

DEVELOPMENT APPLICATION ASSESSMENT REPORT

PANEL REFERENCE	2018SCL002
FILE No.	DA617/2017/1
COUNCIL WARD	Double Bay
ZONING	B2 Local Centre
ADDRESS	28-34 Cross Street DOUBLE BAY
PROPOSAL	Demolition of the existing development and construction of a 6 storey mixed development with ground floor retail, 21 residential units over 5 levels and 2 levels of basement parking for 36 vehicles and 4 motorbikes with vehicular access via 20-26 Cross St
TYPE OF CONSENT	Integrated development
COST OF WORKS	\$25,428,904.00
DATE LODGED	14/12/2017 – Original submission 06/04/2018 – Replacement Application I 21/08/2018 – Replacement Application II
APPLICANT/OWNER	SJD DB2 Pty Ltd
ASSESSING OFFICER	Mr Dimitri Lukas
TEAM LEADER	Mr Thomass Wong
SUBMISSIONS	20
RECOMMENDATION	Approval

SUMMARY

1. REASONS FOR REPORT TO SYDNEY EASTERN CITY PLANNING PANEL

Pursuant to Schedule 7, Sub-clause 9 of State Environmental Planning Policy (State and Regional Development) 2011, the application is to be determined by the Sydney Eastern City Planning Panel because: “...the development that has a capital investment value of more than \$10 million but less than \$30 million.”

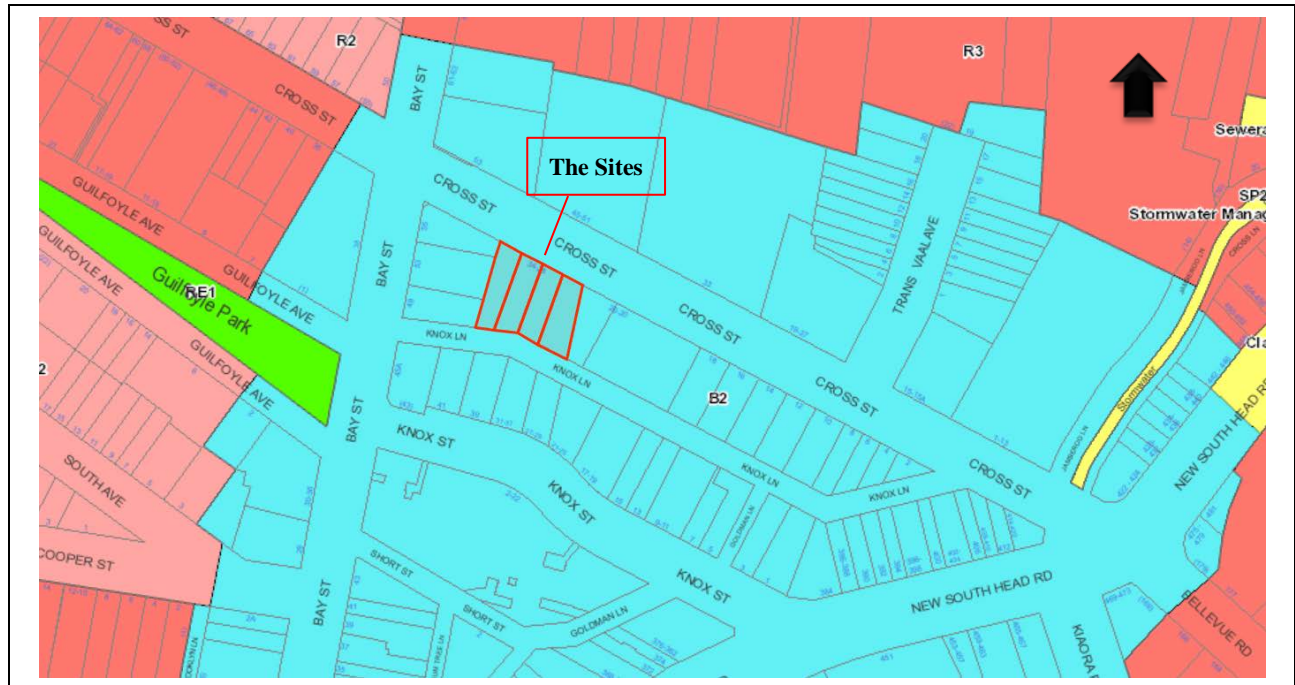
2. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the relevant matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979 and is recommended for **APPROVAL** because:

- The proposal is considered to be satisfactory with regard to the objectives of SEPP 65, Woollahra LEP 2014, Woollahra DCP 2015 and all other applicable environmental planning instruments;
- The proposal will not have any adverse impacts on the local built and natural environment nor any adverse social or economic impacts within the locality;
- The proposal is a permissible and is an expected form of development for this site and locality;
- The proposal is acceptable against the relevant considerations under Section 4.15(1) of the Environmental Planning and Assessment Act 1979;

- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development; and
- The proposal is in the public interest.

3. LOCALITY PLAN



4. PROPOSAL SUMMARY

The proposal is for the demolition of the existing development and construction of a new 6 storey shop-top housing development. The development comprises 6 retail spaces on the ground floor, 21 residential units over 5 levels immediately above and 2 levels of basement parking for 36 vehicles and 4 motorbikes. Access to the basement levels is to be via an easement through the recently approved development immediately adjoining to the east at No.20-26 Cross Street.

The proposed development, and its contextual relationship with the relatively recently approved development immediately adjoining (No.20-26 Cross Street) is best depicted in the following Photomontages provided by the Architect BatesSmart:



Replacement Application I submitted on 6 April 2018 revised the basement levels and ground floor levels to address flooding issues and energy supply requirements. Replacement Application II submitted on 21 August 2018 further revised the ground floor layout to address waste storage facilities.

The original application, as amended by Replacement Applications I & II forms the subject of this assessment.

5. ISSUES SUMMARY

5.1 Development Standards Summary

Development Standard (Site Area: 1041m ²)	Approved Development 20-26 Cross Street (Site Area 1259m ²)	Proposed	Control	Departure
Height of Buildings (Clause 4.3)	19.91m (21.21m – Plant/Lift)	19.71m (21.21m – Plant/Lift)	14.7m	44% or 6.51m
Floor Space (Clause 4.4)	3.51:1 (4,415m ²)	3.61:1 (3,759m ²)	2.5:1 (2,602m ²)	44% or 1157m ²

