



Sydney Eastern City Planning Panel

14th May 2026

Recommended Reasons for Refusal

DA No: DA376/2025/1

Address: 351-353 New South Head Road DOUBLE BAY

Proposal: Demolition of the existing buildings and construction of a new residential flat building including basement carpark with affordable housing

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the refusing consent using the power in section 4.16(1)(b) of the EP&A Act, for the reasons specified below:

Reasons for Refusal

1. State Environmental Planning Policy (Housing) 2021 – Chapter 2, Affordable Housing

Part 2 Development for affordable housing, Division 1 In-Fill Affordable Housing

- a) The proposal does not comply with the *maximum permissible floor space ratio (FSR)* development standard (2.86:1) under Clause 16(1) of the State Environmental Planning Policy (Housing) 2021. The submitted CI 4.6 written request to justify the contravention of the development standard is not well founded.
- b) The proposal conflicts with Clause 20 of the State Environmental Planning Policy (Housing) 2021, as it fails to respond appropriately to the established character of the local area and does not align with the identified desired future character.

2. State Environmental Planning Policy (Housing) 2021 – Chapter 4, Design of Residential Apartment Developments

The proposal is contrary to the relevant provisions of the State Environmental Planning Policy (Housing) 2021, in particular, Chapter 4, Design of Residential Apartment Developments (ADG) and Schedule 9 – Design principles for residential apartment development.

Specifically, the proposal involves the following non-compliances which warrant the refusal of the application.

2.1. Clause 142: Aims of chapter

The proposal is contrary to the aims of Chapter 4 of the SEPP:

- Aim (b) in that it fails to achieve an appropriate built form and streetscape outcome,
- Aim (c) in that it fails to maximise the amenity, safety and security of the residents of residential apartment development and the community,
- Aim (d) in that it fails to demonstrate it satisfies the demand for residential apartment development, considering the needs of a wide range of people,
- Aim (e) in that it fails to contribute to the provision of a variety of dwelling types.

2.2. Clause 147 of SEPP Housing – Determination of Development Applications for Residential Apartment Development

The design quality of the development has been evaluated in accordance with the design principles for residential apartment development under Schedule 9 of the SEPP.

The proposed development is contrary to the following design principles:

- Principle 1: Context & Neighbourhood Character
- Principle 2: Built Form and Scale
- Principle 3: Density
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity

2.3. Apartment Design Guide

The proposal is inconsistent with the objectives outlined in following Parts of the Apartment Design Guide:

- 3B – Orientation
- 3C – Public Domain
- 3D – Communal and Public Open Space
- 3E – Deep Soil Zones
- 3F – Visual privacy
- 4D – Apartment Size and Layout
- 4E – Private open space & balconies
- 4L – Ground Floor apartments
- 4M - Facades
- 4O – Landscape design
- 4X – Building Maintenance

3. State Environmental Planning Policy (Housing) 2021– Chapter 6, Low and Mid-Rise Housing

The proposal does not comply with the *Number of Storey* development standard prescribed in Clause 175(2) of the State Environmental Planning Policy (Housing) 2021. The Applicant fails to provide a written request pursuant to Clause 4.6 of WLEP 2014 to justify the contravention of the development standard contained in the State Environmental Planning Policy (Housing) 2021.

4. Woollahra Local Environmental Plan 2014, Part 1 – Clause 1.2 Aims of Plan

The proposal is inconsistent with the aims in Part 1.2(2) because:

- It does not ensure that growth occurs in a planned and co-ordinated way, as required in sub-clause (a);
- It does not conserve natural environmental heritage in sub-clause (f);
- It does not protect the amenity of the surrounding area, as required in sub-clause (g);
- It does not promote a high standard of design in the private and public domain, as required in sub-clause (j); and

- It does not to ensure development achieves the desired future character of the area, as required in sub-clause (l).

5. Woollahra Local Environmental Plan, Part 2, Land Use Table

The proposal is inconsistent with the relevant objectives of the R3 Medium Density Residential zone because:

- The height and scale of the proposal will not be compatible and sympathetic to the existing and desired future character of the neighbourhood.
- The proposal does not ensure development conserves and enhances tree canopy cover.

7. Woollahra Local Environmental Plan 2014, Part 4 – Clause 4.6 Exceptions to Development Standards

Number of storeys

In the absence of a written request to vary the six-storey development standard under section Clause 175(2) of the State Environmental Planning Policy (Housing) 2021, the consent authority cannot be satisfied that the requirements of section 4.6(3)(a) and section 4.6(3)(b) of the Environmental Planning and Assessment Act 1979 have been met. The proposal fails to address the matters required to be demonstrated under section 4.6(3) in that:

- strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- there are sufficient environmental planning grounds to justify contravening the development standard.

