



# Urban Planning Committee

**Agenda:** *Urban Planning Committee*

**Date:** *Monday 10 February 2014*

**Time:** *6.00pm*

### **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

6 February 2014

To: Her Worship the Mayor, Councillor Toni Zeltzer ex-officio  
Councillors Katherine O'Regan (Chair)  
Ted Bennett  
Anthony Boskovitz  
Luise Elsing (Deputy Chair)  
Greg Levenston  
Matthew Robertson

Dear Councillors

### **Urban Planning Committee Meeting – 10 February 2014**

In accordance with the provisions of the Local Government Act 1993, I request your attendance at a Meeting of the Council's **Urban Planning Committee** to be held in the **Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Monday 10 February 2014 at 6.00pm.**

Gary James  
General Manager

# **Additional Information Relating to Committee Matters**

**Site Inspection**

**Other Matters**

## Meeting Agenda

<b>Item</b>	<b>Subject</b>	<b>Pages</b>
1	Leave of Absence and Apologies	
2	Late Correspondence Note Council resolution of 27 June 2011 to read late correspondence in conjunction with the relevant Agenda Item	
3	Declarations of Interest	

### **Items to be Decided by this Committee using its Delegated Authority**

D1	Confirmation of Minutes of Meeting held on 16 December 2013	1
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### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	Planning Proposal for 529 – 536 Glenmore Road, Edgecliff – 1064.G Plan Prop 2	2
R2	Interim Heritage Orders - 1073.G	22

**Item No:** D1 Delegated to Committee  
**Subject:** **Confirmation of Minutes of Meeting held on 16 December 2013**  
**Author:** Les Windle, Manager – Governance  
**File No:** See Council Minutes  
**Reason for Report:** The Minutes of the Meeting of Monday 16 December 2013 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 16 December 2013 be taken as read and confirmed.

Les Windle  
Manager - Governance

**Item No:** R 2 Recommendation to Council

**Subject:** **PLANNING PROPOSAL FOR 529-539 GLENMORE ROAD, EDGECLIFF**

**Author:** Anne White—Senior Strategic Planner

**File No:** 1064.G Plan Prop 2

**Reason for Report:** To report on a planning proposal prepared by URBIS for 529-539 Glenmore Road, Edgecliff.

**Recommendation:**

- A. That the planning proposal prepared by URBIS for 529-539 Glenmore Road, Edgecliff as summarised in the report to the Urban Planning Committee meeting of 10 February 2014 is not supported. In summary the proposal:
- is not in context with the character of the surrounding buildings,
  - will not reflect the desired future character of the Paddington heritage conservation area,
  - does not provide a suitable built form transition between the site and the surrounding areas,
  - has significant and unreasonable impacts on 161 New South Head Road.

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**1. Summary**

A planning proposal for 529-539 Glenmore Road, Edgecliff was submitted to Council by Urbis on behalf of the Edgecliff Bistro Pty Ltd. The planning proposal seeks to amend Woollahra Local Environmental Plan 1995 (WLEP 1995) by increasing the height and floor space ratio controls to facilitate a ten storey residential flat building on the site. A summary of the proposed controls are as follows:

- Increase the height from 9.5m (3 storeys) to 34m (10 storeys)
- Increase the floor space ratio from 1.5:1 to 6:1
- Rezone to R3 Medium Density Residential in Draft WLEP 2013

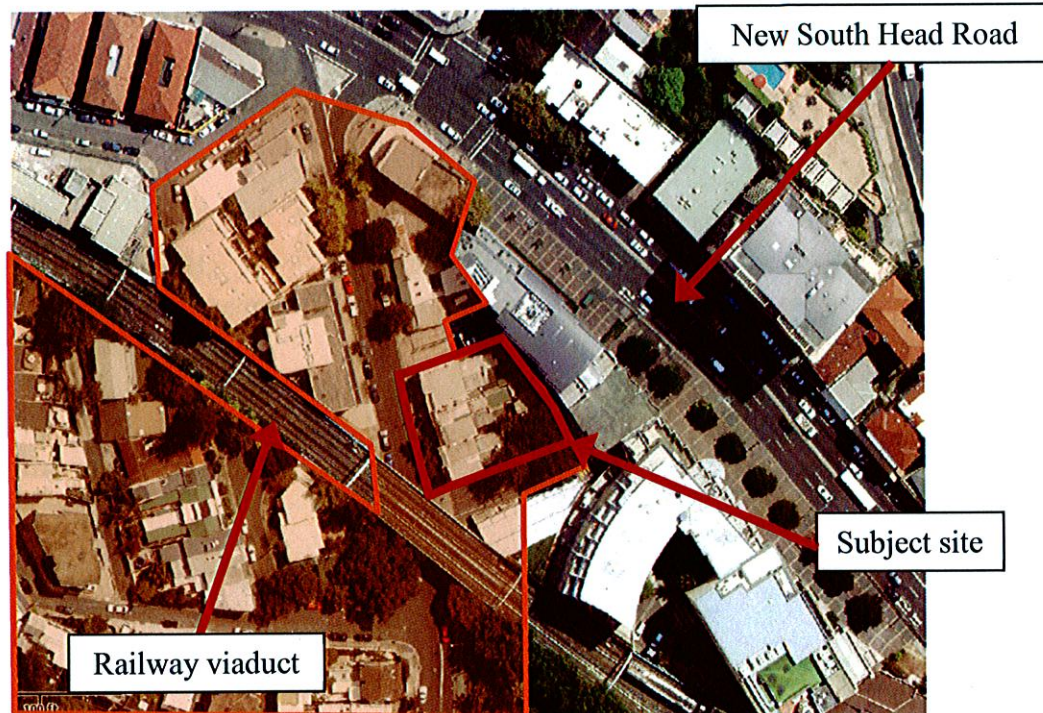
We do not support the planning proposal because in its context, the height and floor space ratio controls are excessive and the proposal is inconsistent with heritage conservation principles. In particular:

- The proposal is not in context with the character of the surrounding buildings within the heritage conservation area
- Increased development potential will not reflect the desired future character of the heritage conservation area
- Controls do not provide a suitable built form transition between the site and the surrounding low scale residential areas to the south within the heritage conservation area
- The proposal has significant and unreasonable impacts on solar access to 161 New South Head Road and views from that property.

## 2. The site and context

The site to which this planning proposal relates is located in the south-western part of the Edgecliff Commercial Centre, and is located in the Paddington Heritage Conservation Area (HCA) (see **Figure 1**). It is immediately to the north of the railway viaduct and is approximately 450m walking distance west of the Edgecliff bus and train interchange.

The site is rectangular with a frontage to Glenmore Road of 27.67m, and a total area of 722m<sup>2</sup>.



*Figure 1: Location of 529-539 Glenmore Road, Edgecliff, and the boundary of the Paddington Heritage Conservation Area is shown in Orange.*

The site consists of six, two storey terraced houses which front Glenmore Road (see **Figure 2**) which are all in one ownership. Three of the houses are occupied as dwellings, while Nos 533-537 are used as a brothel.

