

Urban Planning Committee Agenda



Agenda: *Urban Planning Committee*

Date: *Monday 11 April 2016*

Time: *5.30pm*

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Committee/Staff to present apologies or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Committee.
- If person(s) wish to address the Committee, they are allowed four (4) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (eg applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allotted four (4) minutes, the speaker resumes his/her seat and takes no further part in the debate unless specifically called to do so by the Chairperson.
- If there is more than one (1) person wishing to address the Committee from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- The Chairperson has the discretion whether to continue to accept speakers from the floor.
- After considering any submissions the Committee will debate the matter (if necessary), and arrive at a recommendation (R items which proceed to Full Council) or a resolution (D items for which the Committee has delegated authority).

Recommendation only to the Full Council:

- Such matters as are specified in Section 377 of the Local Government Act and within the ambit of the Committee considerations.
- Broad strategic matters, such as:-
 - Town Planning Objectives; and
 - major planning initiatives.
- Matters not within the specified functions of the Committee.
- Matters requiring supplementary votes to Budget.
- Urban Design Plans and Guidelines.
- Planning Proposals and Local Environment Plans.
- Residential and Commercial Development Control Plans.
- Rezoning applications.
- Heritage Conservation Controls.
- Commercial Centres Beautification Plans of Management.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" and substantive changes.

Delegated Authority:

- To require such investigations, reports or actions as considered necessary in respect of matters contained within the Business Agendas (and as may be limited by specific Council resolutions).
- Confirmation of the Minutes of its Meetings.
- Any other matter falling within the responsibility of the Urban Planning Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed above.
- Statutory reviews of Council's Delivery Program and Operational Plan.

Committee Membership: 7 Councillors

Quorum: The quorum for a Committee meeting is 4 Councillors.

Woollahra Municipal Council

Notice of Meeting

7 April 2016

To: Her Worship the Mayor, Councillor Toni Zeltzer ex-officio
Councillors Katherine O'Regan (Chair)
Ted Bennett (Deputy Chair)
Luise Elsing
James Keulemans
Matthew Robertson
Jeff Zulman

Dear Councillors

Urban Planning Committee – 11 April 2016

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Urban Planning Committee** meeting to be held in the **Thornton Room (Committee Room)**, 536 New South Head Road, Double Bay, on **Monday 11 April 2016 at 5.30pm.**

Gary James
General Manager

Meeting Agenda

Item	Subject	Page
1.	Leave of Absence and Apologies	
2.	Late Correspondence	
3.	Declarations of Interest	
 Items to be Decided by this Committee using its Delegated Authority		
D1	Confirmation of Minutes of Meeting held on 29 March 2016 - 16/44984	7
D2	Double Bay Working Party - minutes of meeting held on 15 March 2016 (SC2819) - 16/44568.....	9
 Items to be Submitted to the Council for Decision with Recommendations from this Committee		
R1	Planning proposal for 83 and 83A Yarranabbe Road, Darling Point - 16/35371	17

Item No: D1 Delegated to Committee
Subject: **CONFIRMATION OF MINUTES OF MEETING HELD ON 29 MARCH 2016**
Author: Sue O'Connor, Secretarial Support - Governance
File No: 16/44984
Reason for Report: The Minutes of the Urban Planning Committee of 29 March 2016 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.

Recommendation:

That the Minutes of the Urban Planning Committee Meeting of 29 March 2016 be taken as read and confirmed.

Item No: D2 Delegated to Committee
Subject: **DOUBLE BAY WORKING PARTY - MINUTES OF MEETING HELD ON 15 MARCH 2016 (SC2819)**
Author: Peter Kauter, Manager Placemaking
Approver: Allan Coker, Director - Planning & Development
File No: 16/44568
Reason for Report: To report on the activities of the Double Bay Working Party

Recommendation:

THAT the minutes of the Double Bay Working Party meeting held on 15/03/2016 as contained in Annexure 1 of this report be received and noted.

1. Background:

Council at its meeting on 11/11/2013 resolved to establish a working party comprising selected Councillors and key stakeholders to oversee the preparation and implementation of the Double Bay Place Plan.

The Working Party held its inaugural meeting on 20/05/2014.

Under the Double Bay Working Party's (DBWP's) Terms of Reference its stated purpose is:

The purpose of the working party is to oversee the preparation and implementation of a strategic action plan for the Double Bay commercial centre. The strategic action plan is to set out further strategies and actions for the revitalisation of the Double Bay commercial centre and will include a process for further testing and implementing the planning strategies arising from the Delivering a Sustainable Future City Program. The Working Party shall not operate in a regulatory or authoritative capacity.

The above statement of purpose is consistent with Council's resolution of 11 November 2013 in relation to the establishment and purpose of the working party.

Under *Delegated Authority* the Terms of Reference provide:

The Working Party is an advisory committee only and has no delegated authority. The Working Party will report to the Urban Planning Committee as required.

Accordingly the minutes of the DBWP meeting held on 15/03/2016 are being reported to the Urban Planning Committee for its consideration.

2. Conclusion:

The key points arising from the DBWP meeting held on 15/03/2016 were:

- **Greg Solomon** – tributes to the passing of Greg and acknowledgement of his achievements and in particular his achievements for Double Bay, the Working Party and the Chamber of Commerce

- **Double Bay lighting strategy and plan** – the presentation by ARUP on the progress of the Double Bay lighting strategy and plan
- **Double Bay Good Food Week** – the presentation by Ms Deirdre O’Loughlin, O’Loughlin Communications, including confirmation that Double Bay Good Food week is now locked-in
- **Supplementary capital works program and additional DPOP items** – updates provided on these matters including digital city guides and the economic feasibility study

The next meeting is scheduled for February 2016. Details to be confirmed.

Annexures

1. Minutes of the Double Bay Working Party meeting held on 15 03 2016

**WOOLLAHRA COUNCIL
DOUBLE BAY WORKING PARTY**

MEETING MINUTES

Date: Tuesday 15 March 2016
Time: 6.00pm
Location: Thornton Room, Woollahra Council

Present	Councillors	Toni Zeltzer – Mayor (Chair) Anthony Marano
	Business	Cara Inia (Double Bay Chamber of Commerce) Ms Deirdre O’Loughlin (Double Bay Networking Group)
	Residents	Alexandra Joel (Double Bay Residents Association) Ms Alison McKenzie (Bay Street Precinct Group) Ms Christine McDiven
	Woollahra Council staff	Allan Coker – Director Planning and Development Richard Ladlow – Acting Manager-Capital Projects Peter Kauter – Manager-Placemaking
	Strategic Advice	Professor Edward Blakely
	Consultants	Rebecca Cadorin, ARUP

Item	Subject	Discussion	Action
	The meeting commenced by acknowledging of the recent passing of Mr Greg Solomon. Greg was, until recently, the Chairman of the Double Bay Chamber of Commerce and a member of Double Bay Working Party. A number of Working Party members paid tribute to the great work Greg did for Double Bay. The Mayor spoke of his passion and commitment to Double Bay. He raised its fortunes at a time when they were flagging and achieved a great deal in a short period of time. The Working Party’s thoughts were with his family at this sad time.		
1	Apologies	Leslie Berger	Nil
2	Adoption of minutes of meeting on 10 November 2015	Adopted without change:	Nil
3	Public domain lighting strategy and plan	Rebecca Cadorin, ARUP, did a presentation on the draft public domain lighting strategy and plan. She explained the ongoing involvement of Leni Schweindinger who was unfortunately not able to attend the meeting. There was discussion on: <ul style="list-style-type: none"> • Bud lights – how they differed from 	ARUP to provide its final lighting strategy and plan by the time of the next Working Party meeting. ARUP to bring samples to the next Working Party meeting

Item	Subject	Discussion	Action
		<p>traditional 'fairy lights' used to decorate trees; the possibility of them being used in Kiaora Lane and expense. Rebecca agreed to bring samples along to the next Working Party meeting.</p> <ul style="list-style-type: none"> • Light spill – e.g. lighting to the Coopers Building (and other privately owned buildings) could impact on occupants of adjacent residential units; on Knox Street reflected light could impact on residents of the Cosmopolitan Centre. There was a need to work with property owners to work through this issue. • Priorities – whether lighting in Bay Street, north of William Street, and around the 18' Sailing Club and ferry wharf; should be the same priority as Kiaora Lane. Opinions differed. • Integration with the Double Bay Public Domain Strategy – the Working Party was reassured that the consultants working on the lighting strategy/plan and on the public domain strategy were talking to one another about the interrelationship of these projects. • Lantern design – there were 2 options being looked at, i.e. 'start from scratch', essentially the development of a new design/style, or modify an existing design to suit. • Timing – Rebecca agreed to provide samples of bud lights and other relevant materials and products referred to in the draft strategy/plan at the next meeting to be held in about a month. Also, projects that can be delivered before the end of June this year. <p>The Working Party was generally pleased with the presentation, the progress that has been made on the lighting strategy and plan and its contents.</p>	<p>of bud lights and other relevant materials and products.</p> <p>ARUP to provide details on projects that could be delivered before the end of June this year including costings.</p>
4	Public domain/gateway plan	<p>Staff updated the Working Party on the progress of the public domain/gateway plan being undertaken by Aspect Studios.</p> <p>Aspect Studios submitted a draft strategy in February 2016. It is vast, covering all aspects of Double Bay's public domain including life in the public domain, i.e. how the streets, parks, arcades, laneways and foreshore are used by people. Staff have reviewed the draft – it does a</p>	<p>Aspect Studios to work with staff on the finalising the draft for presentation at the next Working Party meeting.</p>

Item	Subject	Discussion	Action
		<p>great job in identifying Double Bay's public domain assets and then looks at Key Concepts, Overview, What to do & Opportunities/Recommendations. They are looking at how it can be condensed, achieving a consistent content & style and clarifying some aspect of detail.</p> <p>Aspect Studios will be in a position to make a presentation to the next Working Party meeting.</p>	
5	Double Bay Good Food Week (DBGFW)	<p>Deirdre O'Loughlin, O'Loughlin Communications, updated the Working Party on progress with the DBGFW.</p> <p>It will take place from 10th May 2016 for 6 days. Woolworths has been confirmed as naming rights sponsor. Arrangements are in place for a dedicated DBGFW web site & discussions with the Wentworth Courier have been organised. Banners on NSH Rd 'smart poles' promoting DBGFW will go up in the period leading up to the event. A social media manager has been appointed.</p> <p>40 restaurants, cafes & hotels will be invited to provide cut-price, quality meals. Other activities include cooking classes (Inter Continental and Sake), progressive dining walk (10-14 people) and wine & cheese tastings at Dan Murphys.</p> <p>Other suggestions were musicians (investigate funding from Community & Cultural grants program); kids dining options and temporary lighting.</p> <p>The Working Party was pleased with the progress being made on DBGFW.</p>	Noted. Further update to be provided at the next Working Party meeting.
6	Supplementary capital works program	<p>Digital city guides – arrangements are being finalised with Envent to develop a mobile way-finding application. This follows a review of way-finding options as a result of concerns with practicality of the static modules, given other technologies and financing.</p>	Noted.

Item	Subject	Discussion	Action
7	General business	<p>Economic feasibility study – Alexandra Joel asked about the update that was meant to be provided. Staff advised that a report on a community engagement strategy is due to be considered by the Urban Planning Committee in April. A strategy that integrates other Double Bay initiatives (lighting strategy, public domain/gateway strategy and voluntary planning agreement) is being looked at. Modelling is being done on the effect of the planning control changes.</p> <p>Staff will keep the Working Party informed of what's happening with the study. (This matter was raised under General Business – future updates will be included as an item under the Supplementary Capital Works Program)</p> <p>Taste of China – Councillor Marano provided feedback on the event as part of Cultural Day – Chinese New Year. Over 7,000 people attended, many of the stall holders sold out and all said they would participate next time. It was a resounding success.</p> <p>There is potential for Knox Lane to be used for other food themed events.</p> <p>Double Bay fair – Carolina provided feedback on the annual street fair – strong emphasis on food & beverage, involvement from the 18' Sailing Club and extension of stalls down Bay Street to the ferry wharf raised the standard of the fair. Financially it virtually broke even (-\$2,000). It was a great outcome.</p> <p>Car hoons – a number of Working Party members raised concern with the increasing prevalence of high powered, noisy cars that are disturbing the quiet of the residents at night. It was felt that this was related to recent media reports of anti-social behaviour stemming from changed patterns of use of Kings Cross night spots.</p> <p>It was acknowledged that there is a limited number of existing late night trading premises in Double Bay and that council does not support, in principle, expanding the number of such premises. It was noted that the Double Bay Chamber of Commerce has started the Double Bay Safety Committee aimed at making Double Bay a smart-safe-shared place.</p>	<p>Noted.</p> <p>Staff to keep the Working Party informed of what is happening with the Economic Feasibility Study.</p> <p>Noted.</p> <p>Noted.</p> <p>Noted.</p>

Item	Subject	Discussion	Action
The next meeting of the Working Party is scheduled for 19 th April 2016			

Draft

Item No: R1 Recommendation to Council
Subject: **PLANNING PROPOSAL FOR 83 AND 83A YARRANABBE ROAD, DARLING POINT**
Authors: Brendan Metcalfe, Strategic Planner
Anne White, Acting Team Leader - Strategic Planning
Approvers: Chris Bluett, Manager - Strategic Planning
Allan Coker, Director - Planning & Development
File No: 16/35371
Reason for Report: To report on late correspondence submitted to the Council meeting of 10 August 2015, further submissions and two petitions relating to the planning proposal for 83 and 83A Yarranabbe Road, Darling Point.
To report on the proponent's community consultation on the planning proposal.
To obtain Council's approval to proceed with finalisation of the planning proposal.

Recommendation:

- A. That Council proceed with the planning proposal for 83 and 83A Yarranabbe Road, Darling Point
- B. That Council exercise its delegation authorised by the Department of Planning and Environment on 12 May 2014, to finalise the planning proposal under section 59(2) of the *Environmental Planning and Assessment Act 1979*.

1. Background

A planning proposal has been prepared under the *Environmental Planning and Assessment Act 1979* (the Act) to amend Woollahra Local Environmental Plan 2014 (WLEP 2014) on behalf of the proponent, Yarranabbe Developments.

The following changes are proposed to the planning controls that apply to the land at 83 and 83A Yarranabbe Road, Darling Point (the site):

- increase the floor space ratio (FSR) from 0.9:1 to 1.2:1 over the entire site
- for 83 Yarranabbe Road, increase the maximum building height from 10.5m to 15.2m and apply a second height of 5.7m (see below).
- increase the maximum building height from 10.5m to 15.2m over the access handle of 83A Yarranabbe Road
- amend the foreshore building line from 30m to 18m for residential flat buildings and multi dwelling housing development.

Second height

The second height is a maximum height for development at the highest part of the site. In this case, the highest part of the site adjoins the roadway.

The purpose of the two height limits over 83 Yarranabbe Road in this planning proposal is to:

- Provide an element of compatibility with the scale of adjoining development;
- Permit development that is compatible with the existing streetscape; and
- Minimise impact of new development on existing public and private views.

The proposed maximum building heights for the site are illustrated in section by Figure 1 below.

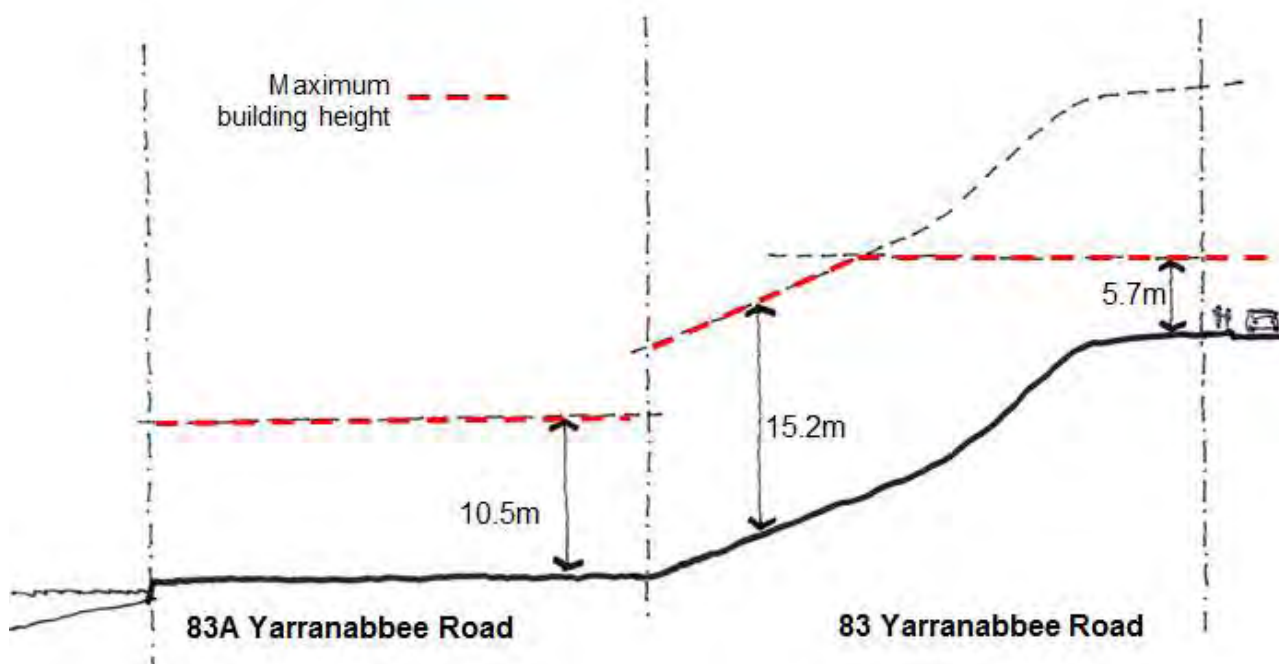


Figure 1: Proposed maximum building height section

The land is zoned R3 Medium Density Residential. No change to the zone is proposed. The proposed changes to the FSR, height and foreshore building line will facilitate redevelopment for a residential flat building (RFB).

Public exhibition of the planning proposal was held from Wednesday 25 March to Friday 8 May 2015, consistent with the Act, *Environmental Planning and Assessment Regulation 2000* (the Regulation) and the conditions set out in the Gateway Determination. A copy of the exhibited planning proposal is provided at **Annexure 1**. Fifty two submissions were received during the exhibition period. The planning proposal has generated significant community interest with a range of opposing views expressed.

On 27 July 2015 the Urban Planning Committee (UPC) considered a report (**Annexure 2**) on the public exhibition, and the issues raised in the submissions were addressed in the report. The UPC recommended that:

- A. That Council proceed with the planning proposal for 83 and 83A Yarranabee Road, Darling Point
- B. That Council exercise its delegation authorised by the Department of Planning and Environment on 12 May 2014, to finalise the planning proposal under section 59(2) of the *Environmental Planning and Assessment Act 1979*.

At the Council meeting of 10 August 2015 six items of late correspondence and one petition with 826 signatures were submitted. A copy of the late correspondence is provided at **Annexure 3**. On 10 August 2015 Council considered the UPC recommendation and resolved:

THAT Council refuse the planning proposal for 83 and 83A Yarranabee Road, Darling Point.

However, on 2 November 2015 Council resolved to rescind that decision:

THAT the motion carried at the Council Meeting held on 10 August 2015 being Item Number R1 of the Urban Planning Committee dealing with the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (SC2503) be rescinded.

At that meeting Council also resolved:

- A. *THAT Council requests staff to prepare a further report on the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (SC2503) including consideration of all late correspondence and present this report to the Urban Planning Committee.*
- B. *THAT the applicant meet with the Darling Point Society and other key community representatives to discuss the potential proposed impacts under:*
 - (i) *The planning proposal.*
 - (ii) *The current LEP and DCP.*

In response to Council's resolution from 2 November 2015, the proponent met with the Darling Point Society and other community members to discuss the potential proposed impacts. The proponent has prepared a report which:

- responds to the late correspondence submitted to the Council meeting of 10 August 2015
- responds to new submissions objecting to the planning proposal
- summarises the results of their consultation exercise

A copy of the proponent's report is provided at **Annexure 4**.

Following the Council meeting in November 2015, we have received an additional seven submissions. A copy of the additional submissions is provided at **Annexure 5**. A petition objecting to the planning proposal containing 1327 signatures was tabled at the Council meeting of 29 March 2016.

2. Summary of current and proposed planning controls

The existing Woollahra LEP 2014 controls and the exhibited and proposed controls are shown in Figures 2, 3, and 6 to 9 and are discussed below.

Height controls



Figure 2: Woollahra LEP 2014 height controls

Under the existing controls a 10.5m height control applies across the site. However, a dwelling house, dual occupancy or semi-detached dwelling, are limited to a maximum height of 9.5m.

Note: The properties on the south side of Yarranabbe Road address Thornton Street.



Figure 3: Proposed height controls

The planning proposal retains the existing height control of 10.5m over the majority of 83A Yarranabbe Road which is closest to the harbour. However, a height of 15.2m would be applied to 83 and the access handle of 83A Yarranabbe Road as shown above.

To maintain the streetscape and protect views from the opposite side of the road, a 5.7m second height is proposed from the highest part of the site abutting Yarranabbe Road.

A dwelling house, dual occupancy or semi-detached dwelling would remain limited to 9.5m across the site.

FSR controls

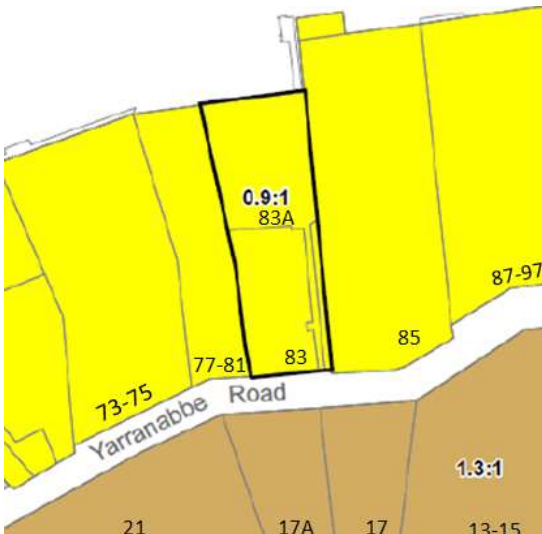


Figure 4: Woollahra LEP 2014 FSR controls

The existing FSR control for medium density development such as multi dwelling housing and RFBs is 0.9:1

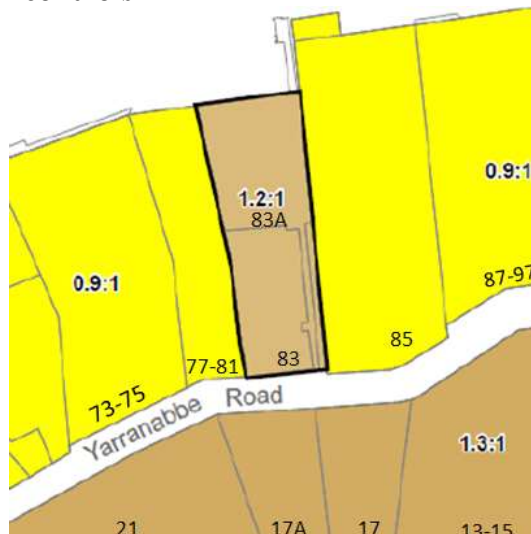


Figure 5: Proposed FSR controls

The planning proposal increases the maximum FSR to 1.2:1 over the entire site for development such as multi dwelling housing and RFBs.

Foreshore building line

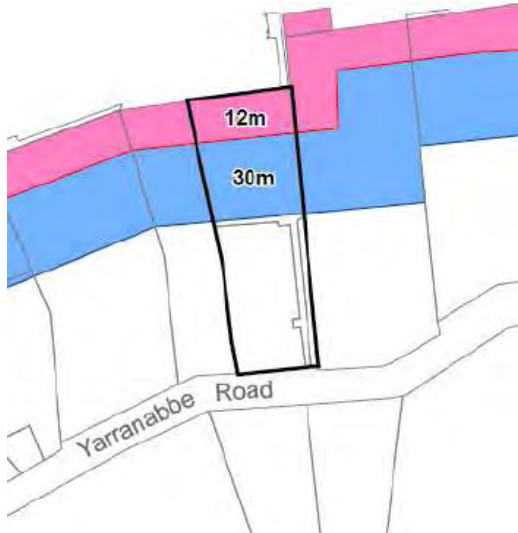


Figure 6: Woollahra LEP 2014 foreshore building line

Under the existing foreshore building line:

- dwelling houses, dual occupancies and semi detached dwellings must be set back 12m from mean high water mark (pink shading)
- RFB and multi dwelling housing development must be set back 30m from mean high water mark (blue shading)

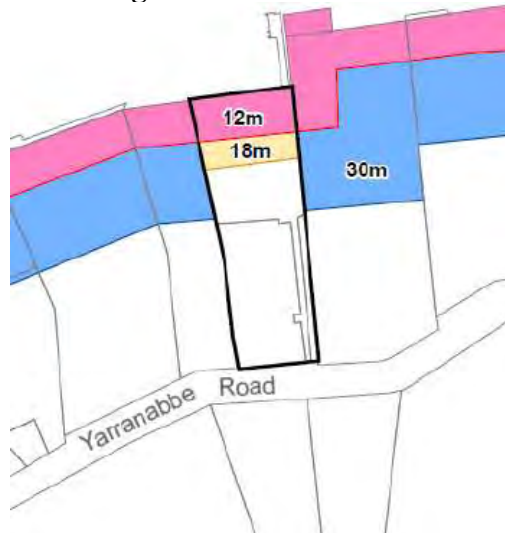


Figure 7: Proposed foreshore building line

The planning proposal would:

- retain the 12m foreshore building area for dwelling houses, dual occupancies and semi detached dwellings (pink shading)
- allow RFB and multi dwelling housing development 18m from the mean high water mark (tan shading)

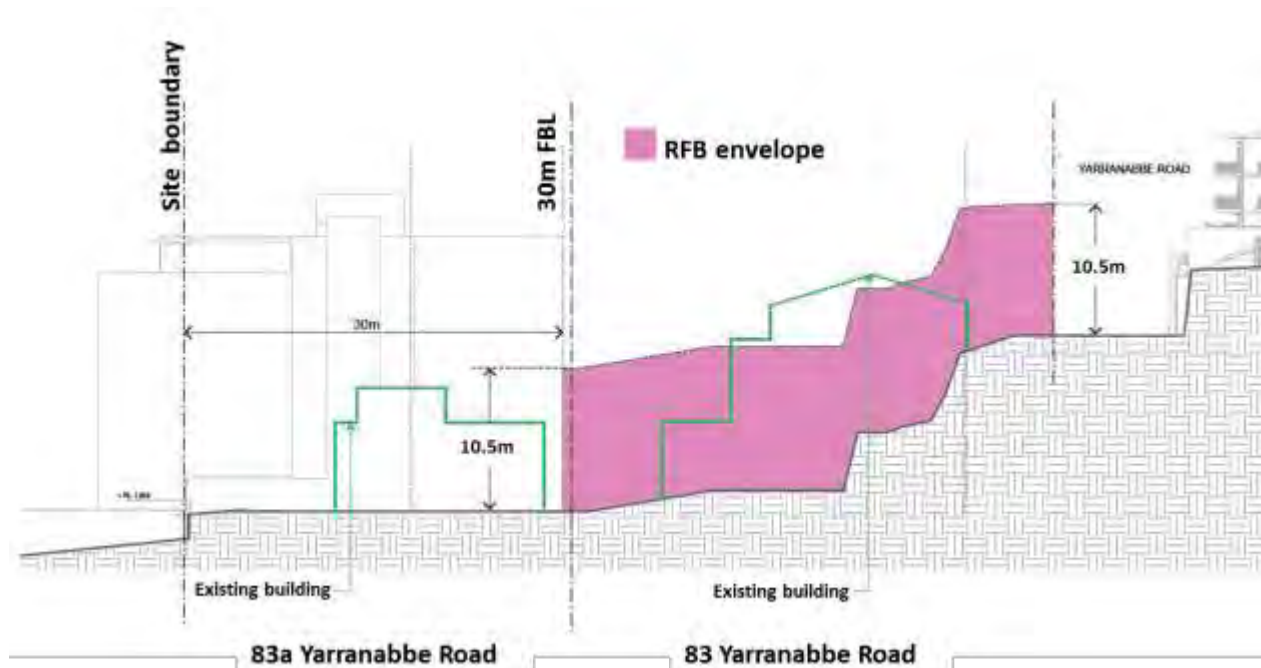


Figure 8: Existing Woollahra LEP 2014 building envelope for multi dwelling housing or RFB development

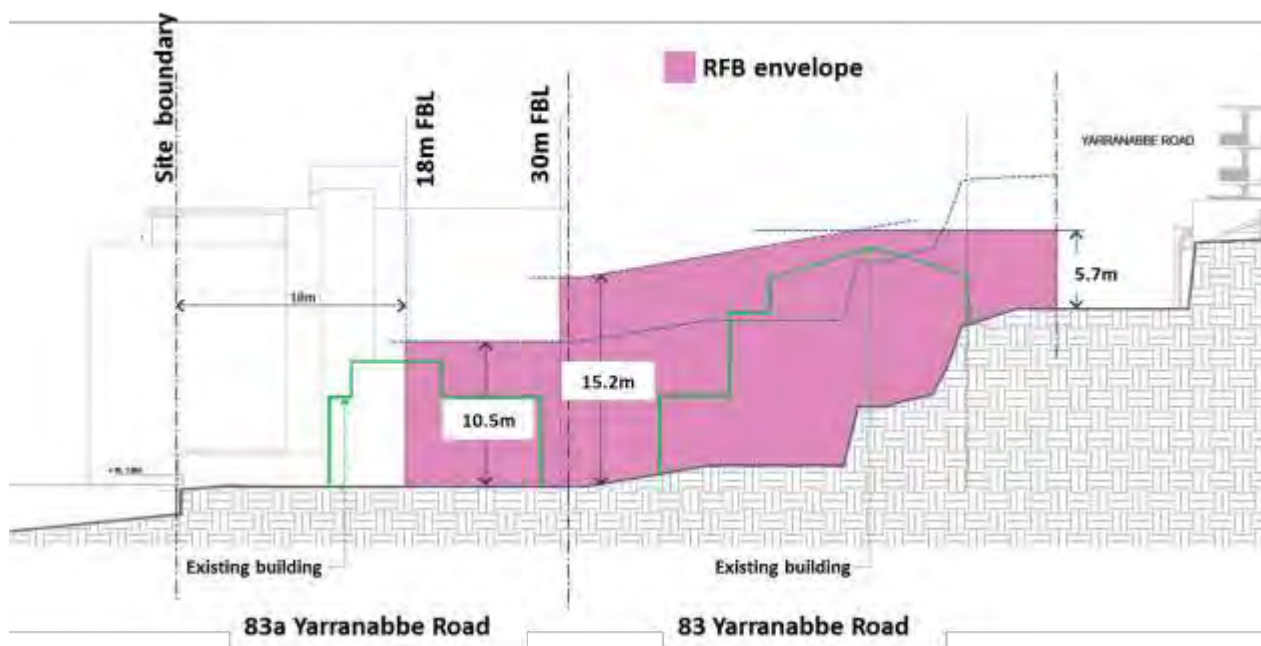


Figure 9: Proposed building envelope for multi dwelling housing or RFB development.

Cross sections of the existing and proposed building envelope created by the maximum building height and foreshore building lines are shown above in Figures 8 and 9. It is apparent that the planning proposal increases permissible height in the middle of the site by up to 4.7m, but reduces the height control at the street frontage by up to 4.8m. We recognise that any development on 83 Yarranabbe Road would need to have regard to the Woollahra Development Control Plan 2015 front setback controls. If a front setback is applied and given the topography of the site, it is unlikely that a building would be constructed to a height of 10.5m at the Yarranabbe Road frontage. Figures 8 and 9 also show the foreshore setback for RFBs and multi dwelling housing which is reduced from 30m to 18m. Both figures show the outline of the existing buildings (green line) that could be demolished and replaced with an RFB development. The planning proposal results in a

built form set back further from the foreshore than the existing buildings resulting in a net increase of 6m of additional landscaped area on the foreshore.

3. Late correspondence to the Council Meeting of 10 August 2015

At the Council meeting of 10 August 2015 six items of late correspondence were submitted (see **Annexure 3**). Following Council's resolution of 2 November 2015, we have responded to the issues raised in the late correspondence.

The late correspondence comprised one submission of support from the Mr John Roth, the owner of 83 Yarranabbe Road and five objections to the planning proposal from:

- The Darling Point Society
- Victoria Taylor, 67 Yarranabbe Road
- Colleen Bray, 67 Yarranabbe Road
- Elizabeth Richards, 67 Yarranabbe Road
- Janet Hemery 23, Thornton Street

The location of the submitters is shown in Figure 10 below



Figure 10: Location of submissions

Any new issues raised in the late correspondence that were not addressed in the report to the UPC on 27 July 2015 have been addressed below first. The new issues raised were:

1. The planning proposal will not provide affordable housing
2. The planning proposal is not in the public interest
3. The Minister of Planning was not aware of the community objections
4. Support for the planning proposal

Where the issue was addressed in the UPC report from 27 July 2015, a cross reference to our response in the UPC report has been provided. We note that the proponent has also provided a response to the issues raised in the late correspondence on pages 4-8 of **Annexure 3**.

In summary, the matters raised in the late correspondence have either been assessed in this report or a previous report. It is considered that they do not raise matters that warrant amendment or termination to the planning proposal.

Table 1: Response to late correspondence issues

1. The planning proposal will not provide affordable housing
<p>One piece of late correspondence from the Darling Point Society raised the issue of affordable housing. The Darling Point Society state that given the median house price in Darling Point, the planning proposal will not meet the State Government’s aim of increasing affordable housing.</p>
<p>Staff response</p> <p>Given the location of the site on the foreshore of Sydney Harbour, is not possible to provide affordable housing without significant subsidies. However, the provision of affordable housing was not an objective of the planning proposal. That does not mean that the planning proposal has no merit.</p> <p>The planning proposal will allow three additional dwellings to be constructed on the site in addition to replacing the existing two dwelling houses on the site. Given the built condition of the Woollahra LGA, achieving additional dwellings will need to occur through a range of options, including minor site yields such as anticipated for the subject site.</p> <p>This outcome is consistent with the Draft East Subregional Strategy which has a target of providing capacity for an additional 2,900 dwellings in the Woollahra LGA by 2031. Increasing housing supply and housing options in the Woollahra LGA are key to addressing affordability. Whilst the increased development potential for the site is modest, it is not the only reason the planning proposal was prepared. The planning proposal is supported as it results in a better planning outcome for the site.</p>
2. The planning proposal is not in the public interest
<p>One submission was received from the Darling Point Society stating that the planning proposal is not in the public interest.</p>
<p>Staff response</p> <p>The planning proposal is the result of on-going discussions with the applicant to establish the preferred planning outcome for the site. The planning proposal is in the public interest as it will:</p> <ul style="list-style-type: none"> • facilitate additional residential development on the site; • maintain or improve views from the public and private domain; and • allow a building to be constructed 18m from the foreshore, resulting in an additional 6m of landscaped area than is currently on the site.
3. The Minister of Planning was not aware of the community objections
<p>One piece of late correspondence from Victoria Taylor raised concerns regarding the Department of Planning and Environment not knowing about the community’s objection to the planning proposal prior to issuing the Gateway Determination. Ms Taylor states that if the Minister for Planning’s office knew of the strength and breadth of the community’s objections, the planning proposal would have been declined at the gateway stage.</p>
<p>Staff response</p> <p>The planning proposal has been prepared consistent with the requirements of the Act, the Regulation.</p> <p>Community input and opinion is not a mandated prerequisite to the stages of preparing a planning proposal prior to a gateway determination. Notwithstanding that, it cannot be concluded that the Department would have declined a gateway determination to allow the planning proposal to proceed. In this regard, the planning proposal is not of State or Regional importance and should be determined at the local level.</p>

4. Support for the planning proposal	
<p>One piece of late correspondence from John Roth the owner of 83 Yarranabbe Road supported the planning proposal. Mr Roth stated that the planning proposal was not understood by the community and that regarding the location of the foreshore building line, it is a simple choice between:</p> <ol style="list-style-type: none"> 1. The existing 3 storey building setback 12m from the foreshore, or 2. The proposed 2 storey building setback 18m from the foreshore. 	
<p>Staff response The comments of support are noted.</p>	
5. Other issues raised in late correspondence already addressed in the report to UPC of 27 July 2015	
Matter	Staff response provided in UPC report (Annexure 2)
<p>Objection to the proposed foreshore building line Raised by: Victoria Taylor, Colleen Bray, Janet Hemery, the Darling Point Society and Elizabeth Richards.</p>	<p><i>See pages 8-12: Objections to reducing the foreshore building line for RFB or multi dwelling housing development.</i> In summary amending the foreshore building line would be acceptable as it would:</p> <ul style="list-style-type: none"> • Provide a transition from the adjoining RFBs which are setback 7m and 30m from the foreshore. • Provide a suitable area for landscaping between the building and the foreshore. • Provides a larger building footprint, thus reducing potential bulk on the upper (street frontage) part of the site.
<p>Objection to the proposed height controls or building bulk Raised by: Victoria Taylor, Colleen Bray, Janet Hemery, the Darling Point Society and Elizabeth Richards.</p>	<p><i>See pages 13-15: Objections to increasing the maximum building height for RFB or multi dwelling housing development</i> In summary:</p> <ul style="list-style-type: none"> • The combination of the proposed controls creates a building envelope which is a contextual fit for the location. • The second height of 5.7m reduces the height of the building at the highest part of the site. • The envelope will maintain views from the public domain across the site from the footpath.
<p>Objections to the proposed floor space ratio controls. Raised by: Janet Hemery, the Darling Point Society and Elizabeth Richards.</p>	<p><i>See pages 15-17: Objections to increasing the floor space ratio for RFB or multi dwelling housing development</i> In summary the proposed FSR:</p> <ul style="list-style-type: none"> • Is consistent with the context of the location. • Will result in a building that will provide reasonable privacy, overshadowing and outlook to adjoining buildings.
<p>Objection regarding the covenant applying to 83A Yarranabbe Road Raised by Colleen Bray.</p>	<p><i>See pages 19-20: Inconsistency with the covenant that applies to 83A Yarranabbe Road.</i> In summary:</p> <ul style="list-style-type: none"> • The covenant is inconsistent with the current planning controls for the site and the area. • The planning proposal is consistent with the objectives and permissible uses in the zone. • Whether the covenant should be released by Council is a matter that can be addressed during an assessment of a DA for the site.

<p>Previous Land and Environment Court decision Raised by: Victoria Taylor, Colleen Bray and the Darling Point Society.</p>	<p><i>See pages 20-22: Inconsistency with a previous Land and Environment Court decision</i> In summary, the previous Land and Environment Court decision does not prevent the planning proposal from being assessed on its merit, nor does it prevent Council amending the planning controls for the site.</p>
<p>The planning proposal will set a precedent Raised by: Victoria Taylor, Colleen Bray, and the Darling Point Society.</p>	<p><i>See page 23: The planning proposal will create an undesirable precedent.</i> In summary:</p> <ul style="list-style-type: none"> • The planning proposal is site specific and does not apply to adjoining land. • The assessment of the planning proposal has been based on the individual features and qualities of this particular site. • If planning proposals or development applications for other foreshore properties are lodged, amendments would be assessed on merit.
<p>Objection to view loss Raised by: Colleen Bray, the Darling Point Society and Elizabeth Richards.</p>	<p><i>See pages 25-31: The impact of the planning proposal on views</i> In summary, based on the submissions received and the proponent's view modelling, satisfactory view sharing will be achieved under the proposed controls.</p>

4. Petitions objecting to the planning proposal

At the Council meeting of 10 August 2015 a petition was tabled objecting to the planning proposal. The petition contains signatures from 826 people collected by the Darling Point Society. The majority of signatures were from residents of Darling Point.

The submission was introduced with the following text:

SAVE OUR HARBOUR FORESHORES – PETITION

Woollahra Council is considering a Planning Proposal which breaches the Foreshore Building Line, the height restriction and the bulk ratio rulings at 83 and 83A Yarranabbe Road.

This proposal would allow a unit block to be built nearer to the Harbour Foreshore than is permitted by Council's rules which protect the foreshore.

This is of great concern for the future because it creates an exception to the ruling and is an invitation to other developers to build nearer to the foreshore using this as a precedent.

We, the undersigned, ask our Councillors to reject this Planning Proposal and to continue to protect our scenic foreshore from over development as previous Councils have done for so long.

At the Council meeting of 29 March 2016, a second petition objecting to the planning proposal containing 1327 signatures collected by the Darling Point Society was tabled. Approximately half of the signatures were from Darling Point and Edgecliff. The introductory text was as follows:

SAVE OUR HARBOUR FORESHORES – PETITION

Woollahra Council is considering a site specific Planning Proposal for 83 and 83A Yarranabbe Road which significantly breaches Council's Foreshore Building Line. The height restriction and the bulk ratio are also in breach.

This proposal would allow a unit block to replace a house, legitimately 12 metres from the waterline, with a unit block 18 metres from the waterline, instead of the 30 metres required by

Council's long standing rule for unit blocks which protects our scenic foreshores.

