



<b>DATE OF DETERMINATION</b>	9 November 2023
<b>DATE OF DECISION</b>	1 November 2023
<b>PANEL MEMBERS</b>	Carl Scully (Chair), Sue Francis, Stephen Murray, Mary-Lou Jarvis and Toni Zeltzer
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

### REZONING REVIEW

RR-2023-20 - 488-492 Old South Head Road and 30 Albemarle Avenue, Rose Bay – PP-2022-731 (As described in Schedule 1)

#### Reason for Review:

- The council has notified the proponent that the request to prepare a planning proposal has not been supported
- The council has failed to indicate its support 115 days after the proponent submitted a request to prepare a planning proposal

### PANEL CONSIDERATION AND DECISION

The Panel considered: the material listed at item 4 and the matters raised and/or observed at briefings and site inspection listed at item 5 in Schedule 1.

Based on this review, the Panel recommends that the proposed instrument:

- should** be submitted for a Gateway determination because the proposal has demonstrated strategic and site specific merit
- should not** be submitted for a Gateway determination because the proposal has
  - not demonstrated strategic merit
  - demonstrated strategic merit but not site specific merit

The decision was 4:1 in favour, with Mary-Lou Jarvis considering the proposal did not have strategic merit or site specific merit.

### REASONS FOR THE DECISION

The Panel considered the documentation, was briefed by the Department of Planning and Environment and heard extensively from Woollahra Municipal Council and the proponent - Ethos Urban and Fabcot Pty Ltd (Woolworths Property Group)

#### Strategic Merit

The majority of the Panel agreed that the planning proposal had Strategic Merit given that:

- The planning proposal is consistent with applicable strategic planning documents, particularly as they relate to the general objectives for housing. These include the Greater Sydney Region Plan, 2018; Eastern City District Plan, 2018; the Woollahra Local Strategic Planning Statement, 2020 (LSPS) and the Woollahra Local Housing Strategy, 2021 (LHS).
- It seeks to deliver additional housing supply which is a priority issue for Sydney and all levels of Government.

## Site Specific Merit

The majority of the Panel agreed that the proposal had Site Specific Merit, in that:

- The planning proposal would support housing and retail services within close proximity to services, employment and public transport.
- The proposed mixed use supermarket and residential apartments are consistent with Woollahra Municipal Council's desired future character of the Rose Bay South Centre.
- The proposed supermarket would address the identified undersupply of supermarket floorspace in the locality and is an appropriate location for a supermarket of the size proposed.
- The proposed development would activate the prominent corner location of the Rose Bay South Centre.
- The 9m buffer area along the western side of 30 Albemarle Avenue provides a suitable transition and landscape buffer to the low density residential uses to the west.
- The planning proposal seeks to zone the site consistent with adjoining land with the same/similar maximum building height and Floor Space Ratio controls. A site specific DCP will address future development on the site.

## Panel recommendations

The majority of the Panel recommends that prior to the planning proposal be submitted for a Gateway determination, the planning proposal is to be revised to remove the reference to open space zone, in the proposed Part 6 Additional Local Provision so that it reads - *"implementation of ground level, publicly accessible land adjacent to the western boundary of 30 Albemarle Avenue providing for a 9m wide building separation zone and an 8m wide deep soil zone"*

Woollahra Municipal Council has previously refused to progress the proposal. In accordance with Section 3.32(1) of the *Environmental Planning and Assessment Act 1979*, the Planning Panel as delegate of the Minister for Planning has determined to appoint itself as the PPA for this Planning Proposal.

Should the proponent fail to pay the PPA fee by the designated date, then the Panel will no longer proceed with the planning proposal and the making of a local environmental plan amendment.

## REASONS FOR THE DISSENTING DECISION

Mary-Lou Jarvis considered that the proposal should not be submitted for a Gateway determination as the proposal has not demonstrated strategic merit nor site specific merit.

Mary-Lou Jarvis's reasons primarily relate to the introduction of an otherwise prohibited land use being a large 2,168m<sup>2</sup> supermarket into a R2 Residential Low Density zone and because in the hierarchy of planning uses a Mixed Use zone is to generally 'consist of small scale shops'.

The Woollahra Council at its meeting of 14 August 2023 resolved to refuse the planning proposal as it was not in the public interest and noted the petition signed by a large number of residents tabled at the meeting which demonstrated widespread community opposition to the size of the proposal. Of the 526 petitioners opposed, at least 395 are Rose Bay residents while others are from further afield eg Bondi, Bellevue, Double Bay and Vaucluse.

The Council also identified issues with traffic and traffic congestion, congestion caused by the close proximity of the proposal to the local public school of more than 500 students, insufficient transition between the development and the R2 zone, dominance in the streetscape and inconsistency with proximate R2 zone given the significant build and size of the proposed development, lack of consideration for development of a proposal on a smaller footprint, lack of consideration of the surrounding area which is well serviced by supermarkets and grocery stores. Mary-Lou Jarvis agrees but also addressed the strategic merit of the proposal and site specific merit.

