



Council Chambers Additional Item

Agenda: *Application Assessment Panel*

Date: *Tuesday 12 February 2008*

Time: *3.00pm*

Part: *Five*

Item: *D16*

Application Assessment Panel

Outline of Meeting Protocol & Procedure:

- The Chairperson will call the Meeting to order and ask the Panel/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 Panel.
- If person(s) wish to address the Panel, they are allowed three (3) 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 three (3) 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 Panel 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 Panel will debate the matter (if necessary), and arrive at a resolution.

Note: Matters where there is a substantive change to the recommendation of the Council Officer are referred to the next appropriate meeting of the Application Assessment Panel.

Note: Matters can be “called” from this Panel Meeting to the Development Control Committee (DCC) by Councillors subject to the following requirements:

- Calling requires one Councillor
- A Councillor may call a matter by written or oral request by 3.00pm on the business day preceding the meeting at which the item is listed
- A Councillor who is in attendance at the Application Assessment Panel meeting may call a matter at any time prior to the completion of the meeting by orally advising the Panel Chairperson.

Additional Item Meeting Agenda Part Five

Item	Subject	Pages
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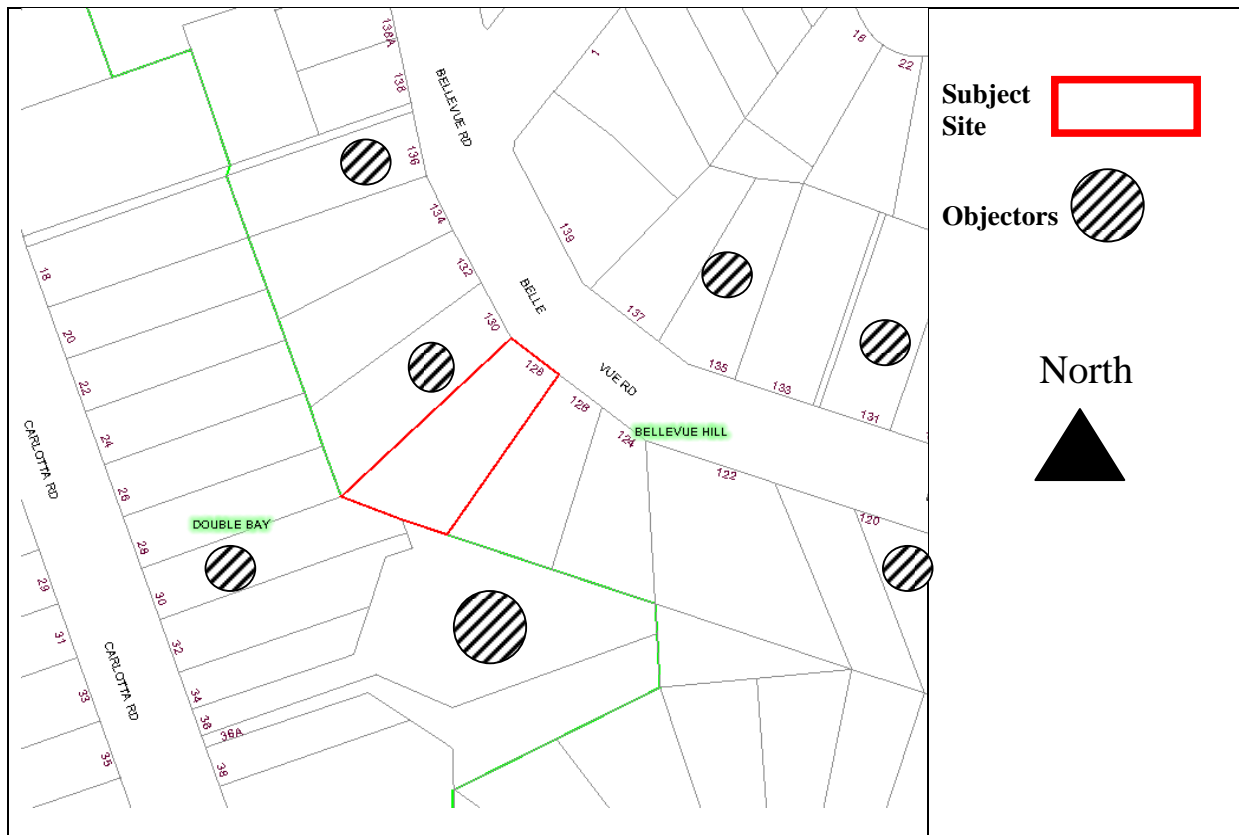
Items to be Decided by this Committee using its Delegated Authority

D16	DA371/2005 – 128 Bellevue Road, Bellevue Hill – Section 82A Review of Refusal – 18/7/2007 *See Recommendation Page 594	573-630
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SECTION 82A REVIEW OF DETERMINATION REPORT

ITEM No.	D16
FILE No.	DA 371/2005
ADDRESS:	128 Bellevue Road BELLEVUE HILL
PROPOSAL:	Demolition of existing dwelling and construction of new residential flat building with basement car parking and associated landscaping
DATE DA DETERMINED:	5 March 2007
SUBJECT OF REVIEW:	Refusal
DATE S82A REVIEW APPLICATION LODGED:	18/07/2007 10/01/2008 – Amended plans, Arborist and Traffic report. 17/01/2008 – Amended stormwater management plan
APPLICANT:	Brenchley Architects
OWNER:	Dr A Small
REVIEW OFFICER:	Mr J La Posta

LOCALITY PLAN



1. SUMMARY

Reason for report

The original development application was refused under delegated authority. In accordance with Council's delegations, the application is referred to the Application Assessment Panel for determination.

Issues

- drainage issues
- site frontage
- owners consent
- trees and landscaping
- building footprint
- objectors concerns
- deep soil landscaping
- non-complying setbacks

Objections

- Twenty-one (21) submissions were submitted to the original application.
- Eight (8) objections have been submitted to the 82A review

Recommendation

The application is recommended for refusal.

