

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSEC-86
DA Number	DA321/2020/1
LGA	Woollahra Municipal Council
Proposed Development	Demolition of existing structures and construction of a shop top housing development
Street Address	19-27 Cross Street DOUBLE BAY (Lot 100 of DP 617017)
Applicant/Owner	Applicant: SDHA Pty Ltd; Owner: Tri-Anta Pty Ltd
Date of DA lodgement	28 August 2020
Total number of Submissions Number of Unique Objections	Seven
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Development that has a capital investment value of more than \$30 million (CIV \$40,434,422)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • List all of the relevant environmental planning instruments: s4.15(1)(a)(i) <ul style="list-style-type: none"> - State Environmental Planning Policy 65: Design Quality Of Residential Flat Development inclusive of Apartment Design Guide - State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; - State Environmental Planning Policy (Infrastructure) 2007; - State Environmental Planning Policy 55: Remediation Of Land; - State Environmental Planning Policy 64: Advertising And Signage; - Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005; - Woollahra Local Environmental Plan 2014; • List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority; s4.15(1)(a)(ii) N/A • List any relevant development control plan: s4.15(1)(a)(iii) Woollahra Development Control Plan 2015 • Other relevant plans: <ul style="list-style-type: none"> - Woollahra Section 94A Contributions Plan 2011; - Woollahra Community Participation Plan 2019; • List any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: s4.15(1)(a)(iiia) N/A • List any relevant regulations e.g. Regs 92, 93, 94, 94A, 288: s4.15(1)(a)(iv) <ul style="list-style-type: none"> - Demolition of Structures (Clause 92); - Building Upgrade (Clause 94); - Fulfilment of BAXIX commitments (Clause 97A); • List any coastal zone management plan: s4.15(1)(a)(v) <ul style="list-style-type: none"> - (repealed)
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> 1. Architectural Plans 2. Landscape Plans 3. Site Survey 4. Design Verification Statement 5. Clause 4.6 – Height of Buildings 6. Clause 4.6 – Floor Space Ratio 7. Referral Response – Urban Design 8. Referral Response – Heritage 9. Referral Response – TS Traffic Engineer 10. Referral Response – TS Development Engineer 11. Referral Response – TS Drainage Engineer 12. Referral Response – Trees and Landscaping 13. Referral Response – Fire Safety Officer

	14. Referral Response – Environmental Health 15. Referral Response – Water NSW 16. Referral Response – Community Services (Public Art) 17. Statement of Environmental Effects 18. Draft Without Prejudice Conditions of Consent 19. GMU Urban Design Report 20. Acoustic Assessment Report 21. Contaminated Land - Initial Site Investigation Report (Stage 1) 22. Geotechnical and Groundwater Investigation
Clause 4.6 requests	<ul style="list-style-type: none"> • The Local Environmental Plan (LEP) the clause 4.6 application relates too <ul style="list-style-type: none"> - Woollahra Local Environmental Plan 2014 (WLEP) • The development standard the clause 4.6 application relates too <ul style="list-style-type: none"> - Clause 4.3 Height of Buildings - Clause 4.4 Floor Space Ratio • The zone the clause 4.6 relates too <ul style="list-style-type: none"> - B2 Local Centre
Summary of key submissions	<ul style="list-style-type: none"> • Overdevelopment of the site and contrary to the village character; • Excessive height; • Excessive bulk, scale and FSR; • Breaches of storey, envelope, setback and other controls in the WDCP; • Breaches of SEPP 65 and of the ADG; • Loss of views, solar access, and privacy; • Traffic and Parking issues; • Poor resultant internal amenity of future residents arising from noise from the Sheaf Hotel; • Incompatibility with the heritage significance of the Transvaal Avenue HCA; • Geotechnical and hydrological concerns; • Acid Sulphate Soils.
Report prepared by	Mr Wilson Perdigao – Senior Assessment Officer
Report date	10 May 2021

Summary of s4.15 matters

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

No – Addressed in the body of the report

Legislative clauses requiring consent authority satisfaction

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

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

No – Addressed in the body of the report

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

Yes – Attached as Annexures

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

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

Not applicable

Conditions

Have draft conditions been provided to the applicant for comment?

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

No – Attached as an Annexure

SYDNEY EASTERN CITY PLANNING PANEL DEVELOPMENT APPLICATION ASSESSMENT REPORT

ITEM No.	0.0
FILE No.	DA321/2020/1
ADDRESS	19-27 Cross Street DOUBLE BAY (Lot 100 of DP 617017)
COUNCIL WARD	Double Bay
SITE AREA	1,334m ²
ZONING	B2 Local Centre
PROPOSAL	Demolition of existing structure and construction of a shop top housing development
TYPE OF CONSENT	Integrated development
COST OF WORKS	\$40,434,422.00
DATE LODGED	28/08/2020
APPLICANT	SDHA Pty Ltd
OWNER	Tri-Anta Pty Ltd
AUTHOR	Mr Wilson Perdigao - Senior Assessment Officer
TEAM LEADER	Mr Thomass Wong - Assessment Team Central
ACTING MANAGER	Mr George Fotis - Development Control
SUBMISSIONS	7
RECOMMENDATION	Refusal (Refer to Section 28 of this report)

Table of Contents

1.	Reason for report to Sydney Eastern City Planning Panel (SECPP).....	4
2.	Reasons for recommendation	4
3.	LOCALITY PLAN	5
4.	PROPOSED DEVELOPMENT	5
5.	ISSUES	7
5.1.	Exceptions to Development Standards in Woollahra Local Environmental Plan 2014.....	7
5.2.	Primary Issues	7
5.3.	Summary of Submissions	8
	PROPERTY DETAILS AND REFERRALS	8
6.	SITE AND LOCALITY	8
7.	RELEVANT PROPERTY HISTORY	13
8.	REFERRALS.....	13
	ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15.....	15
9.	ADVERTISING AND NOTIFICATION	15
9.1.	Submissions	15
9.2.	Statutory Declaration.....	16
9.3.	Amended plans	16
10.	INTEGRATED DEVELOPMENT (DIVISION 4.8 of the EP&A Act 1979)	16
11.	SEPP 64: ADVERTISING AND SIGNAGE.....	17
12.	SEPP 55: REMEDIATION OF LAND.....	17
13.	SEPP (BUILDING SUSTAINABILITY INDEX: BASIX) 2004	18
14.	SEPP (INFRASTRUCTURE) 2007	18
14.1.	Division 17: Roads and traffic.....	18
14.2.	Conclusion.....	19
15.	SEPP (COASTAL MANAGEMENT) 2018	19
16.	SREP (SYDNEY HARBOUR CATCHMENT) 2005	19
17.	SEPP 65: DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT.....	19
17.1.	Clause 2: Aims and Objectives	20
17.3.	Clause 30(2): Design Quality Principles	21
17.4.	Apartment Design Guide (Compliance Table) (Note: Non-compliances are highlighted)	30
17.5.	Part 3 – Siting the Development.....	31
17.6.	Part 4 – Designing the Building (Amenity).....	34
17.7.	Part 4 – Designing the Building (Configuration)	35
17.8.	Part 4 – Designing the Building (Performance)	36
18.	WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014.....	37
18.1.	Part 1.2: Aims of Plan	37
18.2.	Part 2.3: Zone Objectives and Land Use Table	38
18.3.	Part 4: Principal Development Standards.....	38
18.3.1.	Compliance Table.....	38
18.3.2.	Part 4.3: Height of Buildings	38
18.4.	Part 4.4: Floor Space Ratio.....	39
18.5.	Part 4.6: Exceptions to Development Standards (Height of Buildings & Floor Space Ratio)	40
18.6.	Parts 5 & 6: Miscellaneous and Additional Local Provisions	47
18.6.1.	Part 5.10: Heritage Conservation.....	47
18.6.2.	Part 6.1: Acid Sulfate Soils	51
18.6.3.	Part 6.2: Earthworks	52

18.6.4. Part 6.3: Flood Planning	53
19. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015	54
19.2. CHAPTER D5: DOUBLE BAY CENTRE.....	54
19.2.1. DCP Compliance Table (Non-compliances are highlighted)	54
19.3. Section D5.1: Introduction	56
19.4. Section D5.3: Urban structure	57
19.5. Section D5.4: Street character	58
19.6. Section D5.5: Built form envelopes: Control Drawing 3	60
19.7. Section D5.6: Development Controls	62
19.8. Section D5.6.4: Relationship to public domain	65
19.9. Section D5.6.5: Amenity	67
19.10. Appendix 1: Transvaal Avenue Heritage Conservation Area	70
19.11. Chapter E1: Parking and Access	70
19.12. Chapter E2: Stormwater and Flood Risk Management	75
19.13. Chapter E3: Tree Management.....	76
19.14. Chapter E5: Waste Management	76
19.15. Chapter E6: Sustainability	79
19.16. Chapter E8: Adaptable Housing	79
20. DRAFT AMENDMENTS TO POLICIES AND PLANS.....	79
21. CONTRIBUTIONS AND FEES.....	79
22. APPLICABLE ACTS/REGULATIONS	80
23. THE LIKELY IMPACTS OF THE PROPOSAL	81
20.1 Views.....	81
20.2 Hours of Use.....	83
20.3 Others	83
24. THE SUITABILITY OF THE SITE.....	83
25. THE PUBLIC INTEREST	83
26. CONCLUSION.....	83
27. DISCLOSURE STATEMENTS	83
28. RECOMMENDATION TO SYDNEY EASTERN CITY PLANNING PANEL	83
28.1. RECOMMENDATION: Pursuant to Section 4.16 of the EPA Act 1979.....	83

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

Pursuant to clause 2 of Schedule 7, of the *State Environmental Planning Policy (State and Regional Development) 2011*, the application is considered to be regionally significant development as it is “...*Development that has a capital investment value of more than \$30 million*” because the total development cost is over \$40 million.

The consent authority for regionally significant development is the Sydney district planning panel, being the *Sydney Eastern City Planning Panel (SECPP)* for Woollahra (see s4.5(b) of the *Environmental Planning and Assessment Act 1979*; clause 9(a) in Schedule 2 to the *Environmental Planning and Assessment Act 1979*).

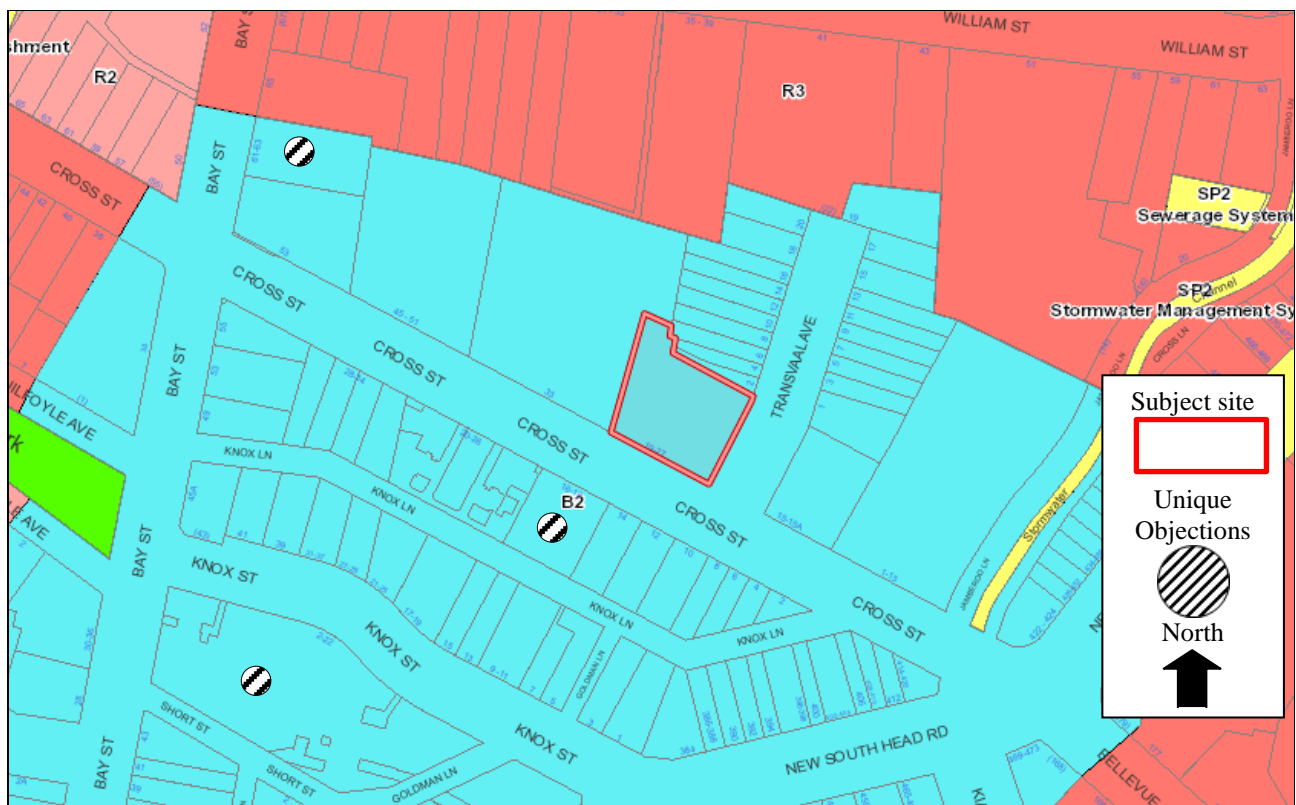
2. REASONS FOR RECOMMENDATION

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

- It is considered to be unsatisfactory with planning provisions contained in SEPP 65 including the accompanying ADG, WLEP 2014 and WDCP 2015;
- The written requests from the applicant have not adequately demonstrated that the contraventions of the *Height of Buildings* and *Floor Space Ratio* development standards prescribed by Part 4.3 and Part 4.4 of the WLEP are justified pursuant to the relevant matters for consideration prescribed by cl4.6 of the WLEP;
- It will have adverse effects on the amenity of adjoining properties and the local built environment such that refusal is justified;
- The site is not suitable for the proposed development in its current form;
- The proposal is not in the public interest.

Note: A Class 1 Appeal (No. 20/351675) (deemed refusal) was filed with the Land and Environment Court (LEC) on 11 December 2020.

3. LOCALITY PLAN



*4 Objections/Submissions received are located outside of the above map or from an unknown address

4. PROPOSED DEVELOPMENT

The subject Development Application (“DA”) seeks consent for the *demolition of existing structures and construction of a new shop-top housing development* (“Proposal”) located at 19-27 Cross Street Double Bay (“the Site”).

The proposal involves the construction of a new six (6) storey shop-top housing development located over two (2) storeys of basement parking. Specifically, the proposal involves the following:

- Site works including demolition of the existing structures on-site and associated excavation to accommodate the construction of basement levels;
- Eighteen (18) residential units comprising, 2 x 1-Bed, 1 x 2-Bed; and 15 x 3-Bed units, located over five residential levels (Levels 1-5);
- Four (4) commercial/retail tenancies located on the Ground Floor Level (comprising a total gross floor area (“GFA”) of 676m²;
- Roof top communal open space, located at Level 6;
- Lift overrun and service/plant rooms as part of the roof form, at Level 6 (effectively a 7th storey);
- Fifty-one (51) car parking spaces, thirty (30) bike parking spaces and six (6) motorbike parking spaces, located within the Basement Levels;
- New public plaza to the north-eastern corner of the site fronting Transvaal Avenue;
- Removal of existing vehicular crossing in Transvaal Avenue;
- New vehicular crossing to Cross Street accessing a car lift.



Figure 1 Photomontage of Proposal as viewed from Cross Street (Source: Luigi Rosselli Architects)



Figure 2 Proposed Development westerly view of the Proposal (Source: Physical 3D Model of the Proposal)



Figure 3 South-westerly view of the Proposal showing its relationship with the Transvaal Avenue HCA and Intercontinental Double Bay (Source: Physical 3D Model of the Proposal)

5. ISSUES

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

Clause	Development Standard	Departure from Control	Conclusion
Part 4.3	Height of Buildings	A 8.8m or 60% departure from the 14.7m control	Unsatisfactory
Part 4.4	Floor Space Ratio	A 1,461m ² or 43% departure from the 2.5:1 control	Unsatisfactory

*Written cl4.6 requests were submitted but were found to be unsatisfactory

5.2. Primary Issues

Issue	Conclusion	Section
Objector concerns	Unsatisfactory – The subject development application is recommended for refusal. Refer to summary of submission below.	5.3
Urban Design	Unsatisfactory – Refer to Reason for Refusal 1	17
Heritage	Unsatisfactory – Refer to Reason for Refusal 2	18.6.1
Height non-compliance	Unsatisfactory – Refer to Reason for Refusal 3	18.3.2; 18.5
Floor Space Ratio non-compliance	Unsatisfactory – Refer to Reason for Refusal 4	18.4; 18.5
Parking and Access Design Standards	Unsatisfactory – Refer to Reason for Refusal 5 and 8(b)	19.11
Public Art	Unsatisfactory – Refer to Reason for Refusal 6	19.8
Inappropriate Apartment Mix	Unsatisfactory – Refer to Reason for Refusal 7 and 8(a)	12.2.8; 17.7.1
Inadequate information	Unsatisfactory – Refer to Reason for Refusal 8	-

5.3. Summary of Submissions

Issue	Conclusion	Section
Overdevelopment of the site and contrary to the village character	Unsatisfactory – The subject development application is recommended for refusal.	-
Excessive height	Unsatisfactory – The subject development application is recommended for refusal. Refer to Reason for Refusal 3	18.3.2; 18.5
Excessive bulk/FSR	Unsatisfactory – The subject development application is recommended for refusal. Refer to Reason for Refusal 4	18.4; 18.5
Breaches of storey, envelope, setback and other controls in the WDCP	Unsatisfactory – The subject development application is recommended for refusal. Refer to Reasons for Refusal 1, 3, 4	19
Breaches of SEPP 65 and the ADG	Unsatisfactory – The subject development application is recommended for refusal. Refer to Reasons for Refusal 1, 3, 4, 7	17
Overshadowing impacts	Unsatisfactory – The subject development application is recommended for refusal.	19.9
Loss of views	Satisfactory – The subject development application is however recommended for refusal.	20.1
Loss of aural & visual privacy	Satisfactory – The subject development application is however recommended for refusal.	19.9
Traffic and Parking issues	Unsatisfactory – The subject development application is recommended for refusal. Refer to Reasons for Refusal 5 and 8(b)	19.11
Poor internal amenity of future residents due to noise from the Sheaf Hotel	Satisfactory – The subject development application is however recommended for refusal.	19.9
Incompatibility with the heritage significance of the Transvaal Avenue HCA;	Unsatisfactory – The subject development application is recommended for refusal. Refer to Reason for Refusal 2	18.6.1
Geotechnical and hydrological concerns;	Satisfactory – The subject development application is however recommended for refusal.	18.6.3; 19.12
Acid Sulphate Soils.	Satisfactory – The subject development application is however recommended for refusal.	18.6.2

PROPERTY DETAILS AND REFERRALS

6. SITE AND LOCALITY

Physical features
The subject site is located at <i>19-27 Cross Street Double Bay</i> comprising of one (1) lot, legally described as Lot 100 in Deposited Plan 617017 (“Site”). The Site has a total area of 1,334m ² .
The Site is irregularly shaped comprising a primary street front boundary to Cross Street (south) of 35.935m, a secondary street front boundary to Transvaal Avenue (east) of 28.965m, a northern (side) boundary of 49.19m and a western (side) boundary of 39.845m.
Topography
The Site is relatively flat, ranging from RL 2.89 AHD at the south-eastern corner to RL 3.29 AHD at the north-western corner of the Site.
Existing Buildings and Structures
The Site is presently developed with a part one & part two storey commercial building of masonry construction with a flat roof form. It is wrapped around a centrally located and publicly accessible plaza known as “Double Bay Plaza”. The Site has very limited landscaping.

While the building on the Site is not a heritage item nor located within a heritage conservation area, the Site sits immediately adjacent to the Transvaal Avenue Heritage Conservation Area listed as a locally significant item No C7 in Schedule 5 of the *Woollahra Local Environmental Plan 2014*.

Environment

The Site is located to the northern side of Cross Street within the Double Bay Local Centre (B2 Local Centre Zone of the WLEP).

It forms part of the Cross Street precinct of the Double Bay commercial centre as described in the Woollahra Development Control Plan 2015 at Section *D5.4.7: Cross Street* and *D5.5.7 Control Drawing 3* i.e. the northern side of Cross Street, between Bay Street and Transvaal Avenue. It is bound by road reserves on two of its boundaries that is Cross Street, to the south; and Transvaal Avenue, to the east.

The surrounding context of the Site includes a range of one (1) through to six (6) storey developments, including a number of single-storey contributory items within the Transvaal Avenue HCA, as identified in the WLEP.

Development that immediately surrounds the Site comprises a mixture of uses and buildings such as commercial, retail, business, hotel, office and residential, and includes:

- Immediately to the north, is the Transvaal Avenue HCA comprising of single-storey semi-detached cottages in 'Gothic Revival style', and is a remnant of the former housing stock of the Double Bay Centre.
- Further to the north, along the south side of William Street are residential flat buildings, ranging between two and three-storeys located within the R3 Medium Density Residential zone.
- Immediately to the west, is a building known as the 'InterContinental Hotel' (33 Cross Street) which is a building that includes a two-storey street wall height with a 4-5 storey additional built from with significant setbacks above the street wall height. Further to the west, is existing established two-storey street wall height at 45-51 and 53 Cross Street;
- To the south, and south-east, across the road reserve are single and two storey commercial/ mixed use developments. It also includes a publicly accessible and pedestrianised thoroughfare known as Goldman Lane.
- To the south-west, along the southern side of Cross Street are recently constructed six (6) storey shop-top housing developments with a four-storey street wall height at No's 16-18 and 20-26 Cross Street.
- To the east, across Transvaal Avenue are two-three storey commercial / mixed-use developments at 15-15A Cross Street with an established two-storey street wall height;
- The Transvaal Avenue road reserve also contains a publicly accessible and widened median strip utilised for outdoor dining.
- Further to the east, is a five-storey (fifth storey is open) public carpark building known as the 'Cross Street Public Car Park'.