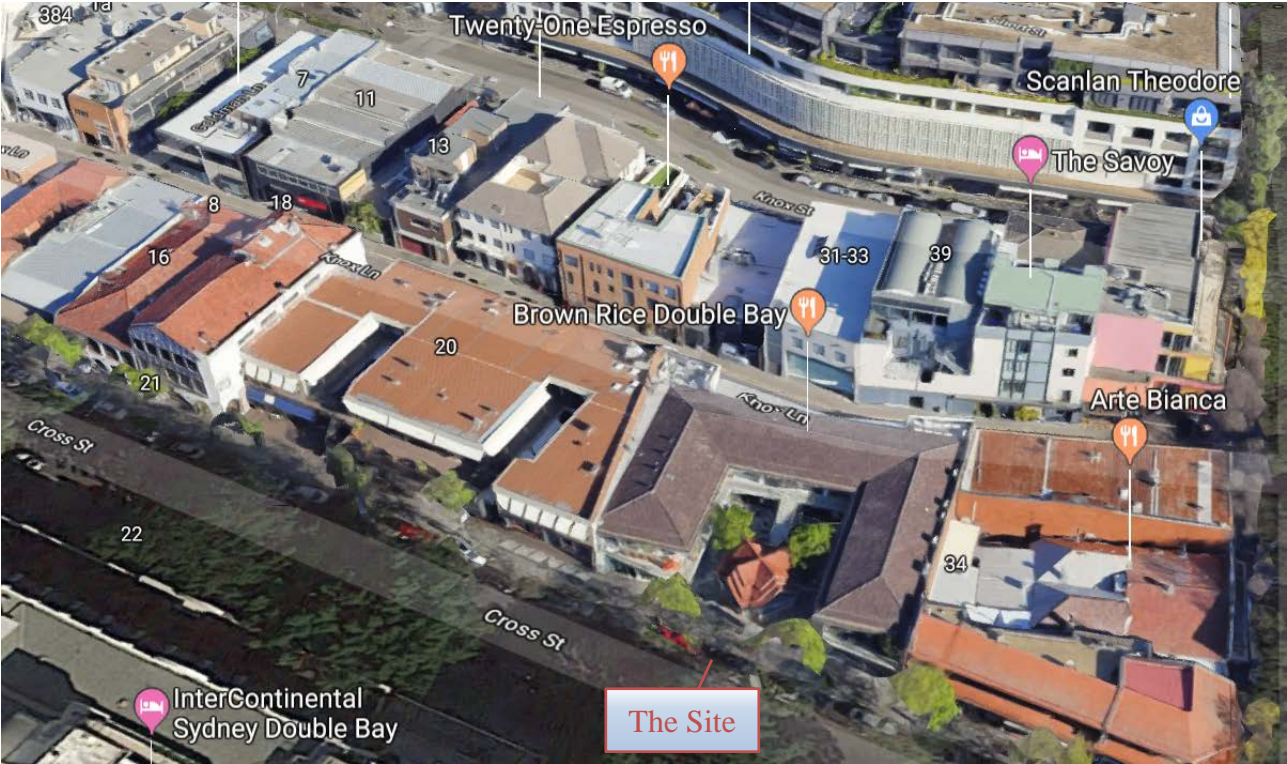
5.2 Summary of all Issues

Issue	Response
Overdevelopment / Non-compliances with the relevant planning controls	The proposal is a permissible and expected form of development on this site and locality. The development is contextually compatible and consistent in its height, scale and bulk with recently approved and similar types of developments immediately adjoining. These approved developments, which are currently under construction, have established the future character of this immediate locality (Cross Street only). For these reasons, the proposal satisfies the objectives underpinning the relevant planning controls and is an appropriate development for this site.
Inadequate setbacks / Sense of enclosure	The proposed development remains consistent in height and has a similar setback with the recently approved and similar types of developments immediately adjoining. Cross Street provides sufficient separation from the only dwellings that are immediately opposite on the norther side. The proposed uppermost levels are sufficiently elevated and setback from adjoining property so that they have no detrimental impact on the amenity of adjoining residents.
Height	The development exceeds the maximum height development standard. Notwithstanding, the development is compatible and consistent in height with the recently approved and similar types of developments immediately adjoining to the east.
Views / outlook	There is no resultant detrimental impact on existing views / outlook from either the private or public domain.
Privacy	Residential accommodation is encouraged and permissible in this locality. The extent of overlooking between residential properties is mutual, expected and reasonable in this built up urban environment.
Overshadowing	The extent of overshadowing of both private and public property is compliant with Council's requirements.
Parking / Traffic	The traffic generation of the proposed development is similar to the existing development it replaces. The sites locality within the Double Bay Commercial centre which provides essential infrastructure, including multiple transport/parking options, can cater for the expected density. The off-street parking provided is sufficient to cater for the density of the development. The proposal is unlikely to detrimentally impact on the amenity of the neighbourhood with regard to parking or traffic.

Design, compatibility, existing/future character	The recently approved and similar types of developments immediately adjoining to the east, which are under construction, have established the future character of this immediate locality (Cross Street only). The development is contextually compatible, consistent and is virtually an extension of these approved developments.
Precedent	This is not a relevant issue pursuant to the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Each development is assessed on its merits.
Village Character	Council's DCP identifies the unique characteristics of each street in the Double Bay Commercial Centre and details its existing and desired future character. The proposed development is contextually suited to the established character of this section of Cross Street and Knox Lane having regard to the recently approved developments immediately adjoining.
Noise	Residential accommodation is permissible, encouraged and exists in this locality. The extent of noise generated by the proposed development is anticipated and will not unduly impact on the amenity of existing residential dwellings within this commercial centre.
Density	The proposed density assists Council in achieving its targets to provide additional housing within the municipality.
Wind tunnel	The proposal is unlikely to detrimentally impact the amenity of pedestrians with regard to wind tunnel effect.
Excavation issues	The site can be made suitable for the proposed development. Preliminary testing of the site indicates it is likely to be contaminated and affected by the water table and acid sulfate soils. The risk to structures, surrounding surface water bodies and groundwater can be managed by appropriate measures which can be imposed by conditions. In this regard, there are no mitigating circumstances associated with the proposed excavation that will detrimentally impact the amenity of adjoining residents, the environment, the water table or any adjoining structures.
Light & Air	The amenity of the only adjoining residents on the opposite and on the northern side of Cross Street will not be detrimentally affected by the proposed development with regard to air flow and light.
Notification issues	The application was advertised and notified in accordance and compliant with the terms of Chapter A2 of the Woollahra DCP 2015.
Commercial uses inadequate	The DCP encourages the first floor to be adaptable to be utilised for commercial suites. However, the floor to ceiling heights required to accommodate office space on the first floor would undermine the streetscape consistency of the subject development in conjunction with the approved developments immediately adjoining. The ground floor retail areas can nevertheless be converted to commercial office suites if the need arises.
Not in the public interest	For reasons considered above, the proposal is in the public interest.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY



3D perspective of the immediate locality (Google Maps)



Cross Street frontage (Google Maps)



Knox Lane frontage facing west and east respectively (Google Maps)

Physical features
The subject development site is made up of 4 allotments located on the southern side of Cross Street, Double Bay. The site is also afforded with a secondary frontage to Knox Lane on its southern side.
The site is an irregularly shaped pentagon. Its frontages to Cross Street and Knox Lane are 35.385m and 36.785m respectively and an eastern and western boundary length of 28.53 and 33.44m respectively. The total site area is 1041m ² .
Topography
The site is relatively flat and devoid of any landscaped area.
Existing buildings and structures
The site is occupied by a 2 storey commercial building with an open style plaza. The ground floor is predominantly occupied by retail uses and the upper level has a combination of retail and office spaces.
Environment
The site is located in the heart of the Double Bay Commercial Centre. The immediate area is characterised by development ranging in height between 1-7 storeys with a variety of uses such as residential, commercial, retail, offices, schools, a hotel and food and drink premises. Double Bay is sited on the southern edge of Sydney Harbour. The surrounding area is relatively level and sits at the base of a large natural amphitheatre which leads up to the ridges of Darling Point, Edgecliff and Bellevue Hill.

7. RELEVANT PROPERTY HISTORY

Current use
Retail and Offices
Previous Relevant Applications
DA390/2015/1 is for the construction of a 6 storey mixed use development immediately adjoining to the east at No.20-26 Cross Street Double Bay. It comprises 2 basement levels with parking for 45 vehicles, ground floor level containing 6 retail spaces and 2 arcades and 5 levels immediately above containing 34 residential units. The application was approved by Council on 12 September 2016.
DA390/2015/4 is a Section 4.55 variation of the above development. It seeks modification to both the internal and external areas to facilitate a reduction in the number of residential units from 34 to 29 and an increase in the number of retail premises from 7 to 9. <i>This application is currently with Council and has yet to be determined.</i>
DA571/2014 is for the construction of a 6 storey mixed use development adjoining further to the east at No.16-18 Cross Street. It comprises 2 basement levels with parking for 18 vehicles, a ground floor level containing 3 retail spaces and an arcade and 5 levels immediately above containing 13 residential units. The application was approved by Council on 25 July 2016.
There are no other applications that are relevant to the scope of works being considered.
Pre-DA
There was no formal pre-da meeting held but there were informal discussions with Council staff regarding the proposed development.
Requests for Additional Information
20.12.2017 – Request to provide details of easement for driveway, traffic report, western elevation and quantum of excavation. 20.03.2018 – Email request to address engineering issues. 20.03.2018 – Email request to provide 3D model.
Amended Plans/Replacement Application
24.01.2018 – Additional details provided to address request for additional information. 06.04.2018 – Replacement Application I submitted as detailed above. 06.07.2018 – Written response to address lack of commercial use. 13.08.2018 – Request to consolidate sites via a condition. 21.08.2018 – Replacement Application II submitted as detailed above.
Land and Environment Court Appeal
No appeal has been lodged.

