



Woollahra  
Municipal  
Council

## COUNCIL ASSESSMENT REPORT

### SYDNEY EASTERN CITY PLANNING PANEL

|                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| PANEL REFERENCE & DA NUMBER                                      | PPSSEC-420 – DA376/2025/1                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| PROPOSAL                                                         | Demolition of the existing buildings and the construction of a new residential flat building, including affordable housing and basement parking                                                                                                                                                                                                                                                                                                                                  |
| ADDRESS                                                          | 351-353 New South Head Road, Double Bay                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| APPLICANT                                                        | Miroslav Michael Petrovic                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| OWNER                                                            | Advent Property Pty Ltd                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| DA LODGEMENT DATE                                                | 14 October 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| APPLICATION TYPE                                                 | Integrated Development Application                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| REGIONALLY SIGNIFICANT CRITERIA                                  | Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: it is Development that has a capital investment value of more than \$30 million.                                                                                                                                                                                                                   |
| CIV                                                              | \$33,912,818.00                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| CLAUSE 4.6 REQUESTS                                              | Nil                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| LIST OF ALL RELEVANT PLANNING CONTROLS (S4.15(1)(A) OF EP&A ACT) | State Environmental Planning Policy (Housing) 2021<br>State Environmental Planning Policy (Transport and Infrastructure) 2021<br>State Environmental Planning Policy (Sustainable Buildings) 2022<br>State Environmental Planning Policy (Resilience and Hazards) 2021<br>State Environmental Planning Policy (Biodiversity & Conservation) 2021<br>Woollahra Local Environmental Plan 2014<br>Woollahra Development Control Plan 2015<br>Woollahra Community Participation Plan |
| AGENCY REFERRALS                                                 | Transport for NSW<br>Water NSW                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| TOTAL & UNIQUE SUBMISSIONS                                       | Objections: 62                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

|                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|---------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>KEY ISSUES</b>                                                         | Height, FSR, Number of Storeys, SEPP (Housing) 2021 (Chapters 2, 4 and 6), Desired Future Character, Bulk and Scale, Streetscape, Overshadowing, Impacts on Trees of Heritage significance, View loss, Visual and Acoustic Privacy                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>                              | <ul style="list-style-type: none"> <li>• Aboriginal Cultural Heritage or Assessment Report</li> <li>• Access Report</li> <li>• Architectural Plans</li> <li>• Acoustic Report</li> <li>• Arborists Report</li> <li>• BASIX Stamped Plans</li> <li>• BASIX Certificate</li> <li>• Cost Estimate Report</li> <li>• Contributions Forms</li> <li>• Demolition Management Plan</li> <li>• Demolition Work Plan</li> <li>• Design Statement</li> <li>• Design Verification Statement</li> <li>• Driveway and Parking Details</li> <li>• Energy Efficiency Report</li> <li>• Flood Risk Impact Report</li> <li>• Geotechnical Report</li> <li>• Heritage Impact Assessment Report</li> <li>• Landscape Plan</li> <li>• Nathers Certificates</li> <li>• Preliminary Engineering Drawings</li> <li>• Updated Statement of Environmental Effects</li> <li>• Section J Report</li> <li>• SEPP 65 Assessment</li> <li>• Stormwater Management Plan</li> <li>• Subdivision Plan</li> <li>• Survey Plan</li> <li>• Traffic Impact Assessment</li> <li>• Traffic Report</li> <li>• Waste Management Plan</li> <li>• 3D Model</li> </ul> |
| <b>DOCUMENTS SUBMITTED WITH THIS REPORT FOR THE PANEL'S CONSIDERATION</b> | <p>Attachment 2 – Architectural Plans</p> <p>Attachment 3 – Referral Response Development Engineering</p> <p>Attachment 4 – Referral Response Trees and landscaping</p> <p>Attachment 5 – Referral Response Heritage</p> <p>Attachment 6 – Referral Response Traffic</p> <p>Attachment 7 – Referral Response Urban Design</p> <p>Attachment 8 – Referral Response Environmental Health</p> <p>Attachment 9 – Referral Response Drainage</p> <p>Attachment 10 – GTAs Water NSW</p> <p>Attachment 11 – Referral Response TfNSW</p> <p>Attachment 12 – Comments by Heritage NSW</p> <p>Attachment 13 – Court Approved Plans under DA 226/2019/1</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>HOUSING AND PRODUCTIVITY</b>                                           | Yes – required.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|                                  |               |
|----------------------------------|---------------|
| <b>CONTRIBUTIONS<br/>(S7.24)</b> |               |
| <b>RECOMMENDATION</b>            | Refusal       |
| <b>PREPARED BY</b>               | Mr B McIntyre |
| <b>DATE OF REPORT</b>            | 6 May 2026    |

## **1. REASON FOR REPORT TO LOCAL PLANNING PANEL (SECPP)**

The application is to be determined by the Sydney Eastern City Planning Panel as the Development has a capital investment value of more than \$30 million [Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021] which declares the proposal regionally significant development.

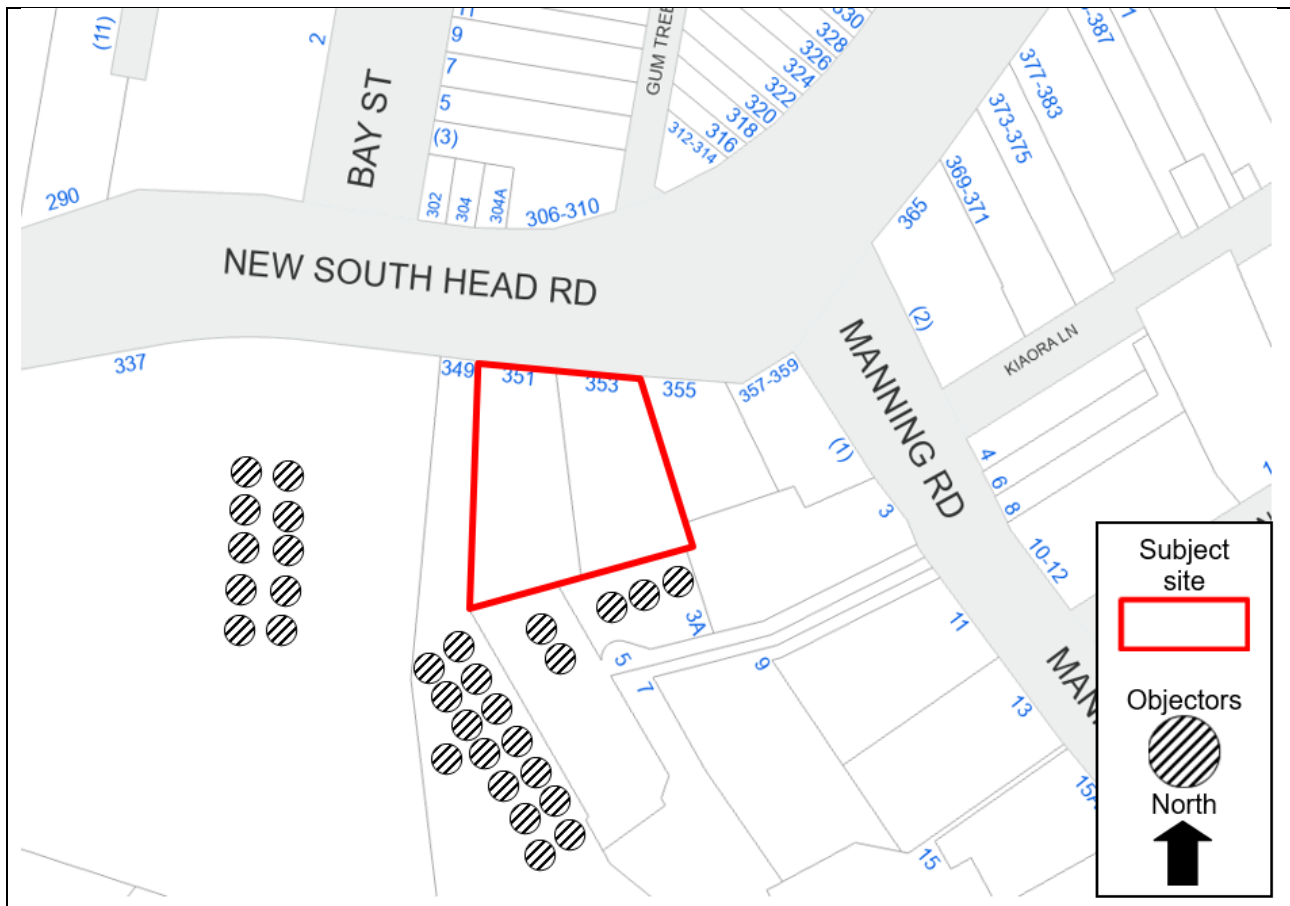
In addition, the matter is the subject of a Class 1 Appeal (No. 2026/17366) which was filed on 14 January 2026 with the Land and Environment Court (LEC) on the grounds of a deemed refusal.

## **2. REASONS FOR RECOMMENDATION**

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for refusal because:

- It is considered to be unsatisfactory with planning provisions contained in Chapters 2, 4 and 6 of the Housing SEPP 2021, WLEP 2014 and WDCP 2015
- It will have adverse effects on the amenity of adjoining properties and/or local built and natural environment such that refusal is justified
- The site is not suitable for the proposed development
- The proposal is not in the public interest

### 3. LOCALITY PLAN



**Notes:** In addition to what is shown, the remaining objectors are outside the catchment of the map above, have provided no address or are Councillors. The list of people who made submissions (comprising 62 objections) is provided at **Attachment 14**



*Aerial view of the subject site (Source: Nearmap)*

#### 4. PROPOSAL

The proposal seeks development consent for the demolition of the existing buildings and the construction of a new eight-storey residential flat building [comprising a total of twenty-four (24) residential units, including affordable housing units], with two basement levels of parking and associated landscaping at No's. 351 and 353 New South Head Road, Double Bay.

Specifically, the proposal involves the following:

##### ***Basement Level 2***

- Parking for 18 car spaces and 3 motorcycle spaces
- Storage rooms, internal stairs and lift
- Driveway ramp

##### ***Basement Level 1***

- Parking for 18 car spaces and 1 motorcycle space
- Bin storage room, internal stairs and lift
- Driveway access via New South Head Road

##### ***Ground Floor Level***

- One 3-bedroom unit, the lower level of a two 2-bedroom unit and a single 1-bedroom unit (all allocated as Affordable Housing)
- 27 bicycle parking spaces
- Fire pump room, plant room MSB room Bin storage room, internal stairs and lift

- Communal gardens located towards the rear and west

### ***First Floor Level***

- One 3-bedroom unit (allocated as Affordable Housing), one standard 3-bedroom unit, the upper levels of the two 2-bedroom affordable units and a single 1-bedroom affordable unit
- Communal lobby, internal stairs and lift

### ***Second to Sixth Floor Levels***

- Each level comprises two 3-bedroom units and one 4-bedroom unit
- Communal lobby, internal stairs and lift

### ***Seventh Floor Level***

- Two 4-bedroom units
- Communal lobby, internal stairs and lift

### ***Roof Plan***

- Curved roof form
- Plant room and PV roof panels

Amended Plans and documentation were submitted on 15 April 2026 which included the following:

- Communal open space added to the north-west and notation provided that the non-trafficable garden is communal.
- Reduction in the size of the Unit 4 terrace to allow for additional communal open space.
- Plant, MSB room, bicycle parking and open breezeway layout amended to open breezeway to eastern side.
- Clarification provided on open entry gate.
- Internal layout for Units 1 and 2 amended to achieve an open living area depth of 8m from the window.
- Internal layout for Unit 6 amended to achieve 4m width for the living room.
- Deep soil calculations updated.
- Clarification of balustrade of communal open space being 1m in height.
- Details of open breezeway provided
- Landscape amendments
- Additional shadow impact analysis
- Additional information- urban context analysis

**\* It is noted that the Amended Plans did not include any changes to the initially proposed building envelope in response to the contentions raised in the Statement of Facts and Contentions filed with the Land and Environment Court on 25 February 2026. It is noted that the Land and Environment Court has not granted leave to the Applicant to rely on these amended plans.**

For detailed floor layouts, elevations and sections, refer to the plans provided in Attachment 2.



*Photomontage showing the proposal as viewed from New South Head Road, looking in a easterly direction  
(Source: Base plan by Luigi Rosselli Pty Ltd and Hill Thalys Architecture + Urban Projects Pty Ltd)*



*Photomontage showing the proposal as viewed from New South Head Road, looking in a westerly direction  
(Source: Base plan by Luigi Rosselli Pty Ltd and Hill Thalys Architecture + Urban Projects Pty Ltd)*

The key planning parameters are provided in the Table below.

### Key Development Data

| Control                                                                                                                                                                                 | Proposal                                                                                                                                                                                                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Site area                                                                                                                                                                               | 351 New South Head Road – 562.8m <sup>2</sup><br>353 New South Head Road – 670.3m <sup>2</sup><br><br>Total: 1,233.1m <sup>2</sup>                                                                                   |
| GFA<br>(3526m <sup>2</sup> which represents the LMR GFA for an additional 30% bonus for the provision of 15% of the residential floor space as affordable housing)                      | 3,526m <sup>2</sup> (on the calculations provided by the Applicant).<br><br>Approximately 3,594m <sup>2</sup> (as per the calculation by Council's Assessment Officer)                                               |
| FSR<br>(2.86:1 - which represents the LMR floor space ratio of 2.2:1 plus an additional 30% bonus for the provision of 15% of the residential floor space as affordable housing)        | 2.86:1 (on the calculations provided by the Applicant)<br><br>Approximately 2.92:1 (as per the calculation by Council's Assessment Officer)                                                                          |
| Max. Height<br>(28.6m - which represents the LMR Height of buildings of 22m plus an additional 30% bonus for the provision of 15% of the residential floor space as affordable housing) | 28.41m                                                                                                                                                                                                               |
| Clause 4.6 Requests                                                                                                                                                                     | CI 4.6 (Precautionary) request provided for Floor Space Ratio (FSR) but no CI 4.6 request has been provided for the Number of Storeys                                                                                |
| No of apartments                                                                                                                                                                        | 24 apartments                                                                                                                                                                                                        |
| Landscaped area                                                                                                                                                                         | Landscaping provided at the Ground Floor Level within private gardens and communal spaces and within planter boxes at various levels to the terraces                                                                 |
| Car Parking spaces                                                                                                                                                                      | 36 parking spaces                                                                                                                                                                                                    |
| Setbacks                                                                                                                                                                                | Front Setback: <ul style="list-style-type: none"> <li>Basement Levels – 4.05m</li> <li>Ground Floor – 4.9m</li> <li>Level 1 – 4.4m</li> <li>Levels 2-6 – 3.78m to 3.965m</li> <li>Level 7 – 3.79m to 4.8m</li> </ul> |

| Control | Proposal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|         | <p>Side setbacks:</p> <p><i>West</i></p> <ul style="list-style-type: none"> <li>Basement Levels – 0.535m to 1m</li> <li>Ground Floor – 1.09m to 3.565m</li> <li>Level 1 – 1.09m to 3.565m</li> <li>Levels 2-6 – 0.95m to 2.065m</li> <li>Level 7 - 0.95m to 3.365m</li> </ul> <p><i>East</i></p> <ul style="list-style-type: none"> <li>Basement Levels – 3.11m</li> <li>Ground Floor – 3.27m to 3.885m</li> <li>Level 1 – 3.27m to 3.885m</li> <li>Levels 2-6 - 3m to 3.885m</li> <li>Level 7 - 3m to 3.885m</li> </ul> <p>Rear setback:</p> <ul style="list-style-type: none"> <li>Basement Levels – 3.5m</li> <li>Ground Floor – 3.8m to 8.7m</li> <li>Level 1 - 3.8m to 8.7m</li> <li>Levels 2-6 - 3.8m to 8.7m</li> <li>Level 7 – 3.8m to 8.5m</li> </ul> |

## 5. ISSUES

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

| Clause                         | Development Standard    | Departure from Control                                                                                                  | Conclusion      |
|--------------------------------|-------------------------|-------------------------------------------------------------------------------------------------------------------------|-----------------|
| Section 16(1) – SEPP (Housing) | Floor Space Ratio (FSR) | 68m <sup>2</sup> or 1.93% departure from the 3,526m <sup>2</sup> control, as calculated by Council's Assessment Officer | Unsatisfactory* |
| Section 176 – SEPP (Housing)   | Number of Storeys       | 2 Storeys or 25% departure from the 6-storey development standard.                                                      | Unsatisfactory^ |

\*The submitted cl4.6 written request is not considered to be well founded.

^ A Cl 4.6 written request has not been submitted

### 5.2. Primary Issues

| Issue                                                                                                | Conclusion                                                  | Section/s       |
|------------------------------------------------------------------------------------------------------|-------------------------------------------------------------|-----------------|
| Housing SEPP                                                                                         | Unsatisfactory. The application is recommended for refusal. | 12              |
| Apartment Design Guide (ADG)                                                                         | Unsatisfactory. The application is recommended for refusal. | 12              |
| Number of storeys (No Cl 4.6 written request has not been provided to vary the development standard) | Unsatisfactory. The application is recommended for refusal. | 12              |
| Non-compliant FSR                                                                                    | Unsatisfactory. The application is recommended for refusal. | 12, 16.5 & 16.6 |

| Issue                                                                            | Conclusion                                                  | Section/s             |
|----------------------------------------------------------------------------------|-------------------------------------------------------------|-----------------------|
| Impacts on Heritage listed trees and landscaping located on adjoining properties | Unsatisfactory. The application is recommended for refusal. | Throughout the report |
| Streetscape and Desired Future Character                                         | Unsatisfactory. The application is recommended for refusal. | Throughout the report |
| Excavation                                                                       | Satisfactory.                                               | 16.10 & 17.2.2        |
| Bulk and scale                                                                   | Unsatisfactory. The application is recommended for refusal. | Throughout the report |
| Visual privacy                                                                   | Unsatisfactory. The application is recommended for refusal. | 12 & 17.2.3           |
| View loss                                                                        | Unsatisfactory. The application is recommended for refusal. | 17.2.3                |
| Inadequate/inaccurate information                                                | Unsatisfactory. The application is recommended for refusal. | -                     |

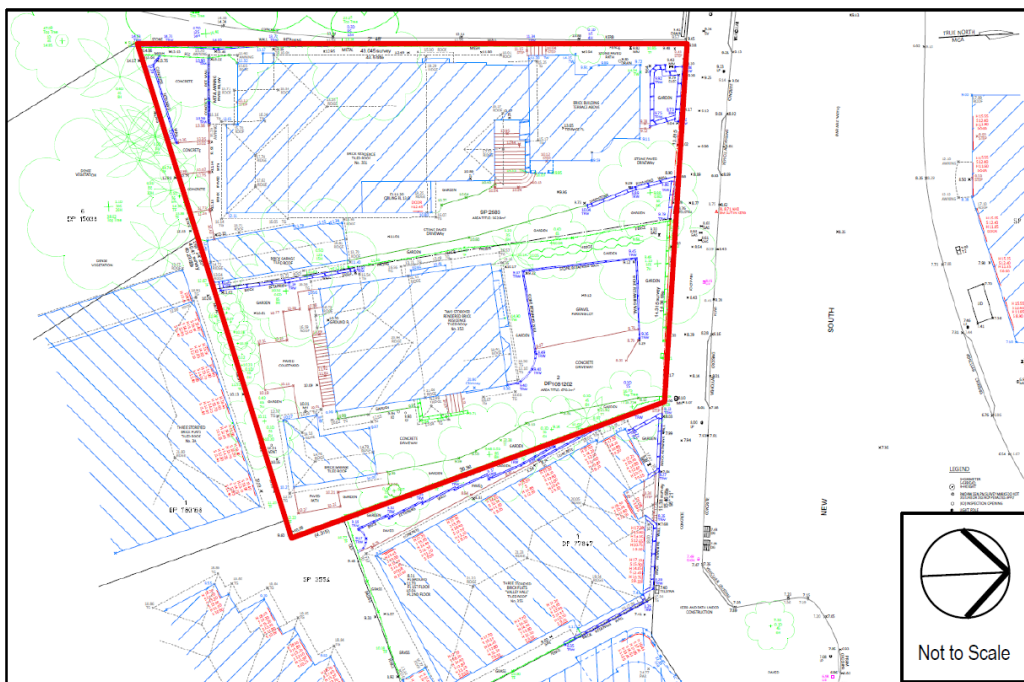
## PROPERTY DETAILS AND REFERRALS

### 6. SITE AND LOCALITY

#### Physical features

The subject sites are located on the southern side of New South Head Road and are legally described as Strata Plan 2583 (No. 351 New South Head Road) and Lot 2 in Deposited Plan 1081202 (No. 351 New South Head Road).