2. BACKGROUND

The original application was refused under delegated authority on 5 March 2007 for the following reasons:

1. *Stormwater Drainage*

Due to the absence of a downstream drainage easement to facilitate a gravity drainage system, the proposal does not provide for adequate site drainage and is therefore unsatisfactory with regard to the provisions of Clause 25 (2) of Woollahra Local Environmental Plan 1995.

2. *Site Requirements*

The subject site does not comply with the lot frontage requirement prescribed in Clause 10B under the Woollahra Local Environmental Plan 1995.

3. *Tree Preservation*

The proposal will impact upon the stability and health of existing trees on site and is not considered satisfactory with regard to the objective prescribed in Clause 2(2)(f) under the Woollahra Local Environmental Plan 1995

4. Building Footprint

The proposal does not comply with Control C 4.7.3 – Building Footprint under Part 4.7 of the Woollahra Residential Development Control Plan 2003.

5. Location of Garages

The proposal does not comply with Control C 4.7.5 – Location of Garages under Part 4.7 of the Woollahra Residential Development Control Plan 2003.

6. Front Fences

The proposal does not comply with Control C 4.7.9.4 – Front Fences under Part 4.7 of the Woollahra Residential Development Control Plan 2003.

7. Streetscape

The proposal does not comply with Objectives O 5.1.1, O 5.1.3 and Control C 5.1.2 under Part 5.1 – Streetscape of the Woollahra Residential Development Control Plan 2003.

8. Building Size and Location

The proposal does not comply with Objective O 5.2.3 and Control C 5.2.2 under Part 5.2 – Building Size and Location of the Woollahra Residential Development Control Plan 2003.

9. Open Space

The proposal does not comply with Objective O 5.3.5 and Control C 5.3.1 under Part 5.3 – Open Space and Landscaping of the Woollahra Residential Development Control Plan 2003.

10. Stormwater Management

The proposal does not comply with Objective O 5.7.1 and Control C 5.7.1 under Part 5.7 – Stormwater Management of the Woollahra Residential Development Control Plan 2003.

11. Acoustic and Visual Privacy

The proposal does not comply with Objective O 5.8.1 and Control C 5.8.6 under Part 5.8 – Acoustic and Visual Privacy of the Woollahra Residential Development Control Plan 2003.

12. Car Parking

The proposal does not comply with Objectives O 5.9.2, O 5.9.3 and Controls C 5.9.3 and C 5.9.15 under Part 5.9 – Car Parking and Driveway of the Woollahra Residential Development Control Plan 2003.

13. Car Parking

The proposed arrangement of parking, in terms of the car park layout and car lift access, are not considered acceptable to ensure a safe and functional vehicular and pedestrian movement.

14. Public Interest

The proposal is not in the public interest.

3. DESCRIPTION OF PROPOSAL SUBJECT OF REVIEW

The proposal was for demolition of existing dwelling and construction of new residential flat building with basement car parking and associated landscaping

4. DESCRIPTION OF PROPOSED REVIEW

The application proposes the demolition of the existing dwelling and construction of a new residential flat building with basement car parking and associated landscaping. Specifically the works include:

- the construction of a three storey building containing three x 2 bedroom units and a car park
- the construction of a car stacker fronting Bellevue Road and providing access to the basement car park
- removal of the Deodar Cedar tree located within the front setback of the site
- the construction of a swimming pool to the rear of the RFB and landscaping surrounding the new building

The section 82A review plans included the following changes from the original approval:

- internal reconfiguration of the units
- removal of the Deodar Cedar Tree within the front setback
- alteration to the lot frontage
- modification to the proposed drainage plan

On the 10 January 2008 the applicant submitted amended plans. The plans detailed the following changes:

- reconfiguration of the vehicle access arrangement to and within the site so as to satisfy AS2890.1
- translucent glass privacy screens installed to a height of 1650mm along the western elevation of level 2 and level 3.

This report reviews all aspects of the determination including any cumulative impacts of the changes requested by the applicant.

5. COUNCIL'S STATUTORY RESPONSIBILITIES UNDER S82A

Under Section 82A of the Environmental Planning and Assessment Act 1979, an applicant may request Council to review a determination of a development application, other than for:

- (a) designated development,
- (b) integrated development; or
- (c) state significant development

The request for review must be made within 12 months after the date of determination and the review must occur in the following way:

- (a) If the determination was made by a delegate of Council – the review must be undertaken by Council or another delegate of Council that is not subordinate to the delegate who made the determination, or
- (b) If the determination was made by full Council the review must also be undertaken by full Council.

Upon making a determination of the review application, the following must be undertaken:

- If upon review, Council grants development consent, or varies the conditions of a development consent, it must endorse on the notice of determination the date from which the consent, or the consent as varied by the review, operates.
- If upon review, Council changes a determination in any way, the changed determination replaces the earlier determination as from the date of the review.

Council's decision on a review may not be further reviewed under section 82A.

6. CONSIDERATION OF REVIEW

6.1 Substantially the same development

The proposal is considered to be substantially the same development to that which was originally refused.

6.2 REFERRALS

6.2.1 Building

The proposal has not been assessed for its compliance with the Building Code of Australia. Should the application be approved and it is found there are issues of compliance with the BCA, then the applicant may need to submit a Section 96 application.

6.2.2 Technical Services

Council's Team Leader of engineering, Mr Nick Tomkins provided the following referral response:

Easement Drainage comments

It was previously understood the applicant has acquired an easement to drain water through the downstream properties and has presented survey details of the drainage easement together with partially completed deeds of agreement. It was envisaged that this matter would be finalised prior to completion of Council's assessment and therefore would not warrant further concern.

However it is now understood that the agreement between the developer and the effected downstream properties has lapsed and as the applicant may not now have an easement he cannot comply with clause 25(2) of Councils LEP 1995, "Council must not grant consent unless (Council) is satisfied that adequate provision has been made for the disposal of stormwater from the land..."

