

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SCL021
DA Number	33.2018.1
LGA	Woollahra Council
Proposed Development	Demolition of all existing commercial buildings & construction of a new six (6) storey mixed-use building including 2 retail tenancies on ground floor, 5 storeys containing 23 residential units above, with 2 levels of below ground basement car parking, vehicular access via Gumtree Lane, provision of a through-site pedestrian link, and associated landscaping
Street Address	21, 23-25, 27 Bay Street DOUBLE BAY
Applicant/Owner	Pilmyth Pty Ltd; Thinqnet Bookings Pty Ltd (Owner) Thinqnet Bookings Pty Ltd c/o MHN Design Union (Applicant)
Date of DA lodgement	05.02.2018
Number of Submissions	Eight (8) – Including two (2) letters of support
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the Environmental Planning and Assessment Act 1979)	Capital Investment Value of \$22,290,000 (CIV > \$20 Million; Development applications lodged prior to 1 March 2018)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • SYDNEY REGIONAL ENVIRONMENTAL PLAN (SYDNEY HARBOUR CATCHMENT) 2005 • STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004 • STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND • STATE ENVIRONMENTAL PLANNING POLICY 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT • STATE ENVIRONMENTAL PLANNING POLICY 65: APARTMENT DESIGN GUIDE • WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014 • WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015 • SECTION 94 & 94A CONTRIBUTION PLANS • OBJECTORS CONCERNS
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Architectural plans and elevations • Referral Responses – Development Engineer • Referral Response – Drainage Engineer • Referral Response – Traffic Engineer • Referral Response – Trees and Landscaping • Referral Response – Heritage Officer • Referral Response – Urban Designer • Referral Responses – Environmental Health • Referral Response – Property • Referral Response – WaterNSW • Submissions • Draft conditions without prejudice
Report prepared by	Wilson Perdigao – Senior Assessment Officer
Report date	24 September 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **No (refer to Applicants SEE)**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

DEVELOPMENT APPLICATION ASSESSMENT REPORT

PANEL REFERENCE	2017SCL021
FILE No.	DA33/2018/1
ADDRESS	21, 23-25 & 27 Bay Street DOUBLE BAY
COUNCIL WARD	Double Bay
SITES AREA	820m ²
ZONING	B2 Local Centre
PROPOSAL	Demolition of all existing commercial buildings & construction of a new six (6) storey mixed-use building including 2 retail tenancies on ground floor, 5 storeys containing 23 residential units above, with 2 levels of below ground basement car parking, vehicular access via Gumtree Lane, provision of a through-site pedestrian link, and associated landscaping
TYPE OF CONSENT	Integrated development
COST OF WORKS	\$20,263,325.00
DATE LODGED	05/02/2018
APPLICANT	Thinqnet Bookings Pty Ltd c/o MHN Design Union
OWNER	Pilmyth Pty Ltd; Thinqnet Bookings Pty Ltd
AUTHOR	Mr W Perdigao
TEAM LEADER	Mr T Wong
SUBMISSIONS	Six (6)
RECOMMENDATION	Refusal

1. REASON FOR REPORT TO SYDNEY EASTERN CITY PLANNING PANEL (SECPP)

Pursuant to Schedule 4A, Sub-clause 3 of the Environmental Planning and Assessment Act 1979, the application is to be determined by the Sydney Eastern City Planning Panel because it is: *"...Development that has a capital investment value of more than \$20 million."* and was lodged prior to 1 March 2018.

2. REASONS FOR RECOMMENDATION

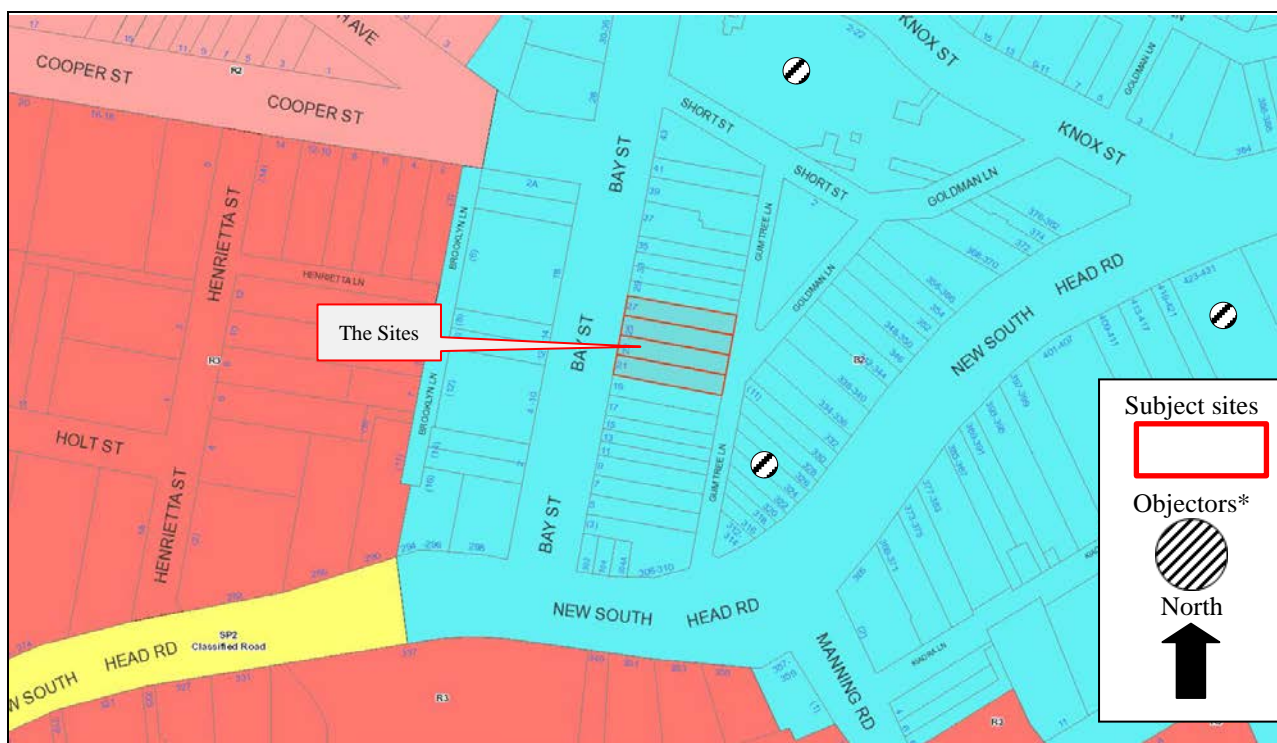
The application has been assessed within the framework of the relevant matters for consideration under Section 4.15 of the Environmental Planning & Assessment Act 1979 and is recommended for **REFUSAL** because:

- The proposal fails to meet the Height of Buildings and Floor Space Ratio development standards prescribed by Woollahra Local Environmental Plan 2014 and the submitted CI 4.6 written requests to justify the contravention are not well founded;
- The proposal exceeds the envelope and setback controls prescribed by the State Environmental Planning Policy 65 Apartment Design Guide and Woollahra Development Control Plan 2015;

- The removal of the existing commercial uses from the site and the lack of adequate replacement in the proposed development is detrimental to the business centre and contrary to the key objective of the zone which is: “...to attract new business and commercial opportunities;”
- By virtue of the non-compliances with the height, floor space and envelope controls, the proposal fails to satisfy the key objective of the zone which is: “...to ensure the development is of a height and scale that achieves the desired future character of the neighbourhood;”
- The design of the proposed development is contrary to the relevant planning controls and fails to satisfy the key strategies for the Double Bay Commercial Centre the first of which states: “...Enhance the public domain of Double Bay by applying a co-ordinated approach to the public domain and streetscape;”
- The proposed height and scale of the development is contextually unsuitable to the commercial centre it forms a part of;
- The proposal is not in the public interest.

Note: A Class 1 Appeal (No. 18/282273) was lodged on 18 September 2018 with the Land and Environment Court (LEC) on the grounds of deemed refusal.

3. LOCALITY PLAN



*Three (3) submissions are outside of the above Locality Plan or from an Unknown Address

4. PROPOSAL

The proposal involves the demolition of all existing structures from the site and construction of a new six (6) storey shop-top housing development including:

- Demolition and site preparation works;
- Excavation to accommodate two (2) levels of basement car parking for 38 vehicles (24 residential, 5 visitor, 8 retail, and dedicated car wash bay);
- Construction of a six (6) storey building above the basement levels, accommodating:

- Ground level with two (2) retail tenancies separated by a residential lobby and through-site pedestrian link, plant and waste storage rooms;
- Five (5) storeys above the ground level containing twenty-three (23) residential units (comprising of, 3 x 1 bedroom, 10 x 2 bedrooms, and 10 x 3 bedrooms);
- Two landscaped rooftop gardens are located on Level 1 incorporating light-wells
- Vehicular access via Gumtree Lane;
- The proposed hours of operation of the retail tenancies are 6am-10pm, Monday-Saturday and 7am-10pm Sunday.



Photomontage of Proposal (as viewed from Bay Street) (Source: MHDUNION)



Photomontage of Proposal (as viewed from Gumtree Lane) (Source: MHNDUNION)

5. ISSUES SUMMARY

5.1. Exceptions to Development Standards in Woollahra Local Environmental Plan 2014

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings - Lift/Stair Overrun - Roof Parapet	7.9m or 53% departure from the 14.7m control 6.18m or 42% departure from the 14.7m control	Unsatisfactory
Part 4.4	Floor Space Ratio	928m ² or 45% departure from the 2.5:1 control	Unsatisfactory

5.2. Primary Issues (including objectors concerns)

- Non-compliance with the height of buildings development standard (WLEP 2014) and the number of storey controls (WDCP 2015);
- Non-compliance with the floor space ratio development standard;
- Excessive building height, bulk and scale;
- Breaches of the number of storey, envelope, setback and other controls in the Woollahra DCP 2015;
- Breaches of SEPP 65 and the Apartment Design Guide;
- Overshadowing impacts;
- Parking and traffic impacts;
- Construction management;
- Inconsistent with the existing built forms directly adjoining the subject site;
- Inconsistent with the desired future character, in particular, Part D5.1.3: Double Bay Centre, Part D5.4.4 Bay Street (south), and Part D5.4.11: Gumtree Lane – Objective a) & c);
- Clause 4.6 written request (Part 4.3 & Part 4.4) are not well founded;
- Acid Sulphate Soils and Contaminated Land;
- Sense of enclosure

- Aural & visual privacy
- Inaccurate information submitted
- Views
- Should be a Planning Proposal
- Over-development
- Undesirable precedent
- Inconsistent with the zone objectives
- Loss of village character
- Loss of commercial use and floor space which is detrimental to the Double Bay centre
- Loss of light.

The issues raised against the development are assessed where necessary under the relevant heads of consideration in the body of the report that follows.