6.1. Site and Context



Figure 4 Existing Site, as viewed from Cross Street (Source: GMU; Overlay: WMC)



Figure 5 Existing Site, as viewed from Cross Street (Source: wmcgislive mapping)

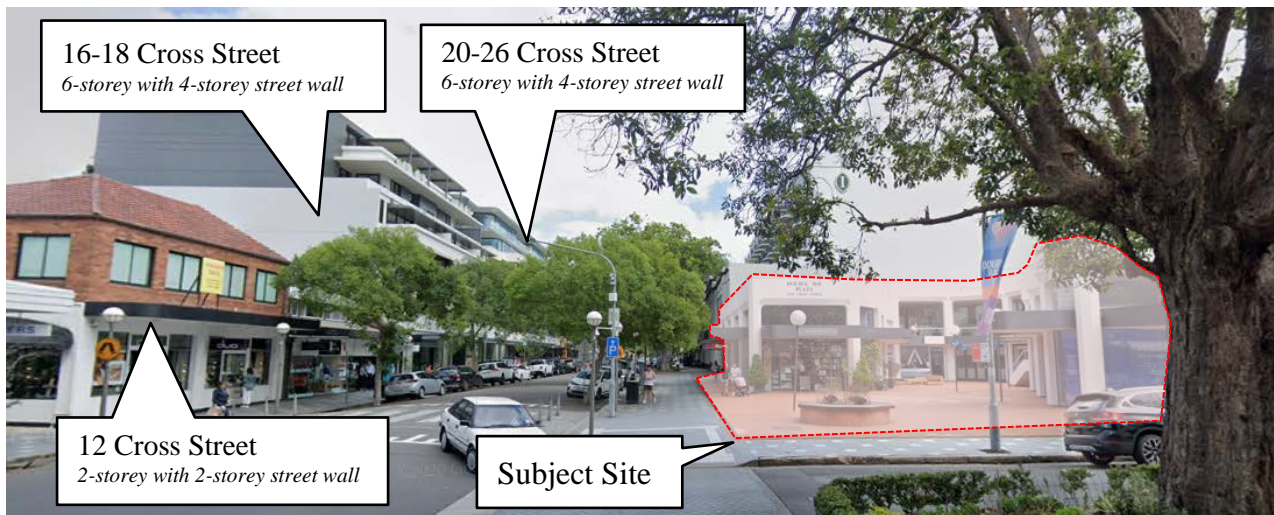


Figure 6 Existing Site, as viewed from Cross Street looking west (Source: wmcgislive mapping)



Figure 7 Existing Site as viewed from Transvaal Avenue (Source: GMU; Overlay: WMC)



Figure 8 Transvaal Avenue HCA single-storey cottages (Source: wmcgislive mapping)



Figure 9 Transvaal Avenue, looking south (Source: wmcgislive mapping)

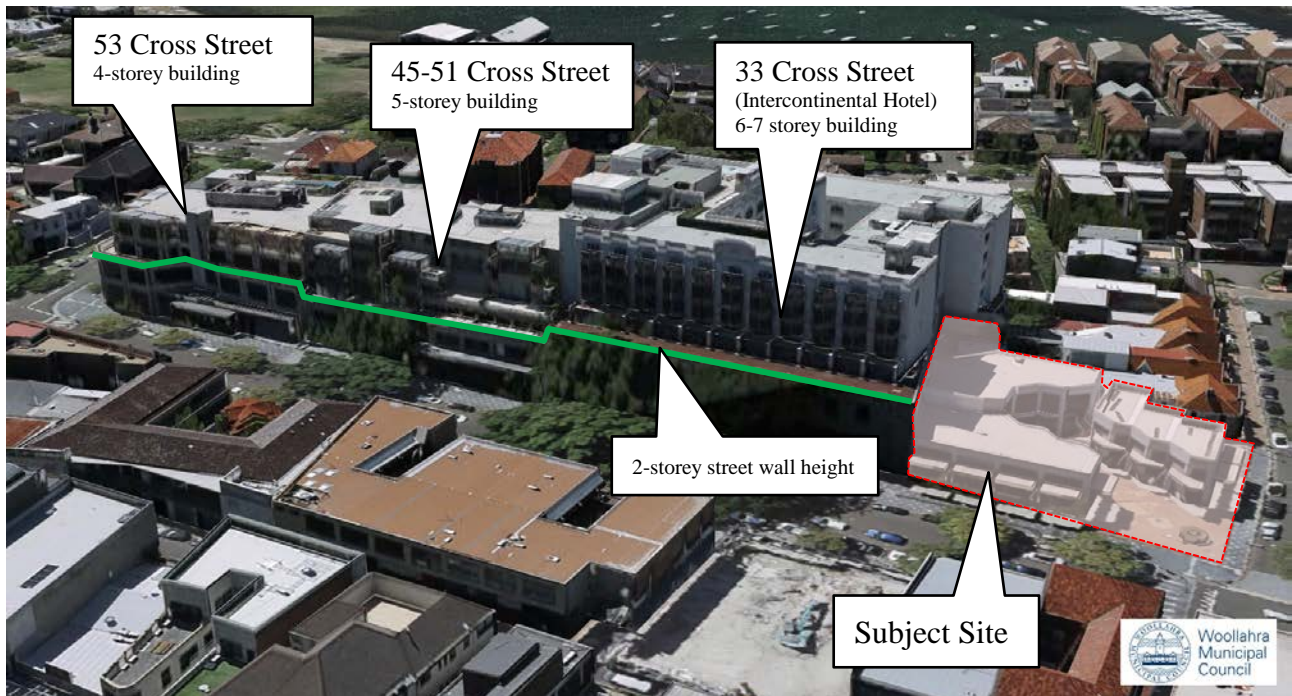


Figure 10 Aerial view of northern side of Cross Street (Source: WMC 3D Modelling Portal)

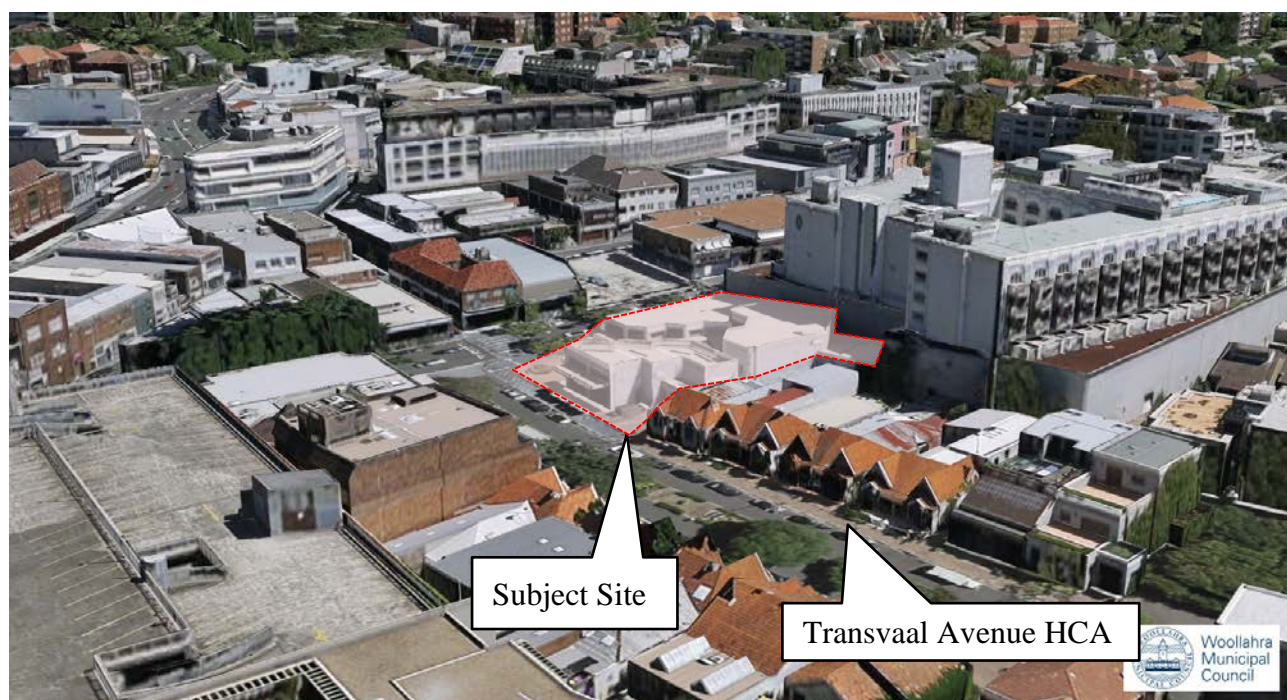


Figure 11 Aerial view of the site, looking south-west (Source: WMC 3D Modelling Portal)

7. RELEVANT PROPERTY HISTORY

Current use
Mixed-use commercial building
Relevant Application History
There have been numerous applications for change of use and fit out for various retail and commercial uses within the existing building since its construction circa. 1979-1980. None of relevance to the scope of proposed works.
Relevant Compliance History
None of relevance to the scope of proposed works.
Pre-DA
Nil.
Requests for Additional Information and Replacement Applications
09.09.2020 – A stop-the-clock letter ('STC') was sent to the Applicant requesting the following additional information: <ul style="list-style-type: none"> Revised Vehicular Access and Parking Arrangement; and Revised Stormwater Management Plans <p>The STC request was satisfied via submission of the requested information on 15 September 2020.</p>
Land and Environment Court Appeal(s)
Class 1 Appeal (No. 20/351675) was filed with the Land and Environment Court (LEC) on 11 December 2020 on the grounds of deemed refusal. A section 34 conciliation conference has been scheduled for 26 July 2021.

8. REFERRALS

Referral	Summary of Referral Response	Annexure
Urban Design	<p>Unacceptable, Council's Urban Design Officer raises the following key issues:</p> <ul style="list-style-type: none"> FSR; Height; Setbacks; Street Wall Heights; and Inconsistency with the existing and the desired future character. <p>Council's Urban Design Officer, states:</p>	7

Referral	Summary of Referral Response	Annexure
	<p><i>“...The proposed development states that it aims to respond to the evolving character of Cross Street. However, it should also consider its sensitive location at the intersection with Transvaal Avenue and the HCA.</i></p> <p><i>Despite having some positive aspects including adequate internal residential amenity and a new public plaza on the ground level, the proposed bulk and scale is excessive and does not provide a soft transition to the existing single-storey context to the north.</i></p> <p><i>As discussed above, the proposal does not respond to the evolving character, particularly with respect to the street wall height and setbacks.</i></p> <p><i>The proposal has relied on the corner character of the subject site to maximise its proposed density. However, it is not identified as a significant corner site in WLEP 2014 or WDCP 2015. Additionally, the proximity to the HCA is of higher importance than the relationship to the street corner. In my opinion, the proposed built form does not provide a suitable transition to the HCA.”</i></p>	
Heritage	<p>Unacceptable, Council’s Heritage Officer provides the following:</p> <p><i>“...The proposal, which does not provide an appropriate transition in scale, bulk and height between the 6-7 storey shop-top development and the adjacent single storey contributory items of the Transvaal Avenue HCA, is not considered to be compatible with the heritage significance of listed heritage items in the vicinity...would dominate and adversely impact the significance of the adjacent Transvaal Avenue HCA including setting and views, and would not retain or enhance the visual prominence of the existing contributory buildings within the conservation area.”</i></p>	8
TS Traffic Engineer	<p>Unacceptable, Council’s Traffic Engineer raises the following key issues:</p> <ul style="list-style-type: none"> - Parking Provision – oversupply of 14 car parking spaces for residential components and shortfall of 11 car parking spaces for non-residential component; - Traffic Generation – More detailed and quantifiable analysis be undertaken to demonstrate the post-development traffic impact on the surrounding road network considering all the influencing factors mentioned in the report above; - Car Lift, Queuing & Waiting Bay ingress and access issues; - Location of Loading Bay; - Width of Access Driveway inadequate to accommodate two-way driveway; - Lack of Sight Splays; - Relocation of Traffic Signs required. 	9
TS Development Engineer	Acceptable, Council’s Development Engineer states that issues can be conditioned subject to resolution of issues raised by TS Traffic Engineer.	10
TS Drainage Engineer	Acceptable and/or issues can be conditioned.	11
Trees and Landscaping	Acceptable and/or issues can be conditioned.	12
Fire Safety Officer	Acceptable and/or issues can be conditioned.	13
Environmental Health	Acceptable and/or issues can be conditioned.	14
Property (awnings)	Acceptable and/or issues can be conditioned.	-
Water NSW	Acceptable, General Terms of Approval have been provided under the Water Management Act 2000.	15
Community Services (Public Art)	Acceptable and/or issues can be conditioned.	16

ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

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

- (a) *the provisions of:*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) *(Repealed)*

that apply to the land to which the development application relates,

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

9. ADVERTISING AND NOTIFICATION

9.1. Submissions

The application was advertised and notified from 16 September 2020 to 15 October 2020 in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

1. Malcom Young on behalf of the 'Double Bay Residents Association';
2. Roberto Collura of 65 Manning Road, Double Bay;
3. Peter & Cynthia Conrad of Unit 2/61-63 Bay Street, Double Bay;
4. Janine Adams of Unit 7D, 2-22 Knox Street Double Bay;
5. Michael & Sarah Lawrence of 9 Wiston Gardens, Double Bay;
6. Bob Chambers of BBC Consulting Planners on behalf of the Golden Sheaf Hotel;
7. Maureen O'Mahoney (Head Petitioner) of Unit 2.03 on behalf of the 'Hunter Strata Committee' at 16-18 Cross Street, Double Bay:
 - Nada Bates, of Unit 1.01;
 - Mr R A Blumberg, of Unit 3.02;
 - Mr M L & D G Dinte, of Unit 3.03;
 - Mr E H & Mrs C Vidor, of Unit 5.01
 - Paul O'Mahoney, of unknown unit/tenancy.

The submissions raised the following key concerns:

- Overdevelopment of the site and contrary to the village character;
- Excessive height;
- Excessive bulk/FSR;
- Breaches of storey, envelope, setback and other controls in the WDCP;
- Breaches of SEPP 65 and the ADG;
- Overshadowing impacts;
- Loss of views;
- Loss of aural & visual privacy;
- Traffic and Parking issues;
- Poor internal amenity of future residents due to noise from the Sheaf Hotel;
- Incompatibility with the heritage significance of the Transvaal Avenue HCA;
- Geotechnical and hydrological concerns;
- Acid Sulphate Soils.

Comment: The proposed development is recommended for refusal on several of the aforementioned grounds. The issues above are assessed where necessary under the relevant heads of consideration in the body of the report that follows.

9.2. Statutory Declaration

The applicant has completed the statutory declaration dated 19/10/2020 declaring that the site notice for DA321/2020/1 was erected and maintained during the notification period in accordance with Chapter A2.3.5 of the Woollahra DCP 2015.

9.3. Amended plans

The amended plans and documentation noted in Section 7 were not renotified to surrounding residents and previous objectors because it was considered to have no greater cumulative environmental or amenity impact in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019.

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 approval under certain other Acts.

The proposed development is an integrated development as it requires development consent under 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;

WaterNSW has provided General Terms of Approval (GTA), under Section 90 of the WM Act.

If development consent were granted, the recommended GTA would be incorporated in the conditions of consent.

11. STATE ENVIRONMENTAL PLANNING POLICY 64: ADVERTISING AND SIGNAGE

There is no signage proposed under this application.

12. STATE ENVIRONMENTAL PLANNING POLICY 55: REMEDIATION OF LAND

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

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

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

A search of Council's Contaminated Land GIS mapping register does not indicate the subject site as being potentially contaminated. Notwithstanding this, the subject site is located within close proximity to potentially contaminated sites within the Double Bay Centre.

Due to existing buildings and paving on the site that limits extensive ground testing, the applicant has provided a *Preliminary Site Investigation for Contamination* prepared by Douglas Partners Engineers (REF: 86397.00.R.002.Rev1-PSI) and dated 10 July 2020 for the subject site which revealed that, *'There were no visual or olfactory indicators (i.e. staining or odours) to suggest the presence of contamination within the bores.'*

The conclusions and recommendations of the report indicate that the land contained residential properties until circa 1979 after which the site was redeveloped as a commercial/retail building. The potential contamination sources and associated contaminants of concern could be deposited such as heavy metals, asbestos, lead (from lead-based paint) among other contaminants.

These contaminants and hazardous materials are not readily identifiable until demolition of site structures and pavement. The conclusion and recommendations of the report states:

*"Based on the findings of this PSI, which included only limited sampling and testing, the **potential for significant contamination to be present within the site is considered to be low.** It is considered that the site can be made suitable for the proposed commercial and high density residential development subject to the following:*

- *Additional soil investigation once the site becomes more accessible (e.g., following demolition) to more broadly assess the contamination status, ASS potential and waste classification of soils;*
- *If required on the basis of the information obtained from the additional soil investigation, preparation and implementation of a Remediation Action Plan (RAP); and*
- *If required on the basis of the information obtained from the additional soil investigation, preparation and implementation of an acid sulfate soil management plan (ASSMP).*

As the buildings are to be demolished a pre-demolition hazardous building materials survey of the buildings must be carried out prior to the demolition.

*Based on the observations at the time of sampling and the reported analytical results, the filling within the site is preliminarily classified as **General Solid Waste (non-putrescible) (with TCLP)** and the natural material is preliminarily classified as VENM as defined in EPA (2014) apart from the area around BH3.*

Given the preliminary nature of the assigned waste and VENM classifications, which were based on limited sampling, it is recommended that the waste and VENM classifications be confirmed by a qualified environmental consultant prior to and during bulk excavation.”

Council’s Environmental Health Officer has reviewed the documentation and found the application to be acceptable with regards to the relevant heads of consideration under SEPP 55: Remediation of Land, subject to imposition of a condition on a development consent requiring a detailed investigation to be undertaken prior to issuing of a construction certificate, which shall read as follows:

- *Given the limited nature of the Preliminary Investigation due to site constraints, confirmation of the contamination status of the site in the form of a Detailed Investigation will need to be undertaken. The Detailed Investigation shall be undertaken in accordance with the NSW EPA Sampling Guidelines (1995), the DECCW’s Guidelines for the NSW Site Auditor Scheme, 2nd Edition, 2006.*

If development consent were granted, the above recommended condition would be incorporated in the conditions of consent.

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

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

The development application was accompanied by BASIX Certificate **1123374M_02** demonstrating compliance with the SEPP.

If development consent were granted, the relevant conditions would be incorporated in the conditions of consent.

14. STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

14.1. Division 17: Roads and traffic

SEPP Infrastructure applies to the development based on its location adjacent to a road that has an average daily traffic volume of more than 40,000 vehicles. The subject site and proposed residential development is located in close proximity of New South Head Road, a classified road with a daily traffic volume of more than 40,000 vehicles. Division 17 of the Infrastructure SEPP is therefore applicable. The relevant considerations are:

Clause 102: Impact of Road Noise or Vibration on Non-Road Development

Clause 102 requires that for development involving residential accommodation in close proximity to classified roads the consent authority is required to be satisfied that appropriate measures will be taken to ensure that the following noise (*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.*

The application is recommended for refusal but should development consent be granted, compliance with these requirements can be enforced by conditions requiring incorporation of acoustic measures to ensure the proposed building will comply with the above-mentioned interior noise levels criteria.

14.2. Conclusion

The proposal is therefore acceptable with regard to SEPP (Infrastructure) 2007.

15. SEPP (COASTAL MANAGEMENT) 2018

SEPP (Coastal Management) 2018 gives effect to the objectives of the Coastal Management Act 2016 from a land use planning perspective, by specifying how development proposals are to be assessed if they fall within the Coastal Zone.

The subject site is located wholly outside of the Coastal Environment Area (Clause 13) and the Coastal Use Area (Clause 14). Furthermore, subclauses 13(3) and 14(2) state:

This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

On the basis, no further consideration is required under the Coastal Management SEPP 2018.

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

The land is within the Sydney Harbour catchment but is outside the Foreshores and Waterways Area and therefore there are no specific matters for consideration.

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

SEPP 65: Design Quality of Residential Flat Development applies to all new residential flat buildings (or substantial redevelopment) where it comprises three or more storeys and four or more self-contained dwellings.

The proposal comprises three or more storeys and four or more self-contained dwellings (i.e. six (6) storey building including eighteen (18) residential units). Based on the composition of this development, the SEPP applies.

17.1. Clause 2: Aims and Objectives

The aim of the SEPP is to improve the design quality of residential apartment development:

- a) *To ensure that it contributes to the sustainable development of New South Wales:*
 - (i) *By providing sustainable housing in social and environmental terms, and*
 - (ii) *By being a long-term asset to its neighbourhood, and*
 - (iii) *By achieving the urban planning policies for its regional and local contexts*
- b) *To achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define, and*
- c) *To better satisfy the increasing demand, the changing social and demographic profile of the community, and the needs of the widest range of people from childhood to old age, including those with disabilities, and*
- d) *To maximise amenity, safety and security for the benefit of its occupants and the wider community, and*
- e) *To minimise the consumption of energy from non-renewable resources, to conserve the environment and to reduce greenhouse gas emissions*
- f) *To contribute to the provision of a variety of dwelling types to meet population growth*
- g) *To support housing affordability*
- h) *To facilitate the timely and efficient assessment of applications for development to which this Policy applies*

This policy provides clarification and further detail for the design of a Residential Flat Building having regard to the 9 *Design Principles* outlined in SEPP 65 and the relevant *Apartment Design Guide*.

The instrument requires the proposal be referred to a Design Review Panel. A Design Review Panel has not been established for the Woollahra Council area. However, a SEPP 65 Design Verification Statement has been prepared by a suitably qualified professional (Luigi Rosselli Architect, and an Urban Design Report by GMU Urban Design and Architecture) which has been submitted with the application, as required by the EPA Regulations cl.50(1A).

The proposal is considered to be unacceptable with regard to the *Clause 2: Aims and Objectives* of the SEPP. An assessment against the 9 design quality principles follows with summarised comments from both Council's Urban Design Planner and Council's planning staff inserted into each relevant heads of consideration:

PART 4 APPLICATION OF DESIGN PRINCIPLES

17.2. Clause 30(1): Standards that cannot be used as grounds to refuse development consent or modification of development consent

Clause 30(2) of SEPP 65 states that a consent authority must not refuse consent to a development application on any of the following:

Total Site Area: 1,334m ²	Proposed	Control	Complies
Parking (minimum) Clause 30(1)(a)	51 car spaces	Min 48 spaces (Equal to Part 3J of the ADG)	Yes
Dwelling Size (minimum) Clause 30(1)(b)	Studio: N/A 1-bed dwellings: 82m ² 2-bed dwellings: 147m ² 3-bed dwellings: 214.5-290m ²	Studio: 35m ² 1-bed dwelling: 50m ² 2-bed dwelling: 70m ² 3-bed dwelling: 90m ²	Yes

Total Site Area: 1,334m ²	Proposed	Control	Complies
		(Equal to Part 4D of the ADG)	
Ceiling heights (minimum) Clause 30(1)(c)	Min 2.7m	2.4m / 2.7m (Equal to Part 4C of the ADG)	Yes

The proposal satisfies the requirements of Clause 30(1) of SEPP 65.

17.3. Clause 30(2): Design Quality Principles

Clause 30(2) of SEPP 65 requires the assessment of the application against the 9 *design quality principles* in Schedule 1 and against the relevant design criteria and objectives as specified in the associated *Apartment Design Guide* (ADG).

This assessment has been undertaken by Council's Urban Design Officer and by the Applicant where relevant, comment from Council's Planning Assessment Officer is included below:

17.3.1. Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Urban Design Planner Comments:

Council's Urban Design Officer, provides, inter alia, the following concerns:

"The proposal provides a 6-7 storey built form adjacent to a single storey HCA. The proposed bulk, scale and height do not respond to the existing or desired future character of Transvaal Avenue nor the transition to the HCA. The scale of the proposed outdoor plaza is not sufficient to create a soft transition to the adjacent single storey HCA. I refer to the 3D view on Page 27 of the architectural drawings.

The proposed five-storey street wall height on Cross Street neither responds to the existing two-storey street wall height of its adjacent Hotel nor the four-storey street wall height envisaged by WDCP 2015 D5.5.7 or displayed by the recent development on the southern side of the street.

The proposed setbacks and separation distances are inconsistent with WDCP 2015 D5.5.7 and the desired future character of the area.

...

Proposal's response to WLEP 2014

Height

The maximum height limit for the site is 14.7m under WLEP 2014. This is equivalent to a 4-storey mixed-use development.

The proposed development (6 -7 storeys) has a maximum building height of 23.5m to its lift overrun. The proposed maximum building height exceeds the height limit.

The proposal does not provide appropriate responses to the following objectives of WLEP 2014 Cl 4.3-Height of the building:

- (a) to establish building heights that are consistent with the desired future character of the neighbourhood*
- (b) to establish a transition in scale between zones to protect local amenity*
- (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion*

The proposed height adjacent the single storey HCA does not provide a sympathetic or gradual transition.

The proposed 6 storey corner element exacerbates the overshadowing impacts on the Transvaal Avenue outdoor dining area between 12 pm to 3 pm. It also blocks the view line from Goldman Lane to the HCA in Transvaal Avenue.

The proposed built form is not supported because it is inconsistent with the WLEP 2014 height objectives.

FSR

The proposed FSR of 3.59:1 does not comply with the maximum FSR of 2.5:1 for the subject site under the WLEP 2014. The proposed GFA results in a built form outcome that does not respond to the existing or the desired future character, as been discussed in this report.

WLEP 2014 Cl 4.4 Floor Space Ration, Objective b:

- (b) for buildings in Zone B1 Neighbourhood Centre, Zone B2 Local Centre, and Zone B4 Mixed Use—to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.*

The proposed built form is not supported because it is inconsistent with the WLEP 2014 FSR objectives.

Proposal's response to WDCP 2015

I have reviewed Chapter D5 of WDCP 2015, which is the most relevant chapter to an urban design analysis.

WDCP 2015 D5.5.7 provides detailed built form recommendations to guide the future built form characteristics. The proposal does not respond to the following:

Street wall height - *The proposed street wall height on Cross Street and Transvaal Avenue does not respond to the existing or the desired future character of the area under WDCP 2015 D5.5.7.*

- On Cross St, WDCP 2015 requires a four-storey street wall height. The proposed development provides a five-storey street wall height.*
- On Transvaal Avenue, WDCP 2015 requires a two-storey street wall height. The proposal provides a six-storey corner element. However, the subject site has not been identified as a corner element under WLEP 2014 or WDCP 2015.*

In addition, the existing context includes a two-storey street wall height on the Hotel and single-storey HCA on Transvaal Avenue. The proposal does not respond to the existing/established characteristics of its adjacent neighbours.

Setbacks – *the proposed setbacks are not consistent with the WDCP 2015 requirements.*

The proposal provides less than a 1m setback on the street, facing Transvaal Avenue. This is less than the minimum 3m setback required by the WDCP 2015 D5.5.7.

I recommend that the proposal increases the setbacks on this frontage to continue the view line from Goldman Lane to the HCA and the proposed plaza entry on Transvaal Avenue.

Above Level 1 on this frontage, the WDCP 2015 requires 1.8m setbacks (as an articulation zone). This has not been provided. I recommend that suitable upper-level setbacks are included in an amended street wall design.

On Cross Street, the first two lower levels are to provide a minimum of 3.5m setbacks. The proposed built form encroaches into the setback area on Level 1.