This is of great concern for the future because it creates an exception to the 30 metre rule and is an invitation to other developers to apply to build unit blocks ever closer to the harbour foreshores.

We, the undersigned, ask our Councillors to reject this Planning Proposal and to continue to protect our scenic foreshores from over development by upholding the 30m setback for unit blocks as previous Councils have done for so long.

Staff response

The introductory information in the petitions is inconsistent with the planning proposal for the following reasons:

- The planning proposal is to amend the foreshore building line, maximum building height and floor space ratio controls that apply to the site. There is no 'breach' of controls as referred to in the petitions.
- The planning proposal would allow an RFB to be constructed closer to the foreshore than is currently permitted. However, the first petition did not identify that there is an existing dwelling house located 12m from the foreshore that would be demolished and replaced with an RFB 18m from the foreshore. This will result in a net increase of 6m of additional landscaped area on the foreshore.
- The petitions state that the planning proposal will set a precedent or be an invitation for other developers to build nearer to the foreshore. Precedent does not apply as this is a site-specific rezoning which has been assessed on its own merits based on the particular features and qualities of this particular site. Notwithstanding that the laws regarding precedent apply to the development application process under Part 4 of the Act, not the plan making powers under Part 3 of the Act, *Emmott v Ku-ring-gai Municipal Council* (1953) 3 LGRA 177 has shown that a precedent is extremely difficult to establish. Should Council receive other planning proposals to vary the foreshore building line, each application will be considered on merit.
- The variation to the foreshore building line control was not considered in isolation. The merit of amending the controls to facilitate an RFB development included the consideration of a number of factors including:
 - the existing context,
 - maintaining or improving the amenity of the surrounding area,
 - the location of the existing dwelling on the foreshore at 83A Yarranabbe Road,
 - the existing 7m foreshore setback of the RFB at 85 Yarranabbe Road.
- The petition implies the planning proposal is a development application. The planning proposal process considers the merit of changing planning controls for a particular location based on context and merit.

When assessing submissions, the issues raised are considered on merit and not by the number of people that have raised the issue. The petitions do not raise matters that warrant amendment or termination to the planning proposal.

5. Further submissions

Following the 2 November 2015 Council meeting, seven submissions have been received (see **Annexure 6**). Four submissions are objecting to the planning proposal and three are supporting it. The four objections were from:

- Design Collaborative on behalf of the owners of 77-81 Yarranabbe Road
- Ray Dresdner on behalf of the owners of 77-81 Yarranabbe Road
- Hones Lawyers on behalf of the owners of 17A Thornton Street
- The Darling Point Society

The three supporting submissions were from residents of 17 Thornton Street located to the south east of the site.

- Stuart Rose
- Rose Corporation
- Robin Chen

The matters raised in the submissions have been assessed in **Annexure 5**. The submissions raise eleven issues which provide variations on existing arguments against the planning proposal.

We note that the proponent has also provided a response to the issues raised in the Design Collaborative and Hones Lawyers submissions on pages 8-11 of **Annexure 4**.

In summary, the further submissions do not raise matters that warrant amendment or termination to the planning proposal.

6. Yarranabbe Development report on community consultation

In response to Council's notice of motion from 2 November 2015, the proponent submitted a report on the meetings they conducted with the Darling Point Society and other local community members. The report is on pages 11-19 of **Annexure 4**. The proponent met with 14 community members, and a summary of the outcome of these meetings is identified below.

	July 2015 position	Current position
Darling Point Society	Against	Against
77 Yarranabbe Rd		
Mr Ray Dresdner	Against	Against
17A Thornton St		
Mr Peter Halas	-	-
Mr Jonathan Pinshaw	-	Against
Mr Jim Dominquez	Against	Against
Santina Building, 85 Yarranabbe Rd		
Ms Leonie Jeffrey	For	For
Mr Cameron Harvey-Sutton	For	For
Mr Max Hunt	For	For
Mr Gary Cohen	-	For
Ms Lorna Nutt	-	For
Hopewood Gardens 15 Thornton Street		
Executive Committee	Against	Not objecting
56 Yarranabbe Rd (or 17 Thornton St)		
Mr Stuart Rose	Against	For
Rose Group	Against	For
Robin Chen	Against	For

According to the proponent's report, as a result of the community consultation exercise three residents have changed their positions to now support the Planning Proposal and the executive committee for Hopewood Gardens is no longer objecting.

Flyer

In addition to directly contacting community members, the proponent delivered a leaflet to 2,500 residences via Australia Post in the last week of March 2016. A copy of the leaflet is shown on page 3 of **Annexure 4**.

On 2 April 2016 the Darling Point Society wrote to all councillors and provided a response to the flyer which they say contained inaccuracies and irrelevancies (see **Annexure 7**). Their response was also posted on the notice board at the intersection of Darling Point Road and Mitchell Road.

The flyer and response from the Darling Point Society do not raise matters which warrant amendment or termination to the planning proposal.

7. Making the Draft LEP under delegated authority

To streamline the plan making process, the Minister can delegate some plan making powers to Council for routine matters. In this case, the Minister has provided written authorisation to exercise delegation to finalise this planning proposal. The latest version of the Gateway Determination (as amended on 14 January 2016) is attached at **Annexure 8**.

Should Council resolve to finalise the planning proposal, staff will request that Parliamentary Counsel (PC) prepare a draft local environmental plan amendment. Once the amendment has been prepared, PC will issue an opinion that it can be made.

Alternatively, should Council decide not to finalise the planning proposal, it should resolve to write to the Minister requesting him or his delegate not proceed with it under section 58(4) of the Act.

8. Conclusion

The planning proposal has generated significant community interest with a number of opposing views being expressed on its merit. The extensive community consultation, during the public exhibition from March to May 2015 and by the proponent during December 2015 to March 2016 has not led to a consensus. However, none of the additional information that has been raised warrants amendment or termination of the planning proposal.

The matters raised in the late correspondence, submissions and two petitions have been assessed. In particular, our assessment of these matters is that:

- A maximum building height of 5.7m at the Yarranabbe Road frontage will ensure that new development on the site will not interrupt views from properties to the south.
- The proposed controls will provide the opportunity to construct an additional three dwellings on the site.
- The planning proposal will not set a precedent for other property owners in the locality.
- A planning proposal is the appropriate process to assess the suitability of the proposed changes to the planning controls.

The proponent conducted community consultation as requested by Council with the Darling Point Society and other community members. The Darling Point Society remains opposed to the planning proposal and stated their questions could not be dealt with satisfactorily. However, according to the proponent's submission, the owners of Hopewood Gardens at 15 and 17 Thornton Street have agreed not to object to the planning proposal. Additionally, the owners of 17 Thornton Street now support the proposal if the maximum height of any building on the site is reduced level (RL) 21.5m. RL 21.5 is the maximum height of the proponent's concept for the site. We note that the maximum building height permitted under the planning proposal is approximately 20cm higher than RL 21.5.

For these reasons and the reasons identified in the UPC report of 27 July 2015 we recommend that Council resolves to finalise the planning proposal and amend WLEP 2014 by making the following changes to the planning controls that apply to the site:

- increase the floor space ratio from 0.9:1 to 1.2:1 over the entire site
- for 83 Yarranabbe Road, increase the maximum building height for residential flat building or multi dwelling housing development from 10.5m to 15.2m and apply a second height of 5.7m
- increase the maximum building height for residential flat building or multi dwelling housing development from 10.5m to 15.2m over the access handle of 83A Yarranabbe Road
- amend the foreshore building line from 30m to 18m for residential flat building and multi dwelling housing development.

Annexures

1. Exhibited planning proposal
2. Report to UPC 27 July 2015
3. Late correspondence to Council meeting of 10 August 2015
4. Proponents report
5. Staff assessment of submissions received after Council meeting of 2 November 2015
6. Submissions received after Council meeting of 2 November 2015
7. Darling Point Society response to flyer
8. Gateway Determination

Annexure 1



PLANNING PROPOSAL

83 and 83A YARRANABBE ROAD, DARLING POINT

25 MARCH 2015

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Part 1 – Introduction

This planning proposal is made in relation to land known as 83 and 83A Yarranabbe Road, Darling Point. The planning proposal seeks to change three development standards applying to the properties by:

- increasing the maximum height controls over part of the site
- introducing a new second height control which restricts the height of buildings at street level
- increasing the maximum floor space ratio (FSR) for residential flat buildings
- reducing the foreshore building line for residential flat buildings.

This planning proposal has been prepared in accordance with section 55 of the *Environmental Planning and Assessment Act 1979 (EPA&Act)* and the two documents prepared by the NSW Department of Planning and Infrastructure titled *A Guide to Preparing Planning Proposals (October 2012)* and *A Guide to Preparing Local Environmental Plans (April 2013)*.

The planning proposal submitted by the applicant provided options to amend both Woollahra Local Environmental Plan 1995 (Woollahra LEP 1995) and Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014). A change to Woollahra LEP 1995 would not be relevant because by the time the planning proposal process is completed, Woollahra LEP 2014 will have commenced operation and in doing so repealed Woollahra LEP 1995.

Therefore, this planning proposal is to amend the Woollahra LEP 2014 planning controls.

Part 2 – Site and context description

The planning proposal applies to land at 83 and 83A Yarranabbe Road, Darling Point (the site), located at the northern end of Darling Point as shown in Figure 1: Site map.



Figure 1: Site map

2.1 Site description

The site comprises two adjoining properties as shown in Figure 2: Site aerial.

The property at 83A Yarranabbe Road is a battle-axe lot accessed by a right-of-way over 83 Yarranabbe Road, which is generally rectangular. The combined area of the site is 1453.6m².

The property at 83 Yarranabbe Road is occupied by a three storey dwelling house with a double garage at the street frontage, and a garden and swimming pool at the rear.

The property at 83A Yarranabbe Road is occupied by a two storey dwelling house which is set back from the foreshore by a minimum of 12m. A swimming pool is located in the garden area between the dwelling and the foreshore. A three car garage is located on the roof of the dwelling, accessed via a raised driveway along the eastern boundary over the right-of-way.



Figure 2: Site aerial

The land at 83A Yarranabbe Road is relatively flat, but No.83 falls significantly from the south to the north by approximately 12.5m.

Vegetation on the site includes two large tree canopies in the south-eastern corner of No.83A that currently rise above the existing buildings and are highly visible from Yarranabbe Road and the properties further to the south. In addition, there is a mature palm in the north-east corner of No.83A among other dense vegetation that is visible from the harbour.

2.2 Context description

The site is in a residential area zoned R3 Medium Density Residential in Woollahra LEP 2014. However, the form of development varies significantly.

Development fronting the harbour ranges from a single storey waterfront house three lots to the west, to seven and ten storey residential flat buildings (RFBs) to the immediate east, and a three to five storey RFB to the immediate west. Other forms of multi-unit housing are located to the south of the site, ranging from single storey dwelling houses to townhouse developments and high density RFBs. The range of building storeys is shown in Figure 3: Existing context.



Figure 3: Existing context

Part 3 – Objectives of the planning proposal

In summary, the objective of the planning proposal is to facilitate medium density residential development by increasing the height and floor space ratio (FSR) controls, introducing a new second height limit to restrict the height of buildings at street level and reducing the foreshore building line setback for RFB development applying to the site.

By altering these controls, the planning proposal establishes a building envelope which is in the context of surrounding development.

Part 4 – Explanation of provisions

This planning proposal is to amend the controls in Woollahra LEP 2014 in the following ways:

- Amend the Floor Space Ratio Map to increase FSR from 0.9:1 to 1.2:1 over the site;
- Amend the Height of Building Maps and clause 4.3A Exceptions to building heights (Area A-Area H) to change the maximum building height from 10.5m to:
 - A maximum building height of 15.2m and a second height of 5.7m at the highest part of the site over 83 Yarranabbe Road, and
 - A maximum building height of part 10.5m and part 15.2m over 83A Yarranabbe Road;
- Amend the Foreshore Building Line Map and clause 6.4 Limited development on the foreshore area to apply an 18m foreshore building line for residential flat building development over the site.

The maps identifying these changes are shown in Part 6 below.

Second heights

The second height is a maximum height for development at the highest part of the site. In this case the highest part of the site adjoins the roadway.

The purpose of the two height limits over 83 Yarranabbe Road in this planning proposal is to:

- Provide an element of compatibility with the scale of adjoining development;
- Permit development that is compatible with the existing streetscape; and
- Minimise impact of new development on existing public and private views.

The proposed maximum building heights for the site are illustrated in section by Figure 4 below.

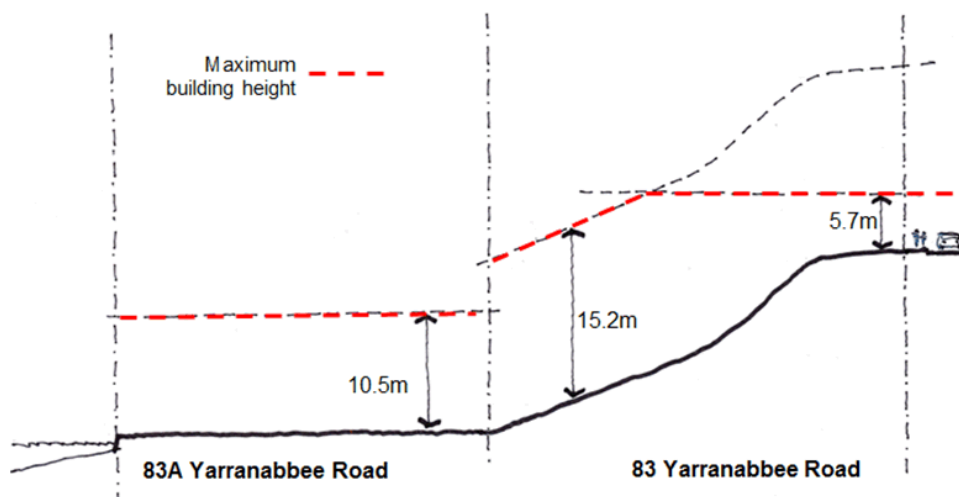


Figure 4: Proposed maximum building heights section

Part 5 – Justification

Section A – Need for the planning proposal

1. Is the planning proposal a result of any strategic study or report?

Yes. The planning proposal is the result of an on-going discussion with the applicant to establish a preferred planning outcome for the site. The applicant's planning proposal considered the site's context and amenity of neighbouring buildings such as view corridors and shadowing. As a result, the applicant's planning proposal and supporting documentation were produced.

The planning proposal submitted to Council was established with the intention of amending the planning controls to accommodate a suitable built form and urban design outcome for the site, and was accompanied by an Urban Design Statement. The Council's Urban Planning Committee report of 24 November 2014 (Attachment 2) includes a copy of the Urban Design Statement.

2. Is the planning proposal the best means of achieving the objectives, or is there a better way?

Yes. This planning proposal is the best means of achieving the objectives. A planning proposal is needed to change the maximum FSR and height, introduce a second height control and amend the foreshore building line to facilitate residential development.

The proposed planning control changes create a building envelope that fits within the existing context. The proposed envelope was established having regard to:

- views from the public and private domain;
- providing solar access to adjoining properties;
- the location of adjoining residential flat building development in relation to the foreshore building line;
- minimising building bulk; and
- providing a contextual building envelope.

At its meeting of 15 December 2014, Council endorsed the planning proposal for the purpose of public exhibition. The exhibition allows the public to comment on the merits of the proposed changes.

Section B – Relationship to strategic planning framework

3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional or sub-regional strategy (including the Sydney Metropolitan Strategy and exhibited draft strategies)?

Yes. The planning proposal is consistent with the relevant directions and actions contained in A Plan for Growing Sydney (the NSW Government's 20-year plan for the Sydney Metropolitan Area which was released in December 2014) and the Draft East Subregional Strategy. Consistency with these documents is addressed in the tables below.

A Plan for Growing Sydney	
GOAL 2: A city of housing choice, with homes that meet our needs and lifestyles	
Plan for greater housing supply, choice and affordability to meet Sydney's changing needs and lifestyles.	
A stronger emphasis on accelerating the delivery of new housing in Sydney to meet the needs of a bigger population and to satisfy a growing demand for different types of housing. Delivering houses in greenfield and urban renewal locations will help people to live closer to family and friends, to workplaces and schools, and to the services they use on a daily or weekly basis.	
<i>"A Plan for Growing Sydney focuses on Government actions to remove the barriers which impede the delivery of more housing, to stimulate competition among developers and to influence the location and type of new homes being built." (p.62)</i>	
Direction and action	Comment on consistency
Direction 2.1	
Accelerate housing supply across Sydney	The planning proposal will increase the dwelling capacity of the site.
Action 2.1.1	
Accelerate housing supply and local housing choices	The planning proposal will increase the dwelling capacity of the site, thereby increasing housing supply and improving housing options.
Direction 2.2	
Accelerate urban renewal across Sydney – providing homes closer to jobs	The subject site is within walking distance of bus and ferry services providing transport to nearby local centres and the CBD. Additionally the site is in proximity to a beach, parks, shops, and schools and other community facilities.
Action 2.2.1	
Use the Greater Sydney Commission to support Council-led urban infill project.	The planning proposal proposes infill medium density residential development in walking distance of public transport and a number of community facilities.

A Plan for Growing Sydney	
Direction 2.3	
Improve housing choice to suit different needs and lifestyles	The planning proposal seeks to provide medium density housing within close proximity of public transport and community facilities, thereby improving housing choice to meet demand and lifestyle requirements. The proposal will support 'universal housing' that allows people to stay in their home as they age.
Action 2.3.1 Require Local Housing Strategies to plan for a range of housing types	The planning proposal is consistent with the desired future character of the R3 Medium Density Residential zone, which permits residential flat buildings with consent. Increasing the number of dwellings on the site will assist Council to meet its target under the Draft East Subregional Plan of 2,900 dwellings by 2031.
Action 2.3.3 Deliver more opportunities for affordable housing	The planning proposal seeks to provide increased capacity for residential dwellings, thereby increasing dwelling supply and affordability.
GOAL 3: A great place to live with communities that are strong, healthy and well connected	
Plan for creating a city with strong, healthy and well connected communities.	
<i>"A Plan for Growing Sydney aims to create more vibrant places and revitalised suburbs where people want to live – welcoming places and centres with character and vibrancy that offer a sense of community and belonging." (p.80)</i>	
Direction 3.3 Create healthy built environments	The subject site is within walking distance of bus and ferry services, parks, beach and other recreational facilities. It provides the opportunity for people to walk and cycle which promotes social cohesion and community connectivity. Overall the proposal supports a strong, healthy and well connected community.

A Plan for Growing Sydney	
<p>Action 3.3.1 Deliver guidelines for a healthy built environment</p>	<p>Increasing dwelling density in this location is consistent with Action 3.3.1 and the NSW Government's Healthy Urban Development Checklist 2009.</p> <p>The subject site is within walking distance to transport, parks and other community facilities which encourages active modes of travel such as walking and cycling and promotes healthy activities.</p>
<p>Central Subregion</p> <p>The subregion will continue to play a dominant role in the economic, social and cultural life of Sydney</p>	
<p>Priorities for Central Subregion Accelerate housing supply, choice and affordability and build great places to live</p>	<p>The planning proposal will increase the dwelling capacity of the site facilitating increased dwelling supply, improved housing options and affordability.</p> <p>The subject site is within walking distance to public transport, parks and other community facilities which encourages active modes of travel such as walking and cycling and promotes healthy activities. Overall it supports a healthy living environment.</p>

Draft East Subregional Strategy	
Strategy C - Housing	
Objective and action	Comment on consistency
<p>Objective C1 Ensure adequate supply of land and sites for residential development.</p>	<p>The planning proposal seeks to provide increased capacity for residential dwellings.</p>
<p>Action C1.3 Plan for increased housing capacity targets in existing areas</p>	<p>The planning proposal will :</p> <ul style="list-style-type: none"> • increase capacity for residential dwellings in an existing medium density residential location. • assist Council to meet the Draft East Subregional Strategy housing target of 2,900 additional dwellings by 2031 for the Woollahra LGA.

Objective C2

Plan for a housing mix near jobs, transport and services

The planning proposal applies to a site that is within walking distance of bus and ferry services providing transport to nearby centres and the CBD.

4. Is the planning proposal consistent with the council's local strategy or other local strategic plan?

Yes. The planning proposal is consistent with the Council's Community Strategic Plan titled *Woollahra 2025 – our community, our place, our plan*. Notably, the planning proposal meets the following strategy within Goal 4 (Well planned neighbourhood) under the theme Quality places and spaces:

- 4.4 Encourage diversity in housing choice to suit a changing population.

5. Is the planning proposal consistent with applicable state environmental planning policies?

A table addressing the applicability of all SEPPs and the consistency of the planning proposal is provided at **Attachment 1**. Based on this assessment, Council has concluded that the planning proposal is consistent with all applicable SEPPs.

Of the relevant SEPPs, comment is provided on four key relevant State Environmental Planning Policies (SEPPs) and one deemed SEPP below.

SEPP 65 – Design Quality of Residential Flat Development 2002

Description of SEPP: This SEPP aims to improve the quality of design of residential flat development across NSW through the application of design principles.

Assessment: SEPP 65 will apply to the proposed development on the subject site. The planning proposal does not propose any changes to this requirement.

SEPP (Building Sustainability Index: BASIX) 2004

Description of SEPP: This SEPP operates in conjunction with *EP&A Amendment (Building Sustainability Index: BASIX) Regulation 2004* to implement consistent building sustainability provisions across NSW.

Assessment: Requirements for a BASIX certificate will apply to the subject site as part of any development application for the site and the planning proposal does not propose any changes to this requirement.

SEPP 32 Urban Consolidation (Redevelopment of Urban Land) 1991

Description of SEPP: This SEPP aims to ensure the NSW Government's urban consolidation objectives are met in all urban areas throughout the State. The policy focuses on the redevelopment of urban land that is no longer required for the purpose it is currently zoned or used, and encourages local councils to pursue their own urban consolidation strategies to help implement the aims and objectives of the policy.

Assessment: The planning proposal is consistent with the aims of this SEPP. It involves the intensification of residential development in an existing medium density zone which will provide new dwellings near public transport services.

SEPP 55 – Remediation of Contaminated Land

Description of SEPP: This SEPP introduces planning controls for the remediation of contaminated land across NSW. The policy states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must be undertaken before the land is developed.

Assessment: SEPP 55 will apply to the proposed development on the subject site. The planning proposal does not propose any changes to this requirement.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Description of the deemed SEPP: This SEPP aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways. It establishes planning principles and controls for the catchment as a whole which must be considered during the preparation of environmental planning instruments.

Assessment: The planning proposal is consistent with the planning principles of the SEPP. The relevant principle being that development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour¹.

The planning proposal responds to the site's context and proposes a transition from the 7m foreshore setback of 85 Yarranabbe Road to the 30m setback of 77-81 Yarranabbe Road. This approach will limit the bulk of development as viewed from the harbour, and provide an opportunity for greater foreshore landscaping compared to existing development on the site.

The 10.5m height limit on 83A Yarranabbe Road adopted by Council in Woollahra LEP 2014 is retained on the foreshore. On 83 Yarranabbe Road, the proposed 15.2m control allows for a development that responds to the topography of the site, but is limited by a second height of 5.7m at the highest part of the site which retains and enhances views from the surrounding area to the harbour.

¹ The *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* definition: Sydney Harbour includes all tidal bays, rivers and their tributaries connected with or leading to Sydney Harbour, and all waters bounded by mean high water mark and lying to the west of a line running between the southernmost point of North Head and the northernmost point of South Head.

6. Is the planning proposal consistent with applicable Ministerial Directions (s.117 directions)?

The applicable s.117 Directions are addressed in the table below.

No.	Title	Comment
Housing, Infrastructure and Urban Development		
3.1	Residential Zones	<p>Applicable – consistent.</p> <ul style="list-style-type: none"> • Woollahra LEP 2014 does not reduce the amount of land zoned for residential purposes. • The planning proposal will provide opportunities for additional residential units within the Woollahra LGA. • Urban consolidation will increase the supply of housing in a location that will utilise existing public transport infrastructure and services. • The site is adequately serviced by sewer, water, gas and electricity.
3.4	Integrating Land Use and Transport	<p>Applicable – consistent.</p> <ul style="list-style-type: none"> • The proposal is located within walking distance of bus and ferry services which connect to the local area and broader region.
Housing, Infrastructure and Urban Development		
4.1	Acid sulfate soils	<p>Applicable – consistent.</p> <ul style="list-style-type: none"> • The site is classified as Class 2 Acid sulfate soils. • Existing acid sulfate soils provisions will not be altered by the planning proposal and will apply to any future development which might intensify the use of the land.
Local plan making		
6.1	Approval and referral requirements	<p>Applicable – consistent.</p> <ul style="list-style-type: none"> • The proposal does not include provisions that require development applications to be referred externally and is not related to designated development.
6.2	Reserving land for public purposes	<p>Applicable – consistent.</p> <ul style="list-style-type: none"> • The planning proposal does not create, alter or reduce existing zonings or reservations of land for public purposes.
6.3	Site specific provisions	<p>Applicable – consistent.</p> <ul style="list-style-type: none"> • The planning proposal does not propose a rezoning or include additional land uses for the land.

No.	Title	Comment
Metropolitan Planning		
7.1	Implementation of A Plan for Growing Sydney	Applicable – consistent. <ul style="list-style-type: none"> As outlined above in Part 5, Section B.

Section C – Environmental, social and economic impact

7. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

The proposal does not apply to land, or is in the vicinity of land, that has been identified as containing critical habitats or threatened species, populations or ecological communities, or their habitats.

8. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

There are no likely environmental effects that cannot be managed through the development assessment process. Council and the other land owners are aware of environmental constraints on the land, such as flood levels and acid sulfate soil. These matters will be addressed if a development application is lodged.

9. How has the planning proposal adequately addressed any social and economic effects?

It is not anticipated that the planning proposal will have any negative social and economic effects which need to be addressed as part of the proposal.

Section D – State and Commonwealth interests

10. Is there adequate public infrastructure for the planning proposal?

Yes. The planning proposal relates to a site in an established area. It is considered that adequate public infrastructure for the development exists.

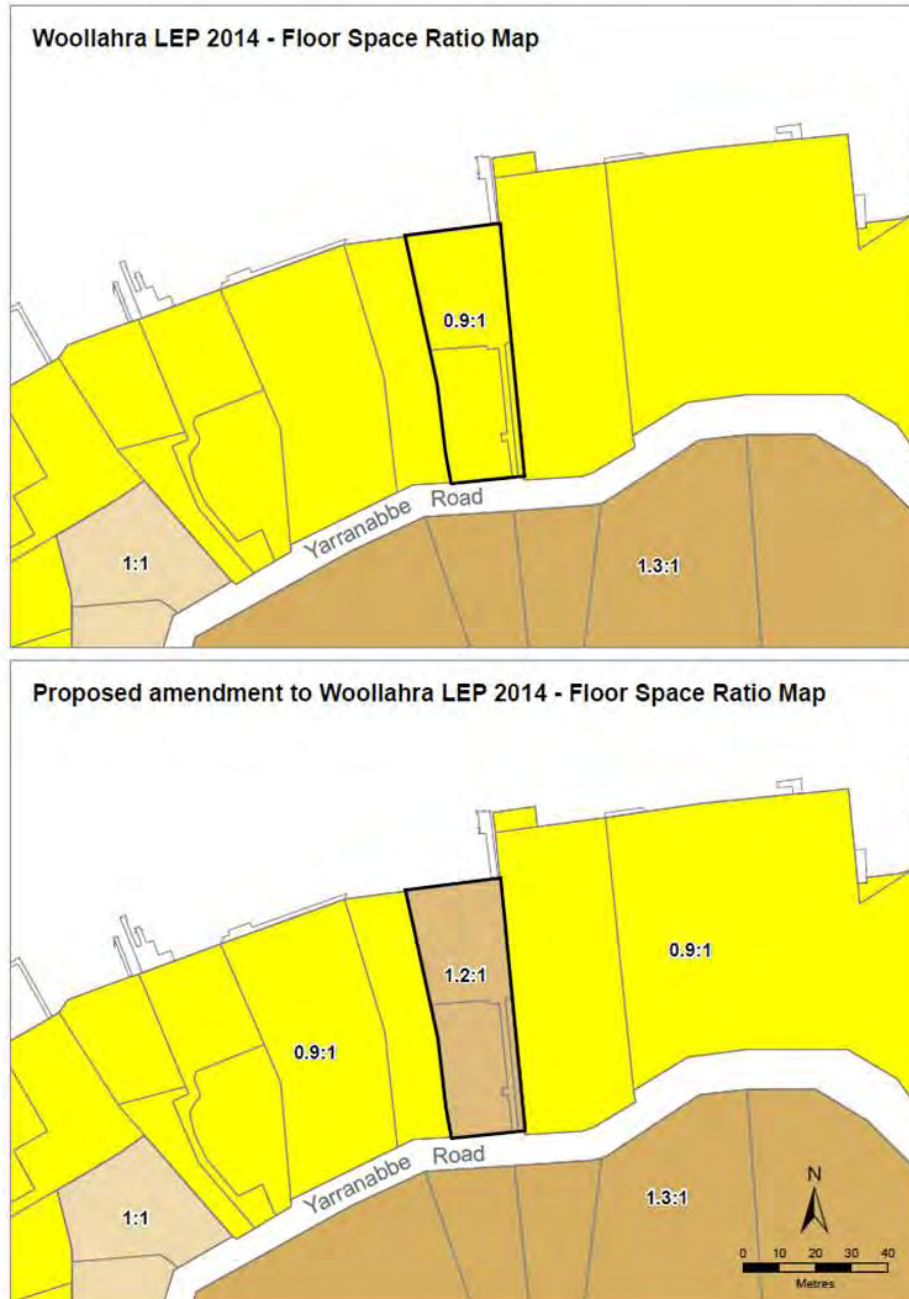
11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

This section will be completed following consultation with public authorities identified in the gateway determination.

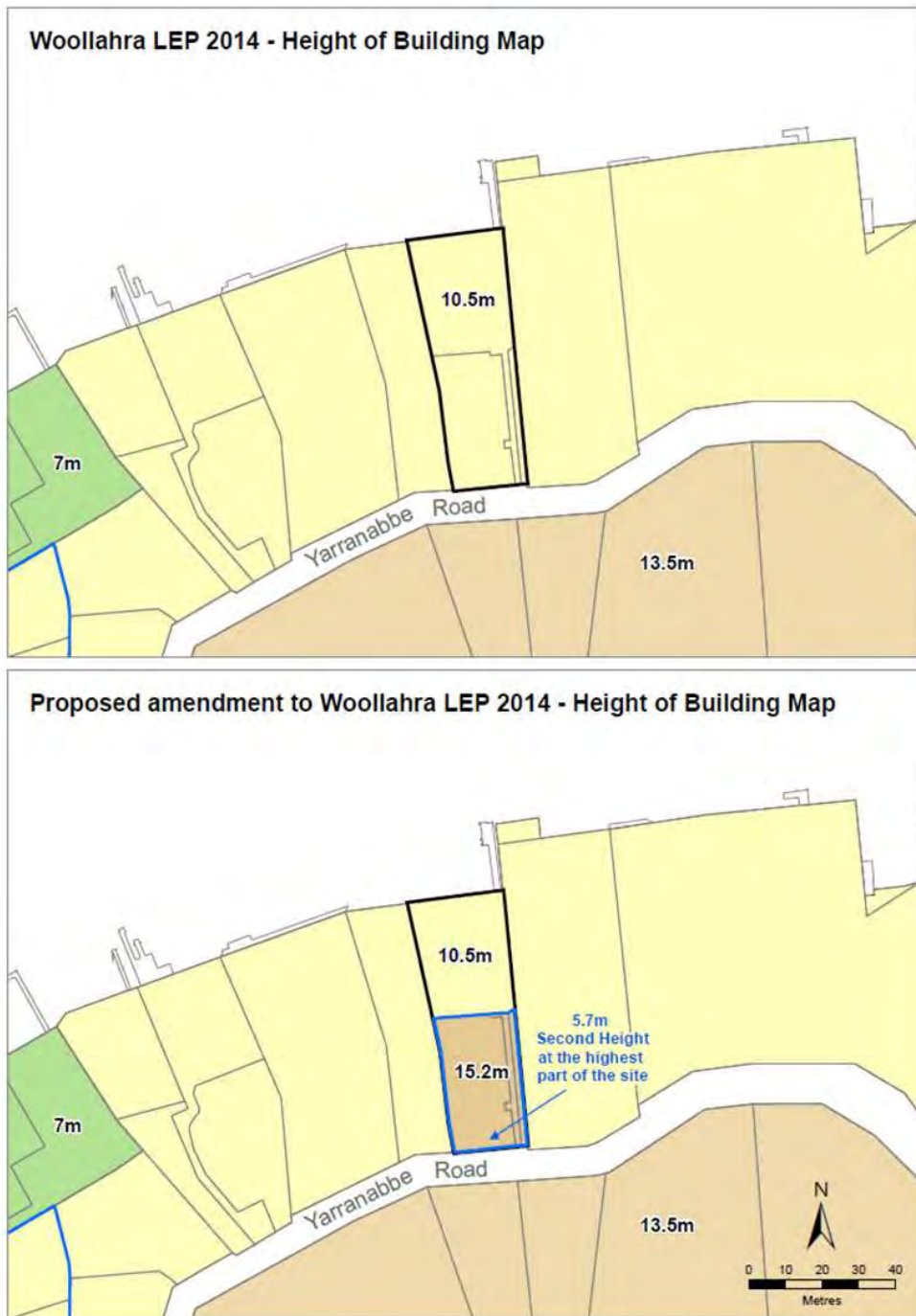
As the site is located adjacent to Sydney Harbour, we recommend that Roads and Maritime Services are consulted as part of the public exhibition.

Part 6 – Mapping

Inset maps of the existing and proposed controls for the site are provided below. The full size Woollahra LEP 2014 existing and proposed maps are located at Attachment 2.

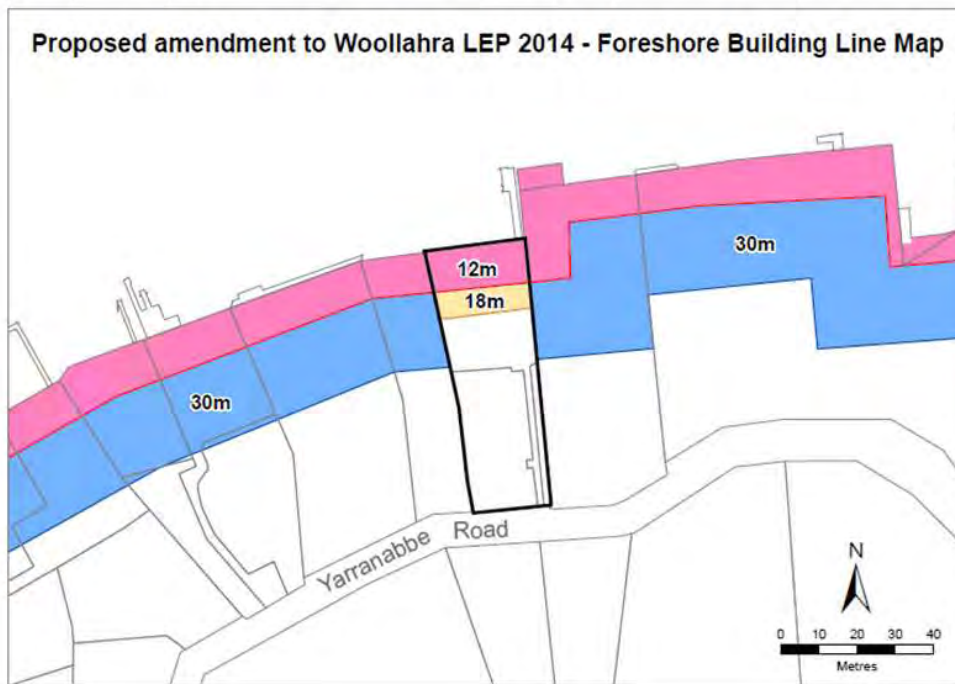
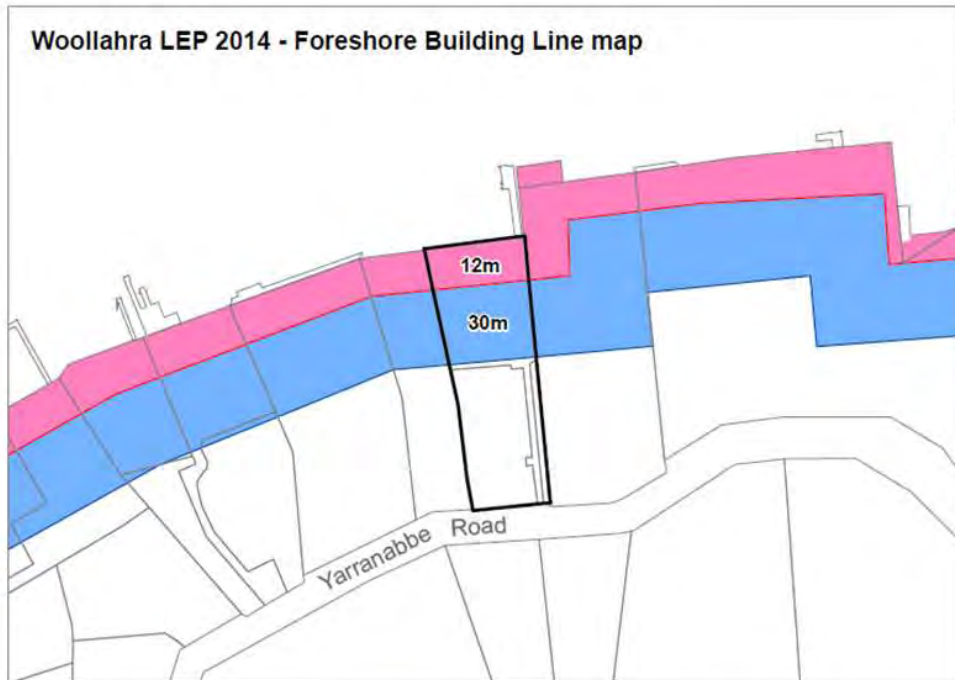


Woollahra Council Planning Proposal – 83 and 83A Yarranabbe Road, Darling Point
25 March 2015



Woollahra Council Planning Proposal – 83 and 83A Yarranabbe Road, Darling Point
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Part 7 – Community consultation

An exhibition period of at least 28 days is intended. This is consistent with part 5.2 of *A guide to preparing local environmental plans*, and due to likely community interest in this proposal.

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 the owners of land which is the subject of the planning proposal; and
- A letter to land owners in the vicinity of the site.

Consultation will also have regard to the requirements set down in the gateway determination issued by the Director-General of the NSW Department of Planning and Environment.

During the exhibition period, the planning proposal, gateway determination and other relevant documentation will be available on Council's Customer Service Centre and on Council's website.

Part 8 – Project timeline

The proposed timeline for completion of the planning proposal is as follows:

Plan-making step	Estimated completion
Urban Planning Committee recommends proceeding	November 2014
Council resolution to proceed	December 2014
Gateway determination	February 2015
Completion of technical assessment	None anticipated
Government agency consultation	March – May 2015
Public exhibition period	(28 days)
Submissions assessment	May – June 2015
Council assessment of planning proposal post exhibition	June 2015
Submission of planning proposal to the Department of Planning and Environment (DPE) finalising the LEP	N/A – proposal to subject to delegation
Council decision to make the LEP amendment (if delegated)	July 2015
Forwarding of LEP amendment to DPE for notification	July 2015
Notification of the approved LEP	August 2015

Attachment 1 Consistency with state environmental planning policies

State Environmental Planning Policy	Comment on consistency
SEPP No 1 - Development Standards	Applicable Consistent. The planning proposal does not contain a provision which affects the operation of this policy.
SEPP N0.14 – Coastal Wetlands	Not applicable
SEPP No 15 - Rural Landsharing Communities	Not applicable
SEPP No 19 - Bushland in Urban Areas	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 21 - Caravan Parks	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 26 – Littoral Rainforests	Not applicable
SEPP No 29 - Western Sydney Recreation Area	Not applicable
SEPP No 30 - Intensive Agriculture	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 32.- Urban Consolidation (Redevelopment of Urban Land)	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 33 - Hazardous and Offensive Development	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 36 - Manufactured Home Estates	Not applicable
SEPP No 39 - Spit Island Bird Habitat	Not applicable
SEPP No 44 - Koala Habitat Protection	Not applicable
SEPP No 47 -Moore Park Showground	Not applicable.

State Environmental Planning Policy	Comment on consistency
SEPP No 50 - Canal Estate Development	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 52 - Farm Dams and Other Works in Land and Water Management Plan Areas	Not applicable.
SEPP No 55 - Remediation of Land	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy. The planning proposal will allow the continuation of the existing residential use.
SEPP No 59 - Central Western Sydney Regional Open Space and Residential	Not applicable.
SEPP No 62 - Sustainable Aquaculture	Not applicable.
SEPP No 64 - Advertising and Signage	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 65 - Design Quality of Residential Flat Development	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 70 - Affordable Housing (Revised Schemes)	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP No 71 - Coastal Protection	Not applicable.
SEPP (Affordable Rental Housing) 2009	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Building Sustainability Index: BASIX) 2004	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.