Site Drainage comments

The stormwater disposal concept plan and Management for Easement plan prepared by Acor Consult P/L SY050283 Dwg No C1.01 & C1.02 issue A and CK20.01 issue C dated 10.06.07 and 02/04/07. shows the site drainage discharging via an easement/drainage system through downstream lots to the Carlotta St. drainage in accordance with Easement plan, Dwg no C1.03E, dated July 2005

However it is now understood that the agreement between the developer and the effected downstream properties has lapsed and as the applicant may not now have an easement he cannot comply with clause 25(2) of Councils LEP 1995, "Council must not grant consent unless (Council) is satisfied that adequate provision has been made for the disposal of stormwater from the land..."

Flooding & Overland Flow comments

The submitted flood and overland flow study from Patterson Britton is acceptable and is to be adopted in order to provide flood protection to the development.

The revised architectural plans show entry and threshold levels complying with this requirement. Conditions applied.

Construction Management comments

The restricted vehicle access to the site warrants that a construction management plan be submitted prior to the commencement of works. Due to limited on-street parking availability a Work Zone will be required from Council during construction and is conditioned accordingly.

Impacts on Council Infrastructure comments

No works are proposed or approved on the street frontage. Council's street assets are generally in good condition. No specific conditions applied

Traffic comments

The expected traffic generation from the proposed development is typical for the zoning of the site and there are no issues raised.

Vehicle Access & Accommodation comments

Carpark Spaces – number of parking spaces is satisfactory.

Carpark layout – The carpark as shown on the "Assessment of Access and Parking Arrangements" by Traffic & Transport Planning Assoc Ref: 07317 dated December 2007 has now been modified to comply with AS2890.1 and deemed satisfactory.

Carlift – the report identifies that the proposed lift and access now complies with Council's requirements and AS2890.1. The design is also to include:

1. *Access to a mechanical parking installation must be made in accordance with Australian Standard AS/NZS 2890.1 2004;*
2. *The design must include sufficient storage to ensure that a vehicle queuing to enter a mechanical parking installation does not extend beyond the property boundary;*
3. *A waiting bay, of sufficient size to enable an incoming vehicle to wait whilst a second vehicle exits the site, must be provided. (It is not acceptable for the waiting vehicle to reverse onto the footpath to enable the second vehicle to manoeuvre off the site.);*
4. *The minimum length of a waiting bay is 6 metres and has a maximum grade of 1 in 20 (5%);*
5. *Details of the ongoing maintenance and operation of mechanical parking installations.*
6. *A traffic signal system must be employed to warn approaching vehicles of a vehicle exiting the mechanical car lift. The signal must be clearly visible from the roadway. The mechanical car lift must default to street level when not in use.*
7. *The proposed car lift must be installed in accordance with the manufacturer's standards and guidelines.*

Geotechnical, Hydrogeological and/or Structural comments

Geotechnical Report prepared by Jeffery & Katauskas P/L Ref: 19373ZRpt dated 21 April 2005 has been submitted in support of the application. The report identified the property was sandy topsoil and fill then natural sand deposit with weathered sandstone found at 7.4 and 7.7m depth with excavation proposed of about 8m. Groundwater appeared not to be an issue.

The report made comments and recommendations on the following:

- *Excavation support*
- *Retaining walls*
- *Vibration*
- *Piling /ground anchors*
- *Dilapidation reports*
- *Construction monitoring*
- *Further Geotechnical input*

The nature of subsurface conditions and scope of works warrant that a Geotechnical engineer prepare a geotechnical monitoring program to ensure all aspects of the excavation works are addressed whilst the excavation proceeds. This and the above recommendations have been implemented within the without prejudice conditions of consent.

Other comments

Due to the likelihood of additional power usage as a result of the new development, Energy Australia has requested that the applicant contact them with regards to the possible provision of a new Electricity Substation on site.

RECOMMENDATION

Council's Development Engineer has determined that the proposal DOES NOT satisfy Technical Services as it does not address clause 25(2) of Councils LEP 1995, "Council must not grant consent unless (Council) is satisfied that adequate provision has been made for the disposal of stormwater from the land... ". This will be achieved with the provision of a downstream drainage easement to drain water off the site.

6.2.3 Tree Management

The application was referred to Council's Trees and Landscaping department on numerous occasions. Following consideration of the staged information provided by the applicant, Council's trees and Landscaping officer has resolved that:

Deodar Cedar (Tree 1)

Tree and Landscape section preference is that this tree is retained. The proposal does not appear to have been designed with the retention of the tree as a parameter.

I acknowledge the difficulty of retaining the Deodar Cedar given the extent of the proposed excavations and the location of the tree at the front centre of the site. Even if the tree were retained, I doubt that it would survive the excavation impacts over a longer term, say 5 years. In a situation such as this Tree & Landscape section would require the planting of an advanced specimen tree at the front of the site as compensation for the tree removed.

The supplied landscape plan proposes the planting of six trees as a dense planting in confined planter beds at the front of the site. The species to be planted are tabulated but the locations are not identified. Given the landscape style and the density of planting, I would not anticipate that any of these specimens would achieve the dimensions that would afford them protection by the Council's Tree Preservation Order. The existing and anticipated visual amenity provided by the Deodar Cedar would not be replaced by this design.

Brush Box (Tree 4 & 5)

I agree with the Arborists assessment of these trees. The trees are of extremely poor form with no aesthetic value. They possibly represent a low level of hazard due to previous lopping and resultant poor branch attachment. On a development of this scale I would expect to see trees of this standard removed and replaced.

Excavations for the proposed storm water drainage system also appears to impact on Tree 4.

Jacaranda (Tree G)

As has been previously expressed by other Council Landscape Officers and the consulting Arborist, there is potential for the excavation of storm water drainage system and holding tank to impact on existing trees. These impacts should be minimised and setbacks agreed with the consulting Arborist.