The site is an irregular shaped parcel of land, with a northern boundary of 28.13 metres (New South Head Road), an eastern boundary of 30.92 metres, a southern boundary of 40.41 metres, and a western boundary of 43.045 metres. The site measures 1,233m<sup>2</sup> in extent.



Survey Plan (Source: GSA Planning)

#### Topography

The site is relatively flat, with a fall of approximately 1.35 metres along New South Head Road, 2.31 metres through the middle of the site and another 4.65 metres along the western boundary.

#### Existing buildings and structures

**No. 351 New South Head Road** is currently occupied by a two-storey strata-subdivided dual occupancy, a single car garage at the rear of the site, accessible from New South Head Road and associated landscaping.

**No. 353 New South Head Road** is currently occupied by a three-storey dwelling, a paved private open space area within the rear setback, a single car garage at the rear of the site, accessible from New South Head Road and associated landscaping.



*View of the subject sites from New South Head Road (Source: GSA Planning)*

#### Surrounding Environment

The surrounding locality is characterised by substantial residential flat buildings that occupy the elevated ridgelines and enjoy outlooks toward the Double Bay Centre and the Sydney Harbour beyond.

The site is positioned immediately south of the Double Bay Local Centre boundary and is within approximately a five-minute walking distance of Edgecliff Railway Station,



*Aerial view of the site and surrounding development (Source: Woollahra Maps)*

### **Development to the North**

Development to the north, directly opposite the site on New South Head Road, is Nos. 302-310 New South Head Road, which comprises a two to three-storey commercial development.



*View of the development directly opposite the site at No's. 302-310 New South Head Road*

### Development to the East

Immediately adjoining the subject site to the East is No. 355 New South Head Road which comprises a three-storey brick dwelling. Further to the east is Nos. 357-359 New South Head Road, which comprises a five-storey commercial building.



*View of the development to the east of the subject sites at No's. 355 and 357-359 New South Head Road*

### Development to the South

Immediately adjoining the subject site to the South is 3A Manning Road which comprises a three-storey residential flat building used for short stay accommodation. Further to the south is No. 3 Manning Road, which comprises a three-storey residential flat building and three single attached garages along the front setback.



*Views of the development to the south of the subject sites at No's. 3A Manning Road (left) and No. 3 Manning Road (right) as viewed from Manning Road (Source: GSA Planning)*

### Development to the West

Immediately to the west of the site is the driveway serving No. 349 New South Head Road, which provides access to a thirteen-storey residential flat building situated immediately south of the subject site. Further west, No. 337 New South Head Road contains two residential flat buildings: the northern building comprises eight storeys, while the southern building rises to nine storeys.



*View of the development to the east of the subject sites at No's. 349 and 337 New South Head Road*



*View of the subject sites from New South Head Road (subject sites largely obscured by existing development and existing trees)*



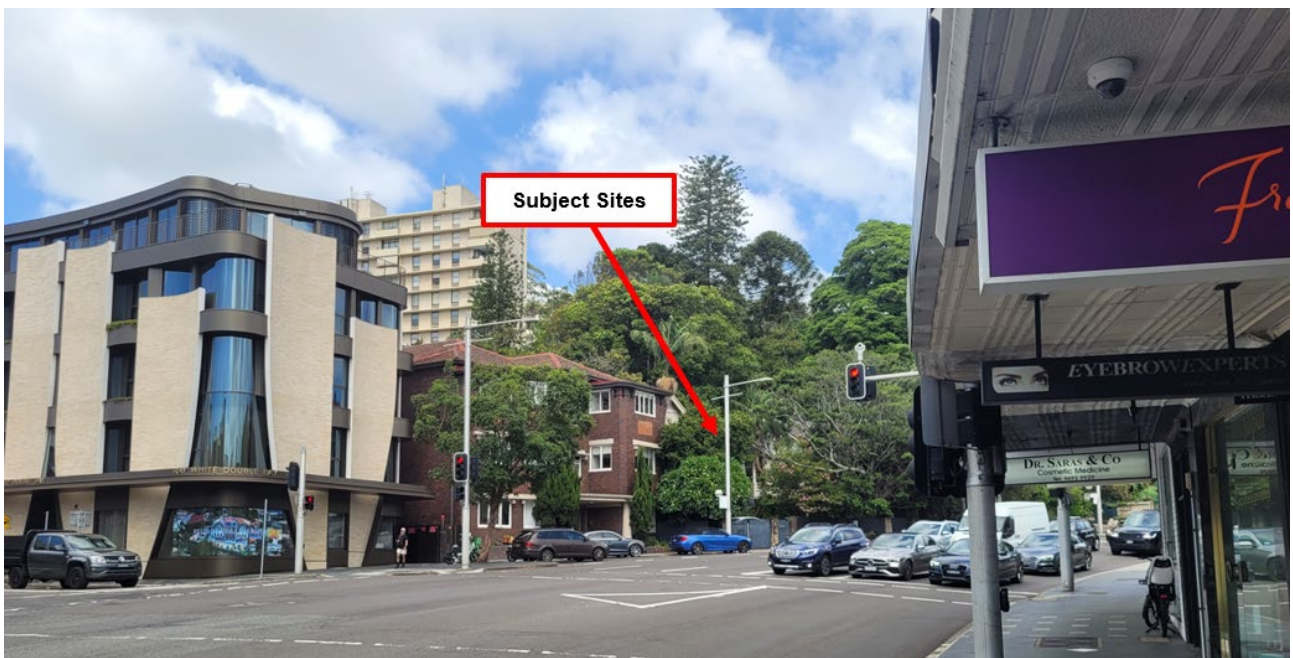
*View of the subject sites from New South Head Road (subject sites largely obscured by existing development and existing trees)*



*View of the existing development at No. 351 New South Head Road*



*View of the existing development at No. 353 New South Head Road*



*View of the subject sites from New South Head Road (subject sites largely obscured by existing development and existing trees) looking in a south-westerly direction*



Views looking down New South Head Road towards the intersection of Manning Road and New South Head Road (subject sites obscured by the existing trees) looking in an easterly direction

## 7. RELEVANT PROPERTY HISTORY

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Current use</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| No. 351 New South Head Road comprises a two-storey, strata-subdivided dual occupancy, while No. 353 New South Head Road contains a three-storey dwelling.                                                                                                                                                                                                                                                                                                               |
| <b>Relevant Application History</b>                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>DA 226/2019/1</b> - Development consent was granted on 24 January 2022, by way of a section 34 agreement, for the demolition of existing buildings, construction of a new residential flat building including provision of affordable rental housing (SEPP ARH 2009) with basement parking consisting of 1 basement level, 5 levels of residential units, being a total of 15 units over 17 car parking spaces. Refer to Attachment 13 for the Court Approved Plans. |
| <b>DA 226/2019/2</b> – Modification application was approved on 31 July 2023 by Council for internal unit layout modifications to the approved residential flat building including change to affordable housing mix and provisions.                                                                                                                                                                                                                                     |
| <b>DA 226/2019/3</b> – Modification application was approved on 9 August 2023 by Council for correction of error in relation to Conditions F.2 and I.1.                                                                                                                                                                                                                                                                                                                 |
| <b>DA 352/2025/1</b> – Development Application was rejected by Council on 8 October 2025.                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Requests for Additional Information and Replacement Applications</b>                                                                                                                                                                                                                                                                                                                                                                                                 |
| 03/11/2025 – A Stop the Clock Letter was sent to the applicant identifying the following deficiencies / lack of information:                                                                                                                                                                                                                                                                                                                                            |
| <ol style="list-style-type: none"> <li>1. <i>Stormwater Management Plan</i></li> <li>2. <i>Traffic Report</i></li> </ol>                                                                                                                                                                                                                                                                                                                                                |
| A response to the Stop the Clock Letter was received on 13 <sup>th</sup> November 2025.                                                                                                                                                                                                                                                                                                                                                                                 |
| <b>Land and Environment Court Appeal(s)</b>                                                                                                                                                                                                                                                                                                                                                                                                                             |
| A Class 1 Appeal (No. 2026/17366) was filed on 14 January 2026 with the Land and Environment Court (LEC) on the grounds of a deemed refusal.                                                                                                                                                                                                                                                                                                                            |
| A Statement of Facts and Contentions was filed with the Land and Environment Court on 25 February 2026.                                                                                                                                                                                                                                                                                                                                                                 |
| The Section 34 conciliation is scheduled for 1 June 2026.                                                                                                                                                                                                                                                                                                                                                                                                               |

## 8. REFERRALS

### Council Referrals

| Referral                | Summary of Referral Response         | Attachment |
|-------------------------|--------------------------------------|------------|
| Development Engineering | Satisfactory, subject to conditions. | 3          |
| Trees and landscaping   | Satisfactory, subject to conditions. | 4          |

| Referral                                        | Summary of Referral Response         | Attachment |
|-------------------------------------------------|--------------------------------------|------------|
| Heritage (including comments from Heritage NSW) | Unsatisfactory.                      | 5          |
| Traffic                                         | Satisfactory, subject to conditions. | 6          |
| Urban Design                                    | Unsatisfactory.                      | 7          |
| Drainage                                        | Satisfactory, subject to conditions. | 8          |
| Environmental Health                            | Satisfactory, subject to conditions. | 9          |

### Concurrence and Referrals to agencies

| Agency                                          | Comments<br>(Issue, resolution, conditions)                         | Resolved |
|-------------------------------------------------|---------------------------------------------------------------------|----------|
| Transport for NSW (TfNSW) (Refer to Attachment) | Satisfactory. TfNSW has provided concurrence subject to conditions. | Yes      |
| Water NSW (Refer to Attachment)                 | Satisfactory. General Terms of Approval have been provided.         | Yes      |
| NSW Police                                      | No referral response received.                                      | No       |

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

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

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

## 9. ADVERTISING AND NOTIFICATION

### 9.1. Submissions

The application was initially advertised and notified from **5 November 2025 to 5 December 2025** in accordance with Chapter 6 of the Woollahra Community Participation Plan.

A total of 62 unique submissions were received, objecting to the proposal. A list of individuals who made submissions during the public notification periods is provided at Attachment 14.

The submissions raised the following concerns:

- Excessive height increase (5 to 8 storeys)
- Excessive bulk and scale

- Planning creep and overdevelopment
- Affordable Housing Bonus (AHB) does not grant automatic height/FSR entitlement
- Cl. 4.6 variation requests not well founded
- Conflict with Woollahra DCP height, character and setback controls
- Apartment mix and excessive parking contributing to unnecessary scale
- Net gain of "affordable housing" used to justify additional storeys
- Incompatibility with established character of Double Bay
- Impacts on heritage gardens and significant trees (Treetops, Overthorpe, Bibaringa)
- Overshadowing of Overthorpe's heritage gardens and apartments
- Encroachment into Hay Garden
- Loss of tree canopy and green spaces
- Woollahra Significant Tree Register identifies plantings as historically and botanically significant
- Foreseeable environmental harm to protected wildlife
- Omission or mischaracterisation of significant vegetation in applicant's heritage documents
- Request for Interim Conservation Order
- Consultation with Heritage NSW required
- Loss of privacy
- Impacts on district and harbour views
- Property devaluation concerns
- Dust, pollution and construction impacts
- Increased setbacks required
- Overshadowing of heritage gardens
- Loss of sunlight to apartments
- Impacts on thermal comfort and liveability
- Critical excavation risks and flooding concerns
- Proposal exceeds groundwater drawdown limits
- Lack of required vibration and settlement controls
- Excessive excavation threatens heritage trees and adjoining development
- Missing stormwater/sewer diversion design and approvals
- Insufficient/inaccurate Geotechnical Report, Heritage Impact Statement and Arboricultural Impact Assessment
- Excessive parking provision
- Apartment mix inconsistent with planning objectives
- Traffic and parking impacts in the surrounding area
- Non-compliance with Housing SEPP and ADG
- Proposal inconsistent with case law requiring assessment against existing environment
- Misrepresentations in applicant's material
- Inadequate community consultation
- Planning integrity concerns and precedent for future overdevelopment

Comment: The submissions are acknowledged. The proposal is recommended for refusal. The issues above have been considered and assessed, where necessary, under the relevant heads of consideration in the body of the report.

## **9.2. Amended Plans**

The Amended Plans noted in Section 4 were not renotified to surrounding residents and previous objectors under Schedule 1 of the Woollahra Community Participation Plan because the proposal, as amended, will have no greater impacts than the previously advertised application.

## **9.3. Statutory Declaration**

The applicant has completed the statutory declaration dated 8 December 2025 declaring that the site notice was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan.

## 10. INTEGRATED DEVELOPMENT (DIVISION 4.8 OF THE EP&A ACT 1979)

Section 4.46 of the Act provides that development is integrated development if it requires consent and it requires one or more approvals under certain other Acts. The proposed development is integrated as it requires development consent under Section 90 of the Water Management Act 2000 (WM Act) and Section 138 of the *Roads Act 1993*.

### Section 90 of the Water Management Act 2000 (WM Act)

Under the WM Act, a permit is required for development which involves water use, water management work and water activity. The proposal requires a Water Supply Work approval for the dewatering of the site. Therefore, WaterNSW is the approval body under the WM Act.

### Section 138 of the Roads Act 1993

Under the *Roads Act 1993*, consent is required to (a) erect a structure or carry out a work in, on or over a public road, or (b) dig up or disturb the surface of a public road, or (c) remove or interfere with a structure, work or tree on a public road, or (d) pump water into a public road from any land adjoining the road, or (e) connect a road (whether public or private) to a classified road.

Section 4.47(3) provides that a consent must be consistent with the general terms of approval of an approval body.

Section 4.47(4) provides that if an approval body informs a consent authority that it will not grant a required approval, the consent authority must refuse consent to the application.

Section 4.47(5) provides that if an approval body fails to inform a consent authority the consent authority may determine the DA. Copies of the determination are also required to be forwarded to WaterNSW and Transport for NSW in accordance with S4.47(6).

Under cl.45 of the Environmental Planning and Assessment Regulation 2021, an approval body is required to advise its decision in relation to the general terms of approval within 21 days after receiving the last of the submissions received during the submission period.

WaterNSW and Transport for NSW have provided General Terms of Approval (GTA) at **Attachments 10 and 11**.

If development consent were granted, the General Terms of Approval (GTA) provided by WaterNSW and Transport for NSW would be imposed in the conditions of consent.

## 11. STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021

### Chapter 2 Infrastructure - Subdivision 2 Development in or adjacent to road corridors and road reservations

Division 17 Roads and traffic of Part 2.3 in Chapter 2 Infrastructure of the Transport and Infrastructure SEPP 2021, applies to the development based on its location adjacent to a Classified Road.

The subject site is located adjacent to New South Head Road, a Classified Road.

The relevant considerations are:

- *Clause 2.118: Development on Proposed Classified Road*
- *Clause 2.119: Development with Frontage to Classified Road*
- *Clause 2.120: Impact of road noise or vibration on non-road development*
- *Clause 2.122 Traffic-generating development*

#### Clause 2.118: Development on Proposed Classified Road

Clause 2.118 requires concurrence from Transport for NSW, if works are proposed to be carried out within a Classified Road (New South Head Road) reserve. No works are proposed to the New South Head Road reserve. Notwithstanding this, Transport for NSW has provided concurrence to the development subject to conditions.

#### Clause 2.119: Development with Frontage to Classified Road

Clause 2.119 applies to development that has a frontage to a Classified Road (New South Head Road). Under Section 2.119, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

New South Head Road is the sole road frontage available for vehicular access to the site, as no alternative secondary access frontage exists. It is acknowledged that the proposed development represents an intensification of the current use through an increase in the number of dwellings. Notwithstanding this, Transport for NSW (TfNSW) has raised no objection to the proposal in relation to vehicular access design, or the nature, volume, frequency of vehicle movements, or the emission of smoke or dust. TfNSW has provided concurrence to the proposal, subject to standard General Terms of Approval.

Council's Environmental Health Officer has also reviewed the proposal and considers it acceptable, subject to conditions. Relevant commentary provided by Council's Environmental Health Officer is provided below.

*"Noise and vibration levels primarily resulting from road traffic movements using New South Head Road, have been measured in the vicinity of the subject site at 351-353 New South Head Road Double Bay. The measurements have been used to predict internal noise and vibration levels for the proposed residential development at the subject site. No exceedances of internal noise or vibration levels are predicted in accordance with the relevant criteria. This is providing that the recommendation details shown in **Section 5.2** above are fully complied with.*

*Environmental Health is satisfied that internal noise intrusions that may adversely impact the development can be controlled through design and construction noise control measures, as detailed in Section 5.2 of the Acoustic Report: prepared by Rodney Stevens Acoustics – Traffic Noise Assessment – Report No. R230492R1 – Revision 0 – 06 August 2025.*

*Prior to the issue of a Construction Certificate, an Acoustic Assessment must be provided to the Principal Certifying Authority confirming necessary acoustic control measures which must be incorporated into the design of the building. The acoustic measures must set out recommendations to ensure compliance with the internal noise limits set out in as defined in the State Environmental Planning Policy (Transport and Infrastructure) 2021 and the Development near Rail Corridors and Busy Roads Interim Guideline December 2008, when applied inside the most sensitive internal living areas of the development with doors and windows closed and mechanical ventilation/air-conditioning operating.”*

Given the commentary above, the provisions of this section can be met, subject to conditions.

If the development were recommended for approval these measures could be conditioned to be implemented into the development at construction certificate stage.

#### Clause 2.120: Impact of road noise or vibration on non-road development

Clause 2.120 applies to development involving residential accommodation that is on land in or adjacent to the road corridor for Classified Road or any road with an annual average daily traffic volume of more than 20,000 vehicles.

Clause 2.120(2) requires that:

*“Before determining a development application for development to which this section applies, the consent authority must take into consideration any **guidelines** that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.”*

Planning Circular (PS 21-018) issued 2 December 2021 provides that before determining a relevant DA, a consent authority must, amongst other matters, take into consideration the ‘Development near rail corridors and busy roads – interim guideline’ to minimise the impacts of busy roads and railway corridors on residential development.

Clause 2.120(3) requires that:

*“If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded—*

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.”*

#### Assessment:

An Acoustic Assessment Report has been prepared by Rodney Stevens Acoustics (Traffic Noise Assessment – Report No. R230492R1 – Revision 0 – 06 August 2025) and submitted in support of the DA which includes an assessment of potential traffic noise intrusion impact on the development. The report recommended several appropriate acoustic treatment measures to be implemented into the construction design in order to achieve the above internal noise intrusion limits.

If the development were recommended for approval these measures could be conditioned to be implemented into the development at construction certificate stage.

#### Clause 2.122 Traffic-generating development

Clause 2.122 requires concurrence from Transport for NSW, if new development considered to be Traffic-generating development.

Traffic-generating development is identified in Schedule 3 of the SEPP as of a size or capacity with:

- direct vehicular or pedestrian access to any road; or
- direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection

The proposed development has direct pedestrian and vehicular access to a road that connects to a classified road within 90m of the connection however is not identified as of a size and capacity identified in Schedule 3 of the SEPP. Notwithstanding this, Transport for NSW has provided concurrence to the development subject to conditions.

### Conclusion

If the application were recommended for approval, relevant conditions of consent could be imposed to ensure the proposal achieves the relevant criteria prescribed by Chapter 2: Infrastructure of the Transport and Infrastructure SEPP 2021.

## **12. STATE ENVIRONMENTAL PLANNING POLICY (HOUSING) 2021**

### **Chapter 2: Affordable housing**

Chapter 2 Part 2 Division 1 In-Fill Affordable Housing of the Housing SEPP relates to residential development seeking to provide a proportion of affordable housing in order to access a floor space ratio and building height bonus.

The purpose of this Division is to support the provision of new in-fill affordable housing that addresses the needs of households with very low, low, and moderate incomes.

Chapter 2 Affordable housing, *Part 2, Division 1 In-fill affordable housing* of the Housing SEPP applies to the development for the purpose of a residential apartment development with a portion of the residential accommodation to be allocated as in-fill affordable rental housing, that is to be equal to at least 10-15% of the total floor area of the building.