State Environmental Planning Policy	Comment on consistency
SEPP (Exempt and Complying Development Codes) 2008	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Housing for Seniors or People with a Disability) 2004	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Infrastructure) 2007	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Kosciuszko National Park - Alpine Resorts) 2007	Not applicable.
SEPP (Kurnell Peninsula) 1989	Not applicable.
SEPP (Major Development) 2005	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Mining, Petroleum Production and Extractive Industries) 2007	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Miscellaneous Consent Provisions) 2007	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Penrith Lakes Scheme) 1989	Not applicable
SEPP (Rural Lands) 2008	Not applicable
SEPP (Transitional Provisions) 2011	Not applicable
SEPP (State and Regional Development) 2011	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.

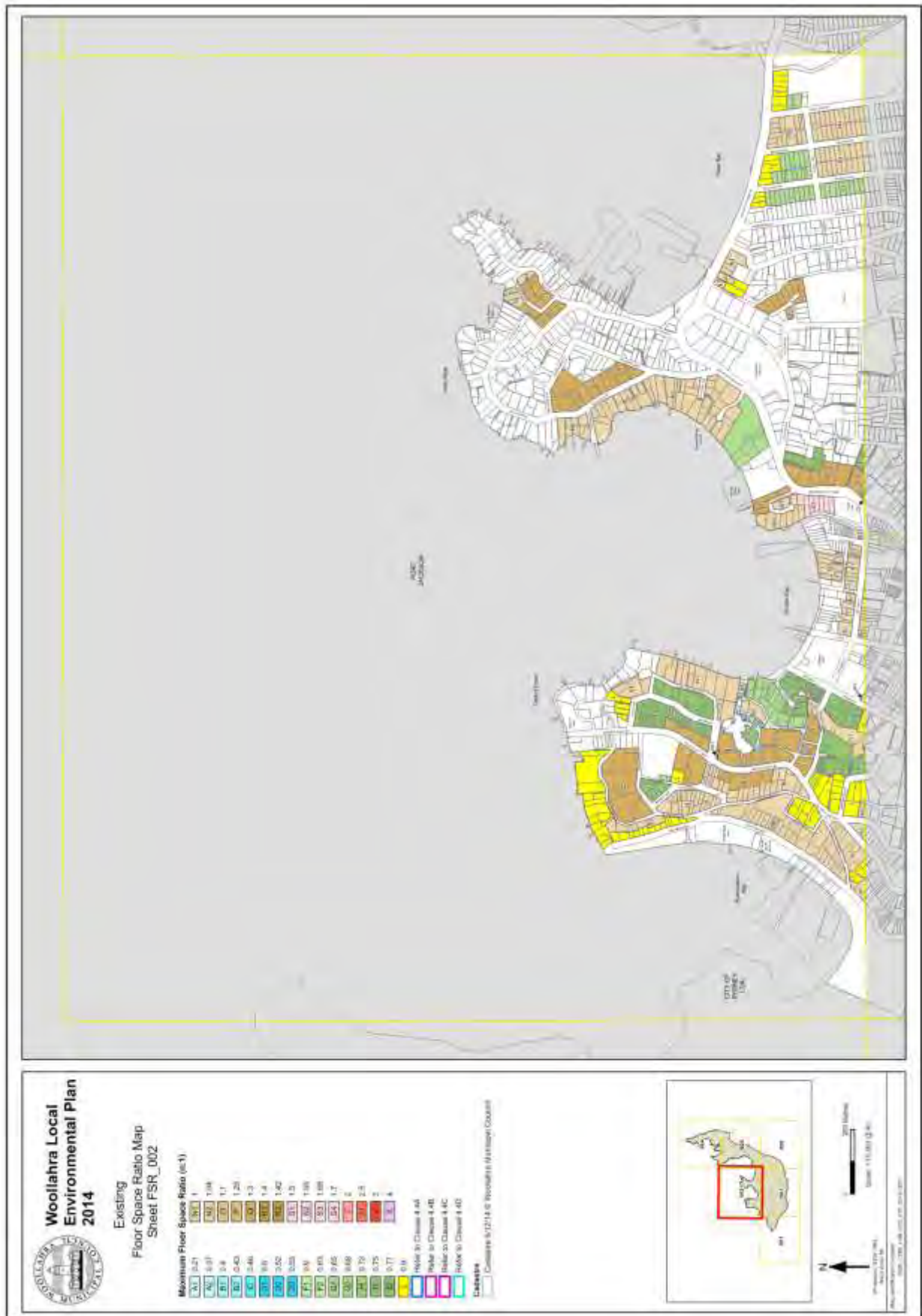
State Environmental Planning Policy	Comment on consistency
SEPP (Sydney Drinking Water Catchment) 2011	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.
SEPP (Sydney Region Growth Centres) 2006	Not applicable
SEPP (Three Ports) 2013	Not applicable
SEPP (Urban Renewal) 2010	Not applicable
SEPP (Western Sydney Employment Area) 2009	Not applicable
SEPP (Western Sydney Parklands) 2009	Not applicable

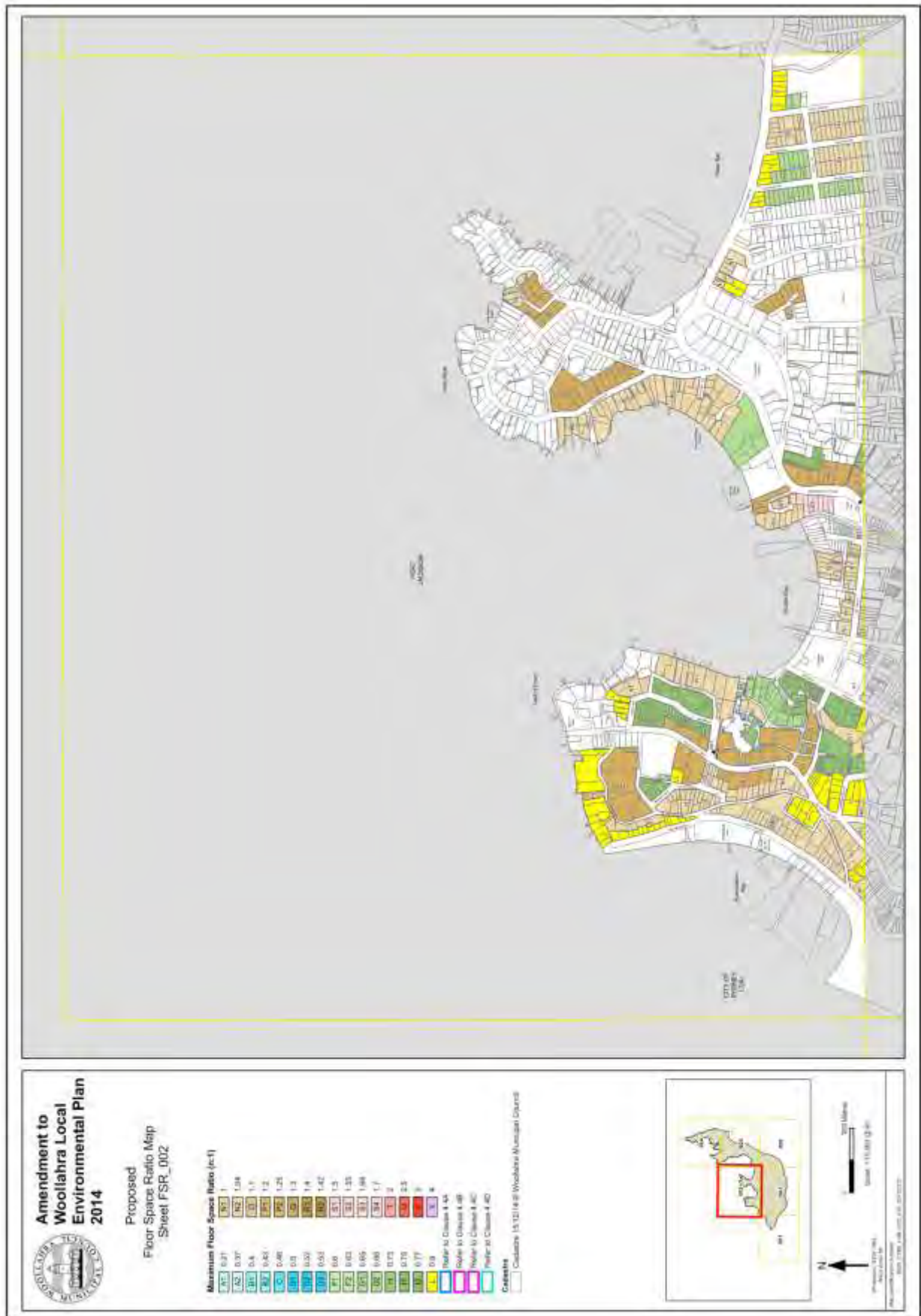
Sydney Regional Environmental Plans – now deemed State Environmental Planning Policies	Comment on consistency
SREP No 8 (Central Coast Plateau Areas)	Not applicable
SREP No 9 - Extractive Industry (No 2 - 1995)	Not applicable
SREP No 16 – Walsh Bay	Not applicable
SREP No18 – Public Transport Corridors	Not applicable
SREP No 19 – Rouse Hill Development Area	Not applicable
SREP No 20 - Hawkesbury- Nepean River (No 2 - 1997)	Not applicable
SREP No 24 - Homebush Bay Area	Not applicable
SREP No 26 – City West	Not applicable
SREP No 30 - St Marys	Not applicable
SREP No 33 - Cooks Cove	Not applicable
SREP (Sydney Harbour Catchment) 2005	Applicable Consistent. The planning proposal does not contain a provision which is contrary to the operation of this policy.

Attachment 2 Woollahra LEP 2014 maps

Woollahra Council Planning Proposal – 83 and 83A Yarranabbe Road, Darling Point
25 March 2015

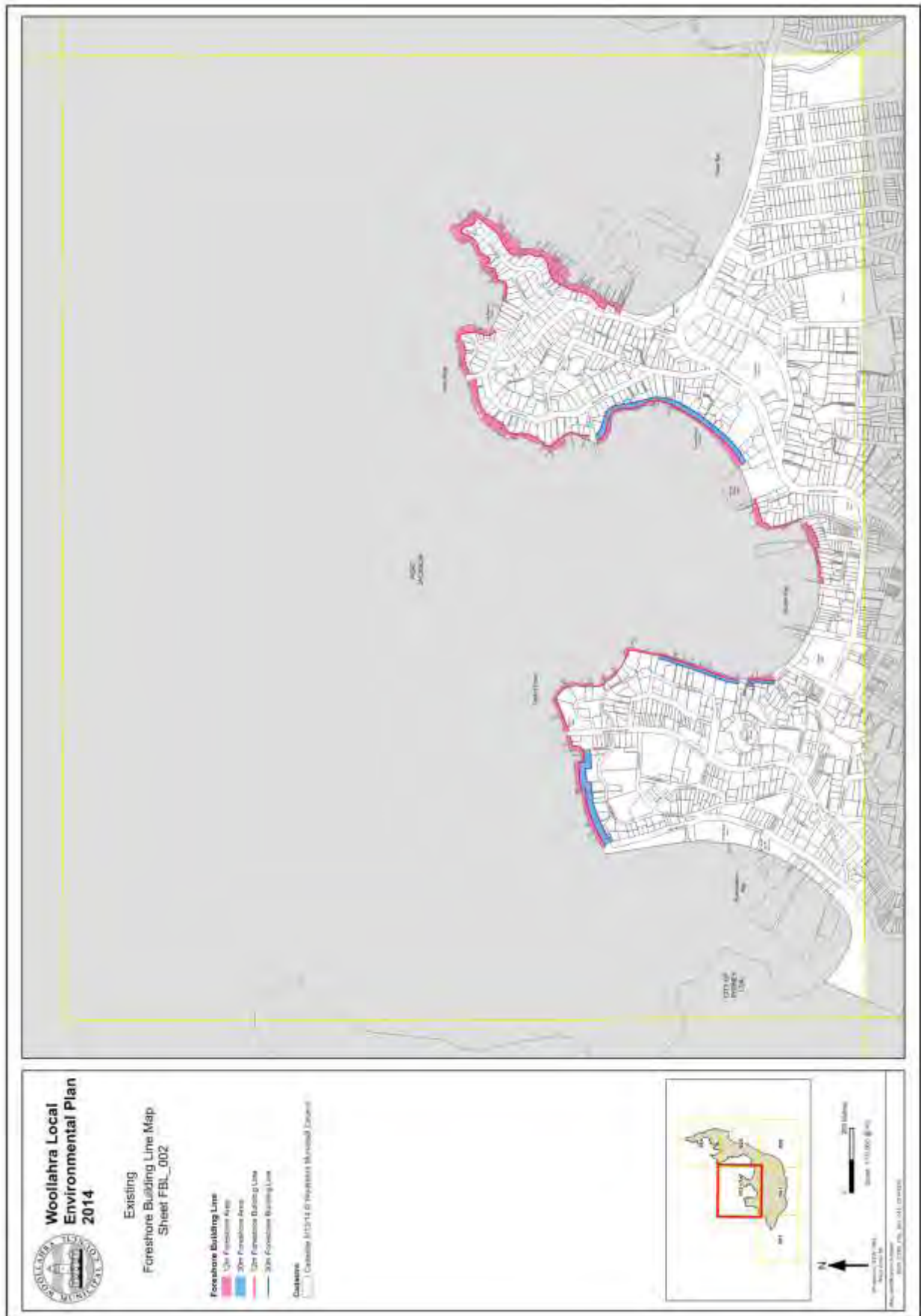
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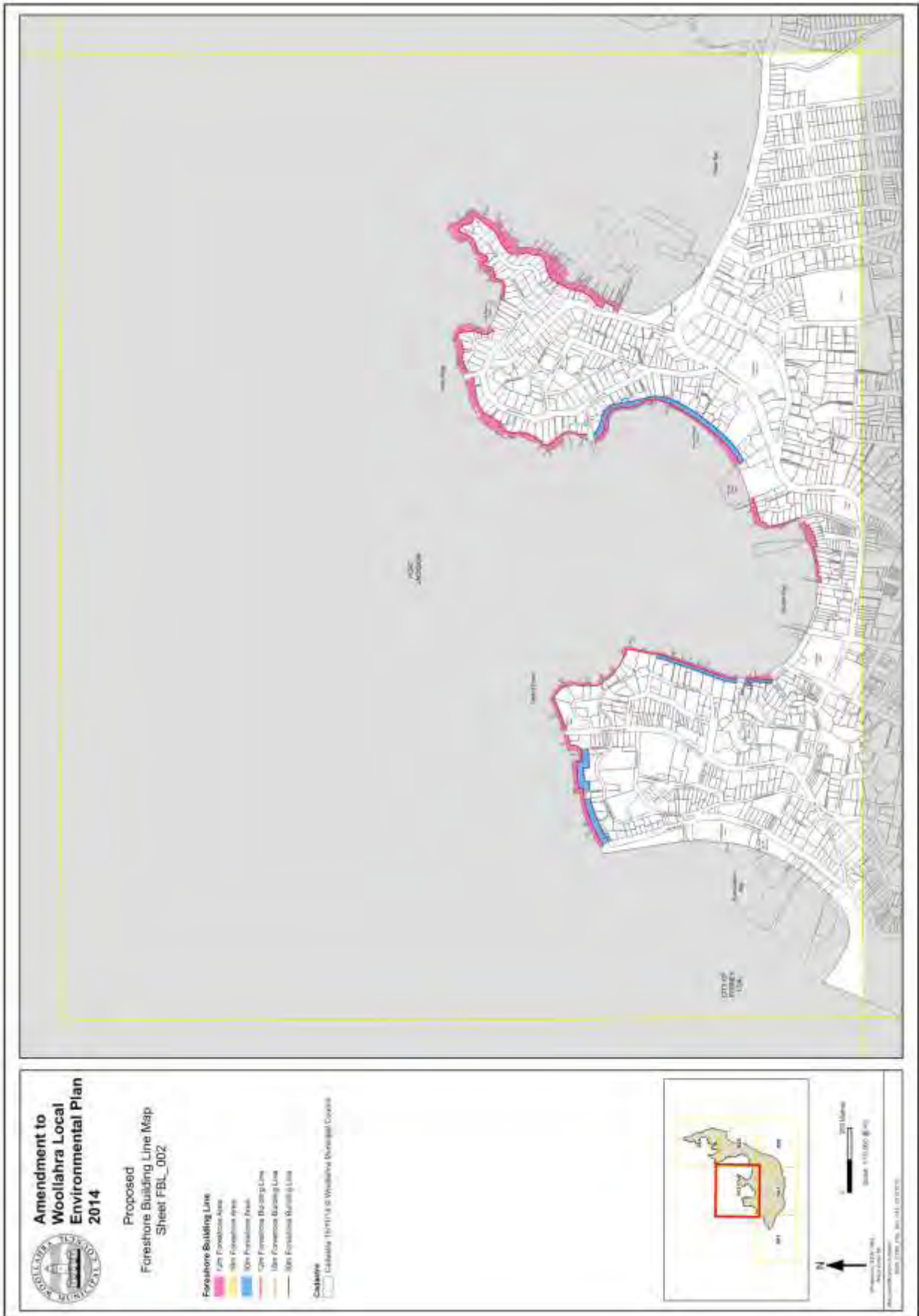












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Annexure 2

Item No: R1 Recommendation to Council
Subject: **PLANNING PROPOSAL FOR 83 AND 83A YARRANABBE ROAD, DARLING POINT (SC2503)**
Author: Brendan Metcalfe, Strategic Planner
Approver: Anne White, Acting Team Leader, Strategic Planning
Chris Bluett, Manager Strategic Planning
Allan Coker, Director Planning and Environment
File No: 15/66454
Reason for Report: To report on the public exhibition of the planning proposal for 83 and 83A Yarranabbe Road, Darling Point.
To obtain Council's approval to proceed with finalisation of the planning proposal.

Recommendation:

- A. That Council proceed with the planning proposal for 83 and 83A Yarranabbe Road, Darling Point
- B. That Council exercise its delegation authorised by the Department of Planning and Environment on 12 May 2014, to finalise the planning proposal under section 59(2) of the *Environmental Planning and Assessment Act 1979*.

1. Summary

On 15 December 2014, Council resolved to prepare and exhibit a planning proposal for Lots 12 and 11 in DP 598514 at 83 and 83A Yarranabbe Road, Darling Point (the site). The resolution followed a report to the Urban Planning Committee of 24 November 2014 (Annexure 4)

The planning proposal is to amend Woollahra Local Environmental Plan 2014 (Woollahra LEP 2014) by making the following changes to the planning controls that apply to the land:

- increase the floor space ratio (FSR) from 0.9:1 to 1.2:1 over the entire site
- increase the maximum building height for residential flat building (RFB) or multi dwelling housing development from 10.5m to 15.2m and apply a second height of 5.7m over 83 Yarranabbe Road
- increase the maximum building height for RFB or multi dwelling housing development from 10.5m to 15.2m over the access handle of 83A Yarranabbe Road
- amend the foreshore building line from 30m to 18m for RFB and multi dwelling housing development.

The land is currently zoned R3 Medium Density Residential (R3 zone), and in this zone dwelling houses, dual occupancy, multi dwelling housing and RFB development are permissible with consent. Minimum lot sizes apply to some of these uses, specifically 460m² for dual occupancy and 700m² for multi dwelling housing and RFB development.

The amendment of the planning controls will facilitate additional residential development on the site by allowing a further 436m² of gross floor area for RFB or multi dwelling housing development.

The public exhibition of the planning proposal is now complete. Fifty-two submissions were received during the exhibition period.

The submissions raised a number of issues including:

- Objecting to the reduced foreshore building line.

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- Objecting to the increased maximum building height and FSR.
- Identifying that a covenant applies to 83A Yarranabbe Road which restricts development on this lot to a dwelling house.
- Inconsistency with a previous Land and Environment Court decision for the site.
- Loss of views.
- Failure to properly consider the planning principles in part 2 of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005*.
- Creation of an undesirable precedent.
- Various perceived impacts to neighbouring properties arising from development on the site.

We have assessed the submissions and conclude that the issues raised do not warrant amendment of the planning proposal as exhibited. Our planning responses to the submissions are outlined in Part 4 of this report.

We recommend that Council proceed with the planning proposal as exhibited.

2. Background

In September 2014 a request for a planning proposal was submitted to Council by City Plan Strategy and Development and Tzannes Associates to facilitate a 2-5 storey residential development on the site. A planning proposal is an application to amend Woollahra Local Environmental Plan 2014, as opposed to a development application (DA) which would include details of the use and exact location of a building on the site.

The planning proposal seeks to change three development standards applying to the site by:

- increasing the maximum building height controls
- increasing the maximum FSR control
- reducing the foreshore building line for RFBs.

The planning proposal was reported to the Urban Planning Committee on 24 November 2014. The recommendation was to proceed with the planning proposal, but with the controls outlined in the Summary above. This recommendation was adopted by Council on 15 December 2014.

The existing Woollahra LEP 2014 controls and the exhibited and proposed controls are shown in Figures 1 and 2 and 5 to 8 and are discussed below.



Figure 1: Woollahra LEP 2014 height controls
Under the existing controls a 10.5m height control applies across the site. However, dwelling house, dual occupancy or semi-



Figure 2: Proposed height controls
The planning proposal retains the existing height control of 10.5m over the majority of 83A Yarranabbe Road which is closest to the harbour.

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detached dwelling, are limited to a maximum height of 9.5m.

Note: The properties on the south side of Yarranabbe Road address Thornton Street.

However, a height of 15.2m would be applied to 83 and the access handle of 83A Yarranabbe Road as shown above.

To maintain the streetscape and protect views from the opposite side of the road, a 5.7m second height is proposed from the highest part of the site abutting Yarranabbe Road.

Cross sections of the existing and proposed building envelope created by the maximum building height and foreshore building lines are shown below in Figures 3 and 4.

Note: Dwelling house, dual occupancy or semi-detached dwelling would remain limited to 9.5m across the site.

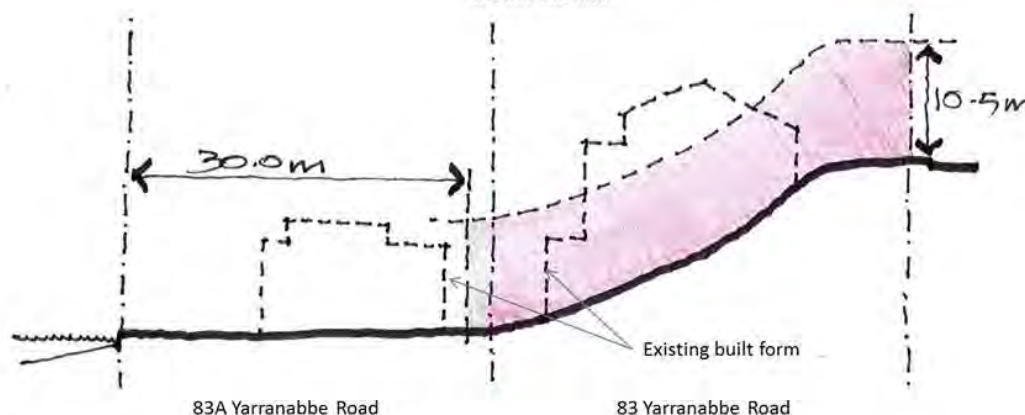


Figure 3: Existing Woollahra LEP 2014 building envelope for multi dwelling housing or RFB development

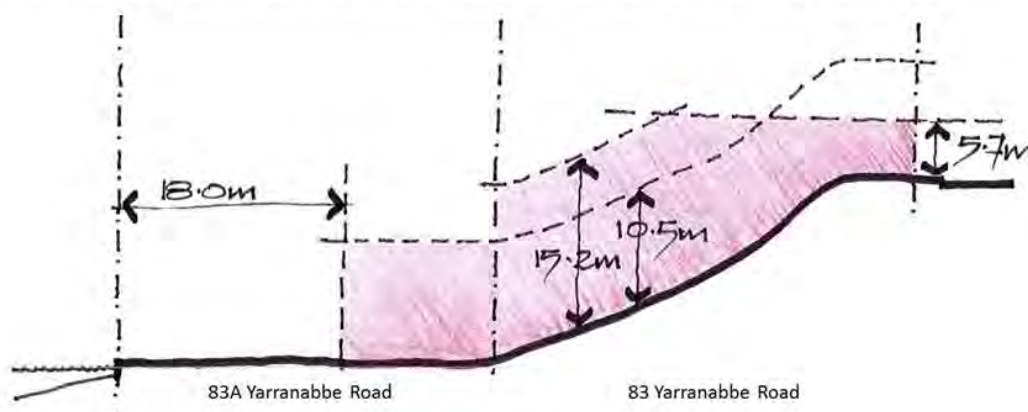


Figure 4: Proposed building envelope for multi dwelling housing or RFB development.

It is apparent that the planning proposal increases permissible height in the middle of the site by up to 4.7m, but reduces the height at the street frontage by up to 4.8m. This will allow the redistribution of building bulk from the top of the site to the middle of the site. Figure 3 and 4 also show the foreshore setback for RFBs and multi dwelling housing which is reduced by 12m.

Figure 3 includes the outline of existing buildings on the site that could be demolished and replaced with an RFB development.

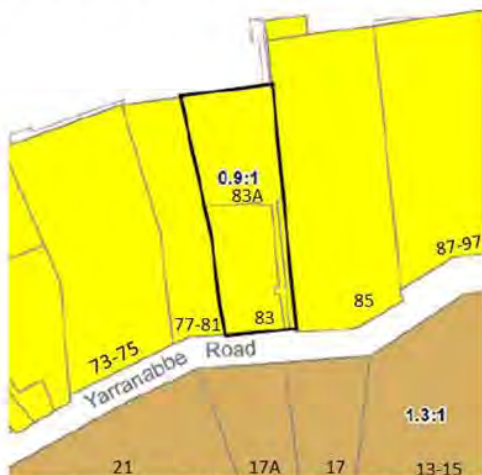


Figure 5: Woollahra LEP 2014 FSR controls
The existing FSR control for medium density development such as multi dwelling housing and RFBs is 0.9:1

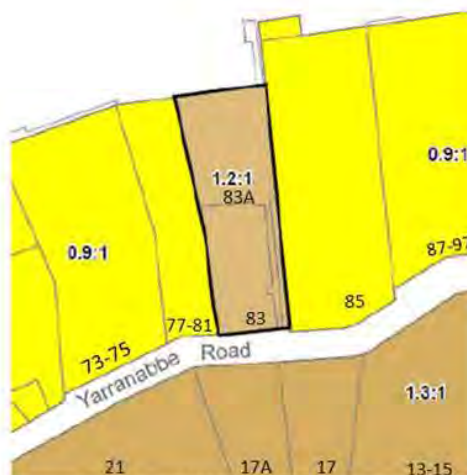


Figure 6: Proposed FSR controls
The planning proposal increases the maximum FSR to 1.2:1 over the entire site.



Figure 7: Woollahra LEP 2014 foreshore building line

Under the existing foreshore building line:

- dwelling houses, dual occupancies and semi detached dwellings must be set back 12m from mean high water mark (red shading)
- RFB and multi dwelling housing development must be set back 30m from mean high water mark (blue shading)



Figure 8: Proposed foreshore building line

The planning proposal would:

- retain the 12m foreshore building area for dwelling houses, dual occupancies and semi detached dwellings (red shading)
- allow RFB and multi dwelling housing development 18m from the mean high water mark (tan shading)

3. Public exhibition

The planning proposal (see **Annexure 1**) was exhibited from Wednesday 25 March to Friday 8 May 2015, consistent with the *Environmental Planning and Assessment Act 1979* (the Act), *Environmental Planning and Assessment Regulation 2000* (the Regulation), and the conditions set out in the Gateway Determination (see **Annexure 2**).

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The exhibition took place in Council's main offices in Double Bay, and the exhibition material was available in the Customer Service area during business hours. A copy of the planning proposal and information required by the Gateway Determination was also placed on Council's website for the duration of the exhibition period.

Details of the exhibition were notified in the Wentworth Courier editions of 25 March, 1 April, 8 April, 15 April, 22 April, 29 April and 6 May 2015.

We wrote to over 330 property owners about the proposal and notified nine State Government agencies: the Department of Planning and Environment, the Foreshores and Waterways Planning and Development Advisory Committee, Roads Division of Roads and Maritime Services (RMS), Heritage Branch, NSW Department of Housing, State Transit Authority, Sydney Buses, Department of Water and Energy, Department of Lands and Sydney Water.

During the exhibition period staff took five telephone enquiries and six front counter enquires. The exhibition information page on Council's website was visited by 197 external customers.

After the exhibition closed staff undertook a site inspection of a property at 5/15 Thornton Street to the south of the site.

4. Submissions

Fifty-two submissions were received. Of these:

- Five submissions were from government agencies: The Foreshores and Waterways Planning and Development Advisory Committee, RMS, Sydney Water, the NSW Office of Water and Transport for NSW. None of these submissions objected to the planning proposal.
- Forty-two submissions objecting to the proposal were received. Of these, one was from the Darling Point Society and four were made on behalf of strata plans or the owners' corporation at:
 - 77-81 Yarranabbe Road - an RFB containing four dwellings, adjoining the site to the west,
 - 85 Yarranabbe Road (known as Santina) - an RFB containing 27 dwellings, adjoining the site to the east,
 - 13-15 Thornton Street - a strata complex containing 50 units and seven town houses to the south east of the site
 - 21 Thornton Street - an RFB containing 59 dwellings to the south west of the site.
- Five submissions in support of the planning proposal were received. Two were from owners in 85 Yarranabbe Road which adjoins the site to the east, one was from an owner in 73 Yarranabbe Road, one was from an owner in 51 Yarranabbe Road and one was from an applicant.

The location of submissions objecting to and supporting the planning proposal from the nearby area are shown in Figure 9 on the following page. Submissions objecting to the proposal were also received from people with addresses in Double Bay, Rose Bay and Dover Heights.

A summary of the submissions and the staff responses are provided in the table below. A copy of all submissions is provided at **Annexure 3**.

The submissions to the planning proposal have been grouped into the following issues:

1. Objections to reducing the foreshore building line for RFB or multi dwelling housing development
2. Objections to increasing maximum building height for RFB or multi dwelling housing development
3. Objections to increasing the floor space ratio for RFB or multi dwelling housing development
4. Whether proper consideration was given to the planning principles of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* and supporting Sydney Harbour Foreshores and Waterways Area DCP 2005

5. Inconsistency with a covenant that applies to 83A Yarranabbe Road
6. Inconsistency with a previous Land and Environment Court decision
7. The planning proposal will create an undesirable precedent
8. Legal advice on the planning proposal
9. The impact of the planning proposal on views
10. Loss of trees/greenery
11. Potential traffic and parking issues
12. The suitability of setbacks from adjoining buildings
13. Impact on acoustic privacy
14. General comments on public meetings with Councillors and the public interest of the planning proposal
15. Support for the planning proposal



Figure 9: Location of submissions

1. Objections to reducing the foreshore building line for RFB or multi dwelling housing development

Nineteen submissions raised foreshore building line related issues; two from adjoining owners, three from adjoining residents, one from SP42120 – 77-81 Yarranabbe Road, one

from Santina Pty Ltd – 85 Yarranabbe Road, 11 from Woollahra LGA residents, one from the Darling Point Society and one from outside the LGA.

General comments

Issues raised in submissions

The submissions object to the foreshore building line being changed from 30m to 18m for RFB development on the basis that:

- it is contrary to Council's long standing policy on the location of the foreshore building lines.
- the proposal is in a highly prominent location.
- 77-81 and 73-75 complied with the 30m control when constructed in the 1990s, therefore a development on this site should also comply.
- the owner of 83 Yarranabbe Road objected to a proposed breach of the foreshore building line when a DA was submitted to construct the RFB at 77-81 Yarranabbe Road. As a result of the objection, the application was amended to comply with the foreshore building line.
- there is insufficient justification for the change.
- the RFBs to the east which are set close to the foreshore are planning mistakes that should not be used to justify future non-compliance.
- the benefits of the proposed envelope, such as improved views and solar access would also be achieved by a development that complied with the 30m foreshore building line.
- the reduced foreshore building line would allow a bulkier structure than that proposed by the previous DA.
- only two buildings breach the 30m foreshore building line from McKell Park to Rushcutters Bay Park and they were built 30 years ago.

Staff response

Merit of the proposal

Council may amend planning controls under Part 3 of the Act. Staff have conducted a merit assessment of the proposed amendments to Woollahra LEP 2014. Part of the assessment was considering the location and prominence of the site, the history of development on the foreshore and previous development applications.

In this case, amending the foreshore building line from 30m to 18m for RFB development has merit as it is compatible with the objective of Woollahra LEP 2014 Clause 6.4 *Limited development on foreshore area* as it:

- will not affect natural foreshore processes as the existing foreshore area is adjoined by a stone retaining wall.
- will not affect the significance or amenity of the foreshore area.
- will increase the landscaped area on the foreshore compared to the existing site configuration.

Note: The objective of Clause 6.4 *Limited development on foreshore area* in Woollahra LEP 2014 is "to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area".

An 18m foreshore building line would be acceptable as it would:

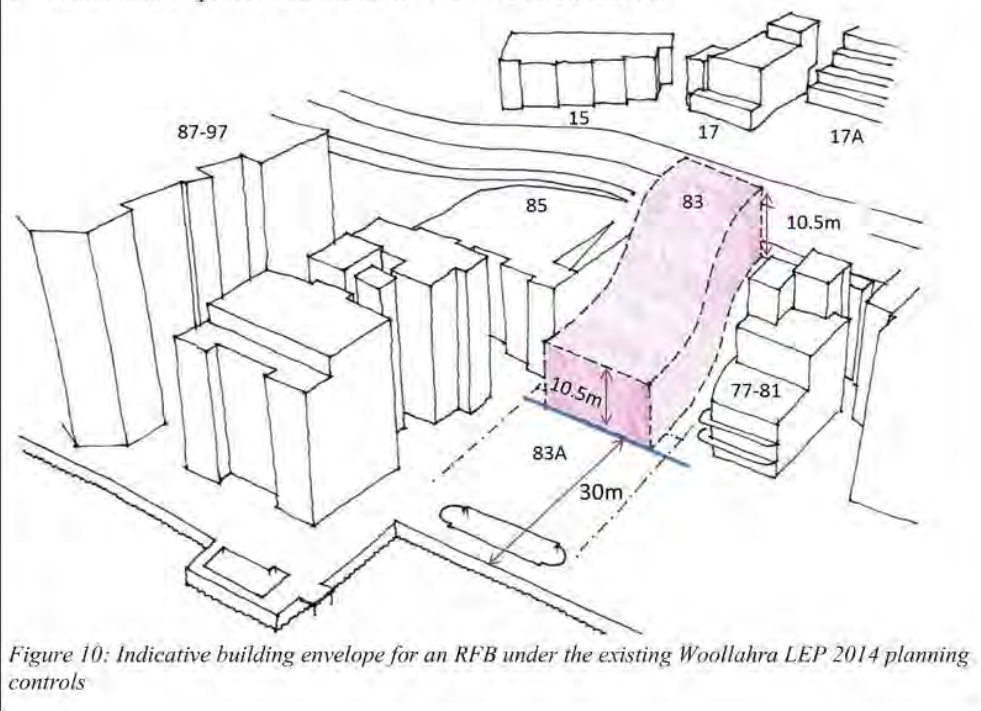
- provide a transition from 85 Yarranabbe Road which is a seven storey RFB setback 7m from the foreshore to 79-81 Yarranabbe Road which is a six storey RFB setback 30m from the foreshore.
- provide a suitable area for landscaping between a building and the foreshore.
- provide a larger building footprint, thus reducing potential building bulk on the upper (street frontage) part of the site.

Redevelopment under the proposed controls

Under the existing Woollahra LEP 2014 controls a dwelling house can be constructed to a height of 9.5m and setback 12m from the foreshore on 83A Yarranabbe Road. This property is currently occupied by a dwelling house with a maximum height of 9.5m which is setback 12m from the foreshore.

If the existing dwelling house was demolished and compared to the envelope for a dwelling house that is permissible under Woollahra LEP 2014, an RFB constructed under the proposed controls would also:

- maintain or improve views to the harbour from adjoining buildings, including views of the Opera House and Harbour Bridge.
- maintain or improve solar access to 77-81 Yarranabbe Road.



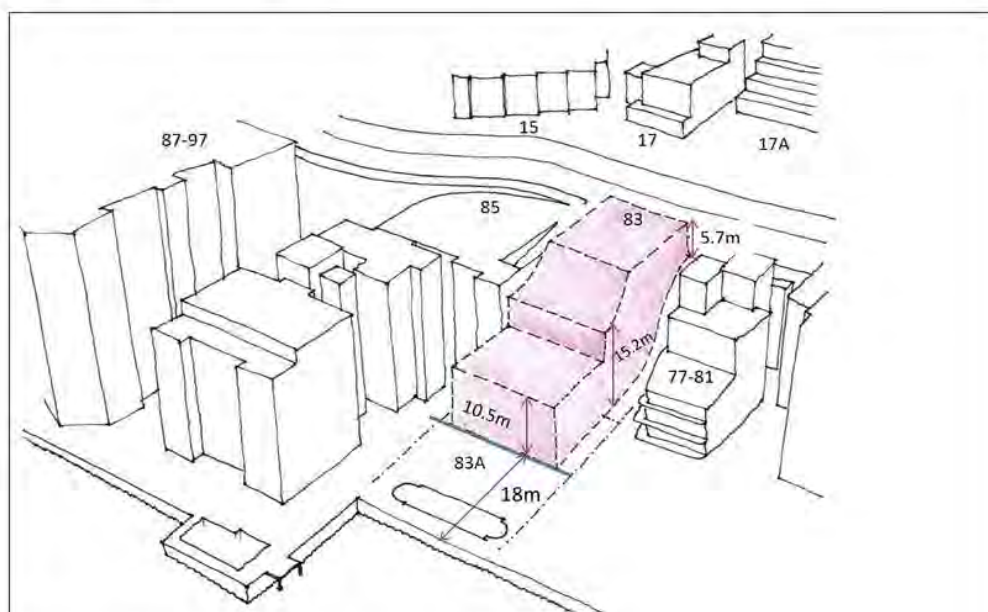


Figure 11: Indicative planning proposal building envelope

Comparison with RFBs to the east

The existing buildings to the east of the subject site were approved in the 1950s or 1960s under previous planning regimes. Whilst these buildings do not comply with the existing planning controls, they are not 'planning mistakes'. As these buildings are part of the existing context, it is relevant to consider them when deciding whether to vary the planning controls.

Notwithstanding, the planning proposal does not attempt to replicate this built form and will not result in buildings of a similar scale. The proposed 18m foreshore building line creates a transition from the 7m setback of the RFB at 85 Yarranabbe Road and the 30m setback of the RFB at 79-81 Yarranabbe Road.

The proposed 18m foreshore building line is part of a suite of planning control changes which redistribute the building bulk across the site.

Compliance with a 30m foreshore building line

On 83A Yarranabbe Road, a multi dwelling housing or RFB development that complied with a 30m foreshore building line at the lower part of the site may improve views and solar access to neighbouring buildings. However, at the Yarranabbe Road frontage, the existing maximum building height is 10.5m. A building constructed to 10.5m at the roadway would result in view loss from the surrounding area; including iconic views to the Opera House and Harbour Bridge.

No development for the purpose of an RFB has taken place on the site under the Woollahra Local Environmental Plan 1995 or under the recently commenced Woollahra LEP 2014 planning controls. The planning proposal would provide the opportunity to demolish the existing dwelling which is located 12m from the foreshore and replace it with a building which is set back 18m, increasing the amount of landscaping on the foreshore.

Potential building bulk resulting from the planning proposal changes

Compared with the previous DA for the site, the controls in the planning proposal are 2.4m lower in height, 0.46:1 less in FSR and increase the foreshore setback for an RFB or multi

dwelling housing by 6m. The planning proposal also reduces the maximum permitted height at Yarranabbe Road by 4.7m. The planning proposal will therefore not result in a bulkier building than the previous DA.

RFBs which breach the foreshore building line

The submission argues that there are only two RFBs, constructed in the section between McKell Park and Rushcutters Bay Park which breach the foreshore building line, and that these buildings were built over 30 years ago. This is incorrect. An RFB on 101 Yarranabbe Road was approved in 2001 under Woollahra Local Environmental Plan 1995 with an 18.5m foreshore setback.

Impact on 77-81 Yarranabbe Road

Issues raised in submissions

Reducing the foreshore building line from 30m to 18m for RFBs and multi dwelling housing would allow such buildings closer to the harbour and affect 77-81 Yarranabbe Road in the following ways: adverse visual impact of an RFB being set closer to the foreshore; loss of the outlook to existing landscaping on 83 Yarranabbe Road from the side windows of 77-81; increased height and bulk adjacent to the boundary, overlooking of the rear garden; balconies and rooms fronting the harbour; and overshadowing of the pool.

Staff response

Where 83A Yarranabbe Road adjoins 77-81 Yarranabbe Road, the existing 10.5m maximum building height is not proposed to change. No. 83A Yarranabbe Road currently contains a dwelling house which is setback 12m from the foreshore and extends back 16.7m. The rear of the dwelling is 1.75m from the 30m foreshore building line. If an RFB were constructed under the proposed planning controls, the dwelling house would need to be demolished.