RECOMMENDATIONS

The following information is required before further assessment of the application can be undertaken;

- *Modification of landscape plans so as to indicate location of proposed species plantings.*
- *Modifications to the landscape plans to show at least one specimen tree at the front centre of the site as a replacement for the Deodar Cedar. This specimen should be a minimum of 200 litre pot size at the time of planting.*
- *Consideration of the removal and replacement of the two Brush Box trees on the rear western boundary (Tree 4 & 5)*
- *Supply of storm water drainage details and Arborists comments that illustrate a reduced impact on the Jacaranda Tree and other trees adjacent to the proposed drainage system.*

Tree Protection Zones to be defined and tabulated by the Arborist for all trees proposed to be retained.

ENVIRONMENTAL ASSESSMENT UNDER S.79C

The relevant matters for consideration under section 79C of the *Environmental Planning and Assessment Act 1979* are assessed under the following headings:

6.3 RELEVANT STATE/REGIONAL INSTRUMENTS AND LEGISLATION

6.3.1 SEPPs

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 ("BASIX") does not apply to the proposed development as the application for a new residential flat building was lodged prior to 1 July 2005.

State Environmental Planning Policy No. 55

Under clause 7 (1) (a) of State Environmental Planning Policy No. 55 – Remediation of Land, consideration has been given as to whether the land is contaminated. An assessment of the *Initial site evaluation* undertaken in the original assessment concluded that the land does not require further consideration under clause 7 (1) (b) and (c) of SEPP 55.

6.3.2 REPs

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is within the area to which the SREP applies. The objectives of the Plan are established at Clause 2 and include the following:

- (a) *To ensure that the catchment, foreshores, waterways and islands of Sydney Harbour are recognised, protected and maintained;*
- (b) *As an outstanding natural asset, and*
- (c) *As a public asset of national and heritage significance, for existing and future generations.*
- (d) *To ensure a healthy, sustainable environment on land and water*
- (e) *To achieve a high quality urban environment,*
- (f) *To ensure a prosperous working waterfront and an effective transport corridor,*
- (g) *To ensure accessibility to and along Sydney Harbour and its foreshores,*
- (h) *To provide a consolidated, simplified and updated legislative framework for future planning.*

The proposal will not have an adverse visual impact on the Harbour foreshore and is consistent with the objectives of the SREP. It is therefore considered that the proposal meets the relevant requirements of the SREP and is acceptable in this regard.

6.3.3 Section 94 contribution

A Section 94 Contribution or Section 94A contribution has not been applied to the proposal as the application is recommended for refusal.

6.3.4 Other relevant legislation

None relevant.

6.4 WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 1995

Aims and objectives of WLEP 1995 and zone (Clause 8(5))

The proposal is permissible and is consistent with the aims and objectives of the LEP and the relevant objectives of the Residential 2(b) zone.

Statutory compliance table

Site Area: 881.8m ²	Existing	Proposed	Control	Complies
Lot Frontage	13.665m	15.22m**	15m	NO**
Overall Height	Approx. 8.6m	9.3m	9.5m	YES
Floor Space Ratio	Approx. 0.26:1 (230m ²)	0.617:1 (544.09m ²)	0.625:1 (551.125m ²)	YES

**see discussion below.

Site area requirements

The applicant has sought to modify the frontage of the subject site through the acquisition of land from the adjoining property at 124 – 126 Bellevue Road (an application previously approved by the Land and Environment Court). Insufficient information has been provided with the section 82A review submitted to Council and no documentation from the Land Title's Office has been issued to confirm the acquisition of this land. As such, the site frontage is assessed as what currently exists. The frontage of 13.665m does not comply with the required 15m width prescribed in Clause 10B subclause (1) of the WLEP 1995.

In this circumstance, the proposal is recommended for refusal as the site does not comply with the statutory lot frontage requirement prescribed in 10B(1) and the applicant has failed to provide a SEPP 1 objection to this development standard.

Height

The application includes a maximum height of 9.3 metres above existing ground level, compliant with statutory 9.5 metre height control relevant to the site.

Floor space ratio

The application proposes a FSR 0.617:1, compliant with the statutory 0.625:1 FSR control relevant to the site.

Clause 18 Excavation: The proposed development involves excavation to accommodate the car lift, basement car park, and swimming pool. A geotechnical and hydrogeological investigation report was prepared by Jeffery and Katauskas Pty Ltd for the original application. The report makes the following comments in regards to the excavation conditions:

“The approximate extent of the proposed excavations to accommodate the car lift (finished floor level at RL31.46m), basement car park level and Unit 3 lower floor level (finished floor level at RL32.96m) and the level 2 terrace level (finished floor level at RL38.3m).

“Following demolition of existing buildings and structures the bulk excavations will extend down to maximum depths between approximately 4m (northern end of the site), 8m (car lift & northern end of car park level) and 1.5m (southern end of unit 3). In addition, excavations for the proposed pool will extend down to a maximum depth of about 2m.”

Cl.18 of WLEP 1995 requires Council to have to regard how that excavation may temporarily or permanently affect:

- (a) *the amenity of the neighbourhood by way of noise, vibration, dust or other similar circumstances related to the excavation process, and*
- (b) *public safety, and*
- (c) *vehicle and pedestrian movements, and*
- (d) *the heritage significance of any heritage item that may be affected by the proposed excavation and its setting; and*
- (e) *natural landforms and vegetation, and*
- (f) *natural water runoff patterns.*

The provisions of Cl.18 are addressed as follows:

The temporary amenity impacts are assessed as follows:

- (i) **Noise:** The excavation process will cause noise impacts. Appropriate conditions could be imposed on the consent to limit the hours when excavation may occur and the duration of the excavation.
- (ii) **Vibrations:** The investigation report considers the impact of vibrations. Conditions could be imposed on the consent to require the applicant to prepare a vibration monitoring program and certification of the program prior to occupation to ensure that the program has been implemented.
- (iii) **Dust:** Conditions could be imposed on the consent to implement appropriate measures to control dust.
- (iv) **Erosion:** Conditions could be imposed that require the applicant to implement best practice techniques to control erosion from the site.
- (v) **Support to existing land and building both with the site and neighbouring site:** The geotechnical and hydrogeological investigation identifies that retaining walls will be required to support the subject site and adjoining land. Relevant conditions could be imposed on the consent to comply with the requirements of the geotechnical and hydrogeological reports, and undertake dilapidation reports of the potentially affected neighbouring properties.
- (vi) **Ground Water:** The geotechnical and hydrogeological investigation report specifies that ground water was not encountered. The report specifies that in the event that ground water is encountered above bedrock, that

“every fourth or fifth pile be stopped at least 0.5m above bedrock level to allow ‘through-flow’ of ground water.

