

# Urban Planning Committee Agenda



**Agenda:** *Urban Planning Committee*

**Date:** *Tuesday 13 June 2017*

**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:** 5 Councillors

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

# Woollahra Municipal Council

## Notice of Meeting

7 June 2017

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

Dear Councillors

### Urban Planning Committee – 13 June 2017

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 **Tuesday 13 June 2017 at 6.00pm.**

Gary James  
General Manager

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## Meeting Agenda

<b>Item</b>	<b>Subject</b>	<b>Page</b>
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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 15 May 2017 - 17/106708 .....	7
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### **Items to be Submitted to the Council for Decision with Recommendations from this Committee**

R1	Public exhibition of the planning proposal for 636 and 638-646 New South Head Road, Rose Bay (SC3446) - 17/103348 .....	9
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**Item No:** D1 Delegated to Committee  
**Subject:** **CONFIRMATION OF MINUTES OF MEETING HELD ON 15 MAY 2017**  
**Author:** Sue O'Connor, Secretarial Support - Governance  
**File No:** 17/106708  
**Reason for Report:** The Minutes of the Urban Planning Committee of 15 May 2017 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 15 May 2017 be taken as read and confirmed.

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**Item No:** R1 Recommendation to Council  
**Subject:** **PUBLIC EXHIBITION OF THE PLANNING PROPOSAL FOR 636 AND 638-646 NEW SOUTH HEAD ROAD, ROSE BAY (SC3446)**  
**Author:** Jorge Alvarez, Senior Strategic Planner  
**Approvers:** Anne White, Team Leader - Strategic Planning  
Chris Bluett, Manager - Strategic Planning  
**File No:** 17/103348  
**Reason for Report:** To report on the public exhibition of the planning proposal for 636 and 638-646 New South Head Road, Rose Bay.  
To obtain Council's approval to proceed with the finalisation of the planning proposal.

**Recommendation:**

- A. That Council proceed with the planning proposal for 636 and 638-646 New South Head Road, Rose Bay to amend Woollahra Local Environmental Plan 2014 as exhibited.
- B. THAT Council exercise its delegation authorised by the Director, Metropolitan (CBD) Planning Services, Department of Planning and Environment, on 15 September 2015, to carry out the functions of the Greater Sydney Commission under section 59 of the Environmental Planning and Assessment Act 1979.

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**1. Summary**

On 27 February 2017 Council resolved to prepare and exhibit a planning proposal (**Annexure 1**) for 636 and 638-646 New South Head Road, Rose Bay (the site), which comprises two adjoining lots, SP 22533 and Lot A DP 393087. The resolution followed a report to the Urban Planning Committee on 13 February 2017 (**Annexure 2**).

The proposal was prepared and submitted to the Department of Planning and Environment, who issued a conditional gateway determination on 4 April 2017, to proceed with a public exhibition (**Annexure 3**).

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

The planning proposal and supporting material were placed on public exhibition for a period of 31 days, from Wednesday 26 April to Friday 26 May 2017 (inclusive). Four submissions were received during the exhibition period. Three submissions did not raise objection to the proposal. One submission raised objection to the proposal, however, it did not raise any planning matters that warrant the amendment of the proposal. An assessment of the submissions is contained in Part 4 below.

We recommend that Council proceed with the planning proposal and exercise its delegated authority to arrange for the drafting and making of a local environmental plan to give effect to the planning proposal.

## 2. The site

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

The site comprises two adjoining lots at 636 New South Head Road (SP 22533) and 638-646 New South Head Road (Lot A DP 393087). The combined area of the site is approximately 1,502m<sup>2</sup>, with a water frontage of approximately 21m to Rose Bay and a road frontage of approximately 31m to New South Head Road. No. 636 New South Head Road is a battle-axe lot with a water frontage to Rose Bay, accommodating a two storey residential flat building known as “Kenmar Court”. No. 638-646 New South Head Road is an irregular rectangular shape with an area of approximately 711m<sup>2</sup> and a frontage of approximately 29m to New South Head Road, accommodating a petrol station. A site photo of the existing petrol station on the site is included as Figure 2.



**Figure 1: Site aerial photograph** (source: JBA and Nearmap)



**Figure 2: Existing petrol station at 638-646 New South Head Road**

### **3. Public exhibition**

The planning proposal and supporting material were placed on public exhibition for a period of 31 days, from Wednesday 26 April to Friday 26 May 2017 (inclusive), consistent with the *Environmental Planning and Assessment Act 1979* (the Act), the *Environmental Planning and Assessment Regulation 2000* (the Regulation) and the conditions set out in the gateway determination.

The exhibition included the following:

1. Five advertisements in the *Wentworth Courier* containing details of the exhibition, on the dates below:
  - 26 April 2017
  - 3 May 2017
  - 10 May 2017
  - 17 May 2017
  - 24 May 2017
2. An exhibition page on Council website. The exhibition page was visited by 104 external customers.
3. Display of the exhibition material at the customer service counter of the Woollahra Council Chambers, available during normal business hours.
4. Notification letter / email to stakeholders including:
  - The applicant
  - Adjoining and nearby property owners
  - Local interest groups:

- Rose Bay Resident's Association
- Rose Bay Good Neighbour Group
- Rose Bay Chamber of Commerce
  
- Public or government agencies:
  - EPA (Office of Environment and Heritage) (as required by the gateway determination)
  - Transport for NSW / RMS
  - Sydney Water
  - Ausgrid
  - Telstra
  - NBN Co.
  - AGL

#### 4. Submissions

Four submissions were received. Two were from government agencies and two from nearby property owners. The location of the submissions from nearby property owners is shown in Figure 3. A redacted copy of all submissions is attached as **Annexure 4**.



Figure 3: Submissions map

A summary of the four submissions received, the issues raised and staff responses to these issues are included below.

1. Two submissions were from the government agencies of the Department of Planning and Environment (Foreshores Committee) and Roads and Maritime Services (RMS).

***Issue***

While neither agency raised an objection to the proposal, they advised that they may provide comment on a future development application for the site. The RMS identified matters that should be considered in the assessment of a future development application for the site.

***Response***

We will refer any future development application on this site to these agencies, and the comments from RMS will be addressed as part of a future development application for the site.

2. One submission was received from the owner of the adjoining property at 648 New South Head Road, Rose Bay.

***Issue***

The submission did not object to the proposal, but noted that they are interested in any subsequent development application.

***Response***

We will notify this owner, as well as other adjoining owners, of any future development application on this site.