8. REFERRALS

Referral	Summary of Comment	Annexure
Urban Design Planner	<i>...Despite this carefully designed building having much to recommend it and it potentially making a substantial contribution to the Double Bay streetscape, I recommend refusal, due to non-compliance with the height control.</i> <i>An acceptable height, or heights, needs to be agreed for the whole of the Double Bay Centre, only then can buildings be designed to contribute to the Double Bay Centre vision in a unified and equitable manner...</i>	2
Engineering	<i>The proposal is satisfactory ...a deferred commencement approval should be considered pending ...the registration of the right-of-carriageway...</i>	3
Traffic	<i>The proposal is satisfactory subject to conditions.</i>	4
Drainage	<i>The proposal is satisfactory subject to conditions.</i>	n/a
Health	<i>The proposal is satisfactory subject to conditions.</i>	n/a
Trees	<i>Located within the existing courtyard of the subject site are two Tuckeroo's ...and are proposed for removal. The submitted landscape plan proposes replacement trees and ...is satisfactory.</i> <i>Tree protection measures should be included for the Chinese Weeping Elm trees located on Council managed land at the Cross Street frontage of the subject site.</i> <i>The proposal is satisfactory subject to conditions.</i>	n/a
Water NSW	<i>... WaterNSW has determined that the proposed development will encounter groundwater during the excavation process, and is subject to a Water Supply Work Approval under the Water Management Act 2000 for dewatering during the construction phase. This determination is subject to appropriate construction methods to be employed to minimise volume of groundwater take during the construction phase. WaterNSW provides General Terms of Approval...</i>	5

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) The provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates,
- (b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) The suitability of the site for the development,
- (d) Any submissions made in accordance with this Act or the regulations,
- (e) The public interest.

9. ADVERTISING AND NOTIFICATION

9.1 Submissions

The application was advertised and notified in accordance with Chapter A2 of the Woollahra DCP 2015. In response, there was a total of 20 submissions received. The details of the submissions are attached as **Annexure 8**.

The issues raised have been summarised above (Section 5.2) and where relevant, are addressed in the body of the report.

9.2 Statutory Declaration

The applicant has completed the statutory declaration declaring that the site notice was erected and maintained during the notification period in accordance with the Advertising and Notifications DCP.

9.3 Replacement Application

Replacement Application I & II as referenced and detailed above were not renotified to surrounding residents and objectors because, pursuant to Chapters A2.4 and A2.8 of the Woollahra DCP 2015, they would have no greater cumulative environmental or amenity impact.

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

The development is located on a relatively level and flat site that is partially obscured from the waterway and the foreshores by existing development and landscaping. The subject site is not a land/water interface development but notwithstanding, Division 2 of the SREP prescribes matters for consideration for interrelationship of waterway and foreshore uses as well as maintenance, protection and enhancement of views.

The proposal does not result in any detrimental impact on the wetlands or cause pollution or siltation of the waterway. It does not detrimentally impact on existing vegetation or drainage patterns and does not obstruct vistas of the waterway from the public domain.

The proposal therefore satisfies the relevant criteria prescribed by the SREP.

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

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

The development application was accompanied by BASIX Certificate committing to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency. The measures as prescribed by Clause 97A of the Environmental Planning and Assessment Regulation 2000 are imposed by Council's standard conditions.

12. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

A report on the Preliminary Site Investigation for Contamination was undertaken by Douglas Partners. The report indicates that the existing buildings on the site hinder detailed ground analysis.

Council's Environmental Health Officer has reviewed the submitted documents and makes comments in part as follows:

"... Given the limited nature of the Preliminary Investigation due to site constraints, confirmation of the contamination status of the site in the form of a Detailed Investigation will need to be undertaken post-demolition of the existing building..."

In light of the above and based on the initial findings in the report by Douglass Partners, the land will likely require further testing but can be made suitable for the proposed development. The recommended measures can be imposed by conditions.

The proposal, subject to appropriate conditions, satisfies the relevant considerations pursuant to this SEPP.

13. STATE ENVIRONMENTAL PLANNING POLICY 64: ADVERTISING AND SIGNAGE

No signage is proposed as part of this application.

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

SEPP 65 applies to the subject development which is defined as a shop top housing development. Given the composition of this development is for 3 or more storeys and 4 or more self-contained dwellings, the SEPP applies.

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

The instrument requires the proposal be referred to a Design Review Panel. This panel has not been established for the Woollahra area. Notwithstanding, the instrument requires the assessment of the subject development application against the 9 design quality principles and against the relevant objectives of the Apartment Design Guide.

An assessment against the 9 design quality principles follows with summarised comments from both Council's *Urban Design Planner* and Council's planning staff inserted into each relevant head of consideration:

14.1 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.

Urban Design Planner's comments: *This building responds to its context. A through block passage facilitates the pedestrian flow between streets which is a feature of Double Bay's established pattern of pedestrian circulation. The presentation of the apartments above to the street and to the lane is appropriate and reflects desirable elements of the future character as expressed in the WDCP2015 which contains objectives and controls regarding the Double Bay Centre.*

There are 6 storey buildings immediately opposite on Cross Street, being the Intercontinental Hotel and the George's building (i.e. No.33 and 45 Cross Street respectively). Immediately adjoining the site to the east are 2 recently approved and similar type developments that are under construction and are also 6 storeys in height (i.e. No.16-18 and 20-26 Cross St). Immediately to the west of the proposed development is the corner of Bay and Cross Street that is currently under-developed based on Council's current controls. However, this corner site has height and envelope controls that are similar to the proposed development.

The contextual relationship of the existing, approved and proposed developments on Cross Street and Knox Lane respectively is best illustrated in the schematic and photomontages provided by Bates Smart Architects as follows:



Having regard to these existing and recently approved developments, the proposal contributes to the existing and established future context and character of this immediate locality (Cross Street only). For this reason, the exceedance of the Height and Floor space ratio development standards is supported given the contextual relationship of the development with the recently approved developments immediately adjoining.

The proposal satisfies this principle.

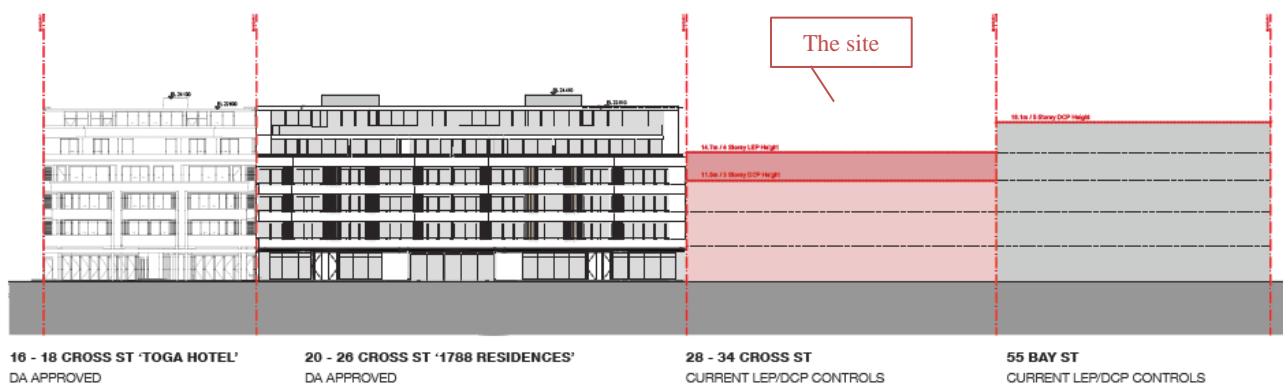
14.2 Principle 2: Built Form and Scale

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.

Urban Design Planner's comments: *The height of the proposal exceeds the 14.7m height appropriate to the existing or desired future character of the street and surrounding buildings as mapped in WLEP2014. The form and scale of the complying portion of the building (the lower 4 storeys) is appropriately aligned, proportioned and articulated. The proposal defines and forms public domain. However the top two levels which rise above the height limit do not conform to the desired future character of the location. Similarly the proposed building has an FSR of 3.5:1 which exceeds the control of 2.5:1. An exceedance that is equivalent to two levels.*

A compliant building form at 4 storeys in height would be contextually unsuitable given what has been approved immediately to its east and what is expected immediately to its west. A compliant development would appear like a “missing tooth” within Cross Street which is best depicted in the following schematic by BatesSmart Architects:



The built form and scale of the proposal is contextually suitable and compatible with recently approved and expected future developments in this locality.