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features, existing buildings and structures
<p>The subject site encompasses three (3) lots, being No's 21, 23-25 and 27 Bay Street Double Bay. These lots have a primary frontage to Bay Street (west) and a secondary (rear) frontage to Gumtree Lane (east) and comprise the following:</p> <ul style="list-style-type: none">• No 21 Bay Street – this lot contains a single-storey rendered masonry building accommodating a retail premises;• No's 23-25 Bay Street – this lot contains a 2-3 storey building with parking at ground level off the lane at the rear. It accommodates two ground floor retail premises and commercial premises at first floor level;• No 27 Bay Street – this lot contains a two-storey building with parking off the lane at the rear. It accommodates a ground floor retail premises and a commercial premises at first floor level. <p>Each lot is rectangular in shape and has similar dimensions. The total site frontage to Bay Street and Gumtree Lane are 24.355m and 24.445m, respectively with an average site depth of approximately 29.5m. The area of the site is 820m².</p>
Topography
<p>The sites are relatively level.</p>
Environment
<p>The subject site forms part of the south section of Bay Street. The Double Bay Centre comprises of a mix of buildings. The subject site is surrounded by the following:</p> <ul style="list-style-type: none">• To the north, is a group of three two-storey terrace style buildings, No's 29-33 Bay Street identified as Character Buildings within the Woollahra DCP 2015. Further north is a six storey shop-top housing development, the Cosmopolitan Building.• To the south, is a mix of older and contemporary style two-storey commercial buildings.• To the west, directly across Bay Street is a mixture of older and contemporary buildings ranging from two to four storeys. Further west, is a low-density residential precinct.• To the east, across Gumtree Lane is a mix of old and contemporary styled commercial buildings of two to three storeys which are orientated primarily towards New South Head Road. <p>Development that surrounds the site comprises a mixture of uses such as commercial, retail, hotel, office, residential and places of public entertainment.</p>



7. RELEVANT PROPERTY HISTORY

Current use
Commercial / Retail
Relevant Application History
There have been numerous applications for change of use and fitout for various retail and commercial suites within the existing buildings but none are relevant to the scope of works proposed.
Pre-DA
Nil.
Requests for Additional Information and Replacement Applications
07.02.2018 – A Stop the clock letter was sent to the applicant requesting: <ol style="list-style-type: none"> 1. Additional fees required for integrated development applications; 2. 3D digital model. <p>This request was satisfied.</p> <p>15.05.2018 – An amended stormwater management design was required. This request was satisfied on 18 June 2018.</p>
Land and Environment Court Appeal(s)
An LEC appeal was lodged by the applicant on 18.09.2018

8. REFERRALS

Referral	Summary of Referral Response	Annexure
Development Engineer	Acceptable – Subject to Conditions .	2
Drainage Engineer	Acceptable – Subject to Conditions .	3
Traffic	Acceptable – Subject to Conditions .	4
Trees and Landscaping	Acceptable – Subject to several Conditions relating to the provision of several appropriate tree preservation and protection measures of Council owned trees on Bay Street prior to and during construction.	5
Heritage	Acceptable – The demolition of the subject buildings is supported. No heritage conservation conditions required.	6
Urban Design	Refusal.	7

Referral	Summary of Referral Response	Annexure
Environmental Health	Acceptable – Council’s Environmental Health Officer has determined that the proposal is satisfactory, in terms of Acid Sulphate Soils & Contaminated Land, subject to Conditions .	8
Property (Owner’s Consent)	Acceptable – Subject to Conditions .	9
NSW Police (CPTED)	No response received.	
Water NSW	Acceptable – General Terms of Approval provided under the <i>Water Management Act 2000</i> .	10
Energy Australia	No response yet received, however the applicant had contacted Ausgrid prior to DA lodgement for preliminary discussions.	

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15(1)

The relevant matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979 include the following:

- (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 Planning 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) *(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) *(Repealed)*

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 from 28 February 2018 to 29 March 2018 in accordance with Chapters A2.2.1, A2.3.1 and A2.8 of the Woollahra DCP 2015. Submissions were received from:

1. **Double Bay Residents Association** PO Box 1684
2. **Janine Adams** of 2-22 Knox Street Double Bay
3. **Peter Breed** of unknown address
4. **Amanda Stewart & Kevin Purdy** of 343A Edgecliff Road
5. **Bob Chambers BBC Consulting Planners** on behalf of Golden Sheaf Hotel
6. **Avrom Sank** of 324 New South Head Road Double Bay

Letters of Support

7. **Rob Turchini**, General Manager of Loftex
8. **Dennis Meyer** of Anka Property Group

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

9.2. Amended Plans

The amended stormwater management plan as noted in Section 7 was not re-notified to surrounding residents and previous objectors under Chapters A2.4 and A2.8 of the Woollahra DCP 2015 because it was considered to have no greater cumulative environmental or amenity impact.

9.3. Statutory Declaration

The applicant has completed the statutory declaration dated 03.04.2018 declaring that the site notice for DA33/2018/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

10. STATE ENVIRONMENTAL PLANNING POLICY 64: ADVERTISING AND SIGNAGE

There is no signage proposed under this application.

11. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

The aims of SEPP 55 are to *promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment:*

- a) *By specifying when consent is required, and when it is not required, for a remediation work*
- b) *By specifying certain considerations that are relevant in rezoning land and in determining development applications in general and development applications for consent to carry out a remediation work in particular*
- c) *By requiring that a remediation work meet certain standards and notification requirements*

Under Clause 7(1)(a) of SEPP 55 – Remediation of Land, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

Due to existing buildings on the site that limits extensive ground testing, the applicant has provided a *Stage 1 Preliminary Environmental Site Assessment* undertaken by EIS Environmental Investigation Services (*REF: E30721KHppt-rev1* dated 19 March 2018).

This report concludes that

“...the historical land uses and potential sources of contamination identified would not preclude the proposed development. However, the following is recommended to better assess the risks associated with the CoPC:

- *A preliminary intrusive investigation should be undertaken either prior to or following demolition to make an assessment of the soil and groundwater contamination conditions;*
- *An ASS assessment should be undertaken either prior to or following demolition to establish the potential for actual or potential ASS to be present, and assess the need to prepare an ASS management plan; and*
- *A hazardous building materials survey should be undertaken prior to demolition of the buildings. Following demolition of the buildings (and preferably prior to removal of the hardstand), an asbestos clearance certificate should be provided... ”*

In essence, the subject sites land will likely require further testing but can be made suitable for the proposed development. The recommended measures within the report can be imposed by appropriate conditions of consent, prior to the issuing of a Construction Certificate.

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

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. In this instance, the proposed six (6) storey building including twenty-three (23) residential units. Based on the composition of this development, 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:

12.1. Design Quality Principles

Clause 30(2) of SEPP 65 requires the assessment of the application against the 9 design quality principles in Schedule 1. Council's Urban Design Officer has provided an assessment of the proposal against the 9 design quality principles contained in Schedule 1 and against the considerations contained in the associated *Apartment Design Guide*.

This assessment has been undertaken by Council's Urban Design Officer and the Applicant, commentary is also provided from Council's Assessment Officer.

12.2.1 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 Comments: *"The proposal does not respond to either the current context or to the desired future context as envisaged in the WDCP 2015. Currently the location is dominated by two storey development, while the controls envisage a maximum of four storey development. The proposal is for a six storey development.*

The proposal does however provide a through site link and active frontage to both Bay Street and Gum Tree Lane."

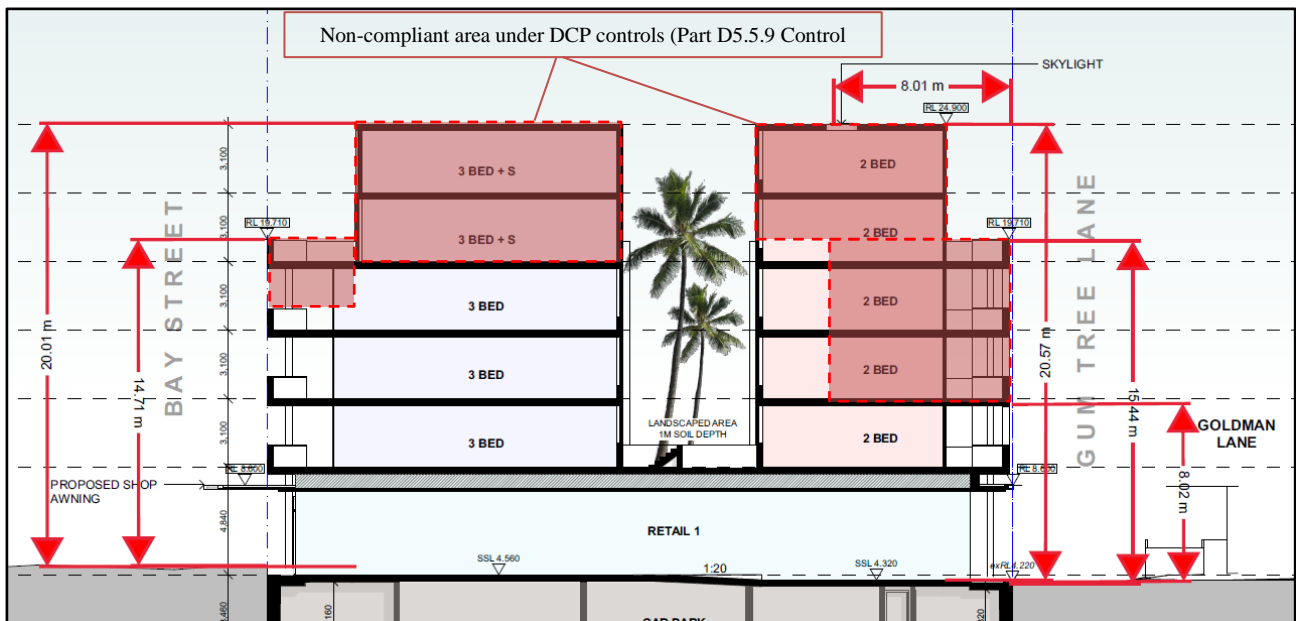
In the Double Bay Centre there are currently a few examples of relatively large scale developments (including the Cosmopolitan Building on Knox Street, the Kiaora Lands Development on New South Head Road and the Intercontinental Hotel and the George's building on Cross Street). The Council has also recently issued development consent for shop-top housing developments 6 storey in height on Cross Street (Nos.16-18 and Nos.20-26).

Notwithstanding this, these buildings are anomalies within the centre which is typically of low-scale and up to 4 storeys in height.

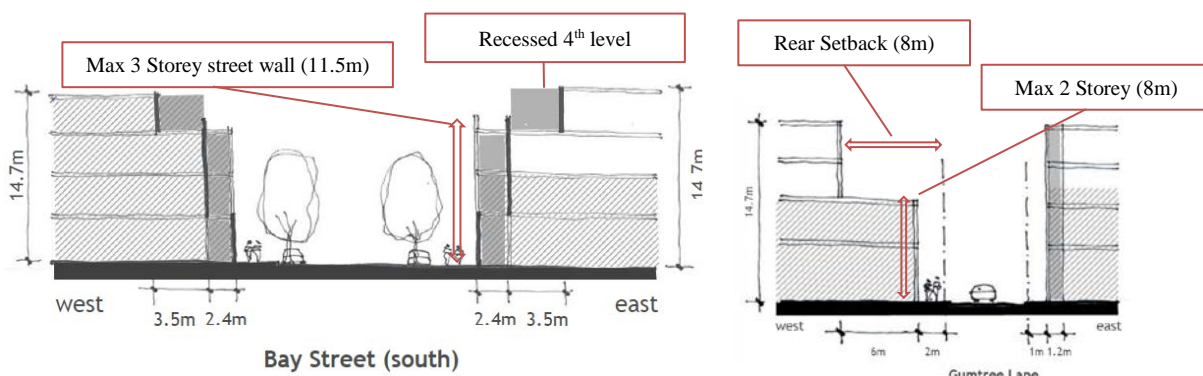
The proposal excessively exceeds the Height of Buildings and Floor Space Ratio development standards prescribed by Woollahra Local Environmental Plan 2014 (WLEP). Inevitably, it results in a building envelope that exceeds the site specific envelope controls prescribed by the Woollahra Development Control Plan 2015 (WDCP). One of the key objectives of this DCP (Part D5.1.3) states, *"O7 To ensure that new development is compatible with the existing built form, and streetscape and village character..."*.