3. One submission was received from the owner of an apartment at 11-19 Newcastle Street, Rose Bay. The submission raised an objection to the “proposed changes” to the Rose Bay centre. The submission reads as a combined objection to this proposal as well as another recently exhibited planning proposal for the Ian Street and Wilberforce Avenue Car Parks, Rose Bay (SC3599). Council staff confirmed with the author that they object to both proposals.

***Issues***

- Traffic congestion is a problem in the Rose Bay Centre, particularly on New South Head Road, Wilberforce Avenue and Dover Road.
- Car parking is an additional problem. There is inefficient public parking now, which would be exacerbated by this proposal.
- The proposal will undermine the village character of the Centre.
- The proposal will turn people away from the Centre.

***Response***

- The submission relates to matters primarily of development impact on the Centre.
- The proposal will not amend the size or scale of the development permissible on the site. Therefore, the proposal is unlikely to affect the potential traffic generation or the car parking requirement for future development. Furthermore, as the planning proposal does not endorse a particular development concept on the site, it is not possible to determine if future development will generate additional traffic or result in additional on-street car parking near the site. Notwithstanding this, consideration of traffic generation and car parking requirements will be undertaken in response to any future development application for the site.

- The planning proposal will permit development which is consistent with the objectives and desired future character for the Rose Bay Centre, as outlined in *Woollahra Development Control Plan 2015*, Chapter D6 Rose Bay Centre. The DCP seeks to:
  - develop the Rose Bay Centre into a high quality medium density urban village with a balanced mix of retail, commercial, residential and leisure uses, which cater primarily for the needs of the local community; and
  - retain and enhance the village atmosphere of the Rose Bay Centre.
- The proposal will provide the opportunity to achieve these outcomes by:
  - encouraging a contiguous ground floor retail frontage and preserve the ‘small shop’ character of the centre, to ensure liveliness of the centre, by maintaining a retail / business use to New South Head Road; and
  - promoting coherent building scale and high quality development, by maintaining the existing building envelopes of the site and permitting new development to replace an ageing petrol / service station.
- In our opinion achieving the DCP outcomes described above will attract people, such as residents, workers and shoppers, to the centre.
- The submission did not raise any planning matters that warrant the amendment of the planning proposal.

## **5. Making the draft LEP under delegated authority**

To streamline the plan making process, the Minister can delegate some plan making powers to Council for routine matters. In this case, the Council has been provided with written authorisation to exercise the functions of the Greater Sydney Commission to make a local environmental plan under section 59 of the Act.

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

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

## **6. Conclusion**

The planning proposal was prepared and exhibited in the manner required by the Act, the Regulation and the conditions set out in the gateway determination.

Four submissions were received during the exhibition period. None of the submissions raised any planning matters that warrant the amendment of the proposal.

We recommend that Council resolves to finalise the planning proposal and amend Schedule 1 of the Woollahra LEP 2014 to permit development on the site (across both lots) for the purpose of a residential flat building, but only as part of a mixed use development.

### **Annexures**

1. Planning proposal for 636 and 638-646 New South Head Road, Rose Bay as exhibited.  
[↓](#)
2. Urban Planning Committee report dated 13 February 2017. [↓](#)
3. Gateway determination. [↓](#)
4. Submissions. [↓](#)

## Annexure 1



# PLANNING PROPOSAL

636 and 638-646 New South Head Road, Rose Bay



HPE: 17/3167



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Planning proposal for 636 and 638-646 New South Head Road, Rose Bay

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## SECTION 1 – INTRODUCTION AND BACKGROUND

### 1 Summary

In December 2016 Woollahra Council received a request for a planning proposal from JPR Architects (the applicant), on behalf of the owners of 636 and 638-646 New South Head Road, Rose Bay (the site). The documentation submitted with the request, including a planning proposal report prepared by JBA Urban Planning Consultants is included as Attachment 1.

The site consists of two separate lots each subject to a different land use zones. No. 636 New South Head Rd is zoned R3 Medium Density Residential, and No. 638-646 New South Head Road is zoned B2 Local Centre.

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

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

The proposal does not seek any other amendments to the WLEP 2014 or Woollahra Development Control Plan 2015 (WDCP 2015).

The proposal is consistent with all relevant state and local environmental planning instruments, strategies, plans and policies, and will not result in any adverse environmental or amenity impacts on the site or neighbouring land. The proposal is also consistent with the desired future character for the Rose Bay Centre.

This report is divided into 2 sections. Section 1 provides introductory and background information about the site, planning controls and development concepts. Section 2 provides a strategic justification for the planning proposal, following the outline for a planning proposal described in the NSW Department of Planning and Environment’s *A Guide to Preparing Planning Proposals* (August 2016).

## 2 The site and surrounding context

### 2.1 The site

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



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

The site comprises two adjoining lots at 636 New South Head Road (SP 22533) and 638-646 New South Head Road (Lot A DP 393087). The combined area of the site is approximately 1,502m<sup>2</sup>, with a water frontage of approximately 21m to Rose Bay and a road frontage of approximately 31m to New South Head Road. The site slopes evenly approximately 2.4m down from New South Head Road to the waterfront.

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

No. 638-646 New South Head Road is an irregular rectangular shape with an area of approximately 711m<sup>2</sup> and a frontage of approximately 29m to New South Head Road. This lot accommodates a petrol station and is located within the Rose Bay Centre.

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



Figure 2: Site aerial photograph (source: JBA and Nearmap)



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



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

## 2.2 Existing context

The site is located near the northwest corner of the Rose Bay Centre. The centre is located along New South Head Road, which is an arterial road connecting Rushcutters Bay and Vaucluse (effectively connecting the Sydney CBD with South Head at Watsons Bay).

The Rose Bay Centre is a mixed use local centre with two supermarkets, three banks, chemists, a broad range of restaurants and cafes and other day-to-day services that contribute to making the centre the most convenient and important for residents from the eastern half of the Woollahra Local Government Area (LGA). Key industries in the centre include retail, accommodation and food services, health care, arts and recreation, and education (source: Eastern Suburbs Economic Profile (2014)).

The built form of development surrounding the site includes predominantly mixed use retail / business and residential development, commercial buildings and residential flat buildings. These are generally low scale being 2-3 storeys, although notable exceptions include the 7-8 storey mixed use development and residential flat building neighbouring the site to the west, at 624-634 and 624A New South Head Road. Site photos of the existing development surrounding the site are included as Figures 5 and 6.