If the application was to be approved conditions could be imposed on the consent to require compliance with the specifications of the submitted geotechnical and hydrogeological report.

- (vii) On-site processing of excavated materials: It is not proposed to process excavated material on-site.

The permanent amenity impacts of the proposed excavation are assessed as follows:

- (i) Landform: The excavation would result in the removal of significant vegetation and changes to the landform of the site. The implications on such vegetation cannot be supported as the applicant has failed to ensure suitable replacement species will be replanted on the site.
- (ii) Support to existing land and building both within the site and neighbouring site: It is anticipated that when completed the development will result in a high level of geotechnical stability across the site.
- (iii) Ground water levels: Subject to compliance with the geotechnical and hydrogeological report, the proposal would allow for ground water flows.

Clause 19 HFSPA: The proposal is acceptable in terms of Clause 19(2).

Clause 24 Land adjoining public open space: The proposal is acceptable in terms of Clause 24(2).

Clause 25 Water, wastewater and stormwater: Clause 25(2) of Woollahra LEP 1995 states that

The Council must not grant consent to the carrying out of development on land or the subdivision of land to which this plan applies for any purpose unless it is satisfied that adequate provision has been made for the disposal of stormwater from the land it is proposed to develop.

The judgement of Justice Bignold of the Land & Environment Court in [Billgate Pty Limited v Woollahra Municipal Council \[2004\] NSWLEC 436](#) ("Billgate") has had a significant and adverse impact upon the ability of Council to determine development applications on sites that cannot gravity drain to the street.

The practical effect of the application of Billgate to development applications is that Council must be satisfied that adequate provision has been made for the disposal of stormwater in both the physical capacity and legal capacity or competence prior to being able to grant consent.

It is noted that a deed of agreement was executed on the 11 May 2007 between Castagnet Joseland Pty Ltd and various owners of the downstream properties (The owners of Strata Plan 19309 – 36 Carlotta Road and Sens Pty Ltd). This easement benefited the properties at 124, 126 and 128 Bellevue Road, Double Bay. That said however, information provided by Pricewaterhouse Legal dated 28 January 2008 on behalf of the owners of Strata Plan 19309 and Sens Pty Ltd stipulates

Clause 2.5 of the deed provides that if Castagnet fails to satisfy any or all of the conditions of the deed within 6 months of the Deed (that is the 11 November 2007), the owners corp. and Sens Pty Ltd may terminate the deed. PWC has advised that both downstream parties have sought "termination of both deeds".

In light of this information and the terms of agreement of the deed, Council cannot conclusively say that the applicant has satisfied the requirements of clause 25(2) of the Woollahra LEP. The applicant can no longer legally demonstrate right to dispose of stormwater through the downstream properties. As such, the application cannot be supported and is recommended for refusal on these grounds.

Clause 25D Acid Sulfate Soils: The proposed works do not require the need for an assessment of acid sulfate soils under clause 25D of Woollahra LEP 1995.

Clauses 26-33 Heritage and conservation area provisions: The subject site is not a heritage item, is not in the immediate vicinity of any heritage items and is not located within a heritage conservation area. The proposal is therefore acceptable in terms of Clause 26-33 of the WLEP.

6.5 DRAFT AMENDMENTS TO STATUTORY CONTROLS

Amendment 60 of the Draft Woollahra LEP 1995 is not relevant to this assessment.

6.6 DEVELOPMENT CONTROL PLANS

Numeric Compliance table - Woollahra Residential Development Control Plan 2003

Site Area (881.8m ²)	Existing	Proposed	Control	Complies
Maximum Number of Storeys – RFB	N/A	3	3	Yes
Building Boundary Setbacks				
Front (N)	14.6-16.1m	11.6-12m	15.75m	NO
Rear (S)	19m	5.5m	12.1m	NO
Side (W) (width >18m)				
Ground Floor (L1, Unit 3)		3m (U3)	1.5m	Yes
First Floor (L2, Unit 2&3)	6m	3m (U3), 5m (U2)	4m	NO
Second Floor (L3, Unit 1)		5m (U1)	4.25m	Yes
Side (E) (width >18m)				
Ground Floor (L1, Unit 3)		3m (U3)	1.5m	Yes
First Floor (L2, Unit 2&3)	5m	3m (U2&3)	3.5m	NO
Second Floor (L3, Unit 1)		3m (U1)	4.25m	NO
Ancillary Development (<i>car lift/garage</i>)				
Maximum Height	2.89	4.4m	3.6m	NO
Rear Setback (S)	38m	31m	1.5m	Yes
Side Setback (W)	7.6m	9.5m	1.5m	Yes
Side Setback (E)	Nil	1.5m	1.5m	Yes
Ancillary Development (<i>pool</i>)				
Maximum Height	Nil	Nil	3.6m	Yes
Rear Setback (S)	11.7m	2.4m	1.5m	Yes
Side Setback (W)	5.4m	4.7m	1.5m	Yes
Side Setback (E)	5.8m	10.3m	1.5m	Yes
Building Footprint	Approx. 15% (130m ²)	40.5% (357m ²)	35% (308.63m ²)	NO
Solar Access to Open Space of Adjacent Properties (Hrs on 21 June)	< 50% < 2 hours	< 50% < 2 hours	50% (or 35m ²) for 2 hours	NO*
Excavation Piling and Subsurface Wall Setback	N/A	0 - 1.5m	1.5m	NO
Deep Soil Landscaping – RFB	N/A	35% (312.2m ²)	40% (352.72m ²)	NO
Deep Soil Landscaping – Front Setback	>40%	49% (83.7m ²)	40% (68.8m ²)	Yes