I recommend an amended proposal complies with the setbacks.

Urban Design Review and Recommendations

The proposed development states that it aims to respond to the evolving character of Cross Street. However, it should also consider its sensitive location at the intersection with Transvaal Avenue and the HCA.

Despite having some positive aspects including adequate internal residential amenity and a new public plaza on the ground level, the proposed bulk and scale is excessive and does not provide a soft transition to the existing single-storey context to the north.

As discussed above, the proposal does not respond to the evolving character, particularly with respect to the street wall height and setbacks.

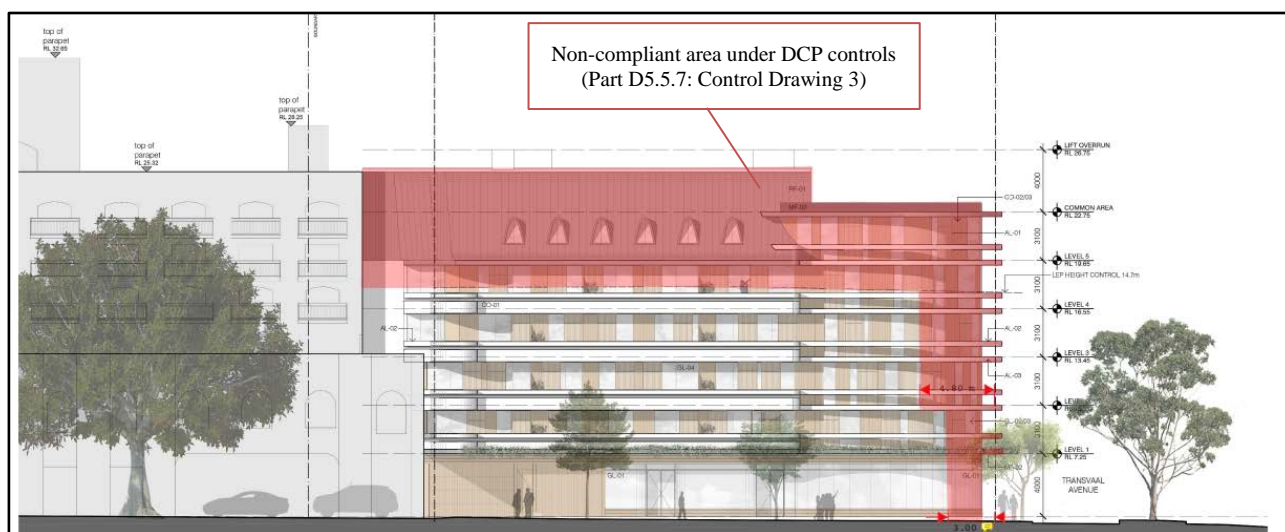
The proposal has relied on the corner character of the subject site to maximise its proposed density. However, it is not identified as a significant corner site in WLEP 2014 or WDCP 2015. Additionally, the proximity to the HCA is of higher importance than the relationship to the street corner. In my opinion, the proposed built form does not provide a suitable transition to the HCA.

I recommend that the proposed bulk and scale be amended to respond to my comments above."

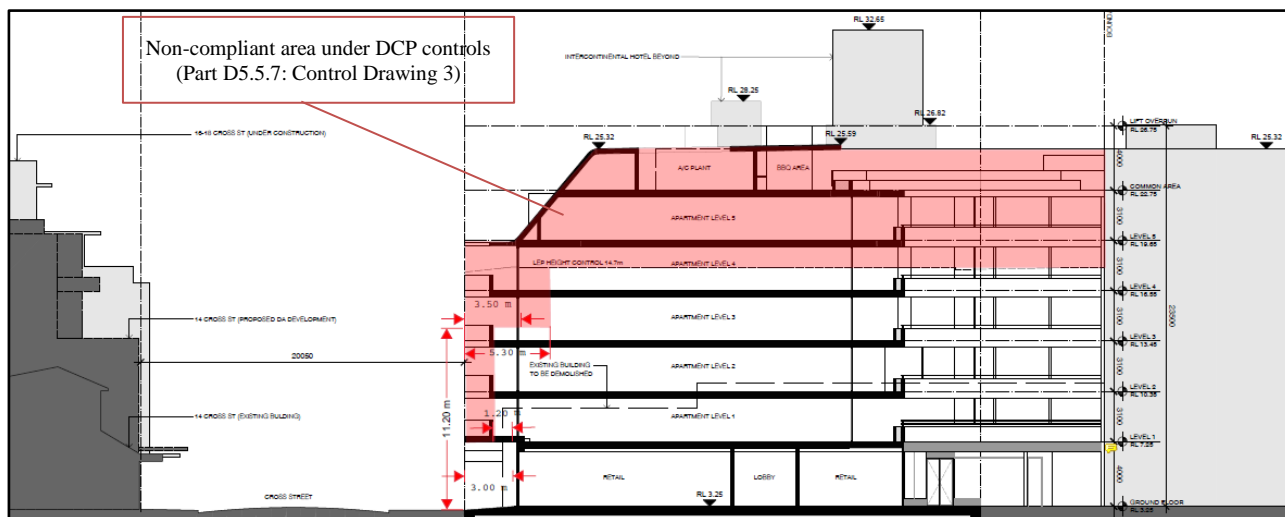
Planning Comment: The aforementioned comments are generally concurred with. The proposal is not considered to be appropriate to Context and Neighbourhood, for the following reasons:

- The proposal exceeds the Height of Buildings and Floor Space Ratio development standards prescribed by Woollahra Local Environmental Plan 2014 (WLEP);
- As a result of the non-compliances, the proposal inevitably results in a building envelope that will substantially exceed the site specific building envelope controls prescribed by the Woollahra Development Control Plan 2015 (WDCP);
- The WDCP (in *Section D5.4: Street Character* and *Section D5.5.7 Control Drawing 3*) prescribes the desired future street character for the 'Cross Street' precinct. Refer to **Elevations, Sections** and **Extracts** below comparing the proposed development against the prescribed building envelope controls of the DCP for the subject site;
- The proposed 6-7 storey building with a 5-6 storey street wall height and reduced front setbacks to Cross Street will result in a building that is inconsistent with the *existing character* and the *future character* of its surrounding context, given the following:
 - On the northern side of Cross street, there is an existing established two-storey street wall height at the Intercontinental Hotel;

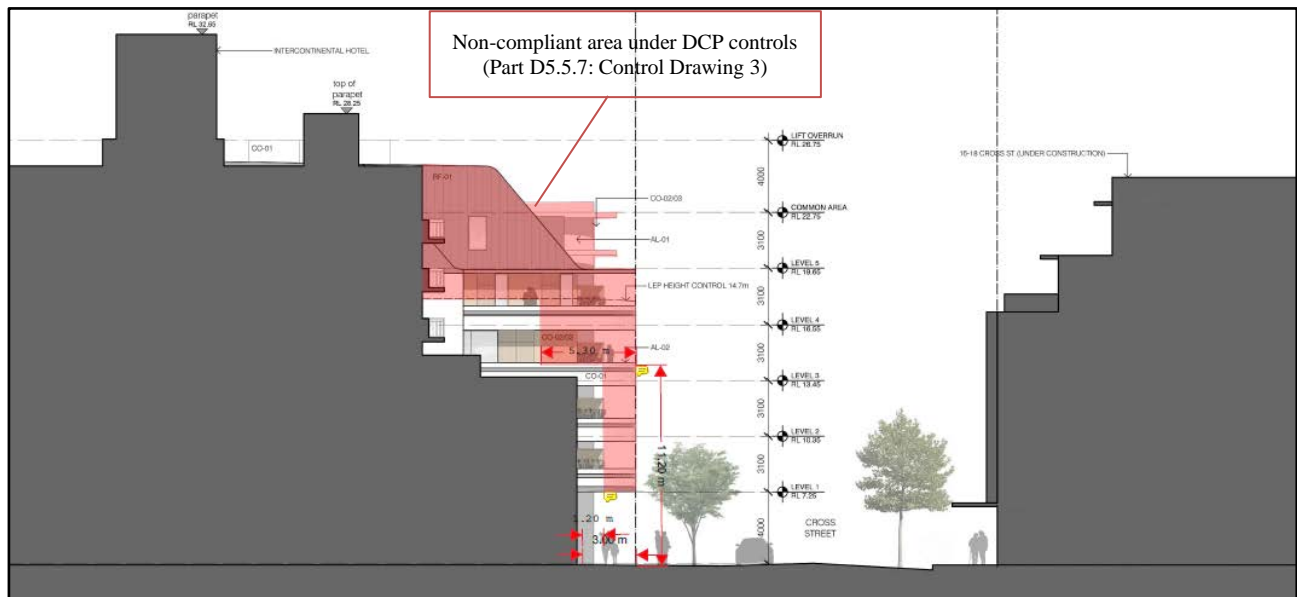
- On the southern side of Cross Street, there is an evolving four-storey street wall height (recently approved and under construction developments at 16-18, 20-26 and 28-34 Cross Street);
- It neither responds to the to the existing street wall height nor the four-storey street wall height envisaged by Woollahra DCP 2015, D5.4.7 and D5.5.7, or displayed by the recent development on the southern side of Cross Street with 4-storey street wall.
- The proposed 6-7 storey building with a proposed 6-storey street wall height and reduced front setbacks to Transvaal Avenue will result in a building that is inconsistent with the *existing character* and the *future character* of its surrounding context, given the following:
 - It neither responds to the two-storey street wall height envisaged by Part D5.5.7 nor the existing single-storey buildings of the Transvaal Avenue HCA.



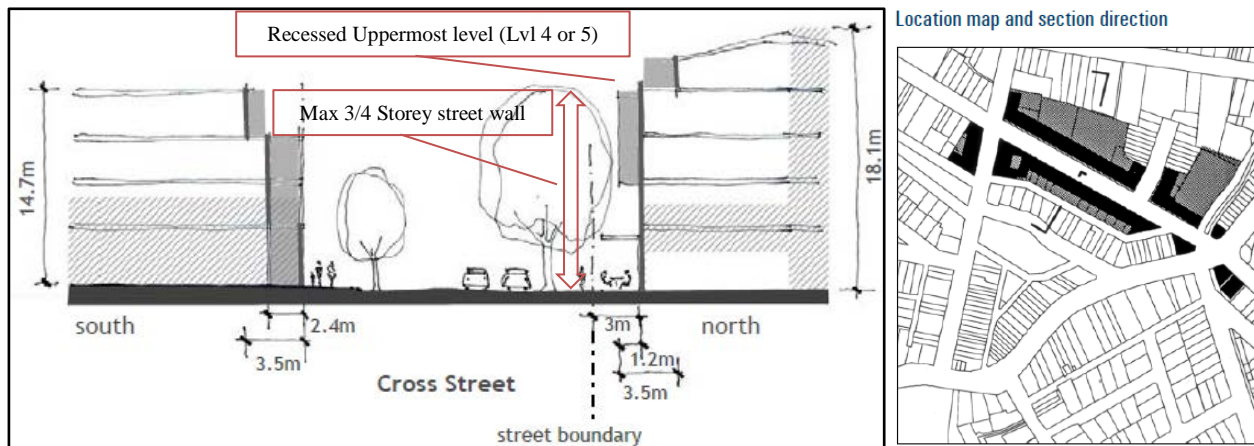
Proposed Elevation - South (Source: Luigi Rosselli Architects; Overlay: Woollahra Council)



Proposed Section AA (Source: Luigi Rosselli Architects; Overlay: Woollahra Council)



Proposed Elevation - West (Source: Luigi Rosselli Architects; Overlay: Woollahra Council)



Extracts from Part D5.4.7 of Woollahra DCP 2015 – Cross Street, the typical desired future character street section of the immediate locality. (Note: Section is through the adjacent Intercontinental Site which has a 18.1m height limit)

Conclusion

The proposal fails to satisfy this principle.

17.3.2. Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.

Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Urban Design Planner Comments: *“In addition to my comments on Principle 1, the proposal is not consistent with the desired future character. Additionally, the six-storey corner element exacerbates the overshadowing impacts on the Transvaal Avenue outdoor dining area between 12 – 3pm.*

The proposed dominant horizontal articulation increases the perceived bulk and scale of the proposed building. This does not respond to the existing fine-grain vertical articulation of the HCA.”

Planner’s Comments: The aforementioned comments are generally concurred with. The proposal is not considered to be satisfactory with Principle 2: Built Form and Scale, for the following reasons:

- The building is excessive in built form and scale, which is reflected in the non-compliances with the maximum height and floor space ratio development standards prescribed by the WLEP;
- The building is excessive in built form and scale, which is also reflected in the non-compliances with the site specific envelope controls prescribed by the WDCP;
- The lack of adequate setbacks and lack of vertical articulation exacerbates the excessive height and scale of the development in particular along the Cross Street and Transvaal Avenue frontages, eroding the spatial qualities of the urban environment.

Conclusion

The proposal fails to satisfy this principle.

17.3.3. Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area’s existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Urban Design Planner Comments: *“The overall dwelling density responds to the existing character and desired future character of the area. However, the appropriateness of the overall dwelling density is dependent on the proposed bulk and scale, achieving suitable amenity and streetscape outcomes.”*

Planner’s Comments: The aforementioned comments are generally concurred with.

Conclusion

The proposal satisfies this principle.

17.3.4. Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse

of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.

Urban Design Planner Comments: *“The proposal provides an appropriate response to the minimum solar access and cross ventilation requirements under the ADG.”*

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

Planner’s Comments

The aforementioned stance is concurred with. The proposal is considered to be satisfactory with regards to Principle 4: Sustainability, for the following reasons:

- The proposed total landscape area and the total communal open space are well in excess of the minimum requirements of Part 3D and 3E of the ADG;
- A BASIX certificate accompanying the development application sets out commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures as required by the NSW Government;
- The proposed development also achieves natural cross-flow ventilation to 60% of its units consistent with the minimum requirements of Part 4D of the ADG.

Conclusion

The proposal satisfies this principle.

17.3.5. Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development’s environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.

Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours’ amenity and provides for practical establishment and long term management.

Urban Design Planner Comments: *“The proposal responds to the requirements of this principle.”*

Planner’s Comments: The aforementioned comments are generally concurred with.

Conclusion

The proposal satisfies this principle.

17.3.6. Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.

Urban Design Planner Comments: “The proposal provides a satisfactory level of internal residential amenity.”

Planner’s Comments: The aforementioned comments are generally concurred with.

Conclusion

The proposal satisfies this principle.

17.3.7. Principle 7: Safety

Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Urban Design Planner Comments: “The proposal responds to the requirements of this principle”.

Planner’s Comments: The aforementioned comments are generally concurred with.

Conclusion

The proposal satisfies this principle.

17.3.8. Principle 8: Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.

Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.

Urban Design Planner Comments:

Council's Urban Design Officer states, inter-alia: *"The proposal provides 15 x three-bedroom units, 2 x one-bedroom units and 1 x two-bedroom unit. Approximately 80% of the proposed dwellings are large units. Although ADG does not have numerical requirements for unit mix...the proposal is not consistent with this principle for delivering a range of housing choices for different needs and budgets."*

Planner's Comments:

The applicant states:

"The proposal includes 18 apartments including:

- 2 one-bedroom (11%)*
- 1 two-bedrooms (6%)*
- 15 three-bedrooms (83%)*

The above mix of apartments will support a range of lifestyles and provides choice in living arrangements. It will appeal to young professionals, starting families and downsizers providing its location within the town centre area and proximity to public transport and amenities and facilities.

The proposal provides generous apartment sizes that exceed the minimum requirement as per the ADG. The apartment size allows for future adaptable housing provision. It incorporates universal design principles to allow for improved mobility access and future adaption of the dwelling for the resident's needs. Two large 3-bedroom units (Apartment 2.01 & 3.01) have been designed to be adaptable apartments. GMU considers Principle No. 8 is met."

The aforementioned stance provided by the applicant is not concurred with. The proposal is not considered to be satisfactory with regards to *Principle 8: Housing diversity and social interaction*. The proposed unit mix comprises no studio apartments and no units allocated to affordable rental housing. The proposal provides a mere 17% of units for 1 or 2-bedroom units. The proposed unit mix is not considered to provide a range of housings types to suit the existing and future social mix of differing demographics, living needs and household budgets.

Conclusion

The proposal fails to satisfy this principle.

17.3.9. Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

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

Urban Design Planner Comments: *"The proposal responds to the requirements of this principle."*

Planner's Comments: The aforementioned comments are generally concurred with.

Conclusion

The proposal satisfies this principle.

17.4. Apartment Design Guide (Compliance Table) (Note: Non-compliances are highlighted)

Site Area: 1,334m ² Residential Units: 18 Business/Retail: 4 (79.5m ² + 152.5m ² + 156m ² + 288m ² = 676m ²)	Proposed	Control	Meets
3D-1 (1) Minimum Communal Open Space	200m ² (Rooftop terrace) + 170m ² (Plaza). Total: 27.7% (370m ²)	25% of the Site (333.5m ²)	Yes
3D-1 (2) Minimum Solar Access to the Principal Useable Portion of Communal Space	Min 50% for 2hrs between 9am-3pm	50% for 2 Hours Between 9am and 3pm on June 21	Yes
3E-1 (1) Minimum Deep Soil Zone	0% (0m²)	7% of the Site (93.4m ²) 3m (Min dimension)	No
3F-1 (1) Min Separation From Buildings – <u>Habitable Rooms & Balconies</u> - Up to 12m (4 Storeys) - Up to 25m (5-8 Storeys)	0-9.6m 0-9.6m	6m 9m (from side or rear boundary)*	No (part) No (part)
3F-1 (1) Min Separation From Buildings – <u>Non-Habitable Rooms</u> - Up to 12m (4 Storeys) - Up to 25m (5-8 Storeys)	Min 3m Min 4.5m (No proposed non-habitable room windows to side or rear)	3m 4.5m (side or rear boundary)*	Yes Yes
3J-1 Number of Car Parking Spaces – Within 800m of Train Station or Centre zone	43 (39 residential; 4 visitor) 8 retail	Max 29 (residential) Min 14 (commercial)	No** No
	Total: 51	Total: 43	No**
4A-1 (1) Direct Sunlight to Living Rooms and Private Open Spaces	83.3% (15 units out of 18)	Minimum 70% of Apartments (13) (Min 2 Hrs Between 9am and 3pm on June 21)	Yes
4A-1 (3) No Direct Sunlight to Apartments Between 9am and 3pm on June 21	3 south-facing units will receive no direct sunlight	Maximum 15% of Apartments (3)	Yes
4B-3 (1) Minimum Cross Ventilation	11/18 cross-ventilated	60% of Apartments (11)	Yes
4B-3 (2) Maximum Building Depth of Cross-through units	Max 18m	18m	Yes
4C-1 (1) Minimum Ceiling Height – - Habitable Rooms - Non-Habitable Rooms - Ground Floor of Mixed Use	2.7m Min 2.4m 3.3m	2.7m 2.4m 3.3m	Yes Yes Yes
4D-1 (1) Minimum Apartment Layout – - Studio - 1 Bedroom - 2 Bedroom - 3 Bedroom	- 82m ² 147m ² 214.5-290m ²	35m ² 50m ² 70m ² 90m ²	- Yes Yes Yes
4D-1 (2) Habitable Room – Minimum Window Surface	100% of Habitable Rooms	10% of Floor Area and Not Borrowed	Yes
4D-2 (1) Max Habitable Room Depth from a window	Max <6.75m (18/18 Units)	2.5m x Ceiling Height (Max 6.75m)	Yes
4D-2 (2) Max Habitable Room Depth from a Window (Open Plan Design)	Max 8m	8m	Yes

Site Area: 1,334m ² Residential Units: 18 Business/Retail: 4 (79.5m ² + 152.5m ² + 156m ² + 288m ² = 676m ²)	Proposed	Control	Meets
4D-3 (1) Minimum Bedroom Size (Excluding Wardrobes)	Min 9m ² / >9m ² Min 10m ² / >10m ²	9m ² (Other Beds) 10m ² (Master Beds)	Yes Yes
4D-3 (2) Minimum Bedroom Dimension (Excluding Wardrobes)	Min 3m / >3m	3m	Yes
4D-3 (3) Minimum Width of Living Rooms	Min 3.6m Min 4m	3.6m (Studio/1 Beds) 4.0m (2/3+ Beds)	Yes Yes
4D-3 (4) Minimum Width of Cross Over/Cross Through Apartments	Min 7.2m	4m	Yes
4E-1 (1) Minimum Balcony Dimensions (Area m ² / Min Dimension) - Studio - 1 Bedroom - 2 Bedroom - 3/3+ Bedroom	- Min 8m ² /2m Min >10m ² /2m Min >12m ² /2.4m	4m ² 8m ² /2m 10m ² /2m 12m ² /2.4m	- Yes Yes Yes
4F-1 (1) Maximum Number of Units in a Corridor	Max 2 per level	Eight (8)	Yes
4G-1 (1) Minimum Storage Area - - 1 Bedroom - 2 Bedroom - 3/3+ Bedroom	Min >6m ³ Min >8m ³ Min >10m ³	6m ³ 8m ³ 10m ²	Yes Yes Yes
4G-1 (1) Provision of Storage Within Apartment	Min 50%	50%	Yes

* *Part 3F (1) prescribes a minimum separation distance of 6-9m between habitable room windows and balconies to the side and rear boundaries, & 3-4.5m for non-habitable rooms. In this case, the Cross Street and Transvaal Avenue boundaries are considered to be front boundaries and therefore the separation criteria does not apply to the Southern and western elevations*

** *Clause 30(1)(a): Minimum Parking – Standard that cannot be used as grounds to refuse development consent*

17.5. Part 3 – Siting the Development

17.5.1. Part 3A: Site Analysis

Objective 3A-1 aims to ensure, “*that a site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context*”

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

17.5.2. Part 3B: Orientation

Objective 3B-1 aims to ensure that, “*Building types and layouts respond to the streetscape and site while optimising solar access within the development*” & Objective 3B-2 aims to ensure, “*Overshadowing of neighbouring properties is minimised during mid-winter*”

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

17.5.3. Part 3C: Public Domain Interface

Objective 3C-1 aims to encourage, “*transition between private and public domain is achieved without compromising safety and security*” and Objective 3C-2 aims to ensure, “*amenity of the public domain is retained and enhanced*”

The proposal fails to satisfy the relevant objective and design guidance prescribed by this Part. Refer to *Solar Access* assessment in *Section D5.6.4: Amenity* of the report.

17.5.4. Part 3D: Communal and Public Open Space

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

Objective 3D-1 aims to provide, “*an adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping*”

The design criteria requires a minimum of 25% (or 333.5m²) of the site area to be allocated for communal open space. This space must also have 50% of direct sunlight access to its principal part in mid-winter.

The proposal provides communal open space that has direct sunlight access to its principal part in mid-winter for a minimum 2hrs between 9am and 3pm, in the form of:

- 200m² (Rooftop terrace); and
- 170m² (Public Plaza).
- Total: 370m² (or 27.7% of site area)

Council’s Urban Design Officer, states:

“The proposed rooftop communal open space is approximately 15% of the site area. This is less than the minimum requirement by the ADG. However, the proposal provides a public plaza on the ground level, which is a positive space both for the residents and the local community. Therefore, I am satisfied with the amount of communal open space provided by this proposal.”

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

17.5.5. Part 3E: Deep Soil Zones

Objective 3E-1 aims to, “*...provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality*”

The design criteria requires a minimum of 7% (or 93.4m²) of the site as Deep Soil Zone with a minimal dimension of 3m. The proposal does not provide any deep-soil landscaped area throughout the site.

Council’s Urban Design Officer, states:

“The proposed development has not provided any deep soil area on the site. This is acceptable due to the location of the subject site in B2 Zone, and the amount of communal space and landscape buffer on the ground level.”

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

17.5.6. Part 3F: Visual Privacy

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

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

The proposal does not comply with this minimum separation control (setback from side and rear boundaries). Notwithstanding this, in this circumstance, a zero setback along the western side of the development is acceptable as there are no windows to this elevation. Furthermore, the majority of the proposed glazed openings are orientated towards Cross Street, and Transvaal Avenue with substantial separation distances from any surrounding residential uses. The proposed balconies and terraces are also either orientated towards public areas or adequately offset from the northern (side) boundaries including the provision of raised landscape garden beds along their northernmost edges. Cumulatively, this would ensure downward sightlines to the main areas of private open space and habitable room windows are minimised.

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

17.5.7. Part 3G: Pedestrian Access and Entries

Objective 3G-1 aims to ensure that, *“...building entries and pedestrian access connects to and addresses the public domain”*.

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

17.5.8. Part 3H: Vehicle Access

Objective 3H-1 aims to ensure, *“vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes”*

The proposal involves a single vehicular driveway access point to the site from Cross Street, relocated from the existing location on Transvaal Avenue.