Figure 5: Existing development to the south of the site on New South Head Road, showing examples of typical nearby 2-3 storey mixed use and residential flat buildings (source: JBA)





**Figure 6 – Existing development to the southwest of the site at 624-634 and 624A New South Head Road, showing notable exceptions to typical development in nearby development**  
(source: JBA)

The site is well serviced by public transport with five bus routes running along New South Head Road to the CBD, being route Nos. 323, 324, 325, and L24. Connections are available from these routes at the Edgecliff Bus and Rail Interchange to district centres such as Bondi Junction. The Rose Bay Ferry Wharf is 550m from the centre with services to Circular Quay, Double Bay and Watsons Bay. Woollahra Council has recently improved cycling facilities to make cycling to and from the centre safer and more convenient.

The site is within walking distance of recreation facilities including Lyne Park which has tennis courts, basketball courts, sporting fields. The site fronts onto Sydney Harbour and Rose Bay beach, providing access to a range of recreational activities such as sailing, kayaking, paddle boarding and other water sports.

Providing opportunities for additional mixed use development incorporating retail / business and residential development on the site is consistent with the well-established best planning practice of increasing development potential near transport nodes and shopping centres to promote sustainable and public transport oriented development.

### 3 Background

#### 3.1 Mixed use development application

Development application (DA) 212/2015 was approved on 18 July 2016 for the demolition of the existing petrol station, remediation of the site and construction of a mixed use development comprising 10 residential apartments, ground floor retail, and 15 basement car spaces. This development application applies to 638-646 New South Head Road only.

#### 3.2 Seniors housing development application

Development application 377/2016 for a seniors housing development was submitted to Woollahra Council on 6 September 2016. At the time of preparing this report a planning assessment report recommending conditional approval was on the agenda to be considered by Council's Development Control Committee on 6 February 2017. The development application will then be determined by the Sydney Central Planning Panel on 16 February 2017. The development application proposes a single building across both lots consisting of 9 seniors housing apartments, 2 retail tenancies fronting New South Head Road, 2 commercial tenancies at ground floor and 19 basement car spaces. The applicant stated in their request that the development application was lodged to provide the landowners with an alternative development option should this planning proposal not be supported.

#### 3.3 Pre-planning proposal application consultation

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

#### 3.4 Preparation of planning proposal

This planning proposal has been prepared in accordance with section 55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the two documents prepared by the NSW Department of Planning and Environment titled *A Guide to Preparing Planning Proposals* (August 2016) and *A Guide to Preparing Local Environmental Plans* (August 2016).

The applicant submitted the following supporting documentation with their request for a planning proposal:

- **Planning proposal report** prepared by JBA Urban Planning Consultants, dated December 2016 (Ref: 15940).
- **Survey plans** prepared by Project Surveyors. Drawing No. Survey 1-3 (Drawing No.: B2059-REVA).
- **Environmental site assessment** prepared by JBS Environmental Pty Ltd, dated January 2012 (Ref: JBS41261-15373 (Rev 1)).
- **Environmental site assessment report** (636 New South Head Road, Rose Bay) prepared by Consulting Earth Scientists, dated 29 April 2016 (Report ID: CES160201-DYL-AB).
- **Remediation action plan** (636 and 638-646 New South Head Road, Rose Bay, NSW) prepared by Consulting Earth Scientists, dated 27 June 2016 (Reference No. CES160201-DYL-AE).
- **Interim advice No.2** Review of Revised ESA 636 New South Head Road, Rose Bay: prepared by ZOIC Environmental Pty Ltd, dated 21 June 2016.
- **Interim advice No.3** Review of RAP for 638-648 [sic] New South Head Road, Rose Bay, NSW: prepared by ZOIC Environmental Pty Ltd, dated 17 August 2016.

## SECTION 2 – PLANNING PROPOSAL REPORT

### Part 1 Objective of planning proposal

#### Part 1.1 Objective

The objective of this planning proposal is to permit development on the site (across both lots) for the purpose of a residential flat building, but only as part of a mixed use development.

#### Part 1.2 Development concept

An indicative development concept for the site is illustrated in Figure 6, and comprises:

- ground floor retail and commercial tenancies at 638-646 New South Head Road, orientated to New South Head Road, with residential apartments above and behind;
- ground floor and upper level residential apartments on at the rear of the retail / business tenancies and on 636 New South Head Road, orientated to Rose Bay; and
- basement car parking in a common basement across the site for both residential and commercial/retail uses, accessed by a single driveway.

### Part 2 Explanation of provisions

#### Part 2.1 Existing planning controls

The site is subject to two separate land use zones under WLEP 2014 as shown in Figure 5 and described below and in Table 1:

- 636 New South Head Rd is zoned R3 Medium Density Residential. The zone generally permits development of medium and high density residential uses, as well as other associated land uses that provide facilities or services to meet the day to day needs of residents. Permitted uses include business premises, residential flat buildings and shops (not including food and drink premises such as cafes and restaurants).
- 638-646 New South Head Road is zoned B2 Local Centre. The zone generally permits development of a range of retail, business, office, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. It also aims to provide active ground floor uses to create vibrant centres. Shop top housing is the only form of residential development permitted. The only form of residential use permitted in the B2 Local Centre zone is shop top housing, however, this is defined as *“one or more dwellings located above ground floor retail premises or business premises”*.



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

The zoning controls that apply to the sites under WLEP 2014 are set out in Table 1 below.

**Table 1: Existing WLEP 2014 zoning controls**

636 New South Head Rd	638-646 New South Head Road
<b>Land use zones</b>	
R3 Medium Density Residential	B2 Local Centre
<b>Objectives of zone</b>	
<ul style="list-style-type: none"> <li>To provide for the housing needs of the community within a medium density residential environment.</li> <li>To provide a variety of housing types within a medium density residential environment.</li> <li>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</li> <li>To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.</li> </ul>	<ul style="list-style-type: none"> <li>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</li> <li>To encourage employment opportunities in accessible locations.</li> <li>To maximise public transport patronage and encourage walking and cycling.</li> <li>To attract new business and commercial opportunities.</li> <li>To provide active ground floor uses to create vibrant centres.</li> <li>To provide for development of a scale and type that is compatible with the amenity of the surrounding residential area.</li> <li>To ensure that development is of a height and scale that achieves the desired future character of the neighbourhood.</li> </ul>
<b>Development permitted without consent</b>	
Roads	Roads
<b>Development permitted with consent</b>	
Attached dwellings; Bed and breakfast accommodation; Boarding houses; Business premises; Child care centres; Community facilities; Dual occupancies; Dwelling houses; Environmental protection works; Group homes; Home occupations (sex services); Hostels; Information and education facilities; Multi dwelling housing; Neighbourhood shops; Office premises; Places of public worship; Public administration buildings; Recreation areas; Residential flat buildings; Respite day care centres; Secondary dwellings; Semi-detached dwellings; Seniors housing; Shops	Amusement centres; Boarding houses; Building identification signs; Business identification signs; Car parks; Child care centres; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Environmental facilities; Environmental protection works; Function centres; Home occupations (sex services); Information and education facilities; Light industries; Medical centres; Passenger transport facilities; Places of public worship; Public administration buildings; Recreation areas; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Service stations; Sex services premises; Shop top housing; Tourist and visitor accommodation; Veterinary hospitals
<b>Prohibited development</b>	
Any development not permitted with or without consent	Any development not permitted with or without consent