Compared with the existing built form on 83A Yarranabbe Road, proposed building envelope will reduce shadowing to the rear of 77-81 Yarranabbe Road (including the pool), and will improve views across the site to the harbour, should a building be constructed 18m instead of 12m from the foreshore.

Any future DA for the site can minimise overlooking impacts through separation and building design. In particular, redevelopment of the site will be required to have regard to the Woollahra Development Control Plan 2015, *State Environmental Planning Policy 65 Residential Apartment Development* and the Apartment Design Guide, which address building separation and privacy.

2. *Objections to increasing maximum building height for RFB or multi dwelling housing development*

Ten submissions raised height related issues; one from SP 42120 – 77-81 Yarranabbe Road, one from Santana Pty Ltd – 85 Yarranabbe Road, one from an adjoining owner, six from residents, one from the Darling Point Society and one from outside the LGA.

General comments

Issues raised in submissions

- The proposed height controls create uncertainty over the built form on the site, as the building envelope submitted with the planning proposal would not comply with the proposed planning controls. Specifically, part of the envelope over 83A Yarranabbe Road reaches a height of 12.2m where a 10.5m height control is proposed.
- The impacts of a building that complies with the planning proposal controls could be different to those of the building envelope submitted with the planning proposal.
- The 15.2m control over 83 Yarranabbe Road would allow a higher and bulkier building than the building envelope submitted with the planning proposal.
- The proposal is too high and bulky in this foreshore location.
- The height of the proposal will result in insufficient amenity for the surrounding land.
- The maximum building height will be higher than controls for the surrounding land.

Staff response

Height on 83A Yarranabbe Road

The maximum building height on 83A Yarranabbe Road remains unchanged at 10.5m, except for the access handle which is increased to 15.2m with a second height of 5.7m at the roadway. The 10.5m maximum building height reflects the majority of the applicant's proposed building envelope, except a small portion in the south-east corner which is approximately 12.2m high.

Council's usual practice is to map maximum height across an entire lot. However, applying a 12.2m maximum building height control across the entire lot was not supported due to mapping constraints. Accurately mapping the location of a small section of the building envelope which extended to a height of 12.2m is not possible, so it was excluded from the map and the existing control of 10.5m was retained.

This is a practical approach to addressing the maximum building height on 83A Yarranabbe Road which also protects the amenity of the surrounding land.

Height on 83 Yarranabbe Road

The proposed maximum building height on 83 Yarranabbe Road is 15.2m, which is supported by a 5.7m second height at the highest part of the site abutting Yarranabbe Road, is shown in Figure 4 above.

The combination of these two controls creates a building envelope that is a contextual fit with the location. Staff are satisfied that the building envelope created by the proposed height controls and 18m foreshore building line allows a better distribution of building bulk across the site. The envelope reduces building height at the highest part of the site by 4.8m, and increases building height in the centre of the site. The envelope would:

- reduce the maximum building height from 10.5m to 5.7m at the site's frontage on Yarranabbe Road.
- maintain views from the public domain across the site from the footpath in front of 85 Yarranabbe Road.

The building envelope

The applicant's building envelope that accompanied the planning proposal is indicative. It does not form part of the proposed planning controls for the site. If Council decided to proceed with the planning proposal it would not be endorsing the applicant's building envelope. Future development of the land would need to be guided by the new planning controls.

There is significant benefit in amending the existing controls by reducing the height at the highest part of the site thereby redistributing the building bulk across the site as discussed above.

The maximum building heights are suitable in the context of existing development and are less than the height of 85 Yarranabbe Road which is 7 storeys and 87-97 Yarranabbe Road which is 10 storeys.

Objectives of Clause 4.3 *Height of Buildings*

The objectives of clause are

- (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,
- (c) to minimise the loss of solar access to existing buildings and open space,
- (d) to minimise the impacts of new development on adjoining or nearby properties from disruption of views, loss of privacy, overshadowing or visual intrusion,
- (e) to protect the amenity of the public domain by providing public views of the harbour and surrounding areas.

The planning proposal is consistent with the objectives of Woollahra LEP 2014 clause 4.3 *Height of buildings* as it will:

- meet the desired future character as set down in clause B1.2.2 *Desired future character* in Woollahra DCP 2015 Chapter B1 Residential Precincts,
- provide a reasonable level of solar access to the adjoining buildings and open space,
- reduce the maximum building height from 10.5m to 5.7m at Yarranabbe Road to maintain views from properties on Thornton Street and the public domain,
- allow for a building to be constructed on the site that will provide reasonable privacy, overshadowing and outlook to nearby buildings,
- allow for view sharing from neighbouring buildings as discussed in Issue 9 below.

Height at Yarranabbe Road

Issues raised in submissions

- The maximum building height should not be increased on Yarranabbe Road.
- Two storeys on Yarranabbe Road would be out of character for the location and interfere with views from properties to the south.
- A 3.5m maximum building height should apply at Yarranabbe Road which is in keeping with the streetscape.

- The 5.7m second height control should be mapped differently as it is unclear where it applies.

Staff response

The existing character on the northern side of Yarranabbe Road varies from one storey to three storeys. The maximum building height at the highest part of 83 Yarranabbe Road is proposed to be reduced by 4.8m from 10.5m under the current controls to 5.7m as shown in Figure 4 above. This reduced maximum building height will better maintain views from the surrounding area and ensure that new development is compatible with the existing character. Using a second building height to control built form at the highest point of the site is successfully used in Council's existing planning documents, and the 5.7m second height will be mapped in Woollahra LEP 2014 in accordance with Council's standard practice. The control works in conjunction with Woollahra LEP 2014 clause 4.3A *Exceptions to building heights (Areas A-H)*. An alternative mapping solution is not required.

The same approach was successfully used to control building height at the highest part of land in Woollahra Planning Scheme Ordinance 1972, Woollahra Local Environmental Plan 24 and Woollahra Local Environmental Plan 1995. In Woollahra LEP 2014 the approach continues to apply and has been expanded to include additional properties. This approach is supported by the Department of Planning and Environment.

3. Objections to increasing the floor space ratio for RFB or multi dwelling housing development

Four submissions raised FSR related issues; one from SP42120 – 77-81 Yarranabbe Road, one from SP 1470 – 21 Thornton Place, one from an adjoining owner and one from the Darling Point Society.

Issues raised in submissions

- The FSR of a compliant envelope is not provided, therefore it is questionable whether the envelope can be considered compliant and therefore a valid basis for comparison.
- The planning proposal will not result in increased dwelling yield compared to the current controls.
- There is no justification for a 33% FSR increase from 0.9:1 to 1.2:1.
- The increased FSR would lead to unacceptable bulk.
- If the LEP is to provide increased density outcomes then there should be incentives to amalgamate the site with sites to the west creating an increased frontage and better separation between future developments in this prominent foreshore locality, allowing better amenity and view sharing in particular maintaining views from the public domain to Sydney Harbour.
- The context arguments of the planning proposal, relying upon the buildings erected in the late 1960s and early 1970s to the east and south, do not support the height and FSR proposed. The 7 and 10 storey harbour foreshore buildings to the east present very poor planning outcomes, one might say planning mistakes. No planning weight should be given to the context arguments the planning proposal relies upon.

Staff response

The building envelope

The compliant envelope modelled in the applicant's planning proposal indicates where buildings are permitted to be constructed on the site under the existing planning controls. An

FSR is not required to model these potential outcomes. FSR is a tool to establish a floor space yield, it does not set a building envelope. The building envelope is achieved through the setbacks and maximum building heights. Usually, FSR fills 70-80% of the building envelope, the envelope being larger to allow for building articulation and flexible design.

Existing context

The table below identifies the existing FSRs of nearby buildings.

Address	FSR	Complies with Woollahra LEP 2014 control of 0.9:1
73-75 Yarranabbe Road	1:1 in DA138/68	No
77-81 Yarranabbe Road	0.875:1 in DA88/317	Yes
85 Yarranabbe Road	1.52:1 (estimated)	No
87-97 Yarranabbe Road	2:1 (estimated)	No
17A Thornton Street	1.14:1 in DA260/1995	No
13-15 Thornton Street	1.134:1 (BA158/66)	No
101 Yarranabbe Road	1.32:1 (DA668/2001/4)	No

The table shows that compliance with the current control of 0.9:1 was achieved by 77-81 Yarranabbe Road only. However, the planning proposal does not rely solely on the scale of RFB buildings to the east of the site. The applicant's proposed envelope was established having regard to the amenity of the surrounding dwellings. Furthermore, the proposed height and FSR controls are considerably less than the scale of the RFBs to the east at 85 and 87-97 Yarranabbe Road.

Yield

The 30% increase to FSR will provide an additional 436m² of development potential, therefore increasing the capacity of the site to provide additional dwellings. This outcome is consistent with the Draft East Subregional Strategy which has a target of providing capacity for an additional 2,900 dwellings in the Woollahra LGA by 2031. Given the built condition of the Woollahra LGA, achieving additional dwellings will need to occur through a range of options, including minor site yields such as anticipated for the subject site.

Amalgamation

This site is located between existing RFBs to the east and west which have multiple owners or are strata titled. Increased density on this site should not depend on amalgamation with the adjoining strata title buildings as the site already meets the 700m² minimum lot size for RFB development in Woollahra LEP 2014. Further, as the building to the west of the site was recently constructed, amalgamation is unlikely in the immediate future.

Based on the applicant's indicative building envelope drawings, view analysis and shadow modelling, the proposed planning controls, including the FSR, are appropriate in the location.

Objectives of Clause 4.4 Floor space ratio

The objectives of the clause for development in Zone R3 Medium Density Residential are:

- (i) to ensure the bulk and scale of new development is compatible with the desired future character of the area, and
- (ii) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain, and
- (iii) to ensure that development allows adequate provision on the land for deep soil planting and areas of private open space.

The planning proposal is consistent with the objectives of this clause as it:

- will meet the desired future character as set down in clause B1.2.2 *Desired future character* in Woollahra DCP 2015 Chapter B1 Residential Precincts,
- provides a building envelope which is a contextual fit with the location,
- redistributes building bulk across the site in a logical and efficient way,
- provides opportunity for a building to be constructed that can provide a reasonable level of amenity to adjoining properties,
- protects views from the public domain by reducing height at the highest part of the site abutting Yarranabbe Road,
- makes adequate provision for deep soil landscaping and private open space on the foreshore.

4. *Whether proper consideration was given to the planning principles of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and supporting Sydney Harbour Foreshores and Waterways Area DCP 2005*

Three submissions were received on the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* and the Sydney Harbour Foreshores and Waterways Area DCP 2005. Two submissions were from residents that did not adjoin the site. One submission of support was from the applicant.

One of the objecting resident's submissions included legal advice from Addisons Lawyers.

The submission in support of the planning proposal came from the applicant and was in the form of legal advice from Gadens Lawyers. Issue 8 of this table discusses the legal advice.

Issues raised in the submissions

- The condition of the original Gateway Determination to consult with the Foreshores and Waterways Planning and Development Advisory Committee was deleted, therefore the Committee was unable to fulfil its role to protect the foreshore.
- The planning proposal document and the review of the planning proposal in the UPC report of 24 November 2014 assert that the only relevant planning principle of the SREP is 13(f). Principles 13(b) and 13(c) should also have been addressed.
- The Sydney Harbour Foreshores & Waterways Area DCP that supports the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* states that the siting of existing dwellings on the foreshore for the purpose of establishing a foreshore setback on a particular site is only able to be taken into consideration where Council does not have a foreshore building line.

Staff response

Foreshores and Waterways Planning and Development Advisory Committee Consultation

The Gateway Determination originally required that Council consult with the Foreshores and Waterways Planning and Development Advisory Committee under Clause 30(1) of the SREP. However clause 30(1) of the SREP applies only to "any draft development control plan" and is therefore not relevant to this Planning Proposal, because it is not a development control plan. Council therefore requested that this condition was deleted and the Department of

Planning and Environment agreed by formally amending the Gateway Determination on 24 February 2015.

Despite the condition to consult with the Foreshores and Waterways Planning and Development Advisory Committee being deleted, as part of the consultation on the planning proposal Council wrote to RMS as the adjoining land owner. The RMS responded with a submission through the Foreshores and Waterways Planning and Development Advisory Committee. The submission states:

The Foreshores and Waterways Planning and Development Advisory Committee (the Committee) has reviewed the referral in accordance with the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (the SREP). The Committee raises no specific issues in relation to the proposed development and as such does not wish to make any further comment concerning this matter.

Consistency with the SREP

This SREP aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways. It establishes planning principles and controls for the catchment as a whole which must be considered during the preparation of environmental planning instruments.

The planning proposal was assessed against the planning principles of the SREP. Annexure 2 to the report to the Urban Planning Committee of 24 November 2014 stated that:

The planning proposal is consistent with the planning principles of the SEPP. The relevant principle being that development that is visible from the waterways or foreshores is to maintain, protect and enhance the unique visual qualities of Sydney Harbour.

Principles 13(b) and 13(c) of the SREP are:

- (b) the natural assets of the catchment are to be maintained and, where feasible, restored for their scenic and cultural values and their biodiversity and geodiversity,*
- (c) decisions with respect to the development of land are to take account of the cumulative environmental impact of development within the catchment,*

These principles were considered as part of the assessment. Regarding principle 13(b), the subject site is occupied by a dwelling house setback 12m from the foreshore. The planning proposal or a redevelopment under the existing 30m foreshore building line would facilitate a development that would demolish this dwelling and replace it with a new building set back further from the foreshore. The greater setback would allow more of the subject site to be used for soft landscaping increasing scenic value. The planning proposal also proposes a reduced maximum building height at the highest part of the site, to maintain views to the harbour from the public and private domain.

Regarding principle 13(c), the proposed planning control changes will not create unacceptable cumulative impacts. The land is currently zoned for medium density residential development additional 436m² of gross floor area created by increasing the FSR on one site only is minor in the context of the Sydney Harbour Catchment.

Sydney Harbour Foreshores & Waterways Area DCP

The section of the Sydney Harbour Foreshores & Waterways Area DCP referred to in the submission is section 5.3, *Siting of buildings* in Part 5 Design Guidelines for Land-Based

Developments. This part of the DCP provides guidance to development applications and is not directed at the preparation of planning proposals which seeks to establish or amend a foreshore building line.

Notwithstanding, the planning proposal would establish a new foreshore building line for RFB and multi dwelling housing development. The locations of existing buildings are therefore a relevant consideration in determining whether to vary the existing control.

Legal advice

The legal advice submitted by the objectors and the applicant provides further comment on the consultation with the Foreshores and Waterways Planning and Development Advisory Committee and consistency of the planning proposal with the principles of the SREP in Issue 8 below.

5. *Inconsistency with the covenant that applies to 83A Yarranabbe Road*

Fifteen submissions raised the covenant that applies to 83A Yarranabbe Road; three from adjoining owners, nine from residents, one from the Darling Point Society, one from outside the LGA, and one from SP2766 – 13-15 Thornton Street.

Issues raised in submissions

The submissions objected to the planning proposal as it would facilitate development that is inconsistent with covenant M167009 applying to 83A Yarranabbe Road (the foreshore lot).

Staff response

On 26 April 1966 Council granted consent to subdivide 83 Yarranabbe Road subject to the establishment of the covenant restricting development on 83A Yarranabbe Road (the foreshore lot) to a single dwelling.

When Council resolved to apply the covenant, the County of Cumberland Planning Scheme Ordinance (CCPSO) applied to the site. The CCPSO zoned this site and the majority of Darling Point as 'Living Area' which permitted dwelling houses without consent and 'residential buildings' with consent. The term 'residential buildings' included all other forms of residential development including RFBs. The CCPSO plan did not include maximum building heights or floor space ratio controls.

A covenant registered as M167009 was established on 17 November 1971 which burdens 83A Yarranabbe Road. The other parties to the covenant, or beneficiaries, are 85 Yarranabbe Road and Council. The covenant can only be released, varied or modified by Council.

The covenant states:

That no building shall be erected or placed or suffered to be erected upon the said Lot 1 other than a private dwelling house for use and occupation by a single family.

The covenant is inconsistent with the current planning controls for the site and the area which permit higher density residential development than a 'single dwelling house'.

Under Woollahra LEP 2014 the site is zoned R3 Medium Density Residential which permits RFB and multi dwelling housing development with consent. The objectives of the R3 zone include:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.

The planning proposal is consistent with these objectives and the permissible uses in the R3 zone.

Whilst the covenant is inconsistent with the current planning controls, it does not prevent the planning proposal from being approved.

Effect of the covenant on a future DA

As the covenant was imposed by Council it is not suspended under Woollahra LEP 2014 clause 1.9A *Suspension of covenants, agreements and instruments*. This is due to subclause (2)(a) which excludes Council imposed covenants from being suspended.

Council may grant consent to a development such as an RFB that is inconsistent with the covenant, but the owner of the site would need to have the covenant released, varied or amended prior to acting on the consent.

Whether the covenant should be released is a matter Council could turn its mind to during an assessment of a DA for the site.

6. *Inconsistency with a previous Land and Environment Court decision*

Seventeen submissions raised a previous court decision; three from adjoining owners, three from adjoining residents, one from the Darling Point Society, eight from residents and one from SP2766 – 13-15 Thornton Street. One submission of support was received from the applicant.

One of the objecting submissions included legal advice from Addisons Lawyers.

The submission in support of the planning proposal came from the applicant and was in the form of legal advice from Gadens Lawyers. Issue 8 of this table discusses the legal advice.

Issues raised in submissions

- Council refused consent for DA485/2012, and the Land and Environment Court rejected an appeal on that refusal. The planning proposal is similar to that DA and should not be supported.
- The Court held that no development could breach the 30 metre setback for flats.
- The Court held that "... there is public benefit in maintaining the planning controls adopted by the environmental planning instrument."
- The judgement was made in the context of properties to the west of the site that are of a lower height and FSR. The Court dismissed the applicant's reliance upon buildings to the east and south of the site, including Thornton Place, as their context argument. Nevertheless, the planning proposal seeks to adopt the buildings to the east and west as part of its context justification for the increased height and FSR in this case.
- The report to the Urban Planning Committee meeting of 24 November 2014 (the UPC report) mischaracterised the Land and Environment Court decision on DA485/2012
- The conclusion that the planning proposal has strategic merit in the UPC report is based on a faulty premise that the proposal absorbed the key points of the Land and Environment Court decision. Effectively, the author of the report failed to take into account a relevant consideration.
- The planning proposal would permit future development on the site which is inconsistent with the judgement of the Land and Environment Court.

Staff response

The relationship of the Land and Environment Court's decision for DA485/2012 in regard to the planning proposal is addressed in paragraphs 21-25 of the legal advice from Gadens (submission 52 of Annexure 3).

A pertinent point of that advice states that:

"a decision-maker's task under Part 4 of the Act is to implement the applicable controls, not to decide what the appropriate controls should be."

This reflects the separation of actions set up in the *Environmental Planning and Assessment Act 1979* under Part 3 (the plan making process) and Part 4 (the development application process). Accordingly, the Council is not bound by the decision of the Court when it decides to reconsider planning controls.

Nevertheless, because a substantial number of submissions have raised the Court's decision and the built form proposed under DA485/2012 we have provided the responses below.

The role of the Court in *Yarranabbe Developments Pty Limited v Woollahra Council NSWLEC 1007* was to determine the merit of the applicant's appeal against the refusal of the DA485/2012. The court considered the merit of the appeal having regard to the planning controls which were applied to the site.

In doing so, the Court considered whether the objections under *State Environmental Planning Policy 1- Development Standards* to the compliance with the development standards for the site of frontage, height, FSR and foreshore building line contained in Woollahra Local Environmental Plan 1995 were unreasonable or unnecessary in the circumstances.

The judgement did not state that 'no development could breach the 30m setback for flats'. The comments in the judgement were in relation to the building proposed in DA485/2012, not all future development.

The statement that "...there is public benefit in maintaining the planning controls adopted by the environmental planning instrument" was made in relation the SEPP 1 objections for DA485/2012. The Court held that in regard to the development proposed in DA485/2012, compliance with the relevant standards was necessary. The comment does not prevent Council contemplating changes to the site's planning controls under Woollahra LEP 2014.

Notwithstanding, a comparison of DA485/2012 submitted under Woollahra LEP 1995, the proposed controls and the existing Woollahra LEP 2014 is provided below.

	Foreshore setback	Maximum building height	FSR
DA485/2012	13m	17.6m	1.66:1
Planning proposal	18m	10.5m and 15.2m with 5.7m second height over 83 Yarranabbe Road	1.2:1
Woollahra LEP 2014 (RFBs)	30m	10.5m	0.9:1

Note: a minimum frontage control does not apply under Woollahra LEP 2014.

On comparing the refused DA to the planning proposal, the foreshore setback has been increased, and the maximum building height and FSR have been reduced. Furthermore, the planning proposal includes a second height of 5.7m is proposed for the highest part of the

site. These changes respond to the amenity impacts that were identified during the appeal of DA485/2012. The changes to development standards are relevant, regardless of whether the Court conducted a full assessment of the DA under s79(c) of the Act.

The suitability of the reduced foreshore building line, amended height controls and increased FSR have been addressed above in issues 1 to 3. However The applicant's planning proposal and urban design statement were reported to the Urban Planning Committee meeting of 24 November 2014 and exhibited as supporting documents with the planning proposal. These documents explain the rationale for varying the Woollahra LEP 2014 planning controls for this particular site, most importantly:

- Increasing the development capacity of the site by 436m².
- Maintaining views from the public domain across the site from the footpath in front of 85 Yarranabbe Road.
- Improving the appearance of the streetscape by creating an envelope that minimises car parking and vehicle access on Yarranabbe Road.
- Providing an envelope for logical and efficient massing of buildings on the site in a configuration that will provide acceptable amenity to the surrounding area.

The UPC report stated that the applicant's planning proposal was supported based on the indicative building envelope drawings, view analysis and shadow modelling.

The exhibited planning proposal has strategic merit, as justified by its consistency with state environmental planning policies and section 117 Ministerial Directions under the Act.

As stated above in Issue 1, the planning proposal does not seek to replicate the bulk and scale of the buildings to the east of the site.

The Land and Environment Court decision for DA485/2012 does not prevent the planning proposal from being assessed on its merit, nor does it prevent Council amending the planning controls for the site.

7. The planning proposal will create an undesirable precedent

Six submissions raised the issue of a precedent being created by the planning proposal; five of these submissions objected and one was in support of the planning proposal. The submissions objecting to proposal came from four residents in Darling Point and one from an adjoining owner.

One of the objecting submissions was legal advice from Addisons Lawyers.

The submission in support of the planning proposal came from the applicant and was in the form of legal advice from Gadens Lawyers. Issue 8 of this table discusses the legal advice.

Issues raised in submissions

The submissions objected to the planning proposal on the basis that the increased height, increased FSR and amended foreshore building line would create a precedent for similar development to occur in future.

Staff response

The planning proposal is site-specific and does not seek to amend or suggest development standards for the adjoining and neighbouring properties. There is no obligation for Council to review the development standards for other lands if it proceeds with a site-specific planning proposal.

Should a development application be lodged for other foreshore properties, any successful non-compliance with a development standard would need to pass the test of clause 4.6

Exceptions to development standards of Woollahra LEP 2014. The legal advice from Gadens (Annexure 3, submission 52) addresses this matter in detail.

8. Legal advice on the planning proposal

Two submissions were received from residents of Darling Point that contained legal advice from Addisons Lawyers on the planning proposal. The applicant provided legal advice from Gadens Lawyers in response. The Addisons advice is contained in submissions 50 and 51 and the Gadens advice is submission 52 of **Annexure 3**.

The advice from Addisons dated 22 June and 14 July 2015 addressed four issues:

1. The relationship of the planning proposal to the Land and Environment Court's decision which dismissed an appeal against the Council's decision for DA 485/2012 . That DA sought consent for a residential flat building on 83 and 83A Yarranabbe Road, Darling Point.
2. The consideration of planning principles contained in Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 and consultation with the Foreshores and Waterways Development Advisory Committee.
3. The precedent which could be set by the planning proposal.
4. The adequacy of the public consultation process.

In summary the Addisons legal advice concludes:

- The report to the Urban Planning Committee meeting of 24 November 2014 (the UPC report) mischaracterised the Land and Environment Court decision on DA485/2012.
- The Court decided it was inappropriate to allow departures from the foreshore building line, height and floor space ratio standards.
- The conclusion that the planning proposal has strategic merit in the UPC report is based on a faulty premise that the proposal absorbed the key points of the Land and Environment Court decision. Effectively, the author of the report failed to take into account a relevant consideration.
- The proper starting point for considering the planning proposal is the framework of Woollahra LEP. The refused DA is not the benchmark for consideration.
- The planning proposal document and the review of the planning proposal in the UPC report of 24 November 2014 incorrectly assert that the only relevant planning principle of the SREP is 13(f). Principles 13(b) and 13(c) should also have been addressed.
- The Council did not consult with the Roads and Maritime Services' Foreshores and Waterways Development Advisory Committee which would have revealed the need to address applicable principles of the SREP.
- As Council's documentation did not fully set out and consider the relevant planning principles the public participation exercise is incomplete and flawed.
- If Council proceeds with the LEP and reduces the foreshore setback requirement for this site, it will be appropriate for every other property owner in this locality to make the same or similar request to that in the planning proposal.

The advice from Gadens dated 16 July 2015 on behalf of the applicant provides the following responses to these issues.

- The Courts decision regarding DA485/2012 was based on an assessment against the

applicable LEP and DCP controls at the time. The Court did not decide whether the controls were appropriate.

- The proponent has properly chosen to request an amendment to the planning controls.
- Both the applicant's request for a planning proposal and the Council's report which assessed that request clearly show that the planning principles in the SREP have been considered as a whole and relevant principles have been drawn out. In this regard the planning principles of the SREP have been properly considered.
- Consultation with the Foreshores and Waterways Development Advisory Committee under clause 30(1) of the SREP applies only to a draft development control plan. The Department of Planning and Environment acknowledged this point and subsequently amended the gateway determination.
- The Council's assessment of the SREP planning principles was not inadequate and is not a matter that the Courts would entertain in any Class 4 judicial review proceedings. Such a review could only occur where there has been a failure to consider the relevant matters at all.
- The laws relating to precedent apply to the development application process under Part 4 of the Act, not to the plan-making powers under part 3 of the Act. Precedent has no role to play in this instance.

9. The impact of the planning proposal on views

Four submissions raised the effect of the planning proposal on views; one from SP 2766 – 15 Thornton Street, two from adjoining residents and two from residents to the south of the site.

Background on view sharing

The concept of 'view sharing' concerns the equitable distribution of views between properties. However, this concept can be difficult to apply to particular cases. There will be circumstances when the concept of 'view sharing' can be reasonably applied and others where it will be more difficult.

For this reason Council uses the principles of view sharing as set out by the Land and Environment Court in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* in assessing view impact.

As set out in the Tenacity case there is a four step process to assess the impact of development on views:

Step 1. What views will be affected?

Step 2. From what part of the property are views obtained ?

Step 3. What is the extent of the impact?

Step 4. What is the reasonableness of the proposal that is causing the impact?

Based on the submissions received and the applicant's view modelling, staff have followed this assessment process to conclude whether acceptable view sharing will be achieved under the proposed controls.

15 Thornton Street

Issues raised in submissions

- Increasing the harbour view is of no consequence as there is a sufficient view at present
- The outlook to the trees on 83 and 83A Yarranabbe Road would be lost

Staff response

Number 15 Thornton Street is located south west of the subject site on the opposite site of Yarranabbe Road. Views have been modelled from Level 2 of 5/15 Thornton Street to show the existing built form, the existing planning controls and the indicative proposed building envelope. These are shown below in Figures 12 to 14. Additionally, at the owner's invitation Council officers visited 5/15 Thornton Avenue to examine potential view impacts of the planning proposal.



Figure 12- The applicant's photomontage of the existing dwelling house on 83 Yarranabbe Road as viewed from 5/15 Thornton Street



Figure 13 –Estimated photomontage of existing maximum building height on 83 Yarranabbe Road as viewed from 5/15 Thornton Street



Figure 14 – The applicant's photomontage of an RFB constructed on 83 and 83A Yarranabbe Road under the proposed planning controls as viewed from 5/15 Thornton Street

In summary, there are existing views to Sydney Harbour including iconic views of the Harbour Bridge and Opera House from each level of the dwelling. The views are available from the garden, ground floor living room, first floor living room and balcony and second floor bedroom, office and balcony. There are also views across the harbour towards Cremorne and North Sydney, to Garden Island and to the waters adjacent to Darling Point.

Compared with the existing planning controls, the planning proposal will reduce the maximum building height at the roadway by 4.8m. A building constructed under the proposed planning controls would be a similar height to the existing dwelling house on 83 Yarranabbe Road.

The existing iconic views of the Harbour Bridge and Opera House, and the other views across the harbour would not be affected by the proposed building envelope. There would be a negligible impact on views to the waters adjacent to Darling Point. In this regard, the building envelope created by the planning controls will facilitate satisfactory view sharing.

Loss of trees

The removal of these trees is discussed in Issue 10 Loss of trees/greenery. It is noted that removal of these trees would improve views to the waters closest to Darling Point.

17A Thornton Street

Issues raised in submissions

The view from 17A Thornton Street will be reduced.

Staff response

No.17A Thornton Street is located to the south of the subject site on the opposite side of Yarranabbe Road.

Views have been modelled from Level 1 of 17A Thornton Street to show the existing built form, the existing planning controls and the proposed building envelope. Views from Level 1 would be most affected by increased building height on 83 and 83A Yarranabbe Road. These

views are shown below in Figure 15 to 17.

Council staff met with two owners from 17A Thornton Street during the exhibition period. The submission from one of the owners included a photograph from a patio on Level 1 of the building. In summary, the views from this location are across the harbour towards Cremorne and Mosman and to the waters adjacent to Darling Point. To the west, the headland of Garden Island is visible.

Compared with the envelope created by the existing planning controls, the planning proposal will reduce the maximum building height at the roadway by 4.8m. This change would retain views of foreshore on the opposite side of the harbour and more of the existing views of the waters adjacent to Darling Point. A building constructed under the planning controls would be a similar height to the existing dwelling house on 83 Yarranabbe Road.

The existing views across the harbour and to Garden Island would not be affected by the planning proposal. There would be a negligible impact on views to the waters closest to Darling Point. The building envelope created by the proposed planning controls will facilitate satisfactory view sharing.



Figure 15 - The applicant's photomontage of the existing dwelling house on 83 Yarranabbe Road as viewed from Level 1 of 17A Thornton Street



Figure 16 – Estimated photomontage of existing height controls on 83 and 83A Yarranabbe Road as viewed from Level 1 of 17A Thornton Street



Figure 17 The applicant's model of an RFB constructed under the planning controls as viewed from Level 1 of 17A Thornton Street

85 Yarranabbe Road

Issues raised in submissions

- There will possibly be some view loss to 85 Yarranabbe Road
- The view of another building from 85 Yarranabbe Road, may not be considered an improvement compared with the existing view of 20 trees

Staff response

No.85 Yarranabbe Road is located to the east of the subject site. Apartments on levels 4 to 7 at the rear of 85 Yarranabbe Road have views to the Harbour Bridge and Opera House which are obtained by looking across the side boundary of 83A Yarranabbe Road. These views are from balconies and living areas and bedrooms of the apartments. The existing dwelling house on 83A Yarranabbe Road blocks views from apartments on other levels.

The current Woollahra LEP 2014 planning controls for 83A Yarranabbe Road allow a building to be constructed up to 10.5m for RFB or multi dwelling housing development or 9.5m for dwelling house, dual occupancy or semi-detached dwelling development. Under these height controls and with a 30m foreshore setback, if 83 and 83A Yarranabbe Road was developed for an RFB, and the existing dwelling house on 83A Yarranabbe Road were demolished, views towards the Harbour Bridge and Opera House would be increased for apartments on levels 2-4.

The planning proposal retains the existing 10.5m maximum building height over 83A Yarranabbe Road. However, it also proposes to amend the foreshore building line for RFB and multi dwelling housing development from 30m to 18m. This would allow an RFB to be constructed 12m closer to the foreshore and adjacent to the living areas and balconies on levels 1-3 and part of level 4 on 85 Yarranabbe Road.

If a building was constructed under the proposed planning controls, views would also be improved from apartments on levels 2-4, but to a lesser degree compared with a building with a 30m foreshore setback. Under an 18m foreshore setback, part of a building would be visible from levels 1-4 in apartments at the rear of 85 Yarranabbe Road.

In this regard, the building envelope created by the planning controls will facilitate satisfactory view sharing of the site if an RFB development was constructed over 83 and 83A Yarranabbe Road with an 18m foreshore setback.

Loss of trees

The potential loss of trees is addressed below in Issue 10. Loss of trees/greenery. However it is noted that the removal of the existing trees on 83 and 83A Yarranabbe Road would improve views to the west and north west from 85 Yarranabbe Road.

General comments on views

Issue raised in submission

- The improvement to views is of no consequence. No one has complained about the current 'lack' of views.
- Neighbouring residents who have sweeping harbour views would see a few degrees more water but that goes nowhere near compensating for looking over the top of a bulky building or at the side of a bulky building extending 12m too far towards the foreshore.
- The fact that the view analysis is appropriate is a judgement made on the basis of the applicant's pictorial submission that does not show the overall visual impact of the

proposed building. The judgement was made without site visits.

Staff response

The comment about the current lack of views is noted.

The comments regarding the development on the site ignore the scale of a building that would be visible under the current controls. Notwithstanding that, the construction of an RFB under the proposed controls would remove the existing building located 12m from the foreshore at 83A Yarranabbe Road and increase the amount of landscaping on this part of the site.

The applicant's view modelling was suitable for the purposes of considering views from neighbouring buildings. Staff conducted a site visit to 5/15 Thornton Street following a request from a resident to consider the outlook from their property. A view analysis is different to considering visual impact, which is what a building would look like. The visual impact would be considered at the DA stage.

10. Loss of trees/ greenery

Seven submissions raised the potential loss of trees from the site; one from SP2766 – 13-15 Thornton Street, one from SP2766 – 15 Thornton Street, two from adjoining owners and three from residents to the south of the site.

Issues raised in submissions

The submissions generally objected to the potential loss of trees on the site. The submissions state that the removal of the trees on the site will reduce amenity and that the established trees contribute to the natural beauty of the area.

One submission supported the removal of the cypress trees on the site which are located on the boundary between 83A Yarranabbe Road and 85 Yarranabbe Road to restore views to the Harbour Bridge and harbour generally.

Staff response

The location of the existing landscaping and trees is shown in Figure 18 below.



Figure 18: site aerial

The removal of the trees from the site would be a matter of consideration for a DA. However, a referral to Council's Tree Management staff for DA485/2012 noted that:

"The two large trees on the site, the Avocado and the Camphor Laurel are compromised by having been supported over a long period of time by adjacent structure. Should these structures be demolished any support that they may provide to the trees would be removed. The stability of the trees then becomes of concern".

The referral identified that:

- it is impractical to attempt to retain trees that are close to the centre of the site for an RFB development
- it is far more effective to allow the trees to be removed and provide substantial replacements

Under the existing controls the established trees may require removal should an RFB development be proposed which removes their supporting structures. The retention of the existing trees is an unreasonable expectation and the planning proposal does not require amendment.

11. Potential traffic and parking issues

Two submissions raised traffic and parking issues; one from an adjoining owner and one from a resident to the south of the site.

Issues raised in the submission

- The additional traffic will result in congestion
- Additional traffic should not be encouraged as Yarranabbe Road is a one-way street
- An RFB development will result in additional on-street car parking if no parking is left on the top car park floor. Additional on-street parking could result in existing residents having to park further away

Staff response

The Roads Division of Roads and Maritime Services raised no objections to the planning proposal. Council's Traffic Engineers identify that redevelopment of the site under the proposed controls:

- will result in low traffic generation from the site
- will have minimal impact on the adjoining road network
- can be accommodated in the existing road network capacity.

The issues raised in submissions do not warrant change to the planning proposal. Further consideration of traffic and parking would need to be undertaken in response to a specific DA.

12. The suitability of setbacks from adjoining buildings

One submission from SP 1470 – 21 Thornton Place raised setbacks and building separation

Issues raised in submissions

The site width is relatively narrow and it is unlikely that any medium density development will be able to achieve the setbacks provided by the current rules of thumb within the Residential Flat Design Code given these site constraints

There is insufficient site frontage to achieve the height and FSR outcomes envisaged by the planning proposal and achieve the objectives of the LEP, Council's Draft DCP, *State Environmental Planning Policy 65 Residential Flat Building Development* and the rules of thumb, especially separation, in the Residential flat Design Code.

Staff response

Setbacks are not controlled by the planning proposal. However, any future DA for the site will be required to have regard to the Woollahra Development Control Plan 2015 and the recently renamed *State Environmental Planning Policy 65 Residential Apartment Development* (SEPP 65). SEPP 65 is supported by the Apartment Design Guide which address building separation and privacy.

The proposed FSR and height controls will provide an opportunity to design a building which is setback to respond to the site's context, and its relationship with adjoining properties.

13. Impact on acoustic privacy

Two submissions from adjoining owners to the east of the site raised acoustic privacy.

Issue raised in submissions

A development under the proposed planning controls will create acoustic privacy issues. For example, the operation of a car lift and general noise will impact on 85 Yarranabbe Road.

Staff response

Whilst the planning proposal would allow an RFB to be located closer to the foreshore, the impact on acoustic privacy is not controlled by the planning proposal. Acoustic privacy is a matter that would be considered as part of a DA assessment. The Woollahra Development Control Plan 2015 (chapter B3 General Development Controls) requires that new dwellings should be designed to ensure acoustic separation to the occupants of all dwellings. This includes ensuring that all machinery complies with the requirements of the *Protection of the Environment Operations Act 1997*.

14. General comments on public meetings with Councillors and the public interest of the planning proposal

Five submissions had general comments; two from adjoining residents to the west of the site, two from residents to the south of the site and one from SP2766 – 13-15 Thornton Street.

Issues raised in submissions

- Before the last Council elections there were two public meetings where Councillors stated they believed in protecting the foreshore.
- The proposal is not in the public interest.

Staff response

The comments are noted.

15. Support for the planning proposal

Three submissions were received in support of the planning proposal; two from adjoining owners at 85 Yarranabbe Road and one from an owner of an apartment in 73-75 Yarranabbe Road

Issues raised in submissions

- General support for the proposed development.
- Existing buildings on 83 and 83A are not attractive.
- Proposal is good in the context.
- The way potential problems such as light and height have been dealt with is impressive.

Staff response

The comments are noted.

5. Making the Draft LEP under delegated authority

To streamline the plan making process, some plan making powers can be delegated to Council for routine matters.

In this case, the Minister has provided written authorisation to exercise delegation to finalise this planning proposal (see **Annexure 2**).

Should Council resolve to finalise the planning proposal, staff will request that Parliamentary Counsel (PC) prepare a draft local environmental plan amendment. Once the amendment has been prepared, PC will issue an opinion that it can be made.

6. Conclusion

The planning proposal was prepared and exhibited in the manner required by the Act, the Regulation and Gateway Determination.

The planning proposal to amend the foreshore building line, floor space ratio and height controls is consistent with the aim of Woollahra LEP 2014 to facilitate opportunities, in suitable locations, for diversity in dwelling density and type. It is also consistent with the objectives of clauses 4.3 *Height of buildings*, 4.4 *Floor space ratio* and 6.4 *Limited development on foreshore area*.

Woollahra Municipal Council
Urban Planning Committee

27 July 2015

The planning proposal should be finalised as it offers the following benefits:

- Provides an envelope for the logical and efficient massing of buildings on the site.
- The suite of planning controls allows a better distribution of building bulk on the site by reducing height at the upper part of the site and increasing height in the centre which is set downhill. This approach responds to the topography of the site and its appearance from the harbour.
- Maintains and improves views from the public domain across the site from the footpath in front of 85 Yarranabbe Road.
- Reduces the potential scale of development on the Yarranabbe Road frontage.
- Increases the development potential of the site by allowing an additional 436m² of gross floor area in an RFB or multi dwelling housing development.
- Has the potential to contribute to the housing target for the Woollahra LGA set by the *Draft East Subregional Strategy*.

The matters raised in the submissions have been assessed and it is considered that they do not raise matters that warrant amendment or termination of the planning proposal. In particular it is concluded that:

- The Land and Environment Court decision for DA485/2012 was on a specific DA for the site under the Woollahra LEP 1995 controls. The role of the court was not to decide what the appropriate controls should be and the decision does not prevent Council from amending the planning controls for the site under Woollahra LEP 2014.
- Although a covenant applies to 83A Yarranabbe Road, it is inconsistent with the existing zoning of the land for medium density residential development and does not prevent Council finalising the planning proposal. Council could consider whether to release the covenant if a DA was lodged for the site.
- The planning proposal was assessed against all of the planning principles of the *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* and found to be consistent with the relevant principle (13(f)).
- The planning proposal was prepared and publicly exhibited consistent with the Act and the Regulation.
- The planning proposal will not set a precedent for other property owners in the locality to make a similar request, as the laws relating to precedent apply to the development application process under part 4 of the Act, not to the plan-making powers under part 3 of the Act.