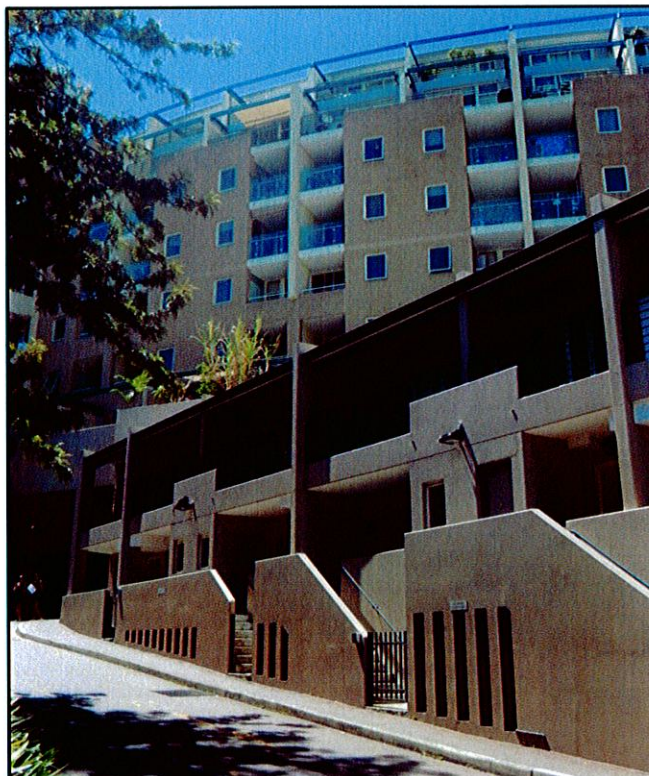


*Figure 2: The subject site at 529-539 Glenmore Road, Edgecliff.*

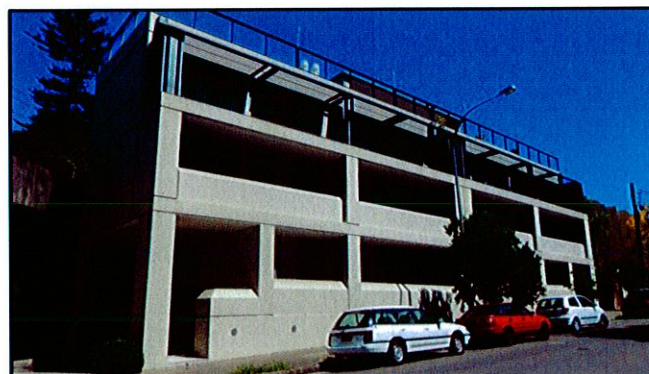




*Figure 3: Adjoining properties to the north at 543-549 Glenmore Road, Edgecliff*



*Figure 4: 161 New South Head Road.*



*Figure 5: 488 Glenmore Road.*

Immediately to the north (and within the Paddington HCA) there are a series of one and two storey residential and commercial buildings (see **Figure 3**).

To the north/ east, addressing New South Head Road is a 4/5 storey commercial building.

To the south east of the subject site is 161 New South Head Road. This consists of two storey townhouses at its front. To the rear of the building, and addressing New South Head road is an 8 storey mixed use building with commercial uses on the ground level, and residential uses above (see **Figure 4**).

Further to the south is the railway viaduct which is approximately 2-3 storeys in height.

To the west of the site, on the other side of the road at 488 Glenmore Rd is a 3/4 storey residential flat building (see **Figure 5**).

### 3. The planning proposal

The planning proposal submitted by URBIS seeks to amend WLEP 1995 by increasing the floor space ratio to facilitate a ten storey residential development on the site. It also seeks to increase the height control (the height control for this site is currently in the Edgecliff Commercial Centre Development Control Plan (DCP) 1995).

The subject site is currently zoned 3(b) Special Business in WLEP 1995. A residential flat building is permissible with consent in this zone. As this planning proposal is seeking to facilitate a residential flat building, it is not recommending a change in zone under WLEP 95.

In Draft Woollahra Local Environmental Plan 2013 (Draft WLEP 2013) zone 3(b) Special Business is translated into the B4 Mixed Use zone. In the B4 Mixed Use zone residential flat buildings are not permitted, but “shop top housing” is permissible. The definition of shop top housing is:

*Shop top housing means one or more dwellings located above ground floor retail premises or business premises.*

Permitting shop top housing in this zone facilitates additional residential dwellings above the ground floor, but requires an active or business use on the ground floor. This is to comply with one of the aims of the B4 Mixed Use zone: *To provide active ground floor uses to create vibrant centres.*

As the planning proposal seeks to facilitate a residential flat building (with no commercial use on the ground floor), the planning proposal requests that in Draft WLEP 2013 the site is rezoned from B4 Mixed Use to R3 Medium Density Residential. A residential flat building is permissible in the R3 Medium Density zone.

A summary of the current and proposed controls are below:

	WLEP 1995	Edgecliff Commercial Centre DCP	Draft WLEP 2013	Planning proposal
<b>Zone</b>	3(b) Special Business	–	B4 Mixed Use	No change in WLEP 1995 Rezone to R3 Medium Density Residential in Draft WLEP 2013
<b>FSR</b>	1.5:1	–	1.5:1	6:1
<b>Height</b>	–	9.5m at the front 12m at the rear	9.5m	34m

Rothe Lowman Architects prepared a concept design which is included with the planning proposal which demonstrates what could be built on the site under the proposed controls. This concept design, shown below in **Figures 6 and 7**, indicates a built form of ten storeys addressing Glenmore Road. The proposal indicates that the façade and side walls of the existing terraces would be retained.



*Figure 6: Concept drawing - view of the frontage to Glenmore Road*



*Figure 7: Concept drawing – aerial view looking east over the site towards the Edgecliff bus and train interchange*

It is noted that the applicant's previous consultant (JBA) sought preliminary advice from Council in 2012 on earlier iterations of this proposal. An email prepared by the Council's Director of Planning raised serious concerns with the overall strategic merit of this proposal (see **Annexure 1**). Issues raised included the bulk and scale, its impacts on the surrounding properties and its impacts on the values and philosophies contained in the Paddington HCA DCP.

Attached at **Annexure 2** is an addendum to the planning proposal prepared URBIS, which they provided in response to the previous advice by the Director of Planning. We have taken this addendum into account in preparing our response to the planning proposal.

#### **4. Pre-gateway review process**

On 2 November 2012 the *Department of Planning and Infrastructure* (DPI) introduced a new review mechanism for planning proposals. This is called a pre-gateway review. It allows an applicant to ask the DPI's Regional Panel to review Council's decision where Council does not support a planning proposal or fails to indicate support within 90 days.

If Council does not support this planning proposal, the applicant has the option to use the new pre-gateway review process and request the DPI to reconsider its strategic merit. .

#### **5. Review of the planning proposal**

In June 2010 Council staff consulted on 24 opportunity sites around the LGA. These were identified for their potential to meet the housing targets set for Woollahra by the State Government subject to planning changes. This site was not one of the 24 opportunity sites.

The opportunity sites were identified following critical planning analysis and staff identified nine urban design and planning criteria to assess the suitability of the sites. We have reviewed this planning proposal against these nine urban design and planning criteria to determine the strategic merit of this proposal.

The nine criteria are:

- 1. Increased development potential will be in context with the existing character of surrounding development*
- 2. Increased development potential will reflect the desired future character of the area*
- 3. Increased development potential is consistent with an adjoining Council's control (for land on the LGA boundary)*
- 4. Controls provide a suitable built form transition between adjoining zones (e.g. between low and medium density residential zones)*
- 5. Topography secures reasonable solar access and views to adjoining areas*
- 6. Lot orientation secures reasonable solar access and views within the site and to adjoining areas*
- 7. Proximity to centres to facilitate access to public transport and services*
- 8. Proximity to public transport nodes*
- 9. Proximity to a main road*

The proposal satisfies criteria 3, 7, 8 and 9 and so we have focused our assessment below on criteria 1, 2, 4, 5 and 6.

### 5.1 Assessment against Criterion 1

**Criterion 1:** Increased development potential will be in context with the existing character of surrounding development.

