

DATE OF DETERMINATION	21 May 2026
DATE OF PANEL DECISION	20 May 2026
DATE OF PANEL MEETING	14 May 2026
PANEL MEMBERS	Carl Scully (Chair), Alice Spizzo, Susan Budd, Toni Zeltzer, Lucinda Regan
APOLOGIES	None
DECLARATIONS OF INTEREST	Toni Zeltzer and Lucinda Regan

Public meeting held by videoconference on 14 May 2026, opened at 10:50am and closed at 12.46pm.

Papers circulated electronically on 6 May 2026.

MATTER DETERMINED

PPSSEC-420 – WOOLLAHRA – DA376/25 – 351-353 New South Head Rd Double Bay 2028

STRATA, Demolition, Residential Flat Building – Demolition of existing building, construction of a new residential flat building to include a two-level basement carpark and eight storeys (plus roof top plant) of residential accommodation for 24 residential apartments. Six apartments are to be dedicated for affordable accommodation for a period of 15 years (as described in Schedule 1).

PANEL CONSIDERATION AND DECISION

The Panel considered all relevant information, including the matters listed at item 6, the material listed at item 7, and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Application to vary a development standard:

Following consideration of written requests from the applicant, made under Clause 4.6 of the *Woollahra Local Environmental Plan 2014* (LEP) and Section 16 and Section 175 of the *State Environmental Planning Policy (Housing) 2021* (Housing SEPP) that seek to contravene:

- A. S. 16(2) of the Housing SEPP with regard to maximum permissible floor space ratio (FSR); and
- B. S. 175(2) of the Housing SEPP with regard to the maximum permissible number of storeys

The Panel is NOT satisfied that:

- a. the Applicant's written request to exceed the maximum floor space ratio is well founded, achieves the relevant objectives of the standard and has acceptable amenity impacts as the additional floor space contributes to excessive built form and unreasonable impacts given the specific context of this site and its surrounding environment;
- b. the Applicant's written request to exceed the maximum permissible number of storeys has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances; and
- c. there are sufficient environmental planning grounds to justify the contravention of the development standards.

Development Application

The Panel determined to refuse the development application pursuant to Section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel generally agreed with the balance of considerations in, and recommendations of, the Council officer's assessment report and determined to refuse the application for all the reasons in the Council assessment report and as set out below.

The proposed development is located in a Low and Mid-rise housing area under the Housing SEPP and seeks to utilise the availability of Floor Space Ratio (FSR) and Height of Buildings incentives under the Housing SEPP. Council and the applicant dispute the calculation of Gross Floor Area (GFA) (and resultant FSR), and the application of the number of storeys development standard set out in Section 175 of the Housing SEPP. The applicant has provided 'precautionary' clause 4.6 applications in relation to these potential breaches of applicable development standards.

Of considerable significance to the Panel's determination of this matter, the site is located immediately adjacent to areas of vegetation of state and local heritage value, including the "Overthorpe" gardens and areas formerly part of John Hay's garden. The State Heritage Inventory listing states:

these are part of a large and significant botanical collection of rare and exotic rainforest species ... unmatched in the municipality of Woollahra and ... part of a historical collection of rain forest trees and palms second only to the collection in the Royal Botanical Gardens.

This area of state and locally significant rainforest forms part of a green canopy that can be viewed from various public viewpoints on New South Head Road, particularly when moving east to west from the Manning Road intersection which marks the western edge of the Double Bay Town Centre.

The Panel considers that the applicant has not demonstrated that there will not be unacceptable impacts on the ongoing viability and heritage significance of the heritage vegetation, including impacts arising from basement excavation/dewatering and overshadowing. The Panel further considers that the bulk and scale of the proposed development would diminish the prominence of this significant heritage vegetation and is likely to have unacceptable impacts on views of the historically significant vegetation from the public domain.

The Panel acknowledges the considerable public concern about this, and other aspects of development, including impacts on the residents of Manning Hall (3A Manning Rd), a registered Boarding House providing low-cost housing which will be subject to increased overshadowing and loss of amenity if the development proceeds in its current form.

The Panel notes that satisfaction of the preconditions to utilise the Affordable Housing Floor Space Ratio and Height of Buildings incentives does not displace the evaluation task under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. While the Panel acknowledges the need for housing generally and affordable housing in particular, the Panel is of the view that the impacts arising from the height, scale and bulk proposed are not justified in the particular context of the development and its surrounds, including the adjoining heritage gardens and neighbouring low cost housing.

In view of the particular context of this site, the lack of robust analysis of the potential impacts of the proposed development on the adjacent state and locally heritage listed rainforest vegetation, and on the amenity of residents of Manning Hall, the panel considers approval of the development is not in the public interest.