The WDCP also provides a desired future character for Bay Street (South) focusing on the modest buildings on narrow lots which states, inter alia, *"Retain the existing modest, lot related building widths and retail frontages."*, and also provides a desired future character for Gumtree Lane, focusing on retention of the two storey built form fronting the lane which states, inter alia, *"Retain the two storey built form and 2m setback on the west side."*

Following is a section comparing the proposed development against the prescribed building envelope controls in the WDCP for this locality:



Proposed Section (Source: MHDUNION; Overlay: Woollahra Council)



Extracts from Parts D5.4.4 & D5.4.11 of Woollahra DCP 2015

The proposal does not satisfy the WDCP’s stated key objective or the desired future character for this locality. It also does not provide a satisfactory contextual response to the existing nor the desired future character of Bay Street (South) and Gumtree Lane immediately adjoining the subject sites.

Conclusion

The proposal fails to satisfy this principle.

12.2.2 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 Comments: “*The proposal at six storeys is not compatible with the current desired future character. In other ways the building is a compatible response, in that it has appropriate alignments and proportions and defines the public domain while contributing to the character of streetscapes and parks, at street level and the three levels above.*”

The building is excessive in built form and scale, which is reflected in the non-compliances with the maximum height and floor space ratio development standards prescribed by the WLEP (further assessment below). The excessive built form and scale of the development is also reflected in the non-compliances with the site specific envelope controls prescribed by the WDCP (further assessment below).

Though the proposal has a street wall design, it extends 2-4 levels higher than envisaged by the DCP controls as depicted in the section exert above.

This lack of adequate setbacks at the upper levels provides a disproportional built form and definition around Bay Street and Gumtree Lane given the height of existing and recently constructed developments nearby the subject sites. The proposed height and scale of the development in particular along Gumtree Lane erodes and encloses the spatial qualities of the urban environment.

Conclusion

The proposal fails to satisfy this principle.

12.2.3 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.

Urban Design Planner Comments: “*The population density proposed is acceptable in this well serviced location. What is less acceptable is the addition of 31 cars onto the location’s road system.*”

The proposed density is acceptable. The proposed traffic generation of the development is also supported by Council’s Traffic department, and assessed under the relevant heads of consideration further below.

Conclusion

The proposal satisfies this principle.

12.2.4 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 Comments: “The roof of this development features solar panels.”

The proposal satisfies the relevant design criteria prescribed by the Apartment Design Guide and was accompanied by a BASIX Certificate committing to environmental sustainability measures relating to thermal comfort, water savings and energy efficiency.

Conclusion

The proposal satisfies this principle.

12.2.5 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 and provides for practical establishment and long term management.

Urban Design Planner Comments: “The proposed light wells are illustrated accommodating large mature palm trees.”

Conclusion

The proposal satisfies this principle.

12.2.6 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 Comments: “*The apartments provide good amenity*”

Conclusion

The proposal satisfies this principle.

12.2.7 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 Comments: “*There are no safety concerns with this development.*”

Conclusion

The proposal satisfies this principle.

12.2.8 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 and providing opportunities for social interaction among residents.

Urban Design Planner Comments: “*The development provides 23 new apartments, 3 of which are single bedroom.*”

The proposal provides a good mix of apartments ranging from 1, 2 and 3 bedrooms.

Conclusion

The proposal satisfies this principle.

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

Urban Design Planner Comments: *The aesthetics of this proposal are acceptable.*

For reasons already discussed and having regard to the non-compliances with the relevant height, envelope and design controls that follows, the proposal does not provide an appropriate response to the existing or future local context.

Conclusion

The proposal fails to satisfy this principle.

12.3 Apartment Design Guide (Compliance Table) (Note: Non-compliances are **highlighted**)

Site Area: 820m² (21, + 23-25 + 27 Bay St) No of Units: 23 No of Retail: 2 (95m² + 236m²)	Proposed	Control	Meets
3D-1 (1) Minimum Communal Open Space	0m²	25% of the Site (205m ²)	No
3D-1 (2) Minimum Solar Access to the Principal Useable Portion of Communal Space	0	50% for 2 Hours Between 9am and 3pm on June 21	No
3E-1 (1) Minimum Deep Soil Zone	84m ² (1m soil depth) 6m	7% of the Site (57.4m ²) 6m (Min dimension)	Yes Yes
3F-1 (1) Min Separation From Buildings – <u>Habitable Rooms & Balconies</u> - Up to 12m (4 Storeys) - Up to 25m (5-8 Storeys)	0m 0m	6m 9m	No No
3F-1 (1) Min Separation From Buildings – <u>Non-Habitable Rooms</u> - Up to 12m (4 Storeys) - Up to 25m (5-8 Storeys)	Min 6m Min 6m	3m 4.5m	Yes Yes
3J-1 Number of Car Parking Spaces – Within 800m of Train Station or Centre zone	38 (24 residential; 5 visitor; 8 retail; 1 car wash bay)	38	Yes
4A-1 (1) Direct Sunlight to Living Rooms and Private Open Spaces	18	Minimum 70% of Apartments (17) (Min 2 Hrs Between 9am and 3pm on June 21)	Yes
4A-1 (3) No Direct Sunlight to Apartments Between 9am and 3pm on June 21	3	Maximum 15% of Apartments (4)	Yes
4B-3 (1) Minimum Cross Ventilation	20	60% of Apartments (14)	Yes
4B-3 (2) Maximum Building Depth of Cross-through units	< 18m	18m	Yes
4C-1 (1) Minimum Ceiling Height – - Habitable Rooms - Non-Habitable Rooms - Ground Floor of Mixed Use	2.8m 2.8m 2.9* -3.7-4.5m	2.7m 2.4m 3.3m	Yes Yes Yes

Site Area: 820m² (21, + 23-25 + 27 Bay St) No of Units: 23 No of Retail: 2 (95m² + 236m²)	Proposed	Control	Meets
4D-1 (1) Minimum Apartment Layout – - Studio - 1 Bedroom - 2 Bedroom - 3 Bedroom - 4 Bedroom	- 53m ² 80-92m ² 112-118m ² -	35m ² 50m ² 70m ² 90m ² 102m ²	- Yes Yes Yes -
4D-1 (2) Habitable Room – Minimum Window Surface	100% of Habitable Rooms	10% of Floor Area and Not Borrowed	Yes
4D-2 (1) Max Habitable Room Depth from a window	Max 7m (23/23 Units)	2.5m x Ceiling Height (Max 7m)	Yes
4D-2 (2) Max Habitable Room Depth from a Window (Open Plan Design)	Max 8m	8m	Yes
4D-3 (1) Minimum Bedroom Size (Excluding Wardrobes)	Min 9m ² Min 10m ²	9m ² (Other Beds) 10m ² (Master Beds)	Yes Yes
4D-3 (2) Minimum Bedroom Dimension (Excluding Wardrobes)	Min 3m	3m	Yes
4D-3 (3) Minimum Width of Living Rooms	Min 3.7m Min 4.17m	3.6m (Studio/1 Beds) 4.0m (2/3+ Beds)	Yes Yes
4D-3 (4) Minimum Width of Cross Over/Cross Through Apartments	Min 7.8m	4m	Yes
4E-1 (2) Private Open Space (Ground Floor Unit) Minimum Area / dimension	-	15m ²	-
4E-1 (1) Minimum Balcony Dimensions (Area m ² / Min Dimension) - 1 Bedroom - 2 Bedroom - 3 Bedroom	18m ² /2m 22-25m ² /2.5m 14-37m ² /2.7-3.6m	8m ² /2m 10m ² /2m 12m ² /2.4m	Yes Yes Yes
4F-1 (1) Maximum Number of Units in a Corridor	Max 5 per level	Eight (8)	Yes
4G-1 (1) Minimum Storage Area - - 1 Bedroom - 2 Bedroom - 3 Bedroom	13m ³ 10-12.9m ³ 11.3-11.8m ³	6m ³ 8m ³ 10m ²	Yes Yes Yes
4G-1 (1) Provision of Storage Within Apartment	Min 50%	50%	Yes

* Retail 02 only

12.2. Part 3 – Siting the Development

12.3.1 Part 3A: Site Analysis

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

12.3.2 Part 3B: Orientation

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

12.3.3 Part 3C: Public Domain Interface

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

12.3.4 Part 3D: Communal and Public Open Space

This Design Criteria prescribes a minimum 25% of the site area as communal open space, which equates to 205m². The proposed development does not provide any communal open space.

Notwithstanding this, providing the communal open space on the site is not considered necessary in this instance because the future residents of this complex would have access to public open space areas within close proximity to the site, in Guilfoyle Park and further afield to Steyne Park which adjoins Sydney Harbour. The future residents would form part of a larger residential community within this urban centre that affords other socially interactive uses such as cafes, restaurants, pubs, gyms etc. The proposal, by virtue of its location, nevertheless satisfies the objective of the design criteria which states in part *...to enhance residential amenity*.

12.3.5 Part 3E: Deep Soil Zones

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

12.3.6 Part 3F: Visual Privacy

Objective 3F-1 aims to ensure that, *“adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy”*

This Design Criteria prescribes a minimum separation distance of 6-9m between habitable room windows and balconies to the side and rear boundaries, & 3-4.5m for non-habitable rooms. In addition, Figure 3F.3 states, *“New development adjacent to existing buildings should provide adequate separation distances to the boundary in accordance with the design criteria”*.

The proposal does not comply with this minimum setback control to the north (No 29-33 Bay Street), to the south (No 19 Bay Street) and to east side (Gumtree Lane). Notwithstanding, there is scope to vary this setback requirement on its northern and southern sides, up to four storeys. This is due to the likely future re-development potential of these adjoining sites, up to four storeys.

In this circumstance, a zero setback along the northern and southern side of the development is acceptable up to four storeys along Bay Street, similarly to what presently exists. However, the development above four storeys should comply with the required 9m setback. With respect to Gumtree Lane, which is the secondary frontage of the subject site, it should comply with the minimum 6-9m separation distance from the eastern rear boundary.

The required setbacks are to enable a satisfactory transition to the existing adjoining development (south and north) and any future redevelopment of sites located along New South Head Road, to the east of the subject site. This is to provide adequate separation and privacy between future residents of the subject and adjoining sites.

The required rear setback also enables additional solar access to penetrate the public domain (Gumtree Lane) and any future north-west facing windows facing Gumtree Lane, immediately to the south and east of the subject sites. The proposed Level 4 & 5, in particular, are considered to be excessive in height having regard to the context of existing built forms immediately adjoining and the desired future character of the Double Bay Centre.

The lack of separation, in particular from the eastern (rear) boundary, will compromise the amenity of both the existing adjoining and potential future residents of redevelopment with regard to privacy, scale, bulk, solar access and sense of enclosure.

For these reasons, the proposal fails to satisfy the relevant objective and design criteria prescribed by this Part.

12.3.7 Part 3G: Pedestrian Access and Entries

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

12.3.8 Part 3H: Vehicle Access

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

12.3.9 Part 3J: Bicycle and Car Parking

Objective 3J-1 aims to ensure, “*car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas*” & Objective 3J-2 aims to facilitate, “*...other modes of transport*”,

The proposal achieves compliance with the requirements of *Chapter E1: Parking and Access* of the Woollahra DCP 2015.

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

12.3. Part 4 – Designing the Building (Amenity)

12.4.1 Part 4A: Solar and Daylight Access

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

12.4.2 Part 4B: Natural Ventilation

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

12.4.3 Part 4C: Ceiling Heights

Objective 4C-1 states, “*Ceiling height achieves sufficient natural ventilation and daylight access.* The relevant design criteria specifies a minimum 3.3m floor-to-ceiling height at ground floor level if located in mixed use area.