We recommend that Council resolves to finalise the planning proposal and amend Woollahra LEP 2014 by making the following changes to the planning controls that apply to the site:

- increase the floor space ratio (FSR) from 0.9:1 to 1.2:1 over the entire site
- increase the maximum building height for residential flat building or multi dwelling housing development from 10.5m to 15.2m and apply a second height of 5.7m over 83 Yarranabbe Road
- increase the maximum building height for residential flat building or multi dwelling housing development from 10.5m to 15.2m over the access handle of 83A Yarranabbe Road
- amend the foreshore building line from 30m to 18m for residential flat building and multi dwelling housing development.

Woollahra Municipal Council
Urban Planning Committee

27 July 2015

Annexures

1. Planning proposal for 83 and 83A Yarranabbe Road, Darling Point
2. Gateway Determination, authorisation to exercise delgation and amendment to determination
3. Submissions
4. Report to Urban Planning Committee of 24 November 2014

LATE CORR	Item: K1
Previously forwarded to Cir	Y/N
Meeting:	Council (UP)
Date:	10/8/15

Sue O'Connor

Subject: FW: Planning Proposal: 83 & 83a Yarranabbe Road, Darling Point

Annexure 3

Begin forwarded message:

From: John Roth [REDACTED]
Subject: Planning Proposal: 83 & 83a Yarranabbe Road, Darling Point
Date: 10 August 2015 9:38:50 am AEST
To: [REDACTED]

Resent-From: [REDACTED]

Dear Councillors

I understand that a petition with up to 800 resident signatures will be presented to Council today opposing the above Planning Proposal.

I have spoken to a number of residents and it is apparent that none of them really understand this Proposal. With respect to the Foreshore Building Line which is the main point of contention, they do not appreciate that for THIS SPECIFIC SITE ONLY it is a simple choice between:

1. A 3 storey building on the 12m line effectively FOREVER, or
2. A 2 storey building on the 18m line effectively FOREVER.

They all think it's a choice between a FSBL of 18m or 30m as they just do not understand the issue with this particular site. The benefit to the people of Sydney of an improved harbour foreshore is obvious

I trust Councillors are able to maintain the position taken by the Urban Planning Committee meeting 2 weeks ago.

Yours sincerely

John Roth

Sue O'Connor

LATE CORRO	Item: <u>PL</u>
Previously forwarded to Cirs	<u>Y/N</u>
Meeting:	<u>Council (UP)</u>
Date:	<u>10/8/15</u>

From: Victoria Taylor [REDACTED]
Sent: Friday, 31 July 2015 7:52 AM
To: Katherine O'Regan, Records
Subject: PLANNING PROPOSAL 83 AND 83A YARRANABBE ROAD DARLING POINT

Dear Katherine,

Please reject this PP and changes to the LEP for 83 and 83a Yarranabbe Road DP on Monday 10th August at the Full Council Meeting.

Fifteen years ago Gabrielle Upton and others set up the Darling Point Society. They convincing Council of the importance of establishing a site-specific DCP for the Darling Point peninsular to restrict another wave of over-development and to preserve heritage. Eighteen of the suggested amendments were incorporated into the 2003 DCP under Mayor John Comino.

The Planning Proposal before you for 83 and 83A Yarranabbe Road Darling Point (under the State Gateway Determination instrument) **on Monday 10th August, is designed to make possible a building project by allowing a site-specific exception to the LEP.** The PP claims to be **IN THE PUBLIC INTEREST**.

When refusing approval for this project in **2012 the Land & Environment Court judge** said: **"There IS PUBLIC BENEFIT in maintaining the planning controls adopted by the environmental planning instrument"**.

Council was really pleased with this finding in the Land and Environment Court in defense of Woollahra Council's refusal of the DA.

We residents are VERY concerned at the proposed changes now before Council. The submitted arguments of more than 50 community objectors - on the bases of waterfront building setback, height and bulk and setting a precedent - are evidence of the volume of community opposition to this PP.

Buildings full of people on Yarranabbe Road and Thornton Street have presented their objections to this PP.

If Site-specific exceptions to an LEP apply to the PLAN-MAKING POWERS under Part 3 of the Act, what will stop any other proponent from going down the same route of site-specific exception to the LEP?

This Planning Proposal WILL set a very dangerous precedent & open a fresh floodgate of over-development.

This building development will produce ONE or possibly two, extra units of **very expensive (not affordable housing)** on this site. It therefore does not justify an exceptional amendment to the LEP! **Please do not support this breach of our LEP regulations, carefully constructed by Council, so that we can all live together harmoniously.**

If the planning minister's office knew the strength and breadth of the communities' objections BEFORE being asked to give his consideration to pass it, this would have been declined.

Please give our objections your careful deliberation.

Yours Sincerely,

V. Taylor

[REDACTED] Yarranabbe Road Darling Point NSW 2027.

1

Craig Bennett

From: Records
Sent: Monday, 3 August 2015 3:23 PM
To: Craig Bennett
Subject: FW: re Proposal, 83 & 83a Yarranabbe Rd, Darling Point

LATE CORRIGENDUM	Item: R1
Previously forwarded to Cllrs	XTN
Meeting:	Council (24)
Date:	10/8/15

-----Original Message-----

From: Chickey Bray [REDACTED]
Sent: Saturday, 1 August 2015 3:36 PM
To: Records
Cc: Jeff Zulman
Subject: Fwd: re Proposal, 83 & 83a Yarranabbe Rd, Darling Point

Dear Jeff,

Thank you for your interest in the above proposal. I attended the meeting last Monday and appreciated your well thought out questions, especially on the matter suggested changing the covenant on foreshore. This covenant is surely seen as the "Holy Grail" in protecting our foreshore over the past 50 years, for this to be altered for a spot development sets a very dangerous precedent allowing the gates to open for..... This is not only an important issue for Darling Point but the whole of Woollahra foreshore.

I cannot support either of the proposed solutions as residents views would be affected either way, as well I do not support the increased roof height to 15.2m for the same reason, hence another solution must be found, perhaps it is the developer who should make the compromise and scale down the bulk of his proposal, as was the case on a similar site at 81 Yarranabbe Rd. still affording the developer more than reasonable returns on his capital.

It seems to me extraordinary that this site still poses such a challenge, firstly rejected by Council, further rejected by Land and Environment Court and after considerable costs to Council bounces back to Woollahra. It should be clear that this proposal is unsuitable on all fronts, why would there be any need for Woollahra Council to be accommodating at this late stage seemingly doing an about turn on its earlier sound judgement.

We should be mindful of the overdevelopment in Thornton St, Darling Point which was allowed to 'slip through the net' in the 1960's

This is an opportunity to get it right!

I urge Council to consider wisely the ongoing, long term ramifications of this proposal.

LATE CORRIGENDUM	Item: R1
Previously forwarded to Ctrs	<input checked="" type="checkbox"/> N
Meeting:	Council (UP)
Date:	10/8/15

Sue O'Connor

From: Lyndie Hemery [REDACTED]
Sent: Wednesday, 5 August 2015 9:30 AM
Subject: 83 and 83A Yarranabbe Road, Darling Point.

Dear Woollahra Council,
I wish to confirm my strong objection to the Proposal to breach the Foreshore Building Line and height restriction and the bulk ratio rulings at 83 and 83A Yarranabbe Road, Darling Point.
Yours faithfully
Janet Hemery
[REDACTED] Thornton Street
Darling Point NSW 2027

LATE CORRO	Item: R1
Previously forwarded to Cirs	JTN
Meeting	Council (UP)
Meet 27 Jul 2015	8/15

Sue O'Connor

Subject: FW: 83-83a Yarranabbe Rd Item R1 approved at UPC

Importance: High

From: Darling Point Society [REDACTED]
Sent: Friday, 7 August 2015 10:48 AM
To: Allan Coker; Brendan Metcalfe; Jeff Zulman; Ted Bennett; Greg Levenston; Andrew Petrie; Lulse Elsing; Deborah Thomas - External Forwarding; James Keulemans; Toni Zeltzer
Subject: 83-83a Yarranabbe Rd Item R1 approved at UPC Meet 27 Jul 2015

For Full Council consideration of Planning Proposal under delegated authority by WMC under the NSW State Gateway Determination Site-Specific Exception to WMC 2014 LEP

The Darling Point Society respectfully wishes to reiterate our objections to the further approval passage of the Planning Proposal for 83 & 83A Yarranabbe Road under the NSW Gateway Determination Site-Specific Exception to the LEP.

We do NOT consider that it is in the public interest, as there is no projected public benefit in its construction. Over 50 objections attest to the contrary.

With an increase of one and perhaps two additional accommodation units and 436 square meters overall on existing, we do NOT feel that this warrants a significant increase to housing density as per the NSW State Government's "Plan for Growing Sydney".

Given the median house prices in Darling Point we do NOT consider that it is contributing to the State Government's desired aim of additional affordable housing.

It's potential to interrupt the views of surrounding apartment buildings if fully utilising Council's 10.5 metres height guideline at street level is most unfortunate. In the Society's submission to Council's draft LEP 2013 we said:

"Changes to building heights - these go against all desired requirements to maintain the leafy environment of, in particular, the Darling Point peninsula. Qualifying parameters should be enshrined in the Local Environment Plan (LEP) not the supplementary Development Control Plan (DCP). Council's proposed arguments to establish these new heights appear somewhat specious.

"Changes to Floor Space Ratios (FSRs) - this will cause an increase in unacceptable bulk."

and elsewhere

"The Society considers that the proposed changes to building heights, FSRs and FSR/site area calculation have significant potential to increase building bulk. This will be to the detriment of public and private views, solar access, provide inconsistency of streetscape and character, significantly impact on views and building vistas."

The applicant has offered to restrict the street height level at 5.7metres. However, the applicant has also requested to breach the Council's 30 metre building line setback to 18 metres.

We maintain that this breach could be seen to set a dangerous precedent and possibly open a fresh floodgate of over-development along the Darling Point shorelines, and indeed throughout the municipality, resulting in loss of amenity to the community and from the harbour.

We understand that site-specific exceptions to an LEP only apply to the Plan-Making powers under Part 3 of the Act and that technically this Planning Proposal is not considered a precedent - but in practice we maintain that it will weaken the implementation of the LEP regulations and will enable this case to be used in support of any future Planning Proposals.

Council has previously refused Planning Proposals that have been referred to, and subsequently upheld, by the Minister. And, historically, there has already been a 2012 DA on this property that Council refused and the L& EC upheld.

We sincerely hope you will refuse this Planning Proposal. We see it as a breach too far in facilitating the passage of a residential flat building on this site.

Yours sincerely,

Charlotte Feldman
President
Darling Point Society

LATE CORRIGENDUM	Item: R1
Previously forwarded to Cirs	Y/N
Meeting:	Council (UP)
Date:	10/8/15

Sue O'Connor

Subject: FW: Ruination of Darling Point Foreshore Amenity

From: [REDACTED]
Sent: Saturday, 8 August 2015 12:46 PM
To: Susan Wynne
Cc: Records
Subject: Fw: Ruination of Darling Point Foreshore Amenity

Dear Ms Wynne, Please note my serious objection to Woollahra Council's approval of the proposal to allow development of the foreshore meters closer to the waterline by nos 83 and 83a Yarranabbe Road. This precedent is anathema to me and any right thinking person with a love for Sydney Harbour and its foreshore history.

Also I note the council plans to increase the height allowed on the waterfront properties in front of 'Yuruga' 67 Yarranabbe Road. Apart from destroying the long established AMENITY of this beautiful area, subsequent development would ruin the views and value of our building.

With trust in your concern and support, Kind Regards, Elizabeth Richards
[REDACTED] Yarranabbe Road, Darling Point.

Annexure 4

22 March 2016

Planning Proposal at 83 and 83A Yarranabbe Rd Darling Point
Submission by Yarranabbe Developments Pty Ltd (Applicant)
in response to the following Woollahra Council Motion

Woollahra Ordinary Council Meeting Minutes

2 November 2015 Page 3900

Notices of Motion

Item No: 11.1

Subject: NOTICE OF MOTION

From: Councillors Ted Bennett, James Keulemans and Jeff Zulman

Date: 27/10/2015

File No: 15/152753

17/18

(Zulman/Keulemans)

Resolved:

- A. THAT Council requests staff to prepare a further report on the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (SC2503) including consideration of all late correspondence and present this report to the Urban Planning Committee.*
- B. THAT the applicant meet with the Darling Point Society and other key community representatives to discuss the potential proposed impacts under:
 - (i) The planning proposal.*
 - (ii) The current LEP and DCP.**

To assist Council staff in preparing the report referred to in Motion A and in accordance with the request in Motion B, this submission therefore contains the following:

1. Details of Darling Point letter box drop
2. Reply to the late correspondence
3. Reply to the Darling Point Society (Save Our Foreshore) Petition
4. Reply to the Design Collaborative submission on behalf of 77 – 81 Yarranabbe Rd dated 14 January 2016
5. Response to the Hones Lawyers letter on behalf of 17A Thornton Street dated 3 February 2016, and

6. A report on the meetings with the Darling Point Society and other key local community representatives
 - a. Darling Point Society
 - b. Mr Ray Dresdner
 - c. Mr Peter Halas
 - d. Mr Jonathan Pinshaw
 - e. Mr Jim Dominquez
 - f. Ms Leonie Jeffrey
 - g. Mr Cameron Harvey-Sutton
 - h. Mr Max Hunt
 - i. Mr Gary Cohen
 - j. Ms Lorna Nutt
 - k. Mr Sam Cullen
 - l. Mr Stuart Rose
 - m. Other Community representatives

1. DETAILS OF DARLING POINT LETTER BOX DROP

During the third week of March, 2016, a letter box drop to 2500 Darling Point residences will be carried out by Mailpost Pty Limited with the following leaflet:

PLANNING PROPOSAL

83 & 83a YARRANABBE ROAD, DARLING POINT

THE FACTS

This proposal will provide the following public benefits to the people of Darling Point:

- **Improved Harbour views** for all neighbours
- Existing building line moved back a further 6m from harbour, thereby creating an additional 6m of Harbour Foreshore landscaping. This is a unique and one-off opportunity to **improve the Harbour Foreshore**, as without it a building will remain on the existing 12m line effectively forever
- **Improved Harbour views** to the public from Yarranabbe Road
- **Reduced potential development height** on Yarranabbe Road from 10.5m to 5.7m

If you have any questions or wish to discuss this proposal further, please contact **Garry Brown** on **9302 5333**.

The purpose of this leaflet is to communicate the facts about the Planning Proposal and to attempt to counter the severe misunderstandings and misinformation which have been circulating throughout the suburb concerning the Planning Proposal. It is quite clear that none of the opponents wish to hear or understand that this proposal will provide an extra 6m of landscaped Harbour foreshore which in its absence would never materialise. There are many other public benefits but the opponents do not want to know about them.

We only hope that Council will see its way to approve what is:

- 1) A good planning outcome for the site
- 2) A proposal which is positive in the overall public interest despite the fact that most of the public does not or will not recognise it

2. REPLY TO LATE CORRESPONDENCE

The late correspondence is addressed in Woollahra Council Memorandum dated 10 August 2015 (attached as **Appendix A**)

Late correspondence included in this section is from:

Ms Victoria Taylor
Colleen Bray
Janet Hemery
Darling Point Society
Elizabeth Richards

Ms Victoria Taylor, 6/67 Yarranabbe Rd, Darling Point, 31 July 2015

In Ms Taylor's email she states:

"This Planning Proposal WILL set a very dangerous precedent & open a fresh floodgate of over-development."

also:

"If the planning minister's office knew the strength and breadth of the communities' objections BEFORE being asked to give his consideration to pass it, this would have been declined."

The first issue above has been dealt with by Council in the report to the Urban Planning Committee Agenda dated 27 July 2015 under Item no R1 page 23 and Item no R1 page 35 and also in its memorandum to all Councillors dated 10 August 2015 dealing with late correspondence.

The second issue was dealt with by the Delegate to the Minister for Planning, Mr Lee Mulvey who wrote to Council on 23 January 2015 as per below:

"It is noted that Councilhas requested delegation of this planning proposal. I have considered the nature of the proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan."

Therefore the Council position is that no precedent will occur from this Planning Proposal and the Minister for Planning has decided that the Council will be the planning authority for this proposal. Hence Ms Taylor's comments are incorrect.

Colleen Bray, address unknown, 3 August 2015

In Colleen Bray's email is the statement:

"This covenant is surely seen as the "Holy Grail" in protecting our foreshore over the past 50 years, for this to be altered for a spot development sets a very dangerous precedent allowing the gates to open for.....This is not only an important issue for Darling Point but the whole of Woollahra foreshore."

All issues in this correspondence have been dealt with by Council in the report to the Urban Planning Committee Agenda dated 27 July 2015 under Item no R1 page 23 and Item no R1 page 35 and also in its memorandum to all Councillors dated 10 August 2015 dealing with late correspondence.

Janet Hemery, 3a/23 Thornton Street, Darling Point NSW, 5 August 2015

We have no comment to make as no basis for the objection was raised.

Darling Point Society, 7 August 2015

In the Darling Point Society's email is the statement:

"The applicant has offered to restrict the street height level at 5.7metres. However, the applicant has also requested to breach the Council's 30 metre building line setback to 18 metres.

We maintain that this breach could be seen to set a dangerous precedent and possibly open a fresh floodgate of over-development along the Darling Point shorelines, and indeed throughout the municipality, resulting in loss of amenity to the community and from the Harbour.

We understand that site-specific exceptions to an LEP only apply to the Plan-Making powers under Part 3 of the Act and that technically this Planning Proposal is not considered a precedent - but in practice we maintain that it will weaken the implementation of the LEP regulations and will enable this case to be used in support of any future Planning Proposals."

Again, Council has fully dealt with this letter both in the Urban Planning Committee Agenda dated 27 July 2015 and in its Memorandum to all Councillor's dated 10 August 2015 concerning late correspondence, we point out here and later in this submission that neither the Darling Point Society nor any other of the numerous objectors are prepared to address the issue that the Planning Proposal provides a further 6m of landscaped Harbour foreshore which in its absence will never be provided. Two further erroneous comments deserve mention:

"With an increase of one and perhaps two additional accommodation units.... we do not feel that this warrants a significant increase to housing density as per the New South Wales Government "Plan for growing Sydney"."

The Planning Proposal provides for an increase of three dwelling units which represents an increase of 150%. Surely this is a significant increase albeit not the main reason for the Proposal.

Also the Submission states:

“The Society considers that the proposed changes to building heights, FSRs....will be to the detriment of public and private views, solar access, provide inconsistency of streetscape and character, significantly impact on views and building vistas.”

This is manifestly incorrect as all neighbours will be provided with better views and better or equal solar access. The public domain will also be provided with better Harbour views from the street due to setbacks on both sides of the Planning Proposal envelope and an improved streetscape. This comment demonstrates a clear lack of understanding of the Proposal which unfortunately dominates the debate.

Elizabeth Richards 2/67 Yarranabbe Road, Darling Point.

In Ms Richards’ email is the statement:

“Please note my serious objection to Woollahra Council’s approval of the proposal to allow development of the foreshore meters closer to the waterline by nos 83 and 83a Yarranabbe Road. This precedent is anathema to me and any right thinking person with a love for Sydney Harbour and its foreshore history.”

In reply please note that due to the current house at 83A being 12m from the Harbour, the proposal does not go closer to the Harbour, but provides a built form 6 metres further from the Harbour, a positive benefit for the Harbour and the neighbourhood.

3. REPLY TO THE DARLING POINT SOCIETY (SAVE OUR FORESHORE) PETITION

The wording of the original petition stated:

“SAVE OUR HARBOUR FORESHORES – PETITION

Woollahra Council is considering a Planning Proposal which breaches the Foreshore Building Line, the height restriction and the bulk ratio rulings at 83 & 83A Yarranabbe Road.

This Proposal would allow a unit block to be built nearer to the Harbour Forshore than is permitted by Council’s rules which protect the foreshore.

This is of great concern for the future because it creates an exception to the ruling and is an invitation to other developers to build nearer to the foreshore using this as a precedent.

We, the undersigned, ask our Councilors to reject this Planning Proposal and to continue to protect our scenic foreshore from over development as previous Councils have done for so long.”

The fundamental flaw with this petition is that the Darling Point Society failed to inform the petitioners or to acknowledge that there is a house on 83A Yarranabbe Rd (the Harbour frontage) which is on the 12m Foreshore Building Line (FSBL). This house can stay there even if a residential flat building (RFB) is built behind it at the 30m FSBL.

Moreover, the economic argument is overwhelming that a house or dual occupancy will always remain on the 12m FSBL setback unless the Planning Proposal is approved and the two lots are amalgamated and developed as a RFB to increase density and provide a sufficient economic yield. This house is worth AS\$20-25 million in today's market and it will never be removed or demolished unless it can be replaced by a building of equal or higher value. The current Planning Proposal would permit a new RFB back 18m from the Harbour foreshore. Due to the extra FSR and height provided in the Planning Proposal envelope (mostly below street level) enabling 5 large apartments to be built replacing the current 2 houses, the economics enable this additional 6m setback.

However, any further setback is not possible as it would not allow enough FSR to justify demolition of the existing house and any further setback beyond 18m results in 83 and 83A Yarranabbe Rd being over dominated and losing Harbour views due to Santina to the east. Therefore due to its unique situation, there will never be a 30m Harbour foreshore setback on this site.

In relation to "*Council's rules which protect the foreshore*" no LEP can be so perfect that it applies without change to every site in a Local Government Area.

Woollahra Council has consistently viewed each proposed development on a site specific basis and where it felt it was warranted, allowed a variation to its own LEP controls accordingly. This is the normal planning process for all Councils. The aim is to achieve the objectives of the Council's strategic plans and in some cases this means varying the specific LEP controls, through the previous SEPP 1, and now Clause 4.6 variation process.

Please see the Council register of Exceptions to Standards – August 2009 to April 2015, 55 pages. Within this Register there are at least 19 exceptions relating to Foreshore Building Line variations in that 6 year period. We have noted that exceptions have occurred which have not been included in the Register such as the FSBL at 71 Yarranabbe Rd dwelling which was approved at 10.0m by Council on 9 November 2009. However, the 18m setback approved for a Residential Flat Building at 101 Yarranabbe Rd, within the last 10 years provides a good justification for this Planning Proposal as it provides a transition to the East to the 1950's Yarranabbe Gardens while this Planning Proposal provides the same transitional setback to the West to the 1950's Santina.

There will be no precedent established for any other Woollahra LGA site. As per Gadens Lawyers advice dated 16 July 2015:

"the laws relating to precedent apply to the development application process under Part 4 of the Act, not to the plan-making powers under part 3 of the Act. Precedent has no role to play in this instance.

there could not be any precedent because the obvious answer is that this is a site-specific rezoning, which has been assessed on its own merits based upon the particular features and qualities of this particular site and its relationship to the adjacent properties, bearing in mind that the Planning Proposal seeks to strike a balance between the adjacent foreshore setbacks, described in the Council assessment report to the Urban Planning Committee (24 November 2014) at Annexure 2 as follows: "The planning proposal responds to the site's context and proposes a transition from the 7m foreshore setback of 85 Yarranabee Road to the 30m setback of 77-81 Yarranabee Road." As such, the planning proposal, which will only alter the planning controls for this specific site, is based upon the individual context of this site and could not conceivably set any precedent, adverse or otherwise."

Any real precedent has long since been created by 101 Yarranabbe Rd and other sites.

If the Planning Proposal was approved then it would allow a Residential Flat Building (RFB) to be built at 18m from the FSBL to replace a house which is 12m from the FSBL, a truly unique situation.

We have obtained a copy of the petition under Freedom of Information legislation. All telephone numbers and some address details were removed from the petition to protect privacy and thereby making it difficult to identify the signatories. Nevertheless, it was possible to draw some conclusions:

This petition was signed by over 800 people. Many clearly live outside Woollahra Municipality and even more outside Darling Point. There are at least 3 or 4 duplicate signatures. Moreover, it is clear that signatures were obtained without providing the signatories full or accurate information. We have spoken to at least seven signatories whose names appear below who were unaware of the fact that a house exists on the 12m FSBL and indeed were misled into signing. They all now understand that the Planning Proposal with a 18m FSBL is indeed a positive enhancement and most now support the proposal.

- Freda Abram
- Phil Abram
- Pauline Shavit
- Danny Shavit
- Lois Fleming
- Joseph Schwartz
- Helene Gonski

Copies of their withdrawal advice and support are attached to this report (**Appendix B**). We have no doubt that these are just a random sample of people whom we happen to know but that there are many more signatories who were equally misled.

4. REPLY TO THE DESIGN COLLABORATIVE SUBMISSION ON BEHALF OF 77 – 81 YARRANABBE RD DATED 14 JANUARY 2016

The Design Collaborative submission is attached as **Appendix C**.

Several comments within the Design Collaborative (DC) submission are contradictory or very subjective and lack a factual basis.

Height of Building on the Yarranabbe Road frontage (no.83)

Page 3 second paragraph:

“Taking into account the fall of the site, it is considered that the height of any proposed building would be reduced at the front setback to provide a logical, feasible built form”

“Accordingly, in our view, the scenario presented to Councillors is misleading as it does not take into account other relevant controls which would prevent the erection of a building on the street frontage”

As shown in several of the View Impact Analysis diagrams (attached as **Appendix D**) a new building could definitely be higher than the height of the existing building on the site and because the site has been unevenly excavated it may be possible to build to 10.5m above Yarranabbe Road on part of the frontage even after allowing for a 6m setback.

Height of Dwelling House on the waterfront (no.83A)

Page 5 first paragraph:

“Additional floor space could potentially be provided over the western side of the existing roof level of the dwelling house but only within the permitted envelope.”

Page 5 fourth paragraph:

“We consider it highly unlikely that additional floor space could be justified at the existing roof level of the dwelling house”

The first statement correctly states that more floor space could be added onto the existing roof level of the house at 83A. The second statement is a totally subjective conclusion which contradicts the first statement.

The Design Collaborative submission includes many other conclusions which are very subjective and not substantiated by facts. We offer our View Impact Analysis diagrams which have been accepted by Council for community presentation as valid representations of the possible outcomes on this site.

In addition, the existing house could be converted to dual occupancy to a height of 9.5m.

The Proposed Planning Controls and the Proponent’s Planning Proposal Envelope

The conclusion states that *“a building complying with the now proposed height standards will have impacts on neighbouring properties which are likely to be greater than those shown in the original Planning Proposal Submission”*.

This is just not correct. First of all the original Planning Proposal heights have already been reduced at Council’s officers request and secondly Professor Tzannes has completed a far more detailed impact analysis than Design Collaborative has been able to do and he has concluded that there will be either no impact or positive impact on neighbouring properties.

5. RESPONSE TO HONES LAWYERS LETTER ON BEHALF OF 17A THORNTON STREET, DATED 3 FEBRUARY 2016

The Hones Lawyers submission is attached as **Appendix E**.

“The Planning Proposal is fundamentally flawed based on a hypothetical and uncertain development scenario for the lands the subject of the proposal which ignores the topography of the land...”

On the contrary, the Planning Proposal fulfils all the requirements of such a document and takes full account of the site topography.

“There is no public benefit in the Proposal and it would not be in the public interest for the proposal to be committed to proceed”.

On the contrary, there are numerous public benefits provided by this Proposal namely:

- Improved Harbour views for all neighbours
- Existing building line moved back a further 6m from Harbour, thereby creating an additional 6m of Harbour foreshore landscaping
- Improved Harbour views from the public domain on Yarranabbe Road
- Reduced maximum building height on Yarranabbe Road from 10.5m to 5.7m

"We agree with and adopt the conclusion in Mr Sanders submission that the impacts of a building complying with the proposed controls, not only on neighbouring properties but also on views to the lands from the Harbour, are likely to be greater than a development based on the current planning controls."

This is demonstratively incorrect as per the View Impact Analysis diagrams attached to this submission .

"It is not a proper justification in our opinion, and therefore not in the public interest to change planning controls based upon a hypothetical building envelope presented in sketch form...."

This is how the Planning Proposal process operates and has been used many times before throughout NSW for similar applications.

"It is not possible that a three story component could be built on Yarranabbe Road as suggested in the sketchy plans provided by the proponent."

Our submission is that the LEP allows such a height. Side and front setbacks provided in the DCP will limit this height but in any case a compliant proposal can definitely be built in excess of the height of the existing house whereas the Planning Proposal provides a height ceiling based upon the height of the existing house.

"There can also be no guarantee, should the Planning Proposal succeed, that any redevelopment at the lands would be in accordance with or comply with proposed amended controls. It is very possible that any properly constituted development application for redevelopment of the site, taking into regard all the mandatory requirements of s79C would need to avail itself of the flexibility provided by clause 14.6 [actually 4.6]of Woollahra LEP 2014 to seek a variation of the amended controls. The final form of any redevelopment of 83 and 83A is therefore extremely uncertain."

It is disingenuous and totally inconsistent to argue that the flexibility provided by the Woollahra LEP would enable a variation of the amended controls as they apply to the Planning Proposal but not accept that this same flexibility is provided by the LEP to vary the existing controls in the case of a largely complying development.

"We understand that only one further dwelling unit would be provided."

This again is incorrect. Three new dwellings units will be provided thereby increasing site capacity by 150% and thereby facilitating dwelling supply.

"The changes to the planning controls which are sought are significant and substantial and will clearly impact on views to the lands from the public users of the Harbour."

We agree with this assertion but for totally different reasons, Hones Lawyers, Design Collaborative and indeed all of the objectors to this Planning Proposal consistently ignore the fact that an extra 6 metres of landscaped Harbour foreshore will be provided through this Planning Proposal and therefore the “*views to the lands from the public users of the Harbour*” will be improved by this Planning Proposal. It is therefore in the public interest, contrary to the conclusion of the Hones Lawyers letter that views from the Harbour are positively rather than negatively impacted.

6. REPORT ON THE MEETINGS WITH THE DARLING POINT SOCIETY AND OTHER KEY LOCAL COMMUNITY REPRESENTATIVES

Summary of Community representatives positions

Of the twelve community representatives consulted, three have changed their positions to now supporting the Planning Proposal and one is now not objecting to the Planning Proposal.

	July 2015 position	Current position
Darling Point Society	Against	Against
77 Yarranabbe Rd		
Mr Ray Dresdner	Against	Against
17A Thornton St		
Mr Peter Halas	-	-
Mr Jonathan Pinshaw	-	Against
Mr Jim Dominquez	Against	Against
Santina Building, 85 Yarranabbe Rd		
Ms Leonie Jeffrey	For	For
Mr Cameron Harvey-Sutton	For	For
Mr Max Hunt	For	For
Mr Gary Cohen	-	For
Ms Lorna Nutt	-	For
Hopewood Gardens		
Mr Sam Cullen	Against	Not objecting
56 Yarranabbe Rd (or 17 Thornton St)		
Mr Stuart Rose	Against	For

A. Meeting with Darling Point Society

Consultation with representatives of the Darling Point Society
Friday, 8/1/16 at 10 00 am Ritchies café Darling Point

Attendees

Charlotte Feldman (CF)	– Darling Point Society
Barbara Rooke (BR)	– Darling Point Society
John Roth (JR)	– Director of Applicant Company
Garry Brown (GB)	– Applicant’s Development Manager

77 – 81 Yarranabbe Rd Darling Point

By way of background GB discussed the DA for this neighbouring unit development and how JR objected to the proposed development in 1988 going an excessive distance to the North, thereby reducing his views of the Harbour and the Harbour Bridge. The original house on this site was built 45m back from the foreshore.

Council imposed a 30m Foreshore Building line (FSBL) upon the development. This FSBL control still allowed the unit development to increase its volume northwards and to reduce the Harbour and Harbour Bridge views from JR's home at 83 Yarranabbe Rd, thereby a negative impact.

Development Application (DA) vs Planning Proposal (PP)

BR queried whether we were dealing with a DA or a PP? We advised that there is no current DA and that the current PP was being discussed and was still with Council for consideration.

GB stated that the PP was significantly different to the previous DA as the PP was lower in height, had a lower FSR and had a greater FSBL, now 18m. Woollahra Council had accepted the PP for consideration as it was a new proposal compared to the DA.

GB discussed the current PP and how the envelope was modelled to improve views and solar access for all surrounding residents. There was general discussion about the Compliant Building Envelope (section 1.3.7 of PP) and the Planning Proposal Base Envelope (section 1.4.2)

GB presented the View Impact analyses and stated that these diagrams are still with Council for approval.

The two Darling Point Society representatives expressed dissatisfaction with the lack of detail in the PP. They stated that they would require a full DA before they could really give an opinion. We advised that the planning process does not work that way with the first step being the Planning Proposal consideration.

We discussed how:

1. Woollahra Council viewed potential developments on a site specific basis and varied LEP controls where they considered obvious benefits were to occur.
2. Our architects Tzannes Associates moulded the PP envelope to improve views and solar access for all neighbours
3. Our PP envisaged several LEP controls changing on our site to suit the proposed positive envelope
4. The proposed FSBL would deliver an additional 6m of depth to the current Harbour Foreshore area
5. PP would not be a precedent for any other development

BR stated that she considered that the proposed change of LEP controls was essentially a deal with Council.

A Darling Point Society submission to Council dated 28 January 2016 (attached as **Appendix F**) was received following our meeting. It is clear that nothing we could say would change their mind as in their view the only good development is no development.

They did however clearly request that we go far beyond the requirements of a Planning Proposal to the extent of lodging a full DA before they could meaningfully comment. Once again they gave no recognition to the fact that this Planning Proposal presented a one-off opportunity to increase the landscaped Harbour foreshore and rejected any criticism of the circumstances under which their petition was organised. They seem to be organising a new petition which we have not yet seen but would appreciate the opportunity to review and comment on prior its presentation to any Council meeting.

B. Meeting with Mr Ray Dresdner

Meeting held at 10 00 am Tuesday 24 November 2015 at Café Mia Eastpoint Shopping Centre

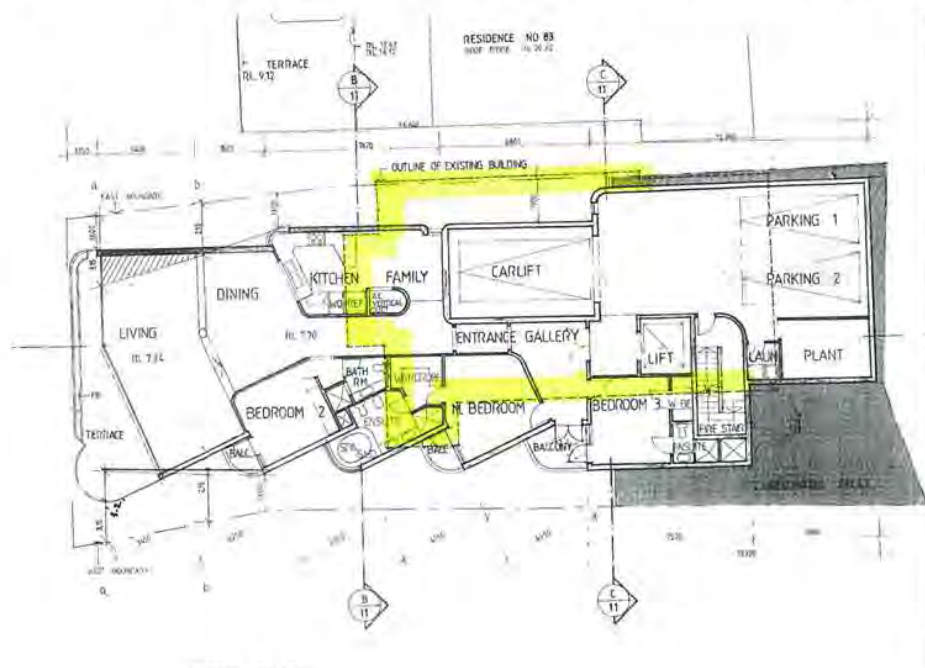
Attendees: Ray Dresdner (RD) (son of a unit owner in 77 – 81 Yarranabbe Rd) and John Roth (JR) and Garry Brown (GB) (Yarranabbe Developments)

Unit development at 77 Yarranabbe Rd

JR discussed how RD has continually related the current Planning Proposal to his mother’s unit development ie the 30m Foreshore Building Line was good for no. 77 and should also apply to any development on nos 83 and 83A.

JR raised with RD how he was personally upset by RD’s repeated reference to the “John Roth balcony” on RD’s mother’s unit. JR said that RD had previously stated to many people that he considered JR had caused the balcony on his mother’s unit to be only 1 metre wide and in RD’s opinion the balcony was too narrow to be usable.

GB showed RD a DA plan of the 77 Yarranabbe unit development clearly showing the new unit development with the previously existing house on the site shown as a dotted line (see below).



GB pointed out to RD that he needed to start with the understanding that the old house on his site was set back approximately 45m from the foreshore, as shown on the DA Plans. The new unit development increased the building envelope significantly north of the previous house and in doing so seriously reduced JR's view of the Harbour and the Harbour Bridge. JR objected to Council about the view loss. However Council determined that JR would definitely lose some of his Harbour views when the unit development was approved to go north to the LEP 30m Foreshore Building Line.

This is in total contrast to the situation at 83/83A where there is an existing house on the 12m Foreshore Building Line versus the 45m original foreshore building line at no. 77 and everyone's views are being improved.

Then having discussed how the front line of the unit development was determined by Council we stated to RD that JR had not designed the unit layout, the unit developer did. The balcony width was determined by the developer and JR had no part in the final outcome. RD stated that he had been unaware of the facts in relation to the previous house location and now better understood the previous situation.

Current Planning Proposal and alternative situations

We stated that there are three outcomes possible on this site, being the current situation remains; 83A house expands vertically; or the Planning Proposal is approved and a building is constructed within that envelope.

Obviously if the current situation remains the same, the two houses may continue in their current form on the site. However this is uncertain in the future.

Alternatively in relation to the 83A house we stated to RD that under the Council LEP controls there is a height limit of 9.5m for this house. Within this height limit 83A could increase to three storeys in height. The current garage roof would be the approximate height of the new top floor. This increase in bulk would negatively impact the views from 77 Yarranabbe Rd. RD was not aware of this height limit nor the ability of 83A to increase in bulk.

Also we discussed the Planning Proposal and how if approved this envelope would determine the building form and that this building form would provide a definite outcome which would not negatively impact the Harbour views from 77, indeed the views from 77 would be significantly enhanced.

While having no specific arguments against any of the above, RD stated that he would have to "agree to disagree".

Mrs Dresdner situation

Having discussed the various planning matters RD raised for discussion the situation with his mother and another senior lady resident of no. 77. He considered that any construction on 83 and 83A would be very detrimental to the ladies' health and quality of life.

JR replied that his family had to endure the construction of no. 77 and that on Council record there is noted an incident where a brick came from no. 77 through one of JR's windows and landed very close to his baby daughter.

GB said to RD “do we have a fundamental problem that does not involve planning merit at all, being your perceived problem with your mother and the other lady living next to a construction site?” He agreed that this was a base issue which he could not allow to happen. JR stated that if we could find a way to ensure RD’s mother was appropriately taken care of we might get to a satisfactory resolution with the development of the site. RD agreed that this would be beneficial. RD said he would think about this.

The meeting finished at 11 15 am with no agreement being reached between the parties. A subsequent discussion confirms that RD remains vehemently opposed to the Planning Proposal. RD now accepts the view improvement but is opposed to the “overshadowing and overbearing” nature of the proposal forward of his building line.

C. Meeting with Peter Halas

Meeting held at 9am, Thursday, 25 February, 2016 at Indigo, Double Bay.

Peter was the only resident/owner of 17A Thornton Street who agreed to meet with JR. Both Messrs Dominguez and Pinshaw have refused. JR went through the whole Planning Proposal with PH. Despite stating at the outset that he fully understood the proposal it was clear that his level of understanding was not complete and only marginally ahead of the general neighbourhood misunderstanding. PH agreed to take on board JR’s arguments and would get back to him. However, PH made it clear that he was a friend of Ray Dresdner and did not want to upset this friendship nor go against his co-owners. PH has not yet responded but his whole building of 3 units is opposed to the development for no explicable reason as they all refuse to communicate. Moreover, this building briefed Hones Lawyers (Appendix 5) who clearly are misinformed on most of the issues.

D. Telephone Conversation with Jonathan Pinshaw and John Roth – 8/12/2015

Jonathan is a new resident/owner of 1/17A Thornton Street. JR asked him whether he had seen the Planning Proposal. Jonathan said he had seen it. JR asked him whether he supported it. Jonathan said no he was against it. When JR asked why, Jonathan responded that it was 10.5m above street level. JR said this was not the case and explained to him that a complying development could be up to 10.5 m above street level but that the Planning Proposal was only 5.7m above street level and moreover was designed so that his view and indeed all views from surrounding residences were either maintained or enhanced. Jonathan listened and asked whether JR could send him the drawings. JR said he would much rather talk him through them in the first instance and then leave them with him for his consideration.

Jonathan said he would be unavailable for the next few weeks as he was undergoing what sounded like a significant medical procedure the next day (9/12/15).

Jonathan was also surprised to hear that JR actually lived at 83 Yarranabbe Road and was proposing to live in one of the units (if built). Jonathan had been told JR lived in Point Piper and was just an absentee developer.

Subsequent to this conversation Jonathan has consistently refused to meet with us or further discuss the proposal.

