the subject site. This stance is maintained.



Source: JPR Architects

16.4. Part 4.4: Floor Space Ratio

Part 11 limits development to a maximum floor space ratio of 2:1 for Nos. 638-646 New South Head Road.

However, the floor space ratio control in Clause 11 is overridden by Clause 45 of SEPP (Housing for Seniors or People with a Disability) 2004, which allows for an additional 0.5:1 floor space ratio bonus.

Table 13: LEP Floor Space Ratio

	Control	Approved	Proposed	Complies
FSR – Nos. 638-646 NSHR	2:1 (1,410m ²) LEP 2.5:1 (1,763m ²) inc 0.5 SEPP bonus	1.73:1 (1,256.9m ²)	2.21:1 (1,558.2m ²)	YES

The proposal complies with the FSR control contained in Clause 45 of SEPP (Housing for Seniors or People with a Disability) 2004. Nevertheless, the proposal is considered to be inconsistent with the FSR Objectives in the following manner:

- The bulk and scale of the proposed development is inconsistent with the desired future character of the Rose Bay Centre and would be inappropriate within the streetscape.
- The additional gross floor area can be attributed to the proposed fifth storey, which is non-compliant with the height and number of storeys control.
- While the proposal complies with the FSR control, it is the location of the additional FSR above the height limit and above the number of storeys control that causes the breach of the objectives.
- The proposal will present excessive bulk and scale when viewed from the public domain.

16.5. Part 5.9: Preservation of Trees or Vegetation

Part 5.9(1) seeks to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation where there are works to any tree or other vegetation.

The proposal is acceptable with regard to Part 5.9 of the Woollahra LEP 2014.

16.6. Part 6.1: Acid Sulfate Soils

Part 6.1 requires Council to consider any potential acid sulfate soil affectation so that it does not disturb, expose or drain acid sulfate soils and cause environmental damage. The proposal is acceptable, subject to the conditions imposed under DA 377/2016/1.

16.7. Part 6.2: Earthworks

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land. The proposal does not involve any change to the excavation approved under SA 377/2016/1.

16.8. Part 6.3: Flood Planning

Part 6.3 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

The proposal is acceptable with regard to Part 6.3 of Woollahra LEP 2014.

17. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

The Section 96 Application relates to the southern part of the site (Nos. 638-646 NSHR) which is within the Rose Bay Centre Precinct.

NOTE: The provisions of SEPP 65 and SEPP (Housing for Seniors or People with a Disability) 2004 prescribe that in the event of an inconsistency between the SEPP and another environmental planning instrument, the SEPP prevails to the extent of the inconsistency.

This part of the report addresses the relevant controls of the WDCP 2015.

17.1 Part B3.5: Built Form and Context

Part 3.5.3: Public and Private Views

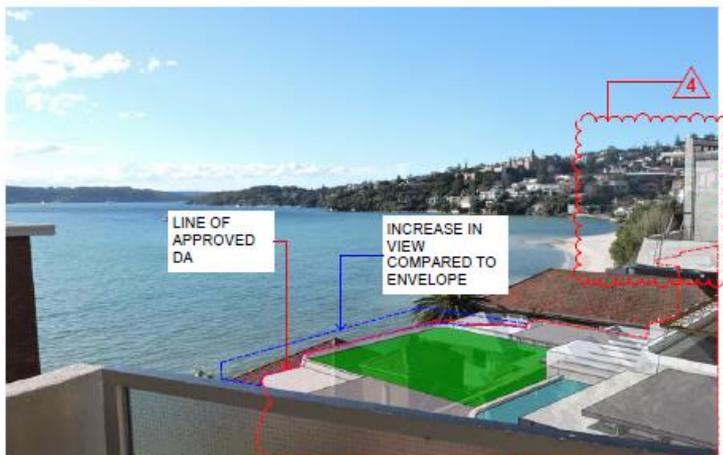
There are no significant public views that will be affected by the proposed development.

The owners of the following properties objected to the proposed development on the basis of view loss:

- 624 New South Head Road
- 624B New South Head Road
- 4/733 New South Head Road
- 737 – 739 New South Head Road

As demonstrated by the montages below, the proposed additional level will not have an impact on water views or iconic views. Given that the only impact is upon views of the sky, it is considered that no further assessment is required.

A full assessment against Tenacity Consulting vs Warringah (2004) NSWLEC 140 was undertaken under DA 377/2016/1, with regard to the impact on the private water views obtained from the neighbouring properties.



