

Item No: R1 Recommendation to Council
Subject: **PLANNING PROPOSAL FOR 636 AND 638-646 NEW SOUTH HEAD ROAD, ROSE BAY**
Author: Jorge Alvarez, Senior Strategic Planner
Approvers: Allan Coker, Director - Planning & Development
Chris Bluett, Manager - Strategic Planning
Anne White, Acting Team Leader - Strategic Planning
File No: 17/7403
Reason for Report: To report on a request for a planning proposal submitted by JPR Architects for 636 and 638-646 New South Head Road, Rose Bay.
To obtain Council's approval to prepare a planning proposal and forward it to the Greater Sydney Commission for a gateway determination.

Recommendation:

- A. That Council prepare a planning proposal which explains a proposed amendment to Woollahra LEP 2014, which will permit development for the purpose of a residential flat building, but only as part of a mixed use development on land at 636 and 638-646 New South Head Road, Rose Bay.
- B. That the planning proposal contained in Annexure 1 of the report to the Urban Planning Committee meeting of 13 February 2017 be forwarded to the Greater Sydney Commission requesting a gateway determination to allow public exhibition.
- C. That when requesting a gateway determination for the planning proposal, the Council seek delegation of the plan-making steps under section 59 of the *Environmental Planning and Assessment Act 1979*.

1. Summary

In December 2016 a request for a planning proposal (contained in Attachment 1 in Annexure 1) was submitted to Council by JPR Architects (the applicant) to facilitate a mixed use retail / business and residential development on 636 and 638-646 New South Head Road, Rose Bay (Lots A DP 393087 and SP 22533) (the site).

The request seeks to amend Schedule 1 of the Woollahra Local Environmental Plan 2014 (WLEP 2014) to permit development on the site (across both lots) for the purpose of a residential flat building, but only as part of a mixed use development. Commercial uses addressing New South Head Road will still be required on 638-646 New South Head Road.

Residential flat buildings are permitted in the R3 Medium Density zone, which applies to 636 New South Head Road, but are prohibited in the B2 Local Centre zone, which applies to 638-646 New South Head Road. The only form of residential use permitted in the B2 Local Centre zone is shop top housing, however, this is defined as “one or more dwellings located above ground floor retail premises or business premises”. Therefore, the proposed amendment is required to permit a mixed use development with a residential flat building component across both lots, part of which may be constructed at ground level.

The amendment will apply only to this site.

Overall, we support this request. We therefore seek a decision of the Council to:

- prepare a planning proposal; and
- endorse the planning proposal contained in Annexure 1, so that it can be referred to the Greater Sydney Commission (GSC) for a gateway determination. The determination will enable the planning proposal to be placed on public exhibition.

2. The site

The site is located on the north (bay) side of New South Head Road, Rose Bay, as shown below in Figure 1. It is located approximately 140m from Lynne Park and is partially within the Rose Bay centre.



Figure 1: Local area map (the site is shown with a red outline on an aerial photograph with a WLEP 2014 zoning map overlay) (source WMC)

The site comprises two adjoining lots at 636 New South Head Road (SP 22533) and 638-646 New South Head Road (Lot A DP 393087). The combined area of the site is approximately 1,502m², with a water frontage of approximately 21m to Rose Bay and a road frontage of approximately 31m to New South Head Road. The site slopes evenly approximately 2.4m down from New South Head Road to the waterfront.

No. 636 New South Head Road is a battle-axe lot with an area of approximately 791m², a water frontage of approximately 21m to Rose Bay and an access handle with approximately 2m frontage onto New South Head Road. This lot accommodates a two storey residential flat building with 6 apartments known as “Kenmar Court”, and associated landscaping.

No. 638-646 New South Head Road is an irregular rectangular shape with an area of approximately 711m² and a frontage of approximately 29m to New South Head Road. This lot accommodates a petrol station and is located within the Rose Bay Centre.

An aerial photo of the site is included as Figure 2. Site photos of the existing development on the site are included as Figures 3 and 4.