We have reviewed the planning proposal's consistency with Criterion 1 using the following sub-headings:

- Context
- Height
- Floor space ratio
- Zone

#### Context

#### Applicant's proposal

The 'Indicative Design Concept Analysis' includes an Urban Context and Site Analysis drawing. **Figure 8** below is an extract from this drawing, showing the height of the existing surrounding development.

The concept design in the planning proposal seeks to maintain the existing facades and side walls of the terraced buildings, demolish the rears and facilitate a ten storey residential flat building behind.

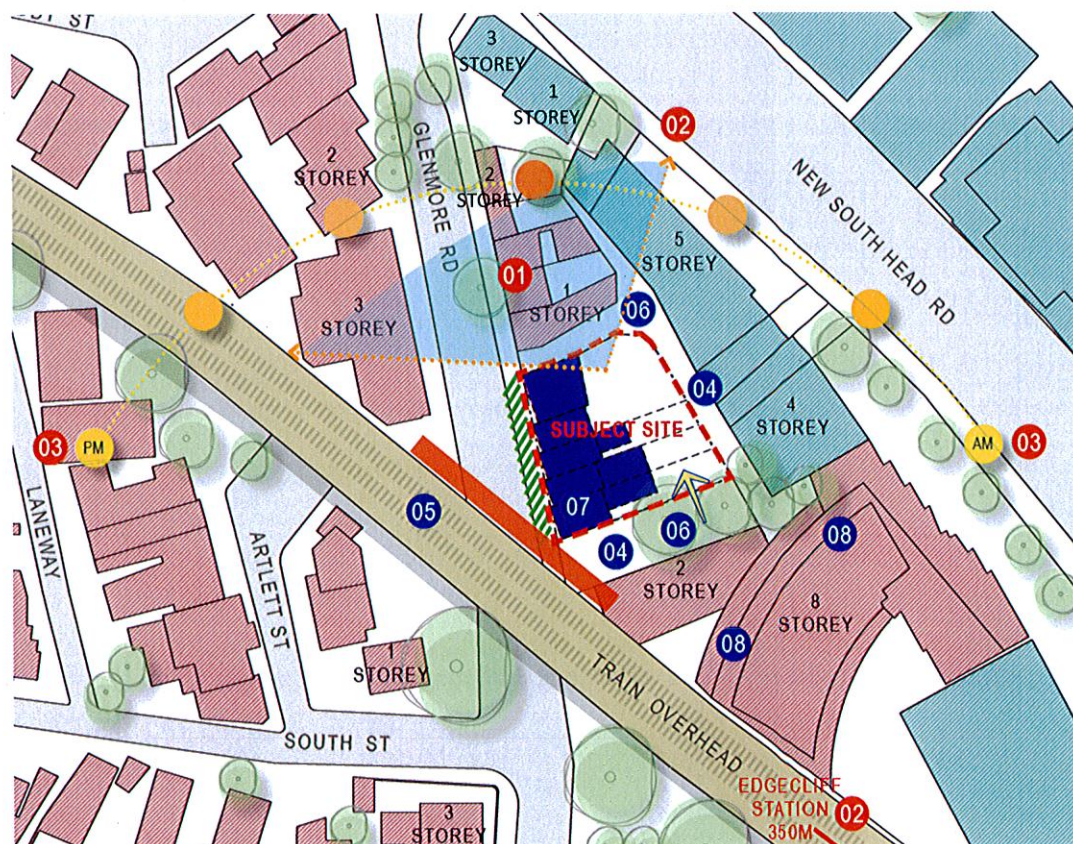


Figure 8: Extract from the Urban Context and Site Analysis on p.9 of the planning proposal – Indicative Design Concept Analysis, with some additional information regarding storey heights added

The Heritage Impact Statement (HIS) submitted with the planning proposal identifies that the impacts of the proposed concept plan on the integrity and heritage significance of the Paddington HCA is considered to be minimal and acceptable. The HIS concludes that:

*The site is unique within the heritage conservation area as it is located on the northern boundary of the conservation area separated by the railway overpass outlined in picture 5 and closely surrounded by a combination of contemporary high rise commercial and residential development. Due to this unique location and the bulk and scale of the surrounding development and the railway overpass the area is viewed aesthetically as a small precinct segregated by the overpass from the main conservation area. Therefore we have assessed the development as appropriate within the conservation area due to the particular uniqueness of the immediate surrounds and therefore lack of negative impact to the conservation area as a whole.<sup>1</sup>*

### Our response

Our assessment does not support the applicant's position. The proposed increase in height and FSR is not in context with the character of the surrounding buildings within the HCA.

As **Figure 8** identifies, the character of the existing surrounding buildings varies from single storey terraces to the north to an eight storey apartment building to the south. Those higher buildings, such as the eight storey building at 161 New South Head Road (see **Figure 4**), are not located in the heritage conservation area and their primary address is to New South Head Road. New South Head Road is a State road and taller buildings are appropriate in that context.

Rather, the subject site draws its relationship from the properties in Glenmore Road and the Paddington HCA which consists of only one, two and three storey buildings. The site's context is not set by those properties located along New South Head Road.

Paddington is a unique urban area of outstanding national heritage significance, which Council is committed to protecting. In order to protect this heritage significance the detailed controls in the Paddington HCA DCP are consistently applied. The following extract is taken from the Paddington HCA DCP 2008:

*Paddington retains many significant types of buildings that represent all phases of the suburb's historical development. These buildings types range from modest, small scale workers' cottages, to remnant examples of former gentry mansions, boom style middle-class terrace houses, apartment blocks and contemporary infill development all of which are set in a varied network of streets, lanes and pedestrian access ways which reflect the phases of subdivision and development.<sup>2</sup>*

The development in and around the subject site along Glenmore Road contains examples of most of the building types listed in this extract including:

- Modest, small scale workers cottages(to the north at 543-547 Glenmore Road)
- Boom style middle-class terrace houses (the subject site)
- Apartment blocks (on the opposite side at 494 Glenmore Road)
- Contemporary infill development (to the north west at 494-496 Glenmore Road)

<sup>1</sup> URBIS, November 2013, Planning Proposal 529 Glenmore Road, Edgecliff: Appendix A Heritage Impact Statement, Part 6 – Conclusion and Recommendations (paragraph 4)

<sup>2</sup> Woollahra Council, 2008, Paddington Heritage Conservation Area DCP, Part 2 – Understanding the context, p.13

Further, this unique area of Paddington is specifically identified in the *Paddington HCA DCP 2008* (p.122).

*Single storey buildings, in particular the timber cottages, are significant because of their rarity and their historical association with the evolution of the early Paddington village and the artisan community that developed at the junction of Glenmore Road and New South Head Road.*

The mix of building types around this part of Glenmore Road is a good example of the unique and varied built form of the Paddington HCA. The heritage response prepared by Council's Strategic Heritage Officer (**Annexure 3**) identifies that the existing terrace<sup>3</sup> on the subject site continues to make an important contribution to the significance of the HCA. In its conclusion the heritage response states:

*The proposal is unacceptable and would have an unsatisfactory impact on the subject properties on Glenmore Road and the Paddington Heritage Conservation Area.*

## Height

### Applicant's proposal

The applicant is proposing a maximum building height of 34 metres (estimated ten storey building). The planning proposal (p.43) identifies that the proposal is consistent with the built form and scale of existing residential tower developments in Edgecliff Town Centre.

### Our response

The site's context is drawn from the adjoining buildings along Glenmore Road which are in the Paddington HCA. These buildings are only one, two and three storeys high. The site's context should not be set by properties located along New South Head Road, or residential towers located elsewhere in the centre.

