



## ADDITONAL REPORT

**Agenda:** *Development Control Committee*

**Date:** *Monday 1 September 2008*

**Time:** *8.00 pm*

**Session:** *Two*

**Part:** *Seven of Seven*

**Items:** *R1*

**Development Control Committee**

### **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 objector speaks 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).

### **Delegated Authority (“D” Items):**

- To approve, disapprove and take action on Development and related applications submitted or any other matter referred by the Council or other Committee; to a site inspection for recommendation back to the Development Control Committee. (Except for those applications within the category of designated development, or matters as specified by resolution of the Council taken from time to time.  
Note: This not to limit the discretions of nominated staff members exercising Delegated Authorities granted by the Council.)
- General implementation of matters touching upon or within the strategic goals and policy directives of the Council, and in respect of which due provision has been made in the Council's current budget.
- 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 resolution).
- Confirmation of Minutes of its Meeting.
- Any other matter falling within the responsibility of the Development Control Committee and not restricted by the Local Government Act or required to be a Recommendation to Full Council as listed below:

### **Recommendation only to the Full Council (“R” Items):**

- Specified developments, as may be determined and listed by the Council by resolution taken from time to time.
- Matters which involve broad strategic or policy initiatives within the responsibilities of the Committee.
- Matters requiring the expenditure of moneys and in respect of which no Council vote has been made.
- Matters not within the specified functions of the Committee,.
- Matters reserved by individual Councillors in accordance with any Council policy on "safeguards" (and substantive changes)

**Committee Membership:** 7 Councillors

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

Woollahra Municipal Council  
Development Control Committee

1 September 2008

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**Meeting Agenda**  
**Session Two – Commencing 8.00pm**  
**Part Seven of Seven Parts**

<b>Item</b>	<b>Subject</b>	<b>Pages</b>
R1	DA628/2007 – 7-9 Conway Avenue, Rose Bay - Demolition of two existing dwelling-houses and ancillary structures, the consolidation of the two (2) allotments & construction of a new residential flat building containing six (6) units incorporating a roof terrace & basement level parking for fifteen (15) vehicles, new swimming pool, landscaping and siteworks – 27/09/2007 <b>*See Recommendation Page 1041</b> <b>*Note: Confidential Report Circulated Under Separate Cover</b>	1038 - 1241

## LAND AND ENVIRONMENT COURT UPDATE REPORT

<b>ITEM No.</b>	R1
<b>FILE No.</b>	DA 628/2007/1
<b>PROPERTY DETAILS</b>	7-9 Conway Avenue, Rose Bay
	<b>Lot &amp; DP No.:</b> LOT: 16 DP: 9987
	<b>Side of Street:</b> Southern
	<b>Site Area (m<sup>2</sup>):</b> 1,179.7m <sup>2</sup>
	<b>Zoning:</b> Residential 2(b)
<b>PROPOSAL:</b>	The demolition of two existing dwelling-houses and ancillary structures, the consolidation of the two (2) allotments and the construction of a new residential flat building containing six (6) units incorporating a roof terrace and basement level parking for fifteen (15) vehicles, new swimming pool, landscaping and siteworks.
<b>TYPE OF CONSENT:</b>	Local Development
<b>APPLICANT:</b>	Conway Properties Pty Ltd
<b>OWNER:</b>	Mr R J M Dunlop
<b>DATE LODGED:</b>	27/09/2007
<b>AUTHOR:</b>	Mr D Waghorn

### 1. PREAMBLE

The original development application assessment report for DA 628/2007/1 was tabled at Council's Development Control Committee on 7 July 2008. The recommendation of the report was for conditional approval.

At its meeting on 7 July 2008, Council's Development Control Committee resolved to refuse the development application for the following reasons:

- A. *THAT the Council, as the consent authority, refuse Development Application No. 628/2007 for the demolition of two existing dwelling-houses and ancillary structures, the consolidation of the two (2) allotments and the construction of a new residential flat building containing six (6) units incorporating a roof terrace and basement level parking for fifteen (15) vehicles, new swimming pool, landscaping and siteworks on land at 7-9 Conway Avenue, Rose Bay for the following reasons:*
- 1. The development fails to comply with the provisions of Clause 25 (2) of WLEP 1995 in relation to stormwater disposal.*
  - 2. The development does not comply with Council's front setback control as prescribed under WRDCP 2003 and results in significant view loss from Nos 1-3 & 5 Conway Avenue, Rose Bay.*

3. *The development does not comply with Council's deep soil landscaped area at the frontage control as prescribed under WRDCP 2003 thereby reducing the future amenity of landscaping within the Municipality.*
  4. *The development does not comply with Council's rear setback control as prescribed under WRDCP 2003 which results in excessive loss of vegetation and views.*
  5. *The development does not comply with Council's number of storeys control as prescribed under WRDCP 2003 including by inappropriate excavation to the rear which together result in excessive loss of mature plantings and negative privacy, bulk and scale impacts.*
  6. *The development does not comply with Council's articulated wall length (to the street) control as prescribed under WRDCP 2003.*
- B. *That a further report from Council's Technical Services Department be provided to Full Council at its meeting of 14 July 2008 addressing whether the development complies with the provisions of Clause 25 (2) of WLEP 1995 in relation to stormwater disposal*

In accordance with Council's meeting procedures and policy this matter was then referred to Full Council due to the substantive change of the Committee's recommendation (refusal) to the Officer's recommendation (approval).