## Part 2.2 Permissibility of development

While the uses proposed in the development concept are independently permissible on each site, this form of development in an integrated mixed use form is prohibited because:

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

An amendment to the permissible uses on the site is required to permit development for the purpose of a residential flat building on the part of the site zoned B2 Local Centre (638-646 New South Head Road). The applicant requested the permissibility of the group term "residential accommodation" on the site. However, Council considers that the "residential accommodation" group term would permit too broad a range of residential land uses on the site. The "residential accommodation" group term includes various residential uses such as "dual occupancies", "hostels" and "multi-dwelling housing", as well as "shop top housing". The permissibility of some of these uses is inconsistent with the objectives of each of the two zones of the site. For example, the development of "dual occupancies" and "hostels" is inconsistent with the objectives of the B2 Local Centre zone, which are primarily aimed at permitting retail and commercial uses. Similarly, the development of "shop top housing" is inconsistent with the objectives of the R3 Medium Density zone, which are primarily aimed at permitting medium density housing not incorporated within a mixed use development.

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

## Part 2.3 Proposed controls

The planning proposal seeks to amend Schedule 1 of the WLEP 2014. Schedule 1 identifies additional permitted uses on certain sites within the Woollahra LGA. It is proposed to add an additional clause to the schedule to permit development on the site (across both lots) for the purpose of a residential flat building, but only as part of a mixed use development.

This is a simple and effective way of resolving the land use permissibility issue to achieve the desired outcome of the planning proposal.

The planning proposal does not seek to amend any other provision of the WLEP 2014.

### Part 3 Justification

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

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

#### Part 3.1 Need for planning proposal

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

No. The planning proposal is the result of the land owners' intention to develop the site as a whole and to remove any ambiguity over land use permissibility.

**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 objective. Four other options were nominated by the applicant in their request for a planning proposal, but these options were not considered to achieve the objectives of the proposal.

The JBA planning proposal report, included as Attachment 1, provides a more detailed discussion of the following five options to facilitate the development concept:



- Option 1: Rezone 638-646 New South Head Road to R3 Medium Density Residential. This option will not meet the objective of the proposal as it will not permit mixed use development across both lots.
- Option 2: Rezone 636 New South Head Road to B2 Local Centre. This option will not meet the objective of the proposal as it will not permit the development of a residential flat building at ground level on either lot.
- Option 3: Amend the B2 Local Centre zoning table. This option will not meet the objective of the proposal as it will not restrict the permitted land use amendment to this site only.
- Option 4: No Planning Proposal. This option will not meet the objective of the proposal as it will not permit residential development at ground level on 638-646 New South Head Road.
- Option 5: Schedule 1 amendment (this Planning Proposal). This option will meet the objective of the proposal.

### Part 3.2 Relationship to strategic planning framework

#### 3. Is the planning proposal consistent with the objectives and actions contained within the applicable regional, subregional strategy or district plan or strategy (including exhibited draft plans or strategies)?

Yes. The planning proposal is consistent with the objectives of *A Plan for Growing Sydney* and the initiatives of the *Draft Central District Plan (2016)*. These plans are discussed in detail in Attachment 2.

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

Yes. The planning proposal is consistent with Woollahra 2025 and the WDCP 2015.

#### **Woollahra 2025**

The planning proposal is consistent with Woollahra 2025, which is Council's 15 year strategic plan for the LGA. Woollahra's future planning is based on the principle of sustainability. That is, meeting the needs of the present, without compromising the ability of future generations to meet their own social, economic, environmental and civic leadership needs.

Key themes of Woollahra 2025 are to:

- Enhance and revitalise the village atmosphere of our shopping areas, providing convenient and easy access to a range of shops and facilities.
- Provide quality places and spaces to meet the different needs of people living in the area and houses within easy distance of shopping areas, business precincts and local facilities.
- Maintain the diversity of our local economic base and encourage new business into the area that will enhance and positively impact on community life.

The planning proposal will enhance the village atmosphere within and adjoining the Rose Bay centre by permitting additional flexibility in residential options for the site while retaining the requirement to provide retail, business, office and other types of non-residential uses.

**WDCP 2015**

The planning proposal will permit development which is consistent with the objectives and desired future character for the Rose Bay Centre. These are outlined in WDCP 2015, Chapter D6 Rose Bay Centre.

The WDCP 2015 seeks to develop the Rose Bay Centre into a high quality medium density urban village with a balanced mix of retail, commercial, residential and leisure uses, which cater primarily for the needs of the local community.

The planning proposal is consistent with this concept and the following relevant specific objectives for the centre:

O1 To retain and enhance the village atmosphere of the Rose Bay Centre.

The planning proposal will:

- Encourage contiguous ground floor retail frontage and preserve the 'small shop' character of the centre, to ensure liveliness of the centre, by maintaining a retail / business use to New South Head Road.
- Promote coherent building scale and high quality development, by maintaining the existing building envelopes of the site and permitting new development to replace an ageing petrol / service station.

O5 To foster the diverse mix of uses in the Rose Bay Centre.

The planning proposal will enhance the existing diverse mix of uses that characterise Rose Bay by permitting additional flexibility in residential options within a mixed use development on the site.

**5. Is the planning proposal consistent with applicable State Environmental Planning Policies?**

Yes. The planning proposal is consistent with the *Standard Instrument – Principal Local Environmental Plan* and all other applicable *State Environmental Planning Policies* (refer to Attachment 3).

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

Yes. The planning proposal is consistent with applicable section 117 directions (refer to Attachment 4).

**Part 3.3 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?**

No. There are no critical habitat areas, threatened species, populations or ecological communities or their habitats present on the subject land. Accordingly, the proposal will not have any impact in this regard.