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

17.5.9. Part 3J: Bicycle and Car Parking

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

The subject site is well situated in close proximity to public transport in the form of several bus buses within a 400m radius, and Edgecliff train station and Double Bay Ferry within an 800m radius. Thus, the proposal providing less than the minimum number of non-residential parking spaces is consistent with Objectives 3J-1 and 3J-2, in that it seeks to facilitate the use of other modes of transport.

Notwithstanding this, the proposal involves an oversupply of residential parking as per the requirements of *Chapter E1: Parking and Access* of the Woollahra DCP 2015.

The proposal therefore fails to satisfy the relevant objectives and design guidance prescribed by this Part.

17.6. Part 4 – Designing the Building (Amenity)

17.6.1. Part 4A: Solar and Daylight Access

Objective 4A-1 aims “*to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space*”

Design criteria 1 requires that living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. The proposal results in 83.3% (15 units out of 18) of the units that will receive a minimum of two hours solar access in mid-winter, achieving the design criteria. Furthermore, 3 south-facing units will receive no direct sunlight between 9am and 3pm in mid-winter, which complies with design criteria 3 (Maximum of 15%).

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

17.6.2. Part 4B: Natural Ventilation

The proposal provides 60% of the apartments which are naturally cross-ventilated. The proposal satisfies the relevant objectives and design criteria prescribed by this Part.

17.6.3. Part 4C: Ceiling Heights

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

The proposal provides minimum floor to ceiling heights of 2.4m (non-habitable), 2.7m (habitable) and minimum of 3.3m (Ground Floor of Mixed Use).

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

17.6.4. Part 4D: Apartment Size and Layout

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

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

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

17.6.5. Part 4E: Private Open Space and Balconies

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

17.6.6. Part 4F: Common Circulation and Spaces

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

17.6.7. Part 4G: Storage

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

17.6.8. Part 4H: Acoustic Privacy

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

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

17.6.9. Part 4J: Noise and Pollution

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

17.7. Part 4 – Designing the Building (Configuration)

17.7.1. Part 4K: Apartment Mix

As discussed in *Principle 8: Housing diversity and social interaction*. The proposal fails to satisfy the relevant objectives and design guidance prescribed by this Part.

17.7.2. Part 4M: Facades

Objective 4M-1 aims to encourage, *“building facades provide visual interest along the street while respecting the character of the local area”*

Council’s Urban Design Officer, provides the following comments:

“The proposed dominant horizontal articulation increases the perceived bulk and scale, especially on the upper levels.

The location of the building adjacent to the small scale fine-grained HCA requires a more sensitive approach. The façade addressing the HCA should include vertical articulation to break up the proposed bulk and scale to create more sympathetic smaller elements.”

The proposal fails to satisfy the relevant objectives and design guidance prescribed by this Part.

17.7.3. Part 4N: Roof Design

Objective 4N-1 aims to encourage, *“Roof treatments are integrated into the building design and positively respond to the street”*.

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

17.7.4. Part 4O: Landscape Design

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

17.7.5. Part 4P: Planting on Structures

Council’s Tree and Landscape Officer supports the proposed development. The proposal satisfies the relevant objective and design guidance prescribed by this Part.

17.7.6. Part 4Q: Universal Design

Objective 4Q-3 3 aims to encourage *“Apartment layouts are flexible and accommodate a range of lifestyle needs”*. The proposal provides units of an adaptable design and apartments of varying configurations and size.

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

17.7.7. Part 4S: Mixed Use

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

17.7.8. Part 4T: Awnings and Signage

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

17.8. Part 4 – Designing the Building (Performance)

17.8.1. Part 4U: Energy Efficiency

The proposal is subject to the provisions of a BASIX certificate relating to commitments within the proposed development in relation to thermal comfort and energy efficiency sustainability measures. The proposal satisfies the relevant objective and design guidance prescribed by this Part.

17.8.2. Part 4V: Water Management and Conservation

The proposal is subject to the provisions of a BASIX certificate relating to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures. The proposal satisfies the relevant objective and design guidance prescribed by this Part.

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

17.8.3. Part 4W: Waste Management

Objective 4W-1 aims to ensure that, “*Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents*”

The proposed design has a dedicated waste storage room within the basement level which is not visible from the public domain but is readily accessible to residents and tenants.

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

17.8.4. Part 4X: Building Maintenance

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

18. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

18.1. Part 1.2: Aims of Plan

The particular relevant aims in Part 1.2(2) of the Woollahra LEP 2014 state:

- aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to ensure that growth occurs in a planned and co-ordinated way,*
- (e) to facilitate opportunities, in suitable locations, for diversity in dwelling density and type,*
- (f) to conserve built and natural environmental heritage,*
- (g) to protect amenity and the natural environment,*
- (j) to promote a high standard of design in the private and public domain,*
- (k) to minimise and manage traffic and parking impacts,*
- (l) to ensure development achieves the desired future character of the area,*

For the assessment undertaken in the report above and to follow, the proposal is unsatisfactory in terms of the aims in Part 1.2(2) of the Woollahra LEP 2014 for the following reasons:

- It does not promote the use and development of land for arts and cultural activity, as required in sub-clause (aa);
- It does not ensure that growth and development of the Double Bay Centre occurs in a planned and co-ordinated way, as required in sub-clause (a);
- It does not facilitate opportunities, for diversity in dwelling density and type, as required in sub-clause (e);
- It does not conserve built environmental heritage, as required in sub-clause (f);
- It does not protect the amenity of the surrounding area, as required in sub-clause (g);
- It does not promote a high standard of design, as required in sub-clause (j);
- It does not minimise and manage traffic and parking impacts, as required in sub-clause (k);
- It does not ensure the development achieves the desired future character of the area, as required in sub-clause (l);

The aforementioned are therefore listed as reasons for refusal.

18.2. Part 2.3: Zone Objectives and Land Use Table

The proposal is defined as construction of a new ‘shop top housing’ development. The proposed development is considered to be permissible with consent within the B2 Local Centre zone.

For the assessment undertaken above and that follows, the proposal is however inconsistent with the objectives of the B2 Local Centre zone as required in sub-clause 2.3(2), for the following reasons:

- It does not provide a development of a scale that is compatible with the amenity of the surrounding residential uses (dot point 6);
- It does not ensure that the development is of a height and scale that achieves the desired future character of the neighbourhood (dot point 7);

The aforementioned are therefore listed as reasons for refusal.

18.3. Part 4: Principal Development Standards

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

Development Standard Site Area: 1,334m ²	Proposed	Controls	Departures	Complies
Maximum Building Height (Clause 4.3)	22.34m (RL 25.59) to rooftop; 23.5m (RL 26.75m) to the lift overrun.	14.7m	7.64m or 52% 8.8m or 60%	No*
Floor Space Ratio (Clause 4.4)	3.59:1 (4,796m²)	2.5:1 (3,335m ²)	1,461m ² or 43%	No*

*A written request pursuant to Clause 4.6 of the WLEP 2014 was submitted.

The proposal involves non-compliances with the *Height of Buildings* and *Floor Space Ratio* development standards under Clause 4.3, Clause 4.4 of the Woollahra LEP 2014, as follows:

- A 8.8m or 60%, non-compliance with the 14.7m *Height of Buildings* development standard, as prescribed by Part 4.3;
- 1,461m² or 43%, non-compliance with the 2.5:1 *Floor Space Ratio* development standard, as prescribed by Part 4.4;

Clause 4.6 written requests for the above has been submitted by the applicant and is assessed below.

18.3.2. Part 4.3: Height of Buildings

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

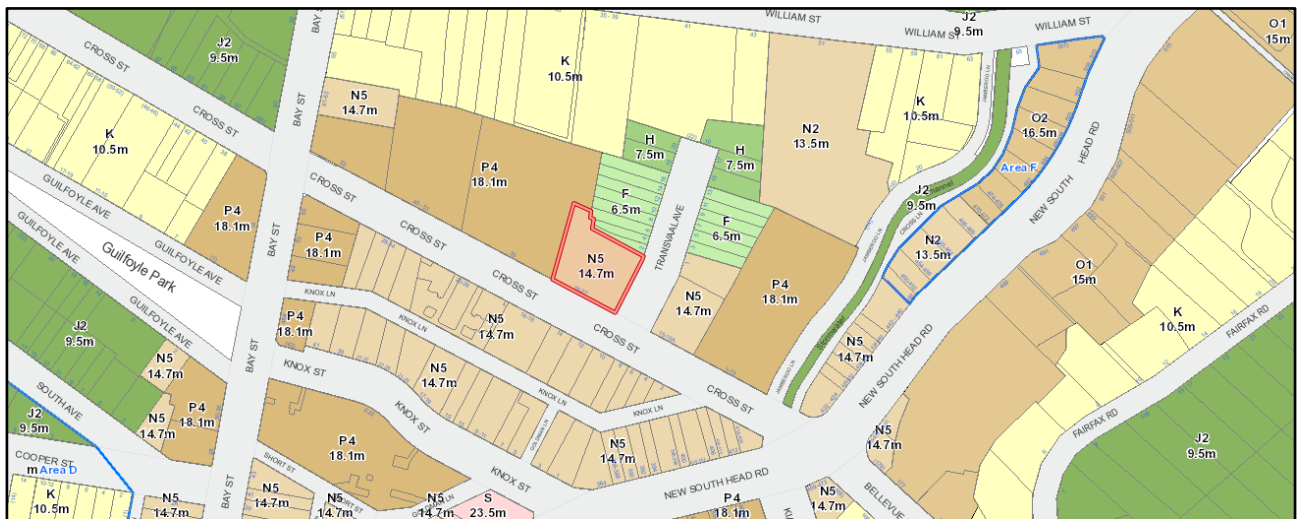


Figure 12 Height of Buildings Map (WLEP 2014)

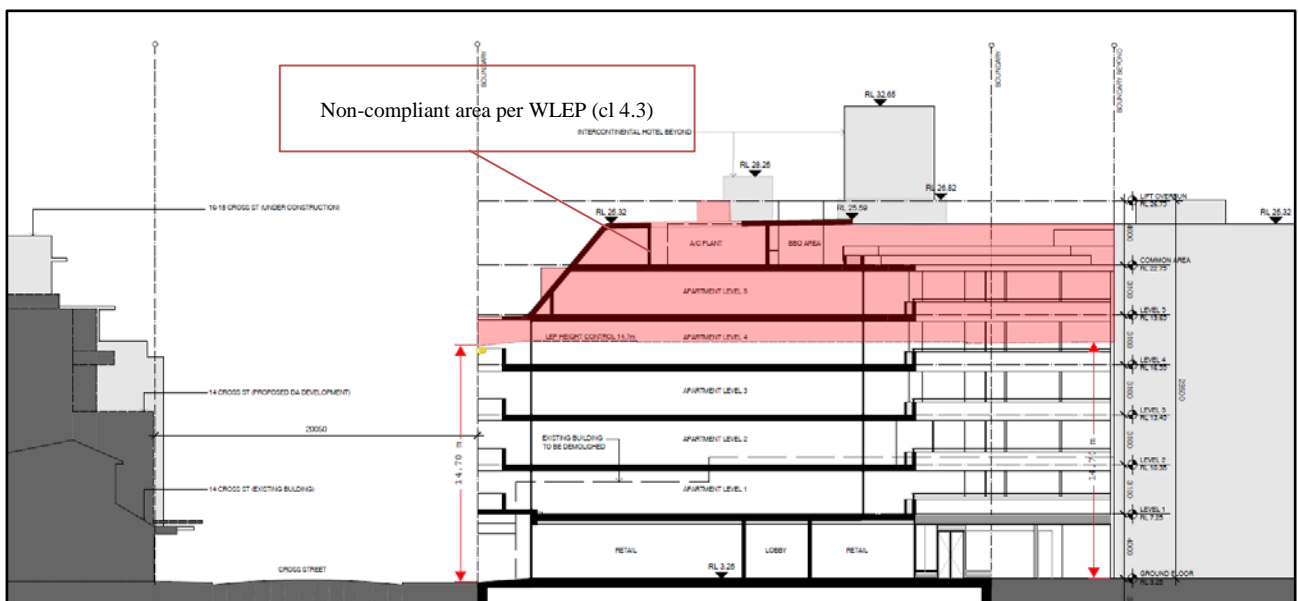


Figure 13 Section AA - Red indicates area of Building Height non-compliance (Source: Luigi Rosselli Architects; Overlay: WMC)

18.4. Part 4.4: Floor Space Ratio

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

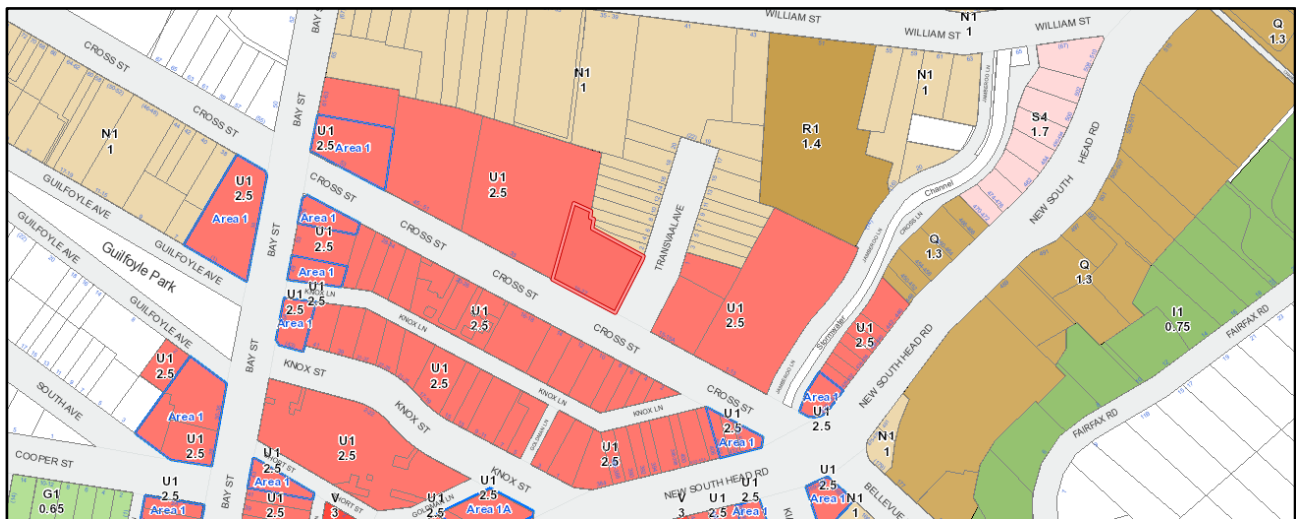


Figure 14 Floor Space Ratio Map (WLEP 2014)

18.5. Part 4.6: Exceptions to Development Standards (Height of Buildings & Floor Space Ratio)

18.5.1. Departure

The proposal involves the following non-compliances with the Woollahra LEP 2014:

- Maximum Height of Buildings development standard under Clause 4.3;
- Floor Space Ratio development standard under Clause 4.4;

As detailed in the report above.

18.5.2. Purpose

Part 4.6 allows a contravention of a development standard with the objectives being to allow an appropriate degree of flexibility in applying certain development standards to particular development and to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

18.5.3. Written Request

Part 4.6(3) stipulates that a written request is required from the applicant that justifies the contravention of the development standard by demonstrating that compliance with is unreasonable or unnecessary and there are sufficient environmental planning grounds to justify the contravention.

The applicant has provided written requests in relation to the departures and are attached as **Annexures 5 and 6**.

18.5.4. Assessment

Clause 4.6(4)(a)(i) - Assessment

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the applicant's written request/s, seeking to justify the contravention of the development standard/s, has adequately

addressed the matters required to be addressed by Cl 4.6(3). There are two separate matters for consideration contained within Cl 4.6(3) and these are addressed as follows:

- a) *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

Comment: The applicant's written requests have not adequately demonstrated that the objectives of the *Height of Buildings* and *Floor Space Ratio* development standards are achieved, notwithstanding the numerical non-compliance.

The applicant's written requests have not adequately demonstrated that compliance with the development standards are unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a). The objectives of the development standards are discussed further in the assessment of Clause 4.6(4)(a)(ii).

- b) *That there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: In the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written requests have adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standards:

'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. '

S1.3 of the EPA Act reads as follows:

1.3 Objects of Act

(cf previous s 5)

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.*

The applicant's written requests, which support the proposed non-compliances with the *height of buildings* and *floor space ratio* development standards, have not adequately demonstrated that:

- the proposed development promotes the sustainable management of built and cultural heritage, in accordance with object 1.3(f);
- the proposed development promotes good design and local amenity of the built environment in accordance with object 1.3(g);

Clause 4.6(4)(a)(ii) - Assessment

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied that:

- ii) *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the *Height of Buildings* and *Floor Space Ratio* development standards, and the zone objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

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

Clause 4.3 - Height of Buildings

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

Comment: For reasons already discussed in Section 12.2.1 '*Principle 1: Context and Neighbourhood Character*' and in Section 19.5 '*D5.4: Street character*' in the report that follows, the proposal will result in a building height that is not compatible with the existing character of Cross Street precinct and fails to ensure that the Proposal is of a height and scale that achieves the desired future character of the neighbourhood.

The non-compliance with the maximum building height development standard will therefore result in development that is inconsistent with the key objectives of Double Bay Centre (WDCP, Part D5.1.3) and that of the B2 Local Centre Zone (WLEP, Part 2.3).

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

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

Comment: The proposal does not *establish a transition in scale between zones* in that it results in a six-seven storey building which is approximately two and a half storeys over the 14.7m height of buildings standard, as required by sub-clause 4.3(b) of the WLEP in that:

- The proposed height, bulk and scale is not considered to provide an appropriate nor a sympathetic transition between the Cross Street precinct to the Transvaal Avenue HCA located immediately to the north of the site.
- The Transvaal Avenue HCA includes single-storey contributory buildings that are generally uniform in scale, form and detailing.

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

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

Comment: The proposal does not *minimise the loss solar access to existing buildings and open space* in that it will result in a significant amount of additional overshadowing of sites to the south and additional overshadowing of the public realm, arising directly from a non-compliant building in terms of height.

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

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

Comment: The Proposal does not *minimise the impacts of new development on adjoining or nearby properties from ... overshadowing or visual intrusion* in that existing (and future developments) surrounding the Site (both the private and public realm) will have will have compromised solar access and visual intrusion impacts arising from the excessive and non-compliant height of the Proposal.

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

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

Comment: The proposal satisfies the objective of sub-clause 4.3(e) of the Woollahra LEP 2014.

Clause 4.4 – Floor Space Ratio

The relevant objective of clause 4.4(1) aims:

...(b) for buildings in ... Zone B2 Local Centre ... - to ensure that buildings are compatible with the desired future character of the area in terms of bulk and scale.

Comment: For reasons already discussed in Section 12.2.1 ‘*Principle 1: Context and Neighbourhood Character*’ and in Section 19.5 ‘*D5.4: Street character*’ in the report that follows, the proposal is not “...compatible with the desired future character of the area in terms of bulk and scale.” in that:

- It does not provide development of a scale that is compatible and consistent with the existing and the desired future character of Cross Street and Transvaal Avenue; and
- It does not provide development of a bulk, height and scale that achieves the desired future character of the neighbourhood.

The non-compliance with the maximum floor space ratio development standard will result in development that is inconsistent with the key objectives of the Double Bay Centre (WDCP, Part D5.1.3) and that of the B2 Local Centre Zone (WLEP, Part 2.3).

The proposal therefore fails to satisfy the objective (b) of sub-clause 4.4(1) of the Woollahra LEP 2014.

Objectives of the Zone (B2 Local Centre)

The zone objectives for the B2 Local Centre are:

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

Comment: For reasons already discussed and in the report that follows the proposal is inconsistent and fails to satisfy with the objectives, dot point 6 & 7, of the B2 Local Centre zone.

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

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

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

Furthermore, a most recent case (in *Ricola Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1047) has indicated and concluded that even a *minimal* impact arising from a non-compliance can be said to be unreasonable and unnecessary. At paragraph 4 and 5 of the judgement the commissioner, states (**emphasis** added):

“4. Nevertheless, the Council remains opposed to the proposed development on the basis that it breaches both the development standards for height and floor space ratio (“FSR”). **The experts agree that the proposed development is reasonably compatible with the desired future character of the neighbourhood** due to the positive built form relationship with the form and scale of existing and approved buildings that are visually proximate to the site. **However, they disagree on whether the proposed development minimises impacts in relation to views and visual intrusion, as required by the objectives of the height development standard, with which the development must be consistent to allow a variation to the height development standard.**

5. *For the reasons set out below, I am not satisfied that the written request concerning the height development standard has adequately addressed the matters required to be demonstrated. Accordingly, there is no power to grant development consent."*

Clause 4.6(3)(a) of the WLEP 2014 requires that the cl4.6 written request justify contravening the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

This can be done by outlining how the cl4.6 written request falls within one of the following five (5) tests, as raised in *Wehbe v Pittwater Council [2007] NSWLEC 827*, including:

- i) **the objectives of the development standard are achieved notwithstanding non-compliance with the standard;**
- ii) the underlying objective or purpose of the standard is not relevant to the development;
- iii) **the underlying objective or purpose would be defeated or thwarted if compliance was required;**
- iv) the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; and/or
- v) the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.

The submitted cl4.6 written requests for both the *Height of Buildings* and *Floor Space Ratio* development standards rely upon **Test (i)** and **(iii)** above. The following assessment has considered each of these two (2) tests:

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

For reasons already discussed, the proposal fails to achieve the objectives underpinning the development standards.

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

Compliance with the standards would not defeat the objective of the standard. The proposed development disregards the relevant height and floor space controls providing a building envelope that is inconsistent with and contextually inappropriate with the *existing* character or the *desired future character* of the Double Bay centre that it forms a part of. The underlying *objective or purpose* of the development standard are to regulate building height, bulk and scale.

For reasons already discussed, compliance is reasonable in the circumstance.

Environmental planning grounds which justify the contravention of the standard

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

For reasons already discussed, there is insufficient environmental planning grounds to justify contravening the development standards in this instance and the development is not considered to be in the public interest.

Clause 4.6(4)(b) - Assessment

Clause 4.6(4)(b) requires the consent authority to be satisfied that:

(b) *the concurrence of the Secretary has been obtained.*

The Department issued a Planning Circular No.PS18-003 (dated 21 February 2018) which notified Councils of arrangements “...where the Director General’s concurrence may be assumed for exceptions to development standards under environmental planning instruments which adopt clause 4.6 ...of the Standard Instrument...” Clause 64 of the EPA Regulations provides that Council may assume the Director-General’s [Secretary’s] concurrence for exceptions to development standards, thus satisfying the terms of this clause.

Conclusion

Part 4.6(4) requires Council to be satisfied that the written requests have adequately addressed the relevant matters, and that the proposed development will be in the public interest because it is consistent with the relevant objectives of the particular standard and zone and the concurrence of the Director-General has been obtained. Furthermore, the Council must be satisfied the proposal is in the public interest because it is *consistent with the relevant objectives of the particular standard and the zone* where the development is located.

The applicant’s written requests fail to adequately address the relevant matters for consideration in Cl4.6(3)(a) and (b). Specifically:

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

18.5.5. Conclusion

The written submissions from the applicant have not adequately demonstrated that the contravention of the *Height of Buildings* and *Floor Space Ratio* development standards prescribed by *Part 4.3* and *Part 4.4* of the Woollahra LEP 2014 is justified pursuant to the relevant matters for consideration prescribed by Clause 4.6.

The consent authority is not satisfied that the applicant’s written requests have demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that sufficient environmental planning grounds have been demonstrated to justify the contravention of the standard.

The consent authority is not satisfied that the proposal is in the public interest as it is inconsistent with the objective of the development standards and those applicable to development within the zone.

Accordingly, the proposal is not in the public interest and is inconsistent with the objectives of the Clause 4.3 and Clause 4.4 development standards. Departure from the controls is not supported.

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

18.6.1. Part 5.10: Heritage Conservation

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

The subject site is not:

- A heritage item in the Woollahra Local Environment Plan 2014 nor listed on any statutory registers including State, National or Commonwealth; or
- located within a heritage conservation area;

The subject site is located adjacent to the Transvaal Avenue HCA, described in Schedule 5 of the WLEP as follows:

Part 2 Heritage conservation areas			
Suburb	Item name	Significance	Item no
Double Bay	Transvaal Avenue	Local	C7



The subject site and the adjacent Transvaal Avenue HCA (source: Councils GIS Mapping System)

The objectives of Part 5.10(1), are:

- to conserve the environmental heritage of Woollahra,*
- to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- to conserve archaeological sites,*
- to conserve Aboriginal objects and Aboriginal places of heritage significance.*

Demolition of existing building on the subject site

Council's Heritage Officer provides, inter alia, the following:

"...A demolition/heritage significance report has been submitted with the development application and includes historical research on the development of the property over time. The assessment of significance of the existing commercial building on the subject property concludes that the building would not meet the threshold for identification as a place of local heritage significance. While the building is associated with a prominent architectural firm, Double Bay Plaza is not considered to represent an important work within the extensive oeuvre of Synman, Justin Bialek (SJB architects). The findings of this report are considered to be accurate."