In preparing the recently exhibited Draft WLEP 2013, this area was reviewed in detail in order to establish appropriate height controls which match the height of existing buildings and protect the heritage significance of the HCA. Where maximum building height controls are greater than the existing buildings we have reduced the height controls in Draft WLEP 2013.

For example, in WLEP 1995 the height control for the single storey cottages at 543-547 Glenmore Road is 9.5m. Under Draft WLEP 2013 we have reduced the height control to 6.5m to recognise the existing predominant single storey built form.

**Figure 9** below identifies that the proposed height controls along Glenmore Road are a mixture of 6.5m (1-2 storey), 9.5m (2-3 storeys) and 12m in Draft WLEP 2013. This reflects the intricate pattern of existing heights within this part of the Paddington HCA.

<sup>3</sup> Terrace is defined in the Paddington HCA DCP 2008 "Terrace is a row of three or more buildings which are linked by common party walls and which share a similar design and form".

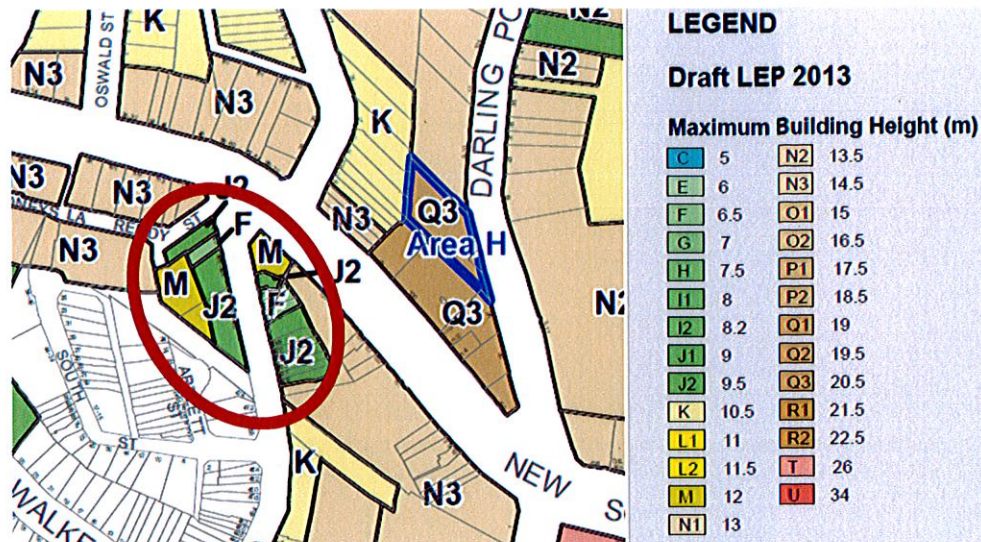


Figure 9: Extract from the Maximum Building Height Map of Draft WLEP 2013

The subject site draws its relationship from the properties in Glenmore Road and the Paddington HCA which consist of only one, two and three storey buildings. The context of the site is not drawn from tower developments in the centre. The proposal for a 34m or ten storey building is significantly higher than the adjoining buildings and is out of context with the existing and surrounding character. The existing control of 9.5m is appropriate.

#### Floor space ratio

#### Applicant's proposal

The applicant proposes a maximum FSR of 6:1 for the site, based on a ten storey residential flat building with an indicative site coverage close to 100%.

#### Our response

An FSR of 6:1 for a residential flat building is excessive for the site, and for the surrounding area. The highest FSR control within the whole of the Edgecliff Centre is 2.5:1, and this is in the Edgecliff Commercial Core.

The Residential Flat Design Code (2002) which is a guide to *State Environmental Planning Policy 65 (Design Quality of Residential Flat Development)* (SEPP 65) recommends that buildings are appropriately separated to maintain internal amenity by maintaining visual and acoustic privacy, providing daylight access to apartments and provide shared open spaces.

Table 1 below summarises the building separation recommendations in SEPP 65.



*Table 1: SEPP 65 recommended building separation*

For a building:	Separation is:
Five to eight storeys/ up to 25m	<ul style="list-style-type: none"> <li>• 18m between habitable rooms/balconies</li> <li>• 13m between habitable rooms/balconies and non-habitable rooms</li> </ul>
Nine storeys and above / over 25m	<ul style="list-style-type: none"> <li>• 24 m between habitable rooms/balconies</li> <li>• 18m between habitable rooms/balconies and non-habitable rooms</li> </ul>

The concept plans depict a building with an FSR four times greater than the current FSR control that applies to the site. As a consequence, the building does not comply with most of these separation requirements. Simply to meet the SEPP 65 separation guidelines, the building bulk would need to be reduced by approximately 30%. However, this would still not take into account requirements for deep soil landscaping, building articulation or its impact on the HCA.

In preparing the recently exhibited Draft WLEP 2013, we comprehensively reviewed the FSR controls for the whole of the LGA. To establish practical and reasonable FSR controls we undertook urban design modelling. The modelling used the maximum building heights in Draft WLEP 2013 in conjunction with DCP setback controls.

The outcome of this work created a suite of baseline FSRs that can be applied to residential development. The baseline height and FSR controls are shown in **Table 2** below.

*Table 2: Draft WLEP 2013 baseline height and FSR controls*

Storeys	Height (m)	Baseline FSR
2	7	0.65:1
3	10.5	1:1
4	13.5	1.3:1
5	16.5	1.55:1
6	19.5	1.55:1
7	22.5	1.55:1
7-8	26	1.55:1

As the table above identifies, in Draft WLEP 2013 the baseline FSR for residential development is capped at 1.55:1. This is to recognise that taller buildings should be further setback to minimise their perceived bulk and scale, provide amenity to the site and the surrounding land, and also provide a well-articulated building.

The proposed FSR of 6:1 is excessive for the site and the surrounding context. The current FSR control of 1.5:1 is appropriate and reflects the bulk of the current buildings on the site.

Zone

### Applicant's proposal

The applicant proposes Zone R3 Medium Density Residential to apply under Draft WLEP 2013, and proposes no amendment to the zone in WLEP 1995. The planning proposal on p.29 identifies that the overall objective is:

*To obtain the necessary rezoning of the subject site to facilitate its development for a ten storey residential flat accommodation within the Edgecliff Town Centre proximate to high frequency public transport networks and key services. The development will contribute to the achievement of strategic housing targets for the Woollahra LGA.*

### Our response

The site is currently zoned 3(b) Special Business in WLEP 1995, and this was translated into the B4 Mixed Use zone in Draft WLEP 2013 (see **Figure 10** for an extract of the Draft WLEP 2013 map).