The proposal satisfies this principle.

14.3 Principal 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.

Urban Design Planner's comments: *The density proposed is appropriate in this well serviced location.*

The proposal satisfies this principle.

14.4 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.

Urban Design Planner's comments: *The apartments perform well with regard to solar access and cross ventilation. ...There are no significant sustainability initiatives associated with this development. There is ample provision for secure bicycle parking as required by WDCP2015.*

The use of waste chutes is potentially problematic if, as is likely, recycling requirements become more stringent.

The apartments do not have an outdoor drying space as required by the WDCP2015 and SEPP 65

The proposal was accompanied by a BASIX Certificate committing to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency.

All units are afforded with private open space that can cater for clothes drying horses or the like and which is in-line with current strata laws. These strata laws, as well as Council's standard conditions which form part of the recommendation, require any clothes drying on balconies not to be visible from the public domain.

The proposed garbage and recycling complies with Council controls as prescribed by the WDCP 2015 and is discussed further below.

The proposal satisfies this principle.

14.5 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.

Urban Design Planner's comments: *There is effectively no landscape element to this mixed use development. There is some use of planters on both elevations. There is no communal space exclusively for the residents use. There is no allowance for outdoor clothes drying, as required by SEPP 65 and by WDCP2015.*

Landscaping on this site which is located within a commercial centre is not required or expected pursuant to the Apartment Design Guide or Council's DCP controls.

The issue of communal open space is addressed below under the Apartment Design Guide objectives and design criteria. The issue of clothes drying has been discussed above.

The proposal satisfies this principle.

14.6 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.

Urban Design Planner's comments: *The design provides good amenity across the development. Natural light penetrates into the communal landings on all levels.*

The proposal satisfies this principle.

14.7 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.

Urban Design Planner's comments: *The apartments are safe.*

The proposal satisfies this principle.

14.8 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.

Urban Design Planner's comments: *Although there is unlikely to be any real affordability, there is a mix of apartment sizes...*

The proposal satisfies this principle.

14.9 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.

Urban Design Planner's comments: *The aesthetics of the building are considered and appropriate, yet distinctive.*

The proposal satisfies this principle.

14.10 Apartment Design Guide (ADG)

SEPP 65 Clause 28(2)(c) provides that the consent authority must take into consideration the design criteria prescribed by the ADG. Clause 6 of the SEPP prescribes that in the event of an inconsistency between the SEPP and another environmental planning instrument (ie WLEP & WDCP) this policy prevails to the extent of the inconsistency. Council's Urban Design Planner provides comments in relation to the criteria prescribed by the ADG in the referral response. An assessment is provided against the relevant design guidance and criteria in the ADG as follows:

14.11 Compliance Table (Note: Non-compliances are highlighted)

Design Criteria (Site Area: 1041m ²)	Proposed	Control	Complies
Communal open space (3D-1) - Minimum area (m ²) - Direct sunlight access to principal part in mid-winter	0 0%	25% or (278) <50%	No No
Deep soil zones (3E-1) - Area (m ²) - Minimum dimension (m)	0% 0	7% or (78) 3	No No
Minimum separation distances between windows and balconies to side boundaries and between dwellings (3F-1) - Habitable/Non-habitable (up to 4 Storey) (m) - Habitable/Non-habitable (5-8 Storey) (m)	0 / <3 0 / <4.5	9 / 6 12 / 7.5	No / No No / No
Minimum number of apartments that receive 2 hours of solar access during mid-winter to living rooms and private open space (4A-1)	72% or (28)	70% or (27)	Yes
Maximum number of apartments that receive no direct sunlight during mid-winter (4A-1)	10% or (4)	15% or (6)	Yes
Minimum number of apartments that are cross-ventilated (4B-3)	69% or (27)	60% or (23)	Yes
Cross-ventilated apartments (4B-3) - Maximum depth (m) - Minimum internal width (m)	<18 >4	18 4	Yes Yes
Minimum ceiling heights (4C-1) - Habitable rooms (m) - Non-habitable rooms (m)	2.7 2.4	2.7 2.4	Yes Yes
Minimum internal areas for S/1/2/3 x Beds (m ²) (4D-1)	-/>50/>70/>90	35/50/70/90	Y/Y/Y/Y
Maximum habitable room depths (m) (4D-2)	8	8	Yes
Master bedroom & other bedrooms (4D-3) - Minimum sizes (m ²) - Minimum dimension (m)	>10 & >9 3	10 & 9 3	Yes Yes

Design Criteria (Site Area: 1041m ²)	Proposed	Control	Complies
Living rooms minimum widths (4D-3) - Studios & 1 Bed (m) - 2 & 3 Beds (m)	>3.6 >4	3.6 4	Yes Yes
Apartment balconies (S/1/2/3 x Bedrooms) (4E-1) - Minimum area (m ²) - Minimum depth (m)	- />8/>10/>12 - />2/>2/>2.4	4/8/10/12 - /2/2/2.4	Y/Y/Y/Y - /Y/Y/Y
Maximum apartments off circulation core (4F-1)	<8	8	Yes
Minimum storage for S/1/2/3 x Bedrooms (m ³) (4G-1)	- />6/>8/>10	4/6/8/10	Yes

14.11.1 Site analysis (Part 3)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.2 Orientation (Part 3B)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.3 Public domain interface (Part 3C)

The proposal satisfies the relevant objectives and design guidance prescribed by this Part.

14.11.4 Communal and public open space (Part 3D)

There is no communal open space or landscaped area provided on this site nor is it reasonable to provide these areas given the developments location within a business centre. The design guidance indicates that in these situations alternate measures should be provided. One measure which is stated and achieved by the proposed development is to provide large balconies and private open space for the units. It is also acknowledged that the future residents of this complex would form part of a larger residential community within the Commercial Centre of Double Bay. They would have access to public open spaces in the near vicinity being Guilfoyle and Steyne Parks as well as other socially interactive uses such as cafes, restaurants, pubs, gyms etc.

The proposal thereby satisfies the objective of the design criteria which states in part *...to enhance residential amenity.*

14.11.5 Deep soil zones (Part 3E)

Not applicable in this built-up urban environment.

14.11.6 Visual privacy (Part 3F)

This Design Criteria prescribes a minimum separation distance from the side and rear boundaries. The proposal is non-compliant with these setback controls as noted in the Compliance Table above.

Residential accommodation is encouraged and permissible in this locality. The proposed development is to be constructed to its side boundaries. It is contextually compatible and consistent with this predominant built form of other recently approved developments immediately adjoining and within this locality.

The proposed fenestration and balconies are suitably screened and orientated so that their primary outlook is towards Cross Street to its front or Knox Lane to its rear. The separation provided by the street and the laneway from residential property immediately opposite ensures there is no detrimental impact on the amenity of neighbouring residents. Furthermore, the extent of overlooking between residential properties is mutual, expected and reasonable in this built up business centre.

In the circumstance, the proposal satisfies the relevant objective of this part which states “...to achieve reasonable levels of external and internal visual privacy.”

Further assessment provided below.

14.11.7 Pedestrian Access and Entries (Part 3G)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.8 Vehicle access (Part 3H)

There is no existing off-street parking provided or proposed on this relatively small and restricted site.

14.11.9 Bicycle and car parking (Part 3J)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.10 Solar and daylight access (Part 4A)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.11.11 Natural ventilation (Part 4B)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.11.12 Ceiling heights (Part 4C)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.11.13 Apartment size and layout (Part 4D)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.11.14 Private open space and balconies (Part 4E)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.11.15 Common circulation and spaces (Part 4F)

The proposal satisfies the relevant objective and design guidance and criteria prescribed by this Part.

14.11.16 Storage (Part 4G)

The proposal satisfies the relevant objective and design criteria prescribed by this Part.

14.11.17 Acoustic privacy (Part 4H)

For reasons already discussed above regarding visual privacy, the proposal satisfies the relevant objective and design criteria prescribed by this Part.

14.11.18 Noise and pollution (Part 4J)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.19 Apartment mix (Part 4K)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.20 Facades (Part 4M)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.21 Roof design (Part 4N)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.22 Landscape design (Part 4O)

Not relevant to the scope of works proposed.