The proposed *retail space 02* has a floor-to-ceiling height of 2.9m which does not meet the minimum requirement. This is primarily due to the slope of the land which makes it difficult to achieve compliance at the southern end of the building. Notwithstanding this proposal achieves compliance with the minimum floor-to-floor heights as required in Part D5.6.3.2 of the Woollahra DCP 2015.

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

12.4.4 Part 4D: Apartment Size and Layout

Under Clause 6A(1) and (2), any controls in the Woollahra DCP 2015 relating to apartment size and layout are overridden by controls in SEPP 65.

Under Clause 30(1) of SEPP 65, refusal cannot occur if the internal area for each apartment is equal to, or greater than that specified in Part 4D.

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

12.4.5 Part 4E: Private Open Space and Balconies

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

12.4.6 Part 4F: Common Circulation and Spaces

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

12.4.7 Part 4G: Storage

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

12.4.8 Part 4H: Acoustic Privacy

The proposal satisfies the relevant objectives prescribed by this Part. Further discussion is provided in *Part B3.5.4 Acoustic Privacy* assessment of the report.

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

12.4.9 Part 4J: Noise and Pollution

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

12.4.10 Part 4K: Apartment Mix

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

12.4.11 Part 4M: Facades

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

12.4.12 Part 4N: Roof Design

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

12.4.13 Part 4O: Landscape Design

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

12.4.14Part 4P: Planting on Structures

Council's Tree and Landscape Officer supports the proposed development, stating:

“The submitted landscape plan appears to make provision for adequate soil depth and area to establish small trees in accordance with Apartment Design Guide, 4P Planting on Structures, written by NSW Planning & Environment, dated June 2015 for proposed planted courtyards within the proposed development. The submitted landscape plan is satisfactory.”

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

12.4.15Part 4Q: Universal Design

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

12.4.16Part 4S: Mixed Use

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

12.4.17Part 4T: Awnings and Signage

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

12.4.18Part 4U: Energy Efficiency

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

12.4.19Part 4V: Water Management and Conservation

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

Further assessment is provided below under Part E2: Stormwater and Flood Risk Management of the WDCP 2015.

12.4.20Part 4W: Waste Management

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

Further assessment is provided below under Part E5: Waste Management of the WDCP 2015.

12.4.21Part 4X: Building Maintenance

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

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 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 can be imposed by conditional consent.

14. 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.

15. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

15.1. Part 1.2: Aims of Plan

For the assessment undertaken above and that follows, the proposal is unsatisfactory in terms of the aims in Part 1.2(2) of the Woollahra LEP 2014 which state:

- “(a) to ensure growth occurs in a planned and co-ordinated way;*
- ...(c) to provide for an appropriate balance and distribution of land for commercial, retail, residential and tourist development and for recreation, open space, entertainment and community facilities;*
- ...(g) to protect amenity and the natural environment;*
- ...(l) to ensure that development achieves the desired future character of the area.”*

The proposal fails to satisfy the aforementioned and are therefore listed as reasons for refusal.

15.2. Land Use Table

The proposal is defined as ‘Shop-top Housing’ development which is permitted in the B2 Local Centre zone.

The proposal is however inconsistent with the objectives of the Local Centre (B2) zone relating to:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To attract new business and commercial opportunities.*
- *To provide active ground floor uses to create vibrant centres.*
- *To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.*

- *To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.*

The composition of the subject site buildings are 1-2 storeys fronting Bay Street and 2-3 storeys fronting Gumtree Lane. The existing ground floor level fronting Bay Street is primarily retail uses and immediately above No's 23-25 and 27 Bay Street are other commercial/office uses which totals more than 1000m² of existing commercial floor area. The existing buildings contain approximately 6 separate tenancies. These existing tenancies provide employment opportunities, not only to employers and employees located within, but also clients and other workers that interact with these uses be it couriers, delivery drivers, cleaners, technicians etc. The removal of these existing commercial uses from this site is to the detriment of the centre and in particular the loss of employment opportunities. The commercial/office uses and associated workers creates a daytime vibrancy that assists in sustaining other retail uses in the centre.

The key objectives of the zone are reinforced in the WDCP Chapter D5 – Part D5.6.2 which prescribes the type of uses for the centre. Objective O4 states “...Encourage first floor retail and commercial use”. Control C3 states in part: “...Design for retail, commercial and community uses at ...first floor levels. Consider design solutions that promote retail, commercial uses at first floor levels...”

The development does not provide a balanced approach to the type of uses it proposes given what is being removed from the prominent location within the heart of the Double Bay commercial centre.

The Woollahra DCP Chapter D5 – Part D5.4 prescribes the desired future character for this locality which has been assessed in Part 12.2.1 and Part 16.2 of this report. As assessed, the proposal at 6 storeys extends between 6.18m-7.9m over the maximum height control development standard. The proposal excessively exceeds these desired future character height and design controls prescribed by the WLEP and WDCP respectively.

Conclusion

Based on the assessment undertaken and that follows the proposal fails to satisfy the key objectives of the zone which are stated above.

Further assessment follows.

15.3. Part 4: Principal Development Standards

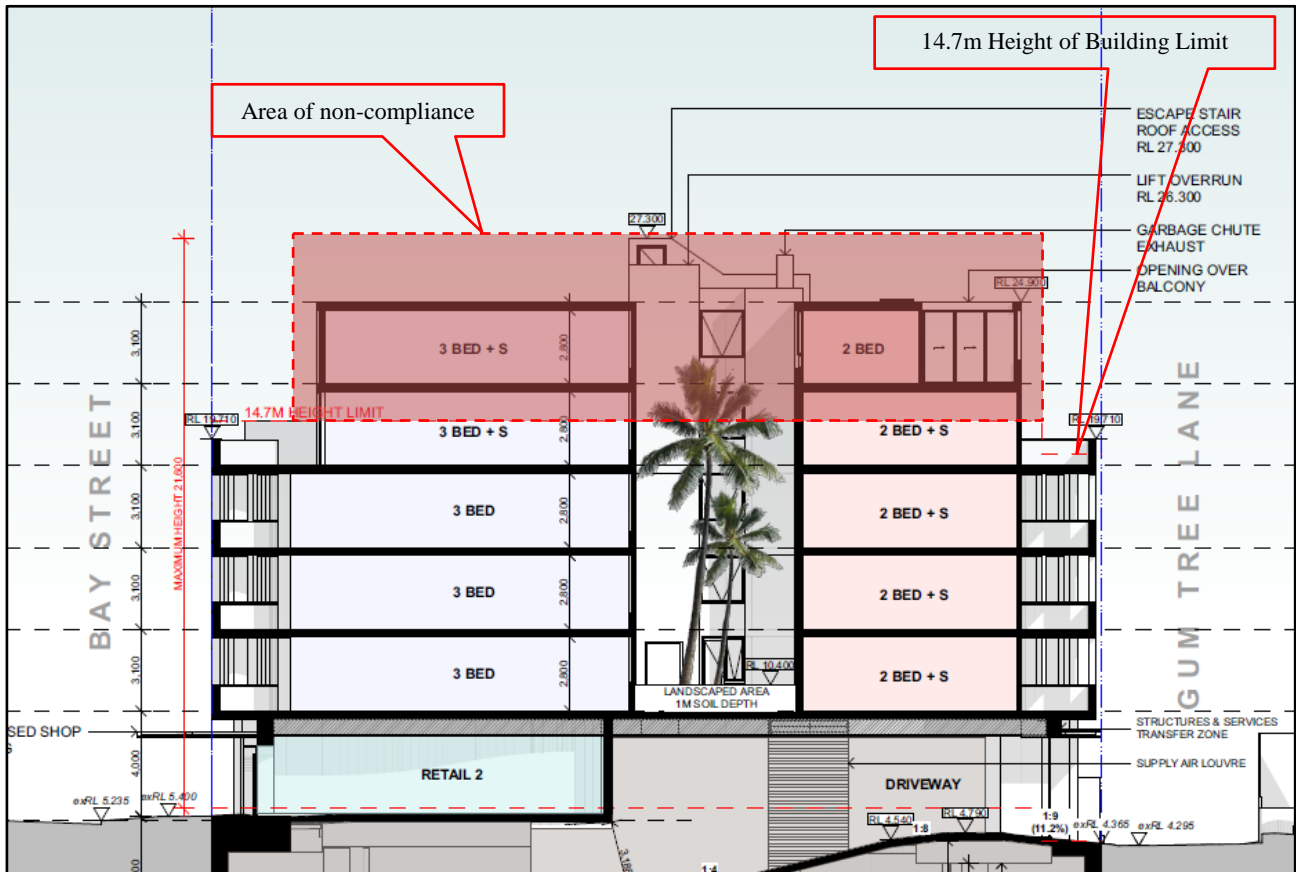
15.3.1. Compliance Table (Note: non-compliances are highlighted)

Development Standard Total Sites Area: 820m²	Proposed	Control	Departure	Complies
Maximum Building Height (Clause 4.3)	22.6m (Lift/Stair Overrun) 20.88m (Roof Parapet)	14.7m	7.9m or 53% 6.18m or 42%	No*
Floor Space Ratio (Clause 4.4)	3.6:1 (2,978m ²)	2.5:1 (2,050m ²)	928m ² or 45%	No*

*Clause 4.6 written request has been submitted.

15.3.2. Part 4.3: Height of Buildings

The proposal does not comply with the maximum building height prescribed by Part 4.3(2) of Woollahra LEP 2014. A Clause 4.6 written request has been submitted by the applicant and is assessed below.



Section A – Indicating Building Height Limit and area of non-compliance (Source: Plans – MHDUNION; Overlays: Woollahra Council).

15.3.3. Part 4.4: Floor Space Ratio

The proposal does not comply with the maximum floor space ratio prescribed by Part 4.4(2) of Woollahra LEP 2014. A Clause 4.6 written request has been submitted by the applicant and is assessed below.

15.4. Part 4.6: Exceptions to Development Standards

15.4.1 Departure

The proposal fails to comply with the Height of buildings, and Floor space ratio development standards prescribed by Part 4.3(2) and 4.4(2), respectively of this Plan.

15.4.2 Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular

development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

15.4.3 Written Request

The Consent Authority must consider a written request from the applicant seeking justification of the contravention of the 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 submitted documentation.

15.4.4 Assessment

Part 4.6(4) requires Council to be satisfied that the written request has adequately addressed the relevant matters, the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and zone and the concurrence of the Director-General has been obtained. 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.PS18-003 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 Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

The applicant’s written request fails to adequately address the relevant matters. Specifically:

- The information provided has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- The applicant has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

The proposal is assessed against the *Objectives of the Development Standards* prescribed by *Part 4.3 (Height of buildings)*, and *Part 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 and in the report that follows, the proposal will result in a building that is greater in bulk and height than the immediate adjoining buildings, and which is inconsistent with the predominant height, bulk and scale of development of the existing streetscape character of Bay Street (South) and Gumtree Lane, and the desired future character of the immediate locality.

The non-compliance with the maximum building height development standard will therefore result in development that is inconsistent with the key objectives of Double Bay Centre (Part

D5.1.3), desired future street character objectives of development located on Bay Street (South) and Gumtree Lane (Parts D5.4.1, D5.4.4 & D5.4.11).

The proposal therefore fails to satisfy the objective of sub-clause 4.3(a) of the Woollahra LEP 2014.

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

Not relevant – The subject site is located within the Low Density Residential (R2) zone does not adjoin land in another zone. The transition of building heights between zones therefore is not a relevant consideration in this instance.

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

The proposal will result in a significant amount of additional overshadowing of sites to the south and east and additional overshadowing of the public realm, arising directly from a non-compliant building in terms of height.

The proposal therefore fails to satisfy the objective of sub-clause 4.3(c) of the Woollahra LEP 2014.