### Lack of strategic merit

The planning proposal is inconsistent with the applicable strategic documents.

The 30minute city was adopted by the Greater Sydney Commission as its centrepiece for its 40 year plan for Sydney. The large Woolworths supermarket in Double Bay of approximately 5,000m<sup>2</sup> with an adjacent car park of 446 car parks already serves the locality, approximately 3.6km away from the subject site and within 30minutes travel, by bus bike or car for those who may use the proposed supermarket. From some parts of Rose Bay it can also be a 30minute walk.

A choice of existing supermarkets are even closer within the Rose Bay locality - it is 600m from the site to IGA and Parisi in Dover Road Rose Bay, 800m to an existing Woolworth and 1.2km to the Coles Rose Bay north along with a variety of grocery and fresh produce stores in between, namely Harris Farm and Parisi and smaller speciality shops selling other foods (fish, bread, chocolates, French foods). All of which reinforce the stated objective of the identified local centre nearby - the Rose Bay Centre - as a 'high quality, medium density, urban village' (Woollahra DCP D.6) This proposal will compete with the existing retailing and potentially impact on its success as a key local centre. As well as the Rose Bay North Mixed Use centre with the adaptive reuse of a heritage building to a Coles supermarket.

Much was made of the applicant's proposal wanting to reinforce this area of Rose Bay as a local centre. In fact, it is not zoned as a local centre and treated in the Woollahra DCP in many respects as a neighbourhood centre (eg Woollahra DCP Chapter D.3 - General controls for Neighbourhood and Mixed Use Centres).

Also within the hierarchy of zones Rose Bay South is not shown on the Eastern City District Plan Map 2018 (Briefing report from Department of Planning and Environment, 18 October 2023 Attachment I) as a local centre, unlike the Rose Bay Centre and Rose Bay North. The nearby, significantly larger local centre, as noted in the Woollahra DCP, 'is less than 2km from the Mixed Use zone'. While Rose Bay South is identified as a local centre in the Woollahra Local Strategic Planning Statement 2020 it is not a key local centre such as the Rose Bay Local Centre.

A significant site area of the proposal is within the small R2 area. It is 30% of the proposed site based on the applicants figure of 696m<sup>2</sup>. Albemarle is just one of three streets in Rose Bay South zoned R2. The first objective of the LEP for the R2 zone is to provide for the housing needs of the community within a low density residential environment. As such a supermarket, car park and shop top housing is currently a prohibited use. In contrast in the Mixed Use zone car parks and shop top housing is permitted with consent. The conclusion is that a supermarket would be a prohibited use unless characterised as shop top housing.

Within the Woollahra Council the highest residential zone is R2 and in Rose Bay South the R2 zone is one of the smaller within the municipality. It was a deliberate strategy and contrasts to the north where higher density is encouraged in the form of an R3 zone. Reinforcing that is the Desired Future Character for the Rose Bay South centre which specifically states that development in the Rose Bay South area 'MUST not detract from the amenity of the adjoining residential area'. The LEP further reinforces this in a quarter of its stated objectives. Namely that a mixed use zone is 'to minimise conflict between land uses within this zone and land uses within adjoining zone' and 'to provide for development of a scale and type that is compatible with the amenity of the surrounding residential area'.

This rezoning review proposal under consideration has not shown how those objectives are met. The proposed use conflicts with uses in the Rose Bay Centre (planned in great detail in separate chapters within the Woollahra DCP Chapter D6 pg 1-64) and R2 zone.

### Lack of site specific merit

Mary-Lou Jarvis undertook a specific site inspection on 29 October 2023 as she was unable to attend on 1 November 2023.

The proponent has not demonstrated the merit of changing a zoning for a significant part of the site from a R2 residential zone, where shop top housing and supermarkets are a prohibited use, to facilitate a more intensive development that would not ordinarily be allowed in the planning hierarchy of uses ie. high density residential and a large supermarket of 2,168m<sup>2</sup> with the attendant parking and noise those uses would create.