14.11.23 Planting on structures (Part 4P)

Not relevant to the scope of works proposed.

14.11.24 Universal design (Part 4Q)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.25 Mixed use (Part 4S)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.26 Awnings and signage (Part 4T)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.27 Energy efficiency (Part 4U)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.28 Water management and conservation (Part 4V)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

14.11.29 Waste management (Part 4W)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

Further assessment is provided below under DCP provisions.

14.11.30 Building maintenance (Part 4X)

The proposal satisfies the relevant objective and design guidance prescribed by this Part.

15. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

NOTE: The provisions of SEPP 65 Clause 6(1) and (2) prescribe that in the event of any inconsistency between the SEPP and another environmental planning instrument the SEPP prevails to the extent of the inconsistency.

15.1 Preliminary (Part 1)

15.1.1 Aims of Plan (Part 1.2)

The proposal satisfies the relevant aims of this plan.

15.2 Permitted or Prohibited Development (Part 2)

15.2.1 Zone B2 – Local Centre

The proposal is a permissible form of development in the zone.

The proposed development removes existing office spaces from the site. The development does not propose any replacement commercial space but rather ground floor retail only. The key objectives of the zone are reinforced in the WDCP Chapter D5 – Part 5.6.2 which prescribes the type of uses for the centre. Objective O4 states “...*Encourage first floor retail and commercial use*”.

The development does not propose any commercial space on the first floor but rather ground floor retail only. As mentioned, Council has approved two developments immediately adjoining to the east on Cross Street involving the same mix and distribution of uses as the proposed development. The floor to ceiling heights required to accommodate office space on the first floor would undermine the streetscape consistency of the subject development in conjunction with the approved developments immediately adjoining.

Notwithstanding, the layout of the ground floor retail area may accommodate commercial office suites if the need arises. In this regard, the development satisfies WDCP Chapter D5, Part 5.6.2 – Control C2 which states to: “...*Design durable and adaptable buildings, spaces and places.*”

15.3 Principal Development Standards (Part 4)

15.3.1 Compliance Table

Development Standard (Site Area: 1,041m ²)	Approved Development 20-26 Cross Street (Site Area 1259m ²)	Proposed	Control	Complies
Height of Buildings (Clause 4.3)	19.91m (21.21m – Plant/Lift)	19.71m (21.21m – Plant/Lift)	14.7m	No*
Floor Space (Clause 4.4)	3.51:1 (4,415m ²)	3.61:1 (3,759m ²)	2.5:1 (2,602m ²)	No*

* Clause 4.6 written request has been submitted.

15.3.2 Height of Buildings (Part 4.3)

The proposal does not comply with the maximum height development standard prescribed by this Part as detailed in the table above. Notwithstanding, Part 4.6 of this LEP allows exceptions to development standards which is assessed below.

15.3.3 Floor Space Ratio (Part 4.4)

The proposal does not comply with the maximum floor space development standard prescribed by this Part as detailed in the table above. Notwithstanding, Part 4.4A of this LEP allows exceptions to the floor space ratio as assessed immediately below.

15.3.4 Exceptions to Development Standards (Part 4.6)

- **Departure**

The proposal fails to comply with the *Height of buildings* and the *Floor space ratio* development standards prescribed by *Part 4.3* and *Part 4.4* respectively of this Plan.

- **Objectives**

The objectives of this clause is to provide flexibility in applying the development standard and to achieve better outcomes for and from the development in particular circumstances.

- **Written Request**

The Consent Authority must consider a written request from the applicant seeking justification of the contravention of the relevant development standard. The request must demonstrate that compliance with the development standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds to justify the contravention.

The written requests form part of the SEE submitted with the development application.

- **Assessment**

Council must be satisfied that the written request from the applicant adequately justifies the contravention. Furthermore, the Council must be satisfied the proposal is in the public interest

because it is *consistent with the relevant objectives of the particular standard and the zone* where the development is located.

The Department issued Planning Circular No.PS08-003 which notified Councils of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...” Clause 64 of the EPA Regulations provides that the Panel may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

The proposal is assessed against the *Objectives of the Development Standards* prescribed by Part 4.3 (Height of buildings) and 4.4 (Floor space ratio) as follows:

Height of Buildings (Part 4.3)

(a) To establish building heights that are consistent with the desired future character of the neighbourhood

For reasons already discussed above, the proposal satisfies this objective.

(b) To establish a transition in scale between zones to protect local amenity

Not relevant to this development located centrally within a B2 Zone.

(c) To minimise the loss of solar access to existing buildings and open space

There are currently no dwellings immediately opposite on the southern side of Knox Lane. These properties are currently commercial uses and therefore there are no controls that strictly apply for overshadowing of windows of habitable rooms or private open space.

Notwithstanding, if these adjoining properties were developed as shop-top housing in accordance with the current controls as prescribed by the WLEP 2014 and WDCP 2015, the shadow diagrams submitted indicate that solar access will be provided to the upper level residential components of these developed properties compliant with the terms of the controls.

The proposal satisfies this objective.

(d) To minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion

The proposal is sufficiently separated from the only nearby residential property immediately opposite on Cross Street. The separation of the development from this nearby property ensures it would not cause a detrimental impact on the amenity of its residents with regard to views, privacy, overshadowing, scale, bulk or visual intrusion. See below for further discussion.

The proposal satisfies this objective.

(e) To protect the amenity of the public domain by providing public views of the harbour and surrounding areas

The proposal satisfies this objective.

Floor Space Ratio (Part 4.4)

The relevant objective of this control states:

...(b) To ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

For reasons already discussed above, the proposal satisfies this objective.

Objectives of the Zone (B2 Local Centre)

The objectives for this Part have been stated earlier (Section 15.2.1).

For reasons already discussed, the proposal satisfies this objective.

Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

In *Wehbe v Pittwater Council [2007] NSWLEC 827*, Preston CJ established potential tests for determining whether a development standard could be considered to be unreasonable or unnecessary.

More recent cases (*Four2Five Pty Limited v Ashfield Council [2013] NSWLEC* and *Moskovitch v Waverley Council [2016] NSWLEC1015*) have indicated that under clause 4.6, in addition to compliance with the objectives of the development standard and the zone, the applicant must demonstrate sufficient environmental planning grounds for the variation.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard

For reasons already discussed, the proposal achieves the objectives underpinning the development standards.

Test 2 - The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.

The objectives of the standards are relevant to the development as they determine the relative impacts associated with its proposed height, scale and bulk. However, for reasons already discussed, compliance with the standards is not necessary in this instance.

Test 3 - The underlying objective of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Compliance with the standards would defeat the objective of the standard. The proposed development provides a height, floor space and subsequently a building envelope that is consistent with and contextually suitable with the approved developments immediately adjoining on Cross Street.

For reasons already discussed, compliance is unreasonable in this circumstance.

Test 4 - The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or

The height and FSR of existing and approved developments vary in different parts of the Double Bay Commercial Centre. The two immediately adjoining developments, being No.16-18 and No.20-26 Cross Street, approved under DA571/2014/1 and DA390/2015/1 respectively both exceed the height of buildings and FSR development standards to a similar extent as the proposed development.

It is not unreasonable to interpret that the Height of buildings and FSR development standards have been abandoned in this section of Cross Street as a result of the above mentioned approvals. However, any abandonment of these development standards is only relevant in the context of this immediate locality (Cross Street only) and not for the entire Double Bay Commercial Centre where these standards have been applied and maintained consistently.

Test 5 - The zoning (not the development standard) is unreasonable or inappropriate.

For reasons already discussed, compliance is unreasonable and inappropriate in the circumstance.

Environmental planning grounds which justify the contravention of the standard

In regard to this consideration, it is not sufficient to support a variation to a development standard by merely pointing to an absence of environment harm (*Hooker Corporation Pty Ltd v Hornsby Shire Council* [1986] 130 LGERA 438; *Memel Holdings Pty Ltd v Pittwater Council* [2000] NSWLEC 106; *Winten Property Group Ltd v North Sydney Council* [2001] NSW LEC 46). Therefore it is necessary to demonstrate that the public interest is satisfied in the circumstances of the case.

For reasons already discussed, there is sufficient environmental planning grounds to justify contravening the development standards in this instance.