Floor Space Ratio (FSR)

The consent authority is of the opinion that the submitted written request fails to justify the contravention of the *maximum Floor Space Ratio (1:2.86)* development standard under Clause 16(1) of the State Environmental Planning Policy (Housing) 2021 in accordance with Clause 4.6(3)(a) and 4.6(3)(b). The submitted written request has not adequately addressed the matters required to be demonstrated by sub-clause (3) in that:

- strict compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
- there are sufficient environmental planning grounds to justify contravening the development standard.

8. Woollahra Local Environmental Plan 2014, Part 5.10 – Heritage Conservation

The proposal is contrary to Clause 5.10(1)(a) and (b) of the Woollahra LEP 2014, as it fails to conserve the heritage significance and landscaped setting of the adjoining State Heritage Register item “Overthorpe”, by reason of its scale, bulk, visual dominance, vegetation removal, and inadequate heritage impact assessment.

9. Woollahra Local Environmental Plan 2014, Part 6.9 – Tree canopy cover in Zones R2 and R3

The proposal is inconsistent with Clause 6.9 of the Woollahra LEP 2014, as the height, bulk and massing of the development result in unacceptable cumulative impacts on existing tree canopy, heritage landscapes and amenity, including increased overshadowing, visual intrusion and diminished landscape prominence affecting the State-listed rainforest at 5 Manning Road and the setting of “Overthorpe”.

10. Woollahra Development Control Plan 2015 (WDCP 2015), Chapter B1 Residential Precincts

10.1. Part B1.4: Wallaroy Residential Precinct

The proposal fails to achieve consistency with regards to the desired future character (DFC) Objectives O1, O4, O6 and O8 outlined in Part B1.4.2 of the WDCP 2015.

11. WDCP 2015, Chapter B3 General Development Controls

11.1. Part B3.2: Building Envelope

The proposal fails to achieve consistency with regards to the objectives O1-O4 outlined in Part B3.2 of the WDCP 2015.

11.2. Part B3.5.1: Streetscape and Local Character

The proposal fails to achieve consistency with regards to the Objectives O1-O4 outlined in Part B3.5.1 of the WDCP 2015.

11.3. Part B3.5.2: Overshadowing

The proposal does not comply with Control C1 and fails to achieve consistency with regards to the Objective O1 outlined in Part B3.5.2 of the WDCP 2015.

11.4. Part B3.5.3: Public and Private Views

The proposal does not comply with Controls C5, C7 and C8 and does not achieve the underlying Objective O3 prescribed in Part B3.5.3 of the WDCP 2015.

11.5. Part B3.7: External Areas

- a) The proposal fails to achieve the underlying Objectives O1, O2 O7 and O9 prescribed in Part B3.7.1 of the WDCP 2015.
- b) The proposal does not comply with Controls C7 and C8 and does not achieve the underlying Objective O7 prescribed in Part B3.7.3 of the WDCP 2015.

12. Insufficient/Inadequate information

Inadequate information has been submitted to enable full and accurate assessment of the proposal against the relevant considerations pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979.

i) Number of storeys: Clause 4.6 Request

A written request pursuant to Clause 4.6 of the WLEP is required to be submitted to vary the six-storey development standard under section Clause 175(2) of the State Environmental Planning Policy (Housing) 2021 as the consent authority cannot be satisfied that the requirements of section 4.6(3)(a) and section 4.6(3)(b) of the Environmental Planning and Assessment Act 1979 have been met.

ii) Floor Space Ratio: Clause 4.6 Request

An updated written request pursuant to Clause 4.6 of the WLEP is required to be submitted to vary the maximum Floor Space Ratio development standard under section Clause 16(1) of the State Environmental Planning Policy (Housing) 2021 as the consent authority cannot be satisfied that the requirements of section 4.6(3)(a) and section 4.6(3)(b) of the Environmental Planning and Assessment Act 1979 have been met.

iii) Sun access to neighbours

Provide evidence that living areas, private open spaces and communal open spaces of neighbours will receive solar access in accordance with Section 3B and 4A of the ADG.

iv) View Loss Analysis

View photomontages for affected properties in accordance with the NSW Land and Environment Court Policy for Use of Photomontages and/or wire frame diagrams are required.

v) Architectural Plans

Revised architectural plans must be submitted showing the following:

- Updated and accurate Gross Floor Area (GFA) calculations, including internal circulation areas at the ground and first-floor levels.
- An updated Landscape Plan which clearly and correctly identifies the extent of deep soil landscaping (as defined in the Woollahra DCP 2015) and landscaped area (as defined in the Woollahra LEP 2014) provided as part of the proposal.