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

Yes. Refer to the comments below.

**Contamination**

The lot at No. 638-646 New South Head Road is currently developed and operating as a petrol / service station. The lot is currently identified on the NSW Environment Protection Authority (EPA) Contaminated Land Register as:

- “significantly contaminated land” (declaration No. 20121102), and
- the subject of a management order (order No. 20131405)

Environmental site investigations were conducted on the site in accordance with the provisions of *State Environmental Planning Policy No. 55 – Remediation of Land* (SEPP 55). A Remedial Action Plan was prepared to manage the environment effects of contamination on the site (refer to Attachment 1). The site investigations concluded that, if the Remedial Action Plan is implemented, the site will be suitable for the proposed land uses. A summary of the environmental site investigations is included below.

An **Environment Site Assessment** prepared in January 2012 by JBS Environmental for 638-646 New South Head Road concluded that:

- sources of contamination on the site contain constituents related to the storage and handling of petroleum products;
- the contamination is most likely restricted to the site’s historical use as a service station and associated workshop;
- the highest levels of impact are generally present in the eastern and north-eastern portions of the site; and
- a Remedial Action Plan for development of the site be prepared and implemented.

An **Environment Site Assessment** prepared in April 2016 by Consulting Earth Scientists for 636 New South Head Road concluded that:

- contamination is comparatively low and localized;
- there is no significant risk to current site users or ecological receptors; and
- any potential impacts to future construction workers or residents of the proposed development can be addressed by the implementation of a Remedial Action Plan.

A **Remedial Action Plan** was prepared in June 2016 by Consulting Earth Scientists for the entire site. The plan concludes that if its recommendations are implemented, the site will be suitable for the proposed development concept.

Council has consulted with the EPA regarding contamination and remediation issues on the site. The EPA advised that they are currently working with the owners of the site, their environmental consultants and the site auditor to resolve the remediation issues raised by the management order. The EPA has advised that the removal of soil contamination from the site during redevelopment can address any residual risks, allowing for the completion of the management order following validation.

Council's Environmental Health Officer has reviewed development application 377/2016 for a seniors housing and recommended the inclusion of a number of development consent conditions to ensure effective remediation of the site. The conditions include engagement of a site auditor accredited under the *Contaminated Land Management Act 1997* to review and determine the appropriateness of the site investigations and the Remediation Action Plan, and provide a Site Audit Statement and Site Audit Report to this effect. While the environmental effects of contamination form part of the assessment of the planning proposal, Council considers that these environmental effects can be best managed at the development application stage, through appropriate conditions of consent.

Therefore, in accordance with SEPP 55 (Clause 6), Council is satisfied that, after remediation, the site will be suitable for mixed use retail / business and residential uses, and that the site can be effectively remediated before it is used for these purposes.

#### **Flood Assessment**

A flood study was prepared by AKY Civil Engineering for the approved development application 377/2016 for a seniors housing development application on the site. The study concludes that the permanent and mechanical flood protection devices proposed for the development would ensure flood protection and flood risk management generally in accordance with the WDCP 2015. The study is included as Attachment 5.

Council's Environmental Health Officer reviewed the flood study and raised no objection to the proposed development, subject to the inclusion of a number of development consent conditions. The conditions include the preparation of a Flood Risk Management Plan on the basis of a 1:100 year Flood Level and the Estuary Planning Level, as determined by the flood study.

While the environmental effects of flooding form part of the assessment of the planning proposal, Council considers that these environmental effects can be best managed at the development application stage, through appropriate conditions of consent. Therefore, Council is satisfied that the site will be suitable for mixed use retail / business and residential uses in terms of flood management.

#### **Other Environmental Effects**

Any other environmental effects, not related to contamination or flooding, that might arise through the redevelopment of this site and future uses would be identified through a development application. Good design and conditions of consent will limit these effects.

**9. Has the planning proposal adequately addressed any social and economic effects?**

Yes. The planning proposal will have positive social and economic effects, in that it provides the additional flexibility in residential development outcomes, which will allow:

- the opportunity for additional residential development within and adjoining a local centre near transport nodes, providing the opportunity for sustainable and public transport oriented development;
- the opportunity for additional housing mix and affordability and differing apartment sizes;
- the potential to increase the local population and provide economic support to local businesses; and
- additional incentive to redevelop the site to replace an ageing petrol/service station and residential flat building.

**Part 3.4 State and Commonwealth interests**

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

Yes. The site is connected to water, sewer, electricity and telephone services. The site is in proximity to regular and frequent public transport services which have capacity to accommodate increased demand.

There is no significant infrastructure demand that will result from the planning proposal. The existing services that are available to the subject sites are suitable for the proposal and appropriate for the requirements of a local centre.

Notwithstanding, we will consult with public utility and public services providers during the public exhibition.

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

Council will consult with all government departments required by the Department of Planning and Environment during the public exhibition of the planning proposal, including Transport for NSW, RMS and EPA.

#### Part 4 Mapping

The planning proposal does not require any amendments to the WLEP 2014 maps.

#### Part 5 Community consultation

The public exhibition will be undertaken in accordance with the requirements of the Act and the *Environmental Planning and Assessment Regulation 2000*.

We recommend that the planning proposal is exhibited for a minimum of 28 days.

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 land owners in the vicinity of the site,
- a letter to the land owner, and
- a letter to any relevant public agency, including the EPA and RMS.

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

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

## Part 6 Project timeline

As Council is authorised to exercise the functions of the Minister for Planning under section 59 of the *Environmental Planning and Assessment Act 1979*, the proposed timeline for completion is as follows:

Plan-making step	Estimated completion
Urban Planning Committee recommends proceeding	February 2017
Council resolution to proceed	March 2017
Gateway determination	May 2017
Additional technical assessment required by Gateway determination	Unknown
Government agency consultation	June/July 2017
Public exhibition period	June/July 2017
Submissions assessment	August 2017
Council assessment of planning proposal post exhibition	August 2017
Urban Planning Committee recommends proceeding	September 2017
Council decision to make the LEP amendment (if delegated)	September 2017
Council to liaise with Parliamentary Counsel to prepare LEP amendment (if delegated)	September 2017
Forwarding of LEP amendment to Department of Planning and Environment for notification	October 2017
Notification of the approved LEP	October 2017

## Annexure 2

Woollahra Municipal Council  
Urban Planning Committee Agenda

13 February 2017

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

### Recommendation:

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

### 1. Summary

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

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

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

The amendment will apply only to this site.