- **Conclusion**

The written submissions from the applicant adequately demonstrates that the contravention of the *Height of buildings* and *Floor space ratio* development standard prescribed by *Clause 4.3* and *Clause 4.4* respectively are justified pursuant to the relevant matters for consideration prescribed by this Clause.

Furthermore, the proposal is in the public interest and is consistent with the objective of the development standards and those applicable to the development within the zone. Accordingly, departure from the development standards are justified in this instance.

15.4 Miscellaneous Provisions (Part 5)

15.4.1 Development within the Coastal Zone (Part 5.5)

The proposal satisfies the relevant criteria prescribed by this Part.

15.4.2 Heritage Conservation (Part 5.10)

The subject sites and buildings thereon are not listed on the State Heritage Register, have not been identified as a heritage item, are not a potential heritage item nor are they within or located adjacent to a Heritage Conservation Area. Demolition of the existing buildings is therefore supported.

The proposal satisfies the relevant criteria prescribed by this Part.

15.5 Additional Local Provisions (Part 6)

15.5.1 Acid sulphate soils (Part 6.1)

The subject sites are located within Land Class 2 of the Acid Sulfate Soils Map which applies to any works below the natural ground level.

A report on the Preliminary Site Investigation for Contamination was undertaken by Douglas Partners which includes an assessment on Potential Acid Sulfate Soils (PASS). The report indicates that the existing buildings on the site hinder detailed ground analysis. Council's Environmental Health Officer concurs with the findings of the submitted documents.

This report concludes the land will require further testing due to location of existing buildings that limits extensive ground testing. Notwithstanding, the sites can be made suitable for the proposed development subject to implementation of an ASSMP. This Plan will enable appropriate management of the potential risks associated with any potential on-site ASS including risks to structures, surrounding surface water bodies and groundwater. These measures can be imposed by conditions.

In light of the above, and subject to appropriate conditions, the proposal satisfies the relevant criteria prescribed by this part.

15.5.2 Earthworks (Part 6.2)

There are no mitigating circumstances associated with the proposed excavation that will detrimentally impact the amenity of adjoining residents, the environment, the water table or any adjoining structures. Standard conditions can be applied to mitigate any expected impacts associated with the excavation and construction process including vibration monitoring, submission of dilapidation reports, dust control and the like.

The proposal satisfies the relevant criteria prescribed by this part.

15.5.3 Flood planning (Part 6.3)

Council's Drainage Engineer has reviewed the proposal and indicates that the proposal can satisfy the terms of this part subject to the imposition of conditions.

The proposal satisfies the relevant criteria prescribed by this Part.

16. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

NOTE: The provisions of SEPP 65 Clause 6(1) and (2) prescribe that in the event of any inconsistency between the SEPP and another environmental planning instrument, the SEPP prevails to the extent of the inconsistency.

Part A - Introduction and Administration

16.1 About this DCP (A1.1)

16.1.1 Objectives of this Plan (A1.1.5)

The proposed development for shop-top housing is a permissible form of development and for reasons already assessed and that follows, satisfies the relevant objectives prescribed by this Plan.

Part D – Double Bay Centre (Chapter D5)

16.2 Double Bay Centre (Chapter D5)

16.2.1 Introduction (D5.1)

- **Objectives (D5.1.3)**

The proposal satisfies the relevant objectives prescribed by this Plan.

16.2.2 Understanding the context (D5.2)

Based on the assessment undertaken and that follows, the proposed development satisfies the relevant matters for consideration in relation to the existing and established future character for the immediately locality (Cross Street).

16.2.3 Urban structure (D5.3)

- ***Key strategies for the Double Bay Centre***

The proposal satisfies the relevant key strategies prescribed by this part.

16.2.4 Street character (D5.4)

For reasons already assessed and that follows, the proposal satisfies the relevant desired future character prescribed by this part.

16.3 Built form envelopes: Control drawings (D5.5)

16.3.1 Compliance Table (Non-compliances are highlighted)

Site Area 1,041m ²	Proposed	Control	Complies
Maximum Height – Storeys & (m)	6 & (19.71 - Roof) (21.21 – Plant/Lift)	4 & (14.7)	No
Occupiable Area (%)			
- Levels 1-2	50-100%	50-100%	Yes
- Levels 3-4	50-100%	50-100%	Yes
- Levels 5-6	50-100%	n/a*	n/a*
Build-to-line Cross Street			
- Cross Street (Level 1-4)	50-100%	50-100%	Yes
- Knox Lane (Levels 1-2)	50-100%	n/a*	n/a*
Minimum Front Setback (Cross Street)			
- Level 1	0	0	Yes
- Level 2	0	0	Yes
- Level 3	0	0	Yes
- Level 4	0	3.5	No
- Level 5	0	n/a*	n/a*
- Level 6	2.75	n/a*	n/a*
Minimum Rear Setback (Knox Lane)			
- Level 1	2	2	Yes
- Level 2	0	2	No
- Level 3	1.75	8	No
- Level 4	1.75	8	No
- Level 5	1.75	n/a*	n/a*
- Level 6	5.05	n/a*	n/a*
Building Articulation (L1-4 Cross Street)			
- Depth (m)	>2.4	2.4	Yes*
- Floor area & open space elements (%)	Up to 40%	Up to 40%	Yes*
Minimum floor-to-ceiling heights (m)			
- Level 1	3.075	4	No
- Level 2-6 (m)	3.1	3.1	Yes
Minimum floor-to-floor heights (m)	2.7	2.7	Yes**
Minimum Awning soffit height (m)	3.2	3.2	Yes
Minimum Arcade			
- Width (m)	3	3	Yes
- Height (m)	3.075	3.6	No
Maximum residential access frontage (m)	8% or (3)	20% or (7)	Yes
Active lane frontage (m)	53% or (19)	75% or (36)	No
Minimum setback of windows/balconies (m)	<9 & <12	9 & 12	No**
Minimum Private Open Space			
- Small dwelling (<60m ²)	>8	8	Yes**
- Medium dwelling (60-90m ²)	>12	12	Yes**
- Large dwelling (>90m ²)	>16	16	Yes**
- Preferred & Minimum depth (m)	>2.4 & >1.8	2.4 & 1.8	Yes**
Cross-ventilation to dwellings	71%	80%	No**
Hours of Solar Access to north facing <i>habitable windows</i> of adjoining properties between 9am and 3pm on 22 June	>2	2	Yes^
Hours of Solar Access to <i>habitable windows</i> & <i>private open space</i> of development between 9am and 3pm on 22 June	>3 & >2	3 & 2	Yes**

* **Proposed Levels 5 & 6**
These levels of the development extends outside the permitted envelope controls.

** **SEPP 65**
These controls are superseded by SEPP 65 as detailed and assessed above.

^ **Solar Access**
There are currently no dwellings adjoining Knox Lane. These properties are currently commercial use and therefore the terms of this control do not strictly apply.

16.4 Development Controls (D5.6)

16.4.1 Use (5.6.2)

For reasons already assessed above, the proposal satisfies the relevant criteria prescribed by this control.

16.4.2 Urban Character (5.6.3)

- **Building Envelopes (5.6.3.1)**

These controls outline an envelope for this site. The proposed development exceeds these prescribed envelope controls as noted in the Compliance Table above with particular regard to the setback of Level 4 to Cross Street as well as the Knox Lane setback. There are no controls applicable to Levels 5 & 6 as these levels extend above and beyond the envisaged envelope controls.

Notwithstanding the non-compliances, the proposed built form and in particular its height and setbacks from both street fronts is contextually compatible and consistent with the recently approved developments immediately adjoining to the east. These relatively recently approved developments that are under construction have established the character of this locality (Cross Street).

In this regard, the proposed development satisfies the relevant objective of this control which states: “...*Development should contribute to the desired future character of streetscapes with appropriate and consistent building forms.*”

- **Height (5.6.3.2)**

For reasons already assessed, the proposal satisfies the relevant objective underpinning this control which states in part: “...*Encourage buildings to achieve the heights along street ...frontages...*”

The proposal is also non-compliant with the minimum floor to ceiling heights at ground level. The non-compliance is a result of the need to raise the ground floor level in order to address potential flooding entering the retail spaces. Notwithstanding this, the proposed retail spaces are provided with wide frontages, are north facing and have an open outlook over both street fronts. For these reasons, the proposal satisfies the objective underpinning this control which states in part: “...*to provide amenity to building users...*”

- **Building articulation (5.6.3.3)**

Levels 1-4 of the proposal complies with the prescribed controls as noted in the Compliance Table above.