### **Division 1 In-fill affordable housing**

*Table. Housing SEPP – Infill Affordable Housing Assessment*

| <b>Chapter 2 Affordable Housing</b>                                                                                                                                                               |                                                                                                 |               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|---------------|
| <b>Clauses and standards</b>                                                                                                                                                                      | <b>Comment</b>                                                                                  | <b>Comply</b> |
| <b>Part 2 Development for Affordable Housing<br/>Division 1 In-fill affordable housing</b>                                                                                                        |                                                                                                 |               |
| <b>13A Application of Chapter 4 to affordable housing</b><br>Development to which this chapter, Part 2, Division 1, 5 or 6 applies may also be residential apartment development under Chapter 4. | Noted. Chapter 4 Design of Residential Apartment Development has been considered further below. | Yes           |
| <b>14 Need for affordable housing and imposition of conditions—the Act, s 7.32(1)</b>                                                                                                             | The proposal seeks to provide affordable rental housing.                                        | Yes           |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| This Policy identifies that there is a need for affordable housing within each area of the State.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |     |
| <b>15 Requirement for imposition of conditions—the Act, s 7.32(3)(a)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | The Applicant has provided details of a registered community housing provider, confirming that the affordable rental housing units will be managed by an approved provider for a minimum period of 15 years.                                                                                                                                                                                                                                                                                         | Yes |
| <b>15A Objective of division</b><br>The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low-, low- and moderate-income households.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | Consistent.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Yes |
| <b>15C Development to which division applies</b><br>(1) This division applies to development that includes residential development if—<br>(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5, <b>Chapter 6</b> or <b>another environmental planning instrument</b> , and<br>(b) the <b>affordable housing component is at least 10%</b> , and<br>(c) all or part of the <b>development is carried out—</b><br>(i) for development on <b>land in the Six Cities Region</b> , other than in the City of Shoalhaven local government area—in an <b>accessible area</b> , or<br>(ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.<br>(2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.<br>(3) In this section—<br>relevant zone means the following—<br>(a) Zone E1 Local Centre,<br>...<br><b>accessible area means land within</b><br>(a) <u>800m walking distance of—</u><br>(i) <u>a public entrance to a railway, metro or light rail station</u> , or<br>(ii) <u>for a light rail station with no entrance—a platform of the light rail station</u> , or<br>(iii) <u>a public entrance to a wharf from which a Sydney Ferries ferry service operates</u> , or<br>(c) <u>400m walking distance of a bus stop used by a regular bus service, within the meaning of the Passenger Transport Act 1990, that has at least 1 bus per hour servicing the bus stop between—(i) 6am and 9pm each day from Monday to Friday, both days inclusive, and (ii) 8am and 6pm on each Saturday and Sunday.</u> | Division 1 infill affordable housing applies, as:<br><ul style="list-style-type: none"><li>Residential Flat Buildings are permitted in the R3 zone under the LEP,</li><li>A 15% (minimum) affordable housing component is to be provided within the development,</li><li>The site is located within an accessible area as it is located within 800m walking distance of the entrance to a railway station (Edgecliff Station) and within 400m of a bus stop used by a regular bus service.</li></ul> | Yes |

| <b>16 Affordable housing requirements for additional floor space ratio</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <u>Bonus Floor Space Ratio (FSR)</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>No, for FSR</b>                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| <p>(1) The maximum floor space ratio for development that includes residential development to which this division applies is the <b><u>maximum permissible floor space ratio</u></b> for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).</p> <p>(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</p> $\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$ <p>(3) If the development includes residential flat buildings or <u>shop top housing</u>, the maximum building height for a building used for residential flat buildings or shop top housing is the <b><u>maximum permissible building height</u></b> for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).</p> <p><i>Example— Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.</i></p> <p>(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.</p> | <p>Clause 16(1) of the SEPP permits a bonus additional FSR of 30% for the land above the applicable FSR standard.</p> <p>The site is subject to a <i>maximum 2.2:1</i> FSR standard under the LMR + an additional <i>0.66:1</i> FSR per Clause 16(1) of the SEPP.</p> <p>The development is therefore subject to a <i>maximum 2.86:1</i> FSR standard.</p> <p>In order to be eligible for the maximum permitted GFA, a minimum of 15% (Infill AH GFA) of the maximum GFA is to be provided within the development.</p> <p>The proposal includes:</p> <ul style="list-style-type: none"> <li>529m<sup>2</sup> of GFA allocated for the purposes of affordable rental housing which is 15% of the maximum permissible GFA (3,526m<sup>2</sup>)</li> </ul> <p><i>Note: The Gross Floor Area provided by the Applicant is incorrect and measures approximately 3,594m<sup>2</sup>, which exceeds the permissible FSR of 2.86:1.</i></p> <p>A precautionary Clause 4.6 Variation Request has been provided by the Applicant in relation to the exceedance of the statutory Floor Space Ratio (FSR); however, it is considered not to be well founded and is therefore listed as a <u>reason for refusal</u>.</p> |                                    |
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <p><u>Bonus Height</u></p> <p>Clause 16(3) of the SEPP permits a bonus additional building height of 30% for the land above the applicable LMR height standard (% equal to that as provided under CI 16(1) of the SEPP).</p> <p>The site is subject to a <i>maximum 22m</i> height standard under the LMR + an additional <i>6.6m</i> height per Clause 16(3) of the SEPP.</p> <p>The development is therefore subject to a <i>maximum 28.6m</i> height of building standard.</p> <p>The proposed building attains a maximum height of 28.41m and is</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <p>Yes, for Height of building</p> |

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|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | therefore compliant with Clause 16(3) of the SEPP.                                                                                                                                                                                                                                                                            |     |
| <b>19 Non-discretionary development standards—the Act, s 4.15</b><br><br><i>(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</i><br><i>Note— See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.</i>                        |                                                                                                                                                                                                                                                                                                                               |     |
| (2) The following are <b>non-discretionary development standards</b> in relation to the residential development to which this division applies:                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                               |     |
| <b>Lot Area</b><br><br><b>(a) a minimum site area of 450m<sup>2</sup></b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | The site has a total site area exceeding 450m <sup>2</sup>                                                                                                                                                                                                                                                                    | Yes |
| <b>Landscaped Area</b><br><br><b>(b) a minimum landscaped area that is the lesser of—</b><br><i>(i) 35m<sup>2</sup> per dwelling, or</i><br><i>(ii) 30% of the site area,</i><br><br><b>• 370m<sup>2</sup> (minimum) Landscaped Area requirement.</b>                                                                                                                                                                                                                                                                                           | Greater than 370m <sup>2</sup> landscaped area provided.                                                                                                                                                                                                                                                                      | Yes |
| <b>Parking (Affordable)</b><br><br><i>(e) the following number of parking spaces for dwellings used for affordable housing—</i> <ul style="list-style-type: none"> <li><i>for each dwelling containing 1 bedroom—at least 0.4 parking spaces,</i></li> <li><i>for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,</i></li> <li><i>for each dwelling containing at least 3 bedrooms—at least 1 parking space,</i></li> </ul> <b>• Minimum 4 spaces (Based on 2 x 1-Bed, 2 x 2 Bed &amp; 2 and 3-Bed allocated to Infill AH)</b> | 27 parking spaces required (not used for affordable housing) + 4 parking spaces required (used for affordable housing) = 31 spaces (SEPP Housing minimum rates)<br><br>51 parking spaces (DCP maximum rates)<br><br>36 parking spaces are being proposed which complies with both the DCP (max) and SEPP Housing (min) rates. | Yes |
| <b>Parking (Market)</b><br><br><i>(f) the following number of parking spaces for dwellings not used for affordable housing—</i> <ul style="list-style-type: none"> <li><i>for each dwelling containing 1 bedroom—at least 0.5 parking spaces,</i></li> <li><i>for each dwelling containing 2 bedrooms—at least 1 parking space,</i></li> <li><i>for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,</i></li> </ul> <b>• Minimum 27 spaces (Based on 18 x 3-Bed units)</b>                                             |                                                                                                                                                                                                                                                                                                                               | Yes |
| <b>Dwelling Size</b><br><br><i>(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,</i><br><br><b>• Minimum dwelling sizes as per ADG</b>                                                                                                                                                                                                                                                                                                                                    | The apartments comply with the minimum area specified in the ADG.                                                                                                                                                                                                                                                             | Yes |
| <b>20 Design requirements</b><br><br>Clause 20(3) stipulates that development consent must not be granted to development under this division unless the consent authority has                                                                                                                                                                                                                                                                                                                                                                   | Inconsistent.<br><br>The proposal is incompatible with the established and desirable character of the local area and is inconsistent with                                                                                                                                                                                     | No  |

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                                                  |            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <p>considered whether the design of the residential development is compatible with:</p> <ul style="list-style-type: none"> <li>the desirable elements of the character of the local area, or</li> <li>for precincts undergoing transition—the desired future character of the precinct.</li> </ul>                                                                                                                                                                                                                                                                                                             | <p>the identified desired future character and is listed as a <u>reason for refusal</u>.</p>                                                                                                                                     |            |
| <p><b>21 Must be used for affordable housing for at least 15 years</b></p> <p>Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development</p> <ul style="list-style-type: none"> <li>the development will include the affordable housing component required for the development under section 16, 17 or 18, and</li> <li>the affordable housing component will be managed by a registered community housing provider.</li> </ul> | <p>The Applicant has provided details of the registered community housing provider ensuring the affordable rental housing units will be managed by a registered community housing provider for a minimum period of 15 years.</p> | <p>Yes</p> |

It is also noted that the In-fill Affordable Housing Practice Note (December 2023) states that:

*The full extent of the in-fill affordable housing bonuses may not be achieved on all sites, due to site constraints and local impacts. The in-fill affordable housing bonuses should not be treated as an entitlement. DAs that propose in-fill affordable housing will be subject to merit assessment by the consent authority. The application of the bonuses does not affect a consent authority's responsibility to consider the requirements of relevant EPIs, a development's likely impacts or the suitability of the site for the development.*

#### Conclusion:

For reasons discussed above, the proposal fails to satisfy the relevant criteria in Chapter 2 of the SEPP (Housing) 2021 and is therefore listed as a reason for refusal.

#### **Chapter 4: Design Quality of Residential Flat Development**

SEPP Housing (2021) – Chapter 4: 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 residential flat building component of the development comprises eight (8) storeys and twenty-four (24) self-contained dwellings and therefore the provisions of Chapter 4 apply.

#### Clause 142: Aims of chapter

The following aims of Chapter 4 of the SEPP Housing 2021 are to improve the design quality of residential apartment development:

- (a) *to ensure residential apartment development contributes to the sustainable development of New South Wales by—*
  - (i) *providing socially and environmentally sustainable housing, and*
  - (ii) *being a long-term asset to the neighbourhood, and*
  - (iii) *achieving the urban planning policies for local and regional areas,*
- (b) *to achieve better built form and aesthetics of buildings, streetscapes and public spaces,*

- (c) *to maximise the amenity, safety and security of the residents of residential apartment development and the community,*
- (d) *to better satisfy the increasing demand for residential apartment development, considering—*
  - (i) *the changing social and demographic profile of the community, and*
  - (ii) *the needs of a wide range of people, including persons with disability, children and seniors,*
- (e) *to contribute to the provision of a variety of dwelling types to meet population growth,*
- (f) *to support housing affordability,*
- (g) *to minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions,*
- (h) *to facilitate the timely and efficient assessment of development applications to which this chapter applies.*
- (2) *This chapter recognises that the design of residential apartment development is significant because of the economic, environmental, cultural and social benefits of high quality design.*

#### Clause 145: Referral to design review panel for development applications

The applicable planning controls require the proposal to be referred to a Design Review Panel. However, as no Design Review Panel has been established for the Woollahra Local Government Area, the application is instead supported by a Design Verification Statement prepared by qualified architects Luigi Rosselli Pty Ltd (Registered Architect NSW, No. 4895) and Hill Thalys Architecture + Urban Projects Pty Ltd (Registered Architect NSW, No. 6780), in accordance with Clause 29 of the Environmental Planning and Assessment Regulation 2021.

An accompanying SEPP 65 Statement has also been submitted, which outlines how the development seeks to address the objectives, criteria, and guidance contained in Parts 3 and 4 of the Apartment Design Guide.

For the reasons outlined below, the proposal is inconsistent with the following aims of Chapter 4 of the SEPP:

- **Aim (b)**, as the proposal does not achieve an appropriate built form or streetscape outcome;
- **Aim (c)**, as it fails to adequately maximise the amenity, safety, and security of residents and the broader community;
- **Aim (d)**, as it does not demonstrate that it responds to demand for residential apartment development having regard to the needs of a diverse range of people; and
- **Aim (e)**, as it does not contribute to the provision of a genuine variety of dwelling types.

Council's Senior Urban Designer has reviewed the amended proposal against the relevant provisions of Chapter 4, and this review has informed the following assessment. A summary of the key issues identified is provided in the tables below, with the full detailed assessment by Council's Senior Urban Designer included in the Attachments.

#### **DESIGN PRINCIPLES**

| <b>Design Principle</b>              | <b>Council's Urban Design comment (summarised)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|--------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. Context & Neighbourhood Character | <b>No</b> - The site is located within the Wallaroy Residential Precinct, characterised by low-scale heritage development within a vegetated, topography-responsive setting. While redevelopment of up to six storeys is anticipated near the Edgecliff Road and New South Head Road intersection, the proposed eight-storey development exceeds the intended scale and is inconsistent with the desired future character due to its excessive height and bulk, landscape impacts, limited articulation, reverse podium form and |

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | resulting overshadowing. The comparative examples provided are noted, however many comprise more slender forms within landscaped settings, with generous setbacks and/or adjacency to public open space.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| 2. Built Form & Scale | <b>No</b> - While technically permissible, the proposed eight-storey height is out of scale with the surrounding development and inconsistent with the area's intended character. The increased scale exacerbates reliance on existing setback and footprint non-compliances, resulting in unacceptable impacts on privacy, residential amenity and view sharing. The building's architectural treatment further amplifies perceived bulk and dominance within the streetscape, and notwithstanding ground-floor reconfiguration, the proposal continues to represent an inefficient design outcome that contributes to excessive bulk and scale.                                                                                                                                                                                                                                                                                                                              |
| 3. Density            | Yes, <b>with caveat</b> - The proposed floor space ratio is compliant with the SEPP (Housing) Low- and Mid-Rise Housing provisions (according to the Applicants calculations), including application of the Affordable Housing bonus, and the site is well located adjacent to the Double Bay Town Centre, within walking distance of Edgecliff Station and existing bus services. The proposal seeks to replace two detached dwellings with 24 apartments, resulting in a moderate increase in residential density; however, the extent of reliance on departures from development standards and amenity concessions indicates that the proposed density may be excessive for the site and its context.                                                                                                                                                                                                                                                                       |
| 4. Sustainability     | Yes, <b>subject to further design refinement</b> - The amended proposal demonstrates positive ESD outcomes, with all apartments achieving natural cross-ventilation and at least 70% receiving a minimum of two hours of mid-winter solar access. While measures such as increased thermal mass, pergola shading to private balconies, rooftop solar PV provision, bicycle parking, and a raingarden are proposed, additional detail is required to demonstrate effective summertime thermal performance, particularly for the north and western elevations. Deep soil zones are indicated; however, areas located above basement structures or hardstand surfaces should be excluded from calculations, and a revised deep soil area schedule is required for assessment.                                                                                                                                                                                                     |
| 5. Landscape          | Yes, <b>subject to further design refinement</b> - The amended proposal provides soft landscaping within the front and rear setbacks and adequately sized communal open space, which assists in softening interfaces and supporting residential amenity, notwithstanding reduced solar access. The expansion of communal open space in the amended drawing set to include landscaped areas within the front setback is encouraged; however, the hard interface and retaining walls along the western boundary remain. Concern also persists regarding the proposed removal of the established Port Jackson Fig tree within the front setback, noting its retention was a key outcome of the previous approval. While the amended landscape plans propose additional planting, including replacement Ficus species and smaller canopy trees, this response highlights the constrained nature of the setback and does not adequately justify the removal of the mature fig tree. |
| 6. Amenity            | <b>No</b> - The amended proposal satisfies ADG requirements for internal residential amenity, including solar access, natural ventilation, and provision of private open space; however, it gives                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

|                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      | rise to significant overshadowing of properties to the south. Portions of the building rely on rear setbacks of less than 4 metres over the full eight-storey height, effectively borrowing amenity from adjoining heritage-listed properties, and the development also exhibits minor non-compliances with minimum room dimensions that should be resolved through further design refinement.                                                                 |
| 7. Safety            | Yes.                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| 8. Housing Diversity | Yes - While there is a potential oversupply of three-bedroom apartments, the submitted Apartment Mix Strategy contends that this dwelling type is the most feasible and in demand within the current Double Bay market. Notwithstanding this, the location of larger affordable rental housing apartments at ground level, co-located with generously sized private courtyards, is supported as it provides suitable accommodation for families with children. |
| 9. Aesthetics        | Yes.                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

### **APARTMENT DESIGN GUIDE (ADG)**

| <b>Section of the ADG</b>           | <b>Councils Urban Design comment</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3B – Orientation                    | <b>No.</b> The proposed massing should be reduced to ensure adequate solar access to adjoining properties, supported by an assessment of neighbouring floor plans to demonstrate that overshadowing does not result in an unreasonable loss of amenity, and with the overshadowing analysis amended to include the development footprint at 5 Manning Road.                                                                                                                                                                                               |
| 3C – Public domain                  | <b>No.</b> A reduction in building height is recommended to achieve a more contextual response when viewed from the public domain, and existing trees within the front setback should be retained or replaced with planting that provides an equivalent or improved canopy cover to maintain streetscape amenity.                                                                                                                                                                                                                                         |
| 3D – Communal and Public Open Space | Yes – <b>subject to design refinement.</b> The building design should be refined to respond more sensitively to the site's slope, minimising reliance on high retaining walls along the side boundaries, and compliance with universal access requirements should be demonstrated, including details addressing the 100 mm level change between the lobby and communal open space.                                                                                                                                                                        |
| 3E – Deep Soil Zones                | Yes – <b>subject to design refinement.</b> The areas located above the basement and proposed to be hard-landscaped have been incorrectly included in the deep soil area calculations. A revised deep soil calculation should therefore be submitted for assessment.                                                                                                                                                                                                                                                                                       |
| 3F – Visual Privacy                 | <b>No</b> – The proposed rear setback of less than 4 metres to habitable rooms fails to adequately address privacy, daylight access, and equitable spatial separation, and relies on borrowing amenity from adjoining heritage properties. While limited reductions to side setbacks and balcony encroachments may be acceptable subject to appropriate screening and minimal impacts, the rear setback should be increased to better reflect the scale of the development, and all built form should remain within the prescribed site setback controls. |
| 4D – Apartment Size and Layout      | <b>No</b> - Several minor internal layout inconsistencies remain, including undersized master bedrooms in Units 3 and 5, a living room width non-compliance in Unit 6, and insufficient information regarding Bedroom 3 in Unit 23. While the amended drawing set has been updated to include dimensions, the apartments have not been reconfigured and the concerns regarding internal amenity persist.                                                                                                                                                  |

|                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                     | Further amended architectural plans, together with updates to the SEE and SEPP assessment, are required to demonstrate compliance with the relevant design criteria.                                                                                                                                                                                                                                                                                                                                              |
| 4E – Private open space + balconies | <b>No</b> - The proposal generally achieves an appropriate relationship between private open space and primary living areas; however, this is not achieved for the partially underground two-bedroom affordable units. Amendments to the floor plans are required to ensure all apartments provide a positive and functional connection between internal living areas and associated private open space.                                                                                                          |
| 4K – Apartment mix                  | Yes – Under the application of the Affordable Housing SEPP, the proposed development provides a mix of accommodation intended to support the needs of a future population comprising different household types and needs. While there is a potential oversupply of three-bedroom apartments, the proponent has submitted an Apartment Mix Strategy which contends that this dwelling type is the most feasible and in demand within the Double Bay market.                                                        |
| 4L – Ground floor apartments        | <b>No</b> - The partially underground two-bedroom apartments present unresolved amenity issues relating to daylight access and privacy, and consolidation into a single first-floor apartment with the removal of below-ground gross floor area is recommended to improve overall design and amenity outcomes.                                                                                                                                                                                                    |
| 4M – Facades                        | <b>No</b> - The building's architectural expression, including the inverted podium, double-storey street colonnade, heavy corner balcony treatment, emphasised horizontality, and limited upper-level setbacks, accentuates the perceived bulk of the development and obstructs views to the surrounding tree canopy. Further articulation of the street façade is recommended to better balance vertical and horizontal elements and achieve a more slender and recessive building form.                         |
| 4O – Landscape Design               | Yes – <b>subject to design refinement</b> . The proposal involves the removal of most existing mature canopy trees on the site, to be replaced with new planting; however, greater effort should be made to retain the fig tree within the front setback, as it contributes significantly to streetscape amenity along New South Head Road. Retention of tree species that provide ongoing canopy cover within both the private and public domain is recommended to maintain the established landscape character. |
| 4X – Building Maintenance           | <b>Cannot be determined</b> - Building maintenance systems and plan of management have not been provided.                                                                                                                                                                                                                                                                                                                                                                                                         |

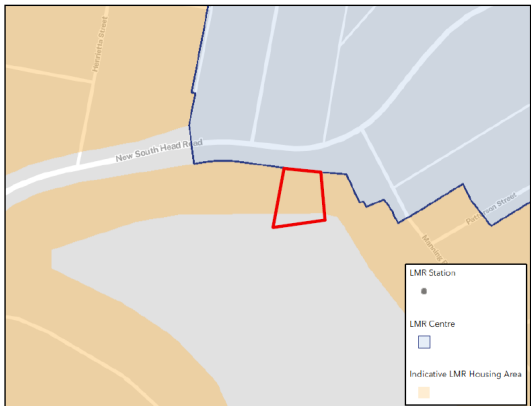
The balance of the proposal is considered acceptable when assessed against the relevant provisions of the Apartment Design Guide.