The proposed demolition of the existing building on the subject site is therefore supported.

Aboriginal Heritage

Council's Heritage Officer provides:

"The AHIMS basic search did not reveal any recorded Aboriginal sites within 200m of the subject site. The subject site is located within a Deep Creek soil landscape. As the site has been previously disturbed when the existing structures were constructed, it is unlikely that any archaeological evidence will remain, therefore no further actions under the Due Diligence Code of Practice are required."

No further action is required.

Transvaal Avenue HCA

Council's Heritage Officer provides, inter alia, the following:

"...In its current form, the proposed 6-7 storey development does not provide a sympathetic transition to the single storey character of the HCA. It is considered the proposal would diminish the setting of and would dominate the contributory single storey Gothic style cottages in the vicinity and would result in an adverse impact on the conservation area. Detailed discussion of the impact of the proposal on the Transvaal Avenue HCA is provided below against the Woollahra LEP 2014 (Part 5.10) and Woollahra DCP 2015

...

The Statement of Significance for the Transvaal Avenue HCA is as follows (Woollahra DCP 2015, Chapter D5, Appendix 1.4):

The Transvaal Avenue retail strip provides a physical record of a significant historical phase in the evolution of the Double Bay Commercial Centre.

The group of buildings provides physical evidence of the working class residential boom at the end of the 19th century by a renowned local developer, Edward Knox Harkness, who was responsible for many fine Federation styled semi-detached cottages within the Double Bay area.

The quality and distinction of the architectural decoration of the turn of the century buildings exemplifies the economic boom in that period and the expansion of residential development after the introduction of the tram service to the City in 1894 and from Rose Bay in 1898.

The area provides an historical record of the time through the naming of each of the properties and the avenue after the victories of the British force in the South African Boer War. Transvaal is the alternate name of the South African Republic.

The consistency and relative intactness of the cottages with their fine Federation but Gothic style brick and tile construction, stucco details and timber fretwork creates a distinctive and aesthetically pleasing character.

The uniformity of form and scale within the Harkness development of the single storey brick and tile semi-detached cottages contributes to the unique qualities of the housing group within the Double Bay commercial precinct.

The streetscape has high aesthetic value which is enhanced by the closed vistas and the carefully maintained street trees and landscape works at the northern end.

The area has social significance to the local community, demonstrated through the involvement of the local community during the 1980s when the area was granted heritage conservation area status after the number of objections raised to the proposed redevelopment of the group.

Collectively, the early 20th century housing in Transvaal Avenue represents an important historic element reflecting the early development of Double Bay. The uniformity of scale and form of the single storey Gothic Revival style cottages, which are generally around 6 metres in height, coupled with their architectural detailing has resulted in the distinctive 'fine grain' streetscape character and aesthetic value of the Transvaal Avenue HCA.



Figure 3: View looking north west across Transvaal Avenue towards the Double Bay Plaza and Transvaal Avenue HCA.



Figure 4: View looking south west across Transvaal Avenue towards the Double Bay Plaza and Transvaal Avenue HCA.

The proposal is for a 6-7 storey shop-top housing development adjacent to the low-height historic development within the Transvaal Avenue HCA. At its greatest setback, the proposal includes a setback distance of around 9.6 metres from the northern boundary of the site (adjoining the Transvaal Avenue HCA) and inclusion of an open plaza and seating area.

While the setback provided by the open plaza and seating area is considered to be positive from a heritage perspective, the scale of the proposed shop-top housing development would dominate the Transvaal Avenue HCA. The 6-7 development would exceed the height of the historic single storey cottages within the adjacent conservation area by over 17 metres (including roof terrace and lift overrun). The lower 6 storeys of the development have a uniform setback distance from the northern boundary of the site that would exceed the predominant height of cottages within the Transvaal Avenue HCA by 13.5 metres. This is not

considered to provide an appropriate transition in terms of scale, bulk and height between the new development and the conservation area in the vicinity.

It is considered that the setting of the Transvaal Avenue HCA would be compromised by the proposal. In particular, the prominence of the modest single storey contributory items located at the southern extent of the conservation area on the western side of Transvaal Avenue (as viewed looking south-west from the northern end of Transvaal Avenue) would be diminished against the 'plane' of the continuous 6 storey northern elevation of the proposed development. It is noted the late 20th century Intercontinental Hotel located to the west of the Transvaal Avenue HCA pre-dates the Woollahra DCP and is not considered precedent development for the proposal within the context of the heritage conservation area.

The proposal should be refined on the northern elevation to minimise the impact on the adjacent conservation area. A 'stepped form' incorporating a lower built form to the street and increased setbacks on the northern elevation to upper levels would assist in providing a more sympathetic transition to the adjacent single storey character of the Transvaal Avenue HCA.

In its current form, the proposal does not provide a sympathetic transition to and would dominate the single storey character of the Transvaal Avenue HCA. As such, it is considered the proposal would adversely impact the heritage significance of the Transvaal Avenue HCA, including associated setting and views. The proposal therefore does not comply with Clause 1(a) and (b) of Part 5.10 of the Woollahra LEP 2014.

...

RECOMMENDATION

The application is generally unacceptable as it does not comply with the relevant statutory and policy documents and would have an unsatisfactory impact.

The proposal in its current form is unsatisfactory for the following reasons:

- 1. The proposal would dominate and adversely impact the significance of the adjacent Transvaal Avenue HCA including setting and views, and would not retain or enhance the visual prominence of the existing contributory buildings within the conservation area. The proposal is therefore contrary to:*
 - a. Woollahra LEP 2014, Clause 1.2(2)(f)*
 - b. Woollahra LEP 2014, Part 5.10, Clause 1(a) and 1(b)*
 - c. Woollahra DCP 2015, Chapter D5, Clause D5.1.3, Objective O10*
 - d. Woollahra DCP 2015, Chapter D5, Appendix 1, Clause A1.1, Objective O1."*

The full detailed consideration and assessment of the effect of the proposal upon the Transvaal Avenue HCA in accordance with sub-clause 5.10(4) in terms of setting, views and visual prominence is in **Annexure 8**.

Conclusion

Based on the above, the proposal is unsatisfactory in terms of Objectives (a) and (b) in Clause 5.10(1) of the Woollahra LEP 2014 as the proposal does not:

- adequately conserve the heritage of Woollahra, as required by Objective (1)(a); and

- adequately conserve the heritage significance of heritage conservation areas, including its associated settings and views available from the public domain, as required by Objective (1)(b).

The aforementioned are therefore listed as a reason for refusal.

18.6.2. Part 6.1: Acid Sulfate Soils

Part 6.1(1) requires Council to consider any potential acid sulfate soil affectation so that it does not *disturb, expose or drain acid sulfate soils and cause environmental damage*.

The subject site is within a *Class 2* area as specified in the Acid Sulfate Soils Map.

Part 6.1(2) stipulates that works to *Class 2* soils is work that requires development consent, if it involves:

- *Works below the natural ground surface. and/or;*
- *Works by which the watertable is likely to be lowered.*

The proposal involves excavation work for the purposes of accommodating two levels of basement on the subject site that is also likely to intersect with the ground water table.

Part 6.1(3) stipulates that development consent must not be granted under this clause for the carrying out of works unless an *acid sulfate soils management plan* has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Part 6.1(4) stipulates that despite sub-clause (2), development consent is not required under this clause for the carrying out of works if:

- (a) ***a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and***
- (b) *the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

A preliminary assessment has been provided in section 5.1 'Acid Sulphate Soils' of the submitted Geotechnical and Groundwater Investigation: Proposed Mixed Use Development 19-27 Cross Street, Double Bay, Project No. 86397.00 and dated 19 September 2018, which states, inter-alia:

"Screening tests on soil samples were carried out by Envirolab Services Pty Ltd (Envirolab) to Provide indications of actual acid sulphate soil (AASS) and potential acid sulphate soil (PASS).

...The screening test results were assessed for the possible presence of AASS or PASS.

... No samples provided positive indicators of AASS. Most of the samples provided positive indicators of PASS and four of these samples were tested for a Chromium Suite at Envirolab. The results of the analysis are summarised in Table 4 and compared with the action criteria specified in ASSMAC (1998) Guidelines.

The results confirmed that none of the four samples tested were PASS soil above the action criteria.

It is therefore concluded that an Acid Sulfate Soil Management Plan is not required for the proposed works, as the potential for acid sulfate soil affectation is below and/or within an acceptable level consistent with the NSW Government Acid Sulfate Soils Management Advisory Committee (ASSMAC) guidelines.

The proposal is therefore acceptable with regard to the relevant matters for consideration in Part 6.1 of the Woollahra LEP 2014.

18.6.3. 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 the following excavation:

- A total of approximately 10,000m³ of bulk excavation material (m³ as per the submitted *Site Waste Minimisation and Management Plan*) to be removed from the site to accommodate the proposed construction of a shop top housing with two levels of basement car parking
- The extent of excavation for the basement floor subsurface walls are setback 0m from the boundaries of the site; and
- It will occur to a maximum depth of approximately 6-7m to underside of the basement level slab, as measured from the existing ground level.

The extent and siting of excavation is to have regard to the following:

- (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*

The proposal is acceptable with regards to Part 6.2 of the Woollahra LEP 2014 for the following reasons:

- It is considered that excavation would result in short-term disruption to local amenity during the construction phase, these disruptions are off-set by the long term benefits to the wider community given the proposed excavation is to ensure the sufficient provision of off-site car parking without compromising local amenity in terms of reducing on-street parking;
- The proposed excavation works are supported by a technical engineering reports;

- Council's Development Engineer is satisfied that the proposed excavation would be acceptable subject to imposition of standard **Conditions** requiring mitigating measures to ensure the maintenance of amenity on the surrounding neighbourhood and structural integrity of any existing and supporting structures during the excavation and construction phase of the development. These measures may include, but are not limited to, requirement for compilation of dilapidation reports, vibration monitoring, Geotechnical Certification & Monitoring, and dust mitigation controls.

18.6.4. Part 6.3: Flood Planning

Part 6.3 seeks to minimise the flood risk to life and property development, allow development on land that is compatible, consider projected changes as a result of climate change and avoid significant adverse impacts on flood behaviour and the environment in flood prone areas.

Part 6.3(2) states that, *"this clause is applies to:*

- (a) land identified as "Flood planning area" on the Flood Planning Map, and*
- (b) other land at or below the flood planning level."*

The subject site is located in a 'Flood Planning Area', as identified on the Flood Planning Map.

Council's Technical Services department is satisfied that the proposed development can be made fit for purpose and provide adequate provision of flood protection measures, subject to imposition of a *Flood Protection* condition, which requires that:

"The Construction Certificate plans and specifications, required by clause 139 of the Regulation, must include a Flood Risk Management Plan on the basis of the Flood Planning Level (FPL) detailing:

- a. A permanent flood risk management plan shall be installed in a prominent area of the basement carpark.*
- b. Permanent flood risk management plans shall be installed in areas frequented by the residents such as in the laundries.*
- c. Permanent brass plaques are to be fixed front court yard indicating both the 1% flood level and the PMF level*
- d. The driveway entry is to be protected by a mechanical flood barrier with the threshold set to the flood planning level of 4.0m AHD.*
- e. Tenancies 1,2 and 4 are to be protected by water tight glass doors to the flood planning level of 4.0m AHD.*
- f. The foyer is to be protected by a mechanical flood barrier with the threshold set to the flood planning level of 4.0m AHD.*
- g. The valve room is are to be protected by water tight flood door to the flood planning level of 4.0m AHD.*
- h. Permanent brass plaques are to be mounted adjacent to all mechanical flood barriers explaining their purpose and operation*
- i. All below ground construction is to be fully tanked.*
- j. Emergency self-powered lights, indicting the safe exit to a flood free area above the probable maximum flood (PMF) are to be installed in the car parking area.*
- k. Flood compatible materials shall be used for all flood exposed construction*
- l. All flood exposed electrical wiring and equipment is to be waterproofed.*

- m. All flood protection measures are to be inspected and certified as fit for purpose after construction is complete by a engineer experienced in flood mitigation.*

The application is recommended for refusal but should development consent be issued compliance with these requirements can be enforced by a condition requiring compliance with the above.

The proposal is therefore satisfactory in terms of the objectives in Part 6.3(1) of the Woollahra LEP 2014.

19. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015

19.1. PART A1.1.5: OBJECTIVES OF THIS PLAN

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

19.2. CHAPTER D5: DOUBLE BAY CENTRE

19.2.1. DCP Compliance Table (Non-compliances are highlighted)

Site Area: 1,334m ²	Existing	Proposed	Control	Complies
Section D5.6: Development controls				
D5.6.2 Use				
Use	Commercial / retail	Commercial / Residential	Mix of Uses	Yes
Access to Residential Uses at Ground Floor	N/A	<20% of Transvaal Ave frontage	Max 20% of Frontage	Yes
D5.6.3 Urban character				
D5.6.3.2 - Maximum Height – Storeys & (m)	1-2 storeys (7.6m)	6-7 storeys (22.34m - 23.5m)	4 storeys (14.7m) above ground	No
D5.6.3.4 - Front Setback (Cross Street)				No (part)
- G	2.9m	2.33-4.2m	3m	No
- L 1	2.9m	0-3.29m	3m	No
- L 2	N/A	0-3.29m	3m (1.8 + 1.2)	No
- L 3	N/A	0-3.29m	5.3m (1.8 + 3.5)	No
- L 4	N/A	0-3.29m*	n/a*	No
- L 5	N/A	3.29-5.7m*	n/a*	No
- L 6	N/A	5.7-8m*	n/a*	No
D5.6.3.4 - Front Setback (Transvaal Ave)				No
- G	3.4m	0.86m	3m	No
- L 1	3.4m	0.86m	3m	No
- L 2	N/A	0.86m	4.8m (3 + 1.8)	No
- L 3	N/A	0.86m	4.8m (3 + 1.8)	No
- L 4	N/A	0.86m*	n/a*	No
- L 5	N/A	0.86m*	n/a*	No
- L 6	N/A	11.7m*	n/a*	No
D5.6.3.4 - Rear Setback (North) [Adjacent to Transvaal HCA]				
- G	1.6m	1.6-8m	0m	Yes
- L 1	1.6m	0-9.6m	0m	Yes
- L 2	N/A	0-9.6m	0m	Yes
- L 3	N/A	0-9.6m	0m	Yes
- L 4	N/A	0-9.6m	n/a*	No*
- L 5	N/A	0-9.6m	n/a*	No*
- L 6	N/A	8.8-9.6m	n/a*	No*

Site Area: 1,334m ²	Existing	Proposed	Control	Complies
D5.6.3.4 - Side Setback (West) [Adjacent to Intercontinental Hotel] - G - L 1 - L 2 - L 3 - L 4 - L 5 - L 6	0m 0m N/A N/A N/A N/A N/A	0m 0m 0m 0m 0-2.2m 0-2.2m 0-2.2m	0m 0m 0m 0m n/a* n/a* n/a*	Yes Yes Yes Yes No* No* No*
D5.6.3.1 Occupied Floor Area (%) - L G-1 - L 2-3 - L 4	<100% N/A N/A	<100% >50% <100%*	Max 100% Max 50% n/a*	Yes No No*
D5.6.3.1 – Max building depth Level 2 and above / cross ventilation - L 2 - L 3 - L 4 - L 5 - L 6	N/A	26.8m 26.8m 26.8m* 26.8m* 8.2m*	Max 15.6m	No No No* No* No*
D5.6.3.1 - Minimum <u>floor-to-ceiling</u> heights of habitable rooms	N/A	Min 2.7m	2.7m	Yes
D5.6.3.2 - Floor level of uppermost habitable storey below the permissible height	N/A	16.4m (RL 19.65) (Level 5 FFL)	11.2m (3.5m below maximum permitted height)	No
D5.6.3.2 - Minimum <u>floor-to-floor</u> heights - Ground (Retail) - L 1 (Residential) - L 2 (Residential) - L 3 (Residential) - L 4 (Residential) - L 5 (Residential) - L 6 (Non-habitable / plant room)	Unknown Unknown N/A N/A N/A N/A	4m 3.1m 3.1m 3.1m 3.1m 2.8m	4m 3.1m 3.1m 3.1m 3.1m N/A	Yes Yes Yes Yes Yes N/A
D5.6.3.3 Building Articulation - <i>Max internal space</i> in articulation zone (%) <u>Cross Street</u> - G-1 - L 2-4 <u>Transvaal Ave</u> - G-1 - L 2-4	<u>Cross St</u> < 100% N/A <u>Transvaal Ave</u> < 100% N/A	<u>Cross St</u> < 100% Max 40% / 1.2m <u>Transvaal Ave</u> < 100% Max 40% / 1.8m	<u>Cross St</u> Max 100% Max 40% / 1.2m <u>Transvaal Ave</u> Max 100% Max 40% / 1.8m	Yes Yes Yes Yes
D5.6.3.8 - Heritage items and character buildings - New developments	Compatible	Incompatible – refer to Part 5.10 WLEP 2014 assessment	Must be compatible with the significance of HCA	No
D5.6.4 Relationship to public domain				
D5.6.4.1 - Awnings	Not continuous awning	continuous awning provided	Must be continuous	Yes
D5.6.4.1 - Awnings - Minimum soffit height	Unknown	Min 4m	3.2m	Yes
D5.6.4.4 - Public art	N/A	Provided	Provided for >CIV \$15Mil	Yes
D5.6.4.4 - Public art	N/A	Partially obscured / not readily visible	Readily Visible	No
D5.6.4.6 - Active Frontage to Lanes	N/A	N/A – no rear lanes	75% of lane frontage	N/A
D5.6.5 Amenity				
D5.6.5.1 Minimum separation (m) - Non-habitable to non-habitable - habitable to habitable	>6m Nil.	>6m >9m	6m 9m	Yes Yes

Site Area: 1,334m ²	Existing	Proposed	Control	Complies
- Balcony to habitable	Nil.	>12m	12m	Yes
D5.6.5.4 - Minimum Private Open Space - Small dwelling (<60m ²) - Medium dwelling (60-90m ²) - Large dwelling (90m ² +) - Preferred & Minimum depth (m)	N/A	Min 8m ² Min 12m ² Min 16m ² Min 2.4m & 1.8m	8m ² 12m ² 16m ² 2.4m & 1.8m	Yes Yes Yes Yes
D5.6.6 Solar access and natural ventilation				
D6.6.6.1 Maintain Solar Access to <u>publicly accessible spaces</u> (footpath of Cross St) between 12pm and 2pm on 21 June	Partially overshadowed between 12-2pm	Further reduced between 12-2pm (Cross St & Goldman Ln)	Not further reduced beyond existing between 12pm and 2pm	No
D6.6.6.1 Hours of Solar Access to <u>adjoining properties</u> between 9am and 3pm on 21 June - Habitable windows (north-facing) - Private open space	Min 3hrs Min 2hrs	Min 3hrs Min 2hrs	Min 3hrs Min 2hrs	Yes Yes
D6.6.6.2 Natural cross-ventilation to all buildings	Nil.	Max 18m**	Max Depth 15.6m	No**
D6.6.6.2 Cross-ventilation to dwellings	N/A	87% (11/18 units)**	80% of Dwellings (15)	No**
D5.6.7 Geotechnology and hydrogeology				
Geotechnology and hydrogeology - Excavation Depth	N/A	Geotechnical Report provided	Excavation >1m is accompanied by a Geotechnical & Structural Report	Yes
D5.6.8 Parking and servicing				
D5.6.8.1 - Location of Parking	Nil	Parking located within Basement Level	Located below Ground Level	Yes
D5.6.8.4 - Site facilities - Air-Conditioning Units - Garbage Storage Area - Fire Hydrant and booster pumps	-	within dedicated internal areas / not readily visible from public domain	Not readily visible / visually integrated	Yes Yes Yes

*No controls for this level, this level of the development extends outside the permitted envelope controls.

**Complies with ADG (Part 4B: Natural Ventilation)

19.3. Section D5.1: Introduction

Part D5.1.3: Objectives

The objectives of this chapter are:

- O1 To retain and enhance through block connections which allow pedestrians to move freely within the Double Bay Centre.
- O2 To develop the particular qualities of different parts of the Double Bay Centre.
- O3 To encourage a diverse mix of uses in the Double Bay Centre and maintain retail uses at ground level.
- O4 To conserve and enhance the visual and environmental amenity of all buildings and places of heritage significance in the Double Bay Centre.
- O5 To enhance the way development contributes to a sense of place.
- O6 To ensure a high standard of architectural and landscape design in any new developments within the Double Bay Centre.
- O7 To preserve and enhance the diversity of uses in the Double Bay Centre.

- O8 *To ensure that new development is compatible with the existing built form, and streetscape and village character.*
- O9 *To encourage view sharing and individual privacy.*
- O10 *To ensure new development is designed to be compatible with the heritage significance of listed heritage items.*

Urban Design Comment: The proposal does not achieve consistency with the relevant Objectives O4, O8, and O10 in *Part D5.1.3: Objectives* of the Double Bay Centre in the Woollahra DCP 2015, as:

- As discussed above, the proposal is not compatible with the *existing* streetscape character immediately adjoining the site nor the *desired future* character of the Double Bay Centre and specifically the Cross Street Precinct (Objective O8);
- As discussed above, the proposal is incompatible with the heritage significance of the Transvaal Avenue HCA including its setting, views and the visual prominence of the existing contributory buildings (Objective O4, O10).

Conclusion

The aforementioned is therefore listed as a reason for refusal.

19.4. Section D5.3: Urban structure

Part D5.3.1: Structure of the Double Bay Centre

The proposal is inconsistent with the Structure of the Double Bay Centre, as detailed in Figure 5 and 11, as:

- It presents as a 5-6 storey development to Cross Street and 6 storey development to Transvaal Avenue with an additional level above recessed within the roof form, which is inconsistent with Figure 5 which encourages 4-5 storey development only to major streets and not to secondary streets/lanes (Note: Transvaal Avenue is not identified as a major street).

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

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

The proposal would incorporate active street frontages with residential spaces above and would satisfy many of the key strategies.

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

Strategy 1:

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

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

Strategy 3:

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

... b) Retain and enhance the sunlit block of arcades between Knox Street and Cross Street...

Strategy 4:

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

- ...b) Improve the pedestrian environment by:*
– providing building setbacks and footpaths in lanes; ...

Strategy 5:

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

- a) Provide direction and certainty of outcome in relation to built form to ensure:*
– a coherent street scale
– compatibility with existing urban fabric
– a variety of building types
– a high level of environmental amenity...
b) Promote high quality architectural design throughout the centre that positively contributes to the streetscape.
c) Ensure that new development is compatible with the existing built, streetscape and village character
d) Establish building envelopes that define building height and building lines (at lower and upper levels) to provide coherent street definition.

Strategy 8:

To improve parking in the centre

- a) Improve parking and traffic conditions in the centre.*
b) To improve traffic and parking management in the centre and minimise vehicular/pedestrian conflicts.
c) Provide adequate parking in new developments at basement level, in the centre of blocks or in other discrete locations.
d) Limit the impact of overflow commercial parking in predominantly residential areas.

Conclusion

The aforementioned are therefore listed as a reason for refusal.

19.5. Section D5.4: Street character

Part D5.4.1 Desired future character

Part D5.4.1: Desired future character, provides:

“The following is provided for each street in the centre:

- **Existing character**, which describes elements such as built form, streetscape, lighting, landscape and views;
- **Desired future character**, which outlines the urban design criteria for each street;
- **Annotated street sections**, which illustrate the **existing** and the **desired future built form**.”

Section D5.4 describes the *existing character* and the *desired future character* of each street in the Double Bay Centre. An assessment of the desired future character prescribed by this part for ‘Cross Street’ is provided below:

Part D5.4.2: Common street strategies

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

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

The proposal satisfies the relevant criteria prescribed by this part.

Part D5.4.7 Cross Street

Part D5.4.7 of the WDCP 2015 encourages:

- Predominately a 3-4 storey street wall height;
- retention of a maximum three-four storey built form fronting Cross Street, Bay and Transvaal Avenue with typically two-storey built forms to the rear;
- a recessed upper floor level (4th or 5th storey)

Note: Part D5.4.7 only permits 5-storey developments to the west of the subject site which has an 18.1m height limit.