E. Telephone Conversation with Jim Dominquez and John Roth – 8/12/2015

After four (4) attempts, JR finally managed to contact Mr Jim Dominquez (a resident/owner in 17A Thornton St). JR requested a meeting to explain the Planning Proposal. Jim refused to see JR unless JR could show Jim a development in full compliance with existing Council controls. When JR said that he had such a drawing Jim said, no he has seen that and it is nonsense. It would never be permitted. Jim had a totally closed mind and said there was no value in JR explaining to him the existing Planning Proposal as he understood it and it was unacceptable.

Jim also added that he could not understand why JR was pursuing this development. To Jim JR was a pariah in the suburb and as a major supporter of St Vincent's Hospital along with his family, it does not behove JR to seek a development beyond Council controls.

F. Meeting with Ms Leonie Jeffrey

Meeting held at 10 30 am Thursday 28 January 2016 at Richie Café, Darling Point

Attendees: Ms Leonie Jeffrey (LJ) resident/owner of 9/85 Yarranabbe Rd Darling Point (Santina Building)
Garry Brown (GB) (Yarranabbe Developments)

The discussion focussed mainly upon the Harbour frontage in relation to both the current 83A house and the Planning Proposal (PP) built form, due to this Harbour frontage being the part of the PP which will affect LJ.

LJ agreed that the PP built form would be a positive impact upon her Harbour views and she stated that she would like the trees to be removed to also enhance her Harbour views. GB advised that the built form outcome is part of the PP currently before Council. However the trees and future site landscaping would form part of a subsequent DA and thereby be for consideration further into the planning process.

LJ stated that she supports the current PP.

G. Meeting with Cameron Harvey-Sutton

Meeting held at 5 30 pm Friday 29 January 2016 at Santina apartment block.

Attendees: Mr Cameron Harvey Sutton (CHS) resident/owner of 5/85 Yarranabbe Rd (Santina Building)
Garry Brown (GB) (Yarranabbe Developments)

The discussion focused mainly upon the Harbour frontage in relation to both the current 83A house and the Planning Proposal (PP) built form, as it is this part of the PP which will affect CHS.

The discussion covered the following matters:

- a. Moving the built form 6m back would be a positive improvement to CHS's Harbour views
- b. The PP built form will definitely allow more sunlight into the apartment, especially in the afternoon

- c. The negative impact on CHS's Harbour views of the trees. GB advised that our eventual plan was to remove all of the existing trees but the palm tree in the middle of the neighbour's path would remain as requested by Council

CHS stated that he supports the current PP.

H. Telephone Conversation with Max Hunt

JR spoke with Max Hunt (resident/owner of 13/85 Yarranabbe Road, Santana Building). He has been away overseas but continues to strongly support the Planning Proposal.

I. Meeting with Gary Cohen

JR met with Gary Cohen who is a resident and owner/co-owner with his wife of 3 units in the Santana Building (being units 3, 4 and 10). He supports the Planning Proposal.

J. Telephone Conversation with Ms Lorna Nutt

JR spoke with Lorna Nutt (resident/owner of 12/85 Yarranabbe Road, Santana Building) on 17/3/16. She is generally supportive of the Planning Proposal.

K. Meeting with Sam Cullen

Meeting held at 10 30 am Friday 29 January 2016 at Suite 604 Eastpoint Tower, Edgecliff

Attendees: Sam Cullen (SC) (resident/owner of 5/15 Thornton St, Hopewood Gardens) and John Roth (JR) and Garry Brown (GB) (Yarranabbe Developments)

The discussion was mainly about the 10.5 m height control over the site and particularly its presentation to Yarranabbe Rd.

SC stated the Council LEP control envelope as in one of the montages prepared by the Council would have a seriously negative impact on some of the views from Hopewood Gardens and particularly from the townhouses. Objections would be raised if such an envelope was proposed.

JR and GB discussed how the Darling Point Society wanted adherence to the 30m FSBL and that this would push the unit block built form to the rear of the site being up towards Yarranabbe Rd. JR and GB also discussed how the 83A house would remain in its present location and that there never could be a 30m Harbour front lawn as envisaged by the Darling Point Society.

SC stated that any proposal or outcome that pushed the bulk of the proposed envelope or any alternative envelope up to Yarranabbe Road and obstructed Hopewood Gardens residents' views would be cause for an objection.

SC stated that he agreed in principle to the setback rule as did most but he hoped the support shown by the community including the Darling Point Society for the maintaining of the 30 metre foreshore setback would not result in a bulk up at Yarranabbe Rd. which in turn caused loss of views. SC had noted a report stating that such bulk up was unlikely to be approved by the Council but he needed to await the response from the Council.

While awaiting this response and receipt of any further information tendered SC thought a further objection by Hopewood Gardens should not be made.

SC asked about whether the two main trees would be removed. JR and GB advised that both trees have a weakness in their trunks as they have grown around the driveway structure to 83A house and thereby have a reduced girth at that point. The Council arborist agreed that removal of the two trees should occur.

SC asked for copies of the Tzannes diagrams for use at further meetings he was having with other Hopewood Gardens residents. GB provided the diagrams later on 29/1.

SC stated he would communicate his position to other Hopewood Gardens' residents and the Executive Committee. Subsequently to our meeting Hopewood Garden EC met in early February and agreed not to object further to the Planning Proposal.

L. Meeting with Stuart Rose

Meeting held at 4 00 pm Tuesday 2 February 2016 at Suite 604, Eastpoint Tower, Edgecliff

Attendees: Stuart Rose (SR) (resident/owner of 1/56 Yarranabbe Rd) and
John Roth (JR) (Yarranabbe Developments)

The discussion was mainly about the 10.5 m height control over the site and particularly its presentation to Yarranabbe Rd.

SR stated that the current Council LEP control envelope would have a negative impact upon the Harbour views of the unit owners of 56 Yarranabbe Rd (17 Thornton St) and that he would prefer this not to happen. SR considered that the lower PP built form at 5.7m in height would suit the owners of his apartment block. He accepted the position that what would actually be allowed in any compliant development under the current controls was uncertain and therefore the Planning Proposal removed this uncertainty.

SR stated his support for the PP and that he would communicate his positive position to the other 56 Yarranabbe Rd owners.

Subsequently to the meeting we received from the owners of units 1, 2 and 3 their positive letters of support for the PP (attached in **Appendix G**).

M. Other Community representatives

A number of discussions have been held with Yarranabbe Rd residents including Mr Robert Whyte, Mr and Mrs Lipshitz and Mr Phillip Stern, all of whom support the Planning Proposal as they have previously in the Planning Proposal process.

Overview

Jeffrey, Harvey-Sutton, Hunt, Cohen, Nutt, Alperstein, Chen and Rose are property owners who are in favour of the PP. Thereby some of the Santana owners and all of 56 Yarranabbe Rd (also known as 17 Thornton St) are positive to the PP and the residents of Hopewood Gardens have decided to not object to the PP. The aforementioned form a large block of the people who would be affected by the PP. Their positive position is substantial and significant as it includes most immediate neighbours.

The other neighbours who would be most affected by our PP are 77 – 81 Yarranabbe Rd and 17A Thornton St. These two apartment blocks have submitted negative submissions either personally or via engaged consultants. We contend that there is no objective planning basis to the negative submissions received from these owners and they are all acting in concert.

We would argue that if the immediate neighbours who understand the actual reality of the Planning Proposal better than anyone else are positive, any negative submissions from the rest of Darling Point are from unaffected parties who are largely misinformed.

APPENDICES

- Appendix A – Woollahra Council Memorandum dated 10 August 2015
Late Correspondence – Council Meeting – 10 August 2015
- Appendix B – Letters of support
- Appendix C – Design Collaborative submission dated 14 January 2016
On behalf of the owners of 77 – 81 Yarranabbe Rd
- Appendix D – 83, 83a Yarranabbe Road Planning Proposal
Diagrams amended to reflect Woollahra LEP 2014 and Woollahra DCP 2015-
26. 02. 2016 (incorporating View Impact Analysis diagrams)
- Appendix E – Hones Lawyers submission dated 3 February 2016
On behalf of the owners of 17A Thornton St
- Appendix F – Darling Point Society submission dated 28 January 2016
- Appendix G – Letters of support from 56 Yarranabbe Rd (17 Thornton St) unit owners

Appendix A – Woollahra Council Memorandum dated 10 August 2015
Late Correspondence – Council Meeting – 10 August 2015

Memorandum

Date 10 August 2015

File No.

To The Mayor, Cr Tori Zeltzer
All Councillors
Senior Staff

CC

From Sue O'Connor, Secretarial Support - Governance

Subject LATE CORRESPONDENCE - COUNCIL MEETING -
10 AUGUST 2015



ABN 32 518 489 245

Local Council Chambers
538 New South Head Road
Double Bay NSW 2028

Correspondence to:

General Manager
PO Box 61
Double Bay NSW 1360
DX 3637 Double Bay
records@woollahra.nsw.gov.au
www.woollahra.nsw.gov.au
Telephone (02) 9391 7000
Facsimile (02) 9391 7044

Please find attached late correspondence relating to matters appearing on the Agenda for the Council Meeting to be held on Monday 10 August 2015. Correspondence received is listed below.

Urban Planning Committee

Item	Matter	Author	Page No.
R1	83 & 83a Yarranabbe Road, Darling Point	Brendan Metcalfe – Strategic Planner	1
R1	83 & 83a Yarranabbe Road, Darling Point	John Roth	3
R1	83 & 83a Yarranabbe Road, Darling Point	Victoria Taylor	4
R1	83 & 83a Yarranabbe Road, Darling Point	Chickey Bray	5
R1	83 & 83a Yarranabbe Road, Darling Point	Janet Hemery	6
R1	83 & 83a Yarranabbe Road, Darling Point	Charlotte Feldman – Darling Point Society	7
R1	83 & 83a Yarranabbe Road, Darling Point	Elizabeth Richards	9

Sue O'Connor
Secretarial Support - Governance

Memorandum

LATE CORRO	Item: <u>R1</u>
Previously forwarded to C/irs	<u>XIN</u>
Meeting:	<u>Council (UP)</u>
Date:	<u>10/8/15</u>



ABN 32 219 483 245

Local Council Chambers
536 New South Head Road
Double Bay NSW 2028
Correspondence to
General Manager
PO Box 61
Double Bay NSW 1200
DX 2607 Double Bay
records@woollahra.nsw.gov.au
www.woollahra.nsw.gov.au
Telephone (02) 9381 7000
Facsimile (02) 9381 7044

Date: 10 August 2015
File No.: SC2503
To: All Council/ors
CC: Allan Coker, Director - Planning and Development
Stephen Dunshea, Director - Governance
Kylie Walsh, Director - Community Services
Tom O'Hanlon, Director - Technical Services
From: Brendan Metcalfe, Strategic Planner
Subject: LATE CORRESPONDENCE TO ITEM R1 PLANNING PROPOSAL FOR 83 AND 83A YARRANABBE ROAD, DARLING POINT (SC2503)

The majority of late correspondence on Item R1 to the Urban Planning Committee of 27 July 2015 raise matters that were addressed in that report. Responses to new issues are provided below:

Late Correspondence	Councils response
<p>Person: Victoria Taylor</p> <p><u>Issue</u> If the Minister's office knew of the strength and breadth of the communities' objections before being asked to give his consideration to pass the planning proposal it would have been declined.</p>	<p>The planning proposal is not of State or Regional importance and should be determined at the local level, not by the Minister.</p> <p>The planning proposal has been prepared consistent with the legal requirements of the <i>Environmental Planning and Assessment Act 1979</i> (the Act), the <i>Environmental Planning and Assessment Regulation 2002</i> and Gateway Determination issued by the Department of Planning and Environment.</p> <p>As Council has delegation under s59(2) of the Act it can, and should now make the plan.</p> <p>Recommendation: No change</p>
<p>Group: Darling Point Society</p> <p><u>Issue</u> Given the median house price in Darling Point, the planning proposal will not meet the State Government's aim of increasing affordable housing.</p>	<p>Whilst the increased development potential for the site is modest, it is not the main reason the planning proposal was prepared.</p> <p>The planning proposal is supported as it results in a better planning outcome for the site.</p> <p>Recommendation: No change</p>

C:\Users\ajac\Documents\Work\Public\UP\TRM\TSMF\TRM.642\15 106309 -Response to 414 2016 (for Council meeting).DOCX

Late Correspondence	Councils response
<p>Person: Elizabeth Richards</p> <p>Issue Council plans to increase the height allowed on the waterfront properties in front of 'Yuruga' 67 Yarranabbe Road. Apart from destroying the long established amenity of this beautiful area, subsequent development would ruin the views and value of our building.</p>	<p>There waterfront properties in front of 67 Yarranabbe Road are NOT the subject of a planning proposal to increase maximum building heights. The planning proposal applies to 83 and 83A Yarranabbe Road only.</p> <p>Recommendation: No change</p>

C:\Users\washi\Desktop\Local\Council\Proponent\T\0\M\TEMP\PTM\5426116_105100_Response to late correspondence for Council meeting.DOCX

LATE CORR	Item: K1
Previously forwarded to Circ	T/N
Meeting:	Council (UP)
Date:	10/8/15

Sue O'Connor

Subject: FW: Planning Proposal: 83 & 83a Yarranabbe Road, Darling Point

Begin forwarded message:

From: John Roth <jroth@henroth.com.au>
Subject: Planning Proposal: 83 & 83a Yarranabbe Road, Darling Point
Date: 10 August 2015 9:38:50 am AEST
To: "greg.levenston@woollahra.nsw.gov.au" <greg.levenston@woollahra.nsw.gov.au>, "andrew.petrie@woollahra.nsw.gov.au" <andrew.petrie@woollahra.nsw.gov.au>, "jeff.zulman@woollahra.nsw.gov.au" <jeff.zulman@woollahra.nsw.gov.au>, "luise.elsing@woollahra.nsw.gov.au" <luise.elsing@woollahra.nsw.gov.au>, "anthony.marano@woollahra.nsw.gov.au" <anthony.marano@woollahra.nsw.gov.au>, "katherine.oregan@woollahra.nsw.gov.au" <katherine.oregan@woollahra.nsw.gov.au>, "James Keulemans (James.Keulemans@woollahra.nsw.gov.au)" <James.Keulemans@woollahra.nsw.gov.au>, Deborah Thomas <Deborah.Thomas@woollahra.nsw.gov.au>, "toni.zeltzer@woollahra.nsw.gov.au" <toni.zeltzer@woollahra.nsw.gov.au>, "peter.cavanagh@woollahra.nsw.gov.au" <peter.cavanagh@woollahra.nsw.gov.au>, "matthew.robertson@woollahra.nsw.gov.au" <matthew.robertson@woollahra.nsw.gov.au>, "ted.bennett@woollahra.nsw.gov.au" <ted.bennett@woollahra.nsw.gov.au>, "susan.wynne@woollahra.nsw.gov.au" <susan.wynne@woollahra.nsw.gov.au>
Cc: "allan.coker@woollahra.nsw.gov.au" <allan.coker@woollahra.nsw.gov.au>, "chris.bluettt@woollahra.nsw.gov.au" <chris.bluettt@woollahra.nsw.gov.au>, "Brendan Metcalfe (Brendan.Metcalfe@woollahra.nsw.gov.au)" <Brendan.Metcalfe@woollahra.nsw.gov.au>
Resent-From: <susan.wynne@woollahra.nsw.gov.au>

Dear Councillors

I understand that a petition with up to 800 resident signatures will be presented to Council today opposing the above Planning Proposal.

I have spoken to a number of residents and it is apparent that none of them really understand this Proposal. With respect to the Foreshore Building Line which is the main point of contention, they do not appreciate that for THIS SPECIFIC SITE ONLY it is a simple choice between:

1. A 3 storey building on the 12m line effectively FOREVER, or
2. A 2 storey building on the 18m line effectively FOREVER.

They all think it's a choice between a FSBL of 18m or 30m as they just do not understand the issue with this particular site. The benefit to the people of Sydney of an improved harbour foreshore is obvious

I trust Councillors are able to maintain the position taken by the Urban Planning Committee meeting 2 weeks ago.

Yours sincerely

John Roth

LATE CORRIGENDUM	Item: 21
Previously forwarded to Cllrs	YTT
Meeting:	Council (UP)
Date:	10/8/15

Sue O'Connor

From: Victoria Taylor <vt600@bigpond.com>
Sent: Friday, 31 July 2015 7:52 AM
To: Katherine O'Regan; Records
Subject: PLANNING PROPOSAL 83 AND 83A YARRANABBE ROAD DARLING POINT

Dear Katherine,

Please reject this PP and changes to the LEP for 83 and 83a Yarranabbe Road DP on Monday 10th August at the Full Council Meeting.

Fifteen years ago Gabrielle Upton and others set up the Darling Point Society. They convinced Council of the importance of establishing a site-specific DCP for the Darling Point peninsula to restrict another wave of over-development and to preserve heritage. Eighteen of the suggested amendments were incorporated into the 2003 DCP under Mayor John Comino.

The Planning Proposal before you for 83 and 83A Yarranabbe Road Darling Point (under the State Gateway Determination instrument) on Monday 10th August, is designed to make possible a building project by allowing a site-specific exception to the LEP. The PP claims to be IN THE PUBLIC INTEREST.

When refusing approval for this project in **2012 the Land & Environment Court judge** said: **"There IS PUBLIC BENEFIT in maintaining the planning controls adopted by the environmental planning instrument"**.

Council was really pleased with this finding in the Land and Environment Court in defense of Woollahra Council's refusal of the DA.

We residents are VERY concerned at the proposed changes now before Council.

The submitted arguments of more than 50 community objectors - on the bases of waterfront building setback, height and bulk and setting a precedent - are evidence of the volume of community opposition to this PP.

Buildings full of people on Yarranabbe Road and Thornton Street have presented their objections to this PP.

If Site-specific exceptions to an LEP apply to the PLAN-MAKING POWERS under Part 3 of the Act, what will stop any other proponent from going down the same route of site-specific exception to the LEP?

This Planning Proposal WILL set a very dangerous precedent & open a fresh floodgate of over-development.

This building development will produce ONE or possibly two, extra units of **very expensive (not affordable housing)** on this site. It therefore does not justify an exceptional amendment to the LEP! **Please do not support this breach of our LEP regulations, carefully constructed by Council, so that we can all live together harmoniously.**

If the planning minister's office knew the strength and breadth of the communities' objections BEFORE being asked to give his consideration to pass it, this would have been declined.

Please give our objections your careful deliberation.

Yours Sincerely,

V.Taylor

6/87 Yarranabbe Road Darling Point NSW 2027.

Craig Bennett

From: Records
Sent: Monday, 3 August 2015 3:23 PM
To: Craig Bennett
Subject: FW: re Proposal, 83 & 83a Yarranabbe Rd. Darling Point

LATE CORR	Item: R1
Previously forwarded to Cirs	YTN
Meeting:	Council (UP)
Date:	10/8/15

-----Original Message-----

From: Chickey Bray [mailto:bray.chickey@gmail.com]
Sent: Saturday, 1 August 2015 3:36 PM
To: Records
Cc: Jeff Zulman
Subject: Fwd: re Proposal, 83 & 83a Yarranabbe Rd. Darling Point

Dear Jeff,

Thank you for your interest in the above proposal, I attended the meeting last Monday and appreciated your well thought out questions, especially on the matter suggested changing the covenant on foreshore. This covenant is surely seen as the "Holy Grail" in protecting our foreshore over the past 50 years, for this to be altered for a spot development sets a very dangerous precedent allowing the gates to open for..... This is not only an important issue for Darling Point but the whole of Woollahra foreshore.

I cannot support either of the proposed solutions as residents views would be affected either way, as well I do not support the increased roof height to 15.2m for the same reason, hence another solution must be found, perhaps it is the developer who should make the compromise and scale down the bulk of his proposal, as was the case on a similar site at 81 Yarranabbe Rd. still affording the developer more than reasonable returns on his capital.

It seems to me extraordinary that this site still poses such a challenge, firstly rejected by Council, further rejected by Land and Environment Court and after considerable costs to Council bounces back to Woollahra. It should be clear that this proposal is unsuitable on all fronts, why would there be any need for Woollahra Council to be accommodating at this late stage seemingly doing an about turn on its earlier sound judgement.

We should be mindful of the overdevelopment in Thornton St. Darling Point which was allowed to 'slip through the net' in the 1960's

This is an opportunity to get it right.

I urge Council to consider wisely the ongoing, long term ramifications of this proposal.

1

LATE CORR	Item: R1
Previously forwarded to Cms	<input checked="" type="checkbox"/> Y <input type="checkbox"/> N
Meeting:	Council (UP)
Date:	10/8/15

Sue O'Connor

From: Lyndie Hemery <lhemery@bigpond.com>
Sent: Wednesday, 5 August 2015 9:30 AM
Subject: 83 and 83A Yarranabbe Road, Darling Point.

Dear Woollahra Council,
I wish to confirm my strong objection to the Proposal to breach the Foreshore Building Line and height restriction and the bulk ratio rulings at 83 and 83A Yarranabbe Road, Darling Point.
Yours faithfully
Janet Hemery
3a/23 Thornton Street
Darling Point NSW 2027

LATE CORR	Item: R1
Previously forwarded to Cirs	TTM
Meeting	Council (UP)
Meet 27 Jul 2015	8/15

Sue O'Connor

Subject: FW: 83-83a Yarranabbe Rd Item R1 approved at UPC
Importance: High

From: Darling Point Society [mailto:darlingpointsoc@hotmail.com]
Sent: Friday, 7 August 2015 10:48 AM
To: Allan Coker; Brendan Metcalfe; Jeff Zulman; Ted Bennett; Greg Levenston; Andrew Petrie; Lulse Elsing; Deborah Thomas - External Forwarding; James Keulemans; Toni Zeltzer
Subject: 83-83a Yarranabbe Rd Item R1 approved at UPC Meet 27 Jul 2015

For Full Council consideration of Planning Proposal under delegated authority by WMC under the NSW State Gateway Determination Site-Specific Exception to WMC 2014 LEP

The Darling Point Society respectfully wishes to reiterate our objections to the further approval passage of the Planning Proposal for 83 & 83A Yarranabbe Road under the NSW Gateway Determination Site-Specific Exception to the LEP.

We do NOT consider that it is in the public interest, as there is no projected public benefit in its construction. Over 50 objections attest to the contrary.

With an increase of one and perhaps two additional accommodation units and 436 square meters overall on existing, we do NOT feel that this warrants a significant increase to housing density as per the NSW State Government's "Plan for Growing Sydney".

Given the median house prices in Darling Point we do NOT consider that it is contributing to the State Government's desired aim of additional affordable housing.

It's potential to interrupt the views of surrounding apartment buildings if fully utilising Council's 10.5metres height guideline at street level is most unfortunate. In the Society's submission to Council's draft LEP 2013 we said:

"Changes to building heights - these go against all desired requirements to maintain the leafy environment of, in particular, the Darling Point peninsula. Qualifying parameters should be enshrined in the Local Environment Plan (LEP) not the supplementary Development Control Plan (DCP). Council's proposed arguments to establish these new heights appear somewhat specious.

"Changes to Floor Space Ratios (FSRs) - this will cause an increase in unacceptable bulk."

and elsewhere

"The Society considers that the proposed changes to building heights, FSRs and FSR/site area calculation have significant potential to increase building bulk. This will be to the detriment of public and private views, solar access, provide inconsistency of streetscape and character, significantly impact on views and building vistas."

The applicant has offered to restrict the street height level at 5.7metres. However, the applicant has also requested to breach the Council's 30 metre building line setback to 18 metres.

We maintain that this breach could be seen to set a dangerous precedent and possibly open a fresh floodgate of over-development along the Darling Point shorelines, and indeed throughout the municipality, resulting in loss of amenity to the community and from the harbour.

We understand that site-specific exceptions to an LEP only apply to the Plan-Making powers under Part 3 of the Act and that technically this Planning Proposal is not considered a precedent - but in practice we maintain that it will weaken the implementation of the LEP regulations and will enable this case to be used in support of any future Planning Proposals.

Council has previously refused Planning Proposals that have been referred to, and subsequently upheld, by the Minister. And, historically, there has already been a 2012 DA on this property that Council refused and the L& EC upheld.

We sincerely hope you will refuse this Planning Proposal. We see it as a breach too far in facilitating the passage of a residential flat building on this site.

Yours sincerely,

Charlotte Feldman
President
Darling Point Society

Sue O'Connor

Subject: FW: Ruination of Darling Point Foreshore Amenity

LATE CORR	Item: R1
Previously forwarded to Cins	Y/N
Meeting:	Council (UP)
Date:	10/8/15

From: izzierichards@bigpond.com [mailto:izzierichards@bigpond.com]
Sent: Saturday, 8 August 2015 12:46 PM
To: Susan Wynne
Cc: Records
Subject: FW: Ruination of Darling Point Foreshore Amenity

Dear Ms Wynne, Please note my serious objection to Woollahra Council's approval of the proposal to allow development of the foreshore meters closer to the waterline by nos 83 and 83a Yarranabbe Road. This precedent is anathema to me and any right thinking person with a love for Sydney Harbour and its foreshore history.

Also I note the council plans to increase the height allowed on the waterfront properties in front of 'Yuruga' 67 Yarranabbe Road. Apart from destroying the long established AMENITY of this beautiful area, subsequent development would ruin the views and value of our building.

With trust in your concern and support, Kind Regards, Elizabeth Richards
2/67 Yarranabbe Road, Darling Point.

Appendix B - Letters of support

Garry Brown

From: John Roth
Sent: Wednesday, 13 January 2016 9:19 AM
To: Garry Brown
Subject: FW: Save our Harbour Foreshores - Petition
Attachments: 12012016084413-0001.pdf

From: Philip Abram [<mailto:philip@philpabramarchitects.com.au>]
Sent: Wednesday, 13 January 2016 7:26 AM
To: John Roth
Subject: Save our Harbour Foreshores - Petition

To Whom it may Concern

I confirm that my wife, Freda, and I are the 6th and 7th signatures on the attached petition page.

We were approached to sign the petition while having a coffee at Rushcutters Bay Park Cafe.

At the time we were not informed that there is an existing house on the 12m foreshore building line and that the Planning Proposal provides for the new unit block to be set back a further 6m from the foreshore resulting in a revised 18m foreshore setback.

On the basis of the potential for an improved setback, we withdraw our signatures to the petition and support the proposal.

Yours sincerely

Phil & Freda Abram

Harris Street, Paddington

Garry Brown

From: John Roth
Sent: Sunday, 21 February 2016 12:26 PM
To: Garry Brown
Subject: Fwd: Petition

Begin forwarded message:

From: Danny <danny@steiners.com.au>
Date: 21 February 2016 8:55:57 am AEDT
To: John Roth <jroth@henroth.com.au>
Subject: Petition

To: John Roth
Subject: Save our Harbour Foreshores - Petition

To Whom it may Concern

I confirm that I signed the attached petition page.

I was approached to sign the petition while having a coffee at
Richie's on Darling Point Road.

At the time we were not informed that there is an existing house on
the 12m foreshore building line and that the Planning Proposal
provides for the new unit block to be set back a further 6m from the
foreshore resulting in a revised 18m foreshore setback.

On the basis of the potential for an improved setback, I wish to
withdraw my signature, and support the proposal.

Yours sincerely,

Pauline Shavit
12A/13 Thomson Street,
Darling Point 2027
Hopewood Gardens.

LATE CORRRO	Item: 14
Previously forwarded to Cirs	YTN
Meeting:	UP
Date:	27/7/15

Sue O'Connor

From: Lois Fleming <lfleming5@bigpond.com>
Sent: Thursday, 23 July 2015 5:06 PM
To: Kira Green
Subject: RE: Notice of Urban Planning Committee meeting - Planning proposal for 83 and 83A Yarranabbe Road, Darling Point

I Lois Fleming of Villa 1 17 a withdraw my objections to 83 and 83a. It has been explained by Me Ross and I am now understand I was wrong with the height of the building. Regards lois Fleming

From: Kira Green [mailto: Sent: Thursday, 23 July 2015 3:36 PM
To: undisclosed-recipients:
Subject: Notice of Urban Planning Committee meeting - Planning proposal for 83 and 83A Yarranabbe Road, Darling Point

I refer to your submission on the planning proposal for 83 and 83A Yarranabbe Road, Darling Point.

A report on the exhibition and the matters raised in all submissions will be considered by Council's Urban Planning Committee meeting on Monday 27 July 2015.

The report recommends amending Woollahra Local Environmental Plan 2014 by making the following changes to the planning controls that apply to the land:

- increase the floor space ratio from 0.9:1 to 1.2:1 over the entire site
- increase the maximum building height for residential flat building or multi dwelling housing development from 10.5m to 15.2m and apply a second height of 5.7m over 83 Yarranabbe Road with the construction
- increase the maximum building height for residential flat building or multi dwelling housing development from 10.5m to 15.2m over the access handle of 83A Yarranabbe Road.
- amend the foreshore building line from 30m to 18m for residential flat building and multi dwelling housing development.

That report, including a copy of all the submissions received, is now available on Council's website at: http://www.woollahra.nsw.gov.au/council/meetings_and_committees/committees/up/2014_up_agendas_and_minutes

You are welcome to attend the Committee meeting. It will held in the Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 27 July 2015 at 6pm.

Yours faithfully

Chris Bluett
Manager, Strategic Planning
Woollahra Municipal Council
536 New South Head Road, Double Bay NSW 2028
w www.woollahra.nsw.gov.au

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Joe Schwarz

From: "John Roth" <jroth@hemroth.com.au>
Date: Friday, 15 January 2016 4:10 PM
To: <josephnewl@bigpond.com>
Attach: 15012016140249-0001.pdf
Subject: FW: Save our Harbour Foreshores - Petition

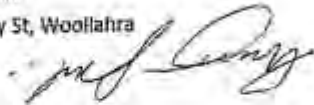
To whom it may concern

I confirm that I am the 4th signature on the attached petition page. I was asked to sign the petition. At no stage was I informed that there is an existing house on the 12m foreshore building line and that the Planning Proposal provides for the new unit block to be set back a further 6m from the foreshore resulting in a revised 18m foreshore setback. On this basis I withdraw my signature to the petition.

Yours sincerely

Joe Schwarz

Trelawney St, Woollahra



No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6176 / Virus Database: 4489/11401 - Release Date: 01/14/16

15/01/2016

Garry Brown

From: John Roth
Sent: Tuesday, 23 February 2016 12:24 PM
To: Garry Brown
Subject: FW: Save our Harbour Foreshores Petition

To Whom it may Concern

I confirm that I am the 8th signatory on the attached petition page.

I was approached to sign the petition while having a coffee at Richie's on Darling Point Road.

At the time I was not informed that there is an existing house on the 12m foreshore building line and that the Planning Proposal provides for the new unit block to be set back a further 6m from the foreshore resulting in a revised 18m foreshore setback.

On the basis of the potential for an improved setback, I wish to withdraw my signature.

Yours sincerely,
Helene Gonski
Sutherland Crescent
Darling Point

No virus found in this message.
Checked by AVG - www.avg.com
Version: 2016.0.7357 / Virus Database: 4533/11666 - Release Date: 02/20/16

Appendix C - Design Collaborative submission dated 14 January 2016
On behalf of the owners of 77 – 81 Yarranabbe Rd



DESIGN COLLABORATIVE
Pty Limited

ABN 36 002 126 954
ACN 002 126 954

Planning and Development Consultants

www.designcollaborative.com.au

Director

J Lidis
BTP (UNSW)
MPIA CPP

Consultants

G W Smith
BSurv(QLD)
MCP(MIT) MIS
FPIA MRTPI FAPI

H M Sanders
MPhil(Lon)
MSc(Rdg)
FPIA MRTPI

14 January 2016
Ref: 150573.6L

The General Manager
Woollahra Council
By email: records@woollahra.nsw.gov.au

Dear Sir,

Re: Planning Proposal – 83 and 83A Yarranabbe Road, Darling Point – Further Consideration

We refer to the resolution of Council on 2 November 2015 that Council staff prepare a further report on the above Planning Proposal to the Urban Planning Committee. We understand that that report is to be prepared in the first quarter of 2016.

We act on behalf of neighbour objectors to the Planning Proposal. They have requested that we review the existing planning controls applicable to 83/83A Yarranabbe Road to test the scenarios for the possible future development of 83/83A that were presented to Councillors in the report to the UPC on 27 July 2015 and by the Proponent. In particular, we have been asked to consider whether under existing planning controls the Proponent could:

- Build a residential flat building to a height of 10.5 m above Yarranabbe Road;
- Build a residential flat building on 83 Yarranabbe Road without demolishing 83A (the dwelling house on the foreshore); and
- Build an extra floor on 83A Yarranabbe Road.

We have also been asked to consider the implications of the now proposed planning controls in the context of the Proponent's original Planning Proposal envelope (as set out in its original submission and described in detail in the Urban Design Statement prepared by Tzannes Associates).

We have also reviewed documentation submitted with the Planning Proposal and the previous DA regarding the existing ground levels/development on the site.

We consider each of the above matters below.

Level 3 225 Clarence St Sydney NSW 2000 Ph: (02) 9262 3200 Fax: (02) 9262 3601

Design Collaborative Pty Ltd

1. Height of Building on the Yarranabbe Road frontage (No. 83)

Under Woollahra LEP 2014, a maximum height of 10.5m applies to No. 83 if a residential flat building is proposed. Under the LEP, height is measured above existing ground level. The existing ground levels on No. 83 fall steeply from the street frontage.

The height diagram in the July report to the UPC ignores Council's other important building envelope controls, in particular the requirement for a front setback. In this regard, Woollahra DCP 2015 states that, for development in the R3 zone, where an FSR control applies, the building envelope is established by applying the following controls:

- front, side and rear setbacks;
- maximum building height set by Woollahra LEP 2014 (B3, p. 6).

While strict interpretation of the front setback control under DCP 2015 could require a greater setback based on the significant setbacks of the existing buildings on neighbouring properties (No. 85, No. 87 and No. 73-75), a front setback of at least 6m (which is consistent with the existing building setback on No. 83 and No. 77-81) would meet the objectives of the control. The provision of a 6m front setback on No. 83 would result in the building envelope being sited primarily over existing ground levels which are well below the level at the street.

Figure 1 below (based on the site section contained in the Tzannes Urban Design Report (the Proponent's architects)) shows a theoretical building height based on Council's height control, 10.5m above the existing ground levels at the middle of the site where the present house is sited and set back 6m from the frontage.

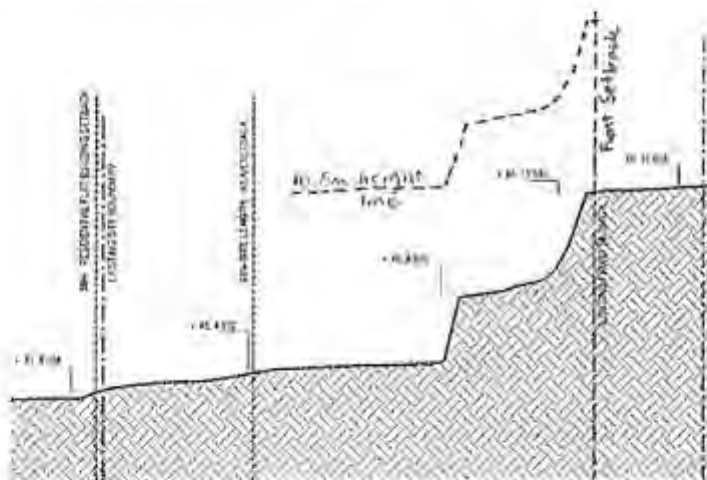


Figure 1: Theoretical Building Height Sketch
(Section of existing ground levels from *Appendix A: Urban Design Statement*, Tzannes Associates, p. 33)

Figure 2 below shows a practical/achievable building height for the site which reaches a height of around 6m above Yarranabbe Road and 10.5m on the lower part of the site. The

Design Collaborative Pty Ltd

practical/achievable height adjacent the road frontage is therefore close to the proposed height limit of 5.7m under the Planning Proposal.

This is because, while a building could have a height of 10.5m above Yarranabbe Road at the front setback line as shown in **Figure I**, the existing ground levels fall away sharply to the north just beyond the front setback line making such a built form impractical. Taking into account the fall of the site, it is considered that the height of any proposed building would be reduced at the front setback to provide a logical, feasible built form.

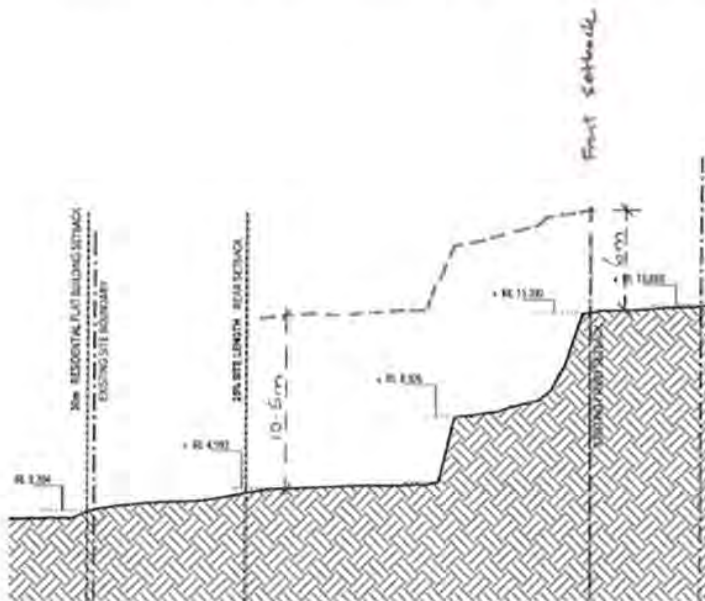


Figure 2: Practical/Achievable Building Height Sketch
(Section of existing ground levels from *Appendix A: Urban Design Statement*, Tzannes Associates, p. 33)

Accordingly, in our view, the scenario presented to Councillors is misleading as it does not take into account other relevant controls which would prevent the erection of a building on the street frontage. As noted above, the interaction between Council's various controls controlling built form/building envelope is clearly set out in its DCP 2015.

The report to the UPC states that *a building constructed to 10.5m at the roadway would result in view loss from the surrounding area including iconic views to the Opera House and Harbour Bridge* (p.11). While we disagree that such a building could be approved or constructed based on the comments above, we also note that the application of the Planning Principle in *Tenacity* regarding view loss and view sharing would, in our view, also preclude any such development.

Design Collaborative Pty Ltd

2. Floor Space of any future Residential Flat Building

Under the LEP, a maximum FSR of 0.9:1 currently applies to the site if a residential flat building is proposed.

In order to achieve 5 units each with a floor space of between 250-300 m² (to provide the quantum of development and a high level of amenity and liveability consistent with the location and the previous DA plans lodged by the Proponent for the site), the two lots making up the site would need to be consolidated to provide a site area of 1453.6sqm. Accordingly, this level of floor space could only be achieved if the existing dwelling house on No. 83A were to be demolished.

Based on the site area of No. 83 (639.4 sqm) only 2 units of the above size could be accommodated on that site under the existing FSR control.

Accordingly, if the existing dwelling house on No. 83A were to be retained, any residential flat building on No. 83 would necessarily be smaller and would also need to comply with the building envelope set out above.

3. Height of Dwelling House on the waterfront (No. 83A)

Under the LEP, the maximum permitted height of a dwelling house in the R3 zone is 9.5m. In addition, the height of any development on a battle axe lot in the R3 zone is limited to 9.5m.

The existing dwelling house on No. 83A already has a partial height of 9.5m to the roof of the garage structure. The remainder of the building has a height of around 6.7m.

For dwelling houses, Council's building envelope controls do not allow a height of 9.5m over the full building footprint area. The DCP requires a maximum wall height of 7.2m with an inclined plane at 45 degrees from the maximum wall height (see Figure 3).

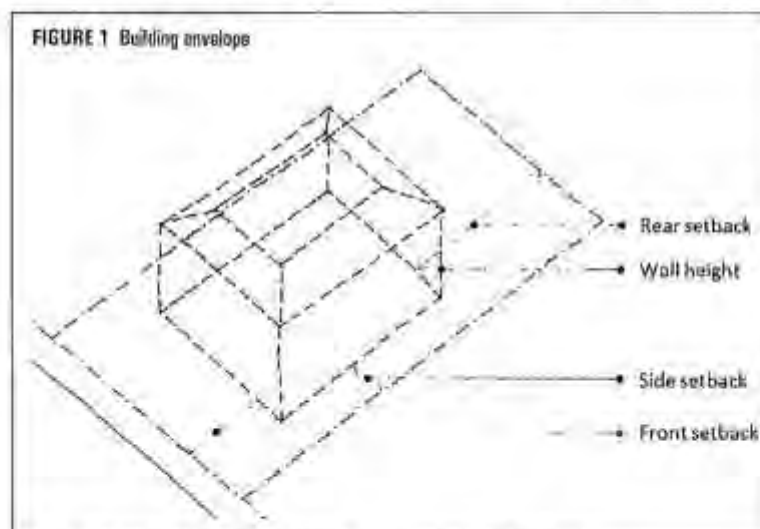


Figure 3: Building Envelope - Extract from Woollahra DCP 2015
Source: Woollahra DCP 2015, Section B.3, p. 5

Design Collaborative Pty Ltd

Taking into account these envelope controls, additional floor space could potentially be provided over the western side of the existing roof level of the dwelling house but only within the permitted envelope.