Figure 2: Site aerial (source JBA and Nearmap)



Figure 3: Existing petrol station at 638-646 New South Head Road



Figure 4: Existing residential flat building at 636 New South Head Road viewed from beach area at Rose Bay

The site is subject to two separate land use zones under WLEP 2014 (as shown in Figure 5) and described below:

- 636 New South Head Rd is zoned R3 Medium Density Residential. The zone generally permits development of medium density residential uses, as well as other land uses that provide facilities or services to meet the day to day needs of residents.
- 638-646 New South Head Road is zoned B2 Local Centre. The zone generally permits development of a range of retail, business, office, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. It also aims to provide active ground floor uses to create vibrant centres. Shop top housing is the only form of residential development permitted in zone B2 Local Centre. The only form of residential use permitted in the B2 Local Centre zone is shop top housing, however, this is defined as “*one or more dwellings located above ground floor retail premises or business premises*”.



Figure 5: Existing WLEP 2014 land use zoning (site shown by yellow outline) (source WMC)

3. Background

3.1 Mixed use development DA

Development application DA212/2015 was approved on 18 July 2016 for the demolition of the existing petrol station, remediation of the site and construction of a mixed use development comprising 10 residential apartments, ground floor retail, and 15 basement car spaces. This DA only applies to 638-646 New South Head Road.

3.2 Pre-application planning proposal application consultation

A pre-application planning proposal meeting was held with Woollahra Council officers on 8 June 2016 to discuss the proposed planning control changes for the site. At the meeting, options to address the constraints to residential development arising from the definition of shop top housing were discussed. A number of issues relating to proposed amendments to the height and floor space ratio development standards were also discussed. The proposed height and floor space ratio amendments are no longer being sought by the applicant.

3.3 Seniors housing DA

Development application DA377/2016 for a seniors housing development was submitted to Woollahra Council on 6 September 2016. A planning assessment report recommending conditional approval was considered by the Council's Development Control Committee on 6 February 2017. The committee recommendation for approval will be considered by the Council on 13 February 2017 and determined by the Sydney Central Planning Panel on 16 February 2017. The DA proposes a single building across both lots consisting of 9 seniors housing apartments, 2 retail tenancies fronting New South Head Road, 2 commercial tenancies at ground floor and 19 basement car spaces. The applicant stated in their request that the DA was lodged to provide the landowners with an alternative development option should this planning proposal not be supported.

4. The planning proposal

The planning proposal explains a proposed amendment to Schedule 1 of WLEP 2014 to permit development on the site for the purpose of a residential flat building, but only as part of a mixed use development. Commercial uses addressing New South Head Road will still be required on 638-646 New South Head Road.

Residential flat buildings are permitted in the R3 Medium Density zone, which applies to 636 New South Head Road, but are prohibited in the B2 Local Centre zone, which applies to 638-646 New South Head Road. The only form of residential use permitted in the B2 Local Centre zone is shop top housing, however, this is defined as "*one or more dwellings located above ground floor retail premises or business premises*". Therefore, the proposed amendment is required to permit a mixed use development with a residential flat building component across both lots, part of which may be constructed at ground level.

4.1 Proposed controls

The planning proposal seeks to amend Schedule 1 of the WLEP 2014. Schedule 1 identifies additional permitted uses on certain sites within the Woollahra LGA. An additional clause (Clause 15) is proposed as follows:

15 Use of certain land at 636-646 New South Head Road, Rose Bay

- (1) This clause applies to land at 636 and 638-646 New South Head Road Rose Bay, being Lot A, DP 393087 and SP22533.
- (2) Development for the purpose of residential flat building is permitted with development consent, but only as part of a mixed use development.

This is a simple and effective way of resolving the land use permissibility issue to achieve the objective of the planning proposal. The planning proposal does not seek to amend any other provision of the WLEP 2014.