#### *R2 zone*

Almost twice as much of the site fronts Albemarle Avenue as Old South Head Road. The Woollahra DCP for the Rose Bay precinct R2 zones seeks 'to respect and enhance the streetscape' and to 'encourage development at a scale which relates to the function and role of the streets they address'. The proposal for almost a third of the site facing the residential Albemarle Street is an incursion into the R2 zone and detracts from these objectives in at least 3 critical respects:

1. The street frontage of the site is matched by 3 residential homes on the opposite side of Albemarle Avenue whose amenity will be severely impacted by constant ingress and egress of vehicles and trucks out within the existing R2 zone. Most notably this will be exacerbated at night with vehicle lights shining into those dwellings and by trucks on the turntable when unloading.
2. All vehicular access and egress proposed as part of the zoning review go directly into Albemarle Avenue. Furthermore, in comparing traffic generated by the previous service station the consultant was unaware that an exit only from the service station was provided for vehicles into Old South Head Road. So when the applicant says vehicle movements would be about the same into Albemarle Avenue it is rather like comparing oranges with apples. Yet common sense suggests that if ALL traffic movements namely the estimated 2,000-2,500/day will exit Albemarle Avenue, traffic impact on that street and surrounding residential amenity will be greater.
3. the rezoning review proposal seeks to increase the height in the R2 zone by almost 50% (currently the R2 zone is limited to 9.5m but 14.5m is proposed) and increase the FSR from 1.5:1 to 1.84:1. A development of that bulk is not justified in a current R2 zone.

#### *MU1 zone*

Such a large supermarket as proposed is not a suitable use in the MU1 zone, previously zoned B4 Mixed Use. That is because land zoned 'mixed use' in the DCP 'shall generally consist of small scale shops'. A large supermarket is not a small scale shop.

The parking objective in that zone is to maximise pedestrian and resident safety and amenity. Yet the proposal is for truck deliveries hours and truck movements in direct conflict with any Rose Bay public primary school child walking from the east along Albemarle to the main entrance of the school, just 300 metres away. Creating carparking ingress and egress in Albemarle Avenue introduces an additional pedestrian crossing with up to 2,000 movements a day. Just one careless movement makes it unsafe.






#### *Particular issue with parking provision*

The proponent claims an entitlement to a reduced number of car parks for the supermarket using a multiplier in the DCP but doesn't refer to the specific provision in the Woollahra DCP 2015 clause E1.5.2 which specifically requires a minimum parking for supermarkets of 3.5 parking spaces per 100sqm of GFA (DCP E.1.5.2Table 2)

On that measure the proponent's GFA of 2,168m<sup>2</sup> for a supermarket would require 76 spaces. Yet it seeks a reduction by a multiplier of 0.7 to 70. However that is not appropriate given the extent of encroachment of the site into the residential R2 zone and having regard to Woollahra DCP 2015 clause E1.5.3 viz 'If the subject site is not located WITHIN a centre identified in Table 3 a multiplier does NOT apply'. That non application is for good planning reasons, given the potential impacts of overflow parking into a residential area and impact on that amenity. As much of the activity as possible should be confined to the site.

The requirement for the 1,978m<sup>2</sup> residential use is 22 spaces, much less than the 69 spaces for an equivalent area as a supermarket. So if at any time in the future the proponent sought to reduce the housing component or to incrementally grow the supermarket on site, parking would become woefully inadequate and could not be supported in planning terms. Noting some Panel discussion about

removing the maximum areas, Mary-Lou Jarvis recommend the maximum areas of use for the supermarket and housing put forward by the proponent be reinforced in recommending the proposal be submitted to permit shop top housing.

PANEL MEMBERS	
 Carl Scully (Chair)	 Sue Francis
 Stephen Murray	 Mary-Lou Jarvis
 Toni Zeltzer	