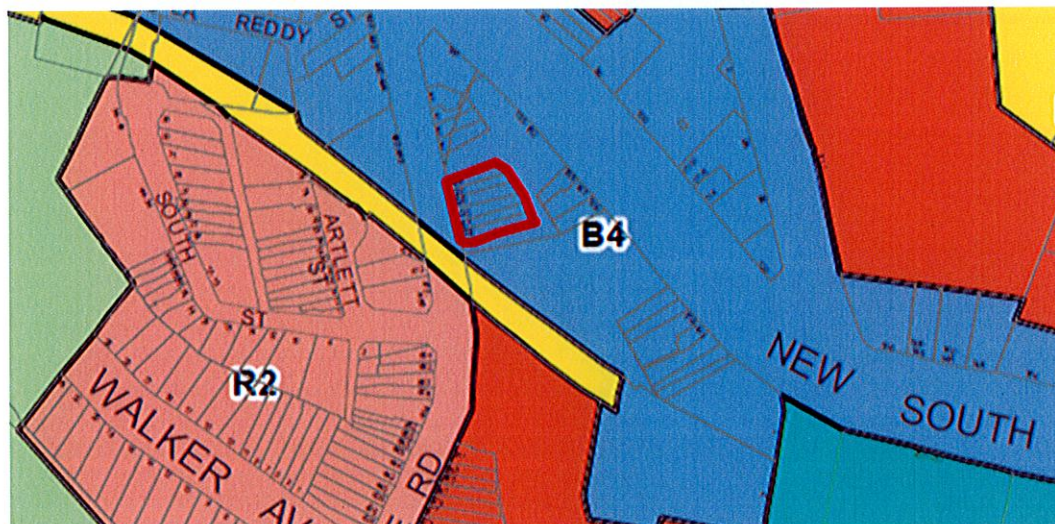


Figure 10: Extract from the Land Zoning Map of Draft WLEP 2013 with the subject site outlined in red

As shown in **Figure 10**, the railway viaduct to the south of the subject site (zoned SP2 Rail Infrastructure facilities in Draft WLEP 2013) effectively serves as the southern boundary of the Edgecliff Commercial Centre.

We do not support a spot rezoning to facilitate a residential flat building, which would introduce a residential zone to the north of the railway viaduct in Draft WLEP 2013. This northern portion of Glenmore Road provides an active mix of uses, and the business zone is appropriate in this location.

**Our finding:** The proposal to amend the zone and increase height and FSR is not in context with the character of the surrounding buildings within the HCA.

## 5.2 Assessment against Criterion 2

**Criterion 2:** Increased development potential will reflect the desired future character of the area.

### Applicant's proposal

The heritage impact statement (HIS) submitted with the planning proposal identifies that the proposed controls will not have any adverse effects on the heritage significance and character of the Paddington HCA. In relation to this matter, the HIS concludes that:

*The subject site has been assessed and it is concluded that the front façade of the extant buildings are of heritage significance as it contributes well to the Heritage Conservation Area (HCA). However, its internal elements have been significantly modified and or removed (it is also noted that several windows and doors to the facades are also recent) and therefore are of no significance. The proposal will retain the front and side facades and contain a contemporary building set back behind and incorporating the terraces. The mass has been set back to minimise the perceived bulk of the building and will not detrimentally affect the HCA.*<sup>4</sup>

### Our response

The heritage response prepared by Council's Strategic Heritage Officer (at Annexure 3) identifies:

*The terrace is located in one of the oldest parts of Paddington and continues to make an important contribution to the significance of the heritage conservation area. The integrity of the group including existing original fabric, detailing, layout and form provides important evidence of the development of Victorian terraces in Paddington.*

*The proposal to retain only the facades of the significant terraces and to place a ten storey contemporary building behind them ridicules the significance of groups of Victorian terraces and the importance of the conservation area.*

*The proposal relies on the concept of 'facadism' as a heritage argument for the new development to be acceptable. This does not reflect heritage best practice nor is it in accordance with the philosophies set out in the Burra Charter*<sup>5</sup>.

The desired future character of the Paddington HCA is identified on p.16 of the Paddington HCA DCP, and this consists of 11 overarching principles. The planning proposal fails to comply with five of these principles (see Table 3 below). The controls in the planning proposal will not reflect the desired future character of the Paddington HCA.

<sup>4</sup> URBIS, November 2013, Planning Proposal 529 Glenmore Road, Edgecliff: Appendix A Heritage Impact Statement, Part 6 – Conclusion and Recommendations (paragraph 2)

<sup>5</sup> The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, 2013. The Burra Charter provides guidance for the conservation and management of places of cultural significance. It contains principles and procedures for the conservation of heritage places.

Table 3: Assessment against the overarching principles of the Paddington HCA DCP

Principle	Comment
1. Retains the unique National heritage significant of Paddington and recognises it as a rare and distinctive urban area.	<p>By proposing a ten storey building behind the existing façade, the proposed planning controls overwhelm and dominate the existing terraces and the surrounding buildings within the conservation area. Due to its height and bulk the proposal will have unreasonable impacts on the adjoining buildings.</p> <p>The proposal undermines and ignores the rare and distinctive urban area of the Paddington HCA.</p>
2. Retains and promotes evidence of the historical development of the area and enables interpretation of that historical development.	<p>Council's heritage response at <b>Annexure 3</b> identifies that the heritage significance of the group of Victorian terraces extends beyond the front facades.</p> <p>The proposal completely disregards the evidence of the historical development of the area by combining the terraces into a single site, and dwarfing them with a ten storey building behind.</p> <p>The addendum at <b>Annexure 2</b> identifies that the building line has been set back by at least two metres from the parapet line to provide greater visual emphasis to the heritage facades and reduce the built form impact to the three storey residential dwellings opposite the site.</p> <p>In response to this, Council's heritage response identifies: <i>The argument that setting the new building back from the façade emphasises the heritage significance or ameliorates the impact of the new building on the conservation area is fallacious. The two metre setback of the proposed building does very little to relieve its impact on the heritage significance of the conservation area. The retention of the facades only has a detrimental impact on the heritage significance of the group and its contribution to the conservation area.</i></p> <p><i>Note:</i> Whilst the indicative concept design accompanying the planning proposal retains the existing facades, should the amendments to the controls go ahead, there is no LEP control that could require their retention as part of a future redevelopment.</p>
3. Retains the cohesive character evident in the low scale, high density built form.	The proposal for a ten storey building does not retain the low scale, high density cohesive character.
4. Retains distinctive features such as... subdivision patterns and buildings which follow the landform and the distinctive patterns of terrace house groups.	By consolidating the site, and proposing a ten storey residential flat building with the existing terraces retained, the proposal completely disregards the existing subdivision pattern.
5. Exhibits contemporary design excellence.	The concept relies on 'facadism' which is not supported.

**Our finding:** Increased development potential, as outlined in the planning proposal, will not reflect the desired future character of the Paddington HCA and will detract from its heritage significance.

### 5.3 Assessment against Criterion 4

**Criterion 4:** Controls provide a suitable built form transition between adjoining zones (e.g. between low and medium density residential zones).

#### Applicant's proposal

The planning proposal identifies that the site is located in a built up 'urban pocket' defined by the major arterial New South Head Road to the north and the rail overpass to the south. It further adds that the site has a distinct urban and commercial character, acting as a transition between New South Head Road, towards the rail and beyond to the finer grain of a lower density to the south. The proposal identifies that when viewed from the south, a ten storey building will sit comfortably behind the rail overpass and will have similar height to the existing residential flat building.