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

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

## 2. The site

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



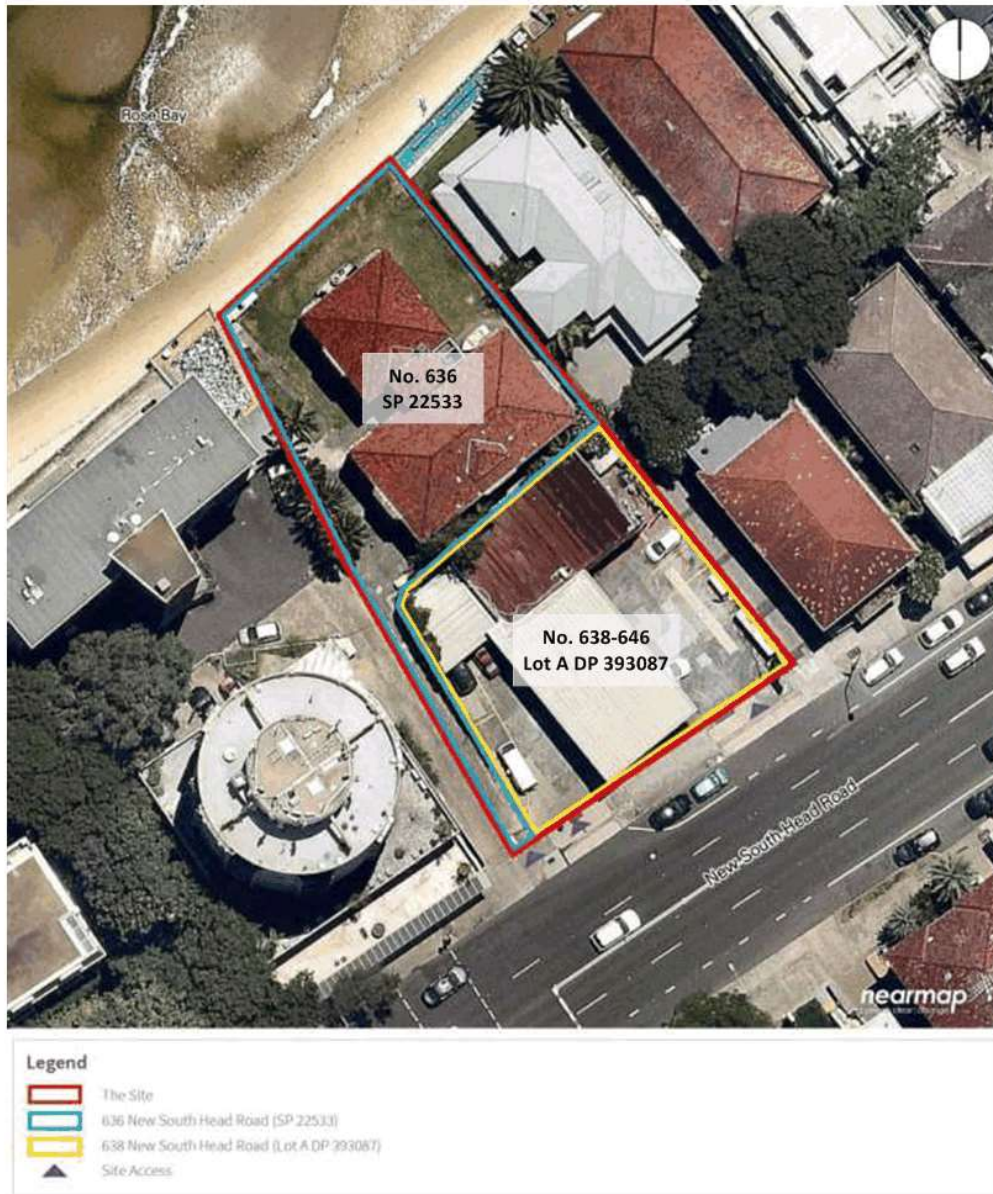
**Figure 1: Local area map** (the site is shown with a red outline on an aerial photograph with a WLEP 2014 zoning map overlay) (source WMC)

The site comprises two adjoining lots at 636 New South Head Road (SP 22533) and 638-646 New South Head Road (Lot A DP 393087). The combined area of the site is approximately 1,502m<sup>2</sup>, with a water frontage of approximately 21m to Rose Bay and a road frontage of approximately 31m to New South Head Road. The site slopes evenly approximately 2.4m down from New South Head Road to the waterfront.

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

No. 638-646 New South Head Road is an irregular rectangular shape with an area of approximately 711m<sup>2</sup> and a frontage of approximately 29m to New South Head Road. This lot accommodates a petrol station and is located within the Rose Bay Centre.

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



**Figure 2: Site aerial** (source JBA and Nearmap)



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



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

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

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



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

### **3. Background**

#### **3.1 Mixed use development DA**

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

#### **3.2 Pre-application planning proposal application consultation**

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

#### **3.3 Seniors housing DA**

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

### **4. The planning proposal**

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

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

#### **4.1 Proposed controls**

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

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

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

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

**4.2 Development concept**

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

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

**4.3 Permissibility of development**

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

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

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

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

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

## 5. Review of the request for a planning proposal

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

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

### 5.1 Strategic merit

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

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

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

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

#### **6. Options for proceeding**

There are two options for responding to the request;

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

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

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

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

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

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

#### **7. Next steps**

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

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

Public notification of the exhibition will comprise:

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



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

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

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

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

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

#### **8. Identification of income**

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

#### **9. Conclusion**

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

#### **Annexures**

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



## Annexure 3

### Gateway Determination

**Planning proposal (Department Ref: PP\_2017\_WOOLL\_001\_00):** to amend Schedule 1 of the Woollahra LEP 2014 to allow mixed use development at 636 and 638-646 New South Head Road, Rose Bay.

I, the Director, Sydney Region East at the Department of Planning and Environment as delegate of the Greater Sydney Commission, 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 (LEP) 2014 should proceed subject to the following conditions:

1. Prior to community consultation, the planning proposal is to be updated as follows:
  - (a) remove the draft clause and include a plain English explanation of the intended planning outcomes; and
  - (b) include a Flood Assessment for the subject site. The report is to be placed on public exhibition along with the planning proposal.
2. Community consultation is required under sections 56(2)(c) and 57 of the Act as follows:
  - (a) the planning proposal must be made publicly available for a minimum of **28 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 2016)*.
3. Consultation is required with the Office of Environment and Heritage under section 56(2)(d) of the Act. The Office of Environment and Heritage 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.
4. A public hearing is not required to be held into the matter by any person or body under section 56(2)(e) of the 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).