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

Existing views afforded to properties surrounding the subject site have their existing views of Sydney Harbour and district views compromised by the excessive and non-compliant height of the development. Further assessment is provided on view loss below.

For this and other reasons already discussed above, the proposal does not minimise impacts on the amenity of existing adjoining residential development with regard to views, sense of enclosure and scale and bulk.

The proposal therefore fails to satisfy the objective of sub-clause 4.3(d) of the Woollahra LEP 2014.

(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 fails to satisfy this objective.

Objectives of the Zone (B2 Local Centre)

The objectives for this Part have been stated earlier (Section 15.2 of the report).

For reasons already discussed, the proposal fails to satisfy 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 Waverely 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 fails to achieve 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. For reasons already discussed, compliance with the standards are considered 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 not defeat the objective of the standard. The proposed development disregards the relevant height and floor space controls providing a building envelope that is inconsistent and contextually inappropriate with the existing or envisaged commercial centre that it forms a part of.

For reasons already discussed, compliance is reasonable in the 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

In addition to the Clause 4.6 written requests, the applicant has also put forward a '*Summary of development in Double Bay which have been approved with height and/or FSR exceeding the controls prepared by Anka Property Group*' and referenced a previously obtained legal opinion indicating that Council has abandoned its height of buildings and floor space ratio development standards.

Council has considered this legal opinion and the examples given to support its argument. This opinion has been reviewed by Council's lawyers. Having done so and having given detailed consideration to the examples relied upon by the applicant, it is considered that the applicant is not correct in concluding that the development standards have been abandoned.

Council has concluded that it has not abandoned its controls for the following reasons:

- There is no planning history to suggest that the current Height of Buildings and FSR development standards will cease to apply.
- There is no evidence to suggest Council will alter the current Height of Buildings and FSR development standards.
- The Height of Buildings and FSR development standards vary in different parts of the centre and in particular to corner sites and those directly adjoining residential zones.
- There are limited examples of approved developments which substantially exceed the Height of Buildings and FSR development standards within the Double Bay Commercial Centre to a similar extent as the proposed development. These only restrict to the two adjoining sites at No. 16-18 Cross Street and No. 20-26 Cross Street, approved under DA571/2014/1 and DA390/2015/1, respectively.
- It is not unreasonable to interpret that the Height of Buildings and FSR development standards have been abandoned in Cross Street as a result of the approved developments at No's 16-18 and No 20-26 Cross Street. However, any abandonment of these development standards is only relevant in the context of Cross Street, and not for the entire Double Bay Commercial Centre whereby these development 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 reasonable and appropriate 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 insufficient environmental planning grounds to justify contravening the development standards in this instance.

15.4.5 Conclusion

The relevant planning controls and in particular the key strategy for the Double Bay Commercial Centre is to: “...*Enhance the public domain of Double Bay by applying a co-ordinated approach to the public domain and streetscape.*”

The non-compliances with the development standards do not result in a better outcome for the centre because the development encompasses a height, bulk and scale that is far in excess of any existing development in the immediate vicinity and has an envelope well in excess of the desired future character for the centre.

Additionally, the non-compliances with the height and FSR development standards result in a building that causes adverse visual impact on the centre because:

- It is inconsistent and incompatible with the existing and the desired future built form, streetscape and village character of the centre;
- The built form does not respond to the scale and importance of activating rear lanes such as Gumtree Lane enclosing the existing spatial qualities of the laneways at street level;
- The proposal does not provide an appropriate transition to, and is inconsistent and contextually inappropriate with, the existing development immediately adjoining;
- It does not minimise negative impacts on the amenity of adjoining and neighbouring residents with respect to scale, bulk, and sense of enclosure or solar access.

The written submissions from the applicant have not adequately demonstrated that the contravention of the *Height of buildings*, and *Floor space ratio* development standards prescribed by *Clause 4.3*, and *4.4* respectively are justified pursuant to the relevant matters for consideration prescribed by this clause.

Furthermore, the proposal is not in the public interest and is inconsistent with the objectives of the development standard and those applicable to the development within the zone. Accordingly, departure from the development standards is not justified in this instance nor has the applicant demonstrated sufficient environmental grounds for the variation.

15.5. Parts 5 & 6: Miscellaneous and Additional Local Provisions

15.5.1. Part 5.10: Heritage Conservation

Parts 5.10(2) and 5.10(4) require Council to consider the effect of works proposed to a heritage item, building, work, relic or tree, within a heritage conservation area or new buildings or subdivision in a conservation area or where a heritage item is located.

The subject sites and buildings thereon were constructed from the 1970s and are not listed on the State Heritage Register, have not been identified as a heritage items, are not a potential heritage item nor are they within or located adjacent to a Heritage Conservation Area or within close proximity to any heritage items or heritage conservation areas.

The development application is supported by a Demolition Report prepared by NBRS Architecture Heritage, dated 18 December 2018 which concludes that the existing building does not meet any of the NSW Heritage Council's criteria of heritage significance nor does it meet any threshold for listing. Council's Heritage Officer has raised no issue with regards to the proposed development which is contained within the subject site supports the demolition of the existing buildings.

Conclusion

The proposed development is therefore acceptable with regard to the objectives in Part 5.10 of the Woollahra LEP 2014.

15.5.2. 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 subject site is within a Class 2 area as identified in the Acid Sulfate Soils Map. The proposal involves excavation for the purposes of two levels of basement. This therefore requires consideration under Part 6.1 of the Woollahra LEP 2014.

The applicant has provided a *Conceptual Acid Sulfate Soil Management Plan* undertaken by EIS Environmental Investigation Services dated 15 May 2018 (Ref: E30721KHlet-ASS).

This report concludes the land will require further testing due to 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.

Conclusion

In light of the above, and subject to appropriate conditions, the proposed development is acceptable with regard to Part 6.1 of the Woollahra LEP 2014.

15.5.3. Part 6.2: Earthworks

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 proposed development is acceptable with regard to Part 6.2 of the Woollahra LEP 2014.

15.5.4. Part 6.3: Flood Planning

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 proposed development is acceptable with regard to Part 6.3 of the Woollahra LEP 2014.

16. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

16.1 About this DCP (A1.1)

16.1.1 Objectives of this Plan (A1.1.5)

As assessed above, the proposal fails to satisfy the relevant objectives prescribed by the WLEP and accordingly fails to satisfy the key objective of this Plan which states: ... *O3 – To achieve the objectives contained in WLEP 2014.*

16.2 Chapter D5: Double Bay Centre

NOTE: The provisions of SEPP 65 Clause 6(1) and (2) 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.

16.2.1 DCP Compliance Table (Non-compliances are highlighted)

Site Area: 820m ²	Proposed	Control	Complies
Maximum Height – Storeys & (m) - Bay Street (south) - Gumtree Lane - Overall Height	4-6 storeys (20.88m) 4-6 Storeys (20.59m) 22.6m (Lift/Stair Overrun)	4 storeys (14.7m) 2 Storeys (8m) 4 Storeys (14.7m)	No No No
D5.6.3.1 Occupied Floor Area (%) Bay Street - L G-1 - L 2-4 - L 5 Gumtree Lane - L G-1 - L 2-4 - L 5	<100% <100% n/a* <100% >50% n/a*	Max 100% Max 100% n/a* 100% 50% n/a*	Yes Yes No Yes No No
D5.4.4 - Front Setback (Bay Street) - L G - L 1 - L 2 - L 3 - L 4 - L 5	1.8m 0m 0m 0m 4m 4m	0m 0m 0m 3.5m n/a* n/a*	Yes Yes Yes No No No
D5.4.11 - Rear Setback (Gumtree Lane) - L G - L 1 - L 2 - L 3 - L 4 - L 5	2m 0m 0m 0m 3m 3m	2m 2m 8m (2 + 6m) n/a* n/a* n/a*	Yes No No No No No
Building Articulation (Bay St L G) - Max internal space in articulation zone (%)	<100%	100% (2.4m – Depth)	Yes
Building Articulation (Bay St L 1 - 5) - Max internal space in articulation zone (%)	<40%	40% (3.5m – depth)	Yes
Building Articulation (Gumtree Lane)	Not Applicable – Located on western side	Articulation to the eastern side of Gumtree Lane	N/A
D5.6.3 - Floor level of uppermost habitable storey below the permissible height	16.3m	11.2m (3.5m below maximum permitted height)	No
D5.6.3 – Max building depth Level 2 and above / cross ventilation	27.7m (86% - 20/23 Units)	15.6m (or 80% units achieve cross-ventilation)	No
D5.6.3.1 - Minimum <u>floor-to-ceiling</u> heights of habitable rooms	Min 2.8m	2.7m	Yes
D5.6.3.2 - Minimum <u>floor-to-floor</u> heights - Ground (Retail) - Level 1 - 5 (Residential)	Min 4m 3.1m	4m 3.1m	Yes Yes
D5.6.4.3 – Arcades, walkways - Min Height - Minimum Width	3.8m 3m	3.6m 3m	Yes Yes
D5.6.4 - Minimum Awning soffit height	2.7-4m**	3.2m	No** (part)
D5.6.4.5 - Active Frontage to Lane	51% (12.5m)	75% (18.43m)	No
D5.6.5.1 Minimum separation (m) - Non-habitable to non-habitable - Non-habitable to habitable - Balcony to habitable	Min 6m Min 6m Approx. 9m	6m 9m 12m	Yes Yes No***
D5.6.5.3 - Minimum Private Open Space - Small dwelling (<60m ²) [1Bed Units] - Medium dwelling (60-90m ²) [2Bed Units] - Large dwelling (90m ² +) [2 & 3+ Bed Unit] - Preferred & Minimum depth (m)	18m ² 12m ² 22-37m ² 2-3.6m	8m ² 12m ² 16m ² 2.4m & 1.8m	Yes Yes Yes Yes

Site Area: 820m ²	Proposed	Control	Complies
D6.6.1 Maintain Solar Access to <u>adjoining public open area (Footpath of NSHRD)</u> between 12pm and 2pm on 21 June	Not reduced between 12-2pm – (Minor additional shadowing to Gumtree Lane & Bay St)	Not further reduced beyond existing between 12pm and 2pm	Yes
D6.6.1 Hours of Solar Access to <u>adjoining properties</u> between 9am and 3pm on 21 June - Habitable windows - Private open space	3 & 2	3hrs 2hrs	Yes
D6.6.1 Hours of Solar Access to <u>new development</u> between 9am and 3pm on 21 June - Habitable windows - Private open space	3 & 2	3hrs 2hrs	Yes
D6.6.6.2 Cross-ventilation to dwellings	87% (20/23 Units)	80% of Dwellings	Yes
D5.6.7 Geotechnology and hydrogeology - Excavation Depth	Geotechnical report provided	Excavation >1m is accompanied by a Geotechnical Report	Yes
D5.6.8.4 Site facilities - Air-Conditioning Units - Garbage Storage Area	Located within basement / visually integrated	Not readily visible Visually integrated	Yes Yes

*No controls for this level, these levels of the development extend outside the permitted envelope controls.

**Southern side of awning on Bay Street does not comply

***Balconies to Gumtree Lane do not comply

16.2.2 Section D5.1: Introduction

Part D5.1.3: Objectives

The proposed development is permissible and is encouraged by this DCP. However, the key objectives of this part state:

- “O3 To encourage a diverse mix of uses in the Double Bay Centre and maintain retail uses at ground level.*
- O6 To preserve and enhance the diversity of uses in the Double Bay Centre.*
- O7 To ensure new development is compatible with the existing built form, and streetscape and village character.”*

As a result of the non-compliances with the Height of Buildings and FSR development standards, the proposed new building will substantially exceed the envelope controls prescribed by this DCP. The proposal does not preserve or enhance the existing commercial uses.