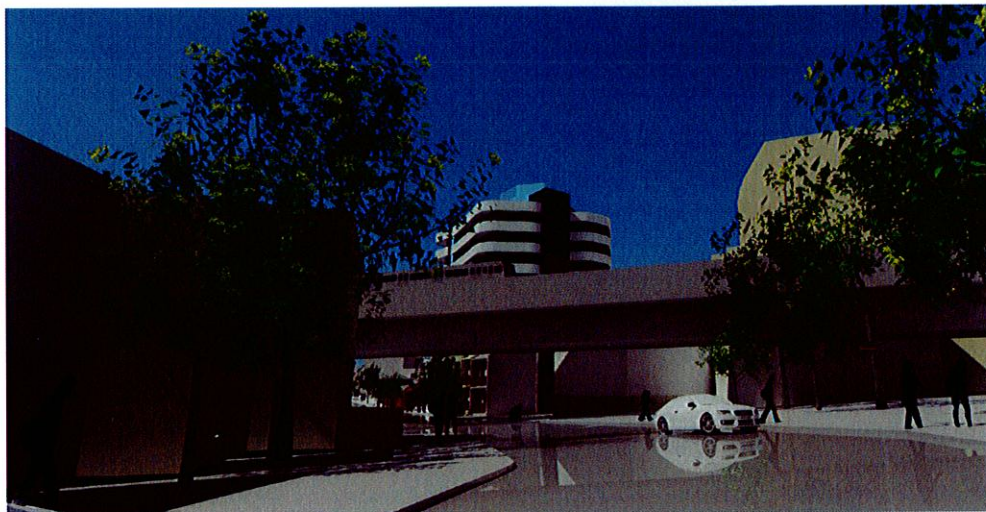


Figure 11: Concept drawing –view from Glenmore Road looking north

#### Our response

To the south of the site is the main portion of the Paddington HCA. Immediately to the south of the railway viaduct the residential area is dominated by two storey residential dwellings. The proposed ten storey building is out of context with this low scale built form of the HCA, and is clearly visible extending above the railways viaduct.

Council's heritage response states:

*The bulk, scale and character of the proposed development exceeds surrounding development. Existing views to and from the conservation area will be impacted on and dominated by the visual presence of the proposed ten storey building.*

The proposed controls in the planning proposal do not provide an appropriate built form transition to the two storey residential area to the south in the Paddington HCA.

**Our finding:** The current controls in WLEP 1995 and Draft WLEP 2013 provide a suitable built form transition between adjoining zones. The proposed controls to facilitate a ten storey residential flat building do not provide an appropriate built form transition to the two storey residential area to the south in the Paddington HCA.

#### 5.4 Assessment against Criterion 5

**Criterion 5:** Topography secures reasonable solar access and views to adjoining areas.

##### Applicant's proposal

The applicant submitted that the proposal will maintain reasonable solar access and views to adjoining sites (see Appendix B).

Included with the planning proposal are a series of shadow diagrams which identify the existing shadows, and the additional shadows cast from the proposed built form. The planning proposal (pg 39) identifies that the proposed controls will maintain a minimum of 2 hours direct sunlight to the surrounding residential apartments on the 21 June.

The Rothe Lowman design analysis includes an indicative view sharing analysis. This analysis considers the effects of the concept design on views from the adjoining building to the south at 161 New South Head Road. The analysis considered the view impacts from the upper and mid-levels of 161 New South Head Road at three unit locations in the building.

The planning proposal (p.39/40) summaries the potential impact on the existing views, and we have summarised this view loss information in Table 4 below.

*Table 4: Summary of the view loss impacts*

Unit location	View loss
Unit A Levels 5-8	45% of view
Unit A Levels 9-12	28% of view 17% of the significant harbour view
Unit B Levels 5-8	12% of view
Unit B Levels 9-12	29% of view 47% of significant harbour view
Unit C Levels 5-8	28% of view
Unit C Levels 9-12	16% of view, 71% of significant harbour view

##### Our response

The site is orientated east/west, and is immediately to the north of a large mixed use building at 161 New South Head Road (see **Figure 4**). The building at Number 161 North South Head Road consists of two storey dwellings fronting a laneway, and an eight storey residential/commercial building which has views over the subject site to the north –west towards the city, the harbour and the harbour bridge. The proximity of the site to the building at 161 New South Head Road can be seen below in **Figure 12**.

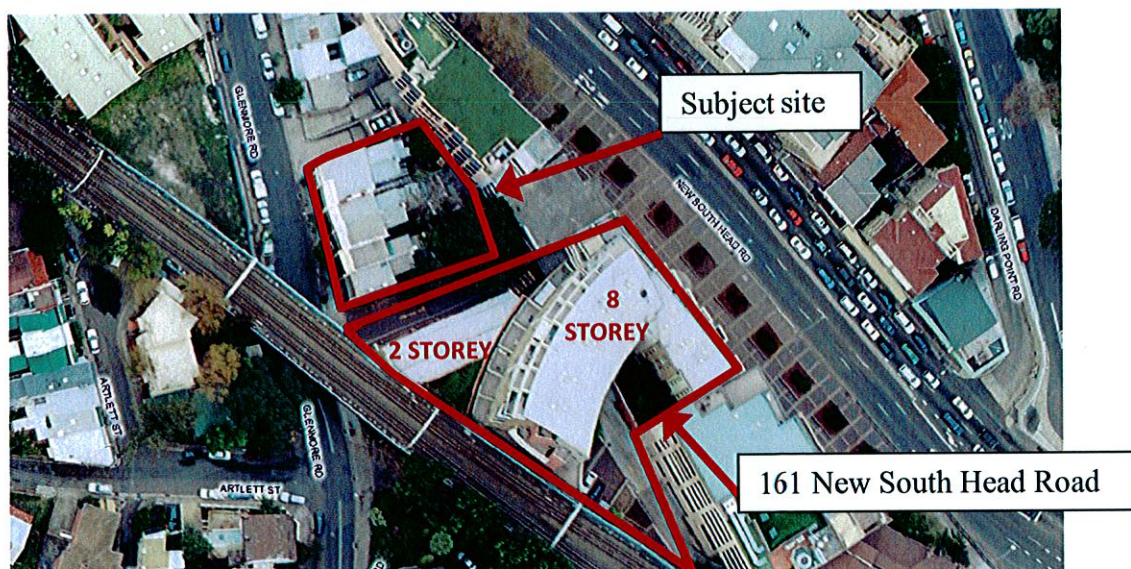


Figure 12: Location of the subject site in relation to the adjoining building at 161 New South Head Road

### *Solar access*

The shadow diagrams submitted with the planning proposal are insufficient. They fail to identify the potential solar access impacts on the individual residential units in the adjoining building at 161 New South Head Road. A comprehensive view analysis would include shadow diagrams showing the impacts on the elevation of the two storey and eight storey components of the building.

The greatest impact from the proposed built form will be on those two storey terraces which are approximately ten metres to the south of the subject site. As a result of the proposed built form, the diagrams appear to illustrate that in mid-winter these terraces would receive no solar access between 9am and 3pm. We therefore disagree with the statement made in the planning proposal that all dwellings will maintain a minimum of 2 hours direct sunlight on the 21 June. This is an unacceptable and unreasonable impact on the amenity of these existing dwellings.

### *Views*

The analysis submitted with the planning proposal is a mapping exercise only and does not satisfy Council's requirements for a view analysis.

Council's practice to assess view impacts is to use the principles of view sharing set out by the Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140 *pars* 23-33. Tenacity identifies four steps that should be used in assessing impacts on views, and our analysis against these principles is set out in Table 5 below.

Table 5: Response to the submitted view analysis against the principles of Tenacity

Principle identified in Tenacity	Our response to the analysis submitted
<p>1. The assessment of the views affected</p> <ul style="list-style-type: none"> <li>• <i>Water views are valued more highly than land views.</i></li> <li>• <i>Iconic views (e.g. Opera House, Sydney Harbour Bridge) are valued more highly than views without icons</i></li> <li>• <i>Whole views are valued more highly than partial views.</i></li> </ul>	<p>The analysis is mathematical and uses modelling to broadly estimate impacts. This makes it imprecise and difficult to interpret.</p> <p>The assessment of views is categorised into “wider aspect views” and “significant harbour views” only. It does not distinguish between iconic views of the harbour, Opera House and Sydney Harbour Bridge which are important considerations.</p> <p>It also fails to identify whole views or partial views.</p>
<p>2. Consideration from what part of the property views are obtained</p> <ul style="list-style-type: none"> <li>• <i>The protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries.</i></li> <li>• <i>Whether the views are from a standing or sitting position may also be relevant.</i></li> </ul>	<p>The view analysis does not provide photographs or give an accurate representation of existing views to establish the types of views that are achieved over the site.</p> <p>Having reviewed site photos we identify that the views will be from main living spaces, and on some floors views will be achieved from both standing and sittings positions.</p>
<p>3. The extent of view impact</p> <ul style="list-style-type: none"> <li>• <i>This should be done for the whole property, not just the view affected.</i></li> <li>• <i>The impact on views from living areas is more significance than bedrooms.</i></li> <li>• <i>The impact should be assessed qualitatively (not quantitatively) as negligible, minor, moderate, severe or devastating.</i></li> <li>• <i>For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House.</i></li> </ul>	<p>There is no qualitative assessment of the impact on views for each unit affected.</p> <p>No units were accessed, and no photographs were taken of the current views from these units.</p> <p>However, we can establish that the views will be from main living areas as the balconies of 161 New South Head Road face over the subject site.</p>
<p>4. The reasonableness of the proposal that is causing the impact</p> <ul style="list-style-type: none"> <li>• <i>A development that complies with all planning controls would be considered more reasonable than one that breaches them, where even a moderate impact may be considered unreasonable.</i></li> </ul>	<p>As the proposal is not in context with the surrounding buildings and does not reflect the desired future character of the HCA the proposed built form and its impact on views is not reasonable.</p>

We estimate that there are at least 30 units facing north-west in the building at 161 New South Head Road which have existing views over the subject site and could be impacted by the proposal. Based on our interpretation of the view loss diagrams on pages 34 to 51 a number of these units would lose iconic views. The proposed built form would therefore have significant and unreasonable impacts on the views of the building at 161 New South Head Road.

**Our finding:** The proposal has significant and unreasonable impacts on solar access to 161 New South Head Roads and views from that property.



## 5.5 Assessment against Criterion 6

**Criterion 6:** Lot orientation secures reasonable solar access and views within the site and to adjoining areas.

### Applicant's proposal

The site's east-west orientation will allow reasonable solar access and views within the site and to adjacent development.

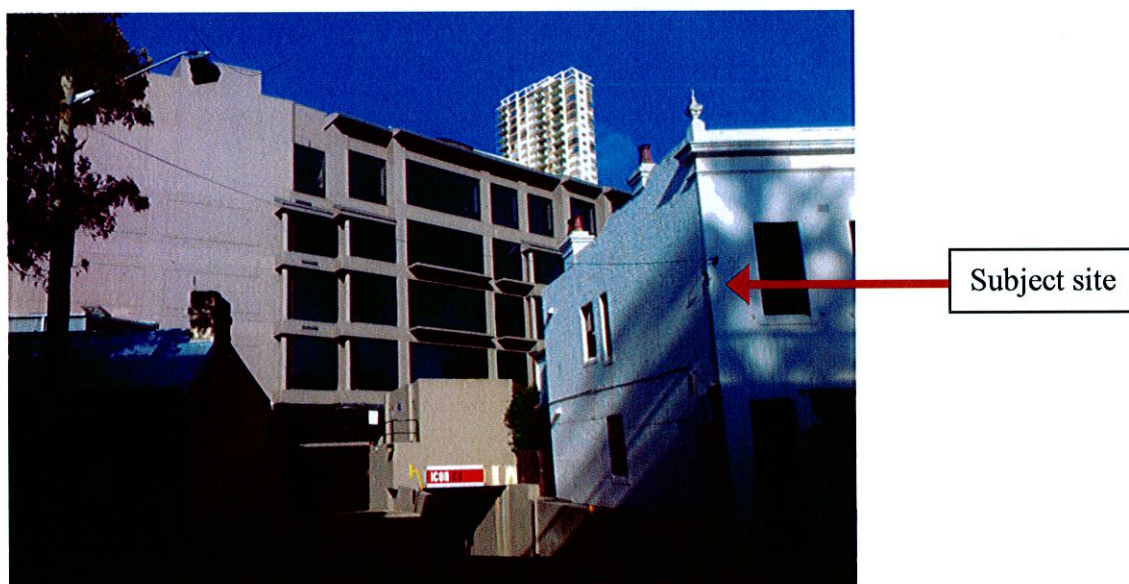
### Our response

#### *Lot orientation*

We agree that the site's orientation east-west will allow reasonable solar access and views for a redevelopment on the subject site. However, it does not secure reasonable solar access and views to adjoining areas.

#### *Adjoining development to the north east*

In addition to the unreasonable impacts on solar access and views to adjoining areas identified in response to Criterion 5 above, we have significant concerns with the potential impact of the proposal to the commercial buildings to the north-east of the site (135-153, 155, 157 and 159 New South Head Road). These buildings contain windows on their southern façade which overlook the subject site, see **Figure 13** below.



*Figure 13: Image showing the windows of the commercial building to the north-west of the subject site.*

At its closest point the subject site is only three metres from these commercial buildings. However, there is no analysis in the planning proposal which addresses the impact on these commercial buildings.

We have concerns that the proposal will have a detrimental impact on the amenity of the existing commercial buildings, and that these amenity impacts have not been addressed in the planning proposal.

*SEPP 65 – State Environmental Planning Policy No 65 – Design quality of residential flat development*

SEPP 65 aims to improve the design quality of residential flat development in NSW. It contains ten design quality principles that must be addressed in a design verification statement as part of a development application.

**Applicant's proposal**

The planning proposal identifies on p.34 that the indicative concept design complies with the key SEPP 65 and Residential Flat Design Code guidelines, as demonstrated by the preliminary assessment which forms part of the Indicative Design Concept Analysis.

**Our response**

Whilst we recognise that this is a planning proposal and not a development application, the information within the preliminary assessment is misleading. It does not provide an explanation of the design in terms of the 10 principles in SEPP 65.

For example, there is no assessment of the proposed design against *Principle 4 – Density* stating:

*Good design has a density appropriate for a site context, in terms of floor space yields (or the number of units or residents).*

*Appropriate densities are sustainable and consistent with the existing density in an area or, in precincts undergoing a transition, are consistent with the desired future density. Sustainable densities respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.*

As we identified in response to criteria 1 and 2 above, the proposed built form is not appropriate or consistent with the character of the surrounding buildings or the desired future character. The proposal therefore fails to comply with this design principle in SEPP 65.

Instead, the SEPP 65 analysis contained in the planning proposal runs through certain rules of thumb<sup>6</sup> taken from the Residential Flat Design Code, but only those that the proposal complies with. It ignores rules of thumb that are not achieved.

As an example, the review fails to address the rule of thumb that “*A minimum of 25 percent of the open space area of a site should be a deep soil zone*”.

There is no shared open space or deep soil zone within the proposal. Consequently the proposed building bulk is excessive for the site and the surrounding area.

The controls within the planning proposal will not secure reasonable amenity impacts to 161 New South Head Road and we are concerned about the potential amenity impacts on the commercial buildings to the north.

**Our finding:** Lot orientation secures reasonable solar access and views for a redevelopment on the subject site but it does not secure reasonable amenity impacts to 161 New South Head Road and we are concerned about the potential amenity impacts on the commercial buildings to the north.

<sup>6</sup> The *Residential Flat Design Code* (RFDC) sets guidelines to improve the design of residential flat buildings. It contains rules of thumb that set broad parameters. The NSW Land and Environment Court has on a number of occasions used the RFDC rules of thumb as the criteria to determine design issues.

## 6. Identification of income

When a planning proposal is not initiated by Council, under section 11 of the *Environmental Planning and Assessment Regulation 2000* (the Regulations), we can request payment of all costs and expenses incurred in relation to the planning proposal. Council's fees and charges for the preparation of a planning proposal are set out in out in the Delivery Program 2013-2017 and Operation Plan 2013-2014. The applicant agreed to pay these charges in an email dated 4 December 2013.

## 7. Conclusion

We do not support the planning proposal which recommends amending the controls for 529-539 Glenmore Road, Edgecliff to facilitate a ten storey residential flat building.

The planning proposal recommends controls that are out of context with the existing character of surrounding development and will have detrimental impacts on the surrounding development to the north and south and the Paddington HCA. In particular:

- the proposal is not in context with the character of the surrounding buildings,
- increased development potential will not reflect the desired future character of the HCA,
- controls do not provide a suitable built form transition between the site and the surrounding areas,
- the proposal has significant and unreasonable impacts on 161 New South Head Road

The existing controls for the site in WLEP 1995 and the low scale controls contained in Draft WLEP 2013 are appropriate and in context with the desired future character of the Paddington HCA.

Anne White  
Senior Strategic Planner

Jacquelyne Della Bosca  
Team Leader Strategic Planning

Chris Blueft  
Manager Strategic Planning

Allan Coker  
Director Planning and Development

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## Annexures

1. Email advice prepared by Allan Coker, Director of Planning (17 July 2012)
2. Addendum to the Planning Proposal prepared by URBIS (23 January 2014)
3. 529-539 Glenmore Road: Heritage Response prepared by Amelia Parkins, Strategic Heritage Officer (1 February 2014)

**Item No:** R2 Recommendation to Council  
**Subject:** INTERIM HERITAGE ORDERS  
**Author:** Amelia Parkins - Strategic Heritage Officer  
**File No:** 1073.G  
**Reason for Report:** To inform Council of the recent Ministerial Order authorising all councils to make interim heritage orders, under the NSW Heritage Act 1977.  
To obtain a decision of the Council to delegate the authorisation of interim heritage orders to the General Manager.

### Recommendation

That the Council resolve under Section 377 of the *Local Government Act 1993* to delegate to the General Manager the authority granted by the Minister for Heritage on 12 July 2013 to the Council to make interim heritage orders.

## 1. Introduction

On 12 July 2013 the Minister for Heritage authorised all local councils in NSW to make interim heritage orders under Section 25 of the *Heritage Act 1977* as published in the NSW Government Gazette No. 90. Prior to this, local councils relied on the intervention of the Heritage Council of NSW and the Minister when unlisted items of local heritage significance came under threat. An interim heritage order could only be made by requesting that the Minister do so under section 24(1) of the Heritage Act. This information was provided in a letter from the Office of Environment and Heritage dated 15 July 2013 (**Annexure 1**).

## 2. What is an interim heritage order?

Interim heritage orders allow for the short-term protection of places that may be of heritage significance and are under threat. The order allows council time to make an assessment of the significance of the property and make a decision whether it should be formally considered for local or state heritage listing.

Interim heritage orders can only be used when council has grounds for considering that a property may be of at least local significance and is being or is likely to be harmed. It should not become the sole form of heritage management in the local area and cannot be used as a tool to block development.

Conditions attached to the use of interim heritage orders are found in Schedule 2 of the Ministerial Order (**Annexure 1**). The following salient conditions are highlighted for the Councillors' information:

- As stipulated in Condition 1, to make an interim heritage order:
  - Council must have an environmental planning instrument that contains a schedule of heritage items and provisions for the management of those items;
  - Council must have considered a preliminary assessment of the item that concludes that the item is likely, on further investigation, to be of at least local significance; that the item is being or likely to be harmed; and that the interim heritage order is confined to the item determined to be under threat.
- Where an interim heritage order is made over land that may be of significance to Aboriginal people, council must refer the proposal to the NSW Heritage Office.
- As stipulated in Condition 2, council must not make an interim heritage order if:
  - The item is listed on an environmental planning instrument or the item is located within a heritage conservation area;

- Council has previously placed an interim heritage order on the item;
  - The court has granted development consent that permits the item to be harmed and the consent is still valid; or
  - A complying development certificate has been granted that permits the item to be demolished and the erection of a new single storey or two storey dwelling house is still in force.
- As stipulated in Condition 3, council must not make an interim heritage order over a potential item<sup>1</sup> that is located on:
    - Crown Land;
    - Land being developed on behalf of the Crown;
    - Land that is subject to a development declared 'State significant development' under the *Environmental Planning and Assessment Act 1979*.
  - As stipulated in Condition 4, council must not make an interim heritage order on a potential item that is subject to an approval, consent, license, permit, permission or any other authorisation that permits the item to be harmed and is issued by the Crown, an officer or employee of the Crown or Minister.
  - As stipulated in Condition 5, council is required to make an assessment of whether the potential item warrants listing on the Local Environmental Plan (LEP) heritage schedule within six months of placing the interim heritage order. If council resolves to add the item to its LEP schedule the interim heritage order is valid for 12 months.

Part 3 of the *Heritage Act 1977* provides further information that council should consider when making an interim heritage order including:

- No notice of intention of making an interim heritage order is required;
- An interim heritage order applies to a building and its curtilage or site, or a work or relic that is attached to or forms part of the land;
- The procedure for notifying interim heritage orders;
- The commencement, duration and revocation of interim heritage orders; and
- Rights of Appeal to the making of an interim heritage order can be made under *the Heritage Act 1977* but must be made within 28 days.

### 3. The authorisation

The authorisation allows council to make an interim heritage order over an item, place or area whilst it assesses whether statutory protection through listing under the LEP is warranted. An interim heritage order can only be placed where a potential heritage item, place or area:

- Is or is likely to be of heritage significance;
- Is under threat of demolition or unsympathetic alteration; and
- Does not already have statutory heritage protection under the *EP&A Act 1979* or the *Heritage Act 1977*.

The authorisation provides council with the ability to provide short term protection of places of local significance that are under threat. It allows council to respond quickly to assess and manage potential heritage items and to achieve conservation outcomes that reflect the concerns of the local community at a local level.

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<sup>1</sup> A potential item is one not currently listed on a statutory Local Environmental Plan (LEP) or State Heritage Register.

#### **4. Delegation of authorisation**

The primary purpose of an interim heritage order is to allow time to assess the heritage significance of a potential heritage item that is under threat. In cases where there is considerable urgency a scheduled meeting of the council to consider whether to place an interim heritage order over a property may not be available. To enable the council to deal effectively with items under imminent threat it should delegate to the General Manager the authority granted by the Minister for Heritage under Section 25 of the *Heritage Act 1977* to make interim heritage orders. Under Section 377 of the *Local Government Act 1993* council is able to delegate that authority to the General Manager. Under Section 378 of the *Local Government Act 1993* the General Manager may sub-delegate that authority to another person or body. In this case the General Manager has indicated that it is his intention to sub-delegate the authority to make interim heritage orders to the Director of Planning.

#### **5. Conclusion**

All Councils in NSW now have the authority to make interim heritage orders. The authorisation allows council to assess and manage places of potential heritage value to the local community at a local level.

It is important to note that interim heritage orders can only be used when council has grounds for considering that a property may be of at least local significance and is under threat.

Amelia Parkins  
Strategic Heritage Officer

Chris Bluett  
Manager Strategic Planning

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#### **Annexures**

Annexure 1      Letter from the Office of Environment and Heritage dated 15 July 2013.

**Political Donations – matters to be considered by Councillors at Meetings**