PP\_2017\_WOOLL\_001\_00 (17/04488)



**Planning &  
Environment**

5. The timeframe for completing the LEP is to be **9 months** from the week following the date of the Gateway determination.

Dated *4<sup>th</sup>* day of *April* 2017

A handwritten signature in black ink that reads 'Sandy Chappel'.

**Sandy Chappel**  
**Director, Sydney Region East**  
**Planning Services**  
**Department of Planning and Environment**  
**Delegate of the Greater Sydney Commission**

PP\_2017\_WOOLL\_001\_00 (17/04488)

## Annexure 4

**From:** [Rachel Johnston](#)  
**To:** [Jorge Alvarez](#)  
**Cc:** [Olivia Hirst](#)  
**Subject:** RE: Exhibition of planning proposal for 636 and 638-646 New South Head Road, Rose Bay  
**Date:** Thursday, 27 April 2017 3:01:58 PM  
**Attachments:** [image001.jpg](#)

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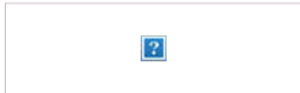
Dear Jorge

Thank you for your email inviting comment from the Foreshores Committee in relation to Council's planning proposal at 636 and 638-646 New South Head Road, Rose Bay. The Foreshores Committee only provides comment at the DA stage, so has nothing to add at the moment.

In all future instances when Council needs to contact the Foreshores Committee, we can be emailed at: [foreshores@planning.nsw.gov.au](mailto:foreshores@planning.nsw.gov.au)

Kind regards

Rachel Johnston  
Planning Officer  
Sydney Region East  
Level 22, 320 Pitt Street | GPO Box 39 | Sydney NSW 2001  
T [REDACTED] | E [REDACTED]



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**From:** Jorge Alvarez [REDACTED]  
**Sent:** Thursday, 27 April 2017 2:15 PM  
**To:** Olivia Hirst [REDACTED]; Rachel Johnston  
[REDACTED]  
**Subject:** Exhibition of planning proposal for 636 and 638-646 New South Head Road, Rose Bay

Dear Olivia and Rachel (Foreshores Committee - Department of Planning)

### **Exhibition of planning proposal for 636 and 638-646 New South Head Road, Rose Bay**

Woollahra Council is exhibiting a planning proposal in relation to 636 and 638-646 New South Head Road, Rose Bay (the site) and we invite your comment.

A planning proposal is a document which explains the intended outcomes and justification for a local environmental plan (LEP).

The site consists of two separate lots each subject to a different land use zone. No. 636 New South Head Road (SP 22533) is zoned R3 Medium Density Residential, and No. 638-646 New South Head Road (Lot A DP 393087) is zoned B2 Local Centre. These zones are applied to the land by the *Woollahra Local Environmental Plan 2014*.

The planning proposal seeks to permit development on the site (across both lots) for the purpose of a residential flat building, but only as part of a mixed

use development. Commercial uses addressing New South Head Road will still be required on No. 638-646 New South Head Road. No other amendments are proposed.

Details for the exhibition of the planning proposal, including supporting material, are as follows:

Exhibition period: Wednesday 26 April to Friday 26 May 2017.

Location: Woollahra Council Customer Service area, 536 New South Head Road, Double Bay, or online at [www.woollahra.nsw.gov.au/yoursay](http://www.woollahra.nsw.gov.au/yoursay).

Submissions: Quote reference (SC3443 Submissions) and addressed to the General Manager at Woollahra Council, PO Box 61, Double Bay NSW 1360 or emailed to [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au).

Submissions can be made during the period Wednesday 26 April and Friday 26 May 2017.

If you have any queries please contact me on 02 9391 7073.

Kind regards

-----  
**Jorge Alvarez**  
Senior Strategic Planner  
**Woollahra Municipal Council**  
536 New South Head Road, Double Bay NSW 2028  
p 02 9391 7073 f 02 9391 7044  
w [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) e [jorge.alvarez@woollahra.nsw.gov.au](mailto:jorge.alvarez@woollahra.nsw.gov.au)

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Friday 19 May 2017

Roads and Maritime Reference: SYD17/00579  
Council Ref: SC3443

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

**Attention:** Jorge Alvarez

**EXHIBITION OF PLANNING PROPOSAL FOR 636 AND 638-646 NEW SOUTH HEAD ROAD, ROSE BAY**

Dear Mr Alvarez

I refer to your email of 27 April 2017 inviting Roads and Maritime Services to provide comment on the abovementioned planning proposal in accordance within Section 55 of the *Environmental Planning and Assessment Act 1979*.

Roads and Maritime has reviewed the submitted documentation and it is noted that the proposed Planning Proposal seeks to amend Schedule 1 of the Woollahra LEP 2014 to allow residential accommodation as an additional permitted use with consent on the subject site.

Roads and Maritime raises no objection to the Planning Proposal in principle, subject to consideration of the following matters in the assessment of any future development application:

- Vehicular access for a future consolidated development to/from New South Head Road should be via a single combined driveway that provides left in/left out movements only and an extension of the median to prevent right turning movements to/from the development;
- Council is reminded that Roads and Maritime has previously resumed and dedicated a strip of land as road along the New South Head Road frontage of the subject property, as shown by grey colour on the attached plan – "X". Therefore, all buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the New South Head Road boundary.
- Provision of appropriate noise attenuation measures to mitigate against road traffic noise on New South Head Road.