Site Area (881.8m ²)	Existing	Proposed	Control	Complies
Deep Soil Landscaping – Front Setback (Consolidated Area)	>20m ²	83.7m ²	20m ²	Yes
Private Open Space – Upper Floor Units in RFBs	N/A	> 8m ² > 2m	8m ² Min dimension 2m	Yes
Location of Swimming Pool	Rear Setback	Rear Setback	Rear Setback	Yes
Swimming Pool Excavation, Piling and Subsurface Wall Setback	5.3m	2.4m	1.5m	Yes
Swimming Pool Height Above Ground Level Adjacent to Adjoining Property	Nil (In-ground)	Nil (In-ground)	0.3m	Yes
Front Fence Height	Approx. 1.2m	1.7m	1.2m/1.5m where 50% transparent	NO
Side and Rear Fence Height	Varied	Unknown	1.8m	Unknown
Car Parking Excavation	N/A	Within Building Footprint	Within Building Footprint	Yes
Location of Garages and Car Parking Structures	Within front setback	Within front setback	Behind Front Setback	NO*
Garage Frontage Width	44% (6m)	31.5% (4.3m)	40% (5.46m)	Yes
Car Parking Spaces – RFB/Dual Occupancy	2 (dwelling)	5 (res) 1 (visitor)	4.5 (3 units x 2+bed) 0.75 (visitor)	Yes

* existing non-compliance

Site analysis performance criteria (Part 3)

The application includes a site analysis plan as required by Council’s DA Guide.

Desired future precinct character objectives and performance criteria (Part 4)

The subject site is located within the Bellevue Hill North Precinct under Part 4.7 of the RDCP 2003. The section 82A application represents non-compliance with the following precinct controls:

Building Footprint

The development proposes a building footprint that occupies 40.5% of the site area. This represents a 48 metre departure above the maximum permissible building footprint for a new residential flat building. In this instance the numeric non-compliance results in a 40 metre deficiency in the required levels of deep soil landscaping on the site and facilitates a building that does not comply with the front and rear setback requirements of the RDCP. The deficiency in deep soil landscaping, the adverse impacts on vegetation and the non-compliance with the setback requirements of the RDCP represent an overdevelopment of the site. As such the non-complying building footprint is not supported by Council.

Side Boundary Setbacks

The site lot width is less than 18m at the front alignment, therefore there are no specific requirements in the precinct controls.

Location of Garages

The application seeks to replace an existing double garage with a single lift car stacker and waiting bay. Whilst the development is an improvement having regard to the garage frontage width, the height of the stacker (4.4 metres) is contrary to C4.7.5 which stipulates that:

“All garages, car parking structures and driveways are designed and located so as not to dominate the street.”

In this instance the height and prominence of the stacker is unacceptable and should be modified to comply with the 2.5 metre maximum height stipulated in C4.7.5C of the RDCP 2003.

Bellevue Hill North Street Section (3)

Whilst the proposal complies with the numeric requirement for deep soil landscaping within the front setback, Council’s Tree and Landscape officer has determined that:

“Given the landscape style and the density of planting, I would not anticipate that any of these specimens would achieve the dimensions that would afford them protection by the Councils Tree Preservation Order. The existing and anticipated visual amenity provided by the Deodar Cedar would not be replaced by this design.”

As such, the development fails to achieve O4.7.3 and O4.7.4 of the desired future character objectives of the Bellevue Hill North Precinct.

The height of the proposal front fence is excessive and does not comply with the control prescribed in Control C 4.7.9.4 under Part 4.7 of the RDCP 2003. It is noted that this front fence height could be conditioned to comply with the control if the proposal were recommended for approval, however as the proposal is to be refused this non-compliance forms one of the reasons for refusal.

Streetscape performance criteria (Section 5.1)

Control C 5.1.2 under Part 5.1 of the RDCP 2003 requires the design and location of garages, parking structures and driveway to conform to the desired future character objectives and performance criteria for the locality described in Part 4. As previously discussed the height of the garage fails the desired future character objectives of the Bellevue Hill North Precinct as is recommended for refusal in its proposed form.

Building size and location performance criteria (Section 5.2)

Setbacks

The proposed front setback represents a non-compliance with the front boundary controls for the site. This non-compliance is compounded by the removal of the Deodar Cedar Tree located within the front garden area of the site and the inadequate replacement plantings that would fail to assist in softening the visual appearance of the new building form.

The rear of the building form fails the required side setbacks. The non-compliance along the western elevation is considered unreasonable as the building will be highly visible from the adjoining neighbour and will impact upon the neighbours privacy levels. The applicant has sought to include privacy screens to minimise the privacy impacts on the neighbour, however the screens will contribute to the bulk of the dwelling and would not comply with the side setback controls of the RDCP. The above reason is a recommendation for refusal.

The development does not comply with the required rear setback. In isolation, the non-compliance is not unreasonable, however the accumulative impact of the non-compliance is the building fails to satisfy the maximum permissible building footprint and does not achieve the deep soil levels required.

Building footprint

The proposal does not comply with the building footprint control. This has been addressed previously in this report.

Open space and landscaping performance criteria (Section 5.3)

Whilst the proposal satisfies the numeric open space requirements of the RDCP, the new development fails the deep soil requirements prescribed for a Residential Flat Building (RFB). It is noted that in the applicant's submission to Council, a deck with a permeable area below was included in the deep soil landscaping calculations. This aspect of the proposal does not satisfy the objectives, nor definition of deep soil landscaping as specified by the RDCP 2003.

Fences and walls performance criteria (Section 5.4)

As previously discussed the front fence is excessive in height and fails to satisfy the numeric requirements of the RDCP 2003.

No information has been provided regarding the side and rear fencing details.

Views performance criteria (Section 5.5)

The proposal does not obstruct significant views from the public or private domain.