However, Council's controls also state that "the building is to be contained within the building envelope, but is to occupy only a percentage of the building envelope (as determined by floor plate controls ...)." We do not have sufficient information to determine whether the existing building already exceeds the floor plate controls.

In addition, the scenario does not take into account the impact of any additional floor space on the roof level of No. 83A on the amenity of neighbours in terms of views, solar access and other amenity impacts.

On the basis of the above, we consider it highly unlikely that additional floor space could be justified at the existing roof level of the dwelling house.

4. The Proposed Planning Controls and the Proponent's Planning Proposal Envelope

Under the now proposed planning controls, a maximum height of 10.5m is proposed on No. 83A. However, according to the Proponent's documentation, part of the original Planning Proposal envelope (on No. 83A) reaches a height of some 12.2m. Therefore, the original Planning Proposal envelope would not comply with the proposed standard and could not be implemented on the site without seeking a variation from the now proposed controls.

At the same time, the now proposed 15.2m height standard over most of No. 83 would allow for a higher and bulkier built form than the original Planning Proposal envelope, particularly along the common boundary with the neighbouring property at No. 77-81 Yarranabbe Road.

A building complying with the now proposed height standards will have impacts on neighbouring properties which are likely to be greater than those shown in the original Planning Proposal submission.

Conclusion

For the reasons set out above, we disagree with the arguments put forward by Council officers and the Proponent in support of the Planning Proposal particularly in relation to the implications of the existing controls for future built form on 83/83A. In our view, appropriate consideration of the interaction of the building envelope controls contained in Council's LEP 2014 (including, in particular, the 30m foreshore building line for residential flat buildings) and DCP 2015 would result in a building with more acceptable impacts on the locality and neighbouring properties.

In addition, the impacts of a building complying with the now proposed controls on neighbouring properties are likely to be greater than those shown in the original Planning Proposal submission.

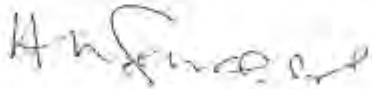
We therefore reiterate our clients' objections to the Planning Proposal for the reasons set out in our previous submissions, including the impact of additional building bulk on 77-81,

Design Collaborative Pty Ltd

In view of the manner in which this matter has progressed, we request that the details of this submission are specifically addressed in the forthcoming report to the UPC.

Yours Faithfully,

DESIGN COLLABORATIVE PTY LTD



H M Sanders
Consultant

Appendix D - 83, 83a Yarranabbe Road Planning Proposal
Diagrams amended to reflect Woollahra LEP 2014 and Woollahra DCP 2015
26. 02. 2016 (incorporating View Impact Analysis diagrams)

83, 83a Yarranabbe Road Planning Proposal

Diagrams amended to reflect Woollahra LEP 2014 and Woollahra DCP 2015

16. 03. 2016

83 & 83a YARRANABBE ROAD, OROUHA FOREST

4/10/2016

VINDAUBALLE DEVELOPMENTS PTY LTD

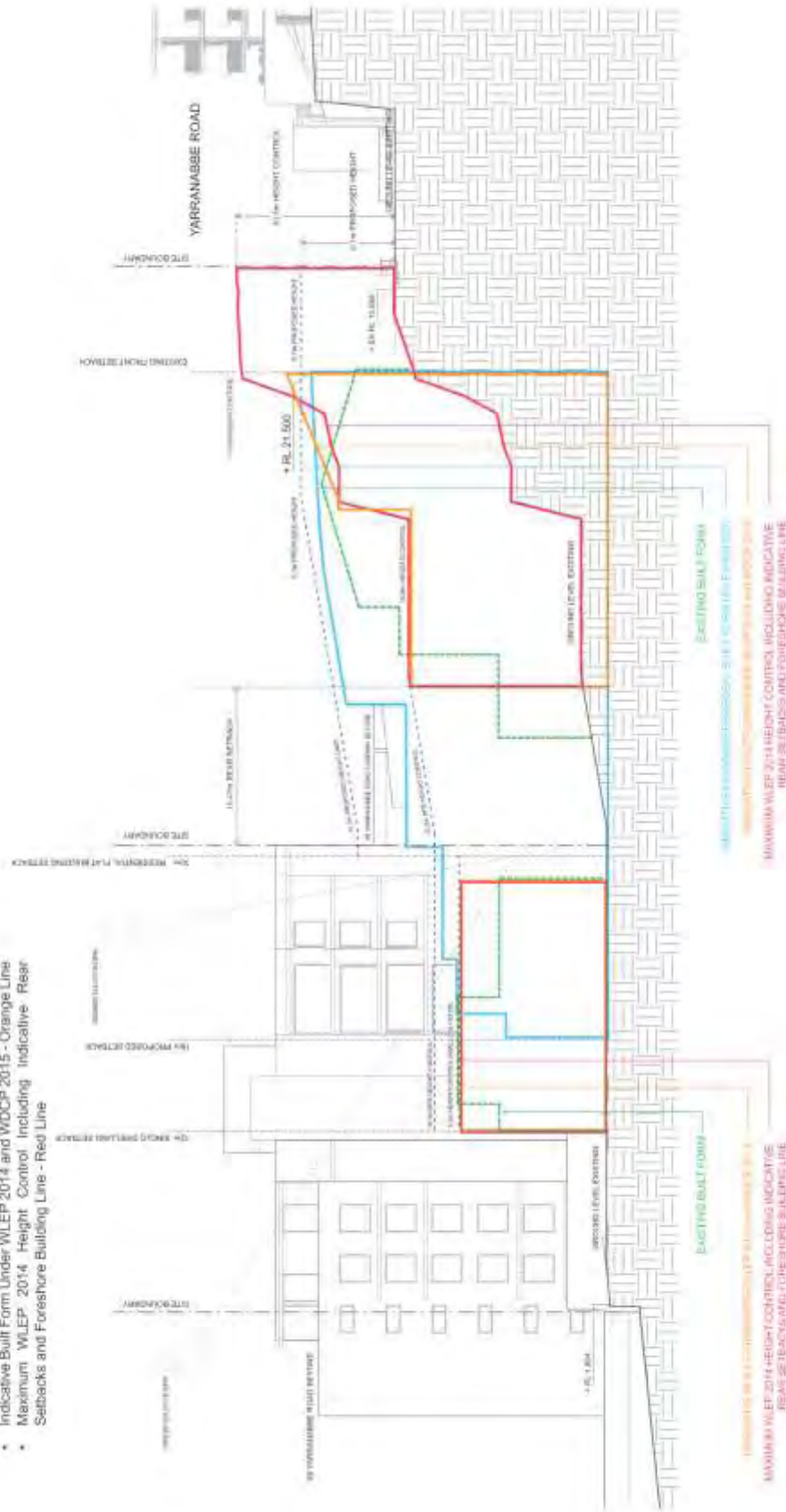


Technical Assessment consultation report (internal)

ENVELOPE COMPARISON

Section through

- Existing Built Form - Green Line
- Planning Proposal Built Form (As Exhibited) - Blue Line
- Indicative Built Form Under WLEP 2014 and WDCP 2015 - Orange Line
- Maximum WLEP 2014 Height Control Including Indicative Rear Setbacks and Foreshore Building Line - Red Line



MAXIMUM WLEP 2014 HEIGHT CONTROL INCLUDING INDICATIVE REAR SETBACKS AND FORESHORE BUILDING LINE

Scale 1:250@A3

83 & 85A YARRANABBE ROAD, DARLING POINT

46.03.2016

YARRANABBE DEVELOPMENTS PTY LTD

CITY PLAN SERVICES

Urban Associates

View Impact Analysis - 83 Yarranabbe Road



83 & 85A YARRANABBE ROAD, GARLING POINT

16.03.2016

YARRANABBE DEVELOPMENTS PTY LTD

Urban Associates Architecture Urban Design



View Impact Analysis - 77/81 Yarranabbe Road



83 & 85A YARRANABBE ROAD, DARLING POINT

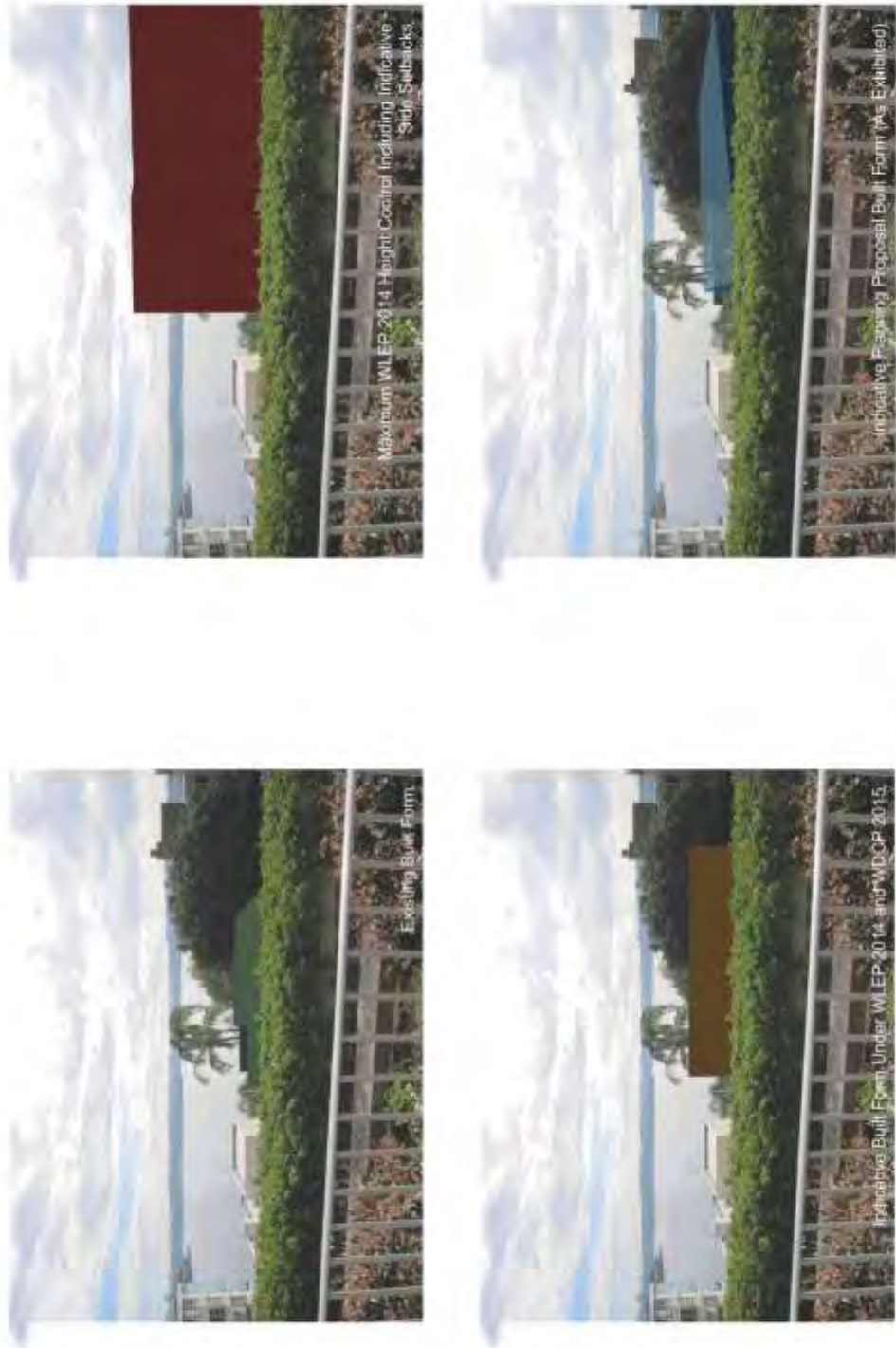
16.03.2016

YARRANABBE DEVELOPMENTS PTY LTD

Urban Associates architectural urban design



View Impact Analysis - 17a Thornton St_Level 1



89 & 93A VANDERWAADE ROAD, DARLING POINT 16.03.2016

VANDERWAADE DEVELOPMENTS PTY LTD

CITY OF SYDNEY SERVICES

Edmund Associates (NSW) Pty Ltd

View Impact Analysis -17 Thornton St Level 4



83 & 85A YARRAWABBE ROAD, DARLING POINT

16.03.2016

YARRAWABBE DEVELOPMENTS PTY LTD



TERRACE ASSOCIATES ARCHITECTURE INTERIOR DESIGN

View Impact Analysis - Harbour View



83 & 83A YARRAPUABLE ROAD, DARLING POINT

16.03.2016

YARRAPUABLE DEVELOPMENTS PTY LTD

Urban Associates architectural design (pvt) ltd



View Impact Analysis - Aerial View



Existing Built Form



Maximum WLEP 2014 Height Control Including Indicative Side and Rear Setbacks and Harbour Foreshore Building Line Setback



Indicative Built Form Under WLEP 2014 and WDCP 2015



Indicative Planning Proposal Built Form (As Exhibited)

83 & 83A YARRAPUNNABE ROAD, DARLING POINT

4/5/2016

VARIABLE DEVELOPMENTS PTY LTD

Urban Associates ARCHITECTURE (Pty) Ltd



Appendix E - Hones Lawyers submission dated 3 February 2016
On behalf of the owners of 17A Thornton St



**HONES
LAWYERS**
Experts in Property & Planning Law

Our Ref: JBH:CC:15525

3 February 2016

The General Manager
Woollahra Council
PO Box 61
DOUBLE BAY NSW 1360

By email : records@woollahra.nsw.gov.au
Alan.Coker@woollahra.nsw.gov.au
Chris.Bluett@woollahra.nsw.gov.au

Dear Sir

**Re Planning Proposal – Further Considerations
Ppty: 83/83A Yarranabbe Road, Darling Point**

We act for the Owners Corporation SP67183 at 17A Thornton Street Darling Point. Our client's property is located opposite 83 and 83A Yarranabbe Road, Darling Point.

We have been instructed to forward a submission to Council on behalf of our client in response to the scenarios for a possible future compliant development of 83/83A Yarranabbe Road that were presented to Councillors in the report to the Urban Planning Committee on 27 July 2015 in support of the Planning Proposal submitted to council to amend planning controls for 83 and 83A Yarranabbe Road Darling Point, and in relation to the Planning Proposal as submitted to Council in general.

Executive Summary

In our view the Planning Proposal is misconceived as the basis or justification for the Planning Proposal is fundamentally flawed being based on a hypothetical and uncertain development scenario for the lands the subject of the Proposal which ignores the topography of the land and does not take into account relevant sections of Woollahra LEP 2014 and other Woollahra Planning Controls such as the Woollahra DCP 2015.

There is no public benefit therefore in the proposal and it would not be in the public interest for the Proposal to be permitted to proceed .Details of the reasons are set out below.

Reasons

1. The Planning Proposal seeks to amend the FSR and height controls and the Foreshore Building Line control for residential flat buildings for 83 and 83A set out in in the *Woollahra Local Environment Plan 2014 (Woollahra LEP 2014)* in circumstances where the LEP has only recently been made, namely, 23 January 2015.

Woollahra LEP 2014 was publicly exhibited and, we note, the proponent of the Planning Proposal made a submission to Council during the public notification and public

Tel +61 3 8929 3031 | F +61 2 9929 7071 | E info@honeslawyers.com.au | W www.honeslawyers.com.au | ABN 59 003 855 028
Level A, 80 Berry Street, North Sydney, NSW 2060 | PO Box 1098, North Sydney NSW 2060
A firmity created by australianlawyer.com.au Professional Standards Exempt Firm
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consultation phase seeking to amend the same controls namely, FSR, height controls and the foreshore building line by letter dated 13 November 2013 from City Plan Services. The justification for the amendments to the gazetted controls was very similar to the justification put forward in the current Planning Proposal. Notwithstanding that submission the LEP was made by Council without changes to the controls as put in that submission. We assume Council took the proponent's submission into account in making the LEP in its final form as it is required to do pursuant to its plan making powers under the Environmental Planning and Assessment Act 1979.

The community of Woollahra and the immediately adjoining neighbours to the subject lands have a legitimate expectation therefore that the controls will remain in place having regard to the public consultation process and the outcome of that consultation process being very recent.

2. The development controls which are sought to be changed in the Planning Proposal are development standards and as such are amenable to variation pursuant to clause 4.6 of Woollahra LEP 2014. In our opinion the procedure under the *Environmental Planning and Assessment Act* in relation to a gateway application is more appropriately intended to be utilised for a rezoning application in order to change potential uses of a site and to remove prohibitions which would prevent a proposed development from taking place at all. This is not the situation here. Clause 4.6 of Woollahra LEP 2014 is available to the proponent when and if a development application for the redevelopment of 83 and 83A or simply for 83A is submitted to Council. This brings into question the utility or necessity for the Planning Proposal.
3. We have been forwarded a copy of the submission to Council by Mr Harvey Sanders of Design Collaborative dated 14 January 2016. We agree with his analysis of the hypothetical development scenario in accordance with the current controls and the comments made therein. Having taken a view of 83 and 83A from an adjacent property, it is abundantly clear in our opinion that the proponent's assertion that a residential flat building can be built to a height of 10.5m above Yarranabbe Road, is not feasible given the manner in which the subject site falls sharply away towards the harbour from the road. We agree with and adopt the conclusions in Mr Sander's submission that the impacts of a building complying with the proposed controls, not only on neighbouring properties but also on views to the lands from the harbour, are likely to be greater than a development based on the current planning controls. We understand that in the Land and Environment Court Appeal in respect of Council's refusal of DA 285/2012/1 for redevelopment of 83 and 83A a similar argument was put to the Commissioner, namely that compliance with the current controls would result in a poor planning outcome with greater impacts for neighbouring properties and this was properly rejected by the Commissioner.
4. It is not a proper justification in our opinion, and therefore not in the public interest to change planning controls based upon a hypothetical building envelope presented in sketch form and without regard to the requirements of s79C of the *Environmental Planning and Assessment Act* which would also have to be addressed in any proposed development for the lands. We concur with the remarks of Mr Sanders for example, in relation to the application of the controls under the *Woollahra Development Control Plan 2015 (Woollahra DCP 2015)* which would not permit the erection of built form to a height of 10.5 metres on Yarranabbe Road. S79C mandates matters which must be taken into consideration in assessing any development application and includes likely impacts of the development on natural and built environments and the public interest. The requirement to take into consideration all of the matters in s79C would, in our opinion, result in it not being possible that a 3 storey component could be built to Yarranabbe Road as suggested in the sketchy plans provided by the proponent. Furthermore, it is not possible on the basis of the

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clearly deficient information provided to support such a hypothetical proposal. It cannot therefore be in the public interest for the Planning Proposal to proceed on the basis of such significantly limited and incomplete information.

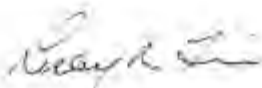
5. There can also be no guarantee, should the Planning Proposal succeed, that any redevelopment at the lands would be in accordance with or comply with proposed amended controls. It is very possible that any properly constituted development application for redevelopment of the site, taking into regard all the mandatory requirements of s79C would need to avail itself of the flexibility provided by clause 14.6 of Woollahra LEP 2014 to seek a variation of the amended controls. The final form of any redevelopment of 83 and 83A is therefore extremely uncertain.

We note from the Planning Proposal that it is asserted that the changes to the controls as sought would increase the dwelling capacity of the site thus facilitating dwelling supply, improved housing options and affordability. We understand that only 1 further dwelling unit would be provided. The issue of affordability is disingenuous in our opinion, given the location of the lands in Darling Point with a view of the harbour. It could not be said that this justification is particular to the circumstances of the site.

6. The subject lands are in a significant location on Sydney Harbour. The changes to the planning controls which are sought are significant and substantial and will clearly impact on views to the lands from the public users of the harbour. The Planning Proposal does not support or justify a decision that the foreshore building line is unreasonable or inappropriate in the circumstances.
7. The public interest therefore is not served by amending planning controls which are not prohibitions and which have just been reinforced by the recently made Woollahra LEP 2014. There would in fact be public detriments as a consequence of the proposed amendments to the controls as set out above in this submission.

Should you have any queries please do not hesitate to contact Mrs Finn of this office

Yours faithfully
HONES LAWYERS



Lesley Finn
Special Counsel
Accredited Specialist Local Government and Town Planning Law
lfinn@honeslawyers.com.au

Appendix F - Darling Point Society submission dated 28 January 2016

THE DARLING POINT SOCIETY INC

P.O. BOX 1131 EDGECLIFF NSW 2027
PHONE 9326 2823 • 9326 2998
Darlingpointsoc@hotmail.com
ABN 88 141 102 701

28 January 2016

The General Manager
records@woollahra.nsw.gov.au
cc: Allan.Coker@woollahra.nsw.gov.au
cc: Chris.Bluett@woollahra.nsw.gov.au
cc: Brendan.Metcalf@woollahra.nsw.gov.au

Dear Sirs,

Following part of Council's resolution of 2nd November 2015 that the proponent of the planning proposal for 83 & 83A Yarranabbe Road, Darling Point meet with the Darling Point Society, we duly had a meeting with John Roth & his development manager, Garry Brown on 8th January 2016.

The material shown to us was a simplistic bulk image of the "newly configured shape". There were no measurements or detailed plans presented to us. It was stated that these were not to be commissioned before this bulk image was approved by Council. Concessions relating to FSR & height were claimed, but with no evidence to substantiate them. Our questions could not be satisfactorily dealt with, on any level, without detailed drawings and unfortunately, responses similar to "all your concerns are unwarranted ladies" in our opinion did not constitute a meaningful meeting.

We did wonder if the proponent should have been requested to submit a photomontage and taken, of course, with a 43.4mm lens (rather than a 28mm lens which reduces images).

Furthermore, proffering a list from Council's website of the successful DAs which were exceptions to Council's LEP controls, as some form of evidence as to why these controls under question here should be allowed to be breached for this planning proposal, only served to enforce our major concern that every exception to the controls - even for site-specific ones - is used as a new benchmark and therefore encourages others.

The Society's position now is that we strongly endorse the detailed substantive arguments contained in the report, commissioned by Darling Point community objectors, that we understand you have in hand and dated 14th January, 2016, from Harvey Sanders of Design Collaborative.

We ask you to consider in particular his well-reasoned arguments relating to:

- a) The 6 metre front setback controls in the DCP which should have a significant impact on establishing a realistic height at street level.
- b) The blowout on overall height and FSR proposed resulting in a much bulkier building adversely affecting neighbouring landowners.

c) The R3 Zone controls in the LEP that restrict any significant further development to the existing house height on the battle axe block to 9.5 metres and thus diminishing any future threat on that front.

d) Breaching the 30 metre shoreline setback for RFB. This setback, a preserve for the whole community and future generations, across the whole municipality.

We have employed Mr Sander's professional expertise in the past and have a huge respect for his acuity and we would ask you to respectfully examine in detail his submission.

The Society would like here to reiterate our firm objection to this planning proposal and maintain that it should be rejected, and repeat, that Council should insist that any development of a RFB on this site be set back 30 metres from the foreshore building line as enshrined in the LEP.

We are in the process of collecting, an already significant, number of signatories to a petition which we are endeavouring to submit to Council prior to the date set for this planning proposal to come before the UPC. Although we don't consider the criticism leveled at the earlier petition of 800+ signatories justified, our new petition does specifically spike any further complaint by mentioning the fact of the already existing house, built at the allowable 12 metres, from the building shoreline.

Yours sincerely,

Charlotte Feldman
President
Darling Point Society Inc.

Appendix G - Letters of support from 56 Yarranabbe Rd (17 Thornton St) unit owners

Stuart Rose
2A Bayview Hill Rd
Rose Bay NSW 2029

24 February 2016

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD, DARLING POINT
(LOTS 11 & 12 DP 598514) – REF SC2501 PLAN PROP**

We are the owners of Unit 1, 56 Yarranabbe Road, Darling Point a new building opposite the
aforementioned property. Any change to the current planning of such property will greatly
impact our property.

We are property developers and understand the benefits of better planning outcomes. We
met with the applicant and we are prepared to support the application subject to the following
conditions.

- The height plane of RL 21.5 at the southern boundary of the site. This is to reduce to
the Western & Northern Boundaries.
- The above RL is inclusive of a landscaped roof (with no reflective materials) with
nothing growing in excess of the aforesaid RL.
- All landscaping elsewhere on the site is not to exceed the aforesaid RL and is to be
maintained below the aforesaid RL.

We look forward to your reply.

Yours sincerely,



Stuart Rose



24 February 2016

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD, DARLING POINT
(LOTS 11 & 12 DP 598514) – REF SC2501 PLAN PROP**

We are the owners of Unit 2, 56 Yarranabbe Road, Darling Point a new building opposite the
aforementioned property. Any change to the current planning of such property will greatly
impact our property.

We are property developers and understand the benefits of better planning outcomes. We
met with the applicant and we are prepared to support the application subject to the following
conditions.

- The height plane of RL 21.5 at the southern boundary of the site. This is to reduce to
the Western & Northern Boundaries.
- The above RL is inclusive of a landscaped roof (with no reflective materials) with
nothing growing in excess of the aforesaid RL.
- All landscaping elsewhere on the site is not to exceed the aforesaid RL and is to be
maintained below the aforesaid RL.

We look forward to your reply.

Yours sincerely,

Steve Alperstein
Company Secretary

RR SR Pty Ltd ACN 139 184 544

Robin Chen
3/56 Yarranabbe Road
Darling Point NSW 2027

25 February 2016

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD, DARLING POINT
(LOTS 11 & 12 DP 598514) – REF SC2501 PLAN PROP**

We are the owners of Unit 3, 56 Yarranabbe Road, Darling Point a new building opposite the
aforementioned property. Any change to the current planning of such property will greatly
impact our property.

We are in the property management/development business and understand the benefits of
better planning outcomes. We have seen the proposed application and we are prepared to
support the application subject to the following conditions.

- The height plane of RL 21.5 at the southern boundary of the site. This is to reduce to
the Western & Northern Boundaries.
- The above RL is inclusive of a landscaped roof (with no reflective materials) with
nothing growing in excess of the aforesaid RL.
- All landscaping elsewhere on the site is not to exceed the aforesaid RL and is to be
maintained below the aforesaid RL.

We look forward to your reply.

Yours sincerely,



Robin Chen
Robin8.rc@gmail.com
0499 772688

Annexure 5

Response to further submissions

Following the 2 November 2015 Council meeting, seven submissions have been received. Four submissions are objecting to the planning proposal and three are supporting it. A copy of the submissions is provided at **Annexure 6** to the report to the Urban Planning Committee (UPC) of 11 April 2016.

The four objections were from:

- Design Collaborative on behalf of the owners of 77-81 Yarranabbe Road
- Ray Dresdner on behalf of the owners of 77-81 Yarranabbe Road
- Hones Lawyers on behalf of the owners of 17A Thornton Street
- The Darling Point Society

The three supporting submissions were from residents of 17 Thornton Street located to the south east of the site.

- Stuart Rose
- Rose Corporation
- Robin Chen

The location of the submitters from the surrounding properties is shown in Figure 1 below.



Figure 1: Location of submissions

The matters raised in the submissions have been grouped into eleven issues. Ten of these issues are new issues, whilst the issue regarding the foreshore building line was addressed in the UPC report from 27 July 2015. Our response to the eleven issues is provided below, and where relevant, a cross reference to our response in the UPC report has been provided.

We note that the proponent has also provided a response to the issues raised in the Design Collaborative and Hones Lawyers submissions on pages 8-11 of **Annexure 4**.

In summary, the matters raised in the submissions have been assessed in this annexure, in the UPC report of 11 April 2016 or a previous report. It is considered that they do not raise matters that warrant amendment or termination to the planning proposal.

The submissions have been grouped into the following issues:

1. Height of development at the Yarranabbe Road frontage.
2. Floor space of any future residential flat building.
3. Height of a dwelling house on 83A Yarranabbe Road.
4. The proposed planning controls compared with the proponent's proposed envelope.
5. The planning proposal should not be supported now, as planning control changes for the site were not supported following a Draft WLEP 2013 submission.
6. Whether the planning proposal is necessary.
7. The planning proposal will not provide certainty as clause 4.6 of WLEP 2014 may be used to vary development standards.
8. Increase of housing supply and affordability.
9. Detailed development application drawings are required to make suitable comment on the planning proposal.
10. Maintaining the 30m foreshore building line for RFB development.
11. Submissions of support from 17 Thornton Street.

Response to further submissions
<p>1. Height of development at the Yarranabbe Road frontage</p> <p>Four submissions were received on the height at the Yarranabbe Road frontage; one from Design Collaborative, and submissions from the Darling Point Society, Hones Lawyers and the owners of 77-81 Yarranabbe Road supporting the Design Collaborative submission.</p> <p>The Design Collaborative submission states that the report to the UPC of 27 July 2015 did not consider how the front setback controls of Woollahra Development Control Plan 2015 and Tenacity planning principle would limit potential built form at the Yarranabbe Road frontage.</p> <p>Design Collaborative consider that a 6m front setback would be reasonable, based on the location of the existing building on 83 Yarranabbe Road. They state that if this setback was applied, development could not be constructed to a height of 10.5m at the Yarranabbe Road frontage due to the slope of the site towards the foreshore.</p> <p>Design Collaborative also state that the Tenacity planning principle would prevent buildings being constructed to 10.5m as a building constructed on the site to this height would impact views.</p> <p><i>Staff response</i></p> <p><u>Effect of the front setback</u></p> <p>In accordance with Council's resolution of 2 November 2015, the proponent has prepared a new section diagram (Figure 2 below) which illustrates:</p> <ul style="list-style-type: none"> • the maximum building height across the site under the existing controls • an indicative built form under WLEP 2014 and WDCP 2015 • the proposed maximum building heights • an indicative built form under the proposed controls and WDCP 2015

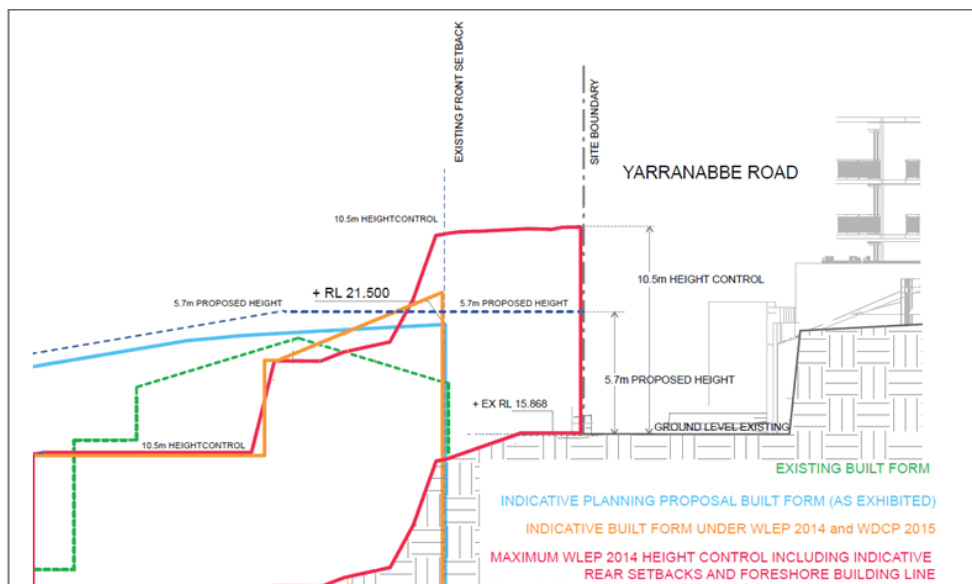


Figure 2: Cross section at the Yarranabbe Road frontage

The front setback of a potential built form (orange line) shown in Figure 2 is consistent with the setback suggested by Design Collaborative and is based on the location of the existing dwelling on 83 Yarranabbe Road. The potential built form under the current controls to a height of 8.2m setback 6.9m from the roadway.

A building constructed in this location would have less impact on the views of dwellings to the south of Yarranabbe Road than a building constructed to 10.5m at the roadway.

We recognise that any development on 83 Yarranabbe Road would need to have regard to the Woollahra Development Control Plan 2015 front setback controls. If a front setback is applied and given the topography of the site, it is unlikely that a building would be constructed to a height of 10.5m at the Yarranabbe Road frontage.

Tenacity planning principle

The Tenacity planning principle would be applied to the assessment of view loss for any future development application for this site. Notwithstanding, there is potential for greater view loss under the current 10.5m maximum building height than under the proposed 5.7m second height at the roadway. The planning proposal provides more certainty regarding maximum building height on 83 Yarranabbe Road by setting a second height limit of 5.7m from the highest part of the site.

2. Floor space of any future residential flat building

Four submissions were received on floor space; one from Design Collaborative, and submissions from the Darling Point Society, Hones Lawyers and the owners of 77-81 Yarranabbe Road supporting the Design Collaborative submission.

The Design Collaborative submission states that in order to achieve five 250-300m² units on the site under the existing planning controls, 83 and 83A Yarranabbe Road would need to be consolidated. Design Collaborative state, this level of floor space could only be achieved if the existing dwelling house on No. 83A were to be demolished.

The submission also states that based on the existing site area of 83 Yarranabbe Road only 2 units of between 250-300m² could be accommodated on that lot under the existing FSR

control. Therefore, if the dwelling on 83A were to be retained, any RFB on 83 Yarranabbe Road would be smaller and that it would have to comply with the building envelope created by WLEP 2014 and WDCP 2015.

Staff response

It is correct that to construct an RFB containing five 250-300m² units, the site would need to be amalgamated.

If the dwelling on 83A Yarranabbe Road was retained, an RFB could still be constructed on 83 Yarranabbe Road. The size of the apartments in the RFB would need to be reduced, as by definition, an RFB contains three or more dwellings.

However, an RFB could be constructed on 83 Yarranabbe Road and the dwelling house on the foreshore could be redeveloped as a dual occupancy. In that case, the site could still yield five dwellings.

3. Height of a dwelling house on 83A Yarranabbe Road

Four submissions were received on the height of a dwelling house on 83A Yarranabbe Road; one from Design Collaborative, and submissions from the Darling Point Society, Hones Lawyers and the owners of 77-81 Yarranabbe Road supporting the design collaborative submission.

Design Collaborative consider that it is unlikely that additional floor space could be contained above the existing roof level of 83A Yarranabbe Road and that an increase to building height would need to be based on:

- the size of the existing dwelling,
- WDCP 2015 building envelope controls, and
- amenity considerations of surrounding development such as views and solar access.

Staff response

The redevelopment of 83A Yarranabbe Road would need to address the height controls in WLEP 2014, the building envelope controls in WDCP 2015 and amenity issues such as views and overshadowing. Notwithstanding, the building envelope permitted on the site allows additional height over the western side of the site compared with the existing building.

4. The proposed planning controls compared with the proponent's proposed envelope

Four submissions were received on the perceived impacts of the proposed planning controls compared with impacts under the proponent's building envelope; one submission from Design Collaborative and submissions from the Darling Point Society, Hones Lawyers and the owners of 77-81 Yarranabbe Road supporting the design collaborative submission.

Design Collaborative state that a building constructed under the proposed maximum building height controls is likely to have greater impacts on neighbouring properties than that shown in the proponent's submission.

Staff response

The applicant's building envelope that accompanied the planning proposal is indicative. It does not form part of the proposed planning controls for the site. If Council is to proceed with the planning proposal it would not be endorsing the applicant's building envelope. Future development of the land would need to be guided by the new planning controls.

There is benefit in amending the existing controls by reducing the height at the highest part of the site thereby redistributing the building bulk across the site as discussed in the UPC reports of 11 April 2016 and 27 July 2015.

The maximum building heights are suitable in the context of existing development and are less than the height of 85 Yarranabbe Road, which is 7 storeys, and 87-97 Yarranabbe Road, which is 10 storeys.

5. The planning proposal should not be supported now, as planning control changes for the site were not supported following a Draft WLEP 2013 submission

A submission from Hones Lawyers referred to the planning control changes requested in 2013. Hones Lawyers consider that as Council did not support a change to planning controls on this site as part of the Draft WLEP 2013 exhibition, it should not support the proposed changes now.

Staff response

The planning control changes requested on 13 November 2013 by City Plan Services were not supported at the time, as the Draft WLEP 2013 was being prepared as a translation from the previous WLEP 1995.

Council is bound to consider new planning proposal requests on merit when they are submitted by a proponent. We note that the extent of planning control changes in the planning proposal are less than those requested in 2013.

A comparison of the 2013 request and the current proposal is shown below.

	Maximum building height	FSR	Foreshore building line for RFBs
2013 request	18-20m (6 storeys)	2:1	12m
Planning proposal controls	5.7-15.2m (1-5 storeys)	1.2:1	18m

Compared with the 2013 request, the planning proposal:

- has a maximum building height 4.8m (1 storey) lower,
- the proposed FSR has been reduced by 45% to 0.9:1, and
- the foreshore building line has been increased by six metres.

The result is that the potential bulk and scale of development has been significantly reduced and any RFB would be set back further from the foreshore.

6. Whether the planning proposal is necessary

A submission from Hones Lawyers questioned whether a planning proposal is required. In their opinion, an LEP amendment is more appropriate for rezoning applications to amend permitted uses, rather than to amend development standards. Hones Lawyers suggest that clause 4.6 *Exceptions to development standards* of WLEP 2014 is available for the proponent to use instead, should they prepare and submit a development application for the site.

Staff response

The *Environmental Planning and Assessment Act 1979* (the Act) or *Environmental Planning and Assessment Regulation 2000* (the Regulation) do not contain any requirements limiting the subject of LEP amendments to permissible uses. For example, the Department of Planning and Environment publication *A guide to preparing local environmental plans* states that LEPs that are routinely delegated to councils to make include:

LEPs which will result in a relaxation of a development standard on a site to promote development including potential increases to FSR and height of building controls and, reduced minimum lot sizes(page 7)

The planning proposal has been prepared consistent with the Act and Regulation and the decision to prepare a planning proposal was appropriate.

It is appropriate to prepare an LEP amendment for the site, as clause 4.6 *Exceptions to development standards* is intended to be used for minor non-compliances to planning controls associated with a development application.

The extent of the changes and complexity of the controls requires a planning proposal. In this case, the scope of amendments involve a change to the maximum FSR and height, the introduction of a second height control and a change to the foreshore building line.

The proposed planning control changes create a building envelope that fits within the existing context.

The proposed envelope was established having regard to:

- views from the public and private domain;
- providing solar access to adjoining properties;
- the location of adjoining residential flat building development in relation to the foreshore building line;
- minimising building bulk; and
- providing a contextual building envelope.

7. The planning proposal will not provide certainty as clause 4.6 of WLEP 2014 may be used to vary development standards

A submission from Hones Lawyers referred to the possible use of clause 4.6 of WLEP 2014 in regard to a future development application. Hones Lawyers suggest if the planning proposal proceeds, the future development form on the site is uncertain. Accordingly, the proponent may submit a development application and use clause 4.6 *Exceptions to development standards* to enable a consent that exceeds the new controls.

Staff response

The use of clause 4.6 *Exceptions to development standards* is a mechanism available to any development application that exceeds a development standard. It is not a valid reason to terminate the consideration of the planning proposal which is being assessed consistently with the Act and the Regulation on speculation that a future development application will exceed development standards.

If a development application is submitted which requests an exception to a development standard under Clause 4.6, the non-compliance would be considered on merit, and the applicant would be required to demonstrate:

<ul style="list-style-type: none">• That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and• That there are sufficient environmental planning grounds to justify contravening the development standard.
8. The planning proposal is not in the public interest
<p>A submission from Hones Lawyers referred to the matter of public interest. Hones Lawyers state that the planning proposal is not in the public interest as the planning control changes are based on a hypothetical building envelope without regard to s79c of the Act.</p>
<p>Staff response</p> <p>The planning proposal is in the public interest for the reasons outlined in response to question 2 in Table 1 in the UPC report of 11 April 2016.</p> <p>The planning proposal has been prepared and exhibited consistent with the relevant provisions of the Act and Regulation. Assessment under s79c of the Act is not required.</p>
9. Increase of housing supply and affordability
<p>A submission from Hones Lawyers referred to the number of additional dwellings facilitated by the planning proposal and affordability.</p> <p>Hones Lawyers state that:</p> <ul style="list-style-type: none">• The planning proposal will only result in one additional unit.• The issue of affordability is disingenuous given the location of the site.
<p>Staff response</p> <p>See response to question 1 in Table 1 in the UPC report of 11 April 2016.</p>
10. Detailed development application drawings are required to make suitable comment on the planning proposal
<p>One submission was received from the Darling Point Society regarding the level of detail in the proponent's documentation.</p> <p>The Society states that the diagrams presented to them as part of the community consultation were not sufficient to comment on. They state that without detailed development application plans, which include measurements, their questions could not be satisfactorily dealt with.</p>
<p>Staff response</p> <p>The proponent has produced detailed section plans, view impact analysis, shadow diagrams and an urban design statement. As part of the community consultation, the proponent modelled potential built forms under the existing LEP and DCP controls and the proposed planning controls as requested by Council. The information provided to date is suitable to determine that the proposed planning controls will provide a better planning outcome for the</p>

site.