#### Conclusion:

For reasons discussed above, the proposal fails to satisfy the relevant criteria in Chapter 4 of the SEPP (Housing) 2021 and the Apartment Design Guide (ADG) and is therefore listed as reasons for refusal.

#### **Chapter 6: Low- and Mid-Rise Housing**

Chapter 6 of the SEPP Housing 2021 aims to encourage the development of low and mid-rise (LMR) housing in areas that are well located with regards to goods, services and public transport.

| Clause and Provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | Complies | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>162 Aim of chapter</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Yes      | The proposal is consistent with the aim of the policy to provide development of housing in areas that are well connected to goods, services and public transport.                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>163 Definitions</b><br><br><p><b>‘Walking distance’</b> means the shortest distance between two points. This distance must be measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings.</p> <p><b>low and mid-rise housing area</b> means land within 800m walking distance of—</p> <p>(a) land identified as “Town Centre” on the Town Centres Map, or</p> <p>(b) a public entrance to a railway, metro or light rail station listed in Schedule 11, or</p> <p>(c) for a light rail station listed in Schedule 11 with no public entrance—a platform of the light rail station.</p> <p><b>low- and mid-rise housing inner area</b> means land within 400m walking distance of—</p> <p>(a) land identified as “Town Centre” on the Town Centres Map, or</p> <p>(b) a public entrance to a railway, metro or light rail station listed in Schedule 11, or</p> <p>(c) for a light rail station listed in Schedule 11 with no public entrance—a platform of the light rail station.</p> | Yes      | <p>Specifically, the site has been identified as being within 400m walking distance of land identified on the Town Centres Map.</p> <p>The site directly adjoins the Double Bay Centre, which is designated as a ‘Town Centre’ on the Town Centres Map.</p> <p>The land (site) is therefore located within the ‘low- and mid-rise housing inner area’.</p>  <p>Source: Low and Mid Rise Housing Indicative Map <span style="border: 1px solid red; padding: 0 2px;"> </span> Subject Site</p> <p>Source: SEE prepared by GSA Planning</p> |
| <b>164 Land to which chapter applies</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Yes      | The land is not excluded land as identified in Clause 164(1) of the SEPP.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Part 4 – Residential flat buildings and shop top housing</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>Division 1 Preliminary</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| <b>174 Development permitted with development consent</b><br><br><p>Development for the purposes of residential flat buildings is permitted with development consent on land to which this chapter applies in a low- and mid-rise housing area in Zone R2 Low Density Residential or R3 Medium Density Residential.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Yes      | <p>The site (land) is located in the low and midrise housing inner area based on walking distance and is zoned as R3 Medium Density Residential under the LEP.</p> <p>Residential flat buildings are permitted with consent in the LEP and under Chapter 6 of the LMR.</p>                                                                                                                                                                                                                                                                                                                                                   |
| <b>175 Development standards—low- and mid-rise housing inner area</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

| Clause and Provision                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Complies                                                                        | Comment                                                                                                                                                                                                                                                                                                                                                                |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) This section applies to land in a low and mid-rise housing inner area in Zone <u>R3 Medium Density Residential</u> or R4 High Density Residential.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Yes                                                                             | The land is located in the low and midrise housing inner area based on walking distance and is zoned as R3 Medium Density Residential under the LEP, therefore the standards are applicable to the proposed development.                                                                                                                                               |
| <p>(2) Development consent must not be granted for development for the purposes of residential flat buildings with a building height of up to 22m unless the consent authority is satisfied the building will have 6 storeys or fewer.</p> <ul style="list-style-type: none"> <li>• <b>22m height of building</b></li> <li>• <b>6 storeys or fewer</b></li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                          | No                                                                              | <p>Refer to Clause 16(3) in Chapter 2 ARH of the Housing SEPP for the applicable height development standard.</p> <p>The proposed residential flat building will have nine (9) storeys.</p> <p>No Clause 4.6 Variation Request for a variation to the number of storeys control has been submitted with the DA and as such is listed as <u>reason for refusal</u>.</p> |
| (4) In this section, a storey does not include a basement within the meaning of the standard instrument.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | -                                                                               | Noted. The proposal is for an 8-storey development excluding basements.                                                                                                                                                                                                                                                                                                |
| <p><b>177 Landscaping—residential flat buildings or shop top housing</b></p> <p>(1) This section applies to land in a low- and mid-rise housing area in Zone R3 Medium Density Residential or R4 High Density Residential.</p> <p>(2) Development consent must not be granted for development for the purposes of residential flat buildings or shop top housing unless the consent authority has considered the Tree Canopy Guide for Low- and Mid-Rise Housing, published by the Department in February 2025.</p> <p><b>The Tree Canopy Guide for Low- and Mid-Rise Housing Policy identifies the site (Site Area &gt;600m<sup>2</sup>) is subject to:</b></p> <ul style="list-style-type: none"> <li>• 15% canopy cover (184.95m<sup>2</sup>)</li> <li>• 7% deep-soil area (86m<sup>2</sup>)</li> </ul> | <p>Yes – for tree canopy cover</p> <p><b>No – for deep soil landscaping</b></p> | <ul style="list-style-type: none"> <li>• 395m<sup>2</sup> (or 32%) of Tree Canopy Cover</li> <li>• The extent of the proposed deep soil landscaped area cannot be accurately assessed, as the information provided is inconsistent and does not reliably identify areas eligible to be counted as deep soil.</li> </ul>                                                |
| <b>178 Minimum lot size for residential flat buildings</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Yes                                                                             | <p>The land is located in the low and mid-rise housing area under the Housing SEPP and the land is zoned R3 Medium Density Residential under the LEP.</p> <p>The minimum lot size and minimum lot width controls which are otherwise applicable under the LEP or DCP are not applicable.</p>                                                                           |

| Clause and Provision                                                                                                                                                                                                                                                                                                                                                                                                                                        | Complies | Comment                                                                                                                             |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|-------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                                                                                                                                                                                                                                                                                                                                                                                             |          | No Minimum lot size is applicable under CI 180 of the Housing SEPP.                                                                 |
| <b>180 Non-discretionary development standards—residential flat buildings and shop top housing in Zone R3</b><br><br>(2) The following non-discretionary development standards apply in relation to development on land in a low- and mid-rise housing <u>inner area</u> : <ul style="list-style-type: none"> <li>• <b>maximum floor space ratio of 2.2:1,</b></li> <li>• <b>a maximum building height of 22m for residential flat buildings</b></li> </ul> | N/A      | Refer to Clauses 16(1) and 16(3) in Chapter 2 ARH of the SEPP for the applicable height and floor space ratio development standard. |

As outlined in the table above, the extent of the proposed deep soil landscaped area cannot be accurately assessed due to inconsistencies in the information provided, which does not clearly distinguish areas eligible to be counted as deep soil. While the applicant's calculations indicate compliance, this cannot be independently verified on the basis of the submitted material.

Notwithstanding the issues identified in relation to the number of storeys and deep soil landscaping, the remainder of the proposal is generally considered to satisfy the relevant assessment criteria prescribed under Chapter 6 of the SEPP (Housing) 2021.

#### Conclusion:

For reasons outlined above, the proposal fails to fully satisfy the relevant criteria prescribed in Clauses 175(2) and 177 and of Chapter 6 of the SEPP Housing 2021 and is listed as a reason for refusal.

### **13. STATE ENVIRONMENTAL PLANNING POLICY (BIODIVERSITY AND CONSERVATION) 2021**

#### Chapter 2: Vegetation in non-rural areas

Chapter 2 of the SEPP relates to vegetation in non-rural areas.

The aims of Chapter 2 of the SEPP, are:

- (a) *to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) *to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

Clause 2.9(2) of the Chapter 2 Vegetation in Non-Rural Areas of the SEPP defers the assessment criteria for the removal of vegetation to the applicable Council DCP in this case being *Chapter E3: Tree Management* of the WDCP 2015.

Councils Tree Officer has undertaken a review of the proposal and has raised no objection to the proposal, subject to conditions.

Should a development consent be granted, relevant conditions of consent could be imposed in order to achieve the relevant criteria prescribed by Chapter 2 – Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021.

For the reasons outlined in Section 16.11 of this report, the proposal does not achieve the relevant objectives of Chapter 2: Vegetation in non-rural areas of the Biodiversity and Conservation SEPP 2021 and is listed as a reason for refusal.

#### Chapter 6: Water Catchments

Chapter 6 (Water Catchments) of the SEPP (Biodiversity and Conservation) 2021 applies to the subject land which is located within a regulated catchment being the Sydney Harbour Catchment.

The Site is within the Sydney Harbour Catchment but is outside the Foreshores and Waterways Area and therefore only the provisions in Part 6.2 of the SEPP applies.

In deciding whether to grant development consent to development on land in a regulated catchment, matters relating to water quality and quantity, aquatic ecology, flooding, recreation and public access and total catchment management must be considered.

Council's Development and Drainage Engineers have provided no objection to the DA, specifically in relation to the Stormwater Management Plan and Flooding related issues, subject to recommended conditions of consent.

Should a development consent be granted, relevant conditions of consent could be imposed in order to achieve the relevant criteria prescribed by Chapter 6 – Water Catchments of the Biodiversity and Conservation SEPP 2021.

### **14. STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021**

The provisions of SEPP (Resilience and Hazards) 2021 that are relevant to the subject site and application involve managing development in terms of the following:

#### Chapter 2: Coastal Management

The provisions of this chapter that are relevant to the subject application involve managing development in the coastal zone and protecting the environmental assets of the coast.

The Site is located wholly outside of the Coastal Environment Area (Clause 2.10) and the Coastal Use Area (Clause 2.11).

It is considered that the proposal would not have any significant adverse environmental impact upon the harbour coastal locality. On this basis, no further consideration is required under Chapter 2 of the Resilience and Hazards SEPP 2021.

#### Chapter 4: Remediation of Land

Under Clause 4.6(1)(a) of SEPP (Resilience and Hazards) 2021, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

Based on a review of the documentation submitted by the Applicant, Council's Environmental Health Officer has raised no objection to the proposal.

Accordingly, the proposal is satisfactory with regards to Chapter 4 of the Resilience and Hazards SEPP 2021.

## 15. STATE ENVIRONMENTAL PLANNING POLICY (SUSTAINABLE BUILDINGS) 2022

This policy generally applies to all residential developments (excluding alterations and additions less than \$50,000) and all non-residential developments, except those excluded in Chapter 3.1 of the policy.

### Chapter 2 Standards for residential development—BASIX

Chapter 2 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 a BASIX Certificate demonstrating compliance with the SEPP. Should a development consent be granted, relevant conditions of consent could be imposed in order to ensure compliance with energy and water use standards for large commercial development.

## 16. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

### 16.1. Part 1.2: Aims of Plan

For reasons discussed throughout this report, the proposal is inconsistent with the aims in Part 1.2(2) of the WLEP 2014 in the following manner:

- It does not ensure that growth occurs in a planned and co-ordinated way, as required in sub-clause (a);
- 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).

The proposal therefore fails to satisfy the aforementioned aims and is listed as a reason for refusal.

### 16.2. Land Use Table

The proposal is permissible but is not consistent with the relevant objectives of the R3 Medium Density Residential zone for the following reasons:

- 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.

The proposal therefore fails to satisfy the relevant objectives and is therefore listed as a reason for refusal.

### 16.3. Part 4.1A: Minimum Lot Sizes for a Residential Flat Building

Clause 4.1A(2) specifies a minimum lot size of 700m<sup>2</sup>.

| Site Area: 1,233m <sup>2</sup>                           | Proposed            | Control             | Complies |
|----------------------------------------------------------|---------------------|---------------------|----------|
| Minimum Lot Size – Multi Unit/ Residential Flat Building | 1,233m <sup>2</sup> | 700m <sup>2</sup> * | Yes      |

*\*No Minimum lot size is applicable under Cl 180 of the SEPP Housing 2021 (LEP provisions do not apply)*

The proposal complies with 4.1A(2) of WLEP 2014.

## 16.4. Part 4.3: Height of Buildings

Part 4.3 limits development to a maximum height of 10.5m.

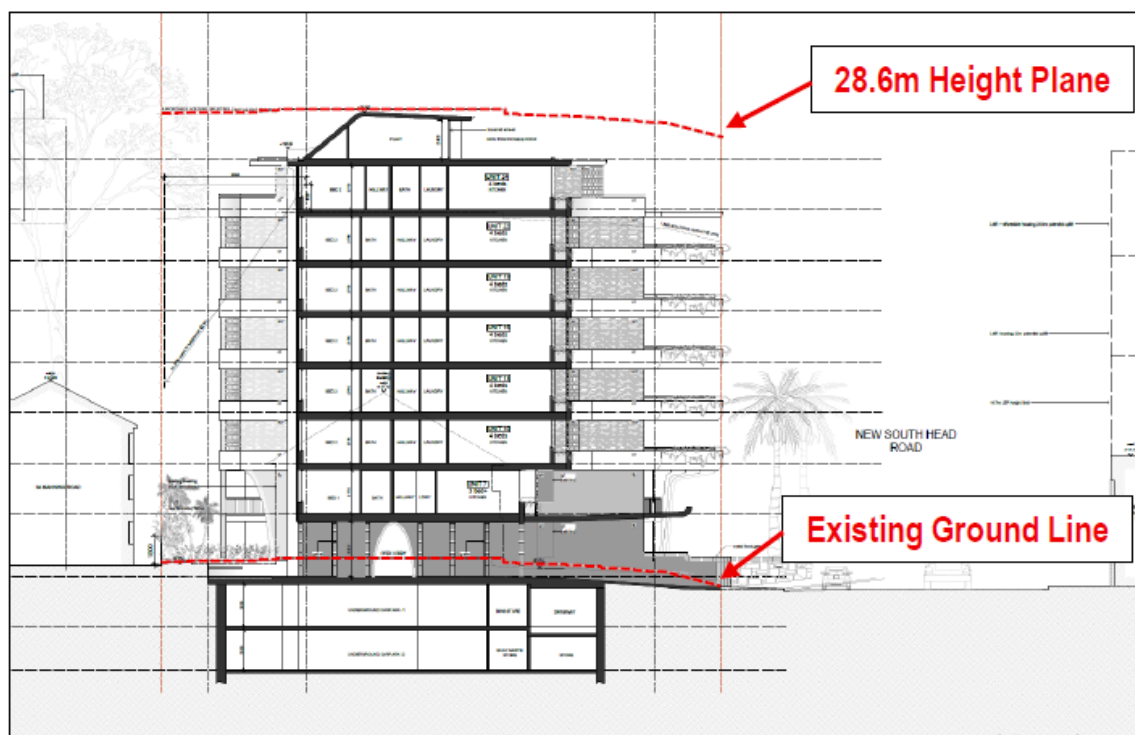
|                         | Proposed | Control | Complies |
|-------------------------|----------|---------|----------|
| Maximum Building Height | 28.41m   | 10.5m * | No       |

*\*The Height of buildings standard of the LEP is overridden by the development standard of 28.6m in Clause 16(3) of the SEPP Housing 2021 which permits a bonus additional building height of 30% for the land above the applicable LMR height standard (% equal to that as provided under Cl 16(1) of the SEPP).*

The proposed building attains a maximum height of 28.41m and exceeds the height limit under the WLEP 2014.

However, as discussed in Section 12 (*Chapter 2 Affordable Housing*) of the report, it allows for a maximum permissible building height of 28.6 metres and therefore complies with Height of buildings standard under the Housing SEPP.

**maximum permissible building height** means the maximum building height permitted on the land under Chapter 5 or 6, where relevant, an environmental planning instrument, other than this Policy, or a development control plan.



*Extract from the SEE prepared by GSA Planning showing the proposal achieving compliance with the permissible building height under Chapter 2 of the SEPP Housing*

## 16.5. Part 4.4: Floor Space Ratio

Part 4.4 limits development to a maximum floor space ratio of 1:1 for a residential flat building.

|                                      |                                 |                                 |                 |
|--------------------------------------|---------------------------------|---------------------------------|-----------------|
| <b>Site Area: 1,233m<sup>2</sup></b> | <b>Proposed</b>                 | <b>Control</b>                  | <b>Complies</b> |
| Floor Space Ratio (FSR)              | 2.91:1<br>3,594m <sup>2</sup> ^ | 1:1<br>(1,233m <sup>2</sup> ) * | No              |

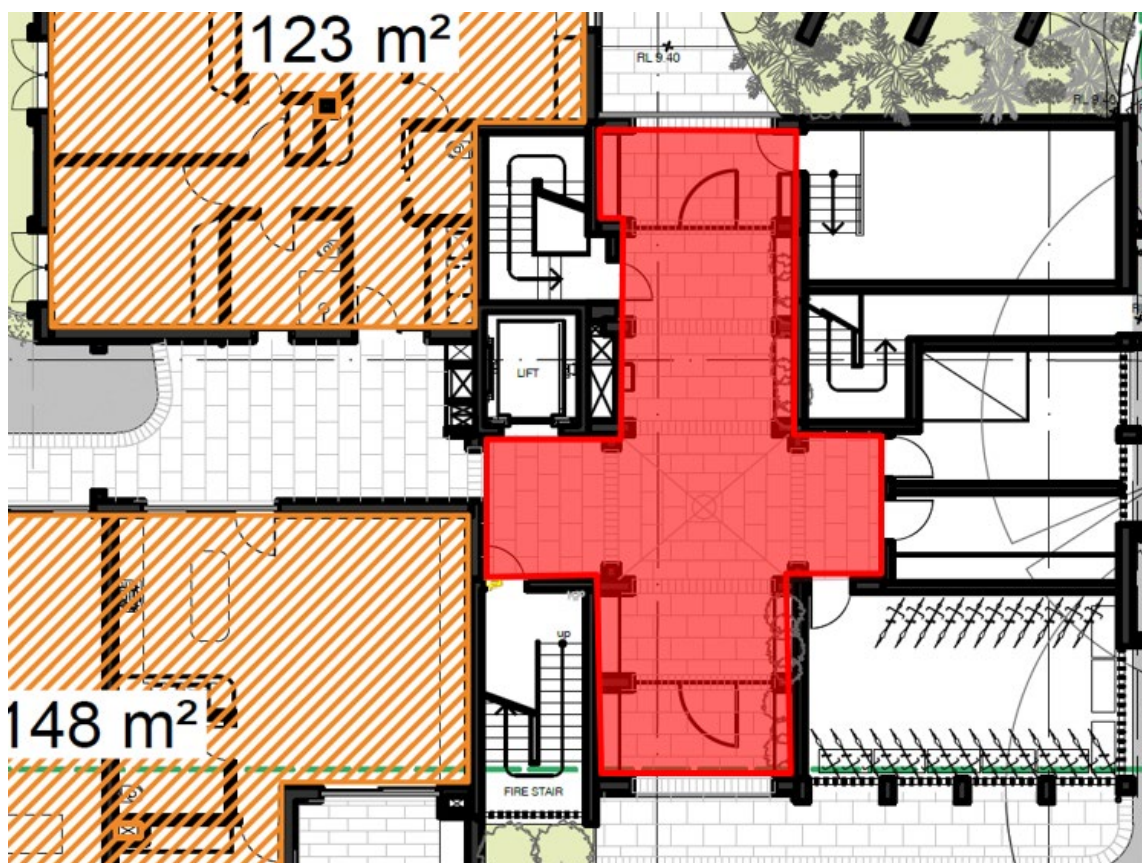
*\*The FSR standard of the LEP is overridden by the development standard of 2.86:1 in Clause 16(1) of the SEPP Housing 2021*

*^Calculation by Assessment Officer*

Part 4.4 limits development to a maximum floor space ratio of 1:1. As illustrated in the Compliance Table above, the proposal does not comply with the FSR development standard under Clause 4.4 of the Woollahra LEP 2014.