There are no controls specified for Level 5 and 6 but nevertheless they remain consistent with the architectural language of the lower levels. In this regard, the proposal satisfies the objective underpinning this control which states in part: “...*promote buildings of articulated design and massing ...that contribute to the character of the street...*”

- **Setbacks (5.3.6.4)**

For reasons already discussed, the proposal satisfies the objective underpinning this control which states in part: “...*encourage consistent building lines to provide coherent streetscapes...*”

The setback controls applicable to the residential component of the development are overridden by the SEPP 65 provisions which have been assessed above.

- **Architectural resolution (5.6.3.6)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Roof design (5.6.3.7)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Heritage items and character buildings (5.6.3.8)**

The proposal satisfies the relevant criteria prescribed by this control.

16.4.3 Relationship to public domain (5.6.4)

- **Awnings (5.6.4.1)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Arcades, walkways and courtyards (5.6.4.3)**

The proposal satisfies the relevant criteria prescribed by this control.

- **Ground floor active lane frontage (5.6.4.5)**

This control “*generally requires*” a minimum of 75% of active frontage to the laneway.

The proposal achieves an active frontage of 53% to Knox Lane thereby resulting in a non-compliance with this control. The non-compliance is primarily a result of services required for the building. These elements have been designed to be unobtrusive and have minimal lane presence. In the circumstance and having regard to the terms of this control, the proposal nevertheless satisfies the relevant objective underpinning this control which state in part: “...*Co-ordinate the provision of ...service access to maximise ground floor activity along lanes.*”

The balance of the proposal satisfies the relevant criteria prescribed by this control.

16.4.4 Amenity (5.6.5)

- **Visual privacy (5.6.5.1)**

The setback controls applicable to the residential component of the development, which directly affect visual privacy, are overridden by the SEPP 65 provisions which have been assessed above.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

- **Acoustic *privacy* (5.6.5.2)**

The setback controls applicable to the residential component of the development, which also directly affect acoustic privacy, are overridden by the SEPP 65 provisions which have been assessed above.

The location of the air-conditioning and lift plant is unlikely to be detrimental to the amenity of adjoining residents. Standard conditions forming part of the recommendation have been applied to mitigate the likely impacts from mechanical plant equipment and enable action should a nuisance arise.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

- ***Landscaped areas* (5.6.5.3)**

Not applicable to this development.

- ***Private open space* (5.6.5.4)**

This issue has been addressed under the provisions of SEPP 65 which supersede these controls.

For reasons already outlined, the proposal satisfies the relevant criteria prescribed by this part.

16.4.5 Solar access and natural ventilation (5.6.6)

- ***Solar access* (5.6.6.1)**

For reasons already discussed, the proposal satisfies the relevant criteria prescribed by this part.

This issue of providing solar access to the subject apartments has been addressed under the provisions of SEPP 65 which supersede these controls.

- ***Cross-ventilation* (5.6.6.2)**

This issue has been addressed under the provisions of SEPP 65 which supersede these controls.

For reasons already outlined, the proposal satisfies the relevant criteria prescribed by this part.

16.4.6 Geotechnical and hydrogeology (5.6.7)

- ***Objectives and Controls***

The issue of Site Contamination and Acid Sulfate Soils is assessed under the relevant heads of consideration in this report.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

16.4.7 On-site parking (5.6.8)

- ***On-site parking (5.6.8.1)***

This control requires that parking must comply with the terms of Chapter E1 of this DCP.

See below for further assessment.

- ***Vehicular access (5.6.8.2)***

The proposal seeks to obtain vehicular access to the basement levels via an easement that passes through the basement levels of the approved development immediately adjoining to the east, being No.20-26 Cross Street. The proposal includes draft terms for an easement for this to occur. Should consent be granted, it is recommended that a deferred commencement consent be applied (see **Annexure 7 - Draft Condition A.3**).

The issue with the proposed development is whether the approved driveway on the adjoining development (No.20-26 Cross Street) and the laneway is capable of accommodating an increase in vehicular movements from the proposed development.

The Traffic Report (TR) by Colston Budd Rogers & Kafes Pty Ltd states in part as follows:

“...The combined traffic generation from both the approved development at 20-26 Cross Street and the proposed development at 28-34 Cross Street ...would not have noticeable effects on the operation of the surrounding road network, including Knox Lane...”

In relation to this issue, Council’s Traffic Engineer comments state in part:

“...the low traffic generation would not have noticeable effects on the operation of the surrounding road network. Intersections would continue to operate at their existing satisfactory levels of service...”

Council’s Traffic Engineer recommends that sight plays for the driveway be provided at the boundary between No.20-26 Cross Street and 28-34 Cross Street. The plays are required to reduce potential vehicle and pedestrian conflict particularly when vehicles are exiting the driveway (see **Annexure 7 - Draft Condition C.1**).

The proposal nevertheless satisfies the relevant criteria prescribed by this control.

Further assessment on the basement layout follows.

- ***Site facilities***

The issue of waste storage facilities is assessed below.

The balance of the proposal satisfies the relevant criteria prescribed by this control.

Part E - General Controls for All Development

16.5 Parking and Access (Chapter E1)

16.5.1 Introduction (E1.1)

- **Objectives (E1.1.3)**

The proposal satisfies the relevant objectives prescribed by this Plan.

16.5.2 Monetary contributions instead of parking spaces (E1.2.4)

These provisions state various considerations for Council to undertake as to whether a monetary contribution is required in-lieu of providing car parking on-site. The Section 94 Contributions Plan provides the mechanism for the monetary contribution. See below for further assessment.

16.5.3 Residential and non-residential parking (E1.4 to E1.7)

The proposal includes a 2-level basement which can accommodate 36 car parking spaces, 4 motorcycle spaces and 29 bicycle parking.

The DCP requires a maximum of 31 car parking spaces for the residential component and a minimum of 11 spaces for the commercial component of the development. That is a maximum total of 42 car parking spaces.

The number of motorcycle spaces and bicycle parking proposed is compliant with the terms of these controls.

Further discussion on car parking is discussed immediately below.

16.5.4 Variations to the parking generation rates (E1.8)

This control enables Council to support a variation to the parking generation rates.

Council's Traffic Engineer indicates that based on the RMS guidelines, the traffic generated by the existing commercial and retail development that is to be demolished is similar to the proposed development that replaces it.

The TR submitted addresses the issue of parking and an exemption is recommended in this instance in fully providing the maximum parking spaces because:

- The existing land use already generates a similar parking deficiency.
- This location appeals to residents and tenants who do not own, or wish to own a car.
- The Edgecliff Bus/Rail Interchange is a main transportation hub that is less than 1km from the site providing alternate transport options.

- There are bus routes on New South Head Road and Manning Road all in close proximity to the site that also provide alternate transport options.
- The Double Bay Wharf with access to Sydney Ferries is less than 1km from the site a further alternate transport option.
- There are 4 public car parks in the Centre that could be utilised by customers and visitors of the development.
- The Double Bay Centre provides infrastructure to cater for the demands of local residents with regard to food, entertainment and other services.
- The parking demand created by the retail components of the development is highly likely to overlap with existing retail and commercial activity in the centre.
- The site is in close vicinity of existing car sharing services.
- Council's residential car parking requirements are a maximum control not a minimum.

The basement car park and the surrounding road network could cater for the proposed development which is permissible and expected in this locality. Council's Traffic Engineer recommends a restriction be placed on any future residents, owners or visitors of being eligible for local parking permits. This position is supported (see **Annexure 7 - Draft Condition I.6**).

Parking demand created by the retail component of the development is highly likely to overlap with existing retail activity in the centre. Given the overlapping nature of visitors to Double Bay, visitor parking is not encouraged on this site. The reason being is that managing the restricted access gate on Knox Lane may potentially cause traffic and pedestrian conflict. In this regard, the surplus of visitor parking spaces should be allocated to the retail component of the development.