At its meeting on 14 July 2008, Full Council resolved as follows:

*That consideration of Development Application No. 628/2007 for the demolition of two existing dwelling-houses and ancillary structures, the consolidation of the two (2) allotments and the construction of a new residential flat building containing six (6) units incorporating a roof terrace and basement level parking for fifteen (15) vehicles, new swimming pool, landscaping and siteworks on land at 7-9 Conway Avenue, Rose Bay be deferred for the applicant to confer with Council staff in relation to the following matters:*

1. *To further address the issue of height non compliance.*
2. *To further address the issue of FSR non compliance.*
3. *To investigate alternate methods that could be used in relation to the driveway excess so as to address the issue of the front setback, deep soil landscaping non compliance and the level of excavation.*
4. *To further address the issue of the articulated wall length (to the street) non compliance.*

On 21 July 2008, the applicants; Conway Properties Pty Ltd sent a letter to Council stating they were unwilling to further amend the plans in accordance with the resolution of Full Council.

A supplementary report was tabled at Council's Development Control Committee meeting on 4 August 2008, where the Development Control Committee resolved as follows:

- A. *THAT the Council, as the consent authority, refuse Development Application No. 628/2007 for the demolition of two existing dwelling-houses and ancillary structures, the consolidation of the two (2) allotments and the construction of a new residential flat building containing six (6) units incorporating a roof terrace and basement level parking for fifteen (15) vehicles, new swimming pool, landscaping and siteworks on land at 7-9 Conway Avenue, Rose Bay for the following reasons:*

1. *The development fails to comply with the provisions of Clause 25 (2) of WLEP 1995 in relation to stormwater disposal.*
  2. *The development does not comply with Council's front setback control as prescribed under WRDCP 2003 and results in significant view loss from Nos 1-3 & 5 Conway Avenue, Rose Bay.*
  3. *The development does not comply with Council's deep soil landscaped area at the frontage control as prescribed under WRDCP 2003 thereby reducing the future amenity of landscaping within the Municipality.*
  4. *The development does not comply with Council's rear setback control as prescribed under WRDCP 2003 which results in excessive loss of vegetation and views.*
  5. *The development does not comply with Council's number of storeys control as prescribed under WRDCP 2003 including by inappropriate excavation to the rear which together result in excessive loss of mature plantings and negative privacy, bulk and scale impacts.*
  6. *The development does not comply with Council's articulated wall length (to the street) control as prescribed under WRDCP 2003.*
  7. *That excavation down to 6 metres within 1.5metres from the side boundary is considered to be excessive and outside the proposed footprint.*
  8. *Excessive roof terracing with have negative amenity impacts on adjoining properties.*
- B. *THAT a further report from Council's Technical Services Department be provided to Full Council at its meeting of 14 July 2008 addressing whether the development complies with the provisions of Clause 25 (2) of WLEP 1995 in relation to stormwater disposal*

On 11 August 2008, Full Council resolved as follows:

*THAT the Council, as the consent authority, refuse Development Application No. 628/2007 for the demolition of two existing dwelling-houses and ancillary structures, the consolidation of the two (2) allotments and the construction of a new residential flat building containing six (6) units incorporating a roof terrace and basement level parking for fifteen (15) vehicles, new swimming pool, landscaping and siteworks on land at 7-9 Conway Avenue, Rose Bay for the following reasons:*

1. *The development fails to comply with the provisions of Clause 25 (2) of WLEP 1995 in relation to stormwater disposal.*
2. *The development does not comply with Council's front setback control as prescribed under WRDCP 2003 and results in significant view loss from Nos 1-3 & 5 Conway Avenue, Rose Bay.*
3. *The development does not comply with Council's deep soil landscaped area at the frontage control as prescribed under WRDCP 2003 thereby reducing the future amenity of landscaping within the Municipality.*
4. *The development does not comply with Council's rear setback control as prescribed under WRDCP 2003 which results in excessive loss of vegetation and views.*

5. *The development does not comply with Council's number of storeys control as prescribed under WRDCP 2003 including by inappropriate excavation to the rear which together result in excessive loss of mature plantings and negative privacy, bulk and scale impacts.*
6. *The development does not comply with Council's articulated wall length (to the street) control as prescribed under WRDCP 2003.*
7. *That excavation down to 6 metres within 1.5metres from the side boundary is considered to be excessive and outside the proposed footprint.*
8. *Excessive roof terracing will have negative amenity impacts on adjoining properties.*

The assessment report is attached as **Annexure 1**.

## **2. BASIS OF REPORT**

The Land and Environment Court have listed the proposal for s34 Conference on 3 October 2008.

Council's solicitor provided prospects of success on 26 August 2008 and these are attached in the confidential report.

## **3. RECOMMENDATION**

- A. THAT in respect of the appeal to the Land and Environment Court against Council's refusal to grant consent to Development Application 627/2007 for the demolition of two existing dwelling-houses and ancillary structures, the consolidation of the two (2) allotments and the construction of a new residential flat building containing six (6) units incorporating a roof terrace and basement level parking for fifteen (15) vehicles, new swimming pool, landscaping and siteworks on land at 7-9 Conway Avenue, Rose Bay, the Committee resolve to enter into closed session with the press and public excluded to consider the confidential report on this matter in accordance with the provisions of Section 10A(2)(g) of the Local Government Act 1993.
- B. THAT in accordance with Council's policy of confidentiality, the confidential report remain confidential for a period of six (6) months or until the conclusion of the appeal, whichever occurs last.

Mr D Waghorn  
**SENIOR ASSESSMENT OFFICER**

Mr N Economou  
**TEAM LEADER**

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## **ANNEXURES**

1. Plans and elevation
2. Development Application Assessment Report