However, as discussed in Section 12 of this report, the site is subject to a maximum floor space ratio (FSR) of 2.2:1 under the Low- and Mid-Rise Housing provisions, with an additional 0.66:1 FSR available, resulting in a maximum permissible FSR of 2.86:1 (equating to 3,526 m<sup>2</sup> of gross floor area (GFA)) pursuant to Clause 16(1) of the SEPP (Housing). To be eligible for this maximum permissible FSR, a minimum of 15% of the maximum GFA is required to be provided as infill affordable housing within the development. The proposal includes 529 m<sup>2</sup> of GFA allocated to affordable rental housing, representing 15% of the maximum permissible GFA of 3,526 m<sup>2</sup>, and therefore qualifies for the affordable housing bonus.

Notwithstanding this, while the applicant's calculations indicate compliance with the applicable development standard under Chapter 2 (Affordable Housing) of the SEPP (Housing), internal corridor spaces at the ground and first-floor levels have been incorrectly identified as breezeways and excluded from the GFA calculation (refer to image below). These areas meet the definition of gross floor area and must be included in the calculation. When these spaces are properly accounted for, the proposal exceeds the maximum permissible development standard under Clause 16(1) of the SEPP (Housing), resulting in an effective floor space ratio of 2.91:1, or approximately 3,594 m<sup>2</sup> of gross floor area, as calculated by the Assessment Officer.



*An extract from the ground floor plan showing the lobby area which has been excluded from the gross floor area calculations*

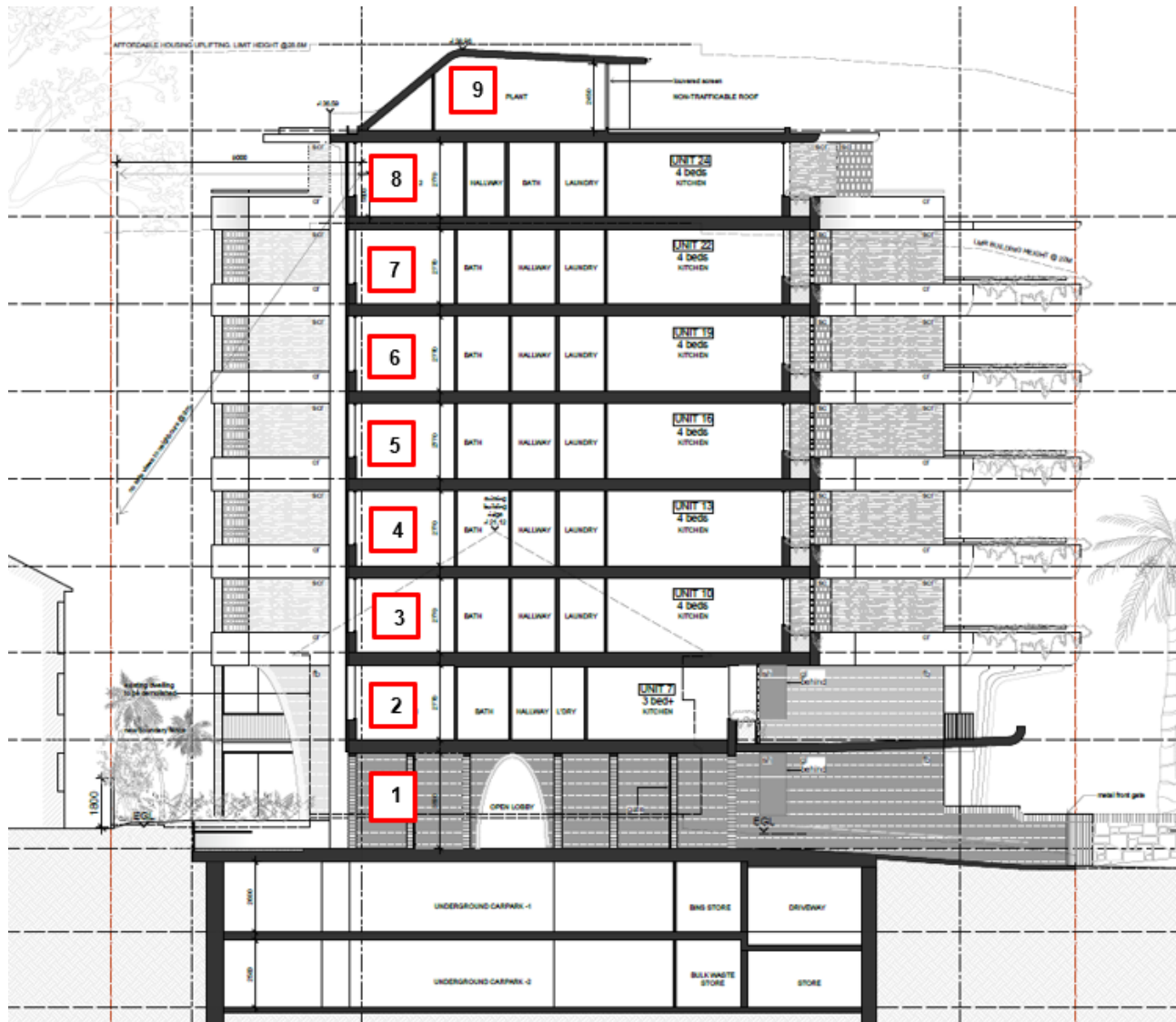
Notwithstanding, the Applicant has provided a Precautionary Clause 4.6 written request (FSR) which has been considered in Section 16.6 below.

## 16.6. Part 4.6: Exceptions to Development Standards

### Departures

#### s175(2) of the SEPP (Housing) – Number of storeys

As discussed in Section 12 of this report the proposal attains a height of 9 storeys which is non-compliant with the 6-storey development standard under s175(2) of the *State Environmental Planning Policy (Housing) 2021*.



Section showing the number of storeys (Source: Base plan by Luigi Rosselli Pty Ltd and Hill Thalys Architecture + Urban Projects Pty Ltd)

In accordance with cl 4.6 under the WLEP, justification must be provided that demonstrates that:

- compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- there are sufficient environmental planning grounds to justify the contravention of the development standard.

A written request to justify all non-compliances must be prepared in accordance with s 35B of the *Environmental Planning and Assessment Regulation 2021*.

The applicant has not submitted the required written request to vary the number of storeys development standard. Council is, therefore, not satisfied that the non-compliance is justified, and consent must not be granted and is therefore listed as a reason for refusal.

### Clause 16(1) of the SEPP (Housing) – Floor Space Ratio

The proposal attains a Floor Space Ratio of 2.91:1 (3,594m<sup>2</sup>) which involves a 68m<sup>2</sup> (1.93%) departure from the 2.86:1 (3,526m<sup>2</sup>) Floor Space Ratio control under Clause 16(1) of the SEPP (Housing).



*Floor plans showing the gross floor area at each level of the proposed development (Source: CI 4.6 written request by GSA Planning)*

It is noted that the figures provided in the CI 4.6 written request submitted by the Applicant incorrectly indicates a Floor Space Ratio of 2.9:1 (3,577m<sup>2</sup>) which involves a 51m<sup>2</sup> (1.45%) departure from the 2.86:1 (3,526m<sup>2</sup>) Floor Space Ratio control under Clause 16(1) of the SEPP (Housing).

## Purpose

Section 4.6 allows for the contravention of a development standard (provided that the standard is not expressly excluded from the section), with the objectives of the section being:

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

## Justification Requirements

Section 4.6(3) states that:

Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

- a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and
- b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Section 4.6(3) does not require the applicant to demonstrate those matters solely in the written request.

## Applicant's Written Request

Section 35B of the *Environmental Planning and Assessment Regulation 2021* requires a development application for development that proposes to contravene a development standard to be accompanied by a document [the written request] setting out the grounds on which the applicant seeks to demonstrate the matters in section 4.6(3) paragraphs (a) and (b).

The applicant has provided a precautionary written request for the FSR breach in accordance with Section 35B of the *Environmental Planning and Assessment Regulation 2021* (Refer to Attachments).

## Council's Assessment

Section 4.6(3) requires Council to be satisfied that the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention.

Council is required to undertake a critical review of the written request, and any other material that the Applicant has provided seeking to demonstrate the matters in section 4.6(3). This is set out below.

### **Step 1: Are the planning instrument, development standard and proposed variation identified in the written request accurate?**

In determining whether the information contained within the written requests are accurate, the following questions have been considered:

*Are the provisions proposed to be varied a development standard?*

The provision proposed to be varied is the Floor Space Ratio (FSR) development standard under Clause 16(1) of the SEPP (Housing).

*Are the development standards proposed to be varied standards that can be varied, and not excluded from the operation of section 4.6 by section 4.6(8)?*

The development standard proposed to be varied can be varied by Clause 4.6.

*Is the correct LEP or SEPP section (and objectives if relevant) referenced?*

The correct SEPP section is referenced.

*Is the extent of the variation correctly identified?*

The extent of the variations have not been correctly identified.

## **Step 2: Section 4.6(3)(a): Is compliance unreasonable or unnecessary?**

In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (**Wehbe**), Preston CJ established five potential tests (the Wehbe test) for determining whether a development standard could be considered unreasonable or unnecessary:

- The first is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- The second is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
- The third is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
- The fourth is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
- The fifth is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary."

However, the five tests set out in Wehbe above are not the only ways that an applicant can demonstrate that compliance with a development standard is unreasonable or unnecessary. In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (**Initial Action**), Preston CJ stated at paragraph 22:

*These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

### **Assessment:**

To determine whether the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances, the following questions have been considered:

*Has the applicant adopted one or more of the Wehbe tests to demonstrate that compliance is unreasonable or unnecessary in the circumstances?*

The Applicant's written requests have adopted Wehbe Test 1, asserting that compliance with the Floor Space Ratio development standard is unreasonable or unnecessary because the objectives of the Floor Space Ratio development standards are achieved notwithstanding non-compliance with the numerical standard.

The following summarised arguments are put forward by the Applicant:

- The applicant contends that any alleged floor space ratio non-compliance is technical in nature only, arising solely from the classification of ground-floor circulation spaces that are predominantly open to the elements and, in their view, should not be counted as gross floor area.
- The applicant further argues that, having regard to the statutory definition of gross floor area and established Land and Environment Court authority, including *GGD Danks Street Pty Ltd v City of Sydney Council* and *Belvoir Developments Pty Ltd v City of Sydney Council*, as well as previous Woollahra Council approvals, the ground-floor circulation spaces should be excluded from gross floor area and that, if this interpretation is accepted, no breach of the FSR standard arises, reinforcing the precautionary nature of the Clause 4.6 request.
- For the purposes of the assessment, the applicant contends that Clause 4.6 is applicable on the basis that the floor space ratio control is imposed by an environmental planning instrument, namely the SEPP (Housing) 2021, and constitutes a development standard within the meaning of section 1.4 of the Environmental Planning and Assessment Act 1979, such that the consent authority is empowered to consider a variation should a non-compliance be identified.

Assessment Officers Comments:

*Has the applicant used another method to justify that the variation is unreasonable or unnecessary?*

The Applicant has not used another method to justify the variation.

*Are the arguments put forward by the applicant, to demonstrate compliance is unreasonable or unnecessary in the circumstances, supported and why?*

The arguments put forward by the applicant are not supported for the following reasons:

- The applicant relies on *GGD Danks Street Pty Ltd v City of Sydney Council [2015] NSWLEC 1521* to contend that the ground-floor lobby and circulation areas should be excluded from gross floor area (GFA). However, Council adopts the reasoning in *Australex Group Pty Ltd v Fairfield City Council [2022] NSWLEC 1685*, the Court expressly declined to apply the reasoning in *Danks*, confirming that the definition of GFA is directed primarily to the quantum of floor area within the building envelope, and that the reference to measurement from the "internal face of external walls" operates as a method of calculation rather than a substantive exclusion. The Court further clarified that internalised circulation spaces, including lobbies and corridors located within the building footprint, are to be included in GFA, noting in particular the absence of any exclusion for common horizontal circulation (in contrast to the express exclusion for vertical circulation such as lifts and stairs). Consistent with *Australex*, the subject lobby and circulation areas are located wholly within the building envelope, function as internal shared space serving the dwellings, and are therefore appropriately included in the GFA calculation, irrespective of their partial openness to the elements.
- The exclusion of these circulation areas has the effect of understating the true intensity of development and does not accurately reflect the actual bulk and scale of the proposal. When these areas are properly included as GFA, the proposal exceeds the applicable floor space ratio development standard and does not comply with the relevant statutory control.

- As discussed throughout this report, the proposal does not achieve compatibility with the desired future character of the area, particularly in terms of its bulk and scale.
- The scale and bulk of the development would visually dominate the streetscape when viewed from New South Head Road, diminish the prominence of significant heritage vegetation, erode established green vistas, and introduce a built form that does not read as visually recessive within its landscaped setting.

**Step 3: Section 4.6(3)(b) Are there sufficient environmental planning grounds to justify the contravention?**

In *Initial Action* Preston CJ provided the following guidance (at paragraphs 23 and 24) concerning whether there will be sufficient environmental planning grounds to justify a contravention of the development standard:

- 23 *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be 'environmental planning grounds' by their nature: See Four2Five Pty Ltd. V Ashfield Council. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act including the objects in s1.3 of the EPA Act.*
- 24 *The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". ... the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].*

Section 1.3 of the EPA Act reads as follows:

**1.3 Objects of Act**

*The objects of this Act are as follows:*

- a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- c) to promote the orderly and economic use and development of land,*
- d) to promote the delivery and maintenance of affordable housing,*
- e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- g) to promote good design and amenity of the built environment,*
- h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- j) to provide increased opportunity for community participation in environmental planning and assessment.*

Assessment:

To determine whether the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standards, the following questions have been considered:

*What environmental planning grounds have been put forward to justify the variation?*

The applicant has provided the following environmental planning grounds to justify the proposed variation to the FSR development standard. These grounds are summarised below:

**1. Technical and Localised Nature of the Breach**

The variation is confined to ground-floor circulation space and does not result in any increase in the perceived bulk, scale or building envelope of the development.

**2. Consistency with Desired Future Character**

The applicant relies on *Woollahra Municipal Council v SJD DB2 Pty Ltd* [2020] NSWLEC 1112 to contend that the desired future character of an area may be informed by approved non-compliant development, and submits that the proposal is consistent with the objectives of the R3 Medium Density Residential zone and the prevailing and emerging multi-storey residential character along New South Head Road.

**3. Amenity Impacts**

The applicant contends that the floor space ratio departure does not result in any additional adverse amenity impacts, noting that the variation is confined to internal ground-floor areas and that any impacts on solar access, privacy or views arise from an otherwise compliant building envelope rather than the alleged excess gross floor area.

**4. Affordable Housing Outcomes**

The applicant submits that the proposed variation enables the delivery of six affordable housing units, supporting a key objective of Clause 16 of the SEPP (Housing), and is therefore considered to deliver positive social and economic outcomes that justify flexibility.

*Are the environmental planning grounds specific to the proposed variation?*

The environmental planning considerations are primarily regarded as being specific to the proposed variation related to FSR.

*Are there sufficient environmental planning grounds to justify the proposed variation to the development standard?*

While the SEPP (Housing) 2021 does not include objectives for the floor space ratio development standard, this does not preclude proper assessment under Clause 4.6. The assessment therefore focuses on whether compliance with the standard is unreasonable or unnecessary in the circumstances, and whether there are sufficient environmental planning grounds to justify the contravention, with particular regard to the development's bulk, scale and intensity and its impacts on streetscape character and amenity.

While the applicant contends that the variation is confined to ground-floor circulation space and does not result in any increase in the perceived bulk, scale or building envelope, this position is not supported. The deliberate exclusion of these circulation areas from the gross floor area calculation has the effect of understating the true intensity of development and does not accurately reflect the

actual bulk and scale of the proposal as experienced in the streetscape and broader context. When these areas are properly included as gross floor area, the proposal exceeds the applicable floor space ratio development standard and fails to comply with the relevant statutory control. Accordingly, the departure cannot be characterised as merely technical.

The applicant's reliance on *Woollahra Municipal Council v SJD DB2 Pty Ltd [2020] NSWLEC 1112* is noted; that decision does not support non-compliance where it results in unsatisfactory built-form outcomes. As discussed throughout this report, the proposal does not achieve compatibility with the desired future character of the area, particularly in terms of its bulk and scale. The development would present as visually dominant when viewed from New South Head Road, diminish the prominence of significant heritage vegetation, erode established green vistas, and introduce a built form that does not read as visually recessive within its landscaped setting. In this context, the proposal is not consistent with the prevailing or desired future character of the locality, and the environmental planning grounds advanced by the applicant are not sufficient to justify variation of the floor space ratio development standard.

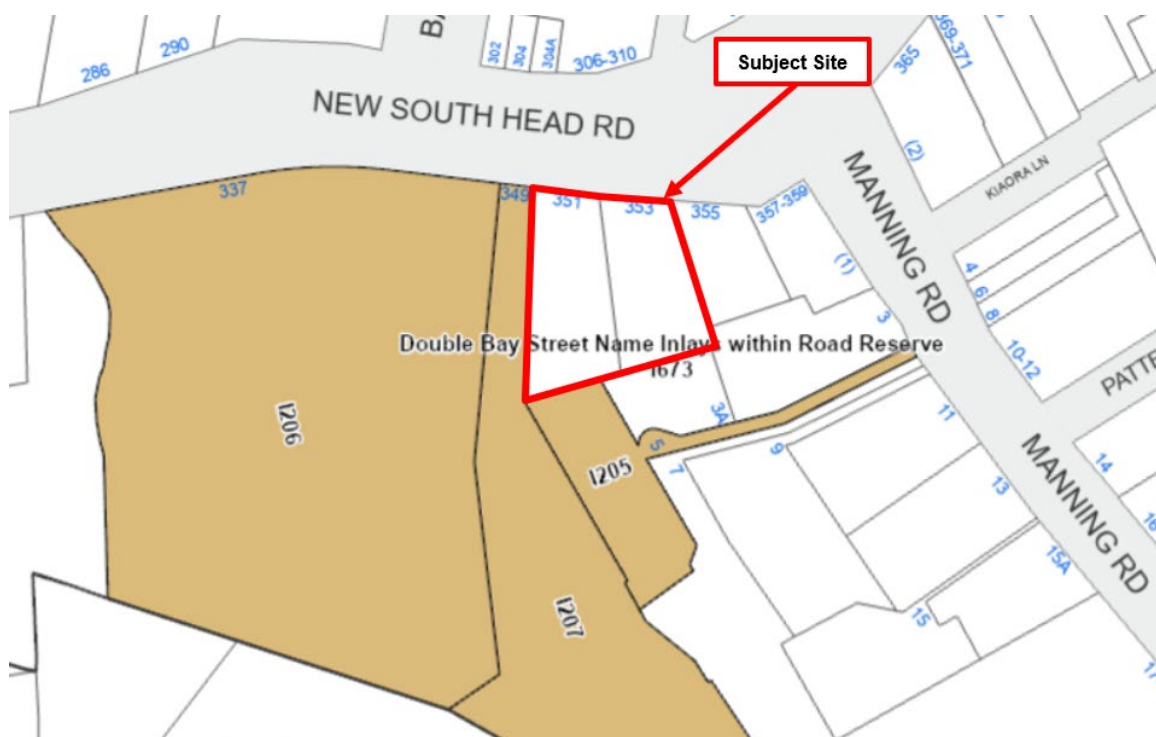
## Conclusion

Council is not satisfied that the Applicant has demonstrated that compliance with the Floor Space Ratio (FSR) development standard is unreasonable or unnecessary in the circumstances, and that there are sufficient environmental planning grounds to justify the contravention.