4.2 Development concept

An indicative development concept for the site was submitted by the applicant as part of the planning proposal request. The concept comprises:

- ground floor apartments at 636 New South Head Road and upper floor apartments at both 636 and 638-646 New South Head Road,
- ground retail / business uses at 638-646 New South Head Road, orientated to New South Head Road,
- basement car parking in a common basement across both lots, for both residential and retail / business uses, accessed by a single driveway off New South Head Road.
- direct access to development at 636 New South Head from New South Head Road, across 638-646 New South Head Road.

4.3 Permissibility of development

While the proposed uses in the development concept are independently permissible on each lot, a residential flat building within a mixed use development across both lots is prohibited because:

- 638-646 New South Head Road is zoned B2 Local Centre, in which the only form of permissible residential accommodation is ‘shop top housing’.
- ‘Shop top housing’ is defined in the WLEP 2014 as “*one or more dwellings located above ground floor retail premises or business premises*”.
- The Land and Environment Court has clarified that the definition requires **all** residential apartments to be located above ground floor retail or business premises. A development which incorporates both ground and upper level apartments would not satisfy the definition (e.g., *Hrsto v Canterbury City Council* [2014] NSWLEC 121).
- The indicative development concept incorporates a mixed use development across both lots as described in section 4.2 above. In this configuration, the apartments could not be characterised as ‘shop top housing’ and would therefore be prohibited at 638-646 New South Head Road.
- While the ground level apartments are proposed to be situated wholly within 636 New South Head Road, which is zoned R3 Medium Density Residential, the development will be a mixed use development across both lots.

An amendment to the permissible uses on the site is required to permit a mixed use development across both lots. The applicant requested the permissibility of the group term “residential accommodation” on the site. However, we consider that the “residential accommodation” group term would permit too broad a range of residential land uses on the site. The “residential accommodation” group term includes various residential uses such as “dual occupancies”, “hostels” and “multi-dwelling housing”, as well as “shop top housing”. The permissibility of some of these uses is inconsistent with the objectives of each of the two zones of the site. For example, the development of “dual occupancies” and “hostels” is inconsistent with the objectives of the B2 Local

Centre zone, which are primarily aimed at permitting retail and commercial uses. Similarly, the development of “shop top housing” is inconsistent with the objectives of the R3 Medium Density zone, which are primarily aimed at permitting medium density housing not incorporated within a mixed use development.

“Residential flat building” is defined in the WLEP 2014 as “a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing”. Permitting this use on 638-646 New South Head Road would facilitate the objective of the planning proposal without compromising the objectives of either of the two zones that apply to the site.

5. Review of the request for a planning proposal

Section 55 of the *Environmental Planning and Assessment Act 1979* (the Act) sets out what information a planning proposal is to include when submitted for a gateway determination. The Department of Planning and Environment (the Department) has prepared the document titled *A guide to preparing planning proposals* (the guidelines) dated August 2016 to help applicants meet the requirements of the Act.

The applicant’s request was submitted in the form of a report which has regard to Section 55 of the Act and the guidelines. We have reviewed the request for accuracy in accordance with section 55 of the Act and the guidelines and prepared a planning proposal to be submitted to the GSC (see **Annexure 1**).

5.1 Strategic merit

We have identified that the request has strategic merit and therefore we can provide in principle support.

The planning proposal is consistent with the existing and desired future character of the Rose Bay Centre in that it provides the opportunity for additional flexibility in:

- development of commercial and residential uses within a mixed use development, in accordance with the NSW Government’s documents *A Plan for Growing Sydney* (2014) and the *Draft Central District Plan* (2016);
- development to enhance the village atmosphere within and adjoining the Rose Bay centre. This is in accordance with Council’s *Community Strategic Plan, Woollahra 2025 – our community our place our plan*, in particular Goal 4 Well planned neighbourhoods and Goal 5 Liveable places;
- residential development options which are consistent with the objectives and desired future character for the Rose Bay Centre, as outlined in WDCP 2015, Chapter D6 Rose Bay Centre;
- development outcomes on land which:
 - are within and adjoining an established local centre, the Rose Bay Centre,
 - are accessible to multiple forms of public transport, including bus and ferry services, which provides direct access to services and employment in the CBD, Bondi Junction and Double Bay, and
 - are in walking distance of recreational facilities such as parks, tennis courts, basketball courts and Sydney Harbour.
- development outcomes for the site, without adversely impacting the amenity neighbouring land or the local environment.