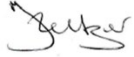
The Panel determined to refuse the application.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Excessive height and increase in storeys and excessive bulk and scale/Overdevelopment of the site
- Overshadowing of heritage gardens and surrounding properties
- Misuse of affordable housing bonus as an entitlement
- Clause 4.6 variation requests not well founded
- Conflict with Woollahra DCP controls (height, setbacks, character)
- Incompatibility with the established character of Double Bay
- Apartment mix and excessive parking contributing to scale
- Impact on existing social housing
- Impacts on heritage gardens and significant trees
- Loss of tree canopy and established tree cover
- Encroachment into heritage garden areas
- Harm to protected wildlife and ecological values
- Request for interim heritage protection
- Misrepresentation or omission of significant vegetation in reports
- Amenity impacts including loss of privacy, loss of sunlight, loss of sky view, visual dominance and sense of enclosure, thermal comfort and liveability, and district and harbour views
- Engineering concerns including risks from deep excavation on adjoining properties, flooding and groundwater drawdown concerns
- Construction impacts including insufficient vibration and settlement controls (dust, pollution, disruption) and potential damage to heritage trees and nearby development
- Missing and/or inadequate/inaccurate technical reports
- Lack of sufficient supporting information to properly assess impact
- Traffic and parking impacts in the surrounding area
- Excessive parking provision
- Non-compliance with Housing SEPP and Apartment Design Guide
- Inconsistency with relevant case law
- Concerns about planning integrity and precedent
- Inadequate community consultation
- Property devaluation concerns

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Carl (Patrick) Scully	 Susan Budd
 Alice Spizzo	 Toni Zeltzer
 Lucinda Regan	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-420 – WOOLLAHRA – DA376/25
2	PROPOSED DEVELOPMENT	STRATA, Demolition, Residential Flat Building – Demolition of existing building, construction of a new residential flat building to include a two-level basement carpark and eight storeys of residential accommodation for 24 residential apartments. Six apartments are to be dedicated for affordable accommodation for a period of 15 years.
3	STREET ADDRESS	351-353 New South Head Rd Double Bay 2028
4	APPLICANT/OWNER	Miroslav Michael Petrovic/Advent Property Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	• Environmental planning instruments: ○ <i>State Environmental Planning Policy (Housing) 2021</i> ○ <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> ○ <i>State Environmental Planning Policy (Sustainable Buildings) 2022</i> ○ <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> ○ <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> ○ <i>Woollahra Local Environmental Plan 2014</i> • Draft environmental planning instruments: Nil • Development control plans: ○ <i>Woollahra Development Control Plan 2015</i> • Planning agreements: Nil • Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	• Council Assessment Report: 6 May 2026 • Precautionary Clause 4.6 Variation Request Report (Floor Space Ratio): 6 May 2026 • Updated Precautionary Clause 4.6 Variation Request Report (maximum no of storeys): 11 May 2026 • Draft Conditions uploaded to the NSW Planning Portal on 6 May 2026 • Written submissions during public exhibition: 62 • Late submissions received after public exhibition: 2 • Verbal submissions at the public meeting: 14
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	• Site inspection: 12 May 2026 ○ <u>Panel members</u>: Carl Scully (Chair), Alice Spizzo, Susan Budd, Toni Zeltzer, Lucinda Regan ○ <u>Council assessment staff</u>: Brett McIntyre • Public Determination Meeting to discuss Council's final recommendation: 14 May 2026

		○ <u>Panel members</u>: Carl Scully (Chair), Alice Spizzo, Susan Budd, Toni Zeltzer, Lucinda Regan ○ <u>Council assessment staff</u>: Brett McIntyre (assessing officer), Vanessa Wood (heritage officer), Jessi Richards-Smith (Senior Urban Designer), Robert Lam (Team Leader Development Engineering), Michael Casteleyn (Drainage Engineer) ○ <u>Applicant representatives</u>: Miroslav Michael Petrovic (applicant), George Karavanas - GSA Planning (Town Planner), Luigi Rosselli - Luigi Rosselli Architects (Architect), Phillip Thalys - Hill Thalys (Urban Design and Architecture), Anna McLaurin - Weir Phillips (Heritage), Peter Castor - Tree Wise Men (Arborist), Louis Heath - Veew Studio (View Assessment), Michael Bates (Landscape Architect) <u>Department staff</u>: Nicole McNamara, Tracey Gillett
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Attached to the Council Assessment Report as uploaded by Council to the NSW Planning Portal on 6 May 2026