**Roads and Maritime Services**

27-31 Argyle Street, Parramatta NSW 2150 |  
PO Box 973 Parramatta NSW 2150 |

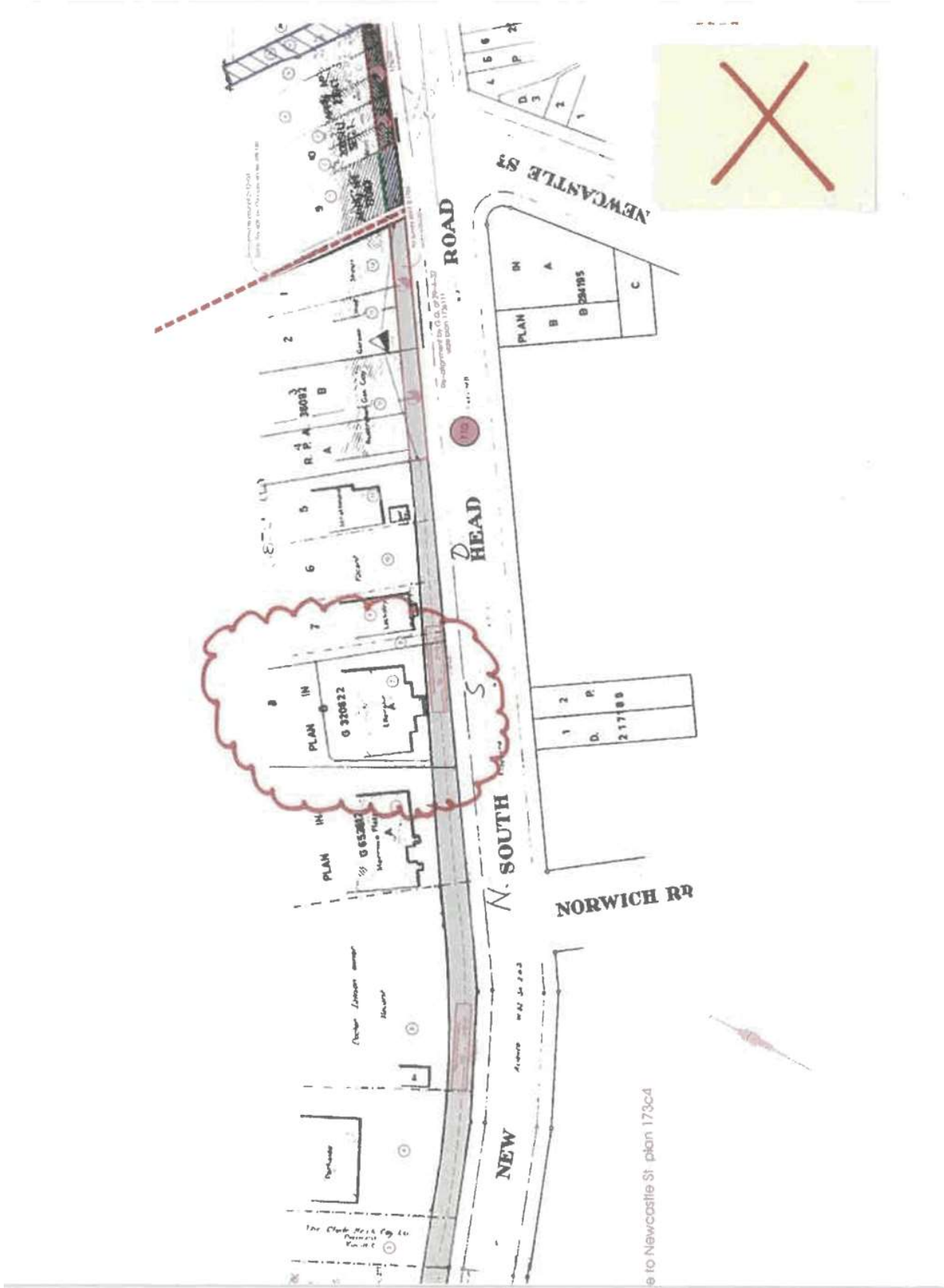
[www.rms.nsw.gov.au](http://www.rms.nsw.gov.au) | 13 22 13

Thank you for the opportunity to provide advice on the subject proposal. If you require clarification on any issue raised, please contact Tricia Zapanta, Strategic Land Use Planner on [REDACTED] or by email on [REDACTED].

Yours Sincerely,



Greg Flynn  
Program Manager, Land Use







**From:** [Mark Heeley](#)  
**To:** [Records](#)  
**Subject:** SC3443 Submissions  
**Date:** Friday, 26 May 2017 3:16:58 PM

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Dear Sir ,

I refer to the exhibition of planning proposal for 636 & 638-646 New South Head Rd,Rose Bay.

I own and occupy the property 648 New South Head rd to the East of the development .

I am going on record as being a very interested party in the DA that will surely follow this application. The developer is requesting this change for reasons of commercial benefit as the developer will find it far easier to on-sell the apartments without the over 55's covenant.

However I note that they were quite happy to take advantage of the over 55 development controls to reach the current DA377/2016.

These advantages will be lost with this planning control change. The next DA application will make for interesting reading indeed.

Regards,

Mark Heeley

T: [REDACTED]

A: 648 New South Head Rd,Rose Bay.

**From:** [Pearl Rubinstein](#)  
**To:** [Records](#)  
**Subject:** Fwd: Submission SC3443  
**Date:** Friday, 26 May 2017 4:32:33 PM

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Sent by  
Pearl Rubinstein  
from her iPhone

Begin forwarded message:

Today I visited Council Chambers and reviewed this plan; I spoke to a staff member in order to understand this plan.

I absolutely reject the proposed changes.

I live at Apartment █, 11-19 Newcastle St and even now the traffic from Vaucluse and Newcastle St is abysmal ! Since the concreted footpaths between Newcastle St/Wilberforce St have been extended , the congestion in New South Head and Dover Roads and the above-mentioned streets has been impossible !! These roads were already congested but now it's impossible to drive into New South Head and Dover Roads. I live across from the Panerong Park and simply cannot join the traffic from my underground parking; this is beyond dangerous as it's not possible to see whether any traffic is coming into Newcastle St as well as the long line of traffic coming towards New South Head Rd and Wilberforce St. It doesn't matter what time of the day this problem prevails.

Parking is an additional problem. There is inefficient public parking now-it would be exacerbated if this proposal is passed.

Rose Bay Village is a gorgeous place to visit or live in. The quaint area brings many to the area of Rose Bay. The Village supplies all the necessary amenities and more; the atmosphere, facilities and feeling of being in the area is splendid.

Council is proposing many changes to the Village which will turn people away from it; after all, there are many other shopping areas close by where people can move to.

I formerly lived in Bellevue Hill for twenty years but my move to Rose Bay has been so enjoyable to me.

I fear that so many changes, including rezoning of buildings and their heights will swamp the Village by removing its atmosphere, further traffic and parking problems.

Rose Bay will lose all of its hominess and its congeniality; people come from far and wide to visit the Village, enjoy being with friends and family and just enjoying its atmosphere which is so endearing.

These changes, one after another will spoil this feeling, affect all the businesses, which contribute to the pleasure and special vibe that exists now.

So in short, I strongly oppose these planning proposals.

Don't change Rose Bay Village.

Regards

Pearl Rubinstein

[REDACTED]  
/17 Newcastle St, Rose Bay 2029

M

Sent by  
Pearl Rubinstein  
from her iPhone

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