Stormwater management performance criteria (Section 5.7)

As discussed above, the application fails to ensure that adequate provision has been made for the disposal of stormwater pursuant to clause 25(2) of WLEP 1995. The proposal fails in terms of Objective O 5.7.1 and Control C 5.7.1 under Part 5.7 of the RDCP 2003.

Acoustic and visual privacy performance criteria (Section 5.8)

The amended plans dated 18 December 2007 have included privacy screens along the western elevation of the building. The screens seek to minimise overlooking from the development into the adjoining western neighbours property. The screens are insufficient in height and do not prevent views from the upper most level rear terrace into the neighbours open space.

Furthermore, the application includes retractable and open able louvres window along the western elevation of the building. If these louvres were to be opened, they would afford direct line of sight into the neighbours open space and swimming pool area. These windows should be fixed to preserve the privacy of the neighbour.

The applicant has also sought to include a raised decking area along the western boundary. This deck should be deleted to prevent overlooking into the rear open space area of the neighbour.

Car parking and driveways performance criteria (*Section 5.9*)

The proposal has satisfied the numeric requirements for number of car spaces as prescribed by the RDCP 2003 and has addressed the previous access concerns raised by Council's Technical Services Department.

Site facilities (*Section 5.10*)

The proposal would satisfy the relevant criteria prescribed by the RDCP 2003.

Harbour Foreshore Development (*Section 5.11*)

The proposal would satisfy the relevant criteria prescribed by the RDCP 2003.

Mixed Development in Business Zones (*Section 5.12*)

Not applicable to this assessment.

Access and mobility performance criteria (*Section 5.13*)

The proposal would satisfy the relevant criteria prescribed by the RDCP 2003.

Inter-War Flat Buildings (*Section 5.14*)

Not applicable to this assessment.

6.7 DCP for off-street car parking provision and servicing facilities

As discussed above, the proposal would satisfy the relevant criteria prescribed by the RDCP 2003.

6.8 Other DCPs, codes and policies

There are no other DCPs, codes or policies applicable to the proposed development.

6.9 APPLICABLE REGULATIONS

Clause 92 of EP&A Regulations 2000

Clause 92 of the EP&A Regulation 2000 requires Council to consider Australian Standard AS2601-2001: the demolition of structures. It also requires compliance with this standard by condition of consent if the proposal were approved.

6.10 THE LIKELY IMPACTS OF THE PROPOSAL

The application has failed to obtain owners consent to construct works (planter and driveway) on the adjoining eastern neighbour's lot. Council will not grant consent for works outside of the parameters of the subject site without the owners consent.

All other likely impacts of the proposed development have been considered elsewhere in the report.

6.11 THE SUITABILITY OF THE SITE

The site is within a Class 5 Acid Sulphate Soil area identified in the Planning NSW Acid Sulphate Soil Risk Map. The site is therefore considered appropriate having regard to the acid sulfate classification.

As discussed in Section 4.6 above, since the applicant has failed to satisfy Council that adequate provision has been made for the disposal of stormwater pursuant to clause 25(2) of WLEP 1995, the site is not considered suitable for the proposed development. For this reason, the proposal is recommended for refusal.

6.12 SUBMISSIONS

The proposal was advertised and notified in accordance with Council's Advertising and Notifications DCP. Eight (8) submissions were received from:

- Mrs G Gollan – 135 Bellevue Rd, Bellevue Hill
- Louise & George Adler - 30 Carlotta Road, Double Bay
- Michelle Mackey - 131 Bellevue Road, Bellevue Hill
- Mr Clive & Mrs Jeanne Rowell - 120 Bellevue Rd, Bellevue Hill
- Di Veroli Architects - 68 Oxford Street, Woollahra c/o 36 Carlotta Road, Double Bay.
- Mr Andrew Petersen – PricewaterhouseCoopers Australia – on behalf of Sens Pty Limited, the owner of the strata lots comprising 36 Carlotta Road, Bellevue Hill
- Mrs Sophie Malizies - 136 Bellevue Road, Bellevue Hill
- Mrs Heather Williams - 130 Bellevue Road, Bellevue Hill

The objectors concerns can be summarised as follows:

- stormwater management
- drainage easement not granted by downstream properties
- inadequate street frontage for car lift
- streetscape
- amount of excavation/geotechnical impact
- vehicle movement on Bellevue Road

The above issues are acknowledged and the proposal is recommended for refusal.

AND/OR

The replacement application (as defined by Clause 90 of the *Environmental Planning and Assessment Regulation 2000*) was not renotified under clause 5.1 of the DCP because, having considered clause 9 of the DCP, the replacement application is substantially the same development as the original proposal and considered to have no greater environmental impact upon neighbours.

7. REVIEW OF ORIGINAL REASONS FOR REFUSAL

The revised drawings have been assessed against the reasons for refusal as follows:

1. Stormwater Drainage

Due to the absence of a downstream drainage easement to facilitate a gravity drainage system, the proposal does not provide for adequate site drainage and is therefore unsatisfactory with regard to the provisions of Clause 25 (2) of Woollahra Local Environmental Plan 1995.

Given the signed deed of agreement has expired and the downstream neighbours have advised Council that they have terminated the agreement, the applicant cannot demonstrate to Council that adequate provision for site drainage can be achieved.

2. Site Requirements

The subject site does not comply with the lot frontage requirement prescribed Clause 10B under the Woollahra Local Environmental Plan 1995.

The applicant has provided insufficient information to Council to demonstrate compliance with the requirements of Clause 10B of the Woollahra LEP 1995. Furthermore, no SEPP 1 objection has been received to seek a variation to the control. This reason for refusal remains outstanding.

3. Tree Preservation

The proposal will impact upon the stability and health of existing trees on site and is not considered satisfactory with regard to the objective prescribed in Clause 2(2)(f) under the Woollahra Local Environmental Plan 1995

Council's Tree and Landscaping officer has reviewed the replacement application and has concluded that the replacement plantings are inadequate. A modified reason for refusal has been imposed on the consent.

4. Building Footprint

The proposal does not comply with Control C 4.7.3 – Building Footprint under Part 4.7 of the Woollahra Residential Development Control Plan 2003.