### 16.7. 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 site is not a listed heritage item in Schedule 5 of the Woollahra Local Environmental Plan 2014 'Woollahra LEP 2014' and is not within a heritage conservation area. However, the site is located immediately adjacent to several locally and state listed items immediately to the south and west of the subject site (refer to image below).



Councils Heritage Officer and Heritage NSW have undertaken an assessment of the proposal and consider the proposal unacceptable. The following relevant commentary (summarised) by Council's Heritage Officer and Heritage NSW is provided below:

The subject site is located immediately adjacent to, and within the visual and landscaped setting of, the State Heritage Register item "Overthorpe" (SHR No. 246) at 337–347 New South Head Road.

The proposal does not satisfactorily comply with Clauses 5.10(1)(a) and 5.10(1)(b) of the Woollahra LEP 2014, as it fails to conserve the environmental heritage of Woollahra and does not adequately conserve the heritage significance or setting of the adjoining State Heritage Register item "Overthorpe".

The subject site forms part of the established visual and landscape setting of the heritage item, with its significance derived from its elevated, landscaped character and mature canopy vegetation visible from New South Head Road. Heritage NSW has advised that insufficient information has been submitted to properly assess heritage impacts, including the absence of a comprehensive visual impact assessment, detailed arboricultural assessment and protection measures for heritage vegetation, confirmation of branch management during construction, and a historical archaeological assessment.

The bulk and scale of the proposed development would visually dominate views from New South Head Road, diminish the prominence of significant heritage vegetation, erode established green vistas, and introduce an excessive built form in this unique heritage landscaped setting.

In addition, the Heritage Impact Statement is considered inadequate, and the removal of the Port Jackson Fig would further undermine the landscaped setting and green character that contributes to the heritage significance of "Overthorpe".

The detailed Referral Response by Councils Heritage Officer and comments by Heritage NSW are provided in Attachment 5.

#### Conclusion:

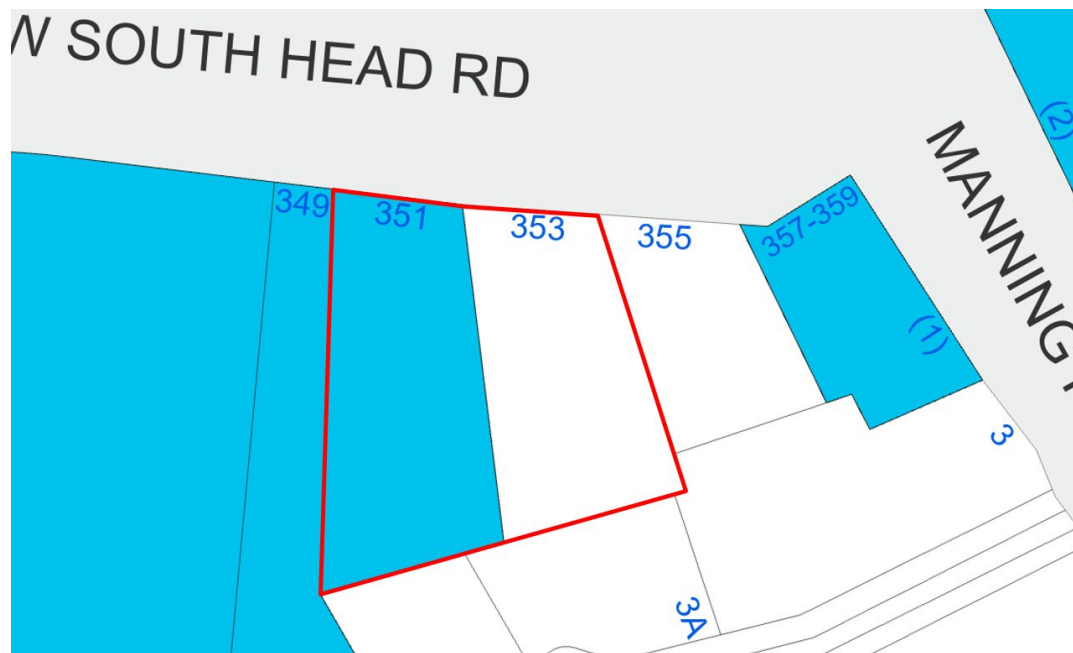
For reasons outlined above, the proposal fails to satisfy the relevant criteria prescribed by Part 5.10 of the Woollahra LEP 2014 and is listed as a reason for refusal.

### **16.8 Part 5.21: Flood Planning**

The objectives of Part 5.21 are:

- a) *to minimise the flood risk to life and property associated with the use of land,*
- b) *to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- c) *to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- d) *to enable the safe occupation and efficient evacuation of people in the event of a flood.*

A section of the subject site is identified under Part 5.21 of the LEP as being flood affected (refer to Flood Planning Area Map below).



*Flood Planning Area Map (Source: Woollahra Maps)*

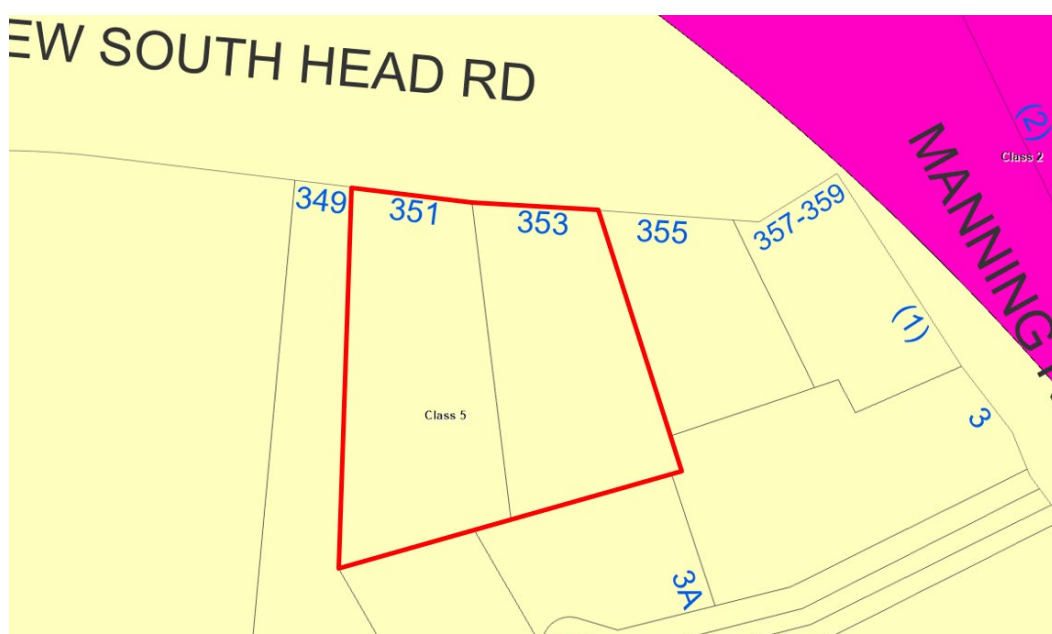
Council's Drainage Engineer considers the proposal satisfactory, subject to conditions (Attachment 8).

Should a development consent be granted, relevant conditions of consent could be imposed in order to achieve the relevant criteria prescribed by Part 5.21 of the WLEP 2014.

#### **16.9. 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 located on land classified as Class 5 on the Acid Sulfate Soils Map (refer to image below), which applies to any works below the natural ground surface and works by which the watertable is likely to be lowered.



*Acid Sulfate Soils Map (Source: Woollahra Maps)*

Council's Environmental Health Officer has undertaken an assessment and considers the proposal acceptable.

The proposal satisfies the relevant criteria prescribed by Part 6.1 of the Woollahra LEP 2014.

#### **16.10. Part 6.2: Earthworks**

Part 6.2(1) requires Council to ensure that any earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The proposal involves excavation to accommodate the 2 basement levels, lower living areas, communal circulation areas and landscaping.

In deciding whether to grant consent for earthworks, the consent authority must consider the following matters:

- (a) *The likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development*
- (b) *The effect of the development on the likely future use or redevelopment of the land*
- (c) *The quality of the fill or the soil to be excavated, or both*
- (d) *The effect of the development on the existing and likely amenity of adjoining properties*
- (e) *The source of any fill material and the destination of any excavated material*
- (f) *The likelihood of disturbing relics*
- (g) *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area*
- (h) *Any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

A Geotechnical Report has been submitted in support of the application which has been reviewed by Council's Development Engineer who considers the proposal acceptable, subject to conditions. For reasons discussed in Section 17.2.2 of this report, the proposal is considered to be acceptable with regards to the relevant matters for consideration outlined in Part 6.2 of the Woollahra LEP 2014.

#### **Conclusion:**

If the application were recommended for approval, relevant conditions of consent could be imposed in order to satisfy the relevant matters for consideration outlined in Part 6.2 of the Woollahra LEP 2014.

#### **16.11 Part 6.9: Tree canopy cover in Zones R2 and R3**

Clause 6.9 aims to conserve and enhance tree canopy cover in the R2 Low Density Residential zone and R3 Medium Density Residential zone.

Clause 6.9(3) requires Council to consider whether the development incorporates planning and design measures to enable the retention and planting of trees to minimise the urban heat island effect, and will avoid, minimise or mitigate adverse impacts on the existing tree canopy.

The adjoining property at 5 Manning Road contains heritage-listed gardens forming part of a state-listed rainforest, which contribute significantly to local heritage values, landscape character, and residential amenity.

While the Tree and Landscaping referral concludes that direct impacts to retained rainforest trees may be managed through the imposition of relevant conditions, both of the Urban Design and Heritage referrals identify broader impacts arising from the proposed height, bulk, and massing of the development. These include significant additional overshadowing onto the heritage-listed gardens, loss of the prevailing dominant tree canopy, and reduced rear setbacks that effectively borrow amenity from the adjoining heritage land rather than equitably sharing impacts.

Heritage NSW, while not a formal concurrence authority in this instance and having provided commentary at Council's request rather than through a formal referral, raises similar concerns regarding the intensification of development from a previously approved five-storey form to an eight-storey building, noting that the Statement of Heritage Impact does not adequately address impacts on significant westward views from New South Head Road toward the State Heritage Register-listed property *Overthorpe*, nor the broader implications for its setting.

When considered together, the referral advice indicates that although direct arboricultural impacts may be conditionally mitigated, the cumulative effects of increased overshadowing, visual intrusion, diminished landscape prominence, and impacts on the setting and views associated with heritage items, including *Overthorpe*, result in an unacceptable impact on the heritage significance and amenity of the state-listed rainforest landscape at 5 Manning Road.

For reasons discussed above and throughout this report, the proposal is unacceptable with regards to Clause 6.9 of WLEP 2014 and is listed as a reason for refusal.

## **17. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

### **17.1. Chapter B1: Wallaroy Precinct**

The relevant objectives of this part are as follows:

- O1 To respect and enhance the streetscape character and key elements of the precinct.*
- O2 To establish a development transition from the large residential flat buildings and lots at New South Head Road and Edgecliff Road to the smaller dwelling houses situated on the slopes.*
- O3 To design and site buildings to respond to the topography and minimise cut and fill.*
- O4 To maintain the evolution of residential building styles through the introduction of well-designed contemporary buildings, incorporating modulation and a varied palette of materials.*
- O6 To promote view corridors between buildings to significant views, particularly harbour views.*
- O7 To ensure that development on the western boundary of the precinct does not have an adverse impact on the heritage significance of the adjoining Woollahra Heritage Conservation Area.*
- O8 To retain and reinforce the green setting of mature street trees, private trees and garden plantings.*
- O9 To retain Inter-War flat buildings, particularly significant and traditional building elements visible from the street.*

For the reasons outlined under relevant headings in this report, the proposal does not satisfactorily achieve the relevant objectives relating to streetscape character, scale, heritage sensitivity, landscaping, and amenity. The proposed built form is excessive for its contextual setting, fails to respond appropriately to the established character of New South Head Road, and results in adverse impacts on adjoining properties through bulk, siting, excavation, and loss of landscape setting. The development does not adequately reinforce the area's green setting, protect trees of heritage significance, retain meaningful view corridors, or demonstrate a sensitive relationship with surrounding development.

Accordingly, the proposal is inconsistent with the relevant objectives for the desired future character of the Wallaroy Precinct as set out in Part B1.4.2 of the WDCP 2015 and is listed as a reason for refusal.

## 17.2. Chapter B3: General Development Controls

### 17.2.1. Part B3.2: Building Envelope

| Site Area: 1,233m <sup>2</sup> | Proposed                                                                                                                               | Control | Complies |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------|---------|----------|
| Front Setback                  | <p><b>Levels 2-6</b> - 3.78 to edge of terraces</p> <p>The balance of the proposal is compliant with the DCP front setback control</p> | 4m      | No       |

*Note: Under the SEPP Housing 2021, the rear and side setbacks are overridden by the visual privacy and separation design criteria in Part 3F: Visual Privacy of the ADG.*

#### Part B3.2.2 – Front setback

As illustrated in the Compliance Table above the proposal results in a minor non-compliance with the front setback control (C1) which has been determined to be 4m.

The relevant objectives of this part are as follows:

- O1 To reinforce the existing streetscape and character of the location.*
- O2 To provide consistent front setbacks in each street.*
- O3 To provide for landscaped area and deep soil planting forward of the building.*
- O4 To ensure that buildings are well articulated and positively contribute to the streetscape.*

While the Woollahra DCP prescribes a minimum front setback of 4 metres, Council's Senior Urban Designer has raised concerns that the proposed front setback does not adequately reflect or respond to the established heritage and landscape character of New South Head Road.

As discussed in Section 12.1 of this report, the site occupies a prominent position adjoining the Double Bay Centre, where the curvilinear streetscape allows views from the public domain to terminate in mature vegetation that forms part of the heritage garden setting of the Wallaroy Residential Precinct. The expansive landscaped front setback area is identified as a defining characteristic of this location, providing visual relief from the town centre and reinforcing a garden-dominant streetscape with buildings visually recessive behind the tree canopy.

The proposed reduction in the front setback area, together with the increased height and bulk of the building, is considered to undermine this established character by limiting opportunities for meaningful canopy planting and shifting visual dominance from landscaping to built structures. In particular, the proposed removal of the mature Port Jackson Fig within the front setback are not supported, as it is a key contributor to streetscape character and westward view termination along New South Head Road, and replacement planting is unlikely to replicate its scale or canopy value within the constrained setback.

Council's Senior Urban Designer therefore recommends either a substantial increase in the front setback or an alternative built-form response involving a lower street wall with upper levels set back to maintain visual separation from the public domain (refer to Section 18.1 of this report, the proposal does not incorporate upper-level setbacks to reduce perceived bulk and scale. In the absence of these measures, the proposal does not adequately protect the heritage landscape qualities of the front setback or meet the objectives of the Woollahra DCP 2015 relating to landscaping and garden character.

#### Conclusion:

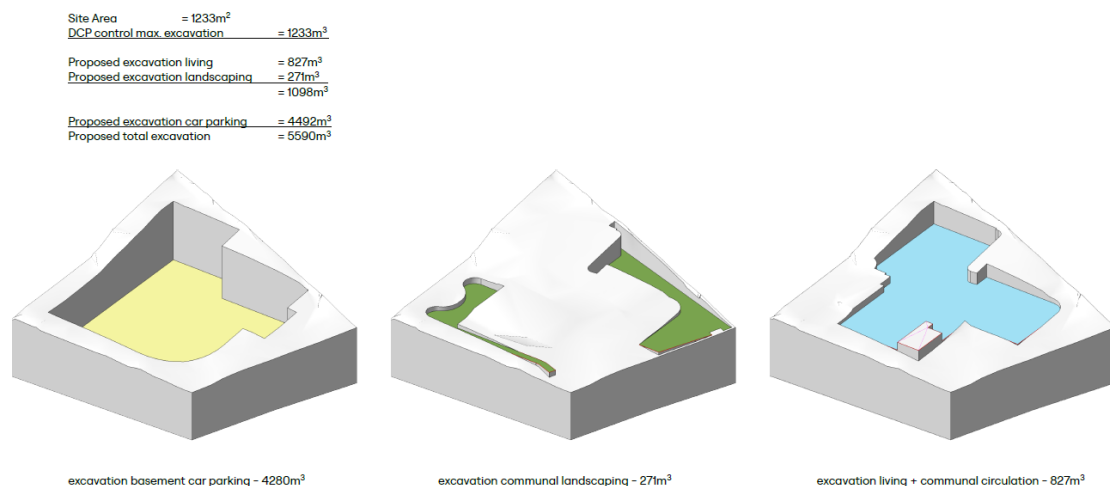
For reasons outlined above, the proposal fails to achieve Objectives O1-O4 of Part B3.2.2 of the WDCP 2015 and is listed as a reason for refusal.

## 17.2.2. Part B3.4: Excavation

| Site Area: 1,233m <sup>2</sup>                  | Proposed                        | Control                                          | Complies |
|-------------------------------------------------|---------------------------------|--------------------------------------------------|----------|
| Maximum volume of Excavation                    | Approx. 5,590m <sup>3</sup>     | 1,233m <sup>3</sup>                              | No       |
| Basement garage setback on both side boundaries | 0.35m and 1m (western boundary) | 1.5m                                             | No       |
| Geotechnical Report                             | Geotechnical report Provided    | Report Required Where excavation is > 2.0m depth | Yes      |

The relevant objective and controls of this part read as follows:

- O1 To set maximum acceptable volumes of excavation which: require buildings to be designed and sited to relate to the existing topography of the site; ensure excavation, including the cumulative impacts of excavation, does not adversely impact land stabilisation, ground water flows and vegetation; avoid structural risks to surrounding structures; ensure noise, vibration, dust and other amenity impacts to surrounding properties during construction are reasonable; enable deep soil planting in required setbacks; ensure traffic impacts and impacts on local infrastructure arising from the transfer of excavated material from the development site by heavy vehicles are reasonable; and satisfy the principles of ecologically sustainable development (including the energy expended in excavation and transport of material and the relative energy intensity of subterranean areas in dwellings).*
- C2 For a residential flat building, manor houses, multi dwelling housing, multi dwelling housing (terraces), or attached dwelling development (including attached and detached garaging)—the maximum volume of excavation permitted is no greater than the volume shown in Figure 13B.*
- C4 Notwithstanding C2 above, a variation to the volume shown in Figure 13B will be considered for residential flat buildings, however the maximum volume of excavation permitted will only be the amount needed to accommodate: car parking to comply with the maximum rates in Part E1 of this DCP and any reasonable access thereto, if the maximum car parking rates are required by the Council; and storage at a rate of 8m<sup>3</sup> (cubic metres) per dwelling.*
- C8 Notwithstanding C7, basement walls and any piling (or similar structural elements) for residential flat buildings, manor houses, multi dwellings housing, multi dwelling housing (terraces) and attached dwellings must be no closer to the boundary than 1.5m (see Figure 15).*
- C10 Excavation below 2m or within 1.5m of the boundary must be accompanied by a geotechnical and hydrogeological report and a structural report demonstrating that the works will not have any adverse effect on surrounding structures.*



Excavation diagram (Source: Hill Thalys Architecture & Luigi Rosselli)

The proposed development requires an estimated volume of excavation of approximately 5,590m<sup>3</sup> to accommodate the basement levels. The scale and extent of the excavation are non-compliant with Controls C2 and C8, which restrict excavation to 1,233m<sup>3</sup> and require a minimum 1.5 metre side setback from property boundaries.

Notwithstanding the non-compliances, the proposal is considered acceptable for the following reasons:

- Control C4 provides that, notwithstanding Control C2, variations to the excavation volume identified in Figure 13B may be considered for residential flat buildings where excavation is limited to that reasonably required to accommodate car parking in accordance with the maximum rates in Part E1 of the DCP, together with reasonable access, and storage at a rate of 8m<sup>3</sup> per dwelling.
- The proposal provides a compliant number of car parking spaces in accordance with the Housing SEPP (minimum 31 spaces) and proposes fewer spaces (36 spaces) than the maximum permitted under Chapter E1 of the Woollahra DCP 2015 (maximum 51 spaces), together with reasonable access.
- The proposed excavation also accommodates storage areas, waste and refuse facilities, lifts and internal stairways, and does not include any superfluous areas.
- The excavation volume ensures that parking and associated services are efficiently and skilfully integrated within the development and provides for safe and practical vehicular access to the site from New South Head Road.
- A Geotechnical Report has been submitted in support of the application and reviewed by Council's Development Engineer, who considers the proposal acceptable, subject to conditions of consent requiring appropriate mitigation measures to protect surrounding amenity and ensure the structural stability of adjoining and supporting structures during excavation and construction.