Part D5.4.7 of the WDCP 2015 provides the following desired future character objectives:

- a) *Unify the street on the north side by building to the street boundary.*
- b) *Retain street level connections to Knox Lane.*
- c) *Allow 4 storeys on 50% of each site frontage to Knox Lane. See Control Drawings for more information.*
- d) *Encourage arcades and courtyards on the south side that cater for outdoor eating and informal gathering.*
- e) *Strengthen built form on corner sites.*

The proposed development does not achieve the Cross Street desired future character objectives c) and e) as:

- It does not provide for a maximum four-storey street wall built form to Cross Street or Transvaal Avenue, presenting a 5-6 storey built form, to Cross Street; and a 6-storey built form to Transvaal Avenue, which is inconsistent with Objective (c);

- The proposed development attempts to emphasis itself via a strong built form element as a *corner site* building. The site is however not identified as a prominent corner site in the DCP, which is inconsistent with Objective (e);

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

19.6. Section D5.5: Built form envelopes: Control Drawing 3

Part D5.5.1: Urban form methodology

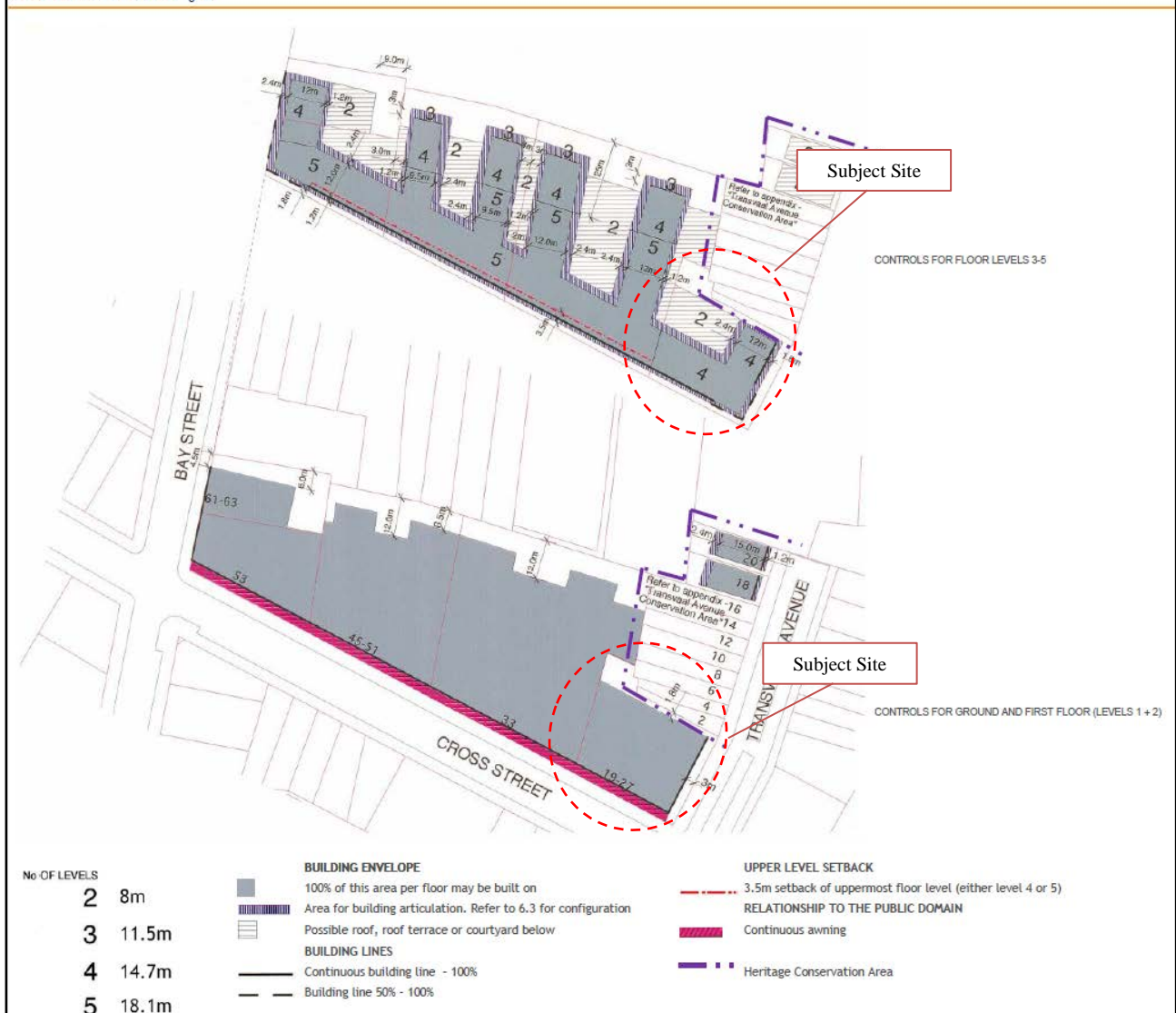
This section contains control drawings which show building envelopes for every site in the Double Bay Centre.

The envelopes generally establish:

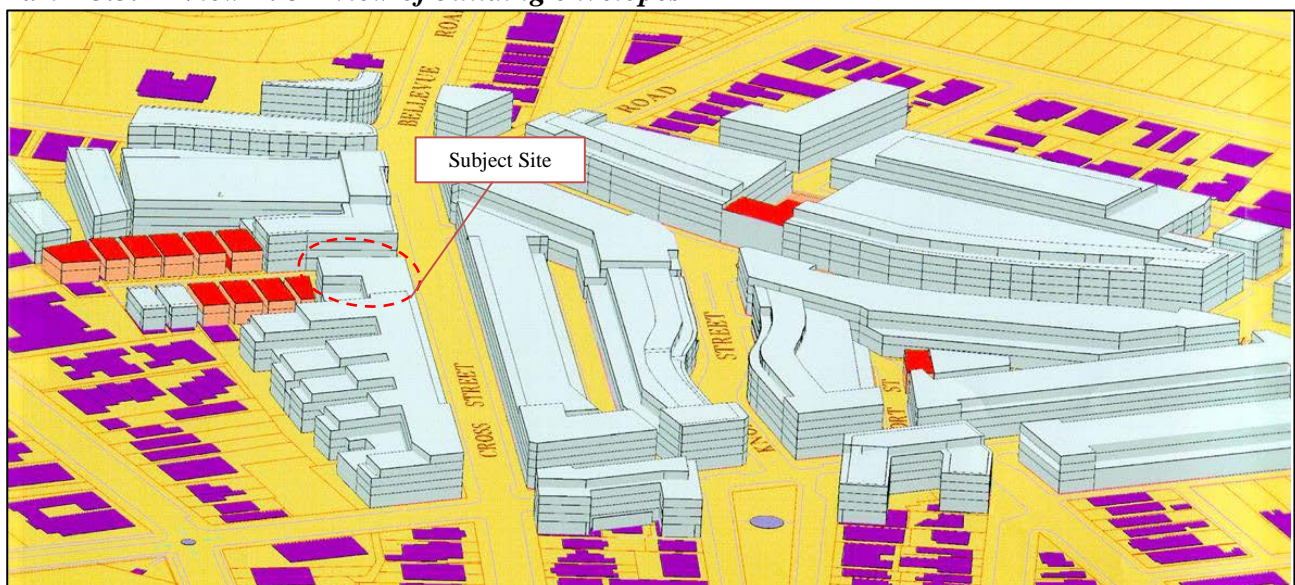
- four storey heights along streets;
- two storey heights along lanes; and
- lesser building depths above the first floor to achieve high amenity development flexible for residential or commercial uses.

Part D5.5.7 Control drawing 3

D5.5.7 Control drawing 3

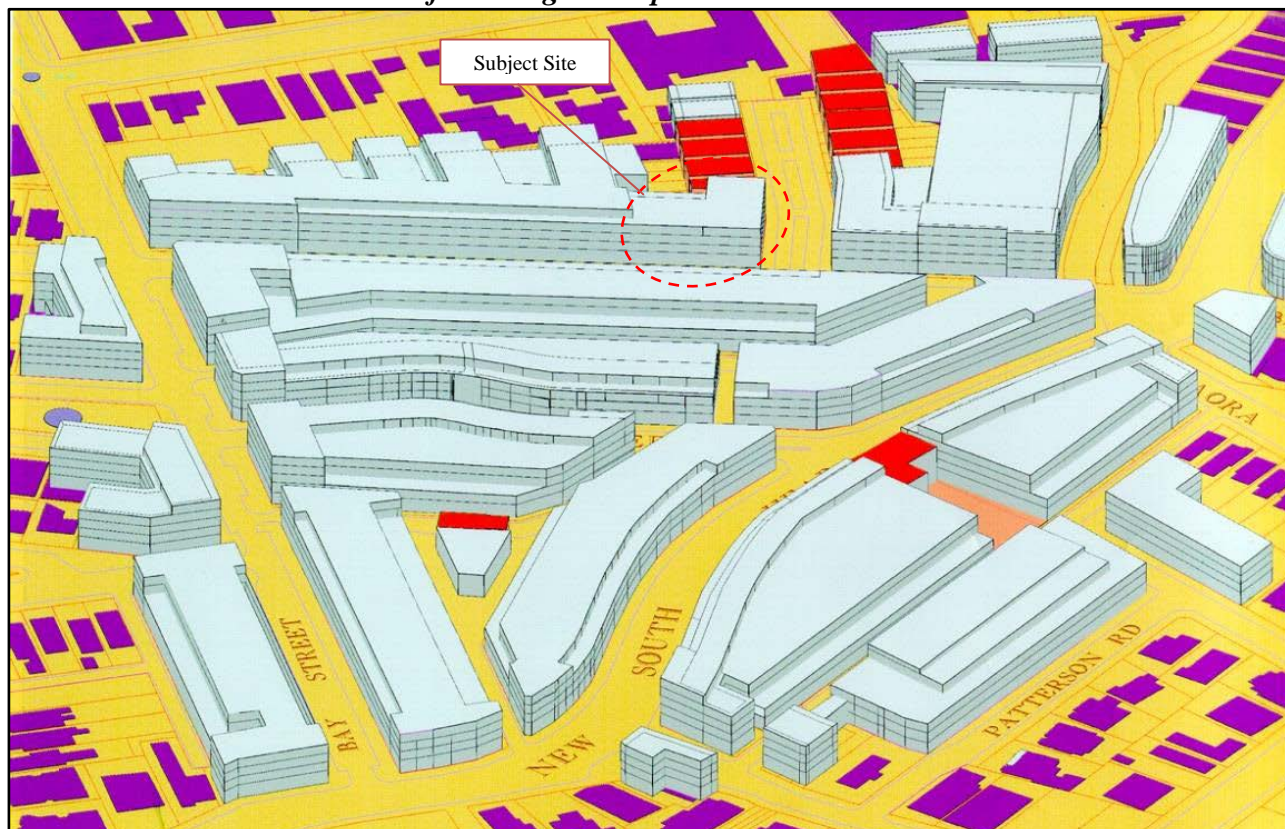


Part D5.5.12 View 1: 3D view of building envelopes



View east along Cross Street

Part D5.5.13: View 2: 3D view of building envelopes



Northerly view

19.7. Section D5.6: Development Controls

Part D5.6.1: Format

Part D5.6.1 provides (emphasis added):

“...Objectives

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

Controls

The controls establish the means of achieving the objectives. This section must be read in conjunction with the Built Form Envelopes: Control drawings that illustrate the site specific controls. Diagrams are incorporated with the development controls to assist interpretation....”

Part D5.6.2: Use

- D5.6.2 – Controls C1, C2, C3, C5 and Objectives O1, O2, O3, O4, O6, O7, O8 & O9

The proposed mixed-use shop top housing development which provides for a mix of commercial/retail at ground floor level and residential uses above, achieves consistency with the relevant Controls and Objectives in Part D5.6.2.

The proposal would satisfy the relevant criteria prescribed by this part.

Part D5.6.3: Urban Character

Building envelopes (Part 5.6.3.1)

- D5.5.7: Built Form Envelopes: Control Drawing 3
- D5.6.3.1 – Control C1 & Objective O1

The proposal does not comply with Control C1 nor does it achieve consistency with the relevant Objective O1 in Part D5.6.3.1: Building Envelopes of the Woollahra DCP 2015, as:

- The proposed development is not located within the prescribed building envelopes as shown on the *Built Form Envelopes: Control Drawing 3* and as noted in the Compliance Table above;
- The proposed 6-7 storey building with a 5-6 storey street wall height and reduced front setbacks to Cross Street will result in a building that is inconsistent with the *existing character* and the *desired future character* of its surrounding context, as:
 - On the northern side of Cross street, there is an existing established two-storey street wall height at the Intercontinental Hotel (33 Cross Street), at 45-51 and 53 Cross Street and at 15-15A Cross Street;
 - On the southern side of Cross Street, there is an evolving four-storey street wall height (recently approved and under construction developments at 16-18, 20-26 and 28-34 Cross Street);
 - It neither responds to the to the existing street wall height nor the four-storey street wall height envisaged by Woollahra DCP 2015 D5.4.7 and D5.5.7, or displayed by the recent development on the southern side of Cross Street with a 4-storey street wall.
- The proposed 6-7 storey building with a proposed 6-storey street wall height and reduced front setbacks to Transvaal Avenue will result in a building that is inconsistent with the *existing character* and the *desired future character* of its surrounding context, as:
 - It neither responds to the two-storey street wall height envisaged by Part D5.5.7; nor
 - the existing single-storey buildings of the Transvaal Avenue HCA.

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

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

Height (5.6.3.2)

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

The proposal does not comply with Control C1, C2, C3 nor does it achieve consistency with the relevant Objective O1 in Part D5.6.3.2: Height of the Woollahra DCP 2015, as:

- The proposed development is not located within the prescribed building height along street as shown on the *Built Form Envelopes: Control Drawing 3* and as noted in the Compliance Table above. It will result in a building form that significantly exceeds the overall and street wall height requirements by this DCP for Cross Street (Controls C1, C2 & C3), failing to achieve consistency with objective O1 which states, “*Encourage buildings to achieve the heights along street and lane frontages described by the control drawings.*”.

The proposal therefore fails to satisfy the relevant objective of this part.

Building articulation (5.6.3.3)

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

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

The proposed development is articulated with both internal and external spaces within the articulation zones as specified by the *Built Form Envelopes: Control Drawing 3* located to Cross Street and Transvaal Avenue. The areas of articulation are consistent with numerical requirements of Control C1 and C2. Notwithstanding this, there are no controls specified for the uppermost levels (level 4 and above) but are nevertheless are consistent in treatment and detail with the lower levels.

The proposal would satisfy the relevant criteria prescribed by this part, except that the uppermost levels (level 4 and above) is not envisaged under this Part.

Setbacks (5.6.3.4)

- D5.5.7: Built Form Envelopes: Control Drawing 3
- D5.6.3.4 – Controls C1, C2, C3, C4 & Objectives O1, O2, O3.

This part of the DCP aims to provide, “*O1 encourage consistent building lines to provide coherent streetscapes*”, “*O2 - introduce new setbacks at street level ... to improve pedestrian amenity.*” and “*O3 - ... provide street setbacks to the upper level of development to permit mid-winter sunlight.*”

The proposal does not comply with Control C1, C2 nor does it achieve consistency with the relevant Objectives O1, O2 and O3 in Part D5.6.3.4: Setbacks of the Woollahra DCP 2015, as:

- The proposed development is not located within the prescribed front setbacks of Cross Street and Transvaal Avenue as shown on the *Built Form Envelopes: Control Drawing 3* and as noted in the Compliance Table above. It will result in a building bulk and scale that significantly exceeds the setback requirements by this DCP for Cross Street (Controls C1, C2), failing to achieve consistency with objectives O1, O2 and O3.

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

Corner buildings (5.6.3.5)

Not applicable – the subject site is *not* identified as a corner lot.

Architectural resolution (5.6.3.6)

- D5.6.3.6 – Objectives O2 and O4;

Council's Urban Design Officer does not support the current scheme from a strategic direction point-of-view in that the proposal in its current form as it does not result in development that is consistent with the *existing* nor the *desired future* streetscape character of the Double Bay Centre.

The proposed development is considered to be contrary to the strategic direction envisaged for each street and lane within the locality, specifically the Cross Street Precinct, failing to achieve consistency with Objectives O2 and O4.

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

Roof design (5.6.3.7)

The proposal satisfies the relevant criteria prescribed by this part.

Heritage items and character buildings (5.6.3.8)

- D5.6.3.8 – Controls C1, C2 and Objective O1;

The subject site and buildings thereon are not identified as items of built or environmental heritage nor located within heritage conservation areas but is located immediately adjacent to the *Transvaal Avenue Heritage Conservation Area*.

The proposal does not comply with Control C1, C2 nor does it achieve consistency with the relevant Objective O1 in Part D5.6.3.8: Heritage items and character buildings of the Woollahra DCP 2015, as:

- It is incompatible with the heritage significance of the Transvaal Avenue HCA.
- It does not conserve and enhance the visual amenity of the Transvaal Avenue HCA. The Proposal will adversely impact on the visual prominence of the HCA and contributory items located therein as viewed from the public domain due to its height, bulk, scale and uniform setbacks.
- It does not enhance the distinctive 'fine grain' streetscape character and aesthetic value of the existing single-storey Gothic Revival style cottages that are uniform in scale, form and detailing.
- It does not ensure the retention of the visual prominence of the existing contributory buildings within the Transvaal Avenue streetscape.

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

19.8. Section D5.6.4: Relationship to public domain

Awnings (D5.6.4.1)

- D5.6.4.1 – Controls C1, C2, C3 and Objectives O1 & O2

The proposal involves the provision of awnings located to the Cross Street and Transvaal Avenue entry points which will not have any adverse impact and is considered to be satisfactory with regard to Objective O1 and O2.

The proposal would satisfy the relevant criteria prescribed by this part.

Colonnades (D5.6.4.2)

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

The proposal would satisfy the relevant criteria prescribed by this part.

Arcades, walkways and courtyards (D5.6.4.3)

- Part D5.6.4.3 – Objectives O1, O2, O3

The DCP encourages the retention existing and creation of new arcades and/or walkways to provide public access and connections throughout the Double Bay Centre. The existing site does not have any public thoroughfare nor does the site contain opportunity for a through-site link.

The proposal would satisfy the relevant criteria prescribed by this part.

Public art (D5.6.4.4)

- Part D5.6.4.4 – Controls C1, C2, C3, C4 and Objectives O1, O2, O3, O4, O5

Control C1 only requires that that development with a capital investment value of \$15M or more to include public art. The proposed development involves an estimated cost of work of in excess of \$40Million and therefore inclusion of public art is required.

The proposal does not comply with Controls C3, C4 nor does it achieve consistency with the relevant Objective O3 in Part D5.6.4.4: Public Art of the Woollahra DCP 2015, as it is not readily visible from the public domain and the submitted 'Public Art Plan' has not been prepared nor undertaken in accordance with the 'Woollahra Public Art Guidelines for Developers'.

Council's Public Art Coordinator has raised the following concerns:

- *The Developer is encouraged to engage an Art Curator or Art Consultant to assist them with the public art component of their development.*
- *Looking at the nature and scale of the development, the proposed 2 art murals appear disproportionate in scale and presence to relate to the 1% of CIV, in this case approximately \$400,000, which should be allocated to public art in developments. A more detailed budgetary breakdown is needed.*
- *The proposed art murals are not very visible from the public area. The plaza might be a suitable space to have a public art presence. Has the Developer considered incorporating the plaza area as a space for public art?*

Notwithstanding the above, the non-compliances and issues raised can be addressed prior to issuing of a construction certificate subject to the following recommended Condition of Consent:

"C.1 Public Art Plan

Before further assessment and recommendation to Council's Public Art Panel, as well as prior to commencement of any construction, a complete Public Art Plan must be submitted to Council's Public Art Coordinator for assessment and approval. It must include:

- *the proposed final artwork/s for Council's Public Art Panel to assess and provide recommendation on*
- *the timeline for the public artwork*
- *a detailed and itemised budget breakdown, corresponding to the Public Art Guidelines assessment criteria, including 6.5: 'Value of public art' (at least 1% of CIV)"*

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

Outdoor eating (D5.6.4.6)

There is no outdoor footpath seating proposed as part of the subject DA. The criteria prescribed in this part is not relevant to the proposed scope of work.

Ground floor active lane frontage (D5.6.4.6)

The proposal would satisfy the relevant criteria prescribed by this part.

19.9. Section D5.6.5: Amenity

Visual privacy (D5.6.5.1)

- D5.6.5.2 – Controls C1, C2, C4 and Objectives O1 and O2.

Concern has been raised from the adjoining neighbour's (at 16-18 Cross Street) in relation to potential adverse visual impacts arising from the proposed south-facing balconies which would potentially overlook habitable room windows and areas of private open space.

The proposal however complies with relevant Controls C1, C2 and C5 and achieves consistency with the relevant Objectives O1 & O2 in Part D5.6.6.2 of the Woollahra DCP 2015, as:

- The majority of the proposed glazed openings are orientated towards Cross Street, and Transvaal Avenue with substantial separation distances from any surrounding residential uses;
- The proposed balconies and terraces are also either orientated towards public areas or adequately offset from the northern (side) boundaries including the provision of raised landscape garden beds along their northernmost edges. Cumulatively, this would ensure downward sightlines to the main areas of private open space and habitable room windows are minimised.

Acoustic privacy (D5.6.5.2)

- D5.6.5.2 – Control C1, C2 and Objectives O1, O2 and O3.

Subject to standard noise related conditions requiring acoustic certification of the proposed mechanical plant equipment and the like prior to issuing of a construction certificate the proposal would satisfy the relevant criteria prescribed by this part.

Landscaped areas (5.6.5.3)

The existing and proposed proposal does not provide any deep-soil landscaping nor is it considered necessary in this urban environment. There is no existing trees and/or vegetation on the subject site, nor are there any foreseeable significant impacts to Council's street trees.

Nevertheless, the proposal was referred to Council's Tree and Landscape Officer which has concluded that the proposed development is supported on tree and landscaping grounds subject to the recommended replacement street tree planting, tree protection and preservation conditions associated with safeguarding the street trees to be located on Cross Street during any development work.

The proposal would satisfy the relevant criteria prescribed by this part.

Private open space (5.6.5.4)

The proposal would satisfy the relevant criteria prescribed by this part.

Solar access (5.6.6.1)

- Part D5.6.6.1 – Controls C1, C2, C3, C4 and Objective O1

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

The proposal results in the following additional shadows:

- 9am, 10am and 11am - on 21 June

Overshadowing to the north-facing balconies/habitable room windows of the 16-18 Cross Street development. Additional overshadowing of the Cross Street road reserve inclusive of its footpath on the southern side. Overshadowing of the publicly accessible Goldman Lane walkway.

- 12pm, 1pm and 2pm - on 21 June

Additional overshadowing of the Cross Street road reserve inclusive of its footpath on the southern side, between 12-2pm. Minor Overshadowing of Transvaal Ave road reserve. Overshadowing of the publicly accessible Goldman Lane walkway, between 12-1pm. No additional overshadowing of habitable room windows main areas of private open space.

- 3pm - on 21 June

Additional overshadowing of the Cross Street road reserve and its footpath on the northern side. Overshadowing of west-facing glazed openings of the commercial building at 15-15A Cross Street. No additional overshadowing of habitable room windows main areas of private open space.

As per the above assessment, the proposal would not achieve compliance with the minimum solar access requirements of Control C1, C2 nor achieve consistency with the relevant Objective O1 in Part D5.6.6.1 of the Woollahra DCP 2015, as:

- Control C1 states, “*Preserve solar access to Guilfoyle Park and the footpath on the south side of Knox Street, Cross Street, and New South Head Road between 12 noon and 2pm on 21 June.*”
- Control C2 states, “*Development should comply with the control drawings in Section D5.5 to ensure adequate solar access is provided to neighbouring properties*”. The proposal does not comply with the control drawing 3 i.e. it is outside of the permitted building envelope;
- Therefore, additional overshadowing to adjoining private and/or public domain which is arising as a result of a proposed non-compliant built form, fails to achieve consistency with the key objective O1 which aims to, “*minimise overshadowing of adjoining properties or publicly accessible spaces*”. The proposal is not minimising impact with regards to solar access.

Conclusion

For reasons outlined, the proposal fails to satisfy the relevant criteria prescribed by this part and is therefore listed as a reason for refusal

Cross-ventilation (5.6.6.2)

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

Geotechnology and hydrogeology (5.6.7)

The proposal would satisfy the relevant criteria prescribed by this part.

On-site parking (5.6.8.1)

- Part D5.6.8.1 – Control C1

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

The existing site does not contain any parking. The proposal increases gross floor area on the site which results in the requirement for additional parking to be provided as per Chapter E1 Parking and Access which provides parking generation rates for the Double Bay Centre. The proposal provides an oversupply of residential parking and undersupply of non-residential parking

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

See below *Chapter E1: Parking and Access* for further assessment.

Vehicular access (5.6.8.2)

The proposal satisfies the relevant criteria prescribed by this part.