6 No 624 - 634 Fifth Floor Balcony 2 Existing Photograph - Proposed



6 No 624 - 634 Fourth Floor Balcony 2 Proposed 3D Model View Superimposed on Existing Photograph



2 No 733 SECOND FLOOR - APT 4 LIVING ROOM BALCONY - PROPOSED



3 No 733 THIRD FLOOR - APT 7 LIVING ROOM BALCONY - PROPOSED



No 735 3RD FLOOR WINDOW 3 - PROPOSED



17.2 Chapter D6: Rose Bay Centre

Part D6.1.3 Objectives

The relevant desired future character objectives for the Rose Bay Centre precinct are:

- O1 To retain and enhance the village atmosphere of the Rose Bay Centre.*
- c) To promote a coherent building scale and high quality development;*
- O3 To create a memorable image for Rose Bay.*
 - a) To create defined entrances to the centre;*
 - b) To provide a stronger public domain focus to the centre; and*
 - c) To provide direction and certainty of outcome in relation to build form to ensure:*
 - a coherent street scale;*
 - that new development meets the desired future character;*
 - a variety of building types; and*
 - a high level of amenity.*

The proposal is inconsistent with regard to the objectives for the Rose Bay Centre in the following ways:

- The proposed five storey development will be inconsistent with the predominant building scale of the Rose Bay centre. This is inconsistent with the objectives which seek to achieve a coherent building scale to the street.
- The increased building height will present additional bulk to the streetscape and will not achieve a high level of visual amenity to New South Head Road and the neighbouring properties.
- As discussed, the proposal is inconsistent with the desired future character of the centre.

Part D6.6.3.1: Building envelopes

The proposal is non-compliant as follows:

- Control C1 which requires that development occurs within the permitted building envelope.
- Control C2 which requires that development achieves a maximum height of 14.1m, to enhance definition of the street edge.

Part D6.6.3.2: Setbacks

C5 requires that side setbacks should:

- a) protect privacy to adjoining buildings;
- b) protect access to natural light and ventilation;
- c) provide pedestrian access to the rear of buildings;
- d) facilitate views from the public domain to the harbour where possible; and
- e) allow stormwater to flow towards the harbour.

The proposal provides side setbacks of 0m – 5.4m and is acceptable with regard to the objectives.

Part D6.6.4: Visual and acoustic privacy

This is addressed under Section 14 of the report.

Part D6.6.6: Solar access and natural ventilation

This is addressed under Section 14 of the report.

18. APPLICABLE ACTS/REGULATIONS

None relevant.

19. THE LIKELY IMPACTS OF THE PROPOSAL

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

20. THE PUBLIC INTEREST

The proposal is considered to be in the public interest.

21. DISCLOSURE STATEMENTS

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this application by the applicant or any person who made a submission.

22. RECOMMENDATION

Pursuant to Section 96 of the Environmental Planning and Assessment Act, 1979

THAT Council, as the consent authority, refuse to modify development consent to DA 377/2016/4 for demolition of the existing service station at 638-646 New South Head Road & residential flat building at 636 New South Head Road, remediation of the site(s), the erection of a new Seniors Living Development comprising of nine (9) residences, two (2) retail and two (2) commercial tenancies & 19 car parking spaces on land at 638-646 New South Head Road ROSE BAY, for the following reasons:

1. The bulk and scale of the proposed additional storey is inconsistent with the design quality principles 1 (context and neighbourhood character) and 2 (built form and scale), under SEPP 65 (Design Quality of Residential Apartment Development).

2. The proposal is inconsistent with Clause 33 (neighbourhood amenity and streetscape), under SEPP (Housing for Seniors and People with a Disability) 2004.
3. The proposed five storey development is inconsistent with the desired future character of the Rose Bay Centre and is unsatisfactory in terms of the aims in Part 1.2(2) of Woollahra LEP 2014, objective (1).
4. The proposed height non-compliance is considered to be excessive and is inconsistent with the control and the objectives under Clause 4.3 of WLEP 2014.
5. The location of the additional gross floor area is considered to be inconsistent with the objectives under Clause 4.4 of WLEP 2014.
6. The proposed additional storey is inconsistent with the Rose Bay centre objectives under Part D6.1.3 of the WDCP 2015.
7. The proposed additional storey is excessive in bulk and scale and is non-compliant with regard to the building envelope and height controls (C1 and C2) under Part D6.6.3.1 of WDCP 2014.
8. The additional storey would present additional bulk when viewed from long views from the harbour and is considered to be unsatisfactory with regard to the provisions of SREP (Sydney Harbour Catchment) 2005.

Ms L Samuels
SENIOR ASSESSMENT OFFICER

Ms E Smith
TEAM LEADER