#### Conclusion:

If the application were recommended for approval, relevant conditions of consent could be imposed in order to satisfy the relevant objectives outlined in Part B3.4 of the Woollahra DCP 2015.

#### **17.2.3. Part B3.5: Built Form and Context**

| Site Area: 1,233m <sup>2</sup> | Proposed                                             | Control  | Complies |
|--------------------------------|------------------------------------------------------|----------|----------|
| Significant Trees              | Cannot be determined due to insufficient information | Retained | No       |

#### Part B3.5.1: Streetscape and Local Character

The relevant objectives of this part are as follows:

- O1 To ensure that the built form is compatible with the streetscape and the desired future character of the area.*
- O2 To ensure that development is of high visual quality and enhances the street.*
- O3 To ensure that development contributes towards reducing the urban heat island effect by encouraging urban greening and retaining, protecting and enhancing tree canopy cover.*
- O4 To maintain the evolution of residential building styles through the introduction of well-designed contemporary buildings.*

For reasons outlined throughout this report, the proposal fails to satisfy the relevant objectives of Part B3.5.1 of the WDCP 2015 and is listed as a reason for refusal.



*View of the subject sites from New South Head Road*



*Photomontage showing the proposal as viewed from New South Head Road (Source: GSA Planning)*



*Photomontage showing the proposal as viewed from New South Head Road, looking in a westerly direction  
(Source: Luigi Rosselli Pty Ltd and Hill Thalys Architecture + Urban Projects Pty Ltd)*

#### Part B3.5.2: Overshadowing

The relevant objective and control of this part are as follows:

*O1 To minimise overshadowing to neighbouring properties.*

*C1 The development is designed so that: a) sunlight is provided to at least 50% (or 35m<sup>2</sup> with a minimum dimension of 2.5m, whichever is the lesser) of the main ground level private open space of adjacent properties for a minimum of 2 hours between 9am and 3pm on 21 June. Where existing overshadowing is greater than this, sunlight is not further reduced; and b) north facing windows to upper-level habitable rooms of adjacent dwellings receive at least 3 hours of sun between 9am and 3pm on 21 June over a portion of their surface.*

The information submitted is insufficient to enable a comprehensive assessment of the proposal. Based on the material provided, the development is likely to result in significant overshadowing of surrounding residential flat buildings, particularly, at 3A Manning Road and the heritage-listed gardens at 5 Manning Road, due to the proposed building height and bulk.

To enable a proper assessment, the submitted overshadowing analysis should be amended to include the full development footprint at 5 Manning Road. In the absence of this information, Council cannot be satisfied that the proposal adequately addresses solar access impacts, and compliance with the applicable controls has not been demonstrated.

For the reasons outlined above, the proposal fails to achieve the objective of Part B3.5.2 of the WDCP 2015 and is listed as a reason for refusal.

### Part B3.5.3: Public and Private Views

#### Public Views

The proposal does not result in any adverse impacts on significant views or vistas from the public domain and is therefore considered satisfactory in this regard.

#### Private Views

The relevant objectives and controls of this part are as follows:

- O3 *To encourage view sharing as a means of ensuring equitable access to views from private property.*
- C5 *Development is sited and designed to enable a sharing of views with surrounding private properties, particularly from the habitable rooms.*
- C7 *The design of the roof form (including roof terraces, lifts, lift overruns, stairwells, access hatches, screens, and other like structures) provides for view sharing.*
- C8 *Roof terraces are uncovered to provide for view sharing. All elements on roof terraces are to comply with the maximum building height control. Note: Access to roofs should not comprise visually prominent stand-alone structures such as lifts or large stairways, particularly on flat roofs.*

Several submissions were received raising concerns regarding potential view loss from the following properties:

- Units 5, 7, 8, 25 and 29 of 337 New South Head Road, Double Bay
- 3A Manning Road, Double Bay
- 5 Manning Road, Double Bay

In assessing the reasonableness or otherwise of the degree of view loss, regard is to be had to the case law established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* which has established a four-step assessment of view sharing. The steps are as follows:

#### **1. Assessment of views to be affected**

*The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

#### **2. Consider from what part of the property the views are obtained**

*The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

#### **3. Assess the extent of the impact**

*The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but*

*in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

#### **4. Assess the reasonableness of the proposal that is causing the impact**

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The applicant's Statement of Environmental Effects (SEE) notes consideration of view sharing impacts; however, it does not include a detailed assessment against the principles established in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

In summary, the applicant contends that no significant public views or vistas are identified across the site, with any potential views being limited by dense rear landscaping and oriented north over Double Bay and the harbour, and given that neighbouring properties are situated at a higher elevation than the proposal, view impacts are considered negligible and equitable view sharing is achieved in accordance with the principles of Tenacity.

The submitted SEE provides only a general conclusion that the proposal will not result in adverse view impacts, without supporting evidence or certified imagery. In the absence of a detailed private view analysis, certified photomontages from surrounding properties, or a Visual Impact Assessment prepared in accordance with Land and Environment Court methodology, the extent of potential private view impacts cannot be accurately determined. Accordingly, Council cannot be satisfied that the proposed development minimises view loss, and the assessment is not considered comprehensive.

For reasons outlined above, the proposal fails to satisfy the relevant objectives of Part B3.5.3 of the WDCP 2015 and is listed as a reason for refusal.

#### **Part B3.5.4: Acoustic and Visual Privacy**

##### **Acoustic privacy**

The relevant objective and controls applicable to the proposal are as follows:

*O1 To ensure adequate acoustic privacy for occupants and neighbours.*

*C1 Dwellings are designed to ensure adequate acoustic separation and privacy to the occupants of all dwellings.*

The proposal is not considered to result in any unacceptable adverse acoustic privacy impacts on adjoining properties, given the site's location within a densely developed urban context characterised by numerous high-rise residential flat buildings, its position on the edge of the Double Bay Centre, and its frontage to New South Head Road, a classified and heavily trafficked road where background noise levels are already elevated.

Any mechanical plant associated with the development is either integrated within the building envelope or can be appropriately managed through the imposition of conditions of consent to ensure that potential acoustic impacts on adjoining properties are satisfactorily mitigated.

If the application were recommended for approval, relevant conditions of consent could be imposed in order to satisfy the relevant objectives of Part B3.5.4 of the Woollahra DCP 2015.

## Visual Privacy

The relevant objectives and controls applicable to the proposal are as follows:

*O2 To ensure adequate visual privacy for occupants and neighbours while balancing the need to provide for reasonable levels of environmental amenity, including access to sunlight and ventilation, and good architectural outcomes.*

*O3 To minimise the impacts of private open space.*

*C4 New windows in habitable rooms are designed to prevent a direct sightline to the habitable room windows or private open space of an adjacent dwelling within 9m. This may be achieved by options including but not limited to (in order of preference): .....*

*c) Architectural design solutions and devices—redirecting and limiting sightlines using deep sills with planter boxes, fixed horizontal or vertical louvres, or other screening devices set off the windows internally or externally.*

*d) Glazed opening windows, using windows with translucent glazing to a height of 1.5m above floor level and fitted with a winder mechanism to control the maximum angle of the opening to limit views.*

*e) Glazed fixed windows or high sills—using fixed windows with translucent glazing in any part of the window below 1.5m above floor level, or windowsill heights of 1.5m above floor level.*

*C7 Private open spaces and the trafficable area of roof terraces (at or below the second storey) (refer to Figure 19) are to be suitably located and screened to prevent direct views to neighbouring:*

*a) habitable rooms (including bedrooms) within 9m; and b) private open space within 9m.*

*Note: Private open space includes an area external to a building including land, terrace, balcony or deck.*

*C9 Windows and balconies of an upper-level dwelling are designed to prevent overlooking of the private open space of a dwelling below within the same development.*

*C10 The trafficable area of a roof terrace (above the second storey) (refer to Figure 19) is setback so that there is no direct line of sight, from that part of the building where the terrace or deck is, to: neighbouring private open space within 12m; or windows of habitable rooms in neighbouring dwellings within 12m*

*C11 Lighting installations on a roof terrace or upper-level deck are: contained within the roof terrace area and located at a low level; or appropriately shaded and fixed in a position so light is projected downwards onto the floor surface of the terrace.*

Concerns were raised by several of the owners of the immediately adjoining properties with regard to visual privacy impacts of the proposed development on adjoining properties.

Under the SEPP Housing 2021, any controls in the WDCP 2015 relating to visual privacy are overridden by the objectives, design criteria and design guidance set out in Part 3F: Visual Privacy of the ADG.

Council's Senior Urban Designer has undertaken an assessment of the proposal under the SEPP Housing 2021 and ADG and has provided the following commentary (summarised):

Council's Senior Urban Designer has assessed the proposal against the provisions of the SEPP (Housing) 2021 and the Apartment Design Guide (ADG) and has advised that the proposed rear

setback of less than four metres to habitable rooms does not adequately address privacy or equitable spatial separation and relies on the amenity of adjoining heritage properties. The rear setback should be increased to better reflect the overall scale of the development, and the built form should remain within the prescribed setback controls.

Although some design refinements and additional privacy measures could potentially be addressed through conditions of consent to mitigate visual privacy impacts on adjoining properties, the proposal in its current form does not satisfy the relevant objectives and controls of Part B3.5 of the Woollahra DCP 2015 and is therefore listed as a reason for refusal.

#### Conclusion:

For reasons discussed above, the proposal is unacceptable with regards to Part B3.5 of the WDCP 2015 and is listed as a reason for refusal.

#### **17.2.4. Part B3.6: On-Site Parking**

|                             | <b>Proposed</b>                  | <b>Control</b>                   | <b>Complies</b> |
|-----------------------------|----------------------------------|----------------------------------|-----------------|
| Location of Parking         | Mostly within the Buildable Area | Within the Buildable Area        | No              |
| Basement Parking            | Twenty-four (24) dwellings       | Required for 3 or More Dwellings | Yes             |
| Maximum Number of Driveways | One                              | One                              | Yes             |

The relevant objectives of this part are as follows:

*O1 To minimise the visual impact of garages, car parking structures and driveways on the streetscape.*

*O2 To ensure that on-site parking does not detract from the streetscape character and amenity.*

*O3 To allow, in certain circumstances, parking structures outside the building envelope.*

*O4 To minimise loss of on-street parking.*

*O5 To retain trees and vegetation of landscape value.*

*O6 To facilitate on-site parking on steeply sloping sites.*

*O7 To ensure that on-site parking is designed and integrated with the principal building on the site.*

*O8 To ensure that on-site parking does not detract from the streetscape character and amenity.*

*O9 To minimise the visual and environmental impacts of driveways and other hard stand areas associated with car parking.*

While the proposal does not strictly comply with Control C1, which requires on-site parking to be wholly contained within the building envelope due to minor encroachments of the basement parking into the western side setback, the parking arrangement is nonetheless consistent with the objectives of this part and has been thoughtfully integrated within the development to minimise visual impacts on the streetscape. It is also noted that nearby residential flat building developments at Nos. 315–317 and 321 New South Head Road incorporate comparable parking structures facing New South Head Road.

The proposal provides a compliant number of car parking spaces in accordance with the Housing SEPP, meeting the minimum requirement of 31 spaces, while proposing 36 spaces, which is below the maximum of 51 spaces permitted under Chapter E1 of the Woollahra DCP 2015.

Parking is accommodated primarily within the building envelope, ensuring that the parking, driveways and hard-stand areas are not visually intrusive and do not detract from streetscape character or amenity.

Council's Traffic Engineer has reviewed the proposed parking and access arrangement and has raised no objection, subject to the imposition of standard conditions of consent. Further discussion in this regard is provided in Section 17.3 of this report.

Accordingly, the proposal is considered to satisfy the relevant objectives of this part and does not result in adverse impacts on on-street parking or the public domain, thereby aligning with the overall intent of the parking controls.

#### Conclusion:

Should a development consent be granted, relevant conditions of consent could be imposed in order to achieve the relevant objectives outlined in Part B3.6 of the Woollahra DCP 2015.

#### **17.2.5. Part B3.7: External Areas**

| <b>Site Area: 1,233m<sup>2</sup></b> | <b>Proposed</b>                                                                                                                                                                                                       | <b>Control</b>                                    | <b>Complies</b> |
|--------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------|-----------------|
| Existing Trees                       | Insufficient information has been provided to determine impacts on existing significant trees, particularly the trees and vegetation listed under the Woollahra LEP 2014 as Trees/vegetation of Heritage significance | Incorporated Into Landscaping                     | No              |
| Front Fence                          | Varies between 1.5m and 2m                                                                                                                                                                                            | 1.2m if solid; or 1.5m if 50% transparent or open | No              |
| Side and Rear Fence Height           | 1.8m                                                                                                                                                                                                                  | 1.8m                                              | Yes             |
| Air Conditioning Units               | Enclosed within the rooftop structure                                                                                                                                                                                 | Not Visible from Public Domain                    | Yes             |

#### Part B3.7.1: Landscaped area and private open space

The relevant Controls of this part are as follows:

*C1 Tree canopy area is at least 30% of the site area for residential development other than dwelling houses, dual occupancies, semi-detached development and attached dwellings.*

*C2 35% of the site area is deep soil landscaped area.*

*O1 To ensure that the areas outside the building contribute to the desired future character of the location.*

*O2 To provide sufficient deep soil landscaped area to encourage urban greening and maintain and enhance tree canopy cover which in turn contributes positively to the existing and desired future character of the locality.*

*O7 To retain important existing canopy trees, vegetation and other landscape features.*

*O9 To ensure that landscaping contributes positively to the streetscape and the amenity of neighbouring properties.*

#### Tree Canopy

The submitted Landscape Plans demonstrate that the proposal will deliver approximately 395 m<sup>2</sup> of tree canopy cover, equating to 32% of the site area. This outcome complies with the relevant DCP controls and also satisfies the tree canopy requirements of the SEPP (Housing) 2021, which

prevails over the Woollahra DCP 2015 and requires a minimum tree canopy cover of 15% (184.95 m<sup>2</sup>).

Council's Tree Officer has undertaken an assessment of the proposal and considers the proposal satisfactory, subject to conditions.

Notwithstanding the above, and for the reasons discussed throughout this report, the subject site is located within the visual and landscaped setting of the State Heritage Register item "Overthorpe", whose significance is closely associated with its elevated position, landscaped grounds and established green character along New South Head Road. While the proposal achieves a compliant tree canopy outcome, it would nevertheless alter important landscape elements that contribute to the heritage setting. The scale and bulk of the development would erode established green vistas and introduce a built form that is visually dominant rather than recessive within the landscape. Accordingly, the proposal does not adequately retain important existing vegetation and landscape elements, nor does it ensure that landscaping contributes positively to the streetscape or the amenity of neighbouring properties.

For the reasons outlined above and throughout this report, the proposal is inconsistent with Objectives O7 and O9 of Part B3.7.1 of the Woollahra DCP 2015 and is listed as a reason for refusal.

#### Deep Soil Landscaping

Under the SEPP (Housing) 2021, the deep soil landscaping controls of the Woollahra DCP 2015 are overridden by Section 177 of Chapter 6 (Low- and Mid-Rise Housing). Under the SEPP Housing 2021, a minimum of 7% (86m<sup>2</sup>) of deep-soil landscaped area is required.

The areas located above the basement and proposed to be hard-landscaped areas have been incorrectly included in the deep soil area calculations. In this regard an accurate assessment of the deep soil landscaping against the relevant control and objectives of cannot be undertaken.

For the reasons outlined above, the proposal is unacceptable with regards to Part B3.7.1 of the WDCP 2015 and is listed as a reason for refusal.

#### Part B3.7.2: Fences

The relevant objectives and controls of this part read as follows:

- O1 *To ensure fences and walls improve amenity for existing and new residents and contribute positively to streetscape and adjacent buildings.*
- O2 *To ensure that fences and walls are not visually intrusive in the streetscape and to enhance pedestrian safety.*
- O6 *To ensure fences and walls are sympathetic to the topography*
- O7 *To protect and retain fences and walls that are important character elements for the precinct.*
- O8 *To ensure materials used in fences and walls are a high quality and in keeping with the existing streetscape character and character of the building.*
  
- C4 *The height of front fences does not exceed:*
  - a) 1.2m if solid; or
  - b) 1.5m if 50% transparent or open;
- C6 *On the high side of streets where there is an increase in ground level in excess of 1.2m on the property side of the street alignment— the height of front fences and walls may increase to 1.2m from the level of the high side.*
- C9 *The rear and side fences: are located behind the building front setback; and do not exceed 1.8m on level sites, or 1.8m as measured from the low side where there is a difference in level either side of the boundary.*

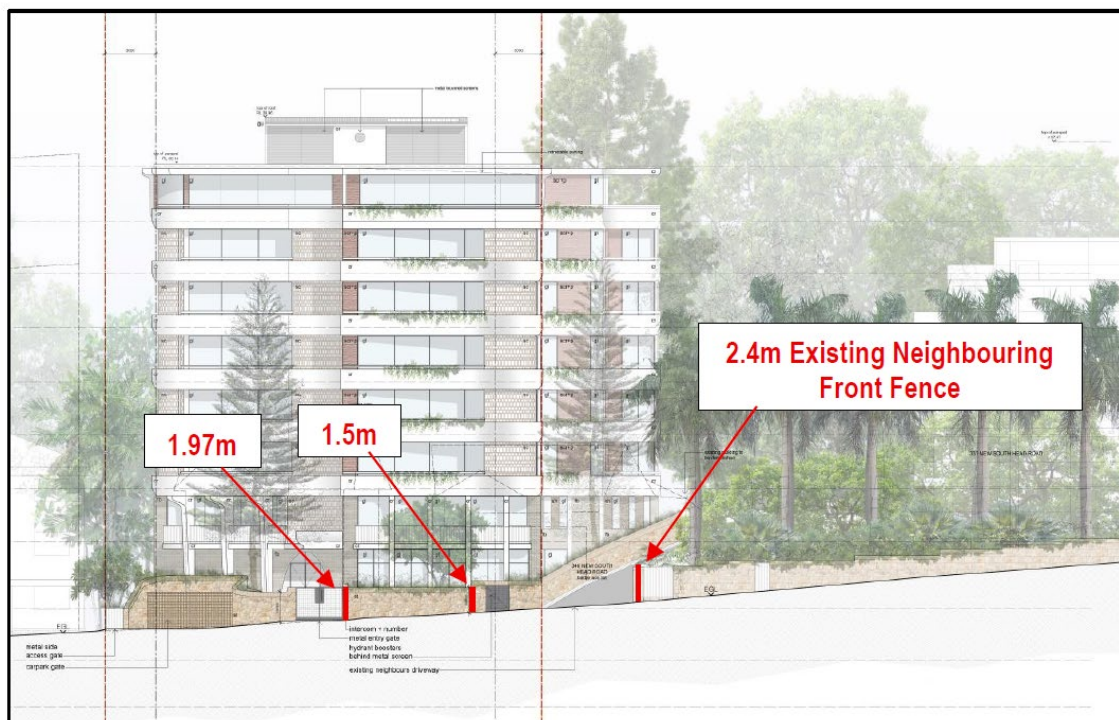
- C10 Where there is a difference in ground level in excess of 1.2m either side of the boundary—the height of fences and walls may increase to 1.2m from the level of the high side.
- C11 For sloping streets—the height of fences and walls may be averaged, and fences and walls may be regularly stepped.
- C15 The design and materials of front fences and walls are compatible with those fences and walls that contribute positively to the streetscape and satisfy the desired future character and precinct controls in Chapters B1 and B2 of this DCP.

### Front Fence

The proposal includes a new sandstone front wall to New South Head Road which measures between 1.5m and 1.97m which results in a non-compliance with Control C4, as illustrated in the Compliance Table above.

Notwithstanding the non-compliance, the proposal is considered acceptable for the following reasons:

- The non-compliance is largely attributable to the site's topography, which slopes downward from west to east across the front portion of the site. The proposal responds appropriately to these conditions by providing a graduated transition in fence heights that aligns with the changing ground levels, ensuring a consistent and acceptable streetscape outcome as the landform levels out toward the eastern end of the site.



Street elevation showing the proposed sandstone fence to the front boundary (Source: SEE by GSA Planning)

- The proposed height of the wall is compatible in height and materiality with the front wall of properties to the west of the site along New South Head Road, as demonstrated in the images below. It is noted that the front walls to the adjoining properties to the west are non-compliant with Control C4.