In light of the above, the adaptable visitor car parking space and vacant area immediately adjoining on Basement Level 01 should be converted to car parking spaces (see **Annexure 7 - Draft Condition C.1**). The conversion of the vacant area increase parking on site by an additional space.

In light of the above, it is recommended that the each retail spaces is afforded a parking space. Barring the 1 bedroom units, all other units are recommended to be afforded with at least 1 parking space each. The 3 and 4 bedroom units are recommended to be afforded with 2 parking spaces each. Council's Traffic Engineer supports this approach. A condition is recommended to be applied that allocates the parking spaces within the basement levels (see **Annexure 7 - Draft Condition I.7**).

The proposal satisfies the relevant criteria prescribed by this part.

16.5.5 Off-street loading and servicing facilities (E1.10)

This control indicates 1 off-street loading and servicing space may be required for the commercial component of the development. However, given the security restriction to access to the basement levels, it is not feasible to provide off-street loading facilities on the premises. Notwithstanding, the existing loading zones in close proximity to the site are sufficient to cater for the development. Council's Traffic Engineer supports this position. This position also satisfies Part 5.6.4.5 of this DCP and in particular Objective O5 which states in part: "*...discourage off-street loading facilities ...if on-street loading bays are available.*"

16.6 Stormwater and Flood Risk Management (Chapter E2)

The proposal satisfies the relevant criteria prescribed by this control and/or can be addressed by conditions.

16.7 Contaminated Land (Chapter E4)

This Chapter identifies requirements for applicants when proposing a development that must be consistent with the provisions of SEPP 55 for managing contaminated land. The provisions of SEPP 55 have been assessed above.

The proposal satisfies the relevant considerations prescribed by this part and are addressed by condition.

16.8 Waste Management (Chapter E5)

The Waste Management Plan (WMP) submitted provides details of the anticipated waste generation for the retail and residential components of the development based on Council's current standards.

Replacement Application III, as detailed above, has amended the ground floor layout to address the waste storage facilities of the proposed development. The originally submitted waste storage facilities catered for the collection of 660ltr waste bins. These bins are not suitable for collection in this location as they would be required to be wheeled onto the lane to be collected by a rear end loader. Council collects bins from the kerb by a side loader. The ground floor layout has been amended accordingly to cater for the 240ltr waste bins.

The amended ground floor layout and the proposed garbage storage facilities satisfies the relevant criteria prescribed by this part.

To remove any conflict in the management of waste disposal from this development, the WMP must be modified to reflect the amended garbage storage design and waste bin sizes as detailed above (see **Annexure 7 - Draft Condition C.1**).

Subject to the imposition of conditions, the proposal satisfies the relevant criteria prescribed by this part.

16.9 Sustainability (Chapter E6)

The proposal satisfies the relevant criteria prescribed by this part and/or can be addressed by Council's standard conditions.

16.10 Adaptable Housing (Chapter E8)

The proposal satisfies the relevant criteria prescribed by this part

17. DRAFT AMENDMENTS TO POLICIES AND PLANS

There are no draft amendments applicable to this development.

18. SECTION 94 & 94A CONTRIBUTION PLANS

Both Contribution Plans are applicable. However, the S94 Contribution Plan was developed to fund an additional half level on top of the existing public car parking facility in Cross Street, Double Bay. Council is no longer pursuing this development option and therefore the contribution under this plan is no longer relevant. Section 94B(1) of the EPA Act 1979 states in part that: "*...a consent authority may impose a condition under s94 only if it is ...in accordance with a contribution plan.*"

On this basis, a levy pursuant to Section 94A is recommended to be applied because it has a broader application including community facilities, environmental works, Council property, public infrastructure works, public open space and business centres and harbourside works.

The contribution under this plan is calculated as follows:

Development Type	Levy (percentage of proposed cost of development)	Cost of works + GST
All developments	1%	\$25,428,904.00

The total contribution under the provisions of this plan is **\$254,428.90**.

19. APPLICABLE ACTS/REGULATIONS

19.1 Demolition of Structures

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires the development to comply with Australian Standard AS 2601-2004: The demolition of structures. Compliance with this requirement can be enforced by condition.

19.2 Fire Safety

An annual fire safety schedule is required to be submitted and compliance with this requirement can be enforced by condition.

19.3 Building Code of Australia

The proposal is required to comply with the relevant provisions of the Building Code of Australia. Compliance with these requirements can be enforced by condition.

20. THE LIKELY IMPACTS OF THE PROPOSAL

20.1 Views

A number of submissions received have raised concern regarding view loss from the proposed development.

The Double Bay Centre DCP has no control or criteria for consideration in relation to view loss except for a reference in the objectives which is “*to encourage view sharing*”. Notwithstanding, the impact on views is a relevant consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.

In assessing the view impact, the Land & Environment Court, in *Tenacity Consulting Pty Ltd v Warringah Council* (2004) adopted ***planning principle*** for assessing view impacts. These steps and assessment are as follows:

- ***What is the value of the view?***

The concerns expressed primarily relate to loss of district views and views of Sydney Harbour.

- ***From what part of the properties are the views obtained?***

From No.343a Edgecliff Road, views of Double Bay and Sydney Harbour are afforded from all levels of the dwelling and its grounds.

From No.45-51 Cross Street, the primary views are to the north towards Sydney Harbour. There are secondary south facing windows and associated balconies looking back towards the Double Commercial Centre including over the subject site.

- ***What is the extent of the impact?***

From *No.343a Edgecliff Road* the view impact is considered to be negligible.

From *No.45-51 Cross Street* the view impact is considered to be negligible.

- ***What is the reasonableness of the proposal that is causing the impact?***

The Court poses two questions, the first question relates to whether a non-compliance with one or more planning controls results in view loss.

The existing district views of the Commercial Centre afforded to the residents immediately opposite on Cross Street have been attained because of the undeveloped nature of the subject site. Any building form fully compliant with Council's envelope and height control would impact on these existing views. The proposed development would form a part of the district views of the business centre. In addition, the primary views afforded to these properties are to the north to Sydney Harbour that are unaffected by the proposed development.

In relation to the views afforded from the dwelling at Edgecliff, the subject development would form another piece of the urban landscape and will not be discernible in the context of the totality of views afforded from this residence or its grounds.

The second question posed by the Court relates to whether a more skilful design could provide the same development potential whilst reducing the impact on views. As stated, it is a fully compliant and expected building envelope that impacts on existing district views of the business centre.

The degree of the view impact in this circumstance is reasonable and the proposal satisfies the principle established by the Court.

20.2 General

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

21. THE PUBLIC INTEREST

The proposal is in the public interest.

22. DISCLOSURE STATEMENTS

Under Section 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.

23. THE PUBLIC INTEREST

The proposal is not in the public interest.

24. DISCLOSURE STATEMENTS

Under Section 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.

25. CONCLUSION

The assessment of the development against the relevant considerations under Section 4.15 of the *Environmental Planning and Assessment Act* 1979, State Environmental Planning Policy 65, Woollahra Local Environmental Plan 2014 and the Woollahra Development Control Plan 2015, concludes that the proposal is an appropriate development of the site and is recommended for Approval.

26. RECOMMENDATION: Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979

THAT the Sydney Eastern City Planning Panel, as the consent authority, is satisfied that the matters required to be addressed under Clause 4.6(4) of the Woollahra Local Environmental Plan 2014 have been demonstrated and that consent may be granted to the Development Application, which contravenes the height development standard (14.7m) under Clause 4.3 and floor space ratio development standard (2.5:1) under Clause 4.4 of Woollahra LEP 2014. The Panel assumes the concurrence of the Secretary, Department Planning and Environment.

AND

THAT the Sydney Eastern City Planning Panel, as the consent authority, grant development consent to DA 617/2017/1 for demolition of the existing development and construction of a 6 storey mixed development with ground floor retail, 21 residential units over 5 levels and 2 levels of basement parking for 36 vehicles and 4 motorbikes with vehicular access via 20-26 Cross St on land at 28-34 New South Head Road DOUBLE BAY, subject to the draft conditions attached as Annexure 8.

ANNEXURES

1. Plans and elevations
2. Referral Response – Urban Design Planner
3. Referral Response – Engineers
4. Referral Response – Traffic
5. Referral Response – WaterNSW
6. Details of Submissions
7. Draft Conditions