This opinion is not intended to represent a position regarding the merits of a future development application for the site.

6. Options for proceeding

There are two options for responding to the request;

- prepare a planning proposal and submit it to the GSC, and
- notify the applicant that the request is not supported.

Option 1: Forward the planning proposal as included as **Annexure 1** to the GSC requesting a gateway for determination. This is our preferred approach.

Council will forward the planning proposal to the GSC requesting a gateway determination under section 58(2) of the Act. The GSC, or delegate, will then issue a gateway determination specifying whether the planning proposal is to proceed and, if so, in what circumstances. The gateway determination will confirm the information and consultation required before the planning proposal can be publicly exhibited.

Under section 59 of the Act, if a planning proposal is of local significance only Council can seek the delegation of the plan-making steps. This planning proposal is considered to have local significance only, and we would seek the delegation of the plan-making steps. This delegation will be to the position of General Manager, and sub-delegated to the position of Director Planning and Development, provided in Council's resolution of 29 November 2012. Delegation of a planning proposal removes duplication and streamlines the plan-making process.

Option 2: Notify the applicant that the request is not supported.

In the event that Council does not support the planning proposal or does not indicate its support within 90 days, the applicant can ask the Department for a pre-gateway review. Under this review mechanism, the Sydney Central Planning Panel will undertake an independent review of the planning proposal. This is not our recommended approach.

7. Next steps

If the Urban Planning Committee supports the recommendation and it is endorsed by Council, the planning proposal will be submitted to the Greater Sydney Commission (GSC) requesting a gateway determination under section 58(2) of the Act. The GSC, or delegate, will then issue a gateway determination specifying whether the planning proposal is to proceed and, if so, in what circumstances. The gateway determination will confirm the information and consultation required before the planning proposal can be publicly exhibited.

The public exhibition will be undertaken in accordance with the requirements of the Act and the *Environmental Planning and Assessment Regulation 2000*. The gateway determination will nominate the minimum required exhibition period. We recommend that the planning proposal is exhibited for a minimum of 28 days, should the gateway determination express a lesser period.

Public notification of the exhibition will comprise:

- a weekly notice in the local newspaper (the Wentworth Courier) for the duration of the exhibition period;
- a notice on Council's website;
- a letter to relevant public authorities;
- a letter to land owners in the vicinity of each site;

- a letter to local community groups including the Rose Bay Chamber of Commerce and the Rose Bay Residents' Association.

During the exhibition period the following material will be available on Council's website and in the customer service area at Woollahra Council:

- the planning proposal, in the form approved by the gateway determination.
- the gateway determination.
- information relied upon by the planning proposal (such as the contamination report and any other relevant reports).

Submissions to the exhibition will be reported to the Urban Planning Committee for Council's further consideration.

Under section 59 of the Act, if a planning proposal is of local significance only, Council can seek the delegation of the plan-making steps. This planning proposal is considered to be of local significance only, and we would request the delegation of the plan-making steps. This delegation will be to the position of General Manager, and sub-delegated to the position of Director Planning and Development, provided in Council's resolution of 26 November 2012. Delegation of a planning proposal removes duplication and streamlines the plan-making process.

8. Identification of income

When a planning proposal is not initiated by Council, under section 11 of the *Environmental Planning and Assessment Regulation 2000* we can request payment of all costs and expenses incurred in relation to the planning proposal. The Delivery Program 2013-2017 and Operational Plan 2016/17 sets out the fees and charges for preparing a planning proposal. The applicant is responsible for all costs associated with the planning proposal as required by the adopted fees and charges.

9. Conclusion

In principle, the request for a planning proposal has merit and we recommend that Council prepare a planning proposal and forward it to the GSC requesting a gateway determination so that it can be placed on public exhibition for a minimum of 28 days for comment.

Annexures

1. Planning proposal including documentation provided by the applicant. [↓](#)