SCHEDULE 1		
1	<b>PANEL REF – LGA – DEPARTMENT REF - ADDRESS</b>	RR-2023-20 - Woollahra LGA - 488-492 Old South Head Road and 30 Albemarle Avenue, Rose Bay- PP-2022-731
2	<b>LEP TO BE AMENDED</b>	Woollahra Local Environmental Plan 2014
3	<b>PROPOSED INSTRUMENT</b>	<p>The proposal seeks to:</p> <ul style="list-style-type: none"> <li>• insert a new Schedule 1 Additional Permitted Use provision applicable to 30 Albemarle Avenue to permit retail premises with development consent, but only as part of shop top housing and in conjunction with the development of 488-492 Old South Head Road; and.</li> <li>• insert a new Part 6 Additional Local Provision setting out:               <ul style="list-style-type: none"> <li>○ a maximum GFA of 3,720m<sup>2</sup> on 488-492 Old South Head Road and 480m<sup>2</sup> on 30 Albemarle Avenue;</li> <li>○ a maximum building height of 14.5m on 30 Albemarle Avenue;</li> <li>○ the implementation of a ground level, publicly accessible, open space zone adjacent the western boundary of 30 Albemarle Avenue providing for a 9m wide building separation zone and an 8m wide deep soil zone;</li> <li>○ the implementation of a staggered minimum separation zone adjacent the western boundary of 30 Albemarle Avenue with a minimum setback to the building of:                   <ul style="list-style-type: none"> <li>• 9m at the first and second floors</li> <li>• 12m at the third floor</li> </ul> </li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• 2m at the second floor and 13.5m at the third floor to habitable rooms and balconies</li> <li>○ a requirement that prior to development consent, a site-specific development control plan with provisions addressing the publicly accessible separation zone and an urban character statement is to be implemented.</li> </ul>
4	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Rezoning review request documentation</li> <li>• Briefing report from Department of Planning and Environment, 18 October 2023</li> </ul>
5	<b>SITE INSPECTION AND BRIEFINGS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• <b>Site inspection with Department of Planning and Environment (DPE):</b> 10:36am – 10:47am, 1 November 2023 <ul style="list-style-type: none"> <li>○ <b>Panel members in attendance:</b> Carl Scully (Chair), Sue Francis, Stephen Murray and Toni Zeltzer</li> <li>○ <b>DPE staff in attendance:</b> Amanda Harvey, Laura Locke, Paula Bizimis &amp; Adam Williams</li> <li>○ <b>Key issues discussed:</b> rezoning R2 zone, heights, Woollahra Local Planning Panel recommendations and Woollahra Development Control Plan, 2015 details including sound barrier</li> </ul> </li> <li>• <b>Briefing with Department of Planning and Environment (DPE):</b> 1:00pm – 1:32pm, 1 November 2023 <ul style="list-style-type: none"> <li>○ <b>Panel members in attendance:</b> Carl Scully (Chair), Sue Francis, Stephen Murray, Mary-Lou Jarvis and Toni Zeltzer</li> <li>○ <b>DPE staff in attendance:</b> Amanda Harvey, Laura Locke, Alex Galea, Paula Bizimis, Doug Cunningham, Renee Ezzy, Lisa Kennedy &amp; Adam Williams</li> <li>○ <b>Key issues discussed:</b> <ul style="list-style-type: none"> <li>• Planning proposal overview, locality, proposed changes – original scheme &amp; revised scheme, strategic and site merit issues –</li> <li>• Concept design – building height; removal of lift overrun; public space; Apartment Design Guide setbacks; No Design Review Panel for Woollahra LGA; Floor Space Ratio</li> </ul> </li> </ul> </li> <li>• <b>Briefing with Woollahra Municipal Council:</b> 1.30pm - 2:02pm, 1 November 2023 <ul style="list-style-type: none"> <li>○ <b>Panel members in attendance:</b> Carl Scully (Chair), Sue Francis, Stephen Murray, Mary-Lou Jarvis and Toni Zeltzer</li> <li>○ <b>DPE staff in attendance:</b> Amanda Harvey, Laura Locke, Alex Galea, Paula Bizimis, Doug Cunningham, Renee Ezzy, Lisa Kennedy &amp; Adam Williams</li> <li>○ <b>Council representatives in attendance:</b> Anne White, Charmaine Tai, Jacquelyne Della Bosca &amp; Jim Stefan</li> <li>○ <b>Key issues discussed:</b> <ul style="list-style-type: none"> <li>• Public open space - request requirement that the area is publicly accessible; acting as a landscape buffer to adjoining low density residential;</li> <li>• Gross Floor Area for retail uses – request a maximum GFA of 2,168m<sup>2</sup></li> </ul> </li> </ul> </li> </ul>

- Voluntary Planning Agreement offer – drinking fountain, signage,
- Independent Economic and Traffic Reports - identified that area needs a supermarket of the size proposed
- Community submissions on proposal – council to send the Panel all the submissions including the petition

- **Briefing with Ethos Urban (Proponent) and Fabcot Pty Ltd (Woolworths Property Group):** 2:02pm – 2.50pm, 1 November 2023

- **Panel members in attendance:** Carl Scully (Chair), Sue Francis, Stephen Murray, Mary-Lou Jarvis and Toni Zeltzer
- **DPE staff in attendance:** Amanda Harvey, Laura Locke, Alex Galea, Paula Bizimis, Doug Cunningham, Renee Ezzy, Lisa Kennedy & Adam Williams
- **Proponent representatives in attendance:** Pierre Abrahamse, Ben Craig, Daniel Howard, James Colling, Will Power, Josh Milston, Hector Valderama & Ellis Davies
- Key issues discussed:
  - Public open space - acting as a landscape buffer to adjoining low density residential; bench seating and bike racks within first 10m from Albemarle Avenue; maintained by owners
  - Concept design – building height; removal of lift overrun
  - Floor Space Ration and number of apartments
  - Traffic – traffic into carpark and noise attenuation; traffic volumes from previous use as service station

- **Panel Discussion:** 2.50pm – 3.14pm, 1 November 2023

- **Panel members in attendance:** Carl Scully (Chair), Sue Francis, Stephen Murray, Mary-Lou Jarvis and Toni Zeltzer
- **DPE staff in attendance:** Amanda Harvey, Laura Locke, Alex Galea, Paula Bizimis, Doug Cunningham, Renee Ezzy, Lisa Kennedy & Adam Williams