In this regard and for reasons already discussed, the proposal fails to satisfy these key objectives.

16.2.3 Section D5.3: Urban structure

Part D5.3.1: Structure of the Double Bay Centre

The proposed development in its current form is inconsistent with the expected development, as detailed in Figure 5.

- The proposed development presents as a four storey development to Bay Street and Gumtree Lane with an additional two recessed levels above, which is inconsistent with Figure 5 which encourages four or five storey development only to major streets and not to rear laneways;

- The proposed development would amalgamate three (3) existing buildings and replace them with a single building that is inconsistent with Figure 9 which encourages the continuity of the fine building grain in the form of small lots within Double Bay. The issue relates to the loss of commercial floor area, as discussed in Part 15.2 of the report.

The proposal therefore fails to satisfy the relevant criteria prescribed by this part.

Part D5.3.2: Key strategies for the Double Bay Centre

This proposed shop-top housing development, with its active street frontages and residential accommodation is encouraged and satisfies many of the key strategies.

However, the height, scale and massing of the proposed development greatly exceeds the relevant prescribed envelope controls. For reasons already considered, the proposal fails to satisfy the relevant key strategies which are summarised in part as follows:

Strategy 1:

“...Enhance and improve the public domain and the provision of public facilities

- a) Enhance the public domain of Double Bay by applying a coordinated approach to the public domain and streetscape...*

Strategy 2:

...Ensure that the centre maintains its commercial viability and competitive position within the Sydney Retail market

- a) Foster the existing mix of uses of the centre such as hotels, retail and commercial and upper level residential...*

Strategy 3:

...Develop the particular qualities of different parts of the centre

- ...d) Reinforce the Bay Street promenade and vista to the harbour foreshore...*
- ...e) Retain the scale of small lot development and street character of Bay Street south of Short Street...*

Strategy 4:

...Retain and enhance pedestrian access and amenity in and around the centre...

- a) Reinforce the intimate scale, active retail frontage and pedestrian amenity of the lanes and little streets in the centre...*

Strategy 5:

...Improve Double Bay's built form to provide appropriate definition to the public domain

- a) Provide direction and certainty of outcome in relation to built form to ensure:
– a coherent street scale*

- compatibility with existing urban fabric
 - a variety of building types
 - a high level of environmental amenity...
- ...c) *Ensure that new development is compatible with the existing built, streetscape and village character*
- d) *Establish building envelopes that define building height and building lines (at lower and upper levels) to provide coherent street definition...*”

16.2.4 Section D5.4: Street character

D5.4.1: Desired future character

An assessment of the desired future character prescribed by this part for Bay Street (South), and Gumtree Lane has been undertaken above (see SEPP 65 & WLEP 2014).

Based on the assessment undertaken, the proposal fails to satisfy these objectives as stated earlier.

Part D5.4.2: Common street strategies

Part D5.4.2 of the WDCP 2015 provides the following relevant Common Street Strategies:

- *Strengthen the spatial definition of streets by encouraging building to the street boundary.*
- *Provide continuous active retail frontage at ground floor level.*
- *Increase street surveillance and promote a safe environment.*
- *Strengthen all built form on corner sites.*

The proposal satisfies the relevant criteria prescribed by this part.

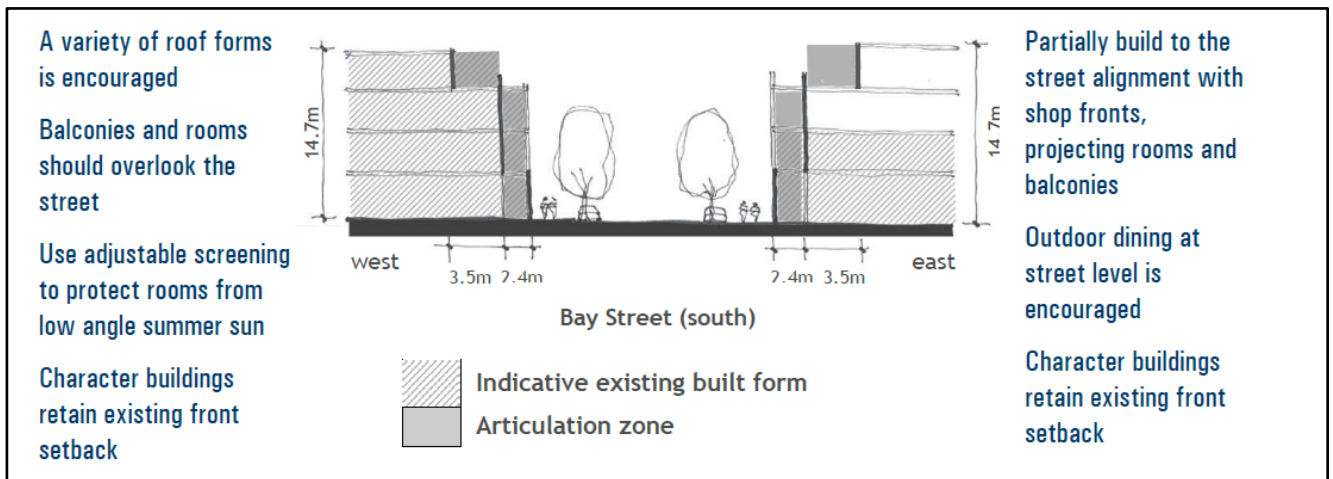
Part D5.4.4 Bay Street (south)

Part D5.4.4 of the WDCP 2015 encourages:

- retention of the three-four storey built form fronting Bay Street;
- use of balconies facing the street;
- increased active retail frontage at ground floor level;
- a minimum of 2.4m setback from Bay Street at ground floor level;
- recessed upper floor level (4th storey)

Part D5.4.4 of the WDCP 2015 provides the following desired future character objectives (emphasis added):

- a) ***Retain the existing modest, lot related building widths and retail frontages.***
- b) *Provide setback areas at ground level that can be used for outdoor eating or public circulation.*
- c) *Retain the character buildings along Bay Street.*
- d) *Maintain the avenue of trees.*



Extract from Part D5.4.4 of the Woollahra DCP 2015

The proposed development does not achieve the Bay Street – Desired Future Character, Objective a), as the proposal does not maintain a three-four storey built form fronting Bay Street, nor does it provide a recessive upper floor level, as envisaged by the DCP.

Conclusion

The proposal therefore fails to satisfy the relevant criteria prescribed by this part.

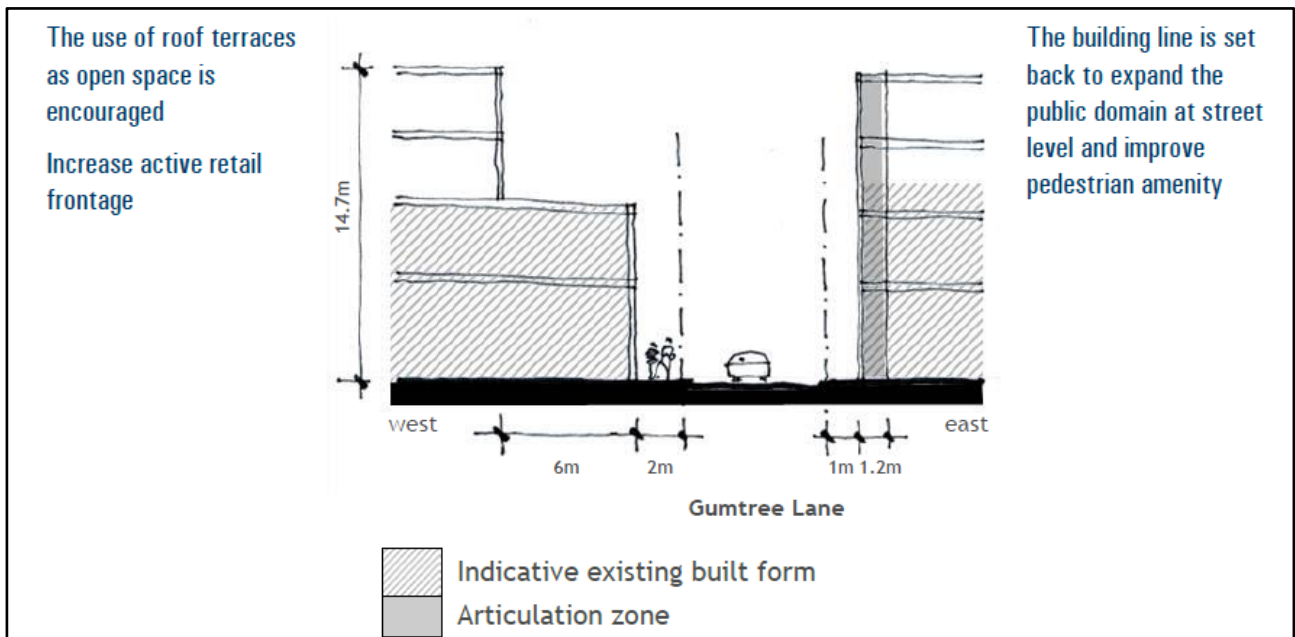
Part D5.4.11: Gumtree Lane

Part D5.4.11 of the WDCP 2015 encourages:

- retention of the two-storey built form fronting Gumtree Lane;
- use of rooftop terraces as open space above level 1;
- increased active retail frontage at ground floor level;
- a minimum of 2m setback from Gumtree Lane (western side) at ground floor and level 1;
- a minimum setback of 6m at the upper floor levels (level 2 and 3);

Part D5.4.11 of the WDCP 2015 provides the following relevant desired future character objectives (emphasis added):

- Retain the two storey built form and 2m setback on the west side.***
- Increase the spatial definition of the lane, and street surveillance with an articulated building addressing the lane from the central triangular site.***



Extract from Part D5.4.11 of the Woollahra DCP 2015

The proposed development does not achieve the Gumtree Lane – Desired Future Character Objectives a) & c), as follows:

- The proposal does not maintain a two storey built form along Gumtree Lane, which is inconsistent with Objective a);
- The proposed upper levels are setback 0-3m from Gumtree Lane which is significantly non-compliant with the 8m (2m + 6m) rear setback control, to all levels above Level 1. This would result in a significant sense of enclosure and a dominating visual bulk and scale upon the public realm (Goldman Lane) and any future redevelopment sites to the east of the subject development, which is inconsistent with the intent of Objective c).

Conclusion

The proposal therefore fails to satisfy the relevant criteria prescribed by this part.

16.2.5 Section D5.5: Built form envelopes: Control Drawing 5; & Section D5.6: Development Controls

D5.6.1: Format

Part D5.6.1 provides (emphasis added):

“...Objectives

The objectives define Council’s intention. They relate to the aims and objectives in Section D5.3 Urban structure, and the desired future character outlined in Section D5.4 Street character.

Controls

The controls establish the means of achieving the objectives. This section must be read in conjunction with the Built Form Envelopes: Control drawings that illustrate the site specific

controls. Diagrams are incorporated with the development controls to assist interpretation....”

D5.6.2: Use

For reasons already discussed above, the proposed development involves the provision of residential accommodation to all levels above ground floor level which is inconsistent with Objective O4 which aims to “...*Encourage first floor retail and commercial use...*” and Control C3 states, “...*Design for retail, commercial and community uses at ground and first floor levels. Consider design solutions that promote retail, commercial use at first floor level...*”

The proposal therefore fails to satisfy the relevant criteria prescribed by this part.