*Images showing the subject sites (left) and the sandstone front fence to the adjoining properties to the west (right) on the same side of New South Head Road as the subject site*



*Images showing the sandstone front fence on properties further to the west on the same side of New South Head Road as the subject site*

- The proposal achieves consistency with the streetscape character and key elements of the Wallaroy precinct which encourages sandstone walls and achieves a balanced outcome which also achieves the relevant objectives of the controls outlined in the WDCP.
- Overall, it is considered that the proposal will ensure the front fence contributes positively to the streetscape and adjacent buildings, is not visually intrusive in the streetscape and will ensure adequate casual surveillance from the building to the street is achieved.

### Side and Rear Fences

The proposal complies with the relevant objectives and controls of this part.

Given the commentary provided above the proposal satisfies the relevant objectives of Part B3.7.2 of the Woollahra DCP 2015.

### Part B3.7.3: Site Facilities

The relevant objectives and controls of this part are as follows:

*O6 To ensure that mechanical plant equipment including lift overruns, airconditioning units and external condensers, do not have adverse streetscape or amenity impacts.*

*O7 To discourage the provision of mechanical plant equipment on the roofs of buildings to minimise clutter and visual impacts created by intrusive site facilities.*

*O8 To minimise visual and acoustic impacts on adjoining properties.*

*C7 Mechanical plant equipment (including lift overruns and air conditioners) must be located internally within the principal building in a suitably designed plant room or the like.*

*C8 Mechanical plant equipment (including lift overruns and air conditioners) must be wholly contained within the permissible building envelope and must not be located externally or on the roof unless Council is satisfied that it: cannot be reasonably located elsewhere; and is thoughtfully located, sized, enclosed, concealed and integrated into the building design*

*(including when viewed from above) and roof form so it: i. is not visible from the streetscape or public domain; ii. is consistent with the overall building design, roof form and materials; iii. is visually discreet and unobtrusive when viewed from adjoining properties; and iv. minimises acoustic impacts to adjoining properties.*

The objectives and controls of this part seek to minimise visual clutter and adverse streetscape impacts by discouraging the placement of mechanical plant and equipment on roof areas and instead encouraging their integration within the building envelope.

In this instance, the proposed rooftop enclosure for the mechanical plant, of which the amount appears to be excessive, presents as an additional storey and introduces an unnecessary and visually intrusive element that exacerbates the overall height, bulk and scale of the development. It is therefore considered that a more skilful design approach could be adopted to adequately screen or integrate the required mechanical plant in a manner that achieves a visually recessive outcome and minimises amenity impacts.

For the reasons outlined above, the proposal fails to satisfy the relevant objectives and controls of Part B3.7.3 of the Woollahra DCP 2015 and is listed as a reason for refusal.

#### Conclusion:

Given the commentary provided above, the proposal is considered unacceptable with regards to Part B3.7 of the WDCP 2015 and is listed as a reason for refusal.

### **17.2.6. Part B3.8: Additional Controls for Development Other Than Dwelling Houses**

#### Part B3.8.1: Minimum Lot Width

The relevant matters under this Part are superseded by the provisions of the Apartment Design Guide, in accordance with Clause 178(2) of the SEPP Housing 2021.

#### Part B3.8.6 Residential Flat Buildings

The relevant matters under this Part are superseded by the provisions of the Apartment Design Guide, in accordance with Clause 149 of the SEPP Housing 2021.

### **17.3. Chapter E1: Parking and Access**

#### **Part E1.4: Residential parking**

Parking for residential uses is calculated using the generation rates specified in E1.4.2.

| Residential flat buildings, manor houses, multi dwelling housing, multi dwelling housing (terraces) and seniors housing (independent living units)<br><i>Spaces based on number of bedrooms per dwelling<sup>3</sup></i> |             |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Studio apartment <sup>4</sup>                                                                                                                                                                                            | 0.5 space   |
| 1 bedroom                                                                                                                                                                                                                | 1 space     |
| 2 bedrooms                                                                                                                                                                                                               | 1.5 spaces  |
| 3 or more bedrooms                                                                                                                                                                                                       | 2 spaces    |
| Visitors                                                                                                                                                                                                                 | 0.25 spaces |

*Extract from Table 1: Residential uses parking generation rates (Source: WDCP 2015)*

### **Car Parking Provision**

| Residential Component | Quantity | DCP Maximum Requirement per Dwelling | DCP Maximum Permitted Parking                     |
|-----------------------|----------|--------------------------------------|---------------------------------------------------|
| 1 Bedroom             | 2        | 1                                    | 2                                                 |
| 2 Bedroom             | 2        | 1.5                                  | 3                                                 |
| 3 or more bedrooms    | 20       | 2                                    | 40                                                |
| Visitors              | 24       | 0.25                                 | 6                                                 |
| Total permitted       |          |                                      | 51                                                |
| Proposed provision    |          |                                      | <b>36 (including 3 accessible parking spaces)</b> |

As illustrated in the Compliance Table above, the proposal is compliant with Part E1.4 of the WDCP 2015.

### **Bicycle and Motor Bike Parking**

| <b>BICYCLE</b>   |              |                         |                              |
|------------------|--------------|-------------------------|------------------------------|
|                  | Quantity     | DCP Minimum Requirement | DCP Minimum Required Parking |
| Residents        | 24 dwellings | 1 per dwelling          | 24                           |
| Visitors         | 24 dwellings | 1 per 10 dwellings      | 2.4                          |
| Total required   |              |                         | 26.4 (~26)                   |
| Provided         |              |                         | 27 bicycle spaces            |
| <b>MOTORBIKE</b> |              |                         |                              |
|                  | Quantity     | DCP Minimum Requirement | DCP Minimum Required Parking |
| Car Spaces       | 36           | 1 per 10 car spaces     | 3.6 (~4)                     |
| Total required   |              |                         | 4                            |
| Provided         |              |                         | 4                            |

As illustrated in the Compliance Table above, the proposed bicycle and motorbike parking provision complies with WDCP 2015.

### **Part E1.10: Parking and Access Design Standards**

Council's Traffic Engineer has undertaken an assessment of the proposal considers the proposal acceptable with regards to Part E1.10, subject to conditions. The detailed commentary in this regard is provided at Attachment 6.

### **Part E1.11: Electric Vehicle Charging Points**

Control C.1 requires evidence of electric circuitry to accommodate 'Level 2' electric vehicle charging points to be integrated into all off-street car parking of new residential development to ensure that 100% of car spaces can install electric vehicle charging points in the future.

Whilst the proposal makes provision for 12 charging points, insufficient details of the electric circuitry have been provided. Notwithstanding this, should a development consent be granted, relevant conditions of consent could be imposed in order to achieve the relevant objectives and controls in *Part E1.11: Electric Vehicle Charging Points* of the WDCP 2015.

Conclusion:

Should a development consent be granted, relevant conditions of consent could be imposed in order to achieve the relevant criteria prescribed by Chapter E1 of the Woollahra DCP 2015.

**17.4. Chapter E2: Stormwater and Flood Risk Management**

Stormwater Drainage Management

Council's Development Engineer has undertaken an assessment of the proposal and considers the proposal acceptable, subject to conditions.

Flood Risk Management

Council's Drainage Engineer has undertaken an assessment of the proposal and considers the proposal acceptable, subject to conditions.

Conclusion:

Should a development consent be granted, relevant conditions of consent could be imposed in order to achieve the relevant criteria prescribed by Chapter E2 of the Woollahra DCP 2015.

**17.5. Chapter E3: Tree Management**

The relevant objectives of this part are as follows:

*O1 To identify trees which are prescribed for the purpose of Part 2.3 of the Biodiversity and Conservation SEPP.*

*O3 To promote, maintain and conserve the leafy character of the Woollahra Municipality.*

*O4 To conserve significant trees of historic, cultural, commemorative, scientific, visual or aesthetic importance.*

*O5 To sustain and enhance Woollahra's tree canopy cover whilst providing opportunities for development on private land.*

Council's Tree Officer has raised no objections to the proposal, subject to conditions.

However, for the reasons outlined in Section 16.11 of this report, the proposal does not achieve the relevant objectives of Chapter E3 of the Woollahra Development Control Plan 2015 and is listed as a reason for refusal.

**17.6. Chapter E5: Waste Management**

Chapter E5 is applicable to all development and seeks to establish waste minimisation and sustainable waste management during demolition and construction phases and throughout the on-going use of the building.

The SWMMP addresses volume and type of waste and recyclables to be generated, storage and treatment of waste and recyclables on site, disposal of residual waste and recyclables and operational procedures for ongoing waste management once the development is complete.

The applicant provided a SWMMP with the development application and it was found to be satisfactory.

## Part E5.2: Demolition and Construction Phase

The proposal is considered to be acceptable with regards to the objectives and controls in Part E5.2 of the WDCP 2015 and/or can be adequately addressed via standard conditions of consent.

## Part E5.3: On-Site Waste and Recycling Controls for all Development

|                                         | Proposed                                                     | Control                                     | Complies |
|-----------------------------------------|--------------------------------------------------------------|---------------------------------------------|----------|
| Garbage and Recycling Areas             | Separated                                                    | Separated                                   | Yes      |
| Location of Garbage and Recycling Areas | Located within a Non-Habitable Area (Basement Level Parking) | Behind Building Line or Non-Habitable Areas | Yes      |

A dedicated area for the storage of on-site waste, recycling and disposal, has been provided within the development proposal.

The proposal is acceptable with regards to Part E5.3 of the WDCP 2015.

## Part E5.5: Multi Dwelling Housing and Residential Flat Buildings

|                                                              | Proposed                                | Control        | Complies |
|--------------------------------------------------------------|-----------------------------------------|----------------|----------|
| Garbage and Recycling Areas                                  | Separate garbage and recycling provided | Required       | Yes      |
| Location of Waste Storage Area                               | Basement Level 1                        | Basement Level | Yes      |
| Maximum Distance from Waste Storage Area to Collection Point | <75m                                    | 75m            | Yes      |

A dedicated area for the storage of household waste recycling and disposal has been provided within the development proposal.

The proposal is considered to be acceptable with regards to the objectives and controls in Part E5.5 of the WDCP 2015.

### Conclusion:

The proposal is considered to be acceptable with regards to the objectives and controls in Chapter E5 of the WDCP 2015 and/or can be adequately addressed via standard conditions.

## 17.7. Chapter E6: Sustainability

### Part E6.3: Solar Energy Systems

|                                       | Proposed                                                       | Control                                                  | Complies             |
|---------------------------------------|----------------------------------------------------------------|----------------------------------------------------------|----------------------|
| Maximum Projection Above Roof Surface | Insufficient detail provided                                   | 500mm                                                    | Cannot be determined |
| Location of Solar Energy System       | Behind front building line and not readily visible from street | Behind the Front Setback and not visible from the street | Yes                  |

Insufficient detail has been provided in relation to the proposed photovoltaic roof panels, particularly with respect to their maximum projection above the roof surface. As a result, a fully informed assessment of the proposal against the objectives and development controls of Part 6.3 of the Woollahra DCP 2015 cannot be undertaken.

### Conclusion

For reasons discussed above, the proposal fails to fully satisfy the objectives and controls of Chapter E6 of the WDCP 2015 and is listed as a reason for refusal.

## **17.8. Chapter E8: Adaptable Housing**

### **Part E8.2: Adaptable Housing**

Control C1 of the applicable planning controls requires that developments comprising 10 or more dwellings include a minimum of 10% of dwellings designed and constructed to achieve Class A certification under AS 4299 – Adaptable Housing.

The proposed development includes twenty-four (24) dwellings, which necessitates a minimum of three adaptable dwellings. The submitted plans identify Units 10, 13 and 16 as adaptable, thereby satisfying the requirements of Control C1.

The proposal is acceptable with regards to Chapter E8 of the Woollahra DCP 2015.

## **18. DRAFT AMENDMENTS TO POLICIES AND PLANS**

### **18.1 Chapter B4: Housing in Accessible Areas**

The Amendment 37 to the Woollahra Development Control Plan (DCP Amendment 37) was approved by Council on 23 February 2026 and came into effect once notified on Council's website on 24 February 2026. DCP Amendment 37 contains a savings provision which means that it does not apply to this development application. However, the provisions of DCP Amendment 37 can still be considered in the assessment of development applications within the scope of the public interest (*Stockland Development Pty Ltd v Manly Council [2004] NSWLEC 472 (at 92)*).

The provisions of DCP Amendment 37 can be given significant weight as the instrument has been subject to two rounds of public consultation and has been adopted by Council, which confirms that it is imminent and certain (noting it has been published).

The relevant considerations have been assessed below.

#### **B4.1.4 Objectives**

The underlying objectives of this chapter read as follows:

*O1 To ensure that the scale, bulk and design of new housing in accessible areas has regard to nearby development.*

*O2 To ensure housing in accessible areas does not unreasonably compromise the amenity of nearby residential uses and public open space.*

*O3 To ensure housing in accessible areas sensitively responds to the significant values of places with heritage significance.*

*O4 To ensure housing in accessible areas provides a diversity of dwelling sizes.*

*O5 To ensure housing in accessible areas minimises traffic and parking impacts.*

For reasons outlined throughout this report, the proposal does not fully satisfy the relevant objectives of Part B4.1.4 of the WDCP 2015.

#### **B4.2.1 Built form and articulation**

The proposal does not comply with Controls C1(b) and C2 as the proposal is inconsistent with the predominant four (4) storey wall height exhibited along the streetscape in this locality and no 3m upper-level setback is provided.

As discussed in Section 12 of this report, the proposal does not accord with the building separation requirements in Chapter 4 of the Housing SEPP nor ADG and therefore does not comply with C4.

For reasons outlined above, the proposal fails to achieve Objectives O5 and O6 as it does not provide a sufficiently well-articulated built form to reduce visual bulk and scale or positively contribute to the streetscape, and it results in an unacceptable level of visual intrusion when viewed from the public domain and surrounding properties.

#### B4.2.4 Apartment mix

The proposal does not provide for the apartment mix outlined in Table 1 under Control C1 which requires the following for a residential flat building with six or more dwellings:

**Table 1 Apartment mix**

| Apartment type     | Maximum |
|--------------------|---------|
| Studio apartment   | 20%     |
| 1 bedroom          | 30%     |
| 2 bedrooms         | 50%     |
| 3 or more bedrooms | 20%     |

The proposed unit mix comprises:

- Studio Apartments = 0%
- 1-bedroom apartments = 8.3%
- 2-bedroom apartments = 8.3%
- 3 or more-bedroom apartments= 83.3%

#### B4.2.5 Car parking

Control C2 reads as follows: For the avoidance of doubt, the provision of car parking and parking structures are not required. If the applicant elects to provide car parking, Table 2 below sets out the maximum number of spaces that can be included in the development.

In calculating the total number of car parking spaces required for a development, the total should never be rounded up, even if the fraction of the total calculation is equal or more than half (0.5 of a space).

**Table 2 Residential uses maximum car parking spaces for land within 800m walking distance of Edgecliff Station and Town Centre, Double Bay Town Centre, Oxford Street Town Centre, Kings Cross Station and Town Centre, Bondi Junction Station and Town Centre, and Rose Bay Town Centre (New South Head Road).**

| Land use                                                                                 | Maximum parking spaces |                             |
|------------------------------------------------------------------------------------------|------------------------|-----------------------------|
| Multi-dwelling housing, multi-dwelling housing (terraces) and residential flat buildings |                        |                             |
| <i>Number of bedrooms per dwelling</i>                                                   | Within 400m            | <i>Between 400m to 800m</i> |
| Studio apartment                                                                         | 0.2 space              | 0.3 space                   |
| 1 bedroom                                                                                | 0.4 space              | 0.6 space                   |
| 2 bedrooms                                                                               | 0.6 space              | 0.9 space                   |
| 3 or more bedrooms                                                                       | 1 space                | 1.2 spaces                  |
| Visitors                                                                                 | 0.1 space              | 0.15 space                  |

| Residential Component | Quantity | DCP Maximum Requirement per Dwelling | DCP Maximum Permitted Parking                     |
|-----------------------|----------|--------------------------------------|---------------------------------------------------|
| 1 Bedroom             | 2        | 0.4                                  | 0.8                                               |
| 2 Bedroom             | 2        | 0.6                                  | 1.2                                               |
| 3 or more bedrooms    | 20       | 1                                    | 20                                                |
| Visitors              | 24       | 0.1                                  | 2.4                                               |
| Total permitted       |          |                                      | 24 (24.4)                                         |
| Proposed provision    |          |                                      | <b>36 (including 3 accessible parking spaces)</b> |

In accordance with C2, the maximum number of car parking spaces generated equals 24.4 spaces which is rounded down to 24 spaces. The proposal provides for 36 spaces which is non-compliant.

## 19. CONTRIBUTION PLANS

### 19.1. Section 7.12 Contributions Plan

The proposed development is recommended for refusal and accordingly Section 7.12 contributions, and relevant fees are not applied. Notwithstanding this, should development consent be granted, a contribution pursuant to Section 7.12 would apply and can be enforced by condition.

### 19.2. Subdivision 4 Housing and Productivity Contributions

Section 7.24 of the Environmental Planning and Assessment Act 1979 identifies that the object of this subdivision is to facilitate the provision of regional infrastructure that supports and promotes housing and economic activity in a region by enabling a housing and productivity contribution to be required.

Division 1 of the Environmental Planning and Assessment (Housing and Productivity Contribution) Ministerial Order 2024 sets out the classes of development, which require a housing and productivity contribution.

NSW Planning Portal

DA Online (PAN-579613) Reference number: CON-42820 Resolved-Completed

Contributions

Applicant input Contributions framework Proposed & existing uses Total number of units Calculate contributions

Calculate contributions

| Street address                          | Local Government area | Lot/Section                                            | Primary address                     |
|-----------------------------------------|-----------------------|--------------------------------------------------------|-------------------------------------|
| 353 NEW SOUTH HEAD ROAD DOUBLE BAY 2028 | WOOLLAHRA             | 2 / -- / DP1081202                                     | <input type="checkbox"/>            |
| 351 NEW SOUTH HEAD ROAD DOUBLE BAY 2028 | WOOLLAHRA             | CP / -- / SP2583<br>2 / -- / SP2583<br>1 / -- / SP2583 | <input checked="" type="checkbox"/> |

| Plan name                 | Contribution type | Plan status |
|---------------------------|-------------------|-------------|
| Greater Sydney - Base HPC | BHPC              | In-Effect   |

State Infrastructure Contributions

Calculation summary Calculation breakdown

Applicable plans and system calculated contributions amounts are shown in the first two columns. If the assessed amount is different to the system calculated amount, update the amount in column three.

| HPC Area                  | System calculated amount | Assessed amount (if different to system calculated amount) | Contributions amount | Timing of payment        | Reason for different assessed amount |
|---------------------------|--------------------------|------------------------------------------------------------|----------------------|--------------------------|--------------------------------------|
| Greater Sydney - Base HPC | \$237,867.83             |                                                            | \$237,867.83         | Construction certificate |                                      |

*Extract from the Planning Portal showing the Housing and Productivity contribution payable*

The Housing and Productivity Contribution has been calculated and finalised through the NSW Planning Portal, confirming that a contribution of \$237,867.83 is payable for the proposed development pursuant to section 7.24 of the Environmental Planning and Assessment Act 1979 (refer to Planning Portal screenshot above).

Should development consent be granted, a contribution of \$237,867.83 pursuant to section 7.24 would apply and may be imposed and enforced by condition of consent.

## 20. APPLICABLE ACTS/REGULATIONS

### 20.1. Environmental Planning and Assessment Regulation 2021

#### Clause 61(1) Additional matters that consent authority must consider

Clause 61(1) of the EPA Regulation 2021 requires Council to take into consideration Australian Standard AS 2601-2001: The demolition of structures. If the application were recommended for approval, these requirements could be imposed by standard condition.

## 21. THE LIKELY IMPACTS OF THE PROPOSAL

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

## 22. THE SUITABILITY OF THE SITE

The site is not suitable for the proposed development.

## 23. THE PUBLIC INTEREST

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

## 24. CONCLUSION

The proposal is unacceptable against the relevant considerations under Section 4.15.

## **25. 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.

## **26. RECOMMENDATION: PURSUANT TO SECTION 4.16 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979**

THAT the Sydney Eastern City Planning Panel, refuse development consent to Development Application No. 367/2025/1 for the demolition of the existing buildings and construction of a new residential flat building including basement carpark with affordable housing on land at No's. 351 & 353 New South Head Road DOUBLE BAY, for the reasons in Attachment 1: