



Urban Planning Committee Agenda

Agenda: *Urban Planning Committee*

Date: *Monday 27 July 2015*

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

23 July 2015

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

Dear Councillors

Urban Planning Committee – 27 July 2015

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 27 July 2015 at 6.00pm.**

Gary James
General Manager

Meeting Agenda

Item	Subject	Page
1.	Leave of Absence and Apologies Note: Leave of absence has previously been granted to <ul style="list-style-type: none">• Councillor Greg Levenston for the period from 13 July 2015 to 30 July 2015	
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 13 July 2015.....	1
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 (SC2503)	3

Item No: D1 Delegated to Committee
Subject: **CONFIRMATION OF MINUTES OF MEETING HELD ON 13 JULY 2015**
Author: Craig Bennett, Manager, Governance & Council Support
File No: 15/97659
Reason for Report: The Minutes of the Urban Planning Committee of 13 July 2015 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 13 July 2015 be taken as read and confirmed.

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 & Development
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.

- 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,



Figure 2: Proposed height controls

The planning proposal retains the existing height control of 10.5m over the majority of 83A Yarranabbe

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.

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.

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.

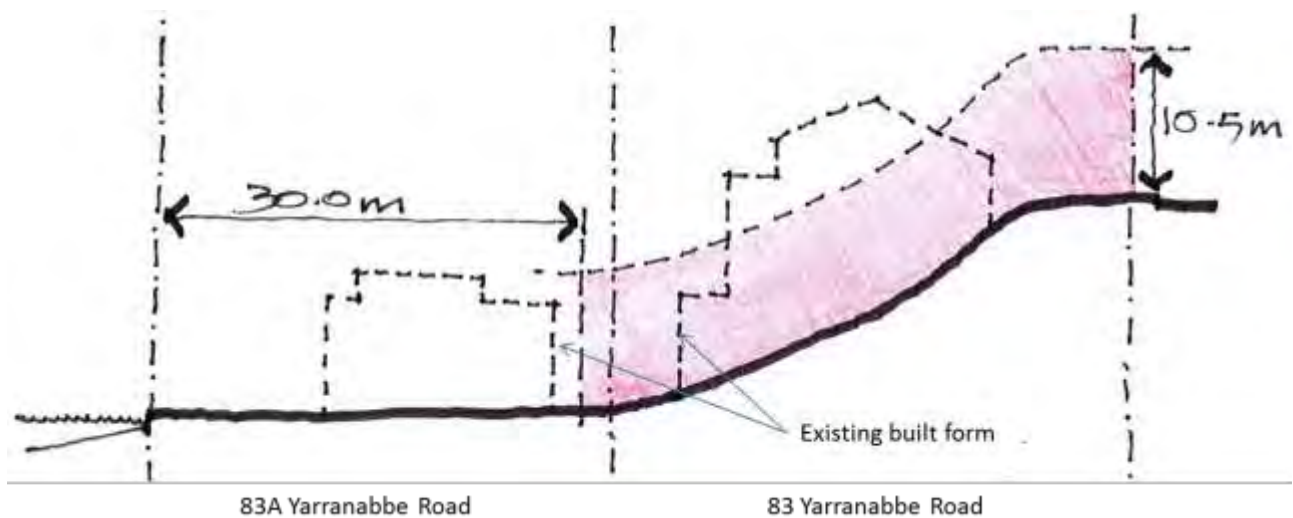


Figure 3: Existing Woollahra LEP 2014 building envelope for multi dwelling housing or RFB development

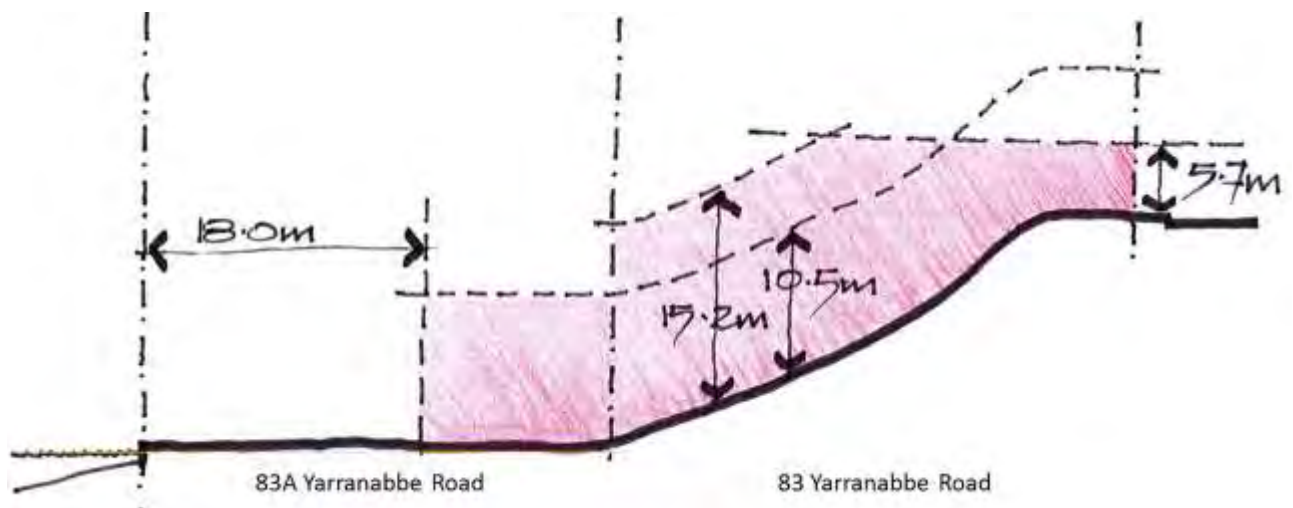


Figure 4: Proposed building envelope for multi dwelling housing or RFB development.

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.

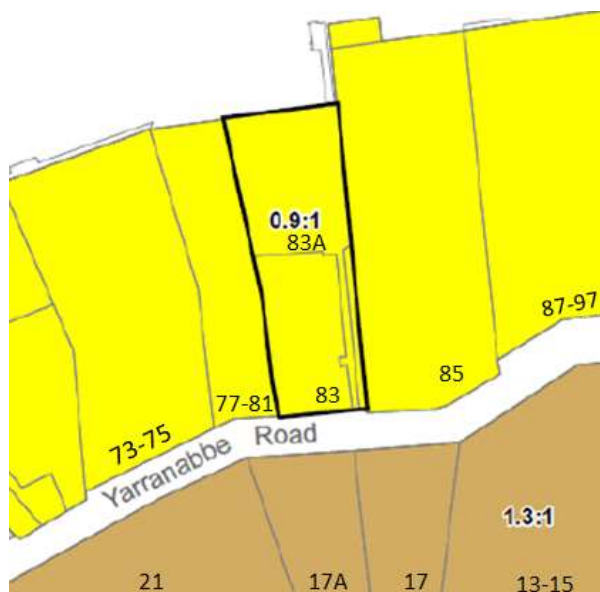


Figure 5: Woollahra LEP 2014 FSR controls
The existing FSR control for medium density development such as multi dwelling housing and RFBs is 0.9:1

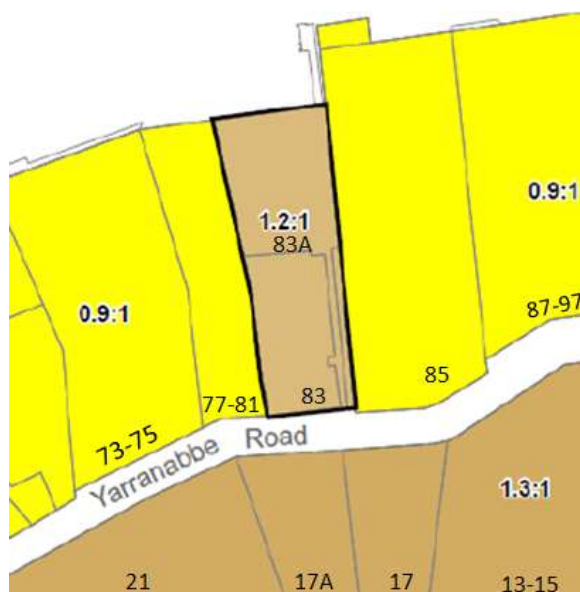


Figure 6: Proposed FSR controls
The planning proposal increases the maximum FSR to 1.2:1 over the entire site.

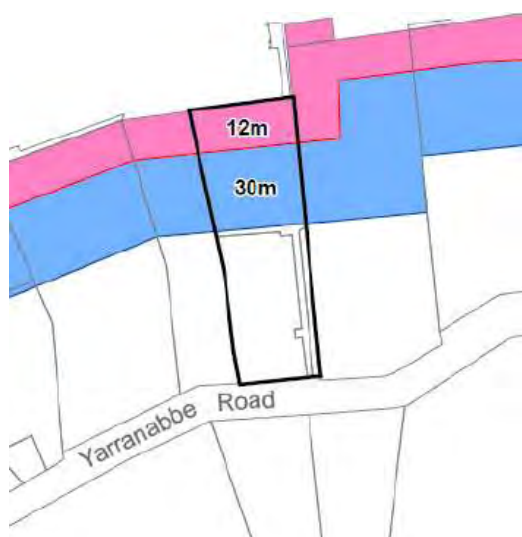


Figure 7: Woollahra LEP 2014 foreshore building line

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)

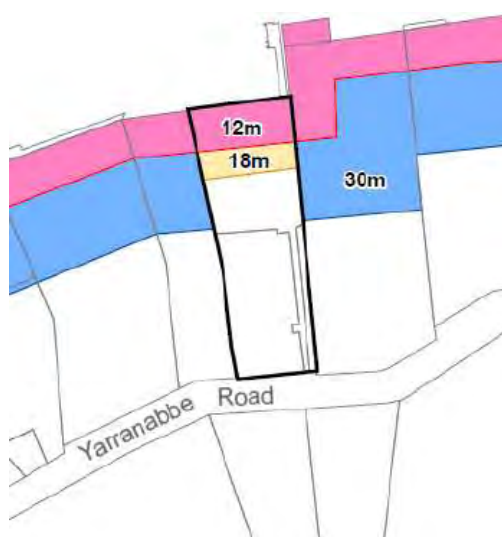


Figure 8: Proposed foreshore building line

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**).

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 Santana) - 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.

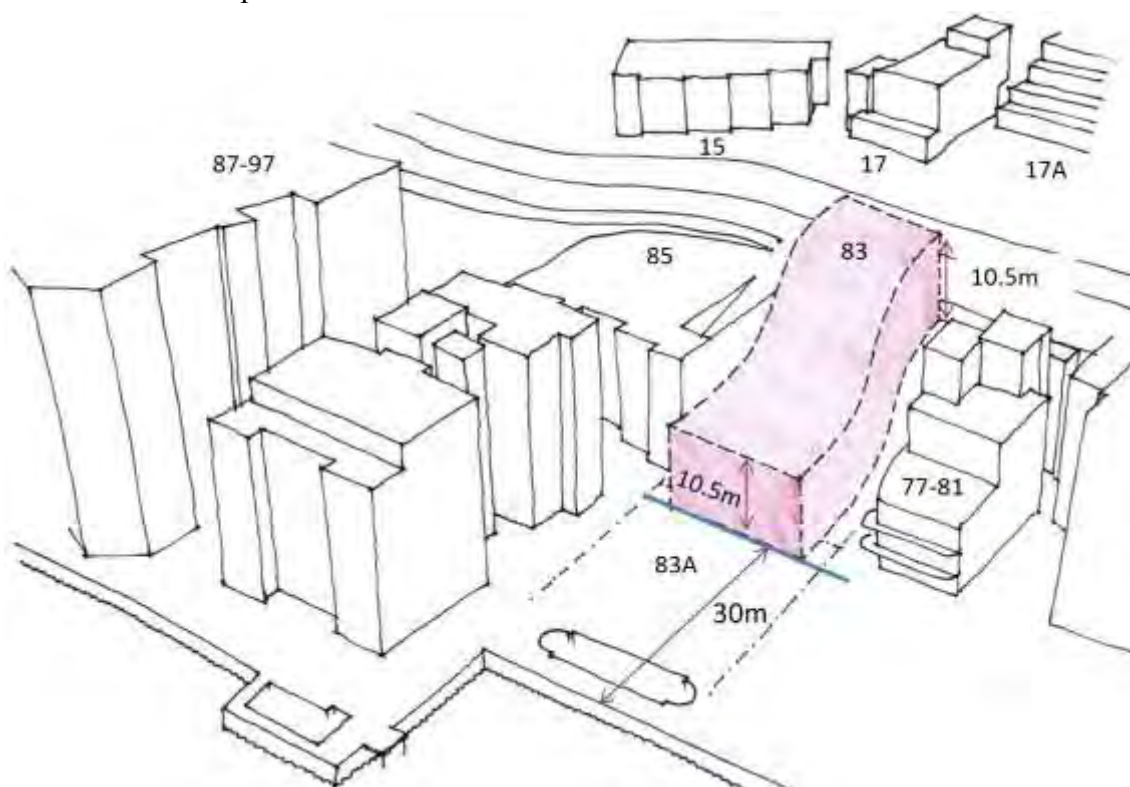


Figure 10: Indicative building envelope for an RFB under the existing Woollahra LEP 2014 planning controls

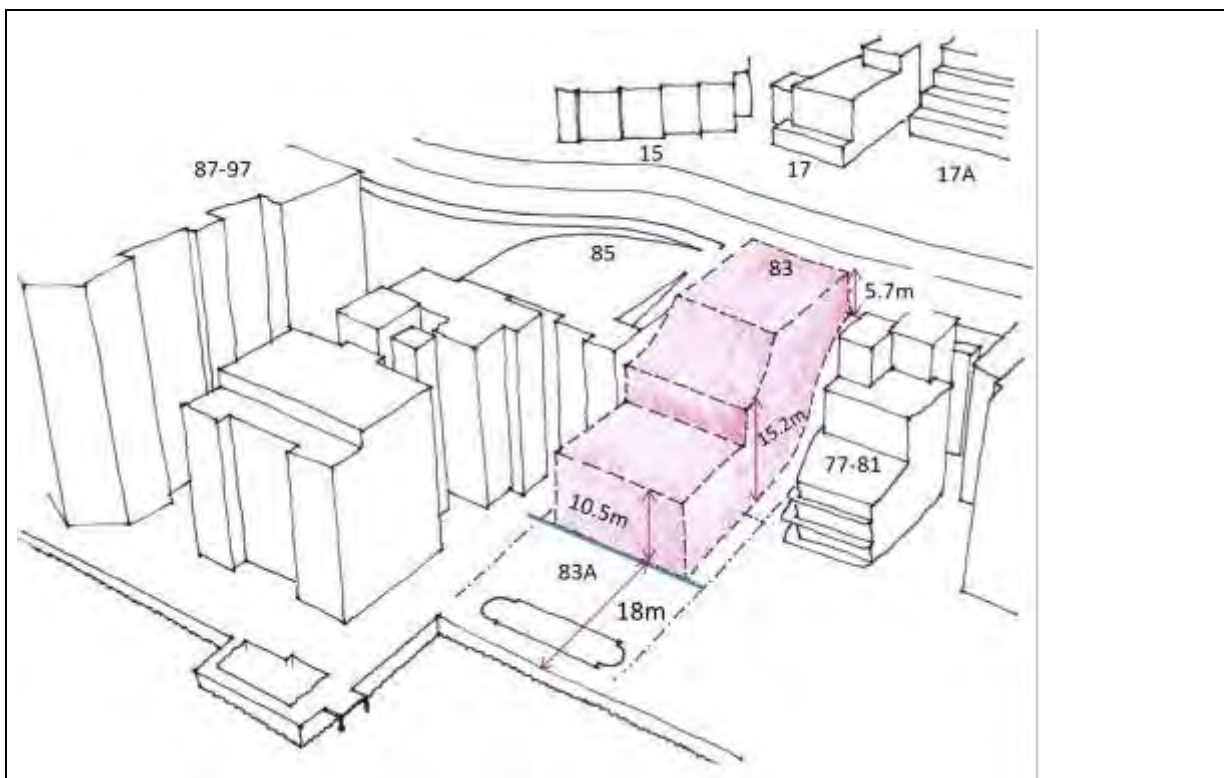


Figure 11: Indicative planning proposal building envelope

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 Santina 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*.

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:

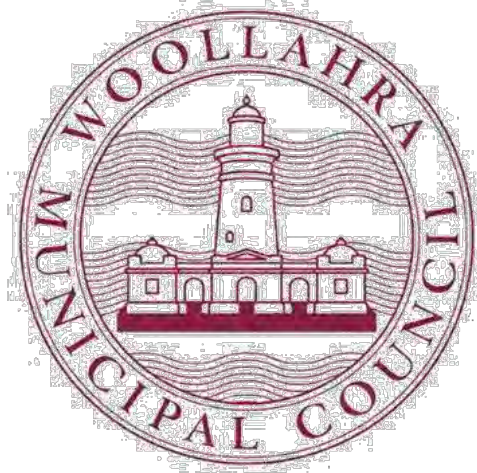
- The Land and Environment Court decision for DA485/2012 was on a specific DA for the site under the Woollahra LEP 1995 controls. The role of the court was not to decide what the appropriate controls should be and the decision does not prevent Council from amending the planning controls for the site 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.

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



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 Yarranabee Road, and
 - A maximum building height of part 10.5m and part 15.2m over 83A Yarranabee 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 Yarranabee 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.

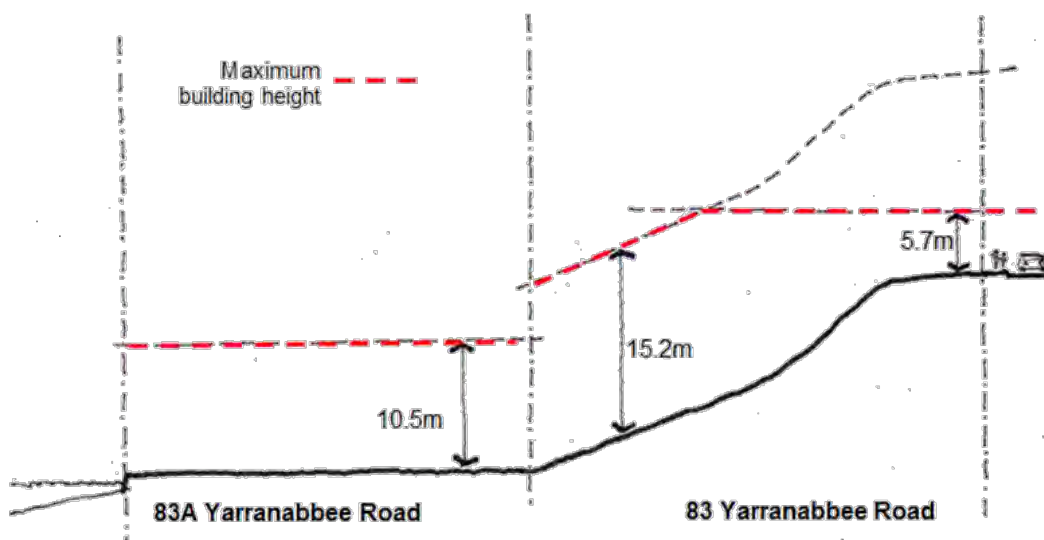


Figure 4: Proposed maximum building heights section

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 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. • 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.

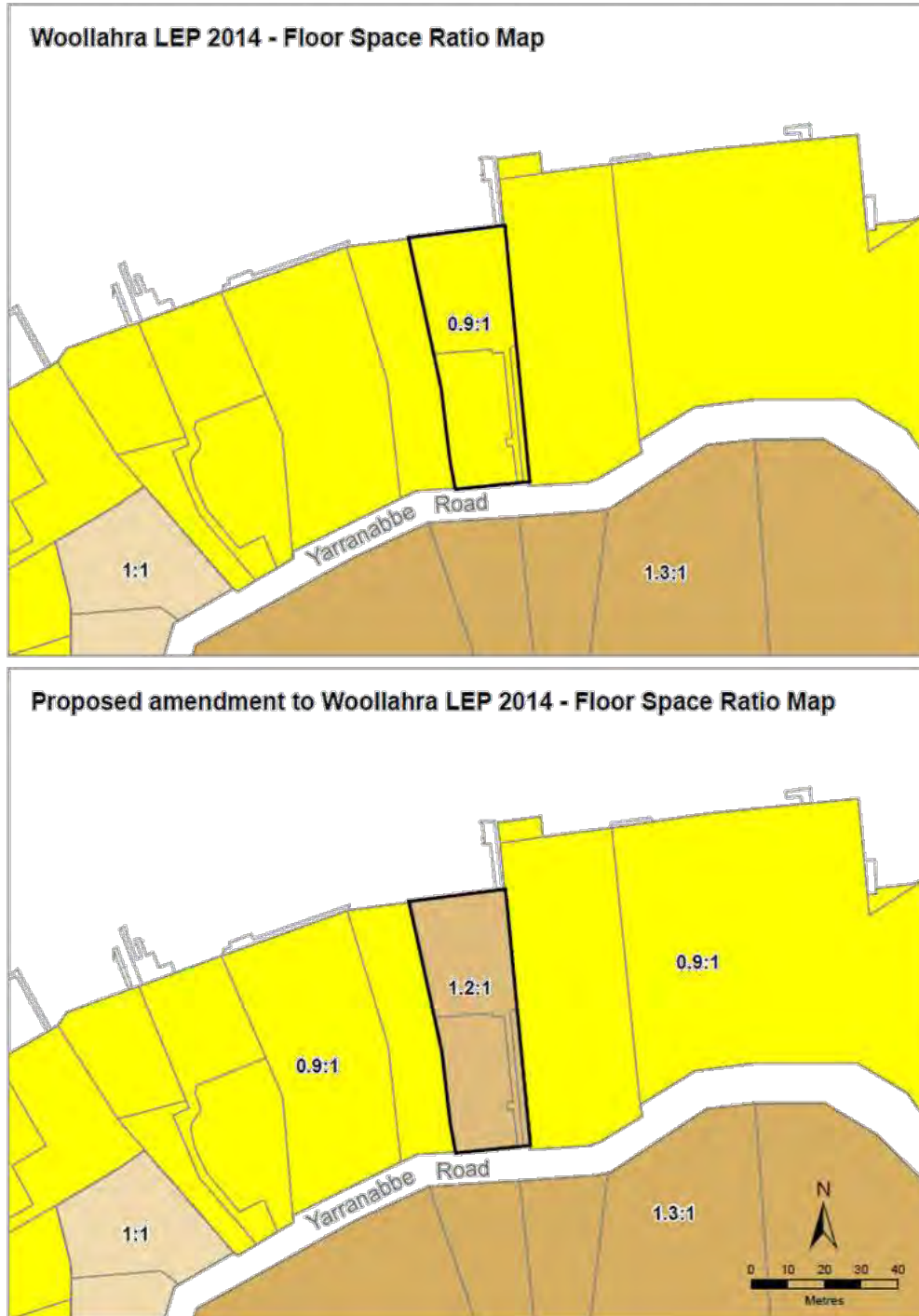
11. What are the views of State and Commonwealth public authorities consulted in accordance with the gateway determination?

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

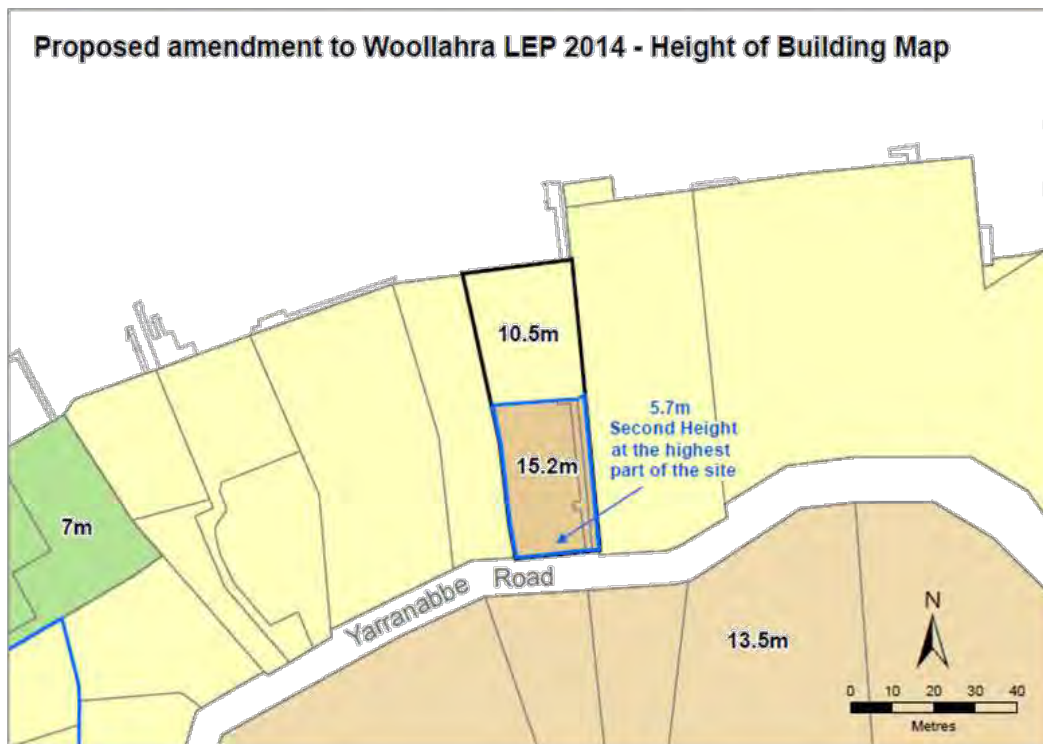
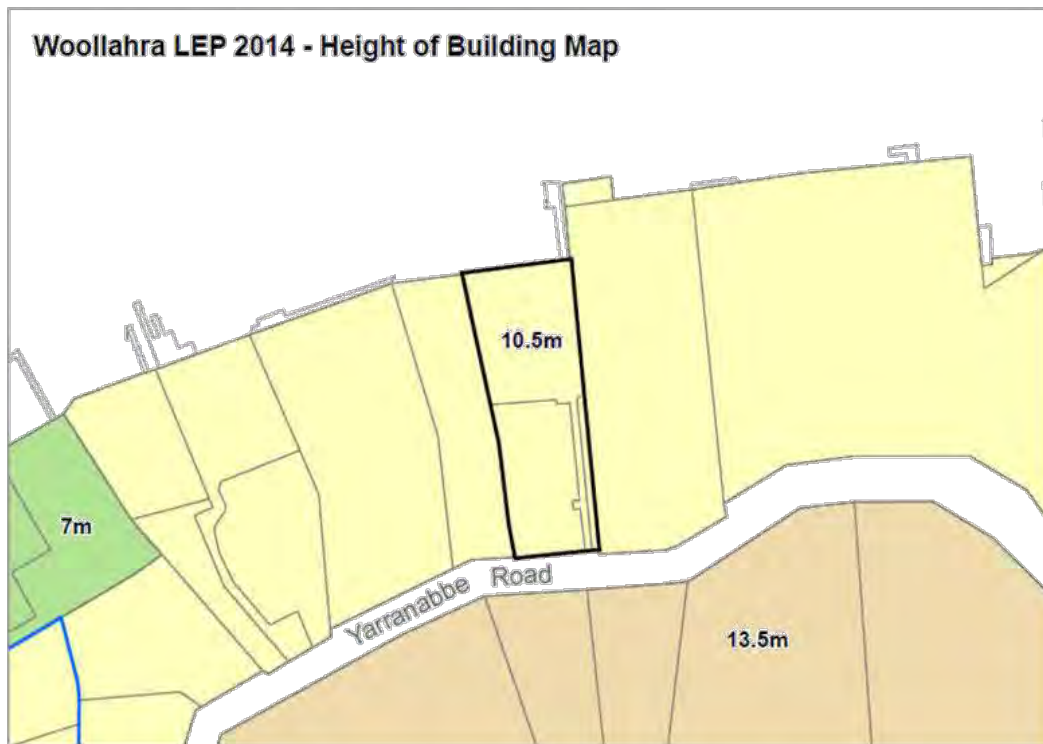
As the site is located adjacent to Sydney Harbour, we recommend that Roads and Maritime Services are consulted as part of the public exhibition.

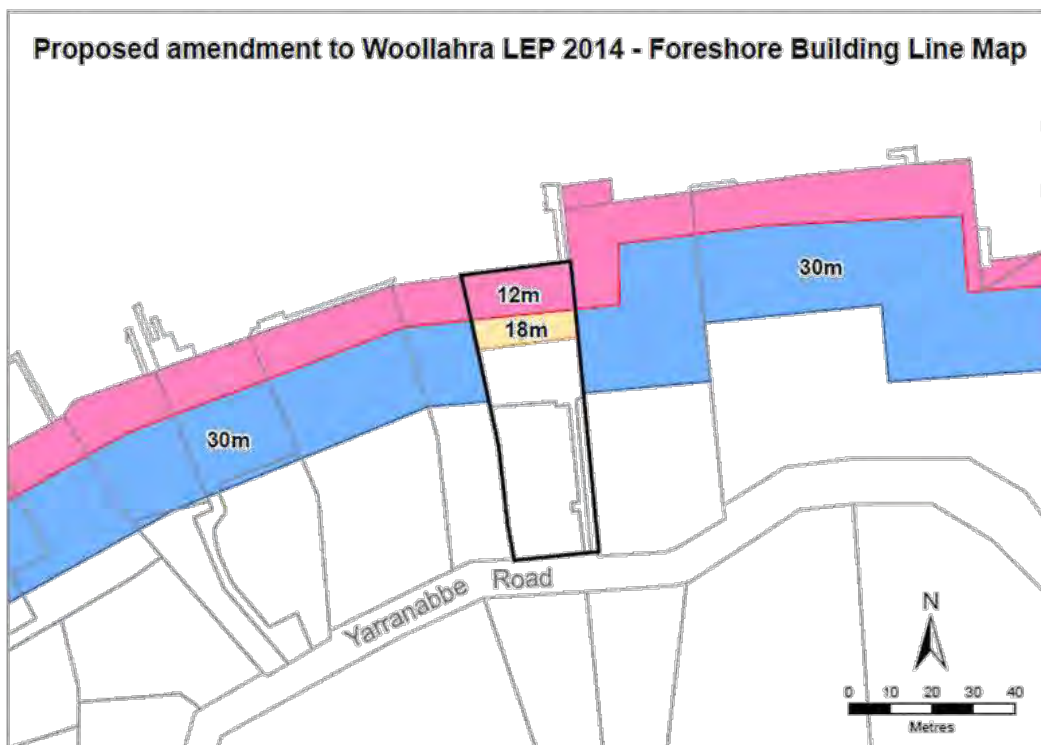
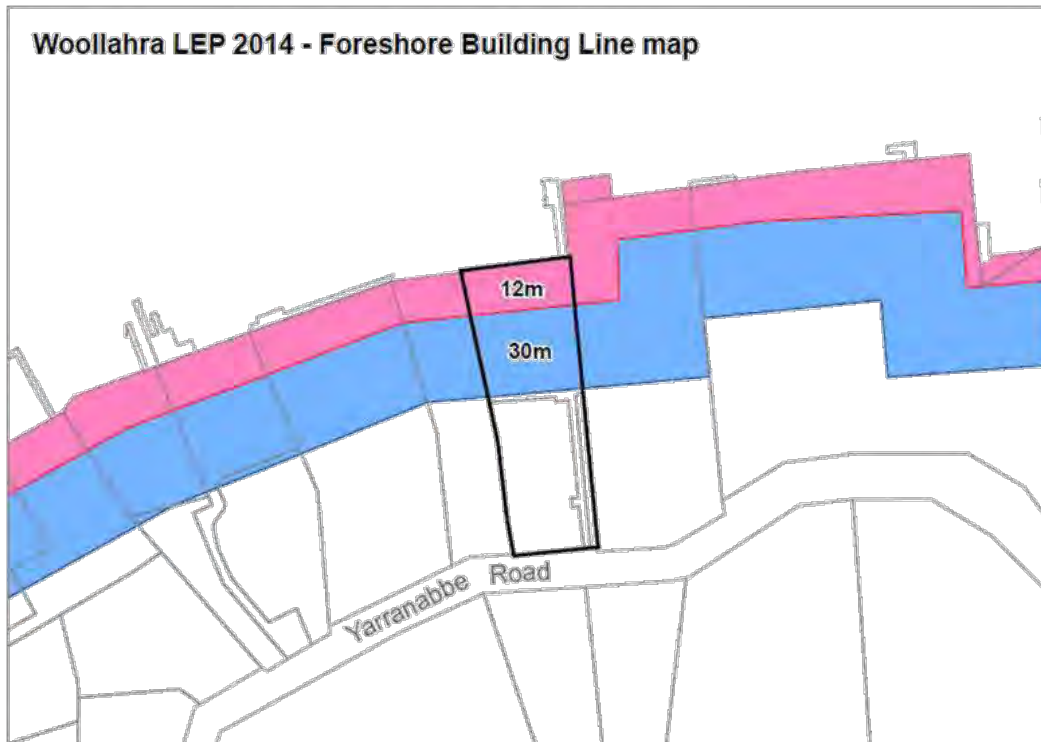
Part 6 – Mapping

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





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 Public exhibition period	March – May 2015 (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 Local Environmental Plan 2014

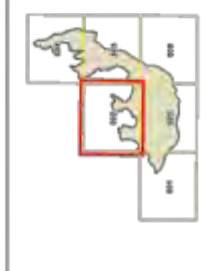
Existing
 Floor Space Ratio Map
 Sheet FSR_002

Maximum Floor Space Ratio (m ² /m ²)	Class
0.21	1
0.27	2
0.37	3
0.4	4
0.43	5
0.48	6
0.5	7
0.52	8
0.55	9
0.58	10
0.63	11
0.65	12
0.68	13
0.75	14
0.77	15
0.8	16
0.83	17
0.85	18
0.88	19
0.9	20
1.0	21
1.1	22
1.2	23
1.3	24
1.4	25
1.5	26
1.6	27
1.7	28
1.8	29
1.9	30
2.0	31
2.5	32
3	33
4	34

Refer to Clause 4.4A
 Refer to Clause 4.4B
 Refer to Clause 4.4C
 Refer to Clause 4.4D

Centres

Centres S1/S2/S4/S Woollahra Municipal Council



Scale: 1:15,000 @ A3
 North Arrow

Project No. 15/001
 Date: 2015/06/18
 Map No. FSR_002



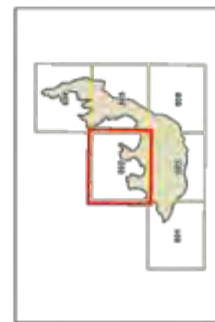
**Amendment to
 Woollahra Local
 Environmental Plan
 2014**

**Proposed
 Floor Space Ratio Map
 Sheet FSR_002**

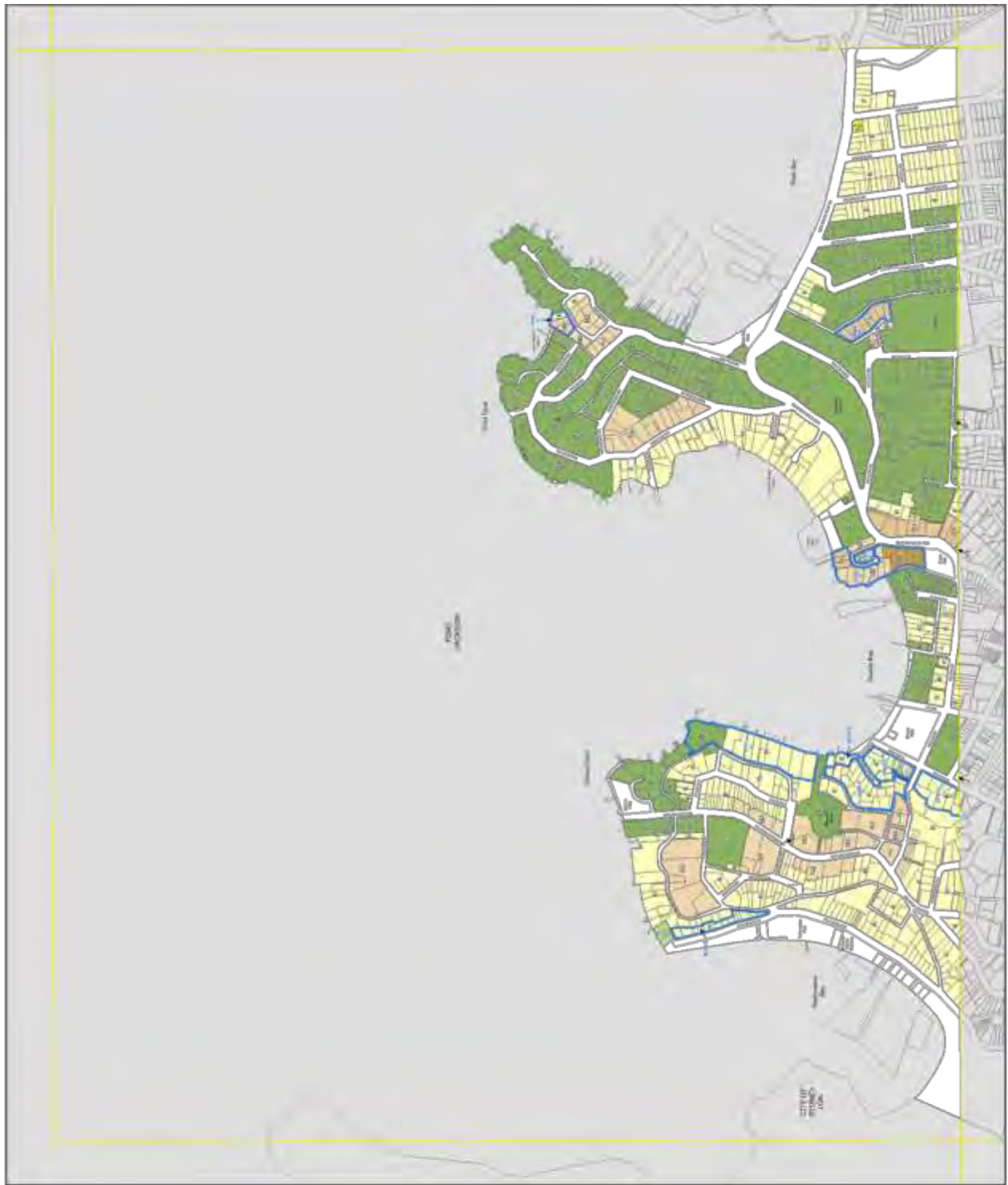
Maximum Floor Space Ratio (n:1)

0.21
0.27
0.4
0.43
0.48
0.5
0.52
0.53
0.55
0.58
0.6
0.65
0.68
0.73
0.75
0.77
0.9
1
1.04
1.1
1.2
1.26
1.3
1.4
1.42
1.5
1.55
1.68
1.7
1.77
1.8
1.85
1.9
1.98
2
2.5
3
3.5
4

- Refer to Clause 4.4A
- Refer to Clause 4.4B
- Refer to Clause 4.4C
- Refer to Clause 4.4D
- Colours
- Celestino 19/12/14 © Woollahra Municipal Council



Project No. 15/14
 Date: 19/12/14
 Map No: FSR_002
 Scale: 1:10,000 @ A3
 North Arrow



Existing
 Height of Buildings Map
 Sheet HOB_002

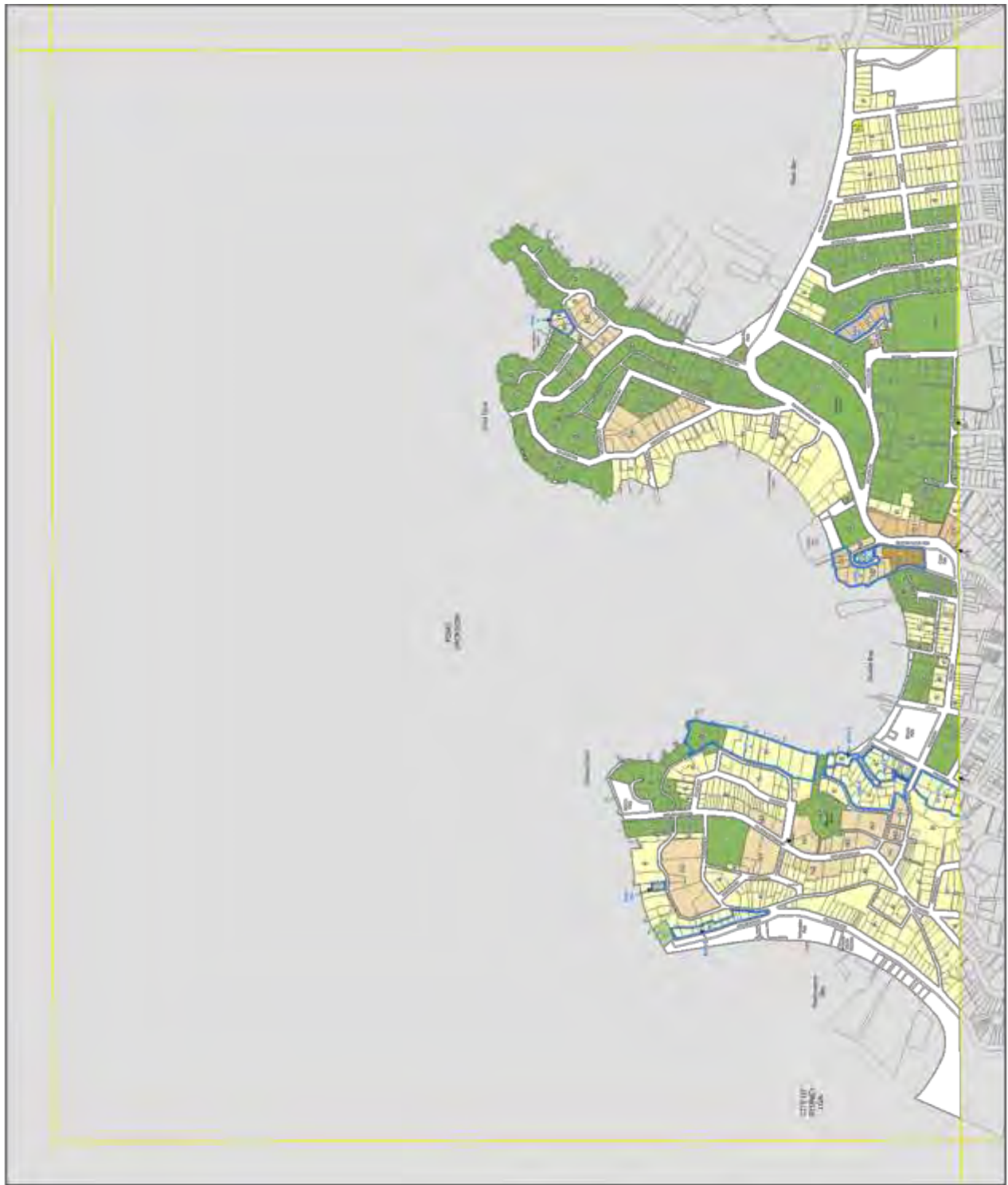
Maximum Building Height (m)	Color
0	Blue
4.1	Light Blue
6.1	Light Green
7.1	Light Yellow
8.1	Yellow
9.1	Orange
10.1	Light Orange
11.1	Orange
12.1	Light Orange
13.1	Orange
14.1	Light Orange
15.1	Orange
16.1	Light Orange
17.1	Orange
18.1	Light Orange
19.1	Orange
20.1	Light Orange
21.1	Orange
22.1	Light Orange
23.1	Orange
24.1	Light Orange
25.1	Orange
26.1	Light Orange
27.1	Orange
28.1	Light Orange
29.1	Orange
30.1	Light Orange
31.1	Orange
32.1	Light Orange
33.1	Orange
34.1	Light Orange

Refer to Clause 4.3A
 Refer to Clause 4.3B
 Refer to Clause 4.4C

City of Woollahra
 5/12/14 © Woollahra Municipal Council



Scale: 1:10,000 @ A3
 200 Metres
 North Arrow
 Prepared by: [Name]
 Date: [Date]
 Map Information number: [Number]



**Proposed
Height of Buildings Map
Sheet HOB_002**

Maximum Building Height (m)
5.4
6
6.5
7
7.5
8
8.2
8.5
9
9.5
10
10.5
11
11.5
12
13
13.5
14.1
14.5
14.7
15
15.2
15.5
16.5
17.5
18
18.5
19
19.5
20.5
21.5
22.5
26
34

- Colour**
- Refer to Clause 4.3A
 - Refer to Clause 4.3B
 - Refer to Clause 4.4C
- Calculate**
- Calculate 15/12/14 © Woollahra Municipal Council



Scale

0 200 Metres

Scale: 1:10,000 @ A3

North Arrow

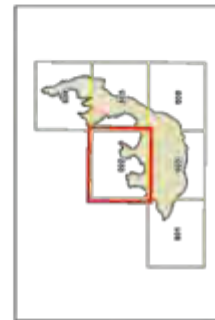
Project No: 15/15/14
Date: 15 June 14
Map Identification number:
© 2014 Woollahra Municipal Council



Existing
 Foreshore Building Line Map
 Sheet FBL_002

- Foreshore Building Line**
- 12m Foreshore Area
 - 30m Foreshore Area
 - 15m Foreshore Building Line
 - 30m Foreshore Building Line

Cadastral
 Cadastral 31/2/14 © Woollahra Municipal Council



Scale
 1:10,000 @ A3
 0 200 Kilometres

North Arrow
 N

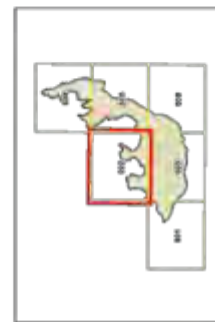
Project No. 14/001
 Date: June 15
 Map No. FBL_002_014_01112015
 © 2014 Woollahra Municipal Council



**Amendment to
 Woollahra Local
 Environmental Plan
 2014**

- Proposed
 Foreshore Building Line Map
 Sheet FBL_002**
- 15m Foreshore Area
 - 15m Foreshore Area
 - 30m Foreshore Area
 - 15m Foreshore Building Line
 - 15m Foreshore Building Line
 - 30m Foreshore Building Line

Cartilage
 Cadastre 15/11/14 © Woollahra Municipal Council



Scale
 0 200 Metres
 Scale: 1:10,000 @ A3

North Arrow
 N

Project No. 15/11/14
 Date: 15/11/14
 Map No. FBL_002



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



**Planning &
Environment**

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

WOOLAHRA 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



**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 29th day of February, 2015.

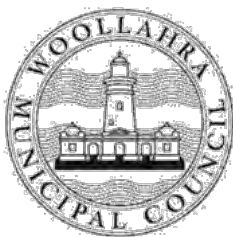

**Lee Mulvey
Director
Metropolitan Delivery (CBD)
Planning Services**

Delegate of the Minister for Planning

JULY 2015

SUBMISSIONS

Plan Prop 83 & 83A Yarranabbe Road, Darling Point



TRIM 15/71179

Contents

CID001 Katrina Hobhouse
CID002 Robert Whyte
CID003 Philip Stern
CID004 Peter Helman & Victoria Wilkins
CID005 Owners of 77-81 Yarranabbe Road, Darling Point (SP 42120)
CID006 Lilly Dresdner
CID007 Colleen Bray
CID008 Victoria Taylor
CID009 Ruth Sife
CID010 George Lewkovitz
CID011 Ian Ingram
CID012 Mizra Alzamora Fernandez
CID013 Charlotte Feldman
CID014 Estelle Tracton
CID015 Daniel Tracton
CID016 David Saul
CID017 Ray Dresdner
CID018 Anita Zweig
CID019 Eric de Diesbach
CID020 Gilda Gude
CID021 Louise Lichtenstein
CID022 Tony De Bono
CID023 Evelyn Krieger
CID024 Ron Hirsch
CID025 Peter Halasz
CID026 Bruce Rosengarten
CID027 Hannah Gilvear Sydney Water
CID028 Maxwell Hunt
CID029 Lance Joseph
CID030 Deborah Jones
CID031 Julianne Breen

TRIM 15/71179

CID032 Mary Ma & Robert Hemphill
CID033 Leonie Jeffrey
CID034 Hazel Watson
CID035 Gina Potter Department of Primary Industries
CID036 Chris Hannan
CID037 Ghita Lipshitz
CID038 Sam Cullen on behalf of Strata Plan 2766
CID039 Carol Grolman
CID040 Steve Alperstein
CID041 Stuart Rose
CID042 Stanley Wise
CID043 Kevin Orsman
CID044 Regina Madden
CID045 Edmond Platon TfNSW
CID046 Brett Daintry
CID047 David Waterhouse
CID048 Lois Flemming
CID049 Roads and Maritime Services
CID050 Raymond Dresdner and James Dominguez
CID051 Raymond Dresdner and James Dominguez
CID052 Yarranabbe Developments

TRIM 15/71179

Sent: Wednesday, 25 March 2015 4:24 PM
To: Records
Subject: SC 2501 Plan Prop 83 & 83A Yarrabee Road Darling Point 2027

I object to a changing of the Planning Control to allow the foreshore building line to be reduced from 30m to 18 m for residential flat building and multi dwelling housing development.

If it is allowed for 83 & 83A Yarrabee Road it will be difficult to prevent all other Yarrabee Road new and renovating developments from moving closer to the foreshore.

Yours sincerely
Katrina Hobhouse

Planning Proposal for 83 & 83A Yarrabee Road, Darling Point - CID001

1

Sent: Friday, 27 March 2015 12:33 PM
To: Records
Subject: Re: Planning Proposal 83/83A Yarranabbe Road, Darling Point

Dear Sir/Madam

I wish to write to advise that I support the Planning Proposal to amend Woollahra LEP 2014 by:

- increasing the FSR
- increasing building height at 83 Yarranabbe Road
- amending the foreshaw building line

In addition, I am the owner of a unit at 73 Yarranabbe Road (subject to settlement) which is in close proximity to the development.

Furthermore, I own Units [REDACTED] at 66 Darling Point Road which overlook the development but believe it enhances the general area.

Yours faithfully,

Robert Whyte

Tel: [REDACTED]

Fax: [REDACTED]

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Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID002

Philip Stern
[REDACTED]
[REDACTED]

April 5, 2015

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

By email to: records@woollahra.nsw.gov.au

Reference: SC2501 Plan Prop (83 and 83A Yarranabbe Rd, Darling Point)

Dear General Manager:

I would like to register my concern with and objection to the planning proposal to amend the Woollahra LEP 2014 by making changes to the planning controls that apply to the land at 83/83A Yarranabbe Road (SC2501 Plan Prop). The proposed amendments to floor space ratio, height and the foreshore building line are not only inconsistent with the guidelines and objectives of the LEP, they will adversely impact surrounding properties.

Further, I support the arguments that will be made in the submission by the Strata Plan that represents the building owners at 73 Yarranabbe Road.

Sincerely,

Philip Stern

CID003 Philip Stern

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID003

Sent: Monday, 6 April 2015 6:34 PM
To: Records
Subject: Planning proposal 83 and 83A Yarranabee Rd, Darling Point

Dear Council,

We would like to voice our objections to the Planning proposal for 83 and 83A Yarranabee Rd, Darling Point. We have read the PDF's in the "Public notices and exhibitions" section of the Council website.

We do not agree that the Woollahra Local Environmental Plan 2014 should be amended for this development, viz.

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 Yarranabee Road, and*
 - *A maximum building height of part 10.5m and part 15.2m over 83A Yarranabee 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.*

We have read the justification for changes, social & environmental effects etc. and do not agree with the conclusions reached: on the contrary we think the proposed changes and subsequent building would impact negatively on the amenity of the area, and therefore we lodge our objections to the plan.

Regards,
Peter Helman & Victoria Wilkins, [REDACTED]



DESIGN COLLABORATIVE
Pty Limited

ABN 36 002 126 954
ACN 002 126 954

Planning and Development Consultants

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Director

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BSurv(QLD)
MCP(MIT) MIS
FPIA MRTPI FAPI

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

10 April 2015
Ref: 150573.1L

The General Manager
Woollahra Municipal Council
By email: records@woollahra.nsw.gov.au
Your Ref: SC2501 Plan Prop

Attention: Mr B Metcalfe

Dear Sir,

Re: PP – 83 and 83A Yarranabbe Road, Darling Point – Objection on behalf of the owners of 77-81 Yarranabbe Road, Darling Point (SP 42120)

We act on behalf of the Owners of 77-81 Yarranabbe Road (SP 42120), the residential flat building immediately to the west of Nos 83 and 83A, the site of the above Planning Proposal. Our clients have requested that we review the Planning Proposal documentation and make this submission on their behalf.

77-81 Yarranabbe Road

Our clients' property comprises a 5-6 level residential flat building containing 4 units over 5 levels and the building entry at the upper, 6th level. Each of the units in the building enjoys views of the Harbour from its living areas and associated balconies and terraces. The topmost unit is over two levels and is set back behind the line of the three lower levels.

It is noted that our clients' building either complies, or largely complies, with the relevant development standards that were applicable to residential flat development under Woollahra LEP 1995 in this part of Darling Point. In particular, our clients' building:

- complies with the 30m foreshore building line (FSBL) from the Harbour water frontage (MHW) which applies to residential flat buildings;
- complies with the maximum 0.875:1 floor space ratio (FSR) standard; and
- involves only very minor breaches of the 9.5m maximum height standard.

The Planning Proposal ("PP")

According to the information currently on exhibition, the PP involves the following changes to the planning controls applicable to the site (under Woollahra LEP 2014):

- reducing the FSBL for residential flat building development from 30m to 18m;
- increasing the maximum height permitted on No. 83 from 10.5m to 15.2m, with a reduced secondary height standard of 5.7m close to the Yarranabbe Road frontage;

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point, CIP005

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- increasing the maximum height permitted on part of No. 83A to 15.2m (with a maximum building height of 10.5m retained on the waterfront part); and
- increasing the maximum floor space ratio from 0.9:1 to 1.2:1.

The purpose of the PP is to facilitate the redevelopment of the site for a residential flat building. The PP is accompanied by a “PP envelope” which forms the basis of the proposed controls. The documentation supporting the PP also illustrates a “compliant building envelope/form” as a basis for comparison with the “PP envelope”.

Flawed Justification for the PP Envelope

Our clients submit that there are flaws in the justification for the “PP envelope”, as detailed below.

Firstly, it is noted that the description of the “compliant building envelope/form” in the submitted documentation is silent as to its FSR; the description only refers to height and setback requirements. Without information regarding its FSR, it is considered questionable whether the “compliant building envelope” can be considered compliant and, therefore, a valid basis for comparison. This is particularly the case as it is being compared with the “PP envelope” which necessarily involves a FSR outside Council’s controls, as evidenced by the proposed increase in the maximum FSR to 1.2:1. On this basis, the comparison and related justification for the PP envelope is considered flawed.

It is also noted that the comparison of the “compliant building envelope/form” and the “PP envelope” in the submitted documentation demonstrates that the PP will not result in an increase in dwelling yield on the site. Both the “compliant building envelope/form” and the “PP envelope” provide for 5 dwellings. While the “PP envelope” would increase the dwelling density on the site compared with the existing situation (from 2 to 5 dwellings) the applicant’s own documentation shows that this density could be achieved under the existing controls. On this basis, any justification for the PP relating to increased residential density on the site, which is a significant theme in the PP documentation, is unfounded.

Our clients therefore submit that the PP should be rejected as the analysis underlying its justification is flawed.

Objections and Impacts on 77-81 Yarranabbe Road

Reduction in the FSBL from 30m to 18m and Adverse Impacts on the Amenity of 77-81

Our clients object, in principle, to the proposed reduction in the FSBL on the site as part of the PP, as well as to the impacts the resulting built form will have on their property arising from the proposed changes to the controls.

The 30m FSBL for residential flat building developments is a long held policy of Woollahra Council and that policy position has been maintained in the new Woollahra LEP 2014. In our clients’ view there is insufficient justification for the proposed reduction in the FSBL, particularly as it appears to be based on historic developments in the locality, erected prior to the introduction of that policy. In this regard, our clients reject the “contextual fit” arguments put forward to justify the PP.

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As noted above, our clients' building, erected during the 1990s, was required to comply with the 30m FSBL, as was the neighbouring building to the west. In these circumstances it has been our clients' reasonable assumption that any development on the neighbouring site for a residential flat building would have a similar siting, bulk and scale to their building. In this regard, there are no exceptional features of the site of the PP which would warrant the alteration of the FSBL. The site has similar characteristics to properties to the west at 77-81 and 73-75 Yarranabbe Road, both of which, as noted above, are occupied by residential flat buildings which comply with the 30m FSBL.

In addition, it is noted that many of the "benefits", in terms of impacts on our clients' property that are attributed to the "PP envelope", would also result from a development that complied with the 30m FSBL, including improved views and solar access. The PP will lead to increased view impacts and loss of solar access to our clients' property compared with a development that complied with the 30m FSBL.

In any event, it is our clients' view that the improvements in solar access and views arising from the "PP envelope" depicted in the PP documentation are marginal compared with the "compliant building envelope/form" (which also includes a dual occupancy on the waterfront).

In our clients' view, the "PP envelope" is not so different from the development that was rejected by the Land and Environment Court, particularly with regard to the impact of the reduction/breach of the FSBL together with height and bulk, that it should now be considered acceptable. In the context of the matters considered in those proceedings, the PP envelope would not justify the setting aside of Council's long-held 30m FSBL policy for residential flat buildings on the site.

In our clients' view, the main "benefit" flowing from the PP is to allow for a larger building on the site than would be permitted under the current controls and thereby provide greater returns to the land owner/s. In our clients' view, such returns would be at the expense of their amenity.

As a result of the proposed reduction in the FSBL, a future building on the site would project forward of our clients' building which will result in adverse visual impact and loss of outlook to our clients' property. A future building would also result in an adverse visual impact on our clients' property as a result of its increased height and bulk adjacent to the common boundary.

In addition, that part of No. 83 which is presently unoccupied by any building footprint, which coincides with the rear façade and associated balconies of our clients' building, would be replaced by a built form up to 4 levels high (based on the PP envelope) which will have an adverse impact on the outlook from our clients' units and balcony areas.

Our clients' objections to the PP also relate to their use and enjoyment of the rear garden and pool area of their property. There is potential for overlooking and loss of privacy to this area from future development on the site.

Our clients therefore submit that the PP should be rejected as there is insufficient justification for the proposed reduction in the FSBL, which goes against a long held policy of Council, and the adverse amenity impacts that a future development under the proposed 18m FSBL, together with the proposed height and FSR controls, is likely to have on their property.

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - C15095

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Objections to Proposed Height Controls

Our clients object to the proposed changes to the height controls as part of the PP, including the increase in the maximum building height to 15.2m on No. 83 and the “secondary” 5.7m height control on the upper part of No. 83.

These concerns relate to the implications for the future built form on the site and its impacts on the amenity of our clients’ property, as set out above, as well as the formulation of the controls themselves.

As set out in the documentation on exhibition, the height standards proposed by the applicant in its PP were a series of RLs across the site aligned to the PP envelope. For reasons set out in the report to the Urban Planning Committee dated 24 November 2014, Council officers do not support this approach. Instead, the proposed height standards have been reformulated to apply blanket standards over the site, as noted above.

Significant concerns are raised regarding the reformulated height standards.

In particular, the reformulated height standards create a lack of certainty regarding the future built form on the site as it appears that the PP envelope would not comply with those proposed standards. According to the PP documentation, part of the PP envelope (on No. 83A) reaches a height of some 12.2m, but, under the current PP, a 10.5m height standard is proposed on that part of the site.

At the same time, the proposed 15.2m height standard over most of No. 83 would allow for a higher and bulkier built form than the PP envelope, particularly along the common boundary with our clients’ property to which our clients would strongly object.

If the PP envelope is not able to implemented under the proposed standards, the whole basis for the PP is called into question and significant uncertainty is raised around the future built form of development on the site. A building complying with the proposed height standards will be inconsistent with the PP envelope. The impacts of such a building may be quite different to those shown in the PP submission.

Such a built form outcome would call into question the justification for the PP itself, particularly in terms of the supposed “benefits” associated with the PP envelope.

Significant concern is also raised regarding the formulation of the secondary height control. On the basis of the maps currently on exhibition, there is no certainty as to which part of No. 83 that control would apply. The maps should be amended either through the creation of a new height zone or an overlay (or similar) on the map to clearly show the part of No. 83 where the 5.7m height standard applies. The indicative cross-section of the proposed height controls only adds to the confusion as it shows a maximum building height varying between 5.7m and 15.2m over the central part of No. 83. The proposed controls as shown on the map do not reflect this built form outcome.

Accordingly, our clients object to the proposed height standards, not only on the basis that the increased height is unjustified and will result in adverse impacts on the amenity of their property, but also on the basis that they give rise to significant uncertainty regarding the future built form and, in particular, would not appear to permit the implementation of the PP envelope.

Planning Proposal for 83 & 83A Yarranabee Road, Darling Point - C1005

Design Collaborative Pty Ltd

Summary

In summary, our clients submit that:

- the PP should be rejected as the analysis underlying its justification, including its comparison with the “compliant building envelope/form”, is flawed for the reasons set out above;
- the PP should be rejected as there is inadequate justification for the proposed change to the FSBL which is a long-standing policy of Woollahra Council. Future development under the proposed 18m FSBL, together with the proposed height and FSR standards, will have a greater impact on their property compared with one that complied with the existing 30m FSBL;
- future development under the proposed controls will have a significant adverse visual impact on their property and loss of outlook as a result of its siting forward of their building, together with its height and bulk;
- future development under the proposed controls will result in additional overshadowing and loss of solar access compared with a building which complied with the 30m FSBL;
- future development will result in visual impact and a loss of privacy to their outdoor garden and pool area; and
- if Council proceeds with the PP, the proposed height standards require significant reformulation to provide greater certainty regarding their implementation and the future built form on the site. As currently formulated the height standards could result in a higher, bulkier building along the common boundary with our clients’ property, to which they would strongly object. It appears that the PP envelope would not comply with the proposed height standards calling into question the whole basis for the PP and its supposed “benefits”.

Accordingly, our clients submit that Council should reject the PP and maintain the existing controls for the site.

Yours Faithfully,
DESIGN COLLABORATIVE PTY LTD



J Lidis
Director

1

The General Manager
Woollahra Municipal Council
P.O. Box 61
Double Bay NSW 1360

Fax: 9391 7044

Email: records@woollahra.nsw.gov.au

Reference: SC2501 Plan Prop

Attention: Mr Brendon Metcalfe

Dear Sir,

**Re: Objection to the Planning Proposal for 83 and 83A Yarranabbe Road,
Darling Point (Lots 11 and 12 DP 598514)**

I live in Unit ■ 81 Yarranabbe Road which is directly next to the above property.

I am writing as a very concerned neighbour to object to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point. The grounds for my objection are set out below.

Land and Environment Court Decision

The Planning Proposal would allow a building, which would not be very different from the building the subject of DA 485/2012, which was rejected by Woollahra Council in 2013.

On appeal the Land & Environment Court after inspecting the site on land and by boat from the harbour and listening to several days of argument by the developer's consultants held that the proposed development did not merit allowing the breach of the Foreshore Building Line or Council's height or FSR standards (Yarranabbe Developments Pty Ltd -v- Woollahra Council Land & Environment Court Matter No. 10711 of 2013).

Both Council and the Court could have approved the previous DA if the project was found to have merit but rejected the DA.

My objections to the DA breaching the 30 meter foreshore setback and being too high and bulky have certainly not been addressed in the Planning Proposal.

My objection in respect of the Foreshore Building Line was mirrored in objections from many other residents and the Darling Point Society as reported in the *Wentworth Courier* (February 26, 2014).

Why would Council now allow a Planning Proposal to reverse its previous rejection of a DA for a similar building, which it successfully defended in Court? The Planning Proposal would effectively be subverting the judgement of the Court.

Foreshore Building Line (FSBL)

The major difference between the Planning Proposal and the previous DA for the property is that the Planning Proposal provides for the proposed building to be set back 18 meters from the foreshore instead of the 13 meter setback in the previous DA.

The Woollahra Council LEP 2014 incorporates the long-held policy of Woollahra Council for a mandatory 30 meter foreshore building line for residential flat buildings.

The developer contends that since the two flat buildings to the right of the property are built on the foreshore he should be allowed to breach the Foreshore Building Line by 12 meters. These buildings were built in the 1950's before Council and the State Government adopted policies to protect the green foreshore. The three flat buildings to the left of the property are set back 30 meters from the foreshore. The green foreshore continues along past a number of single family dwellings and then along the length of Yarranabbe Park.

The Land and Environment Court rejected the developer's contention in respect of the two flat buildings on the foreshore and held that planning mistakes made in the past could not be used to justify non compliance in the future. The Court's decision was that the developer was required to abide by the 30 meter set back.

Every ferry, pleasure boat, tourist excursion boat and cruise boat passing in and out of Sydney Harbour views the property in question which is on the very tip of the Darling Point peninsula which is also visible from all the high rise office buildings on the north eastern edge of the CBD.

The Planning Proposal is inconsistent with the Principles in clause 2(2) of SREP (Sydney Harbour Catchment) 2005 for the Foreshore and Waterways Area, which provides:

- (a) Sydney Harbour is to be recognized as a public resource, owned by the public to be protected for the public good.
- (b) the public good has precedence over the private good whenever and wherever change is proposed for Sydney Harbour or its foreshores.
- (c) Protection of the natural assets of Sydney Harbour has precedence over all other interests.

The Development Control Plan that is related to SREP is the Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 which provides in Part 5 Design Guidelines for Land based Developments that:

For the purposes of Part 5.3 the siting of existing buildings on adjoining properties is only able to be taken into consideration in relation to the siting of proposed buildings in circumstances where Council has not set a foreshore building line.

There is also a covenant (No. M167009) over 83A Yarranabbe Road in favour of Council prohibiting the erection of any building other than a private house for a single family. A previous Council created this covenant in order to protect the foreshore.

The Planning Proposal assumes that Council will not enforce the covenant and disregards the intended protection given by the covenant.

I strongly object to the applicant being permitted to breach the Foreshore Building Line and the covenant.

Floor Space Ratio (FSR)

The Planning Proposal would allow an increase in the FSR from 0.9:1 to 1.2:1 under LEP 2014. On this basis, a future development under the proposed controls would exceed the 0.9:1 standard by 0.3:1 (436m² GFA), which is 33% more than the standard.

I do not believe there is justification for such a large increase in the FSR to be permitted.

Height

The Planning Proposal would allow the height of a future development to be increased by up to 4.7 meters to 15.2 meters compared with the 10.5m standard.

I do not believe there is justification for permitting such a large increase in the height.

In any event I am advised that as a result of Council's reformulation of the height standards (from those used in the Planning Proposal submission to justify the Proposal) the building envelope used in that submission would not comply with the proposed height standards in the Planning Proposal which calls into question the whole basis for the Planning Proposal.

Part of the envelope in the Planning Proposal submission reaches a height of 12.2 meters whereas a 10.5 meter height standard is proposed. The proposed

15.2 meter height standard over most of No.83 would allow a higher and bulkier built form than required by the envelope in the Planning Proposal submission. This is particularly so along the common boundary with my property.

A building complying with the Planning Proposal height standards will be inconsistent with the height standards in the Planning Proposal submission. The impacts of such a building may be quite different to those shown in the Planning Proposal submission.

Surely the Planning Proposal cannot be approved on the basis of the impacts of a built form which does not reflect the height standards in the Planning Proposal.

Adverse Effect on Amenity

The cumulative effect of allowing a development to protrude so far forward towards the foreshore past the balcony of my building together with the increase in FSR and height allowed would significantly impact the outlook from my unit.

The building would overlook my balcony, living room, pool and garden and have a significantly impact on my privacy. Such a building would overshadow my pool and garden.

When I purchased my home unit I relied on the fact any flat building built on the adjoining property would be required to comply with the 30 meter Foreshore set back that applied to my building. I was also aware that Council had a covenant over 83A to ensure that this requirement was complied with.

The issues of the visual impact of such a bulky building, privacy and overshadowing of my pool and garden do not appear to have been addressed in the Planning Proposal.

The Planning Proposal submission is noteworthy for the negative effects which are not addressed.

Planning Proposal Changes Are Not Justified

I do not believe that the departures from the Foreshore Building Line, Council's FSR and Height standards proposed in the Planning Proposal can be justified.

The justification that a bigger, bulkier, higher building substantially closer to the harbour foreshore is more desirable than a building complying with Council's existing development standards is to say the least questionable. As is the

justification that the Planning Proposal would assist Council in achieving an increase in population density when all that will be achieved would be one additional very expensive luxury home unit probably occupied by a wealthy couple possibly for some period with their children.

Summary

The extent of the changes in the Planning Proposal will substantially affect my right of enjoyment of my home unit particularly as the bulk of a compliant building would extend 12m past my balcony towards the foreshore.

The impacts of the height standards in the Planning Proposal are uncertain because they do not reflect the building envelope in the Planning Proposal submission. The Planning Proposal is therefore flawed.

The only justification for the proposed changes would be to increase the profits of the developer by allowing the construction of an additional luxury home unit.

In this respect it is of interest to note that Council records show that the developer, who resides in the subject property, engaged Allen, Allen & Hemsley solicitors (as it then was) and Master Plan to ensure that development on my adjoining property, 81 Yarranabbe Road (DA /BA 785/89), was built 30 meters back from the foreshore.

At the very least The Planning Proposal should not subvert the judgement of the Land and Environment Court that the 30 meter Foreshore Building Line should apply to any development on the property. It is my understanding that Council should not directly or indirectly sanction a development that contravenes the decision of the Court.

Yours faithfully,



Name: Lilly Dresdner



Date: 10th April 2015

Sent: Tuesday, 14 April 2015 11:25 AM
To: Records
Subject: Re, planning proposal

Dear Mr. Coker

Re. Exhibition of a planning proposal in relation to 83 and 83 A Yarranabbe Road, Darling Point - Lots 11 and 12 DP 598514

As a neighbour residing in Yarranabbe Rd., I have viewed the proposal at Council and wish to object to this planning proposal on the following grounds;

1. The increase of floor space ratio by approximately 33 % would deliver an unacceptable bulk on the site with subsequent heavier footprint in relation to people, cars and traffic congestion on this one way street .
2. The increase from 10.5m to 15.2m on the street at Yarranabbe Rd. will create an alteration to the line of the streetscape therefore setting an unacceptable precedent for other sites to follow suite along Yarranabbe Rd.

Yours faithfully,

Mrs. Colleen Bray

[REDACTED]
[REDACTED]

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID007

Sent: Tuesday, 14 April 2015 6:31 PM
To: Records
Subject: SC2501 PLAN PROP for 83 AND 83A YARRANABBE ROAD DARLING POINT 2027

The General Manager
Woollahra Council
PO Box 61
DOUBLE BAY NSW 1360

Attention: Allan Coker
Director Planning and Development.
YOUR REF: SC2501 PLAN PROP
for 83 and 83a Yarranabbe Road Darling Point 2027.
Lots 11 and 12 DP 598514

Dear Allan,

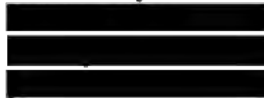
Thank you for your letter dated 24 March 2015.

I wish to *object to this planning proposal* on the following grounds:

1. The increase of floor space ratio by approximately 33 % would deliver *an unacceptable bulk on the site* with subsequent heavier footprint regarding people, cars and traffic congestion on our One Way street.
2. The increase from 10.5m to 15.2m on Yarranabbe Road would create *an alteration to the line of the streetscape* therefore setting *an unacceptable precedent* for other sites all along Yarranabbe Road.

Yours Sincerely,

Victoria Taylor



Ruth Sife

General Manager
Woollahra Municipal Council
P O Box 61
Double Bay NSW 1360

Reference: SC2501 Plan Prop

Attention: Mr Brendon Metcalfe

14th April 2015.

Dear Sir,

Re: Objection to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (Lots 11 and 12 DP 598514)

I live in unit ■ 81 Yarranabbe Road Darling Point, and write to object to the proposed Planning Proposal for 83 and 83 A Yarranabbe Road, Darling Point.

I object to the Planning Proposal because:

Council's LEP mandating a 30-meter foreshore set back from the harbour foreshore for flat buildings should be enforced as it has strong support in the community.

Council took a strong position recently and spent ratepayer's money to defend the 30-meter foreshore set back in the Land and Environment Court in respect of the developer's previous DA for the very same property. The Court affirmed Council's position.

Why should the Planning Proposal allow what Council and the Land and Environment Court recently refused?

Although the Planning Proposal only allows the 30 meter setback to be breached by 12 meters rather than 17 meters which was the subject of the previous refusal this is still substantial, will be noticeable from the harbour and will have a very significant detrimental effect on my building.

I am advised that Council holds a covenant over 83A Yarranabbe Road to protect the harbour foreshore by prohibiting the erection of any building other than a private dwelling house for a single family. The covenant was put in place by a previous farsighted Council to protect the harbour foreshore. The Planning Proposal would breach the covenant.

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID009

The Covenant should not be ignored just so that the developer can make a super profit by building a higher and bulkier building closer to the harbour foreshore.

My building was required to comply with the 30 meter foreshore set back. The developer, who lives next door in 83, engaged lawyers and town planners when my building was being built to enforce the 30 meter setback. I object to the Planning Proposal permitting his building next door to be 12 meters forward of the outer edge of my balcony. The same rules, which he insisted on enforcing, should equally apply to his property.

I also object to the extra height and bulk of the building, which would be permitted under the Planning Proposal in excess of Council's building standards.

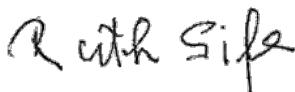
The building, which would be permitted under the Planning Proposal, would overlook my balcony, living room, pool and garden. Such a building would have a significant impact on my privacy including my privacy in my bedroom, which fronts the harbour.

The issues of the visual impact of such a bulky building extending so far forward of my building, privacy and the overshadowing of my bedroom, balcony, pool and garden do not appear to have been addressed in the Planning Proposal.

I am advised that in any event, the reformulation of the height calculations in the Planning Proposal mean that the building proposed by the developer could not be built to comply with those height calculations. Surely the Planning Proposal cannot be justified on the basis of the developers' proposal if that proposal would not comply with the Planning Proposal.

I hope that Council will give serious consideration to the strong grounds of objection to the Planning Proposal.

Yours faithfully,



Ruth Sife

George and Ilana Lewkovitz
[REDACTED]
[REDACTED]
[REDACTED]

The General Manager
Woollahra Municipal Council
P O Box 61, Double Bay NSW 1360.

14th April 2015

Attention: Mr. Brendan Metcalfe

Dear Sir,

**Council Ref: SC2501 Plan Prop-Objection to Planning Proposal
for 83 & 83A Yarranabbe Road, Darling Point.**

I write to object of the above Planning Proposal.

I am concerned that the Planning Proposal breaches the Foreshore Building Line which was included in the WLEP to protect our beautiful scenic harbour foreshore from over development by requiring unit buildings to be set back at least 30 meters from the harbour foreshore.

Council's covenant over No. 83A Yarranabbe Road protects the harbour foreshore by prohibiting the erection of any building other than a private dwelling house for a single family. I request Council not to release or vary this covenant that it holds for benefit of the whole community.

If the Planning Proposal is approved it would be contrary to Council's long standing policy to protect the foreshore in the public interest.

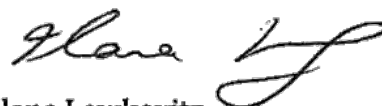
I have numerous occasions heard Woollahra Councilors when asked about their position confirmed their opposition to any development which breached the Foreshore Building Line.

Thank you for your consideration.

Yours faithfully,



George Lewkovitz



Ilana Lewkovitz

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID010

1

The General Manager
Woollahra Municipal Council
P O Box 61
Double Bay NSW 1360

Fax: 9391 7044

Email: records@woollahra.nsw.gov.au

Reference: SC2501 Plan Prop

Attention: Mr Brendon Metcalfe

Dear Sir,

Re: Objection to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (Lots 11 and 12 DP 598514)

I am writing as a very concerned next door neighbour to object to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point. The grounds for my objection are as follows:

Land and Environment Court Decision

The Planning Proposal would allow a virtually identical building to the subject DA 485/2012, which was rejected by Woollahra Council in 2013.

On Appeal the Land & Environment Court (after inspecting the site and listening to several days of argument by the developer's consultants) held that the proposed development did not merit allowing the breach of the Foreshore Building Line or Council's height or FSR standards (Yarranabbe Developments Pty Ltd v Woollahra Council Land & Environment Court Matter No. 10711 of 2013).

Both Council and the Court could have approved the previous DA if the project was found to have merit however they both rejected that DA.

My objections to the DA breaching the 30 meter foreshore setback and being too high and bulky have certainly not been addressed in the Planning Proposal.

My objection in respect of the Foreshore Building Line was supported in objections from many other residents and the Darling Point Society as reported in the Wentworth Courier.

Why would Council now allow a Planning Proposal to reverse its previous rejection of a DA for a similar building, which it successfully defended in Court? The Planning Proposal would be subverting the judgement of the Court.

Surely the Planning Proposal cannot be approved on the basis of the impacts of a built form which does not reflect the height standards in the Planning Proposal.

Adverse Effect on Amenity

The cumulative effect of allowing a development to protrude so far forward towards the foreshore past the balcony of my building together with the increase in FSR and height allowed would significantly impact the outlook from my unit.

The building would overlook my balcony, living room, pool and garden and have a significantly impact on my privacy. Such a building would overshadow my pool and garden.

When I purchased my home unit I relied on the fact any flat building built on the adjoining property would be required to comply with the 30 meter Foreshore set back that applied to my building. I was also aware that Council had a covenant over 83A to ensure that this requirement was complied with.

The issues of the visual impact of such a bulky building, privacy and overshadowing of my pool and garden do not appear to have been addressed in the Planning Proposal.

The Planning Proposal is noteworthy for negative effects which are not addressed.

Planning Proposal Changes Are Not Justified

I do not believe that the departures from the Foreshore Building Line, Council's FSR and Height standards in the Planning Proposal or the other changes proposed can be justified.

The justification that a bigger, bulkier, higher building substantially closer to the harbour foreshore is more desirable than a building complying with Council's existing development standards is to say the least questionable. As is the justification that the Planning Proposal would assist Council in achieving an increase in population density when all that will be achieved would be one additional very expensive luxury home unit probably occupied by a wealthy couple possibly for some period with their children.

Summary

The extent of the changes in the Planning Proposal will substantially affect my right of enjoyment of my home unit particularly as the bulk of a compliant building would extend 12m past my balcony towards the foreshore.

5

The impacts of the height standards in the Planning Proposal are uncertain because they do not reflect the building envelope in the Planning Proposal submission. The Planning Proposal is therefore flawed.

The only justification for the proposed changes would be to increase the profits of the developer by allowing the construction of an additional luxury home unit.

In this respect it is of interest to note that Council records show that the developer, who resides in the subject property, engaged Allen, Allen & Hemsley solicitors (as it then was) and Master Plan to ensure that development on my adjoining property, 81 Yarranabbe Road (DA /BA 785/89), was built 30 meters back from the foreshore.

At the very least The Planning Proposal should not subvert the judgement of the Land and Environment Court that the 30 meter Foreshore Building Line should apply to any development on the property. It is my understanding that Council should not directly or indirectly sanction a development which contravenes the decision of the Court.

Yours faithfully,



Name: Ian Ingram

Address: [Redacted]

Date: [Redacted]

[Redacted]

Mizra Alzamora - Fernandez

The General Manager
Woollahra Municipal Council
P O Box 61
Double Bay NSW 1360

Reference: SC2501 Plan Prop

Attention: Mr Brendon Metcalfe

15th April 2015

Dear Sir,

Re: Objection to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (Lots 11 and 12 DP 598514)

I live in Unit 81 Yarranabbe Road Darling Point, and write to object to the Planning Proposal for 83 and 83 A Yarranabbe Road, Darling Point.

I object for the following reasons:

It would breach the 30-meter foreshore set back from the harbour foreshore for flat buildings, which Council applies to other developments and insisted on when our building was built. The foreshore building set back for flat buildings is a long standing policy of the Council, which has strong community support. Council recently won a Land and Environment Court case to defend the 30meter set back on the property, the subject of the Planning Proposal.

It would be inconsistent with Councils' covenant over 83A Yarranabbe Road, which protects the harbour foreshore by not allowing flat buildings. The Covenant should not be ignored just so that the developer can make a super profit by building a higher and bulkier building closer to the harbour foreshore.

It would allow a building with extra height and bulk in excess of Council's building standards, which would overshadow and overlook our balcony, living room, pool and garden. Such a building would have a significant impact on our privacy.

It would allow a bulky building extending a long way forward of our building. Such a building would have very negative impact on our visual outlook, as we would be looking at the side wall of a large building.

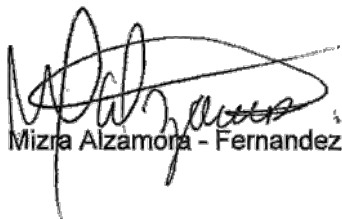
When our building was being built our balcony was planned to be large enough to accommodate a dining table and chairs. The developer, who lives in 83 next door, hired town planners and lawyers to strictly enforce the 30 meter setback from the harbour's edge. (His objections can be found in Council's records.) The

result is that our balcony is a thin strip and too small to fit a dining setting or even a reclining chair. I ask why the developer should be able to use a Planning Proposal to change the rules for no good reason.

I am advised that in any event the Planning Proposal cannot be justified on the basis of the developers' proposal, as that proposal would not comply with the height standards in the Planning Proposal. An analysis of any benefits claimed in respect of the developer's proposal are therefore irrelevant.

The only justification for the Planning Proposal would be to allow the developer to break the rules in order to make a bigger profit. I strongly object.

Yours faithfully,



Mizra Alzamora - Fernandez

THE DARLING POINT SOCIETY INC

[REDACTED]
[REDACTED]
[REDACTED]
20 April 2015



The General Manager
Woollahra Municipal Council
P O Box 61
Double Bay NSW 1360

Email: records@woollahra.nsw.gov.au

Reference: SC2501 Plan Prop

Attention: Mr Brendon Metcalfe

Dear Sir,

Re: Objection to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (Lots 11 and 12 DP 598514)

The Darling Point Society Inc. objects to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point. The grounds for this objection are set out below.

Land and Environment Court Decision

The Planning Proposal would allow a building, which would be not be very different from the building the subject of DA 485/2012, which was rejected by Woollahra Council in 2013.

On appeal the Land & Environment Court after inspecting the site on land and by boat from the harbour and listening to several days of argument by the developer's consultants held that the proposed development did not merit allowing the breach of the Foreshore Building Line or Council's height or FSR standards (Yarranabbe Developments Pty Ltd -v- Woollahra Council Land & Environment Court Matter No. 10711 of 2013).

Both Council and the Court could have approved the previous DA if the project was found to have merit but rejected the DA.

Objections to the DA breaching the 30 meter foreshore setback and being too high and bulky have certainly not been addressed in the Planning Proposal.

The objection from the Society in respect of the Foreshore Building Line was mirrored in objections from many other residents and the Darling Point Society as reported in the Wentworth Courier.

Why would Council now allow a Planning Proposal to reverse its previous rejection of a DA for a similar building, which it successfully defended in Court? The Planning Proposal would effectively be subverting the judgement of the Court.

Foreshore Building Line (FSBL)

The major difference between the Planning Proposal and the previous DA for the property is that the Planning Proposal provides for the proposed building to be set back 18 meters from the foreshore instead of the 13 meter setback in the previous DA.

The Woollahra Council LEP 2014 incorporates the long-held policy of Woollahra Council for a mandatory 30 meter foreshore building line for residential flat buildings.

The developer contends that since the two flat buildings to the right of the property are built on the foreshore he should be allowed to breach the Foreshore Building Line by 12 meters. These buildings were built in the 1950's before Council and the State Government adopted policies to protect the green foreshore. The three flat buildings to the left of the property are set back 30 meters from the foreshore. The green foreshore continues along past a number of single family dwellings and then along the length of Yarranabbe Park.

The Land and Environment Court rejected the developer's contention in respect of the two flat buildings on the foreshore and held that planning mistakes made in the past could not be used to justify non compliance in the future. The Court's decision was that the developer was required to abide by the 30 meter set back.

Every ferry, pleasure boat, tourist excursion boat and cruise boat passing in and out of Sydney Harbour views the property in question which is on the very tip of the Darling Point peninsula which is also visible from all the high rise office buildings on the north eastern edge of the CBD.

The Planning Proposal is inconsistent with the Principles in clause 2(2) of SREP (Sydney Harbour Catchment) 2005 for the Foreshore and Waterways Area, which provides:

- (a) Sydney Harbour is to be recognized as a public resource, owned by the public to be protected for the public good.
- (b) the public good has precedence over the private good whenever and wherever change is proposed for Sydney Harbour or its foreshores.
- (c) Protection of the natural assets of Sydney Harbour has precedence over all other interests.
- (d) The distinctive foreshore extending from Yarranabbe Park to McKell Park viewed from the harbour must be preserved
- (e) Only two buildings currently exceed the FSR and the 30 meter water line at the point and the current LEP ruling should be enforced.

The Development Control Plan that is related to SREP is the Sydney Harbour Foreshore and Waterways Area Development Control Plan 2005 which provides in Part 5 "Design Guidelines for Land based Developments" that:

For the purposes of Part 5.3 the siting of existing buildings on adjoining properties is only able to be taken into consideration in relation to the siting of proposed buildings in circumstances where Council has not set a foreshore building line.

There is also a covenant (No. M167009) over 83A Yarranabbe Road in favour of Council prohibiting the erection of any building other than a private house for a single family. A previous Council created this covenant in order to protect the foreshore.

The Planning Proposal assumes that Council will not enforce the covenant and disregards the intended protection given by the covenant.

We strongly object to the applicant being permitted to breach the Foreshore Building Line and the covenant.

Floor Space Ratio (FSR)

The Planning Proposal would allow an increase in the FSR from 0.9:1 to 1.2:1 under LEP 2014. On this basis, a future development under the proposed controls would exceed the 0.9:1 standard by 0.3:1 (436m² GFA), which is 33% more than the standard.

There is no justification for such a large increase in the FSR to be permitted.

Height

The Planning Proposal would allow the height of a future development to be increased by up to 4.7 meters to 15.2 meters compared with the 10.5m standard.

The Society does not believe there is justification for permitting such a large increase in the height.

We believe that the building envelope used in that submission would not comply with the proposed height standards in the Planning Proposal which calls into question the whole basis for the Planning Proposal.

Part of the envelope in the Planning Proposal submission reaches a height of 12.2 meters whereas a 10.5 meter height standard is proposed. The proposed 15.2 meter height standard over most of No.83 would allow a higher and bulkier built form than required by the envelope in the Planning Proposal submission. This is particularly so along the common boundary with my property.

A building complying with the Planning Proposal height standards will be inconsistent with the height standards in the Planning Proposal submission. The impacts of such a building may be quite different to those shown in the Planning Proposal submission.

Surely the Planning Proposal cannot be approved on the basis of the impacts of a built form which does not reflect the height standards in the Planning Proposal.

Adverse Effect on Amenity

The cumulative effect of allowing a development to protrude so far forward towards the foreshore together with the increase in FSR and height allowed would significantly impact the outlook from neighbouring properties.

In particular the building would have a significantly impact on privacy as well as overshadowing the garden and pool next door.

The issues of the visual impact of such a bulky building, privacy and overshadowing of neighbouring pools and gardens do not appear to have been addressed in the Planning Proposal.

The Planning Proposal is noteworthy for negative effects which are not addressed.

Planning Proposal Changes Are Not Justified

The departures from the Foreshore Building Line, Council's FSR and Height standards in the Planning Proposal or the other changes proposed cannot be justified.

The justification that a bigger, bulkier, higher building substantially closer to the harbour foreshore is more desirable than a building complying with Council's existing development standards is to say the least questionable. As is the justification that the Planning Proposal would assist Council in achieving an increase in population density when all that will be achieved would be one

additional very expensive luxury home unit probably occupied by a wealthy couple possibly for some period with their children.

Summary

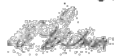
The impacts of the height standards in the Planning Proposal are uncertain because they do not reflect the building envelope in the Planning Proposal submission. The Planning Proposal is therefore flawed.

The only justification for the proposed changes would be to increase the profits of the developer by allowing the construction of an additional luxury home unit.

In this respect it is of interest to note that Council records show that the developer, who resides in the subject property, engaged Allen, Allen & Hemsley solicitors (as it then was) and Master Plan to ensure that development on my adjoining property, 81 Yarranabbe Road (DA /BA 785/89), was built 30 meters back from the foreshore.

At the very least The Planning Proposal should not subvert the judgement of the Land and Environment Court that the 30 meter Foreshore Building Line should apply to any development on the property. It is my understanding that Council should not directly or indirectly sanction a development which contravenes the decision of the Court.

Yours faithfully,



Charlotte Feldman
President
Darling Point Society Inc.

Estelle Tracton



*The General Manager
Woollahra Municipal Council
P O Box 61, Double Bay NSW 1360.*

17th April 2015

Attention: Mr. Brendan Metcalfe

Dear Sir,

Council Ref: SC2501 Plan Prop-Objection to Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point.

I am writing to object to the above Planning Proposal.

My main objection is that the Planning Proposal breaches the Foreshore Building Line which was included in the WLEP to protect the beautiful harbour foreshore. This was specifically to protect the green foreshore by not allowing unit blocks closer than 30 meters from the water.

Council has a covenant over the waterfront property No. 83A Yarranabbe Road which prohibits the erection of any building other than a private dwelling house for a single family. This covenant is held by the Council on behalf of the community to protect a treasure, which should never be compromised. Council recently won a Land and Environment Court decision to prevent this same developer from breaching the Foreshore Building Line on this particular block. I do not understand how the developer can again be intending to breach the Covenant and the Foreshore Building Line.

I trust that the Council will uphold its stand to protect our Harbour foreshore.

I also object to a unit building which is higher and bulkier than Council's specific rules. Why would this building be allowed to break those very well considered rules which apply to other buildings in Woollahra?

Thank you for your consideration.

Yours faithfully,



Estelle Tracton.

The General Manager,
Woollahra Municipal Council
P O Box 61, Double Bay NSW 1360.

17 April 2015

Attention: Mr. Brendan Metcalfe

Dear Sir,

**Council Ref: SC2501 Plan Prop-Objection to
Planning Proposal for 83 & 83A Yarranabbe Road,
Darling Point.**

We object to the above Planning Proposal for the following reasons.

The Planning Proposal breaches the Foreshore Building Line which is included in the WLEP to protect the Harbour foreshore from over development. Unit blocks have to be 30 meters back from the water.

It is important to note that Council holds a covenant over No. 83A Yarranabbe Road. This covenant protects the harbour foreshore by prohibiting the erection of any building other than a private dwelling house for a single family. We trust Council will not release or vary this covenant as it is specifically to ensure that nobody can build a unit block which encroaches on the foreshore.

If the Planning Proposal is approved it would be contrary to Council's long standing policy to protect the foreshore in the public interest. It would also be contrary to the recent Land and Environment Court decision which related to this particular property.

The building proposed is also too high and too bulky as it breaks the rules for buildings in this Woollahra Council area. We do not see the merit in changing the rules especially for a building that is so visible from the harbour.

Thank you for your consideration.

Yours faithfully,



Daniel Tracton



Michelle Tracton



David Saul

The General Manager
Woollahra Municipal Council
P O Box 61
Double Bay NSW 1360

Reference: SC2501 Plan Prop

Attention: Mr Brendon Metcalfe

Date: 17th April 2015

Dear Sir,

Re: Objection to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (Lots 11 and 12 DP 598514)

I live in [REDACTED] and write to object to the proposed Planning Proposal for 83 and 83 A Yarranabbe Road, Darling Point.

I object to the Planning Proposal for the following reasons:

Council's LEP mandating a 30-meter foreshore set back from the harbour foreshore for flat buildings should be enforced as it protects the green border of the harbour and has strong support in the broad community and those who look down on the foreshore from the multitude of apartments in Thornton Street behind 83 A Yarranabbe Road.

Recently Council spent taxpayer's money in the Land and Environment Court to defend the 30-meter foreshore set back. This was in respect of a DA from the same developer in respect of a similar development of the same properties. The Court upheld Council's position.

I do not understand why the Planning Proposal should reverse what Council so recently fought and won in Court.

Although the Planning Proposal only allows the setback to be breached by 12 meters rather than 17 meters, which was the subject of Council's previous refusal, it is still substantial and will be noticeable from the harbour and will have a very significant detrimental effect on my building.

I am advised that Council holds a covenant over 83A Yarranabbe Road to protect the harbour foreshore by prohibiting the erection of any building other than a private dwelling house for a single family. The covenant was put in place by a previous farsighted Council to protect the harbour foreshore. The Planning Proposal would breach the covenant.

I am upset that the Covenant may be ignored just so that the developer can make a super profit by building a higher and bulkier building closer to the harbour foreshore.

My building was required to comply with the 30 meter foreshore set back. The developer, who lives next door in 83, engaged lawyers and town planners when my building was being built to enforce the 30 meter setback. When I bought my unit off the plan I was therefore sure that the same setback would be enforced on the neighbouring property particularly when my solicitor told me about the covenant. I do not understand why the developer of the neighbouring property should be given special treatment in the Planning Proposal without any real justification.

I object to the Planning Proposal permitting his building next door to be 12 meters forward of my building.

I also object to the extra height and bulk of the building, which would be permitted under the Planning Proposal in excess of Council's building standards.

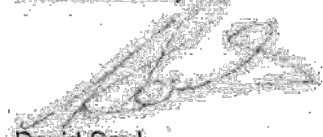
The building, which would be permitted under the Planning Proposal, would overlook my garden terrace on which eat my meals and spend a good part of each day enjoying my retirement. It would also overlook my living room, pool and garden.

The issues of the visual impact of such a bulky building extending so far forward of my building, privacy and the overshadowing of my garden terrace, pool, and garden do not appear to have been addressed in the Planning Proposal.

I am advised that in any event, the reformulation of the height calculations in the Planning Proposal mean that the building proposed by the developer could not be built to comply with those height calculations. Surely the Planning Proposal cannot be justified on the basis of the developers' proposal if that proposal would not comply with the Planning Proposal.

I cannot express how strongly I feel about the Planning Proposal for the reasons I have tried to explain in this letter. I ask Council to give careful consideration to the impacts that this Planning Proposal would have on me and my neighbours.

Yours faithfully,



David Saul

Ray and Ann Dresdner
137 Darling Point Road
Darling Point 2027

The General Manager
Woollahra Municipal Council
P O Box 61, Double Bay NSW 1360.

17 April 2015

Attention: Mr. Brendan Metcalfe

Dear Sir,

Council Ref: SC2501 - Plan Prop-Objection to Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point.

We object to the above Planning Proposal.

The Planning Proposal breaches the Foreshore Building Line that requires residential flat building to be at least 30 meters back from the foreshore.

The foreshore Building Line protects our beautiful scenic harbour foreshore from over development and should be enforced. This position is reinforced by:

- (A) The mandatory provision in the WLEP 2014. This is the standard LEP provision found in most if not all foreshore Council LEP's'. The tip of the Darling Point peninsular is a particularly visible area from the harbour.
- (B) the covenant over 83A Yarranabee Road, allowing only single family houses, which can only be released by Council , was put in place to protect the green foreshore
- (C) long standing Council policy to protect the foreshore.
- (D) strong community support for the protection of the foreshore.
- (E) before the last Woollahra Council elections we attended two public meetings at which candidates standing for election answered questions from the

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID017

floor. By far the most common question was what is your position on foreshore development. All answered that they believed in protecting the foreshore.

- (F) Council less than 2 years ago spent ratepayer's money in the Land and Environment Court successfully defending it's rejection of a DA from the same developer to build a similar building to that proposed in the Planning Proposal submission. The main issue in that Court case was the breaching of the Foreshore Building Line and the Judge held that there was no justification to allow it to be breached. It is clear from reading the judgment that whether the breach was 18 meters or 12 meters was not the issue. The comparison with other buildings on the foreshore built in the 50's and 60's, when the foreshore was not protected, did not justify allowing the breach of the Foreshore Building Line today nor did the proposed development merit allowing it to be breached.

If the Planning Proposal is approved it would be contrary to the Court's judgment and the Council's long standing policy to protect the foreshore in the public interest

We are also concerned about the height and bulk of a building on the foreshore which would be permitted with the Planning Proposal changes to development standards.

We thank you for your consideration.

Yours faithfully,



Ray Dresdner



Ann Dresdner

Anita Zweig



18th April 2015

**The General Manager
Woollahra Municipal Council
P O Box 61, Double Bay NSW 1360.**

Attention: Mr. Brendan Metcalfe

Dear Sir,

**Council Ref: SC2501 Plan Prop-Objection to
Planning Proposal for 83 & 83A Yarranabbe
Road, Darling Point.**

**I write to object of the above Planning
Proposal.**

**The Planning Proposal breaches the Foreshore
Building Line for unit blocks which I
understand requires unit buildings to be set
back at least 30 meters from the harbour
foreshore.**

**I object to Council allowing a building with
greater height and bulk to be built closer to
the foreshore than would be allowed if the
Foreshore Building Line were not changed.
Every ferry, yacht and cruise boat going in and
out of Sydney harbour passes and will see this
building. This is an issue for the entire
community.**

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID018

Council's covenant over No. 83A Yarranabbe Road protects the appearance of the harbour foreshore by prohibiting the erection of any building other than a private dwelling house for a single family. Council should not release or vary this covenant, which is held for benefit of the entire community.

Council spent a large amount of ratepayer's money in a recent Land and Environment Court case to prevent the breaching of the Foreshore Building Line by a very similar development on the same property. How can Council now go against the decision of the Court?

If the Planning Proposal is approved it would be contrary to the Court's decision and a large amount of ratepayer's money will have been wasted which should be of concern to all Woollahra ratepayers. Ratepayers also should question whether Council's claim that it does all it can do to protect the foreshore in the public interest is still valid.

I hope you will seriously consider my concerns, which are relevant to the entire Woollahra community.

Yours faithfully,



Anita Zweig

Eric and Jacqueline de Diesbach

[REDACTED]
[REDACTED]
[REDACTED]

The General Manager
Woollahra Municipal Council
Email: records@woollahra.nsw.gov.au

20 April 2015

Attention: Mr. Brendan Metcalfe

Dear Sir,

Council Ref: SC2501 Plan Prop-Objection to Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point.

We write to object of the above Planning Proposal.

We object to the Planning Proposal breaching the Foreshore Building Line which was included in the WLEP to protect our beautiful scenic harbour foreshore from over development by requiring flat buildings to be set back at least 30 meters from the harbour foreshore.

Council's covenant over No. 83A Yarranabbe Road protects the harbour foreshore by prohibiting the erection of any building other than a private dwelling house for a single family. We request Council not to release or vary this covenant, which is for benefit of the whole community.

The Planning Proposal should not overturn the recent judgment of Land and Environment Court, funded by Woollahra rate-payers, that the Foreshore Building Line should apply to the property.

If the Planning Proposal were to be approved it would be contrary to Council's long standing objective to protect the foreshore in the public interest.

Thank you for your consideration.

Yours faithfully,

Eric and Jacqueline de Diesbach

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID019

Sent: Tuesday, 21 April 2015 6:50 PM
To: Records
Subject: Mr ALLAN COKER
Attachments: 20150326190631432.pdf; ATT00001.txt

Dear Mr Coker

I am writing a letter to you on the basis of NO CHANGE to planning laws in the Public Interest please for the below application.

It would also set a bad precedent for other people in the area.

I hope you consider my email.

Regards

████████████████████
████████████████████
████████████████████

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID020

Louise Lichtenstein

The General Manager
Woollahra Municipal Council
P O Box 61
Double Bay NSW 1360

Reference: SC2501 Plan Prop

Attention: Mr Brendon Metcalfe

18th April 2015

Dear Sir,

Re: Objection to the Planning Proposal for 83 and 83A Yarranabbe Road, Darling Point (Lots 11 and 12 DP 598514)

I live in Unit ■ 81 Yarranabbe Road Darling Point, and write to object to the Planning Proposal for 83 and 83 A Yarranabbe Road, Darling Point.

I object to the Planning Proposal as follows:

It would breach the 30-meter foreshore set back from the harbour for flat buildings, which Council applies to other developments and insisted on when our building was built.

It would breach Council's covenant over 83A Yarranabbe Road, which protects the harbour foreshore by only allowing a single dwelling for one family and not allowing flat buildings. The Covenant is in the interests of the community and our neighbouring building and should not be breached by the Planning Proposal just so that the developer can make a super profit by building a higher and bulkier building closer to the harbour foreshore.

It would allow a building with extra height and bulk in excess of Council's building standards, which would overshadow and overlook our balcony, living room, pool and garden. Such a building would have a significant impact on our privacy particularly the bedroom facing the harbour.

The issues of the visual impact of such a bulky building extending so far forward of our building and overshadowing our building with the consequent effect on the privacy of the bedroom, balcony, pool and garden do not appear to have been addressed in the Planning Proposal.

The building extending a long way forward of our building would have a very detrimental impact on our visual outlook as we would be looking at the side wall of a large building.

When our building was being built the developer, who lives in 83 next door, hired town planners and lawyers to strictly enforce the 30 meter setback from the harbour's edge. (His objections can be found in Council's records.) The developer should not be able to use a Planning Proposal to change the rules for no good reason.

I am advised that in any event the Planning Proposal cannot be justified on the basis of the developers' proposal, as that proposal would not comply with the height standards in the Planning Proposal. An analysis of any benefits claimed in respect of the developer's proposal are therefore irrelevant.

The only justification for the Planning Proposal would be to allow the developer to break the rules in order to make a bigger profit.

I hope that Council will take note of my objections as I feel very strongly about this issue.

Yours faithfully,



Louise Lichtenstein

Tony and Karla De Bono
[REDACTED]
[REDACTED]

**Mr. Brendan Metcalfe
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360**

20 April 2015

Dear Sir,

**Council Ref: SC2501 Plan Prop-Objection to Planning Proposal for
83 & 83A Yarranabbe Road, Darling Point.**

We write to object of the above Planning Proposal.

**We object to the Planning Proposal breaching the Foreshore Building
Line which was included in the WLEP to protect our beautiful scenic
harbour foreshore from over development by requiring flat buildings
to be set back at least 30 meters from the harbour foreshore.**

**Council's covenant over No. 83A Yarranabbe Road protects the
harbour foreshore by prohibiting the erection of any building other
than a private dwelling house for a single family. We request
Council not to release or vary this covenant, which is for benefit of
the whole community.**

**The Planning Proposal should not overturn the recent judgment of
Land and Environment Court, funded by Woollahra rate-payers, that
the Foreshore Building Line should apply to the property.**

**If the Planning Proposal were to be approved it would be contrary to
Council's long standing objective to protect the foreshore in the
public interest.**

Thank you for your consideration.

Yours faithfully,

Tony and Karla De Bono

Evelyn Krieger

The General Manager
April 2015
Woollahra Municipal Council
P O Box 61, Double Bay NSW 1360.

18th

Attention: Mr. Brendan Metcalfe

Dear Sir,

Council Ref: SC2501 Plan Prop-Objection to Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point.

I write to object of the above Planning Proposal.

The Planning Proposal breaches the Foreshore Building Line for unit blocks which I understand requires unit buildings to be set back at least 30 meters from the harbour foreshore.

I object to Council allowing a building with greater height and bulk to be built closer to the foreshore than would be allowed if the Foreshore Building Line were not changed. Every ferry, yacht and cruise boat going in and out of Sydney harbour passes and will see this building. This is an issue for the entire community.

The Planning Proposal would be in conflict with Council's covenant over No. 83A Yarranabbe Road, which protects the appearance of the harbour foreshore for benefit of the entire community

Council spent a large amount of ratepayer's money in a recent Land and Environment Court case to prevent the breaching of the Foreshore Building Line by a very similar development on

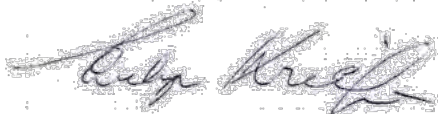
Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID023

the same property. How can Council now go against the decision of the Court?

If the Planning Proposal is approved it would be contrary to the Court's decision and a large amount of ratepayer's money will have been wasted which should be of concern to all Woollahra ratepayers. Ratepayers also should question whether Council's claim that it does all it can do to protect the foreshore in the public interest is still valid.

My concerns would be supported by all Woollahra ratepayers (other than the developer) who become aware of the details of what is happening with this Planning Proposal.

Yours faithfully,



Evelyn Krieger

Sent: Sunday, 26 April 2015 4:10 PM
To: Records
Subject: Council Ref: SC2501

The General Manager
Woollahra Municipal Council
P O Box 61, Double Bay NSW 1360.
Email: records@woollahra.nsw.gov.au

Attention: Mr. Brendan Metcalfe

Dear Sir,

Council Ref: SC2501 Plan Prop-Objection to Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point.

We write to object of the above Planning Proposal.

We object to Council allowing a building with greater height and bulk to be built closer to the foreshore than the 30 meter setback provided in Council's Local Environment Plan.

The tip of the Darling Point is very viable to a great many people from the harbour, the north shore and the CBD and its foreshore should be protected for the benefit of the whole Sydney community

Yours faithfully,
Ron and Maya Hirsch

[Redacted signature block]

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID024

Peter and Yvonne Halasz

[REDACTED]

[REDACTED]

**The General Manager
Woollahra Municipal Council
P O Box 61, Double Bay NSW 1360.**

25th April 2015

Attention: Mr. Brendan Metcalfe

Dear Sir,

Council Ref: SC2501 Plan Prop-Objection to Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point.

Our unit is virtually across the road from the above property fronting Yarranabbe Road although the road access is from Thornton Street.

We write to object to changed Foreshore Building Line, height and FSR in the Planning Proposal.

The Planning Proposal breaches the Foreshore Building Line for flats which I understand requires flat buildings to be set back at least 30 meters from the harbour foreshore.

We object to the Planning Proposal allowing a building with greater height and bulk to be built closer to the foreshore than would be allowed if the Planning Proposal did not change the Foreshore Building Line.

The property is at the very end of the Darling Point peninsular which is one of the most visible points on Sydney harbour. Every ferry, yacht and cruise boat going in and out of Sydney harbour passes and will see this building. High rise buildings

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID025

in the CBD look down on the peninsular and will see this building.

Council should be doing all in it's power the prevent flat buildings encroaching on this part of the scenic harbour foreshore.


The Planning Proposal would be contrary to Council's covenant over No. 83A Yarranabbe Road, which was put in place to prevent a flat building ever being built close to the foreshore. Surely this covenant should not be ignored.

Council recently won a Land and Environment Court case to successfully prevent the Foreshore Building Line being breached by a very similar development on the same property. The Planning Proposal should not be used as a way to get around the Court judgment

The protection of the green harbour foreshore is an issue for the entire community and has long been Council policy.

We ask that Council reject the application for the Planning Proposal.

Yours faithfully,



PETER HALASZ

Sent: Sunday, 3 May 2015 11:41 AM
To: Records
Subject: SC2501 Plan Prop 83 & 83a Yarranabee Rd

I refer to the proposal SC2501 Plan Prop 83 & 83a Yarranabee Rd.

As the owner of [REDACTED] Thornton Street, I wish to register my formal objection to the proposal.

The proposal is inconsistent with the current covenant and endangers the enjoyment of all in the surrounding areas.

Regards
Bruce Rosengarten

[REDACTED]

[REDACTED]

Sent from my iPad

Planning Proposal for 83 & 83A Yarranabee Road, Darling Point - CID026



27 April 2015

Mr Allan Coker
Director, Planning and Development
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

Re: 83 and 83A Yarranabbe Road, Darling Point (SC2501 Plan Prop)

Dear Mr Coker,

Thank you for your letter notifying Sydney Water of the proposed development referenced above. We have reviewed the application and provide the following comments for your consideration.

Water

- For the proposed development, the drinking water main available for connection is the 150mm main on the Northern side of Yarranabbe Road.
- Detailed drinking water requirements will be provided at the Section 73 application phase.

Wastewater

- For the proposed development, the 300mm wastewater main traversing through the property has capacity to service the subject site.
- Detailed wastewater requirements will be provided at the Section 73 application phase.

Sydney Water E-Planning

Sydney Water has an email address for planning authorities to submit statutory or strategic planning documents for review. This email address is urbangrowth@sydneywater.com.au

Further advice and requirements for this proposal are at attachment 1 & 2 (overleaf). If you require any further information, please contact Hannah Gilvear of the Urban Growth Branch on 02 8849 5296 or e-mail hannah.gilvear@sydneywater.com.au

Yours Sincerely

A handwritten signature in black ink, appearing to read "Greg Joblin".

Greg Joblin
A/Manager, Growth Strategy



Attachment 1

Sydney Water Servicing

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water.

Make an early application for the certificate, as there may be water and wastewater pipes to be built that can take some time. This can also impact on other services and buildings, driveways or landscape designs.

Applications must be made through an authorised Water Servicing Coordinator. For help either visit www.sydneywater.com.au > Plumbing, building and developing > Developing > Land development or telephone 13 20 92.

Building Plan Approval

You must have your building plans stamped and approved before any construction is commenced. Approval is needed because construction/building works may affect Sydney Water's assets (e.g water, sewer and stormwater mains).

For further assistance please telephone 13 20 92 or refer to the Building over or next to assets page on the Sydney Water website (see Plumbing, building and developing then Building over or next to assets).



Attachment 2

Requirements for Business Customers for Commercial and Industrial Property Developments

If this property is to be developed for Industrial or Commercial operations, it may need to meet the following requirements:

Trade Wastewater Requirements

If this development is going to generate trade wastewater, the property owner must submit an application requesting permission to discharge trade wastewater to Sydney Water's sewerage system. You must wait for approval of this permit before any business activities can commence.

The permit application should be emailed to Sydney Water's Business Customer Services at businesscustomers@sydneywater.com.au

It is illegal to discharge Trade Wastewater into the Sydney Water sewerage system without permission.

A Boundary Trap is required for all developments that discharge trade wastewater where arrestors and special units are installed for trade wastewater pre-treatment.

If the property development is for Industrial operations, the wastewater may discharge into a sewerage area that is subject to wastewater reuse. Find out from Business Customer Services if this is applicable to your development.

Backflow Prevention Requirements

Backflow is when there is unintentional flow of water in the wrong direction from a potentially polluted source into the drinking water supply.

All properties connected to Sydney Water's supply must install a testable Backflow Prevention Containment Device appropriate to the property's hazard rating. Property with a high or medium hazard rating must have the backflow prevention containment device tested annually. Properties identified as having a low hazard rating must install a non-testable device, as a minimum.

Separate hydrant and sprinkler fire services on non-residential properties, require the installation of a testable double check detector assembly. The device is to be located at the boundary of the property.

Before you install a backflow prevention device:

1. Get your hydraulic consultant or plumber to check the available water pressure versus the property's required pressure and flow requirements.
2. Conduct a site assessment to confirm the hazard rating of the property and its services. Contact PIAS at NSW Fair Trading on 1300 889 099.



For installation you will need to engage a licensed plumber with backflow accreditation who can be found on the Sydney Water website:

<http://www.sydneywater.com.au/Plumbing/BackflowPrevention/WaterEfficiencyRecommendations>

Water is our most precious resource and every customer can play a role in its conservation. By working together with Sydney Water, business customers are able to reduce their water consumption. This will help your business save money, improve productivity and protect the environment.

Some water efficiency measures that can be easily implemented in your business are:

- Install water efficiency fixtures to help increase your water efficiency, refer to WELS (Water Efficiency Labelling and Standards (WELS) Scheme, <http://www.waterrating.gov.au/>
- Consider installing rainwater tanks to capture rainwater runoff, and reusing it, where cost effective. Refer to <http://www.sydneywater.com.au/Water4Life/InYourBusiness/RWTCalculator.cfm>
- Install water-monitoring devices on your meter to identify water usage patterns and leaks.
- Develop a water efficiency plan for your business.

It is cheaper to install water efficiency appliances while you are developing than retrofitting them later.

Contingency Plan Recommendations

Under Sydney Water's customer contract Sydney Water aims to provide Business Customers with a continuous supply of clean water at a minimum pressure of 15 meters head at the main tap. This is equivalent to 146.8kpa or 21.29psi to meet reasonable business usage needs.

Sometimes Sydney Water may need to interrupt, postpone or limit the supply of water services to your property for maintenance or other reasons. These interruptions can be planned or unplanned.

Water supply is critical to some businesses and Sydney Water will treat vulnerable customers, such as hospitals, as a high priority.

Have you thought about a contingency plan for your business? Your Business Customer Representative will help you to develop a plan that is tailored to your business and minimises productivity losses in the event of a water service disruption.

For further information please visit the Sydney Water website at:

<http://www.sydneywater.com.au/OurSystemsandOperations/TradeWaste/> or contact Business Customer Services on 1300 985 227 or businesscustomers@sydneywater.com.au




Sent: Monday, 4 May 2015 6:44 PM
To: Records
Subject: Council Reference SC2501-83&83A Yarranabee Rd

For General Manager, Woollahra Council

We refer to your advice of 24 March.

We understand that the proposed amendments to the Local Environment Plan 2014 have been previously considered-and rejected-by the Council, a rejection later upheld by the Land and Environment Court. if so, we see nothing in this new submission or any changes in argument to justify a different finding in the case. Accordingly, we wish to register an objection to the proposed amendments and would be obliged if this objection could be recorded accordingly.

Lance & Robyn Joseph


Planning Proposal for 83 & 83A Yarranabee Road, Darling Point - CID029

Sent: Tuesday, 5 May 2015 9:24 AM
To: Records
Subject: SC2501-Planning proposal for 82 & 83A Yarranabee Rd, Darling Point
Importance: High

Dear Mr Metcalfe

We are the Strata Mangers for strata plan 2766- 13-15 Thornton Street, Darling Point. I have been instructed by the Owners Corporation to contact you regarding the above planning proposal.

This is third attempt to develop this site and if the proposal is approved will drastically affect the outlook for many of the residents at 13-15 Thornton Street, particularly those in the townhouses.

The planning proposal increases the size and height of the new building dramatically from the previous proposals and amends the foreshore building line which the Owners Corporation find completely unacceptable in light of the fact that the council has a covenant on 83A when sub-division originally took place.

The Owners Corporations further concerns include the impact this will have on the greenery in the area as it is proposed that a large number of trees will need to be removed if the proposal is approved and the site developed as envisaged.

In essence the Owners Corporation refers to your previous rejection to develop this site and the findings of the Land and Environment Court appeal to dismiss a smaller development and requests you log their objection to the planning proposal and consequent development in the strongest term possible terms

I kindly request an acknowledgement of receipt of this email be sent to our offices.

Please feel free in contacting me should you require any further information.

Regards
Deborah Jones
Strata Manager

[Redacted]

[Redacted]



Strata Partners

[Redacted]

[Redacted] 83A Yarranabee Road, Darling Point - CID030

[REDACTED]
[REDACTED]

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Please consider the environment before printing this email.

This email has been scanned by the Symantec Email Security.cloud service.

4th May, 2015

The General Manager,
Woollahra Municipal Council,
POB 61,
DOUBLE BAY NSW 1360

Dear Sir,

Re: SC 2501 Planning Proposal – Objection to Planning Proposal for 83 & 83a Yarranabbe Road
Darling Point

I object to the above planning proposal and in the strongest possible terms.

I write as an owner in Hopewood Gardens which closely overlooks the subject site. I have lived here for over 10 years.

The proposal and consequent building would rob me of amenity and landscape which are the major relief to the buildings in place already. There is little greenery left in the area and that on this particular site, should be maintained. Apart from the fact that another high building will be an eyesore along the foreshore.

The proposal and consequent structure would sanction the removal of approx. 50-60 trees to be replaced by a concrete building which is of huge concern not to mention the loss of amenity and landscape factor.

Any benefit to surrounding residents claimed by those wishing to develop the property would be of no consequence compared to that of the developer. I note that within the Council's determination for the earlier DA, the Council found that the development was not in the public interest. What has now changed? I ask that Council maintain this stance and not abandon that standard.

I ask that Council listen to the many objections by the community of Darling Point and not to another developer wishing to capitalise on the beautiful amenities of Darling Point.

Yours faithfully,



JULIANNE BREEN

Sent: Tuesday, 5 May 2015 5:11 PM
To: Records
Subject: 83 and 83A Yarranabee Road, Darling Point Ref SC2501Plan Prop

For attention of Brendan Metcalfe

Dear Sir,

We, Mary Ma the owner of [REDACTED] Thornton Street, Darling Point and Robert Hemphill the owner of [REDACTED] New Beach Road, Darling Point make the following submissions in relation to the above planning proposal:

1. the proposal provides for a building height at the Yarranabee Road frontage of 5.7 meters reduced from 9.5 meters. The precision of the reduced height indicates that the Council expects to have a two story building on the Yarranabee Road frontage. Such a two story building on the frontage will be completely out of character with other buildings, primarily garages, along Yarranabee Road and would set an undesirable precedent, allowing ,for example, residential buildings on and above existing garages on the street frontage.. Such development would be out of character, and in most cases grossly interfere with, long established views held by a large numbers of famiies residing on the southern side of Yarranabee Road;
2. The proposal involves the removal of a large number of trees two of which are quite mature and provide a very pleasing vista of their foliage from the street and from the southern side of Yarranabee Road. It would be a great shame for the precinct to loose the irreplaceable beauty of these trees.
3. Yarranabee Road is a narrow one way street and we do not think that additional motor traffic should be encouraged.

We look forward to your taking our submission into consideration.

Yours sincerely,
Mary Ma
Robert Hemphill

Sent: Wednesday, 6 May 2015 4:45 PM
To: Records
Cc: leonie jeffrey
Subject: Woollahra Council Planning Proposal 83 and 83A Yarranabbe Road Darling Pt.

To Whom It May Concern

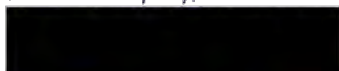
I have read and understood the above-mentioned Planning Proposal for 83 and 83 A Yarranabbe Road Darling Pt. and would like to express to Council that the proposal has my support. I am the owner of apartment ■ "Santina" 85 Yarranabbe Road, Darling Point.

I believe that the progression of this proposal to Development Application and further to successful on-going progression to building stage will ensure that the line of cypress pines and other inappropriate foliage planted by the current owner of 83A Yarranabbe Road Darling Point, Mr Reimer.... (not sure if that is the correct spelling) will be removed and thus once again expose us to the views we had previously enjoyed of the harbour bridge and Sydney Harbour. This advantage is most relevant to the Santina owner/residents who reside on the north-western wing of the building. Prior to Mr Reimer's selfish determined plantings my unit had expansive views of the harbour and the bridge.

The removal of the trees on 83 A Yarranabbe Road Darling Pt. will enhance my enjoyment of living in this very unique position on Sydney Harbour. I have sought the removal of these unsightly trees for many years, as have other owner-residents of "Santina".

I have viewed the Planning Proposal for 83 and 83A Yarranabbe Road Darling Point and have no objections to the proposal and would be encouraging of it's progression through Council. I do not find the current buildings #83 and #83A Yarranabbe Road particularly attractive and would not be perturbed by their removal and replacement by the 5 apartments proposed for the site.

Leonie Jeffrey
Intake/CMT Caseworker
Child and Family District Unit
for Northern Sydney, South Eastern Sydney and Sydney Districts



Security Statement
Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID033

[REDACTED]
[REDACTED]
[REDACTED]

Mr. Gary James
The General Manager
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

Attention: Mr Brendan Metcalfe

By Email: records@woollahra.nsw.gov.au
brendan.metcalfe@woollahra.nsw.gov.au

7/5/2015

RE: Planning proposal 83 and 83A Darling Point NSW 2027

Sir,

It is with concern that I understand the above is being submitted to Woollahra Council for consideration.

I personally object strongly to the proposal

1. I will be impacted by any development as I live directly beside the proposed site.
2. Noise, privacy and the removal of major trees would be my main issues;
3. This area of Darling Point has been considered relatively peaceful.
4. The proposal to build 5/6 units with open spaces for entertaining is of great concern impacting a direct noise issue for those living nearby.
5. Reducing also privacy for those of us who live facing the west.
6. The impact upon this particular area will change forever the landscape of Yarranabbe Rd with indeed the removal of major trees.
7. The Leyton Cypress which border our western boundary definitely cause concern and impact greatly on lower levels of our building but the remaining trees towards the back of the block soften the landscape, encourage the birds bringing a degree of tranquillity to this environment in which we live.

The present planning controls are there for good reason to protect both our living environment but also to protect the foreshores of Darling Point.

Yours Sincerely



Hazel Watson



Department of
Primary Industries
Office of Water



The General Manager
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

Our ref: 10 ERM2012/0966
File No: 9056466
Your Ref: DA2012/485/1

Attention: Brendan Metcalfe

16 April 2015

Dear Sir/Madam

Re: Proposed Development / Controlled Activity Approval
Described as: Demolition of existing structures and the construction of a residential flat building
Located at: 83 & 83A Yarranabbe Road Darling Point

I refer to your letter dated 24/03/2015 in relation to an S96 for the about site. The GTA issued by the NSW Office of Water on 13/12/2012 remain valid.

Further information on controlled activity approvals under the *Water Management Act 2000* can be obtained from the Office of Water's website
www.water.nsw.gov.au Water licensing Approvals Controlled activities

Please direct any questions or correspondence to Gina Potter,
Gina.Potter@dpi.nsw.gov.au.

Yours sincerely

Gina Potter
Water Regulation Officer
NSW Department of Primary Industries
Office of Water
Water Regulatory Operations, WR Operations - Hunter, Sydney & South Coast





Department of
Primary Industries
Office of Water



Our ref: 10 ERM2012/0966
Our file:
Your ref: DA2012/485/1

The General Manager
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

Attention: Mr T. Wong

13 December 2012

Dear Sir/Madam

Re: Integrated Development Referral – General Terms of Approval
Dev Ref: DA2012/485/1
Description of proposed activity: Demolition of existing structures and the construction of a residential flat building
Site location: 83 & 83A Yarranabbe Road Darling Point

I refer to your recent letter regarding an integrated Development Application (DA) proposed for the subject property. Attached, please find the Office of Water's General Terms of Approval (GTA) for works requiring a controlled activity approval under the *Water Management Act 2000* (WM Act), as detailed in the subject DA.

Please note Council's statutory obligations under section 91A (3) of the *Environmental Planning and Assessment Act 1979* (EPA Act) which requires a consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

If the proposed development is approved by Council, the Office of Water requests that these GTA be included (in their entirety) in Council's development consent. Please also note the following:

- The Office of Water should be notified if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works on waterfront land (which includes (i) the bed of any river together with any land within 40 metres inland of the highest bank of the river, or (ii) the bed of any lake, together with any land within 40 metres of the shore of the lake, or (iii) the bed of any estuary, together with any land within 40 metres inland of the mean high water mark of the estuary).
- Once notified, the Office of Water will ascertain if the amended plans require review or variation/s to the GTA. This requirement applies even if the proposed works are part of Council's proposed consent conditions and do not appear in the original documentation.

Planning www.water.nsw.gov.au Yarranabbe Road, Darling Point - CID035

170912

- The Office of Water should be notified if Council receives an application to modify the development consent and the modifications change any activities on waterfront land.
- The Office of Water requests notification of any legal challenge to the consent.

As the controlled activity to be carried out on waterfront land cannot commence before the applicant applies for and obtains a controlled activity approval, the Office of Water recommends the following condition be included in the development consent:

"The Construction Certificate will not be issued over any part of the site requiring a controlled activity approval until a copy of the approval has been provided to Council".

The attached GTA are not the controlled activity approval. The applicant must apply (to the Office of Water) for a controlled activity approval **after consent** has been issued by Council **and before** the commencement of any work or activity on waterfront land.

Finalisation of a controlled activity approval can take up to eight (8) weeks from the date the Office of Water receives all documentation (to its satisfaction). Applicants must complete and submit (to the undersigned) an application form for a controlled activity approval together with any required plans, documents, the appropriate fee and security deposit or bank guarantee (if required by the Office of Water) and proof of Council's development consent.

Application forms for the controlled activity approval are available from the undersigned or from the Office of Water's website:

www.water.nsw.gov.au [Water licensing](#) [Approvals](#) [Controlled activities](#)

The Office of Water requests that Council provide a copy of this letter to the applicant.

The Office of Water also requests that Council provides the Office of Water with a copy of the determination for this development application as required under section 91A (6) of the EPA Act.

Yours Sincerely

Nicole Hely
Licensing Officer
Office of Water - Licensing Operations South

General Terms of Approval

for work requiring a controlled activity approval
under s91 of the Water Management Act 2000

Our Reference:	10 ERM2012/0966	File No:
Site Address:	83 & 83A Yarranabbe Road Darling Point	
DA Number:	DA2012/485/1	
LGA:	Woollahra Municipal Council	

Number	Condition
Plans, standards and guidelines	
1	<p>These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to DA2012/485/1 and provided by Council:</p> <p>(i) Site plan, map and/or surveys</p> <p>Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.</p>
2	Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the foreshore identified.
3	<p>The consent holder must prepare or commission the preparation of:</p> <p>(i) Erosion and Sediment Control Plan</p> <p>(ii) Soil and Water Management Plan</p>
4 - 6	N/A
7	The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.
8 - 14	N/A
14	The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
15 - 16	N/A
17	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.
18	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
19 - 27	N/A
END OF CONDITIONS	

www.water.nsw.gov.au

Planning

170912

CHRIS HANNAN



The General Manager
Woollahra Municipal Council
Email: records@woollahra.nsw.gov.au

8 May 2015

Attention: Mr. Brendan Metcalfe

Dear Sir,

Council Ref: SC2501 Plan Prop-Objection to Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point.

I write to object to the Planning Proposal breaching the Foreshore Building Line, which is an important part of the Woollahra Local Environment Plan 2014.

The Foreshore Building Line protects our beautiful scenic harbour foreshore by requiring flat buildings to be set back at least 30 meters from the harbour foreshore and should be strictly enforced.

The Planning Proposal should not overturn the recent judgment of Land and Environment Court that held that the Foreshore Building Line should apply to the property.

This is an issue that concerns the entire community. If the Planning Proposal were to be approved it would be contrary to Council's long standing policy to protect the foreshore in the public interest.

Sincerely,

A handwritten signature in cursive script that reads "Chris Hannan".

Chris Hannan

To: Woollahra Municipal Council 7th May 2015

From: Ghita Lipshitz [REDACTED]

Planning proposal for 83 and 83A Yarranabbe Road

I visited the Council today to view the planning proposals and was impressed with how they dealt with potential problem areas such as light and heights. The proposals were good in their context and as a property owner I view it as positive for the area where I live.

Sincerely



Ghita Lipshitz

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID037

The General Manager
Woollahra Municipal Council
PO Box 61, Double Bay NSW 1360

Correspondence to:
Sam Cullen

Attention Mr Brendan Metcalfe



Dear Sir,

6th. May 2015

Council Ref: SC2501 Plan Prop.

1.

Subject. Objection to Planning Proposal for 83 and 83A Yarranabbe Road,
Darling Point.

We object to the above proposal.

We write as owners or legal representatives of the owners of the seven townhouses in Hopewood Gardens Strata Plan 2766 which closely overlooks the subject site. We have owned or lived here for many years.

We understand that Owners Corporation of Strata Plan 2766 is lodging an objection on behalf of all owners and residents as well.

Amenity and Landscape

The proposal and consequent building would rob us of amenity and pleasant landscape which both are the major relief to the buildings already in place. There is little greenery left in the area and that on this particular site should be maintained. That there are other apartment buildings in the area is not a reason to allow another.

The proposal and consequent structure would sanction the removal of approximately 60 trees to be replaced by a concrete building which is of great concern. We lose a sought after amenity and landscape factor.

The claim that more view of the harbour would result by building the proposed structure is of no consequence or benefit to us as there is sufficient view at present. There is already more view through the foliage in any case. Any benefit to surrounding residents claimed by those wishing to develop the property should be treated as minimal compared to the gains of the developer. As stated we lose amenity and gain nothing of any consequence.

Visits to Assess Impact.

We point out that in the past two recent attempts to build on this site Council officers firstly and then Land and Environment Court senior officials visited the townhouses and other buildings to assess impact. For the current proposal there

have been no such visits. We would welcome Council officers and councillors to visit on this occasion.

Height and Scale/Bulk

We note that the proposal would enable increased height and scale for a consequent structure than is allowed in the current controls. We object to those proposals. There is insufficient surrounding amenity land for the scale envisaged compared to adjacent buildings.

The current codes are soundly based to protect the community.

Foreshore

We note that the proposal includes the foreshore line to be reduced from 30 to 18 metres. We object to that proposal in order to maintain the integrity of the remaining undeveloped foreshore including the amenity that is provided for those viewing while on the harbour.

Covenant

We note the covenant on no. 83A placed earlier by the Council when subdivision took place. We ask the Council not to abandon lightly its own standards by approving this proposal that would consequently allow a structure to be built that breaches its own covenant.

Public Interest

We note that within the Council's determination for the earlier DA the Council found that the development was not in the public interest. We ask that the Council maintain this stance and not abandon lightly that standard.

Land and Environment Court

We note the findings of The Land and Environment Court wherein the appeal to Council's own determination rejecting a DA for a smaller development than is now envisaged was dismissed. We ask that Council take a serious regard of the Court's decision and not abandon lightly the Court's finding firstly in the 2. Council's favour and secondly by implication, supporting the many strong community objections to a structure of that proportion on the site.

Continual Concerns

3.

We advise we have been residents and ratepayers in Darling Point for many years and to date able to enjoy the amenity. This proposal SC2501 is the third attempt to enable development of this site in three years. This has caused stress, anxiety and unfair interruption of daily life to many residents.

Seven Objections.

We request that this communication be treated as seven individual objections. The contents are the result of individual inputs.

Final Rejection

We ask that Council do not approve the proposal thus hopefully finalising this matter in favour of the many concerned residents once and for all.

Thank you and sincerely,

[Redacted]
Willsie
AS AUTHORIZED AGENT
FOR
CRISTIAN BRY P/L
[Redacted]

[Redacted]
J. Burfitt-Williams
JUSTINE BURFITT-WILLIAMS
[Redacted]

CHRISTOPHER BROWN
[Redacted]

IAN SONAS
[Redacted]

JANET CULLEN
SAMUEL + JANET
CULLEN
[Redacted]

BOBAY NOTARAS
[Redacted]

H Bourke
[Redacted]

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID038
POWER OF ATTORNEY FOR MR. R.E. BOURKE
MR. + MRS R.E. BOURKE

Sent: Friday, 8 May 2015 11:54 AM
To: Brendan Metcalfe; Kira Green
Subject: Council Ref: SC2501 Plan Prop.

Follow Up Flag: Follow up
Flag Status: Flagged

General Manager :
Woollahra Municipal Council
PO Box 61, Double Bay NSW 1360 .

Attention Mr Brendan Metcalfe

Dear Mr Metcalfe,

1.
re: Objection to Planning Proposal for 83 and 83A Yarranabbe Road.

The proposal for this development has been knocked back twice now and this is the third attempt by the developer to go ahead with the proposal.

The foreshore of Sydney harbour is continually under attack from developers who have tunnel vision and only see the profit which is in such a development for themselves. They have no consideration for the fact that the de greening of our foreshore – the continual removal of trees and shrubs which have been established for many years will degrade the foreshore for everyone. The proposal and consequent structure would sanction the removal of approximately 60 trees to be replaced by a concrete building which is of great concern.

Council do not take lightly to the removing of a Covenant. As I understand the matter Council themselves put a covenant on the land under question and we ask that they abide by their own laws.

The argument that there will be “improved views” is of no consequence. No one has complained about the current “lack” of views. Plus the structure proposed is higher than that originally planned – all in all a development which only benefits the Developers.

We ask Council to please protect our foreshore.

Regards

C Grolman

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID039



8 May 2015

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: OBJECTION TO PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD,
DARLING POINT (LOTS 11 & 12 DP 598514) – REF SC2501 PLAN PROP**

We are the owners of Unit ■ 17 Thornton St, 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,
however, it appears that planning proposals for the above property are being made for
commercial reasons only without taking proper planning considerations into account.

We strongly object to the increase of the maximum building height from 10.5 metres to 15.2
metres and in particular the application of a second height of 5.7 metres at the highest point
on Yarranabbe Road. We believe this should be reduced to be more in keeping with the
streetscape of Yarranabbe Road and lessen the impact on existing properties.

We met with the applicant and put forward our proposals below as a solution and which in
turn reinstates the visual loss of the trees being removed:

- The height plane of RL 19.8 continues to the eastern and southern boundaries of the
site. This would mean a height of approximately 3.5 metres at the highest point on
Yarranabbe Road.
- 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 blue ink, appearing to read "Steve Alperstein", is written over a faint, light-colored background.

Steve Alperstein
Company Secretary

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID040
RR SR Pty Ltd ACN 139 184 544



8 May 2015

General Manager
Woollahra Council
PO Box 61
Double Bay NSW 1360

Dear Sir,

**RE: OBJECTION TO PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD,
DARLING POINT (LOTS 11 & 12 DP 598514) – REF SC2501 PLAN PROP**

We are the owners of Unit ■ 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, however, it appears that planning proposals for the above property are being made for commercial reasons only without taking proper planning consideration into account.

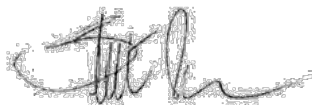
We strongly object to the increase of the maximum building height from 10.5 metres to 15.2 metres and in particular the application of a second height of 5.7 metres at the highest point on Yarranabbe Road. We believe this should be reduced to be more in keeping with the streetscape of Yarranabbe Road and lessen the impact on existing properties.

We met with the applicant and put forward our proposals below as a solution and in turn reinstates the visual loss of the trees being removed:

- The height plane of RL 19.8 continues to the eastern and southern boundaries of the site. This would mean a height of approximately 3.5 metres at the highest point on Yarranabbe Road.
- 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

12 May 2015
Our Ref: 10088 PP Submission.docx

Mr. Gary James
The General Manager
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

Attention: Mr Brendan Metcalfe

By Email: records@woollahra.nsw.gov.au
brendan.metcalfe@woollahra.nsw.gov.au

Dear Mr James,

Planning Proposal (Department Ref:PP_2015_WOOLL_001_00)

Address: 83 & 83A Yarranabbe Road, Darling Point

We are the managers of the property at 85 Yarranabbe Road Darling Point and have been specifically authorised to lodge this correspondence on behalf of our client.

Introduction

Santina Pty Ltd (**Santina**), is the registered proprietor of No. 85 Yarranabbe Road, Darling Point. Santina is located immediately to the east of the DA site at 85 Yarranabbe Rd. Santina submits this objection to the above Planning Proposal (**PP**) to Woollahra Municipal Council (**Council**).

While this submission objects to the PP, we have engaged GLN Planning consultants (**GLN**) to undertake a detailed review of the PP and to engage with the proponent, together with Santina, in the aim of having our concerns addressed. Accordingly we anticipate providing a supplementary submission in the near future.

We confirm that Santina have made no political donations that would require disclosure in accordance with the requirements of section 147(5) of Environmental Planning and Assessment Act 1979 (**the Act**).

Background

GLN lodged submissions on behalf of Santina during the public exhibition of an earlier development application (DA No.:485/2012) for a residential flat building on the site. Those submissions initially raised a number of concerns with the subject DA as originally exhibited. Santina with the assistance of GLN subsequently engaged with representatives of the proponent and substantially resolved issues. Santina then withdrew its objections to that DA.

Despite the above, the DA was refused by Council based on the assessment and recommendation of Council planning officers. The grounds of refusal related to matters broader than Santina.

The DA was appealed and the Land and Environment Court upheld Council's decision (*Yarranabbe Developments Pty Limited v Woollahra Council [2014] NSWLEC 1007*). The reasons for the decision of the Court are summarised [at 93] as follows:

Having found that none of the SEPP1 objections to development standards should be upheld, the preconditions to the grant of consent have not been met and therefore, a full assessment of the application under the provisions of s79C of the Environmental Planning and Assessment Act 1979 or consideration of the effect of the covenant is not required. However, based on my findings in relation to the size, bulk, scale, height and siting of the proposed development such merit assessment of the application would demonstrate the site is not suited to the development proposed.

The Planning Proposal involves changes to the Local Environmental Plan (**LEP**) that control height, floor space ratio and the setback from harbour foreshore (foreshore building line). The changes are proposed to Woollahra LEP 2014 which has been approved by the Minister but will not commence until 23 May 2015 when it will replace Woollahra LEP 1995. Other more detailed controls such as side boundary setbacks contained in Councils Development Control Plan and are not proposed to be amended.

Santina understands that the proposed changes to the LEP are a precursor to the lodgement of a further development application. Having regard to the above context, the changes to the LEP will diminish the basis for which any future DA could be objected to but will not provide any guarantee as to exactly what that future DA will be. Accordingly, Santina's concerns mostly relate to the ensuring that the planning controls as a package will provide an appropriate outcome if the site was to be redeveloped.

Submission

The following outlines our primary concerns in regard to each of the proposed LEP changes. More detailed considerations may be provided in a supplementary submission.

Our submission does not address potential impacts that relate to residents or properties, other than Santina.

Floor Space Ratio

There is a proposed change to the floor space ratio (FSR) for the site from 0.9:1 to 1.2:1.

The earlier DA had an FSR of 1.79:1 while the applicable FSR at that time was 0.875:1.

While the FSR proposed by the LEP change is less than that proposed in previous DA, it is more important to consider what development outcome an increase in the FSR permitted by the LEP might facilitate. In the design of the previous DA the applicant was well aware that any impacts arising as a consequence of non-compliance with a development standard would be given substantially more weight in the assessment of a DA compared to an impact that was compliant. Therefore there was substantial incentive to ensure the development was designed to minimise any impacts, including view loss and privacy impacts to Santina residents.

Building Height

We understand that the lower part of the site will retain the same 10.5m height limit that applies to it and the adjoining land under the LEP, the upper part of the site is proposed to have the height limit increased to 15.2m capped at 5.7 metres above the ground level at the street boundary (see **Figure 1**). The maximum height applicable to the earlier proposal was 17.6m.

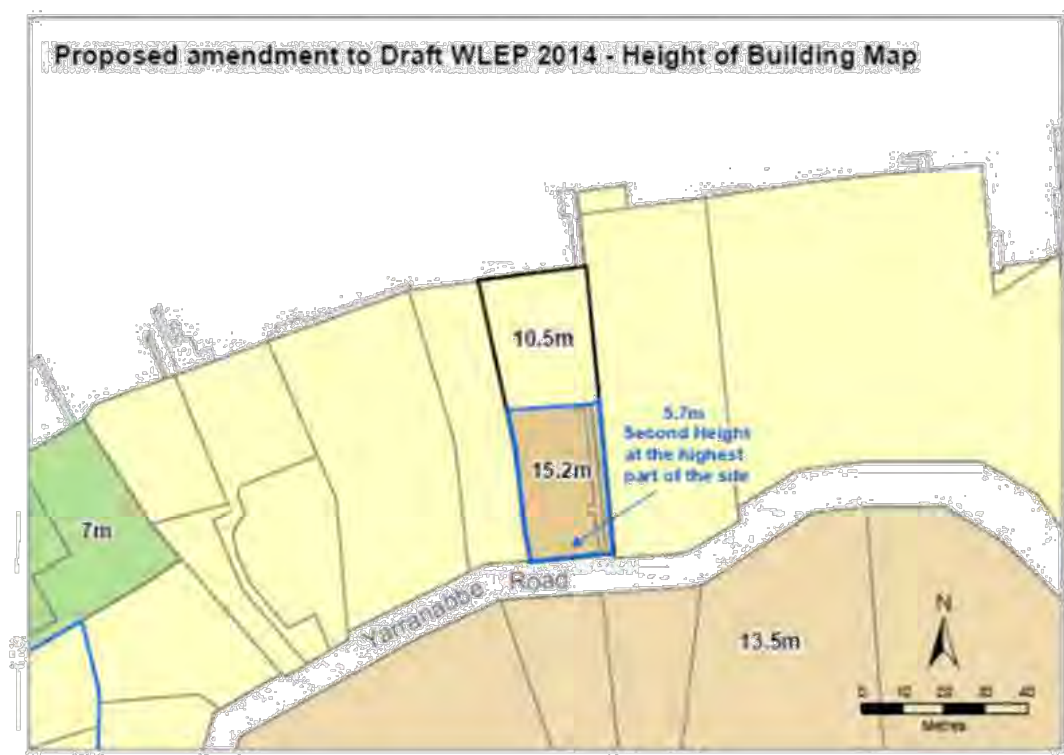


Figure 1: Proposed LEP Height Limits (Source Council PP 16.12.14, pg.13)

While the proposed height limit is reducing from the earlier proposal it will be conspicuously higher for part of the site compared to all other surrounding land between Yarranabbe Road and the Harbour. There does not appear to be any strategic planning basis for this difference.

Further, while the height limit is less than that applicable to the previous DA, it only contributed to the establishment of a maximum building envelope. The extent to which that building envelope could be filled remained limited by the maximum permitted FSR. The increase in the permitted FSR together with the increase in permitted height will inevitably increase the expectation for the size of a building on the site.

Foreshore Building Line

The harbour foreshore building line (**FSBL**) for residential flat buildings is proposed to be reduced from 30m to 18m. The earlier DA had a minimum foreshore setback of 12m (closest to Santina) increasing to 20.7m for the lower two levels and part of levels 3 and 4. However, levels 5 and 6 were to be constructed behind the 30m FSBL.

While the height standard would provide a secondary control to limit of the extent of the higher levels of a building, the reduced FSBL would allow a bulkier structure than that proposed by the previous DA and possibly some view loss.

Summary of Combined Effects of LEP Changes

It is inevitable that the proposed LEP will lead to expectations for development potential of the site that is much greater than is currently permitted. The Court has determined that the variations from the existing standards would not be acceptable having regard to the context of the site.

The proposed changes to the LEP effectively enlarge the permitted building envelope for the site (**Figure 2**). While the applicant has mooted a future building form (**Figure 3**) there is no guarantee that this will eventuate.

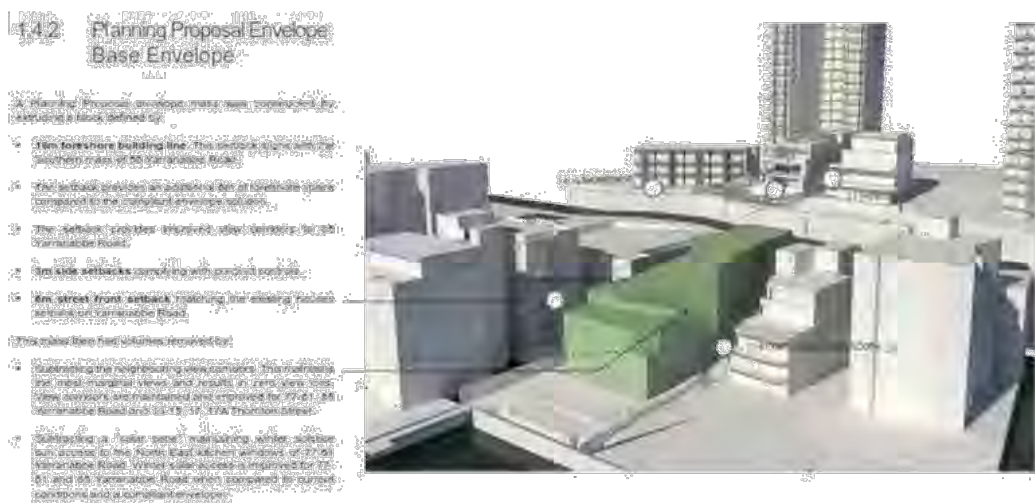


Figure 2: Building Envelope Achieved by Planning Proposal

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID042

(Source Urban Design Statement, Tzannes Architects, pg.44)

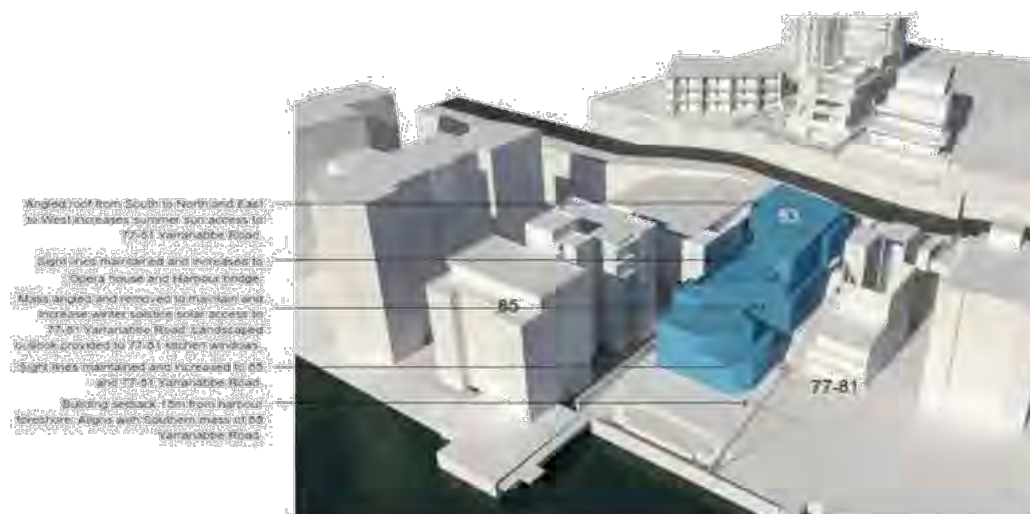


Figure 3: Development Scheme Intended for DA Stage

(Source Urban Design Statement, Tzannes Architects, pg.46)

The acceptability of the planning proposal is implicitly predicated on the assumption that it will not allow a development as large as the previous DA. However, there is no guarantee of this.

Santina is sensitive to the final development form and design that might arise with a future DA due to the significant impacts that could arise. Particular impacts of concern relate to:

- View loss
- Privacy
- Visual impact

The changes to the development standards will inexplicably provide different controls for the subject site compared to those applying to other surrounding land between Yarranabbe Road and the Harbour. The controls for this area should be based on a broader strategic planning study that comprehensively looks at the best planning outcome. This might involve other changes to Council's suite of planning controls, including additional detailed provisions in the DCP, particularly in relation to the subject site.

Conclusion

The proposed development standards to apply to the site will illogically differ from those applying to other surrounding land between Yarranabbe Road and the Harbour.

The proposed development standards to apply to the site will allow a large building to be developed. Impacts arising as a consequence of non-compliance with a development standard would be given substantially more weight in the assessment of a DA compared to an impact that was compliant. Despite the applicant mooting a future DA that will have a constrained and carefully modulated form there can be no guarantee as to exactly what that future DA will be. If the previous DA sought variations from more onerous development standards, you could understand our concern as to what a future DA may propose with more lenient standards.

Having regard to the uncertainties that remain we object to the PP.

Despite our objection, should Council decide to proceed with the PP we request Council give further consideration as to how the future building form on the site could be more strictly controlled to better ensure the possible development outcome. We assume that this might involve more detailed provisions being inserted into Councils DCP.

Should you have any questions, please do not hesitate to contact the writer.

Yours faithfully,
ALLAN DALE REAL ESTATE PTY LIMITED

Stanley Wise
MANAGING AGENT for SANTINA PTY LIMITED

Sent: Friday, 8 May 2015 2:30 PM
To: Records
Subject: SC2501 Plan Prop 83 & 83A Yarranabee Rd, Darling Point

To whom it concerns

We wish to vehemently object to any thought of allowing an increase in height along Yarranabee Rd either by changing the planning laws, ignoring Council's covenant or simply from pressure by those who stands to make gains for no good reason with complete disregard for the area or other residents' loss.

The submitted DA for same was not approved by Council nor the LEC & if these rulings were to be overturned for any reason it would open the floodgates to other greedy developers who would destroy the area without concern.

Kevin Orsman and Patricia Nance

████████████████████
████████████████████

Planning Proposal for 83 & 83A Yarranabee Road, Darling Point - CID043

8 May 2015

The General Manager
Woollahra Municipal Council
PO Box 61
Double Bay 1360

Dear Sir


Council Ref: SC2501 Plan Prop


We are four residents at 13-15 Thornton Street, under Strata Plan number 2766.


We would like to lodge the following objections to the DA SC2501.


- We are long-term residents of Darling Point and moved to the area specifically because of the natural beauty and being surrounded by established trees.
- We note that the proposal includes the foreshore line to be reduced from 30m to 18m. This is a direct breach of covenant 83A placed by Council.
- We note that an appeal for a smaller development on the land has already been rejected by the Land and Environment Court.
- We note the proposal's increased height and scale is insufficient for the surrounding amenity land. The current codes are based to protect the community.
- Finally, we note the proposal sanctions the removal of approximately SIXTY TREES, to be replaced by a concrete building. Again, loss of amenity to the community.


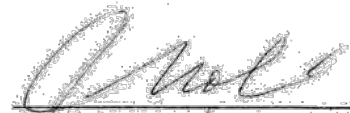
We point out that in the past two attempts to build on this site, Council and Land and Environment Court officials visited the site to assess the impact. No such visits have taken place for this proposal. We invite Council and the Land and Environment officials to visit.




Kogira Madden


Craig Adams 



Marilyn Hurd 


JODIE NOLL
unit 



General Manager
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

Attention: Mr Brendan Metcalfe (Strategic Planner)

**EXHIBITION OF PLANNING PROPOSAL FOR
83 AND 83A YARRANABBEE ROAD, DARLING POINT**

Dear Sir

Thank you for Woollahra Municipal Council's letter dated 13 April 2015 requesting for Transport for NSW (TfNSW) review and comment on the subject Planning Proposal.

TfNSW has undertaken a review of the documents associated with the application and no transport related issues have been identified in regard to the proposal.

Thank you again for the opportunity of providing advice for the subject proposal. If you have any questions regarding this matter please, please do not hesitate to contact Edmond Platon (Transport Planner) [REDACTED]

Please note for future reference, when sending proposals to TfNSW via email, could you kindly use the following email address: development@transport.nsw.gov.au

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Mark Ozinga'.

23/4/15

Mark Ozinga
Manager Land Use Development & Planning
Planning Division

CD15/06317

Our Ref: Project 336
Your Ref: **SC2501 Plan Prop**

7 May 2015

The General Manager
Woollahra Council



(By email: records@woollahra.nsw.gov.au)

Attention: Manager Strategic Planning

Dear Mr Bluett,

**Re: Submission Planning Proposal
Property: 83 and 83A Yarranabbe Road, Darling Point (the site)**

I have been instructed to review the planning proposal and make a submission on behalf of the owners' corporation in Strata Plan 1470 (Thornton Place).

Thornton Place is a heritage-listed property. Thornton Place has a 5,530m² site area upon which a 22 Storey residential flat building was erected in 1965 with a current FSR of 1:1.64 (9,108m² GFA).

Thornton Place achieves excellent amenity outcomes for itself and its neighbours because of the extensive landscaped areas around it and the separation that is achieved by it. There are several other similar tall thin towers that occupy large consolidated sites within Darling Point as detailed by Figure 3 of the Planning Proposal. Collectively the tall buildings achieve excellent amenity outcomes because of their higher height to relatively low FSR. In short, the relationship between HOB and FSR and their larger consolidated sites delivered very good amenity outcomes both within and adjoining them.

The concern of the owners within Thornton Place is to ensure that there is an appropriate relationship between site area, frontage width, HOB and FSR such that the amenity outcomes arising from any application that will follow will be acceptable. It is submitted that the proposed site area frontage width, HOB and FSR are not appropriate.

The combined area of the site is 1453.6m², a relatively small when compared with neighbouring sites with larger RFBs to the east and south. The site frontage - lot width is relatively narrow when compared to its neighbours to the east. Any medium density redevelopment of the site will be unlikely to achieve setbacks provided by the current rules of thumb within the Residential Flat Design Code given these site constraints.

Relevant Merit Appeal

In *Yarranabbe Developments Pty Limited v Woollahra Council* [2014] NSWLEC 1007 the proponent sought consent to demolish two dwelling houses at 83 and 83A Yarranabbe Road, Darling Point and construct a residential flat building containing 6 dwellings and underground parking, swimming pool, gym and associated site landscaping. Council refused consent and the Court dismissed the appeal.

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point - CID046

Daintry Associates Pty Ltd ABN 66 159 957 712

Page 1 of 2

Setting aside the abject failure of the SEPP 1 objections in this case, the Court held (par 93) that "the size, bulk, scale, height and siting of the proposed development such merit assessment of the application would demonstrate the site is not suited to the development proposed."

At par 76 the Court held "... there is public benefit in maintaining the planning controls adopted by the environmental planning instrument."

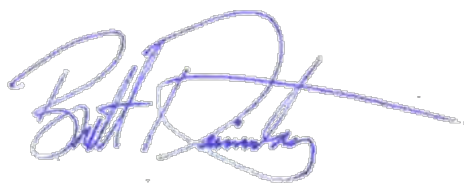
This judgement was made in the context of properties to the west of the site that are of lower HOB and FSR. The Court dismissed the applicant's reliance upon buildings to the east and south of the site, including Thornton Place as their context argument. Nevertheless, the planning proposal seeks to adopt the buildings to the east and west as part of its context justification for the increased HOB and FSR in this case. We reinforce that the HOB achieved on sites such a Thornton Place was only acceptable due to large site dimensions and areas together with relatively low FSR for the HOB assigned to them.

In short we submit that:

1. There is insufficient site frontage to achieve the HOB and FSR outcomes envisaged by the planning proposal and achieve the objectives of the LEP, Council's Draft DCP, SEPP 65 and the RFDC rules of thumb especially separation.
2. 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 HOB 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.
3. 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.

Please don't hesitate to contact me on [REDACTED]

Yours faithfully,



Brett Daintry, MPIA, MAIBS, MEHA
Director

David Waterhouse



Brendan Metcalfe
Woollahra Council
Fax 0293917044

Re Proposal 83 & 83a Yarranabee Rd.

Dear Brendon,

Thank you very much for your time the other day-very much appreciated.

The planning proposal by no.83 to amend is not modest in anyway. They are applying for

- . 30% extra in SFR (floor space)-than the current planning controls allows.
- . 50% extra in max building height-than the planning controls allows-this with an extra 5.7m at the highest part of the front street.

.To reduce the foreshore building line (build close to the water) by 40 %-they are asking a reduction of 12m against the planning controls allotments of 30m.

I am deeply concerned about the impact that this will have on some of the Santana apartments and car parking in the street- also the environment.

With regards to the idea that the Western apartments will have a better view -I'm not sure all shareholders would agree that having a view of another building adjacent, right up along to our building is a better view than existing view of around 20 beautiful trees. It's obvious which one is better for the environment. Noise will also become a nuisance for many units in Santana-not only the car-lift noise, throughout the day and night, but also the general noise as a consequence of the close proximity.

Another issue is extra parking of cars in the street, which will prompt parking to overflow on to Darling Point road- everyone without a second garage will have to adapt to walking a greater distance if no parking is left on the top car park floor. However this could turn from bad to worse-it would cause Woollahra Council, if parking was to come a problem in the street-then in a way to control the issue-they would bring in one hour unless holder of a parking permits.

Another concern is that if this proposal is approved it could lead to another larger development proposal from other owners in the area

Planning Proposal for 83 & 83A Yarranabee Road, Darling Point - CID047

From: Lois Fleming [REDACTED]
Sent: Monday, 18 May 2015 1:10 PM
Subject: Local Environmental plan 2014
Attachments: DSC00303.jpg
Attention Brendan Metcalfe. Thank you for your help this morning. I am meeting you at 3pm to discuss my position in relationship to plan 2014. I was indisposed for the last few weeks so missed the 13th to discuss the height of the proposed units that are to be built in 83 Yarranabee Road right opposite my building in [REDACTED] Thornton Street Darling Point. This is the photo taken from my Patio. I was told by Mr Ross that the building would be no higher than the height it is now. It appears that this is not correct and has been altered from the original plan presented to council years ago. I am concerned that my view is now being threatened by the New building. Regards Lois Fleming [REDACTED]



Planning Proposal for 83 & 83A Yarranabee Road, Darling Point - CID048



20 May 2015

Roads and Maritime Reference: SYD15/00394
Council Reference: SC2501

Director, Planning and Development
Woollahra Municipal Council
General Manager
PO Box 61
Double Bay 1360

Attention: Brendan Metcalf

**EXHIBITION OF PLANNING PROPOSAL
83 – 83A YARRANABEE ROAD, DARLING POINT**

Dear Mr Coker,

I refer to your correspondence of 24 March 2015 inviting Roads and Maritime Services to comment on a planning proposal to facilitate redevelopment of the abovementioned properties to a residential flat building. Roads and Maritime appreciates the opportunity to provide comment on the subject planning proposal and I apologise for the delay in providing comment.

The Roads Division of the Roads and Maritime has reviewed the planning proposal and raises no objection.

Any further enquiries in relation to this matter can be directed to the undersigned on phone [REDACTED]

Yours sincerely,

A handwritten signature in black ink, appearing to read "James Hall".

James Hall

**A/Manager, Strategic Land Use
Network & Safety Section**

Planning Proposal for 83 & 83A Yarranabee Road, Darling Point - CID049

Roads and Maritime Services
[REDACTED]

ANALYSIS OF THE REPORT PREPARED BY COUNCIL STAFF TO THE URBAN PLANNING COMMITTEE MEETING ON 24 NOVEMBER 2014 AND THEN AT A COUNCIL MEETING RECOMMENDING A PLANNING PROPOSAL FOR 83 & 83A YARRANABBE ROAD, DARLING POINT.

The point numbers refer to the point numbers in the Report.

Quotes from the Report are in bold.

Background

Point 2 of the Report - Background states- " In November 2012 a development application (DA 485/2012) was lodged for the demolition of the two adjacent dwelling houses on the site and construction of a five level RFB. The development containing six dwellings was proposed with a maximum height of 17.6m from existing ground level and an FSR of 1.79: 1. The development was set back 13m from the mean high water mark thereby breaching the 30m foreshore building line. The DA was refused by delegated authority on 25 June 2013." The applicant appealed to the Land and Environment Court and appeal was dismissed on 14 January 2014.

The Report ignores the fact the Court's decision held that on this particular site the following 3 controls should never be breached.

1. Council's 30-meter Foreshore Building Line (FBL) could not be breached,
2. Council's height control could not be breached,
3. Council's FSR control could not be breached.

Considered and lengthy reasoning was given in the judgments on each control separately.

The judgment did not hold that the development merited allowing the above controls to be breached to any extent. It held that the controls must be complied with not just **RESPONDED TO** with some concessions by the developer.

Notwithstanding the Court judgment **Point 4 of the Report** states: "**In summary, the objective of the planning proposal is to increase the height and FSR controls and reduce the foreshore building setback**"

The Planning Proposal (PP) would allow a development which while in some respects would represent concession by the developer it would still substantially breach the controls considered by the Court. The PP would allow a development, which directly and clearly subverts the Court decision.

The Planning Proposal

Point 4.2 of the Report - The applicant's planning proposal states: "The building envelope RESPONDS TO the key matters raised during the LEC case being: (see the three dot points below in bold)

- **1. "View impact from private properties."** The Report states that:

"The indicative envelope provided by the applicant in the planning proposal aims to maintain or improve existing neighbouring views across the site to the harbour, Sydney CBD and the Sydney Harbour Bridge by setting development back a minimum of 18m from the foreshore".

Since the views would be so much better if the development complied with the 30m set back this would not seem to be a reason to allow the development to breach the mandatory 30m setback.

The main argument by the developer's consultants to justify the proposed building in respect of the previous DA was that views would be improved. This argument was rejected by the residents affected and by the Court. However the argument was recycled in the PP submission and accepted in the Report on the basis of similar drawings which do not accurately show the overall impact of the proposed development.

At the site inspections of 8 properties by the Court every one of the property owners (details should be available from the files of Council's solicitors in the case, Norton Rose) submitted that the extra few degrees of view they might see, given the view they already have, would in no way compensate for the loss of visual amenity, for the following reasons:

(a) in the case of the buildings fronting Thornton Street, on the high side of Yarranabbe Road, looking over the top of an over large bulky building extending over the FBL. Objections against the PP were lodged by these buildings - Thornton Place (60 units), Hopewood Gardens (45 units), the 7 Townhouses, and

(b) in the case of the building, on the western boundary of the proposed development, 81 Yarranabbe Road, looking at the side of a large bulky building extending beyond the outer edge of their building which complies with the FBL. All owners in this property lodged objections against the PP.

Obviously the above property owners, which the Report says will benefit from improved views, disagree.

- **2. "Non-compliance with the foreshore building line"**

Only two buildings breach the 30m FBL for flats for some 2.5 kilometers around the Darling Point peninsular from McKell Park to the end of Rushcutters Park and they were built some 50 years ago. This would be the third on what is one of the most visible parts of the Sydney harbour foreshore.

The fact that the developer has bargained down from the original proposal to breach the FBL from 17m to 12m does not comply with the Court decision that the 30m set back must apply nor does it comply with long standing Council policy to protect the green foreshore.

- **3. "Non-compliance with FSR and height controls" & "Contextual fit"**

These issues do not comply with the Court decision.

Justification for the Planning Proposal

Point 5 of the Report - Strategic Merits

The Report justifies the concessions made to the developer in the Planning Proposal by two statements:

1. "We identify that the planning proposal has strategic merit and provides in principle support. The proposal will facilitate increased residential density in a location that is within walking distance of bus and ferry services that link to the nearby centres of Edgecliff and Double Bay and other centres further afield."

The changing of the zoning of the property to provide at most one additional home unit over and above what could be built under existing controls is surely of questionable strategic merit.

2. "Based on the indicative building envelope drawings, view analysis and shadow modeling, the proposed planning controls are appropriate in the location."

View analysis

The fact that view analysis is appropriate is a judgment made on the basis of the developer's consultant's pictorial submission that does not show the overall visual impact of the proposed building. The judgment was made without site inspections of the neighbouring properties or taking into account the opinions of the owners of the properties affected.

Shadow modeling

The garden and pool at the rear of 81 Yarranabbe Road, on the western boundary of the site, obviously would be overshadowed and suffer a loss of privacy by allowing a building extending 12 meters beyond the outer edge of the building on that property.

It is difficult to understand how these statements 1 & 2 above can justify the PP and in particular allow a flat building to encroach on the foreshore. Would the development be more appropriate if it complied with the FBL?

Covenant

The Report does not address the Covenant, which Council holds over 83A Yarranabbe Road, which only allows a single family dwelling to be built on that property. This covenant was placed on the property by a previous farsighted Council to protect the scenic foreshore the PP would be in breach of the Covenant.

Report conclusion

In its conclusion the Report states that the PP **"should be exhibited in accordance with the Act and any conditions imposed by the gateway determination"**.

This recommendation was not complied with.

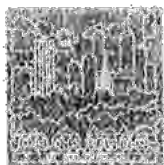
The determination was subject to the following condition: "Prior to undertaking public exhibition Council is to consult with the Foreshores and Waterways Planning and Development Advisory committee". The PP was then to be revised after any submission from the Committee.

This condition was deleted at the request of Council and the Committee was unable to fulfill its roll to protect the harbour foreshore.

Many Councilors have publicly stated that they stand for the protection of the scenic foreshore. This PP does exactly the opposite and sets a precedent which will make it much more difficult for Council to protect the foreshore in future.

At the very least the PP should comply with Council's mandatory FBL for flats as required by Council's LEP which has just been introduced, the recent Court decision obtained by Council and Council's covenant.





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27 May 2015
Ref: 150573.3L

The Proprietors
SP 42120
77-81 Yarranabbe Road
Darling Point NSW 2027

C/- Mr R Dresdner
By email

Dear Sir,

**Re: Planning Proposal – 83 and 83A Yarranabbe Road, Darling Point –
Consideration of Yarranabbe Developments Pty Limited v Woollahra Council
[2014] NSWLEC 1007**

We refer to the above matter.

As requested, we have undertaken a comparison of the above Planning Proposal (PP) with the proposal (DA 485/2012) on that site which was refused by the Land and Environment Court (LEC). The comparison focusses on the breaches of the FSBL, FSR and height standards under Woollahra's LEPs:

Comparison

The table below sets out the details of the DA refused by the LEC and the current PP under consideration by Council.

	DA 485/2012	WLEP 2014	PP
FSBL	13m	30m	18m
Height	17.6m	10.5m	10.5m-15.2m
FSR	1.66:1	0.9:1	1.2:1

From the above table it is apparent that the PP, while involving smaller breaches compared with the DA, involves significant exceedances of three development standards under WLEP 2014 - FSR, building height and FSBL.



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Consideration of the LEC Judgment

The Judgment rejected arguments to justify the development and the breaches of the standards which relied upon the siting, bulk and scale of the neighbouring apartment buildings to the east.

The Judgment found that those neighbouring apartment buildings were *the antithesis of the controls* (para 72) which were approved prior to the current controls and not consistent in any way with those controls.

The Judgment gave greater weight in its consideration of the built context to the development to the west of the site (including 77-81 Yarranabbe Road) which was consistent with the controls and desired future character.

The PP now seeks to rely on similar arguments to those rejected by the Court that the future built form on the site create a "transition" between the development to the east and that to the west.

In its analysis of the proposal, the Judgment found that:

- the development was not compatible with the adjoining residential neighbourhood particularly to the west of the site as a result of its siting forward of the FSBL and its height and bulk;
- the development was out of scale with development to the west as a result of its height and bulk. The bulk located in the centre of the site contrary to the existing situation and that of the remaining development to the west;
- the development did not provide a landscape setting compatible with the development to the west as it was sited forward the FSBL and built over the central undeveloped part of the site, an area which provided an open, landscaped setting when viewed from the adjoining properties;
- a development which complied with the FSBL would minimise adverse environmental effects on the use and enjoyment of the common open space of the adjacent property to the west of the site. *No part of the residential flat building should be constructed within the 30m FBL and therefore, there would be no impact on the use of that space.* (para 79);
- compliance with the standards would enhance views and sunlight available to residents of adjoining properties to the west.

The Judgment rejected 4 objections under SEPP 1 in relation to the breaches of development standards and concluded that there was no justification for the variation of the standards in the circumstances of the case and, further, *there is public benefit in maintaining [all of the] the planning controls adopted by the environmental planning instrument* (para 76).

In our view, the matters addressed in the LEC Judgment and summarised above particularly with regard to the breaches of the FSBL, FSR and height standards would equally apply to the PP (and the arguments put forward to justify its proposed variations to the former and current development standards applicable to the site).

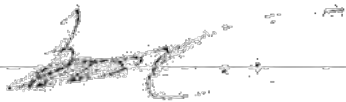
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Approval of the PP would permit a future development on the site of a type which is inconsistent with the Judgment of the LEC and would therefore be out of character with and incompatible with the adjoining residential neighbourhood by virtue of its:

- siting forward of the 30m FSBL by 12m;
- its height in excess of the standard applicable on adjoining sites; and
- its FSR in excess of the standard applicable on adjoining sites.

The Judgment found that each of the above standards separately was to be complied with.

Yours Faithfully,
DESIGN COLLABORATIVE PTY LTD



J Lidis
Director



22 June 2015

Our Ref: DOD

Mr James Dominguez and Mr Ray Dresdner

By Email:

Dear Sirs

Planning Proposal for 83 & 83A Yarranabbe Road, Darling Point (to amend Woollahra Local Environmental Plan 2014)

1. Introduction

1.1 We note your strong concerns at the possibility that the 'spot rezoning' referred to above will be finally approved in the coming weeks. We understand your concerns arise because the Planning Proposal is in direct conflict with the Woollahra Local Environmental Plan 2014 ("WLEP 2014"), which has been for many years in consideration and has only recently come into effect. In addition, you have requested our opinion on the question whether the decision of the Land and Environment Court in *Yarranabbe Developments Pty Ltd v Woollahra Council* [2014] NSWLEC 1007 ("the LEC decision") has been correctly characterised and explained to the Council.

1.2 In summary, it is our opinion that the report which went to the Urban Planning Committee Meeting on 24 November 2014 ("UCP Report") mischaracterises the LEC decision and misses the real point of the case.

2. What the LEC decision actually decided

2.1 As appears clearly from the LEC decision, the task embarked upon by the Court was to first enquire whether it was appropriate to depart from the four development standards in question and grant a dispensation under *State Environmental Planning Policy No 1—Development Standards* (SEPP No. 1) in order to enable development consent to be given.

2.2 First, and most importantly, the Court had to be persuaded by the applicant that its objections to the four development standards were 'well founded'—in other words, that compliance with the relevant development standards was unreasonable or unnecessary in the circumstances of the case. It is axiomatic in matters such as this that the Court should not embark upon an assessment of the merits of the matter unless and until it is satisfied that the objection under SEPP No. 1 should be upheld and strict compliance with the standards dispensed with.

2.3 The Court was not convinced that any of the applicant's objections were well founded (see paragraph 76 (site frontage); paragraph 82 (floor space ratio); paragraph 84 (height of buildings); and paragraphs 92 to 93 (foreshore building line, and summary)). Accordingly, this threshold matter was decided adversely to the applicant. Any brief reference to the

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merits of the Proposal, which in any event appears to have been uniformly negative (see paragraph 93), was by way of non-binding comment only.

- 2.4. In effect, then, all the Court decided, as the threshold issue, was that the four development standards were appropriate and should not be dispensed with in the context of this application. As a consequence of this finding of the appropriateness of the four standards, the Court did not embark upon a full assessment of the application under section 79C of the *Environmental Planning and Assessment Act 1979 (NSW) (EP&A Act)* (see paragraph 93).
3. **The UCP's Report mischaracterisation of the LEC decision; and its effect on the Report's recommendations**
 - 3.1. It appears, from paragraph 4.2 of the UCP Report, that the true import of the LEC decision has not been explained.
 - 3.2. It is clear the LEC decision deals only with the appropriateness of the development standards and as the SEPP No. 1 objection failed, there was then no determination on the merits of the application (although a comment is made in paragraph 93 about the suitability of the site for the development).
 - 3.3. To illustrate the point, the LEC decision rejected a submission that the underlying objective of the foreshore building line standard had no relevance to this development. It considered that, taking into account the objects of the control and the undesirability of further non-compliance, there was no reason not to comply with the control and that the objection was accordingly not well-founded.
 - 3.4. Accordingly, on a proper reading of the LEC decision, it cannot be maintained that the Planning Proposal, which proposes to change the 30 metre control, in any way "responds" to the key matters considered by the Court in respect of the FSBL. Nor does the report articulate any reasons which might explain why that conclusion has been reached.
 - 3.5. The purpose of the UCP Report was to consider, and make recommendations concerning, whether the Planning Proposal had "strategic merit", in accordance with the publicly available policy contained in the 2012 'Guide to Preparing Planning Proposals'. Its conclusion that the Planning Proposal does have such merit is based on the faulty premise that the Proposal has absorbed the key points of the LEC decision, when that is in fact far from the case.
 - 3.6. Under section 55(2)(c) of the EP&A Act, the Council is required to justify the objectives of the proposed LEP.
 - 3.7. It is difficult to find within the UCP Report any or any proper justification for the Proposal.
 - 3.8. The essence of the LEC decision was the appropriateness of the four standards in this location. No reasoned case is even attempted to be made out in the Report to justify the changes to the standards held by the Court to be appropriate for this site.
 - 3.9. We note there is no justification for the changes to the controls for this site and this site only.
 - 3.10. We note there is no justification for the changes to the controls for this site having regard to the recently enacted WLEP 2014.

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4. The effect of the flawed basis for the UCP Report's conclusions/recommendations

4.1 It is clear from the Court of Appeal decision in *Gales Holdings Pty Ltd v Minister for Infrastructure and Planning* [2006] NSWCA 388 (applying *Minister for Aboriginal Affairs v Peko Wallsend Ltd* (1986) 162 CLR 24) that the Council must take into consideration relevant matters which "may" have a direct bearing on the final form of the rezoning of the subject land. There can be little doubt in our opinion that a proper understanding of the LEC decision is a matter which has a direct bearing on whether or not the rezoning should proceed and needs to be properly understood.

4.2 In this situation, the author of the UCP Report was effectively bound to make comments as to the strategic merit of the Planning Proposal in order to make recommendations. Those comments as to strategic merit have been made on the (mistaken) belief that the key matters raised in the LEC decision have been addressed. As submitted above, they have not. The true 'key matters' of the LEC decision are that the Court considered it appropriate *not* to depart from the relevant development standards.

4.3 In these circumstances, any ultimate decision that failed to take into account the true effect and nature of the LEC decision would be subject to vitiation by error on the grounds that there has been a failure to take into account a relevant consideration.

5. Conclusion

Please let us know if any further comment is required.

Yours faithfully



David O'Donnell
Consultant





14 July 2015

Our Ref: DOD:DOM001/4001

Mr Gary James
General Manager
Woollahra Municipal Council
PO Box 61
DOUBLE BAY NSW 1360

Dear Sir

**Planning Proposal to amend Woollahra Local Environmental Plan 2014
83-83A Yarranabbe Road, Darling Point**

We have been instructed by Mr James Dominguez and Mr Ray Dresdner of Darling Point to enquire whether the steps being taken by the Council to rezone the land in question follow lawful process.

In carrying out our enquiry, we have directed our attention to the following matters:

1. Whether the mandatory planning principles for land within the Sydney Harbour Catchment have been the subject of any or any proper consideration;
2. Whether the conclusions of the Land and Environment Court in *Yarranabbe Developments Pty Ltd v Woollahra Council* [2014] NSWLEC 1007 ("the LEC Decision") has been correctly characterised and explained to the Council;
3. Precedent;
4. Whether the public consultation processes so far undertaken are adequate.

For the reasons appearing below, we have concluded that serious issues arise and, if the Council proceeds to make the LEP on the basis of the information currently available then that decision of the Council would be open to be set aside in judicial review proceedings in the Land and Environment Court of NSW.

1. Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (REP)

- 1.1 Council will be aware that this REP of 2005 for Sydney Harbour involved considerable work in consolidating and clarifying a number of diverse State and Regional Planning Policies.
- 1.2 The Explanatory Memorandum from the then Department of Infrastructure, Planning and Natural Resources stressed that it was necessary:

"to have a clear and consistent planning framework to protect and enhance the unique attributes of the Harbour"

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- 1.3 The Memorandum explained that there was a need for:

"a more robust and strategic approach to decisions affecting the use of the Harbour and its catchment"

- 1.4 Clause 2 of the REP sets out the aims of the Plan which are to ensure that (inter alia) the catchment and foreshores:

'are recognised, protected, enhanced and maintained:

(i) as an outstanding natural asset,

(ii) as a public asset of national and heritage significance,

for existing and future generations."

(Our emphasis)

- 1.5 Part 2 of the REP then provides for a set of clear planning principles for land within the Sydney Harbour Catchment. An onus is placed on the Council to consider these principles and where possible achieve them in the preparation of environmental planning instruments under Part 3 of the Act (see clause 12).
- 1.6 Clause 13 of the REP – Sydney Harbour Catchment, sets out the 12 planning principles for land within the Sydney Harbour Catchment.
- 1.7 We have had regard to the report to the Council's Urban Planning Committee of 24 November 2014 to enquire what regard was had by council officers to these fundamentally important planning principles for the Sydney Harbour Catchment.
- 1.8 Before dealing with the Council report, we also note that we have had regard also to the Planning Proposal document prepared on behalf of the owners by City Plan Services and dated September 2014 and the accompanying Urban Design Statement.
- 1.9 Both the Planning Proposal document and the Council's Planning Proposal Review (Annexure 2 to the Report of 24 November 2014) assert that the only relevant planning principle is that contained within clause 13(f) of the REP. We do not agree.
- 1.10 In an area designated to be of national significance, it is unfortunate that neither the proponent nor the Council have sought to understand and implement the requirements of the REP. In addition to the aims of the Plan set out above, there are other planning principles in clause 13 which should have been addressed and have not been. Furthermore the treatment of the single planning principle, clause 13(f) which has been mentioned has not been properly considered.
- 1.11 By reference to clause 13(f), one may ask rhetorically how the unique visual qualities of Sydney Harbour are to be maintained, protected and enhanced by permitting a residential flat building to be constructed 18 metres from the water on this site when on this and every other site in this locality a setback of 30 metres is presently required.
- 1.12 In this context, we note that the foreshore building line development standard is proposed to be reduced so that development for a residential flat building can be built within 18 metres of the Harbour rather than the existing and longstanding requirement for a 30 metre setback. We note other proposed changes in relation to height and floor space ratio, which are also contrary to the decision of the Court.
- 1.13 There are other planning principles in clause 13 which are relevant but have not been considered.

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Clause 13(b) of the REP requires:

"...the natural assets of the catchment area to be maintained and, where feasible, restored for their scenic and cultural values..."

- 1.14 The Harbour foreshores in private ownership are part of the natural assets of the catchment. Reducing the foreshore building line from 30 metres to 18 metres can hardly be regarded as maintaining or restoring the natural assets of the catchment for their scenic and cultural values.
- 1.15 Clause 13(c) requires regard to be had to the cumulative environmental impact of development within the catchment. No regard has been had to this principle by the Council. Please see our further comment below under heading 4.
- 1.16 We also seriously question the argument and rationale adopted by both the proponent and in the Council's Planning Report.
- 1.17 In the context of the foreshore building line, rather than using the longstanding 30 metre requirement as the commencement point for the evaluation of the proposal there is reference to the proposal being an improvement on the failed Land and Environment Court proposed setback of 12 metres. This seems to us to adopt a fundamentally wrong approach when it comes to the proper implementation of the planning principles in clause 13 of the REP.
- 1.18 Against the disregard of the relevant planning matters in the REP, we are instructed that the Council, in the face of the Gateway requirement to consult with the Foreshores and Waterways Planning and Development Advisory Committee, sought and obtained approval from the Department of Planning and Environment NOT to consult with that committee. It may be one thing for the Council to inadvertently fail to have regard to relevant considerations, but it is another matter entirely to avoid steps which may well have shed light on the applicability of the relevant planning principles.
- 1.19 Any failure to pay proper regard to the planning principles in clause 13 would result in the Land and Environment Court in our opinion making a declaration that the proposed Local Environmental Plan is invalid.

2. The relevance of the LEC Decision

- 2.1 The Planning Report of November 2014 to the Council's Urban Planning Committee stated that the rezoning proposal was responsive *"to the key matters raised during the LEC case"*.
- 2.2 In our opinion, the report which went to the Urban Planning Committee mischaracterises the LEC Decision and misses the real point of the case.
- 2.3 The true *"key matter"* of the LEC Decision was that the Court considered it appropriate not to depart from the foreshore building line, height or floor space ratio control. We note the similarity between the proposal and the scheme rejected by the Court.
- 2.4 To illustrate the point, the LEC Decision rejected a submission from the proponent that the underlying objective of the foreshore building line standard had no relevance to the subject development. The Court considered that, taking into account the objects of the control and the undesirability of further non-compliance, there was no reason not to comply with the control and that the objection was accordingly not well-founded.
- 2.5 We strongly suggest that the proper starting point for the consideration of this draft LEP is the framework in Woollahra LEP 2014. They are the lawful and adopted controls. To use the scheme rejected by the Land and Environment Court as a benchmark against which to assess the suitability of the proposal is clearly wrong particularly when the Court has rejected that



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scheme and expressly refused to depart from the established controls in the context of that scheme.

3. Precedent

3.1 Clause 13(c) of the REP requires the Council to take into account:

"the cumulative environmental impact of development within the catchment"

3.2 A curious and unexplained aspect of this planning proposal is the failure to have regard to the precedent created by the proposed decision. This is particularly the case as Woollahra LEP 2014 has only just commenced.

3.3 Woollahra LEP 2014 continues the longstanding requirement for residential flat buildings on the water in Darling Point to be set back 30 metres.

3.4 Presumably, if the Council proceeds with the LEP and reduces the critical 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.

3.5 This is the critical matter that clause 13(c) requires the Council to have regard to and which so far has been ignored.

4. Public participation

4.1 Clearly, the matters the subject of this Planning Proposal are of fundamental importance to the existing and future planning of the foreshores of Darling Point. It is apparent that many other sites have been constrained to comply with the existing 30 metre setback whereas now the Council appears well down a track to change the rules for one site and one site only.

4.2 In this context, we strongly suggest that incomplete planning documents which do not fully set out and properly consider the relevant planning principles are conducive to an incomplete and flawed public participation exercise.

5. Conclusion

5.1 In our opinion, any ultimate decision of the Council that fails to take into account all of the relevant planning principles in the REP and the true effect and nature of the LEC Decision creates strong arguments for successful judicial review proceedings in the Land and Environment Court of NSW for a declaration that the LEP is a nullity and with consequential costs orders against the Council.

Yours faithfully



David O'Donnell



Our reference Anthony Whealy 35611571

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Gadens Lawyers
Sydney Pty Limited
ABN 69 100 963 308

16 July 2015

Mr Gary James
General Manager
Woollahra Municipal Council
PO Box 61
Double Bay NSW 1360

Dear Sir

**Planning Proposal to amend Woollahra LEP 2014
83-83A Yarranabee Road, Darling Point (Lots 12 & 11 DP 598514) ('the Property')**

We act for the Proponent of the above-mentioned Planning Proposal (the Planning Proposal).

We are instructed to respond to the letter dated 14 July 2015 prepared by Addisons, on behalf of James Dominguez and Ray Dresdner (**the Objectors**), as well as some legal issues that arise from an earlier letter from Addisons dated 22 June 2015, which was an attachment to an objection letter which was unsigned and undated, but which we assume was also sent by or on behalf of the Objectors.

The Addisons letters are materially incorrect in their legal and factual assertions, for the reasons detailed below.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

1. In relation to *Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP)*, the requirement to **consider** the planning principles in Part 2 of the SREP is a requirement that applies only "in **the preparation of**" any new or amended LEP. As such, provided that these principles have been **considered by** the applicant in preparing the initial Planning Proposal application, and by Council staff in their assessment as part of the LEP-preparation process, then the SREP planning principles will have been "considered" as legally required. There can be no conceivable possibility of legal error on this basis. This has been made very clear by the Court of Appeal, as detailed further below.
2. The Addisons letter (quite correctly) does not take the SREP issue any higher. Although it devotes 2 pages to scaremongering the SREP issue, it acknowledges (at para 1.15) that the legal obligation is only to "consider" the SREP planning principles and "where possible" to achieve them.
3. The applicant's Planning Proposal prepared by City Plan Services discusses the SREP Planning Principles at pages 25-26. It expressly acknowledges that "*the principles are to be considered and, where possible, achieved in the preparation of environmental planning instruments*". It also refers to the whole of clause 13 before expressing the opinion that the relevant principle in this instance is clause 13(f). This alone makes it abundantly clear that the principles have been considered as a whole in order to determine which of them is relevant. It also notes that "all relevant planning principles" will also be addressed at DA stage. It is therefore clear that the authors had considered all of those principles referred to.

4. Similarly the Council assessment report to the Urban Planning Committee (24 November 2014) at Annexure 2 **expressly** considers the SREP. The relevant extract is attached for ease of reference. It acknowledges having considered the applicant's submissions on the SREP. It also states in the plainest of terms that "*The Planning Proposal is consistent with the principles of the [SREP]*". Contrary to the Addisons submission, **nowhere does it say that the remaining planning principles of the SREP are irrelevant or that they have not been considered**. It is quite clear that the Council has considered the SREP principles as required.
5. The Addisons letter tacitly admits that the SREP planning principles **have** indeed been considered by Council staff, given that it admits that "*both the Planning Proposal document and Council's Planning Proposal Review...assert that the only relevant planning principle is that contained within clause 13(f)*." While this statement is patently untrue in light of the quote provided at paragraph 4 above (and contained in the attachment to this letter), even this statement alone makes it perfectly clear that there has been a consideration of the whole suite of planning principles, in order to "consider" which of them are relevant. In essence, the Addisons letter disagrees as to which principles are relevant, rather than demonstrating that there has been no consideration of the planning principles.
6. The Addisons opinion on the relevance of the SREP planning principles is simply that – an opinion. It provides no basis for asserting any legal error given that, as stated above, it in fact assists in demonstrating that both the applicant and Council staff **have** considered the SREP planning principles in order to form an opinion on which of them are relevant to this limited, site-specific LEP amendment.
7. The Addisons letter asserts that no regard has been had to the SREP planning principle regarding cumulative impacts. With respect this is self-evidently nonsense. The current LEP amendment is a site-specific amendment which will only alter the controls for one potential development site. It was therefore entirely appropriate for both the applicant and Council staff to have considered this principle but to have decided that it is not relevant to this particular, limited, site-specific LEP. The planning principle would of course have been relevant had Council been considering a larger LEP amendment which could be relied upon by multiple applicants across multiple sites. But that is simply not the case here.
8. Council could further protect itself on the SREP issue by providing an additional assessment of the SREP planning principles (to the extent that any are relevant to this site-specific rezoning proposal) as a specific matter for the elected Council to consider as part of its decision-making process (ie on or before 27 July). **This is not legally required** because the consideration is only required "in the preparation of environmental planning instruments" (ie by Council staff and/or the applicant to a Planning Proposal). However this could be done very easily should Council wish to do so. If so, **there could again be no conceivable future legal challenge by any third party**.
9. The Addisons letter is critical of the Council for seeking approval from the Department to not consult with the Foreshores and Waterways Planning and Development Advisory Committee pursuant to clause 30(1) of the SREP. However clause 30(1) of the SREP applies only to "any draft development control plan" and therefore was never relevant to this Planning Proposal, because it is not a development control plan. The Department agreed by formally amending the Gateway Determination on 24 February 2015. As such, Council should again have no concern whatsoever about this criticism.

The legal requirement to "consider" a matter

10. Relevant to the analysis above regarding the SREP, we note that the requirement (whether in any LEP, SEPP, REP, or in the *Environmental Planning and Assessment Act 1979*) for a Council to "consider" a relevant matter has been the subject of considerable judicial analysis and an extensive body of case law.

11. In the past, decisions of councils (and other decision-makers such as the Minister for planning) were often challenged in judicial review proceedings on the basis of an allegation that a particular matter had not been adequately considered, in that the obligation was said to be to give "proper, genuine and realistic" consideration to the relevant issue: *Khan v Minister for Immigration & Ethnic Affairs* (1987) 14 LD 291.
12. This appears to be the legal allegation and threat raised by Addisons in arguing that Council's assessment of the SREP has, to date, been inadequate.
13. However the Court of Appeal subsequently **rejected** that approach, noting that provided the Council considers the relevant issue, it is not for the Courts in judicial review proceedings to question or revisit the merits of the Council's decision: *Minister for Planning v Walker* [2008] NSWCA 224. In that decision, the Court of Appeal warned that

"...the danger is that adoption of the epithets such as "proper, genuine and realistic" consideration, may be understood to qualify the statutory terminology in a manner inconsistent with accepted principles in relation to judicial review. As noted in *Bruce v Cole*, they risk an assessment of the nature of the consideration which will encourage a slide into impermissible merit review ...

An applicant dissatisfied with the merit assessment and outcome of an exercise of discretionary power by a consent authority may seek to disguise a challenge on those merits in terms of recognised grounds of judicial review, such as the *relevant considerations* grounds. A court should see through the disguise. The court must avoid the temptation to express the conclusion in terms of a recognised ground of review while in truth making a decision on the merits."
14. It follows that the approach in the Addisons letter, namely to criticise Council's assessment of the SREP planning principles, 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. As identified above, that is not what has occurred in this instance.
15. We note for completeness that the Court of Appeal's decision in *Minister for Planning v Walker* [2008] has subsequently been consistently applied by the Courts. The approach adopted in the Addisons letter is therefore based on legal principles that have been consistently rejected by the Courts for approximately 7 years.

Precedent

16. The Addisons letter dated 14 July 2015 asserts that the Planning Proposal will set a precedent (presumably an adverse precedent). The basis of this allegation is that if Council alters the foreshore setback control to 18m "*it will be appropriate for every other property owner in this locality to make the same or similar request.*"
17. That submission fails to acknowledge that 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.
18. Moreover, the Courts have held that even in the context of Part 4 of the Act (development application assessment), it is necessary to have real evidence that the precedent would be **likely** to result in a number of other similar applications, and that those applications would in themselves amount to an objectionable outcome: *Emmott v Ku-ring-gai Municipal Council* (1954) 3 LGRA 177. This is notoriously difficult to establish and has not been remotely established by Addisons in this instance. For example, in the Emmott decision, the Court commented:

"Applications must be considered on their own merits and it would appear to be unduly onerous to refuse an application, unobjectionable on its individual merits, on the mere chance of probability that there may be later applications sufficient, if approved, to produce in their totality some undesirable condition. In such a case as the present, if what originally appeared to be a mere possibility or chance turned out later to become a distinct possibility, there would be no reason why the council should not at that stage call a halt, if it should then appear proper to do so.

19. 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.

20. For completeness, we note that precedent is sometimes said to be relevant to the assessment of SEPP 1 objections (and clause 4.6 variation requests) but only where "*the development standard has been virtually abandoned or destroyed by the Council's own actions in departing from the standard*": *Wehbe v Pittwater Council* [2007] NSWLEC 827. In this instance however, because the Planning Proposal seeks to change the planning controls, it **expressly avoids** a situation where the Council might be approving development which is in breach of the applicable controls, therefore destroying them. Rather it seeks to alter the controls via the far more extensive plan-making processes under Part 3 of the Act, specific to this site only. As such, precedent simply does not arise.

The previous Land and Environment Court judgment

21. Both of the Addison's letters (dated 22 June 2015 and 14 July 2015) refer extensively to the decision of Commissioner Morris dated 14 January 2014 in relation to the subject site. However that decision was a decision made by a Commissioner of the Court whose task was to assess a particular development application against the applicable LEP and DCP controls that were in force at that time, and to apply those particular LEP controls to that particular development application.
22. This reflects the basic fact 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. The Courts have made it clear that in such cases, the decision-maker must assume the development standards are appropriate and cannot decide for itself whether the development standard is appropriate, as that is a separate strategic planning process to be undertaken under Part 3 of the Act: *Wehbe v Pittwater Council* [2007] NSWLEC 827 at 50:
- "The dispensing power under SEPP 1 also is not a general planning power to be used as an alternative to the plan making power under Part 3 of the Act to change existing planning provisions. An objection cannot be used as a means to effect general planning changes throughout a local government area (in circumvention of the procedures under Part 3 of the Act)."
23. In this instance the proponent has appropriately chosen to request an amendment to the planning controls that Commissioner Morris was required to apply in January of 2014. If the Planning Proposal is approved, once those new planning controls come into force, any subsequent development application will be assessed on its merits against those new controls. The previous LEC decision will then be of **no relevance**, given that it was based on the controls that applied under the now-repealed *Woollahra Local Environmental Plan 1995*.

24. We note that the earlier Addisons letter dated 22 June 2015 appears to accept this entirely, stating that the previous LEC decision "was by way of non-binding comment only". This is correct given that the Court of Appeal has held that even a Commissioner's decision is not binding and need not be followed by any subsequent Commissioner: *Segal v Waverley Council* [2005] NSWCA 310.
25. In the circumstances, Council should be wary of being led to focus heavily on the decision of Commissioner Morris given that it was entirely an exercise in applying the previous planning controls under Part 4 of the Act, whereas what is now before Council is a Planning Proposal to amend those very controls. The submissions of the Objectors are therefore misconceived in that they do not recognise the distinction between development assessment under Part 4 of the Act and strategic planning (plan-making) under Part 3 of the Act.

Should you have any questions in relation to the above, please contact Anthony Whealy on (02) 9931 4867.

Yours sincerely



Anthony Whealy
Partner
Accredited Specialist Local Government and Planning Law

Enclosed – Annexure A – extract of Council assessment report to the Urban Planning Committee (24 November 2014)

Annexure A

► Review of the planning proposal for 83 and 83A Yarranabee Road, Darling Point

SEPP 55 - Remediation of Contaminated Land

This is addressed on page 23 of the planning proposal.

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

This is addressed on page 25 of the planning proposal.

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 Harbour².

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. 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 Yarranabee Road adopted by Council in WLEP 2014 is retained on the foreshore. On 83 Yarranabee Road, the proposed 15.2m control allows for a development that steps up 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.

Recommendation

No change.

² 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.

Woollahra Municipal Council
Urban Planning Committee

24 November 2014

Item No: R Recommendation to Council
Subject: **PLANNING PROPOSAL FOR 83 AND 83A YARRANABEE ROAD, DARLING POINT**
Author: Brendan Metcalfe - Strategic Planner
File No: 1064.G Plan Prop 8
Reason for Report: To report on the planning proposal prepared by City Plan Strategy and Development and Tzannes Associates for 83 and 83A Yarranabee Road. To obtain Council's approval to prepare an amended planning proposal and forward it to the Department of Planning and Environment for a gateway determination.

Recommendation:

- A. That the planning proposal prepared by City Plan Strategy and Development and Tzannes Associates for 83 and 83A Yarranabee Road, Darling Point, as contained in Annexure 1 of the report to the Urban Planning Committee meeting of 24 November 2014 be forwarded to the Minister for Planning requesting a gateway determination so that it can be placed on public exhibition subject to the building heights being expressed as height above ground level (existing) in metres rather than reduced levels.
- B. That the planning proposal controls are:
- floor space ratio of 1.2:1 over both lots
 - maximum building height of 15.2m and a second height of 5.7m over 83 Yarranabee Road
 - maximum building height of part 10.5m and part 15.2m over 83A Yarranabee Road
 - foreshore building line of 18m for residential flat building development.
- C. That when requesting a gateway determination for the planning proposal at point A above, the Council seek delegation of the plan-making steps under section 59 of the *Environmental Planning and Assessment Act 1979*.
- D. That the applicant meets all costs associated with the preparation and completion of the planning proposal as set out in the Council's fees and charges.

1. Summary

In September 2014 a planning proposal (**Annexure 1**) was submitted to Council by City Plan Strategy and Development and Tzannes Associates to facilitate a 2-5 storey residential development on 83 and 83A Yarranabee Road, Darling Point (Lots 12 and 11 in DP 598514).

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

- increasing the maximum height controls
- increasing the maximum floor space ratio (FSR) for residential flat buildings
- reducing the foreshore building line for residential flat buildings.

Overall, we support this planning proposal for the purpose of obtaining a gateway determination from the Minister for Planning and Environment (DPE). However, we recommend amending the way maximum building heights are applied. Instead of using a complex arrangement of reduced levels (RLs) in Australian Height Datum across the site as submitted by the applicant, we

recommend using heights in metres above existing ground level. This is consistent with both Council's standard practice and the preferred approach of the DPE.

The purpose of this report is to obtain Council's approval of the amended planning proposal prior to referring it to the DPE for a gateway determination. The determination will enable the planning proposal to be placed on public exhibition.

2. Background

In November 2012 a development application (DA 485/2012) was lodged for the demolition of the two adjacent dwelling houses on the site and construction of a five level RFB. The development containing six dwellings was proposed with a maximum height of 17.6m from existing ground level and an FSR of 1.79:1. The development was set back 13m from the mean high water mark thereby breaching the 30m foreshore building line. The DA was refused by delegated authority on 25 June 2013.

The applicant appealed this decision with the NSW Land and Environment Court (LEC). The appeal is cited as *Yarranabee Developments Pty Limited v Woollahra Council [2014] NSWLEC 1007*. The issues of the case included whether the non-compliance with Council's planning controls in terms of site frontage width, foreshore building line, side boundary setback, bulk, height and scale of the development were appropriate; whether the landscaping proposal was adequate to compensate for the trees to be removed from the site; and whether the development was contrary to the terms of a covenant that applies to the land. The appeal was dismissed by the LEC on 14 January 2014.

The owner has subsequently commissioned a planning proposal for the site. The matters raised in the LEC case have been considered during the preparation of the proposed controls and associated building envelope.

3. The site

The site is located at the north of Darling Point as shown below in Figure 1: Local area map.



Figure 1: Local area map

The site comprises two adjoining properties at 83 and 83A Yarranabee Road. The property at 83A Yarranabee Road is a battle-axe lot accessed by a right-of-way over 83 Yarranabee Road which is generally rectangular. The combined area of the site is 1453.6m².

A three storey dwelling house with a double garage at the street frontage is located on 83 Yarranabee Road. The dwelling is separated by its rear garden and a swimming pool from the house on 83A Yarranabee Road as shown in Figure 2: Site aerial.



Figure 2: Site aerial

The property at 83A Yarranabee Road contains 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 garage for three cars is located on the roof of the dwelling house and accessed via a raised driveway along the eastern boundary over the right-of-way.

The property at 83A Yarranabee 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 that currently rise above the existing buildings and are highly visible from Yarranabee Road and the properties further to the south. In addition, there is a mature palm in the north-east corner of the site among other dense vegetation that is visible from the harbour.

The site is within a residential area zoned R3 Medium Density Residential in Draft WLEP 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 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.

4. The applicant’s planning proposal

In summary, the objective of the planning proposal is to increase the height and FSR controls and reduce the foreshore building line setback for RFB development applying to the site.

4.1 Proposed controls

The planning proposal submitted by the applicant provides options for the amendment of Woollahra Local Environmental Plan 1995 (WLEP 1995) and Draft Woollahra Local Environmental Plan 2014 (Draft WLEP 2014).

Our review focuses on the proposal to amend the Draft WLEP 2014 planning controls because Draft WLEP 2014 is likely to have been approved by the DPE by the time any planning proposal for 83 and 83A Yarranabee Road is exhibited and approved.

A summary of the controls under Draft WLEP 2014 and the applicant’s proposal is shown below:

	FSR	Height	Foreshore building line for RFB development
Draft WLEP 2014	0.9:1	10.5m	30m
Planning proposal to amend Draft WLEP 2014	1.2:1	Various reduced levels as shown below in Figure 3	18m



Figure 3: Proposed building heights

4.2 The proposed building envelope

The applicant's planning proposal was submitted to amend the planning controls for the site. The amending controls establish a building envelope for an RFB development on the site to increase density. The building envelope responds to the key matters raised during the LEC case being:

- view impact from private properties
- impact on solar access to adjoining properties
- non-compliance with foreshore building line
- building bulk
- non-compliance with FSR and height controls
- contextual fit.

The indicative envelope provided by the applicant in the planning proposal aims to maintain or improve existing neighbouring views across the site to the harbour, Sydney CBD and Sydney Harbour Bridge by setting development back a minimum of 18m from the foreshore. The planning proposal diagrams show that the proposed building envelope would improve views from levels 1-4 of 77-81 Yarranabee Road and levels 1-6 at the rear of 85 Yarranabee Road based on a comparison to a development complying with the current height and foreshore building line controls.

The applicant's drawings also demonstrate that the envelope would improve existing solar access to levels 1-3 of 71-81 Yarranabee Road and levels 1-4 at the rear of 85 Yarranabee Road.

The envelope proposed by the applicant is shown below in Figures 4 and 5.



Figure 4: The applicant's proposed envelope as viewed from the south-west



Figure 5: The applicant's proposed envelope as viewed from the north-west

5. Review of the planning proposal

Section 55 of the Act sets out what information a planning proposal is to include when submitted for a gateway determination. The DPE has prepared the document titled *A guide to preparing planning proposals* (the guidelines) dated October 2012.

We have reviewed the planning proposal in accordance with section 55 of the Act and the guidelines (see **Annexure 2: Planning proposal review**). The review identifies where:

- amendments are to be made to the planning proposal, and
- additional information is to be included in the planning proposal.

5.1 Strategic merit

We identify that the planning proposal has strategic merit and provide in principle support. The proposal will facilitate increased residential density in a location that is within walking distance of bus and ferry services that link to the nearby centres of Edgecliff and Double Bay and other centres further afield.

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

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

5.2 Amendments to proposed height controls

For the purpose of exhibition an increase to the maximum building height for the site is supported, but not in the format suggested by the applicant.

The applicant's proposal is to apply RLs across the site at various locations. We do not support the highly prescriptive mapping of RLs as proposed because:

- The use of RLs at various locations over a lot is inconsistent with Council's approach to mapping height in Draft WLEP 2014.
- The number of different RLs on the site is overly complex.

- The scale of the Draft WLEP 2014 Height of Building Map makes identifying the precise location of each RL impossible.
- Describing the exact location of each RL on the site with a textual description in a clause in Draft WLEP 2014 is not preferred, nor typical of Standard Instrument local environmental plans.
- The DPE has recently advised Council that the application of RLs in Draft WLEP 2014 is not supported for two sites on New South Head Road, Double Bay. Therefore, they are unlikely to support the use of RLs for this site.

Usually, Council sets a maximum building height in metres above existing ground level. A second height limit may also be applied to restrict development at the highest part of the site. The second height limit facilitates view sharing and provides a consistent streetscape.

These standard approaches for setting height limits should be applied to the planning proposal.

Using these approaches, we propose the following maximum building height controls for the site:

- A maximum building height of 15.2m and a second height of 5.7m over 83 Yarranabee Road.
- A maximum building height of part 10.5m and part 15.2m over 83A Yarranabee Road.

These controls are illustrated below in Figure 6.



Figure 6: Proposed maximum building heights

Explanation of the proposed provisions

On 83 Yarranabee Road, the 15.2m maximum building height is equivalent to the maximum RL of the applicant's indicative proposal.

The 5.7m second height from the highest part of the site is the equivalent to the maximum RL of the applicant's indicative proposal as viewed from Yarranabee Road. An indicative cross section of the height controls is shown below in Figure 7.

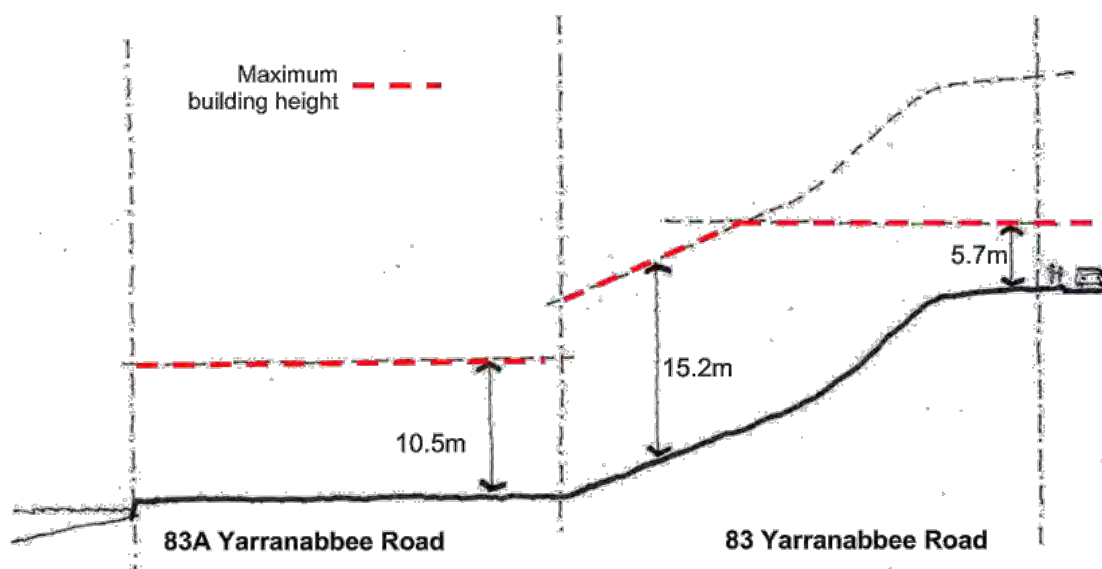


Figure 7: Indicative cross section of controls

On 83A Yarranabee Road, the 10.5m maximum building height reflects the majority of the applicant's indicative proposal except a small portion proposed as RL 15.1 in the south-east corner. As the exact location of the area proposed with an RL of 15.1m cannot be accurately identified using Council's usual mapping techniques it has been excluded from the property.

This is a practical approach to addressing the maximum building heights on 83A Yarranabee Road given the limitations of the Standard Instrument.

5.3 Additional information to be submitted

Section 55(2) of the Act outlines the components a planning proposal must contain. The planning proposal submitted by City Plan Strategy and Development and Tzannes Associates has generally been prepared in accordance with the Act. However, Council will need to prepare the:

- relevant maps which identify the proposed planning controls for the site, and
- indicative project timeline.

6. Options for proceeding

Option 1: Forward the planning proposal, subject to amendments to height and various other matters identified in Annexure 2 to the DPE requesting a gateway for determination. This is our preferred approach.

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

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

Option 2: Notify the applicant that the planning proposal is not supported.

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

7. Identification of income

When a planning proposal is not initiated by Council, under section 11 of the *Environmental Planning and Assessment Regulation 2000* we can request payment of all costs and expenses incurred in relation to the planning proposal. The Delivery Program 2013-2017 and Operation Plan 2014/15 sets out the fees and charges for preparing a planning proposal. We recommend that the applicant is responsible for all costs associated with the planning proposal as required by the adopted fees and charges.

8. Conclusion

In principle this planning proposal has merit and, subject to amendments, we recommend that Council forwards the planning proposal for 83 and 83A Yarranabee Road, Darling Point, to the Minister for Planning requesting a gateway determination so that it can be placed on public exhibition for a minimum of 28 days for comment.

As this matter is of local significance only, we recommend seeking delegation of the plan-making steps under section 59 of the Act.

If the gateway determination recommends that the planning proposal proceeds, it should be exhibited in accordance with the Act and any conditions imposed by the gateway determination.

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

Woollahra Municipal Council
Urban Planning Committee

24 November 2014

Brendan Metcalfe
Strategic Planner

Jacquelyne Della Bosca
Team Leader Strategic Planning

Chris Bluett
Manager Strategic Planning

Allan Coker
Director Planning and Development

Annexures:

1. Planning proposal for 83 and 83A Yarranabee Road, Darling Point as submitted by City Plan Strategy and Development and Tzannes and Associates.
2. Planning proposal review.

Political Donations – matters to be considered by Councillors at Meetings