This reason for refusal still stands particularly given the non-compliance with the front and rear setback requirements and deep soil landscaping control.

5. Location of Garages

The proposal does not comply with Control C 4.7.5 – Location of Garages under Part 4.7 of the Woollahra Residential Development Control Plan 2003.

The location of the garaging is not unreasonable, however the height of the proposed structure, dominates the streetscape and detracts from the appearance of the design.

6. Front Fences

The proposal does not comply with Control C 4.7.9.4 – Front Fences under Part 4.7 of the Woollahra Residential Development Control Plan 2003.

This matter has not been addressed by the applicant in the Section 82A review.

7. Streetscape

The proposal does not comply with Objectives O 5.1.1, O 5.1.3 and Control C 5.1.2 under Part 5.1 – Streetscape of the Woollahra Residential Development Control Plan 2003.

The outstanding concerns relating to streetscape remain the height of the garaging, front fencing and inadequate replacement plantings to accommodate significant vegetation.

8. Building Size and Location

The proposal does not comply with Objective O 5.2.3 and Control C 5.2.2 under Part 5.2 – Building Size and Location of the Woollahra Residential Development Control Plan 2003.

This non-compliance is not unreasonable subject to a reduction in height to the garaging, modifications to the front fencing and the planting of suitable species within the front setback.

9. Open Space

The proposal does not comply with Objective O 5.3.5 and Control C 5.3.1 under Part 5.3 – Open Space and Landscaping of the Woollahra Residential Development Control Plan 2003.

The subject of review fails the deep soil landscaping requirements and Council's Tree and Landscaping Officer. This reason for refusal stands.

10. Stormwater Management

The proposal does not comply with Objective O 5.7.1 and Control C 5.7.1 under Part 5.7 – Stormwater Management of the Woollahra Residential Development Control Plan 2003.

This matter remains an outstanding issue and has not been satisfactorily addressed.

11. Acoustic and Visual Privacy

The proposal does not comply with Objective O 5.8.1 and Control C 5.8.6 under Part 5.8 – Acoustic and Visual Privacy of the Woollahra Residential Development Control Plan 2003.

The proposal is deficient in maintaining acceptable levels of privacy for the adjoining western neighbour. This reason for refusal stands.

12. Car Parking

The proposal does not comply with Objectives O 5.9.2, O 5.9.3 and Controls C 5.9.3 and C 5.9.15 under Part 5.9 – Car Parking and Driveway of the Woollahra Residential Development Control Plan 2003.

The proposed car parking arrangement is acceptable subject to a reduction in the height of the car stacker. This reason for refusal is modified to express such concern.

13. Car Parking

The proposed arrangement of parking, in terms of the car park layout and car lift access, are not considered acceptable to ensure a safe and functional vehicular and pedestrian movement.

This matter has been addressed to the satisfaction of Council Technical Services Department.

14. Public Interest

The proposal is not in the public interest.

The proposal remains contrary to the public interest.

8. CONCLUSION

The proposal is acceptable against the relevant considerations under s79C and would be in the public interest.

9. RECOMMENDATION: Pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979

THAT Council, as the consent authority, having considered the application for review of its determination, resolve to maintain its refusal of development consent to Development Application No. 371/2005 for residential flat building 3 storey's on land at 128 Bellevue Road Bellevue Hill, for the following reasons:

1. Stormwater Drainage

Due to the absence of a valid downstream drainage easement to facilitate a gravity drainage system, the proposal does not provide for adequate site drainage and is therefore unsatisfactory with regard to the provisions of Clause 25 (2) of Woollahra Local Environmental Plan 1995.

2. Site Frontage Requirements

The subject site does not comply with the lot frontage requirement prescribed in Clause 10B (1) of the Woollahra Local Environmental Plan 1995. The applicant has failed to submit a SEPP 1 objection to apply to vary the development standard.

3. Tree Preservation

The proposal seeks to remove established vegetation from the site and is deficient in providing suitable replacement species. The proposal therefore fails to satisfy the objectives prescribed in Clause 2(2)(f)(i) & (ii) of the Woollahra Local Environmental Plan 1995 and O4.7.3 of the Woollahra Residential Development Control Plan 2003.

4. Overdevelopment of the site

The proposed building footprint coupled with the non-complying deep soil landscaping levels and deficient front, side and rear setbacks represent an overdevelopment in the site. The proposal therefore fails to satisfy O4.7.3, C4.7.3, O5.2.1, O5.2.3, C5.2.1, C5.2.3, O5.3.2, O5.3.3, O5.3.5 and C5.3.1 of the Woollahra Residential Development Control Plan 2003.

5. Height of car lift

The height of the car lift is excessive and results in the garage element being the dominant feature when viewing the site from Bellevue Road. The prominence of this structure also detracts from the proposed design. The application fails to achieve C4.7.5 and O5.9.3 of the Woollahra Residential Development Control Plan 2003.

6. Front Fence

The proposed front fence is excessive in height and does not conform to C 4.7.9.4 of the Woollahra Residential Development Control Plan 2003.

7. Streetscape

The excessive height of the car stacker and front fence detracts from the streetscape character and appearance of the development when viewed from Bellevue Road. Furthermore, the non-complying front setback and deficient replacement deep soil landscaping fails O 5.1.1, O 5.1.3 and C 5.1.2 of the Woollahra Residential Development Control Plan 2003.

8. Acoustic and Visual Privacy

The proposed privacy screens are inadequate to preserve the privacy of the adjoining western neighbour. The proposal does not comply with Objective O 5.8.1 and Control C 5.8.6 under Part 5.8 – Acoustic and Visual Privacy of the Woollahra Residential Development Control Plan 2003.

9. Public Interest

The proposal is not in the public interest.

Mr J La Posta
SENIOR REVIEW OFFICER

Mr M Schofield
TEAM LEADER

ANNEXURES

1. Original assessment Report
2. Plans and elevation
3. Referral response – Technical Services
4. Referral response – Trees and Landscaping