Site facilities (5.6.8.4)

The provision of site facilities including waste storage, fire hydrants and the like are unobtrusively integrated into the design of the proposed development and/or not readily visible from the public domain.

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

19.10. Appendix 1: Transvaal Avenue Heritage Conservation Area

19.10.1. Part A1.1: Introduction

As already assessed above, the proposal fails to satisfy the relevant Objective O1 which aims:

“...To retain and enhance the existing contributory buildings in Transvaal Avenue and to ensure that they retain their visual prominence in the streetscape...”

The proposal fails to satisfy the relevant criteria prescribed by this part and is therefore listed as a reason for refusal.

19.11. Chapter E1: Parking and Access

19.11.1. Part E1.1.3: Objectives

The objectives of this chapter are:

- O1 To minimise the amount and impact of vehicular traffic generated due to proposed development.*
- O2 To ensure that development generating vehicular traffic makes adequate provision off street for the car parking and servicing needs of its occupants and users, including residents, employees, visitors and deliveries.*
- O3 To ensure the safe and efficient movement of vehicles within, entering and leaving properties.*
- O4 To minimise the environmental effects, particularly visual impact, of parked vehicles on the amenity of the municipality.*
- O5 To ensure that access points to car parking areas are situated to minimise disruption of vehicle movement on the public road system.*

For the reasons discussed below, the proposal fails to satisfy objectives O1, O2, O3 and O5 are therefore listed as a reason for refusal.

19.11.2. Part E1.4-E1.5: Residential parking and Non-residential parking

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

Parking for non-residential uses is calculated using the generation rates specified in E1.5.2 and applied by the multiplier rate in E1.5.3.

Use	GFA	Rate	Multiplier	Control (Spaces Required)	Complies (Y/N) (Spaces Provided)
<u>Residential Component</u> (Mixed-use)* - Maximum Parking Rates	1-Bed/Studio - 0.5 spaces/unit 2-Bed – 1 space/unit 3-Bed/3+Bed- 1.5 spaces/unit Visitors – 0.2 spaces/unit		x0.6**	Max 29 Spaces	N – 43 Spaces (39 for residents, 4 for residential visitors)
<u>Commercial</u> (Business/Retail) - Minimum Parking Rates	676m ²	3.3/100m ²	x0.6***	Min 14 (13.38)	N – 8 spaces

*Units: 18 (2 x 1Bed, 1 x 2Bed; and 15 x 3Bed units)

** The number of parking spaces for 1-Bed or studio apartments in the Double Bay Centre are multiplied by (x0.6)

*** The number of parking spaces for non-residential uses are multiplied by the parking multiplier (x0.6) in the Double Bay Centre B2 zone.

The applicant provides the following justification for the exceedance of the maximum number of parking spaces for the residential component and short-fall for the non-residential component of the mixed-use development is:

“Whilst the residential provision exceeds the DCP criteria, it is assessed that:

- *resident apartment car parking in Double Bay does not have a high traffic generation characteristic because of the “Town Centre” range of facilities within easy walking distance (supermarket, cafés, restaurants, bars, hairdressing/ beauty salons, doctors, chemists)*
- *apartment residents often have a recreational vehicle that is seldom used (or used on weekends) or commonly command extra parking so that they can utilise it for storage*
- *because it is only proposed to provide 8 spaces for the retail and Food/Beverage*
- *tenancies in lieu of the normal minimum requirement of 19 spaces, then there will be a net reduced potential traffic generation*
- *while there is a common perception that providing less car parking results in reduced commuter traffic generation there is no known study to support this perception. In fact, TTPA undertook an assessment of the comparative peak traffic generation characteristics of residential apartments at St Leonards which had constrained parking provision (Herbert Street) and apartments which did not have constrained parking provision.*

All things considered, it is apparent that the proposed parking provision will not be incorporated and will not result in any adverse traffic implications.”

Council’s Traffic Engineer does not support the oversupply of residential parking and undersupply of non-residential parking.

The proposal is not considered to achieve consistency with Part E1.4 and E1.5 of the Woollahra DCP 2015 and is therefore listed as reasons for refusal.

19.11.3. Part E1.6: Bicycle parking and Part E1.7: Motorcycle parking rates

Use	Existing	Spaces Provided	Spaces required	Complies
Residential Accommodation (Part E1.6)	N/A	30 bike spaces	Min 31 bicycles spaces (1 per dwelling + visitor spaces)	Yes (Merit)
Residential Accommodation (Part E1.7)	N/A	6 spaces (1.2m x 2.4m)	Min 5 spaces (Min 1 motorbike space per 10 car spaces)	Yes (Merit)

Council’s Traffic Engineer provides:

“In response, the proposed provision includes 30 bicycle parking spaces and six (6) motorcycle parking spaces in the basement area, which will result in a shortfall of one (1) bicycle parking space. It is however acknowledged residential storage room can accommodate a bicycle, the marginal shortfall is thus considered acceptable”

The proposal is considered to achieve consistency with regards to the relevant controls and objectives in *Part E.6 Bicycle parking and end-of-trip facilities* and *Part E1.7: Motorcycle parking rates* of the Woollahra DCP 2015.

19.11.4. Part E1.10: Parking and Access Design Standards

	Existing	Proposal	Control	Complies
Dimension of Car Parking Space	N/A	18 x B85 standard car spaces	2.4-3m x 5.4m	Yes
Maximum Length of Parking Removed from the Street	1 (1 driveway)	Max 1 (1 driveway)	5.4m, max 1 space	Yes
Access To and From the Site	N/A	Forward direction, ingress and egress	Forward Movement	Yes
Vehicle Entrance Splay	N/A	Not provided	2m x 2m at 45 degrees	No
Driveway Width	Approx. 3m	5.5m	3.0m-6.0m (or greater if required)	No (6m required)
Location of Driveway	Frontage (no rear access)	Frontage (no rear access)	From the Rear whereby possible	Yes
Angle of Driveway to the Street	Non-perpendicular	Perpendicular	Perpendicular	Yes
Distance of Driveway from Adjoining Driveway	>5.4m	>5.4m	0m or 5.4m only (maximise on-street parking)	Yes

Part E1.10.3: Car parking space and bay size

Part E1.10.3 of the Woollahra DCP 2015, provides:

“Minimum bay width and length dimensions are to comply with AS/NZS 2890.1 and AS 2890.2.”

E1.10.4 Ramps and primary aisles

Part E1.10.4 of the Woollahra DCP 2015, provides:

“The minimum dimensions for the design of ramps and primary aisles which do not have direct access to or from parking bays are shown in AS/NZS 2890.1 - Section 2.5 Design of Circulation Roadways and Ramps.

The ramp grading is to be designed to ensure that the breakover angle coming onto, or off, a ramp is not so severe as to cause scraping of a vehicle undercarriage. Design of ramps and gradients will be consistent with AS/NZS 2890.1.”

Part E1.10.5: Turning paths

Part E1.10.5 of the WDCP 2015 provides:

“The design of turning paths for manoeuvring, parking space access and aisle designs are set out in AS/NZS 2890.1 Appendix B Section B3 Swept Paths for cars (for the B85 vehicle) and AS 2890.2 Part 2: Off-section street commercial vehicle facilities.

Some laneways or narrow streets do not have sufficient turning space for B85 vehicles. The removal of on-street parking to establish a turning space into private property should be avoided and will only be considered in the following circumstances:

- no more than a maximum of 5.4m of on-street parking, measured at the kerb line, is removed to provide for a turning space;*
- the use and quantity of the remaining on-street parking spaces is not adversely affected; and*
- 5.4m is a maximum. If Council can demonstrate that a B85 vehicle can access and egress the site with the removal of less than 5.4m of on-street parking, then this lesser amount is all that will be approved.*

Part E1.10.6 Driveways and access points

Part E1.10.6 Driveways and access points, provides the following of relevance:

- The design of driveways and access points, except for dwelling houses, is to be such that vehicle entry and exit from a site, onto a public road, is made by driving in a forward direction, unless otherwise required by Council.*
- Driveways are situated so that any vehicle turning from, or into, the street can be readily seen by the driver of an approaching motor vehicle or pedestrian.*
- Access driveway locations comply with Figure 3.1 in Section 3.2.3 of AS/NZS 2890.1.*
- Driveway splays shall be provided in accordance with Figure 3.3 in Section 3.2.4 of AS/NZS 2890.1. Exceptions to this may be accepted in the following circumstances:*
 - for dwelling house, dual occupancies and attached dwellings in residential zones in low pedestrian activity locations¹⁵ a fence to a maximum height of 0.9m is permitted in the splay area.*
 - where an object in the adjoining property creates an obstruction to visibility within the splay area.*
- Car parking and driveway areas are located and designed to:*
 - enable the efficient use of car spaces and accessways, including safe manoeuvrability for vehicles between the site and street;*
 - fit in with any adopted street hierarchy and objectives of the hierarchy and with any related local traffic management plans;*
 - preserve significant trees and vegetation; and*
 - complement the desired future character for the locality as described in the residential chapters of this DCP.*
- The width of vehicle crossings is minimised so as to retain on-street parking. Footpath crossings will not be permitted where:*
 - One off-street parking space will result in the loss of two on-street parking spaces. For example, where the street is narrow with parking on both sides.*
 - The provision of off-street parking will result in the loss of a significant tree.*
- Vehicle crossings are constructed at an angle of 90° to the carriageway of the road. Vehicle crossings must take the shortest route across the footpath, between the kerb and boundary.*

- *Vehicle crossings are located to minimise the loss of useable on-street parking. That is, they are located immediately adjacent to the adjoining property's vehicle crossing (0m) or a minimum distance of one on-street car parking space (5.4m) from any existing driveway crossing.*

Part E1.11: Electric Vehicle Charging Points

Part E1.11 seeks to encourage and support the increased use of electric vehicles by ensuring the installation of appropriate electric circuitry and dedicated electric vehicle charging points.

Control C1 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.

Comment: No details have been provided of electric circuitry. If development consent were granted, the relevant conditions would be incorporated in the conditions of consent requiring the provision for electric vehicle circuitry within the development.

Part E1.10: Parking and Access Design Standards – Assessment

Council's Development and Traffic Engineers do not support the proposal with regards to Parking and Access Design Standards (refer to **Annexures 9 and 10**).

The proposal is not considered to achieve consistency with Part E1.10 of the WDCP, for the following reasons:

- Car Park Layout and Aisle Width – The Proposal does not provide unrestricted manoeuvres when entering and exiting parking spaces, failing to satisfy the relevant matters for consideration under Part E1.10 of the WDCP in that it does not comply with *AS/NZS 2890.1 Part 1: Off-street car parking* and *AS 2890.2 Part 2: Off-street commercial vehicle facilities*;
- Access driveway – The Proposal involves the construction of a new single 5.5m wide driveway for both entry and exiting the Site. Table 3.2 of *AS/NZS 2890.1:2004* requires a minimum 3m wide driveway for Category 1 access facilities i.e. a total width of 6m. The proposed access driveway does not comply with the standard;
- Driveway Gradient – Pursuant to Clause 3.3 of *AS/NZS 2890.1:2004*, the design of access driveway should adopt a maximum gradient of 1 in 20 for the first 6m into the car park. The proposed entry ramp with a gradient of 1 in 10 does not comply with the standard;
- Driveway Splays – The Proposal does not provide driveway splays within the property boundary, which is inconsistent with Clause 3.2.3 of *AS/NZS 2890.1:2004* and contrary to Part E1.10.6 of the WDCP;

The proposal is not considered to achieve consistency with Part E1.10 of the WDCP and is therefore listed as reasons for refusal.

19.11.5. Part E1.14-E1.15 Off-street loading and servicing facilities Mechanical parking installations

Council's Development Engineer and Traffic Engineer do not support the proposal with regards to off-street loading and servicing facilities and mechanical parking installations.

The proposal is not considered to achieve consistency with Part E1.14-E1.15 of the WDCP, for the following reasons:

- Loading Bay – The Proposal does not ensure that the loading bay at Basement Level 1 will provide a safe and efficient movement of service vehicles when entering and leaving the property, failing to satisfy the relevant matters for consideration under Part E1.14.2 of the WDCP. The proposed location near the entrance area and partially within the parking aisle of Basement 1 is undesirable exacerbating potential queuing of vehicles and car conflicts near the car lift.
- Queuing of vehicles on footpath – The Proposal may require the use of the footpath and driveway as a waiting bay (Part E1.15: Mechanical Parking Installations of the WDCP requires waiting bays to be a minimum length of 6m). This would compromise the use of the footpath which is not considered to be a safe use of access ways for vehicles and pedestrians, contrary to Part E1.10.6 of the WDCP. Queuing on the driveway access point/footpath area and potentially onto Cross Street, is contrary to Part E1.15.3 of the WDCP;
- Waiting Bay – The Proposal does not provide a waiting bay onsite. Vehicles attempting to simultaneously access and egress the car lift at peak periods appears to be unfeasible as no details of the following has been provided:
 - The service rate (in seconds) associated with the proposed car lift; and
 - Number of on-site waiting bays required to accommodate the 98th percentile queue at peak traffic levels.

19.11.6. Conclusion

The proposal is therefore not considered to achieve consistency with regards to the objectives and controls in *Chapter E1: Parking and Access* of the Woollahra DCP 2015 and therefore is listed as a reason for refusal.

19.12. Chapter E2: Stormwater and Flood Risk Management

The objectives of this chapter are:

- O1 To encourage ecologically sustainable stormwater management and the use of water sensitive urban design.*
- O2 To maintain existing natural drainage patterns.*
- O3 To ensure that adequate provision has been made for the disposal of stormwater from land proposed to be developed.*
- O4 To ensure the controlled release of stormwater to public stormwater systems without adversely impacting on adjoining or downstream properties.*
- O5 To protect Sydney Harbour and its waterways from stormwater pollution.*

- O6 To minimise flood risk and damage to people and property by setting appropriate development controls.
- O7 To ensure that flood levels are not increased by development.

For the reasons discussed below, the proposal satisfies the aforementioned relevant objectives and/or can be addressed via standard conditions of consent.

19.12.1. Part E2.2: Stormwater drainage management controls

Council's Development Engineer is satisfied that the proposed development has made or can be made to have adequate provision of stormwater management, stating:

"The submitted revised concept stormwater plans are considered satisfactory in principle subject to refinements at the CC stage which will be conditioned accordingly."

Generally, Council's Technical Services Division is satisfied that adequate provision could be made for the disposal of stormwater from the land it is proposed to develop and complies with Chapter E2 "Stormwater and Flood Risk Management" DCP."

The proposal is considered to be satisfactory in terms of the relevant controls and objectives in Part E2.2 of the Woollahra DCP 2015 and/or can be addressed via standard conditions of consent.

19.12.2. Part E2.3: Flood Risk Management controls

The subject site is identified as a 'Flood Planning Area'.

Council's Drainage Engineer is satisfied that the proposed development has or can be made to have adequate provision of flood protection measures, stating:

"Council's Drainage Engineer has determined that the development proposal is generally satisfactory, subject to condition."

The proposal is considered to be satisfactory in terms of the relevant controls and objectives in Part E2.3 of the Woollahra DCP 2015 and/or can be addressed via standard conditions of consent.

19.12.3. Conclusion

The proposal is considered to achieve consistency with regards to the objectives and controls in Chapter E2: Stormwater and Flood Risk Management of the Woollahra DCP 2015.

19.13. Chapter E3: Tree Management

The proposal is considered to be acceptable with regards to the objectives and controls in Chapter E3: Tree Management of the Woollahra DCP 2015 and/or can be adequately addressed via **conditions** provided by Council's Tree and Landscape Officer.

19.14. Chapter E5: Waste Management

The objectives of this chapter are:

- O1 To assist applicants in planning for sustainable waste management, through the preparation of a site waste minimisation and management plan.*
- O2 To identify on-site requirements for waste and recycling storage and management, having regard to access and amenity.*
- O3 To ensure waste management systems are compatible with collection services.*
- O4 To minimise noise and nuisance arising from waste and recycling collection having regard to the need to balance operational needs and functions of businesses with the amenity of nearby residential uses, particularly between 10pm and 7am.*

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 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 are to be considered.

A Site Waste Minimisation and Management Plan ('SWMMP') and an on-going Operational Waste Management Plan ('OWMP') was submitted with the development application and it was found to be satisfactory.

19.14.1. Part E5.2: Demolition and Construction Phase

Subject to the recommended standard conditions requiring compliance with the submitted Site Waste Minimisation and Management Plan (SWMMP) during the demolition, excavation and construction phases of the development. The proposal is considered to be acceptable with regard to the relevant controls and objectives in Part E5.2 of the Woollahra DCP 2015.

19.14.2. Part E5.3: On-site waste and recycling controls for all development

Subject to the recommended standard conditions requiring compliance with the submitted on-going OWMP. The proposal is considered to be acceptable with regard to the relevant controls and objectives in Part E5.3 of the Woollahra DCP 2015.

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

	Proposed	Control	Complies
Garbage and Recycling Areas	Provided – Dedicated communal waste storage rooms in the Basement Level 1	Required	Yes
Compost Area	Provided – Suitable areas within communal areas and individual dwellings for 'Apartment Style Compost Bins'	Required	Yes
Garbage Compaction Unit	Provided – ceiling mounted compactor	Required Where > 20 Units	Yes
Location of Waste Storage Area	Dedicated communal waste storage rooms in the Basement Level 1	Basement Level or within Building envelope	Yes
Garbage Chute	Provided – ediverter Garbage Chutes	Required Where > 4 Storeys	Yes
Bulky Storage Area	Provided – total of 3 waste rooms	Required Where > 10 Dwellings	Yes
Maximum Distance from Waste Storage Area to Collection Point	<75m from collection point on Cross Street via Car lift and/or lifts	75m	Yes

Control C4 specifies a weekly rate of 120L/unit for waste, 55L/unit for recycling and 240L for a shared use food and organics.

With the proposed 18 units, this equates to a total of 3,390L (2,160L + 990L + 240L) or approximately 9 x 240L mobile waste bins, 4 x 240L mobile recycling bins and 1 x 240L mobile waste bin for food and organics. The required footprint for these bins is approximately 6m². The proposal provides two (2) residential waste storage rooms, a total of 33m² (Room A: 15m² and Room B: 18m²). This is adequate for the number of required bins inclusive of bin movement allowance and allows for additional bins should they be required.

The proposal is acceptable with regard to the relevant controls and objectives in Part E5.5 of the Woollahra DCP 2015.

19.14.4. Part E5.6: Commercial and non-residential developments

The submitted on-going OWMP provides the following estimated waste volumes:

ESTIMATED WASTE VOLUMES AND PROVISIONS

The following table shows the estimated volume (L) of garbage and recycling generated by the commercial/retail component of the development. A seven-day operating week has been assumed. As exact details on the tenancies are not available at the time of writing, the waste generation rates for cafés have been used to provide approximate waste generation figures.

Table 4: Calculated Waste Generation – Commercial/Retail

Tenancy	Type	GFA (m ²)	Garbage Generation Rate (L/100m ² /day)	Generated Garbage (L/week)	Recycling Generation Rate (L/100m ² /day)	Generated Recycling (L/week)	
1	Café	156	100	1092	120	1310	
2	Café	152.5	100	1068	120	1281	
3	Café	79.5	100	557	120	668	
4	Café	288	100	2016	120	2419	
TOTAL		676		4732		5678	
Collections & Equipment	Bin Size (L)			240	Bin Size (L)		240
	Collections per Week			3	Collections per Week		3
	No. Bins Required			7	No. Bins Required		8

The proposed development comprises a commercial bin store within the Basement Level 1 with a total area of 15m² which is adequate capacity for the number of required bins inclusive of bin movement allowance and allows for additional bins should they be required.

The proposal is acceptable with regard to the relevant controls and objectives in Part E5.6 of the Woollahra DCP 2015.

19.14.5. Part E5.7: Mixed use developments

	Proposed	Control	Complies
Commercial Waste Storage Area	Separated Commercial and Residential	Separated from Residential	Yes

The proposal is acceptable with regard to the relevant controls and objectives in Part E5.7 of the Woollahra DCP 2015.

19.14.6. Conclusion

The proposal is acceptable with regard to the objectives and controls in Chapter E5 of the Woollahra DCP 2015 and/or can be addressed by Council's standard conditions.

19.15. Chapter E6: Sustainability

The proposal is acceptable with regard to the objectives and controls in Chapter E8 of the Woollahra DCP 2015 and/or can be addressed by Council's standard conditions.

19.16. Chapter E8: Adaptable Housing

Total No. Units: 18	Proposed	Control	Complies
Class A Certification Dwellings	Two (2) (Apt. 2.01 and 3.01)	10% of Dwellings (Min 2)	Yes

An adaptable dwelling is a dwelling that can be modified to be an accessible dwelling.

An accessible dwelling is a dwelling designed and built to accommodate the needs of people with a disability, and which complies with the AS1428 - Design for Access and Mobility.

Control C1 states that for a residential flat building containing 10 or more dwellings, at least 10% of the dwellings are to be Class A certification under AS 4299 – Adaptable housing. The proposal provides two adaptable dwellings achieving compliance with Control C2

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

20. DRAFT AMENDMENTS TO POLICIES AND PLANS

None relevant to the scope of works.

21. CONTRIBUTIONS AND FEES

21.1. Section 94 Contributions Plan 2002 and Section 94A Contributions Plan 2011

Both Contribution Plans are applicable. However, the S94 Contribution Plan was developed to fund an additional half level on top of the existing public car parking facility in Cross Street, Double Bay. Council is no longer pursuing this development option and therefore the contribution under this plan is no longer relevant. Section 7.13 of the EPA Act 1979 states in part that: "...A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan."

On this basis, a levy pursuant to Section 7.12 is recommended to be applied because it has a broader application including community facilities, environmental works, Council property, public infrastructure works, public open space and business centres and harbourside works.

The contribution under this plan is calculated as follows:

Development Type	Levy (percentage of proposed cost of development)	Cost of works + GST
All developments	1%	\$404,344.22

The total contribution under the provisions of this plan is **\$404,344.22**

The proposed development is recommended for refusal and accordingly Section 7.11 & 7.12 contributions and relevant fees are not applied. Notwithstanding this, should development consent be issued, a contribution pursuant to Section 7.12 and relevant fees and charges would apply and can be enforced by condition.

22. APPLICABLE ACTS/REGULATIONS

22.1. Environmental Planning and Assessment Regulation 2000

22.1.1. Demolition of Structures (Clause 92)

Clause 92 of the Environmental Planning and Assessment Regulation 2000 requires Council to consider Australian Standard AS 2601-2004: *The demolition of structures*. The proposal is considered to be acceptable with regards to Clause 92 of the regulations and/or can be addressed via standard conditions of consent.

22.1.2. Fire Safety (Clause 94)

Clause 94 of the Environmental Planning and Assessment Regulation 2000 requires an assessment of the development application against the Building Code of Australia (BCA), with particular respect to the fire provisions within the development.

Council's Fire Safety Officer has undertaken an assessment of the application and deemed that a fire safety statement must be submitted on completion and prior to occupation and then on an annual basis. The application is recommended for refusal but should development consent be issued compliance with these requirements can be enforced by condition.

22.1.3. Building Code of Australia

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

22.1.4. Swimming Pools Act 1992

Clause 4 of the Swimming Pools Act 1992 applies: "*to swimming pools (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, ... is located*". As the proposed development involves the construction of a swimming pool (as defined in the Act), the Swimming Pools Act 1992 is applicable.

Generally, as per the Swimming Pools Act, a swimming pool is at all times to be surrounded by a child-resistant barrier that separates the swimming pool from any residential building and that is designed, constructed, installed and maintained in accordance with the standards prescribed by the regulations. Additional provisions relate to:

- a) The swimming pool must be registered in accordance with Section 30B of the Swimming Pools Act 1992
- b) A Certificate of Compliance issued pursuant to Section 22D of the Swimming Pools Act 1992
- c) Water recirculation and filtration systems
- d) Backwash must be discharged to the sewer

The application is recommended for refusal but should development consent be issued compliance with these requirements can be enforced by conditions requiring compliance with the above.

23. THE LIKELY IMPACTS OF THE PROPOSAL

20.1 Views

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

“...The development with its 60%+ height exceedance will be oppressive to properties in Transvaal Avenue and limit the view outlook from future development on the opposite side of Cross Street. The development fails this fourth objective of the Height standard.... Its bulk and height will mean a loss of harbour views for upper floor residences in the Cosmopolitan Centre, Colebrook (177, Bellevue Road) and numerous homes on the amphitheatre that surrounds Double Bay...”