The applicant's planning proposal and urban design statement were reported to the Urban Planning Committee meeting of 24 November 2014 and exhibited as supporting documents with the planning proposal. These documents explain the rationale for varying the Woollahra LEP 2014 planning controls for this particular site, most importantly:

- Increasing the development capacity of the site by 436m².
- Maintaining views from the public domain across the site from the footpath in front of 85 Yarranabbe Road.
- Improving the appearance of the streetscape by creating an envelope that minimises car parking and vehicle access on Yarranabbe Road.
- Providing an envelope for logical and efficient massing of buildings on the site in a configuration that will provide acceptable amenity to the surrounding area.

The UPC report stated that the applicant's planning proposal was supported based on the indicative building envelope drawings, view analysis and shadow modelling. The proponent has provided sufficient information to proceed with the planning proposal.

11. Maintaining the 30m foreshore building line for RFB development

Three submissions raised foreshore building line related issues. The submissions were from the Darling Point Society, Hones Lawyers and the owners of 77-81 Yarranabbe Road.

The submissions object to the foreshore building line being changed from 30m to 18m for RFB development.

The Darling Point Society objects to 'breaching' the 30m shoreline setback, and requests that future RFB development on the site is made to comply with the current control.

Hones Lawyers state that the proposed planning control changes, particularly to the foreshore building line, will result in impact on views of the site from the harbour.

The submission from the owners of 77-81 Yarranabbe Road state that there is a petition being circulated that has over 1000 signatures against varying the foreshore building line.

Staff response

The merit of amending the foreshore building line is covered in detail in pages 6 to 10 of the report Urban Planning Committee of 27 July 2015 (**Annexure 2**). In summary, we support amending the foreshore building line as the amendment is compatible with the objective of Woollahra LEP 2014 Clause 6.4 *Limited development on foreshore area* and the change would:

- provide a transition from 85 Yarranabbe Road which is a seven storey RFB setback 7m from the foreshore to 79-81 Yarranabbe Road which is a six storey RFB setback 30m from the foreshore.
- provide a suitable area for landscaping between a building and the foreshore.
- provide a larger building footprint, thus reducing potential building bulk on the upper (street frontage) part of the site.

The proposed controls will permit a built form on the site that is in context with the site and surrounding development. In these circumstances the impact on views from the harbour will be acceptable.

12. Submissions of support from 17 Thornton Street

The three owners of the RFB at 17 Thornton Street, Darling Point withdrew their objections to the planning proposal and now support the planning proposal. The support is subject to the maximum building height of any future development being limited to a reduced level (RL) of 21.5m Australian Height Datum (AHD).

Staff response

The submissions are noted. Two of the owners have reversed their objection to the planning proposal following discussions with the proponent. The proponent's concept for the site shows that it is possible to construct an RFB on the site to a height of RL 21.5m AHD under the proposed controls.



Annexure 6
DESIGN COLLABORATIVE
Pty Limited

ABN 36 002 126 954
ACN 002 126 954

Planning and Development Consultants

www.designcollaborative.com.au

Director
J Lidis
BTP (UNSW)
MPIA CPP

Consultants
G W Smith
BSurv(QLD)
MCP(MIT) MIS
FPIA MRTPI FAPI

H M Sanders
MPhil(Lon)
MSc(Rdg)
FPIA MRTPI

14 January 2016
Ref: 150573.6L

The General Manager
Woollahra Council
By email: records@woollahra.nsw.gov.au

Dear Sir,

Re: Planning Proposal – 83 and 83A Yarranabbe Road, Darling Point – Further Consideration

We refer to the resolution of Council on 2 November 2015 that Council staff prepare a further report on the above Planning Proposal to the Urban Planning Committee. We understand that that report is to be prepared in the first quarter of 2016.

We act on behalf of neighbour objectors to the Planning Proposal. They have requested that we review the existing planning controls applicable to 83/83A Yarranabbe Road to test the scenarios for the possible future development of 83/83A that were presented to Councillors in the report to the UPC on 27 July 2015 and by the Proponent. In particular, we have been asked to consider whether under existing planning controls the Proponent could:

- Build a residential flat building to a height of 10.5 m above Yarranabbe Road;
- Build a residential flat building on 83 Yarranabbe Road without demolishing 83A (the dwelling house on the foreshore); and
- Build an extra floor on 83A Yarranabbe Road.

We have also been asked to consider the implications of the now proposed planning controls in the context of the Proponent's original Planning Proposal envelope (as set out in its original submission and described in detail in the Urban Design Statement prepared by Tzannes Associates).

We have also reviewed documentation submitted with the Planning Proposal and the previous DA regarding the existing ground levels/development on the site.

We consider each of the above matters below.



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1. Height of Building on the Yarranabbe Road frontage (No. 83)

Under Woollahra LEP 2014, a maximum height of 10.5m applies to No. 83 if a residential flat building is proposed. Under the LEP, height is measured above existing ground level. The existing ground levels on No. 83 fall steeply from the street frontage.

The height diagram in the July report to the UPC ignores Council's other important building envelope controls, in particular the requirement for a front setback. In this regard, Woollahra DCP 2015 states that, for development in the R3 zone, *where an FSR control applies, the building envelope is established by applying the following controls:*

- front, side and rear setbacks;
- maximum building height set by Woollahra LEP 2014 (B3, p. 6).

While strict interpretation of the front setback control under DCP 2015 could require a greater setback based on the significant setbacks of the existing buildings on neighbouring properties (No. 85, No. 87 and No. 73-75), a front setback of at least 6m (which is consistent with the existing building setback on No. 83 and No. 77-81) would meet the objectives of the control. The provision of a 6m front setback on No. 83 would result in the building envelope being sited primarily over existing ground levels which are well below the level at the street.

Figure 1 below (based on the site section contained in the Tzannes Urban Design Report (the Proponent's architects)) shows a theoretical building height based on Council's height control, 10.5m above the existing ground levels at the middle of the site where the present house is sited and set back 6m from the frontage.

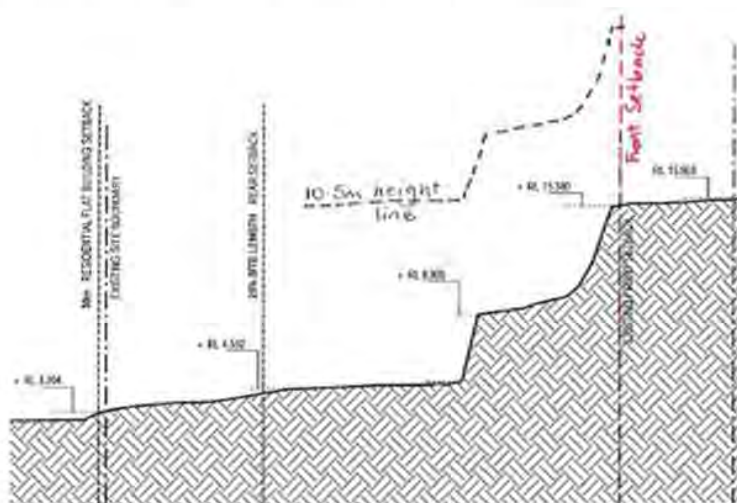


Figure 1: Theoretical Building Height Sketch
(Section of existing ground levels from *Appendix A: Urban Design Statement*, Tzannes Associates, p. 33)

Figure 2 below shows a practical/achievable building height for the site which reaches a height of around 6m above Yarranabbe Road and 10.5m on the lower part of the site. The

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practical/achievable height adjacent the road frontage is therefore close to the proposed height limit of 5.7m under the Planning Proposal.

This is because, while a building could have a height of 10.5m above Yarranabbe Road at the front setback line as shown in **Figure 1**, the existing ground levels fall away sharply to the north just beyond the front setback line making such a built form impractical. Taking into account the fall of the site, it is considered that the height of any proposed building would be reduced at the front setback to provide a logical, feasible built form.

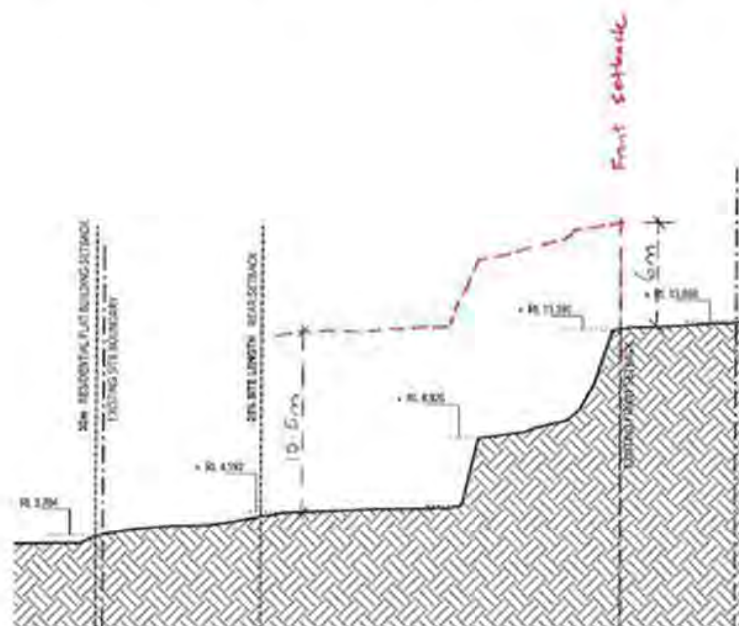


Figure 2: Practical/Achievable Building Height Sketch
(Section of existing ground levels from *Appendix A: Urban Design Statement*, Tzannes Associates, p. 33)

Accordingly, in our view, the scenario presented to Councillors is misleading as it does not take into account other relevant controls which would prevent the erection of a building on the street frontage. As noted above, the interaction between Council's various controls controlling built form/building envelope is clearly set out in its DCP 2015.

The report to the UPC states that *a building constructed to 10.5m at the roadway would result in view loss from the surrounding area including iconic views to the Opera House and Harbour Bridge* (p.11). While we disagree that such a building could be approved or constructed based on the comments above, we also note that the application of the Planning Principle in *Tenacity* regarding view loss and view sharing would, in our view, also preclude any such development.

Design Collaborative Pty Ltd

2. Floor Space of any future Residential Flat Building

Under the LEP, a maximum FSR of 0.9:1 currently applies to the site if a residential flat building is proposed.

In order to achieve 5 units each with a floor space of between 250-300 m² (to provide the quantum of development and a high level of amenity and liveability consistent with the location and the previous DA plans lodged by the Proponent for the site), the two lots making up the site would need to be consolidated to provide a site area of 1453.6sqm. Accordingly, this level of floor space could only be achieved if the existing dwelling house on No. 83A were to be demolished.

Based on the site area of No. 83 (639.4 sqm) only 2 units of the above size could be accommodated on that site under the existing FSR control.

Accordingly, if the existing dwelling house on No. 83A were to be retained, any residential flat building on No. 83 would necessarily be smaller and would also need to comply with the building envelope set out above.

3. Height of Dwelling House on the waterfront (No. 83A)

Under the LEP, the maximum permitted height of a dwelling house in the R3 zone is 9.5m. In addition, the height of any development on a battle axe lot in the R3 zone is limited to 9.5m.

The existing dwelling house on No. 83A already has a partial height of 9.5m to the roof of the garage structure. The remainder of the building has a height of around 6.7m.

For dwelling houses, Council's building envelope controls do not allow a height of 9.5m over the full building footprint area. The DCP requires a maximum wall height of 7.2m with an inclined plane at 45 degrees from the maximum wall height (see **Figure 3**):

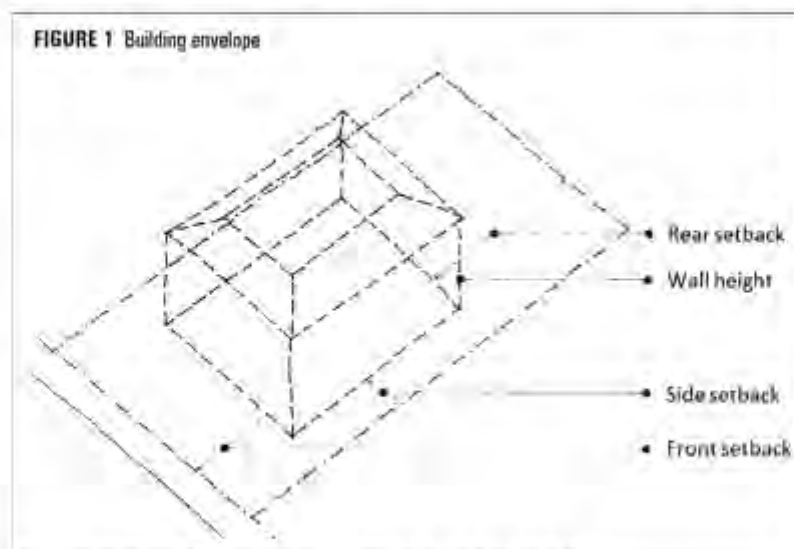


Figure 3: Building Envelope - Extract from Woollahra DCP 2015
Source: Woollahra DCP 2015, Section B.3, p. 5

Design Collaborative Pty Ltd

Taking into account these envelope controls, additional floor space could potentially be provided over the western side of the existing roof level of the dwelling house but only within the permitted envelope.

However, Council's controls also state that "the building is to be contained within the building envelope, but is to occupy only a percentage of the building envelope (as determined by floor plate controls ...)." We do not have sufficient information to determine whether the existing building already exceeds the floor plate controls.

In addition, the scenario does not take into account the impact of any additional floor space on the roof level of No. 83A on the amenity of neighbours in terms of views, solar access and other amenity impacts.

On the basis of the above, we consider it highly unlikely that additional floor space could be justified at the existing roof level of the dwelling house.

4. The Proposed Planning Controls and the Proponent's Planning Proposal Envelope

Under the now proposed planning controls, a maximum height of 10.5m is proposed on No. 83A. However, according to the Proponent's documentation, part of the original Planning Proposal envelope (on No. 83A) reaches a height of some 12.2m. Therefore, the original Planning Proposal envelope would not comply with the proposed standard and could not be implemented on the site without seeking a variation from the now proposed controls.

At the same time, the now proposed 15.2m height standard over most of No. 83 would allow for a higher and bulkier built form than the original Planning Proposal envelope, particularly along the common boundary with the neighbouring property at No. 77-81 Yarranabbe Road.

A building complying with the now proposed height standards will have impacts on neighbouring properties which are likely to be greater than those shown in the original Planning Proposal submission.

Conclusion

For the reasons set out above, we disagree with the arguments put forward by Council officers and the Proponent in support of the Planning Proposal particularly in relation to the implications of the existing controls for future built form on 83/83A. In our view, appropriate consideration of the interaction of the building envelope controls contained in Council's LEP 2014 (including, in particular, the 30m foreshore building line for residential flat buildings) and DCP 2015 would result in a building with more acceptable impacts on the locality and neighbouring properties.

In addition, the impacts of a building complying with the now proposed controls on neighbouring properties are likely to be greater than those shown in the original Planning Proposal submission.

We therefore reiterate our clients' objections to the Planning Proposal for the reasons set out in our previous submissions, including the impact of additional building bulk on 77-81.

Design Collaborative Pty Ltd

In view of the manner in which this matter has progressed, we request that the details of this submission are specifically addressed in the forthcoming report to the UPC.

Yours Faithfully,

DESIGN COLLABORATIVE PTY LTD



H M Sanders
Consultant



Our Ref: JBH:CC:15525

3 February 2016

The General Manager
Woollahra Council
PO Box 61
DOUBLE BAY NSW 1360

By email : records@woollahra.nsw.gov.au

Dear Sir

**Re Planning Proposal – Further Considerations
Ppty: 83/83A Yarranabbe Road, Darling Point**

We act for the Owners Corporation SP67183 at 17A Thornton Street Darling Point. Our client's property is located opposite 83 and 83A Yarranabbe Road, Darling Point.

We have been instructed to forward a submission to Council on behalf of our client in response to the scenarios for a possible future compliant development of 83/83A Yarranabbe Road that were presented to Councillors in the report to the Urban Planning Committee on 27 July 2015 in support of the Planning Proposal submitted to council to amend planning controls for 83 and 83A Yarranabbe Road Darling Point, and in relation to the Planning Proposal as submitted to Council in general.

Executive Summary

In our view the Planning Proposal is misconceived as the basis or justification for the Planning Proposal is fundamentally flawed being based on a hypothetical and uncertain development scenario for the lands the subject of the Proposal which ignores the topography of the land and does not take into account relevant sections of Woollahra LEP 2014 and other Woollahra Planning Controls such as the Woollahra DCP 2015.

There is no public benefit therefore in the proposal and it would not be in the public interest for the Proposal to be permitted to proceed. Details of the reasons are set out below.

Reasons

1. The Planning Proposal seeks to amend the FSR and height controls and the Foreshore Building Line control for residential flat buildings for 83 and 83A set out in in the *Woollahra Local Environment Plan 2014 (Woollahra LEP 2014)* in circumstances where the LEP has only recently been made, namely, 23 January 2015.

Woollahra LEP 2014 was publicly exhibited and, we note, the proponent of the Planning Proposal made a submission to Council during the public notification and public

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consultation phase seeking to amend the same controls namely, FSR, height controls and the foreshore building line by letter dated 13 November 2013 from City Plan Services. The justification for the amendments to the gazetted controls was very similar to the justification put forward in the current Planning Proposal. Notwithstanding that submission the LEP was made by Council without changes to the controls as put in that submission. We assume Council took the proponent's submission into account in making the LEP in its final form as it is required to do pursuant to its plan making powers under the Environmental planning and Assessment Act 1979.

The community of Woollahra and the immediately adjoining neighbours to the subject lands have a legitimate expectation therefore that the controls will remain in place having regard to the public consultation process and the outcome of that consultation process being very recent.

2. The development controls which are sought to be changed in the Planning Proposal are development standards and as such are amenable to variation pursuant to clause 4.6 of Woollahra LEP 2014. In our opinion the procedure under the *Environmental Planning and Assessment Act* in relation to a gateway application is more appropriately intended to be utilised for a rezoning application in order to change potential uses of a site and to remove prohibitions which would prevent a proposed development from taking place at all. This is not the situation here. Clause 4.6 of Woollahra LEP 2014 is available to the proponent when and if a development application for the redevelopment of 83 and 83A or simply for 83A is submitted to Council. This brings into question the utility or necessity for the Planning Proposal.
3. We have been forwarded a copy of the submission to Council by Mr Harvey Sanders of Design Collaborative dated 14 January 2016. We agree with his analysis of the hypothetical development scenario in accordance with the current controls and the comments made therein. Having taken a view of 83 and 83A from an adjacent property, it is abundantly clear in our opinion that the proponent's assertion that a residential flat building can be built to a height of 10.5m above Yarranabbe Road, is not feasible given the manner in which the subject site falls sharply away towards the harbour from the road. We agree with and adopt the conclusions in Mr Sander's submission that the impacts of a building complying with the proposed controls, not only on neighbouring properties but also on views to the lands from the harbour, are likely to be greater than a development based on the current planning controls. We understand that in the Land and Environment Court Appeal in respect of Council's refusal of DA 285/2012/1 for redevelopment of 83 and 83A a similar argument was put to the Commissioner; namely that compliance with the current controls would result in a poor planning outcome with greater impacts for neighbouring properties and this was properly rejected by the Commissioner.
4. It is not a proper justification in our opinion, and therefore not in the public interest to change planning controls based upon a hypothetical building envelope presented in sketch form and without regard to the requirements of s79C of the *Environmental Planning and Assessment Act* which would also have to be addressed in any proposed development for the lands. We concur with the remarks of Mr Sanders for example, in relation to the application of the controls under the *Woollahra Development Control Plan 2015 (Woollahra DCP 2015)* which would not permit the erection of built form to a height of 10.5 metres on Yarranabbe Road. S79C mandates matters which must be taken into consideration in assessing any development application and includes likely impacts of the development on natural and built environments and the public interest. The requirement to take into consideration all of the matters in s79C would, in our opinion, result in it not being possible that a 3 storey component could be built to Yarranabbe Road as suggested in the sketchy plans provided by the proponent. Furthermore, it is not possible on the basis of the

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clearly deficient information provided to support such a hypothetical proposal. It cannot therefore be in the public interest for the Planning Proposal to proceed on the basis of such significantly limited and incomplete information.

5. There can also be no guarantee, should the Planning Proposal succeed, that any redevelopment at the lands would be in accordance with or comply with proposed amended controls. It is very possible that any properly constituted development application for redevelopment of the site, taking into regard all the mandatory requirements of s79C would need to avail itself of the flexibility provided by clause 14.6 of Woollahra LEP 2014 to seek a variation of the amended controls. The final form of any redevelopment of 83 and 83A is therefore extremely uncertain.

We note from the Planning Proposal that it is asserted that the changes to the controls as sought would increase the dwelling capacity of the site thus facilitating dwelling supply, improved housing options and affordability. We understand that only 1 further dwelling unit would be provided. The issue of affordability is disingenuous in our opinion, given the location of the lands in Darling Point with a view of the harbour. It could not be said that this justification is particular to the circumstances of the site.

6. The subject lands are in a significant location on Sydney Harbour. The changes to the planning controls which are sought are significant and substantial and will clearly impact on views to the lands from the public users of the harbour. The Planning Proposal does not support or justify a decision that the foreshore building line is unreasonable or inappropriate in the circumstances.
7. The public interest therefore is not served by amending planning controls which are not prohibitions and which have just been reinforced by the recently made Woollahra LEP 2014. There would in fact be public detriments as a consequence of the proposed amendments to the controls as set out above in this submission.

Should you have any queries please do not hesitate to contact Mrs Finn of this office.

Yours faithfully

HONES LAWYERS



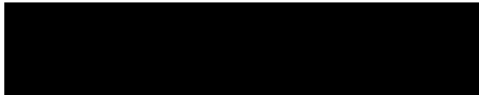
Lesley Finn
Special Counsel
Accredited Specialist Local Government and Town Planning Law

THE DARLING POINT SOCIETY INC



28 January 2016

The General Manager
records@woollahra.nsw.gov.au



Dear Sirs,

Following part of Council's resolution of 2nd November 2015 that the proponent of the planning proposal for 83 & 83A Yarranabbe Road, Darling Point meet with the Darling Point Society, we duly had a meeting with John Roth & his development manager, Garry Brown on 8th January 2016.

The material shown to us was a simplistic bulk image of the "newly configured shape". There were no measurements or detailed plans presented to us. It was stated that these were not to be commissioned before this bulk image was approved by Council. Concessions relating to FSR & height were claimed, but with no evidence to substantiate them. Our questions could not be satisfactorily dealt with, on any level, without detailed drawings and unfortunately, responses similar to "all your concerns are unwarranted ladies" in our opinion did not constitute a meaningful meeting.

We did wonder if the proponent should have been requested to submit a photomontage and taken, of course, with a 43.4mm lens (rather than a 28mm lens which reduces images).

Furthermore, proffering a list from Council's website of the successful DAs which were exceptions to Council's LEP controls, as some form of evidence as to why these controls under question here should be allowed to be breached for this planning proposal, only served to enforce our major concern that every exception to the controls - even for site-specific ones - is used as a new benchmark and therefore encourages others.

The Society's position now is that we strongly endorse the detailed substantive arguments contained in the report, commissioned by Darling Point community objectors, that we understand you have in hand and dated 14th January, 2016, from Harvey Sanders of Design Collaborative.

We ask you to consider in particular his well-reasoned arguments relating to:

- a) The 6 metre front setback controls in the DCP which should have a significant impact on establishing a realistic height at street level.
- b) The blowout on overall height and FSR proposed resulting in a much bulkier building adversely affecting neighbouring landowners.

c) The R3 Zone controls in the LEP that restrict any significant further development to the existing house height on the battle axe block to 9.5 metres and thus diminishing any future threat on that front.

d) Breaching the 30 metre shoreline setback for RFB. This setback, a preserve for the whole community and future generations, across the whole municipality.

We have employed Mr Sander's professional expertise in the past and have a huge respect for his acuity and we would ask you to respectfully examine in detail his submission.

The Society would like here to reiterate our firm objection to this planning proposal and maintain that it should be rejected, and repeat, that Council should insist that any development of a RFB on this site be set back 30 metres from the foreshore building line as enshrined in the LEP.

We are in the process of collecting, an already significant, number of signatories to a petition which we are endeavouring to submit to Council prior to the date set for this planning proposal to come before the UPC. Although we don't consider the criticism leveled at the earlier petition of 800+ signatories justified, our new petition does specifically spike any further complaint by mentioning the fact of the already existing house, built at the allowable 12 metres, from the building shoreline.

Yours sincerely,

Charlotte Feldman
President
Darling Point Society Inc.

Stuart Rose



24 February 2016

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD, DARLING POINT
(LOTS 11 & 12 DP 598514) – REF SC2501 PLAN PROP**

We are the owners of Unit 1, 56 Yarranabbe Road, Darling Point a new building opposite the
aforementioned property. Any change to the current planning of such property will greatly
impact our property.

We are property developers and understand the benefits of better planning outcomes. We
met with the applicant and we are prepared to support the application subject to the following
conditions.

- The height plane of RL 21.5 at the southern boundary of the site. This is to reduce to
the Western & Northern Boundaries.
- The above RL is inclusive of a landscaped roof (with no reflective materials) with
nothing growing in excess of the aforesaid RL.
- All landscaping elsewhere on the site is not to exceed the aforesaid RL and is to be
maintained below the aforesaid RL.

We look forward to your reply.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Stuart Rose'.

Stuart Rose



24 February 2016

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD, DARLING POINT
(LOTS 11 & 12 DP 598514) – REF SC2501 PLAN PROP**

We are the owners of Unit 2, 56 Yarranabbe Road, Darling Point a new building opposite the
aforementioned property. Any change to the current planning of such property will greatly
impact our property.

We are property developers and understand the benefits of better planning outcomes. We
met with the applicant and we are prepared to support the application subject to the following
conditions.

- The height plane of RL 21.5 at the southern boundary of the site. This is to reduce to
the Western & Northern Boundaries.
- The above RL is inclusive of a landscaped roof (with no reflective materials) with
nothing growing in excess of the aforesaid RL.
- All landscaping elsewhere on the site is not to exceed the aforesaid RL and is to be
maintained below the aforesaid RL.

We look forward to your reply.

Yours sincerely,

Steve Alperstein
Company Secretary

RR SR Pty Ltd ACN 139 184 544



Mr Gary James

General Manager

Woollahra Council

records@woollahra.nsw.gov.au



Dear Mr. James,

Re: Rezoning Application 83 and 83A Yarranabbe Road Darling Point

I write on behalf of the owners of 77-81 Yarranabbe Road (on the western boundary of the above property), pursuant to Council's following resolution:

"A. THAT Council requests staff to prepare a further report on the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (SC2503) including consideration of all late correspondence and present this report to the Urban Planning Committee.

B. THAT the applicant meet with the Darling Point Society

and other key community representatives to discuss the potential proposed impacts under:

- (i) The planning proposal.
- (ii) The current LEP and DCP."

Following the resolution I met with the Applicant and his Development Manager on behalf of the owners of the units at 77-81 Yarranabbe Road.

Following that meeting I conferred with all the owners of 77-81 Yarranabbe Road. Nothing the Applicant put to me at the meeting in any way changed their views and their objection stands. In particular the Applicant indicated that the extent of the proposed change to the Foreshore Building Line would not be varied by "one millimetre".

The owners of 77-81 Yarranabbe Road respectfully ask Council to take into consideration the submissions to Council on their behalf prepared by Design Collaborative dated 10 April 2015 and 14 January 2016 detailing their objections.

Further the fact that an overwhelming number of residents object to the Planning Proposal is evidenced by the support for a new Petition the Darling Point Society is promoting. More than 1,000 people have so far signed the new Petition (even more than the previous Petition).

This Petition makes it clear that the proposed development would replace an existing house 12 metres from the foreshore with a residential flat building 18 metres from the foreshore. It cannot creditably be argued that when they signed the new Petition the community did not understand what they were signing.

An overwhelming number of residents clearly object to Council allowing a residential flat building closer to the waterline than the 30 metre setback stipulated in the 2014 LEP.

Yours faithfully,

R. D. Dresdner.

For and on behalf of the owners of 77-81 Yarranabbe Road, Ruth Sife, Lily Dresdner, Ian Ingram and David Saul.

1st March 2016

Robin Chen
[REDACTED] Yarranabbe Road
Darling Point NSW 2027

25 February 2016

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD, DARLING POINT
(LOTS 11 & 12 DP 598514) – REF SC2501 PLAN PROP**

We are the owners of Unit 3, 56 Yarranabbe Road, Darling Point a new building opposite the
aforementioned property. Any change to the current planning of such property will greatly
impact our property.

We are in the property management/development business and understand the benefits of
better planning outcomes. We have seen the proposed application and we are prepared to
support the application subject to the following conditions.

- The height plane of RL 21.5 at the southern boundary of the site. This is to reduce to
the Western & Northern Boundaries.
- The above RL is inclusive of a landscaped roof (with no reflective materials) with
nothing growing in excess of the aforesaid RL.
- All landscaping elsewhere on the site is not to exceed the aforesaid RL and is to be
maintained below the aforesaid RL.

We look forward to your reply.

Yours sincerely,



Robin Chen
[REDACTED]

Annexure 7



THE FACTS

83 & 83a YARRANABBE ROAD

The developer of the above property, which is on the northern tip of the Darling Point peninsular, has applied to Council to rezone the site so that he can build an **over bulky unit block too close to the foreshore. The permitted distance from the waterline is 30 metres back but the developer wants to build only 18 metres back.**

The Darling Point Society strongly opposes the rezoning.

The rezoning would allow a unit building to encroach on the foreshore, reach a height of 15.2 metres, over large part of the site, instead of the permitted height of 10.5 metres and exceed the Council's control on the bulk of the building by 30%.

The developer has distributed a flyer, which the Society considers to be misleading.

The flyer claims that the rezoning would reduce the potential development height on Yarranabbe Road to 5.7 metres. The independent professional advice sighted by the Society states that the slope of the land is such that under existing zoning this in any event approximates what would be allowed.



Annexure 8

Contact: James Sellwood
Phone: 02 8575 4122
Email: james.sellwood@planning.nsw.gov.au
Postal: GPO Box 39 SYDNEY NSW 2001

Our ref: PP_2015_WOOLL_001_00 (15/01631)

Mr Gary James
General Manager
Woollahra Municipal Council
PO Box 61
DOUBLE BAY NSW 1360

Dear Mr James

Planning Proposal to amend Woollahra Local Environmental Plan 2014

I am writing in response to Council's letter dated 16 December 2014, requesting a Gateway determination for a planning proposal at 83 and 83A Yarranabbe Road, Darling Point, which seeks to amend the floor space ratio, building height and foreshore building line controls on the site.

As delegate of the Minister for Planning, I have determined that this planning proposal should proceed subject to the conditions in the attached Gateway determination.

The Minister delegated plan making powers to councils in October 2012. It is noted that Council has now accepted this delegation, and has requested delegation of this planning proposal. I have considered the nature of the proposal and have decided to issue an authorisation for Council to exercise delegation to make this plan.

The amending Local Environmental Plan is to be finalised within **9 months** of the week following the date of the Gateway determination. Council should aim to commence the exhibition of the planning proposal as soon as possible. Council's request to draft and finalise the Local Environmental Plan should be made directly to Parliamentary Counsel's Office **6 weeks** prior to the projected publication date. A copy of the request should be forwarded to the Department of Planning and Environment for administrative purposes.

The State Government is committed to reducing the time taken to complete Local Environmental Plans by tailoring the steps in the process to the complexity of the proposal, and by providing clear and publicly available justification for each plan at an early stage. In order to meet these commitments, the Minister may take action under section 54(2)(d) of the Act if the time frames outlined in this determination are not met.

If you have any queries in regard to this matter, I have arranged for Mr James Sellwood of the Department's Metropolitan Region (East) branch to assist you. Mr Sellwood can be contacted on 02 8575 4122.

Yours sincerely

 23/1/15
Lee Mulvey
Director
Metropolitan Delivery (CBD)
Planning Services

Delegate of the Minister for Planning

Encl:
Gateway Determination
Written Authorisation to Exercise Delegation
Delegated Plan Making Reporting Template



Gateway Determination

Planning proposal (Department Ref: PP_2015_WOOLL_001_00): to amend the floor space ratio, building height and foreshore building line controls for 83 and 83A Yarranabbe Road, Darling Point.

I, the Director, Metropolitan Delivery (CBD) at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(2) of the *Environmental Planning and Assessment Act 1979* ("the Act") that an amendment to the Woollahra Local Environmental Plan 2014 to amend the floor space ratio, building height and foreshore building line controls for 83 and 83A Yarranabbe Road, Darling Point, should proceed subject to the following conditions:

1. Prior to undertaking public exhibition, Council is to update the planning proposal to include Site Identification, Height of Buildings, Floor Space Ratio, and Foreshore Building Line Maps which clearly show both the existing and proposed controls for the site.

Note: Maps should be prepared to the standards identified in Standard Technical Requirements for LEP Maps (Department of Planning and Environment 2013).

2. Community consultation is required under sections 56(2)(c) and 57 of the EP&A Act as follows:
 - (a) the planning proposal must be made publicly available for a minimum of **14 days**; and
 - (b) the relevant planning authority must comply with the notice requirements for public exhibition of planning proposals and the specifications for material that must be made publicly available along with planning proposals as identified in section 5.5.2 of 'A Guide to Preparing LEPs' (Department of Planning and Environment 2013).
3. Consultation is required with Transport for NSW – Roads and Maritime Services under section 56(2)(d) of the EP&A Act. The agency is to be provided with a copy of the planning proposal and any relevant supporting material, and given at least **21 days** to comment on the proposal, or to indicate that they will require additional time to comment.

Roads and Maritime Services may request additional information or additional matters to be addressed in the planning proposal. The planning proposal is to be revised to address submissions from the agency, copies of any submissions must be included with the revised proposal.

WOOLLAHRA PP_2015_WOOLL_001_00 (15/01631)

4. Prior to undertaking public exhibition Council is to consult with the Foreshores and Waterways Planning and Development Advisory Committee under clause 30(1) of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Council planning proposal is to be revised to address any submission received from the Advisory Committee within 30 days after the date on which the planning proposal was forwarded to the Committee.

5. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the EP&A Act. This does not discharge Council from any obligation it may otherwise have to conduct a public hearing (for example, in response to a submission or if reclassifying land).
6. Prior to undertaking public exhibition, the planning proposal is to be revised to demonstrate consistency with 'A Plan for Growing Sydney', released on 14 December 2014.
7. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.
8. A written authorisation to exercise delegation under section 59 of the Environmental Planning and Assessment Act, 1979 is issued to Council in relation to the planning proposal.

Dated *23rd* day of *January* 2015.


Lee Mulvey
Director
Metropolitan Delivery (CBD)
Planning Services

Delegate of the Minister for Planning

WOOLLAHRA PP_2015_WOOLL_001_00 (15/01631)



WRITTEN AUTHORISATION TO EXERCISE DELEGATION

Woollahra Municipal Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979* that are delegated to it by instrument of delegation dated 14 October 2012, in relation to the following planning proposal:

Number	Name
PP_2015_WOOLL_001_00	Planning proposal to amend the floor space ratio, building height and foreshore building line controls for 83 and 83A Yarranabbe Road, Darling Point

In exercising the Minister's functions under section 59, the Council must comply with the Department's "A guide to preparing local environmental plans" and "A guide to preparing planning proposals".

Dated 23 January 2015


Lee Mulvey
Director
Metropolitan Delivery (CBD)
Planning Services

Delegate of the Minister for Planning

WOOLLAHRA PP_2015_WOOLL_001_00 (15/01631)

Planning Proposal to amend the floor space ratio, building height and foreshore building line controls for 83 and 83A Yarranabbe Road, Darling Point

Reporting template for delegated Local Environmental Plan amendments

Notes:

- Planning proposal number will be provided by the Department of Planning and Environment following receipt of the planning proposal
- The Department of Planning and Environment will fill in the details of Tables 1 and 3
- The Relevant Planning Authority is to fill in details for Table 2
- If the planning proposal is exhibited more than once, the Relevant Planning Authority should add additional rows to **Table 2** to include this information
- The Relevant Planning Authority must notify the relevant contact officer in the regional office in writing of the dates as they occur to ensure the publicly accessible Plan Making Tracking System is kept up to date
- A copy of this completed report must be provided to the Department of Planning and Environment with the Relevant Planning Authority's request to have the Local Environmental Plan (the Plan) notified

Table 1 – To be completed by Department of Planning and Environment

Stage	Date/Details
Planning Proposal Number	PP_2015_WOOLL_001_00
Date Sent to Department under s56	16/12/14
Date considered at LEP Review Panel (if applicable)	N/A
Gateway determination date	

Table 2 – To be completed by the RPA

Stage	Date/Details	Notified Reg Off
Dates draft Plan exhibited		
Date of public hearing (if held)		
Date sent to PCO seeking Opinion		
Date Opinion received		
Date Council Resolved to Adopt Plan		
Date Plan made by GM (or other) under delegation		
Date sent to the Department requesting notification		

Table 3 – To be completed by Department of Planning and Environment

Stage	Date/Details
Notification Date and details	

Additional relevant information:



Contact: James Sellwood
Phone: 02 8575 4122
Email: james.sellwood@planning.nsw.gov.au
Postal: GPO Box 39 SYDNEY NSW 2001
Our ref: PP_2015_WOOLL_001_00 (15/01631)

Mr Gary James
General Manager
Woollahra Municipal Council
PO Box 61
DOUBLE BAY NSW 1360

Dear Mr James

Planning Proposal PP_2015_WOOLL_001_00 – Alteration of Gateway Determination

I am writing in response to Council's letter dated 4 February 2015, requesting an amendment to the Gateway determination for the planning proposal at 83 and 83A Yarranabbe Road, Darling Point.

As delegate of the Minister for Planning, I have determined to alter the Gateway Determination dated 23 January 2015 for PP_2015_WOOLL_001_00. The Alteration to Gateway Determination is attached.

If you have any queries in regard to this matter, I have arranged for Mr James Sellwood of the Department's Metropolitan Delivery (CBD) branch to assist you. Mr Sellwood can be contacted on 02 8575 4122.

Yours sincerely


Lee Mulvey
Director
Metropolitan Delivery (CBD)
Planning Services
24/2/15

Delegate of the Minister for Planning

Encl:
Alteration of Gateway Determination

Department of Planning and Environment
23-33 Bridge Street Sydney NSW 2000 | GPO Box 39 Sydney NSW 2001 | T 02 9228 6111 | F 02 9228 6445 | www.planning.nsw.gov.au



**Planning &
Environment**

Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2015_WOOLL_001_00): to amend the floor space ratio, building height and foreshore building line controls for 83 and 83A Yarranabbe Road, Darling Point.

I, the Director, Metropolitan Delivery (CBD) at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(7) of the *Environmental Planning and Assessment Act 1979* (the Act) to alter the Gateway determination dated 23 January 2015, for an amendment to the Woollahra Local Environmental Plan 2014 to amend the floor space ratio, building height and foreshore building line controls for 83 and 83A Yarranabbe Road, Darling Point, as follows:

1. Delete Condition 4:

"Prior to undertaking public exhibition Council is to consult with the Foreshores and Waterways Planning and Development Advisory Committee under clause 30(1) of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.

Council planning proposal is to be revised to address any submission received from the Advisory Committee within 30 days after the date on which the planning proposal was forwarded to the Committee."

Dated 24th day of February, 2015.


Lee Mulvey
Director
Metropolitan Delivery (CBD)
Planning Services

Delegate of the Minister for Planning

WOOLLAHRA PP_2015_WOOLL_001_00 (15/01631)



Mr Gary James
General Manager
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

15/18265

Dear Mr James

Planning Proposal PP_2015_WOOLL_001_00 – Alteration of Gateway Determination

I refer to your request of 10 December 2015 seeking an extension of time to complete Planning Proposal to amend the floor space ratio, building height and foreshore building line controls for 83 and 83A Yarranabbe Road, Darling Point. The proposal was to be completed by 30 October 2015.


I have determined as delegate of the Minister for Planning, in accordance with section 56(7) of the *Environmental Planning and Assessment Act 1979*, to alter the Gateway determination dated 23 January 2015 for PP_2015_WOOLL_001_00. The Alteration of the Gateway Determination is enclosed.

The extension will allow Council and the proponent to undertake further work before the proposal is further considered by Council.

Please be advised that the remainder of the conditions of the gateway determination continue to apply.

If you have any queries in regard to this matter, please contact Mr Wayne Williamson of the Department of Planning and Environment. Mr Williamson can be contacted on 02 9228 6585.

Yours sincerely


Lee Mulvey
Director, Metropolitan (CBD)
Planning Services



Alteration of Gateway Determination

Planning proposal (Department Ref: PP_2015_WOOLL_001_00)

I, Director, Metropolitan (CBD) at the Department of Planning and Environment as delegate of the Minister for Planning, have determined under section 56(7) of the *Environmental Planning and Assessment Act 1979* to alter the Gateway determination dated 23 January 2015 for the proposed amendment to Woollahra Local Environmental Plan 2014 as follows:

Delete:

condition 7 "The timeframe for completing the LEP is to be 9 months from the week following the date of the Gateway determination."

And replace with:

a new condition 7 "The timeframe for completing the LEP is by 30 June 2016."

Dated 14th day of January 2016.


Lee Mulvey
Director, Metropolitan (CBD)
Planning Services

Delegate of the Minister for Planning

Political Donations – matters to be considered by Councillors at Meetings

