

<b>DATE OF DETERMINATION</b>	15 March 2018
<b>PANEL MEMBERS</b>	Carl Scully (Chair), Sue Francis, John Roseth, Mary-Lou Jarvis, Toni Zelter
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held at Christie Conference Centre, 3 Spring St, Sydney on 15 March 2018, opened at 11:30 am and closed at 1:35 pm

#### **MATTER DETERMINED**

2017SCL056 – Woollahra – DA377/2016/4 at 636 & 638-646 New South Head Road ROSE BAY (AS DESCRIBED IN SCHEDULE 1)

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the development application as described in Schedule 1 pursuant to section 96 of the *Environmental Planning and Assessment Act 1979*.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The decision was 3:2, with Sue Francis, Toni Zeltzer and Mary-Lou Jarvis determining to refuse the application, and Carl Scully and John Roseth against the decision to refuse the application.

#### **REASONS FOR THE DECISION**

The reasons for the decision of the majority of the Panel are as follows:

Sue Francis, Toni Zeltzer and Mary-Lou Jarvis (the majority) accepted the recommendation of the staff to refuse the modification because the proposed additional storey is inconsistent with the desired future character of the area. The majority of the Panel note that there are buildings that are currently taller than the desired future character height of four storeys (14.1m), established in the Woollahra Local Environment Plan 2014 (WLEP) and Woollahra Development Control Plan 2015 (DCP), but consider that these are historical exceptions (under previous planning controls) that do not in and of themselves justify a variation to the anticipated height limit.





The majority of the Panel notes that Council's controls do allow a greater height on some restricted sites further to the north, subject to the delivery of increased access to the harbour, which is a desirable and broader public benefit.

Further, the majority of the Panel understands that the applicant is seeking the additional height in order to utilise more of the 0.5:1 Floor Space Ratio (FSR) bonus obtained pursuant to Clause 45(2) of the SLSEPP. As originally approved, one (1) affordable dwelling is provided being 11% of the nine (9) dwellings originally sought. In the section 96 modification this affordable unit is retained and forms a 10% dwelling provision. Condition H8 of the original approval nominates this as being unit 2, located on level 2 in the street side of the development. It is 96sqm (including enclosed balcony). The 0.5:1 bonus provides 395.5sqm to the harbourside allotment and 353sqm to the street side allotment. In total, the proposed Gross Floor Area (GFA) is approx. 2261.9sqm and the affordable unit equates to 4.2% of the total GFA and utilises only 12.8% of the bonus GFA.

As the majority of the Panel understand the proposal, it is seeking to use more of the 0.5:1 bonus for non-affordable dwellings. Whilst it is noted that the SLSEPP requires a provision of a minimum of 10% 'dwellings' and not GFA to achieve the bonus floorspace, it is considered that the intent of the bonus provision is to provide for affordable dwellings. Whilst the requirement is stated in 'dwellings' and a minimum of 10% dwellings being provided to trigger the bonus, this development only provides 4.2% of its GFA to affordable dwellings and where the additional GFA being sought is in excess of the height limit and contrary to the desired future character of the area, without any public benefit in the way of more affordable housing. The majority of the Panel does not consider there to be sufficient environmental grounds to support the proposal nor determines that it represents a better planning outcome.

Carl Scully and John Roseth disagreed with the majority decision, and voted to approve the modification application for the following reasons:

- While the desired future character for the Rose Bay Centre is one of four storeys, this does not mean that every building in the centre is likely to be four storeys, or that it would be desirable of practical for all buildings to be of a uniform height.
- The building adjoining to the West is eight stories. While that building is an anomaly, it is part of the Centre's character.
- The proposal's Floor Space Ratio (FSR) is significantly less than is permissible. A redistribution of the floor space to other parts of the site would increase the visual impact towards the Harbour, where it would be more adverse.
- The Council has increased the height control on other sites in the Rose Bay Centre.

PANEL MEMBERS	
 Carl Scully (Chair)	 John Roseth
 Sue Francis	<i>Approved via email at 2:52 pm 21/03/2018</i> Mary-Lou Jarvis
 Toni Zeltzer	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017SCL056 – Woollahra – DA377/2016/4
2	PROPOSED DEVELOPMENT	Modification to the approved development including a new upper level comprising an additional senior's housing unit
3	STREET ADDRESS	636 & 638-646 New South Head Road ROSE BAY
4	APPLICANT/OWNER	RBJV Nominees Pty Limited/ Mr A & Mrs I Spindel and Mrs J & Mr G Morgan
5	TYPE OF REGIONAL DEVELOPMENT	Section 96(2) Modification Application
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy No 65: Design Quality of Residential Flat Development</li> <li>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</li> <li>Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005</li> <li>Woollahra Local Environment Plan 2014</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Woollahra Development Control Plan 2015</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the Environmental Planning and Assessment Regulation 2000: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the Environmental Planning and Assessment Act 1979 or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 19 February 2018</li> <li>Written submissions during public exhibition: 10</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>Object – Erik Ahlberg, Mark Heeley</li> <li>On behalf of the applicant – Dennis Rabinowitz, Nigel Dickson, Crosbie Lorimer</li> </ul> </li> </ul>
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>Final briefing meeting to discuss council's recommendation, 15 March 2018 at 11am. Attendees: <ul style="list-style-type: none"> <li>Panel members: Carl Scully (Chair), Sue Francis, John Roseth, Mary-Lou Jarvis, Toni Zelter</li> <li>Council assessment staff: Lauren Samuels, Eleanor Smith</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the council assessment report