D5.6.3: Urban Character

Building envelopes (Part 5.6.3.1)

- D5.5.6: Built Form Envelopes: Control Drawing 5
- D5.6.3.1 – Control C1 & Objective O1

The proposal fails to comply with the prescribed building envelope controls as noted in the Compliance Table above. It will result in a building form that:

- Does not comply with the 4 storey height control (Bay Street) and 2 Storey height control (Gumtree Lane).
- Will not result in a building form that is consistent with the expected built form presentation located along both Bay Street and Gumtree Lane.
- The proposal is therefore considered to be consistent with the desired future character of the locality.
- Fails to meet the existing or desired future character for Bay Street (South).
- Fails to meet the existing or desired future character for Gumtree Lane.
- Compromises the amenity of the public domain in terms of its scale, bulk, sense of enclosure and solar access.

The proposal therefore fails to satisfy the relevant objective of this part which states:

“O1 Development should contribute to the desired future character of streetscapes with appropriate and consistent building forms.”

Height (5.6.3.2)

- D5.6.3.2 – Controls C1, C2, C3, C4 & Objectives O1, O2

The proposal fails to comply with the prescribed height controls as noted in the Compliance Table above. It will result in a building form that significantly exceeds the height requirement by this DCP for both Bay Street and Gumtree Lane (Controls C1, C2 & C3). The proposal provides sufficient floor-to-floor heights consistent with the intent of Control C4 and Objective O2.

The proposal therefore fails to satisfy the relevant objective of this part which states:

“O1 Encourage buildings to achieve the heights along street and lane frontages described by the control drawings.”

Building articulation (5.6.3.3)

- D5.6.3.3 – Controls C1, C2 & Objectives O1, O2

This part of the DCP aims to, “...*promote buildings of articulated design and massing, with building facades that contribute to the character of the street, and provide useable external spaces...*”, via a mix of both internal and external spaces.

The proposed development is articulated with both internal and external space located to the east and west. The areas of articulation are consistent with numerical requirements of Control C1 and C2. Notwithstanding that there are no controls specified for the upper two storeys (Levels 4 & 5) but they nevertheless are consistent in their treatment and detail with the lower levels.

The proposal therefore satisfies the relevant criteria prescribed by this part.

Setbacks (5.6.3.4)

- D5.5.8 – Control Drawing 5
- D5.6.3.4 – Controls C1, C2, C4, C5 & Objectives O1, O2, O3.

This part of the DCP aims to provide, “...*Setbacks on upper levels allow solar access to streets, and establish an appropriate relationship between building height and street width.*”. Control C2 (D5.5.9 – Control Drawing 5) requires:

- a front setback to the uppermost level (Level 3), facing Bay Street.
- a rear setback of 2m (ground floor), and 8m (Levels 2 and above), facing Gumtree Lane.

The proposal presents a 0-4m front setback, representing a 3-3.5m non-compliance with Control C2.

The height of the front street wall to Bay Street, and the lack of an adequate front setback fails to satisfy key Objective O1 of this part which states: “...*Encourage consistent building lines to provide coherent streetscapes...*” and would not contribute positively to the streetscape in terms of providing consistent building lines, failing to reduce the scale of the development at upper floor levels.

The side and rear setbacks of the development have been assessed above, in SEPP 65 considerations.

The proposal therefore fails satisfies the relevant criteria prescribed by this part.

Architectural resolution (5.6.3.6)

The proposal satisfies the relevant criteria prescribed by this part.

Roof design (5.6.3.7)

The proposal satisfies the relevant criteria prescribed by this part.

Heritage items and character buildings (5.6.3.8)

The proposal satisfies the relevant criteria prescribed by this control.

16.2.6 Section D5.6.4: Relationship to public domain

Awnings (5.6.4.1)

- D5.6.4.1 – Control C1, C4 and Objective O1 & O2

There is no requirement for the provision of continuous awnings in the location of the subject sites.

Notwithstanding this, Control C4 requires adequate cover to building entrances. The proposal involves the provision of an awning located to the Bay Street frontage which will not have any adverse impact and is satisfactory with regard to Objective O1 and O2.

The proposal satisfies the relevant criteria prescribed by this part.

Colonnades (5.6.4.2)

Colonnades are not required in the location of the subject sites.

The proposal therefore satisfies the relevant criteria prescribed by this part.

Arcades, walkways and courtyards (5.6.4.3)

- Part D5.6.4.3 – Control C1, C4, C5, C6 and Objectives O1, O2, O4

The DCP encourages the retention existing and creation of new arcades and/or walkways to provide public access and connections throughout the Double Bay Centre.

The proposal provides a through-site pedestrian link connecting Bay Street to Gumtree Lane with a minimum width of 3m, as envisaged by the DCP.

The proposal therefore satisfies the relevant criteria prescribed by this part.

Ground floor active lane frontage (5.6.4.5)

- D5.6.4.5 – Control C1, C2, C3 and Objective O4.

A minimum of 75% (18.43m) of the frontage to Gumtree Lane is required to incorporate an active frontage. The proposal achieves an active frontage of 51% (12.5m) to Gumtree Lane, which is non-compliant with the minimum requirement. In this instance, the non-compliance is generally supported as it is an improvement from the existing situation which has 0% of active frontage. In the circumstances, the proposal is acceptable as it satisfies Objective O4 which seeks to “...*improve safety and security by providing active shopfronts to improve general lane surveillance.*”

The proposal therefore satisfies the relevant criteria prescribed by this part.

16.2.7 Section D5.6.5: Amenity

Visual privacy (D5.6.5.1)

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

Acoustic privacy (D5.6.5.2)

- Part D5.6.5.2 – Control C2 and Objectives O1, O2 and O3.

Concern has been raised from the operators of the Golden Sheaf Hotel at No 429 New South Head Road, Double Bay in relation to potential adverse internal amenity impacts arising from external noise sources within the Double Bay Centre due to its close proximity to New South Head Road, and the Golden Sheaf Hotel. Subject to standard noise related conditions this issue could be adequately addressed.

The proposal therefore satisfies the relevant criteria prescribed by this part.

Landscaped areas (5.6.5.3)

For reasons already outlined, providing deep soil landscaped area on the site is not considered necessary in this urban environment. There is no existing trees and/or vegetation on the subject site, nor are there any impacts to Council's street trees.

Nevertheless, the proposal provides two landscaped roof top gardens located within the centre of the development which is consistent with Objective O2 which aims "...*Provide landscaped areas, typically in the centre of blocks, to preserve and extend established open spaces...*".

The proposal therefore satisfies the relevant criteria prescribed by this part.

Private open space (5.6.5.4)

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

Solar access (5.6.6.1)

- Part D5.6.6.1 – Control C2 and Objective O1

In relation to providing solar access to the residential component of the development, this has been addressed under the provisions of SEPP 65 which supersede these controls.

Increasing the side and rear setback of the development to achieve compliance with the SEPP 65 ADG provisions, particularly on its southern and eastern sides, would improve solar access afforded to adjoining properties and public areas.

Part D5.6.6.1 aims to minimise overshadowing of publicly accessible spaces, and minimise shadowing of north-facing habitable rooms and private open space.

The proposal results in the following additional shadows:

9am on 21 June

Additional overshadowing to the Bay Street road reserve and footpath on eastern side of Bay Street (2m²). The roofs of the shops/commercial spaces to the south of the subject site would also be overshadowed. No additional overshadowing of habitable room windows and/or private open space.

12pm on 21 June

Additional overshadowing to the Gumtree Lane road reserve, and footpaths and adjoining roofs to the south. Additional overshadowing of north-west facing windows/rear elevations (No 330 NSHRD).

3pm on 21 June

Additional overshadowing to the Gumtree Lane and NSHRD road reserve, and adjoining roofs to the east. Additional overshadowing of windows North-west facing windows (No 330-336, No 330 & No 324 NSHRD) and publicly accessible land such as footpaths/road reserves.

As per the above assessment, the proposal would achieve compliance with the minimum solar access requirements of Control C1, C3 and C4 in Part D5.6.6.1 of the Woollahra DCP 2015, in terms of retaining solar access to areas of private open space and north-facing habitable room windows. Notwithstanding this, any future redevelopment of the sites located to the east and south of the subject site, would be significantly compromised due to the amount of additional overshadowing arising from a non-compliant built form. This would fail to achieve the key objective O1 which aims to, “*Minimise overshadowing of adjoining properties or publicly accessible spaces.*”

Conclusion

For reasons outlined, the proposal fails to satisfy the relevant criteria prescribed by this part.

Cross-ventilation (5.6.6.2)

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

Geotechnology and hydrogeology (5.6.7)

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 part.

On-site parking (5.6.8.1)

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

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

See below for further assessment.

Vehicular access (5.6.8.2)

The proposal satisfies the relevant criteria prescribed by this part.

Site facilities (5.6.8.4)

The issue of waste storage facilities is assessed below.

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

16.3 Chapter E1: Parking and Access

16.3.1 Part E1.4-E1.5: Residential and non-residential parking

Use	Num. Spaces provided	Control	Complies
Residential Component			
Studio / 1+ Bed (x3)	25*	Max 26 (25.9)	Yes
2 Bedroom (x10)			
3+ Bedroom (x10)			
Visitor	5	Max 5 (4.6)	Yes
Total	30	Max 31 (30.5)	Yes
Retail Component (331m ²)	8	Min 7 (6.6)	Yes
Total	38	38 (37.5)	Yes

**Includes a dedicated car wash bay*

The development provides 24 basement car spaces for the residential component, 5 visitor spaces, 8 retail spaces and a designated car wash bay.

In this instance, the development results in a generation rate of 38 spaces and makes provision for 38 spaces.

In terms of the traffic generation of the proposed development, Council’s Traffic Engineer states:

“...the traffic generation is predicted to be lower than the traffic generated by the previous developments and thus will not result in unacceptable adverse traffic impact on the existing road network.”

The proposal satisfies the relevant controls and objectives of these parts.

16.3.2 Part E1.6: Bicycle parking and end-of-trip facilities

Council’s Traffic Engineer provides:

“The proposal makes provision of 40 storage/bike cages for residents, 5 bicycle spaces for retail employees and retail customers combined, and 4 motorbike spaces. Each of these provisions meets or exceeds the requirements for each type.”

The proposal satisfies the relevant controls and objectives of this part.

16.3.3 Part E1.14: Off-street Loading and Servicing Facilities

	Existing	Proposed	Control	Complies
Minimum Number of Loading Bays	None	None	1	NO

E1.14.1 requires a minimum of one loading bay, and E1.14.2 states that loading bays are to be independent, located wholly on the subject site.

The DCP prescribes that a loading bay is required for the site. The proposed lack of a loading bay is supported for the following reasons:

- Council’s Traffic Engineer supports the lack of a loading bay stating, “...*Future deliveries associated with the development are anticipated to utilise the available on-street parking.*”;
- There are loading zones in close proximity to the site that would cater for the temporary delivery of goods including on-street parking;
- Furthermore, there is no guarantee that delivery vehicles would utilise a loading bay if provided on-site.

In view of the above, the non-compliance with Part E1.14.1 and E1.14.2 is supported in this instance.

16.3.4 Part E1.7: Special Provisions

	Proposed	Control	Complies
Basement or Undercover Parking	Basement parking	Required Where > 20 Spaces	Yes

E1.7.1 requires basement or undercover parking where there are more than 20 car spaces.

16.3.5 Conclusion

The proposal is acceptable with regard to the objectives and controls in Chapter E1 of the Woollahra DCP 2015 and/or can be addressed by conditions.

16.4 Chapter E2: Stormwater and Flood Risk Management

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

16.5 Chapter E3: Tree Management

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

16.6 Chapter E4: Contaminated Land

Chapter E4 identifies requirements for applicants when proposing a development that it must be consistent with the provisions of SEPP 55 for managing contaminated land.

The provisions of SEPP 55 have been assessed above.

The proposal nevertheless satisfies the relevant considerations prescribed and can be addressed by condition.