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

In assessing the reasonableness or otherwise of the degree of view loss, the applicant has provided the following view analysis prepared by Richard Lamb & Associates, stating:

“Existing view access and potential effects (private domain)

Our observations in relation to the extent of existing visual access available for neighbouring buildings have been based on our experience and an analysis of the spatial relationship, landforms, built form and presence of vegetation within the immediate site context undertaken in field work and via a review of aerial imagery. In our opinion a limited number of residential apartments may be potentially affected by impacts on view sharing as a result of construction of the taller built form proposed, if it was to be constructed on the site. Inspections made from the carpark deck of Colebrook (equivalent to views from the first residential storey at 177 and 175 Bellevue Road) confirm that views to the north-west include the site and a background of the development and vegetation along the Darling Point ridgeline, with parts of the Sydney CBD skyline beyond, for example Centrepont Tower, also visible. In views from the south-east the proposed development would rise to the same level as the Intercontinental Hotel roof and would block views of this building. The risks appear however to be low.

Views to the north from Overthorpe and 349 New South Head Road may include the site however we observe that both developments spring from ground levels that are significantly higher relative to the subject site, so that the majority of views are unlikely to be unaffected by the proposed development. Views from the lower two levels at Overthorpe are likely to be heavily screened by vegetation within the gardens of the property. As the Gardens are heritage listed the majority of vegetation will remain present in views pending the good health and management of the vegetation.

Mid-level apartments at each location may have access to mid-ground views of the Double Bay commercial precinct but given the predominant height of built form in this vicinity, views are unlikely to extend beyond the site and downward to scenic features such as areas of land-water interface in Double Bay or near Point Piper.

The proposed development from the private domain in this vicinity, would be visible in the context of adjacent built form to the west that is equivalent in height, to what is proposed and taller in respect of the lift well. In our opinion given the modest height of the Intercontinental Hotel, seen in horizontal or downward views from the such locations, it is unlikely that the proposed development would cause significant unique or additional view loss or visual impacts.

Conclusions

The private domain visual catchment is limited to the south, south-west and south-east and is unlikely to have access to items that are highly valued in Tenacity terms.

The wider private domain visual catchment, that could have access to views beyond the site is limited and isolated to dwellings at high level in residential towers that are some distance from the site. Access to scenic features that are highly valued in Tenacity, are unlikely to be significantly affected by the visual effects of the proposed built form or view loss.

In the majority of private domain views the proposed built form would be visible in the context of the commercial-retail core of Double Bay including the Intercontinental Hotel of the same and greater height.

As a guide, the proposed built form is likely to generate an analogous level of view loss, as the adjacent Intercontinental Hotel, notwithstanding the subject site is smaller and built form proposed is lower overall in relation to it.

The proposed development would not generate any significant negative visual effects in relation to public domain views.

Conclusion

The proposal is therefore considered to be acceptable with regard to the four step assessment of view sharing planning principle established by *Tenacity Consulting v Warringah (2004) NSWLEC 140* as the proposed development is unlikely to have any significant view impact from private properties or public domain. The extent of view impact arising from the proposed development is likely to be negligible.

20.2 Hours of Use

The proposal does not seek any hours of use for the newly created commercial/retail tenancies. A future development application and/or complying development certificate would be required to change the use for the existing individual tenancies and a first-use application to include the internal fit-outs including operational restrictions for the four (4) new commercial tenancies.

Notwithstanding this, if the application were to be recommended for approval a condition of consent could be imposed to ensure the aforementioned considerations apply to the subject DA.

20.3 Others

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

24. THE SUITABILITY OF THE SITE

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

25. THE PUBLIC INTEREST

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

26. CONCLUSION

Based on the assessment contained within this report, the proposal is unacceptable against the relevant heads of considerations under Section 4.15 of the EP&A Act 1979 and the proposal is therefore recommended for refusal.

27. 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.

28. RECOMMENDATION TO SYDNEY EASTERN CITY PLANNING PANEL

That the Development Application be **REFUSED** by the Sydney Eastern City Planning Panel subject to the **RECOMMENDATION** below:

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

THAT the **Sydney Eastern City Planning Panel**, as the consent authority, is not satisfied that the written requests from the applicant have adequately addressed the relevant matters to be addressed under Clause 4.6 of the Woollahra Local Environmental Plan 2014 and therefore consent cannot be granted to the development which contravenes the ***Height of Buildings*** and ***Floor Space Ratio*** development standards under Clause 4.3 and 4.4 of the Woollahra Local Environmental Plan 2014.

AND

THAT the **Sydney Eastern City Planning Panel**, as the consent authority, refuse development consent to Development Application No. 321/2020/1 for demolition of existing structure and construction of a shop top housing development on land at 19-27 Cross Street DOUBLE BAY, for the following reasons:

1. Urban Design

The Proposal is excessive in bulk and scale that is incompatible and inconsistent with the existing and desired future character of the locality. The Proposal fails on urban design grounds due to its excessive bulk and scale.

Particulars

- i. The proposed height of the Proposal of 23.5m, to the lift overrun and 22.34m, to the rooftop does not comply with the maximum 14.7m height control development standard applicable to the Site prescribed by Clause 4.3 of the Woollahra Local Environment Plan 2014 ('WLEP').
- ii. The proposed floor space ratio of the Proposal of 3.59:1 (4,796m²) does not comply with the maximum floor space ratio of 2.5:1 development standard applicable to the Site prescribed by Part 4.4 of WLEP.
- iii. The proposed seven-storey building (23.5m height) and Floor Space Ratio ('FSR') of 3.59:1 creates excessive contrasts with the *existing* and *desired* future character of the locality.
- iv. The Proposal fails to take into account the Site's unique characteristics, in that:
 - a) It has strongly relied on the subject site's location at the intersection of Transvaal Avenue and Cross Street to maximise its proposed density and perceived bulk and scale as a 'corner element'. However, the Site is not identified as a corner site in the WLEP or Woollahra Development Control Plan 2015 ('WDCP').
 - b) It has not considered its sensitive location in proximity to the immediately adjoining Transvaal Avenue HCA which comprises single-storey semi-detached cottages. The proposal imposes a significant level of bulk and scale to the low-scale and intimate characteristics of the street. It does not provide a sympathetic or gradual built form transition to the HCA. It results in significant visual intrusion impacts particularly on the low scale characteristics of Transvaal Avenue, including the HCA.
 - c) The proposed 6-7 storey building with a 5-6 storey street wall height and reduced front setbacks to *Cross Street* will result in a building that is inconsistent with the existing character and the desired future character of its surrounding context, as:
 - On the northern side of Cross street, there is an existing established two-storey street wall height at the Intercontinental Hotel (33 Cross Street), at 45-51 and 53 Cross Street and at 15-15A Cross Street;
 - On the southern side of Cross Street, there is an evolving four-storey street wall height (recently approved and under construction developments at 16-18, 20-26 and 28-34 Cross Street);
 - It neither responds to the existing street wall height nor the four-storey street wall height envisaged by Woollahra DCP 2015 D5.4.7 and D5.5.7, or as

displayed by the recent development on the southern side of Cross Street with 4-storey street wall height.

- d) The proposed 6-7 storey building with a proposed 6-storey street wall height and reduced front setbacks to *Transvaal Avenue* will result in a building that is inconsistent with the existing character and the desired future character of its surrounding context, as:
 - It neither responds to the two-storey street wall height envisaged by Part D5.5.7; nor
 - the existing single-storey buildings of the Transvaal Avenue HCA.
 - e) The existing two-storey street wall height followed by upper-level setbacks on the Intercontinental Hotel building allow the canopy of the existing mature street trees to spread/grow over the street wall element. This facilitates and supports the maintenance of the existing tree canopies and the leafy character of Cross Street and Transvaal Avenue.
 - f) The proposed setbacks are inconsistent with the Building Envelope controls of the WDCP 2015, Part D5.5.7. This increases the perceived bulk and scale of the proposed development as viewed from the public domain.
 - g) The proposed dominant horizontal articulation increases the perceived bulk and scale of the envelope. This does not respond to the fine-grain vertical modulation of the Transvaal Avenue HCA and/or the podium built form of the Intercontinental Hotel.
 - h) The Proposal does not provide a positive contribution to the existing and the desired future streetscape character of Cross Street and Transvaal Avenue.
 - i) Cross Street, Goldman Pedestrian Lane and Transvaal Avenue are highly pedestrian-oriented/activated public domain areas in the centre. The proposal exacerbates the overshadowing impacts on the public domain compared to a compliant bulk and scale.
- v. For the particulars raised above, the Proposal is not consistent with the following:

State Environmental Planning Policy 65 ('SEPP 65'):

- Principle 1 – Context and Neighbourhood Character
- Principle 2 – Built Form and Scale

Apartment Design Guide ('ADG'):

- Part 3C: Public Domain Interface – Objective 3C-2
- Part 4M: Facades – Objective 4M-1

WLEP:

- Part 1.2 – Sub-clauses (2)(a), (g), (j) and (l);
- Part 2.3 – Sub-clause (2), B2 zone objectives, dot point 6 and 7;
- Part 4.3 – Sub-clause (1)(a), (b), (c), (d) and (2);
- Part 4.4 – Sub-clauses (1)(b) and (2);

WDCP:

- Part A1.1.5 – Objective O3;
- Part D5.1.3 – Objective O8;
- Part D5.3.1 – Figures 5 and 11;

- Part D5.3.2 – Strategies 1a), 3b), 4b), and 5a), b), c) & d);
- Part D5.4.7 (Cross Street);
- Part D5.5.7 (Built form envelopes) – Control Drawing 3;
- Part D5.6.3.1 (Building Envelopes) – Objective O1 and Control C1;
- Part D5.6.3.2 (Height) – Objective O1 and Controls C1, C2, C3;
- Part D5.6.3.4 (Setbacks) – Objectives O1, O2, O3 and Controls C1, C2;
- Part D5.6.3.6 – Objectives O2 and O4;

2. Heritage Conservation

The proposed shop-top housing development is considered to have an unacceptable adverse impact on the heritage significance of the Transvaal Avenue HCA.

Particulars

- i. The proposal is contrary to aim (f) in Clause 1.2(2) Aims of Plan, and fails to achieve the objectives (a) and (b) in Clause 5.10(1) of the WLEP 2014 and the consent authority cannot be satisfied of the relevant matters for consideration under Clause 5.10 of the WLEP 2014 as the proposal would dominate and adversely impact the significance of the adjacent Transvaal Avenue HCA.
- ii. The Proposal will adversely affect the heritage significance of the Transvaal Avenue HCA including its setting, views and the visual prominence of the existing contributory buildings, because:
 - a) the *scale* of the proposed 6-7 storey shop top housing development would visually dominate the Transvaal Avenue HCA local heritage item in terms of its *height and bulk* in that it would exceed the predominant height of the single-storey contributory cottages by over 17m, to the top of the roof terrace/ lift overrun).
 - b) the *uniform setback* of development at its northern elevation would exceed the predominant height of the single-storey contributory cottages by over by 13.5m.
 - c) the *scale* and *uniform setback* of the Proposal, does not provide an appropriate transition between new development and the Transvaal Avenue HCA;
 - d) the *setting* and *views* of the Transvaal Avenue HCA would be diminished in terms of its visual prominence of modest existing single-storey contributory items, as viewed from looking south-west from the northern end of Transvaal Avenue, against the continuous six (6) storey northern elevation of the Proposal;
 - e) the Proposal does not provide a *stepped form* nor a *sympathetic transition* from its northern elevation to the single-storey buildings of the Transvaal Avenue HCA.
 - f) The Proposal fails to retain or enhance the *visual prominence*, in terms of uniformity of scale and form, of the existing single-storey Gothic Revival style cottages, which are generally around 6m in height, coupled with their architectural detailing has resulted in the distinctive ‘fine grain’ streetscape character and aesthetic value of the Transvaal Avenue HCA.
- iii. The Proposal is contrary to Objectives O4 and O10 in Part D5.1.3; Controls C1, C2 and Objective O1 in Part D5.6.3.8, and Objective O1 in Appendix A1.1 of the WDCP 2015 as the proposal is incompatible with the heritage significance of the heritage listed Transvaal Avenue HCA, as it:

- a) does not conserve and enhance the visual amenity of the Transvaal Avenue HCA. The Proposal will adversely impact on the visual prominence of the HCA and contributory items located therein as viewed from the public domain due to its height, bulk, scale and uniform setbacks.
- b) does not enhance the distinctive ‘fine grain’ streetscape character and aesthetic value of the existing single-storey Gothic Revival style cottages that are uniform in scale, form and detailing.
- c) does not ensure the retention of the visual prominence of the existing contributory buildings within the Transvaal Avenue streetscape.
- iv. For the reasons set out in particulars 1 – 3 above, the Proposal is contrary to Objectives O4 and O10 in Part D5.1.3; Controls C1, C2 and Objective O1 in Part D5.6.3.8, and Objective O1 in Appendix A1.1 of the WDCP 2015.
- v. For the reasons set out in particulars 1 – 4 above, the Proposal is contrary to aim (f) in Clause 1.2(2) Aims of Plan, and fails to achieve the objectives (a) and (b) in Clause 5.10(1) of the WLEP 2014.

3. Height of the Proposal

The Proposal is excessive in height and fails to comply with the height of buildings development standard in cl. 4.3 of the WLEP.

Particulars

- i. The Proposal exceeds the height development standard because it has a height of 23.5m, to the lift overrun and 22.34m, to the rooftop. This results in a variation of **60% or 8.8m** of the height control and does not comply with the maximum 14.7m height control development standard applicable to the site prescribed by Clause 4.3 of the WLEP.
- ii. The Proposal will result in a six-seven storey building (above ground) that is 2 to 3 storeys over the prescribed height and building envelope controls for the Site, as prescribed by the WDCP.
- iii. The Proposal will result in a building form that significantly exceeds the street wall and overall height requirements for the Cross Street and Transvaal Avenue frontages, as prescribed by Control Drawing 3 in D5.5.7 of the WDCP.
- iv. The Proposal fails to demonstrate that the objectives of the height control are achieved (cl4.3(1)(a), (b), (c) and (d) of the WLEP).
- v. The Applicant has submitted a cl4.6 written request (“Height Request”) to vary the Height of Buildings development standard as set out in cl4.3 of the WLEP.
- vi. The Height Request submitted by the Applicant is not considered to be well founded because:
 - a) the applicant has not adequately addressed the matters required to be demonstrated under clause 4.6(3) in that:
 - i. it has not satisfactorily demonstrated that compliance with the height development standard is unreasonable or unnecessary; and
 - ii. that there are sufficient environmental planning grounds to justify contravening the standard.

- b) the Proposal is not in the public interest because it is inconsistent with objectives (a), (b), (c) and (d) of the height of building development standard as prescribed in Clause 4.3(1) in the WLEP.
- c) the Proposal is not in the public interest because it is inconsistent with the objectives of the B2 Local Centre Zone as prescribed in the Zone B2 Local Centre Land Use Table in the WLEP in that:
 - i. It does not provide a development of a scale that is compatible with the amenity of the surrounding residential uses (dot point 6);
 - ii. It does not ensure that the development is of a height and scale that achieves the desired future character of the neighbourhood (dot point 7).
- vii. For the particulars raised above, the Proposal is not consistent with the following:

SEPP 65:

- Principle 1 – Context and Neighbourhood Character
- Principle 2 – Built Form and Scale

ADG:

- Part 3C: Public Domain Interface – Objective 3C-2

WLEP:

- Part 1.2 – Sub-clauses (2)(a), (g) and (l);
- Part 2.3 – Sub-clause (2), B2 zone objectives, dot point 6 and 7;
- Part 4.3 – Sub-clause (1)(a), (b), (c), (d) and (2);

WDCP:

- Part A1.1.5 – Objective O3;
- Part D5.1.3 – Objective O8;
- Part D5.3.1 – Figures 5 and 11;
- Part D5.3.2 – Strategies 1a), 3b), 4b), and 5a), b), c) & d);
- Part D5.4.7 (Cross Street) – Objectives c) and e);
- Part D5.5.7 (Built form envelopes) – Control Drawing 3;
- Part D5.6.3.1 (Building Envelopes) – Objective O1 and Control C1;
- Part D5.6.3.2 (Height) – Objective O1 and Controls C1, C2, C3.

4. Floor Space Ratio (“FSR”) of the Proposal

The DA should be refused due to its excessive bulk and failure to comply with the Floor Space Ratio (‘FSR’) development standard in cl. 4.4 of the WLEP.

Particulars

- i. Pursuant to cl. 4.4 and the FSR Map, a maximum FSR of 2.5:1 applies to the Site.
- ii. The Proposal exceeds the FSR development standard, as it has a gross floor area of 4,796m², and an FSR of 3.59:1. This results in a variation of **43% or 1,461m²** against the floor space ratio development standard applicable to the Site under cl. 4.4 of the WLEP.

- iii. The Applicant has submitted a cl4.6 written request to vary the FSR development standard as set out in cl4.4 of the WLEP (“FSR Request”).
- iv. The FSR Request is not considered to be well founded because:
 - a) the applicant has not adequately addressed the matters required to be demonstrated under clause 4.6(3) in that:
 - i. it has not satisfactorily demonstrated that compliance with the FSR development standard is unreasonable or unnecessary; and
 - ii. that there are sufficient environmental planning grounds to justify contravening the standard.
 - b) the Proposal is not in the public interest because it is inconsistent with the objective of the FSR development standard as prescribed in Clause 4.4(1)(b) and with the objectives of the B2 Local Centre Zone as prescribed in the Zone B2 Local Centre Land Use Table in the WLEP
 - c) The Proposal fails to demonstrate that the objective of the FSR control are achieved (cl 4.4(1)(b) of the WLEP)
- v. Having regard to the particulars raised above, the Proposal is inconsistent with the following:

SEPP 65:

- Principle 1 – Context and Neighbourhood Character
- Principle 2 – Built Form and Scale

WLEP:

- Part 1.2 – Sub-clauses (2)(a), (g) and (l);
- Part 2.3 – Sub-clause (2), B2 zone objectives, dot point 6 and 7;
- Part 4.4 – Sub-clauses (1)(b) and (2);

WDCP:

- Part A1.1.5 – Objective O3;
- Part D5.1.3 – Objective O8;
- Part D5.3.1 – Figures 5 and 11;
- Part D5.3.2 – Strategies 1a), 3b), 4b), and 5a), b), c) & d);
- Part D5.4.7 (Cross Street) – Objectives c) and e);
- Part D5.5.7 (Built form envelopes) – Control Drawing 3;
- Part D5.6.3.1 (Building Envelopes) – Objective O1 and Control C1;
- Part D5.6.3.2 (Height) – Objective O1 and Controls C1, C2, C3.
- Part D5.6.3.4 (Setbacks) – Objectives O1, O2, O3 and Controls C1, C2;

5. Parking and Access Design Standards

The Proposal fails to provide adequate parking for future users and tenants of the Site. The Proposal fails to provide for safe and efficient movement of vehicles within, entering and leaving the Site. The Proposal fails to ensure that access points to car parking areas minimise disruption of vehicle movement on the public road system.

Particulars

- i. The Proposal comprises, a total of 39 parking spaces for residents, 4 parking spaces for residential visitors and 8 parking spaces for the commercial/retail tenancies, representing:
 - An oversupply of 14 car parking spaces, as outlined in the maximum residential parking rates in Part E1.4 of the WDCP.
 - A total short-fall of 6 car parking spaces, as outlined in the minimum non-residential parking rates in Part E.1.5 of the WDCP.
- ii. The parking and access design of the Proposal does not ensure the safe and efficient movement of vehicles within the Site, nor when entering and leaving Site, nor minimise disruption of vehicle movements on the public road system failing to achieve consistency with the needs of its intended users and failing to satisfy the relevant matters for consideration under Part E1.10; Part E1.14 and Part E1.15 of the WDCP in that:
 - Car Park Layout and Aisle Width – The Proposal does not provide unrestricted manoeuvres when entering and exiting parking spaces, failing to satisfy the relevant matters for consideration under Part E1.10 of the WDCP in that it does not comply with *AS/NZS 2890.1 Part 1: Off-street car parking* and *AS 2890.2 Part 2: Off-street commercial vehicle facilities*;
 - Loading Bay – The Proposal does not ensure that the loading bay at Basement Level 1 will provide a safe and efficient movement of service vehicles when entering and leaving the property, failing to satisfy the relevant matters for consideration under Part E1.14.2 of the WDCP. The proposed location near the entrance area and partially within the parking aisle of Basement 1 is undesirable exacerbating potential queuing of vehicles and car conflicts near the car lift.
 - Access driveway – The Proposal involves the construction of a new single 5.5m wide driveway for both entry and exiting the Site. Table 3.2 of *AS/NZS 2890.1:2004* requires a minimum 3m wide driveway for Category 1 access facilities i.e. a total width of 6m. The proposed access driveway does not comply with the standard;
 - Driveway Gradient – Pursuant to Clause 3.3 of *AS/NZS 2890.1:2004*, the design of access driveway should adopt a maximum gradient of 1 in 20 for the first 6m into the car park. The proposed entry ramp with a gradient of 1 in 10 does not comply with the standard;
 - Driveway Splays – The Proposal does not provide driveway splays within the property boundary, which is inconsistent with Clause 3.2.3 of *AS/NZS 2890.1:2004* and contrary to Part E1.10.6 of the WDCP;
 - Queuing of vehicles on footpath – The Proposal may require the use of the footpath and driveway as a waiting bay (Part E1.15: Mechanical Parking Installations of the WDCP requires waiting bays to be a minimum length of 6m). This would compromise the use of the footpath which is not considered to be a safe use of access ways for vehicles and pedestrians, contrary to Part E1.10.6 of the WDCP. Queuing on the driveway access point/footpath area and potentially onto Cross Street, is contrary to Part E1.15.3 of the WDCP;

- Waiting Bay – The Proposal does not provide a waiting bay onsite. Vehicles attempting to simultaneously access and egress the car lift at peak periods appears to be unfeasible as no details of the following has been provided:
 - i. The service rate (in seconds) associated with the proposed car lift; and
 - ii. Number of on-site waiting bays required to accommodate the 98th percentile queue at peak traffic levels.
- iii. For the particulars raised above, the Proposal is contrary to objectives O1, O2, O3 and O5 in Part E1.1.3 of the WDCP.
- iv. For the particulars raised above, the Proposal is contrary to aim (k) in Clause 1.2(2) Aims of Plan of the WLEP as it does not minimise and manage traffic and parking impacts.

6. Public Art

The Proposal does not provide readily visible Public Art.

Particulars

- i. The proposal does not comply with Controls C3, C4 nor does it achieve consistency with the relevant Objective O3 in Part D5.6.4.4: Public Art of the WDCP, as:
 - a) Public Art it is not readily visible from the public domain; and
 - b) Public Art has not been prepared nor undertaken in accordance with the ‘Woollahra Public Art Guidelines for Developers’.
- ii. For the particulars raised above, the Proposal is contrary to aim (aa) in Clause 1.2(2) Aims of Plan of the WLEP as it does not promote the use and development of land for arts and cultural activity.

7. Apartment Mix

The Proposal does not provide an appropriate apartment mix.

Particulars

- i. The Proposal does not achieve consistency with Objective 4K-1, 4K-2 in Part 4K of the ADG and Principle 8 of SEPP 65, as:
 - a) It does not comprise a full range of apartment types envisaged by the ADG, as it does not include studio apartments;
 - b) It does not comprise units allocated to affordable rental housing;
 - c) It provides 17% of the total small apartments (1-Bed or 2-Bed units) and 83% of the total as large apartments;
 - d) For the particulars 2(a), (b) and (c) raised above, it is not considered to provide a range of housing types to support diverse household types and stages of life including single person households, families, multi-generational families and group households now and into the future.
- ii. For the particulars raised above, the Proposal is contrary to aim (e) in Clause 1.2(2) Aims of Plan of the WLEP as it does not to facilitate opportunities, for diversity in dwelling density and type.
- iii. Having regard to the particulars raised above, the Proposal is inconsistent with the following:

- SEPP 65: Principle 8 – Housing diversity and social interaction
- ADG: Part 4K – Apartment Mix
- WLEP: Part 1.2 – Sub-clauses (2)(e)

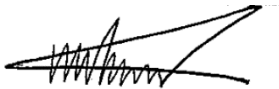
8. Inadequate information

Inadequate information has been submitted to enable a full and accurate assessment of the Proposal against the relevant considerations pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979. Council requires the following material to carry out an assessment.

Particulars

- i. A *Public Art Plan* prepared by a suitably qualified professional is required to be submitted to Council's Public Art Panel in accordance with the *Woollahra Public Art Guidelines for Developers*.
- ii. A *Traffic Generation analysis* inclusive of *car lift queuing analysis* is to be prepared by a suitably qualified engineer in order to demonstrate the post-development traffic impact on the surrounding road network required for the assessment of Part E1 of the WDCP.

Report prepared by:



Mr Wilson Perdigao
Senior Assessment Officer

Date: 5 May 2021

Report reviewed and agreed on behalf
of the Development Control department by:



Mr George Fotis
Acting Manager - Development Control

Date: 10 May 2021