16.7 Chapter E5: Waste Management

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

16.8 Chapter E6: Sustainability

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

16.9 Chapter E8: Adaptable Housing

Total 23 units	Proposed	Control	Complies
Class A Certification Dwellings	2	10% of Dwellings 2	Yes

The proposal is acceptable with regard to the objectives and controls in Chapter E8 of the Woollahra DCP 2015.

17 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%	\$22,289,658.00

The total contribution under the provisions of this plan is **\$222,896.58**

Should development consent be issued, a contribution pursuant to Section 94A would apply and can be enforced by condition.

18 APPLICABLE ACTS/REGULATIONS

18.1 Environmental Planning and Assessment Regulation 2000 (Demolition of Structures)

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

19.1 Fire Safety

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

19.2 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.

19 THE LIKELY IMPACTS OF THE PROPOSAL

20.1 Views

Submissions have raised view loss as a concern to properties within and surrounding the Double Bay Centre. Some of these properties are located on the higher side of Double Bay on New South Head Road that overlook the commercial centre. Concerns express the potential loss of district views and Sydney harbour water views. The submission from the Double Bay Residents Association, states:

“...The addition of the extra two upper floors affect four categories of properties. Firstly, it will affect easterly district views from the properties opposite across Bay St such as the 4 storey 4-10 Bay St and 18 Bay St. Secondly, it will affect the reasonable anticipation on their redevelopment that the run of properties to the south on the same side of Bay St would have, since the ground level slowly rises to New South Head Rd, of harbour views across the top of 4 storeys only on this site. Thirdly, it will block NE harbour views from near neighbours such as Overthorpe and Bibaringa on the uphill, southern side of New South Head Road. Fourthly, it will block NE harbour views from a host of properties located on the amphitheatre formed by the slopes of Edgecliff and Woollahra...”

The WDCP 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.

Whilst view loss inspections have not been undertaken from potentially affected properties within the Double Bay Centre and those on the higher side of Double Bay on New South Head Road that overlook the commercial centre, the proposed development is unlikely to have any significant view impact. The extent of impact arising from the proposed development is likely to be negligible.

Notwithstanding the above, any view loss arising from a building that is excessive in height and scale in terms of non-compliances with site specific envelope controls prescribed by the WDCP 2015 and WLEP 2014, is not considered to be reasonable.

20.2 Retail hours

The proposed hours of use of the retail component of the development, being 6am-10pm Monday to Saturday and 7am-10pm Sunday, is consistent with other existing retail uses in the centre. The proposed hours of operation are unlikely to detrimentally impact on the amenity of adjoining residents with respect to noise or anti-social behaviour.

20.3 General

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

20 THE SUITABILITY OF THE SITE

Based upon the above assessment, the site is not suitable for the proposed development.

21 THE PUBLIC INTEREST

The proposal is not considered to be in the public interest.

22 CONCLUSION

The assessment of the development against the relevant considerations under s4.15 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 overdevelopment of the site and is recommended for **REFUSAL**.

23 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 development application by the applicant or any person who made a submission.

24 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, refuse development consent to DA33/2018/1 for demolition of all existing commercial buildings & construction of a new six (6) storey mixed-use building including 2 retail tenancies on ground floor, 5 storeys containing 23 residential units above, with 2 levels of below ground basement car parking, vehicular access via Gumtree Lane, provision of a through-site pedestrian link, and associated landscaping on land at 21, 23-25 & 27 Bay Street DOUBLE BAY, for the following reasons:

1. Building Height

The proposed development exceeds the maximum height development standard and is inconsistent and incompatible with the existing built form, streetscape and village character of the centre.

Particulars

- a) The proposed height of the development at 22.6m (Lift/Stair Overrun) and 20.88m (Roof Parapet) fails to comply with the maximum 14.7m height limit development standard applicable to the site prescribed by Woollahra Local Environmental Plan 2014 (WLEP). The written request submitted by the applicant does not adequately demonstrate that the contravention of the development standard is justified pursuant to the relevant matters for consideration prescribed by clause 4.6 of the WLEP.
- b) The proposed development fails to achieve the desired future character objectives for the Bay Street (South) and Gumtree Lane.
- c) The proposed development is contrary to the strategic approach for the redevelopment of the centre that was undertaken in a planned and co-ordinated way that was tailored for each site taking into considerations its unique characteristics.
- d) The proposal is 2-4 storeys over the prescribed height control and does not provide a coherent streetscape definition on either Bay Street or Gumtree Lane.
- e) The proposed development does not minimise negative impacts on the amenity of the adjoining properties and the public domain with respect to scale, bulk, solar access and sense of enclosure.
- f) The proposal fails to satisfy the following provisions:

State Environmental Planning Policy 65:

Principle 1: Context and neighbourhood character.

Principle 2: Built form and scale.

Principle 9: Aesthetics.

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(a), (g) and (l).

Part 2 – Land Use Table, Zone B2 Local Centre, Objectives of zone.

Part 4 – Clause 4.3(1)(a), (c), (d) and (2).

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3.

Part D5.1.3 – Objectives O6 and O7.

Part D5.3.1 – Figure 5

Part D5.3.2 – Strategies 1a), 3e), 4a) and 5a), c), d).

Part D5.4.4 (Bay Street South) – Objective a)

Part D5.4.11 (Gumtree Lane) – Objectives a) and c)

Part D5.5 (Built form envelopes) – Control Drawing 5;

Part D5.6.3.2 – Objective O1 and Controls C1, C2, C3.

Part D5.6.6.1 – Objective O1 and Control C2.

2. Floor Space Ratio

The proposed development exceeds the maximum floor space ratio and subsequently creates a building volume that is inconsistent and incompatible with the existing built form, streetscape and village character of the centre.

Particulars

- a) The proposal has a floor space ratio of 3.6:1 exceeding the maximum Floor Space Ratio of 2.5:1 which is a development standard prescribed by Clause 4.4 of WLEP 2014. In this regard, the written submission does not adequately demonstrate that the contravention of the floor space ratio development standard prescribed by

Clause 4.4 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

- b) The proposed development fails to achieve the desired future character objectives for the Bay Street (South) and Gumtree Lane
- c) The proposed development is contrary to the strategic approach for the redevelopment of the centre that was undertaken in a planned and co-ordinated way that was tailored for each site taking into considerations its unique characteristics.
- d) The scale and bulk of the development is incompatible with any existing developments in this locality.
- e) The scale and bulk of the development does not provide a coherent streetscape definition on either Bay Street or Gumtree Lane in-line with Council's envelope controls.
- f) The proposed development does not provide an appropriate transition to the existing developments immediately adjoining to the south, and north, and across Gumtree Lane to east.
- g) The proposed development does not minimise negative impacts on the amenity of the adjoining sites and public realm with respect to scale, bulk, solar access and sense of enclosure.
- h) The proposal fails to satisfy the following provisions:

State Environmental Planning Policy 65:

Principle 1: Context and neighbourhood character.

Principle 2: Built form and scale.

Principle 9: Aesthetics.

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(a), (c), (g) and (l).

Part 2 – Land Use Table, Zone B2 Local Centre, Objectives of zone.

Part 4 – Clause 4.4 (1)(b) and (2).

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3.

Part D5.1.3 – Objectives O6 and O7.

Part D5.3.2 – Strategies 1a), 2a), 3e), 4a) and 5a), c), d).

Part D5.4.4 (Bay Street South) – Objective a)

Part D5.4.11 (Gumtree Lane) – Objectives a) and c)

Part D5.5 (Built form envelopes) – Control Drawing 5;

Part D5.6.3.2 – Objective O1 and Controls C1, C2, C3.

Part D5.6.6.1 – Objective O1 and Control C2.

3. Clause 4.6 Variation

The consent authority is of the opinion that the written requests from the applicant under Part 4.6 of the Woollahra Local Environmental Plan 2014 to the *Height of buildings* and *Floor space ratio* development standards under Clauses 4.3 and 4.4 respectively have not adequately demonstrated that compliance with the development standards are unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental grounds to justify contravening the development standard.

4. Setbacks

The proposed development should be refused because it fails to provide adequate setback to protect the amenity of adjoining residential properties, future residents and the public domain.

Particulars

- a) The proposal is constructed to the northern and southern side boundaries above Ground Level to all levels (Level 1 through to 5).
- b) The proposal is constructed to its eastern rear boundary above Ground Level to Level 3 and setback 3m on Levels 4 and 5.
- c) The proposed setbacks is insufficient based on the Design Criteria prescribed by the Apartment Design Guide ('ADG') which requires a setback of 3-9m from the northern, southern and eastern boundaries.
- d) The proposed setbacks provide insufficient separation.
- e) The lack of separation, in particular from the eastern (rear) boundary, compromises the amenity of both the existing adjoining and potential future residents of redevelopment with regard to privacy, scale, bulk, solar access and sense of enclosure.
- f) The proposed setback does not provide a satisfactory contextual transition of the building form with the lower scale development immediately adjoining to the north and south.
- g) The proposed setbacks results in a building form that does not achieve the desired future character for the Double Bay Centre.
- h) The proposed setbacks compromises the privacy of future residents of the subject development.
- i) The proposal fails to satisfy the following provisions:

Apartment Design Guide:

Objective 3F-1 and Design Criteria 1 and Figure 3F.3

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(a), (g) and (l).

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3.

Part D5.1.3 – Objectives O7.

Part D5.3.1 – Figure 5

Part D5.3.2 – Strategies 1a), 3e), 4a) and 5a), c), d).

Part D5.4.4 (Bay Street South) – Objective a)

Part D5.4.11 (Gumtree Lane) – Objectives a) and c)

Part D5.5 (Built form envelopes) – Control Drawing 5;

Part D5.6.3.1 – Objective O1 and Control C1

Part D5.6.3.2 – Objective O1 and Controls C1, C2, C3.

Part D5.6.3.4 – Objective O1 and Controls C1, C2, C4, C5.

Part D5.6.6.1 – Objective O1 and Control C2.

5. Use

The removal of the existing commercial/office uses from this site and the lack of adequate replacement in the proposed development is detrimental to the centre and in particular the loss of employment opportunities.

Particulars

- a) The composition of the existing buildings that are to be demolished is 1-3 storeys with the ground floor primarily of retail uses. It totals more than 1000m² of existing commercial floor area. The existing buildings contain approximately 6 separate tenancies.
- b) These existing commercial tenancies provide employment opportunities, not only to employers and employees, but also clients and other workers that interact with these uses be it couriers, delivery drivers, cleaners, technicians etc.
- c) The removal of these existing commercial/office uses from this site is to the detriment of the centre and in particular the loss of employment opportunities.
- d) The commercial/office uses and associated workers creates a daytime vibrancy that assists in sustaining other retail uses in the centre.
- e) The proposal fails to satisfy the following provisions:

Woollahra Local Environmental Plan 2014:

Part 1 – Clause 1.2, Sub-clauses (2)(a) and (c).

Part 2 – Land Use Table, Zone B2 Local Centre, Objectives of zone.

Woollahra Development Control Plan 2015:

Part A1.1.5 – Objective O3

Part D5.1.3 – Objectives O3 and O6

Part D5.3.2 – Strategy 2a)

Part D5.6.2 – Objective O4 and C3.

6. Public interest

By reason of the contentions raised above, the proposal is not in the public interest.

ANNEXURES

1. Plans and elevations
2. Development Engineer - Referral Response
3. Drainage Engineer - Referral Response
4. Traffic - Referral Response
5. Trees and Landscaping - Referral Response
6. Heritage - Referral Response
7. Urban Design - Referral Response
8. Environmental Health - Referral Response
9. Property (Owner's Consent) - Referral Response
10. Water NSW – External Referral Response
11. Conditions without prejudice